ITEM 4

TEST CLAIM

FINAL STAFF ANALYSIS

Education Code Sections 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251, 66252, 66261, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, 72011, 72012, 72013, 72014, 87101, and 87102

Statutes 1976, Chapter 1010; Statutes 1981, Chapter 470;
Statutes 1982, Chapter 1117; Statutes 1983, Chapter 143; Statutes 1984, Chapter 1371;
Statutes 1988, Chapters 973; Statutes 1990, Chapter 1372; Statutes 1991, Chapter 1198;
Statutes 1998, Chapter 914; Statutes 1999, Chapter 587; and Statutes 2002, Chapter 1169

California Code of Regulations, Title 5, Sections 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, 53034, and 54220

"Student Equity: Guidelines for Developing a Plan" Fall 2002, The Academic Senate for California Community Colleges (Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions"), (Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, Adopted by the Academic Senate Fall 2002)

(Consolidated With)

Government Code Sections 11135, 11136, 11137, 11138, and 11139

Statutes 1977, Chapter 972; Statutes 1992, Chapter 913; Statutes 1994, Chapter 146;
Statutes 1999, Chapter 591; Statutes 2001, Chapter 708; Statutes 2002, Chapter 300;
Statutes 2002, Chapter 1102

California Code of Regulations, Title 5, Sections 59300, 59303, 59304, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330 , 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360, and 59362

Register 96, number 23; Register 2001, number 6; Register 2002, number 13; and
Register 2002, number 35;

Discrimination Complaint Procedures

02-TC-46 (02-TC-25 and 02-TC-31)

Santa Monica Community College District
Los Rios Community College District, and
West Kern Community College District, Co-Claimant

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Cases:

- *Albemarle Paper Co. v. Moody, et al.* (1975) 422 U.S. 405
- *Alexander v. Choate* (1985) 469 U.S. 287
- *Alexander v. Gardner-Denver Co.* (1974) 415 U.S. 36
- *Alexander v. Sandoval* (2001) 532 U.S. 275
- *Associated Dry Goods Corporation v. Equal Employment Opportunity Commission* (4th Cir. 1983) 720 F.2d 804
- *Barnes v. Gorman* (2002) 536 U.S. 181
- *Cal. Drive-In Restaurant Assn. v. Clark* (1943) 22 Cal.2d 287

- *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183
- *Campbell v. Zolin* (1995) 33 Cal.App.4th 489
- *Cannon v. University of Chicago* (1979) 441 U.S. 677
- *Chicot County Drainage District v. Baxter State Bank* (1940) 308 U.S. 371
- *Christian Science Reading Room Jointly Maintained v. City and County of San Francisco* (9th Cir. 1986) 784 F.2d 1010
- *Clady v. County of Los Angeles* (9th Cir. 1985) 770 F.2d 1421
- *Coleman v. Zatechka* (D.Neb. 1993) 824 F.Supp. 1360
- *Connerly v. State Personnel Bd.* (2001) 92 Cal.App. 4th 16
- *Consolidated Rail Corp. v. Darrone* (1984) 465 U.S. 624
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- *DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal. 4th 382
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- *Fells v. Brooks* (D.D.C. 1981) 522 F.Supp. 30
- *Filush v. Town of Weston* (D.Conn. 2003) 266 F.Supp.2d 322
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- *Garcia v. Spun Steak Co.* (9th Cir. 1993) 998 F.2d 1480
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- *Gonzales v. Oregon* (2006) 546 U.S. 243
- *Greater Los Angeles Council on Deafness, Inc. v. Zolin* (9th Cir. 1987) 812 F.2d 1103
- *Grimes v. Superior Home Health Care of Middle Tennessee, Inc.* (M.D. Tenn. 1996) 929 F.Supp. 1088
- *Guardians Assoc. of the New York Police Dept., Inc. v. Civil Service Commission of the City of New York, et al.* (2nd Cir 1980) 630 F.2d 79

- *Hart v. Massanari* (9th Cir. 2001) 266 F.3d 1155
- *Huezo v. Los Angeles Community College Dist*. (C.D. Cal. 2008) 672 F.Supp.2d 1045
- *Humphrey v. Memorial Hospitals Assn.* (2001) 239 F.3d 1128
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- *McDonnell Douglas Corporation v. Green* (1973) 411 U.S. 792
- *Nichols v. Azteca Restaurant Enterprises, Inc.* (9th Cir. 2001) 256 F.3d 864
- *North Haven Bd. of Ed. v. Bell* (1982) 456 U.S. 512
- *Norton v. Shelby County* (1886) 118 U.S. 425
- *OONA, R.-S v. McCaffrey* (9th Cir. 1998) 143 F.3d 473
- *Pepper v. Board of Directors of Bolinas Public Utility Dist.* (1st Dist. 1985) 162 Cal.App.2d 1
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- *Riebe v. Budget Financial Corp.* (1968) 264 Cal.App.2d 576
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- California Constitution, article I, section 31

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- Title 20 United States Code section 1681
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- Title 29 United States Code section 701
- Title 29 United States Code section 794
- Title 29 United States Code section 794a
- Title 42 United States Code section 6101

- Title 42 United States Code section 6102
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- Title 42 United States Code section 12111
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- Title 42 United States Code section 12117
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- Title 42 United States Code section 12132
- Title 42 United States Code section 2000c-6
- Title 42 United States Code section 2000d
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- Title 42 United States Code section 2000e-2
- Title 42 United States Code section 2000e-4
- Title 42 United States Code section 2000e-5
- Title 42 United States Code section 2000e-8
- Title 42 United States Code section 2000e-12

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- Education Code section 76001
- Education Code section 78223
- Education Code section 87102,
  as added by Statutes 1978, chapter 766
- Former Education Code section 40, Statutes 1990, chapter 1372
- Former Education Code section 212.6,
  as added by Statutes 1992, chapter 906
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  as added by Statutes 1988, chapter 1514
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  as amended by Statutes 1974, chapter 989
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- Former Education Code section 72015,
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- 29 Code of Federal Regulations parts 1607.1, 1607.2, 1607.3,
  1607.5, and 1607.6
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- 34 Code of Federal Regulations part 104.4
- 34 Code of Federal Regulations part 104.7
- 34 Code of Federal Regulations part 104.8
- 34 Code of Federal Regulations part 106.8
- 34 Code of Federal Regulations part 106.9
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  <http://www.asccc.org/about> [as of September 2, 2010]
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- American Heritage Dictionary (new college ed. 1979), defining "standard," p. 1256-1257
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- Budget Acts:
    - Budget Act of 1989 (Stats. 1989, ch. 93), line item 6870-101-001
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- Chancellor's Office "Nondiscrimination Complaint Process," Legal Advisory 04-04 (September 15, 2004)
- Chancellor's Office "Changes to Nondiscrimination Regulations," Legal Advisory A 06-01 (May 18, 2006)
- Equal Employment Opportunity Commission, "Regional Attorneys' Manual"
- IPEDS "Fall Staff Survey, 2001"
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- Legislative Analyst's Analysis of Proposition 209 for the 1996 General Election
- National Center for Education Statistics, "Fall Staff in Postsecondary Institutions," (1993) Introduction
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- Office of Administrative Law, *Nomenclature Cross Reference*, effective April 1, 1990
- Office for Civil Rights of the United States Department of Education, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, (Jan. 2001)
- Senate Committee on Governmental Organization,
  Staff Analysis of Assembly Bill No. 803 (1976-1977 Reg. Sess.)
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- Senate Rules Com., Office of Senate Floor Analyses, 3d reading
  analysis of Senate Bill number 105 (2001-2002 Reg. Sess.)
  as amended July 18, 2002

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

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Exhibit A

TEST CLAIM FORM

Claim No. 02-TC-46

Local Agency or School District Submitting Claim

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Santa Monica Community College District
1900 Pico Avenue
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

Discrimination Complaint Procedures (CCD)

Chapter 1102, Statutes of 2002	Government Code Sections	Title 5, California Code of Regulations
Chapter 300, Statutes of 2002	Section 11135	Sections 59300, 59303, 59304, 59310,
Chapter 708, Statutes of 2001	Section 11136	59311, 59320, 59322, 59324, 59326,
Chapter 591, Statutes of 1999	Section 11137	59327, 59328, 59329, 59330, 59332,
Chapter 146, Statutes of 1994	Section 11138	59334, 59336, 59338, 59339, 593340,
Chapter 913, Statutes of 1992	Section 11139	59342, 59350, 59351, 59352, 59354
Chapter 972, Statutes of 1977		59356, 59358, 59360 and 59362

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
Thomas J. Donner Executive Vice President -Business and Administration	Voice (310) 434-4221 Fax (310) 434-3607

Signature of Authorized Representative	Date
X Thomas J. Donner	June 23, 2003

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

	No. CSM _____
Test Claim of: Santa Monica Community College District Test Claimant	Chapter 1102, Statutes of 2002 Chapter 300, Statutes of 2002 Chapter 708, Statutes of 2001 Chapter 591, Statutes of 1999 Chapter 146, Statutes of 1994 Chapter 913, Statutes of 1992 Chapter 972, Statutes of 1977 Government Code Sections 11135, 11136, 11137, 11138 and 11139 Title 5, California Code of Regulations Sections 59300, 59303, 59304, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330, 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360 and 59362
	Discrimination Complaint Procedures (CCD)

TEST CLAIM FILING

PART 1. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Santa Monica Community College District is a "school district" as defined in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for community colleges to establish and implement complaint resolution procedures as required by Title 5, California Code of Regulations governing "Nondiscrimination in Programs Receiving State Financial Assistance Through the Chancellor or Board of Governors of the California Community Colleges".

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Prior to January 1, 1975, there was no statute or regulation which mandated any complaint resolution procedures.

SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974

Government Code Sections

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[1] Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools."

Chapter 972, Statutes of 1977, Section 1, added Government Code Section 11135[2] which provides that no person in the State of California shall be unlawfully denied the benefits of any program or activity that is funded directly by the state or receives any financial assistance from the state based on their ethnic group identification, religion, age, sex, color, or physical or mental disability.

Chapter 972, Statutes of 1977, Section 1, added Government Code Section 11136[3] which provides that, whenever a state agency that administers a program or activity funded directly by the state, or which receives financial assistance from the

---

[2]Government Code Section 11135, added by Chapter 972, Statutes of 1977, Section 1:

"No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state."

[3]Government Code Section 11136, added by Chapter 972, Statutes of 1977, Section 1:

"Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation occurred."

state, has reasonable cause to believe that a local agency has violated the provisions of 11135 or any regulation adopted to implement the section, the head of the state agency is required to notify the local agency of such violation and, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of Section 11135 has occurred. If probable cause is established, the head of the state agency shall cause a hearing to be conducted pursuant to the provisions of Chapter 5 (Government Code Sections 11500 through 11529) to determine whether a violation occurred. (See: Section D, infra.)

Chapter 972, Statutes of 1977, Section 1, added Government Code Section 11137[4] which provides that, if it is determined that a local agency has violated the provisions of the article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such local agency.

Chapter 972, Statutes of 1977, Section 1, added Government Code Section 11138[5] which requires that each state agency that administers a program or activity that

---

[4]Government Code Section 11137, added by Chapter 972, Statutes of 1977, Section 1:

"If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency."

[5] Government Code Section 11138, added by Chapter 972, Statutes of 1977, Section 1:

"Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into

is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars ($100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371), adopt such rules and regulations as are necessary to carry out the purposes and provisions of the article. Test claimant believes and thereon alleges that the Chancellor's Office of the California Community Colleges is the only state agency to adopt rules and regulations which require local government to implement duties assigned by law to be preformed by the responsible state agency, in this case, the Board of Governors of the California Community Colleges.

Chapter 972, Statutes of 1977, Section 1, added Government Code Section 11139[6] which provides that the prohibitions and sanctions imposed by this article shall be in addition to any other prohibitions and sanctions imposed by law.

---

contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars ($100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article."

[6] Government Code Section 11139, added by Chapter 972, Statutes of 1977, Section 1:

"The prohibitions and sanctions imposed by this article shall be in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in such manner so as to frustrate its purpose.

This article shall not be interpreted in such a manner so as to adversely affect lawful programs which benefit the disabled, the aged, minorities, and women."

Chapter 913, Statutes of 1992, Section 18, amended Government Code Section 11135[7], subdivision (a), to delete "physical or mental" as modifiers of "disability". Subdivision (b) was added to require that programs and activities, at a minimum, shall meet the protections and prohibitions of the Americans with Disabilities Act of 1990. Subdivision (c) was added to define "disability" as any of the following: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment, or (3) being regarded as having such an impairment.

Chapter 146, Statutes of 1994, Section 66, amended Government Code Section 11135 to make non-substantive technical changes.

Chapter 591, Statutes of 1999, Section 3, amended Government Code Section

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[7] Government Code Section 11135, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 913, Statutes of 1992, Section 18:

"(a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or ~~physical or mental~~ disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment, (3) being regarded as having such an impairment."

11139[8] to add a provision that allows enforcement of the article and regulations to be enforced by a civil action for equitable relief.

Chapter 708, Statutes of 2001, Section 1, amended Government Code Section 11135[9], subdivision (a), to clarify that no person shall be denied full and equal access to

---

[8] Government Code Section 11139, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 591, Statutes of 1999, Section 3:

"The prohibitions and sanctions imposed by this article ~~shall be~~ are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in ~~such~~ a manner ~~so as to~~ that would frustrate its purpose.

This article shall not be interpreted in ~~such~~ a manner ~~so as to~~ that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief."

[9] Government Code Section 11135, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 708, Statutes of 2001, Section 1:

"(a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any ~~of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment as described in paragraph (1), or (3) being regarding as having an impairment as described~~

the benefits of any program or activity that is conducted, operated, or administered by the state or by any state agency. Subdivision (c) was amended to redefine "disability" by reference to Section 12926.

Chapter 708, Statutes of 2001, Section 2, amended Government Code Section 11139[10] which clarified that enforcement by a civil action for equitable relief is independent of any other rights and remedies.

Chapter 300, Statutes of 2002, Section 4, amended Government Code Section 11135[11], subdivision (a), to add "race" and "national origin" to the list of prohibited basis

---

~~in paragraph (1).~~ mental or physical disability as defined in Section 12926."

[10] Government Code Section 11139, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 708, Statutes of 2001, Section 2:

"The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.
This article shall not be interpreted in a manner that would frustrate its purpose.
This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.
This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies."

[11] Government Code Section 11135, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 300, Statutes of 2002, Section 4:

"(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state or receives any financial assistance from the state."

for discrimination.

Chapter 1102, Statutes of 2002, Section 2.5, amended Government Code Section 11135[12] by adding subdivision (d) which requires complaince with federal laws regulating electronic or information technology for the blind and visually impaired and deaf and hard-of-hearing persons.

California Code of Regulations

Subchapter 5 (Articles 1-4, Sections 59300-59362, not consecutive), initally adopted in 1981, establishes Board of Governor regulations for "Nondiscrimination in Programs Receiving State Financial Assistance Through the Chancellor or Board of Governors of the California Community Colleges". These Title 5 Code of Regulations

---

[12] Government Code Section 11135, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 1102, Statutes of 2002, Section 2.5:

> "(d) (1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.
>
> (2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.
>
> (3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity."

Sections are attached hereto as Exhibit 2 and are incorporated herein by reference.

ARTICLE 1. GENERAL

Section 59300 [filed 1981 - last amended 2002] states the purpose of the subchapter is to implement the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code Sec. 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12100 et seq.) and the Age Discrimination Act (42 U.S.C. Sec. 6101), to the end that no person in the State of California be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is administered by, funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges based upon ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability.

Section 59303 [filed 1981 - last amended 2002] provides that the Board of Governors delegates responsibility for implementing and enforcing the requirements of Government Code Sections 11135 through 11137 to the Chancellor of the California Community Colleges, except as specifically stated in this subchapter.

Section 59304 [filed 1981 - last amended 2002] provides that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination

that may exist in their programs and activities and in meeting the requirements of the subchapter.

ARTICLE 2. DEFINITIONS

Section 59310 [filed 1981 - last amended 2002] provides that, except as otherwise provided in the subchapter, the definitions of activities prohibited and protected by Title 22 of the California Code of Regulations (commencing with section 98100) be incorporated into and made applicable to the subchapter. Sections 98100 through 98111 of Title 22 are attached hereto as Exhibit 3 and are incorporated herein by reference.

Section 59311 [filed 2001 - last amended 2002] provides definitions for the subchapter.

ARTICLE 3. DISTRICT COMPLIANCE AND ENFORCEMENT

Section 59320 [filed 1981 - last amended 2002] provides that each community college district has the primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental disability. Each community college district is required to investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve these complaints in accordance with the provisions of the subchapter.

Section 59322 [filed 1981 - last amended 2002] requires that each community college district establish and adopt written policies consistent with this article and when

those policies are adopted or amended, they shall be submitted to the Chancellor for review and approval within 90 days of the effective date of the adoption or amendment(s).

Section 59324 [filed 1981 - last amended 2002] requires each community college district to identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district, such as when the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

Section 59326 [filed 1981 - last amended 2002] requires that each community college district notify students and employees of the provisions of the subchapter.

Section 59327 [filed 1996 - last amended 2002] provides, in subdivision (a), that whenever any person brings charges of unlawful discrimination to the attention of the responsible district officer designated pursuant to section 59324, that officer shall:

(1) Undertake efforts to informally resolve the charges;

(2) Advise the complainant that he or she need not participate in informal resolution;

(3) Notify the person bringing the charges of his or her right to file a complaint, as defined in section 59311, and of the procedure for filing such a complaint pursuant to section 59328;

(4) Advise the complainant that he or she may file his or her nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction; and

(5) Advise the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies.

Subdivision (b) provides that efforts at informal resolution pursuant to subsection (a)(1) need not include any investigation unless the responsible district officer determines that an investigation is warranted by the seriousness of the charges. Subdivision (c) requires that efforts at informal resolution may continue after the filing of a formal written complaint but, after a complaint is filed, an investigation is required to be conducted pursuant to section 59334 and must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint. Any efforts at informal resolution after the filing of a written complaint shall not exceed the ninety (90) day period for rendering the administrative determination pursuant to section 59336.

Section 59328 [filed 1981 - last amended 2002] provides that an investigation of alleged unlawful discrimination prohibited by this subchapter will be initiated by filing a complaint that meets the following requirements:

(a) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator;

(b) The complaint shall be filed with the Chancellor of the California Community Colleges or with the officer designated pursuant to section 59324 by the appropriate community college district;

(c) The complaint shall be in a form prescribed by the Chancellor;

(d) In any complaint not involving employment, the complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination;

(e) In any complaint alleging discrimination in employment, the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period should be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days; and

(f) In any complaint alleging discrimination in employment, the district shall: (1) advise the complainant that he or she may file the

complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies, and (2) forward a copy of any filing by the complainant with DFEH to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of this subchapter.

Section 59329 [filed 1981 - last amended 2002] provides that, upon receiving a complaint filed pursuant to section 59328, the Chancellor will immediately forward a copy of the complaint to the appropriate community college district responsible officer who shall respond pursuant to section 59332 or initiate the investigation required by section 59334.

Section 59330 [filed 1981 - last amended 2002] requires that, immediately upon receiving a complaint filed in accordance with section 59328, the district shall forward a copy of the complaint to the Chancellor.

Section 59332 [filed 1981] provides that, when a district receives a complaint which it finds does not meet the requirements of Section 59328, the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

Section 59334 [filed 1981 - last amended 2002] provides that, upon receiving a

complaint that is properly filed in accordance with section 59328, the district will commence an impartial fact-finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results of the investigation shall be set forth in a written report that shall include at least all of the following:

(a) A description of the circumstances giving rise to the complaint;

(b) A summary of the testimony provided by each witness, including the complainant and any viable witnesses identified by the complainant in the complaint;

(c) An analysis of any relevant data or other evidence collected during the course of the investigation;

(d) A specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; and

(e) Any other information deemed appropriate by the district.

Section 59336 [filed 1992 - last amended 2002] provides that, within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward a copy of the investigative report required pursuant to section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:

(a) The determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination

occurred with respect to each allegation in the complaint;

(b) A description of actions taken, if any, to prevent similar problems from occurring in the future;

(c) The proposed resolution of the complaint; and

(d) The complainant's right to appeal to the district governing board and the Chancellor pursuant to sections 59338 and 59339.

Section 59338 [filed 1992 - last amended 2002] provides, in subdivision (a), that if the complainant is not satisfied with the results of the administrative determination rendered pursuant to section 59336, the complainant may submit a written appeal to the district governing board within fifteen (15) days from the date of the administrative determination. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty-five (45) days after receiving the appeal. Subdivision (b) provides that a copy of the final district decision rendered by the governing board, that includes complainant's right to appeal the district's decision to the Chancellor pursuant to section 59339, shall be forwarded to the complainant and to the Chancellor. Subdivision (c) provides that, if the governing board does not act within forty-five (45) days, the administrative determination shall be deemed approved and shall become the final district decision in the matter. The district shall notify the complainant and the Chancellor that the board took no action and the administrative determination is deemed approved pursuant to this section. The complainant shall also be notified of his or her

right to appeal the district's decision to the Chancellor pursuant to section 59339.

Section 59339 [filed 2001 - last amended 2002] provides, in subdivision (a), that in any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days from the date that the governing board issues the final district decision or permits the administrative determination to become final pursuant to section 59338. Such appeals shall be processed pursuant to the provisions of Article 4 (commencing with section 59350) of the subchapter. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement, under penalty of perjury, that no response was received from the governing board within forty-five (45) days from that date. Subdivision (b) provides that, in any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency.

Section 59340 [filed 1981 - last amended 2002] provides that, within 150 days of receiving a complaint, the district will forward to the Chancellor: (a) a copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to section 59338(a); (b) a copy of the notice to the complainant required pursuant to section 59338(a); and (c) such other information as the Chancellor may require.

Section 59342 [filed 1992 - last amended 2002] provides, in subdivision (a), that if a district, for reasons beyond its control, is unable to comply with the 90-day or 150-day deadline specified in sections 59336 or 59340 for submission of materials to the Chancellor, the district may file a written request that the Chancellor grant an extension of the deadline. Subdivision (b) requires that a copy of the request for an extension shall be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt. Subdivision (c) provides that the Chancellor may grant the request unless delay would be prejudicial to the investigation. Subdivision (d) provides that if a district fails to comply with the requirements of sections 59336 or 59340 by the required deadline, including any extension granted pursuant to this section, the Chancellor may proceed to review the case as provided in Article 4 (commencing with section 59350) of the subchapter based on the original complaint and any other relevant information then available.

ARTICLE 4. CHANCELLOR'S PROCEDURE TO EFFECT COMPLIANCE

Section 59350 [filed 1981 - last amended 2002] requires, in subdivision (a), that the Chancellor review the materials submitted by the district pursuant to sections 59336 and 59340, together with the complainant's appeal, and determine whether there is reasonable cause to believe the district has violated the requirements of the subchapter. Subdivision (b) provides that a failure by the complainant to file an appeal pursuant to section 59339 shall not preclude the Chancellor from finding reasonable cause to believe the district has violated the requirements of the subchapter. Subdivision (c)

provides that, if the Chancellor finds there is no reasonable cause to believe a violation has occurred, the Chancellor shall immediately notify both the complainant and the district.

Section 59351 [filed 2001 - last amended 2002] provides that, if the Chancellor's Office finds that issues or facts not included in the complaint have been raised for the first time on appeal based upon review of the materials submitted by the complainant pursuant to section 59339, the Chancellor's Office will provide the district a reasonable opportunity to respond to the new issues or facts raised by complainant.

Section 59352 [filed 1981 - last amended 2002] provides that, if the Chancellor finds there is reasonable cause to believe a violation has occurred, the Chancellor shall investigate to determine whether there is probable cause to believe a violation has occurred.

Section 59354 [filed 1981 - last amended 2002] provides that, during the course of the investigation, the Chancellor shall seek to informally resolve the alleged violation, and that such resolution shall be set forth in a written conciliation agreement with a copy of the written agreement to be sent to the complainant.

Section 59356 [filed 1981 - last amended 2002] provides that, within 120 days of initiating the investigation, the Chancellor shall notify the district and the complainant either that there is probable cause to believe the district has violated the provisions of this subchapter or that there is no probable cause to believe the district has violated the provisions of this subchapter.

Section 59358 [filed 1981 - last amended 2002] provides that, if the Chancellor finds the district has violated the provisions of this subchapter, and if the district does not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant to chapter 5 (commencing with section 11500) of Part I, Division 3, Title 2 of the Government Code, to determine whether the violation did occur. Districts are then required to submit and respond to the due process requirements set forth therein.

Section 59360 [filed 1981 - last amended 2002] provides, in subdivision (a), that upon a determination that a district has violated the provisions of this subchapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including the withholding of all or part of the district's state support, or making probationary eligibility for future state support conditional on compliance with specified conditions, or proceeding in a court of competent jurisdiction for an appropriate order compelling compliance. Subdivision (b) provides that no decision to curtail state funding to a district pursuant to this section shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

Section 59362 [filed 1981 - last amended 2002] provides that, a decision by the Chancellor pursuant to section 59360 is subject to judicial review by the district, as provided by Section 1094.5 of the Code of Civil Procedure.

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The California Code of Regulations Sections cited in this test claim result in community college districts incurring costs mandated by the state, as defined in Government Code section 17514[13], by creating new state-mandated duties related to the uniquely governmental function of providing education and service to the public and these regulations apply to community college districts and do not apply generally to all residents and entities in the state.[14]

The new duties mandated by the state upon community college districts require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

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[13] Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

[14] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

A) Pursuant to Subchapter 5 of Title 5 of the California Code of Regulations (Articles 1-4, Sections 59300-59362, not consecutive) for each community college district to establish and implement policies and procedures, and to periodically update those policies and procedures, to implement those regulations, as defined in Sections 59310, 59311 and the Title 22, California Code of Regulations attached hereto as Exhibit 3.

B) Pursuant to Section 59320 insuring that the district's programs and activities are available to persons without discrimination based on ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental disability. Investigating complaints of unlawful discrimination in its programs or activities and seeking to resolve complaints in accordance with the provisions of the subchapter.

C) Pursuant to Section 59322, establishing and adopting written policies consistent with the article and submitting them to the Chancellor for review and approval within 90 days of the effective date of the adoption or amendment(s).

D) Pursuant to Section 59324, identifying to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to section 59328 and coordinating their investigation.

E) Pursuant to Section 59326, notifying students and employees of the provisions of the subchapter.

F) Pursuant to Section 59327, whenever any person brings charges of unlawful

discrimination to the district's attention:

(1) Undertaking efforts to informally resolve the charges;

(2) Advising the complainant that he or she need not participate in informal resolution;

(3) Notifying the person bringing the charges of his or her right to file a complaint pursuant to section 59328;

(4) Advising the complainant that he or she may file his or her non-employment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction; and

(5) Advising the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH).

Pursuant to subdivision (b) commencing an investigation when the responsible district officer determines that an investigation is warranted by the seriousness of the charges. Pursuant to subdivision (c), completing any investigation within 90 days after a formal complaint is filed.

G) Pursuant to Section 59328, initiating an investigation of a charge of unlawful discrimination upon the filing of a conforming complaint.

H) Pursuant to Section 59328, subdivision (f), (1) advising the complainant that he or

she may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies, and (2) forwarding a copy of any filing by the complainant with DFEH to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of the subchapter.

I) Pursuant to Section 59329, responding to a complaint submitted to the Chancellor pursuant to Section 59332, or initiating an impartial fact-finding investigation pursuant to Section 59334.

J) Pursuant to Section 59330, upon receipt, forwarding a copy of any complaint to the Chancellor.

K) Pursuant to Section 59332, when receiving a complaint which the district finds does not meet the requirements of Section 59328, immediately notifying the complainant that the complaint does not meet the requirements of Section 59328 and specifying in what requirement the complaint was defective.

L) Pursuant to Section 59334, upon receiving a complaint that is properly filed, commencing an impartial fact-finding investigation of the complaint.

M) Pursuant to Section 59334, upon commencing an impartial fact-finding investigation, notifying the complainant and Chancellor that it is conducting an investigation and that the results of the investigation will be set forth in a written report.

N) Pursuant to Section 59334, after conducting an impartial fact-finding investigation, setting forth in a written report the results of the investigation which shall include at least all of the following:

(1) A description of the circumstances giving rise to the complaint;

(2) A summary of the testimony provided by each witness, including the complaint and any viable witnesses identified by the complainant in the complaint;

(3) An analysis of any relevant data or other evidence collected during the course of the investigation;

(4) A specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; and

(5) Any other information deemed appropriate by the district.

O) Pursuant to Section 59336, forwarding a copy of the completed investigative report to the Chancellor and to the complainant within 90 days of receiving the complaint, and a written notice setting forth all of the following:

(1) The determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;

(2) A description of actions taken, if any, to prevent similar problems from occurring in the future;

(3) The proposed resolution of the complaint; and

(4) The complainant's right to appeal to the district governing board and the Chancellor pursuant to sections 59338 and 59339.

P) Pursuant to Section 59338, notifying the complainant and the Chancellor when the district governing board takes no action causing an administrative determination to be deemed approved.

Q) Pursuant to Section 59340, forwarding the following documents to the Chancellor within 150 days after receiving a complaint:

(1) A copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to section 59338(a);

(2) A copy of the notice to the complainant required pursuant to section 59338(a); and

(3) Such other information as the Chancellor may require.

R) Pursuant to Section 59342, if, for reasons beyond its control, a district is unable to comply with the deadlines in sections 59336 or 59340, filing a written request with the Chancellor for an extension of the deadline and mailing a copy to the complainant.

S) Pursuant to Section 59351, responding to new issues or facts raised by a complainant on appeal to the Chancellor's office.

T) Pursuant to Section 59352, cooperating and complying with the Chancellor in any

investigation conducted to determine whether there is probable cause to believe a violation has occurred.

U) Pursuant to Section 59354, cooperating with the Chancellor when seeking an informal resolution of an alleged violation and joining in any written conciliation agreement when resolution is achieved.

V) Pursuant to Section 59356, subdivision (a), acquiescing or contesting a finding by the Chancellor that there is probable cause to believe the district has violated the provisions of the subchapter. Pursuant to subdivision (b), closing the district's file upon a finding by the Chancellor that there is no probable cause to believe the district has violated the provisions of the subchapter.

W) Pursuant to Section 59358, submitting and responding to the hearing process initiated by the Chancellor when the district does not acquiesce in a finding the district has violated the provisions of the subchapter.

X) Pursuant to Section 59360, complying with actions taken by the Chancellor upon a determination that the district has violated the provisions of the subchapter or, in the alternative, appearing and defending in a court of competent jurisdiction opposing an order seeking compliance.

Y) Pursuant to Section 59362, filing a petition as provided by Section 1094.5 of the Code of Civil Procedure to review a decision of the Chancellor when necessary or appropriate.

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SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[15] statutory exceptions to a finding of costs mandated by the state apply to this test claim. Note, that to the extent community college districts may have previously performed functions similar to those mandated by the referenced code section, such efforts did not establish a preexisting

[15] Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

duty that would relieve the state of its constitutional requirement to later reimburse school districts when these activities became mandated.[16]

SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

No funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from any other source.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of Thomas J. Donner
Santa Monica Community College District

Exhibit 2: Copies of Statutes Cited

Chapter 1102, Statutes of 2002
Chapter 300, Statutes of 2002
Chapter 708, Statutes of 2001
Chapter 591, Statutes of 1999
Chapter 146, Statutes of 1994
Chapter 913, Statutes of 1992
Chapter 972, Statutes of 1977

Exhibit 3: Government Code Sections Cited

11135

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[16] Government Code section 17565, added by Chapter 879, Statutes of 1986:

"If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

11136
11137
11138
11139

Exhibit 4: Title 5, California Code of Regulation Sections cited:

Section 59300
Section 59303
Section 59304
Section 59310
Section 59311
Section 59320
Section 59322
Section 59324
Section 59326
Section 59327
Section 59328
Section 59329
Section 59330
Section 59332
Section 59334
Section 59336
Section 59338
Section 59339
Section 59340
Section 59342
Section 59350
Section 59351
Section 59352
Section 59354
Section 59356
Section 59358
Section 59360
Section 59362

Exhibit 5: Title 22, California Code of Regulations Referenced
Section 98100
Section 98101
Section 98102
Section 98110
Section 98111

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June _____, 2003, at Santa Monica, California by:

_____
Thomas J. Donner
Executive Vice President
Santa Monica Community College District

Voice: (310) 434-4221
Fax: (310) 434-3607

PART VI. APPOINTMENT OF REPRESENTATIVE

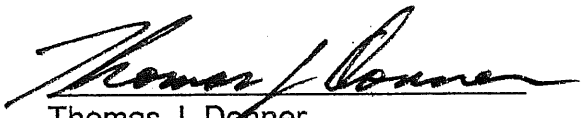
Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

_____ _____
Thomas J. Donner Date
Executive Vice President
Santa Monica Community College District

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 23, 2003, at Santa Monica, California by:



Thomas J. Donner
Executive Vice President
Santa Monica Community College District

Voice: (310) 434-4221
Fax: (310) 434-3607

PART VI. APPOINTMENT OF REPRESENTATIVE

Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

6-23-03

Thomas J. Donner
Executive Vice President
Santa Monica Community College District

Date

EXHIBIT 1
DECLARATION

DECLARATION OF THOMAS J. DONNER

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Test Claim of Santa Monica Community College District

COSM No. _____

Discrimination Procedures (CCD)

Statutes	**Title 5,California Code of Regulations**	
Chapter 1102, Statutes of 2002	Section 59300	Section 59334
Chapter 300, Statutes of 2002	Section 59303	Section 59336
Chapter 708, Statutes of 2001	Section 59304	Section 59338
Chapter 591, Statutes of 1999	Section 59310	Section 59339
Chapter 146, Statutes of 1994	Section 59311	Section 59340
Chapter 913, Statutes of 1992	Section 59320	Section 59342
Chapter 972, Statutes of 1977	Section 59322	Section 59350
	Section 59324	Section 59351
	Section 59326	Section 59352
	Section 59327	Section 59354
Government Code Sections	Section 59328	Section 59356
11135, 11136, 11137,	Section 59329	Section 59358
11138 and 11139	Section 59330	Section 59360
	Section 59332	Section 59362

Discrimination Complaint Procedures (CCD)

I, Thomas J. Donner, Executive Vice President, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Executive Vice President, I am responsible for implementation of the Title 5 Regulations governing discrimination complaint procedures. I am familiar with the provisions and requirements of the statutes, Government Code sections and Title 5 Regulations enumerated above.

These statutes, sections and regulations require the Santa Monica Community College District to implement the following activities:

A) Pursuant to Government Code Sections 11135 through 11139 and Subchapter 5

of Title 5 of the California Code of Regulations (Articles 1-4, Sections 59300-59362, not consecutive) for each community college district to establish and implement policies and procedures, and to periodically update those policies and procedures, to implement those regulations, as defined in Sections 59310, 59311 and the Title 22, California Code of Regulations attached to the test claim as Exhibit 5.

B) Pursuant to Section 59320 insuring that the district's programs and activities are available to persons without discrimination based on ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental disability. Investigating complaints of unlawful discrimination in its programs or activities and seeking to resolve complaints in accordance with the provisions of the subchapter.

C) Pursuant to Section 59322, establishing and adopting written policies consistent with the article and submitting them to the Chancellor for review and approval within 90 days of the effective date of the adoption or amendment(s).

D) Pursuant to Section 59324, identifying to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to section 59328 and coordinating their investigation.

E) Pursuant to Section 59326, notifying students and employees of the provisions of the subchapter.

F) Pursuant to Section 59327, whenever any person brings charges of unlawful discrimination to the district's attention:

(1) Undertaking efforts to informally resolve the charges;

(2) Advising the complainant that he or she need not participate in informal resolution;

(3) Notifying the person bringing the charges of his or her right to file a complaint pursuant to section 59328;

(4) Advising the complainant that he or she may file his or her non-employment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction, and

(5) Advising the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH).

Pursuant to subdivision (b) commencing an investigation when the responsible district officer determines that an investigation is warranted by the seriousness of the charges. Pursuant to subdivision (c), completing any investigation within 90 days after a formal complaint is filed.

G) Pursuant to Section 59328, initiating an investigation of a charge of unlawful discrimination upon the filing of a conforming complaint.

(H) Pursuant to Section 59328, subdivision (f), (1) advising the complainant that he or she may file the complaint with the U.S. Equal Employment Opportunity

Commission (EEOC) and/or Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies, and (2) forwarding a copy of any filing by the complainant with DFEH to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of the subchapter.

(I) Pursuant to Section 59329, responding to a complaint submitted to the Chancellor pursuant to Section 59332, or initiating an impartial fact-finding investigation pursuant to Section 59334.

(J) Pursuant to Section 59330, upon receipt, forwarding a copy of any complaint to the Chancellor.

(K) Pursuant to Section 59332, when receiving a complaint which the district finds does not meet the requirements of Section 59328, immediately notifying the complainant that the complaint does not meet the requirements of Section 59328 and specifying in what requirement the complaint was defective.

(L) Pursuant to Section 59334, upon receiving a complaint that is properly filed, commencing an impartial fact-finding investigation of the complaint.

(M) Pursuant to Section 59334, upon commencing an impartial fact-finding investigation, notifying the complainant and Chancellor that it is conducting an investigation and that the results of the investigation will be set forth in a written report.

(N) Pursuant to Section 59334, after conducting an impartial fact-finding

investigation, setting forth in a written report the results of the investigation which shall include at least all of the following:

(1) A description of the circumstances giving rise to the complaint;

(2) A summary of the testimony provided by each witness, including the complaint and any viable witnesses identified by the complainant in the complaint;

(3) An analysis of any relevant data or other evidence collected during the course of the investigation;

(4) A specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; and

(5) Any other information deemed appropriate by the district.

(O) Pursuant to Section 59336, forwarding a copy of the completed investigative report to the Chancellor and to the complainant within 90 days of receiving the complaint, and a written notice setting forth all of the following:

(1) The determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;

(2) A description of actions taken, if any, to prevent similar problems from occurring in the future;

(3) The proposed resolution of the complaint; and

(4) The complainant's right to appeal to the district governing board and the Chancellor pursuant to sections 59338 and 59339.

(P) Pursuant to Section 59338, notifying the complainant and the Chancellor when the district governing board takes no action causing an administrative determination to be deemed approved.

(Q) Pursuant to Section 59340, forwarding the following documents to the Chancellor within 150 days after receiving a complaint:

(1) A copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to section 59338(a);

(2) A copy of the notice to the complainant required pursuant to section 59338(a); and

(3) Such other information as the Chancellor may require.

(R) Pursuant to Section 59342, if for reasons beyond its control a district is unable to comply with the deadlines in sections 59336 or 59340, filing a written request with the Chancellor for an extension of the deadline and mailing a copy to the complainant.

(S) Pursuant to Section 59351, responding to new issues or facts raised by a complainant on appeal to the Chancellor's office.

(T) Pursuant to Section 59352, cooperating and complying with the Chancellor in any investigation conducted to determine whether there is probable cause to believe

a violation has occurred.

(U) Pursuant to Section 59354, cooperating with the Chancellor when seeking an informal resolution of an alleged violation and joining in any written conciliation agreement when resolution is achieved.

(V) Pursuant to Section 59356, subdivision (a), acquiescing or contesting a finding by the Chancellor that there is probable cause to believe the district has violated the provisions of the subchapter. Pursuant to subdivision (b), closing the district's file upon a finding by the Chancellor that there is no probable cause to believe the district has violated the provisions of the subchapter.

(W) Pursuant to Section 59358, submitting and responding to the hearing process initiated by the Chancellor when the district does not acquiesce in a finding the district has violated the provisions of the subchapter.

(X) Pursuant to Section 59360, complying with actions taken by the Chancellor upon a determination that the district has violated the provisions of the subchapter or, in the alternative, appearing and defending in a court of competent jurisdiction opposing an order seeking compliance.

(Y) Pursuant to Section 59362, filing a petition as provided by Section 1094.5 of the Code of Civil Procedure to review a decision of the Chancellor when necessary or appropriate.

It is estimated that the Santa Monica Community College District, to the extent Title 5 complaints are filed with the district, incurred more than $ 1,000 in staffing and

other costs in excess of any funding provided to school districts and the state for the period from July 1, 2000 through June 30, 2002 to implement these new duties mandated by the state for which the district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 23 day of June, 2003, at Santa Monica, California.

Thomas J. Donner
Executive Vice President
Santa Monica Community College District

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 972

An act to add Article 9.5 (commencing with Section 11135) to Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to discrimination.

[Approved by Governor September 21, 1977. Filed with Secretary of State September 21, 1977.]

The people of the State of California do enact as follows:

SECTION 1. Article 9.5 (commencing with Section 11135) is added to Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, to read:

Article 9.5. Discrimination

11135. No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

11136. Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of

Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation has occurred.

11137. If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.

11138. Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars ($100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article.

11139. The prohibitions and sanctions imposed by this article shall be in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in such manner so as to frustrate its purpose.

This article shall not be interpreted in such a manner so as to adversely affect lawful programs which benefit the disabled, the aged, minorities and women.

11139.5. The Secretary of the Health and Welfare Agency, with the advice and concurrence of the Fair Employment Practices Commission, shall establish standards for determining which persons are protected by this article and guidelines for determining what practices are discriminatory. The secretary, with the cooperation of the Fair Employment Practices Commission, shall assist state agencies in coordinating their programs and activities and shall consult with such agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of the provisions of the article.

CHAPTER 913

An act to amend Section 125.6 of the Business and Professions Code, to amend Sections 51, 51.5, 51.8, 52, 53, 54, 54.1, 54.2, 54.3, and 54.8 of the Civil Code, to amend Section 224 of the Code of Civil Procedure, to amend Sections 44100, 44101, 44337, and 44338 of the Education Code, to amend Sections 754 and 754.5 of the Evidence Code, to amend Sections 4450, 4500, 11135, 12920, 12921, 12926, 12931, 12940, 12944, 12993, 19230, 19231, 19232, 19233, 19234, 19235, 19237, and 19702 of, to add Section 12940.3 to, and to repeal Section 12994 of, the Government Code, to amend Section 19952 of the Health and Safety Code, to amend Section 1735 of the Labor Code, to amend Section 365.5 of the Penal Code, to amend Sections 2881 and 99155.5 of, and to add Section 2881.2 to, the Public Utilities Code, to amend Section 2557 of the Streets and Highways Code, and to amend Section 336 of the Vehicle Code, relating to disabled persons.

[Approved by Governor September 24, 1992. Filed with Secretary of State September 25, 1992.]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in enacting this act to strengthen California law in areas where it is weaker than the Americans with Disabilities Act of 1990 (Public Law 101-336) and to retain California law when it provides more protection for individuals with disabilities than the Americans with Disabilities Act of 1990.

SEC. 2. Section 125.6 of the Business and Professions Code is amended to read:

125.6. Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to such person if, because of the

standards than the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto, then those public transit facilities and operations shall meet the higher standards.

SEC. 18. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of such an impairment, (3) being regarded as having such an impairment.

SEC. 19. Section 12920 of the Government Code is amended to read:

12920. It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for such reasons foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advance, and substantially and adversely affects the interest of employees, employers, and the public in general.

Further, the practice of discrimination because of race, color, religion, sex, marital status, national origin, , ancestry, familial status, or disability in housing accommodations is declared to be against public policy.

It is the purpose of this part to provide effective remedies which will eliminate such discriminatory practices.

This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.

SEC. 20. Section 12921 of the Government Code is amended to read:

in which case Sections 25, 25.1, and 25.3 of this bill shall not become operative.

(c) Section 25.3 of this bill incorporates amendments to Section 12993 of the Government Code proposed by this bill, AB 311, and AB 1178. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1993, (2) all three bills amend Section 12993 of the Government Code, and (3) this bill is enacted after AB 311 and AB 1178, in which case Sections 25, 25.1, and 25.2 of this bill shall not become operative.

BILL NUMBER: AB 3601 CHAPTERED 07/11/94

CHAPTER 146
FILED WITH SECRETARY OF STATE JULY 11, 1994
APPROVED BY GOVERNOR JULY 9, 1994
PASSED THE SENATE JUNE 23, 1994
PASSED THE ASSEMBLY MAY 12, 1994
AMENDED IN ASSEMBLY APRIL 14, 1994

INTRODUCED BY Committee on Judiciary as presented by Assembly Member Weggeland on behalf of the committee (Archie-Hudson, Caldera, Connolly, Epple, Terry Friedman, Goldsmith, Horcher, Isenberg, Morrow, Snyder, Speier, and Statham)

FEBRUARY 25, 1994

An act to amend Sections 166, 729, 3502, 3521.5, 4980.45, 6157.5, 6403, 8025.1, and 10145 of, and to amend and renumber Section 6086.13 of, the Business and Professions Code, to amend Sections 1785.11, 1785.13, 1950.5, 2982, 2984.3, 2986.2, and 3482.6 of, and to repeal Section 4722.5 of, the Civil Code, to amend Sections 405.21, 472b, and 695.220 of, to amend and renumber Section 383 of, to amend and renumber the heading of Article 3 (commencing with Section 405.30), Article 4 (commencing with Section 405.50), and Article 5 (commencing with Section 405.60) of Chapter 2 of Title 4.5 of Part 2 of, and to repeal Title 1 (commencing with Section 1823) of Part 3.5 of, the Code of Civil Procedure, to amend Sections 1981, 41305, 42238, 44277, 48911, 48918, 56034, 56155.5, 56366.1, 56775, and 60240 of the Education Code, to amend Sections 2552, 2601, and 6005 of the Elections Code, to amend Section 2110 of, and to add Section 4071.5 to, the Family Code, to amend Sections 857, 8051.2, 8598, and 12157 of the Fish and Game Code, to amend Sections 232, 235, 4104, 77417, and 77442 of, to amend and renumber Sections 239, 240, 241, 242, 243, 77501, 77502, 77503, 77504, and 77505 of, and to repeal Article 2 (commencing with Section 56732) of Chapter 7.5 of Division 20 of, the Food and Agricultural Code, to amend Sections 6159, 9020, 10207, 11135, 12811, 12945.2, 13960, 14669.8, 16367.5, 20013.7, 20013.75, 56375, 68059, and 95004 of, to amend and renumber Sections 6516.5 and 15819.32 of, to amend and renumber the heading of Chapter 11 (commencing with Section 15399.50) of Part 6.7 of Division 3 of Title 2 of, to repeal, amend, and renumber the heading of Article 3.6 (commencing with Section 15346) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of, and to repeal Sections 12955.9, 26751, 41612, 53115.1, 54925.1, and 54952.2 of, the Government Code, to amend Sections 658.3, 1126, and 1171.5 of the Harbors and Navigation Code, to amend Sections 429.16, 1259.5, 1266, 1357, 1418.8, 1562.5, 1569.694, 10284, 10325, 11366.8, 25159.18, 25187, 25200.1.5, 25201.5, 25355.7, 26569.29, 33334.20, 33607.7, 33676, 42400.4, and 50406 of, to amend and renumber Sections 429.13, 429.14, 429.15, 1250.1, 1367.5, 17922.1, 25201.10, 25359.3, 33492.50, 33492.51, 33492.53, and 33492.69 of, to add the heading of Article 4 (commencing with Section 33492.70) to Chapter 4.5 of Part 1 of Division 24 of, to repeal Sections 1596.803, 33492.55, 33681.6, and 33682.1 of, to repeal Article 7.5 (commencing with Section 1389.1) of Chapter 2.2 of Division 2 of, to repeal Article 1 (commencing with Section 33492) of Chapter 4.5 of Part 1 of Division 24 of, and to repeal the heading of Article 2

with respect to communications between the member and the Legislative Counsel except as otherwise provided by the rules of the Legislature. All materials arising out of this relationship, including, but not limited to, proposed bills and amendments, analyses, opinions, and memoranda prepared by the Legislative Counsel, are not public records, except as otherwise provided by the rules of the Legislature or when released by the member for whom the material was prepared. When he or she determines that the public interest so requires, the Legislative Counsel may release any material arising out of the attorney-client relationship with a former Member of the Legislature who is not available to execute a release.

(b) (1) The Legislative Counsel shall maintain the attorney-client relationship with the Governor with respect to communications between the Governor and the Legislative Counsel. All materials arising out of this relationship, including, but not limited to, legal services concerning any bill in the Governor's hands for rejection, approval, or other action, legal services concerning any legal opinion provided to the Governor, and legal services concerning any matter as the circumstances permit and the Governor requests, prepared by the Legislative Counsel, are not public records, except when released by the Governor. When he or she determines that the public interest so requires, the Legislative Counsel may release any material arising out of the attorney-client relationship with a former Governor who is not available to execute a release.

(2) Whenever the Legislative Counsel issues an opinion to the Governor analyzing the constitutionality, operation, or effect of a bill or other legislative measure that is then pending before the Legislature, or of any amendment made or proposed to be made to that bill or measure, the Legislative Counsel shall deliver two copies of the opinion to the first-named author of the bill or measure as promptly as feasible after delivery of the original opinion, and shall also deliver a copy to any other author of the bill or measure who requests a copy.

SEC. 66. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment as described in paragraph (1), or (3) being regarded as having an impairment as described in paragraph (1).

SEC. 67. Section 12811 of the Government Code is amended to read:

Sec. 7. Section 11110 of the Penal Code shall be funded from moneys appropriated by the Legislature in the Budget Act of 1994 or from existing resources of the Department of Justice other than fees collected pursuant to subdivision (e) of Section 11105 of the Penal Code.

SEC. 240. Any section of any act enacted by the Legislature during the 1994 calendar year that takes effect on or before January 1, 1995, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

BILL NUMBER: AB 1670 CHAPTERED 10/10/99

CHAPTER 591
FILED WITH SECRETARY OF STATE OCTOBER 10, 1999
APPROVED BY GOVERNOR OCTOBER 2, 1999
PASSED THE ASSEMBLY SEPTEMBER 9, 1999
PASSED THE SENATE SEPTEMBER 8, 1999
AMENDED IN SENATE SEPTEMBER 3, 1999
AMENDED IN SENATE AUGUST 26, 1999
AMENDED IN SENATE AUGUST 25, 1999
AMENDED IN ASSEMBLY JUNE 1, 1999
AMENDED IN ASSEMBLY MAY 6, 1999

INTRODUCED BY Committee on Judiciary (Kuehl (Chair), Aroner, Bock, Corbett, Jackson, Knox, Longville, Shelley, Steinberg, and Wiggins)

MARCH 15, 1999

An act to amend Section 51.5 of the Civil Code, and to amend Sections 11139, 12921, 12926, 12927, 12930, 12940, 12945, 12948, 12955, 12965, 12970, 12989.2, and 12989.3 of, and to add Section 12955 to, the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1670, Committee on Judiciary. California Civil Rights Amendments of 1999.

Existing law prohibits business establishments from discriminating against, boycotting or blacklisting, or refusing to buy from, sell to, or trade with any person because of the race, creed, religion, color, national origin, sex, or disability of any person or the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

This bill would additionally prohibit these forms of discrimination (1) because of a perception that any of those persons have one or more of the above characteristics or (2) because the person is associated with a person who has, or is perceived to have, any of those characteristics.

Existing law prohibits denial of benefits under, or discrimination against any person in, any program or activity funded or financially assisted by the state on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability. Existing law specifies a hearing procedure for determining violations and requires curtailing state funding for any contractor, grantee, or local agency found to be in violation.

This bill would make these provisions and regulations adopted thereunder enforceable by a civil action for equitable relief.

Existing provisions of the California Fair Employment and Housing Act declare as a civil right the opportunity to seek, obtain, and hold employment without discrimination on specified bases.

This bill would declare as a civil right the opportunity to seek, obtain, and hold housing without discrimination on specified bases or any arbitrary basis prohibited by the Unruh Civil Rights Act. The bill would also revise the definition of discrimination for the purposes of these provisions to include harassment in connection with housing accommodations.

Existing provisions of the California Fair Employment and Housing

Employment and Housing Act, are declaratory of existing law.

This bill would incorporate the changes in Section 12926 of the Government Code proposed by Senate Bill 1185, if that bill is enacted and this bill is enacted last.

This bill would incorporate the changes in Section 12955 of the Government Code proposed by Senate Bill 1098, Senate Bill 1148, or both, if either or both of those bills are enacted and this bill is enacted last.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the California Civil Rights Amendments of 1999.

SEC. 2. Section 51.5 of the Civil Code is amended to read:

51.5. No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, or disability of the person or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.

As used in this section, "person" includes any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.

This section shall not be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

SEC. 3. Section 11139 of the Government Code is amended to read:

11139. The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief.

SEC. 4. Section 12921 of the Government Code is amended to read:

12921. (a) The opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age is hereby recognized as and declared to be a civil right.

(b) The opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, or any other basis prohibited by Section 51 of the Civil Code is hereby

responsible for a violation of this title as is necessary to assure the full enjoyment of the rights granted by this title.

(2) Other relief as the court deems appropriate, including monetary damages to persons aggrieved.

(3) A civil penalty in an amount not exceeding fifty thousand dollars ($50,000), for a first violation, and in an amount not exceeding one hundred thousand dollars ($100,000), for any subsequent violation.

(g) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the state, reasonable attorney's fees and costs, including expert witness fees, against any party other than the state.

(h) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under this section that involves an alleged discriminatory housing practice with respect to which that person is an aggrieved person or a conciliation agreement to which that person is a party. The court may grant appropriate relief to any intervening party as is authorized to be granted to a plaintiff in a civil action under Section 12989.2.

SEC. 16. The amendments made by this act to Section 51.5 of the Civil Code and to Sections 12926, 12927, and 12955 of the Government Code do not constitute a change in, but are declaratory of existing law.

SEC. 17. Section 5.1 of this bill incorporates amendments to Section 12926 of the Government Code proposed by both this bill and SB 1185. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12926 of the Government Code, and (3) this bill is enacted after AB 1185, in which case Section 5 of this bill shall not become operative.

SEC. 18. (a) Sections 11.1 and 11.2 of this bill incorporate amendments to Section 12955 of the Government Code proposed by both this bill and SB 1098. Sections 11.1 and 11.2 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12955 of the Government Code, (3) SB 1148 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1098, in which case Sections 11, 11.3, 11.4, and 11.5, of this bill shall not become operative.

(b) Section 11.3 of this bill incorporates amendments to Section 12955 of the Government Code proposed by both this bill and SB 1148. Section 11.3 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12955 of the Government Code, (3) AB 1670 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1148, in which case Sections 11, 11.1, 11.2, 11.4, and 11.5 of this bill shall not become operative.

(c) Sections 11.4 and 11.5 of this bill incorporate amendments to Section 12955 of the Government Code proposed by this bill, SB 1098, and SB 1148. Sections 11.4 and 11.5 only become operative if (1) all three bills are enacted and become effective on or before January 1, 2000, (2) all three bill amend Section 12955 of the Government Code, and (3) this bill is enacted after SB 1148 and AB 1670, in which case Sections 11, 11.1, 11.2, and 11.3, and of this bill shall not become operative.

DISABLED PERSONS—DISCRIMINATION—PARKING PLACARDS

CHAPTER 708

A.B. No. 677

AN ACT to amend Sections 11135 and 11139 of the Government Code, and to amend Sections 22511.55 and 22511.59 of the Vehicle Code, relating to discrimination.

[Filed with Secretary of State October 11, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 677, Steinberg. Persons with disabilities.

(1) Existing law provides that no person in the state shall be unlawfully denied the benefits of, or unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state, on the basis of ethnic

group identification, religion, age, sex, color, or disability, and defines the term "disability" for these purposes.

This bill instead would provide that no person in the state shall, on any of those bases, be unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. It would also revise the definition of "disability" for these purposes.

Existing law also specifies a hearing procedure for determining violations of the above provisions, requires curtailing state funding for any contractor, grantee, or local agency found to be in violation, and makes these provisions and regulations adopted thereunder enforceable by a civil action for equitable relief.

This bill would provide that any civil action for equitable relief shall be independent of any other rights and remedies.

(2) Existing law authorizes a disabled person, any temporarily disabled person, and any disabled veteran, including those temporarily traveling in the state, to apply to the Department of Motor Vehicles for the issuance of a distinguishing placard for specified parking purposes. The placard is required to be the size and color determined by the department and to have a fixed expiration date of June 30 every 2 years. The fee for an original application, a renewal application, or the issuance of a new or substitute placard is fixed at $6.

This bill would provide that the placard shall also be in the shape determined by the department, and would require that a portion of the placard be printed in a contrasting color that shall be changed every 2 years. It would also repeal the fees, except for a temporary placard for a person who is temporarily disabled.

The people of the State of California do enact as follows:

SECTION 1. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any * * * mental or physical disability as defined in Section 12926.

SEC. 2. Section 11139 of the Government Code is amended to read:

11139. The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies.

SEC. 3. Section 22511.55 of the Vehicle Code is amended to read:

22511.55. (a)(1) Any disabled person or disabled veteran may apply to the department for the issuance of a distinguishing placard. The placard may be used in lieu of the special identification license plate or plates issued under Section 5007 for parking purposes described in Section 22511.5 when suspended from the rear view mirror or, if there is no rear view mirror, when displayed on the dashboard of a vehicle. It is the intent of the Legislature to

encourage the use of these distinguishing placards because they provide law enforcement officers with a more readily recognizable symbol for distinguishing vehicles qualified for the parking privilege. The placard shall be the size, shape, and color determined by the department and shall bear the International Symbol of Access adopted pursuant to Section 3 of Public Law 100–641, commonly known as the "wheelchair symbol." The department shall incorporate instructions for the lawful use of a placard, and a summary of the penalties for the unlawful use of a placard, into the identification card issued to the placard owner.

(2)(A) The department may establish procedures for the issuance and renewal of the placards. The placards shall have a fixed expiration date of June 30 every two years. * * * A portion of the placard shall be printed in a contrasting color that shall be changed every two years. The size and color of this contrasting portion of the placard shall be large and distinctive enough to be readily identifiable by a law enforcement officer in a passing vehicle.

(B) As used in this section, "year" means the period between the inclusive dates of July 1 through June 30.

(C) Prior to the end of each year, the department shall, for the most current three years available, compare its record of disability placards issued against the records of the Bureau of Vital Statistics of the State Department of Health Services, or its successor, and withhold any renewal notices that otherwise would have been sent, for any placard holders identified as deceased.

(3) * * * Except as provided in paragraph (4), no person is eligible for more than one placard at any time.

(4) Organizations and agencies involved in the transportation of disabled persons or disabled veterans may apply for a placard for each vehicle used for the purpose of transporting disabled persons or disabled veterans.

(b)(1) Prior to issuing any disabled person or disabled veteran an original distinguishing placard, the department shall require the submission of a certificate, in accordance with paragraph (2), signed by the physician or surgeon substantiating the disability, unless the applicant's disability is readily observable and uncontested. The disability of any person who has lost, or has lost use of, one or more lower extremities or both hands, or who has significant limitation in the use of lower extremities, may also be certified by a licensed chiropractor. The blindness of any applicant shall be certified by a licensed physician or surgeon who specializes in diseases of the eye or a licensed optometrist. The physician or person certifying the qualifying disability shall provide a full description of the illness or disability on the form submitted to the department.

(2) The physician or other person who signs a certificate submitted under this subdivision shall retain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(3) The department shall maintain in its records all information on an applicant's certification of permanent disability and shall make that information available to eligible law enforcement or parking control agencies upon a request pursuant to Section 22511.58.

(c) * * * Any person who has been issued a distinguishing placard pursuant to subdivision (a) may apply to the department for a substitute placard without recertification of eligibility, if that placard has been lost or stolen.

* * *

(d) The distinguishing placard shall be returned to the department not later than 60 days after the death of the disabled person or disabled veteran to whom the placard was issued.

SEC. 4. Section 22511.59 of the Vehicle Code is amended to read:

22511.59. (a) Upon receipt of the applications and documents required by subdivisions (b), (c), or (d), the department shall issue a temporary distinguishing placard bearing the International Symbol of Access adopted pursuant to Section 3 of Public Law 100–641 commonly known as the "wheelchair symbol." During the period for which it is valid, the temporary distinguishing placard may be used for the parking purposes described in Section 22511.5 in the same manner as a distinguishing placard issued pursuant to Section 22511.55.

(b)(1) Any person who is temporarily disabled for a period of not more than six months may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the submission of a certificate signed by a physician or surgeon, as described in subdivision (b) of Section 22511.55, substantiating the temporary disability and stating the date upon which the disability is expected to terminate.

(3) The physician or other person who signs a certificate submitted under this subdivision shall maintain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(4) A placard issued pursuant to this subdivision shall expire not later than 180 days from the date of issuance or upon the expected termination date of the disability, as stated on the certificate required by paragraph (2), whichever is less.

(5) The fee for a temporary placard issued pursuant to this subdivision shall be six dollars ($6).

(c)(1) Any disabled person or disabled veteran who is not a resident of this state and plans to travel within the state may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require certification of the disability, as described in subdivision (b) of Section 22511.55.

(3) The physician or other person who signs a certificate submitted under this subdivision shall maintain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(4) A placard issued pursuant to this subdivision shall expire not later than 90 days from the date of issuance.

(d)(1) Any disabled person or disabled veteran who has been issued either a distinguishing placard pursuant to Section 22511.55 or special identification license plates pursuant to Section 5007, but not both, may apply to the department for the issuance of the temporary distinguishing placard for the purpose of travel described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the applicant to submit either the number identifying the distinguishing placard issued pursuant to Section 22511.55 or the number on the special identification license plates.

(3) A placard issued pursuant to this subdivision shall expire not later than 30 days from the date of issuance.

* * *

LOCAL AGENCIES—PUBLIC MEETING NOTICES AND AGENDAS—DISCRIMINATION

CHAPTER 300

A.B. No. 3035

AN ACT to amend Sections 11125, 11125.1, 11135, 54954.1, 54954.2, and 54957.5 of, and to add Sections 11123.1 and 54953.2 to, the Government Code, relating to access to government programs.

[Filed with Secretary of State August 28, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3035, Committee on Judiciary. Access to government programs.

(1) The Bagley–Keene Open Meeting Act generally requires that all meetings of a state body be open and public. Writings that are public records and are distributed to members of the state body prior to or during a public meeting, pertaining to any item to be considered during the public meeting, are required to be made available for public inspection, and any person may attend any public meeting of a state body. The act also requires that notice of public meetings and those held in closed session of a state body be given to any person who requests that notice in writing and that the agenda for those meetings be made available upon request without delay.

This bill would require that the notices and agendas of these public meetings and closed sessions and the public records distributed at these public meetings and closed sessions be made available in appropriate alternative formats upon request by any person with a disability consistent with the federal Americans with Disabilities Act of 1990. The bill would also require that the notice include information on the availability of disability-related aids or services to enable the person to participate in a public meeting consistent with the federal Americans with Disabilities Act of 1990.

(2) Existing law provides that no person in this state shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

This bill would extend the prohibited basis of discrimination under this provision to include race and national origin consistent with the federal Americans with Disabilities Act of 1990.

(3) The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public. All persons may attend these meetings except as otherwise provided by the act. The act also requires that the agenda be posted and include a general description of items to be discussed in closed session. All the documents constituting the agenda packet of a public meeting, including any other writings distributed to all or a majority of all of the members of a legislative body of a local agency by any person in connection with a matter to be discussed at the public meeting, are required to be made available to any person upon request.

This bill would require that these agendas, agenda packets, and other writings distributed to members of a legislative body be made available in appropriate alternative formats to persons with a disability and that the agendas include information on the availability of disability-related aids or services to enable the person to participate in the public meeting consistent with the federal Americans with Disabilities Act of 1990.

(4) This bill would incorporate changes in Section 11125.1 of the Government Code proposed by AB 1752 that would become operative if both bills are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 11123.1 is added to the Government Code, to read:

11123.1. All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

SEC. 2. Section 11125 of the Government Code is amended to read:

11125. (a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

SEC. 3. Section 11125.1 of the Government Code is amended to read:

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are distributed to members of the state body by board staff or individual members prior to or during a meeting shall be: (1) made available for public inspection at that meeting, (2) distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125, and (3) made available on the Internet.

(d) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section * * * 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(e) "Writing" for purposes of this section means "writing" as defined under Section 6252.

SEC. 3.5. Section 11125.1 of the Government Code is amended to read:

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are distributed to members of the state body by board staff or individual members prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125 * * *.

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section * * * 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and

regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

SEC. 4. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

SEC. 5. Section 54953.2 is added to the Government Code, to read:

54953.2. All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

SEC. 6. Section 54954.1 of the Government Code is amended to read:

54954.1. Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

SEC. 7. Section 54954.2 of the Government Code is amended to read:

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or

accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

SEC. 8. Section 54957.5 of the Government Code is amended to read:

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.

(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section * * * 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 11125. 1 of the Government Code proposed by both this bill and AB 1752. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill

amends Section 11125.1 of the Government Code, and (3) this bill is enacted after AB 1752, in which case Section 3 of this bill shall not become operative.

DISABLED PERSONS—BLIND AND VISUALLY IMPAIRED AND DEAF AND HARD OF HEARING—EMPLOYMENT-RELATED SERVICES

CHAPTER 1102

S.B. No. 105

AN ACT to amend Section 11135 of the Government Code, to amend Sections 19050 and 19050.5 of, to add Section 19054 to, and to add Chapter 3 (commencing with Section 19095) to Part 1 of Division 10 of, the Welfare and Institutions Code, relating to human services.

[Filed with Secretary of State September 29, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 105, Burton. Services: blind: visually impaired: deaf: hard of hearing.

Existing law provides for the Department of Rehabilitation, which administers various programs and services for disabled persons, including the blind and visually impaired.

This bill would establish the Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing, would establish the responsibilities of the division, would require the director of the division to report to the Legislature and the Governor on programs administered by the division, would require the director to appoint a Blind Advisory Committee and a Deaf Advisory Committee to advise the director on certain issues, and would make related and conforming changes.

This bill would incorporate additional changes in Section 11135 of the Government Code, proposed by AB 3035, to be operative only if AB 3035 and this bill are both chaptered and become effective January 1, 2003, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Approximately 70 percent of employable blind and visually impaired individuals are unemployed.

(2) Due to the lack of employment, most of these individuals receive public assistance payments, as well as Medi-Cal and other public benefits, thereby costing the state millions of dollars in benefit payments and lost income tax revenue.

(3) It is the primary function of the Department of Rehabilitation to prepare and place persons with disabilities, including the blind and visually impaired, in meaningful jobs.

(4) The department needs to implement policy and procedural changes in order to improve its ability to increase the numbers of blind and visually impaired consumers placed in competitive employment.

(5) The blind and visually impaired have a long history of success with separate specialized training that takes into account their unique needs and the need to have experienced, trained staff, and contracting organizations.

(6) The establishment of a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing in the Department of Rehabilitation will, through the focus of state and federal resources and without diverting resources that would otherwise be used to assist

those with other disabilities, dramatically improve employment-related services provided to persons who are blind or visually impaired or deaf or hard of hearing.

(7) The purpose of the establishment of a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing in the department is to streamline, and make more efficient and effective, the department's delivery of services to Californians who are blind or visually impaired, and that this streamlined organization of those services into a single division within the department will result in no greater than minor, absorbable costs, if any.

(b) It is, therefore, the intent of the Legislature to establish a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing to improve the lives of blind and visually impaired and deaf and hard of hearing persons.

SEC. 2. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

(d)(1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

SEC. 2.5. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

(d)(1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

SEC. 3. Section 19050 of the Welfare and Institutions Code is amended to read:

19050. There is in the department a program manager for the blind and * * * visually impaired and a program manager for the deaf and * * * hard of hearing. The program managers shall, as determined by the director, * * * report to the deputy director of the division established pursuant to Section 19095, and shall assist in the development and coordination of policy with respect to programs for * * * persons who are blind and * * * visually impaired and persons who are deaf and hard of hearing.

SEC. 4. Section 19050.5 of the Welfare and Institutions Code is amended to read:

19050.5. The program manager for the blind and * * * visually impaired programs and the program manager for the deaf and * * * hard-of-hearing programs shall have demonstrated experience and sensitivity in working with these disabilities.

SEC. 5. Section 19054 is added to the Welfare and Institutions Code, to read:

19054. The director shall appoint a Deaf Advisory Committee to advise the director on means to increase employment, enlarge economic opportunities, enhance independence and self-sufficiency, and otherwise improve services to persons who are deaf or hard of hearing. A majority of the committee members shall be deaf or hard of hearing, and other members shall have experience relating to services to the deaf or hard of hearing. The committee shall develop, in conjunction with stakeholders, an annual work plan to identify and address areas for improvement in services provided by the department to persons who are deaf or hard of hearing.

SEC. 6. Chapter 3 (commencing with Section 19095) is added to Part 1 of Division 10 of the Welfare and Institutions Code, to read:

Chapter 3. Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing

19095. (a)(1) There is hereby established in the Department of Rehabilitation a Division of Specialized Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing.

(2) For purposes of this chapter "division" means the division established pursuant to paragraph (1).

(b) The purposes of the division shall be as follows:

(1) To assist persons who are blind and visually impaired and deaf and hard of hearing in gaining competitive employment.

(2) To enlarge economic opportunities for persons who are blind or visually impaired and deaf and hard of hearing.

(3) To enhance the independence and self-sufficiency of blind and visually impaired and deaf and hard-of-hearing persons.

19095.5. (a) The division shall be under the direction of a deputy director, who shall be appointed by the Governor.

(b) The deputy director shall have extensive background in, or knowledge of, services to the blind and visually impaired and the deaf and hard of hearing.

(c) The deputy director shall report directly to the directorate of the Department of Rehabilitation and shall be a member of the department's executive management, taking part in all departmental planning and decisionmaking.

19096. (a) Commencing July 1, 2003, the division shall be charged with the administration of the following programs and services:

(1) All staff within the division, including rehabilitation counselors, rehabilitation counselors for the blind, staff of the orientation center, and staff of the business enterprises program.

(2) Orientation centers for the blind, provided for pursuant to Article 1 (commencing with Section 19500) of Chapter 6 of Part 2.

(3) The Business Enterprise Program for the Blind, provided pursuant to Article 5 (commencing with Section 19625) of Chapter 6 of Part 2.

(4) Contracts for services with organizations serving the blind and visually impaired and the deaf and hard of hearing.

(5) Programs for the blind under Subchapter 7 (commencing with Section 796) of Chapter 16 of Title 29 of the United States Code.

(b) The division shall also provide additional rehabilitation services to its blind and visually impaired and deaf and hard-of-hearing clients, to the extent that funds are available.

(c) The program managers shall report to the deputy director of the division established pursuant to this chapter.

(d) The division shall be responsible for administrative functions, including, but not limited to, the following:

(1) Develop, implement, and oversee policies related to blind and visually impaired and deaf and hard-of-hearing consumers, including timely provision of assistive technology services.

(2) Develop and implement mandatory orientation training programs for new rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers.

(3) Develop and implement ongoing mandatory training for rehabilitation supervisors of blind-designated units.

(4) Establish minimum professional competencies for rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers, and provide continuing in-service education to rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers.

(5) Provide support and assistance to field staff on issues related to the cases of blind and visually impaired and deaf and hard-of-hearing consumers.

(6) Provide technical assistance to the department related to the assistive technology needs of blind and visually impaired and deaf and hard-of-hearing employees and consumers.

(7) Establish and maintain within the department's Internet Web site, a communications system for staff serving blind and visually impaired and deaf and hard-of-hearing consumers for the purpose of sharing resource information, effective practices, and problem solving.

(e) Any program administered in whole or in part by the State Department of Education relative to the transition from school to work for blind and visually impaired and deaf and hard-of-hearing secondary education students shall be conducted in partnership with the division.

19097. (a) Subject to the control of the director, all employees of the department providing services to persons who are blind and visually impaired administered by the division pursuant to this chapter shall be under the exclusive direction and supervision of the deputy director of the division.

(b) The division shall establish criteria and train counselors and supervisors working with persons who are blind and visually impaired and deaf and hard of hearing to ensure they have the specialized knowledge and skills to meet the needs of these persons.

19097.5. The department shall report annually in the fourth quarter of each calendar year to the Blind Advisory Committee on the amount of state and federal funds allocated to direct services governed by this chapter.

19098. The Director of Rehabilitation shall, on or before July 1, 2005, and every other year thereafter, report to the Legislature and the Governor on the programs administered by the division. The report shall include statistics on competitive employment placements of persons who are blind or visually impaired.

19098.5. The Director of Rehabilitation shall establish the Blind Advisory Committee to advise the Director of Rehabilitation on means to increase competitive employment, enlarge economic opportunities, enhance independence and self-sufficiency, and otherwise improve services for persons who are blind and visually impaired. A majority of the members shall be blind or visually impaired. Members of the committee who are not blind or visually impaired shall have experience in services to the blind. The committee shall develop, in conjunction with stakeholders, an annual work plan to identify and address areas for improvement in services provided by the division to persons who are blind and visually impaired.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 11135 of the Government Code proposed by both this bill and AB 3035. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 11135 of the Government Code, and (3) this bill is enacted after AB 3035, in which case Section 2 of this bill shall not become operative.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

§ 11135. **Programs or activities funded by state; discrimination on basis of race; national origin, ethnic group identification, religion, age, sex, color, or disability; federal act; definition; legislative findings and declarations regarding electronic or information technology**

(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

(d)(1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

(Amended by Stats.1992, c. 913 (A.B.1077), § 18; Stats.1994, c. 146 (A.B.3601), § 66; Stats.2001, c. 708 (A.B.677), § 1; Stats.2002, c. 300 (A.B.3035), § 4; Stats.2002, c. 1102 (S.B.105), § 2.5.)

§ 11136. Notice to contractor, grantee or local agency by state agency; probable cause to believe violation of statute or regulation; hearing

Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation has occurred.

(Added by Stats.1977, c. 972, p. 2942, § 1.)

§ 11137. Action to curtail state funding upon determination of violation

If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.

(Added by Stats.1977, c. 972, p. 2943, § 1.)

§ 11138. Rules and regulations

Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars ($100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article.

(Added by Stats.1977, c. 972, p. 2943, § 1.)

§ 11139. Prohibitions and sanctions; construction and enforcement of article

The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies.

(Amended by Stats.1999, c. 591 (A.B.1670), § 3; Stats.2001, c. 708 (A.B.677), § 2.)

Exhibit 4
Copies of Regulations Cited

this chapter and district implementing regulations, any written agreement, and the auxiliary organization's articles of incorporation, bylaws or other governing instrument. Such review shall be conducted in accordance with the procedure specified in the district implementing regulations;

(e) Prepare and keep current a list of auxiliary organizations in good standing in the manner provided for in section 59263. A copy of the initial list of auxiliary organizations in good standing, as well as any updated version of such list shall be forwarded to the Chancellor; and

(f) Report to the Chancellor, as may be required from time to time, on the operations of its auxiliary organizations.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

Article 3. Board of Governors and Chancellor's Office Responsibilities

§ 59270. Procedures for Annual Audits and Financial Reporting.

The Chancellor shall have the authority to prescribe the reporting and auditing procedures for auxiliary organizations. Such procedures are contained in the document, *California Community Colleges Auxiliary–Organization Accounting and Reporting System,* which shall be maintained by the Chancellor. Districts and auxiliary organizations shall apply and comply with the provisions of this document.

NOTE: Authority cited: Sections 66700, 70901, 72672, 72675, Education Code. Reference: Sections 72672 and 72675, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59272. Review of District Implementing Regulations.

The Chancellor shall review and approve or disapprove district implementing regulations no later than 60 days after receipt. Implementing regulations which satisfactorily address the minimum contents specified in section 59257 shall be approved. Implementing regulations which are disapproved shall be returned with a statement of reasons as to why they were rejected.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Section 72672, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59274. Retention of Documentation.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Repealer filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59276. Annual Report to Legislature.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Section 72681, Education Code.

HISTORY

1. Repealer filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

Subchapter 5. Nondiscrimination in Programs Receiving State Financial Assistance Through the Chancellor or Board of Governors of the California Community Colleges

Article 1. General

§ 59300. Purpose.

The purpose of this subchapter is to implement the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code § 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101), to the end that no person in the State of California shall, on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under any program or activity that is administered by, funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

NOTE: Authority cited: Section 70901 Education Code; and Section 11138, Government Code. Reference: Sections 11135–11139.5, Government Code; Section 66250 et seq., Education Code; title 20, United States Codes, Section 1681; title 29, United States Code, Section 794; and title 42, United States Code, Sections 2000d, 6101 and 12100, et seq.

HISTORY

1. New Chapter 5 (Articles 1–4, Sections 59300–59362, not consecutive) filed 4–17–81; effective thirtieth day thereafter (Register 81, No. 16). For prior history, see Registers 79, No. 46; and 78, No. 39).
2. Amendment of section and NOTE filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section and NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
4. Amendment of section and NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59301. Prohibited Discrimination.

NOTE: Authority cited: Section 11138, Government Code; and Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Repealer filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59302. Academic Requirements.

Nothing in this subchapter shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59303. Delegation of Authority.

The Board of Governors hereby delegates responsibility for implementing and enforcing the requirements of Government Code sections 11135 through 11137 to the Chancellor of the California Community Colleges, except as specifically stated in this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Sections 70901 and 71090, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY
1. Amendment filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59304. Intent.

It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination that may exist in their programs and activities and in meeting the requirements of this subchapter. Punitive action authorized by this subchapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11137, 11138 and 11139, Government Code.

HISTORY
1. Amendment of section and NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59305. Operative Date.

NOTE: Authority cited: Section 11138, Government Code; and Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY
1. Repealer filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59306. Visitor Parking for Persons with Disabilities.

(a) Each community college district shall, consistent with the requirements of Education Code section 67301 provide visitor parking at each of its colleges or centers at no charge to persons with disabilities or those providing transportation for such persons.

(b) For purposes of this section only, "persons with disabilities" are those who:

(1) qualify as disabled persons pursuant to section 22511.5 of the Vehicle Code; or

(2) if they were students, would be entitled to special parking provided to students with disabilities pursuant to subchapter 1 (commencing with section 56000) of chapter 7 of this division.

(c) Parking at no charge shall be available to persons with disabilities who are visitors, and those providing transportation to such persons, in those parking facilities which are most accessible to administrative offices, libraries, and other facilities which the district finds are most used by visitors.

(d) Each community college district shall post in conspicuous places notice that parking is available without charge to persons with disabilities who are visitors and those providing transportation for such persons.

(e) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for persons with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

(f) Parking fees collected pursuant to Education Code section 76360 shall be used to offset any costs resulting from compliance with the requirements of this section.

NOTE: Authority cited: Sections 67301 and 70901, Education Code; and Section 11135, Government Code. Reference: Section 76360, Education Code; and Section 22511.5, Vehicle Code.

HISTORY
1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of subsections (a)–(b)(2) and (f) and amendment of NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59307. Sexual Harassment and Sex Discrimination.

NOTE: Authority cited: Sections 232 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 200 et seq., Education Code.

HISTORY
1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Repealer filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).

Article 2. Definitions

§ 59310. Incorporation by Reference.

Except as otherwise provided by this subchapter those definitions of activities prohibited by and persons protected by title 22 of the California Code of Regulations (commencing with section 98100) are incorporated into and made applicable to this subchapter as if fully set forth here.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY
1. Amendment of section and NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59311. Definitions.

For purposes of this subchapter, the following definitions shall apply:

(a) "Appeal" means a request by a complainant made in writing to a community college district governing board pursuant to section 59338 and/or to the Chancellor's Office pursuant to section 59339 to review the administrative determination of a community college district regarding a complaint of discrimination.

(b) "Complaint" means a written and signed statement meeting the requirements of section 59328 that alleges unlawful discrimination in violation of this subchapter.

(c) "Days" means calendar days.

(d) Except for purposes of section 59306, "disability" means any mental or physical disability as defined in Government Code section 12926.

(e) "Discrimination on the basis of sex" means sexual harassment or discrimination on the basis of gender.

NOTE: Authority cited: Sections 11135 and 11138, Government Code; and Sections 66250 et seq., 70901 and 12926, Education Code. Reference: Sections 11135 and 11138, Government Code; and Section 66250 et seq., Education Code.

HISTORY
1. New section filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6). For prior history, see Register 92, No. 17.
2. Amendment of section and NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).
3. New subsection (c) and subsection relettering filed 4–15–2002; operative 5–15–2002. Submitted to OAL for printing only (Register 2002, No. 23).

Article 3. District Compliance and Enforcement

§ 59320. District Responsibility.

Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints in accordance with the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 66250, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY
1. Amendment of section and NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59322. District Regulations.

Each community college district shall establish and adopt written policies consistent with this article. When the policies are adopted or amended, they shall be submitted to the Chancellor for review and approval within 90 days of the effective date of the adoption or amendment(s).

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59324. Responsible District Officer.

Each community college district shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district. Such procedures shall be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59326. Notice to Students and Employees.

Each community college district shall notify students and employees of the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59327. Informal Resolution.

(a) Whenever any person brings charges of unlawful discrimination to the attention of the responsible district officer designated pursuant to section 59324, that officer shall:

(1) undertake efforts to informally resolve the charges;

(2) advise the complainant that he or she need not participate in informal resolution;

(3) notify the person bringing the charges of his or her right to file a complaint, as defined in section 59311, and of the procedure for filing such a complaint pursuant to section 59328; and

(4) advise the complainant that he or she may file his or her nonemployment–based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction.

(5) advise the complainant that he or she may file his or her employment–based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies.

(b) Efforts at informal resolution pursuant to subsection (a)(1) need not include any investigation unless the responsible district officer determines that an investigation is warranted by the seriousness of the charges.

(c) Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to section 59334 and must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint or the complainant files with the Department of Fair Employment and Housing and the Chancellor elects not to require further investigation pursuant to section 59328(f)(2). Any efforts at informal resolution after the filing of a written complaint shall not exceed the ninety (90) day period for rendering the administrative determination pursuant to section 59336.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
2. Amendment of subsections (a)(3) and (c) filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59328. Formal Investigation Upon Filing of Written Complaint.

An investigation of alleged unlawful discrimination prohibited by this subchapter will be initiated by filing a complaint that meets the following requirements:

(a) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator.

(b) The complaint shall be filed with the Chancellor of the California Community Colleges or with the officer designated pursuant to section 59324 by the appropriate community college district.

(c) The complaint shall be in a form prescribed by the Chancellor.

(d) In any complaint not involving employment the complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

(e) In any complaint alleging discrimination in employment the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period should be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

(f) In any complaint alleging discrimination in employment, the district shall:

(1) advise the complainant that he or she may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies, and;

(2) forward a copy of any filing by the complainant with DFEH to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Repealer of subsection (b) and subsection relettering filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section heading and subsection (a) filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
4. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).
5. Amendment of subsection (e) filed 4–15–2002; operative 5–15–2002. Submitted to OAL for printing only (Register 2002, No. 23).

§ 59329. Complaints Filed with Chancellor.

Upon receiving a complaint filed pursuant to section 59328, the Chancellor will immediately forward a copy of the complaint to the appropriate community college district responsible officer who shall respond pursuant to section 59332 or initiate the investigation required by section 59334. In any complaint alleging employment discrimination the Chancellor shall notify the complainant that he or she has the right to file with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59330. Notice to Chancellor.

Immediately upon receiving a complaint filed in accordance with section 59328 the district shall forward a copy of the complaint to the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section and NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59332. Defective Complaint.

When a district receives a complaint which it finds does not meet the requirements of Section 59328 the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59333. Office for Civil Rights.

(a) Whenever a complaint is filed with the Chancellor pursuant to section 59329 and whenever the Chancellor renders a decision pursuant to article 4 (commencing with section 59350) of this subchapter, the Chancellor shall notify the complainant that he or she may file a complaint regarding the same matter with the Office For Civil Rights of the U.S. Department of Education (OCR) where the complaint is within the jurisdiction of that agency.

(b) In such cases, OCR will normally accept compliance with these regulations as satisfying the due process requirements of federal law.

(c) OCR shall have no jurisdiction to rule on any finding regarding violation of state law.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
2. Amendment of subsection (a) filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59334. District Investigation.

Upon receiving a complaint that is properly filed in accordance with section 59328, the district will commence an impartial fact–finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results of the investigation shall be set forth in a written report that shall include at least all of the following:

(a) a description of the circumstances giving rise to the complaint;

(b) a summary of the testimony provided by each witness, including the complainant and any viable witnesses identified by the complainant in the complaint;

(c) an analysis of any relevant data or other evidence collected during the course of the investigation;

(d) a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; and

(e) any other information deemed appropriate by the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of existing paragraph and NOTE and adoption of subsections (a)–(e) filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59336. Administrative Determination.

Within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward a copy of the investigative report required pursuant to section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:

(a) the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;

(b) a description of actions taken, if any, to prevent similar problems from occurring in the future;

(c) the proposed resolution of the complaint; and

(d) the complainant's right to appeal to the district governing board and the Chancellor pursuant to sections 59338 and 59339.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59338. Final District Decision; Appeals to Local Governing Board.

(a) If the complainant is not satisfied with the results of the administrative determination rendered pursuant to section 59336, the complainant may submit a written appeal to the district governing board within fifteen (15) days from the date of the administrative determination. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty–five (45) days after receiving the appeal.

(b) A copy of the final district decision rendered by the governing board that includes complainant's right to appeal the district's decision to the Chancellor pursuant to section 59339 shall be forwarded to the complainant and to the Chancellor.

(c) If the governing board does not act within forty–five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter. The district shall notify the complainant and the Chancellor that the board took no action and the administrative determination is deemed approved pursuant to this section. The complainant shall also be notified of his or her right to appeal the district's decision to the Chancellor pursuant to section 59339.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of section heading and section filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59339. Appeal to Chancellor.

(a) In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days from the date that the governing board issues the final district decision or permits the administrative determination to become final pursuant to section 59338. Such appeals shall be processed pursuant to the provisions of article 4 (commencing with section 59350) of this subchapter. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within forty–five (45) days from that date.

(b) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency. In addition, in such cases, the complainant may file an appeal with the Chancellor within thirty (30) days from the date that the governing board

issues the final district decision or permits the administrative determination to become final pursuant to section 59338. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within forty–five (45) days from that date. The Chancellor shall have discretion to accept or reject any such appeal in employment discrimination cases. If the Chancellor agrees to accept the appeal, he/she may:

(1) attempt to informally resolve the matter pursuant to section 59354;

(2) where applicable, treat the complaint as an allegation that the district has violated the provisions of subchapter 1 (commencing with section 53000) of chapter 4 of this division; or

(3) take any other action deemed appropriate by the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section heading and section filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59340. Forward to Chancellor.

Within 150 days of receiving a complaint, the district will forward the lowing to the Chancellor:

(a) a copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to section 59338(a);

(b) a copy of the notice to the complainant required pursuant to section 59338(a); and

(c) such other information as the Chancellor may require.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Repealer of subsections (a)–(c) and subsection relettering filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59342. Extensions; Failure to Comply.

(a) If a district, for reasons beyond its control, is unable to comply with the 90–day or 150–day deadline specified in sections 59336 or 59340 for bmission of materials to the Chancellor, the district may file a written equest that the Chancellor grant an extension of the deadline. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline established pursuant to sections 59336 or 59340 and shall set the reasons for the request and the date by which the district expects to be able to submit the required materials.

(b) A copy of the request for an extension shall be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt.

(c) The Chancellor may grant the request unless delay would be prejudicial to the investigation. If the Chancellor grants an extension of the 90–day deadline, the 150–day deadline is automatically extended by an equal amount.

(d) If a district fails to comply with the requirements of sections 59336 or 59340 by the required deadline, including any extension granted pursuant to this section, the Chancellor may proceed to review the case as provided in article 4 (commencing with section 59350) of the subchapter based on the original complaint and any other relevant information then available.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901,Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of subsections (a), (c) and (d) filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).
4. Amendment of subsection (c) filed 4–15–2002; operative 5–15–2002. Submitted to OAL for printing only (Register 2002, No. 23).

Article 4. Chancellor's Procedure to Effect Compliance

§ 59350. Review for Reasonable Cause.

(a) The Chancellor shall review the materials submitted by the district pursuant to sections 59336 and 59340, together with the complainant's appeal, and determine whether there is reasonable cause to believe the district has violated the requirements of this subchapter.

(b) Failure by the complainant to file an appeal pursuant to section 59339 shall not preclude the Chancellor from finding reasonable cause to believe the district has violated the requirements of this subchapter.

(c) If the Chancellor finds there is no reasonable cause to believe a violation has occurred, the Chancellor shall immediately notify both the complainant and the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of subsections (a) and (b) and amendment of NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59351. New Issues Raised on Appeal.

If, upon review of the materials submitted by the complainant pursuant to section 59339, the Chancellor's Office finds that issues or facts not included in the complaint have been raised for the first time on appeal, the Chancellor's Office will provide the district a reasonable opportunity to respond to the new issues or facts raised by complainant.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section heading and section filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59352. Investigation.

If the Chancellor finds there is reasonable cause to believe a violation has occurred, the Chancellor shall investigate to determine whether there is probable cause to believe a violation has occurred.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59354. Informal Resolution.

During the course of the investigation, the Chancellor shall seek to informally resolve the alleged violation. Such resolution shall be set forth in a written conciliation agreement. A copy of the written agreement shall be sent to the complainant.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59356. Formal Resolution.

Within 120 days of initiating the investigation, the Chancellor shall:

(a) Notify the district and the complainant that there is probable cause to believe the district has violated the provisions of this subchapter. The

Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.

(b) Notify the district and the complainant that there is no probable cause to believe the district has violated the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59358. Hearing.

If the Chancellor finds the district has violated the provisions of this subchapter, and if the district does not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant to chapter 5 (commencing with section 11500) of part I, division 3, title 2 of the Government Code, to determine whether the violation did occur.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59360. Enforcement.

(a) Upon a determination that a district has violated the provisions of this subchapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including:

(1) Withhold all or part of the district's state support;

(2) Make probationary eligibility for future state support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state funding to a district pursuant to this section shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of subsections (a), (a)(2) and (b) and amendment of NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59362. Judicial Review.

A decision by the Chancellor pursuant to section 59360 is subject to judicial review by the district, as provided by section 1094.5 of the Code of Civil Procedure.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

Subchapter 6. Waiver of Part–Time Instructor Limit

NOTE: Authority cited: Sections 71020 and 87613, Education Code. Reference: Section 87613, Education Code.

HISTORY

1. New Chapter 6 (Sections 59380–59388, not consecutive) filed 6–1–82; effective thirtieth day thereafter (Register 82, No. 23).
2. Repealer of Chapter 6 (Sections 59380–59388, not consecutive) filed 3–7–85; effective thirtieth day thereafter (Register 85, No. 10).

Subchapter 7. Instructional and Other Materials

§ 59400. Required Instructional and Other Materials.

(a) The governing board of a district may, consistent with the provisions of this Subchapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.

(b) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. New chapter 7 (sections 59400–59408, not consecutive) filed 5–16–85; effective thirtieth day thereafter (Register 85, No. 20).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of subsection (a) and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59402. Definitions.

For the purposes of this Subchapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost and:

(1) the material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or

(2) the material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of opening statement, subsections (a) and (c)–(c)(2) and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course

EXHIBIT 5
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TITLE 22. SOCIAL SECURITY
DIVISION 8. NONDISCRIMINATION IN STATE-SUPPORTED PROGRAMS AND ACTIVITIES
CHAPTER 2. DISCRIMINATORY PRACTICES RELATING TO ALL GROUPS PROTECTED BY ARTICLE 9.5
ARTICLE 1. GENERAL PROHIBITIONS AGAINST DISCRIMINATION

22 CCR **98100** (2003)

§ **98100.** General Prohibition

No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under any program or activity funded directly by the State or receiving any financial assistance from the State.

AUTHORITY:

Note: Authority cited: Section 11139.5, Government Code. Reference: Section 11135, Government Code.

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ARTICLE 1. GENERAL PROHIBITIONS AGAINST DISCRIMINATION

22 CCR **98101** (2003)

§ **98101.** Discriminatory Practices Applicable to All Persons

It is a discriminatory practice for a recipient, in carrying out any program or activity directly, or through contractual, licensing or other arrangements, on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability:

(a) to deny a person the opportunity to participate in, or benefit from an aid, benefit or service;

(b) to afford a person the opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded others;

(c) to provide a person with an aid, benefit or service that is not as effective in affording an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. In some situations, identical treatment may be discriminatory;

(d) to provide different or separate aid, benefits or services to a person, or to any class of persons, than is provided to others, or to provide aid, benefits or services at a different time, unless such action is clearly necessary to provide such persons with an equal opportunity to receive as truly effective aid, benefits or services as those provided to others;

(e) to aid or perpetuate discrimination by transferring State support to another recipient that discriminates in providing any aid, benefit or service;

(f) to exclude a person from participation as a member of a planning or advisory board. Under this requirement, it is a discriminatory practice for a recipient to fail to make reasonable efforts to achieve a representative board. However, such requirement is not deemed to impose adherence to a quota system;

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ARTICLE 1. GENERAL PROHIBITIONS AGAINST DISCRIMINATION

22 CCR 98102 (2003)

§ 98102. Interpretation of Section **98101**

The provisions of Section **98101** are not intended:

(a) to limit, by the enumeration of specific forms of prohibited discrimination, the general prohibition against discrimination set forth in Section 98100;

(b) to adversely affect lawful programs which benefit persons of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability to overcome the effects of conditions that result or have resulted in limited participation in, or receipt of benefits from, any State supported program or activity; or

(c) to prohibit or require actions or practices otherwise allowed or not required under Chapter 3 of this Division.

AUTHORITY:

Note: Authority cited: Sections 11135, 11139, 11139.5, Government Code. Reference: Sections 11135, 11139, 11139.5, Government Code.

(g) to otherwise limit a person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving any aid, benefit or service resulting from the program or activity;

(h) to deny a person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities;

(i) to utilize criteria or methods of administration that:

(1) have the purpose or effect of subjecting a person to discrimination on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability;

(2) have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient's program with respect to a person of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability; or

(3) perpetuate discrimination by another recipient on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability.

(j) to make or permit selections of sites or locations of facilities:

(1) that have the purpose or effect of excluding persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity;

(2) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to a person of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental

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CHAPTER 2. DISCRIMINATORY PRACTICES RELATING TO ALL GROUPS PROTECTED BY ARTICLE 9.5
ARTICLE 2. MANDATORY AND PERMISSIVE REMEDIAL ACTION

22 CCR **98110** (2003)

§ **98110.** Mandatory Remedial Action

(a) If the responsible State agency finds a recipient has violated this Division or other implementing regulations the recipient shall take such remedial action as the responsible State agency deems necessary to overcome the effects of such violation.

(b) Where a recipient is found to have violated this Division or implementing regulations and where another recipient exercises control over such recipient, either or both recipients shall be required to take such remedial action as deemed appropriate by the responsible State agency.

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CHAPTER 2. DISCRIMINATORY PRACTICES RELATING TO ALL GROUPS PROTECTED BY ARTICLE 9.5
ARTICLE 2. MANDATORY AND PERMISSIVE REMEDIAL ACTION

22 CCR **98111** (2003)

§ **98111.** Permissive Remedial Action

(a) A State agency may, where necessary to overcome the effects of discrimination in violation of this Division or implementing regulations:

(1) require a recipient to take remedial action with respect to persons who are no longer participants in the recipient's program or activity but who were participants in the program when such discrimination occurred; and

(2) require a recipient to take remedial action with respect to persons who would have been participants in the program or activity had the discrimination not occurred.

(b) Even in the absence of a finding of discrimination, a recipient may be permitted by a State agency to take voluntary steps in addition to any action that is required by this Division or implementing regulations to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by persons of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability.

AUTHORITY:

Note: Authority cited: Sections 11135, 11137, 11139, 11139.5, Government Code.
Reference: Sections 11135, 11137, 11139, Government Code.

Exhibit B

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU

RECEIVED
MAR 11 2004
COMMISSION ON
STATE MANDATES

March 11, 2004

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Discrimination Complaint Procedures; 02-TC-46
Santa Monica Community College District, Claimant
Government Code Sections 11135-11139
California Code of Regulations, title 5, sections 59300 et seq.

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above test claim in light of the following questions addressing key issues before the Commission:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code? If so, are costs associated with the mandate reimbursable?

- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?

- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

Claimant alleges that Government Code sections 11135-11139, regarding unlawful discrimination and the implementing regulations found in the California Code of Regulations, title 5, sections 59300 et seq. create a reimbursable state mandate. We agree.

Assembly Bill 803 added Government Code sections 11135-11139 by Statutes 1977, chapter 972, section 1. The statute prohibits unlawful discrimination in programs receiving state assistance, charges state agencies that administer state funded programs with enforcement of its provisions and requires them to adopt regulations to that end. The Board of Governors of the California Community Colleges adopted regulations pursuant to this charge on December 5, 1980, set forth in California Code of Regulations, title 5, sections 59300[1] et seq. These regulations were filed on April 17, 1981.

[1] All citations to the 50000 series are to the California Code of Regulations, title 5 unless otherwise indicated.

Documentation on file from that time indicates that the Chancellor's Office notified the Department of Finance (DOF) in a memo dated September 19, 1980, that the proposed regulations imposed a mandate on community college districts and that the Chancellor's Office intended to request funds from the Governors Budget. (Attachment 1.) The reimbursable costs were estimated to be $157,975 for the year of implementation and $243,322 annually. (Attachments 1 and 2.) The DOF responded to the Chancellor's Office on October 20, 1980, and, among other points, suggested that the proposed regulations might not constitute a state mandate and if they did, requested that the Chancellor's Office pursue reimbursement funding via an independent legislative bill rather than the through the Governor's Budget. (Attachment 3.) As nearly as we can determine, despite the efforts of the Chancellor's Office, no funds were provided at that time or at any time thereafter.

Federal law prohibits discrimination on the basis of most of the protected categories enumerated in section 59300; however many of the procedural obligations of title 5 are not required by federal law.

The Chancellor's Office does not collect information on district expenditures for processing unlawful discrimination complaints. Currently, the Chancellor's Office receives about 200 unlawful discrimination complaints from districts statewide per year; however, this figure does not include any informal complaints, which are handled locally. Our records indicate that during the test mandate time period of July 1, 2000, through June 30, 2002, 14 formal unlawful discrimination complaints were filed against the Santa Monica Community College District.

For the reasons stated above, we believe there is a basis for reimbursement.

Sincerely,

Frederick E. Harris

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning

State of California

Memorandum

To : George Normington
Principal Program Budget Analyst
Education Systems Unit
Department of Finance

Date : September 19, 1980

File No.:

From : Catherine Close
Staff Counsel

Subject: Cost Estimate of Proposed Regulations Implementing Chapter 972 of Statutes of 1977

We are sending you regulations proposed for adoption by the Board of Governors to implement Chapter 972 of 1977, Assembly Bill 803. We are also sending and asking your concurrence in the estimate of cost we have prepared for these regulations.

These regulations are scheduled for hearing by the Board of Governors on December 4 and 5, 1980. Notice will be issued not later than October 20, 1980. The regulations are being sent to you 30 days prior to notice, as required by Section 6056 of the State Administrative Manual.

Chapter 972 of 1977, Assembly Bill 803, prohibits unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color or physical or mental disability in any program or activity funded directly by the state, or that receives financial assistance from the state. The statute then continues to charge state agencies who administer state funded programs with enforcement of its provisions, and requires them to adopt regulations to that end. These regulations will meet that mandate.

We need to emphasize that the cost of these regulations to community college districts could not be estimated with precision. At this time we cannot know how many complaints of unlawful discrimination will be received, the nature of the complaints, or the extent of the investigation required by each complaint. This uncertainty is apparent in the estimate in the discussion of assumptions made in arriving at the estimate.

Attached, then, please find:

1. The proposed regulations
2. The cost estimate prepared according to S.A.M. Section 6052.

To discuss these, please call me at 5-0103.

CC:lr

Attachments

bcc: Jerry Hayward
Tom Nussbaum
Pat Ryan
Gary Paque

Background

Assembly Bill 803, Chapter 972 of 1977, added the following to the California Government Code:

11135. Prohibited discrimination under program or activity funded directly by state or receives financial assistance from state. No person in the State of California shall on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

11136. Institution of hearing by state agencies administering program and activities funded directly by state to determine violation by contractor, grantee, or local agency. Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation has occurred.

11137. Action to curtail state funding to contractor, etc., violating provisions. If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.

11138. Adoption of regulations implementing provisions. Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars ($100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article.

11139. Prohibitions and sanctions imposed in addition to other prohibitions and sanctions imposed by law The prohibitions and sanctions imposed by this article shall be in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in such manner so as to frustrate its purpose.

This article shall not be interpreted in such a manner so as to adversely affect lawful programs which benefit the disabled, the aged, minorities and women.

11139.5. Standards and guidelines for determining discriminatory practices: Coordination of programs and activities. The Secretary of the Health and Welfare Agency, with the advice and concurrence of the Fair Employment Practices Commission, shall establish standards for determining which persons are protected by this article and guidelines for determining what practices are discriminatory. The Secretary, with the cooperation of the Fair Employment Practices Commission, shall assist state agencies in coordinating their programs and activities and shall consult with such agencies, as necessary so that consistent policies, practices, and procedures are adopted with respect to the enforcement of the provisions of the article.

Thus the Act requires the following of state agencies who administer state-funded programs

1. Investigation. When the agency has reasonable cause to believe unlawful discrimination has occurred, the agency shall investigate.

2. Administrative hearing. If the investigation shows probable cause that a violation has occurred, the agency shall initiate an administrative hearing to determine whether a violation has occurred.

3. Curtail state funds. If it is determined that a violation has occurred, the agency shall curtail funds in whole or part.

4. Adopt regulations. State agencies administering over $100,000 in state funds are required to adopt regulations to carry out the Act.

The statute, then, sets up a process with strict requirements for the Board of Governors and Chancellor. This may be shown in the following diagram:

If the Chancellor has reasonable cause to believe a community college has discriminated unlawfully,

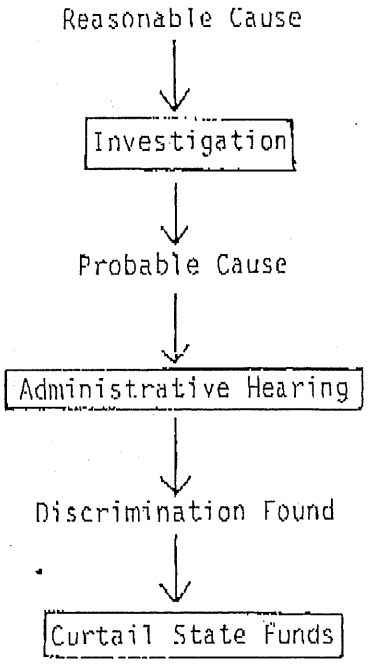
the Chancellor shall investigate.

If the investigation yields probable cause to believe a community college has discriminated unlawfully,

the Chancellor shall initiate an administrative hearing.

If it is determined that the college did unlawfully discriminate,

the Chancellor shall curtail state funding in whole or in part.



In the opinion of Chancellor's staff, this statute may be very difficult to administer. The proposed regulations, therefore, are intended to provide for the effective administration of the statute with as little burden and intrusion on the community college districts as possible within the very narrow confines of the statute.

In drafting the proposed regulations, recognition was first given to two characteristics of the California Community Colleges which should be preserved:

- The "open door" admissions policy through which the California Community Colleges have been remarkably successful in their endeavor to serve all the citizens of the state.
- The local autonomy of each community college district which allows the district to respond to the needs of the unique community which it serves.

Recognition was also given to the clear fact that no student is served by withholding funds from a community college district.

The regulations, then, recognize that the first responsibility for insuring that community college programs and activities are free of discrimination based on ethnic group identification, religion, age, sex, color or disability lies with the community college district.

The proposed regulations establish a two-level process. Complaints of unlawful discrimination are received first by the community college district. The district is required to investigate the complaint but is given great discretion in determining the intensity of the investigation. The district is encouraged to resolve the matter at the district level. After the district has completed its investigation and attempted resolution it will forward the matter to the Chancellor. The Chancellor will review the materials submitted by the district together with material submitted by the complainant and determine if further investigation is needed Again the Chancellor is required to attempt to resolve the matter However, if the Chancellor is unable to do so and if the Chancellor finds probable cause to believe unlawful discrimination has occurred, an administrative hearing will be held to determine whether the unlawful discrimination did occur. If it is determined that the district did discriminate the Chancellor will take appropriate remedial action. State funds will be withheld only when compliance cannot be secured by voluntary means. The district may seek judicial review of the Chancellor's decision.

The Role of the Secretary for Health and Welfare

The Secretary for Health and Welfare is given four areas of responsibility by the statute;

- To establish standards for determining which persons are protected by the statute;
- To establish guidelines for determining what practices are discriminatory;
- To assist state agencies in coordinating their programs and activities;
- To consult with state agencies so that consistent policies, practices and procedures are adopted with respect to the enforcement of the statute.

In June 1980, the Secretary for Health and Welfare, Mario Obledo, adopted regulations for fulfilling his responsibilities under the statute. It is the opinion of the Chancellor's legal staff that the regulations go beyond the authority granted the secretary by the statute. The regulations do define protected groups and discriminatory practices, but rather than offering consultation and assistance to other state agencies, as required by the statute, the Secretary's regulations impose specific compliance mechanisms on other state agencies.

The Secretary released the first draft of his regulations to the Chancellor in October 1979. That draft of the regulations imposed a very rigid and costly compliance system on this and all other state agencies who administer state funds. The proposed regulations appeared to have been drafted for state agencies which exercise direct control over a local agency rather than for an agency such as the Board of Governors which exercises only indirect control over community college districts which are governed by locally elected Boards of Trustees. The proposed regulations also ignored the fact that it is the Board of Governors of the California Community Colleges which is the state agency responsible for the governance and

supervision of the California Community Colleges. Rather, the Secretary s proposed regulations took that responsibility from the Board of Governors and placed it with the Secretary for Health and Welfare. In December 1979, Glenn Gooder, then Interim Chancellor, and Gerald Hayward, then Chancellor-Elect, notified the Secretary that those regulations were unacceptable to the California Community Colleges and offered numerous comments.

In March 1980, the Secretary released his regulations for public comment. These regulations did reveal that the Secretary had considered the Chancellor's objections. More latitude was given state agencies to devise their own compliance mechanisms. Public hearings on these regulations were held. Members of the Chancellor's staff met with representatives for the Secretary to discuss the Chancellor's continued objections to the Secretary's regulations. However, as finally adopted, the Secretary's regulations continue to exceed the authority granted the Secretary by the statute and attempt to impose rigid components of a compliance system on other autonomous state agencies.

In preparing regulations for adoption by the Board of Governors, full consideration was given to the Secretary's regulations. Those regulations were considered as guidelines and were followed when appropriate to do so. However, when the guidelines found in the Secretary's regulations were found to be inappropriate for community colleges, other mechanisms appropriate for this system were included. In the comments to the proposed regulations, we point out where we have departed from the Secretary's regulation.

The Secretary's regulations require state agencies adopting regulations to submit their regulations to the Secretary for review prior to noticing them for public hearing. Legal counsel disputes the Secretary's authority to impose this requirement. However, as the Chancellor welcomes comment from all interested parties, we have submitted these regulations to the Secretary for his comment.

Cost

Article XIIIB, Section 6 of the California Constitution, as added by Proposition 4 (the Gann Initiative) contains the following requirement

> Section 6. Whenever the Legislature or any State agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates
>
> (a) Legislative mandates requested by the local agency affected:
>
> (b) Legislation defining a new crime or changing an existing definition of a crime; or
>
> (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially

implementing legislation enacted prior to January 1, 1975.

In addition, the State is required to reimburse community college districts for any costs which they incur as a result of regulations adopted after January 1, 1978 ("S.B. 90 Costs).

When a state agency adopts a regulation which includes reimbursable costs, the regulation " ..shall be accompanied by a bill appropriating funds therefor or, alternatively, an appropriation for such funds shall be included in the Budget Bill for the next following fiscal year..." Revenue and Taxation Code, Section 2231. Use of the second alternative requires the prior approval of the Department of Finance.

The Department of Finance asks state agencies to estimate the costs of regulations and to forward this estimate to the Department 30 days prior to giving notice of the proposed regulations or 75 days prior to action on the regulations.

The Chancellor is now in the process of estimating the cost of these regulations. This estimate will be submitted to the Department of Finance not later than September 19, 1980, to enable the Board to adopt these regulations in December. The estimate, together with the data, assumptions and calculations which support the estimate, will be available to this committee for consideration in November.

The Proposed Regulations

The organization of the proposed regulations is set forth in the following table of contents. Following that table is the resolution for the Board's consideration, including the complete text of the regulations. A brief discussion follows each proposed regulation.

CHAPTER 5 OF DIVISION 10, PART VI, TITLE 5

NONDISCRIMINATION IN PROGRAMS RECEIVING STATE FINANCIAL ASSISTANCE THROUGH THE CHANCELLOR OR BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES

Article 1. GENERAL

Section 59300 Purpose
59301 Prohibited Discrimination
59302 Academic Requirements
59303 Delegation of Authority
59304 Intent

Article 2. DEFINITIONS (Reserved)
(for protected persons and prohibited activities)

Article 3. DISTRICT COMPLIANCE AND ENFORCEMENT

Section 59320 District Responsibility
59322 District Regulations
59324 Responsible District Officer
59326 Notice to Students and Employees
59328 Complaint
59330 Notice to Chancellor
59332 Defective Complaint
59334 District Investigation
59336 District Resolution
59338 Notice to Complainant
59340 Forward to Chancellor

Article 4. CHANCELLOR'S PROCEDURE TO EFFECT COMPLIANCE

Section 59350 Review for Reasonable Cause
59352 Investigation
59354 Informal Resolution
59356 Formal Resolution
59358 Hearing
59360 Enforcement
59362 Judicial Review

Resolution

Be it resolved by the Board of Governors, California Community Colleges, acting under the authority of Sections 66700, 71020 and 71091 of the Education Code and Sections 11135 and 11138 of the Government Code, and implementing, interpreting and making specific Sections 11135 through 11139.5 of the Government Code, and pursuant to the Administrative Procedures Act, regulations in Title 5, Part VI of the California Administrative Code are added as follows:

Chapter 5 (Commencing with Section 59300) is added to Division 10, Part VI of Title 5 as follows:

CHAPTER 5 NONDISCRIMINATION IN PROGRAMS RECEIVING STATE FINANCIAL ASSISTANCE THROUGH THE CHANCELLOR OR BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES

Article 1. GENERAL.

Comment: These regulations are divided into four articles. The first article is general and includes the statement of the Board's purpose and intent in adopting regulations.

Section 59300. Purpose. The purpose of this chapter is to implement the provisions of California Government Code Sections 11135 through 11139.5 as added by Chapter 972 of the Statutes of 1977, to the end that no person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color or physical or mental disability, be unlawfully subject to discrimination under any program or activity that is funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135-11139.5 Government Code.

Comment: The purpose of these regulations is to implement the statute.

Section 59301. Prohibited Discrimination. All programs and activities in the California Community Colleges shall be available to all qualified persons without regard to ethnic group identification, religion, age, sex, color or physical or mental disability. No person shall be denied the benefits of any community college program or activity on the basis of ethnic group identification, religion, age, sex, color or physical or mental disability.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: This section reflects the Board of Governors' policy that community college programs or activities be available to all qualified persons. Discrimination against persons on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability is anathema to the role and function of the California Community Colleges. If such discrimination is found it must be eradicated.

Section 59302. Academic Requirements. Nothing in this chapter shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: The fear has been expressed that the terms of this statute and regulations could be used to infringe on the authority of community colleges to establish legitimate and bona fide academic standards.

Section 59303. Delegation of Authority. The Board of Governors hereby delegates responsibility for implementing and enforcing the requirements of Government Code Sections 11135 through 11137 to the Chancellor, except as specifically stated in this chapter.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 71020 and 71091 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: This section delegates responsibility for the administration of these regulations to the Chancellor. Appeal from the Chancellor's decisions will be directly to Superior Court by writ of mandate.

Section 59304. Intent. It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination from their programs and activities and in meeting the requirements of this chapter. Punitive action authorized by this chapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: Although the statute requires the Board of Governors to withhold state funds if unlawful discrimination is found, this section recognizes that the primary thrust of the Board of Governors activities under this statute should be remedial and assistive rather than punitive. Students will not be served by withholding funds from community college districts and this should be resorted to only when other measures fail.

Article 2. DEFINITIONS

Comment: This article is reserved for definitions of protected persons and prohibited activities. This article is not proposed at this time as it is felt that a procedure must first be established for administering the procedures of the statute. Only after gaining experience administering these regulations will the Chancellor's staff be able to state definitions which meet the unique needs of the California Community Colleges.

Article 3. DISTRICT COMPLIANCE AND ENFORCEMENT

Comment: This article assigns community college districts primary responsibility for ensuring that they do not unlawfully discriminate in their programs or activities.

Section 59320. District Responsibility. Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, religion, age, sex, color or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: Each community college district is responsible for insuring that its programs and activities are available to all persons. Each community college district is uniquely able to make its programs and activities available without unlawful discrimination and to remedy any unlawful discrimination which it may find in its own programs and activities. Therefore the initial attempts to resolve complaints of unlawful discrimination will occur at the independent community college district.

Section 59322. District regulations. Each community college district, no later than 90 days from the effective date of this chapter shall adopt and submit to the Chancellor for approval rules and regulations consistent with this article for the investigation and resolution of complaints of unlawful discrimination.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited Sections 11135 through 11139.5 Government Code.

Comment: The Chancellor will supply community college districts with sample regulatons which the district may use in complying with this provision. The regulations which the Chancellor will suggest will be compatible with other affirmative action responsibilities which the districts have.

Section 59324. Responsible District Officer. Each community college district shall identify to the Chancellor and to the public a single person as the responsible district officer for insuring district compliance with this chapter.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 and 11139.5 Government Code.

Comment: Each community college district will identify one person who is responsible for district compliance with this chapter. It is not intended that this person have full-time duties for implementing this chapter, but merely that this person be a source of information and contact for matters regarding this chapter.

Section 59326. Notice to Students and Employees. Each community college district shall notify students and employees of the provisions of this chapter.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: Students must be notified of the provisions of this chapter if the chapter is to be effective.

Section 59328. Complaint. An investigation of alleged unlawful discrimination prohibited by this chapter will be initiated by filing a complaint which meets the following requirements:

(a) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity.

(b) The complaint shall be filed with the chief administrative officer of the appropriate community college district.

(c) The complaint shall be in a form prescribed by the Chancellor.

(d) The complaint shall be filed within 120 days of the alleged unlawful discrimination.

NOTE: Authority cited: Sections 11135 and 11138 Governemnt Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: The procedures for investigating a complaint of unlawful discrimination are initiated by filing a complaint in conformance with the requirements of this section. In this section the proposed regulations depart from Health and Welfare's guidelines. Those guidelines suggest complaints should be accepted from any interested person. These proposed regulations require a district to accept complaints only from one who alleges either that he or she has personally suffered unlawful discrimination or has learned of such unlawful discrimination in his or her official capacity. To require a community college district to investigate complaints from "any interested person" would be to impose too great a burden.

The proposed regulation also departs from Health and Welfare's guidelines in requiring that the complaint must be filed within 180 days of the alleged unlawful discrimination. Health and Welfare's guidelines suggest complaints should be accepted for a period of one year from the alleged unlawful discrimination. However, in community colleges students are in a class for only a semester or a quarter before moving on. Investigations must not occur too far after the facts being investigated if they are to help remedy unlawful discrimination.

Section 59330. Notice to Chancellor. Immediately upon receiving a complaint filed in accordance with Section 59328 the district shall notify the Chancellor of the complaint in a form and manner determined by the Chancellor.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: To meet the requirement imposed by the statute that the state agency act whenever it has reasonable cause to believe discrimination has occurred, the Chancellor cannot delegate all responsibility to the community college district. The Chancellor retains responsibility and so must be informed of complaints in the community college districts.

Section 59332. Defective Complaint. When a district receives a complaint which it finds does not meet the requirements of Section 59328 the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: If a district determines a complaint is defective it must notify the complainant so that the complainant may remedy the defect.

Section 59334. District Investigation. Within fourteen (14) days of receiving a complaint filed in accordance with Section 59328 the district will commence an investigation of that complaint and notify the complainant that it is doing so.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: The district must commence an investigation of a complaint within 14 days. The scope of the district's investigation is not prescribed. This gives the district the discretion to determine the depth of investigation required in particular circumstances.

Section 59336. District Resolution. Upon completing the investigation, the district will make findings regarding the validity of the complaint. If the district finds that unlawful discrimination has occurred, the district shall take such action as it deems necessary to correct the effects of such unlawful discrimination and to ensure that there will be no further instances of such unlawful discrimination.

Comment: As stated previously, each district is in a unique position to understand what remedial action is appropriate and necessary to end unlawful discrimination in that district. The district should take that action.

Section 59338. Notice to Complainant. Upon resolution of a complaint as required by Section 59336, the district will notify complainant of its findings and proposed resolution. The district will also notify complainant that the complainant may object to the district's findings and/or resolution by submitting those objections to the Chancellor within thirty (30) days. The notice to complainant will be in the form determined by the Chancellor.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: Each complainant should be notified of the district's findings regarding his or her complaint. The complainant must also be notified that he or she may object to the district's findings to the Chancellor.

Section 59340. Forward to Chancellor. Upon sending the notice pursuant to Section 59338 and within ninety (90) days of initiating the investigation required by Section 59334 the district will forward the following to the Chancellor:

(a) The original complaint,

(b) Report of the nature and extent of the investigation conducted by the district,

(c) Statement of the district's findings;

(d) Report of any action taken to resolve the complaint;

(e) Evidence that the district has complied with the requirements of Section 59338;

(f) Such other information as the Chancellor may require.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: The community college district is required to complete its investigation within ninety (90) days of its initiation. The district must then forward a report of the investigation, findings and district action to the Chancellor together with the original complaint and evidence that the district has notified the complainant of his right to object. The Chancellor may require other information as he deems necessary. These materials forwarded to the Chancellor form the basis for the Chancellor's investigation.

Article 4. CHANCELLOR'S PROCEDURE TO EFFECT COMPLIANCE

Comment: The Chancellor's role in this procedure begins when the district has completed its investigation and taken action as it deems appropriate.

Section 59350. Review for Reasonable Cause. (a) The Chancellor shall review the materials submitted by the district pursuant to Section 59340, together with any objection submitted by the complainant, and determine whether there is reasonable cause to believe the district has violated the requirements of this chapter.

(b) Failure by the complainant to file an objection pursuant to Section 59338 shall not preclude the Chancellor from finding reasonable cause to believe the district has violated the requirements of this chapter.

(c) If the Chancellor finds there is no reasonable cause to believe a violation has occurred, the Chancellor shall immediately notify both the complainant and the district.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: The Chancellor must first determine whether there is reasonable cause to believe unlawful discrimination has occurred. This determination will be made based on the materials submitted by the district and any objection submitted by the complainant. Failure by the district to submit complete materials will certainly indicate that further investigation by the Chancellor is necessary.

Section 59352. Investigation. If the Chancellor finds there is reasonable cause to believe a violation has occurred, the Chancellor shall investigate to determine whether there is probable cause to believe a violation has occurred.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: The statute requires the Chancellor to investigate if there is reasonable cause to believe unlawful discrimination has occurred. Reasonable cause is not defined.

Section 59354. Informal Resolution. During the course of the investigation, the Chancellor shall seek to informally resolve the alleged violation. Such resolution shall be set forth in a written conciliation agreement. A copy of the written agreement shall be sent to the complainant.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: At all times during the Chancellor's investigation, the Chancellor will seek to resolve the matter. The resolution will be set forth in a written conciliation agreement. A copy of that agreement will be sent to the complainant. However, the complainant is not a part to the agreement and need not acquiesce in the agreement.

Comment: Health and Welfare's regulations require state agencies to submit written conciliation agreements to the Secretary. The Chancellor's legal counsel has opined that the Secretary for Health and Welfare does not have the authority to impose this mandate and it is believed that this requirement would discourage such written conciliation agreements. Therefore, this provision is not included in these regulations.

Section 59356. Formal Resolution. Within 120 days of initiating the investigation, the Chancellor shall:

(a) Notify the district and the complainant that there is probable cause to believe the district has violated the provisions of this chapter. The Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.

(b) Notify the district and the complainant that there is no reasonable cause to believe the district has violated the provisions of this chapter.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: This provision allows the Chancellor 120 days to complete his investigation. If the Chancellor finds probable cause to believe unlawful discrimination has occurred, the district shall be allowed to acquiesce in this finding. If the district does so, it will avoid the necessity of a hearing pursuant to the Administrative Procedures Act and the provisions of Section 406 will immediately be applicable.

Section 59358. Hearing. If the Chancellor finds the district has violated the provisions of this chapter, and if the district does not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant to Chapter 5 (commencing with Section 11500) of Part I, Division 3, Title 2 of the Government Code, to determine whether the violation did occur.

Comment: The statute requires that if the Chancellor finds probable cause to believe a community college district has unlawfully discriminated in its programs or activities it shall initiate a hearing pursuant to the Administrative Procedure Act to determine whether the violation did occur. This provision meets that requirement.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Section 59360. Enforcement (a) Upon a determination that a district has violated the provisions of this chapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including:

(1) Withhold all or part of the district's state support;

(2) Probationary eligibility for future state support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state funding to a district under this chapter shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

NOTE: Authority cited: Sections 11135 and 11138 Government Code; Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: The statute provides that if the state agency finds the recipient has practiced unlawful discrimination the state agency shall curtail state funding in whole or in part. This proposed regulation recognizes that no student will be served by curtailing state funds to a community college district and encourages the Chancellor to utilize other measures to compel compliance before withholding funds.

Section 59362. Judicial Review. A decision by the Chancellor pursuant to Section 59360 is subject to judicial review by the district, as provided by Section 1094.5 of the Code of Civil Procedure.

NOTE: Authority cited: Sections 11135 and 11138 Government Code: Sections 66700 and 71020 Education Code. Reference cited: Sections 11135 through 11139.5 Government Code.

Comment: The Chancellor's decision to enforce the provisions of this chapter under Section 59300 will have followed a hearing before an administrative law judge at which it was determined that the district did practice unlawful discrimination. The decision of the Chancellor to enforce the provisions of this article should not then be subject to further administrative proceedings. It should be appealed directly to the courts.

REGULATIONS TO IMPLEMENT CHAPTER 972 OF 1977: AN ESTIMATE OF COST

STATEMENT OF THE MANDATE

Chapter 972 of 1977 (Assembly Bill 803) requires the following of state agencies which administer state funds:

1. Investigation. When the agency has reasonable cause to believe unlawful discrimination has occurred, the agency shall investigate.

2. Administrative hearing. If the investigation shows probable cause that a violation has occurred, the agency shall initiate an administrative hearing to determine whether a violation has occurred.

3. Curtail state funds. If it is determined that a violation has occurred, the agency shall curtail funds in whole or part.

4. Adopt regulations. State agencies administering over $100,000 in state funds are required to adopt regulations to carry out the Act.

The regulations proposed for adoption by the Board of Governors to implement this statute will impose the following mandates on community college districts:

1. All programs and activities in the California Community Colleges shall be available to all qualified persons without regard to ethnic group identification, religion, age, sex, color or physical or mental disability. (59301)

2. Each community college district shall investigate complaints of unlawful discrimination in its programs or activities. (59302)

3. The district shall seek to resolve those complaints. (59320)

4. Each community college district shall adopt rules and regulations consistent with this article. (59322)

5. Each community college district shall submit those rules and regulations to the Chancellor for approval. (59322)

6. The district shall identify a responsible district officer. (59324)

7. The district shall notify students and employees of the provisions of this chapter. (59326)

8. The district shall receive complaints of unlawful discrimination. (59328)

9. The district shall notify the Chancellor of complaints received in a form and manner determined by the Chancellor. (59330)

10. Each community college district shall notify complainants who have submitted defective complaints that the complaint is defective and in what respect it is defective. (59332)

11. Each community college district will commence an investigation within 14 days. (59334)

12. The district will notify the complainant that it is commencing an investigation. (59334)

13. The district will make findings regarding the validity of the complaint. (59334)

14. The district will take necessary remedial action if unlawful discrimination did occur. (59336)

15. The district will notify complainant of its findings and proposed resolution and of the complainant's right to object to the Chancellor in a form prescribed by the Chancellor. (59338)

16. The district will forward the materials resulting from the complaint to the Chancellor. (59340)

17. The Chancellor will be required to participate in an administrative hearing if the Chancellor finds reasonable cause to believe discrimination has occurred. (59358)

Working Data

Any additional expenses which will arise upon implementing these regulations will be directly dependent upon the number of complaints that will be investigated by the community college districts and the Chancellor's Office.

Student data is derived from the student file within the Chancellor's Office Information System. The particular data used in this estimate are from the Fall 1979 term. This data is for credit students only and represents an 83.5 percent sample of the total enrollment of 1,248,459 students. The percentage distributions by race are extrapolated to the total enrollment figure to produce the totals by race in Table I.

Professional staff data is derived from the 1977 federal EEO-6 report and the Chancellor's Office 1979-80 Faculty and Administrative Salaries Report. Percentage distribution by race are taken from the 1977 ERO-6 report (Table II) and are extrapolated on the total count of community college professional staff to produce the totals in Table III.

A search was made for hard data on the number of complaints filed under existing equal rights laws. No information was available at the local, state or federal levels of government. Data on the number of complaints which can be expected is hypothetical and is covered in the discussion of assumptions.

TABLE I
FALL 1979
CALIFORNIA COMMUNITY COLLEGES

STUDENT DISTRIBUTION BY RACE

	% of Total Enrollment	Total Enrollment Based Upon Extrapolation of Sample Percent To Total Enrollment
American Indian	1.45	18,103
Asian	5.17	64,545
Black	9.81	122,474
White	71.31	890,276
Hispanic	11.02	137,580
Filipino	1.24	15,481
TOTAL	100.00	1,248.459
TOTAL MINORITY	28.69	358,183
Men	45.5%	
Women	54.5%	

No data is available regarding the numbers of students by religion, disability or ethnic group identification.

TABLE 11
PERCENTAGE OF DISTRIBUTION
OF
CALIFORNIA COMMUNITY COLLEGES
FULL-TIME STAFF BY RACE* AND SEX
1977

	%
White	80.44
Black	7.55
Hispanic	7.74
Asian or Pacific Islander	3.71
American Indian or Alaskan Native	0.56
TOTAL	100%
TOTAL MINORITY	19.56%
MEN	56.3%
WOMEN	43.7%

Based on 1977 EEO-6

TABLE III
ESTIMATE OF NUMBER OF
CALIFORNIA COMMUNITY COLLEGES
EMPLOYEES BY RACE* AND SEX
1979-80

White	36,162
Black	3,394
Hispanic	3,480
Asian or Pacific Islander	1,668
American Indian or Alaskan Native	252
TOTAL	44,956
TOTAL MINORITY	8,793
MEN	25,310
WOMEN	19,646

*Based on 1977 EEO-6 percentage distribution by race extrapolated on the count of faculty for 1979-80 contained in "Faculty and Administrative Salaries, 1979-80."

Assumptions

The first assumption regards the racial distribution of the student population. It is assumed that the aggregation of total student enrollment by race is proportional to the distribution of students by race in the 83.5 percent sample of Fall 1979 enrollments. While it is probable that the distribution by race of noncredit students will vary from that of credit students, the size of the variation is not judged to be significant for the purposes of this estimate.

The second assumption is that the 1979-80 percentage distribution by race of community college professional staff will be substantially the same as the distribution by race reported in the 1977 EEO-6 report.

The third set of assumptions concerns the number of complaints that will need to be investigated as a result of this legislation. Because there is no statistical data available on the number of complaints filed under other equal rights laws, it is necessary to work with an estimate. It is assumed that for each 1,000 community college students or staff that there will be one complaint which will require investigation at the district level. It is also assumed that four out of five complaints will be resolved at the district level without any active participation from the Chancellor's Office. Every fifth complaint would require an investigation by the Chancellor's Office of at least the same scope as that conducted at the district level.

The fourth set of assumptions concerns the amount of resources required to investigate complaints. This is another area where there is no information available on which to base a cost estimate. It is assumed, however, that all new cost will be for personnel time allocated to the investigation process. It is estimated that each investigation will require an average of six professional manhours and two hours of clerical time for typing reports, recording and filing paperwork from the investigation.

Calculations

Number of student complaints at the district level: Given a Fall 1979 enrollment of 1,248,459 and a complaint rate of one per thousand students, it is estimated that there will be 1,249 student complaints per annum.

Staff hours required to process student complaints at the district level: Given that it requires six professional manhours and two clerical manhours to conduct an investigation, it can be expected that it will take 7,494 professional and 2,498 clerical manhours to process the 1,249 student complaints each year.

Personnel cost to investigate student complaints at the district level:

It is estimated that the total cost for a professional will be $40,000 per annum and $18,000 per annum for a clerical position. Based on a district work year of 245 work days of eight hours each, it is estimated that each position will provide 1960 hours of work. Thus, it will be necessary to allocate the equivalent of 3.8 professional positions and 1.3 clerical positions to the investigation of student complaints. The cost of the professional positions will be $152,953 and the clerical positions will cost $22,932, for a total cost of $175,884 for the community college districts.

Number of staff complaints at the district level: Given a professional staff of 44,956 and approximately another 15 percent nonprofessional for a total of 51,700 community college district employees. Given the complaint rate of one per thousand employees, it is estimated that there will be 52 complaints.

Staff hours required to process staff complaints at the district level: Given that it requires six professional and two clerical manhours to conduct each investigation, it can be expected that it will take 312 professional and 104 clerical manhours to process the 52 staff complaints.

Personnel cost to investigate staff complaints at the district level: At the rate of $40,000 per annum for a professional and $18,000 for a clerical position, and based on the same 1,960 hours of time available for a full-time position, it is estimated that it will cost $6,367 for professional and $955 for clerical time for a total of $7,322 to investigate staff complaints.

Staff hours required to review student complaints at the Chancellor's Office: The Chancellor's Office must review all student and staff complaints. It is estimated that it will require an hour of professional staff time to review each complaint and an hour of clerical time for typing, correspondance, filing and recording of the necessary reports.

Since four out of five complaints will be resolved at the district level it is estimated that 1,041 complaints can be handled without any additional personnel time. Investigation of the remaining 260 complaints will require six hours of professional and two hours of clerical time to process. This results in an additional requirement of 1,561 professional and 520 clerical manhours. Total requirements will be 2,602 professional and 1,561 clerical manhours. Based on a 1,960 hour work year, this translates into approximately 1.3 professional and 0.8 clerical positions. This results in a cost of $53,107 for professional and $14,330 for clerical personnel and amounts to a total cost of $67,437.

TABLE IV
COMMUNITY COLLEGE DISTRICT
COST TO INVESTIGATE COMPLAINTS

Object of Cost	Man Hours	Approximate Cost Per Man Hour $	Cost $
Professional	7,806	$20.41	159,320
Clerical	2,602	$ 9.18	23,886
TOTAL	10,408		183,206

TABLE V
CHANCELLOR'S OFFICE
COST TO INVESTIGATE COMPLAINTS

Object of Cost	Man Hours	Approximate Cost Per Man Hour $	Cost $
Professional	2,602	$20.41	53,107
Clerical	1,561	$ 9.18	14,330
TOTAL	4,163		67,437

Cost to write and implement AB 803 regulations: Each community college district must write and implement regulations to comply with AB 803 and the Chancellor's Office regulations. While there will be some diversity in the way that districts choose to frame their local regulations, and in the type of investigative processes and procedures which they will use, it is reasonable to assume that at least 100 hours of professional staff time and 20 hours of clerical time will be required at each district. At a rate of $20.42 per professional hour and $9.18 for clerical manhour, it will cost each community college district $2,041 for professional and $184 for clerical time. Total cost to each district is $2,225. It will cost all seventy community college districts $155,750.

Total costs: Total Costs will breakdown as follows:

One-time Implementation Cost

Chancellor's Office	$ 2,225
Community College Districts	$155,750
TOTAL COST	$157,975

Annual Administrative Cost of the Investigative Process

Chancellor's Office	$ 67,437
70 Community College Districts	$175,885
TOTAL ANNUAL COST	$243,322

Conclusions:

The Board of Governors of the California Community Colleges estimates that the fiscal effect of these regulations on local government, to wit: community college districts, will be additional expenditures of approximately $157,975 for the year of implementation and $243,322 annually, which are reimbursable by the state pursuant to Section 2231 of the Revenue and Taxation Code. Funding for this reimbursement will be requested in the 1981-82 Governor's Budget for appropriation in the Budget Act of 1981.

In the Superior Court

of the County of Sacramento, State of California

NOV

In the matter of

State of California, County of Sacramento } ss.

D. Killary

being duly sworn, on oath says:

THE SACRAMENTO UNION CORP., is, and at all dates herein mentioned was, a corporation, organized under the laws of the State of California, with its principal place of business at the City of Sacramento, county of Sacramento; State of California;

That "THE SACRAMENTO UNION" is a daily newspaper and during all the times herein mentioned and referred to, w said City of Sacramento in said county of Sacramento, telegraphic news and intelligence of a general character, ha paying subscribers, and is established, printed and published, year next preceding the dates of the publications and notice he printed and published at said City and County, and during a published herein at regular intervals, to-wit, daily, and is and newspaper of general circulation, as that term is defined by Se State of California, and is not and was not during any of sa published for the entertainment or instruction of a particular or denomination, or for the entertainment and instructior professions, trades, callings, races or denominations;

That affiant is and on all the dates of publication of the citizen of the United States, over the age of eighteen years, a and on all of said dates was, the principal clerk of said printer as such has, and on all of said dates, had charge of the publi said "THE SACRAMENTO UNION" and make this affidavit notice, a copy of which as so published in said newspaper is h hereby referred to and made a part hereof, was published in dates, and as follows, vis:

October 20, 1980

both dates inclusive. That said legal notice, as so published, was set in type not smaller than nonpareil, and was preceded with words printed in black face type not smaller than nonpareil, describing and expressing in general terms the purport and character of said notice, as fully appears from the exact copy of said legal notice, which is hereto annexed as aforesaid.

Subscribed and sworn to before me, this 24th day of October 1980

Notary Public in and for the County of Sacramento, State of California.

EXHIBIT "A"

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES

Notice is hereby given that the Board of Governors of the California Community Colleges, pursuant to the authority vested by Sections 66700, 71020 and 71091 of the Education Code, and to implement, interpret, or make specific Sections 11135 through 11139.5 of the Government Code, and pursuant to the Administrative Procedures Act, proposes to adopt regulations adding Chapter 5 (commencing with Section 59000) to Division 10, Part VI of Title 5 of the California Administrative Code, as follows:

Assembly Bill 803, Chapter 972 of 1977, prohibits unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color or physical or mental disability in programs receiving funds from the state. The statute requires state agencies which administer state funds to investigate complaints of unlawful discrimination, to cause an administrative hearing to determine if unlawful discrimination did occur, and if unlawful discrimination did occur, to withhold state funds in whole or in part. The statute also requires state agencies who administer $100,000 in state funds to adopt regulations to implement the statute. These regulations will do so.

Notice is also given that any person interested may present statements or arguments orally or in writing relevant to the proposed action at a hearing to be held in Kent Room A of the Airport Marina Hotel, Los Angeles, California, on November 14, 1980, commencing at the hour of 8:45 a.m., or as soon thereafter as the business of the Agency will permit, and in the French Room of the Villa Hotel, 1000 S. El Camino Real, San Mateo, California, on December 5, 1980, commencing at the hour of 8:30 a.m., or as soon thereafter as the business of the Agency will permit. These facilities are accessible to persons with disabilities. The Board of Governors of the California Community Colleges, upon its own motion, or at the instance of any interested person, may thereafter adopt the above proposal substantially as above set forth without further notice.

Comment in writing must be received no later than November 14, 1980, in order for them to be considered with regard to the proposed action. Inquiries concerning these proposed regulation changes may be directed to Catherine Close, Staff Counsel, at (916) 445-0106.

The Board of Governors of the California Community Colleges estimates that the fiscal effect of these regulations to local government, to wit: community college districts, will be additional expenditures of approximately $107,975 for the year of implementation and $243,322 annually, which are reimbursable by the state pursuant to Section 2231 of the Revenue and Taxation Code. Funding for this reimbursement will be requested in the 1981-82 Governor's Budget for appropriation in the Budget Act of 1981.

Copies of the proposed regulations and more complete statement of the purpose of the proposed action and the information which is being relied upon in proposing the action have been prepared, and may be obtained at the time and place of hearing, or upon request from the Chancellor's Office, 1238 "S" Street, Sacramento, California 95814, Attention: Staff Counsel.

Board of Governors of the
CALIFORNIA COMMUNITY COLLEGES
Gerald C. Hayward
Chancellor

DATED: October 10, 1980
SU2596 (Run 1 tis October 20, 1980).

State of California

Memorandum

OCT 23 REC'D

Date : October 20, 1980

To : Catherine Close
Staff Counsel
California Community Colleges

From : Department of Finance

Subject: Proposed Regulations Implementing Chapter 972 (AB 803), Statutes of 1977

In a memorandum dated September 19, 1980, you sent me a set of proposed regulations accompanied by district and Chancellor's Office cost estimates for our concurrence with the cost estimates. It is also clear from the material submitted that funding for these costs "will be requested in the 1981-82 Governor's Budget for appropriation in the Budget Act of 1981".

This is a complex matter which will impact all education segments and other State and local agencies. Also, I am told there is a history of problems and disagreements with the Health and Welfare Agency regarding its own regulations and those of other agencies (including disagreements between the Chancellor's Office and the Health and Welfare Agency).

While there are other pertinent and important sections in Chapter 972, two of the basic ones follow:

> "11135. No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the State or receives any financial assistance from the State".
>
> "11139.5. The Secretary of the Health and Welfare Agency, with the advice and concurrence of the Fair Employment Practices Commission, shall establish standards for determining which persons are protected by this article and guidelines for determining what practices are discriminatory. The secretary, with the cooperation of the Fair Employment Practices Commission, shall assist State agencies in coordinating their programs and activities and shall consult with such agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of the provisions of the article".

I have the following comments and problems:

1. There are many Federal regulations already in existence which apply to community colleges and these deal with many aspects of discrimination. Also, it has been our understanding that the Board of Governors has long had a policy of non-discrimination (the open-access policy). If this is true, why reimburse districts for enforcing existing regulations and policy?

2. It is my understanding that you do not disagree with #1 above but believe that Chapter 972 mandates certain procedures to be used for enforcement. If this is true, then why do most of the Health and Welfare regulations use the permissive "should" rather than the mandatory "shall"?

3. Even if there are district costs reimbursable by the State, I am not prepared to concur with your district cost estimates. While the basic methodology seems to be sound (disregarding for a moment the basic question of whether there are new mandates), there appears to be a mixing of Chancellor's Office costs with district costs to arrive at the annual total cost to districts. Also, I question the one-time district implementation costs because the Chancellor's Office will be sending sample regulations to the districts which they can adopt at their choice. If the districts adopt different regulations, it is my contention that this is at their option and therefore not reimbursable as a State mandate.

4. The Chancellor's Office is the only education segment which has submitted regulations pertaining to Chapter 972. The Department of Education also has districts under a local governance system and may wish to claim reimbursable costs, but we have nothing before us. While UC and CSUC are not in the same situation, they may wish additional funds for campus and central office costs. Again, we have nothing before us on their proposed regulations.

I am not prepared to recommend approval of costs associated with this complex and controversial subject on a piecemeal basis. Considering all of the comments and problems noted above, I urge you to take a second look at the proposed regulations and possible costs, to coordinate with your colleagues in other segments, and to reconsider the time schedule for adoption by the Board of Governors.

Even if we could reach agreement that there are costs of a certain magnitude associated with the regulations, I am not prepared to recommend inclusion of funds in the Governor's 1981-82 Budget. The Revenue and Taxation Code (Section 2231) provides two methods of appropriating funds for reimbursements associated with mandate regulations. One method is through the Governor's Budget and the Budget Bill. The second is through a legislative bill. If after reexamination of the regulations, your office still believes there are State-mandated reimbursable costs, I am asking that you pursue the legislative bill method because of the complex issues and

the involvement of other State and local agencies.

Underlying all of the above expressed concerns is the State's bleak fiscal situation. You should be aware that it is our intention to use every available means to avoid additional General Fund expenditures. I note that your office has estimated a total annual reimbursable cost to the districts of $243,322 (and we question this estimate) for a small average cost of $3,476 per district.

You and the Chancellor's Office budget staff have been very cooperative in discussions regarding this subject and that is sincerely appreciated. Although no BCP was received to cover possible reimbursable costs associated with the proposed regulations, I want you to know that I consider that to be an understandable and minor procedural matter, and it is not the reason I am unwilling to recommend funds in the Governor's Budget.

If you wish to discuss this matter, please call me on 445-0328.

George

George Normington
Principal Program Budget Analyst
Education Systems Unit

cc: Gerald C. Hayward, Chancellor, California Community Colleges
Gus Guichard, Executive Vice Chancellor, California Community Colleges
Tom Nussbaum, General Counsel, Chancellor's Office
Pat Ryan, Budget Officer, California Community Colleges

EXHIBIT C

DEPARTMENT OF FINANCE

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

March 23, 2004

RECEIVED

MAR 26 2004

COMMISSION ON STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

This letter is to inform you that the Department of Finance (Department) has performed a review of the test claim submitted by the Santa Monica Community College District (claimant) asking the Commission to determine whether specified costs incurred under various statutes and regulations are reimbursable state mandated costs (Claim No. CSM-02-TC-46 "Discrimination Complaint Procedures"). Specifically, the claim specifies alleged mandated reimbursable costs for establishment and implementation of complaint resolution procedures specified in Title 5, California Code of Regulations governing Nondiscrimination in Programs Receiving State Financial Assistance.

We conclude this claim should be denied in its entirety. The claim proceeds to list numerous state statutes and regulations, without explaining which activities are either a higher level of service than required under federal law or the California Constitution, or which activities result in new costs to the claimant. We do not believe the claimant has made a case for any defined reimbursable activities.

The regulations governing test claim filing, Title 2, California Code of Regulations, section 1183, subdivision (d)(3)(A), require the claimant to include a written narrative that contains a detailed description of the activities required under prior law or executive order. The claimant inaccurately asserts on page 29 of the test claim that "None of the Government Code Section 17556 statutory exceptions to a finding of costs mandated by the state apply to this test claim." In fact, Government Code (GC) Section 17556(c) states that statutes or executive orders implementing a federal law or regulation are not reimbursable. Furthermore, GC Section 17556(f) states a statute or executive order imposed by a ballot measure is not reimbursable. The claimant fails to distinguish any State statutory or regulatory requirements from those requirements existing at the federal level, as well as those requirements enacted by California's voters.

Several federal laws require compliance with regulations regarding unlawful discrimination and complaint resolution procedures. Given that all community colleges receive some form of federal funds, laws regarding prohibited forms of discrimination are not new requirements. Additionally, Section 31 of Article I of the California Constitution, enacted by the voters in 1996, prohibits discrimination against anyone on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, or public contracting. While the claimant mentions Section 31 of Article 1 of the California Constitution (adopted by initiative measure in 1996) in its claim, the

claimant failed to discuss how State statutes and regulations included in the test claim relate to this Section.

Several federal laws require specified procedures for handling unlawful discrimination complaints. Given that all community colleges receive some form of federal funds, state laws regarding prohibited discrimination are not new requirements. Because these prior federal laws already prohibited several forms of discrimination and required investigations of complaints, these activities would not therefore be reimbursable pursuant to Government Code Section 17556(c):

- Title IV of the 1964 Civil Rights Act prohibits discrimination on the basis of race, color, sex, religion, or national origin in public schools.
- Title VI of the Civil Rights Act of 1964 prohibits exclusion of participation, denial of benefits, or other discrimination by any federally funded program or activity to any person based on race, color, or national origin.
- The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in federally funded programs or activities.
- Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded education program or activity.
- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any federally funded program or activity.
- The Americans with Disabilities Act of 1990 prohibits discrimination of qualified individuals with disabilities in all employment practices.
- Section 106.8 of Title 34 CFR Part 106 authorized by Title IX of the Education Amendments of 1972 states that each federal funds recipient shall designate at least one responsible employee to coordinate and investigate complaints of discrimination based on sex and adopt and publish grievance procedures.
- In addition, Section 104.7 of Title 34 CFR Part 104 of Section 504 of the Rehabilitation Act of 1973, states that recipients of federal funds who employ fifteen or more persons shall designate at least one person to coordinate compliance and adopt grievance procedures and resolutions of complaints of discrimination based on disability.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 11, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Pete Cervinka, Principal Program Budget Analyst, at (916) 445-0328 or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

Attachments

Attachment A

DECLARATION OF PETE CERVINKA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-46

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the various statutory sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge, except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

3/23/04
at Sacramento, CA

Pete Cervinka

PROOF OF SERVICE

Test Claim Name: Discrimination Complaint Procedures
Test Claim Number: CSM-02-TC-46

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On March 23, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-08
Mr. Michael Havey
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Ms. Beth Hunter
Centration, Inc.
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Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586

Mr. Keith B. Peterson
SixTen & Associates
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San Diego, CA 92117

Mr. Steve Smith
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11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Mr. Thomas J. Donner
Santa Monica Community College District
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Santa Monica, CA 90405-1628

Ms. Harmeet Barkschat
Mandate Resource Services
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Sacramento, CA 95842

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Mr. Mark Drummond
California Community Colleges
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Mr. Thomas J. Nussbaum
California Community Colleges
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 23, 2004, at Sacramento, California.

Chad Rohrs

SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

EXHIBIT D

April 30, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED
MAY 04 2004
COMMISSION ON
STATE MANDATES

Re: Test Claim 02-TC-46
Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated March 23, 2004 and the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 11, 2004, to which I now respond on behalf of the test claimant.

A. The Comments of DOF are Incompetent and Should be Excluded

Test claimant objects to the comments of DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the response since DOF has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

> "If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

In addition, DOF has cited numerous federal statutes and regulations without attaching a copy thereof and without identifying specific chapters, articles, sections or page numbers in violation of Title 2, California Code of Regulations Section 1183.02, subdivision (c)(2), which requires that written responses, opposition or recommendations on the test claim shall contain:

> "A copy of relevant portions of...federal statutes, and executive orders that may impact the alleged mandate...unless such authorities are also cited in the test claim. The specific chapters, articles, sections, or page numbers must be identified..."

The comments of DOF do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of DOF not be included in the Staff's analysis.

Part I
Reply to DOF

B. DOF Misstates Government Code Section 17556(c)

DOF argues that Government Code Section 17556(c) "states that statutes or executive orders implementing a federal law or regulations are not reimbursable." This is a misstatement of the law. Subdivision (c) of Government Code Section provides:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:...
> (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government,

unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation." (Emphasis supplied)

DOF omits that very important exception to the statute, i.e., "unless the statute of executive order mandates costs which exceed the mandate in that federal law or regulation."

C. DOF's Shotgun Approach to Federal Law Must Be Disregarded

DOF then couples its incorrect statement of the law with eight (8) bulleted references to federal laws and regulations without attaching copies or without identifying specific chapters, articles, sections, or page numbers as required by Title 2, California Code of Regulations Section 1183.02, subdivision (c)(2). As such, this shotgun approach must be disregarded.

D. DOF Misstates the Contents of the Test Claim

DOF complains that the test claim does not explain which activities are either a higher level of service or which activities result in new costs. Test claimant refers DOF to the test claim at pages 22-28.

DOF also complains that the test claim does not contain a written narrative that contains a detailed description of the activities required under prior law or executive order. As for the written narrative, test claimant refers DOF to the test claim at pages 2-21. As for the activities required under prior law, test claimant refers DOF to the test claim at page 2 where the test claimant declared there was no statute or regulation which mandated any complaint resolution procedures prior to January 1, 1975.

Part II
Reply to CCC

E. CCC Affirms the Validity of the Test Claim

CCC adds historical perspective by furnishing documents from 1980 and disclosing that CCC advised DOF then that the proposed regulations imposed a mandate on community college district. At that time, CCC estimated annual costs of implementation to be $243,322. Currently, CCC states it receives about 200 unlawful discrimination complaints statewide per year. That figure does not include informal complaints, which

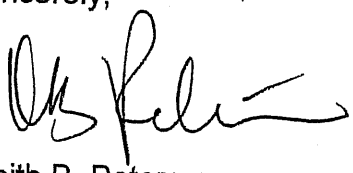
are handled locally.

CCC concludes "we believe there is a basis for reimbursement."

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Discrimination Complaint Procedures (CCD) 02-TC-46
CLAIMANT: Santa Monica Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of April 30, 2004, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

☐ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 4/30/04, at San Diego, California.

Diane Bramwell

Commission on State Mandates

Original List Date: 7/8/2003
Last Updated:
List Print Date: 07/11/2003
Claim Number: 02-TC-46
Issue: Discrimination Complaint Procedures (CCD)

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Thomas J. Donner
Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, CA 90405-1628

Claimant

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Fax: (310) 434-8200

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SixTen & Associates
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Mr. Michael Havey
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Division of Accounting & Reporting
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Fax: (916) 327-0225

Exhibit E

SixTen and Associates
Mandate Reimbursement Services

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Sacramento
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Sacramento, CA 95834
Telephone: (916) 565-6104
Fax: (916) 564-6103

January 8, 2007

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: No. CSM. 02-TC-46
Discrimination Complaint Procedures

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 5, CCR, sections included in the test claim.

Sincerely,

Keith B. Petersen

C: Douglas Brinkley, Vice-Chancellor
Finance and Administration
State Center Community College District
1525 East Weldon
Fresno, CA 3268

Keith B. Petersen
SixTen and Associates
3841 North Freeway Blvd, Suite 170
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Voice: (916) 565-6104
Fax: (916) 564-6103
kbpsixten@aol.com

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Supplement to the:	No. CSM. 02-TC -46
Test Claim Filed June 27, 2003	Discrimination Complaint Procedures
	History Index for
	Title 5, California Code of Regulations
by Santa Monica Community College District	
	Section 59300
	Section 59303
	Section 59304
	Section 59310
	Section 59311
	Section 59320
	Section 59322
	Section 59324
	Section 59326
	Section 59327
	Section 59328
	Section 59329
	Section 59330
	Section 59332
	Section 59334
	Section 59336
	Section 59338
	Section 59339
	Section 59340
	Section 59342
	Section 59350
	Section 59351
	Section 59352
	Section 59354

)	Section 59356
)	Section 59358
)	Section 59360
)	Section 59362
)	
)	

SUPPLEMENTAL INFORMATION

This supplement to the test claim provides an index and copy of each change to the Title 5, CCR, sections included in the test claim. The Registers cited are attached as Exhibit A. Amended language is underlined (new language) or stricken out (deleted language).

HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

Register 81-16 § 59300: New section added.

§ 59301: New section added.

§ 59302: New section added.

§ 59303: New section added.

§ 59304: New section added.

§ 59305: New section added.

§ 59310: New section added.

§ 59320: New section added.

§ 59322: New section added.

§ 59324: New section added.

§ 59326: New section added.

§ 59328: New section added.

§ 59329: New section added.

§ 59330: New section added.

§ 59332: New section added.

§ 59334: New section added.

§ 59336: New section added.

§ 59338: New section added.

§ 59340: New section added.

§ 59350: New section added.

§ 59352: New section added.

§ 59354: New section added.

§ 59356: New section added.

§ 59358: New section added.

§ 59360: New section added.

§ 59362: New section added.

Register 92-17 § 59324: Amendment of section.

§ 59328: Amendment of section.

§ 59334: Amendment of existing paragraph and NOTE and adoption of subsections (a)-(e).

§ 59336: Repealed, new section added.

§ 59338: Repealed, new section added.

§ 59340: Amendment of section.

§ 59342: New section added.

Register 96-23 § 59300: Amendment of section and NOTE. Submitted to OAL for printing only.
§ 59327: New section added.
§ 59328: Repealed subsection (b) and subsection relettering. Submitted to OAL for printing only.
§ 59333: New section added.

Register 01-06 § 59300: Amendment of section and NOTE. Submitted to OAL for printing only.
§ 59301: Repealed section. Submitted to OAL for printing only.
§ 59303: Amendment filed. Submitted to OAL for printing only.
§ 59311: New section added. Submitted to OAL for printing only.
§ 59320: Amendment of section and NOTE. Submitted to OAL for printing only.
§ 59322: Amendment of section and NOTE. Submitted to OAL for printing only.
§ 59326: Amendment of section and NOTE. Submitted to OAL for printing only.
§ 59327: Amendment of subsections (a)(3) and (c). Submitted to OAL for printing only.
§ 59328: Amendment of section heading and subsection (a). Submitted to OAL for printing only.
§ 59330: Amendment of section and NOTE. Submitted to OAL for

printing only.

§ 59336: Amendment of section. Submitted to OAL for printing only.

§ 59338: Amendment of section heading and section. Submitted to OAL for printing only.

§ 59339: New section added. Submitted to OAL for printing only.

§ 59340: Repealed subsections (a)-(c) and subsection relettering. Submitted to OAL for printing only.

§ 59342: Amendment of subsections (a), (c), and (d). Submitted to OAL for printing only.

§ 59350: Amendment of subsections (a) and (b) and NOTE. Submitted to OAL for printing only.

§ 59351: New section added.

§ 59356: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 59358: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 59360: Amendment of subsections (a), (a)(2) and (b) and amendment of NOTE. Submitted to OAL for printing only.

Register 02-13 § 59300: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 59302: Amendment of section and NOTE. Submitted to OAL for

printing only.

§ 59303: Amendment filed. Submitted to OAL for printing only.

§ 59304: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 59305: Section repealed. Submitted to OAL for printing only.

§ 59310: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 59311: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 59320: Amendment of section. Submitted to OAL for printing only.

§ 59322: Amendment of section. Submitted to OAL for printing only.

§ 59324: Amendment of section. Submitted to OAL for printing only.

§ 59326: Amendment of section. Submitted to OAL for printing only.

§ 59327: Amendment of section. Submitted to OAL for printing only.

§ 59328: Amendment of section. Submitted to OAL for printing only.

§ 59329: Amendment of section and NOTE. Submitted to OAL

for printing only.

§ 59330: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 59333: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 59334: Amendment of section. Submitted to OAL for printing only.

§ 59336: Amendment of section. Submitted to OAL for printing only.

§ 59338: Amendment of section. Submitted to OAL for printing only.

§ 59339: Amendment of section heading and section. Submitted to OAL for printing only.

§ 59340: Amendment of section. Submitted to OAL for printing only.

§ 59342: Amendment of section. Submitted to OAL for printing only.

§ 59350: Amendment of section. Submitted to OAL for printing only.

§ 59351: Amendment of section heading and section. Submitted to OAL for printing only.

§ 59352: Amendment of NOTE. Submitted to OAL for printing only.

§ 59354: Amendment of NOTE. Submitted to OAL for printing only.

§ 59356: Amendment of section. Submitted to OAL for printing only.

§ 59358: Amendment of section. Submitted to OAL for printing only.

§ 59360: Amendment of section. Submitted to OAL for printing only.

§ 59362: Amendment of section and NOTE. Submitted to OAL for printing only.

Register 02-23 § 59311: New subsection (c) and subsection relettering. Submitted to OAL for printing only.

§ 59328: Amendment of subsection (e). Submitted to OAL for printing only.

§ 59342: Amendment of subsection (c). Submitted to OAL for printing only.

Subsequent Registers: There may be changes to the regulations after the test claim was filed, which are not included.

CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and complete to the best of my own knowledge or information or belief, and that the attached regulations are true and correct copies of documents from archives of a recognized law library.

EXECUTED this 8 day of January 2008, at Sacramento, California

FOR THE TEST CLAIMANT

Keith Petersen, President

SixTen and Associates

ATTACHMENT

Exhibit A Title 5, CCR Registers

Register 81-16

§ 59300
§ 59303
§ 59304
§ 59310
§ 59320
§ 59322
§ 59324
§ 59326
§ 59328
§ 59329
§ 59330
§ 59332
§ 59334
§ 59336
§ 59338
§ 59340
§ 59350
§ 59352
§ 59354
§ 59356
§ 59358
§ 59360
§ 59362

CHAPTER 5. NONDISCRIMINATION IN PROGRAMS RECEIVING STATE FINANCIAL ASSISTANCE THROUGH THE CHANCELLOR OR BOARD OF GOVERNOR OF THE CALIFORNIA COMMUNITY COLLEGES

Article 1. General

59300. Purpose.

The purpose of this chapter is to implement the provisions of California Government Code Sections 11135 through 11139.5 as added by Chapter 972 of the Statutes of 1977, to the end that no person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color or physical or mental disability, be unlawfully subject to discrimination under any program or activity that is funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135–11139.5, Government Code.

HISTORY:

1. New Chapter 5 (Articles 1–4, Sections 59300–59362, not consecutive) filed 4-17-81; effective thirtieth day thereafter (Register 81, No. 16). For prior history, see Registers 79, No. 46; and 78, No. 39).

59301. Prohibited Discrimination.

All programs and activities in the California Community Colleges shall be available to all qualified persons without regard to ethnic group identification, religion, age, sex, color or physical or mental disability. No person shall be denied the benefits of any community college program or activity on the basis of ethnic group identification, religion, age, sex, color or physical or mental disability.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

59302. Academic Requirements.

Nothing in this chapter shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

59303. Delegation of Authority.

The Board of Governors hereby delegates responsibility for implementing and enforcing the requirements of Government Code Sections 11135 through 11137 to the Chancellor, except as specifically stated in this chapter.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020, 71025, and 71091, Education Code. Reference: Sections 11135 and 11138, Government Code.

59304. Intent.

It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination that may exist from their programs and activities and in meeting the requirements of this chapter. Punitive action authorized by this chapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11137, 11138, and 11139, Government Code.

59305. Operative Date.
This chapter shall be operative July 1, 1981.
NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

Article 2. Definitions

59310. Incorporation by Reference.
Those definitions of activities prohibited by and persons protected by Chapter 972 of the Statutes of 1977 set forth in Chapters 2 and 3 of Division 8 of Title 22 of the California Administrative Code (commencing with Section 98100) are incorporated into and made applicable to this Chapter as if fully set forth here.
NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

Article 3. District Compliance and Enforcement

59320. District Responsibility.
Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, religion, age, sex, color or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints.
NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

59322. District Regulations.
Each community college district, no later than 90 days from the operative date of this chapter shall adopt and submit to the Chancellor for approval rules and regulations consistent with this article for the investigation and resolution of complaints of unlawful discrimination.
NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

59324. Responsible District Officer.
Each community college district shall identify to the Chancellor and to the public a single person as the responsible district officer for insuring district compliance with this chapter.
NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

59326. Notice to Students and Employees.
Each community college district shall notify students and employees of the provisions of this chapter.
NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

59328. Complaint.
(a) An investigation of alleged unlawful discrimination prohibited by this chapter will be initiated by filing a complaint which meets the following requirements:

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity.

(2) The complaint shall be filed with the Chancellor of the California Community Colleges or with the chief administrative officer of the appropriate community college district.

(3) The complaint shall be in a form prescribed by the Chancellor.

(4) The complaint shall be filed within 120 days of the alleged unlawful discrimination.

(b) Districts may establish procedures for attempting to resolve charges or unlawful discrimination which may be a prerequisite to filing a complaint pursuant to this chapter. Such procedures shall be limited to thirty (30) days.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59329. Complaints Filed with Chancellor.

Upon receiving a complaint filed pursuant to Section 59328, the Chancellor will immediately forward a copy of the complaint to the appropriate community college district responsible officer who shall respond pursuant to Section 59332 or initiate the investigation required by Section 59334.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59330. Notice to Chancellor.

Immediately upon receiving a complaint filed in accordance with Section 59328 the district shall notify the Chancellor of the complaint in a form and manner determined by the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59332. Defective Complaint.

When a district receives a complaint which it finds does not meet the requirements of Section 59328 the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59334. District Investigation.

Within fourteen (14) days of receiving a complaint filed in accordance with Section 59328 the district will commence an investigation of that complaint and notify the complainant that it is doing so.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59336. District Resolution.

Upon completing the investigation, the district will attempt to resolve the complaint and will take such action as it deems necessary to correct the effects of any unlawful discrimination and to ensure that no unlawful discrimination will occur in the district.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59338. Notice to Complainant.

Upon resolution of a complaint as required by Section 59336, the district will notify complainant of its proposed resolution. The district will also notify complainant that the complainant may object to the district's proposed resolution by submitting those objections to the Chancellor within thirty (30) days. The notice to complainant will be in the form determined by the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59340. Forward to Chancellor.

Upon sending the notice pursuant to Section 59338 and within ninety (90) days of initiating the investigation required by Section 59334 the district will forward the following to the Chancellor:

(a) The original complaint;

(b) Report of the nature and extent of the investigation conducted by the district;

(c) Report of any action taken to resolve the complaint;

(d) Evidence that the district has complied with the requirements of Section 59338;

(e) Such other information as the Chancellor may require.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

Article 4. Chancellor's Procedure to Effect Compliance

59350. Review for Reasonable Cause.

(a) The Chancellor shall review the materials submitted by the district pursuant to Section 59340, together with any objection submitted by the complainant, and determine whether there is reasonable cause to believe the district has violated the requirements of this chapter.

(b) Failure by the complainant to file an objection pursuant to Section 59338 shall not preclude the Chancellor from finding reasonable cause to believe the district has violated the requirements of this chapter.

(c) If the Chancellor finds there is no reasonable cause to believe a violation has occurred, the Chancellor shall immediately notify both the complainant and the district.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59352. Investigation.

If the Chancellor finds there is reasonable cause to believe a violation has occurred, the Chancellor shall investigate to determine whether there is probable cause to believe a violation has occurred.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59354. Informal Resolution.

During the course of the investigation, the Chancellor shall seek to informally resolve the alleged violation. Such resolution shall be set forth in a written conciliation agreement. A copy of the written agreement shall be sent to the complainant.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59356. Formal Resolution.

Within 120 days of initiating the investigation, the Chancellor shall:

(a) Notify the district and the complainant that there is probable cause to believe the district has violated the provisions of this chapter. The Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.

(b) Notify the district and the complainant that there is no reasonable cause to believe the district has violated the provisions of this chapter.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59358. Hearing.

If the Chancellor finds the district has violated the provisions of this chapter, and if the district does not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant to Chapter 5 (commencing with Section 11500) of Part I, Division 3, Title 2 of the Government Code, to determine whether the violation did occur.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59360. Enforcement.

(a) Upon a determination that a district has violated the provisions of this chapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including:

(1) Withhold all or part of the district's state support;

(2) Probationary eligibility for future state support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state funding to a district under this chapter shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59362. Judicial Review.

A decision by the Chancellor pursuant to Section 59360 is subject to judicial review by the district, as provided by Section 1094.5 of the Code of Civil Procedure.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, and 11138, Government Code.

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this list, he or she shall give the board of directors of such organization reasonable notice that a conference will be held to determine whether grounds for removal do in fact exist, and representatives of said board shall be entitled to be present at such conference and to be heard. Based upon such conference, the chief executive officer or other designee shall recommend to the district governing board whether a particular organization should be removed from the list. The district governing board may, in its sole discretion, remove such an auxiliary organization from said list, and may make such other provisions consistent with law as may be appropriate with respect to an auxiliary organization not included on said list.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Section 72672, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59265. Ongoing Responsibilities.

Each district governing board which establishes one or more auxiliary organizations shall:

(a) Insure that an audit on each auxiliary organization is performed annually in the manner prescribed by subdivision (a) of section 72672 of the Education Code; and that a copy of said audit is submitted to the Chancellor;

(b) Submit any changes in district implementing regulations to the Chancellor for approval;

(c) Submit to the Chancellor any changes made in any written agreement, articles of incorporation, bylaws or other governing instrument pertaining to any established auxiliary organization;

(d) Periodically review each auxiliary organization for compliance with Education Code sections 72670–72682, the regulations contained in this chapter and district implementing regulations, any written agreement, and the auxiliary organization's articles of incorporation, bylaws or other governing instrument. Such review shall be conducted in accordance with the procedure specified in the district implementing regulations;

(e) Prepare and keep current a list of auxiliary organizations in good standing in the manner provided for in section 59263. A copy of the initial list of auxiliary organizations in good standing, as well as any updated version of such list shall be forwarded to the Chancellor; and

(f) Report to the Chancellor, as may be required from time to time, on the operations of its auxiliary organizations.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 3. Board of Governors and Chancellor's Office Responsibilities

§ 59270. Procedures for Annual Audits and Financial Reporting.

The Chancellor shall have the authority to prescribe the reporting and auditing procedures for auxiliary organizations. Such procedures are contained in the document, *California Community Colleges Auxiliary–Organization Accounting and Reporting System*, which shall be maintained by the Chancellor. Districts and auxiliary organizations shall apply and comply with the provisions of this document.

NOTE: Authority cited: Sections 66700, 70901, 72672, 72675, Education Code. Reference: Sections 72672 and 72675, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59272. Review of District Implementing Regulations.

The Chancellor shall review and approve or disapprove district implementing regulations no later than 60 days after receipt. Implementing regulations which satisfactorily address the minimum contents specified in section 59257 shall be approved. Implementing regulations which are disapproved shall be returned with a statement of reasons as to why they were rejected.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Section 72672, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59274. Retention of Documentation.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Repeal of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59276. Annual Report to Legislature.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Section 72681, Education Code.

HISTORY

1. Repeal of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 5. Nondiscrimination in Programs Receiving State Financial Assistance Through the Chancellor or Board of Governors of the California Community Colleges

Article 1. General

§ 59300. Purpose.

The purpose of this chapter is to implement the provisions of California Government Code Sections 11135 through 11139.5 as added by Chapter 972 of the Statutes of 1977, to the end that no person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color or physical or mental disability, be unlawfully subject to discrimination under any program or activity that is funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135–11139.5, Government Code.

HISTORY

1. New Chapter 5 (Articles 1–4, Sections 59300–59362, not consecutive) filed 4–17–81; effective thirtieth day thereafter (Register 81, No. 16). For prior history, see Registers 79, No. 46; and 78, No. 39).

§ 59301. Prohibited Discrimination.

All programs and activities in the California Community Colleges shall be available to all qualified persons without regard to ethnic group identification, religion, age, sex, color or physical or mental disability. No person shall be denied the benefits of any community college program or activity on the basis of ethnic group identification, religion, age, sex, color or physical or mental disability.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59302. Academic Requirements.

Nothing in this chapter shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59303. Delegation of Authority.

The Board of Governors hereby delegates responsibility for implementing and enforcing the requirements of Government Code Sections 11135 through 11137 to the Chancellor, except as specifically stated in this chapter.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020, 71025, and 71091, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59304. Intent.

It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination that may exist from their programs and activities and in meeting the requirements of this chapter. Punitive action authorized by this chapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11137, 11138, and 11139, Government Code.

§ 59305. Operative Date.

This chapter shall be operative July 1, 1981.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59306. Visitor Parking for Persons with Disabilities.

(a) Each community college district shall, consistent with the requirements of Education Code Sections 66260 and 67311.5, provide visitor parking at each of its colleges or centers at no charge to persons with disabilities or those providing transportation for such persons.

(b) For purposes of this section, "persons with disabilities" are those who:

(1) qualify as disabled persons pursuant to Section 22511.5 of the Vehicle Code; or

(2) if they were students, would be entitled to special parking provided to students with disabilities pursuant to Subchapter 1 (commencing with Section 56000) of Chapter 7 of this Division.

(c) Parking at no charge shall be available to persons with disabilities who are visitors, and those providing transportation to such persons, in those parking facilities which are most accessible to administrative offices, libraries, and other facilities which the district finds are most used by visitors.

(d) Each community college district shall post in conspicuous places notice that parking is available without charge to persons with disabilities who are visitors and those providing transportation for such persons.

(e) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for persons with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

(f) Parking fees collected pursuant to Education Code Section 72247 shall be used to offset any costs resulting from compliance with the requirements of this section.

NOTE: Authority cited: Sections 66260, 67311.5 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 66260, 67311.5, and 72247, Education Code; and Section 22511.5, Vehicle Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 59307. Sexual Harassment and Sex Discrimination.

The governing board of each community college district shall ensure that all persons, regardless of their sex, are afforded equal rights and opportunities in programs and activities conducted by colleges in the district. The district shall comply with all requirements of Chapter 2 (commencing with Section 200) of Division 1 of Title 1 of the Education Code, which is commonly referred to as the Sex Equity in Education Act. Complaints alleging sexual harassment or discrimination on the basis of gender prohibited by that Act shall be filed and investigated pursuant to the procedures set forth in this subchapter.

NOTE: Authority cited: Sections 232 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 200 et seq., Education Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Article 2. Definitions

§ 59310. Incorporation by Reference.

Those definitions of activities prohibited by and persons protected by Chapter 972 of the Statutes of 1977 set forth in Chapters 2 and 3 of Division 8 of Title 22 of the California Administrative Code (commencing with Section 98100) are incorporated into and made applicable to this Chapter as if fully set forth here.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59311. Handicapped Visitor Parking.

NOTE: Authority cited: Sections 66260, 66700 and 71020, Education Code; and Section 11135, Government Code. Reference: Section 71020, Education Code; and Section 11135, Government Code.

HISTORY

1. New section filed 6–12–85; effective thirtieth day thereafter (Register 85, No. 24).

2. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Article 3. District Compliance and Enforcement

§ 59320. District Responsibility.

Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, religion, age, sex, color or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59322. District Regulations.

Each community college district, no later than 90 days from the operative date of this chapter shall adopt and submit to the Chancellor for approval rules and regulations consistent with this article for the investigation and resolution of complaints of unlawful discrimination.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59324. Responsible District Officer.

Each community college district shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to Section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district. Such procedures shall be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 59326. Notice to Students and Employees.

Each community college district shall notify students and employees of the provisions of this chapter.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59328. Complaint.

(a) An investigation of alleged unlawful discrimination prohibited by this Subchapter will be initiated by filing a complaint which meets the following requirements:

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity.

(2) The complaint shall be filed with the Chancellor of the California Community Colleges or with the officer designated pursuant to Section 59324 by the appropriate community college district.

(3) The complaint shall be in a form prescribed by the Chancellor.

(4) The complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

(b) Districts shall establish procedures for attempting to resolve charges of unlawful discrimination which shall be a prerequisite to filing a complaint pursuant to this chapter. Such procedures shall be limited to thirty (30) days.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 59329. Complaints Filed with Chancellor.

Upon receiving a complaint filed pursuant to Section 59328, the Chancellor will immediately forward a copy of the complaint to the appropriate community college district responsible officer who shall respond pursuant to Section 59332 or initiate the investigation required by Section 59334.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59330. Notice to Chancellor.

Immediately upon receiving a complaint filed in accordance with Section 59328 the district shall notify the Chancellor of the complaint in a form and manner determined by the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59332. Defective Complaint.

When a district receives a complaint which it finds does not meet the requirements of Section 59328 the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59334. District Investigation.

Upon receiving a complaint which is properly filed in accordance with Section 59328, the district will commence an impartial fact–finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results of the investigation shall be set forth in a written report which shall include at least all of the following:

(a) a description of the circumstances giving rise to the complaint;

(b) a summary of the testimony provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint;

(c) an analysis of any relevant data or other evidence collected during the course of the investigation;

(d) a specific finding as to whether discrimination did or did not occur with respect to each allegation in the complaint; and

(e) any other information deemed appropriate by the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of existing paragraph and NOTE and adoption of subsections (a)–(e) filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 59336. Administrative Determination.

Within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward all of the following to the complainant:

(a) a copy or summary of the investigative report required pursuant to Section 59334;

(b) a written notice setting forth:

(1) the determination of the chief executive officer or his/her designee as to whether discrimination did or did not occur with respect to each allegation in the complaint;

(2) a description of actions taken, if any, to prevent similar problems from occurring in the future;

(3) the proposed resolution of the complaint; and

(4) the complainant's right to appeal to the district governing board and the Chancellor pursuant to Section 59338.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 59338. Final District Decision; Appeals.

(a) If the complainant is not satisfied with the results of the administrative determination pursuant to Section 59336, the complainant may, within fifteen (15) days, submit a written appeal to the district governing board. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty–five (45) days after receiving the appeal. A copy of the final district decision rendered by the governing board shall be forwarded to the complainant and to the Chancellor. The complainant shall also be notified of his or her right to appeal this decision pursuant to this section. If the governing board does not act within forty–five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter.

(b) In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days after the governing board issues the final district decision or permits the administrative determination to become final pursuant to subsection (a). Such appeals shall be processed pursuant to the provisions of Article 4 (commencing with Section 59350) of this subchapter.

(c) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing. In addition, in such cases, the complainant may file a petition for review with the Chancellor within thirty (30) days after the governing board issues the final district decision or permits the administrative determination to become final pursuant to subsection (a). The Chancellor shall have discretion to accept or reject any such petition for review in employment discrimination cases. If the Chancellor agrees to accept the case, he/she may:

(1) attempt to informally resolve the matter pursuant to Section 59354;

(2) where applicable, treat the complaint as an allegation that the district has violated the provisions of Subchapter 1 (commencing with Section 53000) of Chapter 4 of this Division; or

(3) take any other action deemed appropriate by the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

History
1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 59340. Forward to Chancellor.

Within 150 days of receiving a complaint, the district will forward the following to the Chancellor:

(a) the original complaint;

(b) the report required pursuant to Section 59334 describing the nature and extent of the investigation conducted by the district;

(c) a copy of the notice sent to the complainant pursuant to Section 59336(b);

(d) a copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to Section 59338(a);

(e) a copy of the notice to the complainant required pursuant to Section 59338 (a); and

(f) such other information as the Chancellor may require.

Note: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

History
1. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

59342. Extensions; Failure to Comply.

(a) If a district, for reasons beyond its control, is unable to comply with the 150–day deadline specified in Section 59340 for submission of materials to the Chancellor, the district may file a written request that the Chancellor grant an extension of the deadline. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline established pursuant to Section 59340 and shall set the reasons for the request and the date by which the district expects to be able to submit the required materials.

(b) A copy of the request for an extension shall be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt.

(c) The Chancellor may grant the request unless delay would be prejudicial to the complainant.

(d) If a district fails to comply with the requirements of Section 59340 by the required deadline, including any extension granted pursuant to this section, the Chancellor may proceed to review the case as provided in Article 4 (commencing with Section 59350) of the Subchapter based on the original complaint and any other relevant information then available.

Note: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

History
1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Article 4. Chancellor's Procedure to Effect Compliance

§ 59350. Review for Reasonable Cause.

(a) The Chancellor shall review the materials submitted by the district pursuant to Section 59340, together with any objection submitted by the complainant, and determine whether there is reasonable cause to believe the district has violated the requirements of this chapter.

(b) Failure by the complainant to file an objection pursuant to Section 59338 shall not preclude the Chancellor from finding reasonable cause to believe the district has violated the requirements of this chapter.

(c) If the Chancellor finds there is no reasonable cause to believe a violation has occurred, the Chancellor shall immediately notify both the complainant and the district.

Note: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59352. Investigation.

If the Chancellor finds there is reasonable cause to believe a violation has occurred, the Chancellor shall investigate to determine whether there is probable cause to believe a violation has occurred.

Note: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59354. Informal Resolution.

During the course of the investigation, the Chancellor shall seek to informally resolve the alleged violation. Such resolution shall be set forth in a written conciliation agreement. A copy of the written agreement shall be sent to the complainant.

Note: Authority cited: Section 11138, Government Cod; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59356. Formal Resolution.

Within 120 days of initiating the investigation, the Chancellor shall:

(a) Notify the district and the complainant that there is probable cause to believe the district has violated the provisions of this chapter. The Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.

(b) Notify the district and the complainant that there is no reasonable cause to believe the district has violated the provisions of this chapter.

Note: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59358. Hearing.

If the Chancellor finds the district has violated the provisions of this chapter, and if the district does not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant to Chapter 5 (commencing with Section 11500) of Part I, Division 3, Title 2 of the Government Code, to determine whether the violation did occur.

Note: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59360. Enforcement.

(a) Upon a determination that a district has violated the provisions of this chapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including:

(1) Withhold all or part of the district's state support;

(2) Probationary eligibility for future state support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state funding to a district under this chapter shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

Note: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59362. Judicial Review.

A decision by the Chancellor pursuant to Section 59360 is subject to judicial review by the district, as provided by Section 1094.5 of the Code of Civil Procedure.

Note: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, and 11138, Government Code.

Subchapter 6. Waiver of Part–Time Instructor Limit

Note: Authority cited: Sections 71020 and 87613, Education Code. Reference: Section 87613, Education Code.

History
1. New Chapter 6 (Sections 59380–59388, not consecutive) filed 6–1–82; effective thirtieth day thereafter (Register 82, No. 23).

2. Repealer of Chapter 6 (Sections 59380–59388, not consecutive) filed 3–7–85; effective thirtieth day thereafter (Register 85, No. 10).

Subchapter 7. Instructional and Other Materials

§ 59400. Required Instructional and Other Materials.

(a) The governing board of a district may, consistent with the provisions of this chapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.

(b) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.

NOTE: Authority cited: Sections 66700, 70901 and 72249, Education Code. Reference: Sections 70901, 70902 and 72249, Education Code.

HISTORY

1. New chapter 7 (sections 59400–59408, not consecutive) filed 5–16–85; effective thirtieth day thereafter (Register 85, No. 20).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59402. Definitions.

For the purposes of this chapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost; and:

(1) The material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or

(2) The material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

NOTE: Authority cited: Sections 66700, 70901 and 72249, Education Code. Reference: Sections 70901, 70902 and 72249, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course shall adopt policies or regulations, consistent with the provisions of this chapter, which specify the conditions under which such materials will be required.

(b) The policies or regulations specified in subsection (a) shall be adopted no later than January 1, 1986, forwarded to the Chancellor's Office upon adoption, and thereafter published in each college catalog developed after the date of adoption.

NOTE: Authority cited: Sections 66700, 70901 and 72249, Education Code. Reference: Sections 70901, 70902 and 72249, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59406. Report to Chancellor.

The governing board of a community college district which prescribes required instructional and other materials for its courses shall respond to periodic surveys or inquiries of the Chancellor on the subject.

NOTE: Authority cited: Sections 66700, 70901 and 72249, Education Code. Reference: Sections 70901, 70902 and 72249, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59406.5. Reports Re Instructional Materials Used.

Each district board shall make reports, whenever required, directly to the Board of Governors or Chancellor's Office, concerning the instructional materials used in its colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59408. Operative Date and Violations of Chapter.

(a) The regulations in this chapter shall become operative on August 15, 1985, provided that a district governing board which wishes to implement these regulations earlier may do so.

(b) The governing board of a district which prescribes required instructional and other materials in violation of this chapter shall be deemed to have established a student fee not expressly established by law.

NOTE: Authority cited: Sections 66700, 70901 and 72249, Education Code. Reference: Sections 70901, 70902 and 72249, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59410. Withholding Grades, Transcripts, etc., for Nonrepayment of Financial Obligations.

The governing board of a community college district may provide by appropriate rules and regulations that grades, transcripts, diplomas and registration privileges, or any combination thereof, shall be withheld from any student or former student who has been provided with written notice that he or she has failed to pay a proper financial obligation due to the district or a college. Any item or items withheld shall be released when the student satisfactorily meets the financial obligation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Chapter 11. Regulations of the Chancellor

Subchapter 1. Standards for the Determination of Proportional Level of Service for Adult Noncredit Programs for Substantially Handicapped Persons

§ 59500. Purpose.

NOTE: Authority cited: Section 84730, Education Code. Reference: Section 84730, Education Code.

HISTORY

1. New Chapter 1 (Sections 59500–59503) filed 10–3–80; effective thirtieth day thereafter (Register 80, No. 40).
2. Repealer filed 3–29–88; operative 4–28–88 (Register 88, No. 16).

§ 59501. Substantially Handicapped Persons.

NOTE: Authority cited: Section 84730, Education Code. Reference: Section 84730, Education Code.

HISTORY

1. Repealer filed 3–29–88; operative 4–28–88 (Register 88, No. 16).

§ 59502. Proportional Level of Service.

NOTE: Authority cited: Section 84730, Education Code. Reference: Section 84730, Education Code.

HISTORY

1. Repealer filed 3–29–88; operative 4–28–88 (Register 88, No. 16).

§ 59503. Withholding.

NOTE: Authority cited: Section 84730, Education Code. Reference: Section 84730, Education Code.

HISTORY

1. Repealer filed 3–29–88; operative 4–28–88 (Register 88, No. 16).

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in this chapter and district implementing regulations, any written agreement, and the auxiliary organization's articles of incorporation, bylaws or other governing instrument. Such review shall be conducted in accordance with the procedure specified in the district implementing regulations;

(e) Prepare and keep current a list of auxiliary organizations in good standing in the manner provided for in section 59263. A copy of the initial list of auxiliary organizations in good standing, as well as any updated version of such list shall be forwarded to the Chancellor; and

(f) Report to the Chancellor, as may be required from time to time, on the operations of its auxiliary organizations.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

Article 3. Board of Governors and Chancellor's Office Responsibilities

§ 59270. Procedures for Annual Audits and Financial Reporting.

The Chancellor shall have the authority to prescribe the reporting and auditing procedures for auxiliary organizations. Such procedures are contained in the document, *California Community Colleges Auxiliary-Organization Accounting and Reporting System*, which shall be maintained by the Chancellor. Districts and auxiliary organizations shall apply and comply with the provisions of this document.

NOTE: Authority cited: Sections 66700, 70901, 72672, 72675, Education Code. Reference: Sections 72672 and 72675, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59272. Review of District Implementing Regulations.

The Chancellor shall review and approve or disapprove district implementing regulations no later than 60 days after receipt. Implementing regulations which satisfactorily address the minimum contents specified in Section 59257 shall be approved. Implementing regulations which are disapproved shall be returned with a statement of reasons as to why they were rejected.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Section 72672, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59274. Retention of Documentation.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Repealer filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59276. Annual Report to Legislature.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Section 72681, Education Code.

HISTORY

1. Repealer filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

Subchapter 5. Nondiscrimination in Programs Receiving State Financial Assistance Through the Chancellor or Board of Governors of the California Community Colleges

Article 1. General

§ 59300. Purpose.

The purpose of this Chapter is to implement the provisions of California Government Code Sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code § 200 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101), to the end that no person in the State of California shall, on the basis of ethnic group identification, national origin, religion, age, sex, race, color or physical or mental disability, be unlawfully subject to discrimination under any program or activity that is funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

NOTE: Authority cited: Section 70901 Education Code; and Section 11138, Government Code. Reference: Sections 11135-11139.5, Government Code, Section 200 et seq., Education Code, Title 29, United States Code, Section 794, and Title 42, United States Code, Section 2000d, 6101 and 12100, et seq.

HISTORY

1. New Chapter 5 (Articles 1-4, Sections 59300-59362, not consecutive) filed 4-17-81; effective thirtieth day thereafter (Register 81, No. 16). For prior history, see Registers 79, No. 46; and 78, No. 39).
2. Amendment of section and NOTE filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 59301. Prohibited Discrimination.

All programs and activities in the California Community Colleges shall be available to all qualified persons without regard to ethnic group identification, religion, age, sex, color or physical or mental disability. No person shall be denied the benefits of any community college program or activity on the basis of ethnic group identification, religion, age, sex, color or physical or mental disability.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59302. Academic Requirements.

Nothing in this chapter shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59303. Delegation of Authority.

The Board of Governors hereby delegates responsibility for implementing and enforcing the requirements of Government Code Sections 11135 through 11137 to the Chancellor, except as specifically stated in this chapter.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020, 71025, and 71091, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59304. Intent.

It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful dis-

crimination that may exist from their programs and activities and in meeting the requirements of this chapter. Punitive action authorized by this chapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11137, 11138, and 11139, Government Code.

§ 59305. Operative Date.

This chapter shall be operative July 1, 1981.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59306. Visitor Parking for Persons with Disabilities.

(a) Each community college district shall, consistent with the requirements of Education Code Sections 66260 and 67311.5, provide visitor parking at each of its colleges or centers at no charge to persons with disabilities or those providing transportation for such persons.

(b) For purposes of this section, "persons with disabilities" are those who:

(1) qualify as disabled persons pursuant to Section 22511.5 of the Vehicle Code; or

(2) if they were students, would be entitled to special parking provided to students with disabilities pursuant to Subchapter 1 (commencing with Section 56000) of Chapter 7 of this Division.

(c) Parking at no charge shall be available to persons with disabilities who are visitors, and those providing transportation to such persons, in those parking facilities which are most accessible to administrative offices, libraries, and other facilities which the district finds are most used by visitors.

(d) Each community college district shall post in conspicuous places notice that parking is available without charge to persons with disabilities who are visitors and those providing transportation for such persons.

(e) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for persons with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

(f) Parking fees collected pursuant to Education Code Section 72247 shall be used to offset any costs resulting from compliance with the requirements of this section.

NOTE: Authority cited: Sections 66260, 67311.5 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 66260, 67311.5, and 72247, Education Code; and Section 22511.5, Vehicle Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 59307. Sexual Harassment and Sex Discrimination.

The governing board of each community college district shall ensure that all persons, regardless of their sex, are afforded equal rights and opportunities in programs and activities conducted by colleges in the district. The district shall comply with all requirements of Chapter 2 (commencing with Section 200) of Division 1 of Title 1 of the Education Code, which is commonly referred to as the Sex Equity in Education Act. Complaints alleging sexual harassment or discrimination on the basis of gender prohibited by that Act shall be filed and investigated pursuant to the procedures set forth in this subchapter.

NOTE: Authority cited: Sections 232 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 200 et seq., Education Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

Article 2. Definitions

§ 59310. Incorporation by Reference.

Those definitions of activities prohibited by and persons protected by Chapter 972 of the Statutes of 1977 set forth in Chapters 2 and 3 of Division 8 of Title 22 of the California Administrative Code (commencing with Section 98100) are incorporated into and made applicable to this Chapter as if fully set forth here.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59311. Handicapped Visitor Parking.

NOTE: Authority cited: Sections 66260, 66700 and 71020, Education Code; and Section 11135, Government Code. Reference: Section 71020, Education Code; and Section 11135, Government Code.

HISTORY

1. New section filed 6-12-85; effective thirtieth day thereafter (Register 85, No. 24).
2. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

Article 3. District Compliance and Enforcement

§ 59320. District Responsibility.

Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, religion, age, sex, color or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59322. District Regulations.

Each community college district, no later than 90 days from the operative date of this chapter shall adopt and submit to the Chancellor for approval rules and regulations consistent with this article for the investigation and resolution of complaints of unlawful discrimination.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59324. Responsible District Officer.

Each community college district shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to Section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district. Such procedures shall be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 59326. Notice to Students and Employees.

Each community college district shall notify students and employees of the provisions of this chapter.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59327. Informal Resolution.

(a) Whenever any person brings charges of unlawful discrimination to the attention of the responsible district officer designated pursuant to Section 59324, that officer shall:

(1) undertake efforts to informally resolve the charges;

(2) advise the complainant that he or she need not participate in informal resolution;

(3) notify the person bringing the charges of the procedure for filing a complaint pursuant to Section 59328; and

(4) advise the complainant that he or she may file a complaint with the Office of Civil Rights of the U.S. Department of Education (OCR).

(b) Efforts at informal resolution pursuant to subsection (a)(1) need not include any investigation unless the responsible district officer determines that an investigation is warranted by the seriousness of the charges.

(c) Efforts at informal resolution may continue after the filing of a written complaint, but after a complaint is filed the investigation conducted pursuant to Section 59334 must be completed unless the matter is resolved and the complaint is dismissed. Any efforts at informal resolution after the filing of a written complaint shall not exceed the ninety (90) day period for rendering the administrative determination pursuant to Section 59336.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 59328. Complaint.

An investigation of alleged unlawful discrimination prohibited by this Subchapter will be initiated by filing a complaint which meets the following requirements:

(a) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity.

(b) The complaint shall be filed with the Chancellor of the California Community Colleges or with the officer designated pursuant to Section 59324 by the appropriate community college district.

(c) The complaint shall be in a form prescribed by the Chancellor.

(d) The complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer of subsection (b) and subsection relettering filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 59329. Complaints Filed with Chancellor.

Upon receiving a complaint filed pursuant to Section 59328, the Chancellor will immediately forward a copy of the complaint to the appropriate community college district responsible officer who shall respond pursuant to Section 59332 or initiate the investigation required by Section 59334.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59330. Notice to Chancellor.

Immediately upon receiving a complaint filed in accordance with Section 59328 the district shall notify the Chancellor of the complaint in a form and manner determined by the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59332. Defective Complaint.

When a district receives a complaint which it finds does not meet the requirements of Section 59328 the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59333. Office for Civil Rights.

(a) Whenever a complaint is filed with the Chancellor pursuant to Section 59329 and whenever the Chancellor renders a decision pursuant to Article 4 (commencing with Section 59350) of this Subchapter, the Chancellor shall notify the complainant that he or she may file a complaint regarding the same matter with the Office For Civil Rights of the U.S. Department of Education (OCR).

(b) In such cases, OCR will normally accept compliance with these regulations as satisfying the due process requirements of federal law.

(c) OCR shall have no jurisdiction to rule on any finding regarding violation of state law.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 59334. District Investigation.

Upon receiving a complaint which is properly filed in accordance with Section 59328, the district will commence an impartial fact-finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results of the investigation shall be set forth in a written report which shall include at least all of the following:

(a) a description of the circumstances giving rise to the complaint;

(b) a summary of the testimony provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint;

(c) an analysis of any relevant data or other evidence collected during the course of the investigation;

(d) a specific finding as to whether discrimination did or did not occur with respect to each allegation in the complaint; and

(e) any other information deemed appropriate by the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of existing paragraph and NOTE and adoption of subsections (a)-(e) filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 59336. Administrative Determination.

Within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward all of the following to the complainant:

(a) a copy or summary of the investigative report required pursuant to Section 59334;

(b) a written notice setting forth:

(1) the determination of the chief executive officer or his/her designee as to whether discrimination did or did not occur with respect to each allegation in the complaint;

(2) a description of actions taken, if any, to prevent similar problems from occurring in the future;

(3) the proposed resolution of the complaint; and

(4) the complainant's right to appeal to the district governing board and the Chancellor pursuant to Section 59338.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 59338. Final District Decision; Appeals.

(a) If the complainant is not satisfied with the results of the administrative determination pursuant to Section 59336, the complainant may, within fifteen (15) days, submit a written appeal to the district governing board. The governing board shall review the original complaint, the in-

vestigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty-five (45) days after receiving the appeal. A copy of the final district decision rendered by the governing board shall be forwarded to the complainant and to the Chancellor. The complainant shall also be notified of his or her right to appeal this decision pursuant to this section. If the governing board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter.

(b) In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days after the governing board issues the final district decision or permits the administrative determination to become final pursuant to subsection (a). Such appeals shall be processed pursuant to the provisions of Article 4 (commencing with Section 59350) of this subchapter.

(c) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing. In addition, in such cases, the complainant may file a petition for review with the Chancellor within thirty (30) days after the governing board issues the final district decision or permits the administrative determination to become final pursuant to subsection (a). The Chancellor shall have discretion to accept or reject any such petition for review in employment discrimination cases. If the Chancellor agrees to accept the case, he/she may:

(1) attempt to informally resolve the matter pursuant to Section 59354;

(2) where applicable, treat the complaint as an allegation that the district has violated the provisions of Subchapter 1 (commencing with Section 53000) of Chapter 4 of this Division; or

(3) take any other action deemed appropriate by the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 59340. Forward to Chancellor.

Within 150 days of receiving a complaint, the district will forward the following to the Chancellor:

(a) the original complaint;

(b) the report required pursuant to Section 59334 describing the nature and extent of the investigation conducted by the district;

(c) a copy of the notice sent to the complainant pursuant to Section 59336(b);

(d) a copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to Section 59338(a);

(e) a copy of the notice to the complainant required pursuant to Section 59338 (a); and

(f) such other information as the Chancellor may require.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

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in this chapter and district implementing regulations, any written agreement, and the auxiliary organization's articles of incorporation, bylaws or other governing instrument. Such review shall be conducted in accordance with the procedure specified in the district implementing regulations;

(e) Prepare and keep current a list of auxiliary organizations in good standing in the manner provided for in section 59263. A copy of the initial list of auxiliary organizations in good standing, as well as any updated version of such list shall be forwarded to the Chancellor; and

(f) Report to the Chancellor, as may be required from time to time, on the operations of its auxiliary organizations.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

Article 3. Board of Governors and Chancellor's Office Responsibilities

§ 59270. Procedures for Annual Audits and Financial Reporting.

The Chancellor shall have the authority to prescribe the reporting and auditing procedures for auxiliary organizations. Such procedures are contained in the document, *California Community Colleges Auxiliary-Organization Accounting and Reporting System*, which shall be maintained by the Chancellor. Districts and auxiliary organizations shall apply and comply with the provisions of this document.

NOTE: Authority cited: Sections 66700, 70901, 72672, 72675, Education Code. Reference: Sections 72672 and 72675, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59272. Review of District Implementing Regulations.

The Chancellor shall review and approve or disapprove district implementing regulations no later than 60 days after receipt. Implementing regulations which satisfactorily address the minimum contents specified in section 59257 shall be approved. Implementing regulations which are disapproved shall be returned with a statement of reasons as to why they were rejected.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code Reference: Section 72672, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59274. Retention of Documentation.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Repealer filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59276. Annual Report to Legislature.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Section 72681, Education Code.

HISTORY

1. Repealer filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

Subchapter 5. Nondiscrimination in Programs Receiving State Financial Assistance Through the Chancellor or Board of Governors of the California Community Colleges

Article 1. General

§ 59300. Purpose.

The purpose of this Chapter is to implement the provisions of California Government Code Sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code § 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101), to the end that no person in the State of California shall, on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability, be unlawfully denied access to, the benefits of, or be unlawfully subjected to discrimination under any program or activity that is funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

NOTE: Authority cited: Section 70901 Education Code; and Section 11138, Government Code. Reference: Sections 11135–11139.5, Government Code; Section 66250 et seq., Education Code; Title 20, United States Codes, Section 1681; Title 29, United States Code, Section 794; and Title 42, United States Code, Sections 2000d, 6101 and 12100, et seq.

HISTORY

1. New Chapter 5 (Articles 1–4, Sections 59300–59362, not consecutive) filed 4-17-81; effective thirtieth day thereafter (Register 81, No. 16). For prior history, see Registers 79, No. 46; and 78, No. 39).
2. Amendment of section and NOTE filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59301. Prohibited Discrimination.

NOTE: Authority cited: Section 11138, Government Code; and Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Repealer filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59302. Academic Requirements.

Nothing in this chapter shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59303. Delegation of Authority.

The Board of Governors hereby delegates responsibility for implementing and enforcing the requirements of Government Code Sections 11135 through 11137 to the Chancellor of the California Community Colleges, except as specifically stated in this Chapter.

NOTE: Authority cited: Section 11138, Government Code; and Sections 70901 and 71090, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59304. Intent.

It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination that may exist from their programs and activities and in meeting the requirements of this chapter. Punitive action authorized by this chapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11137, 11138, and 11139, Government Code.

§ 59305. Operative Date.

This chapter shall be operative July 1, 1981.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59306. Visitor Parking for Persons with Disabilities.

(a) Each community college district shall, consistent with the requirements of Education Code Sections 66260 and 67311.5, provide visitor parking at each of its colleges or centers at no charge to persons with disabilities or those providing transportation for such persons.

(b) For purposes of this section, "persons with disabilities" are those who:

(1) qualify as disabled persons pursuant to Section 22511.5 of the Vehicle Code; or

(2) if they were students, would be entitled to special parking provided to students with disabilities pursuant to Subchapter 1 (commencing with Section 56000) of Chapter 7 of this Division.

(c) Parking at no charge shall be available to persons with disabilities who are visitors, and those providing transportation to such persons, in those parking facilities which are most accessible to administrative offices, libraries, and other facilities which the district finds are most used by visitors.

(d) Each community college district shall post in conspicuous places notice that parking is available without charge to persons with disabilities who are visitors and those providing transportation for such persons.

(e) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for persons with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

(f) Parking fees collected pursuant to Education Code Section 72247 shall be used to offset any costs resulting from compliance with the requirements of this section.

NOTE: Authority cited: Sections 66260, 67311.5 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 66260, 67311.5, and 72247, Education Code; and Section 22511.5, Vehicle Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 59307. Sexual Harassment and Sex Discrimination.

NOTE: Authority cited: Sections 232 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 200 et seq., Education Code

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

Article 2. Definitions

§ 59310. Incorporation by Reference.

Those definitions of activities prohibited by and persons protected by Chapter 972 of the Statutes of 1977 set forth in Chapters 2 and 3 of Division 8 of Title 22 of the California Administrative Code (commencing with Section 98100) are incorporated into and made applicable to this Chapter as if fully set forth here.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

§ 59311. Definitions.

For purposes of this Chapter, the following definitions shall apply:

(a) "Complaint" means a written and signed statement meeting the requirements of Section 59328 which alleges unlawful discrimination in violation of this Subchapter.

(b) "Appeal" means a request by a complainant made in writing to a community college district governing board pursuant to Section 59338 and/or to the Chancellor's Office pursuant to Section 59339 to review the administrative determination of a community college district regarding a complaint of discrimination.

(c) "Discrimination on the basis of sex" means sexual harassment or discrimination on the basis of gender.

NOTE: Authority cited: Sections 11135 and 11138, Government Code; and Sections 66250 et seq. and 70901, Education Code. Reference: Sections 11135 and 11138, Government Code; and Sections 66250 et seq., Education Code.

HISTORY

1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6). For prior history, see Register 92, No. 17.

Article 3. District Compliance and Enforcement

§ 59320. District Responsibility.

Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints.

NOTE: Authority cited: Section 11138, Government Code; and Section 66250, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59322. District Regulations.

Each community college district shall establish and adopt written policies consistent with this Article. When the policies are adopted or amended, they shall be submitted to the Chancellor for review and approval within 90 days of the effective date of the adoption or amendment(s).

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59324. Responsible District Officer.

Each community college district shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to Section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district. Such procedures shall be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 59326. Notice to Students and Employees.

Each community college district shall notify students and employees of the provisions of this Subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59327. Informal Resolution.

(a) Whenever any person brings charges of unlawful discrimination to the attention of the responsible district officer designated pursuant to Section 59324, that officer shall:

(1) undertake efforts to informally resolve the charges;

(2) advise the complainant that he or she need not participate in informal resolution;

(3) notify the person bringing the charges of his or her right to file a complaint, as defined in Section 59311, and of the procedure for filing such a complaint pursuant to Section 59328; and

(4) advise the complainant that he or she may file a complaint with the Office of Civil Rights of the U.S. Department of Education (OCR).

(b) Efforts at informal resolution pursuant to subsection (a)(1) need not include any investigation unless the responsible district officer determines that an investigation is warranted by the seriousness of the charges.

(c) Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to Section 59334 and must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint. Any efforts at informal resolution after the filing of a written complaint shall not exceed the ninety (90) day period for rendering the administrative determination pursuant to Section 59336.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
2. Amendment of subsections (a)(3) and (c) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59328. Formal Investigation Upon Filing of Written Complaint.

An investigation of alleged unlawful discrimination prohibited by this Subchapter will be initiated by filing a complaint which meets the following requirements:

(a) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator.

(b) The complaint shall be filed with the Chancellor of the California Community Colleges or with the officer designated pursuant to Section 59324 by the appropriate community college district.

(c) The complaint shall be in a form prescribed by the Chancellor.

(d) The complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer of subsection (b) and subsection relettering filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section heading and subsection (a) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59329. Complaints Filed with Chancellor.

Upon receiving a complaint filed pursuant to Section 59328, the Chancellor will immediately forward a copy of the complaint to the appropriate community college district responsible officer who shall respond pursuant to Section 59332 or initiate the investigation required by Section 59334.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59330. Notice to Chancellor.

Immediately upon receiving a complaint filed in accordance with Section 59328 the district shall forward a copy of the complaint to the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59332. Defective Complaint.

When a district receives a complaint which it finds does not meet the requirements of Section 59328 the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59333. Office for Civil Rights.

(a) Whenever a complaint is filed with the Chancellor pursuant to Section 59329 and whenever the Chancellor renders a decision pursuant to Article 4 (commencing with Section 59350) of this Subchapter, the Chancellor shall notify the complainant that he or she may file a complaint regarding the same matter with the Office For Civil Rights of the U.S. Department of Education (OCR).

(b) In such cases, OCR will normally accept compliance with these regulations as satisfying the due process requirements of federal law.

(c) OCR shall have no jurisdiction to rule on any finding regarding violation of state law.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 59334. District Investigation.

Upon receiving a complaint which is properly filed in accordance with Section 59328, the district will commence an impartial fact-finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results of the investigation shall be set forth in a written report which shall include at least all of the following:

(a) a description of the circumstances giving rise to the complaint;

(b) a summary of the testimony provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint;

(c) an analysis of any relevant data or other evidence collected during the course of the investigation;

(d) a specific finding as to whether discrimination did or did not occur with respect to each allegation in the complaint; and

(e) any other information deemed appropriate by the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of existing paragraph and NOTE and adoption of subsections (a)-(e) filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 59336. Administrative Determination.

Within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward a copy of the investigative report required pursuant to Section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:

(a) the determination of the chief executive officer or his/her designee as to whether discrimination did or did not occur with respect to each allegation in the complaint;

(b) a description of actions taken, if any, to prevent similar problems from occurring in the future;

(c) the proposed resolution of the complaint; and

(d) the complainant's right to appeal to the district governing board and the Chancellor pursuant to Section 59338 and 59339.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59338. Final District Decision; Appeals to Local Governing Board.

(a) If the complainant is not satisfied with the results of the administrative determination rendered pursuant to Section 59336, the complainant may, within fifteen (15) days from the date of the administrative determination, submit a written appeal to the district governing board. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty-five (45) days after receiving the appeal.

(b) A copy of the final district decision rendered by the governing board that includes complainant's right to appeal the district's decision to the Chancellor pursuant to Section 59339 shall be forwarded to the complainant and to the Chancellor.

(c) If the governing board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter. The district shall notify the complainant and the Chancellor that the board took no action and the administrative determination is deemed approved pursuant to this Section. The complainant shall also be notified of his or her right to appeal the district's decision to the Chancellor pursuant to Section 59339.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of section heading and section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59339. Appeal and Petition for Review to Chancellor.

(a) In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days from the date that the governing board issues the final district decision or permits the administrative determination to become final pursuant to Section 59338. Such appeals shall be processed pursuant to the provisions of Article 4 (commencing with Section 59350) of this Subchapter.

(b) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing. In addition, in such cases, the complainant may file a petition for review with the Chancellor within thirty (30) days from the date that the governing board issues the final district decision or permits the administrative determination to become final pursuant to Section 59338. The Chancellor shall have discretion to accept or reject any such petition for review in employment discrimination cases. If the Chancellor agrees to accept the petition, he/she may:

(1) attempt to informally resolve the matter pursuant to Section 59354;

(2) where applicable, treat the complaint as an allegation that the district has violated the provisions of Subchapter 1 (commencing with Section 53000) of Chapter 4 of this Division; or

(3) take any other action deemed appropriate by the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59340. Forward to Chancellor.

Within 150 days of receiving a complaint, the district will forward the following to the Chancellor:

(a) a copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to Section 59338(a);

(b) a copy of the notice to the complainant required pursuant to Section 59338 (a); and

(c) such other information as the Chancellor may require.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer of subsections (a)-(c) and subsection relettering filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59342. Extensions; Failure to Comply.

(a) If a district, for reasons beyond its control, is unable to comply with the 90-day or 150-day deadline specified in Sections 59336 or 59340 for submission of materials to the Chancellor, the district may file a written request that the Chancellor grant an extension of the deadline. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline established pursuant to Sections 59336 or 59340 and shall set the reasons for the request and the date by which the district expects to be able to submit the required materials.

(b) A copy of the request for an extension shall be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt.

(c) The Chancellor may grant the request unless delay would be prejudicial to the complainant. If an extension of the 90-day deadline is granted by the Chancellor the 150-day deadline is automatically extended by an equal amount.

(d) If a district fails to comply with the requirements of Sections 59336 or 59340 by the required deadline, including any extension granted pursuant to this section, the Chancellor may proceed to review the case as provided in Article 4 (commencing with Section 59350) of the Subchapter based on the original complaint and any other relevant information then available.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a), (c) and (d) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

Article 4. Chancellor's Procedure to Effect Compliance

§ 59350. Review for Reasonable Cause.

(a) The Chancellor shall review the materials submitted by the district pursuant to Section 59336 and 59340, together with the complainant's appeal or petition for review, and determine whether there is reasonable cause to believe the district has violated the requirements of this Subchapter.

(b) Failure by the complainant to file an appeal or petition for review pursuant to Section 59339 shall not preclude the Chancellor from finding reasonable cause to believe the district has violated the requirements of this Subchapter.

(c) If the Chancellor finds there is no reasonable cause to believe a violation has occurred, the Chancellor shall immediately notify both the complainant and the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

HISTORY

1. Amendment of subsections (a) and (b) and amendment of NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59351. New Issues Raised on Appeal or Petition for Review.

If, upon review of the materials submitted by the complainant pursuant to Section 59339, the Chancellor's Office finds that issues or facts not included in the complaint have been raised for the first time on appeal or in the petition for review, the Chancellor's Office will provide the district a reasonable opportunity to respond to the new issues or facts raised by complainant.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59352. Investigation.

If the Chancellor finds there is reasonable cause to believe a violation has occurred, the Chancellor shall investigate to determine whether there is probable cause to believe a violation has occurred.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59354. Informal Resolution.

During the course of the investigation, the Chancellor shall seek to informally resolve the alleged violation. Such resolution shall be set forth in a written conciliation agreement. A copy of the written agreement shall be sent to the complainant.

NOTE: Authority cited: Section 11138, Government Cod; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59356. Formal Resolution.

Within 120 days of initiating the investigation, the Chancellor shall:

(a) Notify the district and the complainant that there is probable cause to believe the district has violated the provisions of this Subchapter. The Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.

(b) Notify the district and the complainant that there is no probable cause to believe the district has violated the provisions of this Subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59358. Hearing.

If the Chancellor finds the district has violated the provisions of this Subchapter, and if the district does not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code, to determine whether the violation did occur.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59360. Enforcement.

(a) Upon a determination that a district has violated the provisions of this Subchapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including:

(1) Withhold all or part of the district's state support;

(2) Make probationary eligibility for future state support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state funding to a district pursuant to this Section shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

HISTORY

1. Amendment of subsections (a), (a)(2) and (b) and amendment of NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59362. Judicial Review.

A decision by the Chancellor pursuant to Section 59360 is subject to judicial review by the district, as provided by Section 1094.5 of the Code of Civil Procedure.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, and 11138, Government Code.

Subchapter 6. Waiver of Part-Time Instructor Limit

NOTE: Authority cited: Sections 71020 and 87613, Education Code. Reference: Section 87613, Education Code.

HISTORY

1. New Chapter 6 (Sections 59380-59388, not consecutive) filed 6-1-82; effective thirtieth day thereafter (Register 82, No. 23).
2. Repealer of Chapter 6 (Sections 59380-59388, not consecutive) filed 3-7-85; effective thirtieth day thereafter (Register 85, No. 10).

Subchapter 7. Instructional and Other Materials

§ 59400. Required Instructional and Other Materials.

(a) The governing board of a district may, consistent with the provisions of this Subchapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.

(b) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference. Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. New chapter 7 (sections 59400-59408, not consecutive) filed 5-16-85; effective thirtieth day thereafter (Register 85, No. 20).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of subsection (a) and NOTE filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59402. Definitions.

For the purposes of this Subchapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

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in this chapter and district implementing regulations, any written agreement, and the auxiliary organization's articles of incorporation, bylaws or other governing instrument. Such review shall be conducted in accordance with the procedure specified in the district implementing regulations;

(e) Prepare and keep current a list of auxiliary organizations in good standing in the manner provided for in section 59263. A copy of the initial list of auxiliary organizations in good standing, as well as any updated version of such list shall be forwarded to the Chancellor; and

(f) Report to the Chancellor, as may be required from time to time, on the operations of its auxiliary organizations.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

Article 3. Board of Governors and Chancellor's Office Responsibilities

§ 59270. Procedures for Annual Audits and Financial Reporting.

The Chancellor shall have the authority to prescribe the reporting and auditing procedures for auxiliary organizations. Such procedures are contained in the document, *California Community Colleges Auxiliary-Organization Accounting and Reporting System,* which shall be maintained by the Chancellor. Districts and auxiliary organizations shall apply and comply with the provisions of this document.

NOTE: Authority cited: Sections 66700, 70901, 72672, 72675, Education Code. Reference: Sections 72672 and 72675, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59272. Review of District Implementing Regulations.

The Chancellor shall review and approve or disapprove district implementing regulations no later than 60 days after receipt. Implementing regulations which satisfactorily address the minimum contents specified in section 59257 shall be approved. Implementing regulations which are disapproved shall be returned with a statement of reasons as to why they were rejected.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Section 72672, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59274. Retention of Documentation.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Repealer filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59276. Annual Report to Legislature.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Section 72681, Education Code.

HISTORY

1. Repealer filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

Subchapter 5. Nondiscrimination in Programs Receiving State Financial Assistance Through the Chancellor or Board of Governors of the California Community Colleges

Article 1. General

§ 59300. Purpose.

The purpose of this subchapter is to implement the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code § 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101), to the end that no person in the State of California shall, on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under any program or activity that is administered by, funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

NOTE: Authority cited: Section 70901 Education Code; and Section 11138, Government Code. Reference: Sections 11135-11139.5, Government Code; Section 66250 et seq., Education Code; title 20, United States Codes, Section 1681; title 29, United States Code, Section 794; and title 42, United States Code, Sections 2000d, 6101 and 12100, et seq.

HISTORY

1. New Chapter 5 (Articles 1-4, Sections 59300-59362, not consecutive) filed 4-17-81; effective thirtieth day thereafter (Register 81, No. 16). For prior history, see Registers 79, No. 46; and 78, No. 39).
2. Amendment of section and NOTE filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
4. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59301. Prohibited Discrimination.

NOTE: Authority cited: Section 11138, Government Code; and Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Repealer filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59302. Academic Requirements.

Nothing in this subchapter shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59303. Delegation of Authority.

The Board of Governors hereby delegates responsibility for implementing and enforcing the requirements of Government Code sections 11135 through 11137 to the Chancellor of the California Community Colleges, except as specifically stated in this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Sections 70901 and 71090, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY
1. Amendment filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59304. Intent.

It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination that may exist in their programs and activities and in meeting the requirements of this subchapter. Punitive action authorized by this subchapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11137, 11138 and 11139, Government Code.

HISTORY
1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59305. Operative Date.

NOTE: Authority cited: Section 11138, Government Code; and Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY
1. Repealer filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59306. Visitor Parking for Persons with Disabilities.

(a) Each community college district shall, consistent with the requirements of Education Code section 67301 provide visitor parking at each of its colleges or centers at no charge to persons with disabilities or those providing transportation for such persons.

(b) For purposes of this section only, "persons with disabilities" are those who:

(1) qualify as disabled persons pursuant to section 22511.5 of the Vehicle Code; or

(2) if they were students, would be entitled to special parking provided to students with disabilities pursuant to subchapter 1 (commencing with section 56000) of chapter 7 of this division.

(c) Parking at no charge shall be available to persons with disabilities who are visitors, and those providing transportation to such persons, in those parking facilities which are most accessible to administrative offices, libraries, and other facilities which the district finds are most used by visitors.

(d) Each community college district shall post in conspicuous places notice that parking is available without charge to persons with disabilities who are visitors and those providing transportation for such persons.

(e) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for persons with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

(f) Parking fees collected pursuant to Education Code section 76360 shall be used to offset any costs resulting from compliance with the requirements of this section.

NOTE: Authority cited: Sections 67301 and 70901, Education Code; and Section 11135, Government Code. Reference: Section 76360, Education Code; and Section 22511.5, Vehicle Code.

HISTORY
1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a)-(b)(2) and (f) and amendment of NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59307. Sexual Harassment and Sex Discrimination.

NOTE: Authority cited: Sections 232 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 200 et seq., Education Code.

HISTORY
1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

Article 2. Definitions

§ 59310. Incorporation by Reference.

Except as otherwise provided by this subchapter those definitions of activities prohibited by and persons protected by title 22 of the California Code of Regulations (commencing with section 98100) are incorporated into and made applicable to this subchapter as if fully set forth here.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY
1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59311. Definitions.

For purposes of this subchapter, the following definitions shall apply:

(a) "Appeal" means a request by a complainant made in writing to a community college district governing board pursuant to section 59338 and/or to the Chancellor's Office pursuant to section 59339 to review the administrative determination of a community college district regarding a complaint of discrimination.

(b) "Complaint" means a written and signed statement meeting the requirements of section 59328 that alleges unlawful discrimination in violation of this subchapter.

(c) Except for purposes of section 59306, "disability" means any mental or physical disability as defined in Government Code section 12926.

(d) "Discrimination on the basis of sex" means sexual harassment or discrimination on the basis of gender.

NOTE: Authority cited: Sections 11135 and 11138, Government Code; and Sections 66250 et seq., 70901 and 12926, Education Code. Reference: Sections 11135 and 11138, Government Code; and Section 66250 et seq., Education Code.

HISTORY
1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6). For prior history, see Register 92, No. 17.
2. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

Article 3. District Compliance and Enforcement

§ 59320. District Responsibility.

Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints in accordance with the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 66250, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY
1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59322. District Regulations.

Each community college district shall establish and adopt written policies consistent with this article. When the policies are adopted or amended, they shall be submitted to the Chancellor for review and approval within 90 days of the effective date of the adoption or amendment(s).

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59324. Responsible District Officer.

Each community college district shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district. Such procedures shall be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59326. Notice to Students and Employees.

Each community college district shall notify students and employees of the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59327. Informal Resolution.

(a) Whenever any person brings charges of unlawful discrimination to the attention of the responsible district officer designated pursuant to section 59324, that officer shall:

(1) undertake efforts to informally resolve the charges;

(2) advise the complainant that he or she need not participate in informal resolution;

(3) notify the person bringing the charges of his or her right to file a complaint, as defined in section 59311, and of the procedure for filing such a complaint pursuant to section 59328; and

(4) advise the complainant that he or she may file his or her nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction.

(5) advise the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies.

(b) Efforts at informal resolution pursuant to subsection (a)(1) need not include any investigation unless the responsible district officer determines that an investigation is warranted by the seriousness of the charges.

(c) Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to section 59334 and must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint or the complainant files with the Department of Fair Employment and Housing and the Chancellor elects not to require further investigation pursuant to section 59328(f)(2). Any efforts at informal resolution after the filing of a written complaint shall not exceed the ninety (90) day period for rendering the administrative determination pursuant to section 59336.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
2. Amendment of subsections (a)(3) and (c) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59328. Formal Investigation Upon Filing of Written Complaint.

An investigation of alleged unlawful discrimination prohibited by this subchapter will be initiated by filing a complaint that meets the following requirements:

(a) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator.

(b) The complaint shall be filed with the Chancellor of the California Community Colleges or with the officer designated pursuant to section 59324 by the appropriate community college district.

(c) The complaint shall be in a form prescribed by the Chancellor.

(d) In any complaint not involving employment the complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

(e) In any complaint alleging discrimination in employment the complaint shall be filed within six months of the date the alleged unlawful discrimination occurred, except that this period should be extended by no more than 90 days following the expiration of that six months if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of six months.

(f) In any complaint alleging discrimination in employment, the district shall:

(1) advise the complainant that he or she may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies, and;

(2) forward a copy of any filing by the complainant with DFEH to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer of subsection (b) and subsection relettering filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section heading and subsection (a) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
4. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59329. Complaints Filed with Chancellor.

Upon receiving a complaint filed pursuant to section 59328, the Chancellor will immediately forward a copy of the complaint to the appropriate community college district responsible officer who shall respond pursuant to section 59332 or initiate the investigation required by section 59334. In any complaint alleging employment discrimination the Chancellor shall notify the complainant that he or she has the right to file with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59330. Notice to Chancellor.

Immediately upon receiving a complaint filed in accordance with section 59328 the district shall forward a copy of the complaint to the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59332. Defective Complaint.

When a district receives a complaint which it finds does not meet the requirements of Section 59328 the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59333. Office for Civil Rights.

(a) Whenever a complaint is filed with the Chancellor pursuant to section 59329 and whenever the Chancellor renders a decision pursuant to article 4 (commencing with section 59350) of this subchapter, the Chancellor shall notify the complainant that he or she may file a complaint regarding the same matter with the Office For Civil Rights of the U.S. Department of Education (OCR) where the complaint is within the jurisdiction of that agency.

(b) In such cases, OCR will normally accept compliance with these regulations as satisfying the due process requirements of federal law.

(c) OCR shall have no jurisdiction to rule on any finding regarding violation of state law.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
2. Amendment of subsection (a) filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59334. District Investigation.

Upon receiving a complaint that is properly filed in accordance with section 59328, the district will commence an impartial fact-finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results of the investigation shall be set forth in a written report that shall include at least all of the following:

(a) a description of the circumstances giving rise to the complaint;

(b) a summary of the testimony provided by each witness, including the complainant and any viable witnesses identified by the complainant in the complaint;

(c) an analysis of any relevant data or other evidence collected during the course of the investigation;

(d) a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; and

(e) any other information deemed appropriate by the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of existing paragraph and NOTE and adoption of subsections (a)-(e) filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59336. Administrative Determination.

Within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward a copy of the investigative report required pursuant to section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:

(a) the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;

(b) a description of actions taken, if any, to prevent similar problems from occurring in the future;

(c) the proposed resolution of the complaint; and

(d) the complainant's right to appeal to the district governing board and the Chancellor pursuant to sections 59338 and 59339.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59338. Final District Decision; Appeals to Local Governing Board.

(a) If the complainant is not satisfied with the results of the administrative determination rendered pursuant to section 59336, the complainant may submit a written appeal to the district governing board within fifteen (15) days from the date of the administrative determination. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty-five (45) days after receiving the appeal.

(b) A copy of the final district decision rendered by the governing board that includes complainant's right to appeal the district's decision to the Chancellor pursuant to section 59339 shall be forwarded to the complainant and to the Chancellor.

(c) If the governing board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter. The district shall notify the complainant and the Chancellor that the board took no action and the administrative determination is deemed approved pursuant to this section. The complainant shall also be notified of his or her right to appeal the district's decision to the Chancellor pursuant to section 59339.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of section heading and section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59339. Appeal to Chancellor.

(a) In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days from the date that the governing board issues the final district decision or permits the administrative determination to become final pursuant to section 59338. Such appeals shall be processed pursuant to the provisions of article 4 (commencing with section 59350) of this subchapter. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within forty-five (45) days from that date.

(b) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency. In addition, in such cases, the complainant may file an appeal with the Chancellor within thirty (30) days from the date that the governing board

issues the final district decision or permits the administrative determination to become final pursuant to section 59338. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within forty-five (45) days from that date. The Chancellor shall have discretion to accept or reject any such appeal in employment discrimination cases. If the Chancellor agrees to accept the appeal, he/she may:

(1) attempt to informally resolve the matter pursuant to section 59354;

(2) where applicable, treat the complaint as an allegation that the district has violated the provisions of subchapter 1 (commencing with section 53000) of chapter 4 of this division; or

(3) take any other action deemed appropriate by the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section heading and section filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59340. Forward to Chancellor.

Within 150 days of receiving a complaint, the district will forward the following to the Chancellor:

(a) a copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to section 59338(a);

(b) a copy of the notice to the complainant required pursuant to section 59338(a); and

(c) such other information as the Chancellor may require.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer of subsections (a)-(c) and subsection relettering filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59342. Extensions; Failure to Comply.

(a) If a district, for reasons beyond its control, is unable to comply with the 90-day or 150-day deadline specified in sections 59336 or 59340 for submission of materials to the Chancellor, the district may file a written request that the Chancellor grant an extension of the deadline. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline established pursuant to sections 59336 or 59340 and shall set the reasons for the request and the date by which the district expects to be able to submit the required materials.

(b) A copy of the request for an extension shall be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt.

(c) The Chancellor may grant the request unless delay would be prejudicial to the investigation. If the Chancellor grants the 90-day extension of the deadline, the 150-day deadline is automatically extended by an equal amount.

(d) If a district fails to comply with the requirements of sections 59336 or 59340 by the required deadline, including any extension granted pursuant to this section, the Chancellor may proceed to review the case as provided in article 4 (commencing with section 59350) of the subchapter based on the original complaint and any other relevant information then available.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901,Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a), (c) and (d) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

Article 4. Chancellor's Procedure to Effect Compliance

§ 59350. Review for Reasonable Cause.

(a) The Chancellor shall review the materials submitted by the district pursuant to sections 59336 and 59340, together with the complainant's appeal, and determine whether there is reasonable cause to believe the district has violated the requirements of this subchapter.

(b) Failure by the complainant to file an appeal pursuant to section 59339 shall not preclude the Chancellor from finding reasonable cause to believe the district has violated the requirements of this subchapter.

(c) If the Chancellor finds there is no reasonable cause to believe a violation has occurred, the Chancellor shall immediately notify both the complainant and the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of subsections (a) and (b) and amendment of NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59351. New Issues Raised on Appeal.

If, upon review of the materials submitted by the complainant pursuant to section 59339, the Chancellor's Office finds that issues or facts not included in the complaint have been raised for the first time on appeal, the Chancellor's Office will provide the district a reasonable opportunity to respond to the new issues or facts raised by complainant.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section heading and section filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59352. Investigation.

If the Chancellor finds there is reasonable cause to believe a violation has occurred, the Chancellor shall investigate to determine whether there is probable cause to believe a violation has occurred.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59354. Informal Resolution.

During the course of the investigation, the Chancellor shall seek to informally resolve the alleged violation. Such resolution shall be set forth in a written conciliation agreement. A copy of the written agreement shall be sent to the complainant.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59356. Formal Resolution.

Within 120 days of initiating the investigation, the Chancellor shall:

(a) Notify the district and the complainant that there is probable cause to believe the district has violated the provisions of this subchapter. The Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.

(b) Notify the district and the complainant that there is no probable cause to believe the district has violated the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59358. Hearing.

If the Chancellor finds the district has violated the provisions of this subchapter, and if the district does not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant to chapter 5 (commencing with section 11500) of part I, division 3, title 2 of the Government Code, to determine whether the violation did occur.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59360. Enforcement.

(a) Upon a determination that a district has violated the provisions of this subchapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including:

(1) Withhold all or part of the district's state support;

(2) Make probationary eligibility for future state support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state funding to a district pursuant to this section shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of subsections (a), (a)(2) and (b) and amendment of NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59362. Judicial Review.

A decision by the Chancellor pursuant to section 59360 is subject to judicial review by the district, as provided by section 1094.5 of the Code of Civil Procedure.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

Subchapter 6. Waiver of Part-Time Instructor Limit

NOTE: Authority cited: Sections 71020 and 87613, Education Code. Reference: Section 87613, Education Code.

HISTORY

1. New Chapter 6 (Sections 59380-59388, not consecutive) filed 6-1-82; effective thirtieth day thereafter (Register 82, No. 23).
2. Repealer of Chapter 6 (Sections 59380-59388, not consecutive) filed 3-7-85; effective thirtieth day thereafter (Register 85, No. 10).

Subchapter 7. Instructional and Other Materials

§ 59400. Required Instructional and Other Materials.

(a) The governing board of a district may, consistent with the provisions of this Subchapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.

(b) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. New chapter 7 (sections 59400-59408, not consecutive) filed 5-16-85; effective thirtieth day thereafter (Register 85, No. 20).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of subsection (a) and NOTE filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59402. Definitions.

For the purposes of this Subchapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost and:

(1) the material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or

(2) the material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of opening statement, subsections (a) and (c)-(c)(2) and NOTE filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course

Register 02-23

§ 59311
§ 59328
§ 59342

HISTORY
1. Amendment filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59304. Intent.

It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination that may exist in their programs and activities and in meeting the requirements of this subchapter. Punitive action authorized by this subchapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11137, 11138 and 11139, Government Code.

HISTORY
1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59305. Operative Date.

NOTE: Authority cited: Section 11138, Government Code; and Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY
1. Repealer filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59306. Visitor Parking for Persons with Disabilities.

(a) Each community college district shall, consistent with the requirements of Education Code section 67301 provide visitor parking at each of its colleges or centers at no charge to persons with disabilities or those providing transportation for such persons.

(b) For purposes of this section only, "persons with disabilities" are those who:

(1) qualify as disabled persons pursuant to section 22511.5 of the Vehicle Code; or

(2) if they were students, would be entitled to special parking provided to students with disabilities pursuant to subchapter 1 (commencing with section 56000) of chapter 7 of this division.

(c) Parking at no charge shall be available to persons with disabilities who are visitors, and those providing transportation to such persons, in those parking facilities which are most accessible to administrative offices, libraries, and other facilities which the district finds are most used by visitors.

(d) Each community college district shall post in conspicuous places notice that parking is available without charge to persons with disabilities who are visitors and those providing transportation for such persons.

(e) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for persons with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

(f) Parking fees collected pursuant to Education Code section 76360 shall be used to offset any costs resulting from compliance with the requirements of this section.

NOTE: Authority cited: Sections 67301 and 70901, Education Code; and Section 11135, Government Code. Reference: Section 76360, Education Code; and Section 22511.5, Vehicle Code.

HISTORY
1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a)-(b)(2) and (f) and amendment of NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59307. Sexual Harassment and Sex Discrimination.

NOTE: Authority cited: Sections 232 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 200 et seq., Education Code.

HISTORY
1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

Article 2. Definitions

§ 59310. Incorporation by Reference.

Except as otherwise provided by this subchapter those definitions of activities prohibited by and persons protected by title 22 of the California Code of Regulations (commencing with section 98100) are incorporated into and made applicable to this subchapter as if fully set forth here.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY
1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59311. Definitions.

For purposes of this subchapter, the following definitions shall apply:

(a) "Appeal" means a request by a complainant made in writing to a community college district governing board pursuant to section 59338 and/or to the Chancellor's Office pursuant to section 59339 to review the administrative determination of a community college district regarding a complaint of discrimination.

(b) "Complaint" means a written and signed statement meeting the requirements of section 59328 that alleges unlawful discrimination in violation of this subchapter.

(c) "Days" means calendar days.

(d) Except for purposes of section 59306, "disability" means any mental or physical disability as defined in Government Code section 12926.

(e) "Discrimination on the basis of sex" means sexual harassment or discrimination on the basis of gender.

NOTE: Authority cited: Sections 11135 and 11138, Government Code; and Sections 66250 et seq., 70901 and 12926, Education Code. Reference: Sections 11135 and 11138, Government Code; and Section 66250 et seq., Education Code.

HISTORY
1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6). For prior history, see Register 92, No. 17.
2. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).
3. New subsection (e) and subsection relettering filed 4-15-2002; operative 5-15-2002. Submitted to OAL for printing only (Register 2002, No. 23).

Article 3. District Compliance and Enforcement

§ 59320. District Responsibility.

Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints in accordance with the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 66250, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY
1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59322. District Regulations.

Each community college district shall establish and adopt written policies consistent with this article. When the policies are adopted or amended, they shall be submitted to the Chancellor for review and approval within 90 days of the effective date of the adoption or amendment(s).

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59324. Responsible District Officer.

Each community college district shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district. Such procedures shall be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59326. Notice to Students and Employees.

Each community college district shall notify students and employees of the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59327. Informal Resolution.

(a) Whenever any person brings charges of unlawful discrimination to the attention of the responsible district officer designated pursuant to section 59324, that officer shall:

(1) undertake efforts to informally resolve the charges;

(2) advise the complainant that he or she need not participate in informal resolution;

(3) notify the person bringing the charges of his or her right to file a complaint, as defined in section 59311, and of the procedure for filing such a complaint pursuant to section 59328; and

(4) advise the complainant that he or she may file his or her nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction.

(5) advise the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies.

(b) Efforts at informal resolution pursuant to subsection (a)(1) need not include any investigation unless the responsible district officer determines that an investigation is warranted by the seriousness of the charges.

(c) Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to section 59334 and must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint or the complainant files with the Department of Fair Employment and Housing and the Chancellor elects not to require further investigation pursuant to section 59328(f)(2). Any efforts at informal resolution after the filing of a written complaint shall not exceed the ninety (90) day period for rendering the administrative determination pursuant to section 59336.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
2. Amendment of subsections (a)(3) and (c) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59328. Formal Investigation Upon Filing of Written Complaint.

An investigation of alleged unlawful discrimination prohibited by this subchapter will be initiated by filing a complaint that meets the following requirements:

(a) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator.

(b) The complaint shall be filed with the Chancellor of the California Community Colleges or with the officer designated pursuant to section 59324 by the appropriate community college district.

(c) The complaint shall be in a form prescribed by the Chancellor.

(d) In any complaint not involving employment the complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

(e) In any complaint alleging discrimination in employment the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period should be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

(f) In any complaint alleging discrimination in employment, the district shall:

(1) advise the complainant that he or she may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies, and;

(2) forward a copy of any filing by the complainant with DFEH to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Governme: Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer of subsection (b) and subsection relettering filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section heading and subsection (a) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
4. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).
5. Amendment of subsection (e) filed 4-15-2002; operative 5-15-2002. Submitted to OAL for printing only (Register 2002, No. 23).

§ 59329. Complaints Filed with Chancellor.

Upon receiving a complaint filed pursuant to section 59328, the Chancellor will immediately forward a copy of the complaint to the appropriate community college district responsible officer who shall respond pursuant to section 59332 or initiate the investigation required by section 59334. In any complaint alleging employment discrimination the Chancellor shall notify the complainant that he or she has the right to file with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59330. Notice to Chancellor.

Immediately upon receiving a complaint filed in accordance with section 59328 the district shall forward a copy of the complaint to the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59332. Defective Complaint.

When a district receives a complaint which it finds does not meet the requirements of Section 59328 the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59333. Office for Civil Rights.

(a) Whenever a complaint is filed with the Chancellor pursuant to section 59329 and whenever the Chancellor renders a decision pursuant to article 4 (commencing with section 59350) of this subchapter, the Chancellor shall notify the complainant that he or she may file a complaint regarding the same matter with the Office For Civil Rights of the U.S. Department of Education (OCR) where the complaint is within the jurisdiction of that agency.

(b) In such cases, OCR will normally accept compliance with these regulations as satisfying the due process requirements of federal law.

(c) OCR shall have no jurisdiction to rule on any finding regarding violation of state law.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
2. Amendment of subsection (a) filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59334. District Investigation.

Upon receiving a complaint that is properly filed in accordance with section 59328, the district will commence an impartial fact-finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results of the investigation shall be set forth in a written report that shall include at least all of the following:

(a) a description of the circumstances giving rise to the complaint;

(b) a summary of the testimony provided by each witness, including the complainant and any viable witnesses identified by the complainant in the complaint;

(c) an analysis of any relevant data or other evidence collected during the course of the investigation;

(d) a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; and

(e) any other information deemed appropriate by the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of existing paragraph and NOTE and adoption of subsections (a)-(e) filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59336. Administrative Determination.

Within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward a copy of the investigative report required pursuant to section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:

(a) the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;

(b) a description of actions taken, if any, to prevent similar problems from occurring in the future;

(c) the proposed resolution of the complaint; and

(d) the complainant's right to appeal to the district governing board and the Chancellor pursuant to sections 59338 and 59339.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59338. Final District Decision; Appeals to Local Governing Board.

(a) If the complainant is not satisfied with the results of the administrative determination rendered pursuant to section 59336, the complainant may submit a written appeal to the district governing board within fifteen (15) days from the date of the administrative determination. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty-five (45) days after receiving the appeal.

(b) A copy of the final district decision rendered by the governing board that includes complainant's right to appeal the district's decision to the Chancellor pursuant to section 59339 shall be forwarded to the complainant and to the Chancellor.

(c) If the governing board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter. The district shall notify the complainant and the Chancellor that the board took no action and the administrative determination is deemed approved pursuant to this section. The complainant shall also be notified of his or her right to appeal the district's decision to the Chancellor pursuant to section 59339.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of section heading and section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59339. Appeal to Chancellor.

(a) In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days from the date that the governing board issues the final district decision or permits the administrative determination to become final pursuant to section 59338. Such appeals shall be processed pursuant to the provisions of article 4 (commencing with section 59350) of this subchapter. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within forty-five (45) days from that date.

(b) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency. In addition, in such cases, the complainant may file an appeal with the Chancellor within thirty (30) days from the date that the governing board

issues the final district decision or permits the administrative determination to become final pursuant to section 59338. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within forty-five (45) days from that date. The Chancellor shall have discretion to accept or reject any such appeal in employment discrimination cases. If the Chancellor agrees to accept the appeal, he/she may:

(1) attempt to informally resolve the matter pursuant to section 59354;

(2) where applicable, treat the complaint as an allegation that the district has violated the provisions of subchapter 1 (commencing with section 53000) of chapter 4 of this division; or

(3) take any other action deemed appropriate by the Chancellor

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section heading and section filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59340. Forward to Chancellor.

Within 150 days of receiving a complaint, the district will forward the following to the Chancellor:

(a) a copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to section 59338(a);

(b) a copy of the notice to the complainant required pursuant to section 59338(a); and

(c) such other information as the Chancellor may require.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer of subsections (a)-(c) and subsection relettering filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59342. Extensions; Failure to Comply.

(a) If a district, for reasons beyond its control, is unable to comply with the 90-day or 150-day deadline specified in sections 59336 or 59340 for submission of materials to the Chancellor, the district may file a written request that the Chancellor grant an extension of the deadline. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline established pursuant to sections 59336 or 59340 and shall set the reasons for the request and the date by which the district expects to be able to submit the required materials.

(b) A copy of the request for an extension shall be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt.

(c) The Chancellor may grant the request unless delay would be prejudicial to the investigation. If the Chancellor grants an extension of the 90-day deadline, the 150-day deadline is automatically extended by an equal amount.

(d) If a district fails to comply with the requirements of sections 59336 or 59340 by the required deadline, including any extension granted pursuant to this section, the Chancellor may proceed to review the case as provided in article 4 (commencing with section 59350) of the subchapter based on the original complaint and any other relevant information then available.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a), (c) and (d) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).
4. Amendment of subsection (c) filed 4-15-2002; operative 5-15-2002. Submitted to OAL for printing only (Register 2002, No. 23).

Article 4. Chancellor's Procedure to Effect Compliance

§ 59350. Review for Reasonable Cause.

(a) The Chancellor shall review the materials submitted by the district pursuant to sections 59336 and 59340, together with the complainant's appeal, and determine whether there is reasonable cause to believe the district has violated the requirements of this subchapter.

(b) Failure by the complainant to file an appeal pursuant to section 59339 shall not preclude the Chancellor from finding reasonable cause to believe the district has violated the requirements of this subchapter.

(c) If the Chancellor finds there is no reasonable cause to believe a violation has occurred, the Chancellor shall immediately notify both the complainant and the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of subsections (a) and (b) and amendment of NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59351. New Issues Raised on Appeal.

If, upon review of the materials submitted by the complainant pursuant to section 59339, the Chancellor's Office finds that issues or facts not included in the complaint have been raised for the first time on appeal, the Chancellor's Office will provide the district a reasonable opportunity to respond to the new issues or facts raised by complainant.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section heading and section filed 3-20-2002; operative 4-19-2002 Submitted to OAL for printing only (Register 2002, No. 13).

§ 59352. Investigation.

If the Chancellor finds there is reasonable cause to believe a violation has occurred, the Chancellor shall investigate to determine whether there is probable cause to believe a violation has occurred.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59354. Informal Resolution.

During the course of the investigation, the Chancellor shall seek to informally resolve the alleged violation. Such resolution shall be set forth in a written conciliation agreement. A copy of the written agreement shall be sent to the complainant.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59356. Formal Resolution.

Within 120 days of initiating the investigation, the Chancellor shall:

(a) Notify the district and the complainant that there is probable cause to believe the district has violated the provisions of this subchapter. The

Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.

(b) Notify the district and the complainant that there is no probable cause to believe the district has violated the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59358. Hearing.

If the Chancellor finds the district has violated the provisions of this subchapter, and if the district does not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant to chapter 5 (commencing with section 11500) of part 1, division 3, title 2 of the Government Code, to determine whether the violation did occur.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59360. Enforcement.

(a) Upon a determination that a district has violated the provisions of this subchapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including:

(1) Withhold all or part of the district's state support;

(2) Make probationary eligibility for future state support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state funding to a district pursuant to this section shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of subsections (a), (a)(2) and (b) and amendment of NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59362. Judicial Review.

A decision by the Chancellor pursuant to section 59360 is subject to judicial review by the district, as provided by section 1094.5 of the Code of Civil Procedure.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

Subchapter 6. Waiver of Part-Time Instructor Limit

NOTE: Authority cited: Sections 71020 and 87613, Education Code. Reference: Section 87613, Education Code.

HISTORY

1. New Chapter 6 (Sections 59380-59388, not consecutive) filed 6-1-82; effective thirtieth day thereafter (Register 82, No. 23).
2. Repealer of Chapter 6 (Sections 59380-59388, not consecutive) filed 3-7-85; effective thirtieth day thereafter (Register 85, No. 10).

Subchapter 7. Instructional and Other Materials

§ 59400. Required Instructional and Other Materials.

(a) The governing board of a district may, consistent with the provisions of this Subchapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.

(b) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. New chapter 7 (sections 59400-59408, not consecutive) filed 5-16-85; effective thirtieth day thereafter (Register 85, No. 20).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of subsection (a) and NOTE filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59402. Definitions.

For the purposes of this Subchapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost and:

(1) the material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or

(2) the material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of opening statement, subsections (a) and (c)-(c)(2) and NOTE filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course

02TC46

Commission on State Mandates
Test Claim Completeness Checklist

X = Requirement was not met. Test claim is deemed incomplete.

Title 2 California Code of Regulations, Section 1183 - Test Claim Requirements.

(d) Content of a Test Claim. All test claims, or amendments thereto, shall be filed on a form provided by the commission. All test claims or amendments thereto shall contain at least the following elements and documents:

✓ (d)(1) Requirement No. 1 - A copy of the statute, or executive order alleged to contain or impact a mandate.

✓ (d)(1) Requirement No. 2 - The specific sections of chaptered bill or executive order alleged to contain a mandate must be identified.

✓ (d)(2) Requirement No. 1 - A copy of relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate and a copy of administrative decisions and court decisions that may impact the alleged mandate.

✓ (d)(2) Requirement No. 2 - The specific chapters, articles, sections, or page numbers must be identified.

✓ (d)(3) Requirement No. 1 - A written narrative which includes a detailed description of:

___ (A) What activities were required under prior law or executive order, and

___ (B) What activities are required under the statute or executive order alleged to contain or impact a mandate and

___ (C) How any increased level of service and/or cost was incurred or is expected to be incurred.

___ (d)(4) Requirement No. 1 - If the narrative describing an alleged mandate involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations must be supported by documentary evidence which shall be submitted with the test claim.

___ (d)(4) Requirement No. 2 - All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge or information or belief.

✓ (d)(5) Requirement No. 1 - A statement of actual and/or estimated costs which result from the alleged mandate should be identified by function and by fiscal year.

✓ (d)(6) Requirement No. 1 - A test claim or amendment thereto shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge or information or belief.

✓ (d)(6) Requirement No. 2 - The date of signing, the declarant's title, address, and telephone number shall be included. If the claimant or its authorized representative can be reached via facsimile machine, that telephone number should also be included.

✓ (e) Requirement No. 1 - Number of copies. The claimant shall file an original and seven (7) copies of the test claim or amendment thereto and accompanying documents with the commission.

✓ (f) Requirement No. 1 - The original test claim, amendment thereto, and accompanying documents shall be unbound and single sided.

✓ (g) Any test claim filed with the commission must involve alleged mandated costs exceeding two hundred dollars ($200). $1000

Comments:

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STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

Exhibit F

June 22, 2010

Mr. Keith Petersen
SixTen and Associates
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

Re: NOTICE OF SEVERANCE:
Education Code Sections 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251, 66252, 66261, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, 72011-72014, 87101, and 87102; California Code of Regulations, Title 5, Sections 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, 53034, and 54220; and "Student Equity: Guidelines for Developing a Plan" Fall 2002, The Academic Senate for California Community Colleges (Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions"), (Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, Adopted by the Academic Senate Fall 2002)

Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)
(See enclosed list for statutes and regulations pled)
Los Rios Community College District,
Santa Monica Community College District, and
West Kern Community College District, Co-claimants

AND CONSOLIDATION WITH:
Discrimination Complaint Procedures (02-TC-46)
Government Code Sections 11135, 11136, 11137, 11138, 11139
California Code of Regulations, Title 5, Sections 59300, 59303, 59304, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330, 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360, and 59362.
Santa Monica Community College District, Claimant

Dear Mr. Petersen:

After review of *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) and *Discrimination Complaint Procedures* (02-TC-46), it has been determined that the test claims share common issues and allegations. Specifically, the test claims address statutes, administrative regulations,

and alleged executive orders regarding the prohibition against discrimination in community college employment and programs. In addition, these test claims raise similar issues regarding federal antidiscrimination laws.

For the sake of efficiency, Education Code sections 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251, 66252, 66261, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, 72011-72014, 87101, and 87102; California Code of Regulations, title 5, sections 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, 53034, and 54220; and "Student Equity: Guidelines for Developing a Plan" Fall 2002, The Academic Senate for California Community Colleges (Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions"), (Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, Adopted by the Academic Senate Fall 2002) will be severed from the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim and consolidated with the *Discrimination Complaint Procedures* (02-TC-46) test claim. This action is being taken pursuant to my authority under Government Code section 17530 and California Code of Regulations, title 2, section 1183.06, and will be effective 10 days from the service of this letter.

All future references to the *Discrimination Complaint Procedures* (02-TC-46) test claim will include Los Rios Community College District and West Kern Community College District as co-claimants with Santa Monica Community College District. A consolidated mailing list is enclosed.

As provided in the Commission's regulations this action and decision of the executive director may be appealed to the Commission for review. Please refer to California Code of Regulations, title 2, section 1181, subdivision (c).

Please contact Kenny Louie at (916) 323-2611 if you have any questions or concerns regarding this matter.

Sincerely,

Paula Higashi

PAULA HIGASHI
Executive Director

Enclosures: List of Statutes and Executive Orders Pled, Consolidated Test Claim: *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) and Consolidated Mailing List

J:mandates/2002/tc/02tc25/consolidatedtc/severeltr062210

LIST OF STATUTES AND EXECUTIVE ORDERS PLED
CONSOLIDATED TEST CLAIM: *MINIMUM CONDITIONS FOR STATE AID*
(02-TC-25 AND 02-TC-31)

STATUTES

Chaptered Bills:

Statutes 1975, Chapter 802;
Statutes 1976, Chapters 275, 783, 1010, and 1176;
Statutes 1977, Chapters 36, 967;
Statutes 1979, Chapters 797 and 977;
Statutes 1980, Chapter 910;
Statutes 1981, Chapters 470 and 891;
Statutes 1982, Chapters 1117 and 1329;
Statutes 1983, Chapters 143 and 537;
Statutes 1984, Chapter 1371;
Statutes 1986, Chapter 1467;
Statutes 1988, Chapters 973 and 1514;
Statutes 1990, Chapters 1372 and 1667;
Statutes 1991, Chapters 1038, 1188, and 1198;
Statutes 1995, Chapters 493 and 758;
Statutes 1998, Chapter 365, 914, and 1023;
Statutes 1999, Chapter 587;
Statutes 2000, Chapter 187; and
Statutes 2002, Chapter 1169

Education Code Sections:

212	66030	66270	66722	66742	72014	81820
212.5	66251	66271.7	66722.5	66743	78015	81821
213	66252	66281.5	66731	70901	78016	81823
214	66261	66290	66732	70901.5	78211.5	87101
221.5	66261.5	66291	66736	70902	78212	87102
221.7	66262	66292	66737	71027	78213	87482.6
66010.2	66262.5	66292.3	66738	72011	78214	87482.7
66010.7	66263	66721	66740	72012	78215	
66016	66264	66721.5	66741	72013	78216	

California Code of Regulations, Title 5, Sections:

51000	53002	53309	55201	55502	55620	55800.5
51002	53003	53310	55202	55510	55630	55801
51004	53004	53311	55205	55512	55750	55805
51006	53005	53312	55207	55514	55751	55805.5
51008	53006	53314	55209	55516	55752	55806
51010	53020	54220	55211	55518	55753	55807
51012	53021	54626	55213	55520	55753.5	55808
51014	53022	54805	55215	55521	55753.7	55809
51016	53023	55000	55217	55522	55754	55825
51018	53024	55000.5	55219	55523	55755	55827
51020	53025	55001	55300	55524	55756	55828
51021	53026	55002	55316	55525	55756.5	55829
51022	53033	55002.5	55316.5	55526	55757	55830
51023	53034	55004	55320	55530	55758	55831
51023.5	53200	55005	55321	55532	55758.5	58102
51023.7	53202	55006	55322	55534	55759	58104
51024	53203	55100	55340	55600	55760	58106
51025	53204	55130	55350	55601	55761	58107
51026	53207	55150	55401	55602	55762	58108
51027	53300	55160	55402	55602.5	55763	59404
51100	53301	55170	55403	55603	55764	59410
51102	53302	55182	55404	55605	55765	
53001	53308	55200	55500	55607	55800	

Implementing Guidelines Handbooks:

Handbook of Accreditation and Policy Manual,
Accrediting Commission for Community and Junior Colleges (Summer 2002)

"Program and Course Approval Handbook"
Chancellor's Office California Community Colleges (September 2001)

"Student Equity Guidelines for Developing a Plan"
Fall 2002, The Academic Senate for California Community Colleges
(Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions")
(Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, adopted by the Academic Senate Fall 2002)

Commission on State Mandates

Original List Date: 6/22/2010
Last Updated:
List Print Date: 06/22/2010
Claim Number: 02-TC-25, 31, 46
Issue: Notice to Students/Minimum Conditions for State Aid/ Discrimination Complaint Procedures (CCD)

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: Fax:	(916) 727-1350 (916) 727-1734
Mr. David E. Scribner Max8550 2200 Sunrise Boulevard, Suite 240 Gold River, California 95670	Tel: Fax:	(916) 852-8970 (916) 852-8978
Mr. Jeff Carosone Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-8913
Mr. Douglas R. Brinkley State Center Community College District 1525 East Weldon Avenue Fresno, CA 93704-6398	Tel: Fax:	(916) 000-0000 (916) 000-0000
Mr. Arthur Palkowitz Stutz Artiano Shinoff & Holtz 2488 Historic Decatur Road, Suite 200 San Diego, CA 92106	Tel: Fax:	(619) 232-3122 (619) 232-3264
Mr. Steve Bruckman California Community Colleges Chancellor's Office (G-01) 1102 Q Street Sacramento, CA 95814-6511	Tel: Fax:	(916) 323-7007 (916) 322-4783
Mr. Allan Burdick MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: Fax:	(916) 471-5538 (916) 366-4838
Ms. Angie Teng State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Fax:	(916) 323-0706

Ms. Jill Kanemasu State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Fax:	(916) 322-9891
Mr. Paul Steenhausen Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: Fax:	(916) 319-8324 (916) 324-4281
Mr. Jon Sharpe Los Rios Community College District 1919 Spanos Court Sacramento, CA 95825	Tel: Fax:	(559) 244-5910 (559) 243-1949
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: Fax:	(951) 303-3034 (951) 303-6607
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: Fax:	(866) 481-2621 (866) 481-2682
Ms. Jolene Tollenaar MGT of America 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: Fax:	(916) 443-9136 (916) 443-1766
Mr. Andy Nichols Nichols Consulting 1857 44th Street Sacramento, CA 95819	Tel: Fax:	(916) 455-3939 (916) 739-8712
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 449-5252
Mr. William Duncan West Kern Community College District 29 Emmons Park Drive Taft, CA 93268	Tel: Fax:	(661) 763-7700
Mr. Mike Brown School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: Fax:	(916) 669-5116 (888) 487-6441
Mr. J. Bradley Burgess Public Resource Management Group 895 La Sierra Drive Sacramento, CA 95864	Tel: Fax:	(916)595-2646
Mr. Erik Skinner California Community Colleges Chancellor's Office (G-01) 1102 Q Street Sacramento, CA 95814-6511	Tel: Fax:	(916) 323-7007 (916) 322-4783
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518	Tel: Fax:	(916) 323-5849 (916) 327-0832

Sacramento, CA 95814		
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: Fax:	(916) 446-7517 (916) 446-2011
Ms. Sandra Thornton California Teachers Association 9548 Duchess Lane Stockton, CA 95209	Tel: Fax:	(209) 473-2850
Mr. Keith B. Petersen SixTen & Associates 3270 Arena Blvd., Suite 400-363 Sacramento, CA 95834	Tel: Fax:	(916) 419-7093 (916) 263-9701
Ms. Cheryl Miller CLM Financial Consultants, Inc. 1241 North Fairvale Avenue Covina, CA 91722	Tel: Fax:	(626) 484-0660 (626) 332-4886
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: Fax:	(916) 454-7310 (916) 454-7312
Ms. Jeannie Oropeza Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-0328 (916) 323-9530
Ms. Juliana Morozumi Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-0328
Mr. Chris Bonvenuto Santa Monica Community College District 1900 Pico Blvd. Santa Monica, CA 90405-1628	Tel: Fax:	(310) 434-4201 (310) 434-8200
Mr. Ed Hanson Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-0328

Hearing: November 9, 2010

SEE ADMINISTRATIVE RECORD FOR:

Minimum Conditions for State Aid

02-TC-25 and 02-TC-31

Los Rios Community College District
Santa Monica Community College District, and
West Kern Community College District, Co-Claimant

Exhibit A

Test Claim Filing and Attachments for 02-TC-25 submitted June 5, 2003

Exhibit B

Test Claim Filing and Attachments for 02-TC-31 submitted June 13, 2003

Exhibit C

California Community Colleges, Chancellor's Office (Chancellor's Office) Comments on Test Claim 02-TC-31, dated March 11, 2004

Exhibit D

Chancellor's Office Comments on Test claim 02-TC-25, dated March 16, 2004

Exhibit E

Claimant Response to Chancellor's Office Comments on Test Claim 02-TC-25, dated April 19, 2004

Exhibit F

Claimant Response to Chancellor's Office Comments on Test Claim 02-TC-31, dated May 5, 2004

Exhibit H

Claimant Submission of Additional Information for Test Claim 02-TC-25, dated October 22, 2007

Exhibit J

Department of Finance Comments on Test Claim 02-TC-25, dated November 9, 2007

Exhibit L

Claimant Submission of Additional Information for Test Claim 02-TC-31, March 14, 2008

Exhibit N

Commission Request for Comments from the Chancellor's Office, dated April 21, 2008

Exhibit Q

Commission Request for Comments from the Chancellor's Office, dated June 23, 2008

Exhibit R

Chancellor's Office Response to Request for Comments, dated July 7, 2008

Exhibit A

SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

June 3, 2003

RECEIVED
JUN 05 2003
COMMISSION ON
STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF Los Rios Community College District
Statutes of 2000 / Chapter 187
Notice to Students

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Los Rios Community College District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

Jon Sharpe
Vice Chancellor, Finance and Administration
Los Rios Community College District
1919 Spanos Court
Sacramento, California 95825

The Commission regulations provide for an informal conference of the interested parties

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Keith B. Petersen

C: Jon Sharpe, Vice Chancellor, Finance & Administration
Los Rios Community College District

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
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CSM 2 (1/91)

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COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Claim No. 02-TC-25

Local Agency or School District Submitting Claim

LOS RIOS COMMUNITY COLLEGE DISTRICT

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Los Rios Community College District
1919 Spanos Court
Sacramento, California 95825

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

NOTICE TO STUDENTS

Chapter 187, Statutes of 2000 — Education Code Section 66281.5
Chapter 914, Statutes of 1998 — Education Code Section 66721.5

Title 5,California Code of Regulations

Section 51006	Section 55202	Section 55752	Section 55760	Section 55800
Section 54262	Section 55530	Section 55753	Section 55761	Section 58102
Section 54805	Section 55534	Section 55758	Section 55762	Section 58104
Section 55005	Section 55750	Section 55759	Section 55764	Section 59404
			Section 55765	Section 59410

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
Jon Sharpe Vice Chancellor, Finance & Administration	(916) 568-3069

Signature of Authorized Representative	Date
X	5/9/03

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	No. CSM 02-TC-25
Los Rios Community College District	Chapter 187, Statutes of 2000 Chapter 914, Statutes of 1998
	Education Code Section 66281.5, 66721.5
Test Claimant	Title 5, Code of Regulations Section 51006, 54626, 54805, 55005, 55202 55530, 55534, 55750, 55752, 55753, 55758, 55759, 55760, 55761, 55762, 55764, 55765, 55800, 58102, 58104 59404, 59410
	Notice to Students
	TEST CLAIM FILING

PART 1. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Los Rios Community College District is a "school district" as defined in

Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for community college districts to prepare, publish, and implement various policies, procedures and notices to students.

SECTION 1. LEGISLATIVE HISTORY PRIOR JANUARY 1, 1975

Prior to January 1, 1975, there were no statutes, codes or regulations which required the specific notices to students set forth in this test claim.

SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

Chapter 914, Statutes of 1998, Section 49, added Education Code Section 66281.5[2]. Subdivision (b) requires community colleges to have and implement a written

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[1] Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools."

[2] Education Code Section 66281.5, added by Chapter 914, Statutes of 1998, Section 49:

"(a) It is the policy of the State of California, pursuant to Section 66251, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary educational institution of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each postsecondary educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The postsecondary educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and

policy on sexual harassment which shall be included in its regular policy statement. Subdivision (c) requires the written policy to include information on where to obtain the rules and procedures for reporting sexual harassment charges and the available remedies. Subdivision (d), requires the written policy to be displayed in a prominent location in the main administrative building or other area of the campus. Subdivision (e) requires the written policy to be provided to new students as a part of any orientation program at the beginning of each quarter, semester or summer session. Subdivision (f) requires a copy of the written policy to be provided annually to each faculty member, all members of the administrative staff, all members of the support staff, and any newly hired employee. Subdivision (g), requires the written policy to be in any publication that

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procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the postsecondary educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the postsecondary educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the postsecondary educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the postsecondary educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution."

sets forth the rules, regulations, procedures, and standards of conduct for the institution.

Chapter 187, Statutes of 2000, Section 3, added Education Code Section 66721.5[3]. Subdivision (a) requires the governing board of each community college district to provide each student with a copy of the current transfer core curriculum.

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[3]Education Code Section 66721.5, added by Chapter 187, Statutes of 2000, Section 3:

"(a) (1) The governing board of each community college district shall direct the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum.

(2) As used in this section, "transfer core curriculum" means the lower-division, general education transfer curriculum that, pursuant to Section 66720, is fully articulated between the California Community Colleges and the California State University and University of California.

(b) A copy of the current transfer core curriculum shall be distributed to each newly admitted community college student who is enrolled in a degree or certification program and is physically in attendance at the institution.

(c) The governing board of a community college district shall ensure that the text of the current transfer core curriculum is included in the published class schedule for each academic term. Copies of the transfer core curriculum may also be made available in other locations on each campus, including, but not necessarily limited to, all of the following:

(1) The admissions office.
(2) The bookstore.
(3) The career counseling center.
(4) The veteran's affairs office.

(d) Notwithstanding subdivision (c), the governing board of a community college may, as an alternative to the methods of distribution set forth in subdivision (c), distribute copies of the current transfer core curriculum by any of the following means:

(1) During the registration process.
(2) By mail, with the registration materials or the enrollment materials, or both, or with other items sent to students.
(3) During the issuance of student identification cards.
(4) During student orientation programs.

(e) Nothing in this section shall be construed to limit the distribution of the transfer core curriculum to community college students."

Subdivision (b) requires the distribution of a current copy of the transfer core curriculum to every newly admitted and attending community college student enrolled in a degree or certification program. Subdivision (c) requires the text of the current transfer core curriculum be included in the published class schedule each term, and made available at various locations around campus. Subdivision (d), allows alternative distribution methods either during the registration process, by mail, while issuing student identification cards, or during student orientation programs.

SECTION 3. TITLE 5 CALIFORNIA CODE OF REGULATIONS[4]:

Section 51006 (added in 1983 and last amended in 1994), subdivision (a), requires community college districts to adopt a policy which provides that every course, course section or class, wherever offered and maintained, shall be fully open to enrollment and participation by any person who has been admitted to the college. Subdivision (b) requires the statement of policy to be published in the official catalog, schedule of classes, and addenda to the schedule of classes.

Section 54626 (added in 1976 and last amended in 1983), subdivision (a), requires community college districts to adopt a policy which identifies the categories of directory information which may be released. Subdivision (b) allows directory information to be released provided that annual public notice is given of the categories of information the district plans on releasing and of the recipients. The notice shall also

[4] Copies of all Title 5 California Code of Regulations cited in this section are attached hereto as Exhibit 4 and are incorporated herein by reference.

specify the period of time within which students are given to inform the district, in writing, of those categories of information they wish not to be released.

Section 54805 (added in 1988 and last amended in 1991), requires district governing boards to include in the materials given to each student at registration, information pertaining to the student representation fee, including, a statement indicating that the money collected will be used to provide support for students or representatives who may be stating their positions and view points before city, county and district government, and agencies of the state and federal government, the amount of the fee, and a statement informing students of their right to refuse to pay the fee for religious, political, moral or financial reasons.

Section 55005 (added in 1981 and last amended in 1991) requires community colleges to make college publications available to students which informs them, before they enroll in a course, whether a course is offered as a credit or noncredit course or a community services class; is transferable to four-year colleges and universities; or fulfills a major or general education requirement.

Section 55202 (added in 1993), subdivision (a), requires rules concerning prerequisites, corequisites, and advisories on recommended preparation to be identified in college publications available to students as well as the outlines of any course for which they are established.

Section 55530 (added in 1990 and last amended in 1993), subdivision (b), requires community college districts to ensure that information be made available to

students, during or prior to enrollment, in written form, such as class schedules, catalogs or other appropriate publications, describing their rights and responsibilities under the chapter on curriculum and instruction.

Section 55534 (added in 1990 and last amended in 1994), subdivision (a), requires districts to investigate and attempt to resolve any alleged violations of the subchapter (matriculation programs) in a timely manner. Records of all such complaints are required to be retained for at least three years after resolution. When a challenge contains an allegation that a community college district has used any matriculation practice in a manner which has the purpose or effect of subjecting any person to unlawful discrimination, subdivision (b) requires community college districts, upon completion of the challenge procedure, to advise the student that he or she may file a formal complaint of unlawful discrimination.

Section 55750 (added in 1983 and last amended in 1991) requires community college districts to adopt and implement regulations consistent with this chapter, relating to curriculum and instruction, which shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office.

Section 55752 (added in 1983 and last amended in 1991), subdivision (a), requires the governing board of each district to specify in its catalog the category into which each course falls, either, (1) in a course where all students are evaluated on a "credit - no credit" basis, or (2) courses wherein each student may elect on registration whether the basis for evaluation is to be "credit - no credit", or a letter grade.

Section 55753 (added in 1983 and last amended in 2002), subdivision (a), requires the governing board of community college districts to adopt and publish procedures and regulations, in its catalog, relating to credit by examination in accordance with the provisions of the subchapter, standards of scholarship.

Section 55758 (added in 1983 and last amended in 2000), subdivision (d), requires the governing board of community college districts to publish the point equivalencies for letter grades, including pluses and minuses if necessary, in the catalog. If the governing board decides to use the "FW" equivalencies, it shall also be published in the catalog.

Section 55759 (added in 1983 and last amended in 1991) requires community colleges to make reasonable efforts to notify students who are subject to academic probation or dismissal at or near the beginning of the semester or quarter that is affected, or no later than the start of Fall semester/quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to students on probation. Community colleges are also required to notify a student upon being removed from probation or reinstatement after dismissal. These policies and procedures are required to be published in the college catalog.

Section 55760 (added in 1983 and last amended in 1991), subdivision (b), requires the governing board of a district to adopt and publish procedures and regulations for repeating courses for which substandard work has been recorded in accordance with sections 55761 and 55762.

Section 55761 (added in 1983 and last amended in 1991) requires community colleges to adopt and publish procedures or regulations pertaining to repeating of courses for which substandard work has been recorded.

Section 55762 (added in 1983 and last amended in 1991) , subdivision (c), requires community colleges to indicate any specific courses or categories of courses which are exempt from consideration for repetition after substandard academic performance. Subdivision (d) requires community colleges to indicate any courses repeated on the student's permanent record with an appropriate symbol. Subdivision (e) requires community colleges to publish specific procedures to implement this section. Subdivision (g) requires community colleges to maintain a record of actions taken under course repetition procedures or regulations.

Section 55764 (added in 1983 and last amended in 1991) requires community colleges to adopt and publish procedures or regulations pertaining to alleviating previously recorded substandard academic performance which is not reflective of a student's demonstrated ability.

Section 55765 (added in 1983 and last amended in 1991), subdivision (c), requires that, when adopted procedures permit alleviation of previously recorded substandard academic performance, community college districts shall publish specific procedures to be followed in implementing procedures or regulations adopted, stating; (1) the procedures to be followed by students petitioning for alleviation, and (2) the officers and/or personnel responsible for implementing the procedures or regulations.

Section 55800 (added in 1983 and last amended in 1991) requires community college districts to adopt a policy consistent with the chapter on degrees and certificates which shall be published in the college catalog under appropriate headings.

Section 58102 (added in 1982 and last amended in 1993) requires the description of each course to be clear and understandable to prospective students and be published in the official catalog, and/or schedule of classes, and/or addenda.

Section 58104 (added in 1982 and last amended in 1993) requires all courses offered to be described in the official catalog and/or addenda and listed in the schedule of classes. Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Section 59404 (added in 1985 and last amended in 1994) requires the governing board of a community college, which requires that students provide instructional or other materials for a course, to adopt policies or regulations which specify the conditions under which such materials will be required. These policies and regulations are required to be published in each college catalog.

Section 59410 (added in 1991 and last amended in 1994) provides that the governing board of a community college district may provide, by appropriate rules and regulations, that grades, transcripts, diplomas, and registration privileges shall be withheld from any student who has been provided with written notice and who has failed to pay a proper financial obligation due to the district or to a college.

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The Statutes, Education Code Sections, and California Code of Regulation sections referenced in this test claim result in school districts incurring costs mandated by the state, as defined in Government Code section 17514[5], by creating new state-mandated duties related to the uniquely governmental function of providing public service and education to students and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[6]

The new duties mandated by the state upon community colleges require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and

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[5] Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

[6] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

capital assets, staff and student training and travel to implement the following activities:

A) Establishing and implementing policies and procedures, and periodically updating those policies and procedures, for the notification of students pursuant to the following sections of the Education Code and Title 5 Regulation sections.

B) Pursuant to Education Code Section 66281.5, subdivision (b), adopting and implementing a written policy on sexual harassment, and including the policy in its regular policy statement. Pursuant to subdivision (c), including information in the written policy on where to obtain the rules and procedures for reporting sexual harassment charges and the available remedies. Pursuant to subdivision (d), displaying the written policy in a prominent location in the main administrative building or other area of the campus. Pursuant to subdivision (e), providing the written policy to new students as a part of any orientation program. Pursuant to subdivision (f), providing a copy of the written policy annually to each faculty member, administrative staff, all members of support staff, and to any newly hired employee. Pursuant to subdivision (g), publishing the written policy in any publication that sets forth the rules, regulations, procedures, and standards of conduct for the institution.

C) Pursuant to Education Code Section 66721.5, subdivision (a), providing each student with a copy of the current transfer core curriculum. Pursuant to subdivision (b), distributing a copy of current transfer core curriculum to each newly admitted and attending community college student enrolled in a degree or

certification program. Pursuant to subdivision (c), publishing the text of the current transfer core curriculum in the class schedule each term and making it available at, but not limited to the following locations:

(1) The admissions office,

(2) The bookstore,

(3) The career counseling center and,

(4) The veteran's affairs office.

Pursuant to subdivision (d), as an alternative to the methods of distribution set forth in subdivision (c), distributing copies of the current transfer core curriculum by any of the following means:

(1) During the registration process,

(2) By mail with other items sent to the student,

(3) While issuing student identification cards,

(4) During student orientation programs.

D) Pursuant to Title 5, California Code of Regulations, Section 51006, subdivision (a), adopting and implementing a policy which provides that every course, course section or class, reported for state aid, wherever offered and maintained, shall be fully open to enrollment and participation by any person who has been admitted to the college. Pursuant to subdivision (b), publishing the statement of policy adopted by the board pursuant to subdivision (a), in the official catalog, schedule of classes, and addenda to the schedule of classes.

E) Pursuant to Title 5, California Code of Regulations, Section 54626, subdivision (a), adopting and implementing a policy identifying any of the following categories of directory information may which be released: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student.

(1) Pursuant to subdivision (b), giving public notice at least annually of the categories of directory information which the district plans to release and of the recipients. Such notice shall also specify the period of time within which the student must inform the district in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

(2) Pursuant to subdivision (c), other information may be added to the categories set forth above, provided that release of such information shall be authorized in writing by the student.

F) Pursuant to Title 5, California Code of Regulations, Section 54805, including in the materials given to each student at registration, information pertaining to the student representation fee which shall include the following:

(1) Pursuant to subdivision (a), a statement which indicates that the money collected as a representation fee shall be expended to provide support for

students or representatives who may be stating their positions and viewpoints before city, county, and district government, and agencies of the state and federal government.

(2) Pursuant to subdivision (b), the amount of the fee.

(3) Pursuant to subdivision (c), a statement which informs students of their right to refuse to pay the fee for religious, political, moral or financial reasons.

G) Pursuant to Title 5, California Code of Regulations, Section 55005, making available to students, for each course offered, through college publications all of the following facts before they enroll in the course:

(1) Whether the course is offered as a credit or noncredit course, or a community service class.

(2) Whether the course is transferable to four-year colleges and universities.

(3) Whether the course fulfills a major or general education requirement.

H) Pursuant to Title 5, California Code of Regulations, Section 55202, requiring identification in college publications and course outlines the establishment of prerequisites, corequisites, and advisories.

I) Pursuant to Title 5, California Code of Regulations, Section 55530, subdivision (b), ensuring that information be made available to students, during or prior to enrollment, in written form, such as class schedules, catalogs or other appropriate publications, describing their rights and responsibilities under the

chapter pertaining to curriculum and instruction.

J) Pursuant to Title 5, California Code of Regulations, Section 55534, subdivision (a), investigating and attempting to resolve any alleged violations of the subchapter on curriculum and instruction. Pursuant to subdivision (b), advising students that they may file a formal complaint of unlawful discrimination upon completion of the challenge procedure established by subdivision (a).

K) Pursuant to Title 5, California Code of Regulations, Section 55750, adopting and implementing regulations consistent with the chapter on standards of scholarship and publishing those regulations in the college catalog under appropriate headings.

L) Pursuant to Title 5, California Code of Regulations, Section 55752, subdivision (a), specifying in its college catalog the category into which each course falls, as either,

(1) in a course where all students are evaluated on a "credit - no credit" basis, or

(2) courses wherein each student may elect on registration whether the basis for evaluation is to be "credit - no credit:, or a letter grade.

M) Pursuant to Title 5, California Code of Regulations, Section 55753, subdivision (a), adopting and publishing procedures and regulations, in its catalog, relating to credit by examination in accordance with the provisions of the subchapter, standards of scholarship.

N) Pursuant to Title 5, California Code of Regulations, Section 55758, subdivision (d), publishing the point equivalencies for letter grades, including pluses and minuses if necessary, and if the governing board chooses, "FW" equivalencies, in the catalog.

O) Pursuant to Title 5, California Code of Regulations, Section 55759, notifying students who are subject to academic probation or dismissal at or near the beginning of the semester or quarter that is affected, or no later than the start of Fall semester/quarter and notifying a student upon being removed from probation or reinstatement after dismissal. Publishing these policies and procedures in the college catalog.

P) Pursuant to Title 5, California Code of Regulations, Section 55760, subdivision (b), adopting and publishing procedures and regulations for repeating courses in which substandard work has been performed.

Q) Pursuant to Title 5, California Code of Regulations, Section 55761, adopting and publishing procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded.

R) Pursuant to Title 5, California Code of Regulations, Section 55762, subdivision (c), specifying courses, or categories of courses, which are exempt from consideration for repetition after substandard academic performance. Pursuant to subdivision (d), indicating any courses repeated on the student's permanent record with an appropriate symbol. Pursuant to subdivision (e) publishing specific

procedures to implement this section. Pursuant to subdivision (g), maintaining a record of actions taken under course repetition procedures or regulations.

S) Pursuant to Title 5, California Code of Regulations, Section 55764, adopting and publishing procedures or regulations pertaining to alleviating previously recorded substandard academic performance which is not reflective of a student's demonstrated ability which includes a clear statement of the educational principles upon which they are based.

T) Pursuant to Title 5, California Code of Regulations, Section 55765, subdivision (c), publishing the specific procedures to be followed in implementing procedures or regulations which permit alleviation of previously recorded substandard academic performance, which state: (1) the procedures to be followed by students petitioning for alleviation, and (2) the officers and/or personnel responsible for implementation.

U) Pursuant to Title 5, California Code of Regulations, Section 55800, adopting a policy consistent with the chapter on degrees and certificates and publishing that policy in the college catalog under appropriate headings.

V) Pursuant to Title 5, California Code of Regulations, Section 58102, clearly and understandably describing each course to prospective students which shall be published in the official catalog, and/or schedule of classes, and/or addenda.

W) Pursuant to Title 5, California Code of Regulations, Section 58104, describing all courses in the official catalog and/or addenda and listing them in the schedule of

classes. To reasonably well publicize courses which are established or conducted after the publication of the general catalog or regular schedule of classes.

X) Pursuant to Title 5, California Code of Regulations, Section 59404, subdivision (a), whenever community colleges require students to provide instructional or other materials for a course, adopting policies or regulations which specify the conditions under which such materials will be required and pursuant to subdivision (b), publishing those policies or regulations in each college catalog.

Y) Pursuant to Title 5, California Code of Regulations, Section 59410, providing written notice to any student who has failed to pay a proper financial obligation due to the district or college that grades, transcripts, diplomas and registration privileges shall be withheld.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: The Declaration of Vicky Fong
Los Rios Community College District

Exhibit 2: Statutes cited: Chapter 187, Statutes of 2000
Chapter 914, Statutes of 1998

Exhibit 3: Education Code Sections cited:
Section 66281.5
Section 66721.5

Exhibit 4: Title 5, Code of Regulations cited:

Section 51006
Section 54626
Section 54805
Section 55005
Section 55202
Section 55530
Section 55534
Section 55750
Section 55752
Section 55753
Section 55758
Section 55759
Section 55760
Section 55761
Section 55762
Section 55764
Section 55765
Section 55800
Section 58102
Section 58104
Section 59404
Section 59410

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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on May 9, 2003, at Sacramento, California by:

Jon Sharpe
Vice Chancellor, Finance and Administration

Voice: (916) 568-3058
Fax: (916) 568-3078

PART VI. APPOINTMENT OF REPRESENTATIVE

Los Rios School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Jon Sharpe
Vice Chancellor, Finance and Administration

5/9/03
Date

Exhibit 1
Declaration of Vicky Fong

DECLARATION OF VICKY FONG

Los Rios Community College District

Test Claim Los Rios Community College District

COSM_____

Statutes:

Chapter 187, Statutes of 2000
Chapter 914, Statutes of 1998

Code Sections:

Education Code Section 66281.5
Education Code Section 66721.5

Title 5, Code of Regulations

Section 51006
Section 54626
Section 54805
Section 55005
Section 55202
Section 55530
Section 55534
Section 55750
Section 55752
Section 55753
Section 55758
Section 55759
Section 55760
Section 55761
Section 55762
Section 55764
Section 55765
Section 55800
Section 58102
Section 58104
Section 59404
Section 59410

Notice to Students

I, Vicky Fong, Associate Vice President of Instruction, Los Rios Community College District, make the following declaration and statement:

In my capacity as Associate Vice President of Instruction, I am responsible for implementing the requirements of notices to students, including the required publication of notices. I am familiar with the requirements of the Statutes, Education Code Sections, and Title 5, Code of Regulations Sections listed above.

These Education Code sections require the district to implement the following activities:

A) Establishing and implementing policies and procedures, and periodically updating those policies and procedures, for the notification of students pursuant to the following sections of the Education Code and Title 5 Regulation sections.

B) Pursuant to Education Code Section 66281.5, subdivision (b), adopting and implementing a written policy on sexual harassment, and including the policy in its regular policy statement. Pursuant to subdivision (c), including information in the written policy on where to obtain the rules and procedures for reporting sexual harassment charges and the available remedies. Pursuant to subdivision (d), displaying the written policy in a prominent location in the main administrative building or other area of the campus. Pursuant to subdivision (e), providing the written policy to new students as a part of any orientation program. Pursuant to subdivision (f), providing a copy of the written policy annually to each faculty member, administrative staff, all members of support staff, and to any newly hired employee. Pursuant to subdivision (g), publishing the written policy in any publication that sets forth the rules, regulations, procedures, and standards of conduct for the institution.

C) Pursuant to Education Code Section 66721.5, subdivision (a), providing each student with a copy of the current transfer core curriculum. Pursuant to subdivision (b), distributing a copy of current transfer core curriculum to each newly admitted and attending community college student enrolled in a degree or certification program. Pursuant to subdivision (c), publishing the text of the current transfer core curriculum in the class schedule each term and making it available at, but not limited to the following locations:

(1) The admissions office,

(2) The bookstore,

(3) The career counseling center and,

(4) The veteran's affairs office.

Pursuant to subdivision (d), as an alternative to the methods of distribution set forth in subdivision (c), distributing copies of the current transfer core curriculum by any of the following means:

(1) During the registration process,

(2) By mail with other items sent to the student,

(3) While issuing student identification cards,

(4) During student orientation programs.

D) Pursuant to Title 5, California Code of Regulations, Section 51006, subdivision (a), adopting and implementing a policy which provides that every course, course section or class, reported for state aid, wherever offered and maintained, shall be fully open to enrollment and participation by any person who has been admitted to the college. Pursuant to subdivision (b), publishing the statement of policy adopted by the board pursuant to subdivision (a), in the official catalog, schedule of classes, and addenda to the schedule of classes.

E) Pursuant to Title 5, California Code of Regulations, Section 54626, subdivision (a), adopting and implementing a policy identifying any of the following categories of directory information which may be released: student's name, address, telephone number, date and place of birth, major field of study, class schedule,

participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student.

(1) Pursuant to subdivision (b), giving public notice at least annually of the categories of directory information which the district plans to release and of the recipients. Such notice shall also specify the period of time within which the student must inform the district in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

(2) Pursuant to subdivision (c), other information may be added to the categories set forth above, provided that release of such information shall be authorized in writing by the student.

F) Pursuant to Title 5, California Code of Regulations, Section 54805, including in the materials given to each student at registration, information pertaining to the student representation fee which shall include the following:

(1) Pursuant to subdivision (a), a statement which indicates that the money collected as a representation fee shall be expended to provide support for students or representatives who may be stating their positions and viewpoints before city, county, and district government, and agencies of the state and federal government.

(2) Pursuant to subdivision (b), the amount of the fee.

(3) Pursuant to subdivision (c), a statement which informs students of their right to refuse to pay the fee for religious, political, moral or financial reasons.

G) Pursuant to Title 5, California Code of Regulations, Section 55005, making available to students, for each course offered, through college publications all of the following facts before they enroll in the course:

(1) Whether the course is offered as a credit or noncredit course, or a community service class.

(2) Whether the course is transferable to four-year colleges and universities.

(3) Whether the course fulfills a major or general education requirement.

H) Pursuant to Title 5, California Code of Regulations, Section 55202, requiring identification in college publications and course outlines the establishment of prerequisites, corequisites, and advisories.

I) Pursuant to Title 5, California Code of Regulations, Section 55530, subdivision (b), ensuring that information be made available to students, during or prior to enrollment, in written form, such as class schedules, catalogs or other appropriate publications, describing their rights and responsibilities under the chapter pertaining to curriculum and instruction.

J) Pursuant to Title 5, California Code of Regulations, Section 55534, subdivision (a), investigating and attempting to resolve any alleged violations of the subchapter on curriculum and instruction. Pursuant to subdivision (b), advising

students that they may file a formal complaint of unlawful discrimination upon completion of the challenge procedure established by subdivision (a).

K) Pursuant to Title 5, California Code of Regulations, Section 55750, adopting and implementing regulations consistent with the chapter on standards of scholarship and publishing those regulations in the college catalog under appropriate headings.

L) Pursuant to Title 5, California Code of Regulations, Section 55752, subdivision (a), specifying in its college catalog the category into which each course falls, as either,

(1) in a course where all students are evaluated on a "credit - no credit" basis, or

(2) courses wherein each student may elect on registration whether the basis for evaluation is to be "credit - no credit:, or a letter grade.

M) Pursuant to Title 5, California Code of Regulations, Section 55753, subdivision (a), adopting and publishing procedures and regulations, in its catalog, relating to credit by examination in accordance with the provisions of the subchapter, standards of scholarship.

N) Pursuant to Title 5, California Code of Regulations, Section 55758, subdivision (d), publishing the point equivalencies for letter grades, including pluses and minuses if necessary, and if the governing board chooses, "FW" equivalencies, in the catalog.

O) Pursuant to Title 5, California Code of Regulations, Section 55759, notifying students who are subject to academic probation or dismissal at or near the beginning of the semester or quarter that is affected, or no later than the start of Fall semester/quarter and notifying a student upon being removed from probation or reinstatement after dismissal. Publishing these policies and procedures in the college catalog.

P) Pursuant to Title 5, California Code of Regulations, Section 55760, subdivision (b), adopting and publishing procedures and regulations for repeating courses in which substandard work has been performed.

Q) Pursuant to Title 5, California Code of Regulations, Section 55761, adopting and publishing procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded.

R) Pursuant to Title 5, California Code of Regulations, Section 55762, subdivision (c), specifying courses, or categories of courses, which are exempt from consideration for repetition after substandard academic performance. Pursuant to subdivision (d), indicating any courses repeated on the student's permanent record with an appropriate symbol. Pursuant to subdivision (e) publishing specific procedures to implement this section. Pursuant to subdivision (g), maintaining a record of actions taken under course repetition procedures or regulations.

S) Pursuant to Title 5, California Code of Regulations, Section 55764, adopting and publishing procedures or regulations pertaining to alleviating previously recorded

substandard academic performance which is not reflective of a student's demonstrated ability which includes a clear statement of the educational principles upon which they are based.

T) Pursuant to Title 5, California Code of Regulations, Section 55765, subdivision (c), publishing the specific procedures to be followed in implementing procedures or regulations which permit alleviation of previously recorded substandard academic performance, which state: (1) the procedures to be followed by students petitioning for alleviation, and (2) the officers and/or personnel responsible for implementation.

U) Pursuant to Title 5, California Code of Regulations, Section 55800, adopting a policy consistent with the chapter on degrees and certificates and publishing that policy in the college catalog under appropriate headings.

V) Pursuant to Title 5, California Code of Regulations, Section 58102, clearly and understandably describing each course to prospective students which shall be published in the official catalog, and/or schedule of classes, and/or addenda.

W) Pursuant to Title 5, California Code of Regulations, Section 58104, describing all courses in the official catalog and/or addenda and listing them in the schedule of classes. To reasonably well publicize courses which are established or conducted after the publication of the general catalog or regular schedule of classes.

X) Pursuant to Title 5, California Code of Regulations, Section 59404, subdivision

(a), whenever community colleges require students to provide instructional or other materials for a course, adopting policies or regulations which specify the conditions under which such materials will be required and pursuant to subdivision (b), publishing those policies or regulations in each college catalog.

Y) Pursuant to Title 5, California Code of Regulations, Section 59410, providing written notice to any student who has failed to pay a proper financial obligation due to the district or college that grades, transcripts, diplomas and registration privileges shall be withheld:

It is estimated that the District incurred more than $1,000 for the fiscal year of 2001-2002 to implement these new duties mandated by the state for the purpose of implementing this mandate, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 30th day of May, 2003 in the City of Sacramento, California.

Vicky J. Fong

Vicky Fong
Associate Vice President of Instruction

Exhibit 2
Copies of Statutes Cited

POSTSECONDARY EDUCATION—COMMUNITY COLLEGE STUDENTS —ACCESS TO TRANSFER INFORMATION

CHAPTER 187

A.B. No. 1918

AN ACT to add Section 66721.5 to the Education Code, relating to public postsecondary education.

[Filed with Secretary of State July 24, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1918, Romero. Public postsecondary education: Access to Transfer Information for Community College Students Act.

(1) Existing law establishes the various segments of the higher education system in the state. These segments include the University of California, which is administered by the Regents of the University of California, the California State University, which is administered

by the Trustees of the California State University, the California Community Colleges, which are administered by the Board of Governors of the California Community Colleges, and various private institutions of higher learning.

This bill would enact the Access to Transfer Information for Community College Students Act. The bill would impose a state-mandated local program by requiring the governing board of each community college district to direct the appropriate officials at their respective campuses to provide students with copies of the transfer core curriculum, as defined to mean the lower-division, general education transfer curriculum that is fully articulated between the California Community Colleges and the California State University and the University of California. The bill would require that a copy of the current transfer core curriculum be distributed to each newly admitted community college student, as prescribed, and that the text of the current transfer core curriculum be included in the published class schedule. The bill would authorize copies of the curriculum to be available at prescribed locations on community college campuses.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited as, the "Access to Transfer Information for Community College Students Act."

SEC. 2. The Legislature finds and declares all of the following:

(a) Student matriculation, from community colleges through the University of California and the California State University, is recognized by the Governor, Legislature, and the governing boards of each of the segments of California's system of public postsecondary education as a central institutional priority of all segments of higher education.

(b) The Board of Governors of the California Community Colleges, with the cooperation of the Regents of the University of California and Trustees of the California State University, should ensure that all students are clearly and fully informed as to which community college courses and units are transferable.

(c) Knowledge of transfer agreements will improve a community college student's opportunity to transfer.

(d) The Master Plan for Higher Education establishes transfers as a priority. The California Community Colleges and the University of California established the goal of a 33 percent increase in transfers between the 1995–96 and the 2004–05 academic years.

(e) According to recent reports by the California Postsecondary Education Commission, the transfer rate to the University of California system has decreased every year since 1995. Given the decreased transfer rates, there is no possibility of achieving the goal of 33 percent.

SEC. 3. Section 66721.5 is added to the Education Code, to read:

66721.5. (a)(1) The governing board of each community college district shall direct the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum.

(2) As used in this section, "transfer core curriculum" means the lower-division, general education transfer curriculum that, pursuant to Section 66720, is fully articulated between the California Community Colleges and the California State University and University of California.

(b) A copy of the current transfer core curriculum shall be distributed to each newly admitted community college student who is enrolled in a degree or certification program and is physically in attendance at the institution.

(c) The governing board of a community college district shall ensure that the text of the current transfer core curriculum is included in the published class schedule for each academic term. Copies of the transfer core curriculum may also be made available in other locations on each campus, including, but not necessarily limited to, all of the following:

(1) The admissions office.

(2) The bookstore.

(3) The career counseling center.

(4) The veteran's affairs office.

(d) Notwithstanding subdivision (c), the governing board of a community college may, as an alternative to the methods of distribution set forth in subdivision (c), distribute copies of the current transfer core curriculum by any of the following means:

(1) During the registration process.

(2) By mail, with the registration materials or the enrollment materials, or both, or with other items sent to students.

(3) During the issuance of student identification cards.

(4) During student orientation programs.

(e) Nothing in this section shall be construed to limit the distribution of the transfer core curriculum to community college students.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SCHOOLS AND SCHOOL DISTRICTS—DISCRIMINATION—RELATED PROVISIONS

CHAPTER 914

A.B. No. 499

AN ACT to amend Sections 200, 211, 212, 212.5, 213, 214, 220, 223, 224, 250, 251, 253, 262.3, and 72012 of, to amend the headings of Chapter 2 (commencing with Section 200) of, and Article 3 (commencing with Section 220) of, Chapter 2 of Part 1 of, to amend and renumber Sections 40, 41, 45, 210, 212.6, 222, 226, 227, 228, 232, 262, 262.1, 262.2, 263, 33032.5, 44806, 52905, 52906, 52907, 52908, 58508, and 72015 of, to amend and renumber the headings of Article 4 (commencing with Section 240) of, Article 5 (commencing with Section 250) of, and Article 6 (commencing with Section 260) of, Chapter 2 of Part 1 of, to add Sections 210, 262.4, and 264 to, to add the headings of Article 4 (commencing with Section 221.5) of, Article 5 (commencing with Section 233) of, Article 6 (commencing with Section 235) of, and Article 11 (commencing with Section 280) of, Chapter 2 of Part 1 of, and to add Chapter 4.5 (commencing with Section 66250) to Part 40 of, and to repeal the headings of Article 4 (commencing with Section 40) of, and Article 4.5 (commencing with Section 45) of, Chapter 1 of Part 1 of, and Article 8 (commencing with Section 52905) of Chapter 12 of Part 28 of, the Education Code, relating to education.

[Approved by Governor September 28, 1998.]

[Filed with Secretary of State September 28, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 499, Kuehl. Education: diversity in education: Sex Equity in Education Act.

Under existing law, numerous provisions of the Education Code relate to the prohibition of discrimination in the provision of educational services by elementary, secondary, and postsecondary institutions.

Under existing law, the governing board of a school district has primary responsibility for ensuring that school district programs and activities are free from discrimination based on

282. The human relations course developed pursuant to this article shall encompass the following goals:

(a) Fostering cooperation and promoting positive interaction among pupils of different racial and ethnic groups.

(b) Developing an understanding of ethnic diversity within California, throughout the nation, and in the world.

(c) Understanding the dangers of stereotyping and discrimination that have existed throughout history and recognizing the protections offered to all by a democratic society.

(d) Appreciating the contributions of minority groups to the development of the United States.

SEC. 47. Section 52908 of the Education Code is amended and renumbered to read:

283. The human relations course developed pursuant to this article shall be designed and be ready for implementation by the 1990–91 school year.

SEC. 48. Section 58508 of the Education Code is amended and renumbered to read:

235. There shall be no racial, sex, or ethnic discrimination in any aspect of the operation of alternative schools, charter schools, or the Demonstration Scholarship Program.

SEC. 49. Chapter 4.5 (commencing with Section 66250) is added to Part 40 of the Education Code, to read:

CHAPTER 4.5. SEX EQUITY IN EDUCATION ACT

Article 1. Title and Declaration of Purpose

66250. This chapter shall be known, and may be cited, as the Sex Equity in Education Act.

66251. It is the policy of the State of California to afford all persons, regardless of their sex, ethnic group identification, race, national origin, religion, or mental or physical disability, equal rights and opportunities in the postsecondary institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

66252. (a) All students have the right to participate fully in the educational process, free from discrimination and harassment.

(b) California's postsecondary educational institutions have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.

(c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.

(d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.

(e) There is an urgent need to teach and inform students in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase students' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in postsecondary educational institutions and in society as a means of responding to potential harassment and hate violence.

(f) It is the intent of the Legislature that each postsecondary educational institution undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of students to equal educational opportunity.

(g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal

Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.

Article 2. Definitions

66260. The definitions in this article shall govern the use of the terms defined for purposes of this chapter.

66261. "Governing board" means the governing board of a community college.

66261.5. "Postsecondary educational institution" means a public or private institution of vocational, professional, or postsecondary education; the governing board of a community college district; the Regents of the University of California; or the Trustees of the California State University.

66262. "Sex" has the same meaning as defined in Section 212.

66262.5. "Sexual harassment" has the same meaning as defined in Section 212.5.

66263. "State financial assistance" has the same meaning as defined in Section 213.

66264. "State student financial aid" has the same meaning as defined in Section 214.

Article 3. Prohibition of Discrimination

66270. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

66271. This chapter shall not apply to an educational institution that is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

66271.1. The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California may, adopt regulations as required by law to implement this chapter.

Article 4. Sex Equity in Education

66271.5. The provisions of this article are supplemental to any provision in the Constitution or laws of the United States or laws of the State of California, relating to discrimination.

66273. This article shall not apply to the membership practices of a social fraternity or social sorority, exempt from taxation under subdivision (a) of Section 501 of the federal Internal Revenue Code of 1954, whose active membership consists primarily of students in attendance at a postsecondary educational institution.

66281.5. (a) It is the policy of the State of California, pursuant to Section 66251, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary educational institution of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each postsecondary educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The postsecondary educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the postsecondary educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the postsecondary educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the postsecondary educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the postsecondary educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

Article 5. Compliance and Enforcement

66290. Prior to receipt of any state financial assistance or state student financial aid, a postsecondary educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the postsecondary educational institution will be conducted in compliance with this chapter and all other applicable provisions of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the postsecondary educational institution, may be provided for all the programs and activities conducted by a postsecondary educational institution.

66291. (a) A community college district shall submit timely, complete, and accurate compliance reports to the chancellor's office, as that entity may require.

(b) All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

66292.3. (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a community college district or the president of a campus of the California State University, pursuant to this article, to the Board of Governors of the California Community Colleges or the Chancellor of the California State University, as applicable.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders, may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

(c) Nothing in this chapter shall be construed to require an exhaustion of the appeal to the Board of Governors of the California Community Colleges or to the Chancellor of the California State University pursuant to subdivision (a), before civil law remedies may be purchased.

(d) Notwithstanding any other provision of law, a person who alleges that he or she is a victim of discrimination may not seek civil remedies pursuant to this section until at least 90 days have elapsed from the filing of a discrimination complaint with the local educational agency. The 90-day moratorium imposed by this subdivision does not apply to injunctive relief and is applicable only if the local educational agency has appropriately, and in a timely manner, apprised the complainant of his or her right to file a complaint.

66292.4. This chapter may be enforced through a civil action.

SEC. 50. Section 72012 of the Education Code is amended to read:

72012. Every community college shall comply with * * * Sections 221.5, 221.7, and 66016, relating to sex discrimination.

SEC. 51. Section 72015 of the Education Code is amended and renumbered to read:

66271.7. (a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.

(b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.

(c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

(f) The Legislature finds and declares that female students are not accorded opportunities for participation in community college athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in community college athletics be provided equally to male and female students and on an equitable basis to all students.

(g) Insofar as practicable, in apportioning public funds, community college district governing boards shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of the governing board of a community college district, or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and opportunities for participation shall include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(h) It is the further intent of the Legislature that females be given the same opportunity to participate in athletics and compete with other females in individual and team sports as is available to males who compete with other males in individual and team sports. Nothing in this section shall be construed to require a community college to require competition between male and female students in school-sponsored athletic programs.

Exhibit 3
Education Code Sections

§ 66281.5. State policy; institution's written policy

(a) It is the policy of the State of California, pursuant to Section 66251, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary educational institution of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each postsecondary educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The postsecondary educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the postsecondary educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the postsecondary educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the postsecondary educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the postsecondary educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66721.5. Current transfer core curriculum; copies provided to students; availability

(a)(1) The governing board of each community college district shall direct the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum.

(2) As used in this section, "transfer core curriculum" means the lower-division, general education transfer curriculum that, pursuant to Section 66720, is fully articulated between the California Community Colleges and the California State University and University of California.

(b) A copy of the current transfer core curriculum shall be distributed to each newly admitted community college student who is enrolled in a degree or certification program and is physically in attendance at the institution.

(c) The governing board of a community college district shall ensure that the text of the current transfer core curriculum is included in the published class schedule for each academic term. Copies of the transfer core curriculum may also be made available in other locations on each campus, including, but not necessarily limited to, all of the following:

(1) The admissions office.

(2) The bookstore.

(3) The career counseling center.

(4) The veteran's affairs office.

(d) Notwithstanding subdivision (c), the governing board of a community college may, as an alternative to the methods of distribution set forth in subdivision (c), distribute copies of the current transfer core curriculum by any of the following means:

(1) During the registration process.

(2) By mail, with the registration materials or the enrollment materials, or both, or with other items sent to students.

(3) During the issuance of student identification cards.

(4) During student orientation programs.

(e) Nothing in this section shall be construed to limit the distribution of the transfer core curriculum to community college students.

(Added by Stats.2000, c. 187 (A.B.1918), § 3.)

Exhibit 4
Title 5, Code of Regulations Cited

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Equal Employment Opportunity.

The governing board of a community college district shall:

(a) adopt a district policy which describes its equal employment opportunity program and meets the requirements of section 53002;

(b) develop and adopt a district equal employment opportunity plan which meets the requirements of section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by section 53004;

(d) ensure that a program of recruitment is carried out as required by section 53021;

(e) ensure that screening and selection procedures are developed and used in accordance with section 53024;

(f) ensure that, where necessary, additional steps are taken consiste with the requirements of section 53006;

(g) ensure that the pattern of hiring and retention, when viewed over time, is consistent with the objectives established in the district's equal employment opportunity plan; and

(h) substantially comply with the other provisions of subchapter 1 (commencing with section 53000) of chapter 4.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; ar Sections 11135–111139.5, Government Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).
5. New subsection (f), subsection relettering and amendment of newly desigr subsection (g) and NOTE filed 5–31–96; operative 6–30–96. Submitted to O for printing only (Register 96, No. 23).
6. Amendment of section heading, section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning formation of a new college or educational center shall obtain approval such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

public or private school attended by the student, and any other information authorized in writing by the student.

(e) "Financial Aid" means a payment of funds provided to an individual or a payment in kind of tangible or intangible property to the individual which is conditioned on the individual's attendance at a community college.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76210, Education Code; 20 USC 1232(g); and 45 CFR 99.3.

HISTORY

1. Amendment filed 3–15–77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment of subsection (c) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. New subsection (c)(7) filed 8–4–78; effective thirtieth day thereafter (Register 78, No. 31).
4. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54608. Retention and Destruction of Student Records.

The retention and destruction of student records, where not otherwise specifically provided for in this Subchapter, shall be in accordance with regulations adopted by the Board for the retention and destruction of records generally. Such regulations, adopted pursuant to Education Code Sections 70901 and 76220 appear in Division 6, Chapter 10, Subchapter 0.5 (commencing with Section 59020).

NOTE: Authority cited: Sections 70901, 76220 and 76246, Education Code. Reference: Section 72603, Education Code; 20 USC 1232(g); and 45 CFR 99.3.

HISTORY

1. New section filed 10–8–76; effective thirtieth day thereafter (Register 76, No. 41).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 54610. Student Access.

Community college districts shall provide access to student records pursuant to Education Code Section 76230, provided that if any material or document in the student record includes information on more than one student, the rights provided in Section 76230 shall only extend to such information as pertains to the student.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Sections 76230, Education Code; and 20 USC 1232(g).

HISTORY

1. Amendment filed 3–15–77; effective thirtieth day thereafter (Register 77, No. 12).
2. Repealer of Article 2 heading and Section 54610 and new section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54612. Waiver.

A student may waive his or her right to access to student records as provided in Education Code Section 76231. Such waivers shall be in writing and signed by the student.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76231, Education Code; 20 USC 1232(g); and 45 CFR 99.6.

HISTORY

1. Amendment filed 3–15–77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment filed 8–4–78; effective thirtieth day thereafter (Register 78, No. 31).
3. Repealer and new section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54614. Confidential Maintenance of Records.

HISTORY

1. Repealer of Article 3 heading and Section 54614 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54616. Consent.

A community college district may, when the student has provided consent, permit access to the student's records pursuant to Education Code Section 76242. Such consent must be signed and dated by the student.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Sections 76230 and 76242, Education Code; 20 USC 1232(g); and 45 CFR 99.30–99.40.

HISTORY

1. Amendment filed 3–15–77; effective thirtieth day thereafter (Register 77, No. 12).
2. Repealer and new section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54618. Mandatory Access.

HISTORY

1. Repealer filed 3–15–77; effective thirtieth day thereafter (Register 77, No. 12).

§ 54620. Court Orders.

HISTORY

1. Amendment filed 3–15–77; effective thirtieth day thereafter (Register 77, No. 12).
2. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54622. Access.

HISTORY

1. Repealer and new section filed 3–15–77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment filed 8–4–78; effective thirtieth day thereafter (Register 78, No. 31).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54624. Access to Statistical Data.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54626. Directory Information.

(a) Community college districts shall adopt a policy identifying any of the following categories of directory information which may be released: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student.

(b) Directory information, as established by the local governing board, may be released as to any student or former student currently attending the community college, provided that public notice is given at least annually of the categories of information which the district plans to release and of the recipients. Such notice shall also specify the period of time within which the student must inform the district in writing that such personally identifiable information is not to be designated as directory information with respect to that student. No directory information shall be released regarding any student or former student when the student or former student has notified the school in writing pursuant to procedures established by the district that such information shall not be released.

(c) Other information may be added to the categories set forth in subsection (a) of this section, provided that release of such information shall be authorized in writing by the student.

(d) Any district may, in its discretion, limit or deny the release of specific categories of directory information to any public or private nonprofit organization based upon a determination of the best interests of students. The names and addresses of students may be provided to a private school or college operating under the provisions of Division 10 of the Education Code, or its authorized representative, provided, however, that no such private school or college shall use such information for other than purposes directly related to the academic or professional goals of the institution.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Sections 76240 and 76242, Education Code; 20 USC 1232(g); and 45 CFR 99.40.

HISTORY

1. Amendment filed 3–15–77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment of subsection (d) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment of subsections (b) and (d) filed 8–4–78; effective thirtieth day thereafter (Register 78, No. 31).

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 54803. Termination of Fee.

(a) Any student representation fee that has been instituted pursuant to the procedures enumerated in section 54801 may be terminated by a majority of the students voting in an election called in one of the following two manners:

(1) By placing the issue on the ballot for the next regular associated student body election. The issue shall be placed on the ballot upon receipt of a petition indicating an interest in the termination of the representation fee signed by a majority of the number of students who voted in the election establishing the fee.

(2) Pursuant to procedures pre–established by the student body association for calling such an election. Such procedures shall be available for public inspection during regular business hours.

(b) The elections shall be conducted in accordance with the procedures established pursuant to section 54801.

NOTE: Authority cited: Section 66700, 70901 and 76060.5, Education Code. Reference: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 54805. Collection of the Fee.

District governing boards shall include in the materials given to each student at registration, information pertaining to the representation fee. The form used by a college for the purpose of collecting the fee shall contain, at a minimum, the following:

(a) a statement indicating that the money collected pursuant to this article shall be expended to provide support for students or representatives who may be stating their positions and viewpoints before city, county, and district government, and before offices and agencies of the state and federal government;

(b) the amount of the fee;

(c) a statement informing the students of their right to refuse to pay the fee for religious, political, moral or financial reasons.

NOTE: Authority cited: Sections 66700, 70901 and 76060.5, Education Code. References: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 54912. Residence Questionnaires.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Chapter 6. Curriculum and Instruction

Subchapter 1. Programs, Courses and Classes

Article 1. Program, Course and Class Classification and Standards

§ 55000. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.

(b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

(c) "Class" means a community services offering.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer of chapter 1 (subchapters 1–3, sections 55000–55144, not consecutive) and new chapter 1 (articles 1–2, sections 55000–55180, not consecutive) filed 12–21–81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 80, No. 11; 77, No. 45; and 71, No. 9.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55000.5. Handbook; Monitoring and Review of Approved Courses and Programs.

(a) The Chancellor shall prepare, distribute, and maintain a detailed handbook for use by the local educational agencies. The handbook shall contain course approval criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals.

(b) The Chancellor shall monitor and review courses and programs which were approved under the provisions of section 70901 of the Education Code for compliance with applicable statutes and regulations on a periodic basis.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55001. Community College Educational Program.

(a) The instructional services of community colleges include:

(1) liberal arts and sciences education:

(A) baccalaureate oriented/transfer programs and courses

(B) associate degree programs and courses

(C) developmental programs and courses

1. compensatory programs and courses
2. adult elementary and secondary basic skills programs and courses

(D) community education programs and courses

1. personal development and survival courses
2. parenting and family support courses
3. community and civic development courses
4. general and cultural courses

(2) occupational education:

(A) vocational/technical transfer programs and courses

(B) vocational/technical associate degree and certificate programs and courses

dards of attendance and achievement that the committee deems appropriate for the enrolled students. In order to be eligible for state apportionment, such courses are limited to the categories of instruction listed in ...cation Code Section 84711 and must be approved by the Chancellor's ...ice as noted in Title 5, Section 55150.

(2) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the scope, objectives, contents, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met.

(3) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

(d) Community Services Class. A community services class is a class that meets the following minimum requirements:

(1) is approved by the local district governing board;

(2) is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein;

(3) provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students;

(4) is conducted in accordance with a predetermined strategy or plan;

(5) is open to all members of the community; and

(6) may not be claimed for apportionment purposes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of subsection (a) filed 12–28–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 5–18–84; effective thirtieth day thereafter (Register 84, No. 20).
3. Repealer and new section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).
6. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
7. Editorial correction of HISTORY 4 (Register 95, No. 20).

§5002.5. Credit Hour; Allowance for Shorter Term.

One credit hour of community college work is approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks. Where a term is more or less than 16 weeks, more or less than one credit hour shall be allowed in the same ratio that the length of the term is to 16 weeks.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55004. Social Science Courses.

The course of instruction in social sciences shall include a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States of America.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four–year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit–no credit, and if so, which provision of subsection (a) of section 51302 is applicable.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55006. Records and Reports.

Authorities of each community college maintaining credit and noncredit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55008. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error in second paragraph (Register 91, No. 43).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
4. Editorial correction of HISTORY 1 (Register 95, No. 20).

Article 2. Approval of Courses, Programs and Classes

§ 55100. Course Approval.

Except as provided in subsection (b) and section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not approval by the Chancellor is required, the district shall designate the appropriate classification of the course or activity in accordance with section 55001.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

(1) it was established prior to July 6, 1990, and is part of a sequence of degree–applicable courses within a given discipline; or

(2) it was established between July 6, 1990, and the effective date of this regulation, in accordance with regulations in effect during this period of time; or

(3) it is required by statute or regulation; or

(4) it is part of a closely–related lecture–laboratory course pairing within a discipline; or

(5) it is required by four–year institutions.

(e) A course in communication or computation skills may be established as a prerequisite or corequisite for any course other than another course in communication or computation skills only if, in addition to conducting a content review, the district gathers data according to sound research practices and shows that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or corequisite. If the curriculum committee initially determines, pursuant to Section 55002(a)(2)(E), that a new course needs to have a communication or computation skill prerequisite or corequisite, then, despite Subsection (d) of this Section, the prerequisite or corequisite may be established for a single period of not more than two years while the research is being conducted and the final determination is being made, provided that all other requirements for establishing the prerequisite or corequisite have been met. The requirements of this subdivision related to collection of data shall not apply when:

(1) four–year institutions will not grant credit for a course unless it has the particular communication or computation skill prerequisite; or

(2) the prerequisite or corequisite is required for enrollment in a program, that program is subject to approval by a state agency other than the Chancellor's Office and both of the following conditions are satisfied:

(A) colleges in at least six different districts have previously satisfied the data collection requirements of this subdivision with respect to the same prerequisite or corequisite for the same program; and

(B) the district establishing the prerequisite or corequisite conducts an evaluation to determine whether the prerequisite or corequisite has a disproportionate impact on particular groups of students described in terms of race, ethnicity, gender, age or disability, as defined by the Chancellor. When there is a disproportionate impact on any such group of students, the district shall, in consultation with the Chancellor, develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact.

(f) Any prerequisite or corequisite may be challenged by a student on one or more of the grounds listed below. The student shall bear the initial burden of showing that grounds exist for the challenge. Challenges shall be resolved in a timely manner and, if the challenge is upheld, the student shall be permitted to enroll in the course or program in question. Grounds for challenge are:

(1) The prerequisite or corequisite has not been established in accordance with the district's process for establishing prerequisites and corequisites;

(2) The prerequisite or corequisite is in violation of this Article;

(3) The prerequisite or corequisite is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(4) The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite;

(5) The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available; and

(6) Such other grounds for challenge as may be established by the district governing board.

(g) In the case of a challenge under Subsection (f)(3) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

(h) District policies adopted pursuant to this section shall be submitted to the Chancellor as part of the district's matriculation plan pursuant to Section 55510 of Subchapter 6 of Chapter 6 of this Division.

NOTE: Authority cited: Section 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
2. Amendment of subsection (e), new subsections (e)(1)–(e)(2)(B) and amendment of NOTE filed 2–9–98; operative 3–11–98. Submitted to OAL for printing only (Register 98, No. 7).

§ 55202. Additional Rules.

The following additional rules apply to the establishment of prerequisites and corequisites:

(a) Prerequisites, corequisites, and advisories on recommended preparation must be identified in college publications available to students as well as the course outline of any course for which they are established.

(b) Prerequisites establishing communication or computational skill requirements may not be established across the entire curriculum unless established on a course–by–course basis.

(c) The determination of whether a student meets a prerequisite shall be based on successful completion of an appropriate course or on an assessment using multiple measures. Any assessment instrument used shall be selected and used in accordance with the provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

(d) If a prerequisite requires precollegiate skills in reading, written expression, or mathematics, the governing board of a district shall ensure that precollegiate basic skills courses designed to teach the required skills are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course.

(e) Whenever a corequisite course is established, sufficient sections shall be offered to reasonably accommodate all students who are required to take the corequisite. A Corequisite shall be waived as to any student for whom space in the corequisite course is not available.

(f) No exit test may be required to satisfy a prerequisite or corequisite unless it is incorporated into the grading for the prerequisite or corequisite course.

(g) The determination of whether a student meets a prerequisite shall be made prior to his or her enrollment in the course requiring the prerequisite, provided, however, that enrollment may be permitted pending verification that the student has met the prerequisite or corequisite. If the verification shows that the student has failed to meet the prerequisite, the student may be involuntarily dropped from the course if the applicable enrollment fees are promptly refunded. Otherwise a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or to the student code of conduct.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

Article 3. Distance Education

§ 55205. Definition and Application.

Distance education means instruction in which the instructor and student are separated by distance and interact through the assistance of communication technology. All distance education is subject to the general requirements of this chapter as well as the specific requirements of this article. In addition, instruction provided as distance education is subject to the requirements that may be imposed by the Americans with Disabili-

tended Opportunity Programs and Services (EOPS) and Disabled Students Programs and Services (DSPS) are authorized, consistent with the provisions of chapter 1 (commencing with section 56000) and chapter 2.5 ...mmencing with section 56200) of division 7 of this part, to provide ...cialized matriculation services and modified or alternative matriculation services to their respective student populations. Notwithstanding this authorization, participation in the EOPS and DSPS programs is voluntary and no student may be denied necessary accommodations in the assessment process because he or she chooses not to use specialized matriculation services provided by these programs. Modified or alternative matriculation services for limited or non–English–speaking students may be provided in English as a Second Language programs.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700, 70901, and 84500.1, Education Code. Reference: Section 11135, Government Code; Sections 72011, 78211, 78213, and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55523. Counseling and Advisement.

(a) If not already required to do so by the minimum standards for counseling services set forth in section 51018 of division 1 of this Part, each community college district shall do all of the following:

(1) make reasonable efforts to ensure that all nonexempt students who ... on probation participate in counseling as provided in section 55759 of this Part;

(2) make reasonable efforts to ensure that all nonexempt students who have not declared a specific educational goal participate in counseling to assist them in the process of selecting a specified educational goal pursuant to section 55525;

(3) make reasonable efforts to ensure that all nonexempt students who are enrolled in pre–collegiate basic skills courses participate in counseling or advisement; and

(4) make available to all students, as defined in section 55502(i), advisement or counseling on general academic requirements and the selection of specific courses by counselors or appropriately trained instructor/advisors, and/or other appropriately trained staff working in consultation with counselors.

(b) Counseling by appropriately trained counselors or advisement by appropriately trained staff may also be made available in any other area the district deems appropriate, including but not limited to, the interpretation of assessment results and the development of a student's educational ...lan as required by section 55525.

...OTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55524. Assessment.

The Chancellor shall establish and update, at least annually, a list of approved assessment instruments and guidelines for their use by community college districts. These guidelines shall identify modifications of an assessment instrument or the procedures for its use which may be made in order to provide special accommodations required by section 55522 without separate approval by the Chancellor. Such guidelines shall also describe the procedure by which districts may seek to have assessment instruments approved and added to the list. The Chancellor shall ensure that all assessment instruments included on the list minimize or eliminate cultural or linguistic bias, are normed on the appropriate populations, yield valid and reliable information, identify the learning needs of students, make efficient use of student and staff time, and are otherwise consistent with the educational and psychological testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55525. Student Educational Plan.

(a) Each community college district shall establish a process for assisting students to select a specific educational goal within a reasonable time after admission as required by Section 55530 (d). This shall include, but not be limited to, the provision of counseling as required by Section 55523(a)(2).

(b) Once a student has selected a specific educational goal, the district shall afford the student the opportunity to develop a student educational plan describing the responsibilities of the student, the requirements he or she must meet, and the courses, programs, and services required to achieve the stated goal.

(c) The student educational plan developed pursuant to Subsection (b) shall be recorded in written or electronic form. The plan and its implementation shall be reviewed as necessary to ensure that it continues to accurately reflect the needs and goals of the student.

(d) If a student believes the district has failed to make good faith efforts to develop a plan, has failed to provide services specified in the student educational plan, or has otherwise violated the requirements of this Section, the student may file a complaint pursuant to Section 55534 (a).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).
2. Amendment of subsections (a), (c) and (d) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55526. Student Follow–up.

Each community college district shall establish a student follow–up process to assist the student in achieving his/her educational goal. The follow–up system shall ensure that the academic progress of each student is regularly monitored to detect early signs of academic difficulty and students shall be provided with advice or referral to specialized services or curriculum offerings where necessary. Districts shall also identify and refer to counseling or advisement, as appropriate pursuant to section 55523(a), any students who have not declared a specific educational goal as required by section 55530, who are enrolled in pre–collegiate basic skills courses, or who have been placed on probation.

NOTE: Authority cited: Sections 66700 and 70901, Educational Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 4. Appeals, Waivers, Student Rights and Responsibilities

§ 55530. Student Rights and Responsibilities.

(a) Nothing in this Subchapter shall be construed to interfere with the right of a student admitted to a community college in accord with district admission policies adopted pursuant to Education Code Section 76000, et seq. to enroll in any course for which he or she can meet necessary and appropriate prerequisites, if any, which have been established pursuant to the requirements of Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of this Division.

(b) Community college districts shall take steps to ensure that information is available in written form to all students during or prior to enrollment (e.g., during orientation) and is included in class schedules, catalogs or other appropriate publications, describing their rights and responsibilities under this Chapter.

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to avoid additional testing by submitting scores on recently taken tests that correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission; declare a specific educational goal within a reasonable period after admission; participate in counseling or advisement pursuant to Section 55523(a)(1), (2), and (3); diligently attend class and complete assigned coursework; and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of Chapter 9 (commencing with Section 55750) of Division 6 of this Part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this Subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree-applicable credit course work, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to Section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to Section 55525. If a student fails to fulfill the responsibilities listed in this Subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his or her specific educational goal, or fails to abide by the terms of his or her student educational plan, the district may, subject to the requirements of this Chapter, suspend or terminate the provision of services authorized in Section 55520, provided however, that nothing in this Section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of Chapter 6 (commencing with Section 54600) of Division 5 of this Part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 76000, 76001, 76001.5 and 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (b) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
3. Amendment of subsections (a), (b) and (d) filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Each community college district shall establish written procedures by which students may challenge any alleged violation of the provisions of this Subchapter. Districts shall investigate and attempt to resolve any such complaints in a timely manner. Such complaint procedures may be consolidated with existing student grievance procedures by action of the governing board. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under Section 55512(c).

(b) When a challenge contains an allegation that a community college district has violated the provisions of Section 55521(a)(6), the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135–11139.5, Government Code; Sections 78211 and 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment of subsection (b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) "Vocational education contract" means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) "The California State Plan for Vocational Education" means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94–482 and 95–40), part A, Vocational Education, or any subsequent federal legislation.

(c) "Contractor" as used in section 55602 means any private postsecondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300), and which has been in operation

§ 55728. Flexible Calendar Attendance Reporting.

(a) On forms provided by the Chancellor, districts with approved flexible calendar operations shall report at least the following:

(1) the total hours of classroom assignments (teaching time) which instructors specified in the district's approved plan were required to teach;

(2) of the total in Subsection (a)(1), the total faculty contact hours of instruction for which staff, student, and instructional improvement activities are being substituted. This total of faculty contact hours shall further be reported in terms of credit and noncredit faculty contact hours of instruction; and

(3) the number of faculty contact hours of instruction for which instruction during the designated days is being substituted. Such instruction during the designated days meeting the attendance accounting standards may be claimed for apportionment; and the faculty contact hours shall not be eligible for adjustment pursuant to Section 55729.

(b) Districts with approved flexible calendar operations shall also report such additional data as deemed necessary by the Chancellor including any data necessary to compute the FTES adjustment specified in Section 55729.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. New section filed 11–10–82; effective thirtieth day thereafter (Register 82, No. 46).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).
3. Amendment of subsections (a)(1), (a)(3), (b) and NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
4. Amendment of subsections (a)(2)–(b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55729. Full–time Equivalent Student (FTES) Units; Adjustments to Reflect Activities; Computation by Multiplier Factor.

(a) The Chancellor's Office shall adjust the actual units of full–time equivalent student of a district operating under a plan approved in accordance with Sections 55720–32 to reflect the conduct of staff, student, and instructional improvement activities in lieu of scheduled instruction during flexible time. The adjusted units of full–time equivalent student shall be computed by multiplying the actual units of full–time equivalent student in the academic year, exclusive of any intersessions, computed pursuant to Section 58003.1, by a factor which does not change the full–time equivalent student which would have otherwise been generated if the time for the improvement activities had not been permitted and scheduled instruction had instead taken place.

(b) For courses other than those described in Subsection (b) of Section 58003.1, the multiplier factor shall equal the sum of the following:

(1) 1.0; and

(2) the total of all the actual hours of flexible time of all instructors pursuant to Section 55720 in the fiscal year, divided by the total of all the actual hours of classroom instruction of all instructors in the academic year, exclusive of any intersessions.

(c) For those courses described in Subsection (b) of Section 58003.1, this multiplier factor shall equal the maximum term length multiplier set forth in that Subsection.

(d) The Chancellor shall also withhold the appropriate amount of state aid whenever there is a final audit finding that an instructor did not spend at least as much time performing staff, student, and instructional improvement activities as the amount of time he or she was released from classroom instruction.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
2. Amendment of section heading and text filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55730. Ongoing Responsibilities of Districts.

A district conducting an approved flexible calendar shall do all of the following to ensure effective use of resources during flex days:

(a) conduct and annually update a survey of the most critical staff, student, and instructional improvement needs in the district;

(b) develop and carry out a plan of activities to address the critical needs;

(c) maintain records on the description, type and number of activities scheduled and the number of district employees and students participating in these activities;

(d) evaluate annually the effectiveness of conducted activities and update the plan to reflect needed changes;

(e) appoint and hold regular meetings of an advisory committee composed of faculty, students, administrators and other interested persons to make recommendations on staff, student, and instructional improvement activities; and

(f) provide, upon request of the Chancellor, copies of documents and information specified in Subsections (a) through (d), inclusive.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).

§ 55732. Ongoing Responsibilities of the Chancellor.

The Chancellor shall:

(a) Adjust state aid for districts with approved flexible calendar operations in accordance with the provisions of section 55729 of this Part;

(b) Periodically review documentation from selected districts to determine whether they are in compliance with the provisions of sections 55726, 55728, and 55730, and to determine whether they are conducting their flexible calendar operations in a manner consistent with the approved requests. Districts which are found to be out of compliance shall be notified and be given an opportunity to respond; and

(c) Terminate approval of any flexible calendar operation if it is found that the district has, without good cause:

(1) failed to conduct its flexible calendar operation in a manner consistent with its approved request;

(2) failed to carry out the responsibilities specified in section 55726; or

(3) failed to meet its ongoing responsibilities as specified in section 55730.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).
2. Amendment filed 5–15–93; operative 6–14–93 (Register 93, No. 25).

Subchapter 9. Standards of Scholarship

§ 55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by section 51002 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. New chapter 9 (sections 55750–55765) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with section 55758.

(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55752. Credit–No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit–no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit–no credit" or a letter grade.

(b) All units earned on a "credit–no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit–no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300–55352 of this part may be graded on a "credit–no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55753. Credit by Examination.

(a) The governing board of each community college district shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this Subchapter.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The nature and content of the examination shall be determined solely by faculty in the discipline that normally teaches the course for which credit is to be granted in accordance with policies and procedures approved by the curriculum committee established pursuant to Section 55002. The faculty shall determine that the examination adequately measures mastery of the course content as set forth in the outline of record. The faculty may accept an examination conducted at a location other than the community college for this purpose.

(d) A separate examination shall be conducted for each course for which credit is to be granted. Credit may be awarded for prior experience or prior learning only in terms of individually identified courses for which examinations are conducted pursuant to this section.

(e) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(f) Grading shall be according to the regular grading scale approved by the governing board pursuant to Section 55758, except that students shall be offered a credit–no credit option if that option is ordinarily available for the course.

(g) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Amendment filed 1–4–2002; operative 7–1–2002. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2002, No. 8).

§ 55753.5. Articulation of High School Courses.

(a) For purposes of this section, the term "articulated high school course" means a high school course or courses that the faculty in the appropriate discipline, using policies and procedures approved by the curriculum committee established pursuant to Section 55002, have determined to be comparable to a specific community college course.

(b) The governing board of a community college district may adopt policies to permit articulated high school courses to be applied to community college requirements in accordance with this Section. Articulated high school courses may be accepted in lieu of comparable community college courses to partially satisfy:

(1) requirements for a certificate program, including the total number of units required for the certificate; or,

(2) the major requirements in a degree program.

(c) Articulated high school courses used to partially satisfy certificate or major requirements shall be clearly noted as such on the student's academic record. Notations of community college course credit shall be made only if community college courses are successfully completed or if credit is earned via credit by examination.

(d) Except through credit by examination, as defined in Section 55753, high school courses may not be used to satisfy:

(1) the requirement of Section 55806 that students complete at least 60 semester or 90 quarter units in order to receive an associate degree; or,

(2) any general education requirement for the associate degree established by the district.

(e) All community college district–high school articulation agreements shall be subject to the provisions of this Section. However, any student who, prior to the date this Section takes effect, has successfully completed a high school course articulated under the terms of a previo agreement shall be permitted to apply the credit so earned according the terms of the previous agreement.

NOTE: Authority cited: Sections 66700, 70901 and 70902, Education Code. Reference: Sections 66700, 70901 and 70902, Education Code.

HISTORY

1. New section filed 1–4–2002; operative 7–1–2002. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2002, No. 8).

§ 55753.7. Advanced Placement Examinations.

The governing board of a community college district may adopt policies to grant credit for satisfactory completion of advanced placement examinations typically recognized by colleges and universities as measuring competencies comparable to those achieved in baccalaureate level courses.

The faculty in the appropriate discipline must approve advanced placement examinations, scores deemed to constitute satisfactory performance, courses offered by the college for which credit will be granted, and requirements that may be met by such examinations in accordance with policies and procedures approved by the curriculum committee established pursuant to Section 55002.

The student's academic record shall be clearly annotated to reflect t credit was earned through an advanced placement examination.

NOTE: Authority cited: Sections 66700, 70901 and 70902, Education Code. Reference: Sections 66700, 70901 and 70902, Education Code.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college–level courses, request reinstatement to proceed with college–level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit–no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average using only the following evaluative symbols, except as provided in subsections (b) and (c):

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board of a community college district may use "plus" and "minus" designations in combination with letter grades, except that the grade of C minus shall not be used. If pluses and minuses are used, the grade point value of a plus shall be computed by adding 0.3 to the value assigned to the letter grade with which it is combined, and the grade point value of a minus shall be computed by subtracting 0.3 from the value assigned to the letter grade with which it is combined, except that no grade point value shall be less than 0 or greater than 4.0.

(c) Regardless of whether the governing board elects to use plus and minus grading, it may provide for the use of the "FW" grade symbol to indicate that a student has both ceased participating in a course some time after the last day to officially withdraw from the course without having achieved a final passing grade, and that the student has not received district authorization to withdraw from the course under extenuating circumstances. The "FW" symbol may not be used if a student has qualified for and been granted military withdrawal. If "FW" is used, its grade point value shall be zero (0).

(d) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) or subsections (a) and (b) (if pluses and minuses are used) in the catalog or catalogs of that community college district as a part of its grading practices. In the event the governing board chooses to use the "FW" described in subsection (c), it shall be included in the grading scale and point equivalencies published in the catalog.

(e) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open–entry, open–exit" course is assigned an "IP" at the end of an attendance period and does not re–enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in this Section other than a "W."

Symbol	*Definition*
	The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in Sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.
MW	Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following: "Military Withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s. In no case would a military withdrawal result in a student being assigned an "FW" grade.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of subsection (c) filed 5–20–91 and submitted to OAL on 5–24–91 for printing only pursuant to Education Code section 10901.5; operative 6–19–91 (Register 91, No. 31).
3. Editorial correction of printing error in NOTE (Register 91, No. 43).
4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).
5. Editorial correction of HISTORY 1 (Register 95, No. 22).
6. Amendment of subsection (a), new subsection (b), subsection relettering, amendment of newly designated subsection (c), and amendment of NOTE filed 1–12–98; operative 2–11–98. Submitted to OAL for printing only (Register 98, No. 3).
7. Amendment of subsection (a), new subsection (c), subsection relettering, and amendment of newly designated subsections (d) and (e) filed 12–8–2000; operative 1–7–2001. Submitted to OAL for printing only (Register 2000, No. 50).

§ 55758.5. Grade Point Averaging.

(a) This section augments and should be read in conjunction with Section 55758 relating to academic record symbols and grade point average.

(b) In calculating students' degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–25–91; operative 11–24–91 (Register 92, No. 7).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(e) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(f) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(g) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Repealer of subsection (d), subsection relettering, and amendment of NOTE filed 3–25–98; operative 4–24–98. Submitted to OAL for printing only (Register 98, No. 14).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded.

(b) Except as provided in Subsection (c), repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition. Grades awarded for courses repeated under the provisions of this subsection shall not be counted in calculating a student's grade point average.

(c) If a district permits repetition of courses where substandard work has not been recorded, repetition shall be permitted, without petition, in instances when such repetition is necessary for a student to meet a legally mandated training requirement as a condition of continued paid or volunteer employment. Such courses must conform to all attendance accounting, course approval, and other requirements imposed by applicable provisions of law. Such courses may be repeated for credit any number of times, regardless of whether or not substandard work was previously recorded, and the grade received each time shall be included for purposes of calculating the student's grade point average. The governing board of a district may establish policies and procedures requiring students to certify or document that course repetition is necessary to complete legally mandated training pursuant to this subsection.

(d) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Amendment of section and NOTE filed 3–25–98; operative 4–24–98. Submitted to OAL for printing only (Register 98, No. 14).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of

[The next page is 360.4(c).]

grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55800.5. Minimum Credit Hours for Graduation from Two-Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1983).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

2. Editorial correction of HISTORY 1 (Register 95, No. 23).

58056. Immediate Supervision and Control.

(a) Subdivision (a)(1) of section 58051 requires, as a condition for claiming attendance for apportionment purposes, the immediate supervision and control of an academic employee authorized to render service in a capacity and during the period in which he or she served. Immediate supervision and control requires the presence of the authorized employee. More specifically, immediate supervision or presence is characterized by all of the following:

(1) The authorized employee is able, in terms of physical proximity and range of communication, to provide immediate instructional supervision and control; and

(2) The authorized employee is in a position to provide the supervision and control necessary for the protection of the health and safety of students; and

(3) The authorized employee is not to have any other assigned duty during the instructional activity for which attendance is being claimed. The criteria specified above are to be applied in recognition of the fact that the need for immediate supervision will vary according to the course being offered, as well as with the design or mode of instruction of such course or program.

(b) Under the following limited circumstances, attendance of students enrolled in a course or program which does not meet the requirements of subdivision (a) shall qualify for apportionment purposes if:

(1) The course or program is approved and being conducted as distance education in accordance with article 3 (commencing with section 55205) of subchapter 1 of chapter 6; or

(2) The course or program is approved and being conducted as independent study in accordance with subchapter 4 (commencing with section 55300) of chapter 6; or

(3) The course or program is approved and being conducted as work experience education in accordance with subchapter 3 (commencing with section 55250) of chapter 6 of this part; or

(4) The course or program is approved and is being conducted as health sciences education in accordance with section 58055(a).

(c) Attendance generated solely under an instructional assistant or aide does not qualify for apportionment. In addition, instructional aides shall not be used to increase the number of students in relation to the number of classroom instructors in the district. However, attendance may qualify for apportionment under the following limited circumstances:

(1) The assistant or aide functions under the exclusive direction of the authorized employee assigned to that educational activity, and not independently; and

(2) The assistant or aide performs only those duties specifically authorized by law, including, but not limited to, sections 88240–88249 of the Education Code; and,

(3) The authorized employee is able, in terms of physical proximity and range of communication, to provide necessary supervision and control of students, so that by working in conjunction with the assistant or aide, the requirements of subsection (a) of this section are met.

NOTE: Authority cited: Sections 66700, 70901 and 84500, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 58058. Employee of the District.

(a) A person is an "employee of the district" within the meaning of subdivision (a)(1) of Section 58051 if:

(1) The district has the primary right to control and direct the person's activities during the time such person is serving the district; and

(2) A contract exists between the person and the district, indicia of which may include provisions which specify the terms and conditions of work, salary and other compensation, work to be performed, and employment classification; and,

(3) The district compensates the person according to an adopted salary or wage schedule which complies with the provisions of Article 8 (commencing with Section 87801), Chapter 3, Part 51 of the Education Code.

(b) For the purposes of complying with the requirements of this section, a district may also contract for instruction to be provided by a public or private agency. Such contracts shall specify that the district has the primary right to control and direct the activities of the person or persons furnished by the public or private agency during the term of the contract. In addition, the district shall enter into a written contract with each person furnished by the public or private agency; and said contracts shall meet the requirements of subsection (a)(1) and (2) of this section. In this manner an individual employed will continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

NOTE: Authority cited: Sections 66700, 70901 and 84500, Education Code. Reference: Sections 70901, 84500 and 87801, Education Code.

HISTORY

1. Amendment of subsections (a) and (a)(3) and NOTE filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 58060. Valid Employment Qualifications.

For the purposes of Sections 58051 and 58056, the employee is deemed authorized to perform the services because he or she is employed pursuant to a valid, unrevoked credential issued by the Board of Governors or pursuant to minimum qualifications adopted by the Board of Governors or equivalencies pursuant to Section 53430.

(a) If the person serves pursuant to a credential,

(1) It must authorize the holder to provide instruction in the particular subject matter or matters; and

(2) It must authorize the holder to provide that instruction during the period in which the holder is providing it.

(b) If the person serves pursuant to minimum qualifications adopted by the Board of Governors or equivalencies, the qualifications or equivalencies must be related to the assignment and effective during the period of instruction for which attendance is being claimed.

(c) For purposes of this section, an employee is deemed authorized to perform the services if he or she is employed as a faculty intern.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 84500 and 87487, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
2. Editorial correction of subsection (b) (Register 95, No. 47).

Subchapter 2. Limitations on State Aid

Article 1. Open Courses

§ 58100. Open Enrollment.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Section 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58106. Limitations on Enrollment.

In order to be claimed for purposes of state apportionment, all courses shall be open to enrollment by any student who has been admitted to the college, provided that enrollment in specific courses or programs may be limited as follows:

(a) Enrollment may be limited to students meeting prerequisites and corequisites established pursuant to Sections 55200–55202 of this Division,

(b) Enrollment may be limited due to health and safety considerations, facility limitations, faculty workload, the availability of qualified instructors, funding limitations, the constraints of regional planning or legal requirements imposed by statutes, regulations, or contracts. The governing board shall adopt policies identifying any such limitations and requiring fair and equitable procedures for determining who may enroll in affected courses or programs. Such procedures shall be consistent with one or more of the following approaches:

(1) limiting enrollment to a "first–come, first–served" basis or using other nonevaluative selection techniques to determine who may enroll; or

(2) limiting enrollment using a registration procedure authorized by Section 58108; or

(3) in the case of intercollegiate completion, honors courses, or public performance courses, allocating available seats to those students judged most qualified; or

(4) limiting enrollment in one or more sections of a course to a cohort of students enrolled in one or more other courses, provided however, that a reasonable percentage of all sections of the course do not have such restrictions; or

(5) with respect to students on probation or subject to dismissal, the governing board may, consistent with the provisions of Sections 55754–55755 of this Part, limit enrollment to a total number of units or to selected courses, or require students to follow a prescribed educational plan.

(c) A student may challenge an enrollment limitation established pursuant to Subsection (b) of this Section on any of the following grounds:

(1) the enrollment limitation is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(2) the district is not following its policy on enrollment limitations;

(3) the basis upon which the district has established an enrollment limitation does not in fact exist; or

(4) any other criteria established by the district.

(d) The student shall bear the burden of showing that grounds exists for the challenge. Challenges shall be handled in a timely manner, and if the challenge is upheld, the district shall waive the enrollment limitation with respect to that student.

(e) In the case of a challenge under Subsection (c)(1) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer and new section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42). For prior history, see Register 92, No. 15.

§ 58107. Facilities and Opportunities for Participation.

Notwithstanding any other provision of law, no public funds shall be used in connection with athletic programs conducted under the auspices of a community college district governing board or any student organization within the district, which do not provide facilities and opportunities for participation by both sexes on an equitable basis. Facilities and opportunities for participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58108. Registration and Enrollment Procedures.

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off–campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58110. Enrollment Limitations.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

Article 2. 175–Day Rule

§ 58120. Conditions for Inclusion as a Day.

(a) For a day to count towards meeting the requirements of section 58142, courses of instruction must be offered for a minimum of three hours during the period of 7 a.m. and 11 p.m.

(b) Notwithstanding subsection (a) of this section, days of final examination may be counted toward meeting the requirements of section 58142, provided that:

Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.

(b) Notify the district and the complainant that there is no probable cause to believe the district has violated the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59358. Hearing.

If the Chancellor finds the district has violated the provisions of this subchapter, and if the district does not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant to chapter 5 (commencing with section 11500) of part I, division 3, title 2 of the Government Code, to determine whether the violation did occur.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).

   Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59360. Enforcement.

(a) Upon a determination that a district has violated the provisions of this subchapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including:

(1) Withhold all or part of the district's state support;

(2) Make probationary eligibility for future state support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state funding to a district pursuant to this section shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of subsections (a), (a)(2) and (b) and amendment of NOTE filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59362. Judicial Review.

A decision by the Chancellor pursuant to section 59360 is subject to judicial review by the district, as provided by section 1094.5 of the Code of Civil Procedure.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3–20–2002; operative 4–19–2002. Submitted to OAL for printing only (Register 2002, No. 13).

Subchapter 6. Waiver of Part–Time Instructor Limit

NOTE: Authority cited: Sections 71020 and 87613, Education Code. Reference: Section 87613, Education Code.

HISTORY

1. New Chapter 6 (Sections 59380–59388, not consecutive) filed 6–1–82; effective thirtieth day thereafter (Register 82, No. 23).
2. Repealer of Chapter 6 (Sections 59380–59388, not consecutive) filed 3–7–85; effective thirtieth day thereafter (Register 85, No. 10).

Subchapter 7. Instructional and Other Materials

§ 59400. Required Instructional and Other Materials.

(a) The governing board of a district may, consistent with the provisions of this Subchapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.

(b) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. New chapter 7 (sections 59400–59408, not consecutive) filed 5–16–85; effective thirtieth day thereafter (Register 85, No. 20).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of subsection (a) and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59402. Definitions.

For the purposes of this Subchapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost and:

(1) the material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or

(2) the material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of opening statement, subsections (a) and (c)–(c)(2) and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course

shall adopt policies or regulations, consistent with the provisions of this Subchapter, which specify the conditions under which such materials will be required.

(b) The policies or regulations specified in Subsection (a) shall be adopted no later than January 1, 1986, forwarded to the Chancellor's Office upon adoption, and thereafter published in each college catalog developed after the date of adoption.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of section and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59406. Report to Chancellor.

The governing board of a community college district which prescribes required instructional and other materials for its courses shall respond to periodic surveys or inquiries of the Chancellor on the subject.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59406.5. Reports Re Instructional Materials Used.

Each district board shall make reports, whenever required, directly to the Board of Governors or Chancellor's Office, concerning the instructional materials used in its colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59408. Operative Date and Violations of Subchapter.

(a) The regulations in this Subchapter shall become operative on August 15, 1985, provided that a district governing board which wishes to implement these regulations earlier may do so.

(b) The governing board of a district which prescribes required instructional and other materials in violation of this Subchapter shall be deemed to have established a student fee not expressly established by law.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of section heading, text and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

Subchapter 7.5. Student Financial Obligations

§ 59410. Withholding Grades, Transcripts, etc., for Nonrepayment of Financial Obligations.

The governing board of a community college district may provide by appropriate rules and regulations that grades, transcripts, diplomas and registration privileges, or any combination thereof, shall be withheld from any student or former student who has been provided with written notice that he or she has failed to pay a proper financial obligation due to the district or a college. Any item or items withheld shall be released when the student satisfactorily meets the financial obligation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. New subchapter 7.5 heading filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

Subchapter 8. District Reorganization

§ 59420. Newly Formed District.

A community college district is a newly formed district up to the close of the fiscal year in which its formation became effective for all purposes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New subchapter 8 and section filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 59422. Use of Bond Proceeds.

When the territory of a district is reorganized, any funds derived from the sale of the bonds issued by the former district shall be used for the acquisition, construction, or improvement of college property only in the territory which comprised the former district or to discharge the bonded indebtedness of the former district, except that if the bonded indebtedness is assumed by the new district, the funds may be used in any area of the new district for the purposes for which the bonds were originally voted.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Renumbering and amendment of former section 53530 to section 59422 filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 59424. Territory of District Becoming Part of Two or More Districts; Disposition of Records.

If all the territory of any reorganized district becomes part of two or more districts, and the inclusion in the two or more districts of the several portions of territory comprising the whole of the original district is effective for all purposes on the same date, the records of the original district shall be disposed of as follows:

(a) All records of the original district which are required by law to be kept on file shall be deposited with the governing board of the district which, after the reorganization has become effective for all purposes, has located within its boundaries the former office of the superintendent of the original district.

(b) Records of employees shall be transferred to the district thereafter employing the personnel or thereafter maintaining the last place of employment.

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only

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COMMISSION ON STATE MANDATES

Exhibit B

TEST CLAIM FORM

Claim No. 02-TC-31

Local Agency or School District Submitting Claim

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person

Keith B. Petersen, President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, California 92117

Telephone Number

Voice: 858-514-8605
Fax: 858-514-8645

Claimants Addresses

Thomas J. Donner, Executive Vice President, Business/Administration
Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

(1169/02) Minimum Conditions for State Aid
See Attached

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Thomas J. Donner
Executive Vice President, Business/Administration

Telephone No.

VOICE: (310) 434-4201
FAX: (310) 434-8200

Signature of Authorized Representative

X Thomas J. Donner

Date

June 13, 2003

Attached Exhibit to Form CSM 2
Test Claim of Santa Monica Community College District
Minimum Conditions for State Aid (1169/02)

Chaptered Bills:

Chapter 1169, Statutes of 2002
Chapter 187, Statutes of 2000
Chapter 587, Statutes of 1999
Chapter 1023, Statutes of 1998
Chapter 914, Statutes of 1998
Chapter 365, Statutes of 1998
Chapter 758, Statutes of 1995
Chapter 493, Statutes of 1995
Chapter 1198, Statutes of 1991
Chapter 1188, Statutes of 1991
Chapter 1038, Statutes of 1991
Chapter 1667, Statutes of 1990
Chapter 1372, Statutes of 1990
Chapter 1514, Statutes of 1988
Chapter 973, Statutes of 1988
Chapter 1467, Statutes of 1986
Chapter 1371, Statutes of 1984
Chapter 537, Statutes of 1983
Chapter 143, Statutes of 1983
Chapter 1329, Statutes of 1982
Chapter 1117, Statutes of 1982
Chapter 891, Statutes of 1981
Chapter 470, Statutes of 1981
Chapter 910, Statutes of 1980
Chapter 977, Statutes of 1979
Chapter 797, Statutes of 1979
Chapter 967, Statutes of 1977
Chapter 36, Statutes of 1977
Chapter 1176, Statutes of 1976
Chapter 1010, Statutes of 1976
Chapter 783, Statutes of 1976
Chapter 275, Statutes of 1976
Chapter 802, Statutes of 1975

Education Code Sections:

212
212.5
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214
221.5
221.7
66010.2
66010.7
66016
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California Code of Regulations:

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Attached Exhibit to Form CSM 2
Test Claim of Santa Monica Community College District
Minimum Conditions for State Aid (1169/02)

Implementing Guidelines Handbooks:

Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002)

"Program and Course Approval Handbook" Chancellor's Office California Community Colleges (September 2001)

"Student Equity Guidelines for Developing a Plan" Fall 2002, The Academic Senate for California Community Colleges
(Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions")
(Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14,1997, adopted by the Academic Senate Fall 2002)

Informational Exibits:

Component 5: Equal Employment Opportunity
Memo issued by the Board of Governors, "Title 5 Regulations: Equal Employment Opportunity, Action Scheduled" (July 8-9, 2002)

Component 7: Approval of New Colleges and Educational Centers
Memo issued by the Board of Governors, "Approval of College Status for Folsom Lake Center, Los Rios Community College District, Action Scheduled" (November 12-13, 2002)

Component 16: Matriculation
Report issued by the Chancellor's Office, "Matriculation Standards"

Memo issued by the Board of Governors, "Study Session on Basic Skills, Information" (July 8-9, 2002)

Component 18: Student Equity
Report issued by the Board of Governor's Committee on Equity, Diversity and Human Resources, "Report from the Equity and Diversity Task Force" (November 12-13, 2002)

Component 20: Compliance Enforcement
Report issued by the Board of Governors, "Minutes of the Meeting" (November 12, 2002)

General Information
Report issued by the Chancellor's Office, "Description of Grant Programs Administered by the Chancellor's Office" (last revised October 9, 2002)

Report issued by the Chancellor's Office, "AB 1725: A Comprehensive Analysis" (January 1989)

Memo issued by the Chancellor's Office, "AB 1725: First Major Update" (August 1989)

Memo issued by the Chancellor's Office, "AB 1725: Second Major Update" (October 1990)

Claim Prepared By:
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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	)	No. CSM. _____
	)	
	)	
Santa Monica Community	)	
	)	Chapter 1169, Statutes of 2002
College District	)	Chapter 187, Statutes of 2000
	)	Chapter 587, Statutes of 1999
	)	Chapter 1023, Statutes of 1998
	)	Chapter 914, Statutes of 1998
	)	Chapter 365, Statutes of 1998
	)	Chapter 758, Statutes of 1995
	)	Chapter 493, Statutes of 1995
	)	Chapter 1198, Statutes of 1991
	)	Chapter 1188, Statutes of 1991
	)	Chapter 1038, Statutes of 1991
	)	Chapter 1667, Statutes of 1990
	)	Chapter 1372, Statutes of 1990
	)	Chapter 1514, Statutes of 1988
	)	Chapter 973, Statutes of 1988
	)	Chapter 1467, Statutes of 1986
	)	Chapter 1371, Statutes of 1984
	)	Chapter 537, Statutes of 1983
	)	Chapter 143, Statutes of 1983
	)	Chapter 1329, Statutes of 1982
	)	Chapter 1117, Statutes of 1982
	)	Chapter 891, Statutes of 1981
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	)	Chapter 910, Statutes of 1980
	)	Chapter 977, Statutes of 1979

)	Chapter 797, Statutes of 1979
)	Chapter 967, Statutes of 1977
)	Chapter 36, Statutes of 1977
)	Chapter 1176, Statutes of 1976
)	Chapter 783, Statutes of 1976
)	Chapter 275, Statutes of 1976
)	Chapter 802, Statutes of 1975
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)	Education Code Sections 70901, 70901.5 and 70902
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)	Minimum Conditions for State Aid

COMPONENT 1: STANDARDS OF SCHOLARSHIP:
T5, CCR, Sections 51002, 55750-55765

COMPONENT 2: DEGREES AND CERTIFICATES:
T5, CCR, Sections 51004, 55800-55809

COMPONENT 3: OPEN COURSES:
T5, CCR, Sections 51006, 58102-58108

COMPONENT 4: COMPREHENSIVE PLAN:
Education Code Sections 81820-81823 T5, CCR, Sections 51008, 55401-55405

COMPONENT 5: EQUAL EMPLOYMENT OPPORTUNITY:
Education Code Sections 87100-87108 T5, CCR, Sections 51010, 53000-53034

COMPONENT 6: STUDENT FEES:
T5, CCR, Section 51012

COMPONENT 7: APPROVAL OF NEW COLLEGES AND EDUCATIONAL CENTERS:
T5, CCR, Sections 51014, 55825-55831

COMPONENT 8: ACCREDITATION:
T5, CCR, Section 51016

Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002)

COMPONENT 9: COUNSELING PROGRAMS:
T5, CCR, Section 51018

COMPONENT 10: INSTRUCTIONAL OBJECTIVES:
T5, CCR, Section 51020

COMPONENT 11: CURRICULUM:
T5, CCR, Sections 51021, 55000-55350

"Program and Course Approval Handbook" Chancellor's Office California Community Colleges (September 2001)

COMPONENT 12: VOCATIONAL EDUCATION PROGRAMS:
Education Code Sections 78015-78016 T5, CCR, Sections 51022, 55600-55630

COMPONENT 13: COURSE ARTICULATION-LOCAL:
T5, CCR, Section 51022

COMPONENT 14: ACADEMIC FREEDOM:
T5, CCR, Section 51023

COMPONENT 15: SHARED GOVERNANCE (Faculty, Staff, Students):
T5, CCR, Sections 51023-51023.7, 53200-53207

COMPONENT 16: MATRICULATION:
Education Code Sections 78210-78218 T5, CCR, Sections 51024, 55500-55534

COMPONENT 17: FULL-TIME / PART-TIME FACULTY:
Education Code Sections 87482.6-87482.7 T5, CCR, Sections 51025, 53300-53314

COMPONENT 18: STUDENT EQUITY:
Education Code Sections 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251-66292.3, 72011-72014

T5, CCR, Sections 51026, 54220

Chancellor's Office "Student Equity Plan Review Procedures and Instructions" (Appendix 1 of "Student Equity: Guidelines for Developing a Plan," 2002)

Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, adopted by the Academic Senate Fall 2002 (Appendix 3 of "Student Equity Guidelines for Developing a Plan, 2002)

COMPONENT 19: TRANSFER CENTERS: Education Code Sections 66720-66745, 71027	T5, CCR, Section 51027
COMPONENT 20: ENFORCEMENT Education Code Section 70901(b)	T5, CCR, Sections 51000, 51100-51102

TEST CLAIM FILING

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551 (a) to ". . . hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." The Santa Monica Community College District is a "school district" as defined in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs subject to reimbursement by the state for community colleges to comply with a variety of state code and regulatory requirements (minimum requirements) the satisfaction of which entitles a college district to receive state

[1]Government Code section 17519, as last amended by Chapter 1459/84:

"School district" means any school district, community college district, or county superintendent of schools.

aid and for which noncompliance results in fiscal and other penalties.

California Community Colleges Board of Governors' Duties

Education Code section 70901[2], subdivision (b) added by Statutes of 1988,

[2]Education Code section 70901, as added by Statutes of 1988, Chapter 973, section 8, as amended by Statutes of 1998, Chapter 1023, section 1:

(a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements,

Chapter 973 (AB 1725), section 8, requires the state Board of Governors of the California

and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Contract for the procurement of goods and services, as necessary.

(16) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

Community Colleges to provide leadership and development of the community college system, the implementation of which is listed in subordinate paragraphs. Pursuant to paragraph (1), establish minimum standards as required by law, including, but not limited to, the following: (A) student academic standards relating to graduation requirements and probation, dismissal, and readmission policies; (B) for the employment of academic and administrative staff in community colleges; (C) for the formation of community colleges and districts; (D) standards for credit and noncredit classes; and, (E) to ensure faculty, staff, and students the right to participate effectively in district and college governance (a.k.a. shared governance). Pursuant to paragraph (6), establish minimum conditions entitling districts to receive state aid for support of community colleges, and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors. Pursuant to paragraph (8), facilitate articulation with other segments of higher education with secondary education. Pursuant to paragraph (9), review and approve comprehensive plans for each community college district. Pursuant to paragraph (10), review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors. Pursuant to paragraph (11), exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor. Pursuant to paragraph (12), notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary,

the uniform budgeting and accounting structures and procedures for the California Community Colleges.

Pursuant to subdivision (c), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

Pursuant to subdivision (e), in performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals.

Education Code section 70901.5[3] added by Statutes of 1988, Chapter 973 (AB

[3]Education Code section 70901.5, as added by Statutes of 1988, Chapter 973, section 8:

(a) The board of governors shall establish procedures for the adoption of rules and regulations governing the California Community Colleges. Among other matters, the procedures shall implement the following requirements:

(1) Written notice of a proposed action shall be provided to each community college district and to all other interested parties and individuals, including the educational policy and fiscal committees of the Legislature and the Department of Finance, at least 45 days in advance of adoption. The regulations shall become effective no earlier than 30 days after adoption.

(2) The proposed regulations shall be accompanied by an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state-mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies.

(3) The board of governors shall ensure that all proposed regulations of the board meet the standards of "necessity," "authority," "clarity," "consistency," "reference," and "nonduplication," as those terms are defined in Section 11349 of the Government Code. A district governing board or any other interested party may challenge any proposed regulatory action regarding the application of these standards.

(4) Prior to the adoption of regulations, the board of governors shall consider and respond to all written and oral comments received during the comment period.

(5) The effective date for a regulation shall be suspended if, within 30 days after adoption

1725), section 8, required the state Board of Governors of the California Community Colleges to establish and utilize a method of rulemaking for the adoption of rules and regulations (Title 5, California Administrative Code) governing the California Community Colleges.

Community College District Governing Board Duties

Education Code section 70902[4], added by Statutes of 1988, Chapter 973 (AB 1725),

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by the board of governors, at least two-thirds of all governing boards vote, in open session, to disapprove the regulation. With respect to any regulation so disapproved, the board of governors shall provide at least 45 additional days for review, comment, and hearing, including at least one hearing before the board itself. After the additional period of review, comment, and hearing, the board may do any of the following:

(A) Reject or withdraw the regulation.

(B) Substantially amend the regulation to address the concerns raised during the additional review period, and then adopt the revised regulation. The regulation shall be treated as a newly adopted regulation, and shall go into effect in accordance with those procedures.

(C) Readopt the regulation as originally adopted, or with those nonsubstantive, technical amendments deemed necessary to clarify the intent of the original regulation. If the board of governors decides to readopt a regulation, with or without technical amendments, it shall also adopt a written declaration and determination regarding the specific state interests it has found necessary to protect by means of the specific language or requirements of the regulation. A readopted regulation may then be challenged pursuant to existing law in a court of competent jurisdiction, and shall not be subject to any further appeal within the California Community Colleges.

(6) As to any regulation which the Department of Finance determines would create a state-mandated local program cost, the board of governors shall not adopt the regulation until the Department of Finance has certified to the board of governors and to the Legislature that a source of funds is available to reimburse that cost.

(7) Any district or other interested party may propose a new regulation or challenge any existing regulation.

(b) Except as expressly provided by this section, and except as provided by resolution of the board of governors, the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to regulations adopted by the board of governors.

[4] Education Code section 70902, as added by Statutes of 1988, Chapter 973, section 8:

(a) Every community college district shall be under the control of a board of trustees, which is referred to herein as the "governing board." The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any

section 8, requires local community college governing boards to:

Pursuant to subdivision (a) establish, maintain, operate, and govern their community

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manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.

The governing board of each community college district shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district.

(b) In furtherance of the provisions of subdivision (a), the governing board of each community college district shall do all of the following:

(1) Establish policies for, and approve, current and long-range academic and facilities plans and programs and promote orderly growth and development of the community colleges within the district. In so doing, the governing board shall, as required by law, establish policies for, develop, and approve, comprehensive plans. The governing board shall submit the comprehensive plans to the board of governors for review and approval.

(2) Establish policies for and approve courses of instruction and educational programs. The educational programs shall be submitted to the board of governors for approval. Courses of instruction that are not offered in approved educational programs shall be submitted to the board of governors for approval. The governing board shall establish policies for, and approve, individual courses that are offered in approved educational programs without referral to the board of governors.

(3) Establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors.

(4) Employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors and establish employment practices, salaries, and benefits for all employees not inconsistent with the laws of this state.

(5) To the extent authorized by law, determine and control the district's operational and capital outlay budgets. The district governing board shall determine the need for elections for override tax levies and bond measures and request that those elections be called.

(6) Manage and control district property. The governing board may contract for the procurement of goods and services as authorized by law.

(7) Establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right to participate effectively in district and college governance, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(8) Establish rules and regulations governing student conduct.

(9) Establish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law.

(10) In its discretion, receive and administer gifts, grants, and scholarships.

(11) Provide auxiliary services as deemed necessary to achieve the purposes of the community college.

(12) Within the framework provided by law, determine the district's academic calendar, including the holidays it will observe.

(13) Hold and convey property for the use and benefit of the district. The governing board may acquire by eminent domain any property necessary to carry out the powers or functions of the district.

(14) Participate in the consultation process established by the board of governors for the development and review of policy proposals.

colleges in accordance with law, and to shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of their community colleges.

Pursuant to subdivision (b), paragraph (1), establish policies for, and approve, current and long-range academic and facilities plans and programs and promote orderly growth and development of the community colleges within the district. In so doing, the governing board shall, as required by law, establish policies for, develop, and approve, comprehensive plans. The governing board shall submit the comprehensive plans to the board of governors for review and approval. Pursuant to paragraph (2), establish policies for and approve courses of instruction and educational programs. The educational programs shall be submitted to the board of governors for approval. Pursuant to paragraph (3), establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors. Pursuant to paragraph (4), employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors and establish employment practices, salaries, and benefits for all employees not inconsistent with the laws of this state. Pursuant to paragraph (7), establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to participate effectively in district and college governance. Pursuant to paragraph (8), establish rules and regulations governing student conduct. Pursuant to paragraph (9), establish student fees as it is required to establish by law, and,

in its discretion, fees as it is authorized to establish by law. Pursuant to paragraph (12), within the framework provided by law, determine the district's academic calendar, including the holidays it will observe. Pursuant to paragraph (14), participate in the consultation process established by the board of governors for the development and review of policy proposals.

Title 5 Enforcement of Minimum Conditions for State Aid

In furtherance of the Education Code sections 70901 and 70902 requirements to establish minimum conditions for the receipt of state aid, the State Board of Governors adopted Title 5, California Code of Regulations, sections 51000 through 51027, and for the enforcement of these regulations, sections 51100 and 51102.

For purposes of this test claim, the program costs subject to state reimbursement for community college districts to comply with the minimum conditions are presented in nineteen separate subject matter conditions, with the compliance duty presented as condition 20.

PART II. LEGISLATIVE HISTORY OF THE CLAIM

CONDITION 1 STANDARDS OF SCHOLARSHIP

This condition alleges mandated costs reimbursable by the state for community college districts to adopt and comply with regulations pertaining to the standards of scholarship required of students in each district.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Title 5, Section 51002 (added in 1983 and last amended in 1994) requires the

governing board of a community college district to: (a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6; (b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and (c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Section 55750 (added in 1983 and last amended in 1991), requires the district to adopt "regulations" for standards of scholarship and publish those policies and procedures in the college catalog and file them with the Chancellor's Office.

Section 55751 (added in 1983 and last amended in 1991), requires each district to establish a uniform grading practice that is based on sound academic principles and includes a grading scale for degree, certificate, and licenses and credit-no credit options for other courses.

Section 55752 (added in 1983 and last amended in 1991), permits a district to offer specified courses on a credit-no credit basis. Subdivision (a) requires that if such credit-no credit courses are offered, the community college must specify so in its catalog. Units earned on this basis must be counted in satisfaction of curriculum requirements and considered in probation and dismissal procedures, but must not be used to calculate grade point averages, pursuant to subdivisions (b) and (c). The credit-no credit basis may be used for independent study courses and must be used for courses in which there is a single standard of performance for which unit credit is assigned, pursuant to subdivisions (d) and (e).

Section 55753 (added in 1983 and last amended in 2002) requires the governing board of each community college district to adopt and publish procedures and regulations pertaining to credit by examination. Subdivision (b) permits the governing board to grant credit to any student who passes an examination for a course listed in the school catalog, so long as that student is registered and in good standing with the college. Subdivision (c) requires the nature and content of an examination to be determined solely by faculty in the discipline that normally teaches in that subject, to be in accordance with the curriculum committee's established policies and procedures, and to adequately measure mastery of the course content. Subdivision (d) requires a separate examination to be conducted for each course for which credit is to be granted. Subdivision (e) requires a student's academic record to be clearly annotated to reflect that credit was earned by examination. Subdivision (f) requires grading to be in according to the regular, approved grading scale unless a credit-no credit option is ordinarily available for a certain course. Subdivision (g) prohibits counting the units for which credit is given under this section toward the determination of residence credit hours.

Section 55753.5 (added in 2002), subdivision (b), permits the governing board of each community college district to adopt and publish procedures and regulations to permit articulated high school courses to be accepted in lieu of comparable community college courses to partially satisfy requirements for certificate programs or the major requirements of a degree program. Subdivision (c) requires that any credits earned in

this manner be clearly noted on the student's academic record as such. Subdivision (d) prohibits these type of credits from being used to bypass any general education requirements or minimum credit units required to earn an associates degree. Subdivision (e) requires all community college district-high school articulation agreements to be subject to this section unless a student has successfully completed a similar course under a previous agreement prior to the date this Section takes effect.

Section 55753.7 (added in 2002) permits the governing board of each community college district to adopt and publish procedures and regulations which grant credit for satisfactory completion of advanced placement examinations as approved by relevant faculty. Any credit earned through an advanced placement examination must be clearly annotated on a student's academic record as such.

Section 55754 (added in 1983 and last amended in 1991) requires the governing board of each community college district to adopt statewide standards for academic probation or adopt local standards which exceed the statewide standard. The statewide standards require a student to be placed on "academic probation" if the student has attempted at least 12 semester units and has earned a grade point average of below 2.0 for units graded based on the regular grading scale. A student must be placed on "progress probation" if the number of classes for which a student has earned a "withdraw", "incomplete" or "no credit" on his or her record, reaches or exceeds fifty percent in relation to all units in which a student has enrolled.

Section 55755 (added in 1983 and last amended in 1991) requires the governing

board of each community college district to adopt statewide standards for removal from academic probation or adopt local standards which exceed the statewide standard. The statewide standard requires a student on academic probation to be removed from probation when his or her grade point average is 2.0 or higher. A student on progress probation must be removed when the percentage of units for which a "withdraw", "incomplete" or "no credit" has been recorded, drops below 50 percent.

Section 55756 (added in 1983 and last amended in 1991) requires the governing board of each community college district to adopt statewide standards for dismissal or to adopt local standards which exceed the statewide standard. The statewide standard requires a student who is on academic probation to be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters. A student on progress probation will be subject to dismissal if the percentage of units for which a "withdraw", "incomplete" or "no credit" has been recorded in at least 3 consecutive semesters, reaches or exceeds 50 percent. Section 55756 also requires the district board to adopt rules outlining exceptions to the standards for dismissal and to file those rules with the Chancellor.

Section 55756.5 (added in 1990) provides the limits of remedial coursework a student may take; requires that the need for remedial coursework be determined using appropriate assessment instruments, methods, or procedures provided by matriculation procedures; allows dismissed students to reapply for reinstatement; and requires remedial education statistics regarding success rates of the program and the effect on

students by sex, age, and ethnicity, to be reported as part of the Management Information System. Students enrolled in at least one course of English as a Second Language or who have been identified as having a learning disability, will be exempted form the limitation on remedial coursework.

Section 55757 (added in 1983 and last amended in 1991) requires the governing board of each community college district to adopt rules governing the inclusion in or exclusion of the number of "units attempted" in which a student did not receive a grade or "credit-no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

Section 55758 (added in 1983 and last amended in 2001), subdivision (a), requires the governing board to utilize a statewide grading scale established on the basis of point equivalencies and to notify students of these standards by publication. Subdivision (b) permits a community college district governing board to use "plus" and "minus" designations in combination with letter grades, with some limitations. Subdivision (e) authorizes the use of the following non-symbols and provides guidelines for the use of each: "I": Incomplete, "IP": In Progress, "RD": Report Delayed: "W": Withdrawal, and "MW": Military Withdrawal.

Section 55758.5 (added in 1991) requires that when calculating students' degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.

Section 55759 (added in 1983 and last amended in 1991) requires the district to

publish probation and dismissal policies and procedures in the college catalog; to make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect; make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties; and make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district.

Section 55760 (added in 1983 and last amended in 1991) provides that grades shall be determined by the instructor and shall be final in the absence of mistake and requires that the governing board adopt policies and publish the procedures for the repetition of courses.

Section 55761 (added in 1983 and last amended in 1991) requires the district governing board to adopt and publish procedures or regulations pertaining to course repetition for those courses in which a student has earned a grade of "D", "F", and/or "NC".

Section 55762 (added in 1983 and last amended in 1998) provides guidelines for the implementation of any procedures or regulations adopted by the community college governing board pertaining to course repetition. Such policies must comply with existing law, indicate any courses which are exempt, provide for indication on a student's permanent record of any courses repeated, be published, and provide for maintenance of a record of any actions taken under such course repetition procedures that have

been adopted.

Section 55763 (added in 1983 and last amended in 1998) establishes special circumstances for course repetition. A district governing board is permitted to adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded upon a petition of the student and with the written permission of the governing board based on just cause. If such policies are adopted, subdivision (c) requires course repetition to be granted, without petition, if necessary for a student to meet a legally mandated training requirement as a condition of continued employment. Subdivision (d) requires that when course repetition under this section occurs, the student's permanent academic record must be annotated as such.

Section 55764 (added in 1983 and last amended in 1991) requires that the governing board to adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance which is not reflective of a student's demonstrated ability. Any changes made to a student's grade pursuant to such "academic renewal regulations" must be annotated on the student's permanent record as such.

Section 55765 (added in 1983 and last amended in 1991) provides the statewide criteria for implementing academic renewal without course repetition.

CONDITION 2 DEGREES AND CERTIFICATES

This condition alleges mandated costs reimbursable by the state for community college districts to adopt and comply with regulations for awarding degrees and

certificates.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Section 51004 (added in 1983 and last amended in 1994), requires the governing board of a community college district to: (a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6, regarding degrees and certificates; (b) file a copy of its regulations and any amendments thereto with the Chancellor; and (c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Section 55800 (added in 1983 and last amended in 1991), requires the governing board of a community college district to adopt policies and procedures for awarding degrees and certificates, to publish the policy and to provide a copy to the Chancellor's Office.

Section 55800.5 (added in 1991), requires the governing board of a community college district to award an associate degree to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

Section 55801 (added in 1983 and last amended in 1991), defines the term "satisfactorily completed" as "either credit earned on a "credit-no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum

upon which the degree is based. The term "satisfactorily completed" is used in Section 55806, pertaining to the minimum requirements for an Associate Degree, and in Section 55809, pertaining to the district governing board's duty to grant a diploma.

Sections 55802 and 55803 (both added in 1983 and last amended in 1991) provide the associate degree requirements that were in effect until July 1, 1983.

Section 55805 (added in 1983 and last amended in 1991), requires the governing board of a community college district to adopt and review on a regular basis policies and implementation criteria for its specific philosophy on General Education. The district's adopted philosophy is required to be consistent with the stated philosophy of the State Board of Governors. Some of the goals stated in the Board of Governors' philosophy include: encouraging students' abilities to think and communicate clearly and effectively both orally and in writing; to use mathematics; to understand the modes of inquiry of the major disciplines; to be aware of other cultures and times; to achieve insights gained through experience in thinking about ethical problems; and to develop the capacity for self-understanding.

Section 55805.5 (added in 1983 and last amended in 1991), provides that the criteria established by the district governing board to implement its philosophy on the associate degree must permit only courses that conform to the standards specified in section 55002(a) (which outlines the curriculum standards and criteria for associate degree courses) and that fall into the following four categories to be offered for associate degree credit: (a) all lower division courses accepted toward the

baccalaureate degree by the California State University or University of California or designed to be offered for transfer; (b) courses that apply to the major in non-baccalaureate occupational fields; (c) English courses not more than one level below the first transfer level composition course, typically known as English 1A; (d) all mathematics courses above and including Elementary Algebra; and (e) credit courses in English and mathematics taught in or on behalf of other departments and which, as determined by the local governing board require entrance skills at a level equivalent to those necessary for the courses specified in subdivisions.

Section 55806 (added in 1988 and last amended 1991) provides the associate degree requirements, effective from July 1, 1983 to the present. A district governing board is required to confer the degree of Associate in Arts or Associate in Science upon a student who has demonstrated competence in reading, written expression, and mathematics, and who has satisfactorily completed at least 60 semester units or 90 quarter units of college work in a curriculum accepted toward the degree by a college within the district. Such course work must include at least 18 semester or 27 quarter units in General Education and at least 18 semester or 27 quarter units in a recognized major. Of the required units, at least 12 semester or 18 quarter units must be completed in residence at the college granting the degree. Subdivision (a) requires that, for a student to fulfill the requirements for his or her Major, the student must take at least 18 semester or 27 quarter units of study in a single discipline or related disciplines, as listed in the Community Colleges "Taxonomy of Programs". Subdivision (b) outlines the

General Education requirements for an Associate Degree. Subdivision (b)(1) provides that, to earn an Associate Degree, students are required to complete a minimum of 18 semester or 27 quarter units of general education, including a minimum of three semester or four quarter units in each of the following five areas: natural sciences; social and behavioral sciences; humanities; English composition; communication and analytical thinking. Courses that fulfill the Natural Sciences requirement must be designed in a manner that helps the student develop an appreciation and understanding of the scientific method, and encourages an understanding of the relationships between science and other human activities. Courses that fulfill the Social and Behavioral Sciences requirement must be designed to develop an awareness of the method of inquiry used by the social and behavioral sciences and also to stimulate critical thinking about the ways people act and have acted in response to their societies. Courses that fulfill the Humanities requirement must be designed to help the student develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and an ability to make value judgments. Qualifying English Composition courses must be designed to include both expository and argumentative writing. Finally, courses that fulfill the Communication and Analytical Thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines. Subdivision (b)(2) prohibits courses from being counted more than once to

satisfy a general education requirement. Subdivision (b)(3) requires districts to offer Ethnic Studies in at least one of the required areas.

Section 55807 (added in 1983 and last amended 1991), provides for the conversion of noncredit courses to academic credit. Such conversion may be permitted only upon student petition and subsequent certification by a governing board, based upon evidence of prescribed credit-level competence as approved by the faculty.

Section 55808 (added in 1988 and last amended 1991), requires the governing board of a community college district to issue a certificate of achievement to any student whom the governing board determines has completed successfully any course of study or curriculum for which a certificate of achievement is offered.

Section 55809 (added in 1983 and last amended 1991) requires the governing board of a community college district to award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements.

Section 55810 (added in 1983, last amended 1991) requires the governing board of a community college district to adopt necessary policies and procedures to implement the transition between degree requirements applicable until July 1, 1983 and requirements applicable on or after July 1, 1983.

CONDITION 3 OPEN COURSES

This condition alleges mandated costs reimbursable by the state for community

college districts to adopt and comply with policies and procedures ensuring open enrollment to all students as a minimum condition of receipt of state aid.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Section 51006 (added in 1983 and last amended in 1994) requires the governing board of a community college district to adopt by resolution and publish in the college catalog and schedule of classes the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

Section 58100, pertaining to open enrollment, was repealed in 1992.

Section 58102 (added in 1982 and last amended in 1993) requires the description of each course to be clear and understandable to the prospective student and to be published in the official catalog, and/or schedule of classes, and/or addenda.

Section 58104 (added in 1982 and last amended in 1993) requires community colleges to describe all prospective course offerings in the official general catalog and/or addenda and to list such courses in the schedules of classes. Courses which are established or conducted after publication of the general catalog or regular schedule of

classes are required to be reasonably well publicized. Districts are prohibited from issuing any course offering announcements to only a limited, specialized clientele, or from giving notice of course offerings to any group or individual prior to issuing the notice to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

Section 58106 (added in 1993) requires that, in order to be claimed by a community college for purposes of state apportionment, all courses must be open to enrollment by any student who has been admitted to the college, unless a limitation applies. Subdivision (a) permits enrollment to be limited by use of properly established prerequisites and corequisites and subdivision (b) outlines other acceptable limitations a community college may use to restrict course enrollment. Such acceptable limitations include those based on: prerequisite requirements, health and safety considerations, faculty limitations, faculty workload, the availability of qualified instructors, funding issues, or constraints of legal requirements. Any limitations must be identified in advance by governing board policy and may be challenged by any student. In the case of a student challenge to an enrollment limitation due to discriminatory basis, the district must, upon completion of the established challenge procedure, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Sections 59300-59362 of Title 5 of the California Code of Regulations.

Section 58107 (added in 1991 and last amended in 1991) requires that any public funds used in connection with athletic programs conducted under the auspices of

a community college district governing board or any student organization within the district, must only be used for programs which provide facilities and opportunities for participation by both sexes on an equitable basis.

Section 58108 (added in 1982 and last amended in 1993) requires all procedures for registration and standards for enrollment in any course to be consistent with law and to be uniformly administered by authorized district employees. Districts are prohibited from doing any of the following to restrict student access to classes: requiring preregistration activities that are not uniformly required; enforcing nonacademic requisites as barriers to enrollment in or completion of a class; or restricting enrollment to a specialized clientele. Finally, districts are prohibited from requiring any student to make any special effort not required of all students to register in a class or course selection. Once enrolled in a class, all students must have equal access to all off-campus sites and facilities.

Section 58110, regarding enrollment limitations, was repealed in 1992.

CONDITION 4 COMPREHENSIVE (MASTER) PLANS

This condition alleges mandated costs reimbursable by the state for community college districts to annually prepare and submit to the Chancellor both educational and capital construction master plans that cover current and long-range plans.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Capital Construction Master Plans

Education Code Section 20065[5] required the governing board of each community college district to prepare and submit to the Chancellor, a ten-year plan for capital construction. In addition, it required that after January 1, 1975, the capital construction plan instead reflect a five-year time period and that an annual report detailing any modifications made to the plan be prepared and submitted to the Chancellor.

Education Code Section 20066[6] required the contents of the capital construction

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[5]Education Code Section 20065, added by Chapter 1550, Statutes of 1967, Section 2, as amended by Chapter 280, Statutes of 1974, Section 1:

"On or before November 1, 1967, the governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district for the 10-year period commencing with that date. After January 1, 1975, the plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The plan shall be subject to continuing review by the governing board and each year shall be extended one year, and there shall be submitted to the chancellor, on or before the first day of November in each succeeding year, a report outlining the required modifications or changes, if any, in the plan."

[6]Education Code Section 20066, added by Chapter 1550, Statutes of 1967, Section 2, as amended by Chapter 1525, Statutes of 1971, Section 13:

"The plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:
(a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas to be emphasized.
(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college within a district shall be made cooperatively by the Department of Finance and the community college district.
(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors.
(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors.
(e) An annual inventory of all facilities of the district using standard definitions, forms, and instructions adopted by the board of governors."

plan to include: (a) the district's plans concerning future academic and student programs and the effect of such programs on any estimated future construction needs; (b) the student enrollment projections expressed in terms of weekly student contact hours; (c) the current student enrollment capacity based on the space standards for classrooms adopted by the Board of Governors; (d) the capacities of the district office, library and supporting facility in accordance with the physical plant standards adopted by the Board of Governors; and (e) an annual inventory of all facilities of the district.

Education Code Section 20067[7] required the Chancellor to review and evaluate the plan for capital construction submitted by the governing board of each community college district, to make revisions and changes as appropriate and to notify the governing board of each district of the approved form and content of the revised plan. This review was required to be made on or before March 1, 1968 and also annually thereafter.

SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974

Capital Construction Master Plans

[7]Education Code Section 20067, added by Chapter 1550, Statutes of 1967, Section 2, as amended by Chapter 280, Statutes of 1974, Section 2:

"The chancellor shall, on or before March 1, 1968, review and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 20066, and shall, on the basis of such review and evaluation, make such revision and changes therein as are appropriate, and approve the same. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each district maintaining a community college shall be made on or before each succeeding first day of December. The chancellor shall, promptly after such approval, notify the governing board of each community college district of the approved form and content of the district's plan for capital construction."

Chapter 783, Statutes of 1976, Section 1, amended Education Code Section 20065[8] to change the deadline for the district to submit its annual capital construction plan to the Chancellor from November to February. In addition, the section was amended to require, for the first time, that the report submitted to the Chancellor include both the five-year construction plan and project planning guides covering projects requested for the first year of the five-year construction plan. The amendment required that a copy of the project planning guides from the report also be transmitted, on or before the first day of February each year, to the Department of Finance and the Joint Legislative Audit Committee.

Chapter 783, Statutes of 1976, Section 2, amended Education Code Section 20067[9] to delete the language requiring the Chancellor's evaluation of a district's capital

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[8]Education Code Section 20065, as amended by Chapter 783, Statutes of 1976, Section 1:

"On or before November 1, 1967, the governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district for the 10-year period commencing with that date. After January 1, 1975, the plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The plan shall be subject to continuing review by the governing board and each year shall be extended one year, and there shall be submitted to the chancellor, on or before the first day of ~~November~~ February in each succeeding year, a report outlining the required modifications or changes, if any, in the plan.

The report to be submitted to the chancellor shall include the five-year construction plan and project planning guides covering projects requested for the first year of the five-year construction plan. A copy of the proposed project planning guides shall be transmitted at that time to the Department of Finance and the Joint Legislative Audit Committee for informational purposes."

[9]Education Code Section 20067, as amended by Chapter 783, Statutes of 1976, Section 2:

"The chancellor shall~~, on or before March 1, 1968,~~ review and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 20066, and shall, on the basis of such review and evaluation, make such revision and changes therein as are appropriate, and approve the same. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing

construction plan to be completed "on or before March 1, 1968" and also changed the deadline for the annual review from December to May.

Chapter 1010, Statutes of 1976, Section 2 (operative April 30, 1977) recodified and renumbered the Education Code. Relevant code sections before and after the recodification and renumbering are as follows:

Former Code Section	New Code Section
20065	81820
20066	81821
20067	81822

Chapter 36, Statutes of 1977, Sections 328 and 329 amended Education Code Sections 81820 and 81822 respectively to make technical "clean-up" changes in response to the recodification of 1010/76/2.

Chapter 967, Statutes of 1977, Section 1 added Education Code Section 81823[10] to allow a community college district that maintains at least one college and

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board of each district maintaining a community college shall be made on or before each succeeding first day of ~~December~~ May. The chancellor shall, promptly after such approval, notify the governing board of each community college district of the approved form and content of the district's plan for capital construction."

[10]Education Code Section 81823, as added by Chapter 967, Statutes of 1977, Section 1:

"(a) If a community college district maintains colleges, or one college and one or more educational centers, it may additionally submit the plan required by Section 81820 on the basis of each college or educational center maintained by the district, if either of the following circumstances is present such that students will be better served by evaluating the capital outlay program for the district on that basis: (1) the isolation of students within a district in terms of the distance of students from the location of an educational program, or inadequacy of transportation, and student financial inability to meet costs of transportation to an educational program; or (2) the inability of existing colleges and educational centers in

one or more educational center, to submit in addition to the district-wide capital construction plan required by Section 81820, a capital construction plan based on each college or educational centers maintained by that district if students would be better served by such an evaluation due to either the rural nature of the district or the unique cultural needs of a significant number of students. Section 81823, for the first time, required the Board of Governors to adopt rules and regulations to implement the above provisions.

Chapter 797, Statutes of 1979, Section 113 amended Education Code Section 81820[11] to require that the plan for capital construction submitted to the Chancellor

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the district to meet the unique educational and cultural needs of a significant number of ethnic students.

(b) If a district elects to submit such a plan, it shall include therewith justification and documentation for so doing.

(c) When a district so elects, the evaluation of the plan pursuant to Section 81822 shall include an evaluation of:

(1) The justification and documentation for so doing, including enrollment projections for individual campuses and centers; and

(2) The plan as thus submitted.

(d) The board of governors shall adopt rules and regulations to implement the provisions of subdivision (a) of this section."

[11]Education Code Section 81820, as amended by Chapter 797, Statutes of 1979, Section 113:

"~~On or before November 1, 1967, t~~The governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district for the ~~10-year~~ five-year period commencing with ~~that date~~ the next proposed year of funding. ~~After January 1, 1975, The plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding.~~ The plan shall be subject to continuing review by the governing board and each year shall be extended one year, and there shall be submitted to the chancellor, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the plan.

The report to be submitted to the chancellor shall include the five-year construction plan and project planning guides covering projects requested for the first year of the five-year construction plan. A copy of the proposed project planning guides shall be transmitted at that time to the Department of Finance and the Joint Legislative Audit Committee for informational purposes."

consist of a five-year plan as opposed to the earlier ten-year plan requirement. This amendment was made in response to the earlier language of this code section which stated that after January 1, 1975 a five-year plan would replace the ten-year plan requirement.

Chapter 910, Statutes of 1980, Section 1, repealed Education Code Sections 81820-81823 respectively and Chapter 910, Statutes of 1980, Section 2, replaced the same code sections, making the following various changes:

Education Code Section 81820[12] was amended to require that the capital construction report submitted to the Chancellor be submitted on or before February 1, 1981, and to delete the requirement that a copy of the proposed project planning guides from the report be transmitted to the Department of Finance and the Joint Legislative Audit Committee.

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[12]Education Code Section 81820, repealed by Chapter 910, Statutes of 1980, Section 1, as replaced by Chapter 910, Statutes of 1980, Section 2:

"On or before February 1, 1981, ~~T~~the governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district. The plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The five-year plan shall be subject to continuing review by the governing board and ~~each year~~ annually shall be extended one year, and there shall be submitted to the chancellor, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the five-year plan.

~~The report to be submitted to the chancellor shall include the five-year construction plan and project planning guides covering projects requested for the first year of the five-year construction plan. A copy of the proposed project planning guides shall be transmitted at that time to the Department of Finance and the Joint Legislative Audit Committee for informational purposes.~~"

Education Code Section 81821[13] was amended to clarify that the plan was to be a five-year plan. In addition, for the first time, the following information was required to be included in the capital construction plan: subdivision (b) required the enrollment figures of educational centers to be included when reporting enrollment projections; subdivision (d) required the district to comply with the standards of the California Postsecondary Education Commission when reporting district office, library, and supporting facility capacities; subdivision (e) required all land of the district to be included in the annual inventory submitted by the district; and subdivision (f) required the district to include an estimate of district funds to be made available for capital outlay matching purposes pursuant to Section 81838.

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[13]Education Code Section 81821, repealed by Chapter 910, Statutes of 1980, Section 1, as added by Chapter 910, Statutes of 1980, Section 2:

"The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

(a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the community college district.

(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors.

(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(e) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.

(f) An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations pursuant to Section 81838."

Education Code Section 81822[14] was amended to change the annual deadline month for the district governing boards to submit their evaluation report of the capital construction plan to the Chancellor from May to April. In addition, the amendment clarified that the Chancellor may disapprove any plans submitted by the districts.

Education Code Section 81823[15] was amended to delete the requirement that

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[14]Education Code Section 81822, repealed by Chapter 910, Statutes of 1980, Section 1, as replaced by Chapter 910, Statutes of 1980, Section 2:

"The chancellor shall review~~,~~ and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 81821, and shall, on the basis of such review and evaluation, make such revision and changes therein as are appropriate, and approve ~~the same~~ or disprove the plan. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each community college district ~~maintaining a community college~~ shall be made on or before each succeeding first day of ~~May~~ April. The chancellor shall, promptly after such approval or disapproval, notify the governing board of each community college district of the ~~approved form and~~ content of the district's plan for capital construction."

[15]Education Code Section 81823, repealed by Chapter 910, Statutes of 1980, Section 1, as replaced by Chapter 910, Statutes of 1980, Section 2:

"(a) If a community college district maintains colleges, or one college and one or more educational centers, it may additionally submit the plan required by Section 81820 on the basis of each college or educational center maintained by the district, if either of the following circumstances is present such that students will be better served by evaluating the capital outlay program for the district on that basis: (1) the isolation of students within a district in terms of the distance of students from the location of an educational program, or inadequacy of transportation, and student financial inability to meet costs of transportation to an educational program; or (2) the inability of existing colleges and educational centers in the district to meet the unique educational and cultural needs of a significant number of ethnic students.

(b) If a district elects to submit such a plan, it shall include therewith justification and documentation for so doing.

(c) When a district so elects, the evaluation of the plan pursuant to Section 81822 shall include an evaluation of both of the following:

(1) The justification and documentation for so doing, including enrollment projections for individual campuses and centers. ~~;and~~

(2) The plan as thus submitted.

~~(d) The board of governors shall adopt rules and regulations to implement the provisions of subdivision (a) of this section.~~"

the Board of Governors adopt rules and regulations to implement the provisions of subdivision (a) of that section.

Chapter 470, Statutes of 1981, Section 256 amended subdivision (c) of Education Code Section 81821[16] to require the district to comply with the standards of the California Postsecondary Education Commission when reporting the current enrollment capacity of the district.

Chapter 891, Statutes of 1981, Sections 2 and 3 amended Education Code Sections 81821 and 81822 respectively to make technical changes.

Chapter 1372, Statutes of 1990, Section 571 amended Education Code Section 81820[17] to require the community college districts to submit their capital construction plans to the Board of Governors, rather than the Chancellor, and to delete language that stated the report must be submitted "on or before February 1, 1981".

Chapter 1372, Statutes of 1990, Section 573 amended Education Code Section

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[16]Education Code Section 81821, as amended by Chapter 470, Statutes of 1981, Section 256:

"...(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards."...

[17]Education Code Section 81820, as amended by Chapter 1372, Statutes of 1990, Section 571:

"~~On or before February 1, 1981, t~~The governing board of each community college district shall prepare and submit to the ~~chancellor~~ Board of Governors of the California Community Colleges a plan for capital construction for community college purposes of the district. The plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The five-year plan shall be subject to continuing review by the governing board and annually shall be extended one year, and there shall be submitted to the ~~chancellor~~ board of governors, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the five-year plan."

81822[18] to require the Board of Governors, as opposed to the Chancellor, to review and evaluate the plan for capital construction and to notify the governing boards of each community college district of any revisions.

Chapter 758, Statutes of 1995, Section 212 amended subdivision (f) of Education Code Section 81821[19] to require, for the first time, the Board of Governors to adopt regulations concerning the district funds required to be made available for capital outlay matching purposes.

SECTION 3. TITLE 5, CALIFORNIA CODE OF REGULATIONS

Comprehensive (Master) Plan

Section 51008 (added in 1983 and last amended in 1994) in subdivision (a) requires the governing board of a community college district to establish policies for, and to approve, comprehensive or master plans for the district which include both (1)

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[18]Education Code Section 81822, as amended by Chapter 1372, Statutes of 1990, Section 573:

"The ~~chancellor~~ board of governors shall review and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 81821, and shall, on the basis of ~~such~~ the review and evaluation, make ~~such~~ the revision and changes therein as are appropriate, and notify the district. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each community college district shall be made ~~on or before each succeeding first day of April~~. The ~~chancellor~~ board of governors shall, promptly after review, notify the governing board of each community college district of the content of the district's revised plan for capital construction."

[19]Education Code Section 81821, as amended by Chapter 758, Statutes of 1995, Section 121:

"The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:
...(f) An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations ~~pursuant to Section 81838~~ adopted by the board of governors."...

academic master plans and (2) long range master plans for facilities. Local rules will determine the content of the master plans; however, districts must ensure that the plans also address the planning requirements that are specified by the Board of Governors. Subdivision (b) requires the plans, as well as any annual updates or changes to such plans, to be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code ("the [comprehensive] plans shall be submitted to the Board of Governors by the governing board of each community college") and with regulations of the Board of Governors pertaining to such plans.

Educational Master Plans

Title 5 Section 55401 (added in 1971 and last amended in 1991) requires the governing board of each Community College district to establish policies for, and to approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

Section 55402 (added in 1971 and last amended in 1991) requires the governing board of each Community College district to annually, on or before November 1 each year, submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole.

Section 55403 (added in 1971 and last amended in 1991) requires each plan to be submitted on a form provided by the Chancellor and to contain such information as the Chancellor requires.

Section 55404, (added in 1971 and last amended in 1991) specifies that each

plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, remedial and developmental programs and ancillary services.

Section 55405 (added in 1971 and last amended in 1991) requires the Chancellor to review each master plan.

CONDITION 5 EQUAL EMPLOYMENT OPPORTUNITY

This condition alleges mandated costs reimbursable by the state for community college districts to implement and comply with policies and procedures pertaining to equal employment opportunity as a minimum condition for receipt of state aid.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Mandated duties regarding equal employment opportunity as a minimum condition for receipt of state aid did not exist prior to January 1, 1975.

SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974

Chapter 766, Statutes of 1978, Section 1 added Education Code Sections 87100-87107, entitled "Affirmative Action Hiring"

2001 Repealer of Affirmative Action Code and Regulations

On September 4, 2001, the California Court of Appeal, in *Connerly v. State Personnel Board* (2001) 92 Cal.App.4th 16, invalidated Education Code sections 87100 - 87107, which were the basis of the Community College affirmative action program. In addition, these Education Code Sections served as the substantive basis for the affirmative action program regulations contained in Title 5, California Code of

Regulations, Sections 53000-53012, which were a minimum condition for state aid, pursuant to Section 51010.

In response to the holding in *Connerly*, Chapter 1169, Statutes of 2002, Section 1 repealed Education Code Sections 87100 - 87107. Chapter 1169, Statutes of 2002, Section 2 then replaced the repealed sections with new Education Code Sections 87100 - 87107, and entitled the article "Equal Employment Opportunity Hiring".

Education Code Section 87100[20] outlines the intent of the Legislature in enacting Education Code Sections 87100 - 87107, specifically, that community college districts adopt and implement programs and plans for ensuring equal employment opportunity in their employment practices so that a community of nondiscrimination and equal

[20]Education Code Section 87100, as added by Chapter 1109, Statutes of 2002, Section 2:

"The Legislature finds and declares all of the following:
(a) In fulfilling its mission within California's system of public higher education, the California Community Colleges are committed to academic excellence and to providing all students with the opportunity to succeed in their chosen educational pursuits.
(b) Academic excellence can best be sustained in a climate of acceptance and with the inclusion of persons from a wide variety of backgrounds and preparations to provide service to an increasingly diverse student population.
(c) A workforce that is continually responsive to the needs of a diverse student population may be achieved by ensuring that all persons receive an equal opportunity to compete for employment and promotion within the community college districts and by eliminating barriers to equal employment opportunity.
(d) It is the intent of the Legislature to establish and maintain, within the California Community College districts, a policy of equal opportunity in employment for all persons, and to prohibit discrimination or preferential treatment based on ethnic group identification, race, color, national origin, religion, age, gender, disability, ancestry, or sexual orientation. Every aspect of personnel policy and practice in the community college districts should advance the realization of inclusion through a continuing program of equal employment opportunity.
(e) The Legislature recognizes that it is not enough to proclaim that community college districts must not discriminate and must not grant preferential treatment on impermissible bases. The Legislature declares that efforts must also be made to build a community in which nondiscrimination and equal opportunity are realized. It is the intent of the Legislature to require community college districts to adopt and implement programs and plans for ensuring equal employment opportunity in their employment practices."

opportunity may be attained in community college districts.

Education Code Section 87101[21] provides definitions for terms pertaining to equal employment opportunity. Subdivision (a) states that "Equal Employment Opportunity" means that "all qualified individuals have a full and fair opportunity to compete for hiring and promotion and fully enjoy the benefits of employment by a community college district". Subdivision (b) defines an "Equal employment opportunity plan" as "a document that includes specific procedures for achieving equal employment opportunity". Finally, subdivision (c) states that an "Equal employment opportunity program" means "all the various methods by which equal employment opportunity is ensured". District employers are required to continually work to devise recruiting, training, and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees.

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[21]Education Code Section 87101, as added by Chapter 1109, Statutes of 2002, Section 2:

"For the purposes of this article:
(a) "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and fully enjoy the benefits of employment by a community college district. Ensuring equal employment opportunity is advanced in an inclusive environment that fosters cooperation, acceptance, democracy, and the free expression of ideas. An inclusive environment is welcoming to men and women, persons with disabilities, individuals from all ethnic groups, and individuals from all other groups protected from discrimination by this article.
(b) "Equal employment opportunity plan" means a document that includes specific procedures for achieving equal employment opportunity.
(c) "Equal employment opportunity program" means all the various methods by which equal employment opportunity is ensured. These methods include, but are not necessarily limited to, actively recruiting, using nondiscriminatory employment practices, and monitoring employment practices to ensure equality of opportunity. Each district employer shall commit to sustained action to devise recruiting, training, and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees."

Education Code Section 87102[22] requires community college districts to prepare and submit to the board of governors an affirmation of compliance with the equal employment opportunity article as a condition for receipt of state aid. Each district's equal opportunity program must include the following: an assurance of district commitment to the program; a list of steps the district will take to eliminate improper discrimination; and the district's plan for achieving the 75% ratio of full-time to part-time faculty hiring, as indicated in Section 87482.6, while still ensuring equal employment opportunity.

Education Code Section 87103[23] requires the board of governors to assist the community colleges in developing and implementing equal employment opportunity programs.

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[22]Education Code Section 87102, as added by Chapter 1109, Statutes of 2002, Section 2:

"(a) As a condition for the receipt of funds pursuant to Section 87107, the governing board of community college district that opts to participate under the article shall periodically submit to the board of governors an affirmation of compliance with this article. Each participating district's equal employment opportunity program shall ensure participation in, and commitment to, the program by district personnel. Each participating district's equal employment opportunity plan shall include steps that the district will take in eliminating improper discrimination or preferences in its hiring and employment practices. Each plan shall address how the district will make progress in achieving the ratio of full-time to part-time faculty hiring, as indicated in Section 87482.6, while still ensuring equal employment opportunity.

(b) Each participating district's equal employment opportunity plan is a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code)."

[23]Education Code Section 87103, as added by Chapter 1109, Statutes of 2002, Section 2:

"The board of governors shall render assistance in developing and implementing equal employment opportunity programs in the community college districts."

Education Code Section 87105[24] requires the board of governors to adopt and implement all regulations necessary to accomplish equal employment opportunity in community college districts and to ensure that each participating community college district implements processes for ensuring equal employment opportunities.

Education Code Section 87106[25], subdivision (a), requires that the board of governors develop and implement systemwide strategies for encouraging community college students to become qualified for, and seek, employment as community college faculty or administrators. Subdivision (b) requires the board of governors to develop, implement and disseminate to community college districts a model equal employment opportunity plan that accomplishes at least all of the following: compliance with the

[24]Education Code Section 87105, as added by Chapter 1109, Statutes of 2002, Section 2:

"The board of governors shall adopt all necessary regulations to carry out the intent of this article and to ensure that each participating community college district implements processes for ensuring equal employment opportunities. Nothing in this act shall be construed to require any community college to incur any costs in excess of the funds allocated by the state for the purposes of this act."

[25]Education Code Section 87106, as added by Chapter 1109, Statutes of 2002, Section 2:

"(a) The board of governors shall develop systemwide strategies for encouraging community college students to become qualified for, and seek, employment as community college faculty or administrators.

(b) The board of governors shall develop and disseminate to community college districts a model equal employment opportunity plan that accomplishes at least all of the following:

(1) Compliance with the regulations adopted by the board of governors to implement this article.

(2) Compliance with the other applicable state and federal nondiscrimination statutes.

(3) Implementation of the best practices for improving the equality of opportunity.

(4) Encouragement of districts to take steps reasonably calculated to inform their students about the opportunity to participate in the Graduate Assumption Program of Loans for Education authorized by Article 5.5 (commencing with Section 69618) of Chapter 2 of Part 42 and to participate in other programs developed by the board of governors pursuant to subdivision (a)."

adopted equal employment opportunity regulations; compliance with applicable state and federal nondiscrimination statutes; implementation of the best practices for improving the equality of opportunity; encouragement of districts to take steps to inform their students about the opportunity to participate in the Graduate Assumption Program of Loans for Education and in programs pertaining to encouraging students to seek employment as faculty or administrators in the community college districts.

Education Code Section 87107[26] created Employment Opportunity Fund to support the activities authorized by the article. The board of governors is to administer the fund to promote equal employment opportunity in community college districts.

Education Code Section 87108[27] requires the board of governors to adopt and

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[26]Education Code Section 87107, as added by Chapter 1109, Statutes of 2002, Section 2:

"In order to support the activities required and authorized by this article, the Employment Opportunity Fund is hereby established. The fund shall include moneys appropriated in the annual Budget Act or provided, pursuant to Section 87482.7, through transfer. The moneys in the fund shall be administered by the board of governors for the purpose of promoting equal employment opportunities in hiring and promotion at community college districts."

[27]Education Code Section 87108, as added by Chapter 1109, Statutes of 2002, Section 2:

"(a) The board of governors shall adopt regulations for the use of the fund. Those uses may include, but need not be limited to, all of the following:
(1) Activities designed to encourage community college students to become qualified for, and seek, employment as community college faculty or administrators.
(2) Outreach and recruitment.
(3) In-service training on equal employment opportunities.
(4) Accommodations for applicants and employees with disabilities.
(5) Activities to promote equal employment opportunities and implement the requirements of this article.
(b) The Board of Governors of the California Community Colleges may use not more than 25 percent of the revenues in the fund to provide technical assistance, service, monitoring, and compliance functions. Service functions under this subdivision may include, but are not necessarily limited to, the provision of a clearinghouse for advertising community college district job opportunities and for allowing persons seeking jobs to make known their interest in community college employment. This clearinghouse shall include a special emphasis on faculty internship employment opportunities and on reaching students who are qualified for faculty internship programs. The remaining balance in the fund may be allocated to

implement regulations for the use of the Employment Opportunity Fund and lists the types of services such regulations may include, such as outreach and recruitment and in-service training on equal employment opportunities. Subdivision (b) prohibits the Board of Governors from using more than 25 percent of the revenues in the fund to provide technical assistance, service, monitoring, and compliance functions. The section states that providing a community college job opportunity clearinghouse qualifies a "service function" that comes within the 25% restriction. Any such clearinghouse must include a special emphasis on internship opportunities.

SECTION 3. TITLE 5, CALIFORNIA CODE OF REGULATIONS

In response to the holding of the 2001 Connerly case, the repealer of Education Code Sections 87100 - 87107 and replacement with new Education Code sections 87100 - 87107 in 2002, new regulations were adopted effective August 11, 2002. These new regulations updated, amended, or repealed the previous program regulations (which are provided in an endnote[1]), relying upon several other Government Code and Education Code sections as authority for the amended regulations.

Effective August 11, 2002, Title 5, Section 51010 requires as a minimum condition for state aid that community college districts adopt a policy which describes its equal opportunity employment program (subdivision a); develop and adopt an equal employment opportunity plan (subdivision b); ensure that the district employment patterns are annually surveyed (subdivision c); ensure that recruitment (subdivision d),

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the individual community college districts as prescribed by the board of governors."

screening and selection (subdivision e), additional steps (subdivision f) are taken, and that hiring and retention over time (subdivision g) are consistent with the plan; and, to comply with the provisions of Sections 53300 - 53063 (thus making all of the subchapter minimum conditions).

Scope of District Plan

Section 53000 (added in 1992 and last amended in 2002), in subdivision (a), requires the subchapter (Sections 53000-53064) "to be read in conjunction with" specified Government Code and Education Code sections, specified federal laws, and states that it is not intended to conflict with the California Constitution. Subdivision (b) states that the subchapter is intended to promote equal employment opportunities which are in addition to and consistent with state or federal law, and that compliance with the subchapter should not be construed to mean compliance with all other applicable laws, thus indicating that the requirements of the subchapter exceed other applicable laws.

Section 53001 (added in 1992 and last amended in 2002), provides the definitions applicable to the implementation of the subchapter. The following terms are defined in this section: "adverse impact"; "business necessity"; "equal employment opportunity"; "equal employment opportunity plan"; "equal employment opportunity programs"; "ethnic minorities"; "ethnic group identification"; "goals for persons with disabilities"; "in-house of promotional only hiring"; "monitored group"; "person with a disability"; "projected representation"; "reasonable accommodation"; "screening or

selection procedure"; "significantly underrepresented group"; "target date" and "timetable".

Section 53002 (added in 1992 and last amended in 2002) requires the governing board to adopt a policy statement regarding its commitment to equal employment opportunities.

Section 53003 (added in 1992 and last amended in 2002) describes the requirements for the district's equal employment opportunity plan. Subdivision (b) requires the plan to be reviewed every three years and to be submitted to the Chancellor. Subdivision (c) requires the plan to include the following: a designation of the district employees who will implement the plan and assure compliance; the procedure for filing complaints; the process for notifying employees of the provisions of the plan; a training program; the process for providing notice to the community concerning the district's plan; an analysis of the number of persons from monitored groups who are employed by the district; an analysis of the degree of underrepresentation of persons from monitored groups; methods for addressing underrepresentation; additional steps to be taken to remedy underrepresentation; and other measures to further equal employment opportunity. Subdivision (d) requires the plan to include goals for hiring persons with disabilities. Subdivision (e) states that the plans shall be public records. Subdivision (f) requires the district to make a good faith effort to comply with the requirements of this Section. Subdivision (g) requires that the criteria for the determination of underrepresentation shall be established by the

statewide Consultation Process.

Section 53004 (added in 1992 and last amended in 2002) requires, at subdivision (a), that the district annually survey its employees and monitor applicants for employment to evaluate the implementation of its equal employment opportunity plan and to provide the source of data needed for specified reports, and to annually provide this information to the Chancellor. Subdivision (b) requires districts to permit each employee to self-identify his or her gender, ethnicity and/or disability, if applicable.

Section 53005 (added in 1992 and last amended in 2002) requires the district to establish an Equal Employment Opportunity Advisory Committee, comprising a diverse membership if possible, to assist the district in implementing the district plan.

Section 53006 (added in 1996 and last amended in 2002), at subdivision (a), requires any district which determines that a particular monitored group is underrepresented to take additional steps to try to rectify the situation. At a minimum, these additional steps are to include the following: a review of the district's recruitment procedures; consideration and implementation of other means of reducing underrepresentation, without taking the status of the monitored group into account; a determination of the effectiveness of other additional remedies; and, where significant underrepresentation persists, monitoring the staffing rate for specific job categories until underrepresentation has been reduced. Subdivision (b) requires that if chronic underrepresentation persists for a particular group or job category, the district shall: review the qualifications for the job category; discontinue the use of locally established

qualifications that are inconsistent with state or federal law; and utilize qualification standards that have less exclusionary effect. Subdivision (c) establishes three years as a reasonable period to measure the success of the plan. Subdivision (d) allows districts to take other steps to mitigate and ensure equal employment opportunities.

Sections 53010, 53011, and 53012 were repealed in 1992.

Recruitment and Screening

Section 53020 (added in 1992 and last amended in 2002), at subdivision (a), states that the governing board is responsible for the implementation of the equal employment opportunity program and shall designate an equal employment opportunity officer to operate the program. Subdivision (b) states that the designated officer must be included in the plan and that complaints must be properly investigated. Subdivision (c) extends liability for the program to any person, whether or not an employee, who acts on behalf of the governing board with regard to recruitment and screening.

Section 53021 (added in 1992 and last amended in 2002), at subdivision (a), requires districts to actively recruit from within and outside the district workforce for all job openings, some of which require statewide recruitment. Subdivisions (b), (c), and (d) prevent "in-house only" recruitment except for interim positions of less than one-year, with some exceptions. Subdivision (e) provides a list of five types of personnel actions which do not constitute a new "job opening."

Section 53022 (added in 1992 and last amended in 2002), specifies the content requirements for job announcements. Such announcements must state clearly job

specifications setting forth the knowledge, skills, and abilities necessary to job performance. Any job specifications required for the open position that exceed the state minimum requirements must be reviewed for conformity with the equal employment opportunity regulations and state and federal nondiscrimination laws, prior to announcement of the position.

Section 53023 (added in 1992 and last amended in 2002) subdivision (a), requires that the application process allow applicants to voluntarily self-identify their demographic and other personal data. Such data, once revealed, must be kept confidential and be used only for data analysis type reasons. Subdivision (b) requires the applications to be evaluated to ensure that potential applicants from monitored groups have not been excluded due to discriminatory recruitment procedures. Subdivision (c) lists the remedial steps to be taken when a monitored group has been adversely impacted. The listed steps include a deadline extension coupled with outreach efforts targeted toward members of any adversely impacted group, and a reevaluation of all applicants on a basis that does not include any non-job related qualifications more stringent than the state and federal minimum qualifications for the particular job.

Section 53024 (added in 1992 and last amended in 2002) provides for a screening process which does not adversely impact monitored groups, and provides mitigation procedures for underrepresentation. Subdivision (c) prohibits districts from designating any positions to be filled by members of any particular group or from

engaging in any practice which would result in unlawful discriminatory or preferential treatment. Subdivision (d) requires that seniority may only be taken into consideration if for job related reasons, if not used as the sole hiring criterion, and if included in the job announcement. Subdivision (e) states that any required applicant selection testing must be in compliance with the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures". Subdivision (g) vests the governing board with the authority to make all final hiring decisions, which includes the power to amend the screening process so that equal employment opportunity is accomplished.

Section 53025 (added in 1992 and last amended in 2002) requires districts to ensure that applicants and employees with disabilities receive reasonable accommodations in order foster success in the workplace. Districts must establish reasonable goals for hiring applicants with disabilities and establish and implement methods to mitigate underrepresentation.

Section 53026 (added in 1992 and last amended in 2002) requires the district to establish a procedure to respond to complaints alleging that the equal employment opportunity plan has been violated. A copy of any filed complaints must be forwarded to the Chancellor, and the district must prepare and submit an investigative report of the incident within 90 days, if the Chancellor so requests.

Section 53027 (added in 1992 and last amended in 2002) states that the plan is not intended to conflict with any provisions of the Education Code pertaining to merit system districts.

Sections 53028 and 53029 were repealed in 1992.

Faculty and Staff Diversity Fund

Section 53030 (added in 1992 and last amended in 2002) describes how state funds provided for the purpose of promoting equal employment opportunities are to be utilized, including amounts allocated to districts to implement the recruitment plan. Such resources are to be placed in an Equal Employment Opportunity Fund. A portion of this fund, not to exceed twenty-five percent, must be set aside for technical assistance and compliance type functions, and the balance may be allocated to the districts for activities intended to promote equal employment opportunity.

Section 53031 and 59032 were repealed in 1996.

Section 53033 (added in 1992 and last amended in 2002) states that districts which fail to report the district's compliance to the Chancellor will have their funds withheld, unless the district supplies the required data by March 31st of the preceding fiscal year or the district receives an extension from the Chancellor.

Section 53034 (added in 1992 and last amended in 2002) requires districts to prepare and submit a report to the Chancellor, by September 30th of each year, regarding the district's use of Equal Employment Opportunity funds.

Sections 53040 through 53064 were repealed in 1992.

CONDITION 6 STUDENT FEES

This condition alleges mandated costs reimbursable by the state for community college districts to establish and implement policies and procedures to ensure that the

collection of student fees complies with the law (generally, Education Code sections 76300 through 76395).

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Title 5, Section 51012 (added in 1983 and last amended in 1991) states that the governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

CONDITION 7 APPROVAL OF NEW COLLEGES & EDUCATIONAL CENTERS

This condition alleges mandated costs reimbursable by the state for community college districts to establish and comply with policies and procedures for approval of new colleges and educational centers, as a minimum condition for receipt of state aid.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Title 5, Section 51014, (added in 1983 and last amended in 1994), requires the governing board of a community college district planning the formation of a new college or educational center to obtain approval for such college or educational center from the Board of Governors prior to the commencement of classes.

Section 55825 (added in 1983 and last amended in 1991) requires the governing board of a community college district planning the formation of a new college or educational center to comply with the standards contained in sections 55829 (Assessment of Needs and Preferences), 55830 (Identification of Objectives) and 55831(Analysis of Alternative Delivery System).

Section 55827 (added in 1983 and last amended in 1994) provides the

definitions relative to the approval process. A "college" is defined as a degree-granting institution intended to provide instruction through the second year of college. At least one of the following types of courses are to be offered at such institutions: standard courses suitable for transfer to higher institutions, vocational courses leading to employment, and general liberal arts courses intended for district accreditation. An "educational center" is defined as a postsecondary operation, intended to last at least three years and to enroll at least 500 students, that is established and administered by an existing college or district at a location away from the parent institution's campus.

Section 55828 (added in 1983 and last amended in 1991) subdivisions (a) and (b), describe the review and approval function of the Chancellor's Office to include an inventory of all off-campus programs and facilities in the community college, to be updated annually and distributed to each community college district, and development of procedures to identify and review plans for new colleges and new educational centers within the district's Five-Year Academic and Capital Outlay Master Plans. Subdivision (c) specifies the content of proposals by community college districts for new colleges and new educational centers. All such proposals must be submitted to the Chancellor and should contain an assessment of needs and preferences, an identification of objectives, and an analysis of alternative delivery systems, as outlined in Sections 55829 - 55831 of Title 5, respectively. Subdivision (d) requires the Chancellor's Office to review each proposed new college or educational center, prepare an analysis of each proposal and recommend approval or disapproval to the Board of

Governors. Subdivision (e) requires the Board of Governors to approve or disapprove each new college or educational center and transmit its findings to the community college district initiating the proposal and to the California Postsecondary Education Commission.

Section 55829 (added in 1983 and last amended in 1991) specifies the following types of data as those to be included in the assessment of needs and preferences section of the district's proposal: (a) the community area and characteristics of individuals to be served; (b) projections of potential enrollment demand in the service area; (c) significant community support or opposition; (d) the preferences for community college programs and services of individuals in the service; (e) present and future labor market requirements; and, (f) projected labor market requirements and community program preferences.

Section 55830 (added in 1983 and last amended in 1991) requires the proposed college or educational center programs and services to be directed to the identified educational needs and preferences of the community to be served and to the specific objectives which fulfill the needs and preferences.

Section 55831 (added in 1983 and last amended in 1991) requires the district to ensure that the proposed new college or education center is the most effective and equitable of the feasible delivery system alternatives for providing intended programs and services. In selecting the proposed system, the district must consider the accessibility, content, quality and cost of programs and services in the area. In addition,

districts must identify any feasible alternatives and both short and long term sources of prospective funding for the proposed program.

CONDITION 8 ACCREDITATION

This condition alleges mandated costs reimbursable by the state for community college districts to establish and implement policies and procedures to ensure compliance with the accreditation standards and requirements established by the Accrediting Commission for Community and Junior Colleges (ACCJAC) and to pay the actual costs of the accreditation process.

The mandate for community college districts to establish and implement policies to ensure compliance with the standards set forth by the ACCJAC was first established in 1983 by Title 5, California Code of Regulations, Section 51016. Previous Education Code sections 78050 and 78051, repealed by Statutes of 1990, Chapter 1372, Section 458, authorized but did not require the district to pay the cost of accreditation by the regional authority serving California.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Title 5, Section 51016 (added in 1983 and last amended in 1994) requires each community college within a district to be accredited by the ACCJAC. Therefore, by reference, the costs incurred by districts to implement procedures to comply with the accreditation standards and requirements established by the ACCJAC are mandated costs subject to reimbursement. The ACCJAC has published and promulgated a document entitled, the "Handbook of Accreditation and Policy Manual" (Revised,

Summer 2002, hereinafter "Handbook"), which contains sections setting forth the organization's Eligibility Requirements for Accreditation (hereinafter "Eligibility Requirements") and Standards of Accreditation (hereinafter "Standards"), a copy of which is attached hereto as an Exhibit. The Handbook, as well as any succeeding accreditation standards adopted by the ACCJAC or any board succeeding the ACCJAC, are incorporated herein by reference.

CONDITION 9 COUNSELING PROGRAMS

This condition alleges mandated costs reimbursable by the state for community college districts to adopt regulations and procedures regarding the implementation of counseling programs for students, to provide these counseling programs for students, including those with special needs, and to publicize the counseling programs.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Title 5, Section 51018 (added in 1983 and last amended in 1994) requires the governing board of a community college to adopt regulations and implement procedures to provide counseling programs for students and to file a copy with the Chancellor's Office. The district must provide and publicize an organized and functioning counseling program in each college within the district which includes academic counseling, career counseling, personal counseling, and other services for students with special needs, skills testing programs, financial assistance programs, and job placement services.

CONDITION 10 INSTRUCTIONAL OBJECTIVES

This condition alleges mandated costs reimbursable by the state for community college districts to establish and implement objectives for its instructional programs and all other district functions.

The Education Code provides a mission statement for higher education institutes beginning at Section 66010 which is the Legislative basis for the district statement of objectives.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Title 5, Section 51020 (added in 1983 and last amended in 1991) requires the governing board to adopt stated objectives for its instructional program and all other district functions.

CONDITION 11 CURRICULUM

This condition alleges mandated costs reimbursable by the state for community college districts to establish and implement educational programs and courses that will further the objectives and functions of the community college and meet the approval of the Chancellor.

Previous Education Code Sections (78200 through 78208) discussed the requirements of the community college as it relates to implementing their programs and courses but these sections were repealed by various statutes up to and including Statutes of 1990, Chapter 1372, at Section 459.5.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Section 51021 (added in 1983, last amended in 1994) requires each community college to establish educational programs and courses that will further the objectives and functions of the community college and provides that all such courses must be approved by the Chancellor. The Chancellor's Office has issued a comprehensive Manual, entitled "Program and Course Approval Handbook" (hereinafter "Handbook"), that details its course approval requirements. The most recent issue of the Handbook was last published in 2001, a copy of which is attached hereto as an Exhibit and is incorporated herein by reference. The introduction of the Handbook contains the following statement: "...colleges are expected to follow the procedures and instruction in this handbook and to have curriculum approved by the Chancellor's Office." Therefore, the Handbook is incorporated in total into this test claim as an Executive Order, and by reference, the costs of district compliance with the standards and requirements set forth in the Handbook are mandated costs subject to reimbursement.

Program Classification and Standards

Section 55000 (added in 1981, last amended in 1991) provides the following definitions for terms pertinent to the course approval process: (a) "course" means an organized pattern of instruction on a specified subject offered by community colleges; (b) "educational program" means an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education; and (c) "class" means a community services offering.

Section 55000.5 (added in 1991) requires the Chancellor to prepare, distribute and maintain a detailed handbook ("Handbook") specifying course approval criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals, for use by local educational agencies in complying with curriculum requirements.

Section 55001 (added in 1981, last amended in 1994) outlines and defines the types of educational programs that community colleges are authorized to provide. Subdivision (a) states that the instructional services of a community college include both liberal arts and sciences education and also occupational education. Subdivision (b) states that the community services (non FTES generating) of a community college include both classes (avocational, recreational, seminar-type, and professional in-service classes) and also activities (Civic Center Act, cultural, community development and recreational activities). Subdivisions (c) and (d) require districts to report the classification of all courses, classes and activities offered in accordance with the course classification system detailed in subdivisions (a) and (b) and the standards for district courses contained in Section 55002. When reporting such course classification, districts are required to transmit all of the following information to the Chancellor's Office: (1) the unique static course identifier and the course title for all courses regardless of whether they are for credit or noncredit; (2) the classification of each credit and noncredit course in accordance with its primary objective; (3) whether the course is credit or noncredit; (4) whether the course transfers to the California State

University or the University of California or both; and (5) the number of community service classes and activities in each category and its participants.

Section 55002, (added in 1988, last amended in 1993) sets forth the standards and criteria for all district courses and classes. Different course standards are detailed for each of the following four main categories of courses offered by community college districts: (a) associate degree credit courses; (b) nondegree credit courses; (c) noncredit courses; and (d) community services courses. Subdivision (a)(1) requires the establishment, by each college and/or district, of a curriculum committee to evaluate and recommend all associate degree credit, nondegree credit and noncredit courses.

Subdivision (a)(2) sets forth the following standards that associate degree courses must meet to gain approval by the curriculum committee: (A) the grading policy must measure the student's proficiency in the subject matter by administering grades based upon uniform standards; (B) the units designated to a course must be based upon the number of hours a student spends in lecture or lab which must be at least three hours of work per week; (C) the course treats the subject matter with an intensity that requires independent study outside of the classroom; (D) prerequisites or corequisites must be required if the curriculum committee determines that students would be unable to obtain a satisfactory grade in the course without certain knowledge or skills not taught in the course; (E) if students need specific communication or computation skills to succeed in the course, the course must require the student to enroll in English or mathematics as a prerequisite; (F) the course work must command

critical thinking and the understanding and application of concepts determined to be at college level; and (G) the course must require college level learning skills and vocabulary. Subdivision (a)(3) requires associate degree credit courses to be described in a detailed course outline that is maintained in the official college files and made available to each instructor. Subdivision (a)(4) requires each section of an associate degree credit course to be taught by a qualified instructor, and Subdivision (a)(5) sets forth the criteria for course repetition.

Subdivision (b) pertains to nondegree credit courses (courses that are not applicable to the associate degree). Pursuant to subdivision (b)(1), such courses include precollegiate basic skills courses, courses designed to enable students to succeed in college-level work, precollegiate occupational preparation courses designed to provide foundation skills, and essential occupational instruction. Subdivision (b)(2) sets forth the standards for which the curriculum committee must recommend approval of nondegree credit courses. Nondegree credit courses must meet the same grading policy, unit and intensity standards required of associate degree credit courses. Subdivisions (b)(3), (b)(4), and (b)(5) require the same policies regarding course outlines, course instructors, and course repetition that are required of associate degree credit classes. Subdivision (b)(2)(D) provides that prerequisites and corequisites may be required whenever the college deems them to be appropriate.

Subdivision (c) pertains to noncredit courses (courses recommended by the college and/or curriculum committee and approved by the district governing board as a

course meeting the needs of enrolled students). Subdivision (c)(1) requires the college and/or district curriculum committee to recommend approval of such courses if the course treats subject matter and follows procedures that the committee deems to be appropriate for the enrolled students. Subdivision (c)(2) and (c)(3) require the same policies regarding course outlines and course instructors that are required of associate degree credit courses.

Subdivision (d) pertains to community services classes. Such classes must meet the following minimum requirements: the class must be approved by the local district governing board; the class must be designed for the physical, mental, moral, economic, or civic development of the people enrolled; the class must provide teaching methods deemed appropriate by the district governing board; the class must be conducted in accordance with a predetermined plan; the class must be open to all members of the community; and the class must not be claimed for apportionment purposes.

Section 55002.5 (added in 1991) establishes one credit hour of community college work to be approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks.

Section 55004 (added in 1991) specifies the scope of study for social sciences instruction. Such courses must include a study of the role, participation and contribution of both men and women, black Americans, Mexicans, American Indians, Asians, Pacific Island people, and other ethic groups of the economic, political and the social development of California and the United States of America.

Section 55005 (added in 1981, last amended in 1991) requires community colleges to determine and publish the following information for each course offered, prior to the student course enrollment period: (a) whether the course is for credit or noncredit or a community service class, (b) whether the course is transferrable to four year colleges or universities, (c) whether the course meets a major or general education requirement, and (d) whether the course is offered for credit or no credit and which provision of section 51302(a) is applicable.

Section 55006 (added in 1981, last amended in 1991) requires community college "authorities" to maintain and submit to the Chancellor any records and reports on district credit and non-credit courses and community service classes that the Chancellor may require to fulfill statutory responsibilities.

Section 55008, regarding the appointment of a vocational education advisory committee by school districts participating in vocational education programs, was repealed in 1993.

Approval of Courses

Section 55100 (added in 1981, last amended in 1991) requires the Chancellor to approve all courses offered by a community college before the course can be offered by the college. The course must be submitted to the Chancellor for approval on forms provided by the Chancellor's Office. Subdivision (b) provides that once an educational program has been approved by the Chancellor, the governing board of a district must establish policies for, and may approve individual courses which are offered as part of

an approved program. Subdivision (c) requires the district to classify all courses or activities in accordance with section 55001, regardless of whether or not approval by the Chancellor is required.

Section 55101, regarding the Chancellor's Report, was repealed in 1985.

Section 55130 (added in 1981, last amended in 1991) provides that, prior to offering any course as part of an educational program at a college, district governing boards must obtain approval of the educational program from the Chancellor. Subdivision (b) requires the application for approval to include the following information: (1) the name of the program; (2) a description of the program; (3) the purposes and objectives of the program; (4) the location of the program in the district master plan; (5) an explanation of whether the program is appropriate to the objectives of higher education; (6) the need for the proposed program in relation to area, job market and enrollment projections, and (7) the need for and present adequacy of library and media center resources, facilities and equipment, financial support and available faculty. Subdivision (c) requires the faculty to be involved in the development, establishment and evaluation of all educational programs. Subdivision (d) provides that an approved program will remain effective unless it has been substantially modified by the district or terminated by the Chancellor, and subdivision (e) pertains to program approval in multicollege districts.

Section 55150 (added in 1981, last amended in 1991) requires all noncredit courses or programs offered by a district to be approved by the Chancellor. Subdivision

(b) requires outlines describing the course to be kept on file and Subdivision (c) requires authorities of each community college to keep all such current records and reports of the noncredit courses and that the Chancellor may require.

Section 55160 (added in 1981, last amended in 1991) authorizes districts to approve and conduct community service classes without the approval of the Chancellor. Subdivision (b) prohibits community services classes from being classified as noncredit classes.

Section 55170 (added in 1981, last amended in 1991) authorizes districts to approve and conduct "contract classes" without the Chancellor's approval if the district does not claim state support for the class. Subdivision (a) defines "contract classes" as those classes offered by a community college district which fulfill a contract with a public or private agency, corporation, association or other body or person.

Section 55180, regarding a Chancellor's Report, was repealed in 1991.

Section 55182 (added in 1983 and last amended in 1991) authorizes the governing board to reinstate any course which was removed from the credit or noncredit curriculum during the 1982-83 fiscal year, in response to provision Number 11 of Item 6870-101-001 of the Budget Act of 1982. The following procedures must be followed to reinstate such courses: (a) the governing board must only reinstate courses in a manner that is consistent with the Board of Governors policy that courses which are primarily avocational, or recreational must be offered as community services classes and not as credit or noncredit courses; (b) the governing board must determine that the

course meets the criteria and standards for courses specified in section 55002; (c) a course may be reinstated only after it has been reviewed by the district board through the district's established procedures for approving new courses; (d) the course must be submitted to the Chancellor for approval; (e) the governing board must determine that the course, if reinstated, will be congruent with the mission of the community college and local needs; and (f) any course reinstated to the curriculum pursuant to a separate authorization of the Board of Governors shall be exempt from the requirements of this section.

Prerequisites and Corequisites

Section 55200 (added in 1993) provides the following terms and definitions pertinent to the prerequisite and corequisite approval process: (a)"prerequisite" means a requirement students must meet in order to determine their readiness to enroll in a course; (b) "corequiste" means a condition of enrollment consisting of a course a student is required to simultaneously take in order to enroll in another course; (c) "advisory on recommended preparation" means a condition of enrollment that a student is advised, but not required, to meet before or in conjunction with enrollment in a course or educational program; (d) "satisfactory grade" means that, for a specific course, the student's academic record contains the symbols A, B, C or "CR" as they are defined in Section 55758 of Title 5 of the California Code of Regulations; (e) "necessary and appropriate" means a strong rational basis exists for concluding that a prerequisite or corequisite is reasonably needed to achieve the purpose that it purports to serve; and

(f) "content review" means a rigorous, systematic process conducted by faculty to identify the necessary and appropriate body of knowledge or skills students need to possess prior to enrolling in a course, or which students need to acquire through concurrent enrollment in a corequisite course.

Section 55201 (added in 1983, last amended in 1998), in subdivision (a), authorizes the governing board to establish prerequisites, corequisites, and advisories on recommended preparation and requires prerequisites or corequisites if a course is to be offered for associate degree credit and the curriculum committee finds that either are necessary pursuant to Section 55002(a)(2)(D) or 55002(a)(2)(E).

Pursuant to subdivision (a), all prerequisites, corequisites, or advisories on recommended preparation must be established in accordance with the provisions of this Article and, pursuant to Subdivision (b), the district must adopt policies for all of the following: (1) the process for establishing such courses, in accordance with various specified guidelines; (2) procedures to assure that courses for which prerequisites or corequisites are established will be taught in accordance with the course outline; (3) the process, including levels of scrutiny, for review to assure that such preparatory courses remain necessary and appropriate; and (4) the bases and process for student challenge to a prerequisite or corequisite.

Subdivision (c) provides that prerequisites or corequisites may only be established for the following four purposes: (1) if expressly required or expressly authorized by statute or regulation; (2) if the prerequisite course will assure that a

student has the skills, concepts, and/or information necessary to achieve a satisfactory grade in the course or program for which it is being established; (3) if the corequisite course will assure that a student acquires the necessary skills, concepts, and/or information, such that a student who has not enrolled in the corequisite is highly unlikely to receive a satisfactory grade in the course or program for which the corequisite is being established; or (4) if necessary to protect the health and safety of a student or others.

Subdivision (d) provides the following five exceptions to the requirement that a prerequisite or corequisite be scrutinized to determine if it is necessary and appropriate to achieve the purpose for which is has been established: (1) if established prior to July 6, 1990, and as part of a sequence of degree-applicable courses within a given discipline; (2) if established between July 6, 1990, and November 4, 1993, in accordance with regulations in effect during this period of time; (3) if required by statute or regulation; (4) if part of a closely-related lecture-laboratory course pairing within a discipline; or (5) if required by four-year institutions.

Subdivision (e) imposes an additional duty on districts seeking to require a communication or computation skills course as a prerequisite or corequisite for non-communication/computation classes. In such cases, a district must gather data to show that a student is highly unlikely to succeed in the course without the proposed prerequisite or corequisite. The Subdivision provides an exception to this data gathering requirement in either of the following two situations: (1) if the particular communication

or computation skill prerequisite is required by four-year institutions in order to receive credit for the particular course; (2) if the prerequisite or corequisite is required for enrollment in a program that is subject to approval by a state agency other than the Chancellor's Office, colleges in at least six different districts have previously satisfied the data collection requirements for the same prerequisite or corequisite pertaining to the same program, and the district establishing the prerequisite or corequisite conducts an evaluation to determine whether it has a disproportionate impact on particular groups of students.

Subdivision (f) permits students to challenge any prerequisite or corequisite on any of the following six grounds: (1) if not properly established in accordance with district procedure; (2) if in violation of this Article; (3) if unlawfully discriminatory on its face or in its application; (4) if the student has the knowledge or ability to succeed in the course or program without the prerequisite or corequisite; (5) if the student will be subject to undue delay in attaining his or her educational goal because the prerequisite or corequisite course has not been made reasonably available; and (6) if any other grounds for challenge may be established by the district governing board.

Subdivision (g) requires districts to advise any student issuing a challenge to a prerequisite or corequisite that he or she may also file a formal complaint of unlawful discrimination.

Subdivision (h) requires that any district policies adopted pursuant to this section must be submitted to the Chancellor as part of the district's matriculation plan.

Section 55202 (added in 1993) outlines additional rules that apply to the establishment of prerequisites and corequisites. Subdivision (a) requires any such courses to be identified in college publications that are available to students as well as in the course outline of any course for which they are established. Subdivision (b) requires that prerequisites establishing communication or computational skill requirements be established on a course-by-course basis rather than across the entire curriculum. Subdivision (c) provides that the determination of whether a student meets a prerequisite shall be based either on successful completion of an appropriate course or on an assessment using multiple measures. Subdivision (d) provides that if a prerequisite requires precollegiate skills in reading, written expression, or mathematics, the governing board of a district must ensure that precollegiate basic skills courses designed to teach the required skills are offered with reasonable frequency and number. Subdivision (e) requires sufficient sections of any established corequisite to be offered to reasonably accommodate all students who are required to take the corequisite. If the sections are insufficient, the corequisite it is to be waived. Subdivision (f) prohibits districts from requiring an exit test to satisfy a prerequisite or corequisite unless it is incorporated into the grading for the prerequisite or corequisite course. Subdivision (g) requires the district to determine whether a student has met a prerequisite prior to that student's enrollment in the course requiring the prerequisite.

Distance Education Courses

Course approval standards are similarly applicable to distance education

courses. The Title 5 regulations for distance education, previously numbered at Sections 55370 et seq., are now contained in Sections 55205 through 55219.

Section 55205 (added in 2002, former section 55370 repealed) defines "distance education" as instruction in which the instructor and student are separated by distance and interact through the assistance of communication technology. All distance education is subject to the general course approval requirements and the requirements that may be imposed by the Americans with Disabilities Act (42 U.S.C. Sec. 12100 et seq.).

Section 55207 (added in 2002, former section 55372 repealed) requires the same standards of course quality to be applied to distance education as are applied to traditional classroom courses, in regard to the course quality judgments and any local course quality determination or review process.

Section 55209 (added in 2002, former section 55374 repealed) requires determinations and judgments about the quality of distance education to be made with the full involvement of faculty in accordance with the provisions commencing with Section 53200 of Title 5 of the California Code of Regulations.

Section 55211 (added in 2002, former section 55376 repealed) requires district governing boards to ensure that all approved courses offered as distance education include regular effective contact between instructors and students and that all distance education courses are delivered consistently with guidelines issued by the Chancellor pursuant to Section 409 of the Procedures and Standing Orders of the Board of

Governors (pertaining to a report from a committee on distance learning).

Section 55213 (added in 2002, former section 55378 repealed) requires each distance learning course to be separately reviewed and approved, according to the district's certified course approval procedures.

Section 55215 (added in 2002, former section 55380 repealed) requires that instructors of sections delivered via distance education technology must be selected by the same procedures used to determine all instructional assignments.

Section 55217 (added in 2002) requires the determination of the number of students assigned to any one course offered by distance learning to be consistent with other district procedures related to faculty assignments, including curriculum committee review and collective bargaining methods.

Section 55219 (added in 2002) requires the district to comply with certain recordkeeping and reporting requirements for noncredit and nontransferable distance learning courses, including an annual report to the district governing board, and compliance with Section 409 of the Procedures and Standing Orders of the Board of Governors (pertaining to a report from a committee on distance learning).

Independent Study Courses

Sections 55300 (added in 1978, last amended 1992) and 55310 (added in 1978, last amended 1991) require the college district to report approved independent study courses to the Chancellor in the manner specified by the Chancellor.

Section 55316 (added in 1978, last amended in 1994) requires independent

study courses to be accepted for the purpose of awarding associate degrees and to be recognized by the California State College and University systems.

Section 55316.5 (added in 1994, last amended June 19, 2002) allows independent study courses to include nontransferable courses and non credit courses if offered as distance learning.

Section 55320 (added in 1978, last amended in 1991) states that the academic standards for independent study courses will be the same as those applied to credit courses.

Section 55321 (added in 1978, last amended in 1991) requires the district to establish student progress evaluation procedures and requires instructors of Independent Study courses to prepare a report which certifies the satisfactory progress of each student toward course objectives, for state apportionment purposes.

Section 55322 (added in 1978, last amended in 1991) requires the college to provide independent study students the same access to their course instructor as that available for other courses.

Section 55340 (added in 1978, last amended in 1994) requires independent study courses to meet all the requirements of curriculum approval and standards in order to be eligible for state funds.

Section 55350 (added in 1978, last amended in 1991) requires instructors of independent study courses to be qualified for the services provided; be responsible for the supervision and control of the course and enrolled students; provide orientation and

guidance to each student; and provide a schedule of office hours.

CONDITION 12 VOCATIONAL EDUCATION PROGRAMS

This condition alleges mandated costs reimbursable by the state for community college districts to develop and implement policies and procedures for the establishment, modification or discontinuance of programs and courses.

Chapter 977, Statutes of 1979, Section 7 added Education Code Section 78015,[28] effective September 22, 1979, to require at subdivision (a), that the governing board of a community college district, prior to establishing a vocational or occupational training program, shall conduct a job market study of the standard metropolitan statistical area, to insure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction. The study must be conducted by the district's advisory committee on vocational

[28]Education Code Section 78015, as added by Chapter 977, Statutes of 1979, Section 7:

"(a) The governing board of a community college district, shall prior to establishing a vocational or occupational training program, conduct a job market study of the of the standard metropolitan statistical area, as those terms are defined in Section 52301.5, in which it proposes to establish the program. To the extent possible, the study shall use the California Occupational Information System, as defined in Section 52301.5, and other available sources of labor market information. The study shall be conducted in cooperation with the Employment Development Department, prospective employers, and the district's advisory committee on vocational education. The Employment Development Department may cooperate in the study, to the extent possible, within existing resources. The study shall include an analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to insure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the community college district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the community college district determines that the job market study justifies the initiation of the proposed program, it shall, by resolution, determine whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to the provisions of Section 8092."

education as well as the Employment Development Department and prospective employers. Subdivision (b) requires that after completing the study the district shall determine whether or not the study justifies the proposed vocational education program. If so, pursuant to subdivision (c), the governing board of the community college district shall determine by resolution whether the program shall be offered through the district's own facilities or through a contract with an approved private post secondary school pursuant to Section 8092.

Chapter 977, Statutes of 1979, Section 8, effective September 22, 1979, added Education Code Section 78016[29] to require at subdivision (a) that beginning in 1979, every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to ensure it meets a documented labor market demand, does not unnecessarily duplicate other manpower training programs in the area and it is effective in obtaining employment for students and ensuring they complete the program.

Chapter 1329, Statutes of 1982, Section 5 amended Education Code Section

[29]Education Code Section 78916, as added by Chapter 977, Statutes of 1979, Section 8:

"(a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to assure that each such program, does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The provisions of this section shall apply to each program commenced subsequent to the effective date of this section."

78016[30] to add a new subdivision (c), which states that the County Private Industry Council, established pursuant to Division 8 of the Unemployment Insurance Code, must participate in the review process concerning all of the vocational and occupational training programs offered by the community college district.

Chapter 537, Statutes of 1983, Section 4, effective July 28, 1983, amended Education Code Section 78016[31] to require the local Private Industry Counsel instead of

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[30]Education Code Section 78016, as added by Chapter 1329, Statutes of 1982, Section 5:

"(a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to assure that each such program, does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the County Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) ~~(c)~~ The provisions of this section shall apply to each program commenced subsequent to the effective date of this section."

[31]Education Code Section 78016, as added by Chapter 537, Statutes of 1983, Section 4:

"(a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to assure that each such program, does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the

the County's Private Industry Counsel to include its comments in the review process of the community college district's programs.

Chapter 1667, Statutes of 1990, Section 4 amended Education Code Section 78105[32] to require the governing board of a community college district to conduct a job market study of the labor market area by referencing the State-Local Cooperative Labor Market Information Program established in Section 10533, or any other available sources of labor market information if that program is unavailable. Prior to this amendment, the district was required to base the job market study on the standard

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local ~~County~~ Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) The provisions of this section shall apply to each program commenced subsequent to the effective date of this section."

[32]Education Code Section 78015, as amended by Chapter 1667, Statutes of 1990, Section 4:

"(a) The governing board of a community college district, shall prior to establishing a vocational or occupational training program, conduct a job market study of the ~~of the standard metropolitan statistical area,~~ labor market area, as those terms are defined in Section 52301.5, in which it proposes to establish the program. The study shall use the State-Local Cooperative Labor Market Information Program established in Section 10533, or if this program is not available in the labor market area, other available sources of labor market information. ~~To the extent possible, t~~The study shall ~~use the~~ include a California Occupational Information System~~, as defined in Section 52301.5, and other available sources of labor market information. The study shall be conducted in cooperation with the Employment Development Department, prospective employers, and the district's advisory committee on vocational education. The Employment Development Department may cooperate in the study, to the extent possible, within existing resources. The study shall include an~~ supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to ~~insure~~ ensure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the community college district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the community college district determines that the job market study justifies the initiation of the proposed program, it shall, by resolution, determine whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to Section 8092."

metropolitan statistical area. In addition, this amendment deleted the district's responsibility for conducting the study in cooperation with the Employment Development Department and prospective employers.

Chapter 1667, Statutes of 1990, Section 4.5 amended Education Code Section 78016[33] to require in subdivision (a) that the governing board reference the California Occupational Information System, including the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information, to determine the effectiveness and necessity of the community colleges training programs. This amendment also states that this section applies to programs created in 1983 instead of 1979.

Chapter 758, Statutes of 1995, Section 104, amended Education Code Section

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[33]Education Code Section 78016, as amended by Chapter 1667, Statutes of 1990, Section 4.5:

"(a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to assure that each ~~such~~ program, as demonstrated by the California Occupational Information System, including the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information, does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) ~~The provisions of t~~This section shall apply to each program commenced subsequent to ~~the effective date of this section~~ July 28, 1983."

78015[34] to clarify that the State-Local Cooperative Labor Market Information Program, which the governing board of a community college district must use in completing the job market study, is found in Section 10533 of the Unemployment Insurance Code.

Chapter 365, Statutes of 1998, Section 1 amended Education Code Section 78105[35] to require, for the first time, that the governing board of a community college

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[34]Education Code Section 78015, as amended by Chapter 758, Statutes of 1995, Section 104:

"(a) The governing board of a community college district, ~~shall~~ prior to establishing a vocational or occupational training program, shall conduct a job market study of the labor market area, as those terms are defined in Section 52301.5, in which it proposes to establish the program. The study shall use the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information. The study shall include a California Occupational Information System supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to ensure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the community college district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the community college district determines that the job market study justifies the initiation of the proposed program, it shall determine, by resolution, ~~determine~~ whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to Section 8092."

[35]Education Code Section 78015, as amended by Chapter 365, Statutes of 1998, Section 1:

"(a)(1) The governing board of a community college district, prior to establishing a vocational or occupational training program, shall conduct a job market study of the labor market area, as those terms are defined in Section 52301.5, in which it proposes to establish the program. The study shall use the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information. The study shall include a California Occupational Information System supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to ensure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction.

(2) The governing board of the community college district shall make copies of each job market study available to the public.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the community college district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the community college district determines that the job market study

district must make copies of each job market study available to the public.

Chapter 365, Statutes of 1998, Section 2 amended Education Code Section 78016[36] to require, for the first time, that a written summary of the findings of each review must be made available to the public.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Section 51022, subdivision (a) (added in 1984 and last amended in 1991) requires the governing board of each community college district to, by July 1, 1984, develop and implement policies for the establishment, modification, or discontinuance of courses or programs, including responsibilities regarding vocational training programs pursuant to Education Code Section 78016.

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justifies the initiation of the proposed program, it shall determine, by resolution, whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to Section 8092."

[36]Education Code Section 78016, as amended by Chapter 365, Statutes of 1998, Section 2:

"(a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to ~~assure~~ ensure that each program, as demonstrated by the California Occupational Information System, including the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information, does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) This section shall apply to each program commenced subsequent to July 28, 1983.

(e) A written summary of the findings of each review shall be made available to the public."

Contracts

Section 55600 (added in 1983 and last amended in 1993), in subdivision (a), defines "vocational education contracts" as agreements between any community college district and a contractor that meet the standards prescribed herein to provide vocational instruction for community college students. Subdivision (b) defines "The California State Plan for Vocational Education" as an agreement between the California State Board of Education and the United States Commissioner of Education that provides policies, procedures and standards that must apply to the operation of various phases of vocational education to qualify for financial support. Subdivision (c) defines a "contractor" as any private post secondary school authorized or approved pursuant to provisions of chapter 3 which has been in operation not less than 2 full calendar years prior to the effective date of the contract. Subdivision (d) defines "eligible costs" as all direct and indirect related instructional costs excluding capital outlay.

Section 55601 (added in 1993) requires the governing board of each community college district participating in a vocational education program to appoint a vocational education advisory committee to develop recommendations on the program and to provide a liaison between the district and potential employers.

Section 55602 (added in 1991) states that any community college district or districts may contract with approved private post secondary schools or with an activity center, work activity center, or sheltered work shop to provide vocational skill training provided that the amount contracted for per student does not exceed the total cost it

would to provide the same training in the community college or the tuition the private post secondary school charges its students. In addition, the community college student receiving training pursuant to the contract must not be charged additional tuition and all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Vocational Education. All such contracts must be approved by the Chancellor who may audit the accounts of both the district and the private party involved in these contracts to the extent necessary to assure the integrity of the public funds involved.

Section 55602.5 (added in 1991 and last amended in 1994) authorizes the governing board of a community college district to enter into a contract with a public or private entity for the education of students who are impaired by a physical deficiency or injury in vocational education classes to be conducted for such students by the contract agency. All classes shall be approved and supervised by the governing board of the community college and shall be taught by academic employees.

Section 55603 (added in 1983 and last amended in 1991) requires contractors to provide technical, vocational or occupational instruction that will prepare students for gainful employment, occupational upgrading, or enrollment in more advanced training programs.

Section 55604, regarding the application for approval, was repealed in 1983.

Section 55605 (added in 1977 and last amended in 1991) provides that vocational education contracts shall not exceed one year, be approved by the

Chancellor, and include such details to explain and justify intended offerings. The contracts are to be "maintained in conformity" with applicable provisions of the Education Code, Title 5 of the California Code of Regulations, California Community Colleges Budget and Accounting Manual, and the California State Plan for Vocational Education, and administered by community college districts in such a manner that there will be separate accounts for all income and expenditures applicable to the contract.

Section 55606, regarding administration, was repealed in 1983.

Section 55607 (added in 1977 and last amended in 1991) requires each district that has entered into a contract with a contractor to submit annually to the Chancellor statistical and evaluative reports on forms provided by the Chancellor. All records related to income and expenditures applicable to the contract are to be made available for an audit by the state or federal government for five (5) years or one year after audited, whichever comes first.

Section 55608, regarding accounting procedures, was repealed in 1983.

Contracting Standards

Section 55620 (added in 1977 and last amended in 1991) provides that the following conditions must be used to determine the appropriateness of vocational education contracts with contractors: (a) manpower needs and job opportunities are identified for the instruction program; (b) the program or courses are not already available in the region served; (c) the program or courses provide vocational education

opportunities that are not already available; (d) the program or courses shall not reduce or supplant the vocational education efforts of any district; (e) eligible costs shall not exceed the same cost to provide the same training in the public entity or the tuition the private postsecondary school charges its private citizens; (f) the community college student may not be charged additional tuition for any training included in the contract; (g) students are eligible to enroll under a contract if they are sixteen years of age and are enrolled in a community college; and (h) the contractor must be accredited by an accrediting agency recognized by the United States Office of Education or conform to guidelines on contractual relationships with nonaccredited organizations established by the agency accrediting the community college.

Contract Provisions

Section 55630 (added in 1983 and last amended in 1991) requires contracts to include the following provisions: (a) that the governing board of the community college district has determined by resolution the appropriateness of offering the program; (b) methods for identifying eligible costs and payment procedures; (c) procedures and conditions relating to enrollment period, student transfer, class hours required to meet performance objectives, supervision of staff and withdrawal of students prior to completion of a course or program; (d) that the contractor and community college district will insure students receive additional support services; (e) qualified faculty will provide instruction; (f) performance objectives for each class and a report regarding accomplishments of the objectives at the end of each contract period; (g) the contractor

will maintain records of student attendance and achievement; (h) terms and condition relating to termination of the contract; (i) the contractor is in compliance with Civil Rights Act of 1964; (j) the contractor provides workers' compensation insurance coverage for any student; and (k) the contractor provides indemnity and defense for the state and community college district against any and all claims and liability.

CONDITION 13 COURSE ARTICULATION-LOCAL

This condition alleges mandated costs reimbursable by the state for community college districts to develop and implement policies and procedures to provide that district courses and programs are articulated with proximate four-year colleges and high schools.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Section 51022, Subdivision (b) (added in 1984 and last amended in 1991) requires the governing board of each community college district to by July 1, 1984 to develop, file with the Chancellor, and carry out its policies and procedures to ensure that its courses and programs are articulated with proximate four-year colleges and high schools. It is reasonable to conclude that the articulation agreements would need to be updated on an ongoing basis to remain useful. The scope of this articulation mandate appears to separate and distinct of the transfer center requirements, discussed below.

CONDITION 14 ACADEMIC FREEDOM

This condition alleges mandated costs reimbursable by the state for community

college districts to adopt, implement and comply with policies and procedures pertaining to faculty academic freedom as a minimum condition for receipt of state aid.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Section 51023 (added in 1984 and last amended in 1994), at subdivision (a), requires the governing board of a community college district to adopt and implement a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor. Subdivision (c) requires the district to substantially comply with the policy and procedures adopted pursuant to subdivision (a).

CONDITION 15 SHARED GOVERNANCE

This condition alleges mandated costs reimbursable by the state for community college districts to adopt, implement and comply with policies and procedures pertaining to a system of shared governance with faculty, staff and students, as a minimum condition for receipt of state aid.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

The regulations implementing the shared governance minimum conditions for state aid are found in three Title 5 sections, 51023, 51023.5, and 51023.7.

Faculty Shared Governance: Academic Senates

Section 51023 (added in 1984 and last amended in 1994), in subdivision (b), requires the governing board of a community college district to adopt procedures which

are consistent with the provisions of Sections 53000-53206[37], regarding the role of academic senates and faculty councils and to file such procedures with the Chancellor. Subdivision (c) requires the district to substantially comply with the policies and procedures adopted pursuant to subdivision (b).

Section 53200 (last amended in 1994) establishes definitions for the establishment and operation of the district academic senate. Subdivision (a) defines the term "faculty" as those employees who are employed in non-supervisory or management positions and for which minimum qualifications for hire is specified by the Board of Governors. Subdivision (b) defines an "academic senate" as an organization whose purpose is to make recommendations to the college and district administration with respect to academic and professional matters. Subdivision (c) defines the phrase "academic and professional matters" as any of the following policy development and implementation matters: curriculum; degree and certificate requirements; grading policies; educational program development; standards or policies regarding student preparation and success; district and college governance structures; involvement in accreditation processes; policies for faculty professional development activities; processes for program review; processes for institutional planning and budget

[37] Sections 53000 through 53064 were the subject of affirmative action and equal employment requirements until 2002, at which time the sections were completely replaced by new "post-*Connerly*" regulations, which are the subject of another part of this test claim. Sections 53100-53102 were repealed in May 1993. Section 53125 pertains to the transfer of accumulated sick leave, which is not the subject of this test claim.

Section 53130 (new section filed) requires the governing board to publish and make available to each academic employee reasonable rules and regulations pertaining to performance evaluations.

development; and any other academic and professional matters mutually agreed upon between the governing board and the academic senate. Finally, subdivision (d) defines the phrase "consult collegially" as the requirement that districts develop and implement policies on academic and professional matters providing for a collegial consultation process with the academic senate. Such policies may allow the district to rely primarily upon the advice and judgment of the academic senate, require mutual agreement by the district and academic senate, or provide for the use of both methods.

Section 53201 (last amended in 1990) provides that academic senates may be established at the college and/or district level so that the faculty may participate in the formation and implementation of district policies on academic and professional matters.

Section 53202 (last amended in 1990) establishes the procedures for the establishment and operation of an academic senate. Subdivision (a) requires that the full-time faculty of a community college must vote by secret ballot to form an academic senate. Subdivision (c) requires the district governing board to authorize the faculty to fix the composition, structure and procedures of the academic senates and provide for the selection of members by democratic election procedures.

Section 53203 (added in 1990 and last amended in 1994) delineates the powers of the governing board and academic senate within the context of the consultation process. Subdivision (a) requires the district governing board to adopt policies for delegation of authority to its academic senate and procedures for responding to recommendations of the academic senate. Subdivision (b) requires the governing board

to consult collegially with representatives of the academic senate when adopting such policies and procedures. Subdivision (f) requires an academic senate to consult with the chief executive officer prior to the appointment of faculty members to serve on any district groups dealing with academic and professional matters.

Section 53204 (added in 1990 and last amended in 1994) states that the academic senate consultation process is not intended to modify the scope nor to detract from any negotiated agreements between collective bargaining representatives and district governing boards.

Section 53206 (added in 1978 and last amended in 1994) establishes the Academic Senate for California Community Colleges, which is the subject of another test claim.

Section 53207 (added in 2003) requires community college districts to grant release or reassigned time to the faculty members who have been elected to serve as president and vice president of the Academic Senate of the California Community Colleges (ASCCC). Subdivision (b) provides that the ASCCC will determine and report to the district employing such faculty members the amount of release or reassigned time which will be required. Subdivision (c) provides for district reimbursement by the ASCCC for the reasonable and documented administrative costs associated with hiring faculty to replace the faculty serving as president and vice president of the ASCCC. Subdivision (d) permits a district to refuse to grant such release or reassigned time in cases where the faculty member is in a position for which a qualified temporary

replacement cannot be found to meet the needs of the students. Subdivision (e) provides that no district shall be required to grant release or reassigned time for an individual serving as president or vice president of the ASCCC for a period exceeding four years.

Staff Shared Governance

Section 51023.5 (added in 1991 and last amended in 1994) requires community college districts to provide a process whereby non-academic district staff members are given an opportunity to participate in college governance. The governing board must, pursuant to subdivision (a), adopt and pursuant to subdivision (d), substantially comply with polices and procedures to provide a shared governance process for its district and college non-academic staff. Such policies and procedures must provide district staff with the opportunity to participate in the formulation of all district polices and procedures which have significant effect on staff. District staff must also be permitted to select members of the boards and organizations established for the consultation process. In addition, the policies and procedures are required to include the following: definitions of non-faculty staff positions that the governing board is required to recognize; participation structures and procedures; a mandate for the governing board to consult with the representatives of existing staff organizations when developing the above-mentioned staff definitions and participation structures; opportunities for staff to participate in the development of district policies and procedures; an opportunity for staff to participate in the development of any matter having a "significant affect" on staff, prior to any action

being taken on such matters; an assurance that staff opinions will be given every reasonable consideration; and a provision that the selection of any staff representatives are to be made from the category that they represent and by those organizations that the governing board has officially recognized, when required by law. Districts are prohibited from allowing the consultation process to encroach upon either the collective bargaining process, pursuant to subdivision (b), or the academic faculty process, pursuant to subdivision (c).

Student Shared Governance

Section 51023.7 (added in 1991 and last amended in 1994), requires community college districts to provide a process whereby its students are given an opportunity to participate in college governance. The governing board must, pursuant to subdivision (a), adopt and pursuant to subdivision (e), substantially comply with polices and procedures to provide a shared governance process for the student body and its student organizations. Such policies and procedures must provide students with the opportunity to participate in the formulation of any district polices and procedures that have significant effect on students, as defined in subdivisions (b) and (c), and for students to participate in the selection of representatives of the bodies that participate in the process. The district is to give reasonable consideration to the student's recommendations and positions relating to college governance. As outlined in subdivision (b), the district policies and procedures that are considered to have a "significant effect on students" include the following: grading policies; codes of student

conduct; academic disciplinary policies; curriculum development; courses or programs which should be initiated or discontinued; processes for institutional planning and budget development; standards and policies regarding student preparation and success; student services planning and development; student fees within the authority of the district to adopt; and any other district and college matter that the district governing board determines will have a significant effect on students. Subdivision (d) prohibits the student consultation process from encroaching upon the shared governance, due process, or collective bargaining rights granted to the district faculty or staff.

CONDITION 16 MATRICULATION SERVICES

This condition alleges mandated costs reimbursable by the state for community college districts to develop and implement policies and procedures to comply with the Seymour-Campbell Matriculation Act of 1986, as contained in Education Code Sections 78210 -78218.

Seymour-Campbell Matriculation Act of 1986

Chapter 1467, Statutes of 1986, Section 1, added Education Code sections 78210 -78218, and thereby established the community college matriculation program entitled the "Seymour-Campbell Matriculation Act of 1986".

Chapter 1467, Statutes of 1986, Section 1, added Section 78211[38], to state that

[38]Education Code Section 78211, as added by Chapter 1467, Statutes of 1986, Section 1:
"It is the intent of the Legislature to do all of the following:
(a) Ensure equal education opportunity for all Californians.
(b) Ensure that students receive the educational services necessary to optimize their opportunities for success.
(c) Provide students with the information to establish realistic educational goals, and ensure that

the intent of the Legislature in enacting the Seymour-Campbell Matriculation Act was to accomplish the following goals: to ensure equal education opportunity for all Californians; to ensure that students receive the educational services necessary to optimize their opportunities for success; to provide students with the information to establish realistic educational goals; and to ensure that the matriculation process does not exclude students from receiving appropriate educational services at community colleges.

Chapter 1467, Statutes of 1986, Section 1, added Section 78211.5[39] to require the Chancellor to provide for full implementation of the matriculation services specified in Section 78212 in as many community colleges as the funds appropriated for the purpose allow. In addition, the section required that any college or district receiving funding must agree to carry out the provisions of the article, as specified, for the period during which funding is received pursuant to the article. The college or district was

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the matriculation process does not exclude students from receiving appropriate educational services at community colleges."

[39]Education Code Section 78211.5, as added by Chapter 1467, Statutes of 1986, Section 1:
"(a) The Chancellor of the California Community Colleges shall initially provide for full implementation of the matriculation services specified in Section 78212 in as many community colleges as the funds appropriated for this purpose allow.
(b) Because of the need to develop and evaluate data on a standard statewide basis concerning the implementation and effectiveness of the matriculation services described in this article, any college or district receiving funding under this article shall agree to carry out its provisions as specified, but shall be bound to that agreement only for the period during which funding is received pursuant to this article. The obligations of the college or district under the agreement shall include, but not be limited to, the expenditure of funds received pursuant to this article for only those matriculation services approved by the chancellor and the contribution toward the purposes of this article of such matching funds as the chancellor may require pursuant to Section 78216."

required to expend the funds received pursuant to the article only for those matriculation services approved by the Chancellor or for the contribution of matching funds toward the purposes of the article as may be required by the Chancellor pursuant to Section 78216.

Chapter 1467, Statutes of 1986, Section 1, added Section 78212[40] to provide definitions applicable to the matriculation program and the duties of the district and

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[40]Education Code Section 78212, as added by Chapter 1467, Statutes of 1986, Section 1:

"(a) For purposes of this article, "matriculation" means a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational objectives. The agreement involves the responsibilities of both parties to attain those objectives through the college's established programs, policies, and requirements.

The student's responsibilities under the agreement include the expression of at least a broad educational intent upon enrollment, the declaration of a specific educational objective within a reasonable period after enrollment, diligence in class attendance and completion of assigned coursework, and the completion of courses and maintenance of progress toward an educational goal according to standards established by the college, the district, and the state.

(b) Matriculation services to be made available by the colleges shall include, but are not limited to, all of the following:

(1) Processing of the application for admission.

(2) Orientation and preorientation services designed to provide to students, on a timely basis, information concerning campus procedures, academic expectations, financial assistance, and any other matters the college or district finds appropriate.

(3) Assessment and counseling upon enrollment, which shall include, but not be limited to, all of the following:

(A) Administration of assessment instruments to determine student competency in computational and language skills.

(B) Assistance to students in the identification of aptitudes,

interests and educational objectives, including, but not limited to, associate of arts degrees, transfer for baccalaureate degrees, and vocational certificates and licenses.

(C) Evaluation of student study and learning skills.

(D) Referral to specialized support services as needed, including, but not limited to, federal, state, and local financial assistance; health services; campus employment placement services; extended opportunity programs and services provided pursuant to Article 8 (commencing with Section 69640) of Chapter 2 of Part 42; campus child care services provided pursuant to Article 4 (commencing with Section 8225) of Chapter 2 of Part 6; programs that teach English as a second language; anddisabled student services provided pursuant to Chapter 14 (commencing with Section 67300) of Part 40.

(E) Advisement concerning course selection.

(4) Postenrollment evaluation of each student's progress, and required advisement or counseling for students who are enrolled in remedial courses, who have not declared an educational objective as required, or who are on academic probation, as defined by standards adopted by the Board of Governors of the California Community Colleges and community college districts."

student. "Matriculation" was defined as a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational objectives. As outlined in this section, the student's responsibilities under the agreement included the expression of at least a broad educational intent upon enrollment, the declaration of a specific educational objective within a reasonable period after enrollment, diligence in class attendance and completion of assigned coursework, and the completion of courses and maintenance of progress toward an educational goal according to standards established by the college, the district, and the state. The matriculation services to be made available by the colleges was required to include: (1) processing of the application for admission; (2) student orientation; (3) assessment and counseling upon enrollment, including assessment of math and language skills, aptitude, study and learning skills, and referral to specialized support services; (4) course selection; and (5) postenrollment evaluation of each student's progress and remedial counseling.

Chapter 1467, Statutes of 1986, Section 1, added Section 78213[41] to require that

[41]Education Code Section 78213, as added by Chapter 1467, Statutes of 1986, Section 1:

"(a) No district or college may use any assessment instrument for the purposes of this article without the authorization of the chancellor. The chancellor may adopt a list of authorized assessment instruments pursuant to the policies and procedures developed pursuant to this section and the intent of this article. The chancellor may waive this requirement as to any assessment instrument pending evaluation.

(b) The chancellor shall review all assessment instruments to ensure that they meet all of the following requirements:

(1) Assessment instruments shall be sensitive to cultural and language differences between students.

(2) Assessment instruments shall be used as an advisory tool to assist students in the selection of an educational program.

(3) Assessment instruments shall not be used to exclude students from admission to community colleges.

a district or college use only those assessment instruments authorized by the Chancellor. The section required the Chancellor to ensure that assessment instruments: (1) are sensitive to cultural and language differences between students; (2) are used as an advisory tool to assist students in the selection of an educational program; and (3) are not used exclude students from admission to community colleges. In addition, the section required the Chancellor to establish an advisory committee to review and make recommendations concerning all assessment instruments used by districts and colleges pursuant to the article.

Chapter 1467, Statutes of 1986, Section 1, added Section 78214[42] to require that all participating districts, with the assistance of the Chancellor, establish and maintain an

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(c) The chancellor shall establish an advisory committee to review and make recommendations concerning all assessment instruments used by districts and colleges pursuant to this article."

[42]Education Code Section 78214, as added by Chapter 1467, Statutes of 1986, Section 1:
"(a) All participating districts shall, with the assistance of the chancellor, establish and maintain institutional research to evaluate the effectiveness of the matriculation services described by this article and of programs and services designed to remedy students' skills deficiencies.
(b) The data base for this research shall include, but not be limited to:
(1) Prior educational experience, including transcripts when appropriate, as determined by the chancellor.
(2) Educational objectives.
(3) Criteria for exemption from assessment or required counseling or advisement, if applicable.
(4) Need for financial assistance.
(5) Ethnicity, sex, and age.
(6) Academic performance.
(7) Any additional information that the chancellor finds appropriate.
(c) The evaluation provided for by this section shall include an assessment of the effectiveness of the programs and services in attaining at least the following objectives:
(1) Helping students to define their educational goals.
(2) Assisting institutions in the assessment of students' educational needs.
(3) Matching institutional resources with students' educational needs.
(4) Providing students with specialized support services as referred to in subdivision (b) of Section 78212."

institutional research data base to evaluate the effectiveness of the matriculation services including: (1) prior educational experience; (2) educational objectives; (3) criteria for exemption from assessment or required counseling or advisement; (4) need for financial assistance; (5) ethnicity, sex, and age; (6) academic performance; and (7) any additional information that the Chancellor finds appropriate. The section required programs to be evaluated to determine their effectiveness in: (1) helping students to define their educational goals; (2) assisting institutions in the assessment of students' educational needs; (3) matching institutional resources with students' educational needs; and (4) providing students with specialized support services.

Chapter 1467, Statutes of 1986, Section 1, added Section 78215[43] to require the Board of Governors to establish criteria for exempting students from participation in orientation, assessment testing, or required counseling or advisement under the article.

Chapter 1467, Statutes of 1986, Section 1, added Section 78216[44] to address

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[43]Education Code Section 78215, as added by Chapter 1467, Statutes of 1986, Section 1:
"The Board of Governors of the California Community Colleges shall establish criteria for exempting students from participation in orientation, assessment testing, or required counseling or advisement under this article."

[44]Education Code Section 78216, as added by Chapter 1467, Statutes of 1986, Section 1:
"(a) The Legislature recognizes that community college districts are currently funding various components of student matriculation through existing counseling, assessment, and other student services, but that adequate student matriculation cannot be realized without supplemental funding support.
(b) The chancellor shall develop a formula for funding student matriculation services at community colleges. The formula shall include the requirement that the districts or colleges contribute matching funds in an amount to be established by the chancellor in each case, and shall reflect, but not be limited to, all of the following considerations:
(1) The number of students to receive matriculation services at each college.
(2) The levels of support for matriculation services provided at each college prior to July 1, 1985, and the need for funding assistance in the implementation of the program set forth in this article.

the funding of the program. The Legislature officially recognized, for the first time, that although community college districts had already been funding various components of student matriculation through existing counseling, assessment, and other student services, adequate student matriculation could not be realized without supplemental funding support. Subdivision (b) required the Chancellor to develop a funding formula which included the requirement that the districts or colleges contribute matching funds in an amount to be established by the Chancellor in each case, according to: (1) the number of students to receive matriculation services at each college; (2) the levels of support for matriculation services provided at each college prior to July 1, 1985 (which is contrary to Government Code section 17565 for the reimbursement of mandates) and

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(3) The relative needs for matriculation services, based on special student populations such as low-income students, students with language differences, students with physical and learning disabilities, and students in need of remedial instruction.

(4) The requirement that funds for matriculation services be expended only for services approved by the chancellor.

(5) The requirement that any district or college receiving funding pursuant to this section agree to implement this article during the period in which it receives that funding.

(6) The need for computer hardware and software to provide approved matriculation services, and for institutional research personnel for ongoing evaluation.

(c) The chancellor shall require participating colleges to develop a plan for student matriculation that reflects all of the following:

(1) A method for providing the services specified in Section 78212.

(2) The college budget for the matriculation services pursuant to Sections 78212 and 78214.

(3) The development and training of staff and faculty to implement the matriculation services.

(4) In multicampus districts, the coordination of the college matriculation plan with other college plans.

(5) Computerized information services and institutional research andevaluation necessary for implementation of this article.

(d) The chancellor may allocate up to 5 percent of the total funds appropriated for student matriculation for state administrative operations to carry out the intent of this article, subject to the review of the annual budget process."

the current ability to fund the program; (3) the relative need for matriculation for low-income students, students with language differences, students with physical and learning disabilities, and students in need of remedial instruction; (4) the requirement that funds for matriculation services be expended only for services approved by the board of governors; (5) the requirement that any district or college receiving funding pursuant to the section agree to implement this article during the period in which it receives that funding; and (6) the need for computer hardware and software to provide approved matriculation services, and for institutional research personnel for ongoing evaluation. Subdivision (c) required participating colleges to develop a plan for student matriculation to reflect all of the following: (1) a method for providing the services: (2) the college budget for the matriculation services; (3) the development and training of staff and faculty to implement the matriculation services; (4) in multicampus districts, the coordination of the college matriculation plan with other college plans; and (5) computerized information services and institutional research and evaluation necessary for implementation of this article.

Chapter 1467, Statutes of 1986, Section 1, added Section 78217[45] to require the

[45]Education Code Section 78217, as added by Chapter 1467, Statutes of 1986, Section 1:

"(a) By no later than January 30, 1987, and prior to the allocation of any funding for purposes of this article to local districts, the chancellor shall provide the Department of Finance, Legislative Analyst, California Postsecondary Education Commission, and the education policy committees and the fiscal committees of the Legislature with a comprehensive management plan for implementation of matriculation programs pursuant to this article.

(b) On or before March 15, 1989, the chancellor shall submit a report to the Legislature evaluating the effectiveness of those community college matriculation programs receiving funding under this article for the 1986-87 academic year. The report shall cover operation of the programs during the 1986-87 and 1987-88 fiscal years, and shall include the chancellor's recommendations regarding the improvement of student matriculation, the continued operation of student matriculation services, and the funding of those

Chancellor to a) prepare and submit to the Department of Finance, Legislative Analyst, California Postsecondary Education Commission, and the education policy committees and the fiscal committees of the Legislature, a comprehensive management plan for implementation of matriculation programs; b) prepare and submit to the Legislature an initial progress report; c) prepare and submit to Legislature annual progress reports; d) appoint an advisory committee to assist in the development of the article; and e) prepare and submit to the Legislature a report evaluating the comparative utility of matriculation services to students with differing educational objectives.

Chapter 1467, Statutes of 1986, Section 1, added Section 78218[46] to specify that beginning fiscal year 1986-87 and each fiscal year thereafter, matriculation programs shall be required only if funds are specifically appropriated.

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services. The chancellor shall include in the report information on the success rate of students who enroll in courses contrary to the recommendations and advice of college advisement staff.

(c) On or before March 15 of each year thereafter, the chancellor shall provide a progress report to the Legislature on the implementation of this article. The chancellor may require participating districts or colleges to provide data for the completion of these reports.

(d) No later than January 1, 1986, the chancellor shall appoint an advisory committee to assist in the development of the evaluation required by this section; however, the Legislature recognized that to promote the effective implementation of this program, the chancellor may wish to appoint the advisory committee prior to that date.

(e) On or before April 1, 1988, the chancellor shall submit a report to the Legislature evaluating the comparative utility of matriculation services to students with differing educational objectives."

[46]Education Code Section 78218, as added by Chapter 1467, Statutes of 1986, Section 1:

"In the 1986-87 fiscal year and each fiscal year thereafter, this article shall be operative only if funds are specifically appropriated for the purposes of this article."

Chapter 973, Statutes of 1988, Section 18, added Section 78212.5[47] to authorize each community college district to operate: (a) career resource and placement centers; (b) programs to instruct appropriate staff and faculty members in the performance of matriculation services; (c) orientation programs; (d) a publicity program about the purposes of the mandatory matriculation process; and (e) a publicity program designed to inform high schools about student skill levels, and of available student support services.

Chapter 1372, Statutes of 1990, Sections 460-463 amended Education Code Sections 78211.5, 78213, 78216 and 78217 respectively, to require the Board of Governors, rather than the Chancellor to be vested with the responsibility implementing the program. No other substantive changes were made in any of these code sections, aside from the above mentioned language change.

Chapter 758, Statutes of 1995, Section 105, amended Education Code Section

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[47]Education Code Section 78212.5, as added by Chapter 973, Statutes of 1988, Section 18:

"Each community college district may develop and maintain all of the following within each community college in the district:

(a) Career resource and placement centers having the purposes of maintaining information on vocational, technological and educational opportunities, and facilitating career employment.

(b) Programs to instruct appropriate staff and faculty members in the performance of matriculation services.

(c) Orientation programs designed to explain to new students academic requirements and other regulations of the community college, and the available student support services.

(d) A publicity program designed to inform the community served by the community college that the purposes of the mandatory matriculation process are intended to facilitate, rather than restrict, student access to community college instruction, and to enhance each student's awareness of his or her abilities, skills, and potential.

(e) A publicity program designed to inform high schools in the community served by the community college, through orientation programs and other means, of student skill levels, and of available student support services."

78217[48] to delete all earlier language in the code section except for the requirement that the Board of Governors provide an annual progress report to the Legislature on the implementation of the Seymour-Campbell Matriculation Act.

Chapter 745, Statutes of 2001, Section 78217[49], repealed Education Code Section 78217. Therefore, the Board of Governors no longer must provide the above mentioned progress report to the Legislature.

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[48]Education Code Section 78217, as amended by Chapter 758, Statutes of 1995, Section 105:

"~~(a) By no later than January 30, 1987, and prior to the allocation of any funding for purposes of this article to local districts, the board of governors shall provide the Department of Finance, Legislative Analyst, California Postsecondary Education Commission, and the education policy committees and the fiscal committees of the Legislature with a comprehensive management plan for implementation of matriculation programs pursuant to this article.~~

~~(b) On or before March 15, 1989, the board of governors shall submit a report to the Legislature evaluating the effectiveness of those community college matriculation programs receiving funding under this article for the 1986-87 academic year. The report shall cover operation of the programs during the 1986-87 and 1987-88 fiscal years, and shall include the board of governors' recommendations regarding the improvement of student matriculation, the continued operation of student matriculation services, and the funding of those services. The board of governors shall include in the report information on the success rate of students who enroll in courses contrary to the recommendations and advice of college advisement staff.~~

~~(c)~~ On or before March 15 of each year ~~thereafter~~, the board of governors shall provide a progress report to the Legislature on the implementation of this article. The board of governors may require participating districts or colleges to provide data for the completion of these reports.

~~(d) No later than January 1, 1986, the board of governors shall appoint an advisory committee to assist in the development of the evaluation required by this section; however, the Legislature recognized that to promote the effective implementation of this program, the board of governors may wish to appoint the advisory committee prior to that date.~~

~~(e) On or before April 1, 1988, the board of governors shall submit a report to the Legislature evaluating the comparative utility of matriculation services to students with differing educational objectives.~~"

[49]Education Code Section 78217, as repealed by Chapter 745, Statutes of 2001, Section 38:

"~~On or before March 15 of each year, the board of governors shall provide a progress report to the Legislature on the implementation of this article. The board of governors may require participating districts or colleges to provide data for the completion of these reports.~~"

TITLE 5, CALIFORNIA CODE OF REGULATIONS

As a minimum condition for receipt of state aid, Title 5, Section 51024 (added in 1990 and last amended in 1992) requires the governing board of each community college district to: (a) adopt and submit to the Chancellor a matriculation plan; (b) evaluate its matriculation program and participate in statewide evaluation activities; (c) provide matriculation services to its students; (d) establish procedures for waivers and appeals in connection with its matriculation program; and to (e) substantially comply with all other provisions of Sections 55500 through 55534.

Scope of Matriculation Programs

Title 5, Section 55500 begins the regulatory requirements established in 1990 for the matriculation programs. This section (added in 1990 and last amended in 1992) requires that the regulations be "read in conjunction with the provisions of the Seymour-Campbell Matriculation Act of 1986." The section provides that the matriculation program requirements apply only to districts receiving funds pursuant to Education Code Section 78216 for the period of time during which such funds are received.

Section 55502 (added in 1990 and last amended in 1994) provides definitions for the implementation of the programs which supplement those in the Education Code. As detailed in this section, the following definitions apply: a) "matriculation" means a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational goal through the college's established

programs, policies, and requirements; b) "assessment" means the process of gathering information about individual students to facilitate student success, including information regarding the student's study skills, English language proficiency, computational skills, aptitudes, goals, learning skills, career aspirations, academic performance, and need for special services. Only after a grade has been assigned and recorded in the student's transcript can it be used in the assessment process; c) "assessment instruments, methods, or procedures" include interviews, standardized tests, holistic scoring processes, attitude surveys, vocational or career aptitude and interest inventories, high school or college transcripts, specialized certificates or licenses, educational histories and other measures of performance; d) "pre-collegiate basic skills courses" are those courses in reading, writing, computation, and English as a Second Language which are designated by the community college district as nondegree credit courses pursuant to Section 55002(b); e) "disproportionate impact" occurs when the percentage of persons from a particular racial, ethnic, gender, age or disability group who are directed to a particular service or placement based on an assessment procedure is significantly different from the representation of that group in the population of persons being assessed, and that discrepancy is not justified by empirical evidence demonstrating that the assessment procedure is a valid and reliable predictor of performance in the relevant educational setting; f) "exemption" means waiving or deferring a student's participation in any required orientation, assessment, counseling, or advisement activities; g) "matriculation services" are those services listed in Section 55520; h) "matriculation

practices" means one or more instruments, methods, or procedures used in providing any of the matriculation services listed in Section 55520; i) "student" means a person enrolled in at least one credit course; j) "orientation" is a process which acquaints students and potential students with college programs, services, facilities and grounds, academic expectations, and institutional procedures; and k) "student follow-up" is the process of monitoring a student's progress toward his or her educational goals and providing the student with appropriate advice based on the results of such monitoring.

Planning and Administration of Matriculation Programs

Section 55510 (added in 1990 and last amended in 1994) requires each community college district adopt, as specified in subdivision (a), a matriculation plan describing the services to be provided to its students. Subdivision (b) requires that the plan be developed through consultation with representatives of the academic senate, students, and staff. Subdivision (c) requires the plans to conform to law, and to be submitted to the Chancellor for initial and periodic review and approval.

Section 55512 (added in 1990) requires each community college district to establish a program of institutional research for ongoing evaluation of its matriculation process. All assessment instruments, methods or procedures must be evaluated to determine whether any assessment instrument, method or procedure has a disproportionate impact on particular groups of students, in which case the district will, in consultation with the Chancellor, develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact. The Chancellor is required to

establish a system for evaluation of the matriculation program on a statewide basis.

Section 55514 (added in 1990) requires each community college district to submit an annual report describing the district's efforts to implement its matriculation plan and expenditures made for that purpose. The report must include specified program outcome data on students from various ethnic, gender, age or disability groups.

Section 55516 (added in 1990) requires each community college district to develop and implement a program for providing all faculty and staff with training on the provision of matriculation services. The training must be appropriate to faculty needs and include the following information: the proper purpose, design, evaluation, and use of assessment instruments, methods or procedures, as well as their limitations and possible misuse.

Section 55518 (added in 1990) requires the Chancellor to adopt a funding formula for allocating matriculation funds to community college districts complying with the requirements of this chapter which requires that each dollar of state matriculation funding shall be matched by three dollars of other district resources devoted to the matriculation program.

Required Matriculation Services

Section 55520 (added in 1990) provides the list of required matriculation services, which essentially restates the statutory enumeration. The list includes the following mandated services: processing of admission applications; orientation; assessment; counseling; assistance in developing an educational plan; post enrollment evaluation;

and referral to both support services and specialized curriculum offerings.

Section 55521 (added in 1990 and last amended in 1992) provides a statement of prohibited and discriminatory matriculation assessment practices. The following practices are listed as prohibited uses of assessment instruments: any use that has not been approved by the Chancellor; use in a manner or for a purpose other than that for which it was developed or validated for; use of any single instrument by itself for student placement, evaluation or referral purposes; to exclude any person from admission; to mandatorily place a student in or exclude from any educational program, unless as an established prerequisite; to subject any person to unlawful discrimination. Pursuant to subdivision (b), assessment instruments may be used to determine "ability to benefit" in evaluating a student's eligibility for financial aid.

Section 55522 (added in 1990) requires that appropriate modifications be made in the matriculation process for ethnic and language minority students and students with disabilities so that their needs are accommodated.

Section 55523 (added in 1990) requires Community College districts to make reasonable efforts to provide counseling and advisement services for all nonexempt students who: are on probation; have not declared a specific educational goal; or are enrolled in pre-collegiate basic skills courses. Also, counseling services must be made available for all students to advise them on general academic requirements and the selection of specific courses.

Section 55524 (added in 1990) requires the Chancellor to establish and provide

to community college districts an annual list of approved assessment instruments and guidelines for their use. Such guidelines must identify any special modifications approved for compliance with section 55522 (Special Accommodations) and also describe the procedure by which districts may seek to have assessment instruments approved and added to the list.

Section 55525 (added in 1990 and last amended in 1994) requires the district to establish a process for assisting students to select a specific educational goal and for affording students with an opportunity to develop a written educational plan. Any such educational plan that has been developed must be recorded and reviewed as necessary by the district to ensure that the plan continues to accurately reflect the needs and goals of the student. The district must also afford a student the right to file a complaint pursuant to Section 55534(a) if that student believes the district has violated the requirements of this Section.

Section 55526 (added in 1990) requires the district to establish a follow-up process to assist the student in achieving his or her educational goal which includes regular monitoring to detect early signs of academic difficulty and advice or referral to specialized services where necessary. In addition, students who have not declared a specific educational goal, who are enrolled in pre-collegiate basic skills courses, or who are on probation shall be identified and referred to advisement.

Student Rights, Appeals, and Waivers

Section 55530 (added in 1990 and last amended in 1993) provides a list of

student rights and responsibilities. Districts must ensure that information is available in written form to all students during or prior to enrollment (e.g., during orientation) and is included in class schedules, catalogs or other appropriate publications, describing their rights and responsibilities. Districts must also take steps to ensure that the matriculation process is efficient and avoids additional student testing by permitting students to submit scores on recently taken tests that correlate with those used by the district. The governing board of each community college district must adopt clear written policies that are not inconsistent with law and that specifically define these student responsibilities and the consequences of failure to fulfill such responsibilities. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan.

Section 55532 (added in 1990) requires districts that elect to exempt certain students from participation in orientation, assessment, counseling or advisement to establish policies and procedures for doing so. Such policies must specify the grounds for exemption, be identified in the matriculation plan and be reported to the Chancellor. Any student exempted pursuant to this section must be notified that he or she is covered by an exemption and must be given the opportunity to choose whether or not to participate in that part of the matriculation process. The Chancellor is required to analyze and recommend necessary changes regarding the impact on the matriculation program of any exemption policies adopted by the districts.

Section 55534 (added in 1990 and last amended in 1993) requires the district to

establish written procedures by which students may challenge any alleged violation of the matriculation program. Districts are required to investigate and attempt to resolve any such complaints in a timely manner. Records of all such complaints must be retained for at least three years after the complaint has been resolved and will be subject to review by the Chancellor. When a challenge contains an allegation that a community college district has been discriminatory, the district must, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

CONDITION 17 FULL-TIME / PART-TIME FACULTY

This condition alleges mandated costs reimbursable by the state for community college districts to ensure that their faculty pool consists of 75% full-time faculty ratio.

Chapter 973, Statutes of 1988, Section 35, added Education Code Section 87482.6[50]. Subdivision (a) required Community Colleges to apply a portion of any

[50]Education Code Section 87482.6, as added by Chapter 973, Statutes of 1988, Section 35:

"(a) Until the provisions of Section 84750 regarding program-based funding are implemented by a standard adopted by the board of governors that establishes the appropriate percentage of hours of credit instruction that should be taught by full-time instructors, the Legislature wishes to recognize and make efforts to address longstanding policy of the board of governors that at least 75 percent of the hours of credit instruction in the California Community Colleges, as a system, should be taught by full-time instructors. To this end, community college districts which have less than 75 percent of their hours of credit instruction taught by full-time instructors shall apply a portion of the program improvement allocation received pursuant to Section 84755 as follows:

(1) Districts which, in the prior fiscal year, had between 67 percent and 75 percent of their

"program improvement" funds received pursuant to Education Code Section 84755, according to certain guidelines to ensure that at least 75 percent of credit instruction

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hours of credit instruction taught by full-time instructors shall apply up to 33 percent of their program improvement allocation as necessary to reach the 75 percent standard. If a district in this category chooses instead not to improve its percentage, the board of governors shall withhold 33 percent of the district's program improvement allocation.

(2) Districts which, in the prior fiscal year, had less than 67 percent of their hours of credit instruction taught by full-time instructors shall apply up to 40 percent of their program improvement allocation as necessary to reach the 75 percent standard. If a district in this category chooses instead not to improve its percentage, the board of governors shall withhold 40 percent of the district's program improvement allocation.

Districts which maintain 75 percent or more of their hours of credit instruction taught by full-time instructors shall otherwise be free to use their program improvement allocation for any of the purposes specified in Section 84755.

(b) The board of governors shall adopt regulations for the effective administration of this section. Unless and until amended by the board of governors, the regulations shall provide as follows:

(1) In computing the percentage of hours of credit instruction taught by full-time instructors, the hours of overload teaching by full-time instructors shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(2) A full-time instructor shall be defined as any regular and contract faculty member teaching credit instruction.

(3) The chancellor shall compute and report to each community college district the number of full-time faculty (FF.) which are to be secured through the use of the prescribed portion of program improvement revenue allocated to each district. This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide average hourly rate of compensation for part-time instructors times the statewide average full-time teaching load). If the quotient is not a whole number, then the quotient shall be rounded down to the nearest whole number. If this quotient, once applied, will result in the district exceeding the 75 percent standard, the chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

By March 15th of each year, the chancellor shall report to each district an estimate of the number of FTF to be secured based upon the appropriation of revenues contained in the annual Budget Bill.

(4) On or before December 31, 1991, the chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to paragraph (3) for the 1989-90 and 1990-91 fiscal years. To the extent that the cumulative number of FTF have not been retained, the chancellor shall reduce the district's base budget for 1991-92 and subsequent fiscal years by an amount equivalent to the average replacement cost times the deficiency in the number of FTF."

hours would be taught by full-time instructors in Community College Districts. Districts which had between 67 percent and 75 percent of credit instruction hours taught by full-time instructors in the previous fiscal year, were required to apply up to 33 percent of their program improvement allocation toward the goal of attaining the 75 percent standard. If a district in this category chose not to improve its percentage, the board of governors was required to withhold 33 percent of that district's program improvement allocation for that year. Those districts with less than 67 percent of credit instruction hours taught by full-time instructors, were required to apply up to 40 percent of their program improvement allocation to reach the 75 percent standard. If a district in this category chose not to improve its percentage, the board of governors was required to withhold 40 percent of that district's program improvement allocation for the year. Finally, districts which successfully met or surpassed the 75 percent standard in the previous year, were to be free to use their program improvement allocation for any of the purposes specified in Section 84755. Subdivision (b) required the Board of Governors to adopt regulations administering this section. Such regulations were to adhere to the following specifications unless and until amended by the Board of Governors at a later date: (1) the hours of overload teaching by full-time instructors were required to be excluded when computing the percentage of hours of credit instruction taught; (2) the definition of a full-time instructor would be "any regular and contract faculty member teaching credit instruction"; (3) the Chancellor was required to compute, according to specified computation methods, the number of full-time faculty (FTF) to be secured

through the use of the prescribed portion of program improvement revenue allocated to each district. By March 15th of each year, the Chancellor would be required to report to each district an estimate of the number of FTF to be secured based upon the appropriation of revenues contained in the annual Budget Bill; (4) On or before December 31, 1991, the Chancellor was required to determine the extent to which each district, by September 30, 1991, had hired the number of FTF (as determined pursuant to 87482.6(b)(3)) for the 1989-90 and 1990-91 fiscal years. To the extent that the cumulative number of FTF had not been retained, the Chancellor was required to reduce the district's base budget for 1991-92 and subsequent fiscal years by an amount equivalent to the average replacement cost times the deficiency in the number of FTF.

Chapter 1038, Statutes of 1991, Section 12.3, added Education Code Section 87482.7[51] to require the board of governors to adopt regulations to establish minimum standards regarding the percentage of hours of credit instruction that must be taught by full-time instructors. The section also authorized the Department of Finance to transfer any funds deducted from district apportionments, pursuant to any such regulations adopted, to the Faculty and Staff Diversity Fund.

Chapter 1169, Statutes of 2002, Section 3, amended Education Code Section

[51]Education Code Section 87482.7, as added by Chapter 1038, Statutes of 1991, Section 12.3:

"(a) The board of governors shall, pursuant to paragraph (6) of subdivision (b) of Section 70901, adopt regulations that establish minimum standards regarding the percentage of hours of credit instruction that shall be taught by full-time instructors.

(b) Upon notice by the board of governors, the Department of Finance shall transfer any money deducted from district apportionments pursuant to the regulations adopted under this section. This money shall be transferred to the Faculty and Staff Diversity Fund pursuant to Section 87107."

87482.7[52] to require that any such funds deducted should be transferred to the "Employment Opportunity Fund", rather than the "Faculty and Staff Diversity Fund".

TITLE 5, CALIFORNIA CODE OF REGULATIONS

75% Standard

The regulations implementing full-time faculty requirements established by Education Code section 87482.7, as a condition for state aid are found in Title 5 of the California Code of Regulations, Section 51025, which relates to and should be read in conjunction with Sections 53300-53320.

Section 51025 (added in 1991 and last amended in 2000), subdivision (a), requires that if a district's full-time faculty percentage, as calculated pursuant to Section 53308, is less than 75 percent, the district must increase the base full-time faculty obligation whenever the Board of Governors determines, pursuant to subdivision (e), that adequate funds ("growth revenues" and "program improvement funds") have been provided. Districts that fail to meet or maintain the full-time faculty ratios shall have their revenues reduced by the amount computed by the Chancellor, and those funds shall be utilized by the district, pursuant to subdivision (d), for the purposes of faculty and staff

[52]Education Code Section 87482.7, as amended by Chapter 1169, Statutes of 2002, Section 3:

"(a) The board of governors shall, pursuant to paragraph (6) of subdivision (b) of Section 70901, adopt regulations that establish minimum standards regarding the percentage of hours of credit instruction that shall be taught by full-time instructors.

(b) Upon ~~notice~~ notification by the board of governors, the Department of Finance shall transfer any money deducted from district apportionments pursuant to the regulations adopted under this section. This money shall be transferred to the ~~Faculty and Staff Diversity~~ Employment Opportunity Fund pursuant to Section 87107."

diversity, pursuant to Education Code section 87107 (which has since been ruled unconstitutional by *Connerly*.)

Full-Time Equivalent Faculty

Section 53300 (added in 1990 and last amended in 1998) requires Sections 53300 - 53320 be read in conjunction with Section 51025.

Section 53301 (added in 2000) defines the term "part-time faculty" as any faculty member who is not a regular employee or contract employee of the district.

Section 53302 (added in 1990 and last amended in 2000) defines the term "full-time faculty" as any faculty member who is a regular or contract employee of the district.

Section 53308 (added in 2000), outlines the calculation method to be used when determining a district's full-time faculty percentage.

Section 53309 (added in 2000 and last amended in 2001), outlines certain rules to be followed when calculating full-time equivalent faculty attributable to full-time faculty. Different calculation methods are described for the following areas: instruction; non-instructional activities; regular assignment; overload; sabbatical; released-reassigned time; unpaid leave; teaching by others; and late retirement.

Computation of the Ratio

Section 53310 (added in 2000 and last amended in 2001), outlines rules for calculating full-time equivalent faculty attributable to part-time faculty. Different calculation methods are described for instructional and for non-instructional activities.

Subdivision (c) requires that all activities of part-time faculty be included in such calculations except those attributable to replacing full-time faculty on sabbatical leave, released or reassigned time, unpaid leave, or who resigned or retired late.

Section 53311 (added in 1990, last amended in 2000), defines "base data" as both the district's base full-time faculty percentage and its base full-time faculty obligation.

Section 53312 (added in 1990, last amended in 2000) requires the Chancellor to compute the number of full-time faculty which each district is to secure in accordance with Sections 51025 and 53308. Subdivisions (b), (c), and (d) describe the methods the Chancellor is to use in making the computations.

Section 53314 (added in 1992 and last amended in 2000), as the result of applying additional FTES growth and program improvement revenue allotments, requires the Chancellor to report to districts the estimated number of full-time faculty each district must secure by the following Fall term. The Chancellor's report must be made by the Spring term of each year.

Section 53320, regarding enforcement, was repealed in 1994.

CONDITION 18 STUDENT EQUITY

This condition alleges mandated costs reimbursable by the state for community college districts to develop policies and procedures to establish and implement a student equity plan as a minimum condition for the receipt of state aid.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Education Code Section 91[53], as added by Chapter 182, Statutes of 1974, Section 1, required all community college classes and courses, both academic and nonacademic, to be conducted without regard to the sex of the pupils enrolled. Subdivision (d) prohibited school counselors from offering vocational or career opportunity guidance to pupils on the basis of that pupil's sex. Subdivision (e) required the same physical education activities or sports to be offered to pupils of both sexes.

Education Code Section 22504.7[54], as added by Chapter 1526, Statutes of 1974, Section 1, required community college districts to provide opportunities for participation in intercollegiate athletic programs on as equal a basis as is practicable to both male and female students.

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[53]Education Code Section 91, as added by Chapter 182, Statutes of 1974, Section 1:

"(a) It is the policy of the state that elementary and secondary school and community college classes and courses, including nonacademic and elective classes and courses be conducted, without regard to the sex of the pupils enrolled in such classes and courses.

(b) No school district shall prohibit any pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Section 8506.

(c) No school district shall require pupils of one sex to enroll in a particular class or course, unless the same class or course is also required of pupils of the opposite sex.

(d) No school counselor shall, on the basis of the sex of a pupil, offer vocational or school program guidance to pupils of one sex which is different from that offered to pupils of the opposite sex or, in counseling students, differentiate career, vocational, or higher education opportunities on the basis of the sex of the pupil counseled.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex."

[54]Education Code Section 22504.7, as added by Chapter 1526, Statutes of 1974, Section 1:

"It is the intent of the Legislature that opportunities for participation in intercollegiate athletic programs in the community colleges, in the campuses of the California State University and Colleges, and in the campuses of the University of California be provided on as equal a basis as is practicable to male and female students. The costs of providing these equal opportunities may vary according to the type of sports contained within the respective men's and women's athletic programs. Additional sources of revenue should be determined to provide additional funds for these equal opportunity programs."

SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974

Chapter 802, Statutes of 1975, Section 1, added Education Code Section 92[55] to require community college districts to provide opportunities for participation in school-sponsored athletic programs equally to both male and female students. Subdivision (b) prohibited any public funds from being used in connection with any school athletic program which did not provide equal opportunity for both sexes to participate and to use school facilities for such participation.

Chapter 275, Statutes of 1976, Section 7, added Education Code Section 22502.1[56] to require community college districts to "provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex."

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[55]Education Code Section 92, as added by Chapter 802, Statutes of 1975, Section 1:

"(a) The Legislature finds and declares that female students are not accorded opportunities for participation in school-sponsored athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female students.

(b) Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(c) Nothing in this section shall be construed to require a school district to require competition between male and female students in school-sponsored athletic programs."

[56]Education Code Section 22502.1, as added by Chapter 275, Statutes of 1976, Section 7:

"Every community college district shall provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex."

Chapter 1176, Statutes of 1976, Section 1 amended Education Code Section 91[57] to add language to subdivision (d), to include teachers, administrators and aides among the members of school personnel prohibited from offering vocational or career opportunity guidance to pupils on the basis of that pupil's sex. In addition, the amendment imposed an affirmative duty upon any school personnel acting in a career counseling or course selection capacity to any pupil, to explore nontraditional career options for that pupil's sex.

Chapter 1010, Statutes of 1976, Section 2 (operative April 30, 1977) recodified and renumbered the Education Code. Relevant code sections before and after the recodification and renumbering are as follows:

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[57]Education Code Section 91, as amended by Chapter 1176, Statutes of 1976, Section 1:

"(a) It is the policy of the state that elementary and secondary school and community college classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the pupils enrolled in such classes and courses.

(b) No school district shall prohibit any pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Section 8506.

(c) No school district shall require pupils of one sex to enroll in a particular class or course, unless the same class or course is also required of pupils of the opposite sex.

(d) No school counselor, teacher, administrator, or aide shall, on the basis of the sex of a pupil, offer vocational or school program guidance to pupils of one sex which is different from that offered to pupils of the opposite sex or, in counseling students, differentiate career, vocational, or higher education opportunities on the basis of the sex of the pupil counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with such pupil the possibility of careers, or courses leading to such careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 10921, in advance of career counseling and course selection commencing with course selection for the seventh grade so that they may participate in such counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex."

Former Code Section	New Code Section
91	40
92	41
22504.7	66016

Chapter 36, Statutes of 1977, Section 1.5, amended Education Code Section 40[58] to specifically include community college districts within the scope of the code section. Therefore, for the first time, community college districts were required to comply with the duties contained in the section in order to ensure that all classes and courses would be conducted without regard to the sex of the students enrolled in such classes and courses.

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[58]Education Code Section 40, as amended by Chapter 36, Statutes of 1977, Section 1.5:

"(a) It is the policy of the state that elementary and secondary school and community college classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the ~~pupils~~ student enrolled in such classes and courses.

(b) No school district or community college district shall prohibit any ~~pupil~~ student from enrolling in any class or course on the basis of the sex of the ~~pupil~~ student, except a class subject to Section ~~8506~~ 51550.

(c) No school district or community college district shall require ~~pupils~~ students of one sex to enroll in a particular class or course, unless the same class or course is also required of ~~pupils~~ students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a ~~pupil~~ student, offer vocational or school program guidance to ~~pupils~~ students of one sex that is different from that offered to ~~pupils~~ students of the opposite sex or, in counseling students, differentiate career, vocational, or higher education opportunities on the basis of the sex of the ~~pupil~~ student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section ~~10921~~ 48980, in advance of career counseling and course selection commencing with course selection for the seventh grade so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of ~~pupils~~ students of one sex, shall be available to ~~pupils~~ students of each sex."

Chapter 36, Statutes of 1977, Section 507, added Education Code Section 72013[59] to replace Education Code Section 25502.1. The addition only changed the section number and left the language of the section the same.

Chapter 470, Statutes of 1981, Section 46 added Education Code Sections 72010 - 72012 to include general prohibitions against discrimination. Education Code Section 72010[60] stated that the provisions of the article were supplemental to any provision in the Constitution or laws of the United States or Constitution or laws of the State of California, relating to discrimination. Education Code Section 72011 was added to replace Education Code Section 72013. The addition only changed the section number and left the language of the section the same. Education Code Section 72012[61] required community colleges to comply with Sections 40, 41, and 66016, relating to sex discrimination.

Chapter 1117, Statutes of 1982, Section 1 added Chapter 2 (commencing with

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[59]Education Code Section 72013, as added by Chapter 36, Statutes of 1977, Section 507:

~~§25502.1~~ §72013
"Every community college district shall provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex."

[60]Education Code Section 72010, as added by Chapter 470, Statutes of 1981, Section 46:

"The provisions of this article are supplemental to any provision in the Constitution or laws of the United States or Constitution or laws of the State of California, relating to discrimination."

[61]Education Section 72012, as added by Chapter 470, Statutes of 1981, Section 46:

"Every community college shall comply with Sections 40, 41, and 66016, relating to sex discrimination."

Section) 200 to Part 1 of Division 1 of Title 1 of the Education Code. The title of this chapter was "Prohibition of Discrimination on the Basis of Sex" and the Education Code Sections that were added which are pertinent to Community Colleges today were Sections 212, 213, 214 and 262. Education Code Sections 212, 213 and 214 were contained in Article 2 (Definitions) and Education Code Section 262 was contained in Article 6 (Enforcement).

Education Code Section 212[62] defined the term "sex" as the biological condition or quality of being a male or female human being.

Education Code Section 213[63] defined the term "state financial assistance" to mean any form of financial aid administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any pupils admitted to the educational institution, which included: (a) grants of state property, or any interest therein; (b) provision of the services of state personnel; and (c) funds provided by contract, tax rebate, appropriation, allocation, or formula.

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[62]Education Code Section 212, as added by Chapter 1117, Statutes of 1982, Section 1:

"For purposes of this chapter, "sex" means the biological condition or quality of being a male or female human being."

[63]Education Code Section 213, as added by Chapter 1117, Statutes of 1982, Section 1:

"For purposes of this chapter, "state financial assistance" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any pupils admitted to the educational institution.

State financial assistance shall include, but not be limited to, all of the following:

(a) Grants of state property, or any interest therein.

(b) Provision of the services of state personnel.

(c) Funds provided by contract, tax rebate, appropriation, allocation, or formula."

Education Code Section 214[64] defined the term "state student financial aid" to mean any form of financial aid administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution, including scholarships, loans, grants, or wages.

Education Code Section 262[65] required the governing board of a community college district to have the primary responsibility for ensuring that community college district programs and activities would be free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability. The Chancellor's office of the California Community Colleges was required to review the original complaints of unlawful discrimination, district investigation reports and district reports of

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[64]Education Code Section 214, as added by Chapter 1117, Statutes of 1982, Section 1:

"For purposes of this chapter, "state student financial aid" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution. State student financial aid shall include, but not be limited to, scholarships, loans, grants, or wages."

[65]Education Code Section 262, as added by Chapter 1117, Statutes of 1982, Section 1:

"(a) The governing board of a community college district shall have the primary responsibility for ensuring that district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for all of the following:

(1) Reviewing original complaints of alleged unlawful discrimination filed pursuant to Section 59328 of Title 5 of the California Administrative Code.

(2) Reviewing reports of the nature and extent of the investigation of each complaint conducted by the district.

(3) Reviewing reports of any actions taken by the district to resolve each complaint.

(4) Monitoring the compliance of each district with any and all regulations promulgated pursuant to Section 11138 of the Government Code."

action taken to resolve each complaint. Also, the Chancellor was responsible for monitoring the compliance of each district with all regulations promulgated pursuant to Section 11138[66] of the Government Code.

Chapter 143, Statutes of 1983, Section 46 amended Education Code Section 66016[67] to make technical, non-substantive language changes.

Chapter 1371, Statutes of 1984, Section 1 added Education Code Section 212.5[68]

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[66]Government Code Section 11138, as added by Chapter 972, Statutes of 1977, Section 1:

"Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars ($100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article."

[67]Education Code Section 66016, as amended by Chapter 143, Statutes of 1983, Section 46:

"It is the intent of the Legislature that opportunities for participation in intercollegiate athletic programs in the community colleges, in the campuses of the California State University ~~and Colleges~~, and in the campuses of the University of California be provided on as equal a basis as is practicable to male and female students.

The costs of providing these equal opportunities may vary according to the type of sports contained within the respective men's and women's athletic programs. Therefore it is also the intent of the Legislature that additional sources of revenue should be determined to provide additional funds for these equal opportunity programs."

[68]Education Code Section 212.5, as added by Chapter 1371, Statutes of 1984, Section 2:

"For purposes of this chapter, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available

to define the term "sexual harassment" as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions: (a) submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress; (b) submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual; (c) the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment; or (d) submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

Chapter 1514, Statutes of 1988, Section 2 amended Education Code Section 262[69] to delete the requirements that the Chancellor review the original complaints of

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at or through the educational institution."

[69]Education Code Section 262, as amended by Chapter 1514, Statutes of 1988, Section 2:

"(a) The governing board of a community college district shall have the primary responsibility for ensuring that community college district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for ~~all of the following:~~

~~(1) Reviewing original complaints of alleged unlawful discrimination filed pursuant to Section 59328 of Title 5 of the California Administrative Code~~

~~(2) Reviewing reports of the nature and extent of the investigation of each complaint conducted by the district.~~

~~(3) Reviewing reports of any actions taken by the district to resolve each complaint.~~

~~(4)~~ Monitoring the compliance of each district with any and all regulations promulgated

unlawful discrimination, investigation reports and reports of district action taken to resolve each complaint. Therefore, after the amendment, the Chancellor need only to continue to monitor the compliance of each district with all regulations promulgated pursuant to Section 11138 of the Government Code.

Chapter 1372, Statutes of 1990, Sections 3 and 4 amended Education Code Sections 40 and 41 respectively, but the language of Section 41 remained the same. The amendment to Education Code Section 40[70] deleted the language concerning specific application of the code section to community colleges.

Chapter 1372, Statutes of 1990, Section 288.5 added Education Code Section

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pursuant to Section 11138 of the Government Code."

[70]Education Code Section 40, as amended by Chapter 1372, Statutes of 1990, Section 3:

"(a) It is the policy of the state that elementary and secondary school ~~and community college~~ classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the student enrolled in such classes and courses.

(b) No school district ~~or community college district~~ shall prohibit any student from enrolling in any class or course on the basis of the sex of the student, except a class subject to Section 51550.

(c) No school district ~~or community college district~~ shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex that is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational, or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for the seventh grade so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex."

72013[71] to provide that the terms "handicap" and "disability" were to have the same meaning with respect to access to access to community college programs.

Chapter 1372, Statutes of 1990, Section 289 added Education Code Section 72014[72] to prohibit any community college district funds from being used for membership to or for any type of financial payment or contribution to any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin.

Chapter 1372, Statutes of 1990, Section 289.5 added Education Code Section 72015[73], stating that the policy of the state was that community college classes and

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[71]Education Code Section 72013, as added by Chapter 1372, Statutes of 1990, Section 288.5:

"With respect to access to community college district services, classes, and programs, and with respect to all references within this division, "handicap" and "disability" shall have the same meaning."

[72]Education Code Section 72014, as added by Chapter 1372, Statutes of 1990, Section 289:

"No funds under the control of a community college district shall ever be used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin. This section does not apply to any public funds which have been paid to an individual officer or employee of the district as salary, or to any funds which are used directly or indirectly for the benefit of student organizations."

[73]Education Code Section 72015, as added by Chapter 1372, Statutes of 1990, Section 289.5:

"(a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.

(b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.

(c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that

courses, including nonacademic and elective classes and courses, were to be conducted without regard to the sex of the student enrolled in such classes and courses. Subdivision (d) required that any school personnel acting in a career counseling or course selection capacity, affirmatively explore with the pupil the possibility of careers, or courses leading to careers, nontraditional for that pupil's sex. Subdivision (e) required districts to ensure that if participation in a particular physical education activity or sport was required of students of one sex that it also be available to students of each sex. Subdivision (f) declared that opportunities for participation in community college athletics must be provided equally to male and female students and on an equitable basis to all students. Subdivision (g) required the governing boards of community college districts to

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offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

(f) The Legislature finds and declares that female students are not accorded opportunities for participation in community college athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in community college athletics be provided equally to male and female students and on an equitable basis to all students.

(g) Insofar as practicable, in apportioning public funds, community college district governing boards shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of the governing board of a community college district, or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and opportunities for participation shall include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(h) It is the further intent of the Legislature that females be given the same opportunity to participate in athletics and compete with other females in individual and team sports as is available to males who compete with other males in individual and team sports. Nothing in this section shall be construed to require a community college to require competition between male and female students in school-sponsored athletic programs."

apportion any public funds available for athletics in a manner that ensured, insofar as practicable, that equitable amounts were allocated for all students.

Chapter 1198, Statutes of 1991, Sections 4.2, 4.5 and 9 added Education Code Sections 66010.2, 66010.7 and 66030 respectively.

Education Code Section 66010.2[74] required community college districts to provide (a) access to education to all qualified Californians, particularly for those who have been underrepresented in both their graduation rates from secondary institutions and in their attendance at higher educational institutions; (b) quality teaching and programs of excellence for their students; and (c) educational equity through a diverse student body and faculty, and an environment in which "each person, regardless of race, gender, age, disability, or economic circumstances, has a reasonable chance to fully develop his or her potential."

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[74]Education Code Section 66010.2, as added by Chapter 1198, Statutes of 1991, Section 4.2:

"The public elementary and secondary schools, the California Community Colleges, the California State University, the University of California, and independent institutions of higher education share goals designed to provide educational opportunity and success to the broadest possible range of our citizens, and shall provide the following:

(a) Access to education, and the opportunity for educational success, for all qualified Californians. Particular efforts should be made with regard to those who are historically and currently underrepresented in both their graduation rates from secondary institutions and in their attendance at California higher educational institutions.

(b) Quality teaching and programs of excellence for their students. This commitment to academic excellence shall provide all students the opportunity to address issues, including ethical issues, that are central to their full development as responsible citizens.

(c) Educational equity not only through a diverse and representative student body and faculty but also through educational environments in which each person, regardless of race, gender, age, disability, or economic circumstances, has a reasonable chance to fully develop his or her potential."

Education Code Section 66010.7[75] declared the Legislature's commitment to encourage and support collaboration and coordination among all segments of education including, as stated in subdivision (3), facilitating achievement of the goals of educational equity.

Education Code Section 66030[76] required the governing boards of the community colleges to ensure and maintain multicultural learning environments free from all forms

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[75]Education Code Section 66010.7, as added by Chapter 1198, Statutes of 1991, Section 4.5:

"(a) The Legislature, through the enactment of this section, expresses its commitment to encourage and support collaboration and coordination among all segments of education.

(b) Within the differentiation of segmental functions outlined in this article, the institutions of higher education shall undertake intersegmental collaboration and coordination particularly when it can do any of the following:

(1) Enhance the achievement of the institutional missions shared by the segments.

(2) Provide more effective planning of postsecondary education on a statewide basis.

(3) Facilitate achievement of the goals of educational equity.

(4) Enable public and independent higher education to meet more effectively the educational needs of a geographic region.

(5) Facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions.

(c) The leaders responsible for public and independent institutions of higher education and the Superintendent of Public Instruction shall work together to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels.

(d) The California Postsecondary Education Commission shall have responsibility for reviewing and evaluating the effectiveness of intersegmental activities in accomplishing the established goals, and shall report its findings to the Governor and Legislature biennially."

[76]Education Code Section 66030, as added by Chapter 1198, Statutes of 1991, Section 9:

"(a) It is the intent of the Legislature that public higher education in California strive to provide educationally equitable environments which give each Californian, regardless of ethnic origin, race, gender, age, disability, or economic circumstance, a reasonable opportunity to develop fully his or her potential.

(b) It is the responsibility of the governing boards of institutions of higher education to ensure and maintain multicultural learning environments free from all forms of discrimination and harassment, in accordance with state and federal law."

of discrimination and harassment, in accordance with state and federal law.

Chapter 914, Statutes of 1998, Sections 2, 3, 34 and 51 amended and renumbered Education Code Sections 40, 41, 262 and 72015 respectively and made non-substantive technical changes to each. The amendment to sections 40 and 41 also replaced the term "student" whenever it appeared, with the term "pupil". The code sections before and after the renumbering are as follows:

Former Code Section	New Code Section
40	221.5
41	221.7
262	66292
72015	66271.7

Chapter 914, Statutes of 1998, Sections 11, 12, 14 and 15 amended Education Code Sections 212, 212.5, 213 and 214 respectively to delete the phrase "For purposes of this chapter . . . " from the start of each of the code sections and to make other non-substantive technical changes.

Sex Equity in Education Act:

Chapter 914, Statutes of 1998, Section 49, added Education Code Sections 66251 - 66292.4 to establish, for the first time, the Sex Equity in Education Act, a separate act that was to apply specifically to postsecondary institutions.

Education Code section 66251[77] declared the policy of the State of California to afford all persons, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, equal rights and opportunities in the postsecondary institutions of the state. The section stated that the purpose of the following chapter was to prohibit acts contrary to this policy and to provide remedies for any violations of the policy.

Education Code Section 66252[78] declared the Legislative findings that all

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[77]Education Code Section 66251, as added by Chapter 914, Statutes of 1998, Section 49:

"It is the policy of the State of California to afford all persons, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, equal rights and opportunities in the postsecondary institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor."

[78]Education Code Section 66252, as added by Chapter 914, Statutes of 1998, Section 49:

"(a) All students have the right to participate fully in the educational process, free from discrimination and harassment.
(b) California's postsecondary educational institutions have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.
(c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.
(d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.
(e) There is an urgent need to teach and inform students in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase students' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in postsecondary educational institutions and in society as a means of responding to potential harassment and hate violence.
(f) It is the intent of the Legislature that each postsecondary educational institution undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of students to equal educational opportunity.
(g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the

students have the right to participate fully in the educational process, free from discrimination and harassment, and that California's postsecondary educational institutions have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity. The section stated the Legislative intent that each postsecondary educational institution undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of students to equal educational opportunity. It was also the intent of the Legislature that this law be interpreted as consistent with various other state and federal laws that concern civil rights, unless this law granted more protections or imposed any additional obligations.

Education Code Sections 66260-66264 contained the definitions applicable to the chapter. Education Code Section 66260[79] provided that the definitions in this article would govern the use of the terms defined for purposes of the Sex Equity in Education

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Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes."

[79]Education Code Section 66260, as added by Chapter 914, Statutes of 1998, Section 49:

"The definitions in this article shall govern the use of the terms defined for purposes of this chapter."

Act of Chapter 4.5. Education Code Section 66261[80] defined the term "governing board" to mean the governing board of a community college. Education Code Section 66261.5[81] defined the term "Postsecondary educational institution" to mean a public or private institution of vocational, professional, or postsecondary education; the governing board of a community college district; the Regents of the University of California; or the Trustees of the California State University. Education Code Section 66262[82] defined the term "sex" as having the same meaning as defined in Section 212. Education Code Section 66262.5[83] defined the term "sexual harassment" as having the same meaning as defined in Section 212.5. Education Code Section 66263[84] defined the term "state financial assistance" as having the same meaning as defined in Section 213. Finally,

[80]Education Code Section 66261, as added by Chapter 914, Statutes of 1998, Section 49:

""Governing board" means the governing board of a community college."

[81]Education Code Section 66261.5, as added by Chapter 914, Statutes of 1998, Section 49:

""Postsecondary educational institution" means a public or private institution of vocational, professional, or postsecondary education; the governing board of a community college district; the Regents of the University of California; or the Trustees of the California State University."

[82]Education Code Section 66262, as added by Chapter 914, Statutes of 1998, Section 49:

" "Sex" has the same meaning as defined in Section 212."

[83]Education Code Section 66262.5, as added by Chapter 914, Statutes of 1998, Section 49:

""Sexual harassment" has the same meaning as defined in Section 212.5."

[84]Education Code Section 66263, as added by Chapter 914, Statutes of 1998, Section 49:

""State financial assistance" has the same meaning as defined in Section 213."

Education Code Section 66264[85] defined the term "state student financial aid" as having the same meaning as defined in Section 214.

Education Code Section 66270[86] prohibited discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability, in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

Section 66271.1[87] required the Board of Governors of the California Community Colleges to adopt regulations to implement this chapter.

Section 66271.5[88] stated that the provisions of sections 66271.5, 66273 and

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[85]Education Code Section 66264, as added by Chapter 914, Statutes of 1998, Section 49:

""State student financial aid" has the same meaning as defined in Section 214."

[86]Education Code Section 66270, as added by Chapter 914, Statutes of 1998, Section 49:

"No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability, in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid."

[87]Education Code Section 66271.1, as added by Chapter 914, Statutes of 1998, Section 49:

"The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California may, adopt regulations as required by law to implement this chapter."

[88]Education Code Section 66271.5, as added by Chapter 914, Statutes of 1998, Section 49:

"The provisions of this article are supplemental to any provision in the Constitution or laws of the United States or laws of the State of California, relating to discrimination."

66281.5 (Article 4: Sex Equity in Education) were to be supplemental to any provision in the Constitution or laws of the United States or laws of the State of California, relating to discrimination, thus establishing additional duties mandated by the state.

Education Code Section 66281.5[89] stated that the policy of the State of California, pursuant to Section 66251, was that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary educational institution of the state. Each California Community College was required to establish a written policy on sexual harassment that was to include, pursuant to subdivision (c), information on

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[89]Education Code Section 66281.5, as added by Chapter 914, Statutes of 1998, Section 49:

"(a) It is the policy of the State of California, pursuant to Section 66251, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary educational institution of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each postsecondary educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The postsecondary educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the postsecondary educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that
location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the postsecondary educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation
program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the postsecondary educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the postsecondary educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution."

where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies. A copy of the sexual harassment policy was required to be distributed in the following ways and pursuant to the following subdivisions: (d) to display it in a prominent location in the main administrative building or other area of the campus or schoolsite; (e) to provide it as part of any orientation program conducted for new students; (f) to provide it to each faculty member, all members of the administrative and support staff at the beginning of the first quarter or semester of the school year and upon the hiring of each new employee; and (g) to publish it in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

Education Code section 66290[90] required that, prior to receipt of any state financial assistance or state student financial aid, community colleges must provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the community college will be conducted in compliance with all applicable provisions of state law prohibiting discrimination on the basis of sex.

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[90]Education Code Section 66290, as added by Chapter 914, Statutes of 1998, Section 49:

"Prior to receipt of any state financial assistance or state student financial aid, a postsecondary educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the postsecondary educational institution will be conducted in compliance with this chapter and all other applicable provisions of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the postsecondary educational institution, may be provided for all the programs and activities conducted by a postsecondary educational institution."

Education Code Section 66291[91] required community college districts to submit timely, complete, and accurate compliance reports to the Chancellor's office, as that entity may require, and also to make such reports available for public inspection during regular business hours.

Education Code Section 66292.3[92] permitted a party to a written complaint of prohibited discrimination to appeal the action taken by the governing board of a community college district to the Board of Governors of the California Community

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[91]Education Code Section 66291, as added by Chapter 914, Statutes of 1998, Section 49:

"(a) A community college district shall submit timely, complete, and accurate compliance reports to the chancellor's office, as that entity may require.

(b) All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours."

[92]Education Code Section 66292.3, as added by Chapter 914, Statutes of 1998, Section 49:

"(a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a community college district or the president of a campus of the California State University, pursuant to this article, to the Board of Governors of the California Community Colleges or the Chancellor of the California State University, as applicable.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders, may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

(c) Nothing in this chapter shall be construed to require an exhaustion of the appeal to the Board of Governors of the California Community Colleges or to the Chancellor of the California State University pursuant to subdivision (a), before civil law remedies may be purchased.

(d) Notwithstanding any other provision of law, a person who alleges that he or she is a victim of discrimination may not seek civil remedies pursuant to this section until at least 90 days have elapsed from the filing of a discrimination complaint with the local educational agency. The 90-day moratorium imposed by this subdivision does not apply to injunctive relief and is applicable only if the local educational agency has appropriately, and in a timely manner, apprised the complainant of his or her right to file a complaint."

Colleges. In addition, the section required community college educational institutions to advise persons who have filed a complaint of prohibited discrimination that civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders, may also be available to such complainants. Finally, the educational institution was required to make this information available by publication in appropriate informational materials.

Education Code Section 66292.4[93] stated that the chapter may be enforced through action in civil law.

Chapter 914, Statutes of 1998, Section 50 amended Education Code Section 72012[94] to make non-substantive technical changes.

Chapter 587, Statutes of 1999, Section 7 and 8 amended Education Code

[93]Education Code Section 66292.4, as added by Chapter 914, Statutes of 1998, Section 49:

"This chapter may be enforced through a civil action."

[94]Education Code Section 72012, as amended by Chapter 914, Statutes of 1998, Section 50:

"Every community college shall comply with Sections ~~40~~ 221.5, ~~44~~ 221.7, and 66016, relating to sex discrimination."

Section 66251[95] and 66270[96] to include among the persons to be afforded equal rights and opportunities under 66251 and to be protected from discrimination under 66270 in the community colleges, those persons protected from hate crimes by Section 422.6(a) of the Penal Code. Penal Code Section 422.6, subdivision (a), prohibits hate crimes against another because of race, color, religion, ancestry, national origin, disability, gender or sexual orientation, or because one perceives that the other person has any of the above characteristics. Therefore, the qualities of a person's color, ancestry, sexual orientation and perception by another that a person may have any of the enumerated characteristics, were added to those people specifically to be afforded equal rights and opportunities, under Education Code Section 66251 and to be protected from discrimination, under Education Code Section 66270, in community college districts.

SECTION 3. TITLE 5, CALIFORNIA CODE OF REGULATIONS

Section 51026 (added in 1998) requires, as a condition of receipt of state aid, that

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[95]Education Code Section 66251, as amended by Chapter 587, Statutes of 1999, Section 7:

"It is the policy of the State of California to afford all persons, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, or regardless of any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, equal rights and opportunities in the postsecondary institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor."

[96]Education Code Section 66270, as amended by Chapter 587, Statutes of 1999, Section 8:

"No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid."

the governing board of a community college district adopt a student equity plan.

Section 54220 (added in 1993 and last amended in 1998) requires, at subdivision (a), the district to adopt, by July 1, 1993, a student equity plan which includes the following for each college in the district: (1) Campus-based research as to the extent of student equity in the five areas described in paragraph (2) and the determination of what activities are most likely to be effective; (2) Goals for access, retention, degree and certificate completion, ESL and basic skills completion, and transfer; for the overall student population and for each population group of students, as appropriate. Where significant underrepresentation is found to exist, the student equity plan must include race-neutral, or, when legally appropriate, race-conscious measures for addressing the disparity, in accordance with standards adopted by the Board of Governors; (3) Implementation activities designed to attain the goals, including a means of coordinating existing student equity related programs; (4) Sources of funds for the activities in the plan; (5) Schedule and process for evaluation; and, (6) An executive summary that includes, at a minimum, the groups for whom goals have been set, the goals, the initiatives that the college or district will undertake to achieve these goals, the resources that have been budgeted for that purpose, and the district official to contact for further information. Subdivision (b) requires that these plans be developed with the active involvement of all groups on campus as required by law, and with the involvement of appropriate people from the community. Subdivision (c) requires the Board-adopted plan to be submitted to the Office of the Chancellor, and for the Office of the Chancellor

to publish all executive summaries, and to send copies to every college and district, the chair of each consultation group that so requests, and such additional individuals and organizations as deemed appropriate.

SECTION 4. CHANCELLOR'S REVISED GUIDELINES AND INFORMATION

The Chancellor of the California Community Colleges has also promulgated Revised Guidelines and Information, 2002, entitled "Student Equity: Regulations and Guidelines", a copy of which is attached hereto as an Exhibit and is incorporated herein by reference. These guidelines impose additional duties on community colleges in implementing Sections 51026 and 54220 of Title 5 of the California Code of Regulations.

The introduction of the Chancellor's Revised Guidelines and Information, 2002, states that districts should establish a success/equity advisory committee comprised of members representative of all groups on campus and of the surrounding community to assist in development of the student equity plan when implementing Section 54220 of Title 5 of the California Code of Regulations.

The guideline for 54220(a)(1) states that when compiling data to determine the extent to which equity issues are revealed, districts should periodically review such data and make efforts to address any problems that are identified.

The guideline for 54220(a)(2) states that when goals for student equity are adopted, they should meet the following standards: be written; include specific measures for determining progress towards achieving the desired outcomes; identify the baseline data findings that forms the bases for noting an equity issue; identify the amount and

direction of change expected to reflect the desired outcome or amount of progress to be achieved; and include target dates and/or timetables to establish a time frame for assessing the effectiveness in achieving expected outcomes. If establishing goals to eliminate any noted underrepresentation, any methods used must be race/gender neutral. When evidence of significant underrepresentation is found (below the 70% level of expected representation), community colleges must go beyond complying with the nondiscrimination laws and take active steps to promote student equity. Specifically, such colleges shall: (1) review its practices and procedures and identify and implement any additional measures which might reasonably be expected to address the needs of significantly underrepresented groups in the success indicator areas in question; (2) consider various other means of reducing the underrepresentation, which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective; and (3) establish target dates for achieving expected outcomes. The Chancellor's Office recommends that race/gender neutral methods of rectifying underrepresentation be tried for at least 3 years before consideration is given to mechanisms that take race or gender into account.

The guideline for 54220(a)(5) states that the data collection component of any student equity plan should be a continuing process. Each district is expected to conduct an annual survey of its student population and gather ethnicity, gender and disability data for use in evaluating its progress in implementing the goals set forth in its plan. The

evaluation schedule that a community college adopts should contain specific information about who is doing what and when and how often the plan itself will be evaluated.

The guideline for 54220(a)(6) states that the contact person designated pursuant to this subdivision is to be responsible for the monitoring, review, and evaluation of student success for all students and for guiding the planning and development process to promote student success. In addition, this person should compile the results of the periodic review process to determine effective success strategies, report these findings to the success/equity advisory committee on an annual basis, and submit a copy of this report along with any resulting committee board action to the Chancellor's Office.

CONDITION 19 TRANSFER CENTERS

This condition alleges mandated costs reimbursable by the state for community college districts to implement and comply with policies and procedures to recognize transfer as one of its primary missions, and adopt a transfer center plan as a minimum condition for receipt of state aid.

Chapter 973, Statutes of 1988, Section 7 added Education Code Sections 66720-66723.

Education Code Section 66720[97] required the Board of Governors of the

[97]Education Code Section 66720, as added by Chapter 973, Statutes of 1988, Section 7:

"The Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University, with appropriate consultation with the Academic Senates of the respective segments, shall jointly develop, maintain, and disseminate a common core curriculum in general education courses for the purposes of transfer. Any person who has successfully completed the transfer core curriculum, shall be deemed to have thereby completed all lower division general education requirements for the University of California and the California State University."

California Community Colleges, the Regents of the University of California, and the Trustees of the California State University, with appropriate consultation with the Academic Senates of the respective segments, to jointly develop, maintain, and disseminate a common core curriculum in general education courses for the purposes of transfer.

Education Code Section 66721[98] required that, upon development of the transfer core curriculum pursuant to Section 66720, and upon any subsequent joint revision of that curriculum, the Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University jointly cause the curriculum to be published and distributed to each public school in the state that provides instruction in any of the grades 7 to 12, inclusive, and to each community college in the state, with an emphasis on the communication of that information to each school or college having a high proportion of students who are members of one or more ethnic minorities.

[98]Education Code Section 66721, as added by Chapter 973, Statutes of 1988, Section 7:

"Upon development of the transfer core curriculum pursuant to Section 66720, and upon any subsequent joint revision of that curriculum, the Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University shall jointly cause the curriculum to be published and distributed to each public school in this state that provides instruction in any of the grades 7 to 12, inclusive, and to each community college in this state, with an emphasis on the communication of that information to each school or college having a high proportion of students who are members of one or more ethnic minorities. In addition, the Board of Governors shall distribute that transfer core curriculum to the State Board of Education, which shall apply that information to ensure, through its curriculum development activities, that public school pupils enrolled in any of the grades 9 to 12, inclusive, are aware of the academic requirements for preparation for higher education and may receive any necessary academic remediation in a timely manner."

Education Code Section 66723[99] stated that chapter 9.2, regarding student transfer, did not apply to the University of California unless specifically provided for by appropriate resolution by the Regents of the University of California.

Chapter 1188, Statutes of 1991, Section 5 added Education Code Sections 66730-66744.

Education Code Section 66730[100] required the Regents of the University of California, the Trustees of the California State University, and the Board of Governors of

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[99]Education Code Section 66723, as added by Chapter 973, Statutes of 1988, Section 7:

"No provision of this chapter shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, makes that provision applicable."

[100]Education Code Section 66730, as added by Chapter 1188, Statutes of 1991, Section 5:

"(a) The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges shall have as a fundamental policy the maintenance of a healthy and expanded student transfer system. Both the University of California and the California State University shall have as a basic enrollment policy the maintenance of upper division enrollment, which are students who have attained upper division status, at 60 percent of total undergraduate enrollment. This goal shall be met through programs aimed at increasing the numbers of qualified transfer students from the community colleges without denying eligible freshmen applicants.

(1) The California State University shall maintain its upper division enrollment, which are students who have attained upper division status, at approximately 60 percent of total undergraduate enrollment. Its planning documents shall reflect this policy.

(2) Commencing in the 1991-92 academic year, the University of California shall progressively increase the percentage that upper division enrollment systemwide is of total undergraduate enrollment through the 1995-96 academic year until that percentage reaches approximately 60 percent. This shall be accomplished through increases in the numbers of community college transfer students admitted to upper division standing at the university without denying eligible freshmen applicants. Planning documents shall reflect these expected increases.

(b) The governing board of each segment shall ensure that individual university and college campus enrollment plans include adequate upper division places for community college transfer students in all undergraduate colleges or schools, and that each undergraduate college or school on each campus participates in developing articulation and transfer agreement programs with community colleges. The governing boards shall meet this goal within their respective general statewide planning framework used to attain and maintain the state's goal of a 60/40 ratio of upper to lower division students, their segmental enrollment planning processes, and campus planning regarding program balance, educational quality, and other relevant goals."

the California Community Colleges to have, as a fundamental policy, the maintenance of a healthy and expanded student transfer system. The governing board of each segment was required to ensure that individual university and college campus enrollment plans include adequate upper division places for community college transfer students in all undergraduate colleges or schools, and that each undergraduate college or school on each campus participated in developing articulation and transfer agreement programs with community colleges. In addition, the governing boards were to meet this goal within their respective general statewide planning framework used to attain and maintain the state's goal of a 60/40 ratio of upper to lower division students, their segmental enrollment planning processes, and campus planning regarding program balance, educational quality, and other relevant goals.

Education Code Section 66731[101] provided that student matriculation from community colleges through the University of California and the California State University must be recognized by the Governor, Legislature, and the governing boards of each of California's public postsecondary education segments as a central institutional priority of all segments of higher education.

[101]Education Code Section 66731, as added by Chapter 1188, Statutes of 1991, Section 5:

"Student matriculation from community colleges through the University of California and the California State University shall be recognized by the Governor, Legislature, and the governing boards of each of California's public postsecondary education segments as a central institutional priority of all segments of higher education."

Education Code Section 66732[102] required the governing boards of each segment to declare as policy that the student transfer agreement program constitute a significant role in achieving the goal of student diversity within their segments, and to ensure that all students, particularly those currently underrepresented in higher education, have access to a university education. In addition, the governing boards of each segment where required to design, adopt, and implement policies to facilitate successful movement of students from community colleges through the University of California and the California State University.

Education Code Section 66734[103] vested the Board of Governors of the California Community Colleges with the authority and responsibility to guarantee that all community college students have access to courses that meet the lower division baccalaureate degree requirements of the California public universities. The Board of

[102]Education Code Section 66732, as added by Chapter 1188, Statutes of 1991, Section 5:

"The governing boards of each segment shall declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within their segments, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. The governing boards of each segment shall design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University."

[103]Education Code Section 66734, as added by Chapter 1188, Statutes of 1991, Section 5:

"The Board of Governors of the California Community Colleges shall have the authority and responsibility to guarantee that all community college students have access to courses that meet the lower division baccalaureate degree requirements of the California public universities. The Board of Governors of the California Community Colleges, with the cooperation of the Regents of the University of California and the Trustees of the California State University, shall ensure that all students are clearly and fully informed as to which community college courses and units are transferable and meet the general education and lower division major requirements at the California State University and the University of California."

Governors of the California Community Colleges, with the cooperation of the Regents of the University of California and the Trustees of the California State University, were required to ensure that all students are clearly and fully informed as to which community college courses and units are transferable and meet the general education and lower division major requirements at the California State University and the University of California.

Education Code Section 66736[104] provided that the community college district governing boards were to ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students. All policies and procedures were required to give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations.

[104]Education Code Section 66736, as added by Chapter 1188, Statutes of 1991, Section 5:

"Each community college district governing board shall ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students.

All policies and procedures shall give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations."

Education Code Section 66737[105] stated that the Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges were expected to develop new programs of outreach, recruitment, and cooperation between and among the three segments of public higher education, to facilitate the successful transfer of students between the community colleges and the universities.

Education Code Section 66738[106] required the governing board of each public

[105]Education Code Section 66737, as added by Chapter 1188, Statutes of 1991, Section 5:

"The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges are expected to develop new programs of outreach, recruitment, and cooperation between and among the three segments of public higher education to facilitate the successful transfer of students between the community colleges and the universities. Every community college student who successfully completes the transfer agreement programs, as defined in Section 66738, in a community college shall have an appropriate place in an upper division university program."

[106]Education Code Section 66738, as added by Chapter 1188, Statutes of 1991, Section 5:

"(a) The governing board of each public postsecondary education segment shall be accountable for the development and implementation of formal systemwide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures to support and enhance the transfer function.

(b) The elements in a comprehensive transfer system shall include, but not be limited to, the following:

(1) Enrollment and resource planning; intersegmental faculty curricular efforts.

(2) Coordinated counseling.

(3) Financial aid and transfer services.

(4) Transfer articulation agreements and programs.

(5) Specific efforts to improve diversity.

(6) Early outreach activities.

(7) Expansion of current practices relating to concurrent enrollment of community college students in appropriate university courses.

(8) Centers.

(c) The governing board of each segment shall expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available; and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus."

postsecondary education segment to be accountable for the development and implementation of formal systemwide articulation agreements and transfer agreement programs. In addition, the governing board of each segment was required to expand existing practices related to concurrent enrollment, to provide community college students with the opportunity to take courses at the University of California and California State University campuses, as space is available; and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus.

Education Code Section 66740[107] required each department, school, and major in

[107]Education Code Section 66740, as added by Chapter 1188, Statutes of 1991, Section 5:

"Each department, school, and major in the University of California and California State University shall develop, in conjunction with community college faculty in appropriate and associated departments, discipline-specific articulation agreements and transfer program agreements for those majors that have lower division prerequisites. Faculty from the community colleges and university campuses shall participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency.

Where specific majors are impacted or over-subscribed, the prescribed course of study and minimum grade point average required for consideration for upper division admission to all of these majors shall be made readily available to community college counselors, faculty, and students on an annual basis. In cases where the prescribed course of study is altered by the university department, notice of the modification shall be communicated to appropriate community college faculty and counselors at least one year prior to the deadline for application to that major and implementation by the department responsible for teaching that major.

Community college districts, in conjunction with the California State University and the University of California, shall develop discipline-based agreements with as many campuses of the two university segments as feasible, and no fewer than three University of California campuses and five California State University campuses. The development of these agreements shall be the mutual responsibility of all three segments, and no one segment should bear the organizational or financial responsibility for accomplishing these goals.

The Chancellor of the California Community Colleges and the President of the University of California shall begin the process of setting priorities to determine which community colleges will receive first attention for the development of agreements. Criteria for priority determination shall include, but not be limited to, the percentage and number of students from economically disadvantaged families and underrepresented racial and ethnic minorities, and community colleges which traditionally have not

the University of California and California State University to develop, in conjunction with community college faculty in appropriate and associated departments, discipline-specific articulation agreements and transfer program agreements for those majors with lower division prerequisites. Faculty from the community colleges and university campuses were also required to participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency. Community college districts, in conjunction with the California State University and the University of California, were required to develop discipline-based agreements with as many campuses of the two university segments as feasible, and no fewer than three University of California campuses and five California State University campuses.

Education Code Section 66741[108] required that each community college student

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transferred many students to the University of California. The priority list shall be completed by March 1, 1992. These considerations shall not be used in any way to displace current agreements between any community college and the University of California or the California State University.

The Chancellor of the California Community Colleges and the Chancellor of the California State University system shall begin the process of setting priorities to determine which community colleges will receive first attention for the development of agreements. Criteria for priority determination shall include, but not be limited to, the percentage and number of students from economically disadvantaged families and underrepresented racial and ethnic minorities, and community colleges which traditionally have not transferred many students to California State Universities. The priority list shall be completed by March 1, 1992. These considerations shall not be used in any way to displace current agreements between any community college and the University of California or the California State University."

[108]Education Code Section 66741, as added by Chapter 1188, Statutes of 1991, Section 5:

"As a result of systemwide and interinstitutional agreements, each community college student shall be assured of the opportunity to enter into a transfer agreement program enabling a student to receive high priority consideration, attain equivalent special treatment, or enter into a contract when applying for university admission at the advanced standing level. It is recognized that eligibility for transfer agreement programs will require completion of certain requirements as defined in interinstitutional agreements. It is also recognized that access to majors of choice will, in most cases, require completion of additional requirements, such as specialized coursework and attainment of a specialized grade point average.

have the opportunity to enter into a transfer agreement program which would enable the student to receive high priority consideration, attain equivalent special treatment, or enter into a contract when applying for university admission at the advanced standing level. Transfer agreement programs were also required to carry high priority access to majors of choice. The University of California and the California State University were required to ensure that continuing undergraduate students and community college transfer students would be assessed against a common set of criteria for upper division standing to a specific major even though access to such programs would generally require such transfer students to meet qualifications above the minimum standard for general admission. Alternatively, students would be permitted to apply directly for admission at the advanced standing level, by meeting the University of California or California State University requirements for admission at that level. All students meeting these admission requirements were required to be guaranteed a place somewhere in the University of California or California State University system, as appropriate.

Transfer agreement programs also shall carry high priority access to majors of choice. The University of California and the California State University shall require that continuing undergraduate students and community college transfer students are assessed against a common set of criteria for upper division standing to a specific major. However, generally speaking, access to these programs shall require completion of specialized coursework and attainment of a grade point average above the minimums defined in general admission requirements, such as those used in supplementary admission criteria for impacted or over-subscribed programs.

Alternatively, students may also, by meeting the University of California or California State University requirements for admission at the advanced standing level, simply wish to apply as required. All students meeting these admission requirements shall be guaranteed a place somewhere in the University of California or California State University system, as appropriate."

Education Code Section 66742[109] required the governing boards of the three segments of public higher education to present annual statistical reports on transfer patterns via the California Postsecondary Education Commission to the Governor and Legislature.

Education Code Section 66743[110] required the California Postsecondary

[109]Education Code Section 66742, as added by Chapter 1188, Statutes of 1991, Section 5:

"The governing boards of the three public segments of higher education shall present annual statistical reports on transfer patterns via the California Postsecondary Education Commission to the Governor and Legislature. The reports shall include recent statistics on student enrollments by campus, segment, gender, ethnicity, and the ratio of upper division to lower division, including information on both freshman and transfer student access to the system. These reports should include, to the extent that data are available or become available, data on application, admission and enrollment information for all students by sex, ethnicity, and campus. For transfer students, this data shall indicate the segment of origin for all students. In addition, data shall be separately identified for transfer students from California Community Colleges, and shall identify the subset of applications which are completed together with admission, enrollment, and declared major information for that group. The reports shall describe the number of transfer agreements, if any, whose terms and conditions were not satisfied by either the California State University or the University of California, the number of California Community College transfer students denied either admission to the student's first choice of a particular campus of the California State University or the University of California or the student's first choice of a major field of study, and, among those students, the number of students who, upon denial of either of the student's first choices, immediately enrolled at another campus of the California State University or the University of California. The reports shall also include information by sex and ethnicity on retention and degree completion for transfer students as well as for native students, and the number and percentage of baccalaureate degree recipients who transferred from a community college."

[110]Education Code Section 66743, as added by Chapter 1188, Statutes of 1991, Section 5:

"The California Postsecondary Education Commission is requested to convene an intersegmental advisory committee on transfer access and performance for the purposes of presenting biennial reports to the Governor and the Legislature on the status of transfer policies and programs, the diligence of each segment's board, and the
effectiveness of these programs in meeting the state's goals for transfer. The report shall include information about all of the following:

(a) The effectiveness of transfer agreement programs and activities in enhancing the transfer function overall as well as the extent to which transfer program activities have been directed at students who have been historically underrepresented in the University of California and the California State University.

(b) The status of the implementation of the transfer core curriculum as described in Section 66720 for each community college, including information about the extent to which sophomore level courses needed for transfer are available on all community college campuses.

Education Commission to convene an intersegmental advisory committee on transfer access and performance and to biannually prepare a report for the Governor and the Legislature on the status of transfer policies and programs based on their findings. The report was required to include information regarding the effectiveness of transfer agreement programs in enhancing the overall transfer function, the status of the implementation of the transfer core curriculum, and the progress made in achieving articulation agreements in specific majors. The California Postsecondary Education Commission was required to report to the Governor and the Legislature on the overall success of chapter 9.2, regarding student transfer, no later that April 1994. Finally, the code section required that any finding of a substantial failure in achieving improved transfer enrollment or to implement reform in the transfer system in the University of California and the California State University, would result in the commencement of

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(c) Progress that has been made in achieving articulation agreements in those specific majors that have lower division prerequisites, and the dissemination of this information. The committee shall also explore methods to systematically measure the extent to which the state's goals of freshmen and transfer student access are being met, including analyses of the number of fully eligible freshmen or transfer students who are denied access to the system, and the reasons for that denial. The committee shall also address ways in which sharing of information about transfer students among the segments can be improved, including early identification of potential transfer students for intensive recruitment purposes.

No later than April 1994, the California Postsecondary Education Commission shall report to the Governor and the Legislature on the overall success of this chapter in expediting the goals of transfer, including recommendations about a common definition of transfer rates, including the identification of campuses and positions of employment that prevent progress toward a more effective transfer program, with specific recommendations about resource, program, or other incentives to encourage an effective intersegmental transfer or other incentives to encourage an effective intersegmental transfer program. The Governor and the Legislature shall monitor the success of the University of California and the California State University in achieving their targeted enrollment levels and in implementing these reforms. A substantial failure to implement reform, to achieve the 60/40 ratio by the designated dates, or to significantly improve the transfer rate of historically underrepresented groups, shall precipitate legislative hearings to determine the reasons why any one or all of these goals have not been met."

legislative hearings to determine the reasons why goals have not been met.

Education Code Section 66744[111] stated that article 9.2, regarding student transfers, did not apply to the University of California unless specifically provided for by appropriate resolution by the Regents of the University of California.

Chapter 1198, Statutes of 1991, Section 17 added Education Code Section 66722[112] to state the intent of the Legislature that the transfer function shall be a central institutional priority of all segments of higher education in California, and that the segments shall have as a fundamental policy and practice the maintenance of an effective transfer system.

Chapter 1198, Statutes of 1991, Section 18 added Education Code Section 66722.5[113] to state the intent of the Legislature that the segments of higher education pursue the development of transfer agreement programs that specify the curricular

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[111]Education Code Section 66744, as added by Chapter 1188, Statutes of 1991, Section 5:

"No provision of this article shall apply to the University of California except to the extent that the Regents of the University of California, by resolution, make that provision applicable."

[112]Education Code Section 66722, as added by Chapter 1198, Statutes of 1991, Section 17:

"It is the intent of the Legislature that the transfer function shall be a central institutional priority of all segments of higher education in California, and that the segments shall have as a fundamental policy and practice the maintenance of an effective transfer system."

[113]Education Code Section 66722.5, as added by Chapter 1198, Statutes of 1991, Section 18:

"It is the intent of the Legislature that the segments of higher education shall pursue the development of transfer agreement programs that specify the curricular requirements that must be met, and the level of achievement that must be attained, by community college students in order for those students to transfer to the campus, undergraduate college, or major of choice in the public four-year segments."

requirements that must be met, and the level of achievement that must be attained, by community college students in order for those students to transfer to the campus, undergraduate college, or major of choice in the public four-year segments.

Chapter 493, Statutes of 1995, Section 2, added Education Code Section 71027[114] to require the Board of Governors to develop, maintain, and disseminate a common course numbering system for use by the community colleges.

Chapter 758, Statutes of 1995, Section 38 amended Education Code Section 66743[115] to delete the requirement that the California Postsecondary Education

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[114]Education Code Section 71027, as added by Chapter 493, Statutes of 1995, Section 2:

"(a) The Board of Governors of the California Community Colleges shall develop, maintain, and disseminate a general common course numbering system for use by the community college districts.
(b) The office of the Chancellor of the California Community Colleges shall absorb the costs of developing, maintaining, and disseminating a general common course numbering system pursuant to this section within the office's existing resources.
(c) The board of governors shall report to the Legislature by January 1, 1998, on its progress in implementing this common course numbering system."

[115]Education Code Section 66743, as amended by Chapter 758, Statutes of 1995, Section 38:

"The California Postsecondary Education Commission is requested to convene an intersegmental advisory committee on transfer access and performance for the purposes of presenting biennial reports to the Governor and the Legislature on the status of transfer policies and programs, the diligence of each segment's board, and the effectiveness of these programs in meeting the state's goals for transfer. The report shall include information about all of the following:
(a) The effectiveness of transfer agreement programs and activities in enhancing the transfer function overall as well as the extent to which transfer program activities have been directed at students who have been historically underrepresented in the University of California and the California State University.
(b) The status of the implementation of the transfer core curriculum as described in Section 66720 for each community college, including information about the extent to which sophomore level courses needed for transfer are available on all community college campuses.
(c) Progress that has been made in achieving articulation agreements in those specific majors that have lower division prerequisites, and the dissemination of this information. The committee shall also explore methods to systematically measure the extent to which the state's goals of freshmen and transfer student access are being met, including analyses of the number of fully eligible freshmen or transfer students who are denied access to the system, and the reasons for that denial. The committee shall also

Commission report to the Governor and the Legislature on the overall success of chapter 9.2, regarding student transfer, no later than April 1994.

Chapter 758, Statutes of 1995, Sections 37.5 and 38.5 repealed Education Code Sections 66723[116] and 66744[117], respectively.

Chapter 187, Statutes of 2000, Section 3, added Education Code Section 66721.5[118] to require the governing board of each community college district to direct the

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address ways in which sharing of information about transfer students among the segments can be improved, including early identification of potential transfer students for intensive recruitment purposes. ~~No later than April 1994, the California Postsecondary Education Commission shall report to the Governor and the Legislature on the overall success of this chapter in expediting the goals of transfer, including recommendations about a common definition of transfer rates, including the identification of campuses and positions of employment that prevent progress toward a more effective transfer program, with specific recommendations about resource, program, or other incentives to encourage an effective intersegmental transfer or other incentives to encourage an effective intersegmental transfer program.~~ The Governor and the Legislature shall monitor the success of the University of California and the California State University in achieving their targeted enrollment levels and in implementing these reforms. A substantial failure to implement reform, to achieve the 60/40 ratio by the designated dates, or to ~~significantly~~ improve the transfer rate of historically underrepresented groups significantly, shall precipitate legislative hearings to determine the reasons why any one or all of these goals have not been met."

[116]Education Code Section 66723, as repealed by Chapter 758, Statutes of 1995, Section 37.5:

~~"No provision of this chapter shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, makes that provision applicable."~~

[117]Education Code Section 66744, as repealed by Chapter 758, Statutes of 1995, Section 38.5:

~~"No provision of this article shall apply to the University of California except to the extent that the Regents of the University of California, by resolution, make that provision applicable."~~

[118]Education Code Section 66721.5, as added by Chapter 187, Statutes of 2000, Section 3:

"Upon development of the transfer core curriculum pursuant to Section 66720, and upon any subsequent joint revision of that curriculum, the Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University shall jointly cause the curriculum to be published and distributed to each public school in this state that provides

appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum. The governing board of a community college district was required to ensure that the text of the current transfer core curriculum would be included in the published class schedule for each academic term. In addition, copies of the transfer core curriculum were permitted to be made available in other locations on each campus and distributed at specified alternative times or by alternative methods.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

In furtherance of the Education Code requirements, Title 5 Section 51027 (new section filed 1991 and last amended 1994) the governing board of each community college district is required, at subdivision (a), to recognize transfer as one of its primary missions, and to place priority emphasis on the preparation and transfer of underrepresented students, including African-American, Chicano/Latino, American Indian, disabled, low-income and other students historically and currently underrepresented in the transfer process. Subdivision (b) requires each community college district governing board, in consultation with baccalaureate college and university personnel, to direct the development and adoption of a transfer center plan that

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instruction in any of the grades 7 to 12, inclusive, and to each community college in this state, with an emphasis on the communication of that information to each school or college having a high proportion of students who are members of one or more ethnic minorities. In addition, the Board of Governors shall distribute that transfer core curriculum to the State Board of Education, which shall apply that information to ensure, through its curriculum development activities, that public school pupils enrolled in any of the grades 9 to 12, inclusive, are aware of the academic requirements for preparation for higher education and may receive any necessary academic remediation in a timely manner."

identifies target student populations and establishes target increases in the number of applicants to baccalaureate institutions. Plan components shall: (A) identify, contact, and provide transfer support services to targeted student populations; (B) ensure the provision of academic planning for transfer, the development and use of transfer admission agreements with baccalaureate institutions where available and as appropriate, and the development and use of course-to-course and major articulation agreements; (C) ensure that students receive accurate and up-to-date academic and transfer information through coordinated transfer counseling services; (D) monitor the progress of transfer students to the point of transfer; (E) support the progress of transfer students through referral as necessary, to such services as ability and diagnostic testing, tutoring, financial assistance, counseling, and to other instructional and student services on campus as appropriate; (F) assist students in the transition process, including timely completion and submittal of necessary forms and applications; (G) include a schedule of services for transfer students to be provided by baccalaureate institution staff; and (H) provide a resource library of college catalogs, transfer guides, articulation information and agreements, applications to baccalaureate institutions, and related transfer information. Districts are required to provide: space and facilities adequate to support the transfer center and its activities; clerical support for the transfer center and assign college staff to coordinate the activities of the transfer center; an advisory committee to plan the development, implementation, and ongoing operations of the transfer center: a plan of institutional research for ongoing internal evaluation of the effectiveness of the

college's transfer efforts, and the achievement of its transfer center plan; and, an annual report to the Chancellor describing the status of the district's efforts to implement its transfer center plan.

CONDITION 20 COMPLIANCE ENFORCEMENT

TITLE 5, CALIFORNIA CODE OF REGULATIONS

In furtherance of the Education Code sections 70901 and 70902 requirements to establish minimum conditions for the receipt of state aid, the State Board of Governors adopted Title 5, California Code of Regulations, sections 51000 through 51027, and for the enforcement of these regulations, sections 51100 and 51102.

Section 51000 (added in 1983 and last amended in 1984) specifically references Education Code section 70901, subdivision (b), paragraph (6) as the authority to establish the rules and regulations "affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to received state aid for the support of its community colleges."

Section 51100 (added in 1983 and last amended in 1984) requires the State Chancellor to, at least once every seven years, to review each college to determine whether it has met the minimum conditions established by Title 5 sections 51000 - 51027.

Section 51102 (added in 1983 and last amended in 1984) states that If the Chancellor's review indicates any area of noncompliance, the Chancellor is required to provide a written notice to the college, to which the college must respond. The

Chancellor then must either accept the response, require the district to adopt and follow a plan for compliance in order to continue to receive state aid, or withhold the district's state aid. If the Chancellor's review indicates any area of noncompliance, the Chancellor is required to provide a written notice to the college, to which the college must respond. The Chancellor then must either accept the response, require the district to adopt and follow a plan for compliance in order to continue to receive state aid, or withhold the district's state aid.

PART III. STATEMENT OF THE CLAIM

SECTION 1. REQUIREMENT FOR STATE REIMBURSEMENT

The statues, code sections, regulations, and executive orders described in this document result in community college districts incurring costs mandated by the state, as defined in Government Code section 17514[119], by creating new state-mandated duties related to the uniquely governmental function of providing public services and these statutes apply only to public schools and do not apply generally to all residents and entities in the state.[120]

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[119]Government Code section 17514, as last amended by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

[120]Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App.3d 155:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. v. State of

The new duties mandated by the state upon community colleges that require state reimbursement are the direct and indirect costs of labor, materials and supplies, contracted services, equipment and capital assets, staff and student training, and travel to implement the following activities:

CONDITION 1. STANDARDS OF SCHOLARSHIP

A) For the governing board of a community college district to adopt and implement regulations consistent with the standards of scholarship contained in Title 5, California Code of Regulations, Sections 55750 - 55765, as a minimum condition for receipt of state aid, pursuant to Title 5, California Code of Regulations, Section 51002 and 55750.

1) To file a copy of its regulations, and any amendments with the Chancellor, pursuant to Section 51002(b);

2) To substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship, pursuant to Section 51002(c);

3) To publish such regulations in the college catalog under appropriate headings, pursuant to Section 55750.

B) For each governing board maintaining one or more community colleges to determine and implement a uniform grading practice for the district which is

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California (1987) 190 Cal.App.3d at p. 537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

based on sound academic principles and conforms to the following standards, pursuant to Title 5, California Code of Regulations, Section 55751:

1) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license is graded in accordance with the governing board adopted grading scale, pursuant to Title 5, California Code of Regulations, Section 55751(a); and

2) Such work is also graded in accordance with the provisions of section 55752 (regarding credit-no credit options) or section 55753 (regarding credit by examination), pursuant to Title 5, California Code of Regulations, Section 55751(b).

C) For governing boards to implement the following, regarding courses offered on a credit-no credit basis, pursuant to Title 5, California Code of Regulations, Section 55752:

1) To make the decision to offer such courses by resolution and to issue regulations authorizing such credit-no credit courses, pursuant to Title 5, California Code of Regulations, Section 55752(a).

2) To specify in its catalog the category into which each course falls, pursuant to Title 5, California Code of Regulations, Section 55752(a):

a) Courses where all students are evaluated on a "credit-no credit" basis, pursuant to Title 5, California Code of Regulations, Section 55752(a)(1);

b) Courses where each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit-no credit" or a letter grade, pursuant to Title 5, California Code of Regulations, Section 55752(a)(2).

3) To ensure that all units earned on a "credit-no credit" basis in accredited California institutions of higher education or equivalent out-of-state institutions are counted in satisfaction of community college curriculum requirements, pursuant to Title 5, California Code of Regulations, Section 55752(b).

4) To ensure that units earned on a "credit-no credit" basis are not used to calculate grade point averages, pursuant to Title 5, California Code of Regulations, Section 55752(c).

5) To consider units attempted for which "NC" (as defined in section 55758) is recorded in probation and dismissal procedures, pursuant to Title 5, California Code of Regulations, Section 55752(c).

6) To allow independent study courses to be graded on a "credit-no credit" basis, pursuant to Title 5, California Code of Regulations, Section 55752(d).

7) To use the "CR/NC" grading system when a district offers courses in which there is a single standard of performance for which unit credit is assigned, pursuant to Title 5, California Code of Regulations, Section 55752(e).

D) For the governing board of each community college district to adopt and publish procedures and regulations pertaining to credit by examination, which implement the following requirements, pursuant to Title 5, California Code of Regulations, Section 55753:

1) To only grant credits to students who are registered at the college, in good standing and only for a course listed in the catalog of the community college, pursuant to Title 5, California Code of Regulations, Section 55753(b).

2) To ensure that the nature and content of an examination to be determined solely by faculty in the discipline that normally teaches the course for which credit is to be granted, pursuant to Title 5, California Code of Regulations, Section 55753(c).

(a) For such determination to be made in accordance with policies and procedures approved by the curriculum committee established in compliance with Section 55002, pursuant to Title 5, California Code of Regulations, Section 55753(c).

(b) For the faculty to make a determination that the examination adequately measures mastery of the course content as set forth in the outline of record, pursuant to Title 5, California Code of Regulations, Section 55753(c).

3) To ensure that a separate examination is conducted for each course for

which credit is to be granted, pursuant to Title 5, California Code of Regulations, Section 55753(d).

4) To ensure that a student's academic record is clearly annotated to reflect that credit was earned by examination, pursuant to Title 5, California Code of Regulations, Section 55753(e).

5) To ensure that grading is performed according to the regular grading scale approved by the governing board pursuant to Section 55758, except that students shall be offered a credit-no credit option if that option is ordinarily available for the course, pursuant to Title 5, California Code of Regulations, Section 55753(f).

6) To ensure that units for which credit is given pursuant to the provisions of this section are not be counted in determining the 12 semester hours of credit in residence required for an associate degree, pursuant to Title 5, California Code of Regulations, Section 55753(g).

E) For the curriculum committee to establish and implement policies and procedures for appropriate faculty to follow in determining an "articulated high school course", deemed to be comparable to a specific community college course, pursuant to Title 5, California Code of Regulations, Section 55753.5.

1) To ensure that any articulated high school courses used to partially satisfy certificate or major requirements are clearly noted as such on the student's academic record, pursuant to Title 5, California Code of Regulations,

Section 55753.5(c).

2) To ensure that notations of community college course credit are made only if community college courses are successfully completed or if credit is earned via credit by examination, pursuant to Title 5, California Code of Regulations, Section 55753.5(c).

3) To ensure that, except through credit by examination, as defined in Section 55753, high school courses are not be used to satisfy either of the following, pursuant to Title 5, California Code of Regulations, Section 55753.5(d):

   a) The requirement of Section 55806 that students complete at least 60 semester or 90 quarter units in order to receive an associate degree, pursuant to Title 5, California Code of Regulations, Section 55753.5(d)(1); or

   b) Any general education requirement for the associate degree established by the district, pursuant to Title 5, California Code of Regulations, Section 55753.5(d)(2).

4) To ensure that all community college district-high school articulation agreements are subject to the provisions of Section 55753.5, pursuant to Title 5, California Code of Regulations, Section 55753.5(e).

5) To allow any student who, prior July 1, 2002, has successfully completed a high school course articulated under the terms of a previous agreement to

be permitted to apply the credit so earned according to the terms of the previous agreement, pursuant to Title 5, California Code of Regulations, Section 55753.5(e).

F) For the governing board of a community college district to adopt policies regarding advanced placement examinations which implement the following, pursuant to Title 5, California Code of Regulations, Section 55753.7:

1) Appropriate faculty members must review, analyze and approve all of the following, pursuant to Title 5, California Code of Regulations, Section 55753.7:

a) advanced placement examinations,

b) scores deemed to constitute satisfactory performance,

c) courses offered by the college for which credit will be granted, and

d) requirements that may be met by such examinations

2) A student's academic record must be clearly annotated to reflect any credit that was earned through an advanced placement examination, pursuant to Title 5, California Code of Regulations, Section 55753.7.

G) For community colleges to either comply with the following statewide standards for academic probation, or for governing boards to adopt higher, local standards regarding probation, pursuant to Title 5, California Code of Regulations, Section 55754.

1) To place a student on "academic probation" if he or she has attempted at least 12 semester or 18 quarter units and has earned a grade point average below 2.0 in all units based the grading scale described in section 55758, pursuant to Title 5, California Code of Regulations, Section 55754(a).

2) To place a student on "progress probation" if he or she has enrolled in a total of at least 12 semester or 18 quarter units and the percentage of all units in which the student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%), pursuant to Title 5, California Code of Regulations, Section 55754(b).

H) For the governing board of a district to adopt, publish and implement procedures and conditions for probation and appeal of probation and request for removal from probation, that are not lower than the statewide standards and that allow removal from probation in the following circumstances, pursuant to Title 5, California Code of Regulations, Section 55755:

1) A student on academic probation for a grade point deficiency must be removed from probation when the student's accumulated grade point average is 2.0 or higher, pursuant to Title 5, California Code of Regulations, Section 55755(a).

2) A student on progress probation because of an excess of units for which

entries of "W," "I," and "NC" (as defined in section 55758) are recorded must be removed from probation when the percentage of units in this category drops below fifty percent (50%), pursuant to Title 5, California Code of Regulations, Section 55755(b).

l) For the governing board of a district to adopt, publish and implement procedures and conditions for dismissal and appeal of dismissal and request for reinstatement that are not lower than the following statewide standards, pursuant to Title 5, California Code of Regulations, Section 55756 (c):

1) Semesters or quarters must be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year), pursuant to Title 5, California Code of Regulations, Section 55756.

2) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758, pursuant to Title 5, California Code of Regulations, Section 55756(a).

3) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled

for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754, pursuant to Title 5, California Code of Regulations, Section 55756(b).

4) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor, pursuant to Title 5, California Code of Regulations, Section 55756(c).

J) To implement and comply with the following standards regarding remedial coursework, pursuant to Title 5, California Code of Regulations, Section 55756.5:

1) To determine a student's need for remedial coursework using appropriate assessment instruments, methods, or procedures administered in compliance with chapter 6 (commencing with section 55500) of division 6 of Title 5, California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 55756.5(b).

2) To ensure that, except as otherwise provided, no student receives more than 30 semester units (or 45 quarter units) of credit for remedial coursework, pursuant to Title 5, California Code of Regulations, Section 55756.5(b).

3) To refer students that have exhausted the unit limitation to appropriate adult noncredit education services provided by college, adult school,

community-based organization, or other appropriate local provider with which the district has an established referral agreement, pursuant to Title 5, California Code of Regulations, Section 55756.5(b).

4) To track and ensure that students enrolled in English as a Second Language (ESL) classes and those students identified by the district as having a learning disability are exempted from the limitation on remedial coursework, pursuant to Title 5, California Code of Regulations, Section 55756.5(c).

5) For the governing board to review and approve any locally developed standards which provides for a waiver of the limitation on remedial coursework with respect to any student, and for the standards to include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units, pursuant to Title 5, California Code of Regulations, Section 55756.5(d).

6) To dismiss and refer to adult noncredit education courses any student who does not attain full eligibility status for college-level work within the required time limit, unless provided with a waiver, pursuant to Title 5, California Code of Regulations, Section 55756.5(e).

7) To allow a student who has successfully completed all appropriate "remedial coursework," or has demonstrated the level of skills which reasonably assures success in college-level courses, to request

reinstatement to proceed with college-level coursework, pursuant to Title 5, California Code of Regulations, Section 55756.5(f).

8) For the governing board of each district to prepare and submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following, pursuant to Title 5, California Code of Regulations, Section 55756.5(g):

a) The effect of this section on students by sex, age, and ethnicity, pursuant to Title 5, California Code of Regulations, Section 55756.5(g)(1); and

b) Success rates for students enrolled in "remedial coursework", pursuant to Title 5, California Code of Regulations, Section 55756.5(g)(2).

K) For the governing board of each district to adopt and implement rules and regulations governing whether the units in which a student did not receive a grade or "credit-no credit" or from which the student withdrew, will be included in or excluded from the category of "units attempted", pursuant to Title 5, California Code of Regulations, Section 55757.

L) For the governing board to utilize a statewide grading scale established on the basis of point equivalencies that comply with the following, and to notify students of these standards by publication, pursuant to Title 5, California Code of Regulations, Section 55758:

1) To use only the following evaluative symbols in issuing grades, unless issuing "plus and minus" designations or using the "FW" grade symbol, pursuant to Title 5, California Code of Regulations, Section 55758(a):

A Excellent 4

B Good 3

C Satisfactory 2

D Passing, less than satisfactory 1

F Failing 0

CR Credit (at least satisfactory–units not counted in GPA)

NC No Credit (less than satisfactory or failing--units not counted in GPA)

2) If the governing board of a community college district uses "plus" and "minus" designations in combination with letter grades, it must do so according to statewide calculation methods and must ensure that the grade of C minus is not used, pursuant to Title 5, California Code of Regulations, Section 55758(b).

3) If the governing board uses the "FW" grade symbol to indicate that a student has withdrawn from a course after the official withdrawal date without authorized extenuating circumstances, it must ensure that the grade point value recorded is zero and that the symbol is not used if a student has been granted military withdrawal, pursuant to Title 5, California

Code of Regulations, Section 55758(c).

4) For the governing board of each community college district to authorize only the following nonevaluative symbols and in the following manner, pursuant to Title 5, California Code of Regulations, Section 55758(e):

a) I Incomplete: "Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term", pursuant to Title 5, California Code of Regulations, Section 55758(e).

(i) The instructor must state in a written record the condition for the removal of the "I" and the grade assigned in lieu of its removal.

(ii) This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed.

(iii) A final grade must be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed.

(iv) The "I" may be made up no later than one year following the end of the term in which it was assigned.

(v) The "I" Symbol must not be used in calculating units attempted nor for grade points.

(vi) The governing board must provide a process whereby a

student may petition for a time extension due to unusual circumstances.

b) IP In progress: "Work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion", pursuant to Title 5, California Code of Regulations, Section 55758(e).

(i) The "IP" symbol must be used only in those courses which extend beyond the normal end of an academic term.

(ii) The "IP" symbol must remain on the student's permanent record in order to satisfy enrollment documentation.

(iii) The appropriate evaluative symbol (grade) and unit credit must be assigned and appear on the student's permanent record for the term in which the course is completed.

(iv) The "IP" must not be used in calculating grade point averages.

(v) If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty must assign an appropriate evaluative symbol to be recorded on the student's permanent record for the course.

c) RD Report Delayed: "When there is a delay in reporting the grade of

a student due to circumstances beyond the control of the student", pursuant to Title 5, California Code of Regulations, Section 55758(e).

(i) The "RD" symbol may be assigned by the registrar only.

(ii) It is a temporary notation to be replaced by a permanent symbol as soon as possible.

(iii) "RD" shall not be used in calculating grade point averages.

d) W Withdrawal: (see section "M" for duties), pursuant to Title 5, California Code of Regulations, Section 55758(e).

e) MW Military Withdrawal: "When a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses" (see section "M" for duties), pursuant to Title 5, California Code of Regulations, Section 55758(e).

M) For the governing board of a community college district to adopt and implement a withdrawal policy consistent with the following, pursuant to Title 5, California Code of Regulations, Section 55758(e):

1) Withdrawal from a class or classes must be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less), unless the governing board establishes a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the

fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less), pursuant to Title 5, California Code of Regulations, Section 55758(e).

2) The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in this Section other than a "W", pursuant to Title 5, California Code of Regulations, Section 55758(e).

3) To use excessive"W"s as factors in probation and dismissal procedures, pursuant to Title 5, California Code of Regulations, Section 55758(e).

4) For the governing boards to establish and implement criteria for withdrawal and the procedures to accomplish it and published such criteria in college catalogs, pursuant to Title 5, California Code of Regulations, Section 55758(e).

5) For the governing board of a community college district to also adopt military withdrawal procedures consistent with the following, pursuant to Title 5, California Code of Regulations, Section 55758(e):

   a) The governing board must establish and implement procedures to verify such military orders and a time period for which a withdrawal symbol may be assigned, pursuant to Title 5, California Code of Regulations, Section 55758(e).

b) Military withdrawals must not be counted in progress probation and dismissal calculations, pursuant to Title 5, California Code of Regulations, Section 55758(e).

c) "W"s incurred during the period between January 1, 1990 and January 7, 2001, which meet the definition of military withdrawal herein, must not be counted in progress probation and dismissal calculations and may be changed to "MW"s, pursuant to Title 5, California Code of Regulations, Section 55758(e).

d) In no case would a military withdrawal result in a student being assigned an "FW" grade, pursuant to Title 5, California Code of Regulations, Section 55758(e).

N) To ensure that grades earned in nondegree credit courses are not included in calculating students' degree applicable grade point averages, pursuant to Title 5, California Code of Regulations, Section 55758.5.

O) For each community college to make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter, pursuant to Title 5, California Code of Regulations, Section 55759.

1) To make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any

academic difficulties, pursuant to Title 5, California Code of Regulations, Section 55759.

2) To make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district, pursuant to Title 5, California Code of Regulations, Section 55759.

3) To publish probation and dismissal policies and procedures in the college catalog, pursuant to Title 5, California Code of Regulations, Section 55759.

P) For districts to implement policies to ensure that the instructor of any course of instruction in a community college district for which grades are awarded, determine the grade to be awarded each student in accordance with section 55758 (Academic Record Symbols and Grade Point Average), pursuant to Title 5, California Code of Regulations, Section 55760.

1) The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency, pursuant to Title 5, California Code of Regulations, Section 55760(a).

2) Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record, pursuant to Title 5, California Code of Regulations, Section 55760(a).

3) The governing board of a district shall adopt, publish and implement procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761

(District Policy for Course Repetition) and 55762 (Course Repetition: Implementation), pursuant to Title 5, California Code of Regulations, Section 55760(b).

4) When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history, pursuant to Title 5, California Code of Regulations, Section 55760(b).

Q) For the governing board of a district maintaining a community college to adopt, publish and implement procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded, pursuant to Title 5, California Code of Regulations, Section 55761.

1) To define the term "substandard" as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded, pursuant to Title 5, California Code of Regulations, Section 55761.

2) When course repetition occurs, the permanent academic record must be annotated in such a manner that all work remains legible, insuring a true and complete academic history, pursuant to Title 5, California Code of Regulations, Section 55761.

R) For the governing board of a district maintaining a community college to ensure

that any procedures or regulations adopted pertaining to the repetition of courses for which substandard academic performance has been previously recorded, implement the following requirements, pursuant to Title 5, California Code of Regulations, Section 55762:

1) For the adopted regulations to indicate any specific courses or categories of courses which are exempt from consideration, pursuant to Title 5, California Code of Regulations, Section 55762(c);

2) To clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol, pursuant to Title 5, California Code of Regulations, Section 55762(d);

3) To publish the specific procedures required for course, pursuant to Title 5, California Code of Regulations, Section 55762(e); and

4) To maintain a careful record of actions taken under any course repetition procedures or regulations, pursuant to Title 5, California Code of Regulations, Section 55762(g).

S) For the governing board of a district that chooses to adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded, to comply with the following, pursuant to Title 5, California Code of Regulations, Section 55763.

1) To ensure that repetition of courses for which substandard work has not

been recorded is permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition, pursuant to Title 5, California Code of Regulations, Section 55763(b).

2) To permit repetition, without petition, in instances when such repetition is necessary for a student to meet a legally mandated training requirement as a condition of continued paid or volunteer employment, pursuant to Title 5, California Code of Regulations, Section 55763(c).

   a) To ensure that such courses conform to all attendance accounting, course approval, and other requirements imposed by applicable provisions of law, pursuant to Title 5, California Code of Regulations, Section 55763(c).

   b) To permit such courses to be repeated for credit any number of times, regardless of whether or not substandard work was previously recorded, and to include each grade received in the calculation of the student's grade point average, pursuant to Title 5, California Code of Regulations, Section 55763(c).

3) To annotate a student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history when course repetition under this section occurs, pursuant to Title 5, California Code of Regulations, Section 55763(d).

T) For the governing board of a district maintaining a community college to adopt, publish and implement procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance which is not reflective of a student's demonstrated ability, pursuant to Title 5, California Code of Regulations, Section 55764 and 55765

1) For such procedures or regulations to include a clear statement of the educational principles upon which they are based, pursuant to Title 5, California Code of Regulations, Section 55764.

2) To refer to such procedures as academic renewal regulations, pursuant to Title 5, California Code of Regulations, Section 55764.

3) To annotate a student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history when academic renewal procedures or regulations adopted by a district permit previously recorded, substandard course work to be disregarded in the computation of grade point averages, pursuant to Title 5, California Code of Regulations, Section 55764.

4) To ensure that such regulations or procedures comply with Education Code section 76224, pertaining to the finality of grades assigned by instruction, and Chapter 2.5 (commencing with section 59020) of division 10 of Title 5, California Code of Regulations, pertaining to the retention, destruction and permanency of records, pursuant to Title 5, California

Code of Regulations, Section 55765(a).

5) For such regulations to state the following, pursuant to Title 5, California Code of Regulations, Section 55765(b):

a) The maximum amount of coursework that may be alleviated, pursuant to Title 5, California Code of Regulations, Section 55765(b)(1);

b) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated, pursuant to Title 5, California Code of Regulations, Section 55765(b)(2);

c) The length of time to have elapsed since the coursework to be alleviated was recorded, pursuant to Title 5, California Code of Regulations, Section 55765(b)(3); and

d) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations, pursuant to Title 5, California Code of Regulations, Section 55765(b)(4).

6) To adopt, publish and implement specific procedures to be followed in implementing any procedures or regulations adopted pursuant to this section which state at a minimum, pursuant to Title 5, California Code of Regulations, Section 55765(c):

a) The procedures to be followed by students in petitioning for alleviation, pursuant to Title 5, California Code of Regulations, Section 55765(c)(1); and

b) The officers and/or personnel responsible for implementing the procedures or regulations, pursuant to Title 5, California Code of Regulations, Section 55765(c)(2).

CONDITION 2. DEGREES AND CERTIFICATES

A) For the governing board of a community college district to adopt and implement policies, procedures and regulations for the award of degrees and certificates, which comply with Division 6, Chapter 6, Subchapter 10 of Title 5 of the California Code of Regulations, pursuant to Title 5, California Code of Regulations, Sections 51004 and 55800.

1) To file a copy of its regulations and any subsequent amendments with the Chancellor, pursuant to Title 5, California Code of Regulations, Section 51004(b) and 55800;

2) To publish the adopted policy in the college catalog, pursuant to Title 5, California Code of Regulations, Section 55800.

B) For community colleges to ensure that any student who successfully completes the prescribed course of study for an associates degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses, is awarded an associate

degree, pursuant to Title 5, California Code of Regulations, Section 55800.5.

C) To monitor credits that qualify as being "satisfactorily completed" and to define such credits as " either credit earned on a "credit-no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based", for purposes of Sections 55806 and 55809, pursuant to Title 5, California Code of Regulations, Section 55801.

D) For the governing board of a community college district to adopt and implement a policy which states its specific philosophy on General Education and is consistent with the philosophy of the Board of Governors, pursuant to Title 5, California Code of Regulations, Section 55805.

1) For the district governing board to establish and implement criteria to determine which courses may be used in implementing its philosophy on the associate degree and general education, pursuant to Title 5, California Code of Regulations, Section 55805(b).

2) For the district governing board to review their adopted policy and criteria on a regular basis, pursuant to Title 5, California Code of Regulations, Section 55805(c).

F) For the district governing board to review and catagorize all courses, and permit only courses that conform to the standards specified in section 55002(a) and that fall into the following categories to be offered for associate degree credit, pursuant to Title 5, California Code of Regulations, Section 55805.5:

1) All lower division courses accepted toward the baccalaureate degree by the California State University or University of California or designed to be offered for transfer, pursuant to Title 5, California Code of Regulations, Section 55805.5(a);

2) Courses that apply to the major in non-baccalaureate occupational fields, pursuant to Title 5, California Code of Regulations, Section 55805.5(b);

3) English courses not more than one level below the first transfer level composition course, pursuant to Title 5, California Code of Regulations, Section 55805.5(c);

4) All mathematics courses above and including Elementary Algebra, pursuant to Title 5, California Code of Regulations, Section 55805.5(d); or

5) Credit courses in English and mathematics taught in or on behalf of other departments and which, as determined by the local governing board require entrance skills at a level equivalent to those necessary for the English and Math courses specified above, pursuant to Title 5, California Code of Regulations, Section 55805.5(e).

G) For the governing board of a community college district to offer the appropriate curriculum and to implement policies and procedures to ensure that the degree of Associate in Arts or Associate in Science is conferred upon a student who has demonstrated competence in reading, in written expression, and in mathematics, and who has satisfactorily completed at least 60 semester units or 90 quarter

units of college work, in accordance with the following criteria, pursuant to Title 5, California Code of Regulations, Section 55806, paragraph one:

1) This course work requirement must be fulfilled in a curriculum accepted toward the degree by a college within the district and that this information is published in the community college's catalog, pursuant to Title 5, California Code of Regulations, Section 55806.

2) The course work must include at least 18 semester or 27 quarter units in General Education and at least 18 semester or 27 quarter units in a major as prescribed in section 55806(a), pursuant to Title 5, California Code of Regulations, Section 55806.

3) Of the required units, at least 12 semester or 18 quarter units must be completed in residence at the college granting the degree, pursuant to Title 5, California Code of Regulations, Section 55806.

4) Exceptions to residence requirements for the Associate Degree may only be made by the governing board when it determines that an injustice or undue hardship would be placed on the student, pursuant to Title 5, California Code of Regulations, Section 55806.

5) To require students to complete at least 18 semester or 27 quarter units of study in a single discipline or related disciplines, as listed in the Community Colleges "Taxonomy of Programs," in order to fulfill the requirements for a student's major, pursuant to Title 5, California Code of Regulations,

Section 55806(a).

6) To require students to complete the following to fulfill his or her General Education Requirements, pursuant to Title 5, California Code of Regulations, Sections 55806(b):

a) Students receiving an Associate Degree must complete a minimum of 18 semester or 27 quarter units of general education, pursuant to Title 5, California Code of Regulations, Sections 55806(b)(1);

b) A minimum of three semester or four quarter units must be completed in each of the following five areas: natural sciences; social and behavioral sciences; humanities; English composition; and communication and analytical thinking, pursuant to Title 5, California Code of Regulations, Sections 55806(b)(1); and

c) The remainder of the unit requirement must also be selected from among the four main divisions of learning (natural sciences, social and behavioral sciences, humanities and language and rationality), or as determined by local option, pursuant to Title 5, California Code of Regulations, Sections 55806(b)(1).

H) For community colleges to establish and implement a process to respond to a student petition requesting that noncredit courses be counted toward associate degrees, pursuant to Title 5, California Code of Regulations, Section 55807.

1) For a governing board to accept, disapprove, or approve and certify any

such student petitions, pursuant to Title 5, California Code of Regulations, Section 55807.

2) For the faculty to approve the types of evidence of prescribed competence indicating sufficient credit-level achievement that may be considered in such matters, pursuant to Title 5, California Code of Regulations, Section 55807.

I) For the district governing board to issue a certificate of achievement to any student whom the board determines has successfully completed any course of study or curriculum for which a certificate of achievement is offered, pursuant to Title 5, California Code of Regulations, Section 55808.

J) For the district governing board to award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements, pursuant to Title 5, California Code of Regulations, Section 55809.

CONDITION 3. OPEN COURSES

A) For the district governing board to adopt a statement pertaining to its policy on open enrollment which provides that, unless specifically exempted by statute or regulation, every course reported for state aid shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets any prerequisites that have been properly established by a district,

pursuant to Title 5, California Code of Regulations, Section 51006.

1) To publish the open enrollment policy statement in the official catalog, schedule of classes, and addenda to the schedule of classes for which full-time equivalent student (FTES) is reported for state apportionment, pursuant to Title 5, California Code of Regulations, Section 51006(b);

2) To file a copy of such policy with the Chancellor, pursuant to Title 5, California Code of Regulations, Section 51006(b).

B) To publish a clear description of each course, which is understandable to the prospective student, in the official catalog, and/or schedule of classes, and/or addenda, pursuant to Title 5, California Code of Regulations, Section 58102.

C) To establish and implement procedures to ensure, if a course description indicates a course is designed to meet certain specialized needs, that the district affirms the availability of the course to all qualified students, pursuant to Title 5, California Code of Regulations, Section 58102.

D) To describe all courses to be conducted within the community college district in the official general catalog and/or addenda and to list such courses in the schedules of classes, pursuant to Title 5, California Code of Regulations, Section 58104.

1) To ensure that any courses which are established or conducted after publication of the general catalog or regular schedule of classes are reasonably well publicized, pursuant to Title 5, California Code of

Regulations, Section 58104.

2) To ensure that any announcements of course offerings are not limited to a specialized clientele, pursuant to Title 5, California Code of Regulations, Section 58104.

3) To ensure that no group or individual receives notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students, pursuant to Title 5, California Code of Regulations, Section 58104.

E) To establish and implement policies and procedures to ensure that, as a condition to be claimed for purposes of state apportionment, all community college courses are open to enrollment by any student who has been admitted to the college, unless the course qualifies for a limitation, pursuant to Title 5, California Code of Regulations, Section 58106.

1) To permit enrollment to be limited to students meeting prerequisites and corequisites that have been established in compliance with Sections 55200-55202 of Title 5, pursuant to Title 5, California Code of Regulations, Section 58106(a).

2) To ensure that any other limitation used by the district falls into one of the following acceptable reasons for enrollment limitations, pursuant to Title 5, California Code of Regulations, Section 58106(b):

a) health and safety considerations;

b) facility limitations;

c) faculty workload;

d) the availability of qualified instructors;

e) funding limitations;

f) the constraints of regional planning; or

g) legal requirements imposed by statutes.

3) For the governing board to adopt and implement policies identifying any enrollment limitations used, ensuring that such policies provide fair and equitable procedures for determining who may enroll in affected courses or programs, and are consistent with at least one of the following approaches, pursuant to Title 5, California Code of Regulations, Section 58106(b):

a) Limiting enrollment to a "first-come, first-served" basis or using other nonevaluative selection techniques to determine who may enroll, pursuant to Title 5, California Code of Regulations, Section 58106(b)(1); or

b) Limiting enrollment using a registration procedure authorized by Section 58108 (see section "H" of this section for procedures) of Title 5, pursuant to Title 5, California Code of Regulations, Section 58106(b)(2); or

c) In the case of intercollegiate completion, honors courses, or public performance courses, allocating available seats to those students

judged most qualified, pursuant to Title 5, California Code of Regulations, Section 58106(b)(3); or

d) Limiting enrollment in one or more sections of a course to a cohort of students enrolled in one or more other courses, provided however, that a reasonable percentage of all sections of the course do not have such restrictions, pursuant to Title 5, California Code of Regulations, Section 58106(b)(4); or

e) With respect to students on probation or subject to dismissal, the governing board may, consistent with the provisions of Sections 55754 (regarding Standards for Probation) and 55755 (regarding Removal from Probation) of Title 5, limit enrollment to a total number of units or to selected courses, or require students to follow a prescribed educational plan, pursuant to Title 5, California Code of Regulations, Section 58106(b)(5).

F) For districts to establish and implement procedures for and to respond to a student challenge to an enrollment limitation, pursuant to Title 5, California Code of Regulations, Section 58106(c), (d), and (e).

1) To permit students to challenge an enrollment limitation on any of the following grounds, pursuant to Title 5, California Code of Regulations, Section 58106(c):

a) Unlawful discrimination on the limitation's face or in its application,

pursuant to Title 5, California Code of Regulations, Section 58106(c)(1);

b) Failure of the district to follow it's own enrollment limitation policy, pursuant to Title 5, California Code of Regulations, Section 58106(c)(2);

c) An argument that the basis upon which the district has established an enrollment limitation does not in fact exist, pursuant to Title 5, California Code of Regulations, Section 58106(c)(3); or

d) Any other criteria established by the district, pursuant to Title 5, California Code of Regulations, Section 58106(c)(4).

2) For the district to handle such enrollment limitation challenges in a timely manner, pursuant to Title 5, California Code of Regulations, Section 58106(d);

3) To waive the enrollment limitation with respect to any student whose challenge is upheld, pursuant to Title 5, California Code of Regulations, Section 58106(d);

4) To advise any student who has challenged an enrollment limitation based on the theory of unlawful discrimination that he or she may also file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of Title 5 of the California Code of Regulations, once the challenge procedure has been completed, pursuant to Title 5, California

Code of Regulations, Section 58106(e).

G) To ensure that any public funds used in connection with community college athletic programs are used only for those programs which provide facilities and opportunities for participation by both sexes on an equitable basis, including, but not limited to, equity in the following areas, pursuant to Title 5, California Code of Regulations, Section 58107:

1) equipment and supplies;

2) scheduling of games and practice time;

3) compensation for coaches;

4) travel arrangements;

5) per diem;

6) locker rooms; and

7) medical services

H) To ensure that all procedures for registration and standards for enrollment in any course are consistent with all sections of Title 5 of the California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 58108.

1) To ensure that such procedures and standards are uniformly administered by appropriately authorized employees of the district, pursuant to Title 5, California Code of Regulations, Section 58108.

2) To ensure that, except as otherwise provided by state law, no student shall be required to do any of the following, pursuant to Title 5, California Code

of Regulations, Section 58108:

a) To confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district, pursuant to Title 5, California Code of Regulations, Section 58108;

b) To be required to participate in any preregistration activity not uniformly required, pursuant to Title 5, California Code of Regulations, Section 58108;

c) To be subjected to nonacademic requisites, imposed by anyone, as barriers to enrollment in or the successful completion of a class, pursuant to Title 5, California Code of Regulations, Section 58108;

d) To be subjected to any registration procedures that result in restricting enrollment to a specialized clientele, pursuant to Title 5, California Code of Regulations, Section 58108; or

e) To be required to make any special effort not required of all students to register in any class or course section, with respect to accessibility to off-campus sites and facilities, pursuant to Title 5, California Code of Regulations, Section 58108.

3) To ensure that, once enrolled in a class, all students have equal access to the site, pursuant to Title 5, California Code of Regulations, Section 58108.

CONDITION 4. COMPREHENSIVE PLAN

Comprehensive Master Plans: Capital Construction and Educational

A) For the governing board of each community college district to create, establish policies for, approve and implement comprehensive master plans for their facilities so that they meet the following requirements, pursuant to Title 5, California Code of Regulations, Section 51008:

1) The plan must include both academic master plans (Educational Master Plans) and long range master plans for facilities (Capital Construction Master Plans), pursuant to Title 5, California Code of Regulations, Section 51008(a);

2) The plan must address planning requirements which meet the specifications issued by the Board of Governors, as detailed in Title 5 California Code of Regulations, Sections 55401-55405, pursuant to Title 5, California Code of Regulations, Section 51008(a);

3) The plans, as well as any annual updates or changes to the plans, must be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans, as detailed in Title 5, California Code of Regulations, Sections 55401-55405, pursuant to Title 5, California Code of Regulations, Section 51008(b).

Capital Construction Master Plans:

A) For the governing board of each community college district to annually prepare,

update and submit to the Board of Governors of the California Community Colleges, a plan for capital construction covering a five-year time period, as opposed to the earlier ten-year time period required prior to 1975, pursuant to Education Code Section 81820 and Title 5, California Code of Regulations, Section 51008.

B) For community college districts to establish and implement policies and procedures and gather the appropriate data to ensure that the five-year plan for capital construction sets out the estimated capital construction needs of the district with reference to elements including at least all of the following information, pursuant to Education Code Section 81821:

1) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized, pursuant to Education Code Section 81821(a).

2) The enrollment projections for each district formulated by the Department of Finance, pursuant to Education Code Section 81821(b)

a) The enrollment projections must be expressed in terms of weekly student contact hours, pursuant to Education Code Section 81821(b).

b) The enrollment projections for each individual college and

educational center within a district must be made cooperatively by the Department of Finance and the community college district, pursuant to Education Code Section 81821(b).

3) The current enrollment capacity of the district, pursuant to Education Code Section 81821(c).

a) The enrollment capacity must be expressed in terms of weekly student contact hours, pursuant to Education Code Section 81821(c); and

b) The enrollment capacity must be based upon the space and utilization standards for community college classrooms and laboratories adopted by the Board of Governors in consultation with the California Postsecondary Education Commission and consistent with its standards, pursuant to Education Code Section 81821(c).

4) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the Board of Governors in consultation with the California Postsecondary Education Commission and consistent with its standards, pursuant to Education Code Section 81821(d).

5) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the Board of Governors, pursuant to Education Code Section 81821(e).

6) An estimate of district funds which must be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors, pursuant to Education Code Section 81821(f).

C) For a community college district that maintains colleges, or one college and one or more educational centers, and that submits an additional capital construction plan based on each college or educational center maintained by the district, to prepare and include documentation justifying that students will be better served by such a plan due to the existence of either of the following circumstances, pursuant to Education Code Section 81823.

1) The isolation of students within a district in terms of either of the following, pursuant to Education Code Section 81823(a)(1):

a) The distance of students from the location of an educational program, pursuant to Education Code Section 81823(a)(1); or

b) The inadequacy of transportation, and student financial inability to meet costs of transportation to an educational program, pursuant to Education Code Section 81823(a)(1); or

2) The inability of existing colleges and educational centers in the district to meet the unique educational and cultural needs of a significant number of ethnic students, pursuant to Education Code Section 81823(a)(2).

Educational Master Plans:

A) For the governing board of each Community college district to establish and implement policies for, and to approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole, pursuant to Title 5, California Code of Regulations, Section 55401 and Section 51008.

B) For the governing board of each Community College district to annually, on or before November 1st of each year, submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole, pursuant to Title 5, California Code of Regulations, Section 55402.

C) For each educational master plan submitted to the Chancellor to be on a form provided by the Chancellor, and to contain all information that the Chancellor requires, pursuant to Title 5, California Code of Regulations, Section 55403.

D) For community colleges to ensure that the contents of each educational master plan contains all of the following information, pursuant to Title 5, California Code of Regulations, Section 55404:

1) The educational objectives of the Community College or district, pursuant to Title 5, California Code of Regulations, Section 55404;

2) The future plans for all of the following, pursuant to Title 5, California Code of Regulations, Section 55404:

a) transfer programs;

b) occupational programs;

c) continuing education courses; and

d) remedial and developmental programs.

3) Plans for the development and expansion of at least all of the following ancillary services, pursuant to Title 5, California Code of Regulations, Section 55404:

a) library;

b) counseling;

c) placement; and

d) financial aid.

CONDITION 5. EQUAL EMPLOYMENT OPPORTUNITY

A) For each community college district employer to commit to a sustained action to devise recruiting, training and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees, pursuant to Education Code Section 87101(c).

B) For the governing board of a community college district to periodically submit to the board of governors an affirmation of compliance with the equal employment opportunity article as a condition for the receipt of funds under Education Code Section 87107, pursuant to Education Code Section 87102.

1) For each participating district's equal employment opportunity program to ensure participation in, and commitment to, the program by district personnel, pursuant to Education Code Section 87102(a).

2) For each plan to include steps that the district will take in eliminating improper discrimination or preferences in its hiring and employment practices, pursuant to Education Code Section 87102(a).

3) For each plan to address how the district will make progress in achieving the ratio of full-time to part-time faculty hiring, as indicated in Education Code Section 87482.6, while still ensuring equal employment opportunity, pursuant to Education Code Section 87102(a).

C) For the governing board of a community college district to adopt and implement a district policy which describes its equal employment opportunity program, pursuant to Title 5, California Code of Regulations, Section 51010.

1) For the policy to meet the requirements of section 53002, pursuant to Title 5, California Code of Regulations, Section 51010(a).

2) To develop, adopt and implement a district equal employment opportunity plan which meets the requirements of section 53003, pursuant to Title 5, California Code of Regulations, Section 51010(b).

3) To ensure that the district's employment patterns are annually surveyed in the manner required by section 53004, pursuant to Title 5, California Code of Regulations, Section 51010(c).

4) To ensure that a program of recruitment is carried out as required by section 53021, pursuant to Title 5, California Code of Regulations, Section 51010(d).

5) To ensure that screening and selection procedures are developed and used in accordance with section 53024, pursuant to Title 5, California Code of Regulations, Section 51010(e).

6) To ensure that, where necessary, additional steps are taken consistent with the requirements of section 53006, pursuant to Title 5, California Code of Regulations, Section 51010(f).

7) To ensure that the pattern of hiring and retention, when viewed over time, is consistent with the objectives established in the district's equal employment opportunity plan, pursuant to Title 5, California Code of Regulations, Section 51010(g).

8) To substantially comply with the other provisions of subchapter 1 (commencing with section 53000) of chapter 4 of Title 5 of the California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 51010(h).

D) To incorporate the definitions for the following terms within the district's policies and procedures, as outlined in and pursuant to Title 5, California Code of Regulations, Section 53001: "adverse impact"; "business necessity"; "equal employment opportunity"; "equal employment opportunity plan"; "equal employment opportunity programs", "ethnic minorities"; "ethnic group identification"; "goals for persons with disabilities"; "in-house of promotional only hiring"; "monitored group"; "person with a disability"; "projected representation";

"reasonable accommodation"; "screening or selection procedure"; "significantly underrepresented group"; "target date" and "timetable".

E) For the governing board of each community college district to adopt and implement a policy statement setting forth the district's commitment to an equal employment opportunity program, pursuant to Title 5, California Code of Regulations, Section 53002.

F) For the governing board of each community college district to develop, adopt and implement a district-wide written equal employment opportunity plan to implement its equal employment opportunity program, pursuant to Title 5, California Code of Regulations, Section 53003.

1) To submit such plans and any revisions to the Chancellor's Office for review and approval, pursuant to Title 5, California Code of Regulations, Section 53003(a).

2) To review, and if necessary, revise such plans at least every three years, pursuant to Title 5, California Code of Regulations, Section 53003(b).

3) To notify the Chancellor at least 30 days prior to adopting any other amendments to the plan, pursuant to Title 5, California Code of Regulations, Section 53003(b).

4) For the plan to include all of the following, pursuant to Title 5, California Code of Regulations, Section 53003(c):

a) The designation of the district employee or employees who have

been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this subchapter pursuant to section 53020, pursuant to Title 5, California Code of Regulations, Section 53003(c)(1);

b) The procedure for filing complaints pursuant to section 53026 and the person with whom such complaints are to be filed, pursuant to Title 5, California Code of Regulations, Section 53003(c)(2);

c) A process for notifying all district employees of the provisions of the plan and the policy statement required under section 53002, pursuant to Title 5, California Code of Regulations, Section 53003(c)(3);

d) A process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this subchapter and of state and federal nondiscrimination laws, pursuant to Title 5, California Code of Regulations, Section 53003(c)(4);

e) A process for providing annual written notice to appropriate community-based and professional organizations concerning the district's plan and the need for assistance from the community and such organizations in identifying qualified applicants, pursuant to Title 5, California Code of Regulations, Section 53003(c)(5);

f) An analysis of the number of persons from monitored groups who are employed in the district's work force and those who have applied for employment in each of the job categories listed in section 53004(a), pursuant to Title 5, California Code of Regulations, Section 53003(c)(6);

g) An analysis of the degree to which monitored groups are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each such job category and whether or not the underrepresentation is significant, pursuant to Title 5, California Code of Regulations, Section 53003(c)(7);

h) Methods for addressing any identified underrepresentation, pursuant to Title 5, California Code of Regulations, Section 53003(c)(8).

i) Additional steps consistent with section 53006 to remedy any significant underrepresentation identified in the plan, pursuant to Title 5, California Code of Regulations, Section 53003(c)(9);

j) Any other measures necessary to further equal employment opportunity throughout the district, pursuant to Title 5, California Code of Regulations, Section 53003(c)(10); and

k) Any goals for hiring persons with disabilities that are required by

section 53025, pursuant to Title 5, California Code of Regulations, Section 53003(d).

5) For community college districts to make a continuous good faith effort to comply with the requirements of the plan required under this section, pursuant to Title 5, California Code of Regulations, Section 53003(e).

G) For each district to survey its employees on an annual basis and to monitor applicants for employment on an ongoing basis in order to evaluate the implementation of its equal employment opportunity plan and to provide data needed for the analyses required by sections 53003, 53006, 53023, and 53024, pursuant to Title 5, California Code of Regulations, Section 53004.

1) Each district must annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey of employees at each college in the district, pursuant to Title 5, California Code of Regulations, Section 53004(a).

2) To ensure that each employee is reported so that he or she may be identified as belonging to one of the following seven job categories, pursuant to Title 5, California Code of Regulations, Section 53004(a):

a) executive/administrative/managerial;

b) faculty and other instructional staff;

c) professional nonfaculty;

d) secretarial/clerical;

e) technical and paraprofessional;

f) skilled crafts; and

g) service and maintenance.

3) To ensure that, for purposes of the survey and report required pursuant to subdivision (a) of this section, each applicant or employee is afforded the opportunity to identify his or her gender, ethnic group identification and, if applicable, his or her disability, pursuant to Title 5, California Code of Regulations, Section 53004(b).

a) To ensure that a person is counted in only one ethnic group for reporting purposes, pursuant to Title 5, California Code of Regulations, Section 53004(b).

b) To ensure that Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are counted and reported as part of the Asian/Pacific Islander group as well as in separate subcategories, pursuant to Title 5, California Code of Regulations, Section 53004(b).

H) For each community college district to establish an Equal Employment Opportunity Advisory Committee that includes a diverse membership whenever possible, to assist the district in developing and implementing the plan required under section 53003, pursuant to Title 5, California Code of Regulations, Section 53005.

l) For a district that determines that a particular monitored group is significantly underrepresented with respect to one or more job categories, the district shall take additional steps to ensure equal employment opportunity, pursuant to Title 5, California Code of Regulations, Section 53006.

1) For the districts, in taking the required initial steps, to implement all of the following actions:

a) To review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group, pursuant to Title 5, California Code of Regulations, Section 53006(a)(1);

b) To consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective, pursuant to Title 5, California Code of Regulations, Section 53006(a)(2);

c) To determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in (1) and (2) have been in place for a reasonable period of time, pursuant to Title 5, California Code of Regulations, Section 53006(a)(3);

d) If significant underrepresentation persists, to monitor the staffing rate for the significantly underrepresented group in the specified job category or categories on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question, pursuant to Title 5, California Code of Regulations, Section 53006(a)(4).

2) For the district to implement all of the following actions if a reasonable period of time passes and significant underrepresentation persists for a particular group in the job category in question, pursuant to Title 5, California Code of Regulations, Section 53006(b):

a) To review each locally established "required," "desired" or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job-related and consistent with business necessity through a process meeting the requirements of federal law or is among those qualifications which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system, pursuant to Title 5, California Code of Regulations, Section 53006(b)(1);

b) To discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in

paragraph (1) of the subdivision, pursuant to Title 5, California Code of Regulations, Section 53006(b)(2);

c) To continue using qualification standards meeting the requirements of paragraph (1) only where no alternative qualification standard is reasonably available which would accomplish all of the following, pursuant to Title 5, California Code of Regulations, Section 53006(b)(3):

(i) select for the same characteristics;

(ii) meet the requirements of paragraph (1); and

(iii) be expected to have a less exclusionary effect.

J) For the governing board of each community college district to implement policies and procedures to ensure that it is ultimately responsible for proper implementation of the subchapter pertaining to equal employment opportunity at all levels of district and college operation and for making measurable progress toward equal employment opportunity by the methods described in the district's equal employment opportunity plan, pursuant to Title 5, California Code of Regulations, Section 53020.

1) For the governing board, upon the recommendation of the chief executive officer, to ensure that an equal employment opportunity officer is designated to oversee the day-to-day implementation of the requirements set forth in the subchapter, pursuant to Title 5, California Code of

Regulations, Section 53020(a).

2) To describe the administrative structure created by any delegation of authority to the equal employment opportunity officer or others in the district's equal employment opportunity plan submitted pursuant to section 53003, pursuant to Title 5, California Code of Regulations, Section 53020(b).

a) To design such structure in such a manner so as to ensure prompt and effective implementation of the requirements of this subchapter, pursuant to Title 5, California Code of Regulations, Section 53020(b).

b) For the plan to also designate a single officer, who may be the equal employment opportunity officer, who shall be given authority and responsibility for all of the following, pursuant to Title 5, California Code of Regulations, Section 53020(b):

(i) receiving complaints filed pursuant to section 53026;

(ii) for ensuring that such complaints are promptly and impartially investigated; and

(iii) ensuring that selection procedures and the applicant pool are properly monitored as required by sections 53023 and 53024.

K) For community colleges to implement policies and procedures to actively recruit from both within and outside the district work force to attract qualified applicants

for all new openings, pursuant to Title 5, California Code of Regulations, Section 53021.

1) For such recruitment to include outreach designed to ensure that all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district, pursuant to Title 5, California Code of Regulations, Section 53021(a).

2) To apply the requirement of open recruitment to all new full-time and part-time openings in all job categories and classifications, including, but not limited to the following, pursuant to Title 5, California Code of Regulations, Section 53021(a):

   a) faculty;

   b) classified employees;

   c) categorically funded positions;

   d) the chief executive officer; and

   e) all other executive/administrative/managerial positions.

3) To ensure that recruitment for full-time faculty and educational administrator positions are at least statewide and, at a minimum, include seeking qualified applicants listed in the California Community Colleges Equal Employment Opportunity Registry, pursuant to Title 5, California Code of Regulations, Section 53021(a).

4) To ensure that recruitment for part-time faculty positions is conducted by

full and open recruitment, pursuant to Title 5, California Code of Regulations, Section 53021(a).

5) To ensure that "in-house or promotional only" recruitment is not used to fill any new opening except when the position is being filled on an interim basis for the minimum time necessary to allow for full and open recruitment; provided however, that no interim appointment or series of interim appointments exceed one year in duration, pursuant to Title 5, California Code of Regulations, Section 53021(b).

6) For a district that believes justification exists for use of the exception listed in subdivision (b), to notify the Equal Employment Opportunity Advisory Committee and the Chancellor at least ten (10) working days prior to offering the position to a candidate; pursuant to Title 5, California Code of Regulations, Section 53021(c).

7) For districts to comply with its established hiring procedures and to afford all qualified district employees the opportunity to apply for open positions even where in-house or promotional only recruitment is permitted pursuant to subdivision (b), pursuant to Title 5, California Code of Regulations, Section 53021(d).

L) To ensure that job announcements clearly state job specifications and set forth the knowledge, skills, and abilities necessary to job performance, pursuant to Title 5, California Code of Regulations, Section 53022.

1) To ensure that, for faculty and administrative positions, job requirements include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students, pursuant to Title 5, California Code of Regulations, Section 53022.

2) To ensure that job specifications, including any "required," "desired" or "preferred" qualifications beyond the state minimum qualifications which the district wishes to utilize, are reviewed before the position is announced, to ensure conformity with the requirements of this subchapter and state and federal nondiscrimination laws, pursuant to Title 5, California Code of Regulations, Section 53022.

M) To implement policies and procedures to analyze the applicant pool for open positions in the community college districts, pursuant to Title 5, California Code of Regulations, Section 53023.

1) To ensure that all employment applications afford each applicant an opportunity to voluntarily identify his or her gender, ethnic group identification and, if applicable, his or her disability, pursuant to Title 5, California Code of Regulations, Section 53023(a).

a) To take measures to ensure that this information remains confidential, pursuant to Title 5, California Code of Regulations, Section 53023(a).

b) To only use this information for research, validation, monitoring, evaluating the effectiveness of the district's equal employment opportunity program, or any other purpose specifically authorized in the subchapter, or by any applicable statute or regulation, pursuant to Title 5, California Code of Regulations, Section 53023(a).

2) To analyze the composition of the initial applicant pool after the application deadline has passed, to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures, pursuant to Title 5, California Code of Regulations, Section 53023(b).

a) To extend the application deadline, if necessary, and to conduct additional recruitment that will eliminate discriminatory recruitment procedures and ensure that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants, pursuant to Title 5, California Code of Regulations, Section 53023(b).

b) To screen applications to determine which candidates satisfy job specifications set forth in the job announcement, when recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile, pursuant to Title 5, California Code of Regulations, Section

53023(b).

3) To analyze the composition of the qualified applicant pool, before the selection process continues, to ensure that no monitored group is adversely impacted pursuant to section 53001(a), pursuant to Title 5, California Code of Regulations, Section 53023(c).

a) If adverse impact is found to exist, the chief executive officer or his or her designee must take effective steps to address the adverse impact before the selection process continues, pursuant to Title 5, California Code of Regulations, Section 53023(c).

b) For such steps to include the following:

(i) Extending the deadline and undertaking inclusive outreach efforts to ensure that members of the adversely impacted group have equal opportunity to seek employment with the district, pursuant to Title 5, California Code of Regulations, Section 53023(c)(1); and

(ii) Including all applicants who were screened out on the basis of any locally established qualifications beyond state minimum qualifications which have not been specifically demonstrated to be job-related and consistent with business necessity through a process meeting the requirements of federal law or which are not among those which the Board of

Governors has found to be job-related and consistent with business necessity throughout the community college system, pursuant to Title 5, California Code of Regulations, Section 53023(c)(2).

4) If adverse impact persists after taking steps required under subdivision (c), the district must ensure that the selection process proceeds only if one of the following is present, pursuant to Title 5, California Code of Regulations, Section 53023(d):

a) The job announcement does not require qualifications beyond the statewide minimum qualifications, pursuant to Title 5, California Code of Regulations, Section 53023(d)(1); or

b) Locally established qualifications beyond state minimum qualifications, if any, are demonstrated to be job-related and consistent with business necessity through a process meeting the requirements of federal law and suitable alternative selection procedures to reduce the adverse impact were unavailable, pursuant to Title 5, California Code of Regulations, Section 53023(d)(2); or

c) The particular qualification beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job-related and consistent with

business necessity throughout the community college system, pursuant to Title 5, California Code of Regulations, Section 53023(d)(3).

5) To ensure that the district does not advertise or utilize in future hiring processes for the same position or a substantially similar position any locally established qualifications beyond state minimum qualifications that the district was unable to verify under subdivision (b)(2) unless such qualifications are so verified in advance of commencing any such future hiring process, pursuant to Title 5, California Code of Regulations, Section 53023(e).

N) To implement policies and procedures pertaining to screening or selection procedures in the hiring process, pursuant to Title 5, California Code of Regulations, Section 53024.

1) To ensure that all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, are all of the following, pursuant to Title 5, California Code of Regulations, Section 53024(a):

a) Provided to the Chancellor upon request, pursuant to Title 5, California Code of Regulations, Section 53024(a)(1);

b) Designed to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants

demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students, pursuant to Title 5, California Code of Regulations, Section 53024(a)(2);

c) Based solely on job-related criteria, pursuant to Title 5, California Code of Regulations, Section 53024(a)(3); and

d) Designed to avoid an adverse impact, as defined in section 53001(a), and monitored by means consistent with this section to detect and address any adverse impact which does occur for any monitored group, pursuant to Title 5, California Code of Regulations, Section 53024(a)(4).

2) If monitoring pursuant to subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted any such group, for the chief executive officer or his/her designee to suspend the selection process and take timely and effective steps to remedy the problem before the selection process resumes, pursuant to Title 5, California Code of Regulations, Section 53024(b).

a) To ensure that confidential information is not disclosed if the equal employment opportunity officer, or other official charged with responsibility for monitoring selection procedures, assists the screening committee by discussing the overall composition of the

applicant pool and the screening criteria or procedures which have produced an adverse impact, pursuant to Title 5, California Code of Regulations, Section 53024(b).

b) To immediately discontinue the use of any qualifications where adverse impact results from locally established qualifications beyond state minimum qualifications that have not been verified as described in section 53023(c)(2) or replaced with suitable alternatives having a lesser adverse impact, and to continue any applicant eliminated on the basis of that qualification in the hiring process, pursuant to Title 5, California Code of Regulations, Section 53024(b).

3) To implement policies and procedures to ensure that the district does not do any of the following in the employment process, pursuant to Title 5, California Code of Regulations, Section 53024(c):

a) Designate or set aside particular positions to be filled by members of any group defined in terms of ethnic group identification, race, color, national origin, religion, age, gender, disability, ancestry or sexual orientation, pursuant to Title 5, California Code of Regulations, Section 53024(c);

b) Engage in any other practice which would result in discriminatory or preferential treatment prohibited by state or federal law, pursuant to

Title 5, California Code of Regulations, Section 53024(c);

c) Apply the district's equal employment opportunity plan in a rigid manner which has the purpose or effect of so discriminating, pursuant to Title 5, California Code of Regulations, Section 53024(c).

4) To ensure that seniority or length of service is taken into consideration only to the extent of the following, pursuant to Title 5, California Code of Regulations, Section 53024(d):

a) it is job related;

b) it is not the sole criterion; and

c) it is included in the job announcement consistent with the requirements of section 53022.

5) To ensure that any selection testing for employees follows the procedures outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures", pursuant to Title 5, California Code of Regulations, Section 53024(e).

6) To ensure that, whenever possible, screening committees include a diverse membership to bring a variety of perspectives to the assessment of applicant qualifications, pursuant to Title 5, California Code of Regulations, Section 53024(f).

7) To implement policies and procedures for the governing board or its

designee to have the following authority, pursuant to Title 5, California Code of Regulations, Section 53024(g):

a) To make all final hiring decisions based upon careful review of the candidate or candidates recommended by a screening committee, pursuant to Title 5, California Code of Regulations, Section 53024(g);

b) To reject all candidates and to order further review by the screening committee, pursuant to Title 5, California Code of Regulations, Section 53024(g); and

c) To reopen the position where necessary to further achievement of the objectives of the equal employment opportunity plan or to ensure equal employment opportunity, pursuant to Title 5, California Code of Regulations, Section 53024(g).

O) To implement policies and procedures to afford persons with disabilities equal employment opportunity in community college districts, pursuant to Title 5, California Code of Regulations, Section 53025.

1) For districts to ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code sections 11135 et seq. and 12940(m), section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, pursuant to Title 5, California Code of Regulations, Section 53025(a).

2) If a district established a goal for persons with disabilities prior to the effective date of this subdivision and if significant underrepresentation still exists, such districts must accomplish all of the following, pursuant to Title 5, California Code of Regulations, Section 53025(b):

a) update that goal;

b) set a new target date for achieving projected representation in the category or categories in question; and

c) concurrently comply with subdivisions (a)(1), (a)(2) and (b) of section 53006 with respect to persons with disabilities.

3) Where persons with disabilities are found to be significantly underrepresented, measures required under subdivisions (a)(1) and (a)(2) of section 53006 must be implemented concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where the underrepresentation was found to exist, pursuant to Title 5, California Code of Regulations, Section 53025(c).

a) Goals must remain in effect only until projected representation has been achieved for that group in the category or categories in question, pursuant to Title 5, California Code of Regulations, Section 53025(c).

b) Until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category, an aggregate labor force

availability rate must be utilized for setting goals for hiring persons with disabilities with respect to the total district work force, pursuant to Title 5, California Code of Regulations, Section 53025(c).

c) The district must ensure that any other measures which take disability into account, are discontinued when projected representation is achieved for persons with disabilities in the category or categories in question, pursuant to Title 5, California Code of Regulations, Section 53025(c).

P) For each community college district to establish and implement a process permitting any person to file a complaint alleging that the requirements of the subchapter have been violated, pursuant to Title 5, California Code of Regulations, Section 53026.

1) To immediately forward a copy of the complaint to the Chancellor, pursuant to Title 5, California Code of Regulations, Section 53026.

2) To prepare and submit to the Chancellor a written investigative report within ninety (90) days, if the Chancellor so requires, pursuant to Title 5, California Code of Regulations, Section 53026.

3) To process any complaints which also allege discrimination prohibited by Government Code sections 11135 et seq. according to the procedures set forth in subchapter 5 (commencing with section 59300) of chapter 10 of this division, pursuant to Title 5, California Code of Regulations, Section

53026.

Q) For districts to provide the data required under Section 53004 no later than March 31st of the preceding fiscal year or to request and receive an extension of the deadline from the Chancellor, as a condition for receipt of any funds under the Equal Employment Opportunity fund base, pursuant to Title 5, California Code of Regulations, Section 53033.

R) For districts to submit a report on the use of Equal Employment Opportunity funds to the Chancellor's Office, pursuant to Title 5, California Code of Regulations, Section 53034.

1) For such report to be submitted no later than September 30th of the fiscal year following the use of the funds, pursuant to Title 5, California Code of Regulations, Section 53034.

2) Until such time as a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required under section 53004, districts must report that rate by a separate survey conducted, as directed by the Chancellor's Office, pursuant to Title 5, California Code of Regulations, Section 53034.

CONDITION 6. STUDENT FEES

To develop and implement policies and procedures to ensure that the collection of student fees comply with the law (generally, Education Code sections 76300-76395), pursuant to Title 5, California Code of Regulation 51012.

CONDITION 7. APPROVAL OF NEW COLLEGES EDUCATIONAL & CENTERS

A) For the governing board of a community college district planning the formation of a new college or educational center to obtain approval for such college or educational center from the Board of Governors, before classes begin at the new college or educational center, pursuant to Title 5, California Code of Regulations, Section 51014(a).

B) For the governing board of a community college to establish and implement policies and procedures to comply with the provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 of Title 5 of the California Code of Regulations when requesting the approval of new colleges and educational centers, pursuant to Title 5, California Code of Regulations, Section 51014(b).

C) For the governing board of a community college district planning the formation of a new college or educational center as defined in section 55827 of Title 5, to employ and comply with the standards contained in sections 55829 (Assessment of Needs and Preferences), 55830 (Identification of Objectives) and 55831 (Analysis of Alternative Delivery Systems), pursuant to Title 5, California Code of Regulations, Section 55825.

D) For community college districts to ensure that college documents, policies and procedures incorporate the definitions contained in Section 55827 for the terms "College" and "Educational Center", pursuant to Title 5, California Code of Regulations, Section 55827.

E) For community colleges to provide to the Chancellor's Office all information necessary to enable the Chancellor to maintain an inventory of all off-campus programs and facilities in the community colleges, pursuant to Title 5, California Code of Regulations, Section 55828(a).

F) For community college districts to prepare and submit to the Chancellor's Office, according to the Chancellor's forms and requirements, proposals for new colleges and new educational centers that contain at least all of the following elements, pursuant to Title 5, California Code of Regulations, Section 55828(c):

(1) Assessment of Needs and Preferences (section 55829);

(2) Identification of Objectives (section 55830); and

(3) Analysis of Alternative Delivery Systems (section 55831).

G) For districts submitting a proposal for a new college or educational center, to compile and include all of the following data in such proposal as part of their "Assessment of Needs and Preferences" requirement, pursuant to Title 5, California Code of Regulations, Sections 55828(c)(1) and 55829:

1) An adequate identification of the community area and characteristics of individuals to be served, pursuant to Title 5, California Code of Regulations, Section 55829(a);

2) Projections of potential enrollment demand in the service area that demonstrate significant unmet need, and take into account plans of nearby secondary and postsecondary institutions, pursuant to Title 5, California

Code of Regulations, Section 55829(b);

3) Evidence of significant community support and identification of possible community opposition, pursuant to Title 5, California Code of Regulations, Section 55829(c);

4) Identification of preferences for community college programs and services on the part of individuals in the service area, pursuant to Title 5, California Code of Regulations, Section 55829(d);

5) Identification of present and future labor market requirements for the proposed service area, a broader adjacent region, and the state, pursuant to Title 5, California Code of Regulations, Section 55829(e);

6) Reconciliation of projected labor market requirements and community program preferences, pursuant to Title 5, California Code of Regulations, Section 55829(f).

H) Proposed college or educational center programs and services must be directed to the identified educational needs and preferences of the community to be served, pursuant to Title 5, California Code of Regulations, Section 55830(a).

I) Objectives of the proposed programs and services must be sufficiently specific to enable the district board to evaluate the success with which needs and preferences are met, pursuant to Tile 5, California Code of Regulations, Section 55830(b).

J) The proposed operation must be the most effective and equitable of feasible

delivery system alternatives for providing intended programs and services, pursuant to Title 5, California Code of Regulations, Section 55831(a):

1) The criteria for selecting the proposed delivery system must include all of the following, pursuant to Title 5, California Code of Regulations, Section 55831(b):

   a) Accessibility of programs and services to individuals in the service area, pursuant to Title 5, California Code of Regulations, Section 55831(b)(1);

   b) Content and quality of programs and services, pursuant to Title 5, California Code of Regulations, Section 55831(b)(2); and

   c) Cost of programs and services, pursuant to Title 5, California Code of Regulations, Section 55831(b)(3).

2) Depending on the delivery system proposed, alternatives for providing the proposed programs and services must include at least all of the following, pursuant to Title 5, California Code of Regulations, Section 55831(c):

   a) Increased utilization of existing district resources, pursuant to Title 5, California Code of Regulations, Section 55831(c)(1);

   b) Forming a new college, educational center, and/or outreach locations, pursuant to Title 5, California Code of Regulations, Section 55831(c)(2); and

   c) Use of media such as television, computer-assisted instruction or

programmed learning packages, pursuant to Title 5, California Code of Regulations, Section 55831(c)(3).

3) Alternative delivery systems considered must be all of the following, pursuant to Title 5, California Code of Regulations, Section 55831(c):

a) adequately described;

b) generally mutually exclusive; and

c) limited to a manageable number to facilitate analysis and review.

4) Proposed sources of funding for needed resources must be identified for both short and long-term operations, pursuant to Title 5, California Code of Regulations, Section 55831(d).

CONDITION 8. ACCREDITATION

A) For community colleges to establish and implement policies and procedures to ensure district compliance with the accreditation standards and requirements promulgated by the ACCJAC, pursuant to Title 5, California Code of Regulations, Section 51016.

B) For community colleges to provide documentation to the ACCJAC ensuring that they have completed all of the following basic requirements to qualify for the status of accreditation, pursuant to the ACCJAC Handbook, page 9:

1) The community college must have completed a period of intensive and comprehensive self-study, followed by an on-site evaluation of institutional performance, demonstrating that it meets Commission standards, pursuant

to the ACCJAC Handbook, page 9.

2) The community college must have demonstrated that its educational programs operate at a satisfactory level of quality and are consistent with the college's stated purposes and with Commission standards, pursuant to the ACCJAC Handbook, page 9.

3) The community college must have demonstrated the availability of sufficient resources to support existing and planned activities at a satisfactory level of quality and must have offered reasonable grounds for the belief that there will continue to be adequate resources in the future, pursuant to the ACCJAC Handbook, page 9.

4) The community college must have committed itself to all of the following, pursuant to the ACCJAC Handbook, page 10:

a) institutional improvement,

b) periodic self-evaluation, and

c) compliance with all Commission standards, policies, procedures and decisions.

C) For community colleges to apply to become a "Candidate for Accreditation" prior to making a formal application for accreditation, by compiling, preparing and submitting to the ACCJAC appropriate documentation to show district fulfillment of the following twenty ACCJAC Eligibility Requirements for Accreditation, pursuant to the ACCJAC Handbook, Part I, pages 12-15:

1) Authority

The community college must be authorized by a governmental organization or agency as required by the jurisdiction in which it operates, to do both of the following, pursuant to the ACCJAC Handbook, page 12:

a) To operate as an educational institution.

b) To award degrees.

2) Mission

The community college's educational mission must meet all of the following criteria, pursuant to the ACCJAC Handbook, page 13:

a) The mission must be clearly defined, adopted, and published by its governing board;

b) The mission must be consistent with its legal authorization;

c) The mission must be appropriate to a degree granting institution of higher education;

d) The mission must be appropriate to the constituency it seeks to serve.

3) Governing Board

The community college must have a functioning governing board that meets the following criteria, pursuant to the ACCJAC Handbook, pages 13:

a) The board must be responsible for the quality and integrity of the

institution;

b) The board must be responsible for ensuring that the institution's mission is being carried out;

c) The board's membership must be sufficient in size and composition to fulfill all board responsibilities;

d) The board must be an independent organization;

e) The majority of the board members must not have any (1) employment, (2) family or (3) financial interest in the institution.

4) Chief Executive Officer

The community college must have an chief executive officer who is appointed by the governing board and whose primary responsibility is to the institution, pursuant to the ACCJAC Handbook, page 13.

5) Administrative Capacity

The community college must have sufficient staff that are appropriately prepared and experienced to provide the administrative services necessary to support the college's mission and purpose, pursuant to the ACCJAC Handbook, page 13.

6) Operational Status

The community college must be operational and enroll students that are actively pursuing the college's degree programs, pursuant to the ACCJAC Handbook, page 13.

7) Degrees

A substantial portion of the community college's educational offerings must lead to degrees, and a significant proportion of the college's students must be enrolled in these degree leading courses, pursuant to the ACCJAC Handbook, page 13.

8) Educational Programs

The community college's principal degree programs must meet all of the following criteria, pursuant to the ACCJAC Handbook, page 13:

a) The programs must be congruent with the college's mission;

b) The programs must be based on recognized higher education field(s) of study;

c) The programs must be of sufficient content and length;

d) The programs must be conducted at levels of quality and rigor that are appropriate to the degrees offered;

e) At least one degree program must be of two academic years in length.

9) Academic Credit

The community college must award academic credits based on generally accepted practices in degree-granting institutions of higher education and provide appropriate information regarding the award of academic credit, pursuant to the ACCJAC Handbook, page 14.

10) Educational Objectives

The community college must define and publish for its students the educational objectives of each program offered, pursuant to the ACCJAC Handbook, page 14.

11) General Education

The community college must define and incorporate into all of its degree programs a substantial component of general education that meets the following criteria, pursuant to the ACCJAC Handbook, page 14:

a) The component must be designed to ensure breadth of knowledge;

b) The component must promote intellectual inquiry;

c) The component must include demonstrated competence in writing and computational skills and an introduction to some of the major areas of knowledge;

d) Degree credit for general education programs must be consistent with levels of quality and rigor that are appropriate to higher education.

12) Faculty

The community college must have a substantial core of qualified faculty with full-time responsibility to the institution, pursuant to the ACCJAC Handbook, page 14.

a) The faculty must be sufficient in size and experience to support all

of the institution's educational programs.

b) The district must adopt a clear statement of faculty responsibilities.

13) Student Services

The community college must provide for all of its students appropriate student services and development programs that are consistent with student characteristics and the college's institutional mission, pursuant to the ACCJAC Handbook, page 14.

14) Admissions

The community college must adopt, implement and adhere to admission policies that meet the following criteria, pursuant to the ACCJAC Handbook, page 14:

a) The policies must be consistent with the college's mission;

b) The policies must specify the student qualifications that are appropriate for its programs.

15) Information and Learning Resources

The community college must own or otherwise provide specific long-term access to sufficient information and learning resources and services to support its mission and all of its educational programs, pursuant to the ACCJAC Handbook, page 14.

16) Financial Resources

The community college must document (1) a funding base, (2) financial

resources, and (3) plans for financial development that are adequate to support the college's mission and educational programs and to assure financial stability, pursuant to the ACCJAC Handbook, page 14-15.

17) Financial Accountability

The community college must regularly undergo and make available an external financial audit by a certified public accountant or an audit by an appropriate public agency, pursuant to the ACCJAC Handbook, page 15.

a) The community college must submit to the Committee a copy of the current budget.

b) The community college must submit to the Committee a copy of the current audited financial statement, as prepared by an outside CPA who has no other relationship to the institution.

c) The audit must be certified.

d) Any exceptions to the audit requirement must be explained.

18) Institutional Planning and Evaluation

The community college must provide evidence of basic planning for the development of the institution, pursuant to the ACCJAC Handbook, page 15.

a) The plan must identify and integrate plans for the following:

(i) academic personnel;

(ii) learning resources;

(iii) facilities; and

(iv) financial development.

b) The plan must identify and integrate procedures for the following:

(i) program review; and

(iv) institutional improvement.

c) The community college must engage in a systematic evaluation of how well and in what ways it is accomplishing its purposes, that includes at least the following information:

(i) an assessment of student learning; and

(ii) documentation of institutional effectiveness.

19) Public Information

The community college must publish in its catalog or other appropriate places accurate and current information that describes the following, pursuant to the ACCJAC Handbook, page 15:

a) The college's purposes and objectives;

b) Admission requirements and procedures;

c) Rules and regulations directly affecting students;

d) Programs and courses;

e) Degrees offered and the degree requirements;

f) Costs and refund policies;

g) Grievance procedures;

h) Academic credentials of faculty and administrators; and

i) Any other items relative to attending the institution withdrawing from it.

20) Relations with the Accrediting Commission

The governing board must agree to do all of the following, regarding its relations with the Accrediting Commission, pursuant to the ACCJAC Handbook, page 15:

a) Provide assurance that the institution adheres to the eligibility requirements, accreditation standards and policies of the Commission;

b) Describe itself in identical terms to all its accrediting agencies;

c) Communicate any changes in its accredited status; and

d) Agree to disclose information required by the Commission to carry out its accrediting responsibilities.

D) For community colleges to adopt and implement policies and procedures to comply with the ACCJAC's Ten "Standards For Accreditation", pursuant to the ACCJAC Handbook, Part II, pages 19-32.

Standard One: Institutional Mission

1) For the governing board of the community college district to adopt, implement and regularly review and revise a mission statement for the

institution which identifies all of the following, pursuant to Standard 1, subdivisions (1-4).

a) The district's educational purpose, pursuant to Standard 1, subdivision 1.

b) The potential students of the district, pursuant to Standard 1, subdivision 2.

c) The district's place in the higher education community, pursuant to Standard 1, subdivision 3.

Standard Two: Institutional Integrity

2) To include in the district's catalogs clear and accurate information regarding all of the following, pursuant to Standard 2, subdivision (1):

a) The district's educational purpose;

b) Degrees, curricular offerings, educational resources, and course offerings;

c) Student fees and other financial obligations, student financial aid and fee refund policies;

d) Requirements for admission and for achievement of degrees, including the academic calendar and information regarding program length;

e) The names of administrators, faculty and governing board members.

3) For the governing board of the community college district to adopt and implement policies setting forth the following:

   a) The district's commitment to the free pursuit and dissemination of knowledge, pursuant to Standard 2, subdivision (2).

   b) The district's expectations concerning the principles of academic honesty and the sanctions for violations, pursuant to Standard 2, subdivision (5).

   c) The district's understanding of and concern for issues of equity and diversity, pursuant to Standard 2, subdivision (6).

4) To give clear prior notice of any district policies that reflect any specific beliefs or world views or that require codes of conduct of faculty, administrative and support staff or students, pursuant to Standard 2, subdivision (4).

5) To establish and implement policies and procedures to ensure compliance with the Commission's standards, policies and guidelines, and public disclosure, and self-study requirements, pursuant to Standard 2, subdivision (8).

6) To regularly evaluate and revise institutional policies, practices and publications to ensure integrity in all representations about the district's mission, programs and services, pursuant to Standard 2, subdivision (9).

Standard Three: Institutional Effectiveness

7) To establish and implement a broad-based and integrated system of research, evaluation and planning to assess institutional effectiveness, pursuant to Standard 3.

a) The district must use the results of the evaluation to improve the institution, pursuant to Standard 3.

b) The district must develop and implement the means for evaluating the success of its programs, pursuant to Standard 3, subdivision (A.3).

c) The district must provide evidence that its program evaluations improve the district's programs and services, pursuant to Standard 3, subdivision (A.4).

d) The district must define and publish its planning processes and integrate it with the evaluation processes to identify priorities for improvement, pursuant to Standard 3, subdivision (B.2).

e) The district must regularly engage in (1) educational, (2) financial, (3) physical and (4) human resources planning and implement any changes to improve the programs and services, pursuant to Standard 3, subdivision (B.3).

f) The district must specify its intended institutional outcomes and clearly document the achievement of these goals, pursuant to Standard 3, subdivision (C.1).

g) The district must clearly communicate matters of quality assurance to the public, pursuant to Standard 3, subdivision (C.2).

Standard Four: Educational Programs

8) If the community college district eliminates any programs or if program requirements are significantly changed, the community college must establish and implement policies and procedures so that enrolled students will be able to complete their education in a timely manner and with a minimum amount of disruption, pursuant to Standard 4, subdivision (A.3).

9) To establish and implement procedures to ensure that the district has sufficient (1) human, (2) financial, and (3) physical resources to support its educational programs, pursuant to Standard 4, subdivision (A.4).

a) The community college district must establish and implement academic advising programs for its students, pursuant to Standard 4, subdivision (A.5).

b) The community college district must train faculty and other personnel to assist in advisory roles, pursuant to Standard 4, subdivision (A.5).

10) To establish and implement procedures in order to demonstrate that the district's degrees and programs support the mission of the institution, pursuant to Standard 4, subdivision (B.1).

a) The community college district must identify its degrees and

certificates in ways which are consistent with (1) the program content, (2) degree objectives, and (3) student mastery of knowledge and skills, pursuant to Standard 4, subdivision (B.2).

b) The community college district must (1) identify, and (2) make public expected learning outcomes for its degrees and certificate programs, pursuant to Standard 4, subdivision (B.3).

c) The community college district must document the technical and professional competence of students completing its occupational and vocational programs, pursuant to Standard 4, subdivision (B.6).

11) To establish, implement, and publish in its general catalog, a general education component for all of its degrees which is based on the humanities and fine arts, the natural sciences and the social sciences, pursuant to Standard 4, subdivisions (C.1 - C.4).

12) To clearly define the district's process for establishing and evaluating all of its educational programs and to conduct these evaluations on a regular basis, pursuant to Standard 4, subdivision (D.1).

a) The community college district must clearly state (1) how it evaluates student learning, (2) how it awards credits and (3) its transfer of credit policies, pursuant to Standard 4, subdivisions (D.3 and D.4).

b) The community college district must provide evidence that all of its

courses and programs, both credit and non-credit are (1) designed, (2) approved and (3) administered under established institutional procedures, pursuant to Standard 4, subdivision (D.6)

Standard Five: Student Support and Development

13) For the district to implement all of the following, regarding student support and development, pursuant to Standard 5:

a) To publish admissions policies which are consistent with the district's mission, pursuant to Standard 5, subdivision (1).

b) To provide to all prospective and current students information regarding all of the following, pursuant to Standard 5, subdivision (2):

(i) graduation requirements;

(ii) social and academic policies;

(iii) refund policies;

(iv) student conduct standards; and

(v) complaint and grievance procedures.

c) To identify student needs and provide students with academic support, pursuant to Standard 5, subdivision (3).

Standard Six: Information and Learning Resources

14) To make information and learning resources readily accessible to students, faculty and administrators, pursuant to Standard 6, subdivision (3).

a) The community college district must have professionally qualified staff to provide appropriate support and training to those who use the resources, pursuant to Standard 6, subdivision (4).

b) The district must provide consistent financial support to effectively maintain and improve its learning resources, pursuant to Standard 6, subdivision (5).

c) If the district contracts with another institution to support its educational programs, it must document that a formal agreement exists, pursuant to Standard 6, subdivision (6).

Standard Seven: Faculty and Staff

15) To clearly state and make public the (1) criteria, (2) qualifications and (3) procedures for selecting all faculty, pursuant to Standard 7, subdivision (A.2).

a) To list all degrees held by faculty in the college's primary catalog, pursuant to Standard 7, subdivision (A.4).

b) To evaluate each category of staff in systematic and stated intervals, pursuant to Standard 7, subdivision (B.1).

c) To adopt and implement policies ensuring fairness in all employment procedures, pursuant to Standard 7, subdivision (D.1).

d) To establish and implement provisions for the security and confidentiality of personnel records, pursuant to Standard 7,

subdivision (D.4).

Standard Eight: Physical Resources

16) To provide adequate physical resources to support the district's purposes and goals, pursuant to Standard 8, subdivision (1).

Standard Nine: Financial Resources

17) To establish and implement a financial plan that supports the district's institutional goals, pursuant to Standard 9, subdivision (A.1).

a) The community college district must clearly define and follow guidelines and processes for financial planning and budget development, pursuant to Standard 9, subdivision (A.4).

b) The community college district must ensure that all contractual agreements that it enters into are governed by institutional policies and contain appropriate provisions to maintain the integrity of the institution, pursuant to Standard 9, subdivision (B.5).

c) The community college district must (1) clearly identify its future obligations and payment plans, (2) adopt policies for appropriate risk management and (3) institute a plan for responding to financial emergencies or unforeseen circumstances, pursuant to Standard 9, subdivisions (C.1, C.2 and C.4).

Standard Ten: Governance and Administration

18) To establish a governing board that will be responsible for the quality and

integrity of the community college, pursuant to Standard 10, subdivision (A.1).

a) The governing board establishment process must include a mechanism that provides for continuity of board membership and staggered terms of office, pursuant to Standard 10, subdivision (A.1).

b) The district's governing board must establish broad institutional policies and delegate responsibility for implementing those policies, pursuant to Standard 10, subdivision (A.3).

c) The governing board must evaluate its policies on a regular basis, pursuant to Standard 10, subdivision (A.3).

d) The governing board must select and evaluate the chief executive officer and other major academic and administrative officers, pursuant to Standard 10, subdivision (A.4).

e) The governing board must develop a program for new member orientation and governing board development, pursuant to Standard 10, subdivision (A.6).

f) The community college's district chief executive officer must provide effective leadership and implement all of the following activities, pursuant to Standard 10, subdivision (B.1, B.2, C.1 and C.2):

(i) define goals;

(ii) develop plans;

(iii) establish priorities for the community college;

(iv) control the community college's budget and expenditures; and

(v) ensure the implementation of statutes, regulations and board policies.

g) The community college district must ensure that its administrative officers are qualified by training and experience to perform their responsibilities by evaluating such officers systematically and regularly, pursuant to Standard 10, subdivision (B.4).

h) The community college district must have a written policy which identifies appropriate institutional support for faculty participation in governance, pursuant to Standard 10, subdivision (B.8).

i) The community college district must clearly state and publicize the role of staff and students in institutional governance, pursuant to Standard 10, subdivisions (B.9 and B.10).

j) The community college district must adopt a statement that clearly delineates the operational responsibilities and functions of the district and those of the college, pursuant to Standard 10, subdivision (C.3).

k) The community college district must implement an effective process

for the establishment and review of district (1) policy, (2) planning and (3) financial management, pursuant to Standard 10, subdivision (C.6).

E) For community colleges in multi-college systems or districts to ensure that their applications for accreditation comply with the procedures the ACCJAC has set forth in and pursuant to the ACCJAC Handbook, pages 87-91.

CONDITION 9. COUNSELING

A) To establish and implement regulations and procedures to provide counseling programs for students in each college within the district, pursuant to Title 5, California Code of Regulations, Section 51018.

B) To file a copy of the community college district's regulations regarding counseling programs with the Chancellor's Office, pursuant to Title 5, California Code of Regulations, Section 51018(a).

C) To publicize the counseling program, pursuant to Title 5, California Code of Regulations, Section 51018(b).

D) To ensure the counseling program is organized and functioning and meets the needs of average students and those with special needs, pursuant to Title 5, California Code of Regulations, Section 51018(b) and (b)(4).

E) To ensure the counseling program includes at least all of the following services, pursuant to Title 5, California Code of Regulations, Section 51018(b):

1) academic counseling;

2) career counseling;

3) personal counseling;

4) skills testing programs;

5) financial assistance programs; and

6) job placement services.

F) To ensure that academic, career and personal counseling services are provided to all of the following students, pursuant to Title 5, California Code of Regulations, Section 51018(c):

1) First-time students enrolled for more than six units,

2) Students enrolled provisionally, and

3) Students on academic or progress probation.

CONDITION 10. INSTRUCTIONAL OBJECTIVES

A) To develop and implement policies and procedures establishing stated objectives for its instructional programs, pursuant to Title 5, California Code of Regulations, Section 51020.

B) To develop and implement policies and procedures establishing stated objectives for all of its district functions, pursuant to Title 5, California Code of Regulations, Section 51020.

CONDITION 11. CURRICULUM

A) For community college districts to establish and implement educational programs and courses that will further the objectives of the community college and meet

the approval of the Chancellor, pursuant to Title 5, California Code of Regulations, Section 51021.

B) For community college districts to incorporate in district documents and policies the definitions contained in Section 55000 and 55200 for all of the following terms, pursuant to Title 5, California Code of Regulations, Sections 55000 and 55200:

1) To incorporate the terms and definitions for "course"; "educational program"; and "class", pursuant to Title 5, California Code of Regulations, Section 55000.

2) To incorporate the terms and definitions for "prerequisite"; "corequisite"; "advisory on recommended preparation"; "satisfactory grade"; "necessary and appropriate"; and "content review", pursuant to Title 5, California Code of Regulations, Section 55200.

C) For community college districts to adopt and implement policies and procedures to comply with the Handbook issued by the Chancellor's Office pertaining to (1) course approval criteria, (2) implementation plans for administrative regulations, and (3) procedures for securing course and program approvals, and to prepare and provide to the Chancellor all documentation that the Chancellor may require to monitor and review the district's approved courses, pursuant to Title 5, California Code of Regulations, Section 55000.5.

D) For community college districts to report the classification of all courses, classes

and activities offered to the Chancellor's Office and for such information to include all of the following data, pursuant to Title 5, California Code of Regulations Section 55001 Subdivision (c):

1) The unique static course identifier and the course title for all courses regardless of whether they are for credit or noncredit, pursuant to Title 5, California Code of Regulations Section 55001(c)(1);

2) The classification of each credit and noncredit course in accordance with its primary objective, pursuant to Title 5, California Code of Regulations Section 55001(c)(2);

3) An indication of whether the course is credit or noncredit, pursuant to Title 5, California Code of Regulations Section 55001(c)(3);

4) An indication of whether the course transfers to the California State University or the University of California or both, pursuant to Title 5, California Code of Regulations Section 55001(c)(4);

5) The number of community service classes and activities in each category and its participants, pursuant to Title 5, California Code of Regulations Section 55001(c)(5) and 5001(c)(6).

E) For community college districts to establish and implement the following standards and criteria for associate degree credit courses and classes, pursuant to Title 5, California Code of Regulations, Section 55002(a):

1) For the district to ensure that all such courses have been (1) designated

as appropriate to the associate degree in accordance with the requirements of Section 55805.5, (2) recommended by the college and/or district curriculum committee and (3) approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission, pursuant to Title 5, California Code of Regulations, Section 55002(a).

2) For the college and/or district administration and the academic senate to establish and supervise a curriculum committee that must evaluate and recommend for approval or disapproval all potential associate degree courses, pursuant to Title 5, California Code of Regulations, Section 55002(a)(1).

a) To establish the curriculum committee by mutual agreement, pursuant to Title 5, California Code of Regulations, Section 55002(a)(1)

b) To ensure that the curriculum committee is established as either one of the following, pursuant to Title 5, California Code of Regulations, Section 55002(a)(1):

(i) a committee of the academic senate; or

(ii) a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college and/or district administration and the academic senate.

3) For the district to ensure that the curriculum committee recommends approval of an associate degree credit course if the course meets the following standards, pursuant to Title 5, California Code of Regulations, Section 55002(a)(2):

a) The course must provide for measurement of student performance in terms of the stated course objectives and culminate in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of Title 5, pursuant to Title 5, California Code of Regulations, Section 55002(a)(2)(A).

(i) The grade must be based on proficiency in subject matter, demonstrated in part by essays or, when appropriate, by problemsolving exercises or skills demonstrations by students, pursuant to Title 5, California Code of Regulations, Section 55002(a)(2)(A).

(ii) The curriculum committee must deem any such problemsolving exercises or skills demonstrations to be appropriate prior to their use as a basis for measurement of subject matter proficiency, pursuant to Title 5, California Code of Regulations, Section 55002(a)(2)(A).

b) The course must grant units of credit based upon a relationship, specified by the governing board, between the number of units

assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline, pursuant to Title 5, California Code of Regulations, Section 55002(a)(2)(B).

(i) The course must require a minimum of three hours of work per week, including class time for each unit of credit, prorated for short-term, laboratory and activity courses.

c) The course must treat subject matter with a scope and intensity that requires students to study independently outside of class time, pursuant to Title 5, California Code of Regulations, Section 55002(a)(2)(C).

d) When the college and/or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course, then the course must require prerequisites or corequisites that are established, reviewed, and applied in accordance with the requirements of Article 2.5 (commencing with Section 55200) of Title 5, pursuant to Title 5, California Code of Regulations, Section 55002(a)(2)(D).

e) If success in the course is dependent upon communication or

computation skills, then the course must require, as a prerequisite or corequisite, the student's eligibility for enrollment in associate degree credit courses in English and/or mathematics, respectively, pursuant to Title 5, California Code of Regulations, Section 55002(a)(2)(E).

f) The course work must call for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level, pursuant to Title 5, California Code of Regulations, Section 55002(a)(2)(F).

g) The course must require learning skills and a vocabulary that the curriculum committee deems appropriate for a college course, pursuant to Title 5, California Code of Regulations, Section 55002(a)(2)(G).

4) The course must be described in a course outline of record that is maintained in the official college files and made available to each instructor, pursuant to Title 5, California Code of Regulations, Section 55002(a)(3).

a) The course outline of record must specify the (1) unit value, (2) scope, (3) objectives, and (4) content of the course in terms of a specific body of knowledge, pursuant to Title 5, California Code of Regulations, Section 55002(a)(3).

b) The course outline must specify types or provide examples of the following, pursuant to Title 5, California Code of Regulations, Section 55002(a)(3):

(i) required reading and writing assignments,

(ii) other outside-of-class assignments,

(iii) instructional methodology, and

(iv) methods of evaluation for determining whether the stated objectives have been met by students.

5) Each section of the course must be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record, pursuant to Title 5, California Code of Regulations, Section 55002(a)(4).

6) Repeated course enrollment must only be allowed if in accordance with the provisions of Chapter 2 (commencing with Section 51000), Sections 55761-55763 and Section 58161 of Title 5, pursuant to Title 5, California Code of Regulations, Section 55002(a)(5).

F) For community college districts to establish and implement the following standards and criteria for nondegree credit courses and classes, pursuant to Title 5, California Code of Regulations, Section 55002(b):

1) For the district to ensure that all such courses have been (1) designated by the governing board as not applicable to the associate degree, (2)

recommended by the college and/or district curriculum committee, and (3) approved by the district governing board, pursuant to Title 5, California Code of Regulations, Section 55002(b).

2) For the district to ensure that all such courses fall within one of the following categories, pursuant to Title 5, California Code of Regulations, Section 55002(b):

a) Precollegiate basic skills courses, defined as "community services classes" in Section 55502(d), pursuant to Title 5, California Code of Regulations, Section 55002(b)(1)(A);

b) Courses that are designed to enable students to succeed in college-level work and that meet the following criteria, pursuant to Title 5, California Code of Regulations, Section 55002(b)(1)(B):

(i) The courses must include at least college orientation and guidance courses, and discipline-specific preparatory courses;

(ii) The courses must integrate basic skills instruction throughout the course; and

(iii) The courses must assign grades partly upon the demonstrated mastery of basic skills.

c) Precollegiate occupational preparation courses designed to provide foundation skills for students preparing for entry into college-level

occupational courses or programs, pursuant to Title 5, California Code of Regulations, Section 55002(b)(1)(C);

d) Essential occupational instruction for which meeting the standards for an Associate Degree Credit course is neither necessary nor required, pursuant to Title 5, California Code of Regulations, Section 55002(b)(1)(D).

2) The college and/or district curriculum committee must evaluate and recommend approval of the course on the basis of the following standards and submit the course for approval to the Chancellor's Office in order to be eligible for state apportionment, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2):

a) The course must provide for measurement of student performance in terms of the stated course objectives and culminate in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2)(A).

(i) The grade must be based on demonstrated proficiency in the subject matter; and

(ii) the grade must also be based on the ability to demonstrate subject matter proficiency, at least in part, by means of written expression.

b) The course must grant units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2)(B).

(i) The course must require a minimum of three hours of student work per week, per unit, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2)(B).

(ii) Such student work must include class time and/or demonstrated competency, for each unit of credit, prorated for short-term, laboratory, and activity courses, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2)(B).

c) The course must (1) provide instruction in critical thinking; (2) generally treat subject matter with a scope and intensity that prepares students to study independently outside of class time; (3) include reading and writing assignments and homework; and (4) provide assignments that are sufficiently rigorous so that students completing each such course successfully will have acquired the skills necessary to successfully complete college-level work upon

completion of the required sequence of such courses, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2)(C).

d) When the college and/or district curriculum committee deems appropriate, the course may require prerequisites or corequisites for the course that are established, reviewed, and applied in accordance with Article 2.5 (commencing with Section 55200) of Title 5, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2)(D).

3) The course must be described in a course outline of record that is maintained in the official college files and made available to each instructor, pursuant to Title 5, California Code of Regulations, Section 55002(b)(3).

(a) The course outline of record must specify the (1) unit value, (2) scope, (3) objectives, and (4) content of the course in terms of a specific body of knowledge, pursuant to Title 5, California Code of Regulations, Section 55002(b)(3).

(b) The course outline must specify types or provide examples of all of the following, pursuant to Title 5, California Code of Regulations, Section 55002(b)(3):

(i) required reading and writing assignments,

(ii) other outside-of-class assignments,

(iii) instructional methodology, and

(iv) methods of evaluation for determining whether the stated objectives have been met by students.

c) The course specifications must be such as to typically enable any student who successfully completes all of the assigned work prescribed in the outline of record to successfully meet the course objectives, pursuant to Title 5, California Code of Regulations, Section 55002(b)(3).

4) All sections of the course must be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record, pursuant to Title 5, California Code of Regulations, Section 55002(b)(4).

5) Repeated enrollment must only be allowed if in accordance with provisions of Division 2 (commencing with Section 51000), Sections 55761-55763 and Section 58161 of Title 5, pursuant to Title 5, California Code of Regulations, Section 55002(b)(5).

G) For community college districts to establish and implement the following standards and criteria for noncredit courses and classes, pursuant to Title 5, California Code of Regulations, Section 55002(c):

1) For the district to ensure that all such courses have been (1) recommended by the college and/or district curriculum committee and (2)

approved by the district governing board as a course meeting the needs of enrolled students, pursuant to Title 5, California Code of Regulations, Section 55002(c)

2) The college and/or district curriculum committee must evaluate the course to ensure that the course treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement that the committee deems to be appropriate for the enrolled students, prior to course approval, pursuant to Title 5, California Code of Regulations, Section 55002(c)(1).

3) The course must be described in a course outline of record that meets all of the following criteria, pursuant to Title 5, California Code of Regulations, Section 55002(c)(2):

(a) The outline must be maintained in the official college files;

(b) The outline must be made available to each instructor;

(c) The outline must specify the (1) scope, (2) objectives, (3) contents, (4) instructional methodology, and (5) methods of evaluation for determining whether the stated objectives have been met.

4) All sections of the course must be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

H) For community college districts to establish and implement policies and

procedures to ensure that all community services classes meet the following minimum requirements, pursuant to Title 5, California Code of Regulations, Section 55002(d):

1) The local district governing board must review and approve all such classes, pursuant to Title 5, California Code of Regulations, Section 55002(d)(1);

2) The classes must be designed for the physical, mental, moral, economic, or civic development of persons enrolled therein, pursuant to Title 5, California Code of Regulations, Section 55002(d)(2);

3) The classes must provide subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students, pursuant to Title 5, California Code of Regulations, Section 55002(d)(3);

4) The classes must be conducted in accordance with a predetermined strategy or plan, pursuant to Title 5, California Code of Regulations, Section 55002(d)(4);

5) The classes must be open to all members of the community, pursuant to Title 5, California Code of Regulations, Section 55002(d)(5); and

6) The classes may not be claimed for apportionment purposes, pursuant to Title 5, California Code of Regulations, Section 55002(d)(6).

l) To implement policies and procedures to establish standards regarding credit

hours, pursuant to Title 5, California Code of Regulations, Section 55002.5.

1) One credit hour of community college work must be weighted at approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks.

2) Where a term is more or less than 16 weeks, the district must ensure that more or less than one credit hour is allowed in the same ratio that the length of the term is to 16 weeks.

J) To ensure that courses of instruction in social sciences include a study of the (1) role, (2) participation, and (3) contribution of all of the following groups to the (a) economic, (b) political, and (c) social development of both California and the United States of America, pursuant to Title 5, California Code of Regulations, Section 55004:

1) both men and women,

2) black Americans,

3) American Indians,

4) Mexicans,

5) Asians,

6) Pacific Island people, and

7) other ethnic groups.

K) For community colleges to ensure that, for each course offered, all of the following facts are made available to students through college publications

before the students enroll in the course, pursuant to Title 5, California Code of Regulations, Section 55005:

1) Whether the course is offered as a credit or noncredit course, or a community services class, pursuant to Title 5, California Code of Regulations, Section 55005(a).

2) Whether the course is transferable to four-year colleges and universities, pursuant to Title 5, California Code of Regulations, Section 55005(b).

3) Whether the course fulfills a major or general education requirement, pursuant to Title 5, California Code of Regulations, Section 55005(c).

4) Whether the course is offered on the basis of credit-no credit, and if so, which provision of Subdivision (a) of section 51302 is applicable, pursuant to Title 5, California Code of Regulations, Section 55005(d).

L) For the authorities of each community college maintaining credit and non-credit courses and community services classes and activities to keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities, pursuant to Title 5, California Code of Regulations, Section 55006.

M) To submit each course to be offered by a community college to the Chancellor for approval on forms provided by the Chancellor's Office, pursuant to Title 5, California Code of Regulations, Section 55100.

1) For the district governing board to establish and implement policies for all

individual courses that are offered as part of an educational program that has been previously approved by the Chancellor, pursuant to Title 5, California Code of Regulations, Section 55100(b).

2) For the district to designate the appropriate classification of any course or activity approved by a district, whether or not approval by the Chancellor is required, in accordance with section 55001, pursuant to Title 5, California Code of Regulations, Section 55100(c).

N) For district governing boards to prepare and submit to the Chancellor an application for approval, on forms provided by the Chancellor, before offering any course as part of an educational program at a college, pursuant to Title 5, California Code of Regulations, Section 55130.

1) To ensure that the application for approval contains at least all of the following, pursuant to Title 5, California Code of Regulations, Section 55130(b):

a) The name of the proposed program, pursuant to Title 5, California Code of Regulations, Section 55130(b)(1).

b) The description of the proposed program, pursuant to Title 5, California Code of Regulations, Section 55130(b)(2).

c) The purposes and specific objectives of the proposed program, pursuant to Title 5, California Code of Regulations, Section 55130(b)(3).

d) The place of the proposed program in the district master plan, pursuant to Title 5, California Code of Regulations, Section 55130(b)(4).

e) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning, pursuant to Title 5, California Code of Regulations, Section 55130(b)(5).

f) The need for the proposed program ascertained with regard to at least all of the following factors, pursuant to Title 5, California Code of Regulations, Section 55130(b)(6):

(i) Other community colleges in the area currently offering the program;

(ii) Other programs closely related to the proposed program offered by the college;

(iii) Relation of the proposed program to job market analysis;

(iv) Enrollment projection for the proposed program;

(v) Recommendations of area vocational master plan committees when applicable; and

(vi) The classification of the courses in the program in accordance with section 55001.

g) The need for and present adequacy of the following resources, determined in relation to the proposed program, pursuant to Title 5, California Code of Regulations, Section 55130(b)(7):

(i) Library and media center resources;

(ii) Facilities and equipment required to initiate and sustain the program, with reference made to the five-year master plan if a new facility is to be used;

(iii) Availability of adequate or proposed financial support;

(iv) Availability of faculty.

2) To ensure that the development, establishment and evaluation of an education program include representative faculty involvement, pursuant to Title 5, California Code of Regulations, Section 55130(c).

O) To submit all courses or programs offered for noncredit to the Chancellor for approval in accordance with section 55100 on forms provided by the Chancellor's Office, pursuant to Title 5, California Code of Regulations, section 55150(a).

1) To keep course outlines for all noncredit courses on file in the community college offering the course, pursuant to Title 5, California Code of Regulations, Section 55150(b).

2) For authorities of each community college maintaining noncredit courses to keep such current records and reports as may be required by the

Chancellor, pursuant to Title 5, California Code of Regulations, Section 55150(c).

P) For districts to implement policies for the approval and classification of any community services classes conducted by the district and to report the classification of all such classes to the Chancellor in accordance with section 55001, pursuant to Title 5, California Code of Regulations, Section 55160.

Q) If the district claims state support for a contract class, districts must ensure that approval of the class is obtained in the manner provided for classes of the same type, as provided in this article and approval of the contract is obtained in the manner provided for by law, pursuant to Title 5, California Code of Regulations, Section 55170.

R) For the district governing board to apply the following criteria and procedures if reinstating any course which was deleted from the credit or noncredit curriculum during the 1982-83 fiscal year, in response to provision Number 11 of Item 6870-101-001 of the Budget Act of 1982 (Chapter 326, Statutes of 1982), pursuant to Title 5, California Code of Regulations, Section 55182:

1) To ensure that such courses are only reinstated in a manner consistent with the policy of the Board of Governors that offerings which are primarily avocational, or recreational shall be offered as community services classes, and not as credit or noncredit courses, pursuant to Title 5, California Code of Regulations, Section 55182(a);

2) To determine that the course meets the criteria and standards for courses specified in section 55002, pursuant to Title 5, California Code of Regulations, Section 55182(b);

3) To ensure that any reinstated course has first been reviewed through the college's or district's established procedure for the approval of new courses, pursuant to Title 5, California Code of Regulations, Section 55182(c);

4) To submit the course to the Chancellor for approval, or report approval of the course, depending on the requirements of section 55100 and to use a separate designation to distinguish reinstated courses from new courses, pursuant to Title 5, California Code of Regulations, Section 55182(d); and

5) To make a determination that reinstatement of the course maintains or improves the curriculum balance of the district in accordance with the mission of the community college and local needs, pursuant to Title 5, California Code of Regulations, Section 55182(e).

S) For each community college and/or district's curriculum committee to assess each associate degree credit course to determine if prerequisite or corequisite courses are necessary pursuant to Section 55002(a)(2)(D) or 55002(a)(2)(E), pursuant to Title 5, California Code of Regulations, Section 55201(a).

1) If such courses are deemed to be necessary by the curriculum committee, then the district must ensure that such courses are required and offered,

pursuant to Title 5, California Code of Regulations, Section 55201(a).

T) For community college districts to adopt and implement policies for the following, regarding any prerequisites, corequisites, and "advisories on recommended preparation" required by the district, pursuant to Title 5, California Code of Regulations, Section 55201:

1) The process for establishing prerequisites, corequisites, and advisories on recommended preparation, pursuant to Title 5, California Code of Regulations, Section 55201(b)(1).

a) Such policies must provide that in order to establish a prerequisite or corequisite, the prerequisite or corequisite must be determined to be necessary and appropriate for achieving the purpose for which it is being established, pursuant to Title 5, California Code of Regulations, Section 55201(b)(1).

b) District policies must specify the level of scrutiny required in order to establish different types of prerequisites, corequisites, and advisories on recommended preparation, pursuant to Title 5, California Code of Regulations, Section 55201(b)(1).

c) At a minimum, prerequisites, corequisites, and advisories on recommended preparation must be based on content review, with additional methods of scrutiny being applied depending on the type of prerequisite or corequisite being established, pursuant to Title 5,

California Code of Regulations, Section 55201(b)(1).

d) The policy must provide that the types of prerequisites to be used in conjunction with courses in communication or computation skills may be established only on the basis of data collected using sound research practices, pursuant to Title 5, California Code of Regulations, Section 55201(b)(1).

e) Any determinations about prerequisites and corequisites must be made on a course-by-course or program-by-program basis, pursuant to Title 5, California Code of Regulations, Section 55201(b)(1).

2) Procedures to assure that courses for which prerequisites or corequisites are established will be taught in accordance with the course outline, particularly those aspects of the course outline that are the basis for justifying the establishment of the prerequisite or corequisite, pursuant to Title 5, California Code of Regulations, Section 55201(b)(2).

3) The process, including levels of scrutiny, for reviewing prerequisites and corequisites, to assure that they remain necessary and appropriate, pursuant to Title 5, California Code of Regulations, Section 55201(b)(3).

a) These processes must provide for district review of each prerequisite and corequisite at least once every six years, pursuant to Title 5, California Code of Regulations, Section 55201(b)(3).

b) These processes must also provide for the periodic review of advisories on recommended preparation, pursuant to Title 5, California Code of Regulations, Section 55201(b)(3).

4) The bases and process for an individual student to challenge the application of a prerequisite or corequisite, pursuant to Title 5, California Code of Regulations, Section 55201(b)(4).

5) Prerequisites or corequisites may be established only for any of the following purposes, pursuant to Title 5, California Code of Regulations, Section 55201(c):

a) When the prerequisite or corequisite is expressly required or expressly authorized by statute or regulation, pursuant to Title 5, California Code of Regulations, Section 55201(c)(1);

b) When the prerequisite will assure that a student has the skills, concepts, and/or information that is presupposed in terms of the course or program for which it is being established, such that a student who has not met the prerequisite is highly unlikely to receive a satisfactory grade in the course for which the prerequisite is being established, pursuant to Title 5, California Code of Regulations, Section 55201(c)(2);

c) When the corequisite course will assure that a student acquires the necessary skills, concepts, and/or information, such that a student

who has not enrolled in the corequisite is highly unlikely to receive a satisfactory grade in the course or program for which the corequisite is being established, pursuant to Title 5, California Code of Regulations, Section 55201(c)(3); and

d) When the prerequisite or corequisite is necessary to protect the health and safety of a student or the health and safety of others, pursuant to Title 5, California Code of Regulations, Section 55201(c)(4).

6) To ensure that no prerequisite or corequisite is established or renewed unless it is determined to be necessary and appropriate to achieve the purpose for which it has been established, pursuant to Title 5, California Code of Regulations, Section 55201(d).

7) To ensure that if a course in communication or computation skills is established as a prerequisite or corequisite for any course other than another course in communication or computation skills, the district completes the following activities, pursuant to Title 5, California Code of Regulations, Section 55201(e):

a) the district must conduct a content review, and

b) the district must gather data according to sound research practices and show that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or

corequisite.

8) To establish procedures for a student to challenge any prerequisite or corequisite for any of the following grounds, pursuant to Title 5, California Code of Regulations, Section 55201(f):

a) If the prerequisite or corequisite has not been established in accordance with the district's process for establishing prerequisites and corequisites, pursuant to Title 5, California Code of Regulations, Section 55201(f)(1);

b) If the prerequisite or corequisite is in violation of Title 5, California Code of Regulations, sections 55200 - 55202, pursuant to Title 5, California Code of Regulations, Section 55201(f)(2);

c) If the prerequisite or corequisite is either unlawfully discriminatory or being applied in an unlawfully discriminatory manner, pursuant to Title 5, California Code of Regulations, Section 55201(f)(3);

d) If the student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite, pursuant to Title 5, California Code of Regulations, Section 55201(f)(4);

e) If the student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available, pursuant to Title

5, California Code of Regulations, Section 55201(f)(5);

f) Such other grounds for challenge that the district governing board has established, pursuant to Title 5, California Code of Regulations, Section 55201(f)(6).

9) In the case of a challenge alleging unlawful discrimination regarding any prerequisite or corequisite, the district must, upon completion of the challenge procedure, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of Division 6 of the California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 55201(g).

10) District policies adopted pursuant to this section must be submitted to the Chancellor as part of the district's matriculation plan pursuant to Section 55510 of Subchapter 6 of Chapter 6 of this Division, pursuant to Title 5, California Code of Regulations, Section 55201(h).

U) For community college districts to apply the following additional rules to the establishment of prerequisites and corequisites, pursuant to Title 5, California Code of Regulations, Section 55202:

1) Prerequisites, corequisites, and advisories on recommended preparation must be identified in college publications available to students as well as the course outline of any course for which they are established, pursuant

to Title 5, California Code of Regulations, Section 55202(a).

2) The district must ensure that any prerequisites establishing communication or computational skill requirements are not established across the entire curriculum unless established on a course-by-course basis, pursuant to Title 5, California Code of Regulations, Section 55202(b).

3) The determination of whether a student meets a prerequisite must be based either on successful completion of an appropriate course or on an assessment using multiple measures, pursuant to Title 5, California Code of Regulations, Section 55202(c).

   a) The district must ensure that the selection and use of any assessment instrument is done in accordance with the provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of Division 6 of the California Code of Regulations

4) If a prerequisite requires precollegiate skills in reading, written expression, or mathematics, the district must offer precollegiate basic skills courses designed to teach the required skills, pursuant to Title 5, California Code of Regulations, Section 55202(d).

   a) Such courses must be offered with reasonable frequency; and

   b) A reasonable number of sections of such courses must be offered so that the number of students who are required to meet the

associated skills prerequisites and who diligently seek enrollment in the prerequisite course are able to enroll in the course.

5) Whenever a corequisite course is established, sufficient sections must be offered to reasonably accommodate all students who are required to take the corequisite and the district must waive any corequisite as to any student for whom space in the course is not available, pursuant to Title 5, California Code of Regulations, Section 55202(e).

6) The district must ensure that if an exit test is required to satisfy a prerequisite or corequisite, such test is incorporated into the grading for the prerequisite or corequisite course, pursuant to Title 5, California Code of Regulations, Section 55202(f).

7) The district must make the determination of whether a student meets a prerequisite prior to his or her enrollment in the course requiring the prerequisite, unless enrollment is being permitted pending verification that the student has met the prerequisite or corequisite, pursuant to Title 5, California Code of Regulations, Section 55202(g).

V) For community college districts to adopt and implement policies and procedures pertaining to distance education that ensure the following, pursuant to Title 5, California Code of Regulations, sections 55205-55219:

1) The instruction provided as distance education must meet all requirements that may be imposed by the Americans with Disabilities Act

(42 U.S.C. Sec. 12100 et seq.) and section 508 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 794d), pursuant to Title 5, California Code of Regulations, Section 55205.

2) The same standards of course quality must be applied to distance education as are applied to traditional classroom courses, in regard to course quality judgments and any local course quality determination or review process, pursuant to Title 5, California Code of Regulations, Section 55207.

3) Determinations and judgments about the quality of distance education under the course quality standards must be made with the full involvement of faculty in accordance with the provisions commencing with section 53200, pursuant to Title 5, California Code of Regulations, Section 55209.

4) District governing boards must ensure the following regarding instructor contact, pursuant to Title 5, California Code of Regulations, Section 55211:

a) All approved courses offered as distance education must include regular effective contact between instructors and students, pursuant to Title 5, California Code of Regulations, Section 55211(a).

b) All distance education courses must be delivered consistent with guidelines issued by the Chancellor pursuant to section 409 of the

Procedures and Standing Orders of the Board of Governors, pursuant to Title 5, California Code of Regulations, Section 55211(b).

5) Each proposed or existing distance education course, must be separately reviewed and approved according to the district's certified course approval procedures, pursuant to Title 5, California Code of Regulations, Section 55213.

6) Instructors of sections delivered via distance education technology must be selected by the same procedures used to determine all instructional assignments and possess the minimum qualifications for the discipline into which the course's subject matter most appropriately falls, pursuant to Title 5, California Code of Regulations, Section 55215.

7) The number of students assigned to any one course section offered by distance education must be determined by and be consistent with other district procedures related to faculty assignment, pursuant to Title 5, California Code of Regulations, Section 55217.

8) Any district conducting any noncredit and nontransferable distance learning courses must perform all of the following, pursuant to Title 5, California Code of Regulations, Section 55219:

a) Maintain records and report data through the Chancellor's Office Management Information System on the number of students and

faculty participating in new courses or sections of established courses, pursuant to Title 5, California Code of Regulations, Section 55219(a);

b) Prepare and provide to the local governing board, no later than August 31st of each year, a report on all distance education activity, pursuant to Title 5, California Code of Regulations, Section 55219(b);

c) Compile, prepare and provide other information consistent with reporting guidelines developed by the Chancellor pursuant to section 409 of the Procedures and Standing Orders of the Board of Governors, pursuant to Title 5, California Code of Regulations, Section 55219(c).

W) For community college districts to adopt and implement policies and procedures regarding independent study courses that ensure all of the following, pursuant to Title 5, California Code of Regulations, Sections 55300-55350:

1) Approved courses conducted as independent study must be reported to the Chancellor in accordance with specified procedures as required by law, pursuant to Title 5, California Code of Regulations, Section 55300.

2) All independent study courses must meet the following criteria, pursuant to Title 5, California Code of Regulations, Section 55316:

a) The course must be accepted by the college toward completion of

an appropriate educational sequence leading to an associate degree, pursuant to Title 5, California Code of Regulations, Section 55316(a); and

b) The course must be recognized by an institution of the University of California or the California State University upon transfer to that institution, pursuant to Title 5, California Code of Regulations, Section 55316(b).

3) Districts must ensure that if they offer, as an independent study course, any noncredit courses or any nontransferable courses designed to meet the requirements of sections 55805.5, 55806, and 55002(a) or (b), that such courses are conducted in the following manner, pursuant to Title 5, California Code of Regulations, Section 55316.5:

a) By distance education;

b) Consistent with the requirements of sections 55205-55219 of Title 5 of the California Code of Regulations; and

c) Consistent with the guidelines developed by the Chancellor.

4) Districts must ensure that academic standards applicable to courses of independent study are the same as those applied to other credit courses in the college, pursuant to Title 5, California Code of Regulations, Section 55320.

5) A report by an instructor on appropriate records bearing the student's

name for purposes of state apportionment must certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by each student enrolled in the course, pursuant to Title 5, California Code of Regulations, Section 55321.

6) The college must provide access to the instructor for the students enrolled in independent study courses at least equivalent to that commonly available to students enrolled in courses conducted by other instructional methods, in addition to regularly scheduled office hours as practiced at that college, pursuant to Title 5, California Code of Regulations, Section 55322.

7) In order for attendance in a course of independent study to be eligible for state apportionment, the district must report the course in the manner required by Chapter 6 of Title 5 of the California Code of Regulations (pertaining to Curriculum and Instruction), and ensure that the course meets all other requirements of statute and regulation relative to eligibility for state apportionment, pursuant to Title 5, California Code of Regulations, Section 55340.

8) The district must ensure that any instructor assigned to an independent study course meets all of the following criteria, pursuant to Title 5, California Code of Regulations, Section 55350:

a) The instructor must be qualified to provide service in that capacity

during the period in which that service is rendered, pursuant to Title 5, California Code of Regulations, Section 55350(a);

b) The instructor must be responsible for the supervision, control, and evaluation of the course and the enrolled students, pursuant to Title 5, California Code of Regulations, Section 55350(b);

c) The instructor must provide (1) orientation, (2) guidance, and (3) information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college, pursuant to Title 5, California Code of Regulations, Section 55350(c); and

d) The instructor must provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, and include this schedule in the written record, pursuant to Title 5, California Code of Regulations, Section 55350(d).

X) For community college districts to adopt and implement policies and procedures to comply with the curriculum standards and criteria for curriculum approval set forth by the Chancellor's Office in the "Program and Course Approval Handbook" ("Handbook") (September 2001), established pursuant to Title 5, California Code of Regulations, Section 55000.5.

1) Community Colleges must document that a proposed educational

program meets all five of the following criteria for approval before the program will be approved by the Chancellor's Office: (1) Appropriateness to Mission; (2) Need; (3) Quality; (4) Feasibility; and (5) Compliance, pursuant to "Handbook", page 16.

a) Appropriateness to Mission

(i) Curriculum must be designed to be taught to lower division students for credit toward the degree, for purposes of transfer, occupational preparation, or career supplementation or upgrade, rather than avocational purposes, pursuant to "Handbook", page 16.

(ii) Curriculum must be designed to provide systematic instruction in a body of content or skill whose mastery forms the basis of the student grade, rather than designed primarily to provide group activities or services, pursuant to "Handbook", page 16.

b) Need

(i) There must be a demonstrative need for a course or program that meets the stated goals and objectives, at this time, and in the region the college proposes to serve with the program, pursuant to "Handbook", page 16.

(ii) Primarily occupational programs must demonstrate need for the program by gathering and supplying all of the following, pursuant to "Handbook", page 16:

(1) labor market information;

(2) an employer survey;

(3) a job market analysis, or other information that shows that jobs are available for program completers;

(4) a recommendation for approval by the "Regional Occupational Consortium"

c) Quality

(i) The program must be designed so that successfully completing the program requirements will enable students to fulfill the program goals and objectives, pursuant to "Handbook", page 17.

(ii) Courses and programs must be integrated, with courses designed to effectively meet their objectives and the goals and objectives of the programs for which they are required, pursuant to "Handbook", page 17.

d) Feasibility

(i) The college must have the resources (funding, faculty, facilities and equipment) to realistically maintain the program

at the level of quality described in the new program application, pursuant to "Handbook", page 18.

(ii) The college must commit to offering all the required courses for the program at least once every two years, unless a longer time frame is justified based on the best interests of the students, pursuant to "Handbook", page 18.

2) Community Colleges must comply with the Chancellor's Office Procedures when compiling data for, preparing and submitting program approval applications for each of the following programs as detailed in Appendix A, "Forms and instructions for Approval of New Programs", pursuant to "Handbook", page 18.

a) New Occupational Program Approval Application (Districts must comply with all procedures detailed in pages A-1 through A-19).

b) New Transfer Program Approval Application (Districts must comply with all procedures detailed in pages A-21 through A-35).

c) Request to Add New Option or Certificate within Existing Program to Inventory (Districts must comply with all procedures detailed in pages A-37 through A-41).

d) Non-Substantial Changes to Approved Program (or Reactivation of Inactive Program) (Districts must comply with all procedures detailed in pages A-43 through A-44).

e) Request to Add Projected Program to Inventory (Districts must comply with all procedures detailed in pages page A-45).

f) Credit/Noncredit Apprenticeship Program Approval Application (Districts must comply with all procedures detailed in pages A-47 through A-54).

3) Community Colleges must assess and categorize all courses that are not part of an approved program and determine whether they qualify as one of the five categories of "stand alone courses" that have been granted blanket approval by the Chancellor, and therefore need not be submitted to the Chancellor's Office for approval, as outlined in and pursuant to "Handbook", pages 24-25.

CONDITION 12. VOCATIONAL EDUCATION PROGRAMS

A) To develop and implement policies for the establishment, modification, or discontinuance of courses or programs, which incorporate statutory responsibilities regarding vocational or occupational training program review, in accordance with Education Code Section 78016, pursuant to Title 5, California Code of Regulations, Section 51022(a).

B) To conduct a job market study of the labor market focusing on whether the anticipated employment demand for students in the proposed program justifies the establishment of the proposed course of instruction prior to establishing a vocational educational program, pursuant to Education Code Section

78015(a)(1).

1) To use the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code or if the program is not available, other available sources of labor market information when conducting the study, pursuant to Education Code Section 78015(a)(1).

2) To include in the study a California Occupational Information System supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges and private postsecondary schools in the area pursuant to Education Code Section 78015(a)(1).

3) To make copies of each job market study available to the public pursuant to Education Code Section 78015(a)(2).

4) To determine whether the study justifies the proposed vocational education program, pursuant to Education Code Section 78105(b).

5) If the governing board of the community college district determines the job market study justifies initiation of the proposed program, it shall determine by resolution whether the program shall be offered through the districts' own facilities or through a contract with an approved private post secondary school, pursuant to Education Code Section 78015(c).

C) For the governing board of the community college district to review every

vocational or occupational training program offered by a community college district every two years to ensure the programs are effective, meet a documented labor market demand, and do not unnecessarily duplicate other manpower training programs in the area, pursuant to Education Code Section 78016(a).

1) For the governing board of a community college district to consider the review and comments of the local Private Industry Council established pursuant to Division 8 of the Unemployment Insurance Code before it conducts its review process, pursuant to Education Code Section 78016(c).

2) To provide a written summary of the findings of each review to the public, pursuant to Education Code Section 78016(e).

D) To incorporate the definitions contained in Section 55600, for all of the following terms, into district policies, procedures and documents: "Vocational Educational Contract"; "The California State Plan for Vocational Education"; "Contractor"; and "Eligible Cost", pursuant to Title 5, California Code of Regulations, Section 55600.

E) For the governing board of a community college district to appoint and supervise a vocational education advisory committee, pursuant to Title 5, California Code of Regulations, Section 55601.

1) For the advisory committee to be responsible for and to implement both of

the following activities, pursuant to Title 5, California Code of Regulations, Section 55601:

a) To develop recommendations on the vocational education program, pursuant to Title 5, California Code of Regulations, Section 55601; and

b) To act as a liaison between the district and potential employers, pursuant to Title 5, California Code of Regulations, Section 55601.

2) For the district to appoint one or more representatives of the general public to the vocational education advisory committee who is knowledgeable about all of the following, pursuant to Title 5, California Code of Regulations, Section 55601:

a) the disadvantaged,

b) students,

c) teachers,

d) business,

e) industry,

f) school administration, and

g) the field office of the Department of Employment Development.

F) For any community college district that contracts with a private post secondary school, an activity center, work activity center, or sheltered work shop, to

implement policies and procedures to ensure all of the following, pursuant to Title 5, California Code of Regulations, Sections 55602, 55605 and 55607:

1) All contracts must be approved by the Chancellor, pursuant to Title 5, California Code of Regulations, Section 55602(1).

2) All contracts must provide the following, pursuant to Title 5, California Code of Regulations, Section 55602:

   a) The amount contracted for per student must not exceed the amount it costs to provide the same training in community colleges or the tuition charged in postsecondary schools, pursuant to Title 5, California Code of Regulations, Section 55602(2);

   b) Those students who are currently enrolled in community colleges and are receiving training in another institution, must not be charged additional tuition, pursuant to Title 5, California Code of Regulations, Section 55602(3);

   c) All programs, courses and classes of instruction must meet the standards set forth in the California State Plan for Vocational Education or a course of study for adult schools approved by the Department of Education, pursuant to Title 5, California Code of Regulations, Section 55602(4).

3) The community college district must organize and administer the contracts to ensure that there will be separate accounts for all income and

expenditures applicable to the contract, pursuant to Title 5, California Code of Regulations, Section 55605(e).

4) The community college district must submit annually to the Chancellor statistical and evaluative reports on forms provided by the Chancellor with regard to each vocational education contract it enters into with a private post secondary school, an activity center, work activity center, or sheltered work shop to provide vocational skill training, pursuant to Title 5, California Code of Regulations, Section 55607.

5) All records related to income and expenditures regarding the contracts must be made available for audit by the state or federal government and retained for five years or one year after the audit, pursuant to Title 5, California Code of Regulations, Section 55607.

G) If the governing board of a community college district enters into a contract with a private or public entity for the education of students whose capacity to function is impaired by physical deficiency or injury in vocational education classes, the governing board of the community college district must approve of and supervise all instruction, pursuant to Title 5, California Code of Regulations, Section 55602.5.

H) To adopt and implement policies and procedures to ensure that contractors provide (1) vocational, (2) technical, and (3) occupational instruction related to attainment of (a) skills, (b) knowledge, and (c) attitudes so that students may be

prepared for any of the following, pursuant to Title 5, California Code of Regulations, Section 55603:

1) Gainful employment in the occupational area for which training has been provided, pursuant to Title 5, California Code of Regulations, Section 55603(a); or

2) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, pursuant to Title 5, California Code of Regulations, Section 55603(b); or

3) Enrollment in more advanced training programs, pursuant to Title 5, California Code of Regulations, Section 55603(c).

l) To ensure all vocational education contracts entered into with contractors meet all of the following conditions, pursuant to Title 5, California Code of Regulations, Section 55620:

1) Manpower needs and job opportunities must be identified and established for the instruction program, pursuant to Title 5, California Code of Regulations, Section 55620(a).

2) The program or courses must not already be available in the region served, pursuant to Title 5, California Code of Regulations, Section 55620(b).

3) The program or courses must provide vocational education opportunities

that are not otherwise available, pursuant to Title 5, California Code of Regulations, Section 55620(c).

4) The programs or services must not reduce vocational education efforts of any district, pursuant to Title 5, California Code of Regulations, Section 55620(d).

5) Costs must not exceed the same cost to provide the same training in the public entity or the tuition private postsecondary schools charge their students, pursuant to Title 5, California Code of Regulations, Section 55620(e).

6) The community college student must not be forced to pay additional tuition for any training in the contract, pursuant to Title 5, California Code of Regulations, Section 55620(f).

7) Districts must ensure that only students who are sixteen or older and enrolled in a community college are eligible for enrollment under a contract, pursuant to Title 5, California Code of Regulations, Section 55620(g).

8) The contractor must be accredited by an accrediting agency recognized by the United States Office of Education or confirm to contractual relationship guidelines, pursuant to Title 5, California Code of Regulations, Section 55620(h).

J) To ensure each contract expressly includes at least all of the following

provisions, pursuant to Title 5, California Code of Regulations, Section 55630.

1) For the governing board of the community college to determine, by resolution, that offering the program through a contract is appropriate, pursuant to Title 5, California Code of Regulations, Section 55630(a).

2) To include methods for identifying eligible costs and payment procedures to ensure the students enrolled are not being charged additional tuition or an amount that exceeds the cost to provide the same training in the community college or the tuition the private postsecondary school charges, pursuant to Title 5, California Code of Regulations, Section 55630(b).

3) To include procedures, terms and conditions relating to all of the following topics, pursuant to Title 5, California Code of Regulations, Section 55630(c):

   a) enrollment period;

   b) transferring of students;

   c) class hours required to meet performance objectives,

   d) supervision of staff; and

   e) withdrawal of students prior to completion of a course or program.

4) For the contractor and community college district to insure that students are provided with ancillary and support services, which include at least both of the following services, pursuant to Title 5, California Code of

Regulations, Section 55630(d):

a) Counseling and guidance; and

b) Placement assistance.

5) To ensure that qualified faculty provide instruction, pursuant to Title 5, California Code of Regulations, Section 55630(e).

6) To include performance objectives for each class and a report regarding accomplishments of the objectives at the end of each contract period, pursuant to Title 5, California Code of Regulations, Section 55630(f).

7) For the contractor to maintain records of student attendance and achievement, and for the community college to develop a record review schedule for the contractor to use, pursuant to Title 5, California Code of Regulations, Section 55630(g).

8) To include terms and conditions relating to termination of the contract, pursuant to Title 5, California Code of Regulations, Section 55630(h).

9) For the contractor to be in compliance with the Civil Rights Act of 1964, pursuant to Title 5, California Code of Regulations, Section 55630(i).

10) For the contractor to provide workers' compensation insurance coverage for any student, pursuant to Title 5, California Code of Regulations, Section 55630(j).

11) For the contractor to provide indemnity and defense for the state and community college district against any and all claims and liability, pursuant

to Title 5, California Code of Regulations, Section 55630(k).

CONDITION 13. COURSE ARTICULATION - LOCAL

For the governing board of each community college district to develop, file with the Chancellor, and implement its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools, pursuant to Title 5, California Code of Regulations, Section 51022(b).

CONDITION 14. ACADEMIC FREEDOM

For community college districts to adopt and implement a policy statement on academic freedom, pursuant to Title 5, California Code of Regulations, Section 51023(a) and (c).

1) To make such policy available to faculty pursuant to Title 5, California Code of Regulations, Section 51023(a);

2) To file the policy with the Chancellor pursuant to Title 5, California Code of Regulations, Section 51023(a); and

3) For the district to substantially comply with the adopted policies and procedures pursuant to Title 5, California Code of Regulations, Section 51023(c).

CONDITION 15. SHARED GOVERNANCE (Faculty, Staff, Students)

Faculty Shared Governance (Academic Senate)

A) For the governing board of community college districts to adopt, implement and comply with procedures which are consistent with the provisions of Title 5, California Code of Regulations, Sections 53000-53206, regarding the role of academic senates and faculty councils, pursuant to Title 5, California Code of

Regulations, Section 51023(b) and (c).

1) To file such adopted procedures with the Chancellor, pursuant to Title 5, California Code of Regulations, Section 51023(b).

2) For the district governing board to develop and implement policies on academic and professional matters by "consulting collegially" with the Academic Senate through either or both of the following methods, pursuant to Title 5, California Code of Regulations, Section 53200(d):

   a) relying primarily upon the advice and judgment of the academic senate, pursuant to Title 5, California Code of Regulations, Section 53200(d)(1); or

   b) agreeing that the district governing board, or such representatives as it may designate, and the representatives of the academic senate must have the obligation to reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations, pursuant to Title 5, California Code of Regulations, Section 53200(d)(2).

3) To ensure that the following procedure is used to establish an academic senate, pursuant to Title 5, California Code of Regulations, Section 53202:

   a) The full-time faculty of a community college must vote by secret ballot to form an academic senate, pursuant to Title 5, California

Code of Regulations, Section 53202(a).

b) When the full-time faculty of multi-college districts vote on whether or not to form a district academic senate, the vote must be made by secret ballot, pursuant to Title 5, California Code of Regulations, Section 53202(b).

c) The governing board of a district must recognize the academic senate and authorize the faculty to do the following, pursuant to Title 5, California Code of Regulations, Section 53202(c):

(1) Fix and amend by vote of the full-time faculty the composition, structure, and procedures of the academic senate, pursuant to Title 5, California Code of Regulations, Section 53202(c)(1); and

(2) Provide for the selection of the members of the academic senate in accordance with accepted democratic election procedures, pursuant to Title 5, California Code of Regulations, Section 53202(c)(2).

d) To allow the full-time faculty to provide for the membership and participation of part-time faculty members in the academic senate, pursuant to Title 5, California Code of Regulations, Section 53202(d).

e) To permit the part-time faculty to form an academic senate in a

community college that does not have any full-time faculty members, pursuant to Title 5, California Code of Regulations, Section 53202(e).

4) For the governing board of a community college district to adopt and implement policies for appropriate delegation of authority and responsibility to its college and/or district academic senate, pursuant to Title 5, California Code of Regulations, Section 53203.

a) For such policies to provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters, pursuant to Title 5, California Code of Regulations, Section 53203(a).

b) For the governing board or its designees to consult collegially with representatives of the academic senate when adopting such policies and procedures, pursuant to Title 5, California Code of Regulations, Section 53203(b).

c) To ensure that, while in the process of consulting collegially, the academic senate retains the right to meet with or to appear before the governing board with respect to the views, recommendations, or proposals of the senate, pursuant to Title 5, California Code of Regulations, Section 53203(c).

d) For the governing board of a district to adopt procedures for responding to recommendations of the academic senate that incorporate the following, pursuant to Title 5, California Code of Regulations, Section 53203(d):

(1) If a recommendation of the academic senate is not accepted, in instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the governing board, upon request of the academic senate, must promptly communicate its reasons in writing to the academic senate, pursuant to Title 5, California Code of Regulations, Section 53203(d)(1).

(2) In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy must remain in effect unless continuing with such policy exposes the district to a good faith belief of compelling legal liability or causes substantial fiscal hardship, pursuant to Title 5, California Code of Regulations, Section 53203(d)(2).

e) To ensure that the academic senate consults with the chief executive officer prior to the appointment of faculty members to serve on college or district committees, task forces, or other groups

dealing with academic and professional matters, pursuant to Title 5, California Code of Regulations, Section 53203(f).

5) To ensure that the academic senate consultation process does not modify the scope or detract from any negotiated agreements between collective bargaining representatives and district governing boards, pursuant to Title 5, California Code of Regulations, Section 53204.

6) To grant release or reassigned time to the faculty members who have been elected to serve as president and vice president of the Academic Senate of the California Community Colleges (ASCCC) for the time required by the ASCCC, pursuant to Title 5, California Code of Regulations, Section 53207.

a) Districts must document and certify to the Chancellor by August all administrative costs associated with hiring faculty to replace the faculty serving as president and vice president of the ASCCC for which the district seeks reimbursement, pursuant to Title 5, California Code of Regulations, Section 53207(c).

b) Districts must, if seeking to refuse to grant release or reassigned time, certify to the Chancellor by August 1 that the faculty member who seeks release or reassigned time under this section is in a position for which a qualified

temporary replacement cannot be found to meet the needs of the students if the district seeks to refuse, pursuant to Title 5, California Code of Regulations, Section 53207(d).

Staff Shared Governance

B) For the governing board of a community college district to adopt and implement policies and procedures to provide district and college staff the opportunity to participate effectively in district and college governance that include the following, pursuant to Title 5, California Code of Regulations, Section 51023.5:

1) Definitions of non-faculty staff positions that the governing board is required by law to recognize or chooses to recognize, pursuant to legal authority, with separate definitions for all management and nonmangement positions, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(1).

2) Participation structures and procedures for the defined staff positions, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(2).

3) A requirement that the governing board or its designees must consult with the representatives of existing staff councils, committees, employee organizations, and other such bodies in performing the requirements of 51023.5, subdivisions (a)(1) and (2), pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(3).

4) For the governing board or its designees to broadly inform all staff of

policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views when no groups or structures for participation exist that provide representation for particular groups of staff, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(3).

5) To provide staff with opportunities to participate in the formulation and development of the following, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(4):

   a) district and college policies and procedures, and

   b) those processes for jointly developing recommendations for action by the governing board that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

6) To ensure that the governing board provides staff an opportunity to participate in the formulation and development of any matter significantly affecting staff, prior to taking action on any such matter, unless an unforeseeable, emergency situation exists, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(5)

7) The policies and procedures of the governing board must ensure that the recommendations and opinions of staff are given reasonable consideration, pursuant to Title 5, California Code of Regulations, Section

51023.5(a)(6).

8) For the selection of staff representatives to serve on college and district task forces, committees, or other governance groups to be made by those councils, committees, employee organizations, or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(7).

a) In cases where the law does not require a particular staff group to make such a selection, for the selection to be made by, or in consultation with, district staff groups that the governing board has officially recognized in its policies and procedures for staff participation, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(7).

b) For all staff representatives to be selected from the category that they represent, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(7).

9) In developing and carrying out such policies and procedures, the district governing board must ensure that its actions do not do any of the following, pursuant to Title 5, California Code of Regulations, Section 51023.5(b):

a) dominate or interfere with the formation or administration of any

employee organization,

b) contribute financial or other support to any employee organization,

c) in any way encourage employees to join any organization in preference to another,

d) intrude on matters within the scope of representation under Section 3543.2 of the Government Code, or

e) interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

Student Shared Governance

C) For the governing board of a community college districts to adopt and implement policies and procedures to provide students the opportunity to participate effectively in district and college governance, pursuant to Title 5, California Code of Regulations, Section 51023.7.

1) To provide students with the opportunity to participate in the formulation and development of district and college policies and procedures that have or will have a significant effect on students, including the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures, pursuant to Title 5, California Code of Regulations, Section 51023.7(a)(1).

2) To ensure that the governing board provides students an opportunity to participate in the formulation and development of any matter significantly affecting students, prior to taking action on any such matter, unless an unforeseeable, emergency situation exists, pursuant to Title 5, California Code of Regulations, Section 51023.7(a)(2).

3) For governing board procedures to ensure that, at the district and college levels, recommendations and positions developed by students are given every reasonable consideration, pursuant to Title 5, California Code of Regulations, Section 51023.7(a)(3).

4) For the districts to ensure that the selection of student representatives to serve on college or district committees, task forces, or other governance groups are made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district, pursuant to Title 5, California Code of Regulations, Section 51023.7(a)(4).

5) To classify the following as matters that have or will have a "significant effect on students", which thereby require providing students with prior notice and opportunity to participate in the development of any action to be taken on the matter, pursuant to Title 5, California Code of Regulations, Section 51023.7(b):

(a) grading policies;

(b) codes of student conduct;

(c) academic disciplinary policies;

(d) curriculum development;

(e) courses or programs which should be initiated or discontinued;

(f) processes for institutional planning and budget development;

(g) standards and policies regarding student preparation and success;

(h) student services planning and development;

(i) student fees within the authority of the district to adopt; and

(j) any other district and college policy, procedure, or related matter that the district governing board determines will have a significant effect on students.

6) For the governing board to ensure that reasonable consideration is given to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff, pursuant to Title 5, California Code of Regulations, Section 51023.7(c).

CONDITION 16. MATRICULATION

A) For any community college or district receiving funding under the Seymour-Campbell Matriculation Act of 1986 as contained in Education Code Sections 78210-78218 to agree to carry out the provisions of the the article for the period during which funding is received, and to expend such

funds only for those matriculation services approved by the Board of Governors or for any contribution of matching funds as may be required by the Board of Governors, pursuant to Education Code Section 78211.5.

B) For the districts to provide all of the following matriculation services to students, pursuant to Education Code Section 78212(b) and Title 5, California Code of Regulations Section 55520:

1) Processing of the application for admission, pursuant to Education Code Section 78212(b)(1) and Title 5, California Code of Regulations, Section 55520(a);

2) Student orientation, pursuant to Education Code Section 78212(b)(2) and Title 5, California Code of Regulations, Section 55520(b);

a) Districts must ensure that orientation and pre-orientation services are designed to provide nonexempt students and potential students all of the following information, pursuant to Title 5, California Code of Regulations, Section 55520(b):

(1) College procedures and course scheduling, pursuant to Title 5, California Code of Regulations, Section 55520(b) and Education Code Section 78212(b)(2);

(2) Academic expectations, pursuant to Title 5, California Code of Regulations, Section 55520(b) and Education Code Section 78212(b)(2);

(3) Financial assistance, pursuant to Title 5, California Code of Regulations, Section 55520(b) and Education Code Section 78212(b)(2); and

(4) Any other matters the college or district finds appropriate, pursuant to Title 5, California Code of Regulations, Section 55520(b) and Education Code Section 78212(b)(2).

b) Districts must ensure that such information is provided on a timely basis, pursuant to Title 5, California Code of Regulations, Section 55520(b).

3) Assessment and counseling upon enrollment, pursuant to Education Code Section 78212(b)(3) and Title 5, California Code of Regulations, Section 55520(c) and 55520(d).

a) For the assessment and counseling to include all of the following, pursuant to Education Code Section 78212(b)(3):

(1) Math and language skills, pursuant to Education Code Section 78212(b)(3)(A);

(2) Identification of aptitudes, interests and educational objectives, pursuant to Education Code Section 78212(b)(3)(B);

(3) Study and learning skills, pursuant to Education Code Section 78212(b)(3)(C);

(4) Referral to specialized support services, pursuant to Education Code Section 78212(b)(3)(D); and

(5) Course selection, pursuant to Education Code Section 78212(b)(3)(E).

b) For assessment of all nonexempt students to be implemented in accordance with Title 5 of the California Code of Regulations Section 55524, pursuant to Title 5, California Code of Regulations, Section 55520(c);

c) For counseling or advisement of for nonexempt students to be implemented in accordance with Title 5 of the California Code of Regulations, Section 55523, pursuant to Title 5, California Code of Regulations, Section 55520(d).

5) Postenrollment evaluation of each student's progress, pursuant to Education Code Section 78212(b)(4) and Title 5, California Code of Regulations, Section 55520(f):

a) Districts must provide remedial counseling for any of the following students, pursuant to Education Code Section 78212(b)(4):

(1) Students who are enrolled in remedial courses, pursuant to Education Code Section 78212(b)(4);

(2) Students who have not declared an educational objective as required, pursuant to Education Code Section 78212(b)(4);

or

(3) Students who are on academic probation, pursuant to Education Code Section 78212(b)(4).

b) Districts must ensure that all post enrollment evaluations are implemented in accordance with Title 5 of the California Code of Regulations, Section 55526, pursuant to Title 5, California Code of Regulations, Section 55520(f).

6) Assistance in developing a student educational plan which meets the following criteria, pursuant to Title 5, California Code of Regulations, Section 55520(e):

a) The plan must be implemented in accordance with Title 5 of the California Code of Regulations, Section 55525, pursuant to Title 5, California Code of Regulations, Section 55520(e).

b) The plan must identify the student's educational objectives, pursuant to Title 5, California Code of Regulations, Section 55520(e).

c) The plan must identify the courses, services and programs to be used to achieve the student's educational objectives, pursuant to Title 5, California Code of Regulations, Section 55520(e).

7) Referral of students to the following programs, pursuant to Title 5, California Code of Regulations, Section 55520(g):

a) Support services, pursuant to Title 5, California Code of Regulations, Section 55520(g)(1); and

b) Specialized curriculum offerings that include both of the following, pursuant to Title 5, California Code of Regulations, Section 55520(g)(2):

(1) Pre-collegiate basic skills courses, pursuant to Title 5, California Code of Regulations, Section 55520(g)(2); and

(2) Programs in English as a Second Language, pursuant to Title 5, California Code of Regulations, Section 55520(g)(2).

C) For community college districts to adopt and implement policies regarding the use of assessment instruments in the matriculation process that incorporate the following, pursuant to Education Code Section 78213 and Title 5, California Code of Regulations, Section 55524:

1) Districts must obtain authorization from the Board of Governors prior to the use of any assessment instruments, pursuant to Education Code Section 78213(a).

2) Assessment instruments must be sensitive to cultural and language differences between students, pursuant to Education Code Section 78213(b)(1);

3) Assessment instruments must be used as an advisory tool to assist students in the selection of an educational program, pursuant to

Education Code Section 78213(b)(2); and

4) Assessment instruments must not be used to exclude students from admission to community colleges, pursuant to Education Code Section 78213(b)(3).

5) Districts must comply with any recommendations concerning assessment instruments that are issued by the advisory committee established by the Board of Governors, pursuant to Education Code Section 78213(c).

6) Districts must ensure that they only use assessment instruments that have been approved and listed by the Chancellor and that they follow the Chancellor's procedure when seeking to have assessment instruments approved and added to the list of approved instruments, pursuant to Title 5, California Code of Regulations, Section 55524.

D) For community college districts to consult with the Chancellor and establish, implement and maintain an institutional research database to evaluate the effectiveness of the matriculation services which includes all of the following information, pursuant to Education Code Section 78214:

1) Prior student educational experience, pursuant to Education Code Section 78214(b)(1);

2) Educational objectives, pursuant to Education Code Section 78214(b)(2);

3) Criteria for exemption from assessment or required counseling or advisement, pursuant to Education Code Section 78214(b)(3);

4) Need for financial assistance, pursuant to Education Code Section 78214(b)(4);

5) Ethnicity, sex, and age, pursuant to Education Code Section 78214(b)(5);

6) Academic performance, pursuant to Education Code Section 78214(b)(6);

7) Any additional information that the Chancellor finds appropriate, pursuant to Education Code Section 78214(b)(7);

8) An assessment of the effectiveness of the programs in attaining the following objectives, pursuant to Education Code Section 78214(c):

a) Helping students to define their educational goals, pursuant to Education Code Section 78214(c)(1);

b) Assisting institutions in the assessment of students' educational needs, pursuant to Education Code Section 78214(c)(2);

c) Matching institutional resources with students' educational needs, pursuant to Education Code Section 78214(c)(3); and

d) Providing students with specialized support services, pursuant to Education Code Section 78214(c)(4).

E) For community colleges to comply with the criteria established by the Board of Governors regarding exempting students from participation in orientation, assessment testing, or required counseling or advisement, by adopting and implementing district policies that specify the grounds for exemption, pursuant to Education Code Section 78215 and Title 5, California Code of Regulations,

Section 55532.

1) Districts must identify such adopted policies in the matriculation plan, pursuant to Title 5, California Code of Regulations, Section 55532(a).

2) Districts must report to the Chancellor the number of students, by category, that have been exempted, pursuant to Title 5, California Code of Regulations, Section 55532(a).

3) Districts must ensure that only students who have completed an associate degree or higher are permitted to qualify for such exemption, pursuant to Title 5, California Code of Regulations, Section 55532(b).

4) Districts must notify any student exempted by this section that he or she is covered by an exemption and give that student an opportunity to choose whether or not to participate in that part of the matriculation process, pursuant to Title 5, California Code of Regulations, Section 55532(c).

5) Districts must ensure that their policies do not use any of the following as the sole criterion for exempting any student who does not wish to participate, pursuant to Title 5, California Code of Regulations, Section 55532(d):

   a) The student has enrolled only in evening classes, pursuant to Title 5, California Code of Regulations, Section 532(d)(1);

   b) The student has enrolled in fewer than some specified number of units, pursuant to Title 5, California Code of Regulations, Section

55532(d)(2);

c) The student is undecided about his or her educational objectives, pursuant to Title 5, California Code of Regulations, Section 55532(d)(3); or

d) The student does not intend to earn a degree or certificate, pursuant to Title 5, California Code of Regulations, Section 55532(d)(4).

F) For community college districts to comply with the matriculation funding formula developed by the Board of Governors and to ensure that each dollar of state matriculation funding is matched by three dollars of other district resources devoted to the matriculation program, pursuant to Education Code Section 78216 and Title 5, California Code of Regulations, Section 55518(b).

G) For community colleges to develop a plan for student matriculation that reflects all of the following, pursuant to Education Code Section 78216(c):

1) A method for providing the services, pursuant to Education Code Section 78216(c)(1);

2) The college budget for the matriculation services, pursuant to Education Code Section 78216(c)(2);

3) The development and training of staff and faculty to implement the matriculation services, pursuant to Education Code Section 78216(c)(3);

4) In multicampus districts, the coordination of the college matriculation plan

with other college plans, pursuant to Education Code Section 78216(c)(4); and

5) Computerized information services and institutional research and evaluation necessary for implementation of the matriculation program, pursuant to Education Code Section 78216(c)(5).

H) For the governing board of each community college district to implement all of the following regarding student matriculation services, pursuant to Title 5, California Code of Regulations, Section 51024:

1) Adopt, implement and submit to the Chancellor a matriculation plan, pursuant to Title 5, California Code of Regulations, Section 51024(a);

2) Evaluate its matriculation program and participate in statewide evaluation activities, pursuant to Title 5, California Code of Regulations, Section 51024(b);

3) Provide matriculation services to its students, pursuant to Title 5, California Code of Regulations, Section 51024(c);

4) Establish and implement procedures for waivers and appeals in connection with its matriculation program, pursuant to Title 5, California Code of Regulations, Section 51024(d); and

5) Substantially comply with all other provisions of Sections 55500 through 55534 (Matriculation Programs) of Title 5, pursuant to Title 5, California Code of Regulations, Section 51024(e).

I) For the community college districts to consult with the Chancellor to assist in the adoption of a schedule for implementing the provisions of the matriculation program and to ensure that they comply with the schedule in implementing district matriculation programs, pursuant to Title 5, California Code of Regulations, Section 55500.

J) For community college districts to recognize, adopt and incorporate into their policies and procedures the definitions of the following terms that are pertinent to the matriculation program: "matriculation", "assessment instruments, methods, or procedures", "pre-collegiate basic skills courses", "disproportionate impact", "exemption", "matriculation services", "matriculation practices", "student", "orientation", and "student follow-up", as detailed in and pursuant to Title 5, California Code of Regulations, Section 55502.

K) For community college districts to adopt and implement a matriculation plan describing the services to be provided to its students, pursuant to Title 5, California Code of Regulations, Section 55510.

1) Districts must ensure that the adopted matriculation plan includes at least all of the following information, pursuant to Title 5, California Code of Regulations, Section 55510(a):

a) A description of methods by which services will be delivered, pursuant to Title 5, California Code of Regulations, Section 55510(a)(1);

b) The matriculation budget, pursuant to Title 5, California Code of Regulations, Section 55510(a)(2);

c) Plans for faculty and staff development, pursuant to Title 5, California Code of Regulations, Section 55510(a)(3);

d) Computerized information services and institutional research and evaluation necessary to implement the Chapter, pursuant to Title 5, California Code of Regulations, Section 55510(a)(4);

e) Criteria for student matriculation exemption, pursuant to Title 5, California Code of Regulations, Section 55510(a)(5);

f) Procedures for establishing and reviewing prerequisites, pursuant to Title 5, California Code of Regulations, Section 55510(a)(6);

g) Procedures for considering student challenges to prerequisites, pursuant to Title 5, California Code of Regulations, Section 55510(a)(7); and

h) In districts with more than one college, arrangements for coordination by the district of the matriculation plans of its various colleges, pursuant to Title 5, California Code of Regulations, Section 55510(a)(8).

2) Districts must develop the plan through consultation with representatives of all of the following groups, pursuant to Title 5, California Code of Regulations, Section 55510(b):

a) Academic Senate;

b) Students; and

c) Staff with appropriate expertise.

3) Districts must ensure that the plan conforms to the law and is submitted to the Chancellor for initial and periodic review and approval, pursuant to Title 5, California Code of Regulations, Section 55510(c).

L) For the districts to establish a program of institutional research for ongoing evaluation of its matriculation process to ensure compliance with the requirements of the chapter that incorporates the following, pursuant to Title 5, California Code of Regulations, section 55512:

1) Districts must evaluate all assessment procedures to ensure they minimize cultural or linguistic bias and are used in a valid manner, pursuant to Title 5, California Code of Regulations, section 55512(a);

2) Districts must determine whether any procedures have a disproportionate impact on particular groups of students, based on ethnicity, gender, age or disability, pursuant to Title 5, California Code of Regulations, section 55512(a);

3) If a disproportionate impact exists, districts must consult with the Chancellor and develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact, pursuant to Title 5, California Code of Regulations, section 55512(a);

4) Districts must perform and include an analysis of the degree to which the matriculation program does any of the following, pursuant to Title 5, California Code of Regulations, section 55512(a):

a) Impacts on particular courses, programs, and facilities, pursuant to Title 5, California Code of Regulations, section 55512(a)(1);

b) Helps students to define their educational goals, pursuant to Title 5, California Code of Regulations, section 55512(a)(2);

c) Promotes student success, pursuant to Title 5, California Code of Regulations, section 55512(a)(3);

d) Assists the district in the assessment of students' educational needs, pursuant to Title 5, California Code of Regulations, section 55512(a)(4);

e) Matches district resources with students' educational needs, pursuant to Title 5, California Code of Regulations, section 55512(a)(5);

f) Provides students with the support services described in section 545520(g), pursuant to Title 5, California Code of Regulations, section 55512(a)(6).

5) Districts must provide for and implement a review of the revenue and expenditures of the matriculation program as part of its annual financial audit, pursuant to Title 5, California Code of Regulations, Section

55512(b).

M) For the community college districts to annually prepare and submit a report describing the district's efforts to implement its matriculation program and also expenditures made for that purpose that includes at least all of the following information, pursuant to Title 5, California Code of Regulations, Section 55514:

1) The proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who are placed in (1) pre-collegiate, (2) associate-degree applicable, or (3) transfer level courses in any of the following educational areas, pursuant to Title 5, California Code of Regulations, Section 55514(a):

a) Reading;

b) Writing;

c) Computation; or

d) English as a Second Language.

2) The proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who (1) enter and (2) complete pre-collegiate basic skills courses, pursuant to Title 5, California Code of Regulations, Section 55514(b);

3) The proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, completing pre-collegiate basic skills courses who subsequently (1) enter and (2) complete courses

applicable to the associate degree, pursuant to Title 5, California Code of Regulations, Section 55514(c);

4) Outcome and retention data, as described in section 55512(a), indicating the effectiveness of matriculation, pursuant to Title 5, California Code of Regulations, Section 55514(d);

5) The basis on which the use of particular assessment instruments, methods or procedures was validated by a district, pursuant to Title 5, California Code of Regulations, Section 55514(e);

6) The numbers of students exempted, pursuant to section 55532, from participation in the district's matriculation program, by category of exemption, pursuant to Title 5, California Code of Regulations, Section 55514(f);

7) The number of students filing complaints pursuant to 55534 and the bases of those complaints, pursuant to Title 5, California Code of Regulations, Section 55514(g);

8) The particular matriculation services, as listed in section 55520, which each student received, pursuant to Title 5, California Code of Regulations, Section 55514(h); and

9) Any other matter the Chancellor, after consultation with community college districts, deems necessary for the effective evaluation of matriculation programs, pursuant to Title 5, California Code of

Regulations, Section 55514(i).

N) For community college districts to develop and implement a program for providing all faculty and staff with training on the provision of matriculation services that meets the following criteria, pursuant to Title 5, California Code of Regulations, Section 55516:

1) The training must be appropriate to the needs of the faculty and staff, pursuant to Title 5, California Code of Regulations, Section 55516.

2) The training must include at least all of the following information regarding assessment instruments, methods or procedures that are used in the matriculation process, pursuant to Title 5, California Code of Regulations, Section 55516:

a) Their proper (1) purpose, (2) design, (3) evaluation, and (4) use, pursuant to Title 5, California Code of Regulations, Section 55516; and

b) Their (1) limitations and (2) possible misuse, pursuant to Title 5, California Code of Regulations, Section 55516.

O) For community college districts, when implementing matriculation services, to ensure that the following uses of assessment instruments are prohibited, pursuant to Title 5, California Code of Regulations, Section 55521:

1) Any use that has not been approved by the Chancellor, pursuant to Title 5, California Code of Regulations, Section 55521(a)(1);

2) Use in a manner or for a purpose other than that for which it was developed or validated for, pursuant to Title 5, California Code of Regulations, Section 55521(a)(2);

3) Use of any single instrument by itself for student placement, evaluation or referral purposes, pursuant to Title 5, California Code of Regulations, Section 55521(a)(3);

4) To exclude any person from admission, pursuant to Title 5, California Code of Regulations, Section 55521(a)(4);

5) To mandatorily place a student in or exclude from any educational program, unless as an established prerequisite, pursuant to Title 5, California Code of Regulations, Section 55521(a)(5);

6) To subject any person to unlawful discrimination, pursuant to Title 5, California Code of Regulations, Section 55521(a)(6).

P) For community college districts to implement appropriate modifications in the matriculation process so that the needs of ethnic and language minority students and students with disabilities are accommodated and met, pursuant to Title 5, California Code of Regulations, Section 55522.

Q) For community college districts to make reasonable efforts to provide and implement counseling and advisement services for all of the following students, pursuant to Title 5, California Code of Regulations, Section 55523:

1) All nonexempt students who are on probation, have not declared a

specific educational goal, or are enrolled in pre-collegiate basic skills courses, pursuant to Title 5, California Code of Regulations, Section 55523(a)(1), (a)(2), and (a)(3); and

2) All students in general, to offer advice on academic requirements and the selection of specific courses, pursuant to Title 5, California Code of Regulations, Section 55523(a)(4).

R) For community college districts to establish and implement a process for all of the following, regarding the Student Educational Plan, pursuant to Title 5, California Code of Regulations, Section 55525:

1) Counseling students on selecting a specific educational goal, pursuant to Title 5, California Code of Regulations, Section 55525(a);

2) Affording the student an opportunity to develop a written educational plan, pursuant to Title 5, California Code of Regulations, Section 55525(b);

3) Recording such educational plan, pursuant to Title 5, California Code of Regulations, Section 55525(c);

4) Reviewing the plan as necessary to ensure that the plan continues to accurately reflect the needs and goals of the student, pursuant to Title 5, California Code of Regulations, Section 55525(c);

5) Affording a student the right to file a complaint pursuant to Section 55534(a) if that student believes the district has violated the requirements

of this Section, pursuant to Title 5, California Code of Regulations, Section 55525(d).

S) For community college districts to establish and implement a follow-up process to assist the student in achieving his or her educational goal which includes regular monitoring to detect early signs of academic difficulty and advice or referral to specialized services where necessary, pursuant to Title 5, California Code of Regulations, Section 55526.

T) For the governing boards community college districts to adopt and implement policies and procedures that clearly define student rights and responsibilities and the consequences of failure to fulfill such responsibilities, pursuant to Title 5, California Code of Regulations, Section 55530.

1) Districts must ensure that all such information is available in written form to all students during or prior to enrollment (e.g., during orientation) and be included in class schedules, catalogs, other appropriate publications and in the student's educational plan, pursuant to Title 5, California Code of Regulations, Section 55530(b) and (d);

2) Districts must take steps to ensure that the matriculation process is efficient, pursuant to Title 5, California Code of Regulations, section 55530(c);

3) The policy must define the period of time within which a student must identify a specific educational goal and provide the student with an

opportunity to develop a student educational plan once that goal has been identified by the student, pursuant to Title 5, California Code of Regulations, section 55530(d).

4) The district must classify all information obtained from the matriculation process as "student records" that are subject to the requirements of Sections 54600-54626 of the California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 55530(e).

U) For community college districts to establish and implement written procedures for and to hear a student challenge to an alleged violation of the matriculation program, pursuant to Title 5, California Code of Regulations, Section 55534.

1) Districts must investigate and attempt to resolve any student complaints regarding matriculation violations in a timely manner, pursuant to Title 5, California Code of Regulations, Section 55534(a).

2) Districts must retain records of all such complaints for at least three years after the complaint has been resolved, and to allow review of such records by the Chancellor, pursuant to Title 5, California Code of Regulations, Section 55534(a).

3) When a challenge contains an allegation that a community college district has been discriminatory, the district must, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful

discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division, pursuant to Title 5, California Code of Regulations, Section 55534(b).

CONDITION 17. FULL-TIME / PART-TIME FACULTY

A) For community college districts to ensure that at least 75 percent of the hours of credit instruction in the California Community Colleges, as a system, is taught by full-time instructors, by applying a portion of any "program improvement" funds received pursuant to Education Code Section 84755, according to the following guidelines, pursuant to Education Code Section 87482.6(a):

1) For districts which have between 67 percent and 75 percent of credit instruction hours taught by full-time instructors in the previous fiscal year, to apply up to 33 percent of their program improvement allocation toward the goal of attaining the 75 percent standard, pursuant to Education Code 87482.6(a)(1).

2) For those districts with less than 67 percent of credit instruction hours taught by full-time instructors, to apply up to 40 percent of their program improvement allocation to reach the 75 percent standard, pursuant to Education Code Section 87482.6(a)(2).

B) For community college districts to adopt and implement policies and procedures to comply with and to adjust their budget in accordance with the regulations adopted by the Board of Governors, pertaining to allocation of funds

in relation to the number of full-time equivalent faculty (FTF) employed by a district and the number of credit hours of instruction taught by such faculty, pursuant to Education Code Section 87482.6(b) and Title 5, California Code of Regulations, Sections 53312 and 53314.

1) For districts to compile and prepare all data required for the Chancellor to annually compute and determine the number of full-time faculty a district has retained each year and the estimate number of full-time faculty a district needs to secure for the following year, in order to receive program improvement funds, pursuant to Education Code Section 87482.6(b) and Title 5, California Code of Regulations, Sections 53312 and 53314.

2) For districts to secure the number of full-time faculty that the Chancellor requires, as determined by the computation formula contained in subdivision (b)(3), in order to receive program improvement funds, pursuant to Education Code Section 87482.6(b)(3).

C) For community college districts to implement policies and procedures to comply with the regulations adopted by the Board of Governors which establish minimum standards regarding the percentage of hours of credit instruction that must be taught by full-time instructors, pursuant to Education Code Section 87482.7.

D) For community college districts to implement policies and procedures to comply with the following duties in order to ensure that the 75 percent full-time faculty

percentage is met, pursuant to Title 5, California Code of Regulations, Section 51025:

1) For a district with less than a 75 percent full-time faculty percentage, to increase the base full-time faculty obligation by the Fall term of the succeeding fiscal year by a particular method of calculation as specified in Title 5, California Code of Regulations, Section 50125(a)(1), so that the faculty obligation correlates with the growth revenues received related to increases in the full-time student population, pursuant to Title 5, California Code of Regulations, Section 51025(a)(1).

2) For districts which have between 67 percent and 75 percent of credit instruction hours taught by full-time instructors in the previous fiscal year, to apply up to 33 percent of their program improvement allocation toward the goal of attaining the 75 percent standard, pursuant to Title 5, California Code of Regulations, Section 51025(a)(2).

3) For those districts with less than 67 percent of credit instruction hours taught by full-time instructors, to apply up to 40 percent of their program improvement allocation to reach the 75 percent standard, pursuant to Title 5, California Code of Regulations, Section 51025(a)(3).

4) For districts which are required to apply a portion of their program improvement allocation fund toward reaching the 75 percent standard, to use those funds to increase the number of full-time faculty, by the Fall

term of the succeeding fiscal year, by a particular calculation method as specified in, and pursuant to Title 5, California Code of Regulations, Section 51025(a)(4).

E) For districts to ensure that all policies and procedures regarding the proportion of full-time and part-time faculty to be employed by community colleges, incorporate and implement the requirements contained in Section 51025 of Title 5 of the California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 53300.

F) For districts to define and catagorize all faculty members as either "part-time" or "full-time" in accordance with the definitions prescribed in and pursuant to Title 5, California Code of Regulations, Sections 53301 and 53302.

G) For districts to determine it's full-time faculty percentage using the formula described in Title 5, California Code of Regulations, Section 53308.

H) For districts, when making the calculations required in Section 51025, to calculate full-time equivalent faculty (FTEF) attributable to full-time faculty according to the following rules, pursuant to Title 5, California Code of Regulations, Section 53309:

1) To calculate instruction based on the percentage of instructional hours per week considered a full-time assignment for regular instructional employees having comparable duties, excluding any noncredit instructional assignments, pursuant to Title 5, California Code of

Regulations, Section 53309(a).

2) To calculate non-instructional activities based on the percentage of working hours per week considered a full-time assignment for regular non-instructional employees having comparable duties, pursuant to Title 5, California Code of Regulations, Section 53309(b).

3) To include the regular assignment of full-time faculty as defined in Section 53302, pursuant to Title 5, California Code of Regulations, Section 53309(c).

4) To exclude full-time faculty overload from the calculation of FTEF, pursuant to Title 5, California Code of Regulations, Section 53309(d).

5) To include full-time faculty sabbatical FTEF, whether paid or unpaid, and exclude the FTEF of replacement faculty, whether full-time or part-time, from the computation to determine the full-time faculty percentage in compliance with Section 53308, pursuant to Title 5, California Code of Regulations, Section 53309(e).

6) To include FTEF for full-time faculty who are released or reassigned, pursuant to Title 5, California Code of Regulations, Section 53309(f).

   a) To count the FTEF of a full-time faculty member on released or reassigned time as if the faculty member was teaching/working full-time and had not been provided released or reassigned time, pursuant to Title 5, California Code of Regulations, Section

53309(f).

b) To exclude the FTEF of replacement faculty, whether full-time or part-time, when computing the full-time faculty percentage in compliance with Section 53308, pursuant to Title 5, California Code of Regulations, Section 53309(f).

7) To include unpaid leave FTEF for a faculty member on unpaid leave, pursuant to Title 5, California Code of Regulations, Section 53309(g).

a) To count the FTEF of a full-time faculty member on unpaid leave as if the faculty member was teaching/working full-time and had not been provided with unpaid leave, pursuant to Title 5, California Code of Regulations, Section 53309(g).

b) To exclude the FTEF of replacement faculty, whether full-time or part-time, when computing the full-time faculty percentage in compliance with Section 53308, pursuant to Title 5, California Code of Regulations, Section 53309(g).

8) To include credit instruction FTEF taught by classified staff or administrators who are appropriately qualified to teach, so long as the following conditions are met, pursuant to Title 5, California Code of Regulations, Section 53309(h):

a) Only the actual hours of teaching by such individuals are included in determining the FTEF, pursuant to Title 5, California Code of

Regulations, Section 53309(h); and

b) The hours of teaching by such individuals are part of a regular contract, and not taught as an overload assignment, pursuant to Title 5, California Code of Regulations, Section 53309(h).

9) To include the FTEF of a faculty member who resigned or retired and who provided written notice thereof within 45 faculty duty days of the end of the previous Spring primary term and whose position has not been replaced by another full-time faculty member by the current Fall primary term, pursuant to Title 5, California Code of Regulations, Section 53309(i).

10) To exclude the FTEF of replacement faculty, whether full-time or part-time, when computing the full-time faculty percentage in accordance with Section 53308, pursuant to Title 5, California Code of Regulations, Section 53309(i).

a) For districts to fill the position(s) of resigned or retired FTEF by the following Spring primary term unless designees for the district governing board and academic senate jointly agree that it is in the best interests of the district to delay the filling of the position, pursuant to Title 5, California Code of Regulations, Section 53309(i).

b) For districts to ensure that, in such cases, replacement is made by

the following primary term to avoid a reduction by the Chancellor in the district's state apportionment revenues for the current year in accordance with the provisions of Section 51025, pursuant to Title 5, California Code of Regulations, Section 53309(i).

I) For districts, when making the calculations required in Section 51025, to calculate the percentage of full-time faculty in the district according to the calculation method prescribed in Section 53308, pursuant to Title 5, California Code of Regulations, Section 53308.

J) For districts, when making the calculations required in Section 51025, to calculate full-time equivalent faculty (FTEF) attributable to part-time faculty according to the following rules, pursuant to Title 5, California Code of Regulations, Section 53310:

1) With respect to instruction, FTEF must be calculated based on the percentage of instructional hours per week considered a full-time assignment for regular instructional employees having comparable duties, excluding any noncredit instructional assignments, pursuant to Title 5, California Code of Regulations, Section 53310(a).

2) With respect to non-instructional activities, FTEF must be calculated based on the percentage of working hours per week considered a full-time assignment for regular non-instructional employees having comparable duties, pursuant to Title 5, California Code of Regulations,

Section 53310(b).

3) All instructional and non-instructional activities of part-time faculty must be included, except the following, pursuant to Title 5, California Code of Regulations, Section 53310(c):

a) FTEF attributable to part-time faculty who replace full-time faculty on sabbatical leave, pursuant to Title 5, California Code of Regulations, Section 53310(c)(1).

b) FTEF attributable to part-time faculty who replace full-time faculty on released or reassigned time, pursuant to Title 5, California Code of Regulations, Section 53310, pursuant to Title 5, California Code of Regulations, Section 53310(c)(2).

c) FTEF of part-time faculty replacing full-time faculty on unpaid leave, pursuant to Title 5, California Code of Regulations, Section 53310(c)(3).

d) FTEF of part-time faculty replacing full-time faculty who resigned or retired late as defined in section 53309(i), pursuant to Title 5, California Code of Regulations, Section 53310(c)(4).

K) To determine the data necessary to calculate the base full-time faculty percentage from the current year's Fall management information system staff data submission to the Chancellor's Office, pursuant to Title 5, California Code of Regulations, Section 53311.

CONDITION 18. STUDENT EQUITY

A) To establish and implement policies and procedures and to conduct staff training to ensure that a general prohibition against discrimination exists in community colleges, pursuant to Education Code Sections 72010-72014, 221.5, 221.7, 66016 and 66030.

1) To provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex, pursuant to Education Code Section 72011.

2) To establish and implement policies and procedures to ensure that community colleges are in compliance with Education Code Sections 221.5 (policy of the state; prohibited discrimination), 221.7 (school-sponsored athletic programs; prohibited discrimination) and 66016 (equal opportunity; participation in athletics), relating to sex discrimination, pursuant to Education Code Section 72012. (For duties encompassed in Education Code Sections 221.5, 221.7 and 66016, see duties under numbers 5, 6 and 7 respectively).

3) To incorporate into district policies and procedures regarding matters within Division 6 of the Education Code, that with respect to access to community college district services, classes, and programs, and with respect to all references within this division, "handicap" and "disability" have the same meaning, pursuant to Education Code Section 72013.

4) To establish and implement policies and procedures to ensure that no funds under the control of the community college district are ever used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin, pursuant to Education Code Section 72014.

5) To require all classes and courses to be conducted without regard to the sex of the student enrolled, pursuant to Education Code Section 221.5 and 66271.7, in the following ways:

a) Districts must ensure that no student is prohibited from enrolling in any class course the basis of the sex of the pupil, pursuant to Education Code Sections 221.5(b) and 66271.7(b).

b) Districts must ensure that if students of one sex are required to enroll in a particular course, the same course is also required of students of the opposite sex, pursuant to Education Code Sections 221.5(c) and 66271.7(c).

c) Districts must ensure that no school counselor, teacher, instructor, administrator, or aide offers any of the following types of guidance to students of one sex that is different from that offered to students of the opposite sex, based on that student's sex, pursuant to

Education Code Sections 221.5(d) and 66271.7(d):

(i) vocational;

(ii) school program;

(iii) career; or

(iv) higher education opportunity guidance.

d) Districts must require any school personnel acting in a career counseling or course selection capacity to any student, to affirmatively explore with the student the possibility of careers, or courses leading to careers, that are nontraditional for the student's sex, pursuant to Education Code Sections 221.5(d) and 66271.7(d).

e) Districts must notify the parents or legal guardian of a pupil at least once, in advance of career counseling and course selection and allow such parents to participate in the counseling sessions and decisions (for minor students), pursuant to Education Code Section 221.5(d).

f) Districts must make participation in physical education activities or sports available to students of both sexes if it is required of students of one sex, pursuant to Education Code Sections 221.5(e) and 66271.7(e).

6) To ensure that public funds for athletic programs are only used for those

programs that provide equal opportunity to both sexes for participation and for use of facilities, pursuant to Education Code Sections 221.7(b) and 66271.7(g).

7) For the governing boards of community college districts to apportion public funds available for athletics in a manner that ensures that equitable amounts are allocated for all students, insofar as practicable, pursuant to Education Code Section 66271.7(g).

8) To ensure that opportunities for participation in intercollegiate athletic programs be provided on as equal a basis as is practicable to both make and female students, in compliance with the Legislative intent, pursuant to Education Code Section 66016.

9) For the governing boards of the community colleges to ensure and maintain multicultural learning environments free from all forms of discrimination and harassment, pursuant to Education Code Section 66030.

B) To create and implement a Comprehensive Mission Statement to identify common educational missions shared by educational institutions in California, pursuant to Education Code Section 66010.1 - 66010.7

1) For the Community Colleges to provide the following, pursuant to Education Code Section 66010.2:

a) Access to education to all qualified Californians, particularly for

those who have been underrepresented in both their graduation rates from secondary institutions and in their attendance at higher educational institutions, pursuant to Education Code Section 66010.2(a);

b) Quality teaching and programs of excellence for their students, pursuant to Education Code Section 66010.2(b); and

c) Educational equity through a diverse student body and faculty, and an environment in which each person, regardless of race, gender, age, disability, or economic circumstances, has a reasonable chance to fully develop his or her potential, pursuant to Education Code Section 66010.2(c).

2) For Community Colleges to establish and implement policies and procedures for intersegmental collaboration and coordination when it can do any of the following, pursuant to Education Code Section 66010.7(b):

a) Enhance the achievement of the institutional missions shared by the segments, pursuant to Education Code Section 66010.7(b)(1);

b) Provide more effective planning of postsecondary education on a statewide basis, pursuant to Education Code Section 66010.7(b)(2);

c) Facilitate achievement of the goals of educational equity, pursuant to Education Code Section 66010.7(b)(3);

d) Enable public and independent higher education to meet more effectively the educational needs of a geographic region, pursuant to Education Code Section 66010.7(b)(4);

e) Facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions, pursuant to Education Code Section 66010.7(b)(5).

3) For the leaders of community colleges and the Superintendent of Public Instruction to work together to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels, pursuant to Education Code Section 66010.7(c).

4) For the community colleges to make available and for the California Postsecondary Education Commission to review and evaluate the effectiveness of intersegmental activities in accomplishing the established goals, and report its findings to the Governor and Legislature biennially, pursuant to Education Code Section 66010.7(d).

C) To establish and implement policies and procedures to comply with the Sex Equity in Education Act of 1988, pursuant to Education Code Sections 66250 -

66292.4.

1) To ensure that equal rights and opportunities in the community colleges are afforded to all persons, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, color, ancestry, sexual orientation, or perception by others that a person has any of the above characteristics, pursuant to Education Code Section 66251.

2) To affirmatively combat racism, sexism, and other forms of bias, pursuant to Education Code Section 66252(b).

3) To incorporate the following terms and definitions into district policies and procedures relating to sex equity in education, as detailed in and pursuant to Education Code Sections 66260-66264:

a) "Governing board" means the governing board of a community college, pursuant to Education Code Section 66261;

b) "Postsecondary educational institution" means a public or private institution of vocational, professional, or postsecondary education; the governing board of a community college district; the Regents of the University of California; or the Trustees of the California State University, pursuant to Education Code Section 66261.5;

c) "Sex" has the same meaning as defined in Section 212, pursuant

to Education Code Section 66262 and pursuant to Education Code Section 212, "Sex" means the biological condition or quality of being a male or female human being;

d) "Sexual harassment" has the same meaning as defined in Section 212.5, pursuant to Education Code Section 66262.5 and pursuant to Education Code Section 212.5, "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(i) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress, pursuant to Education Code Section 212.5(a);

(ii) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, pursuant to Education Code Section 212.5(b);

(iii) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or

educational environment, pursuant to Education Code Section 212.5(c); or

(iv) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution, pursuant to Education Code Section 212.5(d).

e) "State financial assistance" has the same meaning as defined in Section 213, pursuant to Education Code Section 66263 and pursuant to Education Code Section 213, "State financial assistance" means "any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any pupils admitted to the educational institution that includes all of the following:

(i) Grants of state property, or any interest therein, pursuant to Education Code Section 213(b)(1);

(ii) Provision of the services of state personnel, pursuant to Education Code Section 213(b)(2); and

(iii) Funds provided by contract, tax rebate, appropriation,

allocation, or formula, pursuant to Education Code Section 213(b)(3).

f) "State student financial aid" has the same meaning as defined in Section 214, pursuant to Education Code section 66264 and pursuant to Education Code Section 214, "State student financial aid" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution, which includes, but is not limited to, scholarships, loans, grants, or wages.

4) To ensure that no person in the community colleges is subject to discrimination on the basis of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, color, ancestry, sexual orientation, or perception by others that a person has any of the above characteristics, pursuant to Education Code Section 66270.

5) To establish and implement a written policy on sexual harassment that includes information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies, pursuant to Education Code Section 66281.5(b) and (c).

6) To display a copy of the community college's written policy on sexual

harassment in all of the following places and manners, pursuant to Education Code Section 66281.5(d)-(g):

a) The policy must be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite, pursuant to Education Code Section 66281.5(d).

b) The policy, as it pertains to students, must be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable, pursuant to Education Code Section 66281.5(e).

c) The policy must be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired, pursuant to Education Code Section 66281.5(f).

d) The policy must appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution, pursuant to Education Code Section 66281.5(g).

7) To provide assurance to any agency administering state funds that the activity conducted by the community college will be in compliance with the Sex Equity in Education Act and any other applicable provisions of state

law prohibiting discrimination on the basis of sex, pursuant to Education Code Section 66290.

a) Districts must make this assurance in the manner required by the agency distributing the funds, pursuant to Education Code Section 66290.

b) Districts must make this assurance prior to receipt of such funds, pursuant to Education Code Section 66290.

8) To prepare and submit compliance reports to the Chancellor's office, as that entity may require, pursuant to Education Code Section 66291(a).

9) To make all reports submitted pursuant to 66291(a) available for public inspection during regular business hours, pursuant to Education Code Section 66291(b).

10) For the governing board of a community college district to ensure that programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, pursuant to Education Code Section 66292(a).

11) To allow a party to a written complaint of prohibited discrimination to appeal any action taken by the governing board of a community college district, pursuant to Education Code Section 66292.3(a).

12) To advise any person who files a complaint of prohibited discrimination that civil law remedies may also be available to such complainants,

pursuant to Education Code Section 66292.3(b).

13) To publish in appropriate informational materials the fact that civil law remedies may be available to complainants of prohibited discrimination, pursuant to Education Code Section 66292.3(b).

D) To establish and implement a Student Equity Plan, as authorized by Education Code Section 66271.1 and implemented by Title 5, California Code of Regulations Sections 51026 and 54220.

1) For the governing board of community college districts to adopt and implement a student equity plan prior to receipt of state aid, pursuant to Title 5, California Code of Regulations Section 51026.

2) For Community College districts to adopt and implement a student equity plan which includes the following for each college in the district, pursuant to Title 5, California Code of Regulations, Section 54220:

a) Campus-based research as to the extent of student equity in (1) access, (2) retention, (3) degree and certificate completion, (4) ESL and basic skills completion, and (5) transfer and the determination of what activities are most likely to be effective, pursuant to Title 5, California Code of Regulations, Section 54220(a)(1);

(i) To periodically review the data compiled, and

(ii) To make efforts to address any problems that are identified, pursuant to Chancellor's Revised Guidelines and

Information, (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

b) Goals for (1) access, (2) retention, (3) degree and certificate completion, (4) ESL and basic skills completion, and (5) transfer; for the overall student population and for each population group of students, as appropriate, pursuant to Title 5, California Code of Regulations, Section 54220(a)(2);

(i) For these goals to meet the following standards: (1) be written; (2) include specific measures for determining progress toward achieving the desired outcomes; (3) identify the baseline data findings that forms the bases for noting an equity issue; (4) identify the amount and direction of change expected to reflect the desired outcome or amount of progress to be achieved; (5) include target dates and/or timetables to establish a time frame for assessing the effectiveness in achieving expected outcomes, pursuant to Chancellor's Revised Guidelines and Information, (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

c) Race-neutral measures, or, when legally appropriate, race-conscious measures, implemented in accordance with standards adopted by the Board of Governors, to address any disparity in

student population if significant underrepresentation of a particular group is found to exist, pursuant to Title 5, California Code of Regulations, Section 54220(a)(2);

(i) To implement race/gender neutral measures when working to eliminate any noted underrepresentation, pursuant to Chancellor's Revised Guidelines and Information, (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

(ii) To take active steps, beyond compliance with nondiscrimination laws, to promote student equity when significant underrepresentation exists, pursuant to Chancellor's Revised Guidelines and Information, (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

(iii) To implement the following procedures when significant underrepresentation exists: (1) review its practices and procedures and identify and implement any additional measures which might reasonably be expected to address the needs of significantly underrepresented groups in the success indicator areas in question; (2) consider various other means of reducing the underrepresentation, which do not involve taking underrepresented group status into account, and implement any such techniques which are

determined to be feasible and potentially effective; and (3) establish target dates for achieving expected outcomes, pursuant to Chancellor's Revised Guidelines and Information, (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

(iv) To use race/gender neutral methods to rectify underrepresentation for at least 3 years before considering mechanisms that take race or gender into account, pursuant to Chancellor's Revised Guidelines and Information, (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

d) Implementation activities designed to attain the goals, including a means of coordinating existing student equity related programs, pursuant to Title 5, California Code of Regulations, Section 54220(a)(3);

e) Sources of funds for the activities in the plan, pursuant to Title 5, California Code of Regulations, Section 54220(a)(4);

f) A schedule and process for evaluation, pursuant to Title 5, California Code of Regulations, Section 54220(a)(5);

(i) To conduct an annual survey of the college's student population and gather ethnicity, gender and disability data

for use in evaluating the progress in implementing the goals set forth in its plan, pursuant to Chancellor's Revised Guidelines and Information, (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

(ii) For the evaluation schedule to contain specific information about who is doing what and when and how often the plan itself will be evaluated, pursuant to Chancellor's Revised Guidelines and Information, (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

(g) An executive summary that includes, at a minimum, (1) the groups for whom goals have been set; (2) the goals; (3) the initiatives that the college or district will undertake to achieve these goals; (4) the resources that have been budgeted for that purpose; and (5) the district official to contact for further information, pursuant to Title 5, California Code of Regulations, Section 54220(a)(6);

(i) For the designated contact person to be responsible for the following: (1) monitoring, review, and evaluation of student success for all students; (2) guiding the planning and development process to promote student success; (3) compiling the results of the periodic review process to determine effective success strategies; (4) reporting these

findings to the success/equity advisory committee on an annual basis; (5) submitting a copy of this report along with any resulting committee board action to the Chancellor's Office, pursuant to Chancellor's Revised Guidelines and Information, (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

3) To develop the student equity plan with the active involvement of all groups on campus and with the involvement of appropriate people from the community, pursuant to Title 5, California Code of Regulations, Section 54220(b). To implement this subdivision, the governing board must determine who may qualify as "appropriate people from the community" and give notice to such people and also to all groups on campus of any meetings or activities regarding the development of the student equity plan.

4) For the governing board to submit the Board-adopted plan to the Office of the Chancellor, pursuant to Title 5, California Code of Regulations, Section 54220(c).

E) Community Colleges must ensure that their student equity plans, established pursuant to Title 5, California Code of Regulations, Sections 51026 and 54220 adhere to the Chancellor's criteria for reviewing and evaluating student equity plans, as detailed in and pursuant to the "Student Equity Plan Review

Procedures and Instructions" contained in Appendix 1 of "Student Equity: Guidelines for Developing a Plan, 2002"

CONDITION 19. TRANSFER CENTERS

A) To implement policies and procedures to comply with the statewide common course numbering system adopted and disseminated by the Board of Governors, pursuant to Education Code Section 71027.

B) To implement policies and procedures to comply with the common core curriculum for transfer, established and disseminated by the Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University, pursuant to Education Code Sections 66720 -66722.5

1) For the governing board of each community college district to direct the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum, pursuant to Education Code Section 66721.5(a)

2) For community colleges to ensure that a copy of the current transfer core curriculum is distributed to each newly admitted community college student who is enrolled in a degree or certification program and is physically in attendance at the institution, pursuant to Education Code Section 6621.5(b)

3) For the governing board of community college districts to ensure that the

text of the current transfer core curriculum is included in the published class schedule for each academic term, pursuant to Education Code Section 6621.5(c).

4) For community colleges to implement policies and procedures to ensure that the transfer function is a central institutional priority, and that the maintenance of an effective transfer system constitutes a fundamental policy and practice in the community college system, pursuant to Education Code Section 66722.

5) For community colleges to implement policies and procedures to pursue the development of transfer agreement programs that specify the curricular requirements that must be met, and the level of achievement that must be attained, by community college students in order for those students to transfer to the campus, undergraduate college, or major of choice in the public four-year segments, pursuant to Education Code Section 66722.5.

C) For community college districts to implement a comprehensive transfer system, pursuant to Education Code Sections 66730 - 66744.

1) To recognize student matriculation from community colleges through the University of California and the California State University as a central institutional priority of all segments of higher education, pursuant to Education Code Section 66731.

2) For the governing boards of each community college district to design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University, pursuant to Education Code Section 66732.

a) To declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within the district, pursuant to Education Code Section 66732; and

b) To declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education, pursuant to Education Code Section 66732.

3) For each community college district governing board to ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services, pursuant to Education Code Section 66736.

a) To design and implement such centers or services to affirmatively:

(1) seek out,

(2) counsel,

(3) advise, and

(4) monitor the progress of (a) potential and (b) identified community college transfer students, pursuant to Education Code Section 66736.

b) To ensure that all such policies and procedures give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations, pursuant to Education Code Section 66736.

4) For community college districts to implement policies and procedures to comply with the new programs of outreach, recruitment, and cooperation between and among the three segments of public higher education designed to facilitate the successful transfer of students between the community colleges and the universities, as developed by the Board of Governors of the California Community Colleges, pursuant to Education Code Section 66737.

5) For the governing board of each community college district to assist in the development and implementation of formal systemwide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures

to support and enhance the transfer function, pursuant to Education Code Section 66738.

a) To ensure that the elements in a comprehensive transfer system include the following, pursuant to Education Code Section 66738(b):

(1) Enrollment and resource planning; intersegmental faculty curricular efforts;

(2) Coordinated counseling;

(3) Financial aid and transfer services;

(4) Transfer articulation agreements and programs;

(5) Specific efforts to improve diversity;

(6) Early outreach activities;

(7) Expansion of current practices relating to concurrent enrollment of community college students in appropriate university courses; and

(8) Centers.

b) To expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available, pursuant to Education Code Section 66738(c);

c) To expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus, pursuant to Education Code Section 66738(c).

D) For faculty from the community colleges and university campuses to participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency, pursuant to Education Code Section 66740.

1) To implement policies and procedures to ensure that, where specific majors are impacted or over-subscribed, the prescribed course of study and minimum grade point average required for consideration for upper division admission to all of these majors are made readily available to (a) community college counselors, (b) faculty, and (c) students on an annual basis, pursuant to Education Code Section 66740.

2) In cases where the prescribed course of study is altered by the university department, to communicate notice of the modification to appropriate community college faculty and counselors at least one year prior to the deadline for application to that major and implementation by the department responsible for teaching that major, pursuant to Education Code Section 66740.

3) For Community college districts, in conjunction with the California State University and the University of California, to develop discipline-based

agreements with as many campuses of the two university segments as feasible, and no fewer than three University of California campuses and five California State University campuses, pursuant to Education Code Section 66740.

E) To ensure that, each community college student is assured of the opportunity to enter into a transfer agreement program enabling a student to (1) receive high priority consideration, (2) attain equivalent special treatment, or (3) enter into a contract when applying for university admission at the advanced standing level, pursuant to Education Code Section 66741.

F) For the community college governing boards to prepare and present annual statistical reports on transfer patterns via the California Postsecondary Education Commission to the Governor and Legislature, pursuant to Education Code Section 66742.

1) For the reports to include recent statistics on student enrollment by the following, pursuant to Education Code Section 66742:

a) campus,

b) segment,

c) gender,

d) ethnicity, and

e) the ratio of upper division to lower division, including information on both (1) freshman and (2) transfer student access to the system.

2) For the reports to include, to the extent that data are available or become available, data on application, admission and enrollment information for all students by sex, ethnicity, and campus, pursuant to Education Code Section 66742.

3) To ensure that, for transfer students, this data indicates the segment of origin for all students, pursuant to Education Code Section 66742.

4) For the data to be separately identified for transfer students from California Community Colleges, pursuant to Education Code Section 66742.

5) For the data to identify the subset of applications which are completed together with admission, enrollment, and declared major information for that group, pursuant to Education Code Section 66742.

6) For the reports to describe the following, pursuant to Education Code Section 66742:

   a) The number of transfer agreements, if any, whose terms and conditions were not satisfied by either the California State University or the University of California, pursuant to Education Code Section 66742;

   b) The number of California Community College transfer students denied either (1) admission to the student's first choice of a particular campus of the California State University or the

University of California or (2) the student's first choice of a major field of study, pursuant to Education Code Section 66742; and

c) The number of students who, upon denial of either of the student's first choices, immediately enrolled at another campus of the California State University or the University of California, pursuant to Education Code Section 66742.

7) For the reports to include information by sex and ethnicity on retention and degree completion for the following, pursuant to Education Code Section 66742:

a) transfer students

b) native students, and

c) the number and percentage of baccalaureate degree recipients who transferred from a community college.

G) For community college districts to compile, prepare and make available data required by the California Postsecondary Education Commission's intersegmental advisory committee on transfer access and performance so that the committee may present biennial reports to the Governor and the Legislature on the status of transfer policies and programs, pursuant to Education Code Section 66743

H) To implement and comply with minimum standards for transfer centers, pursuant to Title 5 of the California Code of Regulations, Section 51027.

1) For the governing board of each community college district to recognize transfer as one of its primary missions, and to place priority emphasis on the preparation and transfer of underrepresented students, including African-American, Chicano/Latino, American Indian, disabled, low-income and other students historically and currently underrepresented in the transfer process, pursuant to Title 5, California Code of Regulations, Section 51027(a).

2) For each community college district governing board to develop, adopt and implement a transfer center plan that includes the following, pursuant to Title 5, California Code of Regulations, Section 51027(b):

a) A description of the activities of the transfer center and the services to be provided to students, pursuant to Title 5, California Code of Regulations, Section 51027(b);

b) Identification of target student populations, pursuant to Title 5, California Code of Regulations, Section 51027(b);

c) Establishment of target increases in the number of applicants baccalaureate institutions from these populations, including specific targets for increasing the transfer applications of underrepresented students among transfer students, pursuant to Title 5, California Code of Regulations, Section 51027(b);

d) Consultation with baccalaureate college and university personnel in

the development of the transfer center plan, pursuant to Title 5, California Code of Regulations, Section 51027(b); and

e) Inclusion of at least the following plan components, pursuant to Title 5, California Code of Regulations, Section 51027(b):

(1) services to be provided to students;

(2) facilities;

(3) staffing;

(4) advisory committee; and

(5) evaluation and reporting.

3) For community college districts to implement the following required services, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1):

a) To identify, contact, and provide transfer support services to targeted student populations as identified in the transfer center plan, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(A);

(1) To place priority emphasis on African-American, Chicano/Latino, American Indian, disabled, low-income, and other underrepresented students; and

(2) To develop and implement these activities in cooperation with student services departments and with faculty.

b) To ensure: (1) the provision of academic planning for transfer, (2) the development and use of transfer admission agreements with baccalaureate institutions where available and as appropriate, and (3) the development and use of course-to-course and major articulation agreements, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(B).

(1) To ensure that academic planning and articulation activities are provided in cooperation with (1) student services, (2) with faculty, and (3) with baccalaureate institution personnel as available.

c) To ensure that students receive accurate and up-to-date academic and transfer information through coordinated transfer counseling services, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(C).

d) To monitor the progress of transfer students to the point of transfer, in accordance with monitoring activities established in the Transfer Center Plan, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(D).

e) To support the progress of transfer students through referral as necessary, to such services as: (1) ability and diagnostic testing, (2) tutoring, (3) financial assistance, (4) counseling, and (5) to other

instructional and student services on campus as appropriate, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(E).

f) To assist students in the transition process, including timely completion and submittal of necessary forms and applications, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(F).

g) To develop and implement a schedule of services for transfer students to be provided by baccalaureate institution staff, in cooperation with baccalaureate institution personnel as available, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(G).

h) To provide: (1) a resource library of college catalogs, (2) transfer guides, (3) articulation information and agreements, (4) applications to baccalaureate institutions, and (5) related transfer information, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(H).

4) For each district governing board to provide space and facilities adequate to support the transfer center and its activities, pursuant to Title 5, California Code of Regulations, Section 51027(b)(2).

a) To designate a particular location on campus as the focal point of

transfer functions, pursuant to Title 5, California Code of Regulations, Section 51027(b)(2).

b) To ensure that this location is readily identifiable and accessible to students, faculty, and staff, pursuant to Title 5, California Code of Regulations, Section 51027(b)(2).

5) For each district governing board to provide clerical support for the transfer center and assign college staff to accomplish the following, pursuant to Title 5, California Code of Regulations, Section 51027(b)(3):

a) To coordinate the activities of the transfer center;

b) To coordinate underrepresented student transfer efforts;

c) To serve as liaison to articulation, to student services, and to instructional programs on campus;

d) To work with baccalaureate institution personnel.

6) For each district to designate an advisory committee to plan the development, implementation, and ongoing operations of the transfer center, pursuant to Title 5, California Code of Regulations, Section 51027(b)(4).

a) To ensure that membership is representative of campus departments and services.

b) To ensure that Baccalaureate institution personnel are included as available.

7) For each district governing board to include in its transfer center plan, a plan of institutional research for ongoing internal evaluation of the effectiveness of the college's transfer efforts, and the achievement of its transfer center plan, pursuant to Title 5, California Code of Regulations, Section 51027(b)(5).

8) For each community college district to prepare and submit an annual report to the Chancellor describing the following, pursuant to Title 5, California Code of Regulations, Section 51027(b)(5):

a) the status of the district's efforts to implement its transfer center(s),

b) achievement of transfer center plan targets and goals, and

c) expenditures supporting transfer center operations.

COMPONENT 20: COMPLIANCE ENFORCEMENT

A) To adopt and implement policies and procedures to comply with the requirements of Education Code Section 70901(b)(6) and Chapter 2 of Division 6 of the California Code of Regulations regarding the minimum conditions the district must meet to receive state aid for the support of the community college, pursuant to Title 5, California Code of Regulations, Section 51000.

B) To prepare and submit all data necessary to respond to any review by the State Chancellor to determine whether the district has complied with the minimum conditions contained in Subchapter 1 (commencing with Section 51000) of Chapter 2 of the California Code of Regulations, pursuant to Title 5, California

Code of Regulations, Section 51101.

C) To adopt and implement policies and procedures to comply with any enforcement orders that the Chancellor may issue to the district regarding district compliance with the provisions of Subchapter 1 (commencing with Section 51100) of Chapter 2 of the California Code of Regulations (Minimum Conditions), pursuant to Title 5, California Code of Regulations, Section 51102.

1) To prepare and submit to the Chancellor an official written response by a date specified by the Chancellor, if the Chancellor notifies the chief executive officer of the district that any noncompliance with the Subchapter exists, pursuant to Title 5, California Code of Regulations, Section 51102(a);

2) If the Chancellor so requires, to prepare, submit and implement a plan and timetable for achieving compliance as a condition for continued receipt of state aid Title 5, California Code of Regulations, Section 51102(b)(2).

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[121] statutory exceptions to a finding

[121]Government Code section 17556 as last amended by Chapter 589/89:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that:
(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to

of costs mandated by the state apply to this statute. Note that to the extent community colleges may have previously performed functions similar to those mandated by the referenced code section, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse districts when these activities became mandated.[122]

SECTION 3. FUNDING FOR THE STATE MANDATE

No funds were appropriated by the statute, regulation, or executive orders which establish the programs which result in costs mandated by the state.

"AB 1725," Statutes of 1988, Chapter 973 Programs

Several of the activities included in this test claim were initially established by "AB 1725," Statutes of 1988, Chapter 973. At Section 70 (an uncodified section),

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implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

[122]Government Code section 17565, as added by Chapter 879/86:

If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.

subdivision (b) (2), states: "It is the intent of the Legislature that moneys appropriated during Phase II fully fund any state mandate created pursuant to this section." At subdivision (e): "Based on estimates provided . . . , the Legislature finds and declares that its estimate of this funding amount is seventy million dollars ($70,000,000), in addition to the seventy million dollars ($70,000,000) estimated under subdivision (d) [for Phase I]."

The appropriations referenced in the Section 70 intent language are assigned to specific priorities in Education Code section 84755[123] (added by Statutes of 1988,

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[123]Education Code section 84755, as added by Chapter 973/88, Section 21.7

(a) The Legislature finds and declares that program-based funding, once implemented, will more adequately and accountably fund the costs of providing quality community college education. Given that program-based funding will not be implemented until fiscal year 1991-92, given that community colleges will be entering a period of major reform and incurrence of new state mandates commencing in January 1989, and given that community colleges will be entering this period of reform having lost purchasing power since the 1977-78 fiscal year, the Legislature recognizes the need to create a transitional funding mechanism for program improvement and mandate funding that can operate until program-based funding is implemented.

(b) For the purpose of improving the quality of community college educational programs and services, for the purpose of reimbursing state-mandated local program costs imposed by this act, and for the purposes of initially implementing specified reforms, the board of governors shall, from amounts appropriated for purposes of this section, allocate program improvement revenues to each district on the basis of an amount per unit of average daily attendance funded in the prior fiscal year. However, this amount shall be increased or decreased to provide for equalization in a manner determined by the Board of Governors, consistent with Sections 84703 to 84705, inclusive.

Each community college district shall use its allocation to initially reimburse state-mandated local program costs, and then to implement specified reforms and make authorized program and service improvements as follows:

(1) Developing articulated programs provided for in Section 69 of Chapter 973 of the Statutes of 1988 with school districts and campuses of the University of California and California State University.

(2) Applying minimum qualifications to all newly hired faculty and administrators, including candidates for these positions as required by Section 87356.

(3) Developing and administering a process for waiver of minimum qualifications as required by Section 87359.

(4) Establishing and applying local hiring criteria as required by Section 87360.

(5) Establishing and applying faculty service areas and competency criteria as required by Sections 87743 to 87743.5, inclusive.

Chapter 973, Section 21.7), including Section 87610.1 which is referenced at subdivision (b), items (7) and (8). However, in a preamble, subdivision (b) states that the new funds will be allocated to "each district on the basis of an amount per unit of

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(6) Evaluating temporary employees, instituting peer review evaluation, and widely distributing evaluation procedures as required by Section 87663.

(7) Establishing and applying new processes for tenure evaluation required by Section 87610.1.

(8) Establishing and applying the tenure denial grievance procedure required by Section 87610.1.

(9) Establishing and applying a process for moving administrators into faculty positions as required by Sections 87454 to 87458, inclusive.

(10) Publishing and distributing a report on the affirmative action success rate as required by Section 87102.

(11) Improving instruction by reducing the ratio of full-time equivalent students to full-time equivalent instructors.

(12) Improving instruction by increasing the hiring of full-time instructors and limiting the practice of hiring part-time instructors.

(13) Augmenting budgets for college libraries and learning resources.

(14) Augmenting budgets for plant maintenance and operations.

(15) Adding new courses or programs to serve community need.

(16) Making progress towards affirmative action goals and timetables established by the district.

(17) Developing and maintaining programs and services authorized by Section 78212.5.

(18) Augmenting budgets for student services in the areas of greatest need.

(19) Providing for release time for faculty and staff as deemed appropriate by the governing board of each community college district, to enable faculty and staff participation in implementing reforms.

(c) Except as provided by Section 87482.6, and except as necessary to reimburse the costs of new state mandates, district governing boards shall have full authority to expend program improvement allocations for any or all of the authorized purposes specified in subdivision (b).

(d) As required by the board of governors, the governing board of each community college district shall submit to the board of governors a plan for using the resources allocated pursuant to this section. The board of governors shall review each plan to ensure that proposed expenditures are consistent with the listing of authorized expenditures provided in this section, and the board of governors shall approve all plans to the full extent that expenditures are authorized by this section. To the extent that a community college district expends its program improvement allocation consistent with its plan, the board of governors shall include the district's allocation as part of the district's base budget for subsequent years.

(e) The board of governors, through the annual systemwide budget submitted pursuant to paragraph (5) of subdivision (b) of Section 70901, shall request necessary resources for the purposes of this section. It is the intent of the Legislature that the appropriation and allocation of program improvement money not otherwise provided pursuant to subdivision (b) shall be accomplished through the annual state budget process beginning with the 1989-90 fiscal year. After June 30, 1991, if Section 84750 is implemented, it is the intent of the Legislature to fund the ongoing operations of community college districts pursuant to Section 84750.

average daily attendance funded in the prior fiscal year," but only after the amount is "increased or decreased to provide for equalization." This effectively negates any concept of cost reimbursement, which is the actual cost of the increased level of service, it is merely a general funding device disguised as a mandate reimbursement apportionment.

Notwithstanding, this funding scenario, to the extent actually implemented, it does not meet the Government Code section 17556, subdivision (e) exception to a finding of "costs mandated by the state," since the statute (Chapter 973/88) did not provide for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or *include additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.* The funding, to the extent it actually was later provided, was provided by *subsequent* legislation, and *the sufficiency* of the funding remains a question of fact (note that Section 70 declares that it is an "estimate"). More to the point, at Section 67 of Chapter 973, Statutes of 1988, the Legislature leaves it to the Commission on State Mandates to determine if there are any reimbursable mandated costs.

To the extent that funding was made available, and continues to be made available each subsequent year, such funding might reduce the reimbursable costs, but does not preclude an initial determination of whether a reimbursable mandate exists. The test claimant is informed and believes that the Chancellor of the California

Community Colleges on or about 1991 prepared an AB 1725 cost questionnaire to obtain from each community college the cost of implementing the provisions of AB 1725, that the cost data was specific to each new program enacted, that most of the community colleges provided this data to the Chancellor, and that the Chancellor is in possession of this information. This information can be utilized to establish base-period cost and revenue information.

Special Purpose Funding

Community colleges received dedicated grant and categorical funding for some of the activities included in this test claim (e.g., Matriculation Services). To the extent that the funding is provided each year, and to the extent that the dedicated funds are applied to activities mandated by the state, the amounts received and applicable to mandated activities will reduce the amount of cost mandated by the state. The test claimant is informed and believes that the Chancellor of the California Community Colleges has the documentation necessary to determine the amounts of these special purpose funds allocated to each college year, and the purposes for which the funds were intended. This information can be utilized to determine the revenue offset amounts each year.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: The Declaration of Piedad F. Robertson,
President, Santa Monica Community College District

Exhibit 2: Copies of Statutes cited:

Chapter 1169, Statutes of 2002
Chapter 187, Statutes of 2000
Chapter 587, Statutes of 1999
Chapter 1023, Statutes of 1998
Chapter 914, Statutes of 1998
Chapter 365, Statutes of 1998
Chapter 758, Statutes of 1995
Chapter 493, Statutes of 1995
Chapter 1198, Statutes of 1991
Chapter 1188, Statutes of 1991
Chapter 1038, Statutes of 1991
Chapter 1667, Statutes of 1990
Chapter 1372, Statutes of 1990
Chapter 1514, Statutes of 1988
Chapter 973, Statutes of 1988
Chapter 1467, Statutes of 1986
Chapter 1371, Statutes of 1984
Chapter 537, Statutes of 1983
Chapter 143, Statutes of 1983
Chapter 1329, Statutes of 1982
Chapter 1117, Statutes of 1982
Chapter 891, Statutes of 1981
Chapter 470, Statutes of 1981
Chapter 910, Statutes of 1980
Chapter 977, Statutes of 1979
Chapter 797, Statutes of 1979
Chapter 967, Statutes of 1977
Chapter 36, Statutes of 1977
Chapter 1176, Statutes of 1976
Chapter 783, Statutes of 1976
Chapter 275, Statutes of 1976
Chapter 802, Statutes of 1975
Chapter 1526, Statutes of 1974
Chapter 280, Statutes of 1974
Chapter 182, Statutes of 1974
Chapter 1525, Statutes of 1971

Exhibit 3: Education Code sections cited:

212	66251	66271.1	66722	66742	72014	78214	87101
212.5	66252	66271.7	66722.5	66743	78015	78215	87102
213	66260	66281.5	66730	70901	78016	78216	87103
214	66261	66290	66731	70901.5	78210	78218	87105
221.5	66261.5	66291	66732	70902	78211	81820	87106
221.7	66262	66292	66736	71027	78211.5	81821	87107
66010.2	66262.5	66292.3	66737	72011	78212	81822	87108
66010.7	66263	66720	66738	72012	78212.5	81823	87482.6
66016	66264	66721	66740	72013	78213	87100	87482.7
66030	66270	66721.5	66741				

Exhibit 4: Title 5, California Code of Regulations sections cited:

51000	51102	53203	55006	55316.5	55522	55753	55805
51002	53000	53204	55100	55320	55523	55753.5	55805.5
51004	53001	53206	55130	55321	55524	55753.7	55806
51006	53002	53207	55150	55322	55525	55754	55807
51008	53003	53300	55160	55340	55526	55755	55808
51010	53004	53301	55170	55350	55530	55756	55809
51012	53005	53302	55182	55401	55532	55756.5	55825
51014	53006	53308	55200	55402	55534	55757	55827
51016	53020	53309	55201	55403	55600	55758	55828
51018	53021	53310	55202	55404	55601	55758.5	55829
51020	53022	53311	55205	55405	55602	55759	55830
51021	53023	53312	55207	55500	55602.5	55760	55831
51022	53024	53314	55209	55502	55603	55761	58102
51023	53025	54220	55211	55510	55605	55762	58104
51023.5	53026	55000	55213	55512	55607	55763	58106
51023.7	53027	55000.5	55215	55514	55620	55764	58107
51024	53030	55001	55217	55516	55630	55765	58108
51025	53033	55002	55219	55518	55750	55800	
51026	53034	55002.5	55300	55520	55751	55800.5	
51027	53200	55004	55316	55521	55752	55801	
51100	53202	55005					

Exhibit 5: State Agency Program Manuals and advisories (Executive Orders)

Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002)

"Program and Course Approval Handbook" Chancellor's Office California Community Colleges (September 2001)

"Student Equity: Guidelines for Developing a Plan" Fall 2002, The Academic Senate for California Community Colleges
(Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions")
(Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, adopted by the Academic Senate Fall 2002)

Exhibit 6: Informational Exhibits

Component 5: Equal Employment Opportunity
Memo issued by the Board of Governors, "Title 5 Regulations: Equal Employment Opportunity, Action Scheduled" (July 8-9, 2002)

Component 7: Approval of New Colleges and Educational Centers
Memo issued by the Board of Governors, "Approval of College Status for Folsom Lake Center, Los Rios Community College District, Action Scheduled" (November 12-13, 2002)

Component 16: Matriculation
Report issued by the Chancellor's Office, "Matriculation Standards"

Memo issued by the Board of Governors, "Study Session on Basic Skills, Information" (July 8-9, 2002)

Component 18: Student Equity
Report issued by the Board of Governor's Committee on Equity, Diversity and Human Resources, "Report from the Equity and Diversity Task Force" (November 12-13, 2002)

Component 20: Compliance Enforcement
Report issued by the Board of Governors, "Minutes of the Meeting" (November 12, 2002)

General Information
Report issued by the Chancellor's Office, "Description of Grant Programs Administered by the Chancellor's Office" (last revised October 9, 2002)

Report issued by the Chancellor's Office, "AB 1725: A Comprehensive Analysis" (January 1989)

Memo issued by the Chancellor's Office, "AB 1725: First Major Update" (August 1989)

Memo issued by the Chancellor's Office, "AB 1725: Second Major Update" (October 1990)

PART V. CERTIFICATION

I declare under penalty of perjury that the statements made in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on June 13, 2003, at Santa Monica, California, by:

Thomas J. Donner
Executive Vice President, Business/Administration
Santa Monica Community College District
1900 Pica Blvd.
Santa Monica, California 90405-1628

Voice: (310) 434-4201
FAX: (310) 434-8200

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PART VI. APPOINTMENT OF REPRESENTATIVE

Santa Monica Community college appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Thomas J. Donner, Executive Vice President
Business/Administration
Santa Monica Community College District

6-13-03
Date

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EXHIBIT 1

DECLARATIONS

DECLARATION OF PIEDAD F. ROBERTSON, PRESIDENT

Santa Monica Community College District

Test Claim of Santa Monica Community College District

COSM No. _____

COMPONENT 1: STANDARDS OF SCHOLARSHIP:
T5, CCR, Sections 51002, 55750-55765

COMPONENT 2: DEGREES AND CERTIFICATES:
T5, CCR, Sections 51004, 55800-55809

COMPONENT 3: OPEN COURSES:
T5, CCR, Sections 51006, 58102-58108

COMPONENT 4: COMPREHENSIVE PLAN:
Education Code Sections 81820-81823 T5, CCR, Sections 51008, 55401-55405

COMPONENT 5: EQUAL EMPLOYMENT OPPORTUNITY:
Education Code Sections 87100-87108 T5, CCR, Sections 51010, 53000-53034

COMPONENT 6: STUDENT FEES:
T5, CCR, Section 51012

COMPONENT 7: APPROVAL OF NEW COLLEGES AND EDUCATIONAL CENTERS:
T5, CCR, Sections 51014, 55825-55831

COMPONENT 8: ACCREDITATION:
T5, CCR, Section 51016

Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002)

COMPONENT 9: COUNSELING PROGRAMS:
T5, CCR, Section 51018

COMPONENT 10: INSTRUCTIONAL OBJECTIVES:
T5, CCR, Section 51020

COMPONENT 11: CURRICULUM:
T5, CCR, Sections 51021, 55000-55350

"Program and Course Approval Handbook" Chancellor's Office California Community Colleges (September 2001)

COMPONENT 12: VOCATIONAL EDUCATION PROGRAMS:
Education Code Sections 78015-78016 T5, CCR, Sections 51022, 55600-55630

COMPONENT 13: COURSE ARTICULATION-LOCAL:
T5, CCR, Section 51022

COMPONENT 14: ACADEMIC FREEDOM:
T5, CCR, Section 51023

COMPONENT 15: SHARED GOVERNANCE (Faculty, Staff, Students):
T5, CCR, Sections 51023-51023.7, 53200-53207

COMPONENT 16: MATRICULATION:
Education Code Sections 78210-78218 T5, CCR, Sections 51024, 55500-55534

COMPONENT 17: FULL-TIME / PART-TIME FACULTY:
Education Code Sections 87482.6-87482.7 T5, CCR, Sections 51025, 53300-53314

COMPONENT 18: STUDENT EQUITY:
Education Code Sections 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251-66292.3, 72011-72014

T5, CCR, Sections 51026, 54220

Chancellor's Office "Student Equity Plan Review Procedures and Instructions" (Appendix 1 of "Student Equity: Guidelines for Developing a Plan," 2002)

Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, adopted by the Academic Senate Fall 2002 (Appendix 3 of "Student Equity Guidelines for Developing a Plan, 2002)

COMPONENT 19: TRANSFER CENTERS:
Education Code Sections 66720-66743, 71027 T5, CCR, Section 51027

COMPONENT 20: ENFORCEMENT
Education Code Section 70901(b) T5, CCR, Sections 51000, 51100-51102

Minimum Conditions for State Aid

I, Piedad F. Robertson, President/Superintendent, Santa Monica Community College District, make the following declaration and statement.

In my capacity as President, I am responsible for the district's compliance with laws governing the operation of the district. I am familiar with the provisions and requirements of the Education Code Sections, California Code of Regulations and Implementing Guidelines of the Chancellor's Office enumerated above which require the district to:

COMPONENT 1: STANDARDS OF SCHOLARSHIP

A) To adopt and implement regulations consistent with the standards of scholarship contained in Title 5, California Code of Regulations, Sections 55750 - 55765, as a minimum condition for receipt of state aid, pursuant to Title 5, California Code of Regulations, Section 51002 and 55750.

1) To file a copy of such regulations, and any amendments with the Chancellor, pursuant to Section 51002(b);

2) To substantially comply with such regulations and the regulations of the Board of Governors pertaining to standards of scholarship, pursuant to Section 51002(c);

3) To publish such regulations in the college catalog under appropriate headings, pursuant to Section 55750.

B) To determine and implement a uniform grading practice for the district which is based on sound academic principles and conforms to the following standards, pursuant to Title 5, California Code of Regulations, Section 55751:

1) Work in all courses acceptable in fulfillment of the requirements for an

associate or baccalaureate degree, a certificate, diploma or license must be graded in accordance with the governing board adopted grading scale, pursuant to Title 5, California Code of Regulations, Section 55751(a); and,

2) Such work must also be graded in accordance with the provisions of section 55752 (regarding credit-no credit options) or section 55753 (regarding credit by examination), pursuant to Title 5, California Code of Regulations, Section 55751(b).

C) To implement the following, regarding courses offered on a credit-no credit basis, pursuant to Title 5, California Code of Regulations, Section 55752:

1) To make the decision to offer such courses by resolution and to issue regulations authorizing such credit-no credit courses, pursuant to Title 5, California Code of Regulations, Section 55752(a).

2) To specify in the college catalog the category into which each course falls, pursuant to Title 5, California Code of Regulations, Section 55752(a):

a) Courses where all students are evaluated on a "credit-no credit" basis, pursuant to Title 5, California Code of Regulations, Section 55752(a)(1); and

b) Courses where each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit-no credit" or a letter grade, pursuant to Title 5, California Code of Regulations, Section 55752(a)(2).

3) To ensure that all units earned on a "credit-no credit" basis in accredited California institutions of higher education or equivalent out-of-state institutions are counted in satisfaction of community college curriculum

requirements, pursuant to Title 5, California Code of Regulations, Section 55752(b).

4) To ensure that units earned on a "credit-no credit" basis are not used to calculate grade point averages, pursuant to Title 5, California Code of Regulations, Section 55752(c).

5) To consider units attempted for which "NC" (as defined in section 55758) is recorded in probation and dismissal procedures, pursuant to Title 5, California Code of Regulations, Section 55752(c).

6) To allow independent study courses to be graded on a "credit-no credit" basis, pursuant to Title 5, California Code of Regulations, Section 55752(d).

7) To use the "CR/NC" grading system when a district offers courses in which there is a single standard of performance for which unit credit is assigned, pursuant to Title 5, California Code of Regulations, Section 55752(e).

D) To adopt, publish, and implement procedures and regulations pertaining to credit by examination, which implement the following requirements, pursuant to Title 5, California Code of Regulations, Section 55753:

1) To only grant credits to students who are registered at the college, in good standing and only for a course listed in the catalog of the community college, pursuant to Title 5, California Code of Regulations, Section 55753(b).

2) To ensure that the nature and content of an examination to be determined solely by faculty in the discipline that normally teaches the course for

which credit is to be granted, pursuant to Title 5, California Code of Regulations, Section 55753(c).

3) To ensure that a separate examination is conducted for each course for which credit is to be granted, pursuant to Title 5, California Code of Regulations, Section 55753(d).

4) To ensure that a student's academic record is clearly annotated to reflect that credit was earned by examination, pursuant to Title 5, California Code of Regulations, Section 55753(e).

5) To ensure that grading is performed according to the regular grading scale approved by the governing board pursuant to Section 55758, except that students shall be offered a credit-no credit option if that option is ordinarily available for the course, pursuant to Title 5, California Code of Regulations, Section 55753(f).

6) To ensure that units for which credit is given pursuant to the provisions of this section are not be counted in determining the 12 semester hours of credit in residence required for an associate degree, pursuant to Title 5, California Code of Regulations, Section 55753(g).

E) For the curriculum committee to establish and implement policies and procedures for appropriate faculty to follow in determining an "articulated high school course," deemed to be comparable to a specific community college course, pursuant to Title 5, California Code of Regulations, Section 55753.5.

1) To ensure that any articulated high school courses used to partially satisfy certificate or major requirements are clearly noted as such on the student's academic record, pursuant to Title 5, California Code of

Regulations, Section 55753.5(c).

2) To ensure that notations of community college course credit are made only if community college courses are successfully completed or if credit is earned via credit by examination, pursuant to Title 5, California Code of Regulations, Section 55753.5(c).

3) To ensure that, except through credit by examination, as defined in Section 55753, high school courses are not be used to satisfy either of the following, pursuant to Title 5, California Code of Regulations, Section 55753.5(d):

   a) The requirement of Section 55806 that students complete at least 60 semester or 90 quarter units in order to receive an associate degree, pursuant to Title 5, California Code of Regulations, Section 55753.5(d)(1); or

   b) Any general education requirement for the associate degree established by the district, pursuant to Title 5, California Code of Regulations, Section 55753.5(d)(2).

4) To ensure that all community college district-high school articulation agreements are subject to the provisions of Section 55753.5, pursuant to Title 5, California Code of Regulations, Section 55753.5(e).

5) To allow any student who, prior July 1, 2002, has successfully completed a high school course articulated under the terms of a previous agreement to be permitted to apply the credit so earned according to the terms of the previous agreement, pursuant to Title 5, California Code of Regulations, Section 55753.5(e).

F) To adopt and implement policies regarding advanced placement examinations which implement the following, pursuant to Title 5, California Code of Regulations, Section 55753.7:

1) Appropriate faculty members must review, analyze and approve all of the following, pursuant to Title 5, California Code of Regulations, Section 55753.7:

a) Advanced placement examinations,

b) Scores deemed to constitute satisfactory performance,

c) Courses offered by the college for which credit will be granted, and

d) Requirements that may be met by such examinations.

2) A student's academic record must be clearly annotated to reflect any credit that was earned through an advanced placement examination, pursuant to Title 5, California Code of Regulations, Section 55753.7.

G) To either comply with the statewide standards for academic probation, or for the district governing board to adopt and implement higher, local standards regarding probation, pursuant to Title 5, California Code of Regulations, Section 55754.

H) To adopt, publish and implement procedures and conditions for probation and appeal of probation and request for removal from probation, that are not lower than the statewide standards and that allow removal from probation, pursuant to Title 5, California Code of Regulations, Section 55755.

I) To adopt, publish and implement procedures and conditions for dismissal and appeal of dismissal and request for reinstatement that are not lower than the

statewide standards, pursuant to Title 5, California Code of Regulations, Section 55756.

J) To implement and comply with the following standards regarding remedial course work, pursuant to Title 5, California Code of Regulations, Section 55756.5:

1) To determine a student's need for remedial course work using appropriate assessment instruments, methods, or procedures administered in compliance with chapter 6 (commencing with section 55500) of division 6 of Title 5, California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 55756.5(b).

2) To ensure that, except as otherwise provided, no student receives more than 30 semester units (or 45 quarter units) of credit for remedial course work, pursuant to Title 5, California Code of Regulations, Section 55756.5(b).

3) To refer students that have exhausted the unit limitation to appropriate adult noncredit education services provided by college, adult school, community-based organization, or other appropriate local provider with which the district has an established referral agreement, pursuant to Title 5, California Code of Regulations, Section 55756.5(b).

4) To track and ensure that students enrolled in English as a Second Language (ESL) classes and those students identified by the district as having a learning disability are exempted from the limitation on remedial course work, pursuant to Title 5, California Code of Regulations, Section 55756.5(c).

5) For the governing board to review and approve any locally developed standards which provides for a waiver of the limitation on remedial course work with respect to any student, and for the standards to include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units, pursuant to Title 5, California Code of Regulations, Section 55756.5(d).

6) To dismiss and refer to adult noncredit education courses any student who does not attain full eligibility status for college-level work within the required time limit, unless provided with a waiver, pursuant to Title 5, California Code of Regulations, Section 55756.5(e).

7) To allow a student who has successfully completed all appropriate "remedial course work," or has demonstrated the level of skills which reasonably assures success in college-level courses, to request reinstatement to proceed with college-level course work, pursuant to Title 5, California Code of Regulations, Section 55756.5(f).

8) For the governing board to prepare and submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following, pursuant to Title 5, California Code of Regulations, Section 55756.5(g):

   a) The effect of this section on students by sex, age, and ethnicity, pursuant to Title 5, California Code of Regulations, Section 55756.5(g)(1); and

   b) Success rates for students enrolled in "remedial course work," pursuant to Title 5, California Code of Regulations, Section

55756.5(g)(2).

K) To adopt and implement rules and regulations governing whether the units in which a student did not receive a grade or "credit-no credit" or from which the student withdrew, will be included in or excluded from the category of "units attempted," pursuant to Title 5, California Code of Regulations, Section 55757.

L) To utilize a statewide grading scale established on the basis of point equivalencies that comply with the requirements of Section 55758, and to notify students of these standards by publication, pursuant to Title 5, California Code of Regulations, Section 55758.

M) To adopt and implement a withdrawal policy that is consistent with the requirements of Title 5, California Code of Regulations, Section 55758(e).

N) To establish and implement policies and procedures to ensure that grades earned in nondegree credit courses are not included in calculating students' degree applicable grade point averages, pursuant to Title 5, California Code of Regulations, Section 55758.5.

O) To make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter, pursuant to Title 5, California Code of Regulations, Section 55759.

1) To make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties, pursuant to Title 5, California Code of Regulations, Section 55759.

2) To make reasonable efforts to notify a student of removal from probation

or reinstatement after dismissal within time lines established by the district, pursuant to Title 5, California Code of Regulations, Section 55759.

3) To publish probation and dismissal policies and procedures in the college catalog, pursuant to Title 5, California Code of Regulations, Section 55759.

P) To establish and implement policies to ensure that the instructor of any course of instruction in a community college district for which grades are awarded, determines the grade to be awarded each student in accordance with section 55758 (Academic Record Symbols and Grade Point Average), pursuant to Title 5, California Code of Regulations, Section 55760.

Q) To adopt, publish and implement procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded, pursuant to Title 5, California Code of Regulations, Section 55761.

R) To establish and implement policies and procedures to ensure that any procedures or regulations adopted pertaining to the repetition of courses for which substandard academic performance has been previously recorded, implement the requirements of Title 5, California Code of Regulations, Section 55762.

S) To establish and implement policies and procedures to ensure compliance with all of the following, pertaining to the repetition of courses for which substandard work has not been recorded, pursuant to Title 5, California Code of Regulations, Section 55763.

1) To ensure that repetition of courses for which substandard work has not been recorded is permitted only upon petition of the student and with the

written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition, pursuant to Title 5, California Code of Regulations, Section 55763(b).

2) To permit repetition, without petition, in instances when such repetition is necessary for a student to meet a legally mandated training requirement as a condition of continued paid or volunteer employment, pursuant to Title 5, California Code of Regulations, Section 55763(c).

3) To annotate a student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history when course repetition under this section occurs, pursuant to Title 5, California Code of Regulations, Section 55763(d).

T) To adopt, publish and implement procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance which is not reflective of a student's demonstrated ability, pursuant to Title 5, California Code of Regulations, Section 55764 and 55765:

1) For such procedures or regulations to include a clear statement of the educational principles upon which they are based, pursuant to Title 5, California Code of Regulations, Section 55764.

2) To refer to such procedures as academic renewal regulations, pursuant to Title 5, California Code of Regulations, Section 55764.

3) To annotate a student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history when academic renewal procedures or regulations adopted by a district permit previously recorded, substandard course work to be

disregarded in the computation of grade point averages, pursuant to Title 5, California Code of Regulations, Section 55764.

4) To ensure that such regulations or procedures comply with Education Code section 76224, pertaining to the finality of grades assigned by instruction, and Chapter 2.5 (commencing with section 59020) of division 10 of Title 5, California Code of Regulations, pertaining to the retention, destruction and permanency of records, pursuant to Title 5, California Code of Regulations, Section 55765(a).

5) For such regulations to state the following, pursuant to Title 5, California Code of Regulations, Section 55765(b):

   a) The maximum amount of course work that may be alleviated, pursuant to Title 5, California Code of Regulations, Section 55765(b)(1);

   b) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the course work to be alleviated, pursuant to Title 5, California Code of Regulations, Section 55765(b)(2);

   c) The length of time to have elapsed since the course work to be alleviated was recorded, pursuant to Title 5, California Code of Regulations, Section 55765(b)(3); and

   d) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations, pursuant to Title 5, California Code of Regulations, Section 55765(b)(4).

6) To adopt, publish and implement specific procedures to be followed in implementing any procedures or regulations adopted pursuant to this section which state at a minimum, pursuant to Title 5, California Code of Regulations, Section 55765(c):

a) The procedures to be followed by students in petitioning for alleviation, pursuant to Title 5, California Code of Regulations, Section 55765(c)(1); and

b) The officers and/or personnel responsible for implementing the procedures or regulations, pursuant to Title 5, California Code of Regulations, Section 55765(c)(2).

COMPONENT 2: DEGREES AND CERTIFICATES

A) To adopt and implement policies, procedures and regulations for the award of degrees and certificates, which comply with Division 6, Chapter 6, Subchapter 10 of Title 5 of the California Code of Regulations (Degrees and Certificates), pursuant to Title 5, California Code of Regulations, Sections 51004 and 55800.

1) To file a copy of such regulations and any subsequent amendments with the Chancellor, pursuant to Title 5, California Code of Regulations, Section 51004(b) and 55800;

2) To publish the adopted policy in the college catalog, pursuant to Title 5, California Code of Regulations, Section 55800.

B) To establish and implement policies and procedures to ensure that any student who successfully completes the prescribed course of study for an associates degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses, is

awarded an associate degree, pursuant to Title 5, California Code of Regulations, Section 55800.5.

C) To monitor credits that qualify as being "satisfactorily completed" and to define such credits as " either credit earned on a "credit-no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based", for purposes of Sections 55806 and 55809, pursuant to Title 5, California Code of Regulations, Section 55801.

D) To adopt and implement a policy which states the district's specific philosophy on General Education and to ensure that this policy is consistent with the philosophy of the Board of Governors, pursuant to Title 5, California Code of Regulations, Section 55805.

1) For the district governing board to establish and implement criteria to determine which courses may be used in implementing its philosophy on the associate degree and general education, pursuant to Title 5, California Code of Regulations, Section 55805(b).

2) For the district governing board to review their adopted policy and criteria on a regular basis, pursuant to Title 5, California Code of Regulations, Section 55805(c).

F) To review and catagorize all courses, and permit only courses that conform to the standards specified in section 55002(a) and that fall into the following categories to be offered for associate degree credit, pursuant to Title 5, California Code of Regulations, Section 55805.5:

1) All lower division courses accepted toward the baccalaureate degree by the California State University or University of California or designed to be

offered for transfer, pursuant to Title 5, California Code of Regulations, Section 55805.5(a);

2) Courses that apply to the major in non-baccalaureate occupational fields, pursuant to Title 5, California Code of Regulations, Section 55805.5(b);

3) English courses not more than one level below the first transfer level composition course, pursuant to Title 5, California Code of Regulations, Section 55805.5(c);

4) All mathematics courses above and including Elementary Algebra, pursuant to Title 5, California Code of Regulations, Section 55805.5(d); or

5) Credit courses in English and mathematics taught in or on behalf of other departments and which, as determined by the local governing board require entrance skills at a level equivalent to those necessary for the English and Math courses specified above, pursuant to Title 5, California Code of Regulations, Section 55805.5(e).

G) To offer the appropriate curriculum and to establish and implement policies and procedures to ensure that the degree of Associate in Arts or Associate in Science is conferred upon a student who has demonstrated competence in reading, in written expression, and in mathematics, and who has satisfactorily completed at least 60 semester units or 90 quarter units of college work, in accordance with the criteria included in Title 5, California Code of Regulations, Section 55806.

H) To establish and implement a process to respond to a student petition requesting that noncredit courses be counted toward associate degrees, pursuant to Title 5, California Code of Regulations, Section 55807.

J) To award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements, pursuant to Title 5, California Code of Regulations, Section 55809.

COMPONENT 3: OPEN COURSES

A) To adopt a statement pertaining to its policy on open enrollment which provides that, unless specifically exempted by statute or regulation, every course reported for state aid shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets any prerequisites that have been properly established by a district, pursuant to Title 5, California Code of Regulations, Section 51006.

1) To publish the open enrollment policy statement in the official catalog, schedule of classes, and addenda to the schedule of classes for which full-time equivalent student (FTES) is reported for state apportionment, pursuant to Title 5, California Code of Regulations, Section 51006(b);

2) To file a copy of such policy with the Chancellor, pursuant to Title 5, California Code of Regulations, Section 51006(b).

B) To publish a clear description of each course, which is understandable to the prospective student, in the official catalog, and/or schedule of classes, and/or addenda, pursuant to Title 5, California Code of Regulations, Section 58102.

C) To establish and implement procedures to ensure, if a course description indicates a course is designed to meet certain specialized needs, that the district affirms the availability of the course to all qualified students, pursuant to Title 5, California Code of Regulations, Section 58102.

D) To describe all courses to be conducted within the district in the official general catalog and/or addenda and to list such courses in the schedules of classes, pursuant to Title 5, California Code of Regulations, Section 58104.

1) To ensure that any courses which are established or conducted after publication of the general catalog or regular schedule of classes are reasonably well publicized, pursuant to Title 5, California Code of Regulations, Section 58104.

2) To ensure that any announcements of course offerings are not limited to a specialized clientele, pursuant to Title 5, California Code of Regulations, Section 58104.

3) To ensure that no group or individual receives notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students, pursuant to Title 5, California Code of Regulations, Section 58104.

E) To establish and implement policies and procedures to ensure that, as a condition to be claimed for purposes of state apportionment, all community college courses are open to enrollment by any student who has been admitted to the college, unless the course qualifies for a limitation, pursuant to Title 5, California Code of Regulations, Section 58106.

1) To permit enrollment to be limited to students meeting prerequisites and corequisites that have been established in compliance with Sections 55200-55202 of Title 5, pursuant to Title 5, California Code of Regulations, Section 58106(a).

2) To ensure that any other limitation used by the district falls into one

of the acceptable reasons for enrollment limitations, pursuant to Title 5, California Code of Regulations, Section 58106(b).

3) To adopt and implement policies identifying any enrollment limitations used, ensuring that such policies provide fair and equitable procedures for determining who may enroll in affected courses or programs, and are consistent with at least one of the approaches included in Title 5, California Code of Regulations, Section 58106(b).

F) To establish and implement procedures for and to respond to a student to challenge an enrollment limitation, pursuant to Title 5, California Code of Regulations, Section 58106(c), (d), and (e).

1) To permit students to challenge an enrollment limitation on any of the following included in Title 5, California Code of Regulations, Section 58106(c):

2) For the district to handle such enrollment limitation challenges in a timely manner, pursuant to Title 5, California Code of Regulations, Section 58106(d);

3) To waive the enrollment limitation with respect to any student whose challenge is upheld, pursuant to Title 5, California Code of Regulations, Section 58106(d);

4) To advise any student who has challenged an enrollment limitation based on the theory of unlawful discrimination that he or she may also file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of Title 5 of the California Code of Regulations, once the challenge procedure has been completed,

pursuant to Title 5, California Code of Regulations, Section 58106(e).

G) To establish and implement policies and procedures to ensure that any public funds used in connection with athletic programs are used only for those programs which provide facilities and opportunities for participation by both sexes on an equitable basis, pursuant to Title 5, California Code of Regulations, Section 58107.

H) To ensure that all procedures for registration and standards for enrollment in any course are consistent with all sections of Title 5 of the California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 58108.

1) To ensure that such procedures and standards are uniformly administered by appropriately authorized employees of the district, pursuant to Title 5, California Code of Regulations, Section 58108.

2) To ensure that, except as otherwise provided by state law, no student shall be required to do any of the following, pursuant to Title 5, California Code of Regulations, Section 58108:

a) To confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district, pursuant to Title 5, California Code of Regulations, Section 58108;

b) To be required to participate in any preregistration activity not uniformly required, pursuant to Title 5, California Code of Regulations, Section 58108;

c) To be subjected to nonacademic requisites, imposed by anyone, as barriers to enrollment in or the successful completion of a class,

pursuant to Title 5, California Code of Regulations, Section 58108; or

d) To be subjected to any registration procedures that result in restricting enrollment to a specialized clientele, pursuant to Title 5, California Code of Regulations, Section 58108;

e) To be required to make any special effort not required of all students to register in any class or course section, with respect to accessibility to off-campus sites and facilities, pursuant to Title 5, California Code of Regulations, Section 58108.

3) To ensure that, once enrolled in a class, all students have equal access to the site, pursuant to Title 5, California Code of Regulations, Section 58108.

COMPONENT 4: COMPREHENSIVE PLAN

Comprehensive Master Plans: Capital Construction and Educational

A) To establish policies for, approve and implement a comprehensive master plan for community college facilities which meets the following requirements, pursuant to Title 5, California Code of Regulations, Section 51008:

1) The plan must include both academic master plans (Educational Master Plans) and long range master plans for facilities (Capital Construction Master Plans), pursuant to Title 5, California Code of Regulations, Section 51008(a);

2) The plan must address planning requirements which meet the specifications issued by the Board of Governors, as detailed in Title 5 California Code of Regulations, Sections 55401-55405, pursuant

to Title 5, California Code of Regulations, Section 51008(a);

3) The plans, as well as any annual updates or changes to the plans, must be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans, as detailed in Title 5, California Code of Regulations, Sections 55401-55405, pursuant to Title 5, California Code of Regulations, Section 51008(b).

Capital Construction Master Plans:

A) To annually prepare, update and submit to the Board of Governors of the California Community Colleges, a plan for capital construction covering a five-year time period, as opposed to the earlier ten-year time period required prior to 1975, pursuant to Education Code Section 81820 and Title 5, California Code of Regulations, Section 51008.

B) To establish and implement policies and procedures and gather the appropriate data to ensure that the five-year plan for capital construction sets out the estimated capital construction needs of the district with reference to elements including at least all of the following information, pursuant to Education Code Section 81821:

1) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized, pursuant to Education Code Section 81821(a).

2) The enrollment projections for the district formulated by the Department

of Finance, pursuant to Education Code Section 81821(b).

3) The current enrollment capacity of the district, pursuant to Education Code Section 81821(c).

4) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the Board of Governors in consultation with the California Postsecondary Education Commission and consistent with its standards, pursuant to Education Code Section 81821(d).

5) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the Board of Governors, pursuant to Education Code Section 81821(e).

6) An estimate of district funds which must be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors, pursuant to Education Code Section 81821(f).

C) To establish and implement policies and procedures to ensure that, if the college submits an additional capital construction plan based on each college or educational center maintained by the district, the district must prepare and include documentation justifying that students will be better served by such a plan due to the existence of either of the following circumstances, pursuant to Education Code Section 81823:

1) The isolation of students within a district in terms of the distance of students from the location of an educational program or the inadequacy of transportation, and student financial inability to meet costs of transportation to an educational program, pursuant to Education Code

Section 81823(a)(1).

2) The inability of existing colleges and educational centers in the district to meet the unique educational and cultural needs of a significant number of ethnic students, pursuant to Education Code Section 81823(a)(2).

Educational Master Plans:

A) To establish and implement policies for, and to approve, current and long range educational plans and programs, pursuant to Title 5, California Code of Regulations, Section 55401 and Section 51008.

B) To annually, on or before November 1st of each year, submit to the Chancellor an educational master plan, pursuant to Title 5, California Code of Regulations, Section 55402.

C) For each educational master plan submitted to the Chancellor to be on a form provided by the Chancellor, and to contain all information that the Chancellor requires, pursuant to Title 5, California Code of Regulations, Section 55403.

D) To establish and implement policies and procedures to ensure that the contents of each educational master plan contains all of the following information, pursuant to Title 5, California Code of Regulations, Section 55404:

1) The educational objectives of the Community College or district, pursuant to Title 5, California Code of Regulations, Section 55404;

2) The future plans for all of the following, pursuant to Title 5, California Code of Regulations, Section 55404:

a) transfer programs;

b) occupational programs;

c) continuing education courses; and

d) remedial and developmental programs.

3) Plans for the development and expansion of at least all of the following ancillary services, pursuant to Title 5, California Code of Regulations, Section 55404:

a) library;

b) counseling;

c) placement; and

d) financial aid.

COMPONENT 5: EQUAL EMPLOYMENT OPPORTUNITY

A) To commit to a sustained action to devise recruiting, training and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees, pursuant to Education Code Section 87101(c).

B) To periodically submit to the Board of Governors an affirmation of compliance with the equal employment opportunity article as a condition for the receipt of funds under Education Code Section 87107, pursuant to Education Code Section 87102.

1) For the district's equal employment opportunity program to ensure participation in, and commitment to, the program by district personnel, pursuant to Education Code Section 87102(a).

2) For the plan to include steps that the district will take in eliminating improper discrimination or preferences in its hiring and employment practices, pursuant to Education Code Section 87102(a).

3) For the plan to address how the district will make progress in achieving the ratio of full-time to part-time faculty hiring, as indicated in Education

Code Section 87482.6, while still ensuring equal employment opportunity, pursuant to Education Code Section 87102(a).

C) To adopt and implement a district policy which describes its equal employment opportunity program, pursuant to Title 5, California Code of Regulations, Section 51010.

1) For the policy to meet the requirements of section 53002, pursuant to Title 5, California Code of Regulations, Section 51010(a).

2) To develop, adopt and implement a district equal employment opportunity plan which meets the requirements of section 53003, pursuant to Title 5, California Code of Regulations, Section 51010(b).

3) To ensure that the district's employment patterns are annually surveyed in the manner required by section 53004, pursuant to Title 5, California Code of Regulations, Section 51010(c).

4) To ensure that a program of recruitment is carried out as required by section 53021, pursuant to Title 5, California Code of Regulations, Section 51010(d).

5) To ensure that screening and selection procedures are developed and used in accordance with section 53024, pursuant to Title 5, California Code of Regulations, Section 51010(e).

6) To ensure that, where necessary, additional steps are taken consistent with the requirements of section 53006, pursuant to Title 5, California Code of Regulations, Section 51010(f).

7) To ensure that the pattern of hiring and retention, when viewed over time, is consistent with the objectives established in the district's equal

employment opportunity plan, pursuant to Title 5, California Code of Regulations, Section 51010(g).

8) To substantially comply with the other provisions of subchapter 1 (commencing with section 53000) of chapter 4 of Title 5 of the California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 51010(h).

D) To incorporate the definitions for the following terms within the district's policies and procedures, as outlined in and pursuant to Title 5, California Code of Regulations, Section 53001: "adverse impact"; "business necessity"; "equal employment opportunity"; "equal employment opportunity plan"; "equal employment opportunity programs", "ethnic minorities"; "ethnic group identification"; "goals for persons with disabilities"; "in-house of promotional only hiring"; "monitored group"; "person with a disability"; "projected representation"; "reasonable accommodation"; "screening or selection procedure"; "significantly underrepresented group"; "target date" and "timetable".

E) To adopt and implement a policy statement setting forth the district's commitment to an equal employment opportunity program, pursuant to Title 5, California Code of Regulations, Section 53002.

F) To develop, adopt and implement a district-wide written equal employment opportunity plan to implement its equal employment opportunity program, pursuant to Title 5, California Code of Regulations, Section 53003.

1) To submit such plans and any revisions to the Chancellor's Office for review and approval, pursuant to Title 5, California Code of Regulations, Section 53003(a).

2) To review, and if necessary, revise such plans at least every three years, pursuant to Title 5, California Code of Regulations, Section 53003(b).

3) To notify the Chancellor at least 30 days prior to adopting any other amendments to the plan, pursuant to Title 5, California Code of Regulations, Section 53003(b).

4) For the plan to include all of the following, pursuant to Title 5, California Code of Regulations, Section 53003(c):

   a) The designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this subchapter pursuant to section 53020, pursuant to Title 5, California Code of Regulations, Section 53003(c)(1);

   b) The procedure for filing complaints pursuant to section 53026 and the person with whom such complaints are to be filed, pursuant to Title 5, California Code of Regulations, Section 53003(c)(2);

   c) A process for notifying all district employees of the provisions of the plan and the policy statement required under section 53002, pursuant to Title 5, California Code of Regulations, Section 53003(c)(3);

   d) A process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this subchapter and of state and federal nondiscrimination laws, pursuant to Title 5, California Code of Regulations, Section 53003(c)(4);

e) A process for providing annual written notice to appropriate community-based and professional organizations concerning the district's plan and the need for assistance from the community and such organizations in identifying qualified applicants, pursuant to Title 5, California Code of Regulations, Section 53003(c)(5);

f) An analysis of the number of persons from monitored groups who are employed in the district's work force and those who have applied for employment in each of the job categories listed in section 53004(a), pursuant to Title 5, California Code of Regulations, Section 53003(c)(6);

g) An analysis of the degree to which monitored groups are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each such job category and whether or not the underrepresentation is significant, pursuant to Title 5, California Code of Regulations, Section 53003(c)(7);

h) Methods for addressing any identified underrepresentation, pursuant to Title 5, California Code of Regulations, Section 53003(c)(8).

i) Additional steps consistent with section 53006 to remedy any significant underrepresentation identified in the plan, pursuant to Title 5, California Code of Regulations, Section 53003(c)(9);

j) Any other measures necessary to further equal employment opportunity throughout the district, pursuant to Title 5, California

Code of Regulations, Section 53003(c)(10); and

k) Any goals for hiring persons with disabilities that are required by section 53025, pursuant to Title 5, California Code of Regulations, Section 53003(d).

5) To make a continuous good faith effort to comply with the requirements of the plan required under this section, pursuant to Title 5, California Code of Regulations, Section 53003(e).

G) To conduct a survey of district employees on an annual basis and to monitor applicants for employment on an ongoing basis in order to evaluate the implementation of its equal employment opportunity plan and to provide data needed for the analyses required by sections 53003, 53006, 53023, and 53024, pursuant to Title 5, California Code of Regulations, Section 53004.

1) To annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey of employees at each college in the district, pursuant to Title 5, California Code of Regulations, Section 53004(a).

2) To ensure that each employee is reported so that he or she may be identified as belonging to one of the following seven job categories, pursuant to Title 5, California Code of Regulations, Section 53004(a):

a) executive/administrative/managerial;

b) faculty and other instructional staff;

c) professional nonfaculty;

d) secretarial/clerical;

e) technical and paraprofessional;

f) skilled crafts; and

g) service and maintenance.

3) To ensure that, for purposes of the survey and report required pursuant to subdivision (a) of this section, each applicant or employee is afforded the opportunity to identify his or her gender, ethnic group identification and, if applicable, his or her disability, pursuant to Title 5, California Code of Regulations, Section 53004(b).

H) To establish an Equal Employment Opportunity Advisory Committee, that includes a diverse membership whenever possible, to assist the district in developing and implementing the plan required under section 53003, pursuant to Title 5, California Code of Regulations, Section 53005.

I) To establish and implement policies and procedures to ensure that, if a determination is made that a particular monitored group is significantly underrepresented with respect to one or more job categories, the district shall take additional steps to ensure equal employment opportunity, pursuant to Title 5, California Code of Regulations, Section 53006.

1) For the district, in taking the required initial steps, to implement all of the following actions:

a) To review district recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group, pursuant to Title 5, California Code of Regulations, Section 53006(a)(1);

b) To consider various other means of reducing the

underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective, pursuant to Title 5, California Code of Regulations, Section 53006(a)(2);

c) To determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in (1) and (2) have been in place for a reasonable period of time, pursuant to Title 5, California Code of Regulations, Section 53006(a)(3);

d) If significant underrepresentation persists, to monitor the staffing rate for the significantly underrepresented group in the specified job category or categories on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question, pursuant to Title 5, California Code of Regulations, Section 53006(a)(4).

2) For the district to implement all of the following actions if a reasonable period of time passes and significant underrepresentation persists for a particular group in the job category in question, pursuant to Title 5, California Code of Regulations, Section 53006(b):

a) To review each locally established "required," "desired" or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job-related and consistent with business necessity through a process meeting the requirements of federal law or is among those qualifications which

the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system, pursuant to Title 5, California Code of Regulations, Section 53006(b)(1);

b) To discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in paragraph (1) of the subdivision, pursuant to Title 5, California Code of Regulations, Section 53006(b)(2);

c) To continue using qualification standards meeting the requirements of paragraph (1) only where no alternative qualification standard is reasonably available which would accomplish all of the following, pursuant to Title 5, California Code of Regulations, Section 53006(b)(3):

(i) select for the same characteristics;

(ii) meet the requirements of paragraph (1); and

(iii) be expected to have a less exclusionary effect.

J) To establish and implement policies and procedures to ensure that the district governing board is ultimately responsible for proper implementation of the subchapter pertaining to equal employment opportunity at all levels of district and college operation and for making measurable progress toward equal employment opportunity by the methods described in the district's equal employment opportunity plan, pursuant to Title 5, California Code of Regulations, Section 53020.

1) For the governing board to ensure that an equal employment opportunity

officer is designated to oversee the day-to-day implementation of the requirements set forth in the subchapter, pursuant to Title 5, California Code of Regulations, Section 53020(a).

2) To describe the administrative structure created by any delegation of authority to the equal employment opportunity officer or others in the district's equal employment opportunity plan submitted pursuant to section 53003, pursuant to Title 5, California Code of Regulations, Section 53020(b).

a) To design such structure in such a manner so as to ensure prompt and effective implementation of the requirements of this subchapter, pursuant to Title 5, California Code of Regulations, Section 53020(b).

b) For the plan to also designate a single officer, who may be the equal employment opportunity officer, who shall be given authority and responsibility for all of the following, pursuant to Title 5, California Code of Regulations, Section 53020(b):

(i) receiving complaints filed pursuant to section 53026;

(ii) for ensuring that such complaints are promptly and impartially investigated; and

(iii) ensuring that selection procedures and the applicant pool are properly monitored as required by sections 53023 and 53024.

K) To establish and implement policies and procedures to actively recruit from both within and outside the district work force to attract qualified applicants for all new

openings, pursuant to Title 5, California Code of Regulations, Section 53021.

1) For such recruitment to include outreach designed to ensure that all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district, pursuant to Title 5, California Code of Regulations, Section 53021(a).

2) To apply the requirement of open recruitment to all new full-time and part-time openings in all job categories and classifications, pursuant to Title 5, California Code of Regulations, Section 53021(a).

3) To ensure that recruitment for full-time faculty and educational administrator positions are at least statewide and, at a minimum, include seeking qualified applicants listed in the California Community Colleges Equal Employment Opportunity Registry, pursuant to Title 5, California Code of Regulations, Section 53021(a).

4) To ensure that recruitment for part-time faculty positions is conducted by full and open recruitment, pursuant to Title 5, California Code of Regulations, Section 53021(a).

5) To ensure that "in-house or promotional only" recruitment is not used to fill any new opening except when the position is being filled on an interim basis for the minimum time necessary to allow for full and open recruitment; provided however, that no interim appointment or series of interim appointments exceed one year in duration, pursuant to Title 5, California Code of Regulations, Section 53021(b).

6) To establish and implement policies and procedures to ensure that, when the district believes justification exists for use of the exception listed in

subdivision (b), that the district notifies the Equal Employment Opportunity Advisory Committee and the Chancellor at least ten (10) working days prior to offering the position to a candidate, pursuant to Title 5, California Code of Regulations, Section 53021(c).

7) For the district to comply with its established hiring procedures and to afford all qualified district employees the opportunity to apply for open positions even where in-house or promotional only recruitment is permitted pursuant to subdivision (b), pursuant to Title 5, California Code of Regulations, Section 53021(d).

L) To ensure that job announcements clearly state job specifications and set forth the knowledge, skills, and abilities necessary to job performance, pursuant to Title 5, California Code of Regulations, Section 53022.

1) To ensure that, for faculty and administrative positions, job requirements include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students, pursuant to Title 5, California Code of Regulations, Section 53022.

2) To ensure that job specifications, including any "required," "desired" or "preferred" qualifications beyond the state minimum qualifications which the district wishes to utilize, are reviewed before the position is announced, to ensure conformity with the requirements of this subchapter and state and federal nondiscrimination laws, pursuant to Title 5, California Code of Regulations, Section 53022.

M) To implement policies and procedures to analyze the applicant pool for open

positions in the community college districts, pursuant to Title 5, California Code of Regulations, Section 53023.

1) To ensure that all employment applications afford each applicant an opportunity to voluntarily identify his or her gender, ethnic group identification and, if applicable, his or her disability, pursuant to Title 5, California Code of Regulations, Section 53023(a).

   a) To take measures to ensure that this information remains confidential, pursuant to Title 5, California Code of Regulations, Section 53023(a).

   b) To only use this information for research, validation, monitoring, evaluating the effectiveness of the district's equal employment opportunity program, or any other purpose specifically authorized in the subchapter, or by any applicable statute or regulation, pursuant to Title 5, California Code of Regulations, Section 53023(a).

2) To analyze the composition of the initial applicant pool after the application deadline has passed, to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures, pursuant to Title 5, California Code of Regulations, Section 53023(b).

   a) To extend the application deadline, if necessary, and to conduct additional recruitment that will eliminate discriminatory recruitment procedures and ensure that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants, pursuant to Title 5, California Code of Regulations,

Section 53023(b).

b) To screen applications to determine which candidates satisfy job specifications set forth in the job announcement, when recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile, pursuant to Title 5, California Code of Regulations, Section 53023(b).

3) To analyze the composition of the qualified applicant pool, before the selection process continues, to ensure that no monitored group is adversely impacted pursuant to section 53001(a), pursuant to Title 5, California Code of Regulations, Section 53023(c).

a) If adverse impact is found to exist, the district must take effective steps to address the adverse impact before the selection process continues, pursuant to Title 5, California Code of Regulations, Section 53023(c).

b) For such steps to include the following:

(i) Extending the deadline and undertaking inclusive outreach efforts to ensure that members of the adversely impacted group have equal opportunity to seek employment with the district, pursuant to Title 5, California Code of Regulations, Section 53023(c)(1); and

(ii) Including all applicants who were screened out on the basis of any locally established qualifications beyond state minimum qualifications which have not been specifically

demonstrated to be job-related and consistent with business necessity through a process meeting the requirements of federal law or which are not among those which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system, pursuant to Title 5, California Code of Regulations, Section 53023(c)(2).

4) If adverse impact persists after taking steps required under subdivision (c), the district must ensure that the selection process proceeds only if one of the following is present, pursuant to Title 5, California Code of Regulations, Section 53023(d):

a) The job announcement does not require qualifications beyond the statewide minimum qualifications, pursuant to Title 5, California Code of Regulations, Section 53023(d)(1); or

b) Locally established qualifications beyond state minimum qualifications, if any, are demonstrated to be job-related and consistent with business necessity through a process meeting the requirements of federal law and suitable alternative selection procedures to reduce the adverse impact were unavailable, pursuant to Title 5, California Code of Regulations, Section 53023(d)(2); or

c) The particular qualification beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job-related

and consistent with business necessity throughout the community college system, pursuant to Title 5, California Code of Regulations, Section 53023(d)(3).

5) To ensure that the district does not advertise or utilize in future hiring processes for the same position or a substantially similar position any locally established qualifications beyond state minimum qualifications that the district was unable to verify under subdivision (b)(2) unless such qualifications are so verified in advance of commencing any such future hiring process, pursuant to Title 5, California Code of Regulations, Section 53023(e).

N) To establish and implement policies and procedures pertaining to screening or selection procedures in the hiring process, pursuant to Title 5, California Code of Regulations, Section 53024.

1) To ensure that all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, are all of the following, pursuant to Title 5, California Code of Regulations, Section 53024(a):

a) Provided to the Chancellor upon request, pursuant to Title 5, California Code of Regulations, Section 53024(a)(1);

b) Designed to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students, pursuant to Title 5,

California Code of Regulations, Section 53024(a)(2);

c) Based solely on job-related criteria, pursuant to Title 5, California Code of Regulations, Section 53024(a)(3); and

d) Designed to avoid an adverse impact, as defined in section 53001(a), and monitored by means consistent with this section to detect and address any adverse impact which does occur for any monitored group, pursuant to Title 5, California Code of Regulations, Section 53024(a)(4).

2) If monitoring pursuant to subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted any such group, for the chief executive officer or his/her designee to suspend the selection process and take timely and effective steps to remedy the problem before the selection process resumes, pursuant to Title 5, California Code of Regulations, Section 53024(b).

a) To ensure that confidential information is not disclosed if the equal employment opportunity officer, or other official charged with responsibility for monitoring selection procedures, assists the screening committee by discussing the overall composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact, pursuant to Title 5, California Code of Regulations, Section 53024(b).

b) To immediately discontinue the use of any qualifications where adverse impact results from locally established qualifications beyond state minimum qualifications that have not been verified as

described in section 53023(c)(2) or replaced with suitable alternatives having a lesser adverse impact, and to continue any applicant eliminated on the basis of that qualification in the hiring process, pursuant to Title 5, California Code of Regulations, Section 53024(b).

3) To establish and implement policies and procedures to ensure that the district does not do any of the following in the employment process, pursuant to Title 5, California Code of Regulations, Section 53024(c):

   a) Designate or set aside particular positions to be filled by members of any group defined in terms of ethnic group identification, race, color, national origin, religion, age, gender, disability, ancestry or sexual orientation, pursuant to Title 5, California Code of Regulations, Section 53024(c);

   b) Engage in any other practice which would result in discriminatory or preferential treatment prohibited by state or federal law, pursuant to Title 5, California Code of Regulations, Section 53024(c);

   c) Apply the district's equal employment opportunity plan in a rigid manner which has the purpose or effect of so discriminating, pursuant to Title 5, California Code of Regulations, Section 53024(c).

4) To ensure that seniority or length of service is taken into consideration, pursuant to Title 5, California Code of Regulations, Section 53024(d):

5) To ensure that any selection testing for employees follows the procedures outlined in the Equal Employment Opportunity Commission's "Uniform

Guidelines on Employee Selection Procedures", pursuant to Title 5, California Code of Regulations, Section 53024(e).

6) To ensure that, whenever possible, screening committees include a diverse membership to bring a variety of perspectives to the assessment of applicant qualifications, pursuant to Title 5, California Code of Regulations, Section 53024(f).

7) To establish and implement policies and procedures for the governing board or its designee to have the following authority, pursuant to Title 5, California Code of Regulations, Section 53024(g):

a) To make all final hiring decisions based upon careful review of the candidate or candidates recommended by a screening committee, pursuant to Title 5, California Code of Regulations, Section 53024(g);

b) To reject all candidates and to order further review by the screening committee, pursuant to Title 5, California Code of Regulations, Section 53024(g); and

c) To reopen the position where necessary to further achievement of the objectives of the equal employment opportunity plan or to ensure equal employment opportunity, pursuant to Title 5, California Code of Regulations, Section 53024(g).

O) To establish and implement policies and procedures to afford persons with disabilities equal employment opportunity in community college districts, pursuant to Title 5, California Code of Regulations, Section 53025.

1) For the district to ensure that applicants and employees with disabilities

receive reasonable accommodations consistent with the requirements of Government Code sections 11135 et seq. and 12940(m), section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, pursuant to Title 5, California Code of Regulations, Section 53025(a).

2) To accomplish all of the following, regarding district goals established for persons with disabilities prior to the effective date of this subdivision where significant underrepresentation still exists, pursuant to Title 5, California Code of Regulations, Section 53025(b):

   a) update that goal;

   b) set a new target date for achieving projected representation in the category or categories in question; and

   c) concurrently comply with subdivisions (a)(1), (a)(2) and (b) of section 53006 with respect to persons with disabilities.

3) Where persons with disabilities are found to be significantly underrepresented, measures required under subdivisions (a)(1) and (a)(2) of section 53006 must be implemented concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where the underrepresentation was found to exist, pursuant to Title 5, California Code of Regulations, Section 53025(c).

P) To establish and implement a process permitting any person to file a complaint alleging that the requirements of the subchapter have been violated, pursuant to Title 5, California Code of Regulations, Section 53026.

1) To immediately forward a copy of the complaint to the Chancellor,

pursuant to Title 5, California Code of Regulations, Section 53026.

2) To prepare and submit to the Chancellor a written investigative report within ninety (90) days, if the Chancellor so requires, pursuant to Title 5, California Code of Regulations, Section 53026.

3) To process any complaints which also allege discrimination prohibited by Government Code sections 11135 et seq. according to the procedures set forth in subchapter 5 (commencing with section 59300) of chapter 10 of this division, pursuant to Title 5, California Code of Regulations, Section 53026.

Q) To compile and provide the data required under Section 53004 no later than March 31st of the preceding fiscal year or to request and receive an extension of the deadline from the Chancellor, as a condition for receipt of any funds under the Equal Employment Opportunity fund base, pursuant to Title 5, California Code of Regulations, Section 53033.

R) To prepare and submit a report on the use of Equal Employment Opportunity funds to the Chancellor's Office, pursuant to Title 5, California Code of Regulations, Section 53034.

1) For such report to be submitted no later than September 30th of the fiscal year following the use of the funds, pursuant to Title 5, California Code of Regulations, Section 53034.

2) Until such time as a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required under section 53004, districts must report that rate by a separate survey conducted, as directed by the Chancellor's Office, pursuant to Title 5, California Code of

Regulations, Section 53034.

COMPONENT 6: STUDENT FEES

A) To develop and implement policies and procedures to ensure that the collection of student fees comply with the law (generally, Education Code sections 76300-76395), pursuant to Title 5, California Code of Regulation 51012.

COMPONENT 7: APPROVAL OF NEW COLLEGES AND EDUCATIONAL CENTERS

A) To establish and implement policies and procedures to ensure that, when planning the formation of a new college or educational center, the district must obtain approval for such college or educational center from the Board of Governors, before classes begin at the new college or educational center, pursuant to Title 5, California Code of Regulations, Section 51014(a).

B) To establish and implement policies and procedures to comply with the provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 of Title 5 of the California Code of Regulations when requesting the approval of new colleges and educational centers, pursuant to Title 5, California Code of Regulations, Section 51014(b).

C) To establish and implement policies and procedures to ensure that, when planning the formation of a new college or educational center, as defined in section 55827 of Title 5, the district must employ and comply with the standards contained in sections 55829 (Assessment of Needs and Preferences), 55830 (Identification of Objectives) and 55831 (Analysis of Alternative Delivery Systems), pursuant to Title 5, California Code of Regulations, Section 55825.

D) To ensure that college documents, policies and procedures incorporate the definitions contained in Section 55827 for the terms "College" and "Educational

Center", pursuant to Title 5, California Code of Regulations, Section 55827.

E) To prepare and provide to the Chancellor's Office all information necessary to enable the Chancellor to maintain an inventory of all off-campus programs and facilities in the community colleges, pursuant to Title 5, California Code of Regulations, Section 55828(a).

F) To prepare and submit to the Chancellor's Office, according to the Chancellor's forms and requirements, proposals for new colleges and new educational centers that contain at least all of the following elements, pursuant to Title 5, California Code of Regulations, Section 55828(c):

(1) Assessment of Needs and Preferences (section 55829);

(2) Identification of Objectives (section 55830); and

(3) Analysis of Alternative Delivery Systems (section 55831).

G) To establish and implement policies and procedures to ensure that, when submitting a proposal for a new college or educational center, the district must compile and include all of the required data in such proposal as part of their "Assessment of Needs and Preferences" requirement, pursuant to Title 5, California Code of Regulations, Sections 55828(c)(1) and 55829.

H) Proposed college or educational center programs and services must be directed to the identified educational needs and preferences of the community to be served, pursuant to Title 5, California Code of Regulations, Section 55830(a).

I) Objectives of the proposed programs and services must be sufficiently specific to enable the district board to evaluate the success with which needs and preferences are met, pursuant to Tile 5, California Code of Regulations, Section 55830(b).

J) The proposed operation must be the most effective and equitable of feasible delivery system alternatives for providing intended programs and services, pursuant to Title 5, California Code of Regulations, Section 55831(a):

1) The criteria for selecting the proposed delivery system must include all of the following, pursuant to Title 5, California Code of Regulations, Section 55831(b):

a) Accessibility of programs and services to individuals in the service area, pursuant to Title 5, California Code of Regulations, Section 55831(b)(1);

b) Content and quality of programs and services, pursuant to Title 5, California Code of Regulations, Section 55831(b)(2); and

c) Cost of programs and services, pursuant to Title 5, California Code of Regulations, Section 55831(b)(3).

2) Depending on the delivery system proposed, alternatives for providing the proposed programs and services must include at least all of the following, pursuant to Title 5, California Code of Regulations, Section 55831(c):

a) Increased utilization of existing district resources, pursuant to Title 5, California Code of Regulations, Section 55831(c)(1);

b) Forming a new college, educational center, and/or outreach locations, pursuant to Title 5, California Code of Regulations, Section 55831(c)(2); and

c) Use of media such as television, computer-assisted instruction or programmed learning packages, pursuant to Title 5, California Code of Regulations, Section 55831(c)(3).

3) Alternative delivery systems considered must be all of the following, pursuant to Title 5, California Code of Regulations, Section 55831(c):
   a) adequately described;
   b) generally mutually exclusive; and
   c) limited to a manageable number to facilitate analysis and review.

4) Proposed sources of funding for needed resources must be identified for both short and long-term operations, pursuant to Title 5, California Code of Regulations, Section 55831(d).

COMPONENT 8: ACCREDITATION

A) To establish and implement policies and procedures to ensure district compliance with the accreditation standards and requirements promulgated by the ACCJAC, pursuant to Title 5, California Code of Regulations, Section 51016.

B) To provide documentation to the ACCJAC ensuring that the district has completed all of the following basic requirements to qualify for the status of accreditation, pursuant to the ACCJAC Handbook, page 9:

1) The community college must have completed a period of intensive and comprehensive self-study, followed by an on-site evaluation of institutional performance, demonstrating that it meets Commission standards, pursuant to the ACCJAC Handbook, page 9.

2) The community college must have demonstrated that its educational programs operate at a satisfactory level of quality and are consistent with the college's stated purposes and with Commission standards, pursuant to the ACCJAC Handbook, page 9.

3) The community college must have demonstrated the availability of

sufficient resources to support existing and planned activities at a satisfactory level of quality and must have offered reasonable grounds for the belief that there will continue to be adequate resources in the future, pursuant to the ACCJAC Handbook, page 9.

4) The community college must have committed itself to all of the following, pursuant to the ACCJAC Handbook, page 10:

a) institutional improvement,

b) periodic self-evaluation, and

c) compliance with all Commission standards, policies, procedures and decisions.

C) To apply to become a "Candidate for Accreditation" prior to making a formal application for accreditation, by compiling, preparing and submitting to the ACCJAC appropriate documentation to show district fulfillment of the following twenty ACCJAC Eligibility Requirements for Accreditation, pursuant to the ACCJAC Handbook, Part I, pages 12-15:

1) Authority

The community college must be authorized by a governmental organization or agency as required by the jurisdiction in which it operates, to do both of the following, pursuant to the ACCJAC Handbook, page 12:

a) To operate as an educational institution.

b) To award degrees.

2) Mission

The community college's educational mission must meet all of the following criteria, pursuant to the ACCJAC Handbook, page 13:

a) The mission must be clearly defined, adopted, and published by its governing board;

b) The mission must be consistent with its legal authorization;

c) The mission must be appropriate to a degree granting institution of higher education;

d) The mission must be appropriate to the constituency it seeks to serve.

3) Governing Board

The community college must have a functioning governing board that meets the following criteria, pursuant to the ACCJAC Handbook, pages 13:

a) The board must be responsible for the quality and integrity of the institution;

b) The board must be responsible for ensuring that the institution's mission is being carried out;

c) The board's membership must be sufficient in size and composition to fulfill all board responsibilities;

d) The board must be an independent organization;

e) The majority of the board members must not have any (1) employment, (2) family or (3) financial interest in the institution.

4) Chief Executive Officer

The community college must have a chief executive officer who is appointed by the governing board and whose primary responsibility is to

the institution, pursuant to the ACCJAC Handbook, page 13.

5) Administrative Capacity

The community college must have sufficient staff that are appropriately prepared and experienced to provide the administrative services necessary to support the college's mission and purpose, pursuant to the ACCJAC Handbook, page 13.

6) Operational Status

The community college must be operational and enroll students that are actively pursuing the college's degree programs, pursuant to the ACCJAC Handbook, page 13.

7) Degrees

A substantial portion of the community college's educational offerings must lead to degrees, and a significant proportion of the college's students must be enrolled in these degree leading courses, pursuant to the ACCJAC Handbook, page 13.

8) Educational Programs

The community college's principal degree programs must meet all of the following criteria, pursuant to the ACCJAC Handbook, page 13:

a) The programs must be congruent with the college's mission;

b) The programs must be based on recognized higher education field(s) of study;

c) The programs must be of sufficient content and length;

d) The programs must be conducted at levels of quality and rigor that are appropriate to the degrees offered;

e) At least one degree program must be of two academic years in length.

9) Academic Credit

The community college must award academic credits based on generally accepted practices in degree-granting institutions of higher education and provide appropriate information regarding the award of academic credit, pursuant to the ACCJAC Handbook, page 14.

10) Educational Objectives

The community college must define and publish for its students the educational objectives of each program offered, pursuant to the ACCJAC Handbook, page 14.

11) General Education

The community college must define and incorporate into all of its degree programs a substantial component of general education that meets the following criteria, pursuant to the ACCJAC Handbook, page 14:

a) The component must be designed to ensure breadth of knowledge;

b) The component must promote intellectual inquiry;

c) The component must include demonstrated competence in writing and computational skills and an introduction to some of the major areas of knowledge;

d) Degree credit for general education programs must be consistent with levels of quality and rigor that are appropriate to higher education.

12) Faculty

The community college must have a substantial core of qualified faculty with full-time responsibility to the institution, pursuant to the ACCJAC Handbook, page 14.

a) The faculty must be sufficient in size and experience to support all of the institution's educational programs;

b) The district must adopt a clear statement of faculty responsibilities.

13) Student Services

The community college must provide for all of its students appropriate student services and development programs that are consistent with student characteristics and the college's institutional mission, pursuant to the ACCJAC Handbook, page 14.

14) Admissions

The community college must adopt, implement and adhere to admission policies that meet the following criteria, pursuant to the ACCJAC Handbook, page 14:

a) The policies must be consistent with the college's mission;

b) The policies must specify the student qualifications that are appropriate for its programs.

15) Information and Learning Resources

The community college must own or otherwise provide specific long-term access to sufficient information and learning resources and services to support its mission and all of its educational programs, pursuant to the ACCJAC Handbook, page 14.

16) Financial Resources

The community college must document (1) a funding base, (2) financial resources, and (3) plans for financial development that are adequate to support the college's mission and educational programs and to assure financial stability, pursuant to the ACCJAC Handbook, page 14-15.

17) Financial Accountability

The community college must regularly undergo and make available an external financial audit by a certified public accountant or an audit by an appropriate public agency, pursuant to the ACCJAC Handbook, page 15.

a) The community college must submit to the Committee a copy of the current budget.

b) The community college must submit to the Committee a copy of the current audited financial statement, as prepared by an outside CPA who has no other relationship to the institution.

c) The audit must be certified.

d) Any exceptions to the audit requirement must be explained.

18) Institutional Planning and Evaluation

The community college must provide evidence of basic planning for the development of the institution, pursuant to the ACCJAC Handbook, page 15.

a) The plan must identify and integrate plans for the following:

(i) academic personnel;

(ii) learning resources;

(iii) facilities; and

(iv) financial development.

b) The plan must identify and integrate procedures for the following:

(i) program review; and

(ii) institutional improvement.

c) The community college must engage in a systematic evaluation of how well and in what ways it is accomplishing its purposes, that includes at least the following information:

(i) an assessment of student learning; and

(ii) documentation of institutional effectiveness.

19) Public Information

The community college must publish in its catalog or other appropriate places accurate and current information that describes the following, pursuant to the ACCJAC Handbook, page 15:

a) The college's purposes and objectives;

b) Admission requirements and procedures;

c) Rules and regulations directly affecting students;

d) Programs and courses;

e) Degrees offered and the degree requirements;

f) Costs and refund policies;

g) Grievance procedures;

h) Academic credentials of faculty and administrators;

i) Any other items relative to attending the institution and withdrawing from

it.

20) Relations with the Accrediting Commission

The governing board must agree to do all of the following, regarding its relations with the Accrediting Commission, pursuant to the ACCJAC Handbook, page 15:

a) Provide assurance that the institution adheres to the eligibility requirements, accreditation standards and policies of the Commission;

b) Describe itself in identical terms to all its accrediting agencies;

c) Communicate any changes in its accredited status; and

d) Agree to disclose information required by the Commission to carry out its accrediting responsibilities.

D) To adopt and implement policies and procedures to comply with the ACCJAC's Ten "Standards For Accreditation", pursuant to the ACCJAC Handbook, Part II, pages 19-32.

Standard One: Institutional Mission

1) To adopt, implement and regularly review and revise a mission statement for the institution which identifies all of the following, pursuant to Standard 1, subdivisions (1-4).

a) The district's educational purpose, pursuant to Standard 1, subdivision 1.

b) The potential students of the district, pursuant to Standard 1, subdivision 2.

c) The district's place in the higher education community, pursuant to

Standard 1, subdivision 3.

Standard Two: Institutional Integrity

2) To include in the district's catalogs clear and accurate information regarding all of the following, pursuant to Standard 2, subdivision (1):

   a) The district's educational purpose;

   b) Degrees, curricular offerings, educational resources, and course offerings;

   c) Student fees and other financial obligations, student financial aid and fee refund policies;

   d) Requirements for admission and for achievement of degrees, including the academic calendar and information regarding program length;

   e) The names of administrators, faculty and governing board members.

3) To adopt and implement policies setting forth the following:

   a) The district's commitment to the free pursuit and dissemination of knowledge, pursuant to Standard 2, subdivision (2).

   b) The district's expectations concerning the principles of academic honesty and the sanctions for violations, pursuant to Standard 2, subdivision (5).

   c) The district's understanding of and concern for issues of equity and diversity, pursuant to Standard 2, subdivision (6).

4) To give clear prior notice of any district policies that reflect any specific

beliefs or world views or that require codes of conduct of faculty, administrative and support staff or students, pursuant to Standard 2, subdivision (4).

5) To establish and implement policies and procedures to ensure compliance with the Commission's standards, policies and guidelines, and public disclosure, and self-study requirements, pursuant to Standard 2, subdivision (8).

6) To regularly evaluate and revise institutional policies, practices and publications to ensure integrity in all representations about the district's mission, programs and services, pursuant to Standard 2, subdivision (9).

Standard Three: Institutional Effectiveness

7) To establish and implement a broad-based and integrated system of research, evaluation and planning to assess institutional effectiveness, pursuant to Standard 3.

   a) The district must use the results of the evaluation to improve the institution, pursuant to Standard 3.

   b) The district must develop and implement the means for evaluating the success of its programs, pursuant to Standard 3, subdivision (A.3).

   c) The district must provide evidence that its program evaluations improve the district's programs and services, pursuant to Standard 3, subdivision (A.4).

   d) The district must define and publish its planning processes and integrate it with the evaluation processes to identify priorities for

improvement, pursuant to Standard 3, subdivision (B.2).

e) The district must regularly engage in (1) educational, (2) financial, (3) physical and (4) human resources planning and implement any changes to improve the programs and services, pursuant to Standard 3, subdivision (B.3).

f) The district must specify its intended institutional outcomes and clearly document the achievement of these goals, pursuant to Standard 3, subdivision (C.1).

g) The district must clearly communicate matters of quality assurance to the public, pursuant to Standard 3, subdivision (C.2).

Standard Four: Educational Programs

8) If the community college district eliminates any programs or if program requirements are significantly changed, the community college must establish and implement policies and procedures so that enrolled students will be able to complete their education in a timely manner and with a minimum amount of disruption, pursuant to Standard 4, subdivision (A.3).

9) To establish and implement procedures to ensure that the district has sufficient (1) human, (2) financial and (3) physical resources to support its educational programs, pursuant to Standard 4, subdivision (A.5).

a) The community college district must establish and implement academic advising programs for its students, pursuant to Standard 4, subdivision (A.4).

b) The community college district must train faculty and other personnel to assist in advisory roles, pursuant to Standard 4,

subdivision (A.5).

10) To establish and implement procedures in order to demonstrate that the district's degrees and programs support the mission of the institution, pursuant to Standard 4, subdivision (B.1).

a) The community college district must identify its degrees and certificates in ways which are consistent with (1) the program content, (2) degree objectives and (3) student mastery of knowledge and skills, pursuant to Standard 4, subdivision (B.2).

b) The community college district must (1) identify, and (2) make public expected learning outcomes for its degrees and certificate programs, pursuant to Standard 4, subdivision (B.3).

c) The community college district must document the technical and professional competence of students completing its occupational and vocational programs, pursuant to Standard 4, subdivision (B.6).

11) To establish, implement, and publish in its general catalog, a general education component for all of its degrees which are based on the humanities and fine arts, the natural sciences and the social sciences, pursuant to Standard 4, subdivisions (C.1 - C.4).

12) To clearly define the district's process for establishing and evaluating all of its educational programs and to conduct these evaluations on a regular basis, pursuant to Standard 4, subdivision (D.1).

a) The community college district must clearly state (1) how it evaluates student learning, (2) how it awards credits, and (3) its

transfer of credit policies, pursuant to Standard 4, subdivisions (D.3 and D.4).

b) The community college district must provide evidence that all of its courses and programs, both credit and non-credit are (1) designed, (2) approved and (3) administered under established institutional procedures, pursuant to Standard 4, subdivision (D.6)

Standard Five: Student Support and Development

13) To establish policies for and to implement all of the following, regarding student support and development, pursuant to Standard 5:

a) To publish admissions policies which are consistent with the district's mission, pursuant to Standard 5, subdivision (1).

b) To provide to all prospective and current students information regarding all of the following, pursuant to Standard 5, subdivision (2):

(i) graduation requirements;

(ii) social and academic policies;

(iii) refund policies;

(iv) student conduct standards; and

(v) complaint and grievance procedures.

c) To identify student needs and provide students with academic support, pursuant to Standard 5, subdivision (3).

Standard Six: Information and Learning Resources

14) To make information and learning resources readily accessible to students, faculty and administrators, pursuant to Standard 6, subdivision

(3).

a) The community college district must have professionally qualified staff to provide appropriate support and training to those who use the resources, pursuant to Standard 6, subdivision (4).

b) The district must provide consistent financial support to effectively maintain and improve its learning resources, pursuant to Standard 6, subdivision (5).

c) If the district contracts with another institution to support its educational programs, it must document that a formal agreement exists, pursuant to Standard 6, subdivision (6).

Standard Seven: Faculty and Staff

15) To clearly state and make public the (1) criteria, (2) qualifications and (3) procedures for selecting all faculty, pursuant to Standard 7, subdivision (A.2).

a) To list all degrees held by faculty in the college's primary catalog, pursuant to Standard 7, subdivision (A.4).

b) To evaluate each category of staff in systematic and stated intervals, pursuant to Standard 7, subdivision (B.1).

c) To adopt and implement policies ensuring fairness in all employment procedures, pursuant to Standard 7, subdivision (D.1).

d) To establish and implement provisions for the security and confidentiality of personnel records, pursuant to Standard 7, subdivision (D.4).

Standard Eight: Physical Resources

16) To provide adequate physical resources to support the district's purposes and goals, pursuant to Standard 8, subdivision (1).

Standard Nine: Financial Resources

17) To establish and implement a financial plan that supports the district's institutional goals, pursuant to Standard 9, subdivision (A.1).

a) The community college district must clearly define and follow guidelines and processes for financial planning and budget development, pursuant to Standard 9, subdivision (A.4).

b) The community college district must ensure that all contractual agreements that it enters into are governed by institutional policies and contain appropriate provisions to maintain the integrity of the institution, pursuant to Standard 9, subdivision (B.5).

c) The community college district must (1) clearly identify its future obligations and payment plans, (2) adopt policies for appropriate risk management and (3) institute a plan for responding to financial emergencies or unforeseen circumstances, pursuant to Standard 9, subdivisions (C.1, C.2 and C.4).

Standard Ten: Governance and Administration

18) To establish a governing board that will be responsible for the quality and integrity of the community college, pursuant to Standard 10, subdivision (A.1).

a) The governing board establishment process must include a mechanism that provides for continuity of board membership and staggered terms of office, pursuant to Standard 10, subdivision

(A.1).

b) The district's governing board must establish broad institutional policies and delegate responsibility for implementing those policies, pursuant to Standard 10, subdivision (A.3).

c) The governing board must evaluate its policies on a regular basis, pursuant to Standard 10, subdivision (A.3).

d) The governing board must select and evaluate the chief executive officer and other major academic and administrative officers, pursuant to Standard 10, subdivision (A.4).

e) The governing board must develop a program for new member orientation and governing board development, pursuant to Standard 10, subdivision (A.6).

f) The community college's district chief executive officer must provide effective leadership and implement all of the following activities, pursuant to Standard 10, subdivision (B.1, B.2, C.1 and C.2):

(i) define goals;

(ii) develop plans;

(iii) establish priorities for the community college;

(iv) control the community college's budget and expenditures; and

(v) ensure the implementation of statutes, regulations and board policies.

g) The community college district must ensure that its administrative

officers are qualified by training and experience to perform their responsibilities by evaluating such officers systematically and regularly, pursuant to Standard 10, subdivision (B.4).

h) The community college district must have a written policy which identifies appropriate institutional support for faculty participation in governance, pursuant to Standard 10, subdivision (B.8).

i) The community college district must clearly state and publicize the role of staff and students in institutional governance, pursuant to Standard 10, subdivisions (B.9 and B.10).

j) The community college district must adopt a statement that clearly delineates the operational responsibilities and functions of the district and those of the college, pursuant to Standard 10, subdivision (C.3).

k) The community college district must implement an effective process for the establishment and review of district (1) policy, (2) planning, and (3) financial management, pursuant to Standard 10, subdivision (C.6).

E) To establish and implement policies and procedures to ensure that applications for accreditation comply with the procedures the ACCJAC has set forth in and pursuant to the ACCJAC Handbook, pages 87-91.

COMPONENT 9: COUNSELING PROGRAMS

A) To establish and implement regulations and procedures to provide counseling programs for students within the district, pursuant to Title 5, California Code of Regulations, Section 51018.

B) To file a copy of the district's regulations regarding counseling programs with the Chancellor's Office, pursuant to Title 5, California Code of Regulations, Section 51018(a).

C) To publicize the counseling program, pursuant to Title 5, California Code of Regulations, Section 51018(b).

D) To ensure the counseling program is organized and functioning and meets the needs of average students and those with special needs, pursuant to Title 5, California Code of Regulations, Section 51018(b) and (b)(4).

E) To ensure the counseling program includes at least all of the following services, pursuant to Title 5, California Code of Regulations, Section 51018(b):

1) academic counseling;
2) career counseling;
3) personal counseling;
4) skills testing programs;
5) financial assistance programs; and
6) job placement services.

F) To ensure that academic, career and personal counseling services are provided to all of the following students, pursuant to Title 5, California Code of Regulations, Section 51018(c):

1) First-time students enrolled for more than six units,
2) Students enrolled provisionally, and
3) Students on academic or progress probation

COMPONENT 10: INSTRUCTIONAL OBJECTIVES

A) To develop and implement policies and procedures establishing stated

objectives for its instructional programs, pursuant to Title 5, California Code of Regulations, Section 51020.

B) To develop and implement policies and procedures establishing stated objectives for all of its district functions, pursuant to Title 5, California Code of Regulations, Section 51020.

COMPONENT 11: CURRICULUM

A) To establish and implement educational programs and courses that will further the objectives of the community college and meet the approval of the Chancellor, pursuant to Title 5, California Code of Regulations, Section 51021.

B) To incorporate in district documents and policies the definitions contained in Section 55000 and 55200 for all of the following terms, pursuant to Title 5, California Code of Regulations, Sections 55000 and 55200:

1) To incorporate the terms and definitions for "course"; "educational program"; and "class", pursuant to Title 5, California Code of Regulations, Section 55000.

2) To incorporate the terms and definitions for "prerequisite"; "corequisite"; "advisory on recommended preparation"; "satisfactory grade"; "necessary and appropriate"; and "content review", pursuant to Title 5, California Code of Regulations, Section 55200.

C) To adopt and implement policies and procedures to comply with the Handbook issued by the Chancellor's Office pertaining to (1) course approval criteria, (2) implementation plans for administrative regulations, and (3) procedures for securing course and program approvals, and to prepare and provide to the Chancellor all documentation that the Chancellor may require to monitor and

review the district's approved courses, pursuant to Title 5, California Code of Regulations, Section 55000.5.

D) To report the classification of all courses, classes and activities offered to the Chancellor's Office and for such information to include all of the following data, pursuant to Title 5, California Code of Regulations Section 55001 Subdivision (c):

1) The unique static course identifier and the course title for all courses regardless of whether they are for credit or noncredit, pursuant to Title 5, California Code of Regulations Section 55001(c)(1);

2) The classification of each credit and noncredit course in accordance with its primary objective, pursuant to Title 5, California Code of Regulations Section 55001(c)(2);

3) An indication of whether the course is credit or noncredit, pursuant to Title 5, California Code of Regulations Section 55001(c)(3);

4) An indication of whether the course transfers to the California State University or the University of California or both, pursuant to Title 5, California Code of Regulations Section 55001(c)(4);

5) The number of community service classes and activities in each category and its participants, pursuant to Title 5, California Code of Regulations Section 55001(c)(5) and 5001(c)(6).

E) To establish and implement the following standards and criteria for associate degree credit courses and classes, pursuant to Title 5, California Code of Regulations, Section 55002(a):

1) For the district to ensure that all such courses have been (1) designated

as appropriate to the associate degree in accordance with the requirements of Section 55805.5, (2) recommended by the college and/or district curriculum committee and (3) approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission, pursuant to Title 5, California Code of Regulations, Section 55002(a).

2) For the college and/or district administration and the academic senate to establish and supervise a curriculum committee that must evaluate and recommend for approval or disapproval all potential associate degree courses, pursuant to Title 5, California Code of Regulations, Section 55002(a)(1).

3) For the district to ensure that the curriculum committee recommends approval of an associate degree credit course if the course meets the standards included in Title 5, California Code of Regulations, Section 55002(a)(2).

4) The course must be described in a course outline of record that is maintained in the official college files and made available to each instructor, pursuant to Title 5, California Code of Regulations, Section 55002(a)(3).

5) Each section of the course must be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record, pursuant to Title 5, California Code of Regulations, Section 55002(a)(4).

6) Repeated course enrollment must only be allowed if in accordance with

the provisions of Chapter 2 (commencing with Section 51000), Sections 55761-55763 and Section 58161 of Title 5, pursuant to Title 5, California Code of Regulations, Section 55002(a)(5).

F) To establish and implement the following standards and criteria for nondegree credit courses and classes, pursuant to Title 5, California Code of Regulations, Section 55002(b):

1) For the district to ensure that all such courses have been (1) designated by the governing board as not applicable to the associate degree, (2) recommended by the college and/or district curriculum committee, and (3) approved by the district governing board, pursuant to Title 5, California Code of Regulations, Section 55002(b).

2) For the district to ensure that all such courses fall within one of the following categories, pursuant to Title 5, California Code of Regulations, Section 55002(b):

a) Precollegiate basic skills courses, defined as "community services classes" in Section 55502(d), pursuant to Title 5, California Code of Regulations, Section 55002(b)(1)(A);

b) Courses that are designed to enable students to succeed in college-level work that meet the criteria included in Title 5, California Code of Regulations, Section 55002(b)(1)(B).

c) Precollegiate occupational preparation courses designed to provide foundation skills for students preparing for entry into college-level occupational courses or programs, pursuant to Title 5, California Code of Regulations, Section 55002(b)(1)(C);

d) Essential occupational instruction for which meeting the standards for an Associate Degree Credit course is neither necessary nor required, pursuant to Title 5, California Code of Regulations, Section 55002(b)(1)(D).

2) The college and/or district curriculum committee must evaluate and recommend approval of the course on the basis of the following standards and submit the course for approval to the Chancellor's Office in order to be eligible for state apportionment, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2):

a) The course must provide for measurement of student performance in terms of the stated course objectives and culminate in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2)(A).

b) The course must grant units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2)(B).

c) The course must (1) provide instruction in critical thinking; (2) generally treat subject matter with a scope and intensity that prepares students to study independently outside of class time; (3) include reading and writing assignments and homework; and (4)

provide assignments that are sufficiently rigorous so that students completing each such course successfully will have acquired the skills necessary to successfully complete college-level work upon completion of the required sequence of such courses, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2)(C).

d) When the college and/or district curriculum committee deems appropriate, the course may require prerequisites or corequisites for the course that are established, reviewed, and applied in accordance with Article 2.5 (commencing with Section 55200) of Title 5, pursuant to Title 5, California Code of Regulations, Section 55002(b)(2)(D).

3) The course must be described in a course outline of record that is maintained in the official college files and made available to each instructor, pursuant to Title 5, California Code of Regulations, Section 55002(b)(3).

a) The course outline of record must specify the (1) unit value, (2) scope, (3) objectives, and (4) content of the course in terms of a specific body of knowledge, pursuant to Title 5, California Code of Regulations, Section 55002(b)(3).

b) The course outline must specify types or provide examples of all of the following, pursuant to Title 5, California Code of Regulations, Section 55002(b)(3):

(i) required reading and writing assignments,

(ii) other outside-of-class assignments,

(iii) instructional methodology, and

(iv) methods of evaluation for determining whether the stated objectives have been met by students.

c) The course specifications must be such as to typically enable any student who successfully completes all of the assigned work prescribed in the outline of record to successfully meet the course objectives, pursuant to Title 5, California Code of Regulations, Section 55002(b)(3).

4) All sections of the course must be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record, pursuant to Title 5, California Code of Regulations, Section 55002(b)(4).

5) Repeated enrollment must only be allowed if in accordance with provisions of Division 2 (commencing with Section 51000), Sections 55761-55763 and Section 58161 of Title 5, pursuant to Title 5, California Code of Regulations, Section 55002(b)(5).

G) To establish and implement the following standards and criteria for noncredit courses and classes, pursuant to Title 5, California Code of Regulations, Section 55002(c):

1) For the district to ensure that all such courses have been (1) recommended by the college and/or district curriculum committee and (2) approved by the district governing board as a course meeting the needs of enrolled students, pursuant to Title 5, California Code of Regulations, Section 55002(c)

2) The college and/or district curriculum committee must evaluate the course to ensure that the course treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement that the committee deems to be appropriate for the enrolled students, prior to course approval, pursuant to Title 5, California Code of Regulations, Section 55002(c)(1).

3) The course must be described in a course outline of record that meets all of the criteria included in Title 5, California Code of Regulations, Section 55002(c)(2).

4) All sections of the course must be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

H) To establish and implement policies and procedures to ensure that all community services classes meet the following minimum requirements, pursuant to Title 5, California Code of Regulations, Section 55002(d):

1) The local district governing board must review and approve all such classes, pursuant to Title 5, California Code of Regulations, Section 55002(d)(1);

2) The classes must be designed for the physical, mental, moral, economic, or civic development of persons enrolled therein, pursuant to Title 5, California Code of Regulations, Section 55002(d)(2);

3) The classes must provide subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students, pursuant to Title 5, California Code of

Regulations, Section 55002(d)(3);

4) The classes must be conducted in accordance with a predetermined strategy or plan, pursuant to Title 5, California Code of Regulations, Section 55002(d)(4);

5) The classes must be open to all members of the community, pursuant to Title 5, California Code of Regulations, Section 55002(d)(5); and

6) The classes may not be claimed for apportionment purposes, pursuant to Title 5, California Code of Regulations, Section 55002(d)(6).

I) To implement policies and procedures to establish standards regarding credit hours, pursuant to Title 5, California Code of Regulations, Section 55002.5.

1) One credit hour of community college work must be weighted at approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks.

2) Where a term is more or less than 16 weeks, the district must ensure that more or less than one credit hour is allowed in the same ratio that the length of the term is to 16 weeks.

J) To ensure that courses of instruction in social sciences include a study of the (1) role, (2) participation, and (3) contribution of all ethnic groups to the (a) economic, (b) political, and (c) social development of both California and the United States of America, pursuant to Title 5, California Code of Regulations, Section 55004.

K) To ensure that, for each course offered, all of the following facts are made available to students through college publications before the students enroll in the course, pursuant to Title 5, California Code of Regulations, Section 55005:

1) Whether the course is offered as a credit or noncredit course, or a community services class, pursuant to Title 5, California Code of Regulations, Section 55005(a).

2) Whether the course is transferable to four-year colleges and universities, pursuant to Title 5, California Code of Regulations, Section 55005(b).

3) Whether the course fulfills a major or general education requirement, pursuant to Title 5, California Code of Regulations, Section 55005(c).

4) Whether the course is offered on the basis of credit-no credit, and if so, which provision of Subdivision (a) of section 51302 is applicable, pursuant to Title 5, California Code of Regulations, Section 55005(d).

L) To establish policies and procedures to ensure that when the district maintains credit and non-credit courses and community services classes and activities, the district must keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities, pursuant to Title 5, California Code of Regulations, Section 55006.

M) To submit each course to be offered by a community college to the Chancellor for approval on forms provided by the Chancellor's Office, pursuant to Title 5, California Code of Regulations, Section 55100.

1) For the district governing board to establish and implement policies for all individual courses that are offered as part of an educational program that has been previously approved by the Chancellor, pursuant to Title 5, California Code of Regulations, Section 55100(b).

2) For the district to designate the appropriate classification of any course or

activity approved by a district, whether or not approval by the Chancellor is required, in accordance with section 55001, pursuant to Title 5, California Code of Regulations, Section 55100(c).

N) To prepare and submit to the Chancellor an application for approval, on forms provided by the Chancellor, before offering any course as part of an educational program at a college, pursuant to Title 5, California Code of Regulations, Section 55130.

1) To ensure that the application for approval contains at least all of the following, pursuant to Title 5, California Code of Regulations, Section 55130(b):

a) The name of the proposed program, pursuant to Title 5, California Code of Regulations, Section 55130(b)(1).

b) The description of the proposed program, pursuant to Title 5, California Code of Regulations, Section 55130(b)(2).

c) The purposes and specific objectives of the proposed program, pursuant to Title 5, California Code of Regulations, Section 55130(b)(3).

d) The place of the proposed program in the district master plan, pursuant to Title 5, California Code of Regulations, Section 55130(b)(4).

e) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning, pursuant to Title 5, California Code of

Regulations, Section 55130(b)(5).

f) The need for the proposed program ascertained with regard to at least all of the factors listed in Title 5, California Code of Regulations, Section 55130(b)(6).

g) The need for and present adequacy of district resources, determined in relation to the proposed program, pursuant to Title 5, California Code of Regulations, Section 55130(b)(7).

2) To ensure that the development, establishment and evaluation of an education program include representative faculty involvement, pursuant to Title 5, California Code of Regulations, Section 55130(c).

O) To submit all courses or programs offered for noncredit to the Chancellor for approval in accordance with section 55100 on forms provided by the Chancellor's Office, pursuant to Title 5, California Code of Regulations, section 55150(a).

1) To keep course outlines for all noncredit courses on file in the community college offering the course, pursuant to Title 5, California Code of Regulations, Section 55150(b).

2) For authorities of each community college maintaining noncredit courses to keep such current records and reports as may be required by the Chancellor, pursuant to Title 5, California Code of Regulations, Section 55150(c).

P) To establish and implement policies for the approval and classification of any community services classes conducted by the district and to report the classification of all such classes to the Chancellor in accordance with section

55001, pursuant to Title 5, California Code of Regulations, Section 55160.

Q) If the district claims state support for a contract class, the district must ensure that approval of the class is obtained in the manner provided for classes of the same type, as provided in this article and approval of the contract is obtained in the manner provided for by law, pursuant to Title 5, California Code of Regulations, Section 55170.

R) For the district governing board to apply the criteria and procedures for reinstating any course which was deleted from the credit or noncredit curriculum during the 1982-83 fiscal year, in response to provision Number 11 of Item 6870-101-001 of the Budget Act of 1982 (Chapter 326, Statutes of 1982), pursuant to Title 5, California Code of Regulations, Section 55182.

S) For the community college and/or district's curriculum committee to assess each associate degree credit course to determine if prerequisite or corequisite courses are necessary pursuant to Section 55002(a)(2)(D) or 55002(a)(2)(E), pursuant to Title 5, California Code of Regulations, Section 55201(a).

T) To adopt and implement policies for the following, regarding any prerequisites, corequisites, and "advisories on recommended preparation" required by the district, pursuant to Title 5, California Code of Regulations, Section 55201:

1) The process for establishing prerequisites, corequisites, and advisories on recommended preparation, pursuant to Title 5, California Code of Regulations, Section 55201(b)(1).

2) Procedures to assure that courses for which prerequisites or corequisites are established will be taught in accordance with the course outline, particularly those aspects of the course outline that are the basis for

justifying the establishment of the prerequisite or corequisite, pursuant to Title 5, California Code of Regulations, Section 55201(b)(2).

3) The process, including levels of scrutiny, for reviewing prerequisites and corequisites, to assure that they remain necessary and appropriate, pursuant to Title 5, California Code of Regulations, Section 55201(b)(3).

4) The bases and process for an individual student to challenge the application of a prerequisite or corequisite, pursuant to Title 5, California Code of Regulations, Section 55201(b)(4).

5) Prerequisites or corequisites may be established only for the purposes included in Title 5, California Code of Regulations, Section 55201(c).

6) To ensure that no prerequisite or corequisite is established or renewed unless it is determined to be necessary and appropriate to achieve the purpose for which it has been established, pursuant to Title 5, California Code of Regulations, Section 55201(d).

7) To ensure that if a course in communication or computation skills is established as a prerequisite or corequisite for any course other than another course in communication or computation skills, the district completes the activities required in Title 5, California Code of Regulations, Section 55201(e).

8) To establish and implement policies and procedures for a student to challenge any prerequisite or corequisite for any of the grounds provided for by Title 5, California Code of Regulations, Section 55201(f).

9) In the case of a challenge alleging unlawful discrimination regarding any prerequisite or corequisite, the district must, upon completion of the

challenge procedure, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of Division 6 of the California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 55201(g).

10) District policies adopted pursuant to this section must be submitted to the Chancellor as part of the district's matriculation plan pursuant to Section 55510 of Subchapter 6 of Chapter 6 of this Division, pursuant to Title 5, California Code of Regulations, Section 55201(h).

U) To establish and implement policies and procedures which apply the following additional rules to the establishment of prerequisites and corequisites, pursuant to Title 5, California Code of Regulations, Section 55202:

1) Prerequisites, corequisites, and advisories on recommended preparation must be identified in college publications available to students as well as the course outline of any course for which they are established, pursuant to Title 5, California Code of Regulations, Section 55202(a).

2) The district must ensure that any prerequisites establishing communication or computational skill requirements are not established across the entire curriculum unless established on a course-by-course basis, pursuant to Title 5, California Code of Regulations, Section 55202(b).

3) The determination of whether a student meets a prerequisite must be based either on successful completion of an appropriate course or on an assessment using multiple measures, pursuant to Title 5, California Code

of Regulations, Section 55202(c).

4) If a prerequisite requires precollegiate skills in reading, written expression, or mathematics, the district must offer precollegiate basic skills courses designed to teach the required skills, pursuant to Title 5, California Code of Regulations, Section 55202(d).

5) Whenever a corequisite course is established, sufficient sections must be offered to reasonably accommodate all students who are required to take the corequisite and the district must waive any corequisite as to any student for whom space in the course is not available, pursuant to Title 5, California Code of Regulations, Section 55202(e).

6) The district must ensure that if an exit test is required to satisfy a prerequisite or corequisite, such test is incorporated into the grading for the prerequisite or corequisite course, pursuant to Title 5, California Code of Regulations, Section 55202(f).

7) The district must make the determination of whether a student meets a prerequisite prior to his or her enrollment in the course requiring the prerequisite, unless enrollment is being permitted pending verification that the student has met the prerequisite or corequisite, pursuant to Title 5, California Code of Regulations, Section 55202(g).

V) To adopt and implement policies and procedures pertaining to distance education that ensure the following, pursuant to Title 5, California Code of Regulations, sections 55205-55219:

1) The instruction provided as distance education must meet all requirements that may be imposed by the Americans with Disabilities Act

(42 U.S.C. Sec. 12100 et seq.) and section 508 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 794d), pursuant to Title 5, California Code of Regulations, Section 55205.

2) The same standards of course quality must be applied to distance education as are applied to traditional classroom courses, in regard to course quality judgments and any local course quality determination or review process, pursuant to Title 5, California Code of Regulations, Section 55207.

3) Determinations and judgments about the quality of distance education under the course quality standards must be made with the full involvement of faculty in accordance with the provisions commencing with section 53200, pursuant to Title 5, California Code of Regulations, Section 55209.

4) District governing boards must ensure the following regarding instructor contact, pursuant to Title 5, California Code of Regulations, Section 55211:

   a) All approved courses offered as distance education must include regular effective contact between instructors and students, pursuant to Title 5, California Code of Regulations, Section 55211(a).

   b) All distance education courses must be delivered consistent with guidelines issued by the Chancellor pursuant to section 409 of the Procedures and Standing Orders of the Board of Governors, pursuant to Title 5, California Code of Regulations, Section 55211(b).

5) Each proposed or existing distance education course, must be separately reviewed and approved according to the district's certified course approval procedures, pursuant to Title 5, California Code of Regulations, Section 55213.

6) Instructors of sections delivered via distance education technology must be selected by the same procedures used to determine all instructional assignments and possess the minimum qualifications for the discipline into which the course's subject matter most appropriately falls, pursuant to Title 5, California Code of Regulations, Section 55215.

7) The number of students assigned to any one course section offered by distance education must be determined by and be consistent with other district procedures related to faculty assignment, pursuant to Title 5, California Code of Regulations, Section 55217.

8) Any district conducting any noncredit and nontransferable distance learning courses must perform all of the following, pursuant to Title 5, California Code of Regulations, Section 55219:

   a) Maintain records and report data through the Chancellor's Office Management Information System on the number of students and faculty participating in new courses or sections of established courses, pursuant to Title 5, California Code of Regulations, Section 55219(a);

   b) Prepare and provide to the local governing board, no later than August 31st of each year, a report on all distance education activity, pursuant to Title 5, California Code of Regulations, Section

55219(b);

c) Compile, prepare and provide other information consistent with reporting guidelines developed by the Chancellor pursuant to section 409 of the Procedures and Standing Orders of the Board of Governors, pursuant to Title 5, California Code of Regulations, Section 55219(c).

W) To adopt and implement policies and procedures regarding independent study courses that ensure all of the following, pursuant to Title 5, California Code of Regulations, Sections 55300-55350:

1) Approved courses conducted as independent study must be reported to the Chancellor in accordance with specified procedures as required by law, pursuant to Title 5, California Code of Regulations, Section 55300.

2) All independent study courses must meet the following criteria, pursuant to Title 5, California Code of Regulations, Section 55316:

a) The course must be accepted by the college toward completion of an appropriate educational sequence leading to an associate degree, pursuant to Title 5, California Code of Regulations, Section 55316(a); and

b) The course must be recognized by an institution of the University of California or the California State University upon transfer to that institution, pursuant to Title 5, California Code of Regulations, Section 55316(b).

3) To ensure that if the district offers, as an independent study course, any noncredit courses or any nontransferable courses designed to meet

the requirements of sections 55805.5, 55806, and 55002(a) or (b), that such courses are conducted in the following manner, pursuant to Title 5, California Code of Regulations, Section 55316.5:

a) By distance education;

b) Consistent with the requirements of sections 55205-55219 of Title 5 of the California Code of Regulations; and

c) Consistent with the guidelines developed by the Chancellor.

4) To ensure that academic standards applicable to courses of independent study are the same as those applied to other credit courses in the college, pursuant to Title 5, California Code of Regulations, Section 55320.

5) A report by an instructor on appropriate records bearing the student's name for purposes of state apportionment must certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by each student enrolled in the course, pursuant to Title 5, California Code of Regulations, Section 55321.

6) The college must provide access to the instructor for the students enrolled in independent study courses at least equivalent to that commonly available to students enrolled in courses conducted by other instructional methods, in addition to regularly scheduled office hours as practiced at that college, pursuant to Title 5, California Code of Regulations, Section 55322.

7) In order for attendance in a course of independent study to be eligible for state apportionment, the district must report the course in the manner required by Chapter 6 of Title 5 of the California Code of Regulations

(pertaining to Curriculum and Instruction), and ensure that the course meets all other requirements of statute and regulation relative to eligibility for state apportionment, pursuant to Title 5, California Code of Regulations, Section 55340.

8) To ensure that any instructor assigned to an independent study course meets all of the following criteria, pursuant to Title 5, California Code of Regulations, Section 55350:

a) The instructor must be qualified to provide service in that capacity during the period in which that service is rendered, pursuant to Title 5, California Code of Regulations, Section 55350(a);

b) The instructor must be responsible for the supervision, control, and evaluation of the course and the enrolled students, pursuant to Title 5, California Code of Regulations, Section 55350(b);

c) The instructor must provide (1) orientation, (2) guidance, and (3) information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college, pursuant to Title 5, California Code of Regulations, Section 55350(c); and

d) The instructor must provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, and include this schedule in the written record, pursuant to Title 5, California Code of Regulations, Section 55350(d).

X) To adopt and implement policies and procedures to comply with the curriculum

standards and criteria for curriculum approval set forth by the Chancellor's Office in the "Program and Course Approval Handbook" ("Handbook") (September 2001), established pursuant to Title 5, California Code of Regulations, Section 55000.5.

1) The Community College must document that a proposed educational program meets all five of the following criteria for approval before the program will be approved by the Chancellor's Office: (1) Appropriateness to Mission; (2) Need; (3) Quality; (4) Feasibility; and (5) Compliance, pursuant to "Handbook", page 16-18.

   a) Appropriateness to Mission

   b) Need

   c) Quality

   d) Feasibility

2) The Community College must comply with the Chancellor's Office Procedures when compiling data for, preparing and submitting program approval applications for each of the following programs as detailed in Appendix A, "Forms and instructions for Approval of New Programs", pursuant to "Handbook", page 18.

   a) New Occupational Program Approval Application (Districts must comply with all procedures detailed in pages A-1 through A-19).

   b) New Transfer Program Approval Application (Districts must comply with all procedures detailed in pages A-21 through A-35).

   c) Request to Add New Option or Certificate within Existing Program to Inventory (Districts must comply with all procedures detailed in

pages A-37 through A-41).

d) Non-Substantial Changes to Approved Program (or Reactivation of Inactive Program) (Districts must comply with all procedures detailed in pages A-43 through A-44).

e) Request to Add Projected Program to Inventory (Districts must comply with all procedures detailed in pages page A-45).

f) Credit/Noncredit Apprenticeship Program Approval Application (Districts must comply with all procedures detailed in pages A-47 through A-54).

3) The Community College must assess and categorize all courses that are not part of an approved program and determine whether they qualify as one of the five categories of "stand alone courses" that have been granted blanket approval by the Chancellor, and therefore need not be submitted to the Chancellor's Office for approval, as outlined in and pursuant to "Handbook", pages 24-25.

COMPONENT 12: VOCATIONAL EDUCATION PROGRAMS

A) To develop and implement policies for the establishment, modification, or discontinuance of courses or programs, which incorporate statutory responsibilities regarding vocational or occupational training program review, in accordance with Education Code Section 78016, pursuant to Title 5, California Code of Regulations, Section 51022(a).

B) To conduct a job market study of the labor market focusing on whether the anticipated employment demand for students in the proposed program justifies the establishment of the proposed course of instruction prior to establishing a

vocational educational program, pursuant to Education Code Section 78015(a)(1).

1) To use the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code or if the program is not available, other available sources of labor market information when conducting the study, pursuant to Education Code Section 78015(a)(1).

2) To include in the study a California Occupational Information System supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges and private postsecondary schools in the area pursuant to Education Code Section 78015(a)(1).

3) To make copies of each job market study available to the public pursuant to Education Code Section 78015(a)(2).

4) To determine whether the study justifies the proposed vocational education program, pursuant to Education Code Section 78105(b).

5) If the governing board of the community college district determines the job market study justifies initiation of the proposed program, it shall determine by resolution whether the program shall be offered through the districts' own facilities or through a contract with an approved private post secondary school, pursuant to Education Code Section 78015(c).

C) To review every vocational or occupational training program offered by a community college district every two years to ensure the programs are effective, meet a documented labor market demand, and do not unnecessarily duplicate

other manpower training programs in the area, pursuant to Education Code Section 78016(a).

1) For the governing board of the community college district to consider the review and comments of the local Private Industry Council established pursuant to Division 8 of the Unemployment Insurance Code before it conducts its review process, pursuant to Education Code Section 78016(c).

2) To provide a written summary of the findings of each review to the public, pursuant to Education Code Section 78016(e).

D) To incorporate the definitions contained in Section 55600, for all of the following terms, into district policies, procedures and documents: "Vocational Educational Contract"; "The California State Plan for Vocational Education"; "Contractor"; and "Eligible Cost", pursuant to Title 5, California Code of Regulations, Section 55600.

E) For the governing board of the community college district to appoint and supervise a vocational education advisory committee, pursuant to Title 5, California Code of Regulations, Section 55601.

1) For the advisory committee to be responsible for and to implement both of the following activities, pursuant to Title 5, California Code of Regulations, Section 55601:

a) To develop recommendations on the vocational education program, pursuant to Title 5, California Code of Regulations, Section 55601; and

b) To act as a liaison between the district and potential employers,

pursuant to Title 5, California Code of Regulations, Section 55601.

2) For the district to appoint one or more representatives of the general public to the vocational education advisory committee who is knowledgeable about all of the following, pursuant to Title 5, California Code of Regulations, Section 55601:

a) the disadvantaged,

b) students,

c) teachers,

d) business,

e) industry,

f) school administration, and

g) the field office of the Department of Employment Development.

F) To establish and implement policies and procedures to ensure that whenever the district contracts with a private post secondary school, an activity center, work activity center, or sheltered work shop, that all of the following criteria are met, pursuant to Title 5, California Code of Regulations, Sections 55602, 55605 and 55607:

1) All contracts must be approved by the Chancellor, pursuant to Title 5, California Code of Regulations, Section 55602(1).

2) All contracts must provide the following, pursuant to Title 5, California Code of Regulations, Section 55602:

a) The amount contracted for per student must not exceed the amount it costs to provide the same training in community colleges

or the tuition charged in postsecondary schools, pursuant to Title 5, California Code of Regulations, Section 55602(2);

b) Those students who are currently enrolled in community colleges and are receiving training in another institution, must not be charged additional tuition, pursuant to Title 5, California Code of Regulations, Section 55602(3);

c) All programs, courses and classes of instruction must meet the standards set forth in the California State Plan for Vocational Education or a course of study for adult schools approved by the Department of Education, pursuant to Title 5, California Code of Regulations, Section 55602(4).

3) The community college district must organize and administer the contracts to ensure that there will be separate accounts for all income and expenditures applicable to the contract, pursuant to Title 5, California Code of Regulations, Section 55605(e).

4) The community college district must submit annually to the Chancellor statistical and evaluative reports on forms provided by the Chancellor with regard to each vocational education contract it enters into with a private post secondary school, an activity center, work activity center, or sheltered work shop to provide vocational skill training, pursuant to Title 5, California Code of Regulations, Section 55607.

5) All records related to income and expenditures regarding the contracts must be made available for audit by the state or federal government and retained for five years or one year after the audit, pursuant to Title 5,

California Code of Regulations, Section 55607.

G) If the governing board of the community college district enters into a contract with a private or public entity for the education of students whose capacity to function is impaired by physical deficiency or injury in vocational education classes, the governing board of the community college district must approve of and supervise all instruction, pursuant to Title 5, California Code of Regulations, Section 55602.5.

H) To adopt and implement policies and procedures to ensure that contractors provide (1) vocational, (2) technical, and (3) occupational instruction related to attainment of (a) skills, (b) knowledge, and (c) attitudes so that students may be prepared for any of the following, pursuant to Title 5, California Code of Regulations, Section 55603:

1) Gainful employment in the occupational area for which training has been provided, pursuant to Title 5, California Code of Regulations, Section 55603(a); or

2) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, pursuant to Title 5, California Code of Regulations, Section 55603(b); or

3) Enrollment in more advanced training programs, pursuant to Title 5, California Code of Regulations, Section 55603(c).

I) To ensure all vocational education contracts entered into with contractors meet all of the following conditions, pursuant to Title 5, California Code of Regulations, Section 55620:

1) Manpower needs and job opportunities must be identified and established

for the instruction program, pursuant to Title 5, California Code of Regulations, Section 55620(a).

2) The program or courses must not already be available in the region served, pursuant to Title 5, California Code of Regulations, Section 55620(b).

3) The program or courses must provide vocational education opportunities that are not otherwise available, pursuant to Title 5, California Code of Regulations, Section 55620(c).

4) The programs or services must not reduce vocational education efforts of any district, pursuant to Title 5, California Code of Regulations, Section 55620(d).

5) Costs must not exceed the same cost to provide the same training in the public entity or the tuition private postsecondary schools charge their students, pursuant to Title 5, California Code of Regulations, Section 55620(e).

6) The community college student must not be forced to pay additional tuition for any training in the contract, pursuant to Title 5, California Code of Regulations, Section 55620(f).

7) The district must ensure that only students who are sixteen or older and enrolled in a community college are eligible for enrollment under a contract, pursuant to Title 5, California Code of Regulations, Section 55620(g).

8) The contractor must be accredited by an accrediting agency recognized by the United States Office of Education or confirm to contractual

relationship guidelines, pursuant to Title 5, California Code of Regulations, Section 55620(h).

J) To ensure each contract expressly includes at least all of the following provisions, pursuant to Title 5, California Code of Regulations, Section 55630.

1) For the governing board of the community college to determine, by resolution, that offering the program through a contract is appropriate, pursuant to Title 5, California Code of Regulations, Section 55630(a).

2) To include methods for identifying eligible costs and payment procedures to ensure the students enrolled are not being charged additional tuition or an amount that exceeds the cost to provide the same training in the community college or the tuition the private postsecondary school charges, pursuant to Title 5, California Code of Regulations, Section 55630(b).

3) To include procedures, terms and conditions relating to all of the following topics, pursuant to Title 5, California Code of Regulations, Section 55630(c):

a) enrollment period;

b) transferring of students;

c) class hours required to meet performance objectives,

d) supervision of staff; and

e) withdrawal of students prior to completion of a course or program.

4) For the contractor and community college district to insure that students are provided with ancillary and support services, which include at least both of the following services, pursuant to Title 5, California Code of

Regulations, Section 55630(d):

a) Counseling and guidance; and

b) Placement assistance.

5) To ensure that qualified faculty provide instruction, pursuant to Title 5, California Code of Regulations, Section 55630(e).

6) To include performance objectives for each class and a report regarding accomplishments of the objectives at the end of each contract period, pursuant to Title 5, California Code of Regulations, Section 55630(f).

7) For the contractor to maintain records of student attendance and achievement, and for the community college to develop a record review schedule for the contractor to use, pursuant to Title 5, California Code of Regulations, Section 55630(g).

8) To include terms and conditions relating to termination of the contract, pursuant to Title 5, California Code of Regulations, Section 55630(h).

9) For the contractor to be in compliance with the Civil Rights Act of 1964, pursuant to Title 5, California Code of Regulations, Section 55630(i).

10) For the contractor to provide workers' compensation insurance coverage for any student, pursuant to Title 5, California Code of Regulations, Section 55630(j).

11) For the contractor to provide indemnity and defense for the state and community college district against any and all claims and liability, pursuant to Title 5, California Code of Regulations, Section 55630(k).

COMPONENT 13: COURSE ARTICULATION - LOCAL

A) To develop, file with the Chancellor, and implement the district's policies and

procedures to provide that all district courses and programs are articulated with proximate four-year colleges and high schools, pursuant to Title 5, California Code of Regulations, Section 51022(b).

COMPONENT 14: ACADEMIC FREEDOM

A) To adopt and implement a policy statement on academic freedom, pursuant to Title 5, California Code of Regulations, Section 51023(a) and (c)

1) To make such policy available to faculty pursuant to Title 5, California Code of Regulations, Section 51023(a);

2) To file the policy with the Chancellor pursuant to Title 5, California Code of Regulations, Section 51023(a); and

3) For the district to substantially comply with the adopted policies and procedures pursuant to Title 5, California Code of Regulations, Section 51023(c).

COMPONENT 15: SHARED GOVERNANCE (Faculty, Staff, Students)

Part I: Faculty Shared Governance (Academic Senate)

A) To adopt, implement and comply with procedures which are consistent with the provisions of Title 5, California Code of Regulations, Sections 53000-53206, regarding the role of academic senates and faculty councils, pursuant to Title 5, California Code of Regulations, Section 51023(b) and (c).

1) To file such adopted procedures with the Chancellor, pursuant to Title 5, California Code of Regulations, Section 51023(b)

2) For the district governing board to develop and implement policies on academic and professional matters by "consulting collegially" with the Academic Senate through either or both of the following methods,

pursuant to Title 5, California Code of Regulations, Section 53200(d):

a) relying primarily upon the advice and judgment of the academic senate, pursuant to Title 5, California Code of Regulations, Section 53200(d)(1); or

b) agreeing that the district governing board, or such representatives as it may designate, and the representatives of the academic senate must have the obligation to reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations, pursuant to Title 5, California Code of Regulations, Section 53200(d)(2).

3) To ensure that the following procedure is used to establish an academic senate, pursuant to Title 5, California Code of Regulations, Section 53202:

a) The full-time faculty of a community college must vote by secret ballot to form an academic senate, pursuant to Title 5, California Code of Regulations, Section 53202(a).

b) When the full-time faculty of multi-college districts vote on whether or not to form a district academic senate, the vote must be made by secret ballot, pursuant to Title 5, California Code of Regulations, Section 53202(b).

c) The governing board of the district must recognize the academic senate and authorize the faculty to do the following, pursuant to Title 5, California Code of Regulations, Section 53202(c):

(1) Fix and amend by vote of the full-time faculty the

composition, structure, and procedures of the academic senate, pursuant to Title 5, California Code of Regulations, Section 53202(c)(1); and

(2) Provide for the selection of the members of the academic senate in accordance with accepted democratic election procedures, pursuant to Title 5, California Code of Regulations, Section 53202(c)(2).

d) To allow the full-time faculty to provide for the membership and participation of part-time faculty members in the academic senate, pursuant to Title 5, California Code of Regulations, Section 53202(d).

e) To permit the part-time faculty to form an academic senate in a community college that does not have any full-time faculty members, pursuant to Title 5, California Code of Regulations, Section 53202(e).

4) For the governing board of the community college district to adopt and implement policies for appropriate delegation of authority and responsibility to its college and/or district academic senate, pursuant to Title 5, California Code of Regulations, Section 53203.

a) For such policies to provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters, pursuant to Title 5, California Code of Regulations, Section 53203(a).

b) For the governing board or its designees to consult collegially with representatives of the academic senate when adopting such policies and procedures, pursuant to Title 5, California Code of Regulations, Section 53203(b).

c) To ensure that, while in the process of consulting collegially, the academic senate retains the right to meet with or to appear before the governing board with respect to the views, recommendations, or proposals of the senate, pursuant to Title 5, California Code of Regulations, Section 53203(c).

d) For the governing board of the district to adopt procedures for responding to recommendations of the academic senate that incorporate the following, pursuant to Title 5, California Code of Regulations, Section 53203(d):

(1) If a recommendation of the academic senate is not accepted, in instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the governing board, upon request of the academic senate, must promptly communicate its reasons in writing to the academic senate, pursuant to Title 5, California Code of Regulations, Section 53203(d)(1).

(2) In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy must remain in effect unless continuing with such policy exposes

the district to a good faith belief of compelling legal liability or causes substantial fiscal hardship, pursuant to Title 5, California Code of Regulations, Section 53203(d)(2).

e) To ensure that the academic senate consults with the chief executive officer prior to the appointment of faculty members to serve on college or district committees, task forces, or other groups dealing with academic and professional matters, pursuant to Title 5, California Code of Regulations, Section 53203(f).

5) To ensure that the academic senate consultation process does not modify the scope or detract from any negotiated agreements between collective bargaining representatives and district governing boards, pursuant to Title 5, California Code of Regulations, Section 53204.

6) To grant release or reassigned time to the faculty members who have been elected to serve as president and vice president of the Academic Senate of the California Community Colleges (ASCCC) for the time required by the ASCCC, pursuant to Title 5, California Code of Regulations, Section 53207.

Part II: Staff Shared Governance (Classified and Other Staff Groups)

B) To adopt and implement policies and procedures to provide district and college staff the opportunity to participate effectively in district and college governance that include the following, pursuant to Title 5, California Code of Regulations, Section 51023.5:

1) Definitions of non-faculty staff positions that the governing board is required by law to recognize or chooses to recognize, pursuant to legal

authority, with separate definitions for all management and nonmangement positions, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(1).

2) Participation structures and procedures for the defined staff positions, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(2).

3) A requirement that the governing board or its designees must consult with the representatives of existing staff councils, committees, employee organizations, and other such bodies in performing the requirements of 51023.5, subdivisions (a)(1) and (2), pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(3).

4) For the governing board or its designees to broadly inform all staff of policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views when no groups or structures for participation exist that provide representation for particular groups of staff, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(3).

5) To provide staff with opportunities to participate in the formulation and development of the following, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(4):

   a) district and college policies and procedures, and

   b) those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

6) To ensure that the governing board provides staff an opportunity to participate in the formulation and development of any matter significantly affecting staff, prior to taking action on any such matter, unless an unforeseeable, emergency situation exists, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(5)

7) The policies and procedures of the governing board must ensure that the recommendations and opinions of staff are given reasonable consideration, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(6).

8) For the selection of staff representatives to serve on college and district task forces, committees, or other governance groups to be made by those councils, committees, employee organizations, or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(7).

   a) In cases where the law does not require a particular staff group to make such a selection, for the selection to be made by, or in consultation with, district staff groups that the governing board has officially recognized in its policies and procedures for staff participation, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(7).

   b) For all staff representatives to be selected from the category that they represent, pursuant to Title 5, California Code of Regulations, Section 51023.5(a)(7).

9) In developing and carrying out such policies and procedures, the district governing board must ensure that its actions do not do any of the following, pursuant to Title 5, California Code of Regulations, Section 51023.5(b):

a) dominate or interfere with the formation or administration of any employee organization,

b) contribute financial or other support to any employee organization,

c) in any way encourage employees to join any organization in preference to another,

d) intrude on matters within the scope of representation under Section 3543.2 of the Government Code, or

e) interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

Part III: Student Shared Governance

C) To adopt and implement policies and procedures to provide students the opportunity to participate effectively in district and college governance, pursuant to Title 5, California Code of Regulations, Section 51023.7.

1) To provide students with the opportunity to participate in the formulation and development of district and college policies and procedures that have or will have a significant effect on students, including the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures, pursuant to Title

5, California Code of Regulations, Section 51023.7(a)(1).

2) To ensure that the governing board provides students an opportunity to participate in the formulation and development of any matter significantly affecting students, prior to taking action on any such matter, unless an unforeseeable, emergency situation exists, pursuant to Title 5, California Code of Regulations, Section 51023.7(a)(2).

3) For governing board procedures to ensure that, at the district and college levels, recommendations and positions developed by students are given every reasonable consideration, pursuant to Title 5, California Code of Regulations, Section 51023.7(a)(3).

4) For the district to ensure that the selection of student representatives to serve on college or district committees, task forces, or other governance groups are made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district, pursuant to Title 5, California Code of Regulations, Section 51023.7(a)(4).

5) To classify the following as matters that have or will have a "significant effect on students", which thereby require providing students with prior notice and opportunity to participate in the development of any action to be taken on the matter, pursuant to Title 5, California Code of Regulations, Section 51023.7(b):

(a) grading policies;

(b) codes of student conduct;

(c) academic disciplinary policies;

(d) curriculum development;

(e) courses or programs which should be initiated or discontinued;

(f) processes for institutional planning and budget development;

(g) standards and policies regarding student preparation and success;

(h) student services planning and development;

(i) student fees within the authority of the district to adopt; and

(j) any other district and college policy, procedure, or related matter that the district governing board determines will have a significant effect on students.

6) For the governing board to ensure that reasonable consideration is given to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff, pursuant to Title 5, California Code of Regulations, Section 51023.7(c).

COMPONENT 16: MATRICULATION SERVICES

A) To establish and implement policies and procedures which agree to carry out the provisions of the Seymour-Campbell Matriculation Act of 1986 as contained in Education Code Sections 78210-78218 for the period during which funding is received under the article, and to expend such funds only for those matriculation services approved by the Board of Governors or for any contribution of matching funds as may be required by the Board of Governors, pursuant to Education Code Section 78211.5.

B) For the district to provide all of the following matriculation services to students, pursuant to Education Code Section 78212(b) and Title 5,

California Code of Regulations Section 55520:

1) Processing of the application for admission, pursuant to Education Code Section 78212(b)(1) and Title 5, California Code of Regulations, Section 55520(a);

2) Student orientation, pursuant to Education Code Section 78212(b)(2) and Title 5, California Code of Regulations, Section 55520(b);

   a) Districts must ensure that orientation and pre-orientation services are designed to provide nonexempt students and potential students all of the following information, pursuant to Title 5, California Code of Regulations, Section 55520(b):

      (1) College procedures and course scheduling, pursuant to Title 5, California Code of Regulations, Section 55520(b) and Education Code Section 78212(b)(2);

      (2) Academic expectations, pursuant to Title 5, California Code of Regulations, Section 55520(b) and Education Code Section 78212(b)(2);

      (3) Financial assistance, pursuant to Title 5, California Code of Regulations, Section 55520(b) and Education Code Section 78212(b)(2); and

      (4) Any other matters the college or district finds appropriate, pursuant to Title 5, California Code of Regulations, Section 55520(b) and Education Code Section 78212(b)(2).

b) The district must ensure that such information is provided on a timely basis, pursuant to Title 5, California Code of Regulations, Section 55520(b).

3) Assessment and counseling upon enrollment, pursuant to Education Code Section 78212(b)(3) and Title 5, California Code of Regulations, Section 55520(c) and 55520(d).

a) For the assessment and counseling to include all of the following, pursuant to Education Code Section 78212(b)(3):

(1) Math and language skills, pursuant to Education Code Section 78212(b)(3)(A);

(2) Identification of aptitudes, interests and educational objectives, pursuant to Education Code Section 78212(b)(3)(B);

(3) Study and learning skills, pursuant to Education Code Section 78212(b)(3)(C);

(4) Referral to specialized support services, pursuant to Education Code Section 78212(b)(3)(D); and

(5) Course selection, pursuant to Education Code Section 78212(b)(3)(E).

b) For assessment of all nonexempt students to be implemented in accordance with Title 5 of the California Code of Regulations Section 55524, pursuant to Title 5, California Code of Regulations, Section 55520(c);

c) For counseling or advisement of for nonexempt students to

be implemented in accordance with Title 5 of the California Code of Regulations, Section 55523, pursuant to Title 5, California Code of Regulations, Section 55520(d).

5) Postenrollment evaluation of each student's progress, pursuant to Education Code Section 78212(b)(4) and Title 5, California Code of Regulations, Section 55520(f):

a) The district must provide remedial counseling for any of the following students, pursuant to Education Code Section 78212(b)(4):

(1) Students who are enrolled in remedial courses, pursuant to Education Code Section 78212(b)(4);

(2) Students who have not declared an educational objective as required, pursuant to Education Code Section 78212(b)(4); or

(3) Students who are on academic probation, pursuant to Education Code Section 78212(b)(4).

b) The district must ensure that all post enrollment evaluations are implemented in accordance with Title 5 of the California Code of Regulations, Section 55526, pursuant to Title 5, California Code of Regulations, Section 55520(f).

6) Assistance in developing a student educational plan which meets the following criteria, pursuant to Title 5, California Code of Regulations, Section 55520(e):

a) The plan must be implemented in accordance with Title 5 of

the California Code of Regulations, Section 55525, pursuant to Title 5, California Code of Regulations, Section 55520(e).

b) The plan must identify the student's educational objectives, pursuant to Title 5, California Code of Regulations, Section 55520(e).

c) The plan must identify the courses, services and programs to be used to achieve the student's educational objectives, pursuant to Title 5, California Code of Regulations, Section 55520(e).

7) Referral of students to the following programs, pursuant to Title 5, California Code of Regulations, Section 55520(g):

a) Support services, pursuant to Title 5, California Code of Regulations, Section 55520(g)(1); and

b) Specialized curriculum offerings that include both of the following, pursuant to Title 5, California Code of Regulations, Section 55520(g)(2):

(1) Pre-collegiate basic skills courses, pursuant to Title 5, California Code of Regulations, Section 55520(g)(2); and

(2) Programs in English as a Second Language, pursuant to Title 5, California Code of Regulations, Section 55520(g)(2).

C) To adopt and implement policies regarding the use of assessment instruments in the matriculation process that incorporate the following,

pursuant to Education Code Section 78213 and Title 5, California Code of Regulations, Section 55524:

1) The district must obtain authorization from the Board of Governors prior to the use of any assessment instruments, pursuant to Education Code Section 78213(a).

2) Assessment instruments must be sensitive to cultural and language differences between students, pursuant to Education Code Section 78213(b)(1);

3) Assessment instruments must be used as an advisory tool to assist students in the selection of an educational program, pursuant to Education Code Section 78213(b)(2); and

4) Assessment instruments must not be used to exclude students from admission to community colleges, pursuant to Education Code Section 78213(b)(3).

5) The district must comply with any recommendations concerning assessment instruments that are issued by the advisory committee established by the Board of Governors, pursuant to Education Code Section 78213(c).

6) The district must ensure that they only use assessment instruments that have been approved and listed by the Chancellor and that they follow the Chancellor's procedure when seeking to have assessment instruments approved and added to the list of approved instruments, pursuant to Title 5, California Code of Regulations, Section 55524.

D) To consult with the Chancellor and establish, implement and maintain an institutional research database to evaluate the effectiveness of the matriculation services which includes all of the following information, pursuant to Education Code Section 78214:

1) Prior student educational experience, pursuant to Education Code Section 78214(b)(1);

2) Educational objectives, pursuant to Education Code Section 78214(b)(2);

3) Criteria for exemption from assessment or required counseling or advisement, pursuant to Education Code Section 78214(b)(3);

4) Need for financial assistance, pursuant to Education Code Section 78214(b)(4);

5) Ethnicity, sex, and age, pursuant to Education Code Section 78214(b)(5);

6) Academic performance, pursuant to Education Code Section 78214(b)(6);

7) Any additional information that the Chancellor finds appropriate, pursuant to Education Code Section 78214(b)(7);

8) An assessment of the effectiveness of the programs in attaining the following objectives, pursuant to Education Code Section 78214(c):

a) Helping students to define their educational goals, pursuant to Education Code Section 78214(c)(1);

b) Assisting institutions in the assessment of students' educational needs, pursuant to Education Code Section

78214(c)(2);

c) Matching institutional resources with students' educational needs, pursuant to Education Code Section 78214(c)(3); and

d) Providing students with specialized support services, pursuant to Education Code Section 78214(c)(4).

E) To comply with the criteria established by the Board of Governors regarding exempting students from participation in orientation, assessment testing, or required counseling or advisement, by adopting and implementing district policies that specify the grounds for exemption, pursuant to Education Code Section 78215 and Title 5, California Code of Regulations, Section 55532.

1) The district must identify such adopted policies in the matriculation plan, pursuant to Title 5, California Code of Regulations, Section 55532(a).

2) The district must report to the Chancellor the number of students, by category, that have been exempted, pursuant to Title 5, California Code of Regulations, Section 55532(a).

3) The district must ensure that only students who have completed an associate degree or higher are permitted to qualify for such exemption, pursuant to Title 5, California Code of Regulations, Section 55532(b).

4) The district must notify any student exempted by this section that he or she is covered by an exemption and give that student an

opportunity to choose whether or not to participate in that part of the matriculation process, pursuant to Title 5, California Code of Regulations, Section 55532(c).

5) The district must ensure that their policies do not use any of the following as the sole criterion for exempting any student who does not wish to participate, pursuant to Title 5, California Code of Regulations, Section 55532(d):

a) The student has enrolled only in evening classes, pursuant to Title 5, California Code of Regulations, Section 532(d)(1);

b) The student has enrolled in fewer than some specified number of units, pursuant to Title 5, California Code of Regulations, Section 55532(d)(2);

c) The student is undecided about his or her educational objectives, pursuant to Title 5, California Code of Regulations, Section 55532(d)(3); or

d) The student does not intend to earn a degree or certificate, pursuant to Title 5, California Code of Regulations, Section 55532(d)(4).

F) To comply with the matriculation funding formula developed by the Board of Governors and to ensure that each dollar of state matriculation funding is matched by three dollars of other district resources devoted to the matriculation program, pursuant to Education Code Section 78216 and Title 5, California Code of Regulations, Section 55518(b).

G) To develop and implement a plan for student matriculation that reflects all

of the following, pursuant to Education Code Section 78216(c):

1) A method for providing the services, pursuant to Education Code Section 78216(c)(1);

2) The college budget for the matriculation services, pursuant to Education Code Section 78216(c)(2);

3) The development and training of staff and faculty to implement the matriculation services, pursuant to Education Code Section 78216(c)(3);

4) The coordination of the college matriculation plan with other college plans, pursuant to Education Code Section 78216(c)(4); and

5) Computerized information services and institutional research and evaluation necessary for implementation of the matriculation program, pursuant to Education Code Section 78216(c)(5).

H) To establish policies and procedures for and to implement all of the following regarding student matriculation services, pursuant to Title 5, California Code of Regulations, Section 51024:

1) The district must implement and submit to the Chancellor a matriculation plan, pursuant to Title 5, California Code of Regulations, Section 51024(a);

2) The district must evaluate the its matriculation program and participate in statewide evaluation activities, pursuant to Title 5, California Code of Regulations, Section 51024(b);

3) The district must provide matriculation services to its students, pursuant to Title 5, California Code of Regulations, Section

51024(c);

4) The district must establish and implement procedures for waivers and appeals in connection with the matriculation program, pursuant to Title 5, California Code of Regulations, Section 51024(d); and

5) The district must substantially comply with all other provisions of Sections 55500 through 55534 (Matriculation Programs) of Title 5, pursuant to Title 5, California Code of Regulations, Section 51024(e).

I) To consult with the Chancellor to assist in the adoption of a schedule for implementing the provisions of the matriculation program and to ensure that they comply with the schedule in implementing district matriculation programs, pursuant to Title 5, California Code of Regulations, Section 55500.

J) To recognize, adopt and incorporate into district policies and procedures the definitions of the following terms that are pertinent to the matriculation program: "matriculation", "assessment instruments, methods, or procedures", "pre-collegiate basic skills courses", "disproportionate impact", "exemption", "matriculation services", "matriculation practices", "student", "orientation", and "student follow-up", as detailed in and pursuant to Title 5, California Code of Regulations, Section 55502.

K) To adopt and implement a matriculation plan describing the services to be provided to district students, pursuant to Title 5, California Code of Regulations, Section 55510.

1) The district must ensure that the adopted matriculation plan includes at least all of the following information, pursuant to Title 5, California Code of Regulations, Section 55510(a):

   a) A description of methods by which services will be delivered, pursuant to Title 5, California Code of Regulations, Section 55510(a)(1);

   b) The matriculation budget, pursuant to Title 5, California Code of Regulations, Section 55510(a)(2);

   c) Plans for faculty and staff development, pursuant to Title 5, California Code of Regulations, Section 55510(a)(3);

   d) Computerized information services and institutional research and evaluation necessary to implement the Chapter, pursuant to Title 5, California Code of Regulations, Section 55510(a)(4);

   e) Criteria for student matriculation exemption, pursuant to Title 5, California Code of Regulations, Section 55510(a)(5);

   f) Procedures for establishing and reviewing prerequisites, pursuant to Title 5, California Code of Regulations, Section 55510(a)(6);

   g) Procedures for considering student challenges to prerequisites, pursuant to Title 5, California Code of Regulations, Section 55510(a)(7); and

   h) Arrangements for coordination by the district of the matriculation plans of the various colleges in the district,

pursuant to Title 5, California Code of Regulations, Section 55510(a)(8).

2) The district must develop the plan through consultation with representatives of all of the following groups, pursuant to Title 5, California Code of Regulations, Section 55510(b):

a) Academic Senate;

b) Students; and

c) Staff with appropriate expertise.

3) The district must ensure that the plan conforms to the law and is submitted to the Chancellor for initial and periodic review and approval, pursuant to Title 5, California Code of Regulations, Section 55510(c).

L) To establish and implement a program of institutional research for ongoing evaluation of the district matriculation process to ensure compliance with the requirements of the chapter that incorporates the following, pursuant to Title 5, California Code of Regulations, section 55512:

1) The district must evaluate all assessment procedures to ensure they minimize cultural or linguistic bias and are used in a valid manner, pursuant to Title 5, California Code of Regulations, section 55512(a);

2) The district must determine whether any procedures have a disproportionate impact on particular groups of students, based on ethnicity, gender, age or disability, pursuant to Title 5, California

Code of Regulations, section 55512(a);

3) If a disproportionate impact exists, the district must consult with the Chancellor and develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact, pursuant to Title 5, California Code of Regulations, section 55512(a);

4) The district must perform and include an analysis of the degree to which the matriculation program does any of the following, pursuant to Title 5, California Code of Regulations, section 55512(a):

   a) Impacts on particular courses, programs, and facilities, pursuant to Title 5, California Code of Regulations, section 55512(a)(1);

   b) Helps students to define their educational goals, pursuant to Title 5, California Code of Regulations, section 55512(a)(2);

   c) Promotes student success, pursuant to Title 5, California Code of Regulations, section 55512(a)(3);

   d) Assists the district in the assessment of students' educational needs, pursuant to Title 5, California Code of Regulations, section 55512(a)(4);

   e) Matches district resources with students' educational needs, pursuant to Title 5, California Code of Regulations, section 55512(a)(5);

   f) Provides students with the support services described in

section 545520(g), pursuant to Title 5, California Code of Regulations, section 55512(a)(6).

5) The district must provide for and implement a review of the revenue and expenditures of the matriculation program as part of its annual financial audit, pursuant to Title 5, California Code of Regulations, Section 55512(b).

M) To annually prepare and submit a report describing the district's efforts to implement the matriculation program and also expenditures made for that purpose that includes at least all of the following information, pursuant to Title 5, California Code of Regulations, Section 55514:

1) The proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who are placed in (1) pre-collegiate, (2) associate-degree applicable, or (3) transfer level courses in any of the following educational areas, pursuant to Title 5, California Code of Regulations, Section 55514(a):

a) Reading;

b) Writing;

c) Computation; or

d) English as a Second Language.

2) The proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who (1) enter and (2) complete pre-collegiate basic skills courses, pursuant to Title 5, California Code of Regulations, Section 55514(b);

3) The proportion of students from various ethnic, gender, age or

disability groups, as defined by the Chancellor, completing pre-collegiate basic skills courses who subsequently (1) enter and (2) complete courses applicable to the associate degree, pursuant to Title 5, California Code of Regulations, Section 55514(c);

4) Outcome and retention data, as described in section 55512(a), indicating the effectiveness of matriculation, pursuant to Title 5, California Code of Regulations, Section 55514(d);

5) The basis on which the use of particular assessment instruments, methods or procedures was validated by a district, pursuant to Title 5, California Code of Regulations, Section 55514(e);

6) The numbers of students exempted, pursuant to section 55532, from participation in the district's matriculation program, by category of exemption, pursuant to Title 5, California Code of Regulations, Section 55514(f);

7) The number of students filing complaints pursuant to 55534 and the bases of those complaints, pursuant to Title 5, California Code of Regulations, Section 55514(g);

8) The particular matriculation services, as listed in section 55520, which each student received, pursuant to Title 5, California Code of Regulations, Section 55514(h); and

9) Any other matter the Chancellor, after consultation with community college districts, deems necessary for the effective evaluation of matriculation programs, pursuant to Title 5, California Code of Regulations, Section 55514(i).

N) To develop and implement a program for providing all faculty and staff with training on the provision of matriculation services that meets the following criteria, pursuant to Title 5, California Code of Regulations, Section 55516:

1) The training must be appropriate to the needs of the faculty and staff, pursuant to Title 5, California Code of Regulations, Section 55516.

2) The training must include at least all of the following information regarding assessment instruments, methods or procedures that are used in the matriculation process, pursuant to Title 5, California Code of Regulations, Section 55516:

a) Their proper (1) purpose, (2) design, (3) evaluation, and (4) use, pursuant to Title 5, California Code of Regulations, Section 55516; and

b) Their (1) limitations and (2) possible misuse, pursuant to Title 5, California Code of Regulations, Section 55516.

O) For the district, when implementing matriculation services, to ensure that the following uses of assessment instruments are prohibited, pursuant to Title 5, California Code of Regulations, Section 55521:

1) Any use that has not been approved by the Chancellor, pursuant to Title 5, California Code of Regulations, Section 55521(a)(1);

2) Use in a manner or for a purpose other than that for which it was developed or validated for, pursuant to Title 5, California Code of Regulations, Section 55521(a)(2);

3) Use of any single instrument by itself for student placement, evaluation or referral purposes, pursuant to Title 5, California Code of Regulations, Section 55521(a)(3);

4) To exclude any person from admission, pursuant to Title 5, California Code of Regulations, Section 55521(a)(4);

5) To mandatorily place a student in or exclude from any educational program, unless as an established prerequisite, pursuant to Title 5, California Code of Regulations, Section 55521(a)(5);

6) To subject any person to unlawful discrimination, pursuant to Title 5, California Code of Regulations, Section 55521(a)(6).

P) To establish and implement appropriate modifications in the matriculation process so that the needs of ethnic and language minority students and students with disabilities are accommodated and met, pursuant to Title 5, California Code of Regulations, Section 55522.

Q) To make reasonable efforts to provide and implement counseling and advisement services for all of the following students, pursuant to Title 5, California Code of Regulations, Section 55523:

1) All nonexempt students who are on probation, have not declared a specific educational goal, or are enrolled in pre-collegiate basic skills courses, pursuant to Title 5, California Code of Regulations, Section 55523(a)(1), (a)(2), and (a)(3); and

2) All students in general, to offer advice on academic requirements and the selection of specific courses, pursuant to Title 5, California Code of Regulations, Section 55523(a)(4).

R) To establish and implement a process for all of the following, regarding the Student Educational Plan, pursuant to Title 5, California Code of Regulations, Section 55525:

1) Counseling students on selecting a specific educational goal, pursuant to Title 5, California Code of Regulations, Section 55525(a);

2) Affording the student an opportunity to develop a written educational plan, pursuant to Title 5, California Code of Regulations, Section 55525(b);

3) Recording such educational plan, pursuant to Title 5, California Code of Regulations, Section 55525(c);

4) Reviewing the plan as necessary to ensure that the plan continues to accurately reflect the needs and goals of the student, pursuant to Title 5, California Code of Regulations, Section 55525(c);

5) Affording a student the right to file a complaint pursuant to Section 55534(a) if that student believes the district has violated the requirements of this Section, pursuant to Title 5, California Code of Regulations, Section 55525(d).

S) To establish and implement a follow-up process to assist the student in achieving his or her educational goal which includes regular monitoring to detect early signs of academic difficulty and advice or referral to specialized services where necessary, pursuant to Title 5, California Code of Regulations, Section 55526.

T) To adopt and implement policies and procedures that clearly define

student rights and responsibilities and the consequences of failure to fulfill such responsibilities, pursuant to Title 5, California Code of Regulations, Section 55530.

1) The district must ensure that all such information is available in written form to all students during or prior to enrollment (e.g., during orientation) and be included in class schedules, catalogs, other appropriate publications and in the student's educational plan, pursuant to Title 5, California Code of Regulations, Section 55530(b) and (d);

2) The district must take steps to ensure that the matriculation process is efficient, pursuant to Title 5, California Code of Regulations, section 55530(c);

3) The policy must define the period of time within which a student must identify a specific educational goal and provide the student with an opportunity to develop a student educational plan once that goal has been identified by the student, pursuant to Title 5, California Code of Regulations, section 55530(d).

4) The district must classify all information obtained from the matriculation process as "student records" that are subject to the requirements of Sections 54600-54626 of the California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 55530(e).

U) To establish and implement written procedures for and to hear a student challenge to an alleged violation of the matriculation program, pursuant to

Title 5, California Code of Regulations, Section 55534.

1) The district must investigate and attempt to resolve any student complaints regarding matriculation violations in a timely manner, pursuant to Title 5, California Code of Regulations, Section 55534(a).

2) The district must retain records of all such complaints for at least three years after the complaint has been resolved, and to allow review of such records by the Chancellor, pursuant to Title 5, California Code of Regulations, Section 55534(a).

3) When a challenge contains an allegation that a community college district has been discriminatory, the district must, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division, pursuant to Title 5, California Code of Regulations, Section 55534(b).

COMPONENT 17: FULL-TIME/PART-TIME FACULTY (75 Percent Standard)

A) To ensure that at least 75 percent of the hours of credit instruction is taught by full-time instructors, by applying a portion of any "program improvement" funds received pursuant to Education Code Section 84755, according to the following guidelines, pursuant to Education Code Section 87482.6(a):

1) If the district has between 67 percent and 75 percent of credit instruction hours taught by full-time instructors in the previous fiscal year, the district must apply up to 33 percent of the program improvement allocation

toward the goal of attaining the 75 percent standard, pursuant to Education Code 87482.6(a)(1).

2) If the district has less than 67 percent of credit instruction hours taught by full-time instructors, the district must apply up to 40 percent of the program improvement allocation to reach the 75 percent standard, pursuant to Education Code Section 87482.6(a)(2).

B) To adopt and implement policies and procedures to comply with and to adjust the district budget in accordance with the regulations adopted by the Board of Governors, pertaining to allocation of funds in relation to the number of full-time equivalent faculty (FTF) employed by a district and the number of credit hours of instruction taught by such faculty, pursuant to Education Code Section 87482.6(b) and Title 5, California Code of Regulations, Sections 53312 and 53314.

1) To compile and prepare all data required for the Chancellor to annually compute and determine the number of full-time faculty the district has retained each year and the estimate number of full-time faculty the district needs to secure for the following year, in order to receive program improvement funds, pursuant to Education Code Section 87482.6(b) and Title 5, California Code of Regulations, Sections 53312 and 53314.2)

2) For the district to secure the number of full-time faculty that the Chancellor requires, as determined by the computation formula contained in subdivision (b)(3), in order to receive program improvement funds, pursuant to Education Code Section 87482.6(b)(3).

C) To establish and implement policies and procedures to comply with the

regulations adopted by the Board of Governors which establish minimum standards regarding the percentage of hours of credit instruction that must be taught by full-time instructors, pursuant to Education Code Section 87482.7.

D) To establish and implement policies and procedures to comply with the following duties in order to ensure that the 75 percent full-time faculty percentage is met, pursuant to Title 5, California Code of Regulations, Section 51025:

1) If the district has less than a 75 percent full-time faculty percentage, the district must increase the base full-time faculty obligation by the Fall term of the succeeding fiscal year by a particular method of calculation as specified in Title 5, California Code of Regulations, Section 50125(a)(1), so that the faculty obligation correlates with the growth revenues received related to increases in the full-time student population, pursuant to Title 5, California Code of Regulations, Section 51025(a)(1).

2) If the district has between 67 percent and 75 percent of credit instruction hours taught by full-time instructors in the previous fiscal year, the district must apply up to 33 percent of their program improvement allocation toward the goal of attaining the 75 percent standard, pursuant to Title 5, California Code of Regulations, Section 51025(a)(2).

3) If the district has less than 67 percent of credit instruction hours taught by full-time instructors, the district must apply up to 40 percent of their program improvement allocation to reach the 75 percent standard, pursuant to Title 5, California Code of Regulations, Section 51025(a)(3).

4) If the district is required to apply a portion of the program improvement allocation fund toward reaching the 75 percent standard, the district must

use those funds to increase the number of full-time faculty, by the Fall term of the succeeding fiscal year, by a particular calculation method as specified in, and pursuant to Title 5, California Code of Regulations, Section 51025(a)(4).

E) To ensure that all policies and procedures regarding the proportion of full-time and part-time faculty to be employed by community colleges, incorporate and implement the requirements contained in Section 51025 of Title 5 of the California Code of Regulations, pursuant to Title 5, California Code of Regulations, Section 53300.

F) To define and catagorize all faculty members as either "part-time" or "full-time" in accordance with the definitions prescribed in and pursuant to Title 5, California Code of Regulations, Sections 53301 and 53302.

G) To determine the district's full-time faculty percentage using the formula described in Title 5, California Code of Regulations, Section 53308.

H) For the district, when making the calculations required in Section 51025, to calculate full-time equivalent faculty (FTEF) attributable to full-time faculty according to the following rules, pursuant to Title 5, California Code of Regulations, Section 53309:

1) To calculate instruction based on the percentage of instructional hours per week considered a full-time assignment for regular instructional employees having comparable duties, excluding any noncredit instructional assignments, pursuant to Title 5, California Code of Regulations, Section 53309(a).

2) To calculate non-instructional activities based on the percentage of

working hours per week considered a full-time assignment for regular non-instructional employees having comparable duties, pursuant to Title 5, California Code of Regulations, Section 53309(b).

3) To include the regular assignment of full-time faculty as defined in Section 53302, pursuant to Title 5, California Code of Regulations, Section 53309(c).

4) To exclude full-time faculty overload from the calculation of FTEF, pursuant to Title 5, California Code of Regulations, Section 53309(d).

5) To include full-time faculty sabbatical FTEF, whether paid or unpaid, and exclude the FTEF of replacement faculty, whether full-time or part-time, from the computation to determine the full-time faculty percentage in compliance with Section 53308, pursuant to Title 5, California Code of Regulations, Section 53309(e).

6) To include FTEF for full-time faculty who are released or reassigned, pursuant to Title 5, California Code of Regulations, Section 53309(f).

   a) To count the FTEF of a full-time faculty member on released or reassigned time as if the faculty member was teaching/working full-time and had not been provided released or reassigned time, pursuant to Title 5, California Code of Regulations, Section 53309(f).

   b) To exclude the FTEF of replacement faculty, whether full-time or part-time, when computing the full-time faculty percentage in compliance with Section 53308, pursuant to Title 5, California Code of Regulations, Section 53309(f).

7) To include unpaid leave FTEF for a faculty member on unpaid leave, pursuant to Title 5, California Code of Regulations, Section 53309(g).
   a) To count the FTEF of a full-time faculty member on unpaid leave as if the faculty member was teaching/working full-time and had not been provided with unpaid leave, pursuant to Title 5, California Code of Regulations, Section 53309(g).
   b) To exclude the FTEF of replacement faculty, whether full-time or part-time, when computing the full-time faculty percentage in compliance with Section 53308, pursuant to Title 5, California Code of Regulations, Section 53309(g).

8) To include credit instruction FTEF taught by classified staff or administrators who are appropriately qualified to teach, so long as the following conditions are met, pursuant to Title 5, California Code of Regulations, Section 53309(h):
   a) Only the actual hours of teaching by such individuals are included in determining the FTEF, pursuant to Title 5, California Code of Regulations, Section 53309(h); and
   b) The hours of teaching by such individuals are part of a regular contract, and not taught as an overload assignment, pursuant to Title 5, California Code of Regulations, Section 53309(h).

9) To include the FTEF of a faculty member who resigned or retired and who provided written notice thereof within 45 faculty duty days of the end of the previous Spring primary term and whose position has not been replaced by another full-time faculty member by the current Fall primary term,

pursuant to Title 5, California Code of Regulations, Section 53309(i).

10) To exclude the FTEF of replacement faculty, whether full-time or part-time, when computing the full-time faculty percentage in accordance with Section 53308, pursuant to Title 5, California Code of Regulations, Section 53309(i).

a) For the district to fill the position(s) of resigned or retired FTEF by the following Spring primary term unless designees for the district governing board and academic senate jointly agree that it is in the best interests of the district to delay the filling of the position, pursuant to Title 5, California Code of Regulations, Section 53309(i).

b) For the district to ensure that, in such cases, replacement is made by the following primary term to avoid a reduction by the Chancellor in the district's state apportionment revenues for the current year in accordance with the provisions of Section 51025, pursuant to Title 5, California Code of Regulations, Section 53309(i).

I) For the district, when making the calculations required in Section 51025, to calculate the percentage of full-time faculty in the district according to the calculation method prescribed in Section 53308, pursuant to Title 5, California Code of Regulations, Section 53308.

J) For the district, when making the calculations required in Section 51025, to calculate full-time equivalent faculty (FTEF) attributable to part-time faculty according to the following rules, pursuant to Title 5, California Code of Regulations, Section 53310:

1) With respect to instruction, FTEF must be calculated based on the percentage of instructional hours per week considered a full-time assignment for regular instructional employees having comparable duties, excluding any noncredit instructional assignments, pursuant to Title 5, California Code of Regulations, Section 53310(a).

2) With respect to non-instructional activities, FTEF must be calculated based on the percentage of working hours per week considered a full-time assignment for regular non-instructional employees having comparable duties, pursuant to Title 5, California Code of Regulations, Section 53310(b).

3) All instructional and non-instructional activities of part-time faculty must be included, except the following, pursuant to Title 5, California Code of Regulations, Section 53310(c):

   a) FTEF attributable to part-time faculty who replace full-time faculty on sabbatical leave, pursuant to Title 5, California Code of Regulations, Section 53310(c)(1).

   b) FTEF attributable to part-time faculty who replace full-time faculty on released or reassigned time, pursuant to Title 5, California Code of Regulations, Section 53310, pursuant to Title 5, California Code of Regulations, Section 53310(c)(2).

   c) FTEF of part-time faculty replacing full-time faculty on unpaid leave, pursuant to Title 5, California Code of Regulations, Section 53310(c)(3).

   d) FTEF of part-time faculty replacing full-time faculty who

resigned or retired late as defined in section 53309(i), pursuant to Title 5, California Code of Regulations, Section 53310(c)(4).

K) To determine the data necessary to calculate the base full-time faculty percentage from the current year's Fall management information system staff data submission to the Chancellor's Office, pursuant to Title 5, California Code of Regulations, Section 53311.

COMPONENT 18: STUDENT EQUITY

A) To establish and implement policies and procedures and to conduct staff training to ensure that a general prohibition against discrimination exists in community colleges, pursuant to Education Code Sections 72010-72014, 221.5, 221.7, 66016 and 66030.

1) To provide access to district services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex, pursuant to Education Code Section 72011.

2) To establish and implement policies and procedures to ensure that the district is in compliance with Education Code Sections 221.5 (policy of the state; prohibited discrimination), 221.7 (school-sponsored athletic programs; prohibited discrimination) and 66016 (equal opportunity; participation in athletics), relating to sex discrimination, pursuant to Education Code Section 72012. (For duties encompassed in Education Code Sections 221.5, 221.7 and 66016, see duties under numbers 5, 6 and 7 respectively)

3) To incorporate into district policies and procedures regarding matters

within Division 6 of the Education Code, that with respect to access to community college district services, classes, and programs, and with respect to all references within this division, "handicap" and "disability" have the same meaning, pursuant to Education Code Section 72013.

4) To establish and implement policies and procedures to ensure that no funds under the control of the community college district are ever used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin, pursuant to Education Code Section 72014.

5) To require all classes and courses to be conducted without regard to the sex of the student enrolled, pursuant to Education Code Section 221.5 and 66271.7, in the following ways:

   a) The district must ensure that no student is prohibited from enrolling in any class course the basis of the sex of the pupil, pursuant to Education Code Sections 221.5(b) and 66271.7(b).

   b) The district must ensure that if students of one sex are required to enroll in a particular course, the same course is also required of students of the opposite sex, pursuant to Education Code Sections 221.5(c) and 66271.7(c).

   c) The district must ensure that no school counselor, teacher, instructor, administrator, or aide offers any of the following types of guidance to students of one sex that is different from that offered to

students of the opposite sex, based on that student's sex, pursuant to Education Code Sections 221.5(d) and 66271.7(d):

(i) vocational;

(ii) school program;

(iii) career; or

(iv) higher education opportunity guidance.

d) The district must require any school personnel acting in a career counseling or course selection capacity to any student, to affirmatively explore with the student the possibility of careers, or courses leading to careers, that are nontraditional for the student's sex, pursuant to Education Code Sections 221.5(d) and 66271.7(d).

e) The district must notify the parents or legal guardian of a pupil at least once, in advance of career counseling and course selection and allow such parents to participate in the counseling sessions and decisions (for minor students), pursuant to Education Code Section 221.5(d).

f) The district must make participation in physical education activities or sports available to students of both sexes if it is required of students of one sex, pursuant to Education Code Sections 221.5(e) and 66271.7(e).

6) To ensure that public funds for athletic programs are only used for those programs that provide equal opportunity to both sexes for participation and for use of facilities, pursuant to Education Code Sections 221.7(b)

and 66271.7(g).

7) The district must apportion public funds available for athletics in a manner that ensures that equitable amounts are allocated for all students, insofar as practicable, pursuant to Education Code Section 66271.7(g).

8) To ensure that opportunities for participation in intercollegiate athletic programs be provided on as equal a basis as is practicable to both make and female students, in compliance with the Legislative intent, pursuant to Education Code Section 66016.

9) The district must ensure and maintain multicultural learning environments free from all forms of discrimination and harassment, pursuant to Education Code Section 66030.

B) To establish and implement policies and procedures to comply with the Sex Equity in Education Act of 1988, pursuant to Education Code Sections 66250 - 66292.4.

1) To ensure that equal rights and opportunities in the community college are afforded to all persons, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, color, ancestry, sexual orientation, or perception by others that a person has any of the above characteristics, pursuant to Education Code Section 66251.

2) To affirmatively combat racism, sexism, and other forms of bias, pursuant to Education Code Section 66252(b).

3) To incorporate the following terms and definitions into district policies and procedures relating to sex equity in education, as detailed in and pursuant to Education Code Sections 66260-66264:

a) "Governing board" means the governing board of a community college, pursuant to Education Code Section 66261;

b) "Postsecondary educational institution" means a public or private institution of vocational, professional, or postsecondary education; the governing board of a community college district; the Regents of the University of California; or the Trustees of the California State University, pursuant to Education Code Section 66261.5;

c) "Sex" has the same meaning as defined in Section 212, pursuant to Education Code Section 66262 and pursuant to Education Code Section 212, "Sex" means the biological condition or quality of being a male or female human being;

d) "Sexual harassment" has the same meaning as defined in Section 212.5, pursuant to Education Code Section 66262.5 and pursuant to Education Code Section 212.5, "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(i) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress, pursuant to Education Code Section 212.5(a);

(ii) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, pursuant to Education Code Section 212.5(b);

(iii) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment, pursuant to Education Code Section 212.5(c); or

(iv) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution, pursuant to Education Code Section 212.5(d).

e) "State financial assistance" has the same meaning as defined in Section 213, pursuant to Education Code Section 66263 and pursuant to Education Code Section 213, "State financial assistance" means "any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any pupils admitted to the educational institution that includes all of the following:

(i) Grants of state property, or any interest therein, pursuant to

Education Code Section 213(b)(1);

(ii) Provision of the services of state personnel, pursuant to Education Code Section 213(b)(2); and

(iii) Funds provided by contract, tax rebate, appropriation, allocation, or formula, pursuant to Education Code Section 213(b)(3).

f) "State student financial aid" has the same meaning as defined in Section 214, pursuant to Education Code section 66264 and pursuant to Education Code Section 214, "State student financial aid" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution, which includes, but is not limited to, scholarships, loans, grants, or wages.

4) To ensure that no person in the community college is subject to discrimination on the basis of their sex, ethnic group identification, race, national origin, religion , mental or physical disability, color, ancestry, sexual orientation, or perception by others that a person has any of the above characteristics, pursuant to Education Code Section 66270.

5) To establish and implement a written policy on sexual harassment that includes information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies, pursuant to Education Code Section

66281.5(b) and (c).

6) To display a copy of the community college's written policy on sexual harassment in all of the following places and manners, pursuant to Education Code Section 66281.5(d)-(g):

a) The policy must be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite, pursuant to Education Code Section 66281.5(d).

b) The policy, as it pertains to students, must be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable, pursuant to Education Code Section 66281.5(e).

c) The policy must be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired, pursuant to Education Code Section 66281.5(f).

d) The policy must appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution, pursuant to Education Code Section 66281.5(g).

7) To provide assurance to any agency administering state funds that the activity conducted by the community college will be in compliance with the Sex Equity in Education Act and any other applicable provisions of state

law prohibiting discrimination on the basis of sex, pursuant to Education Code Section 66290.

a) The district must make this assurance in the manner required by the agency distributing the funds, pursuant to Education Code Section 66290.

b) The district must make this assurance prior to receipt of such funds, pursuant to Education Code Section 66290.

8) To prepare and submit compliance reports to the Chancellor's office, as that entity may require, pursuant to Education Code Section 66291(a).

9) To make all reports submitted pursuant to 66291(a) available for public inspection during regular business hours, pursuant to Education Code Section 66291(b).

10) To ensure that programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, pursuant to Education Code Section 66292(a).

11) To allow a party to a written complaint of prohibited discrimination to appeal any action taken by the governing board of the community college district, pursuant to Education Code Section 66292.3(a).

12) To advise any person who files a complaint of prohibited discrimination that civil law remedies may also be available to such complainants, pursuant to Education Code Section 66292.3(b).

13) To publish in appropriate informational materials the fact that civil law remedies may be available to complainants of prohibited discrimination, pursuant to Education Code Section 66292.3(b).

C) To establish and implement a Student Equity Plan, as authorized by Education Code Section 66271.1 and implemented by Title 5, California Code of Regulations Sections 51026 and 54220.

1) To adopt and implement a student equity plan prior to receipt of state aid, pursuant to Title 5, California Code of Regulations Section 51026.

2) To adopt and implement a student equity plan which includes the following for each college in the district, pursuant to Title 5, California Code of Regulations, Section 54220:

a) Campus-based research as to the extent of student equity in (1) access, (2) retention, (3) degree and certificate completion, (4) ESL and basic skills completion, and (5) transfer, and the determination of what activities are most likely to be effective, pursuant to Title 5, California Code of Regulations, Section 54220(a)(1) and the Chancellor's Revised Guidelines and Information (Appendix 3 of "Student Equity: Guidelines for Developing a Plan");

(i) To periodically review the data compiled, and

(ii) To make efforts to address any problems that are identified, pursuant to Chancellor's Revised Guidelines and Information (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

b) Goals for (1) access, (2) retention, (3) degree and certificate completion, (4) ESL and basic skills completion, and (5) transfer; for the overall student population and for each population group of students, as appropriate, pursuant to Title 5, California Code of

Regulations, Section 54220(a)(2);

(i) For these goals to meet the following standards: (1) be written; (2) include specific measures for determining progress towards achieving the desired outcomes; (3) identify the baseline data findings that forms the bases for noting an equity issue; (4) identify the amount and direction of change expected to reflect the desired outcome or amount of progress to be achieved; (5) include target dates and/or timetables to establish a time frame for assessing the effectiveness in achieving expected outcomes, pursuant to Chancellor's Revised Guidelines and Information (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

c) Race-neutral measures, or, when legally appropriate, race-conscious measures, implemented in accordance with standards adopted by the Board of Governors, to address any disparity in student population if significant underrepresentation of a particular group is found to exist, pursuant to Title 5, California Code of Regulations, Section 54220(a)(2);

(i) To implement race/gender neutral measures when working to eliminate any noted underrepresentation, pursuant to Chancellor's Revised Guidelines and Information (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

(ii) To take active steps, beyond compliance with nondiscrimination laws, to promote student equity when

significant underrepresentation exists, pursuant to Chancellor's Revised Guidelines and Information (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

(iii) To implement the following procedures when significant underrepresentaion exists: (1) review its practices and procedures and identify and implement any additional measures which might reasonably be expected to address the needs of significantly underrepresented groups in the success indicator areas in question; (2) consider various other means of reducing the underrepresentation, which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective; and (3) establish target dates for achieving expected outcomes, pursuant to Chancellor's Revised Guidelines and Information (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

(iv) To use race/gender neutral methods to rectify underrepresentation for at least 3 years before considering mechanisms that take race or gender into account, pursuant to Chancellor's Revised Guidelines and Information (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

d) Implementation activities designed to attain the goals, including a

means of coordinating existing student equity related programs, pursuant to Title 5, California Code of Regulations, Section 54220(a)(3);

e) Sources of funds for the activities in the plan, pursuant to Title 5, California Code of Regulations, Section 54220(a)(4);

f) A schedule and process for evaluation, pursuant to Title 5, California Code of Regulations, Section 54220(a)(5);

(i) To conduct an annual survey of the college's student population and gather ethnicity, gender and disability data for use in evaluating the progress in implementing the goals set forth in its plan, pursuant to Chancellor's Revised Guidelines and Information (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

(ii) For the evaluation schedule to contain specific information about who is doing what and when and how often the plan itself will be evaluated, pursuant to Chancellor's Revised Guidelines and Information (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

g) An executive summary that includes, at a minimum, (1) the groups for whom goals have been set; (2) the goals; (3) the initiatives that the college or district will undertake to achieve these goals; (4) the resources that have been budgeted for that purpose; and (5) the district official to contact for further information, pursuant to Title 5, California Code of Regulations, Section 54220(a)(6);

h) For the designated contact person to be responsible for the following: (1) monitoring, review, and evaluation of student success for all students; (2) guiding the planning and development process to promote student success; (3) compiling the results of the periodic review process to determine effective success strategies; (4) reporting these findings to the success/equity advisory committee on an annual basis; (5) submitting a copy of this report along with any resulting committee board action to the Chancellor's Office, pursuant to Chancellor's Revised Guidelines and Information, 2002 (Appendix 3 of "Student Equity: Guidelines for Developing a Plan").

3) To develop the student equity plan with the active involvement of all groups on campus and with the involvement of appropriate people from the community, pursuant to Title 5, California Code of Regulations, Section 54220(b). To implement this subdivision, the governing board must determine who may qualify as "appropriate people from the community" and give notice to such people and also to all groups on campus of any meetings or activities regarding the development of the student equity plan.

4) For the governing board to submit the Board-adopted plan to the Office of the Chancellor, pursuant to Title 5, California Code of Regulations, Section 54220(c).

D) To create and implement a Comprehensive Mission Statement to identify common educational missions shared by educational institutions in California,

pursuant to Education Code Section 66010.1 - 66010.7

1) To provide the following, pursuant to Education Code Section 66010.2:
   a) Access to education to all qualified Californians, particularly for those who have been underrepresented in both their graduation rates from secondary institutions and in their attendance at higher educational institutions, pursuant to Education Code Section 66010.2(a);
   b) Quality teaching and programs of excellence for their students, pursuant to Education Code Section 66010.2(b); and
   c) Educational equity through a diverse student body and faculty, and an environment in which each person, regardless of race, gender, age, disability, or economic circumstances, has a reasonable chance to fully develop his or her potential, pursuant to Education Code Section 66010.2(c).
2) To establish and implement policies and procedures for intersegmental collaboration and coordination when it can do any of the following, pursuant to Education Code Section 66010.7(b):
   a) Enhance the achievement of the institutional missions shared by the segments, pursuant to Education Code Section 66010.7(b)(1);
   b) Provide more effective planning of postsecondary education on a statewide basis, pursuant to Education Code Section 66010.7(b)(2);
   c) Facilitate achievement of the goals of educational equity, pursuant to Education Code Section 66010.7(b)(3);

d) Enable public and independent higher education to meet more effectively the educational needs of a geographic region, pursuant to Education Code Section 66010.7(b)(4);

e) Facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions, pursuant to Education Code Section 66010.7(b)(5).

3) For the leaders of community college to work with the Superintendent of Public Instruction to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels, pursuant to Education Code Section 66010.7(c).

4) For the community college to make available and for the California Postsecondary Education Commission to review and evaluate the effectiveness of intersegmental activities in accomplishing the established goals, and report its findings to the Governor and Legislature biennially, pursuant to Education Code Section 66010.7(d).

E) To ensure that the district student equity plans, established pursuant to Title 5, California Code of Regulations, Sections 51026 and 54220 adhere to the Chancellor's criteria for reviewing and evaluating student equity plans, as detailed in and pursuant to the "Student Equity Plan Review Procedures and Instructions" contained in Appendix 1 of "Student Equity: Guidelines for

Developing a Plan, 2002"

COMPONENT 19: TRANSFER CENTERS

A) To implement policies and procedures to comply with the statewide common course numbering system adopted and disseminated by the Board of Governors, pursuant to Education Code Section 71027.

B) To establish and implement policies and procedures to comply with the common core curriculum for transfer, established and disseminated by the Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University, pursuant to Education Code Sections 66720 -66722.5

1) To provide each of their students with a copy of the current transfer core curriculum, pursuant to Education Code Section 66721.5(a)

2) To ensure that a copy of the current transfer core curriculum is distributed to each newly admitted student who is enrolled in a degree or certification program and is physically in attendance at the institution, pursuant to Education Code Section 6621.5(b)

3) To ensure that the text of the current transfer core curriculum is included in the published class schedule for each academic term, pursuant to Education Code Section 6621.5(c).

4) To establish and implement policies and procedures to ensure that the transfer function is a central institutional priority, and that the maintenance of an effective transfer system constitutes a fundamental policy and practice in the community college system,

pursuant to Education Code Section 66722.

5) To establish and implement policies and procedures to pursue the development of transfer agreement programs that specify the curricular requirements that must be met, and the level of achievement that must be attained, by students in order for those students to transfer to the campus, undergraduate college, or major of choice in the public four-year segments, pursuant to Education Code Section 66722.5.

C) To establish and implement a comprehensive transfer system, pursuant to Education Code Sections 66730 - 66744.

1) To recognize student matriculation from community colleges through the University of California and the California State University as a central institutional priority of all segments of higher education, pursuant to Education Code Section 66731.

2) To design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University, pursuant to Education Code Section 66732.

3) To ensure that the district college or colleges maintain student transfer counseling centers or other counseling and student services, pursuant to Education Code Section 66736.

a) To design and implement such centers or services to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college

transfer students, pursuant to Education Code Section 66736.

b) To ensure that all such policies and procedures give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations, pursuant to Education Code Section 66736

4) To establish and implement policies and procedures to comply with the new programs of outreach, recruitment, and cooperation between and among the three segments of public higher education designed to facilitate the successful transfer of students between the community college and the universities, as developed by the Board of Governors of the California Community Colleges, pursuant to Education Code Section 66737.

5) To assist in the development and implementation of formal systemwide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures to support and enhance the transfer function, pursuant to Education Code Section 66738.

a) To ensure that the elements in a comprehensive transfer system include the following, pursuant to Education Code Section 66738(b):

1) Enrollment and resource planning; intersegmental faculty curricular efforts;
2) Coordinated counseling;
3) Financial aid and transfer services;
4) Transfer articulation agreements and programs;
5) Specific efforts to improve diversity;
6) Early outreach activities;
7) Expansion of current practices relating to concurrent enrollment of community college students in appropriate university courses; and
8) Centers.

b) To expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available, pursuant to Education Code Section 66738(c);

c) To expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus, pursuant to Education Code Section 66738(c).

D) For faculty from the community college to participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency, pursuant to Education Code Section 66740.

1) To establish and implement policies and procedures to ensure that, where specific majors are impacted or over-subscribed, the prescribed course of study and minimum grade point average required for consideration for upper division admission to all of these majors are made readily available to (a) community college counselors, (b) faculty, and (c) students on an annual basis, pursuant to Education Code Section 66740.

2) In cases where the prescribed course of study is altered by the university department, to communicate notice of the modification to appropriate community college faculty and counselors at least one year prior to the deadline for application to that major and implementation by the department responsible for teaching that major, pursuant to Education Code Section 66740.

3) For the district, in conjunction with the California State University and the University of California, to develop discipline-based agreements with as many campuses of the two university segments as feasible, and no fewer than three University of California campuses and five California State University campuses, pursuant to Education Code Section 66740.

E) To ensure that, each student is assured of the opportunity to enter into a transfer agreement program enabling a student to (1) receive high priority consideration, (2) attain equivalent special treatment, or (3) enter into a contract when applying for university admission at the advanced standing level, pursuant to Education Code Section 66741.

F) To prepare and present annual statistical reports on transfer patterns via the California Postsecondary Education Commission to the Governor and Legislature, pursuant to Education Code Section 66742.

1) For the reports to include recent statistics on student enrollment by campus, segment, gender, ethnicity, and the ratio of upper division to lower division, including information on both (1) freshman and (2) transfer student access to the system, pursuant to Education Code Section 66742.

2) For the reports to include, to the extent that data are available or become available, data on application, admission and enrollment information for all students by sex, ethnicity, and campus, pursuant to Education Code Section 66742.

3) To ensure that, for transfer students, this data indicates the segment of origin for all students, pursuant to Education Code Section 66742.

4) For the data to be separately identified for transfer students from California Community Colleges, pursuant to Education Code Section 66742.

5) For the data to identify the subset of applications which are completed together with admission, enrollment, and declared major information for that group, pursuant to Education Code Section 66742.

6) For the reports to describe the following, pursuant to Education Code Section 66742:

a) The number of transfer agreements, if any, whose terms and conditions were not satisfied by either the California State University or the University of California, pursuant to Education Code Section 66742;

b) The number of California Community College transfer students denied either (1) admission to the student's first choice of a particular campus of the California State University or the University of California or (2) the student's first choice of a major field of study, pursuant to Education Code Section 66742; and

c) The number of students who, upon denial of either of the student's first choices, immediately enrolled at another campus of the California State University or the University of California, pursuant to Education Code Section 66742.

7) For the reports to include information by sex and ethnicity on retention and degree completion for transfer students, native students, and the number and percentage of baccalaureate degree recipients who transferred from a community college, pursuant to Education Code Section 66742.

G) To compile, prepare and make available data required by the California Postsecondary Education Commission's intersegmental advisory committee on transfer access and performance so that the committee may present biennial reports to the Governor and the Legislature on the status of transfer policies and programs, pursuant to Education Code Section 66743

H) To implement and comply with minimum standards for transfer centers, pursuant to Title 5 of the California Code of Regulations, Section 51027.

1) To recognize transfer as one of the districts primary missions, and to place priority emphasis on the preparation and transfer of underrepresented students, including African-American, Chicano/Latino, American Indian, disabled, low-income and other students historically and currently underrepresented in the transfer process, pursuant to Title 5, California Code of Regulations, Section 51027(a).

2) To develop, adopt and implement a transfer center plan that includes the following, pursuant to Title 5, California Code of Regulations, Section 51027(b):

a) A description of the activities of the transfer center and the services to be provided to students, pursuant to Title 5, California Code of Regulations, Section 51027(b);

b) Identification of target student populations, pursuant to Title 5, California Code of Regulations, Section 51027(b);

c) Establishment of target increases in the number of applicants baccalaureate institutions from these populations, including specific targets for increasing the transfer applications of underrepresented students among transfer students, pursuant to Title 5, California Code of Regulations, Section 51027(b);

d) Consultation with baccalaureate college and university

personnel in the development of the transfer center plan, pursuant to Title 5, California Code of Regulations, Section 51027(b); and

e) Inclusion of at least the following plan components, pursuant to Title 5, California Code of Regulations, Section 51027(b):

(1) services to be provided to students;

(2) facilities;

(3) staffing;

(4) advisory committee; and

(5) evaluation and reporting.

3) To establish and implement the following required services, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1):

a) To identify, contact, and provide transfer support services to targeted student populations as identified in the transfer center plan, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(A);

(1) To place priority emphasis on African-American, Chicano/Latino, American Indian, disabled, low-income, and other underrepresented students; and

(2) To develop and implement these activities in cooperation with student services departments and with faculty.

b) To ensure: (1) the provision of academic planning for transfer, (2) the development and use of transfer admission agreements with baccalaureate institutions where available and as appropriate, and (3) the development and use of course-to-course and major articulation agreements, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(B).

(1) To ensure that academic planning and articulation activities are provided in cooperation with (1) student services, (2) with faculty, and (3) with baccalaureate institution personnel as available.

c) To ensure that students receive accurate and up-to-date academic and transfer information through coordinated transfer counseling services, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(C).

d) To monitor the progress of transfer students to the point of transfer, in accordance with monitoring activities established in the Transfer Center Plan, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(D).

e) To support the progress of transfer students through referral as necessary, to such services as: (1) ability and diagnostic testing, (2) tutoring, (3) financial assistance, (4) counseling, and (5) to other instructional and student services on campus as appropriate, pursuant to Title 5, California Code

of Regulations, Section 51027(b)(1)(E).

f) To assist students in the transition process, including timely completion and submittal of necessary forms and applications, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(F).

g) To develop and implement a schedule of services for transfer students to be provided by baccalaureate institution staff, in cooperation with baccalaureate institution personnel as available, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(G).

h) To provide: (1) a resource library of college catalogs, (2) transfer guides, (3) articulation information and agreements, (4) applications to baccalaureate institutions, and (5) related transfer information, pursuant to Title 5, California Code of Regulations, Section 51027(b)(1)(H).

4) To provide space and facilities adequate to support the transfer center and its activities, pursuant to Title 5, California Code of Regulations, Section 51027(b)(2).

a) To designate a particular location on campus as the focal point of transfer functions, pursuant to Title 5, California Code of Regulations, Section 51027(b)(2).

b) To ensure that this location is readily identifiable and accessible to students, faculty, and staff, pursuant to Title 5, California Code of Regulations, Section 51027(b)(2).

5) To provide clerical support for the transfer center and assign college staff to accomplish the following, pursuant to Title 5, California Code of Regulations, Section 51027(b)(3):

   a) To coordinate the activities of the transfer center;

   b) To coordinate underrepresented student transfer efforts;

   c) To serve as liaison to articulation, to student services, and to instructional programs on campus;

   d) To work with baccalaureate institution personnel.

6) To designate an advisory committee to plan the development, implementation, and ongoing operations of the transfer center, pursuant to Title 5, California Code of Regulations, Section 51027(b)(4).

   a) To ensure that membership is representative of campus departments and services.

   b) To ensure that Baccalaureate institution personnel are included as available.

7) To include in the districts transfer center plan, a plan of institutional research for ongoing internal evaluation of the effectiveness of the college's transfer efforts, and the achievement of its transfer center plan, pursuant to Title 5, California Code of Regulations, Section 51027(b)(5).

8) To prepare and submit an annual report to the Chancellor describing the following, pursuant to Title 5, California Code of Regulations, Section 51027(b)(5):

a) the status of the district's efforts to implement its transfer center(s),

b) achievement of transfer center plan targets and goals, and

c) expenditures supporting transfer center operations.

COMPONENT 20: COMPLIANCE ENFORCEMENT

A) To adopt and implement policies and procedures to comply with the requirements of Education Code Section 70901(b)(6) and Chapter 2 of Division 6 of the California Code of Regulations regarding the minimum conditions the district must meet to receive state aid for the support of the community college, pursuant to Title 5, California Code of Regulations, Section 51000.

B) To prepare and submit all data necessary to respond to any review by the State Chancellor to determine whether the district has complied with the minimum conditions contained in Subchapter 1 (commencing with Section 51000) of Chapter 2 of the California Code of Regualtions, pursuant to Title 5, California Code of Regulations, Section 51101.

C) To adopt and implement policies and procedures to comply with any enforcement orders that the Chancellor may issue to the district regarding district compliance with the provisions of Subchapter 1 (commencing with Section 51100) of Chapter 2 of the California Code of Regulations (Minimum Conditions), pursuant to Title 5, California Code of Regulations, Section 51102.

1) To prepare and submit to the Chancellor an official written response by a date specified by the Chancellor, if the Chancellor

notifies the chief executive officer of the district that any noncompliance with the Subchapter exists, pursuant to Title 5, California Code of Regulations, Section 51102(a);

2) If the Chancellor so requires, to prepare, submit and implement a plan and timetable for achieving compliance as a condition for continued receipt of state aid Title 5, California Code of Regulations, Section 51102(b)(2).

It is estimated that the Santa Monica Community College District incurred more than $1000 in staffing and other costs in excess of any funding provided to the district for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this _____ day of June, 2003, at _____, California

_____

Piedad F. Robertson, President
Santa Monica Community College District

notifies the chief executive officer of the district that any noncompliance with the Subchapter exists, pursuant to Title 5, California Code of Regulations, Section 51102(a);

2) If the Chancellor so requires, to prepare, submit and implement a plan and timetable for achieving compliance as a condition for continued receipt of state aid Title 5, California Code of Regulations, Section 51102(b)(2).

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The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 16th day of June, 2003, at Santa Monica, California

Piedad F. Robertson, President
Santa Monica Community College District

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EXHIBIT 2

COPIES OF STATUTES CITED

SEC. 50. Section 72012 of the Education Code is amended to read:

72012. Every community college shall comply with * * * Sections 221.5, 221.7, and 66016, relating to sex discrimination.

SEC. 51. Section 72015 of the Education Code is amended and renumbered to read:

66271.7. (a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.

(b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.

(c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

(f) The Legislature finds and declares that female students are not accorded opportunities for participation in community college athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in community college athletics be provided equally to male and female students and on an equitable basis to all students.

(g) Insofar as practicable, in apportioning public funds, community college district governing boards shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of the governing board of a community college district, or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and opportunities for participation shall include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(h) It is the further intent of the Legislature that females be given the same opportunity to participate in athletics and compete with other females in individual and team sports as is available to males who compete with other males in individual and team sports. Nothing in this section shall be construed to require a community college to require competition between male and female students in school-sponsored athletic programs.

SCHOOLS AND SCHOOL DISTRICTS—COMMUNITY COLLEGES—BOARD OF GOVERNORS

CHAPTER 1023

A.B. No. 2329

AN ACT to amend Section 70901 of the Education Code, and to amend Sections 10295, 10430, 12100.5, and 12120 of, and to add Sections 20661 and 20662 to, the Public Contract Code, relating to community colleges.

[Approved by Governor September 30, 1998.]

[Filed with Secretary of State September 30, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2329, Firestone. Community colleges: contracts.

Under existing law, the Regents of the University of California and the Trustees of the California State University are not subject to laws governing contracts for the state procurement of materials, goods, supplies, or services, or for the acquisition of electronic data-processing and telecommunications goods and services, with certain exceptions. Under existing law, the trustees are required to develop policies and procedures that further expressed legislative policies for procurement without the involvement of the Department of Finance or the Department of General Services.

This bill would provide that the Board of Governors of the California Community Colleges is not subject to the laws described above, but would require the board to develop policies and procedures that further express legislative policies for procurement without the involvement of the Department of Finance or the Department of General Services.

Under existing law, Section 8 of Article XVI of the California Constitution (Proposition 98) sets forth a formula for computing the minimum amount of General Fund revenues that the state is required to appropriate for the support of school districts, as defined, and community college districts for each fiscal year.

The bill would authorize the Chancellor of the California Community Colleges to enter into a contract on behalf of one or more community college districts, subject to certain restrictions. The bill would require the chancellor to report to the Legislature and the Governor by

January 1, 2001, on contracts entered into pursuant to these provisions and any resultant cost savings. The bill would authorize the chancellor to enter into a contract with a community college district whereby the district performs services or acts as a fiscal agent on behalf of the California Community Colleges when the funds for the contract or agreement are in satisfaction of the state obligation to provide funding pursuant to Section 8 of Article XVI of the California Constitution. The bill would authorize the Board of Governors of the California Community Colleges to adopt regulations to implement the provisions of this paragraph.

This bill would incorporate additional changes in Section 10430 of the Public Contract Code proposed by SB 412, to be operative if SB 412 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 70901 of the Education Code is amended to read:

70901. (a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general

apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Contract for the procurement of goods and services, as necessary.

(16) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

SEC. 2. Section 10295 of the Public Contract Code, as amended by Chapter 88 of the Statutes of 1998, is amended to read:

10295. All contracts entered into by any state agency for (a) the hiring or purchase of equipment, supplies, materials, or elementary school textbooks, (b) services, whether or not the services involve the furnishing or use of equipment, materials or supplies or are performed by an independent contractor, (c) the construction, alteration, improvement, repair or maintenance of property, real or personal, or (d) the performance of work or services by the state agency for or in cooperation with any person, or public body, are void unless and until approved by the department. Every such contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of the approval. This section applies to any state agency that by general or specific statute is expressly or impliedly authorized to enter into transactions referred to in this section. This section does not apply to any transaction entered into by the Trustees of the California State University, by the Board of Governors of the California Community Colleges, or by a department under the State Contract Act or the California State University Contract Law, any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under Section 14035 or 14035.5 of the Government Code, Sections 99316 to 99319, inclusive, of the Public Utilities Code, or the Streets and Highways Code, any contract entered into by the Department of Transportation that is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources, any contract entered into by the Department of Personnel Administration for state employees in State Bargaining Unit 16 for employee benefits, occupational health and safety, training services, or combination thereof any contract let by the Legislature, or any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

SEC. 3. Section 10430 of the Public Contract Code, as amended by Section 72 of Chapter 88 of the Statutes of 1998, is amended to read:

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California.

(b) Transactions covered under Chapter 3 (commencing with Section 12100).

(c) Except as otherwise provided in this chapter, any entity exempted from the provisions of Section 10295 or 10295.1. However, the Trustees of the California State University and the Board of Governors of the California Community Colleges shall be governed by this chapter except with regard to transactions covered under the California State University and Colleges Contract Law, and except as provided in Sections 10295, 10335, 10356, and 10389.

(d) Transactions covered under Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Except as provided for in subdivision (c), members of boards or commissions who receive no payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.

(f) The emergency purchase of protective vests for correctional peace officers whose duties require routine contact with state prison inmates. This subdivision shall remain operative only until January 1, 1987.

(g) Spouses of state officers or employees and individuals and entities that employ spouses of state officers and employees, that are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that capacity, does not receive any material financial benefit, distinguishable from the benefit to the public generally, from any governmental decision made by the state officer or employee.

SEC. 3.5. Section 10430 of the Public Contract Code, as amended by Section 72 of Chapter 88 of the Statutes of 1998, is amended to read:

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California.

(b)(1) Transactions covered under Chapter 3 (commencing with Section 12100), except that Sections 10365.5, 10410, and 10411 shall apply to all individuals, companies, corporations, or other entities that bid on or are awarded contracts, either as contractors or subcontractors, pursuant to that chapter.

(2) The changes made to this subdivision during the 1998 portion of the 1997–98 Regular Session shall not be construed to have retroactive effect on any pending action, arbitration, or administrative proceeding, but shall only apply to an action, arbitration, or administrative proceeding, at law or in equity, that is commenced on or after January 1, 1999.

(c) Except as otherwise provided in this chapter, any entity exempted from the provisions of Section 10295 or 10295.1. However, the Trustees of the California State University and the Board of Governors of the California Community Colleges shall be governed by this chapter except with regard to transactions covered under the California State University and Colleges Contract Law, and except as provided in Sections 10295, 10335, 10356, and 10389.

(d) Transactions covered under Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Except as provided for in subdivision (c), members of boards or commissions who receive no payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.

(f) The emergency purchase of protective vests for correctional peace officers whose duties require routine contact with state prison inmates. This subdivision shall remain operative only until January 1, 1987.

(g) Spouses of state officers or employees and individuals and entities that employ spouses of state officers and employees, that are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that capacity, does not receive any material financial benefit, distinguishable from the benefit to the public generally, from any governmental decision made by the state officer or employee.

SEC. 4. Section 12100.5 of the Public Contract Code is amended to read:

12100.5. The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges shall not be subject to this chapter except that the trustees shall develop policies and procedures maintained in its state university administrative manual and the board shall adopt policies and procedures maintained in its administrative manual that further the legislative policies for procurement expressed in this chapter but without the involvement of the Director of Finance and the Director of General Services or the Department of Finance and the Department of General Services.

SEC. 5. Section 12120 of the Public Contract Code is amended to read:

12120. The Legislature finds and declares that, with the advent of deregulation in the telecommunications industry, substantial cost savings can be realized by the state through the specialized evaluation and procurement of alternative telecommunications systems. All contracts for the acquisition of telecommunications services and all contracts for the acquisition of telecommunications goods, whether by lease or purchase, shall be made by, or under the supervision of, the Department of General Services. All procurements shall be accomplished in accordance with Chapter 3 (commencing with Section 12100), relating to the acquisition of electronic data-processing goods and services, except to the extent any directive or provision is uniquely applicable to electronic data-processing acquisitions. The Department of General Services shall have responsibility for the establishment of policy and procedures for telecommunications. The Department of General Services shall have responsibility for the establishment of tactical policy and procedures for data-processing acquisitions consistent with statewide strategic policy as established by the Department of Finance. The Department of Finance shall have review and approval responsibility of data-processing information and telecommunication acquisitions to assure consistency with budgetary objectives. The Trustees of the California State University and the Board of Governors of the California Community Colleges shall assume the functions of the Department of Finance and the Department of General Services with regard to procurement of telecommunication goods and services by the California State University and the California Community Colleges, respectively. The trustees and the board shall each grant to the Department of General Services, Division of Telecommunications, an opportunity to bid whenever the university or the college system solicits bids for telecommunications goods and services.

SEC. 6. Section 20661 is added to the Public Contract Code, to read:

20661. (a) The Chancellor of the California Community Colleges is authorized to enter into a contract on behalf of one or more community college districts, subject to the following restrictions:

(1) No district may be required to participate in any contract entered into pursuant to this section.

(2) The cost to each district that is a party to or a beneficiary of a contract entered into pursuant to this section must be lower than the cost the district could obtain through its standard contracting procedures. No contract for the procurement of goods or services may be made when a bid has been received by a participating district for the procurement of the same goods or services unless the contract would result in a lower price for the goods or services upon the same terms, conditions, and specifications.

(3) The state shall not incur any financial responsibility in connection with a contract entered into pursuant to this section.

(b) The Chancellor of the California Community Colleges is authorized to charge a fee, commission, or other charge to either or both of the following:

(1) Each provider of goods or services under a contract entered into pursuant to this section.

(2) Each community college district that the chancellor enters into a contract on behalf of pursuant to this section.

(c) On or before January 1, 2001, the Chancellor of the California Community Colleges shall report to the Legislature and the Governor on contracts entered into pursuant to this section and any resultant cost savings.

(d) The Board of Governors of the California Community Colleges shall adopt regulations to implement this section.

SEC. 7. Section 20662 is added to the Public Contract Code, to read:

20662. The Chancellor of the California Community Colleges is authorized to enter into a contract or other agreement with the governing board of any community college district whereby the district performs services or acts as a fiscal agent on behalf of the California Community colleges. This section shall apply only when the funds for the contract or agreement are in satisfaction of the state obligation to provide funding pursuant to Section 8 of Article XVI of the California Constitution.

SEC. 7.5. (a) Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code applies to the Board of Governors of the California Community Colleges and to the Chancellor's Office of the California Community Colleges. The Legislature finds and declares that this subdivision is declaratory of existing law.

(b) Nothing in this act shall be construed to provide any exemption from Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code for the Board of Governors of the California Community Colleges or the Chancellor's Office of the California Community Colleges.

SEC. 8. It is the intent of the Legislature that this act will result in greater efficiency in the operation of the California Community Colleges.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 10430 of the Public Contract Code proposed by both this bill and SB 412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 10430 of the Public Contract Code, and (3) this bill is enacted after SB 412, in which case Section 3 of this bill shall not become operative.

EDUCATION—CALIFORNIA STUDENT SAFETY AND VIOLENCE PREVENTION ACT

CHAPTER 587

A.B. No. 537

AN ACT to amend Sections 200, 220, 66251, and 66270 of, to add Section 241 to, and to amend and renumber Sections 221 and 66271 of, the Education Code, relating to discrimination.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 537, Kuehl. Discrimination.

(1) Existing law provides that it is the policy of the State of California to afford all persons in public schools and postsecondary institutions, regardless of their sex, ethnic group identification, race, national origin, religion, or mental or physical disability, equal rights and opportunities in the educational institutions of the state.

Existing law makes it a crime for a person, whether or not acting under color of law, to willfully injure, intimidate, interfere with, oppress, or threaten any other person, by force or threat of force, in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

This bill would also provide that it is the policy of the state to afford all persons in public school and postsecondary institutions equal rights and opportunities in the educational institutions of the state, regardless of any basis referred to in the aforementioned paragraph.

(2) Existing law prohibits a person from being subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability in any program or activity conducted by any educational institution or postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

This bill would also prohibit a person from being subjected to discrimination on the basis of any basis referred to in paragraph (1) in any program or activity conducted by any educational institution or postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

(3) This bill would state that it does not require the inclusion of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or a postsecondary educational institution and would prohibit this bill from being deemed to be violated by the omission of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or a postsecondary educational institution.

To the extent that this bill would impose new duties on school districts and community college districts, it would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. This bill shall be known, and may be cited, as the California Student Safety and Violence Prevention Act of 2000.

SEC. 2. (a) The Legislature finds and declares all of the following:

(1) Under the California Constitution, all students of public schools have the inalienable right to attend campuses that are safe, secure, and peaceful. Violence is the number one cause of death for young people in California and has become a public health problem of epidemic proportion. One of the Legislature's highest priorities must be to prevent our children from the plague of violence.

(2) The fastest growing, violent crime in California is hate crime, and it is incumbent upon us to ensure that all students attending public school in California are protected from potentially violent discrimination. Educators see how violence affects youth every day; they know first hand that youth cannot learn if they are concerned about their safety. This legislation is designed to protect the institution of learning as well as our students.

(3) Not only do we need to address the issue of school violence but also we must strive to reverse the increase in teen suicide. The number of teens who attempt suicide, as well as the number who actually kill themselves, has risen substantially in recent years. Teen suicides in the United States have doubled in number since 1960 and every year over a quarter of a million adolescents in the United States attempt suicide. Sadly, approximately 4,000 of these attempts every year are completed. Suicide is the third leading cause of death for youths 15 through 24 years of age. To combat this problem we must seriously examine these grim statistics and take immediate action to ensure all students are offered equal protection from discrimination under California law.

SEC. 3. Section 200 of the Education Code is amended to read:

200. * * * It is the policy of the State of California to afford all persons in public schools, regardless of their sex, ethnic group identification, race, national origin, religion, * * * mental or physical disability, or regardless of any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

SEC. 4. Section 220 of the Education Code is amended to read:

220. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, * * * mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

SEC. 5. Section 221 of the Education Code is renumbered to read:

220.5. This article shall not apply to an educational institution which is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

SEC. 6. Section 241 is added to the Education Code, to read:

241. Nothing in the California Student Safety and Violence Prevention Act of 2000 requires the inclusion of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or postsecondary educational institution; the California Student Safety and Violence Prevention Act of 2000 shall not be deemed to be violated by the omission of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or postsecondary educational institution.

SEC. 7. Section 66251 of the Education Code is amended to read:

66251. It is the policy of the State of California to afford all persons, regardless of their sex, ethnic group identification, race, national origin, religion, * * * mental or physical disability, or regardless of any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, equal rights and opportunities in the postsecondary institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

SEC. 8. Section 66270 of the Education Code is amended to read:

66270. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

SEC. 9. Section 66271 of the Education Code is renumbered to read:

66270.5. This chapter shall not apply to an educational institution that is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

POSTSECONDARY EDUCATION—COMMUNITY COLLEGE STUDENTS —ACCESS TO TRANSFER INFORMATION

CHAPTER 187

A.B. No. 1918

AN ACT to add Section 66721.5 to the Education Code, relating to public postsecondary education.

[Filed with Secretary of State July 24, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1918, Romero. Public postsecondary education: Access to Transfer Information for Community College Students Act.

(1) Existing law establishes the various segments of the higher education system in the state. These segments include the University of California, which is administered by the Regents of the University of California, the California State University, which is administered

by the Trustees of the California State University, the California Community Colleges, which are administered by the Board of Governors of the California Community Colleges, and various private institutions of higher learning.

This bill would enact the Access to Transfer Information for Community College Students Act. The bill would impose a state-mandated local program by requiring the governing board of each community college district to direct the appropriate officials at their respective campuses to provide students with copies of the transfer core curriculum, as defined to mean the lower-division, general education transfer curriculum that is fully articulated between the California Community Colleges and the California State University and the University of California. The bill would require that a copy of the current transfer core curriculum be distributed to each newly admitted community college student, as prescribed, and that the text of the current transfer core curriculum be included in the published class schedule. The bill would authorize copies of the curriculum to be available at prescribed locations on community college campuses.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited as, the "Access to Transfer Information for Community College Students Act."

SEC. 2. The Legislature finds and declares all of the following:

(a) Student matriculation, from community colleges through the University of California and the California State University, is recognized by the Governor, Legislature, and the governing boards of each of the segments of California's system of public postsecondary education as a central institutional priority of all segments of higher education.

(b) The Board of Governors of the California Community Colleges, with the cooperation of the Regents of the University of California and Trustees of the California State University, should ensure that all students are clearly and fully informed as to which community college courses and units are transferable.

(c) Knowledge of transfer agreements will improve a community college student's opportunity to transfer.

(d) The Master Plan for Higher Education establishes transfers as a priority. The California Community Colleges and the University of California established the goal of a 33 percent increase in transfers between the 1995–96 and the 2004–05 academic years.

(e) According to recent reports by the California Postsecondary Education Commission, the transfer rate to the University of California system has decreased every year since 1995. Given the decreased transfer rates, there is no possibility of achieving the goal of 33 percent.

SEC. 3. Section 66721.5 is added to the Education Code, to read:

66721.5. (a)(1) The governing board of each community college district shall direct the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum.

(2) As used in this section, "transfer core curriculum" means the lower-division, general education transfer curriculum that, pursuant to Section 66720, is fully articulated between the California Community Colleges and the California State University and University of California.

(b) A copy of the current transfer core curriculum shall be distributed to each newly admitted community college student who is enrolled in a degree or certification program and is physically in attendance at the institution.

(c) The governing board of a community college district shall ensure that the text of the current transfer core curriculum is included in the published class schedule for each academic term. Copies of the transfer core curriculum may also be made available in other locations on each campus, including, but not necessarily limited to, all of the following:

(1) The admissions office.

(2) The bookstore.

(3) The career counseling center.

(4) The veteran's affairs office.

(d) Notwithstanding subdivision (c), the governing board of a community college may, as an alternative to the methods of distribution set forth in subdivision (c), distribute copies of the current transfer core curriculum by any of the following means:

(1) During the registration process.

(2) By mail, with the registration materials or the enrollment materials, or both, or with other items sent to students.

(3) During the issuance of student identification cards.

(4) During student orientation programs.

(e) Nothing in this section shall be construed to limit the distribution of the transfer core curriculum to community college students.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

COLLEGES AND UNIVERSITIES—COMMUNITY COLLEGES—EQUAL EMPLOYMENT OPPORTUNITIES

CHAPTER 1169

S.B. No. 2028

AN ACT to amend Section 87482.7 of, and to repeal and add Article 4 (commencing with Section 87100) of Chapter 1 of Part 51 of, the Education Code, relating to community colleges.

[Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2028, Vasconcellos. Community colleges: equal employment opportunity hiring.

Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law authorizes the establishment of community college districts under the administration of community college governing boards, and authorizes these districts to provide instruction at community college campuses throughout the state.

Existing statutes, relating to affirmative action hiring by the community colleges, that have been invalidated by order of the California Court of Appeal, require the board of governors, out of funds appropriated for that purpose, to provide assistance to local community colleges in maintaining high-quality affirmative action programs. The invalidated statutes also established the Faculty and Staff Diversity Fund in the State Treasury. Money in this fund was available to the board of governors, upon appropriation by the Legislature, for the purpose of enabling the community colleges as a system to address a goal of making the system's workforce reflect proportionately the adult population of the state.

This bill would repeal these invalidated provisions. The bill would instead enact provisions relating to equal employment opportunity hiring by the community colleges, and establish the Employment Opportunity Fund, to be administered by the board of governors, upon appropriation by the Legislature, for the purpose of promoting equal employment opportunities in hiring and promotion at the community colleges. The bill would make conforming changes.

The bill would require the governing board of each community college district that opts to participate under the bill to periodically submit to the board of governors an affirmation of compliance with the article. The bill would require the board of governors to adopt regulations to ensure that each participating community college district implements processes for ensuring equal employment opportunities. The bill would require the board of governors to develop systemwide strategies for encouraging community college students to become qualified for, and seek, employment as community college faculty or administrators. The bill would require the board of governors to develop and disseminate to community college districts a model equal employment opportunity plan.

The bill would require the board of governors to adopt regulations for the use of the fund, including outreach and recruitment, in-service training on equal employment opportunities, accommodations for applicants and employees with disabilities, and other activities to promote equal employment opportunities. The bill would prohibit the board of governors from using more than 25% of the revenues in the fund to provide technical assistance, service, monitor-

ing, and compliance functions. The bill would authorize the board of governors to allocate the remaining balance in the fund to the individual community college districts.

The people of the State of California do enact as follows:

SECTION 1. Article 4 (commencing with Section 87100) of Chapter 1 of Part 51 of the Education Code is repealed.

SEC. 2. Article 4 (commencing with Section 87100) is added to Chapter 1 of Part 51 of the Education Code, to read:

Article 4. Equal Employment Opportunity Hiring

87100. The Legislature finds and declares all of the following:

(a) In fulfilling its mission within California's system of public higher education, the California Community Colleges are committed to academic excellence and to providing all students with the opportunity to succeed in their chosen educational pursuits.

(b) Academic excellence can best be sustained in a climate of acceptance and with the inclusion of persons from a wide variety of backgrounds and preparations to provide service to an increasingly diverse student population.

(c) A workforce that is continually responsive to the needs of a diverse student population may be achieved by ensuring that all persons receive an equal opportunity to compete for employment and promotion within the community college districts and by eliminating barriers to equal employment opportunity.

(d) It is the intent of the Legislature to establish and maintain, within the California Community College districts, a policy of equal opportunity in employment for all persons, and to prohibit discrimination or preferential treatment based on ethnic group identification, race, color, national origin, religion, age, gender, disability, ancestry, or sexual orientation. Every aspect of personnel policy and practice in the community college districts should advance the realization of inclusion through a continuing program of equal employment opportunity.

(e) The Legislature recognizes that it is not enough to proclaim that community college districts must not discriminate and must not grant preferential treatment on impermissible bases. The Legislature declares that efforts must also be made to build a community in which nondiscrimination and equal opportunity are realized. It is the intent of the Legislature to require community college districts to adopt and implement programs and plans for ensuring equal employment opportunity in their employment practices.

87101. For the purposes of this article:

(a) "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and fully enjoy the benefits of employment by a community college district. Ensuring equal employment opportunity is advanced in an inclusive environment that fosters cooperation, acceptance, democracy, and the free expression of ideas. An inclusive environment is welcoming to men and women, persons with disabilities, individuals from all ethnic groups, and individuals from all other groups protected from discrimination by this article.

(b) "Equal employment opportunity plan" means a document that includes specific procedures for achieving equal employment opportunity.

(c) "Equal employment opportunity program" means all the various methods by which equal employment opportunity is ensured. These methods include, but are not necessarily limited to, actively recruiting, using nondiscriminatory employment practices, and monitoring employment practices to ensure equality of opportunity. Each district employer shall commit to sustained action to devise recruiting, training, and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees.

87102. (a) As a condition for the receipt of funds pursuant to Section 87107, the governing board of community college district that opts to participate under the article shall periodically submit to the board of governors an affirmation of compliance with this article. Each participating district's equal employment opportunity program shall ensure participation in, and commitment to, the program by district personnel. Each participating district's equal

employment opportunity plan shall include steps that the district will take in eliminating improper discrimination or preferences in its hiring and employment practices. Each plan shall address how the district will make progress in achieving the ratio of full-time to part-time faculty hiring, as indicated in Section 87482.6, while still ensuring equal employment opportunity.

(b) Each participating district's equal employment opportunity plan is a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

87103. The board of governors shall render assistance in developing and implementing equal employment opportunity programs in the community college districts.

87105. The board of governors shall adopt all necessary regulations to carry out the intent of this article and to ensure that each participating community college district implements processes for ensuring equal employment opportunities. Nothing in this act shall be construed to require any community college to incur any costs in excess of the funds allocated by the state for the purposes of this act.

87106. (a) The board of governors shall develop systemwide strategies for encouraging community college students to become qualified for, and seek, employment as community college faculty or administrators.

(b) The board of governors shall develop and disseminate to community college districts a model equal employment opportunity plan that accomplishes at least all of the following:

(1) Compliance with the regulations adopted by the board of governors to implement this article.

(2) Compliance with the other applicable state and federal nondiscrimination statutes.

(3) Implementation of the best practices for improving the equality of opportunity.

(4) Encouragement of districts to take steps reasonably calculated to inform their students about the opportunity to participate in the Graduate Assumption Program of Loans for Education authorized by Article 5.5 (commencing with Section 69618) of Chapter 2 of Part 42 and to participate in other programs developed by the board of governors pursuant to subdivision (a).

87107. In order to support the activities required and authorized by this article, the Employment Opportunity Fund is hereby established. The fund shall include moneys appropriated in the annual Budget Act or provided, pursuant to Section 87482.7, through transfer. The moneys in the fund shall be administered by the board of governors for the purpose of promoting equal employment opportunities in hiring and promotion at community college districts.

87108. (a) The board of governors shall adopt regulations for the use of the fund. Those uses may include, but need not be limited to, all of the following:

(1) Activities designed to encourage community college students to become qualified for, and seek, employment as community college faculty or administrators.

(2) Outreach and recruitment.

(3) In-service training on equal employment opportunities.

(4) Accommodations for applicants and employees with disabilities.

(5) Activities to promote equal employment opportunities and implement the requirements of this article.

(b) The Board of Governors of the California Community Colleges may use not more than 25 percent of the revenues in the fund to provide technical assistance, service, monitoring, and compliance functions. Service functions under this subdivision may include, but are not necessarily limited to, the provision of a clearinghouse for advertising community college district job opportunities and for allowing persons seeking jobs to make known their interest in community college employment. This clearinghouse shall include a special emphasis on faculty internship employment opportunities and on reaching students who are qualified for faculty internship programs. The remaining balance in the fund may be allocated to the individual community college districts as prescribed by the board of governors.

SEC. 3. Section 87482.7 of the Education Code is amended to read:

87482.7. (a) The board of governors shall, pursuant to paragraph (6) of subdivision (b) of Section 70901, adopt regulations that establish minimum standards regarding the percentage of hours of credit instruction that shall be taught by full-time instructors.

(b) Upon notification by the board of governors, the Department of Finance shall transfer any money deducted from district apportionments pursuant to the regulations adopted under this section. This money shall be transferred to the * * * Employment Opportunity Fund pursuant to Section 87107.

EDUCATION—CALIFORNIA COMMUNITY COLLEGES

CHAPTER 973

A.B.No. 1725

AN ACT to amend Sections 66701, 71000, 71001, 78205, 84381, 84713, 87102, 87104, 87454, 87457, 87602, 87663, and 87743 of, to add Sections 71020.5, 71090.5, 78212.5, 84750, 84755, 87001, 87107, 87482.6, 87608.5, 87610.1, 87615, 87743.1, 87743.2, 87743.3, 87743.4, and 87743.5 to, to add Article 5 (commencing with Section 87150) to Chapter 1 of Part 51 of, to add Chapter 9.2 (commencing with Section 66720) to Part 40 of, and Chapter 2.5 (commencing with Section 87350) to Part 51 of, to add Part 43.5 (commencing with Section 70900) to Division 7 of, to repeal and add Sections 71020, 72411.5, 87458, 87605, 87608, 87609, 87610, and 87611 of, to repeal Sections 71023, 71025, 71026, 71027, 71028, 71062, 71063, 71064, 71066, 71068, 71069, 71070, 71071, 71072, 71073, 71075, 71076, 71079, 71080, 71091, 72201, 72230, 72231.5, 72233, 72282, 72284, 72285, 72286, 72287, 72288, 72289, 72290, 72291, 72292, 72300, 78200, 87455, and 87456 of, and to repeal Chapter 2 (commencing with Section 87200) of Part 51 of, the Education Code, relating to community colleges, and making an appropriation therefor.

[Approved September 19, 1988]

[Filed September 19, 1988]

LEGISLATIVE COUNSEL'S DIGEST

AB 1725, Vasconcellos. California Community Colleges.

This bill would make various changes, as summarized below, in provisions governing the California Community Colleges, in the following general subject areas:

GOVERNANCE:

(1) Under existing law, the Board of Governors of the California Community Colleges (hereafter board of governors) is created, with specified membership, to administer and govern the statewide system of community colleges.

This bill would expressly designate the system as the California Community Colleges, and would make various legislative findings and declarations concerning the system. It would repeal and recast provisions of law relating to the board of governors and the governing boards of community college districts. The bill would revise the membership of the board of governors, to provide that of the 13 members appointed by the Governor under existing law, 2 shall be current or former elected members of local community college district governing boards. It would change the number of voting tenured faculty members on the board of governors from one to 2. It would provide that the 2 current or former elected members of the governing board of a community college appointed to the board under the provisions of this bill shall occupy the 1st and 3rd seats made available, as specified.

It would also provide that the additional voting tenured faculty member appointed to the board under the provisions of this bill shall occupy the 2nd seat made available, as specified. Commencing with appointments made on or after January 1, 1990, the bill

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would lengthen the terms of board members from 4 to 6 years, except that the faculty member of the board would have a 2-year term, and the student member a one-year term.

The bill would expressly establish certain responsibilities of the board of governors in various areas, including the monitoring of community college districts, fiscal management review, and development and submission to the Governor of a position paper regarding affirmative action. The bill would require the Governor to appoint up to 6 deputy and vice chancellors of the California Community Colleges, as specified.

(2) The bill would require the board to conduct a thorough review of all statutes affecting the administration and operation of the California Community Colleges, with recommendations for amendment and repeal, and submit the review to the Legislature no later than January 31, 1989.

(3) Under existing law, there are no express requirements that the board of governors develop guidelines or plans with respect to the academic senate, and the role of students in governance, or that the board clarify and define particular matters with respect to executive officers, in the community colleges.

This bill would require the board of governors to develop policies and guidelines concerning the academic senate, and standards regarding the role of students in governance.

(4) Under existing law, the board of governors, in adopting, amending, and repealing its regulations, is subject to existing procedures, administered by the Office of Administrative Law.

This bill would exclude the board from these existing procedures, and instead authorize the board of governors to establish its own regulatory procedure, subject to specified existing standards. The board would be required to consult with community college districts, as specified, as a part of this process.

MISSION AND FUNCTIONS:

(5) Existing law provides that the course of study for the California Community Colleges includes, as primary objectives, instruction designed to prepare students for admission to the upper division of 4-year educational institutions, and in vocational and technical fields leading to employment, general or liberal arts courses, and community services.

This bill would revise the missions and goals of the community colleges. The bill would also direct the board of governors, the Regents of the University of California (at their option), and the Trustees of the California State University to jointly develop, maintain, and disseminate, as specified, a common core curriculum in general education courses and lower division major preparation curricula for purposes of transfer. This bill would impose a state-mandated local program by requiring that the community colleges award an associate degree to each student who successfully meets certain requirements, including the transfer core curriculum as described.

(6) Under existing law, vocational education is one of the statutory purposes of the community college system.

This bill would direct the board of governors to provide certain information to the community college districts relative to vocational education programs and to work with community college districts, the State Board of Education, and the Trustees of the California State University to coordinate community college vocational education with vocational education programs, as specified.

The bill would direct the board of governors and the State Board of Education to determine the extent to which students are underrepresented in vocational education programs in the community colleges and in public schools, respectively, on the basis of gender or ethnic origin and to jointly file a report with the education policy committees of the Legislature on their findings.

The bill would make the provisions summarized in the preceding 2 paragraphs operative only to the extent funds are appropriated for their specific purposes. The bill would require the California Postsecondary Education Commission to conduct a study for the

use of the associate of applied sciences degree in community colleges in other states and to report its findings to the Legislature, as specified.

(7) Existing law provides for certain matriculation services in the California Community Colleges, including procedures for the academic assessment and counseling of students upon enrollment.

This bill would authorize each community college district to develop and maintain, as specified, career resource and placement centers, programs to instruct staff and faculty in the performance of matriculation services, orientation programs, and publicity programs. This bill would also require the board of governors to adopt regulations which substantially incorporates a policy that limits the total number of units of course credit that may be assigned to any student in remedial coursework to 30 semester units, or 45 quarter units, except pursuant to a specified waiver procedure.

(8) Under existing law, the community college system offers instruction in English as a second language.

This bill would direct the California Postsecondary Education Commission and the State Department of Education to jointly agree on a coordinated research framework to be utilized by each agency in a review of those programs in the California Community Colleges, the University of California, the California State University, and adult education programs, and of future educational needs in this area. The bill would state the purpose of the study as assessing the ongoing role of the California Community Colleges in this area, in relation to the respective roles of the University of California and the California State University. The bill would require that the results of the review, together with any recommendations for programs of cooperation, be reported to the Legislature no later than January 1, 1990, as specified.

FACULTY, ADMINISTRATORS, AND STAFF:

(9) Existing law requires the governing board of each community college district to establish an affirmative action employment program. Existing law requires that the governing board of each community college district submit to the board of governors, on or before January 1, 1980, an affirmation of compliance with existing law in this respect.

This bill would require the governing board of each district to submit the affirmation periodically, to meet certain requirements in conjunction with goals and timetables, and to publish and distribute, as specified, a record of the success rate of hiring employees through its affirmative action program, and thus, impose a state-mandated local program.

(10) Existing law requires the office of the Chancellor of the California Community Colleges to develop guidelines to assist community college districts in developing and implementing affirmative action employment programs.

This bill would require the office of the chancellor to establish a technical assistance team to review the affirmative action plan of each district that fails to comply with its plan and to take appropriate measures to effect compliance. The bill would require the board of governors to establish, by July 1, 1989, within the chancellor's office, or through other means, as necessary, a major service function to assist community college districts in specified matters relating to affirmative action. The bill would create the Faculty and Staff Diversity Fund, for allocation by the board of governors, upon appropriation by the Legislature, to districts for various affirmative action purposes. The bill would prescribe allocation standards applicable to the fund, and state the overall goal of the fund as addressing the goal that the system's workforce reflect proportionately the adult population of the state by the year 2005.

(11) The bill would create the Community College Faculty and Staff Development Fund, available upon appropriation by the Legislature, for district faculty and staff development, as specified.

(12) The bill would impose a state-mandated local program by requiring the governing board of each community college district to determine whether it would be beneficial to enter into specified agreements to provide part-time temporary teachers for the district. The bill would require that these teachers not displace persons currently teaching full or part time.

(13) This bill would require the Student Aid Commission to conduct, and, on or before January 1, 1990, to report to the Legislature and the California Postsecondary Education Commission the results of, a study of community college programs whose purpose is to increase the number of students entering into the teaching profession at the community college level. The bill would require the California Postsecondary Education Commission, on or before March 15, 1990, to review and comment on this report to the Legislature, as specified.

(14) Existing law includes provisions relating to the requirements for, and issuance, revocation, or suspension of, teaching credentials, and credentials for librarians, counselors, student personnel workers, supervisors, administrators, and chief administrative officers, for community college personnel.

This bill would repeal those provisions.

This bill would provide that any person employed under a credential as of June 30, 1990, is entitled to serve under the terms of the credential until it terminates, and that during that period the person is not required to meet the minimum qualifications until June 30, 1990.

The bill would require the board of governors to adopt regulations, with prior consultation, as specified, to establish prescribed minimum qualifications for these categories, and would institute a procedure for waiver of the qualifications. In addition, the bill would require that the board of governors adopt, subject to enumerated requirements, regulations authorizing governing boards to establish a process for employment of persons who do not meet the minimum qualifications. The bill would require that, among other things, the regulations require that the process, as well as the standards and criteria under which the governing board reaches its determinations, be developed and jointly agreed upon by the representatives of the governing board and the academic senate, and approved by the governing board. The bill would require that the existing process remain in place until the joint agreement is reached and approved. The provisions summarized in this paragraph would impose a state-mandated local program.

The bill would require that, with specified consultation, the board of governors establish a process to review minimum qualifications every 3 years.

This bill would require that the plan for new faculty qualifications being developed by the Chancellor of the California Community Colleges include a specified transition provision, consideration of projected California demographics, and consideration of affirmative action policies and programs.

The bill would require that community college districts, in establishing hiring criteria for faculty and administrators, identify criteria which address specified matters. It would also require that hiring criteria, policies, and procedures for new faculty members be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board, and that until the joint agreement is reached and approved, that the existing process remain in effect. The changes summarized in this paragraph would impose a state-mandated local program.

(15) Under existing law, the Community College Fund for Instructional Improvement is established to support alternative educational programs and services, as specified.

This bill would include programs for the improvement of the intellectual development of faculty and staff, as specified, within the scope of programs covered by the fund.

(16) Existing law authorizes each community college district to employ temporary employees in positions requiring certification qualifications.

This bill would require the board of governors to develop a 2-year pilot program regarding the employment of part-time temporary faculty by option-rollover contracts, as specified, in selected areas of specialization. This bill would require the board of governors to select 3 community college districts for participation in the program, thereby imposing a state-mandated local program upon those districts. If the board of governors deems this pilot program to be beneficial, this bill would require the board of governors, in consultation with the faculty, to establish policy and develop standards for employing part-time temporary faculty under option-rollover contracts.

(17) Existing law requires that a person, employed in an administrative or supervisory position requiring certification qualifications, upon completing a contract period, including any time served as a classroom instructor, in the same district, be classified as and become a regular employee as a classroom teacher.

This bill would repeal that provision, and impose a state-mandated local program by providing, instead, that a person employed in an administrative position that is not part of the classified service, who has not previously acquired tenured status as a faculty member in the same district, has the right, pursuant to a process developed and agreed upon jointly by representatives of the governing board and the academic senate, to become a 1st year probationary faculty member once his or her administrative assignment expires or is terminated, subject to specified conditions. The bill would require that the existing process remain in place until the joint agreement is reached and approved.

(18) Existing law requires that the governing board of a community college district employ persons in positions requiring certification qualifications by contract during their first academic year of employment, as defined.

This bill would require employment by contract during the 1st, 2nd, or 3rd year of employment, as specified, of those employees, and would make other related changes. This change would impose a state-mandated local program.

(19) Existing law provides that, if a contract employee is working under his or her 2nd consecutive contract, the governing board shall either hire the employee as a regular employee for all subsequent academic years, or shall not employ the contract employee as a regular employee.

This bill would, instead, require that the governing board make an election when the employee is employed under his or her 2nd consecutive contract to not enter into a contract for 2 academic years, enter into a contract for 2 academic years, or employ the contract employee as a regular employee for all subsequent academic years. If a contract employee is working under his or her 3rd consecutive contract pursuant to this provision, the bill would require that the governing board elect to employ the probationary employee as a tenured employee for all subsequent academic years, or not employ the probationary employee as a tenured employee. The changes summarized in this paragraph would become operative on July 1, 1990, and would impose a state-mandated local program.

The bill would make related changes to existing provisions governing mandatory written notice to a contract employee, thereby imposing a state-mandated local program.

(20) Existing law grants a right to a hearing to any contract employee who objects to an employment decision of the board, as specified.

This bill would, instead, grant those rights to 2nd- or 3rd-year contract employees. The bill would establish an appeal process regarding tenure decisions, including procedures for grievance and arbitration. This provision would impose a state-mandated local program.

(21) Existing law requires that contract employees of a community college district be evaluated at least once every academic year, and that regular employees be evaluated at least once in every 2 academic years.

This bill would change the required evaluation of regular employees to once every 3 years, and would require that temporary employees be evaluated within the 1st year of employment, and thereafter, at least once every 6 semesters or 9 quarters. This bill, in addition, would require that the evaluation include a peer review process, as specified, and that the peer review process address affirmative action concerns, as specified, and would revise the procedures and standards of evaluation. The changes described in this paragraph would impose a state-mandated local program.

In those districts in which evaluation procedures are collectively bargained, this bill would require that the faculty's representative consult with the academic senate before engaging in collective bargaining on those procedures.

(22) The bill would establish the minimum degree for tenure as a bachelor's degree or the equivalent from an accredited institution, or an equivalent foreign degree. This requirement would not apply to vocational faculty until January 1, 1994. The bill would

also provide for the granting of waivers from the degree requirement, under enumerated conditions, and pursuant to a process developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The bill would require that the existing process remain in place until the joint agreement is reached and approved. The changes summarized in this paragraph would impose a state-mandated local program.

(23) The bill also would impose a state-mandated local program by requiring each district to establish faculty service areas, as defined, that mandate faculty qualification for one or more of these areas, as specified.

(24) Existing law requires that the Chancellor of the California Community Colleges convene 2 short-term task forces to make recommendations regarding changes in community college financing, as specified, and in faculty and administrator, qualification, peer review, hiring, and retention, as specified.

This bill would require that the board of governors review the Education Employment Relations Act, as specified, and report to the Legislature as specified, not later than January 1, 1993. In conducting the review, the board would be required to convene a review committee, with specified representatives.

ACCESS TO PROGRAMS, AND THE SUCCESS OF PARTICIPANTS:

(25) Existing law authorizes the Chancellor of the California Community Colleges to adopt a list of authorized student assessment instruments.

This bill would require the chancellor, pursuant to consultation with appropriate community college personnel, to adopt that list.

This bill would also direct the chancellor, as specified, to report to the Legislature on the effectiveness of community college programs in the 1988–89 and 1989–90 fiscal years, on student retention, transfer, completion of vocational education programs, and skill level improvement, and on the impact of the matriculation process on community college student populations.

(26) The bill would require the chancellor to conduct a specified study regarding the feasibility of establishing, on a pilot basis, "interdisciplinary colleges" with a special concern for the integration of vocational and academic study.

RELATED PROVISIONS:

(27) The bill would revise the procedures and criteria for allocation of funds to community college districts by the board of governors. In accordance with specified criteria, standards, and requirements, the bill would require the board of governors to adopt regulations implementing a system of program-based funding, commencing in the 1991–92 fiscal year. In this connection, the bill would extend the operation of existing community college apportionment provisions from July 1, 1989, the date those provisions would become inoperative under existing law, to July 1, 1991. The bill also would require the board of governors and organizational representatives of the California Community Colleges to develop and implement a comprehensive community college educational and fiscal accountability system, as specified.

(28) This bill would appropriate $7,250,000 to the Board of Governors of the California Community Colleges and would allocate that appropriation for enumerated purposes of the bill, in specified amounts and under specified conditions. Based upon specified legislative findings and declarations, the bill would authorize the implementation of certain enumerated provisions only upon the provision of adequate funding, as defined.

(29) The bill would make numerous legislative findings, declarations, and statements of intent concerning these changes to existing law.

(30) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $500,000 statewide and other procedures for claims whose statewide costs exceed $500,000.

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This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $500,000, shall be made from the State Mandates Claims Fund.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows, with regard to the general background and intent of this act:

(a) The California Community Colleges face an unprecedented challenge in the coming two decades, as California undergoes a major demographic, social, and economic transformation. The community colleges are at the center of this change, and the state's future as a healthy and free, diverse, and creative society depends in major part upon the commitments expressed through and in the community colleges.

(b) The community colleges educate hundreds of thousands of Californians every year, are the route to higher education for the majority of our people, provide access to language and citizenship for tens of thousands of immigrants annually, retrain workers in an economy changing more rapidly than any in history, and are the last hope for older citizens seeking skills and involvement in their communities. To do these things well, to bring excitement and power into the lives of students so diverse and needing so much, to serve the economy and society through its service of these students, requires a deep commitment from all who teach and learn, from those who administer and counsel, from those who fund and regulate.

(c) The community colleges embody an historic commitment to provide an opportunity for college instruction for all Californians capable of benefiting from instruction. The community colleges have historically found their mission in the statewide scheme for higher education, the Master Plan for Higher Education, and in local commitments to meet the needs of different communities—urban and rural, middle class and poor. From these sources have come the conviction, and the fact, that the community colleges ought to provide high quality lower division instruction for purposes of transfer to baccalaureate institutions, and a wide range of courses and programs to meet vocational and basic education needs. The community colleges have been notable because they are local and accessible, diverse in their responsiveness to local needs, and yet have maintained standards capable of placing students in any of the state's universities or in any of the state's industries.

(d) Since the development of the original master plan, there has been a significant change in the populations served by the community colleges, and in the anticipated needs of the state as we move into the 21st century. The state's population will grow by 22 percent between 1986 and 2000, from 27 million to roughly 33 million. By the turn of the century, California will have a cultural and ethnic pluralism unknown elsewhere in the mainland United States. Fifty-one percent of the schoolage children in 1989 will be minorities; the majority of the population will be nonwhite in the following decade. However, there is no one "minority community;" rather there will be recent immigrants from Asia and Central America, the children of today's urban ghettos, and members of the "working poor." These communities of Californians will turn increasingly to the community colleges for language training, job reskilling, technical education, or the liberal arts.

(e) By the year 2000, California will be proportionally older; 20 percent will be senior citizens. California will have more elderly citizens than any other state in the nation. These citizens will turn, as they have already, to the community colleges for continuing education and job skills.

(f) By the turn of the century, increasingly more working men and women will come to the community colleges to acquire job skills and retraining. In an economy of rapid change and intense international competition, there will be much job displacement, sometimes on a massive scale. The periodic recessions and the unpredictable collapse of one or more markets, or industries will cause new students to matriculate to the

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community colleges. But inside the economic center—not just at its margins—the workers of the future will need new literacy skills, and more ability to communicate and learn on their own. When analysts predict a labor shortage in California by 2000, the real issue will not be numbers but quality. The important questions will be whether working men and women will have the skills required for jobs of rapid transformation, and whether California will be able to compete economically with other states now making massive investment in their educational systems.

(g) The convergence of these tendencies—both demographic and economic—lead to the possibility of an increasingly stratified society. This can include what has been called a "permanent underclass;" mostly minority, and a semipermanent, semiemployable stratum of low-skilled workers. The consequences of this development would be dire: the permanent underutilization of the energies and talents of our people, the deepening of racial resentments and fears, and the constant anxiety among more and more of us that the future has no place for us.

(h) The Legislature is committed to an alternative vision in which California remains a place of opportunity and hope—where innovation and creativity mark our economy and our culture, and where the minds and spirits of all our communities contribute to our common future. The community colleges will be at the heart of whatever effort we make to insure that the future is equitable and open, that California's economy remains healthy and growing, and that both rural towns and rapidly expanding urban centers have educational resources close at hand. The community colleges are not the only place in which Californians will make their investment for an expansive and decent future, but they will have to be one such essential place.

(i) The community colleges—once envisaged as "junior colleges" devoted primarily to providing middle-class youth with a local option to the lower-division years of college—will be called upon for the tasks of retraining workers, teaching English to those recently among us, providing skills and opportunities for the elderly, providing a second chance to those who were failed by our secondary schools, and still providing lower division transfer education of quality and integrity for all who want it.

(j) The majority of people in California welcome this new epoch as a challenge of unprecedented opportunity. The Legislature shares this view, and expresses the intent that sufficient funding and resources of this state be provided to forge into a new range of educational engagements for our people. It is important in this regard to honor those who teach basic skills and literacy, as well as those who teach Shakespeare and Plato, to facilitate effective communication between "vocational" and "liberal arts" departments in an epoch where all vocations will require deeper and more subtle forms of literacy, and to build a new and diverse curriculum which engages all our diverse students, and demands the best of their minds and spirits.

(k) The people of California should have the opportunity to be proud of a system of community colleges which instills pride among its students and faculty, where rigor and standards are an assumed part of a shared effort to educate, where the hugely diverse needs of students are a challenge rather than a threat, where the community colleges serve as models for the new curricula and innovative teaching, where learning is what we care about most.

(*l*) It is the intent of the Legislature in enacting this act, to strengthen the capacity of the community colleges to meet the emerging needs of our state, and in particular, to better ensure that all Californians are offered a chance, challenged and taught with imagination and inspiration, offered assistance and counseling, and held to honest standards.

SEC. 2. The Legislature finds and declares the following with regard to the problems facing the California Community Colleges, and their mission and functions in resolving those problems:

(a) As the Commission for the Review of the Master Plan for Higher Education noted in its report, and as others have noted, the decline in the number of students seeking to transfer from the California Community Colleges to four-year educational institutions is attributable to a variety of factors, including, but not limited to, a decreased number of

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high school graduates, a lack of coordination among postsecondary segments and between postsecondary and secondary institutions, and the inadequate provision of student financial aid. This decline represents a serious threat to the historical objective of the community college system to provide access to quality education regardless of personal circumstance. The Legislature finds and declares that transfer between the California Community Colleges and California's four-year public universities is a matter of statewide concern.

(b) If the community college system is to fulfill its role in meeting the educational needs of this state in future years, there is a need for a reinvigorated transfer program in that system, involving a closer articulation between the community colleges and the other segments of public postsecondary education as to educational programs, expectations, and responsibilities, and involving the communication of the respective educational expectations of those segments to the high schools. The provision of quality transfer education is a primary mission of the community colleges.

(c) There is also a growing need in this state for quality courses and programs of baccalaureate program quality in the community college system for students who either do not desire to transfer to a four-year educational institution or who already possess a baccalaureate degree.

(d) Vocational and technical education is a primary mission of the California Community Colleges, and programs of study leading to employment meet the needs of both students and society. The dramatic changes in California's economy will require, however, an ongoing and thorough review of the relevance and responsiveness of current vocational education programs, as well as the relationship between those programs throughout the state.

(e) It is necessary that the Board of Governors of the California Community Colleges initiate, through the chancellor's office, a detailed examination of the implications of current economic developments and trends for the development of vocational education programs. In the agriculture, manufacturing, and services sectors, new technologies, the reorganization of production, and the shifting international context require that review.

(f) Current vocational programs in the California Community Colleges appropriately include both academic certificate or degree programs and short-term jobs skills and retraining programs. Both are essential to meet the rapidly shifting needs within the economy. Within many of those programs, however, there is a need for greater continuity between the high schools, the community colleges, and the four-year colleges or universities.

(g) Vocational "tracks" should have as much connection as possible with courses in the liberal arts and general education. This ensures the greatest variety of career options for students, and addresses a growing conviction on the part of industry that vocational training must include a broad variety of literacy skills beyond technical expertise. The chancellor's office should initiate a review of the curricular relationships between vocational and general education programs.

(h) As indicated by the Commission for the Review of the Master Plan for Higher Education, there exist patterns of gender and ethnic underrepresentation in a number of vocational education programs. For example, in 15 of the 30 largest community college vocational education programs, over 80 percent of the students are of the same gender.

(i) There is a massive and growing demand in this state for remedial education, resulting from a decline in high school academic standards, the increasing dropout rate, restrictions on funding of adult education programs in the public schools, and the growing number of adults seeking basic skills, language, and literacy training. This need exists in all ethnic groups, and affects students from all socioeconomic backgrounds, whether or not high school graduates. The provision of remedial education is an essential and important mission of the community colleges.

(j) The success of the assessment, counseling, and placement system in the community colleges depends upon the ability of community college districts to provide a full range of courses of remedial instruction and related support services.

(k) The effectiveness of a program of remedial instruction in offering educational opportunity to underprepared students requires better coordination between adult education programs and community college programs, based upon locally negotiated agreements between those institutions for the provision of remedial instruction.

(l) Courses in English as a second language are vital to California's transition to a future as a multicultural society in which men and women of diverse backgrounds can share a common language, and to the opportunity for hundreds of thousands of recent immigrants to become participants in our society. The provision of English as a second language is an essential and important mission of the community colleges.

(m) English as a second language is needed by students having enormously varied backgrounds as to place of origin and level of preexisting educational skills, and is therefore necessary as a means of applying their abilities in an English-speaking culture, rather than as an effort to provide remediation or retraining.

(n) Because the programs in English as a second language currently offered in the California Community Colleges and the adult schools are inadequate to meet the growing need in this state for those programs, it is essential that the community colleges seek to coordinate those programs with local adult education schools, if any.

(o) Adult literacy training and basic skills education are among the most difficult challenges facing California education in the next 15 years, based upon 1980 census figures showing that over four million adults in this state, and perhaps up to 25 percent of California's adult population, may be illiterate.

(p) Illiteracy prevents those Californians from reading newspapers, work manuals, and labels on cans of poison, and results in incalculable costs to this state in terms of lost economic productivity, higher welfare and public assistance expenditures, unemployment, crime, social isolation, and personal exclusion.

(q) Whereas democracy depends upon an informed and engaged population, the percentage of our citizens voting in elections is among the lowest of any democracy in the entire world, a fact that may be related to our rate of literacy, which is lower than that of any other industrial democracy.

(r) Programs in noncredit adult education, including adult literacy and citizenship programs conducted in the California Community Colleges are important and essential functions of that system. The relationship between those programs and similar programs offered by other institutions, governed by a variety of authorities, requires clarification.

(s) The Legislature should require that local agreements be entered into between various educational entities for the provision of adult literacy training and basic skills education.

SEC. 3. It is the intent of the Legislature that the California Community Colleges be governed under an efficient and flexible system, providing adequate fiscal oversight and development of educational standards at the state level, and incentive to design programs meeting the particular needs of each district at the local level. The Legislature recognizes that the California Community Colleges is a statewide system with common standards and practices governing local initiative and control. The Legislature therefore finds and declares that clarifying and strengthening the respective roles of the Board of Governors and the Chancellor of the California Community Colleges will enhance the efficiency and flexibility of the system.

SEC. 4. The Legislature finds and declares the following with regard to faculty, administrators, and staff of the California Community Colleges:

(a) The California Community Colleges will face a severe hiring crisis in the next 15 years. It is estimated that fully 55 percent of the current full-time faculty will retire in that period. In this regard there are three major interlocking issues which must be considered:

(1) There must be guarantees that the full-time positions which become open because of the retirement of these faculty members not be divided into part-time positions that are less expensive to fill than the full-time positions. The division of full-time positions that become vacant into part-time positions is currently occurring all too frequently. The

maintenance of a fully staffed, full-time faculty is an essential element of a coherent program.

(2) Competition for qualified persons is intense, from both other sectors of education and private business.

(3) Given the emerging turnover in faculty vacancies, the next 15 years represent the last major "window of opportunity" to significantly change the ethnic mix of the faculty during the next 30 years. It will be imperative for the faculty to be sympathetic and sensitive to cultural diversity in the colleges especially when the student body is continually changing. One means of ensuring this is for the faculty to be culturally balanced and more representative of the state's diversity.

(b) If the community colleges are to respond creatively to the challenges of the coming decades, they must have a strong and stable core of full-time faculty with long-term commitments to their colleges. There is proper concern about the effect of an overreliance upon part-time faculty, particularly in the core transfer curricula. Under current conditions, part-time faculty, no matter how talented as teachers, rarely participate in college programs, design departmental curricula, or advise and counsel students. Even if they were invited to do so by their colleagues, it may be impossible if they are simultaneously teaching at other colleges in order to make a decent living.

(c) However, in many areas the employment of part-time temporary faculty is both appropriate and necessary, especially in vocational programs where part-time faculty members may be practicing professionals in the field.

(d) Decisions regarding the appropriateness of part-time faculty should be made on the basis of academic and program needs, however, and not for financial savings. The Legislature's concern about abuses in this regard led to the establishment of the current statutory cap on part-time employment.

(e) There is widespread concern about the current tendency to fill "retiring" full-time positions with multiple part-time positions, and that there is a financial incentive to do so. Under current formulae, part-time faculty receive less money than do full-time faculty, and do not receive benefits. Thus, proposals concerning the status and conditions of part-time faculty will depend upon changes in the pay structure as well as the overall financing of the colleges.

(f) Changes in the governance of the California Community Colleges will affect, and be affected by, current collective bargaining agreements and the statutes governing those agreements, and that with regard to jurisdictional matters and questions of process, there can be considerable confusion regarding the relationship between collective bargaining agents, academic units organized through the colleges including departments and schools, and the academic senates.

(g) Community college instructors, recruited directly from graduate school or from some form of employment other than teaching, may not be prepared to deal effectively with the wide range of student abilities and attitudes found in community college classrooms. As larger numbers of students from many different cultural backgrounds and with significant English language and other deficiencies are enrolled, the problem will become more serious for both administrators and faculty. The proposed establishment of a student assessment, counseling, and placement program on each campus will also require additional training and assistance for both faculty and administrators.

(h) Professional development for faculty, support staff, student services staff, and administrators is vital. Further, the success of the assessment, counseling, and placement programs will depend upon the effectiveness of this training.

(i) The recruitment of faculty into the community colleges, and the maintaining of morale and enthusiasm among the faculty depends in large part upon the intellectual and personal environment within which faculty work. Much of that environment is created by their own authority over the substantive direction of the programs and courses in which they work, through the quality of their relationship with the college administration, and in the quality of their interactions with the communities of students they teach. At the same time, it is apparent that faculty morale comes from their engagement in the

development of new and innovative programs, from their engagement in professional and discipline-based associations, and from an active, intellectual life as scholars and teachers.

(j) Community colleges have less resources available for faculty professional and intellectual development than do other segments of the system of higher education, and this disparity may become a substantial barrier to the future recruitment of quality faculty. Yet, faculty in the community colleges should be no less intellectually engaged than their colleagues in the other segments. Their primary commitment to teaching makes it imperative that they have a vibrant and rich intellectual life.

(k) The success of the assessment, counseling, and placement system in the California Community Colleges will depend upon the commitment and dedication of trained student services staff. The importance of their role stretches across all aspects of community college life—including: counseling, reading and computational assessment and evaluation, financial aid assistance, providing and directing tutorial services, providing outreach into the local community, providing information to continuing students, and assisting the faculty in designing and providing courses of study which meet the particular needs of very different students. It is essential that the college have adequate service staff, and that they be superbly trained, especially in view of the current diversity of student educational needs in the community colleges.

(*l*) The tenure system is an important prerequisite for the maintenance of academic freedom, continuity in academic and vocational programs, and development of a faculty committed to the long-term health of the community colleges. At the same time, the tenure system is a central part of the governance of the colleges. Thus, the determination of standards for tenure, procedures governing tenure, and the actual granting of tenure determine in large part the substantive direction of the colleges.

(m) The current tenure system lacks adequate participation by the faculty, provides an inadequate probationary period for the evaluation of permanent faculty, and does not provide uniform systemwide procedures for due process and grievance.

(n) It is a general purpose of this act to improve academic quality, and to that end the Legislature specifically intends to authorize more responsibility for faculty members in duties that are incidental to their primary professional duties. It is the intent of the Legislature that, in exercising these increased responsibilities, faculty members are not deprived of their status as employees under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. It is also the intent of the Legislature that the exercise of this increased responsibility shall not make these faculty members managerial or supervisory employees, as those terms are defined in that chapter.

There has been a great deal of uncertainty as a result of the decision of the United States Supreme Court in National Labor Relations Board v. Yeshiva University, 444 U.S. 672, 63 L.Ed.2d 115, regarding whether increased faculty involvement in institutional governance and decisionmaking might subject the faculty members to legal challenges in connection with their rights of collective bargaining. This act is intended to enable faculty members who perform the duties described in subdivision (e) of Section 87610.1 of the Education Code to avoid having to choose between collective bargaining and greater participation in these functions by ensuring that increased participation in the tenure system, which occurs as an outgrowth of this act, shall not subject faculty members to losing their status as employees under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

(o) Any set of laws, regulations, directives, or guidelines regarding community college faculty and administrator qualifications, evaluation, hiring, or retention should promote the efforts of local community colleges to ensure that their faculty and administration consists of:

(1) Teachers who can teach and who are experts in the subject matter of their curriculum.

(2) Counselors, librarians, and other instructional and student service faculty who can foster college effectiveness and who are experts in the subject matter of their specialty.

(3) Administrators who can lead, organize, plan, and supervise; who understand the needs of faculty and the learning process; and who value institutional governance based upon a genuine sharing of responsibility with faculty colleagues.

(p) (1) The laws, regulations, directives, or guidelines should help the community colleges ensure that the faculty and administrators they hire and retain are people who are sympathetic and sensitive to the racial and cultural diversity in the colleges, are themselves representative of that diversity, and are well prepared by training and temperament to respond effectively to the educational needs of all the special populations served by community colleges.

(2) All state and local policies, rules, and regulations regarding community college faculty and administrator qualifications, evaluation, hiring, or retention should strengthen faculty, administration, and board cooperation in matters related to those topics. They should also strengthen the role of the faculty as an authoritative, professional collegiate body.

(q) (1) In general, the appropriate focus of minimum qualifications is in helping the colleges to ensure that they will select faculty who are competent in subject matter and possess the basic academic preparation needed to work effectively at the college level. The minimum qualifications for all faculty should be the same except where the application of qualifications without differentiation would be clearly unreasonable or impractical.

(2) The minimum qualifications for administrators should help the colleges to ensure that they will select individuals who are competent to perform the kind of administrative responsibilities that administrators are normally required to assume, such as supervision, organizational planning, and budget development and administration, and who understand the needs of faculty and the learning process.

(r) (1) The pool of underrepresented individuals interested in faculty and administrative positions in the community colleges should be increased. Furthermore, practical and effective ways of finding and recruiting those individuals should be developed and maintained. The state's leadership in this effort is appropriate and urgently needed.

(2) The hiring process for administrators and faculty (both temporary and permanent) should be designed so that both faculty and administrators take real responsibility for meeting affirmative action goals and ensuring that affirmative action considerations effectively influence hiring decisions.

(s) (1) No single approach to hiring faculty can guarantee attainment of the colleges' affirmative action goals and consistent selection of qualified individuals. Nevertheless, any hiring process adopted by a college should require the joint and cooperative exercise of responsibility by the faculty, administration, and board and should reflect the differing source of each participant's authority and the kind of responsibility that authority conveys.

(2) The governing board of a community college district derives its authority from statute and from its status as the entity holding the institution in trust for the benefit of the public. As a result, the governing board and the administrators it appoints have the principal legal and public responsibility for ensuring an effective hiring process.

(3) Faculty members derive their authority from their expertise as teachers and subject matter specialists and from their status as professionals. As a result, the faculty has an inherent professional responsibility in the development and implementation of policies and procedures governing the hiring process.

(4) Beyond requiring a joint and cooperative exercise of responsibility, the hiring process should be focused on ensuring that the community colleges will select teachers who can teach and who are experts in the subject matter of their curriculum; and counselors, librarians, and other instructional and student services faculty who can foster community college effectiveness and who are experts in the subject matter of their specialty. This means that the colleges may establish criteria for hiring that go well beyond the minimum qualifications set by regulation. The establishment of additional criteria of this sort should be expected and encouraged.

(5) The focus of the hiring process for administrators is slightly different from the focus in hiring teachers. In hiring teachers, the goal is to find people who can teach, but

in hiring administrators the goal is to ensure that the community colleges will select administrators who are competent to perform the kind of administrative responsibilities that administrators are normally required to assume in the context of the operation and programs of the community colleges.

(t) The state should provide the community colleges with enough resources and a sufficiently stable funding environment to enable them to predict their staffing needs and to establish highly effective hiring processes. While the precise nature of the hiring process for faculty should be subject to local definition and control, each community college should, in a way that is appropriate to its circumstances, establish a hiring process that ensures that:

(1) Emphasis is placed on the responsibility of the faculty to ensure the quality of their faculty peers.

(2) Both faculty members and administrators participate effectively in all appropriate phases of the process.

(3) Positions to be filled are normally identified through a well defined, thoughtful, planning process.

(4) The time between the announcement of each position and the selection of a candidate for hire is long enough to allow a thorough, complete, and thoughtful search.

(5) Clear and complete job descriptions, including all job-related skills requirements and any additional qualifications recommended by the faculty when appropriate, are prepared for each position, and these job descriptions are reviewed before each position is announced, to ensure conformity with the community college's affirmative action and nondiscrimination commitments.

(6) All participants in the process are given appropriate training in affirmative action procedures and the affirmative action goals and timetables of the community college so that success in reaching those goals is better assured.

(7) Individuals, preferably minorities or women, who are knowledgeable about and responsible to the community college's affirmative action goals are included on all selection committees or similar groups.

(8) Final hiring decisions are, whenever reasonably possible, made during the regular academic year and promptly communicated to the faculty; the expectation that faculty recommendations regarding the hiring of faculty will normally be accepted is reinforced; and only in exceptional circumstances, and for compelling reasons communicated to the selection committee and to the president of the academic senate of the college, will someone be hired as a faculty member who has not been found to be among the best qualified by the faculty.

(u) The state should provide the community colleges with enough resources and a sufficiently stable funding environment to enable them to predict their staffing needs and to establish highly effective hiring processes. While the precise nature of the hiring process for administrators should be subject to local definition and control, each community college should, in a way that is appropriate to its circumstances, establish a hiring process which ensures that:

(1) Representatives of the faculty and other employees whose circumstances at work will be directly affected by the employment of the administrator participate effectively in all appropriate phases of the process.

(2) Positions to be filled are normally identified through a well defined, thoughtful, planning process.

(3) The time between the announcement of each position and the selection of a candidate for hire is long enough to allow a thorough, complete, and thoughtful search.

(4) Clear and complete job descriptions that include all job-related skills requirements are prepared for each position and these job descriptions are reviewed before each position is announced, to ensure conformity with the community college's affirmative action and nondiscrimination commitments.

(5) All participants in the process are given appropriate training in affirmative action procedures and goals and timetables of the community college, so that success in reaching those goals is better assured.

(6) Individuals, preferably minorities or women, who are knowledgeable about and responsive to the college's affirmative action goals are included on all selection committees or similar groups.

(7) Final hiring decisions are, whenever reasonably possible, made during the regular academic year and promptly communicated to the faculty and staff.

(v) (1) The evaluation process should promote professionalism, enhance performance, and be closely linked with staff development efforts.

(2) The evaluation process should be effective in yielding a genuinely useful and substantive assessment of performance. Among other things, this requires an articulation of clear, relevant criteria on which evaluations will be based.

(3) The evaluation process should be timely. This requires that evaluations be performed regularly at reasonable intervals.

(4) The specific purposes for which evaluations are conducted should be clear to everyone involved. This requires recognition that the principal purposes of the evaluation process are to recognize and acknowledge good performance, to enhance satisfactory performance and help employees who are performing satisfactorily further their own growth, to identify weak performance and assist employees in achieving needed improvement, and to document unsatisfactory performance.

(5) A faculty member's students, administrators, and peers should all contribute to his or her evaluation, but the faculty should, in the usual case, play a central role in the evaluation process and, together with appropriate administrators, assume principal responsibility for the effectiveness of the process.

(6) The procedures defined by negotiations should foster a joint and cooperative exercise of responsibility by the faculty, administration, and governing board of the community college and should reflect faculty and administrator expertise and authority in evaluating professional work as well as the governing board's legal and public responsibility for the process.

(w) Faculty tenure fosters academic freedom and should be maintained. For administrators, the need for job security justifies appointments of reasonable duration, but no one should obtain tenure or permanent status in an administrative position. A person should be granted tenure as a faculty member only after it has been determined through a process of evaluation that he or she is, and will likely continue to be, a positive asset to the community college. In other words, the award of tenure should be an affirmative act, rather than the result of default. The faculty's inherent professional responsibility to ensure the quality of their faculty peers requires faculty review to be at the heart of the evaluation process leading to tenure decisions.

SEC. 4.5. It is the intent of the Legislature that the Board of Governors of the California Community Colleges be broadly and equitably representative of the general public and that appointments to the board of governors include adequate representation on the basis of sex and on the basis of the major racial, ethnic, and economic groups in the state.

SEC. 5. The Legislature finds and declares the following with regard to access to the California Community Colleges, and the importance and value of success to those who participate in the system:

(a) It is the responsibility of this state to provide to every Californian the opportunity to realize his or her intellectual, emotional, and vocational potential. To fulfill this responsibility, and to ensure that California enjoys a healthy economy and society, open access to a quality community college system must be affirmed for a diverse student population, which includes, but is not limited to, recent high school graduates, senior citizens, persons who are Caucasian, Black, Asian, and Hispanic, disabled men and women, persons at a variety of income levels, businessmen and businesswomen, single parents, women reentering the work force, high school dropouts, and persons with baccalaureate degrees.

(b) It is the joint responsibility of the student and the community college to realize the student's goals and aspirations, which often change during the educational experience and which include such diverse purposes as literacy training, English acquisition and development both for persons whose primary language is English and persons having other primary languages, vocational training, job reskilling, skills enhancement, and education oriented toward transfer to a four-year college or university.

(c) Open access to community colleges must be assured for all adults who can benefit from instruction, which access is meaningful only if supported by a system of assessment, counseling, and placement that assists students in identifying their talents and abilities, directs them to courses that meet their needs, and maintains standards designed to ensure their success.

SEC. 6. Section 66701 of the Education Code is amended to read:

66701. (a) Public community colleges shall offer instruction through but not beyond the second year of college. These institutions may grant the associate in arts and the associate in science degree.

(b) Authorized instruction in the community colleges shall include * * * standard collegiate courses for transfer to other institutions, vocational and technical courses leading to or upgrading, or leading to and upgrading, employment, general or liberal arts courses, adult noncredit courses, and community services programs and courses. However, priorities in the instructional programs shall be as follows:

(1) The primary mission of the community colleges is the provision of rigorous, high quality degree and certificate curricula in lower division arts and sciences and in vocational and occupational fields.

(2) The provision of remedial instruction, English as a second language instruction, and support services which help students succeed at the postsecondary level are essential and important functions of the community colleges.

(3) The provision of adult noncredit education curricula in areas defined as being in the state's interest is an essential and important function of the community colleges.

(4) The provision of community services courses and programs is an authorized function of the community colleges so long as their provision is compatible with an institution's ability to meet its obligations in its primary missions.

SEC. 7. Chapter 9.2 (commencing with Section 66720) is added to Part 40 of the Education Code, to read:

CHAPTER 9.2. STUDENT TRANSFER

66720. The Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University, with appropriate consultation with the Academic Senates of the respective segments, shall jointly develop, maintain, and disseminate a common core curriculum in general education courses for the purposes of transfer. Any person who has successfully completed the transfer core curriculum, shall be deemed to have thereby completed all lower division general education requirements for the University of California and the California State University.

66721. Upon development of the transfer core curriculum pursuant to Section 66720, and upon any subsequent joint revision of that curriculum, the Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University shall jointly cause the curriculum to be published and distributed to each public school in this state that provides instruction in any of the grades 7 to 12, inclusive, and to each community college in this state, with an emphasis on the communication of that information to each school or college having a high proportion of students who are members of one or more ethnic minorities. In addition, the Board of Governors shall distribute that transfer core curriculum to the State Board of Education, which shall apply that information to ensure, through its curriculum development activities, that public school pupils enrolled in any of the grades 9

to 12, inclusive, are aware of the academic requirements for preparation for higher education and may receive any necessary academic remediation in a timely manner.

66723. No provision of this chapter shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, makes that provision applicable.

SEC. 8. Part 43.5 (commencing with Section 70900) is added to Division 7 of the Education Code, to read:

PART 43.5. THE CALIFORNIA COMMUNITY COLLEGES

70900. There is hereby created the California Community Colleges, a postsecondary education system consisting of community college districts heretofore and hereafter established pursuant to law and the Board of Governors of the California Community Colleges. The board of governors shall carry out the functions specified in Section 70901 and local districts shall carry out the functions specified in Section 70902.

70901. (a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

70901.5. (a) The board of governors shall establish procedures for the adoption of rules and regulations governing the California Community Colleges. Among other matters, the procedures shall implement the following requirements:

(1) Written notice of a proposed action shall be provided to each community college district and to all other interested parties and individuals, including the educational policy and fiscal committees of the Legislature and the Department of Finance, at least 45 days in advance of adoption. The regulations shall become effective no earlier than 30 days after adoption.

(2) The proposed regulations shall be accompanied by an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state-mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies.

(3) The board of governors shall ensure that all proposed regulations of the board meet the standards of "necessity," "authority," "clarity," "consistency," "reference," and "nonduplication," as those terms are defined in Section 11349 of the Government Code. A district governing board or any other interested party may challenge any proposed regulatory action regarding the application of these standards.

(4) Prior to the adoption of regulations, the board of governors shall consider and respond to all written and oral comments received during the comment period.

(5) The effective date for a regulation shall be suspended if, within 30 days after adoption by the board of governors, at least two-thirds of all governing boards vote, in open session, to disapprove the regulation. With respect to any regulation so disapproved, the board of governors shall provide at least 45 additional days for review, comment, and hearing, including at least one hearing before the board itself. After the additional period of review, comment, and hearing, the board may do any of the following:

(A) Reject or withdraw the regulation.

(B) Substantially amend the regulation to address the concerns raised during the additional review period, and then adopt the revised regulation. The regulation shall be treated as a newly adopted regulation, and shall go into effect in accordance with those procedures.

(C) Readopt the regulation as originally adopted, or with those nonsubstantive, technical amendments deemed necessary to clarify the intent of the original regulation. If the board of governors decides to readopt a regulation, with or without technical amendments, it shall also adopt a written declaration and determination regarding the specific state interests it has found necessary to protect by means of the specific language or requirements of the regulation. A readopted regulation may then be challenged pursuant to existing law in a court of competent jurisdiction, and shall not be subject to any further appeal within the California Community Colleges.

(6) As to any regulation which the Department of Finance determines would create a state-mandated local program cost, the board of governors shall not adopt the regulation until the Department of Finance has certified to the board of governors and to the Legislature that a source of funds is available to reimburse that cost.

(7) Any district or other interested party may propose a new regulation or challenge any existing regulation.

(b) Except as expressly provided by this section, and except as provided by resolution of the board of governors, the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to regulations adopted by the board of governors.

70902. (a) Every community college district shall be under the control of a board of trustees, which is referred to herein as the "governing board." The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is

not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.

The governing board of each community college district shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district.

(b) In furtherance of the provisions of subdivision (a), the governing board of each community college district shall do all of the following:

(1) Establish policies for, and approve, current and long-range academic and facilities plans and programs and promote orderly growth and development of the community colleges within the district. In so doing, the governing board shall, as required by law, establish policies for, develop, and approve, comprehensive plans. The governing board shall submit the comprehensive plans to the board of governors for review and approval.

(2) Establish policies for and approve courses of instruction and educational programs. The educational programs shall be submitted to the board of governors for approval. Courses of instruction that are not offered in approved educational programs shall be submitted to the board of governors for approval. The governing board shall establish policies for, and approve, individual courses that are offered in approved educational programs without referral to the board of governors.

(3) Establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors.

(4) Employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors and establish employment practices, salaries, and benefits for all employees not inconsistent with the laws of this state.

(5) To the extent authorized by law, determine and control the district's operational and capital outlay budgets. The district governing board shall determine the need for elections for override tax levies and bond measures and request that those elections be called.

(6) Manage and control district property. The governing board may contract for the procurement of goods and services as authorized by law.

(7) Establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right to participate effectively in district and college governance, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(8) Establish rules and regulations governing student conduct.

(9) Establish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law.

(10) In its discretion, receive and administer gifts, grants, and scholarships.

(11) Provide auxiliary services as deemed necessary to achieve the purposes of the community college.

(12) Within the framework provided by law, determine the district's academic calendar, including the holidays it will observe.

(13) Hold and convey property for the use and benefit of the district. The governing board may acquire by eminent domain any property necessary to carry out the powers or functions of the district.

(14) Participate in the consultation process established by the board of governors for the development and review of policy proposals.

(c) In carrying out the powers and duties specified in subdivision (b) or other provisions of statute, the governing board of each community college district shall have full authority to adopt rules and regulations, not inconsistent with the regulations of the

board of governors and the laws of this state, that are necessary and proper to executing these prescribed functions.

(d) Wherever in this section or any other statute a power is vested in the governing board, the governing board of a community college district, by majority vote, may adopt a rule delegating the power to the district's chief executive officer or any other employee or committee as the governing board may designate; provided, however, that the governing board shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of the delegation.

SEC. 9. Section 71000 of the Education Code is amended to read:

71000. There is in the state government a Board of Governors of the California Community Colleges, consisting of all of the following:

(a) Thirteen members, who are appointed by the Governor with the advice and consent of two-thirds of the Senate. Of the members appointed by the Governor, two shall be current or former elected members of local community college district governing boards. The Governor shall appoint the current or former members of the governing board of a community college district for staggered six-year terms. The voting members who are current or former members of the governing board of a community college district shall first be appointed no later than January 15, 1990, and January 15, 1992, respectively.

* * *

(b) One voting student who is enrolled in a community college with a minimum of five semester units, or its equivalent, at the time of the appointment and throughout the period of his or her term of appointment, or until a replacement has been named. A student member shall be enrolled in a community college at least one semester prior to his or her appointment and shall meet and maintain the minimum standards of scholarship prescribed for community college students. The student member shall be appointed by the Governor for a one-year term commencing on June 1. * * *

(c) Two voting tenured faculty members from a community college, who shall be appointed by the Governor for * * * two-year terms. The Governor shall appoint each faculty member from a list of names of at least three persons furnished by the Academic Senate of the California Community Colleges. The first voting tenured faculty member appointed to the board shall occupy the seat on the board that is made available by the next full-term vacancy of a four-year term that exists after January 1, 1984. The first voting tenured faculty member appointed to the additional voting tenured faculty member seat on the board provided by the amendments to this section enacted by the Statutes of 1987 shall occupy the second seat on the board that is made available by the next full-term vacancies that exist after January 1, 1988. Thereafter, each seat shall be designated as a voting tenured faculty member seat and shall in the future be filled by a tenured faculty member from a community college pursuant to this section and Section 71003.

* * *

(d) Commencing with appointments made on or after January 1, 1990, all members of the board shall be appointed for staggered six-year terms, except in the case of the faculty appointments, which shall be two years, and the student appointment, which shall be one year, and the ex officio members, who shall serve during the period of their tenure in their respective state offices.

SEC. 9.5. Section 71001 of the Education Code is amended to read:

71001. (a) Except for the student member and the faculty member, the terms of office of the members of the board appointed by the Governor shall be as follows:

(1) To the positions expiring on December 1, 1985, the Governor shall appoint two persons whose terms shall expire on January 15, 1989.

(2) To the positions expiring on November 30, 1986, the Governor shall appoint three persons whose terms shall expire on January 15, 1988; three persons whose terms shall expire on January 15, 1990; and one person whose term shall expire on January 15, 1991.

(3) To the position expiring on January 2, 1987, the Governor shall appoint one person whose term shall expire on January 15, 1991.

(4) Commencing January 15, 1987, all terms of office of the members of the board, except the terms of the student member and the faculty members appointed by the Governor, shall be four years, and, commencing January 1, 1990, six years.

(b) Each term of office shall commence at the expiration of the preceding term.

(c) A member whose term has expired shall continue to discharge the duties of office until his or her successor is appointed by the Governor.

SEC. 10. Section 71020 of the Education Code is repealed.

SEC. 11. Section 71020 is added to the Education Code, to read:

71020. The board of governors shall develop and submit to the Governor, every three years, commencing July 1, 1989, an affirmative action paper concerning its own membership, providing the board's assessment of its role in statewide representation of minorities, women, and the disabled.

SEC. 11.5. Section 71020.5 is added to the Education Code, to read:

71020.5. (a) It is the intent of the Legislature in enacting this section to foster the creation, implementation, and phase-in of a comprehensive community college accountability system which describes the performance of community colleges in meeting the postsecondary educational needs of students. This educational and fiscal accountability system shall provide performance data on students, programs, and institutions.

It is further the intent of the Legislature that this accountability system assist all participants in the community college system, including students, faculty, staff, administrators, local governing boards, the chancellor, the state board of governors, the public, and other interested constituencies, in identifying the educational and fiscal strengths and weaknesses of colleges in order to improve educational quality in community colleges.

(b) The board of governors shall develop and implement a comprehensive community college educational and fiscal accountability system. In developing and implementing this system, the board of governors shall solicit consultation from institutional and organizational representatives of the California Community Colleges, including statewide faculty and staff organizations. At a minimum, the system shall:

(1) Be consistent with the Legislature's intent as expressed in this act, Chapter 136 of the Statutes of 1987, and Chapter 1465 of the Statutes of 1986.

(2) Draw from, and build upon, the system proposed in the report entitled "AB 3409 Community College Accountability Report," prepared pursuant to Chapter 1465 of the Statutes of 1986.

(3) Be designed to promote student success in community colleges.

(4) Define and measure, quantitatively and qualitatively, accountability information, including:

(A) Student access to community colleges.

(B) The extent to which the community college student body reflects proportionately the adult population of the state.

(C) Student transfer rates and programs.

(D) Academic standards and student achievement.

(E) Student goal satisfaction and success in courses and programs.

(F) Completion rates of courses and programs.

(G) Occupational preparation relative to state and local workforce needs and for entry-level employment, occupational advancement, and career changes of students.

(H) Adequacy of basic skills and English as a Second Language courses and instruction in preparing students to succeed in collegiate level work.

(I) Adequacy of and student satisfaction with student services.

(J) The extent to which the community college workforce reflects proportionately the adult population of the state.

(K) Fiscal conditions of community college districts.

(5) Be designed to streamline the use of multiple performance measures from appropriate sources of data, including, but not limited to, matriculation evaluations, categorical program evaluations, the community college management information system, and other existing data collection and evaluation systems.

(6) Provide feedback to individual colleges in order to improve access to community colleges, student performance, and educational programs where needed.

(7) Produce a published report of community college accountability.

(c) The Legislature finds and declares that successful implementation of a comprehensive educational and fiscal accountability system is, in part, dependent upon an adequate data collection and reporting system. The accountability system developed and implemented pursuant to this section shall be phased in, to the extent necessary, with the funding and local implementation of the community college management information system.

(d) The chancellor shall provide a written report on the accountability system developed pursuant to this section to the Legislature and Governor on or before July 1, 1990. This report shall not only delineate the accountability system and how it would be phased in, but shall differentiate between those portions of the system which can be implemented without imposing additional mandates on community college districts and those which can be implemented when additional funds are provided to reimburse the mandates on districts.

It is the intent of the Legislature that the accountability system be implemented over a three-year period, beginning not later than the 1991–92 academic year, which will provide student performance, program effectiveness, and institutional effectiveness information so that the accountability system, when fully implemented, will encompass the full range of information for effective decisionmaking, planning and budgeting.

SEC. 12. Section 71023 of the Education Code is repealed.

SEC. 12.1. Section 71025 of the Education Code is repealed.

SEC. 12.2. Section 71026 of the Education Code is repealed.

SEC. 12.3. Section 71027 of the Education Code is repealed.

SEC. 12.4. Section 71028 of the Education Code is repealed.

SEC. 12.5. Section 71062 of the Education Code is repealed.

SEC. 12.6. Section 71063 of the Education Code is repealed.

SEC. 12.7. Section 71064 of the Education Code is repealed.

SEC. 12.8. Section 71066 of the Education Code is repealed.

SEC. 12.9. Section 71068 of the Education Code is repealed.

SEC. 12.10. Section 71069 of the Education Code is repealed.

SEC. 12.11. Section 71070 of the Education Code is repealed.

SEC. 12.12. Section 71071 of the Education Code is repealed.

SEC. 12.13. Section 71072 of the Education Code is repealed.

SEC. 12.14. Section 71073 of the Education Code is repealed.

SEC. 12.15. Section 71075 of the Education Code is repealed.

SEC. 12.16. Section 71076 of the Education Code is repealed.

SEC. 12.17. Section 71079 of the Education Code is repealed.

SEC. 12.18. Section 71080 of the Education Code is repealed.

SEC. 12.19. Section 71091 of the Education Code is repealed.

SEC. 13. Section 71090.5 is added to the Education Code, to read:

71090.5. In addition to the position authorized by subdivision (e) of Section 4 of Article VII of the California Constitution, the Governor, with the recommendation of the board of governors, shall appoint up to six deputy and vice chancellors, who shall be exempt from state civil service. These appointments shall not result in any increase in funds, available for expenditure by the board of governors in the 1989–90 fiscal year, above the total

amount available to the board in the 1988–89 fiscal year. The appointments shall not exceed an aggregate total of six, for both the positions of deputy and vice chancellor.

SEC. 14. Section 72201 of the Education Code is repealed.

SEC. 14.2. Section 72230 of the Education Code is repealed.

SEC. 14.3. Section 72231.5 of the Education Code is repealed.

SEC. 14.4. Section 72233 of the Education Code is repealed.

SEC. 14.5. Section 72282 of the Education Code is repealed.

SEC. 14.6. Section 72284 of the Education Code is repealed.

SEC. 14.7. Section 72285 of the Education Code is repealed.

SEC. 14.8. Section 72286 of the Education Code is repealed.

SEC. 14.9. Section 72287 of the Education Code is repealed.

SEC. 14.10. Section 72288 of the Education Code is repealed.

SEC. 14.11. Section 72289 of the Education Code is repealed.

SEC. 14.12. Section 72290 of the Education Code is repealed.

SEC. 14.13. Section 72291 of the Education Code is repealed.

SEC. 14.14. Section 72292 of the Education Code is repealed.

SEC. 14.15. Section 72300 of the Education Code is repealed.

SEC. 15. Section 72411.5 of the Education Code is repealed.

SEC. 16. Section 72411.5 is added to the Education Code, to read:

72411.5. Every instructional or student services administrator of a community college district shall be employed, and all other administrators of a community college may be employed, by the governing board of the district by a contract not to exceed four years. The contract may be extended for periods of no more than four years at the discretion of the governing board. However, in the absence of an express agreement, every administrator shall serve in his or her administrative assignment at the pleasure of the governing board. The dismissal of, and imposition of penalties for cause on, an administrator employed by contract pursuant to this section shall, if the administrator does not have tenure as a faculty member, be in accordance with the terms of the contract of employment. If the administrator has tenure as a faculty member, the dismissal of, and imposition of penalties for cause on, the administrator shall be in accordance with the provisions applicable to faculty members.

SEC. 16.5. Section 78200 of the Education Code is repealed.

SEC. 17. Section 78205 of the Education Code is amended to read:

78205. The minimum requirement for graduation from a two-year community college course of study shall be * * * 60 credit hours of work. An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

SEC. 18. Section 78212.5 is added to the Education Code, to read:

78212.5. Each community college district may develop and maintain all of the following within each community college in the district:

(a) Career resource and placement centers having the purposes of maintaining information on vocational, technological and educational opportunities, and facilitating career employment.

(b) Programs to instruct appropriate staff and faculty members in the performance of matriculation services.

(c) Orientation programs designed to explain to new students academic requirements and other regulations of the community college, and the available student support services.

(d) A publicity program designed to inform the community served by the community college that the purposes of the mandatory matriculation process are intended to

facilitate, rather than restrict, student access to community college instruction, and to enhance each student's awareness of his or her abilities, skills, and potential.

(e) A publicity program designed to inform high schools in the community served by the community college, through orientation programs and other means, of student skill levels, and of available student support services.

SEC. 19. Section 84381 of the Education Code is amended to read:

84381. There is hereby created in the State Treasury the Community College Fund for Instructional Improvement. The fund shall consist of a revolving loan program and a direct grant program to support alternative educational programs and services within or on behalf of the California Community Colleges, including:

(a) Nontraditional forms, content, and methods of instruction, including, but not limited to, the following:

(1) Instructional programs which involve internships and experiential learning opportunities.

(2) Individualized instructional programs which require student development of learning objectives through learning contracts.

(3) Instructional programs which focus on the development of interpersonal skills.

(4) Instructional programs involving independent study.

(b) Programs for improving teaching abilities of faculty members.

(c) Programs addressing special learning needs of educationally disadvantaged students.

(d) Educational services for new clientele, including older, working adults.

(e) Efforts to improve traditional instructional programs.

(f) Programs for the improvement of the intellectual development of faculty and staff, including, but not limited to, the following:

(1) Intersegmental summer programs including research projects and seminars.

(2) College programs bringing visiting scholars to local districts.

(3) Interdisciplinary programs involving local noncollege institutions in the arts and sciences.

(4) Intersegmental research and public information projects on topics of special concern to rural and urban California regarding the environment, social history, and culture.

(5) Summer "bridge" programs for the transition period into college life.

SEC. 20. Section 84713 of the Education Code is amended to read:

84713. This article shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 21. Section 84750 is added to the Education Code, to read:

84750. The board of governors, in accordance with the statewide requirements contained in subdivisions (a) to (j), inclusive, and in consultation with institutional representatives of the California Community Colleges and statewide faculty and staff organizations, so as to ensure their participation in the development and review of policy proposals, shall develop criteria and standards for the purposes of making the annual budget request for the California Community Colleges to the Governor and the Legislature, and for the purpose of allocating the state general apportionment revenues, beginning with the budget request for the 1991–92 fiscal year.

In developing the criteria and standards, the board of governors shall utilize and strongly consider the guidelines and work products of the Task Force on Community College Financing as established pursuant to Chapter 1465 of the Statutes of 1986, and shall complete the development of these criteria and standards, accompanied by the necessary procedures, processes, and formulas for utilizing its criteria and standards, by

March 1, 1990, and shall submit on or before that date a report on these items to the Legislature and the Governor.

The board of governors shall develop the criteria and standards within the following statewide minimum requirements:

(a) The calculations of each community college district's revenue level for each fiscal year shall be based on the level of general apportionment revenues (state and local) the district received for the prior year plus any amount attributed to a deficit of minimum workload growth, with revenue adjustments being made for increases or decreases in workload, for program improvement as authorized by this section or by any other provision of law, for inflation, and for other purposes authorized by law.

(b) (1) For credit instruction, the funding mechanism developed pursuant to this section shall recognize the needs among the major categories of operation of community colleges, with categories established for instruction, instructional services and libraries, student services, maintenance and operations, and institutional support.

(2) The board of governors may propose to the Legislature, for enactment by statute, other cost categories when adequate data exist.

(3) Funding for noncredit classes shall be determined as follows:

(A) The preliminary amount per noncredit full-time equivalent student (FTES) for 1991–92 shall be equal to the comparable amount for 1990–91 with increases corresponding to the cost of living adjustment (COLA) specified in subdivision (e) and corresponding to any program improvement provided to the maintenance and operations category for 1991–92.

(B) Funds for maintenance and operations shall be included in the funds derived under paragraph (4) of subdivision (c).

(C) Funds for institutional support will be derived as part of the computation under paragraph (5) of subdivision (c).

(D) From the preliminary amount described in subparagraph (A), a deduction shall be made corresponding to the amounts derived in subparagraphs (B) and (C), and the remainder shall be the funded amount per noncredit FTES for 1991–92.

(E) Changes in noncredit FTES shall result in adjustments to revenues as follows:

(i) Increases in noncredit FTES shall result in an increase in revenues in the year of the increase and at the average rate per noncredit FTES.

(ii) Decreases in noncredit FTES shall result in a revenue reduction as follows:

(I) District revenue shall be adjusted at the average rate per noncredit FTES.

(II) Revenue adjustments shall be over a three-year period beginning in the year following the initial year of decrease in noncredit FTES.

(iii) Districts shall be entitled to restore any reductions in apportionment revenue due to decrease in noncredit FTES during the three years following the initial year of decrease in noncredit FTES if there is a subsequent increase in FTES.

(4) Except as otherwise provided by statute, current categorical programs providing direct services to students, including extended opportunity programs and services, and disabled students programs and services, shall continue to be funded separately through the annual Budget Act, and shall not be assumed under budget formulas of program-based funding.

(5) District revenues shall be determined based on systemwide funding standards within the categories, and revenue adjustments shall occur based on distinct measures of workload applicable to each category.

(c) Workload measures applicable to each category shall be established with the following measures to be provided:

(1) For credit instruction, the workload measure shall be the credit FTES. Changes in credit FTES shall result in adjustments in revenues as follows:

(A) Increases in FTES shall result in an increase in revenues in the year of the increase and at the statewide average per FTES.

(B) Decreases in FTES shall result in a revenue reduction as follows:

(i) High revenue districts (those at the statewide average or higher) shall be adjusted at the statewide average per FTES.

(ii) Low revenue districts (those below the statewide average) shall be adjusted at one-half of the district's average per FTES.

(iii) Revenue adjustments shall be made over a three-year period beginning in the year following the initial year of decrease in FTES.

(C) Districts shall be entitled to restore any reductions in apportionment revenue due to decrease in FTES during the three years following the initial year of decrease in FTES if there is a subsequent increase in FTES.

(2) For instructional services and libraries, the workload measure shall be the credit FTES. Changes in credit FTES with respect to instructional services and libraries shall result in adjustments to revenues as follows:

(A) Increases in FTES shall result in an increase in revenues in the year of the increase and at the statewide average rate per FTES.

(B) Decreases in FTES shall result in a revenue reduction as follows:

(i) High revenue districts (those at the statewide average or higher) shall be adjusted at the full amount of the statewide average per FTES.

(ii) Low revenue districts (those below the statewide average) shall be adjusted at one-half of the district's average per FTES.

(iii) Revenue adjustments shall be made over a three-year period beginning in the year following the initial year of decrease in FTES.

(C) Districts shall be entitled to restore any reductions in apportionment revenue due to decreases in FTES during the three years following the initial year of decreases in FTES if there is a subsequent increase in FTES.

(3) For student services, the workload measure shall be based on the numbers of credit students enrolled (headcount).

Changes in headcount shall result in adjustments to revenues as follows:

(A) Increases in headcount shall result in an increase in revenues in the year of the increase at the statewide average per headcount.

(B) Decreases in headcount shall result in a revenue reduction as follows:

(i) High revenue districts (those at the statewide average or higher) shall be adjusted at the full amount of the statewide average per headcount.

(ii) Low revenue districts (those below the statewide average) shall be adjusted at one-half of the district's average per headcount.

(iii) Revenue adjustments shall be made over a three-year period beginning in the year following the initial year of decrease in headcount.

(C) Districts shall be entitled to restore any reductions in apportionment revenue due to decrease in headcount during the three years following the initial year of decrease in headcount if there is a subsequent increase in headcount.

(4) For maintenance and operations, the workload measure shall be based on the number of square feet of owned or leased facilities. Changes in the number of square feet shall be adjusted as follows:

(A) Increases in the number of square feet shall result in an increase in revenue in the year that the increase occurs and at the average per square foot.

(B) Decreases in the number of square feet shall result in a decrease in revenue beginning July 1 of the first full year in which the square feet are no longer owned or leased and at the average rate per square foot.

(5) For institutional support, a single fixed percentage which shall apply to all districts shall be established based on the pattern from the most recent data. The percentage shall be obtained from statewide data by comparing expenditures for this category with the total revenue for all five categories.

(d) Funding standards, subject to the conditions and criteria of this section, shall be established by the board for the various categories of operation established pursuant to subdivision (b). In consultation as required by subdivision (e) of Section 70901, the board of governors shall annually request program improvement moneys to assist districts in meeting these standards.

(e) Annual revenue adjustments shall be made to reflect cost changes, using the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States as published by the United States Department of Commerce, and using the ratio for the fourth calendar quarter of the latest available year to the fourth calendar quarter of the prior year rounded up to the next hundredth.

(f) An adjustment for economies of scale for districts and colleges shall be provided.

(g) The statewide increase in workload of FTES and headcount shall be, at a minimum, the rate of change of the adult population as determined by the Department of Finance, and may be increased through the budget process to reflect such other factors as statewide priorities, the unemployment rate, and the number of students graduating from California high schools. The allocation of changes on a district-by-district basis shall be determined by the board of governors.

(h) For fiscal year 1991–92, all districts shall receive at least the amount of revenue to which they would have been entitled pursuant to Article 1 (commencing with Section 84700) of Chapter 5 of Part 50. Thereafter, allocations shall be made pursuant to this section, as implemented by the board of governors pursuant to the annual State Budget.

(i) Except as specifically provided by statute, regulations of the board of governors for determining and allocating the state general apportionment to the community colleges shall not require district governing boards to expend the allocated revenues in specified categories of operation or according to the workload measures developed by the board of governors.

(j) As used in this section:

(1) "Criteria" means the definitions of elements of institutional practice or activity to be included in the categories of operation of community college districts.

(2) "Program improvement" means an increase in revenue which is allocated to all districts to fund standards adopted pursuant to subdivision (d). Program improvement also means an increase in revenue allocated to low revenue districts to bring them closer to the statewide average.

(3) "Standard" means the appropriate level of service in a category of operation of the community college districts.

SEC. 21.7. Section 84755 is added to the Education Code, to read:

84755. (a) The Legislature finds and declares that program-based funding, once implemented, will more adequately and accountably fund the costs of providing quality community college education. Given that program-based funding will not be implemented until fiscal year 1991–92, given that community colleges will be entering a period of major reform and incurrence of new state mandates commencing in January 1989, and given that community colleges will be entering this period of reform having lost purchasing power since the 1977–78 fiscal year, the Legislature recognizes the need to create a transitional funding mechanism for program improvement and mandate funding that can operate until program-based funding is implemented.

(b) For the purpose of improving the quality of community college educational programs and services, for the purpose of reimbursing state-mandated local program costs imposed by this act, and for the purposes of initially implementing specified reforms, the board of governors shall, from amounts appropriated for purposes of this section, allocate program improvement revenues to each district on the basis of an amount per unit of average daily attendance generated in the 1987–88 fiscal year. However, this amount shall be increased or decreased to provide for equalization in a manner determined by the Board of Governors, consistent with the provisions of Sections 84703 to 84705, inclusive.

Each community college district shall use its allocation to initially reimburse state-mandated local program costs, and then to implement specified reforms and make authorized program and service improvements as follows:

(1) Developing articulated programs provided for in Section 70 of Assembly Bill 1725 of the 1987–88 Regular Session of the Legislature with school districts and campuses of the University of California and California State University.

(2) Applying minimum qualifications to all newly hired faculty and administrators, including candidates for these positions as required by Section 87356.

(3) Developing and administering a process for waiver of minimum qualifications as required by Section 87359.

(4) Establishing and applying local hiring criteria as required by Section 87360.

(5) Establishing and applying faculty service areas and competency criteria as required by Sections 87743 to 87743.5, inclusive.

(6) Evaluating temporary employees, instituting peer review evaluation, and widely distributing evaluation procedures as required by Section 87663.

(7) Establishing and applying new processes for tenure evaluation required by Section 87610.1.

(8) Establishing and applying the tenure denial grievance procedure required by Section 87610.1.

(9) Establishing and applying a process for moving administrators into faculty positions as required by Sections 87454 to 87458, inclusive.

(10) Publishing and distributing a report on the affirmative action success rate as required by Section 87102.

(11) Improving instruction by reducing the ratio of full-time equivalent students to full-time equivalent instructors.

(12) Improving instruction by increasing the hiring of full-time instructors and limiting the practice of hiring part-time instructors.

(13) Augmenting budgets for college libraries and learning resources.

(14) Augmenting budgets for plant maintenance and operations.

(15) Adding new courses or programs to serve community need.

(16) Making progress towards affirmative action goals and timetables established by the district.

(17) Developing and maintaining programs and services authorized by Section 78212.5.

(18) Augmenting budgets for student services in the areas of greatest need.

(19) Providing for release time for faculty and staff as deemed appropriate by community college district governing boards, to enable faculty and staff participation in implementing reforms.

(c) Except as provided by Section 87482.6, and except as necessary to reimburse the costs of new state mandates, district governing boards shall have full authority to expend program improvement allocations for any or all of the authorized purposes specified in subdivision (b).

(d) As required by the board of governors, the governing board of each community college district shall submit to the board of governors a plan for using the resources allocated pursuant to this section. The board of governors shall review each plan to ensure that proposed expenditures are consistent with the listing of authorized expenditures provided in this section, and the board of governors shall approve all plans to the full extent that expenditures are authorized by this section. To the extent that a community college district expends its program improvement allocation consistent with its plan, the board of governors shall include the district's allocation as part of the district's base budget for subsequent years.

(e) The board of governors, through the annual systemwide budget submitted pursuant to paragraph (5) of subdivision (b) of Section 70901, shall request necessary resources for

the purposes of this section. It is the intent of the Legislature that the appropriation and allocation of program improvement money not otherwise provided pursuant to subdivision (b) of this section shall be accomplished through the annual state budget process beginning with the 1989–90 fiscal year. After June 30, 1991, if Section 84750 is implemented, it is the intent of the Legislature to fund the ongoing operations of community college districts pursuant to the provisions of Section 84750.

SEC. 22. Section 87001 is added to the Education Code, to read:

87001. The board of governors shall adopt regulations defining positions subject to minimum qualifications as set forth in subdivisions (a), (b), and (c). Unless and until amended pursuant to Section 87357, the regulations shall initially establish the definitions as the following:

(a) "Administrator" means any person employed by the governing board of a community college district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Instructional or student services administrator" means an administrator who is employed in a position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Instructional and student services administrators include, but are not limited to, chancellors, presidents, and instructional or student services managers.

(c) "Faculty" means those employees of a community college district who are employed in positions that are not designed as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code and for which minimum qualifications for hire have been specified in the regulations of the board of governors adopted pursuant to subdivision (a) of Section 87356. Faculty include, but are not limited to, instructors, librarians, counselors, community college health services professionals, handicapped student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisorial, nonmanagement certification qualifications.

SEC. 23. Section 87102 of the Education Code is amended to read:

87102. (a) The governing board of each community college district shall periodically submit, * * * to the Board of Governors of the California Community Colleges an affirmation of compliance with the provisions of this article. The affirmative action employment program shall have goals that ensure participation in, and commitment to, the program by district personnel, and timetables, for its implementation. The affirmative action plan shall include steps that the district will take in meeting and improving hiring goals for both full-time faculty and part-time faculty pursuant to Section 87482.6, and the development of the plan shall be a condition for receipt of allowances pursuant to that section.

The governing board of each community college district shall be held accountable pursuant to this article and other applicable provisions of law for the success or failure of its affirmative action employment program. The plans shall be a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) The governing board of each community college district shall publish and distribute a record of the success rate of measurable progress, with respect to its goals and timetables, in hiring employees through its affirmative action employment program. This publication shall be a public record within the meaning of the California Public Records Act, and shall include data and information specified by the board of governors.

SEC. 24. Section 87104 of the Education Code is amended to read:

87104. (a) The Board of Governors of the California Community Colleges, out of funds appropriated for these purposes, (1) shall provide assistance to local community colleges in adopting and maintaining high-quality affirmative action programs; (2) report to the Legislature * * * regarding the number of districts which have adopted and are maintain-

ing affirmative action programs, including the effectiveness of the programs in meeting the intent of this article; * * * (3) develop and disseminate to public community college districts guidelines to assist these agencies in developing and implementing affirmative action employment programs; and (4) shall establish a technical assistance team to review the affirmative action plan of each community college district which fails to make measurable progress in meeting the goals and timetables of its adopted plan. The technical assistance team shall recommend appropriate actions to assure reasonable progress in improving success rates. The board of governors shall prescribe those conditions necessary to assure reasonable progress and otherwise meet the legal requirements of affirmative action. The conditions may include the withholding of allowances made pursuant to Sections 87482.6 and 87107.

(b) The board of governors shall establish, by July 1, 1989, within the chancellor's office or through other means as deemed necessary, a major service function to assist community college districts in identifying, locating, and recruiting qualified members of underrepresented groups, and in establishing and maintaining effective affirmative action hiring procedures.

(c) The board of governors shall, by March 15, 1989, develop and adopt a systemwide plan for strengthening faculty and staff affirmative action policies and programs in the California Community Colleges.

SEC. 25. Section 87107 is added to the Education Code, to read:

87107. (a) There is hereby created in the State Treasury a fund which shall be known as the Faculty and Staff Diversity Fund. The money in the fund shall be available to the board of governors upon appropriation by the Legislature for the purpose of enabling the California Community Colleges as a system to address the goal that by the year 2005 the system's work force will reflect proportionately the adult population of the state. For the purpose of administering this fund, the board of governors shall develop and apply availability data and factors for measuring district progress in contributing to this goal for the system. Also for the purpose of administering this fund, it is the intent of the Legislature that the board of governors take the steps which are necessary to reach the goal that by fiscal year 1992–93, 30 percent of all new hires in the California Community Colleges as a system will be ethnic minorities.

(b) By December 1, 1993, the board of governors shall report upon and assess the extent to which the California Community Colleges as a system have met or begun to meet the goals specified in this section. The report shall include conclusions regarding any necessary revisions to these goals. Unless provided otherwise by the Legislature by statute, the board of governors may, on or after September 30, 1994, adopt regulations to revise these goals.

(c) The board of governors shall utilize up to 25 percent of the fund to do all of the following:

(1) Reimburse districts for the costs of publishing, distributing, and reporting affirmative action success rates as provided in Section 87102.

(2) Reimburse districts for the cost of preparing and updating affirmative action plans.

(3) Carry out the assistance, service, monitoring, and compliance functions specified in Section 87104.

(d) The remainder of the fund shall be allocated to districts, in accordance with regulations of the board of governors, to provide for extended outreach and recruitment of underrepresented groups, for incentives to hire members of underrepresented groups, for in-service training and for other related staff diversity programs.

(e) It is the intent of the Legislature that the board of governors, in administering this fund, shall, pursuant to the provisions of this article, give funding priority and shall afford flexibility and discretion in the use of these funds to districts which have made or are making reasonable progress in contributing to the achievement of the goals of this fund.

SEC. 26. Article 5 (commencing with Section 87150) is added to Chapter 1 of Part 51 of the Education Code, to read:

Article 5. Community College Faculty and Staff Development Fund

87150. There is hereby created in the State Treasury the Community College Faculty and Staff Development Fund, to be administered by the Board of Governors of the California Community Colleges, the purpose of which is to provide state general funds to community colleges for supporting locally developed and implemented faculty and staff development programs.

87151. The Board of Governors of the California Community Colleges shall annually allocate funds appropriated for the purposes of this article to each community college district whose chief executive officer has submitted to the chancellor an affidavit which includes:

(a) A statement that each campus within the district has an advisory committee, composed of administrators, faculty, and staff representatives, which has assisted in the assessment of the faculty and staff development needs and in the design of the plan to meet those needs.

(b) A campus human development resources plan has been completed for the current and subsequent fiscal years.

(c) A report of the actual expenditures for faculty and staff development for the preceding year.

87152. (a) The initial allocation to each district, from funds appropriated by the Legislature therefor, shall be an amount equivalent to one-half of one percent of the fiscal year revenues, as defined by Section 84700, received by the district, for the 1987–88 fiscal year.

(b) In subsequent fiscal years, no district shall receive an allocation greater than 2 percent of its fiscal year revenues, as defined in Section 84700, for the prior fiscal year.

87153. The authorized uses of funds allocated under this article shall include all of the following:

(a) Improvement of teaching.

(b) Maintenance of current academic and technical knowledge and skills.

(c) In-service training for vocational education and employment preparation programs.

(d) Retraining to meet changing institutional needs.

(e) Intersegmental exchange programs.

(f) Development of innovations in instructional and administrative techniques and program effectiveness.

(g) Computer and technological proficiency programs.

(h) Courses and training implementing affirmative action and upward mobility programs.

(i) Other activities determined to be related to educational and professional development pursuant to criteria established by the Board of Governors of the California Community Colleges, including, but not necessarily limited to, programs designed to develop self-esteem.

87154. This article shall be operative during any fiscal year only if funds are provided therefor in the annual Budget Act for that fiscal year or other legislation.

SEC. 27. Chapter 2 (commencing with Section 87200) of Part 51 of the Education Code is repealed.

SEC. 28. Chapter 2.5 (commencing with Section 87350) is added to Part 51 of the Education Code, to read:

CHAPTER 2.5. QUALIFICATIONS FOR COMMUNITY COLLEGE PERSONNEL

Article 1. General Provisions

87350. The plan for a new mechanism of faculty qualifications being developed by the Chancellor of the California Community Colleges pursuant to Chapter 1465 of the Statutes of 1986 shall include all of the following:

(a) A transition provision which would grandfather existing bargaining unit definitions.

(b) Consideration of projected California demographics.

(c) Consideration of affirmative action policies and programs.

Article 2. Minimum Qualifications and Hiring Criteria

87355. Any person employed under a credential as of June 30, 1990, including an instructor, librarian, counselor, student personnel worker, supervisor, administrator, or chief administrative officer, shall be entitled to serve under the terms of that credential until it terminates, and during the period the credential is effective, shall not be required to meet the minimum qualifications applicable after July 1, 1990. The board of governors shall adopt regulations as necessary to implement this exemption within 120 days of the effective date of this act.

87356. (a) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for hire as a community college faculty member. Unless and until amended pursuant to the process described in Section 87357, the regulations shall establish the minimum qualifications for hire as a community college faculty member teaching any credit course, as any of the following:

(1) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(2) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment and possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(3) For faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available, which are, generally, disciplines in specialized technical, trade, or industrial fields, either of the following:

(A) Possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment, plus two years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

(B) Possession of an associate degree from an accredited institution in a discipline reasonably related to the faculty member's assignment, plus six years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

(b) The board of governors shall adopt regulations establishing appropriate minimum qualifications for extended opportunity programs and services workers, pursuant to Section 69648.7.

(c) The board of governors shall adopt regulations establishing appropriate minimum qualifications for handicapped student programs and services workers, pursuant to Section 78440.5.

(d) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for hire as an instructional or student services administrator. Unless and until amended pursuant to the process described in Section 87357, the regulations shall establish the minimum qualifications for hire as an instructional or student services administrator as all of the following:

(1) Possession of a master's degree.

(2) One year of formal training, internship, or leadership experience reasonably related to the administrator's administrative assignment, which may, but need not be, concurrent with the required full-time service.

(e) The Legislature finds and declares that this section does not create a state-mandated local program cost because compensation of faculty will continue to be determined through the collective bargaining process or meet and confer sessions.

87357. (a) In establishing and maintaining minimum qualifications pursuant to Section 87356, the board of governors shall do all of the following:

(1) With regard to minimum qualifications for faculty, consult with, and rely primarily on the advice and judgment of, the statewide Academic Senate, and with regard to minimum qualifications for instructional or student service administrators, consult with, and rely primarily on the advice and judgment of, an appropriate statewide organization of administrators. In either case, the board of governors shall provide a reasonable opportunity for comment by other statewide representative groups.

(2) The board of governors shall establish a process to review at least every three years the continued appropriateness of the minimum qualifications, and the adequacy of the means by which they are administered. The process shall provide for the appointment of a representative group of community college faculty, administrators, students, and trustees to conduct or otherwise assist in the review, including particularly, representatives of academic senates, collective bargaining organizations, and statewide faculty associations. In addition, the group shall be broadly representative of academic and vocational programs in the curriculum from both urban and rural districts, and representative of ethnic minority communities.

(b) The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prescribe by regulation a working definition of the term "discipline" and shall prepare and maintain a list of disciplines that are "reasonably related" to one another, as that phrase is used in the minimum qualifications. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for hire.

In formulating advice and recommendations to the board of governors regarding the definition of the term "discipline," the statewide Academic Senate shall consult with appropriate statewide organizations representing administrators and faculty collective bargaining agents. The statewide Academic Senate shall incorporate the advice of those groups into its recommendations to the board of governors, particularly as it relates to the practical ramifications of any proposed definition of the term "discipline" on issues of reassignment, transfer, and reduction in force.

The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prepare and maintain a list of disciplines in which the master's degree is not generally expected or available. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for hire.

87358. The board of governors shall periodically designate a team of community college faculty, administrators, and trustees to review each community college district's application of minimum qualifications to faculty and administrators.

87359. The board of governors shall adopt regulations setting forth a process authorizing local governing boards to employ faculty members, instructional administrators, and student services administrators who do not meet the applicable minimum qualifications specified in the regulations adopted by the board pursuant to Section 87356. Unless and until amended pursuant to the process described in Section 87357, the regulations shall require all of the following:

(a) No one may be hired to serve as a community college faculty member, instructional administrator, or student services administrator under the authority granted by the regulations unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board adopted pursuant to Section 87356. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine

that each individual employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination; and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.

87359.5. By May 1, 1989, the board of governors shall have reviewed or contracted for review of, the job relevance of the requirements of Sections 87408, 87408.5, 87408.6, and any other physical fitness tests or examinations, and other conditions of employment, applicable to community college personnel.

Article 3. Hiring Criteria

87360. (a) In establishing hiring criteria for faculty and administrators, district governing boards shall, no later than July 1, 1990, develop criteria that include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students.

(b) No later than July 1, 1990, hiring criteria, policies, and procedures for new faculty members shall be developed and agreed upon jointly by representatives of the governing board, and the academic senate, and approved by the governing board.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the existing district process in existence on January 1, 1989, shall remain in effect.

SEC. 29. Section 87454 of the Education Code is amended to read:

87454. A tenured employee, when assigned from a faculty position to an administrative * * * position, or assigned any special or other type of work, or given special classification or designation * * *, shall retain his or her status as a tenured faculty member.

SEC. 30. Section 87455 of the Education Code is repealed.

SEC. 31. Section 87456 of the Education Code is repealed.

SEC. 32. Section 87457 of the Education Code is amended to read:

87457. Whenever a person employed in an administrative * * * position * * * is assigned to a faculty position, the governing board of the community college district shall give the employee, when requested by him or her, a written statement of the reasons for the transfer.

SEC. 33. Section 87458 of the Education Code is repealed.

SEC. 34. Section 87458 is added to the Education Code, to read:

87458. A person employed in an administrative position that is not part of the classified service, who has not previously acquired tenured status as a faculty member in the same district, shall have the right to become a first year probationary faculty member once his or her administrative assignment expires or is terminated if all of the following apply:

(a) The process by which the governing board reaches the determination shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that the administrator possesses the minimum qualifications for employment as a faculty member. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination; and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(b) Until a joint agreement is reached pursuant to subdivision (a), the district process in existence on January 1, 1989, shall remain in effect.

(c) The administrator has completed at least two years of satisfactory service, including any time previously served as a faculty member, in the district.

(d) The termination of the administrative assignment is for any reason other than dismissal for cause.

SEC. 35. Section 87482.6 is added to the Education Code, to read:

87482.6. (a) Until the provisions of Section 84750 regarding program-based funding are implemented by a standard adopted by the board of governors that establishes the appropriate percentage of hours of credit instruction that should be taught by full-time instructors, the Legislature wishes to recognize and make efforts to address longstanding policy of the board of governors that at least 75 percent of the hours of credit instruction in the California Community Colleges, as a system, should be taught by full-time instructors. To this end, community college districts which have less than 75 percent of their hours of credit instruction taught by full-time instructors shall apply a portion of the program improvement allocation received pursuant to Section 84755 as follows:

(1) Districts which, in the prior fiscal year, had between 67 percent and 75 percent of their hours of credit instruction taught by full-time instructors shall apply up to 33 percent of their program improvement allocation as necessary to reach the 75 percent standard. If a district in this category chooses instead not to improve its percentage, the board of governors shall withhold 33 percent of the district's program improvement allocation.

(2) Districts which, in the prior fiscal year, had less than 67 percent of their hours of credit instruction taught by full-time instructors shall apply up to 40 percent of their program improvement allocation as necessary to reach the 75 percent standard. If a district in this category chooses instead not to improve its percentage, the board of governors shall withhold 40 percent of the district's program improvement allocation.

Districts which maintain 75 percent or more of their hours of credit instruction taught by full-time instructors shall otherwise be free to use their program improvement allocation for any of the purposes specified in Section 84755.

(b) The board of governors shall adopt regulations for the effective administration of this section. Unless and until amended by the board of governors, the regulations shall provide as follows:

(1) In computing the percentage of hours of credit instruction taught by full-time instructors, the hours of overload teaching by full-time instructors shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(2) A full-time instructor shall be defined as any regular and contract faculty member teaching credit instruction.

(3) The chancellor shall compute and report to each community college district the number of full-time faculty (FTF) which are to be secured through the use of the prescribed portion of program improvement revenue allocated to each district. This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide average hourly rate of compensation for part-time instructors times the statewide average full-time teaching load). If the quotient is not a whole number, then the quotient shall be rounded down to the nearest whole number. If this quotient, once applied, will result in the district exceeding the 75 percent standard, the chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

By March 15th of each year, the chancellor shall report to each district an estimate of the number of FTF to be secured based upon the appropriation of revenues contained in the annual Budget Bill.

(4) On or before December 31, 1991, the chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to paragraph (3) for the 1989–90 and 1990–91 fiscal years. To the extent that the cumulative number of FTF have not been retained, the chancellor shall reduce the district's base budget for 1991–92 and subsequent fiscal years by an amount equivalent to the average replacement cost times the deficiency in the number of FTF.

SEC. 36. Section 87602 of the Education Code is amended to read:

87602. For the purposes of other provisions of law:

(a) A contract employee is a probationary employee.

(b) A regular or tenured employee is a permanent employee.

SEC. 37. Section 87605 of the Education Code is repealed.

SEC. 38. Section 87605 is added to the Education Code, to read:

87605. The governing board of a district shall employ faculty for the first academic year of his or her employment by contract. Any person who, at the time an employment contract is offered to him or her by the district, is neither a tenured employee of the district nor a probationary employee then serving under a second or third contract entered into pursuant to Section 87608 shall be deemed to be employed for "the first academic year of his or her employment." A faculty member shall be deemed to have completed his or her first contract year if he or she provides service for 75 percent of the first academic year.

SEC. 39. Section 87608 of the Education Code is repealed.

SEC. 40. Section 87608 is added to the Education Code, to read:

87608. If a contract employee is working under his or her first contract, the governing board, at its discretion and not subject to judicial review except as expressly provided in Sections 87610.1 and 87611, shall elect one of the following alternatives:

(a) Not enter into a contract for the following academic year.

(b) Enter into a contract for the following academic year.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

SEC. 41. Section 87608.5 is added to the Education Code, to read:

87608.5. If a contract employee is working under his or her second contract, the governing board, at its discretion and not subject to judicial review except as expressly provided in Sections 87610.1 and 87611, shall elect one of the following alternatives:

(a) Not enter into a contract for the following academic year.

(b) Enter into a contract for the following two academic years.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

SEC. 42. Section 87609 of the Education Code is repealed.

SEC. 43. Section 87609 is added to the Education Code, to read:

87609. If a contract employee is employed under his or her third consecutive contract entered into pursuant to Section 87608.5, the governing board shall elect one of the following alternatives:

(a) Employ the probationary employee as a tenured employee for all subsequent academic years.

(b) Not employ the probationary employee as a tenured employee.

SEC. 44. Section 87610 of the Education Code is repealed.

SEC. 45. Section 87610 is added to the Education Code, to read:

87610. (a) The governing board shall give written notice of its decision under Section 87608 or 87608.5 and the reasons therefor to the employee on or before March 15 of the academic year covered by the existing contract. The notice shall be by registered or certified mail to the most recent address on file with the district personnel office. Failure

to give the notice as required to a contract employee under his or her first or second contract shall be deemed an extension of the existing contract without change for the following academic year.

(b) The governing board shall give written notice of its decision under Section 87609 and the reasons therefor to the employee on or before March 15 of the last academic year covered by the existing contract. The notice shall be by registered or certified mail to the most recent address on file with the district personnel office. Failure to give the notice as required to a contract employee under his or her third consecutive contract shall be deemed a decision to employ him or her as a regular employee for all subsequent academic years.

SEC. 46. Section 87610.1 is added to the Education Code, to read:

87610.1. (a) In those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government Code, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining on these procedures.

(b) Allegations that the community college district, in a decision to grant tenure, made a negative decision that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied, any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. Allegations that the community college district in a decision to reappoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.

Arbitration as used in this section refers to advisory arbitration, as well as final and binding arbitration.

(c) Any grievance brought pursuant to the provisions of subdivision (b) may be filed by an employee on his or her behalf, or by the exclusive bargaining representative on behalf of an employee or a group of employees in accordance with Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. The exclusive representative shall have no duty of fair representation with respect to taking any of these grievances to arbitration, and the employee shall be entitled to pursue a matter to arbitration with or without the representation by the exclusive representative. However, if a case proceeds to arbitration with representation by the exclusive representative, the resulting decision shall not be considered a precedent for purposes of interpreting tenure procedures and policies, or the collective bargaining agreement, but instead shall affect only the result in that particular case. When arbitrations are not initiated by the exclusive representative, the district shall require the employee submitting the grievance to file with the arbitrator or another appropriate party designated in the collective bargaining agreement, adequate security to pay the employee's share of the cost of arbitration.

(d) The arbitrator shall be without power to grant tenure, except for failure to give notice on or before March 15 pursuant to subdivision (b) of Section 87610. The arbitrator may issue an appropriate make-whole remedy, which may include, but need not be limited to, back pay and benefits, reemployment in a probationary position, and reconsideration. Procedures for reconsideration of decisions not to grant tenure shall be agreed to by the governing board and the exclusive representative of faculty pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

(e) Any employees who are primarily engaged in faculty or other bargaining unit duties, who perform "supervisory" or "management" duties incidental to their performance of primary professional duties shall not be deemed supervisory or managerial employees as those terms are defined in Section 3540.1 of the Government Code, because of those duties. These duties include, but are not limited to, serving on hiring, selection, promotion, evaluation, budget development, and affirmative action committees, and making effective recommendations in connection with these activities. These employees

whose duties are substantially similar to those of their fellow bargaining unit members shall not be considered supervisory or management employees.

SEC. 47. Section 87611 of the Education Code is repealed.

SEC. 48. Section 87611 is added to the Education Code, to read:

87611. A final decision reached following a grievance or hearing conducted pursuant to subdivision (b) of Section 87610.1 shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

SEC. 49. Section 87615 is added to the Education Code, to read:

87615. Commencing July 1, 1990, the minimum degree requirement for tenure as a community college faculty member shall be a bachelor's degree or equivalent from an accredited institution, or an equivalent foreign degree, as determined by the board of governors, except that in the case of vocational faculty, this requirement shall commence January 1, 1994. The board of governors shall monitor the effects and anticipated effects of this provision upon hiring practices within the districts, analyze the results, and make a report and recommendation to the Legislature no later than January 1, 1993.

The governing board may grant tenure to faculty members who do not meet the minimum degree requirement for tenure specified in this section if both of the following are met:

(a) The governing board determines that rare and compelling reasons exist justifying the action. The reasons for the governing board's determination shall be reflected in its action granting tenure to the individual.

(b) The process by which the governing board reaches the determination has been developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that rare and compelling reasons exist to grant tenure. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination; and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.

SEC. 51. Section 87663 of the Education Code is amended to read:

87663. (a) Contract employees shall be evaluated at least once in each academic year. Regular employees shall be evaluated at least once in every three academic years. Temporary employees shall be evaluated within the first year of employment. Thereafter, evaluation shall be at least once every six regular semesters, or once every nine regular quarters, as applicable.

(b) Whenever an evaluation is required of a certificated employee by a community college district, the evaluation shall be conducted in accordance with the standards and procedures established by the rules and regulations of the governing board of the employing district.

(c) Evaluations shall include, but not be limited to, a peer review process.

(d) The peer review process shall be on a departmental or divisional basis, and shall address the forthcoming demographics of California, and the principles of affirmative action. The process shall require that the peers reviewing are both representative of the diversity of California and sensitive to affirmative action concerns, all without compromising quality and excellence in teaching.

(e) The Legislature recognizes that faculty evaluation procedures may be negotiated as part of the collective bargaining process.

(f) In those districts where faculty evaluation procedures are collectively bargained, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining regarding those procedures.

(g) It is the intent of the Legislature that faculty evaluation include, to the extent practicable, student evaluation.

(h) A probationary faculty member shall be accorded the right to be evaluated under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative. Those procedures shall ensure good-faith treatment of the probationary faculty member without according him or her de facto tenure rights.

(i) Governing boards shall establish and disseminate written evaluation procedures for administrators. It is the intent of the Legislature that evaluation of administrators include, to the extent possible, faculty evaluation.

SEC. 51.5. Section 87743 of the Education Code is amended to read:

87743. No tenured employee shall be deprived of his or her position for causes other than those specified in Sections 87453, 87467, and 87484, and Sections 87732 to 87739, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Section 87740 except in accordance with the provisions of Section 87463 and Sections 87743 to 87762, inclusive.

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of the district it shall have become necessary by reason of either of these conditions to decrease the number of tenured employees in the district, the * * * governing board may terminate the services of not more than a corresponding percentage of the * * * employees of the district, tenured as well as probationary, at the close of the school year. However, the services of no tenured employee may be terminated under * * * this section while any probationary employee, or any other employee with less seniority, is retained to render a service in a faculty service area in which the records of the district maintained pursuant to Section 87743.4 reflect that the tenured employee possesses the minimum qualifications prescribed by the board of governors and is competent to serve under district competency criteria.

Notice of the termination of services either for a reduction in attendance or reduction or discontinuance of a particular kind of service to take effect not later than the beginning of the following school year, shall be given before the 15th of May in the manner prescribed in Section 87740 and services of the employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with * * * Sections 87413 and 87414. In the event that a tenured or probationary employee is not given the notices and a right to a hearing as provided for in Section 87740, he or she shall be deemed reemployed for the ensuring school year.

The board shall make assignments and reassignments in * * * a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.

SEC. 52. Section 87743.1 is added to the Education Code, to read:

87743.1. As used in this chapter, "faculty service area" means a service or instructional subject area or group of related services or instructional subject areas performed by faculty and established by a community college district.

SEC. 53. Section 87743.2 is added to the Education Code, to read:

87743.2. Not later than July 1, 1990, each community college district shall establish faculty service areas. The establishment of faculty service areas shall be within the scope of meeting and negotiating pursuant to Section 3543.2 of the Government Code. The exclusive representative shall consult with the academic senate in developing its proposals.

SEC. 54. Section 87743.3 is added to the Education Code, to read:

87743.3. Each faculty member shall qualify for one or more faculty service areas at the time of initial employment. A faculty member shall be eligible for qualification in any

faculty service area in which the faculty member has met both minimum qualifications pursuant to Section 87356 and district competency standards. After initial employment, a faculty member may apply to the district to add faculty service areas for which the faculty member qualifies. The application shall be received by the district on or before February 15 in order to be considered in any proceeding pursuant to Section 87743 during the academic year in which the application is received. Any dispute arising from an allegation that a faculty member has been improperly denied a faculty service area shall be classified and procedurally addressed as a grievance. If the district has no grievance procedure, fair and equitable procedures for the resolution of the disputes shall be developed by the academic senate and representatives of the governing board.

SEC. 55. Section 87743.4 is added to the Education Code, to read:

87743.4. Each district shall maintain a permanent record for each faculty member employed by the district of each faculty service area for which the faculty member possesses the minimum qualifications for service and in which he or she has established competency pursuant to district competency standards. The record shall be contained in the faculty member's personnel file.

SEC. 56. Section 87743.5 is added to the Education Code, to read:

87743.5. To determine competency to serve in a faculty service area for the purposes of Section 87743, each community college district shall, not later than July 1, 1990, establish competency criteria for faculty members employed by the district. The development and establishment of such competency criteria shall be within the scope of meeting and negotiating pursuant to Section 3543 of the Government Code.

SEC. 57. The Board of Governors of the California Community Colleges shall conduct a thorough review of all statutes affecting the administration and operation of the California Community Colleges, and recommend to the Legislature the amendment or repeal of those provisions affected by this act. The review shall be submitted to the Legislature no later than January 31, 1989.

SEC. 58. The Board of Governors of the California Community Colleges shall review the Education Employment Relations Act, Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, with regard to the delineation of roles and responsibilities of the academic senate and the faculty bargaining agents, especially in light of proposed changes in the role of faculty concerning hiring, peer review and evaluation, and curricular design. The results of this review including the recommendations of the board of governors shall be submitted to the Legislature no later than January 1, 1993. The board of governors shall convene a committee, for the purpose of conducting the review. The committee shall include representatives from faculty and employee groups, collective bargaining organizations, and academic senates.

This section shall become operative only if funds are specifically appropriated to the board of governors for purposes of this section.

SEC. 59. The California Postsecondary Education Commission and the State Department of Education shall jointly agree on a coordinated research framework to be utilized by each agency in a review of the programs in English as a second language offered through the California Community Colleges, the University of California, the California State University, and adult education programs, and of the future educational needs in this area, and to report its recommendations for programs of effective cooperation between those institutions in this respect. The California Postsecondary Education Commission shall have responsibility for reviewing the programs of the postsecondary segments and the State Department of Education shall have responsibility for reviewing the programs offered by school districts. Both the commission and the State Department of Education shall report the results of their review to the Legislature no later than January 1, 1990. The purpose of the study provided for under this section shall be to assess the ongoing role of the California Community Colleges, in relation to the respective roles of the University of California and the California State University in conducting programs in English as a second language.

This section shall become operative only if funds are specifically appropriated for the purposes of conducting the work specified in this section.

SEC. 60. The Chancellor of the California Community Colleges shall conduct a study, with the participation of one or more community college districts, on the feasibility of establishing, on a pilot basis, "interdisciplinary colleges" within selected community colleges—with a special concern with the integration of vocational and academic study. The study shall include exploration of the possibilities, through the establishment of these colleges, of the integration of work experience and study, and the provision of a more cooperative learning environment as a model for all colleges. On or before January 1, 1990, the chancellor shall submit to the Legislature a report summarizing the findings and recommendations which result from the study conducted pursuant to this section.

This section shall become operative only if funds are specifically appropriated for the purposes of this section.

SEC. 61. The Board of Governors of the California Community Colleges shall, by January 1, 1990, do all of the following:

(a) Develop policies and guidelines for strengthening the role of the academic senate with regard to the determination and administration of academic and professional standards, course approval and curricula, and other academic matters.

(b) In cooperation with community college district and student representatives, develop a plan for encouraging greater student participation in appropriate aspects of campus, district, and statewide governance.

SEC. 62. The Student Aid Commission shall conduct a study of student aid programs which have as their purpose increasing the number of students entering into the teaching profession at the community college level, and shall report the results of this study to the Legislature and to the California Postsecondary Education Commission on or before January 1, 1990. Prior to March 15, 1990, the California Postsecondary Education Commission shall review and comment on this report to the Legislature, and shall propose any recommendations for revisions to improve these programs.

This section shall become operative only if funds are specifically appropriated for purposes of this section.

SEC. 63. The Board of Governors of the California Community Colleges, on or before January 1, 1990, shall provide ongoing information to community college districts relative to the design and operation of vocational education programs. This information shall include, but is not necessarily limited to, summaries and analyses of current economic trends and employment projections, as indicated by industry groups and other sources, and the curriculum implications of that data.

This section shall become operative only if funds are specifically appropriated for purposes of this section.

SEC. 64. The Board of Governors of the California Community Colleges and the State Board of Education shall each determine the extent to which students are underrepresented in vocational education programs in the community colleges and in public schools, respectively, on the basis of gender or ethnic origin, and shall jointly undertake to encourage students to enter those vocational education programs in which they are underrepresented. On or before July 1, 1990, the Board of Governors of the California Community Colleges and the State Board of Education jointly shall file a report with the education policy committees of the Legislature on their findings.

This section shall become operative only if funds are specifically appropriated for purposes of this section.

SEC. 65. (a) The Board of Governors of the California Community Colleges shall develop a pilot program regarding the employment of part-time temporary faculty by option-rollover contracts in selected areas of specialization. The board of governors shall select three community college districts to implement the two-year pilot program. Community college districts eligible to participate in this pilot program shall be those whose proposal for participation has the concurrence of the local exclusive bargaining representative. In districts having no exclusive bargaining representative, the plan must have the concurrence of the local academic senate.

(b) The community college districts participating in the pilot program established pursuant to subdivision (a) shall employ part-time temporary faculty for a duration of two years under an option-rollover contract. At the end of the two-year period, the community college district shall have, under the pilot program, the option of retaining the part-time temporary employee by rolling over the contract an additional two years.

(c) The pilot program shall be reviewed by the full-time faculty, the part-time temporary employees participating in the pilot program, and the students of the community college district.

(d) Upon the completion of the pilot program, the board of governors shall evaluate the review conducted pursuant to subdivision (c) and shall determine whether the pilot program regarding the employment of part-time temporary faculty under option-rollover contracts is beneficial to the community college and its students.

(e) If the pilot program is deemed to be beneficial to the community college and its students, the board of governors, in consultation with the faculty, shall establish policy directed at, and shall develop standards for, employing part-time temporary faculty under option-rollover contracts for periods ranging from two to five years. At the conclusion of the contractual period, the employing community college district shall have the option of retaining the employee for a period equal to the duration of the original contract by rolling over the contract for the stated period.

(f) It is the intent of the Legislature that the development of option-rollover contracts for part-time temporary employees not frustrate the policy of the community colleges to strengthen the core of their full-time faculty, including the recruitment and hiring of full-time faculty members.

(g) The board of governors shall develop standards requiring part-time temporary employees who have contractual status under an option-rollover contract to participate in student advisement and curriculum-related development, in addition to classroom instruction. Part-time temporary employees shall be compensated according to these standards.

This section shall become operative only if funds are specifically appropriated for purposes of this section.

SEC. 66. (a) The governing board of each district may determine whether it would be beneficial for various community college departments to enter into agreements with the analogous graduate department at the University of California or California State University campus closest in proximity to the community college, to provide part-time temporary teaching positions in the district for advanced university graduate students.

(b) In determining whether the development of part-time temporary teaching positions would be beneficial for the district, the governing board shall consider that the part-time temporary teaching positions, if implemented, would be limited to the following individuals:

(1) Advanced graduate students with prior proven teaching experience.

(2) Advanced graduate students teaching in areas consistent with the subject area of their graduate program.

(3) Advanced graduate students who qualify for employment in positions requiring certification.

(4) Advanced graduate students selected by the pertinent community college department and administrators from among a list of candidates provided by the University of California or the California State University graduate department.

(c) The governing board shall also consider whether the following intended purposes would be served by the development of part-time temporary teaching positions:

(1) Be a form of financial aid to the graduate students, especially for minority and disadvantaged students.

(2) Provide access to graduate students who wish to enter into the teaching profession at the community college level.

(3) Guarantee community college departments one or two part-time positions each year.

(d) In the event that part-time temporary teaching positions are established, graduate students who would teach on a temporary part-time basis shall not displace persons then currently teaching part-time or full-time.

SEC. 67. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 68. On or before January 1, 1990, the Board of Governors of the California Community Colleges shall adopt regulations which substantially incorporate the following policy:

No more than 30 semester units, or 45 quarter units, in course credit may be assigned to any student for remedial coursework, except as to any student who is enrolled in one or more courses in English as a second language or who is identified as having a learning disability. This limit may be waived by the community college district pursuant to regulations of the board of governors, based upon the student's showing of significant, measurable progress toward the development of skills appropriate to his or her enrollment in college level courses. Students needing remedial instruction beyond the course credit restrictions set forth in this section shall be referred to appropriate noncredit adult basic education programs conducted by the community college or an adult school, or to appropriate community services.

The board of governors shall examine and review the effects of the limit under this regulation on the students taking remedial courses, including their success rates, attrition rates, and movement into other programs of study or employment. The review shall include an analysis of the composition by ethnicity and gender of the students reaching this limit, as well as a review of district efforts to use faculty and support service personnel to promote the success rate of students in remedial courses. A report concerning this review shall be delivered to the education policy committees of the Senate and Assembly on or before December 31, 1991.

SEC. 69. Pursuant to paragraph (8) of subdivision (b) of Section 70901 of the Education Code:

(a) The board of governors and the State Board of Education shall jointly assist school districts and community college districts in the development and maintenance of articulated programs that coordinate vocational education over the final two years in high school and two years in community college to effectively meet student and employer needs.

(b) The Board of Governors of the California Community Colleges and the Trustees of the California State University, shall jointly develop and maintain articulated programs that expand upon the articulated programs developed pursuant to subdivision (a) to include the attainment of the baccalaureate degree where appropriate. These programs shall provide for the transfer of students in vocational education programs in community colleges to the California State University.

(c) Plans for the implementation of these programs shall be completed by July 1, 1991.

(d) This section shall become operative only if funds are specifically appropriated for purposes of this section.

SEC. 70. (a) The Legislature finds and declares that the reforms enacted through this act form a mutually dependent and related set of provisions. While some few provisions could be enacted independently, other sections of this act depend upon adequate support for the programs of the community colleges. There is a direct linkage between those sections of this act which constitute the further professionalization of the faculty and the moneys required to enhance the programs of the community colleges for "transitional program improvement," as specified in Section 84755 of the Education Code.

For instance, the elimination of credentials must be accompanied by the establishment of minimum qualifications by the board of governors. Minimum qualifications in turn must be implemented by districts through the establishment of faculty service areas, competency criteria, and various waiver processes. The extension of the tenure probationary period to four years as well as the revisions to layoff procedures also depend upon the establishment of tenure denial grievance processes as well as the establishment of faculty service areas and competency criteria. Similarly, because so many of the reforms call for faculty involvement in the determination and implementation of policy, and because the quality, quantity, and composition of full-time faculty have the most immediate and direct impact on the quality of instruction, overall reform cannot succeed without sufficient members of full-time faculty with sufficient opportunities for continued staff development, and with sufficient opportunity for participation in institutional governance.

The Legislature further finds that, absent resources to reimburse the state-mandated costs of this act, new full-time faculty to replace part-time faculty, and expanded programs for staff development, the viability or success, or both, of many of the reforms in this act will be jeopardized. The Legislature recognizes that due to unanticipated fiscal conditions the State cannot immediately fund all of the reforms contained in this act. The Legislature also recognizes, however, that if minimal funding is not soon provided that it would be inappropriate to proceed with many reforms.

(b) The Legislature finds and declares that the California Community Colleges are entering a period of major reform, but require further assistance in regaining prior purchasing power in order to fully carry out major reforms. The Legislature intends that the reform process be phased in over a reasonable and logical period of time, and that the institution of major reform be based upon the community colleges' ability to deliver enhanced quality in their programs. Pursuant to this act, the Legislature finds and declares that the transitional stage of reform process shall consist of two phases:

(1) "Phase I of transitional program improvement," as used in this section, means a period of reform during which community college programs are improved and enhanced to prepare an appropriate environment for the subsequent professionalization of faculty. In this connection, the Legislature finds and declares that it would be an unsound and wasteful policy to expend moneys to professionalize faculty without first making the program changes necessary to enable that faculty to assume a more effective role in the educational process. It is the intent of the Legislature that those changes, combined in proper sequence with the professional improvement of faculty, will improve the overall quality of education within the system. It is the intent of the Legislature that moneys appropriated during Phase I fully fund any state-mandates created pursuant to this section.

(2) "Phase II of transitional program improvement" means a period of reform following initial program improvement and professionalization of faculty. During that period, the new educational environment created under Phase I, including such reforms as innovative training programs, evaluation procedures, and minimum qualifications, may be utilized to the fullest extent in hiring new full-time faculty. The Legislature finds that this latter step is a major component of successful reform and the eventual attainment of the highest possible quality in the educational programs of the California Community Colleges. It is the intent of the Legislature that moneys appropriated during Phase II fully fund any state-mandate created pursuant to this section.

(c) The Legislature finds and declares that the provisions of subdivisions (d) and (e) address an essential policy issue at the core of the system created by this act. The reforms with delayed operative dates pursuant to subdivisions (d) and (e) will be fiscally and substantively meaningful only if other enumerated reforms, on which the reforms with delayed operative dates depend, are adequately funded as an initial step in the process of improving the structure and quality of the California Community Colleges.

(d) Sections 27 to 34, inclusive, and Sections 51 to 56, inclusive, of this act shall be implemented by the board of governors and be mandatory with regard to implementation by community college districts only if the board of governors certifies in writing to the Governor and to the Legislature that adequate funding has been provided for Phase I of transitional program improvement and for any applicable state mandates, as authorized in

Section 84755 of the Education Code. If the board of governors so certifies, each of these sections shall be implemented on the date of certification, or upon any operative date specified for the particular section in this act, whichever is later. For purposes of this subdivision, "adequate funding" means those moneys required to provide an increased quality of instruction and programs, and to carry out applicable mandates of this act, within the California Community Colleges. Based upon estimates provided by the board of governors and exhaustive review of the community colleges' operations by the Joint Committee for the Review of the Master Plan for Higher Education, the Legislature finds and declares that its estimate of this funding amount is seventy million dollars ($70,000,000).

(e) Sections 21, and 36 to 49, inclusive, of this act shall be implemented by the board of governors and be mandatory with regard to implementation by community college districts only if the board of governors certifies in writing to the Governor and to the Legislature that adequate funding has been provided for Phase II of transitional program improvement and for any applicable state mandates, as authorized in Section 84755. If the board of governors so certifies, each of these sections shall be implemented on the date of certification, or upon any operative date specified for the particular section in this act, whichever is later. For purposes of this subdivision, "adequate funding" means those moneys required to provide an increased quality of instruction and programs, and to carry out applicable state mandates of this act, within the California Community Colleges. Based upon estimates provided by the board of governors and exhaustive review of the community colleges' operations by the Joint Committee for the Review of the Master Plan for Higher Education, the Legislature finds and declares that its estimate of this funding amount is seventy million dollars ($70,000,000), in addition to the seventy million dollars ($70,000,000) estimated under subdivision (d).

(f) Notwithstanding this section, the board of governors, commencing January 1, 1989, may develop criteria and standards, as may be necessary to prepare for implementation of Section 84750 of the Education Code. However, the board of governors may not implement that section until the terms of this section have been met.

SEC. 71. Section 70901.5 of the Education Code, as added by Section 8 of this act, shall become operative on January 1, 1990.

SEC. 72. The sum of seven million two hundred fifty thousand dollars ($7,250,000) is hereby appropriated from the General Fund to the Board of Governors of the California Community Colleges for expenditure pursuant to this act in the 1988–89 fiscal year in accordance with the following schedule:

(a) For expenditure pursuant to Article 5 (commencing with Section 87150) of Chapter 1 of Part 51 of the Education Code. Notwithstanding subdivision (a) of Section 87152, the board of governors shall allocate these funds to community college districts on a per average daily attendance (ADA) basis, using the funded ADA levels for the 1987–88 fiscal year, so that seven dollars ($7) per ADA, or as near thereto as possible, is allocated, and so that each district receives at least five thousand dollars ($5,000). Before computing the per ADA amount the board of governors may set aside up to 2 percent of the allocation of this subdivision for statewide administration	$5,000,000
(b) For expenditure pursuant to Section 87107 of the Education Code	$1,000,000
(c) For purposes of the administration of this act, including the administration of Section 84755 of the Education Code, the adoption of regulations as required by Sections 70901.5, 87356, 87359, 87107, and 87482.6 of the Education Code and Section 69 of this act, the development of a list of disciplines, as required by Section 87357 of the Education Code, and the review required by Section 87359.5 of the Education Code	$ 300,000
(d) For purposes of commencing implementation of Section 84750 of the Education Code, during the period of January 1, 1989, through June 30, 1990	$ 300,000
(e) For purposes of subdivision (b) of Section 87104 of the Education Code	$ 300,000

(f) For purposes of Section 71020.5 of the Education Code ..... $ 150,000
(g) To the Community College Fund for instructional improvement pursuant to Section 84381 of the Education Code ..... $ 200,000

CHAPTER 1514

An act to amend Sections 260 and 262 of, and to add Sections 262.1, 262.2, 262.3, and 265 to, the Education Code, relating to education.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

The people of the State of California do enact as follows:

SECTION 1. Section 260 of the Education Code is amended to read:

260. The governing board of a school district shall have the primary responsibility for ensuring that school district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, and for monitoring compliance with any and all rules and regulations promulgated pursuant to Section 11138 of the Government Code.

SEC. 2. Section 262 of the Education Code is amended to read:

262. (a) The governing board of a community college district shall have the primary responsibility for ensuring that community college district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for monitoring the compliance of each district with any and all regulations promulgated pursuant to Section 11138 of the Government Code.

SEC. 3. Section 262.1 is added to the Education Code, to read:

262.1. The Chancellor of the California State University and the president of each California State University campus shall have the primary responsibility for ensuring that campus programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

SEC. 4. Section 262.2 is added to the Education Code, to read:

262.2. The President of the University of California and the chancellor of each University of California campus shall have primary responsibility for ensuring that campus programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

SEC. 5. Section 262.3 is added to the Education Code, to read:

262.3. A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, the president of a campus of the California State University, or the chancellor of a campus of the University of California, pursuant to

this article, to the State Department of Education, the Chancellor of the California Community Colleges, the Chancellor of the California State University, or the President of the University of California, as applicable.

SEC. 6. Section 265 is added to the Education Code, to read:

265. Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other orders may also be available to the complainants. The educational institution shall make this information available by publication in appropriate informational materials.

SEC. 7. It is the intent of the Legislature that Section 264 of the Education Code, relative to the applicability of Chapter 2 (commencing with Section 200) of Part 1 of the Education Code to the University of California, apply to the sections of the Education Code amended and added by this act.

CHAPTER 1372

An act to amend Sections 40, 41, 52, 92, 262.3, 1043, 1240, 1245, 1246, 1250, 1252, 1253, 1260, 1262, 1271, 1294, 1297, 1298, 1330, 1340, 1400, 1500, 1510, 1602, 1606, 1700, 1721, 1831, 1946, 4002, 4003, 7000, 8006, 8008, 8070, 8080, 8081, 8084, 8092, 8207, 8225, 8285.5, 8320, 8322, 8328, 8329, 8362, 8394, 8510, 8534, 8760, 8761, 8762, 8763, 8764, 8765, 8771, 10407, 10504, 10900, 10901, 10907, 10910, 10912, 10913, 10914, 11001, 12020, 12220, 12302, 12400, 12401, 12402, 12405, 14000, 15100, 15106, 15140, 15141, 15142, 15147, 15252, 15254, 15502, 15520, 15527, 15528, 15541, 15551, 15570, 15574, 15701, 15718, 15735, 15745, 15752, 15794, 16042, 16045, 16080, 16100, 16105, 16165, 16195, 16197, 16200, 16214, 17302, 17313, 17900, 17901, 17902, 17903, 18100, 18101, 18102, 18103, 18110, 18111, 18120, 18121, 18122, 18131, 18132, 18134, 18137, 18138, 18139, 18170, 18171, 18172, 19901, 22200, 22504, 24806, 24923, 24924, 32033, 32300, 32371, 32372, 33031, 33113, 33117, 33117.5, 35501, 39214.5, 39308, 39383, 39830, 41303, 41332, 44849, 44850, 44854, 51875.7, 52152, 52154, 52302.3, 52342, 52512, 62001, 66010, 66011, 66017, 66021, 66700, 68011, 68012, 68016, 68022, 68023, 68040, 68041, 68051, 68070, 68071, 68072, 68073, 68100, 69510, 69511.5, 69537, 69640, 69641, 69641.5, 69642, 69643, 69648, 69648.5, 69649, 69653, 69655, 71004, 71020, 71040, 71046, 71050, 71090, 71092, 71093, 72000, 72023.5, 72027, 72031, 72102, 72122, 72241, 72247, 72423, 72500, 72506, 72530, 74000, 74001, 74104, 74105, 74106, 74107, 74109, 74110, 74132, 74134, 74135, 74136, 74139, 74140, 74153, 74154, 74155, 74158, 74159, 74202, 74270, 74290, 76000, 76001, 76020, 76403, 76407, 78031, 78032, 78211.5, 78213, 78216, 78217, 78230, 78249, 78300, 78401, 78900, 78907, 79020, 79021, 79154, 79155, 81033, 81130, 81130.5, 81133, 81160, 81177, 81179, 81805, 81807, 81820, 81822, 81836, 81837, 81901, 81908, 81947, 82321, 82537, 82542, 84030, 84040.6, 84207, 84320, 84328, 84362, 84381, 84382, 84383, 84384, 84660, 84890, and 85230 of, to amend and repeal Section 32033 of, to add Sections 8323, 71025, 71028, 72013, 72014, 72015, 72243, 72249, 72253.3, 72253.5, 72253.7, 78034, 84001, 84700.3, 85266.5, 87448, and 88020.5 to, to add Chapter 1.5 (commencing with Section 78100) to Part 48 of, to repeal Sections 91, 265, 1255, 7001, 7002, 8085, 8329.5, 8511, 8513, 8514, 8515, 8516, 12210, 12404, 14020, 14021, 15000, 32200, 44971, 66101, 66102, 66200, 66700.5, 66902.5, 67007, 68010, 68013, 68019, 68020, 68021, 68090, 69644, 69645, 69646, 69647, 69648.7, 69657, 71005, 71027.5, 71033, 71034, 71038, 71039, 71041, 71042, 71047, 71048, 71095, 71096, 71097, 72001, 72002, 72020, 72021, 72023.7, 72024, 72025, 72028, 72029, 72030, 72032, 72033, 72035, 72120, 72125, 72126, 72132, 72200, 72202, 72203, 72204, 72208, 72231, 72237, 72241.5, 72244, 72247.1, 72248, 72255, 72256, 72408, 72409, 72412, 72413, 72419, 72419.5, 72420, 72421, 72422, 72531, 72532, 74010, 74011, 74271, 74282, 74283, 74291, 74292, 74293, 74294, 74295, 76001.5, 76002, 76006, 76021, 76142, 76160, 76400, 76405, 76408, 76409, 76470, 78001, 78002, 78003, 78004, 78005, 78006, 78007, 78010, 78011, 78012, 78220, 78221, 78222, 78240, 78241, 78242, 78243, 78244, 78245, 78246, 78247, 78248, 78250, 78270, 78272, 78301, 78302, 78303, 78304, 78305, 78402, 78403, 78405, 78407, 78409, 78412, 78440, 78440.5, 78441,

78442, 78902, 78903, 78904, 78905, 78906, 79022, 79023, 79024, 79025, 79026, 79027, 79027.5, 79028, 79029, 79031, 79032, 79121, 79122, 79123, 79124, 79153, 81000, 81005, 81006, 81008, 81009, 81033.5, 81035, 81036, 81038, 81039, 81131, 81131.5, 81131.6, 81132, 81134, 81135, 81136, 81137, 81140, 81164, 81165, 81176, 81801, 81802, 81803, 81804, 81806, 81809, 81810, 81821.5, 81830, 81831, 81833, 81838, 81900, 81903, 81906, 81910, 81911, 81912, 81913, 81914, 81915, 81916, 81917, 81918, 81919, 81920, 81921, 81922, 81923, 81924, 81931, 81948, 81953, 81954, 81957, 81958, 81959, 81967, 82305, 82305.5, 82321.1, 82360, 82362, 82363, 82364, 82365, 82530, 82531, 82532, 82533, 82535, 82536, 82538, 82539, 82540, 82541, 82543, 84004, 84005, 84031, 84035, 84040.3, 84040.7, 84041, 84043, 84044, 84045, 84046, 84200, 84201, 84206, 84300, 84322, 84324, 84325, 84327, 84329, 84330, 84331, 84332, 84360, 84363, 84380, 84384.1, 84385, 84386, 84387, 84661, 84662, 84735, 84850.5, 84891, 84892, 84893, 84894, 84895, 85210, and 85430 of, to repeal Article 2 (commencing with Section 8020) of Chapter 1 of Part 6 of, Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of, Article 3 (commencing with Section 71060) of Chapter 1 of Part 44 of, Article 3 (commencing with Section 72280) of, and Article 5 (commencing with Section 72320) of Chapter 3 of, Article 1 (commencing with Section 72600) of, Article 4 (commencing with Section 72640) of, and Article 5 (commencing with Section 72650) of, Chapter 6 of Part 45 of, Article 8 (commencing with Section 76130) of Chapter 1 of, Chapter 2 (commencing with Section 76300) of, Article 2 (commencing with Section 76420) of, and Article 4 (commencing with Section 76450) of Chapter 3 of Part 47 of, Article 2.5 (commencing with Section 78040) of, and Article 3 (commencing with Section 78050) of Chapter 1 of, Article 1 (commencing with Section 78200.5) of, and Article 6 (commencing with Section 78280) of Chapter 2 of, Article 2 (commencing with Section 78430) of, and Article 5 (commencing with Section 78460) of Chapter 3 of, Article 2 (commencing with Section 78920) of, and Article 3 (commencing with Section 78930) of Chapter 7 of, Article 1 (commencing with Section 79000) of, and Article 2 (commencing with Section 79010) of Chapter 8 of Part 48 of, Article 1 (commencing with Section 82500) of Chapter 8 of Part 49 of, Article 3 (commencing with Section 84050) of Chapter 1 of, Article 6 (commencing with Section 84370) of, and Article 8 (commencing with Section 84390) of Chapter 3 of, Article 5 (commencing with Section 84801) of Chapter 5 of, Article 1 (commencing with Section 85200) of Chapter 8 of, Article 1 (commencing with Section 85400) of Chapter 9 of, and Article 3 (commencing with Section 85420) of Chapter 9 of Part 50, to repeal Chapter 5.5 (commencing with Section 84900) of, Chapter 6 (commencing with Section 85000) of, and, Chapter 7 (commencing with Section 85100) of Part 50, to repeal and add Section 84040 of, and to repeal and add Chapter 4 (commencing with Section 84500) of Part 50 of, the Education Code, to amend Section 16417 of the Government Code, and to add Section 20660 to the Public Contract Code, relating to community colleges.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature hereby finds and declares that numerous provisions of the Education Code, including those provisions listed in subdivision (b), authorizing community colleges to conduct various activities are unnecessary in light of Section 14 of Article IX of the California Constitution. Section 14 of Article IX of the California Constitution authorizes community college districts to initiate and carry out any activity which is not in conflict with, or inconsistent with, or preempted by any law, and which is not in conflict with the purposes for which community college districts are established.

(b) The Legislature finds and declares that the purpose of this act is to repeal or make inapplicable to the community colleges numerous Education Code provisions which are no longer necessary in light of the authority of Section 14 of Article IX of the Constitution. In repealing or making inapplicable these provisions, the Legislature finds and declares that under the general authority of Section 14 of Article IX, community college districts shall continue to have the authority provided in the provisions that are repealed. The Legislature specifically declares this finding with regard to, but not limited to, the following Education Code sections which are repealed or amended by this act:

Sections 8080, 8081, 8084, 8085, 8091, 8322, 8329, 8760, 8761, 8762, 8763, 8764, 10504, 12400, 12401, 12402, 12404, 12405, 18110, 18111, 18120, 18131, 18134, 32371, 32372, 72241.5, 72244, 72320, 72321, 72412, 72419, 72419.5, 72420, 72421, 72422, 76400, 76470, 78001, 78010, 78011, 78050, 78051, 78208, 78230, 78240, 78270, 78280, 78281, 78286, 78302, 78303, 78409, 78440, 79022, 79028, 79032, 79121, 81009, 81839, 81931, 81953, 81954, 81957, 82305, 82305.5, 82500, 82501, 82535, 82541, 84035, 84050, 85201, 85260.5, 85266, 85267, 85410, 85420, and 85430, the second sentence of Section 32033, the second and third sentences of Section 76403, the first sentence of Section 78442, and the second and third sentences of Section 84041.

SEC. 3. Section 40 of the Education Code is amended to read:

40. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses be conducted, without regard to the sex of the student enrolled in such classes and courses.

(b) No school district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student, except a class subject to Section 51550.

(c) No school district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or

aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for the seventh grade so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

SEC. 4. Section 41 of the Education Code is amended to read:

41. (a) The Legislature finds and declares that female students are not accorded opportunities for participation in school-sponsored athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female students.

(b) Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(c) Nothing in this section shall be construed to require a school district to require competition between male and female students in school-sponsored athletic programs.

SEC. 5. Section 52 of the Education Code is amended to read:

52. The secondary schools of the state are designated as high schools, technical schools, and adult schools.

SEC. 6. Section 91 of the Education Code is repealed.

SEC. 7. Section 92 of the Education Code is amended to read:

92. "County" or "counties" as used in Sections 2300, 12300 to 12307, inclusive, 41000 to 41964, inclusive, 42100 to 42128, inclusive, 46000 to 46392, inclusive, 84000 to 84850.5, inclusive, and 85000 to 85430, inclusive, whichever are in effect, includes a city and county.

SEC. 9. Section 262.3 of the Education Code is amended to read:

262.3. (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, the president of a campus of the California State University,

from determination of the total membership constituting the governing board.

SEC. 287.5. Section 72001 of the Education Code is repealed.

SEC. 288. Section 72002 of the Education Code is repealed.

SEC. 288.5. Section 72013 is added to the Education Code, to read:

72013. With respect to access to community college district services, classes, and programs, and with respect to all references within this division, "handicap" and "disability" shall have the same meaning.

SEC. 289. Section 72014 is added to the Education Code, to read:

72014. No funds under the control of a community college district shall ever be used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin. This section does not apply to any public funds which have been paid to an individual officer or employee of the district as salary, or to any funds which are used directly or indirectly for the benefit of student organizations.

SEC. 289.5. Section 72015 is added to the Education Code, to read:

72015. (a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.

(b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.

(c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

(f) The Legislature finds and declares that female students are not accorded opportunities for participation in community college athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in

community college athletics be provided equally to male and female students and on an equitable basis to all students.

(g) Insofar as practicable, in apportioning public funds, community college district governing boards shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of the governing board of a community college district, or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and opportunities for participation shall include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(h) It is the further intent of the Legislature that females be given the same opportunity to participate in athletics and compete with other females in individual and team sports as is available to males who compete with other males in individual and team sports. Nothing in this section shall be construed to require a community college to require competition between male and female students in school-sponsored athletic programs.

SEC. 290. Section 72020 of the Education Code is repealed.

SEC. 291. Section 72021 of the Education Code is repealed.

SEC. 292. Section 72023.5 of the Education Code is amended to read:

72023.5. (a) The governing board of each community college district shall order the inclusion within the membership of the governing board, in addition to the number of members otherwise prescribed, one or more nonvoting students who are residents of the district. These students shall have the right to attend each and all meetings of the governing board, except that student members shall not have the right, or be afforded the opportunity, to attend executive sessions of the governing board.

The students selected to serve on the governing board, in addition to being residents of the district, shall be enrolled in a community college of the district and shall be chosen, and shall be recalled, by the students enrolled in the community colleges of the district in accordance with procedures prescribed by the governing board. A student member shall be required throughout the term of his or her appointment to be enrolled in a community college of the district for at least five semester units, or its equivalent, and shall meet and maintain the minimum standards of scholarship for community college students prescribed by the community college district. The term of the student members shall be one year commencing on June 1 of each year.

The nonvoting student members appointed pursuant to this section shall be entitled to the mileage allowance prescribed by

Chapter 1 of Part 48 of the Education Code is repealed.

SEC. 458. Article 3 (commencing with Section 78050) of Chapter 1 of Part 48 of the Education Code is repealed.

SEC. 459. Chapter 1.5 (commencing with Section 78100) is added to Part 48 of the Education Code, to read:

CHAPTER 1.5. LIBRARY SERVICES

78100. The governing board of each community college district shall provide school library services for the students and faculty of the district by establishing and maintaining community college libraries or by contractual arrangements with another public agency.

78101. The board of governors shall adopt standards, rules, and regulations for community college library services.

78103. The libraries shall be open for the use of the faculty and the students of the community college district during the schoolday. In addition, the libraries may be open at other hours, including evenings and Saturdays, as the governing board may determine. Libraries open to serve students during evening and Saturday hours shall be under the supervision of certificated personnel or those employed pursuant to minimum standards adopted by the board of governors.

SEC. 459.5. Article 1 (commencing with Section 78200.5) of Chapter 2 of Part 48 of the Education Code is repealed.

SEC. 460. Section 78211.5 of the Education Code is amended to read:

78211.5. (a) The Board of Governors of the California Community Colleges shall initially provide for full implementation of the matriculation services specified in Section 78212 in as many community colleges as the funds appropriated for this purpose allow.

(b) Because of the need to develop and evaluate data on a standard statewide basis concerning the implementation and effectiveness of the matriculation services described in this article, any college or district receiving funding under this article shall agree to carry out its provisions as specified, but shall be bound to that agreement only for the period during which funding is received pursuant to this article. The obligations of the college or district under the agreement shall include, but not be limited to, the expenditure of funds received pursuant to this article for only those matriculation services approved by the board of governors and the contribution toward the purposes of this article of matching funds as the board of governors may require pursuant to Section 78216.

SEC. 461. Section 78213 of the Education Code is amended to read:

78213. (a) No district or college may use any assessment instrument for the purposes of this article without the authorization of the board of governors. The board of governors may adopt a list of authorized assessment instruments pursuant to the policies and procedures developed pursuant to this section and the intent of this

article. The board of governors may waive this requirement as to any assessment instrument pending evaluation.

(b) The board of governors shall review all assessment instruments to ensure that they meet all of the following requirements:

(1) Assessment instruments shall be sensitive to cultural and language differences between students.

(2) Assessment instruments shall be used as an advisory tool to assist students in the selection of an educational program.

(3) Assessment instruments shall not be used to exclude students from admission to community colleges.

(c) The board of governors shall establish an advisory committee to review and make recommendations concerning all assessment instruments used by districts and colleges pursuant to this article.

SEC. 462. Section 78216 of the Education Code is amended to read:

78216. (a) The Legislature recognizes that community college districts are currently funding various components of student matriculation through existing counseling, assessment, and other student services, but that adequate student matriculation cannot be realized without supplemental funding support.

(b) The board of governors shall develop a formula for funding student matriculation services at community colleges. The formula shall include the requirement that the districts or colleges contribute matching funds in an amount to be established by the board of governors in each case, and shall reflect, but not be limited to, all of the following considerations:

(1) The number of students to receive matriculation services at each college.

(2) The levels of support for matriculation services provided at each college prior to July 1, 1985, and the need for funding assistance in the implementation of the program set forth in this article.

(3) The relative needs for matriculation services, based on special student populations such as low-income students, students with language differences, students with physical and learning disabilities, and students in need of remedial instruction.

(4) The requirement that funds for matriculation services be expended only for services approved by the board of governors.

(5) The requirement that any district or college receiving funding pursuant to this section agree to implement this article during the period in which it receives that funding.

(6) The need for computer hardware and software to provide approved matriculation services, and for institutional research personnel for ongoing evaluation.

(c) The board of governors shall require participating colleges to develop a plan for student matriculation that reflects all of the following:

(1) A method for providing the services specified in Section 78212.

(2) The college budget for the matriculation services pursuant to

Sections 78212 and 78214.

(3) The development and training of staff and faculty to implement the matriculation services.

(4) In multicampus districts, the coordination of the college matriculation plan with other college plans.

(5) Computerized information services and institutional research and evaluation necessary for implementation of this article.

(d) The board of governors may allocate up to 5 percent of the total funds appropriated for student matriculation for state administrative operations to carry out the intent of this article, subject to the review of the annual budget process.

SEC. 463. Section 78217 of the Education Code is amended to read:

78217. (a) By no later than January 30, 1987, and prior to the allocation of any funding for purposes of this article to local districts, the board of governors shall provide the Department of Finance, Legislative Analyst, California Postsecondary Education Commission, and the education policy committees and the fiscal committees of the Legislature with a comprehensive management plan for implementation of matriculation programs pursuant to this article.

(b) On or before March 15, 1989, the board of governors shall submit a report to the Legislature evaluating the effectiveness of those community college matriculation programs receiving funding under this article for the 1986–87 academic year. The report shall cover operation of the programs during the 1986–87 and 1987–88 fiscal years, and shall include the board of governors' recommendations regarding the improvement of student matriculation, the continued operation of student matriculation services, and the funding of those services. The board of governors shall include in the report information on the success rate of students who enroll in courses contrary to the recommendations and advice of college advisement staff.

(c) On or before March 15 of each year thereafter, the board of governors shall provide a progress report to the Legislature on the implementation of this article. The board of governors may require participating districts or colleges to provide data for the completion of these reports.

(d) No later than January 1, 1986, the board of governors shall appoint an advisory committee to assist in the development of the evaluation required by this section; however, the Legislature recognizes that to promote the effective implementation of this program, the board of governors may wish to appoint the advisory committee prior to that date.

(e) On or before April 1, 1988, the board of governors shall submit a report to the Legislature evaluating the comparative utility of matriculation services to students with differing educational objectives.

SEC. 464. Section 78220 of the Education Code is repealed.

rules and regulations.

For purposes of this chapter, the board of governors shall assemble statewide data on facility and construction costs, and on the basis thereof formulate cost standards and construction standards. The formulation of standards shall include also the formulation of average ratios of equipment cost to total project costs, unit equipment costs per faculty or other staff measure, and unit costs related to floor areas.

SEC. 567. Section 81806 of the Education Code is repealed.

SEC. 568. Section 81807 of the Education Code is amended to read:

81807. Funds appropriated for a project of a community college district for purposes of this chapter shall be allocated and disbursed upon order of the Board of Governors of the California Community Colleges, and by warrants of the Controller issued pursuant thereto.

SEC. 569. Section 81809 of the Education Code is repealed.

SEC. 570. Section 81810 of the Education Code is repealed.

SEC. 571. Section 81820 of the Education Code is amended to read:

81820. The governing board of each community college district shall prepare and submit to the Board of Governors of the California Community Colleges a plan for capital construction for community college purposes of the district. The plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The five-year plan shall be subject to continuing review by the governing board and annually shall be extended one year, and there shall be submitted to the board of governors, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the five-year plan.

SEC. 572. Section 81821.5 of the Education Code is repealed.

SEC. 573. Section 81822 of the Education Code is amended to read:

81822. The board of governors shall review and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 81821, and shall, on the basis of the review and evaluation, make the revision and changes therein as are appropriate, and notify the district. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each community college district shall be made. The board of governors shall, promptly after review, notify the governing board of each community college district of the content of the district's revised plan for capital construction.

SEC. 574. Section 81830 of the Education Code is repealed.

SEC. 575. Section 81831 of the Education Code is repealed.

SEC. 576. Section 81833 of the Education Code is repealed.

SEC. 577. Section 81836 of the Education Code is amended to

Accordingly, the Board of Governors of the California Community Colleges shall continue its review of the Education Code related to the administration and operation of the California Community Colleges and shall recommend to the Legislature the amendment or repeal of those provisions affected by Chapter 973 of the Statutes of 1988 which have not been accomplished in this act.

SEC. 714. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1667

An act to amend Sections 52301.5, 52302, 52519, 78015, and 78016 of the Education Code, and to amend Sections 14002.5, 15340, 15341, 15342, and 15344, and the heading of Article 3.5 (commencing with Section 15340) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of, and to repeal Sections 15340.1 and 15343 of, the Government Code, to add Section 4638.5 to the Labor Code, and to amend Sections 1611, 9614, 10510, 10521, 10527, 15002, 15026, 15037, 15038.5, 15064, 15075, 15076, 15077, 15077.5, 15079, and 15082, and the heading of Chapter 7.5 (commencing with Section 15075) of Division 8 of, to repeal and add Section 15078 of, to add Sections 10525, 15075.1, and 15076.5 to, to add Article 3 (commencing with Section 10530) to Chapter 4.5 of Division 3 of, and to repeal Sections 15038.51, 15057.5 and 15086 of, the Unemployment Insurance Code, relating to displaced workers, and making an appropriation therefor.

in the labor market area, other available sources of labor market information. The study shall include a California Occupational Information System supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to ensure that the anticipated employment demand for the adults enrolled in the proposed program justifies the establishment of the proposed courses of instruction.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the high school or unified school district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the high school district or unified school district determines that the job market study justifies the initiation of the proposed program, it shall, by resolution, determine whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to Section 8092.

SEC. 4. Section 78015 of the Education Code is amended to read:

78015. (a) The governing board of a community college district shall, prior to establishing a vocational or occupational training program, conduct a job market study of the labor market area, as those terms are defined in Section 52301.5, in which it proposes to establish the program. The study shall use the State-Local Cooperative Labor Market Information Program established in Section 10533, or if this program is not available in the labor market area, other available sources of labor market information. The study shall include a California Occupational Information System supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to ensure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the community college district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the community college district determines that the job market study justifies the initiation of the proposed program, it shall, by resolution, determine whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to Section 8092.

SEC. 4.5. Section 78016 of the Education Code is amended to read:

78016. (a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to assure that each

program, as demonstrated by the California Occupational Information System, including the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information, does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) This section shall apply to each program commenced subsequent to July 28, 1983.

SEC. 5. Section 14002.5 of the Government Code is amended to read:

14002.5. As used in this part, unless the context otherwise requires:

(a) "Department" means the Department of Transportation.

(b) "Director" means the Director of Transportation.

(c) "Secretary" means the Secretary of the Business, Transportation and Housing Agency.

(d) "Board" or "commission" means the California Transportation Commission.

(e) "Displaced worker" means individuals eligible for assistance pursuant to Section 15076 of the Unemployment Insurance Code.

SEC. 6. The heading of Article 3.5 (commencing with Section 15340) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code is amended to read:

Article 3.5. Economic Adjustment

SEC. 7. Section 15340 of the Government Code is amended to read:

15340. The Legislature declares the following:

(a) The state must meet the competitive challenges of the 1990's and provide sufficient employment opportunities for its population, and the mature sectors of the state's industrial base must be revitalized.

(b) In some instances, the revitalization process has entailed, and will continue to entail, the closure of some plants and the attendant severe economic dislocations for displaced workers, their families,

(b) Service delivery areas may provide, to the extent permitted by federal law, needs-related payments to eligible dislocated workers who do not qualify for, or have exhausted, unemployment insurance benefits, in order to enable these workers to participate in job training and education programs authorized by this chapter.

SEC. 34. Section 15082 of the Unemployment Insurance Code is amended to read:

15082. Federal and state funds to be transferred to the Consolidated Work Program Fund shall include all of the following:

(a) That portion of the federal employment and training funds received by the state that is designated for the purpose of local delivery of employment and training services, except for those funds designated for employment activities under Title IV-A and IV-C of the federal Social Security Act (42 U.S.C. Sec. 601, et seq. and Sec. 630, et seq.) and the Food Stamp Act (7 U.S.C. Sec. 2011, et seq.).

(b) Reinvestment of a portion of state public assistance grant savings reasonably attributable to the operation of this program. The Governor's Budget shall annually identify the savings resulting from the prior fiscal year's program operations and recommend the portion, if any, to be applied toward program funding during the budget year.

(c) Federal funds received by the state pursuant to Section 202 (b) and Title III of the federal Job Training Partnership Act. However, these funds shall be allocated pursuant to subdivision (e) of Section 15037 and Section 15078.

SEC. 35. Section 15086 of the Unemployment Insurance Code is repealed.

SEC. 36. Section 13 of this bill incorporates amendments to Section 1611 of the Unemployment Insurance Code proposed by both this bill and AB 2694. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 1611 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 2694, in which case Section 12.5 of this bill shall not become operative.

CHAPTER 1038

An act to amend Sections 69643, 72000, 72411, 78100, 78103, 78300, 84001, 84713, and 87003 of, to amend and renumber the heading of Article 2.5 (commencing with Section 84750) of Chapter 5 of Part 50 of, to add Sections 81663, 84501, 84810.5, and 87482.7 to, to repeal Article 1 (commencing with Section 84700) of Chapter 5 of Part 50 of, and to repeal and add Sections 72253.3 and 87487 of, the Education Code, to add Section 15814.21 to the Government Code, and to repeal Sections 6 and 7 of Chapter 565 of the Statutes of 1983, relating to community colleges, and declaring the urgency thereof, to take effect immediately.

SEC. 12.3. Section 87482.7 is added to the Education Code, to read:

87482.7. (a) The board of governors shall, pursuant to paragraph (6) of subdivision (b) of Section 70901, adopt regulations that establish minimum standards regarding the percentage of hours of credit instruction that shall be taught by full-time instructors.

(b) Upon notice by the board of governors, the Department of Finance shall transfer any money deducted from district apportionments pursuant to the regulations adopted under this section. This money shall be transferred to the Faculty and Staff Diversity Fund pursuant to Section 87107.

SEC. 12.5. Section 87487 of the Education Code is repealed.

SEC. 12.7. Section 87487 is added to the Education Code, to read:

87487. (a) The governing board of any community college district may establish a faculty internship program pursuant to regulations adopted by the Board of Governors of the California

Community Colleges and may employ, as faculty interns within the program, graduate students enrolled in the California State University, the University of California, or any other accredited institution of higher education subject to Chapter 3 (commencing with Section 94300) of Part 59.

(b) A student employed as a faculty intern shall be employed as a temporary faculty member under Section 87482.5 and shall meet the minimum qualifications set forth in paragraphs (1) to (3), inclusive. Unless and until the Board of Governors of the California Community Colleges adopts regulations pursuant to paragraph (1) of subdivision (a) of Section 87357, the board of governors shall adopt regulations that include all of the following:

(1) Faculty interns shall be enrolled in a master's or doctoral program at the University of California, the California State University, or any other accredited institution of higher education subject to Chapter 3 (commencing with Section 94300) of Part 59 and shall have completed at least one-half of the coursework for the master's or doctorate degree, or the equivalent, in that graduate program.

(2) Faculty interns may only be assigned to teach or to serve in a discipline in which they would be legally qualified to teach or render service upon completion of their graduate studies. A faculty intern shall be limited to two years of participation in the program.

(3) Each faculty intern shall serve under the direct supervision of a mentor who is legally qualified to teach the course or render the service that the faculty intern is providing. The district governing boards shall ensure that faculty mentors provide substantial direct in-class supervision and evaluation of interns' teaching capabilities. The mentor shall have no other regularly assigned duties during the time that the faculty intern is teaching or rendering service. The mentor is responsible for providing direct monitoring and systematic contact with the faculty intern.

CHAPTER 1188

An act to amend Section 66202 of, to add Section 66202.5 to, to add an article heading to Chapter 9.2 (commencing with Section 66720) of, and to add Article 2 (commencing with Section 66730) to Chapter 9.2 of Part 40 of, the Education Code, relating to education.

[Approved by Governor October 14, 1991. Filed with Secretary of State October 14, 1991.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) A viable and effective student transfer system is one of the

accommodated. It is the intent of the Legislature to fund programs designed to accomplish the purposes of this subdivision through appropriations made in the Budget Act to the public institutions of higher education, and the annual Budget shall contain appropriations necessary to accommodate all students from all of the categories designated in subdivision (a) of Section 66202.

The segments may, in implementing these enrollment plans and admissions practice priorities, consider the overall needs of students in maintaining a balanced program and a quality curriculum, and are expected to consider the state's goals of educational equity and racial and ethnic diversity of students and faculty in the planning and management of their admissions practices. It is further the intent of the Legislature that campus enrollment planning processes provide for the equitable treatment of the following: (1) all eligible entering freshmen; (2) continuing students in good standing; and (3) eligible community college transfer students with regard to accommodation in majors.

This part shall supersede any other law which conflicts with this part.

SEC. 4. An article heading is added to Chapter 9.2 (commencing with Section 66720) of Part 40 of the Education Code, to read:

Article 1. Transfer System

SEC. 5. Article 2 (commencing with Section 66730) is added to Chapter 9.2 of Part 40 of the Education Code, to read:

Article 2. Transfer Functions

66730. (a) The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges shall have as a fundamental policy the maintenance of a healthy and expanded student transfer system. Both the University of California and the California State University shall have as a basic enrollment policy the maintenance of upper division enrollment, which are students who have attained upper division status, at 60 percent of total undergraduate enrollment. This goal shall be met through programs aimed at increasing the numbers of qualified transfer students from the community colleges without denying eligible freshmen applicants.

(1) The California State University shall maintain its upper division enrollment, which are students who have attained upper division status, at approximately 60 percent of total undergraduate enrollment. Its planning documents shall reflect this policy.

(2) Commencing in the 1991–92 academic year, the University of California shall progressively increase the percentage that upper division enrollment systemwide is of total undergraduate enrollment through the 1995 –96 academic year until that percentage reaches

approximately 60 percent. This shall be accomplished through increases in the numbers of community college transfer students admitted to upper division standing at the university without denying eligible freshmen applicants. Planning documents shall reflect these expected increases.

(b) The governing board of each segment shall ensure that individual university and college campus enrollment plans include adequate upper division places for community college transfer students in all undergraduate colleges or schools, and that each undergraduate college or school on each campus participates in developing articulation and transfer agreement programs with community colleges. The governing boards shall meet this goal within their respective general statewide planning framework used to attain and maintain the state's goal of a 60/40 ratio of upper to lower division students, their segmental enrollment planning processes, and campus planning regarding program balance, educational quality, and other relevant goals.

66731. Student matriculation from community colleges through the University of California and the California State University shall be recognized by the Governor, Legislature, and the governing boards of each of California's public postsecondary education segments as a central institutional priority of all segments of higher education.

66732. The governing boards of each segment shall declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within their segments, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. The governing boards of each segment shall design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University.

66734. The Board of Governors of the California Community Colleges shall have the authority and responsibility to guarantee that all community college students have access to courses that meet the lower division baccalaureate degree requirements of the California public universities. The Board of Governors of the California Community Colleges, with the cooperation of the Regents of the University of California and the Trustees of the California State University, shall ensure that all students are clearly and fully informed as to which community college courses and units are transferable and meet the general education and lower division major requirements at the California State University and the University of California.

66736. Each community college district governing board shall ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college

transfer students.

All policies and procedures shall give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations.

66737. The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges are expected to develop new programs of outreach, recruitment, and cooperation between and among the three segments of public higher education to facilitate the successful transfer of students between the community colleges and the universities. Every community college student who successfully completes the transfer agreement programs, as defined in Section 66738, in a community college shall have an appropriate place in an upper division university program.

66738. (a) The governing board of each public postsecondary education segment shall be accountable for the development and implementation of formal systemwide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures to support and enhance the transfer function.

(b) The elements in a comprehensive transfer system shall include, but not be limited to, the following:

(1) Enrollment and resource planning; intersegmental faculty curricular efforts.

(2) Coordinated counseling.

(3) Financial aid and transfer services.

(4) Transfer articulation agreements and programs.

(5) Specific efforts to improve diversity.

(6) Early outreach activities.

(7) Expansion of current practices relating to concurrent enrollment of community college students in appropriate university courses.

(8) Centers.

(c) The governing board of each segment shall expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available; and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus.

66740. Each department, school, and major in the University of California and California State University shall develop, in conjunction with community college faculty in appropriate and associated departments, discipline-specific articulation agreements and transfer program agreements for those majors that have lower division prerequisites. Faculty from the community colleges and university campuses shall participate in discipline-specific

curriculum development to coordinate course content and expected levels of student competency.

Where specific majors are impacted or over-subscribed, the prescribed course of study and minimum grade point average required for consideration for upper division admission to all of these majors shall be made readily available to community college counselors, faculty, and students on an annual basis. In cases where the prescribed course of study is altered by the university department, notice of the modification shall be communicated to appropriate community college faculty and counselors at least one year prior to the deadline for application to that major and implementation by the department responsible for teaching that major.

Community college districts, in conjunction with the California State University and the University of California, shall develop discipline-based agreements with as many campuses of the two university segments as feasible, and no fewer than three University of California campuses and five California State University campuses. The development of these agreements shall be the mutual responsibility of all three segments, and no one segment should bear the organizational or financial responsibility for accomplishing these goals.

The Chancellor of the California Community Colleges and the President of the University of California shall begin the process of setting priorities to determine which community colleges will receive first attention for the development of agreements. Criteria for priority determination shall include, but not be limited to, the percentage and number of students from economically disadvantaged families and underrepresented racial and ethnic minorities, and community colleges which traditionally have not transferred many students to the University of California. The priority list shall be completed by March 1, 1992. These considerations shall not be used in any way to displace current agreements between any community college and the University of California or the California State University.

The Chancellor of the California Community Colleges and the Chancellor of the California State University system shall begin the process of setting priorities to determine which community colleges will receive first attention for the development of agreements. Criteria for priority determination shall include, but not be limited to, the percentage and number of students from economically disadvantaged families and underrepresented racial and ethnic minorities, and community colleges which traditionally have not transferred many students to California State Universities. The priority list shall be completed by March 1, 1992. These considerations shall not be used in any way to displace current agreements between any community college and the University of California or the California State University.

66741. As a result of systemwide and interinstitutional

agreements, each community college student shall be assured of the opportunity to enter into a transfer agreement program enabling a student to receive high priority consideration, attain equivalent special treatment, or enter into a contract when applying for university admission at the advanced standing level. It is recognized that eligibility for transfer agreement programs will require completion of certain requirements as defined in interinstitutional agreements. It is also recognized that access to majors of choice will, in most cases, require completion of additional requirements, such as specialized coursework and attainment of a specialized grade point average.

Transfer agreement programs also shall carry high priority access to majors of choice. The University of California and the California State University shall require that continuing undergraduate students and community college transfer students are assessed against a common set of criteria for upper division standing to a specific major. However, generally speaking, access to these programs shall require completion of specialized coursework and attainment of a grade point average above the minimums defined in general admission requirements, such as those used in supplementary admission criteria for impacted or over-subscribed programs.

Alternatively, students may also, by meeting the University of California or California State University requirements for admission at the advanced standing level, simply wish to apply as required. All students meeting these admission requirements shall be guaranteed a place somewhere in the University of California or California State University system, as appropriate.

66742. The governing boards of the three public segments of higher education shall present annual statistical reports on transfer patterns via the California Postsecondary Education Commission to the Governor and Legislature. The reports shall include recent statistics on student enrollments by campus, segment, gender, ethnicity, and the ratio of upper division to lower division, including information on both freshman and transfer student access to the system. These reports should include, to the extent that data are available or become available, data on application, admission and enrollment information for all students by sex, ethnicity, and campus. For transfer students, this data shall indicate the segment of origin for all students. In addition, data shall be separately identified for transfer students from California Community Colleges, and shall identify the subset of applications which are completed together with admission, enrollment, and declared major information for that group. The reports shall describe the number of transfer agreements, if any, whose terms and conditions were not satisfied by either the California State University or the University of California, the number of California Community College transfer students denied either admission to the student's first choice of a particular campus of the California State University or the University of California or

the student's first choice of a major field of study, and, among those students, the number of students who, upon denial of either of the student's first choices, immediately enrolled at another campus of the California State University or the University of California. The reports shall also include information by sex and ethnicity on retention and degree completion for transfer students as well as for native students, and the number and percentage of baccalaureate degree recipients who transferred from a community college.

66743. The California Postsecondary Education Commission is requested to convene an intersegmental advisory committee on transfer access and performance for the purposes of presenting biennial reports to the Governor and the Legislature on the status of transfer policies and programs, the diligence of each segment's board, and the effectiveness of these programs in meeting the state's goals for transfer. The report shall include information about all of the following:

(a) The effectiveness of transfer agreement programs and activities in enhancing the transfer function overall as well as the extent to which transfer program activities have been directed at students who have been historically underrepresented in the University of California and the California State University.

(b) The status of the implementation of the transfer core curriculum as described in Section 66720 for each community college, including information about the extent to which sophomore level courses needed for transfer are available on all community college campuses.

(c) Progress that has been made in achieving articulation agreements in those specific majors that have lower division prerequisites, and the dissemination of this information. The committee shall also explore methods to systematically measure the extent to which the state's goals of freshmen and transfer student access are being met, including analyses of the number of fully eligible freshmen or transfer students who are denied access to the system, and the reasons for that denial. The committee shall also address ways in which sharing of information about transfer students among the segments can be improved, including early identification of potential transfer students for intensive recruitment purposes.

No later than April 1994, the California Postsecondary Education Commission shall report to the Governor and the Legislature on the overall success of this chapter in expediting the goals of transfer, including recommendations about a common definition of transfer rates, including the identification of campuses and positions of employment that prevent progress toward a more effective transfer program, with specific recommendations about resource, program, or other incentives to encourage an effective intersegmental transfer program. /The Governor and the Legislature shall monitor the success of the University of California and the California State University in achieving their targeted enrollment levels and in implementing these reforms. A substantial failure to implement

reform, to achieve the 60/40 ratio by the designated dates, or to significantly improve the transfer rate of historically underrepresented groups, shall precipitate legislative hearings to determine the reasons why any one or all of these goals have not been met.

66744. No provision of this article shall apply to the University of California except to the extent that the Regents of the University of California, by resolution, make that provision applicable.

SEC. 6. The Board of Regents of the University of California, the Board of Trustees of the California State University, and the Board of Governors of the California Community Colleges, are requested to each prepare a plan for the implementation of Article 2 (commencing with Section 66730) of Chapter 9.2 of Part 40 of the Education Code. These plans shall be submitted to the policy and fiscal committees of the Legislature by January 15, 1992.

It is the intent of the Legislature that each plan shall include a timetable for implementation of this act, including identification of additional resources that may be required. The Legislature acknowledges that some sections of Article 2 (commencing with Section 66730) of Chapter 9.2 of Part 40 of the Education Code, such as Section 66740, will require a phase in process and the full implementation of those sections will depend on the availability of resources.

The institutions are requested further to identify those additional resources required for faculty time associated with course articulation, and those that are associated with counseling, student advising and outreach to community college students. Any request for augmentation of a four-year segment's resources should further include an estimate of the resources currently being used for community college purposes as well as for analogous activities with high schools and high school students.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1198

An act to amend Sections 66010, 66014.5, and 66201 of, to add Sections 66010.1, 66010.2, 66010.3, 66010.5, 66010.7, 66024, 66201.5, 66204, 66205, 66207, 66722, and 66722.5 to, to add an article heading immediately preceding Section 66010 of, to add an article heading immediately preceding Section 66010.1 of, to add an article heading immediately preceding Section 66011 of, to add Chapter 1.5 (commencing with Section 66002) to Part 40 of, to add Article 4 (commencing with Section 66030) to Chapter 2 of Part 40 of, to add Article 5 (commencing with Section 66050) to Chapter 2 of Part 40 of, to add Chapter 11.5 (commencing with Section 66950) to Part 40 of, to add Chapter 16 (commencing with Section 67400) to Part 40 of, to repeal Sections 66020 and 66301 of, the Education Code, relating to postsecondary education.

[Approved by Governor October 14, 1991. Filed with Secretary of State October 14, 1991.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 66002) is added to Part 40 of the Education Code, to read:

CHAPTER 1.5. LEGISLATIVE FINDINGS

66002. The Legislature finds and declares all of the following:

(a) The Master Plan for Higher Education in California, 1960–75, was originally prepared in 1959, and its recommendations were approved in principle by the affected governing boards of the higher education segments. Subsequently, legislation necessary to implement certain of the master plan's provisions was enacted, including this part. A need to differentiate the functions of the segments of higher education and rapidly increasing enrollments were primary factors that motivated the creation of the master plan.

(b) Pursuant to Resolution Chapter 285 of the Statutes of 1970, and Resolution Chapter 232 of the Statutes of 1971, a joint committee of the Legislature issued its report in 1973, entitled "Report of the Joint Committee on the Master Plan for Higher Education," which reaffirmed the principles of the original master plan and emphasized a need for the segments of higher education to improve access and educational equity, coordination and planning, governance, and diversity within the entire system. As in the 1960's, legislation necessary to implement certain of the joint committee's recommendations was enacted, largely through amendments to this part.

(c) Pursuant to Chapter 1507 of the Statutes of 1984, the Commission for the Review of the Master Plan for Higher Education conducted public hearings and deliberations; in 1987, it issued its

SEC. 4.1. Section 66010.1 is added to the Education Code, to read:

66010.1. The purpose of this article is to identify common educational missions shared by educational institutions in California and to differentiate more specific missions and functions between the various educational segments.

SEC. 4.2. Section 66010.2 is added to the Education Code, to read:

66010.2. The public elementary and secondary schools, the California Community Colleges, the California State University, the University of California, and independent institutions of higher education share goals designed to provide educational opportunity and success to the broadest possible range of our citizens, and shall provide the following:

(a) Access to education, and the opportunity for educational success, for all qualified Californians. Particular efforts should be made with regard to those who are historically and currently underrepresented in both their graduation rates from secondary institutions and in their attendance at California higher educational institutions.

(b) Quality teaching and programs of excellence for their students. This commitment to academic excellence shall provide all students the opportunity to address issues, including ethical issues, that are central to their full development as responsible citizens.

(c) Educational equity not only through a diverse and representative student body and faculty but also through educational environments in which each person, regardless of race, gender, age,

disability, or economic circumstances, has a reasonable chance to fully develop his or her potential.

SEC. 4.3. Section 66010.3 is added to the Education Code, to read:

66010.3. The public elementary and secondary schools shall be responsible for academic and general vocational instruction from kindergarten and grades 1 to 12, inclusive, including preparation of pupils for postsecondary instruction, future participation in California's economy and society, and adult instruction to the extent of state support.

SEC. 4.4. Section 66010.5 is added to the Education Code, to read:

66010.5. The mission of the public segments of higher education shall also include a broad responsibility to the public interest, and independent segments of higher education are encouraged to assume a broad responsibility to the public interest. As part of this responsibility, the public and independent segments are encouraged to support programs of public service and to involve faculty and students in these programs.

SEC. 4.5. Section 66010.7 is added to the Education Code, to read:

66010.7. (a) The Legislature, through the enactment of this section, expresses its commitment to encourage and support collaboration and coordination among all segments of education.

(b) Within the differentiation of segmental functions outlined in this article, the institutions of higher education shall undertake intersegmental collaboration and coordination particularly when it can do any of the following:

(1) Enhance the achievement of the institutional missions shared by the segments.

(2) Provide more effective planning of postsecondary education on a statewide basis.

(3) Facilitate achievement of the goals of educational equity.

(4) Enable public and independent higher education to meet more effectively the educational needs of a geographic region.

(5) Facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions.

(c) The leaders responsible for public and independent institutions of higher education and the Superintendent of Public Instruction shall work together to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels.

(d) The California Postsecondary Education Commission shall have responsibility for reviewing and evaluating the effectiveness of intersegmental activities in accomplishing the established goals, and shall report its findings to the Governor and Legislature biennially.

SEC. 5. An article heading is added immediately preceding Section 66011 of the Education Code, to read:

Article 3. General Provisions

SEC. 6. Section 66014.5 of the Education Code is amended to read:

66014.5. (a) It is the intent of the Legislature to recognize the role of independent, regionally accredited postsecondary education in California postsecondary education. Statewide planning, policy coordination, and review of postsecondary education shall include attention to the contributions of the independent institutions in meeting the state's goals of access, quality, educational equity, economic development, and student aid.

(b) The Legislature hereby finds and declares that there is a need of providing students with economic and academic freedom of choice in selecting a college or university they wish to attend. The Legislature further finds that an important means of meeting this need is through offering financial assistance to students who wish to attend public or independent colleges and universities and who have demonstrated financial need.

SEC. 7. Section 66020 of the Education Code is repealed.

SEC. 8. Section 66024 is added to the Education Code, to read:

66024. The Legislature hereby affirms its commitment to the continuing quality and development of graduate and professional programs of the University of California, the California State University, and the independent institutions of higher education in this state.

It is the intent of the Legislature that each governing board of an institution of higher education periodically review the quality of the graduate and professional programs operated by the institution, and the need to add, discontinue, or enhance graduate and professional programs, including programs leading to the joint doctorate degree.

It is further the intent of the Legislature that the development of joint doctoral programs operated by the California State University and the University of California or one or more accredited independent institutions of higher education be established and expedited.

All graduate and professional programs, including joint doctoral programs, are expected to undergo careful evaluation and be approved only when it has been demonstrated that these programs meet the needs of students and the state.

SEC. 9. Article 4 (commencing with Section 66030) is added to Chapter 2 of Part 40 of the Education Code, to read:

Article 4. Educational Equity for Students

66030. (a) It is the intent of the Legislature that public higher education in California strive to provide educationally equitable environments which give each Californian, regardless of ethnic origin, race, gender, age, disability, or economic circumstance, a reasonable opportunity to develop fully his or her potential.

their responsibilities in preparing students for college.

SEC. 14. Section 66205 is added to the Education Code, to read:

66205. (a) In determining the standards and criteria for undergraduate and graduate admissions to the University of California and the California State University, it is the intent of the Legislature that the governing boards do all of the following:

(1) Develop processes which strive to be fair and are easily understandable.

(2) Consider the use of criteria and procedures that allow students to enroll who are otherwise fully eligible and admissible but who have course deficiencies due to circumstances beyond their control, and, when appropriate, provide that the admission requires the student to make up the deficiency.

(3) Consult broadly with California's diverse ethnic and cultural communities.

(b) It is the intent of the Legislature that the University of California and the California State University, pursuant to Section 66201.5, seek to enroll a student body that meets high academic standards and reflects the cultural, racial, geographic, economic, and social diversity of California.

SEC. 15. Section 66207 is added to the Education Code, to read:

66207. This chapter shall supersede any other law which conflicts with this part.

SEC. 16. Section 66301 of the Education Code is repealed.

SEC. 17. Section 66722 is added to the Education Code, to read:

66722. It is the intent of the Legislature that the transfer function shall be a central institutional priority of all segments of higher education in California, and that the segments shall have as a fundamental policy and practice the maintenance of an effective transfer system.

SEC. 18. Section 66722.5 is added to the Education Code, to read:

66722.5. It is the intent of the Legislature that the segments of higher education shall pursue the development of transfer agreement programs that specify the curricular requirements that must be met, and the level of achievement that must be attained, by community college students in order for those students to transfer to the campus, undergraduate college, or major of choice in the public four-year segments.

SEC. 19. Chapter 11.5 (commencing with Section 66950) is added to Part 40 of the Education Code, to read:

CHAPTER 11.5. HIGHER EDUCATION ASSESSMENT ACT OF 1990

66950. The Legislature finds and declares all of the following:

(a) The primary goal of every higher educational institution should be to provide a collegiate experience which gives each student the skills of communication and problemsolving, the ideas and principles underlying the major areas of modern knowledge, the ability to consider critical issues thoughtfully, the understanding that

learning is a continuous lifelong process, and the knowledge of democracy necessary for good citizenship.

(b) To improve performance, educational institutions are encouraged to use effective assessment mechanisms based on positive reinforcement, incentives, and cooperation.

66951. In enacting this chapter, it is the intent of the Legislature to urge the continued development and implementation of assessment processes whereby institutions of higher education establish mechanisms, through program review and improvement, for the assessment of their performance in attempting to improve student learning and comprehension and achieving the expressed state policy goals for higher education of quality, educational equity, employee diversity, student transfer, and student retention. The primary purposes of assessment shall be to improve teaching and learning as well as academic advising. Assessment programs shall be focused on activities that are campus-based, faculty-centered, and student-responsive. Faculty, students, and academic administrators are encouraged to work together in developing assessment programs.

66952. It is the intent of the Legislature to monitor the performance of the University of California, the California State University, and the community colleges in the following areas:

(a) Diversification of student bodies.

(b) Improved student transfer rates.

(c) Improved student retention rates.

(d) Diversification of faculty, nonfaculty academic staff, and administrative positions.

(e) As a part of program review, enhanced student learning, as demonstrated through mechanisms designed to explore improvements in knowledge, skills, and abilities.

SEC. 20. Chapter 16 (commencing with Section 67400) is added to Part 40 of the Education Code, to read:

CHAPTER 16. APPLICABILITY TO UNIVERSITY OF CALIFORNIA

67400. No provision of this part shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make that provision applicable.

SEC. 21. Nothing in this act shall be interpreted to expand or diminish the rights, responsibilities, and duties provided for in Chapters 10.7 (commencing with Section 3540) and 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code.

SEC. 22. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000),

reimbursement shall be made from the State Mandate Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 493

An act to add Section 71027 to the Education Code, relating to postsecondary education.

[Approved by Governor October 1, 1995. Filed with Secretary of State October 2, 1995.]

I am signing Senate Bill No. 450, but I am deleting Sections 3, 4 and 5.

This bill would require the Board of Governors of the California Community Colleges to develop a general common course numbering system. It also would have appropriated $5 million from a bond if the authorization for the bond was enacted by January 1, 1996 and subsequently approved by the voters.

The provisions of the bill which would develop a common course numbering system are sensible. The $5 million appropriation, however, is inappropriate and also inoperable under its own terms. Capital outlay decisions are part of the annual budget, and should remain so. For these reasons I object to Sections 3, 4 and 5 and am striking them from the bill.

PETE WILSON, Governor

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares, as follows:

(a) Many California community college students desire to, and do, attend more than one community college in the state during their educational career.

(b) Often community colleges, even those within the same district, have different numbering systems for the same courses of instruction. As a result, much confusion and many delays occur when students complete graduation requirements, transfer between

community colleges, and matriculate to four-year colleges and universities.

(c) The inconsistencies described in subdivision (a) cost the students, colleges, and state a substantial amount of money, as unnecessary duplication of coursework is occurring.

(d) A first start to enhancing the quality, while limiting extra cost, of education is to ensure a common course numbering system within California's largest postsecondary education system, the California Community Colleges.

(e) It is the intent of the Legislature that the implementation of the common course numbering system pursuant to this section coincide with any regularly scheduled changes in administrative documents and other college publications in order to minimize the costs to community college districts of implementing the system and thereby reducing state-mandated local costs.

SEC. 2. Section 71027 is added to the Education Code, to read:

71027. (a) The Board of Governors of the California Community Colleges shall develop, maintain, and disseminate a general common course numbering system for use by the community college districts.

(b) The office of the Chancellor of the California Community Colleges shall absorb the costs of developing, maintaining, and disseminating a general common course numbering system pursuant to this section within the office's existing resources.

(c) The board of governors shall report to the Legislature by January 1, 1998, on its progress in implementing this common course numbering system.

SEC. 3. Of the funds derived from the issuance and sale of bonds and deposited in the 1996 Higher Education Capital Outlay Bond Fund, the amount of five million dollars ($5,000,000) is allocated for development of the San Joaquin campus of the University of California.

SEC. 4. Sections 3 and 5 of this act shall become operative only if the Public Education Facilities Bond Act of 1996 is chaptered on or before January 1, 1996, and approved by the voters.

SEC. 5. If the funds allocated pursuant to Section 3 are not encumbered by January 1, 2000, those funds shall revert to the 1996 Higher Education Capital Outlay Bond Fund for use by the University of California system.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: AB 446 CHAPTERED 10/11/95

CHAPTER 758
FILED WITH SECRETARY OF STATE OCTOBER 11, 1995
APPROVED BY GOVERNOR OCTOBER 10, 1995
PASSED THE SENATE SEPTEMBER 15, 1995
PASSED THE ASSEMBLY SEPTEMBER 15, 1995
AMENDED IN SENATE SEPTEMBER 7, 1995
AMENDED IN SENATE AUGUST 21, 1995
AMENDED IN SENATE JULY 19, 1995
AMENDED IN SENATE JUNE 12, 1995
AMENDED IN ASSEMBLY MARCH 27, 1995

INTRODUCED BY Assembly Committee on Higher Education

FEBRUARY 16, 1995

An act to amend, repeal, and add Sections 28, 1247.6, 2902, 4939, 4980.40, and 18629 of the Business and Professions Code, to amend, repeal, and add Section 1812.501 of the Civil Code, to amend, repeal, and add Section 10251 of the Corporations Code, to amend Sections 1510, 8152, 12050, 12052, 12053, 12400, 66010, 66015, 66022, 66023, 66202.5, 66743, 66753.5, 66903, 66903.3, 67385, 67500, 68011, 68133, 69509, 69613, 69615.2, 69634, 69900, 69908, 71000, 71020.5, 71090.5, 72023.5, 72411.5, 72425, 72620, 74270, 76000, 76140, 76210, 76225, 76231, 76232, 76240, 76245, 76330, 76330.1, 76355, 76370, 76380, 76391, 78015, 78217, 79121, 81033, 81130.5, 81141, 81162, 81177, 81314, 81345, 81348, 81401, 81530, 81551, 81661, 81821, 84362, 84501, 84751, 84810.5, 84820, 85223, 85233, 85267, 87008, 87017, 87411, 87413, 87414, 87418, 87419, 87420, 87423, 87448, 87451, 87453, 87460, 87464, 87468, 87469, 87470, 87483, 87487, 87603, 87604, 87622, 87672, 87673, 87675, 87676, 87677, 87701, 87715, 87732, 87734, 87740, 87744, 87745, 87746, 87762, 87764, 87768.5, 87770, 87774, 87780, 87781, 87787, 87790, 87832, 88000, 88001, 88002, 88003, 88004.5, 88010, 88013, 88014, 88015, 88020, 88023, 88024, 88030, 88033, 88036, 88050, 88051, 88053, 88054, 88057, 88063.5, 88076, 88083, 88086.5, 88092, 88093, 88097, 88098, 88104, 88105, 88107, 88120, 88125, 88126, 88128, 88132, 88136, 88164, 88165, 88167, 88168, 88185, 88191, 88192, 88194, 88195, 88196, 88197, 88198, 88203, 88205, 88205.5, 88206, 88207, 88227, 88245, 88263, 89002, 89036, 89046, 89047, 89300, 89310, 89537, 92620, 99100, 99103, 99105, and 99106 of, to amend the heading of Article 1 (commencing with Section 10000) of Chapter 1 of Part 7 of, to amend the heading of Article 13 (commencing with Section 69760) of Chapter 2 of Part 42 of, to amend and renumber the heading of Part 43.5 (commencing with Section 70900) of, to amend, repeal, and add Sections 8092, 8092.5, 44227, 49073, 66170, 69509.5, 94050, and 94355 of, to add Sections 67359.9, 84756, 84757, and 84758 to, to add an article heading immediately preceding Section 92020 of, to add Article 12 (commencing with Section 44390) to Chapter 2 of Part 25 of, Article 6 (commencing with Section 66060) and Article 7 (commencing with Section 66070) to Chapter 2 of Part 40 of, and Article 6 (commencing with Section 89250) to Chapter 2 of Part 55 of, to add Chapter 11.3 (commencing with Section 66940) to Part 40 of, and Chapter 7 (commencing with Section 94700) to Part 59 of, to repeal Sections 8081, 8084, 12051, 12061, 66207, 66211, 66605.5, 66723, 66744, 66903.4, 66903.6, 67321, 67386, 67392, 69507.7, 69534, 69534.2, 69534.5, 69534.6, 69639, 69766.1, 72410, 76320, 76392, 78217, 78310, 87012, 87018, 87461, 87772, 87773, 87778, 88032, 88035.5, 88079.1, 89003, 89004, 89009, 89032, 89033, 89040, 89070.45, 89081, 89082, 89083, 89211, 89241, 89242, 89703, 92010, 92610, and

specified in the redirection agreement, the approved transfer program or written agreements, unless these majors have been declared "impacted." For impacted majors, students shall be given the opportunity to have access to the major when spaces become available, and new freshmen shall be admitted to the major in a controlled manner to ensure that all transfer students described in paragraph (2) of subdivision (a) of Section 66202 have an equitable chance of being accommodated. It is the intent of the Legislature to fund programs designed to accomplish the purposes of this subdivision through appropriations made in the Budget Act to the public institutions of higher education, and the annual Budget shall contain appropriations necessary to accommodate all students from all of the categories designated in subdivision (a) of Section 66202.

The segments may, in implementing these enrollment plans and admissions practice priorities, consider the overall needs of students in maintaining a balanced program and a quality curriculum, and are expected to consider the state's goals of educational equity and racial and ethnic diversity of students and faculty in the planning and management of their admissions practices. It is further the intent of the Legislature that campus enrollment planning processes provide for the equitable treatment of the following: (1) all eligible entering freshmen; (2) continuing students in good standing; and (3) eligible community college transfer students with regard to accommodation in majors.

SEC. 35. Section 66207 of the Education Code is repealed.

SEC. 35.5. Section 66211 of the Education Code is repealed.

SEC. 36. Chapter 7 (commencing with Section 66501) of Part 40 of the Education Code is repealed.

SEC. 37. Section 66605.5 of the Education Code is repealed.

SEC. 37.5. Section 66723 of the Education Code is repealed.

SEC. 38. Section 66743 of the Education Code is amended to read:

66743. The California Postsecondary Education Commission is requested to convene an intersegmental advisory committee on transfer access and performance for the purposes of presenting biennial reports to the Governor and the Legislature on the status of transfer policies and programs, the diligence of each segment's board, and the effectiveness of these programs in meeting the state's goals for transfer. The report shall include information about all of the following:

(a) The effectiveness of transfer agreement programs and activities in enhancing the transfer function overall as well as the extent to which transfer program activities have been directed at students who have been historically underrepresented in the University of California and the California State University.

(b) The status of the implementation of the transfer core curriculum as described in Section 66720 for each community college, including information about the extent to which sophomore level courses needed for transfer are available on all community college campuses.

(c) Progress that has been made in achieving articulation agreements in those specific majors that have lower division prerequisites, and the dissemination of this information. The committee shall also explore methods to systematically measure the extent to which the state's goals of freshmen and transfer student access are being met, including analyses of the number of fully eligible freshmen or transfer students who are denied access to the system, and the reasons for that denial. The committee shall also address ways in which sharing of information about transfer students among the segments can be improved, including early identification of potential transfer students for intensive recruitment purposes.

The Governor and the Legislature shall monitor the success of the University of California and the California State University in achieving their targeted enrollment levels and in implementing these reforms. A substantial failure to implement reform, to achieve the /40 ratio by the designated dates, or to improve the transfer rate of historically underrepresented groups significantly, shall precipitate legislative hearings to determine the reasons why any one or all of these goals have not been met.

SEC. 38.5. Section 66744 of the Education Code is repealed.

SEC. 38.7. Section 66753.5 of the Education Code is amended to read:

66753.5. The enrollment of a student at a host campus pursuant to this chapter shall not be counted in the calculation of headcount or full-time equivalent student enrollment at the host campus. The home campus may count in the calculation of headcount or full-time equivalent student enrollment only those units for which the student is enrolled at the home campus.

SEC. 39. Section 66900 of the Education Code is repealed.

SEC. 40. Section 66900 is added to the Education Code, to read:

66900. (a) It is the intent of the Legislature that the California Postsecondary Education Commission (CPEC) be responsible for coordinating public, independent, and private postsecondary education in California and providing independent policy analyses and recommendations to the Legislature and the Governor on postsecondary education issues. In this respect, the Legislature finds as follows:

(1) California, in its adoption of the 1960 Master Plan for Higher Education, established the Coordinating Council for Higher Education, the commission's predecessor as the statewide coordinating and planning board for higher education.

(2) In 1973, the Legislature's Joint Committee on Higher Education eviewed the 1960 Master Plan for Higher Education and ultimately advanced a report that included recommendations for strengthening California's higher education plan. The committee's work resulted in the disestablishment of the Coordinating Council for Higher Education and the establishment of the California Postsecondary Education Commission.

(3) Assembly Bill 770 (Chapter 1187 of the Statutes of 1973) strengthened the membership of the commission by having a majority of its members represent the general public. That bill also increased the commission's responsibilities with respect to advising the Legislature and the Governor on issues related to governance, operation, and financing of higher education in California.

(4) Since 1974, the commission has served as the state's independent planning and coordination agency for postsecondary education policy, responsible for providing analyses and recommendations to the Legislature and the Governor related to long-range planning for public postsecondary education and the state policy and programs involving independent and private postsecondary education sectors.

(5) In 1990, Senate Bill 1570 (Chapter 1587 of the Statutes of 1990) codified the commission's mission statement developed by the 1989 Joint Committee for the Review of the Master Plan for Higher Education.

(6) The commission has administered specifically designated federal programs and in July 1993, it was named the state's designated agency to administer the new federal state postsecondary review entity (SPRE).

(b) It is the intent of the Legislature that the commission maintain the essential role it plays in coordinating all sectors of

regulations of the board of governors.

SEC. 102. Section 76391 of the Education Code is amended to read:

76391. Notwithstanding Section 76360, the governing board of the Santa Monica Community College District or the Glendale Community College District, or both, may require payment of a parking fee at a campus in excess of the limits set forth in subdivision (a) of Section 76360 for the purpose of funding the construction of oncampus parking facilities if both of the following conditions exist at the campus:

(a) The full-time equivalent students (FTES) per parking space on the campus exceeds the statewide average FTES per parking space on community college campuses.

(b) The market price per square foot of land adjacent to the campus exceeds the statewide average market price per square foot of land adjacent to community college campuses.

If the governing board requires payment of a parking fee in excess of the limits set forth in subdivision (a) of Section 76360, the fee may not exceed the actual cost of constructing oncampus parking facilities or sixty dollars ($60) per semester, whichever is less. Students who receive financial assistance pursuant to any of the programs described in subdivision (g) of Section 76300 shall be exempt from parking fees imposed pursuant to this section that exceed twenty dollars ($20) per semester.

SEC. 103. Section 76392 of the Education Code is repealed.

SEC. 104. Section 78015 of the Education Code is amended to read:

78015. (a) The governing board of a community college district, prior to establishing a vocational or occupational training program, shall conduct a job market study of the labor market area, as those terms are defined in Section 52301.5, in which it proposes to establish the program. The study shall use the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information. The study shall include a California Occupational Information System supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to ensure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the community college district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the community college district determines that the job market study justifies the initiation of the proposed program, it shall determine, by resolution, whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to Section 8092.

SEC. 105. Section 78217 of the Education Code is amended to read:

78217. On or before March 15 of each year, the board of governors shall provide a progress report to the Legislature on the implementation of this article. The board of governors may require participating districts or colleges to provide data for the completion of these reports.

SEC. 106. Article 2.5 (commencing with Section 78230) of Chapter 2

lease or a lease-purchase agreement into which neither students nor teachers are required to enter and which would be excluded from the meaning of "school building" in Section 81160 shall not be considered to be a "school building" within the meaning of Section 81130.5.

SEC. 119. Section 81551 of the Education Code is amended to read:

81551. Before a lease or lease-purchase agreement may be entered into, the lessee shall comply with all applicable provisions for bids and contracts prescribed by Article 3 (commencing with Section 81641) of Chapter 3 and by Section 20651 of the Public Contract Code.

Each contract shall show the total price for an outright purchase of any item and also its total cost for the entire specified term of the contract.

SEC. 120. Section 81661 of the Education Code is amended to read:

81661. In determining the lowest responsible bidder for an energy management system pursuant to Section 20651 of the Public Contract Code, the governing board of any community college district shall consider the net cost or savings of each system. For the purposes of this section, "net cost or savings" means the cost of the system to the district, if any, less the projected energy savings to be realized from the energy management system. The governing board may require an independent evaluation of the projected energy savings.

SEC. 121. Section 81821 of the Education Code is amended to read:

81821. The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

(a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the community college district.

(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(e) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.

(f) An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors.

SEC. 122. Section 84362 of the Education Code is amended to read:

84362. (a) As used in this section, "salaries of classroom instructors" means:

(1) The salary paid to each instructor employed by the district whose duties require that the full time for which the instructor is

adjunct instructor and the employing unit enter a written contract with the following provisions:

(1) That any federal or state income tax liability shall be the responsibility of the party providing the services.

(2) That no disability insurance coverage is provided under the contract.

(3) That the party performing the services certifies that he or she is doing so as a secondary occupation or as a supplemental source of income.

(b) This section shall not apply to services performed under a collective bargaining agreement.

(c) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 293.5. Section 633 is added to the Unemployment Insurance Code, to read:

633. (a) For purposes of coverage under Part 2 (commencing with Section 2601) of Division 1, "employment" does not include services performed as an intermittent or adjunct instructor at a postsecondary educational institution which meets the requirements of Article 4 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code if the intermittent or adjunct instructor and the employing unit enter a written contract with the following provisions:

(1) That any federal or state income tax liability shall be the responsibility of the party providing the services.

(2) That no disability insurance coverage is provided under the contract.

(3) That the party performing the services certifies that he or she is doing so as a secondary occupation or as a supplemental source of income.

(b) This section shall not apply to services performed under a collective bargaining agreement.

(c) This section shall become operative on January 1, 1997.

SEC. 294. Section 282 of this act shall become operative on January 1, 1997.

SEC. 295. (a) Except as provided in subdivision (b), any section of any act enacted by the Legislature during the 1995 calendar year that takes effect on or before January 1, 1996, and that amends, amends and renumbers, adds, repeals and adds, or repeals a provision amended, repealed, or added by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act.

(b) Subdivision (a) does not apply to any of the following:

(1) Section 2902 of the Business and Professions Code, as amended by Chapter 279 of the Statutes of 1995.

(2) Section 4980.40 of the Business and Professions Code, as amended by Chapter 327 of the Statutes of 1995.

(3) Section 72023.5 of the Education Code, as amended by Chapter 82 of the Statutes of 1995.

BILL NUMBER: AB 2214 CHAPTERED 08/24/98

CHAPTER 365
FILED WITH SECRETARY OF STATE AUGUST 24, 1998
APPROVED BY GOVERNOR AUGUST 24, 1998
PASSED THE SENATE AUGUST 6, 1998
PASSED THE ASSEMBLY APRIL 30, 1998
AMENDED IN ASSEMBLY MARCH 24, 1998

INTRODUCED BY Assembly Member Aguiar

FEBRUARY 19, 1998

An act to amend Sections 78015 and 78016 of the Education Code, relating to community colleges.

LEGISLATIVE COUNSEL'S DIGEST

AB 2214, Aguiar. Community colleges: vocational and occupational training programs.

(1) Existing law requires the governing board of a community college district, prior to establishing a vocational or occupational training program, to conduct a job market study, as defined, of the labor market area, as defined, in which it proposes to establish the program.

This bill would require the governing board of the community college district to make these job market studies available to the public.

(2) Existing law requires that every vocational or occupational training program offered by a community college district be reviewed every 2 years by the governing board of the district to ensure that each program meets certain conditions.

This bill would impose a state-mandated local program by requiring that a written summary of the findings of each review be made available to the public.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 78015 of the Education Code is amended to read:

78015. (a) (1) The governing board of a community college district, prior to establishing a vocational or occupational training program, shall conduct a job market study of the labor market area, as those terms are defined in Section 52301.5, in which it proposes to establish the program. The study shall use the State-Local

Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information. The study shall include a California Occupational Information System supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to ensure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction.

(2) The governing board of the community college district shall make copies of each job market study available to the public.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the community college district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the community college district determines that the job market study justifies the initiation of the proposed program, it shall determine, by resolution, whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to Section 8092.

SEC. 2. Section 78016 of the Education Code is amended to read:

78016. (a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to ensure that each program, as demonstrated by the California Occupational Information System, including the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information, does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

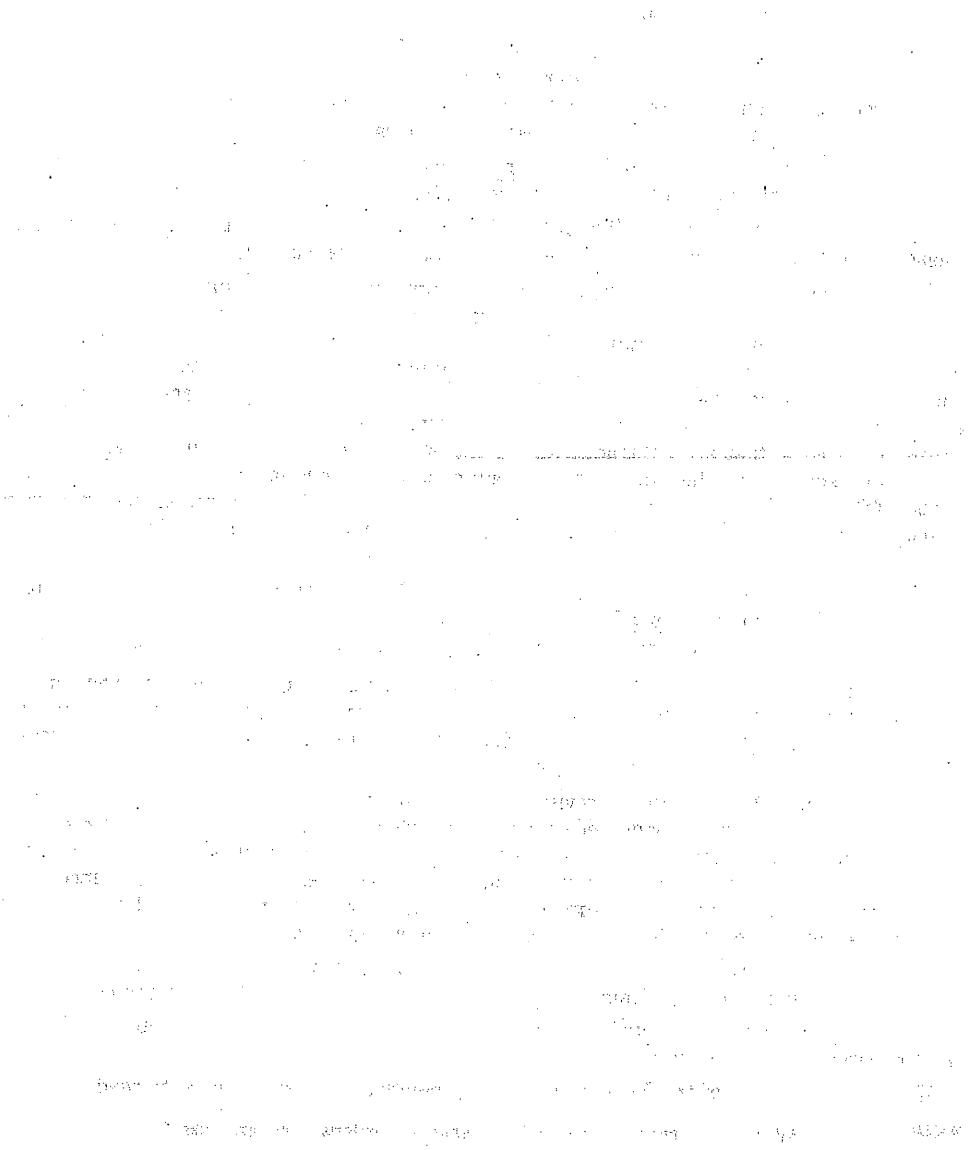
(d) This section shall apply to each program commenced subsequent to July 28, 1983.

(e) A written summary of the findings of each review shall be made available to the public.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the

California Constitution.



The people of the State of California do enact as follows:

SECTION 1. The heading of Article 4 (commencing with Section 40) of Chapter 1 of Part 1 of the Education Code is repealed.

SEC. 2. Section 40 of the Education Code is amended and renumbered to read:

221.5. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the pupil enrolled in these classes and courses.

(b) No school district shall prohibit any pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Section 51550.

(c) No school district shall require pupils of one sex to enroll in a particular class or course, unless the same class or course is also required of pupils of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a pupil, offer vocational or school program guidance to pupils of one sex that is different from that offered to pupils of the opposite sex or, in counseling pupils, differentiate career, vocational, or higher education opportunities on the basis of the sex of the pupil counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for grade * * * 7 so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex.

SEC. 3. Section 41 of the Education Code is amended and renumbered to read:

221.7. (a) The Legislature finds and declares that female pupils are not accorded opportunities for participation in school-sponsored athletic programs equal to those accorded male pupils. It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female pupils.

(b) Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(c) Nothing in this section shall be construed to require a school district to require competition between male and female pupils in school-sponsored athletic programs.

SEC. 4. The heading of Article 4.5 (commencing with Section 45) of Chapter 1 of Part 1 of the Education Code is repealed.

SEC. 5. Section 45 of the Education Code is amended and renumbered to read:

SEC. 7. Section 200 of the Education Code is amended to read:

200. (a) It is the policy of the State of California to afford all persons in public schools, regardless of their sex, ethnic group identification, race, national origin, religion, or mental or physical disability, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

SEC. 8. Section 210 is added to the Education Code, to read:

210. The definitions in this article shall govern the use of the terms defined for purposes of this chapter.

SEC. 9. Section 210 of the Education Code is amended and renumbered to read:

210.1. * * * "Educational institution" means a public or private preschool, elementary, or secondary school or institution; * * * the governing board of a school district; * * * or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.

SEC. 10. Section 211 of the Education Code is amended to read:

211. * * * "Governing board" means the governing board of a school * * * district.

SEC. 11. Section 212 of the Education Code is amended to read:

212. * * * "Sex" means the biological condition or quality of being a male or female human being.

SEC. 12. Section 212.5 of the Education Code is amended to read:

212.5. * * * "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

SEC. 13. Section 212.6 of the Education Code is amended and renumbered to read:

231.5. (a) It is the policy of the State of California, pursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

SEC. 14. Section 213 of the Education Code is amended to read:

213. * * * (a) "State financial assistance" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any pupils admitted to the educational institution.

(b) State financial assistance shall include, but not be limited to, all of the following:

(1) Grants of state property, or any interest therein.

(2) Provision of the services of state personnel.

(3) Funds provided by contract, tax rebate, appropriation, allocation, or formula.

SEC. 15. Section 214 of the Education Code is amended to read:

214. * * * "State student financial aid" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution. State student financial aid shall include, but not be limited to, scholarships, loans, grants, or wages.

SEC. 34. Section 262 of the Education Code is amended and renumbered to read:

66292. (a) The governing board of a community college district shall have the primary responsibility for ensuring that community college district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for monitoring the compliance of each district with any and all regulations adopted pursuant to Section 11138 of the Government Code

SEC. 49. Chapter 4.5 (commencing with Section 66250) is added to Part 40 of the Education Code, to read:

CHAPTER 4.5. SEX EQUITY IN EDUCATION ACT

Article 1. Title and Declaration of Purpose

66250. This chapter shall be known, and may be cited, as the Sex Equity in Education Act.

66251. It is the policy of the State of California to afford all persons, regardless of their sex, ethnic group identification, race, national origin, religion, or mental or physical disability, equal rights and opportunities in the postsecondary institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

66252. (a) All students have the right to participate fully in the educational process, free from discrimination and harassment.

(b) California's postsecondary educational institutions have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.

(c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.

(d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.

(e) There is an urgent need to teach and inform students in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase students' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in postsecondary educational institutions and in society as a means of responding to potential harassment and hate violence.

(f) It is the intent of the Legislature that each postsecondary educational institution undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of students to equal educational opportunity.

(g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal

Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.

Article 2. Definitions

66260. The definitions in this article shall govern the use of the terms defined for purposes of this chapter.

66261. "Governing board" means the governing board of a community college.

66261.5. "Postsecondary educational institution" means a public or private institution of vocational, professional, or postsecondary education; the governing board of a community college district; the Regents of the University of California; or the Trustees of the California State University.

66262. "Sex" has the same meaning as defined in Section 212.

66262.5. "Sexual harassment" has the same meaning as defined in Section 212.5.

66263. "State financial assistance" has the same meaning as defined in Section 213.

66264. "State student financial aid" has the same meaning as defined in Section 214.

Article 3. Prohibition of Discrimination

66270. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

66271. This chapter shall not apply to an educational institution that is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

66271.1. The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California may, adopt regulations as required by law to implement this chapter.

Article 4. Sex Equity in Education

66271.5. The provisions of this article are supplemental to any provision in the Constitution or laws of the United States or laws of the State of California, relating to discrimination.

66273. This article shall not apply to the membership practices of a social fraternity or social sorority, exempt from taxation under subdivision (a) of Section 501 of the federal Internal Revenue Code of 1954, whose active membership consists primarily of students in attendance at a postsecondary educational institution.

66281.5. (a) It is the policy of the State of California, pursuant to Section 66251, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary educational institution of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each postsecondary educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The postsecondary educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the postsecondary educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the postsecondary educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the postsecondary educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the postsecondary educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

Article 5. Compliance and Enforcement

66290. Prior to receipt of any state financial assistance or state student financial aid, a postsecondary educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the postsecondary educational institution will be conducted in compliance with this chapter and all other applicable provisions of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the postsecondary educational institution, may be provided for all the programs and activities conducted by a postsecondary educational institution.

66291. (a) A community college district shall submit timely, complete, and accurate compliance reports to the chancellor's office, as that entity may require.

(b) All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

66292.3. (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a community college district or the president of a campus of the California State University, pursuant to this article, to the Board of Governors of the California Community Colleges or the Chancellor of the California State University, as applicable.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders, may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

(c) Nothing in this chapter shall be construed to require an exhaustion of the appeal to the Board of Governors of the California Community Colleges or to the Chancellor of the California State University pursuant to subdivision (a), before civil law remedies may be purchased.

(d) Notwithstanding any other provision of law, a person who alleges that he or she is a victim of discrimination may not seek civil remedies pursuant to this section until at least 90 days have elapsed from the filing of a discrimination complaint with the local educational agency. The 90-day moratorium imposed by this subdivision does not apply to injunctive relief and is applicable only if the local educational agency has appropriately, and in a timely manner, apprised the complainant of his or her right to file a complaint.

66292.4. This chapter may be enforced through a civil action.

CHAPTER 1525

An act to amend Sections 190, 5719, 20054, 20055, 20056, 20058, 20065, 20066, 20067, 20075, 20076, 20077, 20078, 20079, 20080, 20081, 20082, 20084, 20210, 20211, 20755, and 25515.5 of, to add Sections 192.5, 6079, 20053.5, and 25543 to, to repeal Section 200.10 of, and to repeal Article 1.5 (commencing with Section 25543) of Chapter 5 of Division 18.5 of, the Education Code, and to add Section 16352.5 to the Government Code, relating to community colleges, and making an appropriation therefor.

[Approved by Governor November 16, 1971. Filed with Secretary of State November 16, 1971.]

SEC. 13. Section 20066 of the Education Code is amended to read:

20066. The plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

(a) The plans of the district concerning its future academic programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas to be emphasized.

(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college within a district shall be made cooperatively by the Department of Finance and the community college district.

(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors.

(d) District office, library and supporting facility capacities as derived from the physical plant standards for office, library and supporting facilities adopted by the board of governors.

(e) An annual inventory of all facilities of the district using standard definitions, forms, and instructions adopted by the board of governors.

CHAPTER 182

An act to add Chapter 5 (commencing with Section 91) to Division 1 of the Education Code, relating to public schools.

[Approved by Governor April 25, 1974. Filed with Secretary of State April 25, 1974.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 5 (commencing with Section 91) is added to Division 1 of the Education Code, to read:

CHAPTER 5. INSTRUCTION WITHOUT REGARD TO THE SEX OF PUPILS

91. (a) It is the policy of the state that elementary and secondary school and community college classes and courses, including nonacademic and elective classes and courses be conducted, without regard to the sex of the pupils enrolled in such classes and courses.

(b) No school district shall prohibit any pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Section 8506.

(c) No school district shall require pupils of one sex to enroll in a

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particular class or course, unless the same class or course is also required of pupils of the opposite sex.

(d) No school counselor shall, on the basis of the sex of a pupil, offer vocational or school program guidance to pupils of one sex which is different from that offered to pupils of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the pupil counseled.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex.

SEC. 2. There are no state-mandated local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code because there are no duties, obligations, or responsibilities imposed on local government by this act.

CHAPTER 280

An act to amend Sections 20065 and 20067 of the Education Code, relating to community colleges.

[Approved by Governor May 28, 1974. Filed with Secretary of State May 28, 1974.]

The people of the State of California do enact as follows:

SECTION 1. Section 20065 of the Education Code is amended to read:

20065. On or before November 1, 1967, the governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district for the 10-year period commencing with that date. After January 1, 1975, the plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The plan shall be subject to continuing review by the governing board and each year shall be extended one year, and there shall be submitted to the chancellor, on or before the first day of November in each succeeding year, a report outlining the required modifications or changes, if any, in the plan.

SEC. 2. Section 20067 of the Education Code is amended to read:

20067. The chancellor shall, on or before March 1, 1968, review, and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the

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elements of the capital construction program specified in Section 20066, and shall, on the basis of such review and evaluation, make such revision and changes therein as are appropriate, and approve the same. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each district maintaining a community college shall be made on or before each succeeding first day of December. The chancellor shall, promptly after such approval, notify the governing board of each community college district of the approved form and content of the district's plan for capital construction.

CHAPTER 1526

An act to add Section 22504.7 to the Education Code, relating to public higher education athletic programs, and making an appropriation therefor.

[Approved by Governor September 27, 1974. Filed with Secretary of State September 27, 1974.]

The people of the State of California do enact as follows:

SECTION 1. Section 22504.7 is added to the Education Code, to read:

22504.7. It is the intent of the Legislature that opportunities for participation in intercollegiate athletic programs in the community colleges, in the campuses of the California State University and Colleges, and in the campuses of the University of California be provided on as equal a basis as is practicable to male and female students. The costs of providing these equal opportunities may vary according to the type of sports contained within the respective men's and women's athletic programs. Additional sources of revenue should be determined to provide additional funds for these equal opportunity programs.

SEC. 2. In order to determine the scope and cost of augmenting intercollegiate athletic programs pursuant to Section 22504.7 of the Education Code the California Postsecondary Education Commission is hereby directed to conduct a study of intercollegiate athletic programs in institutions of public higher education, as defined pursuant to Section 22500 of the Education Code. The study shall include, but not necessarily be limited to, the following:

(a) An evaluation of existing programs and policies, as well as recommendations for necessary staffing, equipment, and facilities to implement Section 22504.7 of the Education Code; and

(b) A determination of financing required for recommended program levels, with an evaluation of current means of financing, and recommendations of funding sources.

The California Postsecondary Education Commission shall submit a final report of its findings to the Legislature within six months of the effective date of this act, including any other recommendations it may have for implementing Section 22504.7 of the Education Code.

SEC. 3. There is hereby appropriated from the General Fund in the State Treasury to the California Postsecondary Education Commission the sum of two thousand five hundred forty-five dollars ($2,545) for the purpose of financing the study prescribed by Section 2 of this act.

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CHAPTER 802

An act to add Section 92 to the Education Code, relating to public schools.

[Approved by Governor September 16, 1975. Filed with Secretary of State September 16, 1975.]

The people of the State of California do enact as follows:

SECTION 1. Section 92 is added to the Education Code, to read:

92. (a) The Legislature finds and declares that female students are not accorded opportunities for participation in school-sponsored athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female students.

(b) Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(c) Nothing in this section shall be construed to require a school district to require competition between male and female students in school-sponsored athletic programs.

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CHAPTER 275

An act to amend Sections 17303.6, 17402, and 17407 of, to add Sections 18151, 25502.1, and 25506.5 to, and to repeal Section 18151 of, the Education Code, relating to community colleges, and declaring the urgency thereof, to take effect immediately.

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SEC. 7. Section 25502.1 is added to the Education Code, to read:

25502.1. Every community college district shall provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex.

This act is not intended, and shall not be construed, to supersede any portion of Item 366 of the Budget Act of 1976, except for paragraphs (2), (3), (4), and (5) of subdivision (b) thereof.

Paragraph (1) of subdivision (b) of Item 366 of the Budget Act of 1976 shall supersede subdivision (a) of Section 17303.6 of the Education Code, as amended by this act, for the 1976–77 fiscal year.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that funds appropriated for handicapped students attending community college may be more effectively utilized for the 1975–76 school year, which commenced July 1, 1975, it is essential that this act go into effect immediately.

CHAPTER 783

An act to amend Sections 20065, 20067, 20076, and 20078 of the Education Code, relating to community colleges.

[Approved by Governor September 6, 1976. Filed with Secretary of State September 7, 1976.]

The people of the State of California do enact as follows:

SECTION 1. Section 20065 of the Education Code is amended to read:

20065. On or before November 1, 1967, the governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district for the 10-year period commencing with that date. After January 1, 1975, the plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The plan shall be subject to continuing review by the governing board and each year shall be extended one year, and there shall be submitted to the chancellor, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the plan.

The report to be submitted to the chancellor shall include the five-year construction plan and project planning guides covering projects requested for the first year of the five-year construction plan. A copy of the proposed project planning guides shall be transmitted at that time to the Department of Finance and the Joint Legislative Audit Committee for informational purposes.

SEC. 2. Section 20067 of the Education Code is amended to read:

20067. The chancellor shall review and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 20066, and shall, on the basis of such review and evaluation, make such revision and changes therein as are appropriate, and approve the same. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each district maintaining a community college shall be made on or before each succeeding first day of May. The chancellor shall, promptly after such approval, notify the governing board of each community college district of the approved form and content of the district's plan for capital construction.

SEC. 3. Section 20076 of the Education Code is amended to read:

20076. The chancellor shall review and evaluate each proposed project with reference to the elements of the capital construction program specified in Section 20066, and if approved after review by the Board of Governors of the California Community Colleges, shall transmit the approved proposed project to the Department of Finance not later than April 1, 1968, and May 1st of each year thereafter. A proposed project not approved shall be returned to the governing board of the community college district with recommendations concerning changes deemed necessary by the chancellor.

SEC. 4. Section 20078 of the Education Code is amended to read:

20078. A proposed project submitted by the governing board of a community college district to the chancellor pursuant to Section 20075 prior to February 1st of each year shall be finally acted upon

by the chancellor pursuant to Section 20076 on or before the next succeeding first day of April 1968, and May 1st of each year thereafter. A proposed project submitted to the Department of Finance pursuant to Section 20076, shall be finally acted upon by the department pursuant to Section 20077 on or before the first day of July 1968, and each year thereafter.

CHAPTER 1176

An act to amend Section 91 of the Education Code, relating to public schools.

[Approved by Governor September 21, 1976. Filed with Secretary of State September 22, 1976.]

The people of the State of California do enact as follows:

SECTION 1. Section 91 of the Education Code is amended to read:

91. (a) It is the policy of the state that elementary and secondary school and community college classes and courses, including nonacademic and elective classes and courses be conducted, without regard to the sex of the pupils enrolled in such classes and courses.

(b) No school district shall prohibit any pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Section 8506.

(c) No school district shall require pupils of one sex to enroll in a particular class or course, unless the same class or course is also required of pupils of the opposite sex.

(d) No school counselor, teacher, administrator, or aide shall, on the basis of the sex of a pupil, offer vocational or school program guidance to pupils of one sex which is different from that offered to pupils of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the pupil counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with such pupil the possibility of careers, or courses leading to such careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 10921, in advance of career counseling and course selection commencing with course selection for the seventh grade so that they may participate in such counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex.

SEC. 2. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because duties, obligations, or responsibilities imposed on local governmental entities by this act are such that related costs are incurred as a part

of their normal operating procedures.

CHAPTER 36

An act to amend Sections 40, 1042, 1330, 1891, 1904, 1908, 2104, 2502, 4200, 4210, 4321, 4364, 5012, 5016, 5018, 5204, 5454, 8203, 8210, 8211, 8212, 8240, 8242, 8245, 8246, 8248, 8250, 8250.1, 8251, 8252, 8254, 8321, 8326, 8327, 8329, 8330, 8360, 8361, 8362, 8363, 8364, 8365, 8366, 8367, 8368, 8369, 8383, 8395, 8500, 10101, 10103, 10104, 10106, 10601, 10602, 10603, 10604, 10606, 12516, 14002, 14003, 14020, 15104, 16035, 16040, 16044, 16057, 16058, 16063, 16192, 16250, 16310, 16343, 18383, 18535, 19422, 19423, 19424, 19510, 19511, 19512, 19515, 19521, 19522, 21107, 21108, 21110, 21111, 21112, 21180, 21183, 21189, 21192, 22112, 22114, 22122, 22127, 22142, 22401, 22716, 22802, 22809, 23006, 23100, 23108, 23401, 23506, 23702, 23703, 23704, 23800, 23803, 23804, 23811, 23900, 23903, 23909, 23910, 23918, 23919, 23920, 23921, 24100, 24200, 24203, 24600, 33332, 35041.5, 35101, 35174, 35214, 35300, 35330, 35511, 35512, 35515, 35518, 35704, 35705, 37220, 37228, 39002, 39140, 39143, 39149, 39210, 39214, 39227, 39230, 39321, 39363.5, 39440, 39602, 39651, 39674, 39830, 40000, 40013, 41015, 41020, 41201, 41301, 41372, 41601, 41700, 41718, 41761, 41762, 41840, 41856, 41857, 41859, 41863, 41886, 41888, 41915, 42238, 42244, 42245, 42603, 42631, 42633, 42635, 42636, 42639, 42643, 42831, 44008, 44009, 44228, 44263, 44274, 44335, 44346, 44853, 44909, 45023.5, 45057, 45203, 45205, 45207, 45250, 46010, 46111, 46300, 48011, 48200, 48265, 48412, 48414, 48938, 48980, 49061, 49063, 49065, 49068, 49069, 49070, 49075, 49076, 49077, 51226, 51767, 51872, 52002, 52012, 52015, 52113, 52309, 52315, 52317, 52321, 52324, 52372, 52500, 52506, 52517, 52570, 52612, 54002, 54006, 54123, 54125, 54665, 54666, 54669, 56336, 56601, 56717, 56811, 56829, 60014, 60101, 60201, 60202, 60204, 60222, 60223, 60261, 60640, 60643, 60664, 66602, 68014, 69273, 69274, 69511, 69532, 69536, 69538, 69565, 69566, 69582, 69583, 69584,

18102.6, 18102.9, 18151, 18258, 19576, 19578, 19581, 19584.4, 19589, 19590, 19594, 19601.5, 19682.5, 19699.9, 19700.51, 19700.78, 19700.608, 19700.695, 20065, 20067, 20076, 20078, 20110, 20204, 20212, 20213, 20450.5, 20452, 20456.4, 20803, 20905, 20905.55, 20906, 20906.1, 20906.2, 20906.3, 20906.4, 20906.5 as added by Chapter 323 of the Statutes of 1976, 20906.5 as added by Chapter 397 of the Statutes of 1976, 20907, 20935, 20935.1, 20935.15, 20935.2, 20954, 21102, 21104, 21106, 21107, 21107.6, 21109, 21113, 21118, 21119, 21352, 21702.2, 22601, 22712.5, 22712.6, 22712.7, 22809, 22855.5, 22856.5, 22859.6, 23583.22, 23604.5, 23802, 23805, 24054, 24055, 24204, 24217, 24317, 25393, 25411.5, 25411.7, 25424.3, 25425, 25430.1, 25430.3, 25430.4, 25430.5, 25430.7, 25430.8, 25430.9, 25430.10, 25430.12, 25430.14, 25430.15, 25430.16, 25457.5, 25502.1, 25505.4, 25505.8, 25505.20, 25506.5, 25515.3, 25515.7, 27803, 27804, 27805, 27901, 27902, 27902.1, 27903, 27952, 27953, 28204, 28455.1, 28455.2, 28456, 29042, 30303, 30313, 30320, 30321.5, 30328, 30329, 31026, 31058, 31059, 31061, 31062, 31063, 31151, 31154, 31160, 31163, 31913, 31913.5, 40201, 40402, 40405, 40406, 40406.5, 41006, 41007, 41201.1, 41202, 41203, 41402, 41403.1, 41404, 41801, 41803, 42200, 42401, 43003, 43203, 45000, and 45022 of, to repeal Article 2.5 (commencing with Section 27) of Chapter 1 of Division 1, Article 7 (commencing with Section 490) of Chapter 3 of Division 2, Article 9.5 (commencing with Section 1084) of Chapter 3 of Division 4, Article 14.5 (commencing with Section 1900) of Chapter 6 of Part 2 of Division 1 of Title 1, Chapter 5.76 (commencing with Section 5767) of Division 6, Article 1.5 (commencing with Section 12930) of Chapter 1 of Division 10, Article 2 (commencing with Section 15051) of Chapter 1 of Division 11, Division 12.4 (commencing with Section 16690), Article 8.2 (commencing with Section 17971) of Chapter 3 and Chapter 3.9 (commencing with Section 20940) of Division 14, Chapter 1.2 (commencing with Section 22509) and Chapter 4.5 (commencing with Section 22670) of Division 16.5, Article 3 (commencing with Section 24320) of Chapter 9 of Division 18, Article 11.5 (commencing with Section 28520) of Chapter 6 of Division 20, Chapter 1.5 (commencing with Section 29090) of Division 21, and Article 1 (commencing with Section 40100) of Chapter 1 of Division 25 of, and to repeal the headings of Chapter 4 (commencing with Section 16760) of Division 12.5, and Article 4 (commencing with Section 27901) of Chapter 5 of Division 20 of, the Education Code as enacted by Chapter 2 of the Statutes of 1959, relating to education law and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 29, 1977. Filed with Secretary of State April 29, 1977.]

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the 1977 Education Code Supplemental Act.

SEC. 1.5. Section 40 of the Education Code as enacted by Chapter

1010 of the Statutes of 1976 is amended to read:

40. (a) It is the policy of the state that elementary and secondary school and community college classes and courses, including nonacademic and elective classes and courses be conducted, without regard to the sex of the student enrolled in such classes and courses.

(b) No school district or community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student, except a class subject to Section 51550.

(c) No school district or community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with such pupil the possibility of careers, or courses leading to such careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for the seventh grade so that they may participate in such counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

SEC. 2. Section 1042 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

1042. County boards of education may:

(a) Adopt rules and regulations governing the administration of the office of the county superintendent of schools.

(b) Review the county superintendent of schools annual itemized estimate of anticipated revenue and expenditures before such annual itemized estimate is filed with the auditor as required by Section 29040 of the Government Code and make such revisions, reductions or additions therein that it deems advisable and proper. No such itemized estimate shall be filed by the county superintendent of schools or be approved by the board of supervisors until it has first been so reviewed and approved by the county board of education.

(c) In the name by which the board of education is designated, acquire, hold and convey real property for the purpose of housing the offices and the services of the county superintendent of schools, except that this subdivision shall only apply to such county boards of education to which all the duties and functions of the county board of supervisors have been transferred pursuant to Section 1080.

(d) Contract with and employ any persons for the furnishing to the

SEC. 326. Section 81602 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

81602. The governing board of a community college district may, by resolution, establish a fund or funds for losses, including but not limited to, district property, any liability, and workers' compensation, in the county treasury for the purpose of covering the deductible amount under deductible types of insurance policies or losses due to noninsured perils. In the fund or funds shall be placed such sums, to be provided in the budget of the district, as will create an amount which, together with investments made from the fund or funds, will be sufficient in the judgment of the governing board to protect the district from such losses on the deductible amount under deductible types of insurance policies or losses due to noninsured perils. Nothing in this section shall be construed as prohibiting the governing board from providing protection against such losses to district property partly by means of the fund or funds and partly by means of insurance written by acceptable insurers as provided in Section 81601. A district may contract for claims adjustment and related services. The cost of such services is an appropriate charge against the appropriate fund.

The fund or funds shall be considered as separate and apart from all other funds of the district, and the balance therein shall not be considered as being part of the working cash of the district in compiling annual budgets.

Warrants shall not be drawn on or transfers made from the fund or funds so created, except to reimburse or indemnify the community college district for losses as herein specified, and only upon resolution duly adopted by the board of education.

The cash placed in the fund or funds may be invested and reinvested by the county treasurer, with the advice and consent of the governing board of the district, in securities which are legal investments for surplus county funds in this state. The income derived from such investments, together with interest earned on uninvested funds, shall be considered revenue of and be deposited in the fund.

SEC. 327. Section 81651 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

81651. The governing board of any community college district may purchase supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, or periodicals in any amount needed for the operation of the schools of the district without taking estimates or advertising for bids.

SEC. 328. Section 81820 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

81820. On or before November 1, 1967, the governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district for the 10-year period commencing with that date. After January 1, 1975, the plan shall reflect capital construction

for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The plan shall be subject to continuing review by the governing board and each year shall be extended one year, and there shall be submitted to the chancellor, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the plan.

The report to be submitted to the chancellor shall include the five-year construction plan and project planning guides covering projects requested for the first year of the five-year construction plan. A copy of the proposed project planning guides shall be transmitted at that time to the Department of Finance and the Joint Legislative Audit Committee for informational purposes.

SEC. 329. Section 81822 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

81822. The chancellor shall review, and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 81821, and shall, on the basis of such review and evaluation, make such revision and changes therein as are appropriate, and approve the same. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each district maintaining a community college shall be made on or before each succeeding first day of May. The chancellor shall, promptly after such approval, notify the governing board of each community college district of the approved form and content of the district's plan for capital construction.

SEC. 330. Section 81831 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

81831. The chancellor shall review and evaluate each proposed project with reference to the elements of the capital construction program specified in Section 81821, and if approved after review by the Board of Governors of the California Community Colleges, shall transmit the approved proposed project to the Department of Finance not later than April 1, 1968, and May 1st of each year thereafter. A proposed project not approved shall be returned to the governing board of the community college district with recommendations concerning changes deemed necessary by the chancellor.

SEC. 331. Section 81833 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

81833. A proposed project submitted by the governing board of a community college district to the chancellor pursuant to Section 81830 prior to February 1st of each year shall be finally acted upon by the chancellor pursuant to Section 81831 on or before the next succeeding first day of April 1968, and May 1st of each year thereafter. A proposed project submitted to the Department of Finance pursuant to Section 81831, shall be finally acted upon by the

instances, however, the student may be considered for a loan or employment aid to the extent that such are available on the basis of the resources of the student and the student's spouse, if any.

69508. The provisions of this article shall apply only to grants to be awarded for the 1978–79 academic year.

This article shall be operative only until June 30, 1978, or until completion of the processing of applications for the 1978–79 academic year, whichever is later, and as of that date is repealed.

SEC. 504. Section 69538.5 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

69538.5. It is the intent of the Legislature that the Student Aid Commission shall experiment with awarding Cal Grants to students in proprietary schools. The Student Aid Commission shall report to the Legislature no later than July 1 of each year as to the extent which this intent is met within the provisions of Sections 69536 and 69538 and the following information on students attending proprietary postsecondary educational institutions:

(a) The number of students receiving Cal Grants.

(b) The names of the institutions attended by these students.

(c) The attrition rate of these students compared to students attending two- and four-year colleges or universities.

(d) The primary fields of study offered by these proprietary postsecondary educational institutions.

(e) A representative sampling of the family income of students.

This section shall remain in effect only until June 30, 1980, and as of that date is repealed.

SEC. 505. Section 71094 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

71094. The chancellor's office of the California Community Colleges shall prepare and distribute by April 1, 1977, and thereafter maintain, a detailed handbook for use by the local educational agencies and regional councils established pursuant to Section 8020. The handbook shall contain course approval criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals.

SEC. 506. Section 71095 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

71095. Effective July 1, 1977, the chancellor's office of the California Community Colleges shall monitor and review courses and programs which were approved under the provisions of Section 78200 for compliance with applicable statutes and regulations on a periodic basis. Any courses or programs determined to be in noncompliance shall not receive any apportionment of state funds for attendance or average daily attendance relating to these courses or programs.

SEC. 507. Section 72013 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

72013. Every community college district shall provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex.

incorporate the changes made in the Education Code, in 1976, into the Education Code as enacted by Chapter 1010 of the Statutes of 1976. It is not the intent of the Legislature to make any substantive change in the law.

SEC. 1136. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The new reorganized Education Code, enacted by Chapter 1010 of the Statutes of 1976, will become operative on April 30, 1977, which is long before the effective date of ordinary statutes enacted in 1977 in the 1977–78 Regular Session of the Legislature. Other 1976 education legislation was directed to the Education Code as enacted by Chapter 2 of the Statutes of 1959. This bill would adapt such other education legislation enacted in 1976 to the reorganized Education Code as enacted by Chapter 1010 of the Statutes of 1976. In order that statutory continuity may be maintained and that administrative confusion may be avoided, such adaptation must become operative on the operative date of the new Education Code. It is, therefore, necessary that this act take effect immediately as an urgency statute.

CHAPTER 967

An act to add Sections 81823 and 81824 to the Education Code, relating to community colleges.

[Approved by Governor September 21, 1977. Filed with Secretary of State September 21, 1977.]

The people of the State of California do enact as follows:

SECTION 1. Section 81823 is added to the Education Code, to read:

81823. (a) If a community college district maintains colleges, or one college and one or more educational centers, it may additionally submit the plan required by Section 81820 on the basis of each college or educational center maintained by the district, if either of the following circumstances is present such that students will be better served by evaluating the capital outlay program for the district on that basis: (1) the isolation of students within a district in terms of the distance of students from the location of an educational program, or inadequacy of transportation, and student financial inability to meet costs of transportation to an educational program, or (2) the inability of existing colleges and educational centers in the district to meet the unique educational and cultural needs of a significant number of ethnic students.

(b) If a district elects to submit such a plan, it shall include therewith justification and documentation for so doing.

(c) When a district so elects, the evaluation of the plan pursuant to Section 81822 shall include an evaluation of:

(1) The justification and documentation for so doing, including

enrollment projections for individual campuses and centers; and

(2) The plan as thus submitted.

(d) The board of governors shall adopt rules and regulations to implement the provisions of subdivision (a) of this section.

SEC. 2. Section 81824 is added to the Education Code, to read:

81824. As used in Section 81823, an "educational center" is an off-campus location established and administered by an existing college or district which: (1) is scheduled to operate for three or more years; (2) is estimated to have enrolled an average daily attendance of 500 or more students by the third year of operation; (3) has on-site administrative personnel; and (4) offers courses in programs leading to certificates or degrees to be conferred by the parent institution.

CHAPTER 797

An act to amend Sections 1243, 1244, 1245, 1604, 1710, 4312, 4320, 8007, 8100, 14042, 15701, 15704, 15705, 15706, 15711, 15712, 15713, 15719, 15721, 15723, 15724, 15727, 15737, 15746, 15749, 16002, 16003, 16007, 16009, 16014, 16022, 16023, 16029, 16034, 16036, 16042, 16044, 16051, 16051.5, 16067, 16082, 16314, 16319, 16330.5, 16331, 16335, 16336, 66804, 71001, 71026, 71027, 71041, 71091, 71092, 72233, 72409, 72640, 74015, 76140, 76160, 76320, 76321, 78005, 78010, 78011, 78409, 78442, 78920, 79010, 79013, 81005, 81363, 81400, 81820, 81831, 81833, 84327, 84330, 84384, 84385, 85241, 85260, 87200, 87214, 87228, 87408, 87412, 87422, and 87768 of, to amend and renumber Section 85264 of, to add Sections 81800.1 and 81831.5 to, to repeal Sections 8035, 10405, 16055, 71029, 71030, 71031, 71032, 71035, 71036, 71037, 71043, 71065, 71067, 71074, 71077, 72293, 72305, 76310, 76332, 76342, 76442, 76455, 78220, 78221, 78270, 81004, 81101, 81102, 81145, 84032, 84321, 84323, 84326, 84333, 84341, 84503, 84532, 85261, 85262, 85263, 87216, 87270, 87294, 87332, 87425, 87433, 87434, 87710, and 87713 of, and to repeal Chapter 3 (commencing with Section 10200) of Part 7 of, Article 10 (commencing with Section 16380) of Chapter 8 of Part 10 of, Article 8 (commencing with Section 78310) of Chapter 2 of Part 48 of, Chapter 4 (commencing with Section 78600) of Part 48 of, Chapter 5 (commencing with Section 78700) of Part 48 of, Chapter 6 (commencing with Section 78800) of Part 48 of, Article 3 (commencing with Section 79140) of Chapter 9 of Part 48 of, Article 4 (commencing with Section 79150) of Chapter 9 of Part 48 of, Article 3 (commencing with Section 81050) of Chapter 1 of Part 49 of, Chapter 6 (commencing with Section 82100) of Part 49 of, Article 4 (commencing with Section 84560) of Chapter 4 of Part 50 of, Article 6 (commencing with Section 84781) of Chapter 5 of Part 50 of, Article 9 (commencing with Section 84810) of Chapter 5 of Part 50 of, Article 10 (commencing with Section 84830) of Chapter 5 of Part 50 of, Article 12 (commencing with Section 84860) of Chapter 5 of Part 50 of, and Article 9 (commencing with Section 87860) of Chapter 3 of Part 51 of, the Education Code, relating to community colleges.

[Approved by Governor September 19, 1979. Filed with Secretary of State September 19, 1979.]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in enacting this act to update and technically clarify provisions of law which establish powers and duties of the Board of Governors of the California Community Colleges and the Chancellor of the California Community Colleges. This act repeals numerous Education Code provisions relating to the board of governors and the chancellor's office which are outdated or redundant. It also repeals certain Education Code provisions which were mistakenly made applicable

SEC. 106. Article 3 (commencing with Section 81050) of Chapter 1 of Part 49 of the Education Code is repealed.

SEC. 107. Section 81101 of the Education Code is repealed.

SEC. 108. Section 81102 of the Education Code is repealed.

SEC. 109. Section 81145 of the Education Code is repealed.

SEC. 110. Section 81363 of the Education Code is amended to read:

81363. The funds derived from the sale or from a lease with an option to purchase shall be used for capital outlay; provided, however, that the proceeds of property sold or leased in accordance with subdivision (a) or (b) of Section 81363.5 may be deposited in the general fund of the district if, prior to such sale or lease, the community college district governing board has determined that the district has no anticipated need for additional sites or building construction for the five-year period following such sale or lease.

SEC. 111. Section 81400 of the Education Code is amended to read:

81400. After considering all proposals submitted, the governing board of the community college district shall have the authority, subject to the provisions of Section 81401, to select the plan or proposal which best meets the needs of the district and to enter into a contract incorporating that plan or proposal either as submitted or as revised by the district's governing board.

The governing board shall require any person, firm or corporation with whom it enters into a lease or agreement pursuant to this article to file a bond, executed by either two or more good and sufficient sureties or by a corporate surety, for the performance of such lease or agreement.

SEC. 112. Section 81800.1 is added to the Education Code, to read:

81800.1. The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to provide assistance to community college districts for the construction of community college facilities. The community college system is of general concern and interest to all the people of the state and the education of community college students is a joint obligation and function of both the state and community college districts.

In adopting this chapter, the Legislature considers that the greatest need is to provide community college facilities that will be required to house the great increase of community college students resulting from growth in population and from legislative policies expressed through implementation of the Master Plan for Higher Education.

SEC. 113. Section 81820 of the Education Code is amended to read:

81820. The governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of

funding. The plan shall be subject to continuing review by the governing board and each year shall be extended one year, and there shall be submitted to the chancellor, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the plan.

The report to be submitted to the chancellor shall include the five-year construction plan and project planning guides covering projects requested for the first year of the five-year construction plan. A copy of the proposed project planning guides shall be transmitted at that time to the Department of Finance and the Joint Legislative Audit Committee for informational purposes.

SEC. 114. Section 81831 of the Education Code is amended to read:

81831. The chancellor shall review and evaluate each proposed project with reference to the elements of the capital construction program specified in Section 81821, and if approved after review by the Board of Governors of the California Community Colleges, shall transmit the approved proposed project to the Department of Finance not later than May 1st of each year. A proposed project not approved shall be returned to the governing board of the community college district with recommendations concerning changes deemed necessary by the chancellor.

SEC. 115. Section 81831.5 is added to the Education Code, to read:

81831.5. The governing board of any community college district shall meet with appropriate local government recreation and park authorities to review all possible methods of coordinating planning, design, and construction of new facilities and sites or major additions to existing facilities and recreation and park facilities in the community. Any community college district planning, designing, or constructing new facilities and sites or major additions to existing facilities shall report to the chancellor's office on plans to achieve (a) a greater use of any joint or contiguous recreation and park facilities by the district and (b) possible use by the total community of such facilities and sites and recreation and park facilities.

SEC. 116. Section 81833 of the Education Code is amended to read:

81833. A proposed project submitted by the governing board of a community college district to the chancellor pursuant to Section 81830 prior to February 1st of each year shall be finally acted upon by the chancellor pursuant to Section 81831 on or before the next succeeding May 1st of each year. A proposed project submitted to the Department of Finance pursuant to Section 81831, shall be finally acted upon by the department pursuant to Section 81832 on or before the first day of July each year.

SEC. 117. Chapter 6 (commencing with Section 82100) of Part 49 of the Education Code is repealed.

SEC. 118. Section 84032 of the Education Code is repealed.

SEC. 119. Section 84321 of the Education Code is repealed.

teaching position who has rendered service to the district for at least six consecutive years preceding the granting of the leave, but not more than one such leave of absence shall be granted in each six-year period. The governing board granting the leave of absence may prescribe the standards of service which shall entitle the employee to the leave of absence. No absence from the service of the district under a leave of absence, other than a leave of absence granted pursuant to Section 87767, granted by the governing board of the district shall be deemed a break in the continuity of service required by this section, and the period of such absence shall not be included as service in computing the six consecutive years of service required by this section. Service under a national recognized fellowship or foundation approved by the board of governors, for a period of not more than one year, for research, teaching or lecturing shall not be deemed a break in continuity of service, and the period of such absence shall be included in computing the six consecutive years of service required by this section.

SEC. 157. Article 9 (commencing with Section 87860) of Chapter 3 of Part 51 of the Education Code is repealed.

SEC. 158. No appropriation is made by this act, nor is any obligation created thereby, pursuant to Section 2231 or 2234 of the Revenue and Taxation Code. Moreover, no claim shall be considered with respect to this act by the State Board of Control pursuant to Section 905.2 of the Government Code or Section 2250 of the Revenue and Taxation Code, and the Department of Finance shall not review or report on this act pursuant to Section 2246 of the Revenue and Taxation Code.

CHAPTER 977

An act to amend Sections 8092 and 52302 of, and to add Sections 52301.5, 52302.3, 52519, 52520, 78015, and 78016 to, the Education Code, relating to vocational education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1979. Filed with Secretary of State September 22, 1979.]

unified school district shall, prior to establishing a vocational or occupational training program, conduct a job market study of the standard metropolitan statistical area in which it proposes to establish the program. To the extent possible, the study shall use the California Occupational Information System and other available sources of labor market information. The study shall be conducted in cooperation with the Employment Development Department, prospective employers, and the district's advisory committee on vocational education. The Employment Development Department may cooperate in the study, to the extent possible, within existing resources. The study shall include an analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to insure that the anticipated employment demand for the adults enrolled in the proposed program justifies the establishment of the proposed courses of instruction.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the high school or unified school district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the high school district or unified school district determines that the job market study justifies the initiation of the proposed program, it shall, by resolution, determine whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to the provisions of Section 8092.

SEC. 6. Section 52520 is added to the Education Code, to read:

52520. (a) Every vocational or occupational training program for adults offered by any high school district or unified school district shall be reviewed every two years by the governing board to assure that each such program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The provisions of this section shall apply to each program commenced subsequent to the effective date of this section.

SEC. 7. Section 78015 is added to the Education Code, to read:

78015. (a) The governing board of a community college district shall, prior to establishing a vocational or occupational training program, conduct a job market study of the standard metropolitan statistical area, as those terms are defined in Section 52301.5, in which it proposes to establish the program. To the extent possible, the study shall use the California Occupational Information System, as defined

in Section 52301.5, and other available sources of labor market information. The study shall be conducted in cooperation with the Employment Development Department, prospective employers, and the district's advisory committee on vocational education. The Employment Development Department may cooperate in the study, to the extent possible, within existing resources. The study shall include an analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to insure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the community college district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the community college district determines that the job market study justifies the initiation of the proposed program, it shall, by resolution, determine whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to the provisions of Section 8092.

SEC. 8. Section 78016 is added to the Education Code, to read:

78016. (a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to assure that each such program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The provisions of this section shall apply to each program commenced subsequent to the effective date of this section.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that the provisions of this act be implemented as soon as possible and that the training to be provided under this act be made available to students as soon as possible, it is necessary that this act take effect immediately. In addition, this bill would diminish the constitutional cloud over existing vocational education contracts.

CHAPTER 910

An act to repeal, add, and repeal Chapter 4 (commencing with Section 81800) of Part 49 of the Education Code, relating to community colleges, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1980. Filed with Secretary of State September 17, 1980.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 81800) of Part 49 of the Education Code is repealed.

SEC. 2. Chapter 4 (commencing with Section 81800) is added to Part 49 of the Education Code, to read:

CHAPTER 4. COMMUNITY COLLEGE CONSTRUCTION ACT OF 1980

Article 1. Definitions and General Provisions

81800. (a) This chapter shall be known and may be cited as the Community College Construction Act of 1980.

(b) The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to provide assistance to community college districts for the construction of community college facilities. The community college system is of general concern and interest to all the people of the state, and the education of community college students is a joint obligation and function of both the state and community college districts.

In enacting this chapter, the Legislature considers that there is a need to provide adequate community college facilities that will be

required to accommodate community college students resulting from growth in population and from legislative policies expressed through implementation of the Master Plan for Higher Education.

81801. As used in this chapter, "community college" means grades 13 and 14 of a community college; and "community college district" means any community college district.

81802. (a) As used in this chapter, the term "project" means the purpose for which a community college district has applied for assistance under this chapter for one or more institutions under its authority or for districtwide facilities. A project may include the planning, acquisition, and improvement of community college sites; the planning, construction, reconstruction, or remodeling of any permanent structure necessary for use as a classroom, laboratory, library, a performing arts facility, a gymnasium, the basic outdoor physical education facilities, and basic food service facilities; related facilities necessary for the instruction of students or for administration of the educational program; maintenance or utility facilities essential to the operation of the foregoing facilities; and the initial acquisition of equipment.

(b) A project may also include the reconstruction or remodeling of any facility leased or lease-purchased for educational purposes. The chancellor's office shall require transfer to the community college district of title or any other interest considered sufficient by the district, in and to facilities presently leased or to be leased in the future by the district, to the extent of the funds appropriated for reconstruction or remodeling of leased facilities. When sufficient title or interest has not been transferred, the term of the lease shall be of sufficient duration to completely amortize the reconstruction or remodeling cost. Such amortization shall be determined by utilizing current interest rates and normal accounting practices. If the lease is terminated prior to amortizing the reconstruction or remodeling costs the district shall repay the state for any unamortized state costs.

(c) The projects defined by subdivisions (a) and (b) of this section shall not be construed as a commitment by the Legislature as to the type or possible number of projects that may be considered during any fiscal year.

(d) A project shall not include the planning or construction of dormitories, student centers other than cafeterias, stadia, the improvement of sites for student or staff parking, or single-purpose auditoriums.

81803. As used in this chapter, "weekly student contact hours" means the product of the number of students and the scheduled class periods in which they are enrolled, in graded and ungraded community college classes convened prior to 10 o'clock p.m. during a census week. A class period is not less than 50 minutes and not more than 60 minutes.

81804. As used in this chapter, "chancellor" means the Chancellor of the California Community Colleges.

81805. This chapter shall be administered by the chancellor, and for purposes of such administration the board of governors may adopt all necessary rules and regulations.

For purposes of this chapter, the chancellor shall assemble statewide data on facility and construction costs, and on the basis thereof formulate cost standards and construction standards. The formulation of standards shall include also the formulation of average ratios of equipment cost to total project costs, unit equipment costs per faculty or other staff measure, and unit costs related to floor areas.

81806. Any action of the chancellor in administering this chapter may be appealed to the board of governors by the governing board of an affected community college district. The appeal shall be placed on the agenda of the board in accordance with the general agenda practices of the board. The decision of the board on such appeals shall be final.

81807. Funds appropriated for a project of a community college district for purposes of this chapter shall be allocated and disbursed upon order of the chancellor, and by warrants of the State Controller issued pursuant thereto.

81808. In the event an existing community college district is included in a newly formed community college district, any unused funds appropriated or authorized to be appropriated for a finally approved project of the included district pursuant to this chapter shall be transferred to the newly formed or including community college district on the date that such district is effective for all purposes, or prior to such effective date where the governing boards of the districts agree to such earlier transfer.

81809. Upon completion of a project the governing board of the community college district shall submit to the chancellor, within 30 days after the closure of the current fiscal year, a final report on all expenditures in connection with the project and the sources of the funds expended.

81810. As used in this chapter, "educational center" means an off campus location established and administered by an existing college or district which:

(a) Is scheduled to operate for three or more years;

(b) Is estimated to have enrolled an average daily attendance of 500 or more students by the third year of operations;

(c) Has onsite administrative personnel; and

(d) Offers courses in programs leading to certificates or degrees to be conferred by the parent institution.

Article 2. Plans for Capital Construction

81820. On or before February 1, 1981, the governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district. The plan shall reflect capital construction for

community college purposes of the district for the five-year period commencing with the next proposed year of funding. The five-year plan shall be subject to continuing review by the governing board and annually shall be extended one year, and there shall be submitted to the chancellor, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the five-year plan.

81821. The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

(a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the community college district.

(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors.

(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(e) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.

(f) An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to Section 81838.

81821.5. The governing board of any community college district shall meet with appropriate local government recreation and park authorities to review all possible methods of coordinating planning, design, and construction of new facilities and sites or major additions to existing facilities and recreation and park facilities in the community. Any community college district planning, designing, or constructing new facilities and sites or major additions to existing facilities shall report to the chancellor's office on plans to achieve: (a) a greater use of any joint or contiguous recreation and park facilities by the district; and (b) possible use by the total community of such facilities and sites and recreation and park facilities.

81822. The chancellor shall review and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 81821, and shall, on the basis of such review and evaluation, make such revision and changes

therein as are appropriate, and approve or disapprove the plan. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each community college district shall be made on or before each succeeding first day of April. The chancellor shall, promptly after such approval or disapproval, notify the governing board of each community college district of the content of the district's plan for capital construction.

81823. (a) If a community college district maintains colleges, or one college and one or more educational centers, it may additionally submit the plan required by Section 81820 on the basis of each college or educational center maintained by the district, if either of the following circumstances is present such that students will be better served by evaluating the capital outlay program for the district on that basis: (1) the isolation of students within a district in terms of the distance of students from the location of an educational program, or inadequacy of transportation, and student financial inability to meet costs of transportation to an educational program; or (2) the inability of existing colleges and educational centers in the district to meet the unique educational and cultural needs of a significant number of ethnic students.

(b) If a district elects to submit such a plan, it shall include therewith justification and documentation for so doing.

(c) When a district so elects, the evaluation of the plan pursuant to Section 81822 shall include an evaluation of both of the following:

(1) The justification and documentation for so doing, including enrollment projections for individual campuses and centers.

(2) The plan as thus submitted.

Article 3. Project Proposals

81830. Any community college district may submit a proposed project to the chancellor for review and approval or disapproval. The proposed project shall be an element of the district's plan for capital construction. It shall be in such form and contain such detail, pursuant to rules and regulations of the board of governors, as will permit its evaluation and approval with reference to the elements of the capital construction program specified in Section 81821.

81831. The chancellor shall review and evaluate each proposed project with reference to the elements of the capital construction program specified in Section 81821. Such review shall include the following elements:

(a) An architectural analysis to determine costs of the various phases of the project, with particular attention to be directed to the type of construction, unit costs, and the efficiency of particular buildings and facilities in terms of effective utilization of area.

(b) Determining the amount of federal funds available for the project, and taking appropriate measures to ensure that the project will qualify for the maximum amounts of federal funds practicable

under the circumstances.

"Federal funds" means any construction and equipment moneys provided by the federal government to a community college district for the project or any part of the project, which are or will be available to the district for the project.

(c) Determining the total cost of the project, reducing the total cost by the amount of federal funds available therefor, and determining the remainder thereof to be borne by the state, or, if the district has matching funds, by the state and by the district.

The determination as to whether the district has funds to provide all or part of its matching share of the project shall be made on the basis of district ability. If the district ability, as determined by Section 81838, is sufficient to meet the matching costs of the project or its individual phases of planning, working drawings, construction, equipment, or land acquisition, the district shall bear its matching share of the cost of the project or one or more of its phases. If the district funds available are insufficient to provide the district matching share for the cost of the project or one or more of its phases, computed pursuant to Section 81838, the district shall provide the moneys available, as defined by the board of governors, and state funds may be requested to provide the balance of funds required.

(d) Determining the total of funds required for the first phase of the project to be provided on a matching basis, if the district has funds pursuant to Section 81838, by the state and the district, the total state funds required by appropriation, and the state funds required to be provided for the project or one or more of its phases.

81833. A proposed project submitted by the governing board of a community college district to the chancellor pursuant to Section 81830 prior to February 1st of each year shall be finally acted upon by the chancellor pursuant to Section 81831 on or before the next succeeding April 1st of each year.

81836. The chancellor shall:

(a) Advise the governing board of each community college district on the acquisition of new college sites, and after a review of available plots, give the governing board of the district in writing a list of the approved locations in the order of their merit, considering especially the matters of educational merit, reduction of traffic hazards, and conformity to the organized regional plans as presented in the master plan of the planning commission having jurisdiction, and charge the governing board of the community college district a reasonable fee as determined by the chancellor's office for each 10 acres or fraction thereof of school site reviewed.

(b) Establish standards for community college facilities.

(c) Review plans and specifications for all construction in those community college districts that have submitted plans and specifications therefor to the chancellor for approval.

(d) For services rendered for the review of plans and specifications of a proposed project pursuant to Section 81831, the chancellor's office shall charge a reasonable fee as established by the

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board of governors.

(e) Approve plans and specifications submitted by governing boards of community college districts, and return without approval and with recommendation for changes, any plans not conforming to established standards.

81837. The governing board of each community college district, except districts governed by a city board of education, before letting any contract or contracts totaling one hundred thousand dollars ($100,000), or more, in the erection of any new community college facility, or for any addition to, or alteration of, an existing community college facility, shall submit plans therefor to the chancellor's office, and obtain the written approval of the plans by that office. No contract for construction made by any governing board of a community college district contrary to the provisions of this section is valid, nor shall any public money be paid for erecting, adding to, or altering any facility in contravention of this section.

81838. In determining a community college district's matching share, the chancellor's office shall do the following:

(a) Determine the average statewide ending balance per weekly student contact hour according to the following procedure:

(1) For each district divide the total prior year's net ending balance of all budget funds established and maintained, minus excluded funds as defined by subdivision (c), by that district's annual weekly student contact hours for the same fiscal year.

(2) Compute the mean average district ending balance per weekly student contact hour for the prior fiscal year by dividing the total of ending balances statewide by the total statewide weekly student contact hours for the same fiscal year.

(b) Determine the state-local matching shares for each community college district according to the following procedure:

(1) For each district compute a factor by dividing the amount calculated in paragraph (1) of subdivision (a) by the statewide average district ending balance per weekly student contact hour computed pursuant to paragraph (2) of subdivision (a).

(2) The distict local matching share shall be equal to 50 percent of the project cost multiplied by the factor.

(c) As used in this chapter, "excluded funds" means any of the following:

(1) Moneys designated for specific projects included in the district's five-year plan, which were included in the Budget Act of 1980 or a prior Budget Act.

(2) Moneys designated for 100 percent locally funded projects which were approved by the chancellor's office prior to July 1, 1981.

(3) Restricted and committed revenues such as those moneys collected for community service programs, student health activities, food services, book stores, parking, district self-insurance, California State Teachers' Retirement System, Public Employees' Retirement System, and others as certified to by the district governing board and approved by the chancellor's office.

81839. The governing board of a community college district may include a proposed site in its plans for a project and may enter into an agreement with the owner of property constituting such proposed site whereby the district, for an annual consideration to be borne by the district, is given an option to purchase, or lease with an option to purchase such property at an unspecified future date, as a building site.

The existence of such an agreement shall in no way affect the determination of the share of the cost of the project to be borne by the state under this chapter, and the consideration paid by the district for such option or lease shall not be considered part of the cost of the project in determining the state's share of the funding thereof.

Such option or lease agreement shall constitute an obligation of the district and shall not be construed as in any way creating an obligation on the part of the state.

81840. This chapter shall remain in effect only until July 1, 1982, and as of such date is repealed unless a statute which is chaptered before July 1, 1982, deletes or extends such date.

SEC. 3. (a) There is hereby appropriated from the Capital Outlay Fund for Public Higher Education to the Board of Governors of the California Community Colleges the sum of four million four hundred seventy-three thousand two hundred fifty dollars ($4,473,250) to be allocated, subject to the prior approval of the State Public Works Board, by the Board of Governors of the California Community Colleges to community college districts for expenditure by such districts as set forth in the schedule below:

Imperial Community College District,	
Imperial Valley College:	
(1) Working drawings and construct removal of architectural barriers	135,700
Los Angeles Community College District,	
East Los Angeles College:	
(2) Working drawings and construct removal of architectural barriers	55,300
(2.5) Replacement of air conditioning system in the existing library provided that the district provides equivalent matching funds prior to the State Public Works Board allocation	80,500
Los Angeles Harbor College:	
(3) Working drawings and construct removal of architectural barriers	62,500

CHAPTER 911

An act to amend Section 15432 of the Government Code, and Section 436.2 of the Health and Safety Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1980. Filed with Secretary of State September 17, 1980.]

CHAPTER 470

An act to amend Sections 1256, 1257, 1264, 1265, 1330, 2400, 2509, 10401, 10407, 32020, 32030, 32040, 32044, 32211, 66803, 71060, 72002, 72020, 72030, 72122, 72126, 72129, 72237, 72280, 72300, 72330, 72331, 72332, 72400, 72401, 72408, 72533, 72601, 72602, 72670, 72673, 72682, 76000, 76001, 76002, 76130, 76160, 78005, 78008, 78030, 78031, 78032, 78033, 78204, 78409, 78907, 79000, 79020, 79021, 79022, 79023, 79024, 79025, 79026, 79027.5, 79028, 79030, 79031, 81000, 81006, 81031, 81033, 81033.5, 81035, 81036, 81038, 81144, 81179, 81452, 81457, 81640, 81648, 81657, 81658, 81821, 82530, 82531, 82535, 82536, 82537, 82538, 82541, 82542, 82543, 82544, 84300, 84362, 84370, 84373, 84500, 84520, 84528, 85000, 85003, 85022, 85200, 85201, 85266, 85442, 87032, 87036, 87039, 87212, 87274, 87408.5, 87409, 87422, 87423, 87424, 87428, 87454, 87455, 87456, 87457, 87458, 87484, 87708, 87732, 87733, 87735, 87744, 87745, 87801, 87808, 87828, 88000, 88240, and 88242 of, to amend the heading of Chapter 8 (commencing with Section 79000) of Part 48 of, to add Sections 8085, 71029, 78002, 78200.5, 78270, 78460, 81130.5, 87406.5, 87408.6, 88008, and 88010.5 to, to add Article 2 (commencing with

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Section 78220) and Article 8 (commencing with Section 78310) to Chapter 2 of, and Chapter 4 (commencing with Section 78600) to, Part 48 of, to add an article heading to Chapter 3 of Part 51 of, to repeal Sections 2501, 10402, 10404, 10406, 66905, 66920, 68081, 68083, 68132, 71094, 71095, 72034, 72100, 72101.5, 72105, 72124, 72130, 72131, 72205, 72209, 72210, 72234, 72236, 72240, 72240.5, 72252, 72300.5, 72301, 72303, 72333, 72334, 72402, 72403, 72414, 72416, 72417, 72418, 72504, 72507, 72509, 72511, 72539, 72604, 72642, 74011.5, 74032, 74103, 76003, 76004, 76005, 76006, 76131, 76141, 76406, 76423, 76424, 76425, 76456, 76482, 78009, 78013, 78014, 78034, 78209, 78273, 78404, 78410, 78411, 78464, 78465, 78931, 78932, 78933, 79002, 79003, 79011, 81003, 81007, 81032, 81034, 81037, 81043, 81131.4, 81178, 81180.5, 81182, 81184, 81333, 81337, 81338, 81339, 81340, 81341, 81342, 81342.5, 81343, 81352, 81353, 81354, 81360.5, 81383, 81610, 81612, 81614, 81615, 81616, 81650, 81652, 81654, 82302, 82303, 82306, 82307, 82502, 82503, 82504, 82505, 82506, 82507, 82545, 82546, 82547, 84006, 84007, 84009, 84070, 84071, 84202, 84203, 84204, 84205, 84301, 84302, 84303, 84374, 84501, 84529, 85001, 85002, 87030, 87045, 87065, 87210, 87211, 87212.5, 87213, 87215, 87337, 87338, 87343, 87344, 87345, 87346, 87347, 87403, 87404, 87407, 87426, 87427, 87429, 87430, 87431, 87435, 87437, 87439, 87450, 87452, 87465, 87703, 87704, 87705, 87707, 87709, 87711, 87712, 87738, 87800, 87805, 87811, 87826, 87827, and 87830 of, to repeal Chapter 8 (commencing with Section 2100) of Part 2 of, Article 1 (commencing with Section 7000) of Chapter 1 of Part 5 of, Article 1 (commencing with Section 14200) of Chapter 2 of Part 9 of, Article 5 (commencing with Section 76100) of Chapter 1, Article 3 (commencing with Section 76440) of Chapter 3, and Article 7 (commencing with Section 76490) of Chapter 6, of Part 47 of, Article 4 (commencing with Section 78451) of Chapter 3, Article 2 (commencing with Section 79130), and Article 5 (commencing with Section 79160), of Chapter 9, of Part 48 of, Article 4 (commencing with Section 81060), Article 5 (commencing with Section 81080), and Article 6 (commencing with Section 81100), of Chapter 1 of, Article 2 (commencing with Section 81630) of Chapter 3 of, Chapter 5 (commencing with Section 81900) of, Article 2 (commencing with Section 82320) of Chapter 7 of, Part 49 of, and Article 4 (commencing with Section 84340) of Chapter 3 of, and Chapter 7 (commencing with Section 85100) of, Part 50 of, to repeal the article heading of Article 2 of Chapter 2 of Part 48 of, to amend and repeal Section 72035 of, to repeal and add Sections 72422, 72506, 76400, 76401, 78930, 79001, 81160, 87401, and 87714 of, and to repeal and add Article 2 (commencing with Section 72010) of Chapter 1 of Part 45 of, Article 3 (commencing with Section 76030) of Chapter 1 of, Chapter 2 (commencing with Section 76300) of, and Article 4 (commencing with Section 76450) of Chapter 3 of, Part 47 of, the Education Code, relating to education.

[Approved by Governor September 14, 1981. Filed with Secretary of State September 14, 1981.]

SEC. 41. Section 71060 of the Education Code is amended to read:

71060. By enacting this article the Legislature declares its intent to more specifically delineate the powers, duties, and functions of the Board of Governors of the California Community Colleges and the powers, duties, and functions of the local district governing boards operating community colleges.

SEC. 42. Section 71094 of the Education Code is repealed.

SEC. 43. Section 71095 of the Education Code is repealed.

SEC. 44. Section 72002 of the Education Code is amended to read:

72002. Whenever a petition is presented to the governing board of a community college district, signed by at least 15 qualified electors of any community college district, asking that the name of the district be changed, the governing board shall designate a day upon which it will act upon the petition, which shall not be less than 10 days nor more than 40 days after the receipt of the petition.

The clerk of the governing board shall give notice to all parties interested by sending a notice of the time for the hearing of the petition. Notices shall be mailed at least 10 days before the day set for hearing. At the hearing the board shall by resolution either grant or deny the petition, and, if granted, the clerk shall notify the county superintendent of the change of the name of the district.

SEC. 45. Article 2 (commencing with Section 72010) of Chapter 1 of Part 45 of the Education Code is repealed.

SEC. 46. Article 2 (commencing with Section 72010) is added to Chapter 1 of Part 45 of the Education Code, to read:

Article 2. Nondiscrimination

72010. The provisions of this article are supplemental to any provision in the Constitution or laws of the United States or Constitution or laws of the State of California, relating to discrimination.

72011. Every community college district shall provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex.

72012. Every community college shall comply with the provisions of Sections 40, 41, and 66016, relating to sex discrimination.

SEC. 47. Section 72020 of the Education Code is amended to read:

72020. In any community college district coterminous with a unified district, the governing board of the unified district shall, except as provided in this section or in Section 74126, constitute the community college board and after organizing as a community college board shall have the management and control of the community college in the district. If the district is divided into two or more unified districts, or if any territory is included within the boundaries of such community college district by annexation thereto or by change of boundaries thereof, which territory is not included within the unified district, such community college district shall be governed by a board of five members who shall be elected in the

dollars ($250) per transaction for work done, compensation for employees or consultants, and purchases of equipment, supplies, or materials. Ratification by the governing board shall not be required with respect to transactions entered into pursuant to this section. In the event of malfeasance in office, the district official invested by the governing board with authority to act under this section shall be personally liable for any and all moneys of the district paid out as a result of such malfeasance.

SEC. 255. Section 81658 of the Education Code is amended to read:

81658. If any change or alteration of a contract governed by the provisions of this article is ordered by the governing board of the community college district, such change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:

(a) The amount specified in Section 81640 or 81649, whichever is applicable to the original contract; or

(b) Ten percent of the original contract price.

SEC. 256. Section 81821 of the Education Code is amended to read:

81821. The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

(a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the community college district.

(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(e) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.

(f) An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to Section 81838.

SEC. 257. Chapter 5 (commencing with Section 81900) of Part 49 of the Education Code is repealed.

SEC. 258. Section 82302 of the Education Code is repealed.

SEC. 259. Section 82303 of the Education Code is repealed.

SEC. 260. Section 82306 of the Education Code is repealed.

SEC. 261. Section 82307 of the Education Code is repealed.

SEC. 262. Article 2 (commencing with Section 82320) of Chapter 7 of Part 49 of the Education Code is repealed.

SEC. 263. Section 82502 of the Education Code is repealed.

SEC. 264. Section 82503 of the Education Code is repealed.

SEC. 265. Section 82504 of the Education Code is repealed.

SEC. 266. Section 82505 of the Education Code is repealed.

SEC. 267. Section 82506 of the Education Code is repealed.

SEC. 268. Section 82507 of the Education Code is repealed.

SEC. 269. Section 82530 of the Education Code is amended to read:

82530. The governing board of any community college district may grant the use of college facilities or grounds for public, literary, scientific, recreational, educational, or public agency meetings, or for the discussion of matters of general or public interest upon such terms and conditions as the board deems proper, and subject to the limitations, requirements, and restrictions set forth in this article.

The governing board of any community college district may grant the use of college facilities or grounds to any church or religious organization for the conduct of religious services for temporary periods where such church or organization has no suitable meeting place for the conduct of such services upon such terms and conditions as the board deems proper, and subject to the limitations, requirements, and restrictions set forth in this article. Notwithstanding the provisions of Section 82542, the governing board shall charge the church or religious organization using such property for the conduct of religious services an amount at least sufficient to pay the cost to the district of supplies, utilities and salaries paid college district employees necessitated by such use of such property.

SEC. 270. Section 82531 of the Education Code is amended to read:

82531. No use shall be inconsistent with the use of the buildings or grounds for college purposes, or interfere with the regular conduct of instruction.

SEC. 271. Section 82535 of the Education Code is amended to read:

82535. The governing board of a community college district may grant the use of college facilities, grounds, and equipment without charge to public agencies for the purpose of holding examinations for the selection of personnel, and for the instruction of precinct board members.

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are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 891

An act to amend Sections 81809, 81821, 81822, 81831, 81833, and 81837 of, and to repeal Section 81840 of, the Education Code, relating to community colleges.

[Approved by Governor September 27, 1981. Filed with Secretary of State September 28, 1981.]

The people of the State of California do enact as follows:

SECTION 1. Section 81809 of the Education Code is amended to read:

81809. Upon completion of a project the governing board of the community college district shall submit to the chancellor, within 30 days after the closure of the current fiscal year, a final report on all expenditures in connection with the project and the sources of the funds expended. The district shall be subject to a state post-audit review of fund claims for all such projects.

SEC. 2. Section 81821 of the Education Code is amended to read:

81821. The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

(a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction

needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the community college district.

(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(e) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.

(f) An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to Section 81838.

SEC. 3. Section 81822 of the Education Code is amended to read:

81822. The chancellor shall review and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 81821, and shall, on the basis of such review and evaluation, make such revision and changes therein as are appropriate, and notify the district. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each community college district shall be made on or before each succeeding first day of April. The chancellor shall, promptly after review, notify the governing board of each community college district of the content of the district's revised plan for capital construction.

SEC. 4. Section 81831 of the Education Code is amended to read:

81831. The chancellor shall review and evaluate each proposed project with reference to the elements of the capital construction program specified in Section 81821. Such review shall include the following elements:

(a) An architectural analysis to determine costs of the various phases of the project, with particular attention to be directed to the type of construction, unit costs, and the efficiency of particular buildings and facilities in terms of effective utilization of area.

(b) Determining the amount of federal funds available for the project, and taking appropriate measures to ensure that the project will qualify for the maximum amounts of federal funds practicable under the circumstances.

"Federal funds" means any construction and equipment moneys provided by the federal government to a community college district for the project or any part of the project, which are or will be available to the district for the project.

(c) Determining the total cost of the project, reducing the total cost by the amount of federal funds available therefor, and determining the remainder thereof to be borne by the state, or, if the district has matching funds, by the state and by the district.

The determination as to whether the district has funds to provide all or part of its matching share of the project shall be made on the basis of district ability. If the district ability, as determined by Section 81838, is sufficient to meet the matching costs of the project or its individual phases of planning, working drawings, construction, equipment, or land acquisition, the district shall bear its matching share of the cost of the project or one or more of its phases. If the district funds available are insufficient to provide the district's matching share for the cost of the project or one or more of its phases, computed pursuant to Section 81838, the district shall provide the moneys available, as defined by the board of governors, and state funds may be requested to provide the balance of funds required.

(d) Determining the total of funds required for the first phase of the project to be provided on a matching basis by the state and the district, and the total state appropriation required to be provided for the project or one or more of its phases.

SEC. 5. Section 81833 of the Education Code is amended to read:

81833. A proposed project submitted by the governing board of a community college district to the chancellor pursuant to Section 81830 prior to February 1st of each year shall be finally acted upon by the chancellor pursuant to Section 81831 on or before the next succeeding May 1st of each year.

SEC. 6. Section 81837 of the Education Code is amended to read:

81837. The governing board of each community college district, except districts governed by a city board of education, before letting any contract or contracts totaling one hundred fifty thousand dollars ($150,000), or more, in the erection of any new community college facility, or for any addition to, or alteration of, an existing community college facility, shall submit plans therefor to the chancellor's office, and obtain the written approval of the plans by that office. No contract for construction made by any governing board of a community college district contrary to the provisions of this section is valid, nor shall any public money be paid for erecting, adding to, or altering any facility in contravention of this section.

SEC. 7. Section 81840 of the Education Code is repealed.

CHAPTER 1117

An act to add Chapter 2 (commencing with Section 200) to Part 1 of Division 1 of Title 1 of the Education Code, relating to discrimination.

[Approved by Governor September 16, 1982. Filed with Secretary of State September 17, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 2 (commencing with Section 200) is added to Part 1 of Division 1 of Title 1 of the Education Code, to read:

CHAPTER 2. PROHIBITION OF DISCRIMINATION ON THE BASIS OF SEX

Article 1. Declaration of Purpose

200. It is the policy of the State of California to afford all persons, regardless of their sex, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

Article 2. Definitions

210. For purposes of this chapter, "educational institution" means a public or private preschool, elementary, or secondary school or institution; a public or private institution of vocational, professional, or postsecondary education; the governing board of a school district; the governing board of a community college district; the Regents of the University of California; the Trustees of the California State University, or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.

211. For purposes of this chapter, "governing board" means the governing board of a school district or the governing board of a community college district.

212. For purposes of this chapter, "sex" means the biological condition or quality of being a male or female human being.

213. For purposes of this chapter, "state financial assistance" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any students admitted to the educational institution.

State financial assistance shall include, but not be limited to, all of the following:

(a) Grants of state property, or any interest therein.

(b) Provision of the services of state personnel.

(c) Funds provided by contract, tax rebate, appropriation, allocation, or formula.

214. For purposes of this chapter, "state student financial aid" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution. State student financial aid shall include, but not be limited to, scholarships, loans, grants, or wages.

Article 3. Prohibition of Sex Discrimination

220. No person shall be subjected to discrimination on the basis of sex in any program or activity conducted by an educational institution which receives or benefits from state financial assistance or enrolls students who receive state student financial aid.

221. This article shall not apply to an educational institution which is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

222. This article shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine.

223. This article shall not apply to the membership practices of any of the following:

(a) A social fraternity or social sorority which is exempt from taxation under subdivision (a) of Section 501 of the federal Internal Revenue Code of 1954, whose active membership consists primarily of students in attendance at an institution of higher education.

(b) The Young Men's Christian Association, Young Women's Christian Association, girl scouts, boy scouts, camp fire girls, or voluntary youth service organizations which are exempt from taxation under subdivision (a) of Section 501 of the federal Internal Revenue Code of 1954, whose membership has traditionally been limited to persons of one sex, and principally to persons of less than 19 years of age.

224. This article shall not apply to any of the following:

(a) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.

(b) Any program or activity of any secondary educational institution specifically for any of the following purposes:

(1) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.

(2) The selection of students to attend any of those conferences.

225. This article shall not preclude father-son or mother-daughter activities at an educational institution, provided that if such activities

are offered for students of one sex, opportunities for reasonably comparable activities are offered for students of the other sex.

226. This article shall not apply to any scholarship or other financial assistance awarded by a postsecondary educational institution to any individual upon the basis of a combination of factors related to the individual's personal appearance, poise, and talent as an award in any pageant in which participation is limited exclusively to individuals of one sex, provided that the pageant complies with other nondiscrimination provisions of state and federal law.

227. In regard to admissions to educational institutions, this article shall apply only to institutions of vocational, professional, or postgraduate education, and to public postsecondary education institutions.

228. In regard to admissions to educational institutions, this article shall not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

229. Nothing contained in this article shall be construed to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in, or receiving the benefits of, any state supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, district, or other area. However, this section shall not be construed to prevent the consideration in any hearing or proceeding under this article of statistical evidence which tends to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any state-supported program or activity by the members of one sex.

230. For purposes of this chapter, discrimination on the basis of sex shall include, but not be limited to, the following practices:

(a) On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity.

(b) On the basis of sex, provision of different amounts or types of student financial aid, limitation of eligibility for student financial aid, or the application of different criteria to applicants for student financial aid or for participation in the provision of student financial aid by others. Nothing in this subdivision shall be construed to prohibit an educational institution from administering, or assisting in the administration of, scholarships, fellowships, or other forms of student financial aid, established pursuant to domestic or foreign wills, bequests, trusts, or similar legal instruments or by acts of a foreign government, which require that awards be made to members of a particular sex; provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of student financial aid does not discriminate on the basis of

sex.

(c) On the basis of sex, exclusion from participation in or denial of equivalent opportunity in athletic programs. For purposes of this subdivision, "equivalent" means equal or equal in effect.

(d) On the basis of sex, discrimination among persons, including, but not limited to, students and nonstudents, or academic and nonacademic personnel, in employment and the conditions thereof, except as it relates to a bona fide occupational qualification.

(e) On the basis of sex, the application of any rule concerning the actual or potential parental, family, or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions.

231. Nothing herein shall be construed to prohibit any educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes, so long as comparable facilities are provided.

232. The State Board of Education, the Board of Governors of the California Community Colleges, and the Trustees of the California State University shall issue rules, regulations, or orders to implement the provisions of this chapter.

The Regents of the University of California may issue rules, regulations, or orders to implement the provisions of this chapter.

Article 4. Instructional Materials

240. Governing boards of school districts shall adopt instructional materials in accordance with the provisions of Section 60040.

Article 5. Compliance

250. Prior to receipt of any state financial assistance or state student financial aid, an educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the educational institution will be conducted in compliance with the provisions of this chapter and all other applicable provisions of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the educational institution, may be provided for all the programs and activities conducted by an educational institution.

251. A school district or a community college district shall submit timely, complete, and accurate compliance reports to the State Department of Education or to the chancellor's office, as those entities may require.

All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

Article 6. Enforcement

260. The governing board of a school district shall have the responsibility for ensuring that district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, and for monitoring compliance with any and all rules and regulations promulgated pursuant to Section 11138 of the Government Code.

261. The provisions of this chapter shall be implemented pursuant to existing regulations and procedures promulgated pursuant to Section 11138 of the Government Code, governing the filing and handling of written complaints of prohibited discrimination.

262. (a) The governing board of a community college district shall have the primary responsibility for ensuring that district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for all of the following:

(1) Reviewing original complaints of alleged unlawful discrimination filed pursuant to Section 59328 of Title 5 of the California Administrative Code.

(2) Reviewing reports of the nature and extent of the investigation of each complaint conducted by the district.

(3) Reviewing reports of any actions taken by the district to resolve each complaint.

(4) Monitoring the compliance of each district with any and all regulations promulgated pursuant to Section 11138 of the Government Code.

263. The California Postsecondary Education Commission shall report to the Legislature and Governor on the representation and utilization of ethnic minorities and women among academic, administrative, and other employees at the commmunity colleges, the California State University, and the University of California, pursuant to Sections 66903.1 and 66903.3.

264. No provision of this chapter shall be applicable to the University of California unless the Regents of the University of California, by resolution, make the provision applicable.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 3. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by

that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1329

An act to amend Sections 52302.3, 52520, and 78016 of, and to add Section 8285.5 to, the Education Code, to add Division 8 (commencing with Section 15000) to, to repeal Section 10524 of, and to repeal Chapter 3 (commencing with Section 10000) of Part 1 of Division 3 of, the Unemployment Insurance Code, and to amend Section 11200 of, and to repeal and add Section 11205 to, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to modify provisions relating to public social services programs.

SEC. 2. Section 8285.5 is added to the Education Code, to read:

8285.5. (a) Notwithstanding any other provision of this chapter, at such times as the Superintendent of Public Instruction proposes to expand child care and development services either within an existing facility or within a newly established child care and development facility, he or she shall submit a written proposal to the county private industry council, established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, for each county wherein the proposed expansion is to occur.

(b) The written proposal shall describe the proposed number of additional children to be served, the proposed location of these

services, the amount of additional funding to be allocated within the county, and any other pertinent information the superintendent may deem useful and necessary.

(c) Following the review of the written proposal by the county private industry council, the Superintendent of Public Instruction shall receive comments submitted by each county's private industry council, and shall, to the maximum extent feasible, incorporate the findings and recommendations of each county council into the actual planned expansion of child care services to be implemented within the county.

(d) Nothing herein shall be construed to preclude the Superintendent of Public Instruction from contacting a county's private industry council prior to the development of any expansion proposal in order to obtain the council's advice and recommendations relating to child care and development services needs occurring within the county.

(e) For the purposes of this section, the term "expansion of child care and development services" means any increase during a calendar year in a county's aggregate average daily enrollment of children receiving subsidized child care services pursuant to the provisions of this chapter above the aggregate average daily enrollment which exists in a county on January 1 of that year.

SEC. 3. Section 52302.3 of the Education Code is amended to read:

52302.3. (a) Every vocational course or program offered by a school district or community college district or districts or county superintendent or superintendents sponsoring a regional occupational center or program shall be reviewed every two years by the appropriate governing body to assure that each such course or program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any course or program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing body shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the county private industry council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) The provisions of this section shall apply to each course or program commenced subsequent to the effective date of this section.

SEC. 4. Section 52520 of the Education Code is amended to read:

52520. (a) Every vocational or occupational training program for adults offered by any high school district or unified school district shall be reviewed every two years by the governing board to assure

that each such program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the County Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) The provisions of this section shall apply to each program commenced subsequent to the effective date of this section.

SEC. 5. Section 78016 of the Education Code is amended to read:

78016. (a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to assure that each such program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the County Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) The provisions of this section shall apply to each program commenced subsequent to the effective date of this section.

SEC. 6. Chapter 3 (commencing with Section 10000) of Part 1 of Division 3 of the Unemployment Insurance Code is repealed.

SEC. 7. Section 10524 of the Unemployment Insurance Code is repealed.

SEC. 8. Division 8 (commencing with Section 15000) is added to the Unemployment Insurance Code, to read:

DIVISION 8. FAMILY ECONOMIC SECURITY: JOB PREPARATION AND TRAINING SERVICES

CHAPTER 1. GENERAL PROVISIONS

15000. The Legislature finds and declares that many

recommendations shall discuss methods by which a portion of the program savings achieved from the provisions contained in this act could be utilized to improve and expand existing child care services. The recommendations required by this section shall be completed and submitted to the State Department of Social Services for inclusion in the report required under Section 12.

SEC. 14. It is the intent of the Legislature that resources and personnel necessary for the implementation of this act be drawn from existing resources and personnel within the State Department of Social Services and the Employment Development Department, except to the extent that federal funds are available to defray the costs of the activities mandated under Section 12.

SEC. 15. The Employment Development Department and the State Department of Social Services shall seek such waivers as are necessary from the federal government for purposes of implementation of this act.

SEC. 16. If any provision of this act or the application thereof to any person or circumstance is held invalid by reason of the federal government's unwillingness to grant the waivers necessary to implement that provision, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and in this respect the provisions of this act are severable. If any provision held invalid because of failure to receive necessary federal waivers, the program shall be operated as consistently as feasible with the legislative intent related to that provision within the requirements of federal law.

SEC. 17. The Family Economic Security Program: Job Preparation and Training Services shall be in effect in all counties of this state by December 31, 1983.

SEC. 18. The Legislature presumes that Congress will enact federal employment and training funding legislation consistent with the provisions contained herein. Unless and until the legislation is enacted, and for so long as the federal Comprehensive Employment and Training Act of 1973, as amended, remains in effect, the provisions of this act shall remain inoperative.

SEC. 19. Nothing in this act shall be construed so as to hold counties liable for the costs of implementing any new duty or higher level of service provided for under this act.

CHAPTER 143

An act to amend Section 2902 of the Business and Professions Code, to amend Section 2080.9 of the Civil Code, to amend Sections 8080, 8081, 8084, 10000, 10001, 10003, 10101, 10103, 10105, 12090, 22509, 23918, 23921, 32220, 32221, 32320, 33031, 33113, 33115, 39363.5, 44212, 44315, 44521, 44522, 44525, 44528, 44529, 44531, 44534, 44574, 44585, 44857, 52342, 54405, 54632, 59006, 59143, 59211, 60313, 66010, 66011, 66016, 66102, 66202, 66203, 66300, 66500, 66601, 66605, 66606, 66607, 66609, 66901, 66903.1, 66904, 67003, 67124, 67146, 68011, 68012, 68022, 68040, 68121, 68123, 68124, 68133, 69271, 69534.3, 69620, 69621, 69622, 69624, 69625, 69626, 69627, 70022, 78001, 81363.5, 84500, 87463, 89001, 89004, 89006, 89030, 89031, 89032, 89033, 89034, 89036, 89037, 89038, 89040, 89041, 89044, 89045, 89046, 89047, 89060, 89063, 89064, 89080, 89082, 89084, 89200, 89210, 89211, 89222, 89230, 89301, 89302, 89304, 89330, 89333, 89400, 89502, 89503, 89508, 89515, 89520, 89530, 89542.5, 89545, 89550, 89552, 89560, 89561, 89701, 89702, 89703, 89704, 89706, 89707, 89708, 89710, 89722, 89723, 89724, 89725, 89750, 89753, 89756, 89758, 89901, 89902, 89903, 89905, 90002, 90011, 90073, 90074, 90075, 90077, 90078, 90100, 90101, 90126, 90400, 90401, 90420, 90510, and 94302 of, to amend the heading of Article 4 (commencing with Section 37050) of Chapter 1 of Part 22 of, to amend the heading of Chapter 8 (commencing with Section 66600) of Part 40 of, to amend the heading of Article 7 (commencing with Section 69620) of Chapter 2 of Part 42 of, to amend the heading of Division 8 (commencing with Section 89000) of, to amend the heading of Part 55 (commencing with Section 89000) of, and to amend the heading of Article 3 (commencing with Section 89560) of Chapter 5 of Part 55 of, the Education Code, to amend Section 12041 of the Food and Agricultural Code, to amend Sections 7.6, 3202, 3560, 3561, 3562, 3569.5, 3572, 3586, 3592, 4451, 4475, 8832, 11121.5, 11126, 14903, 15854.5, 15861, 16304.6a, 16315, 20023.4, 20023.5, 20815, 22816.5, 50330, and 50330.4 of the Government Code, to amend Section 551 of the Health and Safety Code, to amend Section 10203.1 of the Insurance Code, to amend Section 1720.3 of the Labor Code, to amend Sections 602.10,

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SEC. 44. Section 66010 of the Education Code is amended to rea

66010. Public higher education consists of (a) all publi community colleges, (b) the California State University, and eac campus, branch, and function thereof, (c) each campus, branch, an function of the University of California, and (d) the Californi Maritime Academy.

SEC. 45. Section 66011 of the Education Code is amended to rea

66011. It is hereby declared to be the policy of the Legislatur that all resident applicants to California institutions of public highe education, who are determined to be qualified by law or by admission standards established by the respective governing boards should be admitted to either (1) the public community colleges, (2) the California State University, or (3) the University of California

SEC. 46. Section 66016 of the Education Code is amended to read

66016. It is the intent of the Legislature that opportunities fo participation in intercollegiate athletic programs in the community colleges, in the campuses of the California State University, and in the campuses of the University of California be provided on as equa a basis as is practicable to male and female students.

The costs of providing these equal opportunities may vary according to the type of sports contained within the respective men's and women's athletic programs. Therefore it is also the intent of the Legislature that additional sources of revenue should be determined to provide additional funds for these equal opportunity programs.

SEC. 47. Section 66102 of the Education Code is amended to read:

66102. For purposes of this chapter, "public higher education" shall consist of (a) all public community colleges, (b) the California State University, and each campus, branch, and function thereof, (c) each campus, branch, and function of the University of California, and (d) the California Maritime Academy.

SEC. 48. Section 66202 of the Education Code is amended to read:

66202. It is further the intent of the Legislature that the following categories be established, insofar as practicable in the following order, for the purpose of enrollment planning and admission priority practice at the undergraduate resident student level for the California State University and the University of California:

(1) Continuing undergraduate students in good standing.

(2) California residents who have successfully completed the first two years of their baccalaureate program.

(3) California residents entering at the freshman or sophomore levels.

It is further the intent of the Legislature that within each of the preceding enrollment categories, the following groups of applicants receive priority consideration in admissions practice in the following order:

(a) Residents of California who are recently released veterans of the armed forces of the United States.

(b) Transfers from California public community colleges.

(c) Applicants who have been previously enrolled at the campus

during the 1983 calendar year, which takes effect on or before January 1, 1983, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act.

CHAPTER 537

An act to amend Sections 8285.5, 52302.3, 52520, and 78016 of the Education Code, to amend Section 14999.1 of the Government Code, to amend Sections 15001, 15010, 15011, 15020, 15021, 15022, 15023, 15024, 15025, 15026, 15027, 15028, 15029, 15030, 15031, 15032, 15036, 15040, 15041, 15042, 15043, 15044, 15045, 15046, 15050, 15051, 15052, 15053, 15055, 15056, 15057, 15058, 15063, 15070, 15071, 15072, 15073, 15080, 15081, 15082, and 15087 of, to amend the headings of Chapter 3 (commencing with Section 15020) and Chapter 5 (commencing with Section 15040) of Division 8 of, to add Chapter 1.5 (commencing with Section 15005) and Chapter 7.5 (commencing with Section 15075) to Division 8 of, to add Sections 15009, 15029.5, 15034.5, and 15037.3 to, and to repeal Sections 15032.5 and 15047 of, the Unemployment Insurance Code, and to amend Sections 12, 17, and 19 of Chapter 1329 of the Statutes of 1982, relating to economic development and job training, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 28, 1983. Filed with Secretary of State July 28, 1983.]

The people of the State of California do enact as follows:

SECTION 1. Section 8285.5 of the Education Code is amended to read:

8285.5. (a) Notwithstanding any other provision of this chapter,

body shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local private industry council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) The provisions of this section shall apply to each course or program commenced subsequent to the effective date of this section.

SEC. 3. Section 52520 of the Education Code is amended to read:

52520. (a) Every vocational or occupational training program for adults offered by any high school district or unified school district shall be reviewed every two years by the governing board to assure that each such program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) The provisions of this section shall apply to each program commenced subsequent to the effective date of this section.

SEC. 4. Section 78016 of the Education Code is amended to read:

78016. (a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to assure that each such program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) The provisions of this section shall apply to each program commenced subsequent to the effective date of this section.

SEC. 4.5. Section 14999.1 of the Government Code is amended to

delivery areas of this state by October 1, 1983.

SEC. 52. Section 19 of Chapter 1329 of the Statutes of 1982 is amended to read:

Sec. 19. Nothing in this act shall be construed so as to hold local units of government liable for the costs of implementing any new duty or higher level of service provided for under this act.

SEC. 53. It is the intent of the Legislature that state personnel and resources presently supporting programs specified in Section 15082 of the Unemployment Insurance Code, as amended by this act, be organized into a single administrative entity either as a major division within an existing state department or as a new state department. The purposes of the reorganization are to:

(1) Promote the intent and purposes of the Family Economic Security Program: Job Preparation and Training Services,

(2) Achieve integration of, and response to policies and direction provided by the state Job Training Coordinating Council,

(3) Assure the investment in job training programs results in a more skilled work force, and

(4) Produce cost savings through administrative efficiencies.

SEC. 54. The Governor shall conduct a study to determine the appropriate state organizational structure required to achieve the Legislature's intent and purposes. On the basis of findings from the study, the Governor is hereby authorized to submit to the Legislature a reorganization plan, pursuant to Article 7.5 (commencing with Section 12080) of Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code, which accomplishes the intent and purposes of this section. The Governor's reorganization plan shall be submitted to the Legislature by January 1, 1986. In the event the Governor determines that no reorganizational changes should be undertaken, he shall, by that same date, submit to the Legislature a report which describes the findings and conclusions supporting the determination.

SEC. 55. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the state to meet the requirements of the federal Job Training Partnership Act of 1982 and to conform with the requirements of federal law at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 1371

An act to amend Section 230 of, and to add Section 212.5 to, the Education Code, relating to education.

[Approved by Governor September 25, 1984. Filed with Secretary of State September 26, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 212.5 is added to the Education Code, to read:

212.5. For purposes of this chapter, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

SEC. 2. Section 230 of the Education Code is amended to read:

230. For purposes of this chapter, harassment and other discrimination on the basis of sex include, but are not limited to, the following practices:

(a) On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to harassment or other discrimination in, any academic, extracurricular, research, occupational training, or other program or activity.

(b) On the basis of sex, provision of different amounts or types of student financial aid, limitation of eligibility for student financial aid, or the application of different criteria to applicants for student financial aid or for participation in the provision of student financial aid by others. Nothing in this subdivision shall be construed to prohibit an educational institution from administering, or assisting in the administration of, scholarships, fellowships, or other forms of student financial aid, established pursuant to domestic or foreign wills, bequests, trusts, or similar legal instruments or by acts of a foreign government, which require that awards be made to

members of a particular sex; provided, that the overall effect of the award of these sex-restricted scholarships, fellowships, and other forms of student financial aid does not discriminate on the basis of sex.

(c) On the basis of sex, exclusion from participation in, or denial of equivalent opportunity in, athletic programs. For purposes of this subdivision, "equivalent" means equal or equal in effect.

(d) On the basis of sex, harassment or other discrimination among persons, including, but not limited to, students and nonstudents, or academic and nonacademic personnel, in employment and the conditions thereof, except as it relates to a bona fide occupational qualification.

(e) On the basis of sex, the application of any rule concerning the actual or potential parental, family, or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 4. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1467

An act to add Article 1.5 (commencing with Section 78210) to Chapter 2 of Part 48 of the Education Code, relating to community colleges, and making an appropriation therefor.

[Approved by Governor September 30, 1986. Filed with Secretary of State September 30, 1986.]

I am reducing the appropriation contained in Section 2(a) of Assembly Bill No. 3 from $55,196,000 to $6,151,000.

The reductions are reflected as follows:

Section 2(1) I eliminate this appropriation

Section 2(2) $34,296,000 to $6,151,000.

The reduction has two effects:

1. It will eliminate the one-half-year funding provided in the bill for matriculation.

2. It will provide, after taking into consideration the fiscal impact of AB 216 which I have previously signed, one-half of full funding for community colleges with declining average daily attendance.

When the 1987–88 legislative session convenes, it is my intention to seek full funding for the matriculation (which was funded for one-half-year only) and the remaining one-half of the declining average daily attendance provisions. I support full funding of the matriculation program which was added to my Budget and the declining average daily attendance provisions which I included in my Budget. However, because of the Legislature's failure to complete their own budget process, I am obligated to make these reductions in order to protect California's fiscal integrity. When the Legislature sent me their budget in June, they relied upon an additional $302 million in income. I set aside funding for these programs, awaiting the necessary legislation implementing the Legislature's budget action. Unfortunately, the Legislature has failed to send me a bill fully funding these programs, thus requiring this action.

With this reduction, I approve Assembly Bill No. 3.

GEORGE DEUKMEJIAN, Governor

152550

The people of the State of California do enact as follows:

SECTION 1. Article 1.5 (commencing with Section 78210) is added to Chapter 2 of Part 48 of the Education Code, to read:

Article 1.5. Student Matriculation

78210. This article shall be known and may be cited as the Seymour-Campbell Matriculation Act of 1986.

78211. It is the intent of the Legislature to do all of the following:

(a) Ensure equal education opportunity for all Californians.

(b) Ensure that students receive the educational services necessary to optimize their opportunities for success.

(c) Provide students with the information to establish realistic educational goals, and ensure that the matriculation process does not exclude students from receiving appropriate educational services at community colleges.

78211.5. (a) The Chancellor of the California Community Colleges shall initially provide for full implementation of the matriculation services specified in Section 78212 in as many community colleges as the funds appropriated for this purpose allow.

(b) Because of the need to develop and evaluate data on a standard statewide basis concerning the implementation and effectiveness of the matriculation services described in this article, any college or district receiving funding under this article shall agree to carry out its provisions as specified, but shall be bound to that agreement only for the period during which funding is received pursuant to this article. The obligations of the college or district under the agreement shall include, but not be limited to, the expenditure of funds received pursuant to this article for only those matriculation services approved by the chancellor and the contribution toward the purposes of this article of such matching funds as the chancellor may require pursuant to Section 78216.

78212. (a) For purposes of this article, "matriculation" means a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational objectives. The agreement involves the responsibilities of both parties to attain those objectives through the college's established programs, policies, and requirements.

The student's responsibilities under the agreement include the expression of at least a broad educational intent upon enrollment, the declaration of a specific educational objective within a reasonable period after enrollment, diligence in class attendance and completion of assigned coursework, and the completion of courses and maintenance of progress toward an educational goal according to standards established by the college, the district, and the state.

(b) Matriculation services to be made available by the colleges shall include, but are not limited to, all of the following:

(1) Processing of the application for admission.

(2) Orientation and preorientation services designed to provide to students, on a timely basis, information concerning campus procedures, academic expectations, financial assistance, and any other matters the college or district finds appropriate.

(3) Assessment and counseling upon enrollment, which shall include, but not be limited to, all of the following:

(A) Administration of assessment instruments to determine student competency in computational and language skills.

(B) Assistance to students in the identification of aptitudes, interests and educational objectives, including, but not limited to, associate of arts degrees, transfer for baccalaureate degrees, and vocational certificates and licenses.

(C) Evaluation of student study and learning skills.

(D) Referral to specialized support services as needed, including, but not limited to, federal, state, and local financial assistance; health services; campus employment placement services; extended opportunity programs and services provided pursuant to Article 8 (commencing with Section 69640) of Chapter 2 of Part 42; campus child care services provided pursuant to Article 4 (commencing with Section 8225) of Chapter 2 of Part 6; programs that teach English as a second language; and disabled student services provided pursuant to Chapter 14 (commencing with Section 67300) of Part 40.

(E) Advisement concerning course selection.

(4) Postenrollment evaluation of each student's progress, and required advisement or counseling for students who are enrolled in remedial courses, who have not declared an educational objective as required, or who are on academic probation, as defined by standards adopted by the Board of Governors of the California Community Colleges and community college districts.

78213. (a) No district or college may use any assessment instrument for the purposes of this article without the authorization of the chancellor. The chancellor may adopt a list of authorized assessment instruments pursuant to the policies and procedures developed pursuant to this section and the intent of this article. The chancellor may waive this requirement as to any assessment instrument pending evaluation.

(b) The chancellor shall review all assessment instruments to ensure that they meet all of the following requirements:

(1) Assessment instruments shall be sensitive to cultural and language differences between students.

(2) Assessment instruments shall be used as an advisory tool to assist students in the selection of an educational program.

(3) Assessment instruments shall not be used to exclude students from admission to community colleges.

(c) The chancellor shall establish an advisory committee to review and make recommendations concerning all assessment instruments used by districts and colleges pursuant to this article.

78214. (a) All participating districts shall, with the assistance of the chancellor, establish and maintain institutional research to

evaluate the effectiveness of the matriculation services described by this article and of programs and services designed to remedy students' skills deficiencies.

(b) The data base for this research shall include, but not be limited to:

(1) Prior educational experience, including transcripts when appropriate, as determined by the chancellor.

(2) Educational objectives.

(3) Criteria for exemption from assessment or required counseling or advisement, if applicable.

(4) Need for financial assistance.

(5) Ethnicity, sex, and age.

(6) Academic performance.

(7) Any additional information that the chancellor finds appropriate.

(c) The evaluation provided for by this section shall include an assessment of the effectiveness of the programs and services in attaining at least the following objectives:

(1) Helping students to define their educational goals.

(2) Assisting institutions in the assessment of students' educational needs.

(3) Matching institutional resources with students' educational needs.

(4) Providing students with specialized support services as referred to in subdivision (b) of Section 78212.

78215. The Board of Governors of the California Community Colleges shall establish criteria for exempting students from participation in orientation, assessment testing, or required counseling or advisement under this article.

78216. (a) The Legislature recognizes that community college districts are currently funding various components of student matriculation through existing counseling, assessment, and other student services, but that adequate student matriculation cannot be realized without supplemental funding support.

(b) The chancellor shall develop a formula for funding student matriculation services at community colleges. The formula shall include the requirement that the districts or colleges contribute matching funds in an amount to be established by the chancellor in each case, and shall reflect, but not be limited to, all of the following considerations:

(1) The number of students to receive matriculation services at each college.

(2) The levels of support for matriculation services provided at each college prior to July 1, 1985, and the need for funding assistance in the implementation of the program set forth in this article.

(3) The relative needs for matriculation services, based on special student populations such as low-income students, students with language differences, students with physical and learning disabilities, and students in need of remedial instruction.

(4) The requirement that funds for matriculation services be expended only for services approved by the chancellor.

(5) The requirement that any district or college receiving funding pursuant to this section agree to implement this article during the period in which it receives that funding.

(6) The need for computer hardware and software to provide approved matriculation services, and for institutional research personnel for ongoing evaluation.

(c) The chancellor shall require participating colleges to develop a plan for student matriculation that reflects all of the following:

(1) A method for providing the services specified in Section 78212.

(2) The college budget for the matriculation services pursuant to Sections 78212 and 78214.

(3) The development and training of staff and faculty to implement the matriculation services.

(4) In multicampus districts, the coordination of the college matriculation plan with other college plans.

(5) Computerized information services and institutional research and evaluation necessary for implementation of this article.

(d) The chancellor may allocate up to 5 percent of the total funds appropriated for student matriculation for state administrative operations to carry out the intent of this article, subject to the review of the annual budget process.

78217. (a) By no later than January 30, 1987 and prior to the allocation of any funding for purposes of this article to local districts, the chancellor shall provide the Department of Finance, Legislative Analyst, California Postsecondary Education Commission, and the education policy committees and the fiscal committees of the Legislature with a comprehensive management plan for implementation of matriculation programs pursuant to the provisions of this article.

(b) On or before March 15, 1989, the chancellor shall submit a report to the Legislature evaluating the effectiveness of those community college matriculation programs receiving funding under this article for the 1986–87 academic year. The report shall cover operation of the programs during the 1986–87 and 1987–88 fiscal years, and shall include the chancellor's recommendations regarding the improvement of student matriculation, the continued operation of student matriculation services, and the funding of those services. The chancellor shall include in the report information on the success rate of students who enroll in courses contrary to the recommendations and advice of college advisement staff.

(c) On or before March 15 of each year thereafter, the chancellor shall provide a progress report to the Legislature on the implementation of this article. The chancellor may require participating districts or colleges to provide data for the completion of these reports.

(d) No later than January 1, 1986, the chancellor shall appoint an advisory committee to assist in the development of the evaluation

required by this section; however, the Legislature recognizes that to promote the effective implementation of this program, the chancellor may wish to appoint the advisory committee prior to that date.

(e) On or before April 1, 1988, the chancellor shall submit a report to the Legislature evaluating the comparative utility of matriculation services to students with differing educational objectives.

78218. In the 1986–87 fiscal year and each fiscal year thereafter, this article shall be operative only if funds are specifically appropriated for the purposes of this article.

SEC. 2. (a) The sum of fifty-five million one hundred ninety-six thousand dollars ($55,196,000) is hereby appropriated from the General Fund to the Board of Governors of the California Community Colleges for local assistance as follows:

(1) Twenty-one million dollars ($21,000,000) for matriculation purposes pursuant to Article 1.5 (commencing with Section 78210) of Chapter 2 of Part 48 of the Education Code.

(2) Thirty-four million one hundred ninety-six thousand dollars ($34,196,000) for the purposes of augmenting category A of Item 6870-101-001 of Section 2.00 of the 1986 Budget Act (Chapter 186 of the Statutes of 1986) for community colleges with declining average daily attendance.

(b) The Legislature declares that funds appropriated by this act for matriculation purposes are for half year costs in the 1986–87 fiscal year.

EXHIBIT 3

COPIES OF CODE SECTIONS CITED

§ 212. Sex

"Sex" means the biological condition or quality of being a male or female human being.

(Added by Stats.1982, c. 1117, p. 4037, § 1. Amended by Stats.1998, c. 914 (A.B.499), § 11.)

§ 212.5. Sexual harassment

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

(Added by Stats.1984, c. 1371, § 1. Amended by Stats.1998, c. 914 (A.B.499), § 12.)

§ 213. State financial assistance

(a) "State financial assistance" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any pupils admitted to the educational institution.

(b) State financial assistance shall include, but not be limited to, all of the following:

(1) Grants of state property, or any interest therein.

(2) Provision of the services of state personnel.

(3) Funds provided by contract, tax rebate, appropriation, allocation, or formula.

(Added by Stats.1982, c. 1117, p. 4037, § 1. Amended by Stats.1998, c. 914 (A.B.499), § 14.)

§ 214. State student financial aid

"State student financial aid" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution. State student financial aid shall include, but not be limited to, scholarships, loans, grants, or wages.

(Added by Stats.1982, c. 1117, p. 4038, § 1. Amended by Stats.1998, c. 914 (A.B.499), § 15.)

§ 221.5. Policy of State; prohibited discrimination

(a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the pupil enrolled in these classes and courses.

(b) No school district shall prohibit any pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Section 51550.

(c) No school district shall require pupils of one sex to enroll in a particular class or course, unless the same class or course is also required of pupils of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a pupil, offer vocational or school program guidance to pupils of one sex that is different from that offered to pupils of the opposite sex or, in counseling pupils, differentiate career, vocational, or higher education opportunities on the basis of the sex of the pupil counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for grade 7 so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex.

(Formerly § 40, added by Stats.1976, c. 1010, § 2, operative April 30, 1997. Amended by Stats.1997, c. 36, § 1.5, eff. April 29, 1997; Stats.1990, c. 1372 (S.B.1854),§ 3. Renumbered § 221.5 and amended by Stats.1998, c. 914 (A.B.499), § 2.)

§ 221.7. School-sponsored athletic programs; prohibited sex discrimination

(a) The Legislature finds and declares that female pupils are not accorded opportunities for participation in school-sponsored athletic programs equal to those accorded male pupils. It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female pupils.

(b) Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(c) Nothing in this section shall be construed to require a school district to require competition between male and female pupils in school-sponsored athletic programs.

(Formerly § 41, added by Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1990, c. 1372 (S.B.1854), § 4. Renumbered § 221.7 and amended by Stats. 1998, c. 914 (A.B.499), § 3.)

§ 66010.2. Goals

The public elementary and secondary schools, the California Community Colleges, the California State University, the University of California, and independent institutions of higher education share goals designed to provide educational opportunity and success to the broadest possible range of our citizens, and shall provide the following:

(a) Access to education, and the opportunity for educational success, for all qualified Californians. Particular efforts should be made with regard to those who are historically and currently underrepresented in both their graduation rates from secondary institutions and in their attendance at California higher educational institutions.

(b) Quality teaching and programs of excellence for their students. This commitment to academic excellence shall provide all students the opportunity to address issues, including ethical issues, that are central to their full development as responsible citizens.

(c) Educational equity not only through a diverse and representative student body and faculty but also through educational environments in which each person, regardless of race, gender, age, disability, or economic circumstances, has a reasonable chance to fully develop his or her potential.

(Added by Stats.1991, c. 1198 (A.B.617), § 4.2.)

§ 66010.7. Intersegmental collaboration and coordination

(a) The Legislature, through the enactment of this section, expresses its commitment to encourage and support collaboration and coordination among all segments of education.

(b) Within the differentiation of segmental functions outlined in this article, the institutions of higher education shall undertake intersegmental collaboration and coordination particularly when it can do any of the following:

(1) Enhance the achievement of the institutional missions shared by the segments.

(2) Provide more effective planning of postsecondary education on a statewide basis.

(3) Facilitate achievement of the goals of educational equity.

(4) Enable public and independent higher education to meet more effectively the educational needs of a geographic region.

(5) Facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions.

(c) The leaders responsible for public and independent institutions of higher education and the Superintendent of Public Instruction shall work together to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels.

(d) The California Postsecondary Education Commission shall have responsibility for reviewing and evaluating the effectiveness of intersegmental activities in accomplishing the established goals, and shall report its findings to the Governor and Legislature biennially.

(Added by Stats.1991, c. 1198 (A.B.617), § 4.5.)

§ 66016. Equal opportunity; participation in athletics

It is the intent of the Legislature that opportunities for participation in intercollegiate athletic programs in the community colleges, in the campuses of the California State University, and in the campuses of the University of California be provided on as equal a basis as is practicable to male and female students.

The costs of providing these equal opportunities may vary according to the type of sports contained within the respective men's and women's athletic programs. Therefore it is also the intent of the Legislature that additional sources of revenue should be determined to provide additional funds for these equal opportunity programs.

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1983, c. 143, § 46.)

§ 66030. Higher education; legislative intent; responsibility of governing boards

(a) It is the intent of the Legislature that public higher education in California strive to provide educationally equitable environments which give each Californian, regardless of ethnic origin, race, gender, age, disability, or economic circumstance, a reasonable opportunity to develop fully his or her potential.

(b) It is the responsibility of the governing boards of institutions of higher education to ensure and maintain multicultural learning environments free from all forms of discrimination and harassment, in accordance with state and federal law.

(Added by Stats.1991, c. 1198 (A.B.617), § 9.)

§ 66251. Policy; purpose

It is the policy of the State of California to afford all persons, regardless of their sex, ethnic group identification, race, national origin, religion, * * * mental or physical disability, or regardless of any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, equal rights and opportunities in the postsecondary institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

(Added by Stats.1998, c. 914 (A.B.499), § 49. Amended by Stats.1999, c. 587 (A.B.537), § 7.)

§ 66252. Legislative findings and intent

(a) All students have the right to participate fully in the educational process, free from discrimination and harassment.

(b) California's postsecondary educational institutions have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.

(c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.

(d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.

(e) There is an urgent need to teach and inform students in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase students' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in postsecondary educational institutions and in society as a means of responding to potential harassment and hate violence.

(f) It is the intent of the Legislature that each postsecondary educational institution undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of students to equal educational opportunity.

(g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.

(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66260. **Definitions governing chapter**

The definitions in this article shall govern the use of the terms defined for purposes of this chapter.
(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66261. Governing board

"Governing board" means the governing board of a community college.

(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66261.5. Postsecondary educational institution

"Postsecondary educational institution" means a public or private institution of vocational, professional, or postsecondary education; the governing board of a community college district; the Regents of the University of California; or the Trustees of the California State University.

(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66262. Sex

"Sex" has the same meaning as defined in Section 212.
(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66262.5. Sexual harassment

"Sexual harassment" has the same meaning as defined in Section 212.5.
(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66263. State financial assistance

"State financial assistance" has the same meaning as defined in Section 213.

(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66264. State student financial aid

"State student financial aid" has the same meaning as defined in Section 214.
(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66270. **Prohibited discrimination**

No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

(Added by Stats.1998, c. 914 (A.B.499), § 49. Amended by Stats.1999, c. 587 (A.B.537), § 8.)

§ 66271.1. Regulations

The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California may, adopt regulations as required by law to implement this chapter.

(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66271.7. Community colleges

(a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.

(b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.

(c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

(f) The Legislature finds and declares that female students are not accorded opportunities for participation in community college athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in community college athletics be provided equally to male and female students and on an equitable basis to all students.

(g) Insofar as practicable, in apportioning public funds, community college district governing boards shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of the governing board of a community college district, or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and opportunities for participation shall include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(h) It is the further intent of the Legislature that females be given the same opportunity to participate in athletics and compete with other females in individual and team sports as is available to males who compete with other males in individual and team sports. Nothing in this section shall be construed to require a community college to require competition between male and female students in school-sponsored athletic programs.

(Formerly § 72015, added by Stats.1990, c. 1372, (S.B.1834), § 289.5. Renumbered § 66271.7 and amended by Stats.1998, c. 914 (A.B.499), § 51.)

§ 66281.5. State policy; institution's written policy

(a) It is the policy of the State of California, pursuant to Section 66251, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary educational institution of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each postsecondary educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The postsecondary educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the postsecondary educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the postsecondary educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the postsecondary educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the postsecondary educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66290. **State financial assistance or student financial aid; prerequisite institutional assurance of compliance**

Prior to receipt of any state financial assistance or state student financial aid, a postsecondary educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the postsecondary educational institution will be conducted in compliance with this chapter and all other applicable provisions of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the postsecondary educational institution, may be provided for all the programs and activities conducted by a postsecondary educational institution.

(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66291. **Community college compliance reports**

(a) A community college district shall submit timely, complete, and accurate compliance reports to the chancellor's office, as that entity may require.

(b) All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66292.3. Appeal; notice of remedies; civil remedy timing

(a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a community college district or the president of a campus of the California State University, pursuant to this article, to the Board of Governors of the California Community Colleges or the Chancellor of the California State University, as applicable.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders, may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

(c) Nothing in this chapter shall be construed to require an exhaustion of the appeal to the Board of Governors of the California Community Colleges or to the Chancellor of the California State University pursuant to subdivision (a), before civil law remedies may be purchased.

(d) Notwithstanding any other provision of law, a person who alleges that he or she is a victim of discrimination may not seek civil remedies pursuant to this section until at least 90 days have elapsed from the filing of a discrimination complaint with the local educational agency. The 90–day moratorium imposed by this subdivision does not apply to injunctive relief and is applicable only if the local educational agency has appropriately, and in a timely manner, apprised the complainant of his or her right to file a complaint.

(Added by Stats.1998, c. 914 (A.B.499), § 49.)

§ 66720. Transfer core curriculum; development, etc.; effect of completion

The Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University, with appropriate consultation with the Academic Senates of the respective segments, shall jointly develop, maintain, and disseminate a common core curriculum in general education courses for the purposes of transfer. Any person who has successfully completed the transfer core curriculum, shall be deemed to have thereby completed all lower division general education requirements for the University of California and the California State University.

(Added by Stats.1988, c. 973, § 7.)

§ 66721. Transfer core curriculum; publication and distribution

Upon development of the transfer core curriculum pursuant to Section 66720, and upon any subsequent joint revision of that curriculum, the Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University shall jointly cause the curriculum to be published and distributed to each public school in this state that provides instruction in any of the grades 7 to 12, inclusive, and to each community college in this state, with an emphasis on the communication of that information to each school or college having a high proportion of students who are members of one or more ethnic minorities. In addition, the Board of Governors shall distribute that transfer core curriculum to the State Board of Education, which shall apply that information to ensure, through its curriculum development activities, that public school pupils enrolled in any of the grades 9 to 12, inclusive, are aware of the academic requirements for preparation for higher education and may receive any necessary academic remediation in a timely manner.

(Added by Stats.1988, c. 973, § 7.)

§ 66721.5. Current transfer core curriculum; copies provided to students; availability

(a)(1) The governing board of each community college district shall direct the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum.

(2) As used in this section, "transfer core curriculum" means the lower-division, general education transfer curriculum that, pursuant to Section 66720, is fully articulated between the California Community Colleges and the California State University and University of California.

(b) A copy of the current transfer core curriculum shall be distributed to each newly admitted community college student who is enrolled in a degree or certification program and is physically in attendance at the institution.

(c) The governing board of a community college district shall ensure that the text of the current transfer core curriculum is included in the published class schedule for each academic term. Copies of the transfer core curriculum may also be made available in other locations on each campus, including, but not necessarily limited to, all of the following:

(1) The admissions office.

(2) The bookstore.

(3) The career counseling center.

(4) The veteran's affairs office.

(d) Notwithstanding subdivision (c), the governing board of a community college may, as an alternative to the methods of distribution set forth in subdivision (c), distribute copies of the current transfer core curriculum by any of the following means:

(1) During the registration process.

(2) By mail, with the registration materials or the enrollment materials, or both, or with other items sent to students.

(3) During the issuance of student identification cards.

(4) During student orientation programs.

(e) Nothing in this section shall be construed to limit the distribution of the transfer core curriculum to community college students.

(Added by Stats.2000, c. 187 (A.B.1918), § 3.)

§ 66722. **Transfer function; central institutional priority**

It is the intent of the Legislature that the transfer function shall be a central institutional priority of all segments of higher education in California, and that the segments shall have as a fundamental policy and practice the maintenance of an effective transfer system.

(Added by Stats.1991, c. 1198 (A.B.617), § 17.)

§ 66722.5. **Transfer agreement programs**

It is the intent of the Legislature that the segments of higher education shall pursue the development of transfer agreement programs that specify the curricular requirements that must be met, and the level of achievement that must be attained, by community college students in order for those students to transfer to the campus, undergraduate college, or major of choice in the public four-year segments.

(Added by Stats.1991, c. 1198 (A.B.617), § 18.)

§ 66730. **Upper division enrollment percentage of total undergraduate enrollment; programs to increase transfer students from community colleges**

(a) The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges shall have as a fundamental policy the maintenance of a healthy and expanded student transfer system. Both the University of California and the California State University shall have as a basic enrollment policy the maintenance of upper division enrollment, which are students who have attained upper division status, at 60 percent of total undergraduate enrollment. This goal shall be met through programs aimed at increasing the numbers of qualified transfer students from the community colleges without denying eligible freshmen applicants.

(1) The California State University shall maintain its upper division enrollment, which are students who have attained upper division status, at approximately 60 percent of total undergraduate enrollment. Its planning documents shall reflect this policy.

(2) Commencing in the 1991–92 academic year, the University of California shall progressively increase the percentage that upper division enrollment systemwide is of total undergraduate enrollment through the 1995–96 academic year until that percentage reaches approximately 60 percent. This shall be accomplished through increases in the numbers of community college transfer students admitted to upper division standing at the university without denying eligible freshmen applicants. Planning documents shall reflect these expected increases.

(b) The governing board of each segment shall ensure that individual university and college campus enrollment plans include adequate upper division places for community college transfer students in all undergraduate colleges or schools, and that each undergraduate college or school on each campus participates in developing articulation and transfer agreement programs with community colleges. The governing boards shall meet this goal within their respective general statewide planning framework used to attain and maintain the state's goal of a 60/40 ratio of upper to lower division students, their segmental enrollment planning processes, and campus planning regarding program balance, educational quality, and other relevant goals.

(Added by Stats.1991, c. 1188 (S.B.121), § 5.)

§ 66731. **Student matriculation from community colleges to upper division enrollment as central institutional priority**

Student matriculation from community colleges through the University of California and the California State University shall be recognized by the Governor, Legislature, and the governing boards of each of California's public postsecondary education segments as a central institutional priority of all segments of higher education.

(Added by Stats.1991, c. 1188 (S.B.121), § 5.)

§ 66732. Governing boards to design, adopt and implement policies to facilitate movement of students from community colleges through University of California and California State University

The governing boards of each segment shall declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within their segments, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. The governing boards of each segment shall design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University.

(Added by Stats.1991, c. 1188 (S.B.121), § 5.)

§ 66736. Counseling services; preference for students from economically disadvantaged families and underrepresented minorities

Each community college district governing board shall ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students.

All policies and procedures shall give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations.

(Added by Stats.1991, c. 1188 (S.B.121), § 5.)

§ 66737. **Programs of outreach, recruitment, and cooperation between and among community colleges and universities; place in upper division university program on completion of transfer agreement programs**

The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges are expected to develop new programs of outreach, recruitment, and cooperation between and among the three segments of public higher education to facilitate the successful transfer of students between the community colleges and the universities. Every community college student who successfully completes the transfer agreement programs, as defined in Section 66738, in a community college shall have an appropriate place in an upper division university program.

(Added by Stats.1991, c. 1188 (S.B.121), § 5.)

§ 66738. **Development and implementation of formal systemwide articulation agreements and transfer agreement programs; elements of comprehensive transfer system; concurrent enrollment**

(a) The governing board of each public postsecondary education segment shall be accountable for the development and implementation of formal systemwide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures to support and enhance the transfer function.

(b) The elements in a comprehensive transfer system shall include, but not be limited to, the following:

(1) Enrollment and resource planning; intersegmental faculty curricular efforts.

(2) Coordinated counseling.

(3) Financial aid and transfer services.

(4) Transfer articulation agreements and programs.

(5) Specific efforts to improve diversity.

(6) Early outreach activities.

(7) Expansion of current practices relating to concurrent enrollment of community college students in appropriate university courses.

(8) Centers.

(c) The governing board of each segment shall expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available; and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus.

(Added by Stats.1991, c. 1188 (S.B.121), § 5.)

§ 66740. **Discipline-specific articulation and transfer program agreements for majors with lower division prerequisites; priority list of community colleges**

Each department, school, and major in the University of California and California State University shall develop, in conjunction with community college faculty in appropriate and associated departments, discipline-specific articulation agreements and transfer program agreements for those majors that have lower division prerequisites. Faculty from the community colleges and university campuses shall participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency.

Where specific majors are impacted or over-subscribed, the prescribed course of study and minimum grade point average required for consideration for upper division admission to all of these majors shall be made readily available to community college counselors, faculty, and students on an annual basis. In cases where the prescribed course of study is altered by the university department, notice of the modification shall be communicated to appropriate community college faculty and counselors at least one year prior to the deadline for application to that major and implementation by the department responsible for teaching that major.

Community college districts, in conjunction with the California State University and the University of California, shall develop discipline-based agreements with as many campuses of the two university segments as feasible, and no fewer than three University of California campuses and five California State University campuses. The development of these agreements shall be the mutual responsibility of all three segments, and no one segment should bear the organizational or financial responsibility for accomplishing these goals.

The Chancellor of the California Community Colleges and the President of the University of California shall begin the process of setting priorities to determine which community colleges will receive first attention for the development of agreements. Criteria for priority determination shall include, but not be limited to, the percentage and number of students from economically disadvantaged families and underrepresented racial and ethnic minorities, and community colleges which traditionally have not transferred many students to the University of California. The priority list shall be completed by March 1, 1992. These considerations shall not be used in any way to displace current agreements between any community college and the University of California or the California State University.

The Chancellor of the California Community Colleges and the Chancellor of the California State University system shall begin the process of setting priorities to determine which community colleges will receive first attention for the development of agreements. Criteria for priority determination shall include, but not be limited to, the percentage and number of students from economically disadvantaged families and underrepresented racial and ethnic minorities, and community colleges which traditionally have not transferred many students to California State Universities. The priority list shall be completed by March 1, 1992. These considerations shall not be used in any way to displace current agreements between any community college and the University of California or the California State University.

(Added by Stats.1991, c. 1188 (S.B.121), § 5.)

§ 66741. Opportunity of community college student to enter transfer agreement program; application for admission at advanced standing level

As a result of systemwide and interinstitutional agreements, each community college student shall be assured of the opportunity to enter into a transfer agreement program enabling a student to receive high priority consideration, attain equivalent special treatment, or enter into a contract when applying for university admission at the advanced standing level. It is recognized that eligibility for transfer agreement programs will require completion of certain requirements as defined in interinstitutional agreements. It is also recognized that access to majors of choice will, in most cases, require completion of additional requirements, such as specialized coursework and attainment of a specialized grade point average.

Transfer agreement programs also shall carry high priority access to majors of choice. The University of California and the California State University shall require that continuing undergraduate students and community college transfer students are assessed against a common set of criteria for upper division standing to a specific major. However, generally speaking, access to these programs shall require completion of specialized coursework and attainment of a grade point average above the minimums defined in general admission requirements, such as those used in supplementary admission criteria for impacted or over-subscribed programs.

Alternatively, students may also, by meeting the University of California or California State University requirements for admission at the advanced standing level, simply wish to apply as required. All students meeting these admission requirements shall be guaranteed a place somewhere in the University of California or California State University system, as appropriate.

(Added by Stats.1991, c. 1188 (S.B.121), § 5.)

§ 66742. Annual statistical reports on transfer patterns

The governing boards of the three public segments of higher education shall present annual statistical reports on transfer patterns via the California Postsecondary Education Commission to the Governor and Legislature. The reports shall include recent statistics on student enrollments by campus, segment, gender, ethnicity, and the ratio of upper division to lower division, including information on both freshman and transfer student access to the system. These reports should include, to the extent that data are available or become available, data on application, admission and enrollment information for all students by sex, ethnicity, and campus. For transfer students, this data shall indicate the segment of origin for all students. In addition, data shall be separately identified for transfer students from California Community Colleges, and shall identify the subset of applications which are completed together with admission, enrollment, and declared major information for that group. The reports shall describe the number of transfer agreements, if any, whose terms and conditions were not satisfied by either the California State University or the University of California, the number of California Community College transfer students denied either admission to the student's first choice of a particular campus of the California State University or the University of California or the student's first choice of a major field of study, and, among those students, the number of students who, upon denial of either of the student's first choices, immediately enrolled at another campus of the California State University or the University of California. The reports shall also include information by sex and ethnicity on retention and degree completion for transfer students as well as for native students, and the number and percentage of baccalaureate degree recipients who transferred from a community college.

(Added by Stats.1991, c. 1188 (S.B.121), § 5.)

§ 66743. Intersegmental advisory committee on transfer access and performance; biennial report; report on overall success; legislative hearings

The California Postsecondary Education Commission is requested to convene an intersegmental advisory committee on transfer access and performance for the purposes of presenting biennial reports to the Governor and the Legislature on the status of transfer policies and programs, the diligence of each segment's board, and the effectiveness of these programs in meeting the state's goals for transfer. The report shall include information about all of the following:

(a) The effectiveness of transfer agreement programs and activities in enhancing the transfer function overall as well as the extent to which transfer program activities have been directed at students who have been historically underrepresented in the University of California and the California State University.

(b) The status of the implementation of the transfer core curriculum as described in Section 66720 for each community college, including information about the extent to which sophomore level courses needed for transfer are available on all community college campuses.

(c) Progress that has been made in achieving articulation agreements in those specific majors that have lower division prerequisites, and the dissemination of this information. The committee shall also explore methods to systematically measure the extent to which the state's goals of freshmen and transfer student access are being met, including analyses of the number of fully eligible freshmen or transfer students who are denied access to the system, and the reasons for that denial. The committee shall also address ways in which sharing of information about transfer students among the segments can be improved, including early identification of potential transfer students for intensive recruitment purposes.

* * * The Governor and the Legislature shall monitor the success of the University of California and the California State University in achieving their targeted enrollment levels and in implementing these reforms. A substantial failure to implement reform, to achieve the 60/40 ratio by the designated dates, or to * * * improve the transfer rate of historically underrepresented groups significantly, shall precipitate legislative hearings to determine the reasons why any one or all of these goals have not been met.

(Added by Stats.1991, c. 1188 (S.B.121), § 5. Amended by Stats.1995, c. 758 (A.B.446), § 38.)

§ 70901. **Board of governors; duties; rules and regulations; delegation; consultation**

(a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective

element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

§ 70901.5. Rules and regulations

(a) The board of governors shall establish procedures for the adoption of rules and regulations governing the California Community Colleges. Among other matters, the procedures shall implement the following requirements:

(1) Written notice of a proposed action shall be provided to each community college district and to all other interested parties and individuals, including the educational policy and fiscal committees of the Legislature and the Department of Finance, at least 45 days in advance of adoption. The regulations shall become effective no earlier than 30 days after adoption.

(2) The proposed regulations shall be accompanied by an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state-mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies.

(3) The board of governors shall ensure that all proposed regulations of the board meet the standards of "necessity," "authority," "clarity," "consistency,"

"reference," and "nonduplication," as those terms are defined in Section 11349 of the Government Code. A district governing board or any other interested party may challenge any proposed regulatory action regarding the application of these standards.

(4) Prior to the adoption of regulations, the board of governors shall consider and respond to all written and oral comments received during the comment period.

(5) The effective date for a regulation shall be suspended if, within 30 days after adoption by the board of governors, at least two-thirds of all governing boards vote, in open session, to disapprove the regulation. With respect to any regulation so disapproved, the board of governors shall provide at least 45 additional days for review, comment, and hearing, including at least one hearing before the board itself. After the additional period of review, comment, and hearing, the board may do any of the following:

(A) Reject or withdraw the regulation.

(B) Substantially amend the regulation to address the concerns raised during the additional review period, and then adopt the revised regulation. The regulation shall be treated as a newly adopted regulation, and shall go into effect in accordance with those procedures.

(C) Readopt the regulation as originally adopted, or with those nonsubstantive, technical amendments deemed necessary to clarify the intent of the original regulation. If the board of governors decides to readopt a regulation, with or without technical amendments, it shall also adopt a written declaration and determination regarding the specific state interests it has found necessary to protect by means of the specific language or requirements of the regulation. A readopted regulation may then be challenged pursuant to existing law in a court of competent jurisdiction, and shall not be subject to any further appeal within the California Community Colleges.

(6) As to any regulation which the Department of Finance determines would create a state-mandated local program cost, the board of governors shall not adopt the regulation until the Department of Finance has certified to the board of governors and to the Legislature that a source of funds is available to reimburse that cost.

(7) Any district or other interested party may propose a new regulation or challenge any existing regulation.

(b) Except as expressly provided by this section, and except as provided by resolution of the board of governors, the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to regulations adopted by the board of governors.

(Added by Stats.1988, c. 973, § 8, operative Jan. 1, 1990.)

Operative Jan. 1, 1990

§ 70902. Governing boards; rules and regulations; duties; authority; delegation

(a) Every community college district shall be under the control of a board of trustees, which is referred to herein as the "governing board." The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.

The governing board of each community college district shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district.

(b) In furtherance of the provisions of subdivision (a), the governing board of each community college district shall do all of the following:

(1) Establish policies for, and approve, current and long-range academic and facilities plans and programs and promote orderly growth and development of the community colleges within the district. In so doing, the governing board shall, as required by law, establish policies for, develop, and approve, comprehensive plans. The governing board shall submit the comprehensive plans to the board of governors for review and approval.

(2) Establish policies for and approve courses of instruction and educational programs. The educational programs shall be submitted to the board of governors for approval. Courses of instruction that are not offered in approved educational programs shall be submitted to the board of governors for approval. The governing board shall establish policies for, and approve, individual courses that are offered in approved educational programs without referral to the board of governors.

(3) Establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors.

(4) Employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors and establish employment practices, salaries, and benefits for all employees not inconsistent with the laws of this state.

(5) To the extent authorized by law, determine and control the district's operational and capital outlay budgets. The district governing board shall determine the need for elections for override tax levies and bond measures and request that those elections be called.

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(6) Manage and control district property. The governing board may contract for the procurement of goods and services as authorized by law.

(7) Establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right to participate effectively in district and college governance, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(8) Establish rules and regulations governing student conduct.

(9) Establish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law.

(10) In its discretion, receive and administer gifts, grants, and scholarships.

(11) Provide auxiliary services as deemed necessary to achieve the purposes of the community college.

(12) Within the framework provided by law, determine the district's academic calendar, including the holidays it will observe.

(13) Hold and convey property for the use and benefit of the district. The governing board may acquire by eminent domain any property necessary to carry out the powers or functions of the district.

(14) Participate in the consultation process established by the board of governors for the development and review of policy proposals.

(c) In carrying out the powers and duties specified in subdivision (b) or other provisions of statute, the governing board of each community college district shall have full authority to adopt rules and regulations, not inconsistent with the regulations of the board of governors and the laws of this state, that are necessary and proper to executing these prescribed functions.

(d) Wherever in this section or any other statute a power is vested in the governing board, the governing board of a community college district, by majority vote, may adopt a rule delegating the power to the district's chief executive officer or any other employee or committee as the governing board may designate; provided, however, that the governing board shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of the delegation.

(Added by Stats.1988, c. 973, § 8.)

§ 71027. General common course numbering system; development, maintenance and dissemination

(a) The Board of Governors of the California Community Colleges shall develop, maintain, and disseminate a general common course numbering system for use by the community college districts.

(b) The office of the Chancellor of the California Community Colleges shall absorb the costs of developing, maintaining, and disseminating a general common course numbering system pursuant to this section within the office's existing resources.

(c) The board of governors shall report to the Legislature by January 1, 1998, on its progress in implementing this common course numbering system.

(Added by Stats.1995, c. 493 (S.B.450), § 2.)

§ 72011. Access to services, classes and programs

Every community college district shall provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex.

(Added by Stats.1981, c. 470, p. 1742, § 46.)

§ 72012. Sex discrimination

Every community college shall comply with * * *Sections 221.5, 221.7, and 66016, relating to sex discrimination.

(Amended by Stats.1998, c. 914 (A.B.499), § 50.)

§ 72013. "Handicap" and "disability"

With respect to access to community college district services, classes, and programs, and with respect to all references within this division, "handicap" and "disability" shall have the same meaning.

(Added by Stats.1990, c. 1372 (S.B.1854), § 288.5.)

§ 72014. **Organizations with discriminatory membership practices; district funds**

No funds under the control of a community college district shall ever be used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin. This section does not apply to any public funds which have been paid to an individual officer or employee of the district as salary, or to any funds which are used directly or indirectly for the benefit of student organizations.

(Added by Stats.1990, c. 1372 (S.B.1854), § 289.)

§ 78015. Job market study; area; scope

(a)(1) The governing board of a community college district, prior to establishing a vocational or occupational training program, shall conduct a job market study of the labor market area, as those terms are defined in Section 52301.5, in which it proposes to establish the program. The study shall use the State–Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information. The study shall include a California Occupational Information System supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to ensure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction.

(2) The governing board of the community college district shall make copies of each job market study available to the public.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the community college district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the community college district determines that the job market study justifies the initiation of the proposed program, it shall determine, by resolution, whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to Section 8092.

(Amended by Stats.1990, c. 1667 (S.B.1033), § 4; Stats.1995, c. 758 (A.B.446), § 104; Stats.1998, c. 365 (A.B.2214), § 1.)

§ 78016. Review of program; termination

(a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to ensure that each program, as demonstrated by the California Occupational Information System, including the State–Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information, does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) This section shall apply to each program commenced subsequent to July 28, 1983.

(e) A written summary of the findings of each review shall be made available to the public.

(Amended by Stats.1990, c. 1667 (S.B.1033), § 4.5; Stats.1998, c. 365 (A.B.2214), § 2.)

§ 78210. Short title

This article shall be known and may be cited as the Seymour-Campbell Matriculation Act of 1986.

(Added by Stats.1986, c. 1467, § 1.)

§ 78211. Legislative intent

It is the intent of the Legislature to do all of the following:

(a) Ensure equal education opportunity for all Californians.

(b) Ensure that students receive the educational services necessary to optimize their opportunities for success.

(c) Provide students with the information to establish realistic educational goals, and ensure that the matriculation process does not exclude students from receiving appropriate educational services at community colleges.

(Added by Stats.1986, c. 1467, § 1.)

§ 78211.5. **Matriculation services; establishment in community colleges; agreement by college or district; enforcement during funding**

(a) The * * * Board of Governors of the California Community Colleges shall initially provide for full implementation of the matriculation services specified in Section 78212 in as many community colleges as the funds appropriated for this purpose allow.

(b) Because of the need to develop and evaluate data on a standard statewide basis concerning the implementation and effectiveness of the matriculation services described in this article, any college or district receiving funding under this article shall agree to carry out its provisions as specified, but shall be bound to that agreement only for the period during which funding is received pursuant to this article. The obligations of the college or district under the agreement shall include, but not be limited to, the expenditure of funds received pursuant to this article for only those matriculation services approved by the * * * board of governors and the contribution toward the purposes of this article of matching funds as the * * * board of governors may require pursuant to Section 78216.

(Amended by Stats.1990, c. 1372 (S.B.1854), § 460.)

§ 78212. Matriculation defined; matriculation services

(a) For purposes of this article, "matriculation" means a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational objectives. The agreement involves the responsibilities of both parties to attain those objectives through the college's established programs, policies, and requirements.

The student's responsibilities under the agreement include the expression of at least a broad educational intent upon enrollment, the declaration of a specific educational objective within a reasonable period after enrollment, diligence in class attendance and completion of assigned coursework, and the completion of courses and maintenance of progress toward an educational goal according to standards established by the college, the district, and the state.

(b) Matriculation services to be made available by the colleges shall include, but are not limited to, all of the following:

(1) Processing of the application for admission.

(2) Orientation and preorientation services designed to provide to students, on a timely basis, information concerning campus procedures, academic expectations, financial assistance, and any other matters the college or district finds appropriate.

(3) Assessment and counseling upon enrollment, which shall include, but not be limited to, all of the following:

(A) Administration of assessment instruments to determine student competency in computational and language skills.

(B) Assistance to students in the identification of aptitudes, interests and educational objectives, including, but not limited to, associate of arts degrees, transfer for baccalaureate degrees, and vocational certificates and licenses.

(C) Evaluation of student study and learning skills.

(D) Referral to specialized support services as needed, including, but not limited to, federal, state, and local financial assistance; health services; campus employment placement services; extended opportunity programs and services provided pursuant to Article 8 (commencing with Section 69640) of Chapter 2 of Part 42; campus child care services provided pursuant to Article 4 (commencing with Section 8225) of Chapter 2 of Part 6; programs that teach English as a second language; and disabled student services provided pursuant to Chapter 14 (commencing with Section 67300) of Part 40.

(E) Advisement concerning course selection.

(4) Postenrollment evaluation of each student's progress, and required advisement or counseling for students who are enrolled in remedial courses, who have not declared an educational objective as required, or who are on academic probation, as defined by standards adopted by the Board of Governors of the California Community Colleges and community college districts.

(Added by Stats.1986, c. 1467, § 1.)

§ 78212.5. Authorized district programs

Each community college district may develop and maintain all of the following within each community college in the district:

(a) Career resource and placement centers having the purposes of maintaining information on vocational, technological and educational opportunities, and facilitating career employment.

(b) Programs to instruct appropriate staff and faculty members in the performance of matriculation services.

(c) Orientation programs designed to explain to new students academic requirements and other regulations of the community college, and the available student support services.

(d) A publicity program designed to inform the community served by the community college that the purposes of the mandatory matriculation process are intended to facilitate, rather than restrict, student access to community college instruction, and to enhance each student's awareness of his or her abilities, skills, and potential.

(e) A publicity program designed to inform high schools in the community served by the community college, through orientation programs and other means, of student skill levels, and of available student support services.

(Added by Stats.1988, c. 973, § 18.)

§ 78213. Assessment instruments

(a) No district or college may use any assessment instrument for the purposes of this article without the authorization of the * * * board of governors. The * * * board of governors may adopt a list of authorized assessment instruments pursuant to the policies and procedures developed pursuant to this section and the intent of this article. The * * * board of governors may waive this requirement as to any assessment instrument pending evaluation.

(b) The * * * board of governors shall review all assessment instruments to ensure that they meet all of the following requirements:

(1) Assessment instruments shall be sensitive to cultural and language differences between students.

(2) Assessment instruments shall be used as an advisory tool to assist students in the selection of an educational program.

(3) Assessment instruments shall not be used to exclude students from admission to community colleges.

(c) The * * * board of governors shall establish an advisory committee to review and make recommendations concerning all assessment instruments used by districts and colleges pursuant to this article.

(Amended by Stats.1990, c. 1372 (S.B.1854), § 461.)

§ 78214. Institutional research to evaluate; data base; fulfillment of objectives

(a) All participating districts shall, with the assistance of the chancellor, establish and maintain institutional research to evaluate the effectiveness of the matriculation services described by this article and of programs and services designed to remedy students' skills deficiencies.

(b) The data base for this research shall include, but not be limited to:

(1) Prior educational experience, including transcripts when appropriate, as determined by the chancellor.

(2) Educational objectives.

(3) Criteria for exemption from assessment or required counseling or advisement, if applicable.

(4) Need for financial assistance.

(5) Ethnicity, sex, and age.

(6) Academic performance.

(7) Any additional information that the chancellor finds appropriate.

(c) The evaluation provided for by this section shall include an assessment of the effectiveness of the programs and services in attaining at least the following objectives:

(1) Helping students to define their educational goals.

(2) Assisting institutions in the assessment of students' educational needs.

(3) Matching institutional resources with students' educational needs.

(4) Providing students with specialized support services as referred to in subdivision (b) of Section 78212.

(Added by Stats.1986, c. 1467, § 1.)

§ 78215. Criteria for exemptions

The Board of Governors of the California Community Colleges shall establish criteria for exempting students from participation in orientation, assessment testing, or required counseling or advisement under this article.

(Added by Stats.1986, c. 1467, § 1.)

§ 78216. Student matriculation; funding of services; formula; considerations; plan by participating colleges

(a) The Legislature recognizes that community college districts are currently funding various components of student matriculation through existing counseling, assessment, and other student services, but that adequate student matriculation cannot be realized without supplemental funding support.

(b) The * * * board of governors shall develop a formula for funding student matriculation services at community colleges. The formula shall include the requirement that the districts or colleges contribute matching funds in an amount to be established by the * * * board of governors in each case, and shall reflect, but not be limited to, all of the following considerations:

(1) The number of students to receive matriculation services at each college.

(2) The levels of support for matriculation services provided at each college prior to July 1, 1985, and the need for funding assistance in the implementation of the program set forth in this article.

(3) The relative needs for matriculation services, based on special student populations such as low-income students, students with language differences, students with physical and learning disabilities, and students in need of remedial instruction.

(4) The requirement that funds for matriculation services be expended only for services approved by the * * * board of governors.

(5) The requirement that any district or college receiving funding pursuant to this section agree to implement this article during the period in which it receives that funding.

(6) The need for computer hardware and software to provide approved matriculation services, and for institutional research personnel for ongoing evaluation.

(c) The * * * board of governors shall require participating colleges to develop a plan for student matriculation that reflects all of the following:

(1) A method for providing the services specified in Section 78212.

(2) The college budget for the matriculation services pursuant to Sections 78212 and 78214.

(3) The development and training of staff and faculty to implement the matriculation services.

(4) In multicampus districts, the coordination of the college matriculation plan with other college plans.

(5) Computerized information services and institutional research and evaluation necessary for implementation of this article.

(d) The * * * board of governors may allocate up to 5 percent of the total funds appropriated for student matriculation for state administrative operations to carry out the intent of this article, subject to the review of the annual budget process.

(Amended by Stats.1990, c. 1372 (S.B.1854), § 462.)

§ 78218. Article operative only in fiscal years specifically funded

In the 1986–87 fiscal year and each fiscal year thereafter, this article shall be operative only if funds are specifically appropriated for the purposes of this article.

(Added by Stats.1986, c. 1467, § 1.)

§ 81820. **Preparation and submission; continuing review**

* * * The governing board of each community college district shall prepare and submit to the * * * Board of Governors of the California Community Colleges a plan for capital construction for community college purposes of the district. The plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The five-year plan shall be subject to continuing review by the governing board and annually shall be extended one year, and there shall be submitted to the * * * board of governors, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the five-year plan.

(Amended by Stats.1990, c. 1372 (S.B.1854), § 571.)

§ 81821. Contents of plan

The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

(a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the community college district.

(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(e) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.

(f) An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to * * * regulations adopted by the board of governors.

(Amended by Stats.1995, c. 758 (A.B.446), § 121.)

§ 81822. **Review, evaluation, and revision**

The * * * board of governors shall review and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 81821, and shall, on the basis of the review and evaluation, make the revision and changes therein as are appropriate, and notify the district. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each community college district shall be made * * *. The * * * board of governors shall, promptly after review, notify the governing board of each community college district of the content of the district's revised plan for capital construction.

(Amended by Stats.1990, c. 1372 (S.B.1854), § 573.)

§ 81823. Submission of plan based on each college of district

(a) If a community college district maintains colleges, or one college and one or more educational centers, it may additionally submit the plan required by Section 81820 on the basis of each college or educational center maintained by the district, if either of the following circumstances is present such that students will be better served by evaluating the capital outlay program for the district on that basis: (1) the isolation of students within a district in terms of the distance of students from the location of an educational program, or inadequacy of transportation, and student financial inability to meet costs of transportation to an educational program; or (2) the inability of existing colleges and educational centers in the district to meet the unique educational and cultural needs of a significant number of ethnic students.

(b) If a district elects to submit such a plan, it shall include therewith justification and documentation for so doing.

(c) When a district so elects, the evaluation of the plan pursuant to Section 81822 shall include an evaluation of both of the following:

(1) The justification and documentation for so doing, including enrollment projections for individual campuses and centers.

(2) The plan as thus submitted.

(Added by Stats.1980, c. 910, p. 2875, § 2, eff. Sept. 17, 1980.)

§ 87100. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) In fulfilling its mission within California's system of public higher education, the California Community Colleges are committed to academic excellence and to providing all students with the opportunity to succeed in their chosen educational pursuits.

(b) Academic excellence can best be sustained in a climate of acceptance and with the inclusion of persons from a wide variety of backgrounds and preparations to provide service to an increasingly diverse student population.

(c) A workforce that is continually responsive to the needs of a diverse student population may be achieved by ensuring that all persons receive an equal opportunity to compete for employment and promotion within the community college districts and by eliminating barriers to equal employment opportunity.

(d) It is the intent of the Legislature to establish and maintain, within the California Community College districts, a policy of equal opportunity in employment for all persons, and to prohibit discrimination or preferential treatment based on ethnic group identification, race, color, national origin, religion, age, gender, disability, ancestry, or sexual orientation. Every aspect of personnel policy and practice in the community college districts should advance the realization of inclusion through a continuing program of equal employment opportunity.

(e) The Legislature recognizes that it is not enough to proclaim that community college districts must not discriminate and must not grant preferential treatment on impermissible bases. The Legislature declares that efforts must also be made to build a community in which nondiscrimination and equal opportunity are realized. It is the intent of the Legislature to require community college districts to adopt and implement programs and plans for ensuring equal employment opportunity in their employment practices.

(Added by Stats.2002, c. 1169 (S.B.2028), § 2.)

§ 87101. Purposes

For the purposes of this article:

(a) "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and fully enjoy the benefits of employment by a community college district. Ensuring equal employment opportunity is advanced in an inclusive environment that fosters cooperation, acceptance, democracy, and the free expression of ideas. An inclusive environment is welcoming to men and women, persons with disabilities, individuals from all ethnic groups, and individuals from all other groups protected from discrimination by this article.

(b) "Equal employment opportunity plan" means a document that includes specific procedures for achieving equal employment opportunity.

(c) "Equal employment opportunity program" means all the various methods by which equal employment opportunity is ensured. These methods include, but are not necessarily limited to, actively recruiting, using nondiscriminatory employment practices, and monitoring employment practices to ensure equality of opportunity. Each district employer shall commit to sustained action to devise recruiting, training, and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees.

(Added by Stats.2002, c. 1169 (S.B.2028), § 2.)

§ 87102. Affirmation of compliance with this article; equal employment opportunity plans

(a) As a condition for the receipt of funds pursuant to Section 87107, the governing board of community college district that opts to participate under the article shall periodically submit to the board of governors an affirmation of compliance with this article. Each participating district's equal employment opportunity program shall ensure participation in, and commitment to, the program by district personnel. Each participating district's equal employment opportunity plan shall include steps that the district will take in eliminating improper discrimination or preferences in its hiring and employment practices. Each plan shall address how the district will make progress in achieving the ratio of full-time to part-time faculty hiring, as indicated in Section 87482.6, while still ensuring equal employment opportunity.

(b) Each participating district's equal employment opportunity plan is a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(Added by Stats.2002, c. 1169 (S.B.2028), § 2.)

§ 87103. Assistance by board of governors

The board of governors shall render assistance in developing and implementing equal employment opportunity programs in the community college districts.

(Added by Stats.2002, c. 1169 (S.B.2028), § 2.)

§ 87105. Adoption of regulations

The board of governors shall adopt all necessary regulations to carry out the intent of this article and to ensure that each participating community college district implements processes for ensuring equal employment opportunities. Nothing in this act shall be construed to require any community college to incur any costs in excess of the funds allocated by the state for the purposes of this act.

(Added by Stats.2002, c. 1169 (S.B.2028), § 2.)

§ 87106. Systemwide strategies; model equal employment opportunity plan

(a) The board of governors shall develop systemwide strategies for encouraging community college students to become qualified for, and seek, employment as community college faculty or administrators.

(b) The board of governors shall develop and disseminate to community college districts a model equal employment opportunity plan that accomplishes at least all of the following:

(1) Compliance with the regulations adopted by the board of governors to implement this article.

(2) Compliance with the other applicable state and federal nondiscrimination statutes.

(3) Implementation of the best practices for improving the equality of opportunity.

(4) Encouragement of districts to take steps reasonably calculated to inform their students about the opportunity to participate in the Graduate Assumption Program of Loans for Education authorized by Article 5.5 (commencing with Section 69618) of Chapter 2 of Part 42 and to participate in other programs developed by the board of governors pursuant to subdivision (a).

(Added by Stats.2002, c. 1169 (S.B.2028), § 2.)

§ 87107. **Employment Opportunity Fund; establishment; administration**

In order to support the activities required and authorized by this article, the Employment Opportunity Fund is hereby established. The fund shall include moneys appropriated in the annual Budget Act or provided, pursuant to Section 87482.7, through transfer. The moneys in the fund shall be administered by the board of governors for the purpose of promoting equal employment opportunities in hiring and promotion at community college districts.

(Added by Stats.2002, c. 1169 (S.B.2028), § 2.)

§ 87108. **Regulations for use of fund; technical assistance; clearinghouse**

(a) The board of governors shall adopt regulations for the use of the fund. Those uses may include, but need not be limited to, all of the following:

(1) Activities designed to encourage community college students to become qualified for, and seek, employment as community college faculty or administrators.

(2) Outreach and recruitment.

(3) In-service training on equal employment opportunities.

(4) Accommodations for applicants and employees with disabilities.

(5) Activities to promote equal employment opportunities and implement the requirements of this article.

(b) The Board of Governors of the California Community Colleges may use not more than 25 percent of the revenues in the fund to provide technical assistance, service, monitoring, and compliance functions. Service functions under this subdivision may include, but are not necessarily limited to, the provision of a clearinghouse for advertising community college district job opportunities and for allowing persons seeking jobs to make known their interest in community college employment. This clearinghouse shall include a special emphasis on faculty internship employment opportunities and on reaching students who are qualified for faculty internship programs. The remaining balance in the fund may be allocated to the individual community college districts as prescribed by the board of governors.

(Added by Stats.2002, c. 1169 (S.B.2028), § 2.)

§ 87482.6. Districts having less than 75 percent of credit instruction taught by full-time instructors; allocation of funds; regulations; contents

(a) Until the provisions of Section 84750 regarding program-based funding are implemented by a standard adopted by the board of governors that establishes the appropriate percentage of hours of credit instruction that should be taught by full-time instructors, the Legislature wishes to recognize and make efforts to address longstanding policy of the board of governors that at least 75 percent of the hours of credit instruction in the California Community Colleges, as a system, should be taught by full-time instructors. To this end, community college districts which have less than 75 percent of their hours of credit instruction taught by full-time instructors shall apply a portion of the program improvement allocation received pursuant to Section 84755 as follows:

(1) Districts which, in the prior fiscal year, had between 67 percent and 75 percent of their hours of credit instruction taught by full-time instructors shall apply up to 33 percent of their program improvement allocation as necessary to reach the 75 percent standard. If a district in this category chooses instead not to improve its percentage, the board of governors shall withhold 33 percent of the district's program improvement allocation.

(2) Districts which, in the prior fiscal year, had less than 67 percent of their hours of credit instruction taught by full-time instructors shall apply up to 40 percent of their program improvement allocation as necessary to reach the 75 percent standard. If a district in this category chooses instead not to improve its percentage, the board of governors shall withhold 40 percent of the district's program improvement allocation.

Districts which maintain 75 percent or more of their hours of credit instruction taught by full-time instructors shall otherwise be free to use their program improvement allocation for any of the purposes specified in Section 84755.

(b) The board of governors shall adopt regulations for the effective administration of this section. Unless and until amended by the board of governors, the regulations shall provide as follows:

(1) In computing the percentage of hours of credit instruction taught by full-time instructors, the hours of overload teaching by full-time instructors shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(2) A full-time instructor shall be defined as any regular and contract faculty member teaching credit instruction.

(3) The chancellor shall compute and report to each community college district the number of full-time faculty (FTF) which are to be secured through the use of the prescribed portion of program improvement revenue allocated to each district. This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide average hourly rate of compensation for part-time instructors times the statewide average full-time teaching load). If the quotient is not a whole number, then the quotient shall be rounded down to the nearest whole number. If this quotient, once applied, will result in the district exceeding the 75 percent standard, the chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

By March 15th of each year, the chancellor shall report to each district an estimate of the number of FTF to be secured based upon the appropriation of revenues contained in the annual Budget Bill.

(4) On or before December 31, 1991, the chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to paragraph (3) for the 1989–90 and 1990–91 fiscal years. To the extent that the cumulative number of FTF have not been retained, the chancellor shall reduce the district's base budget for 1991–92 and subsequent fiscal years by an amount equivalent to the average replacement cost times the deficiency in the number of FTF.

(Added by Stats.1988, c. 973, § 35.)

§ 87482.7. **Minimum standards for percentage of hours of credit instruction to be taught by full-time instructors; regulations**

(a) The board of governors shall, pursuant to paragraph (6) of subdivision (b) of Section 70901, adopt regulations that establish minimum standards regarding the percentage of hours of credit instruction that shall be taught by full-time instructors.

(b) Upon notification by the board of governors, the Department of Finance shall transfer any money deducted from district apportionments pursuant to the regulations adopted under this section. This money shall be transferred to the * * * Employment Opportunity Fund pursuant to Section 87107.

(Amended by Stats.2002, c. 1169 (S.B.2028), § 3.)

EXHIBIT 4

COPIES OF REGULATIONS CITED

ignated Employees	*Disclosure Categories*
ucational Services and Economic Development Division	1, 4
ce Chancellor	1
inistrator/Academic Planning and Development	1
inistrator/Vocational Education	2
Specialist/Library Planning and Development	2
Specialist/Academic Planning and Development	2
Specialist/Information Systems and Analysis	2
Specialist/General Vocational Education	2
Specialist/Criminal Justice	2
Telecommunications Systems Manager I (Specialist)	2
Consultants*	2
rnal Operations Division	1, 4
Director	3
Accounting Administrator I	3
Senior Accounting Officer (Supervisor)	3
Business Services Officer I (Specialist)	1
Business Services Assistant	3
Staff Services Manager I	2
Consultants*	

*Note: With respect to consultants, the Chancellor, however, may determine in riting that a particular consultant, although a "designated person," is hired to per- rm a range of duties that are limited in scope and thus is not required to comply ith the disclosure requirements described in this category. Such determination all include a description of the consultant's duties and, based upon that descrip- n, a statement of the extent of disclosure requirements. The Chancellor's deter- nation is a public record and shall be retained for public inspection in the same nner and location as this conflict of interest code. Nothing herein excuses any ch consultant from any other provision of the Conflict of Interest Code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) Any interest in real property;

(b) Investments and business positions in, and income from, any busi- ess entity engaged in publishing, manufacturing, selling, or leasing: (1) structional materials, (2) equipment, or (3) services, when such materi- ls, equipment or services are of the type utilized by community college istricts or the Board of Governors or Chancellor's Office, or (4) real es- hich is utilized by community college districts or the Board of Gov- s or Chancellor's Office.

2. Designated employees in Category 2 must report any investments nd business positions in, and income from, any business entity engaged publishing, manufacturing, selling or leasing:

(a) Instructional materials;

(b) Equipment; or

(c) Services; when such materials, equipment or services are of the ype utilized by community college districts or the Board of Governors r Chancellor's Office.

3. Designated employees in Category 3 must report any investments nd business positions in, and income from, any business entity engaged in publishing, manufacturing, selling or leasing:

(a) Instructional materials;

(b) Equipment; or,

(c) Services; when such materials, equipment or services are of the type utilized by the Board of Governors or Chancellor's Office.

4. Designated employees in Category 4 must report any investments and business positions in, and income from, any entity that provides edu- cation, training, or experience to persons toward meeting minimum qual- ifications for employment in a Community College district.

Subchapter 3. Committees

HISTORY

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

HISTORY

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

HISTORY

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

HISTORY

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

HISTORY

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt a resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Equal Employment Opportunity.

The governing board of a community college district shall:

(a) adopt a district policy which describes its equal employment opportunity program and meets the requirements of section 53002;

(b) develop and adopt a district equal employment opportunity plan which meets the requirements of section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by section 53004;

(d) ensure that a program of recruitment is carried out as required by section 53021;

(e) ensure that screening and selection procedures are developed and used in accordance with section 53024;

(f) ensure that, where necessary, additional steps are taken consistent with the requirements of section 53006;

(g) ensure that the pattern of hiring and retention, when viewed over time, is consistent with the objectives established in the district's equal employment opportunity plan; and

(h) substantially comply with the other provisions of subchapter 1 (commencing with section 53000) of chapter 4.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–111139.5, Government Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).
5. New subsection (f), subsection relettering and amendment of newly designated subsection (g) and NOTE filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
6. Amendment of section heading, section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

) The provisions of Subchapter 11 (commencing with Section 25) of Chapter 6 shall govern the approval of new colleges and educa-al centers.

TE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Ref- ections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Sec-)) of Chapter 4, Part 49, Education Code.

HISTORY

mendment filed 3–4–91 by Board of Governors of California Community Col- ges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Sub- itted to OAL for printing only pursuant to Education Code Section 0901.5(b).

mendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing nly pursuant to Education Code section 70901.5 (Register 94, No. 38).

Editorial correction of HISTORY 1 (Register 95, No. 15).

1016. Accreditation.

Each community college within a district shall be an accredited institu-n. The Accrediting Commission for Community and Junior Colleges ll determine accreditation.

TE: Authority cited: Sections 66700 and 70901, Education Code. Reference: tion 70901, Education Code.

HISTORY

mendment filed 3–4–91 by Board of Governors of California Community Col- ges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Sub- itted to OAL for printing only pursuant to Education Code Section 0901.5(b).

mendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing nly pursuant to Education Code section 70901.5 (Register 94, No. 38).

Editorial correction of HISTORY 1 (Register 95, No. 15).

1018. Counseling Programs.

a) The governing board of a community college district shall adopt gulations and procedures consistent with the provisions of this section. copy of district regulations and procedures, as well as any amend-nts, shall be filed with the Chancellor's Office.

b) The governing board of a community college district shall provide olicize an organized and functioning counseling program in each ge within the district. Counseling programs shall include, but not be ited to, the following:

(1) academic counseling, in which the student is assisted in assessing, nning, and implementing his or her immediate and long–range aca-nic goals;

(2) career counseling, in which the student is assisted in assessing his er aptitudes, abilities, and interests, and is advised concerning the rent and future employment trends;

(3) personal counseling, in which the student is assisted with personal, nily, or other social concerns, when that assistance is related to the stu-nt's education; and

(4) coordination with the counseling aspects of other services to stu-nts which may exist on the campus, including, but not limited to, those rvices provided in programs for students with special needs, skills test-g programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) all be provided to first–time students enrolled for more than six units, idents enrolled provisionally, and students on academic or progress obation.

OTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: ctions 70901 and 72620, Education Code.

HISTORY

Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Editorial correction of HISTORY 1 (Register 95, No. 15).

20. Objectives.

ach community college shall have stated objectives for its instruc-ional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

(3) In performing the requirements of Subsections (a)(1) and (2), the governing board or its designees shall consult with the representatives of existing staff councils, committees, employee organizations, and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this Section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views.

(4) Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this Section.

(6) The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration.

(7) The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations, or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category that they represent.

(b) In developing and carrying out policies and procedures pursuant to Subsection (a), the district governing board shall ensure that its actions do not dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code Sections 3540, et seq., such procedures for staff participation shall not intrude on matters within the scope of representation under Section 3543.2 of the Government Code. In addition, governing boards shall not interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer–employee relations. Nothing in this Section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards. It is the intent of the Board of Governors to respect lawful agreements between staff and exclusive representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to staff pursuant to these regulations.

(c) Nothing in this Section shall be construed to impinge upon the policies and procedures governing the participation rights of faculty and students pursuant to Sections 53200–53204, and Section 51023.7, respectively.

(d) The governing board of a community college district shall comply substantially with the provisions of this Section.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b), (Register 91, No. 23).
2. Editorial correction of printing error in subsection (b) and HISTORY 1. (Register 91, No. 43).
3. Amendment of subsections (a)(1), (a)(3), (a)(5), (a)(7), (b), (c) and (d) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51023.7. Students.

(a) The governing board of a community college district shall adopt policies and procedures that provide students the opportunity to participate effectively in district and college governance. Among other matters, said policies and procedures shall include the following:

(1) Students shall be provided an opportunity to participate in formulation and development of district and college policies and procedures that have or will have a significant effect on students. This right includes the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures.

(2) Except in unforeseeable, emergency situations, the governing board shall not take action on a matter having a significant effect on students until it has provided students with an opportunity to participate in the formulation of the policy or procedure or the joint development of recommendations regarding the action.

(3) Governing board procedures shall ensure that at the district and college levels, recommendations and positions developed by students are given every reasonable consideration.

(4) For the purpose of this Section, the governing board shall recognize each associated student organization or its equivalent within the district as provided by Education Code Section 76060, as the representative body of the students to offer opinions and to make recommendations to the administration of a college and to the governing board of a district with regard to district and college policies and procedures that have or will have a significant effect on students. The selection of student representatives to serve on college or district committees, task forces, or other governance groups shall be made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district.

(b) For the purposes of this Section, district and college policies and procedures that have or will have a "significant effect on students" includes the following:

(1) grading policies;
(2) codes of student conduct;
(3) academic disciplinary policies;
(4) curriculum development;
(5) courses or programs which should be initiated or discontinued;
(6) processes for institutional planning and budget development;
(7) standards and policies regarding student preparation and success;
(8) student services planning and development;
(9) student fees within the authority of the district to adopt; and
(10) any other district and college policy, procedure, or related matter that the district governing board determines will have a significant effect on students.

(c) The governing board shall give reasonable consideration to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration,and staff.

(d) Nothing in this Section shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiations or negotiated agreements between collective bargaining agents and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining agents as to

they will consult, collaborate, share or delegate among themselves responsibilities that are or may be delegated to academic senates pursant to the regulations on academic senates contained in Sections 00–53206.

e governing board of a community college district shall comply ually with policies and procedures adopted in accordance with Section.

E: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901 (b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

ew section filed 3–12–91 by Board of Governors of California Community olleges with the Secretary of State; operative 4–5–91. Submitted to OAL for rinting only pursuant to Education Code section 70901.5(b) (Register 91, No. 3).

ditorial correction of printing errors in subsections (a) and (b) and HISTORY 1 egister 91, No. 43).

mendment of subsections (a)(2), (a)(4), (b), (b)(10), (d) and (e) filed 9–6–94; perative 10–6–94. Submitted to OAL for printing only pursuant to Education ode section 70901.5 (Register 94, No. 38).

1024. Matriculation Services.

The governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required der Section 55510;

(b) evaluate its matriculation program and participate in statewide aluation activities as required under Section 55512(c);

(c) provide matriculation services to its students in accordance with ctions 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its triculation program in a manner consistent with Section 55534; and

(e) substantially comply with all other provisions of Subchapter 6 ommencing with Section 55500) of Chapter 6 of this Division.

OTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: ections 78210–78218, Education Code.

HISTORY

section filed 6–5–90 by the Board of Governors, California Community ges, with the Secretary of State; operative 7–5–90. Submitted to OAL for nting only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Amendment of first paragraph and subsection (e) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

51025. Full–Time/Part–Time Faculty.

This Section relates to and should be read in conjunction with Subapter 3 (commencing with Section 53300) of Chapter 4 of this Division.

(a) If a district's full–time faculty percentage, as calculated pursuant Section 53308, is less than 75 percent, the following shall apply:

(1) For growth revenues received related to increases in credit FTES rsuant to Section 58774, the district shall increase the base full–time culty obligation (as defined in Section 53311), subject to Subsection (e) low, by the Fall term of the succeeding fiscal year, by the product of eir base full–time faculty obligation multiplied by the percentage ange in funded credit FTES, rounded down to the nearest whole number.

In computing the district's full–time faculty obligation for the cceeding fiscal year, the base obligation will be increased by the lower f the projected fundable growth at the time of the budget enactment or e actual percentage change in funded credit FTES. For the second cceeding Fall term the obligation will be adjusted to the actual percentge change in funded credit FTES.

(2) Districts which, as determined from their base data, had a full–time aculty percentage of 67 percent or greater, but less than 75 percent shall pply up to 33 percent of their program improvement allocation pursuant o Subsection (b) of Section 58775, as necessary to reach the 75 percent ard pursuant to Subsection (a)(4) below.

Districts which, as determined from their base data, had a full–time aculty percentage of less than 67 percent shall apply up to 40 percent of heir program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(4) For program improvement funds identified in Subsection (a)(2) or (3), as appropriate, the district shall increase the number of full–time faculty, by the Fall term of the succeeding fiscal year, by the quotient of the applicable program improvement funds divided by the statewide average replacement cost, rounded down to the nearest whole number.

(5) If the number of full–time faculty derived in Subsections (a)(1) and (4) result in the district exceeding the 75 percent standard, the Chancellor shall reduce the number that leaves the district as close as possible to, but in excess of, the 75 percent standard.

(b) Statewide average replacement cost is the statewide average faculty salary plus benefits, minus the product of the statewide average hourly rate of compensation for part–time faculty times the statewide average full–time teaching load.

(c) On or before January 31 of each year, the Chancellor shall determine, based on information submitted by districts, the extent to which each district, by the Fall term of that year, has maintained or hired the number of additional full–time faculty determined pursuant to Subsection (a) for the prior fiscal year. To the extent that the number of full–time faculty has not been maintained or additional full–time faculty have not been retained, the Chancellor shall reduce the district's revenue for the current fiscal year by an amount equal to the average replacement cost for the prior fiscal year times the deficiency in the number of full–time faculty. To the extent a district hires the additional full–time faculty in subsequent fiscal years, the reductions made to the district's revenue shall be restored.

(d) All revenues available due to reductions made pursuant to Subsection (c), shall be made available on a one–time basis for that fiscal year, for purposes of faculty and staff diversity pursuant to Education Code, Section 87107.

(e) By January 20 of each fiscal year the Board of Governors shall determine whether adequate growth funds and adequate cost–of–living funds have been provided to allow full or partial implementation of the provisions of Subsection (a)(1).

(f) For districts that experience a reduction in base credit FTES, the Chancellor shall make a proportionate reduction to their base number of full–time faculty.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 7–3–91 and submitted to OAL on 7–12–91 for printing only pursuant to Education Code section 70901.5; operative 8–3–91 (Register 91, No. 46).
2. New first paragraph, amendment of subsections (a)–(a)(4) and (c) and NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment of subsections (a)–(a)(4), (b) and (c) filed 3–25–98; operative 4–24–98. Submitted to OAL for printing only (Register 98, No. 14).
5. Amendment filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 51026. Student Equity.

In accordance with the provisions of Section 54220, the governing board of a community college district shall adopt a student equity plan.

HISTORY

1. New section filed 1–12–98; operative 2–11–98. Submitted to OAL for printing only (Register 98, No. 3).

§ 51027. Transfer Centers: Minimum Program Standards.

(a) The governing board of each community college district shall recognize transfer as one of its primary missions, and shall place priority emphasis on the preparation and transfer of underrepresented students, including African–American, Chicano/Latino, American Indian, disabled, low–income and other students historically and currently underrepresented in the transfer process.

(b) Each community college district governing board shall direct the development and adoption of a transfer center plan describing the activities of the transfer center and the services to be provided to students, in-

corporating the provisions established in the standards outlined below. Plans shall identify target student populations and shall establish target increases in the number of applicants baccalaureate institutions from ıe populations, including specific targets for increasing the transfer plications of underrepresented students among transfer students. Plans shall be developed in consultation with baccalaureate college and university personnel as available.

Plan components shall include, but not be limited to: services to be provided to students; facilities; staffing; advisory committee; and evaluation and reporting.

(1) Required Services. Districts shall:

(A) Identify, contact, and provide transfer support services to targeted student populations as identified in the transfer center plan, with a priority emphasis placed on African–American, Chicano/Latino, American Indian, disabled, low–income, and other underrepresented students. These

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activities shall be developed and implemented in cooperation with student services departments and with faculty.

(B) Ensure the provision of academic planning for transfer, the development and use of transfer admission agreements with baccalaureate institutions where available and as appropriate, and the development and use of course–to–course and major articulation agreements. Academic planning and articulation activities shall be provided in cooperation with student services, with faculty, and with baccalaureate institution personnel as available.

(C) Ensure that students receive accurate and up–to–date academic and transfer information through coordinated transfer counseling services.

(D) Monitor the progress of transfer students to the point of transfer, in accordance with monitoring activities established in the Transfer Center Plan.

(E) Support the progress of transfer students through referral as necessary, to such services as ability and diagnostic testing, tutoring, financial assistance, counseling, and to other instructional and student services on campus as appropriate.

(F) Assist students in the transition process, including timely completion and submittal of necessary forms and applications.

(G) In cooperation with baccalaureate institution personnel as available, develop and implement a schedule of services for transfer students to be provided by baccalaureate institution staff.

(H) Provide a resource library of college catalogs, transfer guides, articulation information and agreements, applications to baccalaureate institutions, and related transfer information.

(2) Facilities. Each district governing board shall provide space and facilities adequate to support the transfer center and its activities. Each district shall designate a particular location on campus as the focal point of transfer functions. This location should be readily identifiable and accessible to students, faculty, and staff.

(3) Staffing. Each district governing board shall provide clerical support for the transfer center and assign college staff to coordinate the activities of the transfer center; to coordinate underrepresented student transfer efforts; to serve as liaison to articulation, to student services, and to instructional programs on campus; and to work with baccalaureate institution personnel.

(4) Advisory Committee. Each district shall designate an advisory committee to plan the development, implementation, and ongoing operations of the transfer center. Membership shall be representative of campus departments and services. Baccalaureate institution personnel shall be included as available.

(5) Evaluation and Reporting. Each district governing board shall include in its transfer center plan a plan of institutional research for ongoing internal evaluation of the effectiveness of the college's transfer efforts, and the achievement of its transfer center plan.

Each community college district shall submit an annual report to the Chancellor describing the status of the district's efforts to implement its transfer center(s), achievement of transfer center plan targets and goals, and expenditures supporting transfer center operations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66010.4 and 70901, Education Code.

HISTORY

1. New section filed 7–22–91; operative 8–21–91 (Register 92, No. 4).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 2. Investigation and Enforcement of Minimum Conditions

§ 51100. Review of Colleges.

(a) At least once each seven years, and at such other times as he or she deems necessary, the Chancellor shall review each community college to determine whether it has met the minimum conditions contained in Subchapter 1 (commencing with Section 51000) of Chapter 2.

(b) In the event that the Chancellor determines that a visit to the college is necessary to investigate compliance, he or she shall inform the chief executive officer of the district at least one month in advance of such visit, and shall specify the particular minimum conditions which will be investigated.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 51100 and 51101) and new chapter 2 (sections 51100 and 51102) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 2, see Registers 81, No. 52; 77, No. 45; and 71, No. 27.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of subsection (a) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51102. Enforcement.

(a) If any review pursuant to Section 51100 discloses that a college is not in compliance with the provisions of Subchapter 1 (commencing with Section 51100) of Chapter 2, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

(1) accept in whole or part the district's response regarding noncompliance;

(2) require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

(3) withhold all or part of the district's state aid. The amount of withholding shall be related to the extent and gravity of noncompliance and shall require approval of the Board of Governors.

(c) The Chancellor shall report to the Board of Governors on any actions taken pursuant to Subsection (b) of this Section, provided that, in the event he or she determines to withhold all or a portion of a district's state aid, the Chancellor shall inform and obtain the approval of the Board prior to the withholding.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

Subchapter 3. Faculty

NOTE: Authority cited: Sections 71020, 71024 and 71025, Education Code.

HISTORY

1. Repealer of Chapter 3[216z (Sections 51200 and 51201) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 4. Standards of Scholarship

NOTE: Authority cited: Section 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY

1. Repealer of Chapter 4 (Sections 51300–51319, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 4, see Registers 82, No. 20; 80, No. 19; 80, No. 11; 77, No. 45; and 71, No. 27.

HISTORY

Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 13)

Action by the Chancellor.

NOTE: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 87332, 87340, 87341 and 87342, Education Code.

HISTORY

Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 13).

52311. Special Revocation.

NOTE: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 87332, 87340, 87341 and 87342, Education Code.

HISTORY

Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 13).

Subarticle 3. Administrative Hearing Procedure

52320. Administrative Hearing.

NOTE: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 11503 and 11504, Government Code.

HISTORY

Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Subchapter 2. Validation of Service Without a Credential

52400. Application.

NOTE: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

HISTORY

Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

52401. Approval.

NOTE: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

HISTORY

Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

52402. Verification.

NOTE: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

HISTORY

Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

52403. Investigation and Recommendation.

NOTE: Authority cited: Section 87810, Education Code. Reference: Sections 87278, 87281, 87284 and 87295, Education Code.

HISTORY

Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Chapter 4. Employees

Subchapter 1. Equal Employment Opportunity Programs

Article 1. General

§ 53000. Scope and Intent.

(a) This subchapter implements and should be read in conjunction with Government Code sections 11135–11139.5, Education Code sections 66010.2, 66030, and Chapter 4.5 of Part 40 of Title 3, commencing with section 66250; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101). Nothing in this subchapter shall be construed to conflict with or be inconsistent with the provisions of article 1, section 31 of the California Constitution or to authorize conduct that is in conflict with or is inconsistent with such provisions.

(b) The regulations in this subchapter require steps to promote faculty and staff equal employment opportunity which are in addition to and consistent with the nondiscrimination requirements of state or federal law. Therefore, compliance with these regulations or approval of the district's equal employment opportunity plan pursuant to section 53003 does not imply and should not be construed to mean that a district has necessarily complied with its obligations under any other applicable laws or regulations. The Chancellor shall assist districts in identifying other applicable state or federal laws which may affect district equal employment opportunity or nondiscrimination policies.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; Sections 11135–11139.5, Government Code; Title 20, United States Code, Section 1681; Title 29, United States Code, Section 794; and Title 42, United States Code, Sections 2000d, 6101 and 12100, et seq.

HISTORY

1. New chapter 1 (sections 53000–53004) filed 7–19–77; effective thirtieth day thereafter (Register 77, No. 30).
2. Repealer of chapter 1 (subchapter 1, sections 53000–53004) and new chapter 1 (subchapters 1–4, sections 53000–53052, not consecutive) filed 2–1–82; effective thirtieth day thereafter (Register 82, No. 6).
3. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
4. Amendment of subsection (a) and NOTE filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
5. Amendment of subchapter heading, section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53001. Definitions.

As used in this subchapter:

(a) Adverse Impact. "Adverse impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on any group defined in terms of ethnic group identification, gender, or disability. A disparity identified in a given selection process will not be considered to constitute adverse impact if the numbers involved are too small to permit a meaningful comparison.

(b) Business Necessity. "Business necessity" means circumstances which justify an exception to the requirements of section 53021 because compliance with that section would result in substantial additional financial cost to the district or pose a significant threat to human life or safety. Business necessity requires greater financial cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.

(c) Equal Employment Opportunity. "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity

to compete for hiring and promotion and to enjoy the benefits of employment with the district. Equal employment opportunity should exist at all levels and in all job categories listed in section 53004(a). Ensuring equal employment opportunity also involves creating an environment which fosters cooperation, acceptance, democracy, and free expression of ideas and is welcoming to men and women, persons with disabilities, and individuals from all ethnic and other groups protected from discrimination by this subchapter.

(d) Equal Employment Opportunity Plan. An "equal employment opportunity plan" is a written document in which a district's work force is analyzed and specific plans and procedures are set forth for ensuring equal employment opportunity.

(e) Equal Employment Opportunity Programs. "Equal employment opportunity programs" means all the various methods by which equal employment opportunity is ensured. Such methods include, but are not limited to, using nondiscriminatory employment practices, actively recruiting, monitoring and taking additional steps consistent with the requirements of section 53006.

(f)(1) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks/African–Americans, and Hispanics/Latinos.

(2) Ethnic Group Identification. "Ethnic group identification" means an individual's identification in one or more of the ethnic groups reported to the Chancellor pursuant to section 53004. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.

(g) Goals for Persons with Disabilities. "Goals for persons with disabilities" means a statement that the district will strive to attract and hire additional qualified persons with a disability in order to achieve the level of projected representation for that group by a target date established by taking into account the expected turnover in the work force and the availability of persons with disabilities who are qualified to perform a particular job. Goals are not "quotas" or rigid proportions.

(h) In–house or Promotional Only Hiring. "In–house or promotional only" hiring means that only existing district employees are allowed to apply for a position.

(i) Monitored Group. "Monitored group" means those groups identified in section 53004(b) for which monitoring and reporting is required pursuant to section 53004(a).

(j) Person with a Disability. "Person with a disability" means any person who (1) has a physical or mental impairment as defined in Government Code section 12926 which limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A person with a disability is "limited" if the condition makes the achievement of the major life activity difficult.

(k) Projected Representation. "Projected representation" means the percentage of persons from a monitored group determined by the Chancellor to be available and qualified to perform the work in question.

(*l*) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the district to remove artificial or real barriers which prevent or limit the employment and upward mobility of persons with disabilities. "Reasonable accommodations" may include the items designated in section 53025.

(m) Screening or Selection Procedure. "Screening or selection procedure" means any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques, including but not limited to, traditional paper and pencil tests, performance tests, and physical, educational, and work experience requirements, interviews, and review of application forms.

(n) Significantly Underrepresented Group. "Significantly underrepresented group" means any monitored group for which the percentage of persons from that group employed by the district in any job category listed in section 53004(a) is below eighty percent (80%) of the projected representation for that group in the job category in question.

(o) Target Date. "Target date" means a point in time by which the district plans to meet an established goal for persons with disabilities and thereby achieve projected representation in a particular job category.

(p) Timetable. "Timetable" means a set of specific annual hiring objectives that will lead to meeting a goal for persons with a disability by a projected target date.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; Sections 11135–11139.5, 11092 and 12926, Government Code; 29 C.F.R. 1602.48 (1981); 29 C.F.R. 1607, 29 U.S.C. 793; 41 C.F.R. 60–741–2 (1980).

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of subsections (a), (b)(1)–(b)–(3), (c), (k) and (m) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (a), (b), (e), (f), (h), (j) and (m), new subsections (m)(1)–(q)(3), and amendment of NOTE filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
4. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53002. Policy Statement.

The governing board of each community college district shall adopt a policy statement setting forth the district's commitment to an equal employment opportunity program. This statement may also incorporate the nondiscrimination policy statement required pursuant to section 59300 and other similar nondiscrimination or equal employment opportunity statements which may be required under other provisions of state and federal law.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.1, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment filed 2–7–2001; operative 3–9–2001. Submitted to OAL for printing only (Register 2001, No. 6).
4. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53003. District Plan.

(a) The governing board of each community college district shall develop and adopt a district–wide written equal employment opportunity plan to implement its equal employment opportunity program. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) Such plans shall be reviewed at least every three years and, if necessary, revised and submitted to the Chancellor's Office for approval. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its plan.

(c) In particular, the plan shall include all of the following:

(1) the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this subchapter pursuant to section 53020;

(2) the procedure for filing complaints pursuant to section 53026 and the person with whom such complaints are to be filed;

(3) a process for notifying all district employees of the provisions of the plan and the policy statement required under section 53002;

(4) a process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this subchapter and of state and federal nondiscrimination laws;

(5) a process for providing annual written notice to appropriate community–based and professional organizations concerning the district's plan and the need for assistance from the community and such organizations in identifying qualified applicants;

(6) an analysis of the number of persons from monitored groups who e employed in the district's work force and those who have applied for np' ·t in each of the job categories listed in section 53004(a);
(7 lysis of the degree to which monitored groups are underrep- s an comparison to the numbers of persons from such groups ho.. ..e Chancellor determines to be available and qualified to perform e work required for each such job category and whether or not the un- rrepresentation is significant;
(8) methods for addressing any underrepresentation identified pur- ant to subparagraph (7)
(9) additional steps consistent with section 53006 to remedy any sig- icant underrepresentation identified in the plan; and
(10) any other measures necessary to further equal employment op- rtunity throughout the district.
(d) The plan shall include any goals for hiring persons with disabilities at are required by section 53025.
(e) The plans submitted to the Chancellor shall be public records.
(f) Each community college district shall make a continuous good faith fort to comply with the requirements of the plan required under this sec- n.
(g) In developing the availability data called for in subsection (c)(7), e Chancellor shall work through the established Consultation Process.

OTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and ction 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Sec- n 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and ctions 11135–11139.5, Government Code.

HISTORY

Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
Amendment of subsections (c)(4) and (7) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
Amendment of subsections (b), (c) and (c)(7), new subsections (c)(8)–(9) and su' n renumbering, amendment of newly designated subsection (c)(10) a ubsection (f) filed 5–31–96; operative 6–30–96. Submitted to OAL f .g only (Register 96, No. 23).
ıment of section and NOTE filed 7–12–2002; operative 8–11–2002. Sub- to OAL for printing only (Register 2002, No. 35).

53004. District Evaluation and Report to Chancellor.

(a) Each district shall annually survey its employees and shall monitor pplicants for employment on an ongoing basis in order to evaluate the mplementation of its equal employment opportunity plan and to provide ata needed for the analyses required by sections 53003, 53006, 53023, nd 53024. Each district shall annually report to the Chancellor, in a man- er prescribed by the Chancellor, the results of its annual survey of em- loyees at each college in the district. Each employee shall be reported o that he or she may be identified as belonging to one of the following even job categories:
(1) executive/administrative/managerial;
(2) faculty and other instructional staff;
(3) professional nonfaculty;
(4) secretarial/clerical;
(5) technical and paraprofessional;
(6) skilled crafts; and
(7) service and maintenance.
(b) For purposes of the survey and report required pursuant to subsec- on (a) of this section, each applicant or employee shall be afforded the pportunity to identify his or her gender, ethnic group identification and, f applicable, his or her disability. A person may designate multiple eth- ic groups with which he or she identifies, but shall be counted in only one ethnic group for reporting purposes. Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part o' ian/Pacific Islander group as well as in separate subcategories. H , in determining whether additional steps are necessary to en- at monitored groups have not been excluded on an impermissible b. ., analysis of the separate subgroups is not necessary.

NOTE: Authority cited: Sections 66271.1, 66700, 70901 and 87105, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 8310.5 and 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of subsections (a) and (b) filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
4. Amendment of subsections (a) and (b) and amendment of NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53005. Advisory Committee.

Each community college district shall establish an Equal Employment Opportunity Advisory Committee to assist the district in developing and implementing the plan required under section 53003. This advisory committee shall include a diverse membership whenever possible.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53006. Additional Steps to Ensure Equal Employment Opportunity.

(a) If a district determines that a particular monitored group is significantly underrepresented with respect to one or more job categories, the district shall take additional steps consistent with this section. At a minimum, the district shall:
(1) review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group;
(2) consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective;
(3) determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in (1) and (2) have been in place a reasonable period of time; and
(4) if significant underrepresentation persists, the staffing rate for the significantly underrepresented group in the specified job category or categories shall be monitored on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question.
(b) If a reasonable period of time passes and significant underrepresentation persists for a particular group in the job category in question, the district shall:
(1) review each locally established "required," "desired" or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job–related and consistent with business necessity through a process meeting the requirements of federal law or is among those qualifications which the Board of Governors has found to be job–related and consistent with business necessity throughout the community college system;
(2) discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in paragraph (1) of this subdivision; and
(3) continue using qualification standards meeting the requirements of paragraph (1) only where no alternative qualification standard is reasonably available which would select for the same characteristics, meet the requirements of paragraph (1) and be expected to have a less exclusionary effect.
(c) For purposes of this section, "a reasonable period of time" means three years, or such longer period as the Chancellor may approve, upon the request of the equal employment opportunity advisory committee and the chief executive officer, where the district has not filled enough positions to appreciably affect its work force in the job category in question.

(d) Nothing in this subchapter shall be construed to prohibit a district from taking any other steps it concludes are necessary to ensure equal employment opportunity, provided that such actions are consistent with the requirements of federal and state constitutional and statutory nondiscrimination law.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. New section filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
2. Amendment of section heading, section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53010. Assistance.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87103, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53011. Report.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87104, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53012. Periodic Evaluation.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87102, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Article 2. Other Specific Responsibilities of Community College Districts

§ 53020. Responsibility; Delegation of Authority; Complaints.

(a) The governing board of each community college district is ultimately responsible for proper implementation of this subchapter at all levels of district and college operation and for making measurable progress toward equal employment opportunity by the methods described in the district's equal employment opportunity plan. In carrying out this responsibility, the governing board, upon the recommendation of the chief executive officer, shall ensure that an equal employment opportunity officer is designated to oversee the day–to–day implementation of the requirements set forth in this subchapter.

(b) The administrative structure created by any delegation of authority to the equal employment opportunity officer or others shall be described in the district's equal employment opportunity plan submitted pursuant to section 53003 and shall be designed in such a manner so as to ensure prompt and effective implementation of the requirements of this subchapter. The plan shall also designate a single officer, who may be the equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints filed pursuant to section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by sections 53023 and 53024.

(c) Any organization or individual, whether or not an employee of the district, who acts on behalf of the governing board with regard to the recruitment and screening of personnel is an agent of the district and is subject to all of the requirements of this subchapter.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of subsections (a) and (c) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53021. Recruitment.

(a) Except as otherwise provided in this section, community college districts shall actively recruit from both within and outside the district work force to attract qualified applicants for all new openings. This shall include outreach designed to ensure that all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. The requirement of open recruitment shall apply to all new full–time and part–time openings in all job categories and classifications, including, but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. Recruitment for full–time faculty and educational administrator positions shall be at least statewide and, at a minimum, shall include seeking qualified applicants listed in the California Community Colleges Equal Employment Opportunity Registry. Recruitment for part–time faculty positions may be conducted separately for each new opening or by annually establishing a pool of eligible candidates, but in either case full and open recruitment is required consistent with this section.

(b) "In–house or promotional only" recruitment shall not be used to fill any new opening except when the position is being filled on an interim basis for the minimum time necessary to allow for full and open recruitment; provided however, that no interim appointment or series of interim appointments exceed one year in duration. The Chancellor may approve an extension of up to one additional year if the district demonstrates "business necessity" as defined in section 53001(b).

(c) If a district believes justification exists for use of the exception listed in subsection (b), it shall so notify the Equal Employment Opportunity Advisory Committee established pursuant to section 53005 and the Chancellor at least ten (10) working days prior to offering the position to a candidate.

(d) Even where in–house or promotional only recruitment is permitted pursuant to subsection (b), the district shall comply with its established hiring procedures and all qualified district employees shall be afforded the opportunity to apply.

(e) For purposes of this section, a new opening is not created when:

(1) there is a reorganization or series of lateral transfers that do not result in a net increase in the number of employees;

(2) a position which is currently occupied by an incumbent is upgraded, reclassified, or renamed without significantly altering the duties being performed by the individual;

(3) the faculty in a division or department elect one faculty member to serve as a chairperson for a prescribed limited term;

(4) the position is filled by a temporary, short–term, or substitute employee appointed pursuant to Education Code sections 87422, 87480, 87482.5(b) 88003, 88106 or 88109; or

(5) a part–time faculty member is assigned to teach the same or fewer hours he or she has previously taught in the same discipline without a substantial break in service. For purposes of this section, "a substantial break in service" means more than one calendar year or such different period as may be defined by a collective bargaining agreement.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment subsections (b) and (d)–(e)(2) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (a) and (b)(1)–(b)(2), repealer of subsection (b)(3), amendment of subsections (c), (d) and (e)(1)–(e)(4) and new subsection (e)(5) filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).

Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

53' **Job Announcements and Qualifications.**

J' ...ncements shall state clearly job specifications setting forth ... ledge, skills, and abilities necessary to job performance. For ...ulty and administrative positions, job requirements shall include a ...sitivity to and understanding of the diverse academic, socioeconomic, ...ural, disability, and ethnic backgrounds of community college students. Job specifications, including any "required," "desired" or "pre-...red" qualifications beyond the state minimum qualifications (set forth ...ubchapter 4, commencing with section 53400 of this chapter) which ... district wishes to utilize, shall be reviewed before the position is an-...nced, to ensure conformity with the requirements of this subchapter ...d state and federal nondiscrimination laws.

...TE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and ...tion 11138, Government Code. Reference: Statutes of 1988, Chapter 973, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and ...tions 11135–11139.5, Government Code.

HISTORY

...epealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

...mendment of section heading, section and NOTE filed 7–12–2002; operative ...–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

...3023. Applicant Pool.

(a) The application for employment shall afford each applicant an op...tunity to voluntarily identify his or her gender, ethnic group identifi...ion and, if applicable, his or her disability. This information shall be ...pt confidential and shall be used only in research, validation, monitor..., evaluating the effectiveness of the district's equal employment op...rtunity program, or any other purpose specifically authorized in this ...chapter, or by any applicable statute or regulation.

(b) After the application deadline has passed, the composition of the ...icant pool shall be analyzed to ensure that any failure to obtain ...presentation for any monitored group is not due to discrimi... recruitment procedures. If necessary, the application deadline ...e extended and additional recruitment shall be conducted that ...minates discriminatory recruitment procedures and ensures that re...itment efforts provide a full and fair opportunity for participation to ...wide diversity of potential applicants. When recruitment efforts have ...ered an opportunity for participation to a wide diversity of potential ...plicants or further recruitment efforts would be futile, applications ...all be screened to determine which candidates satisfy job specifica...ns set forth in the job announcement.

(c) Before the selection process continues, the composition of the qu...ified applicant pool shall be analyzed to ensure that no monitored group ... adversely impacted pursuant to section 53001(a). If adverse impact is ...und to exist, the chief executive officer or his or her designee shall take ...ffective steps to address the adverse impact before the selection process ...ntinues. Such steps may include, but are not limited to:

(1) extending the deadline and undertaking inclusive outreach efforts ... ensure that members of the adversely impacted group have equal op...rtunity to seek employment with the district;

(2) including all applicants who were screened out on the basis of any ...cally established qualifications beyond state minimum qualifications ...hich have not been specifically demonstrated to be job–related and consistent with business necessity through a process meeting the require...ents of federal law or which are not among those which the Board of ...overnors has found to be job–related and consistent with business ...ecessity throughout the community college system.

(d) If adverse impact persists after taking steps required under subdivi...on (c), the selection process may proceed only if:

(1) the job announcement does not require qualifications beyond the st... ...e minimum qualifications; or

... ...lly established qualifications beyond state minimum qualifica...s, if any, are demonstrated to be job–related and consistent with busi... ...ecessity through a process meeting the requirements of federal law ...nd suitable alternative selection procedures to reduce the adverse impact were unavailable; or

(3) the particular qualification beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job–related and consistent with business necessity throughout the community college system.

(e) The district may not advertise or utilize in future hiring processes for the same position or a substantially similar position any locally established qualifications beyond state minimum qualifications that the district was unable to verify under subsection (b)(2) unless such qualifications are so verified in advance of commencing any such future hiring process.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code

HISTORY

1. New section filed 2–26–82; designated effective 2–28–82 pursuant to Government Code section 11346.2(d) (Register 82, No. 9).
2. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment of subsections (a) and (b), repealer of subsection (b)(2) and subsection renumbering, and amendment of subsection (c)(2) filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
4. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53024. Screening or Selection Procedures.

(a) All screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, shall be:

(1) provided to the Chancellor upon request;

(2) designed to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students;

(3) based solely on job–related criteria; and

(4) designed to avoid an adverse impact, as defined in section 53001(a), and monitored by means consistent with this section to detect and address any adverse impact which does occur for any monitored group.

(b) If monitoring pursuant to subsection (a)(4) reveals that any selection technique or procedure has adversely impacted any such group, the chief executive officer or his/her designee shall suspend the selection process and timely and effective steps shall be taken to remedy the problem before the selection process resumes. The equal employment opportunity officer, or other official charged with responsibility for monitoring selection procedures, may assist the screening committee by discussing the overall composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact, provided that confidential information about individual candidates is not disclosed. If adverse impact results from locally established qualifications beyond state minimum qualifications that have not been verified as described in section 53023(c)(2) or replaced with suitable alternatives having a lesser adverse impact, the use of such qualifications shall be immediately discontinued and any applicant eliminated on the basis of that qualification shall be continued in the hiring process. Where necessary, the position may be re–opened at any time and a new selection process initiated in a way designed to avoid adverse impact.

(c) A district may not designate or set aside particular positions to be filled by members of any group defined in terms of ethnic group identification, race, color, national origin, religion, age, gender, disability, ancestry or sexual orientation, or engage in any other practice which would result in discriminatory or preferential treatment prohibited by state or federal law. Nor may a district apply the district's equal employment opportunity plan in a rigid manner which has the purpose or effect of so discriminating.

(d) Seniority or length of service may be taken into consideration only to the extent it is job related, is not the sole criterion, and is included in the job announcement consistent with the requirements of section 53022.

(e) Selection testing for employees shall follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures."

(f) Whenever possible, screening committees shall include a diverse membership which will bring a variety of perspectives to the assessment of applicant qualifications.

(g) Notwithstanding any other provision of this division, the governing board or its designee shall have the authority to make all final hiring decisions based upon careful review of the candidate or candidates recommended by a screening committee. This includes the right to reject all candidates and to order further review by the screening committee or to reopen the position where necessary to further achievement of the objectives of the equal employment opportunity plan or to ensure equal employment opportunity. However, a consistent pattern of not hiring qualified candidates from a monitored group who are recommended by screening committees may give rise to an inference that the selections are not consistent with the objectives of equal employment opportunity that are required by this subchapter.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; and Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of subsections (a)(2)–(c), (e) and (g) filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53025. Persons with Disabilities.

(a) Districts shall ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code sections 11135 et seq. and 12940(m), section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Such accommodations may include, but are not limited to, job site modifications, job restructuring, part–time work schedules, flexible scheduling, reassignment to a reasonably equivalent vacant position, adaptive equipment, and auxiliary aids such as readers, interpreters, and notetakers. Such accommodations may be paid for with funds provided pursuant to article 3 (commencing with section 53030) of this subchapter.

(b) If a district established a goal for persons with disabilities prior to the effective date of this subsection and if significant underrepresentation still exists, it shall update that goal, set a new target date for achieving projected representation in the category or categories in question, and concurrently comply with subsections (a)(1), (a)(2) and (b) of section 53006 with respect to persons with disabilities.

(c) Where persons with disabilities are found to be significantly underrepresented, measures required under subsections (a)(1) and (a)(2) of section 53006 shall be implemented concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where the underrepresentation was found to exist. Goals shall remain in effect only until projected representation has been achieved for that group in the category or categories in question. Until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category, an aggregate labor force availability rate shall be utilized for setting goals for hiring persons with disabilities with respect to the total district work force. The district may also concurrently take other additional steps which take disability into account, so long as such measures are discontinued when projected representation is achieved for persons with disabilities in the category or categories in question.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code; 29 U.S.C. 794, and 42 U.S.C. Sections 12101, et seq.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of section and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Repealer of subsections (a) and (b) and deletion of subsection designator filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
4. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53026. Complaints.

Each community college district shall establish a process permitting any person to file a complaint alleging that the requirements of this subchapter have been violated. A copy of the complaint shall immediately be forwarded to the Chancellor who may require that the district provide a written investigative report within ninety (90) days. Complaints which also allege discrimination prohibited by Government Code sections 11135 et seq. shall be processed according to the procedures set forth in subchapter 5 (commencing with section 59300) of chapter 10 of this division.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; and Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53027. Applicability to Districts Operating on the Merit System.

Nothing in this subchapter shall be construed to conflict with or be inconsistent with the provisions of article 3 (commencing with section 88060) of chapter 4 of part 51 of the Education Code which apply to districts operating a merit system for classified employees.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; and Sections 66010.2, 66030, 66071, 66270, 87360 and 88060 et seq., Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53028. Affirmative Action Commitment.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53029. Handicapped.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code; Section 11135, Government Code; 29 U.S.C. 705 and 706.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Article 3. Faculty and Staff Diversity Fund

§ 53030. Equal Employment Opportunity Fund Allocation.

Resources provided to the Board of Governors for the purpose of promoting equal employment opportunity in hiring and promotion within the system shall be placed in an Equal Employment Opportunity Fund and shall be allocated consistent with the following;

(a) A portion of the fund, but not more than 25 percent, shall be set aside to provide technical assistance, service, monitoring, and compliance functions.

(b) That portion of the funds not allocated pursuant to subsection (a) may be allocated to the districts in the following categories:

(1) an amount proportional to the full–time equivalent students of each strict to the total full–time equivalent students for all districts;
(2) equal dollar amount to each district;
(3) ount related to success in promoting equal employment op-
or ultiple methods of measuring success shall be identified by
e cellor working through the established Consultation Process.
(c) funds provided pursuant to this section may be used for:
(1) outreach and recruitment;
(2) in–service training on equal employment opportunity;
(3) accommodations for applicants and employees with disabilities
rsuant to section 53025; and
(4) other activities to promote equal employment opportunity.

OTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and ction 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Sec-n 4; and Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; d Sections 11135–11139.5, Government Code.

HISTORY

Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
Amendment of subsections (b) and (b)(3) and repealer of subsections (b)(4) and (b)(5) filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
Amendment of section heading, section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

53031. Success.

OTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: ection 87107, Education Code.

HISTORY

New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
Amendment of subsection (a) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
F of section filed 5–31–96; operative 6–30–96. Submitted to OAL for p ly (Register 96, No. 23).

2. Point Factors.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Repealer of section filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53033. Failure to Report.

Any district failing to provide the data required under Section 53004 is not in compliance with this subchapter. Equal Employment Opportunity funds for any given fiscal year, other than those under section 53030(a), shall not be granted unless the district provides the data no later than March 31st of the preceding fiscal year or receives an extension of the deadline from the Chancellor.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; and Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of section filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53034. Required Report.

Districts shall submit a report on the use of Equal Employment Opportu funds to the Chancellor's Office no later than September 30th of t year following the use of the funds. Until such time as a data e to calculate the staffing rate of persons with disabilities has been ated into the report required under section 53004, districts will report that rate by a separate survey conducted, as directed by the Chancellor's Office.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; and Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53040. Governing Board's Affirmative Action Employment Policy Statement.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Section 87101, Education Code; Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980); 20 U.S.C. 793; 41 C.F.R. 60–741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60–250.1–.9, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53041. Affirmative Action Responsibilities and Duties.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53042. Affirmative Action Officer.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53043. Internal Dissemination.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53044. External Dissemination.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53045. Complaint Procedure.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53046. Work Force Analysis.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: 29 C.F.R. 1602.48 (1981).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Editorial correction of section heading (Register 94, No. 38).

§ 53049. Utilization Analysis.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53050. Corrective Action.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53051. Goals and Timetables.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Article 1.6. Evaluation of Academic Employees

Availability of Rules and Regulations for Evaluation of Performance.

ne governing board of a community college district shall adopt and e to be printed and made available to each academic employee of the ict reasonable rules and regulations providing for the evaluation of erformance of academic employees in their assigned duties.

TE: Authority cited: Sections 66700 and 70901, Education Code. Reference: ion 70901, Education Code.

HISTORY

ew section filed 3–4–91 by the Board of Governors of California Community olleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). ubmitted to OAL for printing only pursuant to Education Code Section 0901.5(b).

ew article 1.6 heading filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

ditorial correction of HISTORY 1 (Register 95, No. 19).

Article 2. Academic Senates

3200. Definitions.

For the purpose of this Subchapter:

(a) "Faculty" means those employees of a community college district who are employed in positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code, and for which minimum qualifications for hire are specified by the Board of Governors.

(b) "Academic senate," "faculty council," and "faculty senate" means an organization formed in accordance with the provisions of this Subchapter whose primary function, as the representative of the faculty, is to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters. For purposes of this Subchapter, reference to the term "academic senate" also constitutes reference to "faculty council" or "faculty senate."

(c) "Academic and professional matters" means the following policy development and implementation matters:

(1) curriculum, including establishing prerequisites and placing courses within disciplines;

(2) degree and certificate requirements;

(3) grading policies;

(4) educational program development;

(5) standards or policies regarding student preparation and success;

(6) district and college governance structures, as related to faculty roles;

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(7) faculty roles and involvement in accreditation processes, including self-study and annual reports;

(8) policies for faculty professional development activities;

(9) processes for program review;

(10) processes for institutional planning and budget development; and

(11) other academic and professional matters as are mutually agreed upon between the governing board and the academic senate.

(d) "Consult collegially" means that the district governing board shall develop policies on academic and professional matters through either or both of the following methods, according to its own discretion:

(1) relying primarily upon the advice and judgment of the academic senate; or

(2) agreeing that the district governing board, or such representatives as it may designate, and the representatives of the academic senate shall have the obligation to reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
4. Relocation of article 2 heading filed 5-15-93; operative 6-4-93 (Register 93, No. 25).
5. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53201. Academic Senate or Faculty Council.

In order that the faculty may have a formal and effective procedure for participating in the formation and implementation of district policies on academic and professional matters, an academic senate may be established at the college and/or district level.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53202. Formation; Procedures; Membership.

The following procedure shall be used to establish an academic senate:

(a) The full-time faculty of a community college shall vote by secret ballot to form an academic senate.

(b) In multi-college districts, the full-time faculty of the district colleges may vote on whether or not to form a district academic senate. Such vote shall be by secret ballot.

(c) The governing board of a district shall recognize the academic senate and authorize the faculty to:

(1) Fix and amend by vote of the full-time faculty the composition, structure, and procedures of the academic senate.

(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate.

(d) The full-time faculty may provide for the membership and participation of part-time faculty members in the academic senate.

(e) In the absence of any full-time faculty members in a community college, the part-time faculty of such community college may form an academic senate.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53203. Powers.

(a) The governing board of a community college district shall adopt policies for appropriate delegation of authority and responsibility to its college and/or district academic senate. Among other matters, said policies, at a minimum, shall provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. This requirement to consult collegially shall not limit other rights and responsibilities of the academic senate which are specifically provided in statute or other Board of Governors regulations.

(b) In adopting the policies and procedures described in Subsection (a), the governing board or its designees shall consult collegially with representatives of the academic senate.

(c) While in the process of consulting collegially, the academic senate shall retain the right to meet with or to appear before the governing board with respect to the views, recommendations, or proposals of the senate. In addition, after consultation with the administration of the college and/or district, the academic senate may present its views and recommendations to the governing board.

(d) The governing board of a district shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:

(1) in instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) in instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

(e) An academic senate may assume such responsibilities and perform such functions as may be delegated to it by the governing board of the district pursuant to Subsection (a).

(f) The appointment of faculty members to serve on college or district committees, task forces, or other groups dealing with academic and professional matters, shall be made, after consultation with the chief executive officer or his or her designee, by the academic senate. Notwithstanding this Subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 81, No. 3.
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53204. Scope of Regulations.

Nothing in this Subchapter shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements between collective bargaining representatives and district governing

ds. It is the intent of the Board of Governors to respect agreements veen academic senates and collective bargaining representatives as ow they will consult, collaborate, share, or delegate among them- es the responsibilities that are or may be delegated to academic sen- ruant to these regulations.

Authority cited: Sections 66700 and 70901 Education Code. Reference: tions 70901 and 70902, Education Code.

HISTORY

pealer and new section filed 10–30–90 with Secretary of State by Board of overnors, California Community Colleges; operative 11–30–90 (Register 90, . 49). Submitted to OAL for printing only pursuant to Education Code section 901.5(b). For prior history, see Register 83, No.18.

nendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing ly pursuant to Education Code section 70901.5 (Register 94, No. 38).

205. Duties Assigned by Administration and Governing Board.

E: Authority cited: Sections 66700, 71020, 71062 and 71079, Education .. Reference: Sections 71079 and 72292, Education Code.

HISTORY

nendment filed 1–16–81; effective thirtieth day thereafter (Register 81, No.

nendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 3, No.18).

epealer filed 10–30–90 with Secretary of State by Board of Governors, Cali- fornia Community Colleges; operative 11–30–90 (Register 90, No. 49). Sub- mitted to OAL for printing only pursuant to Education Code section 70901.5(b).

3206. Academic Senate for California Community Colleges.

a) An Academic Senate for the California Community Colleges has n established through ratification by local academic senates or faculty ncils so that the community college faculty of California may have ormal and effective procedure for participating in the formation of e policies on academic and professional matters.

b) The Board of Governors recognizes the Academic Senate of the ifornia Community Colleges as the representative of community col- ademic senates or faculty councils before the Board of Governors ancellor's Office.

TE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Ref- nce: Sections 70901 and 70902, Education Code.

HISTORY

New section filed 5–9–78; effective thirtieth day thereafter (Register 78, No. 19).

Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Amendment filed 3–4–91 by Board of Governors of California Community Col- leges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Sub- mitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Amendment of subsection (a) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Editorial correction of HISTORY 3 (Register 95, No. 19).

53207. Reimbursement for Release or Reassigned Time.

(a) Except as provided in subdivisions (d) and (e), the faculty members ected to serve as president and vice president of the Academic Senate f the California Community Colleges (ASCCC) shall be granted release r reassigned time from their local responsibilities by the districts by hich they are employed during their terms of office.

(b) The amount of release or reassigned time required will be deter- ined by the ASCCC and reported to the district employing the person ected ASCCC president by May 1st and to the district employing the erson elected ASCC vice president by June 1st of the year in which these dividuals will assume office, unless the election has not been con- ucted by those dates, in which case the information will be reported im- ediately upon completion of the election.

(c) The districts employing the president and the vice president of the SCCC will be reimbursed by February 1 from the state appropriation e ASCCC for the release or reassigned time at the part–time replace- cost identified by the district prior to September of each year. If the lease or reassigned time need identified is 100 percent and the position to be filled is in a hard to replace discipline area, the district shall so certify to the Chancellor of the California Community Colleges by August 1. If the Chancellor confirms the district certification, the district shall be reimbursed at the full–time temporary replacement cost. In addition, districts shall be reimbursed by the ASCCC for reasonable and documented administrative costs associated with hiring faculty to replace the faculty serving as president and vice president of the ASCCC.

(d) A local district will not be required to grant release or reassigned time for the president or vice president of the ASCCC if it certifies by August 1 to the Chancellor, and he or she confirms, that the faculty member is in a position for which a qualified part–time or full–time temporary replacement cannot be found to meet the needs of the students.

(e) No district shall be required to grant release or reassigned time for an individual serving as president or vice president of the ASCCC for a period exceeding four years.

(f) This section shall only be operative during any fiscal year in which sufficient funds are provided therefore to the ASCCC in the annual Budget Act for that fiscal year or other legislation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3–12–2003; operative 4–11–2003. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 2003, No. 18).

Subchapter 3. Full–Time and Part–Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This Subchapter relates to and should be read in conjunction with the requirements of Section 51025 concerning the proportion of full–time and part–time faculty to be employed by community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
5. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Amendment filed 3–25–98; operative 4–24–98. Submitted to OAL for printing only (Register 98, No. 14).

§ 53301. Part–Time Faculty.

The term "part–time faculty" includes any faculty member, as defined in Section 53402(c), who is not a regular employee or contract employee of the district pursuant to Sections 87601, 87605, 87608, 87608.5, or 87609 of the Education Code.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750, 87482.7, 87601, 87605, 87608, 87608.5 and 87609, Education Code.

HISTORY

1. New section filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53302. Full–Time Faculty.

For purposes of this Chapter the term "full–time faculty" means any faculty member, as defined in Section 53402(c), who is a regular or contract employee of the district pursuant to Sections 87601, 87605, 87608, 87608.5 or 87609 of the Education Code.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750, 87482.6, 87601, 87605, 87608, 87608.5 and 87609, Education Code.

HISTORY

New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment of section heading and section filed 3–25–98; operative 4–24–98. Submitted to OAL for printing only (Register 98, No. 14).
5. Amendment of section and NOTE filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53308. Full–Time Faculty Percentage.

For purposes of this Subchapter and Section 51025, a district's full–time faculty percentage is determined as follows:

(a) Using the rules set forth in Section 53309, calculate the district's full–time equivalent faculty (FTEF) attributable to full–time faculty, as defined in Section 53302.

(b) Determine the district's total FTEF by adding together:

(1) FTEF attributable to full–time faculty, using the rules set forth in Section 53309; and

(2) FTEF attributable to part–time faculty, calculated using the rules set forth in Section 53310.

(c) To obtain the full–time faculty percentage, divide the figure from subdivision (a) (FTEF attributable to full–time faculty) by the figure from subdivision (b) (total FTEF).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53309. Rules for Calculating Full–Time Equivalent Faculty (FTEF) Attributable to Full–Time Faculty.

In calculating full–time equivalent faculty (FTEF) attributable to full–time faculty, the following rules shall be applicable:

(a) With respect to instruction, FTEF shall be calculated based on the percentage of instructional hours per week considered a full–time assignment for regular instructional employees having comparable duties, excluding any noncredit instructional assignments.

(b) With respect to non–instructional activities, FTEF shall be calculated based on the percentage of working hours per week considered a full–time assignment for regular non–instructional employees having comparable duties.

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(c) Regular Assignment. Include the regular assignment of full–time faculty as defined in Section 53302.

(d) Overload. Exclude full–time faculty overload from the calculation of FTEF.

(e) Sabbatical. Include full–time faculty sabbatical FTEF, whether paid or unpaid, and exclude the FTEF of replacement faculty, whether full–time or part–time, from the computation to determine the full–time faculty percentage pursuant to Section 53308.

(f) Released/Reassigned Time. Include FTEF for full–time faculty who are released or reassigned. The FTEF of a full–time faculty member on released or reassigned time shall be counted as if the faculty member was teaching/working full–time and had not been provided released or reassigned time. The FTEF of replacement faculty, whether full–time or part–time, shall be excluded from the computation to determine the full–time faculty percentage pursuant to Section 53308.

(g) Unpaid Leave. Include unpaid leave FTEF for a faculty member on unpaid leave. The FTEF of a full–time faculty member on unpaid leave shall be counted as if the faculty member was teaching/working full–time and had not been provided with unpaid leave. The FTEF of replacement faculty, whether full–time or part–time, shall be excluded from the computation to determine the full–time faculty percentage pursuant to Section 53308.

(h) Teaching by Others. Include credit instruction FTEF taught by classified staff or administrators who are appropriately qualified to teach, under the following conditions:

(1) Only the actual hours of teaching by such individuals shall be included in determining the FTEF; and

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

(i) Late Retirement. The FTEF of a faculty member who resigned or retired and who provided written notice thereof within 45 faculty duty days of the end of the previous Spring primary term and whose position has not been replaced by another full–time faculty member by the current Fall primary term, shall be included. The FTEF of replacement faculty, whether full–time or part–time, shall be excluded from the computation to determine the full–time faculty percentage pursuant to Section 53308.

Districts are required to fill the position(s) by the following Spring primary term unless designees for the district governing board and academic senate jointly agree that it is in the best interests of the district to delay the filling of the position. In such cases, replacement must be made by the following primary term or the Chancellor shall reduce the district's state apportionment revenues for the current year in accordance with the provisions of Section 51025. If the number of late retirees exceeds 15% of the district's total number of full–time faculty, and the district's governing board and academic senate jointly agree, a district may file a request with the Chancellor's Office for a one–year extension to fulfill its hiring obligation to replace those retirees.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).
2. Amendment of subsection (i) filed 10–16–2001; operative 11–15–2001. Submitted to OAL for printing only (Register 2001, No. 43).

Article 2. Proportions of Full–Time and Part–Time Faculty, Computation and Reports

§ 53310. Rules for Calculating Full–Time Equivalent Faculty (FTEF) Attributable to Part–Time Faculty.

In calculating full–time equivalent faculty (FTEF) attributable to part–time faculty, the following rules shall be applicable:

(a) With respect to instruction, FTEF shall be calculated based on the percentage of instructional hours per week considered a full–time assignment for regular instructional employees having comparable duties, excluding any noncredit instructional assignments.

(b) With respect to non–instructional activities, FTEF shall be calculated based on the percentage of working hours per week considered a full–time assignment for regular non–instructional employees having comparable duties.

(c) All instructional and noninstructional activities of part–time faculty shall be included, except the following:

(1) FTEF attributable to part–time faculty who replace full–time faculty on sabbatical leave.

(2) FTEF attributable to part–time faculty who replace full–time faculty on released or reassigned time.

(3) FTEF of part–time faculty replacing full–time faculty on unpaid leave.

(4) FTEF of part–time faculty replacing full–time faculty who resigned or retired late as defined in section 53309(i).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in article 2 heading (Register 91, No. 31).
3. New subsections (f)–(h) and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
4. Amendment of subsection (h) filed 2–4–93; operative 3–6–93 (Register 93, No. 6).
5. Amendment of subsections (d), (e), (g) and (h) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Amendment of section heading and section filed 3–25–98; operative 4–24–98. Submitted to OAL for printing only (Register 98, No. 14).
7. Repealer and new section filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).
8. New subsection (c)(4) filed 10–16–2001; operative 11–15–2001. Submitted to OAL for printing only (Register 2001, No. 43).

§ 53311. Base Data.

For purposes of this Subchapter, "base data" means both the district's base full–time faculty percentage and its base full–time faculty obligation (the number of full–time faculty the district is required to maintain or the number of additional full–time faculty to be hired by the Fall term of the subsequent year.) The data necessary to calculate the base full–time faculty percentage shall be determined from the current year's Fall management information system staff data submission to the Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of section heading, text and NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment filed 3–25–98; operative 4–24–98. Submitted to OAL for printing only (Register 98, No. 14).
5. Amendment filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53312. Additional Full–Time Faculty Positions.

(a) The Chancellor shall compute the number of full–time faculty which each district is to secure in accordance with Sections 51025 and 53308, as the result of applying additional FTES growth and program improvement revenue allotments.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for

part–time instructors times the statewide average full–time teaching load).

(c) If the quotient determined in paragraph (b) is not a whole number, t quotient shall be rounded down to the nearest whole number. If ent, once applied, will result in the district exceeding the 75 per- standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

(d) The computation for the funded growth in full–time equivalent student workload obligation to secure additional full–time faculty shall, when required pursuant to the provisions of Section 51025(a)(1) and (e), be made by multiplying the percentage of funded credit FTES growth times the base number of full–time faculty that were to be in place by Fall of the current year.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsections (a) and (c) and NOTE and new subsection (d) filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment of subsection (a) filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53314. Report to Districts.

By the Spring term of each year, the Chancellor shall report to districts the estimated number of full–time faculty each district must secure by the following Fall term based upon the appropriation of revenues contained in that year's Budget Act and the Board of Governors' action pursuant to Section 51025(e).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

ection filed 6–5–90 by the Board of Governors, California Community ges, with the Secretary of State; operative 7–5–90. Submitted to OAL for nting only pursuant to Education Code section 70901.5(b) (Register 90, No.).
2. Repealer and new section and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

Article 3. Enforcement

§ 53320. Funding Reductions.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
3. Repealer filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This Subchapter implements and should be read in conjunction with the requirements of Education Code Sections 87001, 87002, 87003, 87356 and 87359 concerning minimum qualifications for community e faculty and administrators. The provisions of this subchapter are ective July 1, 1990.

OTE: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 87002, 87003, 87356 and 87359, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
3. Amendment filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
4. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53401. Applicability to Community Services and Contract Classes.

Community service or contract classes which do not award college credit and are not supported by state apportionment are not subject to the provisions of this Subchapter. Contract classes which award college credit are subject to this Subchapter, even if they are not supported by state apportionment.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 78020 through 78023 and 78300, Education Code.

HISTORY

1. New section filed 6–26–92; operative 7–27–92 (Register 92, No. 26).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Educational administrator" means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(c) "Faculty" or "faculty member" means those employees of a district who are employed in academic positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code and for which minimum qualifications for service are specified in Section 53410–53414 or other provisions of this division. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisorial, nonmanagement community college certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002 and 87003, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 53403. Applicability of Amendments.

Notwithstanding changes that may be made to the minimum qualifications established in this division, or to the implementing discipline lists adopted by the Board of Governors, the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if he or she, at the time of initial hire by the district, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

Every person authorized to serve under a credential shall retain the right to serve under the terms of that credential, and, for that purpose, shall be deemed to possess the minimum qualifications specified for every discipline or service covered by the credential until the expiration of that credential. However, a credential shall be invalid when the holder has been convicted of any crime that, under former law, would have been

HISTORY

w section filed 3–4–91 by the Board of Governors of California Community lleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). bmitted to OAL for printing only pursuant to Education Code Section 5(b).

ment of third and fifth paragraphs filed 10–25–91; operative 11–24–91 gister 92, No. 9).

itorial correction of HISTORY 1 (Register 95, No. 19).

nendment of section and NOTE filed 11–6–97; operative 12–6–97. Submitted OAL for printing only (Register 97, No. 46).

Subchapter 4. Student Equity

4220. Student Equity Plans.

a) In order to promote student success for all students, the governing rd of each community college district shall adopt, by July 1, 1993, a dent equity plan which includes for each college in the district:

(1) Campus–based research as to the extent of student equity in the five as described in paragraph (2) and the determination of what activities most likely to be effective;

2) Goals for access, retention, degree and certificate completion, ESL basic skills completion, and transfer; for the overall student popula- and for each population group of students, as appropriate. Where sig- cant underrepresentation is found to exist in accordance with stan- ds adopted by the Board of Governors, the plan shall include –neutral measures for addressing the disparity, and, when legally ap- priate, race–conscious measures for addressing the disparity;

3) Implementation activities designed to attain the goals, including a eans of coordinating existing student equity related programs;

(4) Sources of funds for the activities in the plan;

(5) Schedule and process for evaluation; and

(6) An executive summary that includes, at a minimum, the groups for hom goals have been set, the goals, the initiatives that the college or dis- ct will undertake to achieve these goals, the resources that have been d for that purpose, and the district official to contact for further h ation.

(b) These plans should be developed with the active involvement of groups on campus as required by law, and with the involvement of ap- priate people from the community.

(c) The Board–adopted plan shall be submitted to the Office of the ancellor, which shall publish all executive summaries, sending copies very college and district, the chair of each consultation group that so uests, and such additional individuals and organizations as deemed propriate.

(d) For the purposes of this section, "each population group of stu- nts" means American Indians or Alaskan natives, Asians or Pacific Is- nders, Blacks, Hispanics, Whites, men, women, and persons with dis- bilities. A person shall be included in the group with which he or she ntifies as his or her group.

TE: Authority cited: Section 70901, Education Code. Reference: Sections 10.2, 66010.7, 66030 and 70901, Education Code.

HISTORY

New subchapter 4 and section filed 2–4–93; operative 3–6–93 (Register 93, No. 6).

Amendment of subsections (a)(1), (a)(2) and (b), repealer of subsections d)–(d)(2), and new subsection (d) filed 1–12–98; operative 2–11–98. Submitted to OAL for printing only (Register 98, No. 3).

Subchapter 4.5. Electronic Submissions

54300. Electronic Applications and Digital Signatures.

Community college districts may authorize the electronic submission any form or document and the use of digital signatures on any docu- nts requiring a signature. Residency questionnaires submitted elec- ally must include a digital signature. Where a digital signature is ed, it shall use the technology, criteria, and procedures for digital gnatures approved by the Secretary of State, and contained in Title 2, alifornia Code of Regulations, Section 22000 et. seq. Prior to the elec- tronic submission of any information, districts will inform applicants of the relative security of the information they submit electronically.

NOTE: Authority cited: Sections 70901 and 70901.1, Education Code. Reference: Section 70901.1, Education Code; and Section 16.5, Government Code.

HISTORY

1. New subchapter 4.5 (section 54300) and section filed 5–13–99; operative 6–14–99 (Register 99, No. 20).

Subchapter 5. Commercial Solicitation on Campus

§ 54400. Student Credit Card Solicitations.

By December 31, 2003, the governing board of each community college district shall adopt policies regulating the solicitation practices used on campuses by credit card companies marketing "student credit cards" as defined in Civil Code section 1747.02(m).

NOTE: Authority cited: Section 99030, Education Code. Reference: Section 99030, Education Code; and Section 1747.02(m), Civil Code.

HISTORY

1. Amendment of subchapter heading and new subchapter 5 (section 54400) and section filed 2–14–2003; operative 3–16–2003. Submitted to OAL for printing only pursuant to Education Code section 70901(b) (Register 2003, No. 15). For prior history, see Register 82, No. 31.

Subchapter 6. Student Records

§ 54600. Purpose.

This chapter is adopted pursuant to and for implementation of Chapter 1.5 (commencing with Section 76200), Part 47 of Division 7 of the Education Code regarding Student Records. The provisions of this Chapter should be read and interpreted in conjunction with the provisions of Chapter 1.5.

NOTE: Authority cited: Sections 76220, 76225 and 76246, Education Code. Reference: Chapter 1.5 (commencing with Section 76200), Part 47, Division 7, Education Code; and 20 USC 1232(g).

HISTORY

1. New Chapter 6 Articles 1–7, (Sections 54600–54662, not consecutive) filed 3–5–76; effective thirtieth day thereafter (Register 76, No. 10).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of article heading and amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54602. Construction.

HISTORY

1. Amendment filed 3–15–77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54604. Policy.

Community College districts may establish and maintain only such information on students relevant to admission, registration, academic history, career, student benefits or services, extracurricular activities, counseling and guidance, discipline or matters relating to student conduct, and shall establish and maintain such information required by law.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76210, Education Code; and 20 USC 1232(g).

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54606. Definitions.

(a) "Student" as used in this Chapter means a currently enrolled or formerly enrolled student.

(b) "Access" means a personal inspection and review of a record, an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, or a request to release a copy of any record. The student shall be permitted to select the means of access.

(c) "Student Record" means any item of information directly related to an identifiable student maintained by a Community College or required to be maintained by an employee in the performance of the em-

HISTORY

New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).

ent filed 3–4–91 by Board of Governors of California Community Col-
the Secretary of State; operative 4–5–91 (Register 91, No. 23). Sub-
o OAL for printing only pursuant to Education Code Section
.5(b).

Editorial correction of HISTORY 2 (Register 95, No. 20).

54803. Termination of Fee.

(a) Any student representation fee that has been instituted pursuant to e procedures enumerated in section 54801 may be terminated by a ma-rity of the students voting in an election called in one of the following o manners:

(1) By placing the issue on the ballot for the next regular associated udent body election. The issue shall be placed on the ballot upon receipt a petition indicating an interest in the termination of the representation e signed by a majority of the number of students who voted in the elec-on establishing the fee.

(2) Pursuant to procedures pre-established by the student body associ-tion for calling such an election. Such procedures shall be available for ublic inspection during regular business hours.

(b) The elections shall be conducted in accordance with the procedures stablished pursuant to section 54801.

NOTE: Authority cited: Section 66700, 70901 and 76060.5, Education Code. Ref-erence: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

l correction of HISTORY 2 (Register 95, No. 20).

§ 54805. Collection of the Fee.

District governing boards shall include in the materials given to each student at registration, information pertaining to the representation fee. The form used by a college for the purpose of collecting the fee shall contain, at a minimum, the following:

(a) a statement indicating that the money collected pursuant to this article shall be expended to provide support for students or representatives who may be stating their positions and viewpoints before city, county, and district government, and before offices and agencies of the state and federal government;

(b) the amount of the fee;

(c) a statement informing the students of their right to refuse to pay the fee for religious, political, moral or financial reasons.

NOTE: Authority cited: Sections 66700, 70901 and 76060.5, Education Code. References: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 54912. Residence Questionnaires.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Ref-: Sections 68044 and 68062, Education Code.

HISTORY

mendment of section submitted to OAL for printing only pursuant to Govern-ent Code section 11343.8 (Register 91, No. 23).

2. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Chapter 6. Curriculum and Instruction

Subchapter 1. Programs, Courses and Classes

Article 1. Program, Course and Class Classification and Standards

§ 55000. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.

(b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

(c) "Class" means a community services offering.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer of chapter 1 (subchapters 1–3, sections 55000–55144, not consecutive) and new chapter 1 (articles 1–2, sections 55000–55180, not consecutive) filed 12–21–81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 80, No. 11; 77, No. 45; and 71, No. 9.

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55000.5. Handbook; Monitoring and Review of Approved Courses and Programs.

(a) The Chancellor shall prepare, distribute, and maintain a detailed handbook for use by the local educational agencies. The handbook shall contain course approval criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals.

(b) The Chancellor shall monitor and review courses and programs which were approved under the provisions of section 70901 of the Education Code for compliance with applicable statutes and regulations on a periodic basis.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55001. Community College Educational Program.

(a) The instructional services of community colleges include:

(1) liberal arts and sciences education:

(A) baccalaureate oriented/transfer programs and courses

(B) associate degree programs and courses

(C) developmental programs and courses

1. compensatory programs and courses

2. adult elementary and secondary basic skills programs and courses

(D) community education programs and courses

1. personal development and survival courses

2. parenting and family support courses

3. community and civic development courses

4. general and cultural courses

(2) occupational education:

(A) vocational/technical transfer programs and courses

(B) vocational/technical associate degree and certificate programs and courses

(C) continuing education vocational/technical certificates, programs and courses

(b) The community services (Non FTES generating) of community colleges include:

(1) community services classes:

(A) avocational classes

(B) recreational classes

(C) seminars, lecture series, forum series, workshops, and conferences

(D) professional and occupational in–service classes

(2) community services activities:

(A) Civic Center Act activities

(B) cultural activities

(C) community development activities

(D) recreational activities

(c) All districts shall report the classification of all courses, classes, and activities offered in accordance with the system contained in Subsections (a) and (b) and the standards in Section 55002 by transmitting the following information to the Chancellor's Office:

(1) the unique static course identifier and the course title for all credit and noncredit courses;

(2) the classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor;

(3) whether the course is offered as credit or noncredit;

(4) whether the course transfers to the California State University or the University of California or both;

(5) the number of community services classes in each category, and the number of participants; and

(6) the number of community services activities in each category and the number of participants.

(d) For courses, classes, and activities which are added after June 30, 1982, the district shall report the classification of all courses, classes and activities in the manner provided by Subsection (c). The Chancellor shall review and comment upon, as necessary, the classification of such courses, classes, and activities.

NOTE: Authority cited: Sections 66700, 70901, and 78401, Education Code. Reference: Sections 66701, 70901, 70902, 78300, and 78401, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55002. Standards and Criteria for Courses and Classes.

(a) Associate Degree Credit Course. An associate degree credit course is a course which has been designated as appropriate to the associate degree in accordance with the requirements of Section 55805.5, and which has been recommended by the college and/or district curriculum committee and approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission.

(1) Curriculum Committee. The college and/or district curriculum committee recommending the course shall be established by the mutual agreement of the college and/or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college and/or district administration and the academic senate.

[The next page is 343.]

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course for associate degree credit if it meets the following standards:

\) Grading Policy. The course provides for measurement of student ormance in terms of the stated course objectives and culminates in formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays, or, in courses where the curriculum committee deems them to be appropriate, by problem-solving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course also requires a minimum of three hours of work per week, including class time for each unit of credit, prorated for short–term, laboratory and activity courses.

(C) Intensity. The course treats subject matter with a scope and intensity that requires students to study independently outside of class time.

(D) Prerequisites and Corequisites. When the college and/or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course, then the course shall require prerequisites or corequisites that are established, reviewed, and applied in accordance with the requirements of Article 2.5 (commencing with Section 55200) of this Subchapter.

(E) Basic Skills Requirements. If success in the course is dependent upon communication or computation skills, then the course shall require, consistent with the provisions of Article 2.5 (commencing with Section 55200) of this Subchapter, as prerequisites or corequisites eligibility for enrollment in associate degree credit courses in English and/or mathematics, respectively.

(F) Difficulty. The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level.

(G) Level. The course requires learning skills and a vocabulary that the curriculum committee deems appropriate for a college course.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside–of–class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Conduct of Course. Each section of the course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Chapter 2 (commencing with Section 51000), sections 55761–55763 and 58161 of this Division.

(b) Nondegree Credit Course. A credit course designated by the governing board as not applicable to the associate degree is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under Subdivision (a)(1) of this Section) and is approved by the district governing board and falls within one of the categories described in Subdivision (1) of this Subsection.

(1) Types of Courses. Nondegree applicable credit courses are:

(A) precollegiate basic skills courses as defined in Section 55502(d) of this Division;

(B) courses designed to enable students to succeed in college–level work (including, but not limited to, college orientation and guidance courses, and discipline–specific preparatory courses such as biology, history, or electronics) that integrate basic skills instruction throughout and assign grades partly upon the demonstrated mastery of those skills;

(C) precollegiate occupational preparation courses designed to provide foundation skills for students preparing for entry into college–level occupational courses or programs;

(D) essential occupational instruction for which meeting the standards of Section 55002(a) is neither necessary nor required.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the standards which follow. In order to be eligible for state apportionment, such courses must be approved (as courses not part of programs) by the Chancellor's Office as provided by Section 55100 of this Division.

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in the subject matter and the ability to demonstrate that proficiency, at least in part, by means of written expression that may include essays, or, in courses where the curriculum committee deems them to be appropriate, by problemsolving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course requires a minimum of three hours of student work per week, per unit, including class time and/or demonstrated competency, for each unit of credit, prorated for short–term, laboratory, and activity courses.

(C) Intensity. The course provides instruction in critical thinking and generally treats subject matter with a scope and intensity that prepares students to study independently outside of class time and includes reading and writing assignments and homework. In particular, the assignments will be sufficiently rigorous that students completing each such course successfully will have acquired the skills necessary to successfully complete college–level work upon completion of the required sequence of such courses.

(D) Prerequisites and corequisites. When the college and/or district curriculum committee deems appropriate, the course may require prerequisites or corequisites for the course that are established, reviewed, and applied in accordance with Article 2.5 (commencing with Section 55200) of this Subchapter.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside–of–class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students. Taken together, these course specifications shall be such as to typically enable any student who successfully completes all of the assigned work prescribed in the outline of record to successfully meet the course objectives.

(4) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Division 2 (commencing with Section 51000). Sections 55761–55763 and 58161 of this Division.

(c) Noncredit Course. A noncredit course is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under Subdivision (a)(1) of this Section) and approved by the district governing board as a course meeting the needs of enrolled students.

(1) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course if the course treats subject matter and uses resource materials, teaching methods, and stan-

dards of attendance and achievement that the committee deems appropriate for the enrolled students. In order to be eligible for state apportionment, such courses are limited to the categories of instruction listed in Education Code Section 84711 and must be approved by the Chancellor's Office as noted in Title 5, Section 55150.

(2) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the scope, objectives, contents, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met.

(3) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

(d) Community Services Class. A community services class is a class that meets the following minimum requirements:

(1) is approved by the local district governing board;

(2) is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein;

(3) provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students;

(4) is conducted in accordance with a predetermined strategy or plan;

(5) is open to all members of the community; and

(6) may not be claimed for apportionment purposes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of subsection (a) filed 12–28–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 5–18–84; effective thirtieth day thereafter (Register 84, No. 20).
3. Repealer and new section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).
6. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
7. Editorial correction of HISTORY 4 (Register 95, No. 20).

§ 55002.5. Credit Hour; Allowance for Shorter Term.

One credit hour of community college work is approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks. Where a term is more or less than 16 weeks, more or less than one credit hour shall be allowed in the same ratio that the length of the term is to 16 weeks.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55004. Social Science Courses.

The course of instruction in social sciences shall include a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States of America.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four–year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit–no credit, and if so, which provision of subsection (a) of section 51302 is applicable.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55006. Records and Reports.

Authorities of each community college maintaining credit and noncredit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55008. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error in second paragraph (Register 91, No. 43).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
4. Editorial correction of HISTORY 1 (Register 95, No. 20).

Article 2. Approval of Courses, Programs and Classes

§ 55100. Course Approval.

Except as provided in subsection (b) and section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not approval by the Chancellor is required, the district shall designate the appropriate classification of the course or activity in accordance with section 55001.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55101. Chancellor's Report.

History

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer filed 3–7–85; effective thirtieth day thereafter (Register 85, No. 10).

§ 55130. Approval of Credit Programs.

(a) Before offering any course as part of an educational program at a college, the governing board of a district shall obtain approval of the educational program from the Chancellor in accordance with the provisions of this article. Approval shall be requested on forms provided by the Chancellor.

(b) The application for approval shall contain at least the following:

(1) The name of the proposed program.

(2) The description of the proposed program.

(3) The purposes and specific objectives of the proposed program.

(4) The place of the proposed program in the district master plan.

(5) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning.

(6) The need for the proposed program ascertained with regard to at least the following factors:

(A) Other community colleges in the area currently offering the program.

(B) Other programs closely related to the proposed program offered the college.

(C) Relation of the proposed program to job market analysis.

(D) Enrollment projection for the proposed program.

(E) Recommendations of area vocational master plan committees when applicable.

(F) The classification of the courses in the program in accordance with section 55001.

(7) The need for and present adequacy of the following resources shall be determined in relation to the proposed program:

(A) Library and media center resources.

(B) Facilities and equipment required to initiate and sustain the program. If a new facility is to be used, reference should be made to the five–year master plan.

(C) Availability of adequate or proposed financial support.

(D) Availability of faculty.

(c) The development, establishment and evaluation of an education program shall include representative faculty involvement.

(d) An approval is effective until the program or implementation of the program is discontinued or modified in any substantial way. From time to time the Chancellor may evaluate an educational program, after its approval, on the basis of factors listed in this section. If on the basis of such an evaluation the Chancellor determines that an educational program should no longer be offered, the Chancellor may terminate the approval and determine the effective date of termination.

(e) In multicollege districts, program approval is granted for a specific college.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55150. Approval of Noncredit Courses and Programs.

(a) Courses or programs offered for noncredit shall be approved by the Chancellor in accordance with section 55100 on forms provided by the Chancellor's Office.

(b) Course outlines for all noncredit courses shall be on file in the community college offering the course.

(c) Authorities of each community college maintaining noncredit courses shall keep such current records and reports as may be required by the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78401, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55160. Approval of Community Service Classes.

(a) Districts are authorized in accordance with the provisions of article 7 (commencing with section 78300) of chapter 2, part 48 of the Education Code to approve and conduct community services classes without the approval of the Chancellor. The classification of all such classes shall be reported to the Chancellor in accordance with section 55001.

(b) Community services classes shall not be referred to as noncredit classes.

Note: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Sections 70901 and 78300, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55170. Contract Classes.

(a) Notwithstanding subdivision (c) of section 55000, "contract classes" means those classes which a community college district offers in fulfillment of a contract with a public or private agency, corporation, association, or other body or person.

(b) No approval of a contract class is required if the district does not claim state support for the class and if the legislation which authorizes that class does not require approval. If the district claims state support for a contract class, approval of the class shall be obtained in the manner provided for classes of the same type, as provided in this article. Approval of the contract shall be obtained in the manner provided for by law.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 8092, 70902 and Article 1.5 (commencing with Section 78020) of Chapter 1, Part 48, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55180. Chancellor's Report.

Note: Authority cited: Sections 66700 and 71020, Education Code. Reference: Sections 71091, 78200, and 78401, Education Code.

History

1. Repealer filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55182. Reinstatement of Deleted Courses.

The governing board of a community college district may reinstate any course which was deleted from the credit or noncredit curriculum during the 1982–83 fiscal year, in response to provision Number 11 of Item 6870–101–001 of the Budget Act of 1982 (Chapter 326, Statutes of 1982); provided that the following criteria and procedures shall be applied in conjunction with such reinstatement:

(a) The governing board of the district shall only reinstate such courses in a manner which is consistent with the policy of the Board of Governors that offerings which are primarily avocational, or recreational shall be offered as community services classes, and not as credit or noncredit courses;

The governing board of the district shall determine that the course meets the criteria and standards for courses specified in section 55002;

(c) The governing board may act to reinstate a course only after it has been reviewed through the college's or district's established procedure for the approval of new courses;

(d) The governing board must submit the course to the Chancellor for approval, or report approval of the course, depending on the requirements of section 55100. A separate designation shall be used to distinguish reinstated courses from new courses; and

(e) The governing board must determine that reinstatement of the course maintains or improves the curriculum balance of the district in accordance with the mission of the community college and local needs.

(f) Any category of courses restored to the curriculum pursuant to a separate authorization of the Board of Governors shall be exempt from the requirements of this section.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 70902 and 78401, Education Code.

HISTORY

1. New section filed 12–28–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

Article 2.5. Prerequisites, Corequisites, and Recommended Preparation

55200. Definitions.

For the purposes of this Division, the following definitions apply:

(a) "Prerequisite" means a condition of enrollment that a student is required to meet in order to demonstrate current readiness for enrollment in a course or educational program.

(b) "Corequisite" means a condition of enrollment consisting of a course that a student is required to simultaneously take in order to enroll in another course.

(c) "Advisory on recommended preparation" means a condition of enrollment that a student is advised, but not required, to meet before or in conjunction with enrollment in a course or educational program.

(d) "Satisfactory grade" means that, for the course in question, the student's academic record has been annotated with the symbol A, B, C or "CR" as those symbols are defined in Section 55758 of this Division.

(e) "Necessary and appropriate" means that a strong rational basis exists for concluding that a prerequisite or corequisite is reasonably needed to achieve the purpose that it purports to serve. This standard does not require absolute necessity.

(f) "content review" means a rigorous, systematic process developed in accordance with Sections 53200 to 53204, approved by the Chancellor as part of the district matriculation plan required under Section 55510, and is conducted by faculty to identify the necessary and appropriate body of knowledge or skills students need to possess prior to enrolling in a course, or which students need to acquire through concurrent enrollment in a corequisite course.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New article 2.5 and section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
2. Editorial correction of Article heading (Register 95, No. 20).

55201. Policies for Prerequisites, Corequisites, and Advisories on Recommended Preparation.

(a) The governing board of a community college district may establish prerequisites, corequisites, and advisories on recommended preparation, but must do so in accordance with the provisions of this Article. Nothing in this subchapter shall be construed to require a district to establish prerequisites, corequisites, or advisories on recommended preparation; provided however, that a prerequisite or corequisite shall be required if the course is to be offered for associate degree credit and the curriculum committee finds that the prerequisite or corequisite is necessary pursuant to Section 55002(a)(2)(D) or 55002(a)(2)(E).

(b) A governing board choosing to establish prerequisites, corequisites, or advisories on recommended preparation shall, in accordance with the provisions of Sections 53200–53204 of this Division, adopt policies for the following:

(1) The process for establishing prerequisites, corequisites, and advisories on recommended preparation. Such policies shall provide that in order to establish a prerequisite or corequisite, the prerequisite or corequisite must be determined to be necessary and appropriate for achieving the purpose for which it is being established. District policies shall also specify the level of scrutiny that shall be required in order to establish different types of prerequisites, corequisites, and advisories on recommended preparation. At a minimum, prerequisites, corequisites, and advisories on recommended preparation shall be based on content review, with additional methods of scrutiny being applied depending on the type of prerequisite or corequisite being established. The policy shall provide that the types of prerequisites described in Subsection (e) may be established only on the basis of data collected using sound research practices. Determinations about prerequisites and corequisites shall be made on a course–by–course or program–by–program basis.

(2) Procedures to assure that courses for which prerequisites or corequisites are established will be taught in accordance with the course outline particularly those aspects of the course outline that are the basis for justifying the establishment of the prerequisite or corequisite.

(3) The process, including levels of scrutiny, for reviewing prerequisites and corequisites to assure that they remain necessary and appropriate. These processes shall provide that at least once each six years all prerequisites and corequisites established by the district shall be reviewed. These processes shall also provide for the periodic review of advisories on recommended preparation.

(4) The bases and process for an individual student to challenge the application of a prerequisite or corequisite.

(c) Prerequisites or corequisites may be established only for any of the following purposes:

(1) the prerequisite or corequisite is expressly required or expressly authorized by statute or regulation; or

(2) the prerequisite will assure, consistent with Section 55002(a)(2)(D), that a student has the skills, concepts, and/or information that is presupposed in terms of the course or program for which it is being established, such that a student who has not met the prerequisite is highly unlikely to receive a satisfactory grade in the course (or at least one course within the program) for which the prerequisite is being established; or

(3) the corequisite course will assure, consistent with Section 55002(a)(2)(D), that a student acquires the necessary skills, concepts, and/or information, such that a student who has not enrolled in the corequisite is highly unlikely to receive a satisfactory grade in the course or program for which the corequisite is being established; or

(4) the prerequisite or corequisite is necessary to protect the health and safety of a student or the health and safety of others.

(d) Except as provided in this Subsection, no prerequisite or corequisite may be established or renewed pursuant to Subsection (b)(3) unless it is determined to be necessary and appropriate to achieve the purpose for which it has been established. A prerequisite or corequisite need not be so scrutinized until it is reviewed pursuant to Subsection (b)(3) if:

(1) it was established prior to July 6, 1990, and is part of a sequence of degree–applicable courses within a given discipline; or

(2) it was established between July 6, 1990, and the effective date of ›gulation, in accordance with regulations in effect during this period ...ne; or

(3) it is required by statute or regulation; or

(4) it is part of a closely–related lecture–laboratory course pairing within a discipline; or

(5) it is required by four–year institutions.

(e) A course in communication or computation skills may be established as a prerequisite or corequisite for any course other than another course in communication or computation skills only if, in addition to conducting a content review, the district gathers data according to sound research practices and shows that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or corequisite. If the curriculum committee initially determines, pursuant to Section 55002(a)(2)(E), that a new course needs to have a communication or computation skill prerequisite or corequisite, then, despite Subsection (d) of this Section, the prerequisite or corequisite may be established for a single period of not more than two years while the research is being conducted and the final determination is being made, provided that all other requirements for establishing the prerequisite or corequisite have been met. The requirements of this subdivision related to collection of data shall not apply when:

(1) four–year institutions will not grant credit for a course unless it has the particular communication or computation skill prerequisite; or

(2) the prerequisite or corequisite is required for enrollment in a program, that program is subject to approval by a state agency other than the Chancellor's Office and both of the following conditions are satisfied:

(A) colleges in at least six different districts have previously satisfied the data collection requirements of this subdivision with respect to the same prerequisite or corequisite for the same program; and

(B) the district establishing the prerequisite or corequisite conducts an ...aluation to determine whether the prerequisite or corequisite has a disproportionate impact on particular groups of students described in terms of race, ethnicity, gender, age or disability, as defined by the Chancellor. When there is a disproportionate impact on any such group of students, the district shall, in consultation with the Chancellor, develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact.

(f) Any prerequisite or corequisite may be challenged by a student on one or more of the grounds listed below. The student shall bear the initial burden of showing that grounds exist for the challenge. Challenges shall be resolved in a timely manner and, if the challenge is upheld, the student shall be permitted to enroll in the course or program in question. Grounds for challenge are:

(1) The prerequisite or corequisite has not been established in accordance with the district's process for establishing prerequisites and corequisites;

(2) The prerequisite or corequisite is in violation of this Article;

(3) The prerequisite or corequisite is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(4) The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite;

(5) The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available; and

(6) Such other grounds for challenge as may be established by the district governing board.

(g) In the case of a challenge under Subsection (f)(3) of this Section, the district shall, upon completion of the challenge procedure established ...rsuant to this Section, advise the student that he or she may file a formal ...mplaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

(h) District policies adopted pursuant to this section shall be submitted to the Chancellor as part of the district's matriculation plan pursuant to Section 55510 of Subchapter 6 of Chapter 6 of this Division.

NOTE: Authority cited: Section 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
2. Amendment of subsection (e), new subsections (e)(1)–(e)(2)(B) and amendment of NOTE filed 2–9–98; operative 3–11–98. Submitted to OAL for printing only (Register 98, No. 7).

§ 55202. Additional Rules.

The following additional rules apply to the establishment of prerequisites and corequisites:

(a) Prerequisites, corequisites, and advisories on recommended preparation must be identified in college publications available to students as well as the course outline of any course for which they are established.

(b) Prerequisites establishing communication or computational skill requirements may not be established across the entire curriculum unless established on a course–by–course basis.

(c) The determination of whether a student meets a prerequisite shall be based on successful completion of an appropriate course or on an assessment using multiple measures. Any assessment instrument used shall be selected and used in accordance with the provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

(d) If a prerequisite requires precollegiate skills in reading, written expression, or mathematics, the governing board of a district shall ensure that precollegiate basic skills courses designed to teach the required skills are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course.

(e) Whenever a corequisite course is established, sufficient sections shall be offered to reasonably accommodate all students who are required to take the corequisite. A Corequisite shall be waived as to any student for whom space in the corequisite course is not available.

(f) No exit test may be required to satisfy a prerequisite or corequisite unless it is incorporated into the grading for the prerequisite or corequisite course.

(g) The determination of whether a student meets a prerequisite shall be made prior to his or her enrollment in the course requiring the prerequisite, provided, however, that enrollment may be permitted pending verification that the student has met the prerequisite or corequisite. If the verification shows that the student has failed to meet the prerequisite, the student may be involuntarily dropped from the course if the applicable enrollment fees are promptly refunded. Otherwise a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or to the student code of conduct.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

Article 3. Distance Education

§ 55205. Definition and Application.

Distance education means instruction in which the instructor and student are separated by distance and interact through the assistance of communication technology. All distance education is subject to the general requirements of this chapter as well as the specific requirements of this article. In addition, instruction provided as distance education is subject to the requirements that may be imposed by the Americans with Disabili-

ies Act (42 U.S.C. Sec. 12100 et seq.) and section 508 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 794d).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

w article 3 (sections 55205–55219) and section filed 5–20–2002; operative 19–2002. Submitted to OAL for printing only (Register 2002, No. 26). For prior history of article 3 (section 55225), see Register 95, No. 20.

§ 55207. Course Quality Standards.

The same standards of course quality shall be applied to distance education as are applied to traditional classroom courses, in regard to the course quality judgments made pursuant to the requirements of section 55002 of this part, and in regard to any local course quality determination or review process.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

. New section filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55209. Course Quality Determinations.

Determinations and judgments about the quality of distance education nder the course quality standards referred to in section 55207, shall be ade with the full involvement of faculty in accordance with the provions of subchapter 2 (commencing with section 53200) of chapter 2 of vision 4 of this part.

OTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: ections 70901 and 70902, Education Code.

HISTORY

. New section filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55211. Instructor Contact.

In addition to the requirements of section 55002 and any locally established requirements applicable to all courses, district governing boards ll ensure that:

(a) All approved courses offered as distance education include regular effective contact between instructor and students, through group or individual meetings, orientation and review sessions, supplemental seminar or study sessions, field trips, library workshops, telephone contact, correspondence, voice mail, e–mail, or other activities.

(b) All distance education courses are delivered consistent with guidelines issued by the Chancellor pursuant to section 409 of the Procedures and Standing Orders of the Board of Governors. Regular effective contact is an academic and professional matter pursuant to title 5, section 53200.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55213. Separate Course Approval.

Each proposed or existing course, if delivered by distance education, shall be separately reviewed and approved according to the district's certified course approval procedures.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55215. Faculty Selection.

Instructors of sections delivered via distance education technology shall be selected by the same procedures used to determine all instructional assignments. Instructors shall possess the minimum qualifications the discipline into which the course's subject matter most appropriately falls, in accordance with article 2 of chapter 4 of division 4 of this part (commencing with section 53410), and with the list of disciplinary definitions and requirements adopted by the Board of Governors to implement that article, as such list may be amended from time to time.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55217. Number of Students.

The number of students assigned to any one course section offered by distance education shall be determined by and be consistent with other district procedures related to faculty assignment. Procedures for determining the number of students assigned to a course section offered by distance education may include a review by the curriculum committee established pursuant to section 55002(a)(1).

Nothing in this section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55219. Ongoing Responsibility of Districts.

Any district conducting courses under section 55316.5 shall:

(a) Maintain records and report data through the Chancellor's Office Management Information System on the number of students and faculty participating in new courses or sections of established courses,

(b) Provide to the local governing board, no later than August 31st of each year, a report on all distance education activity,

(c) Provide other information consistent with reporting guidelines developed by the Chancellor pursuant to section 409 of the Procedures and Standing Orders of the Board of Governors.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

Subchapter 2. Programs and Classes Outside of District

NOTE: Authority cited: Section 72012, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 55200–55204) filed 12–21–81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Register 77, No. 45.
2. Amendment of subchapter 2 heading filed 5–15–93; operative 6–14–93 (Register 93, No. 25).

§ 55230. Classes, Property and Buildings Outside of District.

The governing board of a community college district may conduct community college classes and acquire the necessary property and erect the necessary buildings therefor, outside of the boundaries of the district if all of the following conditions exist:

(a) The proposed location is within the state.

(b) the activities, trades, businesses, or work to be carried on at the proposed location is such as to offer educational opportunities to students who are residents of the district in the subject or all of the subjects proposed to be taught at that location, and facilities for such instruction are not available either at the location of the principal buildings of the community college, or elsewhere within the district.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

contact hours counted for a student shall not exceed the maximum number of Cooperative Work Experience Education units for which the student may be granted credit as described in section 55253.

(b) The learning experience and the identified on–the–job learning objectives shall be sufficient to support the units to be awarded.

(c) The following formula will be used to determine the number of units to be awarded:

(1) Each 75 hours of paid work equals one semester credit or 50 hours equals one quarter credit.

(2) Each 60 hours of non–paid work equals one semester credit or 40 hours equals one quarter credit.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 9–29–78; designated effective 1–2–79 (Register 78, No. 39).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 20).

§ 55257. Job Learning Stations.

Job learning stations shall meet the following criteria:

(a) Employers or designated representatives agree with the intent and purposes of Cooperative Work Experience Education for students and are given a copy of each student's approved on–the–job learning objectives.

(b) Job learning stations offer a reasonable probability of continuous work experience for students during the current work experience enrollment term.

(c) Employers or designated representatives agree to provide adequate supervision, facilities, equipment, and materials at the learning stations to achieve on–the–job learning objectives.

(d) Employers as required by law agree to comply with all appropriate federal and state employment regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78249, Education Code.

HISTORY

1. Amendment filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment filed 9–29–78; designated effective 1–2–79 (Register 78, No. 39).
3. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Editorial correction of HISTORY 4 (Register 95, No. 20).

Subchapter 4. Courses and Programs Conducted As Independent Study

Article 1. General Provision and Requirements

§ 55300. Application of Chapter.

The provisions of this chapter apply to and implement the provisions of sections 58051 and 58003.1 in relation to attendance in approved courses and programs designed and conducted as independent study.

Approved courses conducted as independent study shall be reported to the Chancellor in accordance with specified procedures as required by law.

All heretofore approved credit courses offered in whatever mode meeting the above requirements shall remain approved provided such courses meet the requirements of this chapter.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78310, Education Code.

HISTORY

1. Repealer of chapter 4 (sections 55300–55344, not consecutive) and new chapter 4 (articles 1–5; sections 55300–55360, not consecutive) filed 12–18–78; effective thirtieth day thereafter (Register 78, No. 51). For prior history, see Registers 77, No. 45 and 71, No. 9.
2. Amendment filed 11–15–79; effective thirtieth day thereafter (Register 79, No. 46).
3. Amendment of chapter 4 heading, repealer of article 1 heading, and amendment of section 55300 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. New article heading filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
6. Editorial correction of HISTORY 4 (Register 95, No. 20).

§ 55302. Definitions.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55310. Reporting.

Each independent study course, whether or not it is part of an approved program, must be reported to the Chancellor in a manner and form required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 11–15–79; effective thirtieth day thereafter (Register 79, No. 46).
2. Repealer of article 2 heading filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 20).

§ 55312. Transfer.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55314. Faculty and Student Participation.

NOTE: Authority cited: Sections 66700, 70901 and 78301, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55316. Criteria.

Courses offered pursuant to this Chapter shall:

(a) Be accepted by the college toward completion of an appropriate educational sequence leading to an associate degree, and

(b) Be recognized by an institution of the University of California or the California State University upon transfer to that institution.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment of opening statement, subsection (b) and NOTE filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
Editorial correction of HISTORY 2 (Register 95, No. 20).

55316.5. Additional Courses.

Notwithstanding any other provision of law, after June 1, 1994, the following additional types of courses may be offered as independent study if conducted by distance education consistent with the requirements of article 3 of subchapter 1 (commencing with section 55205) of this chapter and the guidelines developed by the Chancellor:

(a) Nontransferable courses designed to meet the requirements of sections 55805.5, 55806, and 55002(a) or (b);

(b) Noncredit courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
2. Amendment of last paragraph and NOTE filed 8–31–98; operative 9–30–98. Submitted to OAL for printing only (Register 98, No. 36).
3. Amendment of subsection (b) filed 12–3–2001; operative 1–2–2002. Submitted to OAL for printing only (Register 2001, No. 50).
4. Amendment of section and NOTE filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55317. Ongoing Responsibilities of Districts.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. New section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
2. Amendment of subsection (b), last paragraph and NOTE filed 8–31–98; operative 9–30–98. Submitted to OAL for printing only (Register 98, No. 36).
3. Amendment of subsections (b)–(c) filed 12–3–2001; operative 1–2–2002. Submitted to OAL for printing only (Register 2001, No. 50).
4. Repealer filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55318. Written Record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902, and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55320. Academic Standards.

Academic standards applicable to courses of independent study shall be the same as those applied to other credit courses in the college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 3 heading filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55321. Student Progress.

Procedures for evaluation of student progress shall be in accordance with regulations set by the college. A report by an instructor on appropriate records bearing the student's name for purposes of state apportionment shall certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by the student.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55322. Availability of Instructor.

The college shall provide access to the instructor for the students enrolled in courses offered pursuant to this chapter at least equivalent to that commonly available to students enrolled in courses conducted by other instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55323. Learning Assistance.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12–17–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 55340. Eligibility for State Funds.

In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this Chapter, the course must be reported as required by this Chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 4 heading and amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of section and NOTE filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55342. Average Daily Attendance.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55343. Grades Awarded.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55344. Enrollment.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55346. Records.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55348. Supervision.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55350. Instruction.

The instructor assigned to a course conducted pursuant to this chapter shall:

(a) Be qualified to provide service in that capacity during the period in which that service is rendered;

(b) Be responsible for the supervision, control, and evaluation of the course and the enrolled students;

(c) Provide orientation, guidance, and information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college; and

(d) Provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, this schedule to be included in the written record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55352. Number of Students.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer and new section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18). For prior history, see Register 91, No. 23.
2. Repealer filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55360. Evaluation Reports.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer of Article 5 heading and Section 55360 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Article 2. Distance Education

§ 55370. Definition and Application.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment of article heading and section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
3. Repealer of article 2 (sections 55370–55380) and repealer of section filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55372. Course Quality Standards.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
3. Repealer filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55374. Course Quality Determinations.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
3. Repealer filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55376. Instructor Contact.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment of section heading and text filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
3. Amendment filed 8–31–98; operative 9–30–98. Submitted to OAL for printing only (Register 98, No. 36).
4. Repealer filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55378. Separate Course Approval.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
3. Repealer filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55380. Faculty Selection.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
3. Repealer filed 5–20–2002; operative 6–19–2002. Submitted to OAL for printing only (Register 2002, No. 26).

Subchapter 5. Educational Master Plans

§ 55400. Definitions.

The definitions provided in the Student Attendance Accounting Manual issued by the Chancellor shall apply to the provisions of this chapter.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New chapter 5 (sections 55400 through 55405) filed 7–1–71; effective thirtieth day thereafter (Register 71, No. 27).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Amendment of section filed 6–11–91; operative 7–11–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 45).
5. Amendment of NOTE filed 6–11–91; operative 7–11–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 92, No. 1).
6. Editorial correction of HISTORY 3 (Register 95, No. 20).

§ 55401. Current and Long Range Plans.

The governing board of each Community College district shall establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

§ 55402. Educational Master Plans.

On or before January 1, 1972, the governing board of each Community College district shall submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor on or before November 1 of each year thereafter.

§ 55403. Form.

Each plan shall be submitted on a form provided by the Chancellor and shall contain such information as the Chancellor shall require.

§ 55404. Contents.

Each plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. On the basis of current and future enrollment, it shall contain plans for the development and expansion of ancillary services, including services in the library and for counseling, placement, and financial aids.

§ 55405. Review and Approval.

The Chancellor shall review each master plan. On or before February 1 following the submission of each plan, the Chancellor shall send a copy of the approval of it to the superintendent of each district.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

§ 55450. Excursions or Field Trips.

The governing board of a community college district may:

(a) Conduct field trips or excursions in connection with courses of instruction or school–related social, educational, cultural, athletic, or college band activities to and from places in the state, or any other state, the District of Columbia, or a foreign country for students enrolled in a college. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district's course of study for the students.

(b) Engage instructors, supervisors, and other personnel who desire to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for the field trip or excursion.

(c) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of students, instructors, supervisors or other personnel to and from places in the state, any other state, the District of Columbia, or a foreign country where the excursions and field trips are being conducted; provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, the liability insurance shall be secured from a carrier licensed to transact insurance business in the foreign country.

(d) Provide supervision of students involved in field trips or excursions by academic employees of the district.

No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance that would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if the class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out–of–state field trips or excursions and all parents or guardians of students taking out–of–state field trips or excursions shall sign a statement waiving such claims.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error in section heading and subsection (e) (Register 91, No. 43).
3. Amendment of subsection (d) and repealer of subsection (e) filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
4. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55451. Provision for Medical or Hospital Service for Students.

The governing board of any community college district conducting excursions and field trips pursuant to these regulations shall provide, or make available, medical or hospital service, or both, through nonprofit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from an authorized insurer, for students of the district injured while participating in the excursions and field trips under the jurisdiction of, or sponsored or controlled by, the district or the authorities of any college of the district. The cost of the insurance or membership may be paid from the funds of the district, or by the insured student, or his or her parent or guardian.

The insurance may be purchased from, or the membership may be taken in, only companies or corporations that are authorized to do business in this state.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of section heading and text filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
3. Editorial correction of HISTORY 1 (Register 95, No. 20).

Subchapter 6. Matriculation Programs

Article 1. Scope and Definitions

§ 55500. Scope and Implementation.

(a) This chapter implements and should be read in conjunction with the provisions of the Seymour–Campbell Matriculation Act of 1986, c. 1467, Stats. 1986, codified as Education Code Sections 78210, et seq. The purpose of this chapter is to further equality of educational opportunity and success for all students in the California Community Colleges.

(b) The requirements of this chapter apply only to districts receiving funds pursuant to Education Code Section 78216 for the period of time during which such funds are received. The Chancellor shall, in consultation with districts and other interested parties, adopt a schedule for implementing the provisions of this chapter as expeditiously as possible within the constraints of available funding. The schedule shall be coordinated with the implementation and funding of the systemwide management information system and the accountability mechanisms established pursuant to Education Code Section 71020.5.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 71020.5 and 78210–78218, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

2. Amendment of subsection (a) and repealer of subsection (c) filed 4–3–92; operative 5–4–92 (Register 92, No. 17).

§ 55502. Definitions.

For purposes of this Chapter, the following definitions shall apply:

(a) "Matriculation" means a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational goal through the college's established programs, policies, and requirements. This agreement is to be implemented by means of the student's individual educational plan developed pursuant to Section 55525.

(b) "Assessment" means the process of gathering information about individual students to facilitate student success. Assessment shall include, but is not limited to, information regarding the student's study skills, English language proficiency, computational skills, aptitudes, goals, learning skills, career aspirations, academic performance, and need for special services. Assessment involves the collection of such information at any time before or after enrollment, except that the process of assigning a grade by an instructor shall not be considered part of the assessment process. Once a grade has been assigned and recorded in a student's transcript, it can be used in the assessment process.

(c) "Assessment instruments, methods, or procedures" means one or more assessment instruments, assessment methods, or assessment procedures, or any combination thereof. These include, but are not limited to, interviews, standardized tests, holistic scoring processes, attitude surveys, vocational or career aptitude and interest inventories, high school or college transcripts, specialized certificates or licenses, educational histories and other measures of performance. The term "assessment instruments, methods, or procedures" also includes assessment procedures such as the identification of test scores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment sessions are conducted, manner in which assessment results are made available, and the length of time required before such results are available.

(d) "Pre–collegiate basic skills courses" are those courses in reading, writing, computation, and English as a Second Language which are designated by the community college district as nondegree credit courses pursuant to Section 55002(b).

(e) "Disproportionate impact" occurs when the percentage of persons from a particular racial, ethnic, gender, age or disability group who are directed to a particular service or placement based on an assessment instrument, method, or procedure is significantly different from the representation of that group in the population of persons being assessed, and that discrepancy is not justified by empirical evidence demonstrating that the assessment instrument, method or procedure is a valid and reliable predictor of performance in the relevant educational setting.

(f) "Exemption" means waiving or deferring a student's participation in orientation, assessment, counseling, or advisement required pursuant to Subsections (b),(c), and (f) of Section 55520.

(g) "Matriculation services" are those services listed in Section 55520.

(h) "Matriculation practices" means one or more instruments, methods, or procedures, or any combination thereof, used in providing any of the matriculation services listed in Section 55520.

(i) "Student" means a person enrolled in at lease one credit course.

(j) "Orientation" is a process which acquaints students and potential students with college programs, services, facilities and grounds, academic expectations, and institutional procedures.

(k) "Student follow–up" is the process of monitoring a student's progress toward his or her educational goals and providing the student with appropriate advice based on the results of such monitoring.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78212 and 78213, Education Code.

HISTORY

1. Amendment of subsection (a) and (b) and new subsections (g), (h), (i), (j) and (k) filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of first paragraph and subsections (a) and (c)–(k) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Article 2. Planning and Administration

§ 55510. Matriculation Plans.

(a) Each community college district shall adopt a matriculation plan describing the services to be provided to its students. The plan shall include, but not be limited to:

(1) a description of the methods by which required services will be delivered;

(2) the district's budget for matriculation;

(3) plans for faculty and staff development;

(4) computerized information services and institutional research and evaluation necessary to implement this Chapter;

(5) criteria for exempting students from participation in the matriculation process;

(6) procedures for establishing and periodically reviewing prerequisites pursuant to Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of this Division;

(7) procedures for considering student challenges to prerequisites established pursuant to Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of this Division; and

(8) in districts with more than one college, arrangements for coordination by the district of the matriculation plans of its various colleges.

(b) The plan shall be developed through consultation with representatives of the academic senate, students, and staff with appropriate expertise, pursuant to Section 51023 et seq.

(c) Such plans shall conform to the requirements of this Chapter and shall be submitted to the Chancellor for review and approval. Plans submitted prior to the effective date of this Section need not be revised or resubmitted if the Chancellor finds that they meet the requirements of this Chapter. Regardless of when plans are initially submitted, the Chancellor may require periodic updates of such plans.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment of subsection (a)(6), new subsection (a)(7) and subsection renumbering filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55512. Evaluation and Audits.

(a) Each community college district shall establish a program of institutional research for ongoing evaluation of its matriculation process to ensure compliance with the requirements of this chapter.

As part of this evaluation, all assessment instruments, methods or procedures shall be evaluated to ensure that they minimize or eliminate cultural or linguistic bias and are being used in a valid manner. Based on this evaluation, districts shall determine whether any assessment instrument, method or procedure has a disproportionate impact on particular groups of students described in terms of ethnicity, gender, age or disability, as defined by the Chancellor. When there is a disproportionate impact on any such group of students, the district shall, in consultation with the Chancellor, develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact. The evaluation shall include, but not be limited to, an analysis of the degree to which the matriculation program:

(1) impacts on particular courses, programs, and facilities;

(2) helps students to define their educational goals;

(3) promotes student success, as evidenced by outcome and retention data such as student persistence, goal attainment, skill improvement, and grades;

(4) assists the district in the assessment of students' educational needs;

(5) matches district resources with students' educational needs; and

(6) provides students with the support services described in section 545520(g).

(b) Each district shall also, as part of its annual financial audit, provide for a review of the revenue and expenditures of the matriculation program.

(c) The Chancellor shall establish a system for evaluation of the matriculation program on a statewide basis, including procedures for monitoring compliance with the requirements of this chapter.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: section 78214 and 78217, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55514. Data Collection.

Each community college district shall submit an annual report describing the district's efforts to implement its matriculation plan and expenditures made for that purpose. In this report, or through the established management information system or otherwise, the data to be collected for evaluation purposes pursuant to Education Code section 78214 and section 55512 of this part. Such data shall specifically include, but is not limited to, the information necessary to permit the Chancellor to determine the following:

(a) the proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who are placed in pre–collegiate, associate–degree applicable, or transfer level courses in reading, writing, computation or English as a Second Language.

(b) the proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who enter and complete pre–collegiate basic skills courses.

(c) The proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, completing pre–collegiate basic skills courses who subsequently enter and complete courses applicable to the associate degree;

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(d) outcome and retention data, as described in section 55512(a), indicating the effectiveness of matriculation;

(e) the basis on which the use of particular assessment instruments, ethods or procedures was validated by a district;

(f) the numbers of students exempted, pursuant to section 55532, from participation in the district's matriculation program, by category of exemption;

(g) the number of students filing complaints pursuant to 55534 and the bases of those complaints;

(h) the particular matriculation services, as listed in section 55520, which each student received; and

(i) any other matter the Chancellor, after consultation with community college districts, deems necessary for the effective evaluation of matriculation programs.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78214, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55516. Training and Staff Development.

Each community college district shall develop and implement a program for providing all faculty and staff with training appropriate to their needs on the provision of matriculation services, including but not limited to, the proper purpose, design, evaluation, and use of assessment instruments, methods or procedures, as well as their limitations and possible misuse.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55518. Funding.

(a) The Chancellor shall adopt a funding formula, consistent with the requirements of this section, for allocating matriculation funds to community college districts complying with the requirements of this chapter.(b) Each dollar of state matriculation funding shall be matched by three dollars of other district resources devoted to the matriculation program.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 3. Matriculation Services

§ 55520. Required Services.

At a minimum, each community college district shall provide students, except as exempted pursuant to section 55532, with all of the following matriculation services:

(a) the processing of applications for admission;

(b) orientation and pre–orientation services designed to provide nonexempt students and potential students, on a timely basis, information concerning college procedures and course scheduling, academic expectations, financial assistance, and any other matters the college or district finds appropriate;

(c) assessment for all nonexempt students pursuant to section 55524;

(d) counseling or advisement for nonexempt students pursuant to section 55523;

(e) assistance in developing a student educational plan pursuant to section 55525, which identifies the student's educational objectives and the courses, services, and programs to be used to achieve them;

(f) post enrollment evaluation, pursuant to section 55526, of each student's progress; and

(g) referral of students to:

(1) support services which may be available, including, but not limited to, counseling, financial aid, health services, campus employment placement services, Extended Opportunity Programs and Services, campus child care services, tutorial services, and Disabled Students Programs and Services; and

(2) specialized curriculum offerings including but not limited to, pre–collegiate basic skills courses and programs in English as a Second Language.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55521. Prohibited Practices.

(a) In implementing matriculation services, community college districts shall not, except as provided in subdivision (b), do any of the following:

(1) use an assessment instrument which has not been approved by the Chancellor pursuant to Section 55524, except that the Chancellor may permit limited field–testing, under specified conditions, of new or alternative assessment instruments, where such instruments are not used for placement and are evaluated only in order to determine whether they should be added to the list of approved instruments;

(2) use any assessment instrument in a manner or for a purpose other than that for which it was developed or has been otherwise validated;

(3) use any single assessment instrument, method or procedure, by itself, for placement, required referral to appropriate services, or subsequent evaluation of any student; provided however that, in the case of assessment instruments, the use of two or more highly correlated instruments does not satisfy the requirement for use of multiple measures;

(4) use any assessment instrument, method or procedure to exclude any person from admission to a community college;

(5) use any assessment instrument, method or procedure for mandatory placement of a student in or exclusion from any particular course or educational program, except that districts may establish appropriate prerequisites pursuant to Sections 55002 and 58106 of Division 9 of this Part; or

(6) use any matriculation practice which has the purpose or effect of subjecting any person to unlawful discrimination prohibited by Chapter 5 (commencing with Section 59300) of Division 10 of this Part.

(b) Notwithstanding the provisions of subdivisions (a)(1) and (2), assessment instruments approved by the Secretary of the United States Department of Education may be used to determine "ability to benefit" in the process of establishing a student's eligibility for federal financial aid pursuant to subdivision (d) of Section 1091 of Title 20 of the United States Code.

NOTE: Authority cited: Section 11138, Government Code; and Sections 66700 and 70901, Education Code. Reference: Section 11135, Government Code; and Sections 72011, 78211 and 78213, Education Code.

HISTORY

1. Amendment of subsections (d), (e) and (f) filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (a) and redesignating following subsections (1)–(6), adoption of subsection (b) and amendment of NOTE filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 55522. Special Accommodations.

Matriculation services for ethnic and language minority students and students with disabilities, shall be appropriate to their needs, and community college districts shall, where necessary, make modifications in the matriculation process or use alternative instruments, methods or procedures to accommodate the needs of such students. Districts may require students requesting such accommodations to provide proof of need. Ex-

tended Opportunity Programs and Services (EOPS) and Disabled Students Programs and Services (DSPS) are authorized, consistent with the provisions of chapter 1 (commencing with section 56000) and chapter 2.5 (commencing with section 56200) of division 7 of this part, to provide specialized matriculation services and modified or alternative matriculation services to their respective student populations. Notwithstanding such authorization, participation in the EOPS and DSPS programs is voluntary and no student may be denied necessary accommodations in the assessment process because he or she chooses not to use specialized matriculation services provided by these programs. Modified or alternative matriculation services for limited or non–English–speaking students may be provided in English as a Second Language programs.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700, 70901, and 84500.1, Education Code. Reference: Section 11135, Government Code; Sections 72011, 78211, 78213, and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55523. Counseling and Advisement.

(a) If not already required to do so by the minimum standards for counseling services set forth in section 51018 of division 1 of this Part, each community college district shall do all of the following:

(1) make reasonable efforts to ensure that all nonexempt students who are on probation participate in counseling as provided in section 55759 of this Part;

(2) make reasonable efforts to ensure that all nonexempt students who have not declared a specific educational goal participate in counseling to assist them in the process of selecting a specified educational goal pursuant to section 55525;

(3) make reasonable efforts to ensure that all nonexempt students who are enrolled in pre–collegiate basic skills courses participate in counseling or advisement; and

(4) make available to all students, as defined in section 55502(i), advisement or counseling on general academic requirements and the selection of specific courses by counselors or appropriately trained instructor/advisors, and/or other appropriately trained staff working in consultation with counselors.

(b) Counseling by appropriately trained counselors or advisement by appropriately trained staff may also be made available in any other area the district deems appropriate, including but not limited to, the interpretation of assessment results and the development of a student's educational plan as required by section 55525.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55524. Assessment.

The Chancellor shall establish and update, at least annually, a list of approved assessment instruments and guidelines for their use by community college districts. These guidelines shall identify modifications of an assessment instrument or the procedures for its use which may be made in order to provide special accommodations required by section 55522 without separate approval by the Chancellor. Such guidelines shall also describe the procedure by which districts may seek to have assessment instruments approved and added to the list. The Chancellor shall ensure that all assessment instruments included on the list minimize or eliminate cultural or linguistic bias, are normed on the appropriate populations, yield valid and reliable information, identify the learning needs of students, make efficient use of student and staff time, and are otherwise consistent with the educational and psychological testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55525. Student Educational Plan.

(a) Each community college district shall establish a process for assisting students to select a specific educational goal within a reasonable time after admission as required by Section 55530 (d). This shall include, but not be limited to, the provision of counseling as required by Section 55523(a)(2).

(b) Once a student has selected a specific educational goal, the district shall afford the student the opportunity to develop a student educational plan describing the responsibilities of the student, the requirements he or she must meet, and the courses, programs, and services required to achieve the stated goal.

(c) The student educational plan developed pursuant to Subsection (b) shall be recorded in written or electronic form. The plan and its implementation shall be reviewed as necessary to ensure that it continues to accurately reflect the needs and goals of the student.

(d) If a student believes the district has failed to make good faith efforts to develop a plan, has failed to provide services specified in the student educational plan, or has otherwise violated the requirements of this Section, the student may file a complaint pursuant to Section 55534 (a).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).
2. Amendment of subsections (a), (c) and (d) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55526. Student Follow–up.

Each community college district shall establish a student follow–up process to assist the student in achieving his/her educational goal. The follow–up system shall ensure that the academic progress of each student is regularly monitored to detect early signs of academic difficulty and students shall be provided with advice or referral to specialized services or curriculum offerings where necessary. Districts shall also identify and refer to counseling or advisement, as appropriate pursuant to section 55523(a), any students who have not declared a specific educational goal as required by section 55530, who are enrolled in pre–collegiate basic skills courses, or who have been placed on probation.

NOTE: Authority cited: Sections 66700 and 70901, Educational Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 4. Appeals, Waivers, Student Rights and Responsibilities

§ 55530. Student Rights and Responsibilities.

(a) Nothing in this Subchapter shall be construed to interfere with the right of a student admitted to a community college in accord with district admission policies adopted pursuant to Education Code Section 76000, et seq. to enroll in any course for which he or she can meet necessary and appropriate prerequisites, if any, which have been established pursuant to the requirements of Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of this Division.

(b) Community college districts shall take steps to ensure that information is available in written form to all students during or prior to enrollment (e.g., during orientation) and is included in class schedules, catalogs or other appropriate publications, describing their rights and responsibilities under this Chapter.

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to void additional testing by submitting scores on recently taken tests that correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission; declare a specific educational goal within a reasonable period after admission; participate in counseling or advisement pursuant to Section 55523(a)(1), (2), and (3); diligently attend class and complete assigned coursework; and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of Chapter 9 (commencing with Section 55750) of Division 6 of this Part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this Subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree-applicable credit course work, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to Section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to Section 55525. If a student fails to fulfill the responsibilities listed in this Subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his or her specific educational goal, or fails to abide by the terms of his or her student educational plan, the district may, subject to the requirements of this Chapter, suspend or terminate the provision of services authorized in Section 55520, provided however, that nothing in this Section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of Chapter 6 (commencing with Section 54600) of Division 5 of this Part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 76000, 76001, 76001.5 and 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (b) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
3. Amendment of subsections (a), (b) and (d) filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Each community college district shall establish written procedures by which students may challenge any alleged violation of the provisions of this Subchapter. Districts shall investigate and attempt to resolve any such complaints in a timely manner. Such complaint procedures may be consolidated with existing student grievance procedures by action of the governing board. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under Section 55512(c).

(b) When a challenge contains an allegation that a community college district has violated the provisions of Section 55521(a)(6), the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135–11139.5, Government Code; Sections 78211 and 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment of subsection (b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) "Vocational education contract" means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) "The California State Plan for Vocational Education" means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94–482 and 95–40), part A, Vocational Education, or any subsequent federal legislation.

(c) "Contractor" as used in section 55602 means any private postsecondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300), and which has been in operation

not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this Code.

(d) "Eligible costs" means all direct and indirect related instructional costs but does not include expenditures for capital outlay (6000 category in the California Community Colleges Budget and Accounting Manual).

Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. New chapter 7 (sections 55600 through 55631, not consecutive) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of subchapter 1 heading, amendment of article 1 heading, and repealer and new section 55600 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Amendment filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
6. Editorial correction of HISTORY 4 (Register 95, No. 22).

§ 55601. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

The governing board of each community college district participating in a vocational education program shall appoint a vocational education advisory committee to develop recommendations on the program and to provide liaison between the district and potential employers.

The committee shall consist of one or more representative of the general public knowledgeable about the disadvantaged, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

New section filed 5–15–93; operative 6–4–93 (Register 93, No. 25). For prior history, see Register 83, No. 18.

§ 55602. Authority to Contract.

Any community college district or districts may contract with a private post secondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300) of part 59 of the Education Code and which has been in operation not less than two full calendar years prior to the effective date of such contract to provide vocational skill training authorized by the Education Code. Any community college district may contract with an activity center, work activity center, or sheltered work shop to provide vocational skill training authorized by the Education Code in any adult education program for substantially handicapped persons operated pursuant to subdivision (e) of section 41976 of the Education Code.

All contracts between a community college district and a private postsecondary school entered into pursuant to this section, or an activity center, work center, or sheltered workshop shall do all of the following:

(1) Be approved by the Chancellor.

(2) Provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in the community colleges or the tuition the private postsecondary school charges its private students, whichever is lower.

(3) Provide that the community college students receiving training in a private postsecondary school, or an activity center, work activity center, or sheltered workshop pursuant to that contract may not be charged additional tuition for any training included in the contract. The attendance of those students pursuant to a contract authorized by this section shall be credited to the community college district for the purposes of apportionments from the State School Fund.

(4) Provide that all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Vocational Education, or is a course of study for adult schools approved by the Department of Education under section 51056 of the Education Code.

The students who attend a private postsecondary school or an activity center, work activity center or sheltered workshop pursuant to a contract under this section shall be enrollees of the community college and the vocational instruction provided pursuant to that contract shall be under the exclusive control and management of the governing body of the contracting community college district. The Chancellor may audit the accounts of both the district and the private party involved in these contracts to the extent necessary to assure the integrity of the public funds involved.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55602.5. Contracts for Vocational Education for Students with Impaired Physical Capacity.

Notwithstanding any provision in the Education Code to the contrary, the governing board of a community college district and a proprietary or nonprofit organization, a public entity, or a proprietary or nonprofit private corporation may enter into a contract for the education of community college students whose capacity to function is impaired by physical deficiency or injury in vocational education classes to be conducted for such students by the proprietary or nonprofit organization, the public entity, or the proprietary or nonprofit private corporation maintaining the vocational education classes. All instruction pursuant to this Section shall be approved of and supervised by the governing board of the community college district and shall be conducted by academic employees. The full-time equivalent student of such community college students attending classes under the provisions of this Section shall be credited to the community college district, and college credit may be granted to students who satisfactorily complete the course of instruction in such classes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55603. Instructional Purpose.

Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55604. Application for Approval.

NOTE: Authority cited: Sections 8092, 71020, 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

2. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
3. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§5605. Contract Approval and Limitations.

Vocational education contracts entered into pursuant to section 55602 shall:

(a) Not exceed one year;

(b) Be approved by the Chancellor;

(c) Include such details to explain and justify intended offerings.

(d) Be maintained in conformity with applicable provisions of the Education Code, Title 5 of the California Code of Regulations, California Community Colleges Budget and Accounting Manual, and the California State Plan for Vocational Education; and

(e) Be organized and administered by community college districts in such a manner that there will be separate accounts for all income and expenditures applicable to the contract.

NOTE: Authority cited: Sections 8092, 66700, 70901, 70902 and 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 22).

§ 55606. Administration.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55607. Reporting.

Each Community College district that has entered into a contract with a contractor pursuant to Education Code section 55602, shall submit annually to the Chancellor statistical and evaluative reports on forms provided by the Chancellor. All records related to income and expenditures applicable to the contract shall be made available for audit by the state or federal government and will be retained for five (5) years or one year after audited, whichever comes first.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 22).

§ 55608. Accounting Procedure.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 2. Contracting Standards

§ 55620. Standards.

The following conditions shall be used to determine the appropriateness of vocational education contracts with contractors:

(a) Manpower needs and job opportunities are identified and established for the instruction program.

(b) The program or courses do not unnecessarily duplicate offerings available in the region served.

(c) The program or courses provide vocational education opportunities not otherwise available.

(d) The programs or courses shall not reduce or supplant the vocational education efforts of any district.

(e) Eligible costs shall not exceed the same cost to provide the same training in the public entity or the tuition the private postsecondary school charges its private students, whichever is lower.

(f) The community college student may not be charged additional tuition for any training included in the contract.

(g) Each student eligible for enrollment under a contract between a community college district and a contractor must: (1) have reached his or her sixteenth birthday and (2) be enrolled in a community college.

(h) The contractor must be accredited by an accrediting agency recognized by the United States Office of Education or conform to guidelines on contractual relationships with nonaccredited organizations established by the agency accrediting the community college.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 22).

Article 3. Contract Provisions

§ 55630. Terms and Conditions.

Each contract shall expressly include but not be limited to, the following provisions:

(a) The governing board of the community college district has determined, by resolution, the appropriateness of offering the program through a contract with a contractor pursuant to Education Code section 78015.

(b) Methods for identifying eligible costs and payment procedures for compliance with section 55602 subdivisions 2 and 3.

(c) Procedures, terms and conditions relating to (1) enrollment period; (2) transfer of students between the community college district and contractor; (3) number of class hours sufficient to meet the stated performance objectives; (4) supervision and evaluation of students; and (5) withdrawal of students prior to completion of a course or program.

(d) The contractor and the community college district will insure that ancillary and support services are provided for the students including, but not limited to (1) counseling and guidance, and (2) placement assistance.

(e) Instruction provided under the immediate supervision and control of qualified faculty of the district.

(f) Performance objectives for each instructional area and a report regarding accomplishment of the objectives at the end of each contract period.

(g) Designation of responsibility to the contractor for maintaining records of student attendance and achievement. Such records shall be available for review at all times and submitted on a schedule developed by the community college district.

(h) Terms and conditions relating to cancellation and termination of the contract.

(i) The contractor is in compliance with the Civil Rights Act of 1964, title 9 of the Higher Education Act of 1972, the U.S. Presidential Executive Order 11246 and subsequent amendments (if applicable), and all applicable state and federal health and safety regulations.

(j) The contractor provides, when required by law and at the contractor's own expense, workers' compensation insurance coverage for any student.

(k) The contractor provides indemnity and defense for the state and the community college district and their respective officers and employees, against any and all claims and liability for death, injury, loss and damage

arising out of, or in any manner connected with, the performance of the contract. Such indemnity and defense shall be provided by an appropriate hold harmless clause and a policy of liability insurance coverage, the cost of which is to be borne by the contractor. Such policy shall name the Board of Governors of the California Community Colleges, the State and public entity, along with their respective officers and employees as additional insureds.

NOTE: Authority cited: Sections 8090, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Repealer and new section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55631. Terms and Conditions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of subsection (d) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Article 4. Regional Adult and Vocational Education Councils

§ 55650. Regulations Reference.

NOTE: Authority cited: Section 8023, Education Code. Reference: Article 2, Chapter 1 (commencing with Section 8020), Division 1, Education Code.

HISTORY

1. New subchapter 2 (section 55650) filed 4–22–76; effective thirtieth day thereafter (Register 76, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Redesignation of subchapter 2 (section 55650) to article 4 (section 55650) filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Repealer filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Editorial correction of HISTORY 4 (Register 95, No. 22).

Article 5. Calculation and Payment of Excess Costs of Apprenticeship Classes

§ 55675. Regulations Reference.

Pursuant to the authority vested by section 3074 of the Labor Code, the State Board of Education, the Board of Governors of the California Community Colleges and the Division of Apprenticeship Standards have jointly issued regulations regarding excess costs to be borne by program sponsors. These regulations are set forth in article 11 (commencing with section 235) of chapter 2, part 1 of title 8, California Administrative Code, and shall govern the calculation and payment of excess costs of apprenticeship classes which are maintained in connection with Community Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 3074, Labor Code.

HISTORY

1. New subchapter 3 (section 55675) filed 7–8–76; effective thirtieth day thereafter (Register 76, No. 28).
2. Editorial correction replacing text inadvertently omitted during printing (Register 80, No. 9).
3. Redesignation of subchapter 3 (section 55675) to article 5 (section 55675) and amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Editorial correction of first paragraph (Register 91, No. 31).

Subchapter 8. Academic Calendar

Article 1. 175–Day Minimum Academic Calendar

§ 55700. Scope.

The provisions of this article pertain to changes made on or after July 1, 1982, to any traditional academic year calendar consisting of at least 175 days of instruction and evaluation. The conversion to a flexible calendar operation is not addressed by the provisions of this article; rather, the provisions of article 2 (commencing with section 55720) govern the flexible calendar option.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New chapter 8, articles 1–4 (sections 55700–55731, not consecutive) filed 5–7–76; effective thirtieth day thereafter (Register 76, No. 19).
2. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of chapter 8 (articles 1–4, sections 55700–55731, not consecutive) and new chapter 8 (articles 1 and 2, sections 55700–55732, not consecutive) filed 7–26–82; designated effective 7–30–82 pursuant to Government Code section 11346.2(d) (Register 82, No. 31). For prior history, see Register 80, No. 11.
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Editorial correction of HISTORY 4 (Register 95, No. 22).

§ 55700.1. Studies on a Quarter System, Trimester Basis or Flexible Calendar.

At the request of a community college district, the Chancellor may approve a program of studies on a quarter system or a trimester basis, or a flexible calendar.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55701. College and Academic Year.

The "college year" begins on the first day of July and ends on the last day of June. The "academic year" means that portion of the college year during which the community college is maintained, which period shall include not less than the number of days required by regulations adopted by the Board of Governors.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 55702. Approval of Changes.

(a) Prior to any change in academic year configuration, including the addition, deletion, shortening or lengthening of any term, the governing board of a district shall obtain the approval of the Chancellor.

(b) Requests for approval shall be made on a form provided by the Chancellor, and shall address:

(1) A complete description of the calendar configuration;

(2) The district's ability to comply with the 175–Day Rule as provided in section 58142; and

(3) The educational implications, positive and negative, of the proposed change.

(c) The Chancellor shall approve a requested change in academic year terms if it is found that:

§ 55728. Flexible Calendar Attendance Reporting.

(a) On forms provided by the Chancellor, districts with approved flexible calendar operations shall report at least the following:

(1) the total hours of classroom assignments (teaching time) which instructors specified in the district's approved plan were required to teach;

(2) of the total in Subsection (a)(1), the total faculty contact hours of instruction for which staff, student, and instructional improvement activities are being substituted. This total of faculty contact hours shall further be reported in terms of credit and noncredit faculty contact hours of instruction; and

(3) the number of faculty contact hours of instruction for which instruction during the designated days is being substituted. Such instruction during the designated days meeting the attendance accounting standards may be claimed for apportionment; and the faculty contact hours shall not be eligible for adjustment pursuant to Section 55729.

(b) Districts with approved flexible calendar operations shall also report such additional data as deemed necessary by the Chancellor including any data necessary to compute the FTES adjustment specified in Section 55729.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. New section filed 11–10–82; effective thirtieth day thereafter (Register 82, No. 46).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).
3. Amendment of subsections (a)(1), (a)(3), (b) and NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
4. Amendment of subsections (a)(2)–(b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55729. Full–time Equivalent Student (FTES) Units; Adjustments to Reflect Activities; Computation by Multiplier Factor.

(a) The Chancellor's Office shall adjust the actual units of full–time equivalent student of a district operating under a plan approved in accordance with Sections 55720–32 to reflect the conduct of staff, student, and instructional improvement activities in lieu of scheduled instruction during flexible time. The adjusted units of full–time equivalent student shall be computed by multiplying the actual units of full–time equivalent student in the academic year, exclusive of any intersessions, computed pursuant to Section 58003.1, by a factor which does not change the full–time equivalent student which would have otherwise been generated if the time for the improvement activities had not been permitted and scheduled instruction had instead taken place.

(b) For courses other than those described in Subsection (b) of Section 58003.1, the multiplier factor shall equal the sum of the following:

(1) 1.0; and

(2) the total of all the actual hours of flexible time of all instructors pursuant to Section 55720 in the fiscal year, divided by the total of all the actual hours of classroom instruction of all instructors in the academic year, exclusive of any intersessions.

(c) For those courses described in Subsection (b) of Section 58003.1, this multiplier factor shall equal the maximum term length multiplier set forth in that Subsection.

(d) The Chancellor shall also withhold the appropriate amount of state aid whenever there is a final audit finding that an instructor did not spend at least as much time performing staff, student, and instructional improvement activities as the amount of time he or she was released from classroom instruction.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
2. Amendment of section heading and text filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

55730. Ongoing Responsibilities of Districts.

A district conducting an approved flexible calendar shall do all of the following to ensure effective use of resources during flex days:

(a) conduct and annually update a survey of the most critical staff, student, and instructional improvement needs in the district;

(b) develop and carry out a plan of activities to address the critical needs;

(c) maintain records on the description, type and number of activities scheduled and the number of district employees and students participating in these activities;

(d) evaluate annually the effectiveness of conducted activities and update the plan to reflect needed changes;

(e) appoint and hold regular meetings of an advisory committee composed of faculty, students, administrators and other interested persons to make recommendations on staff, student, and instructional improvement activities; and

(f) provide, upon request of the Chancellor, copies of documents and information specified in Subsections (a) through (d), inclusive.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).

§ 55732. Ongoing Responsibilities of the Chancellor.

The Chancellor shall:

(a) Adjust state aid for districts with approved flexible calendar operations in accordance with the provisions of section 55729 of this Part;

(b) Periodically review documentation from selected districts to determine whether they are in compliance with the provisions of sections 55726, 55728, and 55730, and to determine whether they are conducting their flexible calendar operations in a manner consistent with the approved requests. Districts which are found to be out of compliance shall be notified and be given an opportunity to respond; and

(c) Terminate approval of any flexible calendar operation if it is found that the district has, without good cause:

(1) failed to conduct its flexible calendar operation in a manner consistent with its approved request;

(2) failed to carry out the responsibilities specified in section 55726; or

(3) failed to meet its ongoing responsibilities as specified in section 55730.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).
2. Amendment filed 5–15–93; operative 6–14–93 (Register 93, No. 25).

Subchapter 9. Standards of Scholarship

§ 55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by section 51002 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. New chapter 9 (sections 55750–55765) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with section 55758.

(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55752. Credit–No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit–no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit–no credit" or a letter grade.

(b) All units earned on a "credit–no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit–no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300–55352 of this part may be graded on a "credit–no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55753. Credit by Examination.

(a) The governing board of each community college district shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this Subchapter.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The nature and content of the examination shall be determined solely by faculty in the discipline that normally teaches the course for which credit is to be granted in accordance with policies and procedures approved by the curriculum committee established pursuant to Section 55002. The faculty shall determine that the examination adequately measures mastery of the course content as set forth in the outline of record. The faculty may accept an examination conducted at a location other than the community college for this purpose.

(d) A separate examination shall be conducted for each course for which credit is to be granted. Credit may be awarded for prior experience or prior learning only in terms of individually identified courses for which examinations are conducted pursuant to this section.

(e) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(f) Grading shall be according to the regular grading scale approved by the governing board pursuant to Section 55758, except that students shall be offered a credit–no credit option if that option is ordinarily available for the course.

(g) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Amendment filed 1–4–2002; operative 7–1–2002. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2002, No. 8).

§ 55753.5. Articulation of High School Courses.

(a) For purposes of this section, the term "articulated high school course" means a high school course or courses that the faculty in the appropriate discipline, using policies and procedures approved by the curriculum committee established pursuant to Section 55002, have determined to be comparable to a specific community college course.

(b) The governing board of a community college district may adopt policies to permit articulated high school courses to be applied to community college requirements in accordance with this Section. Articulated high school courses may be accepted in lieu of comparable community college courses to partially satisfy:

(1) requirements for a certificate program, including the total number of units required for the certificate; or,

(2) the major requirements in a degree program.

(c) Articulated high school courses used to partially satisfy certificate or major requirements shall be clearly noted as such on the student's academic record. Notations of community college course credit shall be made only if community college courses are successfully completed or if credit is earned via credit by examination.

(d) Except through credit by examination, as defined in Section 55753, high school courses may not be used to satisfy:

(1) the requirement of Section 55806 that students complete at least 60 semester or 90 quarter units in order to receive an associate degree; or,

(2) any general education requirement for the associate degree established by the district.

(e) All community college district–high school articulation agreements shall be subject to the provisions of this Section. However, any student who, prior to the date this Section takes effect, has successfully completed a high school course articulated under the terms of a previous agreement shall be permitted to apply the credit so earned according to the terms of the previous agreement.

NOTE: Authority cited: Sections 66700, 70901 and 70902, Education Code. Reference: Sections 66700, 70901 and 70902, Education Code.

HISTORY

1. New section filed 1–4–2002; operative 7–1–2002. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2002, No. 8).

§ 55753.7. Advanced Placement Examinations.

The governing board of a community college district may adopt policies to grant credit for satisfactory completion of advanced placement examinations typically recognized by colleges and universities as measuring competencies comparable to those achieved in baccalaureate level courses.

The faculty in the appropriate discipline must approve advanced placement examinations, scores deemed to constitute satisfactory performance, courses offered by the college for which credit will be granted, and requirements that may be met by such examinations in accordance with policies and procedures approved by the curriculum committee established pursuant to Section 55002.

The student's academic record shall be clearly annotated to reflect that credit was earned through an advanced placement examination.

NOTE: Authority cited: Sections 66700, 70901 and 70902, Education Code. Reference: Sections 66700, 70901 and 70902, Education Code.

HISTORY

1. New section filed 1–4–2002; operative 7–1–2002. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2002, No. 8).

§ 5[illegible] Standards for Probation.

[illegible]ademic probation. A student who has attempted at least 12 se[illegible]mi[illegible]or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 5[illegible]. Removal from Probation.

[illegible] student on academic probation for a grade point deficiency shall b[illegible]oved from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

[illegible] student who is on academic probation shall be subject to dismiss[illegible]r[illegible]e student earned a cumulative grade point average of less than 1.75 [illegible]nits attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community–based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college–level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college–level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college–level courses, request reinstatement to proceed with college–level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit–no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average using only the following evaluative symbols, except as provided in subsections (b) and (c):

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board of a community college district may use "plus" and "minus" designations in combination with letter grades, except that the grade of C minus shall not be used. If pluses and minuses are used, the grade point value of a plus shall be computed by adding 0.3 to the value assigned to the letter grade with which it is combined, and the grade point value of a minus shall be computed by subtracting 0.3 from the value assigned to the letter grade with which it is combined, except that no grade point value shall be less than 0 or greater than 4.0.

(c) Regardless of whether the governing board elects to use plus and minus grading, it may provide for the use of the "FW" grade symbol to indicate that a student has both ceased participating in a course some time after the last day to officially withdraw from the course without having achieved a final passing grade, and that the student has not received district authorization to withdraw from the course under extenuating circumstances. The "FW" symbol may not be used if a student has qualified for and been granted military withdrawal. If "FW" is used, its grade point value shall be zero (0).

(d) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) or subsections (a) and (b) (if pluses and minuses are used) in the catalog or catalogs of that community college district as a part of its grading practices. In the event the governing board chooses to use the "FW" described in subsection (c), it shall be included in the grading scale and point equivalencies published in the catalog.

(e) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open–entry, open–exit" course is assigned an "IP" at the end of an attendance period and does not re–enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in this Section other than a "W."

Symbol	*Definition*
	The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student.
	No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made.
	Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty.
	Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W."
	For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer.
	The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in Sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures.
	Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs.
	A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.
MW	Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following:
	"Military Withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s. In no case would a military withdrawal result in a student being assigned an "FW" grade.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of subsection (c) filed 5–20–91 and submitted to OAL on 5–24–91 for printing only pursuant to Education Code section 10901.5; operative 6–19–91 (Register 91, No. 31).
3. Editorial correction of printing error in NOTE (Register 91, No. 43).
4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).
5. Editorial correction of HISTORY 1 (Register 95, No. 22).
6. Amendment of subsection (a), new subsection (b), subsection relettering, amendment of newly designated subsection (c), and amendment of NOTE filed 1–12–98; operative 2–11–98. Submitted to OAL for printing only (Register 98, No. 3).
7. Amendment of subsection (a), new subsection (c), subsection relettering, and amendment of newly designated subsections (d) and (e) filed 12–8–2000; operative 1–7–2001. Submitted to OAL for printing only (Register 2000, No. 50).

§ 55758.5. Grade Point Averaging.

(a) This section augments and should be read in conjunction with Section 55758 relating to academic record symbols and grade point average.

(b) In calculating students' degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–25–91; operative 11–24–91 (Register 92, No. 7).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(e) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(f) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(g) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Repealer of subsection (d), subsection relettering, and amendment of NOTE filed 3–25–98; operative 4–24–98. Submitted to OAL for printing only (Register 98, No. 14).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded.

(b) Except as provided in Subsection (c), repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition. Grades awarded for courses repeated under the provisions of this subsection shall not be counted in calculating a student's grade point average.

(c) If a district permits repetition of courses where substandard work has not been recorded, repetition shall be permitted, without petition, in instances when such repetition is necessary for a student to meet a legally mandated training requirement as a condition of continued paid or volunteer employment. Such courses must conform to all attendance accounting, course approval, and other requirements imposed by applicable provisions of law. Such courses may be repeated for credit any number of times, regardless of whether or not substandard work was previously recorded, and the grade received each time shall be included for purposes of calculating the student's grade point average. The governing board of a district may establish policies and procedures requiring students to certify or document that course repetition is necessary to complete legally mandated training pursuant to this subsection.

(d) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Amendment of section and NOTE filed 3–25–98; operative 4–24–98. Submitted to OAL for printing only (Register 98, No. 14).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of

[The next page is 360.4(c).]

grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55800.5. Minimum Credit Hours for Graduation from Two–Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1983).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

(d) The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55803. Associate in Science Degree (Applicable Until July 1, 1983).

The governing board of a community college district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall include a major of at least 18 semester hours in the fields of engineering, physical and biological sciences, or occupational curriculum.

The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55805. Philosophy and Criteria for Associate Degree and General Education.

(a) The governing board of a community college district shall adopt policy which states its specific philosophy on General Education. In developing this policy governing boards shall consider the following policy ...e Board of Governors:

...he awarding of an Associate Degree is intended to represent more than an accumulation of units. It is to symbolize a successful attempt on the part of the college to lead students through patterns of learning experiences designed to develop certain capabilities and insights. Among these are the ability to think and to communicate clearly and effectively both orally and in writing; to use mathematics; to understand the modes of inquiry of the major disciplines; to be aware of other cultures and times; to achieve insights gained through experience in thinking about ethical problems; and to develop the capacity for self–understanding. In addition to these accomplishments, the student shall possess sufficient depth in some field of knowledge to contribute to lifetime interest.

Central to an Associate Degree, General Education is designed to introduce students to the variety of means through which people comprehend the modern world. It reflects the conviction of colleges that those who receive their degrees must possess in common certain basic principles, concepts and methodologies both unique to and shared by the various disciplines. College educated persons must be able to use this knowledge when evaluating and appreciating the physical environment, the culture, and the society in which they live. Most importantly, General Education should lead to better self–understanding.

In establishing or modifying a general education program, ways shall be sought to create coherence and integration among the separate requirements. It is also desirable that general education programs involve students actively in examining values inherent in proposed solutions to major social problems.

(b) The governing board of a community college district shall also establish criteria to determine which courses may be used in implementing its philosophy on the associate degree and general education.

(c) The governing board of a community college district shall, on a reg...r basis, review the policy and criteria established pursuant to subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55805.5. Types of Courses Appropriate to the Associate Degree.

The criteria established by the governing board of a community college district to implement its philosophy on the associate degree shall permit only courses that conform to the standards specified in section 55002(a) and that fall into the following categories to be offered for associate degree credit:

(a) All lower division courses accepted toward the baccalaureate degree by the California State University or University of California or designed to be offered for transfer.

(b) Courses that apply to the major in non–baccalaureate occupational fields.

(c) English courses not more than one level below the first transfer level composition course, typically known as English 1A. Each student may count only one such course as credit toward the associate degree.

(d) All mathematics courses above and including Elementary Algebra.

(e) Credit courses in English and mathematics taught in or on behalf of other departments and which, as determined by the local governing board require entrance skills at a level equivalent to those necessary for the courses specified in subsections (c) and (d) above.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55806. Minimum Requirements for the Associate Degree (Applicable July 1, 1983).

The governing board of a community college district shall confer the degree of Associate in Arts or Associate in Science upon a student who has demonstrated competence in reading, in written expression, and in mathematics, and who has satisfactorily completed at least 60 semester units or 90 quarter units of college work. This course work requirement must be fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). It must include at least 18 semester or 27 quarter units in General Education and at least 18 semester or 27 quarter units in a major as prescribed in this section. Of the required units, at least 12 semester or 18 quarter units must be completed in residence at the college granting the degree. Exceptions to residence requirements for the Associate Degree may be made by the governing board when it determines that an injustice or undue hardship would be placed on the student.

(a) Major Requirements. At least 18 semester or 27 quarter units of study taken in a single discipline or related disciplines, as listed in the Community Colleges "Taxonomy of Programs," shall be required.

(b) General Education Requirements.

(1) Students receiving an Associate Degree shall complete a minimum of 18 semester or 27 quarter units of general education, including a minimum of three semester or four quarter units in each of the areas (A), (B) and (C) and the same minimum in each part of (D). The remainder of the unit requirement is also to be selected from among these four divisions of learning or as determined by local option:

(A) Natural Sciences. Courses in the natural sciences are those which examine the physical universe, its life forms, and its natural phenomena. To satisfy the General Education Requirement in natural sciences, a course shall be designed to help the student develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities. This

category would include introductory or integrative courses in astronomy, biology, chemistry, general physical science, geology, meteorology, oceanography, physical geography, physical anthropology, physics and other scientific disciplines.

(B) Social and Behavioral Sciences. Courses in the social and behavioral sciences are those which focus on people as members of society. To satisfy the general education requirement in social and behavioral sciences, a course shall be designed to develop an awareness of the method of inquiry used by the social and behavioral sciences. It shall be designed to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate. This category would include introductory or integrative survey courses in cultural anthropology, cultural geography, economics, history, political science, psychology, sociology and related disciplines.

(C) Humanities. Courses in the humanities are those which study the cultural activities and artistic expressions of human beings. To satisfy the general education requirement in the humanities, a course shall be designed to help the student develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and an ability to make value judgments. Such courses could include introductory or integrative courses in the arts, foreign languages, literature, philosophy, and religion.

(D) Language and Rationality. Courses in language and rationality are those which develop for the student the principles and applications of language toward logical thought, clear and precise expression and critical evaluation of communication in whatever symbol system the student uses.

1. English Composition. Courses fulfilling the written composition requirement shall be designed to include both expository and argumentative writing.

2. Communication and Analytical Thinking. Courses fulfilling the communication and analytical thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines.

(2) While a course might satisfy more than one general education requirement, it may not be counted more than once for these purposes. A course may be used to satisfy both a general education requirement and a major requirement. Whether it may be counted again for a different degree requirement is a matter for each college to determine. Students may use the same course to meet a general education requirement for the Associate Degree and to partially satisfy a general education requirement at the California State University, if such course is eligible under the provisions of section 40405 of this title.

(3) Ethnic Studies will be offered in at least one of the required areas.

(c) The provisions of this section shall be applicable to all students who enter a community college on or after July 1, 1983, provided that a governing board may specify an earlier implementation date pursuant to subsection (b) of Section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Editorial correction of subsection (b)(1)(A) filed 7–19–83; designated effective 8–12–83 (Register 83, No. 29).
2. New section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of printing error in NOTE (Register 91, No. 43).
5. Editorial correction of HISTORY 3 (Register 95, No. 22).

§ 55807. Conversion to Credit.

Upon student petition to and certification by a governing board of credit–level achievement and prescribed academic rigor, and evidence of prescribed competence as approved by the faculty, noncredit courses may count toward associate degrees.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 78405, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55808. Certificate of Achievement.

The governing board of a community college district shall issue a certificate of achievement to any student whom the governing board determines has completed successfully any course of study or curriculum for which a certificate of achievement is offered.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55809. Duty to Grant Diploma.

The governing board of a community college district shall award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student, who has satisfactorily completed the requirements of any course of study in less than the prescribed time, credit for the full number of semester hours scheduled for such course.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55810. Implementation by Governing Boards.

(a) The governing board of a community college district shall adopt necessary policies and procedures to implement the transition between degree requirements applicable until July 1, 1983 (sections 55802 and 55803) and requirements applicable on or after July 1, 1983 (sections 55805 and 55806).

(b) The governing board of a community college may implement sections 55805 and 55806 prior to July 1, 1983, provided that it develops the necessary policies and procedures to implement the transition and notifies the Chancellor as to when the implementation will commence.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

Subchapter 11. New Colleges and Education Centers

§ 55825. Responsibilities of District Governing Boards.

The governing board of a community college district planning the formation of a new college or educational center as defined in section 55827 shall employ and comply with the standards contained in sections 55829, 55830 and 55831 of this chapter.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

History

1. New chapter 11 (sections 55825–55831, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of printing error (Register 91, No. 43).
4. Editorial correction of History 2 (Register 95, No. 22).

§ 55827. Definitions.

(a) College. As used in this Chapter, "college" means a degree–granting institution intended to provide instruction through the second year of college, including but not limited, to one or more of the following categories:

(1) standard collegiate courses for transfer to higher institutions;

(2) vocational and technical fields leading to employment; or

(3) general or liberal arts courses for which institution the district intends to obtain accreditation.

(b) Educational Center. As used in this Chapter, "educational center" means a postsecondary operation established and administered by an existing college or district at a location away from the campus of the parent institution. An educational center is an operation planned to continue for three or more years and expected to enroll over 500 FTES by the third year of operation. The center typically has an on–site administrator and may offer programs leading to certificates and/or degrees conferred by the parent institution.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 66700, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of subsections (a), (a)(3) and (b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of History 1 (Register 95, No. 22).

§ 55828. Responsibilities of the Chancellor's Office, Community College Districts and the Board of Governors.

(a) The Chancellor's Office shall maintain an inventory of all off–campus programs and facilities in the community colleges. This inventory shall be updated annually, and shall be distributed to each community college district and the Postsecondary Education Commission for use in planning activities.

(b) The Chancellor's Office shall develop procedures to identify and review plans for new colleges and new educational centers within the district's Five–Year Academic and Capital Outlay Master Plans.

(c) Community college districts shall prepare and submit to the Chancellor's Office proposals for new colleges and new educational centers as defined in this chapter. These proposals should contain at least the following elements:

(1) Assessment of Needs and Preferences (section 55829),

(2) Identification of Objectives (section 55830), and

(3) Analysis of Alternative Delivery Systems (section 55831).

(d) The Chancellor's Office shall review each proposed new college and new educational center and shall recommend approval or disapproval to the Board of Governors. The Chancellor's Office analysis of these proposals shall stress inter–district concerns and evaluation of the delivery system proposed.

(e) The Board of Governors shall approve or disapprove each new college or educational center and transmit its findings to the community college district initiating the proposal and to the California Postsecondary Education Commission.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 22).

§ 55829. Assessment of Needs and Preferences.

(a) The community area and characteristics of individuals to be served must be identified adequately.

(b) Projections of potential enrollment demand in the service area must demonstrate significant unmet need, taking into account plans of nearby secondary and postsecondary institutions.

(c) Significant community support must be evident and possible community opposition must be identified.

(d) Preferences for community college programs and services on the part of individuals in the service area must be identified.

(e) Insofar as possible, present and future labor market requirements must be identified for the proposed service area, a broader adjacent region, and the state.

(f) Projected labor market requirements and community program preferences must be reconciled, if possible.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 22).

§ 55830. Identification of Objectives.

(a) Proposed college or educational center programs and services must be directed to the identified educational needs and preferences of the community to be served.

(b) Objectives of the proposed programs and services must be sufficiently specific that the district board may evaluate the success with which needs and preferences are met.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 22).

§ 55831. Analysis of Alternative Delivery Systems.

(a) The proposed operation must be the most effective and equitable of feasible delivery system alternatives for providing intended programs and services.

(b) Criteria for selecting the proposed delivery system must include:

(1) accessibility of programs and services to individuals in the service area,

(2) content and quality of programs and services, and

(3) cost of programs and services.

(c) Depending on the delivery system proposed, alternatives for providing the proposed programs and services must include, but need not be limited to:

(1) increased utilization of existing district resources,

(2) forming a new college, educational center, and/or outreach locations, and

(3) use of media such as television, computer–assisted instruction or programmed learning packages.

Alternative delivery systems considered must be adequately described, generally mutually exclusive, and limited to a manageable number to facilitate analysis and review.

(d) Proposed sources of funding for needed resources must be identified for both short and long–term operations.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Editorial correction of History 1 (Register 95, No. 22).

Subchapter 12. Libraries

§ 55840. Appointment and Qualification of District Librarian.

The governing board of a community college district maintaining its own library or libraries may appoint a librarian who shall meet minimum qualifications established pursuant to chapter 4 (commencing with section 53400) of division 4 of this part.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. New subchapter 12 heading filed 5–15–93; operative 6–14–93 (Register 93, No. 25).
3. Editorial correction of History 1 (Register 95, No. 22).

§ 55841. Annual Report by Governing Board to Department of Education.

The governing board of a district shall, on or before August 31st, in each year, report to the Chancellor on the condition of district libraries, for the year ending June 30th preceding. The report shall, in addition to other matters deemed expedient by the governing board or the librarians, contain such statistical and other information as is deemed desirable by the Chancellor. For this purpose the Chancellor may send to the districts instructions or question blanks so as to obtain the material for a comparative study of library conditions in the state.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 22).

Chapter 7. Special Programs

Subchapter 1. Disabled Student Programs and Services

Article 1. General Provisions and Definitions

§ 56000. Scope of Chapter.

This subchapter applies to community college districts offering support services, or instruction through Disabled Student Programs and Services (DSPS), on and/or off campus, to students with disabilities pursuant to Education Code Sections 67310–12 and 84850.

Programs receiving funds allocated pursuant to Education Code Section 84850 shall meet the requirements of this subchapter. Any support services or instruction funded, in whole or in part, under the authority of this subchapter must:

(a) not duplicate services or instruction which are otherwise available to all students;

(b) be directly related to the educational limitations of the verified disabilities of the students to be served;

(c) be directly related to the students' participation in the educational process;

(d) promote the maximum independence and integration of students with disabilities; and

(e) support participation of students with disabilities in educational activities consistent with the mission of the community colleges as set forth in Education Code Section 66701.

Note: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: Sections 66701, 67310–12 and 84850, Education Code.

History

1. Repealer of chapter 1 (sections 56000–56062) and new chapter 1 (sections 56000–56088, not consecutive) filed 12–17–76 as an emergency; effective upon filing. Designated inoperative 90 days after filing (Register 76, No. 51). For prior history, see Register 73, No. 44.
2. Repealer of chapter 1 (sections 56000–56088, not consecutive) and new chapter 1 (sections 56000–56088) filed 3–15–77; effective thirtieth day thereafter (Register 77, No. 12).
3. Amendment of section and Note filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
4. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
5. Repealer of chapter 1 (sections 56000–56088, not consecutive) and new chapter 1 (sections 56000–56088, not consecutive) filed 3–29–88; operative 4–28–99 (Register 88, No. 16).
6. Amendment of first and second paragraphs, repealer of subsections (a) and (f), amendment of newly designated subsections (a)–(d), new subsection (e), and amendment of Note filed 2–4–93; operative 3–6–93 (Register 93, No. 6).

§ 56002. Student with a Disability.

A "student with a disability" or "disabled student" is a person enrolled at a community college who has a verified impairment which limits one or more major life activities, as defined in 28 C.F.R. 35.104, and which imposes an educational limitation as defined in Section 56004. For purposes of reporting to the Chancellor under Section 56030, students with disabilities shall be reported in the categories described in Sections 56032–44.

Note: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: Sections 67310–12 and 84850, Education Code.

History

1. Repealer and new section filed 3–29–88; operative 4–28–88 (Register 88, No. 16). For prior history, see Register 83, No. 18.
2. Repealer and new section filed 2–4–93; operative 3–6–93 (Register 93, No. 6).

§ 56004. Educational Limitation.

As used in this subchapter, "educational limitation" means disability related functional limitation in the educational setting. This occurs when the limitation prevents the student from fully benefiting from classes, activities, or services offered by the college to nondisabled students, without specific additional support services or instruction as defined in Section 56005.

Note: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: Sections 67310–12 and 84850, Education Code.

History

1. Repealer and new section filed 3–29–88; operative 4–28–88 (Register 88, No. 16). For prior history, see Register 83, No. 18.
2. Repealer and new section filed 2–4–93; operative 3–6–93 (Register 93, No. 6).

§ 56005. Support Services or Instruction.

As used in this subchapter, "support services or instruction" means any one or more of the services listed in Section 56026, special class instruction authorized under Section 56028, or both.

Note: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: Sections 67310–12 and 84850, Education Code.

History

1. Repealer and new section filed 3–29–88; operative 4–28–88 (Register 88, No. 16). For prior history, see Register 83, No. 18.
2. New section filed 2–4–93; operative 3–6–93 (Register 93, No. 6).

§ 56006. Determination of Eligibility.

(a) In order to be eligible for support services or instruction authorized under this chapter, a student with a disability must have an impairment which is verified pursuant to subdivision (b) which results in an educational limitation identified pursuant to subdivision (c) of this section.

(b) The existence of an impairment may be verified, using procedures prescribed by the Chancellor, by one of the following means:

2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58056. Immediate Supervision and Control.

(a) Subdivision (a)(1) of section 58051 requires, as a condition for claiming attendance for apportionment purposes, the immediate supervision and control of an academic employee authorized to render service in a capacity and during the period in which he or she served. Immediate supervision and control requires the presence of the authorized employee. More specifically, immediate supervision or presence is characterized by all of the following:

(1) The authorized employee is able, in terms of physical proximity and range of communication, to provide immediate instructional supervision and control; and

(2) The authorized employee is in a position to provide the supervision and control necessary for the protection of the health and safety of students; and

(3) The authorized employee is not to have any other assigned duty during the instructional activity for which attendance is being claimed. The criteria specified above are to be applied in recognition of the fact that the need for immediate supervision will vary according to the course being offered, as well as with the design or mode of instruction of such course or program.

(b) Under the following limited circumstances, attendance of students enrolled in a course or program which does not meet the requirements of subdivision (a) shall qualify for apportionment purposes if:

(1) The course or program is approved and being conducted as distance education in accordance with article 3 (commencing with section 55205) of subchapter 1 of chapter 6; or

(2) The course or program is approved and being conducted as independent study in accordance with subchapter 4 (commencing with section 55300) of chapter 6; or

(3) The course or program is approved and being conducted as work experience education in accordance with subchapter 3 (commencing with section 55250) of chapter 6 of this part; or

(4) The course or program is approved and is being conducted as health sciences education in accordance with section 58055(a).

(c) Attendance generated solely under an instructional assistant or aide does not qualify for apportionment. In addition, instructional aides shall not be used to increase the number of students in relation to the number of classroom instructors in the district. However, attendance may qualify for apportionment under the following limited circumstances:

(1) The assistant or aide functions under the exclusive direction of the authorized employee assigned to that educational activity, and not independently; and

(2) The assistant or aide performs only those duties specifically authorized by law, including, but not limited to, sections 88240–88249 of the Education Code; and,

(3) The authorized employee is able, in terms of physical proximity and range of communication, to provide necessary supervision and control of students, so that by working in conjunction with the assistant or aide, the requirements of subsection (a) of this section are met.

NOTE: Authority cited: Sections 66700, 70901 and 84500, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 58058. Employee of the District.

(a) A person is an "employee of the district" within the meaning of subdivision (a)(1) of Section 58051 if:

(1) The district has the primary right to control and direct the person's activities during the time such person is serving the district; and

(2) A contract exists between the person and the district, indicia of which may include provisions which specify the terms and conditions of work, salary and other compensation, work to be performed, and employment classification; and,

(3) The district compensates the person according to an adopted salary or wage schedule which complies with the provisions of Article 8 (commencing with Section 87801), Chapter 3, Part 51 of the Education Code.

(b) For the purposes of complying with the requirements of this section, a district may also contract for instruction to be provided by a public or private agency. Such contracts shall specify that the district has the primary right to control and direct the activities of the person or persons furnished by the public or private agency during the term of the contract. In addition, the district shall enter into a written contract with each person furnished by the public or private agency; and said contracts shall meet the requirements of subsection (a)(1) and (2) of this section. In this manner an individual employed will continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

NOTE: Authority cited: Sections 66700, 70901 and 84500, Education Code. Reference: Sections 70901, 84500 and 87801, Education Code.

HISTORY

1. Amendment of subsections (a) and (a)(3) and NOTE filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 58060. Valid Employment Qualifications.

For the purposes of Sections 58051 and 58056, the employee is deemed authorized to perform the services because he or she is employed pursuant to a valid, unrevoked credential issued by the Board of Governors or pursuant to minimum qualifications adopted by the Board of Governors or equivalencies pursuant to Section 53430.

(a) If the person serves pursuant to a credential,

(1) It must authorize the holder to provide instruction in the particular subject matter or matters; and

(2) It must authorize the holder to provide that instruction during the period in which the holder is providing it.

(b) If the person serves pursuant to minimum qualifications adopted by the Board of Governors or equivalencies, the qualifications or equivalencies must be related to the assignment and effective during the period of instruction for which attendance is being claimed.

(c) For purposes of this section, an employee is deemed authorized to perform the services if he or she is employed as a faculty intern.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 84500 and 87487, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
2. Editorial correction of subsection (b) (Register 95, No. 47).

Subchapter 2. Limitations on State Aid

Article 1. Open Courses

§ 58100. Open Enrollment.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Section 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a special-clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58106. Limitations on Enrollment.

In order to be claimed for purposes of state apportionment, all courses shall be open to enrollment by any student who has been admitted to the college, provided that enrollment in specific courses or programs may be limited as follows:

(a) Enrollment may be limited to students meeting prerequisites and corequisites established pursuant to Sections 55200–55202 of this Division,

(b) Enrollment may be limited due to health and safety considerations, facility limitations, faculty workload, the availability of qualified instructors, funding limitations, the constraints of regional planning or legal requirements imposed by statutes, regulations, or contracts. The governing board shall adopt policies identifying any such limitations and requiring fair and equitable procedures for determining who may enroll in affected courses or programs. Such procedures shall be consistent with one or more of the following approaches:

(1) limiting enrollment to a "first–come, first–served" basis or using other nonevaluative selection techniques to determine who may enroll; or

(2) limiting enrollment using a registration procedure authorized by § 58108; or

in the case of intercollegiate completion, honors courses, or public performance courses, allocating available seats to those students judged most qualified; or

(4) limiting enrollment in one or more sections of a course to a cohort of students enrolled in one or more other courses, provided however, that a reasonable percentage of all sections of the course do not have such restrictions; or

(5) with respect to students on probation or subject to dismissal, the governing board may, consistent with the provisions of Sections 55754–55755 of this Part, limit enrollment to a total number of units or to selected courses, or require students to follow a prescribed educational plan.

(c) A student may challenge an enrollment limitation established pursuant to Subsection (b) of this Section on any of the following grounds:

(1) the enrollment limitation is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(2) the district is not following its policy on enrollment limitations;

(3) the basis upon which the district has established an enrollment limitation does not in fact exist; or

(4) any other criteria established by the district.

(d) The student shall bear the burden of showing that grounds exists for the challenge. Challenges shall be handled in a timely manner, and if the challenge is upheld, the district shall waive the enrollment limitation with respect to that student.

(e) In the case of a challenge under Subsection (c)(1) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer and new section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42). For prior history, see Register 92, No. 15.

§ 58107. Facilities and Opportunities for Participation.

Notwithstanding any other provision of law, no public funds shall be used in connection with athletic programs conducted under the auspices of a community college district governing board or any student organization within the district, which do not provide facilities and opportunities for participation by both sexes on an equitable basis. Facilities and opportunities for participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58108. Registration and Enrollment Procedures.

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off–campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58110. Enrollment Limitations.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

Article 2. 175–Day Rule

§ 58120. Conditions for Inclusion as a Day.

(a) For a day to count towards meeting the requirements of section 58142, courses of instruction must be offered for a minimum of three hours during the period of 7 a.m. and 11 p.m.

(b) Notwithstanding subsection (a) of this section, days of final examination may be counted toward meeting the requirements of section 58142, provided that:

EXHIBIT 5

STATE AGENCY PROGRAM MANUALS AND ADVISORIES (Executive Orders)

HANDBOOK OF ACCREDITATION AND POLICY MANUAL

Accrediting Commission for Community and Junior Colleges

Western Association of Schools and Colleges

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Revised Summer 2002

ACKNOWLEDGEMENTS

The Standards of Accreditation and Commission Handbook are refined over time and informed by the experience of hundreds of professionals who volunteer their time, their labors, and their wisdom to the work of the Commission. Institutional trustees, presidents, administrators, faculty members, staff, and students contribute their perspective through participation on evaluation teams, working on institutional self studies, serving on Commission Task Groups, and reviewing Commission papers.

A series of Task Groups organized around each of the major standards, augmented by special working groups drawn from the private institutions and from the institutional research community provided advice throughout the development period. In addition, presentations at conferences, workshops with system and institutional representatives, and discussions with Accreditation Liaison Officers provided more comment. Organizations and associations were invited to provide comment, and they responded with valuable suggestions.

The development of this Handbook was further enhanced by the work of a national committee of regional accreditation Associate Directors. This committee reviewed all current regional accreditation eligibility requirements and threshold accreditation standards. The Commission adopted and incorporated much of the work of this group into the 1996 Standards of Accreditation.

The Commission Editorial Board, chaired first by Robert D. Jensen and then by Constance M. Carroll, coordinated the development of the 1996 Standards of Accreditation. Members of that Board were Commissioners Barbara Beno, Carmen Maldonado Decker, J. Robert Evans, Celina Sau Lin Ing, and Bruce Smith. Commission Consultant Frances Conn was a constant source of substantive insight and editorial

refinement. Associate Director Judith Watkins served as overall project coordinator and editor of the Handbook. Sue Lundquist and Mary Ann Hilmes prepared and proofread the material for publication.

PART I

INTRODUCTION TO THE 1996 EDITION

This handbook is intended for members of the community of community, junior, and specialized two year colleges. It is for the use of institutions under review, members of evaluation teams, and others who are concerned with good practice in associate degree- granting institutions.

Institutional accreditation by the Accrediting Commission for Community and Junior Colleges (ACCJC) is a voluntary, nongovernmental process involving institutional self study and professional peer review. Standards for accreditation represent generally-accepted definitions of good practice in education. Policies, procedures, and standards have been adopted and published by ACCJC after development by representatives of accredited institutions and review by accreditation liaison officers and institutional leaders.

New editions are published periodically as the Commission conducts systematic reviews of its standards, policies, and practices. Comments and suggestions should be submitted to the ACCJC Executive Director or any member of the Commission. Standards are under continuous review by ACCJC member institutions and the Commission.

This document is to be used in conjunction with companion volumes. The Guide to Institutional Self Study and Reports to the Commission is a reference book which includes instructions for completion and submission of reports to the Commission. The Handbook for Evaluators assists visiting teams in conducting on-site evaluations and preparing evaluation reports to the Commission. The Eligibility Brochure: Requirements for Accreditation spells out the core characteristics of an accreditable institution and the Commission's expectations of institutions to be considered for membership.

The Commission is recognized by the Council of Higher Education Accreditation (CHEA), a nongovernmental agency that recognizes postsecondary accrediting bodies in the United States. It is also recognized by the U.S. Secretary of Education.

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WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES

The Western Association of Schools and Colleges (WASC) is one of the six regional accrediting associations covering the United States whose purpose is continual improvement of education and cooperation among educational institutions and agencies. WASC was formed on July 1, 1962 to evaluate and accredit schools, colleges, and universities in California, Hawaii, American Samoa, Guam, the Commonwealth of the Northern Marianas, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. WASC functions through a board of directors and three accrediting commissions: the Accrediting Commission for Senior Colleges and Universities, the Accrediting Commission for Community and Junior Colleges, and the Accrediting Commission for Schools. The board of directors consists of nine members, each accrediting commission electing three members.

Each commission, with the involvement of all participating institutions, develops its own standards, procedures, and fiscal policies under the authority and subject to the approval of the WASC board of directors. The accreditation actions of each commission

are certified by the board of directors of WASC. Accreditation ceases whenever an institution requests in writing that its accreditation be terminated, when the Commission formally acts to terminate accreditation, or when an institution fails to pay its annual fees.

THE ACCREDITING COMMISSION FOR COMMUNITY AND JUNIOR COLLEGES

The Accrediting Commission for Community and Junior Colleges (ACCJC) accredits institutions in the WASC service area offering the undergraduate curriculum at less that the baccalaureate level. The ACCJC accredits only institutions that offer an associate's degree. Member institutions of the ACCJC include public community colleges, private non-profit colleges, private proprietary colleges, and religion-based colleges.

The Commission is composed of nineteen individuals selected from among the membership institutions and persons representing the public interest in the region. The Commissioners serve three-year terms, renewable for one term. The Commission develops and approves Accreditation Standards, all policies related to accreditation and the functioning of the Commission office, and makes decisions regarding the accredited status of institutions.

Purposes of Accreditation

Voluntary nongovernmental institutional accreditation as practiced by the Commission and the other regional commissions is a unique characteristic of American education. No institution in the United States is required to seek accreditation; however, because of the recognized benefits, most of the eligible institutions in this and other regions have sought to become accredited. In many other countries the maintenance of educational standards is a governmental function.

While the Commission works to establish minimum standards of quality for institutions, its primary focus is to foster educational excellence. Each institution has the responsibility of defining its mission and standards of excellence for itself, and presenting evidence that it is accomplishing its mission and providing excellent education.

The Commission evaluates the institution's performance against the Standards of Accreditation and in the context of the institution's own mission. The Commission tries to deal with institutional differences in ways that protect both general standards of excellence and individualized educational philosophy and practice.

Where an institution provides programs not commonly offered by accredited institutions of higher education in the United States, the institution bears the burden of demonstrating that the subject matter offered is appropriate to higher education, is academic in quality and rigor, and can be reviewed by peers from accredited institutions.

The Commission accredits institutions, not individual programs. Therefore, in addition to

assessing academic quality, integrity, and effectiveness, the Commission emphasizes structures, processes, and resources. In order to assist institutions in determining their educational effectiveness, the Commission has recognized five major purposes of accreditation:

1. To assure the educational community, the general public, and other organizations and agencies that an institution has clearly defined objectives appropriate to postsecondary education, has established conditions under which their achievement can reasonably be expected, appears in fact to be accomplishing them substantially, is so organized, staffed and supported that it can be expected to continue to do so, and meets Commission standards.

2. To encourage institutional development and improvement through self study and periodic evaluation by qualified peer professionals.

3. To develop and use standards to assess and enhance educational quality and institutional performance, and to validate these standards by ongoing research.

4. To promote interchange of ideas among public and independent institutions through peer review.

5. To protect institutions against encroachments which might jeopardize their educational effectiveness or academic freedom.

Standards and Policies

Accreditation is a continuing process, the heart of which lies in periodic self-appraisal by each institution. In its initial application for candidacy or accreditation, and in preparation for each subsequent visit, every institution prepares an extensive report with primary emphasis on self-analysis and evaluation. Between scheduled visits, each institution addresses visiting team recommendations and submits Annual Reports.

As a result of extensive experience and research, the Commission has determined that there are certain basic characteristics of quality required of all institutions of higher education. These Commission standards, policies, and procedures are periodically reviewed and revised. Revisions are made as needed, based on research, the experience of the Commission and visiting teams, and comments of institutional representatives.

The College-Commission Relationship

In carrying out its functions, the Commission has established a "Code of good Practice," both for its relations with the institutions it serves and with regard to its internal organization and procedures. The full text of this policy is to be found on pages 92-94.

Every institution seeking recognition by the Commission is expected to abide by the

standards and policies of the Commission as stated in this Handbook and as may be developed in the future. As knowledge increases and the needs of society change, institutions are continually evolving in order to serve their students and community better. Consequently, the Commission continually reviews the role and validity of its standards and engages in widespread consultation with the accredited institutions in the region in order to incorporate their suggestions and receive their approval. The Commission conducts research to assess the validity, reliability, and usefulness of its standards and procedures as aids to institutional improvement.

The effectiveness of self-regulatory accreditation, however, depends upon the institution's acceptance of specific responsibilities, including complying with all of the standards and abiding by the Commission's policies, procedures, and decisions. There must be institutional commitment to and involvement in the accreditation process. The process assumes that each institution has the responsibility to accept an honest and forthright assessment of institutional strengths and weaknesses. As a consequence, a comprehensive self study report and peer evaluation are required. Only in this way will the validity and vitality of the accreditation process be ensured.

In its relations with the institutions it serves, the Commission is committed to:

1. Appraise institutions in terms of their own stated purposes within the context of Commission standards and interpret standards in ways that are relevant to the character of the particular institution, respecting institutional integrity and diversity.

2. Emphasize the value and importance of institutional self study including systematic assessment of institutional effectiveness.

3. Assist and stimulate improvement in the educational effectiveness of the institution.

4. Conduct evaluation visits by experienced and qualified peers under conditions which, insofar as reasonably possible, ensure impartial and objective judgment, avoiding conflict of interest.

5. Include on evaluation teams representation from other institutions of similar purpose and academic programs.

6. Provide institutions an opportunity to object, for cause, to individual members assigned to the team designated to visit the institution, with special concern for possible conflict of interest.

7. Require each evaluation team chair to arrange consultation during the visit with administration, faculty, students, and trustees and to include during comprehensive visits a publicized opportunity for an open hearing.

8. Provide opportunity for the institution to respond in writing to the team

report before it is completed and to appear before the Commission when the report is considered.

9. Provide opportunity for institutional representatives and the general public to attend portions of Commission meetings devoted to policies and other nonconfidential matters. See policy on Public Access, page 90.

10. Encourage widespread discussion and serious consideration of major team recommendations.

11. Request a written response from an institution or refer a matter to the next evaluation team when the Commission's attention is drawn to the possibility that an institution may be in violation of Commission standards or policies. A special interim visit focused on specified concerns may be scheduled by the Commission.

12. Make an initial visit for candidacy or accreditation to an institution only on the written request of the chief executive officer of the institution.

13. Revisit an institution consistent with Commission policies and periodic evaluation procedures following due notice to the institution.

14. Permit withdrawal of a request for initial candidacy or initial accreditation at any time (even after evaluation) prior to final action by the Commission.

15. Revoke accreditation or candidacy only after advanced written notice.

16. Encourage continuing communication between the Commission and institutions through the liaison officer position in each institution. See policy on Accreditation Liaison Officer.

Accredited Status

The status of accreditation indicates that an institution has met Commission standards.

In meeting these standards the institution has:

1. Completed a period of intensive and comprehensive self study followed by an on-site evaluation of institutional performance, demonstrating that it meets Commission standards.

2. Demonstrated that it operates at a satisfactory level of quality in its educational programs consistent with its stated purposes and consistent with Commission standards.

3. Demonstrated the availability of sufficient resources to support existing

and planned activities at a satisfactory level of quality and offered reasonable grounds for belief that there will continue to be adequate resources in the future.

4. Committed itself to institutional improvement, periodic self-evaluation, and continuing compliance with all Commission standards, policies, procedures, and decisions.

Periodic Review

Accreditation is attained by the process of evaluation of an entire institution and continues until formally withdrawn. It is subject, however, to periodic review and to conditions as determined by the Commission. Every accredited institution files an annual report and undergoes a comprehensive self study and evaluation at least every six years. A Midterm Report describing progress in responding to team recommendations is submitted in the third year following the evaluation visit. The Commission may request special interim reports and visits to assure progress in addressing specified issues of concern.

If an institution undergoes significant change or if its educational effectiveness is questioned, the Commission reserves the right to review that institution's accreditation without regard to any previously indicated time pattern.

As a voluntary, nongovernmental agency, the Commission is not obligated to exercise the regulatory control of state and federal governments, or to apply their mandates regarding collective bargaining, affirmative action, health and safety regulations, and the like. Furthermore, the Commission does not enforce the standards of specialized accrediting agencies or other nongovernmental organizations, or the laws and regulations of state agencies, although institutions may wish to review the publications of such other agencies as part of the self study process. The Commission has its own standards and expects that institutions and teams will apply them with integrity, imagination, and an attitude of humane concern for students and the public interest.

When an institution is granted accreditation, the following shall appear in all appropriate publications:

(Name of institution) is accredited by the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges, an institutional accrediting body recognized by the Council on Higher Education Accreditation (CHEA) and the U.S. Department of Education.

Candidate Status

Candidate for Accreditation status offers both new and established institutions the opportunity to establish a publicly recognized relationship with a regional accrediting agency. It is a pre-accreditation status, initially awarded for two years. Candidacy indicates that an institution has achieved initial recognition and is progressing toward

accreditation. Candidacy is a period in which the institution undertakes the necessary steps to reach demonstrable compliance with Commission standards. Candidate status may not exceed four years.

An institution granted candidacy must use the following statement if it wishes to describe that status publicly:

> (Name of institution) is a candidate for accreditation by the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges, an institutional accrediting body recognized by the Council of Higher Education Accreditation (CHEA) and the U.S. Department of Education.
>
> Candidate for Accreditation is a status of preliminary affiliation with the Commission initially awarded for two years. The Commission may renew candidate status for an additional two years, grant initial accreditation following institutional self study and on-site evaluation visit, or terminate candidacy. Candidacy may not exceed four years. Candidacy is not accreditation and does not assure eventual accreditation.

Review and Appeal

Institutions whose applications for candidacy, renewal of candidacy, accreditation, or reaffirmation of accreditation are denied or whose candidacy or accreditation is terminated by the Accrediting Commission for Community and Junior Colleges may request a review of the Commission's decision. Such a review must be requested prior to a filing of an appeal by the institution to the Western Association of Schools and Colleges (WASC). The policies and procedures which govern the conduct of the Commission's review are found in the Western Association of Schools and Colleges Constitution.

An institution which, after availing itself of the review procedure of the Commission, still believes itself aggrieved by the Commission's denial or withdrawal of candidacy or accreditation may appeal such action within thirty days of receipt of notice thereof, to the President of the Western Association of Schools and Colleges. The WASC President shall arrange a hearing for representatives of the institution before the Association's Hearing Board, established for this purpose, as prescribed in Article VI of the Constitution of the Western Association of Schools and Colleges.

Alteration of Evaluation Schedule

An institution may petition the Accrediting Commission for alteration of its evaluation schedule. A written request submitted to the Executive Director will be considered by the Commission if the request is based on:

1. A plan to coordinate evaluation of institutions in a system.

2. Disaster, such as fire, flood, or earthquake that impedes the normal conduct of institutional business for an extended period of time.

3. Severe and unusual circumstances that unavoidably disrupt the self study process or scheduled team visit.

4. Substantive changes in the mission or status of the institution.

ELIGIBILITY FOR ACCREDITATION

Eligible institutions offering one or more programs of two academic years leading to the Associate Degree, located in the states of Hawaii and California, the territories of Guam and American Samoa, the Federated States of Micronesia, the Commonwealth of the Northern Marianas Islands, the Republic of Palau, and the Republic of the Marshall Islands may apply to the Commission for candidacy.

Prior to making a formal application, an institution wishing to become a Candidate for Accreditation must begin by assessing itself in relation to the basic criteria for institutional eligibility, stated below. The standards of accreditation and Commission policies should also be reviewed as they will provide a clear statement of ultimate Commission expectations of institutional performance and quality and give further definition to the eligibility criteria. The eligibility process is designed to screen institutions prior to a period of formal and extensive institutional self study so that only institutions which meet the basic criteria for eligibility may proceed.

The Commission uses the same self study and site visit process for both candidacy and accreditation applications. The results of a candidacy or initial accreditation visit could be denial, candidacy, or accreditation. Clearly, the history of the applicant institution will have great bearing on the Commission's decision.

ELIGIBILITY REQUIREMENTS FOR ACCREDITATION

(Adopted June, 1995; Revised January, 1996)

Compliance with the requirements is expected to be continuous and will be validated periodically, normally as part of every institutional self study and comprehensive evaluation. Institutions are expected to include in their self study reports information demonstrating that they continue to meet the eligibility requirements.

AUTHORITY

1. The institution is authorized to operate as an educational institution and to award degrees by an appropriate governmental organization or agency as required by each of the jurisdictions or regions in which it operates.

In California, 94310.3A (or subsequent statute) approval by the California Council for Private Postsecondary and Vocational Education is required for

private institutions. The institution shall submit a copy of its articles of incorporation.

MISSION

2. The institution's educational mission is clearly defined, adopted, and published by its governing board consistent with its legal authorization and is appropriate to a degree granting institution of higher education and the constituency it seeks to serve.

GOVERNING BOARD

3. The institution has a functioning governing board responsible for the quality and integrity of the institution and for ensuring that the institution's mission is being carried out. Its membership is sufficient in size and composition to fulfill all board responsibilities.

The governing board is an independent policy-making body, capable of reflecting constituent and public interest in board activities and decisions. A majority of the board members have no employment, family, or personal financial interest in the institution.

CHIEF EXECUTIVE OFFICER

4. The institution has a chief executive officer who is appointed by the governing board and whose primary responsibility is to the institution.

ADMINISTRATIVE CAPACITY

5. The institution has sufficient staff with appropriate preparation and experience to provide the administrative services necessary to support its mission and purpose.

OPERATIONAL STATUS

6. The institution is operational with students actively pursuing its degree programs.

DEGREES

7. A substantial portion of the institution's educational offerings are programs that lead to degrees, and a significant proportion of its students are enrolled in them.

EDUCATIONAL PROGRAMS

8. The institution's principal degree programs are congruent with its mission, are based on recognized higher education field(s) of study, are of sufficient content and length, and are conducted at levels of quality and rigor appropriate to the degrees offered. At least one degree program must be of two academic years in

length.

ACADEMIC CREDIT

9. The institution awards academic credits based on generally accepted practices in degree-granting institutions of higher education. Public institutions governed by statutory or system regulatory requirements should provide appropriate information regarding the award of academic credit.

EDUCATIONAL OBJECTIVES

10. The institution defines and publishes for each program the program's educational objectives for students.

GENERAL EDUCATION

11. The institution defines and incorporates into all of its degree programs a substantial component of general education designed to ensure breadth of knowledge and promote intellectual inquiry. The general education component should include demonstrated competence in writing and computational skills and an introduction to some of the major areas of knowledge. Degree credit for general education programs should be consistent with levels of quality and rigor appropriate to higher education.

FACULTY

12. The institution has a substantial core of qualified faculty with full-time responsibility to the institution and sufficient in size and experience to support all of the institution's educational programs. A clear statement of faculty responsibilities must exist.

STUDENT SERVICES

13. The institution provides for all of its students appropriate student services and development programs consistent with student characteristics and its institutional mission.

ADMISSIONS

14. The institution has adopted and adheres to admission policies consistent with its mission that specify the qualifications of students appropriate for its programs.

INFORMATION AND LEARNING RESOURCES

15. The institution owns or otherwise provides specific long-term access to sufficient information and learning resources and services to support its mission and all of its educational programs.

FINANCIAL RESOURCES

16. The institution documents a funding base, financial resources, and plans for financial development adequate to support its mission and educational programs and to assure financial stability.

FINANCIAL ACCOUNTABILITY

17. The institution regularly undergoes and makes available an external financial audit by a certified public accountant or an audit by an appropriate public agency. The institution shall submit a copy of the current budget and a copy of the current audited financial statement prepared by an outside certified public accountant who has no other relationship to the institution. The audit must be certified and any exceptions explained. It is recommended that the auditor employ as a guide Audits of Colleges and Universities, published by the American Institute of Certified Public Accountants.

INSTITUTIONAL PLANNING AND EVALUATION

18. The institution provides evidence of basic planning for the development of the institution, planning which identifies and integrates plans for academic personnel, learning resources, facilities, and financial development, as well as procedures for program review and institutional improvement.

The institution engages in systematically evaluating how well and in what ways it is accomplishing its purposes, including assessment of student learning and documentation of institutional effectiveness.

PUBLIC INFORMATION

19. The institution publishes in its catalog or other appropriate places accurate and current information that describes its purposes and objectives, admission requirements and procedures, rules and regulations directly affecting students, programs and courses, degrees offered and the degree requirements, costs and refund policies, grievance procedures, academic credentials of faculty and administrators, and other items relative to attending the institution and withdrawing from it.

RELATIONS WITH THE ACCREDITING COMMISSION

20. The governing board provides assurance that the institution adheres to the eligibility requirements and accreditation standards and policies of the Commission, describes itself in identical terms to all its accrediting agencies, communicates any changes in its accredited status, and agrees to disclose information required by the Commission to carry out its accrediting responsibilities.

DOCUMENTATION FOR ELIGIBILITY APPLICATIONS

The Commission recognizes that not every institution begins the process of affiliation from the same place. A public institution which has existed as a branch or center of an established college will be very different from a new private college, and both will be different from an established specialized institution. The documents listed below are intended to be guidelines indicating Commission expectations for colleges preparing for an Eligibility Review. It is in the college's best interest to provide as much relevant information as possible to assist staff review and the Commission decision making process.

1. AUTHORITY

   - Degree granting approval statement or certificate from appropriate body.

   - Articles of incorporation (private institutions).

2. MISSION

   - Copy of mission statement as it appears in a published catalog or other public document.

   - Minutes of governing board meeting where mission statement was adopted.

3. GOVERNING BOARD

   - Biographical information on the governing board members.

   - Copy of governing board by-laws and statement of board responsibilities.

   - Certification that the board does not have a majority of persons with employment, family, or personal interest in the institution signed by chief executive officer and governing board chair (private institutions).

4. CHIEF EXECUTIVE OFFICER

   - Name, address, and biographical information on chief executive officer.

   - Certification of CEO's primary responsibility to the institution signed by chief executive officer and governing board chair.

5. ADMINISTRATIVE CAPACITY

   - Table of organization, including names of those in positions.

   - Names and biographical information on administrative staff.

6. OPERATIONAL STATUS

   - Enrollment history of the institution.

- Enrollments in institutional degree programs by year or cohort, including degrees awarded.

- Current schedule of classes.

7. DEGREES

- List of degrees, course credit requirements, and length of study for each degree program, including documentation of at least one degree program of two academic years.

- Catalog designation of college level courses for which degree credit is granted.

8. EDUCATIONAL PROGRAMS

- Names of degrees which reflect the mission of the institution.

- Documentation from catalog or other public document which describes the courses, units, and curricular sequence of the educational programs.

9. ACADEMIC CREDIT

- Institutional policies on transfer and award of credit.

- Formulae used by the institution to calculate values of academic credit.

10. EDUCATIONAL OBJECTIVES

- Catalog statements which establish educational objectives for programs.

- Outcomes data from educational program reviews.

- Graduation history.

11. GENERAL EDUCATION

- List of general education courses, including catalog descriptions.

- Course outlines for language and quantitative reasoning courses.

- Documentation of higher education rigor and quality.

12. FACULTY

- Full time and part time faculty roster, including degrees and experience.

- Faculty responsibilities statement.

- Current schedule of classes identifying responsible faculty.

13. STUDENT SERVICES

- Demographic characteristics of students.

- List of student services provided which reflects the mission of the institution.

14. ADMISSIONS

- Copy of admissions policy from a published statement.

- Copy of enrollment application.

- Statement of student qualifications for admission.

15. INFORMATION AND LEARNING RESOURCES

- Profile of holdings and resources.

- Copies of agreements for access to external resources.

16. FINANCIAL RESOURCES

- Past, current, and proposed budgets and financial statements.

- Documentation of any external foundation or other funding support.

- Student loan default rates and relevant USDE reports, if a participant.

- Documentation of funding base.

17. FINANCIAL ACCOUNTABILITY

- Past, current, and proposed budgets.

- Financial aid program reviews/audits, if a participant.

- Certified independent audit, including management letter.

18. INSTITUTIONAL PLANNING AND EVALUATION

- Most recent educational, fiscal, and facilities plans.

- Most recent institutional evaluations of student assessment and outcomes systems.

19. PUBLIC DISCLOSURE

- Catalog or other public document which serves that purpose.

- Recent print or other media advertisements.

- Policies regarding public disclosure.

20. RELATIONS WITH THE ACCREDITING COMMISSION

- Copy of policy adopted and published by the governing board assuring compliance with this criterion.

- List of other accreditation held by the institution.

- Copy of directory pages which describe the institution's representation by those accrediting bodies.

PART II

STANDARDS FOR ACCREDITATION

The standards describe good practice in community and junior college education. The Accrediting Commission for Community and Junior Colleges has established its standards based on experience, research, and extensive consultation with member institutions. Commission standards and policies are periodically reviewed and revised. Revisions are made as needed and are based on research, the experience of the Commission and visiting teams, and comments of institutional representatives.

The Commission articulated five assumptions which undergird the standards. We encourage institutions to remember these overarching goals as they interpret and use the standards in light of individual mission and circumstance.

The diversity of the whole range of institutions included in the region must be respected and accommodated, recognizing that good practice may be manifest in a wide range of practices and settings.

The standards focus on outcomes and accomplishments, embracing a model of accreditation which requires assessment of resources, processes, and outcomes at the institutional level.

The standards are statements of good practice in higher education and avoid language of compliance which might be linked to one system or set of statutes or regulations within the region.

The standards strive toward economy and clarity and avoid redundancy and ambiguity.

The standards recognize that the Accrediting Commission for Community and Junior Colleges is itself a part of a larger accrediting community which includes the other Commissions in the region, other regional institutional accreditors, and governmental and non-governmental agencies.

The accreditation standards cover ten areas, each of which is designated as a major

standard. The scope of each standards is described in a headnote. It is followed by numbered and lettered subsections which provide further definition to the standard. these numbered subsections identify major components of the standard, but they are not designed to cover every facet of the standard. Institutions are expected to address each of the components set forth, and they are encouraged to include additional components if doing so would provide greater depth or more particular applicability to the individual institution.

In preparing its self study, an institution is expected to present appropriate documentation to support its description and analysis of programs and services and evidence that it meets or exceeds the requirements for accreditation.

The Guide to Self Study provides complete discussion of the Commission's expectations concerning evidence and documentation to be presented. It contains information, suggestions, and examples useful in conducting the institutional self study and preparing the accreditation report.

STANDARD ONE: INSTITUTIONAL MISSION

The institution has a statement of mission that defines the institution, its educational purposes, its students, and its place in the higher education community.

1. The institution has a statement of mission, adopted by the governing board, which identifies the broad-based educational purposes it seeks to achieve.

2. The mission statement defines the students the institution intends to serve as well as the parameters under which programs can be offered and resources allocated.

3. Institutional planning and decision making are guided by the mission statement.

4. The institution evaluates and revises its mission statement on a regular basis.

STANDARD TWO: INSTITUTIONAL INTEGRITY

The institution subscribes to, advocates, and demonstrates honesty and truthfulness in representations to its constituencies and the public; in pursuit of truth and the dissemination of knowledge; in its treatment of and respect for administration, faculty, staff, and students; in the management of its affairs and in relationships with its accreditation association and other external agencies.

1. The institution represents itself clearly, accurately, and consistently to its constituencies, the public, and prospective students through its catalogues, publications, and statements, including those presented in electronic formats. Precise, accurate, and current information is provided in the catalog concerning (a) educational purposes; (b) degrees, curricular offerings, educational

resources, and course offerings; (c) student fees and other financial obligations, student financial aid, and fee refund policies; (d) requirements for admission and for achievement of degrees, including the academic calendar and information regarding program length; and (e) the names of administrators, faculty, and governing board.

2. The institution has a readily available governing board-adopted policy protecting academic freedom and responsibility which states the institutional commitment to the free pursuit and dissemination of knowledge and fosters the integrity of the teaching-learning process.

3. Faculty and other college staff distinguish between personal conviction and proven conclusions and present relevant data fairly and objectively to students and others.

4. Institutions which strive to instill specific beliefs or world views or to require codes of conduct of faculty, administrative and support staff, or students give clear prior notice of such policies.

5. The institution provides faculty and students with clear expectations concerning the principles of academic honesty and the sanctions for violation.

6. The institution demonstrates through policies and practices an appropriate understanding of and concern for issues of equity and diversity.

7. The institution demonstrates honesty and integrity in its athletic programs.

8. The institution demonstrates honesty and integrity in its relationships with the Commission and agrees to comply with Commission standards, policies, guidelines, public disclosure, and self study requirements.

9. The institution regularly evaluates and revises institutional policies, practices, and publications to ensure integrity in all representations about its mission, programs, and services.

STANDARD THREE: INSTITUTIONAL EFFECTIVENESS

The institution, appropriate to its mission and purposes as a higher education institution, develops and implements a broad-based and integrated system of research, evaluation, and planning to assess institutional effectiveness and uses the results for institutional improvement. The institution identifies institutional outcomes which can be validated by objective evidence.

A. Institutional Research and Evaluation

A.1 Institutional research is integrated with and supportive of institutional planning and evaluation.

A.2 The institution provides the necessary resources for effective research and evaluation.

A.3 The institution has developed and implemented the means for evaluating how well, and in what ways, it accomplishes its mission and purposes.

A.4 The institution provides evidence that its program evaluations lead to improvement of programs and services.

B. Institutional Planning

B.1 The institution defines and publishes its planning processes and involves appropriate segments of the college community in the development of institutional plans.

B.2 The institution defines and integrates its evaluation and planning processes to identify priorities for improvement.

B.3 The institution engages in systematic and integrated educational, financial,
physical, and human resources planning and implements changes to improve programs and services.

C. Institutional Outcomes Assessment

C.1 The institution specifies intended institutional outcomes and has clear documentation of their achievement.

C.2 The institution uses information from its evaluation and planning activities to communicate matters of quality assurance to the public.

C.3 The institution systematically reviews and modifies, as appropriate, its institutional research efforts, evaluation processes, institutional plans, and planning processes to determine their ongoing utility for assessing institutional effectiveness.

STANDARD FOUR: EDUCATIONAL PROGRAMS

The institution offers collegiate level programs in recognized fields of study that culminate in identified student competencies leading to degrees and certificates. The provisions of this standard are broadly applicable to all educational activities offered in the name of the institution, regardless of where or how presented, or by whom taught.

A. General Provisions

A.1 The institution seeks to meet the varied educational needs of its students through programs consistent with its institutional mission and

purposes and the demographics and economics of its community.

A.2 Programs and courses leading to degrees are offered in a manner which provides students the opportunity to complete the program as announced, within a reasonable time.

A.3 When programs are eliminated or program requirements are significantly changed, the institution makes appropriate arrangements so that enrolled students may complete their education in a timely manner with a minimum of disruption.

A.4 The institution provides sufficient human, financial, and physical (including technological) resources to support its educational programs and to facilitate achievement of the goals and objectives of those programs regardless of the service location or instructional delivery method.

A.5 The institution designs and maintains academic advising programs to meet student needs for information and advice and adequately informs and prepares faculty and other personnel responsible for the advising function.

B. Degree and Certificate Programs

B.1 The institution demonstrates that its degrees and programs, wherever and however offered, support the mission of the institution. Degree and certificate programs have a coherent design and are characterized by appropriate length, breadth, depth, sequencing of courses, synthesis of learning, and use of information and learning resources.

B.2 The institution identifies its degrees and certificates in ways which are consistent with the program content, degree objectives, and student mastery of knowledge and skills including, where appropriate, career preparation and competencies.

B.3 The institution identifies and makes public expected learning outcomes for its degree and certificate programs. Students completing programs demonstrate achievement of those stated learning outcomes.

B.4 All degree programs are designed to provide students a significant introduction to the broad areas of knowledge, their theories and methods of inquiry, and focused study in at least one area of inquiry or established interdisciplinary core.

B.5 Students completing degree programs demonstrate competence in the use of language and computation.

B.6 The institution documents the technical and professional competence

of students completing its vocational and occupational programs.

C. General Education

C.1 The institution requires of all degree programs a component of general education that is published in clear and complete terms in its general catalog.

C.2 The general education component is based on a philosophy and rationale that are clearly stated. Criteria are provided by which the appropriateness of each course in the general education component is determined.

C.3 The general education program introduces the content and methodology of the major areas of knowledge: the humanities and fine arts, the natural sciences, and the social sciences. The general education program provides the opportunity for students to develop the intellectual skills, information technology facility, affective and creative capabilities, social attitudes, and an appreciation for cultural diversity that will make them effective learners and citizens.

C.4 Students completing the institution's general education program demonstrate competence in oral and written communication, scientific and quantitative reasoning, and critical analysis/logical thinking.

D. Curriculum and Instruction

D.1 The institution has clearly defined processes for establishing and evaluating all of its educational programs. These processes recognize the central role of faculty in developing, implementing, and evaluating the educational programs. Program evaluations are integrated into overall institutional evaluation and planning and are conducted on a regular basis.

D.2 The institution ensures the quality of instruction, academic rigor, and educational effectiveness of all of its courses and programs regardless of service location or instructional delivery method.

D.3 The evaluation of student learning and the award of credit are based upon clearly stated and published criteria. Credit awarded is consistent with student learning and is based upon generally accepted norms or equivalencies.

D.4 The institution has clearly stated transfer of credit policies. In accepting transfer credits to fulfill degree requirements, the institution certifies that the credits accepted, including those for general education, achieve educational objectives comparable to its own courses. Where patterns of transfer between institutions are established, efforts are

undertaken to formulate articulation agreements.

D.5 The institution utilizes a range of delivery systems and modes of instruction compatible with the objectives of the curriculum and appropriate to the needs of its students.

D.6 The institution provides evidence that all courses and programs – both credit and non-credit – whether conducted on or off-campus by traditional or non-traditional delivery systems, are designed, approved, administered, and periodically evaluated under established institutional procedures. This provision applies to continuing and community education, contract and other special programs conducted in the name of the institution.

D.7 Institutions offering curricula through electronic delivery systems operate in conformity with applicable Commission policies and statements on "Principles of Good Practice in Distance Education."

D.8 Institutions offering curricula in foreign locations to students other than U.S. nationals operate in conformity with applicable Commission policies and guidelines.

STANDARD FIVE: STUDENT SUPPORT AND DEVELOPMENT

The institution recruits and admits students appropriate to its programs. It identifies and serves the diverse needs of its students with educational programs and learning support services, and it fosters a supportive learning environment. The entire student pathway through the institutional experience is characterized by a concern for student access, progress, and success.

1. The institution publishes admissions policies consistent with its mission and appropriate to its programs and follows practices that are consistent with those policies.

2. The institution provides to all prospective and currently enrolled students current and accurate information about its programs, admissions policies and graduation requirements, social and academic policies, refund policies, student conduct standards, and complaint and grievance procedures.

3. The institution identifies the educational support needs of its student population and provides appropriate services and programs to address those needs.

4. The institution involves students, as appropriate, in planning and evaluating student support and development services.

5. Admissions and assessment instruments and placement practices are designed to minimize test and other bias and are regularly evaluated to assure

effectiveness.

6. The institution provides appropriate, comprehensive, reliable, and accessible services to its students regardless of service location or delivery method.

7. The institution, in keeping with its mission, creates and maintains a campus climate which serves and supports its diverse student population.

8. The institution supports a co-curricular environment that fosters intellectual, ethical, and personal development for all of its students and encourages personal and civic responsibility.

9. Student records are maintained permanently, securely, and confidentially, with provision for secure backup of all files, regardless of the form in which those files are maintained.

10. The institution systematically evaluates the appropriateness, adequacy, and effectiveness of its student services and uses the results of the evaluation as a basis for improvement.

STANDARD SIX: INFORMATION AND LEARNING RESOURCES

Information and learning resources and services are sufficient in quality, depth, diversity, and currentness to support the institutions intellectual and cultural activities and programs in whatever format and wherever they are offered. The institution provides training so that information and learning resources may be used effectively and efficiently.

1. Information and learning resources, and any equipment needed to access the holdings of libraries, media centers, computer centers, databases and other repositories are sufficient to support the courses, programs, and degrees wherever offered.

2. Appropriate educational equipment and materials are selected, acquired, organized, and maintained to help fulfill the institutions purposes and support the educational program. Institutional policies and procedures ensure faculty involvement.

3. Information and learning resources are readily accessible to students, faculty, and administrators.

4. The institution has professionally qualified staff to provide appropriate support to users of information and learning resources, including training in the effective application of information technology to student learning.

5. The institution provides sufficient and consistent financial support for the effective maintenance, security, and improvement of its information and learning resources.

6. When the institution relies on other institutions or other sources for information and learning resources to support its educational programs, it documents that formal agreements exist and that such resources and services are adequate, easily accessible, and utilized.

7. The institution plans for and systematically evaluates the adequacy and effectiveness of its learning and information resources and services and makes appropriate changes as necessary.

STANDARD SEVEN: FACULTY AND STAFF

The institution has sufficient qualified full-time and part-time faculty and staff to support its educational programs and services wherever offered and by whatever means delivered. Consistent with its mission, the institution demonstrates its commitment to the significant educational role played by persons of diverse ethnic, social, and economic backgrounds by making positive efforts to foster such diversity.

A. Qualifications and Selection

A.1 The institution has sufficient faculty and staff who are qualified by appropriate education, training, and experience to support its programs and services.

A.2 Criteria, qualifications, and procedures for selecting all personnel are clearly stated, public, directly related to institutional objectives, and accurately reflect job responsibilities.

A.3 Criteria for selecting faculty include knowledge of the subject matter or service to be performed, effective teaching, and potential to contribute to the mission of the institution.

A.4 Degrees held by faculty and administrators are listed in the institution's primary catalog. All U.S. degrees are from institutions accredited by recognized accrediting agencies. Degrees from non-U.S. institutions are recognized only if equivalence has been established.

B. Evaluation

B.1 The evaluation of each category of staff is systematic and conducted at stated intervals. The follow-up of evaluations is formal and timely.

B.2 Evaluation processes seek to assess effectiveness and encourage improvement.

B.3 Criteria for evaluation of faculty include teaching effectiveness, scholarship or other activities appropriate to the area of expertise, and participation in institutional service or other institutional responsibilities.

C. Staff Development

C.1 The institution provides appropriate opportunities to all categories of staff for continued professional development, consistent with the institutional mission.

C.2 Planning and evaluation of staff development programs include the participation of staff who participate in, or are affected by, the programs.

D. General Personnel Provisions

D.1 The institution has and adheres to written policies ensuring fairness in all employment procedures.

D.2 The institution regularly assesses and reports its achievement of its employment equity objectives, consistent with the institutional mission.

D.3 Personnel policies and procedures affecting all categories of staff are systematically developed, clear, equitably administered, and available for information and review.

D.4 The institution makes provision for the security and confidentiality of personnel records. Personnel records are private, accurate, complete, and permanent.

STANDARD EIGHT: PHYSICAL RESOURCES

The institution has sufficient and appropriate physical resources to support its purposes and goals.

1. The institution ensures that adequate physical resources are provided to support its educational programs and services wherever and however they are offered.

2. The management, maintenance, and operation of physical facilities ensure effective utilization and continuing quality necessary to support the programs and services of the institution.

3. Physical facilities at all site locations where courses, programs, and services are offered are constructed and maintained in accordance with the institution's obligation to ensure access, safety, security, and a healthful environment.

4. Selection, maintenance, inventory and replacement of equipment are conducted systematically to support the educational programs and services of the institution.

5. Physical resource planning and evaluation support institutional goals and are linked to other institutional planning and evaluation efforts, including district or system planning and utilization where appropriate.

STANDARD NINE: FINANCIAL RESOURCES

The institution has adequate financial resources to achieve, maintain, and enhance its programs and services. The level of financial resources provides a reasonable expectation of financial viability and institutional improvement. The institution manages its financial affairs with integrity, consistent with its educational objectives.

A. Financial Planning

A.1 Financial planning supports institutional goals and is linked to other institutional planning efforts.

A.2 Annual and long-range financial planning reflects realistic assessments of resource availability and expenditure requirements. In those institutions which set tuition rates, and which receive a majority of funding from student fees and tuition, charges are reasonable in light of the operating costs, services to be rendered, equipment, and learning resources to be supplied.

A.3 Annual and long-range capital plans support educational objectives and relate to the plan for physical facilities.

A.4 Institutional guidelines and processes for financial planning and budget development are clearly defined and followed.

A.5 Administrators, faculty, and support staff have appropriate opportunities to participate in the development of financial plans and budgets.

B. Financial Management

B.1 The financial management system creates appropriate control mechanisms and provides dependable and timely information for sound financial decision-making.

B.2 Financial documents, including the budget and independent audit, reflect appropriate allocation and use of financial resources to support institutional programs and services. Institutional responses to external audit findings are comprehensive and timely.

B.3 The institution practices effective oversight of finances, including management of financial aid, externally-funded programs, contractual relationships, auxiliary organizations or foundations, and institutional investments.

B.4 Auxiliary activities and fund raising efforts support the programs and services of the institution, are consistent with the mission and goals of the institution, and are conducted with integrity.

B.5 Contractual agreements with external entities are governed by institutional policies and contain appropriate provisions to maintain the integrity of the institution.

B.6 Financial management is regularly evaluated and the results are used to improve the financial management system.

C. Financial Stability

C.1 Future obligations are clearly identified and plans exist for payment.

C.2 The institution has policies for appropriate risk management.

C.3 Cash flow arrangements or reserves are sufficient to maintain stability.

C.4 The institution has a plan for responding to financial emergencies or unforeseen occurrences.

STANDARD TEN: GOVERNANCE AND ADMINISTRATION

The institution has a governing board responsible for the quality and integrity of the institution. The institution has an administrative staff of appropriate size to enable the institution to achieve its goals and is organized to provide appropriate administrative services. Governance structures and systems ensure appropriate roles for the board, administration, faculty, staff, and students, and facilitate effective communication among the institutions constituencies.

A. Governing Board

A.1 The governing board is an independent policy-making board capable of reflecting the public interest in board activities and decisions. It has a mechanism for providing for continuity of board membership and staggered terms of office.

A.2 The governing board ensures that the educational program is of high quality, is responsible for overseeing the financial health and integrity of the institution, and confirms that institutional practices are consistent with the board-approved institutional mission statement and policies.

A.3 The governing board establishes broad institutional policies and appropriately delegates responsibility to implement these policies. The governing board regularly evaluates its policies and practices and revises them as necessary.

A.4 In keeping with its mission, the governing board selects and evaluates the chief executive officer and confirms the appointment of other major academic and administrative officers.

A.5 The size, duties, responsibilities, ethical conduct requirements, structure and operating procedures, and processes for assessing the performance of the governing board are clearly defined and published in board policies or by-laws. The board acts in a manner consistent with them.

A.6 The governing board has a program for new member orientation and governing board development.

A.7 The board is informed about and involved in the accreditation process.

B. Institutional Administration and Governance

B.1 The institutional chief executive officer provides effective leadership to define goals, develop plans, and establish priorities for the institution.

B.2 The institutional chief executive officer efficiently manages resources, implements priorities controlling budget and expenditures, and ensures the implementation of statutes, regulations, and board policies.

B.3 The institution is administratively organized and staffed to reflect the institution's purposes, size, and complexity. The administration provides effective and efficient leadership and management which makes possible an effective teaching and learning environment.

B.4 Administrative officers are qualified by training and experience to perform their responsibilities and are evaluated systematically and regularly. The duties and responsibilities of institutional administrators are clearly defined and published.

B.5 Administration has a substantive and clearly-defined role in institutional governance.

B.6 Faculty have a substantive and clearly-defined role in institutional governance, exercise a substantial voice in matters of educational program and faculty personnel, and other institutional polices which relate to their areas of responsibility and expertise.

B.7 Faculty have established an academic senate or other appropriate organization for providing input regarding institutional governance. In the case of private colleges, the institution has a formal process for providing input regarding institutional governance.

B.8 The institution has written policy which identifies appropriate institutional support for faculty participation in governance and delineates the participation of faculty on appropriate policy, planning, and special purpose bodies.

B.9 The institution clearly states and publicizes the role of staff in institutional governance.

B.10 The institution clearly states and publicizes the role of students in institutional governance.

C. Multi-College Districts and/or Systems

C.1 The district/system chief executive officer provides effective leadership to define goals, develop plans, and establish priorities for the institution.

C.2 The district/system chief executive officer efficiently manages resources, implements priorities controlling budget and expenditures, and ensures the implementation of statutes, regulations, and board policies.

C.3 The district/system has a statement which clearly delineates the operational responsibilities and functions of the district/system and those of the college.

C.4 The district/system provides effective services that support the mission and functions of the college.

C.5 The district/system and the college(s) have established and utilize effective methods of communication and exchange information in a timely and efficient manner.

C.6 The district/system has effective processes in place for the establishment and review of policy, planning, and financial management.

PART III

COMMISSION POLICIES

TESTIMONIAL POLICIES

Testimonial Policies have been adopted by the Commission as public position statements. Testimonial policies define good practice in more detail than do the accreditation standards and are intended to offer guidance to member institutions and to the Commission itself. Such policies are adopted after broad consultation among member institutions and with other agencies that make up the regional accrediting community.

CREDIT FOR PRIOR EXPERIENTIAL LEARNING IN UNDERGRADUATE PROGRAMS

(Adopted June 1980, Revised June 1990)

It is the position of the Commission that the academy has a significant role beyond that

of certifying what a student has learned elsewhere. It is within the academy that a student earns academic degrees.

Credit for prior experiential learning is offered only under the conditions enumerated below. This policy is not designed to apply to such practices as CLEP, advanced placement, or ACE evaluated military credit. Questions about this policy should be referred to Commission staff.

In developing and publishing its guidelines and procedures, it is suggested that institutions follow the "Principles of Good Practice in Assessing Experiential Learning" represented by the Council for the Advancement of Experiential Learning (CAEL)* and the American Council on Education.**

1. Before credit for prior experiential learning becomes part of the student's permanent record, the student completes, at the credit-granting institution, a sufficient number of units to establish evidence of a satisfactory learning pattern.

2. Portfolio-based credit for prior experiential learning is awarded for no more than 30 semester units, or the equivalent, toward the Associate Degree. Credit is awarded only for documented learning which ties the prior experience to the theories and data of the relevant academic field.

3. Credit is awarded only in areas which fall within the regular curricular offerings of the institution and are part of the instructional program the student completes.

4. Institutions using documentation and interviews in lieu of examinations, demonstrate that the documentation provides academic assurances of equivalency to credit earned by traditional means.

5. No assurances are made in advance regarding the number of credits to be awarded.

6. Credit is awarded only by faculty holding regular appointments in the appropriate discipline. The awarding of credit, and the determination of the amount of such credit, is made by qualified faculty members. The faculty ensures that assessment procedures are appropriate for the credit awarded.

7. Only college level learning is creditable, consistent with the academic standards of the institution.

8. Credit is awarded only to matriculated students and is identified on the student's transcript as "credit for prior experiential learning." The institution is prepared, on request from another institution, to furnish full documentation showing how such learning was evaluated and the basis

on which such credit was awarded.

9. Steps are taken to ensure that credit for prior experiential learning does not duplicate credit already awarded or remaining courses planned for the student's academic program.

10. Policies and procedures for awarding experiential learning credit are adopted, described in appropriate institutional publications, and reviewed at regular intervals.

11. Fees charged are realistically related to the cost of the program. Adequate precautions are provided to ensure that payment of fees does not influence the award of credit.

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*Willingham, Warren W. Principles of Good Practice in Assessing Experiential Learning. CAEL, American City Building, Suite 40-3, Columbia, MD 21044, 1977.

**American Council on Education. ``Principles of Good Practice for Alternative and External Degree Programs for Adults." ACE, Publications Department A, One Dupont Circle, Washington, D.C. 20036, 1990.

PRINCIPLES OF GOOD PRACTICE IN OVERSEAS INTERNATIONAL EDUCATION PROGRAMS FOR NON-U.S. NATIONALS

Regional Institutional Accrediting Bodies Council on Postsecondary Accreditation

February 1990

Preface

The Executive Directors of the regional institutional accrediting bodies of the Council on Postsecondary Accreditation subscribe to the following "Principles of Good Practice in Overseas International Education Programs for Non-U.S. Nationals."

Each regional institutional accrediting body will apply these principles consistent with its own accrediting standards.

PRINCIPLES OF GOOD PRACTICE

Institutional Mission

1. The international program is rooted in the U.S. institution's stated mission and purposes and reflects any special social, religious, and ethical elements of that mission.

2. The faculty, administration, and governing board of the U.S. institution

understand the relationship of the international program to the institution's stated mission and purposes.

Authorization

3. The international program has received all appropriate internal approvals where required, including system administration, government bodies, and accrediting associations.

4. The international program has received all appropriate external approvals where required, including system administration, government bodies, and accrediting associations.

5. The U.S. institution documents the accepted legal basis for its operations in the host country.

Instructional Program

6. The U.S. institution specifies the educational needs to be met by its international program.

7. The content of the international educational program is subject to review by the U.S. institution's faculty.

8. The international education program reflects the educational emphasis of the U.S. institution, including a commitment to general education when appropriate.

9. The educational program is taught by faculty with appropriate academic preparation and language proficiencies whose credentials have been reviewed by the U.S. institution.

10. The standard of student achievement in the international program is equivalent to the standard of student achievement on the U.S. campus.

11. The international educational program where possible and appropriate is adapted to the culture of the host country.

Resources

12. The institution currently uses and assures the continuing use of adequate physical facilities for its international educational program, including classrooms, offices, libraries, and laboratories, and provides access to computer facilities where appropriate.

13. The U.S. institution has demonstrated its financial capacity to underwrite the international program without diminishing its financial support of the U.S. campus. Financing of the international program is incorporated into the regular budgeting and auditing process.

Admissions and Records

14. International students admitted abroad meet admissions requirements similar to those used for international students admitted to the U.S. campus, including appropriate language proficiencies.

15. The U.S. institution exercises control over recruitment and admission of students in the international program.

16. All international students admitted to the U.S. program are recognized as students of the U.S. institution.

17. All college-level academic credits earned in the international program are applicable to degree programs at the U.S. institution.

18. The U.S. institution maintains official records of academic credit earned in its international program.

19. The official transcript of record issued by the U.S. institution follows the institution's practices in identifying by site or through course numbering, the credits earned in its off-campus programs.

Students

20. The U.S. institution assures that its institutional program provides a supportive environment for student development, consistent with the culture and mores of the international setting.

21. Students in the international program are fully informed as to services that will or will not be provided.

Control and Administration

22. The international program is controlled by the U.S. institution.

23. The teaching and administrative staff abroad responsible for the educational quality of the international program are accountable to a resident administrator of the U.S. institution.

24. The U.S. institution formally and regularly reviews all faculty and staff associated with its international program.

25. The U.S. institution assesses its international program on a regular basis in light of institutional goals and incorporates these outcomes into its regular planning process.

Ethics and Public Disclosure

26. The U.S. institution can provide to its accrediting agencies upon request a full

accounting of the financing of its international program, including an accounting of funds designated for third parties within any contractual relationship.

27. The U.S. institution assures that all media presentations about the international program are factual, fair, and accurate.

28. The U.S. institution's primary catalog describes its international program.

29. The U.S. institution does not sell or franchise the rights to its name or its accreditation.

30. The U.S. institution assures that all references to transfer of academic credit reflects the reality of U.S. practice.

31. The U.S. institution assures that if U.S. accreditation is mentioned in materials related to the international program, the role and purpose of U.S. accreditation is fairly and accurately explained within these materials.

Contractual Arrangements

32. The official contract is in English and the primary language of the contracting institution.

33. The contract specifically provides that the U.S. institution controls the international program in conformity with these guidelines and the requirements of the U.S. institution's accreditations.

34. The U.S. institution confirms that the foreign party to the contract is legally qualified to enter into the contract.

35. The contract clearly states the legal jurisdiction under which its provisions will be interpreted will be that of the U.S. institution.

36. Conditions for program termination specified in the contract include appropriate protection for enrolled students.

37. All contractual arrangements must be consistent with the regional commissions' document, ``Contractual Relationships With Non-Regionally Accredited Organizations."

Adopted February 12, 1990 by the Executive Directors of the Regional Institutional Accrediting Bodies:

Commission on Higher Education, Middle States Association of Colleges and Schools

Commission Institutions of Higher Education, New England Association of Schools and Colleges

Commission on Vocational, Technical, and Career Institutions, New England Association of Schools and Colleges

Commission on Institutions of Higher Education, North Central Association of Colleges and Schools

Commission on Colleges, Northwest Association of Schools and Colleges

Commission on Colleges, Southern Association of Colleges and Schools

Commission on Occupational Education Institutions, Southern Association of Colleges and Schools

Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges

Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges

Adopted June 1, 1990 by the Accrediting Commission for Community and Junior Colleges

CONTRACTUAL RELATIONSHIPS WITH NON-REGIONALLY ACCREDITED ORGANIZATIONS

(Adopted March 1973)

No postsecondary educational institution accredited by a regional institutional accrediting commission can lend the prestige or authority of its accreditation to authenticate courses or programs offered under contract with organizations not so accredited unless it demonstrates adherence to the following principles:

1. The primary purpose of offering such a course or program is educational. (Although the primary purpose of the offering must be educational, what ancillary purposes also provide the foundation for the program or course such as auxiliary services, anticipated income, and public relations?)

2. Any course offered must be consistent with the institution's educational purpose and objectives as they were at the time of the last evaluation. If the institution alters its purpose and objectives, the regional commission must be notified and the policy on substantive change applied. (How does the institution define the specific relationship between the primary and ancillary purposes and the contracted service and how does it demonstrate its capability to attain these purposes?)

3. Courses to be offered and the value and level of their credit must be determined in accordance with established institutional procedures, and under the usual mechanisms of review. (What evidence exists that established

institutional procedures have been followed?)

4. Courses offered for credit must remain under the sole and direct control of the sponsoring accredited institution, which exercises ultimate and continuing responsibility for the performance of these functions as reflected in the contract, with provisions to assure that conduct of the courses meets the standards of its regular programs as disclosed fully in the institution's publications, especially as these pertain to

a. Recruitment and counseling of students;

b. Admission of students to courses and/or to the sponsoring institution where credit programs are pursued;

c. Instruction in the courses.

d. Evaluation of student progress.

e. Record keeping.

f. Tuition and/or fees charged, receipt and disbursement of funds, and refund policy.

g. Appointment and validation of credentials of faculty teaching the course.

h. Nature and location of courses.

i. Instructional resources, such as the library.

Additional data needed would include course outlines, syllabi, copies of exams, records of students, and evidence of equivalencies with established programs.

In establishing contractual arrangements with non-regionally accredited organizations, institutions are expected to utilize the following guidelines. The not-for-profit institution should establish that its tax-exempt status, as governed by state or federal regulations, will not be affected by such contractual arrangements with a for-profit organization.

The Contract

1. Should be executed only by duly designated officers of the institution and their counterparts in the contracting organization. While other faculty and administrative representatives will undoubtedly be involved in the contract negotiations, care should be taken to avoid implied or apparent power to execute the contract by unauthorized personnel.

2. Should establish a definite understanding between the institution and contractor regarding the work to be performed, the period of the agreement, and the conditions under which any possible renewal or renegotiation of the contract

would take place.

3. Should clearly vest the ultimate responsibility for the performance of the necessary control functions for the educational offering with the accredited institution granting credit for the offering. Such performance responsibility by the credit-granting institution would minimally consist of adequate provision for review and approval of work performed in each functional area by the contractor.

4. Should clearly establish the responsibilities of the institution and contractor regarding

a. Indirect costs and audits

b. Approval of salaries

c. Equipment

d. Subcontracts and travel

e. Property ownership and accountability

f. Inventions and patents

g. Publications and copyrights

h. Accounting records and

i. Security

j. Termination costs

k. Tuition refund

l. Student records

m. Faculty facilities

n. Safety regulations

o. Insurance coverage

Enrollment Agreement

1. The enrollment agreement should clearly outline the obligations of both the institution and the student, and a copy of the enrollment agreement should be furnished to the student before any payment is made.

2. The institution should determine that each applicant is fully informed as to the nature of the obligation being entered into and the applicant's responsibilities and rights under the enrollment agreement before the applicant signs it.

3. No enrollment agreement should be binding until it has been accepted by the authorities of the institution vested with this responsibility.

Tuition Policies

1. Rates

a. The total tuition for any specific given course should be the same for all persons at any given time. Group training contracts showing lower individual rates may be negotiated with business, industrial, or

governmental agencies.

b. Tuition charges in courses should be *bona fide,* effective on specific dates, and applicable to all who enroll thereafter or are presently in school, provided the enrollment agreement so stipulates.

c. All extra charges and costs incidental to training should be revealed to the prospective student before enrollment.

d. The institution should show that the total tuition charges for each of its courses is reasonable in the light of the service to be rendered, the equipment to be furnished, and its operating costs.

2. Refunds and Cancellations

a. The institution should have a fair and equitable tuition refund and cancellation policy.

b. The institution should publish its tuition refund and cancellation policy in its catalog or other appropriate literature.

3. Collection Practices

a. Methods used by an institution in requesting or demanding payment should follow sound ethical business practices.

b. If promissory notes or contracts for tuition are sold or discounted to third parties by the institution, enrollees or their financial sponsors should be aware of this action.

Student Recruitment

1. Advertising and Promotional Literature

a. All advertisements and promotional literature used should be truthful and avoid leaving any false, misleading, or exaggerated impressions with respect to the school, its personnel, its courses and services, or the occupational opportunities for its graduates.

b. All advertising and promotional literature used should clearly indicate that education, and not employment, is being offered.

c. All advertising and promotional literature should include the correct name of the school. So-called ``blind" advertisements are considered misleading and unethical.

2. Field Agents

a. An institution is responsible to its current and prospective students for

the representations made by its field representatives (including agencies and other authorized persons or firms soliciting students), and therefore should select each of them with the utmost care, provide them with adequate training, and arrange for proper supervision of their work.

b. It is the responsibility of an institution to conform to the laws and regulations of each of the areas in which it operates or solicits students, and in particular to see that each of its field representatives is properly licensed or registered as required by the laws of the state or other entity.

If field representatives are authorized to prepare and/or run advertising or to use promotional materials, the institution should accept full responsibility for the materials used and should approve any such in advance of their use.

When field representatives are authorized to collect money from an applicant for enrollment, they should leave with the applicant a receipt for the money collected and a copy of the enrollment agreement.

No field representative should use any title, such as " counselor," " advisor," or " registrar," that tends to indicate that his duties and responsibilities are other than they actually are.

f. No field agent should violate orally any of the standards applicable to advertising and promotional material.

POLICY STATEMENT ON DIVERSITY

(Adopted January, 1994)

How an institution deals with diversity is an important indicator of its integrity and effectiveness. Institutions accredited by the Commission consider diversity issues in a thorough and professional manner. Every institution affiliated with the Commission is expected to provide and sustain an environment in which all persons in the college community can interact on a basis of accepting differences, respecting each individual, and valuing diversity. Each institution is responsible for assessing the quality and diversity of its campus environment and for demonstrating how diversity is served by the goals and mission of the college and district. In addition, institutions must identify the processes that actively promote diversity in the everyday environment and the academic programs of the college. Accreditation teams will evaluate the condition of institutional diversity during the site visits and include findings and recommendations in written reports to the Accrediting Commission.

The Commission Statement on Diversity is designed to guide institutions and evaluation teams in the self study and site visit process and to indicate how institution-wide reviews of issues of diversity should be documented in the self

study and visiting team reports. The Accrediting Commission, taking into account the mission of the institution and the entirety of the self study and peer review processes, will evaluate the institution's effectiveness in addressing issues of diversity.

THE GOVERNING BOARD

(Adopted June 1996)

Institutions of higher education in the United States have a long tradition of governance by lay boards of citizen trustees. A trustee is one to whom property is entrusted for management. In the case of colleges, the board of trustees holds the institution in trust on behalf of the owners, to ensure that the institution is operating effectively and efficiently in accordance with its established mission. For private colleges, the owners may be a nonprofit corporation, a religious order or denomination, or a for-profit corporation. For public institutions, the owners may be a governmental entity or a geographic district. In each case the board includes qualified lay persons who are unencumbered by conflicts of interest. Regional accrediting associations require as a condition of eligibility that member institutions have an independent, policy-making board, with a majority of members who have no employment, ownership, familial or personal relationship with the institution. This latter condition is to ensure impartial exercise of judgment on behalf of the owners and users of the institution.

All boards act on behalf of their owners. Owners may be remote and have a limited range of concerns, or they may have a more immediate presence and establish rather detailed expectations. In every case, however, there is a delegation of authority from owners to trustees, with the clear understanding that trustees may act on behalf of owners to direct the affairs of the college, without compromising legitimate ownership interests.

Boards of public institutions may be elected or appointed, subject to laws and regulations of the political entity that owns the institution. The practice in private institutions is ordinarily appointment of trustees by a self-perpetuating board, appointment by owners/sponsors, or a combination. The duty of the board is to make policy, while *administration,* the day-to-day management of the institution – is the duty of the chief executive and staff. This traditional dividing line is an oversimplification, in that faculty in many institutions play significant roles in policy-making, and administrative authority is in many cases delegated to others than the president's staff.

In his paper, "Policy and Administration," published by the Association of Governing Boards, Charles A. Nelson defines policy as "a general rule of principle, or a statement of intent or direction, which provides guidance to administrators in reaching decisions with respect to the particular matters entrusted to their care." Institutions in public systems are guided and directed by

laws and regulations that establish basic rights and responsibilities of their governing boards. Boards that serve private institutions frequently rely on associations such as the Association of Governing Boards or institutional associations of private institutions to offer guidance as to good practice.

A board needs to establish the level of policy at which it will operate, thus determining the levels of policy at which the administration will operate. Where policy responsibility is formally shared, as it may with faculties on academic issues, the board sets boundaries for itself by formal delegation to others. Size and complexity, and public or private control, will influence the level of policy at which a board operates.

Boards need rules, for themselves as well as for the institution. Bylaws or policies that establish regular meeting times, structuring of agendas, decision-making, and codes of ethics including prohibitions on conflicts of interest help to not only make the board effective, but also to build trust in the integrity of the board.

Oversight responsibility – the obligation to ensure that the mission of the institution is being appropriately served, and that its established goals are faithfully pursued, is a major duty of a board. The board asks questions about achievement of intended outcomes, as part of its acting on behalf of the owners of the institution. The board protects the institution from external pressures, and is an advocate for the best interests of the institution.

The board must be concerned about its own effectiveness, as well as that of the executive and the institution. Boards systematically evaluate the executive, and evaluate their own effectiveness. Board effectiveness may be substantially enhanced by participation in programs of board education offered by organizations such as the Association of Governing Boards, the Association of Community College Trustees, and the Community College League of California.

NATIONAL POLICIES

National Policies adopted by major higher education associations advise accrediting agencies and their member institutions about good practice. The following policies have been adopted by ACCJC and the other regional accrediting agencies. The Commission regularly renews its commitment to the principles expressed in the policies through a process of Commission review. In some cases the original adopting body is no longer in existence; however, the accrediting agencies' joint adoption remains in place.

Note: The Council on Postsecondary Accreditation (COPA) referred to in several policies dissolved in December 1993. The Commission on Recognition of Postsecondary Accreditation (CORPA) was incorporated in January 1994 to continue the recognition process for accrediting agencies. The Council for Higher Education Accreditation was incorporated in July 1996 to recognize accrediting bodies, coordinate accreditation functions, foster innovation in accreditation, assist in resolving disputes,

and serve as a national voice for self-regulation through accreditation.

POLICY STATEMENT ON THE ROLE AND VALUE OF ACCREDITATION

Accreditation is an activity long accepted in the United States, but generally unknown in most other countries because other countries rely on governmental supervision and control of educational institutions. The record of accomplishment and outstanding success in the education of Americans can be traced in large part to the reluctance of the United States to impose governmental restrictions on institutions of postsecondary education and to the success of the voluntary American system of accreditation in promoting quality without inhibiting innovation. The high proportion of Americans benefiting from higher education, the reputation of universities in the United States for both fundamental and applied research, and the widespread availability of professional services in the United States all testify to postsecondary education of high quality and to the success of the accreditation system which the institutions and professions of the United States have devised to promote that quality.

I.

Accreditation is a status granted to an educational institution or a program that has been found to meet or exceed stated criteria of educational quality. In the United States accreditation is voluntarily sought by institutions and programs and is conferred by non-governmental bodies.

Accreditation has two fundamental purposes: to assure the quality of the institution or program, and to assist in the improvement of the institution or program. Accreditation, which applies to institutions or programs, is to be distinguished from certification and licensure, which apply to individuals.

The bodies conducting institutional accreditation are national or regional in scope and comprise the institutions that have achieved and maintain accreditation. A specialized body conducting accreditation of a program preparing students for a profession or occupation is often closely associated with professional associations in the field.

Both institutional and specialized bodies conduct the accreditation process using a common pattern. The pattern requires integral self study of the institution or program, followed by an on-site visit by an evaluation team, and a subsequent review and decision by a central governing group. Within this general pattern the various accrediting bodies have developed a variety of individual procedures adapted to their own circumstances. Increasingly, attention has been given to educational outcomes as a basis for evaluation.

Members of the Council on Postsecondary Accreditation have been found by COPA to meet specific criteria of procedure and organization regarded as necessary for the effective conduct of the accrediting process. A COPA-recognized accrediting body can be regarded as qualified to conduct evaluations of institutions and/or programs seeking accreditation, and accreditation by such bodies is generally recognized and accepted in

higher education.

Institutional or specialized accreditation cannot guarantee the quality of individual graduates or of individual courses within an institution or program but can give reasonable assurance of the context and quality of the education offered.

II.

An institutional accrediting body considers the characteristics of whole institutions. For this reason an institutional accrediting body gives attention not only to the educational offerings of the institutions it accredits, but also to other such institutional characteristics as the student personnel services, financial conditions, and administrative strength.

The criteria of an institutional accrediting body are broad, as is demanded by the attention to an entire institution and by the presence in the United States of postsecondary institutions of widely different purposes and scopes. Such criteria also provide encouragement to institutions to try innovative curricula and procedures, and to adopt them when they prove successful. The accreditation of an institution by an institutional accrediting body certifies to the general public that the institution:

a. Has appropriate purposes.

b. Has the resources needed to accomplish its purposes.

c. Can demonstrate that it is accomplishing its purposes.

d. Gives reason to believe that it will continue to accomplish its purposes.

Institutional improvement is encouraged by an institutional accrediting body through the requirement that the accredited institution conduct periodic self-evaluations seeking to identify what the institution does well, determining the areas in which improvement is needed, and developing plans to address needed improvements. While the certification of accreditation indicates an acceptable level of institutional quality, an institution, however excellent, is capable of improvement, which must come from its own clear identification and understanding of its strengths and weaknesses.

Institutional improvement is also encouraged by the institutional accrediting body through the advice and counsel provided by the visiting team, which is comprised of experienced educators drawn primarily from accredited institutions, and by the publications of the accrediting body.

III.

A specialized accrediting body focuses its attention on a particular program within an institution of higher education. The close relationship of the specialized accrediting body with the professional association for the field helps insure that the requirements for accreditation are related to the current requirements for professional practice.

In a number of fields (*e.g.*, medicine, law, dentistry) graduation from an accredited program in the field is a requirement for receiving a license to practice in the field. Thus, specialized accreditation is recognized as providing a basic assurance of the scope and quality of professional or occupational preparation. This focus of specialized accreditation leads to accreditation requirements that are generally sharply directed to the nature of the program, including specific requirements for resources needed to provide a program satisfactory for professional preparation. Because of this limitation of focus to a single program, many specialized accrediting bodies require that the institution offering the program be institutionally accredited before consideration can be given to program accreditation.

Specialized accreditation encourages program improvement by application of specific accreditation requirements to measure characteristics of a program and by making judgments about the overall quality of the program. For a non-accredited program, the accreditation requirements serve as specific goals to be achieved. In addition to accrediting standards, assistance for program improvement is provided through the counsel of the accreditation visiting team members, which include practitioners of the profession and experienced and successful faculty members and administrators in other institutions.

IV.

Institutional and specialized accreditation are complementary. The focus of an institutional accrediting body on an institution as a total operating unit provides assurance that the general characteristics of the institution have been examined and found to be satisfactory. The focus of a specialized accrediting body on a specific program provides assurance that the details of that particular program meet the external accreditation standards. Institutional accreditation, concerned with evaluating the institution as a whole, does not seek to deal with any particular program in great detail although programs are reviewed as a part of the consideration of the entire institution. Specialized accreditation, speaking to a specific program, does not seek to deal significantly with the general conditions of the institution, although certain general conditions are considered in the context in which the accredited program is offered. Occasionally there are institutions offering but a single program (``free-standing" schools), which may seek institutional and/or specialized accreditation. In such cases, the certification of the accreditation is that appropriate to either institutional or specialized accreditation, and does not imply both certifications, although a specialized body accrediting such an institution is expected to look at the whole institution, just as the institutional body is expected to consider the single educational program.

V.

In fulfilling its two purposes – quality assurance and institutional and program improvement – accreditation provides service of value to several constituencies.

To the **public**, the values of accreditation include:

a. An assurance of external evaluation of the institution or program and a finding that there is conformity to general expectations in higher education or the professional field.

b. An identification of institutions and programs which have voluntarily undertaken explicit activities directed at improving the quality of the institution and its professional programs and are carrying them out successfully.

c. An improvement in the professional services available to the public, as accredited programs modify their requirements to reflect changes in knowledge and practice generally accepted in the field.

d. A decreased need for intervention by public agencies in the operations of educational institutions, since their institutions through accreditation are providing privately for the maintenance and enhancement of educational quality.

To s**tudents**, accreditation provides

a. An assurance that the educational activities of an accredited institution or program have been found to be satisfactory and therefore meet the needs of students.

b. Assistance in the transfer of credits between institutions, or in the admission of students to advanced degrees through the general acceptance of credits among accredited institutions when the performance of the student has been satisfactory and the credits to be transferred are appropriate to the receiving institution.

c. A prerequisite in many cases for entering a profession.

Institutions of higher education benefit from accreditation through:

a. The stimulus provided for self-evaluation and self-directed institutional and program improvement.

b. The strengthening of institutional and program self-evaluation by the review and counsel provided through the accrediting body.

c. The application of criteria of accrediting bodies, generally accepted throughout higher education, which help guard against external encroachments harmful to institutional or program quality by providing benchmarks independent of forces that might impinge on individual institutions.

d. The enhancing of the reputation of an accredited institution or

program because of public regard for accreditation.

e. The use of accreditation as one means by which an institution can gain eligibility for the participation of itself and its students in certain programs of governmental aid to postsecondary education; accreditation is also usually relied upon by private foundations as a highly desirable indicator of institutional and program quality.

Accreditation serves the **professions** by:

a. Providing a means for the participation of practitioners in setting the requirements for preparation to enter the professions.

b. Contributing to the unity of the professions by bringing together practitioners, teachers, and students in an activity directed at improving professional preparation and professional practice.

Adopted by the COPA Board April 15, 1982, Reviewed by ACCJC 1990, 1996

POLICY STATEMENT ON RIGHTS AND RESPONSIBILITIES OF ACCREDITING BODIES AND INSTITUTIONS IN THE ACCREDITING PROCESS

Preface

American higher education is a diverse, semi-autonomous and independent composite of institutions and programs. In the diversity of the system lies its strength. By design, postsecondary education functions with considerable latitude and few restrictions. Compared with most other countries, in America there has been a remarkable degree of freedom from government regulation and intrusion. This freedom has been achieved and maintained in large measure because the self-regulatory process of accreditation balances institutional autonomy, independence, and freedom with the institution's responsibilities to students, to the public, to the profession, and to various levels of government. Voluntary accreditation involves mutual understanding and respect for the rights and responsibilities of institutions and the rights and responsibilities of accrediting bodies. The national, nongovernmental accreditation system is the key in ensuring that education remains fundamentally sound, responsible, responsive, and effective, thereby providing public confidence in the integrity and quality of educational institutions and programs.

Preconditions

A statement related to rights and responsibilities of institutions/programs and accrediting bodies is rooted in general assumptions:

1. That the institutions/programs and accrediting bodies are partners in the system of voluntary nongovernmental evaluation.

2. That there is a mutual commitment among institutions/programs and

accrediting bodies to:

a. Voluntary self-regulation

b. Assessment and enhancement of educational quality

c. Candor

d. Cooperation

e. Integrity

f. Confidence and trust

Given these preconditions there are certain reciprocal institutional/programmatic and accrediting body rights and responsibilities that relate directly (1) to the development and promulgation of accreditation standards and (2) to the various stages of the accrediting process.

A. Development and Promulgation of Standards

Institutions/programs and accrediting bodies, in cooperation with each other, have the responsibility to:

1. Involve broad participation of affected constituencies in the development and acceptance of standards and policies.

2. Develop standards and policies which:

a. Are consistent with the purposes of accreditation.

b. Are sufficiently flexible to allow diversity and effective program development.

c. Allow and encourage institutional/programmatic freedom and autonomy.

d. Allow the institution/program to exercise its rights within a reasonable set of parameters relevant to the quality of education and, in professional fields, to prepare individuals effectively for practice in the profession.

3. Conduct periodic reviews of the standards.

B. Five Stages of Accreditation Actions or Process and Concomitant Statements of Rights and Responsibilities

Stage 1: Basic Procedures

a. The institution/program develops and implements an institutional policy

for seeking, securing, and maintaining accredited status with institutional or specialized accrediting bodies.

b. The institution/program develops an effective mechanism to ensure the internal coordination of accrediting activities.

c. In corresponding with representatives on campus, the accrediting body routinely provides copies to the chief executive and, where appropriate, the chief academic officer and/or director of the program.

d. The accrediting body refrains from advertising or soliciting applications for accreditation from institutions/programs.

Stage 2: Information Requested and Supplied (Including the Self Study)

a. The institution/program determines how it will conduct its self study and the accrediting body specifies the items to be addressed in the report.

b. The accrediting body requires only information that is relevant to accrediting standards and policies, and, whenever possible, this information will be coordinated with information requested by other accrediting bodies.

c. The institution/program involves broad and appropriate constituent groups in the preparation and process of self study.

d. The institution/program discloses to the accrediting body that information which is required to carry out the accrediting body's evaluation and accrediting functions (with due regard to individual privacy).

e. The accrediting body and institution/program respect the confidentiality of information required and evaluated in the accrediting process.

Stage 3: The Site Visit and Review

a. When requested by the institution/program, the accrediting body (in consultation with the institution/program and when feasible) conducts joint, concurrent, coordinated, consolidated, or phased visits.

b. The accrediting body, in consultation with the institution/program, selects site visitors who are:

1. Competent by virtue of experience, training, and orientation;

2. Sensitive to the uniqueness of the institution and/or program; and

3. Impartial, objective, and without conflict of interest.

c. The accrediting body ensures that the composition, team size, and length of the visit are:

1. Determined in consultation with the institution/program

2. Determined with regard to the size and complexity of the institution/program.

3. Most appropriate to accomplish the objectives of the visit.

d. The institution/program provides maximum opportunity for communication with all relevant constituencies.

e. The accrediting body communicates its findings derived from the site visit to the institution/program.

f. The accrediting body ensures that the report identifies and distinguishes clearly between statements directly related to quality-assessment and those representing suggestions for quality-improvement.

g. The accrediting body provides the chief executive officer of the institution (and the chief academic officer and/or the director of the program) with an opportunity to comment on the written report of the visiting team and to file supplemental materials pertinent to the facts and conclusions therein before the accrediting body takes action on the report.

Stage 4: The Decision (Including the Following)

Commission action

Conveyance of action

Appeal

Public announcement of action

a. The accrediting body permits the withdrawal of a request for any status of accreditation at any time prior to the decision on that request.

b. The accrediting body makes decisions solely on the basis of published standards, policies, and procedures using information available and made known to the institution/program.

c. The accrediting body avoids conflicts of interest in the decision making process.

d. The accrediting body ensures the confidentiality of those deliberations in which accrediting decisions are made, but due process will be observed

in all deliberations.

e. The accrediting body notifies institutions and programs promptly in writing of accrediting decisions, giving reasons for the actions.

f. The accrediting body ensures that the communication of the final accrediting decision, *i.e.*, the notification letter and/or final report, identifies and clearly distinguishes between statements directly related to quality-assessment and those representing suggestions for quality-improvement.

g. The institution/program has a right to appeal an accrediting decision in accordance with the policies of the accrediting body and to maintain its accredited status during the appeal.

h. The accrediting body publishes accrediting decisions, both affirmative and negative, except for initial denial which need not be made public.

i. The accrediting body maintains the confidentiality of the final report, but it may request that corrective action be taken if an institution/program releases information misrepresenting or distorting any accreditation action taken by the body or the status of affiliation with the accrediting body. If the institution/program is not prompt in taking corrective action, the accrediting body may further release a public statement providing the correct information.

Stage 5: Follow-Up (Including interim reports and reapplication)

a. The accrediting body can request periodic reports, special reports, and consultative activities relevant to the institution's/program's accreditation status.

b. The accrediting body provides written notice to the institution/program of the action taken in relation to a special report or visit.

c. The accrediting body may request the reevaluation of an institution/program at any time for cause.

d. The institution/program has an obligation to inform the accrediting body of any substantive changes.

e. The institution/program has a right to have pertinent information provided concerning reapplication requirements for accreditation under the terms and conditions specified by the accrediting body.

f. Separate from the accrediting process leading to a decision on accredited status, the accrediting body assists and stimulates improvement of the educational effectiveness of an institution/program, and to this end makes provision for appropriate assistance.

Adopted by the COPA Board April 19, 1985 Reviewed by ACCJC 1990, 1996

INTERREGIONAL POLICIES ON THE ACCREDITATION OF INSTITUTIONS OPERATING ACROSS REGIONS

(Adopted June 2000)

Preamble

The purpose of these policies is to establish and define the respective roles of the regional higher education accrediting commissions in assuring quality and encouraging the improvement of affiliated institutions operating interregionally. Developed by the Council of Regional Accrediting Commissions (CRAC), they are designed to address concerns arising from differences that may exist among regional commission criteria and their application in off-campus operations. The interregional policies encompass only those colleges and universities which have physical presence, appropriate state authorization, and offer instruction equivalent to 50% or more of a degree program in another (host) region(s) than their home region where they hold accreditation. Once adopted, however modified, these polices will encompass all regionally accredited institutions and will establish a common framework for the evaluation of institutions operating interregionally.

These policies are based upon the following fundamental premises:

The home region should be demonstrably accountable for its accreditation decisions affecting institutions operating in host regions.

The host region has a legitimate interest in the quality of institutions from other regions operating within its jurisdiction.

The home and host regions, while honoring these policies and the procedures designed to implement them, have flexibility in defining the host region's role in the evaluation of instructional sites operating in its region.

The eight regional commissions, building on their commonality of tradition and longstanding mutual respect, will work cooperatively, together with affected institutions, to implement these policies toward the fulfillment of their quality assurance responsibilities in the review of transregional programming while honoring institutional autonomy and integrity.

These policies represent a departure from past practice. Their continued efficacy rests upon the commitment of the involved commissions to assess their effectiveness and

otherwise determine their impact on their member institutions, making modifications as are necessary. For that reason, CRAC has recommended that these policies be implemented on a three-year (2000-2003) pilot basis. While it is expected that once in force the policies will materially affect the evaluation of institutions operating across regional boundaries, it is also understood that first experiences will likely result in the need for corrections and adjustments in their content. For that reason, CRAC is committed to undertake in 2003 a basic review of the effectiveness of the policies in achieving their purposes.

POLICY STATEMENT ON THE EVALUATION OF INSTITUTIONS OPERATING INTERREGIONALLY

To preserve the values and practices of peer review and regional accreditation, the evaluation of institutions that deliver education at a physical site(s) in another region(s) will be undertaken with the participation of the host regional accrediting commission(s). This will include the joint (home/host) review of off-campus sites in a host region against the accreditation standards of that region.

Procedures for the evaluation of colleges and universities operating interregionally will honor these basic principles:

The mission of the institution will be respected throughout the evaluation process.

The design and implementation of the strategy fashioned to evaluate its host region instructional sites will be developed collaboratively by the participating regional commissions together with the affected institution.

The home region's evaluation processes will serve as the basis for the joint evaluations and the home region will take the leadership role in initiating and overseeing the process.

The home region will be solely responsible for final accrediting actions, but will respond to issues brought to its attention by the host commission as identified through its involvement in the institutional review.

Host commission participation in an interregional accrediting process shall not constitute accreditation of the institution by that commission.

The host region retains the discretion to determine its involvement in the evaluation of institutions operating interregionally.

Exchanging Information

To assure that each commission is adequately apprised of the instructional activities of out-of-region institutions in its region, the following information will be exchanged as specified:

A. Annually, each commission will notify the other affected commissions of any of its institutions operating interregionally. The information provided will include:

location(s), levels of degree offerings, and number of students enrolled. It is understood here as elsewhere, that notice need only be provided regarding those locations where 50% or more of a degree program are offered.

B. Each commission will notify other relevant commissions when one of its institutions intends to establish a new out-of-region instructional site. In such cases, the home commission in consultation with the host region together with the institution, will determine if the new site(s) constitute a substantive change and thus be subject to review under the interregional accrediting processes.

Procedures for the Interregional Accrediting Process

Notice to Host Region of Planned Evaluations

The home region will provide timely notice to the host region(s) of

A. scheduled comprehensive evaluations of institutions with instructional sites in the host region;

B. any focused visits which include the review of sites in the host region or includes issues related to off-campus programming;

C. any other evaluations of new sites in the host region.

Procedures for Evaluations

A. Standards to be applied. The standards of both the home and host region will be applied at host region sites using a "home standards plus" model. That is, the standards of the home region will be used as the basis for the evaluation as supplemented by any criteria of the host region identified in the design process for the evaluation.

B. Evaluation protocol. Well in advance of the comprehensive visit, the home and host commissions, in consultation with the institution, will develop a protocol for the evaluation of host region sites to include: 1) the scope of the review; 2) which sites are to be reviewed, with the final decision remaining with the home region; 3) the content of

the self-study report(s) for the sites to be visited with particular attention to how identified host region standards are to be addressed; and 4) any other matters of agreement relevant to the evaluation, including issues of possible public disclosure.

C. Site team composition. The size and composition of the team visiting host region sites will be jointly determined, with the host region being afforded the opportunity to appoint up to 50% of the team's membership. The host region may appoint a vice or co-chair as agreed upon by the home region. Teams will otherwise be appointed in keeping with home region procedures. It is understood that the host region's conflict of interest policy will apply for the team members it appoints.

D. Costs. The costs for the evaluation of host region sites will be billed in keeping with the home region's policies. The home region will otherwise administer reimbursement of evaluator expense also in keeping with its policies.

Procedures for Evaluation Reports

A. A single evaluation report will be prepared for each of the sites visited within the host region, as agreed upon by the commissions involved.

B. The evaluation report will include a review of the site under the home region's standards, and as appropriate, findings regarding the host region's standards as previously identified and any topics included in the evaluation under prior agreement. Recommendations to the home region can be made by both home and host sub-groups on the team.

C. Site team reports are provided to the host region by the home region upon receipt. In cases of comprehensive evaluations, the home region's institutional evaluation report is also forwarded to the host region.

D. The host region is responsible for establishing processes for the timely review of site-specific evaluation reports prior to their being considered by the home regional commission so as to provide any comments it believes should be taken

into consideration as the institution's case is reviewed.

F. The policy of confidentiality for team recommendations of the home region will apply.

Procedures for Decisions and Notification

A. The home region's decision-making processes will ensure that the institution has the opportunity to respond to the team report and any comments from the host region before a final decision is made.

B. The home region takes the final accrediting action and is responsible for providing notification of that action to all relevant parties, including the host region.

C. When the final action differs from the recommendation and comments of the host region, if any, a rationale for the action will be sent upon request by the home to the host region.

D. The home region is responsible for addressing any misrepresentation of the interregional evaluation on the institution's accreditation status.

POLICY STATEMENT ON SEPARATELY ACCREDITABLE INSTITUTIONS

In an effort to be consistent and equitable to all institutions, the following criteria for identifying separately accreditable institutions will be applied by each of the regional accrediting commissions.

An instructional site located in a region other than that of its home campus must seek separate accreditation in the region it exists if it functions independent of operational control of the parent college or university. An instructional site will be deemed operationally independent and accreditable by the host region when it meets these criteria:

The instructional site:

1. has, under board policy, substantial financial and administrative independence from the home institution including matters related to personnel;

2. has a full time chief administrative officer;

3. is empowered, under board policy, to initiate and sustain its own academic programs;

4. has degree-granting authority in the state or jurisdiction in

which it is located.

Each regional commission, upon the adoption of this policy, will determine if any of its affiliated institutions have instructional sites that appear to be separately accreditable. Following consultation with the host commission and the institution, and upon learning from the host region the site's potential to meet its eligibility requirements, the home region will make the determination as to the status of such sites that meet these criteria. The host region agrees to take deliberate steps toward reviewing any instructional sites identified as operationally independent in keeping with its policies and procedures for applying institutions. An institution identified as separately accreditable will continue to be included in the accreditation of the parent college or university until it achieves separate accreditation.

Off-campus instructional sites, regardless of location, not found to be operationally independent are included in the accreditation of the home campus. The operational independence of such sites is periodically reviewed under this policy.

POLICY STATEMENT ON PRINCIPLES OF GOOD PRACTICE IN INSTITUTIONAL ADVERTISING, STUDENT RECRUITMENT, AND REPRESENTATION OF ACCREDITED STATUS

All accredited postsecondary institutions, or individuals acting on their behalf, must exhibit integrity and responsibility in advertising, student recruitment, and representation of accredited status. Responsible self-regulation requires rigorous attention to "Principles of Good Practice."

I. Advertising, Publications, Promotional Literature

Educational programs and services offered should be the primary emphasis of all advertisements, publications, promotional literature, and recruitment activities.

2. All statements and representations should be clear, factually accurate, and current. Supporting information should be kept on file and readily available for review.

3. Catalogs and other official publications should be readily available and accurately depict:

a. Institutional purposes and objectives.

b. Entrance requirements and procedures.

c. Basic information on programs and courses, with required sequences and frequency of course offerings explicitly stated.

d. Degree and program completion requirements, including length of time

required to obtain a degree or certification of completion.

e. Faculty (full-time and part-time listed separately) with degrees held and the conferring institution.

f. Institutional facilities readily available for educational use.

g. Rules and regulations for conduct.

h. Tuition, fees, and other program costs.

i. Opportunities and requirements for financial aid.

j. Policies and procedures for refunding fees and charges to students who withdraw from enrollment.[1]

4. In college catalogs and/or official publications describing career opportunities, clear and accurate information should be provided on:

a. National and/or state legal requirements for eligibility for licensure or entry into an occupation or profession for which education and training are offered.

b. Any unique requirements for career paths, or for employment and advancement opportunities in the profession or occupation described.

II. Student Recruitment for Admissions[2]

1. Student recruitment should be conducted by well-qualified admissions officers and trained volunteers whose credentials, purposes, and position or affiliation with the institution are clearly specified.

2. Independent contractors or agents used by the institution for recruiting purposes shall be governed by the same principles as institutional admissions officers and volunteers.

3. The following practices in student recruitment are to be scrupulously avoided:

a. Assuring employment unless employment arrangements have been made and can be verified.

b. Misrepresenting job placement and employment opportunities for graduates.

c. Misrepresenting program costs.

d. Misrepresenting abilities required to complete intended program.

e. Offering to agencies or individual persons money or inducements other than educational services of the institution in exchange for student

enrollment.

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[1]See ACE Guidelines #1: "Policy Guidelines for Refund of Student Charges"

[2]See ACE Guidelines #2: "Joint Statement of Principles of Good Practice in College Admissions and Recruitment"

(Except for awards of privately endowed restricted funds, grants or scholarships are to be offered only on the basis of specific criteria related to merit or financial need.)

III. Representation of Accredited Status

1. The term "accreditation" is to be used only when accredited status is conferred by an accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation and/or the U.S. Secretary of Education.

No statement should be made about possible future accreditation status or qualification not yet conferred by the accrediting body. Statements like the following are not permissible; "(Name of institution) has applied for candidacy with the Commission on Colleges of the _____ Association"; "The _____ program is being evaluated by the National Association of _____, and it is anticipated that accreditation will be granted in the near future."

3. Any reference to state approval should be limited to a brief statement concerning the actual charter, incorporation, license, or registration given.

4. The phrase "fully accredited" should be avoided, since no partial accreditation is possible.

5. When accredited status is affirmed in institutional catalogs and other official publications, it should be stated accurately and fully in a comprehensive statement, including:

a. identifying the accrediting body by name.

indicating the scope of accreditation as:

(1) institutional (regional or national).

Example:

The University of Southern Yukon is accredited by the Commission on Colleges of the Northwest Association, an institutional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation (and/or the

U.S. Department of Education).

(2) programmatic (curriculum or unit accredited must be specified).

Examples:

Programs in (Civil Engineering and Aeronautical Engineering) are accredited by the Accrediting Board for Engineering and Technology, a specialized accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation (and/or the U.S. Department of Education).

The Department of Music at the University of Hiawatha is accredited by the National Association of Schools of Music, a specialized accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation (and/or the U.S. Department of Education).

Programs for the preparation of elementary, secondary, and special education teachers at the bachelor's and master's level, for the preparation of guidance counselors at the master's and specialist degree level, and for school superintendents at the specialist and doctoral degree level are accredited by the National Council for Accreditation of Teacher Education, a specialized accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation (and/or the U.S. Department of Education).

6. The accredited status of a program should not be misrepresented.

a. The accreditation granted by an institutional accrediting body has reference to the quality of the institution as a whole. Since institutional accreditation does not imply specific accreditation of any particular program in the institution, statements like ``this program is accredited,'' or ``this degree is accredited,'' are incorrect and misleading.

b. ``Free-standing'' institutions offering programs in a single field, *e.g.*, a school of art, engineering, theology, granted accreditation by a regional or national institutional accrediting body alone, should clearly state that this accreditation does not imply specialized accreditation of the program offered.

Member agencies of CORPA should assume responsibility for informing the CORPA office of improper or misleading advertising or unethical practices which come to their

attention, so that CORPA may inform the appropriate accrediting association or associations.

Adopted by the COPA Board April 20, 1983

Reviewed by ACCJC 1990, 1996

REPRESENTATION OF ACCREDITED STATUS

(Revised and Adopted June 1998, Revised January 1999)

The following statements govern representations which can be made by an institution during three types of accreditation status. In addition, institutions on probation, show cause, or termination status must disclose that information to students and prospective students and in any publication where the institution makes reference to its accredited status.

A. Representation of status by institutions preparing, submitting, or completing Eligibility Reviews

An institution which is preparing, has submitted, or completed an Eligibility Review has no formal relationship with the Commission. An institution that has completed an Eligibility Review may not make any representation which claims or implies any relationship with the Accrediting Commission.

During the period in which the college prepares its self study, the institution does not have a publicly recognized relationship with the Accrediting Commission and cannot represent itself to current or prospective students, the public, governmental agencies, other accrediting bodies, or any other parties as having an affiliated status with the Commission.

No formal or informal statements should be made about possible future accreditation, status, or qualification which is not yet conferred by the Commission.

Representations should be limited to the following statement:

> At its (date of meeting), the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges reviewed and accepted the Eligibility Report submitted by (name of institution). Under Commission rules, acceptance of an Eligibility Report does not establish a formal relationship between the Commission and the college. Inquiries about accreditation should be made to the Commission office: ACCJC/WASC, 3402 Mendocino Avenue, Santa Rosa, CA 95403, (707) 569-

9177.

B. Representation of status by candidate institutions

Institutions who have achieved candidacy status should use the following language in public representations about their relationship with the Accrediting Commission. Note that both paragraphs are required.

> (Name of institution) is a candidate for accreditation by the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges, 3402 Mendocino Avenue, Santa Rosa, CA 95403, (707) 569-9177, an institutional accrediting body recognized by the Council for Higher Education Accreditation and the U.S. Department of Education.
>
> Candidate for Accreditation is a status of preliminary affiliation with the Commission initially awarded for up to two years. Candidacy is not accreditation and does not assure eventual accreditation.

C. Representation of status by accredited institutions

Representations of accredited status should be limited to the following statement. Additional modifiers such as fully accredited are not appropriate since no partial accreditation is possible.

> (Name of institution) is accredited by the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges, 3402 Mendocino Avenue, Santa Rosa, CA 95403, (707) 569-9177, an institutional accrediting body recognized by the Council for Higher Education Accreditation and the U.S. Department of Education.

POLICY STATEMENT ON CONSIDERATIONS WHEN CLOSING A POSTSECONDARY EDUCATIONAL INSTITUTION

I. Preparing the Way

A decision to close an educational institution requires thoughtful planning and careful consultation with all affected constituencies. Every effort should be devoted to informing each constituency as fully as possible about the conditions requiring consideration of a decision of such importance, and all available information should be shared. Before closing, such alternatives as merging with another institution, forming a consortium, or participating in extensive inter-institutional sharing and cooperation should be carefully considered. As much as possible, the determination to close an institution should

involve a consultative process, but responsibility for the final decision to close rests with the board of governors.

Tradition and sentiment are important considerations, but sentimentality should not be allowed to determine events. A decision to close should never be made or reversed simply on the basis of fears, hopes, or aspirations that have little relation to reality. Neither should it be delayed to the point where the institution has lost its viability and its educational program no longer retains quality and integrity. Since the immediate interests of current students and faculty are most directly affected, their present and future prospects require especially sensitive attention and involvement.

It is assumed that closing an institution means a decision permanently to discontinue its educational activities, not merely to suspend them for an indefinite period in the hope that circumstances may someday permit their resumption. But it should be noted that most institutions of higher education are corporations established under the provisions of state law, and as such may have legal responsibilities (holding title to real property, for example) that may necessitate the continued existence of the corporation after the educational activities of the institution have been terminated. Indeed, it is probable that such continued corporate existence, at least for a time, will prove to be the usual situation. It is unlikely that in most cases corporate existence and educational activities can be terminated simultaneously.

II. Closing an Institution

A decision to close requires specific plans for providing in appropriate ways for the students, the faculty, the administrative and support staff, and for the disposition of the institution's assets. Many considerations bear upon closing an educational institution, and each situation will be unique. Public institutions, seminaries, church-related colleges--the nature and sponsorship of each institution require different emphasis and pose particular conditions to be met in reaching and carrying out the ultimate decision. Nevertheless, general guidelines may be helpful to each institution considering closing.

This statement makes only incidental reference to such corporate responsibilities and always in the educational context. It is imperative, therefore, that a Board of Trustees considering closing an institution under its care should be guided not only by guidelines such as these and by the state educational authorities, but also by advice of legal counsel. Special counsel to advise with respect to problems of closing may be desirable for the institution. Institutional and specialized accrediting bodies should also be consulted and be kept fully apprised of developments.

A. The Students

Students who have not completed their degrees should be provided for according to their academic needs. Arrangements for transfer to other institutions will require complete academic records and all other related information gathered in dossiers which can be transmitted promptly to receiving institutions. Agreements made with other

institutions to receive transferring students and to accept their records must be submitted to the Accrediting Commission for approval. Where financial aid is concerned, particularly federal or state grants, arrangements should be made with the appropriate agencies to transfer the grants to the receiving institutions. Where such arrangements cannot be completed, students should be fully informed. In cases where students have held institutional scholarships or grants and there are available funds which can legally be used to support students while completing degrees at other institutions, appropriate agreements should be negotiated.

B. Academic Records and Financial Aid Transcripts

All academic, financial aid information, and other records should be prepared for permanent filing, including microfilming. Arrangements should be made with the state department of higher education or other appropriate agency for filing of student records. If there is no state educational agency which can receive records, arrangements should be made with another college or university or with the state archives to preserve the records. Notification should be sent to every current and past student indicating where the records are being stored and what the accessibility to those records will be. Where possible, a copy of a student's record should also be forwarded to the individual student.

C. Completion of Institutional Obligations

When a student chooses to continue at another institution but is within a year to 18 months of completing an academic degree in the closing institution, arrangements may be made to permit that student to complete the requirements for a degree elsewhere but to receive it from the closed institution. This may require special action by the appropriate state agency. Such arrangements should also include provision for continuation of the institution's accreditation only for this purpose by the accrediting agency involved. These steps normally require the institution to continue as a legal corporate entity for 12 to 18 months beyond the closing date, but any such arrangement must be established in careful consultation with the appropriate authorities and with their written consent.

D. Provision for Faculty and Staff

In every possible case, the institution should arrange for continuation of those faculty and staff who will be necessary for the completion of the institution's work up to the closing date. When faculty and staff are no longer needed, the institution should make every effort to assist them in finding alternative employment. It should be understood that the institution can make no guarantees, but genuinely good faith efforts to assist in relocation and reassignment are essential. In the event that faculty or staff members find new positions, early resignations should be accepted.

III. The Final determination

Determinations must be made to allocate whatever financial resources and assets

remain after the basic needs of current students, faculty, and staff are provided for. When the financial resources of the institution are inadequate to honor commitments, the Board should investigate what alternatives and protection are available under applicable bankruptcy laws before deciding to close. If funds are insufficient to maintain normal operations through the end of the closing process, the institution should not overlook the possibility of soliciting one-time gifts and donations to assist in fulfilling its final obligations.

Every effort should be made to develop publicly defensible policies for dividing the resources equitably among those with claims against the institution. One of the best ways of achieving this goal is to involve potential claimants in the process of developing the policies. Time and effort devoted to carrying the process to a judicious conclusion may considerably reduce the likelihood of lawsuits or other forms of confrontation.

It is impossible to anticipate in advance the many claims that might be made against remaining resources of an institution, but the following three principles may help to sort out possible claims and to set priorities:

(a) Students have the right to expect basic minimal services during the final semester, not only in the academic division, but also in the business office, financial aid office, registrar's office, counseling, and other essential support services. Staff should be retained long enough to provide these services. It may be appropriate to offer special incentives to keep key personnel present.

(b) Reasonable notice is given to all employees, explaining the possibility of early termination of contracts and that the reasons for retaining some personnel longer than others are based on satisfying the minimal needs of students and the legal requirements for closing.

(c) Every effort should be made to honor long-term financial obligations (loans, debentures, etc.) even though the parties holding such claims may choose not to press them.

IV. The Closing Date

The Board of Trustees should take a formal vote to terminate the institution on a specified date. That date will depend on a number of factors including the decision to file or not to file for bankruptcy. Another key factor is whether or not all obligations to students will have been satisfactorily discharged. This is particularly important if the decision is made to allow seniors in their final year to graduate from the institution by completing their degree requirements elsewhere. If such arrangements are made, the Board must be sure to take the legal action necessary to permit awarding degrees after the institution otherwise ceases to function. Normally, formal vote to award a degree is made after all requirements have been met, but it is legally possible to make arrangements for a student to complete the requirements for a degree at another

institution and to receive the degree from the closed institution. These requirements must be clearly specified along with a deadline for completion. Also the Board must identify the person or persons authorized to determine whether or not these requirements have in fact been satisfied. Arrangements must be completed with the appropriate state and accrediting agencies in advance in order to assure that the degree is awarded by a legally authorized and accredited institution.

V. Disposition of Assets

In the case of a not-for-profit institution, the legal requirements of the state and the federal government must be carefully examined with respect to the disposition of institutional assets. Arrangements for the sale of the physical plant, equipment, the library, special collections, art, or other funds must be explored with legal counsel. In the case of wills, endowments, or special grants, the institution should discuss with the donors, grantors, executors of estates, and other providers of special funds arrangements to accommodate their wishes. State laws regarding the disposition of funds from a nonprofit institution must be meticulously followed. All concerned federal and state agencies need to be apprised of the institution's situation and any obligations relating to estate or federal funds need to be cleared with the proper agencies.

VI. Other Considerations

The institution should establish a clear understanding with its creditors and all other agencies involved with its activities to assure that their claims and interests will be properly processed. Insofar as possible, the institution should assure that its final arrangements will not be subject to later legal proceedings which might jeopardize the records or status of its students or faculty.

VII. Conclusion

The closing of an educational institution is never a happy event. Nevertheless, such action can be rendered less traumatic by careful attention to the details of the legal and moral obligations of the institution. Closing will be marked by sadness, but well-planned and conscientious efforts to assure that the institution's students, faculty, and staff will be optimally provided for and that its assets will be used in ways that will honor the intentions of the original donors should help in avoiding bitterness and rancor. A final report on the closing should be submitted to the appropriate accrediting and state agencies for their records.

Note: The most recent and comprehensive reference work, which includes summaries of state regulations regarding disposition of student records and dissolution of non-profit colleges and universities is the following:

O'Neill, Joseph P. and Barnett, Samuel. College and Corporate Change: Merger, Bankruptcy, and Closure. Princeton, N.J., Conference University Press, 1980.

Adopted by the COPA Board

April 15, 1982

Reviewed by ACCJC 1990, 1996

JOINT POLICY STATEMENT ON TRANSFER AND AWARD OF ACADEMIC CREDIT

Council on Postsecondary Accreditation. American Council on Education/ Commission on Educational Credit American Association of Collegiate Registrars and Admissions Officers

This statement is directed to institutions of postsecondary education and others concerned with the transfer of academic credit among institutions and award of academic credit for extra-institutional learning. Basic to this statement is the principle that each institution is responsible for determining its own policies and practices with regard to the transfer and award of credit. Institutions are encouraged to review their policies and practices periodically to assure that they accomplish the institution's objectives and that they function in a manner that is fair and equitable to students. Any statements, this one or others referred to, should be used as guides, not as substitutes, for institutional policies and practices.

Transfer of credit is a concept that now involves transfer between dissimilar institutions and curricula and recognition of extra-institutional learning, as well as transfer between institutions and curricula of similar characteristics. As their personal circumstances and educational objectives change, students seek to have their learning, wherever and however attained, recognized by institutions where they enroll for further study. It is important for reasons of social equity and educational effectiveness, as well as the wise use of resources, for all institutions to develop reasonable and definitive policies and procedures for acceptance of transfer credit. Such policies and procedures should provide maximum consideration for the individual student who has changed institutions or objectives. It is the receiving institution's responsibility to provide reasonable and definitive policies and procedures for determining a student's knowledge in required subject areas. All institutions have a responsibility to furnish transcripts and other documents necessary for a receiving institution to judge the quality and quantity of the work. Institutions also have a responsibility to advise the students that the work reflected on the transcript may or may not be accepted by a receiving institution.

Inter-institutional Transfer of Credit

Transfer of credit from one institution to another involves at least the following three considerations:

1. The educational quality of the institution from which the student transfers.

2. The comparability of the nature, content, and level of credit earned to that offered by the receiving institution.

3. The appropriateness and applicability of the credit earned to the programs

offered by the receiving institution, in light of the student's educational goals.

Accredited Institutions

Accreditation speaks primarily to the first of these considerations, serving as the basic indicator that an institution meets certain minimum standards. Users of accreditation are urged to give careful attention to the accreditation conferred by accrediting bodies recognized by the Council on Postsecondary Accreditation (COPA). COPA has a formal process of recognition which requires that any accrediting body so recognized must meet the same standards. Under these standards, COPA has recognized a number of accrediting bodies, including:

1. Regional accrediting commissions (which historically accredited the more traditional colleges and universities but which now accredit proprietary, vocational-technical, and single-purpose institutions as well).

2. National accrediting bodies that accredit various kinds of specialized institution.

3. Certain professional organizations that accredit free-standing professional schools, in addition to programs within multi-purpose institutions. (COPA annually publishes a list of recognized accrediting bodies, as well as a directory of institutions accredited by these organizations.)

Although accrediting agencies vary in the ways they are organized and in their statements of scope and mission, all accrediting bodies that meet COPA's standards for recognition function to assure that the institutions or programs they accredit have met generally accepted minimum standards for accreditation.

Comparability and Applicability

Comparability of the nature, content, and level of transfer credit and the appropriateness and applicability of the credit earned to programs offered by the receiving institution are as important in the evaluation process as the accreditation status of the institution at which the transfer credit was awarded. Since accreditation does not address these questions, this information must be obtained from catalogues and other materials and from direct contact between knowledgeable and experienced faculty and staff at both the receiving and sending institutions. When such considerations as comparability and appropriateness of credit are satisfied, however, the receiving institution should have reasonable confidence that students from accredited institutions are qualified to undertake the receiving institution's educational program.

Accreditation affords reason for confidence in an institution's or a program's purposes, in the appropriateness of its resources and plans for carrying out these purposes, and in its effectiveness in accomplishing its goals, insofar as these things can be judged. Accreditation speaks to the probability, but does not guarantee, that students have met

acceptable standards of educational accomplishment.

Admissions and Degree Purposes

At some institutions there may be differences between the acceptance of credit for admission purposes and the applicability of credit for degree purposes. A receiving institution may accept previous work, place credit value on it, and enter it on the transcript. However, that previous work, because of its nature and not its inherent quality, may be determined to have no applicability to a specific degree to be pursued by the student.

Institutions have a responsibility to make this distinction, and its implications, clear to students before they decide to enroll. This should be a matter of full disclosure, with the best interests of the student in mind. Institutions also should make every reasonable effort to reduce the gap between credits accepted and credits applied toward an educational credential.

Unaccredited Institutions

Institutions of postsecondary education that are not accredited by COPA-recognized accredited bodies may lack that status for reasons unrelated to questions of quality. Such institutions, however, cannot provide a reliable, third-party assurance that they meet or exceed minimum standards. That being the case, students transferring from such institutions may encounter special problems in gaining acceptance and transferring credits to accredited institutions. Institutions admitting students from unaccredited institutions should take special steps to validate credits previously earned.

Foreign Institutions

In most cases, foreign institutions are chartered and authorized by their national governments, usually through a ministry of education. Although this provides for a standardization within a country, it does not produce useful information about comparability from one country to another. No other nation has a system comparable to voluntary accreditation. The Division of Higher Education of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) is engaged in a project to develop international compacts for the acceptance of educational credentials. At the operational level, four organizations--the Council on International Exchange (CIEE), the National Council on the Evaluation of Foreign Student Credentials (CEC), the National Association for Foreign Student Affairs (NAFSA), and the National Liaison Committee on Foreign Student Admissions (NLC) -- often can assist institutions by distributing general guidelines on admission and placement of foreign students. Equivalency or placement recommendations are to be evaluated in terms of the programs and policies of the individual receiving institutions.

Validation of Extra-institutional and Experiential Learning for Transfer Purposes

Transfer-of-credit policies should encompass educational accomplishment attained in extra-institutional settings as well as at accredited postsecondary institutions. In deciding on the award of credit for extra-institutional learning, institutions will find the services of the American Council on Education's Office of Educational Credit helpful. One of the Office's functions is to operate and foster programs to determine credit equivalencies for various modes of extra-institutional learning. The Office maintains evaluation programs for formally structured courses offered by the military, and civilian non-collegiate sponsors such as businesses, corporations, government agencies, and labor unions. Evaluation services are also available for examination programs, for occupations with validated job proficiency evaluation systems, and for correspondence courses offered by schools accredited by the National Home Study Council. The results are published in a Guide series. Another resource is the General Education Development (GED) Testing Program, which provides a means for assessing high school equivalency.

For learning that has not been validated through the ACE formal credit recommendation process or through credit-by examination programs, institutions are urged to explore the Council for Advancement of Experiential Learning (CAEL) procedures and processes. Pertinent CAEL publications designed for this purpose are also listed.

Uses of this Statement

This statement has been endorsed by the three national associations most concerned with practices in the area of transfer and award of credit: the American Association of Collegiate Registrars and Admissions Officers, the American Council on Education/Commission on Educational Credit, and the Council on Postsecondary Accreditation.

Institutions are encouraged to use this statement as a basis for discussions in developing or reviewing institutional policies with regard to transfer. If the statement reflects an institution's policies, that institution might want to use this publication to inform faculty, staff, and students.

It is recommended that accrediting bodies reflect the essential precepts of this statement in their criteria.

Adopted by the COPA Board October 10, 1978; Approved by the American Council on Education/Commission on Educational Credit , December 5, 1978

Approved by the Executive Committee, American Association of Collegiate Registrars and Admissions Officers, November 21, 1978 Reviewed by ACCJC 1990, 1996

SELF-REGULATION INITIATIVES:

GUIDELINES FOR COLLEGES AND UNIVERSITIES

POLICY GUIDELINES FOR REFUND OF STUDENT CHARGES

Background

National attention has for some time focused on the matter of fair and equitable refund of student charges and fees. Since 1976, federal law has required that all institutions receiving federal student-aid funds have equitable refund policies. Within the higher education community the belief has grown that policy guidelines for voluntary self-regulation, developed by higher education representatives, are preferable to governmental definitions and regulations. To this end, the American Council on Education and other associations urged the National Association of College and University Business Officers to prepare policy guidelines for refunding student fees.

The guidelines were drafted by NACUBO's Student-Related Programs Committee and were reviewed by persons representing a wide range of institutions and professional responsibilities. Associations that have approved the guidelines are listed below. The guidelines have gained acceptance by officials in the U.S. Office of Education. Leo Kornfeld, Deputy Commissioner for Student Financial Assistance, lauded the effort as important progress toward self-regulation and indicated that, as a result, the USOE will not proceed with developing regulations for tuition refund policies of colleges and universities.

The guidelines summarize elements of fair and equitable policy in refunding tuition, room, board, and other charges for students who withdraw from their studies or otherwise discontinue their use of an institution's services before the end of an academic term. They offer a balanced approach to issues related to refunds, including the financial commitments incurred by the institution and the responsibility to treat both withdrawing and continuing students fairly. Overall, they allow institutions to ensure that their students' rights to fair and equitable treatment are fully recognized.

Colleges and universities are urged to use the guidelines to evaluate and, where necessary, modify current institutional policies and practices to meet the spirit and intent of the guidelines.

GUIDELINE ONE. **The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students.** The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

GUIDELINE TWO. **Institutions should seek consumer views in the process of establishing and amending charge and refund structures.** Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally-designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a

desirable approach for assessing student needs and creating public awareness of institutional requirements.

GUIDELINE THREE. **Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students.** Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment of the charges. Informational materials published free for students and prospective students are ideal for this purpose.

GUIDELINE FOUR. **Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials.** Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

GUIDELINE FIVE. **Institutions should clearly identify charges and deposits that are nonrefundable as ``nonrefundable" on all published schedules.** Institutions determine on an individual basis which of their charges are refundable or nonrefundable. In general, admissions fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. Such fees are generally charged to cover the costs of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic period.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (*e.g.*, tuition deposits). Others are refundable according to the terms of the deposit agreement (*e.g.*, deposits for breakage).

GUIDELINE SIX. **Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students.** Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, state and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

GUIDELINE SEVEN. **Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent**

board charges should be refunded on a *pro rata* basis less a withdrawal fee. It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

GUIDELINE EIGHT. **The institutional tuition refund policy for an academic period should include the following minimum guidelines:**

1. The institution should refund 100 percent of the tuition charge, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.

2. The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period.

It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless state law imposes a more restrictive refund policy.

GUIDELINE NINE. **The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution should make refunds in cases where the institution has assessed charges in error.** Penalty charges, such as those involving late registration fees, change of scheduled fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

GUIDELINE TEN. **Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institutional officer.** A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such requests will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

GUIDELINE ELEVEN. **Institutions should pay or credit refunds due on a timely basis.** The definition of ``timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, such policy should be published as part of all materials related to refund policies.

GUIDELINE TWELVE. **Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeals process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible.** Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will

not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

American Council on Education
August 1979

Reviewed by ACCJC 1990, 1996

OPERATIONAL POLICIES

Operational Policies adopted by WASC and the Commission apply to the organization of the Commission and the conduct of its business.

RELATIONSHIP BETWEEN GENERAL AND SPECIALIZED AGENCIES

(Adopted October 1964, Revised January 1978)

Each institution must be free to decide for itself whether or not to seek accreditation by any particular agency. If an institution desires both general (regional) accreditation and specialized program accreditation, the Commission may collaborate with the specialized accrediting agency in arranging joint visitations or exchange of information.

An institution should not interpret its general accreditation as validating a specialized program in the same manner as specialized accreditation, which by its very nature is a more intensive evaluation process.

A specialized institution may apply for regional accreditation through ACCJC if it meets the Commission's eligibility requirements.

Reviewed by ACCJC 1996

RELATIONS WITH ACCREDITING AGENCIES

(Adopted January 1998, Revised June 1998)

It is the policy of the Accrediting Commission for Community and Junior Colleges to maintain a working relationship with other accrediting agencies where a community of interest exists. Elements of the relationship shall include, but not be limited to:

Active participation in meetings of executive staff and Commission leadership

Routine open sharing of publications and policy documents

Timely submission of information on accrediting decisions taken at

Commission meetings

Cooperating in the evaluation of institutions that operate in more than one accrediting association region

Recommending persons for evaluation team and Commission service, and receiving such recommendations from other agencies

Participation in common ventures of policy development and advocacy for institutional accreditation

Systematically monitoring the status of ACCJC/WASC institutions with other accrediting agencies

Consideration of actions taken by other recognized agencies when undertaking actions of initial candidacy or accreditation, or renewal of candidacy or accreditation of institutions that may be accredited by those other agencies

Handling and forwarding of dues collected from member institutions on behalf of national affiliates such as the Council for Higher Education Accreditation

Upon receipt of information regarding interim or final adverse actions against a member institution by another recognized accrediting agency (or state agency), Commission staff will seek further information from the agency involved, and the Commission shall determine whether a review of the accredited status of the institution will be required.

The Commission will not renew the accreditation or preaccreditation of any institution during a period that the institution is the subject of an interim action by a recognized institutional accreditation agency potentially leading to the suspension, revocation, or termination of the institution s accreditation or preaccreditation, or the institution has been notified of a threatened loss of accreditation and the due process procedures required by the action have not been completed. [602.30(a)(1)(ii)(A) and (C)]. If the Commission grants accreditation or preaccreditation notwithstanding these actions, the Commission will provide to the U.S. Secretary a thorough explanation consistent with its accreditation standards, why the previous action does not preclude the agency□ s grant of accreditation or preaccreditation. 602.30(a)(1)(iv).

In the event that the Commission grants initial accreditation, reaffirmation, or candidacy to an institution that is subject to adverse action by another recognized institutional accrediting agency, the bases for the decision will be explained and communicated to that agency and to the Secretary of Education as appropriate to each case.

The Commission is affiliated with other regional agencies through the Council for Higher Education Accreditation. It should be noted that the Commission has been an active participant in the community of accrediting agencies since the establishment of the

Western Association of Schools and Colleges, first with the Federation of Regional Accrediting Commissions in Higher Education (FRACHE), then the Council on Postsecondary Accreditation (COPA) and the Commission on Recognition in Higher Education Accreditation (CORPA) and the National Policy Board on Higher Education Accreditation.

The primary community of interest is clearly with the other regional institutional accrediting agencies. The Commission shares significant concerns with national agencies that accredit institutions, and to a lesser extent, with specialized accreditors. (Note policy, □ Relationship Between General and Specialized Agencies.□)

The Commission will not renew the accreditation or preaccreditation of any institution that is the subject of an interim action by a recognized institutional accrediting agency potentially leading to the suspension, revocation, or termination of the institutions accreditation or preaccreditation, or the Commission has been notified of a threatened loss of accreditation and the due process procedures required by the action have not been completed., 602.30(a)(1)(ii)(A) and (C). If the Commission grants accreditation or preaccreditation notwithstanding these actions, the Commission will provide to the U.S. Secretary a thorough explanation consistent with its accreditation standards, why the previous action does not preclude the agencys grant of accreditation or preaccreditation 602.30(a)(1)(iv).

ACCESS TO COMMISSION MEETINGS

(Adopted June 1978, Revised January 2000)

The ACCJC holds meetings of the Commission for two purposes: to decide the accredited status of applicant and member institutions and to consider such organizational and policy matters as may come before it. When deliberating or acting upon matters that concern specific individuals or institutions, the Commission meets in Executive Session. When deliberating or acting upon informational, organizational, or policy matters, the Commission meets in Public Session.

The Accrediting Commission for Community and Junior Colleges supports and encourages the presence of members of the public at its meetings. The Commission also recognizes that it has the responsibility to consider actions on the accredited status of institutions and matters such as personnel actions in a confidential manner.

The Executive Director mails a preliminary agenda 30 days before each regular meeting of the Commission to the chief executive officer and accreditation liaison officer of all applicant, candidate, and accredited institutions with the request that the agenda be posted or otherwise publicized. The preliminary agenda is also posted on the Commission web page.

PROCEDURES FOR ACCESS TO COMMISSION MEETINGS

I. PUBLIC SESSIONS OF THE COMMISSION MEETING

Observers will be seated at the public sessions of Commission meetings as space allows. Anyone wishing to make a presentation or address the Commission must give advance notice to the Executive Director as outlined below and identify the agenda item that they wish to address. No reference to specific individuals or institutions shall be made in Public Session.

Participation by observers at Commission meetings is limited to the following:

> Statements which address the Commissions agenda and which have been noted by the Executive Director in the agenda at the appropriate places. A written copy of all prepared remarks should be given to the Executive Director prior to the presentation. Requests to make statements should be made to the Executive Director, in writing, not less than 15 days before the Commission meeting.
>
> Requests to bring items to the attention of the Commission. Such requests should be made to the Executive Director, in writing, not less than 15 days before the Commission meeting
>
> Brief comments on specific points in the Public Session agenda. These may be made at the end of the Commission discussion of the same topic upon recognition from the Chair. The Chair may invite participation at other times at his/her discretion.

In all cases, observers statements shall be limited to five minutes but may be extended at the discretion of the chair or vote of the Commission.

II. EXECUTIVE SESSIONS OF THE COMMISSION

1. When the Commission is deliberating or acting upon matters that concern an institution, it will invite the chief executive officer of the institution to meet with the Commission in Executive Session. There is no requirement that the chief executive officer attend the Commission meeting. If the Commission is considering institutional action as a result of an evaluation team visit and the chief executive officer of the institution accepts the invitation to attend, the Chair of the evaluation team or designee is also invited to attend.

Whenever possible, the Executive Director will arrange for a subcommittee of Commissioners to meet with the institutional representative preceding the Executive Session of the Commission to discuss the matters of concern. The institutional representative will be invited to make a brief presentation followed by questions by Commissioners. After the institutional representative is excused the evaluation Team Chair will be asked to respond to Commission questions. The Team Chair is then excused, and the Commission deliberations and decision are conducted in Executive Session.

2. When the Commission is deliberating or acting upon matters that concern specific individuals, the Commission meets in Executive Session. Requests to meet with members of the Commission in Executive Session should be made to the Executive Director, in writing, not less than 15 days before the Commission meeting. Whenever possible, the Executive Director will arrange for a subcommittee of Commissioners to meet with the individuals preceding the Executive Session of the Commission to discuss the matters of concern. These Commissioners will report to the Commission as a whole and may recommend a presentation before the full Commission at an appropriate time.

COORDINATING GUIDELINES

FOR THE WASC POSTSECONDARY ACCREDITING COMMISSIONS

Revised July 2002

1. Commission of Jurisdiction

For an institution which offers a combination of secondary and lower division college programs, the Commission on Schools and the Commission for Community and Junior Colleges will conduct a joint accreditation review of the institution. ACS will be responsible for accrediting secondary programs. ACCJC will be responsible for accrediting lower-division college-level programs.

Normally, the Commission for Senior Colleges and Universities will assume jurisdiction, consulting with the Commission for Community and Junior Colleges, for an institution which offers lower division programs but is adding one or more upper division baccalaureate degree programs and/or any graduate level work. However, under special circumstances, an institution which offers lower division or community college programs but is adding a single baccalaureate degree program may be eligible for joint accreditation by the Accrediting Commission for Community and Junior Colleges and the Accrediting Commission for Senior Colleges and Universities.

ACCJC will retain jurisdiction of institutions offering the associate degree and limited upper division work which does not lead to a baccalaureate degree.

2. Evaluation and Recognition

When an institution has been accredited or recognized as a candidate by the Commission for Community and Junior Colleges and moves to a higher level, the Commission for Senior Colleges and Universities will conduct an evaluation in cooperation with the Commission for Community and Junior Colleges. The Senior

Commission standards and procedures will be used by the institution and the accrediting team.

The institution will continue to be listed under the original level. At such time as the total institution qualifies for recognition by a higher commission, it will come under that commission's jurisdiction. Generally, the institution has three years in which to effect a transfer.

CODE OF COMMISSION GOOD PRACTICE IN RELATIONS WITH MEMBER INSTITUTIONS

(Adopted June 1980, Revised June 1996, Edited October 1997, Revised January 1999, January 2001)

In its relations with the institutions it accredits, the Commission makes the commitment to:

1. Make an initial visit to, or evaluation of, an institution only on the written request of the chief executive officer of the institution;

2. Revisit an institution only on request by the chief executive, or if a visit is initiated by the Commission, after due notice to the institution;

3. Permit withdrawal of a request for initial candidacy or initial accreditation at any time (even after evaluation) prior to final action by the Commission;

4. Appraise institutions in the light of their own stated purposes so long as these are within the general frame of reference of higher education and consistent with the standards of the Commission;

5. Use the institutions self study, the team report, and relevant qualitative and quantitative information in institutional evaluation;

6. Consider information contained in a minority report that is developed in response to either a self study or another accreditation report submitted by the institution; the minority report should be received in approximate conjunction with the self study or other accreditation report to which it pertains. The Commission will notify the institution when a minority report is received by sending a copy of the report to the institution;

7. Interpret standards for accreditation in ways that are relevant to the character of the particular institution, respecting institutional integrity and diversity;

8. Encourage sound educational innovation and assist and stimulate improvement in the educational effectiveness of the institution;

9. Publish at least twice annually in the newsletter the names of institutions scheduled for comprehensive evaluation;

10. Accept relevant third-party comment on the institutions scheduled for evaluation. Such comment must be submitted in writing, signed, accompanied by return address and telephone number, and received no later than five weeks before the scheduled Commission consideration. The Commission will notify the institution when a third-party report is received by sending a copy of the report to the institution;

11. Establish reporting systems for annual, midterm, and self study reports which inform the Commission regarding student loan default rates and the standing of the institution with respect to appropriate state agencies, institutional or specialized accrediting agencies;

12. Consider information regarding adverse actions against a member institution by another accrediting agency or state agency and provide an explanation consistent with accreditation standards why the action by another authority does not result in an adverse action;

13. Limit oversight required by federal statute and regulations to issues expressly required by that mandate;

14. Include on evaluation teams representation from other institutions of similar purpose and academic program to the extent feasible;

15. Provide institutions an opportunity to object, for cause, to individual members assigned to the team designated to visit the institution, with special concern for possible conflict of interest;

16. Arrange consultation during the visit with administration, staff, students, and trustees, and include a publicized opportunity for an open hearing during the visit;

17. Address performance with regard to student achievement in reviews of institutional effectiveness. In addition, the team report should make clear those standards with which the institution does not comply and those areas needing improvement;

18. Provide to the institution a detailed written report on its review assessing the institution's or program's compliance with the Commission's standards, including areas needing improvement, and the institution's performance with respect to student achievement;

19. Emphasize the value and importance of institutional self study and respect the confidentiality of the institutional self study and evaluation team report. An institution, at its discretion, may make such documents public. In event of an adverse action, the Commission staff will attempt to reach agreement with the institution on a statement for public distribution, but the Commission reserves final authority in case of an impasse. Should the institution issue selective and biased releases or use the public forum to take issue with Commission actions, the Commission and its staff will be free to make all the documents public;

20. Provide opportunity for the institution to respond in writing to all types of team reports before they are finalized, supply all final team reports to the institution before an accrediting decision is made, and provide opportunity to the institution to appear before the Commission when such reports are considered. The Commission staff will notify an institution in writing as soon as reasonably possible regarding Commission decisions;

21. Encourage discussion and use on campus of major team recommendations;

22. Revoke accreditation only after advance written notice to the institution;

23. Provide opportunity for Commission review of its adverse decisions, and in addition, for appeal of those decisions to a panel established by the WASC Board;

24. Provide an opportunity for institutional representatives and the general public to attend those portions of Commission meetings devoted to policy matters and others of a non-confidential nature;

25. Refrain from conditioning candidacy or accreditation upon payment of fees for purposes other than annual fees and evaluation costs; and

26. Encourage continuing close relationships and communication between the Commission and institutions through the establishment of liaison officer positions in each institution, with appropriate visibility and responsibility.

PROFESSIONAL AND ETHICAL RESPONSIBILITIES OF COMMISSION MEMBERS

(Adopted January 2001, Edited June 2001)

PURPOSES OF ACCREDITATION

The Commission expects its members to accept and subscribe to the defined purposes of accreditation. The purposes of the Commission shall be the evaluation of member

institutions to assure the educational community, the general public, and other organizations and agencies that an institution has clearly defined objectives appropriate to higher education; has established conditions under which their achievement can reasonably be expected; appears in fact to be accomplishing them substantially; is so organized, staffed, and supported that it can be expected to continue to do so; and demonstrates that it meets Commission standards. The Commission encourages and supports institutional development and improvement through self study and periodic evaluation by qualified peer professionals.

COMMISSION RESPONSIBILITIES

The Commission as a whole

Establishes and periodically reviews accreditation standards, policies, and practices for member institutions;

Serves as the primary decision-maker on accredited status of member institutions;

Evaluates institutions in terms of their own stated purposes;

Strives for consistency in determining accredited status of institutions;

Assists in interpreting accreditation issues to the various publics served by the Commission.

PROFESSIONAL RESPONSIBILITIES OF COMMISSION MEMBERS

A Commissioner

Participates in all Commission meetings and attends them for their entire duration;

Studies documents as assigned prior to the meetings;

Serves as an in depth reader of evaluation visit materials as assigned;

Votes according to his or her best professional judgment in the light of existing policy and standards;

Participates on Commission committees and in activities representing the Commission□ s interests as assigned;

Attends and actively participates in Commission activities such as evaluation team visits and retreats;

Participates in self study and evaluation of the Commission;

Participates in Commission planning efforts;

Ensures that all functions of the Commission are executed responsibly through the Executive Director;

Participates in the evaluation of the Executive Director;

Notifies the Commission chairperson or Executive Director in a timely manner if the Commissioner's position or status changes during a term so that the Commissioner no longer meets the requirement for the category to which appointed.

ETHICAL RESPONSIBILITIES OF COMMISSION MEMBERS

A Commissioner

Respects the confidentiality of relationships between the Commission and the institutions it accredits.

Avoids conflicts of interest and the appearance of conflicts of interest.

Is familiar with and adheres to established bylaws and policies.

POLICY AND PROCEDURES FOR THE EVALUATION OF INSTITUTIONS IN MULTI-COLLEGE/MULTI-UNIT DISTRICTS OR SYSTEMS

(Adopted June 1999)

Introduction

The Accrediting Commission for Community and Junior Colleges and the other regional commissions have historically accredited colleges rather than districts or systems. The actual array of institutions in the region, however, is such that almost half of the member institutions are part of larger systems, either by being part of a multi-college district/system or owned by a larger corporate entity.

Unintended asymmetries have become evident, resulting in accreditation processes that serve multi-college districts/systems and their colleges differently from single college entities. For example, the role of trustees in the preparation of the self study, the review of the document, and interaction with the visiting team is clearly accounted for in the course of a typical single college institutional evaluation. These important involvements frequently do not happen, or happen to the same degree, in the multi-college setting. Similarly, system chancellors and other important central office executives, staff, and faculty leaders may not be significantly involved with the accreditation activities of district/system colleges. This results primarily because existing accreditation processes focus on the college as the responsible entity, and are less than clear regarding the district-college connections which should be reviewed during the development of the self study and evaluation site visit as indicators of institutional quality.

The purpose of this policy is to address the important relationships between institutions and systems in accreditation matters and to clarify the Commission's expectations regarding the conduct and outcomes of institutional reviews. Specifically, the goals are:

To confirm that the Commission accredits colleges, not districts or systems.

To address concerns regarding the equitable evaluation of all institutions regardless of the differences in organizational setting.

To address concerns that the level of scrutiny for all important organizational functions and outcomes is the same for all types of institutions, regardless of their organizational setting.

To better serve the purposes of accreditation by providing for close coordination among the institution(s), the district/system, the evaluation team(s), and the Commission.

The core principles of this policy are those that have been identified by member institutions and the Commission as being central to the consideration of institutions in multi-college, multi-unit systems or districts. These principles are:

1. The Commission reaffirms that individual colleges are the unit of analysis for the accreditation evaluations.

2. For colleges in multi-unit systems, the central district or organization plays a material role in the ability of the institution to gain and sustain accredited status.

3. The impact of the central entity affects all the Standards of Accreditation directly or indirectly, not just the standard on governance and administration.

4. Institutions have the responsibility to describe and display clearly the particular way functions are distributed in their unique multi-college organization. The Commission will evaluate the institution in light of the characteristics of each organization.

5. The level of scrutiny of all-important functions should be the same for all institutions. The fact that a college is in a multi-college setting is incidental to full accountability for functions that affect the college.

6. Parallel to the practice in single campus districts, when a team identifies serious inadequacies in the performance of a central office function, the consequence could jeopardize the accreditation of one, some or all of the district/system colleges.

7. The Commission reserves the right to initiate direct interaction with

district/system officers at any time when concerns arise regarding the ability of institutions to demonstrate that they meet or exceed the Standards of Accreditation.

8. A district/system may request an evaluation of the effectiveness of central functions in conjunction with any institutional reviews. This activity is limited to issues related to the ability of colleges to demonstrate that they meet or exceed the Standards of Accreditation. The outcome of this activity does not result in any "accredited" status for the district/system.

COMMISSION PROCEDURES REGARDING THE EVALUATION OF INSTITUTIONS IN MULTI-COLLEGE SYSTEMS OR DISTRICTS

A. Self Study

1. Prior to initiating the self study process and in consultation with the district/system, the institution must specify whether primary responsibility for all or parts of a specific function is at the college or district level. This organizational "map" is important in evaluating the quality of the performance of that function and establishing accountability for doing so. Those who are responsible should be involved in reporting about the function and be held accountable for its improvement. As a result, close cooperation between and among the institutions and the district/system office is expected as a part of the institutional self study. Moreover, the Commission recognizes that institutions in a multi-college system may have lateral relationships with other institutions in the district/system which must be addressed, and these too are part of the plan for developing the self study.

2. Individuals, whether on the campus or in the central office, must be actively involved in the self study based upon who has responsibility for the institutional function. For institutions in multi-college districts/systems, the self study will contain a functional map describing the distribution of activities and responsibility between and college and the district/system. This could be reflected in the required "organization for the self study" section, where the participation of appropriate persons would be identified.

3. In the self study, institutions are expected to include a discussion of the impact of the identified district/system functions and decisions on the college. For example, the Board's role in adopting the college mission statement is addressed in the standard dealing with mission; the central office responsibility for personnel is discussed in the standard on faculty and staff; the district/system financial allocation system should be addressed in the standard on financial resources. The functional map outlining the distribution of functions between the college and the central system will provide guidance for this discussion.

The district/system chief executive officer and governing board are expected to be substantially and collegially involved in the development of the self study.

4. At the governing board level, certification of an institutional self study is achieved by a resolution accepted by the governing board which testifies that there has been broad-based involvement from all relevant constituencies, and that the governing board has read the self study.

B. Standards

In any given district/system the distribution of functions between the district and the institutions may vary. The Commission does not try to dictate to a district, system, or organization the specific distribution of functions which should be followed. However, the Commission believes that accountability for the relevant functions should be applied to *every* standard, wherever those functions are located in the organizational structure.

C. Team Composition

Team composition will continue to be shaped by the institution being accredited. Teams visiting colleges in multi-college districts will have the range of expertise appropriate for the college and also individuals with multi-college district/system perspectives (*e.g.*, Chancellors, Chief Business Officers from multi-campus organizations). Institutions may request team members with special expertise in multi-college issues. The Commission will make every effort to include individuals who have experience in similarly situated institutions and multi-college districts/systems to serve as team chairs and team members in these situations.

D. Visit Organization

Institutions in multi-college organizations have the option to request individual, or coordinated site visits. At least three variations are most common:

- each institution is evaluated separately;
- all institutions within the organization are evaluated simultaneously;
- clusters of institutions are evaluated together.

The Commission continues to encourage the simultaneous arrangement in the interests of conservation of resources and encouraging opportunities for coordination and cooperation. However, this decision is ultimately made by the individual district/system.

E. District/System Visiting Team

1. When simultaneous visits are taking place in the colleges of a district/system, the Executive Director will name a Coordinating Chair from the team chairs involved, in consultation with the district/system chief executive officer. This Coordinating Chair, in consultation with the Executive Director, will form a small District/System Team which is drawn from all of the teams visiting the colleges. It will consist of all of the team chairs and such members of the respective teams as are needed to address the district/system issues identified in the self studies and by the evaluation teams.

The Coordinating Chair may have a separate Team Assistant available to him/her solely for the purpose of supporting the District/System Team and for performing organizational tasks related to this part of the evaluation visits. Team chairs on the special District/System Team will receive the self study, the previous team reports, and Commission action letters from every college involved and will make the materials available to institutional team members on the District/System Team.

The purpose of the Coordinating Chair and District/System Team is to validate the statements made in the self study(s), insure commonality and comparability of team recommendations which have district/system consequences, and to support the work of the teams evaluating each college. These activities will be woven into the activities of the college evaluation teams by each institutional team chair. The District/System Team has the responsibility for clarifying the recommendations of each team related to district/system functions. Any recommendations regarding district/system functions will be included in the institutional team reports. Each college team will validate the portions of the self study that are campus based; this part of the process remains much as it has been.

Depending on the circumstances, the District/System Team will spend an appropriate period
of time visiting the central office and validating the portions of the self studies that to
pertain
centralized operations.

2. When only one college in a multi-college district/system is being evaluated, the team chair and appropriate team members will perform the same district/system validation functions on behalf of the evaluation team as described above.

F. Reports by the Institutional Teams and District/System Team

The District/System Team (or the institutional evaluation team when only one college is being evaluated) will develop conclusions that discuss the major issues pertaining to the district/system. These conclusions will be contained, as appropriate, within the appropriate standards discussions in the individual institutional team reports. This outcome will be achieved through the work of the Coordinating Chair with the members of the District/System team. Some system observations may pertain to all colleges, and others only to particular colleges. When the District/System Team feels a recommendation is in order that pertains to the district/system as a whole, that recommendation will appear in each of the institutional team reports.

At the end of each evaluation visit, the institutional team chair meets with the Chief Executive Officer to discuss major findings. The team chair will then make a presentation of the team process and findings at an open meeting involving the entire college community.

After the verbal exit reports are concluded at each of the campuses, the team chairs,

led by the Coordinating Chair, will provide a verbal briefing to the chief executive officer of the district/system. This discussion is limited to the centralized functions identified in the institutional self studies and the issues related to them which are identified in the institutional self studies and the findings of the institutional teams. The themes reported by the Coordinating Chair ought to be congruent with those shared with the institutional chief executive officer(s) at each of the colleges.

Although the district/system policies may affect the accredited status of the institution(s), the District/System Team will not make recommendations on the accredited status of the colleges. Confidential recommendations on the accredited status of the colleges will come from each of the institutional teams.

G. Commission Actions and Public Disclosure

The Commission will receive the familiar items for each college in preparation for Commission Action: the self study, the team report, the catalog, and other pertinent documents. The Commission, using its reader system, will consider each institution separately and take the appropriate action for each.

The Commission will also discuss the district/system and develop a consensus on any matters to be communicated to the Chief Executive Officer of the district/system. In its action letters to the institutions, the Commission will comment on important district/system matters that impinge on or significantly enhance college quality.

In a case where one or more accreditation concerns relating to the district/system are identified, the Commission may request a special report from the district/system itself and may also specify a visit by Commission representatives to validate any such special report. The Commission will make clear that significant inadequacies in central office functions will jeopardize the accreditation of one, some, or all of the district/system colleges.

Should the Commission decide that a special district/system interim report and interim visit are in order, the interim team will normally include the Coordinating Chair (or the team chair if only one college was involved), a member of the Commission, and perhaps additional persons with special expertise, as needed. The purpose of the interim team is to validate the interim report from the district/system. This report could be the basis for subsequent Commission action relative to the accredited status of one or more of the institutions in the district/system.

H. Follow-up Activities

The chief executive officer of a district/system is required to share the report of any special interim visit with the governing board and appropriate staff at the district/system and at the colleges. Historically, the Commission has on occasion issued special private communications to college presidents on particular leadership issues. When the college involved is a member of a district/system, the district/system CEO will be copied on this correspondence.

I. Cost

The additional costs associated with the activities of a district/system team will be billed directly to the district/system involved on an actual cost basis and will not be charged to each institution through the institutional Evaluation Service Fee.

POLICY ON DISTANCE LEARNING, INCLUDING ELECTRONICALLY-MEDIATED LEARNING

(Adopted June 2001)

BACKGROUND

Recognizing that most institutions must make use of the growing range of systems for delivery of instruction, including various electronic means, the Accrediting Commission for Community and Junior Colleges (ACCJC) has adopted a policy based on principles of good practice to help assure that distance learning is characterized by the same concerns for quality, integrity, and effectiveness that apply to more traditional modes of instruction.

As methods used to facilitate/conduct distance learning evolve, the ACCJC policies that address distance learning also change. This policy statement has drawn from several previous policies and is intended to replace those policies with a single, unified, and up-to-date statement. Further development of this policy may well be appropriate in the not-so-distant future.

Definition of Distance Learning

Distance learning is defined, for the purposes of accreditation review, as a formal interaction designed for learning in which any portion of the interaction occurs when the student is separated by location from the instructor, resources used to support learning, or other students. Distance learning may employ correspondence study, audio, video, or computer technologies. Educational interactions delivered through these means may occur on campus as well as off campus. These interactions may be synchronous or asynchronous.

POLICY STATEMENT

ACCJC policy specifies that all learning opportunities provided by our accredited institutions have the same quality, accountability, and focus on student outcomes, whether they are delivered electronically or by more traditional means. The intent of the policy is to provide a framework that allows institutions the flexibility to adapt their delivery modes to the emerging needs of students and society while maintaining quality. Any institution offering courses and programs electronically is expected to meet the

requirements of accreditation in each of its courses and programs and at each of its sites.

Principles

Development, implementation, and evaluation of all courses and programs, including those offered electronically, must take place within the institution's total educational mission.

Institutions are expected to control development, implementation, and evaluation of all courses and programs offered in their names, including those offered electronically.

Institutions are expected to have clearly defined and appropriate educational objectives for students in all courses and programs, including those delivered through electronic means.

Institutions are expected to provide the resources and structure needed to accomplish these objectives.

Institutions are expected to demonstrate that their students meet these objectives through application of rigorous outcome measures.

Institutions are expected to provide the ACCJC reasons to believe that these objectives will continue to be accomplished.

Institutions are expected to give ACCJC advance notice, through the Substantive Change process, of intent to initiate a new delivery mode, such as electronically-delivered courses.

GUIDELINES FOR IMPLEMENTATION

Curriculum and Instruction

Each electronically-delivered course or program of study results in learning outcomes appropriate to the rigor and breadth of the course credit, degree, or certificate awarded.

A degree or certificate program delivered partially or entirely through electronic means is coherent and complete and results in learning outcomes comparable to those delivered through other means.

Student experiences result in achievement of intended learning outcomes whether electronically-delivered courses provide for synchronous or asynchronous interaction between faculty and students and among students.

Portions of courses delivered through electronic means adhere to the

same principles as courses delivered entirely through these means.

Institutional Context and Commitment

Role and Mission

Delivery of courses and programs through electronic means is consistent with the institution's role and mission.

Review and approval processes ensure the appropriateness of electronic delivery to meeting the course and program objectives.

Specific needs of students for whom electronically delivered courses are intended are identified and addressed.

Learning Resources

Appropriate learning resources are available to students who take electronically delivered courses.

Students and Student Services

Students receive clear, complete, and timely information on the curriculum, course and degree requirements, nature of faculty/student interaction, assumptions about technological competence and skills, technical equipment requirements, availability of academic support services and financial aid resources, and costs and payment policies.

Enrolled students have reasonable and adequate access to the range of student services appropriate to support their learning and assess their progress.

Students have the background, knowledge, and technical skills needed to successfully use the technology involved in their course work.

Advertising, recruiting, and admissions materials clearly and accurately represent the courses and programs, and the services available.

Commitment to Support

The institution demonstrates a commitment to ongoing program support, both financial and technical, and to continuation of the program for a period sufficient to enable students to complete a degree/certificate.

The institution ensures that qualified faculty provide appropriate oversight of courses delivered electronically.

The institution gives appropriate consideration to the technical skills and needs of faculty assigned to teach through electronic means.

The faculty evaluation process provides a means to evaluate technical skills when appropriate.

The institution provides faculty training and support services specifically related to teaching via electronic means.

Evaluation and Assessment

The institution evaluates the educational effectiveness of electronically-delivered course work, including assessments of student learning outcomes, student retention, and student and faculty satisfaction. Students have access to such evaluation data.

The institution provides for assessment of student achievement in each course and at completion of a program.

QUESTIONS TO AID DEVELOPMENT OF THE SELF STUDY

An institution offering courses through electronic or other modes of distance delivery is expected to meet ACCJC standards and policies. The questions below are provided to assist institutions in undertaking discussions as part of self study development. Evaluation teams will similarly use them in validating the Self Study.

Curriculum and Instruction

What means does the institution have to ensure that courses intended for electronic or other modes of distance delivery are developed through a process similar to traditionally-delivered courses?

How does the institution ensure that courses and programs provide for timely and effective interaction between students and faculty?

How does the institution ensure that courses and programs provide for effective interaction among students?

How does the institution ensure that faculty have responsibility for and exercise oversight of electronically-delivered courses and programs, ensuring both the rigor of those courses and programs and the quality of instruction?

How does the institution ensure that the technology used is appropriate to the nature and objectives of the courses and programs?

How does the institution ensure the currency of materials, courses, and programs?

How clear and effective are the institution's distance learning policies concerning ownership of materials, faculty compensation, copyright issues, and the utilization of revenue derived from the creation and production of software, telecourses, or other media products?

How does the institution ensure that appropriate faculty support services specifically related to distance learning are provided?

How does the institution provide effective training for faculty who teach using electronic means?

Evaluation and Assessment

How does the institution assess student capability to succeed in electronically delivered courses and programs? How is this information applied to admission and recruiting? How effective is this assessment?

How does the institution evaluate the educational effectiveness of its electronically-delivered courses and programs (including assessments of student learning outcomes, student retention, and student satisfaction) to ensure comparability to traditionally-delivered courses and programs?

How does the institution ensure the integrity of student work and the credibility of the degrees and credit it awards?

Library and Learning Resources

How does the institution ensure that students have access to and can effectively use appropriate information resources?

How does the institution monitor whether students make appropriate use of learning resources?

How does the institution provide laboratories, facilities, and equipment appropriate to the courses or programs?

Student Services

How does the institution provide adequate access to the range of student services appropriate to support the programs, including admissions, financial aid, academic advising, delivery of course materials, and placement, and counseling?

How does the institution provide an adequate means for resolving student complaints?

What advertising, recruiting, and admissions information does the institution provide to students that adequately and accurately represents the programs, requirements, and services available?

How does the institution ensure that students admitted possess the knowledge and equipment necessary to use the technology employed in the course or program?

How does the institution provide assistance to students who are experiencing difficulty using the required technology?

Facilities and Finances

How does the institution ensure that equipment and maintenance required for electronically-delivered courses and programs are provided effectively?

How are facilities, staffing, equipment, and other resources associated with the viability and effectiveness of the electronically-delivered courses and programs reflected in the institution's long-range planning, budgeting, and policy development processes?

GLOSSARY

electronically-mediated learning	Formal interaction designed for learning in which any portion of the interaction is conducted through electronic means.Some examples are: One-way audio (tapes, radio); Two-way audio (phone, voice mail, tapes); One-way video (canned telecourses); Two-way video (interactive telecourses); One-way Internet (website viewing); Two-way Internet (website, e-mail, chat); A combination of any of the above means; Combination of any of the above means with traditional instructional mode
	learning opportunity student interactions with instructors, learning resources, or other students
	program set of coherent courses and other learning experiences leading to a defined learning outcome
	traditional mode of instruction classroom-based, face-to-face learning

POLICY ON COMPLAINTS AGAINST THE ACCREDITING COMMISSION FOR COMMUNITY AND JUNIOR COLLEGES

(Adopted January 1999)

Complaints against the Commission are limited to complaints regarding the agency's standards, criteria, or procedures. In order to be considered a formal complaint against the Commission, a complaint must involve issues broader than a concern about a specific institutional action or a specific evaluation team.

The complaint must be written, and must state clearly the nature of the complaint, and it must be signed. The Executive Director, on behalf of the Commission, responds to each complaint made against the Commission within 30 days of receipt of the complaint (if more time than this is required to complete an investigation, the complainant is notified within the initial 30 days); reports the nature and disposition of any complaints to the Chair of the Commission; and compiles annually a list, available to the public on request, which summarizes the nature and disposition of any such complaints. Upon advice of counsel, the Commission retains the right to withhold public disclosure of information if potential legal action is involved in the complaint.

If a complaint filed against the Commission under the provisions of this section is not resolved by the Executive Director, the Commission chair shall designate one or more persons to review the handling of the complaint. The Commission shall review the report of the designated reviewer(s) and shall notify the complainant and the Executive Director of its response.

STUDENT AND PUBLIC COMPLAINTS AGAINST INSTITUTIONS

(Adopted June 1972, Revised January 1984, January 1993, edited October 1997, Revised June 2001)

Accreditation by the Western Association of Schools and Colleges is an expression of confidence that an institution is satisfactorily achieving its objectives, and that it meets or exceeds the Commission's standards and abides by Commission policies. The Commission is concerned with institutional integrity and with performance consistent with Commission standards and policies. While it cannot intervene in the internal procedures of institutions or act as a regulatory body, the Commission can and does respond to complaints regarding allegations of conditions at affiliated institutions that raise significant questions about the institution's compliance with the standards expected of an accredited institution.

The Commission does not consider allegations concerning the personal lives of individuals connected with its affiliated institutions. It assumes no responsibility for adjudicating isolated individual grievances between students, faculty, or members of the public and individual institutions. The Commission will not act as a court of appeal in

matters of admission, granting or transfer of academic credit, grades, fees, student financial aid, student discipline, collective bargaining, faculty appointments, promotion, tenure and dismissals or similar matters.

Complaints are considered only when made in writing, when the complainant is clearly identified, and the complainant's address is included. Substantial evidence should be included in support of the allegation that the institution is in significant violation of the Commission's standards and policies. Such evidence should state relevant and provable facts. The Commission requires that each affiliated institution have in place student grievance and public complaint policies and procedures that are reasonable, fairly administered, and well publicized. The complainant should demonstrate that a serious effort has been made to pursue all review procedures provided by the institution.

When the Commission receives a complaint about a candidate or accredited institution, it reviews that information to determine if it is relevant to the compliance of that institution with Commission standards and policies. If appropriate, such information may be referred to the institution and/or to the visiting team next scheduled to evaluate the institution. The Commission at all times reserves the right to request information of an affiliated institution and to visit that institution for purposes of fact-finding, consistent with Commission policy. If Commission investigation yields credible evidence that indicates a systemic problem that calls into question the institution's ability to meet Commission standards and policies, the Commission may invoke the sanctions provided for in policy.

PROCEDURES

1. Within ten days of the receipt of a complaint it will be acknowledged in writing and initially reviewed by the staff of the Commission.

It is the complainant's responsibility to do the following:

a. State the complaint in the clearest possible terms.

b. Provide, in writing, a clear description of the evidence upon which the allegation is based.

c. Demonstrate that all remedies available at the institution (grievance procedures, appeals, hearings, etc.) have been exhausted. The complainant should describe what has been done in this regard.

d. Acknowledge awareness that Commission staff may send a copy of the complaint to the president of the institution.

e. Include name and address.

f. Sign the complaint.

2. If the Executive Director or designee finds the complaint to be not within the scope of Commission policies and jurisdiction, the complainant will be so notified. Individual complaints, whether acted upon or not by the Commission, will be retained in Commission files.

3. If the complaint appears to be within the scope of Commission policies and jurisdiction, and is substantially documented, a copy of the complaint will be forwarded to the institution's chief executive, who will be asked to respond to the Executive Director within thirty days. The Executive Director will send a copy of the complaint and correspondence to the chairperson of the Accrediting Commission.

4. The Commission staff will review the complaint, the response, and evidence submitted by the institution's president, and will determine one of the following:

a. That the complaint will not be processed further. The complainant will be so notified.

b. That the complaint has sufficient substance to warrant further investigation (which may include referral to the Commission). The Commission may request information of the institution and may visit that institution for purposes of fact-finding. If Commission investigation reveals credible evidence that the institution is not meeting Commission standards and policies, the Commission may invoke the sanctions provided for in policy. In the event of further investigation, the complainant will be so notified.

Although every effort will be made to expedite a final decision, it is not possible to guarantee a specific time frame in which the process will be completed. If further investigation is warranted, the time required to conduct the investigation may vary considerably depending on the circumstances and the nature of the complaint.

5. The complainant and the institution will be notified of the outcome of the review of the complaint.

a. If the complaint is investigated further, as in 4.b above, the complainant and the institution will be notified of the outcome of the investigation.

Prior to the Commission's disposition of the complaint, the institution will have an opportunity to respond in writing within thirty days to the findings of the investigation. The complainant and the institution involved will be notified of the decision. The decision as communicated by the Executive Director is final.

b. If the complaint was referred to ACCJC by another agency, that agency will receive copies of correspondence that state the outcome of the

complaint.

6. The Commission will keep a record of student and public complaints against member institutions. Commission staff will report to the Commission annually regarding the status and resolution of student and public complaints against member institutions. At the time of an institution's comprehensive evaluation, a summary of any complaints will be provided to the team chair for consideration by the evaluation team.

SUBSTANTIVE CHANGE POLICY

(Adopted October 1972, Revised January 1978, June 1991, June 1996, Edited October 1997, Revised January 2002)

BACKGROUND

Accreditation, a voluntary process of peer review dependent on recognized standards of good practice, is in part an affirmation that the institution

has clearly defined objectives appropriate to higher education;

has established conditions under which the achievement of these objectives can reasonably be expected;

presents evidence that it is in fact accomplishing the objectives substantially;

is so organized, staffed, and supported that it can be expected to continue to do so; and

demonstrates that it meets Commission standards, Eligibility Requirements, and policies.

The scope of an institution's accreditation covers everything done in its name.

POLICY

A substantive change is a change which alters: the mission, scope, or name of the institution; the nature of the constituency served; the location or geographical area served; the control of the institution; the content of courses or programs to an extent which represents a significant departure from current curricula or the mode of delivery of a program so that courses constituting 50% or more of a program are offered at a distance or through electronic delivery; or the credit awarded to courses or programs. Since it is the Commission's responsibility to determine the effect of a substantive change on the quality, integrity, and effectiveness of the total institution, it is the Commission's policy that such changes must be approved by the Commission prior to implementation. When an institution proposes to make a change which is considered substantive, the change must be approved according to the Substantive Change

Approval Process. Upon successful review and approval, the institution's accreditation will be extended to areas affected by the change.

The following changes are all substantive changes:

63840. Change in mission, scope, or name of the institution

a change in the purpose or character of the institution

a change in the degree level from that which was previously offered by the institution any change in the official name of the institution

63925. Change in the nature of the constituency served

a change in the intended student clientele

closure of an institution

3. Change in the location or geographical area served

offering courses or programs outside the geographic region currently served

moving to a new location

establishing an additional location geographically apart from the main campus, at which students can complete at least 50% of an educational program

closing a location geographically apart from the main campus at which students can complete at least 50% of an educational program

4. Change in the control of the institution

any change in the legal status, form of control, or ownership of the institution

merging with another institution

contracting for the delivery of courses or programs in the name of the institution with a non-regionally accredited organization

a change by a parent institution of one of its off-campus sites into a separate institution

5. Change in courses or programs or their mode of delivery that represents a significant departure from current practice.

addition of a program that represents a significant departure from an

institution's current programs

addition of courses that represent a significant departure from the current curricula of an institution

addition of courses that constitute 50% or more of a program or 50% of the college's courses offered through a mode of distance or electronic delivery

6. A change in credit awarded

an increase of 50% or more in the number of credit hours awarded for the successful completion of a program

a change from clock hours to credit hours

SUBSTANTIVE CHANGE APPROVAL PROCESS

Institutions wishing to effect a substantive change should follow these procedures.

Note that institutions which have been declared eligible for accreditation but have not yet achieved candidate or accredited status may not employ the substantive change approval process.

1. Notify the Commission: The institution begins the Substantive Change Approval Process by notifying the Commission of the proposed change, the need for the change, and the anticipated effects. Commission staff determine whether or not the proposed change is indeed substantive. Early notification enables the staff to provide information and advice about how the institution might best proceed through the Substantive Change Process.

2. Preparing the Substantive Change Report: If the Commission staff determines that the proposed change is substantive in nature, the institution is asked to submit a Substantive Change Report for review by the Commission's Committee on Substantive Change.

The Substantive Change Report should include the following:

A. A concise description of the proposed change and the reasons for it.

B. A description of the educational program(s) to be offered and evidence that the educational purposes of the change are clear and appropriate if the substantive change involves a new educational program.

C. A description of the planning process which led to the request for the change, how the change relates to the institution's stated mission, the assessment of needs and resources which has taken place, and the anticipated effect of the proposed change on the rest of the institution.

D. Evidence that the institution has provided adequate human, management, financial, and physical resources and processes to initiate, maintain, and monitor the change and to assure that the activities undertaken are accomplished with acceptable quality.

If the substantive change is to establish a branch campus, private institutions must include projected revenues and expenditures and cash flow at a branch campus. Public institutions, in keeping with the financial reporting requirements of their district, system, or governmental agency, must include financial information which allows for comparable analysis of the financial planning and management of a branch campus.

If the change involves the formation of a separate institution from an off-campus center or branch campus, the projected financial information must be provided for the parent institution of the proposed split. The new separate institution must begin the process for separate accreditation.

E. Evidence that the institution has received all necessary internal or external approvals. The report should state clearly what faculty, administrative, governing board, or regulatory agency approvals are needed and evidence that any legal requirements have been met.

F. Evidence that each Eligibility Requirement will still be fulfilled after the change. Any requirements that are particularly impacted by the change should be addressed in detail.

G. Evidence that each accreditation standard will still be fulfilled after the change and that all relevant Commission policies are addressed. Any standards that are particularly impacted by the change should be addressed in detail.

H. Other information requested by Commission staff that is pertinent to the specific nature of the change.

3. Commission Action: Once the Substantive Change Report is received by the Commission, it is reviewed by the Commission's Committee on Substantive Change, which has full authority to act. The Committee may approve or deny a substantive change request or return it to the institution for additional information. At its discretion, the Committee may refer the decision on the substantive change request to the entire Commission at its next meeting. Commission staff keep the institution informed as to the status of the substantive change request. The institution is notified of the Committee action within two weeks of the Committee meeting. Denial of the request will include reasons for the denial.

63926. Appeal: If the institution wishes to appeal the decision of the Commission's

Committee on Substantive Change, the appeal must be filed in writing and will be

deliberated at the next meeting of the Commission. Members of the Committee on Substantive Change may participate in the discussion but will abstain from voting on the appeal.

63927. Referral to the Commission: In the event a substantive change request has been referred to the Commission for consideration, the institution will be notified of Commission action within two weeks of the meeting at which action occurred. In the event that the change is judged to be of such magnitude as to potentially affect the candidate or accredited status of the institution, the review process for the substantive change may be expanded to include a review of the accreditation status of the institution and a visit.

63928. Future visits: Approved substantive changes should be addressed in the next comprehensive review of the institution. If the institution is not due for a comprehensive evaluation within two years of the approval of the substantive change, an on-site evaluation, or other measures as the Commission may determine, may be required. Costs for an on-site evaluation will be borne by the institution. (Note: Off-campus centers, including branch campuses, that offer 50% or more of a program are subject to an on-site inspection within the first six months of establishment.) The Commission reserves the right to request a report and visit to assess the effects of any substantive change it deems to be a very significant departure from the past, including a requirement to submit periodic prescribed reports and support special visit(s) by representatives of the Commission.

COMMISSION ACTIONS ON INSTITUTIONS

(Adopted January 1977, Revised January 1979, January 1991, June 1998, Edited July 2002)

Institutions applying for candidacy or initial accreditation and accredited institutions undergoing periodic evaluation will be reviewed by the Accrediting Commission. The Commission will examine institutional documents (catalog and schedule), the institutional self study, the evaluation team report, and documents from previous evaluations. The Commission will apply, as it deems appropriate, one of the following actions in each case.

I. Actions on Candidate Institutions

- Grant Candidacy. Candidacy is a pre-accreditation status, initially awarded for two years. Candidate status is granted only to institutions that demonstrate the ability and will to meet the standards of accreditation within the candidate period.

- Extend Candidacy. Candidacy is renewed for two years. (Four years in candidate status is maximum available.)

• Defer a decision on candidacy pending receipt of specified information from the institution.

• Deny Candidacy. The institution may reapply for candidacy by submitting a self study after two years. Denial of candidacy may be subject to a request for review by the Commission and subsequent appeal to the Western Association of Schools and Colleges under the published policies and procedures of these two bodies.

• Termination of Candidacy. If, in the opinion of the Commission, an institution has not maintained its eligibility for candidacy or has failed to explain or correct deficiencies of which it has been given notice, the candidacy of the institution may be terminated. Termination may be subject to a request for review by the Commission and subsequent appeal to the Western Association of Schools and Colleges under the published policies and procedures of these two bodies.

II. Actions on Initial Accreditation

• Grant initial accreditation. The institution must be fully evaluated again within a maximum of six years from the date of the Commission action.

• Grant initial accreditation with a request for a progress report and/or a visit within a limited time. The Commission will specify the nature, purpose, and scope of the information to be submitted and of the visit to be made.

• Defer a decision on accreditation pending receipt of specified additional information from the institution or to permit an institution to correct serious weaknesses and report to the Commission within a limited time. If the institution is a candidate for accreditation, candidacy continues during the period of deferment.

• Denial of accreditation. A denial is a final decision which is subject to a request for review by the Commission and subsequent appeal to the Western Association of Schools and Colleges under the published policies and procedures of these two bodies. A candidate institution may be permitted to remain in candidate status until it is ready for a new evaluation within a limited period of time. In cases where the four year limit on candidacy has been reached, the Commission may consider extending the limit in special circumstances. If an extension is not granted, the institution may not reapply for candidacy for at least two years.

III. Actions on Accredited Institutions

• Reaffirmation of accreditation without conditions.

• Reaffirmation of accreditation, with a request for a progress report to be submitted by a specific date, to achieve resolution within a one- to two-year period.

• Reaffirmation of accreditation, with a request for a progress report to be followed by a limited visit. In such cases, the Commission will specify the nature, purpose, and scope of any further information to be submitted by the institution and of the visit to be made. Institutions are expected to achieve resolution of issues within a one to two year period. The purpose of the visit is to verify in person the institution's response to the Commission's recommendations.

• Deferment of a decision on accreditation pending receipt of specified additional information from the institution or to permit an institution to correct serious weaknesses and report to the Commission within six months or less. The report is followed by a visit addressed primarily to the reasons for the decision. The Commission will specify the nature, purpose, and scope of the information to be submitted and of the visit to be made. The accredited status of the institution continues during the period of deferment.

• Warning. When the Commission finds that an institution has pursued a course deviating from the Commission's eligibility criteria, standards, or policies to an extent that the institution's continued accreditation may become jeopardized, the Commission may issue a warning to the institution to correct its deficiencies, refrain from certain activities, or initiate certain activities within a stated period of time. The Commission will give the institution written reasons for its decision. During the warning period, the institution will be subject to reports and visits, at a minimum of every six months. Resolution of the concerns is required within two years or the Commission must take adverse action. The accreditation status of the institution continues during the warning period.

• Probation. When a candidate or accredited institution fails to respond to conditions imposed upon it by the Commission, including a warning, or when it deviates significantly from the Commission's eligibility criteria, standards, or policies but not to such an extent as to warrant a show cause order or the termination

of candidacy or accreditation, it may be placed on probation for a specified period of time. While on probation, the institution will be subject to special scrutiny by the Commission, including a requirement to submit periodic prescribed reports and receive special visit(s) by representatives of the Commission. The Commission will give the institution written reasons for its decision. Institutions are expected to correct deficiencies within a two year period or the Commission will take adverse action. If the institution has not taken steps satisfactory to the Commission to remove the cause or causes for its probation at the end of the specified time, the Commission will issue a show cause order. The accredited status of the institution continues during the probation period; however, the reaffirmation may be delayed during the period of probation.

• Show Cause. When the Commission finds an institution to be in substantial non-compliance with its eligibility criteria, standards, or policies or when the institution has not responded to the conditions imposed by the Commission, the Commission may require the institution to show cause why its accreditation should not be withdrawn at the end of a stated period. In such cases, the burden of proof will rest on the institution to demonstrate why its accreditation should be continued. While under a show cause order, the institution will be subject to special scrutiny by the Commission, including a requirement to submit periodic prescribed reports and receive special visit(s) by representatives of the Commission, at a minimum of every six months. The Commission will give the institution written reasons for its decision. Resolution of the reasons for the show cause order should be achieved in no longer than one year. If the institution does not demonstrate that it meets accreditation standards and eligibility requirements, the Commission will take adverse action. The accredited status of the institution continues during the period of the show cause order.

• Termination of Accreditation. If, in the judgment of the Commission, an institution has not satisfactorily explained or corrected matters of which it has been given notice, its accreditation may be terminated. The Commission will give the institution written reasons for its decision. Termination of accreditation is subject to a request for review and appeal under the applicable policies and procedures of the Commission and the Western Association of Schools and Colleges. The accredited status of the institution continues pending completion of any review appeal process the institution may request. Otherwise, the institution's accreditation ends on the date when the time period

permitting such a request expires. In such a case, the institution must complete again the entire accreditation process to qualify for candidacy or accreditation.

The Commission requires that a member institution remain in continuing compliance with the Eligibility Requirements and the Standards of Accreditation, comply with Commission policies and procedures, and provide information as requested by the Commission in accordance with the Commission's accreditation responsibilities. However, if an institution cannot document that it is in compliance with the Eligibility Requirements and/or Standards of Accreditation within a maximum of two years after the initial action, the Commission will take an adverse action. In keeping with the provisions of the Higher Education Act of 1965, as amended, the Commission defines adverse action as denial, withdrawal, suspension, or termination of accreditation or candidacy. If the Commission determines that there is good cause, the Commission may extend the time allowed for the institution to demonstrate that it meets or exceeds the Standards of Accreditation. Progress Reports, Midterm Reports, Deferral of a Decision, Warning, Probation, and Show Cause are not adverse actions in the context of federal regulations.

The Commission will announce publicly, as appropriate, through its Executive Director and will publish in appropriate publications and in the WASC annual Directory the status of each institution in accordance with the Commission's policy on "Disclosure and Confidentiality of Information." The Executive Director will attempt to reach agreement with the institution on a public statement to be used by both parties. However, the Commission reserves final authority in event of impasse.

If a specific inquiry is made about an institution which has been warned, placed on probation, or issued a show cause order, the Executive Director shall inform the inquirer that such an action has been taken and the reasons therefore.

In addition, the Commission requires Annual Reports, Midterm Reports from every institution during the third year of the six year evaluation cycle. Progress Reports, special evaluations, and site visits are used as necessary during the cycle in order to monitor institutional improvement activities and compliance with accreditation standards and policies.

If an institution so conducts its affairs that they become a matter of public concern, or uses the public forum to take issue with an action of the Commission relating to that institution, the Commission may announce, through the Executive Director, the action taken and the basis for that action, making public any pertinent information available to it.

REVIEW OF COMMISSION ACTIONS

(Adopted January 1977, Revised January 1979, June 1998)

The Commission defines adverse actions as denial, withdrawal, suspension, or termination of accreditation or preaccreditation as defined in 602.2 of the Higher

Education Act.

Institutions who are denied initial accreditation or preaccreditation, or whose candidate or accredited status is denied, withdrawn, suspended, or terminated by the Accrediting Commission for Community and Junior Colleges may request a review of the Commission's decisions. For purposes of compliance with 602.28(b)(5) of the Higher Education Act, these actions are considered to be adverse actions. For Commission review of denial, withdrawal, suspension or termination of accreditation, or termination of accreditation or preaccreditation, the institution may be represented by counsel. Such institutional appeals are limited to written appeals.

Such a review must be requested prior to filing of an appeal by the institution to the Western Association of Schools and Colleges. The following procedures will govern the conduct of the Commission's review:

1. If the Accrediting Commission for Community and Junior Colleges decides to take any of the actions listed above, its Executive Director will notify the institution concerned of the decision by certified mail, return receipt requested, within approximately seven calendar days of the Commission's decision. Said notification shall contain a succinct statement of the reasons for the Commission's decision.

2. If the institution wishes a review by the Commission, it shall file with the Executive Director a request for such a review under the policies and procedures of the Commission. This request should be submitted by the chief executive officer of the institution and, in the case of private institutions, co-signed by the chairperson of the governing board. Requests for review by an institution in a multi-college system shall be co-signed by the chief executive officer of the system. This request must be received by certified mail, return receipt requested, within twenty-eight calendar days of the date of the mailing of the Commission's notification of its decision to the institution.

3. Within twenty-one calendar days after the date of its request for a review, the institution, through its chief administrative officer, must submit a written statement of the reasons why, in the institution's opinion, a review of the Commission's decision is warranted. As a general rule, this written statement should respond only to the Commission's statement of the reasons for the Commission's decision and to the evidence that was before the Commission at the time of its decision. However, if the institution believes that there are compelling reasons to expand the scope of the response or if it wishes to introduce new evidence which may have been generated or discovered since the time of the Commission's decision, it may do so in a separate section of its response.

4. On receipt of the institution's written statement referred to in paragraph

3, the chairperson of the Commission will select a review committee of three or more persons. A roster of the review committee will be sent to the institution normally within twenty-one calendar days of the date of the Commission's receipt of the institution's written statement.

5. Within a reasonable period of time after the review committee has been selected, the Executive Director will schedule a visit to the institution by the review committee.

6. Prior to the visit to the institution, the review committee will review available information. If additional information is needed, the chairperson of the review committee may request such information from the chief executive officer of the institution.

7. The review visit will be investigative and designed to determine if the Commission's decision was substantially supported by the evidence before the Commission at the time of the Commission's decision. If, however, in the judgment of the review committee, changes have occurred which might materially affect the decision of the Commission, the review committee chairperson, with the approval of the members, may accept new evidence bearing on these changes.

8. The committee should open and close its visit with a meeting with the chief executive officer of the institution. At the closing meeting the chairperson should, among other matters, attempt to ascertain whether or not the institution has any complaints about any aspect of the visit.

9. The committee should prepare a report which cites and evaluates the evidence which the committee considers relevant to the question of whether the Commission's original decision was substantially supported by the evidence before the Commission at the time of its decision. If the committee accepts evidence of changes which occurred subsequent to the committee's original decision, the review committee should include a summary and analysis of such evidence in its report identifying it as new evidence and describing the weight given it.

10. The chairperson of the review committee will submit a copy of the committee's report which is referred to in paragraph 9 to the chief executive officer of the institution, the chairperson of the institution's governing board, and the Executive Director of the Commission, normally within twenty-one calendar days of the end of the review committee's visit.

11. Within fourteen calendar days of the institution's receipt of the review committee's report, the chief executive officer may submit a written response to the Executive Director of the Commission, with a copy to the chairperson of the review committee. Failure of the institution to submit a response shall constitute an acceptance by the institution of the

Commission's original decision.

12. In a confidential letter to the Commission, the review committee shall make one of the following recommendations:

a. The decision of the Commission was substantially supported by the evidence before the Commission at the time of the Commission's decision;

b. The decision of the Commission was not substantially supported by the evidence before the Commission at the time of the Commission's decision; or

c. The decision of the Commission was substantially supported by the evidence available at the time of the Commission's decision, but the institution has taken significant steps to improve conditions and remedy deficiencies and the Commission should reevaluate its decision in light of these steps.

The recommendation of the review committee to the Commission shall not be
disclosed to the institution being reviewed. The recommendation is not binding on the Commission.

13. The chief executive officer of the institution and a limited number of the staff will be invited to meet with the two readers of the committee's report and the chairperson of the review committee shortly before the meeting of the Commission at which the report will be acted upon. Discussion at this preliminary meeting will be confined to the report of the review committee referred to in section 9 and the institution's response to this report.

14. The two readers will report the substance of this meeting to the Commission when it meets. If institutional representatives wish to appear before the Commission at that time, their request will be granted, but the meeting with the readers is intended to obviate the need for such an appearance except in unusual circumstances.

15. In making its decision on the institution's status, the Commission will consider the evidence available to it and then reach a final decision to (a) reaffirm its original decision; (b) modify it; or (c) reverse it. As soon after the meeting as practicable, the Executive Director will notify the chief executive officer of the institution by certified mail of the Commission's decision.

16. The decision of the Commission, referred to in paragraph 15, shall be final as far as the Accrediting Commission for Community and Junior

Colleges is concerned. However, if the institution remains aggrieved, it may file an appeal with the President of the Western Association of Schools and Colleges through the Executive Director of the Commission in accordance with the provisions of Article VI of the Constitution of the Western Association of Schools and Colleges.

17. An institution retains its accredited or candidate status until the review process of the Commission is completed. If the institution files a subsequent appeal with the Western Association of Schools and Colleges, its status remains unchanged until that appeal has been heard and decided.

18. The cost of the review will be borne by the institution. The request for a review must be accompanied by a deposit set by the Commission. If the actual cost is less than this amount, the excess will be refunded. If it is greater, the institution will be billed for the difference.

DISCLOSURE AND CONFIDENTIALITY OF INFORMATION

(Adopted January 1976, Revised June 1978, June 1996, June 1998)

It is the obligation of every institution applying for candidacy, extension of candidacy, accreditation, or reaffirmation of accreditation and of every candidate or accredited institution to provide the Commission with access to all parts of its operations, with due regard for the rights of individual privacy, and with complete and accurate information with respect to the institution's affairs, including reports of other accrediting, licensing, and auditing agencies. Failure to do so, or to make complete, accurate, and honest disclosure, is sufficient reason in and of itself to deny or revoke candidacy or accreditation.

The Commission will maintain inviolate the confidentiality of information supplied by the institution except in those rare cases where it is deemed necessary by the Commission to make public information which forms a substantive basis for the Commission's decision.

I. Policy on publication of Commission actions.

The Commission may announce publicly, as appropriate, through its Executive Director and will publish in the WASC Bulletin and/or annual Directory the fact that

1. The institution's application for candidacy or accreditation has been denied;

2. An institution has been granted candidacy or accredited;

3. The institution's candidacy has not been extended or its accreditation reaffirmed;

4. The institution has been placed on probation;

5. The institution has been given a show cause order effective at a specific date; or

6. The institution's candidacy has not been renewed or its accreditation has been terminated.

II. Policy on publicly available written materials.

It shall be the policy of the Accrediting Commission for Community and Junior Colleges to maintain and make publicly available written materials describing:

(1) Each type of accreditation and preaccreditation granted by the Commission;

(2) Commission procedures for applying for accreditation or preaccreditation;

(3)The criteria and procedures used by the Commission for determining whether to grant, reaffirm, reinstate, deny, restrict, revoke, or take any other action related to each type of accreditation and preaccreditation that the agency grants;

(4) The names, academic and professional qualifications, and relevant employment and organizational affiliations of the members of the Commission's policy and decision making bodies as well as the agency's principal administrative staff; and

(5) The institutions or programs that the Commission currently accredits or preaccredits and the date when the agency will review or reconsider the accreditation or preaccreditation of each institution or program.

POLICY AND PROCEDURES ON PUBLIC DISCLOSURE

(Adopted June 1999, Edited July 2002)

Introduction.

The Commission believes that the two major responsibilities of institutional accreditation are quality assurance to the public and improvement of member institutions. Accreditation systematically accomplishes these purposes through standards of good practice, institutional self study, external peer review and recommendations, Commission actions, and follow-up. The purpose of this policy is to strengthen the ability of institutions and the Commission to fulfill mutual obligations to inform, to educate, and to enhance the level of public confidence in higher education institutions in the process and outcomes of voluntary, non-governmental accreditation, within the region and across regions. Specifically, the goals are:

actions regarding the institution, a definition of the meaning of the accredited status, and a discussion of any terms that might require explanation.

D. Commission Responsibilities to the Institution.

The Commission will prepare information for the institution which outlines the reasons for the action, the follow-up and the monitoring activities which will be required, and the time frame within which the institution must remedy the conditions which led to the action.

If an institution cannot document that it is in compliance with the Eligibility Requirements and/or Standards of Accreditation within a maximum of two years after the initial action, the Commission will take an adverse action. In keeping with the provisions of the Higher Education Act of 1965, as amended, the Commission defines adverse action as denial, withdrawal, suspension, or termination of accreditation or candidacy. If the Commission determines that there is good cause, the Commission may extend the time allowed for the institution to demonstrate that it meets or exceeds the Standards of Accreditation. Progress Reports, Midterm Reports, Deferral of a Decision, Warning, Probation, and Show Cause are not adverse actions in the context of federal regulations.

E. Disclosure of Commission Actions on the Accredited Status of Institutions.

Actions of the Commission regarding the accredited status of institutions as described in the Policy on Commission Actions on Institutions are public actions. The Commission publishes the status of each institution in appropriate publications such as Commission Newsletters, the WASC Directory, and the ACCJC web site. The Commission also notifies appropriate governmental agencies and accrediting bodies as required by the Higher Education Act.

When the action of the Commission involves a status of deferral of a decision, warning, probation, show cause or termination, the Executive Director will invite the institution to develop a joint statement appropriate to the college. This statement can be issued by the Commission and the institution. However, the Commission reserves final authority to develop and issue a statement in the event of an impasse.

If an institution misrepresents a Commission action or uses the public forum to take issue with an action of the Commission relating to that institution, the Commission may announce, through the Executive Director, the action taken and the basis for that action.

II. **Information about the application of the accreditation processes at a**

particular institution.

A. The Commission publishes the names of institutions scheduled for comprehensive review annually in the Commission newsletter. This notice also includes an invitation for third-party comment and information regarding how, and to whom, that comment should be delivered. The institutional evaluation schedule is available to the public on request.

B. The Commission provides each institution under review with a roster of the team members, including their positions and institutional affiliations. Institutions may object to a proposed team member for cause. These rosters are updated regularly as team membership is adjusted.

C. The Commission does not itself make public the institutional self study or the team report without the permission of the college, unless the institution has misrepresented the content of the self study or the findings of the reports. In the event of such misrepresentation, the Commission is free to disclose the reports and provide accurate statements about the institution's accredited status.

D. The Commission does not disclose any information about an institution's potential accredited status before a Commission action is taken. Information about actions under review or appeal (denial of candidacy or initial accreditation, or termination of accreditation) will not be disclosed until a final decision is rendered, unless required by federal regulation. Review and Appeal procedures are found in the policy on Review of Commission Actions.

E. The institutional file in the Commission office is part of the private relationship with the institution and is therefore not available to the public. Upon request, the Commission will disclose the number of complaints received about the institution since the last comprehensive evaluation, the general nature of those complaints, and their resolution or status. In accordance with its Policy on Student and Public Complaints against

Institutions (Handbook of Accreditation), the Commission will only include in that disclosure formal, signed complaints that are within the Commission's jurisdiction and which have been referred to the institution. Multiple complaints about a single issue will be assessed to determine how those complaints should be recorded. The Commission informs the institution when such an inquiry is received.

III. **Information about the Commission and its processes**.

A. The Commission publishes an Annual Report on the status of higher education in the region from the experiences of accreditors. Typically, the report includes a review of major issues in the region, an analysis of

actions taken during the year, summaries of the focus of team findings and recommendations, changes in Commission policies and practices, and summaries of staff activities.

B. The Commission newsletter, which is published quarterly, provides timely information about accreditation, the Commission, and its policies and practices. The newsletter is distributed to all member institutions, other accreditors, and appropriate higher education and government associations and agencies. The newsletter is available to the public on request.

C. The Commission publishes handbooks, videos, and other materials which describe the Commission and its processes which are distributed to all member institutions and to the public on request. These materials are free to members and other accreditors and are available for a nominal charge to others.

D. The Commission maintains a website which informs members and the public about the Commission and its activities.

E. The Commission and Commission staff make presentations before organizations within higher education, government, and the public at large. The Commission and its staff participate in regional and national forums on subjects related to quality assurance and institutional improvement.

INSTITUTIONAL RESPONSIBILITIES

Institutions, as well as accrediting agencies, are accountable for honest and open communication with the public on institution-related issues in which there is a legitimate public interest. Honesty, openness, and concern for its constituents are indicators of the integrity with which the institution conducts its interactions and communication with its public. Ultimately, this institutional integrity is one indicator of institutional quality and effectiveness, and the Commission includes these matters in its evaluation of institutions. The Commission relies on member institutions to conduct themselves in accordance with these principles of institutional responsibility.

I. Institutional Self Study and other Accreditation Reports

A. Self Studies. The Commission relies on the strong sense of collegiality, mutual respect, and trust in its relations with member institutions. The privilege of self-regulation requires openness with the public as well.

The self study is the property of the institution which developed it, but the self study should receive wide distribution within the institution. The Commission recognizes that some institutions may be governed by public disclosure statutes and expects that institutions will conduct themselves in

accord with those laws and regulations.

B. Team Reports. The Commission requires that institutions share the findings and recommendations that result from the accreditation process widely throughout the institution, especially with those that contributed to the self study. Once an on-site evaluation is complete, institutions are required to make the report readily available through a wide distribution system. The institution is required to publicize the location of the team reports. Any excerpting of team reports for use by those outside the institution must be accompanied by explanatory information which discusses the complete context of accreditation. Any use of the team reports which misquotes, misleads, or misrepresents findings or recommendations is grounds for Commission release of the complete team report.

II. On-Site Evaluation

The Commission requires that the chief executive officer notify the campus community of the date and purpose of each comprehensive evaluation and any follow-up activity or reports requested by the Commission. Key elements in that notification to the campus community should include the following:

1. Notice of the opportunity for submission of third-party comments by the public and the process for doing so.

2. Information regarding where and how the Commission's Standards of Accreditation may be accessed at the institution.

3. Information regarding the development of the institutional self study and a call for widespread participation.

4. Information regarding the team visit, *e.g.*, team composition, dates of the visit, team schedule and activities. Institutions are expected to publicize times and locations during the visit when team members will be available to meet informally with any member of the campus community on any accreditation issue.

III. Dissemination of information within individual institutions regarding Commission actions

The Commission delegates the primary responsibility for communicating information about its status to the institution. However, the Commission action letter to the Chief

Executive Officer requires that there be broad and timely dissemination of the team report and the Commission action letter within the institution, especially to those who were signatories to the self study. The Chair of the institutional Board and system or district Chancellor (where applicable) also receive a copy of the action letter and the team report.

IV. Representation of Eligibility, Candidacy, or Accredited Status

A. The institution is expected to describe its accredited status using the language prescribed in the Commission Policy on Representation of Accredited Status, and to avoid expanding that representation to include other matters such as transfer of credit. The address and telephone number of the Commission office is included when the college references its accredited status, including catalogs and recruiting materials. Institutions send a copy of the institutional catalog to the Commission office as each iteration is published.

B. The chief executive officer of the institution is responsible for informing the campus community of the accreditation action taken by the Commission and the reasons for the action. This communication should be coordinated with district or system officers as appropriate. If the accreditation action includes any special status, the institution is obligated to provide that information to all current and prospective students and staff in a timely manner. As noted in Section I.D. of this policy, the Commission will work with the institution in these cases to develop a statement that can be used for distribution to the campus community or for individual inquiry.

C. When the institution refers to its accredited status in any publications or advertisements during a period in which its accreditation may be subject to special scrutiny, the institution must disclose that information.

POLICY REGARDING MATTERS UNDER LITIGATION

(Adopted January 1989, Revised June 1996, January 2001)

The Commission's concerns are to determine whether an institution is in compliance with Commission standards and policies and to assist institutions, through established procedures, in the improvement of quality. To this end, the Commission takes appropriate action on credible evidence received from any reliable source, including the courts, that calls into question the ability of an institution to meet Commission standards and policies. It is the policy of the Accrediting Commission not to become involved in litigation within an institution. The Commission is not an adjudicatory agency, and it is not the role or function of the Commission to arrive at any determination regarding the merits of any aspect of pending litigation.

Because of the sensitivities created when litigation is pending during a site visit by an evaluation team, the Commission has developed the following guidelines.

Responsibility of the Institution

It is the responsibility of the institution to inform the Commission staff, prior to a visit, of any pending litigation against the institution. The staff will consult with the liaison officer to determine if any special advice will need to be provided to the team chair.

Responsibility of Visiting Teams

Visiting teams should not comment on pending litigation in such a way as to express an opinion about the merits of the lawsuit or its outcome. Team members are not precluded from meeting with individuals involved in litigation and hearing from them regarding the litigation. If such a meeting is held or if the subject of the litigation arises during the course of interviews, the institution will be informed. Team members are cautioned against saying or writing anything which may be used by either party in support of their positions in the lawsuit.

If questions arise prior to, during, or after a visit, Commission staff should be consulted.

RELATIONS WITH GOVERNMENT AGENCIES

(Adopted June 1996, Revised January 1998)

The Commission has sought recognition and periodically seeks renewal of recognition by the Secretary of Education, in order that member institutions achieve and maintain eligibility to participate in programs such as HEA Title IV student financial aid. The Commission provides, upon request from the Secretary, any information sought regarding institutional compliance with HEA Title IV regulations.

The Commission notifies the Department of Education and relevant state agencies of all institutional actions, immediately following the meeting at which action is taken. If the Commissions final decision is to deny, withdraw, suspend, or terminate the accreditation or preaccreditation of an institution or program or take other adverse action against an institution or program, the Commission will notify the Secretary of that decision at the same time it notifies the institution or program.

Copies of publications such as the Commission Newsletter and the WASC Directory are routinely sent to the state and federal agencies with which the Commission communicates.

The Commission annually sends an updated directory of accredited institutions to the Secretary of Education.

The Commission maintains regular communication with the Department of Education and relevant state agencies. It responds to inquiries from government agencies and forwards responses to complaints against institutions that have been routed to the Commission by those agencies.

In the event clear evidence of Title IV fraud and abuse is obtained by the Commission, that information is forwarded to the Department of Education.

Institutions are notified and asked to respond if complaints or allegations of fraud and abuse are communicated to the Commission by the Department of Education.

The Commission submits to the Secretary any proposed changes in policy and procedures, or accreditation standards that might alter its scope of recognition or its compliance with appropriate federal regulation [6024.4(g)].

The Commission will not, except where exceptional circumstances exist, renew the accreditation or preaccreditation of any institution that is subject to adverse action by any other recognized institutional accrediting agency or state agency.

REVIEW OF ACCREDITATION STANDARDS

(Adopted June 1996, Revised June 1998, January 1999, June 2001)

The Accrediting Commission conducts systematic and comprehensive study of the utility, effectiveness, relevance, and consistency of its standards and practices.

The Commission assesses its standards concurrent with the development of each edition of the Handbook of Accreditation, normally every six years. Independent review is commissioned prior to issuance of each edition of the Handbook of Accreditation so that the revision may be informed by the findings of that research.

The process for review of accreditation standards:

1. Examines whether the standards are adequate to evaluate educational quality;

2. Focuses on the relationship of the standards to the quality of educational/training programs and their relevance to student needs;

3. Examines each standard and the standards as a whole; and

4. Involves all of the agency's relevant constituencies.

Each such review solicits comments from member institutions and participants in the processes of accreditation. The process seeks to incorporate state of the art institutional evaluation, as practiced by academic quality assurance and accrediting agencies, and by business and industry into standards revisions. Information is sought to measure:

1. Institutional attitudes about validity and utility of standards;

2. Consistency of application of standards;

3. Consistency of application of the Range of Actions policy;

4. Degree of confidence in the processes used by the evaluation teams and the Commission; and

5. Effects of Commission actions and team recommendations on institutional practices.

Constituencies are notified of proposed changes to standards and are given an opportunity to comment. These comments are taken into account during revisions of the standards. If the Commission identifies a need to change the standards between reviews, changes are made in a timely manner. However, the Commission allows sufficient time for the institutions to implement the changes before they are enforced. The process for ensuring constituent participation in those revisions is consistent with that occurring during six-year standard reviews.

CONFLICT OF INTEREST POLICY FOR COMMISSIONERS, EVALUATORS, CONSULTANTS, ADMINISTRATIVE STAFF, AND OTHER AGENCY REPRESENTATIVES

(Adopted June 1997, Revised June 1999, March 2001)

The Accrediting Commission believes that those who engage in accreditation activities must make every effort to protect the integrity of accrediting processes and outcomes. The intent of the Commission is to:

- maintain the credibility of the accreditation process and confidence in its decisions;

- assure that decisions are made with fairness and impartiality;

- avoid allegations of undue influence; relationships which might bias deliberations,
decisions, or actions; and situations which could inhibit an individual's capacity to make objective decisions;

- make all of its decisions in an atmosphere which avoids even the appearance of conflict of interest;

- provide the means to disclose any existing or apparent conflict of interest.

The Commission will not knowingly invite or assign participation in the evaluation of an institution anyone who has a conflict of interest or the appearance thereof.

General Principles regarding Conflict of Interest

1. The Commission relies on the personal and professional integrity of individuals to guard against conflict of interest, or the appearance of conflict of interest, by refusing

any assignment where the potential for conflict of interest exists. Anyone who has contact of the types listed below with an institution/district/system, normally within the last five years, will not participate in the evaluation of that institution.

- any current or prior employment at the institution/district being evaluated;

- candidacy for employment at the institution/district being evaluated;

- any current or prior service as a paid consultant or other business relationship with the institution/district/system being evaluated;

- any written agreement with an institution/district/system that may create a conflict or the appearance of a conflict of interest with the institution/district/system;

-personal or financial interest in the ownership or operation of the institution/district/system;

- close personal or familial relationships with a member of the institution/district;

- other personal or professional connections that would create either a conflict or the appearance of a conflict of interest;

- receipt of any remuneration, honoraria, honorary degrees, honors or other awards from the institution/district/system.

Notwithstanding the above list defining what is considered to be a conflict or potential conflict of interest, a conflict of interest arising from one of the relationships described above does not go into perpetuity, but expires five years after the relationship ends. Nevertheless, the individual is expected to ask him/herself whether the existence of such relationship would in any way interfere with his/her objectivity, and, if the answer is in the affirmative, he/she is expected to refuse the assignment.

2. A Commissioner is expected to recuse him/herself from any deliberation or vote on decisions regarding individual institutions where any of the above conditions exist. A Commissioner who served on the most recent evaluation team of the institution being considered may participate in the discussion, but does not vote. Any such potential conflict of interest shall be reported to the Commission in advance of the deliberation and action and shall be recorded in the Commission minutes.

The following connections have been determined to be of the type that do not constitute a conflict of interest or the appearance thereof. It is recognized that it is the nature of the academy to engender collegial, professional relationships among and between members of institutions. Those professional and collegial relationships are generally considered innocuous. Examples of relationships that do not create a conflict or the appearance of a conflict of interest include:

-attending meetings or cultural events on a campus;

-having infrequent social contact with members of institutions/districts/systems;

-making a presentation at an institution on a one-time, unpaid basis, with no sustained relationship with the institution;

-fulfilling a professional assignment with members of an institution on an issue not related to the institution.

A Commissioner whose connections with the institution/district/system are limited solely to connections of this nature need not disclose them or recuse him/herself.

The purpose of this list is to reduce the burden on the Commission to disclose every relationship for discussion by the Commission. A Commissioner who is uncertain regarding a possible conflict of interest may recuse him/herself, in which case there is no requirement to disclose the nature of the contact(s) for review by the Commission. Alternatively, the Commissioner may disclose the nature of the contact for review by the Commission. The Commission shall then determine in all such cases by majority vote whether the connections raise a conflict of interest or the appearance of conflict of interest. Commission decisions regarding any issue raised relating to conflict of interest shall be noted in the minutes. Commissioners should be especially sensitive to the newly emerging possibilities of conflict of interest created by inter-institutional collaborations such as distance education or international education projects.

3. During the period of Commission employment, Commission staff members are expected to refrain from connections and relationships with candidate or member institutions which could represent a conflict of interest. Commission staff may not engage in private consulting or employment with ACCJC member institutions; Commission staff may engage in such arrangements with outside organizations or institutions other than ACCJC members only with the approval of the Executive Director. The Executive Director may engage in such arrangements only with the approval of the Commission Chair.

4. Each Commissioner, evaluator, consultant, and member of the Commission administrative staff is asked to review the Conflict of Interest Policy and consider potential conflicts of interest in his/her proposed assignments. Institutions being evaluated also review the prospective evaluation team for potential conflict of interest. The Executive Director should be notified immediately if there are conflicts of interest or any concerns that there might be conflicts of interest.

5. During the period in which the visit is occurring and Commission action is pending, evaluation team chairs and team members are expected to refrain from any paid relationship with an institution for which they have been an evaluator.

COMMISSION MEMBERSHIP AND APPOINTMENT PROCEDURE

(Adopted January 1985, Revised January 1988, Revised, January 1992, Revised, June 1992, Revised, June 1996,
Revised, June 1999)

Membership. The Commission consists of nineteen members, all of whom are appointed by the Commission Selection Committee. One Commission member shall be selected from among the nominees of each of the following: the Chancellor of the California Community Colleges, the President of the University of Hawaii, the Accrediting Commission for Senior Colleges and Universities, and the Accrediting Commission for Schools in accordance with the WASC Constitution. At least five of the Commission members shall be faculty, at least five members shall represent the public interest, at least three members shall be administrators, at least one member shall represent independent institutions, and at least one member shall represent institutions in the Pacific Basin.

Term of Appointment. Commissioners are appointed for staggered three-year terms in accordance with the WASC Constitution, Article III. Section 3b. In every case, appointments are limited to two three-year terms unless the person is elected an officer for a term which extends beyond a sixth year, in which case an additional three-year term may be served. Regular appointments are effective on July 1 of the first year and end on June 30 of the last year of a Commissioner term.

A Commissioner appointed to a membership category defined by position or status is expected to maintain that status for the entire term. If the Commissioner's position or status changes during a term so that the Commissioner no longer meets the requirement for the category to which appointed, the Commissioner shall notify the Commission's chairperson or Executive Director in a timely manner. A Commissioner whose status has so changed is considered to have completed the term on the date that the new status is actually assumed.

The officers shall consist of a chairperson and a vice chairperson elected annually by the Commission. The term of office is limited to two years. The vice chairperson shall represent a different constituency from the chairperson and shall serve as chair-elect.

APPOINTMENT PROCEDURE

Vacancies Noted

The Executive Director shall inform the Commission at the winter meeting about terms of office due to expire at the end of the following June. In February a letter will be sent by the Director to chief executive officers, accreditation liaison officers, and district and local academic senate presidents of member institutions, to major organizations, and to individuals known to be interested. The letter shall announce vacant positions on the Commission and will indicate those positions occupied by Commissioners eligible for reappointment. Institutional and organizational representatives may submit nominations, and individuals may also submit applications. The notice will be distributed to organizations for inclusion in their publications. Applications are considered to be in effect for one year.

All applicants and nominees will be asked to submit the following by the published deadline (ordinarily in late April):

(1) A letter of application, stating their interest in the Commission

(2) A completed ACCJC data form

(3) Optional - A professional resume and/or letter of recommendation.

Selection Committee

Appointments for terms beginning July 1.

The Selection Committee, established pursuant to Section 3b of the WASC Constitution, shall meet to consider nominees and applicants and to make appointments to the Commission.

The chairperson of the Commission shall designate a member of the Selection Committee to serve as its chair.

The Executive Director shall serve as the nonvoting secretary to the Selection Committee.

Appointments Out of Normal Sequence

If a vacancy occurs after the meeting of the Selection Committee and before the winter Commission meeting, the Selection Committee will review the pool of applicants and nominations. If the Selection Committee determines that there is adequate representativeness in the pool, it will proceed with the appointments. If it determines that the pool is not adequate, the vacancy will be announced in and according to the process describe above.

PART IV

APPENDIX

ACCREDITATION AGENCIES AND RELATED ORGANIZATIONS

1. Western Association of Schools and Colleges*

The Western Association of Schools and Colleges (WASC) is one of six regional accrediting associations that cover the United States, whose purpose is continual improvement of education and cooperation among educational institutions and agencies.

WASC was formed July 1, 1962, for the purpose of evaluation and accreditation of schools, colleges, and universities in California, Hawaii, and Pacific Island areas.

WASC functions through a board of directors and three accrediting commissions. The board of directors consists of nine members, three of whom are elected by each of the WASC commissions. The board annually elects one of its members to be chairperson of the board and president of the Western Association of Schools and Colleges. It also elects a secretary-treasurer, who is usually the executive director of one of the three accrediting commissions.

The board of directors and the secretary-treasurer are responsible for the annual publication of the WASC Directory, which lists WASC-accredited and candidate institutions.

Each commission develops its own standards, procedures, and fiscal policies, under the authority of and subject to the approval of the WASC Board of Directors.

Those institutions which have been evaluated by commissions and have received approval are accredited by WASC. Any such accreditation shall cease whenever an institution is dropped from the accredited list of the association, or fails to pay its annual fees, or requests in writing that its accreditation be terminated.

The WASC office is located at 533 Airport Boulevard, Suite 200, Burlingame, CA 94010. Telephone (415) 344-4805, FAX (415) 375-7790. The WASC office is administrated by Donald G. Haught, Secretary-Treasurer.

*For the list of WASC candidate and accredited institutions, see the official WASC Directory.

The three accrediting commissions of the Western Association of Schools and Colleges are:

a. Accrediting Commission for Senior Colleges and Universities

Ralph A. Wolff is the Executive Director, and the Commission office is located at 985 Atlantic Avenue, Suite 100, Alameda, California 94501. The telephone number is (510)

748-9001.

b. Accrediting Commission for Community and Junior Colleges

Barbara A. Beno is the Executive Director, and the Commission office is located at 3402 Mendocino Ave Santa Rosa CA 95403. The telephone number is (707) 569-9177.

c. Accrediting Commission for Schools

Donald G. Haught is the Executive Director. The Commission office is at 533 Airport Boulevard, Suite 200, Burlingame, California 94010. The telephone number is (415) 696-1060.

2. Other Regional Commissions in the United States

Middle States Association of Colleges and Schools, Commission on Higher Education, 3624 Market Street, Philadelphia, Pennsylvania 19104. Telephone (215) 662-5606. Executive Director, Jean Avnet Morse.

New England Association of Schools and Colleges, Commission on Institutions of Higher Education, Charles M. Cook, Director; Commission on Vocational, Technical, Career Institutions, Richard E. Mandeville, Director, 209 Burlington Road, Bedford, Massachusetts 01730. Telephone (617) 271-0022.

North Central Association of Colleges and Schools, Commission on Institutions of Higher Education, 30 North LaSalle Street, Suite 2400, Chicago, Illinois 60602. Telephone (312) 263-0456, (800) 621-7440. Executive Director, Patricia A. Thrash.

Northwest Association of Schools and Colleges, Commission on Colleges, 8060 165th Avenue, NE, Suite 100, Redmond, Washington 98052 Telephone (425) 558-4224. Executive Director, Sandra Elman.

Southern Association of Colleges and Schools, Commission on Colleges, 1866 Southern Lane, Decatur, Georgia 30033. Telephone (404) 679-4500. Executive Director, James T. Rogers.

WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES

CONSTITUTION

Revised July 2002

ARTICLE I. Name and Purpose

This organization shall be entitled WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES. Its purpose is to promote the welfare, interests, and development of elementary, secondary, and higher education through (1) improvement of educational programs, (2) close cooperation among the schools, colleges, and universities within

the territory it undertakes to serve, (3) certification of accreditation or candidacy status, and (4) effective working relationships with other educational organizations and accrediting agencies.

ARTICLE II. Accrediting Region and Certification

Section 1. The accrediting region of the Association consists of the states of California and Hawaii, the territories of Guam, American Samoa, Federated States of Micronesia, Republic of the Marshall Islands, Republic of Palau, Commonwealth of the Northern Marianas Islands, the Pacific Basin, and East Asia, and areas of the Pacific and East Asia where American/ International schools or colleges may apply, and such other areas as may apply to it for service, subject to approval by the Board of Directors.

Section 2. Any university, college, or school shall be certified by the Board of Directors as a candidate or accredited institution upon report of action taken by the appropriate Accrediting Commission. Any such certification shall cease whenever an institution resigns, is dropped from the accredited or candidate list of the Association, or fails to pay its annual fees by the date set by the appropriate Accrediting Commission for payment.

ARTICLE III. Organization

Section 1. The Board of Directors shall consist of nine persons, three to be selected for staggered three-year terms from and by each of the three Accrediting Commissions hereinafter named and described. One of each Commission's appointees shall be its Chair or Assistant/Vice Chair. The Board shall elect its Chair from among its members for a one-year term. The Chair may be re-elected for one additional one-year term. The Chair of the Board shall be the President of the Association. The Secretary-Treasurer of the Association shall be selected by the Board.

Section 2. The Board of Directors shall meet annually at such time as may be determined by the Board, and may hold other meetings at the call of the Chair or on the request of any three members of the Board of Directors.

Section 3. There shall be three Accrediting Commissions, as follows:

a. *Accrediting Commission for Senior Colleges and Universities.*

This Commission shall consist of up to twenty-five (25) members, but no less than eighteen (18) members, with the exact number set by the Commission from time to time. Commission members shall serve overlapping three-(3-)year terms, with a maximum of two terms (plus any partial term served as the result of the member being selected to fill a vacancy), as established by the Commission. The Commission shall elect one of its members to serve as Chair for a three-(3-)year term and one of its members to serve as Vice Chair for a one-(1-)year term. In the event the has served for the maximum two terms on the Commission prior to the expiration of his or her term as Chair, the Chair shall continue to serve on the Commission until his or her term as Chair

shall have expired. Commission members shall be elected by the presidents of the institutions accredited by the Commission according to Bylaws approved by the Commission.

Members of the Commission shall be allowed to complete their terms upon retirement from their institutions. Nonpublic Commissioners who lose their institutional base for any reason shall be ineligible to serve beyond the end of the academic year.

b. *Accrediting Commission for Community and Junior Colleges.*

This Commission shall consist of nineteen members, all of whom are appointed by the Commissioner Selection Committee. One Commission member shall be selected from among the nominees who represent community college interests provided by the chief administrative officer of each of the following: the California Community Colleges Chancellor's Office and the University of Hawaii Community Colleges Chancellor's Office. In addition, one Commission member shall be selected from among the nominees provided by each of the other Commissions to represent the Accrediting Commission for Senior Colleges and Universities and the Accrediting Commission for Schools. These nominees shall be sitting or former members of the Senior College or Schools Commissions, or individuals with demonstrated familiarity with the policies, procedures, and operations of the Accrediting Commission for Community and Junior Colleges. At least five of the Commission members shall be faculty, at least five members shall represent the public interest [as defined in USDOE §602.3], at least three members shall be administrators, at least one member shall represent independent institutions, and at least one member shall represent institutions in the Western Pacific. Commission representatives shall serve staggered three year terms.

Commission officers shall be selected by the Commission according to Bylaws approved by the Commission.

c. *Accrediting Commission for Schools*

This Commission shall consist of up to twenty-six persons selected by the Commission's Nomination Review Committee from candidates nominated by member organizations or the Commission. Not less than one-seventh of the persons selected shall be public members. Appointment shall be for staggered three-year terms. Representatives shall be nominated as follows:

- seven by the Association of California School Administrators;
- one by the California Teachers' Association;
- one by the California Federation of Teachers;
- one by the Hawaii Government Employees' Association;
- one by the California Association of Independent Schools;

- one by the Hawaii Association of Independent Schools;
- one by the East Asia Regional Council of Overseas Schools;
- three by the Western Catholic Educational Association, one of whom must be a practicing classroom teacher;
- one by the Pacific Union Conference of Seventh-day Adventists;
- one practicing classroom teacher on a rotational basis from the Hawaii public and private schools;
- one practicing classroom teacher from the California Association of Private School Organizations (CAPSO);
- one school board member by the California School Boards' Association;
- one parent by the California Congress of Parents and Teachers;
- non-school public members from business, community, or public organizations.

The California Department of Education and the Hawaii Department of Education will each have an ex officio seat on the Commission. The Commission shall determine which organizations shall be represented by voting Commission members, and which shall be represented by non-voting ex officio members.

If a change of status, which affects eligibility for constituency appointments of any of the above appointees occurs during the term of office, the individual may at the discretion of the appointing agency, serve the remainder of the term or may be replaced. A person completing a term after a change of status may not be reappointed.

Section 4. The Executive Director of each Accrediting Commission shall be appointed by the Commission. Changes in the size and composition of each Accrediting Commission may be made by the Commission with the approval of the Board of Directors. The composition of each Accrediting Commission shall be published in the annual Directory of the Association.

Section 5. Recognizing that the Board of Directors retains ultimate authority over administrative structures, budgets, fiscal policies, contracts and leases, including those entered into by the Accrediting Commissions, the Board will delegate actual management over such matters, including the actual review and approval of such matters, to the Commissions to the extent it deems prudent.

Section 6. Action taken by any Commission to deny or withdraw accreditation or candidacy shall be reported in writing to the WASC Board at it annual meeting.

ARTICLE IV. Criteria for Certification

Section 1. Each of the Accrediting Commissions shall adopt its own criteria, subject to

the approval of the Board of Directors of the Association. The criteria shall provide for the evaluation of each institution on the basis of the degree to which it is accomplishing the purposes and functions outlined in its own statement of objectives, and on the appropriateness of those purposes and functions for an institution of its type.

Section 2. The actions by each Accrediting Commission, subject to its review procedures and the appeals procedures provided for in Article VI, shall be final and shall be certified by the Board of Directors.

ARTICLE V. Duties of Officers

Section 1. The Chair of the Board of Directors shall preside at all meetings of the Board and shall have the right to vote on all issues that come before the Board for decision. As President of the Association, he/she shall be the official spokesperson for the Association, representing the Association in accord with policies established by each of the three Accrediting Commissions and the Board.

Section 2. The Secretary-Treasurer shall serve as the Secretary of the Board of Directors and shall maintain a complete file of Minutes and Board decisions. He/She shall receive from the Directors of the three Accrediting Commissions the lists of accredited and candidate institutions and shall provide for the publication of a total Association list of accredited and candidate institutions at least once each year.

Section 3. The Director of each of the three Accrediting Commissions shall maintain a careful record of the actions and decisions of the Commission, shall be responsible under the Commission's direction for the scheduling of accreditation visits, appointment of visiting committees, distribution of necessary accreditation materials, and for such other matters as the Commission may delegate to the Director for the effective administration of the accreditation program. Following each meeting of the Commission at which accreditation decisions are made, the Director shall promptly notify the Secretary-Treasurer of the Board of Directors of all changes in the list of accredited and candidate institutions. At its annual meeting the Board of Directors shall certify the list of accredited and candidate institutions submitted by each Accrediting Commission.

ARTICLE VI. Appeals

Section 1. The WASC Board of Directors shall elect annually a WASC Hearing Panel from which shall be selected a Hearing Board established for the purpose of deciding appeals by any institution against the decision of any of the WASC Commissions denying or withdrawing accreditation or candidacy. This Panel shall consist of twenty persons as follows: (1) five from elementary/secondary schools; (2) five from junior or community colleges; (3) five from senior colleges and universities; and (4) five lay members of governing boards. None of the twenty shall be a current member of an Accrediting Commission.

a. The Hearing Board shall consist of five persons, including at least one person from each of the above categories, selected on random basis from the Hearing Panel and

appointed, after such selection, by the WASC President. None of those selected shall have been involved in the accreditation process which resulted in the appeal. The Hearing Board shall elect its Chair from its own membership. Each member, including the Chair, shall have one vote.

b. Hearing Board members to replace those who are absent or have a conflict of interest shall be selected on the same random basis and appointed by the WASC President from the remaining members of the Hearing Panel.

Section 2. Costs. An institution making an appeal shall assume all necessary costs of the Hearing Board including the cost of any legal fees of the Hearing Board.

a. The WASC Board of Directors shall establish a differential deposit, depending upon whether the institution chooses to be represented by counsel in the conduct of the hearing. At the time it makes its appeal the institution shall declare whether or not it wishes to have an attorney conduct its portion of the hearing and represent it before the Hearing Board.

b. An institution making an appeal shall deposit at the time it files its appeal an amount to be established annually by the WASC Board of Directors [ten thousand dollars ($10,000)] with the Secretary Treasurer of the Western Association of Schools and Colleges if the institution wishes to conduct the hearing without the use of an attorney to represent it. If the institution wishes to have an attorney conduct its portion of the hearing and represent it before the Hearing Board the deposit shall be twenty-five thousand dollars ($25,000).

c. In the event the necessary costs exceed the amount of the deposit, the institution shall be responsible for the balance or, in the event the deposit exceeds the necessary costs, the institution shall receive a refund in the amount of the difference.

Section 3. If an institution after availing itself of any review or appeal procedures of its appropriate Commission, still believes itself aggrieved by that Commission's denial or termination of candidacy or accreditation, its governing board may appeal such action within thirty (30) calendar days of receipt of notice thereof to the President of the Western Association of Schools and Colleges through the appropriate Commission's Executive Director. During the period up to and including the appeal, the institution's status with the Commission shall remain the same as it was prior to the decision being appealed.

a. The President of the Western Association of Schools and Colleges shall then arrange a hearing at the earliest practicable date for the representatives of the institution before the Association's Hearing Board, established for this purpose as prescribed in Article VI, Section I of this Constitution.

b. This hearing shall be informal and conducted under rules and procedures established by the WASC Board of Directors. Those testifying shall not be placed under oath. Legal counsel may be present as advisors but they shall not conduct the case unless the

institution has filed a declaration at the time it filed its appeal, as provided in Article VI, Section 2, of this Constitution.

c. At least forty-five (45) calendar days before the time set for the hearing of such an appeal, the President (or Secretary-Treasurer) of the Western Association of Schools and Colleges shall cause notice of the time and place of the hearing to be mailed by registered or certified mail, return receipt requested, to the Chairman or President of the Governing Board of the institution with a copy to the chief executive. Proof of notice shall be made at the hearing.

d. Subject to limitations set forth below, representatives of the institution shall have an opportunity to present written documents, other evidence on the institution's behalf, oral testimony, and arguments. Representatives of the appropriate Commission and of the evaluation team shall have a similar opportunity to present evidence, oral testimony, and arguments on the Commission's behalf. Neither party shall have the right to subpoena or to call any witnesses from the other party.

e. The Hearing Board, in addition to considering evidence adduced at the hearing, will also consider the institution's self-study report, the evaluation team report, and all other material relied upon by the Commission in reaching the decision which is being appealed, including the reports filed as a result of any internal Commission appeal process.

f. The appeal shall be based on one or more of the following grounds: (1) there were errors or omissions in carrying out prescribed procedures on the part of the evaluation team and/or the Commission which materially affected the Commission's decision; (2) there was demonstrable bias or prejudice on the part of one or more members.

ARTICLE VII. Financing

Financial support for the work of the Board of Directors of the Association shall be obtained by equal assessment on each of the three Accrediting Commissions.

ARTICLE VIII. Amendments

Proposed amendments to this Constitution may originate with any of the Commissions or with the Board of Directors. Such proposed amendments, except those relating to the size and composition of a Commission (See Article III, Section 4), shall become effective upon approval by a two-thirds vote of each of the three Commissions and of the Board of Directors.

ARTICLE IX. Indemnification

The Association does hereby grant indemnification to any officer, director, commissioner, or other agent, or former officer, director, commissioner, or other agent, including but not limited to WASC employees and team members, for claims or actions asserted against said person arising out of acts or omissions alleged to have occurred

in connection with, or as a result of his or her activities as an officer, director, commissioner, or agent, of this Association, to the fullest extent permitted by law; provided, however, as follows:

a. If any claim or action is asserted or threatened to be asserted, as described in such statutes, the person requesting indemnification must give timely notice thereof to the President of the Association or the Chairperson of the Board of Directors;

b. If the person requesting indemnification is not successful on the merits of the action, the Board of Directors, the members, or the court must determine that the person acted in good faith, in a manner he or she reasonably believed to be in the best interests of the corporation, and without reason to believe his or her conduct was unlawful; and

c. Indemnification shall be provided herein only to the extent that valid and collectible insurance coverage under all existing policies of insurance held by the Association has been exhausted.

PROCEDURES AND INTERNAL POLICIES

I. Oversight by the WASC Board Over Commission Activities

Recognizing that the WASC Board of Directors (the "Board") retains the ultimate responsibility for the affairs of the corporation while at the same time recognizing the wide latitude which has been historically granted to the three Commissions, the Board establishes the following rules with respect to its oversight responsibilities. These rules are not intended to preclude the Board from taking further actions as it deems necessary in a particular instance to discharge its responsibility to govern the affairs of the corporation:

1. Each Commission shall be audited annually by an outside certified public accountant of the Commission's choice. Copies of the full audit report, including any "management letter" shall be provided by each Commission to the Board.

2. Each Commission shall annually develop and adopt an operating and, when necessary, capital budget. The budgets shall be reported to, reviewed by, and ratified by the WASC Board. Prior ratification shall not be necessary in order for a Commission to begin to implement its budget. Significant variances in expenses or revenues from the budget shall also be reported to the Board.

3. All Commission Manuals, Handbooks, Policies and amendments thereto shall be presented to the Board by the respective Commission for ratification. Prior ratification shall not be necessary in order for a Commission to begin to implement any policy, Manual, or Handbook.

4. Each Commission shall present for prior approval of the WASC Board any proposed capital expenditure larger than the reserves of that Commission.

II. Meeting by Conference Call

A special meeting of the Board may be requested for any reason by the chairs of at least two (2) of the Commissions of WASC. The Board may also meet and act by a meeting conducted by conference call.

III. Satisfying Extraordinary Litigation Expense

WASC recognizes the possibility that the organization may at some time in the future incur substantial costs rising from litigation against WASC. Such costs might involve substantial legal defense expenses or an adverse judgment with resulting damages, or both. WASC maintains liability insurance to protect WASC and its Commissions from such a possibility. However, defense costs might be incurred or an adverse judgment might occur which would not be covered by insurance. This might occur if: (1) insurance becomes unavailable in the future; (2) the adverse judgment or defense costs are in excess of insurance limits; or (3) the nature of the liability precludes coverage from the insurance policy. In such an instance, WASC would have to depend on its own internal financial resources to satisfy all or part of the defense costs or judgment. The purpose of this Policy is to set forth the manner in which the assets of WASC and its Commissions would be made available in this event.

1. The Commission responsible for the action giving rise to the litigation would be responsible to pay for all costs of defense, including legal expenses, and to satisfy the judgment through whatever means it might have at its disposal;

2. To the extent that the assets of the affected Commission were insufficient to satisfy the Commission's obligation under paragraph I above, the assets of the remaining Commissions would be available on an equal basis to cover these costs. To the extent that the assets of the three Commissions were insufficient to pay for these costs, any assets controlled by the WASC Board would become available.

3. To the extent that the assets of the Commissions not responsible for the adverse decision or of the WASC Board were employed as described of WASC's insurance in paragraph 2 above, the Commission responsible for the adverse judgment would be responsible to reimburse the other Commissions and the WASC Board for all such costs. Such reimbursement will be made as soon as practicable and according to a schedule developed by the Commissions and approved by the WASC Board.

IV. Term of the Chair of the Board

At its annual meeting, the Board shall elect its Chair from among its members for a one-year term. The Chair may be re-elected for one additional one-year term. The Chair's term will run from August 1 to July 31.

accjc1@pacbell.net

HANDBOOK OF ACCREDITATION AND POLICY MANUAL

Accrediting Commission for Community and Junior Colleges

Western Association of Schools and Colleges

3402 Mendocino Ave

Santa Rosa, CA 95403

(707) 569-9177

FAX (707) 569-9179

Revised Summer 2002

ACKNOWLEDGEMENTS

The Standards of Accreditation and Commission Handbook are refined over time and informed by the experience of hundreds of professionals who volunteer their time, their labors, and their wisdom to the work of the Commission. Institutional trustees, presidents, administrators, faculty members, staff, and students contribute their perspective through participation on evaluation teams, working on institutional self studies, serving on Commission Task Groups, and reviewing Commission papers.

A series of Task Groups organized around each of the major standards, augmented by special working groups drawn from the private institutions and from the institutional research community provided advice throughout the development period. In addition, presentations at conferences, workshops with system and institutional representatives, and discussions with Accreditation Liaison Officers provided more comment. Organizations and associations were invited to provide comment, and they responded with valuable suggestions.

The development of this Handbook was further enhanced by the work of a national committee of regional accreditation Associate Directors. This committee reviewed all current regional accreditation eligibility requirements and threshold accreditation standards. The Commission adopted and incorporated much of the work of this group into the 1996 Standards of Accreditation.

The Commission Editorial Board, chaired first by Robert D. Jensen and then by Constance M. Carroll, coordinated the development of the 1996 Standards of Accreditation. Members of that Board were Commissioners Barbara Beno, Carmen Maldonado Decker, J. Robert Evans, Celina Sau Lin Ing, and Bruce Smith. Commission Consultant Frances Conn was a constant source of substantive insight and editorial refinement. Associate Director Judith Watkins served as overall project coordinator and editor of the Handbook. Sue Lundquist and Mary Ann Hilmes prepared and proofread the material for publication.

PART I

INTRODUCTION TO THE 1996 EDITION

This handbook is intended for members of the community of community, junior, and specialized two year colleges. It is for the use of institutions under review, members of evaluation teams, and others who are concerned with good practice in associate degree- granting institutions.

California Community Colleges

Program and Course Approval Handbook

Chancellor's Office
California Community Colleges

September 2001

This handbook was produced under the direction of Victoria P. Morrow, Vice Chancellor for Educational Services and Economic Development, and Jose Michel, Dean of Curriculum Standards and Instructional Services. The principal author was Charlie Klein, Specialist in Academic Planning. The section on apprenticeships was written by Dr. Barry Noonan.

This handbook may also be viewed on the World Wide Web. Go to the Chancellor's Office web site at **www.cccco.edu**, click on "Divisions and Units," then "Educational Services and Economic Development," then "Curriculum Standards and Instructional Services."

For comments or questions about this handbook or about program or course approval, please contact Charlie Klein at (916) 322-6888, or e-mail to cklein@cccco.edu. For approval forms, status inquiries, or inventory research, please contact Stephanie Ricks-Albert, Curriculum Analyst, at (916) 323-3093, or e-mail to sricksal@cccco.edu.

Grateful acknowledgment is made to the representatives of the Academic Senate for California Community Colleges, Chief Instructional Officers of the California Community Colleges, and California Community Colleges Association for Occupational Education who provided valuable consultation in the preparation of this handbook. Thanks are also offered to Dr. Nancy Glock-Greuneich, principal author of the previous *Curriculum Standards Handbook*.

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Introduction

This handbook is intended to assist California community college administrators, staff, and faculty who are responsible for designing new programs or courses, and submitting those programs or courses for approval. It is primarily oriented toward Chancellor's Office approval requirements, but also contains information relevant to local curriculum committees and Regional Occupational Consortia.

The Chancellor's Office is required by law to produce and distribute this handbook. The requirement was originally adopted as a statute by the Legislature in 1976. It is now contained in the California Code of Regulations, Title 5 (the regulations adopted by the Board of Governors of the California Community Colleges):

> **55000.5. Handbook; Monitoring and Review of Approved Courses and Programs**
>
> (a) The Chancellor shall prepare, distribute, and maintain a detailed handbook for use by the local educational agencies. The handbook shall contain course approval criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals.
>
> (b) The Chancellor shall monitor and review courses and programs which were approved under the provisions of section 70901 of the Education Code for compliance with applicable statutes and regulations on a periodic basis.

The present edition of this handbook replaces the *Curriculum Standards Handbook*, second edition, as revised March 1995, and all other earlier versions. It also replaces the *Course Standards Handbook* published by the Educational Standards and Evaluation Unit of the Chancellor's Office in July 1987.

Statements in this handbook are not law, except for the regulations and statutes quoted in it. If there is a conflict between something in this handbook and the language of law, the law prevails. However, colleges are expected to follow the procedures and instructions in this handbook to have curriculum approved by the Chancellor's Office.

Updates to this handbook will be supplied by the Chancellor's Office from time to time. As always, we welcome comments and suggestions from users on ways that the handbook could be improved. Please see the reverse of the title page for where to send such comments and suggestions.

The complete and current text of all regulations in the California Code of Regulations, including those referred to in this handbook, may be viewed on the World Wide Web at **www.calregs.com**. The complete text of all California statutes, including the Education Code sections referred to here, may be viewed at **www.leginfo.ca.gov**.

This handbook may be viewed on the World Wide Web. Go to the Chancellor's Office web site at **www.cccco.edu**, click on "Divisions and Units," then "Educational Services and Economic Development," then "Curriculum Standards and Instructional Services."

I. Credit Program Approval

Legal Authority

The Board of Governors, by statute, has statewide responsibility for approving all new instructional programs in community colleges. This mandate is one of the earliest and most basic legislative charges to the Board. Before 1968, approval of programs for junior colleges was the responsibility of the State Board of Education. When the Board of Governors of the California Community Colleges was created by the Legislature in 1968, this responsibility was transferred to the new board. It is now contained in Education Code Section 70901:

> **70901. Board of governors; duties; rules and regulations; delegation; consultation**
>
> (a) The Board of Governors of the California Community Colleges shall . . . perform the following functions:
>
> . . . (b)(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors. . . .

The Legislature also made the requirement for State approval part of the finance law for community colleges. This provision was part of the Education Code for many decades, but in 1991 it was shifted to the California Code of Regulations, Title 5:

> **58050. Conditions for Claiming Attendance.**
>
> (a) All of the following conditions must be met in order for the attendance of students enrolled in a course to qualify for state apportionment:
>
> (1) The course or the program of which it is a part must be approved by the Board of Governors in accordance with the provisions of Article 2 (commencing with Section 55100) of Subchapter 1, Chapter 6.
>
> (2) The course must meet the criteria and standards for courses prescribed by Section 55002. . . .

The Board of Governors has further adopted a "Minimum Condition" regulation regarding program and course approval. Minimum Conditions are selected areas of regulations that are considered particularly crucial and which may result in denial or reduction of State aid if violated. The Minimum Condition regulation on program and course approval is as follows:

> **51021. Curriculum.**
>
> Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community colleges. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

The Title 5 subchapter to which reference is made in the Minimum Condition above is titled "Program, Course, and Class Classification and Standards." Article 2 of that subchapter is titled "Approval of Courses, Programs and Classes." Within that article, the most important section for program approval is Section 55130, which sets forth the basic requirements for approval of a credit instructional program:

55130. Approval of Credit Programs.

(a) Before offering any course as part of an educational program at a college, the governing board of a district shall obtain approval of the educational program from the Chancellor in accordance with the provisions of this article. Approval shall be requested on forms provided by the Chancellor.

(b) The application for approval shall contain at least the following:

(1) The name of the proposed program.

(2) The description of the proposed program.

(3) The purposes and specific objectives of the proposed program.

(4) The place of the proposed program in the district master plan.

(5) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning.

(6) The need for the proposed program ascertained with regard to at least the following factors:

(A) Other community colleges in the area currently offering the program.

(B) Other programs closely related to the proposed program offered by the college.

(C) Relation of the proposed program to job market analysis.

(D) Enrollment projection for the proposed program.

(E) Recommendations of area vocational master plan committees when applicable.

(F) The classification of the courses in the program in accordance with section 55001.

(7) The need for and present adequacy of the following resources shall be determined in relation to the proposed program:

(A) Library and media center resources.

(B) Facilities and equipment required to initiate and sustain the program. If a new facility is to be used, reference should be made to the five-year master plan.

(C) Availability of adequate or proposed financial support.

(D) Availability of faculty.

(c) The development, establishment and evaluation of an education program shall include representative faculty involvement.

(d) An approval is effective until the program or implementation of the program is discontinued or modified in any substantial way. From time to time the Chancellor may evaluate an educational program, after its approval, on the basis of factors listed in this section. If on the basis of such an evaluation the Chancellor determines that an educational program should no longer be offered, the Chancellor may terminate the approval and determine the effective date of termination.

(e) In multicollege districts, program approval is granted for a specific college.

This section, which provides the basic framework for Chancellor's Office program approval, has been administratively applied by the Chancellor's Office as will be explained in the following sections.

What Programs Need to Be Approved?

A "program" is defined by Title 5 as follows:

> **55000. Definitions.**
>
> For the purpose of this chapter, the following definitions shall apply:
>
> (a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.
>
> (b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.
>
> (c) "Class" means a community services offering.

In practice, however, the Chancellor's Office only approves certificates and degrees that community colleges wish to award to students. Degrees and certificates must be approved regardless of whether they are intended primarily for occupational students or primarily for transfer students. All degrees, certificates, and options that are subject to Chancellor's Office review are entered into the Chancellor's Office Inventory of Approved and Projected Programs when they are approved or authorized.

Recommended patterns of coursework for transferring, or achieving any other objective, are not subject to Chancellor's Office approval. Such patterns, although they may be locally referred to as "programs," are not entered into the Chancellor's Office Inventory of Approved and Projected Programs.

Degrees and Majors

All associate degrees and associate degree majors that may appear by name on a student transcript or diploma require Chancellor's Office approval. Thus, a program called "Associate in Science in Electronics Technology" requires approval, and so does a program called "Associate in University Studies–English Emphasis," as well as a degree called "Liberal Studies" or "Transfer Major." Each degree that may be separately named on the transcript or diploma requires separate approval.

All associate degrees in California are one of two general types, Associate in Arts or Associate in Science. There is no difference in law as to the requirements for the two, and no State guidelines on which majors should be assigned which type of degree. However, many colleges are guided by the language of a regulation applicable before

1983, which said that the Associate in Science was to be awarded for majors "in the fields of engineering, physical and biological sciences, or occupational curriculum."

Associate degree majors are required to be at least 18 semester units or 27 quarter units of coursework in a single discipline or related disciplines, as listed in the Taxonomy of Programs. However, for degrees intended to provide transfer students with lower-division general education, a distribution of general education coursework according to university requirements may be considered to satisfy this requirement.

There are also requirements in law for general education and for demonstration of competency in reading, written expression, and mathematics for the associate degree. The key sections of Title 5 regarding these requirements are as follows:

55805. Philosophy and Criteria for Associate Degree and General Education.

(a) The governing board of a community college district shall adopt policy which states its specific philosophy on General Education. In developing this policy governing boards shall consider the following policy of the Board of Governors:

The awarding of an Associate Degree is intended to represent more than an accumulation of units. It is to symbolize a successful attempt on the part of the college to lead students through patterns of learning experiences designed to develop certain capabilities and insights. Among these are the ability to think and to communicate clearly and effectively both orally and in writing; to use mathematics; to understand the modes of inquiry of the major disciplines; to be aware of other cultures and times; to achieve insights gained through experience in thinking about ethical problems; and to develop the capacity for self-understanding. In addition to these accomplishments, the student shall possess sufficient depth in some field of knowledge to contribute to lifetime interest.

Central to an Associate Degree, General Education is designed to introduce students to the variety of means through which people comprehend the modern world. It reflects the conviction of colleges that those who receive their degrees must possess in common certain basic principles, concepts and methodologies both unique to and shared by the various disciplines. College educated persons must be able to use this knowledge when evaluating and appreciating the physical environment, the culture, and the society in which they live. Most importantly, General Education should lead to better self-understanding.

In establishing or modifying a general education program, ways shall be sought to create coherence and integration among the separate requirements. It is also desirable that general education programs involve students actively in examining values inherent in proposed solutions to major social problems.

(b) The governing board of a community college district shall also establish criteria to determine which courses may be used in implementing its philosophy on the associate degree and general education.

(c) The governing board of a community college district shall, on a regular basis, review the policy and criteria established pursuant to subsections (a) and (b) of this section.

55806. Minimum Requirements for the Associate Degree.

The governing board of a community college district shall confer the degree of Associate in Arts or Associate in Science upon a student who has demonstrated competence in reading, in written expression, and in mathematics, and who has satisfactorily completed at least 60 semester units or 90 quarter units of college work. This course work requirement must be fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). It must

include at least 18 semester or 27 quarter units in General Education and at least 18 semester or 27 quarter units in a major as prescribed in this section. Of the required units, at least 12 semester or 18 quarter units must be completed in residence at the college granting the degree. Exceptions to residence requirements for the Associate Degree may be made by the governing board when it determines that an injustice or undue hardship would be placed on the student.

(a) Major Requirements. At least 18 semester or 27 quarter units of study taken in a single discipline or related disciplines, as listed in the Community Colleges "Taxonomy of Programs," shall be required.

(b) General Education Requirements.

(1) Students receiving an Associate Degree shall complete a minimum of 18 semester or 27 quarter units of general education, including a minimum of three semester or four quarter units in each of the areas (A), (B) and (C) and the same minimum in each part of (D). The remainder of the unit requirement is also to be selected from among these four divisions of learning or as determined by local option:

(A) Natural Sciences. Courses in the natural sciences are those which examine the physical universe, its life forms, and its natural phenomena. To satisfy the General Education Requirement in natural sciences, a course shall be designed to help the student develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities. This category would include introductory or integrative courses in astronomy, biology, chemistry, general physical science, geology, meteorology, oceanography, physical geography, physical anthropology, physics and other scientific disciplines.

(B) Social and Behavioral Sciences. Courses in the social and behavioral sciences are those which focus on people as members of society. To satisfy the general education requirement in social and behavioral sciences, a course shall be designed to develop an awareness of the method of inquiry used by the social and behavioral sciences. It shall be designed to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate. This category would include introductory or integrative survey courses in cultural anthropology, cultural geography, economics, history, political science, psychology, sociology and related disciplines.

(C) Humanities. Courses in the humanities are those which study the cultural activities and artistic expressions of human beings. To satisfy the general education requirement in the humanities, a course shall be designed to help the student develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and an ability to make value judgments. Such courses could include introductory or integrative courses in the arts, foreign languages, literature, philosophy, and religion.

(D) Language and Rationality. Courses in language and rationality are those which develop for the student the principles and applications of language toward logical thought, clear and precise expression and critical evaluation of communication in whatever symbol system the student uses.

1. English Composition. Courses fulfilling the written composition requirement shall be designed to include both expository and argumentative writing.

2. Communication and Analytical Thinking. Courses fulfilling the communication and analytical thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines.

(2) While a course might satisfy more than one general education requirement, it may not be counted more than once for these purposes. A course may be used to satisfy both a general education requirement and a major requirement. Whether it may be counted again for a different degree requirement is a matter for each college to determine. Students may use the same course to meet a general education requirement for the Associate Degree and to partially satisfy a general

education requirement at the California State University, if such course is eligible under the provisions of section 40405 of this title.

(3) Ethnic Studies will be offered in at least one of the required areas.

(c) The provisions of this section shall be applicable to all students who enter a community college on or after July 1, 1983, provided that a governing board may specify an earlier implementation date pursuant to subsection (b) of Section 55810.

Certificates

All certificates that may appear by name on a student transcript, diploma, or completion award of any sort, and which require 18 or more semester units or 27 or more quarter units of coursework, require Chancellor's Office approval. Each certificate that may be separately named on the transcript or student award requires separate approval.

Certificates that require fewer than 18 semester units or 27 quarter units do not require Chancellor's Office approval.

When a college creates a set or sequence of certificates in a particular subject, arranged such that a student must complete one level before taking another, and the set or sequence as a whole requires 18 semester or 27 quarter units or more, then the entire set or sequence requires Chancellor's Office approval. For example, if a college offers the following certificates:

Multimedia, Basic (or Level I) – 16 units
Multimedia, Advanced (or Level II) – requires completion of Level I or equivalent skills and knowledge – 16 units

Then both Multimedia certificates require Chancellor's Office approval, since the program as a whole requires 32 units.

The Title 5 provision authorizing the award of certificates contains no specifics on how they should be structured:

55808. Certificate of Achievement.

The governing board of a community college district shall issue a certificate of achievement to any student whom the governing board determines has completed successfully any course of study or curriculum for which a certificate of achievement is offered.

Options

New options, emphases, concentrations, specializations, strands, tracks and so forth also require Chancellor's Office review before they are offered, if they are intended to appear by name on student transcripts, diplomas, or awards. Again, this is true for both occupational and transfer programs. Some options, etc., represent "substantial

modifications" of a program that must be approved as if they were new programs, under the language of Title 5, Section 55130. Others represent minor variations on existing programs that do not require thorough Chancellor's Office review such as is given to a genuinely new program.

In the past, it has proven impossible to draw a clear defining line to tell which options are actually new programs for approval purposes, and which are not. For example, at one extreme it has been claimed that massive new programs in computer animation and multimedia are merely "options" under an existing computer science program approved in the 1970s. Such a claim is not based on curriculum reality, but on a desire to avoid Chancellor's Office program approval. At the other extreme, sometimes a college may wish to divide an existing high-unit certificate into smaller certificates representing levels through which a student can advance gradually, without changing the overall required coursework at all. This sort of "modularization" has occurred in industrial fields such as welding, in business fields such as office technology, and in other areas. Certainly the new certificates resulting from such a re-sequencing are not "new programs" in the usual sense.

To avoid futile debates about whether or not a particular new award is a "new program," the Chancellor's Office has adopted a form to be used for all options, concentrations, specializations, tracks, etc. that a college believes *do not* represent truly new, or substantially modified, programs. It is called "Request to Add New Option Or Certificate Within Existing Program To Inventory." (See Appendix A.) This form, which requires a minimal amount of information, may also be used for requesting the addition of new certificates in a program area where a college already has at least one approved certificate, or for requesting addition of a certificate in a program area where the college already has an approved degree, or for requesting addition of a degree major where the college already has an approved certificate.

If, after reviewing the "Request to Add New Option Or Certificate Within Existing Program To Inventory," the Chancellor's Office believes the additional option, certificate, or degree is actually a new or substantially modified program, it may request additional information from the college before making an approval decision. Such additional information may include any of the elements on the "Application for Approval–New Occupational Program," or the "Application for Approval–New Transfer Program," as applicable.

If an option, specialization, track, etc. is not intended to appear by name on a student transcript or award, then Chancellor's Office review is not required and the option will not be entered in the Inventory of Approved and Projected Programs.

Substantial Modifications

Pursuant to Title 5, Section 55130, a program that has been approved by the Chancellor's Office must be submitted for re-approval if it is "modified in any substantial

way." A program is considered to be substantially modified in any of the following situations:

- The goals and objectives of the program are substantially changed;
- The job categories for which program completers qualify are substantially different from the job categories program completers previously qualified for; or
- The baccalaureate major to which students typically transfer is different from the baccalaureate major students previously typically transferred to.

If a program that has been primarily transfer-oriented proposes to change to become primarily occupational, or vice versa, that is a substantial modification. However, if a transfer program proposes to add an occupational component, but not change its primary transfer orientation; or an occupational program proposes to add a transfer component, but not change its primary occupational orientation, that is not a substantial modification for purposes of State approval.

Changes that are made to keep a program current with changing job requirements, evolving applications of technology within the same occupation, or evolving knowledge within a particular field, are not necessarily substantial modifications for this purpose. There is no specific numerical standard for determining when a program modification is "substantial." The fact that the number of required units has increased from 20 to 32 does not necessarily mean a program has been "substantially modified" so as to require re-approval; and the fact that only two new courses have been added does not necessarily mean that a program has *not* been "substantially modified." Rather, the determination must be made according to the criteria mentioned above.

The Chancellor's Office has adopted a form for reporting non-substantial changes to existing programs that colleges wish to have reflected on the Inventory of Approved and Projected Programs, such as name changes, changes in unit requirements, and even T.O.P. code changes when they do not represent substantial changes in the nature of the program. It is called "Non-Substantial Changes to Approved Program (or Reactivation of Inactive Program." (See Appendix A.) Although a college may submit this form at any time, the Chancellor's Office will also conduct a periodic inventory update, offering colleges the opportunity to supply such update information for all their programs at once.

Projected Programs

Reporting projected programs for inclusion on the inventory, while not required by law, will assist the Chancellor's Office in planning and will make more complete information available to the public. A program's having been listed as projected does not change any requirement of Chancellor's Office approval before it is offered; however, it may facilitate concurrence by the California Postsecondary Education Commission (CPEC). A form to add projected programs to the inventory is included in Appendix A.

Types of Programs

Occupational Programs

An occupational program is one whose primary goal is preparing students for employment immediately upon completing the program, and/or upgrading employment skills. In keeping with the intent of the "open course" regulations (see p.36), occupational programs should not be designed exclusively for persons already employed by a particular employer or in a particular industry, unless the college also makes available a parallel or comparable program which would enable a student who is not already employed by that employer or in that industry to obtain entry-level employment.

The "Application for Approval–New Occupational Program" form should be used for these programs. The chief differences from the transfer program application are that more detail and justification regarding program need are required, and a recommendation for approval from the Regional Occupational Consortium is required.

There are ten Regional Occupational Consortia, composed of vocational education and economic development administrators, faculty, and staff from each college in the region. Their activities are funded by the Chancellor's Office from federal Vocational and Technical Education Act (VTEA) and Economic Development funds, and among their purposes are to increase collaboration among colleges, encourage regional planning, offer professional development, and promote marketing of community college occupational programs.

The Chancellor's Office requires the recommendation of the Regional Occupational Consortium mainly as a means of carrying out its responsibility for ascertaining the need for the proposed program in regard to other community colleges in the area, as specified by Title 5, Section 55130(b)(6)(A). The Chancellor's Office will rely heavily upon the advice of Regional Occupational Consortium in regard to the approval criterion of need. If the review of evidence of need is thorough at the regional level, Chancellor's Office approval will be expedited. This regional review also serves as a quality check, so colleges can be assured that the design of their program curriculum is along the lines of current good practice as judged by their professional peers.

However, the requirement for a recommendation from the Regional Occupational Consortium is not absolute. If a program has been refused a recommendation for approval by a Regional Occupational Consortium, and the college feels the refusal was unjustified or unfair, it may submit the program to the Chancellor's Office without a positive regional recommendation. But the burden of justification will be on the college to show why the application should be approved without a positive recommendation.

Justification of the need for new occupational programs is specifically required through a job market study, pursuant to the Education Code:

78015. Job market study; area; scope

(a) (1) The governing board of a community college district, prior to establishing a vocational or occupational training program, shall conduct a job market study of the labor market area, as those terms are defined in Section 52301.5, in which it proposes to establish the program. The study shall use the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information. The study shall include a California Occupational Information System supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to ensure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction.

(2) The governing board of the community college district shall make copies of each job market study available to the public.

(b) Subsequent to completing the study required by this section and prior to establishing the program, the governing board of the community college district shall determine whether or not the study justifies the proposed vocational education program.

(c) If the governing board of the community college district determines that the job market study justifies the initiation of the proposed program, it shall determine, by resolution, whether the program shall be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to Section 8092.

Some occupational programs also have a transfer component. An item is included on the "Application for Approval–New Occupational Program" for colleges to provide information on the transfer applicability of programs that are primarily occupational.

Transfer Programs

A transfer program is a degree, or degree major, that primarily prepares students to major in a particular university subject matter, or that primarily provides baccalaureate-level general education. The form "Application for Approval–New Transfer Program" should be used for these programs. The chief differences are that no labor market or employer survey information is necessary, and transfer documentation is required.

The appropriateness of these programs for transfer may be documented either according to a programmatic articulation agreement, or according to a specific comparison of the coursework required at the community college and the university. Please see the instructions for the application form. A recommendation from the Regional Occupational Consortium is not required for these programs.

Transfer programs range widely in scope, from narrow specialty majors (for instance, Microbiology) to broad general education programs (for instance, "Liberal Arts"). All degree majors, of whatever scope, that may appear by name on a student transcript or diploma, require Chancellor's Office approval.

Most transfer programs are degree majors; however, it is possible for colleges to offer certificates that are primarily of value to transfer students.

Conjoint Programs

In the past, a conjoint program was defined as one offered in a multi-college district, where one college offered the advanced major coursework and other colleges in the district offered only introductory coursework. This definition is no longer used.

A conjoint program is now defined by the Chancellor's Office as one offered collaboratively by two or more colleges, whether in the same or different districts (but usually within the same geographical region). Each college participating in a conjoint program receives authorization to award the certificate or degree. A single approval application is submitted, but individual cover application forms with all required signatures must be prepared by each participating college. There are two basic curriculum arrangements:

- Each participating college offers the identical or nearly identical curriculum pattern, and each offers all or nearly all the courses required for the program. The collaboration is in designing a uniform curriculum, and submitting a unified approval application. The colleges may or may not share some resources for the program.

- Participating colleges offer different parts of the curriculum needed to complete the program, and students must take some courses at one college and some courses at another. Colleges share program resources; there is really only one program, but more than one college is authorized to confer the program award.

Other combinations and variations may arise, as long as the application is essentially for a single curriculum. A conjoint application may not be used for more than one college to file a single application for approval of significantly different programs. The Chancellor's Office welcomes reasonable innovations within a conjoint framework, so as to make better use of our system's overall resources, especially in specialized occupational fields or geographically contiguous areas.

When a conjoint program application has been approved for a particular geographical area, another college in the same area may request to be added to the conjoint approval within no more than one year from the date when the original conjoint application was received by the Chancellor's Office, provided that the program the college wishes to offer is essentially the same, and evidence has been provided, as part of either the original application or the supplemental request, that the job market is sufficient to justify another college's offering the same degree or certificate.

Apprenticeships

Apprenticeship credit and noncredit offerings have some unique elements regarding curriculum approval and funding approval. All apprenticeship credit programs and noncredit courses must obtain Chancellor's Office approval for each college responsible for the offerings. This is specifically required by the annual Budget Act.

The apprenticeship curriculum offered by community colleges, adult schools, and regional occupational program centers is referred to as *related and supplemental instruction* (RSI) in the apprenticeship law and in the Budget Act. In apprenticeship circles one sometimes hears reference to "Montoya Funding" when talking about *related and supplemental instruction*, but in the law there is no mention of the term "Montoya Funding." Apprenticeship RSI can be described as follows:

> The Apprenticeship related and supplemental instruction (RSI) supplements the on the job training with classroom and laboratory instruction which is intended to provide the apprentice with an understanding of the theoretical bases of the trade or craft and/or develop the ancillary skills that enable the apprentice to successfully practice the trade in the world at large.

An employer who has an apprenticeship RSI program at an adult school or regional occupational program center can apply to move the program to a community college. If the college wants approval to offer the program, it must follow the procedures set forth in this handbook.

Because apprenticeships receive approval from another State agency (the Department of Industrial Relations), they are not sent to the California Postsecondary Education Commission (CPEC) for review. While this may expedite curriculum approval, the RSI approval may take additional time.

If the district intends to receive apprenticeship RSI funding, the Budget Act states that the program or courses must have the approval of the Chancellor's Office. Thus the district must receive from the Chancellor's Office both 1) curriculum approval; and 2) RSI funding approval. For both these approvals, the application must contain documentation that the apprenticeship has been approved by the Division of Apprenticeship Standards within the Department of Industrial Relations. The approval documentation must list the specific campus approved for the RSI, and must be signed by the Chief of the DAS or his designee.

Because funding of apprenticeship programs involves long range planning to provide adequate funding, it is important for the community college district to notify the Chancellor's Office apprenticeship coordinator as soon as the district decides to give the employer or program sponsor a letter of intent to be the Local Educational Agency (LEA). This notification is to be used when working with a new apprenticeship program or applying for the transfer of an existing program from another community college, adult school, or regional occupational program center.

Special Circumstances

Transferred Programs

As stated in Title 5 regulations, in a multi-college district, approval is granted only for the individual college. There is no difference in new program approval requirements resulting from the fact that another similar or identical program may already exist at another college of the same district.

However, if a district wishes to *transfer* a program from one of its colleges to another, all of the approval criteria required for a new program will not need to be addressed. In this case, the college proposing to offer the program should submit the appropriate application form (for a vocational or transfer program), with all required signatures and with the planning summary section completed. However, only the following approval criteria need to be addressed:

- Statement of Program Goals and Objectives
- Catalog Description
- Program Requirements
- Outlines of Records for Required Courses
- Recommendation of Regional Consortium (for vocational program)

In addition, the college should supply an explanation of the reason for the transfer of the program, and of any anticipated effects on other colleges.

This simplified approval procedure does not apply to the transfer of a program from one district to another. Such a case requires a regular new program approval application.

Conversion of Center to New College

It is anticipated that in the coming years a number of districts will apply to the Board of Governors for authorization to convert an existing educational center into a full community college. In such a case, it is necessary to establish a new inventory of approved programs for the new college.

The approved status of programs offered at a center derives from the approved status of those programs reflected on the inventory of the "parent" college. When a new college is converted from a center, it is not necessary to obtain new approvals for all programs. Rather, establishing a program inventory for the new college involves separating the approvals belonging to the parent college and the new college.

When a new college created from a center assumes independent existence (generally, when it receives separate accreditation or begins reporting data separately to the Chancellor's Office Management Information System), the college should provide the

Chancellor's Office Curriculum Standards unit with a list of all programs then being offered. An inventory of approved programs for the new college will then be established, based on those programs offered at the new college that had previously been approved for the parent college, plus any new approvals that have been given specifically for the new college.

However, the new college will start out with approvals only for those parent college programs that are then fully operational at the site of the new college. This means that all coursework necessary to complete the program is offered at that site. No parent college program approvals will be assigned to the new college "on spec," that is, on the hope or possibility that such a program will be set up at the new college a few years later. For example, if the parent college had an Industrial Technology program, but Industrial Technology was not offered as a full program on-site at the educational center before its conversion, then the new college will not receive an inventory authorization for Industrial Technology, even if it offers a few of the courses and plans to set up a full-fledged Industrial Technology program in the future. When the new college is actually ready to establish such a program, it must submit a request for approval.

Programs that are offered in full at both the parent college and the new college at the time of conversion (including academic majors and degrees) will be listed as approved on both inventories. However, any program that has only been offered in full at the center will be removed from the inventory of the parent college, even if the parent college plans to set up a full-fledged program of the same type on-site in the future. When the parent college is actually ready to establish such a program at its site, it must submit a request for approval.

At the time of converting a center to a new college, the approved status of all programs at both sites will be reviewed, and any degrees or certificates that have not been properly approved, at either location, will have to obtain approval before the Curriculum Standards unit will recommend approval of the new college.

Inactive Programs

A program approval is effective until the program is "discontinued," according to Title 5, Section 55130. To implement this provision, a program that is not currently offered may be retained for a maximum of three years on the Inventory of Approved and Projected Programs with an "Inactive" designation, if the college has a specific intention to offer the program again within the near future. The form "Non-Substantial Changes to Approved Program (or Reactivation of Inactive Program)" (Appendix A, p. A-43) may be used to restore such a program to active status. Programs that have not been offered for more than three years will be removed from the inventory.

Approval Criteria

This section discusses the five criteria used by the Chancellor's Office to approve programs. A college must document that a proposed program meets all of these criteria before it will be approved. These criteria also broadly apply to the review of new courses.

These five criteria have been derived from statute, regulation, intersegmental agreements, guidelines provided by transfer institutions and industry, and the experience of those involved in the intersegmental and occupational review of courses, as well as the standards of good practice established in the field of curriculum design.

Appropriateness to Mission

The stated goals and objectives of the proposed program, or the objectives defined in the course Outline of Record, are consistent with the mission of the community colleges as established by the Legislature in the Education Code:

> **66010.4.Missions and function of public and independent institutions of higher education**
>
> The missions and functions of California's public and independent segments, and their respective institutions of higher education shall be differentiated as follows:
>
> (a) (1) The California Community Colleges shall, as a primary mission, offer academic and vocational instruction at the lower division level for both younger and older students, including those persons returning to school. Public community colleges shall offer instruction through but not beyond the second year of college. These institutions may grant the associate in arts and the associate in science degree.
>
> (2) In addition to the primary mission of academic and vocational instruction, the community colleges shall offer instruction and courses to achieve all of the following:
>
> (A) The provision of remedial instruction for those in need of it and, in conjunction with the school districts, instruction in English as a second language, adult noncredit instruction, and support services which help students succeed at the postsecondary level are reaffirmed and supported as essential and important functions of the community colleges.
>
> (B) The provision of adult noncredit education curricula in areas defined as being in the state's interest is an essential and important function of the community colleges.
>
> (C) The provision of community services courses and programs is an authorized function of the community colleges so long as their provision is compatible with an institution's ability to meet its obligations in its primary missions.
>
> (3) A primary mission of the California Community Colleges is to advance California's economic growth and global competitiveness through education, training, and services that contribute to continuous work force improvement.
>
> (4) The community colleges may conduct to the extent that state funding is provided, institutional research concerning student learning and retention as is needed to facilitate their educational missions . . .

Curriculum falls within the mission when designed to be taught to lower division students for credit towards the degree, for purposes of transfer, occupational preparation, or career supplementation or upgrade, rather than for avocational purposes. Non degree-applicable courses that develop the ability of enrolled students to succeed in college level courses, and adult noncredit instruction also fall within the mission.

For courses to be mission appropriate, they must not be designed primarily to provide group activities or services (e.g. physical activity, counseling, or assessment), but rather to provide systematic instruction in a body of content or skills whose mastery forms the basis of the student grade. Avocational, community service, and contract classes do not qualify for state funding, but may fall within the mission if they are self-supporting.

Problems with the mission-appropriateness of a proposed program do not arise often, but when they do arise, they tend to be serious problems for approval. Many instances of such problems are because:

- A program or course appears to be directed at the wrong level for community colleges; that is, to be directed either at the upper-division university level or at the primary or secondary school level; or
- A program or course appears to be primarily avocational or recreational.
- A program or course does not appear to address a valid transfer, occupational, or basic skills purpose.

Programs and courses should also be congruent with the mission statement and comprehensive or master plan of the college and district.

Need

There is a demonstrable need for a course or program that meets the stated goals and objectives, at this time, and in the region the college proposes to serve with the program.

For transfer curriculum, need is presumed to exist if there is student demand for a program or course and its transfer applicability for a university major has been demonstrated; i.e., if it has been shown that the coursework required for the community college program substantially satisfies the lower-division coursework requirements for the corresponding university major.

For programs that are primarily occupational, need must be demonstrated by supplying labor market information, an employer survey, and a job market analysis, or other comparable information that shows that jobs are available for program completers. In addition, a recommendation for approval must be obtained from the Regional Occupational Consortium.

The ordinary expectation is that labor market need must be shown within the service area of the individual college. However, if cooperative planning with neighboring colleges has occurred, labor market evidence for the region as a whole may be sufficient. (The boundaries of the 10 regions for vocational education, economic development, and workforce preparation purposes may be viewed on the World Wide Web at **http://www.cccco.edu/cccco/voced/Advisors/RC/rc.htm**.) Statewide or national labor market evidence may be included as supplementary support, but is not ordinarily acceptable in itself without specific service area or regional evidence of need. If the college believes the program has statewide or national importance and wishes to substitute statewide or national labor market evidence for local evidence, an explicit justification of why this is appropriate must be included.

Here are examples of the types of evidence of occupational need that may be submitted:

- Statistical projections of growth in specific jobs by county (or labor market area) from the Employment Development Department's Labor Market Information system.
- Employer surveys.
- Industry studies.
- Regional economic studies.
- Letters from employers.
- Minutes of industry advisory committee meetings.
- Job advertisements, from newspapers or the World Wide Web.
- Newspaper or magazine articles on industry or employment trends.
- Studies or data from licensing agencies or professional associations.

Further specifics on occupational need are found in the Instructions for completing the application form for approval of a new occupational program (Appendix A).

Quality

Outlines of Record for each course meet all the requirements of Title 5, especially Sections 55002 and 55805.5. (See "Standards for All Courses, " p. 26.)

The program is designed so that successfully completing the program requirements will enable students to fulfill the program goals and objectives.

Courses and programs are integrated, with courses designed to effectively meet their objectives and the goals and objectives of the programs for which they are required.

Feasibility

The college has the resources realistically to maintain the program at the level of quality described in the new program application. This includes funding, faculty, and facilities and equipment.

The college commits to offering all the required courses for the program at least once every two years, unless the goals and rationale for the particular program justify a longer time frame as being in the best interests of students.

In the case of courses, the college has the resources needed to offer the course at the level of quality described in the Outline of Record.

Compliance

The design of the program or the course is not in conflict with any law. This includes both state and federal laws, and both statutes and regulations. It includes laws particularly affecting community colleges, as well as any other law that may affect the program or course (for example, licensing laws in a particular occupation).

Some of the areas of law in which compliance conflicts have arisen include:

- Open course regulations
- Course repeatability regulations
- Regulations requiring active supervision by a qualified instructor.
- Statutes and regulations on student fees.
- Prerequisite and enrollment limitation regulations.
- Particular provisions of the practice act for a health occupation.
- Constitutional prohibitions against political and religious activities in public instruction.

Because a number of compliance problems have arisen in the areas of fees and program admissions procedures, the Chancellor's Office has added a section to the program approval application asking colleges to discuss the fees charged and the program admission policies in programs for which approval is requested.

Chancellor's Office Procedures

Three copies of each program approval application and all supporting materials must be submitted, for new occupational and transfer programs. Two copies of the form and all attachments must be submitted for the "Request to Add New Option or Certificate Within Existing Program to Inventory," and for apprenticeship approval applications. For "Non-Substantial Changes to Approved Program (or Reactivation of Inactive Program)," only one copy of the form needs to be submitted.

The Chancellor's Office will carry out its initial review of applications for approval of new programs within no more than 60 days. (However, there is no authority for districts to assume that a program is approved if a response is not received within a certain time. Approval requires a positive response.) This 60 days does not include time that may be necessary to obtain missing information from the college if the original submission was not complete, or to obtain answers to questions relevant to approval if the initial submission did not fully answer the questions. Inquiries on the status of a program approval application should be directed to the curriculum analyst.

Approval applications will be reviewed by the specialist or program assistant in academic planning, who will make recommendations for approval or denial to the Dean of Curriculum Standards and Instructional Services. In addition, the Chancellor's Office may ask a person knowledgeable in the subject matter area of the proposed program to read the application and provide consultation, for purposes of securing understanding of the discipline, and expediting approval. This may be another specialist or other staff member within the Chancellor's Office, or any other person with appropriate subject matter expertise.

The Chancellor's Office may also provide a copy of a college's approval application to another college that requests to see applications in a particular subject matter area.

If the Chancellor's Office needs to contact the college to request information or discuss some aspect of the application, the specialist or analyst will contact the person who is listed on the application as the contact person. That is why it is important that the person so listed be the one who has the best knowledge of the program's background and details. However, when formal notifications are sent regarding the approval status of the program, they will be sent to the college's chief instructional officer, with copies to the contact person and any other appropriate parties.

The Chancellor's Office may take various actions in response to a program approval application:

- Approve – Program is entered on inventory with no expiration date.
- Deny – Application indicates major problems which prevent approval. No specific revisions which would result in approval are immediately apparent.
- Request changes before approving – This is effectively a denial, but revisions that would make the program approvable are apparent and are suggested. This is sometimes the case when specific compliance issues are found.
- Approve for a limited duration – If the Chancellor's Office believes the program requires a trial period, it may approve for a period of time and require a review report before that period expires, in order to decide on extension or permanent approval. Such a trial period might be from one to three years. Program is entered on inventory with an expiration date.
- Approve with a restriction – If the Chancellor's Office determines that the program is approvable overall but that a certain category of coursework or a

certain program element, if added, would make it unapprovable, the Chancellor's Office may approve subject to a restriction that that element or that category of courses may not be added.

It is expected, based on past experience, that the great majority of program approval applications will be approved. The Chancellor's Office believes that colleges have a right to have their new programs approved in a quick and efficient manner, unless they present specific problems affecting system or State interests. If a program is denied, it is always possible for a college to redesign and resubmit it.

At the same time, also based on past experience, it is predictable that a high percentage of program approval applications will arrive at the Chancellor's Office with some information or some required element missing, or inadequately explained. The college that is careful to ensure that all required signatures are provided, that all necessary copies and attachments are enclosed, and that each required section of the narrative is clear and adequate, will save itself and the Chancellor's Office much time and energy.

Role of CPEC

The California Postsecondary Education Commission (CPEC) is responsible for reviewing and providing a recommendation regarding approval for most new programs in any segment of public higher education, according to the Education Code:

> **66904. Legislative intent**
>
> . . . All proposals for new postsecondary educational programs shall be forwarded to the commission for review together with supporting materials and documents that the commission may specify. The commission shall review the proposals within a reasonable length of time, which time shall not exceed 60 days following submission of the program and the specified materials and documents. . . .

CPEC's response to program approval request is termed "concurrence" or "nonconcurrence." Although the Chancellor's Office has final approval authority, it will not ordinarily approve a program against CPEC's nonconcurrence. However, if CPEC is unable to complete its review and respond one way or another within sixty days, the Chancellor's Office will issue a final approval.

When the Chancellor's Office wishes to approve a program, it will send a letter to the chief instructional officer, notifying the college that the Chancellor's Office proposes to approve and has forwarded the application and supporting materials to CPEC. When CPEC has responded with concurrence or nonconcurrence, the Chancellor's Office will send another letter to the chief instructional officer, notifying the college of final approval, or of delay or denial of approval if CPEC's response indicates nonoccurrence. If CPEC has not responded within sixty days, the Chancellor's Office will send a letter of final approval in the absence of CPEC action.

Additional options or certificates within an existing program, and new apprenticeship programs, are not subject to CPEC review.

A statement of CPEC's principles regarding its role in the review of new programs is included as Appendix B.

What Does Program Approval Authorize?

Colleges that receive Chancellor's Office approval of a new program are authorized to:

- Collect State apportionment for the required courses and restricted electives that are part of the program. [Education Code Section 70901(b)(10), Title 5 Sections 55130, 58050.] Colleges that do not secure the required program approval are subject to loss of revenues through audit or administrative action.
- Award a degree or certificate with the designated title, and require specific courses for the completion of such degree or certificate. [Education Code Sections 70901(b)(10), 70902(b)(2).] Degree or certificate awards that are made in programs for which the required approval has not been secured will not be recognized as valid for any audit or accountability purpose.
- In past editions of this handbook, it was said that colleges require Chancellor's Office approval before publishing the description of a new program in the catalog or publicizing a new program in other ways. There is no direct legal authority for such a restriction. However, since there is a direct legal requirement for approval before the program is offered, colleges should generally not publish the fact that a program exists, before it is approved.

  In some cases, colleges have announced programs in a catalog or class schedule before Chancellor's Office approval has been obtained. Although there is no specific sanction against such an action, it is dangerous and the Chancellor's Office advises against it, since, if the program is not approved before the announced starting date, the college will not legally be able to offer it, and catalog or schedule users will have to be notified of the error. At a minimum, in any such case, the publication should carry a warning that the proposed program has not yet been approved.

Chancellor's Office approval of a program is formally recognized in two ways: by a final letter of approval from the Chancellor's Office to the chief instructional officer of the college, giving the unique program identifier number, and by the program's being entered on the Chancellor's Office Inventory of Approved and Projected Programs. Colleges should verify that both of these formal recognitions have been accomplished. The Inventory is accessible on the World Wide Web at:

http://www.cccco.edu/cccco/esed/curric/inventory.htm

The Web display will be brought up to date with the latest approvals every two weeks.

II. Credit Course Approval

Local Approval and Chancellor's Office Approval

Education Code Section 70901(b)(10) requires that the Board of Governors "Review and approve all educational programs offered by community college districts, *and all courses that are not offered as part of an educational program approved by the board of governors*" (emphasis added). In Title 5, Section 55100, the Board of Governors has delegated this approval responsibility to the Chancellor:

> **55100. Course Approval.**
>
> Except as provided in subsection (b) and section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.
>
> (b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).
>
> (c) For each course approved by a district, whether or not approval by the Chancellor is required, the district shall designate the appropriate classification of the course or activity in accordance with section 55001.

"Except as provided . . . in Section 55160" refers to community services classes.

A course is considered to be "part of an approved program" when it is required or is on a list of restricted electives, specified by course name or number, from which students are required to choose to achieve a degree or certificate in a program approved by the Chancellor's Office.

A program is considered "approved by the Chancellor's Office" when it is listed as approved, and has been assigned a unique identifying code, on the Chancellor's Office Inventory of Approved and Projected Programs. The approved status of any program may be verified on the World Wide Web at

http://www.cccco.edu/cccco/esed/curric/inventory.htm.

Courses Part of an Approved Program

Pursuant to Title 5 Section 55100, the governing board of a community college district may establish policies for, and may approve, courses that are part of an approved program, without separate approval by the Chancellor's Office. However, local approval

of courses must include review by the curriculum committee established according to Title 5 Section 55002. The curriculum committee and the governing board should determine that the course meets the standards of Sections 55002, 55002.5, 55182, 55805.5 and all other applicable provisions of Title 5. In addition, all courses should be appropriate to the mission of the community college system, as defined in Education Code Section 66010.4 (see p. 15).

Blanket Approval of Certain Stand-alone Courses

When a course is *not* part of an approved program as defined above, it is sometimes referred to as a "stand-alone course." By law, stand-alone courses are subject to Chancellor's Office approval. However, the Chancellor's Office has determined that, under limited circumstances, review of each individual stand-alone course is not necessary to ensure reasonable State accountability. Therefore, blanket approval is provided in these circumstances.

The Chancellor's Office hereby waives individual approval of new stand-alone courses in the following categories only, and authorizes all colleges in the system to add such courses without individual course approval:

1) Courses in non-vocational T.O.P. codes, which are accepted for major requirements or general education requirements at any California State University or University of California campus. Courses that are only transferable for elective credit are not included in this blanket approval. When a new community college course, in a non-vocational T.O.P. code, has been identified as similar to a specific course offered for general education or major purposes at a CSU or UC campus, and the community college curriculum committee has applied for the course to be accepted for general education or major purposes at CSU or UC, or for the Intersegmental General Education Transfer Curriculum (IGETC), the community college shall automatically be entitled to offer the course for a period of no more than fifteen months from the date of approval by the curriculum committee, without separate course approval from the Chancellor's Office, while the course is evaluated by CSU or UC for articulation. After that period, if the course is accepted by CSU or UC, or for IGETC, it is authorized under the permanent blanket approval for such courses. If it is not accepted by CSU or UC, the course may not continue to be offered except with individual stand-alone approval from the Chancellor's Office. This automatic limited-duration approval applies only to courses that have been identified as similar to courses offered for general education or major purposes at CSU or UC. Other non-vocational stand-alone courses, even if intended for general education or major purposes, must either actually be accepted by CSU or UC, or be individually approved by the Chancellor's Office, before they are offered.

2) Courses in vocational T.O.P. codes, when the college has fewer than 12 semester units or 18 quarter units of stand-alone coursework in the same T.O.P. code.

3) Cooperative work experience courses (both occupational work experience and general work experience), provided that the district operates its work experience program in accordance with its cooperative work experience plan, as approved by the Chancellor's Office. (See "Cooperative Work Experience Education," p. 49.)

4) Experimental courses, special topics courses, and special study courses. These courses may be offered without individual Chancellor's Office approval, provided that a course outline of record for the category is on file locally, all regular local curriculum approval processes are followed, and the categories are used for the purposes intended. In general, an experimental course is one for which full information on some approval criterion, such as feasibility or need, cannot be determined until the course is actually offered on a trial basis. An experimental course should generally be submitted for approval as a regular course, or discontinued, within one year. A special topics course is one which employs a consistent disciplinary framework, but for which the specific focus may change from term to term. An example is a special topics literature course in which the focus is on a different author each term. If a particular topic is offered regularly, it should be approved as a separate course. A special study course is one that involves an individual student or small group of students in study, research, or activities beyond the scope of regularly offered courses, pursuant to an agreement among the college, faculty member, and student(s).

5) Mandated public safety training courses, offered specifically to satisfy certification requirements of the California Commission on Peace Officers Standards and Training, or the California Fire Service Training and Education System, provided such courses are conducted according to the curricula and standards approved and disseminated by those agencies. While this blanket approval shall apply to stand-alone courses of this type, the establishment of a public safety training academy requiring a sequence of coursework totaling 18 semester units or more shall continue to be considered establishment of an occupational program, subject to Chancellor's Office program approval.

Courses that are part of a program that has been disapproved by the Chancellor's Office are not included in the blanket approval, even if they otherwise fit one of the above criteria. Such courses may be submitted for consideration of individual stand-alone approval.

The curriculum committee should review each new course to see that it meets the standards of Title 5 regulations, and should also determine whether the course falls into one of the blanket approval categories. If it does not, or if it is part of a program that has been disapproved by the Chancellor's Office, it must be submitted individually to the Chancellor's Office for approval before being offered.

The Chancellor's Office may from time to time review a sample of stand-alone courses added to the curriculum under the conditions of this blanket approval. If unusual problems are found, the Chancellor's Office may cancel this authorization with respect to an individual college.

Stand-alone Courses That Require Chancellor's Office Approval

New courses not part of an approved program, other than those that fall into one of the categories given blanket approval above, must be submitted to the Chancellor's Office for approval before being offered. This includes all non-degree-applicable courses. By definition, these courses are not part of any approved program.

Stand-alone courses will be reviewed using the same five broad criteria that are used for program approval, and which are discussed starting on p. 15:

Mission
Need
Quality
Feasibility
Compliance

The Chancellor's Office will respond to requests for stand-alone course approval within 30 calendar days from the date the request is received by the Chancellor's Office. If no response is provided within 30 days, the course shall be approved. The 30-day response need not always be final approval or denial. In cases where unusual difficulties may arise, the 30-day Chancellor's Office response may be that additional time is required to resolve specific problems.

The form to apply for approval of a stand-alone course is in Appendix C of this handbook.

New procedures for approval of stand-alone courses were promulgated by an administrative memo in August, 2000. Subsequently, various questions were raised by persons involved in local curriculum procedures. The Chancellor's Office has published a set of questions and answers on this subject which are included as Appendix D of this handbook. These Q&A's can also be viewed on the World Wide Web. Go to the Chancellor's Office web site at **www.cccco.edu**, click on "Divisions and Units," then "Educational Services and Economic Development," then "Curriculum Standards and Instructional Services."

Standards for All Courses

It is the responsibility of the governing board of each community college district, under the Education Code, to approve courses offered in that district:

70902. Governing boards; rules and regulations; duties; authority; delegation.

. . . the governing board of each community college district shall do all of the following: . . . (2) Establish policies for and approve courses of instruction and educational programs. The educational programs shall be submitted to the board of governors for approval. Courses of instruction that are not offered in approved educational programs shall be submitted to the board of governors for approval. The governing board shall establish policies for, and approve, individual courses that are offered in approved educational programs without referral to the board of governors.

Title 5 of the California Code of Regulations further provides that every course must be recommended for approval by a curriculum committee before it goes to the governing board for approval:

55002. Standards and Criteria for Courses and Classes.

. . . (1) Curriculum Committee. The college and/or district curriculum committee recommending the course shall be established by the mutual agreement of the college and/or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college and/or district administration and the academic senate.

The curriculum committee and the governing board, and the district's and college's academic administrators (as delegated by the governing board) are thus together responsible for ensuring that regulatory standards are met for the applicable category of community college credit, and also that courses meet other standards, such as standards for university transfer, general education certification, and articulation for particular majors.

The Academic Senate for California Community Colleges has published a paper called "Components of a Model Course Outline of Record" (November 1995) which can be useful to curriculum committees in carrying out their responsibilities for course approval.

Associate Degree Applicable Courses

For any course that will apply toward the associate degree, Title 5 regulations require that the curriculum committee determine that the coursework is truly at a college level, and that the course incorporates critical thinking. Every course is required to have an official outline of record which includes specified elements:

55002. Standards and Criteria for Courses and Classes.

(a) Associate Degree Credit Course. An associate degree credit course is a course which has been designated as appropriate to the associate degree in accordance with the requirements of Section 55805.5 and which has been recommended by the college and/or district curriculum committee and approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission.

. . . (2) The college and/or district curriculum committee shall recommend approval of the course for associate degree credit if it meets the following standards:

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays, or in courses where the curriculum committee deems them to be appropriate, by problem solving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board, between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course also requires a minimum of three hours of work per week, including class time for each unit of credit, prorated for short-term, laboratory and activity courses.

(C) Intensity. The course treats subject matter with a scope and intensity that require students to study independently outside of class time.

(D) Prerequisites and Corequisites. When the college and/or district curriculum committee, determines, based on a review of the course Outline of Record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course, then the course shall require prerequisites or corequisites that are established, reviewed, and applied in accordance with the requirements of Article 2.5 (commencing with section 55200) of this Subchapter.

(E) Basic Skills Requirements. If success in the course is dependent upon communication or computational skills, then the course shall require, consistent with the provisions of Article 2.5 (commencing with section 55200) of this Subchapter, as prerequisites or corequisites eligibility for enrollment in associate degree credit courses in English and/or mathematics, respectively.

(F) Difficulty. The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level.

(G) Level. The course requires learning skills and a vocabulary that the curriculum committee deems appropriate for a college course.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside-of-class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Conduct of Course. Each section of the course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Chapter 2 (commencing with Section 51000), sections 55761-55763 and 58161 of this Division.

There is also a description in Title 5 of the types of courses that may be considered associate degree-applicable. Courses that fall outside the categories listed in the regulation may not be offered for associate degree credit:

55805.5. **Types of Courses Appropriate to the Associate Degree.**

The criteria established by the governing board of a community college district to implement its philosophy on the associate degree shall permit only courses that conform to the standards specified in Section 55002 (a) and that fall into the following categories to be offered for associate degree credit:

(a) All lower division courses accepted toward the baccalaureate degree by the California State University or University of California or designed to be offered for transfer.

(b) Courses that apply to the major in non-baccalaureate occupational fields.

(c) English courses not more than one level below the first transfer level composition course, typically known as English 1A. Each student may count only one such course as credit toward the associate degree.

(d) All mathematical courses above and including Elementary Algebra.

(e) Credit courses in English and mathematics taught in or on behalf of other departments and which, as determined by the local governing board, require entrance skills at a level equivalent to those necessary for the courses specified in sections (c) and (d) above.

In paragraph (b) of the section, the Chancellor's Office interprets the phrase "courses that apply to the major in non-baccalaureate occupational fields" to mean courses within a T.O.P. code designated as vocational, which are part of an approved program (degree or certificate), or are approved by the Chancellor's Office, either under a blanket approval, or by individual course approval.

Paragraph (e) of this section means that courses whose content is primarily English or mathematics, regardless of what the course is called or what department it is taught in, may not be applied for associate degree credit unless they are at a level comparable to the course whose completion satisfies the entrance requirements for transferable freshman composition (in the case of English), or comparable to elementary algebra (in the case of math). This rule applies to English as a Second Language as well as all other disciplines. For English and ESL, the standard is interpreted to mean that the course must require the student to write several full-length essays for it to be associate degree-applicable. Thus, courses whose primary focus is the acquisition of spoken English skills, or writing skills at the sentence and paragraph level, are not applicable to the associate degree.

Nondegree-Applicable Credit Courses

The category of credit, non degree-applicable courses was created by regulatory amendments adopted by the Board of Governors in 1986. Its primary purposes were two: to allow community colleges students to receive "workload credit" (which would apply toward maintaining the unit load necessary to receive financial aid) for

precollegiate basic skills (or "remedial") courses; and to safeguard the integrity of the associate degree by ensuring that such courses were not counted within the degree.

Title 5 prescribes that these courses must provide instruction in critical thinking, must prepare students to study independently outside of class, and must include reading and writing assignments. However, the course materials and level of difficulty do not have to be at the college level. In addition, the regulation includes a specific list of the types of courses appropriate for the non degree-applicable credit category:

55002. Standards and Criteria for Courses and Classes.

(b) Nondegree Credit Course. A credit course designated by the governing board as not applicable to the associate degree is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under Subdivision (a)(1) of this section) and is approved by the district governing board and falls within one of the categories described in Subdivision (1) of this subsection.

(1) Types of Courses. Non-degree applicable credit courses are:

(A) Precollegiate basic skills courses as defined in section 55502(d) of this division

(B) Courses designed to enable students to succeed in college-level work (including, but not limited to, college orientation and guidance courses, and discipline-specific preparatory courses such as biology, history, or electronics) that integrate basic skills instruction throughout and assign grades partly upon the demonstrated mastery of those skills.

(C) Precollegiate occupational preparation courses designed to provide foundation skills for students preparing for entry into college-level occupational courses or programs

(D) Essential occupational instruction for which meeting the standards of section 55002(a) is neither necessary nor required.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the standards which follow. In order to be eligible for state apportionment, such courses must be approved (as courses not part of programs) by the Chancellor's Office as provided in section 55100 of this Division.

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in the subject matter and the ability to demonstrate that proficiency, at least in part, by means of written expression that may include essays, or, in courses where the curriculum committee deems them to be appropriate, by problem solving exercises or skills demonstrated by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course requires a minimum of three hours of student work per week, per unit, including class time and/or demonstrated competency, for each unit of credit, prorated for short-term laboratory, and activity courses.

(C) Intensity. The course provides instruction in critical thinking and generally treats subject matter with a scope and intensity that prepare students to study independently outside of class time and includes reading and writing assignments and homework. In particular, the assignments will be sufficiently rigorous that students completing each such course successfully will have acquired the skills necessary to successfully complete college-level work upon completion of the required sequence of such courses.

(D) Prerequisites and corequisites. When the college and/or district curriculum committee deems appropriate, the course may require prerequisites or corequisites for the course that are established, reviewed, and applied in accordance with Article 2.5 (commencing with section 55200) of this Subchapter.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside-of- class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students. Taken together, these course specifications shall be such as to typically enable any student who successfully completes all of the assigned work prescribed in the outline of record to successfully meet the course objectives.

(4) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Division 2 (commencing with Section 5100), Sections 55761-55763 and 58161 of this Division.

Relationship of Hours to Units

Title 5 contains a regulation, carried over from a previous Education Code section originally enacted in the 1930s, that defines the relationship of hours of student learning time to units earned in a community college:

55002.5. Credit Hour; Allowance for Shorter Term.

One credit hour of community college work is approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks. Where a term is more or less than 16 weeks, more or less than one credit hour shall be allowed in the same ratio that the length of the term is to 16 weeks.

This relationship applies to both degree-applicable credit and nondegree-credit courses. In this section, "recitation" includes the method of instruction usually called "lecture."

For purposes of classroom or laboratory time, an hour is defined by Title 5 fiscal regulations, Section 58023, as 50 minutes. However, for out-of-class study time, an hour retains its ordinary meaning of 60 minutes.

The essence of the relationship expressed in this section is that each unit of credit requires approximately 48 hours of student learning time. As a matter of standard university practice (but not as a matter of law), in traditional academic disciplines (such as English, history, mathematics, etc.), it is expected that one third of these hours will occur in the classroom ("recitation" or lecture), and two-thirds of them will occur outside the classroom ("study" or homework).

Thus, for a one-unit academic course, the following hours would normally be expected:

16 hours of classroom time
32 hours of homework
48 hours total student learning time

Many traditional academic courses award three units. The number of hours expected for such a course would be:

48 hours of classroom time
96 hours of homework
144 hours total student learning time

Many other combinations and schedules are possible. For instance, suppose a college offers an accelerated course that meets for two hours of lecture per day over ten days.

20 hours of classroom time
28 hours of homework must be assigned
48 hours total student learning time for one unit

Or an intensive weekend seminar could be offered and generate one-half unit:

16 hours of classroom time (two 8-hour days)
8 hours of homework must be assigned
24 hours total student learning time for one-half unit

It is not appropriate to offer accelerated courses that, by their design, would not permit the student to do the amount of out-of-class homework required to meet the hours-to-units relationship of Title 5.

These configurations illustrate the hours required for lecture-type courses in semester-length terms. For each unit of credit in a college using the quarter system, 10 2/3 hours of classroom time and 21 1/3 hours of homework would be expected in a lecture-type course. For a three-unit course on the quarter system, 32 hours of classroom time and 64 hours of homework would be expected.

Naturally, it is impossible to predict exactly how long it will take for any individual student to do a given amount of assigned study or homework; therefore, these ratios will not hold true for every individual. However, faculty are required to attempt to assign an

amount of homework that they believe would take the average student the requisite amount of time to complete.

In laboratory or activity courses, it has not traditionally been expected that the student will study outside the classroom. Therefore, the number of units earned is generally based entirely on the number of hours of laboratory or activity work performed on campus under the immediate supervision and control of a qualified academic employee. For example, 48 hours of chemistry laboratory (three hours per week over 16 weeks) earns one semester unit of credit, whereas the same number of hours of chemistry lecture would earn three units.

However, some community colleges have assigned a unit of credit for fewer than three hours a week of laboratory or activity, in certain courses where it is expected that students will do some homework, but not as much as in a traditional lecture course. For instance, in a computer applications course which is primarily laboratory, there may nonetheless be a certain amount of reading involved outside of class. The college might thus award one unit of credit for only two hours per week of hands-on computer instruction, as long as the instructor assigns one hour per week of out-of-class study. There is no prohibition against this practice. However, it must be used with caution, particularly in regard to transferable laboratory courses. In the natural sciences, it is standard university practice to base the number of units awarded only on the in-class hours. Any alteration of this relationship for such a course could jeopardize its acceptability for major or general education purposes at the four-year level.

In the California Community College system, the number of hours per unit is often expressed as slightly higher than the figures cited in this section. That is because, although the controlling regulation describes a 16-week semester, our finance laws require that our semesters average 17.5 weeks rather than 16 (and that our quarters average 11 2/3 weeks rather than 10 2/3). Therefore, the number of hours of lecture instruction for a three-unit course, for instance, is often cited as 51 to 54 (three hours per week for 17 weeks or 18 weeks), rather than 48. However, community colleges are authorized to reduce their instructional calendars by up to 15 days per year for "flex time" (faculty professional development activities). Most colleges do not use the maximum allowable 15 days for "flex time," but even one that did would remain in compliance with the hours-per-unit regulation, since the minimum learning time requirement is predicated on a term of 16 weeks.

Course Repetition

Title 5 "Standards of Scholarship" regulations provide that any course may be repeated if the student received a "D," "F," or "NC" grade the first time (see Sections 55761-55762). In addition, a district may allow a student to repeat a course even if he or she achieved a satisfactory grade (such as a "C") the first time, if certain justifying circumstances exist (see Section 55763). Another regulation in the "Fiscal Support" chapter of Title 5 specifies that State apportionment may only be claimed for one repetition in either of these circumstances.

Title 5, Section 58161 defines more precisely these circumstances and others under which such repetition may occur and may be claimed for State apportionment:

58161. State Apportionment for Course Repetition.

(a) Except as specifically authorized by statute or by this section, no state apportionment shall be allowed for the attendance of a student in a course in which the student has previously received a grade from the district.

(b) State apportionment may be claimed for the attendance of a student in a course in which the student has received a grade only if:

(1) The student is repeating the course to alleviate substandard work which has been recorded on the student's record. The term "substandard" shall be defined as course work for which the grading symbol "D," "F," or "N/C" has been recorded; or . . .

This paragraph establishes that any course may be repeated and State apportionment claimed once when the student has received a substandard grade the first time. No special notation need be put on the course outline of record to establish this; it is an across-the-board rule.

The following paragraphs establishes that a district may (but is not required to) allow a student to repeat a course and claim State apportionment once even if he or she received a satisfactory grade the first time, under certain circumstances. Students sometimes want to do this in order to boost their chances of admission to a selective program, or because recency is required for a prerequisite for entrance into a program:

58161. State Apportionment for Course Repetition (cont'd)

. . . . (2) The district finds that the student's previous grade is, at least in part, the result of extenuating circumstances. Extenuating circumstances are verified cases of accidents, illness, or other circumstances beyond the control of the student; or

(3) The district has determined that a student should repeat a course because there has been a significant lapse of time since the student previously took the course.

The attendance of students repeating a course as authorized by this subsection may be claimed only once for state apportionment.

However, Section 55763 provides that when a course is repeated under these paragraphs (the student did not receive a substandard grade the first time), the grade received for the repetition shall not be counted in calculating the student's grade point average.

In 1997, a provision was inserted in Section 55753 requiring districts to allow indefinite repetition "in instances when such repetition is necessary for a student to meet a legally mandated training requirements as a condition of continued paid or volunteer

employment," and to count the grades earned toward the g.p.a. This covers certain periodic recertification courses required of peace officers and emergency medical personnel, but may also apply in other occupations. Districts may require students "to certify or document that course repetition is necessary to complete legally mandated training." Concomitantly, a provision was placed in Section 58161 authorizing districts to collect apportionment for unlimited repetitions in these circumstances:

58161. State Apportionment for Course Repetition (cont'd)

. . . (c) When course repetition is necessary for a student to meet a legally mandated training requirement as a condition of continued paid or volunteer employment, the district may claim state apportionment each time the student repeats the course.

Finally, the last paragraphs of the section establish that districts may designate certain types of courses as repeatable for apportionment up to three times under the semester system or five times under the quarter system, regardless of the grade previously received or the student's individual circumstances. (In other words, the student may take this type of course up to a total of four times or six times, depending on the college's calendar) Such courses must be specifically designated in the college catalog, and a system must be adopted to track students' repetitions:

58161. State Apportionment for Course Repetition (cont'd)

. . . (d) State apportionment for repetition of courses not expressly authorized by this section may be claimed in accordance with the following procedure:

(1) The district must identify the courses which are to be repeatable, and designate such courses in its catalog.

(2) The district must determine and certify that each identified course is one in which the course content differs each time it is offered, and that the student who repeats it is gaining an expanded educational experience for one of the following reasons:

(A) Skills or proficiencies are enhanced by supervised repetition and practice within class periods; or

(B) Active participatory experience in individual study or group assignments is the basic means by which learning objectives are obtained.

(3) The district must develop and implement a mechanism for the proper monitoring of such repetition.

(4) The attendance of students repeating a course pursuant to this subsection may be claimed for state apportionment for not more than three semesters or five quarters.

Physical education activity courses and performing and studio arts courses may be designated as repeatable under this regulation. Occupational courses may also be designated as repeatable if the course content is determined to differ each time the course is offered, and the other criteria of the section are met. (An administrative memo

clarifying the Chancellor's Office interpretation of the applicability of the repeatability regulations to occupational courses was issued January 2, 2001, and may be viewed on the World Wide Web at **http://www.cccco.edu/cccco/esed/curric/curriculum.htm**.) It is not the intent of the regulation that basic skills or ESL courses generally be eligible to be so designated. In those disciplines, where further skill needs to be developed, generally an additional course level should be offered.

The limitation of four semesters or six quarters applies to the total number of repetitions for any given activity, even if the college offers several levels of courses in that activity. As an example, a college may receive apportionment for a student's enrollment in tennis for a total of four semesters or six quarters, regardless of how the tennis courses are numbered. A student may not enroll for four times in each of Beginning Tennis, Intermediate Tennis, and/or Advanced Tennis. (Some colleges have arranged to allow individual students to continue participating in a physical education activity after this limit through the community services, or fee-supported, mode.) This administrative interpretation was promulgated by the Chancellor's Office in 1985. However, the interpretation was modified by another administrative memo in 1992, in regard only to courses in the arts:

> Section 58161(c) [now renumbered 58161(d)] of Title 5 of the California Code of Regulations will henceforth be interpreted to restrict all activity course repetitions to no more than three semester or five quarters per subject matter (as previously applied) or per course (irrespective of the number of repeats in other courses with a common subject matter) if and only if the course is part of a sequenced transfer curriculum in the visual and performing arts disciplines (music, fine arts, dance or theater arts). Applicable sequenced transfer curriculum shall include but not be limited to major performance ensembles.

There is a special exception to the limitations on course repetition for apportionment provided for Disabled Students Programs and Services (DSPS) special classes. It is contained in Title 5, Section 56029, and provides that the limitations do not apply:

> (a) When continuing success of the student in other general and/or special classes is dependent on additional repetitions of a specific class;
>
> (b) When additional repetitions of a specific special class are essential to completing a student's preparation for enrollment into other regular or special classes; or
>
> (c) When the student has a student educational contract which involves a goal other than completion of the special class in question and repetition of the course will further achievement of that goal.

Open Courses

Every community college is required, as a minimum condition of State aid, to place a statement on open courses in its catalog and class schedules:

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full-time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

The meaning of "open courses" is discussed more specifically in an article of Title 5 commencing with Section 58100. Following are some selected key sections from that article:

58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

58108. Registration and Enrollment Procedures.

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off-campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

The linkage of the "open course" concept to State apportionment is further reinforced by a subsection within the "Attendance Accounting Standards" article:

58051.5. Reports for Apportionment; Prohibited Classes.

(a) No community college district may claim for purposes of state apportionment any classes:

. . . (3) if such classes are not located in facilities clearly identified in such a manner, and established by appropriate procedures, to ensure that attendance in such classes is open to the general public, except that students may be required to meet prerequisites which have been established pursuant to Sections 55002, 55201 and 55202.

The open course concept means that no course is approvable if it is restricted to a particular group, such as employees of a particular company or organization, or students concurrently enrolled in a neighboring university, or persons of a particular ethnicity, or any other narrowly defined group. Furthermore, although a course may be designed primarily for persons in a particular group–as a common example, for persons already employed in a particular occupation–it is not approvable unless it is open to, and designed in such a way that it could also be of benefit to, other students. Thus, a course may be primarily intended for skills upgrading of persons already experienced in a particular occupation, but it must also be possible for a student in training for that occupation to take and benefit from the course (subject to legally established prerequisites).

Certain narrow exceptions to the open course rule are specified in law. These include enrollment preference for fire service personnel (Title 5, Section 58051[d]) and law enforcement trainees (Penal Code Section 832.3[c]), courses conducted in a jail or federal prison (Title 5, Section 58051.6), students who are part of a cohort concurrently enrolled in another specified course (Title 5, Section 58106), and apprentices in "related and supplemental instruction" courses (Labor Code Section 3076.3).

Transferable Courses

Community college courses may be transferable to a four-year college for different purposes: elective credit, general education, and/or major credit. Faculty, curriculum committees, and articulation officers share responsibility for determining and ensuring the transferable status of courses.

The predominant transfer-receiving institutions for California community colleges are the campuses of the California State University and the University of California. Under "Executive Order #167," the California State University has delegated responsibility, since 1973, to the community colleges to determine which courses shall be considered baccalaureate-level for elective transfer credit. By contrast, the University of California Office of the President reviews the determination of transferability course-by-course for that system; transferability for elective credit requires that the community college course be essentially equivalent to a course already offered on at least one of UC's campuses.

Executive Order #167 states in part:

> Courses from accredited institutions which do not offer bachelor's degrees [such as community colleges] will be accepted when such courses are identified in the catalog or other official publications as baccalaureate courses. Such identification must make clear that the course is considered to be of baccalaureate level and quality. No qualification may be attached to the designation. For example, it would *not* be acceptable to designate a course as being of baccalaureate level for the The California State University and Colleges or for particular fields of study.

The full text of the executive order may be viewed on the World Wide Web at **http://www.calstate.edu/tier3/EO/EO-167.pdf**.

A document prepared by the Academic Senate for the California State University ("Considerations Involved in Determining What Constitutes a Baccalaureate Level Course") provides some further guidance for transferability:

> **Course Expectations**
>
> 1) The course is presented in a manner that requires of students:
>
> a. a level of intellect, skill, prior knowledge, and maturity consistent with entry level collegiate expectations and the stated prerequisite(s), if any, for that course;
>
> b. learning skills and a vocabulary necessary to master the subject matter of a baccalaureate level course; and
>
> c. the capacity to think critically and to understand and apply concepts.
>
> 2) The course:
>
> a. treats subject matter with an intensity and pace that establishes an expectation for significantly greater learner independence than that required at the secondary level; and

b. requires the student to continue development of communication skills appropriate for higher education.

3) Coursework that:

a. enhances understanding of analytical, intellectual, scientific, or cultural concepts and traditions generally shall be considered baccalaureate level.

b. enhances understanding of occupational and professional fields usually requiring experience in higher education as prerequisite to employment in such fields may be considered baccalaureate level if it includes attention to appropriate theories and concepts.

c. provides instruction in occupational fields not usually requiring experience in higher education as prerequisite to such fields may be considered baccalaureate level if the primary emphasis is upon understanding the theories and concepts that underlie practice rather than only upon the development of technical skills required for immediate employment.

Challenges may be raised at CSU campuses to particular courses that are certified by a community college as transferable, but such challenges are not frequent. Transferability for elective credit, however, does not create any presumption of acceptance for general education or major purposes.

Decisions on transferability for equivalence to particular coursework required as part of a university major are made by departmental faculty and committees at each university campus. Major-specific articulation information for most campuses can be found in the database of the "Articulation System Stimulating Interinstitutional Student Transfer" (ASSIST), on the World Wide Web at: **http://www.assist.org**. In addition, the "California Articulation Number" (CAN), used in most community college catalogs, is a separate numbering system designed to identify comparable courses that may be used in lieu of lower division major requirements at CSU and some participating independent colleges and universities. A course may be assigned a "CAN number" after it has gone through the articulation approval process, and has been accepted for major requirements according to established CAN procedures. The CAN database is also available on the World Wide Web at: **http://www.cansystem.org**.

The four-year public segments have extensive requirements for general education. Identifying those community college courses that will be accepted by CSU or UC as satisfying their general education requirements is very important to the success of transfer students. For the University of California, the acceptability of a course for general education is predicated on the acceptability of the equivalent UC course, since each course transferred to UC has been identified, by staff review at the Office of the President, as essentially equivalent to an existing UC course. UC's general education requirements, moreover, vary greatly from campus to campus. For the California State University, general education requirements are standardized through statewide regulations. Procedures for certifying community college courses as meeting CSU's general education requirements are set forth in the CSU Chancellor's Executive Order 595, which is available on the World Wide Web at **http://www.calstate.edu/tier3/EO/EO-595.pdf.**

Before 1993 community colleges were permitted to self-certify courses as satisfying CSU general education categories. Since 1993, however, new courses intended for general education transfer have been reviewed for acceptability by CSU Chancellor's Office staff and a subcommittee of the CSU General Education Advisory Committee. This same subcommittee, with the addition of UC representatives, reviews the acceptability of community college courses for IGETC, the Intersegmental General Education Transfer Curriculum, which is accepted by both four-year public segments as an alternative pattern for satisfying lower-division general education requirements.

Determining the eligibility of a particular course for university transfer for all these purposes–elective credit, major requirements, and general education–is an essential part of the process of local course approval by the curriculum committee, generally with the assistance of a college articulation officer. For course outlines submitted to the Chancellor's Office, evidence of transferability is a quality criterion that is reviewed for all courses and programs in traditionally or potentially transferable disciplines.

Prerequisites

Title 5, Section 55002 requires, for degree-applicable courses, that when the curriculum committee determines that is necessary for student success, the course shall require appropriate prerequisites or corequisites, including prerequisite English or math levels. This section also states that curriculum committees may establish prerequisites or corequisites for non degree-applicable courses.

However, other Title 5 regulations have been adopted governing the manner in which prerequisites and corequisites may be established. These regulations establish that, with certain limited exceptions, prerequisites must be carefully scrutinized before they are established, to be certain that they are necessary and not discriminatory. Most prerequisites are subject to scrutiny through a process of "content review," but prerequisite English and math levels generally require a process of statistical research validation.

The application of the prerequisite regulations is linked to the Matriculation program and is overseen mainly by the Matriculation unit within the Student Services division of the Chancellor's Office. A document is available from the Chancellor's Office entitled "A Discussion of Title 5 Regulations Concerning Prerequisites, Corequisites, Advisories on Recommended Preparation, and Other Limitations on Enrollment" (August 1997), which may be useful to faculty or administrators dealing with these issues. In addition, the Academic Senate published a paper called "Good Practice for the Implementation of Prerequisites" (Spring 1997), which offers advice, examples, and proposed answers to questions concerning prerequisites. The Matriculation unit of the Chancellor's Office also has documents available pertaining to assessment testing procedures and other aspects of the Matriculation program.

Following is the key section of Title 5 concerning prerequisites. There are a number of other related sections that are discussed and may be found in the papers mentioned above.

55201. Policies for Prerequisites, Corequisites, and Advisories on Recommended Preparation.

(a) The governing board of a community college district may establish prerequisites, corequisites, and advisories on recommended preparation, but must do so in accordance with the provisions of this Article 2.5 55200-55202. Nothing in this subchapter shall be construed to require a district to establish prerequisites, corequisites or advisories on recommended preparation; provided however, that a prerequisite or corequisite shall be required if the course is to be offered for associate degree credit and the curriculum committee finds that the prerequisite or corequisite is necessary pursuant to Section 55002(a)(2)(D) or 55002(a)(2)(E).

(b) A governing board choosing to establish prerequisites, corequisites or advisories on recommended preparation shall, in accordance with the provision of Sections 53200-53204 of this Division, adopt policies for the following:

(1) The process for establishing prerequisites, corequisites, and advisories on recommended preparation. Such policies shall provide that in order to establish a prerequisite or corequisite, the prerequisite or corequisite must be determined to be necessary and appropriate for achieving the purpose for which is it being established. District policies shall also specify the level of scrutiny that shall be required in order to establish different types of prerequisites, corequisites, and advisories on recommended preparation. At a minimum, prerequisites, corequisites, and advisories on recommended preparation shall be based on content review, with additional methods of scrutiny being applied depending on the type of prerequisite or corequisite being established. The policy shall provide that the types of prerequisites described in Subsection (e) may be established only on the basis of data collected using sound research practices. Determinations about prerequisites or corequisites shall be made on a course-by-course or program-by program basis.

(2) Procedures to assure that courses for which prerequisites or corequisites are established will be taught in accordance with the course outline, particularly those aspects of the course outline that are the basis for justifying the establishment of the prerequisite or corequisite.

(3) The process, including levels of scrutiny, for reviewing prerequisites and corequisites to assure that they remain necessary and appropriate. These processes shall provide that at least once each six years all prerequisites and corequisites established by the district shall be reviewed. These processes shall also provide for the periodic review of advisories on recommended preparation.

(4) The bases and process for an individual student to challenge the application of a prerequisite or corequisite.

(c) Prerequisites or corequisites may be established only for any of the following purposes;

(1) the prerequisite or corequisite is expressly required or expressly authorized by statute or regulation; or

(2) the prerequisite will assure, consistent with Section 55002(a)(2)(D), that a student has the skills, concepts, and/or information that is presupposed in terms of the course or program for which it is being established, such that a student who has not met the prerequisite is highly unlikely to receive a satisfactory grade in the course (or at least one course within the program) for which the prerequisite is being established; or

(3) the corequisite course will assure, consistent with Section 55002(a)(2)(D), that a student acquires the necessary skills, concepts, and/or information, such that a student who has not enrolled in the corequisite is highly unlikely to receive a satisfactory grade in the course or program for which the corequisite is being established; or

(4) the prerequisite or corequisite is necessary to protect the health and safety of a student or the health and safety of others.

(d) Except as provided in this Subsection, no prerequisite or corequisite may be established or renewed pursuant to Subsection (b)(3) unless it is determined to be necessary and appropriate to achieve the purpose for which it has been established. A prerequisite or corequisite need not be so scrutinized until it is reviewed pursuant to Subsection (b)(3) if:

(1) it was established prior to July 6, 1990, and is part of a sequence of degree-applicable courses within a given discipline; or

(2) it was established between July 6, 1990, and the effective date of this regulation, in accordance with regulations in effect during this period of time; or

(3) it is required by statute or regulation; or

(4) it is part of a closely-related lecture-laboratory course pairing within a discipline; or

(5) it is required by four-year institutions.

(e) A course in communication or computation skills may be established as a prerequisite or corequisite for any course other than another course in communication or computation skills only if, in addition to conducting a content review, the district gathers data according to sound research practices and shows that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or corequisite. If the curriculum committee initially determines, pursuant to Section 50002(a)(2)(E), that a new course needs to have a communication or computation skill prerequisite or corequisite, then despite Subsection (d) of this Section, the prerequisite or corequisite may be established for a single period of not more than two years while the research is being conducted and the final determination is being made, provided that all other requirements for establishing the prerequisite or corequisite have been met. The requirements of this subdivision related to collection of data shall not apply when:

(1) four-year institutions will not grant credit for a course unless it has the particular communication or computation skill prerequisite; or

(2) the prerequisite or corequisite is required for enrollment in a program, that program is subject to approval by a state agency other than the Chancellor's Office and both of the following conditions are satisfied:

(A) colleges in at least six different districts have previously satisfied the data collection requirements of this subdivision with respect to the same prerequisite or corequisite for the same program; and

(B) the district establishing the prerequisite or corequisite conducts an evaluation to determine whether the prerequisite or corequisite has a disproportionate impact on particular groups of students described in terms of race, ethnicity, gender, age or disability, as defined by the Chancellor. When there is a disproportionate impact on any such group of students, the district shall, in consultation with the Chancellor, develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact.

(f) Any prerequisite or corequisite may be challenged by a student on one or more of the grounds listed below. The student shall bear the initial burden of showing that grounds exist for the challenge. Challenges shall be resolved in a timely manner and, if the challenge if upheld, the student shall be permitted to enroll in the course or program in question. Grounds for challenge are:

(1) The prerequisite or corequisite has not been established in accordance with the district's process for establishing prerequisites or corequisites;

(2) The prerequisite or corequisite is in violation of this Article;

(3) The prerequisite or corequisite is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(4) The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite;

(5) The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available; and

(6) Such other grounds for challenge as may be established by the district governing board.

(g) In the case of a challenge under Subsection (f)(3) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

(h) District policies adopted pursuant to this section shall be submitted to the Chancellor as part of the district's matriculation plan pursuant to Section 55510 of Subchapter 6 of Chapter 6 of this Division.

Special Courses for Students with Disabilities

Some classes for disabled students are simply sections of existing courses. In such a case, the class is taught in accordance with the regular outline of record for that course, but the teaching methods or materials are supplemented to accommodate stated disabilities.

Special classes may also refer, however, to distinct courses with their own outlines of record, designed either to meet educational objectives unique to a population with specific disabilities, or to supplement the standard objectives in an otherwise similar course, with objectives unique to that population.

In either case, special classes–like all courses and sections of courses–must be primarily instructional in nature and must have objectives that fall within the instructional mission of the California Community Colleges. Such courses cannot be designed primarily to provide group activities or services, (e.g. physical activity, counseling, or

assessment) but must provide systematic rather than incidental instruction in a body of content or skills whose mastery forms the basis of the student grade.

Courses designed to meet the needs of students with specific functional limitations "shall be open to enrollment of students who do not have disabilities" (Title 5, Section 56028). The course description published in the college catalog may note that it has been designed for students with specific disabilities, but it may not restrict enrollment to such students, nor require students to register for classes through the DSP&S program or counselor, nor otherwise violate the open-enrollment provisions of State law (Title 5, Section 51006).

Sections of courses in the regular curriculum that are merely adapted to enable students with disabilities to meet the regular course objectives in alternative ways do not require separate Chancellor's Office approval.

New DSP&S courses generally require approval by the Chancellor's Office according to the procedures for stand-alone courses, as they are not by definition generally "part of an approved program."

Title 5 contains definitions and specific provisions related to approval of DSPS courses:

56028. Special Class Instruction.

Special classes are instructional activities offered consistent with the provisions of Section 56000 and designed to address the educational limitations of students with disabilities who are admitted to the institution pursuant to Education Code Sections 76000 et seq. and who would be unable to substantially benefit from regular class college classes even with appropriate support services or accommodations. Such classes generate revenue based on the number of full-time equivalent students (FTES) enrolled in the classes.

Such classes shall be open to enrollment of students who do not have disabilities. However, to qualify as a special class, a majority of those enrolled in the class must be students with disabilities. Special classes offered for credit or noncredit shall meet the applicable requirement for degree credit, non-degree credit, or noncredit set forth in Sections 55002 and 55805.5 of this part. In addition, special classes shall:

(a) Be designed to enable disabled students to compensate for educational limitations and/or acquire the skills necessary to complete their educational objectives;

(b) Employ instructors who meet minimum qualifications set forth in Section 53414 of this division.

(c) Utilize instructional methods, or materials specifically designed to address the educational limitations of students with disabilities. Curriculum committees responsible for reviewing and/or recommending special class offerings shall have or obtain the expertise appropriate for determining whether the requirements of this section are satisfied.

(d) Utilize student/instructor ratios determined to be appropriate by the district given the educational limitations of the students with disabilities enrolled in each class. Class size should not be so large as to impede measurable progress or to endanger the well-being and safety of students or staff.

Section 56029 further allows extended repetitions of DSPS courses under certain circumstances. (See p. 36 for specific language.)

In summary, DSP&S course outlines of record should:

- Specify what disability or disabilities the course is designed to address;
- Clarify what objectives the course is to fulfill as they relate to these disabilities;
- Show why a special course is needed to meet this need, rather than its being met through accommodation in a regular course;
- Specify how it will be determined that the objectives have been achieved;
- Explain what disability-specific instructional methods, materials, equipment, etc. will be used and why.

III. Other Curriculum Topics

Independent Study

Independent study is a mode of instruction in which students are not required to be under the immediate supervision and control of a qualified academic employee. Apportionment for independent study is calculated based on the academic units the student earns, rather than on the student contact hours (classroom or laboratory time).

Independent study includes courses conducted through television, radio, and correspondence. It also includes individual study as arranged between student and faculty member, with approval of the college (sometimes called "special study," "tutorial," or "individual study"). Distance education courses conducted "on-line" may or not be considered independent study for apportionment purposes, depending on how they are conducted.

Distance Education

All distance education is governed by the provisions of the Title 5 subchapter on Independent Study in regard to academic issues. However, if a distance education course is fully interactive (such as a course that uses real-time interactive television, or real-time interactive Internet communication), and conducted with regularly scheduled hours similar to what would be offered in a classroom setting, then it may not be considered independent study for apportionment purposes, but considered instead a regular "census" course.

Title 5 regulations specify that course quality standards apply to distance education in the same manner as for regular classroom courses, and that each course delivered via distance education must be separately approved as such through local curriculum approval processes. In addition, the regulations require regular effective contact between instructors and students. The Academic Senate for California Community Colleges has published a set of "Guidelines for Good Practice: Effective Instructor-Student Contact in Distance Learning" (Spring 1999).

Title 5 regulations on distance education are contained in Sections 55370-55380:

55370. Definition and Application.

Distance education means instruction in which the instructor and student are separated by distance and interact through the assistance of communication technology.

All distance education is independent study, and subject to the general requirements of Article 1 as well as the specific requirements of this Article. Provided however, that fully interactive distance education courses, as defined in guidelines adopted by the Chancellor, shall not be considered independent study for purposes of calculating state apportionment pursuant to Section 58003.1. In addition, instruction provided as distance education is subject to the requirements that may be imposed by the Americans with Disabilities Act (42 U.S.C. Sec. 12100 et seq).

55372. Course Quality Standards.

The same standards of course quality shall be applied to distance education as are applied to traditional classroom courses, in regard to the course quality judgments made pursuant to the requirements of Section 55002 of this Part, and in regard to any local course quality determination or review process.

55374. Course Quality Determinations.

Determinations and judgments about the quality of distance education, under the course quality standards referred to in Section 55372, shall be made with the full involvement of faculty in accordance with the provisions of Subchapter 2 (commencing with Section 53200) of Chapter 2 of Division 4 of this Part.

55376. Instructor Contact.

In addition to the requirements of Section 55002 and any locally-established requirements applicable to all courses, district governing boards shall ensure that

(a) All approved courses offered as distance education shall include regular effective contact between instructor and students, through group or individual meetings, orientation and review sessions, supplemental seminar or study sessions, field trips, library workshops, telephone contact, correspondence, voice mail, e-mail, or other activities.

(b) All distance education courses shall be delivered consistent with guidelines issued by the Chancellor pursuant to Section 409 of the Procedures and Standing Orders of the Board of Governors. Regular effective contact is an academic and professional matter pursuant to Title 5, Section 53200.

55378. Separate Course Approval.

Each proposed or existing course if delivered by distance education, shall be separately reviewed and approved, according to the district's certified course approval procedures.

55380. Faculty Selection.

Instructors of sections delivered via distance education technology shall be selected by the same procedures used to determine all instructional assignments. Instructors shall possess the minimum qualifications for the discipline into which the course's subject matter most appropriately falls, in accordance with Article 2 of Chapter 4 of Division 4 of this Part (commencing with Section 53410), and with the list of disciplinary definitions and requirements adopted by the Board of Governors to implement that Article, as such list may be amended from time to time.

Cooperative Work Experience Education

Cooperative work experience education is another exception to the usual requirement that state-reimbursed community college education be under the immediate supervision and control of a qualified academic employee. Apportionment for this mode of instruction is based on the number of hours of employment, paid or non-paid, that a student works during a term, in a job that offers opportunities for on-the-job educational experiences.

There are two types of cooperative work experience education. "General work experience education" is supervised employment intended to assist students in acquiring desirable work habits, attitudes and career awareness. It need not be related the student's specific educational goals. "Occupational work experience education" is supervised employment where on-the-job learning relates to the student's specific educational or occupational goal. A student may earn up to a maximum of 16 semester units or 24 quarter units of both types of work experience education combined.

A college that offers cooperative work experience must provide certain services, including supervision by a qualified instructor or coordinator, written evaluation of students' progress, consultation with employers, and other elements. Units of work experience must be earned in certain patterns described in regulations.

Title 5 regulations covering cooperative work experience education are contained in Sections 55250-55257. The Chancellor's Office has also published a handbook on this subject: "Cooperative Work Experience Education Management Handbook" (1994).

When work experience education is reported in the Chancellor's Office Management Information System, the Taxonomy of Programs (T.O.P.) code 4930.10 should be used for general work experience education. Occupational work experience should be reported in the same T.O.P. code as the program of which it is part; e.g., occupational work experience in the area of automotive technology should be reported in T.O.P. code 0948.00; occupational work experience in computer information systems should be reported in T.O.P. code 0701.00, etc.

Community Services

Community colleges are authorized by statute and regulation to offer community services classes, which are defined as "classes in civic, vocational, literacy, health, homemaking, technical and general education, including, but not limited to, classes in the fields of music, drama, art, handicraft, science, literature, nature study, nature contacting, aquatic sports and athletics." There is no restriction against offering avocational, recreational, and personal development subject matters in the community services program. Community services classes are not the same as noncredit courses. They do not require approval from the Chancellor's Office and are not connected with any approved program.

Community colleges do not collect any state apportionment for community services offerings. They must charge students in these classes a fee sufficient to cover the cost of maintaining the classes, or they may provide community services classes by contract, or with contributions or donations from individuals or groups.

Community college districts are also prohibited from spending state general fund moneys to maintain community service classes. Thus these classes must be fully self-supporting, but, conversely, fees are not permitted to exceed the cost of maintaining the classes. The Board of Governors, pursuant to statute, has adopted guidelines to define the acceptable costs for which a community services fee may be charged (BOG Agenda, May 1985, Item 5).

The statutory authorization for community services offerings may be found at Education Code Section 78300:

> **78300. Authorization; topics; admission; funds; fees.**
>
> (a) The governing board of any community college district may, without the approval of the Board of Governors of the California Community Colleges, establish and maintain community service classes in civic, vocational, literacy, health, homemaking, technical and general education, including, but not limited to, classes in the fields of music, drama, art, handicraft, science, literature, nature study, nature contacting, aquatic sports and athletics. These classes shall be designed to provide instruction and to contribute to the physical, mental, moral, economic, or civic development of the individuals or groups enrolled therein. (b) Community service classes shall be open for the admission of adults and of those minors as in the judgment of the governing board may profit therefrom. (c) Governing boards shall not expend General Fund moneys to establish and maintain community service classes. Governing boards may charge students enrolled in community service classes a fee not to exceed the cost of maintaining community service classes, or may provide instruction in community service classes for remuneration by contract, or with contributions or donations of individuals or groups. The board of governors shall adopt guidelines defining the acceptable reimbursable costs for which a fee may be charged and shall collect data and maintain uniform accounting procedures to ensure that General Fund moneys are not used for community services classes.

The Title 5 reference is Section 55160:

> **55160. Approval of Community Service Classes.**
>
> (a) Districts are authorized in accordance with the provisions of article 7 (commencing with section 78300) of chapter 2, part 48 of the Education Code to approve and conduct community services classes without the approval of the Chancellor. The classification of all such classes shall be reported to the Chancellor in accordance with Section 55001.
>
> (b) Community services classes shall not be referred to as noncredit classes.

Title 5 also includes a definition of community services classes and the standards they must meet:

55002. Standards and Criteria for Courses and Classes.

. . . (d) Community Services Class. A community services class is a class that meets the following minimum requirements:

(1) is approved by the local district governing board;

(2) is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein;

(3) provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students;

(4) is conducted in accordance with a predetermined strategy or plan;

(5) is open to all members of the community; and

(6) may not be claimed for apportionment purposes.

Contract Education

Community colleges are authorized to conduct contract education offerings, to meet the specific training needs of private corporations or other public agencies. This authorization is contained in Education Code Section 78021:

> **78021. Establishment of programs; recovery of costs; calculating average daily attendance.** The governing board of any community college district may establish, or with one or more community college districts may establish, contract education programs within or outside the state by agreement with any public or private agency, corporation, association, or any other person or body, to provide specific educational programs or training to meet the specific needs of these bodies.
>
> The contracting community college district or districts shall recover, from all revenue sources, including, but not limited to public and private sources, or any combination thereof, an amount equal to, but not less than, the actual costs, including administrative costs, incurred in providing these programs or training.
>
> The attendance of students in these contract education programs shall not be included for purposes of calculating the average daily attendance for apportionment to these districts, unless all statutory and regulatory conditions for generating average daily attendance are met.

Most contract education offerings do not generate State apportionment, because they are customized offerings paid for by businesses for their employees. Since they do not generate apportionment, they are not required to be open to any student admitted to the college. There are also other statutory or regulatory conditions for apportionment that do not apply to contract education.

The majority of contract offerings do not carry community college credit. They are referred to as "not-for-credit classes." (The term "noncredit" is reserved for State-

authorized and State-funded adult education courses in specific categories authorized by law.) However, contract education classes may carry community college credit, if they meet the same quality standards as equivalent courses taught within the State-funded curriculum. Some may generate apportionment, if they are open to any student of the college and meet all other legal requirements.

Approval of contract education classes is covered in Title 5:

> **55170. Contract Classes.**
>
> (a) Notwithstanding subdivision (c) of section 55000, "contract classes" means those classes which a community college district offers in fulfillment of a contract with a public or private agency, corporation, association, or other body or person.
>
> (b) No approval of a contract class is required if the district does not claim state support for the class and if the legislation which authorizes that class does not require approval. If the district claims state support for a contract class, approval of the class shall be obtained in the manner provided for classes of the same type, as provided in this article. Approval of the contract shall be obtained in the manner provided for by law.

This regulation means that Chancellor's Office approval is not required for a non-apportionment-generating contract class, even if it results in college credit. However, the Chancellor's Office advises that contract classes that result in credit, whether they generate apportionment or not, should be required to be approved by the college or district curriculum committee, applying the same quality standards as for other credit courses.

Program Review

Title 5 regulations give the Chancellor's Office the authority to review established programs:

> **55130. Approval of Credit Programs.**
>
> . . . From time to time the Chancellor may evaluate an educational program, after its approval, on the basis of factors listed in this section. If on the basis of such an evaluation the Chancellor determines that an educational program should no longer be offered, the Chancellor may terminate the approval and determine the effective date of termination.

The Chancellor's Office has never been staffed sufficiently to carry out post-approval program reviews in a regular fashion. However, several times during its history the Chancellor's Office has collected information from all colleges on the processes for and/or the results of locally conducted program reviews. In doing so, the agency has relied on another section of Title 5, this one a "minimum condition" regulation (i.e., a condition that must be met for a community college district to receive State apportionment):

51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

In addition, the Education Code specifically requires regular review of the effectiveness of vocational programs:

78016. Review of program; termination

(a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to ensure that each program, as demonstrated by the California Occupational Information System, including the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information, does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) This section shall apply to each program commenced subsequent to July 28, 1983.

(e) A written summary of the findings of each review shall be made available to the public.

Review of instructional programs on a regular basis, and according to a regular procedure, is mandated not only by Title 5 regulations and Education Code statutes, but also by the standards of the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges. Several accrediting standards speak to institutional planning, research, and design of instructional programs; however, the most direct requirement for program review is Standard D.1:

D.1 The institution has clearly defined processes for establishing and evaluating all of its educational programs. These processes recognize the central role of faculty in developing, implementing, and evaluating the educational programs. Program evaluations are integrated into overall institutional evaluation and planning and are conducted on a regular basis.

A report is available from the Chancellor's Office, entitled "Instructional Program Review in California Community Colleges" (June 1991), which summarizes the results of an analysis of all local program review procedures in place during 1990-91. This report identifies and provides examples of several different "genres" of review policies used in different districts: the "productivity" genre, the "planning" genre, the "directive accreditation" genre, and the "nondirective accreditation" genre.

The Academic Senate for California Community Colleges also has produced documents on program review. An ad-hoc research subcommittee produced a report entitled "Toward an Acceptable Program and Services Review" in 1988, which outlines several models of program review. And the Senate adopted a paper in Spring 1996 entitled "Program Review: Developing a Faculty Driven Process," which emphasizes the governance and procedural aspects of program review. "Processes for program review" is one of the areas in which districts governing boards are required by Title 5 (Sections 53200 and 53203) to consult collegially with local academic senates.

At present there is no standard officially recommended model, or selection of models, for how program review should be conducted in our system. There is an imperative, however, that every college must conduct an effective review of its instructional programs on a regular basis.

Curriculum Approval of New Centers and Colleges

Approving or disapproving plans for new facilities is one of the basic responsibilities of the Board of Governors, according to its original authorizing statute (Education Code Section 70901) and the Community College Construction Act (Education Code Section 81800 et seq.) In addition, every new college or educational center is specifically required to be approved by the Board of Governors, regardless of whether State construction funds are requested (Title 5, Section 51014). The Board has adopted a set of regulations broadly prescribing what information districts must submit in a request for a new college or center (Title 5, Sections 55825-55831), and how the request should be analyzed.

The Chancellor's Office Facilities Unit is the lead unit in recommending Board of Governors approval for new centers and colleges. However, the Curriculum Standards and Instructional Services Unit reviews these applications in regard to curriculum and program issues, and provides consultation to the Facilities Unit. For that purpose, the standards presented here have been prepared, as an aid to districts and the Chancellor's Office in carrying out their responsibilities under the law.

As required by the review procedures of the California Postsecondary Education Commission (CPEC), applications for approval of new centers and colleges generally occur in two stages: the "Letter of Intent," and the full "Needs Study." The elements defined below must be addressed in the "Needs Study," which will be used by the Board of Governors for its approval action. However, while not required, any aspects of these

standards which are ready to be addressed at the time of the "Letter of Intent" may be included then.

CURRICULUM STANDARDS FOR APPROVAL OF NEW COLLEGES AND CENTERS

(General authority: Education Code Section 70901, Title 5 Section 51014. Notations in parentheses provide authority and/or reference to relevant statutes and regulations.)

CURRICULUM STANDARDS FOR NEW COLLEGES

1) The approval application should describe the categories of coursework to be offered and the programs that the coursework will support. *(ECS 70901, 81821; T.5/ 55829,55830.)*

2) All the programs both at the new college and at the parent college or district should be approved by the Chancellor's Office, as reflected on the Inventory of Approved and Projected Programs.

In the case of a new college that is being converted from a previously existing center or campus, all programs actually offered in full on-site under the authority of a prior program approval held by the "parent" college, will be considered approved. For any program that is not fully operational on-site when the new college commences operations (even though an approval is held by the "parent" college), and for any program that lacks a prior approval at the "parent" college, a new program application must be submitted. *(ECS 70901, 70902; T.5/ 51021, 5130.)* (See "Conversion of Center to New College," p. 13.)

3) The new college should offer the necessary core curriculum (general education and lower-division requirements for the most common majors) to support a viable transfer function. *(ECS 66722, 66730, 66732; T.5/ 51027.)*

4) The determination of occupational programs to be offered should be based on a recent labor market study or regional economic analysis. *(ECS 78015, 78016; T. 5/ 55130.)*

5) The new college should offer a range of basic skills and ESL that is appropriate for its service area population. *(ECS 66010.4; T.5/ 55829.)*

6) An educational master plan, including projected programs, should be prepared or should be in process of preparation. *(ECS 70901, 70902; T.5/ 51008.)*

7) A policy and procedure for instructional program review should have been adopted. *(T. 5/ 51022.)*

CURRICULUM STANDARDS FOR NEW EDUCATIONAL CENTERS

1) The approval application should describe the categories of coursework to be offered and the programs that the coursework will support. *(ECS 70901, 81821; T.5/ 55829,55830.)*

2) All the programs both at the center and at the parent college should be approved by the Chancellor's Office, as reflected on the Inventory of Approved and Projected Programs.

Any programs that have not previously been approved, or which are to be started concurrently with, or following the establishment of, the new center, must be submitted for program approval. *(ECS 70901, 70902; T.5/ 51021, 5130.)*

3) The center should offer a distribution of coursework based on the needs of the service area, as documented by surveys, and/or information from K-12 schools and other postsecondary educational providers, employers, and public and private nonprofit agencies. The curriculum should include, as determined to be appropriate:

a) Courses in each general education category.
b) Core major coursework for common transfer majors.
c) Coursework for short-term job training and/or full career preparation.

A center, unlike a college, need not always provide all coursework needed for a full transfer function, or the complete range of occupational preparation. Some programs may require that the student take courses at the parent college. *(ECS 66010.4; T.5/ 55829, 55830.)*

4) The determination of occupational programs to be offered should be based on a recent labor market study or regional economic analysis. *(ECS 78015, 78016; T. 5/ 55130.)*

5) The center should offer a range of basic skills and ESL that is appropriate for its service area population. *(ECS 66010.4; T.5/ 55829.)*

6) An educational master plan, including projected programs, should be prepared or should be in process of preparation. *(ECS 70901, 70902; T.5/ 51008.)*

7) A policy and procedure for instructional program review should have been adopted. *(T. 5/ 51022.)*

APPENDIX A

Forms and Instructions for Approval of New Programs

- Application for Approval–New Occupational Program
- Application for Approval–New Transfer Program
- Request to Add New Option or Certificate Within Existing Program to Inventory
- Non-Substantial Changes to Approved Program (or Reactivation of Inactive Program)
- Application for Approval–New or Revised Apprenticeship Program

PLEASE READ!

GENERAL INSTRUCTIONS FOR ALL APPLICATIONS

1) Send the correct number of copies. Applications for approval of new programs need three copies. Requests for addition of options or certificates within existing programs, and applications for apprenticeship approvals, require two copies. Nonsubstantial changes to existing programs require one copy.

2) Ensure that the signature page is completely filled in, with each signature dated, the name of the signer clearly typed or printed, and the date of local board approval filled in.

3) Keep down the overall size of applications. A bulky application does not increase the prospects for approval, and may even cause delay. Bulky printouts of raw data or the contents of web sites should not be included. Do not include items such as the college's entire program review report or course articulation agreement. When a separate labor market or economic study needs to be included to provide evidence of need, that is appropriate, even if bulky.

4) Don't send more, or fewer, course outlines than required. The instructions for each type of approval specify which course outlines should be sent and which should not.

5) Avoid permanent bindings such as tape or perfect binding.

6) College and district officers should realize that they take responsibility for the quality and accuracy of the application when they sign the cover form. Each responsible signer should read the application, and not sign until he or she is satisfied with its contents. This is especially true of the chief instructional officer.

7) If in doubt, do the following: first; read the instruction. If the answer is not found there, contact the Chancellor's Office.

Curriculum Standards & Instructional Services
(916) 322-6888
cklein@cccco.edu

Application Date

California Community Colleges

APPLICATION FOR APPROVAL—NEW OCCUPATIONAL PROGRAM

PROPOSED PROGRAM TITLE

CONTACT PERSON

COLLEGE

TITLE

DISTRICT

PHONE NUMBER

PROJECTED PROGRAM START DATE

E-MAIL ADDRESS

☐ CERTIFICATE ☐ A.A. DEGREE ☐ A.S. DEGREE ☐ LIMITED DURATION, until _____

PLANNING SUMMARY

Recommended T.O.P. Code		Estimated FTE Faculty Workload	
Units for Major—Degree		Number of New Faculty Positions	
Total Units for Degree		Est. Cost, New Equipment	
Required Units—Certificate		Type of New/Remodeled Facility	
Projected Annual Completers		Est. Cost, Library Acquisitions	
Projected Net Annual Labor Demand			

APPROVAL CRITERIA

Approval Criterion	Pg. # in App.	Section	Chancellor's Office Use
MISSION		1. Statement of Program Goals and Objectives	
		2. Catalog Description	
		3. Program Requirements	
		4. Background and Rationale	
NEED		5. Enrollment and Completer Projections	
		6. Place of Program in Curriculum/Similar Programs	
		7. Similar Programs at Other Colleges in Service Area	
		8. Labor Market Information	
		9. Job Market Analysis	
		10. Employer Survey	
		11. Explanation of Employer Relationship	
		12. List of Members of Advisory Committee	
		13. Minutes of Key Meetings/Recommendations	
		14. Recommendation of Regional Consortium	
QUALITY		15. Display of Proposed Sequence	
		16. Outlines of Record for Required Courses	
		17. Transfer Applicability	
		18. Program Evaluation Plan	
FEASIBILITY		19. Library and/or Learning Resources Plan	
		20. Facilities and Equipment Plan	
		21. Financial Support Plan	
		22. Faculty Qualifications and Availability	
COMPLIANCE		23. Model Curriculum	
		24. Licensing or Accreditation Standards	
		25. Student Selection and Fees	
		26. Programs Provided by Contract	

SUBMIT THREE COPIES OF THIS FORM AND ALL ATTACHMENTS

REQUIRED SIGNATURES

Program _____ College _____

LIBRARY AND LEARNING RESOURCES

Library and learning resources needed to fulfill the objectives of the program are currently available or are adequately budgeted for.

DATE	SIGNATURE, CHIEF LIBRARIAN/LEARNING RESOURCES MANAGER	TYPED OR PRINTED NAME

VOCATIONAL REQUIREMENTS

Program fulfills the requirements of employers in the occupation, provides students with appropriate occupational competencies, and meets any relevant professional or licensing standards.

DATE	SIGNATURE, DEAN OF OCCUPATIONAL EDUCATION	TYPED OR PRINTED NAME
DATE	SIGNATURE, CHAIR, OCCUPATIONAL ADVISORY COMMITTEE	TYPED OR PRINTED NAME

Program was recommended for approval by Regional Occupational Consortium on _____ (date).

DATE	SIGNATURE, CHAIR, REGIONAL CONSORTIUM	TYPED OR PRINTED NAME

LOCAL CURRICULUM APPROVAL

Program and courses within the program have been approved by the curriculum committee and instructional administration, and satisfy all applicable requirements of Title 5 regulations.

DATE	SIGNATURE, CHAIR, CURRICULUM COMMITTEE	TYPED OR PRINTED NAME
DATE	SIGNATURE, CHIEF INSTRUCTIONAL OFFICER	TYPED OR PRINTED NAME
DATE	SIGNATURE, PRESIDENT, ACADEMIC SENATE	TYPED OR PRINTED NAME

COLLEGE PRESIDENT

All provisions of Title 5, Section 55130(b) have been considered. All factors, taken as a whole, support establishment and maintenance of the proposed instructional program.

DATE	SIGNATURE, PRESIDENT OF THE COLLEGE	TYPED OR PRINTED NAME

DISTRICT APPROVAL

On _____, the governing board of _____
District approved the instructional program attached to this application.

DATE	SIGNATURE, SUPERINTENDENT/CHANCELLOR OF DISTRICT	TYPED OR PRINTED NAME

INSTRUCTIONS FOR APPLICATION FOR APPROVAL–NEW OCCUPATIONAL PROGRAM

Program Title: Please give the title as it is proposed to appear in the catalog. A program title should clearly and accurately reflect the scope and level of the program.

Contact Person: The person designated as contact for the application should be the person most able to answer questions about the proposed program. It may be the chief instructional officer, the dean of occupational education, the division or department chair of the originating department, or the originating faculty member who has designed the program.

Interim communications from the Chancellor's Office, such as requests for further information, will usually be sent to the contact person, but official communications on the status of program approval applications are sent to the chief instructional officer, with copies to the contact person and whomever else the college may designate.

Projected Program Start Date: The month and year when the college plans to offer the first required course in the program, or to enroll students in an existing course on the expectation that it will count toward the degree or certificate to be approved. Programs are required to be approved before being offered; however, if for some reason the program has already started, please indicate "Already started (term) (year)."

Type of Program: Please check appropriate box or boxes. All new degree majors are required to be approved. For certificates, only those requiring 18 or more semester units, or 27 or more quarter units, are required to be approved. If the program will offer both a certificate and a degree, please submit a single application for both. A limited duration approval may be requested for any type of program.

Limited Duration: A limited duration approval may be requested for one of two reasons: the college plans to operate the program only for a limited period; or the college cannot supply all information necessary for a permanent approval application within the necessary length of time. In the latter case, the Chancellor's Office will consider an approval application with one or more required elements missing or incomplete, if there is reason to believe that permanent approval is likely to be granted when those elements are supplied. In such a case, the limited approval will generally be granted for one academic year only. Colleges are advised to avoid this procedure, as it effectively requires going through the approval process twice (once for the limited authorization and again for the permanent authorization). However, it is available if necessary.

If a limited duration approval is requested because the college plans to operate the program only for a limited period, any duration may be requested, but the same application elements are required as for a permanent approval.

A college may not admit new students into a program after a limited duration approval has expired. However, students already in the program should be permitted to complete it.

Planning Summary

Recommended T.O.P. Code: The Taxonomy of Programs code is the category which groups the proposed new program together with degree and certificate programs on other campuses that have similar employment goals and objectives. The code is used to aggregate system-wide data on awards, program completions, placements, job success and other outcomes, and is the basis for reporting county and statewide job market supply data. For non-occupational programs, the T.O.P. reflects the main discipline or subject matter and is used to aggregate data on awards, program completions and transfers.

The T.O.P. code should be assigned according to the content and outcomes of the program, and should conform as best as possible to the code assigned to similar programs in other colleges around the state. The T.O.P. code should not be assigned based on local departmental structure, faculty qualifications, or budget groupings.

A college that has difficulty identifying the most appropriate T.O.P. code should contact the Chancellor's Office. The Chancellor's Office may adjust the T.O.P. code, if necessary, after consulting the college.

Units for Major–Degree: The number of semester or quarter units reported here should include only required courses, restricted electives, and closely associated prerequisites. An example of a closely associated prerequisite would be anatomy and physiology for a nursing program, or technical mathematics for a manufacturing program. Do not include prerequisite units needed to bring a student to standard collegiate levels of language and computational competence. Do not include general education, or open electives. Do not convert quarter units to semester unit equivalents.

Total Units for Degree: The total units required to complete the degree, including the units in the item above, plus all required general education, open electives, and any other requirements.

Required Units–Certificate: The number of semester or quarter units, including required courses, restricted electives, and closely associated prerequisites. Do not convert quarter units to semester unit equivalents.

Projected Annual Completers: Number of students estimated to receive the degree or certificate each year, when the program is fully established. Explanation may be provided in Item #5.

Projected Net Annual Labor Demand: Fill in the estimated number of annual job openings, minus the annual number of program completers of other programs within the

same service area. In most cases, this figure should cover only the college's service area. But for occupations considered to have a larger regional or statewide training and recruitment area, the larger area may be used. In such a case, the figure shown here should be explained in Items #7-9.

Estimated FTE Faculty Workload: This is the number of full-time equivalent faculty positions estimated to be dedicated to teaching the courses in this program, in the program's first full year of operation, regardless of whether new or existing faculty. It is not the number of FTES (Full Time Equivalent Students) expected to be generated by the program.

Number of New Faculty Positions: Do not fill in total FTE's, but the number of separately identified positions that will involve new hires or reassignments, whether part or full time. The qualifications for these positions should be discussed in Item #22.

Est. Cost, New Equipment: If new equipment will be acquired for this program, estimate total cost from district and State funds. Discuss specifics in Item #20.

Type of New/Remodeled Facility: If new or remodeled facilities will be acquired for this program, indicate here. Discuss specifics in Item #20.

Estimated Cost, Library Acquisitions: Fill in estimated costs for library and learning resources materials. Discuss specifics in Item #19.

Approval Criteria Sections

Please number the sections in the application narrative to correspond to the numbers on the sections below.

MISSION

1. *Statement of Program Goals and Objectives*

A statement must be submitted that defines the goal(s) of the proposed programs. For an occupational program, this statement must, at a minimum, clearly indicate:

- what specific occupation(s) the program will prepare students for;
- what basic occupational competencies students will acquire.

It is this statement of goal(s) and objectives that serves to define the program over time. The goal statement is one of the major factors in determining whether changes to the program are "substantial modifications" for Chancellor's Office approval purposes.

On the basis of the program goals, objectives appropriate to these goals, and a program design consistent with these objectives, the determination is made as to whether the proposed program is appropriate to the mission of the community colleges. For an occupational program, the stated goal of the program must include (but need not be

limited to) the preparation of students for one or more occupations specified in the goal. The objectives of the program must list the main competencies students will have achieved that fulfill the needs and requirements of that occupation.

2. *Catalog Description*

Description of the program as it will appear in the catalog. This description should be consistent with the rest of the application, convey the program's goal and objectives, and suggest how these differ from the goals and objectives of other programs and what students may expect as an outcome.

The catalog description represents a promise to the student, and exaggerated or unsustainable statements should therefore be avoided. Where job market data or other factors as documented in the application suggest some caveats of which students should be aware, these warnings should be as clearly conveyed in the catalog description as possible. It is recommended that for degrees and certificates in "high risk" occupations that are inherently competitive, low-salaried, and/or unlikely to hire inexperienced graduates, that the catalog description should mention the risks.

3. *Program Requirements*

A list must be submitted of all courses required for completion of the program, including core requirements, restricted electives, and prerequisites. For each course, the course number, course name, and unit value must be indicated. The total of the unit values must be shown.

For degree programs, general education requirements should also be indicated, but separately. This may be done in any of several ways. A copy of the college's overall general education requirements for a degree of this type may simply be included (such as a photocopy of requirements from the catalog). Or required general education categories may be listed with the number of units required in each. Or a display may be included of the required general education categories (including number of units required) with specific recommendations for appropriate general education course choices for students in this program.

The total units required for the degree should also be shown, including the major requirements, prerequisites, general education, open electives, and any other requirements.

Any other special requirements for completion of the program, such as an internship, work experience, or examination, must be detailed. Any alternative means of satisfying the program requirements must also be detailed. The program requirements detail should be consistent with the catalog description.

Taken together, successful completion by students of the set of courses required for the program must be sufficient to enable them to fulfill the program goals and meet the

program objectives. Courses should be required that will assure the college level communication and analytic skills that will generally enable graduating students not only to do well in transfer courses, if that is their goal, but also to participate as a full team member in a company, maintain currency in rapidly changing fields, and advance in their chosen occupations over a lifetime.

The set of requirements should reflect the thinking of the advisory committee, as indicated in the minutes of that committee (see Item #13), or the college should explain its departure from those recommendations.

The number of units, specific course requirements, design of individual courses, and the sequence of the courses should, taken together, be coherent, complete, and appropriate, given the program objectives and the resources with which the college has to work. The Chancellor's Office will rely heavily on the educational judgment of local discipline faculty and curriculum committees in regard to judgments on the appropriateness of program requirements.

4. *Background and Rationale*

This section explains at a general conceptual level what role the proposed program, given its stated goals and objectives, would fulfill in the curriculum. It may include some history of how the program proposal came about, what is different about it, why it is important, why it is especially appropriate for the region and for the college, the nature of the community support for it and so forth. These explanations should be related to the overall plan for the college, other new program developments, and the specific needs of that community and mission of the college. This item may be used to justify program objectives or the inclusion of a given course as a requirement, etc.

This narrative provides a context to reviewers. It is the place for colleges to explain special considerations and to make a case for a program that justifies the use of alternative documentation where the usual documentation would be misleading or inconclusive, or is simply not obtainable.

It is not necessary to repeat here information covered elsewhere, as long as it is clearly cross-referenced to a page numbered in proper sequence and a paragraph or section number, and, in the case of references to minutes, with the relevant section highlighted.

NEED

5. *Enrollment and Completer Projections*

These figures may be based upon enrollment in current courses and/or a survey of prospective students. In the case of a survey, the survey questionnaire, itself, as well as a description of population surveyed and survey results, should be included in this documentation.

Please provide estimates of:

- the number of sections of core courses to be offered annually
- the headcount student annual enrollment in the number of sections estimated above. (It is not necessary to break down enrollment estimates by course. A total estimate is sufficient.)
- the number of estimated program completers per year at the end of the first year of program operation
- the number of estimated program completers per year at the end of the third year of program operation

If it is anticipated that enrollments and completions will continue to rise after the third year of program operation, please explain.

6. *Place of Program in Curriculum/Similar Programs*

Before completing this section, review the college's existing program inventory. If you cannot obtain a printed inventory, you may view the inventory on the World Wide Web at **http://www.cccco.edu/cccco/esed/curric/inventory.htm**. This section must specify if the program replaces any existing program(s) on the inventory. Any existing inventory entries that need to be removed or modified in connection with the approval of the program must be specified. If such adjustments are needed, the recommended way to display them is to submit a hand-corrected printed copy of the existing inventory.

What related programs are there in the college? What need will this one fulfill that those programs do not? Will there be courses in common? Will this program pull students from them? Will it accommodate an overflow or provide for a different type of student? Will students wish to, or be able to move between the programs? Will programs share resources?

Explain how, if at all, this program makes new or more productive uses of existing resources, and/or builds upon existing programs or services, establishes a new direction for the college, or similar points. If this program is related to the ending or scaling down of other programs, this is the place to provide details.

7. *Similar Programs at Other Colleges in Service Area*

Under this item, describe all similar programs in colleges within commuting distance of the college. A brief description of each program, or photocopied pages from other colleges' catalogs, is sufficient. A narrative explaining similarities and differences, and why another program of this type is needed in this region at this time, is helpful. In most instances a college proposing a new program needs to make a convincing case that the existing capacities of other colleges are already being fully used and that there is an excess enrollment demand.

If the proposed program would have a different emphasis from programs offered elsewhere, targets a different market, is likely to be closer to the "state of the art" in the field, or is otherwise likely to be stronger, and/or if the college's existing mission, expertise or resources are especially well suited to development in this area, these factors should be explained.

Evidence that program developers have been in communication with existing programs and have used this information to help design the proposed program should be provided here. When two or more colleges in the same region are seeking approval for new programs of a similar sort at or near the same time, evidence of collaboration is especially important.

8. *Labor Market Information*

The US Department of Labor Occupational Employment Statistics (OES) Survey is conducted in each county in California. It surveys medium to large employers in established industries and publishes labor market data by county. OES includes some 750 occupational categories. For those categories that require up to 2 years or more of training, the OES codes have been matched to California Community College TOP codes to create the Labor Market Information or LMI system.

The LMI system provides five year occupational demand data by county on established occupations, i.e. those that have OES codes and that serve medium to large employers. The system also provides occupational supply data based upon actual or projected program outcomes. The LMI system is maintained by the state Employment Development Department (EDD) and partly funded by community colleges to aid in their planning of programs and in their reporting upon outcomes. Statistics from LMI can be found on the World Wide Web at **www.calmis.cahwnet.gov**. The Labor Market Information division of EDD can be reached by telephone at (916) 262-2162. Assistance with LMI data can also be obtained from Vocational Education unit specialists in the Chancellor's Office.

Pursuant to the Education Code, LMI data are specifically required for new program applications, where available:

> **78015. Job market study; area; scope.**
>
> . . . The [labor market] study shall use the State-Local Cooperative Labor Market Information Program . . . or if this program is not available in the labor market area, other available sources of labor market information. The study shall include a California Occupational Information System supply analysis of existing [programs].

The application should include projections from LMI for the most applicable OES codes and geographical regions to be served by the program. If these projections do not appear to suggest adequate job openings to provide employment for all program completers, given existing training sources, then the application must explain what other

factors may make the LMI figures misleading. If LMI figures are unavailable for the occupation targeted by the program, please explain.

When a printout of data from the LMI system is included, which includes projections in numerous categories, it is important to highlight the applicable lines for the program under review with marker or another easily visible method. Do not include printouts showing job statistics for all occupations in a region; do not dump unneeded or irrelevant statistical printouts into an application narrative. This could delay the review.

9. *Labor Market Analysis*

Title 5 requires a college seeking approval of a new program to show "the relation of the proposed program to a job market analysis." This item fulfills that requirement. The job market analysis should present evidence that there is a viable job market that will preferentially hire those graduating with the proposed degree or certificate.

Below are some of the questions that could be addressed in such an analysis.
NOTE It is not necessary to address all of these, but the ones that are applicable:

Net Job Market

- Given the number of enrollments projected for the program and necessary to support the program, are there enough openings locally to permit placement of the expected number of graduates, taking account of the numbers of graduates available from similar programs within the same geographic region?
- Has the job market been: declining slowly? steady? growing slowly? growing rapidly? newly emerging?

Earning Potential

- What is the average initial salary ?
- What is the average percentage of salary increase in 2 years? 5 years?

Program Credibility/Career Potential

- Is there sufficient evidence that employers would preferentially hire or promote graduates with this education, other things being equal?
- How likely is it that employees with only the education provided by this program, and lacking experience, will be hired at all? Or that experienced employees with only this education would be promoted?
- If advanced degrees are typically needed for career advancement, will the courses required for this program transfer towards completion of the requirements for those degrees?
- Will this preparation permit students to stay current in their field? Does the program teach basic principles and theory, as well as applications? Is it current? Is it of

sufficient rigor to assure the capacity to continue to follow the literature and learn new techniques? Is it of sufficient generality to allow for later shifts in career?

- Does this preparation provide a significant secondary expertise to primary careers? Is it designed primarily or in part to meet the needs of those already employed for upward mobility, entrepreneurship, or other career upgrade?
- Does it prepare students to work in an ethnically diverse workforce and an ethnically diverse, global market?

Emerging Occupations

Where job market data are not available or are not appropriate for a new occupational program in an area of emerging social need or technology, it becomes important to provide a careful analysis and explication of the specific demands of this new occupation. It is in anticipating emerging demands that colleges can play an essential leadership role, but can also most readily be misled as to the actual job requirements or prospects in a field and thus inadvertently mislead students.

A carefully designed employer survey can elicit documentation of the fact that (a) employers share the college's assumption as to where the field is going and what skills this emerging industry will require of employees and (b) will recognize the value of the proposed degree or certificate in their hiring or promotion.

Competitive Fields

Colleges are often called upon to provide training that students greatly desire, even where the job prospects are limited and the field is highly competitive. In such occupations--often in the arts and entertainment--it is talent rather than education that is the bottom line in hiring. While no community college certificate can substitute for talent, a program that is exceptionally well designed to identify, develop, and demonstrate the presence of talent can still be justified when few programs of similar quality exist in the service area.

Supplementary Occupational Skills

Many kinds of certificates are of occupational benefit to students already employed. In such circumstances, the program objectives and design, including the sequencing of courses, should fit the needs of students likely to be already employed by building on their prior experience and spacing course requirements to accommodate working students. However, all community college programs should either include opportunities for entry-level students, or should be paired with related entry-level training at the same college. A program should not entirely exclude students who are not already employed in a particular industry, unless the college makes available to such students a practicable entry-level training route that would qualify them, upon completion, for the advanced training.

Small Businesses or Cottage Industries

Entrepreneurial opportunities and the market for cottage industries yield few statistics. Yet these are a source of employment for an increasingly large proportion of the workforce and constitute a legitimate vocational goal for a community college program, especially in rural areas. An application for approval of a program designed to meet the needs of such students should show a careful analysis of their needs and of the market within which they must compete, and relate this analysis to the design of the program.

10. *Employer Survey/Other Evidence of Need*

A survey of prospective employers in the geographic region within which students will be seeking employment should ordinarily be included. If an employer survey is found to be either impracticable or unnecessary, an explanation should be provided, and ample other evidence of job availability must be available.

The survey should address to what extent the proposed degree or certificate, with its stated objectives and proposed courses, will be valued by prospective employers. In communicating with survey respondents, the questionnaire should convey as much information as possible regarding the intended program design, with the proposed equipment, facilities, work experiences proposed, and/or faculty qualifications. The survey can then be used to determine whether, on that basis, the employer would preferentially hire someone with such a degree or certificate over someone without it, other things being equal.

This section should, at minimum, specify:

- When the survey was taken, and by what methodology (mail, telephone);
- How many employers were surveyed and how many responded;
- The specific title(s) of the positions covered by the survey;
- How many openings the employer anticipates, due to separations and new jobs (growth), in the next full year and over the next full five years;
- Whether the employer believes the program as described would qualify students for the specific positions;
- Whether the employer would preferentially hire students who have completed the program.

A copy of the questions asked in the survey and a full summary of responses should be provided either within this section or as an attachment.

Program applications will be evaluated in terms of whether the case was made that the net number of job openings that employers are planning to fill--annually and over the next five years-given turnover, growth, etc., will be equal to or greater than the number of students the program will graduate per year, after taking account of the number of graduates from similar programs in other institutions who will be entering the job market within the geographical region from which employers are being surveyed.

Letters of support from businesses in the college's service area are sometimes included with an approval application. These can be useful and are welcome, although not required. However, the most useful letters of support are specific, rather than general. The most useful letters are those from actual employers who will hire the program completers. An effective letter of support should specify that the employer is familiar with the proposed program, has need for the program completers, and intends to hire them. If possible, the letter should indicate approximately how many program completers the employing company estimates it might hire per year. Letters such as this are especially important if it has been infeasible, for some reason, to conduct a complete employer survey.

Other evidence of job market need may be included if available. Again, if an employer survey has not been conducted, these other materials may be provided in partial substitution. Or they may be provided in addition to the employer survey. Examples of other evidence of need include job advertisements or listings, regional economic studies, and industry trend studies.

11. *Explanation of Employer Relationship*

Whenever a program is to be offered in close cooperation with one or more specific employers–for examples, by using that employer's facilities as training sites or structuring the program to meet the recruitment or upgrade training needs of a specific employer–a discussion of the relationship should be provided.

An explanation of how the open enrollment requirements for California community college courses (Title 5, Sections 51006 and 58100-58110) will be observed in this context should be included in this discussion.

12. *List of Members of Advisory Committee*

This item should identify whether the proposed new vocational or vocational and transfer program has an advisory committee made up of typical employers, discipline faculty from transfer institutions, entrepreneurs, or others qualified to provide guidance in developing and reviewing the program. The list of advisory committee members should include their job titles as well as their affiliations, and an accompanying explanation should make clear that they represent those within the industry who would hire graduates of the proposed program.

13. *Minutes of Key Meetings/Recommendations*

Minutes of advisory committee meetings should be included. Minutes of other meetings, such as curriculum committee meetings, may also be included if they reflect relevant discussion. Meeting minutes should include the date and place of the meeting, and names of all who attended.

In this item, highlight portions of the minutes that deal with substantive issues of program need, objectives, design, resource requirements. Suggestions noted in these minutes, questions or concerns raised, and decisions recorded should be specifically addressed in the application, either in the rationale at the beginning of the application, in a narrative following the minutes, or in the specific parts of the application where the matter is relevant.

14. *Recommendation of Regional Consortium*

Include the minutes of the Regional Occupational Consortium meeting(s) at which the program was discussed. Highlight that portion of the minutes of the meeting in which the proposed program was recommended for approval. If it is impossible to obtain minutes for the meeting, a letter or memo from the chair of the Regional Occupational Consortium must be included, certifying that the group voted to recommend approval of the program, and specifying the date of the vote. This requirement is in addition to the signature of the regional chair, on the reverse of the application cover sheet.

QUALITY

15. *Display of Proposed Sequence*

Include a flowchart, table, or diagram that shows how the required courses should be taken in sequence and how the prerequisites fit together. Indicate whether the sequence is suggested or mandatory. The sequence should be arranged so that a full-time student could complete a degree program in two years, except in the case of a high-unit technical or health occupation program where a case has been made that a sequence longer than two years is definitely necessary. For a certificate, the sequence should be arranged so that a full-time student completes the program within the time normally needed to complete the total number of units required for the certificate.

For a degree program, the proposed sequence should include recommended or suggested typical general education courses. Such a recommended or suggested pattern does not constrain students' individual general education choices, unless specific general education courses have actually been integrated into the program requirements. In that case, they should be counted in the unit count for the major.

16. *Outlines of Record for Required Courses*

Outlines of record must be included for all core courses required of all students in the program.

Usually, outlines should also be included for all restricted electives. However, if there is a large number of restricted electives (i.e., more than ten), a representative sample should be included. A representative sample would constitute at least three outlines, chosen from different categories, if the electives fall into categories.

Do not send outlines for general education or prerequisite courses.

If several related programs or options, concentrations, specializations, etc. are submitted together for approval, do not send duplicate copies of the course outlines. Include the course outlines with one of the applications or narratives, and in all others, refer to where the reader may find the course outlines.

17. *Transfer Applicability*

Some occupational programs in technical fields also serve as transfer preparation for some students. A program that is primarily for the purpose of preparing students for employment immediately after completing the certificate or associate degree, should be considered occupational for purposes of program approval. However, if some students will take the program as transfer preparation, then information on the program's transferability should be included here.

When transfer is included as a major goal in the "Statement of Goals and Objectives," or is described as an outcome of the program in the catalog description, then it is mandatory to include articulation information in this section.

Please indicate what four-year institutions the program may transfer to. For at least two of those institutions, show lower-division requirements for the applicable major. Show the extent to which requirements for the community college program satisfy these transfer major requirements. If a programmatic articulation agreement exists, please include it. If transfer is stated as a major goal or described as an outcome in the catalog description, then the documentation must show that the program's coursework requirements substantially satisfy lower-division coursework requirements for the corresponding university major.

18. *Program Evaluation Plan*

If the college has a standard evaluation plan, please include a copy of that plan (unless it is too bulky, in which case a summary will do). Please explain how often the proposed program would be reviewed using that plan, and what will be done as a result of the information thereby gained.

If the college has no such standard practice, this section should indicate how the requirements of the Education Code, the federal Vocational and Technical Education Act (VATEA), and the accrediting commission for program evaluation will be met. It should also be noted that Title 5, Section 51022 sets the existence of program review procedures as a minimum condition for the receipt of state funding.

Among the items that could be included in the evaluation plan are:

- Fiscal viability of the program
- Adequacy of facilities, equipment, and library and learning resources collection in extent, currency, accessibility and quality

- Curriculum:

  1) Courses are current with respect to new developments in the field and improved teaching methods

  2) The set of requirements is complete, appropriate, and sequenced as effectively as possible, given the objectives of the program

- Faculty & Instruction:

  1) Faculty possess the appropriate credentials or other qualifications
  2) Proportion of part-time to full-time instructors is acceptable
  3) Faculty workload is acceptable
  4) Faculty syllabi and actual instruction are in accordance with the outlines of record
  5) The most effective teaching methods are in use
  6) Faculty evaluations are regularly and properly conducted

- Outcomes

  1) Number of students enrolling in and completing the program
  2) Number of students transferring and their subsequent grade point averages and retention rates
  3) Number of students working in the field after completion of at least one A-C level course (SAM Code) in that field
  4) Satisfaction measures among employers of students who complete vocational programs in the field of employment

FEASIBILITY

19. *Library and Learning Resources Plan*

Explain here the determination of what library and learning resources are necessary to support the program as designed. Determining the needed resources should involve a partnership between the originating faculty and the library and learning resources staff. If new resources will need to be acquired, explain how they will be budgeted.

20. *Facilities and Equipment Plan*

Specific needs for facilities and equipment should be detailed here with an indication of what is already available, what is part of the district's master plan, what is currently in some stage of acquisition, and what would have to be acquired after the program was begun. An estimate of the total cost of new facilities and equipment should be included.

21. *Financial Support Plan*

This section should discuss the adequacy and proposed sources of financial support both for the ordinary costs of instruction, and for any special equipment and/or facilities needs as described in the preceding section.

The source of support for ordinary costs of instruction may be apportionment revenue growth possible under the district's growth cap or apportionment revenue redirected as a result of phasing out another program. In some cases a new program may not entail any increased apportionment, if it is composed only of existing courses and does not add new courses.

Sources of support for facilities and equipment may include State capital outlay funding, instructional equipment grants, donations by industry, funds raised by a foundation, etc.

If the new program has been developed with a grant from the Fund for Instructional Improvement (FII), Economic Development, or other special funds, such as those for employer-based training or federal grants, these sources and any requirements that may have been set in relation to initiating the new program should be explained.

22. *Faculty Qualifications and Availability*

Resumes of the faculty who will be directing and teaching in the new program should be maintained locally in the program file, clearly indicating that the program will be adequately staffed and managed by faculty who meet State minimum qualifications, and whose qualifications indicate adequate understanding of current knowledge and practice in the field appropriate to the program. If new faculty will be needed, or if new training will be provided to faculty who are undertaking expanded or different responsibilities, an explanation should be provided as to how the additional costs and/or training will be accommodated.

If the program is in a field which does not appear by name on the minimum qualifications "disciplines lists," or where there could be ambiguity about which discipline it is under for minimum qualifications purposes, please specify the minimum qualifications that will be applied locally for faculty hiring and assignment.

Discuss the balance of full-time and part-time instructors in the program.

COMPLIANCE

23. *Model Curriculum*

If the program design is based upon a model that has been developed for statewide or national use, refer to the model, and if possible, include a copy of the model or a summary. Explain any departures from the model to fit local circumstances, or for other reasons.

The Chancellor's Office requires that, in fields where model curriculum designs have been developed and disseminated with the support of the Chancellor's Office, and with broad consensus from representatives of the discipline, every new program application generally should incorporate the elements of the model curriculum. The best-known example is the public safety occupations of administration of justice, fire science, hazardous materials, and emergency medical services, where model program

standards have been disseminated throughout the state. There are also model curricula in some health occupations, sometimes developed by national professional associations.

If there is a reason why, in a field where model curriculum does exist, that curriculum or a part of it is inappropriate for a particular new program, the reason should be explained.

24. *Licensing, Accreditation, or Professional Certification Standards*

The college should determine whether accrediting or licensing standards apply to the proposed program and include them, or a summary of them, in the application, together with information as to organizations or persons representing the accrediting or licensing body who may be contacted by the Chancellor's Office, if necessary. As with Item #23, any departures from the accrediting standards should be explained. The explanation should also clarify whether the college intends to function without programmatic accreditation in the area or expects to be accredited. Programmatic accreditation is not always mandatory; it is optional in numerous fields, but the application should discuss the college's intentions and reasons in this regard.

In some occupations, while there is no legal requirement for a license to practice, there is a widely recognized certification provided by a professional association. For example, the American Massage Therapy Association certifies massage therapists; the California Association of Alcohol and Drug Abuse Counselors certifies counselors in that field. In these cases, the Chancellor's Office expects that the approval application will specify whether the program will fully prepare completers for the recognized professional certification. If not, an explanation of why this is not considered necessary should be included.

25. *Student Selection and Fees*

In this item, entry criteria and the selection process for admission to the program, if the program is selective, should be detailed. Program admission or selection procedures should comply with the provisions of Title 5, Section 58106 ("Limitations on Enrollment"), and Section 55201 ("Prerequisites, Corequisites, and Advisories on Recommended Preparation.") In addition, all mandatory fees which students will incur, for the program as a whole or any of its constituent courses, aside from the ordinary course enrollment fee prescribed in Education Code Section 76300, should be specified. This includes fees for materials and reproduction, insurance, travel, uniforms, etc.

26. *Programs Provided by Contract*

For a new program intended to be offered by contract with a private postsecondary provider, or other educational or training entity, please specify the training provider, and include an explanation of the need to contract instead of provide instruction with

community college personnel and resources. Provide a copy of the proposed contract. Providing vocational education through contract with a private postsecondary provider is authorized and governed by Title 5, Sections 55600 through 55631.

A change in mode of delivery, in an established program, from noncontract to contract, or vice versa, is not considered a "substantial modification" requiring program reapproval; however, Title 5 requires that every vocational education contract be reapproved by the Chancellor's Office each year. Approval of these contracts is routinely the responsibility of the Vocational Education unit.

Signature Page

The title of proposed program, and name of the college, must be filled in at the top of this form.

Please be sure to provide all signatures required, and to fill in all blanks. A date must be filled in for each signature, as well as a typed or printed name. Note that the date of recommendation for approval by the Regional Occupational Consortium must be filled in.

In the signature block for the superintendent or chancellor of the district, the date of approval by the district governing board must be filled in.

Applications missing required signatures, or with dates or other information on this form not filled in, will be returned to be completed.

If time is short and obtaining signatures in sequence is a problem, photocopies of the signature page may be made, provided each copy shows the name of the proposed program, and signatures may be obtained on separate copies as necessary. This procedure may be particularly useful in obtaining the signature of the chair of the Regional Occupational Consortium, when that person is at a different college.

The signature of the chair of the Regional Occupational Consortium is not always necessary on this form. If the application includes a memo or letter from that chair indicating that the program was recommended for approval and giving the date of the recommendation, or if it includes a copy of minutes showing the positive recommendation, please write "See memo [or letter, or minutes] under section 14" in this space.

Application Date

California Community Colleges

APPLICATION FOR APPROVAL—NEW TRANSFER PROGRAM

PROPOSED PROGRAM TITLE

COLLEGE

DISTRICT

PROJECTED PROGRAM START DATE

CONTACT PERSON

TITLE

PHONE NUMBER

E-MAIL ADDRESS

☐ CERTIFICATE ☐ A.A. DEGREE ☐ A.S. DEGREE ☐ LIMITED DURATION, until _____

PLANNING SUMMARY

Recommended T.O.P. Code		Estimated FTE Faculty Workload	
Units for Major—Degree		Number of New Faculty Positions	
Total Units for Degree		Est. Cost, New Equipment	
Required Units—Certificate		Type of New/Remodeled Facility	
Projected Annual Completers		Est. Cost, Library Acquisitions	

APPROVAL CRITERIA

Approval Criterion	Pg. # in App.	Section	Chancellor's Office Use
MISSION		1. Statement of Program Goals and Objectives	
		2. Catalog Description	
		3. Background and Rationale	
		4. Program Requirements	
NEED		5. Enrollment and Completer Projections	
		6. Place of Program in Curriculum/Similar Programs	
		7. Similar Programs at Other Colleges in Service Area	
QUALITY		8. Display of Proposed Sequence	
		9. Outlines of Record for Required Courses	
		10. Transfer Documentation	
		11. Program Evaluation Plan	
FEASIBILITY		12. Library and/or Learning Resources Plan	
		13. Facilities and Equipment Plan	
		14. Financial Support Plan	
		15. Faculty Qualifications and Availability	
COMPLIANCE		16. Model Curriculum	
		17. Licensing or Accreditation Standards	
		18. Student Selection and Fees	

SUBMIT THREE COPIES OF THIS FORM AND ALL ATTACHMENTS

REQUIRED SIGNATURES

Program _____ College _____

LIBRARY AND LEARNING RESOURCES

Library and learning resources needed to fulfill the objectives of the program are currently available or are adequately budgeted for.

DATE	SIGNATURE, CHIEF LIBRARIAN/LEARNING RESOURCES MANAGER	TYPED OR PRINTED NAME

LOCAL CURRICULUM APPROVAL

Program and courses within the program have been approved by the curriculum committee and instructional administration, and satisfy all applicable requirements of Title 5 regulations.

DATE	SIGNATURE, CHAIR, CURRICULUM COMMITTEE	TYPED OR PRINTED NAME
DATE	SIGNATURE, CHIEF INSTRUCTIONAL OFFICER	TYPED OR PRINTED NAME
DATE	SIGNATURE, PRESIDENT, ACADEMIC SENATE	TYPED OR PRINTED NAME

COLLEGE PRESIDENT

All provisions of Title 5, Section 55130(b) have been considered. All factors, taken as a whole, support establishment and maintenance of the proposed instructional program.

DATE	SIGNATURE, PRESIDENT OF THE COLLEGE	TYPED OR PRINTED NAME

DISTRICT APPROVAL

On _____, the governing board of _____
District approved the instructional program attached to this application.

DATE	SIGNATURE, SUPERINTENDENT/CHANCELLOR OF DISTRICT	TYPED OR PRINTED NAME

INSTRUCTIONS FOR APPLICATION FOR APPROVAL–NEW TRANFER PROGRAM

Program Title: Please give the title as it is proposed to appear in the catalog. A program title should clearly and accurately reflect the scope and level of the program.

Contact Person: The person designated as contact for the application should be the person most able to answer questions about the proposed program. It may be the chief instructional officer, the division or department chair of the originating department, or the originating faculty member who has designed the program.

Interim communications from the Chancellor's Office, such as requests for further information, will usually be sent to the contact person, but official communications on the status of program approval applications are sent to the chief instructional officer, with copies to the contact person and whomever else the college may designate.

Projected Program Start Date: The month and year when the college plans to offer the first required course in the program, or to enroll students in an existing course on the expectation that it will count toward the degree or certificate to be approved. Programs are required to be approved before being offered; however, if for some reason the program has already started, please indicate "Already started (term) (year)."

Type of Program: Please check appropriate box or boxes. All new degree majors are required to be approved. For certificates, only those requiring 18 or more semester units, or 27 or more quarter units, are required to be approved. If the program will offer both a certificate and a degree, please submit a single application for both. A limited duration approval may be requested for any type of program.

Limited Duration: A limited duration approval may be requested for one of two reasons: the college plans to operate the program only for a limited period; or the college cannot supply all information necessary for a permanent approval application within the necessary length of time. In the latter case, the Chancellor's Office will consider an approval application with one or more required elements missing or incomplete, if there is reason to believe that permanent approval is likely to be granted when those elements are supplied. In such a case, the limited approval will generally be granted for one academic year only. Colleges are advised to avoid this procedure, as it effectively requires going through the approval process twice (once for the limited authorization and again for the permanent authorization). However, it is available if necessary.

If a limited duration approval is requested because the college plans to operate the program only for a limited period, any duration may be requested, but the same application elements are required as for a permanent approval.

A college may not admit new students into a program after a limited duration approval has expired. However, students already in the program should be permitted to complete it.

Planning Summary

Recommended T.O.P. Code: The Taxonomy of Programs code is the category which groups the proposed new program together with degree and certificate programs on other campuses that have similar goals and objectives. The code is used to aggregate system-wide data on awards, program completions, placements, job success and other outcomes, and is the basis for reporting county and statewide job market supply data. For non-occupational programs, the T.O.P. reflects the main discipline or subject matter and is used to aggregate data on awards, program completions and transfers.

The T.O.P. code should be assigned according to the content and outcomes of the program, and should conform as best as possible to the code assigned to similar programs in other colleges around the state. The T.O.P. code should not be assigned based on local departmental structure, faculty qualifications, or budget groupings.

A college that has difficulty identifying the most appropriate T.O.P. code should contact the Chancellor's Office. The Chancellor's Office may adjust the T.O.P. code, if necessary, after consulting the college.

Units for Major–Degree: The number of semester or quarter units reported here should include only required courses, restricted electives, and closely associated prerequisites. An example of a closely associated prerequisite would be anatomy and physiology for a nursing program, or technical mathematics for a manufacturing program. Do not include prerequisite units needed to bring a student to standard collegiate levels of language and computational competence. Do not include general education, or open electives. Do not convert quarter units to semester unit equivalents.

Total Units for Degree: The total units required to complete the degree, including the units in the item above, plus all required general education, open electives, and any other requirements.

Required Units–Certificate: The number of semester or quarter units, including required courses, restricted electives, and closely associated prerequisites. Do not convert quarter units to semester unit equivalents.

Projected Annual Completers: Number of students estimated to receive the degree or certificate each year, when the program is fully established. Explanation may be provided in Item #5.

Estimated FTE Faculty Workload: This is the number of full-time equivalent faculty positions estimated to be dedicated to teaching the courses in this program, regardless of whether new or existing faculty. It is not the number of FTES (Full Time Equivalent Students) expected to be generated by the program.

Number of New Faculty Positions: Do not fill in total FTE's, but the number of separately identified positions that will involve new hires or reassignments, whether part or full time. The qualifications for these positions should be discussed in Item #15.

Est. Cost, New Equipment: If new equipment will be acquired for this program, estimate total cost from district and State funds. Discuss specifics in Item #13.

Type of New/Remodeled Facility: If new or remodeled facilities will be acquired for this program, indicate here. Discuss specifics in Item #13.

Estimated Cost, Library Acquisitions: Fill in estimated costs for library and learning resources materials. Discuss specifics in Item #12.

Approval Criteria Sections

Please number the sections in the application narrative to correspond to the numbers on the sections below.

MISSION

1. *Statement of Program Goals and Objectives*

A statement must be submitted that defines the goal(s) of the proposed programs. On the basis of the program goals, objectives appropriate to these goals, and a program design consistent with these objectives, the determination is made as to whether the proposed program is appropriate to the mission of the community colleges.

For a transfer program, the stated goal of the program must include (but need not be limited to) the preparation of students for one or more baccalaureate majors, which must be specified in the goal. Courses required in the program are specifically designed to be transferable, not only as electives, but to fulfill the lower division requirements of a major in four-year colleges.

Programs designed to provide the complete pattern of lower division general education required for a baccalaureate degree also fall within the mission, even where the transferable courses required may not count directly toward any particular transfer major, but where, taken together, they clearly provide a strong foundation for upper division work.

If the program reflects a goal other than transfer or occupational preparation, please explain in detail how this conforms with the community college mission.

2. *Catalog Description*

Description of the program as it will appear in the catalog. This description should be consistent with the rest of the application, convey the program's goal and objectives, and suggest how these differ from the goals and objectives of other programs and what students may expect as an outcome.

The catalog description represents a promise to the student, and exaggerated or unsustainable statements should therefore be avoided. Assertions of career applicability as well as transfer applicability should be reasonable and capable of being documented.

3. *Program Requirements*

A list must be submitted of all courses required for completion of the program, including core requirements, restricted electives, and prerequisites. For each course, the course number, course name, and unit value must be indicated. The total of the unit values must be shown.

For degree programs, general education requirements should also be indicated, but separately. This may be done in any of several ways. A copy of the college's overall general education requirements for a degree of this type may simply be included (such as a photocopy of requirements from the catalog). Or required general education categories may be listed with the number of units required in each. Or a display may be included of the required general education categories (including number of units required) with specific recommendations for appropriate general education course choices for students in this program.

The total units required for the degree should also be shown, including the major requirements, prerequisites, general education, open electives, and any other requirements.

Any other special requirements for completion of the program, such as an internship, work experience, or examination, must be detailed. Any alternative means of satisfying the program requirements must also be detailed. The program requirements detail should be consistent with the catalog description.

Taken together, successful completion by students of the set of courses required for the program must be sufficient to enable them to fulfill the program goals and meet the program objectives. Courses should be required that will assure the college level communication and analytic skills necessary for success in a transfer program.

The number of units, specific course requirements, design of individual courses, and the sequence of the courses should, taken together, be coherent, complete, and appropriate, given the program objectives and the resources with which the college has to work. The Chancellor's Office will rely heavily on the educational judgment of local discipline faculty and curriculum committees in regard to judgments on the appropriateness of program requirements.

4. *Background and Rationale*

This section explains at a general conceptual level what role the proposed program, given its stated goals and objectives, would fulfill in the curriculum. It may include some

history of how the program proposal came about, what is different about it, why it is important, why it is especially appropriate for the region and for the college, the nature of the community support for it and so forth. These explanations should be related to the overall plan for the college, other new program developments, and the specific needs of that community and mission of the college. This item may be used to justify program objectives or the inclusion of a given course as a requirement, etc.

This narrative provides a context to reviewers. It is the place for colleges to explain special considerations and to make a case for a program that justifies the use of alternative documentation where the usual documentation would be misleading or inconclusive, or is simply not obtainable.

It is not necessary to repeat here information covered elsewhere, as long as it is clearly cross-referenced to a page numbered in proper sequence and a paragraph or section number, and, in the case of references to minutes, with the relevant section highlighted.

NEED

5. *Enrollment and Completer Projections*

These figures may be based upon enrollment in current courses and/or a survey of prospective students. A survey is rarely needed for a transfer program. However, in the case of a survey, the survey questionnaire, itself, as well as a description of population surveyed and survey results, should be included in this documentation.

Please provide estimates of:

- the number of sections of core courses to be offered annually (number of sections each semester times two, or each quarter times three)
- the headcount student annual enrollment in the number of sections estimated above. (It is not necessary to break down enrollment estimates by course. A total estimate is sufficient.)
- the number of estimated program completers at the end of the first year of program operation
- the number of estimated program completers at the end of the third year of program operation

If it is anticipated that enrollments and completions will continue to rise after the third year of program operation, please explain.

6. *Place of Program in Curriculum/Similar Programs*

Before completing this section, review the college's existing program inventory. If you cannot obtain a printed inventory, you may view the inventory on the World Wide Web

at **http://www.cccco.edu/cccco/esed/curric/inventory.htm**. This section must specify if the program replaces any existing program(s) on the inventory. Any existing inventory entries that need to be removed or modified in connection with the approval of the program must be specified. If such adjustments are needed, the recommended way to display them is to submit a hand-corrected printed copy of the existing inventory.

What related programs are there in the college? What need will this one fulfill that those programs do not? Will there be courses in common? Will this program pull students from them? Will it accommodate an overflow or provide for a different type of student? Will students wish to, or be able to move between the programs? Will programs share resources?

Explain how, if at all, this program makes new or more productive uses of existing resources, and/or builds upon existing programs or services, establishes a new direction for the college, or similar points. If this program is related to the ending or scaling down of other programs, this is the place to provide details.

7. *Similar Programs at Other Colleges in Service Area*

Under this item, describe similar programs in other colleges within commuting distance. A brief description of each program, or photocopied pages from other colleges' catalogs, are sufficient. If there are significant differences between the design of the proposed program and similar programs at neighboring colleges, please explain the reasons.

Generally, destructive competition between districts is not an issue for transfer programs, nor is redundancy of offerings, since every college is presumed to have the right to offer a range of transfer majors. For transfer programs, the main reason for considering programs in neighboring colleges is to compare how alike or different the program requirements are.

Evidence that program developers have been in communication with existing programs and have used this information to help design the proposed program should be provided here. When two or more colleges in the same region are seeking approval for new programs of a similar sort at or near the same time, evidence of collaboration is especially important.

QUALITY

8. *Display of Proposed Sequence*

Include a flowchart, table, or diagram that shows how the required courses should be taken in sequence and how the prerequisites fit together. Indicate whether the sequence is suggested or mandatory. The sequence should be arranged so that a full-time student could complete a degree program in two years, except in the case of a high-unit technical or health occupation program where a case has been made that a sequence longer than two years is definitely necessary. For a certificate, the sequence

should be arranged so that a full-time student completes the program within the time normally needed to complete the total number of units required for the certificate.

For a degree program, the proposed sequence should include recommended or suggested typical general education courses. Such a recommended or suggested pattern does not constrain students' individual general education choices, unless specific general education courses have actually been integrated into the program requirements. In that case, they should be counted in the unit count for the major.

9. *Outlines of Record for Required Courses*

Outlines of record must be included for all core courses required of all students in the program.

Usually, outlines should also be included for all restricted electives. However, if there is a large number of restricted electives (i.e., more than ten), a representative sample should be included. A representative sample would constitute at least three outlines, chosen from different categories, if the electives fall into categories.

Do not send outlines for general education or prerequisite courses. The exception is, if the program is based on general education transfer requirements (e.g., a major in "Transfer Studies" or "Liberal Arts"), a representative sample of outlines, including one from each general education category, should be sent.

If several related programs or options, concentrations, specializations, etc. are submitted together for approval, do not send duplicate copies of the course outlines. Include the course outlines with one of the applications or narratives, and in all others, refer to where the reader may find the course outlines.

10. *Transfer Documentation*

Please indicate what four-year institutions the program will transfer to. This section is the single most important section of documentation for a transfer program. It must document that the coursework required for the community college program substantially satisfies the lower-division coursework requirements of the corresponding university major. It is not always necessary that every lower-division requirement at the transfer institution be satisfied.

If a programmatic articulation agreement exists–that is, an agreement providing that completion of the program satisfies, in whole or in specified part, lower division requirements in the major at the four-year institution(s)–include it here. A programmatic articulation agreement is not the same as a course articulation agreement. Please do not include the community college's entire institutional course articulation list.

The ASSIST database (**http://www.assist.org**) can often be helpful in documenting programmatic articulation. Caution is important, however: ASSIST is often incomplete

and/or out-of-date. Whatever ASSIST may show must be verified, supplemented, or explained as necessary to provide complete documentation.

Many transfer majors do not have a programmatic articulation agreement at the time they are initially approved. If that is the case with the proposed program, then other transfer documentation must be provided. A comparison must be displayed of the requirements for the proposed program with the lower-division requirements for the corresponding major in three senior institutions to which students at the community college would typically transfer. (If geographical or programmatic factors limit transfer applicability, for practical purposes, to fewer than three senior institutions, a lesser number is acceptable.) This comparison may be made by laying out the requirements in table form, or by including photocopied pages from the transfer institutions' catalogs. The comparison must show that the requirements for the proposed community college program substantially satisfy the lower-division major requirements at the identified transfer institutions. Any significant gaps where the proposed program would not fulfill the transfer major requirements should be discussed.

Here, for purposes of illustration, is an articulation table prepared for a common major.

Speech Communication: Allan Hancock College–Cal Poly San Luis Obispo		
Required courses, A.A. in Speech Communication, Allan Hancock College	**Articulation Status and Comments**	**Required lower-division courses, B.A. in Speech Communication, Cal Poly San Luis Obispo**
Required Courses for Major		**Required Courses for Major**
Speech 101 Public Speaking	not required at Cal Poly	
Speech 103 Interpersonal Commun.	articulated	Speech 212 Interpersonal Commun.
Speech 102 Small Group Commun.	articulated	Speech 217 Small Group Commun.
Speech 108 Oral Interpretation of Literature	Will be listed as 205 in next catalog (lower division). We already have articulation	Speech 305 Performance of Literature
	No equivalent at this time	Speech 213 Organizational Comm.
	No equivalent at this time	Speech 250 Forensic Activity (1 unit)
Restricted Electives within major recommended for Cal Poly transfers		**Required Support Courses**
History/Humanities 104 Western Civilization to 1650	articulated	History 110 Western Civilization Ancient to Renaissance
History/Humanities 105 Western Civilization Since 1650	articulated	History 111 Western Civilization Reformation to Twentieth Century
Math 123 Elementary Statistics	articulated	Statistics 217 Applied Statistics for the Liberal Arts

This table shows that, to satisfy completely the transfer institution's lower-division requirements, Allan Hancock should develop an articulated course in organizational

communication. However, the table shows that the community college degree is approvable in terms of programmatic articulation, as it substantially (although not completely) satisfies lower-division transfer requirements.

Other types of supplementary transfer documentation that may be used include:

- A proposed programmatic articulation agreement and plans for achieving it.
- A summary of standards for lower-division preparation in this discipline published or endorsed by relevant professional bodies.
- A list of four-year college faculty from transfer institutions, knowledgeable in that discipline, and/or representatives of the profession, who have been involved in helping to create or review the program design.
- A plan for how students can gain transferability of non-articulated courses through a testing process or some other way in which the credits earned by students in the new program can be protected.

The documentation should show a good-faith effort on the part of the college to assure that, as far as possible:

- Every course required of students will count not only in transfer, but specifically toward completion of a major after transfer
- Courses required in the lower-division program will not have to be repeated in upper division
- All major requirements usually fulfilled at the lower-division level can be fulfilled at the community college

11. *Program Evaluation Plan*

If the college has a standard evaluation plan, please include a copy of that plan (unless it is too bulky, in which case a summary will do). Please explain how often the proposed program would be reviewed using that plan, and what will be done as a result of the information thereby gained.

If the college has no such standard practice, this section should indicate how the requirements of the accrediting commission for program evaluation will be met. It should also be noted that Title 5, Section 51022 sets the existence of program review procedures as a minimum condition for the receipt of state funding.

Among the items that could be included in the evaluation plan are:

- Fiscal viability of the program.
- Adequacy of facilities, equipment, and library and learning resources collection in extent, currency, accessibility and quality.

- Curriculum:

  1) Courses are current with respect to new developments in the field and improved teaching methods.

  2) The set of requirements is complete, appropriate, and sequenced as effectively as possible, given the objectives of the program.

- Faculty & Instruction:

  1) Faculty possess the appropriate credentials or other qualifications.
  2) Proportion of part-time to full-time instructors is acceptable.
  3) Faculty workload is acceptable.
  4) Faculty syllabi and actual instruction are in accordance with the outlines of record.
  5) The most effective teaching methods are in use.
  6) Faculty evaluations are regularly and properly conducted.

- Outcomes

  1) Number of students enrolling in and completing the program.
  2) Number of students transferring and their subsequent grade point averages and retention rates.
  3) Number of students working in the field after completion of at least one A-C level course (SAM Code) in that field.
  4) Satisfaction measures among employers of students who complete vocational programs in the field of employment.

FEASIBILITY

12. *Library and Learning Resources Plan*

Explain here the determination of what library and learning resources are necessary to support the program as designed. Determining the needed resources should involve a partnership between the originating faculty and the library and learning resources staff. If new resources will need to be acquired, explain how they will be budgeted.

13. *Facilities and Equipment Plan*

Specific needs for facilities and equipment should be detailed here with an indication of what is already available, what is part of the district's master plan, what is currently in some stage of acquisition, and what would have to be acquired after the program was begun. An estimate of the total cost of new facilities and equipment should be included.

14. *Financial Support Plan*

This section should discuss the adequacy and proposed sources of financial support both for the ordinary costs of instruction, and for any special equipment and/or facilities needs as described in the preceding section.

The source of support for ordinary costs of instruction may be apportionment revenue growth possible under the district's growth cap or apportionment revenue redirected as a result of phasing out another program. In some cases a new program may not entail any increased apportionment, if it is composed only of existing courses and does not add new courses.

Sources of support for facilities and equipment may include State capital outlay funding, instructional equipment grants, donations by industry, funds raised by a foundation, etc.

If the new program has been developed with a grant from the Fund for Instructional Improvement (FII), Economic Development, or other special funds, such as those for employer-based training or federal grants, these sources and any requirements that may have been set in relation to initiating the new program should be explained.

15. *Faculty Qualifications and Availability*

Resumes of the faculty who will be directing and teaching in the new program should be maintained locally in the program file, clearly indicating that the program will be adequately staffed and managed by faculty who meet State minimum qualifications, and whose qualifications indicate adequate understanding of current knowledge and practice in the field appropriate to the program. If new faculty will be needed, or if new training will be provided to faculty who are undertaking expanded or different responsibilities, an explanation should be provided as to how the additional costs and/or training will be accommodated.

If the program is in a field which does not appear by name on the minimum qualifications "disciplines lists," or where there could be ambiguity about which discipline it is under for minimum qualifications purposes, please specify the minimum qualifications that will be applied locally for faculty hiring and assignment.

Discuss the balance of full-time and part-time instructors in the program.

COMPLIANCE

16. *Model Curriculum*

If the program design is based upon a model that has been developed for statewide or national use, refer to the model, and if possible, include a copy of the model or a summary. Explain any departures from the model to fit local circumstances, or for other reasons.

The Chancellor's Office requires that, in fields where model curriculum designs have been developed and disseminated with the support of the Chancellor's Office, and with broad consensus from representatives of the discipline, every new program application generally should incorporate the elements of the model curriculum. The best-known example is the public safety occupations of administration of justice, fire science,

hazardous materials, and emergency medical services, where model program standards have been disseminated throughout the state. There are also model curricula in some health occupations, sometimes developed by national professional associations. The best-known example of a model curriculum in a transfer field is the one developed by the Engineering Liaison Committee for transfer students in engineering.

If there is a reason why, in a field where model curriculum does exist, that curriculum or a part of it is inappropriate for a particular new program, the reason should be explained.

17. *Licensing or Accreditation Standards*

The college should determine whether accrediting or licensing standards apply to the proposed program and include them, or a summary of them, in the application, together with information as to organizations or persons representing the field who may be contacted by the Chancellor's Office, if necessary. As with Item #23, any departures from the accrediting standards should be explained. The explanation should also clarify whether the college intends to function without accreditation in the area or expects to be accredited.

18. *Student Selection and Fees*

In this item, entry criteria and the selection process for admission to the program, if the program is selective, should be detailed. Program admission or selection procedures should comply with the provisions of Title 5, Section 58106 ("Limitations on Enrollment"), and Section 55201 ("Prerequisites, Corequisites, and Advisories on Recommended Preparation.") In addition, all mandatory fees which students will incur, for the program as a whole or any of its constituent courses, aside from the ordinary course enrollment fee prescribed in Education Code Section 76300, should be specified. This includes fees for materials and reproduction, insurance, travel, uniforms, etc.

Signature Page

The title of proposed program, and name of the college, must be filled in at the top of this form.

Please be sure to provide all signatures required, and to fill in all blanks. A date must be filled in for each signature, as well as a typed or printed name

In the signature block for the superintendent or chancellor of the district, the date of approval by the district governing board must be filled in.

Applications missing required signatures, or with dates or other information on this form not filled in, will be returned to be completed.

If time is short and obtaining signatures in sequence is a problem, photocopies of the signature page may be made, provided each copy shows the name of the proposed program, and signatures may be obtained on separate copies as necessary.

Date of Request

California Community Colleges

REQUEST TO ADD NEW OPTION OR CERTIFICATE WITHIN EXISTING PROGRAM TO INVENTORY

(including emphasis, concentration, specialization, strand, track, etc.)

TITLE OF NEW OPTION OR CERTIFICATE

CONTACT PERSON

TITLE OF EXISTING PROGRAM

TITLE

EXISTING PROGRAM T.O.P.

EXISTING PROGRAM UNIQUE CODE

PHONE NUMBER

COLLEGE

DISTRICT

E-MAIL ADDRESS

PROJECTED OPTION START DATE

☐ CERTIFICATE ☐ A.A. DEGREE ☐ A.S. DEGREE

NEW OPTION OR CERTIFICATE:

Recommended T.O.P. Code	
Units for Major—Degree	
Required Units—Certificate	
Projected Annual Completers	

Please provide the following for all options:

1. Statement of goals and objectives for existing program, including new option.
2. Catalog description for existing program, including new option.
3. Option requirements (list of required courses).
4. Discussion of place of option in the curriculum–relation to existing program and options; relation to other programs.
5. Course outlines only for new courses for this option.

Provide the following for options in occupational programs:

6. Discussion of labor market need or job availability.
7. Recommendation of regional consortium.

Provide the following for options in transfer and general programs:

8. Transfer documentation (evidence that option addresses requirements for an academic major at four-year institutions).

Provide the following for all options only if applicable:

9. Discussion of background and rationale (if needed).
10. Discussion of impact on other colleges in region (if needed).
11. Discussion of feasibility factors (if needed).

THE CHANCELLOR'S OFFICE MAY REQUEST ADDITIONAL INFORMATION IF NEEDED BEFORE ADDING A PARTICULAR OPTION TO THE INVENTORY.

SEE REVERSE FOR SIGNATURE PAGE.

SUBMIT TWO COPIES OF THIS FORM AND ALL ATTACHMENTS

REQUEST TO ADD NEW OPTION OR CERTIFICATE WITHIN EXISTING PROGRAM
REQUIRED SIGNATURES

Option or Cert._____ College _____

FOR ALL OPTIONS:

Option or certificate, and courses within the option or certificate, have been approved by the curriculum committee and instructional administration, and satisfy all applicable requirements of Title 5 regulations.

DATE	SIGNATURE, CHAIR, CURRICULUM COMMITTEE	TYPED OR PRINTED NAME
DATE	SIGNATURE, CHIEF INSTRUCTIONAL OFFICER	TYPED OR PRINTED NAME
DATE	SIGNATURE, ACADEMIC SENATE PRESIDENT	TYPED OR PRINTED NAME

FOR VOCATIONAL PROGRAM OPTIONS:

Option or certificate has been reviewed by Regional Occupational Consortium, and approval was recommended on _____ (date).

DATE	SIGNATURE, CHAIR, REGIONAL CONSORTIUM	TYPED OR PRINTED NAME

COLLEGE PRESIDENT:

All provisions of Title 5, Section 55130(b) have been considered. All factors, taken as a whole, support establishment and maintenance of the proposed instructional option or certificate.

DATE	SIGNATURE, PRESIDENT OF THE COLLEGE	TYPED OR PRINTED NAME

DISTRICT APPROVAL (check one):

☐ On _____, the governing board of _____ District approved the instructional option or certificate attached to this request.

☐ The governing board has delegated to me the authority to approve new options or certificates within existing programs, and I have approved the option or certificate attached to this request.

DATE	SIGNATURE, SUPERINTENDENT/CHANCELLOR OF DISTRICT	TYPED OR PRINTED NAME

Instructions for "Request For Addition Of New Option or Certificate Within Existing Program To Inventory"

This form is required whenever a college wishes to add a designation within an existing program – such as option, emphasis, concentration, specialization, strand, track, etc. – which will appear on students' completion awards and/or transcripts. Designations that will not appear on student awards or transcripts need not be submitted and should not be entered on the state Inventory of Approved and Projected Programs.

This form may also be used for requesting the addition of a certificate in a program for which a degree major and/or other certificates are already approved. It may also be used for requesting the addition of a degree major in a program for which a certificate is already approved.

In general, an option or certificate may be considered within an existing program if it is appropriately classified in the same T.O.P. code as the existing program. (However, this does not apply to codes ending in 99 ("Other"), since these codes do not imply any commonality.) In some instances a new option or certificate classified in a 5-digit T.O.P. subdiscipline may be considered within an existing program classified in the corresponding 4-digit T.O.P. discipline. Please check with the Chancellor's Office if you believe that may be appropriate for your option or certificate. If the appropriate T.O.P. classification of the new option or certificate is within a different 4-digit T.O.P. discipline, the "Application for Approval – New Occupational Program" or "Application for Approval – New Transfer Program" form should be used.

Specific Instructions

Statement of goals and objectives – If there is no statement of goals and objectives for the existing program, one will need to be prepared. At a minimum, such a statement should specify what transfer major the program prepares students for, or what specific occupation(s) it prepares students for and what main occupational competencies students will achieve. The statement should reflect or incorporate the new option as appropriate.

Catalog description – The catalog description should be consistent with the statement of goals and objectives, and should reflect or incorporate the new option as appropriate.

Option requirements – A list should be submitted of all courses required for completion of the program, including core requirements, restricted electives, and prerequisites. For each course, the course number, course name, and unit value must be indicated. The total of the unit values should be shown. It should be clear how requirements for the new option or certificate differ from requirements for the existing program and other

options. Also show any other requirements for completion, such as internship, work experience, or examination.

Discussion of place of option in the curriculum – Briefly state how the new option will augment or replace other options or programs. Please review the college's existing entries on the Inventory of Approved and Projected Programs before submitting a new option or certificate. (Request a printout from the Chancellor's Office if necessary.) Indicate what existing entries will need to be removed or modified to reflect program adjustments associated with the new option or new configuration of certificates.

Course outlines – Attach outlines of record for all new courses created for this option. If this option or certificate does not include any new courses, include outlines for any two courses specifically required for this option.

Discussion of labor market need or job availability – Please indicate how the college has determined the need for the new option. This may be through labor market statistics, employer survey, recommendations from occupational advisory committee, expressions of student interest, requests from individual employers, or other appropriate means. Documentation of the labor market is not required to accompany this discussion, unless specifically requested by the Chancellor's Office.

Recommendation of regional consortium – Include the minutes of the Regional Occupational Consortium meeting(s) at which the option was discussed. Highlight that portion of the minutes of the meeting in which the proposed option was recommended for approval. If it is impossible to obtain minutes for the meeting, a letter or memo from the chair of the Regional Occupational Consortium must be included, certifying that the group recommended approval of the option, and specifying the date of the recommendation, or the signature of the chair of the consortium must be provided on the signature page.

Transfer documentation – If the new option is within a transfer program, please include specific information on the requirements for the corresponding baccalaureate degree in two or more four-year institutions to which students are most likely to transfer. A comparison must be displayed between requirements for the community college option and lower-division requirements for the baccalaureate major. The comparison must show that the community college option substantially satisfies the lower-division baccalaureate major requirements.

If another legitimate educational outcome, other than transfer or occupational preparation, is served by the option, please explain.

Discussion of background and rationale (if needed) – This section is only required if there are aspects of the option that need special explanation. Provide

a history of how the option came about, what is unique about it, why it is especially appropriate for the region and the college, the nature of the community support for it, and so forth. This is a place for a college to explain special considerations and unusual circumstances.

Discussion of impact on other colleges in region (if needed) – This section is only required if the option might possibly create destructive competition with programs in other colleges. Discuss how the college has verified that the option will not have a negative impact on similar programs and options at neighboring colleges.

Discussion of feasibility factors (if needed) – This section is only required if the option will require a substantial new investment of facilities, equipment, funding, or faculty. Please discuss how each of these needs will be met, and how the college knows it will be able to provide the resources to continue the option.

Signature Page

The title of the proposed option or certificate must be filled in at the top of this form.

Please be sure to provide all signatures required, and to fill in all blanks. A date must be filled in for each signature, as well as a typed or printed name.

The signature of the chair of the Regional Occupational Consortium is not always necessary on this form. If the application includes a memo or letter from that chair indicating that the option or certificate was recommended for approval and giving the date of the recommendation, and/or if it includes a copy of minutes showing the positive recommendation, please write "See memo [or letter, or minutes] attached" in this space.

In the signature block for the superintendent or chancellor of the district, one of the two boxes must be checked: either the option has been approved by the district governing board (in this case the date of board approval must be filled in), or the superintendent or chancellor has approved the option under a delegation of authority.

Forms missing required signatures, dates or other information will be returned to be completed.

Questions?

If there are any questions about how to prepare this request for addition of a new option or certificate to the inventory, please contact the Chancellor's Office. See program and course approval handbook for contact information, or consult our web page at **www.cccco.edu**.

California Community Colleges

Non-Substantial Changes to Approved Program (or Reactivation of Inactive Program)

College _____ Contact Person _____

District _____ Phone # _____

Date Form Submitted _____ E-mail _____

_____ _____ _____

DATE SIGNATURE, CHIEF INSTRUCTIONAL OFFICER TYPED OR PRINTED NAME

Existing Program:

Permanent Program Identifier[1] _____

T.O.P. Code _____

Local Program Title _____

Inactive Program? Yes ☐ No ☐

Changes:

Title change to _____

T.O.P. shift to _____

(Why is T.O.P. shift requested? Please explain: _____

_____

Reactivate Inactive Program? Yes ☐ No ☐

Program requirements revised in (month/year) _____

Please fill in correct, current information, whether it has changed or not:

Cert Units _____ Deg Units[2] _____ Deg Type[3] _____ Occ Code[4] _____

Comments *(for college use)*: _____

_____

_____

Please attach program description and requirements, as revised.

[1]Inactive programs do not have a permanent program identifier until they are reactivated.

[2]Degree units should include units required for the major, including core and restricted electives, and closely associated prerequisites. Do not include general education or open electives.

[3]Degree types are "A" for Associate in Arts; "S" for Associate in Science; or "B" where both degrees are available. For "B," please explain difference in requirements under "Comments."

[4]Occupational codes: make no mark if nonoccupational; 1 if occupational non-apprenticeship; 2 if apprenticeship only; 3 if both apprenticeship and non-apprenticeship.

Please submit new options and concentrations on form "Request to Add New Option or Certificate Within Existing Program to Inventory."

Instructions for "Non-Substantial Changes to Approved Program (or Reactivation of Inactive Program)"

Although a college may submit this form at any time, the Chancellor's Office will also conduct a periodic inventory update, offering colleges the opportunity to supply such update information for all their programs at once. A college may choose to wait to submit non-substantial changes until such a survey is taken; however, if it is desired to have changes reflected on the Inventory immediately, this form should be submitted.

Please be sure to review your college's existing entries on the Inventory of Approved and Projected Programs before completing this form. This is important so that you can inform the Chancellor's Office of exactly what changes are needed.

If you do not have a current printout of your college's inventory, please request one from the Chancellor's Office. The inventory may also be viewed on the World Wide Web at **http://www.cccco.edu/cccco/esed/curric/inventory.htm**.

The blanks to be filled in for the program information, "Cert Units," "Deg Units," "Deg Type," and "Occ Code," correspond to the column headings for this information that you will see in a printout from the Chancellor's Office inventory. Please refer to the footnotes for definitions of these fields.

Please attach a description of the program and the program requirements (list of required courses and any other completion requirements). These may be from the catalog, a program information sheet given to students, etc.

If the Chancellor's Office should determine that the program changes appear to be substantial, it may request additional information, including any of the elements from the applicable approval forms and instructions.

California Community Colleges

Request to Add Projected Program to Inventory

College _____ Contact Person _____

District _____ Phone # _____

Date Form Submitted _____ E-mail _____

_____ _____ _____

DATE SIGNATURE, CHIEF INSTRUCTIONAL OFFICER TYPED OR PRINTED NAME

Name of Projected Program: _____

Type of Program: ☐ Certificate ☐ Degree

Proposed T.O.P. Code _____

Projected Start Date _____

Brief description or comments (optional):

_____

_____

_____

_____

_____

_____

_____

_____

Application Date

9/01

California Community Colleges

APPLICATION FOR APPROVAL—CREDIT OR NONCREDIT APPRENTICESHIP PROGRAM

PROPOSED APPRENCTICESHIP TITLE

CONTACT PERSON

COLLEGE

TITLE

DISTRICT

PHONE NUMBER

PROJECTED PROGRAM START DATE

E-MAIL ADDRESS

☐ PROGRAM TRANSFER Previous location:

EMPLOYER OR JAC SPONSORING APPRENTICESHIP

TRAINING SITE(S)

☐ RELATED & SUPP. CREDIT COURSES ONLY ☐ RELATED & SUPP. NONCREDIT COURSES ONLY

☐ CERTIFICATE* ☐ A.A. DEGREE* ☐ A.S. DEGREE*

**Approval of a certificate or degree for apprentices does not provide approval of a certificate or degree for non-apprenticeship students. A separate approval is required for a corresponding non-apprenticeship program.*

PLANNING SUMMARY

Recommended T.O.P. Code		Est. Total RSI Hours in Third Year	
Units for Major—Degree		Estimated FTE Faculty Workload	
Total Units for Degree		Number of New Faculty Positions	
Required Units—Certificate		Est. Cost, New Equipment	
Est. Total RSI Hours in First Year		Type of New/Remodeled Facility	
Est. Total RSI Hours in Second Year		Est. Cost, Library Acquisitions	

APPROVAL CRITERIA

Please provide the following for all programs:

1. Statement of Program Goals and Objectives
2. Catalog Description
3. Program Requirements
4. Place of Program in Curriculum/Similar Programs
5. Outlines of Record for Required Courses
6. Evidence of Division of Apprenticeship Standards Approval

SUBMIT TWO COPIES OF THIS FORM AND ALL ATTACHMENTS

REQUIRED SIGNATURES

Program _____ College _____

COLLEGE CURRICULUM APPROVAL

Program and courses within the program have been approved by the curriculum committee and instructional administration, and satisfy all applicable requirements of Title 5 regulations.

DATE	SIGNATURE, CHAIR, CURRICULUM COMMITTEE	TYPED OR PRINTED NAME
DATE	SIGNATURE, CHIEF INSTRUCTIONAL OFFICER	TYPED OR PRINTED NAME
DATE	SIGNATURE, PRESIDENT, ACADEMIC SENATE	TYPED OR PRINTED NAME

COLLEGE PRESIDENT

All provisions of Title 5, Section 55130(b) have been considered. All factors, taken as a whole, support establishment and maintenance of the proposed apprenticeship program.

DATE	SIGNATURE, PRESIDENT OF THE COLLEGE	TYPED OR PRINTED NAME

DISTRICT APPROVAL

On _____, the governing board of _____
District approved the apprenticeship program attached to this application.

DATE	SIGNATURE, SUPERINTENDENT/CHANCELLOR OF DISTRICT	TYPED OR PRINTED NAME

INSTRUCTIONS FOR APPLICATION FOR APPROVAL–NEW OR REVISED APPRENTICESHIP PROGRAM

Program Title: Please give the title as it is proposed to appear in the catalog. A program title should clearly and accurately reflect the scope and level of the program. If the title is not the same as shown on the DAS approval document, please also give the DAS approved name of the program.

Contact Person: The person designated as contact for the application should be the person most able to answer questions about the proposed program. It may be the chief instructional officer, the dean of occupational education, an apprenticeship coordinator, or a faculty member.

Interim communications from the Chancellor's Office, such as requests for further information, will usually be sent to the contact person, but official communications on the status of program approval applications are sent to the chief instructional officer, with copies to the contact person and whomever else the college may designate.

Projected Program Start Date: The month and year when the college plans to offer the first related and supplemental courses for the apprenticeship. All related and supplemental instruction for apprentices is required to be approved by the Chancellor's Office before being offered. However, if for some reason the program has already started, please indicate "Already started (term) (year)."

Program Transfer: If the apprenticeship is being transferred from an adult school or regional occupational center, or from another community college (within the same district, or in another district), please check this box and fill in the name of the previous educational provider. Before applying for program transfer, please contact the Chancellor's Office apprenticeship coordinator for updated information.

Employer or JAC Sponsoring Apprenticeship: Please fill in name of employer or Joint Apprenticeship Committee sponsoring this apprenticeship. Also, if available, please provide address, phone, fax, and e-mail address.

Type of Program: Please check appropriate box or boxes. If the program will offer both a certificate and a degree, please submit a single application for both. Please note that, for related and supplemental apprenticeship instruction, unlike for nonapprenticeship courses, Chancellor's Office approval is required for the coursework itself, whether or not a certificate or degree is offered. For noncredit apprenticeship, each course needs to be approved and inventoried by the Chancellor's Office. Approval of a certificate or degree as part of an apprenticeship program does not provide approval for a corresponding non-apprenticeship certificate or degree.

Planning Summary

Recommended T.O.P. Code: The Taxonomy of Programs code is the category which groups the proposed new program together with programs on other campuses that have similar employment goals and objectives. The code is used to aggregate system-wide data on awards, program completions, placements, job success and other outcomes, and is the basis for reporting county and statewide job market supply data.

The T.O.P. code should be assigned according to the content and outcomes of the program, and should conform as best as possible to the code assigned to similar programs in other colleges around the state. The T.O.P. code should not be assigned based on local departmental structure, faculty qualifications, or budget groupings.

A college that has difficulty identifying the most appropriate T.O.P. code should contact the Chancellor's Office. The Chancellor's Office may adjust the T.O.P. code, if necessary, after consulting the college.

Units for Major–Degree: The number of semester or quarter units reported here should include only required courses, restricted electives, and closely associated prerequisites. An example of a closely associated prerequisite would be anatomy and physiology for a nursing program, or technical mathematics for a manufacturing program. Do not include prerequisite units needed to bring a student to standard collegiate levels of language and computational competence. Do not include general education, or open electives. Do not convert quarter units to semester unit equivalents.

Total Units for Degree: The total units required to complete the degree, including the units in the item above, plus all required general education, open electives, and any other requirements.

Required Units–Certificate: The number of semester or quarter units, including required courses, restricted electives, and closely associated prerequisites. Do not convert quarter units to semester unit equivalents.

Est. Total RSI Hours in First Year: Funding for apprenticeship apportionment is separate from funding for all other apportionment. In order to know how much funding to request from the Legislature, the Chancellor's Office must have each college's best estimate of the total number of hours of related and supplemental instruction the program is likely to generate. This item request an estimate of RSI hours in the first budget year of operation regardless of whether or not it will be a full academic year.

Est. Total RSI Hours in Second Year: This estimate is intended to show whether the college anticipates the apprenticeship program will grow after its initial establishment.

Est. Total RSI Hours in Third Year: This estimate is intended to show whether the college anticipates the apprenticeship program will continue to grow substantially.

Estimated FTE Faculty Workload: This is the number of full-time equivalent faculty positions estimated to be dedicated to teaching the courses in this program, regardless of whether new or existing faculty. It is not the number of FTES (Full Time Equivalent Students) expected to be generated by the program.

Number of New Faculty Positions: Do not fill in total FTE's, but the number of separately identified positions that will involve new hires or reassignments, whether part or full time.

Est. Cost, New Equipment: If new equipment will be acquired for this program, estimate total cost from district and State funds.

Type of New/Remodeled Facility: If new or remodeled facilities will be acquired for this program, indicate here.

Estimated Cost, Library Acquisitions: Fill in estimated costs for library and learning resources materials, if any.

Approval Criteria Sections

Please number the sections in the application narrative to correspond to the numbers on the sections below.

1. *Statement of Program Goals and Objectives*

A statement must be submitted that defines the goal(s) of the proposed programs. For an apprenticeship program, this statement must, at a minimum, clearly indicate:

- what specific occupation(s) the program will prepare students for;
- what basic occupational competencies students will acquire.

It is this statement of goal(s) and objectives that serves to define the program over time. The goal statement is one of the major factors in determining whether changes to the program are "substantial modifications" for Chancellor's Office approval purposes.

2. *Catalog Description*

Description of the program as it will appear in the catalog. This description should be consistent with the rest of the application, convey the program's goal and objectives, and suggest how these differ from the goals and objectives of other programs and what students may expect as an outcome.

The catalog description represents a promise to the student, and exaggerated or unsustainable statements should therefore be avoided

3. *Program Requirements*

A list must be submitted of all courses required for completion of the apprenticeship program. For each course, the course number, course name, and unit value must be indicated. The total of the unit values should be shown.

If the program includes a degree or certificate, this list should include core requirements, restricted electives, and prerequisites. For degree programs, general education requirements should be separately indicated. The total unit requirement should be shown for only the core requirements, restricted electives, and closely associated prerequisites. A separate total unit requirement should be shown for the degree as a whole, including general education and open electives.

Any other special requirements for completion of the program, such as an internship, work experience, or examination, must be detailed. Any alternative means of satisfying the program requirements must also be detailed. The program requirements detail should be consistent with the catalog description.

The number of units, specific course requirements, design of individual courses, and the sequence of the courses should, taken together, be coherent, complete, and appropriate, given the program objectives and the resources with which the college has to work. Any associate degree program must also account for general education requirements in the overall program description and sequencing.

4. *Place of Program in Curriculum/Similar Programs*

Before completing this section, review the college's existing program inventory. If you cannot obtain a printed inventory, you may view the inventory on the World Wide Web at **http://www.cccco.edu/cccco/esed/curric/inventory.htm**. This section must specify if the program replaces any existing program(s) on the inventory. Any existing inventory entries that need to be removed or modified in connection with the approval of the program must be specified. If such adjustments are needed, the recommended way to display them is to submit a hand-corrected printed copy of the existing inventory.

What related programs are there in the college? What need will this one fulfill that those programs do not? Will there be courses in common? Will this program pull students from them? Will students wish to, or be able to move between the programs? Will programs share resources?

Explain how, if at all, this program makes new or more productive uses of existing resources, and/or builds upon existing programs or services, establishes a new direction for the college, or similar points. If this program is related to the ending or scaling down of other programs, this is the place to provide details.

This section is also the place where colleges may discuss any special considerations relating to this apprenticeship or provide any relevant background that is not discussed elsewhere.

5. *Outlines of Record for Required Courses*

Outlines of record must be included for all core courses required of all students in the apprenticeship program.

If a certificate and/or degree is also involved, the following guidelines apply: usually, outlines should also be included for all restricted electives. However, if there is a large number of restricted electives (i.e., more than ten), a representative sample should be included. A representative sample would constitute at least three outlines, chosen from different categories, if the electives fall into categories.

Do not send outlines for general education or prerequisite courses.

If several related programs or options, concentrations, specializations, etc. are submitted together for approval, do not send duplicate copies of the course outlines. Include the course outlines with one of the applications or narratives, and in all others, refer to where the reader may find the course outlines

6. *Evidence of Division of Apprenticeship Standards Approval*

Please provide documentation that the Division of Apprenticeship Standards, Department of Industrial Relations has approved this apprenticeship, including the use of this college as the educational provider for related and supplemental instruction. This documentation must contain the signature of the Chief of the Division or his designee, and must be in the form of one of the following:

- Form DAS-27 ("Extract of New Standards")
- Form DAS-24 ("Revision of Approved Standards")
- Letter or memo of approval from DAS (must include the name of the college as the approved educational provider)

Signature Page

The title of proposed program, and name of the college, must be filled in at the top of this form.

Please be sure to provide all signatures required, and to fill in all blanks. A date must be filled in for each signature, as well as a typed or printed name.

In the signature block for the superintendent or chancellor of the district, the date of approval by the district governing board must be filled in.

Applications missing required signatures, or with dates or other information on this form not filled in, will be returned to be completed.

If time is short and obtaining signatures in sequence is a problem, photocopies of the signature page may be made, provided each copy shows the name of the proposed program, and signatures may be obtained on separate copies as necessary.

APPENDIX B

Statement of "Guiding Principles" for Review of Degree and Certificate Programs

California Postsecondary Education Commission

excerpted from "The Commission's Role in the Review of Degree and Certificate Programs," December 1981

GUIDING PRINCIPLES

In a system of postsecondary education consisting of a diversity of institutions offering a wide range of programs and services, the review of plans and programs must be guided by a concern for the broad public interest. It must encourage programs that will increase the knowledge and skills of individual citizens and be accessible to everyone with the ability and desire to benefit from them. It must support programs and activities that promise to advance the frontiers of knowledge. And it must seek to foster quality within each segment and institution, preserving institutional identity, initiative, and vitality in the process.

At the same time, it must be alert to possible unnecessary duplication of effort, excessive costs, and inefficiencies in the allocation of resources.

As defined in statute, the Commission's role in the review process is advisory. The Commission's recommendations will be based on criteria which, to varying degrees, should guide the process at all levels. While all of the criteria listed below must be taken into account, they cannot be assigned fixed weight in determining the need for every degree or certificate program. The criteria to be employed by the Commission in defining the public interest as it relates to academic and occupational programs, not necessarily listed in order of importance, are the following:

1. Student Demand

Within reasonable limits, students should have the opportunity to enroll in programs of study in which they are interested and for which they are qualified. Therefore, student demand for programs, indicated primarily by current and projected enrollments, is an important consideration in determining the need for a program.

2. Societal Needs

Postsecondary education institutions bear a responsibility to fulfill societal needs for trained manpower and for an informed citizenry. Even though projecting manpower needs is far from being an exact science, such projections serve as one indication of the need for an existing or proposed program. As a general rule, employment prospects for graduates constitute a more important consideration in those programs oriented toward specialized occupational fields; with certificate or associate degree programs, the local employment market tends to be more significant than in the case of graduate programs where the state and national manpower situation assumes more importance. Recognizing the impossibility of achieving and maintaining a perfect balance between manpower supply and demand in any given career field, it nevertheless is important to both society and the individual student that the number of persons trained in a field and the number of job openings remain in reasonable balance.

3. Appropriateness to Institutional and Segmental Mission

Programs offered by any institution within a given segment must comply with the delineation of function for that segment set forth in the California Master Plan, as well as with its own statement of mission and special emphasis approved by the segmental governing body.

4. The Number of Existing and Proposed Programs in the Field

An inventory of existing and proposed programs, compiled by the Commission staff from the plans of all segments of postsecondary education, provides the initial indication of apparent duplication or undue proliferation of programs, both within and among the segments. The number of programs alone, of course, cannot be regarded as an indication of unnecessary duplication. Programs with similar titles may have varying objectives; the regional distribution of programs in public institutions is a consideration; and the level of instruction is a factor. In general, each program should be evaluated in relation to all other programs in the subject in order to ascertain if the program under review represents a responsible use of public resources.

5. Total Costs of the Program

The relative costs of a program, when compared with other programs in the same or different program areas, constitute another criterion in the program review process. Included in the consideration of costs are the number of new faculty required and the student/faculty ratios; and the equipment, library resources, and facilities necessary to conduct the program. For a new program, it is necessary to know the source of the funds required for its support, both initially and in the long run.

6. The Maintenance and Improvement of Quality

The public interest demands that educational programs at all levels be of the highest possible quality. While primary responsibility for the quality of programs rests with the institution and the segment, the Commission, for its part, is interested in indications that high standards have been established for the operation and evaluation of the program. In the process, it is necessary to recognize that a proper emphasis on quality may require more than a minimal expenditure of resources.

7. The Advancement of Knowledge

The program review process should encourage the growth and development of creative scholarship. When the advancement of knowledge seems to require the continuation of existing programs or the establishment of program in new disciplines or in new combinations of existing disciplines, such considerations as costs, student demand, or employment opportunities may become secondary.

APPENDIX C

Application Form for Approval of Stand-alone Course

California Community Colleges

Application for Approval of Credit Course

(Please attach official course outline.)

Date of Application: _____ Course to Start (Date): _____

College: _____ District: _____

Contact Person: _____ Phone: _____

Title: _____ E-Mail: _____

Course Title: _____ Course Dept. No.: _____

T.O.P. Code: _____ Permanent Course Identifier (CB00).: _____

Primary Mission Category: Transfer ☐ Vocational/Economic Development ☐

Basic Skills or ESL ☐ Other ☐ _____

Is course: Degree-Applicable ☐ Non Degree-Applicable ☐

Units: _____ Total Hrs. Lecture: _____ Total Hrs. Lab: _____

(Minimum per unit of 48 hours classroom time and out-of-class study, in any combination, required by law. Generally, each lecture hour requires two hours of out-of-class study; laboratory hours require no out-of-class study.)

Open entry/Open exit ☐ Variable Unit Range _____ Independent Study ☐

Other Method of Instruction ☐ _____

(When course is primarily designed for alternative method of instruction, or alternative classroom hours/units relationship.)

Repeatability: May be repeated _____ times (other than for unsatisfactory grade)

Course Fees (*other than enrollment fee*): _____

(Where information appears on course outline, you may write "See course outline.")

Prerequisite(s): _____

General Ed. Category (*Title 5*): Natural Sciences ☐ Social & Behavioral Sciences ☐

Humanities ☐ English Composition ☐ Communication & Analytical Thinking ☐

Other District G.E. Category ☐ _____

Proposed for Transferability: CSU ☐ UC ☐ Other ☐

Proposed for CSU General Ed. Category _____

Proposed for IGETC Category _____

Please complete other side of form.

Application for Approval of Credit Course *(Cont'd.)*

·oposed Catalog Description (*If this appears on course outline, write "See course outline."*):

What evidence of need for this course exists?

Has articulation or planning with neighboring institutions taken place?

Yes ☐ No ☐ N/A ☐ Please comment below if appropriate:

Estimated enrollment, all sections:

First Year _____ Third Year _____

Is course likely to lead to future program:

Yes ☐ No ☐ Uncertain ☐ Please comment below if appropriate:

For course in reading, writing, ESL, or math, indicate where course fits in credit and/or noncredit developmental sequence in applicable discipline. Please attach catalog pages with applicable course descriptions:

Signatures

We certify that this course meets with the standards of Title 5, Section 55002 for its credit category, and has been approved through the appropriate curriculum procedure for this college.

College Curriculum Committee Chair Date	College Chief Instructional Officer Date
Print Name	Print Name
College Chief Executive Officer Date	District CEO (*if applicable*) Date
Print Name	Print Name

Return this form to:

Curriculum Standards and Instructional Services

California Community Colleges, 1102 Q Street, Sacramento, California 95814, tel. (916) 322-6888

Please attach the official course outline.

APPENDIX D

Questions and Answers on Stand-alone Courses

Administrative Memo on Stand-alone Courses

Questions and Answers on Stand-alone Course Approval

(Refer to section on "Local Approval and Chancellor's Office Approval," p. 23; and to administrative memo on "Approval of Stand-Alone Courses," August 28, 2000.)

Curriculum Standards & Instructional Services
November 2000

1. Q: A stand-alone course that we hope will be accepted by CSU or UC for general education or major purposes must be submitted to those systems, according to a periodic schedule, for certification, before we know whether it actually is accepted. Are we authorized to offer such a course under the "blanket approval" while we are awaiting the decision of CSU or UC?

A: In order to avoid duplicative paperwork and an inordinate number of stand-alone course submissions, the Chancellor's Office hereby establishes a blanket limited-duration approval under specified circumstances as follows: When a new community college course, in a non-vocational T.O.P. code, has been identified as similar to a specific course offered for general education or major purposes at a CSU or UC campus, and the community college curriculum committee has applied for the course to be accepted for general education or major purposes at CSU or UC, or for the Intersegmental General Education Transfer Curriculum (IGETC), the community college shall automatically be entitled to offer the course for a period of no more than fifteen months from the date of approval by the curriculum committee, without separate course approval from the Chancellor's Office, while the course is evaluated by CSU or UC for articulation. After that period, if the course is accepted by CSU or UC, or for IGETC, it is authorized under the permanent blanket approval described in the administrative memo of August 28, 2000. If it is not accepted by CSU or UC, the course may not continue to be offered except with individual stand-alone approval from the Chancellor's Office. This automatic limited-duration approval applies only to courses that have been identified as similar to courses offered for general education or major purposes at CSU or UC.

2. Q: If a college has a 30-unit certificate in a vocational T.O.P. code, and then wants to add one 3-unit stand-alone class in that T.O.P. code, is approval required for the stand-alone course because the college has 12 units or more in that T.O.P. code? Or do you only count the stand-alone courses, and not the courses that are part of programs, in determining whether the college has 12 units or more in that T.O.P. code for blanket approval purposes?

A: As noted in the August 28, 2000 administrative memo, blanket approval is provided when a college has "fewer than 12 semester units or 18 quarter units of stand-alone coursework in the same [vocational] T.O.P. code." The number of units offered in that T.O.P. code as part of an approved program does not count. Therefore, in the example, individual Chancellor's Office approval is not required.

The blanket approval applies because only three units of stand-alone coursework are offered in that T.O.P. code, even though there is also a 30-unit approved certificate.

3. Q: Are cooperative work experience courses subject to stand-alone approval?

A: All cooperative work experience is governed by a plan which must be adopted by the district and approved by the Chancellor's Office, and which is required to include specific information and rules, per Title 5, Sections 55250-55257. Because of this, the Chancellor's Office has determined that there is sufficient oversight in this area so that individual stand-alone course approval is not necessary to ensure reasonable State accountability. Therefore, the Chancellor's Office hereby authorizes all colleges in the system to add such courses without individual course approval, but only if the district operates its program in accordance with its cooperative work experience plan as approved by the Chancellor's Office. Contact Ron Selge, Specialist in Workforce Preparation, at (916) 322-1677, or e-mail to rselge@cccco.edu for further information.

4. Q: May experimental courses be offered without stand-alone approval?

A: Experimental courses, special topics courses, and special study courses may be offered without stand-alone approval, provided that a course outline of record for the category is on file locally, all regular local curriculum approval processes are followed, and the categories are used for the purposes intended. In general, an experimental course is one for which full information on some approval criterion, such as feasibility or need, cannot be determined until the course is actually offered on a trial basis. An experimental course should generally be submitted for approval as a regular course, or discontinued, within one year. A special topics course is one which employs a consistent disciplinary framework, but for which the specific focus may change from term to term. An example is a special topics literature course in which the focus is on a different author each term. If a particular topic is offered regularly, it should be approved as a distinct course. A special study course is one that involves an individual student or small group of students in study, research, or activities beyond the scope of regularly offered courses, pursuant to an agreement among the college, faculty member, and student(s).

If a stand-alone course has been submitted for Chancellor's Office approval and has been denied, the college may not thereafter offer that course as an experimental, special topics, or special study course.

5. Q: Does the blanket approval apply if a stand-alone course is accepted for general education or major purposes at an independent four-year institution?

A: No. Only if it is accepted at a campus of CSU or UC.

6. Q: Does the blanket approval apply if a stand-alone course is accepted for general education or major purposes at a public university in another state, such as Nevada or Oregon?

A: No. Only if it is accepted at a campus of CSU or UC.

7. Q: Is stand-alone course approval required for State-required training courses for firefighters and peace officers? These courses are often not "part of an approved program," but are offered according to regulatory or statutory standards and often within the context of a training "academy."

A: In response to this situation, the Chancellor's Office hereby establishes the following additional category of blanket approval: All colleges in the system are hereby authorized, without individual course approval, to offer stand-alone mandated public safety training courses, offered specifically to satisfy certification requirements of the California Commission on Peace Officers Standards and Training, or the California Fire Service Training and Education System, provided such courses are conducted according to the curricula and standards approved and disseminated by those agencies. While this blanket approval shall apply to stand-alone courses of this type, the establishment of a public safety training academy requiring a sequence of coursework totaling 18 semester units or more shall continue to be considered establishment of an occupational program, subject to Chancellor's Office program approval.

8. Q: We stopped offering a certain stand-alone course for a few years, but we kept it on our "inactive" list. Does this course need Chancellor's Office approval?

A: As noted in the August 28, 2000 administrative memo, "If a course has been discontinued and is then re-established, it is considered new.") For this purpose, we consider "discontinued" to mean "has not been offered for more than one year." If it has been more than one year since the course was offered, regardless of what list it may have been kept on locally, it must be submitted for stand-alone approval if it does not fit into one of the blanket approval categories.

9. Q: Although our academic majors do have lists of restricted electives, we list them in our catalog by course department acronym and number, but not by the full course name. Would our restricted electives not be "part of an approved program" because we don't list the full course name?

A: In acknowledgement of the problem described here, the Chancellor's Office hereby modifies the definition published in the administrative memo of August 28, 2000. A course shall be considered to be "part of an approved program" when it is required or is on a list of restricted electives, specified by course name <u>or number</u>, from which students are required to choose to achieve a degree or certificate in a program approved by the Chancellor's Office.

10. Q: Our transfer coursework is mostly organized into a few broad majors, such as "Social and Behavioral Sciences," "Math and Science," and "Humanities and Fine Arts," which are approved on the state inventory. These majors require that a student take any 18 units of coursework in the subjects under those headings. Are all the courses in those subjects considered restricted electives and therefore "part of an approved program"?

A: No. The intent of the definition of what is "part of an approved program" is that only specific lists of restricted electives for specific majors should be considered "part of an approved program." In the case of broad interdisciplinary majors in academic domains, the approved status of the courses should be evaluated according to the blanket approval criteria for stand-alone courses.

11. Q: Does our district board of trustees have to approve a stand-alone course before we can send the application for approval to the Chancellor's Office?

A: Not necessarily. This is a procedure for local determination. Although the Education Code makes local governing boards responsible for approving programs and courses, some boards may delegate authority to approve particular courses to the chief executive. The application for stand-alone course approval, unlike the program approval application, asks the chief executive to certify that the course "has been approved through the appropriate curriculum procedure for this college," rather than to certify specifically that it has been approved by the governing board. It is thus up to the local chief executive and governing board to determine when approval requests may be sent to the Chancellor's Office.

More Questions?

Contact Charlie Klein, Specialist in Academic Planning, at (916) 322-6888, fax (916) 324-4682, or e-mail to cklein@ cccco.edu.

STATE OF CALIFORNIA

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August 28, 2000

TO: Chief Instructional Officers
Curriculum Committee Chairs

FROM: Victoria P. Morrow, Vice Chancellor
Educational Services and Economic Development

SUBJECT: Approval of Stand-Alone Courses

Pursuant to Education Code Section 70901 and Title 5 Section 55100, courses that are not part of an approved program must be submitted to the Chancellor's Office for approval. These courses are often referred to as "stand-alone courses."

Most of your colleges submitted a form called "Certification of Conditions for Blanket Approval of Stand-alone Courses" for July 1, 1998 through June 30, 2000. When this form was properly signed, the Chancellor's Office provided a blanket approval for all new stand-alone courses introduced during that period at that college.

After June 30, 2000, we will be continuing the practice of granting blanket approval to stand-alone courses, but in a more selective manner. We have devised a set of simple criteria for recognizing which stand-alone courses are eligible for blanket approval, and which need to be submitted for individual approval to the Chancellor's Office. We believe this approach will minimize the time and energy burden on colleges, while allowing the Chancellor's Office to fulfill its legally mandated responsibilities for this area in a responsible way. This memo will inform you of the criteria, and attached you will find a new form to be used for requesting approval of a stand-alone course that does not fall within the blanket approval.

Important Note

At the outset, here are two things to remember:

1) Chancellor's Office approval is only required for *courses that are not part of approved programs.*

2) *Continuing stand-alone courses are not required to be submitted for approval; only new stand-alone courses.* (If a course has been discontinued and is then re-established, it is considered new.)

Courses Part of an Approved Program

A course is considered to be "part of an approved program" when it is required or is on a list of restricted electives, specified by course name, from which students are required to choose to achieve a degree or certificate in a program approved by the Chancellor's Office.

A program is considered "approved by the Chancellor's Office" when it is listed as approved on the Chancellor's Office Inventory of Approved and Projected Programs. The approved status of any program may be verified on the World Wide Web at http://www.cccco.edu/cccco/esed/curric/inventory.htm.

Pursuant to Title 5 Section 55100, the governing board of a community college district may establish policies for, and may approve, courses that are part of an approved program, without separate approval by the Chancellor's Office. However, local approval of courses must include review by the curriculum committee established according to Title 5 Section 55002. The *Curriculum Standards Handbook* includes further information about standards that all courses should meet.

Courses Not Part of an Approved Program

Unless a stand-alone course falls under the blanket approval described below, it must be submitted to the Chancellor's Office for approval. The attached form is provided for this purpose, and the course outline of record must be attached.

Stand-alone courses will be reviewed using the same five broad criteria that are used for program approval, and which are discussed in the *Curriculum Standards Handbook*:

MISSION
NEED
QUALITY
FEASBILITY
COMPLIANCE

The Chancellor's Office will respond to requests for stand-alone course approval within 30 calendar days from the date the request is received by the Chancellor's Office. If no response is provided within 30 days, the course shall be approved. The 30-day response need not always be final approval or denial. In cases where unusual difficulties may arise, the 30-day Chancellor's Office response may be that additional time is required to resolve specific problems.

Blanket Approval of Certain Categories

The Chancellor's Office has determined that, under limited circumstances, review of each individual stand-alone course is not necessary to ensure reasonable State accountability. Therefore, blanket approval is provided in these circumstances.

The Chancellor's Office hereby waives individual approval of new stand-alone courses in the following categories only, and authorizes all colleges in the system to add such courses without individual course approval:

1) Courses in non-vocational T.O.P. codes, which are accepted for major requirements or general education requirements at any California State University or University of California campus. *Courses that are only transferable for elective credit are not included in this blanket approval.*

2) Courses in vocational T.O.P. codes, when the college has fewer than 12 semester units or 18 quarter units of stand-alone coursework in the same T.O.P. code.

Courses that are part of a program that has been disapproved by the Chancellor's Office are not included in the blanket approval, even if they otherwise fit one of the above criteria. Such courses may be submitted for consideration of individual stand-alone approval.

The curriculum committee should review each new course to see that it meets the standards of Title 5 regulations, and should also determine whether the course falls into one of the blanket approval categories. If it does not, or if it is part of a program that has been disapproved by the Chancellor's Office, it must be submitted individually to the Chancellor's Office for approval before being offered.

The Chancellor's Office may from time to time review a sample of stand-alone courses added to the curriculum under the conditions of this blanket approval. If unusual problems are found, the Chancellor's Office may cancel this authorization with respect to an individual college.

Questions?

This memo supercedes the language in the 1995 version of the *Curriculum Standards Handbook* about "delegated authority" for approval of courses, and "regional colloquia." A new edition of the handbook will be produced soon.

Meanwhile, for questions or comments, please contact Charlie Klein, Specialist in Academic Planning, at (916) 322-6888, fax (916) 324-4682, or e-mail to cklein@cccco.edu.

cc: Chief Executive Officers
Academic Senate presidents
Tom Nussbaum, Chancellor
Patrick Lenz, Executive Vice-Chancellor

APPENDIX E

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adopted **fall 2002**

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STUDENT EQUITY: GUIDELINES FOR DEVELOPING A PLAN

THE ACADEMIC SENATE FOR CALIFORNIA COMMUNITY COLLEGES

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INTRODUCTION

California community colleges provide open access to higher education for all students irrespective of ethnicity, gender, age, disability, or economic circumstances. This objective is enshrined in law. A directive issued by the California Legislature in 1991 charged all levels of public education, including California community colleges, to provide educational equity "[n]ot only through a diverse and representative student body and faculty but also through educational environments in which each person ... has a reasonable chance to fully develop his or her potential" (Education Code §66010.2c).

This directive is also reinforced in §66030:

> *66030. (a) It is the intent of the Legislature that public higher education in California strive to provide educationally equitable environments which give each Californian, regardless of ethnic origin, race, gender, age, disability, or economic circumstance, a reasonable opportunity to develop fully his or her potential.*
>
> *(b) It is the responsibility of the governing boards of institutions of higher education to ensure and maintain multicultural learning environments free from all forms of discrimination and harassment, in accordance with state and federal law.*

In keeping with these legal requirements, in September of 1992, the Board of Governors of the California Community Colleges adopted a Student Equity Policy to ensure that groups historically underrepresented in higher education have an equal opportunity for access, success, and transfer, enjoining all districts to develop, implement, and evaluate a student equity plan. Subsequently, at its November 1996 meeting, the Board of Governors amended its Student Equity Policy and Regulations to:

1. Establish the adoption of a student equity plan as a minimum standard for receipt of state funding; and
2. Expand its focus beyond historically underrepresented groups in order to promote student success for all students.[1]

(See Appendix 3: Student Equity: Regulations & Guidelines).

[1] "'Historically underrepresented group' means ethnic minorities, women and persons with disabilities. The Board of Governors recognizes that ethnic minorities, women and persons with disabilities have historically faced discrimination and other obstacles that limited their opportunities for education, and academic success." [Appendix 4: Glossary]

The Board of Governors also recommended a set of student equity indicators to assist districts in identifying equity issues, namely, access, course completion, ESL and basic skills completion, degree and certificate completion, and transfer rate.[2] As these indicators were the same ones already collected by the Chancellor's Office, the new regulations did not require additional MIS reporting by the districts. It did, however, require the districts to focus on student achievement by disaggregating the data by demographic group.

In response to the Board of Governors' adopted policy on student equity, the Academic Senate developed and the plenary body adopted the 1993 document *Student Equity: Guidelines for Developing a Plan.* This original paper was intended as a reference for local senates in creating student equity plans. The Senate understood that conscious and careful planning was the first and necessary step toward reaching the highest possible rates of student success. Only if colleges and districts have a plan will they be able to focus the attention of everyone—faculty, administrators, staff, students, and community members—on the challenging but attainable goal of improving the success rates of California's students. More importantly, the Senate understood that only if there is a plan would resources be allocated to achieve this goal.

The Academic Senate has always argued that student equity should be used to evaluate all aspects of the institution from the classroom to the boardroom. Achieving student equity begins with the college writing an effective student equity plan that is focused on increasing access, retention, course completion, and transfer rates for all its student groups, especially those who have traditionally been underrepresented. Under current regulations, district governing boards are required to consult collegially with their local academic senates in developing and implementing student equity plans. Since 1992-1993, when the first edition of this handbook was written, the Academic Senate has taken a leadership role in pursuing the adoption of the student equity regulations, and has strongly urged their implementation.

Furthermore, the Academic Senate has consistently maintained that colleges and districts should regularly evaluate, revise and update their student equity plans. In Fall 2000, the Senate passed resolution 6.01 urging the Board of Governors to strengthen Title 5 Regulations on student equity plan creation and revision.

> *6.01 F00 Therefore be it resolved that the Academic Senate for California Community Colleges urge the Board of Governors to revise Title 5 Regulations §54220 to require that districts submit a current student equity plan no later than one year after revisions are developed and approved by the Board of Governors and that districts revise their plans every three years thereafter.*

At the time of writing this document, the Chancellor's Task Force on Equity and Diversity[3] is considering two important issues: student equity and diversity in faculty hiring. The soon-to-be-published final report of the Task Force emphasizes the link between student equity and faculty and staff diversity, and articulates the need for renewing the mandate for student equity plans:

> *Through a [college] workforce that is diverse, we benefit students of all backgrounds, by exposing them to different ideas, experiences, and worldviews. We thereby improve student success and educational quality.*

[2] For a definition of these terms, see Section Three of this paper.

[3] The Chancellor's Office convened a Task Force on Equity and Diversity in the wake of the Appellate Court decision on the *Connerly* case that invalidated Education Code §§87100 through 87107. The Task Force was charged with proposing innovative ideas for ensuring equal opportunity and diversity in hiring. The final report of the Task Force was adopted by the Board of Governors in November 2002.

The Academic Senate for California Community Colleges will lead efforts to update by October 2002 the 1993 Academic Senate for California Community Colleges document "Guidelines for Developing a Student Equity Plan" and with the assistance of the Chancellor's Office promote and distribute the revised edition. ... The Chief Executive Officers will lead efforts with Local Governing Boards to adopt a Student Equity Plan by March 2004. [4]

Now, ten years after the adoption of the Board of Governors' Student Equity Policy, there is a need to revisit its implementation. This paper revisits that document and is intended to provide an updated guideline for developing a student equity plan.

The ideas in this paper are presented in five sections as summarized below.

- **Section One: The Process of Developing Student Equity Plans—the Basics**
  This section provides a recommended process for developing the student equity plan—the "Who, What, and Why" of plan development, a brief discussion of the components of the plan, and a look at some possible reservations about developing a student equity plan.
- **Section Two: Campus Climate**
  This section addresses considerations of campus climate including the type of research necessary in considering the impact of campus climate on student persistence and success.
- **Section Three: Research and Data Collection**
  This section defines student equity indicators and the means of their measurement. This section also highlights the fact that much of the data needed for developing a student equity plan may already be collected for other required state reports.
- **Section Four: Student Equity and Institutional Finances Resource Information Other Considerations**
  This section includes a discussion of funding approaches and sources.
- **Section Five: Success Components**
  This section outlines various areas of effort on the part of the faculty and the institution that may have an effect on student success, including recognition for faculty who participate in activities specifically designed to foster student equity.

[4] Chancellor's Task Force on Equity and Diversity Recommendation (November 2002)

SECTION ONE: THE PROCESS OF DEVELOPING STUDENT EQUITY PLANS—THE BASICS

This section provides some basic responses to key questions asked regarding student equity plans. The response to these questions provide a recommended process for developing the student equity plan, particularly the "Who, What, and Why" of plan development, as well as a brief discussion of the components of the plan. We will consider the "Why, What, and Who."

WHY DEVELOP A STUDENT EQUITY PLAN?

Title 5 (§51026 and §54220) requires college districts to produce a student equity plan. However, more important than regulatory requirements is the fact that the state's economic and social future depends on integrating all groups into the economic mainstream. The community colleges have an important part to play in that task because most of the students from all population groups begin their higher education at community colleges.

Student equity is an investment in a college's future. When they receive effective matriculation services that include orientation, counseling and correct placement in courses with validated pre-requisites, students are likely to complete their courses, make progress toward their educational and career goals, and complete degrees, certificates, and/or transfer to a four-year university. When the college provides student services such as financial aid and special services, along with a positive academic climate that motivates students to achieve academically, it sets up a positive upward spiral of students leaving the college with career or transfer potential that will enrich the community and economy. Successful education also provides students with an increased sense of personal efficacy, empowering them to contribute to community and civic life. They develop as well inner resources for living richer, more satisfying lives, and resiliency for facing adversity. The cultivation of critical capacities and literacy across all populations is critical to a successful multicultural society for the future. The cost of failure, on the other hand, could be the perpetuation of a permanent underclass with little hope for upward economic and social mobility.

WHAT IS A STUDENT EQUITY PLAN?

"A student equity plan is a written document in which a district's student population is analyzed and specific result-oriented plans and procedures are set forth for ensuring equal opportunity, promoting diversity, and achieving expected representation of qualified members of all population groups" (see Glossary in Appendix 4).

The components of a student equity plan are specified in Title 5 §54220 (See Appendix 3):

1. Campus-based research as to the extent of student equity in the five indicator areas of access, retention, degree and certificate completion, ESL and basic skills completion, and transfer;
2. Goals to address any adverse impact noted in the five indicator areas for the overall student population and for each population group of students as appropriate ("each population group of students" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks, Hispanics, Whites, men, women, and persons with disabilities);
3. Strategies for attaining goals including increased coordination among existing programs;
4. Sources of funds to support implementation of the plan;
5. Process and a schedule for evaluation; and

6. An executive summary, which identifies the district contact persons, target groups, strategies for accomplishing goals, and funding resources.

These components can be grouped into four broad categories: (1) research, (2) goals, (3) implementation, and (4) evaluation.

(1) RESEARCH: A meaningful student equity plan begins with an analysis of the current rates of enrollment, transfer, and completion, and the identification of barriers to student success. Research used to develop a plan should include as a minimum:

- surveys of campus climate;
- reviews of existing data; and
- analysis of potential college barriers to student success.

Additionally, the research should include

- the extent to which additional student support services such as counseling, financial aid, employment, and tutoring can increase student success in the equity indicators; and
- the effect of instructional methodology (i.e., classroom assessment, learning styles assessment, supplemental instruction, mentoring, peer tutoring, group learning environments, or different configurations of the curriculum) on student success in the equity indicators.

If the college carefully analyzes the data and devises programs to address local needs, or adapts successful practices that have worked in analogous situations in other districts, the college is likely to make progress.

(2) GOALS: Student equity goals must be elevated to the maximum level of visibility and importance. They should be integrated into the mission statement, master planning and accreditation. Goals should be set at a level that would allow significant progress in achieving student equity and that are also realistic and attainable. Goals and objectives for a student equity plan should be developed for each of the five indicator areas discussed in Section Three (access, course completion, degree and certificate completion, ESL and basic skills completion, and transfer rate). Baseline data should be established to evaluate the progress and the success strategies in advancing institutional success goals for all students and which may illuminate the extent of student success among diverse sets of student populations.

(3) IMPLEMENTATION: Colleges need not only to develop a good plan but also to implement the plan effectively. Steps for implementing the college's student equity plan should include identifying specific activities (new or existing activities), person(s) responsible for coordinating the activities, and a timeline. For maximal effect, the plan should be very specific about who is doing what and when the activities should be completed. Faculty, students, and staff are all important in achieving these goals. Celebrating progress on student success—for example, publishing regular updates on how the college is doing and making frequent reports to the governing board and to newspapers—can be very effective in helping the equity effort move forward.

(4) EVALUATION: The Chancellor's Office has established criteria for reviewing and evaluating student equity plans. Plans are evaluated for having achievable and measurable goals (in the five indicator areas) based upon well-founded research and viable implementation strategies and institutional outcome measures for achieving the stated goals. (Please see Appendix 1 for details of these review procedures and criteria.)

WHO SHOULD BE INVOLVED IN DEVELOPING A PLAN?

It is very important that all groups, including faculty, students, administrators, and staff be involved in developing the plan so that all groups support and accept responsibility for its success. Additionally, the

oversight for planning should be done at the highest governance levels to ensure the maximum support of all groups and the most effective implementation. Only then will we have the best coordination of activities and the widest involvement of everyone on campus in fostering student achievement and success.

Local academic senates have special responsibility for much that is at the core of any student equity plan. Strategies for student success, educational programs, curriculum as well as processes for budget development and institutional planning are all keys to student equity, and are among the "ten-plus-one" listed items in Title 5, §53200. Indeed, each of these academic and professional matters relates broadly to student equity plans, and thus local academic senates must be active in planning and implementing student equity.

Thoughtful participants will want to maximize the effective participation of staff and students while consulting collegially in the myriad academic and professional matters that will intersect in any well-written student equity plan. The senate needs to play a key role as well in ensuring that otherwise disparate planning efforts are mutually reinforcing and reflect a common focus on student equity.

POSSIBLE RESERVATIONS ABOUT DEVELOPING A STUDENT EQUITY PLAN

WHY DEVELOP A PLAN WHEN LEGAL REQUIREMENTS ARE UNCERTAIN?

Regardless of future legal decisions, community colleges have the major responsibility for educating most of the adults in higher education. Colleges must develop programs that meet the indicators of student success. Access, course completion, degree and certificate completion, ESL and basic skills completion, and transfer are integral parts of the college mission, goals and objectives. Planning provides the best strategy for colleges to offer a positive college environment and meaningful programs for their students and communities. Identifying obstacles, planning new programs, and coordinating our efforts can best be done effectively if we develop plans.

WHY DEVELOP A PLAN IF TITLE 5 REGULATIONS DO NOT REQUIRE THAT THE PLAN BE IMPLEMENTED?

Solid student equity plans based on sound research afford local colleges an opportunity to coordinate existing efforts, validate successful programs and activities, identify problems, set goals, and make further plans. A good, comprehensive plan can mobilize the whole faculty and staff, and can bring the real satisfaction and excitement that comes from attaining a meaningful goal. A good planning process can, at very little dollar cost, develop considerable new energy.

WILL INCREASED STUDENT SUCCESS ENTAIL WEAKENING ACADEMIC STANDARDS?

This question is based on a common misperception. Increasing student success does not mean lowering standards or "giving away" grades. We can have both high standards and equity as long as we do not expect the students to do all the changing. Faculty ought to examine their pedagogy to assess whether their teaching results in genuine learning for all students; we all need to examine if the "way we do our business" disenfranchises the very students we seek to serve. The task is to find ever better ways to help students succeed in securing a challenging college education. With the right plan, adequate support, and effective implementation, success can be improved while increasing access.

SECTION TWO: CAMPUS CLIMATE

Communities, educational or otherwise, which care for and reach out to [their] members and which are committed to their welfare, are also those which keep and nourish [their] members. Their commitment to students generates a commitment on the part of students to the institution. That commitment is the basis of student persistence. (Vincent Tinto, 1988)

Research has shown that a key factor for student persistence and success is a campus that is receptive and supportive. Therefore, a vital part of the research behind a successful student equity plan is to review the campus climate.

Recent studies suggest that California community colleges have had uneven success in promoting educational goals of non-traditional and underrepresented students.[5] The campus climate must be assessed through the eyes of these students to determine just how receptive and supportive each campus is perceived to be. Do students find the campus community—faculty, staff, students and administrators—as well as the physical plant to be friendly or hostile, warm or impersonal, welcoming or inhospitable? The campus climate is inclusive of the entire college—all programs, departments, services, and staff. Therefore, the entire institution should be welcoming and supportive of students. A survey or some other form of assessment should be done in a manner that reveals the students' perception of the campus and specific programs and services.

Since student satisfaction is highly contextual, colleges should look at local variables as well as assess student perceptions of their campus experiences in areas that include, but are not limited to, the following:

- instructional effectiveness,
- academic advising/counseling,
- administrative effectiveness,
- registration effectiveness,
- safety and security,
- academic services,
- admissions and financial aid,
- campus support services,
- responsiveness to diverse populations,
- physical and environmental factors that may adversely affect some populations.

Many colleges have already conducted local student satisfaction research, hired private research firms, or developed program review processes to assess campus climate. Colleges may utilize existing instruments in designing their own campus climate surveys.

A campus climate committee can be entrusted with the task of planning and implementing student satisfaction assessment surveys and studies. The City College of San Francisco research team, commissioned by the State Chancellor's Office to conduct a statewide study of effective and replicable diversity projects, identified several available models. These can be found in the study report, *We Could Do That! A Users' Guide to Diversity Practices in California Community Colleges.*[6]

The campus climate committee should look at various existing campus climate surveys before coming up with its own instrument. A good resource is *Campus Climate: Understanding the Critical Components of Today's Colleges and Universities* edited by Karen W. Bauer. Another highly recommended source is James B. Boyer's *Multi-Cultural Inventory for Enhancing College-University Curriculum.* Boyer's inventory is designed to discover whether the college creates a welcoming environment for a diverse population. The Boyer inventory can help a college to determine if it encourages esteem and communicates in ways that are relevant to diverse and non-traditional student populations in order to promote their learning experience.

[5] During the 2002 Spring Plenary Session of the Academic Senate, California Tomorrow, a non-profit research organization, presented a report entitled "A New Look at the California Community Colleges: Keeping the Promise Alive for Students of Color and Immigrants." The research shows that students of color and immigrants face special challenges or barriers on their way to academic success. For information about California Tomorrow's equity and access related projects, visit the website http://www.californiatomorrow.org.

[6] City College of San Francisco: Statewide Diversity Practices Project: *"We can do that! A users' guide to Diversity Practices in California Community Colleges."*

SECTION THREE: RESEARCH AND DATA COLLECTION

The Board of Governors has identified five measurable student equity indicators. Furthermore, four of the five areas in which statewide goals have been articulated and outcome measures established for the Partnership for Excellence (PFE) program—successful course completion, degrees and certificates awarded, basic skills improvement, and transfers—closely parallel four of the five student equity indicators contained in the Board's student equity policy. The PFE data, however, is not disaggregated by gender, race, ethnicity, etc., so this will have to be done locally.[7] A number of reports submitted annually by each district to the Chancellor's Office can also be useful in laying the research groundwork for the construction of one's student equity plan: the staff data report, the expenditure report, the performance report, the matriculation report, MIS data and transfer center reports.

The five student equity indicators[8] and the means of their measurement are:

ACCESS

Access can be determined as the percentage of each group enrolled compared to the percentage of each group in the adult population within the community served. Information regarding enrolled students is reported in the California Community College Accountability Model report as item 1.11 (General Participation: Credit) and item 1.12 (General Participation: Noncredit).

COURSE COMPLETION

Course completion can be determined as the ratio of the number of courses that students—by group—actually complete at the end of the term to the number of courses in which students in that group are enrolled on the census day of the term.

Note that "course completion" means the successful completion of a credit course for which a student receives a recorded grade of A, B, C, or Cr. The number of courses in which students are enrolled is determined by the total attempted number of credit courses for which each student ultimately receives a recorded grade of A, B, C, D, F, CR, No-Credit, I, or W.

DEGREE AND CERTIFICATE COMPLETION

Degree and certificate completion can be determined as the ratio of the number of students—by group—who receive a degree or certificate to the number of students in that group with the same declared matriculation goal.

ESL AND BASIC SKILLS COMPLETION

ESL and basic skills completion can be determined as the ratio of the number of students—by group—who complete a degree-applicable course after having completed the final ESL or basic skills course in the sequence to the total number in the group who have completed such a final course.[9]

Completion of a final ESL or basic skills course here means the "successful" completion of a pre-collegiate ESL or basic skills course for English equivalent to one level below English 1A with a grade of C or better; or the "successful" completion of a pre-collegiate basic

[7] Although consideration of student equity is not built into PFE, the virtual identity of PFE and student equity goals makes a strong case for using PFE funding to support student equity efforts.

[8] Title 5, §54220 (see Appendix 3).

[9] Note that ESL and basic skills courses should not be lumped together for data collection since there are major differences between ESL students for whom English is not their native language and native speakers of English with developmental needs. Therefore data regarding a final ESL course completion or a final basic skills course completion should be collected and analyzed separately.

skills course for math equivalent to one level below elementary algebra.

Completion of a degree applicable course currently means the "successful" completion of English 1A, elementary algebra or any collegiate course which is transferable to a four-year institution, has a value of three or more units, and meets established academic requirements for rigor in literacy and numeracy.

TRANSFER RATE

In 2001, the Chancellor's Office defined the cohort of transfer-potential students as consisting of those students who have completed a minimum of 12 units in the community colleges and who have attempted a transfer level course in mathematics or English.[10] The transfer rate, as a student equity indicator, is determined as the ratio of the number of students—by group—who actually transfer to a four-year college or university to the total number of students in that group who are in the transfer-potential cohort.

It is important to recognize that data collection and analysis should not be viewed as mere technical compliance. The data collection component of any student equity plan must be ongoing in order to evaluate the qualitative effectiveness of the plan and to determine what works versus what does not work. All data should be shared with all areas of the campus and the community. Programs or services that do not achieve both the goals of the campus and the community should be identified and jointly considered in an effort to reassess student needs, reevaluate goals, and determine new strategies.

[10] See Chancellor's Office report, "Transfer Capacity and Readiness in the California Community Colleges: A Report to the Legislature", March 1, 2002. The report utilizes Student Right to Know data to achieve a more complete picture of transfer behavior that includes transfer to private and out-of-state colleges.

SECTION FOUR: STUDENT EQUITY AND INSTITUTIONAL FINANCES

Since student equity requires institution-wide commitment, funding for student equity is implicit in the use of all institutional funding streams such as general fund, categorical funds, PFE allocations, faculty and staff development allocations, and grants (both internal to the system such as Fund for Instructional Improvement (FII) and Fund for Student Success (FSS), and external to the system as discussed below). In short, because an institution-wide response to student equity is appropriate, we must view all institutional funds as resources to achieve student equity.

It has been noted that PFE data is not disaggregated. PFE goals do not include any requirement for or sub goals that address equity of student achievement. However, local Partnership and/or Student Equity committees can work to ensure that equity is built into PFE programs and projects. If this is done consistently, PFE funding can essentially be used to fund student equity plans. This will be a critical resource particularly given pending budget cuts to many categorical programs.

Several programs in the student services areas already serve functions closely related to student equity; wherever appropriate, their funded programs should be seen as furthering the campus' student equity goals. Some of these programs are:

- Extended Opportunity Programs and Services (EOPS)
- Cooperative Agencies Resources for Education (CARE)
- Disabled Students Programs and Services (DSPS)
- Matriculation
- Transfer Centers
- Financial Aid
- Mathematics, Engineering and Science Achievement/Minority Engineering Program (MESA/MEP)
- CalWORKS
- Puente

The California Tomorrow study, cited earlier, found that these programs were among the important supports referenced by students.

For vocational education and employment training, the Vocational and Technical Education Act (VTEA) and the Workforce Investment Act (WIA) both include provisions for and support of underrepresented and economically challenged students. Additionally, they fund training opportunities for faculty and staff to help them meet the needs of these targeted populations.

Most faculty do not have the time or resources on their own to research and write grants. However, if an equity plan identifies common funding priorities, it can recommend that the college work to provide resources to underwrite the work involved in seeking grants.

RESOURCE INFORMATION

When internal funds are limited, a college may identify and apply for foundation or other grant funding. Careful consideration of student equity concerns can be built into virtually any grant obtained by the college. Local senates are sometimes required to sign off on grant applications, and even where they are not, the Academic Senate has always urged that local senates create grant review processes that include a role for local senates in development or approval of grants that impact student success. We would recommend that local senates work to ensure that student equity concerns are integral to such grant proposals.

The Foundation Center is a national non-profit service organization founded and supported by foundations to provide an authoritative source of information on foundation and corporate giving. The Center's programs are designed to help grant seekers as they begin to select those funds from the over 68,000 active U.S. foundations which may be most interested in their projects. The Foundation Center offers a wide variety of services and comprehensive collections of information on foundations and grants.

The quickest and most convenient source of information about all the services of the Foundation Center is its online service (http://www.fconline.fdncenter.org). For varying fees, the Center provides four online subscription plans: Basic, Plus, Premium, and Platinum.[11]

- Online Basic includes information on the giving priorities of the 10,000 largest U.S. foundations by total giving.
- Online Plus includes the above and also a searchable grants database with approximately 150,000 records of grants of $10,000 or more awarded by the largest 1,200 foundations.
- Online Premium expands the file of foundation records to 20,000 and includes the set of 150,000 searchable grants.
- Online Platinum greatly expands the foundation file to include over 68,000 entries in all. In addition to all known U.S. foundations, it features two categories of funds that can only be found in Online Platinum: direct corporate giving programs, and public charities grants.

A typical foundation record will include the name of the foundation, the mailing address, contact name, telephone number and, where available, an e-mail address and Website link. To provide subscribers with a sense of a foundation's grant priorities, records include such crucial data as the establishment date; names of donors; purpose and activities statements; fields of interest; types of support; application information; a link to the foundation's 990-PF (IRS return); and, where available, a selected grants list.

Grant records feature vital facts about the grant recipient: the name of the organization, the city and state in which it is located; and the type of recipient. Grant details include: the amount, the duration where applicable, a brief description of the grant (in most cases), the type of support provided, and the subject classification of the grant. The foundation and grants information is updated monthly.

OTHER RESOURCE-RELATED CONSIDERATIONS

In creating or revising student equity plans, many existing community college services and functions could be modified to increase their impact on student equity. Ideally, all disparate pieces of the institution should be analyzed to determine how to advance student equity goals. The following illustrate existing possibilities:

- **Use of Facilities/Facility Development:** Monitor the impact that clustering classrooms by academic area might have on some student equity target groups. For example, all vocational education automotive courses held in a remote facility might isolate female students from their peers and student services.
  Ensure that the physical environment and logistical arrangements for enrollment and study are "user-friendly" and supportive of student

[11] As of the publication of this document, the cost for annual subscription is $195 for the Foundation Directory Online Basic, $295 for the Foundation Directory Online Plus, $595 for the Foundation Directory Online Premium, and $995 for the Foundation Directory Online Platinum. Monthly subscriptions and multiple user plans are also available. For answers to other questions about the Foundation Directory Online Subscription Service, call 1-800-424-9836, M-F 9:00 a.m.-5:00 p.m. EST, or send an e-mail to fdonline@fdncenter.org.

access, retention and success. For example, consider placing the career/transfer center near counseling.

- **Student Mentoring:** Integrate students more effectively into the institution and community through a mentor program, as modeled by Puente, in which students are matched with faculty or community members representing a discipline or occupational areas of interest to the students. Mentors provide an occasion for students to understand the demands of a career area while gaining self-esteem through the support of a role model with whom they can identify.
- **Advisory Committee:** Incorporate the promotion of student equity into the mandates of advisory committees, such as basic skills, vocational, and matriculation advisory committees. Have committees review results of the climate surveys as they plan the year's goals; ensure that those committees reflect the diversity of the college community.
- **Personnel Assignments:** Consider the creation of a position of "Student Equity Ombudsperson" in the community college with the responsibility—and authority—to advocate in all aspects of institutional operations to promote student equity.
- **Community Activities/Community Outreach:** Shape the community college's relationship with the external community to achieve an outcome needed for student equity, through, for example, the creation of internships with minority owned businesses, outreach to high schools, or community service.
- **Personal Development Courses/Life Skills:** Develop curriculum and programs to prepare all students, including re-entry students, for the transition from high school or work to college and for the rigors of college. Help students understand the support services available as well as their options for careers, majors, and occupational/vocational and transfer programs.

SECTION FIVE: SUCCESS COMPONENTS

This section describes a number of activities colleges can initiate or improve upon to promote student equity.

MATRICULATION

Matriculation is at the core of the mission of the California Community Colleges in that a primary mission of the colleges is to provide open access to any California resident over 18 years of age who is capable of profiting from the instruction. In 1986, the Legislature passed Assembly Bill 3—the Seymour-Campbell Matriculation Act—which established the matriculation program in the California community colleges, and is currently incorporated in the Education Code §§78210-78218.

The major component areas of a matriculation program as specified in the Seymour-Campbell Act are admissions, assessment (placement testing), orientation, counseling and advising, student follow-up, coordination and training, research and evaluation, and prerequisite validation and enforcement. Five of these components designate services provided directly to students to enhance their educational success. Two components relate to efforts of colleges and districts to improve institutional effectiveness and accountability and to develop capabilities for evaluation, coordination, and training.

The purpose of matriculation is to provide students with accurate, timely information and to help them define educational goals that are realistic and attainable. The matriculation process is intended to assure all students access to higher education opportunities. An additional purpose is to increase institutional effectiveness and to more efficiently utilize taxpayer support for community college students by ensuring that students are appropriately placed in courses.

The matriculation process requires that the colleges assist students to make their course placement and other educational choices with professional guidance, emphasizing the use of multiple assessment measures and conscientiously applied support services. Students should be offered access to tools designed to help them identify their attitudes, interests, values, personality types and abilities. Considerations of instructional style and learning style may be major factors in student success. Consequently these same considerations necessitate attention at the time of placement and advising.

SUPPORTING STUDENTS WITH LIMITED ENGLISH PROFICIENCY (LEP)

An individualized approach is required for LEP students because they come with such diverse educational histories. Some students have foreign degrees and established professional careers, while others are not literate in their native language. Like all students, LEP students need to know how the community college system works and to have ready access to information about classes, programs, services, processes for enrollment, petitioning for special requests, and obtaining permits for the use of facilities.

ESL programs should be targeted to the demographic needs of the local population. If possible, the college should publish and distribute second language materials to homes and businesses in targeted neighborhoods. Providing these materials would encourage potential students to investigate and enroll in college programs.

Access for LEP students could be increased through specific efforts to transition them successfully from adult education programs. Due to the large population of LEP students working multiple jobs and long hours,

flexible course offerings on weekends, late evenings, and at convenient sites should be considered. We also recommend publishing the application and portions of the class schedule and college catalog in other languages, and providing bilingual taped telephone messages giving general information.

Orientation should include information that outlines programs and services specifically intended to support non-native English-speaking students. LEP students need information regarding specialized curriculum offerings, pre-collegiate basic skills courses, and programs in English as a Second Language. Audiotapes, videotapes, CD-ROMs, and printed information in the students' first languages would be very helpful. Supportive orientation information specifically designed for the LEP student may include a description of the ESL (or LEP) program; telephone number, location, hours of operation of the ESL office; names, office numbers and telephone numbers of bilingual counselors, faculty and staff; information about appropriate clubs; and how to access these activities.

Assessment is required of all matriculating students. In the case of non-native English speakers, the colleges may provide modified or alternative measurement processes as necessary to accurately assess language ability. Appropriate multiple measures for placement of LEP students will take into account the cultural and linguistic differences between second language learners and other students. Counseling and advisement should be required of all entering LEP students, regardless of their educational intentions. Caution is required in the area of LEP student advising since services must be based on the full range of students' listening, speaking, reading, and writing skills, and not just on perceived communication abilities.

LEARNING STYLES

Research indicates that people do not all learn in the same way. Some learners find certain methods of learning more appealing and effective than attending lectures or reading texts, preferring a visual approach to studying. Others learn better from physical activities and the manipulation of objects. Litzinger and Osif describe these learning styles "as the different ways in which children and adults think and learn" (1992, 73). A number of people have tried to classify and categorize the ranges of learning styles. Two of the best known are David Kolb (1984) and Howard Gardner (1989, 1991).

Kolb thought of learning styles as a continuum that one moves through:

- Concrete experience: being involved in a new experience;
- Reflective observation: watching others or developing observations about one's own experience;
- Abstract conceptualization: creating theories to explain observations; and
- Active experimentation: using theories to solve problems and make decisions.

However, most people come to prefer one style over the others, and these styles are what instructors have to be aware of when creating instructional materials. In order to find out more about Kolb's analysis of learning styles and how to teach to them, we recommend *The User's Guide for the Learning-Style Inventory: A Manual for Teachers* by Donna Smith and David Kolb (1986).

Howard Gardner (1983) chose to look at learning styles in a different light, through a theory of multiple intelligences. Gardner expanded the concept of intelligence to also include such areas as music, spatial relations, and interpersonal knowledge in addition to mathematical and linguistic ability. Amy Brualdi (1996) provides the following summary of Gardner's Multiple Intelligences:

- **Logical-Mathematical Intelligence**—consists of the ability to detect patterns, reason deductively

and think logically. This intelligence is most often associated with scientific and mathematical thinking.

Linguistic Intelligence—involves having a mastery of language. This intelligence includes the ability to effectively manipulate language to express oneself rhetorically or poetically. It also allows one to use language as a means to remember information.

Spatial Intelligence—gives one the ability to manipulate and create mental images in order to solve problems. This intelligence is not limited to visual domains—Gardner notes that spatial intelligence is also formed in blind children.

Musical Intelligence—encompasses the capability to recognize and compose musical pitches, tones, and rhythms. (Auditory functions are required for a person to develop this intelligence in relation to pitch and tone, but it is not needed for the knowledge of rhythm.)

Bodily-Kinesthetic Intelligence—is the ability to use one's mental abilities to coordinate one's own bodily movements. This intelligence challenges the popular belief that mental and physical activities are unrelated.

The Personal Intelligences—includes interpersonal feelings and intentions of others—and intrapersonal intelligence—the ability to understand one's own feelings and motivations. These two intelligences are separate from each other. Nevertheless, because of their close association in most cultures, they are often linked together.

These various ways of classifying learning styles tell us that it is essential in early planning to give attention to the characteristics, abilities, and experiences of the learners as a group and as individuals. There are examples of instructional strategies that can accommodate different learning styles. For a detailed discussion of teaching methods, we recommend Paulsen (1995).

Colleges should make an effort to educate both students and faculty in assessing their own learning styles and about learning strategies for various types of learners. This can be done though training seminars for faculty and students and through interactive web pages. (For an example of a community college website on learning styles see Diablo Valley College online at http://www.metamath.com/lsweb/fourls.htm.)

DEVELOPING CLASSROOM ASSESSMENT TECHNIQUES

Thomas Angelo and Patricia Cross (1993) developed an approach to facilitate ongoing assessment of teaching and learning within the classroom.[12] One of the purposes of classroom assessment is to improve student learning, especially in higher cognitive skills such as synthesis and evaluation, and to revitalize faculty engagement in their students' learning. Such attention to classroom assessment can help faculty discover whether and how they are addressing the needs of the many diverse students in a given class.

There are different classroom assessment techniques (CATs) for faculty that are simple to use and easy to interpret—for example, the one-sentence summary, self-assessment, the minute paper, the muddiest point and so on. CATs are aimed at course improvement rather than at assigning grades. The primary goal is to better understand students' learning and to improve teaching.

For faculty, frequent use of CATs can:

- Provide short-term feedback about the day-to-day learning and teaching process when it is still possible to make mid-course corrections.
- Provide useful information about student learning with a much lower investment of time compared to other means of learning assessment.
- Help foster good rapport with students and increase the efficacy of teaching and learning.

[12] Angelo and Cross (1993) *Classroom Assessment Techniques*

- Encourage the view that teaching is a formative process that evolves over time with feedback.

For students, frequent use of CATs can:

- Help them become better monitors of their own learning.
- Help break down feelings of anonymity, especially in larger courses.
- Point out the need to acquire study skills.
- Provide concrete evidence that the instructor cares about learning.

Angelo and Cross recommend that to begin this kind of assessment only one or two of the simplest CATs be tried in only one class. Trying out a simple CAT will require only five to ten minutes of class time. After trying one or two quick assessments, the decision as to whether this approach is worth further investments of time and energy can be made. They suggest a three-step process for starting small:

STEP 1: PLANNING

Select one, and only one, of your classes in which to try out the Classroom Assessment. Decide on the class meeting and select a Classroom Assessment Technique. Choose a simple and quick one.

STEP 2: IMPLEMENTING

Make sure the students know what you are doing and that they clearly understand the procedure. Collect the responses and analyze them as soon as possible.

STEP 3: RESPONDING

To capitalize on time spent assessing, and to motivate students to become actively involved, "close the feedback loop"

LEARNING COMMUNITIES

As noted before, Tinto has found that a sense of connection is one of the most critical factors in enhancing student success. Learning communities create cohorts of connection that can positively reinforce student retention. Breaking down a sense of isolation for both students and faculty is a key benefit of learning community approaches.

A learning community is a curricular structure that links together two or more existing courses. A typical learning community may involve several instructors in different disciplines working with the same students in order to facilitate connections between subjects or disciplines and a curriculum often based on a common theme. The concept suggests that learning is multi-dimensional with the students performing some instructional functions and the faculty engaging in the learning process along with the students. Students find greater coherence in what they are learning, as well as increased intellectual interaction with faculty and fellow students. Learning communities are powerful curricular innovations and certainly help to revolutionize the learning process.

Learning communities were first offered in the Experimental College at the University of Wisconsin in 1927. More recently, the community colleges in Washington State, Daytona Beach Community College in Florida, and LaGuardia Community College in New York have been leaders in developing various forms of learning communities.

"Leaning Community Commons," a website for the National Learning Communities Project at http://learningcommons.evergreen.edu, contains a searchable learning communities directory, an online Learning Communities journal and other resources.

ACADEMIC MENTORING

The Academic Senate for California Community Colleges has developed a *"Primer on Faculty Mentoring."* This paper is designed to help faculty in local districts plan and implement faculty-student mentoring activities. The paper can be downloaded from the Academic Senate Website http://www.academicsenate.cc.ca.us.

Faculty can be matched to students based on institutional assessment, local resources, and probability of failure without intervention. Early alert systems may identify students who are at risk for dismissal or failure. The objectives of the mentoring should be developed locally, but developing "self-reliance" techniques for coping more effectively with academic and other demands of college life will ordinarily be a part of the mentoring activity.

A rapport between the mentor and student ought to be characterized by open communication, responsibility, and motivation. The mentor and the student should be the major decision makers regarding the duration of their interactions. Expectations, interest, and academic ambitions should be taken into consideration as the faculty and students are matched. It would be ideal if the students requested particular faculty members and the latter were aware that the students had chosen them based on experience, accomplishment, or academic preparation.

Clearly, participation in the mentor relationship should be strictly voluntary. The mentorship program should make clear to all its participants the general philosophy and guidelines of the activity. Guidelines may include information regarding suggested interactions, lengths of meetings, activities, reporting functions, and a mutual respect for commitments made.

STUDYING EFFECTS OF DISTANCE EDUCATION AND TECHNOLOGY ON STUDENT EQUITY

While there have been many studies on the success of students who have taken courses in a non-traditional distance education modality, little attention has been given to the equity dimension of distance education and technology. Many community college students come from families that do not have computers or up-to-date technology in their homes, and this is particularly true of students who are currently underrepresented in the community college system. The term "digital divide" is used to refer to a gap between those who can effectively use new information and communication tools, such as the Internet, and those who cannot. While a consensus does not exist on the extent of the divide (and whether the divide is growing or narrowing), researchers are nearly unanimous in acknowledging that some sort of divide exists at this point in time. More research to determine the impact of technology on student equity would be useful.[13]

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[13] During the Spring 2001 Plenary Session of the Academic Senate in San Francisco, a resolution urging research in this area of "digital divide" was adopted:

Whereas, There is growing national concern regarding the digital divide and differential access to technology, which adversely impacts students of various ethnic and socioeconomic backgrounds as well as those with disabilities;

Whereas, The availability of technology is a student access and equity issue; and

Whereas, The ability to understand and utilize information technology and tools is an essential skill for all students;

Resolved, That the Academic Senate for California Community Colleges conduct research to investigate the impact of technology on student access and success in the California Community College System, particularly as it related to ethnic and socio-economic diversity and students with disabilities; and

Resolved, That the Academic Senate for California Community Colleges report back in a paper the research findings and recommended solutions to any problem identified.

SUPPORT FOR FACULTY

Finally, it is also desirable that faculty are supported in their efforts to promote student equity as well as to integrate cultural diversity into the curriculum, including their efforts to address differences in learning styles and increase students' effective use of instructional technology. Colleges should recognize faculty who acquire a new language, take additional courses in their discipline that emphasize diverse contributions and perspectives, or expand methodological approaches deemed effective for all students, and especially for students from historically underrepresented groups in higher education.

Staff development programs on many campuses recognize teaching excellence. New or existing programs can be tailored to support faculty for taking part in activities that enhance student equity. Additional incentives, like the following, may also be offered:

1. Credit toward rank change;
2. Consideration of activities that increase student equity as part of basic teaching load;
3. Flex day credit for workshop development and participation;
4 Reassigned time or stipends for mentoring activities;
5. College foundation funds devoted to mini-grants for faculty projects that integrate cultural diversity into courses;
6. An honorary dinner with tributes for outstanding service and projects that further student equity; and
7. A departmental system of awards for the development of activities that increase student equity within disciplines.

Some of these incentives will have to be negotiated, and thus consultation with the bargaining units will be necessary.

CONCLUSION

Student equity is not a new goal for California community colleges. The ideal is as old as the Master Plan for Higher Education in California, 1960-1975, which designed the community colleges to be open access institutions. If we are truly open to all, then we must serve all our students well, leaving no one behind. That is the essence of student equity. Everything else we do in the name of student equity is merely a means to that end.

To further that end, the Academic Senate endorses the recommendation of the Chancellor's Task Force on Equity and Diversity that the Board of Governors reinvigorate and reinforce the student equity planning process by requiring colleges to periodically reevaluate and revise their student equity plans. Further, we recommend that the Board of Governors review the existing criteria for evaluation of these plans by the Chancellor's Office. Finally, we recommend that the Board of Governors enforce the regulation that development of a student equity plan that meets those criteria be a minimum condition for receipt of state funds.

Even absent a requirement from the state, however, planning for student equity is essential. Only with planning can we hope to achieve student equity and success. Only then can we ensure that no one and no group is left behind. Regardless of mandates from above, planning for student equity is essential, simply because the cost of failing any part of California's population would be a disaster for all Californians.

RECOMMENDATIONS

RECOMMENDATIONS TO THE BOARD OF GOVERNORS AND CHANCELLOR

1. The Chancellor and the Board of Governors must assert that in creating or revising an equity plan, the intent is not mere production of a plan, but to make a difference in the lives of our students.
2. The Board of Governors should again require districts and colleges to re-evaluate and review periodically their student equity plans. The Board should also specify a time period for such review and evaluation.
3. The Board of Governors should require districts and colleges to implement and develop those plans as a minimum condition for funding and should direct the Chancellor's Office to enforce that condition.

RECOMMENDATIONS TO LOCAL SENATES

Academic Senate for the California Community Colleges recommends to local academic senates that they:

1. conduct research to establish baseline data in the 5 student equity indicator areas.
2. set high but reasonable, achievable, measurable goals in the five student equity indicator areas.
3. implement their college student equity plan by establishing a timetable and identifying individuals responsible for implementation.
4. raise the visibility and progress of the plan and its implementation within the college community.
5. recommend that multi-language materials, information, orientations, and services for non-English speaking populations are provided and that courses are offered at more flexible times and at convenient sites.
6. include learning styles inventories as part of student matriculation and placement services.
7. ensure that faculty and staff development programs provide training in the following:
   - Needs of target populations;
   - Learning and teaching styles;
   - CATs;
   - Use of technology and issues of access; and
   - Innovative teaching styles.
8. conduct periodic reviews by including student equity goals as part of program reviews and establishing periodic review of the student equity plan, revising as necessary or as called for by any existing Board of Governors regulation.
9. foster academic mentoring and job shadowing for students, particularly those in targeted populations or at risk groups.
10. examine, as part of facilities master planning, the impact of facilities on equity goals or objectives.
11. work to ensure that sufficient numbers of basic skills classes are offered to meet student needs.
12. incorporate student equity as a primary focus of their staff development programs and orientations of all faculty.
13. research the link between student equity and faculty and staff diversity.

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APPENDIX 1: STUDENT EQUITY PLAN REVIEW PROCEDURES AND INSTRUCTIONS

The following instructions are written to provide reviewers with a general overview of the responsibilities and procedures associated with the review of Student Equity Plans.
Listed below are key areas of the review process. Use this text as a reference throughout the review process. If you have any questions during the review, direct them through the team leader.
The review process is divided into two areas: orientation and program plan review.

READERS RESPONSIBILITIES

The major responsibility of a reviewer is to review and evaluate plans in a fair and equitable manner. Reviews are responsible for the following:

1. Determination whether a district's Student Equity Plan is sufficiently developed to move forward into an annual review process. Consequently a districts plan should have:
   - Achievable and measurable goals based upon well founded research which clearly has identified valid student equity issues; and
   - Viable implementation strategies and outcome measures for achieving their stated goals and recording the outcomes of their progress.
2. Assessment utilizing the approved Student Equity Rating Sheet. The reviewer is to indicate whether selected items are contained in the plan, and provide comments when evaluating each program element. There are six additional questions each reviewer is expected to respond to and comment on and make an overall assessment of the program plan.
3. All plans must be read by a team of at least two reviewers.
4. Read all plans separately and do not discuss them with any other team member until the team subcommittee meeting and the plan is up for discussion.

RATING A PLAN

Each reviewer rates the elements within each plan on the basis of how well it addresses the issues noted in each of the 21 questions posed by the rating sheet The rating scale assigned may be as follows:

- Outstanding - Significantly exceeds requirements of an acceptable program plan.
- Acceptable - Addresses the basic requirements of a program plan.
- Needs Improvement — Improvements needed to meet the requirements of a program plan.

A consensus rating will be obtained for the overall plan and the basic program elements within each plan:

1. Basic Research
2. Goals
3. Implementation
4. Budget
5. Evaluation

STUDENT EQUITY PLAN REVIEW SHEET

District: _____

College: _____

Reader: _____

Date: _____

I. PLAN ELEMENTS

A. RESEARCH

1. Basic research elements are based on:

- ☐ Demographic data
- ☐ Campus climate study
- ☐ Review of existing plans, policies, goals, and objectives
- ☐ Other

2. Reviewer's Assessment and Comment

ASSESSMENT 1: Is the basic research sufficient to formulate legitimate and substantive issues of access, success, and transition and derive valid and meaningful conclusions in the development of the student equity plan?

☐ Yes ☐ No

Comment: _____

_____

_____

ASSESSMENT 2: Is the basic research broad enough to assure assessment of the status of historically underrepresented groups in the institution's service area?

☐ Yes ☐ No

Comment: _____

_____

_____

3. Overall Assessment of Research

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

B. ACCESS

1. Are student access issues identified?

☐ Yes ☐ No

If so, are the goals to address them formulated on the basis of:

- ☐ Comparison of institutional enrollment data with that of service area-based population data
- ☐ Assessment of enrollment trend data
- ☐ Campus climate study
- ☐ Other _____

_____

2. Are barriers to access identified?

☐ Yes ☐ No

If so, are the goals to address them formulated on the basis of:

- ☐ Comparison of institutional enrollment data with that of service area-based population data
- ☐ Assessment of enrollment trend data
- ☐ Campus climate study
- ☐ Other _____

_____

_____

3. Reviewer's Assessment and Comment

ASSESSMENT 3: How well do access goals reflect a logical and reasonable outgrowth of the institution's basic research and findings?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

ASSESSMENT 4: How well are access goals clearly stated with measurable outcomes?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

ASSESSMENT 5: How appropriate are access goals for the student access issues and barriers noted?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

4. Overall Assessment of Access

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

C. RETENTION/COMPLETION

1. Are student retention/completion issues identified?

☐ Yes ☐ No

If so, are the goals to address them formulated on the basis of:

- ☐ Comparison of institutional enrollment data with that of service area-based population data
- ☐ Assessment of enrollment trend data
- ☐ Campus climate study
- ☐ Other:

2. Are barriers to course, degree/certificate, and ESL/basic skills completion identified?

☐ Yes ☐ No

If so, are the goals to address them formulated on the basis of:

- ☐ Comparison of institutional enrollment data with that of service area-based population data
- ☐ Assessment of enrollment trend data
- ☐ Campus climate study
- ☐ Other:

3. Reviewer's Assessment and Comment

ASSESSMENT 6: How well do retention/completion goals reflect a logical and reasonable outgrowth of the institution's basic research and findings?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

ASSESSMENT 7: How appropriate are barriers to retention/completion goals for the retention/completion issues and barriers noted?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____
_____
_____

4. Overall Assessment of Access

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

D. TRANSFER/TRANSITION

1. Are student transfer/transition issues identified?

☐ Yes ☐ No

If so, are the goals to address them formulated on the basis of:

- ☐ Comparison of course completion data with that of base institutional enrollment data
- ☐ Assessment of completion trend data
- ☐ Campus climate study
- ☐ Other:

2. Are barriers to transfer/transition identified?

☐ Yes ☐ No

If so, are the goals to address them formulated on the basis of:

- ☐ Comparison of course completion data with that of base institutional enrollment data
- ☐ Assessment of completion trend data
- ☐ Campus climate study
- ☐ Other_____
_____
_____

3. Reviewer's Assessment arid Comment

ASSESSMENT 8: How well do transfer/transition reflect goals a logical and reasonable outgrowth of the institution's basic research and findings?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____
_____
_____

ASSESSMENT 9: How well are transfer/transition goals clearly stated with measurable outcomes?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

ASSESSMENT 10: How appropriate are transfer/transition goals for the transfer/transition issues and barriers noted?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

4. Overall Assessment of Transfer/Transition

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

E. IMPLEMENTATION

1. Are implementation strategies described to address goals?

☐ Yes ☐ No

2. Strategies are reflected:

- ☐ Planned efforts for further study and data collection of student equity needs
- ☐ Maintain or expand existing student equity efforts
- ☐ Develop new approaches to promote student equity
- ☐ Other:

3. Reviewer's Assessment and Comment

ASSESSMENT 11: How clearly are implementation strategies defined?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

ASSESSMENT 12: How achievable are the desired outcomes through the described activities?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

ASSESSMENT 13: How measurable are the desired results in an outcome data format?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

4. Overall Assessment of Implementation

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

F. BUDGET RESOURCES

Are budget resources to support these planned activities identified?

☐ Yes ☐ No

If so, are they set aside from:

- ☐ Existing general fund and categorical aid program resources
- ☐ New general fund appropriations
- ☐ New grants or special program awards
- ☐ Other:

2. Reviewer's Assessment and Comment

ASSESSMENT 14: How well does the resource utilization pattern reflect a feasible effort to achieve the stated student equity goals and objectives?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

3. Overall Assessment of Budget Resources

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

G. Procedures and Schedule for Evaluation

Are procedures and schedule for evaluation noted?

☐ Yes ☐ No

If so, does it include:

- ☐ Timelines for accomplishment of goals and activities
- ☐ Responsibility for performance clearly assigned
- ☐ Clearly identified success indicators which are measurable in the form of outcomes
- ☐ Other _____

_____

_____

2. Reviewer's Assessment and Comment

ASSESSMENT 15: How feasible is evaluation methodology?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

ASSESSMENT 16: How clearly defined are outcomes/measures?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

ASSESSMENT 17: How well does the evaluation process incorporate an annual review model?

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

Comment _____

_____

_____

3. Overall Assessment of Procedures and Schedule for Evaluation

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

II. REVIEWER'S GENERAL PERCEPTION

A. Did the district board approve the plan? ☐ Yes ☐ No

B. Was the planning process broadly representative? ☐ Yes ☐ No

- ☐ Administration
- ☐ Faculty/Certificated Staff
- ☐ Classified Staff
- ☐ Students
- ☐ Community Representatives

C. Has the established responsibility for oversight been assigned at an appropriate level?

☐ Yes ☐ No

D. Is the plan cohesive and realistic? ☐ Yes ☐ No

E. Greatest strength

F. Greatest weakness

G. Other comments

H. Overall Assessment of Student Equity Plan

- ☐ Needs improvement
- ☐ Acceptable
- ☐ Outstanding

APPENDIX 2: AN EXAMPLE OF A STUDENT EQUITY PLAN DEEMED "OUTSTANDING" BY THE CHANCELLOR'S REVIEW COMMITTEE

A team of 12 readers was assembled in Sacramento on April 26-28, 1994 to participate in a comprehensive review of plans. The review team included students, campus research and planning officers, chief instructional and student services officers, and members of the Chancellor's staff. Each plan was evaluated utilizing a review instrument and set of instructions designed to determine the extent to which colleges addressed those elements recommended by the Board for inclusion in their student equity plan (See Appendix I).

The team reviewed 104 plans (three colleges had not submitted a plan) and deemed that

- Five were "outstanding,"
- Thirty were "acceptable,"
- Sixty-nine "need[ed] improvement."

The five outstanding plans were submitted by Columbia College, Modesto Junior College, College of Marin, Rancho Santiago College, and Riverside College. The Modesto Junior College plan is available in the Senate Office.

APPENDIX 3: STUDENT EQUITY: REGULATIONS AND GUIDELINES

OVERVIEW

This document sets forth regulations related to student equity which were adopted by the Board of Governors at its November 14, 1996 meeting and technically revised on May 14, 1997. Accompanying each regulation (where applicable) is a guideline developed by Chancellor's Office staff that explains and clarifies the implementation of the associated regulation. These guidelines are not part of the regulations and, therefore, do not have the force and effect of law. They represent the Chancellor's interpretation of the regulations and respond to questions raised during the consultation process and the public comment period. They can and will be revised by the Chancellor as deemed necessary.

51026. STUDENT EQUITY

In accordance with the provisions of Section 54220, the governing board of a community college district shall adopt a student equity plan.

GUIDELINES FOR SECTION 51026

This section sets forth the adoption of a student equity plan as a minimum standard for the governing board of a community college district and must be met as a condition for receiving state aid.

54220. STUDENT EQUITY

(a) In order to promote student success for all students, the governing board of each community college district shall adopt, by July 1, 1993, a student equity plan which includes, for each college in the district:

(1) Campus-based research as to the extent of student equity in the five areas described in paragraph (2) and the determination of what activities are most likely to be effective;

(2) Goals for access, retention, degree and certificate completion, ESL and basic skills completion, and transfer for the overall student population and for each population group of students, as appropriate. Where significant underrepresentation is found to exist in accordance with standards adopted by the Board of Governors, the plan shall include race-neutral measures for addressing the disparity, and, when legally appropriate race-conscious measures for addressing the disparity;

(3) Implementation activities designed to attain the goals, including a means of coordinating existing student equity related programs;

(4) Sources of funds for the activities in the plan;

(5) Schedule and process for evaluation; and

(6) An executive summary that includes, at a minimum, the groups for whom goals have been set, the goals, the initiatives that the college or district will undertake to achieve these goals, the resources that have been budgeted for that purpose, and the district official to contact for further information.

(b) These plans should be developed with the active involvement of all groups on campus as required by law, and with the involvement of appropriate people from the community.

(c) The Board-adopted plan shall be submitted to the Office of the Chancellor, which shall publish all executive summaries, sending copies to every college and district, the chair of each consultation group that so requests, and such additional individuals and organizations as deemed appropriate.

(d) For the purposes of this section, "each population group of students" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks, Hispanics, Whites, men, women, and persons with disabilities. A person shall be included in the group with which he or she identifies as his or her group.

GUIDELINES FOR SECTION 54220

This provision generally requires community college districts to adopt a student equity plan and submit a copy of the plan to the Office of the Chancellor.

It is recommended that the district establish a success/equity advisory committee, including representation from all groups on campus and appropriate representatives from the community, to assist in development of the student equity plan. This advisory body is intended to be actively involved in college district planning at the highest governance levels to ensure the most effective means of implementing identified success strategies. This regulation requires the identification of an official contact person and the inclusion of an ongoing evaluation process. This reflects the intent of the Board of Governors that the planning process be an ongoing effort designed to incorporate the results of institutional self study to promote continuous improvement of the college or district.

Student success and especially the success of students from underrepresented groups should become the standard way districts and CEOs measure and advertise their achievements during the next decade.

The regulation further describes the component parts each student equity plan shall contain. Subsection (a)(1) requires a student equity plan to include basic research to determine the extent to which equity issues are revealed. This may include but is not limited to an assessment of success indicators, campus climate studies, or other effective means of identifying areas in which historically underrepresented groups may or may not be best served through the community college. By conducting a study of the problem, it is expected that a college or district will be able to detect things about the way the college is organized, the quality of its instruction, or the availability of services which create obstacles to student success.

The Board of Governors has identified five measurable success indicators it feels are key in determining the success various population groups are achieving access, course completion, degree/certificate completion, ESL/Basic Skills completion, and Transfer. Data in these areas should be periodically reviewed and efforts should be made to address any problems that should be identified.

Subsection (a)(2) allows community colleges and districts to set goals to ensure student equity when underrepresentation is noted within any success indicator area for any student population group. Goals are usually written expressions formulated to achieve a desired outcome.

When goals are adopted, they should include specific measures for determining progress toward achieving the desired outcomes. Such measures should identify the baseline data findings from the basic research that forms the bases for noting an equity issue, as well as the amount and direction of change expected to reflect the desired outcome or amount of progress to be achieved.

Goals are typically accompanied by target dates and/or timetables to establish a time frame for assessing the effectiveness in achieving expected educational outcomes.

Colleges may establish goals and target dates to eliminate noted underrepresentation whenever it is found, as long as its methods are limited to race/gender neutral considerations. Non-discriminatory and equal opportunity practices are intended to protect the rights of everyone and consequently are expected to be race/gender neutral.

Although the Board supports the use of race-neutral methods to promote student success/ equity, it recognizes that under certain conditions, colleges may have a legal obligation under federal law to do more.

Corrective action, however, is an affirmative measure that must be taken in accordance with this regulation when there is significant underrepresentation (below the 70% level of expected representation). When such evidence is found community colleges must go beyond complying with the nondiscrimination laws and take active steps to promote student equity. Corrective action measures may include race/gender neutral as well as methods, which take race and gender into account.

WHEN A DISTRICT DETERMINES THAT SIGNIFICANT UNDERREPRESENTATION EXISTS IT SHALL:

(1) review its practices and procedures and identify and implement any additional measures which might reasonably be expected to address the needs of significantly underrepresented groups in the success indicator areas in question;

(2) consider various other means of reducing the underrepresentation, which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective;

(3) establish target dates for achieving expected outcomes.

It should be noted, however, that race/gender conscious methods may not be used until the district has tried race/gender neutral approaches for the reasonable period of time and found that the significant under representation persists. The Chancellor's Office recommends that race/gender neutral methods be tried for at least 3 years before consideration is given to mechanisms that take race or gender into account.

Subsection (a)(3) calls for the identification of implementation strategies to be undertaken to address student equity goals. California community colleges currently offers a variety of programs and services which, although race neutral, provide support and meet the needs of a variety of underrepresented groups. Many of these as well as others may be considered for inclusion in the student equity plan when these activities are determined to be feasible and potentially effective in the elimination of significant underrepresentation.

WHEN ESTABLISHING GOALS FOR STUDENTS WITH DISABILITIES:

Districts may concurrently utilize disability conscious measures without waiting to prove that disability neutral measures do not or will not work.

Nothing in this regulation shall be construed to prohibit a district from taking any other steps it concludes are necessary to ensure student equity, provided that such actions are consistent with the requirements of federal and state constitutional and statutory nondiscrimination law.

Subsection (a)(4) calls for the identification of resources budgeted to carry out the plan. Student equity is an institution-wide mode of operation, its funding is implicit in the use of all institutional funds which may include but is not limited to federal and/or state resources, general fund revenue, private grants, or in kind services.

Because an institution-wide response to student equity is appropriate, all institutional funds can be viewed as resources for student equity. There are already substantial categorical monies that could be coordinated more effectively with all parts of the campus such as:

- Equal Opportunity Programs and Services
- Cooperative Agencies Resource Education
- Disabled Students Programs and Services
- Matriculation
- Financial Aid

For vocational education and employment training, the Vocational and Technical Education Act and the Job Training Partnership Act both include major provision for the support of underrepresented and economically challenged students.

Within the Chancellor's Office Education Standards and Evaluation program area, several ongoing programs working towards student equity goals are available:

- California Academic Partnership Program
- MESA/MEP - Mathematics, Engineering and Science achievement/Minority Engineering Program

Other specific statewide system funds may be utilized to support the student equity effort include:

- Faculty and Staff Development fund
- Fund for Instructional Improvement
- Underrepresented Student Special Projects Fund
- Student Success Project Fund

Local student equity planners are encouraged to devise new ways to better coordinate these programs to support student equity efforts. There may be ways to save money by using new, more effective teaching strategies or technology, Improved advising and counseling may help student make better decisions on course selection. Effective implementation of probation and dismissal policies may also permit more effective use of the colleges' limited resources.

Subsection (a)(5) requires each district to establish a schedule and process for its evaluation. It is intended that the data collection component of any student equity plan be an on going effort and each community college district is expected to annually survey its student population to gather ethnicity, gender and disability data for use in evaluating its progress in implementing the goals set forth in its plan.

The schedule should be very specific about who is doing what and when they should be doing it. The schedule should also include how often the plan itself will be evaluated.

Each district is further required by subsection (a)(6) to develop an executive summary which identifies the groups for whom goals have been set; the goals and initiatives to be undertaken by the college or district; the resources budgeted for this purpose; and the official contact person responsible for this effort. It is intended that the designated contact be responsible for the monitoring, review, and evaluation of student success for all students as well as guiding the planning and development process to promote student success. He/she should therefore compile the results of the periodic review process to determine effective success strategies and annually report these findings to the success/equity advisory committee for consideration in their planning to promote continuous improvement of the college or district. A copy of this report along with any resulting committee or board action should also be submitted to the Office of the Chancellor.

APPENDIX 4: GLOSSARY

Definition of terms, developed by the Chancellor's staff, commonly used in conjunction with these provisions include:

DIVERSITY. "Diversity" means a condition each district should strive to achieve in which the district's student body includes men and women, persons with disabilities, and individuals from all ethnic groups in numbers adequate to ensure that the community college provides an inclusive educational environment which fosters cooperation, acceptance, democracy and the free exchange of ideas. Although there is no universal or specific measure for determining when diversity has been achieved, the demographics of the adult population of the state and of the community served by the district should both be considered.

EQUAL OPPORTUNITY. "Equal opportunity" means that all qualified individuals have a reasonable chance to fully develop his or her potential through equal access to education and a full and fair opportunity to achieve student success and academic excellence.

ETHNICITY. "Ethnicity" means the ethnic group in which an individual is included or with which an individual identifies. A person shall be included in the group with which he or she identifies as his or her group, but may be counted in only one ethnic group. These groups shall be more specifically defined by the Chancellor and consistent with state and federal law.

ETHNIC MINORITIES. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks, and Hispanics.

EXPECTED REPRESENTATION. "Expected representation" means that the percentage of persons from an historically underrepresented group is substantially the same as the percentage that members of that group would be expected to represent given the number of persons from that group in the pool of persons who are determined by the Chancellor to be available in the service population in question.

GOAL. "Goal" means a statement that the district will strive to attract and serve additional qualified members of an historically underrepresented group in order to achieve the level of expected representation for that group by a target date established by taking into account the expected turnover in enrollment and the availability of persons from that group who are qualified members of its service population. Goals are not "quotas" or rigid proportions.

HISTORICALLY UNDERREPRESENTED GROUP. "Historically underrepresented group" means ethnic minorities, women and persons with disabilities. The Board of Governors recognizes that ethnic minorities, women, and persons with disabilities have historically faced discrimination and other obstacles that limited their opportunities for education, and academic success.

PERSON WITH A DISABILITY. "Person with a disability" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an

impairment. A person with a disability is "substantially limited" if he or she is likely to experience difficulty in securing access to the college or achieve success.

POPULATION GROUP. "Population group" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks, Hispanics, Whites, men, women, persons with disabilities, or other identifiable groups. A person shall be included in the group with which he or she identifies as his or her group.

RACE/GENDER/DISABILITY CONSCIOUS MEASURES: Where race, gender, or disability is included as a factor for selection or granting of a benefit of one group over another.

REASONABLE ACCOMMODATION. "Reasonable accommodation" means the efforts made on the part of the district to remove artificial or real barriers that prevent or limit educational access or success of persons with disabilities.

SIGNIFICANTLY UNDERREPRESENTED GROUP: "Significantly underrepresented group" means any historically underrepresented group for which:

1. the percentage of persons from that group served by the district in any enrollment or service category listed is below seventy percent (70%) of the percentage that members of that group would be expected to represent given the service population in question; or
2. the number of persons from that group served by the district in any enrollment or service category is lower than the number that would be expected given the number of persons from that group in the service population in question, and that discrepancy is found to be statistically significant to the #1 level using the chi square test or any other statistical test the Chancellor determines to be appropriate for this purpose; or
4. where small numbers are involved, both (1) and (2) are satisfied.

STUDENT EQUITY INDICATOR: A "student equity indicator" means a statistical measure that may be utilized to determine areas for which target population groups may or may not achieve equal education access or success. The Board of Governors has identified five measurable student equity indicators:

1. ACCESS: Access can be determined as the percentage of each group enrolled compared to the percentage of each group in the adult population within the community served.
2. COURSE COMPLETION: Course completion can be determined as the ratio of the number of courses that students—by group—actually complete at the end of the term to the number of courses in which students in that group are enrolled on the census day of the term.
3. ESL AND BASIC SKILLS COMPLETION: ESL and basic skills completion can be determined as the ratio of the number of students—by group—who complete a degree applicable course after having completed the final ESL or basic skills course in the sequence to the total number in the group who have completed such a final course.

4. DEGREE AND CERTIFICATE COMPLETION: Degree and certificate completion can be determined as the ratio of the number of students—by group—who receive a degree or certificate to the number of students in that group with the same declared matriculation goal.

5. TRANSFER: The Chancellor's Office has defined the cohort of transfer-potential students as consisting of those students who have completed a minimum of 12 units in the community colleges and who have attempted a transfer level course in Mathematics or English. The transfer rate, as a student equity indicator, is determined as the ratio of the number of students—by group—who actually transfer to a four-year college or university to the total number of students in that group who are in the transfer-potential cohort.

STUDENT EQUITY PLAN. A "student equity plan" is a written document in which a district's student population is analyzed and specific result-oriented plans and procedures are set forth for ensuring equal opportunity, promoting diversity, and achieving expected representation of qualified members of all population groups.

STUDENT EQUITY PROGRAM: "Student Equity Program" means all the various methods by which a diverse and representative student body is to be achieved for qualified members of historically underrepresented groups. Such methods include, but are not limited to, using nondiscriminatory practices to promote student success, actively recruiting, monitoring and taking other steps to ensure equal opportunities, promoting diversity, and taking corrective action where significant disparities in student success levels are identified.

TARGET DATE. "Target date" means a point in time by which the district plans to meet an established goal and achieve expected representation for a particular historically underrepresented group in a particular indicator area.

EXHIBIT 6

Informational Exhibits

Board of Governors
California Community Colleges
July 8-9, 2002

TITLE 5 REGULATIONS: EQUAL EMPLOYMENT OPPORTUNITY

11

ACTION SCHEDULED

Committee of the Whole

Presentation: *Ralph Black*
General Counsel

Issue

This item presents a request for adoption of the proposed Title 5 equal employment opportunity regulations reviewed by the Board of Governors at its January, March and May meetings.

Background

On September 4, 2001, the California Court of Appeal for the Third District reversed the judgment of the trial court in the case of *Connerly v. State Personnel Board* (2001) 92 Cal.App.4th 16, with respect to statutes that include certain affirmative action requirements for the California community college districts. The Court considered a facial challenge to the constitutionality of these sections, and it found that the statutes were inconsistent both with equal protection guarantees and with the prohibitions established in article 1, section 31 of the California Constitution (Proposition 209).

In finding that the statutes are unconstitutional, the Court invalidated sections 87100 through 87107 of the *Education Code*. These sections serve, at least in part, as the current statutory basis for the Title 5 regulations which are proposed for amendment in this item. However, the Board is still obligated to provide supervision to the system in various areas of employment, and it is specifically obligated to regulate in particular employment areas. Thus, the failure of sections 87100 through 87107 to pass constitutional muster does not relieve the Board of Governors of obligations related to employment equity and diversity.

Analysis

There are a number of statutes which require the Board of Governors to ensure that community colleges utilize nondiscriminatory employment practices and/or ask the Board of Governors or local districts to promote workforce diversity. These statutes were discussed at length in the March Board agenda item and are set forth in the Attachment for convenient reference. Through these various directives, the Legislature has sent a clear message that unlawful employment discrimination will not be tolerated and that diversity remains a system goal. Therefore, when the Court of Appeal struck down certain portions of the Legislature's guidance to the system, it did not remove the Legislature's overriding commitments in these areas. The proposed regulations rely on these alternative statutory provisions for their authority.

The revised regulations focus on careful data collection, monitoring for adverse impact, and appropriate inclusive outreach efforts. These strategies are all consistent with the *Connerly* decision.

Even as it was invalidating *Education Code* sections 87100 through 87107, the Court of Appeal acknowledged that,

> "[g]overnmental entities remain under a duty to eliminate the vestiges of segregation and discrimination. [Citation omitted.] All of the justices agree that governmental entities may use race and gender-neutral methods of fostering equal opportunity and that, in some instances, even race and gender-specific remedies may be employed. Accurate and up-to-date information is the sine qua non of intelligent, appropriate legislative and administrative action." (*Connerly v. SPB, supra,* 92 Cal.App.4th 16, 46.)

In more specific terms, the Court of Appeal addressed the collection of data concerning the participation of women and ethnic minorities in public employment, as well as outreach and recruitment efforts. With respect to data collection, the Court noted,

> "Respondents contend that monitoring programs which collect and report data concerning the participation of women and minorities in governmental programs do not violate equal protection principles. We agree.
>
> . . . Assuming that strict scrutiny is required, a monitoring program designed to collect and report accurate and up-to-date information is justified by the compelling governmental need for such information." (*Id.*, at p. 46.)

The Court further explained the significance of accurate data collection:

> "In other words, portions of the [state civil service] statutory scheme that provide for data collection and reporting do not suffer a constitutional defect because a determination of the underutilization of minorities and women in state service can serve legitimate and important purposes. Such a determination may indicate the need for further inquiry to ascertain whether there has been specific, prior

> discrimination in hiring practices. It may indicate the need to evaluate applicable hiring criteria to ensure that they are reasonably job-related and do not arbitrarily exclude members of the underutilized group. And it may indicate the need for inclusive outreach efforts to ensure that members of the underutilized group have equal opportunity to seek employment with the affected department."
> (*Id.*, at p. 56.)

Required recruitment efforts are an important aspect of the system's regulations. The Court of Appeal verified that,

> "outreach or recruitment efforts which are designed to broaden the pool of potential applicants without reliance on an impermissible race or gender classification are not constitutionally forbidden." (*Id.*, at p. 46.)

However, the Court emphatically rejected the mandated use of goals and timetables for the hiring of minorities and women as well as the financial incentives or detriments related to success or failure in meeting such goals and timetables. It also rejected focused outreach only to women and minority applicants and the ability to use limited in-house recruitment based on the parity of women and minority employees in a district's employment environment. Reopening or delaying hiring processes solely to increase the participation of women and minority candidates were found to be improper preferential techniques. Finally, the consideration of an applicant's status as a woman or minority in hiring decisions when significant and extended underutilization persists within a district's workforce was also rejected as an impermissible preferential scheme.

Thus, the *Connerly* decision necessitated changes to specific provisions of the Board's affirmative action and equal employment opportunity regulations, but the basic framework of the regulations and their requirement for monitoring and outreach has been preserved. The proposed changes to the regulations include:

1. Updating the legal references and authorities that support the promulgation of the regulations;

2. Focusing on equal employment opportunity and removing references to affirmative action and diversity;

3. Removing language that may be interpreted as providing an improper preference or authorizing discrimination on an impermissible basis;

4. Eliminating the requirement of district goals and/or timetables for the hiring of minorities and women; and

5. Ensuring that locally-established hiring qualifications beyond state minimum qualifications are properly validated if they result in an adverse impact on identified groups.

The requirements for nondiscrimination in district hiring processes remain in the regulations, and, in fact, become the focus of the proposed revisions.

The initial draft of proposed regulatory changes was presented to the Consultation Council and to the Board for informational purposes in January 2002. The Human Resources Advisory Committee reviewed the regulations in January and April. The proposed regulations were also reviewed by the Equity and Diversity Task Force.

The regulations, as originally proposed, were noticed for public comment at the beginning of March. In addition, an advisory to the field was issued about the status of district equal opportunity and diversity responsibilities under the *Connerly* decision and about the proposed regulatory provisions.

Although the Board of Governors was scheduled to adopt the revised regulations at its March, 2002 meeting, some system human resources professionals requested additional time to review and comment on the regulations prior to Board action to ensure that the regulation changes would fully address the requirements of Proposition 209 and the *Connerly* decision. To accommodate that request, Board action was deferred. Staff subsequently met with a group of human resources and affirmative action administrators from a number of districts, received their comments, and made additional changes to the regulatory language. In addition, the regulations were taken to the Consultation Council three more times, in February, March, and April. Suggestions that have been received through these numerous processes have been considered and, in various areas, incorporated into the regulations. For example, recommendations to better consolidate provisions that apply to persons with disabilities have been incorporated into the proposed revisions. Regulatory language regarding the validation of hiring criteria was revisited and adjusted in response to concerns expressed by representatives of the Academic Senate that the process could be unnecessarily technical and burdensome. Further revisions were made to ensure that nothing in the regulations is perceived as problematic under Proposition 209 or *Connerly*.

The revised regulations were again noticed for public comment in late April and presented to the Board as a public hearing item at its May meeting. The Chancellor asked the Board to defer action because the comment period was not yet over and the Superior Court had not issued its order implementing the decision of the Court of Appeal in the *Connerly* case. The comment period has now ended. Only two comments were received. They both expressed concern about the elimination of the term "diversity" from the regulations and argued that this was not compelled by the *Connerly* decision. It is true that the *Connerly* decision does not prohibit the use of the term "diversity," but it does make clear that even if the need to achieve diversity could justify race or gender conscious action under the United States Constitution, such measures would not be permitted under Proposition 209.

Earlier versions of the regulation changes attempted to retain the use of the term "diversity" while telling districts they could not use it to justify any action that wouldn't fit into an equal opportunity framework. However, the Chief Human Resources Officers and outside attorneys with whom we consulted advised that this strategy was confusing and risked renewed litigation against the Board of Governors and the districts. The version of the regulations presented at the

May meeting addresses this problem by eliminating the use of the term "diversity" while taking the portions of the definition of diversity which are not objectionable under Proposition 209 and including them in the definition of the term "equal employment opportunity." This emphasizes that true equality of opportunity can only be achieved in an environment which fosters diversity and is welcoming to people of all backgrounds. At the same time, it makes clear that any actions taken to create this climate must fit within the framework of equal opportunity. This will help ensure that the restrictions of Proposition 209 are respected and avoid the possibility of litigation over potentially controversial terminology.

Staff believes this rationale is still persuasive and is the prudent approach. Moreover, a return to the earlier formulation would undoubtedly rekindle opposition from others. Therefore, despite the two comments which were received, no further changes are proposed to the regulations. In addition, the Superior Court has now issued its judgment requiring that the Chancellor and Board of Governors "refrain from implementing and enforcing Education Code sections 87100 through 87107 to the extent that, as specified in the opinion of the Court of Appeal (92 Cal.App.4th at pp. 59-61), these sections require respondent chancellor and respondent board, in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and section 31 of article I of the California Constitution, to give preferences to minorities and women in the recruitment and selection of community college employees." This judgment is, as we had requested, narrowly confined to the holding of the Court of Appeal and is entirely compatible with the proposed regulations.

Recommended Action

That the Board approve the proposed regulations, as presented.

Staff: *Virginia Riegel*
Staff Counsel

Proposed Revisions to Title 5 Regulations on Equal Employment Opportunity

1. Section 51010 of subchapter 1 of chapter 2 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

51010. ~~Affirmative Action~~ Equal Employment Opportunity

The governing board of a community college district shall:

(a) adopt a district policy which describes its ~~affirmative action~~ equal employment opportunity program and meets the requirements of ~~Section~~section 53002;

(b) develop and adopt a district ~~faculty and staff diversity~~ equal employment opportunity plan which meets the requirements of ~~Section~~section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by ~~Section~~section 53004;

(d) ensure that a program of recruitment is carried out as required by ~~Section~~ section 53021; ~~and~~

(e) ensure that screening and selection procedures are developed and used in accordance with ~~Section~~ section 53024;

(f) ensure that, where necessary, ~~corrective action is~~ additional steps are taken consistent with the requirements of ~~Section~~ section 53006;

(g) ensure that the pattern of hiring and retention, when viewed over time, ~~furthers~~ is consistent with the ~~goals~~ objectives established in the district's ~~faculty and staff diversity~~ equal employment opportunity plan; and

(h) substantially comply with the other provisions of ~~Subchapter~~ subchapter 1 (commencing with ~~Section~~ section 53000) of ~~Chapter~~ chapter 4.

NOTE: Authority cited: Sections 66271.1, 66700, and 70901 ~~and 87105~~, Education Code~~,~~; and ~~S~~section 11138, Government Code. Reference: ~~Article 4 (commencing with Section 87100) of Chapter 1, Part 51~~ Statutes 1988, chapter 923, section 4, Sections 66010.2, 66030, 66071, 66270, and 87360, Education Code~~,~~; and ~~S~~sections 11135-11139.5, Government Code.

2. The heading of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

Subchapter 1. ~~Affirmative Action and~~ Equal Employment Opportunity Programs

3. Section 53000 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53000. Scope and Intent.

(a) This ~~Subchapter~~subchapter implements and should be read in conjunction with Government Code ~~Sections~~sections 11135-11139.5, Education Code ~~Section~~sections

66010.2, 66030, and 200 et seq., Education Code Sections 87100 et seq.,Chapter 4.5 of Part 40 of Title 3, commencing with section 66250; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101). Nothing in this subchapter shall be construed to conflict with or be inconsistent with the provisions of article 1, section 31 of the California Constitution or to authorize conduct that is in conflict with or is inconsistent with such provisions.

(b) The regulations in this Subchaptersubchapter require affirmative steps to promote faculty and staff diversity equal employment opportunity which are in addition to and consistent with the nondiscrimination requirements of state or federal law. Therefore, compliance with these regulations or approval of the district's faculty and staff diversity equal employment opportunity plan pursuant to Sectionsection 53003 does not imply and should not be construed to mean that a district has necessarily complied with its obligations under any other applicable laws or regulations. The Chancellor shall assist districts in identifying other applicable state or federal laws which may affect district affirmative actionequal employment opportunity or nondiscrimination policies.

NOTE: Authority cited: Sections 66271.1, 66700, and 70901 and 87105, Education Code; and section 11138, Government Code. Reference: Sections 200 et seq. Statutes of 1988, chapter 923, section 4; sections 66010.2, 66030, 66071, 66270, and 87360 and 87100 et seq., Education Code; Ssections 11135-11139.5, Government Code; Title 20, United States Code, Ssection 1681; Title 29, United States Code, Section 794; and Title 42, United States Code, Ssections 2000d, 6101 and 12100, et seq.

4. Section 53001 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53001. Definitions.

As used in this Subchaptersubchapter:

(a) Adverse Impact. "Adverse impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on any group defined in terms of ethnic group identification, gender, or disability. A disparity identified in a given selection process will not be considered to constitute adverse impact if the numbers involved are too small to permit a meaningful comparison.

Affirmative Action Employment Programs. "Affirmative action employment programs" means all the various methods by which equal employment opportunity is ensured and expected representation is to be achieved for qualified members of historically underrepresented groups. Such methods include, but are not limited to, using nondiscriminatory employment practices, actively recruiting, monitoring and taking other steps to ensure equal employment opportunities, promoting diversity in the work force, and taking corrective action consistent with the requirements of Section 53006.

(b) ~~Faculty and Staff Diversity Plan. A "faculty and staff diversity plan" is a written document in which a district's work force is analyzed and specific result-oriented plans and procedures are set forth for ensuring equal employment opportunity, promoting diversity, and achieving expected representation of qualified members of historically underrepresented groups.~~

~~(c)~~ Business Necessity. "Business necessity" means circumstances which justify an exception to the requirements of ~~Section~~section 53021 because compliance with that ~~Section~~section would result in substantial additional financial cost to the district or pose a significant threat to human life or safety. Business necessity requires greater financial cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.

(~~d~~c) Equal Employment Opportunity. "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and to enjoy the benefits of employment with the district. Equal employment opportunity should exist at all levels and in all job categories listed in section 53004(a). Ensuring equal employment opportunity also involves creating an environment which fosters cooperation, acceptance, democracy, and free expression of ideas and is welcoming to men and women, persons with disabilities, and individuals from all ethnic and other groups protected from discrimination by this subchapter.

(d) Equal Employment Opportunity Plan. An "equal employment opportunity plan" is a written document in which a district's work force is analyzed and specific plans and procedures are set forth for ensuring equal employment opportunity.

(e) Equal Employment Opportunity Programs. "Equal employment opportunity programs" means all the various methods by which equal employment opportunity is ensured. Such methods include, but are not limited to, using nondiscriminatory employment practices, actively recruiting, monitoring and taking additional steps consistent with the requirements of section 53006.

(~~e~~f)(1) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks/African-Americans, and Hispanics/Latinos.

(2) ~~Ethnicity. "Ethnicity" means the ethnic group in which an individual is included or with which an individual identifies. A person shall be included in the group with which he or she identifies as his or her group, but may be counted in only one ethnic group.~~ Ethnic Group Identification. "Ethnic group identification" means an individual's identification in one or more of the ethnic groups reported to the Chancellor pursuant to section 53004. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.

(~~f~~g) Goals for Persons with Disabilities. "Goals for persons with disabilities" means a statement that the district will strive to attract and hire additional qualified ~~members of an historically underrepresented group~~ persons with a disability in order to achieve the level of ~~expected~~ projected representation for that group by a target date established by taking into account the expected turnover in the work force and the availability of persons ~~from that group~~ with disabilities who are qualified to perform a particular job. Goals are not "quotas" or rigid proportions.

(h) In-house or Promotional Only Hiring. "In-house or promotional only" hiring means that only existing district employees are allowed to apply for a position.

(i) Monitored Group. "Monitored group" means those groups identified in section 53004(b) for which monitoring and reporting is required pursuant to section 53004(a).

(gj) Person with a Disability. "Person with a disability" means any person who (1) has a physical or mental impairment as defined in Government Code section 12926 which ~~substantially~~ limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A person with a disability is "~~substantially~~ limited" if ~~he or she is likely to experience difficulty in securing, retaining or advancing in employment because of such an impairment~~ the condition makes the achievement of the major life activity difficult.

~~(h) Historically Underrepresented Group. "Historically underrepresented group" means ethnic minorities, women and persons with disabilities. The Board of Governors recognizes that ethnic minorities, women and persons with disabilities have historically faced discrimination and other obstacles that limited their opportunities for education, employment and upward mobility. The Board of Governors further acknowledges that as early as 1983 evidence became available documenting that these groups were underrepresented in many job classifications in many community college districts throughout the system.~~

(k) Projected Representation. "Projected representation" means the percentage of persons from a monitored group determined by the Chancellor to be available and qualified to perform the work in question.

(il) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the~~employer~~ district to remove artificial or real barriers which prevent or limit the employment and upward mobility of persons with disabilities. "Reasonable accommodations" may include the items designated in section 53025.

~~(j) Expected Representation. "Expected representation" means that the percentage of persons from an historically underrepresented group in the applicable work force is substantially the same as the percentage that members of that group would be expected to represent given the number of persons from that group in the pool of persons who are determined by the Chancellor to be available and qualified to perform the work in question.~~

~~(k) In-house or Promotional Only Hiring. "In-house or promotional only" hiring means that only existing district employees are allowed to apply for a position.~~

(lm) Screening or Selection Procedure. "Screening or selection procedure" means any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques, including but not limited to, traditional paper and pencil tests, performance tests, and physical, educational, and work experience requirements, interviews, and review of application forms.

~~(m) Adverse or Disparate Impact. "Adverse impact" or "disparate impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on any group defined in terms of ethnicity gender, or disability. A disparity identified in a given selection process will not be considered to constitute adverse impact if:~~

~~(1) the numbers involved are too small to permit a meaningful comparison; or~~

~~(2) the disparity is attributable to the fact that affirmative action recruitment resulted in large numbers of persons from historically underrepresented groups in the applicant pool; or~~

~~(3) the disparity occurs because the district is taking corrective action pursuant to Section 53006 to overcome the significant underrepresentation of another group.~~

~~(n) Diversity. "Diversity" means a condition each district must strive to achieve in which the district's work force includes men and women, persons with disabilities, and individuals from all ethnic groups in numbers adequate to ensure that the community college provides an inclusive educational and employment environment which fosters cooperation, acceptance, democracy and free expression of ideas. Diversity should exist at all levels and in all job categories listed in Section 53004(a). Although there is no universal or specific measure for determining when diversity has been achieved, the demographics of the adult population of the state and of the community served by the district should both be considered.~~

~~(o) Target Date. "Target date" means a point in time by which the district plans to meet an established goal and achieve expected representation for a particular historically underrepresented group in a particular job category.~~

~~(p) Timetable. "Timetable" means a set of specific annual hiring objectives that will lead to meeting a goal by a projected target date.~~

(~~q~~n) Significantly Underrepresented Group. "Significantly underrepresented group" means any ~~historically underrepresented~~ monitored group for which~~:~~

~~(1)~~ the percentage of persons from that group employed by the district in any job category listed in ~~Section~~section 53004(a) is below ~~seventy~~eighty percent (~~70~~80%) of the ~~percentage that members of that group would be expected to represent given the pool of persons who are available and qualified to perform the work~~ projected representation for that group in the job category in question~~; or~~.

~~(2) the number of persons from that group employed by the district in any job category listed in Section 53004(a) is lower than the number that would be expected given the number of persons from that group in the pool of persons available and qualified to perform the work in question, and that discrepancy is found to be statistically significant using the chi square test or any other statistical test the Chancellor determines to be appropriate for this purpose; or~~

~~(3) where small numbers are involved, both (1) and (2) are satisfied. The Chancellor shall issue guidelines to assist districts with the proper application of these rules in determining significant underrepresentation.~~

(o) Target Date. "Target date" means a point in time by which the district plans to meet an established goal for persons with disabilities and thereby achieve projected representation in a particular job category.

(p) Timetable. "Timetable" means a set of specific annual hiring objectives that will lead to meeting a goal for persons with a disability by a projected target date.

NOTE: Authority cited: Sections 66271.1, 66700, and 70901~~ and 87105~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; S~~s~~ections ~~87101,~~ 66010.2, 66030, 66071, 66270, and 87360, Education Code; S~~s~~ections 11135-11139.5, 11092, and 12926 Government Code; 29 C.F.R. 1602.48 (1981); 29 C.F.R. 1607, 29 U.S.C. 793; 41 C.F.R. 60-741-2 (1980).

Section 53002 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53002. Policy Statement.

The governing board of each community college district shall adopt a policy statement setting forth the district's commitment to an ~~affirmative action employment~~ equal employment opportunity program. This statement may also incorporate the nondiscrimination policy statement required pursuant to ~~Section~~section 59300 and other similar nondiscrimination or equal employment opportunity statements which may be required under other provisions of state and federal law.

NOTE: Authority cited: Sections 66271.1, 66700, and 70901~~ and 87105~~, Education Code; and 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; S~~s~~ections ~~87100 et seq.~~, 66010.1, 66030, 66071, 66270, and 87360, Education Code; and sections 11135-11139.5, Government Code.

6. Section 53003 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53003. District Plan.

(a) The governing board of each community college district shall develop and adopt a district-wide written ~~faculty and staff diversity~~ equal employment opportunity plan to implement its ~~affirmative action employment~~ equal employment opportunity program. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) ~~This plan shall include the goals and timetables, as appropriate for hiring and promotion of members of historically underrepresented groups developed pursuant to Section53006 for each college in the district and for the district as a whole.~~ Such plans shall be reviewed at least every three years and, if necessary, revised and submitted to the Chancellor's Office for approval. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its plan.

(c) In particular, the plan shall include all of the following:

(1) the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this ~~Subchapter~~ subchapter pursuant to ~~Section~~ section 53020;

(2) the procedure for filing complaints pursuant to ~~Section~~ section 53026 and the person with whom such complaints are to be filed;

(3) a process for notifying all district employees of the provisions of the plan and the policy statement required under ~~Section~~ section 53002;

(4) a process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this ~~Subchapter~~ subchapter and of state and federal nondiscrimination laws;

(5) a process for providing annual written notice to appropriate ~~community~~ community-based and professional organizations concerning the district's plan and the need for assistance from the community and such organizations in identifying qualified applicants ~~members of historically underrepresented groups for openings with the district~~;

(6) an analysis of the number of persons from ~~historically underrepresented~~ monitored groups who are employed in the district's work force and those who have applied for employment in each of the job categories listed in ~~Section~~ section 53004(a);

(7) an analysis of the degree to which ~~women, ethnic minorities, and persons with disabilities~~ monitored groups are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each such job category and whether or not the underrepresentation is significant;

(8) ~~the steps the district will take to achieve diversity in its work force;~~

~~(9)~~ ~~goals~~methods for addressing any underrepresentation identified pursuant to ~~Subparagraph~~subparagraph (7)~~; and~~

~~(10) a plan of corrective action~~ (9) additional steps consistent with ~~Section~~section 53006~~, including goals and timetables for hiring and promotion, if necessary,~~ to remedy any significant underrepresentation identified in the plan ~~by achieving expected representation for all historically underrepresented groups in all job categories listed in Section53004(a)~~; and

(10) any other measures necessary to further equal employment opportunity throughout the district.

(d) The plan shall include any goals for hiring persons with disabilities that are required by section 53025.

(e) The plans submitted to the Chancellor shall be public records.

(~~e~~f) Each community college district shall make a continuous good faith effort to comply with the requirements of the plan required under this ~~Section~~section.

(~~f~~g) In developing the availability data called for in ~~Subsection~~subsection (c)(7), the Chancellor shall work through the established Consultation Process.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901 ~~and 87105~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 973, section 4; ~~S~~sections ~~87100 et seq~~.66010.2, 66030, 66071, 66270, and 87360, Education Code; and sections 11135-11139.5, Government Code.

7. Section 53004 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53004. District Evaluation and Report to Chancellor.

(a) Each district shall annually survey its employees and shall monitor applicants for employment on an ongoing basis in order to evaluate ~~its progress in~~ the ~~implementing~~ implementation of its ~~faculty and staff diversity~~ equal employment opportunity plan and to provide data needed for the analyses required by ~~Sections~~sections 53003, 53006, 53023, and 53024. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey of employees at each

college in the district. Each employee shall be reported so that he or she may be identified as belonging to one of the following seven job categories:

(1) executive/administrative/managerial;
(2) faculty and other instructional staff;
(3) professional nonfaculty;
(4) secretarial/clerical;
(5) technical and paraprofessional;
(6) skilled crafts; and
(7) service and maintenance.

(b) For purposes of the survey and report required pursuant to ~~Subsection~~ subsection (a) of this ~~Section~~section, each applicant or employee shall be afforded the opportunity to identify his or her gender, ~~ethnicity~~ethnic group identification and, if applicable, his or her disability. A person may designate multiple ethnic groups with which he or she identifies, but shall be counted in only one ethnic group for reporting purposes. Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part of the Asian/Pacific Islander group as well as in separate subcategories. However, in determining whether ~~corrective action is~~ additional steps are necessary to ensure that monitored groups have not been excluded on an impermissible basis, analysis of the separate subgroups is not necessary.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901 and 87105, Education Code; and Section 11138, Government Code. Reference: Statutes 1988, chapter 923, section 4; ~~Sections 87100 et seq.,~~ Sections 66010.2, 66030, 66071, 66270, and 87360, Education Code; and Sections 8310.5 and 11135 - 11139.5, Government Code.

8. Section 53005 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53005. Advisory Committee.

Each community college district shall establish an ~~Faculty and Staff Diversity~~ Equal Employment Opportunity Advisory Committee to assist the district in developing and implementing the plan required under ~~Section~~section 53003. This advisory committee shall include ~~members of all historically underrepresented groups~~ a diverse membership whenever possible.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901 ~~and 87105~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; ~~S~~sections ~~87100 et seq.~~ 66010.2, 66030, 66071, 66270, and 87360, Education Code; and sections 11135-11139.5, Government Code.

9. Section 53006 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53006. ~~Corrective Action~~ Additional Steps to Ensure Equal Employment Opportunity.

(a) ~~Continuation of Existing Goals. If a district established a goal prior to the effective date of this Section and significant underrepresentation still exists, it shall update that goal, set a new target date for achieving expected representation for that group in the category or categories in question, and concurrently do the following:~~

~~(1) review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group;~~

~~(2) consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective; and~~

~~(3) Ccomply with Subsection (c) of this Section.~~

~~(b) New Goals~~If a district determines~~, pursuant to Section 53003(c)(7),~~ that a particular monitored group is significantly underrepresented with respect to one or more job categories, ~~and no goal has previously been set,~~ the district shall take ~~corrective action~~ additional steps consistent with this ~~Section~~section. At a minimum, the district shall:

(1) review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group;

(2) consider various other means of reducing the underrepresentation which do not involve taking ~~underrepresented~~ monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective;

(3) determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in (1) and (2) have been in place a reasonable period of time; and

(4) if significant underrepresentation persists, the ~~district shall set a goal with a target date for achieving expected representation for the significantly underrepresented group in each job category where significant underrepresentation persists. The~~ staffing rate for the significantly underrepresented group in the specified job category or categories shall be monitored on an ongoing basis ~~and the use of goals shall be discontinued when~~ until the projected ~~expected~~ representation has been achieved for that group in the category or categories in question.

(c~~b~~) ~~Additional Measures.~~ If a ~~goal has been set, and after a~~ reasonable period of time passes and significant underrepresentation persists for a particular group in the job category in question, the district shall: ~~establish a specific timetable to project the levels of annual hiring of persons from the significantly underrepresented group which will be necessary to meet the goal by the target date. In addition, the district shall implement one or more of the following additional corrective measures until expected representation has been achieved for that group in the category in question.~~

~~(1) include in the applicant pool applicants from significantly underrepresented groups who were initially screened out because they failed to meet locally established~~

~~"desirable or preferred" qualifications beyond state minimum qualifications, where such applicants can be expected to meet the additional qualifications through appropriate training or experience within one year.~~

~~(2) consider, as one factor in the final selection process, the fact that a candidate is a member of a significantly underrepresented group, provided that the qualifications of the candidates under consideration are reasonably considered to be substantially equivalent.~~

(1) review each locally established "required," "desired" or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job-related and consistent with business necessity through a process meeting the requirements of federal law or is among those qualifications which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system;

(2) discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in paragraph (1) of this subdivision; and

(3) continue using qualification standards meeting the requirements of paragraph (1) only where no alternative qualification standard is reasonably available which would select for the same characteristics, meet the requirements of paragraph (1) and be expected to have a less exclusionary effect.

~~(d) New Goals for Women or Persons with Disabilities. Where either women or persons with disabilities are found to be significantly underrepresented, and no goal has previously been set for that group, the measures required under Subsections (b)(1) and (b)(2) shall be implemented concurrently with setting a goal with a target date for achieving expected representation for that group in each job category where the underrepresentation was found to exist. Goals shall remain in effect only until expected representation has been achieved for that group in the category or categories in question. Until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category, an aggregate labor force availability rate shall be utilized for setting goals for hiring persons with disabilities with respect to the total district work force. The district may also concurrently take other corrective action which takes gender or disability into account, so long as such measures are discontinued when expected representation is achieved for that group in the category or categories in question.~~

~~(e)~~(c) ~~Definition of Reasonable Period.~~ For purposes of this ~~Section~~section, "a reasonable period of time" means three years, or such longer period as the Chancellor may approve, upon the request of the ~~faculty and staff diversity~~ equal employment opportunity advisory committee and the chief executive officer, where the district has not filled enough positions to appreciably ~~alter the composition of~~affect its work force in the job category in question.

~~(f)~~(d) ~~Other Voluntary Measures.~~ Nothing in this ~~Subchapter~~subchapter shall be construed to prohibit a district from taking any other steps it concludes are necessary to ensure equal employment opportunity, provided that such actions are consistent with the requirements of federal and state constitutional and statutory nondiscrimination law.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901 ~~and 87105~~, Education Code; and ~~S~~section 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; ~~S~~sections ~~87100 et seq.~~66010.2, 66030, 66071, 66270, and 87360, Education Code; and ~~S~~sections 11135-~~11139.5~~ 11139.5, Government Code.

10. Section 53020 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53020. Responsibility; Delegation of Authority; Complaints.

(a) The governing board of each community college district is ultimately responsible for proper implementation of this ~~Subchapter~~subchapter at all levels of district and college operation and for making measurable progress toward ~~the goals~~equal employment opportunity ~~established~~ by the methods described in the district's ~~faculty and staff diversity~~ equal employment opportunity plan. In carrying out this responsibility, the governing board, upon the recommendation of the chief executive officer, shall ensure that an ~~affirmative action~~ equal employment opportunity officer is designated to oversee the day-to-day implementation of the requirements set forth in this ~~Subchapter~~ subchapter.

(b) The administrative structure created by any delegation of authority to the ~~affirmative action~~equal employment opportunity officer or others shall be described in the district's ~~faculty and staff diversity~~ equal employment opportunity plan submitted pursuant to ~~Section~~section 53003 and shall be designed in such a manner so as to ensure prompt and effective implementation of the requirements of this ~~Subchapter~~subchapter. The plan shall also designate a single officer, who may be the ~~affirmative action~~equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints filed pursuant to ~~Section~~section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by ~~Sections~~ sections 53023 and 53024.

(c) Any organization or individual, whether or not an employee of the district, who acts on behalf of the governing board with regard to the recruitment and screening of personnel is an agent of the district and is subject to all of the requirements of this ~~Subchapter~~subchapter.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901~~ and 87105~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; S~~s~~ections ~~87100 et seq.~~ 66010.2, 66030, 66071, 66270, and 87360, Education Code; and sections 11135-11139.5, Government Code.

11. Section 53021 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53021. Recruitment.

(a) Except as otherwise provided in this ~~Section~~section community college districts shall actively recruit from both within and outside the district work force to attract qualified applicants for all new openings. This shall include ~~focused~~outreach designed to ~~historically underrepresented~~ ensure that all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. The

requirement of open recruitment shall apply to all new full-time and part-time openings in all job categories and classifications, including, but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/ managerial positions. Recruitment for full-time faculty and educational administrator positions shall be at least statewide and, at a minimum, shall include seeking qualified applicants listed in the California Community Colleges ~~Faculty and Staff Diversity~~ Equal Employment Opportunity Registry. Recruitment for part-time faculty positions may be conducted ~~separtely~~separately for each new opening or by annually establishing a pool of eligible candidates, but in either case full and open ~~affirmative action~~recruitment is required consistent with this ~~Section~~section.

(b) "In-house or promotional only" recruitment shall not be used to fill any new opening except when:

~~(1) the pool of eligible district employees has achieved expected representation for all historically underrepresented groups and the district has an upward mobility program which is included in the faculty and staff diversity plan approved by the Chancellor;~~

~~(2)~~ the position is being filled on an interim basis for the minimum time necessary to allow for full and open recruitment; provided however, that no interim appointment or series of interim appointments exceed one year in duration. The Chancellor may approve an extension of up to one additional year if the district demonstrates "business necessity" as defined in ~~Section~~section 53001(~~e~~b).

(c) If a district believes justification exists for use of ~~any of the exceptions~~exception listed in ~~Subsections~~subsection (b), it shall so notify the ~~Faculty and Staff Diversity~~ Equal Employment Opportunity Advisory Committee established pursuant to ~~Section~~section 53005 and the Chancellor at least ten (10) working days prior to offering the position to a candidate.

(d) Even where in-house or promotional only recruitment is permitted pursuant to ~~Subsections~~subsection (b), the district shall comply with its established hiring procedures and all qualified district employees shall be afforded the opportunity to apply.

(e) For purposes of this ~~Section~~section, a new opening is not created when:

(1) there is a reorganization or series of lateral transfers that do not result in a net increase in the number of employees;

(2) a position which is currently occupied by an incumbent is upgraded, reclassified, or renamed without significantly altering the duties being performed by the individual;

(3) the faculty in a division or department elect one faculty member to serve as a chairperson for a prescribed limited term;

(4) the position is filled by a temporary, short-term, or substitute employee appointed pursuant to Education Code ~~Sections~~sections 87422, 87480, 87482.5(b), 88003, 88106 or 88109; or

(5) a part-time faculty member is assigned to teach the same or fewer hours he or she has previously taught in the same discipline without a substantial break in service. For purposes of this ~~Section~~section "a substantial break in service" means more than one calendar year or such different period as may be defined by a collective bargaining agreement.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901~~and 87105~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 923,

section 4; ~~S~~sections ~~87100 et seq.~~66010.2, 66030, 66071, 66270, and 87360, Education Code; and sections 11135-11139.5, Government Code.

12. Section 53022 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53022. Job Announcements and ~~Required~~ Qualifications.

Job announcements shall state clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance. For faculty and administrative positions, job requirements shall include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. Job specifications, including any ~~"desired" or~~ "required," "desired" or "preferred" qualifications beyond the state minimum qualifications (set forth in ~~Subchapter~~subchapter 4, commencing with ~~Section~~ section 53400 of this ~~Chapter~~chapter) which the district wishes to utilize, shall be reviewed before the position is announced, to ensure conformity with the requirements of this ~~Subchapter~~subchapter and state and federal nondiscrimination laws.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901 ~~and 87105~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 973, section 4; ~~S~~sections ~~87100 et seq.~~ 66010.2, 66030, 66071, 66270, and 87360, Education Code; and sections 11135-11139.5, Government Code.

13. Section 53023 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53023. Applicant Pool.

(a) The application for employment shall afford each applicant an opportunity to voluntarily identify his or her gender, ~~ethnicity~~ethnic group identification and, if applicable, his or her disability. This information shall be kept confidential and shall be used only in research, validation, monitoring, evaluating the effectiveness of the district's ~~affirmative action employment~~ equal employment opportunity program, or any other purpose specifically authorized in this ~~Subchapter~~ subchapter, or by any applicable statute or regulation.

(b) After the application deadline has passed, the composition of the initial applicant pool shall be analyzed to ensure that ~~expected representation has been achieved for historically underrepresented groups~~ any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures. If necessary, the application deadline shall be extended and additional ~~focused~~ recruitment shall be conducted ~~for any historically underrepresented group for which expected representation has not been achieved~~ that eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants. When ~~the expected representation of historically underrepresented groups is achieved,~~ recruitment efforts have offered an opportunity for

participation to a wide diversity of potential applicants or further recruitment efforts would be futile, applications shall be screened to determine which candidates satisfy job specifications set forth in the job announcement.

(c) Before the selection process continues, the composition of the qualified applicant pool shall be analyzed to ensure that no monitored group~~, defined in terms of ethnicity, gender or disability,~~ is adversely impacted pursuant to ~~Section~~ section 53001 (~~ma~~). If adverse impact is found to exist, the chief executive officer or his or her designee shall take effective steps to address the adverse impact before the selection process ~~is begun~~ continues. Such steps may include, but are not limited to:

(1) extending the deadline ~~is extended and additional recruitment, focused on historically underrepresented groups is undertaken~~ and undertaking inclusive outreach efforts to ensure that members of the adversely impacted group have equal opportunity to seek employment with the district;

(2) including all applicants who were screened out on the basis of any locally established qualifications beyond state minimum qualifications ~~are modified or removed and the application deadline is extended~~ which have not been specifically demonstrated to be job-related and consistent with business necessity through a process meeting the requirements of federal law or which are not among those which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system.

(~~ed~~) If adverse impact persists after taking steps required under subdivision (~~bc~~), the selection process may proceed only if:

(1) the job announcement does not require qualifications beyond the statewide minimum qualifications; or

(2) locally established qualifications beyond state minimum qualifications, if any, are ~~validated as~~demonstrated to be job-related and consistent with business necessity through a process meeting the requirements of federal law and suitable alternative selection procedures to reduce the adverse impact were unavailable; or

(3) the particular ~~requirements~~ qualification beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system.

(e) The district may not advertise or utilize in future hiring processes for the same position or a substantially similar position any locally established qualifications beyond state minimum qualifications that the district was unable to verify under subsection (b)(2) unless such qualifications are so verified in advance of commencing any such future hiring process.

NOTE: Authority cited: Sections 66271.1, 66700, and 70901~~ and 87105~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; S~~s~~ections ~~87100 et seq.~~66010.2, 66030, 66071, 66270, and 87360, Education Code; and sections 11135-11139.5, Government Code; 42 U.S.C. 2000e-2.

14. Section 53024 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53024. Screening or Selection Procedures.

(a) All screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, shall be:

(1) provided to the Chancellor upon request;

(2) designed to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students;

(3) based solely on job-related criteria~~, except as authorized by Section 53006~~; and

(4) designed ~~and monitored~~ to ~~ensure that they do not have~~ avoid an adverse impact, as defined in ~~Section~~section 53001~~(m)~~(a), and monitored by means consistent with this section to detect and address any adverse impact which does occur for ~~on~~ any monitored group~~ defined in terms of ethnicity, gender, or disability~~.

(b) If monitoring pursuant to subsection (a)(4) reveals that any selection technique or procedure has adversely impacted any such group, the chief executive officer or his/her designee shall suspend the selection process and timely and effective steps shall be taken to remedy the problem before the selection process resumes. The ~~affirmative action~~equal employment opportunity officer, or other official charged with responsibility for monitoring selection procedures, may assist the screening committee by discussing the overall composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact, provided that confidential information about individual candidates is not disclosed. If adverse impact results from locally established qualifications beyond state minimum qualifications that have not been verified as described in section 53023(c)(2) or replaced with suitable alternatives having a lesser adverse impact, the use of such qualifications shall be immediately discontinued and any applicant eliminated on the basis of that qualification shall be continued in the hiring process. Where necessary, the position may be re-opened at any time and a new selection process initiated in a way designed to avoid adverse impact.

(c) A district may not designate or set aside particular positions to be filled by members of any group defined in terms of ~~race, ethnicity, gender, age, or disability~~ethnic group identification, race, color, national origin, religion, age, gender, disability, ancestry or sexual orientation, or engage in any other practice which would result in discriminatory or preferential treatment prohibited by state or federal law. Nor may a district apply ~~the goals, if any, set forth in~~ the district's ~~faculty and staff diversity~~ equal employment opportunity plan in a rigid manner which has the purpose or effect of so discriminating.

(d) Seniority or length of service may be taken into consideration only to the extent it is job related, is not the sole criterion, and is included in the job announcement consistent with the requirements of ~~Section~~section 53022.

(e) Selection testing for employees shall follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures."

(f) ~~Selection~~Whenever possible, screening committees shall include ~~members of historically underrepresented groups, whenever possible~~ a diverse membership which will bring a variety of perspectives to the assessment of applicant qualifications.

(g) Notwithstanding any other provision of this ~~Division~~division, the governing board or its designee shall have the authority to make all final hiring decisions based upon careful review of the candidate or candidates recommended by a screening committee. This includes the right to reject all candidates and to order further review by the screening committee or ~~reopening of~~to reopen the position where necessary to further achievement of the ~~goals, if any, established in~~objectives of the ~~faculty and staff diversity~~ equal employment opportunity plan or to ensure equal employment opportunity. However, a consistent ~~failure to select~~ pattern of not hiring qualified candidates from ~~historically underrepresented~~ a monitored groups who are recommended by screening committees ~~shall constitute a violation of Section 51010 of this Division~~ may give rise to an inference that the selections are not consistent with the objectives of equal employment opportunity that are required by this subchapter.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901 ~~and 87105~~, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; Sections ~~87100 et seq.~~ 66010.2, 66030, 66071, 66270, and 87360, Education Code; and Sections 11135-11139.5, Government Code.

15. Section 53025 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53025. Persons with Disabilities.

(a) Districts shall ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code ~~Sections~~sections 11135 et seq. and 12940(m), ~~Section~~section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Such accommodations may include, but are not limited to, job site modifications, job restructuring, part-time work schedules, flexible scheduling, reassignment to a reasonably equivalent vacant position, adaptive equipment, and auxiliary aids such as readers, interpreters, and notetakers. Such accommodations may be paid for with ~~faculty and staff diversity~~ funds provided pursuant to ~~Article~~article 3 (commencing with ~~Section~~section 53030) of this ~~Subchapter~~ subchapter.

(b) If a district established a goal for persons with disabilities prior to the effective date of this subsection and if significant underrepresentation still exists, it shall update that goal, set a new target date for achieving projected representation in the category or categories in question, and concurrently comply with subsections (a)(1), (a)(2) and (b) of section 53006 with respect to persons with disabilities.

(c) Where persons with disabilities are found to be significantly underrepresented, measures required under subsections (a)(1) and (a)(2) of section 53006 shall be implemented concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where the underrepresentation was found to exist. Goals shall remain in effect only until projected

representation has been achieved for that group in the category or categories in question. Until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category, an aggregate labor force availability rate shall be utilized for setting goals for hiring persons with disabilities with respect to the total district work force. The district may also concurrently take other additional steps which take disability into account, so long as such measures are discontinued when projected representation is achieved for persons with disabilities in the category or categories in question.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901 ~~and 87105~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; ~~S~~sections ~~87100 et seq.~~ 66010.2, 66030, 66071, 66270, and 87360, Education Code; ~~S~~sections 11135 ~~et seq.~~ 11139.5, Government Code; 29 U.S.C. 794; 42 U.S.C. ~~S~~sections 12101, et seq.

16. Section 53026 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53026. Complaints.

Each community college district shall establish a process permitting any person to file a complaint alleging that the requirements of this ~~Subchapter~~ subchapter have been violated. A copy of the complaint shall immediately be forwarded to the Chancellor who may require that the district provide a written investigative report within ninety (90) days. Complaints which also allege discrimination prohibited by Government Code ~~Sections~~sections 11135 et seq. shall be processed according to the procedures set forth in ~~Subchapter~~subchapter 5 (commencing with ~~Section~~section 59300) of ~~Chapter~~chapter 10 of this ~~Division~~division.

NOTE: Authority Cited: Sections 66271.1, 66700 and 70901 ~~and 87105~~, Education Code; and ~~S~~sections ~~11135 et seq~~ 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; ~~S~~sections ~~87100 et seq.~~ 66010.2, 66030, 66071, 66270, and 87360, Education Code; and sections 11135-11139.5, Government Code.

17. Section 53027 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53027. Applicability to Districts Operating on the Merit System.

Nothing in this ~~Subchapter~~subchapter shall be construed to conflict with or be inconsistent with the provisions of ~~Article~~article 3 (commencing with ~~Section~~section 88060) of ~~Chapter~~chapter 4 of ~~Part~~part 51 of the Education Code which apply to districts operating a merit system for classified employees.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901 ~~and 87105~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 923,

section 4; Ssections ~~87100 et seq.~~66010.2, 66030, 66071, 66270, 87360 and 88060 et seq., Education Code; and sections 11135-11139.5, Government Code.

18. Section 53030 of article 3 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53030. Equal Employment Opportunity Fund Allocation.

~~Before the end of the fiscal year preceding the year of allocation, the Chancellor shall recommend to the Board of Governors an allocation formula for distribution of the Faculty and Staff Diversity Fund established pursuant to Education Code Section 87107. The allocation shall be~~ Resources provided to the Board of Governors for the purpose of promoting equal employment opportunity in hiring and promotion within the system shall be placed in an Equal Employment Opportunity Fund and shall be allocated consistent with the following:

(a) A portion of the fund, but not more than 25 percent, shall be set aside ~~for the purposes of Education Code Section 87107(c) provided that:~~

~~(1) sufficient funds~~ to provide technical assistance, service, monitoring, and compliance functions. ~~shall be designated from these monies; and~~

~~(2) the remainder of these funds shall be distributed on the basis of the full-time equivalent students of each district as a proportion of the total full-time equivalent students for all districts. These funds are to be used to reimburse costs as specified in Education Code Section 87107.~~

(b) That portion of the funds not allocated pursuant to ~~Subsections~~subsection (a) may be allocated to the districts in the following ~~five~~ categories:

(1) an amount proportional to the full-time equivalent students of each district to the total full-time equivalent students for all districts;

(2) an equal dollar amount to each district;

(3) an amount related to success in promoting ~~diversity~~ equal employment opportunity. Multiple methods of measuring success shall be identified by the Chancellor working through the established Consultation Process.

(c) funds provided pursuant to this section may be used for:

(1) outreach and recruitment;

(2) in-service training on equal employment opportunity;

(3) accommodations for applicants and employees with disabilities pursuant to section 53025; and

(4) other activities to promote equal employment opportunity.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901 ~~and 87107~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; Ssections ~~87107~~ 66010.2, 66030, 66071, 66270, and 87360, Education Code; and sections 11135-11139.5, Government Code.

19. Section 53033 of article 3 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53033. Failure to Report.

Any district failing to provide the data required under Section 53004 is not in compliance with this ~~Subchapter~~subchapter. ~~Faculty and Staff Diversity~~ Equal Employment Opportunity funds for any given fiscal year, other than those under ~~Section~~ section 53030(a), shall not be granted unless the district provides the data no later than March 31st of the preceding fiscal year or receives an extension of the deadline from the Chancellor.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901 ~~and 87107~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; S~~s~~ections ~~87107~~ 66010.2, 66030, 66071, 66270, and 87360, Education Code; and sections 11135-11139.5, Government Code.

20. Section 53034 of article 3 of subchapter 1 of chapter 4 of division 6 of title 5 of the *California Code of Regulations* is amended to read:

53034. Required Report.

Districts shall submit a report on the use of ~~Faculty and Staff Diversity~~ Equal Employment Opportunity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. Until such time as a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required under ~~Section~~section 53004, districts will report that rate by a separate survey conducted, as directed by the Chancellor's Office.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901 ~~and 87107~~, Education Code; and section 11138, Government Code. Reference: Statutes of 1988, chapter 923, section 4; ~~Section~~sections ~~87107~~ 66010.2, 66030, 66071, 66270, and 87360, Education Code; and sections 11135-11139.5, Government Code.

ATTACHMENT

Relevant Provisions of Law

Uncodified Legislative Intent
AB 1725 (Stats. 1988, c. 973)

Section 4(a)(3)
Given the emerging turnover in faculty vacancies, the next 15 years represent the last major "window of opportunity" to significantly change the ethnic mix of the faculty during the next 30 years. It will be imperative for the faculty to be sympathetic and sensitive to cultural diversity in the colleges especially when the student body is continually changing. One means of ensuring this is for the faculty to be culturally balanced and more representative of the state's diversity.

Section 4(p)(1)
The laws, regulations, directives, or guidelines should help the community colleges ensure that the faculty and administrators they hire and retain are people who are sympathetic and sensitive to the racial and cultural diversity in the colleges, are themselves representative of that diversity, and are well prepared by training and temperament to respond effectively to the educational needs of all the special populations served by community colleges.

Section 4(r)(1)
The pool of underrepresented individuals interested in faculty and administrative positions in the community colleges should be increased. Furthermore, practical and effective ways of finding and recruiting those individuals should be developed and maintained. The state's leadership in this effort is appropriate and urgently needed.

Education Code

Section 66010.2.

The public elementary and secondary schools, the California Community Colleges, the California State University, the University of California, and independent institutions of higher education share goals designed to provide educational opportunity and success to the broadest possible range of our citizens, and shall provide the following:

(a) Access to education, and the opportunity for educational success, for all qualified Californians. Particular efforts should be made with regard to those who are historically and currently underrepresented in both their graduation rates from secondary institutions and in their attendance at California higher educational institutions.

(b) Quality teaching and programs of excellence for their students. This commitment to academic excellence shall provide all students the opportunity to address issues, including ethical issues, that are central to their full development as responsible citizens.

(c) Educational equity not only through a diverse and representative student body and faculty but also through educational environments in which each person, regardless of race, gender, age, disability, or economic circumstances, has a reasonable chance to fully develop his or her potential.

Section 66030.

(a) It is the intent of the Legislature that public higher education in California strive to provide educationally equitable environments which give each Californian, regardless of ethnic origin, race, gender, age, disability, or economic circumstance, a reasonable opportunity to develop fully his or her potential.

(b) It is the responsibility of the governing boards of institutions of higher education to ensure and maintain multicultural learning environments free from all forms of discrimination and harassment, in accordance with state and federal law.

Section 66071

In enacting this article, it is the intent of the Legislature to urge the continued development and implementation of assessment processes whereby institutions of higher education establish mechanisms, through program review and improvement, for the assessment of their performance in attempting to improve student learning and comprehension and achieving the expressed state policy goals for higher education of quality, educational equity, employee diversity, student transfer, and student retention. The primary purposes of assessment shall be to improve teaching and learning as well as academic advising. Assessment programs shall be focused on activities that are campus- based, faculty-centered, and student-responsive. Faculty, students, and academic administrators are encouraged to work together in developing assessment programs.

Section 66072

It is the intent of the Legislature to monitor the performance of the University of California, the California State University, and the community colleges in the following areas:

(a) Diversification of student bodies.

(b) Improved student transfer rates.

(c) Improved student retention rates.

(d) Diversification of faculty, nonfaculty academic staff, and administrative positions.

(e) As a part of program review, enhanced student learning, as demonstrated through mechanisms designed to explore improvements in knowledge, skills, and abilities.

Section 66270

No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

Section 66271.1

The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California may, adopt regulations as required by law to implement this chapter.

Section 87360

(a) In establishing hiring criteria for faculty and administrators, district governing boards shall, no later than July 1, 1990, develop criteria that include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students.

(b) No later than July 1, 1990, hiring criteria, policies, and procedures for new faculty members shall be developed and agreed upon jointly by representatives of the governing board, and the academic senate, and approved by the governing board.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the existing district process in existence on January 1, 1989, shall remain in effect.

Government Code

Section 11135

(a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

Section 11138

Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars ($100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article.

Board of Governors
California Community Colleges
November 12-13, 2002

APPROVAL OF COLLEGE STATUS FOR FOLSOM LAKE CENTER, LOS RIOS COMMUNITY COLLEGE DISTRICT

11

ACTION SCHEDULED

Committee of: *The Whole*
Richard H. Leib, President

Presentation: *Robert Turnage, Vice Chancellor*
Fiscal Policy

Issue

This item presents a request by the Los Rios Community College District (LRCCD) to transition its Folsom Lake Center (FLC) instructional operation from center status to college status pursuant to Title 5, California Code of Regulations, section 55828.

Background and Chronology

At its January 1991 meeting, the Board of Governors approved a *Long-Range Capital Outlay Growth Plan.* Among the facility needs identified in the plan was a new college to serve the eastern portion of the LRCCD. Specifically, the plan forecast 46 percent enrollment growth for LRCCD within the ensuing 15 years. The 1991 plan states: "Serving one of the nation's fastest growing metropolitan areas (Sacramento), this 49,000-student district...is expected to grow *to 72,000* students by 2005. The service area is large (2,400 square miles) and at least one new center in the near term, in Folsom—to become a campus in the long term—is indicated." The LRCCD will easily meet or exceed the projected growth of 72,000 students by 2005. As of Spring 2002, the LRCCD enrolled 69,000 students.

Since 1964, LRCCD has been involved in planning for an educational facility to meet the needs of the Folsom region. In 1967, the district acquired land to be preserved for a future Folsom Lake College. By 1991, Folsom was identified as the fourth fastest growing city in California. District enrollment projections, as well as an interest survey among Folsom area residents and businesses, clearly support the development of a new college in accordance with state criteria. Considering the distances that residents of the eastern portion of the district must currently travel to receive services, and the fact that existing facilities have been facing enrollment demands in

excess of capacity, it is clear that large numbers of unserved and underserved individuals may t have access if this college is not built. Since 1993, FLC has been operating in portables at e actual site, as well as in leased space in Folsom, and nearby Rancho Cordova and El Dorado Hills.

The educational plan for the proposed FLC reflects the existence of two major subpopulations of prospective students: the more traditional, younger students focusing on general education and transfer programs, along with entry-level vocational programs; and working, older adult students (including many single parents). Along with traditional programs, the college will have the dual focus of serving as an instructional delivery system aimed at meeting the needs of local business and industry, with requisite flexibility in scheduling and support services. Varied instructional modalities and technologically-advanced delivery modes will be emphasized providing even greater access than what typically occurs in traditional college settings.

The local communities have demonstrated strong interest and support for the proposed college. It will increase the accessibility of services for many current and potential students. The business community is likewise supportive of a planned educational program reflective of the technologies active in the area. There is also strong interest in the programs planned to offer direct assistance to local businesses through contract education and on-site open credit courses. Finally, there is strong support from the secondary and postsecondary institutions in the area.

In Fall 1992, the LRCCD submitted a proposal seeking college status for its existing FLC in Folsom. The proposal was approved by the Board of Governors in November 1992 provided that the California Postsecondary Education Commission (CPEC) general guidelines for the definition of a college have been met, subject to written approval by the Chancellor, on or before July 1, 1997. In December 1992, CPEC approved the Folsom Lake site as the fourth college of the LRCCD.

Originally, the LRCCD established July 1, 1997, as the target date for FLC to become a college. Because of funding constraints on capital outlay projects, LRCCD asked for and received an extension from the Chancellor's Office. In September 1995, the Board approved the district's request for the extension from July 1, 1997, to July 1, 2005. With the passage of Proposition 203 in 1997, capital outlay funds became available for the FLC. Funds were approved for the plans and site planning. In Fall 1999, funds were available for the construction of Phase IA, the first instructional building, which became operable in Fall 2001. The second phase was approved for construction in 2001-02 with plans to commence building in Spring 2003. Additional funds have also been made available for the planning and design of the third phase of facilities. The passage of Measure A, a local bond, in March 2002 provides for the necessary local contribution to complete the construction of these new college facilities. FLC was granted eligibility status by the Western Accreditation of Schools and Colleges Commission (WASC) to begin the self-study process, with a scheduled site visit in Fall 2003 along with the other colleges within the district.

Analysis

Population and Enrollment Projections

The district serves the greater Sacramento metropolitan area, including all of Sacramento County, as well as parts of El Dorado, Yolo, Placer and Solano counties. Its service area covers a diverse 2,400 square miles, comprised of densely-populated metropolitan communities, rapidly expanding suburbs, small Sierra foothill towns, agricultural areas, and national forest and state park regions.

The site, a 151-acre parcel owned by the LRCCD, is located to the southeast of the City of Folsom, on East Bidwell Street, approximately halfway between the city and State Highway 50. The City of Folsom is currently striving to extend Sacramento's Regional Transit light-rail network to Folsom. Prospective commute times from neighboring communities range from approximately 10 minutes from the City of Folsom, to 40 minutes from Citrus Heights. A study by the district planning staff of Folsom-area students currently enrolled revealed the following characteristics:

- Sixty percent are women;
- Almost 43 percent are 30 years old or older. The second largest group, at 34 percent, is between 18 and 24 years of age; and
- Approximately 76 percent of the students are white, with 21 percent from ethnic minority populations (9.1 percent Asian American; 7.2 percent Latino; 2.8 percent African-American; and 1.9 percent Native American).

The Chancellor's Office Research and Planning Unit and the LRCCD both project strong growth for FLC through the year 2015 as reflected below:

Year	Enrollment	WSCH	Full-time Equivalent Students (FTES)
2002	9,545	81,987	5,466
2003	10,557	90,682	6,045
2004	10,948	94,042	6,269
2005	13,046	112,068	7,471
2010	18,074	155,253	10,350
2013	20,124	172,864	11,524
2014	21,087	181,136	12,076
2015	21,772	187,020	12,468

lternatives to Converting the Folsom Lake Site from Center Status to College Status

- Expanding existing district colleges: all three of LRCCD's existing colleges (Sacramento City, American River, and Cosumnes River) far exceed their planned enrollment capacities and have serious space limitations. None of these colleges could expand much beyond their existing enrollment without serious degradation of educational quality. The existing campuses are forty-five minutes to one hour from the growing Folsom population. The attendant traffic and air pollution that excessive commute times and distances create would be a negative by-product.

- In past years, the use of other higher education facilities has been a matter of considerable discussion between LRCCD and its neighboring public universities. However, such an option does not appear feasible since both California State University, Sacramento (CSUS) and University of California, Davis (UCD) have contacted the district to ascertain whether the district has the capacity to handle their students who cannot get into classes or have been denied admittance altogether as a result of budgetary constraints on those institutions.

- The LRCCD currently utilizes nontraditional instructional delivery systems, providing increased access, particularly for students in remote areas. There are very high equipment costs for such methodologies, with additional support and technical staff needed beyond the usual faculty/instructional assistant situation. Students served by telecommunicated courses have very limited access to the kinds of support services that they may need to successfully complete the classes. Distance learning is an important adjunct to—not substitute for—a regular college educational environment.

Arguments for College Status Include

The conversion of the Folsom site from center to college is considered to be the most feasible alternative to effectively and equitably provide full services and comprehensive educational programs to the citizens of the eastern region of the LRCCD.

Residents of the eastern section of the district currently have several service options—all of which are inadequate or will soon be so. Those choosing to attend one of the three existing college campuses in the district face extended commute times, to arrive at programs already at capacity. The El Dorado Center (EDC) located in Placerville, which does not offer a full range of classes and services, will reach and probably exceed capacity within the next few years. Local outreach programs also are necessarily limited in the scheduling and scope of their offerings. Finally, the local business community is best served by the availability of a local college with programs and services tailored to meet local needs.

The district is proposing a multi-phased development approach for the proposed Folsom Lake College. During Phase IA construction was completed for Fall 2002, with the scheduling emphasis aimed at meeting the needs of the expected large numbers of older, working students.

Phase IB, already in the funding stream with construction to begin Spring 2003, will enable the site to meet enrollment capacity and begin to offer a full-service program.

- A full service college would better serve the local population, which includes traditionally underserved groups.
- The acquisition of 151 acres of land for this site was motivated by the plan for a full-service college in the Folsom community.
- The City of Folsom's partnership in sharing costs of the current joint-use fields was precipitated, in part, by the anticipation that its residents would also enjoy a full service higher education facility.
- The conversion from center to college status will open the doors to additional grants and endowments that will benefit the region's populations.
- College status, with a significant increase in course offerings to match expected enrollment, is central to the LRCCD collaborative agreement with CSUS and UCD allowing for dual enrollments and a near seamless transfer of students from one institution to the other.

Despite the advantages, LRCCD is keenly aware of the increased costs that will accompany the expansion and change of status and has been consistently planning for such a change during the last ten years:

- Operational and support costs will increase;
- The expense of a separate accreditation status is anticipated;
- New construction and other improvements for the proposed college will have to be funded locally. These improvements are likely to grow substantially beyond those required for maintaining center status; and
- New, revised funding approaches to the distribution of district revenue must be developed.

LRCCD has studied the issues, contacted other small colleges that have been through the process, and begun the accreditation process. With all that has been learned and accomplished, the LRCCD Board, administrative staff, faculty, students and the community are in agreement that college status is an appropriate goal. The site has begun the WASC accreditation process with a self-study to be completed by August 2003, WASC site visit scheduled for Fall 2003, and WASC board review and approval by January 2004.

Serving Underrepresented Students

LRCCD's colleges are enrolling a growing number of new, young students who are ethnic minorities, particularly those in Sacramento and Yolo counties. Some of these new students may

also be either economically disadvantaged or educationally disadvantaged and many may be both. This increasingly diverse population is currently reflected in the total enrollment of LRCCD, which is 45 percent ethnically diverse. In addition, increasing numbers of those students enrolled in the LRCCD have disabilities (3%) requiring appropriate academic adjustments or auxiliary aids (1998). According to the LRCCD's Office of Institutional Research (2000), the trend toward a more ethnically diverse population is projected to continue to grow over the next ten years and beyond. Almost half of the population in the four-county area served by the district will be nonwhite by 2040, though Sacramento and Yolo counties are far more ethnically diverse. Of particular interest to FLC is the fast growing population of legal immigrants. Sacramento County ranked 8th among all California counties for the number of legal immigrants in 1996 with 7,342 immigrants residing within the county. Also, in 1996, approximately 300 legal immigrants settled in El Dorado County. The country of birth of the 1996 legal immigration population to Sacramento County is as follows: 17.8 percent from Mexico, 8.7 percent from Vietnam, 7.6 percent from the Ukraine, 7.5 percent from the Philippines, 6.6 percent from India, 5.2 percent from China, 3.9 percent from Fiji, 3.0 percent from Laos, and 39.7 percent from other countries. These increases have been reflected in the increased enrollments of Russian and Ukrainian immigrants at the Rancho Cordova Center (RCC). And though the population in both El Dorado and Placer counties are projected to have low proportions of non-White residents (only 18 percent for each, by 2030), an effort to identify the hidden Hispanic population is underway.

LRCCD's student support services programs are uniquely designed to address the needs of students from the service area. A comprehensive cadre of services assist students in reaching high levels of academic achievement, regardless of their family's educational or socioeconomic profile. The program plan and scope of activities give priority to strengthening of both basic and high-level skills in mathematics, reading, writing, and science. Assessment and monitoring of skill levels, grades, activities, financial assistance and follow-up of graduates after transfer or completion of their course of studies are all key factors in the successful operation of this program.

The changing environment of LRCCD, and specifically at FLC, clearly indicates continuing increases of low income and first generation students. This is most evident at the Rancho Cordova Center where the number of Board of Governors' Fee Waiver recipients has increased 85 percent from FY 2000-01 to FY 2001-02. Programs and services at the FLC and EDC are focused on addressing the needs of all students, including at-risk students. Student success including increased transfer rates and retention rates are at the core of this center's existence. Perhaps most significantly, the numbers of students eligible for student support services continue to increase. The district has taken necessary steps to meet the challenges.

Student development at FLC, EDC and RCC is designed to enhance student access, retention, equity, and successful goal fulfillment. Student development staff provide leadership and service delivery in the development and implementation of specific policy, program and budget matters that impact student enrollment and student success at our colleges. Most importantly, student development staff contributes significantly to the teaching and learning process that occurs at the college. The comprehensive constellation of college programs and services supported by the Student Development Unit include, but are not limited to: counseling, career planning, student activities, student government, admissions and records, matriculation, transfer and articulation,

EOPS, CARE, disabled students programs and services (DSPS), student financial aid, CalWORKs, child development center, outreach and recruitment, and grant coordination. The Student Development Unit also works in partnership with the instructional area to ensure adequate tutoring is provided for all students in need of such services.

Staff administers categorical programs and special services, which are essential to providing access and success for low-income and underrepresented students. Student development administers over $1.9 million appropriated annually to the college to implement a comprehensive network of support programs and services. Current programs and services include, but are not limited to: assessment, counseling, programs and services for the disabled, EOPS, CalWORKs, financial aid and tutoring.

Probable Effects on Adjoining Districts

Community college districts contiguous to LRCCD include Sierra, San Joaquin Delta, Yuba, Lake Tahoe and Solano. Distances from their colleges to the FLC and the commute congestion on the local streets and highways are well beyond a reasonable commute. So far, none have suffered enrollment losses as a result of the FLC, nor are they likely to in the future should college status for FLC be achieved. None of LRCCD's colleges is likely to experience enrollment loss since the distance between the other three colleges is approximately 25 miles (45 minute commute).

There is also strong support for cooperative partnership between CSUS and FLC. CSUS, with whom FLC has collaborative agreements for transfer, dual enrollment and other matters, is 35 miles away. Due to budgetary constraints, CSUS has been forced to turn away applicants for freshman and lower-division transfer status and has been in constant contact with LRCCD to inquire whether the community college district could accommodate some of the university students in their classes.

The UCD has also been forced to turn away students and has asked LRCCD about the possibility of handling some of its students. Sacramento City College is now offering classes on the UCD campus, and the two institutions have created various cooperative relationships, the intent of which is to expand transfer opportunities, particularly for disadvantaged students.

The local high school districts will benefit in at least two ways. First, students in these districts will have another option for higher education. This option not only provides more convenient physical access to a college campus, but also, more importantly, provides an entry into higher education, which is becoming more restricted at four-year institutions. Secondly, as a practical consideration, some of the high school campuses will also benefit by regaining the use of their facilities, which have been used by community college programs.

LRCCD, including the FLC, continues its open invitation to local four-year colleges/universities and high schools to participate in the planning and coordination of programs, the joint use of facilities, the mixing of faculty and students, and the exciting possibilities for seamless transfer of students.

All of the districts that are contiguous to LRCCD support the proposed change. Letters of upport from these institutions, along with similar letters from local community leaders and ducational institutions and government officials from Folsom, are contained in the district's application for college status.

Academic Planning and Program Justification

The educational master plan developed for the proposed FLC is based on the LRCCD mission and vision statements, with the primary goal in mind—to offer quality educational programs and services supported with state-of-the-art technology and focused on increased access for the growing surrounding communities of eastern Sacramento and El Dorado counties. The process for developing the educational master plan included input from faculty, staff, students, administrators, and citizens across the LRCCD. The final product resulted from their dedication and commitment. It not only fulfills the needed student requirement but also provides a blueprint for guiding and managing the expected rapid growth over the next five to ten years. The document and process are dynamic because they provide an overall master plan while being flexible, allowing for adjustments and change.

The planned curriculum and services encompass general education (transfer), associate degree, occupational programs, developmental skills, basic skills, and a full offering of student services, including counseling and advising, EOPS, DSPS, CalWORKs, financial aid, library and learning resources, and assessment. The educational master plan provides detailed information on current programs and services, as well as new programs and services projected through 2015. The educational goals, the learning environment needed to meet these goals, the spaces required to provide the learning environment, and the support services required are described. The facilities, staff, support, and technology required for the proposed curriculum are identified.

Nontraditional scheduling of classes will continue to be available to meet the needs of the increasing numbers of older, part-time, working adults and younger students seeking postsecondary education opportunities. A key focus for the FLC is also an instructional delivery system aimed at meeting the needs of local business and industry. The flexible scheduling of program offerings is an important component of this system.

Career field projections from several sources indicate that California's economy is increasingly information based; that is, an economy based on creating, processing, storing, retrieving, and analyzing information—with the computer as the crucial operational tool. The curriculum and course presentation methods at the new college will heavily emphasize the development and implementation of such skills. The recommended general education core pattern will be a cross-disciplinary approach, concentrating problematic social and/or environmental issues. A critical variable is the identification and selection of a faculty and staff that are willing to commit to the concept of creative instructional packaging and delivery. Collaborative learning groups and computer assisted instruction are strongly encouraged.

Student support services will also reflect an appropriate reformation to respond to the new demographics and the use of technology. The matriculation program and other support services

will continue, but delivery of such services will extend beyond the traditional on-site format. Many services will also be accessible via advanced technological delivery modes.

The partnership arrangements that have been established with CSUS, UCD, the Folsom-Cordova Unified School and El Dorado School districts promise rewarding collaborations.

The district is aware of the Chancellor's Office approval requirements for other planned future programs and will be working closely with the Chancellor's Office staff to ensure appropriate processing and approval of the curriculum and programs.

The array of current academic and vocational disciplines and the extent of coursework offered within disciplines are characteristic of a full college as opposed to a center. Ample coursework is provided in general education and common academic majors to support a viable transfer function. English as a Second Language and basic skills classes are available to bring students up to the college level, and vocational programs appropriate to the economy of the area are provided. The use of distance education has been included in the discussions for each curriculum area and where appropriate, is also being implemented.

Collaborations and Partnerships

Collaborations and partnerships appear to have been the cornerstone of the philosophy and mission of the FLC. For example:

- *CSUS*: Preliminary discussions have occurred for CSUS to consider alternative access for students in the Folsom area by offering upper division and some graduate-level coursework at the proposed Folsom Lake College. The goal is to coordinate class scheduling so students can complete their bachelors degrees at the FLC. Dual admission, access to CSUS advisors, and other benefits are a part of this partnership.

- *UCD*: Dual admission, access to UCD advisors, and transfer agreement opportunities are continuing to increase.

- *The City of Folsom*: Joint use of facilities has and will continue to enhance positive relationships and meet joint needs. A joint-use agreement for the development of recreational facilities at the college site was adopted in February 1992. Under the terms of this agreement, the city contribution towards the recreation facilities was $1.5 million for the development of utility requirements and athletic playing fields.

- *Local business and industry*: The local chambers of commerce have had an active role in lobbying for the college. There is strong interest in the programs planned to offer direct assistance to local businesses.

Financial Implications

Facilities

Funding for the Folsom Lake College facilities is expected to be primarily from two sources: state funds and local bond funds. In March 2002, the LRCCD was successful with the passage of its bond—Measure A. The funding identified for Folsom Lake College totals approximately $163 million, of which $81 million is from LRCCD local contributions.

The first phase of permanent facilities, Phase IA, consisted of 33,428 assignable square feet (asf). Construction began in Fall 1999 and opened with classes and student support services in Fall 2001. This first phase was funded primarily by the state. The district funded approximately $2 million for site and parking improvements. This first phase includes 5,524 asf in lecture, 12,000 asf in laboratory, 8,090 asf in library, 5,704 asf in office and 2,111 asf in AV/TV. All classrooms are wired and equipped with the latest technology and are designed with the concept of "flexibility" of space, allowing for maximum use and any necessary future conversion.

Future capital outlay projects requesting state funding include the following projects:

- Phase IB Facilities totaling 63,050 asf includes 38,850 asf for laboratory/lecture spaces, 8,480 asf in office, 1,940 asf in expanded student services and 13,720 asf in expanded library space. Funding for the construction phase has been appropriated and is scheduled to begin in Spring 2003 with opening by Spring 2005.

- Phase IC Facilities planning is currently underway. ASF totals approximately 50,162 and includes 35,227 asf for additional lecture/laboratory space, office space and 14,935 asf of needed support space.

Future capital outlay projects that will be funded with local bond funds include the following projects:

- Lecture/Laboratory Space, Bookstore, Cafeteria, Police Services, Gymnasium

- Fine and Performing Arts Complex

Since 1993, FLC has also had a very cooperative partnership with the City of Folsom. Joint-use facilities include outdoor tennis courts, soccer fields and softball fields. Future plans will expand the tennis courts and enhance the fields as the college's physical education curriculum expands to meet the demand.

The following is a list of all the projects including the anticipated cost and funding source that are currently planned at Folsom Lake College:

Folsom Lake College
Proposed Capital Outlay Projects

Proposed New Projects	Year	Total Cost	Possible Funding Source		
			Local Bonds	State Bonds	District/ Other
New Instructional and Library Spaces	2003-15	$97,832,000	$31,545,500	$65,920,500	$366,000
New Student/Faculty Support and Phys. Educ. Facilities	2003-15	25,604,000	21,422,000	3,091,000	1,091,000
Transportation, Access and Parking Improvements	2004-15	8,055,000	8,055,000	-	-
New Fine and Performing Arts Spaces	2005-07	19,698,000	8,864,100	8,864,100	1,969,800
Folsom Lake College Total		**$151,189,000**	**$69,886,600**	**$77,875,600**	**$3,426,800**

The district has submitted a 2003-04 Final Project Proposal (FPP) for Phase IC Facilities, a 2004-05 FPP for the Physical Education Facility, and a 2005-06 Initial Project Proposal for the Fine and Performing Arts Center. The ability to fund these proposals depends on the amount of a future capital outlay bond, district contribution and the site's continued eligibility.

Fiscal

FLC's transition to full college status has been and continues to be a priority component of the LRCCD's long-range planning process. This planning includes the provision of adequate staffing and operational funds to ensure students receive the full complement of instructional, student and administrative support services necessary for a quality educational experience. The transition to operation as a college in terms of independent management of programs, staffing and operations has already occurred. In that respect, the current operational budget of the district already provides for FLC's operation in most aspects necessary as a full college. Therefore, the transition will not result in an impact on LRCCD's ability to sustain its current operations nor to provide for future growth. The LRCCD has a long history of prudent fiscal management and a planning process that links the allocation of resources to the strategic plan of the District.

The passage of bond Measure A in March 2002 provides the required local contribution needed to complete all capital outlay projects for a new college.

Conclusion

The greater Sacramento metropolitan area, served by the LRCCD, is one of the fastest-growing regions in the state. As a result, all of the existing district facilities are already at enrollment capacity, with problems of congestion and insufficient availability of student services. The development of a new campus is essential to provide access and quality education to the service area.

The LRCCD had the foresight to purchase an appropriate site for a new college campus in 1967. The Folsom area is experiencing an unprecedented population growth. At the same time, it is experiencing an influx of new businesses and industries. The Folsom Lake site is an ideal location for a new college, as it would provide local services to the residents of the eastern portion of the district who currently have excessive commutes and to the workers and business communities of the region who would benefit from an education plan tailored to their needs.

No other alternatives were found to be feasible for providing full educational opportunity through the LRCCD, particularly to the eastern regions. All of the neighboring institutions of higher education are supportive, as is the local community.

In summary, on the basis of the information provided by district planning, the transition from this long-established center to a fully functioning campus should go very smoothly. District and center staff are confident that past, present and future planning efforts of Folsom Lake College will continue with focused attention to ensure the delivery of a quality community college.

Recommended Action

That the Board of Governors approve the transition of the Folsom Lake Center to the Folsom Lake College.

Staff: *Gin Yang-Staehlin, Specialist*
Facilities Planning

MATRICULATION STANDARDS

Chancellor's Office
California Community Colleges
Student Services and Special Programs Division

1. ADMISSIONS COMPONENT

AB 3	Title 5	Component Standards
78212(b)(l)	55520(a)	1. Provide a procedure for the processing of the admission application.
	55522	2. Provide modified or alternative services for the matriculation process (if necessary) for ethnic and language minority students and students with disabilities.
	555 1 O(a)(4)	3. Utilize computerized information services to implement or support admissions services.

2. ORIENTATION COMPONENT

AB 3	Title 5	Component Standards
782 12(b)(2)	55502(j)	1. Provide students and potential students with information concerning college programs, services, financial assistance, facilities and grounds, academic expectations, course scheduling and institutional procedures in a timely manner.
78212(a)	55530(b)(d)	2. Provide written definitions informing students of their rights and responsibilities.
	5520 1 (f),(g)) 58106(c),(d),(e)	3. Promptly inform students of their right to challenge (on specified grounds) a pre- or co-requisite or limitation on enrollment; their responsibility for showing that grounds exist for the challenge; and their right to file a complaint of unlawful discrimination.
	55534(b)	4. Inform students of procedure for alleging unlawful discrimination in the implementation of matriculation practices.
	55534(a)	5. Provide students with or direct them to written district procedures for: challenging matriculation regulatory provisions; district investigation and attempted resolution of complaints; and methods by which district maintains such complaints.
	55522	6. Provide modified or alternative services for the matriculation process (if necessary) for ethnic and language minority students' and students with disabilities.
782 14(b)(3)	55532(a) 55510 (a)(5)	7. Adopt District governing board policies specifying criteria for exemption.
	55532(c)	8. Make exempted students aware that they may choose whether or not to participate in this component.
	55532(d)	9. Ensure that exemptions from this component are not based upon specified sole criterion.
	555 1 O(a)(4)	10. Utilize computerized information services to implement or support orientation activities.

13. ASSESSMENT COMPONENT

AB 3	Title 5	Component Standards
	55520(c)	1. Conduct assessment for all non-exempt students.
78212(b)(3)(A)		2. Administer assessment instruments to determine student competency in computational and language skills.
782 12(b)(3)(B)		3. Assist students to identify their aptitudes, interests, and educational objectives.
78212(b)(3)(C)		4. Evaluate students' study and learning skills.
78213(a)	55521(a)	5. Use assessment instruments approved by the Chancellor.
	5552 1(b)	6. Use assessment instruments only for purpose for which they were developed or validated.
	55521(c)	7. Use multiple measures (other than two or more highly correlated instruments) for placement, required and appropriate referral, or subsequent evaluation.
78213(b)(2)	55521(e)	8. Use assessment instruments, methods or procedures in an advisory manner in the selection of academic courses and educational programs.
	55522	9. Provide modified or alternative services for the matriculation process (if necessary) for ethnic and language minority students and students with disabilities.
78214(b)(3)	55532(a) 555 1 O(a)(5)	10. Adopt District governing board policies specifying criteria for exemption.
	55532(c)	11. Make exempted students aware that they may choose whether or not to participate in this component.
	55532(d)	12. Ensure that exemptions from this component are not based upon specified sole criterion.
	555 10(a)(4)	13. Utilize computerized information services to implement or support assessment services.

4. COUNSELING/ADVISEMENT COMPONENT

AB 3	Title 5	Component Standards
78212(b)(3)(D)	55520(g)(1),(2)	1. Make appropriate referral(s) to available support services and curriculum offerings.
78212(b)(3)(E)	55520(d) 55523(a)(4)	2. Provide advisement concerning course selection.
782 12(b)(4)	55523(a)(l) 55526	3. Make reasonable efforts to ensure that probationary non-exempt students participate in counseling.

782 12(b)(4)	55523(a)(2) 55526	4. Make reasonable efforts to ensure that non-exempt students without a declared educational goal participate in counseling.
78212(b)(4)	55523(a)(3) 55526	5. Make reasonable efforts to ensure that non-exempt students enrolled in pre-collegiate basic skills courses participate in counseling or advisement.
	55520(d) 55523(a)(4)	6. Make counseling or advisement available to all non-exempt students.
	55523(b)	7. Provide counseling or advisement by appropriately trained counselors or staff in areas deemed appropriate by the district.
	55520(e) 55525(a),(b) 55530(d)	8. Provide assistance in selection of a specific educational goal and development of the student educational plan, including student responsibilities.
	55525(c)	9. Record the student educational plan in written or electronic form.
	55525(c)	10. Review, as necessary, the student educational plan, its implementation, and its accuracy related to students' needs.
	55201(f),(g) 58106(c),(d),(e)	11. Promptly inform students of their right to challenge (on specified grounds) a pre- or co-requisite or limitation on enrollment; their responsibility for showing that grounds exist for the challenge; and their right to file a complaint of unlawful discrimination.
	55534(b) 55525(d)	12. Inform students of procedures for filing complaint alleging unlawful discrimination in the implementation of matriculation practices, including alleged violation of process for developing student educational plan.
	55534(a) 55525(d)	13. Provide students with or direct them to written district procedures for: challenging matriculation regulatory provisions; district investigation and attempted resolution of complaints; and methods by which district maintains such complaints.
	55522	14. Provide modified or alternative services for the matriculation process (if necessary) for ethnic and language minority students and students with disabilities.
782 14(b)(3)	55532(a) 55510(a)(5)	15. Adopt District governing board policies specifying criteria for exemption.
	55532(c)	16. Make exempted students aware that they may choose whether or not to participate in this component.
	55532(d)	17. Ensure that exemptions from this component are not based upon specified sole criterion.
	55510(a)(4)	18. Utilize computerized information services to implement or support counseling/advising activities.

5. STUDENT FOLLOW-UP COMPONENT

AB 3	Title 5	Component Standards
782 12(b)(4)	55520(f) 55526 55523(a)(1-3)	1. Provide post-enrollment evaluation of each non-exempt student's academic progress enrolled under specific academic conditions.
	55526	2. Establish a follow-up system that ensures regular monitoring for early detection of academic difficulty.
	55520(g) 55526	3. Make referral to appropriate services and curricula as necessary.
	55522	4. Provide modified or alternative services for the matriculation process (if necessary) for ethnic and language minority students with disabilities.
	55510(a)(4)	5. Utilize computerized information services to implement, support, monitor and/or track follow-up services.

6. COORDINATION AND TRAINING COMPONENT

AB 3	Title 5	Component Standards
782 16(b)(c)(3)	555 16 55510(a)(3) 55523(b)	1. Develop and implement a program for providing all faculty and staff with training appropriate to their needs with respect to provision of matriculation services. a) Admissions b) Orientation c) Assessment d) Counseling/Advisement e) Follow-up f) Research and Evaluation g) Pre- and Co-requisites and Advisories
	55510(a)(4)	2. Utilize computerized information services to implement or support coordination and training activities.

17. RESEARCH AND EVALUATION COMPONENT

AB 3	Title 5	Component Standards
78214(a)	555 12(a)	1. Establish and maintain institutional research for evaluating efficacy of matriculation services and remedial programs and services.

	55512(a)	2. Evaluate all assessment instruments to ensure that they minimize or eliminate cultural or linguistic bias and are being used in a valid manner.
	55512(a)	3. Determine whether any assessment instrument, method or procedure has a disproportionate. impact on particular groups of students described in terms of ethnicity, gender, age or disability; where unjustified disproportionate impact is found, develop plan to correct it.
	55512(a)(1)	4. Analyze degree of matriculation's impact on particular courses, programs and facilities.
78214(c)(1) 782 14(b)(2)	55512(a)(2)	5. Analyze degree to which matriculation helps students to define their educational goals and objectives.
782 14(b)(6)	55512(a)(3) 555 14(d)	6. Analyze extent to which matriculation promotes student success as evidenced by student outcomes, persistence, skill improvement, grades, and goal attainment.
782 14(c)(2)	55512(a)(4)	7. Analyze degree to which matriculation assists district efforts to assess educational needs.
782 14(c)(3)	555 12(a)(5)	8. Analyze degree to which matriculation matches district resources with students' educational needs.
782 14(b)(4) 78214(c)(4)	555 12(a)(6) 55520(g)	9. Analyze degree to which matriculation provides students the specialized support services and programs to which they are referred.
782 14(b)(5)		10. Determine ethnicity, sex and age of credit students.
	55514(a)	11. Determine proportion of students of ethnic, gender, age and disability groups placed in pre-collegiate, associate degree-applicable, or transfer courses in reading, writing, computation, or ESL.
	555 14(b)	12. Determine proportion of students of ethnic, gender, age and disability groups who enter and complete pre-collegiate basic skills courses.
	555 14(c)	13. Determine proportion of students of ethnic, gender, age and disability groups who complete pre-collegiate basic skills course and who subsequently enter and complete associate degree-applicable courses.
	55532(a) 55514(f)	14. Record number of students exempted by category and grounds for exemption.
	555 14(g)	15. Maintain numbers of students filing complaints (re: 55534) and the bases of those complaints.
	55514(h)	16. Document particular matriculation services received by each non-exempt student.
	555 1 O(a)(4)	17. Utilize computerized information services to implement or support research and evaluation activities.

8. PREREQUISITES, COREQUISITES, AND ADVISORIES ON RECOMMENDED PREPARATION

Title 5	Component Standards

58 106(b) 1. District ensures open enrollment subject to health and safety considerations, facility limitations, etc., consistent with Board-adopted policies that identify such limitations and which require fair and equitable procedures for determining who may enroll in such courses.

_____ Local policies/procedures follow District Model exactly
(see sections I.A. and II.C. of Model)
_____ Local policies/procedures differ from District Model (see attached)

55201(b)(1) 2. Board-adopted policy establishes the process for establishing necessary and appropriate prerequisites, corequisites and advisories and their respective level of scrutiny, including data collection where appropriate.

_____ Local policies/procedures follow District Model exactly
(see sections I.C., B.A. and II.B. of Model)
_____ Local policies/procedures differ from District Model (see attached)

55002(a)(2)(D) 3. Curriculum committee reviews course outline of record to determine if associate degree credit course shall require pre- and co-requisite to enhance students' likelihood of success.

_____ Local policies/procedures follow District Model exactly
(see sections I.C.2. and I.C.3. of Model)
_____ Local policies/procedures differ from District Model (see attached)

55201(e)
55510(a)(6) 4. Communication or computation pre- or co-requisites for any course other than a communication or computation course are based on content review, sound data-gathering research practices, and demonstration that student is highly unlikely to succeed without the pre- or co-requisite.

Local policies/procedures follow District Model exactly
(see sections I.C.2., I.C.3., II.A.1.c., II.A.1.g., and [where appropriate] II.A. 1.d. and/or 1 .e. and/or 1 .f of Model)
_____ Local policies/procedures differ from District Model (see attached)

55002(a)(2)(E) 5. If the curriculum committee determines that success in associate degree credit course is dependent on communication or computation skills, it establishes eligibility for enrollment in associate degree credit course(s) in English and/or mathematics as pre- or co-requisite(s).

_____ Local policies/procedures follow District Model exactly
(see sections I.C.2., I.C.3., II.A.1.a. or 1.b. or 1.c. and 1.g., and [where appropriate] II.A. 1 .d. and/or 1 .e. **and/or** 1 .f. of Model)
_____ Local policies/procedures differ from District Model (see attached)

55002(b)(2)(D) 6. Curriculum committee recommends establishment of pre- or co-requisite for **non-degree-applicable** course, where appropriate.

_____ Local **policies/procedures follow** District Model exactly
(see section I.C.2., I.C.3., II.A.1.b. or 1.c. and 1.g., and [where appropriate] II.A.1.d. and/or 1.f. of Model)
_____ Local policies/procedures differ from District Model (see attached)

55201(b)(3) 7. Board-adopted policy specifies the process for periodically reviewing pre- and co-requisites (at least once every six years) and advisories, including level of scrutiny and frequency of review.

_____ Local policies/procedures follow District Model exactly
(see section I.D. of Model)
_____ Local policies/procedures differ from District Model (see attached)

55002(a)(4) 8. District ensures that associate degree credit courses and precollegiate basic skills courses (including those with pre- and co-requisites) are taught by qualified instructors and in accord with course outline of record, particularly those aspects of the course that are the basis for the pre- or co-requisite.
55002(b)(4)
55201(b)(2)

Local policies/procedures follow District Model exactly
(see section I.F. of Model)
_____ Local policies/procedures differ from District Model (see attached)

55202(g) 9. District determines students' satisfaction of a prerequisite prior to enrollment or permits enrollment pending verification, and ensures that enrollment fees are promptly refunded to students who are involuntarily dropped **from** course for failure to successfully complete the prerequisite.

Local policies/procedures follow District Model exactly
(see section I.E. of Model)
_____ Local policies/procedures differ from District Model (see attached)

58106 10. District establishes procedures for determining who may enroll in courses for which there are limitations on enrollment, provides for student challenges to the limitations on the grounds specified in Title 5, handles challenges to enrollment limitation in a timely manner, and waives the enrollment limitation if the challenge is upheld.

_____ Local policies/procedures follow District Model exactly
(see section I.A.2. and I.B. of Model)
_____ Local policies/procedures differ from District Model (see attached)

55201(f) 11. College resolves challenges (made on specified grounds) to pre- and co-requisites in a timely manner and, if the challenge is upheld, the student is allowed to enroll in the course or program.
_____ Local policies/procedures follow District Model exactly
(see section I.A.2. and I.B. of Model)
_____ Local policies/procedures differ from District Model (see attached)

55202(a) 12. Pre- and co-requisites and advisories are identified in college publications and in the respective course outline(s) of record.

_____ Local policies/procedures follow District Model exactly
(see section LA. and I.C. of Model)

_____ Local policies/procedures differ from District Model (see attached)

College publications will reflect new policies/procedures by Fall 1994 catalog and course schedule, or by: (date)_____

55202(d) 13. District ensures that precollegiate basic skills reading, writing or math courses that serve as pre- or co-requisites are offered with reasonable frequency and that the number of available sections is reasonable given student need.

_____ Local policies/procedures follow District Model exactly
(see section II.A.2. of Model)

_____ Local policies/procedures differ from District Model (see attached)

BUDGET

AB 3	Title 5	Component Standards
782 11.5(b)		1. State matriculation allocation is used only for matriculation services approved by the Chancellor.
78211.5	55518(b)	2. District provides at least three-to-one dollar match of state matriculation allocation.
	55512(b)	3. District provides for a review of the revenue and expenditures of matriculation as part of annual district audit.

POLICIES AND PROCEDURES

A. District ensures that no matriculation practice subjects any person to unlawful discrimination - Title 5, §55521(f)(a)(6).

B. District takes steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs - Title 5, §55530(c).

C. District and/or college has developed matriculation plan through consultation with representatives of academic senate, students, and staff - Title 5, $555 10(b).

D. In multi-campus district, the district makes arrangements for coordinating the various college matriculation plans - Title 5, §55510(a)(7).

E. Each pre- or co-requisite is established for at least one of the following reasons: 1) required or authorized by statute or regulation; 2) the prerequisite assures that the student has the skills or knowledge without which success in the subsequent course (or specific course within a program) is highly unlikely; 3) the corequisite assures that the student will acquire the skills or knowledge without which success in the subsequent course (or specific course within a program) is highly unlikely; or 4) necessary to protect the health and safety of the student or others - Title 5, §55201(c)(1-4).

F. District has adopted clear written policies that define student responsibilities and the consequences of failing to fulfill such responsibilities - Title 5, §55530(d).

G. All computational and communication pre- and co-requisites are established on a course-by-course basis - Title 5, §55202(b).

H. Student's satisfaction of pre- or co-requisite is based on successful completion of appropriate course or multiple-measures assessment. Any assessment instrument used shall be selected and used in accord with Title 5, §55521. - Title 5, $55202(c).

I. District ensures that no exit test outside of a course is required to satisfy a prerequisite or co-requisite. - Title 5, §55202(f).

J. Each course outline of record contains specific content and other required information is made available to the instructor. - Title 5, §55002(a)(3), 55002(b)(3)

K. Records of all student complaints of alleged violation of matriculation regulatory provisions are retained for at least three years after the complaint has been resolved. - Title 5, §55534(a)

L. Board has adopted policy on limitations on number of units or selected courses in which students on probationary or dismissal status may enroll, or requirement that they follow a prescribed educational plan. - Title 5, §58 106(b)(5).

M. Board-adopted policies identify limitations on enrollment. - Title 5, §58 106(a),(b)

N. District ensures that there are sufficient numbers of co-requisite sections to accommodate students or the requirement is waived for individual students for whom space is not available. - Title 5, §55201(e)

0. Board-adopted policy specifies the bases and process for a student to challenge the application of a pre-or co-requisite. - Title 5, §55201(b)(4) and (f)

P. Board-adopted district policies and procedures related to pre- and co-requisites and advisories are included in the college's matriculation plan. - Title 5, §55510(a)(6)

Q. District policy ensures open enrollment (subject to meeting pre-and/or co-requisites); policy is in catalog, schedule of classes, and on file with state Chancellor. - Title 5, §5 1006(b) and 58106(a)

R. District permits students, whenever possible, to avoid additional testing by submitting scores on recently taken tests which correlate with those used by the district - Title 5, §55530 (c).

S. No portion of the district's assessment process is used to exclude students from admission to the college - AB 3, 782 13(b)(3); Title 5, §5552 l(d).

Board of Governors
California Community Colleges
July 8-9, 2002

STUDY SESSION ON BASIC SKILLS 13

INFORMATION

Committee of the Whole

Presentation: *Judith James, Vice Chancellor, Student Services and Special Programs*

Victoria P. Morrow, Vice Chancellor, Educational Services

Patrick Perry, Interim Vice Chancellor, Technology, Research and Information Services

Issue

This item presents a response to the Board's request for information on system basic skills instruction and support services activities. It presents a wide array of information on relevant college and system performance, as well as on related policy issues and trends. This initial study session is designed to provide the Board with a foundation in this area, and to allow for the identification of possible next steps, further inquiry, subsequent Board study or other action.

Background

Basic skills instruction and services are the primary means by which California Community Colleges have sought to balance the goal of educational quality with the goal of increasing access to postsecondary education for underprepared students, and for students from groups which are underrepresented in the state's colleges and universities. The community college mission statement in Education Code section 66010.4 affirms the importance of basic skills instruction and support services that help students succeed at the postsecondary level. The mission statement identifies the system's delivery of basic skills instruction and services as "essential functions" which are integral to college and system performance in achieving transfer and occupational education.

The Board of Governors has consistently recognized that providing underprepared and underrepresented students with opportunities to gain the skills foundational to success in college level work, either before or early in their college experience, is critical to achieving educational equity, and to maintaining quality in community colleges certificate, degree, and transfer programs. Likewise, this investment in underprepared students, many of whom are immigrants, English language learners, CalWORKs participants, underemployed, and/or unemployed,

contributes to the colleges' economic development mission, and to the state's long-term social and economic health.

1. Terminology and Conceptual Distinctions

"Basic skills," "remediation," "transitional instruction," "foundation skills," and "developmental education" are all terms used to describe the subject of this study session. Nonetheless, for purposes of this discussion, we will primarily use the term "basic skills" and define it as describing English reading and writing courses, mathematics courses, and English as a Second Language (ESL) courses designed for students not meeting the skill prerequisites for A.A. Degree, certificate, and transfer courses. We are including certain portions of the ESL curriculum within the concept of basic skills, consistent with the Board's May 1985 action, which defined basic skills as:

> "Courses designed to develop reading or writing skills at or below the level required for enrollment in English courses one level below freshman composition, computational skills required in mathematics courses below Algebra, and ESL courses at levels consistent with those defined for English."

Basic skills is the term used throughout most documents and reports of the Board of Governors and the California Community Colleges, in Title 5 regulations, and by the Community Colleges Management Information System (MIS), to describe instruction for under-prepared students. Nationally, however, "developmental education" is now the preferred term among educators and researchers. Learning and/or student development are processes that may include, but are not limited to, instruction that parallels the content of high school English and mathematics classes. In addition to being more descriptive of the broad aims of the curriculum, developmental education is inclusive of the many non-instructional support services community colleges provide for underprepared students.

2. The Curriculum

California Community Colleges offer basic skills English, mathematics, and basic skills level ESL instruction in two modes:

- non-degree applicable credit courses referred to as Precollegiate Basic Skills (PBS);
- noncredit basic skills (BS).

Precollegiate Basic Skills (PBS) courses are defined in Board-adopted Matriculation Regulations (Title 5, §55502) and in the Standards and Criteria for Courses and Classes (Title 5, §55002). That definition states: "Precollegiate basic skills courses are those courses in reading, writing, computation, and English as a Second Language which are designated by the community college district as non-degree credit courses pursuant to section 55002(b)."

Noncredit basic skills (BS) courses comprise that portion of the curriculum referred to as Adult Basic Education (ABE), which is subdivided into elementary and secondary basic skills categories. ABE is defined in Education Code section 8510 as "education in communication and computational skills up to and including the 12th grade level, including English as a Second Language and citizenship." Noncredit basic skills courses are further distinguished from precollegiate basic skills courses by Title 5 regulations governing course standards, course repetition, and attendance accounting.

3. Precollegiate Basic Skills Courses and the Remedial Limit Policy

The remedial limit policy, enacted by the Legislature as part of AB 1725 system reforms in 1988, grew out of the Board's interest in assuring that the design and sequencing of PBS courses was effective in moving students into the college level and degree credit curriculum. That policy, now codified in Title 5, section 55756.5, includes both the requirement that PBS courses maintain rigorous standards for student performance and that students who over time demonstrate their inability to succeed at college-level work shall be referred to adult education schools. With one major exception, the policy prohibits further enrollment in credit courses for students who exhaust the unit limitation without achieving college-level skill proficiencies. The policy sets the enrollment block at 30 semester/45 quarter units of PBS course work, but excludes from the calculation all units earned by students continuing to take any ESL instruction and by students with verified learning disabilities.

4. Students Enrolled in Basic Skills

This section provides some key background data on our basic skills students. Appendix I is the source for some of the material below; other sources are referenced in the text.

In the early nineties, basic skills students were somewhat older than other community college students, and less likely to be recent high school graduates or to be seeking a degree, according to *"Basic Skills Instruction in the California Community Colleges: Emerging Trends in Intersegmental and Intrasegmental Practices,"* March 1995. More recently, MIS reported in May 2002 that basic skills students were over-represented in the 18-19 age group and slightly over-represented among students with goals of degree/certificate/transfer.

The May 2002 report also found that the percentage of students enrolled in basic skills courses had remained fairly stable at about 20 percent from 1993-94 to 2000–2001, ranging from 19.7 percent to 20.1 percent, respectively. (See Appendix I for these data.) In any given year, MIS reported that 1 in 5 students enrolled in at least one basic skills course; and that during Fiscal Year 2000-01, 523,883 students, out of a total 2.6 million students, enrolled in at least one basic skills course. According to the same report, students enrolled in BS/PBS were also more likely to enroll in noncredit courses and/or to be enrolled full-time, compared to non-BS/PBS students. Of the first time students in 1995, however,

about 35 percent attempted at least one basic skills offering during the six-year period from 1995-2001.

The basic skills background data in Appendix I also show a slightly higher percentage of female students enrolled in basic skills--57.5 percent compared to 53.2 percent females enrolled in no basic skills. Basic skills students were over-represented among students receiving Board of Governors Fee Waivers for financial aid. MIS also reported that basic skills students who took the SAT-9 test as high school juniors achieved average scores at the 42.9th percentile, nationally, compared with average scores at the 52.4th percentile for non-basic skills students.

While Black and Asian students were over-represented among basic skills students, compared to students with no basic skills enrollment and to their representation among all community college students, MIS reported much greater over-representation of Hispanic students. Basic skills students were over-represented among students who were non-U.S. citizens. These findings are depicted in the following charts, which are also taken from the May 2002 MIS report:

	BS/PBS	No BS/PBS	All CCC Students
Asian/Filipino/PacIslander	18.3%	14.7%	15.4%
Black	7.9%	7.2%	7.3%
Hispanic	38.8%	21.8%	25.3%
Native American	0.8%	1.0%	1.0%
Other Non-White	1.7%	1.9%	1.9%
White	24.8%	44.6%	40.6%
Unknown	0.7%	1.9%	1.6%

	BS/PBS	No BS/PBS	All CCC Students
US Citizen	64.5%	86.5%	82.2%
Non-U.S. Citizen	35.5%	13.5%	17.8%
Percent of column	100.0%	100.0%	100.0%

It is important to note that the overrepresentation of Hispanic students and of non-U.S. citizens in basic skills within these data is likely an artifact of including ESL courses as part of those defined as basic skills.

Analysis

1. Outcomes Achieved by Students

MIS reported the following outcomes for basic skills students who began their academic career as first-time students as part of the fall 1995 cohort. These findings are derived from data provided in Appendix I under "Outcomes of BS/PBS Students."

- 34.8% had enrolled in at least one basic skills course, within 6 years;
- The retention rate for basic skills students was 81.1% in all enrollments and 81.0% in basic skills courses, compared to a retention rate of 83.2% in all enrollments for non-basic skills students;
- Basic skills students achieved a success rate of 64.5% in all enrollments and 60.7% in basic skills courses, compared with a success rate of 70.0% in all enrollments achieved by non-basic skills students;
- 46.7% of basic skills students who started in Fall 1995 were still enrolled in Spring 1997, compared to 25.1% of non-basic skills students;
- 37.7% of basic skills students and 31.1% of non-basic skills students declared goals of degree/certificate and/or transfer.
  - Of students with those goals, within six years, 17.4% of the basic skills cohort and 13.1% of the non-basic skills cohort had earned an AA/AS/Certificate, and
  - 21.0% of basic skills students and 27.5% of non-basic skills students had transferred to a four-year institution;
- The distribution of transfers by sector and student basic skills status was as follows:

Institutions to Which Students Transfer			
Basic Skills Students		**Non-Basic Skills Students**	
CSU	64.6%	**CSU**	52.3%
UC	13.1%	**UC**	18.9%
In State Private	13.0%	**In State Private**	15.1%
Out of State	9.3%	**Out of State**	13.7%

2. Chronology of Key Policy Affecting Our Approach to Basic Skills

Although there is very little statute or regulation specifically addressing basic skills, there is an extensive body of reports detailing the systems development of basic skills/ESL related policies, beginning in 1983-85 and continuing through 1994.

A chronology of the key policy is provided below.

January 1983	CPEC issues *"Promises to Keep: "Remedial Education in California's Public Colleges and Universities."* The report contained recommendations and actions to be taken by community colleges. (Over time, three additional CPEC reports, summarizing the colleges' progress in implementing recommendations in *Promises to Keep*, were produced in 1984, 1985, and 1986.)
April 1983	The Chancellor appoints a Task Force on Academic Quality to develop a model student matriculation process, to suggest responses to *Promises to Keep*, to make recommendations about the future of remediation in California community colleges, and to recommend standards of academic rigor.
July 1983	Board of Governors policies come into effect that increase the number of units required in the General Education component of the associate degree and require students receiving associate degrees to have demonstrated competencies in reading, writing and mathematics.
October 1983	Board of Governors adopts Title 5 regulation revisions strengthening minimum standards for credit courses.
December 1983	Board of Governors adopts Mission Statement declaring that colleges "should provide remedial and basic skills education."
April 1984	Board of Governors approves student matriculation plan.
January 1985	The Chancellor's Task Force on Academic Quality presents two reports for review by the Board of Governors: *"Remediation in the CCC: A Proposal for Board Policies/Actions,"* and another item entitled *"Strengthening the Associate Degree in the CCC."*
April 1985	After review and comment by the field, an information item containing staff's analysis and recommendations derived from the reports produced by the Task Force on Academic Quality is presented to the Board of Governors.

May 1985	The Board of Governors approves recommendations responding to issues raised in *Promises to Keep*, and stipulates that the sole purpose of remediation in the credit mode at community colleges is to assist students to attain the learning skills necessary to succeed in college transfer, certificate, and/or degree courses and programs. This policy was also perceived as establishing criteria for evaluating the effectiveness of basic skills courses in terms of the extent to which students completing those courses were able to succeed in college-level work. Board action also prohibited the award of degree credit for courses at levels defined as remedial.
September 1986	The Matriculation Act passed (AB 3), requiring colleges to administer assessments to determine student competencies in computation and English language skills. The Act limited assessment instruments that could be used by colleges to those authorized by the Chancellor's Office, established criteria for use of assessment instruments, and directed that such instruments be used as an "advisory tool."
May 1988	The Mexican American Legal Defense and Education Fund (MALDEF) filed suit against the Chancellor's Office and several colleges alleging that assessment instruments were being used for placement in violation of matriculation law.
May 1990	Matriculation regulations were adopted by the Board of Governors implementing AB 3, Title 5 sections 55500-55534. The regulations became effective in July 1990.
November 1993	Revisions to the matriculation regulations became effective. The revisions clarified how prerequisites should be established to ensure that they were "necessary and appropriate" and not arbitrary. Necessary and appropriate was defined as meaning "that there is a strong rational basis for concluding that a prerequisite or corequisite is reasonably needed to achieve the purpose it purports to serve." A Model District Policy was adopted by the Board for voluntary use by districts.

3. Programmatic Issues Confronting the Colleges, the Chancellor's Office, and the Board

English as a Second Language: ESL is the fastest growing area of community college curriculum, and workforce preparation efforts targeting immigrants will continue to fuel this trend. Notwithstanding that observation, this study session does not provide in depth information on ESL instruction, as such, but rather focuses on that portion of ESL which is either non-degree applicable or noncredit instruction.

ESL issues are complex and may merit examination in a separate study, not constrained by the time limitations in a more general study session on basic skills. Some of the issues related to ESL include, but are not limited to, these:

- What are the state supportable purposes of ESL instruction and services?
- What kinds of students are best served by ESL courses?
- Should the boundaries between what is considered non-degree credit as opposed to degree credit be the same within the ESL and the English Language Arts curriculum?
- Should ESL courses be exempt from the remedial limit?
- Should course standards prescribed in Title 5 regulation include specific standards for ESL?
- What are the differences between ESL and foreign language instruction?
- How much time should students spend in noncredit and non-degree credit ESL courses before undertaking degree credit instruction and how does that amount of time affect student persistence and retention in the credit curriculum?
- Are separate tracks in ESL and English, from the lowest levels through and inclusive of the transfer level, educationally and fiscally appropriate?

Effectiveness/Accountability Questions: Prior Board action in May 1985 declared that the sole purpose for providing remediation (basic skills) in community colleges in the credit mode (PBS) is "to assist students to attain those skills necessary to succeed in college transfer, certificate, or degree courses and programs." Accordingly, accountability questions should focus on the relative success of basic skills instruction in transitioning students into programs that lead to expected college outcomes. However, using only that criterion would limit our ability to capture/portray the myriad other goals/successful outcomes achieved by students enrolled in basic skills courses, including the many short-term vocational goals of students enrolled in credit and noncredit basic skills. There may be some value in assessing how effective our curriculum and teaching methods are for

students seeking short-term and/or intermediate goals, rather than just degrees and/or certificates, since so many of our students fall into this category.

Other research/accountability questions include these:

- Are there sufficient numbers of basic skills courses/sections, at needed levels?
- What are the accountability impacts of wide differences in staffing and support services, and of inconsistent administration/compliance with State/local policies, across colleges?
- Does the Partnership for Excellence (PFE) Basic Skills Improvement Goal provide sufficient data to identify districts/colleges not "performing well" on the basic skills mission, however that term is ultimately defined?
- What additional information, if any, is needed to assist under-performing colleges?
- How should we define and measure the effectiveness of non-instructional student services provided to basic skills students?

The bottom line is that effectiveness is about more than just numbers. What we say about effectiveness, including how we measure and report it, is crucial to public perception that providing access via quality instruction in basic skills is a priority for community colleges.

Matriculation, Assessment, Placement, Prerequisites, and Open Access: National trends and research assessing the effectiveness of postsecondary developmental/remedial instruction appears to suggest that underprepared students are better served by mandatory assessment/placement, and enforcement of prerequisite policies. Yet in California Community Colleges there is no uniform practice because current standards provide districts some discretion. The lack of consistency in community colleges' assessment, placement, and prerequisite practices makes statewide assessment of basic skills instruction extremely difficult, and calls into question the reliability of statewide accountability data on this subject. The large number of assessment instruments in use across the colleges, in combination with the wide variety of companion measures used to meet the multiple measures requirement presents a substantial barrier to consistent data collection/reporting, and to state level basic skills program assessment. In addition, not all students are assessed for basic skills competencies, nor do all students assessed as needing basic skills instruction choose to enroll in such courses. Yet we can only define the basic skills population in terms of those who actually enroll and receive this instruction. Drawing conclusions from these data is further complicated by the fact that some students self-refer to basic skills, resulting in potentially inappropriate placement decisions and unsuccessful outcomes.

A more complete statement of the Matriculation standards and procedures that govern current assessment, placement and prerequisite practices is included in Appendices II and

III. Appendix II, "*The California Community College Matriculation Process,*" provides an overview of all seven student service components enacted to assist community college students to determine the most appropriate path for them to succeed in their academic, vocational and skill-building programs. These components include admissions, orientation, assessment, counseling and advising, student follow-up, research and evaluation, and coordination and training. Appendix III, "*Matriculation Assessment in the California Community Colleges,*" provides greater detail on existing assessment and placement services.

4. Fiscal Issues

Determination of the cost of community college basic skills instruction is complex, due to significant disparities in resources, practices, and procedures across colleges and districts. Prior reports and studies have posited that expenditures for community colleges basic skills represent 8-10 percent of total college funding. This is consistent with national research, which reports that average expenditures for such programs represent 8 percent of institutional budgets. Given the size of this enterprise in California; the ethnic and language diversity of basic skills students; the impacts of welfare and immigration reform; job market constraints, particularly at lower skill levels; and the education reform based move towards strengthened standards, we might reasonably expect costs to be higher.

Some factors that contribute to keeping basic skills costs down are the use of part-time faculty (a recent Academic Senate survey found that better than 70 percent of noncredit basic skills instructors were part-time), and, particularly in noncredit, maintaining large class sizes and laboratories. While these conditions are more cost-effective, they are not desirable. On a more positive note, cost containment is also being achieved through:

- Selecting and using technology, where appropriate, to provide instruction and services that meet the learning/support service needs of underprepared students;
- Improvements in instructional methodology based on research into how adults learn;
- Development of regional consortia and collaborations between colleges;
- Improvements in assessment and articulation that result in better student placement decisions; and,
- An emerging focus on working with K-12 to reduce the need for basic skills instruction by recent high school graduates.

Some of the strategies listed above were piloted and implemented using special project institutionalization funds provided by the Fund for Student Success (FSS) and the Fund for Instructional Improvement (FII).

A number of these projects have been completed and the resulting changes have been institutionalized as part of those colleges' ongoing basic skills programs and services. It is unclear, however, what impact the elimination of FSS funding in the 2002-03 budget will have on projects that have only completed the first or second year of planned activities. This funding provided critical start-up capabilities and, particularly for basic skills, incentives for colleges to assess and begin improving their performance in these areas.

Basic Skills Over-Cap Growth Funding: Districts receive funding for basic skills courses through the ordinary annual apportionment, as they do for attendance in other courses in their curriculum. Basic skills courses are supported at the same funding rates, respectively, as other noncredit and/or credit courses in the curriculum. Additionally, eligible districts/colleges receive funding for over-cap growth in basic skills. These funds are heavily oversubscribed, however, and demand continually outstrips funding growth. As of the date of this writing, a recommendation to move supplemental basic skills funding into the General Apportionment base was deleted by the two-house Legislative Conference Committee.

Funding for Noncredit Basic Skills and ESL: Noncredit basic skills and ESL courses are funded at a significantly lower rate than credit courses in basic skills and other academic subjects. Since noncredit students often have the greatest needs, particularly in basic skills and ESL, this inequity makes it difficult to meet the increasing needs of students who are more likely English language learners from immigrant backgrounds, younger and older students seeking GED/high school diploma completion, students seeking preparation to become citizens, improve their employability, and/or transition from welfare.

Beginning in 1996, due to the availability of FSS multi-year special project institutionalization funds, colleges began to focus on improving articulation between their noncredit and credit basic skills courses. This is another area where 2002-2003 budget actions to eliminate special project funds portend negative consequences for the colleges' basic skills/ESL programming.

A Budget Change Proposal (BCP) was submitted by the Chancellor's Office, but not funded, for 2000-01 and 2001-02. Funding was requested for articulated sequences of noncredit courses, leading to employment or preparing students for enrollment and success in college-level courses. Other proposals have been advanced that would have changed noncredit attendance accounting and increased the state reimbursement rate for noncredit attendance in designated courses.

5. Articulation Issues

In California's public schools, colleges, and universities, what is defined as college-level basic skills varies from segment to segment, and at different institutions within segments. Accordingly, easing transitions for students who are moving between institutions within or across segments requires extensive articulation of curriculum and of assessment and

placement practices. Changes to practices or academic requirements, at even a single institution in any one segment, may establish barriers to students' progress toward readiness for college-level work.

Within community colleges, a number of efforts have been undertaken to improve inter-district/college articulation of basic skills curriculum. In 1995, the Academic Senate and the Chancellor's Basic Skills Advisory Committee developed an "Articulation of Math and Language Skills Sequences" document, defining the basic skills math and English language development content appropriate to AA degree/transfer, AA degree/non-transferable, and non-degree credit level courses. This document's purpose is to assist counseling/advising faculty, and staff reviewing transcripts, to determine the comparability of content between basic skills courses in different community colleges and some California State University (CSU) campuses.

Concomitant with reinstitution of a requirement that the Chancellor's Office approve all new basic skills courses, the application form includes a question on articulation and a section in which colleges are asked to indicate where the course fits within their credit/noncredit basic skills sequence in the applicable discipline. Also, the Partnership for Excellence goal for Basic Skills Improvement uses data derived from an element--Course Prior to College Level, data element CB21--that was designed to improve identification of the alignment between basic skills courses and AA degree/transfer and AA degree/nontransferable credit courses. Further, improving articulation, between credit and noncredit, and within credit and noncredit basic skills, has consistently been a special project funding target.

Chancellor's Office staff, staff/teachers from K-12 Adult Education and the State Department of Education, and community college noncredit faculty participated in a multi-year articulation effort. The intent was to develop model course content standards for noncredit adult basic education-elementary, and secondary basic skills, and for noncredit ESL. Standards developed through this work were subjected to extensive field review, using focus groups and a survey. When revisions to the work are reviewed and validated, and if the respective Boards adopt the standards, work will proceed to develop model performance standards and assessments, tied to the content standards.

An emerging articulation issue is how college basic skills enrollments will be affected by implementation of the high school exit exam. Will community colleges be required to provide that exam, or a process utilizing comparable multiple measures, for students in community college high school diploma/GED programs or to demonstrate students' "ability to benefit" for financial aid purposes? A primary goal of articulation with K-12 is reducing the number of recent high school graduates who enroll in community colleges and are assessed as needing basic skills. Progress on this goal will require further articulation of the relationship between community colleges' math/English curriculum/assessments and recently adopted K-12 content standards in mathematics and language arts.

6. Trends and Innovation

One of the primary issues identified by researchers in developmental education has been the lack of systematic evaluation and assessment of such programs. Beginning roughly a decade ago, concurrent with emerging concerns about increases in the number of students entering postsecondary education lacking the skills to do college-level work, federal and state governments, professional associations and researchers began moving toward accountability and outcomes-oriented research in basic skills and/or developmental education.

In the California Community Colleges, this trend was assisted by Matriculation funding and by a strengthened collaboration between the Chancellor's Basic Skills Advisory Committee and the Academic Senate. Direct and active participation by Chief Executive Officers (CEOs) and other college administrators in implementing reforms in these areas has also contributed to the trend toward greater accountability for outcomes from the colleges basic skills instruction and services.

Some outcomes of these activities include the following:

- The Academic Senate for California Community Colleges, and a number of colleges and districts, have developed models that can be used comprehensively to assess a college's basic skills activities. Findings from those assessments are being used to benchmark current practices and/or to suggest best practices that might be institutionalized.

- Since Spring 2000, Chancellor's Office staff, the Academic Senate, and teams of faculty, staff, and administrators from more than forty community colleges, have participated in a series of twice-yearly convocations on "Improving the Skills of Underprepared Students" as part of the UC Berkeley's Community College Forums and Convocations. Participating colleges develop priorities and implementation strategies for reforming their basic skills programs, and in subsequent convocations, they report on progress made and the barriers/challenges encountered in instituting reforms. Teams from colleges new to the convocations learn from teams participating for the second, third or fourth time. The next convocation is scheduled for October 2002.

- FSS has provided multi-year institutionalization grants to colleges to work on improving the articulation among basic skills courses and between basic skills and degree and transfer courses. These funds, along with federal Title III funds, have been used to develop learning communities and supplemental instruction, to design student services focused on students enrolled in basic skills, and to increase the use of technology in serving basic skills students.

- PFE funds have permitted some colleges to implement comprehensive reforms of the way in which basic skills instruction and services are provided.

- The Academic Senate is currently surveying colleges to identify best practices in serving underprepared students, using funding provided by a Board of Governors FII 10% Set-Aside grant.

- The community college Research and Planning (RP) Group has established a Center for Student Success. Their findings, located on the web at http://www.rpgroup.org/cssweb/default.htm, provide valuable information on the results of research by the Center on practices which have been demonstrated to be effective in furthering the Partnership for Excellence goals.

Conclusions

Helping underprepared students to be successful in college-level work is something we can do, based on findings from our own research and on our identification of model practices used by other institutions. As the only public higher education segment required by mission and by statute to provide instruction in basic skills for adults, we have interpreted that charge as requiring the colleges to provide instruction and support services for diverse student populations with widely disparate preparation to undertake college work. Our credit basic skills instruction is purposefully designed to support success in college-level work.

Research indicates that we have many successes to which we can point. More than any other postsecondary institutions in California, the community colleges exemplify the spirit of Education Code section 66201 which affords each able Californian an unparalleled educational opportunity:

> *"It is the intent of the Legislature that each resident of California who has the capacity to benefit from higher education should have the opportunity to enroll in an institution of higher education. Once enrolled, each individual should have the opportunity to continue as long and as far as his or her capacity and motivation, as indicated by academic performance and commitment to educational advancement, will lead him or her to meet academic standards and institutional requirements."*

The decision by this Board to institute a dialogue on the colleges' basic skills mission, with each other and with constituencies from the colleges, will determine our next steps in addressing this charge.

Staff: *Lynn B. Miller, Interim Dean*
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APPENDIX I

Basic Skills Background Data

Snapshot: Who Are the Basic Skills Students? In FY 2000-01, over 523,000 students in the CCC system (of a total of 2.6 million) enrolled in at least one basic skills/precollegiate basic skills course during the year. *In any given year, approximately 1 in 5 CCC students enroll in at least one BS course.*

BS/PBS	523,883	20.1%
No BS/PBS	2,085,482	79.9%
Total	2,609,365	100.0%

Percent of Cohort Who Took Basic Skills. There were 395,729 first-time students in Fall 1995. Within 6 years, 138,014 (34.8%) had attempted at least one basic skills course offering in the CCC system.

Historical Volume and Percentage. While the volume of BS/PBS students is rising, the percentage of students in the system who are BS/PBS students is relatively stable.

	00-01	99-00	98-99	97-98	96-97	95-96	94-95	93-94
BS/PBS	523,883	502,120	458,360	451,791	439,932	406,330	401,189	420,258
No BS/PBS	2,085,482	2,044,306	1,979,403	1,897,068	1,802,079	1,712,460	1,675,197	1,708,324
Total	2,609,365	2,546,426	2,437,763	2,348,859	2,242,011	2,118,790	2,076,386	2,128,582
BS/PBS %	20.1%	19.7%	18.8%	19.2%	19.6%	19.2%	19.3%	19.7%

By Gender. BS/PBS courses contain a slightly higher percentage of female students.

	BS/PBS	No BS/PBS	All CCC Students
F	57.5%	53.2%	54.1%
M	40.4%	46.0%	44.8%
X	2.1%	0.8%	1.1%
% of Col	100.0%	100.0%	100.0%

By Ethnicity. The PS/PBS student population is represented strongly by Hispanic students; however, Asian and Black populations also have higher BS/PBS representation than the total CCC population.

	BS/PBS	No BS/PBS	All CCC Students
Asian/Filipino/PacIsl	18.3%	14.7%	15.4%
Black	7.9%	7.2%	7.3%
Hispanic	38.8%	21.8%	25.3%
Native American	0.8%	1.0%	1.0%
Other Non-White	1.7%	1.9%	1.9%
White	24.8%	44.6%	40.6%
Unknown	7.6%	8.8%	8.5%

By Age. BS/PBS students are greatly overrepresented in the 18-19 age group.

	BS/PBS	No BS/PBS	All CCC Students
<18	5.8%	10.5%	9.6%
18 & 19	22.7%	13.0%	15.0%
20-24	23.9%	22.4%	22.7%
25-29	12.1%	11.9%	12.0%
30-34	9.3%	8.9%	9.0%
35-39	7.7%	7.6%	7.6%
40-49	10.1%	11.8%	11.4%
50+	7.6%	12.0%	11.1%
Unknown	0.7%	1.9%	1.6%

By Citizenship. BS/PBS populations are overrepresented in the Non-U.S. Citizen category.

	BS/PBS	No BS/PBS	All CCC Students
U.S. Citizen	64.5%	86.5%	82.2%
Non-U.S. Citizen	35.5%	13.5%	17.8%
Percent of Column	100.0%	100.0%	100.0%

By Stated Goal. BS students have a slightly higher representation in desiring a degree/cert. or transfer and in being undecided. As expected, the goal of "improving basic skills" is much higher than in both comparison populations.

	BS/PBS	No BS/PBS	All CCC Students
Degree/Cert/Xfer	44.7%	42.6%	43.1%
Career/Ed Development	21.2%	32.3%	29.9%
Improve Basic Skills	7.2%	1.6%	2.8%
Complete GED	4.7%	3.3%	3.6%
Undecided	22.3%	20.2%	20.6%

Academic Preparedness On Entry. For students who took the SAT-9 test as juniors in high school and eventually attended a CCC, the average of the five exams for:

- Basic skills students: 42.9th percentile nationally.
- Nonbasic skills is 52.4th percentile nationally.

Financial Aid: Board of Governors Waiver. BS/PBS students are overrepresented in populations that received a Board of Governors waiver.

	BS/PBS	No BS/PBS	All CCC Students
Rec'd Board of Governors Waiver	29.9%	14.5%	17.6%
No Board of Governors Waiver	70.1%	85.5%	82.4%
% of Col	100.0%	100.0%	100.0%

Full-Time vs. Part-Time (Students). BS/PBS students have a higher likelihood of enrolling in only noncredit courses or being full-time.

Fall 2000 Units Attempted	BS/PBS	Not BS/PBS
Noncredit (0)	24.8%	11.1%
0.1-11.9	41.6%	67.5%
12 or more	33.6%	21.4%
Total	100.0%	100.0%

Outcomes of BS/PBS Students

Unless noted, the following data come from a cohort study of first-time students who began their academic careers as first-time students in Fall 1995.

Success and Retention. The following shows the success and retention outcomes of basic skills and non-basic skills students who began as first-time freshmen in Fall of 1995 and tracked six years forward.

Metric	Total Students	Attempted Enrollments	Completed Enrollments	Retention Rate	Successful Enrollments	Success Rate
All Enrollments, Non-Basic Skills Students	257,715	1,820,150	1,513,591	83.2%	1,274,721	70.0%
All Enrollments, Basic Skills Students	138,014	2,082,175	1,688,456	81.1%	1,342,143	64.5%
Basic Skills Students, Basic Skills Courses Only	138,014	277,392	224,716	81.0%	168,461	60.7%

Persistence. The following shows overall term-to-term persistence for the two subgroups from the 1995 cohort.

Group	Started Fall 1995	Still Enrolled Spring 1996	Still Enrolled Fall 1996	Still Enrolled Spring 1997
Basic Skills Students	138,014	89,844 (65.1%)	71,896 (52.1% of orig.) (80.0% of prev)	64,517 (46.7% of orig.) (89.7% of prev)
Non-Basic Skills Students	257,715	106,700 (41.4%)	74,927 (29.1% of orig.) (70.2% of prev)	64,696 (25.1% of orig.) (86.3% of prev)

Degrees/Certificates/Transfer. The following shows outcomes for degree/certificate attainment for the same 1995 cohort.

	Basic Skills Students	Nonbasic Skills Students
Total number of students in Fall, 1995 cohort of first-time students	138,014	257,715
Total number (%) with stated goal of degree/certificate and/or transfer	52,071 (37.7%)	80,251 (31.1%)
Of those with stated goal, number (%) who earned AA/AS/Certificate in 6 yrs.	9,062 (17.4%)	10,531 (13.1%)
Of those with stated goal, number (%) who transferred to a 4-yr institution in 6 yrs.	10,925 (21.0%)	22,105 (27.5%)
Of those who transfer, distribution of transfers by sector	CSU: 64.6% UC: 13.1% ISP: 13.0% OOS: 9.3%	CSU: 52.3% UC: 18.9% ISP: 15.1% OOS: 13.7%

Faculty and Class Size

BS/PBS Faculty: FT/PT. Fall 1999.

Total Basic Skills Sessions	Percentage Taught by FT-Regular Instructor	Percentage Taught by FT-Overload Instructor	Percentage Taught by PT Instructor
42,821	16,249 (37.9%)	3,749 (8.8%)	22,823 (53.3%)

Class Size. BS/PBS classes have larger class sizes on average (lecture classes only counted; excludes lab/activity/distance ed):

- Enrollments per section, BS/PBS: 35.4
- Enrollments per section, non-BS/PBS: 27.2

APPENDIX II

The California Community College Matriculation Process

Authorized and established by the Seymour-Campbell Matriculation Act of 1986 (AB 3), the Matriculation process provides a specific set of services designed for and intended to assist community college students to determine the most appropriate path for them to succeed in their academic, vocational and skill-building programs. State fiscal support for this effort began in the 1987-88 academic year and state regulations governing the process and defining each component, prohibited practices and implementation procedures were adopted in July 1990.

Matriculation Purpose

The purpose of matriculation is to provide students with accurate, timely information and help to define realistic, reachable educational goals. The matriculation process is intended to assure all students' access to higher education opportunities. An additional purpose is to increase institutional effectiveness and the systemic ability to match students' needs with college/district resources.

Student opportunity and access requires that the colleges assist students to make their course placement and other educational choices **through professional advice** emphasizing the use of multiple assessment measures and conscientiously applied supportive services. This is a commitment to the colleges' interaction with students to strengthen student motivation, provide regular feedback concerning academic progress, and guide students to refine and persist in meeting their educational goals based on the instructional and supportive resources of the institution.

Institutional effectiveness is achieved by efficiently applying the institutions' resources toward meeting the educational needs of students and committing additional resources as necessary. By consistently identifying and addressing student goals and needs through the components of matriculation, the institution is strengthened with greater student retention and the more efficient delivery of services.

Components of the Matriculation Process

The matriculation process has seven components. Five of these provide services directly to students to enhance their educational success. Two components relate to colleges and districts, improving institutional effectiveness and accountability by developing capabilities for evaluation, coordination and training.

Admissions: Through this component, colleges and districts ensure that access to the community colleges is provided to students by a comprehensive application process designed to identify student needs, abilities and accomplishments. Applicants without high school diplomas are identified during the application process in order that they be especially directed to the broad-based assessment and supportive service providers on campus. Information is collected regarding referrals to college services, programs, and resources. Special accommodations are made for ethnic and language minority students and students with disabilities. Bilingual and multilingual admissions staff members are now commonly found on campuses, as are multiple language admissions materials, including applications, registration materials, and supportive service referral information and forms. These are a direct result of the identification of these needs through the matriculation process and funding.

Orientation: Matriculation regulations ensure that community colleges provide students with information concerning their rights and responsibilities as college students as well as what services and information they will be provided by the college. This information is provided through a variety of media including written, video and in-person presentations. College procedures, course information, and availability of financial assistance and other support services are integral portions of these presentations, as are campus tours and interaction with student organizations. Much of the costs for orientation are funded through matriculation such as: counselors' and educational advisors' salaries, student assistants, orientation presentations in different media (videos, handbooks, audio tapes, CD, on-line materials), and multilingual presentations.

Assessment: Education Code and Title 5 regulations direct colleges to collect comprehensive information about individual students in order to facilitate student success. In this manner students may be professionally advised on the basis of multiple criteria that can be used to form a holistic "portrait" of each student; denoting strengths, areas of needed improvement, support service needs, placement test scores, study skills, learning and physical disabilities, computational and language skills, and so forth. Multiple measures for placement advice are stressed to ensure that no **single** test score or assessment measure is used to place students into courses. Matriculation has required multiple measure assessment of students for more than eleven years; a position that is increasingly being adopted by colleges and universities across the nation.

The state pursues rigorous standards to ensure that the testing instruments used for course placement have met established criteria for validity, reliability, and been reviewed for insensitivity and bias. Further, use of test is restricted to only the purpose for which it was designed and validated, e.g., a test designed for admission, such as the ACT, cannot be used for course placement. Additionally, the colleges are required to validate the cut scores and ranges of the instruments they use to ensure that they are appropriate for the placement of students into the college's specific curriculum.

California is the only state to have taken such strides toward assuring a "fit" between students' needs and skill levels, and the content and design of test instruments. In collaboration with instructional faculty, counselors and assessment personnel identify the companion measures that

are used with test scores to assess students' abilities and to assure that course placement is appropriate for the students' further development and progress.

Computerized career guidance systems such as DISCOVER and EUREKA are also utilized to assist in the assessment of aptitudes, interests, values, educational goals and career paths.

Matriculation funds counselors and assessment technicians who work in this component. In addition, testing materials are paid for with matriculation funds as are alternative assessment materials and personnel for students with physical challenges. ESL assessment is also funded largely with matriculation monies.

Counseling and Advising: Title 5 regulations specify that colleges will provide counseling or advisement through appropriately trained staff. These efforts are aimed at making certain that students receive sufficient guidance in the identification of educational goals, appropriate course placement, and referrals to supplemental assistance with academic or personal difficulties that may be mitigated by contact with a counselor or other professional. In addition, students are encouraged (and Title IV financial aid recipients are required) to develop a student educational plan (SEP).

The SEP is a document that describes the "path" by which a student can meet his/her educational goals. In conjunction with a counselor or advisor, the student formulates this plan, building in the courses, services and programs necessary to obtain his/her objective. The SEP is regularly reviewed and modified as appropriate. Special attention is directed to those students who experience academic difficulty and for whom the SEP may require extensive change.

The majority of state funding for matriculation is paid for counselors' salaries and those of academic advisors. The counseling function is central to the provision of matriculation services. Through contact with counselors, students are provided transfer and articulation information, orientation services, development of the Student Educational Plan, multilingual advisement, mainstream and ESL placement advice, probationary and academic dismissal interventions, career life-skill workshops, high school and basis skill course visitations, teaching and guidance courses, and personal counseling.

Student Follow-Up: State regulations require colleges to provide post-enrollment evaluation of every student's progress in order to detect early indications of academic difficulty. Great numbers of California community colleges are adopting electronic "early alert" programs that allow instructional faculty to report student difficulties in a consistently timely manner. As a result of follow-up, students who have not declared a specific educational goal, students enrolled in pre-collegiate basic skills courses, and students on probation or not making satisfactory progress, are identified and referred to services such as tutoring, child care, job counseling or placement, academic and vocational counseling, and other services available to help students overcome obstacles to their academic success. Much of the intervention activities provided through this component are performed by counselors.

Research and Evaluation: The matriculation process is regularly evaluated through the collection and analysis of data as specified by the Board's Title 5 regulations. These data include consideration of the impact of the matriculation process on courses, programs and facilities; students choice of student educational goals; improved, multiple-factor, assessment methodologies; student educational needs; student outcomes. These research studies help the colleges determine the efficacy of matriculation services and identify areas where improvement is needed or where a greater allocation of resources should be considered. These evaluation efforts permit the state to monitor the effectiveness of the matriculation process on a statewide basis.

Prior to the advent of matriculation funding, the research function in the community colleges was not an extensive one. It has been through the addition of researchers funded largely through matriculation that the colleges are increasingly able to use locally-derived data to inform their decision-making and evaluate the extent to which their instructional and supportive services are effective.

Coordination and Training: This component consists of efforts and strategies designed to involve the broadest possible range of college staff, students and faculty in formulating, implementing and evaluating matriculation services. While, typically, one person is designated as the coordinator of the matriculation process on each campus, college and district advisory bodies (comprised of wide-spread college community representatives) contribute to the decision-making process. Title 5 regulations require each community college district to develop and implement a program for providing all faculty and staff with training appropriate to their needs on the provision of matriculation services.

The majority of matriculation coordinators, directors, managers or supervisors are funded through the districts' state matriculation allocation.

When the matriculation system was developed, it was apparent that the needs for services would grow more quickly than could the resources to provide them. Thus, exemption categories were defined in order to make certain that resources were expended on the provision of services to those with the greatest need. Therefore, students with previously-earned college degrees, for example, may choose not to receive all of matriculation's services. Conversely, students without a high school education would receive all student-direct services.

State Oversight and Accountability Mechanisms and Procedures

The Chancellor's Office, on behalf of the Board of Governors, is responsible to the California Legislature to ensure that matriculation funds provided to districts are used for their intended purposes and that colleges operate their programs in compliance with state law and regulations. This is accomplished by use of the following procedures and mechanisms:

1. *Program Plans*--At the onset of matriculation's implementation, each community college district was required to write and submit a plan for enacting the matriculation

process. The plans were submitted to and reviewed by Chancellor's Office staff assisted by faculty and staff selected from various community colleges.

In 1991, all colleges were required to submit updates of their plans. These plans were read by Chancellor's Office staff and each college was provided a written response that delineated where components needed modification with respect to compliance issues. Further updates to the plans are required when significant changes occur in the way a college conducts its matriculation process.

2. *Annual and Expenditure Reports*--Colleges and districts are required to submit an annual "Expenditure Report" that documents numbers of students served; services provided; placement instruments and methods used; orientation topics covered; membership of advisory bodies; SEP formulation procedures; and research and training activities. These reports document the manner in which colleges utilize their state-allocated matriculation funds, describing hiring patterns and component-component expenditures in support of the matriculation process. These reports are read by Chancellor's Office staff and comments returned to the colleges.

3. *Site Evaluations*--The Chancellor's Office coordinates the matriculation site evaluations with teams of professional educators (counselors, faculty, matriculation coordinators, registrars, etc.). The team leaders for the visits are members of a firm of independent evaluation consultants with whom the Chancellor's Office contracts. The matriculation site evaluation is scheduled at each community college during the fifth year of the Accrediting Commission for Community and Junior Colleges' six-year accreditation cycle.

   In preparation for a site evaluation, team members review the college's matriculation plan, expenditure reports, catalogs, schedules of classes, application form(s), orientation materials, research report findings, and other records that document the college's implementation efforts. From this document review, background is obtained and questions formulated for an on-site investigation. Once the team arrives on campus, each member follows a rigorous interview schedule, meeting with representatives of college administrators, program staff, faculty and students to ascertain the effectiveness of the matriculation process.

   At the conclusion of each visit, a member of the Chancellor's Office Matriculation Unit assists the team in writing the exit report and provides guidance and advice to both the college and team members in matters related to matriculation legislation and regulations. When the final draft of the report has been written, the team conducts exit interviews with program staff and college administrators in which the team's findings are reported and recommendations made.

   Prior to joining a team, the site evaluation participants are given thorough orientation and training by Chancellor's Office staff. The training is designed to assist the team members to: learn what questions to ask representatives of each component; identify

areas where the matriculation process may not be satisfactorily implemented; identify areas where the matriculation process may be improved by modification of specific activities; and clarify the team members' roles to all participants. Team members are chosen for their expertise and knowledge of or experience with the matriculation process. They are from colleges in regions other than the region in which the college to be reviewed is located.

4. *Student Retention and Persistence*--Matriculation's impact on student retention and persistence has been documented through studies conducted at many of the state's community colleges. With the use of matriculation services, students complete a satisfactory ratio of units in relation to those they attempt; and, they persist in their courses from term to term, making reasonable academic progress.

   The following topic areas generically describe college research activities that encompass similar themes and are a sample of studies that have been submitted to the Chancellor's Office:

   - Factors that impact student retention;
   - Student persistence in reading, writing, and ESL programs;
   - Patterns of change in students' goals;
   - Student satisfaction with matriculation services;
   - Matriculation perceptions: surveys of staff and faculty;
   - Relationships between student matriculation status and student performance;
   - Evaluating "early alert" and other follow-up strategies;
   - New students' perceptions of matriculation;
   - Reading course placement and subsequent English course completion;

5. *Placement and Multiple Measures Validations*--The research and evaluation component requires colleges to use and expand their data collection and analyses processes to measure the effectiveness of matriculation. A concomitant intent of this activity is to utilize data gathered from the various components of matriculation to develop an integrated, computerized database that is useful for longitudinal research, planning, and evaluation of student outcomes and institutional programs and services. California community colleges are addressing these evaluation concerns, aided by the Chancellor's Office staff and consultants.

Students receiving matriculation services were persisting in progressively larger numbers. This is consistent with the findings of a major study completed by the Chancellor's Office. At the end of 1990, the Chancellor's Office Research and Analysis Unit completed a study in which 38 variables were analyzed for each participant. The study population was derived from a representative sample of twelve colleges throughout the state that reflected the scope of ethnic, rural and urban, and population characteristics of all colleges. According to the study, student participation in the matriculation process leads to greater persistence and retention. The numbers of students served by matriculation has increased dramatically since 1987, and available research

shows a strong positive relationship between matriculation services and student success. It is the underprepared students who are benefiting most from the matriculation process; those who are identified early in the process as needing tutoring, counseling, and financial aid services are attended directly with intervention strategies and support that adds to the students' success probabilities.

The Chancellor's Office study of matriculation student outcomes showed that students with less than 13 grade skill levels who received Matriculation services earned a cumulative college grade point average (GPA) of 2.07, compared to students with similar skills who received only admissions services and earned a cumulative GPA of 1.33.

The study also found that, matriculation improves the retention of students whose skills are below freshman level, and who receive full matriculation services (four to five services). Students from lower socioeconomic levels who received full matriculation services completed 74 percent of their attempted units, as compared with 54 percent for those who utilized only admissions services.

Summary

The California community college matriculation process is a comprehensive approach to guiding students to success. Through an expansive assessment process, a great deal of information is gathered that establishes the students' goals, talents, prior achievements, test results, learning skills, etc. With this information and that provided to the student through orientation activities, the students and the colleges are ensured that the initial placement into courses and subsequent follow-up retention and persistence activities are based on knowledge about the individuals abilities and needs. Allocations of resources, both fiscal and personnel, can thus be directed appropriately and supportive services expanded or created on the basis of the needs determined through the various matriculation components

The California Education Code directs the California Community Colleges to admit all persons above the age of compulsory school attendance who can profit from the educational opportunities they offer. Under this mandate, the colleges serve populations that are ethnically, economically, and educationally diverse, necessitating, a concomitantly diverse offering of programs and services to meet those needs. The matriculation system provides a mechanism to assess students' needs and abilities and match them to college resources toward successful educational outcomes. Thus, the California Community Colleges matriculation system meets and exceeds the goals of Congress and the Secretary of Education with respect to a institutional accountability in the enrollment of students without high school diplomas or the equivalent. Matriculation provides the framework through which the special educational and service needs of those students are identified and provided for in a comprehensive manner with a documented positive effect on student achievement.

APPENDIX III

Matriculation Assessment
In the California Community Colleges

Established by Assembly Bill 3 in 1986, *matriculation* is a process that brings a community college and the student enrolled in credit and noncredit curricula into an agreement for the purpose of realizing the student's educational objectives. A major component of the matriculation process is assessment.

The primary purpose of assessment is to assist the student in recognizing strengths and abilities that may be utilized in pursuit of his/her academic goals. Assessment helps to identify the entering students' reading, writing and math skills to ensure that the student is properly advised with respect to placement into the courses and programs appropriate to the student's skill level(s). While this component includes and indeed, requires, a variety of methodologies and measurements, assessment by instrument is one method common to all community colleges in the state system.

Assembly Bill 3, the 1986 Seymour-Campbell Matriculation Act, Section 78213 states:

> *(a) No district or college may use any assessment instrument for the purposes of this article without the authorization of the chancellor. The Chancellor may adopt a list of authorized assessment instruments pursuant to the policies and procedures developed pursuant to this section and the intent of this article. The Chancellor may waive this requirement as to any assessment instrument pending evaluation.*
>
> *(b) The Chancellor shall review all assessment instruments to ensure that they meet all of the following requirements:*
>
> *(i) Assessment instruments shall be sensitive to cultural and language differences between students.*
>
> *(2) Assessment instruments shall be used as an advisory tool to assist students in the selection of an educational program.*
>
> *(3) Assessment instruments shall not be used to exclude students from admission to community colleges.*
>
> *(c) The Chancellor shall establish an advisory committee to review and make recommendations concerning all assessment instruments used by districts and colleges pursuant to this article.*

The primary mechanism for ensuring that the assessment instruments utilized for placement in the community colleges are approved in a manner consistent with the founding legislation is the Assessment Work Group. This workgroup includes staff members from the state Chancellor's Office, the colleges and districts, and the Center for Educational Testing and Evaluation (CETE) at the University of Kansas. The CETE representatives are psychometric experts who have been contracted specifically for this project. With their guidance and the full participation of the

colleges and districts via the assessment workgroup, the California Community Colleges system has established standards and procedures to evaluate assessment placement instruments used to advise students in course selection. The assessment workgroup evaluates all assessment instrument submissions from commercial test publishers and has established guidelines for the submission of tests that are "locally" developed and managed as well.

During the evolution of the test review process, attention has also been paid to establishing clear and descriptive methodologies that the colleges and districts will use when reviewing instruments. In this regard, the workgroup developed the *Matriculation Assessment Technical Manual,* intended to help the colleges and districts understand and apply the empirical processes of assessment instrument selection, evaluation, and validation. This manual was disseminated during August 1990, and the Standards document is revised periodically.

Multiple Measures in Assessment

With the 1986 passage of matriculation legislation (Assembly Bill 3, Seymour-Campbell), colleges began or continued their efforts to assess students for purposes of course placement. A variety of instruments and procedures had been used with little to no standardization between colleges or often, within programs. The subsequent addition of Title 5 regulations attempted to clarify some testing issues:

> *"in implementing matriculation services, community college districts shall not use any single instrument, method or procedure, by itself, for placement, required referral to appropriate services, or subsequent evaluation of any student; provided however that, in the case of assessment instruments, the use of two or more highly correlated instruments does not satisfy the requirement for use of multiple measures."*
> *Title 5, section 55521 (a)(3)*

The matriculation process addresses the needs and demands of California's diverse student population. Key to these needs is an effective approach to assessment. This approach must distinguish between individual test administrations and a total battery of tools that comprise a holistic description of student strengths and weaknesses. Assessment is not only testing; rather it is gathering information from a variety of sources, using a variety of procedures. These procedures may or may not include standardized testing, but in approximately 98 percent of the community colleges, do use test instruments as part of the assessment process.

What are Multiple Measures?

Multiple measures are a diverse battery of procedures and methods for gathering information about individuals or groups of students. Together, multiple measures create an assessment battery that provides a holistic profile of students individually and in groups. An assessment

battery should include objective and subjective information. Objective information is available through individually or group administered standardized tests. These tests may be multiple choice, true false, or open response. Regardless, typically, there is no controversy concerning the students' score. Only one correct answer exists for any possible question, and this answer cannot be negotiated in scoring.

Subjective instruments on the other hand, are often scored by individuals who have training in recognizing appropriate responses to items. These responses may vary, and indeed, individuals may disagree over the correctness of a response. Examples of subjective instruments include written essays, speeches, artwork, poetry, portfolios, and grades. Subjectivity recognizes the need to individualize decisions based on student need. However, objectivity provides standard measures of performance, which allow comparisons between and within individuals or groups. A well-made assessment battery will provide a balance of objective and subjective measures so it meets the needs of policy makers as well as individual students.

When assessment in the community colleges takes place, it is usually performed through a battery of measurements comprised of objective and subjective data. The combination of these data include pertinent student-related information such as the measures collected through informal and interviews, structured interviews, surveys (e.g., interest) questionnaires, scales (e.g., Likert, forced choice, forced comparison), behavioral observations, a review of school records, job analyses, performance on criterion measures, individually administered tests, or group administered instruments, to identify just a few methods.

How are Multiple Measure Tools Each Selected?

As assessment battery should include measures of ability, achievement, skills, educational history, interests, social/emotional health, physical health, and motivation/commitment at minimum. As previously mentioned, a major difficulty is in balancing the need for objectivity obtained data with the need for subjective measures designed for individual student needs.

Developing an appropriate assessment battery, consisting of multiple measures, requires input from all educational partners. This includes community members, students, researchers, teachers, and administrators. It is important that the assessment battery itself is assessed at least annually. Modifications will be necessary as data is collected and changes occur within populations, programs, personnel, etc. For example, a significant number of community colleges found that their student demographics had changed in an important manner when the alien student amnesty occurred in the early part of the 1990s. Consequently, colleges found that their curricula, financial aid capabilities, supportive service network, instructional assistance resources and basic placement rules had to reflect new assessment concerns more appropriate to the students coming into the institutions. The assessment battery must be seen as credible by anyone for whom it has impact.

An assessment battery should consist of a core set of tools that is administered in all situations. The remainder of the battery should be comprised of instruments that are designed to meet the individual needs of the student or situation. For example, not every student may be administered a test of creativity. However, if you are assessing a student who is highly creative, you may wish to measure this ability and include it in your overall profile of the student. Evidence to support the student's abilities may include a photography portfolio, a collection of short stories or poetry, paintings, awards for art designs, etc. The ability to tailor a portion of the battery is especially important when one wants to document a characteristic unique to that individual, group, curriculum, school, program, etc. The core part of the battery is essential when wanting to compare groups or individuals on a common measure. This may be helpful when comparing instructors, schools within districts, or districts.

Multiple measures should comprise a complete battery of complementary tools that yield data illustrating a holistic profile of the individual or group being assessed. This assessment battery, if valid and reliable, can then be used to make decisions at all levels of decisionmaking.

Why Should Community Colleges Use Multiple Measures?

In May 1988, the Mexican American Legal Defense and Education Fund (MALDEF) filed a discrimination lawsuit against Fullerton College on behalf of Latino and other linguistic minority students, contending that the college unfairly tracked these students into non-transferable or noncredit courses based solely on scores yielded from standardized tests. MALDEF contended that this was in violation of the Seymour-Campbell Matriculation Act and was an unlawful practice. After much negotiation, the case was dismissed in 1991. The Board of Governors adopted regulations in which the scores from a standardized instrument would be mitigated with the use of appropriate companion measures to produce a more rounded picture of the student.

Again, multiple measures are intended to supplement the objective information that is derived from a test score, or to provide a holistic portrait of the student built entirely of subjective measures that include professional judgment.

Abstract of the Matriculation Assessment Standards, Policy and Procedures for the Evaluations of Assessment Instruments Used in the California Community Colleges

The *Matriculation Assessment Standards, Policy and Procedures for the Evaluations of Assessment Instruments Used in the California Community Colleges* document has four major sections. The first section catalogues and details the purposes and appropriate uses of assessment as defined by matriculation legislation and regulation.

The second section of the document presents and discusses the assessment standards and criteria that are employed in the review of placement instruments. The section was drawn largely from

three sources: the *Code of Fair Testing Practices in Education*, the *EEOC Uniform Guidelines for Employee Selection Procedures*, and the *Standards for Educational and Psychological Testing*. Psychometric standards are presented in five areas:

1. Validity;
2. Reliability and Errors of Measurement;
3. Scaling, Norming, Score Comparability and Equating;
4. Standards for Administration, Scoring and Interpretation; and,
5. Testing Special Groups.

In the third section of the guide, more explicit standards and criteria for evaluating professionally prepared placement tests are presented. These are detailed as requirements for tests to be met separately by the test developer and the college or district test user.

A. Minimum Standards: Primary Responsibilities of the Test Developer

1. Validity

a. Content Validity.

The test developer should describe the content of the test in such sufficient and clear detail and specificity that users at community colleges are able to consider the test's appropriateness for making placement recommendations for a sequence of courses at their colleges.

b. Predictive Validity.

Documentation is required to indicate that the test scores relate to performance in classes similar to ones offered by the California Community Colleges. The course content should bear a close logical relationship with the placement purpose of a test. n6t courses in general. The test scores used for placement recommendations should correlate with end-of-course achievement and the correlations should be of sufficient magnitude to warrant the use of the test (r> .35).

2. Reliability and Errors of Measurement.

a. Reliability.

The stability of a placement test should be evaluated. To assess stability, the time between the two testings should be at least two weeks. The resulting coefficients are to be .75 or higher.

b. Standard Errors of Measurement.

Standard errors of measurement are to be computed for intervals of scores or at likely cut points.

3. Analysis for Cultural/Linguistic Bias. Insensitivity and Offensiveness

Evidence must be provided that an appropriate analysis has been conducted focusing on cultural/linguistic bias, insensitivity and offensiveness of the test and test items, and that the findings from such investigations have been incorporated to eliminate or minimize such effects.

B. Minimum Standards: Primary Responsibilities of the Local College

1. Validity

a. It is incumbent upon the local community college to evaluate the assessment measure for the predictive validity of the placement recommendations it yields.

b. Data are to be collected by the individual college to justify the proper identification of any cut scores or score ranges used for placement advice. At a minimum, it should be demonstrated that individuals who score above the cut score or within the score range identified have a relatively greater expectancy of success (e.g., obtaining a C grade or higher) in a specific course for which placement recommendations are made than those who score below the score or score range. Initial setting of the cut score can derive from empirical or judgmental approaches determined as appropriate.

2. Impact of Testing on Various Groups

a. Differential impact and predictability must be monitored for various demographic groups (including gender, age, racial, ethnic, and disability groups).

b. The revision of the instrument for testing individuals who cannot take the tests under standard conditions must be documented. The documentation should demonstrate how the revised method yields test scores with appropriate psychometric characteristics.

The fourth section of the Guide details the process that will be followed in reviewing a placement instrument for the Chancellor's recommendation regarding its use. This is a seven-step process that includes the following:

Step 1. Compile Information on Assessment Instruments
Step 2. Psychometric Expert Review
Step 3. Content Expert Review
Step 4. MAC Assessment Work Group Review
Step 5. Psychometric Expert Recommendations
Step 6. Chancellor's Decision
Step 7. Appeals Process

Following a review based upon the criteria listed above, a written report is submitted to the Chancellor offering a recommendation of: (A1) Approval; or (A2) Provisional Approval; or (A3) Probationary Approval; or (B) Disapproval. All approved instruments will be available for use by a community college. However, the categories of approval (A1, A2, and A3) distinguish the length of time the instrument may be used without submission of additional information. The implications for an instrument's use when placed in a category are as follows:

A1 Approval	Instruments in this category are those meeting criteria on the standards such that the available evidence would indicate they have potential value when used to serve a specific assessment function in California's community colleges.
A2 Provisional Approval	Instruments in this category are those that meet relevant standards and criteria, but lack sufficient or recent information to assign the unequivocal "Approval" rating. This is a conditional category wherein the expectancy is that the test, in time, will achieve an Approval recommendation. Recommendation in this category means that the test developer or user must supply within **one year** the specified additional clarifying information. Failure to submit the required clarifications within one year will result in reclassification into the "Probationary Approval category.
A3 Probationary Approval	Instruments in this category are those where critical information is missing and a clear-cut recommendation cannot be established; or, from the information that is available deficiencies are noted. The intended purpose for use of these instruments is clearly stated and some positive information supporting their use is available, but the necessary evidence from which a final judgment can be made is incomplete. For tests that are recommended as "Probationary," additional data must be provided to document their suitability. Such instruments can only be placed into an "experimental" use designation for a maximum of **two years** while the necessary evidence is assembled.

B Disapproval	Instruments placed in this category are those where the evidence indicates that they have failed to meet one or more of the standards or criteria considered essential by the reviewing bodies or fail to meet a condition of AB 3. What is considered an essential element is likely to vary among applications, but the specific deficiency is identified in the report of the experts to the Chancellor.

As may be seen in this brief primer, assessment in the community colleges is far-reaching and intended to address a multitude of educational needs and objectives. Although transfer education is a primary end of our educational mission, it is not the only one. Consequently, testing and assessment must speak to a highly diverse student population with the intention of assisting them to reach their fullest potential in a variety of courses and programs that range from job preparation and vocational training to language improvement and transfer.

Board of Governors
California Community Colleges

Agenda

Brian E. Conley
Chair
Antonia Hernandez
Vice Chair

Irene M. Menegas
Leslie Wang

Fusako Yokotobi
Vice Chancellor

Committee on Equity, Diversity, and Human Resources

Tuesday, November 12, 2002

1:30 p.m. - 2:00 p.m.

Action Scheduled

5.1 Approval of Minutes: September 9, 2002

5.2 Report from the Equity and Diversity Task Force

5.3 Revisions to the Disciplines List

Full Board Approval of Action Items

COMMITTEE ON EQUITY, DIVERSITY, AND HUMAN RESOURCES

5.1

September 9, 2002

Committee Meeting Minutes

Call to Order

Chair Brian Conley called the September 9, 2002, meeting of the Committee on Equity, Diversity, and Human Resources to order at 11:15 a.m. He welcomed Fusako Yokotobi, the new vice chancellor of Human Resources, and stated that the Board of Governors looks forward to working with her.

Members Present

Brian E. Conley, *Chair*
Antonia Hernandez, *Vice Chair*
Irene M. Menegas
Leslie Wang

Other Members Present

Desirree-Michelle Abshire
Annie R. Bird
Julie Korenstein
Melba Muscarolas
Patricia G. Siever
Catherine L. Unger

4.1 Approval of Minutes: July 8, 2002

The committee approved the minutes of the July 8, 2002, meeting.

4.2. Report from the Equity and Diversity Task Force *(Information)*

Chancellor Tom Nussbaum and Fusako Yokotobi, vice chancellor of Human Resources, presented an update on the work of the Equity and Diversity Task Force.

Yokotobi stated that the report is going back to the Consultation Council in October and it will return to the Board of Governors' November meeting.

Public Testimony

Hoke Simpson, president of the Academic Senate, stated that the Academic Senate supports the report and recommended that the item be a regular agenda item at Board of Governors' meetings so the Board can receive regular progress reports. He recommended that the Academic Senate work jointly with the local chief human resources officers responsible for developing the training program for hiring committee

members (pp. 13-14). Simpson stated that it is extremely important to have the Board of Governors' endorsement of these recommendations.

Simpson invited Board members to the Academic Senate's Fall Plenary Session, on October 31, November 1 and 2 at the Los Angeles Airport Westin.

Board members held a discussion on how the Chancellor's Office will monitor districts' commitment to equity and diversity.

Chancellor Nussbaum emphasized that, at the system level, we will monitor the commitments made by districts. The system will also be approving district Equity and Diversity Plans and reporting back on hiring practices on an annual basis. The Chancellor stated that he will find ways to devote resources to that effort.

David Viar, executive director of the Community College League of California, stated that the California Community College Trustees (CCCT) has worked with great commitment to develop a major initiative on how local governing boards adopt policies and have monitoring and follow-through on those policies. The CCCT Board led this effort and the local governing boards have a major responsibility. The hiring committees are made up of faculty, and in the processes there must be agreement between the local governing boards and the academic senates.

Adjournment

Chair Conley adjourned the meeting of the Committee on Equity, Diversity, and Human Resources at 11:45 a.m.

Board of Governors
California Community Colleges
November 12-13, 2002

REPORT FROM THE EQUITY AND DIVERSITY TASK FORCE

5.2

ACTION SCHEDULED

Committee on: *Equity, Diversity, and Human Resources*
Brian E. Conley, Chair

Presentation: *Fusako Yokotobi, Vice Chancellor*
Human Resources

Issue

This item presents the report of the Equity and Diversity Task Force on new approaches to promoting equity and diversity.

Background

In September 2001, the Third District Court of Appeal handed down its decision in *Connerly v. State Personnel Board* (2001) 92 Cal.App.4th 16, holding that Education Code section 87100 et seq., requiring affirmative action in community college employment, violate Proposition 209 and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. In response to that decision, the Chancellor's Office issued the 14th advisory on Proposition 209 on October 19, 2001. That advisory listed various steps the agency will take to maintain the Board's commitment to diversity in light of the *Connerly* decision.

Among other things, the advisory announced the Chancellor's decision to establish an Equity and Diversity Task Force on new approaches to promoting equity and diversity. The purpose of the task force was to explore innovative policy approaches to promoting diversity and student equity without running afoul of the restrictions imposed by Proposition 209.

Following task force members' final review of Chancellor Nussbaum's comments and recommendations on the progress report, the final report was brought to the Consultation Council in October. The task force report (attached) identifies specific activities and tasks to be undertaken at both the system and local level to "Realize our Commitment to Access and Success for All Students Through Student Equity, Equal Opportunity, Nondiscrimination and Workforce Diversity."

Contingent on Board approval of the task force report, the next steps will be to send the report to each of the designated constituencies and ask them to respond, within 90 days, to the list of activities and the timeframe proposed in the report. Thereafter, the Chancellor's Office will compile and publish the various commitments and present them to the Board of Governors for review. The Chancellor's Office will also work to assist each of the constituencies and will monitor the progress of each constituency in meeting its commitments.

Recommended Action

That Board of Governors accept the recommendations of the Task Force on Equity and Diversity and request each constituency to respond within 90 days, by means of a written action, to the list of activities, tasks, and timeframes proposed.

Equity and Diversity Task Force

Task Statement

Purpose

Recent court decisions have made clear that certain race and gender conscious techniques used in promoting diversity are no longer permissible in light of Proposition 209. In addition to vigorously enforcing nondiscrimination laws, the system, within the parameters of recent court decisions and the provisions of Proposition 209, also needs to explore innovative approaches to improving student equity by promoting a diverse work force. The task force will be asked to recommend changes in policy, Board regulations, or state law needed to carry out the system commitment to diversity and student equity. By diversity we mean a work force that provides equal employment opportunity to all, regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age, income level, socio-economic status, prior hardship, or sexual orientation.

Topics for Discussion

The task force should consider all feasible and legally-permissible approaches to promoting diversity and achieving student equity including, but not limited to:

1. Revising statewide minimum qualifications.

2. Further restricting or eliminating the use of local qualifications beyond state minimum qualifications.

3. Improving outreach and selection procedures.

4. Allowing or requiring colleges to broaden the scope of job descriptions to include such factors as prior community college attendance, participation in programs for disadvantaged students, socio-economic status, prior hardship or discrimination, etc.

5. Strengthening and expanding the existing requirement that faculty candidates demonstrate a sensitivity to and understanding of diverse students.

6. Developing programs to encourage current students to return as community college faculty and staff.

7. Requiring colleges to actively monitor the impact of prerequisites and program admission procedures on student equity.

8. Proposing changes to regulations that would provide criteria for state review and approval of district student equity plans.

9. Developing components of effective campus climate surveys to test perceptions of diverse students, faculty and staff.

Composition

The task force will be co-chaired by a chief executive officer and a faculty member named by the Academic Senate. Members of the task force are as follows:

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EQUITY AND DIVERSITY TASK FORCE REPORT

Realizing Our Commitment to Access and Success for All Students Through Student Equity, Equal Opportunity, Nondiscrimination and Workforce Diversity

OCTOBER 2002

Realizing Our Commitment to Access and Success for All Students Through Student Equity, Equal Opportunity, Nondiscrimination and Workforce Diversity

The California Community Colleges enjoy a tradition of equal access for all students. Our commitment to equity is both historic and ongoing, and embraces the goals of educational success and equal opportunity for all. At the beginning of the new century, it is critical to express these general goals in more specific terms to ensure that the system remains vibrant, responsive, and inclusive, and in all ways focused on educational accessibility and excellence for all our students.

I. Goals.

Our goals are:

A. To foster a climate of equal opportunity, educational excellence, and success for all students throughout the system; and to strengthen and expand the capacity of every officer and employee within the system to demonstrate a sensitivity to, and understanding of, the diversity of the students we serve. "Diversity" is to be understood as encompassing racial and ethnic diversity, as well as differences in gender, sexual orientation, academic preparation, socioeconomic circumstances, age, religion, and disabilities. By being sensitive to, and understanding of, the diversity of our students, we enable more of our students to succeed, and we improve the quality of education. It is in the interests of student success and educational quality that all candidates for employment demonstrate a sensitivity to, and understanding of, this wide range of diversity.

B. To foster a workforce that is diverse through equal employment opportunity for all, and through assuring that we do not discriminate unlawfully. Our workforce is open to all candidates, regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age, income level, socioeconomic status, prior hardship, or sexual orientation. Through a workforce that is diverse, we benefit students of all backgrounds by exposing them to different ideas, experiences, and worldviews. We thereby improve student success and educational quality.

C. To assist California in building a strong society and enabling it to become a successful multicultural democracy. The California Community Colleges are the gateway to higher education and workforce opportunity for the vast majority of Californians. The daily interactions of diverse students, faculty and staff, and the broader pursuit of higher education on our campuses, serve to break down fear, prejudice, and hate. Our students return to their communities with greater levels of understanding, appreciation, tolerance, and humanity. We thereby contribute to the strength of our society and our success as a multicultural democracy.

II. Orchestrated Effort at Both the System and Local Levels.

To achieve these goals we commit to an orchestrated effort at both the system and local levels.

A. At the **system level**, through the orchestrated efforts of the Chancellor's Office, the Community College Trustees Association, the Chief Executive Officers Organization, the statewide Academic Senate, the Association of Chief Human Resource Officers, the Equal Employment, Diversity and Equity Consortia, the Community College Public Relations Officers, the statewide Student Senate and other systemwide organizations, we will:

1. Provide technical advice, assistance, and training to local college districts on matters of student equity, equal employment opportunity, workforce diversity, and state and federal legal requirements.

2. Improve the *Community College Registry* by incorporating a common systemwide online application, with provisions for supplemental materials to be added by local districts; by establishing links to online tutorials about the California Community Colleges (CCC's) including tips on how to apply for positions, interviewing techniques, and related issues; and by incorporating a series of ads for key publications, such as the *Chronicle for Higher Education,* to promote teaching in the CCC's.

3. Develop a common systemwide employment application (with provisions for supplemental materials to be added by local districts), that provides for candidates to demonstrate in writing a sensitivity to, and understanding of, the diversity of the students served by California Community Colleges.

4. Develop and distribute a model Equal Employment Opportunity Plan and a Model Student Equity Plan.

5. Review and approve Equal Employment Opportunity Plans; and review and comment on Student Equity Plans.

6. Administer the Equal Employment Opportunity Fund.

7. Develop and sponsor legislation that will provide funds for scholarships, forgivable loan programs, and other incentives to enable community college students to complete Master's degrees, in return for committing to teach for a specific period in a California Community College.

8. Design a systemwide portable marketing and recruitment package for major national discipline conferences, such as the Modern Language Association (MLA), and create teams of faculty members from different community college districts to staff these efforts.

9. Conduct a single statewide job fair, and assist in the coordination of regional fairs to include recruitment at graduate schools for faculty intern positions.

10. Monitor and enforce state and federal statutes and regulations as assigned by law.

B. At the **local level,** through efforts of governing boards, chief executive officers, academic senates, administrators, classified staff organizations, and student organizations, we will:

1. Develop updated and strengthened Equal Employment opportunity Plans and Student Equity Plans. These plans are the means by which districts will focus their efforts and establish their commitments. The governing boards, as well as all campus and district organizations, staff and students must be involved in these planning efforts that focus on how to enable more of our students to meet their educational goals; how we can be more sensitive to, and understanding of, the diversity of our students; and how we can foster a workforce that is diverse through equal employment opportunity and nondiscrimination.

2. With respect to faculty positions, research and identify hiring criteria most likely to predict effectiveness on the job, defined as improving outcomes for all students.

3. In terms of evaluating candidates for employment, ensure that every stage includes an evaluation of the sensitivity to, and understanding of, the diversity of the students we serve. For the specific criteria to be used in this evaluation see the recommended policy on Sensitivity Hiring Criteria and Training Programs for Members of Hiring Committees.

4. Ensure that district employees who participate on screening or selection committees have appropriate training in the regulations of the Board of Governors; state and federal nondiscrimination laws; and a sensitivity to, and understanding of, the diversity of the students served by community colleges. As to the training of members of hiring committees, see the recommended policy on Sensitivity Hiring Criteria and Training Programs for Members of Hiring Committees.

5. Create scholarships, forgivable/conditional loan programs and other incentives to enable community college students to complete Master's degrees in return for committing to teach for a specified period of time in a California Community College.

6. Develop programs to encourage and support classified staff in meeting minimum qualifications for instruction.

7. Develop procedures to expand the diversity of part-time faculty and to provide mentors to assist part-time faculty to develop potential to fill full-time positions.

8. Increase outreach efforts with community-based agencies in a mutual exchange of services for example, a community college may provide services to agency clients, such as interviewing and resume-writing workshops, while the agency publicizes community college employment opportunities.

9. Market community college full and part-time teaching to K-12 teachers.

10. Establish relationships with city and county governments in order to participate in housing programs for faculty, staff, and administrators.

11. Form recruitment consortia with other educational institutions, such as the Northern California Bay Area Higher Education Recruitment Consortium (HERC).

12. Contact appropriate California State University administrators to identify programs and grants designed to recruit graduate students for part-time teaching.

13. Establish partnerships with private industry to identify potential part-time faculty in areas where instructor shortages exist.

III. Recommended Policies: Sensitivity Hiring Criteria and Training Programs for Members of Hiring Committees.

A. **Sensitivity Hiring Criteria.** The evaluation of sensitivity to, and understanding of [redacted] should be part of every stage of evaluating candidates for

2. The evaluation of candidates according to their demonstrated experience in developing, or participating in, successful efforts to assist and encourage community college students and others like them in achieving their goals.

3. The recognition of proficiency in a language other than English, especially a language spoken by a significant portion of the student body.

4. The evaluation of experience in developing or participating in mentoring or cohort programs.

5. The recognition of the sensitivity of candidates who have been community college students and who have received financial aid, or participated in EOPS, DSPS, CalWORKs, or similar programs while they were students.

6. The evaluation of candidates' formal training or demonstrated ability to offer instruction that addresses a variety of learning styles.

B. **Training Program for Committee Members on Hiring Committees.** The training programs should:

1. Convey a sense of the educational, vocational, and social values to students and the campus community of a rich variety of backgrounds and perspectives among its members;

2. Reduce committee members' fear of cultural differences, and induce a positive appreciation of such differences;

3. Communicate clearly the legal and ethical injustice of discrimination based on cultural and racial difference, age, gender, religion, disability and other similar factors. The training should also illustrate the damage—social, socio-economic, and psychological—that has occurred as a result of discriminatory practices;

4. Communicate the importance of campuses becoming cultural models for students: that by providing and environment which honors diversity and is free of prejudice, the college/district can produce in students attitudes that will contribute to the elimination of bigotry in the larger community;

5. Provide committee members with specific strategies and techniques for promoting inclusiveness in job descriptions, advertising, paper screening, and interviews, as well as eliminating unintended exclusiveness; and,

6. Persuade committee members that good hiring practice demands reaching the broadest pool of potential candidates and hiring the candidate who will be the greatest asset to students and the campus community

Commitments

Those groups with direct responsibility for statewide or local policy development and administration are asked to formally adopt the commitments listed below. The Board of Governors invites and encourages other organizations to make formal and specific commitments about how they will contribute to the goals set forth above.

A. Board of Governors and Chancellor's Office

1. Assume primary responsibility for providing leadership in the system's commitment to equity and diversity, in monitoring the progress of the colleges, and in monitoring the progress of all constituencies in meeting their respective commitments. This will be done, in part, by placing this matter on the Board's Equity, Diversity, and Human Resources Committee agenda on a regular basis.

2. Provide advice and technical assistance to local college districts on matters of student equity, equal employment opportunity, workforce diversity, and state and federal legal requirements.

3. Develop a model Equal Employment Opportunity Plan and a model Student Equity Plan by January 2003 and distribute them to districts by February 2003. The Chancellor's Office will award a grant to a district that will develop a model Equal Employment Opportunity Plan. The Academic Senate will update the 1993 Academic Senate for California Community Colleges Document "Guidelines for Developing a Student Equity Plan," and will work with the Chancellor's Office in promoting and distributing the revised edition.

4. Review and approve district Equal Employment Opportunity Plans, and review and comment on district Student Equity Plans.

5. Administer the Equal Employment Opportunity Fund.

6. Develop (through Consultation) and sponsor legislation for 2003 that will provide funds for scholarships, forgivable loan programs, and other incentives to enable community college students to complete Master's degrees in return for committing to teach for a specified period in California Community Colleges.

7. Improve the Community College Registry by incorporating a common systemwide online application, with provisions for supplemental materials to be added by local districts; by establishing links to online tutorials about the California Community Colleges (CCC's) including tips on how to apply for positions, interviewing techniques, and related issues; and by incorporating a series of ads for key publications, such as the *Chronicle of Higher Education*, to promote teaching in the CCC's. The Chief Human Resources Officers will be responsible to develop the common application, and the other work regarding

improvements in the *Registry* will be done by the district grantee that runs the *Registry*.

B. **California Community College Trustees Association (CCCT)**

1. Encourage all district governing boards to make formal commitments, and exercise leadership to secure commitments from all districts

C. **Chief Executive Officers of the California Community Colleges (CEOCCC)**

1. Encourage all CEO's to make formal commitments, and exercise leadership to secure commitments from all districts

2. In conjunction with the Chancellor's Office, design and provide training for community college CEO's and trustees

D. **Academic Senate for California Community Colleges (ASCCC)**

1. Encourage every local academic senate to form a committee on hiring, and exercise leadership to secure commitments from all local senates.

2. Lead efforts to update by October 2002 the 1993 Academic Senate for California Community Colleges document "*Guidelines for Developing a Student Equity Plan*" and with the assistance of the Chancellor's Office promote and distribute the revised edition.

   Coordinate with: Chancellor's Office, Chief Executive Officers of California Community Colleges and Student Senate

3. Assist the Association of Chief Human Resource Officers to develop by December 2004 supplemental materials to integrate with a common systemwide online and paper application.

   Coordinate with: Chancellor's Office, Equal Employment and Diversity and Equity Consortium

4. Assist the Equal Employment, Diversity and Equity Consortium to design by October 2003 a systemwide portable marketing and recruitment package for major national discipline conferences, such as the Modern Language Association (MLA), and create teams of faculty members from different Community College Districts to staff the events.

   Coordinate with: Chancellor's Office

5. Assist local academic senates, throughout 2002-03 and beyond, in their efforts in the areas of equity and diversity, including the design and implementation of effective training programs for members of hiring committees.

Coordinate with: Local Academic Senates, Association of Chief Human Resource Officers

E. **Association of Chief Human Resource Officers (ACHRO)**

1. Lead efforts to develop by September 2004 a common employment application, with provisions for supplemental materials to be added by districts. The common application will provide for a written response to demonstrate sensitivity to, and understanding of, the diversity of students served by California Community Colleges.

Coordinate with: Chancellor's Office and Equal Employment, Diversity and Equity Consortium

2. Lead efforts to conduct a single statewide job fair by January 2004 (and annually thereafter), and assist in the coordination of regional fairs to include recruitment at graduate schools faculty intern positions.

Coordinate with: Chancellor's Office and Equal Employment, Diversity and Equity Consortium

3. Lead efforts to contact the appropriate California State University administrators by October 2003 to identify programs and grants designed to recruit graduate students for part-time teaching.

Coordinate with: Chancellor's Office and Equal Employment, Diversity and Equity Consortium

4. Lead efforts to develop by December 2004 supplemental materials to integrate with a common systemwide online and paper application.

Coordinate with: Chancellor's Office, Equal Employment, Diversity and Equity Consortium and the Academic Senate for California Community Colleges

F. **Equal Employment, Diversity and Equity Consortium (EEDEC)**

1. Lead efforts to design by October 2003 a systemwide portable marketing and recruitment package for major national discipline conferences, such as the Modern Language Association (MLA), and create teams of faculty members from different Community College Districts to staff the events.

Coordinate with: Chancellor's Office and the Academic Senate for California Community Colleges

2. Assist the Association of Chief Human Resource officers to develop by September 2004 a common employment application, with provisions for supplemental materials to be added by districts. The common application will provide for a written response to demonstrate sensitivity to, and understanding of, the diversity of students served by California Community Colleges.

Coordinate with: Chancellor's Office

3. Assist the Association of Chief Human Resource Officers to conduct a single statewide job fair by January 2004 (and annually thereafter), and assist in the coordination of regional fairs to include recruitment at graduate schools faculty intern positions.

Coordinate with: Chancellor's Office

4. Assist the Association of Chief Human Resource Officers to contact the appropriate California State University administrators by October 2003 to identify programs and grants designed to recruit graduate students for part-time teaching.

Coordinate with: Chancellor's Office

5. Assist the Association of Chief Human Resource Officers to develop by December 2004 supplemental materials to integrate with a common systemwide online and paper application.

Coordinate with: Chancellor's Office and the Academic Senate for California Community Colleges

G. Community College Public Relations Officers (CCPRO)

1. Lead efforts to design by November 2003 a series of ads for key publications, such as *The Chronicle of Higher Education*, to promote teaching in the California Community Colleges, slated to run periodically to coincide with job fairs and major discipline conferences, as well as the beginning of the year and in special editions.

Coordinate with: Chancellor's Office

2. Assist Local District and Chief Human Resource Officers to market community college full and part-time teaching to K-12 teachers by May 2003.

H. **Student Senate of the California Community Colleges (SSCCC)**

1. Assist the Academic Senate for California Community Colleges to update by October 2002 the 1993 Academic Senate for California Community Colleges document "*Guidelines for Developing a Student Equity Plan.*"

   Coordinate with: Chancellor's Office, and the Chief Executive Officers of California Community Colleges

I. **Local Governing Boards of Community College Districts**

1. Adopt an Equal Employment Opportunity Plan by March 2004

   Coordinate with: Chief Executive Officers, Local Academic Senates and all other district and college constituencies

2. Adopt a Student Equity Plan by March 2004.

   Coordinate with: Chief Executive Officers, Local Academic Senates, Local Student Senates and all other district and college constituencies

3. Support the efforts of Chief Executive Officers to create scholarships, forgivable/ conditional loan programs and other incentives to enable community college students to complete Master's degrees in return for committing to teach for a specified period of time in a California Community College by November 2003. Note: The ability to accomplish this objective is dependent on budgetary funding and/or legislation being pursued at the system level.

   Coordinate with: Chancellor's Office

4. Support the efforts of Chief Executive Officers to ensure that a regular program of training is commenced by April 2003 to Board members, and district faculty and staff regarding:

   a. How to effectively promote faculty and staff diversity, and student equity; and

   b. The latest changes to the diversity and equity statutes, regulations, and policies, including the Title 5 regulations on equal employment opportunity.

   Coordinate with: Local District and Chief Human Resource Officers, Local Academic Senates

5. Support the efforts of Chief Executive Officers to establish by March 2004 relationships with city and county governments in order to participate in housing programs for faculty, staff, and administrators.

Coordinate with: Local District and Chief Human Resource Officers

J. **Chief Executive Officers**

1. Lead efforts with Local Governing Boards to adopt an Equal Employment Opportunity Plan by March 2004.

Coordinate with: Local Academic Senates and all other district and college constituencies

2. Lead efforts with Local Governing Boards to adopt a Student Equity Plan by March 2004.

Coordinate with: Local Academic Senates, Local Student Senates and all other district and college constituencies

3. Lead efforts to create scholarships, forgivable/conditional loan programs and other incentives to enable community college students to complete master's degrees in return for committing to teach for a specified period of time in a California Community College by November 2003. Note: The ability to accomplish this objective is dependent on budgetary funding and/or legislation being pursued at the system level.

Coordinate with: Chancellor's Office and Local Governing Boards

4. Lead efforts to ensure that training is provided by April 2003 to Board members and district faculty and staff regarding:

   a. How to effectively promote faculty and staff diversity, and student equity; and

   b. The latest changes to the diversity and equity statutes, regulations, and policies, including the Title 5 regulations on equal employment opportunity.

Coordinate with: Local Governing Boards and Chief Human Resource Officers

5. Lead efforts to increase outreach efforts with community-based agencies in a mutual exchange of services (for example, a community college may provide services to agency clients such as interviewing and resume-writing workshops, while the agency publicizes Community College employment opportunities) by March 2004.

Coordinate with: Local District and Chief Human Resources Officers

6. Lead efforts to establish by March 2004 partnerships with private industry to identify potential part-time faculty in areas where instructor shortages exist.

   Coordinate with: Local District and Chief Human Resource Officers

7. Lead efforts to establish by March 2004 relationships with city and county governments in order to participate in housing programs for faculty, staff, and administrators.

   Coordinate with: Local Governing Boards, Chief Human Resource Officers

8. Support the efforts of Classified Staff Organizations to develop by September 2003 programs to encourage and support classified staff in meeting minimum qualifications for instruction.

   Coordinate with: Local Academic Senates

K. **Local Academic Senates**

1. Assist Local District and Chief Human Resource Officers to develop by July 2003 procedures to expand the diversity of part-time faculty and to provide mentors to assist part-time faculty to develop the potential to fill full-time positions.

2. Assist Chief Executive Officers with the development of an Equal Employment Opportunity Plan by March 2004.

   Coordinate with: All other district and college constituencies

3. Assist Chief Executive Officers with the development of a Student Equity Plan by March 2004.

   Coordinate with: Local Student Senates and all other district and college constituencies

4. Support the efforts of Classified Staff Organizations to develop by September 2003 programs to encourage and support classified staff in meeting minimum qualifications for instruction.

   Coordinate with: Chief Executive Officers

5. Assist Local District and Chief Human Resources Officers to develop, by April 2003, an effective training program for members of hiring committees.

   Coordinate with: Local Governing Boards, Chief Executive Officers and the Academic Senate for California Community Colleges

L. **Chief Human Resource Officers**

1. Lead efforts to form recruitment consortia with other educational institutions, such as the Northern California's Bay Area Higher Educating Recruitment Consortium (HERC) by February 2003.

2. Lead efforts to develop by July 2003 procedures to expand diversity of part-time faculty and provide mentors to assist part-time faculty to develop the potential to fill full-time positions.

   Coordinate with: Local Academic Senates

3. Lead efforts to market community college full and part-time teaching to K-12 teachers by May 2003, and thereafter.

   Coordinate with: Community College Public Relations Officers

4. Assist Chief Executive Officers to increase outreach efforts with community-based agencies in a mutual exchange of services (for example, a community college may provide services to agency clients such as interviewing and resume-writing workshops, while the agency publicizes community college employment opportunities) by March 2004.

5. Assist Chief Executive Officers to ensure that training is provided by April 2003 to Board members and district faculty and staff regarding:

   a. How to effectively promote faculty and staff diversity, and student equity; and

   b. The latest changes to the diversity and equity statutes, regulations, and policies, including the Title 5 regulations on equal employment opportunity.

   Coordinate with: Local Governing Boards

6. Assist Chief Executive Officers to establish by March 2004 partnerships with private industry to identify potential part-time faculty in areas where instructor shortages exist.

7. Assist Chief Executive Officers to establish by March 2004 relationships with city and county governments in order to participate in housing programs for faculty, staff, and administrators.

   Coordinate with: Local Governing Boards

M. **Classified Staff Organizations**

1. Lead efforts to develop by September 2003 programs to encourage and support classified staff in meeting minimum qualifications for instruction.

   Coordinate with: Chief Executive Officers

N. **Local Student Senates**

1. Assist Local Academic Senates with the development of a Student Equity Plan by March 2004.

   Coordinate with: Local Governing Boards, Chief Executive Officers and all other district and college constituencies

Board of Governors
California Community Colleges

MINUTES OF THE MEETING

November 12, 2002

Call to Order

President Richard Leib called the November 12, 2002, public session of the Board of Governors' meeting to order at 9:35 a.m.

Members Present

Desirree-Michelle Abshire
Annie R. Bird
George T. Caplan
Brian E. Conley
Antonia Hernandez
Julie Korenstein
Richard H. Leib
Irene M. Menegas
Patricia G. Siever
Catherine L. Unger
Leslie Wang

Members Absent

Amy B. Dean, *excused*
Melba Muscarolas, *excused*

Pledge of Allegiance

Patricia Siever led the Pledge of Allegiance.

Welcome

Dianne Van Hook, president of College of the Canyons, welcomed everyone to the meeting. She gave a brief history of the college and its role in fulfilling the community's needs.

President's Report

Richard Leib stated that he had the pleasure of meeting President Van Hook about a year ago and it was exciting to be on her campus.

Leib reported that this is his last meeting as president of the Board of Governors. He said he was appointed to the Board three years ago and this is his fourth campus visit, that he had been on wonderful visits to Modesto Junior College, Long Beach City College, and College of the Siskiyous, and that he wished campus visits could be done more frequently.

Leib reflected on how much he appreciates what the community colleges have to offer. He said that they are the heart and soul of the state. He has had the opportunity to work on many different issues that touch the lives of millions of Californians. He noted the bond measures as an example of how much the public truly supports community colleges.

Leib thanked Chancellor Nussbaum, his cabinet members, and staff for all the work they perform under difficult situations.

Leib stated that he had met with the Governor recently and Gray Davis said that he would be spending more time on community

llege issues over the next four years. Leib said Davis was grateful for fine Board members who have done an excellent job and that he will continue to try and resolve our difficult fiscal issues.

Patricia Siever stated that during his leadership, Leib has brought direction and humor, that it had been a pleasure being his vice president and that she has tremendous respect for him.

Chancellor's Report

Chancellor Thomas Nussbaum welcomed everyone to the meeting.

Nussbaum thanked Richard Leib for his outstanding leadership during a critical time in the history of the community colleges.

The chancellor thanked President Dianne Van Hook, Trustee Michelle Jenkins, and the College of the Canyons governing board for hosting the meeting. He also thanked the faculty, staff, and students at the college for welcoming the Board and Chancellor's Office staff.

Nussbaum stated that Van Hook spoke extensively about the importance of the Board of Governors and the system working together. He noted that Dr. Van Hook has been president of the chief executive officers and has been a leader in the system for many years. He said that, in 1994, Dianne was part of a restructuring of the Consultation Process, in which he worked with her closely, and that the success of the Consultation Process today is owed to the work that she gave to that group. He also noted that Philip Hartley is now the vice president at College of the Canyons, but was president of the Academic Senate during the time that AB 1725 was first implemented. He mentioned the rich history of system involvement at College of the Canyons and said that, as the Board of Governors tour the campus, he is sure they will feel the enthusiasm of the faculty, staff and students.

The chancellor reported that on Item 13, *Enforcement of Minimum Conditions for the Receipt of State Aid at the San Mateo County Community College District*, he would ask that the Board not take final action today, but provide him with direction. He said that the gravity of the possible remedies requires a full discussion with the representatives from the San Mateo Community College District.

Nussbaum stated that he is very pleased with the Proposition 47 election results and noted that 59 percent of the public voting for Proposition 47 is outstanding. He said that this is a higher number than on prior state bond acts and represents a real vote of confidence from the public.

Chancellor Nussbaum commended Executive Vice Chancellor Victoria Morrow and his senior staff for the manner in which they have dealt with the budget and staffing issues. He said that the morale in the Chancellor's Office remains high in spite of the possibility of major reductions. He said that the agency is struggling to be as thoughtful and careful as possible, and people have united to find more efficient ways of doing things and making the hard decisions. He said that he and his staff are doing everything they can to avoid harm to faculty, staff, students, and college services.

The chancellor reported that he attended the CalSAAC Conference in October and will attend its November 22 meeting to discuss support and funding for the Student Senate.

Resolutions
(Item 1)

Chancellor Nussbaum reported that resolutions had been prepared for Robert Moore, Pamila Fisher, Augustine Gallego, and Brenda Knight.

Nussbaum stated that the community college system is very blessed to have three of its leaders on the national scene–Pamila Fisher is chairing the American Association of Community Colleges, Augie Gallego is president of the American Council on Education, and Brenda Knight, the trustee at Peralta, is the chair of the Association of Community College Trustees in Washington D.C. He said, however, that Ms. Knight did not win her local election and he is not sure whether or not she will be able to continue in that post.

Venecia Metcalf accepted the resolution on behalf of Pamila Fisher, indicating that Dr. Fisher was preparing for her presentation for the Community College League of California and awaiting the arrival of her first grandchild.

Nussbaum stated that Robert Moore would be attending the Board meeting on Wednesday morning to accept his resolution.

Patricia Siever made a motion to approve the three resolutions. The motion was seconded by Julie Korenstein. The vote was unanimous.

Approval of the Minutes: September 9-10, 2002,
(Item 2)

President Leib asked Board members if there were any corrections or additions.

Patricia Siever had a question on a portion of Dymally's presentation.

Vera Weise, coordinator of the Board *Agenda*, said that Dymally's statement was taken directly from the meeting tape.

Irene Mengeas asked a question about the status of the Title 5 regulations on information competency and Chancellor Nussbaum said that discussions are continuing with the Department of Finance, but the issue has not been resolved.

Patricia Siever made a motion to approve the minutes. The motion was seconded by Irene Menegas. The vote was unanimous.

The Board moved into committee meetings at 10:15 a.m. The minutes of those meetings are located within the committee agendas.

Approval of Contracts and Grants
(Item 10) (Action Scheduled)

Robert Turnage, vice chancellor for Fiscal Policy, was available to answer questions. No concerns were raised.

Julie Korenstein made a motion to approve the contracts and grants. The motion was seconded by Patricia Siever. The vote was unanimous.

Approval of College Status for Folsom Lake Center, Los Rios Community College District
(Item 11) (Action Scheduled)

Robert Turnage, vice chancellor for Fiscal Policy, stated that the item was placed on the consent calendar at the Board's request.

Brian Conley made a motion to approve the item. The motion was seconded by Patricia Siever. The vote was unanimous.

Enforcement of Minimum Conditions for the Receipt of State Aid at the San Mateo County Community College District
(Item 13) (Action Scheduled)

Chancellor Thomas Nussbaum asked the delegation from the San Mateo Community College District to join General Counsel Ralph Black at the testimony table. The chancellor introduced the item by saying that it is primarily an opportunity for the Board of Governors to dialogue with the San Mateo County Community College District governing board representatives, to hear other points for view and then give him direction. He reemphasized his statement from the morning session that the Board is not being asked to take any final action with respect to this item. He advised that, since the Agenda had been prepared, he had received communication from three legislators, Senator Jackie Speier, Senator Byron Sher, and Assemblymember Joe Simitian. All expressed their concern about how any loss of funds would affect students of the San Mateo District. They also expressed their respect for the Board's processes. The chancellor said he had advised all three that he would inform the Board of their communications.

President Leib stated that he had received a number of letters from members of the community and would distribute them for Board members to review.

General Counsel Black stated that the Agenda item sets out the issues and facts of the case. In May of 2001, the San Mateo District Board of Trustees selected Mr. Ron Galatolo to serve as Superintendent/ President of the district after the previous chancellor had suddenly left. There was no external search nor did the district comply with the requirement for an interim hiring, which would have allowed all district employees that were qualified to apply for the position. The district did not notify the Chancellor's Office or its equal opportunity advisory committee that it intended to do an interim hire. Mr. Galatolo does not have a master's degree, and the Board did not make any determination that he had equivalent qualifications as is required by law. In January of 2002, the board offered Mr. Galatolo a four-year contact. Again, there was not an external search and district employees who were qualified for the position were not given an opportunity to apply. The district does not agree with staff's conclusion that it thereby violated the Board's minimum condition regulation, title 5, California Code of Regulations, section 53021. The district has rejected the Chancellor's Office proposed resolution that involved reopening of the position and also provided for monitoring and oversight of district hiring practices for a period of three years. Chancellor Nussbaum and staff met with and corresponded extensively with the district, as documented in the materials;

however, the parties have been unable to reach a resolution.

Black reviewed the district's arguments that it did not violate the minimum condition regulation because it asserts that the regulation was invalidated, along with the rest of the Board of Governors' faculty and staff diversity regulations, by the decision handed down by the District Court of Appeal in the *Connerly vs. the State Personnel Board* case in September of 2001. Chancellor's Office staff disagrees with this position for two reasons. First, the district hired Mr. Galatolo in May of 2001 several months before the court of appeal decision was handed down, at a time when the regulations were clearly still in place. Second, an analysis of the court's decision confirms that it did not invalidate the basic requirement of Section 53021 for open recruitment.

Richard Holober, president of the San Mateo County Community College District Board of Trustees (SMCCD), introduced Pat Millionich, member of the SMCCD board of trustees and immediate past president of the board; Miguel Marquez, Deputy County Counsel, San Mateo County; Barbara Christensen, director of governmental relations, SMCCD; Greg Wedner, counsel with the law firm of Losano, Smith; and Rosa Perez, president of Cañada College.

Holober distributed a binder of additional material to Board of Governors' members and stated that SMCCD takes its responsibility to uphold the law and the regulations of the Board of Governors very seriously and that, unfortunately, SMCCD's and the Chancellor's Office interpretation of the law are very divergent. Holober explained the circumstances surrounding the unexpected departure of the district's previous chancellor, which did not allow sufficient time for a full and deliberative recruitment process without the installation of a "caretaker" administrator for an interim one-year period. The SMCCD Board of Trustees reached the conclusion that, in view of number of new and innovative programs and projects underway in the district, it would appoint its current associate chancellor, Ron Galatolo, as interim chancellor. In considering the process for the employment of a permanent chancellor, the Board of Trustees sought and received legal advice from its legal counsel, the San Mateo County Counsel's Office, that it was not required to conduct a search. Thereafter, the Board of Trustees hired Mr. Galatolo in the permanent position in the belief that it was in the best interest of the district. The Academic Senate was consulted before the hire and chose not to take a position. Mr. Holober described the instant circumstances as atypical of previous executive hires in the district and as highly unlikely to reoccur.

Miguel Marquez, Deputy County Counsel, also addressed the Board of Governors to explain the basis for his office's legal advice to the San Mateo CCD Board of Trustees. He stated that the primary reason for the legal advice was the plain language of the Connerly decision, which said, in pertinent part "The Board of Governors regulations do not come close to implementing the hiring scheme in a constitutional manner." The binder provided to the Board contains a variety of passages from the *Connerly* decision to show the Board the language it was faced with when we looked at the question and provided advice to the Board of Trustees. It continues to be our view that when the statutes were invalidated, the regulations

at were enacted to implement that statu-ory scheme) were also invalidated, and that the district was prohibited from using these invalid regulations because they were found unconstitutional. Mr. Marquez read a portion of Government Code section 11342.2 to support the position that the regulation in question became invalid when the statute was found unconstitutional. It has been and is still the position of the County Counsel's Office that there was a regulatory void in the area at the time the district made its hiring decision.

Richard Holober explained that after the hiring of Mr. Galatolo, a faculty member filed a complaint with the Chancellor's Office. He stated that he and other district trustees, staff, County Counsel, Chancellor Nussbaum and his staff have attempted several times to resolve the matter. Holober indicated that the Board's binder contained a settlement proposed by the SMCCD in response to the resolution put forward by the Chancellor's Office. This settlement does not call for revocation of Mr. Galatolo's contract, nor does it provide for withholding of state funds. It provides for certain monitoring of district hiring processes by the Chancellor's Office. Holober urged the Board to adopt the district's proposal.

Mr. Holober stated that several newspaper articles were included in the Board's binder to inform it of the public nature of this issue in San Mateo County. As a result, there is much turmoil and uncertainty within the SMCCD. He would, therefore, appreciate a speedy resolution.

General Counsel Ralph Black said he would follow-up on several points made in the district's presentation. First of all, the regulations, as they existed before the *Connerly* decision, were based on a number of different statutes, including the Board's general authority under Education Code section 70901 to adopt any regulations it deems necessary for the proper operation of the Community College system. Historically, the regulations that the Board adopted predated the adoption of the Education Code sections that were challenged in *Connerly* lawsuit by three years. The regulations have always had independent statutory authority aside from the sections that were invalidated by the court. The Board's Agendas from May and July 2002 go into great detail on the other statutory authority that existed for those regulations. Secondly, he pointed out that there is a dispute between the Chancellor's Office and the district about exactly what the status of the law was after the court of appeal decision. The best guidance that the Board has for understanding what the state of the law was is the interpretation that the Superior Court gave when it had to interpret the court of appeal decision. The best guidepost in terms of understanding what the law was during that period of time between the *Connerly* decision and the adoption of the new regulations, is to look at the decision that Judge Connerly made about the scope of the court of appeal decision as explained earlier. He indicated that the regulations were not completely invalidated but only those portions that dealt with preferences were affected by the court of appeal decision and Section 53021 goes well beyond involving preferences. Its basic requirement is that you have open recruitment and that has nothing to do with preferences. The district could and should have engaged in open recruitments. Certainly we would not have expected them in January 2002 to do the kind of focused outreach that

the regulation required, which the court of appeal had found unconstitutional. The basic requirement to go out and do open recruitment still was in place and the Superior Court confirmed that. He refocused on the fact that the district first acted in May of 2001, before the *Connerly* decision occurred. Based on the arguments that the district has made about the legality of their action in January but there is certainly no doubt about what the law was in May of 2001. Black stated that he did not believe the district seriously addressed the legality of their actions in the first instance.

Board Member Korenstein requested and received confirmation that the Board would not be making a decision today. Korenstein asked Ralph Black to explain the requirement for a master's degree.

Black responded that the Education Code requires that all faculty and educational administrators possess a master's degree, or the board of trustees, at the time of hire, must make a determination that the individual has equivalent qualifications. The basis for their determination must be made on the record. This was not done by SMCCD in May 2001. In the January 2002 hiring, the Board of Trustees cited certain background that they believed gave Mr. Galatolo equivalent qualification, although it was unable to specifically identify what it relied on for the Chancellor's Office.

Richard Holober stated that the SMCCD made an equivalency determination when they made the permanent hiring. This was one of the allegations investigated by the state chancellor and the state chancellor concluded that there was no violation.

Member Korenstein asked if Mr. Galatolo had a contract with the district and how much it would cost to break the contact.

Mr. Holober confirmed that the district had a binding contract with Mr. Galatolo, which would cost several hundred thousand dollars to break.

There was a brief discussion of the issue of mediation suggested in Senator Speier's letter. Barbara Christensen of the SMCCD stated that a sticking point in settlement negotiations has been the requirement to reopen the chancellor's position.

Board Member George Caplan said that he believed that Chancellor's Office staff was correct in their interpretation of the effect of the *Connerly* decision on the Board's regulations, and that the district's actions violated the spirit and intent of the Board of Governors in promoting diversity. He further stated that he would, nevertheless, reserve judgment on an appropriate resolution, as he felt that withholding money from the district would in fact negatively impact the education of students.

Board member Hernandez also expressed dismay at the district's actions. She stated that she found it rather interesting that with all this public statements of the district's commitment to diversity when the very action that was taken avoided any process for an open hiring. In this situation, an exception is made and processes are not followed. She stated that she wished could see the facts—the data and figures that show if minimum requirements were waived for other individuals. She stated she too was reserving judgment. Her final comment was that it is not helpful for the community

olleges to be engaged in such a public debate. It doesn't do the whole system any good to be doing this.

Board Member Menegas thanked the district for its presentation and asked how the issue of minimum qualifications was addressed. She asked if the Board could receive a copy of the local equivalency process that was followed and the basis for the determination.

General Counsel Black stated that his office had the information the district provided about the equivalency determination that they made in January of 2002, and would provide it to her.

Barbara Christensen stated that the local equivalency process was also followed in the interim hire.

Board member Patricia Siever asked if the district had a hiring policy in board rule that was agreed upon with the Academic Senate, which is what the law requires.

There was discussion on the question between the members of the San Mateo group and President Holober stated that there definitely was a process for faculty equivalency in the district, however, it was not clear if there was a comparable policy for administrators. Holober said he would look into it and advise the Board.

Member Menegas asked President Holober if he felt that the district followed its own policies, and Holober responded that he did feel that the district followed its policies for this hire.

Board President Richard Leib stated that he had a few comments, less from a legal point of view than from a common sense and public policy point of view. The facts he has heard do not make a good case for the district's actions. He stated that it seemed that the district was arbitrary in its choice of evidence in the documents it provided to the Board and its position was not very strong. It is very clear in those documents that the Chancellor's Office advised that the requirement for broad recruitment efforts was not changed. He stated that he, too, would reserve judgment on a resolution of the matter, but that he felt that the Chancellor Nussbaum had made the right decision.

Board Member Brian Conley commented that from a trustee's viewpoint, this was a very strange and disappointing thing to happen in an educational system that holds the achievement of degrees so highly and tells its students how important degrees are.

Chancellor Nussbaum thanked the participants and said he felt this was a very healthy discussion. He stated that there was no doubt as to the sincerity of the parties and the conviction they feel in their statements and in the values expressed. It was also obvious that no one in the room wanted to take money away from the students of the SMCCD and that all want to find the right remedy. The chancellor said that he and his office would attempt to keep a dialogue open with the district in order to resolve the matter. He stated that this issue would be addressed again at the Board's January meeting and he is hopeful that he will be able to report a resolution before then.

Community College Governance: Reaffirmation of the Joint Statement of the Board of Governors and the Community College Trustees
(Item 12) (Action Scheduled)

Chancellor Thomas Nussbaum stated that this item comes from recent discussions with the community college trustees. He stated that there were statewide concerns that some of the Master Plan recommendations went against commitments made in the *Joint Governance Statement*. The chancellor therefore agreed to ask the Board to reaffirm its commitment to the *Joint Statement*.

This Board action is taken with the understanding that local boards of trustees also continue to support the principles set forth in the *Joint Statement*, and that they remain committed to working with the Board of Governors to support legislation that is consistent with these principles, and to oppose legislation that is inconsistent with these principles.

Public Testimony

Eddie Hernandez, Chancellor of the Rancho Santiago Community College District, spoke in support of the *Joint Statement* and urged the Board of Governors to approve it. He asked that the Board resist the temptation to micromanage, to give flexibility to local boards, and to look at the big picture. He emphasized the importance of regulations and that they be extremely clear.

Hernandez said that one of the issues that is *not* in the *Joint Statement* is a discussion of values and the issue of diversity, and how its richness in the state and population should be reflected in everything we do. He asked that the adherence to minimum principles and values be added to the *Joint Statement*. He also said that there should be consequences for the few districts that do not adhere to its policy.

Michele Jenkins, a member of the College of the Canyons Board of Trustees and second vice president of the California Community College Trustees Board of Directors, thanked the Board of Governors and Chancellor Nussbaum for the item. She stated that the CCCT is developing a paper similar to the one Antonia Hernandez earlier described on monitoring and follow-up of the diversity issue.

Patricia Siever made a motion to approve the item. The motion was seconded by Brian Conley. The vote was unanimous.

Adjournment

President Richard Leib recessed the meeting at 6:00 p.m.

MINUTES OF THE MEETING

November 12, 2002

Call to Order

President Richard Leib called the November 12, 2002, public session of the Board of Governors' meeting to order at 9:35 a.m.

Members Present

Desirree-Michelle Abshire
Annie R. Bird
George T. Caplan
Brian E. Conley
Antonia Hernandez
Julie Korenstein
Richard H. Leib
Irene M. Menegas
Patricia G. Siever
Catherine L. Unger
Leslie Wang

Members Absent

Amy B. Dean, *excused*
Melba Muscarolas, *excused*

Pledge of Allegiance

Patricia Siever led the Pledge of Allegiance.

Welcome

Dianne Van Hook, president of College of the Canyons, welcomed everyone to the meeting. She gave a brief history of the college and its role in fulfilling the community's needs.

President's Report

Richard Leib stated that he had the pleasure of meeting President Van Hook about a year ago and it was exciting to be on her campus.

Leib reported that this is his last meeting as president of the Board of Governors. He said he was appointed to the Board three years ago and this is his fourth campus visit, that he had been on wonderful visits to Modesto Junior College, Long Beach City College, and College of the Siskiyous, and that he wished campus visits could be done more frequently.

Leib reflected on how much he appreciates what the community colleges have to offer. He said that they are the heart and soul of the state. He has had the opportunity to work on many different issues that touch the lives of millions of Californians. He noted the bond measures as an example of how much the public truly supports community colleges.

Leib thanked Chancellor Nussbaum, his cabinet members, and staff for all the work they perform under difficult situations.

Leib stated that he had met with the Governor recently and Gray Davis said that he would be spending more time on community

ollege issues over the next four years. Leib said Davis was grateful for fine Board members who have done an excellent job and that he will continue to try and resolve our difficult fiscal issues.

Patricia Siever stated that during his leadership, Leib has brought direction and humor, that it had been a pleasure being his vice president and that she has tremendous respect for him.

Chancellor's Report

Chancellor Thomas Nussbaum welcomed everyone to the meeting.

Nussbaum thanked Richard Leib for his outstanding leadership during a critical time in the history of the community colleges.

The chancellor thanked President Dianne Van Hook, Trustee Michelle Jenkins, and the College of the Canyons governing board for hosting the meeting. He also thanked the faculty, staff, and students at the college for welcoming the Board and Chancellor's Office staff.

Nussbaum stated that Van Hook spoke extensively about the importance of the Board of Governors and the system working together. He noted that Dr. Van Hook has been president of the chief executive officers and has been a leader in the system for many years. He said that, in 1994, Dianne was part of a restructuring of the Consultation Process, in which he worked with her closely, and that the success of the Consultation Process today is owed to the work that she gave to that group. He also noted that Philip Hartley is now the vice president at College of the Canyons, but was president of the Academic Senate during the time that AB 1725 was first implemented. He mentioned the rich history of system involvement at College of the Canyons and said that, as the Board of Governors tour the campus, he is sure they will feel the enthusiasm of the faculty, staff and students.

The chancellor reported that on Item 13, *Enforcement of Minimum Conditions for the Receipt of State Aid at the San Mateo County Community College District*, he would ask that the Board not take final action today, but provide him with direction. He said that the gravity of the possible remedies requires a full discussion with the representatives from the San Mateo Community College District.

Nussbaum stated that he is very pleased with the Proposition 47 election results and noted that 59 percent of the public voting for Proposition 47 is outstanding. He said that this is a higher number than on prior state bond acts and represents a real vote of confidence from the public.

Chancellor Nussbaum commended Executive Vice Chancellor Victoria Morrow and his senior staff for the manner in which they have dealt with the budget and staffing issues. He said that the morale in the Chancellor's Office remains high in spite of the possibility of major reductions. He said that the agency is struggling to be as thoughtful and careful as possible, and people have united to find more efficient ways of doing things and making the hard decisions. He said that he and his staff are doing everything they can to avoid harm to faculty, staff, students, and college services.

The chancellor reported that he attended the CalSAAC Conference in October and will attend its November 22 meeting to discuss support and funding for the Student Senate.

Resolutions
(Item 1)

Chancellor Nussbaum reported that resolutions had been prepared for Robert Moore, Pamila Fisher, Augustine Gallego, and Brenda Knight.

Nussbaum stated that the community college system is very blessed to have three of its leaders on the national scene–Pamila Fisher is chairing the American Association of Community Colleges, Augie Gallego is president of the American Council on Education, and Brenda Knight, the trustee at Peralta, is the chair of the Association of Community College Trustees in Washington D.C. He said, however, that Ms. Knight did not win her local election and he is not sure whether or not she will be able to continue in that post.

Venecia Metcalf accepted the resolution on behalf of Pamila Fisher, indicating that Dr. Fisher was preparing for her presentation for the Community College League of California and awaiting the arrival of her first grandchild.

Nussbaum stated that Robert Moore would be attending the Board meeting on Wednesday morning to accept his resolution.

Patricia Siever made a motion to approve the three resolutions. The motion was seconded by Julie Korenstein. The vote was unanimous.

Approval of the Minutes: September 9-10, 2002,
(Item 2)

President Leib asked Board members if there were any corrections or additions.

Patricia Siever had a question on a portion of Dymally's presentation.

Vera Weise, coordinator of the Board *Agenda*, said that Dymally's statement was taken directly from the meeting tape.

Irene Mengeas asked a question about the status of the Title 5 regulations on information competency and Chancellor Nussbaum said that discussions are continuing with the Department of Finance, but the issue has not been resolved.

Patricia Siever made a motion to approve the minutes. The motion was seconded by Irene Menegas. The vote was unanimous.

The Board moved into committee meetings at 10:15 a.m. The minutes of those meetings are located within the committee agendas.

Approval of Contracts and Grants
(Item 10) (Action Scheduled)

Robert Turnage, vice chancellor for Fiscal Policy, was available to answer questions. No concerns were raised.

Julie Korenstein made a motion to approve the contracts and grants. The motion was seconded by Patricia Siever. The vote was unanimous.

pproval of College Status for Folsom Lake Center, Los Rios Community College District
(Item 11) (Action Scheduled)

Robert Turnage, vice chancellor for Fiscal Policy, stated that the item was placed on the consent calendar at the Board's request.

Brian Conley made a motion to approve the item. The motion was seconded by Patricia Siever. The vote was unanimous.

Enforcement of Minimum Conditions for the Receipt of State Aid at the San Mateo County Community College District
(Item 13) (Action Scheduled)

Chancellor Thomas Nussbaum asked the delegation from the San Mateo Community College District to join General Counsel Ralph Black at the testimony table. The chancellor introduced the item by saying that it is primarily an opportunity for the Board of Governors to dialogue with the San Mateo County Community College District governing board representatives, to hear other points for view and then give him direction. He reemphasized his statement from the morning session that the Board is not being asked to take any final action with respect to this item. He advised that, since the Agenda had been prepared, he had received communication from three legislators, Senator Jackie Speier, Senator Byron Sher, and Assemblymember Joe Simitian. All expressed their concern about how any loss of funds would affect students of the San Mateo District. They also expressed their respect for the Board's processes. The chancellor said he had advised all three that he would inform the Board of their communications.

President Leib stated that he had received a number of letters from members of the community and would distribute them for Board members to review.

General Counsel Black stated that the Agenda item sets out the issues and facts of the case. In May of 2001, the San Mateo District Board of Trustees selected Mr. Ron Galatolo to serve as Superintendent/ President of the district after the previous chancellor had suddenly left. There was no external search nor did the district comply with the requirement for an interim hiring, which would have allowed all district employees that were qualified to apply for the position. The district did not notify the Chancellor's Office or its equal opportunity advisory committee that it intended to do an interim hire. Mr. Galatolo does not have a master's degree, and the Board did not make any determination that he had equivalent qualifications as is required by law. In January of 2002, the board offered Mr. Galatolo a four-year contact. Again, there was not an external search and district employees who were qualified for the position were not given an opportunity to apply. The district does not agree with staff's conclusion that it thereby violated the Board's minimum condition regulation, title 5, California Code of Regulations, section 53021. The district has rejected the Chancellor's Office proposed resolution that involved reopening of the position and also provided for monitoring and oversight of district hiring practices for a period of three years. Chancellor Nussbaum and staff met with and corresponded extensively with the district, as documented in the materials;

however, the parties have been unable to reach a resolution.

Black reviewed the district's arguments that it did not violate the minimum condition regulation because it asserts that the regulation was invalidated, along with the rest of the Board of Governors' faculty and staff diversity regulations, by the decision handed down by the District Court of Appeal in the *Connerly vs. the State Personnel Board* case in September of 2001. Chancellor's Office staff disagrees with this position for two reasons. First, the district hired Mr. Galatolo in May of 2001 several months before the court of appeal decision was handed down, at a time when the regulations were clearly still in place. Second, an analysis of the court's decision confirms that it did not invalidate the basic requirement of Section 53021 for open recruitment.

Richard Holober, president of the San Mateo County Community College District Board of Trustees (SMCCD), introduced Pat Millionich, member of the SMCCD board of trustees and immediate past president of the board; Miguel Marquez, Deputy County Counsel, San Mateo County; Barbara Christensen, director of governmental relations, SMCCD; Greg Wedner, counsel with the law firm of Losano, Smith; and Rosa Perez, president of Cañada College.

Holober distributed a binder of additional material to Board of Governors' members and stated that SMCCD takes its responsibility to uphold the law and the regulations of the Board of Governors very seriously and that, unfortunately, SMCCD's and the Chancellor's Office interpretation of the law are very divergent. Holober explained the circumstances surrounding the unexpected departure of the district's previous chancellor, which did not allow sufficient time for a full and deliberative recruitment process without the installation of a "caretaker" administrator for an interim one-year period. The SMCCD Board of Trustees reached the conclusion that, in view of number of new and innovative programs and projects underway in the district, it would appoint its current associate chancellor, Ron Galatolo, as interim chancellor. In considering the process for the employment of a permanent chancellor, the Board of Trustees sought and received legal advice from its legal counsel, the San Mateo County Counsel's Office, that it was not required to conduct a search. Thereafter, the Board of Trustees hired Mr. Galatolo in the permanent position in the belief that it was in the best interest of the district. The Academic Senate was consulted before the hire and chose not to take a position. Mr. Holober described the instant circumstances as atypical of previous executive hires in the district and as highly unlikely to reoccur.

Miguel Marquez, Deputy County Counsel, also addressed the Board of Governors to explain the basis for his office's legal advice to the San Mateo CCD Board of Trustees. He stated that the primary reason for the legal advice was the plain language of the Connerly decision, which said, in pertinent part "The Board of Governors regulations do not come close to implementing the hiring scheme in a constitutional manner." The binder provided to the Board contains a variety of passages from the *Connerly* decision to show the Board the language it was faced with when we looked at the question and provided advice to the Board of Trustees. It continues to be our view that when the statutes were invalidated, the regulations

that were enacted to implement that statutory scheme) were also invalidated, and that the district was prohibited from using these invalid regulations because they were found unconstitutional. Mr. Marquez read a portion of Government Code section 11342.2 to support the position that the regulation in question became invalid when the statute was found unconstitutional. It has been and is still the position of the County Counsel's Office that there was a regulatory void in the area at the time the district made its hiring decision.

Richard Holober explained that after the hiring of Mr. Galatolo, a faculty member filed a complaint with the Chancellor's Office. He stated that he and other district trustees, staff, County Counsel, Chancellor Nussbaum and his staff have attempted several times to resolve the matter. Holober indicated that the Board's binder contained a settlement proposed by the SMCCD in response to the resolution put forward by the Chancellor's Office. This settlement does not call for revocation of Mr. Galatolo's contract, nor does it provide for withholding of state funds. It provides for certain monitoring of district hiring processes by the Chancellor's Office. Holober urged the Board to adopt the district's proposal.

Mr. Holober stated that several newspaper articles were included in the Board's binder to inform it of the public nature of this issue in San Mateo County. As a result, there is much turmoil and uncertainty within the SMCCD. He would, therefore, appreciate a speedy resolution.

General Counsel Ralph Black said he would follow-up on several points made in the district's presentation. First of all, the regulations, as they existed before the *Connerly* decision, were based on a number of different statutes, including the Board's general authority under Education Code section 70901 to adopt any regulations it deems necessary for the proper operation of the Community College system. Historically, the regulations that the Board adopted predated the adoption of the Education Code sections that were challenged in *Connerly* lawsuit by three years. The regulations have always had independent statutory authority aside from the sections that were invalidated by the court. The Board's Agendas from May and July 2002 go into great detail on the other statutory authority that existed for those regulations. Secondly, he pointed out that there is a dispute between the Chancellor's Office and the district about exactly what the status of the law was after the court of appeal decision. The best guidance that the Board has for understanding what the state of the law was is the interpretation that the Superior Court gave when it had to interpret the court of appeal decision. The best guidepost in terms of understanding what the law was during that period of time between the *Connerly* decision and the adoption of the new regulations, is to look at the decision that Judge Connerly made about the scope of the court of appeal decision as explained earlier. He indicated that the regulations were not completely invalidated but only those portions that dealt with preferences were affected by the court of appeal decision and Section 53021 goes well beyond involving preferences. Its basic requirement is that you have open recruitment and that has nothing to do with preferences. The district could and should have engaged in open recruitments. Certainly we would not have expected them in January 2002 to do the kind of focused outreach that

the regulation required, which the court of appeal had found unconstitutional. The basic requirement to go out and do open recruitment still was in place and the Superior Court confirmed that. He refocused on the fact that the district first acted in May of 2001, before the *Connerly* decision occurred. Based on the arguments that the district has made about the legality of their action in January but there is certainly no doubt about what the law was in May of 2001. Black stated that he did not believe the district seriously addressed the legality of their actions in the first instance.

Board Member Korenstein requested and received confirmation that the Board would not be making a decision today. Korenstein asked Ralph Black to explain the requirement for a master's degree.

Black responded that the Education Code requires that all faculty and educational administrators possess a master's degree, or the board of trustees, at the time of hire, must make a determination that the individual has equivalent qualifications. The basis for their determination must be made on the record. This was not done by SMCCD in May 2001. In the January 2002 hiring, the Board of Trustees cited certain background that they believed gave Mr. Galatolo equivalent qualification, although it was unable to specifically identify what it relied on for the Chancellor's Office.

Richard Holober stated that the SMCCD made an equivalency determination when they made the permanent hiring. This was one of the allegations investigated by the state chancellor and the state chancellor concluded that there was no violation.

Member Korenstein asked if Mr. Galatolo had a contract with the district and how much it would cost to break the contact.

Mr. Holober confirmed that the district had a binding contract with Mr. Galatolo, which would cost several hundred thousand dollars to break.

There was a brief discussion of the issue of mediation suggested in Senator Speier's letter. Barbara Christensen of the SMCCD stated that a sticking point in settlement negotiations has been the requirement to reopen the chancellor's position.

Board Member George Caplan said that he believed that Chancellor's Office staff was correct in their interpretation of the effect of the *Connerly* decision on the Board's regulations, and that the district's actions violated the spirit and intent of the Board of Governors in promoting diversity. He further stated that he would, nevertheless, reserve judgment on an appropriate resolution, as he felt that withholding money from the district would in fact negatively impact the education of students.

Board member Hernandez also expressed dismay at the district's actions. She stated that she found it rather interesting that with all this public statements of the district's commitment to diversity when the very action that was taken avoided any process for an open hiring. In this situation, an exception is made and processes are not followed. She stated that she wished could see the facts—the data and figures that show if minimum requirements were waived for other individuals. She stated she too was reserving judgment. Her final comment was that it is not helpful for the community

olleges to be engaged in such a public debate. It doesn't do the whole system any good to be doing this.

Board Member Menegas thanked the district for its presentation and asked how the issue of minimum qualifications was addressed. She asked if the Board could receive a copy of the local equivalency process that was followed and the basis for the determination.

General Counsel Black stated that his office had the information the district provided about the equivalency determination that they made in January of 2002, and would provide it to her.

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Board Member Brian Conley commented that from a trustee's viewpoint, this was a very strange and disappointing thing to happen in an educational system that holds the achievement of degrees so highly and tells its students how important degrees are.

Chancellor Nussbaum thanked the participants and said he felt this was a very healthy discussion. He stated that there was no doubt as to the sincerity of the parties and the conviction they feel in their statements and in the values expressed. It was also obvious that no one in the room wanted to take money away from the students of the SMCCD and that all want to find the right remedy. The chancellor said that he and his office would attempt to keep a dialogue open with the district in order to resolve the matter. He stated that this issue would be addressed again at the Board's January meeting and he is hopeful that he will be able to report a resolution before then.

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Eddie Hernandez, Chancellor of the Rancho Santiago Community College District, spoke in support of the *Joint Statement* and urged the Board of Governors to approve it. He asked that the Board resist the temptation to micromanage, to give flexibility to local boards, and to look at the big picture. He emphasized the importance of regulations and that they be extremely clear.

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Michele Jenkins, a member of the College of the Canyons Board of Trustees and second vice president of the California Community College Trustees Board of Directors, thanked the Board of Governors and Chancellor Nussbaum for the item. She stated that the CCCT is developing a paper similar to the one Antonia Hernandez earlier described on monitoring and follow-up of the diversity issue.

Patricia Siever made a motion to approve the item. The motion was seconded by Brian Conley. The vote was unanimous.

Adjournment

President Richard Leib recessed the meeting at 6:00 p.m.

ATTACHMENT I

Description of Grant Programs Administered by the Chancellor's Office

(Last Revised 10/9/02)

The following is a description of every program under which the Chancellor's Office awards one or more grants to community college districts. This document does not include programs which distribute funding solely through the apportionment process where no grants are involved.

Academic Senate

The 2002-2003 Budget Act appropriates $497,000 for the Academic Senate in Schedule (13). The monies are allocated to the Academic Senate for California Community Colleges via noncompetitive grant. (Noncompetitive grant.)

AmeriCorps

The 2002-2003 Budget Act appropriates $4,079,000 for the AmeriCorps Program in item 6870-111-0001, Schedule (1.5). The following competitive grants are awarded from this amount:[1]

- The Corporation for National Service through the Governor's Office on Service and Volunteerism (Go-Serv) provides continuing and new campuses with $1,758,251 to implement the California Community College Early Childhood Education Literacy Project. (Competitive.)

- The Corporation for National Service through the Governor's Office on Service and Volunteerism (Go-Serv) provides continuing and new campuses with $356,065 to implement the California Community College Foster Youth Mentoring Project. (Competitive.)

- The Corporation for National Service through the Governor's Office on Service and Volunteerism (Go-Serv) provides continuing and new campuses with $966,241 as Supplemental federal funds for recipients of Teacher and Reading Development Partnership grants. (Competitive.)

[1] The funds appropriated in the Budget Act are based on Department of Finance estimates. The actual amounts received from the federal government may exceed the total grant amount.

Disabled Students Programs and Services

The 2002-2003 Budget Act appropriates $83,608,000 for Disabled Students Programs and Services (DSPS) in Schedule (8). Authority for the DSPS program is found in Education Code section 84850. The majority of these funds are allocated to districts based on a board approved allocation formula. However, Education Code section 84850(e) provides that up to 3 percent of the funds may be used for program development and program accountability functions. This work has, for many years, been handled through a non-competitive grant to the Yosemite CCD. For 2002-03 the amount of this grant is $832,025. (Non-competitive grant**.)

In addition, the 2002-2003 Budget Act provides for the following:

- $597,000 for a statewide Alternate Text Production Center. (Competitive***.)
- $943,000 for the High Tech Training Center Unit. (Competitive***.)

Economic Development

The 2002-2003 Budget Act appropriates $40,322,000 for Economic Development Program Centers in Schedule (22). Authority for this item is found in Education Code section 88500 et seq. and the 2002-2003 Budget Act, the latter of which further divides and allocates the $40,322,000 as follows:

- no more than $17,536,000 for grants for regional business resources assistance and innovation Network Centers. (70% competitive, 30% allocation.)
- no less than $7,537,000 for competitive grants for Industry Driven Regional Education and Training Collaboratives. (Competitive.)
- no more than $4,149,000 for statewide network leadership, organizational development, coordination, information and support services, or other program purposes. (Competitive.)
- $5 million shall be available for Job Development Incentive Training programs focused on job creation for public assistance recipients. (Competitive.)
- $2.1 million shall be allocated for Mexican International Trade Centers operated consistent with the requirements of subdivision (a) of ch. 959, Statutes of 1999. (Noncompetitive grant.)
- $4 million enrollment growth funds for nursing programs. (Allocation.)

Extended Opportunity Programs and Services

The 2002-2003 Budget Act appropriates $96,065,000 for Extended Opportunity Programs and Services in Schedule (6). Authority for this item is found in Education Code section 69640 et seq. Virtually all of this funding is distributed pursuant to a Board-approved allocation formula, but Education Code section 69648.5 authorizes the Chancellor to use up to one percent of these funds for program accountability and evaluation purposes. For many years, this has been handled through a noncompetitive grant to the Pasadena CCD. For 2002-03 the amount of this grant is $330,510. (Noncompetitive grant**.)

Faculty and Staff Diversity

The 2002-2003 Budget Act, Schedule (14) appropriates $1,859,000 for the Faculty and Staff Diversity Fund. Most of this amount is allocated to districts through a Board-approved allocation formula to cover the costs of extended outreach and recruitment of underrepresented groups, for in-service training and for other related staff diversity programs. Education Code § 87107 does, however, authorize the Chancellor to use a portion of this fund to carry out the assistance, service, monitoring, and compliance function specified in section 87104 as follows for 2002-2003:

- $350,000 will be used to contract with Yosemite to operate the Faculty and Staff Diversity Registry, a database of individuals interested in community college employment. (Competitive.)

- $84,240 for a grant to Ventura to fund diversity training and technical assistance teams. (Noncompetitive grant****.)

- $38,324 for a grant to Sierra to develop a statewide model Equal Employment Opportunity Plan. (Noncompetitive grant****.)

Fund for Instructional Improvement

The 2002-2003 Budget Act appropriates $1,630,000 for revolving loan and direct grant programs for Instructional Improvement in Schedule (20). Authority for this item is found in Education Code section 84381. The funds support improvements in curriculum, alternative educational programs, and services within or on behalf of the California Community Colleges. (Competitive.)

Fund for Student Success

The 2002-2003 Budget Act appropriates $6,233,000 for the Fund for Student Success, which is actually an aggregation of various smaller funds now combined in Schedule (21) and may be summarized as follows:

- $1,944,000 for Puente if matched by $200,000 of private funds. (Noncompetitive contract**.)
- $2,489,000 for MESA/MEP Programs, with a dollar for dollar match required. (Standing Order 319 requires new awards to be made based on competition, but districts may receive renewal funding on an ongoing basis pursuant to an exception provided for in subdivision (f) of the Standing Order.)
- No less than $1.8 million for maintaining middle college high school programs. (Standing Order 319 requires new awards to be made based on competition, but districts may receive renewal funding on an ongoing basis pursuant to an exception provided for in subdivision (f) of the Standing Order.)

Hazardous Substances

The 2002-2003 Budget Act appropriates $8,000,000 for abatement of Hazardous Substances in Schedule (26). Authority for this item is found only in the Budget Act. (Competitive*.)

Matriculation

The 2002-2003 Budget Act appropriates $54, 307,000 for Matriculation in Schedule (12). Authority for this item is found in Education Code sections 78210 et seq. Most of this funding is distributed based on a Board-approved allocation formula. However, of the amount appropriated in Schedule (12), 15.64 percent is earmarked for districts on a one-to-one matching basis to provide matriculation services for students enrolled in noncredit classes and programs who may benefit most. In addition, Education Code section 78216 authorizes the Chancellor to use up to five percent of the funding to coordinate statewide program development and evaluation activities. This has, for many years, been handled through a noncompetitive grant to the Pasadena CCD. In 2002-2003 the amount of this grant was $575,300. (Noncompetitive grant**.)

Scheduled Maintenance

The 2002-2003 Budget Act provides $31,752,000 for Scheduled Maintenance in Schedule (24) and in item 6870-485 reappropriates $17, 248,000 from the Proposition 98 Reversion Account. Authority for Scheduled Maintenance is found in Education Code section 84660 et seq. A recipient district must certify that it will increase its operations and maintenance spending from 95/96 levels by the grant amount and match every state dollar with a dollar of local funds. (Competitive*.)

Teacher and Reading Development Partnership

The 2002-2003 Budget Act provides $5 million in Schedule (7) for Teacher and Reading Development Partnership grants. Authority for this item is found only in the Budget Act. Funds are awarded via competitive grants. (Competitive*.)

Telecommunications and Technology Infrastructure

The 2002-2003 Budget Act appropriates $24,500,000 for Telecommunications and Technology Infrastructure in Schedule (18). Authority for this item is found only in the Budget Act. The 2002-2003 Budget Act provides the following amounts:

- $12.5 million for allocations to all districts.
- $12 million awarded via competitive grants for supporting technical and application innovations and for coordination of activities which includes the following:
  - not more than $10 million for regional coordination for technical assistance and planning, cooperative purchase agreements, and faculty and staff development, of which:
  - $4 million is intended to fund the segment's share of upgrading the 4C Net backbone from an OC-3 to an OC-12 Network and shall be matched dollar for dollar by the CSU.
  - $2 million or as much as necessary for a statewide digital uplink.

Transfer Education Articulation

The 2002-2003 Budget Act appropriates $1,974,000 for Transfer Education Articulation in Schedule (23). Authority for this item is found in Education Code sections 66730 et seq. and the Budget Act. The 2002-2003 Budget Act further divides the fund as follows:

- $589,000 for PROJECT ASSIST (Noncompetitive contract**.)
- $835,000 for California Articulation Number (CAN) system through FY 2004-05 (Noncompetitive contract**.)
- $550,000 for Impact faculty articulation workshops (Competitive.)

Virtual University

The 2002-2003 Budget Act appropriates $2.9 million for the Virtual University in Schedule (19). Authority for this item is found only in the Budget Act. (competitive*)

Vocational and Technical Education

The authority for this federal grant program is the Carl D. Perkins Vocational and Technical Education Act of 1998. Federal funding is through an interagency agreement with the California Department of Education. For fiscal year 2002-2003:

Title I, Part C, Section 131/134, $38,489,258
(allocated to districts based on a federally mandated formula).

Title II: Tech Prep Education $8,101,021 (allocated).

Title I, Part B, Section 124, $5,930,104 (competitive).

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*Competitive grants are not required by law, but established as the distribution method pursuant to Standing Order 319.
**Noncompetitive contract pursuant to Public Contract Code section 10340 or noncompetitive grant pursuant to Standing Order 319(d)(2).
***Standing Order 319(d)(2) permits certain types of grants to be awarded noncompetitively, but there are instances where the Chancellor decides to conduct competition even though not required to do so.
****Standing Order 319(d)(3) permits the Chancellor, under specific circumstances that limit competition, and in consultation with the President of the Board and Chairperson of the appropriate committee of the Board of Governors to award grants noncompetitively.

ATTACHMENT II

Standing Orders 318 And 319 of the Board of Governors

318. Contracts.

(a) Except as provided in subsection (b), whenever the power to contract is invested in the Board, or when, in the judgment of the Chancellor, such contracts are expressly or impliedly authorized to fulfill responsibilities or authorities vested in the Office of the Chancellor, the Chancellor is authorized in the name of the Board of Governors to enter into such contracts.

(b) The Chancellor shall secure Board approval before entering into any contract:

(1) In excess of $100,000; or

(2) Over three years in duration; or

(3) With respect to consulting services, in excess of $50,000.

The requirement for Board approval shall apply to any amendment of a contract which results in the original contract exceeding the specified limits, as well as the amendment of a contract where the amendment itself exceeds the specified limits. Under circumstances when the need to contract was not foreseeable, and when delaying approval of the contract until the next Board meeting would jeopardize the contract or frustrate its purpose, the Chancellor shall have the authority to enter into contracts in excess of the limits specified in this subsection. Before entering into such contracts, however, the Chancellor shall consult with the President of the Board.

(c) In securing the approval of contracts by the Board pursuant to subsection (b), the Chancellor shall apply the following procedures:

(1) In determining the nature, extent and need for any such contract, the Chancellor shall provide a summary of the Request for Proposal (RFP), Invitation for Bid (IFB), or other summary of the purpose and need for a contract to the Board of Governors prior to publicly releasing any such RFP or IFB, or prior to making any informal commitment to contract. The Chancellor may proceed with the release of the RFP, IFB, or other contract negotiations, unless the Board President, with or without the advice of any appropriate Board Committee designated by the President, directs the Chancellor to withhold action within a 10 day period from the date the summary is provided.

(2) In developing language for such contracts, the Chancellor shall include a provision which allows any aggrieved bidder on an RFP or IFB to protest the awarding of a contract to the Chancellor. The Chancellor shall inform the Board of any such protests, including the results of such protests. This remedy shall be in addition to the bidder's right to protest the matter to the Department of General Services.

(3) The Chancellor shall ensure that each panel of evaluators who score proposals is made up of staff from more that one division in the Chancellor's Office, including outside evaluators as appropriate; and the Chancellor shall take such other steps as necessary to ensure that evaluations and scoring are objective and fair.

(4) In requesting approval of said contracts, the Chancellor shall, at the time of distributing each regular meeting agenda to the Board of Governors, include a summary of contracts for

Board approval. The summary for each contract shall indicate: the purpose of the contract; the amount of the contract; the time for performance of the contract, including whether it was advertised as a multi-year contract; the number of proposals received or whether the contract is a sole source contract; the number of proposals which met the minimum score for cost opening; and the party awarded the contract.

The provisions of subparagraphs (1) through (3) above shall not apply to interagency agreements with other state agencies, and other agreements necessary for the agency to receive public funds.

(d) The authorization contained in subsection (a) includes agreements, leases, contracts, and other documents, including but not limited to: service agreements, insurance agreements, fiscal, budgetary, and personnel documents, travel requests, contracts for the purchase of apparatus, furniture, equipment, supplies and books, as well as contracts entered into as necessary to receive federal funds allocated to the California Community Colleges, all within the limits of fiscal ability and sound budgetary controls and subject to such policies as may be established by the Board. (EC § 70901(b)(5).)

319. Grants.

(a) Except as provided in subsection (b), whenever the power to enter into a grant is invested in the Board, or when, in the judgment of the Chancellor, a grant is expressly or impliedly authorized to fulfill responsibilities or authorities vested in the Office of the Chancellor, the Chancellor shall have the authority to enter into such grants.

(b) The Chancellor shall secure Board approval before entering into any grant:

(1) In excess of $100,000; or

(2) Over three years in duration; or

The requirement for Board approval shall apply to any amendment of a grant which results in the original grant exceeding the specified limits, as well as the amendment of a grant where the amendment itself exceeds the specified limits Under circumstances when the need to enter into a grant was not foreseeable, and when delaying approval of the grant until the next Board meeting would jeopardize the grant or frustrate its purpose, the Chancellor shall have the authority to enter into grants in excess of the limits specified in this subsection. Before entering into such grants, however, the Chancellor shall consult with the President of the Board.

(c) Prior to submitting grants to the Board for approval pursuant to subsection (b), the Chancellor shall either:

(1) present to the Board for its review and approval an expenditure plan outlining the nature, extent and need for any such grants; or

(2) provide a summary of the Request for Application (RFA) or other summary of the purpose and need for a grant to the Board of Governors prior to publicly releasing any such RFA or prior to making any informal commitment to award a grant. The Chancellor may proceed with the release of the RFA unless the Board President, with or without the advice of any appropriate Board Committee designated by the President, directs the Chancellor to withhold action within a 10 day period from the date the summary is provided.

(d) All grants awarded by the Board of Governors or the Chancellor on or after January 1, 1996, shall be awarded through competitive processes or through allocation formulas reviewed and approved by the Board of Governors, except that:

(1) Grants may be awarded competitively within regions.

(2) Grants for regional or statewide coordination activities for the Extended Opportunity Programs and Services (EOPS), Disabled Students Programs and Services (DSPS), Matriculation, and Economic Development programs need not be competitively bid.

(3) Where there are conditions beyond the control of the Chancellor which limit competition, such as matching fund requirements or other agencies being required to select grantees, the Chancellor, in consultation with the President of the Board and the Chairperson of the appropriate committee, shall have authority to award grants without competition.

(e) Panels evaluating or scoring grant proposals will include or be comprised of outside readers as appropriate and will be comprised so as to assure objectivity and prevent conflicts of interest. In the event that outside readers are not used, the evaluation panel shall be comprised of staff from more than one division in the Chancellor's Office. The Chancellor shall ensure that readers are appropriately trained with respect to the process for review of grant applications.

(f) Grants for the performance of functions which are ongoing in nature will be awarded in cycles of between one and five years in length. In advertising a grant for an ongoing function, district personnel will be apprised of the length of the cycle and the funding anticipated to be available for the duration of the project; provided however, that nothing in this Section shall be construed to preclude subsequent adjustment of actual funding levels to reflect unforeseen circumstances. Districts shall be further informed that continuance of the grant will depend on year-to-year funding, and continued satisfactory performance. The Chancellor shall have the authority to exempt grants described in Subsection (d)(2) or those awarded under the Mathematics, Engineering, and Science Achievement (MESA) program, the Middle College High School program, or the Puente project from the duration limitations imposed by this paragraph.

(g) A district which, prior to January 1, 1996, has been awarded a grant on a non-competitive

basis for the performance of an ongoing function may continue to be awarded that grant, at the discretion of the Chancellor, for a period of up to three additional fiscal years. Retention of the grant shall depend on continued availability of funds and satisfactory performance. At the conclusion of the term, the grant for the ongoing function shall be awarded on a competitive basis.

(h) To the extent that a grantee contracts with a private or public entity to perform certain parts of the grant, the grantee shall be required to disclose the intended purpose and amount of such subcontracting, shall agree to follow locally applicable competitive bidding processes in doing such subcontracting, and shall agree to name the subcontractors chosen.

(i) The procedures specified above shall not apply to grants which are distributed on an allocation formula basis which has been reviewed and approved by the Board of Governors.

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
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HTTP://WWW.CCCCO.EDU

July 13, 2000

Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Re: Public Records Act Request of September 7, 1999
Sierra Joint Community College District

Dear Mr. Petersen:

With regard to the June 30, 2000, production of records in the above-stated Public Records Act request please find enclosed copies of:

(Report) AB 1725: A Comprehensive Analysis, January 1989
(Memo) AB 1725: First Major Update
(Memo) AB 1725: Second Major Update

These documents are being provided at no charge, as extra copies were located.

The remainder of the documents you have requested total 1,292 pages. Please remit a check in the amount of $258.40 made out to "CCCCO," which reflects a charge of 20 cents per page. Please be advised that this is our direct cost of duplication pursuant to the Public Records Act, and does not include research, retrieval, review, collating, unstapling, mailing and other related costs.

Sincerely,

Ralph Black
General Counsel

RB/fr

cc: Robert Wickstrom, Sierra Joint Community College
Paula Higashi, Commission on State Mandates

encls.

HANCELLOR'S OFFICE
CALIFORNIA COMMUNITY COLLEGES
107 NINTH STREET
ACRAMENTO, CALIFORNIA 95814
1) 1757

GEORGE DEUKMEJIAN, *Governor*

August 21, 1989

TO: Superintendents and Presidents
Members, Consultation Councils
Presidents, Boards of Trustees
Academic Senate Presidents
Other Interested Parties

FROM: David Mertes
Chancellor

RE: AB 1725: First Major Update

Synopsis: Attached is the first major update on the implementation of reforms contained in AB 1725. The update follows the outline and format of *AB 1725: A Comprehensive Analysis* (January 1989). This report identifies the particular reforms that will be triggered, specifies the funding that will be available, establishes administrative deadlines (including revised deadlines), and describes legislative efforts to clarify and further implement the reforms. The names and telephone numbers of staff to contact regarding various reforms are listed in the Attachment.

Action/Date Requested: Please copy, distribute, and use this update as you deem appropriate.

Contact: Tom Nussbaum, Vice Chancellor and General Counsel,
(916) 445-4826

AB 1725: FIRST MAJOR UPDATE

(August 1989)

I. MISSION

A. **Mission Statement:** District governing boards have primary responsibility for defining and interpreting the meaning of the terms "primary mission," "important and essential function," and "authorized function." Current legislation that addresses the mission of the colleges in the context of the other public segments of higher education includes AB 462 (Hayden), and SB 1570 (Nielsen). These and other bills are not expected to alter the mission of the community colleges as codified in new *Education Code* Section 66701 of AB 1725.

B. **Transfer Core Curriculum:** Currently, the three intersegmental Academic Senates have reached agreement on most (31 units) of the general education transfer core curriculum. The senates are continuing to negotiate on the remaining three to eight units. The chief issues to be resolved are the University of California's concern that the core include a second English course, and the California State University's concern that it include a course in critical thinking. Because this lack of agreement on the curriculum has a negative impact on community college transfer programs, the statewide Academic Senate and other community college officials are urging quick resolution of the issue. The goal is to develop a recommendation for adoption by the three segmental governing boards by January 1, 1990. For further information, contact Connie Anderson.

C. **Remedial Limit:** The Board of Governors is required to adopt by January 1, 1990, a specific regulation limiting the amount of remedial work a student may take (Section 68, AB 1725). The initial text of the regulation should be available for initial review and consultation in September. The regulation will be discussed as part of a future agenda item on basic skills. For further information, contact Rita Cepeda.

D. **Articulation of Vocational Programs:** In close coordination with the State Department of Education, twenty-one community college districts have participated in the federally-funded articulation projects to initiate or expand 2+2 programs. Seventy-four different vocational education programs have been included in the articulation process. Currently, $1.84 million is allocated for this high priority program. For further information, contact Bill Anderson.

Eighteen 2+2+2 vocational education projects received initial funding in 1988-89, and most are expected to be funded again in 1989-90. The 1989-90 budget provides $1,163,000 for 2+2+2 projects, a $753,000 increase over the

previous year. New project areas for 1989-90 include teacher education, marketing, and home economics. The Chancellor's Office will issue RFPs to districts by late August, with responses due on or about October 15, 1989. For further information, contact Connie Anderson.

E. **English as a Second Language (ESL) Study:** The Governor and Legislature declined to fund this study in 1989-90, and there is no evidence that funding is being sought for the study to be conducted during 1990-91. The study will not be done if funding is not provided. The current and future need for ESL programs is being examined by the Intersegmental Coordinating Committee. The Board of Governors addresses the subject in its *1989-90 Basic Agenda*. For further information, contact Rita Cepeda.

F. **Interdisciplinary Colleges Pilot Study:** The Governor and the Legislature declined to fund this study for 1989-90, and the Board of Governors has not requested funding in its proposed 1990-91 budget. The pilot study will not be done unless funding is provided.

II. GOVERNANCE

A. **Delineation of Function:** With governance roles of the Board of Governors and district governing boards now delineated in statute, attention has turned to implementing other critical parts of an effective governance system, such as the Consultation Process. During August and September, the Chancellor will ask standing councils, the Board of Governors, and other interested parties to evaluate the Consultation Process and recommend needed changes. The changes, if any, will be reviewed and acted upon by the Board in late 1989 or early 1990. For further information, contact Tom Nussbaum or Martha Kanter.

The Board of Governors will make further delegations of its authority (Standing Orders) as authorized in AB 1725. Workload constraints have delayed the initial draft of Standing Orders which will not be available for review and analysis until early 1990. For further information contact Tom Nussbaum.

B. **Education Code Review:** The Board of Governors has completed the Education Code Review, as required by Section 57 of AB 1725, and the report has been submitted to the Legislature. SB 670 (Morgan) was introduced in 1989 to carry the hundreds of statutory changes necessary to implement the recommendations in Education Code Review. From August through November the package of changes will be updated (from its 1988 status as contained in AB 4056), and additional consultation and review will be conducted. A comprehensive set of changes will then be amended into SB 670, and the bill will be moved through the legislative process in 1990.

This portion of the Education Code Review will not include changes regarding community college employment matters. The Chancellor's Office has retained a consultant who is working with an advisory group to determine what changes are necessary to bring the community college employment statutes in line with AB 1725. Their findings will be entered into consultation and will result in a *separate* bill, to be initiated in 1990. For further information, contact Tom Nussbaum.

C. **Regulations of the Board of Governors:** AB 1725 requires the Board of Governors to adopt various procedures for the adoption of regulations, to be used in lieu of procedures applied by the State's Office of Administrative Law. Included in these procedures is one that will allow local governing boards to stop Board regulations from taking effect (by a two-thirds vote). The procedures are to be in place by January 1, 1990 and a draft is expected for initial review and consultation by late October. For further information, contact Tom Nussbaum.

D. **Exempt Positions:** No update necessary.

E. **Composition of the Board of Governors:** Technical changes to provide for the staggering of terms and for other matters have been incorporated into AB 2155 (Vasconcellos), the trailer bill. For further information, contact Tom Nussbaum.

F. **Academic Senate and Student Roles:** Although the development of policies and guidelines for strengthening the role of the Academic Senate have been delayed somewhat by workload constraints, a draft of policies and guidelines is planned for initial review and consultation by late October. For further information, contact Jim Meznek.

A consultant has been retained to help develop a plan for encouraging greater student participation in campus, district, and systemwide governance. Again, a draft of the plan is expected for initial review and consultation by late October of 1989.

III. FINANCE

A. **Extension of SB 851:** AB 2155, the trailer legislation to AB 1725, clarifies that the current community college finance law (SB 851) will not sunset until $140 million in program improvement funds have been provided, or until July 1, 1991, whichever is *later*.

B. **Program-Based Funding:** The Board is required to adopt "criteria and standards" for program-based funding by March 1, 1990. A progress report on the development of these criteria and standards will be presented to the Board at its

September meeting. A draft of the proposed criteria and standards for initial implementation of program-based funding will be available for review and consultation by November. For further information, contact Joe Newmyer or Gary Cook.

AB 2155, the trailer bill, clarifies that during the first year of program-based funding, districts will receive either their program-based funding entitlement or their SB 851 entitlement, whichever is greater. AB 1725 provides this hold-harmless provision for 1991-92, but it is possible that program-based funding will not be implemented by that time.

C. **Transitional Funding Mechanism for Program Improvement:** The mechanism for program improvement provides that 30 percent of funds be allocated for purposes of equalization. This funding provision was discussed by the Board of Governors in March and May, and was adopted at its July 13-14th meeting.

A comprehensive memorandum on program improvement, which includes projected allocations for each district, guidelines for preparing program improvement plans, and reporting forms, was distributed to the colleges in early August. The deadline for submission of program improvement plans to the Chancellor's Office has been moved to *November 15, 1989*. For further information, contact Joe Newmyer or Gary Cook.

After consultation and review, the Chancellor's Office has determined that the statutory language regarding program improvement (*Education Code* Section 84755) should not exclude program improvement allocations from the "current expense of education" for purposes of the 50 Percent Law. However, regulations to improve administration of the Law are currently under consideration. A proposal is also being developed to revise the "serious hardship" exemption to address the implications of program improvement allocations being part of the current expense of education. A draft of regulations on the 50 Percent Law, including amendments to the serious hardship exemption, is expected for initial review and consultation by late September or early October. For further information, contact Joe Newmyer or Gary Cook.

Finally, the trailer bill (AB 2155) contains a provision that bases each district's program improvement allocation on its *funded ADA for the prior fiscal year*, rather than the ADA *generated in the 1987-88 fiscal year*.

D. **Part-Time/Full-Time Faculty Ratios:** Current statutory provisions regarding full-time/part-time faculty ratios (*Education Code* Section 87482.6) are being converted to regulations of the Board of Governors. Since the spring of 1989, additional changes have been discussed in consultation. These changes, which provide such refinements as to how employees on sabbatical or leave are to be counted, will be presented to the Board at its November meeting, with action scheduled for January. For further information, contact Tom Nussbaum.

IV. NEW PROGRAMS AND SERVICES

A. **Staff Development:** In 1989-90, districts will again receive $4,900,000 staff development. As in 1988-89, the Chancellor's Office will allocate the money on a per ADA basis (approximately $7/ADA), with a $5,000 floor for each district. The funds will be allocated through a "Master Grant Agreement," which also includes funding for matriculation, management information systems, faculty and staff diversity, and instructional equipment replacement and library materials. The funds will be distributed in October 1989 (75%) and March 1990 (25%).

Late in 1988, the Chancellor's Office provided affidavit forms for the certifications required of districts by the new statutes. Forms for reporting expenditures were also provided. To date, no regulations have been developed for an allocation mechanism that would replace the per ADA mechanism. Also, no regulations have been developed that establish Board criteria for "other activities determined to be related to educational and professional development" (*Education Code* 87153(j)).

In addition to its share of the $4.9 million, a district may use for staff development purposes any portion of its share of the $45 million in one-time money provided through AB 198 and SB 98. For 1990-91, the Board of Governors is requesting that $10,000,000 be appropriated for staff development purposes. For further information, contact Judy Walters.

B. **Expanded Fund for Instructional Improvement:** AB 1725 provided an additional $200,000 to the Fund for Instructional Improvement, commencing with 1988-89. The additional funds for 1988-89 were used in the spring of 1989 to fund previously unfunded proposals from 1988. For 1989-90, approximately $800,000 is available from the Fund for Instructional Improvement; and for 1990-91, the Board is requesting that the Fund be increased to approximately $1.7 million. Currently, the Chancellor's Office is drafting regulations that would clarify and implement the expansion of the Fund as provided in AB 1725 (*Education Code* Section 84381). The text of these regulations will be available for initial review and consultation by mid to late October. For further information, contact LeBaron Woodyard.

C. **Career Resource and Placement Centers:** No update necessary.

D. **Vocational Education Information to Districts:** If and when funding is provided, the Board is to furnish districts with ongoing economic trend and employment projections. Funding for this purpose was requested in the Board's 1989-90 budget, but was denied. The Board has not requested funds for this purpose in its proposed 1990-91 budget. Certain federally funded, vocational education special projects are designed to provide an economic trend and labor market information to districts. For further information, contact Bill Anderson.

V. AFFIRMATIVE ACTION

A. **Compliance and Accountability:** AB 1725 requires local boards to submit affirmations of compliance, report success rates, and prepare affirmative action plans with goals and timetables. Initially, the Chancellor's Office had established June 1989 as the deadline for districts to submit updated affirmative action plans, including goals and timetables for hiring additional full-time faculty with new funds provided for program improvement. Because of uncertainties in the 1989-90 Budget, and because the Chancellor's Office has been delayed in providing materials, guidelines, and other support materials needed to prepare district plans, the deadline has been moved to *December 31, 1989*. In the meantime, districts will be required to provide certain certifications in order to receive program improvement funds prior to that date. For further information, contact Gus Guichard.

B. **Assistance to Districts:** AB 1725 requires that the Board of Governors provide leadership and assistance by helping colleges to adopt and maintain affirmative action plans, by reporting to the Legislature, by developing guidelines, and providing "technical assistance" to districts which fail to make measurable progress. In June 1989, the Chancellor's Office distributed *Guidelines for A Staff Diversity/Affirmative Action Plan* to assist districts in preparing and updating their plans. The first "technical assistance" reviews will take place in 1990. For further information, contact Gus Guichard.

Also, as a result of the recent U.S. Supreme Court decisions regarding affirmative action and nondiscrimination, the Chancellor's Office is planning a workshop on the implications of these decisions, with particular attention to district legal responsibilities. The workshop will be offered during the fall at several sites in the state. For further information, contact Tom Nussbaum.

C. **Major Service Function to Assist Districts in Recruiting:** AB 1725 requires that, by *July 1, 1989*, the Board establish a major service function to assist districts in recruiting qualified members of underrepresented groups. The bill provided $300,000 for this purpose. The Chancellor's Office has requested information regarding current and past candidates for district positions. A feasibility study of a computerized affirmative action registry will be completed by early November. Plans are underway for a major, systemwide recruitment campaign on behalf of the California Community Colleges in fall of 1989. For further information, contact Gus Guichard.

D. **Systemwide Plan for Strengthening Affirmative Action:** In March 1989, the Board adopted a systemwide plan for strengthening faculty and staff affirmative action. The document, *Toward A New Diversity* contains specific tasks and timetables for implementing the AB 1725 requirements for affirmative action.

E. **Faculty and Staff Diversity Fund:** AB 1725 provided $1,000,000 for allocation to districts from this new fund on a per ADA basis. The 1989-90 Budget provides another $1,000,000 for faculty and staff diversity, again to be allocated on a per ADA basis. The allocations will be made through a "Master Grant Agreement" with districts, with funds to be distributed in October 1989 and March 1990. For 1990-91, the Board is requesting a $3,000,000 augmentation to the Fund, bringing the total Fund to $4,000,000.

Regulations for an allocation mechanism had been intended for adoption by July 1989, but staffing constraints have delayed this work until early 1990. The new regulations will be applied to allocations for 1990-91. For further information, contact Gus Guichard.

F. **Other Affirmative Action Provisions:** At its July meeting, the Board adopted an affirmative action report relating to its own composition, as required by AB 1725.

If and when funding is provided, the Board is to conduct a joint study with the State Board of Education on the underrepresentation of students in vocational education programs. The Board requested funding for this study in its 1989-90 budget, but the request was denied. No request has been made in the proposed 1990-91 budget. Consequently, existing resources, including federal vocational education funds, will be used to pursue work in this area.

VI. EMPLOYMENT POLICIES

A. **Repeal of Credentials:** Through interpretation of the "trigger" mechanism (Section VIII A, *infra*), the Board will provide that statutes on credentials are repealed as of July 1, 1990. Earlier plans had called for initiating legislation to clarify the sunset date of credentials, but this approach has been determined to be unnecessary.

Statutory changes in the grandfather clause regarding credentials are still being discussed. AB 1725 only grandfathers credential holders *employed* as of June 30, 1990. Some are arguing that all persons with credentials should be grandfathered, regardless of employment status as of June 30, 1990. Staff anticipates that some expansion of the grandfather clause will be incorporated into the AB 2155, the trailer bill.

The Chancellor's Office will introduce a bill in 1990 to make the numerous technical revisions to the large body of *Education Code* provisions that reference credentials. This work should be available for initial review and consultation by October.

B. **Minimum Qualifications Established by the Board of Governors:** Definitions of the terms, "administrator," "instructional or student services administrator," and "faculty," were adopted as regulations by the Board at its July meeting (Agenda Item 8). As provided in AB 1725 (*Education Code* Section 87001), the Board has authority to change these definitions in the future. Discussions are continuing regarding the definitions, but there has been no resolution or consensus as to possible changes. Any changes will be reviewed in consultation before being adopted in regulation.

At its July meeting the Board also adopted the initial lists of disciplines necessary for implementing the new system of "minimum qualifications" (Agenda Item 7). After June 30, 1990, a district governing board may not hire anyone who does not either meet the minimum qualifications or possess qualifications "at least equivalent" to the minimum qualifications. The determination of equivalency is a local matter, to be made in accordance with the following legislative directive:

> The process, as well as the criteria and standards by which the governing board reaches its determinations, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board.

As another aspect of implementing the new employment structures, districts must establish "faculty service areas" and assign instructors to such areas. The establishment of faculty service areas is subject to local collective bargaining, although the exclusive representative is to consult with the Academic Senate in developing proposals.

For further information on any of the above matters, contact Tom Nussbaum.

By mid September, the Chancellor's Office will distribute resource materials for use by districts in implementing the new minimum qualifications and establishing faculty service areas. In addition, the office is co-sponsoring a workshop with Californians for Community Colleges on the subject of minimum hiring qualifications and faculty service areas. The workshop will be presented at five locations:

September 22 – Contra Costa College
September 29 – Sacramento City College
October 6 – Pasadena City College
October 13 – San Diego Educational Cultural Center
October 20 – Rancho Santiago College

All workshops will run from 9:00 a.m. to 3:30 p.m. Further information will be available during late August and early September. Minimum qualifications for teaching *noncredit* classes have not yet been developed. Staff anticipates that

an initial draft of such qualifications will be developed for review and consultation by December. Staff also anticipates that the Board will adopt the minimum qualifications for noncredit classes in the spring of 1990. For further information, contact Ronn Farland or Allan Petersen.

C. **Local Hiring Criteria:** Mandates regarding the development of local hiring criteria (*Education Code* Section 87360) must be implemented by July 1, 1990. Assistance to districts in accomplishing this work will be provided by the Chancellor's Office through resource materials distributed to districts and the scheduled workshops on minimum qualifications and faculty service areas.

D. **Employment of Administrators:** The trailer bill (AB 2155) moves the effective date of the new law requiring contracts for administrators (*Education Code* Section 72411.5) to *July 1, 1990*, the effective date for Phase I reforms. Discussions are still underway regarding technical modifications to the AB 1725 provisions on administrator retreat rights. Once these provisions are agreed upon they may be incorporated into AB 2155. Otherwise the Board will initiate legislation in 1990 for that purpose. If changes are not incorporated in AB 2155, the Chancellor's Office will include them in legislation to be sponsored in 1990. For further information, contact Tom Nussbaum.

E. **Evaluation of Employees:** By July 1, 1990, districts must establish procedures for evaluating, and begin evaluating, part-time instructors. Also by July 1, 1990, districts must establish and begin applying peer-review procedures. The Chancellor's Office has not developed any resource materials to assist districts with these mandates. Most evaluation procedures will be developed through the collective bargaining process, with the exclusive representative consulting with the local Academic Senate prior to engaging in bargaining.

F. **Tenure Reforms:** Numerous technical amendments to the new tenure provisions are being discussed. Among other matters, the amendments identify the faculty to which the new reforms will apply and clarify hearing rights and remedies. If agreement is reached on the amendments, they may be incorporated into the trailer bill, AB 2155. Otherwise the Board will initiate appropriate legislation in 1990. For further information, contact Tom Nussbaum.

Through interpretation of the "trigger" mechanism (Section VIII, *infra*) the Board intends that the new tenure provisions take effect on *July 1, 1991*. This effective date will apply only if Phase II is funded (the second $70 million, bringing the total to $140 million) for the 1990-91 fiscal year.

G. **Collective Bargaining Study:** The 1989-90 Budget provides $100,000 for the Board to conduct the review of collective bargaining, as called for in Section 58 of AB 1725. The timeline for the review has not yet been determined; however, it is anticipated that it will take at least a year. The review will be assisted by a

committee whose general composition is specified in Section 58. For further information, contact Tom Nussbaum.

H. **Option Rollover Contract Pilot Project:** The Board's budget request for funding of this pilot project, commencing in 1989-90, was denied. The Board has not requested in its proposed 1990-91 budget. Unless the Legislature itself funds this project for 1990-91, this aspect of reform will not be addressed in the foreseeable future. For further information, contact Tom Nussbaum.

I. **Graduate Students Teaching in Community Colleges:** Workload constraints within the Chancellor's Office have hampered efforts to assist in implementing this provision (Section 66, AB 1725). Ambiguities still exist as to whether the contact hours taught by graduate students can be counted in figuring average daily attendance (ADA). It is also uncertain how the new minimum qualifications requirements apply to graduate students. For further information, contact Tom Nussbaum.

J. **Study of Student Aid Programs for Community Colleges:** The 1989-90 Budget does not provide the Student Aid Commission and the Postsecondary Education Commission with the resources to conduct this study. Currently, neither agency has requested funds for this study in its proposed 1990-91 budget. It is likely that this provision of AB 1725 (Section 62) will not be addressed in the foreseeable future.

VII. ACCOUNTABILITY

A. **Accountability System:** By July 1, 1990, the Board is to develop and recommend implementation of a comprehensive educational and fiscal accountability system for the community colleges. Work on this project is being conducted in conjunction with the implementation of the Management Information System. A task force has been formed to assist in preparing initial recommendations that will be entered into consultation. For further information, contact Bill Hamre, Martha Kanter, or Joe Newmyer.

VIII. CONDITIONS AND APPROPRIATIONS

A. **Conditions of Operability and Trigger Mechanisms:** With $70 million having been appropriated recently for program improvement for 1989-90, it is now possible for the various Phase I reforms to become operative, either on designated dates or when the Board certifies that adequate funding has been provided. Drafting problems in AB 1725 make it possible for several employment reforms – e.g., sunsetting of credentials, requirements to evaluate part-timers and provide for peer review evaluation, and establishing faculty service areas, among others – to become operative earlier than the intended July 1, 1990 date. When these reforms were enacted in various parts of the *Education*

Code, some inadvertently were not accompanied with language that made them operative on July 1, 1990. Consequently, under Section 70 of the bill, they become operative when the Board certifies that adequate funding has been provided for Phase I of reform. Because the money has been appropriated for 1989-90, the Board could make the necessary certification at any time, thus triggering the reforms earlier than intended. Originally, it was thought that legislation might be necessary to correct these drafting errors. However, the Chancellor's Office has since determined that the matter may be addressed through administrative action by the Board.

Section 70 specifies that the reforms become mandatory for districts when the Board certifies . . . "that adequate funding has been *provided* for Phase I of transitional program improvement . . . " [emphasis added]. While the Legislature has appropriated the funds ($70 million) to the Board, the funds have not yet been allocated to the districts. In fact, the $70 million will be allocated during the course of the 1989-90 fiscal year, with the final allocation not being made until late June of 1990. Under these circumstances, the full amount of program improvement money for 1989-90 will not have been allocated until June 30, 1990.

At its September meeting, the Board of Governors will be asked to adopt a certification that adequate funding will have been provided for Phase I of reform, effective June 30, 1990. This certification will enable districts, to do all necessary preparatory work during 1989-90, regarding the implementation of minimum qualifications, disciplines, equivalencies, faculty service areas, hiring criteria, peer review, and evaluation of part-timers. Ongoing administration of the new mandates will then commence on July 1, 1990. If Phase II money (a second $70 million) is provided in the 1990-91 Budget, a similar certification will be adopted. In essence, then, districts will have the 1990-91 year to work on implementation of the new tenure reforms, which would be applied and administered by districts commencing July 1, 1991. For further information, contact Tom Nussbaum.

B. **Appropriations in AB 1725:** No update necessary.

C. **Funding of Reforms Through the Budget Process:** The proposed 1990-91 Budget for the California Community Colleges contains requests for AB 1725 reforms. The Board of Governors reviewed the proposed budget at its July meeting (Agenda Item 9). Action on the budget is scheduled for the Board's September meeting. Among the major budget requests related to AB 1725 are an additional $70 million for program improvement, $10 million for staff development, and $4 million for faculty and staff diversity. For further information, contact Joe Newmyer.

AB 1725 Contact Persons

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October 5, 1990

TO: Superintendents and Presidents
Members, Consultation Councils
Presidents, Boards of Trustees
Academic Senate Presidents
Other Interested Parties

FROM: David Mertes
Chancellor

RE: AB 1725: Second Major Update

Synopsis: Attached is the second major update on the implementation of reforms contained in AB 1725. The update follows the outline and format of *AB 1725: A Comprehensive Analysis* (January 1989), and *AB 1725: First Major Update* (August 21, 1989). The report identifies the remaining reforms that will be triggered, specifies the funding that has been made available, and describes recent legislative efforts to clarify and further implement the reforms. The names and elephone numbers of staff to contact regarding various reforms are listed in the Attachment.

Action/Date Requested: Please copy, distribute, and use this update as you deem appropriate.

Contact: Tom Nussbaum, Vice Chancellor and General Counsel;
Jan Hake, Associate Vice-Chancellor for Reform Coordination; or
Kathy Pulse, Analyst, at (916) 322-1773.

AB 1725: SECOND MAJOR UPDATE
(October 1990)

I. MISSION

A. **Mission Statement:** A recently-enacted piece of legislation (SB 1570, Nielsen, Chapter 1587, Statutes of 1990) makes slight modifications and additions to the mission statement enacted in AB 1725. SB 1570 moves the community college mission statement from *Education Code* Section 66701 to *Education Code* Section 66010.4. New Section 66010.4 is a consolidated statement of the missions of the California Community Colleges, the California State University, and the University of California.

For community colleges the "primary" mission continues to be academic and voca tional instruction at the lower division level, through, but not beyond, the second year of college. Remedial instruction, ESL, adult noncredit instruction, and student support services continue to be designated as "important and essential" functions. Community services continues to be designated as an "authorized" function. New language has been added regarding the institutional research function:

> "The community colleges may conduct, to the extent that state funding is provided, institutional research concerning student learning and retention as is needed to facilitate their educational missions."

AB 462 (Hayden), a more global policy statement regarding all of public education, has been vetoed by the Governor.

In summary, the AB 1725 mission statement remains essentially intact, and districts continue to have the primary responsibility for defining and interpreting the terms "primary mission," "important and essential function," and "authorized function." For further information contact Carole Richard.

B. **Transfer Core Curriculum:** AB 1725 requires the Board of Governors, the California State University Trustees, and the University of California Regents to jointly develop, maintain, and disseminate a common core curriculum in general education. The three intersegmental Academic Senates have taken primary responsibility for developing this policy, and in late July of this year reached agreement on recommendations.

The recommendations of the intersegmental Academic Senates will be introduced into Consultation in October, and will be considered by the Board of Governors for first reading at its January 10-11, 1991, meeting. Implementation details regarding the core curriculum are being worked out by the intersegmental senates, and implementation is planned for fall 1991.

For a copy of the proposal, or for further information on the transfer core curriculum, contact Ronn Farland or the statewide Academic Senate office.

C. **Remedial Limit:** AB 1725 requires the Board of Governors to adopt a specific regulation (the legislation essentially dictates the text) limiting the amount of remedial coursework a student make take (Section 68, AB 1725). At its meeting of January 18-19, 1990 (Item #6), the Board of Governors took action to add new

Section 55756.5 to *Title 5*. The regulation establishes the limit at 30 semester units (45 quarter units), exempts ESL and learning disabled students, and may be waived on a student-by-student basis. The regulation took effect on July 5, 1990. Any remedial coursework taken by a student prior to the effective date of the regulation eed not be counted against the student's limit.

During the next six months the Chancellor, through the Basic Skills Advisory Task Force, will propose regulations which specify the categories of courses to be counted in the limit. The regulations will be entered into Consultation in the spring of 1991, with Board action scheduled for July 1991.

AB 1725 requires the Board of Governors to review the effects of the remedial limit, and to report to the Legislature by December 31, 1991. A prospectus for this review will be entered into Consultation by spring of 1991.

For a copy of the remedial limit regulation, or for further information, contact Rita Cepeda.

D. Articulation of Vocational and Academic Programs: In close coordination with the Chancellor's Office and the Department of Education, 21 community college districts have participated in federally-funded articulation projects to initiate or expand 2+2 programs. As of 1989, 689 articulation agreements had been established through the joint involvement of almost 400 educational agencies. Almost 2,100 students participated in the program during 1989. Numerous other districts have initiated their own locally-funded 2+2 programs. For further information, contact Bobbie Juzek.

Eighteen 2+2+2 vocational education projects received initial funding ($410,000) in 1988-89, and 27 projects (ten new projects with a focus on teacher education and seventeen projects in a second phase) received funding ($1,200,000) for 1989-90. For 1990-91, the State Budget again has provided $1,200,000. The Chancellor's Office issued RFPs to districts in May 1990, with awards being made in August. For further information, contact Rosa de Anda.

E. English as a Second Language (ESL) Study: AB 1725 requires (Section 59) the Postsecondary Education Commission and the State Department of Education to conduct a joint study of ESL. This requirement is contingent on funding for the study. No funding has been yet been provided.

The current and future need for ESL programs is being examined by the Intersegmental Coordinating Council. For further information, contact Rita Cepeda.

F. Interdisciplinary Colleges Pilot Study: AB 1725 requires (Section 60) the Chancellor to conduct a study on the feasibility of establishing, on a pilot basis, "interdisciplinary colleges" that integrate vocational and academic study. This requirement is contingent on funding for the study. No funding has yet been provided.

II. GOVERNANCE

A. Delineation of Function: AB 1725 created the California Community Colleges as a system, and in so doing delineated the major functions of the Board of Governors (Education Code Section 70901) and district governing boards (Education Code Section 70902). In carrying out its roles, the legislation requires the Board of Governors to establish a Consultation Process. The legislation also requires

districts to participate in that process. AB 1725 also broadly authorizes both the Board of Governors and district governing boards to delegate authority.

The Consultation Process is currently under review by the Chancellor's Office and Board of Governors. Efforts have been made to improve the timeliness of agendas and minutes, as well as the coordination of the items being discussed in the seven standing councils. The Consultation Process is also being evaluated in terms of the shared governance aspects of AB 1725: How well does the process provide for formative participation and input from the various parties of interest, and how well does the process incorporate collegial forms of governance? Finally, with the merger of the California Association of Community Colleges, the California Community College Trustees, and the Chief Executive Officers, at least some modifications will be required with respect to the Council of Organizations.

Review of the Consultation Process will continue through the fall, with modifications being put in place by December 1990 or January 1991. For further information, contact Tom Nussbaum or Elaine Cary.

During 1988, initial work was conducted regarding delegation of authority by the Board of Governors. As a result of AB 1725 and the Education Code Review (see *infra*), the first set of delegations of authority is being developed. The policies will be adopted by the Board in the form of "Standing Orders." Workload constraints have delayed this work. For further information, contact Tom Nussbaum.

B. Education Code Review: Board-sponsored legislation to implement the Education Code Review (SB 1854, Morgan) has just been signed (Chapter 1372, Statutes of 1990). A second Board-sponsored bill (SB 2298, Davis) making technical revisions necessary to implement AB 1725 employment reforms, has also just been signed (Chapter 1302, Statutes of 1990). These bills implement AB 1725 by making statutes in the Education Code consistent with the governance framework provided in that legislation. Separate analyses are being prepared to highlight the key aspects of these two very large pieces of legislation. The analyses should be available by late October. For further information, contact Tom Nussbaum or Carole Richard.

As a follow-up activity to the Education Code Review and AB 1725, all regulations of the Board of Governors contained in *Title 5* are being reviewed. The first set of changes are technical and nonsubstantive in nature and were summarized to the Board at its September 13-14 meeting (Item #12). The text of these changes will be entered into Consultation early in October. Board adoption is scheduled for its meeting of November 8-9. For further information contact Tom Nussbaum.

C. Regulations of the Board of Governors: AB 1725 requires the Board of Governors (*Education Code* Section 70901.5) to adopt various procedures for the adoption of regulations, to be used in lieu of procedures applied by the State's Office of Administrative Law. To be included is a procedure that will enable local governing boards, on a two-thirds vote of the 71 boards, to stop Board regulations from going into effect.

At its meeting of March 8-9, 1990, the Board adopted the new procedures for the adoption of regulations (Item #13). The procedures add new Sections 200-212 to the **Procedures and Standing Orders of the Board of Governors.** For a copy of the new procedures, or for further information, contact Tom Nussbaum.

D. Exempt Positions: AB 1725 provides the Board of Governors with up to six deputy or vice chancellor positions which are exempt from State Civil Service.

After exhaustive discussions with the Administration regarding the authority of the Board of Governors to set the salaries for these positions, a decision has been made to fill the positions at the salary levels designated by the Administration. During the course of 1990-91 and 1991-92, all six positions will be opened, advertised, and filled.

E. **Composition of the Board of Governors:** AB 1725 modified the composition of the Board of Governors by requiring the Governor to appoint two current or former local district trustees and a second faculty member. Thirteen members, including the two trustees, have six-year terms; the two faculty members have two-year terms; and the student member has a one-year term. In 1989, the Board of Governors initiated follow-up legislation (AB 2155, Vasconcellos) to provide for staggering of terms in moving from four-year terms to six-year terms. The bill was successful, and the provisions on staggering of terms are now set forth in Section 71001 of the *Education Code*. For further information contact Tom Nussbaum.

F. **Faculty, Staff, and Student Roles:** AB 1725 (Section 61) requires the Board of Governors to develop policies and guidelines for strengthening the role of local academic senates regarding the determination and administration of academic and professional standards, course approval and curricula, and other academic matters. The Board is also required to develop a plan for encouraging greater student participation in campus, district, and systemwide governance. These two projects are in furtherance of a basic governance responsibility of the Board of Governors to develop minimum standards to ensure the participation of faculty, staff and students in district and college governance (*Education Code* Section 70901(b)(1)(E)).

At its July 12-13, 1990 meeting, the Board adopted regulations for "Strengthening Academic Senates" (Item #6), as well as a policy statement entitled, "Shared Governance in the California Community Colleges" (Item #7). At its September 13-14, 1990, meeting, the Board adopted a plan entitled "Encouraging Greater Student Participation in Governance" (Item #9). The Board also reviewed an item entitled "Minimum Standards for Staff Participation in Governance" (Item #15).

By late October, the Chancellor's Office will release a document entitled **Materials to Assist the Implementation of Shared Governance.** The document will contain the text of the Board's shared governance policy, the regulations for strengthening academic senates, the regulation and district-commended activities for strengthening the role of students, the latest draft of the regulation for "staff" participation in governance, and answers to the commonly-raised questions on the implementation of these policies.

The deadline for full implementation of all of these Board policies and regulations by districts has been set for *no later than September 30, 1991*.

For further information, contact Tom Nussbaum or Jan Hake.

III. FINANCE

A. **Expiration of Current Finance Mechanism (SB 851):** Under AB 1725 (as technically clarified by AB 2155, Chapter 1071, Statutes of 1989), the current statutory finance mechanism (SB 851) will become inoperative on July 1, 1991, or on the date program-based funding is implemented by the Board of Governors in accordance with the trigger mechanism (Section 70) of AB 1725, *whichever is later*. Since the second $70 million has been appropriated for "Phase II" of reform (see

infra), SB 851 will become inoperative on July 1, 1991. It should be noted, however, that the SB 851 mechanism will continue to be applied for purposes of making prior year corrections; also one of the requirements of Program Based Funding is that for fiscal year 1991-92, all districts will receive at least the amount of revenue they would have been entitled to receive under SB 851. For further information, contact Joe Newmyer or Gary Cook.

B. **Program-Based Funding:** Under the trigger mechanism in AB 1725 (Section 70), Program-Based Funding is to be implemented on July 1, 1991, or on the date that the Board of Governors certifies that adequate funding has been provided for Phase II or reform, *whichever is later*. Since the Legislature and Governor have recently appropriated the second $70 million, and since this money will be allocated to districts during the course of 1990-91, the Board of Governors will be asked to certify (at its November 8-9, 1990 Board meeting) that, effective July 1, 1991, adequate funding will have been provided for Phase II of reform.

At its meeting of March 8-9, 1990, the Board of Governors adopted "criteria and standards" for implementing Program-Based Funding (Item #12). These criteria and standards will serve as the basis for developing more detailed *Title 5* regulations to implement Program-Based Funding. These regulations are scheduled to be reviewed by the Board of Governors at its meeting of January 10-11, 1991, with adoption scheduled at the meeting of March 14-15, 1991.

By late November, the Chancellor's Office plans to enter a draft of the Program-Based Funding regulations into Consultation. These regulations will include a rewrite of attendance accounting provisions that are currently found in Division 9 (Sections 58000-58172) of *Title 5*. The regulations will also include the text of certain statutes on attendance accounting which, as a result of the Education Code Review bill (SB 1854) are being converted to Board regulation.

C. **Transitional Funding Mechanism for Program Improvement:** With the implementation of program-based funding in 1991-92, 1990-91 will mark the final year of transitional funding for program improvement as set forth in Section 84755 of the *Education Code*. As a result of 1990 legislation, the Legislature and Governor have provided $70,000,000 for program improvement for 1990-91 (the Budget Act of 1990 provided $61,582,000 for program improvement, and SB 1446 provided an additional $8,418,000). Districts are to use program improvement revenues for any of 19 required or authorized uses specified in Section 84755 of the Education Code.

The Budget Act of 1990 places an additional condition on the use of program improvement funds by requiring that a portion of these funds are to be used for "transfer functions to include transfer centers and transfer guarantee agreements." Since the major legislation on transfer (SB 507, Hart) has been vetoed by the Governor, the Chancellor is to allocate the earmarked funds pursuant to an expenditure plan approved by the Department of Finance. District responsibilities regarding transfer functions will included in the Master Grant Agreement for 1990-91. For further information contact Ronn Farland or Kathleen Nelson.

A comprehensive memorandum on program improvement, which includes projected allocations for each district, guidelines for preparing program improvement plans, worksheets for adjustments to hours taught by full-time and part-time faculty, a preliminary calculation of each district's obligation for full-time faculty hires, and clarification regarding the use of funds for transfer centers and transfer guarantee agreements, will be distributed to districts. The deadline for submission of 1990-91 program improvement plans has been set for **November 30, 1990.** For further information contact Kathy Pulse.

On March 6, 1990, the Chancellor's Office issued an analysis of the 1989-90 program improvements plans of districts. This analysis indicated that the great majority (85%) of the funds were being used in five different areas: full-time/part-time ratios, increasing budgets for plant maintenance and operation, adding new courses and programs, improving student services, and improving libraries and learning resources.

D. **Full-Time/Part-Time Ratios:** AB 1725 requires districts with less than 75% of their hours of credit instruction taught by full-time instructors to use a specified portion of their program improvement money (33% or 40%) to hire full-time instructors. Districts have until September of 1991 to put these hires in place; otherwise district base budgets will be reduced. Most of the provisions for administering this requirement were initially set forth in statute (Section 87482.6 of the *Education Code*), but have since been converted to regulations of the Board of Governors. In January of 1990, the Board adopted technical revisions to these regulations (see Item #6), and Sections 53300-53320 of *Title 5*. For further information contact Tom Nussbaum.

The provisions of Section 87482.6, and the Board's implementing regulations will not apply after the implementation of program-based funding. As a part of this new funding mechanism, the Board will establish a standard which fixes the appropriate percentage of hours of credit instruction that should be taught by full-time instructors. The schedule for the development of the regulations to implement program-based funding is for the initial draft to be entered into Consultation by November, with review and action by the Board of Governors in January and March of 1991.

With revenues from Phase I and Phase II, the Chancellor's Office has estimated that districts will be able to hire approximately 1250 additional full-time instructors. Given the great ADA growth (and particularly the great amount of unfunded ADA over the growth cap) in the system, these additional hires will probably not result in an improvement in the overall ratio for the system. Further discussion of this issue is anticipated as the regulations for implementing program-based funding are being developed. For further information contact Joe Newmyer or Gary Cook.

IV. NEW PROGRAMS AND SERVICES

A. **Staff Development:** For 1990-91, districts will again receive $4,900,000 for staff development. The Chancellor's Office will again allocate the money on a per ADA basis (approximately $7/ADA), but with a $10,000 floor for each district. The funds will be allocated to districts using the payment schedule for the State General Apportionment.

An evaluation of the effects of the faculty and staff development fund was completed by an outside contractor in July of 1990. The evaluation has been reviewed and modified in Consultation. The Board of Governors considered an agenda item on this subject at its meeting of September 13-14 (Item #13), and is scheduled to take action at its meeting of November 8-9. The action consists of recommended guidelines for districts and new directives for the Chancellor's Office. For further information, contact Judy Walters.

B. **Expanded Fund for Instructional Improvement:** For 1990-91, $736,000 is available for grants from the Fund for Instructional Improvement. The Board of Governors adopted grant awards for 1990-91 at its May 10-11, 1990, meeting (see Item #1).

Currently, the Chancellor's staff and the FII Advisory Committee are developing regulations to further implement the expansion of the Fund as provided in AB 1725. A draft of these regulations will be entered into Consultation by November, and will e considered by the Board of Governors at its January and March 1991 meetings. For further information contact LeBaron Woodyard.

C. **Career Resource and Placement Centers:** AB 1725 authorizes districts to maintain career resource and placement centers, programs to instruct staff on matriculation services, orientation programs for new students, and various publicity programs (*Education Code* Section 78212.5). An analysis of 1989-90 program improvement plans indicates that districts are spending $2,798,455 in program improvement monies for these activities.

D. **Vocational Education Information to Districts:** If and when funding is provided, the Board of Governors is to furnish districts with ongoing economic trend and employment projections (Section 63, AB 1725). Funding for this purpose was requested in the Board's 1989-90 budget, but was denied. Funding has not been requested since. Certain federally funded, vocational education special projects are designed to provide economic trend and labor market information to districts. For further information contact Ernie Leach.

V. AFFIRMATIVE ACTION

A. **Compliance and Accountability:** AB 1725 requires local boards to submit affirmations of compliance, report success rates, and prepare affirmative action plans with goals and timetables. The Chancellor's Office established a December 31, 1989, deadline for the submission of revised affirmative action plans. By summer of 1990, all plans had been reviewed and approved. For further information contact Maria Sheehan or Roy Kanamaru.

AB 1725 established two systemwide goals for the California Community Colleges, one of which specifies that by 1992-93, 30% of all new hires should be ethnic minorities. For the period of fall 1988 to fall 1989, the system is very close to meeting this goal, with 28.3% of all professional position hires being minorities. Specific minority hiring rates were as follows:

Executive/Managerial	29.6%	Faculty	26.7%
Professional (non-faculty)	39.1%	Secretarial/Clerical	35.6%
Technical/Paraprofessional	31.4%	Skilled Crafts	30.1%
Service/Maintenance	52%		

For further information contact Maria Sheehan or John Madden.

B. **Assistance to Districts:** AB 1725 requires the Board of Governors to provide leadership and assistance by helping colleges to adopt and maintain affirmative action plans, by reporting to the Legislature, by developing guidelines, and by providing "technical assistance" to districts which fail to make measurable progress. In June of 1989, the Chancellor's Office distributed *Guidelines for a Staff Diversity/Affirmative Action Plan* to assist districts in preparing and updating their plans. By January of 1991, the Chancellor's Office will introduce into Consultation its program and timeline for providing technical assistance to districts.

During the next nine months, all Board regulations on affirmative action (*Title 5*, Sections 53000-53052) and nondiscrimination (*Title 5*, Sections 59300-59362) will be reviewed and updated to reflect the passage of AB 1725 and make other technical

clarifications. Neither of these sets of regulations has been revised since 1982, and confusion exists regarding certain of the provisions. A summary of the issues needing attention will be introduced into Consultation by November, with initial review by the Board of Governors in January or March of 1991. For further information contact Ralph Black or Roy Kanamaru.

C. **Major Service Function to Assist Districts in Recruiting:** The Chancellor's Office initiated the Faculty and Staff Diversity Registry in December of 1989. Over 10,600 persons are now in the Registry, with about 200 being added daily. Recruiting trips to Louisiana, Texas, and other sites were conducted during the spring of 1990. For further information contact Maria Sheehan or John Madden.

D. **Systemwide Plan for Strengthening Affirmative Action:** In March of 1989, the Board of Governors adopted a systemwide plan for strengthening faculty and staff affirmative action. The document, *Toward a New Diversity*, contains specific tasks and timetables for implementing the requirements of AB 1725.

E. **Faculty and Staff Diversity Fund:** For 1990-91, $1,859,000 has been appropriated to the Faculty and Staff Diversity Fund, an increase of nearly one million dollars. Instead of being allocated on a dollars per ADA basis, these funds will be allocated in accordance with regulations (*Title 5*, Sections 53060-53064) adopted by the Board of Governors at its May 1990, meeting (Item #10). The regulations allow for additional funding for districts achieving success. District-by-district allocations were adopted by the Board of Governors at its July 12-13, 1990, meeting (Item #2). For further information contact Maria Sheehan or John Madden.

VI. EMPLOYMENT POLICIES

A. **Repeal of Credentials:** About 65 statutes on credentials (Chapter 2 -- commencing with Section 87200 -- of Part 51 of the *Education Code*) became inoperative on July 1, 1990. Under legislation enacted in 1989, every person who has a credential as of this date will retain the right to serve under the terms of that credential, regardless of whether he or she is employed by a community college district on or before July 1, 1990 (see Education Code Section 87355, as added by SB 1590, Chapter 1340, Statutes of 1989). The Chancellor's Office accepted credential applications until close of business on June 30, 1990. All credential applications timely received (about 15,000) will be processed during the next six months. Credentials approved will be dated as of the *date of application*. To enable the Chancellor's Office to review and process this huge influx of applications, the Legislature and Governor approved $465,000 in additional funding for the credentials function for 1990-91 (SB 433, Davis, Chapter 1242, Statutes of 1990). For further information contact Allan Petersen.

B. **Minimum Qualifications Established by the Board of Governors:** In lieu of credentials, AB 1725 directs the Board of Governors to adopt regulations establishing minimum qualifications for employment. After July 1, 1990, a district governing board may not hire anyone who does not possess an appropriate credential, meet appropriate minimum qualifications, or possess qualifications "at least equivalent" to the appropriate minimum qualifications. The determination of equivalency is a local matter, to be worked out with the local academic senate.

AB 1725 dictated the text of initial regulations establishing definitions ("faculty," "administrator," and "instructional or student services administrator") as well as the minimum qualifications for a faculty member teaching *credit* courses, and minimum qualifications for instructional and student services administrators.

The Board of Governors has taken the following steps to implement the new structure of minimum qualifications:

1. **Adopted initial regulations (July 13-14, 1989)** -- The Board adopted regulations defining "faculty," "administrator," and "instructional or student services administrator." The Board also adopted minimum qualifications for instructors of credit courses, minimum qualifications for instructional or student services administrators, and a regulation regarding equivalencies (see Item #8; see also *Title 5*, Sections 53400-53420.

   At its July 13-14, 1989, meeting, the Board also adopted the initial lists of disciplines requiring the master's degree, and disciplines in which a master's degree is not generally expected or available (see Item #7). These lists were developed and recommended by the statewide Academic Senate.

2. **Adopted additional regulations (July 12-13, 1990)** -- The Board adopted regulations (Item #8; see also *Title 5*, Sections 53412-53414, 56262, and 56264) establishing minimum qualifications for noncredit faculty, apprenticeship faculty, for employees of Disabled Students Programs and Services (DSPS), and for employees of Extended Opportunity Programs and Services (EOPS).

   The minimum qualifications for noncredit will only be in place until July 1, 1991. During the next several months, a joint task force on adult education (K-12 and community colleges) will endeavor to develop a common set of minimum qualifications for teaching noncredit instruction. The recommendations of the statewide Academic Senate regarding minimum qualifications for noncredit instructors will also be further considered in Consultation. The Board of Governors will consider the issue of noncredit minimum qualifications at its March 14-15 and May 9-10, 1991, meetings.

3. **Initiated technical implementing legislation:** Aside from SB 1590 and SB 433, which are discussed above, the Board sponsored SB 2298 (urgency, Chapter 1302, Statutes of 1990), a large technical "clean up" bill for AB 1725 employment law reforms. Among other things, SB 2298 deletes reference to "instructional or student services administrator" and replaces it with a definition of "educational administrator" (*Education Code* Section 87002). The bill also authorizes, but does not require, districts to conduct fingerprint investigative checks on employees to ensure that they have not been convicted of crimes which prohibit their employment (*Education Code* Section 87013). Finally, the bill puts into place initial minimum qualifications (which the Board is to convert to regulations) for physicians, psychologists, social workers, dentists, dental hygenists, nurses, optometrists, and audiometrists (Education Code Section 87356).

4. **Will adopt revisions to lists of disciplines:** At its November 8-9, 1990, meeting, the Board is scheduled to adopt the statewide Academic Senate's recommendations regarding changes in the lists of disciplines. The Board considered the Senate's recommendations for first reading at its September 13-14 meeting (Item #11).

AB 1725 requires the Board of Governors to establish a process to review at least every three years the continued appropriateness of the minimum qualifications and the adequacy of the means by which they are administered (*Education Code* Section 87357). The Board is also required to designate a team of community college faculty, administrators, and trustees to review each district's application of the minimum qualifications (*Education Code* Section 87358). Proposed processes for

carrying out each of these functions will be entered into Consultation during the next six months.

For further information on any of the above matters, contact Tom Nussbaum or Allan Petersen.

C. **Local Hiring Criteria Regarding Faculty:** AB 1725 added specific new requirements (*Education Code* Section 87360) to the general responsibility of districts to establish hiring criteria. The bill requires districts to establish hiring criteria for faculty that include a sensitivity to the diverse backgrounds of community college students. Also, as to *new faculty members*, the local academic senate is again provided with a joint-governance role. These new requirements are to be implemented by July 1, 1990. For further information contact Tom Nussbaum.

D. **Employment of Administrators:** 1989 legislation sponsored by the Board of Governors (AB 2155, Vasconcellos, Chapter 1071) moved the effective date of the new law requiring contracts for administrators (*Education Code* Section 72411.5) to July 1, 1990. The subject of administrator retreat rights (see *Education Code* Section 87458) is still under discussion in Consultation, and attempts are being made to develop a proposal for introduction into legislation in 1991. SB 2298 did clarify, however, that the provisions on administrator retreat only apply to administrators whose first date of paid service is on or after July 1, 1990. For further information contact Tom Nussbaum.

E. **Evaluation of Employees:** By July 1, 1990, districts are required to establish procedures for evaluating part-time instructors. Also districts must establish procedures to include a peer review process as a part of evaluation. The peer review process is to be on a departmental or divisional basis (Education Code Section 87663). For further information contact Tom Nussbaum.

F. **Tenure Reforms:** Commencing July 1, 1991, the probationary period for gaining tenure will extend from two to four years. More specifically, all of the changes in tenure laws enacted by AB 1725 will govern the employment, reemployment and acquisition of tenure of faculty whose first day of paid service is *on or after July 1, 1991*. The tenure laws as they read immediately before the enactment of AB 1725 will govern the employment, reemployment and acquisition of tenure of all other faculty (see *Education Code* Section 87612.5, as added by SB 2298, Chapter 1302, Statutes of 1990). For further information contact Tom Nussbaum.

There continue to be differences of opinion over the interpretation of certain of the new tenure provisions, such as *Education Code* Section 87610.1 regarding grievances and arbitration. These differences are being discussed in Consultation, particularly within the Council of Organizations; and attempts are being made to develop clarifying legislation for introduction in 1991.

G. **Layoff/Reduction in Force:** AB 1725 revised the laws regarding layoffs (*Education Code* Section 87743 *et seq*) by requiring districts to establish "faculty service areas" and to determine competency criteria to serve in each faculty service area. These tasks, part of Phase I of reform, were to have been completed by July 1, 1990.

There continue to be questions about the interpretation and implementation of the new provisions on faculty service areas. Within the Council of Organizations and Californians for Community Colleges, there are efforts to determine additional legislative clarification that may be appropriate for 1991. For further information contact Tom Nussbaum.

H. **Collective Bargaining Study:** The 1989-90 Budget provided the Board of Governors with $100,000 to conduct the review of collective bargaining laws called for in Section 58 of AB 1725. Because of fiscal problems facing the State, however, the Legislature and Governor "reappropriated" these funds. The Board of Governors has included a request for $100,000 in its 1991-92 proposed budget. The study is not required to be conducted unless funding is provided. It is due no later than January 1, 1993. For further information contact Tom Nussbaum.

I. **Option Rollover Contract Pilot Project:** The Board's 1989-90 budget request for funding of this pilot project (Section 65 of AB 1725) was denied. Funding has not been requested since this time. Unless the Legislature itself funds this project for 1991-92, this aspect of reform will not be addressed in the foreseeable future. For further information contact Tom Nussbaum.

J. **Graduate Students Teaching in Community Colleges:** AB 1725 (Section 66) authorizes districts to enter into agreements with graduate departments of nearby UC and CSU campuses to provide part-time teaching positions in the district for advanced graduate students. Workload constraints within the Chancellor's Office have hampered efforts to assist in implementing this provision. Ambiguities still exist as to whether the contact hours taught by graduate students can be counted as average daily attendance; it is also uncertain how the new minimum qualifications should or should not apply to graduate students. For further information contact Tom Nussbaum.

K. **Study of Student Aid Programs for Community Colleges:** AB 1725 requires (Section 62) the Student Aid Commission to study financial aid programs that have as their purpose increasing the number of students entering the teaching profession at the community college level. The mandate doesn't become operative unless funding is provided for the study. Funding was not provided for 1989-90 or 1990-91, nor has it been requested for 1991-92. It is unlikely that this provision of AB 1725 will be addressed in the foreseeable future.

VII. ACCOUNTABILITY

A. **Accountability System:** AB 1725 requires the Board of Governors to develop and implement a comprehensive educational and fiscal accountability system for the California Community Colleges (*Education Code* Section 71020.5). The Legislature expressed intent that the system be implemented over a three year period, commencing not later than 1991-92.

At its July 12-13, 1990, meeting, the Board of Governors adopted an "AB 1725 Model Accountability System" (Item #9). The system will be pilot tested in a small number of districts during 1990-91, and Budget Act of 1990 provides the Board of Governors with $375,000 for this purpose. An advisory committee is being formed to assist with this work. For 1991-92, the Board is requesting $7,750,000 for local assistance, and $150,000 for state operations to implement the accountability system. For further information contact Mark Fetler.

VIII. CONDITIONS AND APPROPRIATIONS

A. **Conditions of Operability and Trigger Mechanisms:** Pursuant to Section 70 of AB 1725, the Legislature has provided for reform to come in two phases. The Board of Governors has been delegated with authority to determine when adequate funding has been provided for each phase, thus making mandatory the mandates

contained in that phase. The Legislature expressed its estimate (an strong expectation) that $70 million would be needed for each phase of reform.

At its November 29-30, 1989, meeting, the Board of Governors adopted a certification that, effective June 30, 1990, adequate funding would be provided for Phase I of reform (Item #3). This step triggered (effective July 1, 1990) the repeal of credentials, the establishment of new minimum qualifications and equivalencies, the requirements regarding hiring criteria for faculty, the provisions regarding movement between faculty and administrative positions, the new requirements for evaluation of part-time instructors and peer review, and the implementation of the new layoff and faculty service area provisions.

With the Legislature and Governor having appropriated the second $70 million for 1990-91, the Board of Governors will be asked to certify, at its November 8-9, 1990, meeting, that effective June 30, 1991, adequate funding will have been provided for Phase II of reform. This action will trigger, effective July 1, 1991, the implementation of program-based funding and the new tenure provisions. For further information contact Tom Nussbaum or Joe Newmyer.

B. **Funding of Reforms Through the Budget Process:** The proposed 1991-92 Budget for the California Community Colleges was adopted by the Board of Governors at its September 13-14, 1990, meeting (Item #8). Among the major budget requests related to AB 1725 are a $98 million augmentation to fund ADA growth (at the full rate rather than the marginal rate), a $4.9 million augmentation for staff development, a $2 million augmentation for faculty and staff diversity, a $7.75 million augmentation for the accountability system, a $1.1 million augmentation for 2+2+2 programs, and a $1 million augmentation for the Fund for Instructional Improvement. The $140 million in program improvement funds is in the base and therefore did not need to be requested as a budget augmentation. For further information contact Joe Newmyer.

AB 1725:
A COMPREHENSIVE ANALYSIS

January 1989

Board of Governors
California Community Colleges

6169

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APPENDIX

AB 1725 Implementation Chart

AB 1725: A Comprehensive Analysis

A blueprint for the future, AB 1725 is landmark legislation that provides new direction and support for California's community colleges. The bill's reform measures fall into eight areas:

I. Mission
II. Governance
III. Finance
IV. New Programs and Services
V. Affirmative Action
VI. Employment Policies
VII. Accountability
VIII. Conditions and Appropriations

Each of these areas is summarized below, and analyzed in turn. References are to the appropriate Sections (§) of the *Education Code* (EC) or to Section (Sec.) numbers within AB 1725.

I. Mission

AB 1725 validates the comprehensive mission of the community colleges but clearly restricts the colleges from being all things to all people. New clarity and a structure of priorities are provided in the colleges' mission. Specific focus has been placed upon improving the transfer function and removing barriers to transfer. Articulated programs for vocational training by K-12 districts, community colleges, and the four-year institutions are initiated. Limits are placed on the amount of remedial coursework a student may take. Steps are taken to meet the emerging need for instruction in English as a Second Language (ESL). In short, the mission of the colleges is now focused, prioritized, and forward-looking.

A. Mission Statement (EC § 66701)

The mission of the community colleges is clarified and validated; and for the first time, priorities are established.

AB 1725 reaffirms the authority of districts to offer collegiate courses for transfer, vocational and technical courses, and community services programs and courses. Priorities within this mission are established as follows:

- Degree and certificate programs in lower division arts and sciences and in vocational and occupational fields is the "primary mission" of the colleges.

- Remedial instruction, English as a Second Language, and support services that help students succeed at the postsecondary level are "important and essential functions."

- Adult noncredit education curricula in areas defined as being in the state's interest are an "essential and important function" (see *Education Code*, § 84711 for a listing of state-funded noncredit courses.)

- Community services courses and programs are an "authorized function so long as their provision is compatible with an institution's ability to meet its obligations in its primary missions."

The terms "primary mission," "important and essential function," and "authorized function" are not defined in statute. District governing boards and the Board of Governors are therefore responsible for defining and interpreting these priorities. Basic responsibilities for implementing mission priorities fall to districts, with the role of the Board of Governors being to provide leadership and direction to the colleges.

Accountability regarding this new mission statement will be maintained, in part, through a new accountability system to be developed by the Board of Governors (see Part VII, *Infra*).

B. Transfer Core Curriculum (EC § 66720)

A general education, common core curriculum must be developed and maintained by the Board of Governors, the Board of Trustees of the California State University (CSU) and the Board of Regents of the University of California (UC). Completion of the common core curriculum by a community college student will satisfy lower division general education requirements at UC and CSU. The legislation does not specify a timeline for the development of the initial core curriculum, but work has been underway since 1986 and should be completed by early 1990.

Earlier versions of AB 1725 required completion of the core curriculum as a condition for award of the associate degree. This requirement was deleted in the final version of the bill (EC § 78205).

C. Remedial Limit (Sec. 68, AB 1725)

The Board of Governors is required to adopt a specific regulation on or before January 1, 1990, prohibiting students from acquiring more than 30 semester units (or 45 quarter units) of "remedial coursework." This limit does not apply to students enrolled in English as a Second Language courses or those who are learning disabled. In addition, local governing boards can waive the limit for students who

show "significant, measurable progress toward the development of skills appropriate to his or her enrollment in college level courses." It should be noted that local boards need not apply this remedial limit until the necessary regulation has been adopted by the Board of Governors. Any remedial coursework taken by a student prior to the effective date of the regulation need not be counted against the student's limit.

D. Articulation Regarding Vocational Programs (Sec. 69, AB 1725)

The Board of Governors and the State Board of Education are required to assist school and community college districts in developing articulated programs that coordinate vocational education instruction over the final two years in high school and two years in community colleges (2+2 programs). The Board of Governors is also required to work with the Trustees of the California State University to expand these 2+2 programs to include the final two years of the baccalaureate degree (2+2+2 programs). Plans for implementating of both programs are to be completed by July 1, 1991.

Funding for various 2+2 projects has been provided through the state budget since 1987-88, while initial funding for the first 2+2+2 projects was provided by December 1, 1988. The Board's proposed 1989-90 budget for the community colleges contains additional requests for funding of 2+2 and 2+2+2 projects. The 1989-90 Governor's Budget proposes an additional $853,000, with some $753,000 earmarked for 2+2+2 programs.

E. English as a Second Language Study (Sec. 59, AB 1725)

The California Postsecondary Education Commission (CPEC) and the State Department of Education are to agree upon and conduct a coordinated research effort to review ESL programs offered through the California Community Colleges, UC, CSU, and adult education programs. The results of the review are to be reported to the Legislature by January 1, 1990. CPEC will cover the postsecondary segments by forecasting future educational needs for ESL programs, by assessing the ongoing role of the California Community Colleges in relation to UC and CSU in conducting ESL programs, and by making recommendations for effective cooperation among the segments.

This provision of AB 1725 (Sec. 59) is not operative until funds are specifically appropriated for the review, for which the bill makes no appropriation. The Governor's Budget for 1989-90 also does not contain an appropriation for this study.

F. Interdisciplinary Colleges Pilot Study (Sec. 60, AB 1725)

By January 1, 1990, the Chancellor is to have conducted a study on the feasibility of establishing, on a pilot basis, "interdisciplinary colleges" that integrate vocational and academic study. This study is to be done with the participation of one or more college districts. The requirement to conduct the study does not become operative, however, unless or until the study is funded. AB 1725 does not contain an appropriation for this purpose, and the 1989-90 Governor's Budget does not fund the study. Again, an adjustment of the January 1, 1990 deadline probably will be necessary.

II. Governance

AB 1725 embraces the notion of the community colleges operating as a system - comprised of the Board of Governors and local governing boards - that functions apart from, but responsive to, the Legislature. Embodied in this notion is an intent to strengthen governance both by and within the system. The Board of Governors and local governing boards are enabled to respond to state interests and concerns as a system - through the system's own internal governance mechanisms - rather than having to be so reliant on the Legislature.

AB 1725 also strengthens the role of faculty, particularly academic senates, in community college governance. Throughout the bill the Legislature has attempted to recast faculty roles toward those played by faculty in four-year postsecondary institutions. For instance, academic senates are provided with express roles in developing the core curriculum (EC § 66720), in developing a list of disciplines to implement minimum qualifications for faculty (EC § 87357), in developing and administering processes for waiver of minimum qualifications (EC § 87359), and in establishing hiring criteria for new faculty (EC § 87360). Elsewhere in the bill there is broad language that emphasizes and ensures the rights of faculty and academic senates to participate in systemwide and institutional governance (EC §§ 70901(b)(1)(E), 70902(b)(7)).

Apart from strengthening faculty roles, several parts of AB 1725 create and strengthen the community colleges as a system. The basic roles of the Board of Governors and district governing boards are specified; the entire *Education Code* as it relates to community colleges is to be made consistent with this delineation of functions; the system is provided with authority to develop its own regulations through a new set of internal checks and balances; the composition of the Board is changed to add more field expertise; and the Board of Governors is further enabled to select its staff without sole reliance on the provisions of State Civil Service.

A. Delineation of Function (EC §§ 70900-70902)

The California Community Colleges are expressly designated as a postsecondary system of education, and the respective roles of the Board of Governors and locally elected district governing boards are delineated. This delineation was originally proposed by the Board of Governors, which worked closely with district representatives and the Californians for Community Colleges in developing the recommendations. The Legislature incorporated these recommendations, almost verbatim, into AB 1725. The statutes provide for broad delegations of authority to the Board of Governors and local boards, thereby enabling these bodies to govern more of their own affairs outside of the legislative arena.

The primary role of the Board of Governors is to provide leadership and direction in the continuing development of the California Community Colleges, with the Board's work at all times to be directed to maintaining as much local authority and control as possible. The Board is provided with numerous broad powers of oversight and general supervision (see *Education Code*, § 70901(b)(1-15)), but these powers are to be applied only in light of the Board's primary role of providing leadership and direction. In performing its functions, the Board is directed to establish and use a consultation process, and is provided with broad power to delegate authority to the Chancellor, districts, and others.

The primary role of district governing boards is to establish, maintain, operate, and govern local colleges in accordance with law. In furtherance of this role, governing boards are charged with carrying out various broad functions (see *Education Code*, § 70902(b)(1-14)). With the exception of the new requirement to participate in the Board's consultation process, all these functions are drawn from various existing statutes that fix the broad functions of district governing boards.

B. Education Code Review (Sec. 57, AB 1725)

No later than January 31, 1989, the Board of Governors is required to review all statutes affecting the administration and operation of the California Community Colleges and to recommend the amendment or repeal of those provisions affected by AB 1725. This work, most of which has already been done through Board initiative, is necessary to implement the delineation of governance functions. The broad delegation of authority to the system will be an empty gesture as long as it resides alongside thousands of statutes that prescriptively and narrowly delegate authority.

Legislation developed through the Education Code Review will be sponsored by the Board of Governors during 1989 and 1990.

C. Regulations of the Board of Governors (EC § 70901.5)

Commencing on January 1, 1990, regulations of the Board of Governors, instead of being subject to the review and approval of the state's Office of Administrative Law, must be responsive to concerns raised by the colleges. The Board of Governors is required to establish various procedures for the adoption of regulations. The new law effectively requires the Board to establish procedures that incorporate all key aspects of the state's Administrative Procedures Act (*Government Code*, §§ 11340 *et seq.*), except for the review and approval functions of the Office of Administrative Law. District governing boards and "any other interested party" may comment upon, critique, or challenge Board regulations. In addition, a Board regulation will become effective only if at least two-thirds of all district governing boards vote to disapprove the regulation. The law goes on to specify additional procedures the Board must follow if it wishes to pursue the adoption of such a regulation.

Board procedures to implement the requirements of *Education Code*, § 70901.5 will be developed and adopted as regulations during 1989.

D. Exempt Positions (EC § 71090.5)

Up to six deputy or vice-chancellor positions exempt from State Civil Service are authorized for the Chancellor's Office. To comply with requirements of the State Constitution, these appointments will be made by the Governor, upon recommendation of the Board of Governors. This change will enable the agency to better draw from expertise within the colleges and the private sector.

E. Composition of the Board of Governors (EC § 71000)

Also drawing upon expertise within the colleges, the composition of the Board of Governors is modified to require the Governor to appoint two current or former local district trustees and a second tenured faculty member. Thirteen members (including the two trustees) will have six-year terms; the two faculty members will have two-year terms; and the one student member will have a one-year term. The two trustees would first be appointed on January 15, 1990, and January 15, 1992, respectively. The language is unclear as to when the second faculty member would first be appointed. The first six-year terms would not commence until after January 1, 1990. Additional legislation will be required to convert from a structure of four-year staggered terms to a structure of six-year staggered terms, and to clarify when the second faculty member will first be appointed.

Common law doctrines regarding incompatibility of offices would require current district trustees to resign their local offices in order to accept appointment to the Board. The common law, however, may be overridden by a subsequently enacted statute that provides that local trustees need not resign, or otherwise indicates that

common law is overridden. AB 1725 is unclear in this regard and may require clarification by the Attorney General or additional legislation.

F. Academic Senate and Student Roles (Sec. 61, AB 1725)

By January 1, 1990, the Board of Governors is required to develop policies and guidelines for strengthening the role of local academic senates regarding the determination and administration of academic and professional standards, course approval and curricula, and other academic matters. The Board is also required to develop a plan for encouraging greater student participation in campus, district, and systemwide governance. These two projects augment Board responsibilities to ensure roles for faculty, staff, students, and academic senate in governance, as provided in *Education Code*, § 70901(b)(1)(E).

III. Finance

AB 1725 shifts major authority for developing and administering the community college finance mechanism from the Legislature to the system. The details of community college finance will no longer be contained in statute, but rather in regulations of the Board of Governors. In addition, the use of average daily attendance (ADA) as the single workload measure for funding community colleges will be replaced by a more sophisticated and cost-based set of workload measures known as "program-based funding."

The development of this new finance mechanism will take time. To begin implementing reform, however, revenues in addition to those that will be allocated by the current statutory formula are needed. The Legislature has responded by extending the expiration date of the current finance mechanism, by creating a transitional mechanism intended to provide at least $140 million in additional revenues to districts, and by calling for the implementation of program-based funding in Fiscal Year 1991-92.

A. Extension of SB 851 (EC § 84713)

The current finance mechanism for community colleges, established in 1983 by SB 851, would have expired on July 1, 1989, (EC § 84713). AB 1725 extends this expiration date until July 1, 1991, thus providing time for development of the program-based funding mechanism.

Some officials believe that additional refinements of the SB 851 mechanism will be necessary during the next few years. Of particular interest are changes that will accommodate implementation of program-based funding in 1991-92. Changes to SB 851, however, will result in revenue dislocations for districts during 1989-90 and

1990-91. Any potential changes to be enacted during 1989 should be considered through the consultation process by spring of 1989.

B. Program-Based Funding (EC § 84750)

By March 1, 1990, the Board of Governors is required to adopt "criteria and standards" for purposes of making the annual budget request for the California Community Colleges, and for the purpose of allocating the state general apportionment (EC § 84750). These criteria and standards will constitute the basic mechanism for program-based funding, which will first be implemented in Fiscal Year 1991-92.

While the details of the community college finance mechanism will thus cease to be in statute, AB 1725 is rather explicit about what the Board is to include in its criteria and standards.

1. Districts are to be funded on the basis of adjustments to their prior-year levels of funding. Adjustments will be made for workload changes, program improvement, inflation, and other purposes authorized by law.

2. For *credit* instruction (noncredit instruction is treated separately), there are to be five workload categories and workload measures:

Category	Measure
Instruction	Credit Full-Time Equivalent Students (Credit FTES)
Instructional Services and Libraries	Credit FTES
Student Services	Credit students enrolled (headcount)
Maintenance and Operations	Square feet of owned and leased facilities
Institutional Support	Fixed percentage of other categories

The statute also specifies how increases and decreases in workload are to handled. The Board regulations will flesh out the details of these provisions and fix dollar amounts for each unit of workload within the respective workload measures.

3. The Board is also required to establish funding standards for the five categories and to request program improvement monies annually to assist districts in meeting these standards. As an example, under the category of instruction, the Board could develop standards for student/teacher ratios (such as 25 to 1) or the percentage of hours to be taught by full-time instructors (such as 75 percent of

all hours of credit instruction). Through the annual budget, the Board will seek additional funding (program improvement money) to help districts meet these standards.

4. The inflation adjustment to be developed by the Board is fixed by statute, and is the same adjustment currently contained in SB 851 (Implicit Price Deflator for State and Local Goods and Services for the United States).

5. An adjustment for economies of scale (large and small districts and colleges) is to be provided.

6. At a *minimum*, workload increases in FTES and headcount will be at the rate of change in the general adult population. The Board of Governors is to seek additional growth revenues (to address other growth factors) through the annual budget process, and to determine each district's growth entitlement.

7. A hold-harmless clause is provided for 1991-92 funding, guaranteeing that all districts will receive at least the apportionment they would have been entitled to under SB 851.

8. Unless specifically authorized by statute, the Board shall not require expenditure of revenues in the categories of operation for which they are generated. District governing boards are to determine the expenditure of such revenues.

C. Transitional Funding Mechanism for Program Improvement (EC § 84755)

While program-based funding, once implemented, will more adequately fund the costs of providing quality programs and services, this funding will not commence until at least 1991-92. The colleges, however, are already struggling with a substantial loss of purchasing power, and have an immediate need for additional resources to begin implementing AB 1725.

In response, the Legislature has provided a transitional funding mechanism for program improvement and new mandates that will operate until program-based funding is implemented. This transitional mechanism will allocate revenues to districts on a dollars-per-ADA basis (adjusted for equalization) and authorize districts to use these revenues for any of 19 required or authorized purposes (EC § 84755(b)). AB 1725 does not contain an initial appropriation for purposes of program improvement. However, the Board's 1989-90 proposed budget for community colleges contains an $80 million request. The Governor's Budget for 1989-90 contains no proposed appropriation for program improvement.

As to the uses of program improvement money, the intent is to provide new revenues to cover new mandates, to earmark certain portions for use in improving the percentage of instruction taught by full time faculty, and to otherwise leave districts with as much discretion as possible in determining the use of these funds. The provisions of *Education Code*, §§ 84755 and 87482.6 accomplish these purposes, with § 84755 specifying 19 required or authorized uses of program improvement money.

1. Developing articulated programs school districts and campuses of the University of California and California State University, as provided for in Section 70 [sic] of AB 1725;

2. Applying minimum qualifications to all newly hired faculty and administrators, including candidates for these positions, as required by *Education Code* Section 87356;

3. Developing and administering a process for waiver of minimum qualifications for faculty, as required by *Education Code* Section 87359;

4. Establishing and applying local hiring criteria, as required by *Education Code* Section 87360;

5. Establishing and applying faculty service areas and competency criteria, as required by *Education Code* Sections 87743 to 87743.5, inclusive;

6. Evaluating temporary employees, instituting peer review evaluation, and widely distributing evaluation procedures, as required by *Education Code* Section 87663;

7. Establishing and applying new processes for tenure evaluation, as required by *Education Code* Section 87610.1;

8. Establishing and applying the tenure denial grievance procedure, as required by *Education Code* Section 87610.1;

9. Establishing and applying a process for moving administrators into faculty positions, as required by *Education Code* Sections 87454 to 87458, inclusive;

10. Publishing and distributing a report on the affirmative action success rate, as required by *Education Code* Section 87102;

11. Improving instruction by reducing the ratio of full-time equivalent students to full-time equivalent instructors;

12. Improving instruction by increasing the hiring of full-time instructors and limiting the practice of hiring part-time instructors;

13. Augmenting budgets for college libraries and learning resources;

14. Augmenting budgets for plant maintenance and operations;

15. Adding new courses or programs to serve community need;

16. Making progress towards affirmative action goals and timetables established by the district;

17. Developing and maintaining programs and services authorized by *Education Code* Section 78212.5;

18. Augmenting budgets for student services in the areas of greatest need; and

19. Providing release time as deemed appropriate by community college district governing boards, to enable faculty and staff participation in implementing reforms.

Items 2 through 9 in the above list relate to mandated employment reforms that will not become operative until July 1, 1990, or until $70 million of program improvement money is provided, *whichever occurs later* (see Sec. 70(d), AB 1725).

Once the various employment reforms become operative, however, the law provides that program improvement money be available to cover the costs of the new mandates noted in items 2-9. While a district need not use program improvement money for these purposes (existing staff and resources can be reassigned or reallocated), it will receive no other new revenues for these mandates (whether it be through a claim filed with the Commission on State Mandates or otherwise) unless it can demonstrate that its total allocation of program improvement money, minus the amount set aside for improving its full-time/part-time ratio, is less than the reasonable cost of complying with the mandates.

Item 10 on the list - to cover the cost of publishing and distributing required reports on affirmative action success rates - relates to a mandate that becomes effective on January 1, 1989. However, the costs of this mandate are also reimbursed with allocations from the new Faculty and Staff Diversity Fund (EC § 87107(c)). Accordingly, this item constitutes a more-or-less discretionary use of program improvement money.

Items 11 and 13 through 19 relate to discretionary uses of program improvement money. Most address areas that eventually will be targeted for additional resources by means of funding standards in the new program-based funding formula. By directing program improvement money to these areas, it is anticipated that districts will be further along in meeting whatever standards are developed in connection with program-based funding. Item 12, relating to part-time/full-time ratios, is more completely addressed in new *Education Code*, Section 87482.6.

Program improvement money can be used only within the 19 areas. Districts will be required to develop and submit plans to the Board of Governors for using such resources. To the extent that a district expends its allocation as provided by law, the allocation will be incorporated into its base budget.

This transitional program improvement mechanism will be operative for at least the 1989-90 and 1990-91 fiscal years. Program-based funding will not become operative until Fiscal Year 1991-92 or until district based budgets have been increased by $140 million in program improvement monies, *whichever is later* (Sec. 70(e), AB 1725). The transitional program improvement mechanism will thus continue to operate in 1991-92 and beyond if the $140 million threshold for triggering the implementation of program-based funding has not been reached.

Finally, it should be noted that a number of concerns have been raised that the "50% Law" (EC § 84362) will operate to remove the flexibility and discretion that was intended regarding the use of program improvement money. Because the 50 percent Law requires districts to expend 50% of their budgets on the salaries of classroom instructors, there are concerns that it will prevent districts from being able to use program improvement money for such items as student services, plant maintenance and operation, and making progress towards affirmative action goals and timetables. These concerns will be discussed in the consultation process and may lead to revisions in the program improvement mechanism.

D. Part-Time/Full-Time Ratios (EC § 87482.6)

The most specific and prescriptive use of program improvement money is dedicated to increasing the use of full-time faculty. Currently, 67 percent of the hours of *credit* instruction (excluding overload) in the system is taught by full-time instructors. While program-based funding will most probably have standards relating to part-time/full-time ratios, AB 1725 attempts to increase the systemwide average to 75 percent during the next few years.

The provisions work as follows: If a district has more than 75 percent of its hours of credit instruction taught by full-time instructors, the law does not require the district to use any portion of its program improvement money to improve its percentage. If a district is between 67 and 75 percent, it must apply up to 33 percent of its program improvement money, as necessary, to reach the 75 percent standard. If a district is below 67 percent, it must apply up to 40 percent of its program improvement money, as necessary, to reach the 75 percent standard.

Some examples of how these provisions work are helpful. Assume a district is at 74 percent, and that it will take $100,000 to hire the number of full-time faculty to reach 75 percent. Assume further that the district receives $1,000,000 in program

improvement money. The district need not apply $330,000 (33%) towards improving its ratio; instead, it need only apply $100,000.

As a second example, assume a district is at 62 percent and that it will take $700,000 to hire the number of full-time faculty to reach 75 percent. Assume further that the district receives $1,000,000 in program improvement money. The district must apply $400,000 (40%) towards improving its ratio.

Important elements of this new law will be controlled by regulations of the Board of Governors. Initially the Board is directed to adopt regulations that exclude overload instruction from the computations, define what constitutes a "full-time instructor," and compute the number of full-time faculty each district must add. These regulations may be changed without resorting to legislation, however.

The following technical points regarding the full-time/part-time ratios should be kept in mind:

1. Fall term data (as opposed to complete fiscal year data) will be used for purposes of administering the law. For instance, the number of full-time faculty to be secured with 1989-90 program improvement money will be based upon Fall 1988 data.

2. The ratio will be computed on the basis of hours of credit instruction taught by full and part-time instructors; that is, student contact hours or units of credit will not be used as the basis for computation.

3. Districts will not immediately lose revenues they fail to expend for additional full-time instructors during any given fiscal year. Instead, districts will have until September 30, 1991, to make their designated number of hires. This will effectively provide districts with three major recruiting periods (spring 1989, spring 1990, spring 1991) to secure their total number of hires. To the extent a district does not hire the designated number of faculty, its base funding for 1991-92 and subsequent years will be adjusted downward.

Finally, it should be noted that numerous concerns have been raised that the 75 percent standard operates unfairly against some districts. A district with a relatively large geographical area and relatively small population must establish small off-campus centers in order to provide access to its programs. In order to provide a wide range of courses at these small off-campus centers, the district must use either part-time instructors or full-time instructors that teach in several disciplines. Also, districts with large vocational or contract instruction programs (particularly those with academies for administration of justice or fire science, or apprenticeship) have a greater need to employ part-time instructors who are employed and expert in the field in which they are teaching. Finally, when a district provides sabbaticals or released time to full-time instructors, the hours taught by part-timers which temporarily replace these full-time employees should not count

against the district. These concerns will be discussed in the consultation process and may lead to technical revisions in the either the statute or regulations of the Board of Governors.

IV. New Programs and Services

In addition to providing for a major infusion of resources for various areas of program improvement, AB 1725 also creates or expands several specific programs and services. Among the major new programs and services not otherwise discussed in this analysis are new programs for staff development, an expansion of the Community College Fund for Instructional Improvement, authorizing language to upgrade and establish career resource and placement centers, and the establishment of new service function in the Chancellor's Office to provide districts with information on economic trends and employment projections.

A. Staff Development (EC §§ 87150-87154)

Community colleges, through AB 1725, have become the first educational segment to receive specific funding for staff development. The provisions in the bill are based generally on a CPEC study and recommendations regarding staff development needs in postsecondary education. The intent is to provide formula-based funding (as opposed to funding on a project-by-project basis) to support *locally developed and implemented* staff development programs.

The CPEC recommendations would have provided funding on the basis of a percentage of state funding received by districts, and would have required local matching. AB 1725, instead, calls for an initial allocation of 1/2 of 1 percent of a district's "fiscal year revenues," as defined in SB 851, and up to 2 percent of such revenues thereafter, as determined through the state's budget process. This initial allocation, however, has been overridden by Section 72(a) of AB 1725, which provides $5 million for 1988-89, to be distributed to districts on the basis of a dollar amount per ADA (about $7.00 per unit of 1987-88 funded ADA). Therefore, there is no matching requirement; the initial year's funding (1988-89) of $5 million is provided; and funding for subsequent years will be up to 2 percent of district's fiscal year revenues, as requested by the Board of Governors and funded in the state budget.

In order to receive these formula-based allocations for staff development, districts must complete several steps:

1. Each campus within the district must have an advisory committee composed of administrators, faculty, and staff representatives to assist in needs assessment and the development of plans;

2. Each campus must have a human resources development plan for the current and subsequent fiscal year; and

3. Districts must report actual expenditures for the preceding year.

Evidence that these steps have been taken must be provided to the Chancellor's Office by way of affidavit. A model form for this affidavit has been developed and was distributed to districts in mid-December of 1988.

As to the uses of staff development money, the statute authorizes allocations to be used for:

1. Improvement of teaching.

2. Maintenance of current academic and technical knowledge and skills.

3. In-service training for vocational education and employment preparation programs.

4. Retraining to meet changing institutional needs.

5. Intersegmental exchange programs.

6. Development of innovations in instructional and administrative techniques and program effectiveness.

7. Computer and technological proficiency programs.

8. Courses and training implementing affirmative action and upward mobility programs.

9. Other activities determined to be related to educational and professional development pursuant to criteria established by the Board of Governors.

A number of questions have been raised regarding the interpretation and implementation of these new staff development provisions. They are recounted in this analysis to assist the immediate implementation of the new law. Some of these interpretations may require refinement and revision through the regulatory process. The interpretations will stand, however, until any necessary regulations are finalized.

Question:

Can staff development allocations be used to reimburse district expenditures for staff development that occurred before January 1, 1989 (the effective date of the new law)?

Answer:

While the new law did not become effective until January 1, 1989, the $5 million appropriation for staff development is for expenditure in the 1988-89 fiscal year (Sec. 72, AB 1725). Accordingly, if a district has the appropriate advisory committee(s) and plan(s) in place, expenditures for staff development incurred between July 1, 1988, and January 1, 1989, may be reimbursed with staff development allocations received after January 1, 1989.

Question:

Is faculty and staff development money just for faculty, or may it be used for administrators, classified employees, or trustees?

Answer:

Faculty and staff development money is to be used for faculty, administrators, and classified employees, but not for trustees. Administrators and classified employees are legally "staff" of a district, but trustees are not.

Question:

Who must and who may be a part of advisory committees for staff development?

Answer:

The statute specifically designates that faculty, administrators, and staff must be represented on advisory committees. The word "staff" can only have meaning if it refers to classified employees. As to other persons or groups who may participate on advisory committees, the statute is not limiting. Accordingly, districts could also add students, trustees, members of the public, or other persons of their choice to such advisory committees.

Question:

Does the law require a district to maintain 100% of its current level of expenditure for staff development as a condition for receipt of these new staff development funds?

Answer:

While the law does not require a district to maintain 100% of its pre-existing levels of expenditure for staff development, the intent of the provisions is that a district is to use the new revenues to *increase* its commitment of resources to staff development. As long as this overall commitment of resources is increased, it is a matter within the sound discretion of district governing boards whether the new staff development resources are totally "on top" of current expenditures for staff

development, or whether the new resources partially supplant existing expenditures. In monitoring these provisions, the Board of Governors can be expected to insure that districts substantially increase their commitments of resources for staff development.

Question:

Given the requirement that each "campus" must have an advisory committee and plan, does the word "campus" mean "college," or may it also be construed to include educational centers or other off-site locations?

Answer:

District governing boards have discretion to designate educational centers or other off-site locations as "campuses," but are not required to do so. They are required to include each college within the district as a campus, however.

Question:

Can a portion of a district's staff development allocation be used for purposes of administering the requirements of the law, such as the cost's of advisory committees, the costs of developing plans, and the costs of reporting to the Board of Governors?

Answer:

Administrative costs are not an expressly authorized use for staff development revenues. The Board of Governors, pursuant to *Education Code* § 87153(i), could adopt a regulation that recognizes these costs as related to educational and professional development.

Question:

Must staff development monies be returned to the state if they are not used during the fiscal year for which they are allocated?

Answer:

The law does not require the return of staff development monies not used during the fiscal year for which they are allocated. The intent of the law, however, is that a district should plan for and attempt to expend the entire allocation during the fiscal year for which it is allocated.

Question:

Does staff development money, once allocated, become part of a district's base budget?

Answer:

Staff development money is not incorporated into a district's base budget.

B. Expanded Fund for Instructional Improvement (EC § 84381)

AB 1725 expands the existing list of programs and services eligible for funding on a project-by-project basis through the Community College Fund for Instructional Improvement (FII). The bill also provides an additional $200,000 in FII funds, to be allocated during Fiscal Year 1988-89.

The new programs and services eligible for funding are to promote the intellectual development of faculty and staff, including:

1. Intersegmental summer programs, including research projects and seminars.

2. Programs bringing visiting scholars to districts.

3. Interdisciplinary programs involving local noncollegiate institutions in the arts and sciences.

4. Intersegmental research and public information projects on the environment, social history, and culture.

5. Summer "bridge" programs for student transition to college life.

In June of 1988, the Board approved FII grants and loans for 1988-89 for $536,000 and $88,512, respectively. The approvals were given with the understanding that should there be an augmentation to the Fund for 1988-89, additional projects would be funded. (For 1988-89, 110 proposals requesting over $3.25 million were submitted to the Board.)

The request for proposals (RFP) for 1989-90 FII projects will be released early in 1989. The Governor's Budget for 1989-90 provides $920,000 for the FII ($736,000 for grants and $184,000 for loans), but the actual appropriation won't be known until after legislative hearings in June. Decisions regarding funding for projects will be made by early summer of 1989.

C. Career Resource and Placement Centers (EC § 78212.5)

Until late in its legislative development, AB 1725 would have *required* each district to develop and maintain career resource and placement centers, to provide inservice training on matriculation, to orient students regarding academic requirements and available support services, and to provide various publicity programs. In its final

form the bill was amended to *authorize* districts to conduct these activities rather than require them to do so. In addition, districts were permitted to use program improvement money (EC § 84755(b)(17)) for the purposes of accomplishing these newly authorized activities.

D. Vocational Education Information to Districts (Sec. 63, AB 1725)

On or before January 1, 1990, the Board of Governors must provide districts with ongoing vocational education information in the form of summaries and analyses of current economic trends and employment projections. This requirement does not become operative until funding is provided to enable the Board to provide this new service. No appropriation for this service was provided in AB 1725. The Board requested the necessary funding in its 1989-90 budget request, but the Governor's Budget for 1989-90 does not contain funding for this request.

V. Affirmative Action

In the intent language accompanying AB 1725, the Legislature recognizes that California is undergoing a major demographic, social, and economic transformation; that community colleges are at the center of this change; and that "the state's future as a healthy and free, diverse and creative society depends in major part upon the commitments expressed through and in the community colleges."

The Legislature goes on to recognize the massive number of retirements that will occur in the community colleges during the next 15 years. Also recognized is the "window of opportunity" that will exist to make the faculty and staff of the colleges more representative of the state's diversity.

Concerns about affirmative action and staff diversity are thus woven into the very fabric of AB 1725. Particular attention is paid to increasing the pool of qualified minorities and underrepresented group members from which community colleges will draw new employees. Numerical and percentage goals for the system as a whole are stated, an unprecedented step. The role of the Board of Governors in providing leadership and service, as well as its role in monitoring and effecting compliance, are clarified and strengthened. In short, a comprehensive legislative framework has been provided to both enable and ensure that district governing boards and the Board of Governors make staff diversity a reality.

A. Compliance and Accountability (EC § 87102)

Existing law is amended to require districts to periodically certify compliance with affirmative action statutes, and also to require that they update their affirmative action plans, particularly to include steps to meet hiring goals in the replacement of

part-time faculty with full-time faculty. Districts must update their plans in order to receive program improvement monies for use in improving their full-time/part-time faculty ratios. Since program improvement monies are anticipated beginning July 1, 1989, all affirmative action plans should be updated by then.

Existing law is also amended to require districts to publish and distribute reports on their affirmative action success rates. The reports are to include data and information specified by the Board of Governors. It is anticipated that data and information reporting requirements will be specified early in 1989, with districts first reporting success rates in the fall of 1989.

B. Technical Assistance Team (EC § 87104(a)(4))

Existing law is amended to require the Board of Governors to establish a technical assistance team to review the affirmative action plan of each district failing to make measurable progress in meeting its goals and timetables. This team will make recommendations to the Board, which in turn will prescribe to the district conditions necessary to assure reasonable progress. These conditions may include the withholding of program improvement monies for full-time/part-time faculty ratios and withholding allocations from the Faculty and Staff Diversity Fund.

The Chancellor's Office will create the technical assistance team early in 1989.

C. Major Service Function to Assist Districts in Recruiting (EC § 87104(b))

By July 1, 1989, the Board of Governors is to establish "a major service function to assist districts in identifying, locating, and recruiting qualified members of underrepresented groups . . . ." AB 1725 provides initial-year funding of $300,000 for this function. It is anticipated that this function will provide national recruitment efforts on behalf of the system as well as a computer-based affirmative action registry.

D. Systemwide Plan for Strengthening Affirmative Action (EC § 87104(c))

By March 15, 1989, the Board of Governors is to develop and adopt a systemwide plan for strengthening affirmative action policies and programs in the community colleges. A draft of this plan, entitled *Toward A New Diversity*, was entered into the consultation process in mid October 1988. A revised draft was broadly circulated in January. Adoption of a final plan is scheduled for the Board's March 1989 meeting. The plan contains a specific listing of tasks, timelines, and responsible parties.

E. Faculty and Staff Diversity Fund (EC § 87107)

AB 1725 creates the Faculty and Staff Diversity Fund, administered by the Board of Governors, to pursue two goals (as opposed to quotas or mandates) for the *system*: (1) by 2005, the cumulative workforce of the colleges should proportionately reflect the adult population of the state; and, (2) by 1992-93, 30 percent of all new hires in the system should be ethnic minorities. It is not necessary that each district reach these goals; rather, it is the cumulative numbers or percentages for *all* of the colleges that will be relevant. Further, consistent with the governance delineation, the Board is given authority to adjust these goals for the system after September 30, 1994.

AB 1725 appropriated $1 million to the Fund for 1988-89, and The Governor's Budget for 1989-90 proposes $1,445,000 for the Fund. The Board is required to use up to 25 percent of the Fund to reimburse state-mandated costs associated with district reporting of affirmative action success rates, to reimburse districts for the costs of preparing and updating affirmative action plans, and to carry out specified Board functions. The remainder of the Fund is to be allocated to districts for extended outreach and recruitment, for incentives to hire, for inservice training, and for other purposes of staff diversity. The Board is to adopt regulations regarding allocations for these purposes, and it is anticipated that such regulations will be in place by summer or fall of 1989.

A few additional points regarding the Faculty and Staff Diversity Fund should be kept in mind. First, for purposes of measuring progress on the extent to which the colleges' workforce reflects the makeup of the state's adult population, the Board is to develop and apply availability data. This availability data will take into account the percentages of underrepresented group members who have the requisite education and experience to work in the various community college occupations. Also, in terms of the goal that 30 percent of all new hires be ethnic minorities, the intent is to ensure that 30 percent of all new faculty and administrative hires be ethnic minorities. Finally, it should be remembered that these are goals for the system. Districts will continue to set their own goals and, cumulatively, contribute to achieve the systemwide goals established in AB 1725.

As to the uses of Faculty and Staff Diversity funds, a question has been raised whether all allocations must be used only to make progress regarding ethnic minorities. The language of *Education Code* § 87107(d) clearly indicates that the resources may be used for "underrepresented groups" (which include not only ethnic minorities, but also such groups as women, the disabled and Vietnam veterans).

F. Other Affirmative Action Provisions (EC §§ 71020, 87153(h), 84755(b)(16), 87360, and Sec. 64, AB 1725)

Other parts of AB 1725 that address affirmative action issues and concerns include the following:

- The Board of Governors is required to prepare an affirmative action paper concerning its own membership and assessing its role in statewide representation of minorities, women, and the disabled. This paper is to be prepared by July 1, 1989, and every three years thereafter.

- Districts are authorized to use staff development funds for courses and training to implement affirmative action programs.

- Districts are authorized to use program improvement money for publishing and distributing reports on affirmative action success rates, as well as for making progress towards their own affirmative action goals and timetables.

- In establishing hiring criteria for faculty and administrators, districts must develop criteria that include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students.

- On or before July 1, 1990, the Board of Governors and the State Board of Education are to have determined the extent to which students are underrepresented, in vocational education programs on the basis of ethnic origin and gender.

VI. Employment Policies

AB 1725 brings to an end an era of K-12 employment policies that governed the hiring practices of community colleges. Credentialing, with its standards for employment dictated by the Legislature, is replaced by a structure that vests both the Board of Governors and faculty with authority to establish and apply policy. Consistent with other postsecondary segments, the systemwide governing board establishes minimum qualifications for employment, which are then applied by the local colleges. Both academic senates and exclusive representatives for collective bargaining will have roles in developing and administering this new structure. In addition, the probationary period for tenure is lengthened so as to be more consistent with those used in other postsecondary segments. While most of these reforms will not become operative until July 1, 1990, or later, there is extensive preparatory work that must be done. Orderly implementation within a two-year period will be a challenge, especially at the district level.

A. Repeal of Credentials (Sec. 27, AB 1725)

About 65 statutes on credentials (Chapter 2, Part 51, *Education Code*) will become inoperative when at least $70 million in program improvement money is provided (Sec. 70(d), AB 1725). This could happen as early as July 1, 1989. Most authorities in AB 1725 agree that it was intended that credentials were to sunset on June 30,

1990, so long as at least $70 million in program improvement money had been provided. Technical legislation should include moving the repeal date to July 1, 1990, or until the receipt of $70 million in program improvement funds, *whichever is later.*

B. Minimum Qualifications Established by the Board of Governors (EC §§ 87101, 87356-87359, 87743-87743.5)

In lieu of credentials, the Legislature directs the Board of Governors to adopt regulations establishing definitions and minimum qualifications for employment as a community college faculty member or administrator. The Legislature has dictated the initial regulations establishing definitions, and the minimum qualifications for employment as a faculty member teaching *credit* courses, and as an instructional or student services administrator. The qualifications, which can be changed by the Board of Governors, are as follows:

Minimum qualifications for teaching *credit* courses are:

- a master's degree in the discipline of the teaching assignment; *or*
- a master's degree in a discipline "reasonably related" to the teaching assignment, and a bachelor's degree in the discipline of the assignment; *or*
- if a master's degree is not generally expected or available in the discipline, the instructor must have a bachelor's degree in a discipline "reasonably related" to the teaching assignment and two years of professional experience, plus appropriate certification to practice or licensure; or an associate degree in a discipline "reasonably related" to the teaching assignment and six years of professional experience, plus appropriate certification to practice or licensure.

For instructional or student services administrators; the minimum qualifications are:

- a master's degree, and
- one year of formal training or experience "reasonably related" to the administrative assignment (may be concurrent).

Regulations establishing minimum qualifications for *noncredit* instructors will be developed by the Board of Governors by the spring of 1990.

In implementing the new minimum qualifications, the Board is to define the term "discipline," prepare a list of disciplines "reasonably related" to one another, and prepare a list of disciplines in which the master's degree is not generally expected or available. The Board is to have these tasks done by July 1, 1989, and is to rely

primarily upon the advice and judgment of the statewide Academic Senate. Technically, there is a problem with this deadline because the statute that imposes it will not become operative until at least July 1, 1989, assuming $70 million of program improvement funds is provided by that time.

The new law also requires the Board to adopt regulations to allow for locally administered processes that can provide waivers regarding minimum qualifications (EC § 87359). A new joint-governance role is provided for the local academic senate, as the law provides,

> The process, as well as the criteria and standards by which the governing board reaches its determinations, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board.

The Board will adopt regulations for waiver processes by mid 1989.

Finally, AB 1725 also requires local implementation of "faculty service areas" by July 1, 1990 (EC §§ 87743.1-87743.5). A faculty service area (FSA) is essentially a grouping of disciplines into a service or instructional subject area. FSAs are declared to be within the scope of collective bargaining. Also within the scope of collective bargaining are competency criteria to serve in a faculty service area. A faculty member must qualify for one or more FSAs at the time of initial employment, and additional FSAs may be added pursuant to a process.

The bill does not specify whether or how existing credential holders will have their subject matter areas converted to FSAs. In the event of a layoff, competency under the credentials structure and competency under the FSA structure could both come into play. Additional legal interpretations and/or clarifying legislation will probably be necessary.

Finally, it should be noted that any state-mandated costs that districts incur under these new provisions on minimum qualifications are to be reimbursed with program improvement money (EC § 84755).

C. Local Hiring Criteria (EC § 87360)

Under existing law, districts establish hiring criteria. AB 1725 would additionally require districts to develop criteria that include a sensitivity to the diverse backgrounds of community college students. Also, as to new faculty members, the local academic senate is again provided with a joint-governance role. These new criteria are to be ready by July 1, 1990, or when $70 million of program improvement money is provided, *whichever is later*. Again, program improvement money is available to cover any state-mandated costs arising from these provisions.

D. Employment of Administrators (EC §§ 72411.5, 87454-87458)

Commencing January 1, 1989, every instructional or student services administrator (see EC § 87001 for definitions) *must* be employed by a contract not to exceed four years. All other administrators *may* be employed by a contract not to exceed four years. All contracts may be extended for up to four additional years at the discretion of the governing board.

The application of these new requirements to administrators and managers in the classified service is not clear. Further legal interpretation and/or clarifying regulations will be required. Also, due to a drafting error, these new provisions became operative on January 1, 1989, instead of July 1, 1990, or when $70 million of program improvement money is provided, whichever is later. Technical legislation will be introduced in 1989 to move the operative date.

The assignment of employees from faculty to administrative positions and administrative to faculty positions is also covered in AB 1725 (EC §§ 87454-87458). These provisions, however, do not become operative until $70 million in program improvement funds is provided. Notably, there are provisions for allowing an administrator not part of the classified service and not previously tenured to become a first-year probationary faculty member when the administrative assignment expires (EC § 87458). Again, a joint-governance role for the academic senate is provided in establishing procedures for administrators to move to faculty positions.

E. Evaluation of Employees (EC § 87663)

Commencing as early as July 1, 1989 - if at least $70 million in program improvement is provided - (Sec.70(e), AB 1725) - several new requirements regarding the evaluation of employees will become effective. Full-time probationary employees must, as under current law, be evaluated at least once each academic year; tenured employees must be evaluated at least once every three (instead of every two) academic years; and part-time faculty must be evaluated within their first year, and at least once every six semesters or nine quarters thereafter. Prior law did not require part-time faculty to be evaluated.

Further, the evaluation process must include peer review, to be done on a departmental or divisional basis. The Legislature has also expressed the intent that, "to the extent practicable," students should be involved in faculty evaluation, and that faculty should similarly be involved in the evaluation of administrators.

AB 1725 continues existing law by recognizing that evaluation procedures may be negotiated as part of the collective bargaining process. The bill, however, expands the role of academic senates by requiring the faculty's exclusive representative to consult with the academic senate prior to engaging in collective bargaining on evaluation procedures.

State-mandated costs arising from the new evaluation requirements are reimbursed through program improvement monies (EC § 84755).

Finally, technical legislation is necessary to make the effective date of these changes July 1, 1990, or upon receipt of $70 million in program improvement funds, *whichever is later.*

F. Tenure Reforms (EC §§ 87602-87615)

Commencing as early as July 1, 1990 - upon appropriation of at least $140 million in program improvement funds - Sec. 70(e), AB 1725 - the probationary period for gaining tenure will extend from two to four years. The new statutes provide for three contracts, with periods of one year, one year and two years, respectively. Earlier provisions of the bill had provided for a fifth and "terminal" year, but these provisions were removed. Notice of a decision to re-employ or not re-employ must be provided by March 15 of the academic year covered by the contract, and by March 15 of the second year of the two-year contract. Governing board decisions are subject to limited judicial review only after certain administrative remedies are exhausted.

Currently, it is not clear how these new provisions will apply to individuals *hired* before the operative date, *but not yet tenured* by the operative date. Additional legal interpretation and/or clarifying legislation will probably be required.

A detailed new provision regarding tenure evaluation and grievance procedures (EC § 87610.1) has been added. Basically, decisions to deny tenure are to be classified and procedurally addressed as grievances. If these procedures do not result in arbitration, the grievance proceeds to a hearing in accordance with existing law (EC § 87740).

The new tenure reforms also add a statute to require at least a bachelor's degree in order to obtain tenure (EC § 87615). For academic or nonvocational faculty, this degree requirement commences July 1, 1990 (if $140 million in program improvement funds have been provided); whereas for vocational faculty the requirement commences January 1, 1994. The bachelor's degree requirement can be waived if "rare and compelling" reasons exist; and, the academic senate is again provided with a joint-governance role in establishing procedures for such waivers.

G. Collective Bargaining Study (Sec. 58, AB 1725)

By no later than January 1, 1993, the Board of Governors is to review the collective bargaining law applicable to community colleges. This review is to focus on the delineation of roles and responsibilities of the academic senates and collective bargaining agents, particularly in light of changes made in AB 1725 regarding faculty roles. This review does not become a mandate to the Board unless the costs of

conducting the review are provided. No appropriation was made in AB 1725, but the 1989-90 Governor's Budget proposes $100,000 for this study. The final appropriation for this item won't be known until June, after legislative hearings.

H. Option-Rollover Contract Pilot Project (Sec. 65, AB 1725)

The Board of Governors is required to develop a three-district pilot program for employing of part-time temporary faculty through option-rollover contracts. The law does not specify a timeline under which the Board is to complete this pilot project. The two-year pilot program does not become a mandate to the Board unless the funds for conducting the program are provided. AB 1725 did not contain an appropriation for this purpose, and the 1989-90 Governor's Budget does not propose funding for the project.

I. Graduate Students Teaching in the Community Colleges (Sec. 66, AB 1725)

AB 1725 authorizes districts to determine whether it would be beneficial for various community college departments to enter into agreements with analogous graduate departments of nearby UC and CSU campuses to provide part-time teaching positions in the district for advanced graduate students. Ostensibly, these student teachers would not be required to meet the new minimum qualifications, and courses taught under their supervision would be eligible for state support (ADA). The language of the bill does not expressly resolve these matters, however.

J. Study of Student Aid Programs for Community College Teachers (Sec. 62, AB 1725)

By January 1, 1990, the Student Aid Commission is required to study financial aid programs that have as their purpose increasing the number of students entering the teaching profession at the community college level. The mandate does not become operative unless the Student Aid Commission and CPEC receive the necessary funds for conducting the study. Neither AB 1725 nor the 1989-90 Governor's Budget provides an appropriation for the study.

VII. Accountability

AB 1725 vests both the Board of Governors and district governing boards with significant authority to decide matters heretofore reserved to the Legislature. It should come as no surprise that the Legislature, in delegating away this broad authority, would want to develop a structure for ensuring that the Board and districts are accountable for their exercise of authority. Earlier during 1988, the Legislature took the approach of prescriptively mandating the elements of this

accountability structure - see AB 4131 of 1988, which did not pass. As AB 1725 was finalized, however, the determination was made to approach the new accountability system in a manner similar to the development of program-based funding. Under this approach, the Legislature expresses its intent as to the general issues and content to be addressed, and then turns the development of the actual system over to the Board of Governors and district governing boards. The Board's work is, of course, subject to legislative review and timelines; but, overall, the Legislature has refrained from prescribing the elements of the system.

A. Accountability System (EC § 71020.5)

By July 1, 1990, the Board of Governors is to develop and recommend implementation of a comprehensive community college educational and fiscal accountability system. This system is to be implemented over a three-year period, commencing no later than the 1991-92 academic year. The contents of the system are generally described, with a more specific instruction to:

Define and measure, quantitatively and qualitatively, accountability information, including:

a. Student access to community colleges.

b. The extent to which the community college student body as a whole proportionately reflects the adult population of the state.

c. Student transfer programs and rates.

d. Academic standards and student achievement.

e. Student goal satisfaction and success in courses and programs.

f. Completion rates of courses and programs.

g. Occupational preparation relative to state and local workforce needs and for entry-level employment, occupational advancement, and career changes of students.

h. Adequacy of courses in basic skills and English as a Second Language and instruction in preparing students to succeed in collegiate-level work.

i. Adequacy of and student satisfaction with student services.

j. The extent to which the community college workforce proportionately reflects the adult population of the state.

k. Fiscal conditions of community college districts.

Some of these elements may prove either too expensive to implement or not worth the expense of fully implementing. In this regard, the Board's report (to be submitted by July 1, 1990) can recommend the appropriate restructuring. In addition, the law specifically states that additional mandates will not be imposed on districts without additional reimbursement. Finally, the new law is clear that the implementation of this new accountability system is dependent, in part, upon the development of adequate data collection and reporting system. The community college Management Information System (MIS) will thus be a critical priority in this effort to improve accountability.

VIII. Conditions And Appropriations

Initial implementation of AB 1725 would have cost at least $105 million, according to estimates of the Board of Governors. The fiscal difficulties encountered by the State beginning in the spring of 1988 made it impossible to fully fund these initial costs in the bill itself. As an alternative, various provisions of reform were drafted so as not to become operative until certain major new levels of funding are provided through the annual budget process. This option was taken, in part, because the Governor committed to work for full funding of reform. The option avoided what would have been a certain veto of a fully funded bill. It also enabled initial reforms to commence with a small "down payment" of $7.25 million.

A. Conditions of Operability and Trigger Mechanisms (Sec. 70, AB 1725)

AB 1725 provides that reform is to consist of two phases. Phase I focuses on improving community college programs so as to prepare an appropriate environment for the subsequent professionalization of faculty. Phase II follows initial program improvement and faculty professionalization, and allows for implementation of the act on a wide scale.

The Legislature has directed that certain reforms will not become operative unless "adequate funding" has been provided for Phase I and Phase II, respectively. The Legislature has delegated authority to the Board of Governors to determine and certify in writing whether such funding has been provided. The Legislature, however, has declared its estimates that $70 million is adequate funding for Phase I, and that an additional $70 million (district base budgets increased by a total of $140 million statewide) is adequate funding for Phase II. Because of the negotiations surrounding AB 1725, it is anticipated that the Board's certifications regarding adequate funding will exactly (or almost exactly) reflect the declarations and estimates of the Legislature.

Phase I (Sec. 70(d), AB 1725):

The following reforms do not become operative until the Board of Governors certifies that adequate funding ($70 million for program improvement) has been provided for Phase I, or until the operative date for the specific reform, *whichever is later*:

- Repeal of credentials;
- Establishment of minimum qualifications for faculty and administrators, to be operative after July 1, 1990 (EC § 87356);
- Establishment by the Board of Governors of a process for reviewing minimum qualifications and development of lists of disciplines (EC § 87357);
- Establishment by the board of Governors of review teams for minimum qualifications (EC § 87358);
- Establishment of procedures for waiving minimum qualifications (EC § 87359);
- Establishment of hiring criteria by districts, no later than July 1, 1990 (EC § 87360);
- Implementation of provisions for movement between faculty and administrative positions (EC §§ 87454-87458);
- Implementation of new requirements regarding evaluation of employees (EC § 87663);
- Implementation of new layoff provisions (EC § 87743); and
- Implementation of provisions for faculty service areas, no later than July 1, 1990 (EC § 87743.1-87743.5).

Phase II (Sec. 70(e), AB 1725):

The following reforms do not become operative until the Board of Governors certifies that adequate funding ($140 million in program improvement funds) has been provided for Phase II, or until the operative date for the specific reform, *whichever is later*:

- Implementation of program-based funding on July 1, 1991 (EC § 84750); and
- Implementation of provisions regarding tenure reforms (EC §§ 87602-87615), except degree requirement for vocational faculty not operative until January 1, 1994.

It is important to note that even though the text of a given section of AB 1725 may specify a beginning date or deadline, that section will not become operative until the requisite amount of program improvement funds has been provided. For instance, program-based funding will not be implemented in Fiscal Year 1991-92 if $140 million in program-improvement funds has not been provided.

Several technical concerns have been raised about the trigger mechanism, particularly the Phase I reforms. Some of these concerns have been noted in the Employment Policies section of this analysis. Corrective legislation will probably be necessary, and will be considered through the consultation process.

B. Appropriations in AB 1725 (Sec. 72, AB 1725):

AB 1725 appropriates $7.25 million for expenditure in the 1988-89 fiscal year, as follows:

1. $5,000,000 for Staff Development (EC §§ 87150-87154). Allocations will be made on a per ADA basis (about $7 per ADA), with all districts receiving at least $5,000.

2. $1,000,000 for the Faculty and Staff Diversity Fund (EC § 87107). The method of allocation to districts will be on a per ADA basis.

3. $200,000 for the Community College Fund for Instructional Improvement (EC § 84381).

4. $1,050,000 million (the remainder of the money) will be used by the Board of Governors to develop the program-based funding formula, to provide the major service function for affirmative action recruitment, to develop the accountability system, and to conduct other activities required by AB 1725.

C. Funding of Reforms Through the Budget Process

Beginning with Fiscal Year 1989-90, implementation of AB 1725 will be funded through the annual budget process. The Board of Governors, working through consultation, will request appropriate resources for reform in the systemwide budget proposal. The following major budget proposals were submitted for 1989-90:

1.	Program Improvement (EC § 84755)	$80,000,000
2.	Staff Development (EC §§ 87150-87154)	10,000,000
3.	Fund for Instructional Improvement (EC § 84381)	6,750,000
4.	Faculty and Staff Diversity Fund (EC § 87107)	4,000,000

In addition, the Board has requested funds to conduct various mandated studies and activities, such as the study of collective bargaining, the interdisciplinary colleges pilot study, and the option-rollover contract pilot project.

The proposals for 1989-90 funding had to be submitted to the Department of Finance by the first week of October, allowing only minimal consultation with the field. Proposals for 1990-91 funding will be developed fully through consultation, with initial deliberations commencing in February or March of 1989.

The Governor's Budget for 1989-90 released January 10, 1989, indicates the following levels of support for the following reforms:

1.	Program Improvement (EC § 84755)	$0
2.	Staff Development (EC §§ 87150-87154)	$5,154,000
3.	Fund for Instructional Improvement (EC § 84381)	$920,000
4.	Faculty and Staff Diversity Fund (EC § 87107)	$1,445,000

Appropriations contained in the Governor's Budget are subject to review and revision by the Legislature. Consequently, actual appropriations won't be known until July of 1989.

APPENDIX

AB 1725 Implementation Chart

Explanatory Notes

The following pages provide summary information concerning the implementation of AB 1725. The first column in the five-column chart provides a summary of the components of reform in the same order that they appear in the comprehensive analysis. The second column indicates additional legislative actions necessary to achieve or clarify the reforms. The third column indicates actions to be undertaken by the Board of Governors, including initial timelines for these actions. Necessary and desirable district actions to implement reform are summarized in the forth column.

The fifth column "Consultation/Coordination" elaborates on use of the new consultation process to implement reform, and, in addition, identifies the divisions within the Chancellor's Office which will have responsibilities for the particular reforms. While the chart identities "Council(s) of origin" for most of the reforms, it is intended that **all standing councils will have the opportunity to review, at their discretion, any of the reform components being developed elsewhere in the consultation process.** The designation of a council as a "Council of origin" indicates that this council will work with staff in developing the *initial draft* of a policy; that is, the draft of a policy which will be released to other councils and the field generally for review and comment. The Council of origin will also have a role in evaluating changes to the policy as it is considered in the other standing councils and the field.

In the final analysis, of course, all consultation is *advisory* to the Chancellor; and all councils, groups and individuals, once having participated in consultation, are free to present their positions and concerns to the Board of Governors.

Finally, because of the impending reorganization of the Chancellor's Office, only the broad divisions within the Office are identified with respect to the particular reforms. For more complete information on the individual reforms or responsibilities within the Chancellor's Office, please call either (916) 445-8752 or 445-4826.

Reform Component	Legislative Action	Board of Governors Action	District Action	Consultation/Coordination
I. MISSION A. Mission Statement (EC 66701) -- Validates comprehensive mission while establishing priorities for the various functions as "primary" "important and essential" or "authorized."	None necessary.	Assist and support districts in implementing priorities within mission statement - no specific timeline.	Implement priorities within mission statement - no specific timeline.	Council(s) of origin: Executive Council (CEO) - no specfic timeline. Chancellor's Office (C.O.) Responsibility: Educational Policy Division
B. Transfer Core Curriculum (EC 66720-66721) -- Requires UC Regents, CSU Trustees and Board of Governors to develop, maintain and disseminate a common core curriculum in general education courses for purposes of transfer.	None necessary.	Develop transfer core curriculum with UC Regents and CSU Trustees, relying on initial work of intersegmental senates. No specific timeline, but plan to implement for academic year 1990-91. Publish and distribute core curriculum as required in EC 66721.	Voluntary participation in consultation regarding development of the transfer core curriculum during late 1989 and early 1990. Otherwise, no action necessary until transfer core curriculum adopted by Board of Governors in 1990.	Council(s) of origin: Academic Senate, Council of Chief Instructional Officers. Initial draft expected by fall 1989. C.O. Responsibility: Educational Policy Division
C. Remedial Limit (Sec. 68, AB 1725) -- Requires the Board of Governors to adopt regulations limiting the amount of remediation a community college student may take.	None necessary - at least until December 1991 report by Board of Governors.	Adopt regulations specified in Sec. 68 of AB 1725 by January 1, 1990. Report to Legislature by December 31, 1991.	Voluntary participation in consultation regarding adoption of initial regulations. Otherwise, commence implementation after Board of Governors adopts regulations (probably December 1989).	Council(s) of origin: Academic Senate, Council of Chief Instructional Officers. Initial draft expected by September 1989. C.O. Responsibility: Educational Policy Division
D. Articulation Regarding Vocational Programs - 2+2 and 2+2+2 (Sec. 69, AB 1725) -- Requires Board of Governors to work with the State Board of Education and the CSU Trustees to develop these programs. Plans for implementation due by July 1991.	Fund budget proposals (BCPs) to extend and expand existing funding for 2+2 and 2+2+2 projects.	Develop plans for implementation of 2+2 and 2+2+2 programs by July 1, 1991.	Consider seeking state funding (respond to RFPs) for 2+2 and 2+2+2 projects.	Council(s) of origin: no additional consultation planned during 1989. C.O. Responsibility: Educational Policy Division
E. English as a Second Language Study (Sec. 59, AB 1725) -- Department of Education and CPEC to conduct a joint study of ESL by January 1, 1990. The study isn't required unless funded.	Determine whether to provide funding for study and extend deadline to January 1991.	Participate with CPEC in conducting study when (and if) it is funded.	None necessary pending results of study. Instead, work with Board of Governors on current activities regarding ESL.	Council(s) of origin: no consultation planned until study is funded. C.O. Responsibility: Educational Policy Division

Reform Component	Legislative Action	Board of Governors Action	District Action	Consultation/Coordination
E. English as a Second Language Study (Sec. 59, AB 1725) -- Department of Education and CPEC to conduct a joint study of ESL by January 1, 1990. The study isn't required unless funded.	Determine whether to provide funding for study and extend deadline to January 1991.	Participate with CPEC in conducting study when (and if) it is funded.	None necessary pending results of study. Instead, work with Board of Governors on current activities regarding ESL.	Council(s) of origin: no consultation planned until study is funded. C.O. Responsibility: Educational Policy Division
F. Interdisciplinary Colleges Pilot Study (Sec. 60, AB 1725) -- Requires Chancellor to determine feasibility of establishing interdisciplinary colleges on a pilot basis. Study due by January 1990, but isn't required unless funded.	Fund budget proposal for interdisciplinary colleges and adjust July 1, 1990 deadline in Section 60.	Commence pilot study in fiscal year 1989-90 if funding is provided in 1989-90 budget.	Consider applying as one of pilot districts if funding is provided.	Council(s) of origin: no consultation planned until study is funded. C.O. Responsibility: Educational Policy Division
II. GOVERNANCE A. Delineation of Governance Functions (EC 70900-70902) -- Creates the California Community Colleges as a system and specifies the major roles of the Board of Governors and local governing boards.	Respect governance delineation in considering and enacting legislation.	Respect governance delineation in conducting activities and adopting policies. Further develop consultation process (by late 1989). Further develop Standing Orders and other delegations of authority by fall of 1989. Develop Budget change proposal for 1990-91 that provides resources to perform governance functions.	Respect governance delineation in conducting activities and adopting policies.	Council(s) of origin: Executive Council (CEO). Initial draft of standing orders and delegations of authority expected by late spring of 1989. Initial draft of revisions to consultation process expected by summer 1989. Budget Proposals for performing governance functions will be developed as part of 1990-91 budget (March-Sept of 1989). C.O. Responsibility: Office of Legal Affairs and Policy Analysis Division
B. Education Code Review (Sec. 57, AB 1725) -- Requires the Board of Governors to propose legislation to make entire Education Code consistent with delineation of functions and AB 1725. Deadline: January 31, 1989.	Enact Education Code Review legislation during 1989 and 1990.	Update earlier (1987) recommendations regarding Education Code Review, complete consultation, and sponsor legislation for 1989.	Consider additional participation in Education Code Review project.	Council(s) of origin: Executive Council (CEO) and Council of Organizations. Updated recommendations to be reviewed January-October 1989. The legislation will be amended to reflect the results of consultation. C.O. Responsibility: Office of Legal Affairs

Reform Component	Legislative Action	Board of Governors Action	District Action	Consultation/Coordination
C. Regulations of the Board of Governors (EC 70901.5) -- Requires Board of Governors to develop procedures for adoption of regulations -- to be used in lieu of procedures currently applied by the office of Administrative Law.	None necessary.	Adopt procedures for adoption of regulations during 1989. Have processes and methods in place to print and distribute regulations by January 1, 1990.	Voluntary participation in consultation to develop Board procedures for the adoption of regulations.	Council(s) of origin: Executive Council (CEO). Initial draft expected by fall 1989. C.O. Responsibility: Office of Legal Affairs
D. Exempt Positions (EC 71090.5) -- Authorizes Board of Governors to create and fill up to six positions exempt from civil service.	None necessary.	Appoint exempt positions after January 1, 1989.	None.	Council(s) of origin: no consultation planned. C.O. Responsibility: Chancellor
E. Composition of the Board of Governors (EC 71000) -- Changes terms to six years and provides for appointment of two local trustees and an additional faculty member.	Enact technical modifications to convert from a structure of four-year staggered terms to a structure of six-year staggered terms; also provide for first appointment date of second faculty member.	By late January 1989, draft and review language making technical modifications.	None.	Council(s) of origin: None. Initial draft of technical modifications expected by mid-January 1989, and will be made available to all councils. C.O. Responsibility: Office of Legal Affairs
F. Academic Senate and Student Roles (Sec. 61, AB 1725) -- Requires the Board of Governors to develop policies for strengthening the academic senate, and a plan for encouraging greater student participation in local governance.	None necessary.	By January 1, 1990: (1) develop policies and guidelines for strengthening the role of the academic senate; and (2) develop a plan for encouraging greater student participation in campus, district and systemwide governance.	Voluntary participation in consultation to develop policies and plans; otherwise no action necessary until after January 1, 1990.	Council(s) of origin: Executive Council (CEO) and Academic Senate regarding policies and guidelines for strengthening the academic senate; Executive Council (CEO), Council of Student Body Governments, and Council of Chief Student Services Officers regarding plan for student participation. Initial drafts expected by Fall 1989. C.O. Responsibility: Educational Policy Division

Reform Component	Legislative Action	Board of Governors Action	District Action	Consultation/Coordination
III. FINANCE A. Extension of SB 851 (EC 84713) -- Extends current statutory community college finance mechanism through 1990-91, so that program-based funding formulas can be developed by the Board of Governors.	Enact technical legislation to clarify that SB 851 will not sunset until July 1, 1991 or until $140 million of program improvement money has been provided, whichever is later. Otherwise, the SB 851 mechanism shouldn't be changed unless recommended by the Board of Governors.	Consider technical changes to SB 851 formula through consultation, and decide on recommended changes by spring of 1989.	Voluntary participation in consultation regarding changes in finance formula.	Council(s) of origin: Chief Business Officials C.O. Responsibility: Administrative Services Division
B. Program-Based Funding (EC 84750) -- Establishes broad elements of new community college finance mechanism, with "criteria and standards" to be developed by the Board of Governors.	Enact technical legislation during 1989 to clarify first year of hold harmless, and other changes. Review the Board's criteria and standards after March 1, 1990.	Develop and report "criteria and standards" for initial mechanism by March 1, 1990. Funding under program-based funding mechanism won't occur until at least FY 1991-92.	Voluntary participation in consultation regarding development of criteria and standards.	Council(s) of origin: Executive Council (CEO), Council of Organizations, Council of Chief Business Officials. Initial drafts expected by July 1989. C.O. Responsibility: Administrative Services Division
C. Transitional Funding Mechanism for Program Improvement (EC 84755) -- Provides revenue infusions (by an equalized per ADA amount) to districts. Revenues are to be used for one or more of 19 required or authorized improvements.	Fund program improvement requests in 1989-90 and 1990-91 Budgets. During 1989, enact technical revisions to bill language (reference to "1987-88" in subsection (b) and reference to "Section 70" in subsection (b)(1)). Enact changes regarding applicability of the "50% Law" (EC 84362) if recommended by the Board of Governors.	Determine equalization mechanism for program improvement by spring of 1989. Develop guidelines for district plans by spring of 1989. Review and approve district plans for use of program improvement money by late summer of 1989. By February 1989, consider changes to provide relief from application of the 50% Law to program improvement.	Develop initial plan for use of program improvement money by June 1989. Update district affirmative action plan in conjunction (see EC 87102).	Council(s) of origin: Council of Chief Business Officials and Executive Council (CEO) regarding the equalization mechanism; Executive Council (CEO) regarding guidelines for district plans; Council of Organizations regarding changes to provide relief from the 50% Law. Initial draft of equalization mechanism expected by January 31, 1989. Initial draft of guidelines for district plans expected by March 1, 1989. C.O. Responsibility: Administrative Services Division regarding equalization component and 50% Law analysis; Planning and Research Division regarding guidelines for district plans

Reform Component	Legislative Action	Board of Governors Action	District Action	Consultation/Coordination
D. Part-Time/Full-time Ratios (EC 87482.6) -- Specifies that districts must use up to 33% or 40% of their program improvement money as necessary to provide that 75% of the hours of credit instruction are taught by full-time instructors.	None necessary	Before March 15, 1989, inform districts of estimated number of full-time faculty (FTF) to be secured with program improvement money. Adopt initial regulations for administering the function by spring of 1989. Consider relief from 75% standard for rural districts, vocational programs, etc. by spring of 1989.	Update affirmative action plan (EC 87102). Recruit and hire, particularly during spring 1989, 1990, and 1991.	Council(s) of origin: Executive Council (CEO), Council of Organizations regarding regulations for administering the FT/PT Ratio provision. Initial draft of regulations expected by March 15, 1989. C.O. Responsibility: Office of Legal Affairs regarding regulations; Planning and Research Division regarding notification to districts.
IV. NEW PROGRAMS AND SERVICES A. Staff Development (EC 87150-54) -- Creates a formula-funded program to support locally developed and implemented staff development programs.	Fund Budget proposals for staff development.	Provide model affidavit form for districts by December 15, 1988. Develop form for reporting expenditures and accountability by summer of 1989. Adopt necessary regulations (including criteria establishing other activities related to educational and professional development) for Fund by summer of 1989.	Create advisory committees (as required by EC 87151) no later than January of 1989. Develop a human resources plan for each campus no later than January of 1989. The initial plan should indicate planned expenditures for 1988-89 and 1989-90. Report on expenditures for 1988-89 in the fall of 1989, as required by the Chancellor.	Council(s) of origin: Executive Council (CEO), and Academic Senate regarding regulations (including criteria establishing other activities related to educational and professional development). Executive Council (CEO) regarding accountability and reporting forms. Initial drafts of regulations and accountability forms expected by May 1989. C.O. Responsibility: Human Resources Division, Office of Legal Affairs, and Policy Analysis Division
B. Expanded Fund for Instructional Improvement (EC 84381) -- Adds new purposes for use of funds granted or loaned, and increases the State's appropriation to the Fund.	Fund Budget proposals to expand the Fund for Instructional Improvement.	By early 1989, award an additional $200,000 in grants for FY 1988-89. Distribute RFP for FY 1989-90 grants and loans by February 1, 1989. Award grants and loans for 1989-90 by July 1989. During 1989, consider necessary revisions to Board regulations on the Fund.	Submit proposals for 1989-90 grants or loans by spring of 1989.	Council(s) of origin: Council of Chief Instructional Officers, Academic Senate regarding necessary revisions to current Board regulations governing the Fund. Initial draft of regulations expected by late 1989. C.O. Responsibility: Educational Policy Division

Reform Component	Legislative Action	Board of Governors Action	District Action	Consultation/Coordination
C. Career Resource and Placement Centers (EC 78212.5) -- Authorizes districts to establish career resource and placement centers, provide orientation and inservice training regarding matriculation, and establish publicity programs. Also authorizes program improvement money to be used for such purposes.	None necessary.	Determine extent to which purposes of this section are being met through implementation of other reforms, such as matriculation	Consider using program improvement money (EC 84755) for career resource and placement centers - include in plan for using program improvement money, due June 1989.	Council(s) of origin: Council of Chief Student Services Officers. C.O. Responsibility: Educational Policy Division
D. Vocational Education Information to Districts (Sec. 63, AB 1725) -- Requires the Board to provide ongoing economic trend and employment projection information to districts. Mandate not operative unless Board costs are funded.	Fund Budget proposals to strengthen this function.	If funded, establish the new function in the Chancellor's Office by January 1, 1990.	Receive and use information after January 1, 1990.	Council(s) of origin: Council of Chief Instruction Officers. Timetable for consultation to be arranged. C.O. Responsibility: Education Policy Division
V. AFFIRMATIVE ACTION A. Compliance and Accountability (EC 87102) -- Requires local boards to submit affirmations of compliance, report success rates, and prepare affirmative action plans with goals and timetables.	None necessary.	By early 1989, request districts to update their affirmative action plans by June of 1989. By mid-summer of 1989, specify data and information which districts are to report in measuring their "success rates" regarding goals and timetables in their affirmative action plans.	Update district affirmative action plan (particularly with respect to meeting goals and timetables for hiring additional full-time faculty) by June 1989. Publish and distribute report on affirmative action success rate when required by the Board of Governors (projected for late 1989).	Council(s) of origin: Executive Council (CEO). C.O. Responsibility: Human Resources Division
B. Assistance to Districts (EC 87104) -- Requires the Board of Governors to provide leadership and assistance by helping colleges to adopt and maintain plans, by reporting to the Legislature, by developing guidelines, and by providing "technical assistance" to districts which fail to make measurable progress.	Fund Budget proposals to provide resources for assistance functions.	Create technical assistance team by early 1989. Identify districts which fail to make measurable progress in meeting the goals and timetables in their plans. Provide regular technical assistance reviews commencing in 1990. See also, **Toward a New Diversity**, the systemwide plan for strengthening affirmative action (to be adopted March 1989).	Request and/or accept assistance from the Board of Governors as necessary.	Council(s) of origin: Executive Council (CEO). C.O. Responsibility: Human Resources Division

Reform Component	Legislative Action	Board of Governors Action	District Action	Consultation/Coordination
C. Major Service Function to Assist Districts in Recruiting (EC 87104(b)) -- Requires the Board of Governors to establish (by July 1, 1989) a major service function to assist districts in recruiting qualified members of underrepresented groups.	Fund Budget proposal to implement a computerized affirmative action registry. Implementation of registry is contingent upon outcome of feasibility study.	Use $300,000 appropriation in AB 1725 to establish major service function by July 1, 1989.	Voluntary participation in feasibility study for a computerized registry. Otherwise, use Board service function as services become available..	Council(s) of origin: Executive Council (CEO). C.O. Responsibility: Human Resources Division
D. Systemwide Plan for Strengthening Affirmative Action (EC 87104 (c)) -- Requires the Board of Governors to adopt (by March 15, 1989) a system-wide plan for strengthening faculty and staff affirmative action.	None necessary.	Adopt Plan by March 15, 1989. NOTE: A draft of this plan (entitled, Toward a New Diversity) has been in consultation since October of 1988. The draft plan elaborates on the requirements of AB 1725 and provides detailed implementation information.	Voluntary participation in consultation to develop final draft of plan by March of 1989.	Council(s) of origin: Executive Council (CEO). C.O. Responsibility: Human Resources Division
E. Faculty and Staff Diversity Fund (EC 87107) -- Establishes a fund with two specific goals for the system as a whole. The Board of Governors is to administer the fund, with most of the resources going to districts for the purposes of extended outreach and recruitment, hiring incentives, and in-service training.	Fund request in 1989-90 Budget to increase the Diversity fund.	By early 1989, allocate to districts the $1 million provided for FY 1988-89. This allocation will be made on a per ADA basis. By July of 1989, develop regulations for distributing allocations from the Faculty and Staff Diversity Fund, and for generally administering the Fund. By mid-summer of 1989, develop and apply availability data for purposes of measuring district progress on affirmative action goals.	Voluntary participation in consultation to develop regulations for allocation of Faculty and Staff Diversity Funds, and for general administration of the Fund.	Council(s) of origin: Executive Council (CEO). C.O. Responsibility: Human Resources Division
F. Other Affirmative Action Provisions • Requires the Board to adopt an affirmative action paper on its own composition (EC 71020) • Requires the Board of Governors and the State Board of Education to undertake a study on the underrepresentation of students in vocational education programs (Sec. 64, AB 1725)	None necessary. Fund Budget proposal to determine extent of under-representation, in cooperation with the State Board of Education.	By July 1, 1989 prepare initial paper. If budget proposal funded, study and report extent of underrepresentation by July 1, 1990.	None necessary. None necessary, except to participate in study.	Council(s) of origin: Requiring Board affirmative action paper, no consul-tation required or planned. Regarding study of underrepresentation, n consultation planned until at leas September 1989. C.O. Responsibility: Human Resource Division (paper on Board Composition Educational Policy Division (under representation of students in vocation education programs).

Reform Component	Legislative Action	Board of Governors Action	District Action	Consultation/Coordination
VI. EMPLOYMENT POLICIES				
A. Repeal of Credentials (Sec. 27, AB 1725) -- Provides for the elimination of statutory requirements for community college credentials. Instead of the Legislature fixing credential requirements which are administered by the Board of Governors, the Board of Governors will adopt minimum qualifications which are administered and applied by districts.	Enact clean-up legislation (during 1989) that clarifies that credentials are repealed July 1, 1990 or when $70 million of program improvement money is provided, whichever is later. Also enact legislation clarifying application of grandfather provisions to part-time instructors Also enact legislation to extend the authorization to charge the $40 fee. Enact clean-up legislation (during 1990) to revise or repeal all community college Education Code provisions which address credentialing or certification.	Prepare bill language by January 1989. Develop technical clean-up legislation during 1989.	Prepare to implement and apply minimum qualifications (see below). During fall of 1989, voluntary participation in consultation regarding 1990 legislation.	Council(s) of origin: None - draft language will be made available to all councils. Draft bill language for AB 1725 revisions expected by late January 1989; while more comprehensive Education Code revisions expected by late fall of 1989. C.O. Responsibility: Office of Legal Affairs

Reform Component	Legislative Action	Board of Governors Action	District Action	Consultation/Coordination
B. Minimum Qualifications Established by the Board of Governors (EC 87001, 87356-87359, 87743-87743.5) -- Provides definitions, minimum qualifications, and waiver procedures which the Board of Governors is to adopt as its initial regulations on these matters. The Board can change these initial policies through consultation. Also requires related work to establish disciplines for teaching, which will be used in lieu of subject matter areas for instructor credentials.	Fund Budget proposals to enable Board of Governors to perform new roles.	By July 1989, adopt minimum qualifications and definitions initially specified in AB 1725. By spring of 1990, develop minimum qualifications for teaching noncredit classes. By July 1, 1989, prepare a list of disciplines "reasonably related" to one another and prepare a list of disciplines in which the Master's degree is not generally expected or available. Offer implementation assistance to districts as needed. Initiate study of health requirements required by EC 87359.5 by May 1989. Establish review teams for minimum qualifications by 1990.	Develop faculty service areas by July 1, 1990 (EC 87743.1). Establish processes for waiving minimum qualifications (EC 87359). After July 1, 1990, screen new employees (and candidates) for minimum qualifications.	Council(s) of origin: Academic Senate and Council of Chief Instructional Officers regarding minimum qualifications, definitions, and waiver processes initially transferred from statute to Board regulations. Initial draft expected by May 1989. Academic Senate, regarding lists of disciplines. Initial lists expected for consultation by spring 1989. Academic Senate and Council of Chief Instructional Officers regarding minimum qualifications for teaching noncredit classes. Initial draft expected by fall 1989. C.O. Responsibility: Office of Legal Affairs regarding initial transfer of statutory provisions to regulations and study of health requirements. Educational Policy Division regarding disciplines and minimum qualifications for teaching noncredit classes. Human Resources Division regarding general implementation assistance to districts.
C. Local Hiring Criteria (EC 87360)	None necessary.	Offer implementation assistance to districts as needed.	By July 1, 1990, adopt hiring criteria as required by EC 87360.	Council(s) of origin: no consultation required or planned during 1989. Responsibility: Human Resources Division regarding implementation assistance to districts.
D. Employment of Administrators (EC 72411.5, 87454-87458) -- Requires all instructional and student service administrators to be employed by a contract of not more than four years. Also addresses the "retreat rights" of administrators.	Consider additional technical changes to these new laws, if recommended by the Board of Governors and Californians for Community Colleges.	During 1989, conduct consultation regarding changes to these laws.	Employ instructional and student services administrators by contract after January 1, 1989.	Council(s) of origin: Council of Organizations, Executive Council (CEO). C.O. Responsibility: Office of Legal Affairs regarding technical changes; Human Resources Division regarding general implementation assistance.

Reform Component	Legislative Action	Board of Governors Action	District Action	Consultation/Coordination
E. Evaluation of Employees (EC 87663) -- Requires part-time instructors to be evaluated, and requires peer review to be established.	Enact technical legislation to make AB 1725's changes regarding evaluation operative on July 1, 1990 or upon $70 million in program improvement, whichever comes later.	Provide general implementation assistance to districts as necessary.	By July 1, 1990, establish procedures for evaluating part-time instructors. By July 1, 1990, establish peer review procedures.	Council(s) of origin: Council of Organizations, Executive Council (CEO). C.O. Responsibility: Office of Legal Affairs regarding technical changes; Human Resources Division regarding general implementation assistance.
F. Tenure Reforms (EC 87602-87615) -- Extends probationary for tenure from two to four years; also requires (with certain exceptions) a bachelor's degree in order to obtain tenure.	Consider additional technical changes to these new laws, if recommended by the Board of Governors and Californians for Community Colleges.	During 1989, conduct consultation regarding technical changes to these laws.	Apply new tenure provisions beginning as early as July 1, 1990, if $140 million in program improvement money has been provided. Establish procedures for waiver of bachelor's degree requirement by July 1991.	Council(s) of origin: Council of Organizations, Executive Council (CEO). C.O. Responsibility: Office of Legal Affairs regarding technical revisions; Human Resources Division regarding general implementation assistance
G. Collective Bargaining Study (Sec. 58, AB 1725) -- Requires the Board of Governors to review and study the current collective bargaining law applicable to the community colleges. The requirement is conditional on the receipt of funding to conduct the study.	Fund Budget request, for resources to do study; otherwise no legislative action necessary pending study.	If funded, conduct study during 1989-90 and 1990-91, with recommendations made by January 1992.	Voluntary participation in consultation regarding study.	Council(s) of origin: Executive Council (CEO), Academic Senate, Council of Organizations. Timetable for the study and consultation to be arranged. C.O. Responsibility: Office of Legal Affairs
H. Option Rollover Contract Pilot Project (Sec. 65, AB 1725) -- requires the Board, subject to funding, to conduct a pilot study regarding the employment of part-time faculty by option rollover contracts.	Fund Budget request, for Board to conduct pilot.	If funded, conduct pilot study during 1989-90 and 1990-91.	If project funded, consider applying as one of three pilot districts during 1989-90.	Council(s) of origin: No consultation planned until study is funded. C.O. Responsibility: Human Resources Division
I. Graduate Students Teaching in Community Colleges (Sec. 66, AB 1725) -- Authorizes community colleges to provide part-time teaching positions for advanced graduate students.	No action necessary.	Resolve ambiguities regarding minimum qualifications and ADA eligibility by early in 1989.	Consider entering into agreements as authorized by Section 66.	Council(s) of origin: Council of Chief Instructional Officers, Academic Senate. C.O. Responsibility: Educational Policy Division

Reform Component	Legislative Action	Board of Governors Action	District Action	Consultation/Coordination
J. Study of Student Aid Programs for Community College Teachers (Sec. 62, AB 1725) -- Requires the Student Aid Commission to conduct a study regarding aid programs for community college teachers.	Fund costs of study by the Student Aid Commission.	None necessary, except follow study.	None necessary.	Council(s) of origin: No consultation planned until study is funded. C.O. Responsibility: Educational Policy Division
VII. ACCOUNTABILITY A. Accountability System (EC 71020.5) -- Requires the Board of Governors to develop and recommend (by July 1, 1990) implementation of a comprehensive community college educational and fiscal accountability system.	Fund costs of developing system, including 1989-90 BCPs for Accountability and for Management Information System implementation. Otherwise, no legislative action necessary until at least FY 1990-91.	Use initial appropriation of $150,000 for activities during 1988-89. By July 1, 1990, develop accountability system and report to Legislature as required by EC 71020.5.	Voluntary participation in consultation during 1989 and 1990 to develop system; commence implementation by FY 1991-92.	Council(s) of origin: Executive Council (CEO). Timetable for consultation to be arranged. C.O. Responsibility: Planning and Research Division; and Policy Analysis Division
VIII. CONDITIONS AND APPROPRIATIONS A. Conditions of Operability and Trigger Mechanisms (Sec. 70, AB 1725) -- Specifies that certain reforms don't become operative until specified levels of funding have been provided.	None necessary.	Certify when "adequate funding" has been provided for Phase I and Phase II.	None necessary.	Council(s) of origin: no consultation planned. C.O. Responsibility: Administrative Services Division
B. Funding of Reforms Through the Budget Process -- The ongoing cost of community college reform will be funded through the annual budget process.	Fund annual Budget proposals made by Board of Governors to fund reform.	Develop systemwide budget request annually (March-September of the year prior to each fiscal year).	Voluntary participation in consultation to develop the annual systemwide budget request.	Council(s) of origin: Executive Council (CEO), Council of Organizations. C.O. Responsibility: Administrative Services Division

Exhibit C

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU

March 11, 2004

RECEIVED
MAR 16 2004
COMMISSION ON
STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: CSM 02-TC-31
Santa Monica Community College District, Claimant
Minimum Conditions for State Aid

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above-referenced test claim in light of the following questions addressing key issues before the Commission:

Do the subject statutes or regulations result in a mandated new program or a mandated higher level of service within an existing program upon local entities within the meaning of section 6, article XIIIB of the California Constitution and section 17514 of the Government Code? If so, are costs associated with the mandate reimbursable?

Do any of the provisions of Government Code section 17556 preclude the Commission from finding that the provisions of the subject statutes or regulations impose a reimbursable state-mandated program upon local entities?

Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

This test claim ("Claim") alleges mandated costs reimbursable by the state for community college district activities related to complying with minimum conditions that are necessary for the receipt of state aid. Test Claimant Santa Monica Community College District ("Claimant") alleges that reimbursable mandated costs arise from a variety of Education Code sections and regulations that appear in title 5 of the California Code of Regulations.

Given the number of statutes and regulations that are invoked by Claimant, and the severe cutbacks suffered by this office, we are unable to provide a thorough response to this Claim. It is regrettable that the lack of funding to support mandate claim reviews could conceivably result in the payment of unwarranted claims. We can offer analytical assistance and provide some historic documentation, but regrettably, we must leave a comprehensive review of the issues to the Commission.

There are several bases for rejecting the Claim in its entirety, and various challenged sections raise other specific defenses to reimbursement.

1. If Claimant Has Complied With The Challenged Provisions In Order To Receive State Aid And Has Received State Aid, Claimant Has Already Been Compensated For Compliance, And No Further Reimbursement Is Warranted.

The provisions raised by Claimant are incorporated into a number of regulations that have been adopted by the Board of Governors for the California Community Colleges as minimum conditions for the receipt of state aid. The Board has long been legislatively required to promulgate such regulations.

If Claimant has not complied with the regulations, Claimant cannot raise an issue of reimbursement because Claimant has not taken action in response to a claimed mandate. If Claimant has complied with the regulations so as to collect state aid, Claimant is not eligible for further reimbursement. That is, funds have already been appropriated and paid for any required actions set out in the Claim.

The California Supreme Court recently addressed the conditions for reimbursement of claimed state mandates. (*Department of Finance v. Commission on State Mandates (Kern High School)* (2003) 30 Cal.4th 727, hereinafter referred to as "*Kern High School.*") The primary focus of the Court's analysis was that districts cannot voluntarily participate in programs, and then claim reimbursement for mandates. This is because there is no mandate under the law if a district has the option of not participating in a program or activity.

Kern High School pointed out that even if costs are incurred, they may be permissibly payable from funds that have already been obtained from the state. *(Id.*, at 747.) For the year 2001-2002, Claimant received state assistance in excess of $133,000. Claimant can use the funds it has already received from the state to satisfy any costs of complying with the regulations that are the subject of this Claim. Claimant is supposed to satisfy the regulations in order to be eligible to collect state funding.

Because Claimant has already received state funding for the purposes of complying with the subject provisions, the Claim should be rejected in its entirety. We will not raise this general defense for each of the regulations assessed below, but by setting out the defense as to all minimum conditions, we incorporate this defense into each of the following analyses.

2. Claimant Is Not Required To Collect State Aid. To The Extent Claimant Chooses To Do So, That Choice Negates The Finding Of A State Mandate For Activities That Are Necessary To Make Claimant Eligible For State Aid.

As noted above, the California Supreme Court recently confirmed that reimbursement is not authorized where the Claimant voluntarily undertakes an activity. (See *Kern High School, supra.)* In *Kern High School*, the District sought reimbursement from the state for the costs of preparing notices and agenda items related to certain programs it offered. The Supreme Court found that the District chose to participate in the programs, and therefore the costs of the programs were also voluntarily assumed. No mandates exist where a district voluntarily participates in a program.

Although most community college districts seek state aid in the form of apportionment, districts are not required to do so, and some districts do not receive apportionment. To the extent Claimant complies with the regulations cited herein in order to obtain the state aid that results from compliance, Claimant voluntarily accepts the obligations.

Under *Kern High School,* Claimant's choice to receive state funding for the purposes of complying with the subject provisions renders the conduct optional. We will not raise this general defense for each of the regulations assessed below, but by setting out the defense as to all minimum conditions, we incorporate this defense into each of the following analyses.

3. Minimum Standards Are Not Eligible For Reimbursement If They Were Required By Legislative Action That Predated January 1, 1975.

The regulations identified by Claimant reflect minimum standards that have been adopted by the Board of Governors.

A recent California Attorney General opinion concluded that reimbursement is often unavailable for minimum standard regulations. The question posed to the Attorney General concerned minimum standards for juvenile justice facilities. The Attorney General concluded that where a statute enacted prior to 1975 required a state body to establish minimum standards, revising those standards does not constitute a new program or increased level of an existing program.

The Attorney General considered a county's claim for reimbursement for bringing a juvenile justice facility into compliance with the minimum standards established by the Board of Corrections. The Attorney General concluded that the Board of Corrections had been required to set minimum standards for suitable juvenile facilities since at least 1915. Therefore, regulations adopted as minimum standards did not constitute a new program because

> "Counties have been required to maintain a 'suitable' place for the detention of minors since at least 1915. [Citations omitted.] Setting the minimum standards for what is 'suitable' does not create a 'higher' level of service--it has long been the level of service required of local agencies. [Citations omitted.]" (83 Ops.Cal.Atty.Gen. 111 (2000).)

The Attorney General considered the language of Welfare and Institutions Code section 210, which provides: "The Board of Corrections shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors." The term "suitable" is not part of the charge to the Board of Corrections in setting minimum standards. The term is implied.

Regulations challenged in this Claim reflect Board of Governors' minimum standards. Based on the premise established by the Attorney General, the minimum standards of the Board of Governors do not constitute either a new program or a higher level of service if the Board of Governors was statutorily obligated to set minimum standards in these areas prior to 1975.

Pre-1975 Requirements

The Board of Governors' minimum conditions regulations are generally adopted pursuant to statutes that appear in the Education Code (in a few isolated instances, regulations are also supported by statutes in other codes). Because the Education Code has been reorganized several

times, it is important to trace statutory requirements to their original sources. This is not always an easy undertaking where the Education Code is concerned.

Most statutes that concerned public schools were first assembled in the School Code in 1929. Prior to that time, such statutes appeared in various codes. The School Code became the Education Code in 1943. The Education Code was reorganized in 1959 and again in 1976. Some sections that appear in today's Education Code show that they were added in 1976 - which date incorrectly suggests that they came into being after January 1, 1975, a critical date for purposes of finding a state mandate. However, for many sections, the 1976 date merely reflects the 1976 comprehensive reorganization of the Education Code. That 1976 date does not represent the date of initial legislative pronouncement. In many instances, the Legislature required the Board of Governors to establish minimum standards in the subject areas prior to 1975.

Under the theory articulated by the Attorney General in his 2000 opinion, no new programs or higher level of services are established by Board of Governors' regulations that set minimum standards if the Legislature required the adoption of minimum standards prior to 1975. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Education Code section 66700

Section 66700 requires the Board of Governors to prescribe minimum standards for the operation of the community colleges. Section 66700 was preceded by section 22650, that was enacted in 1960, when the State Board of Education had jurisdiction over the junior colleges in California. (Stats. 1960, 1st Ex. Sess., ch. 49, p. 396.) Section 22650 required the State Board of Education to adopt minimum standards for the operation of the junior colleges. As the community college system developed, the obligation to adopt minimum standards was assigned to the Board of Governors and junior colleges were redesignated community colleges. (The Legislature created the Board of Governors of the California Community Colleges in 1967 by Statutes 1967, chapter 1549. It also vested in the Board of Governors the "duties, powers, purposes, responsibilities, and jurisdiction" previously vested with the State Board of Education. See Education Code section 71024, previously section 197.) Accordingly, since at least 1960, the Legislature has required the state agency having oversight responsibility to adopt minimum standards for the operation of community college districts. It has vested that responsibility in the Board of Governors since 1967.

Education Code section 70901(b)(6)

Section 70901(b)(6) requires the Board of Governors to adopt minimum standards entitling districts to receive state aid for support of community colleges. Section 70901(b)(6) was added by Statutes 1988. However, section 70901(b)(6) was preceded by section 71025 that was enacted by Statutes 1976. Former section 71025 provided that "the Board of Governors of the California Community Colleges shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges." Section 71025 was preceded by section 25510 that was added by Statutes 1963. (Stats. 1963, ch. 100, p. 760.) A 1970 amendment substituted "community college" for "junior college" and an amendment by Statutes 1974 substituted the Board of Governors of the California Community Colleges for the State Board of Education; thus the section read, "The Board of Governors of the California Community College shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges." (The 1974 amendment

merely conformed the Board of Governors' authority to that previously assigned by the Legislature in 1967.)

Accordingly, since at least 1963[1], the Legislature has required the state agency having oversight responsibility to adopt minimum standards enabling community college districts to receive state aid. As noted above, since 1967, that responsibility has rested with the Board of Governors. Based on the Attorney General's analysis, such minimum standards cannot be the basis for a mandate claim. Virtually all of the minimum conditions regulations challenged herein are based on legislative directives to the Board of Governors that preceded January 1, 1975. On that basis, none of the minimum conditions regulations support a claim for reimbursement, and the Claim may be rejected in its entirety. We will not raise this general defense for each of the regulations assessed below, but by setting out the defense as to all minimum conditions, we incorporate this defense into each of the following analyses.

4. Many Of The Regulations That Are The Subject Of This Claim Existed Prior To January 1, 1975, Under Different Section Numbers. To The Extent Any Mandates Predated January 1, 1975 They Are Not Eligible For Reimbursement.

A number of the regulations that are the subject of this Claim were originally adopted in 1969 or 1971 and later renumbered. In 1983, numerous regulations were renumbered through the process of repealing prior regulations and adding the regulations back into the code of regulations under new numbers. The Commission will note that Claimant alleges that a number of the regulations that are claimed as creating mandates came into existence in 1983. In many cases, that 1983 date represents a reorganization of title 5 and does not reflect the creation of new regulatory requirements.

"Costs mandated by the state" do not include costs associated with statutes that were enacted prior to January 1, 1975. (Government Code section 17514.) Regulatory requirements that existed before January 1, 1975, cannot be the basis for reimbursement.

5. A Number Of The Regulations Address Areas That Are Already Required By Federal Laws That Claimant Must Follow.

California community colleges are subject to a variety of federal mandates that require certain activities. In some of these cases, the mandates are imposed as a condition of the receipt of federal financial assistance. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

6. A Number Of The Regulations Address Areas Of General Law That Are Not Based On Claimant's Status As A Local Governmental Body.

Claimant is a California employer. Claimant is also a California business enterprise. As such, Claimant is required to follow general laws that apply to all such employers and enterprises. To the extent that a general law already requires Claimant to take certain actions, Claimant cannot be reimbursed for duplicative actions that are required under the challenged regulations. Actions required by general law cannot be the basis of a claim for reimbursement. (*County of Los*

[1] In some cases, the statutes cited herein may have existed earlier under different section numbers. However, given our resource limitations, we are not able to explore the full extent of possible previous enactments.

Angeles v. State of California (1987) 43 Cal.3d 46, 56.) Only if Claimant is able to determine that the regulations include specific additional mandates is reimbursement a possibility.

Regulatory Background. In the early times after the Board of Governors was established, the Office of Administrative Law, rather than this office, retained the primary regulatory files. Given our current resource restrictions, we are unable to fully explore the earlier versions of current regulations for purposes of this review.

We are attaching copies of the early regulation packages that remain in our files, and we encourage the Commission's thorough review of the early provisions. These packages verify that many of the issues addressed in the regulations cited by Claimant preexisted January 1, 1975. (See enclosed Attachment 1, regulation packet approved for filing August 26, 1969; Attachment 2, regulation packet approved for filing July 1, 1971; Attachment 3, regulation packet approved for filing October 1, 1971; Attachment 4, regulation packet approved for filing June 28, 1971.)

Condition 1, California Code of Regulations, title 5, section 51002 (Standards of Scholarship) Claimant asserts that this section mandates costs of adopting and complying with standards of scholarship for students. Claimant alleges that section 51002 was added in 1983 and amended in 1994.

In August 1969, the Board of Governors filed regulations with the Secretary of State that included section 51002 as a minimum standard entitling districts to receive state aid. (Attachment 1.) Section 51002(e) addressed standards of scholarship. It required districts to adopt regulations consistent with the state regulation and to publish the district standards in the college catalog under appropriate headings.

Section 51002(e) addressed grading, "credit-no credit" grades, when students should be on probation, and standards for dismissal. Section 51005, the text of which is set out in full below in our response to "condition 2," included subsections (e) and (f) that provided for credit by examination, which currently appears as section 55753.

In July, 1971, the Board of Governors filed additional regulations related to standards of scholarship. (Attachment 2.) These 1971 regulations addressed credit and no credit courses, standards for probation (section 51303 that led to present section 55754), standards for dismissal (section 51304 that led to present section 55756), a definition of "units attempted" (section 51305 which led to present section 55757), and grade point averages. Section 51300 required district governing boards to adopt regulations consistent with the regulations of the Board of Governors and to publish the regulations in the college catalog.

We lack the resources to fully correlate all these regulations, but it is clear that current regulatory provisions addressing standards of scholarship existed prior to January 1, 1975, and are not eligible for reimbursement.

Any Claim under this section must be rejected for the general reasons discussed above and because most if not all of the provisions predated January 1, 1975.

Condition 2. California Code of Regulations, title 5, section 51004 (Degrees and Certificates). Claimant asserts that this section requires districts to adopt and comply with regulations for awarding degrees and certificates. Claimant alleges the section was added in 1983 and amended in 1994.

Regulations that were filed by the Board of Governors in 1969 established minimum standards for degrees and certificates as follows. (See Attachment 1.) Those provisions led to numerous regulations that currently appear at sections 55800-55810. We have indicated some of the current related provisions in bold in the following.

> "51005. Requirements for Degrees and Certificates. (a) The governing board of a district maintaining a community college shall confer the degree of associate in arts upon the satisfactory completion in grades 13 and 14 of from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes the requirements listed in (1) through (5), provided that 12 of the required credit hours were secured in residence at that community college. **(See current section 55806.)** (The governing board may make exceptions to the residence requirement in any instance in which the governing board determines that an injustice or hardship would otherwise be placed upon an individual student.) "Satisfactory completion" means either credit earned on a "credit-no credit" basis or a grade point average of 2.0 (grade C on a five point scale with zero for an F grade) or better in 13th and 14th year graded courses in the curriculum upon which the degree is based. **(See current section 55801.)**
>
> (1) A major consisting of at least 20 semester hours in a specified field of study; **(See current section 55806(a).)**
>
> (2) Three semester hours in the Constitution of the United States, and in American history, including the study of American institutions and ideals, and of the principles of state and local government established under the Constitution of this State, and the satisfactory passing of an examination on said courses;
>
> (3) Two semester hours of community and personal hygiene; except that a community college student, who is a minor whose parents or guardian state in writing that the course in community and personal hygiene is contrary to the religious beliefs of the student, or if the student is not a minor if he so states in writing, may be excused from such course and permitted to substitute a two-hour course in a field or fields specifically designated by the governing board of the district in lieu of the required two-hour course in community and personal hygiene.
>
> (4) Two semester hours in physical education earned at the rate of one-half credit per semester for a minimum of 120 minutes per week in directed physical education activities, except as a student may be exempted in accordance with Section 8162, Education Code; and
>
> (5) Such requirements in oral and written English as the governing board of the school district may establish.
>
> (b) The governing board of a district maintaining a community college may confer the degree of associate in science upon the satisfactory completion in grades 13 and 14 of a minimum of 60 semester hours of work which shall satisfy all the requirements for an associate in arts degree, and which work shall include

a major of at least 20 semester hours in any of the following fields: engineering, physical and biological science, vocational-technical curriculums.

(c) The governing board of a district maintaining a community college shall award the appropriate diploma or degree whenever a student shall have completed all requirements of a full curriculum of the community college without regard to the length of time actually taken by the student to complete such requirements. **(See current section 55809.)** The governing board shall grant to any student who satisfactorily completes the requirements of any course of study in less than the prescribed time the full number of semester hours scheduled for such course.

(d) The governing board of a district maintaining a community college shall issue a certificate of achievement (as determined by the governing board and specified in the catalog) to any student who successfully completes any course of study or curriculum in length less than the full number of years and grades maintained by the community college. **(See current section 55808.)**

(e) The governing board of a district maintaining a community college may grant credit (but it shall not count toward the 12 semester hours of credit in residence required in (a) to any student who satisfactorily passes an examination approved and conducted by proper authorities of the college. Such credit may be granted only:

(1) To a student who is registered at the college and in good standing.

(2) For a course listed in the catalog of a California public community college. **(See current section 55753.)**

(f) The examination shall be made at the expense of the person being examined.

(g) Information contained in the physician's report is confidential, and the contents of the report shall not be divulged by an official or employee who has access to the report except to the Board of Governors of the California Community Colleges, the Teachers Retirement Board, any county superintendent of schools, the representatives of any of them, or to the governing board of a district which has requested such information.

(h) The person shall file with the governing board of any district employing him as a substitute instructor the notice, or a photostatic copy or certified copy of the notice, from the county superintendent, stating that the person has passed the physical examination prescribed by the Board of Governors."

The foregoing language verifies that many of the current regulations identified by Claimant existed in 1969 regulations.

In September 1971, the Board of Governors filed additional regulations that addressed degrees and certificates. (Attachment 3.) It is clear that the 1971 regulations are forerunners to current regulations. For example, former section 51622 (definitions) is current section 55801 and former section 51623 (Associate in arts degree) led to current section 55806.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that a number of the provisions predated January 1, 1975, making them ineligible for reimbursement.

Condition 3. California Code of Regulations, title 5, section 51006 (Open Courses)
Claimant alleges that section 51006 was added in 1983 and amended in 1994.

Claimant alleges that section 51006 incorporates the requirements of other sections, including sections 58102, 58104, and 58106 that require that classes be described in catalogs and/or class schedules.

Education Code section 5754 (added by Stats 1965, ch. 842) provided in part: "No class for adults shall be maintained by any district: . . . (2 if such classes are not open to the general public. . . ." (Emphasis added.) This requirement for open courses was replaced by section 84500.1 (added by Stats. 1978, ch. 909) that required in pertinent part that "[n]o community college shall report for attendance or average daily attendance to the board of governors for apportionment any classes: . . . if such classes are not located in facilities clearly identified in such a manner, and established by procedures, to insure that attendance in such classes is open to the general public. . . ." (Emphasis added.) Section 84500.1 was in effect until January 1, 1991. Accordingly, the open course requirement has been in effect in statute or regulation since 1965.

In August 1969, the Board of Governors filed a number of regulations, including section 51003. (See Attachment 1.) Subsection 51003(c) provided that courses that counted towards the associate degree, that were part of an occupational course of study beyond high school, or that were approved for transfer must be described in the college catalog or supplement thereto.

In July 1971, the Board of Governors adopted a number of regulations concerning standards of scholarship. (See Attachment 2.) Section 51102 required districts to describe all of their courses in college publications. Publication of courses in the public catalogs, that was required by both the 1969 and 1971 regulations, is a core element of open courses that presently resides in sections 58100 and 58102. The existence of these 1969 and 1971 regulations that required publication of course information verify the open nature of courses prior to January 1, 1975.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that open course and publication requirements predated January 1, 1975, making them ineligible for reimbursement.

Condition 4. California Code of Regulations, title 5, section 51008 (Comprehensive Plans).
Claimant asserts that section 51008 was added in 1983 and amended in 1994. The section requires districts to adopt academic master plans and master plans for facilities.

The requirement for district academic master plans and facilities master plans preexisted January 1, 1975, and continued without lapse such that reimbursement should be denied. The requirement originally appeared in the Education Code and was later transferred to title 5 pursuant to the requirement that the Board of Governors establish minimum conditions for the receipt of state aid. Our limited resources prevent a thorough review or tracing of all the provisions, but we offer the following:

Section 200.6 was added to the Education Code by stats. 1969 and was replaced by section 199 (added to the Education Code by stats. 1970). Section 199 provided:

> "The board of governors shall review and approve academic master plans and

master plans for facilities for each community college district. Such plans shall be submitted to the board of governors by the local governing board of each community college district. Master plans for facilities submitted pursuant to Chapter 19 (commencing with Section 20050) of Division 14 shall satisfy the requirements of this section in relation to master plans for facilities. Each district shall annually submit changes in its approved academic master plan for approval by the board of governors." (Emphasis added.)

Section 1010.3 was added to the Education Code through stats. 1969, c. 1026; it was renumbered to section 25427 and amended by stats. 1970, c. 870 until it was renumbered to section 72231.5 by stats. 1976, c. 1010. In 1970, section 25427 provided:

"The district governing board shall:
(a) Establish policies for, and approve, current and long-range educational plans and programs and promote orderly growth and development of the community colleges within the district.
(b) Establish policies for, and approve, academic master plans and long-range master plans for facilities. The district governing board shall submit such master plans to the board of governors for review and approval." (Emphasis added.)

The foregoing confirmed the obligation of districts to establish academic and facility master plans well in advance of January 1, 1975.

The Board of Governors also adopted regulations concerning educational master plans well before January 1, 1975. (See Attachment 4.) Sections 55400 through 55405 required districts to "establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole." (Cal. Code Regs., tit. 4, § 55401.) These sections have remained in effect, with some intervening amendments, to the present.

Any Claim under this section must be rejected for the general reasons discussed above and because the requirement for academic master plans and for master plans for facilities predated January 1, 1975, making them ineligible for reimbursement.

Condition 5. California Code of Regulations, title 5, section 51010 (Equal Employment Opportunity).
Claimant asserts that section 51010, regulations that are incorporated by reference under section 51010, and Education Code sections 87100 et seq. require Claimant to provide equal employment opportunity.

Claimant is subject to a number of federal constitutional and statutory requirements that are designed to ensure equal employment opportunity. These include the federal Equal Protection Clause of the Fourteenth Amendment, Title VII, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. These federal laws prohibit discrimination and apply to Claimant because of Claimant's status as a public entity or as an employer, or Claimant's receipt of federal funds. We have determined that Claimant receives federal Vocational and Applied Technology Education Act (VATEA) funding, and it may receive other federal financial support. (Claimant's tentative VATEA allocation for the 2003-04 fiscal year alone is $687,436.00)

Accordingly, Claimant is subject to any obligations that attach to the receipt of such federal funding. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

Equal Protection Clause. The federal Equal Protection Clause is a general constitutional guarantee that requires to Claimant afford equal treatment to all employees. Discrimination on the basis of race, ethnicity, and national origin is particularly suspect, but other bases for discriminatory treatment, such as gender, may also be challenged as a federal constitutional violation.

Title VII. Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex, or national origin. Title VII applies to Claimant in its role as an employer. Title VII is implemented by regulations adopted by the federal Equal Employment Opportunity Commission ("EEOC"). The regulations that appear at 29 C.F.R. 1607 et seq., include a number of obligations to ensure against unlawful discrimination, and the regulations invoked in this Claim frequently reflect the federal provisions.

Americans with Disabilities Act and Section 504 of the Rehabilitation Act. These federal laws require Claimant to ensure that persons with disabilities are not subjected to unlawful discrimination in their employment.

To the extent that the foregoing or other federal laws require activities to ensure equal employment opportunity without discrimination, Government Code section 17556(c) precludes the finding of a reimbursable mandate.

Claimant is also subject to a number of general laws that do not depend on Claimant's status as a local governmental body.

Government Code section 12940. Section 12940 is part of the California Fair Employment and Housing Act ("FEHA"), and it covers virtually all California employers with 15 or more employees. Accordingly, section 12940 applies to Claimant independent of its status as a local government agency.

Section 12940 requires the Claimant to ensure a workplace free of discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. Section 12950 requires Claimant to maintain an employment environment free of sexual harassment.

The FEHA is enforced by the Fair Employment and Housing Commission which has adopted a number of regulations. The Commission has adopted the Uniform Guidelines for Selection Procedures that has been promulgated by the EEOC under Title VII. (See Cal. Code of Regs., tit.2, § 7287.4.) Even if Claimant were not directly subject to Title VII and EEOC regulations, it is subject to the Commission's regulations, and those regulations incorporate the EEOC regulations. As a result, to the extent that the challenged regulations reflect general law requirements that apply to Claimant as a California employer, they cannot be the basis for reimbursement. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

Claimant raises issues under Education Code section 87100, et seq. Section 87102 provides that the activities described in the article are conditions to receipt of funds that are provided by the

Employment Opportunity Fund that is described in section 87107. Therefore, Claimant is not entitled to reimbursement for the activities described in section 87100 et seq. for two reasons.

First, Claimant is not required to seek funding from the Employment Opportunity Fund. If Claimant seeks such funding, it voluntarily assumes the obligations that attach to such funding. Pursuant to *Kern High School*, noted above, such voluntary actions are not reimbursable.

Second, the Employment Opportunity Fund is available for the payment of any documented costs, and reimbursement under this process would be double recovery.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that federal law or general California law may require the challenged actions, and because Claimant has chosen to proceed under Education Code provisions that carry their own funding.

Condition 6. California Code of Regulations, title 5, section 51012 (Student Fees).
Claimant alleges that this regulation requires it to establish and implement policies and procedures to ensure that student fees comply with the law.

The obligation contained in title 5, section 51012 existed prior to January 1, 1975, and has continued to apply to Claimant without lapse to the present. Education Code section 1010.10 was added to the Education Code by stats. 1969, c. 1026. It was renumbered to section 72289 by stats 1976, c. 1010. Both sections provided:

> "The district governing board may establish such student fees as it is authorized to establish by law."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that the obligation predated January 1, 1975.

Condition 7. California Code of Regulations, title 5, section 51014 (Approval of New Colleges & Educational Centers)
Claimant asserts that section 51014 was added in 1983 and amended in 1994, and that it requires districts that are planning new colleges or educational centers to obtain the approval of the Board of Governors prior to the commencement of classes.

Claimant does not allege that it has ever been affected by section 51014. Nothing in the Claim suggests that Claimant has ever sought the Board's approval under section 51014 for a new college or a new educational center, and Claimant alleges no costs arising from complying with section 51014.

Any Claim under this section must be rejected for the general reasons discussed above and because this is a special provision that mandates actions only under special and limited conditions. Claimant does not allege that it ever took those actions. For these reasons, any Claim under this section should be rejected.

Condition 8. California Code of Regulations, title 5, section 51016 (Accreditation)
Claimant asserts that section 51016 was added in 1983 and that the section requires it to establish and implement policies and procedures to ensure compliance with the accreditation standards of

the Accrediting Commission for Community and Junior Colleges ("AACJAC") and to pay the costs of the accreditation process. Claimant alleges that prior to the addition of section 51016, colleges were not specifically required to comply with AACJAC standards and that they were permitted, but not required to pay the costs of the accreditation process.

The expectation that colleges would be accredited predated January 1, 1975. Through stats. of 1967, c. 1562 (amended by stats. 1970, c. 102 and stats. 1974, c. 989), Education Code section 25522 specifically authorized the costs of accreditation of the colleges within a district by "the regional accrediting association serving California." Section 25522 was renumbered to section 78050 by stats. 1976, c. 1010.

Claimant may be correct that no specific statute or regulation required it to pay the costs of accreditation. Our resources do not permit a thorough review of this issue. However, since before January 1, 1975, Claimant was expected to be accredited, and it could not be accredited unless it paid the costs of accreditation.

Accreditation is a condition of eligibility for participation in certain federal programs, including federal funding for higher education resources and student assistance. (See, e.g., 20 U.S.C. § 1058.) To the extent that Claimant chooses to participate in federal programs, it also chooses to participate in the accreditation process. Given Claimant's choice, it cannot claim reimbursement for the costs associated with that choice.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that federal law may require accreditation, because Claimant has chosen to secure federal funding that requires accreditation, and because the expectation of accredited status predated January 1, 1975.

Condition 9. California Code of Regulations, title 5, section 51018. (Counseling)
Claimant asserts that this section requires districts to adopt regulations and procedures regarding counseling programs, to provide the programs to students, and to publicize the counseling programs. Claimant alleges that section 51018 was added in 1983 and amended in 1994.

The obligation for Claimant to have a counseling program preceded January 1, 1975. In August, 1969, the Board of Governors filed regulations with the Secretary of State that included section 51002 as a minimum standard entitling districts to receive state aid. (See Attachment 1.) Section 51001(h) provided as follows:

> Counseling Services. The community college shall have an adequate counseling staff, both in training and experience, and shall have established procedures, to provide, and shall provide, the following counseling services:
> (1) Assisting each student in the college
> (A) To determine his educational goal,
> (B) To make a self-appraisal toward progress toward his goals.
> (2) Providing each first-time freshman described in (A) or (B) below who is enrolled in more than six units special individual or group counseling and guidance, arranging a study load suitable to his needs, and keeping an appropriate record of the student.
>
> (A) He is a high school graduate, his scores on a qualifying test or tests

were below an acceptable minimum for the college of attendance, and his grade point average in the last three years in high school was less than 2.0 (grade C on a five point scale with zero for an F grade), excluding only physical education and military science; or

(B) He is not a high school graduate, and his scores on a qualifying test or tests were below an acceptable minimum for the college of attendance and his grade point average in the years of high school attendance was less than 2.0 (grade C on a five point scale with zero for an F grade), excluding only physical education and military science.

(3) Providing to each student who is on probation individual counseling and guidance service, including regulation of his program according to aptitude and his achievements."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that counseling services were required prior to January 1, 1975.

Condition 10. California Code of Regulations, title 5, section 51020 (Objectives).
Claimant asserts that this section was added in 1983 and amended in 1991, and that it requires Claimant to adopt objectives for its instructional programs and other district functions.

This regulation was first adopted in 1969 as section 51002(a). (See Attachment 1.) Its provisions have remained the same to the present. It provided:

"51002(a) Objectives. The community college shall have stated objectives of its instructional program and the functions which it undertakes to perform."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that objectives were required prior to January 1, 1975.

Condition 11. California Code of Regulations, title 5, section 51021. (Curriculum).
Claimant alleges that this section was added in 1983 and amended in 1994. Claimant alleges that it requires each community college to establish educational programs and courses that will further the objectives and functions of the college and that all courses must be approved by the State Chancellor.

As noted under Condition 4, above, section 1010.3 was added to the Education Code through stats. 1969, c. 1026; it was renumbered to section 25427 and amended by stats. 1970, c. 870 until it was renumbered to section 72231.5 by stats. 1976, c. 1010. Section 25427 required district governing boards to establish policies for and approve, current and long-range educational plans and programs. It can fairly be assumed that such long-range education plans and programs addressed curriculum.

Education Code section 200.9 was added by stats. 1969, c. 1026 and amended by stats. 1970, c. 102. It provided:

"The board of governors shall establish criteria and standards for graded and nongraded classes in community colleges."

Additionally, the curriculum regulation was first adopted in 1969 as section 51002(b) which essentially tracked the language of current section 51021, as follows:

> "51002(b) Curriculum. The community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. Such courses shall be submitted to the Chancellor of the California Community Colleges for prior approval on forms provided by the Chancellor. The Chancellor shall report to the Board of Governors at a fall and a spring meeting the actions which he has taken in approving the courses."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that the curriculum requirement predated January 1, 1975.

Condition 12. California Code of Regulations, title 5, section 51022 (a) (Instructional Programs).
Claimant asserts that section 50122(a) mandates certain responsibilities regarding instructional programs, including vocational or occupational training program review.

Section 51022(a) provides that districts must develop and file with the Chancellor policies for the establishment, modification, and discontinuance of courses or programs.

Districts have long been required to develop and submit to the state their academic master plans which must, of necessity, address instructional programs. (See Ed. Code, § 199, added by stats. 1970, c. 870, and section 1010.3, added by stats. 1969, c. 1026 (renumbered to 25427 by stats. 1970, c. 870) that required district governing boards to "establish policies for, and approve, current and long-range educational plans and programs" and to "establish policies for, and approve, academic master plans. . ." District governing boards have also been required to "establish policies for, and approve, the total educational program of the community college or colleges in the district. . . . approve all classes for adults and shall submit such classes as are eligible for state apportionments to the board of governors for approval." (See Ed. Code, § 1010.4, added by stats. 1969, c. 1026, amended by stats. 1970, c. 102, stats. 1970, c. 870.)

The very reason for Claimant to exist is to offer educational programs and services. The public community colleges were established to "offer instruction through but not beyond the 14th grade level." Their programs could include, but were not limited to "(1) standard collegiate courses for transfer to higher institutions; (b) vocational and technical fields leading to employment; and (3) general or liberal arts courses." (Ed. Code, § 22651, added by stats. 1960, 1st Ex. Sess, c. 49.)

Section 22651 was amended, and ultimately renumbered to section 66701 by stats. 1976, c. 1010. In light of the basic mission of community colleges, the required education master plans, and obligations to establish curriculum (as noted above regarding "Condition 11"), districts would necessarily have developed policies for the establishment, modification, and discontinuance of educational programs and courses apart from the regulation at issue here.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that numerous duties related to instructional

programs and courses existed prior to January 1, 1975.

Condition 13. California Code of Regulations, title 5, section 51022(b) (Course Articulation-Local)
Claimant asserts that section 51022(b) requires it to develop and implement policies and procedures for the articulation of its courses with proximate four-year colleges and high schools.

Through stats. 1969, c. 1026, Education Code section 200.13 was enacted to require the Board of Governors to "facilitate articulation with other segments of higher education and with secondary education." Section 200.13 was renumbered to section 71071 by stats. 1976, c. 1010. Therefore, the Board of Governors has been statutorily required to act in this specific area since before January 1, 1975. This regulation is a necessary part of carrying out this requirement.

Moreover, the community colleges have always been a part of the California public school system. (E.g., see former Ed. Code, § 22650, as amended by stats. 1970, c. 102: "The public community colleges are secondary schools and shall continue to be a part of the public school system of this state.") Being part of a system necessarily involves a level of articulation with other segments of the system.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that articulation with other segments was required prior to January 1, 1975.

Condition 14. California Code of Regulations, title 5, section 51023(a) (Academic Freedom).
Claimant asserts that this section was added in 1984 and amended in 1994, and that it requires districts to adopt and implement a policy statement on academic freedom.

Academic freedom includes the opportunity to express opinions. The requirements of the current regulations grew out of legislative direction to the Board of Governors to establish minimum procedures to insure faculty have the opportunity to express their opinions. Education Code section 200.22 was added by stats. 1969 and provided:

> "The board of governors shall establish minimum procedures to be used by district governing boards to insure to faculty and students the opportunity to express their opinions at the campus level and to insure that these opinions are given every reasonable consideration."

Through stats. 1969, c. 1026, Education Code section 1010.13 required community college districts to "establish procedures not inconsistent with those established by the board of governors to insure faculty and students the opportunity to express their opinions at the campus level." Section 1010.13 was renumbered to section 72292 by stats. 1976. Section 72292 was the original statutory underpinning for the language concerning academic freedom. Section 72292 existed as section 1010.13 well before January 1, 1975.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that the basis for the academic freedom language predated January 1, 1975.

Condition 15. California Code of Regulations, title 5, sections 51023, 51023.5, and 51023.7.

(Shared Governance: Faculty, Staff, Students)
Claimant references the regulations that require shared governance for faculty (§ 51023), staff (§ 51023.5), and students (§ 51023.7).

Faculty. The requirements of section 51023 and sections that are incorporated into section 51023 largely preceded January 1, 1975. The role of academic senates or faculty councils in academic and professional matters was established in 1969 (see Attachment 1) under section 51004 as follows:

> 51004. Academic Senates or Faculty Councils.
> (a) For the purposes of this section:
> (1) "Faculty" means those certificated persons who teach full time in a community college or other full-time certificated persons who do not perform any services for the college that require an administrative or supervisory credential.
> (2) "Academic senate" or "faculty council" means an organization formed in accordance with this section whose primary function is, as the representative of the faculty, to make recommendations to the administration and the governing board of a district with respect to academic and professional matters.
> (b) In order that the faculty may have a formal and effective procedure for participating in the formation of district policies on academic and professional matters described in (a)(2), the faculty first must decide by secret ballot to have an "academic senate" or "faculty council," in which case the governing board of each district shall establish such an "academic senate" or "faculty council" in each community college by authorizing the faculty to:
> (1) Fix, and amend, by vote of the faculty, the composition, structure, and procedures of the academic senate or faculty council.
> (2) Select, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.
> (c) After consultation with the administration, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.
> (d) Upon the request of the academic senate or faculty council and subject to Government Code Sections 54950 ff. (The Brown Act), when applicable, the governing board, or such board members or administrative officers as it may designate, shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board members or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.
> (e) The academic senates or faculty councils may assume such responsibilities and perform such functions as may be requested of it by the administration or board of trustees."

Students. Through stats. 1969, c. 1026, Education Code section 1010.13 required community

college districts to "establish procedures not inconsistent with those established by the board of governors to insure . . . students the opportunity to express their opinions at the campus level." Section 1010.13 was renumbered to section 72292 by stats. 1976.

Staff: The specific details of section 51023.5 appear to have developed recently. However, because they reflect minimum standards, and the Board of Governors has been required to establish minimum standards since before January 1, 1975, the Attorney General has determined that a reimbursable mandate has not been created.

Any Claim under this section must be rejected for the general reasons discussed above. For academic senates or faculty counsels under section 53023, the Commission will be able to confirm that responsibilities predated January 1, 1975. For students, the Commission will also be able to confirm that Claimant was required to provide students with the opportunity to express their opinions prior to January 1, 1975.

Condition 16. California Code of Regulations, title 5, section 51024 (Matriculation Services).
Claimant asserts that the Seymour-Campbell Matriculation Act of 1986 requires certain conduct. Claimant asserts that Education Code sections 78210-78218, and title 5, sections 51024 and 55500-55534 describe these requirements.

Matriculation obligations are directly tied to participation in matriculation funding. Education Code section 78218 verifies that the statutory obligations the regulations implement are only operative if funds are specifically appropriated for matriculation purposes. Moreover, Education Code section 78211.5(b) provides in part that

> "any college or district receiving funding under this article shall agree to carry out its provisions as specified, but shall be bound to that agreement only for the period during which funding is received pursuant to this article."

Accordingly, Claimant's acceptance of matriculation funding is the source of any obligations.

The choice to participate in the matriculation program carries certain obligations so long as the funding is provided. Because participation is discretionary as to districts, under *Kern High School, supra,* 30 Cal.4th 727, the requirements of the Education Code and title 5 sections related to matriculation carry no state mandates.

Districts that do apply for and accept matriculation funding are required to match each dollar of matriculation funding with three dollars of other district resources. (§ 55518.) Some of that matching money is likely other state funding dollars. Nothing in statute or regulation prohibits districts from spending matriculation funding or the matching money from other state resources to satisfy the requirements of section 55530; accordingly, the state should not have to pay again for actions Claimant may already pay for from state resources.

Any Claim under this section must be rejected for the general reasons discussed above, because participation is optional, and because funding for participation is already available.

Condition 17. California Code of Regulations, title 5, section 51025 (Full-time/Part-time Faculty).
Claimant asserts that this section creates mandated costs to reach a full-time/part-time faculty

ratio of 75%/25%. Claimant acknowledges that this provision was adopted in response to Education Code section 87482.6.

Education Code section 87482.6 was added by stats. 1988, c. 973. SEC 70(b)(2) provided that during phase II of the reforms described by AB 1725,

> "the new educational environment created under Phase I, including such reforms as innovative training programs, evaluation procedures, and minimum qualifications, may be utilized to the fullest extent in hiring new full-time faculty. The Legislature finds that this latter step is a major component of successful reform and the eventual attainment of the highest possible quality in the educational programs of the California Community Colleges. It is the intent of the Legislature that moneys appropriated during Phase II fully fund any state-mandate created pursuant to this section."

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review and because funding has been provided.

Amounts were added to the base of community college districts as Program Improvement monies after the 1989-90 fiscal year.

Condition 18. California Code of Regulations, title 5, section 51026 (Student Equity). Claimant asserts that this section requires it to develop policies and procedures for student equity. Although student equity is approached by reference to section 51026, Claimant also identifies a number of state statutory provisions that prohibit discrimination and harassment against students on a variety of bases. For example, Claimant notes that Education Code section 72011 requires it to provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex.

California nondiscrimination laws concerning students frequently reflect the requirements of federal constitutional and statutory requirements, including the federal Equal Protection Clause of the Fourteenth Amendment, Title VI, Title IX, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. These provisions generally prohibit discrimination and harassment by districts as a matter of constitutional principle or as a condition that attaches to the acceptance of federal funds. As noted above, we have determined that Claimant receives federal Vocational and Applied Technology Education Act funding, and it may receive other federal financial support. Accordingly, Claimant is subject to any obligations that attach to the receipt of such federal funding. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

Equal Protection Clause. The federal Equal Protection Clause is a general constitutional guarantee that requires Claimant to treat students equally. Discrimination on the basis of race, ethnicity, and national origin is particularly suspect, but other bases for discriminatory treatment, such as gender, may also be challenged as a federal constitutional violation.

Title VI. Title VI protects students from discrimination under programs that receive federal funding. It provides that "[n]o person . . . shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or subjected to discrimination under

any program or activity receiving Federal financial assistance." (42 U.S.C. § 2000d.) Title VI guarantees equity and nondiscrimination in admissions, services, programs and activities.

It is likely that Claimant receives federal funds and is therefore federally mandated to provide student equity and to prohibit discrimination based on race, color or national origin.

Title IX. Title IX of the Education Amendments of 1972 "is designed to eliminate . . . discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. . . ." (34 CFR § 106.1.) Claimant is therefore subject to the requirements of Title IX and its implementing regulations if Claimant accepts federal education financial assistance. The implementing regulations appear at title 34, Code of Federal Regulations, part 106, sections 106.1 through 106.71. The Office for Civil Rights ("OCR") within the U.S. Department of Education enforces Title IX and the implementing regulations.

Title IX requires community college districts that receive federal financial assistance to adopt and to publish policies prohibiting sex discrimination. Districts must also "adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part." (34 C.F.R. §§ 106.8(b), 106.9.)

Sexual harassment is a form of sex discrimination that is prohibited by Title IX. In January 2001, the OCR published its Title IX "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." As interpreted by the OCR, if a district's required sex discrimination policy does not specifically address sexual harassment, its policy and procedures will not be considered effective. (*Id.*, pp. 19-20.) The failure to have a policy and procedure prohibiting sex discrimination, including sexual harassment, violates the Title IX regulations even if no discrimination or harassment occurs. (*Id.*, p. 19.)

The sexual harassment policy and procedures must be distributed.

> "Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination." (*Id.*, at p. 14.)

OCR examines certain elements in determining whether a district's grievance procedures are prompt and equitable. One element is that students and employees are notified of the procedure, "including where complaints may be filed." (*Id.*, at p. 20.) The OCR notes that schools may ensure notice to students of their rights under Title IX by having copies of the procedures "available at various locations throughout the school or campus" and by "including a summary of the procedures in major publications issued by the school." (*Id.*, at p. 20.)

Based on the foregoing, by accepting federal financial assistance, community college districts obligate themselves to develop and disseminate sexual harassment policies, notify students and employees of the district as to how to file charges, and disseminate information concerning the prohibition to sexual harassment in major district publications.

Americans with Disabilities Act (ADA). The ADA applies to all public (and private) postsecondary educational institutions, and it generally prohibits discrimination against students with disabilities.

Section 504 of the Rehabilitation Act (Section 504). Section 504 applies to those postsecondary educational institutions that receive or benefit from federal financial assistance. Section 504 generally prohibits discrimination against students with disabilities.

Age Discrimination Act of 1975. Public (and private) institutions that receive federal funds must comply with the Age Discrimination Act (42 U.S.C. § 6101 et seq.) that prohibits unreasonable discrimination on the basis of age in programs or activities that receive federal funds. To the extent that Claimant receives federal funds, student equity or nondiscrimination on the basis of age is not a reimbursable state mandate.

There is a second basis for rejecting a Claim based on equity and nondiscrimination requirements. If Claimant is already required by general law to ensure student equity and nondiscrimination, the statutes and regulations cited by Claimant that require nondiscrimination on the same bases do not create reimbursable mandates. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

Civil Code, section 51 (Unruh Act). The Unruh Act prohibits discrimination in business establishments. Public school districts have been found to be business establishments subject to the Unruh Act. For example, the Act ensures student freedom from racial harassment and from sex discrimination in the California public school districts. (*Davison ex rel. Sims v. Santa Barbara High School Dist.*, C.D. Cal.1998, 48 F. Supp.2d 1225; *Nicole M. By and Through Jacqueline M. v. Martinez Unified School Dist.*, N.D.Cal.1997, 964 F. Supp. 1369.)

The Unruh Act has general application to all California businesses and does not impose unique requirements on local government agencies such as community college districts. Accordingly, the requirements to ensure student equity and an educational environment free of discrimination on the basis of sex, race, color, religion, ancestry, national origin, disability, or medical condition already exist apart from the Education Code provisions or title 5 regulations noted by Claimant. Because the Claimant is already required by general law to do these things, these actions cannot be the basis of a claim for reimbursement. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review, because mandates may replicate existing federal requirements, and because general law imposes some of the same requirements.

Condition 19. California Code of Regulations, title 5, section 51027 (Transfer Centers)
Claimant asserts that section 51027 requires each community college district to recognize transfer as one of its primary missions and to develop and adopt a transfer center plan.

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review.

Condition 20. California Code of Regulations, title 5, sections 51100 and 51102 (Compliance Enforcement)

Claimant asserts that sections 51100 and 51102 were added in 1983 and amended in 1984.

Claimant asserts that section 51100 requires the State Chancellor to review each college to determine whether it has met the minimum conditions established by title 5, sections 51000-51027. Section 51102 requires the State Chancellor to notify districts of areas of noncompliance to which districts must respond.

As noted at the beginning of this review, since at least the mid-1960's the Board of Governors has been required to adopt minimum standards entitling districts to receive state aid for support of community colleges. Education Code section 1010.2 was added by stats. 1969, c. 1026 that required Claimant to "establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district. . . ." This section was renumbered to section 72282 through stats. 1976, c. 1010. Accordingly, Claimant has been required to comply with state requirements since well before January 1, 1975. Implicit in the requirement to comply with state requirements is the obligation to demonstrate compliance and to take necessary actions to come into compliance where noncompliance is found.

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review and because the obligation to comply with the rules and regulations of the state Board of Governors predated January 1, 1975, and is therefore not reimbursable under this process.

We hope the foregoing information is useful to you.

Sincerely,

Frederick E. Harris

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning

400 (REV. 5-64)

PAGE SHEET

FO. FILING ADMINISTRATIVE REGULATIONS WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

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AUG 26 1969

Office of Administrative Procedure

ENDORSED

APPROVED FOR FILING

(GOV. CODE 11380.1)

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Office of Administrative Procedure

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Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

Board of Governors of the California

(Agency) Community Colleges

Date of adoption, amendment, or repeal:

August 21, 1969

By: Glenn W. Dumke

Glenn W. Dumke

Chancellor

(Title)

ENDORSED

FILED

In the office of the Secretary of State of the State of California

AUG 26 1969

At 3:45 o'clock P.M.

FRANK M. JORDAN, Secretary of State

By H. P. SULLIVAN

Assistant Secretary of State

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RESOLUTION

A resolution by the Board of Governors of the California Community Colleges to add Subchapter 1 (commencing with Section 51000), Subchapter 2 (commencing with Section 52000), Subchapter 4 (commencing with Section 53000), Subchapter 4.1 (commencing with Section 53500), Subchapter 4.5 (commencing with Section 53700), Subchapter 5 (commencing with Section 54000), and Subchapter 5.5 (commencing with Section 55000) to Chapter 6 of Title 5 of the California Administrative Code, relating to Community Colleges.

Be it resolved by the Board of Governors of the California Community Colleges, acting under the authority of Education Code Sections 193, 197, 8352, and 8353 and pursuant to the Administrative Procedure Act, that:

Section 1. Subchapter 1 is added to Chapter 6 of Title 5 to read:

Subchapter 1. GENERAL PROVISIONS

Article 5. Community College Standards

51000. State Aid. The provisions of this article, except Sections 51003 and 51004, are adopted under the authority of Education Code Section 25510, and comprise the rules and regulations affirming and fixing the minimum standards entitling districts to receive state aid for the support of community colleges.

51001. Basis of Courses Offered. (a) The governing board may by regulation offer courses in either or both of the following categories, and shall specify in its catalog the category or categories in which the course falls: (In the absence of such regulation a course will be presumed to be offered on a letter-grade basis.)

(1) Courses wherein all students are evaluated on a "credit-no credit" basis.

(2) Courses wherein each student may elect on registration, or within a reasonable time thereafter, whether the basis of his evaluation is to be a "credit-no credit" or a letter grade.

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(b) All units earned on a "credit-no credit" basis in California institutions of higher education or equivalent out-of-state institutions shall be counted in satisfaction of community college curriculum requirements, but such courses shall be disregarded in determining a student's grade point average for all purposes for which a grade point average is required.

(c) The governing board may authorize a student who has received credit for a course taken on a "credit-no credit" basis within the district to convert this grade to a letter grade by taking an appropriate examination.

51002. Requirements. The governing board of each district maintaining one or more community colleges shall, as to each community college, comply with the following requirements:

(a) Objectives. The community college shall have stated objectives of its instructional program and the functions which it undertakes to perform.

(b) Curriculum. The community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. Such courses shall be submitted to the Chancellor of the California Community Colleges for prior approval on forms provided by the Chancellor. The Chancellor shall report to the Board of Governors at a fall and a spring meeting the actions which he has taken in approving the courses.

(c) Faculty Personnel. The community college must have an adequate teaching staff of scholarship, experience, and teaching ability for each major field of the curriculum.

(d) Conditions of Instruction. The community college must have a sufficient number of faculty members to enable students to receive individual guidance and assistance in learning and to permit the continued professional growth of the faculty members.

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(e) Standards of Scholarship. The governing board of the community college shall have adopted regulations consistent with this section and Section 51005, establishing standards of scholarship for the continuance of students in the community college and for graduation. The governing board shall have adopted rules setting forth the circumstances that shall warrant exceptions to the dismissal requirements herein set forth and shall file a copy of such rules with the Board of Governors. The regulations shall provide, among other things, that appropriate records shall be kept of every instance in which a student is so excepted. The standards shall be published in the college catalog under appropriate headings.

(1) Minimum standards shall require that a student be placed on probation and immediately notified that his performance is deficient or he shall be dismissed, in accordance with the requirements shown in the following table.

Grades Received	Grade Status Requiring Probation	Grade Status Requiring Dismissal
All of his grades are "credit-no credit" grades	"No-credit" grades in at least 1/2 but not 3/4 of units herein designated for a student in his status	"No-credit" grade in 3/4 or more of all units attempted in each of 3 consecutive semesters (5 consecutive quarters)
All of his grades are grade points are calculated as follows: A-4 grade points B-3 grade points C-2 grade points D-1 grade point F- no grade points	Grade point average for units herein designated for a student in his status is less than 2.0 but not less than 1.75	Grade point average of all units attempted in each of 3 consecutive semesters (5 consecutive quarters) is less than 1.75
Some of his grades are letter grades and some "credit-no credit" grades	Grade status in all units in each category falls in the applicable foregoing description	Grade status in all units so attempted in each category falls in the applicable foregoing description

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STUDENT STATUS	UNITS DESIGNATED
He is transferring to the community college	All units previously attempted in any college or university and in grades 13 and 14 of a community college
He is a full-time student	Units attempted in grades 13 or 14 during the semester or quarter immediately preceding
He is a part-time student and has attempted in any college or university, or grades 13 or 14 of a community college a total of 12 semester units (or the equivalent of quarter units)	All units so attempted

(2) Minimum standards shall require that a student who has been dismissed shall not be reinstated until one semester (or if the college is on the quarter system, two quarters) has elapsed after the dismissal, unless the student comes wihin an exception set forth in rules adopted by the governing board.

(f) Library. The community college shall have adequate working collections of books for each major field of the curriculum and to which new accessions must be made in accordance with student enrollments.

(g) Laboratories, Shops, and Facilities. The community college shall have adequate equipment, materials, and furnishing for courses offered in agriculture, business and commercial education, fine arts, home economics, industrial and technical training, music, natural and physical sciences, and physical and health education.

(h) Counseling Services. The community college shall have an adequate counseling staff, both in training and experience, and shall have established procedures, to provide, and shall provide, the following counseling services:

(1) Assisting each student in the college

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(A) To determine his educational goal.

(B) To make a self-appraisal toward progress toward his goals.

(2) Providing each first-time freshman described in (A) or (B) below who is enrolled in more than six units special individual or group counseling and guidance, arranging a study load suitable to his needs, and keeping an appropriate record of the student.

(A) He is a high school graduate, his scores on a qualifying test or tests were below an acceptable minimum for the college of attendance, and his grade point average in the last three years in high school was less than 2.0 (grade C on a five point scale with zero for an F grade), excluding only physical education and military science; or

(B) He is not a high school graduate, and his scores on a qualifying test or tests were below an acceptable minimum for the college of attendance and his grade point average in the years of high school attendance was less than 2.0 (grade C on a five point scale with zero for an F grade), excluding only physical education and military science.

(3) Providing to each student who is on probation individual counseling and guidance service, including regulation of his program according to aptitude and his achievements.

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51003. Criteria and Standards for Graded Community College Courses in Grades 13 and 14. (a) Definition. For the purposes of this subsection, a course of study is defined as an organized sequence of courses of a college within a given subject area.

(b) Criteria. A graded course (class) in grade 13 or grade 14 shall possess one or more of the following characteristics:

(1) The course provides credit toward an associate degree; is normally considered of collegiate level; and is approved by the Board of Governors as a component of, a prerequisite to, or eligible as a required or elective course within, a course of study which leads toward an associate degree.

(2) The course is approved by the Board of Governors and is part of an occupational course of study of beyond high school level within the scope of the term "vocational and technical fields leading to employment" as the term is used in Education Code Section 22651 which leads toward an associate degree, an occupational certificate, or both.

(3) The course is approved by the Board of Governors and is recognized upon transfer by the University of California, a California state college, or an accredited independent college or university in California, as a part of:

(A) The required preparation toward a major;

(B) The general, or general education, requirement; or

(C) The permissible or recommended elective credits.

(c) Standards. Any course meeting one or more of the above criteria shall meet all of the following standards:

(1) It is a course, approved by the Board of Governors the content of which is organized to meet the requirements for the associate degree as specified in Section 51005 or the requirements for an occupational certificate and is a part of a course of study not exceeding 70 units in length.

(2) It must be offered as described in the college catalog or a supplement thereto which provides an appropriate title, number, and accurate description of course content. A course outline is available at the college.

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Course requirements and credit awarded are consistent with Education Code Section 22651.

(3) It is a course in which are enrolled only those students who have met the prerequisites for the course.

(4) It is subject to the published standards of matriculation, attendance and achievement of the college, and the enrollees are awarded marks or grades on the basis of methods of evaluation set forth by the college and are subject to the standards of retention set forth in Section 51002 or to such additional standards as may be established by the governing board of the district.

(5) It is a course in which enrollment shall not be repeated except in unusual circumstances and with the prior written permission from the district superintendent or his authorized representative or representatives.

51004. Academic Senates or Faculty Councils. (a) For the purposes of this section:

(1) "Faculty" means those certificated persons who teach full time in a community college or other full-time certificated persons who do not perform any services for the college that require an administrative or supervisory credential.

(2) "Academic senate" or "faculty council" means an organization formed in accordance with this section whose primary function is, as the representative of the faculty, to make recommendations to the administration and the governing board of a district with respect to academic and professional matters.

(b) In order that the faculty may have a formal and effective procedure for participating in the formation of district policies on academic and

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professional matters described in (a)(2), the faculty first must decide by secret ballot to have an "academic senate" or "faculty council," in which case the governing board of each district shall establish such an "academic senate" or "faculty council" in each community college by authorizing the faculty to:

(1) Fix, and amend, by vote of the faculty, the composition, structure, and procedures of the academic senate or faculty council.

(2) Select, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.

(c) After consultation with the administration, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.

(d) Upon the request of the academic senate or faculty council and subject to Government Code Sections 54950 ff. (The Brown Act), when applicable, the governing board, or such board members or administrative officers as it may designate, shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board members or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.

(e) The academic senates or faculty councils may assume such responsibilities and perform such functions as may be requested of it by the administration or board of trustees.

51005. Requirements for Degrees and Certificates. (a) The governing board of a district maintaining a community college shall confer the degree of

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associate in arts upon the satisfactory completion in grades 13 and 14 of from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes the requirements listed in (1) through (5), provided that 12 of the required credit hours were secured in residence at that community college. (The governing board may make exceptions to the residence requirement in any instance in which the governing board determines that an injustice or hardship would otherwise be placed upon an individual student.) "Satisfactory completion" means either credit earned on a "credit-no credit" basis or a grade point average of 2.0 (grade C on a five point scale with zero for an F grade) or better in 13th and 14th year graded courses in the curriculum upon which the degree is based.

(1) A major consisting of at least 20 semester hours in a specified field of study;

(2) Three semester hours in the Constitution of the United States, and in American history, including the study of American institutions and ideals, and of the principles of state and local government established under the Constitution of this State, and the satisfactory passing of an examination on said courses;

(3) Two semester hours of community and personal hygiene; except that a community college student, who is a minor whose parents or guardian state in writing that the course in community and personal hygiene is contrary to the religious beliefs of the student, or if the student is not a minor if he so states in writing, may be excused from such course and permitted to substitute a two-hour course in a field or fields specifically designated by the governing board of the district in lieu of the required two-hour course in community and personal hygiene.

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(4) Two semester hours in physical education earned at the rate of one-half credit per semester for a minimum of 120 minutes per week in directed physical education activities, except as a student may be exempted in accordance with Section 8162, Education Code; and

(5) Such requirements in oral and written English as the governing board of the school district may establish.

(b) The governing board of a district maintaining a community college may confer the degree of associate in science upon the satisfactory completion in grades 13 and 14 of a minimum of 60 semester hours of work which shall satisfy all the requirements for an associate in arts degree, and which work shall include a major of at least 20 semester hours in any of the following fields: engineering, physical and biological science, vocational-technical curriculums.

(c) The governing board of a district maintaining a community college shall award the appropriate diploma or degree whenever a student shall have completed all requirements of a full curriculum of the community college without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student who satisfactorily completes the requirements of any course of study in less than the prescribed time the full number of semester hours scheduled for such course.

(d) The governing board of a district maintaining a community college shall issue a certificate of achievement (as determined by the governing board and specified in the catalog) to any student who successfully completes any course of study or curriculum in length less than the full number of years and grades maintained by the community college.

(e) The governing board of a district maintaining a community college may grant credit (but it shall not count toward the 12 semester hours of

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prospective employing district. To qualify, the employee candidate:

(a) Shall furnish reasonable evidence, and be, of good character, and in addition to any other information the governing board shall require, shall answer the questions set forth under question 11 in the then current "Application For Credential Authorizing Public School Service in California" (Form 41-4) as provided by the Commission of Credentials.

(b) Shall execute the oath prescribed in Education Code Section 13121.

(c) Shall meet the citizenship requirements prescribed in Education Code Section 13123.

(d) Shall be free from any contagious and communicable disease or other disabling disease or defect unfitting the applicant to instruct or associate with minors.

(e) Shall submit personal identification cards to the governing board, upon the special form provided by the Department of Education, in the manner required of applicants for teaching credentials as prescribed by Section 52001 below.

(f) Shall not be disqualified to receive a teaching credential under the provisions of Education Code Sections 13129 and 13130.

52001. Processing of Fingerprint Cards. The governing board shall submit the personal identification fingerprint cards of candidates for teaching positions hereunder, in duplicate, to the Bureau of Criminal Identification and Investigation of the Department of Justice, Sacramento, California, with a request in writing that the Bureau render a report thereon for such governing board to the Credentials Office, Department of Education, Sacramento, California. At that time the governing board shall also notify the secretary of the Commission of Credentials for the State of California and the county superintendent of schools of the county in which the community college is

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located that such request has been made. The governing board shall not employ any person pursuant to Education Code Section 25423.5 unless and until the board has received a report from the Commission of Credentials in connection therewith. Any processing charges shall be borne by the submitting governing board.

52002. Cause for Dismissal. No person employed pursuant to Education Code Section 23423.5 and this article, who has engaged in any conduct which would constitute cause for denial of an application for teaching credential under Education Code Sections 13129 or 13130 or cause for dismissal under Education Code Section 13403 shall be retained in employment after discovery thereof by the employing governing board.

52003. Report of Persons Employed. Every governing board which employs noncredentialed persons pursuant to Education Code Section 25423.5 shall, promptly after the close of each school year, file a report with the Commission of Credentials listing the name of each person so employed during the preceding school year and certifying that in connection with each such employee all of the provisions of Education Code Section 25423.5 and this article have been complied with.

Sec. 3. Subchapter 4 is added to Chapter 6 of Title 5 to read:

Subchapter 4. BUSINESS SERVICES

Article 1. Community College Nonresident Fees

53000. Definitions. As used in Education Code Section 25505.8 and this article, each of the following terms has the meaning herein ascribed to it:

(a) Foreign Student. "Citizens of a foreign country," "residents of a foreign country," and "foreign students" mean persons who are both citizens and residents of a foreign country. For purposes of reporting to the Chancellor of the California Community Colleges, all the persons listed in the previous

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sentence shall be referred to as "foreign students."

(b) Military Personnel. "Military Personnel" means active members, in full-time service, of the United States Army, Navy, Marine Corps, Air Force, or Coast Guard. (This does not include members of the National Guard, Army National Guard of the United States, or the Air National Guard of the United States; members of the reserve; or civilian employees. It does not include members of the Coast and Geodetic Survey, Public Health Service, or other organizations when assigned to and serving with the armed services.)

(c) Dependents of Military Personnel. A dependent of military personnel is one of the following:

(1) The spouse of a person who is of the military personnel.

(2) A person who has not completed 75 semester units of college work and who receives more than half of his support from his parent who is of the military personnel.

53001. Determination of Residency. The form employed by the district for enrolling a student shall include, but not necessarily be limited to, questions specified by the Chancellor of the California Community Colleges to be used uniformly throughout the State for the purpose of ascertaining residence. The governing board shall establish procedures for reviewing such statements of residence.

53002. Forms and Reporting. Community colleges shall report the information required by Education Code Section 25505.8 in accordance with instructions on forms provided by the Chancellor of the California Community Colleges.

53003. Per-Unit Tuition Fee. The "per-unit tuition fee" established for nonresident students by the Board of Governors on or before January first of each year shall be applicable to the tuition charges for the succeeding

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fiscal year. Whenever a district maintains a summer session, the "per-unit tuition fee" shall be that established by the Board of Governors for the fiscal year in which the summer session ends.

For each semester, quarter, or summer session, the nonresident tuition fee for a student enrolled for less than 15 units of credit, or the equivalent is the "per-unit tuition fee" multiplied by the number of semester or quarter units of credit for which the student is enrolled. For each semester, quarter, or summer session, the nonresident tuition fee for a student enrolled for 15 or more semester or quarter units of credit is the "per-unit tuition fee" multiplied by 15.

Sec. 4. Subchapter 4.1 is added to Chapter 6 of Title 5 to read:

Subchapter 4.1 JUNIOR COLLEGE CONSTRUCTION ACT

Article 1. General Provisions

53500. General Provisions. For the purposes of administration of the Junior College Construction Act, the provisions of this subchapter apply.

53501. Definitions. (a) "Student contact hours" means the actual or estimated total number of programmed class periods per week for a student.

(b) "A small junior college district" means a district with less than a 1,000 average daily attendance of district resident students in regular day-graded junior college classes.

Article 2. Projecting District Enrollments

53502. Definitions. Terms employed in forms of the State Department of Finance and the State Department of Education used for the purpose of projection of enrollments have the meaning specified in the Handbook of Definitions issued by the Chancellor's Office of the California Community Colleges.

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53503. Projecting Day-Graded Enrollments. The projected growth in resident day-graded enrollment determined for each district by the State Department of Finance shall be developed by utilizing the procedure specified in the Handbook of Definitions mentioned in Section 53502. Exceptions to the procedure may be made by the State Department of Finance for newly formed junior college districts or for the other districts where unusual circumstances justify them, and each exception shall be noted and reported to the Chancellor's Office of the California Community Colleges.

Article 3. Determining Capacity of Existing Facilities and Planning Future Facilities

53504. Definitions. (a) "Temporary facility" means a building that will be demolished or replaced upon completion of the project for which an application has been submitted.

(b) "Rented or leased facility" means a facility for which rental or lease costs are paid and the use of which will be discontinued upon the completion of the project for which an application has been submitted.

(c) Types of rooms and their codes, standard abbreviations, and definitions are the same as those used in the Instructions for Forms P-1 and P-2 (California Public Higher Education Cost and Statistical Analysis), issued by the Coordinating Council for Higher Education.

(d) Standard classifications of subject matter and their codes, standard abbreviations, and definitions are the same as those used in the Standard Classification of Subject Fields and Services (California Public Higher Education Cost and Statistical Analysis), issued by the Coordinating Council for Higher Education.

(e) All other definitions contained in the publications described in (c) and (d) apply.

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(f) Definitions of capacity and utilization contained in the Handbook of Definitions mentioned in Section 53502 apply.

53505. Standards. The following computed capacity and utilization standards will, unless it is determined by the Chancellor's Office of the California Community Colleges in consultation with the Department of Finance that extraordinary conditions exist, apply:

(a) Classroom and seminar room use will be not less than 34 hours per 45 hour week. Small junior college districts as defined in Section 53501 (c) will apply a 27 hour per 45 hour week standard.

(b) Laboratory room use will be not less than 25 hours per 45 hour week. Small junior college districts as defined in Section 53501 (c) will apply a 20 hour per 45 hour week standard.

(c) Classroom and seminar room station occupancy will be not less than 66 percent of capacity.

(d) Laboratory room station occupancy will be not less than 85 percent of capacity.

(e) The computed space per station in both existing and future classroom, seminar room, and service areas will be 15 square feet per student station.

(f) In determining the capacity of existing facilities, the number of classrooms and seminar stations will be computed on the basis of (e). The number of laboratory stations will be determined by an actual count of stations.

(g) The formula for determining the assignable space for future classrooms and seminar-rooms per projected 100 weekly student contact hours is:

$$\frac{\text{Assignable square feet per station}}{\text{Room use standard} \times \text{station occupancy standard}} \times 100$$

(h) In determining the computed capacity of future laboratory and

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service area facilities, the following space allocations by standard classification of subject matter will be applied on a campuswide basis:

MAXIMUM LABORATORY SPACE STANDARDS FOR PLANNING
NEW LABORATORY AND SERVICE AREA FACILITIES,
CALIFORNIA COMMUNITY COLLEGES

Standard Classification Code	Subject Grouping	ASF/STN	ASF/100 WSCH
1200	Bio. Sciences	55	260
4100,4200,4500	Arts	65	305
4300,4400,4800,4900	Language and Literature	40	190
2400	Mathematics	30	140
2600	Physical Sciences	60	280
3000	Social Sciences	30	140
6100	Agriculture	150	705
6200	Business	30	140
6300	Education	--	--
6400	Home Economics	60	280
6500	Applied Graphic Arts	80	375
6600	Health Services	50	235
6700	Pub./Pers. Serv.	50	235
6801	Aero. Tech.	175	820
6802	Air Cond.	130	610
6803	Bldg. Trades	175	820
6804	Ceram. Tech.	40	190
6805	Chem. Tech.	70	330
6806	Culinary	-	--
6807	Draft Tech.	60	280
6808	Electrl. Tech.	70	330
6809	Electr. Mech.	100	470
6810	Electron. Tech.	60	280
6811	Engin. Gen.	90	425
6812	Engin. Tech.	70	330
6813	Ind. Mgt. Supv.	-	--
6814	Ind. Tech.	75	350
6815	Mechanical-Auto	200	940
6816	Metallurgical Tech.	65	305
6817	Metal Trades	130	610
6818	Textile Tech.	120	565
6819	Welding	90	425
6890	Other Trade Tech.	75	352

(i) All office space (academic offices, administrative and clerical offices, office service rooms, and conference rooms) will be computed at 140 assignable square feet for each full-time equivalent instructional staff member. Office space for small junior college districts as defined in Section 53501(c)

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will be computed at 160 assignable square feet for each full-time equivalent instructional staff member.

(j) All library space will be computed by assignable square feet for library functions as specified in this subsection. Square feet are "assignable" only if they are usable for the function described. Areas such as the main lobby (excluding card catalogue area), elevators, stairs, walled corridors, rest rooms, and areas accommodating building maintenance services are not deemed usable for any of the described functions.

(1) For housing the library collections--10 assignable square feet per volume.

(2) For reading stations--25 assignable square feet per station, the number of stations to be 15% to 20% of the number of students in full-time enrollment, depending upon the relative emphasis of the college in trade and technical instruction.

(3) For library service needs--a basic complement of 400 assignable square feet, plus 140 assignable square feet per full-time equivalent staff member.

(4) For audio-visual and programmed learning activities when housed in the library facility--additional areas sized for individual needs.

Sec. 5. Subchapter 4.5 is added to Chapter 6 of Title 5 to read:

Subchapter 4.5 JUNIOR COLLEGE CONSTRUCTION ACT OF 1967

Article 1. General Provisions

53700. General Provisions. For the purposes of administration of the Junior College Construction Act of 1967, the provisions of this subchapter apply.

53701. Definitions. (a) "Federal funds" means moneys provided by the federal government to the district operating a community college for the project or any part of the project, which are or will be available to the

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district under the following acts: Higher Education Facilities Act of 1963; Higher Education Act of 1965; National Defense Education Administration; Public Law 815; and the Vocational Education Act of 1963 (Public Law 88-210).

(b) "Assessed valuation of the district" means the total assessed valuation of all the property within the district, modified by the provisions of Education Code Section 17262 (Collier Factor).

53702. Applications. All applications and required data for assistance under the Junior College Construction Act of 1967 (Chapter 19 of Division 14 of the Education Code) shall be submitted on forms prescribed and furnished by the Chancellor of the California Community Colleges and shall be mailed to the Chancellor, California Community Colleges, 825 Fifteenth Street, Sacramento, California 95814.

Article 2. Project Proposals and Approvals

53703. Definitions. Terms employed in forms of the State Department of Finance and the Chancellor of the California Community Colleges used for the projection of enrollments have the meaning specified in the Handbook of Definitions issued by the Chancellor's Office of the California Community Colleges.

53704. Projecting Day-Graded Enrollments. The projected growth in resident day-graded enrollments determined for each district by the State Department of Finance shall be developed by utilizing the procedure specified in the Handbook of Definitions mentioned in Section 53703. Exceptions to the procedure may be made by the State Department of Finance for newly formed junior college districts or for other districts where unusual circumstances justify them, and each exception shall be noted and reported to the Chancellor of the California Community Colleges.

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Sec. 6. Subchapter 5 is added to Chapter 6 of Title 5 to read:

Subchapter 5. CURRICULUM AND INSTRUCTION

Article 1. Community College Program of Studies Conducted on a Quarter System

54000. Application of Article and Definitions. The provisions of this article apply to a district maintaining or proposing to maintain a community college that conducts its program of studies on a quarter system. The following definitions apply to, and shall be used as the accepted terminology with respect to, such a district:

(a) "Quarter" means a fourth of a school year that includes at least 10 weeks of instruction.

(b) An "academic quarter" is the period of instruction of not less than 10 weeks scheduled for any quarter. An academic quarter may begin on any day of the week.

(c) A "three-quarter academic year" means three consecutive quarters in a school year.

(d) "All-year-round operation" means four consecutive quarters in a school year.

(e) A "quarter credit hour" is the credit allowed for approximately three hours of recitation, study, or laboratory work per week for each week in an academic quarter. (An hour is from 50 to 60 minutes.) A "quarter unit of credit" means the same as a "quarter credit hour."

54001. Conversion Table. The following conversion table for computing semester credit hours and quarter credit hours applies to, and shall be used wherever necessary or appropriate in the total community college program, including but not being limited to computation of graduation requirements, grade points for the required standards of scholarship, nonresident student

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rogulations and fees, nondistrict student regulations, and the college calendar.

(a) Semester credit hours (or semester units of credit) are converted to quarter credit hours (or quarter units of credit) by multiplying the number of semester credit hours by one and one-half.

(b) Quarter credit hours are converted to semester credit hours by multiplying the number of quarter hours by two-thirds.

54002. A Program of Studies. The program of studies shall include courses and curriculums appropriate to, and adjusted as to content and planned presentation to, the quarter system established at the college, and for which proper conversion has been made in all appropriate areas as provided in Section 54001.

54003. Submission of Program of Studies. A district maintaining a community college, prior to converting from a two-semester academic year to a three-quarter academic year or to the all-year-around operation of a community college under the quarter system, shall submit to the Chancellor of the California Community Colleges a proposed program of studies. The Chancellor shall review the proposed program of studies and, if he determines that the conversion from a two-semester academic year to the quarter system has been properly accomplished, he shall approve the proposed program of studies. The proposed program of studies shall be presented to the Chancellor of the California Community Colleges in the form of the proposed or actual college catalog, bulletins, and other official college informational publications, unless the Chancellor shall authorize a district to submit the proposed program in some other form. After approval thereof by the Chancellor of the California Community Colleges the approved programs shall be in the form of the actual college catalog, bulletins and other such official publications.

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Article 2. Administration of Attendance for Community Colleges Operating on a Quarter System

54004. Days Maintained. (a) The regular day school of a junior college district operating on a quarter system shall be scheduled so that the number of days maintained in at least one combination of three quarters is at least 175 in compliance with Section 17551 of the Education Code. Not more than two days of registration for each quarter in such combination of quarters may be counted as days maintained to fulfill this requirement.

(b) A community college operating on a four quarter system shall maintain all quarters within a single fiscal year.

(c) A community college operating on a three quarter system shall maintain the three quarters and a summer session, if any, within the same fiscal year.

54005. Census Weeks for Attendance Purposes. (a) A census week for attendance purposes is the first week of five consecutive school days, excluding Saturdays, next succeeding the third week of each quarter.

54006. Computation of Average Daily Attendance. (a) The units of average daily attendance for each quarter is computed by dividing by 15 the sum of the whole and partial class hours recorded for the census week of regularly enrolled students in grades 13 and 14, exclusive of adults as defined by Education Code Section 5756, resident of the junior college district.

(b) The units of average daily attendance for a summer session are computed by dividing by 525 the whole and partial class hours recorded for the session of regularly enrolled students in grades 13 and 14, exclusive of adults as defined, resident of the junior college district.

54007. Attendance Reported for Apportionment Purposes for a Community College Operating on a Four Quarter System. (a) The units of average daily

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attendance to be reported on the first period report (J-20-P1) are the quotient computed by dividing the sum of the whole and partial class hours recorded for the first and second quarter by 30.

(b) The units of average daily attendance to be reported on the second period report (J-20-P2) are the quotient computed by dividing the whole and partial class hours recorded for the first, second, and third quarters by 45.

(c) The units of average daily attendance to be reported for the fiscal year (Annual Report J-20A) are the sum of the whole and partial class hours of the first, second, third, and fourth quarters divided by 45.

54008. Attendance Reported for Apportionment Purposes for a Community College Operating on a Three Quarter System. (a) The units of average daily attendance to be reported on the first period report (J-20-P1) are the sum of the average daily attendance computed for the summer session under Section 54006(b) and the average daily attendance computed for the first quarter.

(b) The units of average daily attendance to be reported on the second period report (J-20-P2) are the sum of the average daily attendance computed for the summer session and the quotient computed by dividing the sum of the whole and partial class hours recorded for the first and second quarters by 30.

(c) The units of average daily attendance to be reported on the annual report (J-20A) are the sum of the average daily attendance computed for the summer session and the quotient computed by dividing the sum of the whole and partial class hours for the first, second, and third quarters by 45.

Sec. 7. Subchapter 5.5 is added to Chapter 6 of Title 5 to read:

Subchapter 5.5. EDUCATIONALLY HANDICAPPED PUPILS

Article 1. General Provisions

55000. Scope of Chapter. This chapter applies only to special

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education programs for educationally handicapped minors for which allowances may be made under Education Code Section 18102.

55001. Definitions. For the purposes of this subchapter:

(a) An "educational handicap" means a marked learning or behavioral problem or both described in functional terms sufficient to indicate the specific characteristics of the student's problem and to suggest the nature of an educational approach for the management of his problem.

The learning or behavioral problem shall be of such nature and extent that the student cannot receive the reasonable benefit of ordinary education facilities and does not qualify the student:

(1) As a physically handicapped minor defined in Education Code Sections 6801 and 6802.

(2) As a mentally retarded minor defined in Education Code Sections 6901, 6902, and 6903.

(b) "Program" means any of the special education programs for educationally handicapped minors described in Education Code Section 6751 that meet the general and specific standards set forth in this subchapter.

(c) "Program day" means the length of time regular day classes of the school or school district are conducted for students of similar grade level or chronological age.

(d) "Evaluation and Programming Committee" means the admission committee specified in Education Code Section 6755(b).

(e) "Discharge" means exemption or exclusion from school by resolution of the governing board of a school district or by the county superintendent.

(f) "Transfer" means enrolling the student in any of the following:

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(1) A different type of program authorized by Education Code Section 6751.

(2) A regular day class.

(3) A school or class authorized by Chapter 7 (commencing with Section 6500) of Division 6 of the Education Code.

(4) Another special program authorized by law.

Article 2. Program Standards

55002. General Standards for Programs. Every educationally handicapped minors program shall meet the following general standards:

(a) It is the most appropriate one of the programs described in Education Code Section 6751 that meets the individual needs of the student. It provides for the differential grouping of students in classes, groups, or individually for effectiveness in administration, management, and instruction.

(b) It emphasizes the amelioration of handicapping conditions to the greatest extent possible and in the shortest period of time.

(c) It makes adjustments in the curriculum and instruction that enhance the student's achievement to the fullest potential and provides for continued development in areas of student strengths.

(d) It provides for vocational education, work experience, and work study for those students who would benefit therefrom.

(e) It provides, within the instructional program, for the development of the mental health of the student and utilizes additional services where of benefit to the student.

(f) It provides the educational, psychological, and student personnel services necessary for assessment, evaluation, and consultation.

(g) It utilizes services of instructional aides and other personnel

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assistance in the program whenever such services are necessary.

(h) It provides for curriculum development, in-service education, consultation, and supervision for the staff.

(i) It provides parent education opportunities.

55003. Distinction between Special Classes and Other Instruction. (a) A "special day class" is a program described in Education Code Section 6751(a) that meets the specific standards prescribed in Section 55004.

(b) A "learning disability group" is a program described in Education Code Section 6751(b) that meets the specific standards prescribed in Section 55005.

(c) "Home and hospital instruction" is a program providing individual instruction for minors described in Education Code Section 6751(d) that meets the specific standards prescribed in Section 55006.

(d) "Specialized consultation" is a program described in Education Code Section 6751(c) that meets the standards prescribed in Section 55007.

55004. Specific Standards for a Special Day Class. A special day class shall meet the following standards:

(a) It is composed of students whose range of educational handicaps can be appropriately managed within the class.

(b) It is taught by a teacher whose sole responsibility for the program day is to perform services in connection with the educational program of the students enrolled in the class. The teacher is responsible for the coordination and general supervision of all educational activities during the program day of all the students who are enrolled in the class. The teacher devotes no less than the minimum school day to providing specialized instruction. The teacher is provided opportunities for daily preparation to provide individualized assignments for each student enrolled in the class.

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(c) It provides an educational program for those students able to benefit from attendance for the program day. Whenever the evaluation and programming committee finds attendance for the full program day would not be in the best interests of a student, the period of attendance for that student may be reduced accordingly. Whenever a district is unable to provide preparation opportunities for the teacher because of this program day requirement, the Superintendent of Public Instruction may waive compliance with the program day requirement upon prior application on forms provided by the Superintendent of Public Instruction.

55005. Specific Standards for a Learning Disability Group. A learning disability group shall meet the following standards:

(a) It is composed of students whose range of educational handicaps can be appropriately managed within the group.

(b) It is limited to educationally handicapped minors who are enrolled in one or more groups in accordance with the recommendations of the evaluation and programming committee.

(c) It provides specialized instruction for students in each group on a daily basis or, if less than daily, on a basis to ameliorate the handicap in the shortest period of time.

(d) It allows opportunities for daily preparation for the teacher to provide an effective program of instruction and coordination with the student's regular program of instruction.

55006. Specific Standards for Home and Hospital Instruction. A student enrolled in home and hospital instruction is enrolled for, and receives, at least 150 minutes of individual instruction per week.

55007. Specific Standards for Specialized Consultation. Specialized consultation described in Education Code Section 6751(c) shall meet the

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following standards:

(a) The consultation is given by specialists from such fields as education, speech, social work, psychology, medicine and psychiatry.

(b) The consultation relates to the specialized instruction, management and counseling and guidance of students in a program, and to the in-service training of teachers and staff.

(c) State allowances for specialized consultation are used only to provide specialists not regularly employed by the district or county superintendent of schools administering the program.

(d) Expenses of the evaluation and programming committee are not paid from state allowances for specialized consultation.

55008. Appropriate Class Size and Maximum Enrollment Limits. (a) The appropriate class size and the maximum enrollment for a special day class described in Education Code Section 6751(a) is as follows:

(1) For a class in which no student below grade seven or the age equivalent is enrolled - 12 students.

(2) For a class in which the majority of students enrolled are those described in Section 55009(c) - 6 students.

(b) The maximum enrollment for any learning disability group described in Education Code Section 6751(b) is as follows:

(1) For a given learning disability group - 8 students.

(2) For a full-time teacher of learning disability groups - no more than a total enrollment of 32 such students.

(3) For a part-time teacher of learning disability groups - a total enrollment that is the same proportion of 32 as the number of minutes taught in learning disability groups is to the length of the

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program day.

(c) Deviations from the above maximums may be made only on prior written approval of the Superintendent of Public Instruction.

Article 3. Identification and Placement

55009. Eligibility of Minors for a Program. A minor described in Education Code Section 6750 is eligible for admission to a program if he has an educational handicap as defined in Section 55001(a) and meets the qualifications of either (a), (b), (c), or (d).

(a) A student having both of the following characteristics:

(1) His learning or behavioral problems are specific learning disabilities in the psychological processes involved in understanding or using spoken or written language. Such learning disabilities may include, but are not limited to, those sometimes referred to as perceptual handicaps, minimal brain dysfunction, dyslexia, dyscalculia, or dysgraphia.

(2) He exhibits a significant discrepancy between ability and achievement, but may be expected to benefit from a program designed to meet his particular problems.

(b) A student to whom all of the following statements apply:

((1) His learning or behavioral problems are serious behavior disorders that interfere with his receiving the reasonable benefit of ordinary education facilities. Such behavior disorders may include, but are not limited to, those sometimes referred to as school phobia, adjustment reactions, psychoneurotic reactions, withdrawal, lability, hyperkinesis, or impulsiveness.

(2) He exhibits significant discrepancy between ability and achievement, but may be expected to benefit from a program designed to

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Meet his particular problems.

(3) The evaluation and programming committee recommends specific interventions for the amelioration or management of his behavior disorder that can be carried out within the program recommended.

(4) The evaluation and programming committee finds the student's behavior disorder is not problem behavior as defined in Articles 1, 4, and 5 (commencing with Sections 6500, 6651, and 6701, respectively) of Chapter 7 of Division 6 of the Education Code.

(5) He shall have had a complete re-evaluation by the evaluation and programming committee at least every two years.

(c) A student to whom all of the following statements apply:

(1) His learning and behavioral problems are determined to be profound problems in communication and socially responsive behavior (autistic-like) by physicians and psychologists having experience with, or special knowledge of, such problems.

(2) The evaluation and programming committee finds the student to have profound problems in communication and socially responsive behavior, as distinguished from mental retardation defined in Education Code Sections 6901, 6902, and 6903, notwithstanding seeming mental retardation.

(3) The evaluation and programming committee finds the student's handicap of the nature and extent that he may be expected to participate in a program designed to meet his particular problems.

(4) If he is 10 years of age or older, he has not already been in a program for students identified in this subsection (c) for three years without having made reasonable progress. (A student identified under this subsection (c) who is age ten or older who has been in an

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educationally handicapped program for three years without making reasonable progress is not eligible for further participation in a program and shall be transferred or discharged.)

(d) A student to whom all of the following statements apply:

(1) His learning or behavioral problems are associated with a serious emotional disturbance such that he cannot participate in ordinary education facilities. Included, among others, may be students who, to a marked degree, exhibit one or more of the following characteristics:

(A) Inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) Inability to maintain satisfactory relationships with peers and adults.

(C) Inappropriate behavior or affect under normal circumstances.

(D) A pervasive depression or unhappiness.

(E) A tendency to develop psychosomatic symptoms associated with school or personal problems.

(2) His emotional handicap is of such nature and extent that he may be expected to receive reasonable benefit from an educational program designed to meet his particular problems.

(3) His emotional handicap is of such nature and extent that the school can obtain personnel trained to teach such a student and able to provide the necessary supervision.

(4) When necessary to sustain his school participation, ancillary services can be obtained through the parent, guardian, or community.

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55010. Standards for Identification of Students Described in Section 55009(a) or (b). A student described in Section 55009(a) or (b) shall be identified by individual assessment and evaluation, and school records or written reports that include the studies described in this section.

(a) Educational Case Study. An educational case study of the student that includes:

(1) The school history and educational progress of the student and the specific measurements of his levels of academic functioning.

(2) Specific steps taken to assist the student in the areas of his educational handicap and the results of such assistance.

(3) The reason for referral.

(b) Psychological Case Study. A psychological case study of the student that includes:

(1) Early development.

(2) Identification of the specific learning disabilities or behavior disorders and the relationship of these disabilities or disorders to his school achievement. Specific handicapping conditions must be described in functional terms.

(3) Evidence of the significant discrepancy between ability and achievement and a prognosis for the reduction of such discrepancy.

(4) Recommendations regarding methods and services from which the student may be expected to profit in the program.

(c) Health Study. A health study of the student that includes:

(1) A review by a school nurse or licensed physician and surgeon of the student's health record and status, including results of visual and auditory screening.

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(2) For every student whose health review indicates a possibility of related health problems, and for every student recommended by the evaluation and programming committee for placement in a special day class or in home and hospital instruction, a functional evaluation of the physical, neurological and emotional basis for the student's learning or behavior problems by a physician and surgeon licensed to practice in California. Such evaluation is to advise the parent or guardian of any medical services that may be of benefit to the student and to advise the schools (through the physician on the evaluation and programming committee) of those physical, neurological and behavioral factors that may be of significance in planning an educational program. In requesting such an evaluation, the school shall provide the examining physician with a resume of the student's learning and behavioral problems. No student may be placed in a special day class or in home and hospital instruction prior to receiving the required medical evaluation.

(d) Other Studies or Reports. Studies or reports from personnel in any other areas which the evaluation and programming committee deems necessary because of the specific problems of the student. These areas include, but are not limited to, speech and hearing, English as a second language, socio-cultural disadvantage, social work, and welfare and attendance. Absence of such reports indicates that the committee considers that such reports would not be of significance in evaluating the student's handicap or in planning his educational program.

55011. Standards for Identification of Students Described in Section 55009(c) or (d). A student described in Section 55009(c) or (d) shall be identified by an individual assessment and evaluation, and school records or written reports that include:

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(a) Studies Described in Section 55010(a) and (d). The educational case study and other studies or reports described in Section 55010(a) and (d).

(b) Psychological Case Study. A psychological case study of the student including:

(1) Early development.

(2) Identification of the specific handicapping behaviors and the relationship of such behaviors to his school performance.

(3) Recommendations regarding methods and services from which the student may be expected to profit in the program.

(4) A prognosis for educational and behavioral expectancies by placement in the program.

(c) Medical Study. A medical and psychiatric evaluation by a physician and surgeon licensed to practice in California, of the student's handicaps and behavior. The evaluation shall include a functional description of the student's handicaps and shall indicate that the student:

(1) Has a serious emotional disturbance or autistic-like behaviors.

(2) Has a favorable prognosis for participation in the educationally handicapped program.

(3) Either does not evidence behavior such as to cause his school attendance to be inimical to the welfare of other students or may evidence behavior which suggests considerations for home or hospital instruction or instruction in other than a public school setting.

(d) Adequacy of Program. A specific determination that the program to which the student will be assigned is reasonably adequate to cope with the handicap of the student.

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(e) Teacher Consultation. Consultation with the teacher with whom the student will be placed.

55012. The Evaluation and Programming Committee. The administrative head of the school district or the county superintendent of schools shall designate members of an evaluation and programming committee, which shall include, but not be limited to, the persons specified in Education Code Section 6755(b). One consideration in appointing members to the committee shall be the greatest possible continuity of committee membership.

Evaluation and recommendations shall be made by all five members of the committee specified in Education Code Section 6755(b) and such other specialists as the committee may deem necessary. There shall be present at a meeting at which the recommendations are made, a school psychologist and at least three of the remaining four specified members, provided the absent member has submitted a written statement of his evaluation and recommendations prior to the time of the meeting. In the absence of the physician, a school nurse shall be present. No member of the committee shall serve in more than one capacity.

55013. Standards for Evaluation and Programming of Educationally Handicapped Minors.

(a) The evaluation and programming committee shall make an evaluation of each individual student referred to it by making a thorough study of the records and reports described in Sections 55010 or 55011 as appropriate, together with all other pertinent and reliable information available. A written report of the committee's study shall be filed with the district. The report shall include all of the following:

(1) The committee's findings regarding the nature and extent of

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the student's educational handicaps and the relationship of those handicaps to his educational and learning needs.

(2) The committee's findings regarding the ability of the student to profit from participation in a program and specific recommendations regarding particular methods or services from which the student may be expected to profit in the program.

(3) The committee's decision regarding eligibility and recommendations for placement of the student in the most appropriate one of such programs. Unless the decision is unanimous, a statement of the minority positions shall be attached to the committee's report.

(4) The name and role of the members present at the meeting of the committee at which a recommendation was made.

(b) Whenever the recommendation of the committee for placement of a student is not unanimous, any placement made is a trial placement only. A student enrolled for a trial placement shall be re-evaluated by the committee within six months of his initial placement in the program and each six months thereafter as long as the placement remains a trial placement.

(c) The committee may withhold a recommendation for placement of a student in a program whenever the committee determines that it does not have sufficient information to ascertain the student's eligibility or to recommend placement. Whenever a sizeable number of students are referred to the committee for whom the committee has sufficient information to determine eligibility of the student for special education, but does not have sufficient information to complete its determination of the most appropriate program or special education provisions, the administrative head of a school district may designate one special day class, or for a unified district over 10,000 a.d.a. one special day class at the elementary level and one special day class at the secondary level,

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as a diagnostic class for the purpose of providing an ongoing diagnosis and evaluation of such students. A diagnostic special day class shall meet the following requirements:

(1) It is one of the special day classes for educationally handicapped minors provided under Education Code Section 6751(a).

(2) It meets the requirements of Sections 55004(b) and 55008(a).

(3) It is taught by a trained and experienced teacher of the educationally handicapped and has an instructional aide during the hours students are in attendance.

(4) No such student remains in the diagnostic class for more than six months.

(5) A pupil is re-evaluated by the evaluation and programming committee before the end of three months and, if he remains in the class, before the end of six months.

(6) The class has adequate educational, psychological, and student personnel consultation services. Additional consultation may be provided under provisions of Section 55007.

55014. Placement of Educationally Handicapped Students. (a) The responsibility for the assignment of a student in a program provided by a school district rests with the administrative head of the school district or a credentialed employee designated by him. Assignment shall be made only in accordance with the program recommended by the evaluation and programming committee and no student may be placed in a program prior to the recommendation by the committee.

(b) Whenever the number of eligible students exceeds the enrollment limits of Education Code Section 6752, the administrative head of the school district or his designee shall maintain a list of, and determine the priority

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for placement of, all students enrolled in and all students eligible for enrollment in a program. The priority shall be based on the degree of the educational handicap, with students having a favorable prognosis whose school attendance would otherwise be limited or denied given the highest priority. Whenever such a list is maintained, the priorities shall be reviewed at least quarterly.

55015. Re-evaluation, Retention, and Transfer. (a) An annual examination and evaluation shall be made of the school adjustment and educational progress of each student enrolled in a program. The administrative head of the school district or the county superintendent of schools shall specify the personnel and methods to be used in the examination and maintain a written statement of such procedures. The procedures shall provide for consistency in the specific measurements used in determining academic progress. A written report shall be made of the examination and evaluation of each student and a copy thereof added to the student's case study file. The report shall include the following:

(1) A summary of the development and progress since the last evaluation report.

(2) The results of specific measurements of the student's progress in the academic areas of instruction.

(3) A summary of the methods and techniques which have been utilized in the instructional program.

(4) A current revision of the description of the nature and extent of the student's educational handicaps.

(5) Specific recommendations for the student's continuing education.

(b) A summary of the annual re-evaluation reports shall be provided

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for review by the evaluation and programming committee.

(c) A student failing to make an appropriate school adjustment or satisfactory educational progress in accordance with the prognosis and recommendations of the evaluation and programming committee or subsequent evaluation reports, shall be referred to the evaluation and programming committee or to an appropriate public or private resource for further study. Whenever further study fails to provide a basis for a more adequate prognosis, the student shall be referred to the evaluation and programming committee for recommendations regarding transfer or discharge.

(d) A student enrolled in a program may at any time be referred to the evaluation and programming committee for further study, evaluation, and recommendations for additional methods or services from which the student may be expected to profit or for transfer to another program.

Article 4. The Instructional Program

55016. Curriculum Content. The curriculum content of any program shall be established under the following provisions:

(a) The curriculum is designed to fit the individual developmental and learning needs of each student as initially determined and reported by the evaluation and programming committee. Adjustments are made in the curriculum as the student's progress requires.

(b) The amelioration of the learning or behavioral problems determined for each student is emphasized by giving specialized instruction in the areas of disability.

(c) Adaptations in methodology are made in the presentation of instruction, in the sensory modalities employed, and in the performance required of each student, whenever such adaptations will enhance his learning potential.

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(d) The curriculum otherwise shall meet the requirements of Division 7, Chapter 3, (commencing with Section 8501) of the Education Code. A course of study for educationally handicapped minors in high schools shall be adopted which can be adapted to the individual needs of each student and the basis for graduation requirements for the student.

55017. Teacher Qualification. Any teacher may be assigned to give the instruction specified in paragraphs (a), (b), or (d) of Education Code Section 6751 who possesses a valid regular teaching credential, or standard teaching credential, and who in the judgment of the chief administrative officer of the district or the county superintendent of schools possesses specific preparation, experience, and personal attributes deemed desirable for a teacher of educationally handicapped minors.

55018. Program Supervision. A school district shall provide program supervision for all of its programs. The supervision may be by employees of the district or furnished through contracts with other school districts or county superintendent of schools. "Supervision" as used in this section, means those activities described in Section 6550 that have as their basic purpose the improvement of the instructional program for educationally handicapped students.

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Article 5. Approvals

55019. Notice of Intention to Initiate a Program. (a) The notice of intention required by Education Code Section 6754 to initiate a program shall be submitted to the Superintendent of Public Instruction at least 60 days before the date the program is to begin. The notice shall be on a form furnished by the Superintendent of Public Instruction.

(b) If a district or county superintendent of schools maintaining some, but not all, of the types of programs listed in Education Code Section

6751 proposes to add another of the listed types, such addition is the initiation of a program, and the notice of intention to initiate that program shall be given as provided in (a).

55020. Testing or Screening for Educationally Handicapped Minors. In the event a school system elects to test or screen through the use of tests administered directly to all pupils of a grade, school, or district pursuant to Education Code Section 6758, application shall be made for prior approval of the Board of Governors for the tests or screening procedures to be used.

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FORM 400A

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

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FINDING OF EMERGENCY

The California Community Colleges finds that an emergency exists and that the foregoing regulation is necessary for the immediate preservation of the public peace, health and safety or general welfare. A statement of the facts constituting such emergency is:

> The California State Department of Education is in the process of repealing various sections of the California Administrative Code, Title 5, which also pertain to the California Community Colleges. In order to prevent discontinuance of programs in the area of handicapped students and to insure the continuance of these programs without interruption under legal provisions this emergency action to add Subchapters 1, 2, 4, 4.1, 4.5, 5, and 5.5 to Chapter 6 of Title 5 of the California Administrative Code, is necessary.

The said regulation is therefore adopted as an emergency regulation to take effect immediately upon filing with the Secretary of State as provided in Section 11422(c) of the Government Code.

This regulation submitted for filing does not include any "building standard," as defined in the State Building Standards Law (Sections 18900-18917, Health and Safety Code).

APPROVED:

Sidney W. Brossman, Chancellor
The California Community Colleges

Dated: 8/21/69

APPROVED:

Harold F. Wolters, Chairman
Board of Governors of the
California Community Colleges

Dated: 8/21/69

Form 400 (REV. 8-68)

FACE SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

RECEIVED FOR FILING
JUL 1 - 1971
Office of Administrative Procedure

ENDORSED
APPROVED FOR FILING
(GOV. CODE 11380.1)
JUL 1 - 1971
Office of Administrative Procedure

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Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:
Board of Governors of the California Community Colleges
(Agency)

Date of adoption, amendment, or repeal:
June 16, 1971

By: Carl A. Erikson
Carl A. Erikson, III
Legal Counsel
(Title)

ENDORSED
FILED
In the office of the Secretary of State of the State of California
JUL 1 1971
At 2:10 o'clock P.M.
EDMUND G. BROWN Jr., Secretary
By M. F. SULLIVAN
Assistant Secretary of State

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ORDER ADOPTING, AMENDING, RENUMBERING, AND REPEALING
REGULATIONS OF THE
BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Gov. Code, Title 2, Div. 3, Part 1, Chapter 4.5) and pursuant to the authority vested by Sections 193, 197, and 25510 of the Education Code, and to implement, interpret, or make specific Sections 25510 and 25518.6 of the Education Code, the Board of Governors of the California Community Colleges hereby adopts, amends, renumbers, and repeals regulations in Title 5, California Administrative Code, as follows:

(1) Repeal Section 51301 relating to probation and dismissal of students;
(2) Amend the following sections:
  (a) 51300 relating to probation and dismissal of students;
  (b) 51605 relating to credit by examination.
(3) Amend and renumber Section 51102 relating to credit--no credit courses;
(4) Renumber Section 51302 relating to reinstatement of dismissed students;
(5) Adopt the following new sections:
  (a) 51102 relating to identification of courses;
  (b) 51103 relating to college credit courses;
  (c) 51301 relating to grading practices;
  (d) 51303 through 51307 relating to probation and dismissal of students.

Add the following as a footnote to Sections 51102, 51103, 51300 through 51308, and 51605:

*The community colleges may identify their courses and maintain their grading practices in accordance with these regulations on and after July 31, 1971. The community colleges shall identify courses to be offered during and after the fall semester or quarter, 1972, in accordance with these regulations and shall maintain their grading practices beginning on the first day of the fall semester or quarter, 1972, in accordance with these regulations.

The provisions of these regulations are not subject to the jurisdiction of the State Building Standards Commission.

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Part VI of Title 5 of the California Administrative Code is amended as follows:

First -- Section 51102 is amended and renumbered to read:

51302. Credit Courses.

(a) The governing board of a district maintaining a Community College may offer courses in either or both of the following categories:

(1) Courses wherein all students are evaluated on a "credit--no credit" basis.

(2) Courses wherein each student may elect on registration, or within such time thereafter as the district governing board may determine by rules and regulations, whether the basis of his evaluation is to be "credit--no credit" or a grading scale.

(b) All units earned on a "credit--no credit" basis in accredited California institutions of higher education or equivalent out-of-state institutions shall be counted in satisfaction of Community College curriculum requirements. Such units shall be disregarded in determining a student's grade point average for all purposes for which a grade point average is required.

(c) The governing board of a district maintaining a Community College may authorize a student who has received credit for a course taken on a "credit--no credit" basis within the district to convert this to a grade based on a grading scale by taking an appropriate examination.

(d) In the absence of a regulation of the type authorized in subdivision (a) of this section, the work in a course will be presumed to be evaluated on the basis of a grading scale.

(e) The governing board shall establish a policy describing the standards for the award of a "credit" grade for a course.

Second -- Section 51102 is added to read:

51102. Identification of Courses. For each course offered, a Community College shall make available to students through college publications at least all of the following facts before he enrolls in the course:

(a) Whether the course is offered on the basis of credit--no credit and, if so, which provision of Section 51302, subdivision (a) is applicable.

(b) Whether the course is other than a graded course.

(c) Whether the course is a college credit course under the provisions of Section 51103.

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Third -- Section 51103 is added to read:

51103. College Credit Course. A "college credit course" is a course given in a Community College which meets one or more of the following requirements:

(a) The course is part of an approved educational program.

(b) The credit awarded by the Community College for completion of the course is accepted as completion of a portion of an appropriate educational sequence leading to an associate degree or baccalaureate degree by one or more of the following:

(1) The University of California
(2) A California State College
(3) An accredited independent college or university.

Fourth -- Section 51300 is amended to read:

51300. Regulations. The governing board of a district maintaining a Community College shall adopt regulations consistent with the provisions of this chapter. The regulations shall be published in the college catalog under appropriate headings.

Fifth -- Section 51301 is repealed.

Sixth -- Section 51301 is added to read:

51301. Grading Practices. The governing board of the district maintaining a Community College shall determine the grading practice to be used in that Community College. The grading practice shall be based on sound academic principles and shall conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma, or license shall be graded.

(b) Work shall be graded in accordance with the provisions of Section 51302 or Section 51605 or in accordance with a grading scale.

The grading practice adopted by the governing board shall be published as a part of the catalog or class schedule of the Community College to which it applies. The governing board of a district may provide for withdrawal without penalty for students who withdraw from a class before the deadline established by the governing board.

Seventh -- Section 51302 is renumbered as Section 51308.

Eighth -- Section 51303 is added to read:

51303. Standards for Probation. A student shall be placed on probation if he has earned a grade point average below 2.0 in all units attempted which were graded on the basis of a grading scale. The district board shall adopt "credit--no credit" probation rules.

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The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for probation herein set forth and shall file a copy of such rules with the Chancellor of the California Community Colleges.

Ninth — Section 51304 is added to read:

51304. Standards for Dismissal. A student shall be dismissed if he earned a grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of a grading scale. The district board shall adopt "credit--no credit" dismissal rules.

The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor of the California Community Colleges.

Tenth -- Section 51305 is added to read:

51305. Units Attempted. For the purposes of Sections 51303 and 51304, "all units attempted" means all units of credit for which the student was enrolled in any college, university, or grades 13 and 14, regardless of whether he completed the course or received any credit or grade. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion from "all units attempted" of units in which a student did not receive a grade or "credit--no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

Eleventh — Section 51306 is added to read:

51306. Probation and Dismissal - Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points.

(b) The governing board for each Community College shall establish the point equivalencies for the grades used from the grading scale at that Community College in accordance with subsection (a) of this section. These equivalencies shall be published in the catalog of that Community College as a part of the grading practices for that Community College.

Twelfth — Section 51307 is added to read:

51307. Determination of Probation and Dismissal. Each Community College shall make every reasonable effort to notify a student of his academic probation or dismissal no later than the fifth day of classes of the semester or quarter in which it will be in effect.

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Thirteenth -- Section 51605 is amended to read:

51605. Credit By Examination. The governing board of a district maintaining a Community College may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing for a course listed in the catalog of a public Community College.

Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required by Section 51602.

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FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

RECEIVED FOR FILING
SEP 29 1971
Office of Administrative Procedure

ENDORSED
APPROVED FOR FILING
(GOV. CODE 11380.1)
OCT 1 - 1971
Office of Administrative Procedure

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Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

Board of Governors of the California Community Colleges
(Agency)

Date of adoption, amendment, or repeal:

September 16, 1971

By: Carl A. Erikson III
Legal Counsel
(Title)

ENDORSED
FILED
In the office of the Secretary of
of the State of California
OCT 1 - 1971
11:00 a.m.
EDMUND G. BROWN Jr., Secretary
By DAVID M. WEETMAN
Deputy

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ORDER ADOPTING AND AMENDING REGULATIONS OF THE
BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Gov. Code, Title 2, Div. 3, Part 1, Chapter 4.5) and pursuant to the authority vested by Sections 193, 197, and 25510 of the Education Code, and to implement, interpret, or make specific Section 25510 of the Education Code, the Board of Governors of the California Community Colleges hereby amends and adopts its regulations in Title 5, California Administrative Code, as follows:

(1) Amends the title of Chapter 7 (commencing with Section 51600) of Division 2:

(2) Renumbers Section 51605 relating to credit by examination.

(3) Adds Section 51600.5 relating to the effective date of existing regulations on degrees and certificates.

(4) Adds Chapter 8 (commencing with Section 51620) to Division 2 of Part VI relating to degrees and certificates.

Add the following as a footnote to Sections 51620 through 51626:

*The community colleges may adopt degree and certificate regulations in accordance with these regulations to be effective on or after Oct. 1, 1971 The community colleges shall adopt rules and regulations in accordance with these regulations to be effective no later than September 1, 1973.

The provisions of these regulations are not subject to the jurisdiction of the State Building Standards Commission.

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Part VI of Title 5 the California Administrative Code is amended as follows:

First -- The title of Chapter 7 (commencing with Section 51600) of Division 2 is amended to read:

CHAPTER 7. DEGREES AND CERTIFICATES (Pre-September 1, 1973)

Second -- Section 51600.5 is added to read:

51600.5. Effective Date. The provisions of this chapter shall apply to all degrees and certificates granted by a community college district before the effective date of regulations adopted by the governing board of that district in accordance with the provisions of Section 51620 or before September 1, 1973, whichever is the earlier.

Third -- Section 51605 is renumbered as Section 51302.5.

Fourth -- Chapter 8 (commencing with Section 51620) is added to Division 2 to read:

CHAPTER 8. DEGREES AND CERTIFICATES (Post-September 1, 1973)

51620. Effective Date. The provisions of this chapter shall apply to all degrees and certificates granted by a Community College district on and after September 1, 1973. The provisions of this chapter may be made applicable to all degrees and certificates granted on and after July 1, 1972, if the governing board of a community college district adopts regulations consistent with the provisions of this chapter which are effective on July 1, 1972.

A student who enrolls in a community college prior to September 1, 1973, shall have the option of earning his degree under the provisions of Chapter 7 or Chapter 8 of this division if the community college in which he is enrolled has changed its degree requirements in accordance with this chapter before the degree is awarded. No degree or diploma shall be awarded under the provisions of Chapter 7 after September 1, 1975.

51621. Regulations. The governing board of a community college district shall adopt regulations consistent with the provisions of this chapter.

51622. Definitions. For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit--no credit" basis or a grade point average of 2.0 or better in 13th and 14th year graded courses in the curriculum upon which the degree is based.

51623. Associate in Arts Degree. The governing board of a Community College district shall confer the degree of associate in arts upon

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a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that Community College:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas:

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g. chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to man as a member of society or component of society, such as the state, family, or any systematized human institution (e.g. economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

Students taking these courses may elect to use them to satisfy partially the general education requirements for a baccalaureate degree at the California State Colleges in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

51624. Associate in Science Degree. The governing board of a Community College district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall include a major of at least 18 semester hours in the fields of engineering, physical and biological sciences, or occupational curriculums.

51625. Certificate of Achievement. The governing board of a Community College district shall issue a certificate of achievement, when so determined by the governing board to any student who has completed successfully any course of study or curriculum as specified in the college catalog.

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51626. Duty to Grant Degree or Diploma. The governing board of a Community College district shall award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student, who has satisfactorily completed the requirements of any course of study in less than the prescribed time, credit for the full number of semester hours scheduled for such course.

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FORM 400 (REV. 5-64)

FACE SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

RECEIVED FOR FILING
JUN 26 1971
Office of Administrative Procedure

ENDORSED
APPROVED FOR FILING
(GOV. CODE 11380.1)
JUN 28 1971
Office of Administrative Procedure

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Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:
Board of Governors of the
California Community Colleges
(Agency)

Date of adoption, amendment, or repeal:
June 16, 1971

By: Carl Erikson III
Carl A. Erikson, III
Legal Counsel
(Title)

ENDORSED
FILED
in the office of the Secretary of State
of the State of California
JUL -1 1971
At 2:10 o'clock P M.
EDMUND G. BROWN JR., Secretary of State
By M. P. SULLIVAN
Assistant Secretary of State

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4

ORDER ADOPTING REGULATIONS OF THE
BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Gov. Code, Title 2, Div. 3, Part 1, Chapter 4.5) and pursuant to the authority vested by Section 199 of the Education Code, and to implement, interpret, or make specific Section 199 of the Education Code, the Board of Governors of the California Community Colleges hereby adopts Chapter 4 (commencing with Section 55400) of Division 6 of Part VI in Title 5 of the California Administrative Code relating to educational master plans.

The provisions of these regulations are not subject to the jurisdiction of the State Building Standards Commission.

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FORM 400A

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

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Chapter 5 (commencing with Section 55400) is added to Division 6, Part VI, of Title V of the Administrative Code, to read:

Chapter 5. Educational Master Plans

55400. Definitions. The definitions provided in the Handbook of Definitions issued by the Chancellor shall apply to the provisions of this chapter.

55401. Current and Long Range Plans. The governing board of each Community College district shall establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

55402. Educational Master Plans. On or before January 1, 1972, the governing board of each Community College district shall submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor on or before November 1 of each year thereafter.

55403. Form. Each plan shall be submitted on a form provided by the Chancellor and shall contain such information as the Chancellor shall require.

55404. Contents. Each plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. On the basis of current and future enrollment, it shall contain plans for the development and expansion of ancillary services, including services in the library and for counseling, placement, and financial aids.

55405. Review and Approval. The Chancellor shall review each master plan. On or before February 1 following the submission of each plan, he shall send a copy of his approval of it to the superintendent of each district.

Exhibit D

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU

March 16, 2004

RECEIVED
MAR 16 2004
COMMISSION ON
STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: CSM 02-TC-25
Los Rios Community College District, Claimant
Education Code sections 66281.5, 66721.5
Title 5, California Code of Regulations, sections 51006, 54626, 54805, 55005, 55202, 55530, 55534, 55750, 55752, 55753, 55758, 55759, 55760, 55761, 55762, 55764, 55765, 55800, 58102, 58104, 59404, 59410

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above Test Claim in light of the following questions addressing key issues before the Commission:

I. Do the subject statutes or regulations result in a mandated new program or a mandated higher level of service within an existing program upon local entities within the meaning of section 6, article XIIIB of the California Constitution and section 17514 of the Government Code? If so, are costs associated with the mandate reimbursable?

II. Do any of the provisions of Government Code section 17556 preclude the Commission from finding that the provisions of the subject statutes or regulations impose a reimbursable state-mandated program upon local entities?

Claimant alleges that reimbursable mandated costs arise through two Education Code sections and twenty-two regulations adopted by the Board of Governors of the California Community Colleges. The basis of the claim is that these statutes and regulations require community college districts to "prepare, publish, and implement various policies, procedures and notices to students." The claimant also alleges that no "statutes, codes or regulations" required "the specific notices to students set forth in this test claim" prior to January 1, 1975.

We believe that the Claim should be rejected in its entirety.

Education Code section 66281.5

Claimant asserts that Education Code section 66281.5(b) requires community college districts to have and implement a written policy on sexual harassment; subsection (c) requires the written policy to indicate how to report sexual harassment; subsection (d) requires the written policy to be displayed. Claimant asserts that subsections (e), (f), and (g) require districts to provide the written policy to students and employees, and include it in publications that set forth institutional rules.

We note that although Claimant summarizes its Claim as involving notices to students, by including a description of subsection (f), it appears that Claimant also wishes reimbursement for providing copies of the sexual harassment policy to employees.

Claimant asserts that Education Code section 66281.5 was added to the Education Code by Statutes 1998. We agree that section 66281.5 was added by Statutes 1998. However, the Education Code previously included comparable requirements. We will not trace the rather convoluted history because the lineage will still commence after January 1, 1975.

The requirements of Education Code section 66281.5 substantially reflect the requirements of Title IX and Title VII, two federal laws that prohibit sex discrimination and sexual harassment by the districts. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

Additionally, the requirements substantially reflect the requirements of California Government Code section 12950 that apply to California employers with 15 or more employees, including the District.

Title IX

Title IX of the Education Amendments of 1972 "is designed to eliminate . . . discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. . . ." (34 CFR § 106.1.) Community college districts generally choose to receive federal financial assistance and are therefore subject to the requirements of Title IX and its implementing regulations.

These implementing regulations appear at title 34, Code of Federal Regulations, part 106, sections 106.1 through 106.71. The Office for Civil Rights ("OCR") within the U.S. Department of Education enforces Title IX and the implementing regulations.

Title IX requires community college districts that receive federal financial assistance to adopt and to publish policies prohibiting sex discrimination. Districts must also "adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part." (34 C.F.R. §§106.8(b), 106.9.)

Sexual harassment is a form of sex discrimination that is prohibited by Title IX. In January, 2001, the OCR published its Title IX "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." As interpreted by the OCR, if a district's required sex discrimination policy does not specifically address sexual harassment, its policy and procedures will not be considered effective. (*Id.*, pp. 19-20.) The failure to have a policy and procedure prohibiting sex discrimination, including sexual harassment, violates the Title IX regulations even if no discrimination or harassment occurs. (*Id.*, p. 19.)

The sexual harassment policy and procedures must be distributed.

> "Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination." (*Id.*, at p. 14.)

OCR examines certain elements in determining whether a district's grievance procedures are prompt and equitable. One element is that students and employees are notified of the procedure, "including where complaints may be filed." (*Id.*, at p. 20.) The OCR notes that schools may ensure notice to students of their rights under Title IX by having copies of the procedures "available at various locations throughout the school or campus" and by "including a summary of the procedures in major publications issued by the school." (*Id.*, at p. 20.)

Based on the foregoing, by accepting federal financial assistance, community college districts obligate themselves to develop and disseminate sexual harassment policies, notify students and employees of the district as to how to file charges, and disseminate information concerning the prohibition to sexual harassment in major district publications.

Title VII

Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex, or national origin. Title VII applies to community college districts in their role as employers. Title VII is implemented by regulations adopted by the federal Equal Employment Opportunity Commission ("EEOC"). Since 1980, the regulations have confirmed that sexual harassment violates Title VII. (Guidelines on Discrimination Because of Sex, 29 C.F.R. § 1604.11.)

Sexual harassment is a violation of Title VII. "An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned." (29 C.F.R. § 1604.11(f).)

Government Code section 12950

Section 12950 is part of the Fair Employment and Housing Act ("FEHA"), and it covers virtually all California employers with 15 or more employees. Accordingly, section 12950 applies to Claimant independent of its status as a local government agency.

Section 12950 requires the Claimant to ensure a workplace free of sexual harassment, to display a poster that includes information on sexual harassment in a prominent and accessible location in the workplace (subdivision (a)), to distribute to employees an information sheet on sexual harassment that includes the definition and the internal complaint process (subdivision (b)), and such distribution is to be delivered in a manner that ensures distribution to each employee (subdivision (c)).

The FEHA has general application to nearly all California employers and does not impose unique requirements on local government agencies such as community college districts. Accordingly, the requirements to ensure a workplace free of sexual harassment, to have a sexual harassment complaint process, and to disseminate information concerning sexual harassment to employees already exist. Because the Claimant is already required by general law to do these things, these actions cannot be the basis of a claim for reimbursement. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

Education Code section 66281.5 applies only to a community college district that "receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid." (Ed. Code, § 66270.)

The California Supreme Court recently addressed the circumstances that will give rise to a mandate for purposes of reimbursement. (*Department of Finance v. Commission on State Mandates (Kern High School)* (2003) 30 Cal.4th 727, hereinafter referred to as "*Kern High School.*") In that case, the Kern High School District sought reimbursement from the state for the costs of preparing notices and agenda items related to certain programs it offered. The Supreme Court found that no mandates exist where a district voluntarily participates in a program.

The requirements of Chapter 4.5, of which section 66281.5 is a part, apply only when a postsecondary institution, including a community college district, accepts state financial assistance. The "burden" of compliance with section 66281.5 results from choosing the "benefit" of receiving state financial assistance. If Claimant accepted state financial assistance, it voluntarily accepted the attendant obligations under section 66281.5. Under *Kern High School* reimbursement is not available.

The Claimant has a number of obstacles with respect to section 66281.5. All or portions of the obligations described in section 66281.5 already apply to Claimant under Title IX or Title VII. Portions of the obligations described in section 66281.5 already apply to Claimant as a California employer under Government Code section 12950. Finally, if Claimant chose to accept state financial assistance, it is required to comply with Education Code section 66281.5. However, the

discretionary nature of this choice removes Claimant's ability to establish a mandate and the corresponding ability to obtain reimbursement for the costs of complying with section 66281.5.

Education Code section 66721.5

Claimant asserts that section 66721.5 requires its governing board to provide copies of the transfer core curriculum to students, and to publish the transfer core curriculum in the published class schedule each term or by alternative means.

Claimant asserts that section 66721.5 was added to the Education Code by Statutes 2000. We agree that section 66721.5 was added as alleged by Claimant.

The question under section 66721.5 is whether the section resulted in a new program or higher level of service within an existing program. Affected "programs" are those that "carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." *(County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 56, emphasis added.)

There is no question but that public education is a program under the Constitution and mandate statutes. The question is whether publication of information about public education is a "program" under these provisions. In *County of Los Angeles v. Department of Industrial Relations*, the county claimed reimbursement for the costs of complying with elevator safety regulations in county buildings. In assessing whether a "program" was at issue, the Court found that:

> "In determining whether these [safety] regulations are a program, the critical question is whether the *mandated program* carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services. Providing elevators equipped with fire and earthquake safety features simply is not 'a governmental function of providing services to the public.'" (*County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1546, italics in original, emphasis added.)

The Court found that the government functions were operated in various buildings that were owned or leased by the County. The various government functions in the buildings were the programs; the elevators merely assisted people in getting to the programs, but they were not the programs themselves.

Similarly, while public education is a program of which transfer principles are a part, the means by which students learn of the transfer core curriculum is not the educational program. The notices to students required by Education Code section 66721.5 are more akin to the elevators that provide a means of obtaining the program services. Under *County of Los Angeles*, we submit that the notices do not constitute a program or increased services within an existing program and that there is no basis for reimbursement.

We also note that *Kern High School* pointed out that even if costs are incurred, costs may be modest and may be permissibly payable from funds that have already been obtained from the state. (*Department of Finance v. Commission on State Mandates (Kern High School), supra,* 30 Cal.4th at p. 747.) In this regard, Education Code section 66721.5 requires publication of the class schedule and permits numerous alternative means of distributing copies of the transfer core curriculum, with various attendant costs. Assuming that Claimant receives state assistance, we find nothing that prevents Claimant from using some of the funds it has already received from the state to satisfy the costs of publishing the transfer core curriculum and distributing the information to students.

In summary, we submit that the publication of information and the distribution of information to students is not a "program" under applicable case law. Even if a program is established, compliance costs appear to be minimal and payable from moneys already received from the state.

Based upon district end of the year expenditure information reported for the 2001-02 and 2002-03 fiscal years the district maintained a 6.66% and 5.31% reserve. A district's reserve is determined by dividing the unrestricted general fund ending balance by the unrestricted general fund expenditures. The reserve amount identified for each respective year is larger than the 5% prudent reserve recommended by the Chancellor's Office. The amount greater than the prudent reserve requirement could have been applied to fund these activities.

Regulations of the Board of Governors

Claimant identifies twenty-two regulations of the Board of Governors that it claims create mandates subject to cost reimbursements. Related issues are presented by a number of the regulations, which we discuss here by way of introduction.

1. Minimum Standards Created Pursuant to a Legislative Direction That Preceded 1975 Do Not Create New Programs or Higher Levels of Service

Many of the regulations identified by Claimant reflect minimum standards that have been adopted by the Board of Governors. A recent California Attorney General opinion is instructive on the interplay of minimum standard regulations and mandated costs.

The question posed to the Attorney General concerned minimum standards for juvenile justice facilities. The Attorney General concluded that where a statute enacted prior to 1975 required a body to establish minimum standards, revising those standards does not constitute a new program or increased level of an existing program.

The Attorney General considered a county's claim for reimbursement for bringing a juvenile justice facility into compliance with the minimum standards established by the Board of Corrections. The Attorney General concluded that the Board of Corrections had been required to set minimum standards for suitable juvenile facilities since at least 1915. Therefore, regulations adopted as minimum standards did not constitute a new program because

> "Counties have been required to maintain a 'suitable' place for the detention of minors since at least 1915. [Citations omitted.] Setting the minimum standards for what is 'suitable' does not create a 'higher' level of service--it has long been the level of service required of local agencies. [Citations omitted.]" (83 Ops.Cal.Atty.Gen. 111 (2000).)

The Attorney General considered the language of Welfare and Institutions Code section 210, which provides: "The Board of Corrections shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors." The term "suitable" is not part of the charge to the Board of Corrections in setting minimum standards. The term is implied.

Many regulations challenged in this Claim reflect Board of Governors' minimum standards. Based on the premise established by the Attorney General, the minimum standards of the Board of Governors do not constitute either a new program or a higher level of service if the Board of Governors was obligated to set minimum standards in these areas prior to 1975.

Pre-1975 Requirements

The Board of Governors' regulations are generally adopted pursuant to statutes that appear in the Education Code. Because the Education Code has been reorganized several times, it is important to trace statutory requirements to their original sources. This is not always an easy undertaking where the Education Code is concerned: "Entry into the Education Code is painful." (*Haase v. San Diego Community College District* (1980) 113 Cal.App.3d 913, 917.)

Most statutes that concerned public schools were first assembled in the School Code in 1929. Prior to that time, such statutes appeared in various codes. The School Code became the Education Code in 1943. The Education Code was reorganized in 1959 and again in 1976. Some sections that appear in today's Education Code show that they were added in 1976 - which date incorrectly suggests that they came into being after January 1, 1975, a critical date for purposes of finding a state mandate. However, for many sections, the 1976 date merely reflects the 1976 comprehensive reorganization of the Education Code. That date does not represent the date of initial legislative pronouncement. Accordingly, in analyzing a number of the cited regulations, we will demonstrate that the Legislature required the Board of Governors to establish minimum standards in the subject areas prior to 1975.

Under the theory articulated by the Attorney General in his 2000 opinion, no new programs or higher level of services are established by Board of Governors' regulations that set minimum standards if the Legislature required the adoption of minimum standards prior to 1975. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Education Code section 66700

Section 66700 requires the Board of Governors to prescribe minimum standards for the operation of the community colleges. Section 66700 was preceded by section 22650, that was enacted in 1960, when the State Board of Education had jurisdiction over the junior colleges in California.

(Stats. 1960, 1st Ex. Sess., ch. 49, p. 396.) Section 22650 required the State Board of Education to adopt minimum standards for the operation of the junior colleges. As the community college system developed, the obligation to adopt minimum standards was assigned to the Board of Governors and junior colleges were redesignated community colleges. (The Legislature created the Board of Governors of the California Community Colleges in 1967 by Statutes 1967, chapter 1549. It also vested in the Board of Governors the "duties, powers, purposes, responsibilities, and jurisdiction" previously vested with the State Board of Education. See Education Code section 71024, previously section 197.) Accordingly, since at least 1960, the Legislature has required the state agency having oversight responsibility to adopt minimum standards for the operation of community college districts. It has vested that responsibility in the Board of Governors since 1967.

Education Code section 70901(b)(6)

Section 70901(b)(6) requires the Board of Governors to adopt minimum standards entitling districts to receive state aid for support of community colleges. Section 70901(b)(6) was added by Statutes 1988. However, section 70901(b)(6) was preceded by section 71025 that was enacted by Statutes 1976. Former section 71025 provided that "the Board of Governors of the California Community Colleges shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges." Section 71025 was preceded by section 25510 that was added by Statutes 1963. (Stats. 1963, ch. 100, p. 760.) A 1970 amendment substituted "community college" for "junior college" and an amendment by Statutes 1974 substituted the Board of Governors of the California Community Colleges for the State Board of Education; thus the section read, "The Board of Governors of the California Community College shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges." (The 1974 amendment merely conformed the Board of Governors' authority to that previously assigned by the Legislature in 1967.)

Accordingly, since at least 1963[1], the Legislature has required the state agency having oversight responsibility to adopt minimum standards enabling community college districts to receive state aid. As noted above, since 1967, that responsibility has rested with the Board of Governors.

In addition to the general requirement to adopt minimum standards, (current Ed. Code, § 66700), and the requirement to adopt minimum standards for the receipt of state aid (current Ed. Code, § 70901(b)(6)), the Board of Governors has also been required to establish minimum standards in numerous specific areas, and districts have been required to comply with those minimum standards.

The Board of Governors of the California Community Colleges has long been charged with establishing minimum student academic standards. Current Education Code section 70901(b)(1)(A) requires the Board of Governors to adopt "[m]inimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies."

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[1] In some cases, the statutes cited herein may have existed earlier under different section numbers. However, given our resource limitations, we are not able to explore the full extent of possible previous enactments.

Prior to the placement of this requirement in section 70901(b)(1)(A), it existed in section 71066 that required the Board of Governors to adopt "minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies." Section 71066 was enacted by Statutes 1976, but it merely replaced predecessor section 200.7 that was added by Statutes 1969, and that provided: "The board of governors shall establish minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies."

Accordingly, there have been no gaps in the requirement that the Board of Governors set minimum academic standards between 1969 and the present.

In turn, community college districts have long been charged with establishing "academic standards" that are consistent with Board of Governors' minimum standards. Current Education Code section 70902(b)(3) requires district boards to, "Establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors." Prior to section 70902(b)(3), Education Code section 72285 required district governing boards to "establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors." (Enacted by Stats. 1976, ch. 1010.) Before section 72285, the requirement existed in section 1010.6, added by Statutes 1969, that provided: "The district governing board shall establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors."

Thus, there have been no gaps in the requirement that districts establish academic standards consistent with Board of Governors' minimum academic standards between 1969 and the present.

The obligation of the Board of Governors to adopt minimum academic standards and the correlated obligation of districts to establish academic standards that comply with state minimum standards long preceded 1975. As such, these academic standards are not new. As noted in the 2000 Attorney General Opinion cited above, no higher level of service is created under these circumstances. Since before 1975, districts were required to adhere to the minimum academic standards set by the Board of Governors, and that has not changed. (83 Ops.Cal.Atty.Gen. 111 (2000).)

2. Optional Programs Do Not Constitute Mandates

In assessing Education Code section 66281.5, above, we noted that some requirements apply only to a community college district that receives state financial assistance. We described *Kern High School, supra,* 30 Cal.4th 727, a recent California Supreme Court decision that stands for the proposition that if districts choose to offer programs, but are not compelled to do so, costs associated with those optional programs are not mandated for purposes of reimbursement.

A number of the regulations with student notice requirements raised by Claimant reflect minimum standards for the receipt of state aid. It is only if districts desire to receive state aid that they must meet the minimum standards – i.e., only in exchange for state aid are they required to notify students of various matters. Although nearly all districts receive state aid, usually in the form of apportionment, there is no mandate that they do so. Accordingly, if Claimant chooses to receive state aid, it opts to comply with the minimum standards for doing so, and cannot claim that a mandate exists. We will identify those regulations that constitute minimum standards for the receipt of state aid and affirm that under *Kern High School, supra,* 30 Cal.4th 727, no mandate exists.

3. Notice Requirements Do Not Create Mandates

Claimants identify regulations that require districts to publish fundamental information about educational programs and services so that students and members of the public can be informed of educational opportunities. There are two bases for rejecting the costs of publishing various items in the catalogs or providing notification to students as mandated costs.

First, the threshold question is whether any program is at issue. There is no question but that public education is a program under the Constitution and statutes. The publication of information or notices, however, is not the same as public education.

As noted above, we believe the principles of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, apply here. To the extent that publishing information about courses or programs enables the public to understand or access those courses or programs, we believe the publications and notices are reasonably compared to the elevator services described above. The elevators assisted the public in accessing the programs, but were not themselves programs or part of a program. Assuming this analogy has merit, we suggest that "programs" are not at stake with respect to notices, and that the Claim for such matters be rejected.

Second, the California Supreme Court addressed similar public "notice" vehicles, i.e., Brown Act notices and agendas, in *Kern High School, supra,* 30 Cal.4th 727, (discussed above). For one of the programs, the Supreme Court did not decide whether the program was mandated; however, it noted:

> "[W]e nevertheless conclude that under the circumstances here presented, the costs necessarily incurred in complying with the notice and agenda requirements under that funded program do not entitle claimants to obtain reimbursement under article XIII B, section 6, because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary notice and agenda related expenses. . . . [¶] [W]e have found nothing to suggest that a school district is precluded from using a portion of the funds obtained from the state for the implementation of the underlying funded program to pay the associated notice and agenda costs. . . . [E]ven if we assume for purposes of analysis that school districts have been legally compelled to participate in the funded Chacon-Moscone Bilingual-Bicultural Education program, we view the

> state's provision of program funding as satisfying, in advance, any reimbursement requirement. . . . [¶] . . . [¶] We therefore conclude that because claimants are and have been free to use funds form the Chacon-Moscone Bilingual-Bicultural Education program to pay required program expenses (including the notice and agenda costs here at issue), claimants are not entitled under article XIII B, section 6, to reimbursement from the state for such expenses." (*Kern High School, supra,* 30 Cal.4th 727, at pp. 746-748, emphasis added.)

We take the foregoing to mean that if Claimant received state funding that it may use to pay for notices to students, then it is not entitled to further reimbursement for the costs.

Turning to the individual regulations cited by Claimant, we will abbreviate the theories described above.

California Code of Regulations, title 5, section 51006

Claimant asserts that section 51006 requires community college districts to adopt a policy that classes must be open to persons admitted to the college and that the statement of this open course policy must be published in catalogs and class schedules.[2]

Claimant asserts that section 51006 was added in 1983 and last amended in 1994. We cannot verify that information at the present time.

The resources of our legal office have been severely curtailed at the same time that its workload has increased. It may be that previous versions of some of the regulations at issue in this Claim existed prior to the dates cited by Claimant because renumbering of sections occurred at various times. That renumbering can give the appearance that a section has been newly adopted when it has simply been assigned a new section number.

In the early times after the Board of Governors was established, the Office of Administrative Law retained the primary regulatory files, and we are unable to expeditiously identify whether earlier versions of current regulations existed.

We cite to multiple bases for denying the claims under the challenged regulations; it may be that the issue of earlier provisions is a moot point if other bases exist for the rejection of the claims. However, in those instances where the Claim is not disallowed on any basis and where we have been unable to verify the historic development of a regulation, we suggest that the Commission thoroughly review the regulatory history, and we will gladly lend our support to the extent we are able.

Education Code section 5754 (added by Stats 1965, ch. 842) provided in part: "No class for adults shall be maintained by any district: . . . (2) if such classes are not open to the general public. . . ." This requirement for open courses was replaced by section 84500.1 (added by Stats.

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[2] All subsequent section numbers are to the sections in title 5 of the California Code of Regulations unless otherwise specified. Our statements of Claimant's assertions are summaries only and do not purport to fully describe Claimant's statement of the regulatory requirements.

1978, ch. 909) that required in pertinent part that "[n]o community college shall report for attendance or average daily attendance to the board of governors for apportionment any classes: . . . if such classes are not located in facilities clearly identified in such a manner, and established by procedures, to insure that attendance in such classes is open to the general public. . . ." Section 84500.1 was in effect until January 1, 1991.

Based on the foregoing, the requirement for open classes for adults has been continuous since before 1975 through to the present. "Classes for adults" generally means noncredit classes. We have not located a similar pre-1975 requirement that credit courses be open, but given the public nature of the entire system, and the origination of the system within the public school system, we contend that open courses has always been the standard. We therefore assume that the Claim only raises the issue of publication of the open course standard.

Section 51006 is a minimum standard adopted by the Board of Governors pursuant to Education Code sections 66700 and 70901. As noted above, both section 66700 and section 70901 originated prior to 1975. Based on the above Attorney General analysis of minimum standards that are adopted pursuant to legislative directive given prior to 1975, costs for section 51006 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 51006 is also a minimum standard for the receipt of state aid. Claimant is not required to apply for state aid, but having done so, must comply with attendance requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notice of the open nature of classes is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

Finally, under *Kern High School, supra,* 30 Cal.4th 727, the Claimant has not indicated why state money it already receives cannot be used to pay for including the statement concerning open courses in its catalog and class schedules.

California Code of Regulations, title 5, section 54626

Claimant asserts that section 54626(a) requires community college districts to adopt a policy that identifies categories of directory information that may be released, that subsection 54626 allows the release of directory information if annual public notice is given of the categories of directory information and the potential recipients. Claimant asserts that the notice must also specify the period of time within which students may notify the district of categories of directory information they do not want released.

Claimant asserts that section 54626 was added in 1976 and last amended in 1983. We agree.

Section 54626 restates federal law that becomes applicable if Claimant accepts federal financial assistance. The handling of student records is addressed comprehensively in the Family

Educational Rights and Privacy Act of 1974 (FERPA) and its related federal regulations. (20 U.S.C. § 1232g and 34 C.F.R, part 99.)

FERPA provides in part that:

> "Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent." (20 U.S.C. § 1232g(a)(5)(B).)

Districts that accept federal financial assistance must annually notify students of their rights under FERPA. (34 C.F.R. § 99.7.) If districts plan on releasing student directory information, they must give public notice of the types of information the district considers to be directory information, the student's right to refuse to allow the release of directory information, and the period of time during which the student must notify the district that he/she does not want directory information released. (34 C.F.R. § 99.37.)

Claimant undoubtedly receives federal funds and is therefore bound by FERPA and its implementing regulations. Therefore, section 54626 does not create any new or increased obligations. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

Additionally, under *Kern High School, supra,* 30 Cal.4th 727, Claimant cannot choose to accept federal funds and then be reimbursed for costs that result from that choice.

It should be noted the district does receive federal funds for the Temporary Assistance for Needy Families (TANF), and the Vocational Technical Education Act. In the 2001-02 fiscal year the district received roughly $3.7 million and for the 2002-03 fiscal year the district received $1.7 million in federal funds.

California Code of Regulations, title 5, section 54805

Claimants assert that section 54805 mandates districts to provide students with specified information concerning the student representation fee.

Claimant asserts that section 54805 was added in 1988 and last amended in 1991; we agree with those dates.

Section 54805 implements section 76060.5 of the Education Code. That section authorizes a student representation fee if certain conditions are met. The claimed "mandate" of section 54805 is only a requirement if (1) a district authorizes the students to organize a student body organization, (2) the student body organization proposes a student body organization fee, and (3) the district's students vote to approve a student representation fee. None of these actions are

mandated by the Legislature or by Board of Governors' regulations – all of these actions are permissive and rest exclusively with the local district and its students. If all of the permissive actions occur locally, then the requirements of section 54805 apply. However, inasmuch as all actions leading to the fee are based on local choice and action, under *Kern High School, supra,* 30 Cal.4th 727, there is no state mandate.

Additionally, where the permissive actions have occurred and a student representation fee is authorized, the subject district is authorized to retain up to 7 percent of the student representation fees "equal to the actual cost of administering these fees. . . ." (Ed. Code, § 76060.5.) To the extent that Claimant incurs expenses in notifying students as provided by section 54805, Claimant is authorized to cover that expense with up to 7 percent of the amount collected. Government Code section 17556(d) provides that no mandated cost will be found where the "local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

California Code of Regulations, title 5, section 55005

Claimant asserts that section 55005 requires community colleges to make college publications available to students and to inform students concerning pertinent information about the courses.

Claimant asserts that section 55005 was added in 1981 and last amended in 1991. We cannot verify those dates at this time.

In 1969, the Board of Governors submitted regulations to the Office of Administrative Procedure for publication in title 5. Time and resource limitations of our office have permitted only a cursory review of such historic documents. The 1969 submission of the Board of Governors included regulation 51001 that allowed districts to offer courses on a credit-no credit basis, and if they did so, required them to publish that information in their catalogs. In the same 1969 submission, section 51002 required districts to establish curriculum to permit the "realization of the objectives and functions" of the college, and to adopt regulations consistent with section 51002 and to publish their standards of scholarship in their catalogs. Section 51003 required districts to describe graded courses in grades 13 and 14 in the college catalog or supplement thereto and to have a course outline available at the college. We believe that this is a sufficient showing of earlier and on-going obligations in this area that predated 1975. If the Commission does not reject reimbursement for the requirements of section 55005 on the grounds that follow, we recommend a full review of the history of this provision.

Section 55005 is part of the chapter that addresses curriculum and instruction. The chapter is embraced under section 51021which is a minimum standard for curriculum, citing Education Code sections 66700 and 70901, both of which require the Board of Governors to adopt minimum standards for community colleges. As noted above, the predecessor sections to 66700 and to 70901 both predated 1975. Based on the above Attorney General analysis of minimum standards that are adopted pursuant to legislative directive prior to 1975, costs for section 55005 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 51021 and any incorporated sections are minimum standards for the receipt of state aid. Claimant is not required to accept state aid, but having done so, must comply with curriculum requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate.

Assuming that Claimant receives state assistance, we find nothing that prevents Claimant from using some of the funds it has already received from the state to satisfy the costs of publishing course information.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notice concerning courses is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations, title 5, section 55202

Claimant notes that section 55202 requires that prerequisites, corequisites, and advisories on recommended preparation be identified in college publications as well as in the outline of record for the courses to which they pertain.

Claimant asserts that section 55202 was added in 1993. We agree.

Section 55202 addresses the establishment of prerequisites, corequisites, and advisories on recommended preparation. The initial phrase of section 55201(a) confirms the permissive nature of establishing prerequisites, corequisites, and advisories on recommended preparation. The section provides in pertinent part: "The governing board of a community college district may establish prerequisites, corequisites, and advisories on recommended preparation, but must do so in accordance with the provisions of this Article." (Emphasis added.) Thus, districts are not required to establish such matters; but if they do, they must comply with the requirements of the article, including the requirements of section 55202.

All actions leading to the establishment of prerequisites, corequisites, and advisories on recommended preparation are based on local choice and action. The obligations of section 55202 are adopted voluntarily by districts when and if they decide to establish course prerequisites, etc., so pursuant to *Kern High School, supra,* 30 Cal.4th 727, there is no state mandate.

Furthermore, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, notices of the existence of prerequisites, corequisites, or advisories on recommended preparation are not "programs" but merely mechanisms related to accessing educational programs. On either basis, the costs are not reimbursable.

California Code of Regulations, title 5, section 55530

Claimant notes that section 55530 requires districts to ensure that students have information regarding their rights and responsibilities under the chapter on curriculum and instruction.

Claimant asserts that section 55530 was added in 1990 and last amended in 1993; we agree.

Claimant's assertion highlights a drafting construction error in section 55530. The section refers to rights and responsibilities under this "Chapter," but the context and history of the section confirm that the term "chapter" should be "subchapter." The Subchapter in question is Subchapter 6. Subchapter 6 deals only with matriculation programs as opposed to all of curriculum and instruction.

The "Nomenclature Cross-Reference" chart for title 5 verifies that effective April 1, 1990, the term "subchapter" would replace "chapter." The matriculation regulations, of which section 55530 is a part, were in the final stages of adoption by the Board of Governors when the nomenclature change occurred, and the change was not incorporated consistently throughout the regulations. While the reference to "chapter" rather than "subchapter" is a drafting flaw in the regulation, the Chancellor's Office has never applied the matriculation notice to all items covered by the entire curriculum and instruction chapter.

Matriculation obligations are directly tied to participation in matriculation funding. Education Code section 78218 verifies that the statutory obligations the regulations implement are only operative if funds are specifically appropriated for matriculation purposes. Moreover, Education Code section 78211.5(b) provides in part that "any college or district receiving funding under this article shall agree to carry out its provisions as specified, but shall be bound to that agreement only for the period during which funding is received pursuant to this article." Accordingly, Claimant's acceptance of matriculation funding is the source of any obligations.

The choice to participate in the matriculation program carries certain obligations so long as the funding is provided. Because participation is discretionary as to districts, under *Kern High School, supra,* 30 Cal.4th 727, the requirements of section 55530 carry no state mandate.

Districts that do apply for and accept matriculation funding are required to match each dollar of matriculation funding with three dollars of other district resources. (§ 55518.) Some of that matching money is likely other state funding dollars. Nothing in statute or regulation prohibits districts from spending matriculation funding or the matching money from other state resources to satisfy the requirements of section 55530; accordingly, the state should not have to pay again for actions Claimant may already pay for from state resources.

Furthermore, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, notices to students of their matriculation rights are not "programs" but are merely mechanisms related to accessing matriculation services. On that basis, the costs are not reimbursable.

California Code of Regulations , title 5, section 55534

Claimant notes that section 55534 requires districts to investigate and attempt to resolve any alleged violations of the matriculation subchapter. Claimant asserts that section 55534 was added in 1990 and last amended in 1994; we agree.

As noted above, the obligations of the matriculation subchapter fall only to districts that choose to participate in the program by accepting matriculation funding. The same considerations defeat the claim for reimbursement under section 55534. That is, Claimant's participation is discretionary; funding is already provided that Claimant may use for purposes of section 55534. Therefore, for the same reasons noted above for section 55530, the requirements of section 55534 carry no state mandate.

California Code of Regulations, title 5, section 55750

Claimant asserts that section 55750 requires districts to adopt and implement regulations addressing standards of scholarship and to publish those regulations in the college catalog.

Claimant asserts that section 55750 was added in 1983 and last amended in 1991. We cannot verify those dates at this time.

As noted above, our review of a 1969 regulation submission revealed section 51002, which required districts to adopt regulations establishing standards of scholarship and to publish their standards of scholarship in their catalogs. If the Commission does not reject reimbursement for the requirements of section 55750 on other grounds, we recommend a full review of the history of this provision.

Section 55750 was originally adopted under the authority of former Education Code section 72285 (enacted by Stats 1976, ch. 1010) and its predecessor section 1010.6 (enacted by Stats. 1969). Section 1010.6 required district governing boards to "establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors." Thus, we believe that the various mandates of the subchapter on standards of scholarship were embraced by 1010.6, all predated 1975, and have existed continuously since section 1010.6 took effect.

Section 55750 is established as a minimum standard by the Board of Governors. (See § 51002.) Both section 55750 and section 51002 are adopted under the authority of Education Code sections 66700 and 70901, both of which predated 1975 in requiring the Board of Governors to adopt minimum standards. Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55760 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55750 is a minimum standard for the receipt of state aid by virtue of section 51002. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state aid to satisfy the requirements of section 55750; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the publication of standards of scholarship is not a "program" but

merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations , title 5, section 55752

Claimant notes that section 55752 requires districts that offer credit-no credit grading options to specify in its catalog into which category each course falls. Claimant asserts that section 55752 was added in 1983 and last amended in 1991. We cannot verify those dates at this time.

As noted above, the 1969 submission of the Board of Governors included regulation 51001 that provided:

> "(a) The governing board may by regulation offer courses in either or both of the following categories, and shall specify in its catalog the category or categories in which the course falls: (In the absence of such regulation a course will be presumed to be offered on a letter-grade basis.)
> (1) Courses wherein all students are evaluated on a 'credit-no credit' basis.
> (2) Courses wherein each student may elect on registration, or within a reasonable time thereafter, whether the basis of his evaluation is to be a 'credit-no credit' or a letter grade.
> (3) All units earned on a 'credit-no credit' basis in California institutions of higher education or equivalent out-of-state institutions shall be counted in satisfaction of community college curriculum requirements, but such courses shall be disregarded in determining a student's grade point average for all purposes for which a grade point average is required.
> (4) The governing board may authorize a student who has received credit for a course taken on a 'credit-no credit' basis within the district to convert his grade to a letter grade by taking an appropriate examination."

It is clear that former section 51001, which we believe was adopted in 1969, included requirements that now appear in section 55752, sufficient to reject a claim for reimbursement.

Additionally, the initial sentence of section 55752(a) verifies that districts may choose to provide credit-no credit grading options: "The governing board of a district maintaining a community college may by resolution offer courses in either or both of the following categories. . . ." (Emphasis added.) As with various other sections raised by Claimant, the obligation to include information in the catalog results from an optional decision by the governing board. Accordingly, under *Kern High School, supra,* 30 Cal.4th 727, no state mandate is fairly presented.

Section 55752 is also established as a minimum standard by the Board of Governors. (See § 51002.) If Claimant chooses to offer a credit-no credit option, it must comply with the standard. Both section 55752 and section 51002 are adopted under the authority of section Education Code section 70901, a predecessor to which predated 1975 in requiring the Board of Governors to adopt minimum standards. Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55752 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55752 is a minimum standard for the receipt of state aid by virtue of section 51002. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 55752; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the publication of grading options is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations , title 5, section 55753

Claimant asserts that section 55753 requires districts to adopt and publish procedures and regulations related to credit by examination in the college catalog. Claimant asserts that section 55753 was added in 1983 and last amended in 2002; we agree.

Districts have long had statutory authority to grant credit by examination. Thus, section 25518.6, enacted by Statutes 1965, chapter 1669, provided: "To the extent and subject to such requirements as the State Board of Education may, by regulation prescribe, the governing board of a district maintaining a junior college may grant credit to any student based on examinations approved and conducted by proper authorities of the college."

When the Education Code was reorganized, section 25518.6 was replaced by section 78207 (enacted by Stats. 1976, ch. 1010) that provided "To the extent and subject to such requirements as the Board of Governors of the California Community Colleges may, by regulation prescribe, the governing board of a community college district may grant credit to any student based on examinations approved and conducted by proper authorities of the college." Section 78207 was repealed in 1990; it was unnecessary because it was merely permissive and included no mandates. By 1990, the Board had already adopted section 55753. Therefore, either statutory or regulatory authority has continuously addressed credit by examination since at least 1965.

Section 55753(b) confirms that districts are authorized, but not required, to allow for credit by examination. Accordingly, under *Kern High School, supra,* 30 Cal.4th 727, Claimant may not be reimbursed for an optional activity.

Moreover, the Chancellor's Office has determined that because credit by examination is optional, an optional service fee may be imposed on students who pursue credit by examination. The cost of adopting or publishing applicable regulations would be a cost that could be included in assessing how much the service is worth to students. Government Code section 17556(d) provides that no mandated cost will be found where the "local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Accordingly, because Claimant can charge for this service, it cannot secure reimbursement.

California Code of Regulations , title 5, section 55758

Claimant asserts that section 55758 requires districts to publish point equivalencies of grades. Claimant asserts that section 55758 was added in 1983 and last amended in 2000. We cannot verify that information at this point.

The 1969 regulations we discussed above included section 51002 that provided for minimum standards of scholarship and that required that point equivalents to grades and grading standards be published in the college catalog. Section 51002(e)(1) included a table of grades and corresponding grade points, e.g., "A-4 grade points," the grade status for probation, and the grade status for dismissal. Accordingly, it appears at least some of the requirements existed long before 1975. If the Commission does not reject reimbursement for the requirements of section 55758 on other grounds, we request that it research the complete history of this provision.

Section 55758 is also established as a minimum standard by the Board of Governors. (See § 51002.) Both section 55758 and section 51002 are adopted under the authority of Education Code section 70901, a predecessor to which predated 1975 in requiring the Board of Governors to adopt minimum standards. Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55758 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55758 is a minimum standard for the receipt of state aid via section 51002. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 55758; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the publication of standards of scholarship such as point equivalencies for letter grades is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations , title 5, section 55759

Claimant asserts that section 55759 requires colleges to make reasonable efforts to notify students of probation or dismissal, to make an effort to provide counseling to students on probation, to notify students of their removal from probation or reinstatement after dismissal and to publish related policies and procedures in the catalog. Claimant asserts that section 55759 was added in 1983 and last amended in 1991. We cannot verify that information at this point.

The 1969 regulations we discussed above included section 51002 that provided for minimum standards of scholarship and that required that the standards be published in the college catalog. Section 51002(e)(1) required districts to notify students placed on probation that their

performance was deficient and that dismissal could occur in accordance with that section. Section 51002(h)(3) called for counseling for each student on probation. Accordingly, it appears that substantial portions of current 55759 predated 1975. If the Commission does not reject reimbursement for the requirements of section 55759 on other grounds, we recommend a complete review of the history of this provision.

To the extent that section 55759 merely requires districts to make "reasonable efforts" for student notifications, no quantifiable mandates are included.

Section 55759 is established as a minimum standard by the Board of Governors. (See § 51002). Both section 55759 and section 51002 are adopted under the authority of Education Code sections 66700 and 70901, both of which predated 1975 in requiring the Board of Governors to adopt minimum standards. Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55759 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

In addition to the general directive to adopt minimum standards, the Legislature has long required the Board to specifically adopt minimum academic standards relating to student probation, dismissal, and readmission. (Ed. Code, § 70901(b)(1)(A).) This directive was initially added by Statutes 1969, as Education Code section 1010.6, and has been in place without lapse to the present. Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55759 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55759 is a minimum standard for the receipt of state aid via section 51002. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 55759; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students that they are on probation or removed from probation is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations , title 5, section 55760

Claimant asserts that section 55760(b) requires districts to adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded. Claimant asserts that section 55760(b) was added in 1983 and last amended in 1991; we agree.

Sections 55760, 55761, 55762, 55764, and 55765 (which are all included in this Claim) must be read together for purposes of analysis. Taken together, it is clear that districts are not required to allow for the repetition of courses. Section 55761 requires districts to adopt and publish

procedures or regulations pertaining to course repetition; sections 55760, 55762, 55764, and 55765 establish certain parameters for course repetition. However, section 55761 merely permits repetition; it does not require it: "The procedures or regulations may allow such courses [those for which a substandard grade has been recorded] to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages." (Emphasis and parenthetic comment added.)

If districts allow such repetition, certain requirements must be met. Under *Kern High School, supra,* 30 Cal.4th 727, no mandate is present where actions are merely permissive.

Even if the sections are read as requiring districts to permit course repetition, section 55760(b) represents a Board of Governors minimum standard of scholarship. (See § 51002.). Both section 55760 and section 51002 are adopted under the authority of Education Code sections 66700 and 70901, both of which predated 1975 in requiring the Board of Governors to adopt minimum standards. Thus, if Claimant decides to allow for course repetition, it must follow the regulatory minimum standards.

In addition to the general directive to adopt minimum standards, since 1969, the Legislature has required the Board to specifically adopt minimum academic standards. (Ed. Code, § 70901(b)(1)(A) and former § 1010.6.) Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55760 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55760 also a minimum standard for the receipt of state aid via section 51002. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 55760; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students concerning course repetition is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations, title 5, section 55761

Claimant asserts that section 55761 requires districts to adopt and publish procedures or regulations pertaining to repeating of courses for which substandard work has been recorded. Claimant asserts that section 55761 was added in 1983 and last amended in 1991; we agree.

The analysis for section 55760 applies equally to this section, and we incorporate it here by reference.

California Code of Regulations, title 5, section 55762

Claimant asserts that section 55762(c) requires colleges to indicate any specific courses or categories of courses that cannot be repeated after substandard academic performance. Claimant asserts that section 55762(d) requires colleges to indicate any courses that were repeated on the student's academic record, that 55762(e) requires colleges to publish procedures for implementing the section, and that 55762(g) requires districts to record course repetition actions. Claimant asserts that section 55762 was added in 1983 and last amended in 1991; we agree.

The analysis for section 55760 applies equally to this section, and we incorporate it here by reference.

In addition, the actions of maintaining a student's academic record and otherwise recording course repetitions are customary actions that are foundational to district operations. We believe they are subsumed in the basic authority to maintain a college. To assert a claim on the basis of having to maintain student records is akin to asserting a claim for having to open the doors to buildings to allow students to enter.

California Code of Regulations, title 5, section 55764

Claimant asserts that section 55764 requires colleges to adopt and publish procedures or regulations for alleviating previously recorded substandard academic performance if that work does not reflect a student's demonstrated ability. Claimant asserts that section 55764 was added in 1983 and last amended in 1991; we agree.

The analysis for section 55760 applies equally to this section, and we incorporate it here by reference.

California Code of Regulations, title 5, section 55765

Claimant asserts that section 55765(c) requires districts to adopt and publish procedures related to academic renewal. Claimant asserts that section 55765 was added in 1983 and last amended in 1991; we agree.

The analysis for section 55760 applies equally to this section, and we incorporate it here by reference.

California Code of Regulations, title 5, section 55800

Claimant asserts that section 55800 requires districts to adopt policies on degrees and certificates and publish the policies. Claimant asserts that section 55800 was added in 1983 and last amended in 1991. We cannot verify that information at this time.

The 1969 regulations we discussed above included section 51005 that addressed the requirements for degrees and certificates, including requirements for the associate in arts degree

and the associate in science degree, the awarding of diplomas, and the issuing of certificates of achievement. Accordingly, it appears that substantial portions of current 55800 predated 1975. If the Commission does not reject reimbursement for the requirements of section 55800 on other grounds, we recommend a thorough review of the history of this provision.

Section 55800 represents a Board of Governors minimum standard. (See § 51004.) Both section 55800 and section 51004 are adopted under the authority of Education Code sections 66700 and 70901, both of which predated 1975 in requiring the Board of Governors to adopt minimum standards.

In addition to the general directive to adopt minimum standards, since 1969, the Legislature has required the Board to specifically adopt minimum academic standards relating to graduation requirements. (Ed. Code, § 70901(b)(1)(A) and former § 1010.6.) Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55800 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55800 is also a minimum standard for the receipt of state aid via section 51004. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 55800; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students concerning degrees and certificates is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations, title 5, section 58102

Claimant asserts that section 58102 requires the description of courses to be included in catalogs and be clear. Claimant asserts that section 58102 was added in 1982 and last amended in 1993. We cannot verify that information at the present time.

The 1969 regulations we discussed above included section 51003 that addressed graded courses. Subsection (c)(2) provided in pertinent part that "it must be offered as described in the college catalog or a supplement thereto which provides an appropriate title, number, and accurate description of course content. A course outline is available at the college." Accordingly, it appears that substantial portions of current 58102 predated 1975. If the Commission does not reject reimbursement for the requirements of section 58102 on other grounds, we recommend a thorough review of the history of this provision.

Districts are not required to report classes for apportionment; however, if they wish to collect apportionment, they must abide by the requirements of section 58102. (See § 58050.) Under

Kern High School, supra, 30 Cal.4th 727, section 58102 creates no mandate because districts may opt not to collect apportionment. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 58102; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students concerning courses is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations, title 5, section 58104

Claimant asserts that section 58104 requires courses to be described in the official catalog, schedule, or be reasonably well publicized if they are established after the publication of these materials.

Claimant asserts that section 58104 was added in 1982 and last amended in 1993. We cannot verify that information at the present time and we incorporate here our above response regarding section 58102.

California Code of Regulations, title 5, section 59404

Claimant asserts that section 59404 requires governing boards that make their students provide instructional materials for classes to adopt policies and specify the conditions for required materials. The policies must be published in the catalog.

Claimant asserts that section 59404 was added in 1985 and last amended in 1994; we agree.

Section 58400 clearly provides that districts may require students to provide instructional materials. The entire chapter applies only if districts choose to require instructional materials; if so, they must then adopt and publish policies. Under *Kern High School, supra,* 30 Cal.4th 727, no mandate is created because of the permissive nature of the program.

Additionally, prior Education Code section 1010.4(e), adopted by Statutes 1969, chapter 1026, required districts to "establish policies for, and approve, procedures for the adoption of instructional materials." That section was renumbered to section 72283 by Statutes 1976, chapter 1010, and remained in effect until 1990, by which time the subject regulation had taken effect. Any requirement for a policy predated 1975 and has continued without lapse.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students concerning instructional materials is not a "program" but merely a mechanism related to accessing the educational program. On that basis, the cost is not reimbursable.

California Code of Regulations, title 5, section 59410

Claimant asserts that section 59410 permits districts to provide that grades, transcripts, diplomas, and registration privileges will be withheld from students who are notified that they failed to pay a financial obligation.

Claimant asserts that section 59410 was added in 1991 and last amended in 1994; we agree.

Section 59410 contains no mandate unless Claimant chooses to implement a policy of withholding items from students who owe money. Because the mechanism is a purely optional one for Claimant, under *Kern High School, supra,* 30 Cal.4th 727, the optional nature of the action precludes reimbursement.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students concerning debt remedies is not a "program" but merely a tangential fiscal remedy unrelated to the educational program. On that basis, the cost is not reimbursable.

Further based upon the districts higher reserve level than recommended by the State, the district did have State money to pay for these costs.

Conclusion

For the reasons stated above, we believe there is no basis for reimbursement and we recommend rejection of the Claim.

Sincerely,

Frederick E. Harris

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning

SixTen and Associates
Mandate Reimbursement Services

Exhibit E

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April 19, 2004

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APR 22 2004

COMMISSION ON
STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-25
Los Rios Community College District
Notice to Students

Dear Ms. Higashi:

I have received the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 16, 2004, to which I now respond on behalf of the test claimant.

A. The Comments of CCC are Incompetent and Should be Excluded

Test claimant objects to the comments of CCC, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the response since CCC has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

> "If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

In addition, CCC has cited numerous federal statutes and regulations without attaching a copy thereof in violation of Title 2, California Code of Regulations Section 1183.02, subdivision (c)(2), which requires that written responses, opposition or recommendations on the test claim shall contain:

> "A copy of relevant portions of...federal statutes, and executive orders that may impact the alleged mandate...unless such authorities are also cited in the test claim. The specific chapters, articles, sections, or page numbers must be identified..."

The comments of CCC do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of CCC not be included in the Staff's analysis.

Part I
Education Code Sections

B. The Requirements of Education Code Section 66281.5 Create a New Program or Higher Level of Service

(1) The Requirements of Section 66281.5 Exceed the Requirements of Title IX and 34 Code of Federal Regulations, Part 106

CCC claims that the requirements of Education Code section 66281.5 "substantially reflect" the requirements of Title IX, a federal law that prohibits sex discrimination and sexual harassment and its implementing regulations appearing at 34, Code of Federal

Regulations, part 106, sections 106.1 through 106.71.[1] CCC claims that the existence of Title IX and its implementing regulations prohibit a finding that section 66281.5 creates a new program or higher level of service.

As authority for this claim, CCC cites subdivision (c) of Government Code section 17556, which provides:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:...
>
> (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation." (Emphasis supplied)

CCC recites the patriotic purposes of Title IX, but does not direct the Commission to any specific part of Part 106 which establishes a federal requirement or duplicates any of the activities of Education Code Section 66281.5. A possible relevant citation might be section 106.9 of part 106 of 34 CFR where:

(a) Paragraph (a)(1) requires each recipient to implement specific and continuing steps to notify applicants for admission and employment (and others) that it does not discriminate on the basis of sex in educational programs or activities.

(b) Paragraph (a)(1) also requires that the notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part.

(c) Paragraph (a)(2) requires each recipient to make the initial notification required by paragraph (a)(1) within 90 days of the effective or applicable date in newspapers or other written communications distributed to every student and employee.

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[1] Since CCC has not complied with the Title 2 Regulations that require a copy of these federal regulations be provided, a copy is attached hereto as Exhibit "B".

(d) Paragraph (b)(1) requires each recipient to prominently include a statement of the policy described in paragraph (a)[2] to be prominently included in each announcement, bulletin, catalog, or application form which it makes available to any person of a type described in paragraph (a)[3], or which is otherwise used in connection with the recruitment of students or employees. (Emphasis supplied)

(e) Paragraph (c) requires each recipient to distribute each publication described in paragraph (b) and to apprise each of its admission and employment recruitment representatives of the policy and require such representatives to adhere to such policy.

In addition to these federal requirements, the test claim alleges[4] the following additional state activities relative to Education Code Section 66281.5:

(a) Establishing and implementing policies and procedures, and periodically updating those policies and procedures, for the notification of students pursuant to the Education Code and Title 5 Regulation sections.

(b) Pursuant to subdivision (b), adopting and implementing a written policy on sexual harassment, and including the policy in its regular policy statement.

(c) Pursuant to subdivision (c), including information in the written policy on where to obtain the rules and procedures for reporting sexual harassment charges and the available remedies.

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[2] Paragraph (a) describes a policy of nondiscrimination on the basis of sex, but does not otherwise require it to be in writing or be adopted by the governing board.

[3] Paragraph (a) describes applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions and professional organizations holding collective bargaining or professional agreements with the recipient.

[4] Test Claim, page 12, lines 2-17

(d) Pursuant to subdivision (d), displaying the written policy in a prominent location in the main administrative building or other area of the campus.

(e) Pursuant to subdivision (e), providing the written policy to new students as a part of any orientation program.

(f) Pursuant to subdivision (f), providing a copy of the written policy annually to each faculty member, administrative staff, all members of support staff, and to any newly hired employee.

(g) Pursuant to subdivision (g), publishing the written policy in any publication that sets forth the rules, regulations, procedures, and standards of conduct for the institution.

The activities alleged in the test claim exceed those required in part 106 of title 34, Code of Federal Regulations and fall within the exception of subdivision (c) of Government Code Section 17556, that is, when "the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."

(2) The Requirements of Section 66281.5 Exceed the Few Requirements Found in the "Revised Guidance"

CCC also cites general provisions of "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," (hereinafter referred to as the "Revised Guidance") published in January 2001 by the Office for Civil Rights of the U.S. Department of Education.[5] Simply citing this additional publication does not resolve the issue of whether the activities alleged in the test claim exceed those required in the "Revised Guidance."

The "Revised Guidance" reaffirms the compliance standards that OCR applies in investigations and administrative enforcement of Title IX and provides the principles that a school should use to recognize and effectively respond to sexual harassment of students. ("Revised Guidance," Preamble, page i) The "Revised Guidance" provides many examples of "what to do," but provides very little requirements on "how to do"

[5] Since CCC has not complied with the Title 2 Regulations that require a copy of this Revised Sexual Harassment Guidance be provided, a copy is attached hereto as Exhibit "C".

(d) Pursuant to subdivision (d), displaying the written policy in a prominent location in the main administrative building or other area of the campus.

(e) Pursuant to subdivision (e), providing the written policy to new students as a part of any orientation program.

(f) Pursuant to subdivision (f), providing a copy of the written policy annually to each faculty member, administrative staff, all members of support staff, and to any newly hired employee.

(g) Pursuant to subdivision (g), publishing the written policy in any publication that sets forth the rules, regulations, procedures, and standards of conduct for the institution.

The activities alleged in the test claim exceed those required in part 106 of title 34, Code of Federal Regulations and fall within the exception of subdivision (c) of Government Code Section 17556, that is, when "the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."

(2) The Requirements of Section 66281.5 Exceed the Few Requirements Found in the "Revised Guidance"

CCC also cites general provisions of "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," (hereinafter referred to as the "Revised Guidance") published in January 2001 by the Office for Civil Rights of the U.S. Department of Education.[5] Simply citing this additional publication does not resolve the issue of whether the activities alleged in the test claim exceed those required in the "Revised Guidance."

The "Revised Guidance" reaffirms the compliance standards that OCR applies in investigations and administrative enforcement of Title IX and provides the principles that a school should use to recognize and effectively respond to sexual harassment of students. ("Revised Guidance," Preamble, page i) The "Revised Guidance" provides many examples of "what to do," but provides very little directions on "how to do" them.

[5] Since CCC has not complied with the Title 2 Regulations that require a copy of this Revised Sexual Harassment Guidance be provided, a copy is attached hereto as Exhibit "C".

For example, CCC quotes from page 14:

> "Schools are required by the Title IX regulations to adopt and publish grievance procedures[6] providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination." (Emphasis supplied)

The test claim does not allege any "grievance procedures." And, the specific test claim allegations summarized above at subparagraphs (a) through (g) of Education Code Section 66281.5, above, go far beyond the generalized requirement to "disseminate a policy."

CCC also cites pages 19-20 of the "Revised Guidance," from a section entitled "Prompt and Equitable Grievance Procedures." (Again, the test claim does not allege grievance procedure activities.) At page 19, the "Revised Guidance" states:

> "Schools are required by Title IX regulations to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex."

Again, some "what to's" but no "how to's", and less than the specificity set forth in subparagraphs (a) through (g), above. The "Revised Guidance" continues to explain with lack of specificity:

> "Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment." (Emphasis supplied)

Most importantly, the "Revised Guidance" states that the adoption of a policy prohibiting sexual harassment is not required. Again, lots of "what to's" (e.g., "provide

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[6] The "Revised Guidance" and CCC use the terms "grievance procedures" and "complaint procedures" interchangeably. Test claimant assumes that their use of "grievance procedures" does not refer to any collective bargaining process.

effective means") but no "how to's" (such as, "how" to provide "effective means"). At pages 19-20, the "Revised Guidance" does indicate:

> "...if, because of a lack of policy...specifically addressing sexual harassment, students are unaware of what kind of conduct constitutes sexual harassment or that such conduct is prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination complaints will not be considered effective."

In other words, if it doesn't work, it's not good enough, but no required "how to's" are included to make it work. The only specificity put forth by OCR are several elements in evaluating whether a school's grievance procedures will not be considered effective, including an unspecific notice to students, parents and employees where complaints may be filed. This, of course, is different from the more specific requirements of subparagraph (c), above, which requires the inclusion of information in the written policy on where to obtain the rules and procedures for reporting sexual harassment charges and the available remedies.

Then, again, at page 20, OCR becomes non specific:

> "Procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience."

Finally, OCR concludes this discussion by commenting:

> "Many schools ensure adequate notice to students by having copies of the procedures available at various locations throughout the school or campus; publishing the procedures as a separate document; including a summary of the procedures in major publications issued by the school, such as handbooks and catalogs for students, ...faculty and staff; and identifying individuals who can explain how the procedures work."

This observation by OCR is no more than that, an observation, perhaps a suggestion. They are not executive orders. The activities of Education Code section 66281.5 mandate costs which exceed any suggestions found in the "Revised Guidance."

(3) The Requirements of Section 66281.5 Exceed the Requirements of Title VII and 29 Code of Federal Regulations, Part 1604

Part 1604 of 29 Code of Federal Regulations[6] regulates employment discrimination on the basis of sex. CCC quotes a portion of 1604.11(f) which states in whole:

> "Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned." (Emphasis supplied)

The section does not contain any requirements of the federal government so as to include it within the provisions of subdivision (c) of Government Code Section 17556. Even if it could be so construed, the activities described in subparagraphs (a) through (g), above, are activities which exceed those activities in section 1604.11(f) of title 29 of the Code of Federal Regulations.

(4) Education Code Section 66281.5 is not a Law of General Application

At page 4 of its comments, CCC cites Government Code Section 12950[7], notes that it is part of the Fair Employment and Housing Act ("FEHA") and concludes that "FEHA" has general application to nearly all California employers and does not impose unique requirements on local government agencies such as community college districts. CCC cites *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57 as its authority.

CCC errs because the test must be applied to the test claim legislation, i.e., Education Code Section 66281.5 and not to "FEHA." The analysis of section 66281.5 describing its mandated activities in subparagraphs (a) through (g), above, show why it is not a law which applies generally to all residents and entities in the state.

The decision in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56

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[6] Since CCC has not complied with the Title 2 Regulations that require a copy of Part 1604 of 29 Code of Federal Regulations be provided, a copy is attached hereto as Exhibit "D".

[7] Under Government Code Section 12950, employers are required "to post" a poster provided by the Department of Fair Employment and Housing and "distribute" to its employees an information sheet supplied by the Department.

(hereinafter "*County of Los Angeles*) was further relied upon and explained in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51. (hereinafter "*Sacramento II*") There, the California Supreme Court explained its *County of Los Angeles* decision:

> "Most private employers in the state already were required to provide unemployment protection to their employees. Extension of this requirement to local governments, together with the state government and nonprofit corporations, merely makes the local agencies 'indistinguishable in this respect from private employers.'" (Opinion, at page 67)

The above analysis of section 66281.5, at subparagraphs (a) through (g), above, shows that community colleges, when complying with Education Code Section 66281.5 are, in fact, "distinguishable from private employers" when complying with "FEHA". The situation is similar to that discussed by the court in *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 172 where the court held that "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function."

(5) Legal Compulsion is not Necessarily Required for a Finding of a Mandate

At page 4 of its response CCC states that Education Code Section 66281.5 applies only to a community college district that receives, or benefits from, state financial aid. CCC then cites *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 ("*Kern*") and interprets *Kern* to hold that school districts are not entitled to reimbursement "where a district voluntarily participates in a program." This is not a correct interpretation of *Kern*. A finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate. The controlling case law on the subject of legal compulsion *vis-a-vis* non-legal compulsion is still *Sacramento II*.

(a) *Sacramento II* Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(b) *Sacramento I* Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "mandate of the federal government" under Section 9(b).[8]

In other words, *Sacramento I* concluded, *inter alia*, that the loss of federal funds and tax credits did not amount to "compulsion."

(c) *Sacramento II* Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

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[8] Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

However, the court also overruled that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to "compulsion."

(d) *Sacramento II* "Compulsion" Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.

In disapproving *Sacramento I*, the court explained:

> "If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments." (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state's employers faced only with the federal tax. The court replied to this suggestion:

> "However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation, since the state was practically "without discretion" to do otherwise.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of "mandatory" versus "optional":

> "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began;

> the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (Opinion, at page 76)

(e) The "Kern" Case Did Not Change the Standard

In *Kern*, at page 736, the Supreme Court first made it clear that the decision did not hold that legal compulsion was necessary in order to find a reimbursable mandate:

> "For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement under article XIII B, section 6,[9] because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate." (Emphasis in the original, underlining supplied)

After concluding that the facts in *Kern* did not rise to the standard of non-legal compulsion, the court reaffirmed that either double taxation or other draconian consequences could result in non-legal compulsion:

> "In sum, the circumstances presented *in the case before us* do not constitute the type of non-legal compulsion that reasonably could constitute, in claimants' phrasing, a 'de facto' reimbursable state mandate. Contrary to the situation that we described in (*Sacramento II*), a claimant that elects to discontinue participation in one of the programs *here at issue* does not face 'certain and severe...penalties' such as 'double...taxation' or other 'draconian' consequences (citation), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations." (Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented)

The test for determining the existence of a mandate is whether compliance with the test

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[9] This *Kern* disclaimer that "we find it unnecessary in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement" refutes CCC's interpretation that legal compulsion is always necessary for a finding of a mandate.

claim legislation is a matter of true choice, that is, whether participation is truly voluntary. *Hayes v. Commission on State Mandates*, (1992) 11 Cal.App.4th 1564, 1582 Under the "carrot and stick" analysis of both *Kern* and *Hayes*, community college districts' acceptance of state aid is not truly voluntary, the carrot is too large and the stick is too short.

(6) Educating California Students is not an Option

When CCC argues that accepting state aid to educate students is a discretionary act, implying that community colleges are not required to educate students, it ignores a Constitutional mandate to do so.

Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all. The Constitution in 1849 directed the Legislature to "provide for a system of common schools[10], by which a school shall be kept up and supported in each district." That constitutional command, with the additional proviso that the school maintained by each district be "free" has persisted to the present day. *Butt v. State of California*[11] (1992) 4 Cal.4th 668, 680 The California Constitution requires the education of community college students. In *Butt* the court explained:

"Accordingly, California courts have adhered to the following principles: Public education is an obligation which the State assumed by the adoption of the Constitution. (Citations) The system of public schools, although administered through local districts created by the Legislature, is 'one system...applicable to all the common schools...' (Citation) In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. (Citation) 'Management and control of the public schools [is] a matter of state[, not local,] care and supervision...' (citations) The Legislature's 'plenary' power over public education is subject only to constitutional restrictions.

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[10] The California Community Colleges are postsecondary schools and shall continue to be part of the public school system of this state. Education Code Section 66700 Education in our society is considered to be a peculiarly governmental function administered by local agencies to provide service to the public. *Long Beach Unified School District v. State of California* (supra, at 172)

[11] Pursuant to Title 2, California Code of Regulations, Section 1183.03(2), a copy of Butt v. State of California is attached hereto as Exhibit "E".

(Citations) Local districts are the State's agents for local operation of the common school system (Citations), and the State's ultimate responsibility for public education cannot be delegated to any other entity. (citation)" (Opinion, at pages 680-681)

Then after the court reminded us that, in *Serrano I*[12], the court had struck down the then existing State public school financing scheme, which caused the amount of basic revenues per pupil to vary substantially among the respective districts depending on their taxable property values (Opinion, at page 683), the Supreme Court concluded:

> "It therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity. (¶)...Whatever the requirements of the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State." (Opinion, at page 685)

CCC's argument that community college districts need not accept state funding is tantamount to saying that each district is "on its own" when it comes to funding. Since the quality of the education provided by each community college district would then depend on the wealth of each individual district, CCC's argument also violates the equal protection laws of the State constitution. (Article I, §7, subdivisions (a), (b); Article IV, §16, subdivision (a))

C. The Requirements of Education Code Section 66721.5 are a New Program or a Higher Level of Service

(1) The Mandated Activities of Education Code Section 66721.5 Constitute a "Program"

CCC concurs, at page 5 of its comments, that Education Code Section 66721.5 is "new" in that it was added to the Education Code in 2000. It questions whether the

[12] *Serrano v. Priest* (1971) 5 Cal.3d 584

activities required (providing and distributing copies of a district's current transfer core curriculum) are a "program," citing *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538. (hereinafter *Los Angeles v. DIR*),

In *Los Angeles v. DIR*, OSHA added or amended elevator fire and earthquake safety measures in Title 8 Regulations which applied to all elevators, whether publicly or privately owned. (Opinion, at pages 1540-1541) The court first held that the elevator safety regulations did not satisfy the second prong requirement of *County of Los Angeles* in that they applied to all elevators, not just those which were publicly owned and, therefore, did not impose unique requirements that did not apply to all residents and entities in the state. (Opinion, at page 1545)

Having lost this argument, the county then urged the court that the regulations satisfied the first prong of the test in that the regulations were programs that carried out the governmental function of providing services to the public. To buttress this theory, the county offered a declaration which offered the opinion of a declarant that "without those elevators no peculiarly governmental functions and no purposes mandated on County by State Law could be performed in those County buildings." After questioning the sincerity of the declaration[13], the court concluded:

> "County has missed the point. The regulations at issue do not mandate elevator service; they simply establish safety measures....Providing elevators equipped with fire and earthquake safety features simply is not 'a governmental function of providing services to the public'." (Opinion, at page 1546)

The court affirmed the superior court's order granting a motion for summary judgment because "[T]he regulations at issue (did) not mandate elevator service..."

CCC argues disingenuously, at page 5, that providing and distributing copies of a district's current transfer core curriculum "are more akin to the elevators that provide a means of obtaining the program services" and therefore "do not constitute a program or increased services within an existing program and that there is no basis for reimbursement."

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[13] "These thoughts had occurred to counsel only shortly before County's opposition to the summary judgment motion was due to be filed." (Opinion, at page 1545)

Education Code Section 66720 requires the development, maintenance, and dissemination of a common core curriculum for the purposes of transfer which, upon completion will be deemed to have thereby completed all lower division general education requirements of the University of California and the California State University. Section 66721 requires the common core curriculum to be published and distributed. It is essential to, and part of, the education of California's students that they are informed and know which courses must be completed to fulfill the lower division general education requirements of the University of California and the California State University. Otherwise, it would result in education without direction and students would be denied transfers to the University of California and the California State Universities.

It is not necessary to further argue the ups and downs of CCC's "elevator" argument. *County of Los Angeles* (supra, at 56) held that "programs" *either* carry out the governmental function of providing services to the public, *or*, are laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger reimbursement. *Carmel Valley Fire Protection District V. State of California* (1987) 190 Cal.App.3d 521, 537 (hereinafter "*Carmel*")

Providing and distributing copies of a district's current transfer core curriculum is required by a law, to implement a state policy, which imposes on community college districts a unique requirement that does not apply generally to all residents and entities in the state. Having satisfied this one prong of the test, it is not necessary to satisfy the other.

(2) The Test Claim Alleges Sufficient Costs Which are not Required to be Paid From Other District Funds

CCC notes that in *Kern*, the court found the costs to be "modest" and that "nothing . . . prevents Claimant from using some of the funds it has already received from the state to satisfy the costs . . . " What CCC neglects to note is that the funds "already received" in *Kern* were funds received from underlying school-related educational programs. Where CCC's argument fails, is that the general fund balances of community college districts are not additional revenues generated by the same statute and specifically intended to fund the costs of the state mandate, as required by Government Code Section 17556(e).

> "...we have found nothing to suggest that a school district is precluded from using a portion of the funds obtained from the state for the

> implementation of the underlying funded program to pay the associated notice and agenda costs." (*Kern* opinion, at page 747, emphasis supplied)

Education Code Section 66721.5 provides no additional revenues specifically intended to fund the costs of the test claim legislation.

Part II
Title 5 Regulations

D. CCC Exculpatory Comments Repeated in Response to Title 5 Regulations

In its comments to the Title 5 Regulations alleged in the test claim, CCC repeats several issues in its response to one or more regulations. This Part D will respond to each of those issues only once.

(1) Insufficient Time to Research

Test Claimant also notes the excuse of CCC, initially appearing at page 11 of its comments, relative to the addition and effective dates of several Title 5 Regulations:

> "We cannot verify that information at the present time. (¶) The resources of our legal office have been severely curtailed at the same time that its workload has increased. It may be that previous versions of some of the regulations at issue in this Claim existed prior to the dates cited by Claimant because renumbering of sections occurred at various times. That renumbering can give the appearance that a section has been newly adopted when it has simply been assigned a new section number."

CCC then suggests that the Commission (meaning Commission staff) thoroughly review the regulatory history.

The instant test claim was filed on June 5, 2003. The Commission's letter inviting comments was dated June 19, 2003. The CCC finally submitted its comments on March 16, 2004. Test claimant suggests that if CCC cannot find contradictory evidence of the filing of its own regulations in nearly nine months, perhaps it does not exist.

On several other occasions, CCC offers its unverified and unsworn statement that the Board of Governors submitted similar regulations to the Office of the Administrative

Procedure for publication in 1969 and "believes" these other regulations were published. No other proof is offered other than these unverified and unsworn statements. What CCC has not offered is any admissible statement that the Office of Administrative Procedure did, in fact, follow prerequisites for publication or that the "similar regulations" were ever published. Test claimant has attached to the test claim as Exhibit 4, official copies of the regulations as published in cited Registers and on cited dates. This is not only the best evidence before the Commission, it is the only competent evidence before the Commission.

This rebuttal, by this reference, is made again whenever this issue is repeated by CCC.

(2) CCC Misconstrues the Attorney General Opinion

Before embarking on a discussion of the opinion of the Attorney General, test claimant must remind the Commission that such an opinion is subject to three rules of interpretation.

1. Although an opinion of the California Attorney General is entitled to considerable weight, it is not binding.

2. The opinion will be found unpersuasive where the Attorney General has aligned himself with one of the parties.[14]

3. Dissimilar facts are another basis to conclude the opinion to be unpersuasive.

People ex rel. Foundation for Taxpayer & Consumer Rights v. Duque (2003) 105 Cal.App.4th 259, 267-268

CCC cites an Opinion of the California Attorney General (83 Opinions of the California Attorney General 111 (2000)) and makes a quantum leap to conclude that the minimum standards of the Board of Governors do not constitute either a new program or a higher level of service so long as the Board was obligated to set minimum standards in those areas prior to 1975. As will be shown, this misconstrues the Attorney General Opinion.

The facts presented to the Attorney General related to Welfare & Institutions Code Sections 210 and 210.2. Section 210 provided:

[14] In this regard, test claimant requests the Commission to take notice of the fact that the Attorney General, at the time of its opinion, and now, often represents the Department of Finance in matters opposing the adoption of test claims.

> "The Board of Corrections shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors."

The Attorney General was asked for an opinion as to two questions, the second of which was:

> "When a local agency brings a particular juvenile facility into compliance with the minimum standards established by the Board of Corrections, is the state required to reimburse the local agency for the costs incurred in meeting the standards?" (AG Opinion, at page 111)

At page 119 of the opinion, the Attorney General noted that:

> "Counties have been required to maintain a 'suitable' place for the detention of minors since at least 1915 (citations) Setting the minimum standards for what is 'suitable' does not create a 'higher' level of service – it has long been the level of service required of local agencies."

Stated more succinctly, prior to 1975, local agencies were required to provide a "suitable" place for the detention of juveniles. Therefore, any regulations establishing what constitutes "suitable" are not new.

Contrary to the interpretation of CCC, the opinion only went so far as to determine the effect of minimum standards for suitability, it did not render an opinion on minimum standards for every other conceivable activity of the juvenile court system. It certainly did not opine that regulations issued pursuant to a pre-1975 general authority of a state agency to set minimum standards could never constitute either a new program or a higher level of service.

This rebuttal, by this reference, is made again whenever this issue is repeated by CCC.

(3) Education Code Section 66700 Does Not Bar a Finding of a Mandate

CCC cites Education Code Section 66700:

> "The California Community Colleges are postsecondary schools and shall continue to be a part of the public school system of this state. The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of the California

> Community Colleges and exercise general supervision over the California Community Colleges."

Launching from its incorrect conclusion relative to the Attorney General's Opinion as to the statutory requirement to establish minimum standards for suitability, CCC then argues that, since Education Code Section 66700 requires the Board of Governors to prescribe minimum standards for the formation and operation of, and to exercise general supervision over, the community colleges, that means that any regulation made by the Board of Governors on any subject does not create a reimbursable mandate because the regulation was made pursuant to the general authority of the Board of Governors to prescribe minimum standards and exercise general supervision. That is not the law. "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur as a result of any statute or any executive order implementing any statute which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution. Government Code Section 17514

This rebuttal, by this reference, is made again whenever this issue is repeated by CCC.

(4) Minimum Standards are No Longer a "Condition" for State Aid

Immediately prior to 1975, former Education Code Section 25510 (as amended by Chapter 989, Statutes of 1974, Section 23[15]) read:

> "The Board of Governors of the California Community Colleges will adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges."

Former Education Code Section 25510 was recodified and renumbered as section 71025 by Chapter Chapter 1010, Statutes of 1976, Section 2, Statutes of 1976, section 2[16]. As recodified, section 71025 read:

> "The Board of Governors of the California Community Colleges shall

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[15] A copy of Chapter 989, Statutes of 1974, Section 23 is attached hereto in Exhibit "A".

[16] A copy of Chapter 1010, Statutes of 1976, Section 2, which includes Education Code Section 71025 is attached hereto in Exhibit "A".

adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges."

Former Section 71025 was repealed by Chapter 973, Statutes of 1988, section 12.1. It was reenacted as Section 70901, by Chapter 973, Statutes of 1988, section 8[17, 18]. As

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[17] A copy of Chapter 973, Statutes of 1988, Section 8, is attached hereto in Exhibit "A".

[18] Education Code Section 70901, added by Chapter 973, Statutes of 1988, Section 8, as amended by Chapter 1023, Statutes of 1998, Section 1:

"(a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and

academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with

enacted, the new section 70901 is greatly expanded and different from its pre-1975

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secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors."

predecessor[19]. CCC has overlooked this important change. Without discussing the entire statute, the following relevant observations are made:

The "minimum standards" language is now found in subdivision (b)(1):

> "(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and will, in furtherance thereof, perform the following functions:
> (1) Establish minimum standards as required by law, including, but not limited to, the following:..." (emphasis supplied)

but, these "minimum standards" are only applicable to:

> "(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.
> (B) Minimum standards for the employment of academic and administrative staff in community colleges.
> (C) Minimum standards for the formation of community colleges and districts.
> (D) Minimum standards for credit and noncredit classes.
> (E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards"

and, the regulations alleged in the test claim do not encompass any of these subjects, i.e., they do not allege activities relative to student academic standards, employment of academic and administrative staff, formation of districts, credit and noncredit classes or

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[19] Section 70901 was amended again by Chapter 1023, Statutes of 1998, Section 1, to add a new subdivision (b)(15) which allows contracting for the procurement of goods and services, which is not relevant to this test claim. The chapter also renumbered former subdivision (b)(15) as (b)(16).

shared governance. Therefore, the test claim regulations are not part of "minimum standards", as set forth in Education Code Section 70901.

The language concerning "state aid" has now been shifted to subdivision (b)(6) and is subject to minimum conditions, not minimum standards.

> "(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors." (Emphasis supplied)

Therefore, when discussing "minimum standards," minimum standards are limited to those found in Education Code Section 70901, subdivisions (b)(1)(A) through (E), none of which are applicable to this test claim.

It would appear that CCC has seriously confused "minimum standards" providing general supervision with "minimum conditions" for state aid, where the only similarity is the use of the word "minimum."

This rebuttal, by this reference, is made again whenever this issue is repeated by CCC.

(5) Any Discussion of Academic Standards is Irrelevant

Commencing at page 8 to page 9, CCC sets forth a lengthy discussion of the requirement of Education Code Section 70901, subdivision (b)(1)(A) to:

> "Establish minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies." (Emphasis supplied)

Since the test claim does not seek reimbursement for any activities relating to student academic standards relating to graduation requirements, probation, dismissal, and readmission policies, any discussion of those standards are irrelevant to this test claim.

This rebuttal, by this reference, is made again whenever this issue is repeated by CCC.

(6) There are no Optional Programs - None of the Regulations are Minimum Standards for the Receipt of State Aid

Arguing that some of the Title 5 regulation requirements apply only to a community college district that receives state financial assistance, it cites *Kern* again for the proposition that if districts choose to offer programs, but are not compelled to do so, those costs are never mandated for purposes of reimbursement.

As for the "optional" argument, see prior discussion above in part B(5), commencing at page 9, especially the *Kern* quotation on page 12, to the effect that the court found it unnecessary to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement.

As for the argument that some of the regulations reflect minimum standards for the receipt of state aid, see prior discussion above in part D(3), commencing at page 20, where it is pointed out that the reference to state aid is now found in Education Code Section 70901, subdivision (b)(6), subject to the minimum conditions of Title 5 regulation sections 51000 through 51102 which are not alleged in the test claim; and especially at page 21-25, where it is pointed out that minimum standards are now set forth in Education Code Section 70901, subdivision (b)(1)(A) through (b)(1)(E), describing activities none of which are alleged in the test claim.

This rebuttal, by this reference, is made again whenever this issue is repeated by CCC.

(7) Educating Students is not a Discretionary Act

Again with reference to the Title 5 regulations, at page 10 of its comments, CCC renews its argument that "[A]lthough nearly all districts receive state aid, usually in the form of apportionment, there is no mandate that they do so."

As for the argument that receiving state aid is discretionary, and the implication that the education of students is a discretionary act, see prior discussion above in part B(6), commencing at page 13, especially the observation that such a suggestion, if followed, would result in a violation of the equal protection laws of the California Constitution, article I, §7, subdivisions (a), (b) and article IV, §16, subdivision (a).

This rebuttal, by this reference, is made again whenever this issue is repeated by CCC.

(8) Publication of Information About Education is an Integral Part of Education

At page 10 of its comments, referring now to the Title 5 regulations, CCC again argues that "[T]he publication of information or notices, however, is not the same as public education."

As for the "elevator" argument of CCC with its interpretation of *Los Angeles v. DIR*, see prior discussion above in part C(1), commencing at page 15, especially the citation to *Carmel*, at page 16, which holds that only one of two *County of Los Angeles* findings is necessary. The Title 5 regulations alleged in the test claim are regulations which, to implement a state policy, impose unique requirements on community college districts that do not apply generally to all residents and entities in the state. As such, the regulations are "programs" as defined in *County of Los Angeles*.

This rebuttal, by this reference, is made again whenever this issue is repeated by CCC.

E. Comments on Section-Specific Title 5 Regulations

(1) Title 5, California Code of Regulations Section 51006

Section 51006 refers to open classes. For its initial comment, CCC creates a "blue sky" argument. CCC refers to prior statutes which related to reports of average daily attendance for purposes of apportionment and classes for adults. Since this prior statute has nothing to do with open classes, CCC needed a bridge, so, at page 12, it created one:

> "'Classes for adults' generally means noncredit classes. We have not located a similar pre-1975 requirement that credit courses be open, but given the public nature of the entire system, and the origination of the system within the public school system, we contend that open courses has always been the standard." (Emphasis supplied)

Since the argument is admittedly contrived, it is "blue sky" and nothing more.

(2) Title 5, California Code of Regulations Section 54805

Section 54805 requires district governing boards to include in materials given to each student at registration, information pertaining to the student representation fee.

CCC argues that section 54805 merely implements Education Code Section 76060.5. CCC overlooks the superseding intervening events contained therein.

Section 76060.5 provides that the governing body of the association may (or may not) order that an election be held for the purpose of establishing a student representation fee. The section further provides that the affirmative vote of two-thirds of the students

voting in the election shall be required and that the election shall not be sufficient unless the number of students who vote in the election equals or exceeds the average of the number of students who voted in the previous three student body association elections. Therefore, whether or not an election is held, and whether or not a sufficient percentage of students voting approves the fee, and whether or not the number of students voting meets a numerical minimum, is so far beyond the ability of a community college district to control, there is no longer any discretion left to the district.

As for the reference to subdivision (d) of Education Code Section 17556, that subdivision provides:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:...
>
> (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service...."

Since there is no admissible evidence before the Commission that the 7 percent (maximum) of the student representation fee collected is sufficient to pay for the mandated program or increased level of service, it is not a bar to a finding of a mandate. Any fees collected would be an offset to the costs of providing the service.

(3) Title 5, California Code of Regulations Section 55005

CCC offers its unverified and unsworn statement that the Board of Governors submitted similar regulations to the Office of Administrative Procedure for publication in 1969 and believes this unverified and unsworn statement "is a sufficient showing of earlier and on-going obligations..." What CCC has not offered is any statement that the Office of Administrative Procedure did, in fact, follow the prerequisites for publication or that the "similar regulations" were ever published. Test claimant has attached to the test claim, as Exhibit 4, at page 404, an official copy of the regulations as published in Register 95, Nos. 19-20, on May 19, 1995. This not only the best evidence before the Commission, it is the only competent evidence before the Commission.

(4) Title 5, California Code of Regulations Section 55202

No new arguments are presented in response to this section.

(5) Title 5, California Code of Regulations Section 55530

CCC attempts to obfuscate the activities alleged, first with an argument applied to the entire section, and then pleading foul because of a "drafting construction error." Then, by tying the error to Education Code Section 78218 which limits the activities related to the entire matriculation process to only when such funding is received.

First of all, the claim of a "drafting construction error" (existing uncorrected for 14 years) is made by unverified and unsworn comment. Secondly, there is nothing in the record to support that assertion. For example, subdivision (a) of section 55530 uses the word "Subchapter", so the argument that the Board of Governors mistakenly used the word "Chapter" in subdivision (b) appears to be specious.

Finally, Education Code Section 78218 provides that the article shall be operative only if funds are specifically appropriated for the purposes of the article. There is nothing in the record to indicate that the funds, if and when appropriated, are sufficient, to cover notice costs.

(6) Title 5, California Code of Regulations Section 55534

No new arguments are presented in response to this section.

(7) Title 5, California Code of Regulations Section 55750

No new arguments are presented in response to this section.

(8) Title 5, California Code of Regulations Section 55752

No new arguments are presented in response to this section.

(9) Title 5, California Code of Regulations Section 55753

CCC argues that the Chancellor's Office "has determined" that because credit by examination is optional, an optional service fee may be imposed on students. CCC cites no statute, no regulation or no executive order in support of this naked assertion. It totally lacks foundation.

CCC cites subdivision (d) of Government Code Section 17556 as its statutory authority that the collection of these fees defeat a determination of a state mandate. Subdivision (d) provides:

> "The commission shall not find costs mandated by the state, as defined in

> Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:...
> (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service...."

CCC's argument fails because there is no competent evidence before the Commission that districts have the authority to levy a fee, and there is no evidence before the Commission that the authorized fees are in an amount sufficient to pay for the mandated program.

(10) Title 5, California Code of Regulations Section 55758

No new arguments are presented in response to this section.

(11) Title 5, California Code of Regulations Section 55759

CCC argues that since section 55759 "merely" requires districts to make "reasonable efforts" for student notifications, "no quantifiable mandates are included." Does that mean that CCC is telling its community college districts that no effort is required because it is not possible to measure "reasonable?" Not only is that argument unreasonable, it lacks credulity.

(12) Title 5, California Code of Regulations Section 55760

No new arguments are presented in response to this section.

(13) Title 5, California Code of Regulations Section 55761

No new arguments are presented in response to this section.

(14) Title 5, California Code of Regulations Section 55762

CCC argues that the actions of maintaining a student's academic record and otherwise recording course repetition are customary actions that are foundational to district operations. CCC goes on to state "We *believe* they are subsumed in the basic authority to maintain a college." (Emphasis supplied) CCC concludes:

> "To assert a claim on the basis of having to maintain student records is akin to asserting a claim for having to open the doors to buildings to allow

students to enter."

The legal response to this "belief" is that it is not one of the legal objections set forth in Government Code Section 17556. The factual response is that opening doors would be a reimbursable expense if it was mandated by statute or regulation adopted after 1974.

(15) Title 5, California Code of Regulations Section 55764

No new arguments are presented in response to this section.

(16) Title 5, California Code of Regulations Section 55765

No new arguments are presented in response to this section.

(17) Title 5, California Code of Regulations Section 58102

No new arguments are presented in response to this section.

(18) Title 5, California Code of Regulations Section 58104

No new arguments are presented in response to this section.

(19) Title 5, California Code of Regulations Section 59404

No new arguments are presented in response to this section.

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(20) Title 5, California Code of Regulations Section 59410

No new arguments are presented in response to this section.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Notice to Students 02-TC-25
CLAIMANT: Los Rios Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of April 19, 2004, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 4/20/04, at San Diego, California.

Diane Bramwell

Original List Date: 6/19/2003
Last Updated: 6/19/2003
List Print Date: 10/17/2003
Claim Number: 02-TC-25
Issue: Notice to Students

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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EXHIBIT 'A'
ADDITIONAL STATUTES CITED

electors of the district to authorize the issuance of bonds for such purpose at an election held for such purpose and if the district is unable to obtain adequate facilities within the district with the funds available to the district for such purpose.

SEC. 21. Section 25509.5 of the Education Code is amended to read:

25509.5. The governing board of a community college district may establish and maintain community college classes outside of the state, comprising a part of an aircraft pilot training program conducted by the district under an agreement with the federal government or any agency thereof, during the time that it is unlawful by reason of any law or order of the federal government or any agency thereof for such classes to be maintained within the district.

The governing board may make such expenditures and do such things in connection with the establishment and maintenance of classes under this section as it could do were the classes established and maintained within the district.

SEC. 22. Section 25509.6 of the Education Code is amended to read:

25509.6. The governing board of a community college district may enter into a contract on a full-cost basis with the federal government or any agency of the federal government to provide community college courses and classes to persons in the military service of the United States at any military camp, post, installation, base, vessel, or location, whether within or outside the district or the state.

SEC. 23. Section 25510 of the Education Code is amended to read:

25510. The Board of Governors of the California Community Colleges shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges.

SEC. 24. Section 25510.5 of the Education Code is amended to read:

25510.5. The chancellor's office shall annually investigate each community college to determine whether it has met the standards. As part of such investigation, representatives of the chancellor's office may participate in the accreditation visits conducted by the regional accrediting agency, and one representative of the chancellor's office, who may be appointed by the chancellor, may serve as a member of the accrediting commission which accredits the public community colleges.

SEC. 25. Section 25511 of the Education Code is amended to read:

25511. The Board of Governors of the California Community Colleges shall establish criteria and standards for graded classes in grades 13 and 14.

SEC. 26. Section 25513 of the Education Code is amended to read:

25513. The president of any two-year community college may admit 11th and 12th grade students to vocational education classes

section and who are employed by the trustees prior to July 1, 1962, shall be provided with personnel rights and benefits at least equal to those accumulated by them as employees of such state agencies.

CHAPTER 9. COMMUNITY COLLEGES

66700. The public community colleges are secondary schools and shall continue to be a part of the public school system of this state. The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of public community colleges and exercise general supervision over public community colleges.

66701. Public community colleges shall offer instruction through but not beyond the second year of college. These institutions may grant the associate in arts and the associate in science degree. Their program may include but shall not be limited to: standard collegiate courses for transfer to other institutions; vocational and technical fields leading to employment; general or liberal arts courses; and community services.

CHAPTER 10. INTERSTATE ATTENDANCE AGREEMENTS

66800. The Legislature recognizes that existing community colleges in California may benefit from larger and more heterogeneous enrollment in certain curricula and that additional enrollment may often be added with little or no increase in the total operational cost of a given curriculum. It also recognizes that California residents can be provided more complete and more useful curricula in many cases if the curricula is planned and offered on the basis of the needs of an entire region.

The Legislature encourages California community college districts and the Board of Governors of the California Community Colleges to include the educational needs of, and facilities available in, territory adjacent to California in their planning and to make use of those needs and facilities to the extent possible in the conduct of community college education in California.

66801. The Board of Governors of the California Community Colleges is authorized to enter into an interstate attendance agreement with any statewide public agency of another state, which is responsible for public schools providing instruction in grades 13 and 14 and which is an agency of a state which is a party to the Western Interstate Compact for Higher Education, for the exchange of residents, on a one-for-one basis, for the purposes of instruction. The agreement shall contain such terms as the board of governors may adopt and which are consistent with the authority and responsibility of California community college districts and the community colleges they maintain. In no event shall such an agreement permit or require the entry of California residents into institutions in another state on terms substantially different from

may exclude from any such meeting, whether public or closed to the public, during the examination of a witness, any or all other witnesses in the matter being investigated.

71023. It is the intent of the Legislature that the Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of community colleges as an integral and effective element in the structure of public higher education in the state. The work of the board shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local autonomy and control in the administration of the community colleges.

71024. The Board of Governors of the California Community Colleges has the duties, powers, purposes, responsibilities, and jurisdiction heretofore vested in the State Board of Education, Superintendent of Public Instruction, the Department of Education, and the Director of Education with respect to the management, administration, and control of the community colleges.

Whenever in any law other than a provision of the Education Code, enacted prior to January 1, 1977, relating to the management, administration and control of the community colleges reference is made to the State Board of Education, Superintendent of Public Instruction, the Department of Education, or the Director of Education, such reference shall be deemed to mean the Board of Governors of the California Community Colleges.

71025. The Board of Governors of the California Community Colleges shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges.

71026. The chancellor's office shall annually investigate each community college to determine whether it has met the standards prescribed pursuant to Section 71025. As part of such investigation, representatives of the chancellor's office may participate in the accreditation visits conducted by the regional accrediting agency, and one representative of the chancellor's office, who may be appointed by the chancellor, may serve as a member of the accrediting commission which accredits the public community colleges.

71027. The Board of Governors of the California Community Colleges shall establish criteria and standards for graded classes in grades 13 and 14.

71028. The board of governors shall review and approve academic master plans and master plans for facilities for each community college district. Such plans shall be submitted to the board of governors by the local governing board of each community college district. Master plans for facilities submitted pursuant to Chapter 4 (commencing with Section 81800) of Part 49 of Division 7 of this title shall satisfy the requirements of this section in relation to master plans for facilities. Each district shall annually submit changes in its approved academic master plan for approval by the

(b) Whether the program provides preventative, proactive, social, or educational services.

(c) Whether there is a need to expand the program to a statewide basis, and whether the services provided by the program are duplicative of other state or local services.

(d) The direct and indirect program benefits to the parents and children who are participants in the program.

(e) The effectiveness of the program in preventing family crises, child abuse, and neglect.

(f) The characteristics of the targeted service population.

8219. This article shall become inoperative on June 30, 1992, and, as of January 1, 1993, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1993, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. The sum of thirty-seven thousand five hundred dollars ($37,500) is hereby appropriated from the General Fund to the State Department of Education for the purposes of Article 2.5 (commencing with Section 8216) of Chapter 2 of Part 6 of the Education Code for the period of January 1, 1989, to June 30, 1989, inclusive. It is the intent of the Legislature that funds necessary in future years for the purpose of the Parent-Child Information Pilot Project as added to Article 2.5 (commencing with Section 8216) of Chapter 2 of Part 6 of the Education Code, be appropriated in the Budget Act of subsequent fiscal years.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to initiate the system provided for under Section 1 of this act in response to current critical needs related to child care and development, it is necessary that this act take effect immediately.

CHAPTER 973

An act to amend Sections 66701, 71000, 71001, 78205, 84381, 84713, 87102, 87104, 87454, 87457, 87602, 87663, and 87743 of, to add Sections 71020.5, 71090.5, 78212.5, 84750, 84755, 87001, 87107, 87482.6, 87608.5, 87610.1, 87615, 87743.1, 87743.2, 87743.3, 87743.4, and 87743.5 to, to add Article 5 (commencing with Section 87150) to Chapter 1 of Part 51 of, to add Chapter 9.2 (commencing with Section 66720) to Part 40 of, and Chapter 2.5 (commencing with Section 87350) to Part 51 of, to add Part 43.5 (commencing with Section 70900) to Division 7 of, to repeal and add Sections 71020, 72411.5, 87458, 87605, 87608, 87609, 87610, and 87611 of, to repeal Sections 71023, 71025, 71026, 71027, 71028, 71062, 71063, 71064, 71066, 71068, 71069, 71070, 71071, 71072, 71073, 71075, 71076, 71079, 71080, 71091, 72201, 72230, 72231.5, 72233, 72282, 72284, 72285, 72286, 72287, 72288, 72289, 72290, 72291, 72292,

72300, 78200, 87455, and 87456 of, and to repeal Chapter 2 (commencing with Section 87200) of Part 51 of, the Education Code, relating to community colleges, and making an appropriation therefor.

[Approved by Governor September 19, 1988. Filed with Secretary of State September 19, 1988.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows, with regard to the general background and intent of this act:

(a) The California Community Colleges face an unprecedented challenge in the coming two decades, as California undergoes a major demographic, social, and economic transformation. The community colleges are at the center of this change, and the state's future as a healthy and free, diverse, and creative society depends in major part upon the commitments expressed through and in the community colleges.

(b) The community colleges educate hundreds of thousands of Californians every year, are the route to higher education for the majority of our people, provide access to language and citizenship for tens of thousands of immigrants annually, retrain workers in an economy changing more rapidly than any in history, and are the last hope for older citizens seeking skills and involvement in their communities. To do these things well, to bring excitement and power into the lives of students so diverse and needing so much, to serve the economy and society through its service of these students, requires a deep commitment from all who teach and learn, from those who administer and counsel, from those who fund and regulate.

(c) The community colleges embody an historic commitment to provide an opportunity for college instruction for all Californians capable of benefiting from instruction. The community colleges have historically found their mission in the statewide scheme for higher education, the Master Plan for Higher Education, and in local commitments to meet the needs of different communities—urban and rural, middle class and poor. From these sources have come the conviction, and the fact, that the community colleges ought to provide high quality lower division instruction for purposes of transfer to baccalaureate institutions, and a wide range of courses and programs to meet vocational and basic education needs. The community colleges have been notable because they are local and accessible, diverse in their responsiveness to local needs, and yet have maintained standards capable of placing students in any of the state's universities or in any of the state's industries.

(d) Since the development of the original master plan, there has been a significant change in the populations served by the community colleges, and in the anticipated needs of the state as we

Trustees of the California State University, with appropriate consultation with the Academic Senates of the respective segments, shall jointly develop, maintain, and disseminate a common core curriculum in general education courses for the purposes of transfer. Any person who has successfully completed the transfer core curriculum, shall be deemed to have thereby completed all lower division general education requirements for the University of California and the California State University.

66721. Upon development of the transfer core curriculum pursuant to Section 66720, and upon any subsequent joint revision of that curriculum, the Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University shall jointly cause the curriculum to be published and distributed to each public school in this state that provides instruction in any of the grades 7 to 12, inclusive, and to each community college in this state, with an emphasis on the communication of that information to each school or college having a high proportion of students who are members of one or more ethnic minorities. In addition, the Board of Governors shall distribute that transfer core curriculum to the State Board of Education, which shall apply that information to ensure, through its curriculum development activities, that public school pupils enrolled in any of the grades 9 to 12, inclusive, are aware of the academic requirements for preparation for higher education and may receive any necessary academic remediation in a timely manner.

66723. No provision of this chapter shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, makes that provision applicable.

SEC. 8. Part 43.5 (commencing with Section 70900) is added to Division 7 of the Education Code, to read:

PART 43.5. THE CALIFORNIA COMMUNITY COLLEGES

70900. There is hereby created the California Community Colleges, a postsecondary education system consisting of community college districts heretofore and hereafter established pursuant to law and the Board of Governors of the California Community Colleges. The board of governors shall carry out the functions specified in Section 70901 and local districts shall carry out the functions specified in Section 70902.

70901. (a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with

established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule

delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

70901.5. (a) The board of governors shall establish procedures for the adoption of rules and regulations governing the California Community Colleges. Among other matters, the procedures shall implement the following requirements:

(1) Written notice of a proposed action shall be provided to each community college district and to all other interested parties and individuals, including the educational policy and fiscal committees of the Legislature and the Department of Finance, at least 45 days in advance of adoption. The regulations shall become effective no earlier than 30 days after adoption.

(2) The proposed regulations shall be accompanied by an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state-mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies.

(3) The board of governors shall ensure that all proposed regulations of the board meet the standards of "necessity," "authority," "clarity," "consistency," "reference," and "nonduplication," as those terms are defined in Section 11349 of the Government Code. A district governing board or any other interested party may challenge any proposed regulatory action regarding the application of these standards.

(4) Prior to the adoption of regulations, the board of governors shall consider and respond to all written and oral comments received during the comment period.

(5) The effective date for a regulation shall be suspended if, within 30 days after adoption by the board of governors, at least two-thirds of all governing boards vote, in open session, to disapprove the regulation. With respect to any regulation so disapproved, the board of governors shall provide at least 45 additional days for review, comment, and hearing, including at least one hearing before the board itself. After the additional period of review, comment, and hearing, the board may do any of the following:

(A) Reject or withdraw the regulation.

(B) Substantially amend the regulation to address the concerns raised during the additional review period, and then adopt the revised regulation. The regulation shall be treated as a newly

adopted regulation, and shall go into effect in accordance with those procedures.

(C) Readopt the regulation as originally adopted, or with those nonsubstantive, technical amendments deemed necessary to clarify the intent of the original regulation. If the board of governors decides to readopt a regulation, with or without technical amendments, it shall also adopt a written declaration and determination regarding the specific state interests it has found necessary to protect by means of the specific language or requirements of the regulation. A readopted regulation may then be challenged pursuant to existing law in a court of competent jurisdiction, and shall not be subject to any further appeal within the California Community Colleges.

(6) As to any regulation which the Department of Finance determines would create a state-mandated local program cost, the board of governors shall not adopt the regulation until the Department of Finance has certified to the board of governors and to the Legislature that a source of funds is available to reimburse that cost.

(7) Any district or other interested party may propose a new regulation or challenge any existing regulation.

(b) Except as expressly provided by this section, and except as provided by resolution of the board of governors, the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to regulations adopted by the board of governors.

70902. (a) Every community college district shall be under the control of a board of trustees, which is referred to herein as the "governing board." The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.

The governing board of each community college district shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district.

(b) In furtherance of the provisions of subdivision (a), the governing board of each community college district shall do all of the following:

(1) Establish policies for, and approve, current and long-range academic and facilities plans and programs and promote orderly growth and development of the community colleges within the district. In so doing, the governing board shall, as required by law, establish policies for, develop, and approve, comprehensive plans. The governing board shall submit the comprehensive plans to the

board of governors for review and approval.

(2) Establish policies for and approve courses of instruction and educational programs. The educational programs shall be submitted to the board of governors for approval. Courses of instruction that are not offered in approved educational programs shall be submitted to the board of governors for approval. The governing board shall establish policies for, and approve, individual courses that are offered in approved educational programs without referral to the board of governors.

(3) Establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors.

(4) Employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors and establish employment practices, salaries, and benefits for all employees not inconsistent with the laws of this state.

(5) To the extent authorized by law, determine and control the district's operational and capital outlay budgets. The district governing board shall determine the need for elections for override tax levies and bond measures and request that those elections be called.

(6) Manage and control district property. The governing board may contract for the procurement of goods and services as authorized by law.

(7) Establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right to participate effectively in district and college governance, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(8) Establish rules and regulations governing student conduct.

(9) Establish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law.

(10) In its discretion, receive and administer gifts, grants, and scholarships.

(11) Provide auxiliary services as deemed necessary to achieve the purposes of the community college.

(12) Within the framework provided by law, determine the district's academic calendar, including the holidays it will observe.

(13) Hold and convey property for the use and benefit of the district. The governing board may acquire by eminent domain any property necessary to carry out the powers or functions of the district.

(14) Participate in the consultation process established by the board of governors for the development and review of policy proposals.

(c) In carrying out the powers and duties specified in subdivision

(b) or other provisions of statute, the governing board of each community college district shall have full authority to adopt rules and regulations, not inconsistent with the regulations of the board of governors and the laws of this state, that are necessary and proper to executing these prescribed functions.

(d) Wherever in this section or any other statute a power is vested in the governing board, the governing board of a community college district, by majority vote, may adopt a rule delegating the power to the district's chief executive officer or any other employee or committee as the governing board may designate; provided, however, that the governing board shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of the delegation.

SEC. 9. Section 71000 of the Education Code is amended to read:

71000. There is in the state government a Board of Governors of the California Community Colleges, consisting of all of the following:

(a) Thirteen members, who are appointed by the Governor with the advice and consent of two-thirds of the Senate. Of the members appointed by the Governor, two shall be current or former elected members of local community college district governing boards. The Governor shall appoint the current or former members of the governing board of a community college district for staggered six-year terms. The voting members who are current or former members of the governing board of a community college district shall first be appointed no later than January 15, 1990, and January 15, 1992, respectively.

(b) One voting student who is enrolled in a community college with a minimum of five semester units, or its equivalent, at the time of the appointment and throughout the period of his or her term of appointment, or until a replacement has been named. A student member shall be enrolled in a community college at least one semester prior to his or her appointment and shall meet and maintain the minimum standards of scholarship prescribed for community college students. The student member shall be appointed by the Governor for a one-year term commencing on June 1.

(c) Two voting tenured faculty members from a community college, who shall be appointed by the Governor for two-year terms. The Governor shall appoint each faculty member from a list of names of at least three persons furnished by the Academic Senate of the California Community Colleges. The first voting tenured faculty member appointed to the board shall occupy the seat on the board that is made available by the next full-term vacancy of a four-year term that exists after January 1, 1984. The first voting tenured faculty member appointed to the additional voting tenured faculty member seat on the board provided by the amendments to this section enacted by the Statutes of 1987 shall occupy the second seat on the board that is made available by the next full-term vacancies that exist after January 1, 1988. Thereafter, each seat shall be designated as a

the Education Code, the adoption of regulations as required by Sections 70901.5, 87356, 87359, 87107, and 87482.6 of the Education Code and Section 69 of this act, the development of a list of disciplines, as required by Section 87357 of the Education Code, and the review required by Section 87359.5 of the Education Code	$300,000
(d) For purposes of commencing implementation of Section 84750 of the Education Code, during the period of January 1, 1989, through June 30, 1990	$300,000
(e) For purposes of subdivision (b) of Section 87104 of the Education Code	$300,000
(f) For purposes of Section 71020.5 of the Education Code.....	$150,000
(g) To the Community College Fund for instructional improvement pursuant to Section 84381 of the Education Code.....	$200,000

CHAPTER 974

An act to amend and supplement Section 2.00 of the Budget Act of 1988 by augmenting Items 0540-001-001, 2200-001-001, 2240-001-001, 3360-001-465, 3720-001-001, 4170-101-001, 4200-101-001, 4260-101-001, 4260-111-001, 4260-121-001, 4440-101-001, 4440-111-001, 5240-001-001, 5450-001-001, 5460-001-001, 7980-111-001, 7980-121-001, 8260-001-001, 8300-001-001, 8570-001-001, 9800-001-001, 9800-001-494, and 9800-001-988 thereof, amending Items 6440-025-001 and 6610-025-001 thereof, and adding Items 0820-301-001, 2200-001-036, 2200-101-036, and 9210-102-001 thereto, relating to the support of the State of California, and making an appropriation therefor, to take effect immediately, usual current expenses.

[Approved by Governor September 19, 1988. Filed with Secretary of State September 19, 1988.]

I am deleting the $3 million transfer to the General Fund contained in Section 17 of Assembly Bill No. 1903. This action is necessary due to the lack of funds in the Special Account for Capital Outlay.

With this deletion, I approve Assembly Bill No. 1903.

GEORGE DEUKMEJIAN

The people of the State of California do enact as follows:

SECTION 1. Item 0820-301-001 is added to Section 2.00 of the Budget Act of 1988, to read:

Community Colleges As Part of Public School System; Duties of State Board of Education

22650. The public community colleges are secondary schools and shall continue to be a part of the public school system of this state. The State Board of Education shall prescribe minimum standards for the formation and operation of public community colleges and exercise general supervision over public community colleges.

(Amended by Stats. 1970, Ch. 102.)

Scope of Instruction by Community Colleges

22651. Public community colleges shall offer instruction through but not beyond the 14th grade level, which instruction may include, but shall not be limited to, programs in one or more of the following categories: (1) standard collegiate courses for transfer to higher institutions; (2) vocational and technical fields leading to employment; and (3) general or liberal arts courses. Studies in these fields may lead to the associate in arts or associate in science degree.

(Amended by Stats. 1970, Ch. 102.)

CHAPTER 5. CO-ORDINATING COUNCIL FOR HIGHER EDUCATION

(Chapter 5 repealed by Stats. 1973, Ch. 1187. Operative April 1, 1974. See note following Section 22710)

22700–22705. (Repealed by Stats. 1973, Ch. 1187. Operative April 1, 1974. See note following Section 22710.)

Note: Chapter 5, consisting of Sections 22700–22705, effective until April 1, 1974, reads as follows:

CHAPTER 5. CO-ORDINATING COUNCIL FOR HIGHER EDUCATION

22700. (a) There is hereby created an advisory body, the Coordinating Council for Higher Education, to be composed of one representative each of the University of California, the California State Colleges, the public community colleges, the private colleges and universities in the state, one nonvoting ex officio member of the State Board of Education, and six representatives of the general public. The university shall be represented by a person appointed by the regents. The California State Colleges shall be represented by a person appointed by the trustees. The public community colleges shall be represented by a person appointed by the Board of Governors of the California Community Colleges. The private colleges and universities shall be represented by a person appointed by the Governor after consideration of a list or lists of not less than three persons submitted to him by an association or associations of such institutions and subject to confirmation by the Senate. The State Board of Education shall be represented by a board member appointed by the president of the board. The general public shall be represented by six members appointed by the Governor subject to confirmation by the Senate. The terms of the appointments made pursuant to this section shall be as follows:

(1) The representative appointed by the regents shall serve a one-year term.

(2) The representative appointed by the trustees shall serve a one-year term.

(3) The representative appointed by the Board of Governors of the California Community Colleges shall serve a one-year term.

tenance of classes under this section as it could do were the classes established and maintained within the district.

(Amended by Stats. 1970, Ch. 102.)

Contract With Federal Government to Provide Classes and Courses for Servicemen

25509.6. The governing board of any school district maintaining a community college may enter into a contract on a full-cost basis with the federal government or any agency of the federal government to provide community college courses and classes to persons in the military service of the United States at any military camp, post, installation, base, vessel, or location, whether within or outside the district or the state.

(Added by Stats. 1971, Ch. 1153.)

Adoption of Minimum Standards for Receipt of State Aid

25510. The State Board of Education shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges.

(Amended by Stats. 1970, Ch. 102.)

Annual Investigation to Determine if Standards Are Met

25510.5. The State Department of Education shall annually investigate each community college to determine whether it has met the standards. As part of such investigation, representatives of the department may participate in the accreditation visits conducted by the regional accrediting agency, and one representative of the department, who may be appointed by the Superintendent of Public Instruction, may serve as a member of the accrediting commission which accredits the public community colleges.

(Amended by Stats. 1970, Ch. 102.)

Standards for Graded Classes in Grades 13 and 14

25511. The State Board of Education shall establish criteria and standards for graded classes in grades 13 and 14.

(Added by Stats. 1963, Ch. 100.)

Maintenance of Summer School; "Academic Year" Defined

25511.5. The governing board of a district maintaining one or more community colleges may maintain a summer school at any of such community colleges during the period between the close of one academic year and the beginning of the succeeding academic year in accordance with rules and regulations of the State Board of Education and with the prior written approval of the Superintendent of Public Instruction.

The term "academic year" as used in this section means that portion of the school year during which the regular day community college is maintained, which period must include not less than the number of days of teaching required to entitle the district to apportionments of state funds.

(Amended by Stats. 1970, Ch. 102.)

(c) The Superintendent of Public Instruction shall appoint an advisory committee to assist with the development of the data collection instrument, the review of the data collected, and continued improvement of the data collection system. The committee shall consist of at least one representative each from the Department of Finance, the office of the Legislative Analyst, the statewide associations representing continuation high schools, independent study, school administrators, and teachers. Members of the advisory committee shall serve without compensation, but the State Department of Education shall reimburse members for travel expenses.

(d) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 2. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund for the 1998–99 fiscal year to the State Department of Education for the purposes of Section 33319.6 of the Education Code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

So that data collection and reporting required by this act may take place as soon as possible, it is necessary that this act take effect immediately.

SCHOOLS AND SCHOOL DISTRICTS—COMMUNITY COLLEGES—BOARD OF GOVERNORS

CHAPTER 1023

A.B. No. 2329

AN ACT to amend Section 70901 of the Education Code, and to amend Sections 10295, 10430, 12100.5, and 12120 of, and to add Sections 20661 and 20662 to, the Public Contract Code, relating to community colleges.

[Approved by Governor September 30, 1998.]

[Filed with Secretary of State September 30, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2329, Firestone. Community colleges: contracts.

Under existing law, the Regents of the University of California and the Trustees of the California State University are not subject to laws governing contracts for the state procurement of materials, goods, supplies, or services, or for the acquisition of electronic data-processing and telecommunications goods and services, with certain exceptions. Under existing law, the trustees are required to develop policies and procedures that further expressed legislative policies for procurement without the involvement of the Department of Finance or the Department of General Services.

This bill would provide that the Board of Governors of the California Community Colleges is not subject to the laws described above, but would require the board to develop policies and procedures that further express legislative policies for procurement without the involvement of the Department of Finance or the Department of General Services.

Under existing law, Section 8 of Article XVI of the California Constitution (Proposition 98) sets forth a formula for computing the minimum amount of General Fund revenues that the state is required to appropriate for the support of school districts, as defined, and community college districts for each fiscal year.

The bill would authorize the Chancellor of the California Community Colleges to enter into a contract on behalf of one or more community college districts, subject to certain restrictions. The bill would require the chancellor to report to the Legislature and the Governor by

January 1, 2001, on contracts entered into pursuant to these provisions and any resultant cost savings. The bill would authorize the chancellor to enter into a contract with a community college district whereby the district performs services or acts as a fiscal agent on behalf of the California Community Colleges when the funds for the contract or agreement are in satisfaction of the state obligation to provide funding pursuant to Section 8 of Article XVI of the California Constitution. The bill would authorize the Board of Governors of the California Community Colleges to adopt regulations to implement the provisions of this paragraph.

This bill would incorporate additional changes in Section 10430 of the Public Contract Code proposed by SB 412, to be operative if SB 412 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 70901 of the Education Code is amended to read:

70901. (a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general

apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Contract for the procurement of goods and services, as necessary.

(16) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

SEC. 2. Section 10295 of the Public Contract Code, as amended by Chapter 88 of the Statutes of 1998, is amended to read:

10295. All contracts entered into by any state agency for (a) the hiring or purchase of equipment, supplies, materials, or elementary school textbooks, (b) services, whether or not the services involve the furnishing or use of equipment, materials or supplies or are performed by an independent contractor, (c) the construction, alteration, improvement, repair or maintenance of property, real or personal, or (d) the performance of work or services by the state agency for or in cooperation with any person, or public body, are void unless and until approved by the department. Every such contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of the approval. This section applies to any state agency that by general or specific statute is expressly or impliedly authorized to enter into transactions referred to in this section. This section does not apply to any transaction entered into by the Trustees of the California State University, by the Board of Governors of the California Community Colleges, or by a department under the State Contract Act or the California State University Contract Law, any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under Section 14035 or 14035.5 of the Government Code, Sections 99316 to 99319, inclusive, of the Public Utilities Code, or the Streets and Highways Code, any contract entered into by the Department of Transportation that is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources, any contract entered into by the Department of Personnel Administration for state employees in State Bargaining Unit 16 for employee benefits, occupational health and safety, training services, or combination thereof any contract let by the Legislature, or any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

SEC. 3. Section 10430 of the Public Contract Code, as amended by Section 72 of Chapter 88 of the Statutes of 1998, is amended to read:

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California.

(b) Transactions covered under Chapter 3 (commencing with Section 12100).

(c) Except as otherwise provided in this chapter, any entity exempted from the provisions of Section 10295 or 10295.1. However, the Trustees of the California State University and the Board of Governors of the California Community Colleges shall be governed by this chapter except with regard to transactions covered under the California State University and Colleges Contract Law, and except as provided in Sections 10295, 10335, 10356, and 10389.

(d) Transactions covered under Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Except as provided for in subdivision (c), members of boards or commissions who receive no payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.

(f) The emergency purchase of protective vests for correctional peace officers whose duties require routine contact with state prison inmates. This subdivision shall remain operative only until January 1, 1987.

(g) Spouses of state officers or employees and individuals and entities that employ spouses of state officers and employees, that are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that capacity, does not receive any material financial benefit, distinguishable from the benefit to the public generally, from any governmental decision made by the state officer or employee.

SEC. 3.5. Section 10430 of the Public Contract Code, as amended by Section 72 of Chapter 88 of the Statutes of 1998, is amended to read:

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California.

(b)(1) Transactions covered under Chapter 3 (commencing with Section 12100), except that Sections 10365.5, 10410, and 10411 shall apply to all individuals, companies, corporations, or other entities that bid on or are awarded contracts, either as contractors or subcontractors, pursuant to that chapter.

(2) The changes made to this subdivision during the 1998 portion of the 1997–98 Regular Session shall not be construed to have retroactive effect on any pending action, arbitration, or administrative proceeding, but shall only apply to an action, arbitration, or administrative proceeding, at law or in equity, that is commenced on or after January 1, 1999.

(c) Except as otherwise provided in this chapter, any entity exempted from the provisions of Section 10295 or 10295.1. However, the Trustees of the California State University and the Board of Governors of the California Community Colleges shall be governed by this chapter except with regard to transactions covered under the California State University and Colleges Contract Law, and except as provided in Sections 10295, 10335, 10356, and 10389.

(d) Transactions covered under Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Except as provided for in subdivision (c), members of boards or commissions who receive no payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.

(f) The emergency purchase of protective vests for correctional peace officers whose duties require routine contact with state prison inmates. This subdivision shall remain operative only until January 1, 1987.

(g) Spouses of state officers or employees and individuals and entities that employ spouses of state officers and employees, that are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that capacity, does not receive any material financial benefit, distinguishable from the benefit to the public generally, from any governmental decision made by the state officer or employee.

SEC. 4. Section 12100.5 of the Public Contract Code is amended to read:

12100.5. The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges shall not be subject to this chapter except that the trustees shall develop policies and procedures maintained in its state university administrative manual and the board shall adopt policies and procedures maintained in its administrative manual that further the legislative policies for procurement expressed in this chapter but without the involvement of the Director of Finance and the Director of General Services or the Department of Finance and the Department of General Services.

SEC. 5. Section 12120 of the Public Contract Code is amended to read:

12120. The Legislature finds and declares that, with the advent of deregulation in the telecommunications industry, substantial cost savings can be realized by the state through the specialized evaluation and procurement of alternative telecommunications systems. All contracts for the acquisition of telecommunications services and all contracts for the acquisition of telecommunications goods, whether by lease or purchase, shall be made by, or under the supervision of, the Department of General Services. All procurements shall be accomplished in accordance with Chapter 3 (commencing with Section 12100), relating to the acquisition of electronic data-processing goods and services, except to the extent any directive or provision is uniquely applicable to electronic data-processing acquisitions. The Department of General Services shall have responsibility for the establishment of policy and procedures for telecommunications. The Department of General Services shall have responsibility for the establishment of tactical policy and procedures for data-processing acquisitions consistent with statewide strategic policy as established by the Department of Finance. The Department of Finance shall have review and approval responsibility of data-processing information and telecommunication acquisitions to assure consistency with budgetary objectives. The Trustees of the California State University and the Board of Governors of the California Community Colleges shall assume the functions of the Department of Finance and the Department of General Services with regard to procurement of telecommunication goods and services by the California State University and the California Community Colleges respectively. The trustees and the board shall each grant to the Department of General Services, Division of Telecommunications, an opportunity to bid whenever the university or the college system solicits bids for telecommunications goods and services.

SEC. 6. Section 20661 is added to the Public Contract Code, to read:

20661. (a) The Chancellor of the California Community Colleges is authorized to enter into a contract on behalf of one or more community college districts, subject to the following restrictions:

(1) No district may be required to participate in any contract entered into pursuant to this section.

(2) The cost to each district that is a party to or a beneficiary of a contract entered into pursuant to this section must be lower than the cost the district could obtain through its standard contracting procedures. No contract for the procurement of goods or services may be made when a bid has been received by a participating district for the procurement of the same goods or services unless the contract would result in a lower price for the goods or services upon the same terms, conditions, and specifications.

(3) The state shall not incur any financial responsibility in connection with a contract entered into pursuant to this section.

(b) The Chancellor of the California Community Colleges is authorized to charge a fee, commission, or other charge to either or both of the following:

(1) Each provider of goods or services under a contract entered into pursuant to this section.

(2) Each community college district that the chancellor enters into a contract on behalf of pursuant to this section.

(c) On or before January 1, 2001, the Chancellor of the California Community Colleges shall report to the Legislature and the Governor on contracts entered into pursuant to this section and any resultant cost savings.

(d) The Board of Governors of the California Community Colleges shall adopt regulations to implement this section.

SEC. 7. Section 20662 is added to the Public Contract Code, to read:

20662. The Chancellor of the California Community Colleges is authorized to enter into a contract or other agreement with the governing board of any community college district whereby the district performs services or acts as a fiscal agent on behalf of the California Community colleges. This section shall apply only when the funds for the contract or agreement are in satisfaction of the state obligation to provide funding pursuant to Section 8 of Article XVI of the California Constitution.

SEC. 7.5. (a) Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code applies to the Board of Governors of the California Community Colleges and to the Chancellor's Office of the California Community Colleges. The Legislature finds and declares that this subdivision is declaratory of existing law.

(b) Nothing in this act shall be construed to provide any exemption from Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code for the Board of Governors of the California Community Colleges or the Chancellor's Office of the California Community Colleges.

SEC. 8. It is the intent of the Legislature that this act will result in greater efficiency in the operation of the California Community Colleges.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 10430 of the Public Contract Code proposed by both this bill and SB 412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 10430 of the Public Contract Code, and (3) this bill is enacted after SB 412, in which case Section 3 of this bill shall not become operative.

SEC. 320. Section 22635 of the Education Code is amended to read:

22635. The Regents of the University of California, the Trustees of the California State Colleges, and the governing board of every community college or school district maintaining a community college, shall adopt or provide for the adoption of specific rules and regulations governing student behavior along with applicable penalties for violation of such rules and regulations. Every student at such institutions of higher education shall, at the time of registration for a semester or quarter, as the case may be, at such institutions, be provided with a copy of such rules and regulations together with a statement of the applicable penalties which may be incurred by violation thereof. The Regents of the University of California, the Trustees of the California State Colleges, and the governing board of every community college or school district maintaining a community college shall provide for the distribution of any revision of such rules and regulations to students enrolled in such institutions.

SEC. 321. The heading of Chapter 4 (commencing with Section 22650) of Division 16.5 of the Education Code is amended to read:

CHAPTER 4. COMMUNITY COLLEGES

SEC. 322. Section 22650 of the Education Code is amended to read:

22650. The public community colleges are secondary schools and shall continue to be a part of the public school system of this state. The State Board of Education shall prescribe minimum standards for the formation and operation of public community colleges and exercise general supervision over public community colleges.

SEC. 323. Section 22651 of the Education Code is amended to read:

22651. Public community colleges shall offer instruction through but not beyond the 14th grade level, which instruction may include, but shall not be limited to, programs in one or more of the following categories: (1) standard collegiate courses for transfer to higher institutions; (2) vocational and technical fields leading to employment; and (3) general or liberal arts courses. Studies in these fields may lead to the associate in arts or associate in science degree.

SEC. 324. Section 22700 of the Education Code is amended to read:

22700. There is hereby created an advisory body, the Coordinating Council for Higher Education, to be composed of three representatives each of the University of California, the California State Colleges, the public community colleges, the private colleges and universities in the state, and six representatives of the general public. The university shall be represented by the president and two regents appointed by the

and the Regents of the University of California.

SEC. 210. Section 66017 of the Education Code is amended to read:

66017. The respective governing boards of the California Community Colleges, the California State University, or the University of California shall adopt appropriate procedures and designate appropriate persons to take disciplinary action against any student, member of the faculty, member of the support staff, or member of the administration of the community college, state college, or state university who, after a prompt hearing by a campus body, has been found to have willfully disrupted the orderly operation of the campus. Nothing in this section shall be construed to prohibit, where an immediate suspension is required in order to protect lives or property and to ensure the maintenance of order, interim suspension pending a hearing; provided that a reasonable opportunity be afforded the suspended person for a hearing within 10 days. The disciplinary action may include, but need not be limited to, suspension, dismissal, or expulsion. Sections 89538 to 89540, inclusive, shall be applicable to any state university or college employee dismissed pursuant to this section.

SEC. 211. Section 66021 of the Education Code is amended to read:

66021. It is the intent of the Legislature that the Budget Act for each fiscal year provide sufficient funding for financial aid for students with demonstrated financial need at the University of California, the California State University, and the California Community Colleges to offset increases in student charges at those institutions. The Legislature intends that funds for increased student financial aid be provided from sources other than student fees.

SEC. 213. Section 66101 of the Education Code is repealed.

SEC. 214. Section 66102 of the Education Code is repealed.

SEC. 215. Section 66200 of the Education Code is repealed.

SEC. 219. Section 66700 of the Education Code is amended to read:

66700. The California Community Colleges are postsecondary schools and shall continue to be a part of the public school system of this state. The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of the California Community Colleges and exercise general supervision over the California Community Colleges.

SEC. 220. Section 66700.5 of the Education Code is repealed.

SEC. 222. Section 66902.5 of the Education Code is repealed.

SEC. 224. Section 67007 of the Education Code is repealed.

SEC. 225. Section 68010 of the Education Code is repealed.

SEC. 226. Section 68011 of the Education Code is amended to read:

68011. "Institution" means the University of California, the California State University, the California Maritime Academy, or a college of the California Community Colleges.

EXHIBIT 'B'

34 CFR PART 106

and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion.

(4) If an action required to comply with this section would result in that alteration or those burdens, the Department shall take any other action that would not result in the alteration or burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 105.41 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the Department.

(b) As provided in § 105.30, the Department shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Deputy Under Secretary for Management is responsible for coordinating implementation of this section. Complaints may be sent to the U.S. Department of Education, Office of Management, Federal Building No. 6, 400 Maryland Avenue SW., Washington, DC 20202.

(d) The Department shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Department may extend this time period for good cause.

(e) If the Department receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Department shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Department shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Department of the letter required by § 105.41(g). The Department may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Secretary.

(j) If the Secretary determines that additional information is needed for the complainant, he or she shall notify the complainant of the additional information needed to make his or her determination on the appeal.

(k) The Secretary shall notify the complainant of the results of the appeal.

(l) The time limit in paragraph (g) of this section may be extended by the Secretary.

(m) The Secretary may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§ 105.42 Effective date.

The effective date of this part is October 9, 1990.

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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SUBJECT INDEX TO TITLE IX PREAMBLE AND REGULATION
APPENDIX A—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS [NOTE]

AUTHORITY: 20 U.S.C. 1681 *et seq.*, unless otherwise noted.

SOURCE: 45 FR 30955, May 9, 1980, unless otherwise noted.

Subpart A—Introduction

§ 106.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93–568, 88 Stat. 1855, and sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93–380)

§ 106.2 Definitions.

As used in this part, the term:

(a) *Title IX* means title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) *Department* means the Department of Education.

(c) *Secretary* means the Secretary of Education.

(d) *Assistant Secretary* means the Assistant Secretary for Civil Rights of the Department.

(e) *Reviewing Authority* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(f) *Administrative law judge* means a person appointed by the reviewing authority to preside over a hearing held under this part.

(g) *Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *Program or activity* and *program* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 20 U.S.C. 1687)

(i) *Recipient* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

(j) *Applicant* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(k) *Educational institution* means a local educational agency (LEA) as defined by section 1001(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381), a preschool, a private elementary or secondary school, or an applicant or recipient of the type

defined by paragraph (l), (m), (n), or (o) of this section.

(l) *Institution of graduate higher education* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(m) *Institution of undergraduate higher education* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(n) *Institution of professional education* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

(o) *Institution of vocational education* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(p) *Administratively separate unit* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(q) *Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(r) *Student* means a person who has gained admission.

(s) *Transition plan* means a plan subject to the approval of the Secretary pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980; 45 FR 37426, June 3, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students,

treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Assistant Secretary upon request, a description of any modifications made pursuant to paragraph (c)(ii) of this section and of any remedial steps taken pursuant to paragraph (c)(iii) of this section.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.4 Assurance required.

(a) *General.* Every application for Federal financial assistance shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that the education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 45 FR 86298, Dec. 30, 1980; 65 FR 68056, Nov. 13, 2000]

§ 106.5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of subpart B of this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.6 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 292d and 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act

(29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Authority: Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives Federal financial assistance.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.9 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to the Assistant Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in:

(i) Local newspapers;

(ii) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(iii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

Subpart B—Coverage

§ 106.11 Application.

Except as provided in this subpart, this part 106 applies to every recipient and to the education program or activity operated by such recipient which receives Federal financial assistance.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 86298, Dec. 30, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of

1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; sec. 3(a) of P.L. 93-568, 88 Stat. 1862 amending Sec. 901)

§ 106.15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, §§ 106.16 and 106.17, and subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of subpart C.* Except as provided in paragraphs (d) and (e) of this section, subpart C applies to each recipient. A recipient to which subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 45 FR 86298, Dec. 30, 1980]

§ 106.16 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of subpart C unless it is carrying out a transition plan approved by the Secretary as described in § 106.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.17 Transition plans.

(a) *Submission of plans.* An institution to which § 106.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which §106.16 applies shall result in treatment of applicants to or students of such recipient in violation of subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b) (3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b) (4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which §106.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment which emphasizes the institution's commitment to enrolling students of the sex previously excluded.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 106.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§106.16 and 106.17.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admision, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 106.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 106.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 106.31 Education programs or activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which subpart C does not apply, or (2) an entity, not a recipient, to which subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided,* a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to

members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aid, benefits or services not provided by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 47 FR 32527, July 28, 1982; 65 FR 68056, Nov. 13, 2000]

§ 106.32 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(i) Proportionate in quantity and

(ii) Comparable in quality and cost to the student.

A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Authority: Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

§ 106.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

§ 106.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and

activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.35 Access to schools operated by LEAs.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.37 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities or other

services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided,* That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 106.41.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484)

§ 106.38 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates subpart E of this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental,

family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484)

§ 106.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 106.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including those that are social or recreational; and

(10) Any other term, condition, or privilege of employment.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 106.61.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.56 Fringe benefits.

(a) *Fringe benefits defined.* For purposes of this part, *fringe benefits* means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 106.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex

is a *bona-fide* occupational qualification for the particular job in question.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682

Subpart F—Procedures [Interim]

§ 106.71 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6–100.11 and 34 CFR, part 101.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

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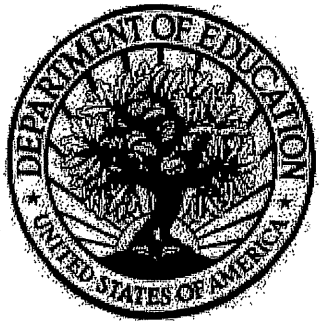
EXHIBIT 'C'

REVISED SEXUAL HARASSMENT GUIDANCE

OFFICE FOR CIVIL RIGHTS - JANUARY 2001

REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES

TITLE IX



January 2001

U.S. Department of Education
Office for Civil Rights

PREAMBLE

Summary

The Assistant Secretary for Civil Rights, U.S. Department of Education (Department), issues a new document (revised guidance) that replaces the 1997 document entitled "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," issued by the Office for Civil Rights (OCR) on March 13, 1997 (1997 guidance). We revised the guidance in limited respects in light of subsequent Supreme Court cases relating to sexual harassment in schools.

The revised guidance reaffirms the compliance standards that OCR applies in investigations and administrative enforcement of Title IX of the Education Amendments of 1972 (Title IX) regarding sexual harassment. The revised guidance re-grounds these standards in the Title IX regulations, distinguishing them from the standards applicable to private litigation for money damages and clarifying their regulatory basis as distinct from Title VII of the Civil Rights Act of 1964 (Title VII) agency law. In most other respects the revised guidance is identical to the 1997 guidance. Thus, we intend the revised guidance to serve the same purpose as the 1997 guidance. It continues to provide the principles that a school[1] should use to recognize and effectively respond to sexual harassment of students in its program as a condition of receiving Federal financial assistance.

Purpose and Scope of the Revised Guidance

In March 1997, we published in the Federal Register "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." 62 FR 12034. We issued the guidance pursuant to our authority under Title IX, and our Title IX implementing regulations, to eliminate discrimination based on sex in education programs and activities receiving Federal financial assistance. It was grounded in longstanding legal authority establishing that sexual harassment of students can be a form of sex discrimination covered by Title IX. The guidance was the product of extensive consultation with interested parties, including students, teachers, school administrators, and researchers. We also made the document available for public comment.

Since the issuance of the 1997 guidance, the Supreme Court (Court) has issued several important decisions in sexual harassment cases, including two decisions specifically addressing sexual harassment of students under Title IX: Gebser v. Lago Vista Independent School District (Gebser), 524 U.S. 274 (1998), and Davis v. Monroe County Board of Education (Davis), 526 U.S. 629 (1999). The Court held in Gebser that a school can be liable for monetary damages if a teacher sexually harasses a student, an

[1] As in the 1997 guidance, the revised guidance uses the term "school" to refer to all schools, colleges, universities, and other educational institutions that receive Federal funds from the Department.

official who has authority to address the harassment has actual knowledge of the harassment, and that official is deliberately indifferent in responding to the harassment. In Davis, the Court announced that a school also may be liable for monetary damages if one student sexually harasses another student in the school's program and the conditions of Gebser are met.

The Court was explicit in Gebser and Davis that the liability standards established in those cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. The Court acknowledged, by contrast, the power of Federal agencies, such as the Department, to "promulgate and enforce requirements that effectuate [Title IX's] nondiscrimination mandate," even in circumstances that would not give rise to a claim for money damages. See, Gebser, 524 U.S. at 292.

In an August 1998 letter to school superintendents and a January 1999 letter to college and university presidents, the Secretary of Education informed school officials that the Gebser decision did not change a school's obligations to take reasonable steps under Title IX and the regulations to prevent and eliminate sexual harassment as a condition of its receipt of Federal funding. The Department also determined that, although in most important respects the substance of the 1997 guidance was reaffirmed in Gebser and Davis, certain areas of the 1997 guidance could be strengthened by further clarification and explanation of the Title IX regulatory basis for the guidance.

On November 2, 2000, we published in the Federal Register a notice requesting comments on the proposed revised guidance (62 FR 66092). A detailed explanation of the Gebser and Davis decisions, and an explanation of the proposed changes in the guidance, can be found in the preamble to the proposed revised guidance. In those decisions and a third opinion, Oncale v. Sundowner Offshore Services, Inc. (Oncale), 523 U.S. 75 (1998) (a sexual harassment case decided under Title VII), the Supreme Court confirmed several fundamental principles we articulated in the 1997 guidance. In these areas, no changes in the guidance were necessary. A notice regarding the availability of this final document appeared in the Federal Register on January 19, 2001.

Enduring Principles from the 1997 Guidance

It continues to be the case that a significant number of students, both male and female, have experienced sexual harassment, which can interfere with a student's academic performance and emotional and physical well-being. Preventing and remedying sexual harassment in schools is essential to ensuring a safe environment in which students can learn. As with the 1997 guidance, the revised guidance applies to students at every level of education. School personnel who understand their obligations under Title IX, e.g., understand that sexual harassment can be sex discrimination in violation of Title IX, are in the best position to prevent harassment and to lessen the harm to students if, despite their best efforts, harassment occurs.

One of the fundamental aims of both the 1997 guidance and the revised guidance has been to emphasize that, in addressing allegations of sexual harassment, the good judgment and common sense of teachers and school administrators are important elements of a response that meets the requirements of Title IX.

A critical issue under Title IX is whether the school recognized that sexual harassment has occurred and took prompt and effective action calculated to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. If harassment has occurred, doing nothing is always the wrong response. However, depending on the circumstances, there may be more than one right way to respond. The important thing is for school employees or officials to pay attention to the school environment and not to hesitate to respond to sexual harassment in the same reasonable, commonsense manner as they would to other types of serious misconduct.

It is also important that schools not overreact to behavior that does not rise to the level of sexual harassment. As the Department stated in the 1997 guidance, a kiss on the cheek by a first grader does not constitute sexual harassment. School personnel should consider the age and maturity of students in responding to allegations of sexual harassment.

Finally, we reiterate the importance of having well- publicized and effective grievance procedures in place to handle complaints of sex discrimination, including sexual harassment complaints. Nondiscrimination policies and procedures are required by the Title IX regulations. In fact, the Supreme Court in Gebser specifically affirmed the Department's authority to enforce this requirement administratively in order to carry out Title IX's nondiscrimination mandate. 524 U.S. at 292. Strong policies and effective grievance procedures are essential to let students and employees know that sexual harassment will not be tolerated and to ensure that they know how to report it.

Analysis of Comments Received Concerning the Proposed Revised Guidance and the Resulting Changes

In response to the Assistant Secretary's invitation to comment, OCR received approximately 11 comments representing approximately 15 organizations and individuals. Commenters provided specific suggestions regarding how the revised guidance could be clarified. Many of these suggested changes have been incorporated. Significant and recurring issues are grouped by subject and discussed in the following sections:

Distinction Between Administrative Enforcement and Private Litigation for Monetary Damages

In Gebser and Davis, the Supreme Court addressed for the first time the appropriate standards for determining when a school district is liable under Title IX for money damages in a private lawsuit brought by or on behalf of a student who has been sexually harassed. As explained in the preamble to the proposed revised guidance, the Court was explicit in Gebser and Davis that the liability standards established in these cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. at 283, and Davis, 526 U.S. at 639. The Gebser Court recognized and contrasted lawsuits for money damages with the incremental nature of administrative enforcement of Title IX. In Gebser, the Court was concerned with the possibility of a money damages award against a school for harassment about which it had not known. In contrast, the process of administrative enforcement requires enforcement agencies such as OCR to make schools

aware of potential Title IX violations and to seek voluntary corrective action before pursuing fund termination or other enforcement mechanisms.

Commenters uniformly agreed with OCR that the Court limited the liability standards established in Gebser and Davis to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. Commenters also agreed that the administrative enforcement standards reflected in the 1997 guidance remain valid in OCR enforcement actions.[2] Finally, commenters agreed that the proposed revisions provided important clarification to schools regarding the standards that OCR will use and that schools should use to determine compliance with Title IX as a condition of the receipt of Federal financial assistance in light of Gebser and Davis.

Harassment by Teachers and Other School Personnel

Most commenters agreed with OCR's interpretation of its regulations regarding a school's responsibility for harassment of students by teachers and other school employees. These commenters agreed that Title IX's prohibitions against discrimination are not limited to official policies and practices governing school programs and activities. A school also engages in sex-based discrimination if its employees, in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students (such as teaching, counseling, supervising, and advising students) deny or limit a student's ability to participate in or benefit from the schools program on the basis of sex. Under the Title IX regulations, the school is responsible for discrimination in these cases, whether or not it knew or should have known about it, because the discrimination occurred as part of the school's undertaking to provide nondiscriminatory aid, benefits, and services to students. The revised guidance distinguishes these cases from employee harassment that, although taking place in a school's program, occurs outside of the context of the employee's provision of aid, benefits, and services to students. In these latter cases, the school's responsibilities are not triggered until the school knew or should have known about the harassment.

One commenter expressed concern that it was inappropriate ever to find a school out of compliance for harassment about which it knew nothing. We reiterate that, although a school may in some cases be responsible for harassment caused by an employee that occurred before other responsible employees of the school knew or should have known about it, OCR always provides the school with actual notice and the opportunity to take appropriate corrective action before issuing a finding of violation. This is consistent with the Court's underlying concern in Gebser and Davis.

Most commenters acknowledged that OCR has provided useful factors to determine whether harassing conduct took place "in the context of providing aid, benefits, or services." However, some commenters stated that additional clarity and examples regarding the issue were needed. Commenters also suggested clarifying

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[2] It is the position of the United States that the standards set out in OCR's guidance for finding a violation and seeking voluntary corrective action also would apply to private actions for injunctive and other equitable relief. See brief of the United States as Amicus Curiae in Davis v. Monroe County.

references to quid pro quo and hostile environment harassment as these two concepts, though useful, do not determine the issue of whether the school itself is considered responsible for the harassment. We agree with these concerns and have made significant revisions to the sections "Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program" and "Harassment by Teachers and Other Employees" to clarify the guidance in these respects.

Gender-based Harassment, Including Harassment Predicated on Sex-stereotyping

Several commenters requested that we expand the discussion and include examples of gender-based harassment predicated on sex stereotyping. Some commenters also argued that gender-based harassment should be considered sexual harassment, and that we have "artificially" restricted the guidance only to harassment in the form of conduct of a sexual nature, thus, implying that gender-based harassment is of less concern and should be evaluated differently.

We have not further expanded this section because, while we are also concerned with the important issue of gender-based harassment, we believe that harassment of a sexual nature raises unique and sufficiently important issues that distinguish it from other types of gender-based harassment and warrants its own guidance.

Nevertheless, we have clarified this section of the guidance in several ways. The guidance clarifies that gender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity and femininity. Although this type of harassment is not covered by the guidance, if it is sufficiently serious, gender-based harassment is a school's responsibility, and the same standards generally will apply. We have also added an endnote regarding Supreme Court precedent for the proposition that sex stereotyping can constitute sex discrimination.

Several commenters also suggested that we state that sexual and non-sexual (but gender-based) harassment should not be evaluated separately in determining whether a hostile environment exists. We note that both the proposed revised guidance and the final revised guidance indicate in several places that incidents of sexual harassment and non-sexual, gender-based harassment can be combined to determine whether a hostile environment has been created. We also note that sufficiently serious harassment of a sexual nature remains covered by Title IX, as explained in the guidance, even though the hostile environment may also include taunts based on sexual orientation.

Definition of Harassment

One commenter urged OCR to provide distinct definitions of sexual harassment to be used in administrative enforcement as distinguished from criteria used to maintain private actions for monetary damages. We disagree. First, as discussed in the preamble to the proposed revised guidance, the definition of hostile environment sexual harassment used by the Court in Davis is consistent with the definition found in the proposed guidance. Although the terms used by the Court in Davis are in some ways different from

the words used to define hostile environment harassment in the 1997 guidance (see, e.g., 62 FR 12041, "conduct of a sexual nature is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment"), the definitions are consistent. Both the Court's and the Department's definitions are contextual descriptions intended to capture the same concept -- that under Title IX, the conduct must be sufficiently serious that it adversely affects a student's ability to participate in or benefit from the school's program. In determining whether harassment is actionable, both Davis and the Department tell schools to look at the "constellation of surrounding circumstances, expectations, and relationships" (526 U.S. at 651 (citing Oncale)), and the Davis Court cited approvingly to the underlying core factors described in the 1997 guidance for evaluating the context of the harassment. Second, schools benefit from consistency and simplicity in understanding what is sexual harassment for which the school must take responsive action. A multiplicity of definitions would not serve this purpose.

Several commenters suggested that we develop a unique Title IX definition of harassment that does not rely on Title VII and that takes into account the special relationship of schools to students. Other commenters, by contrast, commended OCR for recognizing that Gebser and Davis did not alter the definition of hostile environment sexual harassment found in OCR's 1997 guidance, which derives from Title VII caselaw, and asked us to strengthen the point. While Gebser and Davis made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the Davis Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX. We also believe that the factors described in both the 1997 guidance and the revised guidance to determine whether sexual harassment has occurred provide the necessary flexibility for taking into consideration the age and maturity of the students involved and the nature of the school environment.

Effective Response

One commenter suggested that the change in the guidance from "appropriate response" to "effective response" implies a change in OCR policy that requires omniscience of schools. We disagree. Effectiveness has always been the measure of an adequate response under Title IX. This does not mean a school must overreact out of fear of being judged inadequate. Effectiveness is measured based on a reasonableness standard. Schools do not have to know beforehand that their response will be effective. However, if their initial steps are ineffective in stopping the harassment, reasonableness may require a series of escalating steps.

The Relationship Between FERPA and Title IX

In the development of both the 1997 guidance and the current revisions to the guidance, commenters raised concerns about the interrelation of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and Title IX. The concerns relate to two issues: (1) the harassed student's right to information about the outcome of a sexual harassment complaint against another student, including information about sanctions imposed on a student found guilty of harassment; and (2) the due process rights of

individuals, including teachers, accused of sexual harassment by a student, to obtain information about the identity of the complainant and the nature of the allegations.

FERPA generally forbids disclosure of information from a student's "education record" without the consent of the student (or the student's parent). Thus, FERPA may be relevant when the person found to have engaged in harassment is another student, because written information about the complaint, investigation, and outcome is part of the harassing student's education record. Title IX is also relevant because it is an important part of taking effective responsive action for the school to inform the harassed student of the results of its investigation and whether it counseled, disciplined, or otherwise sanctioned the harasser. This information can assure the harassed student that the school has taken the student's complaint seriously and has taken steps to eliminate the hostile environment and prevent the harassment from recurring.

The Department currently interprets FERPA as not conflicting with the Title IX requirement that the school notify the harassed student of the outcome of its investigation, i.e., whether or not harassment was found to have occurred, because this information directly relates to the victim. It has been the Department's position that there is a potential conflict between FERPA and Title IX regarding disclosure of sanctions, and that FERPA generally prevents a school from disclosing to a student who complained of harassment information about the sanction or discipline imposed upon a student who was found to have engaged in that harassment.[3]

There is, however, an additional statutory provision that may apply to this situation. In 1994, as part of the Improving America's Schools Act, Congress amended the General Education Provisions Act (GEPA) -- of which FERPA is a part -- to state that nothing in GEPA "shall be construed to affect the applicability of ... title IX of the Education Amendments of 1972...."[4] The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between requirements of FERPA and requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. The Department is in the process of developing a consistent approach and specific factors for implementing this provision. OCR and the Department's Family Policy Compliance Office (FPCO) intend to issue joint guidance, discussing specific areas of potential conflict between FERPA and Title IX.

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[3] Exceptions include the case of a sanction that directly relates to the person who was harassed (e.g., an order that the harasser stay away from the harassed student), or sanctions related to offenses for which there is a statutory exception, such as crimes of violence or certain sex offenses in postsecondary institutions.

[4] 20 U.S.C. 1221(d). A similar amendment was originally passed in 1974 but applied only to Title VI of the Civil Rights Act of 1964 (prohibiting race discrimination by recipients). The 1994 amendments also extended 20 U.S.C. 1221(d) to Section 504 of the Rehabilitation Act of 1973 (prohibiting disability-based discrimination by recipients) and to the Age Discrimination Act.

FERPA is also relevant when a student accuses a teacher or other employee of sexual harassment, because written information about the allegations is contained in the student's education record. The potential conflict arises because, while FERPA protects the privacy of the student accuser, the accused individual may need the name of the accuser and information regarding the nature of the allegations in order to defend against the charges. The 1997 guidance made clear that neither FERPA nor Title IX override any federally protected due process rights of a school employee accused of sexual harassment.

Several commenters urged the Department to expand and strengthen this discussion. They argue that in many instances a school's failure to provide information about the name of the student accuser and the nature of the allegations seriously undermines the fairness of the investigative and adjudicative process. They also urge the Department to include a discussion of the need for confidentiality as to the identity of the individual accused of harassment because of the significant harm that can be caused by false accusations. We have made several changes to the guidance, including an additional discussion regarding the confidentiality of a person accused of harassment and a new heading entitled "Due Process Rights of the Accused," to address these concerns.

REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS[1] BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES

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I. Introduction

Title IX of the Education Amendments of 1972 (Title IX) and the Department of Education's (Department) implementing regulations prohibit discrimination on the basis of sex in federally assisted education programs and activities.[2] The Supreme Court, Congress, and Federal executive departments and agencies, including the Department, have recognized that sexual harassment of students can constitute discrimination prohibited by Title IX.[3] This guidance focuses on a school's[4] fundamental compliance responsibilities under Title IX and the Title IX regulations to address sexual harassment of students as a condition of continued receipt of Federal funding. It describes the regulatory basis for a school's compliance responsibilities under Title IX, outlines the circumstances under which sexual harassment may constitute discrimination prohibited by the statute and regulations, and provides information about actions that schools should take to prevent sexual harassment or to address it effectively if it does occur.[5]

II. Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.[6] Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program. Sexual harassment of students is, therefore, a form of sex discrimination prohibited by Title IX under the circumstances described in this guidance.

It is important to recognize that Title IX's prohibition against sexual harassment does not extend to legitimate nonsexual touching or other nonsexual conduct. For example, a high school athletic coach hugging a student who made a goal or a kindergarten teacher's consoling hug for a child with a skinned knee will not be considered sexual harassment.[7] Similarly, one student's demonstration of a sports maneuver or technique requiring contact with another student will not be considered sexual harassment. However, in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher's repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment.

III. Applicability of Title IX

Title IX applies to all public and private educational institutions that receive Federal funds, i.e., recipients, including, but not limited to, elementary and secondary schools, school districts, proprietary schools, colleges, and universities. The guidance uses the terms "recipients" and "schools" interchangeably to refer to all of those institutions. The "education program or activity" of a school includes all of the school's operations.[8] This means that Title IX protects students in connection with all of the academic, educational, extra-curricular, athletic, and other programs of the school,

whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere.

A student may be sexually harassed by a school employee,[9] another student, or a non-employee third party (e.g., a visiting speaker or visiting athletes). Title IX protects any "person" from sex discrimination. Accordingly, both male and female students are protected from sexual harassment[10] engaged in by a school's employees, other students, or third parties. Moreover, Title IX prohibits sexual harassment regardless of the sex of the harasser, i.e., even if the harasser and the person being harassed are members of the same sex.[11] An example would be a campaign of sexually explicit graffiti directed at a particular girl by other girls.[12]

Although Title IX does not prohibit discrimination on the basis of sexual orientation,[13] sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX under the circumstances described in this guidance.[14] For example, if a male student or a group of male students target a gay student for physical sexual advances, serious enough to deny or limit the victim's ability to participate in or benefit from the school's program, the school would need to respond promptly and effectively, as described in this guidance, just as it would if the victim were heterosexual. On the other hand, if students heckle another student with comments based on the student's sexual orientation (e.g., "gay students are not welcome at this table in the cafeteria"), but their actions do not involve conduct of a sexual nature, their actions would not be sexual harassment covered by Title IX.[15]

Though beyond the scope of this guidance, gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping,[16] but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond, if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program.[17] For example, the repeated sabotaging of female graduate students' laboratory experiments by male students in the class could be the basis of a violation of Title IX. A school must respond to such harassment in accordance with the standards and procedures described in this guidance.[18] In assessing all related circumstances to determine whether a hostile environment exists, incidents of gender-based harassment combined with incidents of sexual harassment could create a hostile environment, even if neither the gender-based harassment alone nor the sexual harassment alone would be sufficient to do so.[19]

IV. Title IX Regulatory Compliance Responsibilities

As a condition of receiving funds from the Department, a school is required to comply with Title IX and the Department's Title IX regulations, which spell out prohibitions against sex discrimination. The law is clear that sexual harassment may constitute sex discrimination under Title IX.[20]

Recipients specifically agree, as a condition for receiving Federal financial assistance from the Department, to comply with Title IX and the Department's Title IX regulations. The regulatory provision requiring this agreement, known as an assurance of

compliance, specifies that recipients must agree that education programs or activities operated by the recipient will be operated in compliance with the Title IX regulations, including taking any action necessary to remedy its discrimination or the effects of its discrimination in its programs.[21]

The regulations set out the basic Title IX responsibilities a recipient undertakes when it accepts Federal financial assistance, including the following specific obligations.[22] A recipient agrees that, in providing any aid, benefit, or service to students, it will not, on the basis of sex—

- Treat one student differently from another in determining whether the student satisfies any requirement or condition for the provision of any aid, benefit, or service;[23]
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;[24]
- Deny any student any such aid, benefit, or service;[25]
- Subject students to separate or different rules of behavior, sanctions, or other treatment;[26]
- Aid or perpetuate discrimination against a student by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students;[27] and
- Otherwise limit any student in the enjoyment of any right, privilege, advantage, or opportunity.[28]

For the purposes of brevity and clarity, this guidance generally summarizes this comprehensive list by referring to a school's obligation to ensure that a student is not denied or limited in the ability to participate in or benefit from the school's program on the basis of sex.

The regulations also specify that, if a recipient discriminates on the basis of sex, the school must take remedial action to overcome the effects of the discrimination.[29]

In addition, the regulations establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination[30] and adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints of sex discrimination.[31] The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance.[32]

To comply with these regulatory requirements, schools need to recognize and respond to sexual harassment of students by teachers and other employees, by other students, and by third parties. This guidance explains how the requirements of the Title IX regulations apply to situations involving sexual harassment of a student and outlines measures that schools should take to ensure compliance.

V. Determining a School's Responsibilities

In assessing sexually harassing conduct, it is important for schools to recognize that two distinct issues are considered. The first issue is whether, considering the types of harassment discussed in the following section, the conduct denies or limits a student's ability to participate in or benefit from the program based on sex. If it does, the second issue is the nature of the school's responsibility to address that conduct. As discussed in a following section, this issue depends in part on the identity of the harasser and the context in which the harassment occurred.

A. Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program

This guidance moves away from specific labels for types of sexual harassment.[33] In each case, the issue is whether the harassment rises to a level that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. However, an understanding of the different types of sexual harassment can help schools determine whether or not harassment has occurred that triggers a school's responsibilities under, or violates, Title IX or its regulations.

The type of harassment traditionally referred to as quid pro quo harassment occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct.[34] Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the student has been treated differently, or the student's ability to participate in or benefit from the school's program has been denied or limited, on the basis of sex in violation of the Title IX regulations.[35]

By contrast, sexual harassment can occur that does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct. Harassment of this type is generally referred to as hostile environment harassment.[36] This type of harassing conduct requires a further assessment of whether or not the conduct is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program based on sex.[37]

Teachers and other employees can engage in either type of harassment. Students and third parties are not generally given responsibility over other students and, thus, generally can only engage in hostile environment harassment.

1. Factors Used to Evaluate Hostile Environment Sexual Harassment

As outlined in the following paragraphs, OCR considers a variety of related factors to determine if a hostile environment has been created, i.e., if sexually harassing conduct by an employee, another student, or a third party is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. OCR considers the conduct from both a subjective[38] and objective[39] perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all relevant circumstances, i.e., "the constellation of surrounding circumstances, expectations, and relationships."[40] Schools should also use these factors to evaluate conduct in order to draw commonsense distinctions between conduct that constitutes

sexual harassment and conduct that does not rise to that level. Relevant factors include the following:

- The degree to which the conduct affected one or more students' education. OCR assesses the effect of the harassment on the student to determine whether it has denied or limited the student's ability to participate in or benefit from the school's program. For example, a student's grades may go down or the student may be forced to withdraw from school because of the harassing behavior.[41] A student may also suffer physical injuries or mental or emotional distress.[42] In another situation, a student may have been able to keep up his or her grades and continue to attend school even though it was very difficult for him or her to do so because of the teacher's repeated sexual advances. Similarly, a student may be able to remain on a sports team, despite experiencing great difficulty performing at practices and games from the humiliation and anger caused by repeated sexual advances and intimidation by several team members that create a hostile environment. Harassing conduct in these examples would alter a reasonable student's educational environment and adversely affect the student's ability to participate in or benefit from the school's program on the basis of sex.

  A hostile environment can occur even if the harassment is not targeted specifically at the individual complainant.[43] For example, if a student, group of students, or a teacher regularly directs sexual comments toward a particular student, a hostile environment may be created not only for the targeted student, but also for others who witness the conduct.

- The type, frequency, and duration of the conduct. In most cases, a hostile environment will exist if there is a pattern or practice of harassment, or if the harassment is sustained and nontrivial.[44] For instance, if a young woman is taunted by one or more young men about her breasts or genital area or both, OCR may find that a hostile environment has been created, particularly if the conduct has gone on for some time, or takes place throughout the school, or if the taunts are made by a number of students. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. For instance, if the conduct is more severe, e.g., attempts to grab a female student's breasts or attempts to grab any student's genital area or buttocks, it need not be as persistent to create a hostile environment. Indeed, a single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.[45] On the other hand, conduct that is not severe will not create a hostile environment, e.g., a comment by one student to another student that she has a nice figure. Indeed, depending on the circumstances, this may not even be conduct of a sexual nature.[46] Similarly, because students date one another, a request for a date or a gift of flowers, even if unwelcome, would not create a hostile environment. However, there may be circumstances in which repeated, unwelcome requests for dates or similar conduct could create a hostile environment. For example, a person, who has been refused previously, may request dates in an intimidating or threatening manner.

- The identity of and relationship between the alleged harasser and the subject or subjects of the harassment. A factor to be considered, especially in cases involving allegations of sexual harassment of a student by a school employee, is the identity of

and relationship between the alleged harasser and the subject or subjects of the harassment. For example, due to the power a professor or teacher has over a student, sexually based conduct by that person toward a student is more likely to create a hostile environment than similar conduct by another student.[47]

- The number of individuals involved. Sexual harassment may be committed by an individual or a group. In some cases, verbal comments or other conduct from one person might not be sufficient to create a hostile environment, but could be if done by a group. Similarly, while harassment can be directed toward an individual or a group,[48] the effect of the conduct toward a group may vary, depending on the type of conduct and the context. For certain types of conduct, there may be "safety in numbers." For example, following an individual student and making sexual taunts to him or her may be very intimidating to that student, but, in certain circumstances, less so to a group of students. On the other hand, persistent unwelcome sexual conduct still may create a hostile environment if directed toward a group.

- The age and sex of the alleged harasser and the subject or subjects of the harassment. For example, in the case of younger students, sexually harassing conduct is more likely to be intimidating if coming from an older student.[49]

- The size of the school, location of the incidents, and context in which they occurred. Depending on the circumstances of a particular case, fewer incidents may have a greater effect at a small college than at a large university campus. Harassing conduct occurring on a school bus may be more intimidating than similar conduct on a school playground because the restricted area makes it impossible for students to avoid their harassers.[50] Harassing conduct in a personal or secluded area, such as a dormitory room or residence hall, can have a greater effect (e.g., be seen as more threatening) than would similar conduct in a more public area. On the other hand, harassing conduct in a public place may be more humiliating. Each incident must be judged individually.

- Other incidents at the school. A series of incidents at the school, not involving the same students, could — taken together — create a hostile environment, even if each by itself would not be sufficient.[51]

- Incidents of gender-based, but nonsexual harassment. Acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex, but not involving sexual activity or language, can be combined with incidents of sexual harassment to determine if the incidents of sexual harassment are sufficiently serious to create a sexually hostile environment.[52]

It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists. Consequently, in using the factors discussed previously to evaluate incidents of alleged harassment, it is always important to use common sense and reasonable judgement in determining whether a sexually hostile environment has been created.

2. Welcomeness

The section entitled "Sexual Harassment" explains that in order for conduct of a sexual nature to be sexual harassment, it must be unwelcome. Conduct is unwelcome if

the student did not request or invite it and "regarded the conduct as undesirable or offensive."[53] Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.[54] For example, a student may decide not to resist sexual advances of another student or may not file a complaint out of fear. In addition, a student may not object to a pattern of demeaning comments directed at him or her by a group of students out of a concern that objections might cause the harassers to make more comments. The fact that a student may have accepted the conduct does not mean that he or she welcomed it.[55] Also, the fact that a student willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwelcome on a subsequent occasion. On the other hand, if a student actively participates in sexual banter and discussions and gives no indication that he or she objects, then the evidence generally will not support a conclusion that the conduct was unwelcome.[56]

If younger children are involved, it may be necessary to determine the degree to which they are able to recognize that certain sexual conduct is conduct to which they can or should reasonably object and the degree to which they can articulate an objection. Accordingly, OCR will consider the age of the student, the nature of the conduct involved, and other relevant factors in determining whether a student had the capacity to welcome sexual conduct.

Schools should be particularly concerned about the issue of welcomeness if the harasser is in a position of authority. For instance, because students may be encouraged to believe that a teacher has absolute authority over the operation of his or her classroom, a student may not object to a teacher's sexually harassing comments during class; however, this does not necessarily mean that the conduct was welcome. Instead, the student may believe that any objections would be ineffective in stopping the harassment or may fear that by making objections he or she will be singled out for harassing comments or other retaliation.

In addition, OCR must consider particular issues of welcomeness if the alleged harassment relates to alleged "consensual" sexual relationships between a school's adult employees and its students. If elementary students are involved, welcomeness will not be an issue: OCR will never view sexual conduct between an adult school employee and an elementary school student as consensual. In cases involving secondary students, there will be a strong presumption that sexual conduct between an adult school employee and a student is not consensual. In cases involving older secondary students, subject to the presumption,[57] OCR will consider a number of factors in determining whether a school employee's sexual advances or other sexual conduct could be considered welcome.[58] In addition, OCR will consider these factors in all cases involving postsecondary students in making those determinations.[59] The factors include the following:

- The nature of the conduct and the relationship of the school employee to the student, including the degree of influence (which could, at least in part, be affected by the student's age), authority, or control the employee has over the student.
- Whether the student was legally or practically unable to consent to the sexual conduct in question. For example, a student's age could affect his or her ability to do so. Similarly, certain types of disabilities could affect a student's ability to do so.

If there is a dispute about whether harassment occurred or whether it was welcome — in a case in which it is appropriate to consider whether the conduct would be welcome — determinations should be made based on the totality of the circumstances. The following types of information may be helpful in resolving the dispute:

- Statements by any witnesses to the alleged incident.
- Evidence about the relative credibility of the allegedly harassed student and the alleged harasser. For example, the level of detail and consistency of each person's account should be compared in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist. However, the absence of witnesses may indicate only the unwillingness of others to step forward, perhaps due to fear of the harasser or a desire not to get involved.
- Evidence that the alleged harasser has been found to have harassed others may support the credibility of the student claiming the harassment; conversely, the student's claim will be weakened if he or she has been found to have made false allegations against other individuals.
- Evidence of the allegedly harassed student's reaction or behavior after the alleged harassment. For example, were there witnesses who saw the student immediately after the alleged incident who say that the student appeared to be upset? However, it is important to note that some students may respond to harassment in ways that do not manifest themselves right away, but may surface several days or weeks after the harassment. For example, a student may initially show no signs of having been harassed, but several weeks after the harassment, there may be significant changes in the student's behavior, including difficulty concentrating on academic work, symptoms of depression, and a desire to avoid certain individuals and places at school.
- Evidence about whether the student claiming harassment filed a complaint or took other action to protest the conduct soon after the alleged incident occurred. However, failure to immediately complain may merely reflect a fear of retaliation or a fear that the complainant may not be believed rather than that the alleged harassment did not occur.
- Other contemporaneous evidence. For example, did the student claiming harassment write about the conduct and his or her reaction to it soon after it occurred (e.g., in a diary or letter)? Did the student tell others (friends, parents) about the conduct (and his or her reaction to it) soon after it occurred?

B. Nature of the School's Responsibility to Address Sexual Harassment

A school has a responsibility to respond promptly and effectively to sexual harassment. In the case of harassment by teachers or other employees, the nature of this responsibility depends in part on whether the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

1. Harassment by Teachers and Other Employees

Sexual harassment of a student by a teacher or other school employee can be discrimination in violation of Title IX.[60] Schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed. The extent of a recipient's responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

A recipient is responsible under the Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. Recipients generally provide aid, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual harassment – generally this means harassment that is carried out during an employee's performance of his or her responsibilities in relation to students, including teaching, counseling, supervising, advising, and transporting students – and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of sex,[61] the recipient is responsible for the discriminatory conduct.[62] The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has "notice" of the harassment. (As explained in the section on "Notice of Employee, Peer, or Third Party Harassment," for purposes of this guidance, a school has notice of harassment if a responsible school employee actually knew or, in the exercise of reasonable care, should have known about the harassment.) Of course, under OCR's administrative enforcement, recipients always receive actual notice and the opportunity to take appropriate corrective action before any finding of violation or possible loss of federal funds.

Whether or not sexual harassment of a student occurred within the context of an employee's responsibilities for providing aid, benefits, or services is determined on a case-by-case basis, taking into account a variety of factors. If an employee conditions the provision of an aid, benefit, or service that the employee is responsible for providing on a student's submission to sexual conduct, i.e., conduct traditionally referred to as quid pro quo harassment, the harassment is clearly taking place in the context of the employee's responsibilities to provide aid, benefits, or services. In other situations, i.e., when an employee has created a hostile environment, OCR will consider the following factors in determining whether or not the harassment has taken place in this context, including:

- The type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally;
- the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place;
- where and when the harassment occurred;
- the age and educational level of the student involved; and

- as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

These factors are applicable to all recipient educational institutions, including elementary and secondary schools, colleges, and universities. Elementary and secondary schools, however, are typically run in a way that gives teachers, school officials, and other school employees a substantial degree of supervision, control, and disciplinary authority over the conduct of students.[63] Therefore, in cases involving allegations of harassment of elementary and secondary school-age students by a teacher or school administrator during any school activity,[64] consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee's provision of aid, benefits, or services.

For example, a teacher sexually harasses an eighth- grade student in a school hallway. Even if the student is not in any of the teacher's classes and even if the teacher is not designated as a hall monitor, given the age and educational level of the student and the status and degree of influence of teachers in elementary and secondary schools, it would be reasonable for the student to believe that the teacher had at least informal disciplinary authority over students in the hallways. Thus, OCR would consider this an example of conduct that is occurring in the context of the employee's responsibilities to provide aid, benefits, or services.

Other examples of sexual harassment of a student occurring in the context of an employee's responsibilities for providing aid, benefits, or services include, but are not limited to -- a faculty member at a university's medical school conditions an intern's evaluation on submission to his sexual advances and then gives her a poor evaluation for rejecting the advances; a high school drama instructor does not give a student a part in a play because she has not responded to sexual overtures from the instructor; a faculty member withdraws approval of research funds for her assistant because he has rebuffed her advances; a journalism professor who supervises a college newspaper continually and inappropriately touches a student editor in a sexual manner, causing the student to resign from the newspaper staff; and a teacher repeatedly asks a ninth grade student to stay after class and attempts to engage her in discussions about sex and her personal experiences while they are alone in the classroom, causing the student to stop coming to class. In each of these cases, the school is responsible for the discriminatory conduct, including taking prompt and effective action to end the harassment, prevent it from recurring, and remedy the effects of the harassment on the victim.

Sometimes harassment of a student by an employee in the school's program does not take place in the context of the employee's provision of aid, benefits, or services, but nevertheless is sufficiently serious to create a hostile educational environment. An example of this conduct might occur if a faculty member in the history department at a university, over the course of several weeks, repeatedly touches and makes sexually suggestive remarks to a graduate engineering student while waiting at a stop for the university shuttle bus, riding on the bus, and upon exiting the bus. As a result, the student stops using the campus shuttle and walks the very long distances between her classes. In this case, the school is not directly responsible for the harassing conduct because it did not occur in the context of the employee's responsibilities for the provision

of aid, benefits, or services to students. However, the conduct is sufficiently serious to deny or limit the student in her ability to participate in or benefit from the recipient's program. Thus, the school has a duty, upon notice of the harassment,[65] to take prompt and effective action to stop the harassment and prevent its recurrence.

If the school takes these steps, it has avoided violating Title IX. If the school fails to take the necessary steps, however, its failure to act has allowed the student to continue to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program. The school, therefore, has engaged in its own discrimination. It then becomes responsible, not just for stopping the conduct and preventing it from happening again, but for remedying the effects of the harassment on the student that could reasonably have been prevented if the school had responded promptly and effectively. (For related issues, see the sections on "OCR Case Resolution" and "Recipient's Response.")

2. Harassment by Other Students or Third Parties

If a student sexually harasses another student and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program, and if the school knows or reasonably should know[66] about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence.[67] As long as the school, upon notice of the harassment, responds by taking prompt and effective action to end the harassment and prevent its recurrence, the school has carried out its responsibility under the Title IX regulations. On the other hand, if, upon notice, the school fails to take prompt, effective action, the school's own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program on the basis of sex.[68] In this case, the school is responsible for taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had it responded promptly and effectively.

Similarly, sexually harassing conduct by third parties, who are not themselves employees or students at the school (e.g., a visiting speaker or members of a visiting athletic team), may also be of a sufficiently serious nature to deny or limit a student's ability to participate in or benefit from the education program. As previously outlined in connection with peer harassment, if the school knows or should know[69] of the harassment, the school is responsible for taking prompt and effective action to eliminate the hostile environment and prevent its recurrence.

The type of appropriate steps that the school should take will differ depending on the level of control that the school has over the third party harasser.[70] For example, if athletes from a visiting team harass the home school's students, the home school may not be able to discipline the athletes. However, it could encourage the other school to take appropriate action to prevent further incidents; if necessary, the home school may choose not to invite the other school back. (This issue is discussed more fully in the section on "Recipient's Response.")

If, upon notice, the school fails to take prompt and effective corrective action, its own failure has permitted the student to be subjected to a hostile environment that limits

the student's ability to participate in or benefit from the education program.[71] In this case, the school is responsible for taking corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had the school responded promptly and effectively.

C. Notice of Employee, Peer, or Third Party Harassment

As described in the section on "Harassment by Teachers and Other Employees," schools may be responsible for certain types of employee harassment that occurred before the school otherwise had notice of the harassment. On the other hand, as described in that section and the section on "Harassment by Other Students or Third Parties," in situations involving certain other types of employee harassment, or harassment by peers or third parties, a school will be in violation of the Title IX regulations if the school "has notice" of a sexually hostile environment and fails to take immediate and effective corrective action.[72]

A school has notice if a responsible employee "knew, or in the exercise of reasonable care should have known," about the harassment.[73] A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.[74] Accordingly, schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

A school can receive notice of harassment in many different ways. A student may have filed a grievance with the Title IX coordinator[75] or complained to a teacher or other responsible employee about fellow students harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, bus driver, teacher, affirmative action officer, or staff in the office of student affairs. A teacher or other responsible employee of the school may have witnessed the harassment. The school may receive notice about harassment in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The school also may have learned about the harassment from flyers about the incident distributed at the school or posted around the school. For the purposes of compliance with the Title IX regulations, a school has a duty to respond to harassment about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a "reasonably diligent inquiry."[76]

For example, in some situations if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents.[77] In other cases, the pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment — if the harassment is widespread, openly practiced, or well-known to students and staff

(such as sexual harassment occurring in the hallways, graffiti in public areas, or harassment occurring during recess under a teacher's supervision.)[78]

If a school otherwise knows or reasonably should know of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX even if the student has failed to use the school's existing grievance procedures or otherwise inform the school of the harassment.

D. The Role of Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination.[79] (These issues are discussed in the section on "Prompt and Equitable Grievance Procedures.") These procedures provide a school with a mechanism for discovering sexual harassment as early as possible and for effectively correcting problems, as required by the Title IX regulations. By having a strong policy against sex discrimination and accessible, effective, and fairly applied grievance procedures, a school is telling its students that it does not tolerate sexual harassment and that students can report it without fear of adverse consequences.

Without a disseminated policy and procedure, a student does not know either of the school's policy against and obligation to address this form of discrimination, or how to report harassment so that it can be remedied. If the alleged harassment is sufficiently serious to create a hostile environment and it is the school's failure to comply with the procedural requirements of the Title IX regulations that hampers early notification and intervention and permits sexual harassment to deny or limit a student's ability to participate in or benefit from the school's program on the basis of sex,[80] the school will be responsible under the Title IX regulations, once informed of the harassment, to take corrective action, including stopping the harassment, preventing its recurrence, and remedying the effects of the harassment on the victim that could reasonably have been prevented if the school's failure to comply with the procedural requirements had not hampered early notification.

VI. OCR Case Resolution

If OCR is asked to investigate or otherwise resolve incidents of sexual harassment of students, including incidents caused by employees, other students, or third parties, OCR will consider whether — (1) the school has a disseminated policy prohibiting sex discrimination under Title IX[81] and effective grievance procedures;[82] (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment;[83] and (3) the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.[84] (Issues related to appropriate investigative and corrective actions are discussed in detail in the section on "Recipient's Response.")

If the school has taken, or agrees to take, each of these steps, OCR will consider the case against the school resolved and will take no further action, other than monitoring compliance with an agreement, if any, between the school and OCR. This is true in cases

in which the school was in violation of the Title IX regulations (e.g., a teacher sexually harassed a student in the context ofproviding aid, benefits, or services to students), as well as those in which there has been no violation of the regulations (e.g., in a peer sexual harassment situation in which the school took immediate, reasonable steps to end the harassment and prevent its recurrence). This is because, even if OCR identifies a violation, Title IX requires OCR to attempt to secure voluntary compliance.[85] Thus, because a school will have the opportunity to take reasonable corrective action before OCR issues a formal finding of violation, a school does not risk losing its Federal funding solely because discrimination occurred.

VII. Recipient's Response

Once a school has notice of possible sexual harassment of students — whether carried out by employees, other students, or third parties — it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps

reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.[86] As described in the next section, in appropriate circumstances the school will also be responsible for taking steps to remedy the effects of the harassment on the individual student or students who were harassed. What constitutes a reasonable response to information about possible sexual harassment will differ depending upon the circumstances.

A. Response to Student or Parent Reports of Harassment; Response to Direct Observation of Harassment by a Responsible Employee

If a student or the parent of an elementary or secondary student provides information or complains about sexual harassment of the student, the school should initially discuss what actions the student or parent is seeking in response to the harassment. The school should explain the avenues for informal and formal action, including a description of the grievance procedure that is available for sexual harassment complaints and an explanation of how the procedure works. If a responsible school employee has directly observed sexual harassment of a student, the school should contact the student who was harassed (or the parent, depending upon the age of the student),[87] explain that the school is responsible for taking steps to correct the harassment, and provide the same information described in the previous sentence.

Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student's behalf (including in cases involving direct observation by a responsible employee), the school must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial. (Requests by the student who

was harassed for confidentiality or for no action to be taken, responding to notice of harassment from other sources, and the components of a prompt and equitable grievance procedure are discussed in subsequent sections of this guidance.)

It may be appropriate for a school to take interim measures during the investigation of a complaint. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes or in different housing arrangements on a campus, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate. In cases involving potential criminal conduct, school personnel should determine whether appropriate law enforcement authorities should be notified. In all cases, schools should make every effort to prevent disclosure of the names of all parties involved -- the complainant, the witnesses, and the accused -- except to the extent necessary to carry out an investigation.

If a school determines that sexual harassment has occurred, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation.[88] Appropriate steps should be taken to end the harassment. For example, school personnel may need to counsel, warn, or take disciplinary action against the harasser, based on the severity of the harassment or any record of prior incidents or both.[89] A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.[90] In some cases, it may be appropriate to further separate the harassed student and the harasser, e.g., by changing housing arrangements[91] or directing the harasser to have no further contact with the harassed student. Responsive measures of this type should be designed to minimize, as much as possible, the burden on the student who was harassed. If the alleged harasser is not a student or employee of the recipient, OCR will consider the level of control the school has over the harasser in determining what response would be appropriate.[92]

Steps should also be taken to eliminate any hostile environment that has been created. For example, if a female student has been subjected to harassment by a group of other students in a class, the school may need to deliver special training or other interventions for that class to repair the educational environment. If the school offers the student the option of withdrawing from a class in which a hostile environment occurred, the school should assist the student in making program or schedule changes and ensure that none of the changes adversely affect the student's academic record. Other measures may include, if appropriate, directing a harasser to apologize to the harassed student. If a hostile environment has affected an entire school or campus, an effective response may need to include dissemination of information, the issuance of new policy statements, or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and will be responsive to any student who reports that conduct.

In some situations, a school may be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student.[93] For example, if an instructor gives a student a low grade because the student failed to respond to his sexual advances, the school may be required to make arrangements for an independent reassessment of the student's work, if feasible, and change the grade accordingly; make arrangements for the student to take the course again

with a different instructor; provide tutoring; make tuition adjustments; offer reimbursement for professional counseling; or take other measures that are appropriate to the circumstances. As another example, if a school delays responding or responds inappropriately to information about harassment, such as a case in which the school ignores complaints by a student that he or she is being sexually harassed by a classmate, the school will be required to remedy the effects of the harassment that could have been prevented had the school responded promptly and effectively.

Finally, a school should take steps to prevent any further harassment[94] and to prevent any retaliation against the student who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses.[95] At a minimum, this includes making sure that the harassed students and their parents know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any retaliation. To prevent recurrences, counseling for the harasser may be appropriate to ensure that he or she understands what constitutes harassment and the effects it can have. In addition, depending on how widespread the harassment was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.[96]

B. Confidentiality

The scope of a reasonable response also may depend upon whether a student, or parent of a minor student, reporting harassment asks that the student's name not be disclosed to the harasser or that nothing be done about the alleged harassment. In all cases, a school should discuss confidentiality standards and concerns with the complainant initially. The school should inform the student that a confidentiality request may limit the school's ability to respond. The school also should tell the student that Title IX prohibits retaliation and that, if he or she is afraid of reprisals from the alleged harasser, the school will take steps to prevent retaliation and will take strong responsive actions if retaliation occurs. If the student continues to ask that his or her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.

OCR enforces Title IX consistent with the federally protected due process rights of public school students and employees. Thus, for example, if a student, who was the only student harassed, insists that his or her name not be revealed, and the alleged harasser could not respond to the charges of sexual harassment without that information, in evaluating the school's response, OCR would not expect disciplinary action against an alleged harasser.

At the same time, a school should evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors that a school may consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the

accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.[97]

Similarly, a school should be aware of the confidentiality concerns of an accused employee or student. Publicized accusations of sexual harassment, if ultimately found to be false, may nevertheless irreparably damage the reputation of the accused. The accused individual's need for confidentiality must, of course, also be evaluated based on the factors discussed in the preceding paragraph in the context of the school's responsibility to ensure a safe environment for students.

Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual complaint of harassment, other means may be available to address the harassment. There are steps a recipient can take to limit the effects of the alleged harassment and prevent its recurrence without initiating formal action against the alleged harasser or revealing the identity of the complainant. Examples include conducting sexual harassment training for the school site or academic department where the problem occurred, taking a student survey concerning any problems with harassment, or implementing other systemic measures at the site or department where the alleged harassment has occurred.

In addition, by investigating the complaint to the extent possible — including by reporting it to the Title IX coordinator or other responsible school employee designated pursuant to Title IX — the school may learn about or be able to confirm a pattern of harassment based on claims by different students that they were harassed by the same individual. In some situations there may be prior reports by former students who now might be willing to come forward and be identified, thus providing a basis for further corrective action. In instances affecting a number of students (for example, a report from a student that an instructor has repeatedly made sexually explicit remarks about his or her personal life in front of an entire class), an individual can be put on notice of allegations of harassing behavior and counseled appropriately without revealing, even indirectly, the identity of the student who notified the school. Those steps can be very effective in preventing further harassment.

C. Response to Other Types of Notice

The previous two sections deal with situations in which a student or parent of a student who was harassed reports or complains of harassment or in which a responsible school employee directly observes sexual harassment of a student. If a school learns of harassment through other means, for example, if information about harassment is received from a third party (such as from a witness to an incident or an anonymous letter or telephone call), different factors will affect the school's response. These factors include the source and nature of the information; the seriousness of the alleged incident; the specificity of the information; the objectivity and credibility of the source of the report; whether any individuals can be identified who were subjected to the alleged harassment; and whether those individuals want to pursue the matter. If, based on these factors, it is reasonable for the school to investigate and it can confirm the allegations, the considerations described in the previous sections concerning interim measures and appropriate responsive action will apply.

For example, if a parent visiting a school observes a student repeatedly harassing a group of female students and reports this to school officials, school personnel can speak with the female students to confirm whether that conduct has occurred and whether they view it as unwelcome. If the school determines that the conduct created a hostile environment, it can take reasonable, age-appropriate steps to address the situation. If on the other hand, the students in this example were to ask that their names not be disclosed or indicate that they do not want to pursue the matter, the considerations described in the previous section related to requests for confidentiality will shape the school's response.

In a contrasting example, a student newspaper at a large university may print an anonymous letter claiming that a professor is sexually harassing students in class on a daily basis, but the letter provides no clue as to the identity of the professor or the department in which the conduct is allegedly taking place. Due to the anonymous source and lack of specificity of the information, a school would not reasonably be able to investigate and confirm these allegations. However, in response to the anonymous letter, the school could submit a letter or article to the newspaper reiterating its policy against sexual harassment, encouraging persons who believe that they have been sexually harassed to come forward, and explaining how its grievance procedures work.

VIII. Prevention

A policy specifically prohibiting sexual harassment and separate grievance procedures for violations of that policy can help ensure that all students and employees understand the nature of sexual harassment and that the school will not tolerate it. Indeed, they might even bring conduct of a sexual nature to the school's attention so that the school can address it before it becomes sufficiently serious as to create a hostile environment. Further, training for administrators, teachers, and staff and age-appropriate classroom information for students can help to ensure that they understand what types of conduct can cause sexual harassment and that they know how to respond.

IX. Prompt and Equitable Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex.[98] Accordingly, regardless of whether harassment occurred, a school violates this requirement of the Title IX regulations if it does not have those procedures and policy in place.[99]

A school's sex discrimination grievance procedures must apply to complaints of sex discrimination in the school's education programs and activities filed by students against school employees, other students, or third parties.[100] Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment. Thus, if, because of the lack of a policy or procedure specifically addressing sexual harassment, students are unaware of what kind of conduct constitutes sexual harassment or that such conduct is

prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination complaints will not be considered effective.[101]

OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for —

- Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- Application of the procedure to comp laints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to the parties of the outcome of the complaint;[102] and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.[103]

Many schools also provide an opportunity to appeal the findings or remedy, or both. In addition, because retaliation is prohibited by Title IX, schools may want to include a provision in their procedures prohibiting retaliation against any individual who files a complaint or participates in a harassment inquiry.

Procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience. In addition, whether complaint resolutions are timely will vary depending on the complexity of the investigation and the severity and extent of the harassment. During the investigation it is a good practice for schools to inform students who have alleged harassment about the status of the investigation on a periodic basis.

A grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language appropriate to the age of the school's students, easily understood, and widely disseminated. Distributing the procedures to administrators, or including them in the school's administrative or policy manual, may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community. Many schools ensure adequate notice to students by having copies of the procedures available at various locations throughout the school or campus; publishing the procedures as a separate document; including a summary of the procedures in major publications issued by the school, such as handbooks and catalogs for students, parents of elementary and secondary students, faculty, and staff; and identifying individuals who can explain how the procedures work.

A school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities.[104] The school must notify all of its students and employees of the name, office address, and telephone number of the employee or employees designated.[105] Because it is possible that an employee designated to handle Title IX complaints may himself or herself engage in harassment, a school may want to designate more than one employee to be responsible for handling complaints in order to ensure that students have an effective means of reporting harassment.[106] While a school may choose to have a number of employees responsible for Title IX matters, it is also advisable to give one official responsibility for overall coordination and oversight of all sexual harassment complaints to ensure consistent practices and standards in handling complaints. Coordination of recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator) will also ensure that the school can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them.[107] Finally, the school must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.[108]

Grievance procedures may include informal mechanisms for resolving sexual harassment complaints to be used if the parties agree to do so.[109] OCR has frequently advised schools, however, that it is not appropriate for a student who is complaining of harassment to be required to work out the problem directly with the individual alleged to be harassing him or her, and certainly not without appropriate involvement by the school (e.g., participation by a counselor, trained mediator, or, if appropriate, a teacher or administrator). In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis. Title IX also permits the use of a student disciplinary procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, as long as the procedure meets the requirement of affording a complainant a "prompt and equitable" resolution of the complaint.

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.[110] Similarly, schools are cautioned about using the results of insurance company investigations of sexual harassment allegations. The purpose of an insurance investigation is to assess liability under the insurance policy, and the applicable standards may well be different from those under Title IX. In addition, a school is not relieved of its responsibility to respond to a sexual harassment complaint filed under its grievance procedure by the fact that a complaint has been filed with OCR.[111]

X. Due Process Rights of the Accused

A public school's employees have certain due process rights under the United States Constitution. The Constitution also guarantees due process to students in public and State-supported schools who are accused of certain types of infractions. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding. Furthermore, the Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of persons accused of sexual harassment. Procedures that ensure the Title IX rights of the complainant, while at the same time according due process to both parties involved, will lead to sound and supportable decisions. Of course, schools should ensure that steps to accord due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant. In both public and private schools, additional or separate rights may be created for employees or students by State law, institutional regulations and policies, such as faculty or student handbooks, and collective bargaining agreements. Schools should be aware of these rights and their legal responsibilities to individuals accused of harassment.

XI. First Amendment

In cases of alleged harassment, the protections of the First Amendment must be considered if issues of speech or expression are involved.[112] Free speech rights apply in the classroom (e.g., classroom lectures and discussions)[113] and in all other education programs and activities of public schools (e.g., public meetings and speakers on campus; campus debates, school plays and other cultural events[114]; and student newspapers, journals, and other publications[115]). In addition, First Amendment rights apply to the speech of students and teachers.[116]

Title IX is intended to protect students from sex discrimination, not to regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a sexually hostile environment under Title IX.[117] In order to establish a violation of Title IX, the harassment must be sufficiently serious to deny or limit a student's ability to participate in or benefit from the education program.[118]

Moreover, in regulating the conduct of its students and its faculty to prevent or redress discrimination prohibited by Title IX (e.g., in responding to harassment that is sufficiently serious as to create a hostile environment), a school must formulate, interpret, and apply its rules so as to protect academic freedom and free speech rights. For instance, while the First Amendment may prohibit a school from restricting the right of students to express opinions about one sex that may be considered derogatory, the school can take steps to denounce those opinions and ensure that competing views are heard. The age of the students involved and the location or forum may affect how the school can respond consistently with the First Amendment.[119] As an example of the application of free speech rights to allegations of sexual harassment, consider the following:

Example 1: In a college level creative writing class, a professor's required reading list includes excerpts from literary classics that contain descriptions of explicit

sexual conduct, including scenes that depict women in submissive and demeaning roles. The professor also assigns students to write their own materials, which are read in class. Some of the student essays contain sexually derogatory themes about women. Several female students complain to the Dean of Students that the materials and related classroom discussion have created a sexually hostile environment for women in the class. What must the school do in response?

Answer: Academic discourse in this example is protected by the First Amendment even if it is offensive to individuals. Thus, Title IX would not require the school to discipline the professor or to censor the reading list or related class discussion.

Example 2: A group of male students repeatedly targets a female student for harassment during the bus ride home from school, including making explicit sexual comments about her body, passing around drawings that depict her engaging in sexual conduct, and, on several occasions, attempting to follow her home off the bus. The female student and her parents complain to the principal that the male students' conduct has created a hostile environment for girls on the bus and that they fear for their daughter's safety. What must a school do in response?

Answer: Threatening and intimidating actions targeted at a particular student or group of students, even though they contain elements of speech, are not protected by the First Amendment. The school must take prompt and effective actions, including disciplinary action if necessary, to stop the harassment and prevent future harassment.

Endnotes

[1] This guidance does not address sexual harassment of employees, although that conduct may be prohibited by Title IX. 20 U.S.C. 1681 et seq.; 34 CFR part 106, subpart E. If employees file Title IX sexual harassment complaints with OCR, the complaints will be processed pursuant to the Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance. 28 CFR 42.604. Employees are also protected from discrimination on the basis of sex, including sexual harassment, by Title VII of the Civil Rights Act of 1964. For information about Title VII and sexual harassment, see the Equal Employment Opportunity Commission's (EEOC's) Guidelines on Sexual Harassment, 29 CFR 1604.11, for information about filing a Title VII charge with the EEOC, see 29 CFR 1601.7–1607.13, or see the EEOC's website at www.eeoc.gov.

[2] 20 U.S.C. 1681; 34 CFR part 106.

[3] See, e.g., Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 649-50 (1999); Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274, 281 (1998); Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60, 75 (1992); S. REP. NO. 100-64, 100th Cong., 1st Sess. 14 (1987); Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (1997 guidance), 62 FR 12034 (1997).

[4] As described in the section on "Applicability," this guidance applies to all levels of education.

[5] For practical information about steps that schools can take to prevent and remedy all types of harassment, including sexual harassment, see "Protecting Students from Harassment and Hate Crime, A Guide for Schools," which we issued jointly with the National Association of Attorneys General. This Guide is available at our web site at: www.ed.gov/pubs/Harassment.

[6] See, e.g., Davis, 526 U.S. at 653 (alleged conduct of a sexual nature that would support a sexual harassment claim included verbal harassment and "numerous acts of objectively offensive touching;" Franklin, 503 U.S. at 63 (conduct of a sexual nature found to support a sexual harassment claim under Title IX included kissing, sexual intercourse); Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 60-61 (1986) (demands for sexual favors, sexual advances, fondling, indecent exposure, sexual intercourse, rape, sufficient to raise hostile environment claim under Title VII); Ellison v. Brady, 924 F.2d 872, 873-74, 880 (9th Cir. 1991) (allegations sufficient to state sexual harassment claim under Title VII included repeated requests for dates, letters making explicit references to sex and describing the harasser's feelings for plaintiff); Lipsett v. University of Puerto Rico, 864 F.2d 881, 904-5 (1st Cir. 1988) (sexually derogatory comments, posting of sexually explicit drawing of plaintiff, sexual advances may support sexual harassment claim); Kadiki v. Virginia Commonwealth University, 892 F.Supp. 746, 751 (E.D. Va. 1995)

(professor's spanking of university student may constitute sexual conduct under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65 (N.D. Cal. 1996) (sexually derogatory taunts and innuendo can be the basis of a harassment claim); Denver School Dist. #2, OCR Case No. 08-92-1007 (same to allegations of vulgar language and obscenities, pictures of nude women on office walls and desks, unwelcome touching, sexually offensive jokes, bribery to perform sexual acts, indecent exposure); Nashoba Regional High School, OCR Case No. 01-92-1377 (same as to year-long campaign of derogatory, sexually explicit graffiti and remarks directed at one student.

[7] See also Shoreline School Dist., OCR Case No. 10-92-1002 (a teacher's patting a student on the arm, shoulder, and back, and restraining the student when he was out of control, not conduct of a sexual nature); Dartmouth Public Schools, OCR Case No. 01-90-1058 (same as to contact between high school coach and students); San Francisco State University, OCR Case No. 09-94-2038 (same as to faculty advisor placing her arm around a graduate student's shoulder in posing for a picture); Analy Union High School Dist., OCR Case No. 09-92-1249 (same as to drama instructor who put his arms around both male and female students who confided in him).

[8] 20 U.S.C. 1687 (codification of the amendment to Title IX regarding scope of jurisdiction, enacted by the Civil Rights Restoration Act of 1987). See 65 FR 68049 (November 13, 2000) (Department's amendment of the Title IX regulations to incorporate the statutory definition of "program or activity").

[9] If a school contracts with persons or organizations to provide benefits, services, or opportunities to students as part of the school's program, and those persons or employees of those organizations sexually harass students, OCR will consider the harassing individual in the same manner that it considers the school's employees, as described in this guidance. (See section on "Harassment by Teachers and Other Employees.") See Brown v. Hot, Sexy, and Safer Products, Inc., 68 F.3d 525, 529 (1st Cir. 1995) (Title IX sexual harassment claim brought for school's role in permitting contract consultant hired by it to create allegedly hostile environment).

In addition, if a student engages in sexual harassment as an employee of the school, OCR will consider the harassment under the standards described for employees. (See section on "Harassment by Teachers and Other Employees.") For example, OCR would consider it harassment by an employee if a student teaching assistant who is responsible for assigning grades in a course, i.e., for providing aid, benefits, or services to students under the recipient's program, required a student in his or her class to submit to sexual advances in order to obtain a certain grade in the class.

[10] Cf. John Does 1 v. Covington County Sch. Bd., 884 F.Supp. 462, 464-65 (M.D. Ala. 1995) (male students alleging that a teacher sexually harassed and abused them stated cause of action under Title IX).

[11] Title IX and the regulations implementing it prohibit discrimination "on the basis of sex;" they do not restrict protection from sexual harassment to those circumstances in

which the harasser only harasses members of the opposite sex. See 34 CFR 106.31. In Oncale v. Sundowner Offshore Services, Inc. the Supreme Court held unanimously that sex discrimination consisting of same-sex sexual harassment can violate Title VII's prohibition against discrimination because of sex. 523 U.S. 75, 82 (1998). The Supreme Court's holding in Oncale is consistent with OCR policy, originally stated in its 1997 guidance, that Title IX prohibits sexual harassment regardless of whether the harasser and the person being harassed are members of the same sex. 62 FR 12039. See also Kinman v. Omaha Public School Dist., 94 F.3d 463, 468 (8th Cir. 1996), rev'd on other grounds, 171 F.3d 607 (1999) (female student's allegation of sexual harassment by female teacher sufficient to raise a claim under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65, 1575 (N.D. Cal. 1996) (female junior high student alleging sexual harassment by other students, including both boys and girls, sufficient to raise a claim under Title IX); John Does 1, 884 F.Supp. at 465 (same as to male students' allegations of sexual harassment and abuse by a male teacher.) It can also occur in certain situations if the harassment is directed at students of both sexes. Chiapuzo v. BLT Operating Corp., 826 F.Supp. 1334, 1337 (D.Wyo. 1993) (court found that if males and females were subject to harassment, but harassment was based on sex, it could violate Title VII); but see Holman v. Indiana, 211 F.3d 399, 405 (7th Cir. 2000) (if male and female both subjected to requests for sex, court found it could not violate Title VII).

In many circumstances, harassing conduct will be on the basis of sex because the student would not have been subjected to it at all had he or she been a member of the opposite sex; e.g., if a female student is repeatedly propositioned by a male student or employee (or, for that matter, if a male student is repeatedly propositioned by a male student or employee.) In other circumstances, harassing conduct will be on the basis of sex if the student would not have been affected by it in the same way or to the same extent had he or she been a member of the opposite sex; e.g., pornography and sexually explicit jokes in a mostly male shop class are likely to affect the few girls in the class more than it will most of the boys.

In yet other circumstances, the conduct will be on the basis of sex in that the student's sex was a factor in or affected the nature of the harasser's conduct or both. Thus, in Chiapuzo, a supervisor made demeaning remarks to both partners of a married couple working for him, e.g., as to sexual acts he wanted to engage in with the wife and how he would be a better lover than the husband. In both cases, according to the court, the remarks were based on sex in that they were made with an intent to demean each member of the couple because of his or her respective sex. 826 F.Supp. at 1337. See also Steiner v. Showboat Operating Co., 25 F.3d 1459, 1463-64 (9th Cir. 1994), cert. denied, 115 S.Ct. 733 (1995); but see Holman, 211 F.3d at 405 (finding that if male and female both subjected to requests for sex, Title VII could not be violated).

[12] Nashoba Regional High School, OCR Case No. 01-92-1397. In Conejo Valley School Dist., OCR Case No. 09-93-1305, female students allegedly taunted another female student about engaging in sexual activity; OCR found that the alleged comments were sexually explicit and, if true, would be sufficiently severe, persistent, and pervasive to create a hostile environment.

[13] See Williamson v. A.G. Edwards & Sons, Inc., 876 F2d 69, 70 (8th Cir. 1989, cert. denied 493 U.S. 1089 (1990); DeSantis v. Pacific Tel. & Tel. Co., Inc., 608 F.2d 327, 329-30 (9th Cir. 1979)(same); Blum v. Gulf Oil Corp., 597 F.2d 936, 938 (5th Cir. 1979)(same).

[14] It should be noted that some State and local laws may prohibit discrimination on the basis of sexual orientation. Also, under certain circumstances, courts may permit redress for harassment on the basis of sexual orientation under other Federal legal authority. See Nabozny v. Podlesny, 92 F.3d 446, 460 (7th Cir. 1996) (holding that a gay student could maintain claims alleging discrimination based on both gender and sexual orientation under the Equal Protection Clause of the United States Constitution in a case in which a school district failed to protect the student to the same extent that other students were protected from harassment and harm by other students due to the student's gender and sexual orientation).

[15] However, sufficiently serious sexual harassment is covered by Title IX even if the hostile environment also includes taunts based on sexual orientation.

[16] See also, Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989) (plurality opinion) (where an accounting firm denied partnership to a female candidate, the Supreme Court found Title VII prohibits an employer from evaluating employees by assuming or insisting that they match the stereotype associated with their sex).

[17] See generally Gebser; Davis; See also Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 65-66 (1986); Harris v. Forklift Systems Inc., 510 U.S. 14, 22 (1993); see also Hicks v. Gates Rubber Co., 833 F.2d 1406, 1415 (10th Cir. 1987) (concluding that harassment based on sex may be discrimination whether or not it is sexual in nature); McKinney v. Dole, 765 F.2d 1129, 1138 (D.C. Cir. 1985) (physical, but nonsexual, assault could be sex-based harassment if shown to be unequal treatment that would not have taken place but for the employee's sex); Cline v. General Electric Capital Auto Lease, Inc., 757 F.Supp. 923, 932-33 (N.D. Ill. 1991).

[18] See, e.g., sections on "Harassment by Teachers and Other Employees," "Harassment by Other Students or Third Parties," "Notice of Employee, Peer, or Third Party Harassment," "Factors Used to Evaluate a Hostile Environment," "Recipient's Response," and "Prompt and Equitable Grievance Procedures."

[19] See Lipsett, 864 F.2d at 903-905 (general antagonism toward women, including stated goal of eliminating women from surgical program, statements that women shouldn't be in the program, and assignment of menial tasks, combined with overt sexual harassment); Harris, 510 U.S. at 23; Andrews v. City of Philadelphia, 895 F.2d 1469, 1485-86 (3rd Cir. 1990) (court directed trial court to consider sexual conduct as well as theft of female employees' files and work, destruction of property, and anonymous phone calls in determining if there had been sex discrimination); see also Hall v. Gus Construction Co., 842 F.2d 1010, 1014 (8th Cir. 1988) (affirming that harassment due to the employee's sex

may be actionable even if the harassment is not sexual in nature); Hicks, 833 F.2d at 1415; Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (the boys made lewd comments about male anatomy and tormented the girls by pretending to stab them with rubber knives; while the stabbing was not sexual conduct, it was directed at them because of their sex, i.e., because they were girls).

[20] Davis, 526 U.S. at 650 ("Having previously determined that 'sexual harassment' is 'discrimination' in the school context under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute."); Franklin, 503 U.S. at 75 ("Unquestionably, Title IX placed on the [school] the duty not to discriminate on the basis of sex, and 'when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor "discriminate[s]" on the basis of sex.' ... We believe the same rule should apply when a teacher sexually harasses and abuses a student." (citation omitted)).

OCR's longstanding interpretation of its regulations is that sexual harassment may constitute a violation. 34 CFR 106.31; See Sexual Harassment Guidance, 62 FR 12034 (1997). When Congress enacted the Civil Rights Restoration Act of 1987 to amend Title IX to restore institution-wide coverage over federally assisted education programs and activities, the legislative history indicated not only that Congress was aware that OCR interpreted its Title IX regulations to prohibit sexual harassment, but also that one of the reasons for passing the Restoration Act was to enable OCR to investigate and resolve cases involving allegations of sexual harassment. S. REP. NO. 64, 100th Cong., 1st Sess. at 12 (1987). The examples of discrimination that Congress intended to be remedied by its statutory change included sexual harassment of students by professors, id. at 14, and these examples demonstrate congressional recognition that discrimination in violation of Title IX can be carried out by school employees who are providing aid, benefits, or services to students. Congress also intended that if discrimination occurred, recipients needed to implement effective remedies. S. REP. NO. 64 at 5.

[21] 34 CFR 106.4.

[22] These are the basic regulatory requirements. 34 CFR 106.31(a)(b). Depending upon the facts, sexual harassment may also be prohibited by more specific regulatory prohibitions. For example, if a college financial aid director told a student that she would not get the student financial assistance for which she qualified unless she slept with him, that also would be covered by the regulatory provision prohibiting discrimination on the basis of sex in financial assistance, 34 CFR 106.37(a).

[23] 34 CFR 106.31(b)(1).

[24] 34 CFR 106.31(b)(2).

[25] 34 CFR 106.31(b)(3).

[26] 34 CFR 106.31(b)(4).

[27] 34 CFR 106.31(b)(6).

[28] 34 CFR 106.31(b)(7).

[29] 34 CFR 106.3(a).

[30] 34 CFR 106.9.

[31] 34 CFR 106.8(b).

[32] 34 CFR 106.8(a).

[33] The 1997 guidance referred to quid pro quo harassment and hostile environment harassment. 62 FR 12038–40.

[34] See Alexander v. Yale University, 459 F.Supp. 1, 4 (D.Conn. 1977), aff'd, 631 F.2d 178 (2nd Cir. 1980)(stating that a claim "that academic advancement was conditioned upon submission to sexual demands constitutes [a claim of] sex discrimination in education..."); Crandell v. New York College, Osteopathic Medicine, 87 F.Supp.2d 304, 318 (S.D.N.Y. 2000) (finding that allegations that a supervisory physician demanded that a student physician spend time with him and have lunch with him or receive a poor evaluation, in light of the totality of his alleged sexual comments and other inappropriate behavior, constituted a claim of quid pro quo harassment); Kadiki, 892 F.Supp. at 752 (reexamination in a course conditioned on college student's agreeing to be spanked should she not attain a certain grade may constitute quid pro quo harassment).

[35] 34 CFR 106.31(b).

[36] Davis, 526 U.S. at 651 (confirming, by citing approvingly both to Title VII cases (Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57,67 (1986) (finding that hostile environment claims are cognizable under Title VII), and Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 82 (1998)) and OCR's 1997 guidance, 62 FR at 12041-42, that determinations under Title IX as to what conduct constitutes hostile environment sexual harassment may continue to rely on Title VII caselaw).

[37] 34 CFR 106.31(b). See Davis, 526 U.S. at 650 (concluding that allegations of student-on-student sexual harassment that is "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits" supports a claim for money damages in an implied right of action).

[38] In Harris, the Supreme Court explained the requirement for considering the "subjective perspective" when determining the existence of a hostile environment. The Court stated– – "... if the victim does not subjectively perceive the environment to be abusive, the

conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." 510 U.S. at 21-22.

[39] See Davis, 526 U.S. at 650 (conduct must be "objectively offensive" to trigger liability for money damages); Elgamil v. Syracuse University, 2000 U.S. Dist. LEXIS 12598 at 17 (N.D.N.Y. 2000) (citing Harris); Booher v. Board of Regents, 1998 U.S. Dist. LEXIS 11404 at 25 (E.D. Ky. 1998) (same). See Oncale, 523 U.S. at 81, in which the Court "emphasized ... that the objective severity of harassment should be judged from the perspective of a reasonable person in the [victim's] position, considering 'all the circumstances,'" and citing Harris, 510 U.S. at 20, in which the Court indicated that a "reasonable person" standard should be used to determine whether sexual conduct constituted harassment. This standard has been applied under Title VII to take into account the sex of the subject of the harassment, see, e.g., Ellison, 924 F.2d at 878-79 (applying a "reasonable woman" standard to sexual harassment), and has been adapted to sexual harassment in education under Title IX, Patricia H. v. Berkeley Unified School Dist., 830 F.Supp. 1288, 1296 (N.D. Cal. 1993) (adopting a "reasonable victim" standard and referring to OCR's use of it).

[40] See Davis, 526 U.S. at 651, citing both Oncale, 523 U.S. at 82, and OCR's 1997 guidance (62 FR 12041-12042).

[41] See, e.g., Davis, 526 U.S. at 634 (as a result of the harassment, student's grades dropped and she wrote a suicide note); Doe v. Petaluma, 830 F. Supp. at 1566 (student so upset about harassment by other students that she was forced to transfer several times, including finally to a private school); Modesto City Schools, OCR Case No. 09-93-1391 (evidence showed that one girl's grades dropped while the harassment was occurring); Weaverville Elementary School, OCR Case No. 09-91-1116 (students left school due to the harassment). Compare with College of Alameda, OCR Case No. 09-90-2104 (student not in instructor's class and no evidence of any effect on student's educational benefits or service, so no hostile environment).

[42] Doe v. Petaluma, 830 F.Supp. at 1566.

[43] See Waltman v. Int'l Paper Co., 875 F.2d 468, 477 (5th Cir. 1989) (holding that although not specifically directed at the plaintiff, sexually explicit graffiti on the walls was "relevant to her claim"); Monteiro v. Tempe Union High School, 158 F.3d 1022, 1033-34 (9th Cir. 1998) (Title VI racial harassment case, citing Waltman; see also Hall, 842 F. 2d at 1015 (evidence of sexual harassment directed at others is relevant to show hostile environment under Title VII).

[44] See, e.g., Elgmil 2000 U.S. Dist. LEXIS at 19 ("in order to be actionable, the incidents of harassment must occur in concert or with a regularity that can reasonably be termed pervasive"); Andrews, 895 F.2d at 1484 ("Harassment is pervasive when 'incidents of harassment occur either in concert or with regularity'"); Moylan v. Maries County, 792 F.2d 746, 749 (8th Cir. 1986).

[45] 34 CFR 106.31(b). See Vance v. Spencer County Public School District, 231 F.3d 253 (6th Cir. 2000); Doe v. School Admin. Dist. No. 19, 66 F.Supp.2d 57, 62 (D. Me. 1999). See also statement of the U.S. Equal Employment Opportunity Commission (EEOC): "The Commission will presume that the unwelcome, intentional touching of [an employee's] intimate body areas is sufficiently offensive to alter the conditions of her working environment and constitute a violation of Title VII. More so than in the case of verbal advances or remarks, a single unwelcome physical advance can seriously poison the victim's working environment." EEOC Policy Guidance on Current Issues of Sexual Harassment, 17. Barrett v. Omaha National Bank, 584 F. Supp. 22, 30 (D. Neb. 1983), aff'd, 726 F. 2d 424 (8th Cir. 1984) (finding that hostile environment was created under Title VII by isolated events, i.e., occurring while traveling to and during a two-day conference, including the co-worker's talking to plaintiff about sexual activities and touching her in an offensive manner while they were inside a vehicle from which she could not escape).

[46] See also Ursuline College, OCR Case No. 05-91-2068 (a single incident of comments on a male student's muscles arguably not sexual; however, assuming they were, not severe enough to create a hostile environment).

[47] Davis, 526 U.S. at 653 ("The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX's guarantee of equal access to educational benefits and to have a systemic effect on a program or activity. Peer harassment, in particular, is less likely to satisfy these requirements than is teacher student harassment."); Patricia H., 830 F. Supp. at 1297 (stating that the "grave disparity in age and power" between teacher and student contributed to the creation of a hostile environment); Summerfield Schools, OCR Case No. 15-92-1929 ("impact of the ... remarks was heightened by the fact that the coach is an adult in a position of authority"); cf. Doe v. Taylor I.S.D., 15 F.3d 443, 460 (5th Cir. 1994) (Sec. 1983 case; taking into consideration the influence that the teacher had over the student by virtue of his position of authority to find that a sexual relationship between a high school teacher and a student was unlawful).

[48] See, e.g., McKinney, 765 F.2d at 1138-49; Robinson v. Jacksonville Shipyards, 760 F. Supp. 1486, 1522 (M.D. Fla. 1991).

[49] Cf. Patricia H., 830 F. Supp. at 1297.

[50] See, e.g., Barrett, 584 F. Supp. at 30 (finding harassment occurring in a car from which the victim could not escape particularly severe).

[51] See Hall, 842 F. 2d at 1015 (stating that "evidence of sexual harassment directed at employees other than the plaintiff is relevant to show a hostile environment") (citing Hicks, 833 F. 2d, 1415-16). Cf. Midwest City-Del City Public Schools, OCR Case No. 06-92-1012 (finding of racially hostile environment based in part on several racial incidents at school shortly before incidents in complaint, a number of which involved the same student involved in the complaint).

[52] In addition, incidents of racial or national origin harassment directed at a particular individual may also be aggregated with incidents of sexual or gender harassment directed at that individual in determining the existence of a hostile environment. Hicks, 833 F.2d at 1416; Jefferies v. Harris County Community Action Ass'n, 615 F.2d 1025, 1032 (5th Cir. 1980).

[53] Does v. Covington Sch. Bd. of Educ., 930 F.Supp. 554, 569 (M.D. Ala. 1996); Henson v. City of Dundee, 682 F.2d 897, 903 (11th Cir. 1982).

[54] See Meritor Savings Bank, 477 U.S. at 68. "[T]he fact that sex-related conduct was 'voluntary,' in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII.... The correct inquiry is whether [the subject of the harassment] by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary."

[55] Lipsett, 864 F.2d at 898 (while, in some instances, a person may have the responsibility for telling the harasser "directly" that the conduct is unwelcome, in other cases a "consistent failure to respond to suggestive comments or gestures may be sufficient...."); Danna v. New York Tel. Co., 752 F.Supp. 594, 612 (despite a female employee's own foul language and participation in graffiti writing, her complaints to management indicated that the harassment was not welcome); see also Carr v. Allison Gas Turbine Div. GMC., 32 F.3d 1007, 1011 (7th Cir. 1994) (finding that cursing and dirty jokes by a female employee did not show that she welcomed the sexual harassment, given her frequent complaints about it: "Even if ... [the employee's] testimony that she talked and acted as she did [only] in an effort to be one of the boys is ... discounted, her words and conduct cannot be compared to those of the men and used to justify their conduct.... The asymmetry of positions must be considered. She was one woman; they were many men. Her use of [vulgar] terms ... could not be deeply threatening....").

[56] See Reed v. Shepard, 939 F.2d 484, 486-87, 491-92 (7th Cir. 1991) (no harassment found under Title VII in a case in which a female employee not only tolerated, but also instigated the suggestive joking activities about which she was now complaining); Weinsheimer v. Rockwell Int'l Corp., 754 F.Supp. 1559, 1563-64 (M.D. Fla. 1990) (same, in case in which general shop banter was full of vulgarity and sexual innuendo by men and women alike, and plaintiff contributed her share to this atmosphere.) However, even if a student participates in the sexual banter, OCR may in certain circumstances find that the conduct was nevertheless unwelcome if, for example, a teacher took an active role in the sexual banter and a student reasonably perceived that the teacher expected him or her to participate.

[57] The school bears the burden of rebutting the presumption.

[58] Of course, nothing in Title IX would prohibit a school from implementing policies prohibiting sexual conduct or sexual relationships between students and adult employees.

[59] See note 58.

[60] Gebser, 524 U.S. at 281 ("Franklin ... establishes that a school district can be held liable in damages [in an implied action under Title IX] in cases involving a teacher's sexual harassment of a student...."; 34 CFR 106.31; See 1997 Sexual Harassment Guidance, 62 FR 12034.

[61] See Davis, 526 U.S. at 653 (stating that harassment of a student by a teacher is more likely than harassment by a fellow student to constitute the type of effective denial of equal access to educational benefits that can breach the requirements of Title IX).

[62] 34 CFR 106.31(b). Cf. Gebser, 524 U.S. at 283-84 (Court recognized in an implied right of action for money damages for teacher sexual harassment of a student that the question of whether a violation of Title IX occurred is a separate question from the scope of appropriate remedies for a violation).

[63] Davis, 526 U.S. at 646.

[64] See section on "Applicability of Title IX" for scope of coverage.

[65] See section on "Notice of Employee, Peer, or Third Party Harassment."

[66] See section on "Notice of Employee, Peer, or Third Party Harassment."

[67] 34 CFR 106.31(b).

[68] 34 CFR 106.31(b).

[69] See section on "Notice of Employee, Peer, or Third Party Harassment."

[70] Cf. Davis, 526 U.S. at 646.

[71] 34 CFR 106.31(b).

[72] 34 CFR 106.31(b).

[73] Consistent with its obligation under Title IX to protect students, cf. Gebser, 524 U.S. at 287, OCR interprets its regulations to ensure that recipients take reasonable action to address, rather than neglect, reasonably obvious discrimination. Cf. Gebser, 524 U.S. at 287-88; Davis, 526 U.S. at 650 (actual notice standard for obtaining money damages in private lawsuit).

[74] Whether an employee is a responsible employee or whether it would be reasonable for a student to believe the employee is, even if the employee is not, will vary depending on

factors such as the age and education level of the student, the type of position held by the employee, and school practices and procedures, both formal and informal.
The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. Gebser, 524 U.S. at 290, and Davis, 526 U.S. at 642. The concept of a "responsible employee" under our guidance is broader. That is, even if a responsible employee does not have the authority to address the discrimination and take corrective action, he or she does have the obligation to report it to appropriate school officials.

[75] The Title IX regulations require that recipients designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulations, including complaint investigations. 34 CFR 106.8(a).

[76] 34 CFR 106.31. See Yates v. Avco Corp., 819 F.2d 630, 636 (6th Cir. 1987); Katz v. Dole, 709 F.2d 251, 256 (4th Cir. 1983).

[77] For example, a substantiated report indicating that a high school coach has engaged in inappropriate physical conduct of a sexual nature in several instances with different students may suggest a pattern of conduct that should trigger an inquiry as to whether other students have been sexually harassed by that coach. See also Doe v. School Administrative Dist. No. 19, 66 F.Supp.2d 57, 63-64 and n.6 (D.Me. 1999) (in a private lawsuit for money damages under Title IX in which a high school principal had notice that a teacher may be engaging in a sexual relationship with one underage student and did not investigate, and then the same teacher allegedly engaged in sexual intercourse with another student, who did not report the incident, the court indicated that the school's knowledge of the first relationship may be sufficient to serve as actual notice of the second incident).

[78] Cf. Katz, 709 F.2d at 256 (finding that the employer "should have been aware of the problem both because of its pervasive character and because of [the employee's] specific complaints ..."); Smolsky v. Consolidated Rail Corp., 780 F.Supp. 283, 293 (E.D. Pa. 1991), reconsideration denied, 785 F.Supp. 71 (E.D. Pa. 1992) "where the harassment is apparent to all others in the work place, supervisors and coworkers, this may be sufficient to put the employer on notice of the sexual harassment" under Title VII); Jensen v. Eveleth Taconite Co., 824 F.Supp. 847, 887 (D.Minn. 1993); "[s]exual harassment ... was so pervasive that an inference of knowledge arises .... The acts of sexual harassment detailed herein were too common and continuous to have escaped Eveleth Mines had its management been reasonably alert."); Cummings v. Walsh Construction Co., 561 F.Supp. 872, 878 (S.D. Ga. 1983) ("... allegations not only of the [employee] registering her complaints with her foreman ... but also that sexual harassment was so widespread that defendant had constructive notice of it" under Title VII); but see Murray v. New York Univ. College of Dentistry, 57 F.3d 243, 250-51 (2nd Cir. 1995) (concluding that other students' knowledge of the conduct was not enough to charge the school with notice, particularly because these students may not have been aware that the conduct was offensive or abusive).

[79] 34 CFR 106.9 and 106.8(b).

[80] 34 CFR 106.8(b) and 106.31(b).

[81] 34 CFR 106.9.

[82] 34 CFR 106.8(b).

[83] 34 CFR 106.31.

[84] 34 CFR 106.31 and 106.3. Gebser, 524 U.S. at 288 ("In the event of a violation, [under OCR's administrative enforcement scheme] a funding recipient may be required to take 'such remedial action as [is] deem[ed] necessary to overcome the effects of [the] discrimination.' §106.3.").

[85] 20 U.S.C. 1682. In the event that OCR determines that voluntary compliance cannot be secured, OCR may take steps that may result in termination of Federal funding through administrative enforcement, or, alternatively, OCR may refer the case to the Department of Justice for judicial enforcement.

[86] Schools have an obligation to ensure that the educational environment is free of discrimination and cannot fulfill this obligation without determining if sexual harassment complaints have merit.

[87] In some situations, for example, if a playground supervisor observes a young student repeatedly engaging in conduct toward other students that is clearly unacceptable under the school's policies, it may be appropriate for the school to intervene without contacting the other students. It still may be necessary for the school to talk with the students (and parents of elementary and secondary students) afterwards, e.g., to determine the extent of the harassment and how it affected them.

[88] Gebser, 524 U.S. at 288; Bundy v. Jackson, 641 F.2d 934, 947 (D.C. Cir. 1981) (employers should take corrective and preventive measures under Title VII); accord, Jones v. Flagship Int'l, 793 F.2d 714, 719-720 (5th Cir. 1986) (employer should take prompt remedial action under Title VII).

[89] See Doe ex rel. Doe v. Dallas Indep. Sch. Dist., 220 F.3d 380 (5th Cir. 2000) (citing Waltman); Waltman, 875 F.2d at 479 (appropriateness of employer's remedial action under Title VII will depend on the "severity and persistence of the harassment and the effectiveness of any initial remedial steps"); Dornhecker v. Malibu Grand Prix Corp., 828 F.2d 307, 309-10 (5th Cir. 1987); holding that a company's quick decision to remove the harasser from the victim was adequate remedial action).

[90] See Intlekofer v. Turnage, 973 F.2d 773, 779-780 (9th Cir. 1992)(holding that the employer's response was insufficient and that more severe disciplinary action was

necessary in situations in which counseling, separating the parties, and warnings of possible discipline were ineffective in ending the harassing behavior).

[91] Offering assistance in changing living arrangements is one of the actions required of colleges and universities by the Campus Security Act in cases of rape and sexual assault. See 20 U.S.C. 1092(f).

[92] See section on "Harassment by Other Students or Third Parties."

[93] University of California at Santa Cruz, OCR Case No. 09-93-2141 (extensive individual and group counseling); Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (counseling).

[94] Even if the harassment stops without the school's involvement, the school may still need to take steps to prevent or deter any future harassment — to inform the school community that harassment will not be tolerated. Wills v. Brown University, 184 F.3d 20, 28 (1st Cir. 1999) (difficult problems are posed in balancing a student's request for anonymity or limited disclosure against the need to prevent future harassment); Fuller v. City of Oakland, 47 F.3d 1522, 1528-29 (9th Cir. 1995) (Title VII case).

[95] 34 CFR 106.8(b) and 106.71, incorporating by reference 34 CFR 100.7(e). The Title IX regulations prohibit intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX.

[96] Tacoma School Dist. No. 10, OCR Case No. 10-94-1079 (due to the large number of students harassed by an employee, the extended period of time over which the harassment occurred, and the failure of several of the students to report the harassment, the school committed as part of corrective action plan to providing training for students); Los Medanos College, OCR Case No. 09-84-2092 (as part of corrective action plan, school committed to providing sexual harassment seminar for campus employees); Sacramento City Unified School Dist., OCR Case No. 09-83-1063 (same as to workshops for management and administrative personnel and in-service training for non-management personnel).

[97] In addition, if information about the incident is contained in an "education record" of the student alleging the harassment, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, the school should consider whether FERPA would prohibit the school from disclosing information without the student's consent. Id. In evaluating whether FERPA would limit disclosure, the Department does not interpret FERPA to override any federally protected due process rights of a school employee accused of harassment.

[98] 34 CFR 106.8(b). This requirement has been part of the Title IX regulations since their inception in 1975. Thus, schools have been required to have these procedures in place since that time. At the elementary and secondary level, this responsibility generally lies

with the school district. At the postsecondary level, there may be a procedure for a particular campus or college or for an entire university system.

[99] Fenton Community High School Dist. #100, OCR Case 05-92-1104.

[100] While a school is required to have a grievance procedure under which complaints of sex discrimination (including sexual harassment) can be filed, the same procedure may also be used to address other forms of discrimination.

[101] See generally Meritor, 477 U.S. at 72-73 (holding that "mere existence of a grievance procedure" for discrimination does not shield an employer from a sexual harassment claim).

[102] The Family Educational Rights and Privacy Act (FERPA) does not prohibit a student from learning the outcome of her complaint, i.e., whether the complaint was found to be credible and whether harassment was found to have occurred. It is the Department's current position under FERPA that a school cannot release information to a complainant regarding disciplinary action imposed on a student found guilty of harassment if that information is contained in a student's education record unless — (1) the information directly relates to the complainant (e.g., an order requiring the student harasser not to have contact with the complainant); or (2) the harassment involves a crime of violence or a sex offense in a postsecondary institution. See note 97. If the alleged harasser is a teacher, administrator, or other non-student employee, FERPA would not limit the school's ability to inform the complainant of any disciplinary action taken.

[103] The section in the guidance on "Recipient's Response" provides examples of reasonable and appropriate corrective action.

[104] 34 CFR 106.8(a).

[105] Id.

[106] See Meritor, 477 U.S. at 72-73.

[107] University of California, Santa Cruz, OCR Case No. 09-93-2131. This is true for formal as well as informal complaints. See University of Maine at Machias, OCR Case No. 01-94-6001 (school's new procedures not found in violation of Title IX in part because they require written records for informal as well as formal resolutions). These records need not be kept in a student's or employee's individual file, but instead may be kept in a central confidential location.

[108] For example, in Cape Cod Community College, OCR Case No. 01-93-2047, the College was found to have violated Title IX in part because the person identified by the school as the Title IX coordinator was unfamiliar with Title IX, had no training, and did not even realize he was the coordinator.

[109] Indeed, in University of Maine at Machias, OCR Case No. 01-94-6001, OCR found the school's procedures to be inadequate because only formal complaints were investigated. While a school isn't required to have an established procedure for resolving informal complaints, they nevertheless must be addressed in some way. However, if there are indications that the same individual may be harassing others, then it may not be appropriate to resolve an informal complaint without taking steps to address the entire situation.

[110] Academy School Dist. No 20, OCR Case No. 08-93-1023 (school's response determined to be insufficient in a case in which it stopped its investigation after complaint filed with police); Mills Public School Dist., OCR Case No. 01-93-1123, (not sufficient for school to wait until end of police investigation).

[111] Cf. EEOC v. Board of Governors of State Colleges and Universities, 957 F.2d 424 (7th Cir. 1992), cert. denied, 506 U.S. 906 (1992).

[112] The First Amendment applies to entities and individuals that are State actors. The receipt of Federal funds by private schools does not directly subject those schools to the U.S. Constitution. See Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982). However, all actions taken by OCR must comport with First Amendment principles, even in cases involving private schools that are not directly subject to the First Amendment.

[113] See, e.g., George Mason University, OCR Case No. 03-94-2086 (law professor's use of a racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment); Portland School Dist. 1J, OCR Case No. 10-94-1117 (reading teacher's choice to substitute a less offensive term for a racial slur when reading an historical novel aloud in class constituted an academic decision on presentation of curriculum, not racial harassment).

[114] See Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 993 F.2d 386 (4th Cir. 1993) (fraternity skit in which white male student dressed as an offensive caricature of a black female constituted student expression).

[115] See Florida Agricultural and Mechanical University, OCR Case No. 04-92-2054 (no discrimination in case in which campus newspaper, which welcomed individual opinions of all sorts, printed article expressing one student's viewpoint on white students on campus.)

[116] Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969) (neither students nor teachers shed their constitutional rights to freedom of expression at the schoolhouse gates); Cf. Cohen v. San Bernardino Valley College, 92 F.3d 968, 972 (9th Cir. 1996) (holding that a college professor could not be punished for his longstanding teaching methods, which included discussion of controversial subjects such as obscenity and consensual sex with children, under an unconstitutionally vague sexual harassment policy); George Mason University, OCR Case No. 03-94-2086 (law professor's use of a

racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment.)

[117] See, e.g., University of Illinois, OCR Case No. 05-94-2104 (fact that university's use of Native American symbols was offensive to some Native American students and employees was not dispositive, in and of itself, in assessing a racially hostile environment claim under Title VI.)

[118] See Meritor, 477 U.S. at 67 (the "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee" would not affect the conditions of employment to a sufficient degree to violate Title VII), quoting Henson, 682 F.2d at 904; cf. R.A.V. v. City of St. Paul, 505 U.S. 377, 389 (1992) (citing with approval EEOC's sexual harassment guidelines); Monteiro, 158 F.3d at 1032-34 (9th Cir. 1998) (citing with approval OCR's racial harassment investigative guidance).

[119] Compare Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986) (Court upheld discipline of high school student for making lewd speech to student assembly, noting that "[t]he undoubted freedom to advocate unpopular and controversial issues in schools must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior."), with Iota Xi, 993 F.2d 386 (holding that, notwithstanding a university's mission to create a culturally diverse learning environment and its substantial interest in maintaining a campus free of discrimination, it could not punish students who engaged in an offensive skit with racist and sexist overtones).

EXHIBIT 'D'

29 CFR PART 1604

GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

(b) When an administrative law judge certifies a matter for interlocutory review under §1603.213, the Commission may, in its discretion, issue a decision on the matter or send the matter back to the administrative law judge without decision.

(c) The Commission will not accept or consider new evidence on appeal unless the Commission, in its discretion, reopens the record on appeal.

(d) The decision of the Commission on appeal shall be its final order and shall be served on all parties.

(e) In the absence of a timely appeal under §1603.302, the decision of the administrative law judge under §1603.217 or a dismissal under §1603.107 shall become the final order of the Commission. A final order under this paragraph shall not have precedential significance.

§ 1603.305 Modification or withdrawal of Commission decision.

At any time, the Commission may modify or withdraw a decision for any reason provided that no petition for review in a United States Court of Appeals has been filed.

§ 1603.306 Judicial review.

Any party to a complaint who is aggrieved by a final decision under §1603.304 may obtain a review of such final decision under chapter 158 of title 28 of the United States Code by filing a petition for review with a United States Court of Appeals within 60 days after issuance of the final decision. Such petition for review should be filed in the judicial circuit in which the petitioner resides, or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

Sec.

1604.1 General principles.
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1604.4 Discrimination against married women.
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1604.11 Sexual harassment.
APPENDIX TO PART 1604—QUESTIONS AND ANSWERS ON THE PREGNANCY DISCRIMINATION ACT, PUBLIC LAW 95-555, 92 STAT. 2076 (1978).

AUTHORITY: Sec. 713(b), 78 Stat. 265, 42 U.S.C. 2000e–12.

SOURCE: 37 FR 6836, April 5, 1972, unless otherwise noted.

§ 1604.1 General principles.

(a) References to "employer" or "employers" in this part 1604 state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

§ 1604.2 Sex as a bona fide occupational qualification.

(a) The commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Label—"Men's jobs" and "Women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment;

that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in paragraph (a)(2) of this section.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b) Effect of sex-oriented State employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(2) The Commission has concluded that State laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(3) A number of States require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by State law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented State employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the State law is in conflict with and superseded by title VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some States require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

§ 1604.3 Separate lines of progression and seniority systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority

lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A Seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

§ 1604.4 Discrimination against married women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of section 703(e)(1) of title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

§ 1604.5 Job opportunities advertising.

It is a violation of title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

§ 1604.6 Employment agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

§ 1604.7 Pre-employment inquiries as to sex.

A pre-employment inquiry may ask "Male....., Female....."; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly

or indirectly any limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

§ 1604.8 Relationship of title VII to the Equal Pay Act.

(a) The employee coverage of the prohibitions against discrimination based on sex contained in title VII is coextensive with that of the other prohibitions contained in title VII and is not limited by section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

§ 1604.9 Fringe benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under title VIII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

§ 1604.10 Employment policies relating to pregnancy and childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy, childbirth or related medical conditions is in prima facie violation of title VII.

(b) Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms

and conditions as they are applied to other disabilities. Health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion, are not required to be paid by an employer; nothing herein, however, precludes an employer from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

(d)(1) Any fringe benefit program, or fund, or insurance program which is in effect on October 31, 1978, which does not treat women affected by pregnancy, childbirth, or related medical conditions the same as other persons not so affected but similar in their ability or inability to work, must be in compliance with the provisions of §1604.10(b) by April 29, 1979. In order to come into compliance with the provisions of 1604.10(b), there can be no reduction of benefits or compensation which were in effect on October 31, 1978, before October 31, 1979 or the expiration of a collective bargaining agreement in effect on October 31, 1978, whichever is later.

(2) Any fringe benefit program implemented after October 31, 1978, must comply with the provisions of §1604.10(b) upon implementation.

[44 FR 23805, Apr. 20, 1979]

§1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of section 703 of title VII.[1] Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) [Reserved]

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors,

[1] The principles involved here continue to apply to race, color, religion or national origin.

the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

APPENDIX A TO § 1604.11—BACKGROUND INFORMATION

The Commission has rescinded §1604.11(c) of the Guidelines on Sexual Harassment, which set forth the standard of employer liability for harassment by supervisors. That section is no longer valid, in light of the Supreme Court decisions in *Burlington Industries, Inc.* v. *Ellerth*, 524 U.S. 742 (1998), and *Faragher* v. *City of Boca Raton*, 524 U.S. 775 (1998). The Commission has issued a policy document that examines the Faragher and Ellerth decisions and provides detailed guidance on the issue of vicarious liability for harassment by supervisors. EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (6/18/99), EEOC Compliance Manual (BNA), N:4075 [Binder 3]; also available through EEOC's web site, at www.eeoc.gov., or by calling the EEOC Publications Distribution Center, at 1-800-669-3362 (voice), 1-800-800-3302 (TTY).

(Title VII, Pub. L. 88-352, 78 Stat. 253 (42 U.S.C. 2000e *et seq.*))

[45 FR 74677, Nov. 10, 1980, as amended at 64 FR 58334, Oct. 29, 1999]

APPENDIX TO PART 1604—QUESTIONS AND ANSWERS ON THE PREGNANCY DISCRIMINATION ACT, PUBLIC LAW 95-555, 92 STAT. 2076 (1978)

INTRODUCTION

On October 31, 1978, President Carter signed into law the *Pregnancy Discrimination Act* (Pub. L. 95-955). The Act is an amendment to title VII of the Civil Rights Act of 1964 which prohibits, among other things, discrimination in employment on the basis of sex. The *Pregnancy Discrimination Act* makes it clear that "because of sex" or "on the basis of sex", as used in title VII, includes "because of or on the basis of pregnancy, childbirth or related medical conditions." Therefore, title VII prohibits discrimination in employment against women affected by pregnancy or related conditions.

The basic principle of the Act is that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work. A woman is therefore protected against such practices as being fired, or refused a job or promotion, merely because she is pregnant or has had an abortion. She usually cannot be forced to go on leave as long as she can still work. If other employees who take disability leave are entitled to get their jobs back when they are able to work again, so are women who have been unable to work because of pregnancy.

In the area of fringe benefits, such as disability benefits, sick leave and health insurance, the same principle applies. A woman unable to work for pregnancy-related reasons is entitled to disability benefits or sick leave on the same basis as employees unable to work for other medical reasons. Also, any health insurance provided must cover expenses for pregnancy-related conditions on the same basis as expenses for other medical conditions. However, health insurance for expenses arising from abortion is not required except where the life of the mother would be endangered if the fetus were carried to term, or where medical complications have arisen from an abortion.

Some questions and answers about the *Pregnancy Discrimination Act* follow. Although the questions and answers often use only the term "employer," the Act—and these questions and answers—apply also to unions and other entities covered by title VII.

1. Q. What is the effective date of the Pregnancy Discrimination Act?

A. The Act became effective on October 31, 1978, except that with respect to fringe benefit programs in effect on that date, the Act will take effect 180 days thereafter, that is, April 29, 1979.

To the extent that title VII already required employers to treat persons affected by pregnancy-related conditions the same as persons affected by other medical conditions, the Act does not change employee rights arising prior to October 31, 1978, or April 29, 1979. Most employment practices relating to pregnancy, childbirth and related conditions—whether concerning fringe benefits or other practices—were already controlled by title VII prior to this Act. For example, title VII has always prohibited an employer from firing, or refusing to hire or promote, a woman because of pregnancy or related conditions, and from failing to accord a woman on pregnancy-related leave the same seniority retention and accrual accorded those on other disability leaves.

2. Q. If an employer had a sick leave policy in effect on October 31, 1978, by what date must the employer bring its policy into compliance with the Act?

A. With respect to payment of benefits, an employer has until April 29, 1979, to bring into compliance any fringe benefit or insurance program, including a sick leave policy, which was in effect on October 31, 1978. However, any such policy or program created after October 31, 1978, must be in compliance when created.

With respect to all aspects of sick leave policy other than payment of benefits, such

EXHIBIT 'E'

BUTT V. STATE OF CALIFORNIA

4 Cal.4th 668; 15 Cal.Rptr.2d 480; 842 P.2d 1240

[No. S020835. Dec. 31, 1992.]

THOMAS K. BUTT et al., Plaintiffs and Respondents, v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants.

SUMMARY

Parents of school children enrolled in a unified school district filed a class action for injunctive relief against the state and the district's board of education, seeking to prevent the district from closing its schools six weeks before the official end of the school year due to a projected revenue shortfall. After granting plaintiffs' motion to amend the complaint to include the state Superintendent of Public Instruction and the state Controller as defendants, the trial court granted plaintiffs' motion for a preliminary injunction, ordering the state and the superintendent to ensure that the schools remained open until the end of the school year or to provide the students with a substantially equivalent educational opportunity. The court subsequently issued another order, pursuant to the superintendent's plan, authorizing the Controller to disburse an emergency loan to the district from unspent portions of appropriations for the Greater Avenues for Independence (GAIN) program and another unified school district, and authorizing the superintendent to relieve the present board, and to develop recovery and repayment plans. The state's appeal from the trial court's orders was transferred from the Court of Appeal to the Supreme Court. (Superior Court of Contra Costa County, No. C91-01645, Ellen Sickles James, Judge.)

The Supreme Court reversed the trial court's second order insofar as it approved funding of an emergency loan from appropriations for the GAIN program and the other school district; in all other respects, the court affirmed the orders, and directed the Court of Appeal to remand the matter to the trial court for further proceedings. The court held that the trial court, in deciding the propriety of a preliminary injunction, did not abuse its discretion in finding that there was a reasonable probability that plaintiffs would succeed on the merits of their case, since the early closure of the district's schools would have deprived the students of their fundamental right to basic equality in public education, and the state was required to intervene to prevent a deprivation of that right. The court also held that the trial court properly found that denial of the preliminary injunction would have caused students and their parents substantial and irreparable harm greater than that which defendants would suffer if the injunction were granted. The court held that

the trial court acted within its equitable powers in ordering the superintendent to displace the board, operate the district, and impose a plan for the district's permanent financial recovery, but that it was improper for the trial court to order the state to extend the loan by using unspent funds from appropriations for the GAIN program and the other school district, since those funds were not "reasonably available" for that purpose. (Opinion by Baxter, J., with Panelli, Arabian and George, JJ., concurring. Separate concurring and dissenting opinions by Lucas, C. J., Mosk and Kennard, JJ.)

HEADNOTES

Classified to California Digest of Official Reports

(1) **Appellate Review § 119—Dismissal—Grounds—Mootness—Exception for Matters of Public Interest—Issues Concerning Injunction Requiring Emergency State Loan to Fund School District.**—On the state's appeal from a preliminary injunction requiring it to extend an emergency loan to a school district so that it could keep its schools open until the end of the school year despite revenue shortfalls, and to implement a recovery plan for the district, some issues were moot due to the fact that a plan had already been implemented and the state did not seek rescission of the loan. Nevertheless, the Supreme Court had discretion to decide the issues, which included whether the state was responsible to ensure the students' fundamental right to basic educational equality and whether the trial court had authority to order a loan from funds the Legislature had appropriated for other purposes, since those issues involved potentially recurring questions of public importance. As to the appropriations issue, there was a substantial possibility that similar crises would produce similar emergency orders in the future, thus favoring review. Moreover, the state had fully litigated the issue, and any mootness stemmed from the Supreme Court's denial of the state's request for a stay pending appeal.

(2) **Injunctions § 21—Preliminary Injunctions—Appeal—Scope of Review.**—Appellate review of a trial court's decision as to whether to issue a preliminary injunction is limited to whether the decision was an abuse of discretion. In deciding whether to issue a preliminary injunction, the trial court must weigh two "interrelated" factors: (1) the likelihood that the moving party will ultimately prevail on the merits, and (2) the relative interim harm to the parties resulting from the issuance or nonissuance of the injunction. The trial court's determination must be guided by a "mix" of the two factors, and the greater the

plaintiff's showing on one, the less must be shown on the other to support an injunction. The scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at a trial on the merits, and the trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. Thus, unless the potential merit of the claim is conceded, the appellate court must address that issue when reviewing an order granting a preliminary injunction.

(3a-3c) **Schools § 4—School Districts; Financing; Funds—Shortening School Year on Emergency Basis Due to Budget Shortfall—State's Obligation.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district, seeking to prevent the district from ending the school year six weeks early due to a budget shortfall, the trial court, in granting plaintiffs a preliminary injunction, did not abuse its discretion in finding that there was a reasonable probability that plaintiffs would succeed on the merits of their case. Basic equality in public education for all students, regardless of the district in which they reside, is a fundamental right under the California Constitution, and denials of that right are subject to strict scrutiny. The state has the ultimate responsibility for assuring equal operation of the public school system, and is obliged to intervene when a local district's fiscal problems prevent its students from receiving basic educational equality. Moreover, there was no state policy of local autonomy and accountability at the district level that was compelling enough to justify the state's tolerance of the extreme and unprecedented educational deprivation that would have resulted from the early closure of the district's schools.

[See **Cal.Jur.3d,** Schools, §§ 291, 299.]

(4) **Schools § 1—Legislature's Nondelegable Responsibility Over Public School System.**—Public education is an obligation that the state assumed by adoption of the state Constitution. The public school system, although administered through local districts created by the Legislature, is one system applicable to all of the common schools. In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. The Legislature's "plenary" power over public education is subject only to constitutional restrictions. Local districts are the state's agents for local operation of the common school system, and the state's ultimate responsibility for public education cannot be delegated to any other entity.

(5) **Constitutional Law § 87.2—Equal Protection—Classification—Judicial Review—Strict Standard of Review for Suspect Classifications or Classifications Touching on Fundamental Interests—Right to Education.**—Under the equal protection clauses of the federal and state Constitutions, heightened judicial scrutiny applies to state-maintained discrimination whenever the disfavored class is suspect or the disparate treatment has a real and appreciable impact on a fundamental right or interest. Education is such a fundamental interest for purposes of equal protection analysis under the California Constitution.

(6) **Schools § 4—School Districts; Financing; Funds—Shortening School Year on Emergency Basis Due to Budget Shortfall—Preliminary Injunction Against State—Balancing Harm to Parents and Students Against Harm to District.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district to prevent closure of the district's schools six weeks early due to a budget shortfall, the trial court properly found that denial of the parents' motion for a preliminary injunction would have caused district students and their parents substantial and irreparable harm that was greater than that which defendants would suffer if the injunction were granted. Plaintiffs' declarations suggested that the district's inability to complete the school year arose from its ever-worsening fiscal condition and the deterioration of negotiations for emergency aid, and that the teachers' lesson plans did not provide for the contingency of early closure. They also detailed the difficulties of maintaining the educational progress of over 31,000 suddenly displaced students. While plaintiffs may not have demonstrated that "irreparable" harm to students was unavoidable by other means, the trial court's findings both that plaintiffs had a reasonable probability of success on the merits and that they would suffer more harm if an injunction were denied than the state would suffer if it were granted fully justified its decision to grant the preliminary injunction.

(7a, 7b) **Schools § 4—School Districts; Financing; Funds—District in Financial Distress Due to Mismanagement—Trial Court's Equitable Power to Grant Relief—Ordering Superintendent of Public Instruction to Assume Management.**—In an action for injunctive relief by parents against the state, the state Superintendent of Public Instruction, the state Controller, and the board of education of a school district, seeking to prevent the school district from ending the school year six weeks early due to a budget shortfall, the trial court did not exceed its powers in issuing an order, based on a plan submitted by the superintendent and the Controller, authorizing the superintendent to

displace the board, operate the district, and impose a plan for the district's permanent financial recovery. Although no statute gave the superintendent such authority, the takeover order was within the trial court's inherent equitable power to enforce the state's constitutional obligations in light of the unique situation. The state was justified in satisfying its duty by extending a loan with conditions to ensure appropriate use of the funds and minimize the risk of default, especially since the district's ability to administer the loan under its existing systems and managers was uniquely suspect.

(8) **Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power—To Order Discretionary Acts By Executive or Legislature.**—In general, courts have equitable authority to enforce their constitutional judgments. Principles of comity and separation of powers, however, place significant restraints on the authority of courts to order or ratify acts that are normally committed to the discretion of other branches or officials. In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature. Moreover, a judicial remedy must be tailored to the harm at issue. A court should always strive for the least disruptive remedy that is adequate to its legitimate task.

(9) **Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power—To Order Spending of Legislative Appropriations—Ordering Emergency Loan to School District From Funds Appropriated for Other Educational Purposes.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district, seeking to prevent the school district from ending the school year six weeks early due to a budget shortfall, the trial court improperly ordered the state to extend the district an emergency loan of $19 million out of unspent funds appropriated for the Greater Avenues for Independence (GAIN) program and for an emergency loan to another school district. The appropriations did not make funds "reasonably available" for the purpose of financing the remainder of the district's school term. GAIN's purpose is to provide employment, adult education, and job training to recipients of public aid. The GAIN appropriation was expressly designated for that program alone, and was not intended to fund the needs of non-GAIN students. Similarly, the emergency loan to the other district was specifically appropriated for that district, with conditions addressed to the circumstances of that case. The funding of the remainder of the district's term was clearly

outside the particular purposes for which the appropriations were reserved.

[See 7 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, §§ 112, 115.]

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OPINION

BAXTER. J.—In late April 1991, after a period of mounting deficits, the Richmond Unified School District (District) announced it lacked funds to complete the final six weeks of its 1990-1991 school term. The District proposed to close its doors on May 1, 1991. The Superior Court of Contra Costa County issued a preliminary injunction directing the State of California (State), its Controller, and its Superintendent of Public Instruction (SPI) to ensure that the District's students would receive a full school term or its equivalent. The court approved the SPI's plan for an emergency State loan, and for appointment by the SPI of an administrator to take temporary charge of the District's operation.

We declined to stay implementation of the plan pending the State's appeal. However, we transferred the appeal here in order to decide an important issue of first impression: Whether the State has a constitutional duty, aside from the equal allocation of educational funds, to prevent the budgetary problems of a particular school district from depriving its students of "basic" educational equality.

We affirm the trial court's determination that such a duty exists under the California Constitution. Further, the court did not err in concluding, on the basis of the plaintiffs' preliminary showing, that the particular circumstances of this case demanded immediate State intervention. However, the court exceeded its judicial powers by approving the diversion of emergency loan funds from appropriations clearly intended by the Legislature for other purposes.

FACTS AND PROCEDURAL HISTORY[1]

On April 17, 1991, Thomas K. Butt and other named District parents filed a class action for temporary and permanent injunctive relief against the State and the District's board of education (Board).[2] The complaint alleged as follows: The State is responsible for educating all California children, and the Board is the State's agent for carrying out this responsibility in the District. The scheduled final day of the District's 1990-1991 school term was June 14, 1991, but the District had announced that its 44 elementary, secondary, and adult schools would close on May 1, 1991. The resulting loss of six weeks of instruction would cause serious, irreparable harm to the District's 31,500 students and would deny them their "fundamental right to an effective public education" under the California Constitution. Moreover, as an unjustified discrimination against District students compared to those elsewhere in California, the closure would violate equal protection guarantees of the California and United States Constitutions. Therefore, defendants should be enjoined from closing the District's schools before the scheduled end of the scholastic term.

On April 22, 1991, plaintiffs noticed a motion for preliminary injunction. In an attached declaration, Frank R. Calton, a member of the Board, stated

[1]The State, as appellant, has elected to proceed by way of an appendix in lieu of the clerk's transcript, as permitted by rule 5.1 of the California Rules of Court. Some of the documents contained in the appendix, though they include handwritten filing dates, bear no official file stamps and have no proofs of service attached. However, rule 5.1 expressly allows the use of unofficial conformed copies (subd. (c)(1)) and provides that the filing of an appendix "constitutes a representation by counsel that the appendix consists of true and correct copies of the papers in the superior court file" (subd. (i)(1)). No party having urged otherwise, we adopt that assumption for purposes of this opinion.

[2]The named plaintiffs sued on behalf of themselves, their children, and other parents and students of the District.

that the District projected a revenue shortfall of $23 million for the 1990-1991 academic year and only had sufficient funds to pay its employees through April 1991. Calton declared the District would have to close at the end of April unless new funds were obtained or employees agreed to work for registered warrants in lieu of paychecks. He indicated that the District's efforts to obtain an emergency loan from the State had not yet succeeded, and the District was preparing to file for bankruptcy.

Plaintiffs' motion papers also included declarations by District teachers, academicians in the field of education, and members of the Contra Costa County board of education. These statements detailed the serious disruptive effect the proposed closure would have upon the educational process in the District and upon the quality of education afforded its students.

The motion was heard on April 29, 1991. The Attorney General represented the State in opposition. Counsel for the District represented that the Board's appearance was precluded by an automatic bankruptcy stay. The trial court granted plaintiffs' unopposed motion for amendment of the complaint to include the SPI and the Controller as defendants. Pending applications for intervention and amicus curiae status were not formally granted,[3] but as stipulated by the parties, the court heard argument from the applicants and agreed to consider their briefs.

At the conclusion of the hearing, the trial court ruled orally that under the California Constitution, the State itself is responsible for the "fundamental" educational rights of California students and must remedy a local district's inability to provide its students an education "basically equivalent" to that provided elsewhere in the State. Concluding that the threatened closure would deny the District's students a "constitutionally [equal] education," the court ordered the State and the SPI to act as "they deem appropriate" to ensure that District schools remained open until June 14, 1991, or to provide District students a "substantially equivalent educational opportunity" within the statutory school year ending June 30, 1991.

This oral decision was followed by two written orders filed May 2. One of these, drafted by plaintiffs' counsel, purported to formalize the April 29 ruling. It made findings that closure of District schools by May 1 would cause District students irreparable harm, that the balance of harm favored a preliminary injunction, that education is a "fundamental right" in California,

[3]Applications to appear as amici curiae were submitted by the Richmond Federation of Teachers (RFT) and jointly by the Meiklejohn Civil Liberties Institute, the National Lawyers Guild, and Multi-Cultural Education, Training, and Advocacy, Inc. (collectively Meiklejohn). Complaints in intervention and/or applications for leave to intervene were submitted by the Oakland Unified School District (OUSD), RFT, and United Teachers of Richmond (UTR).

that no "compelling interest" justified denying District students six weeks of instruction available to "every other child in the State," and that plaintiffs' ultimate success on the merits was reasonably probable. The State and its agents again were directed to act "as . . . appropriate" to ensure District students, within the school year ending June 30, 1991, an education "equivalent basically" to that provided elsewhere in California for a full school term. The Controller was added as a State official expressly bound by the court's commands.

On the same day, May 2, the SPI and the Controller submitted their plan for compliance with the preliminary injunction. With counsel for all interested parties present, the court took evidence indicating that uncommitted funds exceeding the estimated $19 million necessary to complete the District's school year were available from existing State appropriations to the Greater Avenues for Independence (GAIN) program and for emergency assistance to the OUSD. Counsel for the OUSD stipulated that his client had "no objection" to use of the $10 million OUSD appropriation for purposes of an emergency loan to the District.

Accordingly, the court executed an order, drafted by counsel for the SPI, approving in principle the submitted plan.[4] The order authorized the Controller to disburse an emergency loan to the District from unspent portions of the GAIN and OUSD appropriations. (See Stats. 1989, ch. 93, § 22.00; Stats. 1989, ch. 1438, § 1 et seq.) Meanwhile, the SPI, by virtue of the State's "ultimate responsibility" for equal education and his own statutory obligation to "superintend the schools of this state" (Ed. Code, § 33112, subd. (a)),[5] would have authority to "relieve the . . . [B]oard of its legal duties and powers, appoint a trustee, develop a recovery plan and, subject to the approval of the Controller, [develop] a repayment plan on the [D]istrict's behalf as necessary" to ensure completion of the school term, the District's financial recovery, and the protection of the loaned funds.[6]

The Attorney General timely noticed appeals from the April 29 and May 2 orders on behalf of the State. Defendants SPI and Controller did not

[4]Though the court's order recites that the SPI and the Controller "presented . . . , after notice to all parties, an agreement" to provide an emergency loan, neither the agreement itself, nor a description of its precise terms, has been made part of the record on appeal.

[5]All further statutory references are to the Education Code unless otherwise indicated.

[6]The preliminary injunction motion was litigated with understandable haste, and evidence of the causes of the District's apparent insolvency was not presented below. On appeal, the SPI invites us to take judicial notice of grand jury findings on this subject which were released after the preliminary injunction was granted. (See The Financial Affairs of the Richmond Unified School District, Rep. of 1990-1991 Contra Costa County Grand Jury (May 29, 1991) [hereafter Report].) Without objection, we may note the Report's contents. (Evid. Code, §§ 452, subds. (c), (d), 455, 459; see *People* v. *Gonzalez* (1990) 51 Cal.3d 1179, 1259, fn. 54 [275 Cal.Rptr. 729, 800 P.2d 1159].) Of course, we cannot accept its findings as evidence or its criticisms of the District and the Board as conclusively founded. We are

appeal. The State immediately requested transfer of the appeal from the Court of Appeal, First Appellate District, to this court (see Cal. Rules of Court, rule 20) and also asked that we stay enforcement of the trial court's orders pending appeal. (1)(See fn. 7.) The SPI and the Controller opposed a stay but supported transfer of the appeal to this court. We granted the transfer request but denied a stay.[7]

DISCUSSION

1. *Standard of review.*

(2) In deciding whether to issue a preliminary injunction, a court must weigh two "interrelated" factors: (1) the likelihood that the moving party

particularly loath to do so when the District and the Board were disabled below from defending against claims of mismanagement and, except for a special appearance at oral argument, have not participated in the appeal.

Nonetheless, we cannot ignore the grand jury's assessment that despite repeated warnings, an earnest but financially inexperienced Board permitted massive, accelerating deficit spending over a period of several years to expand staff, boost salaries and benefits, and support innovative programs installed by the District's former superintendent. (Report, pp. 3-5.) According to the Report, the resulting deficit for the years 1986-1990 was $29.5 million, with an $18.1 million deficit for 1990 alone. (*Id.*, at p. 4.) In 1990, the District had received a State emergency loan exceeding $9 million, in consequence of which a limited-powers trustee appointed by the SPI was overseeing District financial affairs during the 1990-1991 school term. (*Id.*, at p. 5.)

[7]Our denial of a stay allowed implementation of the plan approved by the trial court, and the District's school year was completed. Though the State vigorously contends the court lacked power to invade the GAIN and OUSD appropriations, it does not demand actual rescission of the court-approved loan. Moreover, we judicially notice without objection that in June 1992, the SPI approved a repayment and recovery plan adopted by the District, restored the Board's powers, and terminated the court-authorized appointment of the State administrator. (See Evid. Code, §§ 452, subds. (c), (h), 455, 459.) Although portions of the appeal may therefore be technically moot, we have discretion to decide the issues presented as potentially recurring questions of public importance. (E.g., *O'Hare* v. *Superior Court* (1987) 43 Cal.3d 86, 91, fn. 1 [233 Cal.Rptr. 332, 729 P.2d 766]; *DiGiorgio Fruit Corp.* v. *Dept. of Employment* (1961) 56 Cal.2d 54, 58 [13 Cal.Rptr. 663, 362 P.2d 487]; *People* v. *West Coast Shows, Inc.* (1970) 10 Cal.App.3d 462, 468 [89 Cal.Rptr. 290].)

The Chief Justice objects in particular that we neither must nor should address whether the sources of funding approved by the trial court were proper. However, he fails to indicate why this important and sensitive issue is any more moot, or any less worthy of consideration, than other portions of the trial court's order which have also been irretrievably implemented. Indeed, in these uncertain times, the substantial possibility arises that similar future crises will produce similar emergency orders for immediate diversion of State funds from expedient sources. Hence, contrary to the Chief Justice's suggestion, the issue is one capable of repetition but difficult to review, and this concern favors its prompt consideration under the "public interest" exception to the mootness doctrine. (*DiGiorgio Fruit Corp.*, *supra*, 56 Cal.2d at p. 58.) Moreover, the State has fully litigated the merits of the appropriations issue throughout, and any mootness in this or other aspects of the injunction stems from our denial of the State's request for a stay pending appeal. Under these circumstances, the State should not be penalized on appeal for conceding that State funds already expended by the District cannot practicably be recovered.

will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. (*Common Cause* v. *Board of Supervisors* (1989) 49 Cal.3d 432, 441-442 [261 Cal.Rptr. 574, 777 P.2d 610].) Appellate review is limited to whether the trial court's decision was an abuse of discretion. (*Cohen* v. *Board of Supervisors* (1985) 40 Cal.3d 277, 286 [219 Cal.Rptr. 467, 707 P.2d 840].)

The trial court's determination must be guided by a "mix" of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. (*King* v. *Meese* (1987) 43 Cal.3d 1217, 1227-1228 [240 Cal.Rptr. 829, 743 P.2d 889].) Of course, "[t]he scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits." (*Common Cause*, *supra*, 49 Cal.3d at p. 442.) A trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. (*Id.*, at pp. 442-443.) Unless potential merit is conceded, an appellate court must therefore address that issue when reviewing an order granting a preliminary injunction.

Here, the trial court found that plaintiffs' constitutional demand for State intervention had potential merit, and that the balance of interim harm justified the issuance of a preliminary injunction against the State. For the reasons that follow, we conclude that each of these determinations was within the court's discretion.[8]

2. *Merits of plaintiffs' claims.*

(3a) The trial court expressly found "[t]here is a reasonable probability that plaintiffs will succeed on the merits of their case." The court agreed with plaintiffs' claim that the equal protection guaranties of the California Constitution (art. I, § 7, subds. (a), (b); art. IV, § 16, subd. (a)) require State intervention to ensure that fiscal problems do not deprive a local district's

[8]The State insists that under the circumstances of this case, appellate review should not be limited to whether the trial court "abused its discretion" when weighing "interim" harm and "probable" merit. The State stresses that the unstayed injunction, though preliminary in form, was both final and unprecedented in fact. Accordingly, the State suggests, we must decide, as on appeal from a final judgment, whether plaintiffs were entitled to the relief they received.

We disagree. The abuse-of-discretion standard acknowledges that the propriety of preliminary relief turns upon difficult estimates and predictions from a record which is necessarily truncated and incomplete. Here, the urgency of the situation forced plaintiffs to produce, and the State to rebut, a hasty tentative showing of constitutional necessity. The evidence on which the trial court was forced to act may thus be significantly different from that which would be available after a trial on the merits. Neither the trial court nor this court could undertake a final adjudication of plaintiffs' lawsuit under such circumstances.

students of basic educational equality.[9] The court also accepted plaintiffs' preliminary showing that the effect of the District's crisis on its students' educational rights was serious enough to trigger the State's constitutional duty. The State, supported by amicus curiae Pacific Legal Foundation (Pacific),[10] assails these conclusions on multiple grounds.

At the outset, the State does not claim it lacks any and all constitutional role in local educational affairs. Instead, its reasoning proceeds as follows: The State fulfills its financial responsibility for educational equality by subjecting all local districts, rich and poor, to an equalized statewide revenue base.[11] Unless a district fails to provide the minimum six-month school term set forth in the "free school" clause (Cal. Const., art. IX, § 5),[12] the State has no duty to ensure prudent use of the equalized funds by local administrators. Even if local mismanagement causes one district's services to fall seriously below prevailing statewide standards, the resulting educational inequality is

[9]Article I, section 7, subdivision (a) provides in pertinent part that "[a] person may not be . . . denied equal protection of the laws. . . ." Article I, section 7, subdivision (b) provides in pertinent part that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. . . ." Article IV, section 16, subdivision (a) provides that "[a]ll laws of a general nature have uniform operation."

[10]The positions adopted by the various parties and numerous amici curiae in this appeal are diverse. The Attorney General, representing the State as defendant and appellant, opposes all aspects of the trial court orders. Though they were joined as defendants below, the SPI and the Controller, deeming themselves "respondents" on appeal, support plaintiffs' view that the orders were proper in all respects. Amicus curiae Pacific supports the State's position. Amici curiae RFT and UTR approve State financial aid but object to displacement of the local governing board by a State administrator. Amici curiae Frank R. Calton and Howard P. Abelson urge that the Board acted correctly by deciding to close District schools and should not have been displaced. Calton and Abelson also suggest the injunction was improper because the Board had no opportunity to appear and defend against claims of mismanagement. Amici curiae Mario Diaz and Rebecca Hazlewood Bezemek (Diaz and Bezemek) take no position on State financial assistance but argue that the SPI's takeover of District government was improper. Amicus curiae briefs in support of plaintiffs have been filed by the American Civil Liberties Union Foundation, Human Rights Advocates, and Meiklejohn.

[11]The funding scheme for public education is complex, but no party disputes the summary description provided in the State's brief: "The Legislature has attempted to equalize school district funding . . . by the use of a 'base revenue limit' for each district. Each district is classified by size and type. ([Ed.] Code, [§] 42238.) Based upon this classification scheme, each district has a 'base revenue limit' per unit of average daily attendance. The base revenue limit for any district includes the amount of property tax revenues a district can raise, with other specific local revenues, coupled with an equalization payment by the State, thus bringing each district into a rough equivalency of revenues. (Compare [Cal. Code Regs., tit. 5, [§] 15371, *et seq.*[; Ed.] Code [§] 42238 et seq.) [¶] Because the student population is so diverse, the Legislature had to supplement the base revenue limit with specific augmentations targeted for categories of children with needs that require special attention. These supplements are designated as 'categorical' aid. . . ."

[12]Article IX, section 5 provides: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

not grounded in district wealth, nor does it involve a "suspect classification" such as race. Thus, "strict scrutiny" of the disparity is not required, and the State's refusal to intervene must be upheld as rationally related to its policy of local control and accountability. Even if strict scrutiny is appropriate, the local-control policy is "compelling" enough to justify the State's inaction.

Under the unprecedented circumstances of this case, we cannot accept the State's contentions. We set forth our reasons in detail.

Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all. The Constitution of 1849 directed the Legislature to "provide for a system of common schools, by which a school shall be kept up and supported in each district . . . ." (Cal. Const. of 1849, art. IX, § 3.) That constitutional command, with the additional proviso that the school maintained by each district be "free," has persisted to the present day. (Cal. Const., art. IX, § 5.)

In furtherance of the State system of free public education, the Constitution also creates State and county educational offices, including a Superintendent of Public Instruction and a State Board of Education. (Cal. Const., art. IX, §§ 2-3.3, 7.) It authorizes the formation of local school districts (*id.*, §§ 6½, 14), requires that all public elementary and secondary schools be administered within the Public School System (*id.*, § 6), establishes a State School Fund (Fund) (*id.*, § 4), reserves a minimum portion of State revenues for allocation to the Fund (*id.*, art. XVI, §§ 8, 8.5), guarantees minimum allocations from the Fund for each public school (*id.*, art. IX, § 6), specifies minimum salaries for public school teachers (*ibid.*), authorizes the State Board of Education to approve public school textbooks (*id.*, § 7.5), and permits the Legislature to grant local districts such authority over their affairs as does not "conflict with the laws and purposes for which school districts are established" (*id.*, § 14).

(4) Accordingly, California courts have adhered to the following principles: Public education is an obligation which the State assumed by the adoption of the Constitution. (*San Francisco Unified School Dist.* v. *Johnson* (1971) 3 Cal.3d 937, 951-952 [92 Cal.Rptr. 309, 479 P.2d 669]; *Piper* v. *Big Pine School Dist.* (1924) 193 Cal. 664, 669 [226 P. 926].) The system of public schools, although administered through local districts created by the Legislature, is "*one* system . . . applicable to all the common schools . . . ." (*Kennedy* v. *Miller* (1893) 97 Cal. 429, 432 [32 P. 558], italics in original.) ". . . In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. . . ." (*Jackson* v.

Pasadena City School Dist. (1963) 59 Cal.2d 876, 880 [31 Cal.Rptr. 606, 382 P.2d 878].) "[M]anagement and control of the public schools [is] a matter of state[, not local,] care and supervision. . . ." (*Kennedy* v. *Miller*, *supra*, 97 Cal. at p. 431; see also *Hall* v. *City of Taft* (1956) 47 Cal.2d 177, 181 [302 P.2d 574]; *California Teachers Assn.* v. *Huff* (1992) 5 Cal.App.4th 1513, 1523-1524 [7 Cal.Rptr.2d 699].) The Legislature's "plenary" power over public education is subject only to constitutional restrictions. (*Hall* v. *City of Taft*, *supra*, at pp. 180-181 [302 P.2d 574]; *Tinsley* v. *Palo Alto Unified School Dist.* (1979) 91 Cal.App.3d 871, 903-904 [154 Cal.Rptr. 591].) Local districts are the State's agents for local operation of the common school system (*Hall* v. *City of Taft*, *supra*, at p. 181; *San Francisco Unified School Dist.* v. *Johnson*, *supra*, 3 Cal.3d at p. 952; *California Teachers Assn.*, *supra*), and the State's ultimate responsibility for public education cannot be delegated to any other entity (*Hall* v. *City of Taft*, *supra*; *Piper* v. *Big Pine School Dist.*, *supra*, 193 Cal. at p. 669).

(**3b**) It is true that the Legislature has assigned much of the governance of the public schools to the local districts (e.g., §§ 14000, 35160 et seq., 35160.1), which operate under officials who are locally elected and appointed (§§ 35020, 35100 et seq.). The districts are separate political entities for some purposes. (E.g., *Johnson* v. *San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692, 698-700 [266 Cal.Rptr. 187] [general theory of respondeat superior does not make State liable for torts of local district or its employees]; *Gonzales* v. *State of California* (1972) 29 Cal.App.3d 585, 590-592 [105 Cal.Rptr. 804] [same]; *First Interstate Bank* v. *State of California* (1987) 197 Cal.App.3d 627, 633-634 [243 Cal.Rptr. 8] [State not vicariously liable for district's breach of contract]; *Board of Education* v. *Calderon* (1973) 35 Cal.App.3d 490, 496 [110 Cal.Rptr. 916] [local district is not the "state" or the "People," so as to be civilly bound in dismissal proceedings by teacher's acquittal of criminal sex offense under principles of res judicata].)

Yet the existence of this local-district system has not prevented recognition that the State itself has broad responsibility to ensure basic educational equality under the California Constitution. Because access to a public education is a uniquely fundamental personal interest in California, our courts have consistently found that the State charter accords broader rights against State-maintained educational discrimination than does federal law. Despite contrary federal authority, California constitutional principles require State assistance to correct basic "interdistrict" disparities in the system of common schools, even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents.

In *Serrano* v. *Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187] (*Serrano I*), this court struck down the existing State

public school financing scheme, which caused the amount of basic revenues per pupil to vary substantially among the respective districts depending on their taxable property values. *Serrano I* concluded at length that such a scheme violated both state and federal equal protection guaranties because it discriminated against a fundamental interest—education—on the basis of a suspect classification—district wealth—and could not be justified by a compelling state interest under the strict scrutiny test thus applicable. (Pp. 596-619.) As the court concluded, "where fundamental rights *or* suspect classifications are at stake, a state's general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause. [Citation.]" (P. 612, italics added.)

Among other things, *Serrano I* rejected a claim that the wealth-based financing scheme was immune from challenge because the interdistrict revenue disparities it produced were not de jure, but merely de facto. Our opinion detailed the purposeful state legislative action which had produced the geographically based wealth classifications. It also made clear, however, that under California principles developed in cases involving school racial segregation, the absence of purposeful conduct by the State would not prevent a finding that the State system for funding public education had produced unconstitutional results. (*Serrano I*, *supra*, 5 Cal.3d at pp. 603-604, citing *Jackson* v. *Pasadena City School Dist.*, *supra*, 59 Cal.2d 876, 881.)

Serrano I also discussed two groups of federal cases suggesting that place of residence was an impermissible basis for State discrimination in the quality of education. *Serrano I* cited with approval *Hall* v. *St. Helena Parish School Board* (E.D.La. 1961) 197 F.Supp. 649. This federal decision struck down a Louisiana statute permitting local parishes to close their schools rather than integrate them. As *Serrano I* noted, *Hall* v. *St. Helena Parish* found an equal protection violation not only because of the statute's racial consequences, but also " 'because its application in one parish, while the state provides public schools elsewhere, would unfairly discriminate against the residents of that parish, irrespective of race. . . . [A]bsent a reasonable basis for so classifying, a state cannot close the public schools in one area while, at the same time, it maintains schools elsewhere with public funds.' " (*Serrano I*, *supra*, 5 Cal.3d at p. 612, quoting *Hall* v. *St. Helena Parish*, *supra*, 197 F. Supp. at pp. 651, 656.)

Serrano I further noted a "second group of cases, dealing with apportionment [of votes], [in which] the high court has held that accidents of geography and arbitrary boundary lines of local government can afford no ground for discrimination among a state's citizens. [Citation.] . . . If a voter's address may not determine the weight to which his ballot is entitled,

surely it should not determine the quality of his child's education. [Fn.]" (*Serrano I, supra*, 5 Cal.3d at p. 613.)

Finally, *Serrano I* rejected the State's claim that plaintiffs' wealth-discrimination theory would apply equally, and with disastrous effect, to all public services dependent in part on local property taxes. "[W]e are satisfied," the majority concluded, that whatever the status of other public services, "its uniqueness among public activities clearly demonstrates that *education* must respond to the command of the equal protection clause." (*Serrano I, supra*, 5 Cal.3d at p. 614, italics in original.)

In *San Antonio School District* v. *Rodriguez* (1973) 411 U.S. 1 [36 L.Ed.2d 16, 93 S.Ct. 1278], decided after *Serrano I*, the United States Supreme Court declined to subject Texas's similar local-property-tax based school financing scheme to heightened scrutiny under the Fourteenth Amendment. The *Rodriguez* majority concluded that a school finance scheme dependent on district tax values does not discriminate against the poor as a distinct class; in any event, the majority observed, wealth alone had never been deemed a suspect classification for federal purposes. Moreover, the majority reasoned, education is not a fundamental interest protected by the federal Constitution. Therefore finding the strict scrutiny standard of review inapplicable, the majority upheld Texas's system as rationally related to that state's policy of local control of schools. (411 U.S. at pp. 18-55.)

Nonetheless, in *Serrano* v. *Priest* (1976) 18 Cal.3d 728 [135 Cal.Rptr. 345, 557 P.2d 929] (*Serrano II*), this court reaffirmed the reasoning and result of *Serrano I* as required by the separate equal protection guaranties of the California Constitution. (*Serrano II, supra*, 18 Cal.3d at pp. 760-768.) Among other things, *Serrano II* reiterated that for California purposes, education remains a fundamental interest "which [lies] at the core of our free and representative form of government [fn.] . . . ." (*Id.*, at pp. 767-768.)

Hence, *Serrano II* declared, "[i]n applying our state constitutional provisions guaranteeing equal protection of the laws we shall continue to apply strict and searching judicial scrutiny" to claims of discriminatory educational classifications. (*Serrano II, supra*, at p. 767.) More recent cases confirm that education is a fundamental interest under the California equal protection guaranties (e.g., *Steffes* v. *California Interscholastic Federation* (1986) 176 Cal.App.3d 739, 746 [222 Cal.Rptr. 355]) and that the unique importance of public education in California's constitutional scheme requires careful scrutiny of state interference with basic educational rights (see, e.g., *Hartzell* v. *Connell* (1984) 35 Cal.3d 899, 906-909 [201 Cal.Rptr. 601, 679 P.2d 35] [scope of free school guarantee]).

In *Tinsley* v. *Palo Alto Unified School Dist.*, *supra*, 91 Cal.App.3d 871, parents sought mandate requiring several neighboring San Mateo and Santa Clara County school districts, the State, and certain State school officials, to submit a plan for the redress of interdistrict racial segregation in the affected locality. The petitioners declined to allege any specific acts committed by State or local parties as the cause of the interdistrict imbalance.

The State respondents answered the petition, but the districts successfully demurred, and the petition was dismissed as to them. The Court of Appeal reversed, holding that the California Constitution, unlike its federal counterpart as construed in *Milliken* v. *Bradley* (1974) 418 U.S. 717 [41 L.Ed.2d 1069, 94 S.Ct. 3112], contemplates interdistrict relief to remedy mere de facto racial imbalance which extends across district lines. (*Tinsley*, *supra*, 91 Cal.App.3d at pp. 899-907.) Several aspects of the *Tinsley* decision emphasize the State's ultimate responsibility for maintaining a nondiscriminatory common school system.

At the outset, the districts asserted that an appeal was premature under the "one final judgment" rule, because as mere agencies of the State, which had not demurred, they had no separate legal interests which an appeal from their dismissal could finally resolve. The Court of Appeal observed that if the districts' claim of mere agency was correct, any relief ordered against the State would necessarily affect them, and the judgment dismissing them from the action should therefore be reversed. In any event, the court concluded, the premise of identical interests did not bear scrutiny, because while "[t]he local districts, as agents, may have limited powers in interdistrict affairs, . . . the state . . . has plenary powers in all school district affairs. . . ." (*Tinsley*, *supra*, 91 Cal.App.3d at pp. 880-881.)

Turning to the merits, *Tinsley* dismissed the majority reasoning in *Milliken* insofar as based on the federal rule, long rejected in California (see *Crawford* v. *Board of Education* (1976) 17 Cal.3d 280 [130 Cal.Rptr. 724, 551 P.2d 28]; *Jackson* v. *Pasadena City School Dist.*, *supra*, 59 Cal.2d 876), that only de jure racial segregation is a constitutional violation. (*Tinsley*, *supra*, 91 Cal.App.3d at p. 903.) *Tinsley* also distinguished the *Milliken* majority's concern that it "would disrupt and alter" Michigan's entrenched system of local control of schools to impose an interdistrict remedy for Detroit city school segregation without proof that the state or affected suburban districts had engaged in intentional segregative conduct. The *Tinsley* court noted, among other things, that in California, the State shares responsibility with "the local entities it has created" to provide "equal educational opportunity

to the youth of the state" and "has a duty to intervene to prevent unconstitutional discrimination" in its schools. (*Id.*, at pp. 903-904.)[13]

It therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity.

The State claims it need only ensure the six-month minimum term guaranteed by the free school clause (Cal. Const., art. IX, § 5). This contention, however, misconstrues the basis of the trial court's decision. Whatever the requirements of the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State.

The State argues that even if the District's fiscal problems threatened its students' basic educational equality, any State duty to redress the discrimination must be judged under the most lenient standard of equal protection review. The State reasons as follows: Plaintiffs do not claim discrimination on the suspect basis of race. Nor is wealth-based discrimination at issue; as all parties concede, the District received the full benefit of the equalized funding system mandated by our *Serrano* decisions. At most, plaintiffs assert that a misuse of equalized funds by the District's officials caused a geographical disparity in service. Because residence and geography are not suspect classifications, the State's failure to prevent educational discrimination on those grounds is not subject to strict scrutiny. Rather, State inaction must be accepted as rationally related to the legitimate State policy of local control of schools.

(5) However, both federal and California decisions make clear that heightened scrutiny applies to State-maintained discrimination whenever the

[13]In November 1979, the voters adopted a Senate amendment to the California Constitution's equal protection clause, article I, section 7, subdivision (a). The amendment declares that nothing in the California Constitution imposes upon the State, or any local district or official, any obligations beyond those imposed by the Fourteenth Amendment of the United States Constitution "with respect to the use of pupil school assignment or pupil transportation." The amendment further forbids California courts from imposing any school-assignment or pupil-transportation obligation except when a violation of the Fourteenth Amendment has occurred, and unless a federal court could impose such a remedy for the violation. Whatever effect this amendment may have on *Tinsley*'s result, it does not affect consistent interpretations of the California equal protection guaranty where, as here, assignment or transportation of students is not at issue.

disfavored class is suspect *or* the disparate treatment has a real and appreciable impact on a fundamental right or interest. (*Plyler* v. *Doe* (1982) 457 U.S. 202, 216-217 [72 L.Ed.2d 786, 102 S.Ct. 2382]; *Shapiro* v. *Thompson* (1969) 394 U.S. 618, 634 [22 L.Ed.2d 600, 614-615, 89 S.Ct. 1322]; *Darces* v. *Woods* (1984) 35 Cal.3d 871, 885, 888 [201 Cal.Rptr. 807, 679 P.2d 458]; *Fair Political Practices Com.* v. *Superior Court* (1979) 25 Cal.3d 33, 47 [157 Cal.Rptr. 855, 599 P.2d 46]; *Serrano II*, *supra*, 18 Cal.3d 728, 761, 767-768; *Weber* v. *City Council* (1973) 9 Cal.3d 950, 959 [109 Cal.Rptr. 553, 513 P.2d 601]; *Serrano I*, *supra*, 5 Cal.3d 584, 597; *Westbrook* v. *Mihaly* (1970) 2 Cal.3d 765, 784-785 [87 Cal.Rptr. 839, 471 P.2d 487].) As we have seen, education is such a fundamental interest for purposes of equal protection analysis under the California Constitution.

(3c) The State suggests there was no showing that the impact of the threatened closure on District students' fundamental right to basic educational equality was real and appreciable. Of course, the Constitution does not prohibit all disparities in educational quality or service. Despite extensive State regulation and standardization (see discussion, *post*), the experience offered by our vast and diverse public school system undoubtedly differs to a considerable degree among districts, schools, and individual students. These distinctions arise from inevitable variances in local programs, philosophies, and conditions. "[A] requirement that [the State] provide [strictly] 'equal' educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. . . ." (*Hendrick Hudson Dist. Bd. of Ed.* v. *Rowley* (1982) 458 U.S. 176, 198 [73 L.Ed.2d 690, 707, 102 S.Ct. 3034].) Moreover, principles of equal protection have never required the State to remedy all ills or eliminate all variances in service.

Accordingly, the California Constitution does not guarantee uniformity of term length for its own sake. While the current statutory system for allocating State educational funds strongly encourages a term of at least 175 days (see fn. 14, *post*, at p. 687), that system is not constitutionally based and is subject to change. In an uncertain future, local districts, faced with mounting fiscal pressures, may be forced to seek creative ways to gain maximum educational benefit from limited resources. In such circumstances, a planned reduction of overall term length might be compensated by other means, such as extended daily hours, more intensive lesson plans, summer sessions, volunteer programs, and the like. An individual district's efforts in this regard are entitled to considerable deference.

Even unplanned truncation of the intended school term will not necessarily constitute a denial of "basic" educational equality. A finding of constitutional disparity depends on the individual facts. Unless the actual quality

of the district's program, viewed as a whole, falls fundamentally below prevailing statewide standards, no constitutional violation occurs.

Here, however, plaintiffs' preliminary showing suggested that closure of the District's schools on May 1, 1991, would cause an extreme and unprecedented disparity in educational service and progress. District students faced the sudden loss of the final six weeks, or almost one-fifth, of the standard school term originally intended by the District and provided everywhere else in California.[14] The record indicates that the decision to close early was a desperate, unplanned response to the District's impending insolvency and the impasse in negotiations for further emergency State aid.[15] Several District teachers declared that they were operating on standard-term lesson schedules made at the beginning of the school year. These declarants outlined in detail how the proposed early closure would prevent them from completing instruction and grading essential for academic promotion, high school graduation, and college entrance.[16] Faced with evidence of such extensive educational disruption, the trial court did not abuse its discretion

[14]The trial court record contains no evidence of the prevailing term length in California, but the parties assumed below that a minimum term of 175 days prevails, and no dispute has arisen on the issue here. The statutes provide that an established local district may not receive any part of its annual apportionment from the State School Fund if it failed to remain in session at least 175 days during the most recent fiscal year, unless specified circumstances excusing the failure are established to the satisfaction of the SPI. (§§ 41420, subd. (a), 41422.) In an appendix to his brief, the SPI provides copies of local district certifications, submitted to the SPI as a condition of funding under section 41420, which indicate that virtually every established school district in California operated for at least 175 days during the 1990-1991 school year. The SPI asks us to take judicial notice of this information. Having received no objection, we do so. (Evid. Code, §§ 452, subds. (c), (h), 455, 459.)

[15]The declaration of Board member Calton, dated April 12, 1991, detailed the District's growing financial woes and stated the following: ". . . The District has only enough money to pay its employees through April 1991 [even under the most favorable accounting assumptions]. . . . Unless (a) additional funds are received, or (b) employees are willing to work for registered warrants, not redeemable checks, the District will have no alternative but to close all of its public schools at the end of April 1991. [¶] . . . The District has applied to the State of California for a loan, but that request has not been approved. It is my understanding that [collective bargaining concessions demanded by the State] have not been made, although negotiations are continuing. The District has retained bankruptcy counsel, . . . and is preparing to file for bankruptcy prior to April 30, 1991, if necessary."

[16]For example, John Enos, a high school government/economics teacher, stated that early termination of his required senior government class would eliminate intended lessons covering the State's executive and judicial branches, and county and local government. Geoffrey Cantrell, a high school mathematics teacher, stated that if the District closed early, Algebra I students would miss essential instruction in quadratic equations; Algebra II students would miss essential instruction in trigonometry; and geometry students would miss lessons in coordinate systems, logical proof, and trigonometric ratios. Craig Brammer, another high school mathematics teacher who also teaches a preparatory course for the Scholastic Aptitude Test (SAT), opined that loss of six weeks' instruction would severely impair his students' chances on the mathematics portion of the SAT. Betty Jean Crenshaw, a teacher of first-year languages, declared that early closure would prevent students from learning vocabulary and

by concluding that the proposed closure would have a real and appreciable impact on the affected students' fundamental California right to basic educational equality.

The State asserts that its financial obligation to equal education is limited to the equalized system of interdistrict funding required by our *Serrano* decisions. Once revenues are fairly apportioned at the beginning of each school year, the State insists, it cannot be constitutionally liable for how local officials manage the funds.

Nothing in the *Serrano* cases themselves, or in other California decisions, supports the State's argument. On the contrary, the cases suggest that the State's responsibility for basic equality in its system of common schools extends beyond the detached role of fair funder or fair legislator. In extreme circumstances at least, the State "has a duty to intervene to prevent unconstitutional discrimination" at the local level. (*Tinsley*, *supra*, 91 Cal.App.3d at p. 904.)

The State's most vigorous contention is that its nonintervention should have been upheld even under the strict scrutiny standard of equal protection analysis. Allowing the District's students to absorb the consequences of District mismanagement, the State urges, was necessary to preserve the State's compelling educational policy of local autonomy and accountability. However, the State fails to demonstrate a policy of local control so compelling as to justify State tolerance of the extreme local educational deprivation at issue here.

In the first place, the local-district system of school administration, though recognized by the Constitution and deeply rooted in tradition, is not a constitutional mandate, but a legislative choice. (See Cal. Const., art. IX, §§ 6½, 14.) The Constitution has always vested "plenary" power over education not in the districts, but in the State, through its Legislature, which may create, dissolve, combine, modify, and regulate local districts at pleasure. (See *Tinsley*, *supra*, 91 Cal.App.3d at p. 904.) The legislative decision

grammar necessary for advancement to second-year courses. Amy Shinsako, a first grade teacher, stated that early closure would prevent instruction in phonics, reading comprehension, creative writing, handwriting skills, two-digit addition and subtraction, and addition with three addends, all necessary for advancement to the second grade. Several declarants noted that failure to complete the term would prevent the scheduling of final examinations and other term-end projects crucial to the assignment of final grades. Other declarants detailed the difficulties District students would face if forced to transfer to other districts to complete the year's studies. They also noted that unless graduating seniors completed required courses and received final grades, the District might not be able to award high school diplomas, any diplomas awarded would be "stigmatized," and the ability of departing seniors to qualify for college admission might be seriously compromised.

to emphasize local administration does not end the State's constitutional responsibility for basic equality in the operation of its common school system. Nor does disagreement with the fiscal practices of a local district outweigh the rights of its blameless students to basic educational equality.

Moreover, though the Constitution and statutes encourage maximum local program and spending authority consistent with State law (Cal. Const., art. IX, § 14; Ed. Code, §§ 14000, 35160, 35160.1), the degree of supervision voluntarily retained by the State over the common school system is high indeed. The volume and scope of State regulation indicate the pervasive role the State itself has chosen to assume in order to ensure a fair, high quality public education for all California students.

School finance aside, the statutes address at length such matters as county and district organization, elections, and governance (§§ 4000-5450, 35000-35780); educational programs, instructional materials, and proficiency testing (§§ 51000-62008); sex discrimination and affirmative action (§§ 40-41, 200-263, 44100-44105); admission standards (§§ 48000-48053); compulsory attendance (§§ 48200-48416); school facilities (§§ 39000-40048); rights and responsibilities of students and parents (§§ 48900-49079); holidays (§§ 37220-37223); school health, safety, and nutrition (§§ 32000-32254, 49300-49570); teacher credentialing and certification (§§ 44200-44481); rights and duties of public school employees (§§ 44000-44104, 44800-45460; see also Gov. Code §§ 3540-3549.3 [organizational and bargaining rights]); and the pension system for public school teachers (§§ 22000-24924). The statutory scheme has spawned further voluminous regulations administered by the State's Department of Education and the SPI. (Cal. Code Regs., tit. 5, §§ 1-23005.) This long-established level of State involvement in the public education system undermines any claim that local control is a paramount and compelling State policy for all purposes.

Nor is there any indication that the State has had a compelling policy of absolute budgetary freedom and responsibility for local districts. On the contrary, during the years in which the District's deficit developed, districts were required to adopt budgets meeting State standards, and to submit them for oversight and approval by county and State authorities. (§§ 33127, former §§ 42120-42129.) Failure to adopt a conforming budget precluded State or county funding of the district (former § 42128), and a district was required to operate under its most recent approved budget (former § 42127.4).

The State argues that by saddling the District with long-term debt to cover short-term operations, the trial court's orders undermine the District's future

financial health and compromise its ability to provide basic educational equivalency in years to come. The State also urges that other districts will feel free to overspend if encouraged to believe in the availability of State relief.

These are indeed troubling concerns, but we cannot accept the implication that the State deems them compelling. In fact, the State itself has endorsed a policy of emergency conditional loan assistance to districts in financial difficulty.

Under statutes in effect since 1977, distressed districts may, through the SPI, seek specific legislative apportionments for emergency loans. (§§ 41310, 41310.5, 41320 et seq.) As a condition of such aid, a district must prepare a financial recovery plan and obtain approval of the plan from the county superintendent and the SPI. (§ 41320.) The district must also accept a temporary SPI-appointed trustee with veto power over financially significant actions of the local governing board. (§ 41320.1.)

The District itself had received a $9,525,000 conditional State loan under this program in spring 1990 (Stats. 1990, ch. 171, § 3), and its operations were already being monitored by a State trustee at the time closure of District schools was threatened in April 1991. The 1989 Legislature had also appropriated $10 million for a similar emergency loan-with-trustee to the OUSD. (Stats. 1989, ch. 1438, §§ 1-11.) Under these circumstances, the State cannot claim it follows a compelling policy of local control by declining to intervene when financial adversity threatens a district's operations.

Shortly before this lawsuit began, the District faced the prospect of further legislative intervention in its crisis. Assembly Bill No. 128, 1991-1992 Regular Session (A.B. 128), as introduced in December 1990 and thereafter amended, would have appropriated an additional $29 million for emergency loans to the District. Acceptance of the proposed loan would have subjected the District to unprecedented restrictions on self-government. These included a temporary takeover of all District affairs by an SPI-appointed administrator pending approval and implementation of a plan for financial recovery and loan repayment. The administrator would have had broad power, among others, to unilaterally determine wages and benefits for all District employees who, as of April 29, 1991, were not covered by ratified collective bargaining agreements meeting the requirements of an approved recovery plan. (A.B. 128, Sen. Amend. of Jan. 18, 1991, §§ 2, 5.)

A.B. 128 failed passage, but that fact does not suggest a compelling policy against emergency State financial assistance to a local district. On the

contrary, the State has forged into the realm of emergency assistance and control, using the "specific appropriation" requirement (§ 41320) to decide on a case-by-case basis whether, and on what terms, it will intervene.

The State claims that emergency assistance to mismanaged districts contravenes the compelling principle of equalized funding established in our *Serrano* decisions. As we have seen, however, nothing in the *Serrano* cases, which addressed wealth-based disparities in district revenues, prohibits emergency State assistance to a particular district which is experiencing financial difficulties despite its receipt of equalized funding.[17]

Finally, nothing in our analysis is intended to immunize local school officials from accountability for mismanagement, or to suggest that they may indulge in fiscal irresponsibility without penalty. The State is constitutionally free to legislate against any recurrence of the Richmond crisis. It may further tighten budgetary oversight, impose prudent, nondiscriminatory conditions on emergency State aid, and authorize intervention by State education officials to stabilize the management of local districts whose imprudent policies have threatened their fiscal integrity. To the extent such conditions compromise local autonomy and mortgage a district's future, they are not calculated to persuade local officials or their constituents that mismanagement and profligacy will be rewarded.

Indeed, in response to this case, the Legislature and the Governor have already agreed to tighter county and State control of local district budgets and spending.[18] Under certain circumstances, this new legislation *requires* the SPI's complete takeover of an insolvent district as a precondition of an

[17]The *Serrano* decisions themselves, as well as the subsequent adoption of Proposition 13, have exacerbated the need for occasional emergency State intervention by restricting one aspect of local control—the power of local districts to tax themselves out of financial crises. Our *Serrano* opinions condemned the former dependence of school finance on local ad valorem property taxes, because, as a practical matter, however willing a local district might be to increase taxes for education, "districts with small [real property] tax bases simply cannot levy taxes at a rate sufficient to produce the revenue that more affluent districts reap with minimal tax efforts. . . ." (*Serrano I*, *supra*, 5 Cal.3d 584, 598.) In obedience to *Serrano* principles, the current system of public school finance largely eliminates the ability of local districts, rich or poor, to increase local ad valorem property taxes to fund current operations at a level exceeding their State-equalized revenue per average daily attendance. (§ 42238 et seq.) Moreover, Proposition 13 places a general ceiling on the ad valorem property taxes which may be levied on behalf of local governments and school districts. (Cal. Const., art. XIII A, § 1.).

[18]Legislation adopted in 1991 provides, among other things, that if a local district's proposed budget fails to win final county and State approval, the county superintendent of schools shall adopt a governing budget for the district which permits the district to meet current and "multiyear" commitments. The county superintendent may rescind any district action or payment which is inconsistent with the county superintendent's budget, except those

emergency State appropriation.[19] Thus, the State has already made vast inroads on the principle that local control is paramount to State intervention in an insolvent district's affairs. The State's plenary power over education includes ample means to discourage future mismanagement in the day-to-day operations of local districts.

In sum, the California Constitution guarantees "basic" equality in public education, regardless of district residence. Because education is a fundamental interest in California, denials of basic educational equality on the basis of district residence are subject to strict scrutiny. The State is the entity with ultimate responsibility for equal operation of the common school system. Accordingly, the State is obliged to intervene when a local district's fiscal problems would otherwise deny its students basic educational equality, unless the State can demonstrate a compelling reason for failing to do so.

The preliminary facts before the trial court support the inference that the District's impending failure to complete the final six weeks of its scheduled school term would cause educational disruption sufficient to deprive District students of basic educational equality. The State has identified no compelling interest which negated its duty to intervene. We therefore find no abuse of discretion in the trial court's conclusion that plaintiffs' constitutional claims had potential merit.[20]

3. *Interim harm.*

The trial court also expressly concluded that plaintiffs, District students and their parents, would suffer "substantial and irreparable harm" if a preliminary injunction were denied. This harm, the court further found,

in performance of a previously effective collective bargaining agreement. (§ 42127.3, subd. (b)(1), as amended by Stats. 1991, ch. 1213, § 18.) The county superintendent must also monitor all local budgets continuously to ensure that each district can meet its financial obligations for the current and ensuing fiscal years. A county superintendent's determination that a district will be unable to meet its obligations triggers a process which may culminate in forced revisions to the district's budget and rescission of actions, other than collective bargaining obligations, which are inconsistent with the revisions. (§ 42127.6, added by Stats. 1991, ch. 1213, § 20.)

[19]New sections 41325 through 41327 provide that when a local district accepts an emergency appropriation more than twice the size of its State-recommended reserve, the SPI must take control of the district for at least two fiscal years, assume all duties and powers of the local governing board, fire district officials who took no action to avert insolvency, impose a recovery plan including a ten-year repayment schedule, and remain in control until satisfied that local compliance with recovery requirements is probable.

[20]Our conclusion that the trial court's finding of probable merit is supported by the equal protection clauses of the California Constitution makes it unnecessary to address claims that a State duty of intervention may also have arisen under the "free school" clause or the Fourteenth Amendment.

would be "greater . . . than defendants will suffer if the injunction is granted."

These determinations were based upon the uncontradicted declarations of District teachers, local and regional public school officials, and academic specialists in the field of public education. Besides detailing the severe and immediate academic disruption which would arise from the pending closure (see discussion, *ante*, fn. 16, at p. 687), these declarations set forth at length the "ripple" effect on District parents and students. For example, the declarations recounted, working parents, including the high percentage of needy families in the District, would be faced with expensive child care for the lost school hours; difficult efforts would be required to obtain other placement of the students for the remainder of the year; and special-need students would lose carefully nurtured progress.

The State submitted no evidence that it would suffer comparable or greater harm by offering emergency loan assistance necessary to ensure completion of the District's academic program for 1990-1991. Instead, the State simply argued that court-ordered State aid would damage the State's public school policies of local control and accountability.

(6) The State nonetheless claims plaintiffs' "interim harm" showing was inadequate as a matter of law. In the State's view, plaintiffs' declarations failed to establish that the early closure was unforeseeable, or to explain persuasively why any adverse effects on student progress could not be ameliorated.

We find the trial court's interim-harm findings amply supported. As previously noted, plaintiffs' preliminary showing suggested that the District's inability to complete its school year arose from its ever-worsening fiscal condition and from the deterioration of its negotiations for emergency aid. The declarations of District teachers uniformly indicated that their lesson plans did not provide for the contingency of early closure. Other declarations detailed the difficulties of alternate arrangements to maintain the educational progress of over 31,000 suddenly displaced District students, who included high school seniors poised for graduation. The court could reasonably infer that orderly planning to minimize the resulting educational disruption had not taken place and was not realistically possible.

In any event, the court was not obliged to deny a preliminary injunction simply because plaintiffs failed to demonstrate that "irreparable" harm to students was unavoidable by other means. The preliminary record properly convinced the court *both* that plaintiffs had a reasonable probability of

success on the merits, *and* that they would suffer more harm in the meantime if an injunction were denied than the State would suffer if it were granted. This "mix" of the "interrelated" relevant factors fully justified the court's decision to grant the injunction. (See *Common Cause* v. *Board of Supervisors*, *supra*, 49 Cal.3d at pp. 441-442; *King* v. *Meese*, *supra*, 43 Cal.3d at p. 1227.) No error appears.

4. *Scope of remedial order.*

In orders dated April 29, 1991, and May 2, 1991, the trial court directed the State, the SPI, and the Controller to ensure "by whatever means they deem appropriate" that District students would receive their educational rights; both orders made clear that "[h]ow these defendants accomplish this is up to the discretion of defendants. . . ." When no other State official proposed a solution, the SPI and the Controller, on May 2, 1991, offered a conditional loan plan for approval by the court.

After a hearing on that day, the court found that $19 million in aid funds proposed by the SPI and the Controller were presently available, and the court authorized the Controller to apportion such funds as an emergency loan to the District. The court further determined that, given the State's obligation to provide an equal education, the SPI's statutory authority to "[s]uperintend the schools of this state" (§ 33112, subd. (a)), and the "unique" emergency circumstances, "the [SPI] . . . has authority to relieve the [Board] of its legal duties and powers, appoint a trustee, develop a recovery plan and, subject to the approval of the Controller, [develop] a repayment plan on the [D]istrict's behalf as necessary to ensure the operation of the schools through June 14, 1991, the financial recovery of the [D]istrict, and the protection of State funds loaned to the [D]istrict."

(7a) The State and several amici curiae contend that even if the trial court could require State intervention to prevent violation of the District students' constitutional rights, there was no legal or equitable basis for the court's order authorizing the SPI to displace the Board, operate the District through his own administrator, and impose a plan for the District's permanent financial recovery. Under the circumstances presented by this case, however, we conclude that this portion of the court's order did not exceed its powers.

We agree that the statutes themselves provided no direct authority for the approach taken by the trial court. In general, though they act as regulated State agents, local governing boards are vested by statute with immediate jurisdiction over day-to-day district affairs. (§§ 14000, 35000 et seq.) The

SPI has important statutory responsibilities for allocating school funds (§§ 33118, 14000 et seq.), monitoring local budgets (§§ 42120 et seq., 41450), and administering the conditions of emergency loans *appropriated by the Legislature* (§§ 41310, 41320 et seq.; see also § 41325 et seq.), but no statute grants him emergency powers to operate a local district under other circumstances.[21]

The court relied in part on section 33112, subdivision (a), which provides that the SPI shall "[s]uperintend the schools of this state." But no case has interpreted this statute to vest the SPI with nonexpress powers, and an older decision construed similar language narrowly against a county superintendent. (*McKenzie* v. *Board of Education* (1905) 1 Cal.App. 406, 409 [82 P. 392].) Indeed, counsel for the SPI conceded in the trial court that the SPI had no statutory authority to take over the District's government.

The trial court also believed its takeover order was within its inherent equitable power to enforce the State's constitutional obligations in light of the "unique emergency financial conditions" presented by the case. In the court's view, ratification of all loan conditions proposed by the SPI was necessary to ensure the District's continued operation through June 14, 1991, promote its permanent financial recovery, and protect the loan itself. We agree.

(8) In general, courts have equitable authority to enforce their constitutional judgments. (E.g., *Crawford* v. *Board of Education*, *supra*, 17 Cal.3d 280, 308.) Of course, principles of comity and separation of powers place significant restraints on courts' authority to order or ratify acts normally committed to the discretion of other branches or officials. (*Common Cause* v. *Board of Supervisors*, *supra*, 49 Cal.3d 432, 445-446; *Mandel* v. *Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; *Serrano II*, *supra*, 18 Cal.3d 728, 751; *Crawford* v. *Board of Education*, *supra*, 17 Cal.3d at pp. 305-306; cf. *Missouri* v. *Jenkins* (1990) 495 U.S. 33, 50-58 [109 L.Ed.2d 31, 53-59, 110 S.Ct. 1651].) In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature.

Moreover, a judicial remedy must be tailored to the harm at issue. (E.g., *Sheet Metal Workers* v. *EEOC* (1986) 478 U.S. 421, 476 [92 L.Ed.2d 344, 388, 106 S.Ct. 3019]; *Dayton Board of Education* v. *Brinkman* (1977) 433

[21] A.B. 128 would have granted the SPI powers of this magnitude over the District, but the bill failed passage. (See discussion, *ante*, at p. 690.) 1991 statutory amendments call for the SPI's takeover of districts that accept large emergency insolvency *appropriations* (§ 41325 et seq.; see discussion, *ante*, fn. 18 at p. 691), but even after 1991, the SPI has no such statutory authority *independent* of a specific insolvency appropriation by the Legislature.

U.S. 406, 420 [53 L.Ed.2d 851, 863-864, 97 S.Ct. 2766].) A court should always strive for the least disruptive remedy adequate to its legitimate task.

(7b) The trial court's remedial order in this case fell within proper boundaries. Having correctly held the State constitutionally responsible for the students' rights, the court could not deny the State and its officials effective means of fulfilling its obligation. Under the circumstances, the court was warranted in authorizing temporary transfer to the SPI of the Board's statutory powers over District affairs.

The emergency the court confronted on May 2, 1991, demanded a prompt State-assisted solution to prevent immediate closure of the District's schools. The State was justified in satisfying its constitutional duty of aid by extending a loan that would impose the ultimate consequences of the District's self-created predicament upon the District, rather than upon the State, its taxpayers, and the students of other districts. The State was also entitled to conditions on the loan that would ensure its appropriate use for the intended constitutional purpose, and would minimize the risk of the District's default in repayment.

The District's ability to administer the new loan under its existing systems and managers was uniquely suspect. As a matter of public record, the District's worsening financial situation had recently led the Legislature to provide a loan in excess of $9 million. A limited-powers State trustee appointed to monitor the District's fiscal affairs in connection with that loan had not been able to stem a growing District deficit estimated by one declarant, a member of the Board, to exceed $23 million for the 1990-1991 school year alone. In response to these difficulties, the Board had caused the District to seek bankruptcy protection against its existing creditors.

As counsel for the SPI explained on April 29, 1991, the District's unprecedented financial collapse indicated systemic management problems. Hence, counsel reported, the SPI considered it foolhardy to extend further substantial State credit to the District unless its management was placed in competent hands, its administrative practices were reformed and restructured from the outside, and a long-term plan for its financial recovery was imposed.[22] On behalf of the State, the Attorney General contested the legality of vesting such extraordinary powers in the SPI, but no party disputed the logic of the SPI's position.

[22]The following colloquy occurred between the court and counsel for the SPI: "[¶] MR. HERSHER [SPI's counsel]: . . . [The SPI] does not want to make . . . 20 to 30 million dollars in state funds available to a district that has already demonstrated substantial financial irresponsibility. It's pouring state money into a hole and it's never going to come back out. [¶] THE COURT: Would he want to do that if the State was given the responsibility for running the district as you suggested? [¶] MR. HERSHER: I believe so. I think what Bill Honig sees is that

Nor can we. Given the emergency circumstances, and under the extreme and aggravated conditions disclosed by the evidence, the court below could properly conclude that orderly completion of the District's 1990-1991 school term, and the sound financing essential to achieve that end, required temporary displacement of the sitting Board and the operation of the District by the SPI's designee for the purpose of stabilizing its financial affairs.[23] We conclude that the order approving temporary takeover of the District by the SPI was within the court's inherent equitable power to remedy the constitutional crisis.[24]

5. *Source of loan funds.*

In order to obtain the necessary $19 million in emergency loan funds, the trial court authorized the Controller to disburse (1) $9 million of unspent funds from a special contingency appropriation to the Department of Education for the GAIN program, and (2) the unused $10 million appropriated as an emergency loan to the OUSD. (9) The State and amicus curiae Pacific argue that because the Legislature had not earmarked either of these sums

the District has to be reorganized. The financial management of the District needs to be completely restructured, and there needs to be a long-term recovery plan . . . . [I]t has always been [the SPI's] position that somebody needs to . . . take over the District, come up with a long-term plan in which all the creditors of the District suffer equally or equitably."

[23]Amici curiae Diaz and Bezemek ask us to receive additional evidence and make findings about the SPI's record as administrator of the District after May 2, 1991. Among other things, Diaz and Bezemek allege that the SPI's administrator has withdrawn the District's bankruptcy petition, dismantled essential programs, failed to reappoint a citizens' advisory committee, restructured the District's administration, dismissed faculty and counselors, obstructed reorganization of the District's existing debt, imposed an unconscionable interest rate on the court-approved loan, and diverted educational funds to debt repayment. Diaz and Bezemek claim this evidence supports their contention that the SPI's governance of the District presents an inherent conflict between his role as protector of State-loaned funds and his duty to restore the District to financial and educational health.

Appellate courts have limited powers to take evidence and find facts in nonjury civil cases. (Cal. Const., art. VI, § 11; Code Civ. Proc., § 909; Cal. Rules of Court, rule 23(b).) However, the matters Diaz and Bezemek seek to present are beyond the scope of this lawsuit and unnecessary to our analysis. Moreover, Diaz and Bezemek concede the proffered evidence is disputed; appellate courts will not resolve such factual conflicts. (E.g., *In re Marriage of Davis* (1983) 141 Cal.App.3d 71, 75-76 [190 Cal.Rptr. 104]; see *McCracken* v. *Teets* (1953) 41 Cal.2d 648, 653 [262 P.2d 561].) We therefore deny the motion.

[24]The State argues that even if extraordinary judicial interference in the District's affairs was necessary to guarantee the constitutional rights of District students, the court erred by granting the SPI extralegal "discretion" to act rather than assuming control over the District itself, with the SPI as the court's appointed agent. The State cites no authority for its proposition that the court's remedial options were so narrowly confined. The remedial order of May 2, 1991, makes clear that the authority therein accorded the SPI flows from a direct and critical exercise of the court's equitable power and jurisdiction over the constitutional dispute. The order laudably minimizes direct judicial involvement in matters best left to officials with specific responsibilities and expertise in education, but its effect is no different than if it had expressly made the SPI a court functionary. We find no error.

for purposes "reasonably related" to resolving the District's financial crisis, the court improperly invaded the nonjudicial power of appropriation.

We agree. In a valid exercise of its constitutional powers, the Legislature had directed each of these sums to specific agencies and narrow purposes which did not include the District and its financial emergency. Hence, the Legislature had not made these funds reasonably available for disbursement to the District. By diverting the funds from their earmarked destinations and purposes, the court invaded the Legislature's constitutional authority.

Article III, section 3 of the Califonia Constitution provides that "[t]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." Article XVI, section 7 provides that "[m]oney may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." Article IV, sections 10 and 12 set forth the respective powers of the Legislature and Governor over the enactment of appropriations. It has long been clear that these separation-of-powers principles limit judicial authority over appropriations. (*Myers* v. *English* (1858) 9 Cal. 341, 349; see *Westinghouse Electric Co.* v. *Chambers* (1915) 169 Cal. 131, 135 [145 P. 1025]; *California State Employees' Assn.* v. *Flournoy* (1973) 32 Cal.App.3d 219, 234 [108 Cal.Rptr. 251]; see also *Payne* v. *Superior Court* (1976) 17 Cal.3d 908, 920, fn. 6 [132 Cal.Rptr. 405, 553 P.2d 565].)

In certain narrow circumstances, California courts have concluded that judicial orders for the disbursement of appropriated funds do not invade valid legislative functions. *Mandel* v. *Myers*, *supra*, 29 Cal.3d 531, is the only decision by this court which found judicial power to "commandeer" appropriated funds. The facts and analysis of that case demonstrate the strict limits on the judicial authority it recognized.

The plaintiff in *Mandel*, a Department of Health Services (DHS) worker, had prevailed in litigation challenging DHS's practice of allowing paid employee leave on Good Friday. The judgment against the State included an award of attorney fees. However, the Legislature removed appropriations for payment from successive claims and budget bills, including the 1978-1979 Budget Act (Act). The Act included the usual appropriation to DHS for "general operating expenses and equipment," which expressly included expenses for "services" and "all other proper purposes." Such "catchall" budget categories for State agencies had traditionally been used to pay agency legal expenses. However, the Act expressly precluded use of any appropriation therein "to achieve any purpose which has been denied by any formal action of the Legislature."

We upheld the trial court's order that the Controller pay the fee award from the general operating budget of DHS. We noted first that the "catchall" appropriation was "reasonably" or "generally" available for payment of legal expenses incurred by DHS, because the broad terms of the appropriation, as well as its historical uses, indicated such a legislative intent. In effect, we concluded that the Legislature had voluntarily made an appropriation for payments of this general kind. (*Mandel* v. *Myers*, *supra*, 29 Cal.3d at pp. 539-545.)

We further explained that, once having made an appropriation generally available, the Legislature may not impose specific restrictions which are unconstitutionally discriminatory, or which constitute an impermissible legislative attempt to readjudicate the merits of a final court judgment. Hence, we reasoned, the Legislature's attempt to avoid payment of the *Mandel* award in particular must be struck down. The DHS "catchall" appropriation thus remained "available" under its general terms for payment of the judgment. (*Mandel* v. *Myers*, *supra*, 29 Cal.3d at pp. 545-551.)

Subsequent Court of Appeal decisions adhered to these principles of *Mandel*. In *Serrano* v. *Priest* (1982) 131 Cal.App.3d 188 [182 Cal.Rptr. 387], attorneys who had won the school-finance class action sought judicial help after the State rebuffed their informal efforts to collect a court-ordered fee award. After *Mandel* was decided, the State conceded that the trial court had properly ordered payment from a "catchall" appropriation to the Department of Education, the SPI, and the State Board of Education for "operating expenses and equipment." (Pp. 197-198.) In *Committee to Defend Reproductive Rights* v. *Cory* (1982) 132 Cal.App.3d 852 [183 Cal.Rptr. 475], the court concluded, after disregarding an unconstitutional budget act provision against use of Medi-Cal funds for abortions (see *Committee to Defend Reproductive Rights* v. *Myers* (1981) 29 Cal.3d 252 [172 Cal.Rptr. 866, 625 P.2d 779, 20 A.L.R.4th 1118]), that abortion funding could be ordered from monies appropriated for other Medi-Cal pregnancy services. (132 Cal.App.3d at pp. 857-858.)

Plaintiffs and the SPI suggest that two more recent Court of Appeal decisions, *Long Beach Unified Sch. Dist.* v. *State of California* (1990) 225 Cal.App.3d 155 [275 Cal.Rptr. 449] and *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521 [234 Cal.Rptr. 795], have expanded *Mandel*'s concept of "reasonable [or] general availability." The trial court in the instant case apparently relied on these decisions to conclude that it could divert the GAIN and OUSD appropriations to the District because they were "generally related" to education.

Long Beach and *Carmel Valley* do make occasional use of the term "generally related" to describe *Mandel*'s principle of reasonable or general

"availability." (See *Long Beach*, *supra*, 225 Cal.App.3d at p. 181; *Carmel Valley*, *supra*, 190 Cal.App.3d at p. 541.) But nothing in those cases supports the trial court's apparent view that funds appropriated for one specific educational purpose may be judicially diverted to another. So far as the face of the opinions discloses, the stated intent of the target appropriation in each case, or its historical uses, indicated that the court's application of the funds was plausibly within purposes the Legislature might have contemplated.[25] No court has suggested that *Mandel* principles permit court-ordered diversion of an appropriation away from a clear, narrow, and valid purpose specified by the Legislature. We affirm that the words "generally related," as used in *Long Beach* and *Carmel Valley*, do not countenance such judicial incursions into the legislative power over appropriations.[26]

The instant trial court misapplied *Mandel* when it authorized the diversion of appropriated funds from the specific purposes and programs for which the Legislature had validly earmarked them. Nine million dollars was taken from an appropriation in the 1989-1990 Budget Act for the GAIN program. (Stats. 1989, ch. 93, § 22.00.) GAIN's purpose is to provide employment, adult

[25]In *Carmel Valley*, the Court of Appeal struck down budgetary language which had been inserted to foreclose the constitutionally required reimbursement of local agencies for expenses incurred in upgrading firefighter protective clothing as mandated by the State. (See Cal. Const., art. XIII B, § 6.) After disregarding these unconstitutional restrictions, the Court of Appeal quite logically determined that funds appropriated to the Department of Industrial Relations for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers, were available for this expense. (*Carmel Valley*, *supra*, 190 Cal.App.3d at p. 541.) In *Long Beach*, a local school district sought reimbursement for the State-mandated expenses of developing desegregation programs. After the Legislature deleted an appropriation for this purpose from the 1985-1986 budget bill, the district obtained a trial court order for reimbursement from specified line-item accounts related to education, and from the general operating budget of the Department of Education, which had mandated the programs. The Court of Appeal affirmed on grounds that the record substantially supported the trial court's order. As the Court of Appeal explained, these and similar accounts had historically been used to support programs such as the one for which reimbursement was sought, and were logical sources of funding for this specific purpose. (*Long Beach*, *supra*, 225 Cal.App.3d at pp. 181-182; see also p. 185.)

[26]We are aware that in *Missouri* v. *Jenkins*, *supra*, 495 U.S. 33, the United States Supreme Court upheld the power of federal courts to order local tax levies to enforce judicial remedies for unconstitutional school segregation. However, even if the federal Constitution permits federal courts to impose far-reaching remedies for State government violations of federal constitutional rights, it does not follow that California courts are exempt from the constraints imposed by the California Constitution upon their power to invade the functions of a coequal branch of State government.

Indeed, the California Constitution's separation of powers clause precludes any branch from usurping or improperly interfering with the essential operations of either of the other two branches. (See Cal. Const., art. IV, § 1 [legislative power]; Cal. Const., art. V, § 1 [executive power]; Cal. Const., art. VI, § 1 [judicial power].) Nothing in this opinion should be interpreted as sanctioning or immunizing such unconstitutional interference, or as addressing the question of the appropriate remedies that may be invoked in the event one branch improperly impinges on the essential operations of a coequal branch.

education, and job training to recipients of public assistance. (Welf. & Inst. Code, § 11320 et seq.) Local school districts can receive GAIN funds for adult education and training classes (*id.*, §§ 11320.8, 11322, 11323), and the Legislature intended that the 1989-1990 GAIN appropriation might include such funding subject to strict conditions (see Stats. 1989, ch. 93, § 22.00, subd. (b)). However, this appropriation was expressly designated for that program alone and was not intended to fund the needs of non-GAIN students. Nothing in the trial court's order restricted use of the GAIN-derived funds to uses contemplated by the appropriation.

Similar considerations govern the remaining $10 million of the emergency loan, which was derived from the 1989 Legislature's special appropriation for the OUSD. This appropriation, by its express terms, was "for the purpose of an emergency loan *to* [*that*] [*d*]*istrict* in compliance with Article 2 (commencing with Section 41320) of Chapter 3 of Part 24 of the Education Code." (Stats. 1989, ch. 1438, § 1, italics added.)

Section 41310 expresses the intent that emergency loans to distressed districts under section 41320 et seq. not occur "unless funds have been *specifically* appropriated *therefor* by the Legislature." (Italics added.) The statutory scheme imposes detailed conditions on emergency loans granted under its auspices (§§ 41320.1-41323), and the Legislature further refined the conditions on the OUSD appropriation to address the particular circumstances of that case (Stats. 1989, ch. 1438, §§ 2-9).

When it makes an appropriation to a specific district, under specific conditions addressed to the problems of that district, the Legislature clearly intends and contemplates that the appropriation will only be used for that purpose, and under those conditions. Hence, the appropriation is not reasonably available for court-ordered diversion to another district under different conditions.

The trial court, understandably anxious to resolve the crisis, concluded that it could fund its order from any monies previously appropriated "for a purpose that is reasonably related to educational purposes." The court found that the GAIN and OUSD appropriations were "reasonably related to the State's obligation to keep the Richmond schools open through June 14, 1991 . . . ."

As we have seen, however, the test of reasonable availability under *Mandel* does not extend to uses clearly outside the particular purpose for which an appropriation was reserved. The GAIN and OUSD appropriations were earmarked for purposes entirely distinct from the subject matter of this

lawsuit.[27] They were not reasonably available for court diversion to finance the remainder of the District's school term.

In her concurring and dissenting opinion, Justice Kennard claims that by flatly disclaiming judicial power to divert appropriations from the purposes specified by the Legislature, we adopt a "formalistic" and outmoded view of the separation of powers. Citing language from two United States Supreme Court decisions (*Mistretta* v. *United States* (1989) 488 U.S. 361 [102 L.Ed.2d 714, 109 S.Ct. 647]; *Nixon* v. *Administrator of General Services* (1977) 433 U.S. 425 [53 L.Ed.2d 867, 97 S.Ct. 2777]), she proposes that interbranch conflicts of this kind be resolved under a "pragmatic" and "flexible" case-by-case balancing test, in which the derogation of one branch's powers by another may be warranted to promote overriding objectives within the "constitutional authority" of the latter. Because both the OUSD and GAIN appropriations were "generally related" to elementary and secondary education, she reasons, diversion of these funds to the District was not a "great" or "extreme" intrusion upon the appropriations power, and the court's action was justified by its constitutional responsibility to District students.

We cannot accept these contentions. Our adherence to *Mandel* can hardly be deemed rigid or formalistic; our decision in that case strained to find a practical, sensitive, and principled balance between legislative and judicial power over appropriations. In effect, Justice Kennard urges abandonment of *Mandel*'s careful analysis in favor of a rule giving the judiciary unchecked power to override the valid budgetary acts of coequal branches.

However, nothing in the California or federal cases on which Justice Kennard relies even hints that a court may *nullify* a *specific and valid exercise* by the Legislature and the Executive of fundamental budgetary powers explicitly entrusted to those branches, simply for the purpose of

[27]No party or amicus curiae suggests that the purposes specified by the Legislature for these two appropriations were "improper or invalid . . . restriction[s]" on their use which may be disregarded by the courts. (*Mandel* v. *Myers*, *supra*, 29 Cal.3d at p. 542.) This is not a case where the Legislature, in defiance of the Constitution or the judicial branch, had prohibited use of appropriations for particular purposes to which they would otherwise logically extend.

We recognize that, at the May 2 hearing, counsel for the OUSD indicated his client had "no objection" to diversion of its loan appropriation for the court's purposes. The OUSD's position may not have been entirely altruistic; on April 29, counsel had committed the OUSD to accepting an influx of displaced District students but expressed concern about the disruption such a solution would cause. Even if the OUSD believed that diversion of its appropriation was in its own best interests, however, the OUSD could not unilaterally alter the terms and conditions the Legislature had imposed on the appropriation. Moreover, the OUSD's waiver was conditional; counsel made clear that the OUSD reserved its right to demand refunding of the OUSD appropriation "if and when [the OUSD] chooses to exercise its rights to request a loan from the state of [$]10 million at any time up until June 30, 1993."

satisfying a judgment or order that is *unrelated* to the appropriation. (Compare, e.g., *Mistretta* v. *United States*, *supra*, 488 U.S. 361, 380-384 [102 L.Ed.2d 714, 735-738] [Congress's creation of United States Sentencing Commission, a judicial-branch agency charged with establishing mandatory federal sentencing guidelines, did not usurp authority of individual judicial officers or grant forbidden legislative power to judicial branch]; *Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. 425, 441-446 [53 L.Ed.2d 867, 889-893] [legislation vesting Administrator of General Services with limited control over presidential papers of resigned chief executive did not undermine authority of executive branch]; *Wilson* v. *Eu* (1991) 54 Cal.3d 471, 473 [286 Cal.Rptr. 280, 816 P.2d 1306] [Legislature's failure to reapportion justifies judicial adoption of reapportionment plan]; *Davis* v. *Municipal Court* (1988) 46 Cal.3d 64, 72-87 [249 Cal.Rptr. 300, 757 P.2d 11] [District attorney's statutory power to disapprove local misdemeanor-diversion program was not improper delegation of legislative authority; prosecutor's absolute discretion to prevent diversion by charging "wobbler" as felony did not constitute forbidden judicial power]; *Younger* v. *Superior Court* (1978) 21 Cal.3d 102, 115-118 [145 Cal.Rptr. 674, 577 P.2d 1014] [statute requiring Department of Justice to destroy individual's marijuana arrest and conviction records upon application after sentence is complete did not create impermissible conflict with executive clemency powers].)

The balance proposed by Justice Kennard in this case would elevate the judiciary above its coequal brethren, upset the delicate system of checks and balances, and stand the separation of powers clause on its head. Applying *Mandel*'s well-settled principles, we remain satisfied that the trial court acted in excess of its authority when it funded the District's loan with appropriations specifically earmarked by the Legislature for other purposes.[28]

CONCLUSION AND DISPOSITION

The District's financial inability to complete the final six weeks of its 1990-1991 school term threatened to deprive District students of their

[28]Although the instant record is silent on the point, Justice Kennard worries that there *may* have been no unearmarked educational appropriations available to enforce this trial court's order. She suggests further that such funds *may* also not be available under current laws and budgetary constraints to permit judicial enforcement of students' constitutional rights in similar future cases. These concerns have no practical effect in the instant lawsuit, because the State does not seek rescission of the District's loan, and the educational rights of the District's students are secure. In any event, we cannot overlook the fact that the urgency of the District's crisis denied the Legislature any opportunity to respond to the trial court's injunctive order. Once alerted by the trial court's constitutional ruling, however, the Legislature and the Governor have taken significant steps to prevent or remedy recurrences of the District's crisis. We may not assume they will fail or refuse to respond as necessary to our final determination of the State's constitutional responsibilities.

California constitutional right to basic educational equality with other public school students in this State. As the court further concluded, discrimination of this nature against education, a fundamental interest, could only be justified as necessary to serve a compelling interest. The State itself, as the entity with plenary constitutional responsibility for operation of the common school system, had a duty to protect District students against loss of their right to basic educational equality. Local control of public schools was not a compelling interest which would justify the State's failure to intervene.

The trial court thus properly ordered the State and its officials to protect the students' rights. The court also acted within its remedial powers by authorizing the SPI to assume control of the District's affairs, relieve the Board of its duties, and supervise the District's financial recovery. However, the court invaded the exclusive legislative power of appropriation by approving the diversion of appropriations for GAIN and the OUSD to an emergency loan for the District.

Accordingly, we reverse the trial court's remedial order of May 2, 1991, insofar as it approves funding of an emergency loan to the District from appropriations for the Oakland Unified School District and the Greater Avenues for Independence program. In all other respects, the court's orders of April 29 and May 2, 1991, are affirmed. The Court of Appeal is directed to remand the cause to the trial court for such further proceedings as may be appropriate under the views expressed in this opinion.

Panelli, J., Arabian, J., and George, J., concurred.

LUCAS, C. J., Concurring and Dissenting.—I concur with the majority's conclusions regarding the constitutional obligations of the State of California (State) to assure educational equality. I would not, however, address the propriety of the sources approved by the trial court to provide an emergency loan.

In my view, we need not consider questions regarding the use of the Oakland Unified School District (OUSD) emergency appropriation or the unused appropriation for the Greater Avenues for Independence (GAIN) program because the issues are moot and their resolution will have no impact on the status quo in this case. As the majority notes, at the May 2, 1991, proceeding, the State continued to object to the trial court's order arising out of the April 29, 1991, hearing. That order required the State, Superintendent of Public Instruction (SPI) and Controller, at their discretion and "by whatever means they deem appropriate," to ensure Richmond students were not deprived of six weeks of education provided to other students within California. In addition to renewing its basic position on the merits of the

constitutional arguments, the State also objected to use of the specific funds proposed by the SPI and Controller. It offered no alternative sources of funding and appealed from both orders.

Before us, however, the State does not demand rescission of the court-approved loan or any change in the status of that funding. The funding was granted as a loan and a loan repayment agreement has been worked out by the parties. The State, acknowledging those facts, expressly asserts "We do not argue that the Controller must be compelled immediately to recover the money." In other words, it seeks no relief from the trial court's order granting payment from the challenged sources and compelling repayment of the funds under a prescribed repayment schedule.

Accordingly, as the SPI observes, the matter is moot. The State's response, found in its reply brief, is only that "the trial court in the next case will still be guided by, unless this court disapproves the test, the 'generally related' test set forth in *Carmel Valley [Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 540-541 (234 Cal.Rptr. 795)] and *Long Beach [Unified Sch. Dist.* v. *State of California* (1990) 225 Cal.App.3d 155, 181-182 (275 Cal.Rptr. 449)]." It does not assert that this issue is capable of evading review because of timing or that a present controversy over the use of these particular funds still exists. Instead, it seeks guidance only for the future. I would decline to render what would essentially be an advisory opinion here. (See *People* ex rel. *Lynch* v. *Superior Court* (1970) 1 Cal.3d 910, 912 [83 Cal.Rptr. 670, 464 P.2d 126] ["The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court"].)

MOSK, J., Concurring and Dissenting.—I am in general agreement with the views expressed in Justice Kennard's concurring and dissenting opinion.

However, I cannot embrace the ill-advised concession that the trial court's order "did pose a potential for disruption of a function of the legislative branch" although the degree of potential disruption "is not great" and the purported infringement on the legislative function is "not substantial." (Kennard, J., *post*, conc. and dis. opn. at pp. 710, 711.)

The theory of potential interference with legislative functions to any extent is inconsistent with the ultimate conclusion that the funds used for the emergency loan were "reasonably related" to the educational purposes of the legislation, and, indeed, "the trial court's order furthered, rather than defeated, that valid legislative purpose." As persuasively observed in footnote 2, the "funds were appropriated for purposes reasonably and closely related

to the purpose for which the trial court ordered them to be used." (Kennard, J., *post*, conc. and dis. opn. at p. 711.)

Under the foregoing circumstances—with which I agree—there cannot be some conceptual interference, even though "not great," with the functions of the legislative branch.

With that caveat, I join the concurring and dissenting opinion.

KENNARD, J., Concurring and Dissenting.—I agree with the majority that the threatened closure of the schools of the Richmond Unified School District (District) was such an extreme departure from prevailing educational standards as to infringe on the students' state constitutional rights to basic educational equality, requiring the State of California (State) to intervene to protect those rights.

I do not agree, however, that the trial court violated the separation of powers doctrine by ordering that emergency loan funds be made available from an unused special appropriation to the Department of Education and an unused emergency appropriation to the Oakland Unified School District (OUSD). The majority has, in effect, declared that although the students' right to education is fundamental, no means may exist by which our judicial system can enforce that right. In my view, the trial court's order was an appropriate and pragmatic resolution of a difficult case under extreme pressure. Because the Legislature had already appropriated the funds in question for educational purposes reasonably related to the District's needs, I discern no constitutional violation, and would affirm the trial court's orders in their entirety.

I

On April 17, 1991, the District, facing a $23 million budgetary shortfall, announced its schools would close on May 1, 1991, rather than as scheduled on June 14, 1991. Parents of students in the District's schools then filed a class action against the State and the District's board of education, alleging the closure would deprive children of their fundamental right to education and would violate equal protection guarantees. The trial court granted plaintiffs' motion for a preliminary injunction, finding that "education is a fundamental right in California [and] unless injunctive relief is granted children in the District will be denied six weeks of instruction that will be provided to every other child in the State." The trial court ordered the State, the Superintendent of Public Instruction (Superintendent), and the State Controller "to ensure that the students in the District are not deprived of six

weeks of public education while others within the state are not so deprived." The trial court added that "how these defendants accomplish this is up to the discretion of the defendants."

Thereafter, the Superintendent and the Controller proposed a plan to keep the schools open. They proposed that $19 million in unspent funds from two educational programs—from the Greater Avenues for Independence (GAIN) program and from an appropriation to the OUSD—be loaned to the District. After an evidentiary hearing, the trial court ordered the State Controller to disburse an emergency loan to the District from these funds. This court denied the State's motion to stay the order pending appeal, but transferred the case here.

II

The majority holds that the trial court's remedial order violated the doctrine of separation of powers. Essentially, the majority reasons that by ordering that the unused funds be loaned to the District, the trial court impermissibly engaged in the appropriation of funds, an area of exclusive legislative concern.

The majority's conclusion originates from a fundamental misunderstanding of the separation of powers doctrine. Implicit in the majority's discussion is the assumption that under our tripartite scheme of government, particular powers can be definitively categorized as belonging to one of the three branches, and that these powers can never be exercised by a branch other than the designated branch. Thus, under the majority's approach, appropriation is exclusively a legislative function, and unless the Legislature has either appropriated funds for a specific purpose, or made a "catchall" appropriation under which a specific use of funds may fall, funds are simply not available for any purpose, no matter what rights are at stake.

This formalistic interpretation of the separation of powers concept is, however, contrary to modern understanding. The opinions of the United States Supreme Court, although not binding on this court in interpreting the separation of powers principles of the California Constitution, supply a persuasive body of case authority. Just as our state Constitution provides for the separation of the powers of government into three branches (Cal. Const., art. III, § 3), so does the federal Constitution segregate the branches of government (U.S. Const., art. I, § 1, art. II, § 1, & art. III, § 1).

The United States Supreme Court has "squarely rejected the argument that the Constitution contemplates a complete division of authority between the

three branches." (*Nixon* v. *Administrator of General Services* (1977) 433 U.S. 425, 443 [53 L.Ed.2d 867, 891, 97 S.Ct. 2777].) Rather than reading the federal Constitution as " 'requiring three airtight departments of government,' " the high court has adopted a "pragmatic, flexible approach." (*Id.* at pp. 443, 442 [53 L.Ed.2d at pp. 891, 890-891.) This approach, the court has explained, is supported by historical understanding. James Madison, one of the principal architects of the United States Constitution, wrote that the concept of separation of powers " 'd[oes] not mean that these departments ought to have no *partial agency* in, or no *control* over the acts of each other,' " but instead that " 'where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted.' " (J. Madison, The Federalist No. 47, pp. 325-326 (J. Cooke ed. 1961) (original italics), quoted in *Mistretta* v. *United States* (1989) 488 U.S. 361, 380-381 [102 L.Ed.2d 714, 735-736, 109 S.Ct. 647].) Thus, the basic purpose of the separation of powers is to guard against the concentration of power in the hands of one branch, but it is important to distinguish "partial agency" from those aggrandizements of power that pose genuine threats to the constitutional scheme.

The pragmatic and flexible approach favored by the nation's highest court is also appropriate because, in a society growing ever more complex, the practical requirements of efficient government action by each of the three branches must be considered. " 'While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government.' " (*Mistretta* v. *United States*, *supra*, 488 U.S. at p. 381 [102 L.Ed.2d at p. 736], quoting *Youngstown Sheet & Tube Co.* v. *Sawyer* (1952) 343 U.S. 579, 635 [96 L.Ed. 1153, 1199, 72 S.Ct. 863, 26 A.L.R.2d 1378] (conc. opn. of Jackson, J.).) In contemporary society, concerns about the workability of government are especially weighty.

Thus, the high court has not evolved a rigid classification of governmental powers as belonging exclusively to one branch or another. Instead, the court has stated that "the proper inquiry focuses on the extent to which [the act complained of] prevents [one of the three branches] from accomplishing its constitutionally assigned functions." (*Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta* v. *United States*, *supra*, 488 U.S. at p. 383 [102 L.Ed.2d at pp. 737-738].) If the "potential for disruption is present," the court must then "determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. at p. 443 [53

L.Ed.2d at p. 891]; *Mistretta* v. *United States*, *supra*, 488 U.S. at p. 383, fn. 13 [102 L.Ed.2d at p. 737].)

This court has expressed a similar understanding. We have recognized that the purpose of the doctrine of separation of powers "is to prevent one branch of government from exercising the *complete* power constitutionally vested in another [citation]; it is not intended to prohibit one branch from taking action properly within its sphere that has the *incidental* effect of duplicating a function or procedure delegated to another branch. [Citation.]" (*Younger* v. *Superior Court* (1978) 21 Cal.3d 102, 117 [145 Cal.Rptr. 674, 577 P.2d 1014] [original italics].)

More recently, this court reiterated that the separation of powers doctrine " 'has not been interpreted as requiring the rigid classification of all the incidental activities of government, with the result that once a technique or method of procedure is associated with a particular branch of the government, it can never be used thereafter by another.' . . . 'From the beginning, each branch has exercised all three kinds of powers.' " (*Davis* v. *Municipal Court* (1988) 46 Cal.3d 64, 76 [249 Cal.Rptr. 300, 757 P.2d 11] [citations and italics omitted].)

III

A line of cases from California courts has established the principle that a court does not violate the separation of powers doctrine when it orders appropriate expenditures from already existing funds, if such funds are reasonably available for the expenditures in question. (*Mandel* v. *Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; *Long Beach Unified Sch. Dist.* v. *State of California* (1990) 225 Cal.App.3d 155, 180-181 [275 Cal.Rptr. 449]; *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 538-539 [234 Cal.Rptr. 795]; *Committee to Defend Reproductive Rights* v. *Cory* (1982) 132 Cal.App.3d 852, 856 [183 Cal.Rptr. 475].) The precise question in this case is whether funds can be considered "reasonably available" when they are not made part of a "catchall" appropriation under which the specific use of the funds may fall. The majority concludes that unless the funds are part of a "catchall" appropriation, they are not reasonably available.[1]

I would announce no such categorical rule. In my view, the proper inquiry is that set forth by the United States Supreme Court in *Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. 425 and *Mistretta* v. *United States*,

[1]The majority purports to reaffirm the rule of these cases, but in fact undermines it. The "catchall" appropriation exception to the majority's rule could easily be eliminated if the Legislature took the time to label more specifically the purpose of each appropriation in a particular area. If the Legislature did so, there would be no possible remedy for the failure to fund any program, no matter how essential.

supra, 488 U.S. 361: To what extent does the challenged act of one branch interfere with another branch's performance of its constitutionally assigned functions? If there is some potential disruption, the court must then determine whether the challenged act is "justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon* v. *Administrator of General Services*, *supra*, at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta* v. *United States*, *supra*, at p. 383, fn. 13 [102 L.Ed.2d at p. 737].)

Applying the principles followed by the high court in *Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. 425 and *Mistretta* v. *United States*, *supra*, 488 U.S. 361, and by this court in cases such as *Younger* v. *Superior Court*, *supra*, 21 Cal.3d 102 and *Davis* v. *Municipal Court*, *supra*, 46 Cal.3d 64, I conclude that the trial court's order authorizing the Controller to disburse funds from the GAIN and OUSD accounts as an emergency loan to the District to assure the District's schools remained open did pose a potential for disruption of a function of the legislative branch.

The degree of potential disruption, however, is not great. As the trial court concluded, the funds that were the source of the emergency loan were appropriated for purposes reasonably related to the educational purposes served by the District.

The OUSD loan funds were appropriated by the Legislature for the precise purpose for which they were employed here—to alleviate a fiscal crisis in a local school district and prevent disruption of an ongoing educational program. (See Stats. 1989, ch. 1438, § 1.) Moreover, the trial court had before it an application for leave to intervene from the OUSD itself, in which the OUSD stated that the threatened closure of the nearby District "would place substantial and difficult burdens on OUSD as displaced Richmond students seek admission to Oakland Schools," that would be "extremely costly and disruptive" to the operation of the Oakland schools. The emergency loan fund for the OUSD was intended by the Legislature to avoid disruption of the educational program at the Oakland schools, and the trial court's order furthered, rather than defeated, that valid legislative purpose.

The GAIN program was enacted to address the problem of teenage parenting, basic educational deficiencies, and long-term welfare dependency. Specifically, GAIN was intended to "[p]rovide the education and training services needed by teenage parents to help them earn a high school diploma or its equivalent," and to "[l]ink teenagers to other needed health and social services." (Welf. & Inst. Code, § 11330, subd. (c).) The purpose of the particular appropriation to the Department of Education at issue in this case

was solely to meet educational needs, and not to provide health and social services. (Stats. 1989, ch. 93, § 22.00.) This goal is served by keeping the District's schools open. The trial court had before it uncontradicted evidence that a large number of the students in the District came from low-income families, many of whom were welfare-dependent. The court could rationally conclude that the otherwise unused GAIN funds were reasonably available to meet the basic educational needs of the District's students, a significant portion of whom were in the welfare-dependent population the GAIN program was targeted to assist. Under the circumstances, the funds were ordered to be used for a purpose reasonably congruent with the statutory purpose.[2]

Thus, because the trial court authorized the OUSD and GAIN funds to be used for a purpose that was reasonably related to the purposes for which the funds were appropriated, any infringement on the legislative function is not substantial. By contrast, we are not faced with a situation in which a trial court has ordered that funds appropriated for one purpose be used for some entirely unrelated purpose; nor are we confronted with a trial court order that funds actually in use for one program be diverted to another. It is vital that

[2]The majority asserts that this opinion "urges abandonment" of the rule of *Mandel* v. *Myers*, *supra*, 29 Cal.3d 531 (*Mandel*). This is incorrect.

In *Mandel*, *supra*, 29 Cal.3d 531, this court held that the separation of powers doctrine does not prevent the courts from ordering appropriate expenditures from already existing funds when such funds are "reasonably available for the expenditures in question . . . ." (*Id.* at p. 542.) There, the court found that certain "catchall" funds were reasonably available for the expenditures in question, the payment of attorney fees in a case enforcing constitutional rights. But nothing in *Mandel* indicated that the only funds that might ever be reasonably available in any case were "catchall" funds. And, as later cases made clear, *Mandel*'s test of "reasonable availability" encompasses unused funds that have been appropriated for purposes closely related to the purposes for which they are sought to be expended. (*Long Beach Unified Sch. Dist.* v. *State of California*, *supra*, 225 Cal.App.3d at p. 181; *Carmel Valley Fire Protection Dist.* v. *State of California*, *supra*, 190 Cal.App.3d at p. 541.)

In this case, as my analysis has demonstrated, the OUSD and GAIN funds were appropriated for purposes reasonably and closely related to the purpose for which the trial court ordered them to be used. Thus, *Mandel* and its progeny were not violated. The analysis in this opinion is entirely consistent with both the *Mandel* line of cases, and the cases from the United States Supreme Court and this court that more fully and generally articulate the doctrine of separation of powers. *Mandel* and its progeny represent an area of specific application of general separation of powers principles; properly understood, there is no disjunction between the *Mandel* line of cases and cases such as *Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. 425, and *Mistretta* v. *United States*, *supra*, 488 U.S. 361, that set forth a principled and coherent view of the separation of powers doctrine.

Thus, the majority's accusation that the approach to separation of powers questions set forth in this opinion, which is the same approach employed by our nation's highest court, would "stand the separation of powers clause on its head," is meritless.

trial courts take care to minimize any impingement on legislative prerogatives. But the trial court in this case did use the least intrusive means available to it to ensure the students' rights.[3]

As discussed earlier, if there is some cognizable interference with the functions of another branch, the reviewing court must then determine whether the act is "justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta* v. *United States*, *supra*, 488 U.S. at p. 383, fn. 13 [102 L.Ed.2d at p. 737].) In my view, here the trial court's order was so justified.

The objective that the trial court sought to achieve by its orders in this case—to assure the protection of the fundamental rights of the District's students—was unquestionably within its constitutional authority. As this court has made clear on previous occasions, and as the majority reaffirms today, education is a fundamental right under the California Constitution. (*Serrano* v. *Priest* (1971) 5 Cal.3d 584, 608-609 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Serrano* v. *Priest* (1976) 18 Cal.3d 728, 766 [135 Cal.Rptr. 345, 557 P.2d 929].)

Moreover, the court, in acting to protect the students' rights to education, had no practical alternative to the remedial order it issued. It was the court's

[3]At the hearing on the preliminary injunction, an official of the Department of Education testified without contradiction that there were two sources from which department funds were available that could be employed to assist the District—the OUSD fund and the GAIN fund. No other funds were identified as available.

The funds appropriated to the Department of Education for the general support of elementary and secondary schools are not placed in a "catchall" fund subject to the discretion of Department of Education officials. Instead, under the Education Code, virtually all sums transferred from the state's general fund to the Department of Education for the general support of elementary and secondary education are transferred subject to a strict formula under which each local district is entitled to an amount computed on the basis of average daily student attendance. (Ed. Code, § 14000 et seq., § 46000 et seq.) No state official appears to have any discretion to vary the legislatively mandated allocation of funds.

My research reveals that the only funds that might have been considered reasonably available to aid the District under the majority's criteria at the time of the trial court's decision in this case were certain emergency funds under control of the Director of Finance. (Stats. 1990, ch. 467, § 2.00.) But there is nothing in the record to show that these funds had not been used for some other emergency purpose. Even assuming that none of these funds had been committed to some other use, however, the funds would have been grossly inadequate to meet the District's needs in any event. The total amount of funds available to the Director of Finance to meet all the emergency needs of the State under the then-current budget was $7 million. (*Ibid.*) As we have seen, the District faced a $23 million budget shortfall.

duty to act. As the United States Supreme Court has held, "a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us." (*Reynolds* v. *Sims* (1964) 377 U.S. 533, 566 [12 L.Ed.2d 506, 530, 84 S.Ct. 1362].)

When the other branches of government have failed to act, the courts have not flinched from their duty to fashion appropriate remedies when necessary to guarantee constitutional rights to the people of this state. Thus, in *Wilson* v. *Eu* (1991) 54 Cal.3d 471, 473 [286 Cal.Rptr. 280, 816 P.2d 1306], we held that, although reapportionment is primarily a matter for the legislative branch, when that branch has failed to act and electoral rights will be irretrievably lost if no action is taken, "we must proceed forthwith to draft such [reapportionment] plans." And in *Crawford* v. *Board of Education* (1976) 17 Cal.3d 280, 307 [130 Cal.Rptr. 724, 551 P.2d 28], we held that when a recalcitrant school board failed to act to cure the harmful consequences of school segregation, the trial court could exercise "broad equitable powers" to frame a remedy that would assure the students' basic rights. (Accord, e.g., *Swann* v. *Board of Education* (1971) 402 U.S. 1, 15 [28 L.Ed.2d 554, 566, 91 S.Ct. 1267]; see *Assembly* v. *Deukmejian* (1982) 30 Cal.3d 638, 659 [180 Cal.Rptr. 297, 639 P.2d 939]; *Midway Orchards* v. *County of Butte* (1990) 220 Cal.App.3d 765, 779 [269 Cal.Rptr. 796].)

No sound reason exists to hold that although some fundamental rights demand judicial protection when they are endangered because the other branches of government have failed to act, other rights, equally fundamental, do not. Yet that is the consequence of the majority's holding in this case that the trial court erred in ordering that an emergency loan be made to the District.

The practical consequences of the majority's holding should not be overlooked. In an era of fiscal constraint and uncertainty for local governments, including school districts, we cannot assume that the District's problems will prove to be unique. If another school district experiences financial difficulties and the other branches of government fail to act, parents may indeed bring a lawsuit to protect their children's right to education. Under today's decision, the trial court will declare that the children have a constitutional right to basic educational equality, and that the State bears responsibility for assuring this right is not denied. The court may then announce that no means

exist by which it can enforce that right. And the doors to the schoolhouse will close.

I would affirm the orders of the trial court in their entirety.

EXHIBIT 'F'

OPINION OF THE CALIFORNIA ATTORNEY GENERAL

OPINION 99-1214 - MAY 2, 2000

Opinion No. 99-1214—May 2, 2000

Requested by: THE BOARD OF CORRECTIONS

Opinion by: BILL LOCKYER, Attorney General
Gregory L. Gonot, Deputy

THE BOARD OF CORRECTIONS has requested an opinion on the following questions:

1. Is the Board of Corrections authorized to institute a legal action or impose sanctions against a local agency for a failure to bring a particular juvenile facility into compliance with the minimum standards established by the board?

2. When a local agency brings a particular juvenile facility into compliance with the minimum standards established by the Board of Corrections, is the state required to reimburse the local agency for the costs incurred in meeting the standards?

CONCLUSIONS

1. The Board of Corrections is not authorized to institute a legal action or impose sanctions against a local agency for a failure to bring a particular juvenile facility into compliance with the minimum standards established by the board.

2. When a local agency brings a particular juvenile facility into compliance with the minimum standards established by the Board of Corrections, the state is not required to reimburse the local agency for the costs incurred in meeting the standards.

ANALYSIS

The Board of Corrections ("Board") is established within the Youth and Adult Correctional Agency (Pen. Code, § 6024) and serves as "the means whereby the Department of Corrections and the Department of Youth Authority may correlate their individual programs for the adults and youths under the jurisdiction of each" (Pen. Code, § 6026). Among the Board's specific duties is the adoption of minimum standards for the operation and maintenance of juvenile facilities in which minors are confined. (Welf. & Inst. Code, § 210.)[1] We are asked to determine whether the Board has any enforcement powers with respect to the minimum standards which it sets for juvenile facilities and whether compliance with the standards by a local agency requires the state to reimburse the local agency for the costs incurred.

[1] All references hereafter to the Welfare and Institutions Code are by section number only.

(Matthew Bender & Co., Inc.)

We conclude that the Board has not been authorized to institute legal actions or impose sanctions to enforce its minimum standards and that the state is not required to reimburse local agencies for the costs associated with complying with the standards.

1. Authority to Enforce Minimum Standards

Section 210 states: "The Board of Corrections shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors." Section 210.2 additionally requires the Board to establish standards for adult facilities used temporarily to house minors. The key statute requiring our interpretation is section 209, which provides:

> "(a) The judge of the juvenile court of a county, or, if there is more than one judge, any of the judges of the juvenile court shall, at least annually inspect any jail, juvenile hall, or special purpose juvenile hall that, in the preceding calendar year, was used for confinement, for more than 24 hours, of any minor.
>
> "The judge shall promptly notify the operator of the jail, juvenile hall, or special purpose juvenile hall of any observed noncompliance with minimum standards for juvenile facilities adopted by the Board of Corrections under Section 210. Based on the facility's subsequent compliance with the provisions of subdivisions (d) and (e), the judge shall thereafter make a finding whether the facility is a suitable place for the confinement of minors and shall note the finding in the minutes of the court.
>
> "The Board of Corrections shall conduct a biennial inspection of each jail, juvenile hall, lockup, or special purpose juvenile hall situated in this state that, during the preceding calendar year, was used for confinement, for more than 24 hours, of any minor. The board shall promptly notify the operator of any jail, juvenile hall, lockup, or special purpose juvenile hall of any noncompliance found, upon inspection, with any of the minimum standards for juvenile facilities adopted by the Board of Corrections under Section 210 or 210.2.
>
> "If either a judge of the juvenile court or the board, after inspection of a jail, juvenile hall, special purpose juvenile hall, or lockup, finds that it is not being operated and maintained as a suitable place for the confinement of minors, the juvenile court or the board shall give notice of its finding to all persons having authority to confine minors pursuant to this chapter and

commencing 60 days thereafter the facility shall not be used for confinement of minors until the time the judge or board, as the case may be, finds, after reinspection of the facility that the conditions that rendered the facility unsuitable have been remedied, and the facility is a suitable place for confinement of minors.

"The custodian of each jail, juvenile hall, special purpose juvenile hall, and lockup shall make any reports as may be requested by the board or the juvenile court to effectuate the purposes of this section.

"(b) The Board of Corrections may inspect any law enforcement facility that contains a lockup for adults and that it has reason to believe may not be in compliance with the requirements of subdivision (d) of Section 207.1 or with the certification requirements or standards adopted under Section 210.2. A judge of the juvenile court shall conduct an annual inspection, either in person or through a delegated member of the appropriate county or regional juvenile justice commission, of any law enforcement facility that contains a lockup for adults which, in the preceding year, was used for the secure detention of any minor. If the law enforcement facility is observed, upon inspection, to be out of compliance with the requirements of subdivision (d) of Section 207.1, or with any standard adopted under Section 210.2, the board or the judge shall promptly notify the operator of the law enforcement facility of the specific points of noncompliance.

"If either the judge or the board finds after inspection that the facility is not being operated and maintained in conformity with the requirements of subdivision (d) of Section 207.1 or with the certification requirements or standards adopted under Section 210.2, the juvenile court or the board shall give notice of its finding to all persons having authority to securely detain minors in the facility, and, commencing 60 days thereafter, the facility shall not be used for the secure detention of a minor until the time the judge or the board, as the case may be, finds, after reinspection, that the conditions that rendered the facility unsuitable have been remedied, and the facility is a suitable place for the confinement of minors in conformity with all requirements of law.

"The custodian of each law enforcement facility that contains a lockup for adults shall make any report as may be requested

by the board or by the juvenile court to effectuate the purposes of this subdivision.

"(c) The board shall collect biennial data on the number, place, and duration of confinements of minors in jails and lockups, as defined in subdivision (i) of Section 207.1, and shall publish biennially this information in the form as it deems appropriate for the purpose of providing public information on continuing compliance with the requirements of Section 207.1.

"(d) Except as provided in subdivision (e), a juvenile hall, special purpose juvenile hall, law enforcement facility, or jail shall be unsuitable for the confinement of minors if it is not in compliance with one or more of the minimum standards for juvenile facilities adopted by the Board of Corrections under Section 210 or 210.2, and if, within 60 days of having received notice of noncompliance from the board or the judge of the juvenile court, the juvenile hall, special purpose juvenile hall, law enforcement facility, or jail has failed to file an approved corrective action plan with the Board of Corrections to correct the condition or conditions of noncompliance of which it has been notified. The corrective action plan shall outline how the juvenile hall, special purpose juvenile hall, law enforcement facility, or jail plans to correct the issue of noncompliance and give a reasonable timeframe, not to exceed 90 days, for resolution, that the board shall either approve or deny. In the event the juvenile hall, special purpose juvenile hall, law enforcement facility, or jail fails to meet its commitment to resolve noncompliance issues outlined in its corrective action plan, the board shall make a determination of suitability at its next scheduled meeting.

"(e) Where a juvenile hall is not in compliance with one or more of the minimum standards for juvenile facilities adopted by the Board of Corrections under Section 210, and where the noncompliance arises from sustained occupancy levels that are above the population capacity permitted by applicable minimum standards, the juvenile hall shall be unsuitable for the confinement of minors if the board or the judge of the juvenile court determines that conditions in the facility pose a serious risk to the health, safety, or welfare of minors confined in the facility. In making its determination of suitability, the board or the judge of the juvenile court shall consider, in addition to the noncompliance with minimum standards, the totality of conditions in the juvenile

> hall, including the extent and duration of overpopulation as well as staffing, program, physical plant, and medical and mental health care conditions in the facility. The Board of Corrections may develop guidelines and procedures for its determination of suitability in accordance with this subdivision and to assist counties in bringing their juvenile halls into full compliance with applicable minimum standards. This subdivision shall not be interpreted to exempt a juvenile hall from having to correct, in accordance with the provisions of subdivision (d), any minimum standard violations that are not directly related to overpopulation of the facility."[2]

In analyzing the terms of section 209 and related provisions of the statutory scheme, we rely upon well established principles of statutory interpretation. "When construing a statute, we must 'ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation.]" (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977.) "Our first step [in determining the Legislature's intent] is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning. [Citations.]" (*People v. Valladoli* (1996) 13 Cal.4th 590, 597; accord, *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 633.) It is a "cardinal rule that a statute '. . . is to be interpreted by the language in which it is written, and courts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions.' [Citation.]" (*Wells Fargo Bank v. Superior Court* (1991) 53 Cal.3d 1082, 1097.)

Applying these principles to the Board's statutorily prescribed duties, we find that the Legislature has been highly specific in defining the responsibilities of the Board. It is to adopt minimum standards for facilities housing juveniles. (§§ 210, 210.2.) A judge is to inspect these facilities each year. (§ 209, subd. (a).) The judge is to notify the operator of any facility not in compliance with the Board's minimum standards. (*Ibid.*) In addition, the Board is to inspect each facility every two years and must also notify the operator of any facility not in compliance with its minimum standards. (*Ibid.*) If the facility is thereafter found not to be "a suitable place for the confinement of minors," the juvenile court or the Board is required to "give notice of its findings to all persons having authority to confine minors. . . ." (*Ibid.*) Sixty days after such notification, "the facility shall not

[2] Subdivision (d) of section 207.1 authorizes the temporary confinement of certain minors in an adult facility under specified conditions.

be used for confinement of minors" until "the facility is a suitable place. . . ." (*Ibid.*)

Accordingly, after the Board sets the minimum standards (§§ 210, 210.2), section 209 imposes upon the Board the duties of (1) inspecting the facilities every other year, (2) providing notification to the operator of any facility found not to be in compliance with the standards, and (3) providing notification to persons having authority to confine minors of any finding of unsuitability. No other enforcement duties are specified in section 209 or any other statute. We are not at liberty to add, in the guise of statutory interpretation, the additional enforcement remedies of filing a legal action or imposing sanctions against public officials responsible for operating a particular juvenile facility in violation of section 209.

Justifiably, the Legislature may anticipate that local public officials will obey the law by not housing minors in a particular juvenile facility found unsuitable by a judge or the Board. (See *City of Beaumont v. Beaumont Irr. Dist.* (1965) 63 Cal.2d 291, 297 ["There is a statutory presumption that officials will comply with the law"]; *Erven* v. *Board of Supervisors* (1975) 53 Cal.App.3d 1004, 1012 ["It may be presumed that the Board will comply with the law"]; *San Bernardino County Flood Etc. Dist. v. Superior Court* (1969) 269 Cal.App.2d 514, 521 ["It must be presumed that the board of supervisors of the Flood Control District will perform its official duties"].)

This is particularly true here since both the Legislature and public officials are aware that the failure to comply with the terms of section 209 may subject the public officials to criminal prosecution. Government Code section 1222 states:

> "Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

We have examined the application of Government Code section 1222 in a number of situations (see, e.g., 82 Ops.Cal.Atty.Gen. 246, 248 (1999); 82 Ops.Cal.Atty.Gen. 6, 10, fn. 4 (1999); 80 Ops.Cal.Atty.Gen. 36, 39–40 (1997); 76 Ops.Cal.Atty.Gen. 289, 292–293 (1993), as have the courts (see, e.g., *Centinela Hospital Assn. v. City of Inglewood* (1990) 225 Cal.App.3d 1586, 1598; *Griffis v. County of Mono* (1985) 163 Cal.App.3d 414, 427, fn. 15; *Griswald v. Mt. Diablo Unified Sch. Dist.* (1976) 63 Cal.App.3d 648, 656–658; *Adler v. City Council* (1960) 184 Cal.App.2d 763, 774–774; see also *Boags v. Municipal Court* (1987) 197 Cal.App.3d 65). A willful omission to remove minors from a place found unsuitable by a judge or

the Board in violation of section 209 may give rise to an application of Government Code section 1222.

Public officials who refuse to comply with the terms of section 209 may also be subject to removal from office. (See Gov. Code, §§ 1770, subd. (h) [An office becomes vacant upon "[h]is or her conviction . . . of any offense involving a violation of his or her official duties"], 3060–3074 [conviction of "willful or corrupt misconduct in office" removes the person from office]; *Lubin v. Wilson* (1991) 232 Cal.App.3d 1422, 1427; *People v. Hawes* (1982) 129 Cal.App.3d 930, 938–939; *People v. Tice* (1956) 144 Cal.App.2d 750, 754; 82 Ops.Cal.Atty.Gen., *supra*, at p. 10, fn. 4; 80 Ops.Cal.Atty.Gen., *supra*, at pp. 40–41; 76 Ops.Cal.Atty.Gen., *supra*, at p. 291; 75 Ops.Cal.Atty.Gen. 64, 66–67 (1992).)

Under these circumstances, the Legislature may reasonably believe that giving the Board additional enforcement powers with respect to its minimum standards for juvenile facilities would be unnecessary. Of course, if the Legislature determines that the Board should institute legal proceedings and impose sanctions in appropriate circumstances, it may easily so authorize. (See, e.g., *State Farm Mut. Auto. Ins. Co. v. Department of Motor Vehicles* (1997) 53 Cal.App.4th 1076, 1082 ["Had the Legislature intended to limit the exception . . . it could have done so in express terms"].)

Finally, we note that in 63 Ops.Cal.Atty.Gen. 227 (1980), we were presented with a similar question regarding the Board's authority to enforce minimum standards for adult local detention facilities. We stated in part:

> ". . . There is nothing in the statutes that gives the board authority to sue to compel compliance with those standards, even if the failing in a particular facility is life-threatening. A public agency, such as the board, which has been created by the Legislature may exercise only such powers which have been expressly granted to it or which may be fairly implied from such granted powers. [Citations.] No such authority has been granted to the board herein, nor may such be implied from its powers. Instead, the Legislature has left compliance with the standards to persuasion through the filing of reports of inspection or through the coercion of withholding reimbursement for detention of alleged parole violators under section 4016.5. . . ." (*Id.*, at p. 231.)

Here, we believe that the public officials charged with housing minors in a juvenile facility will act to avoid violating the terms of section 209. The consequences of refusing to obey the law may be severe.

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We conclude in answer to the first question that the Board is not authorized to institute a legal action or impose sanctions against a local agency for a failure to bring a particular juvenile facility into compliance with the minimum standards established by the Board.

2. State Mandated Local Costs

Section 6 of article XIII B of the Constitution provides:

> "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
>
> "(a) Legislative mandates requested by the local agency affected;
>
> "(b) Legislation defining a new crime or changing an existing definition of a crime; or
>
> "(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

Government Code section 17561 implements this constitutional requirement by providing: "The state shall reimburse each local agency and school district for all 'costs mandated by the state,' as defined in section 17514." Government Code section 17514 defines reimbursable costs as "any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The constitutional subvention requirement applies to state mandated increases in services provided by local agencies in existing programs. (*Los Angeles v. California* (1987) 43 Cal.3d 46, 56.) Covered programs are those that "carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Ibid.*) As used in section 6 of Article XIII B of the Constitution, the term "mandate" applies to agency regulations as well as

statutory requirements. (*Long Beach Unified School Dist. v. California* (1990) 225 Cal.App.3d 155, 175.)

Here, we do not have a "new program" being imposed by the Legislature upon local governments. Counties have been required to maintain a "suitable" place for the detention of minors since at least 1915. (See § 850; Stats. 1961, ch. 1616, § 2; Stats. 1945, ch. 967, § 2; Stats. 1915, ch. 631, § 22.) Setting the minimum standards for what is "suitable" does not create a "higher" level of service—it has long been the level of service required of local agencies. (See also *Inmates of the Riverside County Jail v. Clark* (1983) 144 Cal.App.3d 850, 860–861 [minimum standards set by Board for local detention facilities reflect constitutional requirements].)

In *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, the court rejected an argument that the state was required to reimburse local governments for the costs incurred in meeting new elevator earthquake and fire safety regulations promulgated by the California Occupational Safety and Health Administration. The court noted in part: "The regulations at issue do not mandate elevator service; they simply establish safety measures." (*Id.*, at p. 1546.)

In 63 Ops.Cal.Atty.Gen. 700 (1980), we concluded that the state was not required to reimburse local agencies for the costs of adding municipal court judges as directed by the Legislature. In finding that the additional judges did not constitute a "new" program or a "higher" level of service, we stated:

> ". . . Providing for an adequate number of judges for the most important court in the state in terms of the numbers of citizens it serves, in order that it may continue effectively to function as a forum for the orderly settlement of civil disputes and the prosecution of the floodtide of petty crime (*cf. Board of Supervisors v. Krumm* (1976) 62 Cal. App. 3d 935, 946), in accordance with the standard of justice prescribed by the constitution and laws of this state and of the United States, is a preexisting constitutional imperative. It is that standard, as distinguished from the number of personnel, to which the 'level of service' relates. Thus, a 'standard' has been defined in part as 'a definite level or degree of quality that is proper and adequate for a specific purpose.' (Webster's Third New Internat. Dict. (1961) p. 2233.) Hence, in our view, an increase in the number of judges does not portend the imposition by the Legislature of any new or increased obligation, but the maintenance of preordained constitutional standards." (*Id.* at pp. 702–703, fn. omitted.)

The minimum standards set by the Board for juvenile facilities constitute objective criteria which are needed to ensure that the facilities remain suitable places for the confinement of minors. The standards do not create a new program or impose a higher level of service for local agencies. What has long been required of local agencies is the maintenance of "suitable" facilities to house detained minors.

In answer to the second question presented, we conclude that when a local agency brings a particular juvenile facility into compliance with the minimum standards established by the Board, the state is not required to reimburse the local agency for the costs incurred in meeting the standards.

(Matthew Bender & Co., Inc.)

EXHIBIT 'G'

People Ex.Rel. Foundation etc v. Duque

105 Cal.App.4th 259; 129 Cal.Rptr.2d 298

[No. A098863. First Dist., Div. Five. Jan. 10, 2003.]

THE PEOPLE ex rel. FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS, Plaintiff and Respondent, v. HENRY DUQUE, Defendant and Appellant.

SUMMARY

The trial court entered a judgment that a Public Utilities Commission (PUC) commissioner forfeited his office pursuant to Pub. Util. Code, § 303, subd. (a), for having owned stock in a corporation that was regulated by the PUC. (Superior Court of the City and County of San Francisco, No. 318146, Alfred G. Chiantelli, Judge.)

The Court of Appeal reversed. The court held that because the trial court correctly ruled that defendant held his interest in the stock voluntarily, and since the forfeiture language set forth in the statute applies only when a commissioner acquires an interest in a regulated company "other than voluntarily," the statute, by its terms, did not apply under the facts of the case. The court could not supply an implied remedy to fill the statutory gap. It is particularly appropriate to honor forfeiture limitations where the issue is whether a state constitutional officer has forfeited his or her office. A court must limit itself to interpreting the law as written and leave for the people and the Legislature the task of revising it as they deem wise. Moreover, a commissioner who voluntarily owns stock in a regulated company arguably has neglected his statutory duty under Pub. Util. Code, § 303, subd. (a), and thus would be subject to removal under Cal. Const., art. XII, § 1. (Opinion by Jones, P. J., with Stevens and Simons, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a-1d) Public Officers and Employees § 29—Duration and Termination of Tenure—Forfeiture—Public Utilities Commissioner—Voluntary Ownership of Stock in Regulated Company.—The trial court erred in ruling that a Public Utilities Commission (PUC) commissioner forfeited his office pursuant to Pub. Util. Code, § 303, subd. (a), for

having owned stock in a corporation that was regulated by the PUC. Because the trial court correctly ruled that defendant held his interest in the stock voluntarily, and since the forfeiture language set forth in the statute applies only when a commissioner acquires an interest in a regulated company "other than voluntarily," the statute, by its terms, did not apply under the facts of the case. The court could not supply an implied remedy to fill the statutory gap. It is particularly appropriate to honor forfeiture limitations where the issue is whether a state constitutional officer has forfeited his or her office. A court must limit itself to interpreting the law as written and leave for the People and the Legislature the task of revising it as they deem wise. Moreover, a commissioner who voluntarily owns stock in a regulated company arguably has neglected his statutory duty under Pub. Util. Code, § 303, subd. (a), and thus would be subject to removal under Cal. Const., art. XII, § 1.

[See 8 Witkin, Summary of Cal. Law (9th ed. 1989) Constitutional Law, § 889; West's Key Number Digest, Public Utilities ⚖ 142.]

(2) **Statutes § 30—Construction—Language—Plain Meaning.**—In construing a statute a court ascertains the Legislature's intent in order to effectuate the law's purpose. The court must look to the statute's words and give them their usual and ordinary meaning. The statute's plain meaning controls the court's interpretation unless its words are ambiguous.

(3) **Public Officers and Employees § 29—Duration and Termination of Tenure—Forfeiture.**—Public office forfeiture provisions are disfavored because they encroach on the fundamental right to hold office. The right to hold public office, either by election or appointment, is one of the valuable rights of citizenship. The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Furthermore, the law traditionally disfavors forfeitures, and statutes imposing them are to be strictly construed.

(4) **Statutes § 30—Construction—Language—Plain Meaning.**—Courts are obligated to interpret the language in a statute in accordance with its plain meaning, and may not, under the guise of construction, rewrite a law or give the words an effect different from the plain and direct import of the terms used.

(5) **Statutes § 39—Construction—Conformation of Parts.**—While a court must, if possible, avoid interpreting a statute in an absurd manner, when deciding what is absurd the court is required to read the statute

with reference to the entire scheme of law of which it is part so that the whole may be harmonized.

(6) **State of California § 10—Attorney General—Opinions—Weight.** —An opinion of the Attorney General authorizing a quo warranto action against a Public Utilities Commission commissioner was not controlling on the commissioner's appeal from an adverse judgment. Given that the Attorney General aligned himself with plaintiff, citing the Attorney General's opinion as controlling is analogous to one party arguing that an amicus curiae brief submitted in support of his or her position mandates how an appeal must be resolved. In any event, while opinions of the Attorney General are entitled to considerable weight, they are not binding.

COUNSEL

Remcho, Johansen & Purcell, Joseph Remcho and Thomas A. Willis for Defendant and Appellant.

Harvey Rosenfield, Pamela M. Pressley; Bill Lockyer, Attorney General, and Anthony Davigo, Deputy Attorney General, for Plaintiff and Respondent.

OPINION

JONES, P. J.—The People of the State of California, through relator the Foundation for Taxpayer and Consumer Rights (FTCR) filed a quo warranto action against Commissioner Henry Duque of the Public Utilities Commission (PUC), contending Duque must be removed from office pursuant to Public Utilities Code section 303,[1] subdivision (a), because he formerly held stock in a corporation that was regulated by the PUC. The trial court agreed and ruled Duque had forfeited his office. Duque now appeals claiming the judgment must be reversed because (1) section 303, subdivision (a), is unconstitutional, and (2) the statute, by its terms, did not apply to his conduct. We agree with the second of these arguments and reverse the judgment.

[1]Unless otherwise indicated, all further section references will be to the Public Utilities Code.

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 3, 1995, former Governor Pete Wilson appointed Duque a commissioner on the PUC. The position is a constitutionally mandated office.[2] In December 1996, Governor Wilson reappointed Duque to a full six-year term. His appointment was confirmed by the state senate. Duque's term of office ended on January 1, 2003.

While Duque was a commissioner, his personal investment account was managed by his long-term stockbroker, Michael Golub. Golub made investment decisions for Duque pursuant to a power of attorney without seeking input from Duque. When Duque became a commissioner, he told Golub he could not own stock in companies that were regulated by the PUC.

On May 12, 1999, Golub purchased stock in Nextel Communications, Inc., a wireless communication carrier, and allocated 700 shares to Duque's account. At the time of the purchase, Duque believed that wireless carriers such as Nextel were regulated by the Federal Communications Commission (FCC), and not by the PUC. Golub had a similar understanding. Duque disclosed his ownership of the Nextel stock in his 1999 and 2000 statements of economic interests.

In fact, while states are precluded from regulating the rates charged by wireless carriers (see 47 U.S.C. § 332(c)(3)(A)), other aspects of Nextel's business were and are regulated by the PUC. Three months after Duque acquired his stock, Nextel and all other phone companies in California filed a joint petition seeking an allocation of phone numbers in the 310 area code. The PUC, with Duque voting in dissent, adopted an allocation plan. Duque voted against the interests of Nextel and the other petitioning parties.

In February 2000, the PUC noticed rulemaking proceedings to establish consumer protection rules applicable to telecommunication companies. The rules would apply to all communication companies, including Nextel.

In March 2000, the PUC approved an interconnection agreement between Pacific Bell and Nextel. The agreement was part of a larger consent item agenda that included several similar agreements. All the agreements were approved en masse.

[2]California Constitution, article XII, section 1, states: "The Public Utilities Commission consists of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for staggered 6-year terms. . . . The Legislature may remove a member for incompetence, neglect of duty, or corruption, two thirds of the membership of each house concurring."

On August 16, 2000, Duque received a phone call from Todd Wallack, a reporter for the San Francisco Chronicle, who had reviewed Duque's statements of economic interests. Wallack questioned Duque's ownership of Nextel stock, asserting it was a regulated company whose stock Duque was not permitted to own. Duque contacted the general counsel of the PUC to ask him whether Nextel was regulated by the PUC. The general counsel did not call back.

Duque believed that Wallack sounded knowledgeable. He decided to sell his stock because there was, at a minimum, a perception of conflict. On August 18, 2000, Duque directed his stockbroker to sell his remaining Nextel stock. Duque earned almost $70,000 as the result of his ownership of the stock.

On October 4, 2000, respondent FTCR sought permission from the California Attorney General to file an action against Duque. The Attorney General granted permission in an opinion dated November 29, 2000. (See 83 Ops.Cal.Atty.Gen. 263 (2000).)

In January 2001, FTCR, acting in the name of the People of the State of California, filed a quo warranto action against Duque under Code of Civil Procedure section 803 et seq. FTCR contended that Duque had forfeited his office as a commissioner under section 303, subdivision (a), because he formerly owned a prohibited financial interest in Nextel.

In July 2001, FTCR filed a motion for summary judgment arguing it was entitled to prevail as a matter of law. The judge hearing the motion denied it, ruling that section 303, subdivision (a), "does not provide for the removal from office of a [c]ommissioner . . . for a voluntary acquisition of stock." However, the judge ruled Nextel was in fact subject to regulation by the PUC.

The case then proceeded to a one-day court trial. At the conclusion of the trial, the court issued a statement of decision ruling Duque had forfeited his office under section 303, subdivision (a), because he had voluntarily owned stock in a company that was regulated by the PUC. The court ruled specifically that Duque had *not* been dishonest and that he had *not* acted in bad faith. Instead, the court ruled that Duque had shown poor judgment because he had "not [done] everything, which can reasonably be expected of a public utility commissioner to do in order to avoid a conflict of interest." The court ordered Duque to pay a $5,000 fine, and ruled he must pay FTCR's attorney fees under Code of Civil Procedure section 1021.5.

This appeal followed. While the matter was being briefed, we granted Duque's petition for writ of supersedeas and stayed the court's judgment pending our resolution of the appeal.

II. DISCUSSION[3]

(1a) Duque contends the judgment must be reversed because (1) section 303, subdivision (a) is unconstitutional, and (2) the section, by its terms, did not apply under the facts of this case. Since we do not reach constitutional issues unless absolutely required to do so (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 230 [45 Cal.Rptr.2d 207, 902 P.2d 225]), we turn to the second, and we believe, dispositive argument.

Section 303, subdivision (a), states: "A public utilities commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission. If any commissioner acquires a financial interest in a corporation or person subject to regulation by the commission other than voluntarily, his or her office shall become vacant unless within a reasonable time he or she divests himself or herself of the interest."

Our interpretation of this language is guided by well-settled rules of construction. **(2)** In construing a statute we ascertain the Legislature's intent in order to effectuate the law's purpose. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386 [241 Cal.Rptr. 67, 743 P.2d 1323].) We must look to the statute's words and give them their usual and ordinary meaning. (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601 [7 Cal.Rptr.2d 238, 828 P.2d 140].) "The statute's plain meaning controls the court's interpretation unless its words are ambiguous." (*Kobzoff v. Los Angeles County Harbor/UCLA Medical Center* (1998) 19 Cal.4th 851, 860-861 [80 Cal.Rptr.2d 803, 968 P.2d 514].)

(1b) The language used in section 303, subdivision (a), is reasonably clear. The first sentence states that commissioners are precluded from owning an interest in any company that is subject to regulation by the PUC. Here, the trial court ruled, and the evidence fully supports the conclusion, that Duque held an interest in a corporation that was regulated by the PUC.

[3]While this appeal was being briefed, FTCR filed a request asking this court to take judicial notice of the legislative history of the statutes and constitutional sections that are at issue in this case. We deferred ruling on the request until the merits of the appeal. (See *People v. Preslie* (1977) 70 Cal.App.3d 486, 493-494 [138 Cal.Rptr. 828].) Having now considered FTCR's request, we grant it.

It is undisputed that Duque held Nextel stock. Nextel, as a wireless carrier, was and is subject to regulation by the PUC. Indeed, Duque himself participated in a decision in which the PUC asserted its right to regulate certain aspects of the wireless communication business. (See *In re Mobile Telephone Service and Wireless Communications* (Cal.P.U.C., 1996) 174 Pub.Utl.Rep.4th (West) 543.)

The second sentence of section 303, subdivision (a), then states that if a commissioner comes to possess an interest in a regulated company "*other than voluntarily*" (or in other words involuntarily) he or she must divest himself or herself of that interest "within a reasonable time." If the commissioner fails to do so, his or her office "shall become vacant." Here the trial court held, and the parties both agree, that Duque held his interest in Nextel *voluntarily*. Since the forfeiture language set forth in section 303, subdivision (a), applies only when a commissioner acquires an interest in a regulated company "other than voluntarily," the statute, by its terms, did not apply under the facts of this case.

This application of section 303, subdivision (a), highlights a critical gap in the language of the statute. While section 303, subdivision (a), states that commissioners may not possess an interest in a regulated company, and provides a remedy for the *involuntary* acquisition of such an interest, the statute does not describe what occurs when a commissioner *voluntarily* acquires an interest in a regulated company.[4] The pivotal issue presented here is whether we must fill that gap with an implied remedy: i.e., that a commissioner who voluntarily acquires an interest in a regulated company must forfeit his or her office. We decline to do so.

(3) First, forfeiture provisions are disfavored because they encroach on the fundamental right to hold office. " '[T]he right to hold public office, either by election or appointment, is one of the valuable rights of citizenship . . . *The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. . . .*' " (*Helena Rubenstein Internat. v.*

[4]The statute's silence as to penalty for a voluntary acquisition is mirrored in a related constitutional provision. Article XII, section 7, of the California Constitution states: "A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission." This language provides a standard of conduct applicable to public utilities commissioners, but does not provide a remedy for a violation of that standard. Article XII, section 7, also states: "A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office." This portion of the section mandates forfeiture of office for certain types of conduct, but states clearly that the remedy does not apply to public utilities commissioners.

Younger (1977) 71 Cal.App.3d 406, 418 [139 Cal.Rptr. 473], italics added in *Helena Rubenstein*, quoting *People v. Washington* (1869) 36 Cal. 658, 662; see also *Carter v. Com. on Qualifications, etc.* (1939) 14 Cal.2d 179, 182 [93 P.2d 140].) Furthermore, the "law traditionally disfavors forfeitures and statutes imposing them are to be strictly construed." (*People v. United Bonding Ins. Co.* (1971) 5 Cal.3d 898, 906 [98 Cal.Rptr. 57, 489 P.2d 1385]; see also 67 Ops.Cal.Atty.Gen. 459, 461 (1984).) **(1c)** We believe it is particularly appropriate to honor these limitations where, as here, the issue is whether a state constitutional officer has forfeited his office.

(4) Second, we are obligated to interpret the language in a statute in accordance with its plain meaning. (*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003 [111 Cal.Rptr.2d 564, 30 P.3d 57].) "We may not, under the guise of construction, rewrite [a] law or give the words an effect different from the plain and direct import of the terms used." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297].) **(1d)** Here, section 303, subdivision (a), describes what occurs when a commissioner involuntarily owns stock in a regulated company. The statute, by its terms, does not describe what occurs when a commissioner voluntarily owns stock in a company that is regulated. "[W]e must limit ourselves to interpreting the law as written and leave for the People and the Legislature the task of revising it as they deem wise." (*People v. Garcia* (1999) 21 Cal.4th 1, 15 [87 Cal.Rptr.2d 114, 980 P.2d 829].)

Our holding does not mean that commissioners may violate section 303, subdivision (a), with impunity. Article XII, section 1, of the California Constitution states that the Legislature may remove a commissioner from office "for incompetence, neglect of duty, or corruption . . . ." A commissioner who voluntarily owns stock in a regulated company arguably has neglected his statutory duty under section 303, subdivision (a), and thus would be subject to removal under article XII, section 1. Furthermore, Duque concedes that commissioners who violate the public trust remain subject to civil and criminal penalties under the Political Reform Act of 1974. (See Gov. Code, § 81000 et seq.) We hold only that a commissioner who violates section 303, subdivision (a), by voluntarily owning stock, does not, under the terms of that statute, forfeit his office.[5]

FTCR contends the interpretation of section 303, subdivision (a), we have adopted is absurd because it would permit forfeiture of office for the

[5]Having reached this conclusion, we need not decide the potentially more troubling issue of whether section 303, subdivision (a), is constitutional in light of article XII, section 1, of the California Constitution, which states: "The Legislature may remove a member [of the Public Utilities Commission] for incompetence, neglect of duty, or corruption, two thirds of the membership of each house concurring." Specifically, we need not decide whether the

involuntary acquisition of an interest in a regulated company, while providing no remedy for the more serious violation that occurs when a commissioner voluntarily acquires an interest in a regulated company. FTCR concedes this argument is premised on the assumption that a voluntary acquisition of an interest in a regulated company is, by its nature, a more serious offense. In our view, FTCR's premise is flawed. A commissioner can voluntarily but inadvertently acquire an interest in a regulated company by, for example, purchasing shares in an unregulated corporation which, unbeknownst to the commissioner, has recently acquired a regulated corporation. There is nothing particularly blameworthy about such an act and it should not necessarily trigger a more severe sanction.

(5) Furthermore, while we must, if possible, avoid interpreting a statute in an absurd manner (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276 [87 Cal.Rptr.2d 222, 980 P.2d 927]), when deciding what is "absurd" we are required to read the statute " ' "with reference to the entire scheme of law of which it is part so that the whole may be harmonized . . . ." ' " (*Ibid.*, quoting *People v. Pieters* (1991) 52 Cal.3d 894, 898-899 [276 Cal.Rptr. 918, 802 P.2d 420].) Section 303, subdivision (a), certainly has a limited scope. It mandates forfeiture of office for an involuntary acquisition of an interest in a regulated company, while stating no remedy for the conflict of interest that arises when a commissioner voluntarily obtains an interest in a regulated company. However, the omissions inherent in section 303, subdivision (a), are largely filled by the power to remove found in article XII, section 1, of the California Constitution, and by the civil and criminal penalties contained in the Political Reform Act of 1974. (See Gov. Code, § 81000 et seq.) When all the related provisions of law are considered together, our interpretation of section 303, subdivision (a), is not absurd.

FTCR also contends the trial court's interpretation of section 303, subdivision (a), is supported by two opinions issued by the California Attorney General. However, the issue in the first opinion, 80 Ops.Cal.Atty.Gen. 27 (1997) was whether the PUC is obligated to discharge an employee who marries an employee of a regulated company. That Attorney General concluded that "on its face, section 303 would prohibit continued employment by an employee of the Commission who marries an employee of a regulated utility." (*Id.* at p. 29.) The opinion does not involve a constitutional officer, does not involve stock ownership, and does not discuss the forfeiture clause

section's grant of the power to remove to the Legislature, bars the judiciary from determining whether removal is necessary or appropriate. (Cf. *In re McGee* (1951) 36 Cal.2d 592 [226 P.2d 1]; *California War Veterans for Justice v. Hayden* (1986) 176 Cal.App.3d 982 [222 Cal.Rptr. 512].)

that is pivotal here. Given these significant differences, we conclude the opinion is not persuasive. (Cf. *Andres v. Young Men's Christian Assn.* (1998) 64 Cal.App.4th 85, 90 [74 Cal.Rptr.2d 788].)

(6) The second opinion, 83 Ops.Cal.Atty.Gen. 263 (2000), is the one in which the Attorney General authorized FTCR to file the present litigation. Given that the Attorney General has aligned himself with FTCR, citing the Attorney General's opinion as controlling is analogous to one party arguing that an amicus brief submitted in support of his position mandates how an appeal must be resolved. In any event, while opinions of the Attorney General are entitled to considerable weight, they are not binding. (*State of Cal. ex rel. State Lands Com. v. Superior Court* (1995) 11 Cal.4th 50, 71 [44 Cal.Rptr.2d 399, 900 P.2d 648].) Here, the Attorney General stated in his opinion that "[Duque's] office became vacant immediately upon his acquisition of the 700 shares of stock in Nextel on May 12, 1999." (83 Ops.Cal.Atty.Gen., *supra*, at p. 265.) In reaching that conclusion, the Attorney General did not discuss the language of the section 303, subdivision (a), in detail and he did not acknowledge that the statute only provides for a forfeiture when a commissioner obtains stock involuntarily. Again, we conclude the Attorney General's opinion is not persuasive.

FTCR next contends the trial court's ruling was correct under the rule that courts must, if possible, give meaning to all the language of a statute. (See, e.g., *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1118 [81 Cal.Rptr.2d 471, 969 P.2d 564].) According to FTCR, interpreting section 303, subdivision (a), to mean that a voluntary acquisition of an interest does not result in a forfeiture would render the second sentence of the subdivision meaningless. This is simply not true. Under our interpretation, the first sentence of section 303, subdivision (a), sets forth the general rule that commissioners may not possess an interest in a company that is regulated by the PUC. The second sentence then provides a limited remedy for a violation of the general rule. If a commissioner obtains an interest involuntarily, he must divest himself of that interest in a reasonable time. If he fails to do so, his office is vacated. Under our interpretation, all language in the statute is given meaning.

Next, FTCR contends the trial court's ruling is supported by the maxim of statutory construction, *expressio unius est exclusio alterius,* meaning the "expression of one thing is the exclusion of another." (See *People v. Anzalone* (1999) 19 Cal.4th 1074, 1078 [81 Cal.Rptr.2d 315, 969 P.2d 160].) As we understand it, FTCR's theory is that the first sentence of section 303, subdivision (a), states the general rule that a commissioner who owns an

interest in a company that is regulated by the PUC forfeits his office. The second sentence then provides for a single exception to the general rule: a commissioner who obtains his interest involuntarily, need not forfeit his office if he disposes of that interest within a reasonable time. According to FTCR, interpreting the statute to mean that a commissioner who voluntarily obtains an interest in a regulated company faces no risk of automatic forfeiture of office would improperly add an additional exception that is not specified in the statute. We reject this argument because it is based on a false premise. Contrary to FTCR's argument, the first sentence of section 303, subdivision (a), does not state that a commissioner who owns an interest in a regulated company forfeits his office. It merely states that a commissioner may not own an interest in a regulated company. No remedy is provided. FTCR's argument, based on a mistaken interpretation of the statute, must fail.

FTCR also argues that its interpretation of section 303, subdivision (a), is supported by a constitutional consideration. Specifically, FTCR notes that the first sentence of subdivision (a) stating: "A public utilities commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission" is identical to language contained in article XII, section 7, of the California Constitution. The language in article XII, section 7, in turn, is based on former article XII, section 22, which stated in part: "no person in the employ of or holding any official relation to any person, firm or corporation, which said person, firm or corporation is subject to regulation by said Public Utilities Commission and no person owning stock or bonds of any such corporation or who is in any manner pecuniarily interested therein, shall be appointed to *or hold* the office of Public Utilities Commissioner." (See Deering's Cal. Codes (1974 ed.) Const., art. XII, § 22, p. 199, italics added.) Since current article XII, section 7, was intended to restate former article XII, section 22, without "substantive change," (see art. XII, § 9) FTCR contends the language we have italicized in former article XII, section 22, must be interpreted to mean that a person cannot simultaneously hold the position of commissioner and possess stock in a regulated company. If a commissioner does so, his office becomes vacant. We reject this argument because it fails to distinguish between a duty and a remedy. Article XII, section 7, and former article XII, section 22, both describe a duty that is imposed on those who serve as commissioners on the PUC. A commissioner cannot hold an interest in a company that is regulated by the PUC. However, neither of those sections provides a remedy for a violation of that duty. It is simply beyond our purview, as an intermediate appellate court, to create or imply such a remedy where it is not statutorily or constitutionally compelled.

Finally, FTCR relies on language from *Lubin v. Wilson* (1991) 232 Cal.App.3d 1422, 1429-1430 [284 Cal.Rptr. 70], where the court said: "A person holds office subject to conditions imposed by the state and, where cause for removal is provided by law, the person is deemed to have accepted the office on condition he or she could be removed for that cause and in the manner provided. [Citation.]" FTCR contends that when Duque violated section 303, subdivision (a), by voluntarily owning stock, he failed to satisfy a "condition" of his position and thus forfeited his office.

We have no quarrel with the court's holding in *Lubin*; however, the case is distinguishable. The issue in *Lubin* was whether a member of the State Board of Equalization had forfeited his office when he was convicted of several felonies in federal court. The *Lubin* court ruled the member had forfeited his office, relying in part on Government Code section 1770, subdivision (h), which states that when person is "convict[ed] of a felony" his office becomes vacant. Since the statute at issue expressly mandated forfeiture under the circumstances presented, we agree the *Lubin* court reached the correct conclusion. Here, by contrast, the statute at issue contains a forfeiture provision, however, it clearly does not apply under the facts of this case. *Lubin* is not controlling.

III. DISPOSITION

The judgment is reversed.

Stevens, J., and Simons, J., concurred.

Respondent's petition for review by the Supreme Court was denied April 9, 2003.

SixTen and Associates
Mandate Reimbursement Services

Exhibit F

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May 5, 2004

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COMMISSION ON
STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-31
Santa Monica Community College District
Minimum Conditions for State Aid

Dear Ms. Higashi:

I have received the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 11, 2004, to which I now respond on behalf of the test claimant.

The Comments of CCC are Incompetent and Should be Excluded

Test claimant objects to the comments of CCC, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the response since CCC has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

> "If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

In addition, CCC has cited numerous federal statutes and regulations without attaching a copy thereof, and without identifying specific chapters, articles, sections or page numbers, in violation of Title 2, California Code of Regulations Section 1183.02, subdivision (c)(2), which requires that written responses, opposition or recommendations on the test claim shall contain:

> "A copy of relevant portions of...federal statutes, and executive orders that may impact the alleged mandate...unless such authorities are also cited in the test claim. The specific chapters, articles, sections, or page numbers must be identified..."

The comments of CCC do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of CCC not be included in the Staff's analysis.

Part I
Replies Applicable to Repeated Arguments

CCC repeats several arguments to various issues throughout its response. Test Claimant will reply to these arguments in this Part I and will not repeat them in total each time the argument is made.

A. Limited Time to Respond is not a Valid Argument

CCC laments that, given the number of statutes and regulations, and severe cutbacks suffered, it was unable to provide a thorough response to this claim. CCC goes on to argue that it is regrettable that the lack of funding to support mandate claim reviews

could conceivably result in the payment of "unwarranted" claims.[1] It concludes that it must leave a comprehensive review of the issues to the Commission (i.e., the Commission staff).

The instant test claim was filed on June 19, 2003. The Commission's letter inviting comments was dated July 3, 2003. The CCC finally submitted its comments on March 16, 2004. Test claimant suggests that if CCC cannot find contradictory evidence to these issues in eight and one-half months, perhaps it does not exist.

B. CCC Misinterprets "*Kern*" Relative to "Legal Compulsion"

Citing *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 (hereinafter "*Kern*"), CCC offers an interpretation that legal compulsion is required in order to find a mandate. This is an erroneous interpretation. Legal compulsion is not necessarily required for a finding of a mandate. The controlling case law on the subject of legal compulsion *vis-a-vis* non-legal compulsion is still *City of Sacramento v. State of California* (1990) 50 Cal.3rd 51 (hereinafter "*Sacramento II*").

(1) *Sacramento II* Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter

[1] There is perhaps something to be said about the mind-set of CCC when it can declare a claim to be "unwarranted" before it has the time or resources to analyze the claim.

chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(2) *Sacramento I* Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "mandate of the federal government" under Section 9(b).[2]

In other words, *Sacramento I* concluded, *inter alia*, that the loss of federal funds and tax credits did not amount to "compulsion."

(3) *Sacramento II* Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

However, the court also overruled that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to "compulsion."

(4) *Sacramento II* "Compulsion" Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not

[2] Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

present in Public Law 94-566. Defendants responded that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.

In disapproving *Sacramento I*, the court explained:

> "If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments." (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state's employers faced only with the federal tax. The court replied to this suggestion:

> "However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation, since the state was practically "without discretion" to do otherwise.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of "mandatory" versus "optional":

> "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (Opinion, at page 76)

(5) The "Kern" Case Did Not Change the Standard

In *Kern*, at page 736, the Supreme Court first made it clear that the decision did not

hold that legal compulsion was necessary in order to find a reimbursable mandate:

> "For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement under article XIII B, section 6,[3] because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate." (Emphasis in the original, underlining supplied)

After concluding that the facts in *Kern* did not rise to the standard of non-legal compulsion, the court reaffirmed that either double taxation or other draconian consequences could result in non-legal compulsion:

> "In sum, the circumstances presented *in the case before us* do not constitute the type of non-legal compulsion that reasonably could constitute, in claimants' phrasing, a 'de facto' reimbursable state mandate. Contrary to the situation that we described in (*Sacramento II*), a claimant that elects to discontinue participation in one of the programs *here at issue* does not face 'certain and severe...penalties' such as 'double...taxation' or other 'draconian' consequences (citation), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations." (Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented)

The test for determining the existence of a mandate is whether compliance with the test claim legislation is a matter of true choice, that is, whether participation is truly voluntary. *Hayes v. Commission on State Mandates*, (1992) 11 Cal.App.4th 1564, 1582 Under the "carrot and stick" analysis of both *Kern* and *Hayes*, community college districts' acceptance of state aid is not truly voluntary. The carrot is too large and the stick is too short.

The process for such a determination is found in *Sacramento II*, that is, the determination in each case must depend on such factors as the nature and purpose of

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[3] This *Kern* disclaimer that "we find it unnecessary in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement" refutes CCC's interpretation that legal compulsion is always necessary for a finding of a mandate.

the program; whether its design suggests an intent to coerce; when district participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. ("*Sacramento II*", at page 76)

CCC has not applied this crucial test to any of the test claim activities. Therefore, it cannot properly claim that the test claim activities are discretionary.

C. CCC Misinterprets "*Kern*" Relative to "Receipt of State Funding"

CCC argues that claimant can use funds it has already received from the state to satisfy any costs of complying with the test claim legislation and regulations, again citing "*Kern*". CCC has the facts of "*Kern*" badly mistaken:

> "Real parties in interest - - two public school districts and a county (hereafter claimants) - - participate in various education-related programs that are funded by the state and, in some instances, by the federal government. Each of these underlying funded programs in turn requires participating public school districts to establish and utilize specified school councils and advisory committees. Statutory provisions enacted in the mid-1990's require that such school councils and advisory committees provide notice of meetings, and post agendas for those meetings. (citations) We granted review to determine whether claimants have a right to reimbursement from the state for their costs in complying with these statutory notice and agenda requirements." (Opinion, at pages 730-731, underlining supplied to show that the funding referred to was provided for the underlying education-related programs.)

At page 731 of the opinion, the court summarized its later holding:

> "...we conclude that as to *eight* of the nine underlying funded programs here as issue, claimants have not been legally compelled to participate...,assuming (without deciding) that claimants have been legally compelled to participate in *one* of the nine programs, we conclude that claimants nonetheless have no entitlement to reimbursement from the state for such [notice and agenda] expenses,[4] because they have been

[4] The court found these costs to be "rather modest". (Opinion, at page 747)

> free at all relevant times to use funds provided by the state[5] for that [underlying education-related] program to pay required program expenses - - including the notice and agenda costs here at issue," (Emphasis in the original, underlining and bracketed clarification added.)

It is only in the context of those facts, that the court held:

> "We therefore conclude that because claimants are and have been free to use funds from the [underlying education-related] Chacon-Moscone Bilingual-Bicultural Education program to pay required program expenses (including the notice and agenda costs here at issue), claimants are not entitled under article XIII B, section 6, to reimbursement from the state for such expenses." (Opinion at page 748, parenthetical notation in the original, bracketed clarification added.)

Therefore, "*Kern*" is factually distinguishable. In the test claim now before the Commission there is no funding provided in any statute or regulations cited. Here, there are no "funds that have already been obtained from the state."

D. CCC Confuses Minimum Standards with Minimum Conditions

CCC uses the term "minimum standards" interchangeably with the term "minimum conditions". The two terms have different meanings and different applications.

Immediately prior to 1975, former Education Code Section 25510 (as amended by Chapter 989, Statutes of 1974, Section 23[6]) read:

> "The Board of Governors of the California Community Colleges shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges."

Former Education Code Section 25510 was recodified and renumbered as section

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[5] The court found the underlying program funding to be "substantial". (Opinion, at page 732)

[6] A copy of Chapter 989, Statutes of 1974, Section 23 is attached hereto in Exhibit "A".

71025 by Chapter 1010, Statutes of 1976, section 2[7]. As recodified, section 71025 also read:

> "The Board of Governors of the California Community Colleges shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges."

Former Section 71025 was repealed by Chapter 973, Statutes of 1988, section 12.1. It was reenacted as Section 70901, by Chapter 973, Statutes of 1988, section 8[8, 9]. As

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[7] A copy of Chapter 1010, Statutes of 1976, Section 2, which includes Education Code Section 71025 is attached hereto in Exhibit "A".

[8] A copy of Chapter 973, Statutes of 1988, Section 8, is attached hereto in Exhibit "A".

[9] Education Code Section 70901, added by Chapter 973, Statutes of 1988, Section 8:

"(a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by

governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to

determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community

enacted, the new section 70901 is greatly expanded and different from its pre-1975 predecessor[10]. CCC has overlooked this important change. Without discussing the entire statute, the following relevant observations are made:

The "minimum standards" language is now found in subdivision (b)(1):

> "(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:
>
> (1) Establish minimum standards as required by law, including, but not limited to, the following:..." (emphasis supplied)

and, these "minimum standards" are only applicable to:

> "(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.
> (B) Minimum standards for the employment of academic and administrative staff in community colleges.
> (C) Minimum standards for the formation of community colleges and districts.
> (D) Minimum standards for credit and noncredit classes.
> (E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards."

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college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors."

[10] Section 70901 was amended again by Chapter 1023, Statutes of 1998, Section 1, to add a new subdivision (b)(15) which allows contracting for the procurement of goods and services, which is not relevant to this test claim. The chapter also renumbered former subdivision (b)(15) as (b)(16).

The language concerning "state aid" has now been shifted to subdivision (b)(6) and is subject to minimum conditions, not minimum standards.

> "(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors." (Emphasis supplied)

Therefore, when discussing "minimum standards," minimum standards are limited to those found in Education Code Section 70901, subdivisions (b)(1)(A) through (E). This test claim is about the "minimum conditions" for the receipt of state aid which were established in 1988.

E. CCC Misconstrues the Attorney General Opinion

CCC cites an Opinion of the California Attorney General (83 Opinions of the California Attorney General 111 (2000)) and makes a quantum leap to conclude that the "minimum standards" of the Board of Governors do not constitute either a new program or a higher level of service so long as the Board was obligated to set minimum standards in those areas prior to 1975. As will be shown, this misconstrues the Attorney General Opinion. (Please note also that the argument goes to "minimum standards" and not to "minimum conditions". Therefore, it has no relevance to this test claim.)

Before embarking on a discussion of the opinion of the Attorney General, test claimant must remind the Commission that such an opinion is subject to three rules of interpretation.

1. Although an opinion of the California Attorney General is entitled to considerable weight, if relevant, it is not binding.

2. The opinion will be found unpersuasive when the Attorney General has aligned himself with one of the parties.[11]

3. Dissimilar facts are another basis to conclude the opinion to be unpersuasive. *People ex rel. Foundation for Taxpayer & Consumer Rights v. Dugue* (2003) 105

[11] In this regard, test claimant requests the Commission to take notice of the fact that the Attorney General, at the time of its opinion, and now, often represents the Department of Finance in matters opposing the adoption of test claims.

Cal.App.4th 259, 267-268[12]

The facts presented to the Attorney General related to Welfare & Institutions Code Sections 210 and 210.2. Section 210 provided:

> "The Board of Corrections shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors."

The Attorney General was asked for an opinion as to two questions, the second of which was:

> "When a local agency brings a particular juvenile facility into compliance with the minimum standards established by the Board of Corrections, is the state required to reimburse the local agency for the costs incurred in meeting the standards?" (AG Opinion, at page 111)

At page 119 of the opinion, the Attorney General noted that:

> "Counties have been required to maintain a 'suitable' place for the detention of minors since at least 1915 (citations) Setting the minimum standards for what is 'suitable' does not create a 'higher' level of service – it has long been the level of service required of local agencies."

Stated more succinctly, prior to 1975, local agencies were required to provide a "suitable" place for the detention of juveniles. Therefore, any regulations establishing what constitutes "suitable" are not new.

Contrary to the interpretation of CCC, the opinion only went so far as to determine the effect of minimum standards for suitability, it did not render an opinion on minimum standards for every other conceivable activity of the juvenile court system. It certainly did not opine that regulations issued pursuant to a pre-1975 general authority of a state agency to set minimum standards could never constitute either a new program or a higher level of service.

F. Unidentified Regulations

[12] Pursuant to Title 2, California Code of Regulations, Section 1183.03(2), a copy of *People ex rel. Foundation for Taxpayer & Consumer Rights v. Duque* is attached hereto as Exhibit "B".

At section 4 of its comments, CCC by its unsworn and unverified statement asserts that many of the regulations that are the subject of this claim existed prior to January 1, 1975, under different section numbers. Therefore, the argument continues that to the extent any mandates predated January 1, 1975, they are not eligible for reimbursement.

CCC in this argument does not identify either the pre-1975 regulations or the test claim regulations to which it refers. As such, these comments must be disregarded.

G. Unidentified Federal Laws

At section 5 of its comments, CCC by its unsworn and unverified statement asserts that a number of the regulations address areas that are already required by federal laws that claimant must follow.

CCC in this argument does not identify either the regulations or the federal laws to which it refers. As such, these comments must be disregarded.

H. Unidentified Laws of General Application

CCC, in section 6, argues that claimant is a California business enterprise (!) and required to follow general laws that apply to all such employers and enterprises, concluding that actions required by general law cannot be the basis for reimbursement.

CCC in this argument does not identify the test claim statutes or regulations[13] which it contends are laws of general application. As such, these comments must also be disregarded.

Part II
Replies Applicable to Minimum Conditions for State Aid

Prologue

In a section entitled "Regulatory Background", CCC states that it is attaching copies of early regulation packages (Attachments 1, 2, 3 and 4) and encourages the Commission's (i.e., Commission staff's) thorough review of the early provisions in the

[13] Any argument that a claim is not reimbursable because it is based upon a law of general application must show that the test claim statute or regulations is a law of general application. Reference to some other "general law" is not relevant.

hope that the search will discover that many of the issues addressed in the test claim regulations preexisted January 1, 1975.

First of all, this reply cannot, obviously, respond to this "scavenger hunt" approach to legal analysis. Secondly, the copy of the comments (sent by e-mail) received by test claimant did not have attachments. Therefore, test claimant reserves the right to respond, if needed, when the attachments may be received in the future.

Condition 1 - Standards of Scholarship

CCC relies on the contents of Attachment 1 and Attachment 2 as the basis for its argument that all of the Standards of Scholarship existed prior to 1975.

Since test claimant did not receive a copy of Attachment 1 or Attachment 2, it will reserve its reply to those attachments to when they are received.

Government Code Section 17514 defines "costs mandated by the state" as any increased costs which a local agency or school district is required to incur as a result of any statute or executive order implementing any statute which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

"Even if" CCC is correct in its assertions relative to the attachments, its descriptions fall far short of the new programs or higher levels of service required by the current regulations. For example, the summary by CCC of these purported pre-1975 regulations do not include:[14]

> (1) A requirement to file a copy of its own regulations with the Chancellor pursuant to Title 5, California Code of Regulations Section 51002(b);[15]
>
> (2) A requirement to determine and implement a uniform grading practice including grades given in accordance with an adopted grading scale, pursuant to section 55751;

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[14] The following summary is a portion of the new duties alleged in the test claim in the section for Standards of Scholarship. The summary is not intended to be all-inclusive. For a more detailed listing, please refer to the test claim at pages 164-188.

[15] Unless otherwise noted, all citation of "regulations" shall be to Title 5, California Code of Regulations.

(3) A requirement to ensure that all units earned on a "credit-no credit" basis in other California institutions and equivalent out-of-state institutions are counted in satisfaction of community college curriculum, pursuant to section 55752(b);

(4) A requirement to ensure that units earned on a "credit-no credit" basis are not used to calculate grade point averages, pursuant to section 55752(c);

(5) A requirement to consider units attempted for which "NC" is recorded in probation and dismissal procedures, pursuant to section 55752(c);

(6) A requirement to allow independent study courses to be graded on a "credit-no credit" basis, pursuant to section 55752(d);

(7) A requirement to use the "CR/NC" grading system when offering courses in which there is a single standard of performance, pursuant to section 55752(e);

(8) A requirement to establish and implement policies and procedures for faculty to follow in determining an "articulated high school course", pursuant to 55753.5;

(9) A requirement to adopt policies regarding advanced placement examinations, pursuant to section 55753.7;

(10) A requirement to adopt, publish and implement procedures and conditions for probation and the appeal of probation, pursuant to section 55755;

(11) A requirement to adopt, publish and implement procedures and conditions for an appeal of dismissal and the request for reinstatement, pursuant to section 55756(c);

(12) A requirement to implement and comply with standards regarding remedial coursework, pursuant to section 55756.5;

(13) A requirement to utilize a statewide grading scale established on the basis of point equivalencies, pursuant to section 55758;

(14) A requirement to adopt and implement a withdrawal policy, pursuant to section 55758(e);

(15) A requirement to ensure that grades earned in nondegree credit courses are not included in calculating students' grade point averages, pursuant to section 55758.5;

(16) A requirement to make a reasonable effort to notify a student subject to academic probation or dismissal, pursuant to section 55759;

(17) A requirement to ensure that the instructor of any course determine the grade to be awarded to each student, pursuant to section 55760;

(18) A requirement to adopt, publish and implement procedures or regulations pertaining to the repetition of courses, pursuant to section 55761;

(19) A requirement to adopt procedures or regulations pertaining to the repetition of course for which substandard work has not been recorded, pursuant to section 55761; or

(20) A requirement to adopt, publish and implement procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance which is not reflective of a student's demonstrated ability, pursuant to sections 55764 and 55765.

Condition 2 - Degrees and Certificates

The response of CCC to this condition is based primarily on Attachments 1 and 3. Test claimant reserves the right to respond, if needed, when the attachment may be received in the future.

Condition 3 - Open Courses

(A) CCC's Statutory History is Incorrect

CCC contends that the Title 5, California Code of Regulations Section 51006 was preceded by former (pre-1975) Education Code Section 5754[16]. The correct citation is former Education Code Section 5753 which read, in part:

> "No class for adults shall be maintained by any district:...(2) if such classes are not open to the general public..." (Emphasis supplied)

Chapter 1010, Statutes of 1976, Section 2 recodified and renumbered former section 5753 as new Education Code Section 78450. Section 78450 was repealed by Chapter

[16] Section 5754 regulated classes for adults in dancing or recreational physical education.

36, Statutes of 1977, Section 610, operative April 30, 1977.

CCC then states that section 5754 was replaced by section 84500.1. It was not. Section 5754 was recodified and renumbered as new section 78451[17] and was repealed by Chapter 470, Statutes of 1981, Section 169.

Section 84500.1 was actually added by Chapter 909, Statutes of 1978, Section 24, and related to reports of average daily attendance for the purpose of apportionment. It was repealed by Chapter 1372, Statutes of 1990, Section 678.

(B) The response of CCC to the condition for Open Courses is also based Attachments 1 and 2. Test claimant reserves the right to respond, if needed, when the attachments may be received in the future.

(C) The Test Claim Requires Activities Which Constitute New Programs or Higher Levels of Service

Government Code Section 17514 defines "costs mandated by the state" as any increased costs which a local agency or school district is required to incur as a result of any statute or executive order implementing any statute which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Former pre-1975 Education Code Section 5753, required classes for adults to be open to the general public. The attachments as described by CCC are limited in scope. They did not include the following new programs or higher levels of service[18] now required by the minimum conditions for Open Courses:

(1) Adopting a statement which provides that every course reported for state aid shall be fully open to enrollment and participation by any person, and
   a) to publish the open enrollment policy statement in the official catalog, schedule of classes, and addenda to the schedule of classes; and

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[17] Section 78451 still continued to regulate classes for adults in dancing or recreational physical education.

[18] For a more detailed statement of the new programs or higher levels of service required by the minimum conditions for open courses, see the test claim, at pages 193-200.

b) to file a copy of such policy with the Chancellor.

(2) Publishing a clear description of each course in the official catalog, and/or schedule of classes, and/or addenda.

(3) Establishing and implementing procedures to ensure, if a course description indicates a course is designed to meet certain specialized needs, that the district affirms the availability of the course to all qualified students.

(4) Describing all courses in the official general catalog and/or addenda and listing such courses in the schedules of classes, and
- a) ensuring that any courses which are established or conducted after publication of the general catalog or regular schedule of classes are reasonably well publicized, and
- b) ensuring that any announcements of course offerings are not limited to a specialized clientele, and
- c) ensuring that no one receives notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

(5) Ensuring that all community college courses are open to enrollment by any student unless the course qualifies for a limitation, such as,
- a) Permitting enrollment to be limited to students meeting prerequisites and corequisites that have been established, or
- b) Ensuring that any other limitation used by the district falls into one of acceptable reasons for enrollment limitations, or
- c) Adopting and implementing policies ensuring fair and equitable procedures for determining who may enroll in affected courses or programs, such as:
  - i) Limiting enrollment to a "first-come, first-served" basis or other nonevaluative selection techniques, or
  - ii) Limiting enrollment using an authorized method, or
  - iii) In the case of intercollegiate completion, honors courses, or public performance courses, allocating available seats to those students judged most qualified, or
  - iv) Limiting enrollment in one or more sections of a course to a cohort of students enrolled in one or more other courses, or
  - v) With respect to students on probation or subject to dismissal, limiting enrollment to a total number of units or to selected courses, or require students to follow a prescribed

educational plan.

(6) Establishing and implementing procedures for, and responding to, a student challenge to an enrollment limitation, including:
   (a) Permitting students to challenge an enrollment limitation on any of the following grounds:
      i) Unlawful discrimination,
      ii) Failure of the district to follow it's own enrollment limitation policy,
      iii) An argument that the basis upon which the district has established an enrollment limitation does not in fact exist, and
      iv) Any other criteria established by the district.
   (b) Handling such enrollment limitation challenges in a timely manner.
   (c) Waiving the enrollment limitation with respect to any student whose challenge is upheld.
   (d) Advising any student who has challenged an enrollment limitation based on the theory of unlawful discrimination that he or she may also file a formal complaint of unlawful discrimination once the challenge procedure has been completed.

(7) Ensuring that any public funds used in connection with community college athletic programs are used only for those programs which provide facilities and opportunities for participation by both sexes on an equitable basis.

(8) Ensuring that all procedures for registration and standards for enrollment in any course are consistent with all sections of Title 5 of the California Code of Regulations and
   a) Ensuring that such procedures and standards are uniformly administered by appropriately authorized employees of the district,
   b) Ensuring that, except as otherwise provided by state law, no student shall be required to do any of the following:
      i) To confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district;
      ii) To be required to participate in any preregistration activity not uniformly required;
      iii) To be subjected to non-academic requisites, imposed by anyone, as barriers to enrollment in or the successful completion of a class;
      iv) To be subjected to any registration procedures that result in

restricting enrollment to a specialized clientele; or

v) To be required to make any special effort not required of all students to register in any class or course section.

c) Ensuring that, once enrolled in a class, all students have equal access to the site.

The above summary clearly demonstrates that the test claim legislation and regulations relative to minimum conditions for Open Courses require new programs or higher levels of service.

Condition 4 - Comprehensive Plans

(A) CCC's Statutory History is Incomplete

CCC cites former Education Code Section 199 which provided:

> "The board of governors shall review and approve academic master plans and master plans for facilities for each community college district. Such plans shall be submitted to the board of governors by the local governing board of each community college district...Each district shall annually submit changes in its approved academic master plan for approval by the board of governors."

CCC fails to note that section 199 was recodified and renumbered as new section 71028 by Chapter 1010, Statutes of 1976, Section 2. Section 71028 was repealed by Chapter 973, Statutes of 1988, Section 12.4.

CCC also cites former Education Code Section 25427 which provided:

> "The district governing board shall:
> (a) Establish policies for, and approve, current and long-range education plans and programs and promote orderly growth and development of the community colleges within the district.
> (b) Establish policies for, and approve, academic master plans and long-range master plans for facilities. The district governing board shall submit such master plans to the board of governors for review and approval."

CCC fails to note that section 25427 was recodified and renumbered as new section 72231.5 by Chapter 1010, Statutes of 1976, Section 2. Section 72231.5 was repealed by Chapter 973, Statutes of 1988, Section 14.3.

CCC cites these two repealed sections in support of its conclusion that "[T]he foregoing confirmed (sic) the obligations of districts to establish academic and facility master plans well in advance of January 1, 1975." CCC fails to offer evidence that the new regulations published after the repeal dates of the statutes are not new programs.

(B) The response of CCC to this condition is also based on Attachment 4. Test claimant reserves the right to respond, if needed, when the attachment may be received in the future.

(C) The Test Claim Requires Activities Which Constitute New Programs or Higher Levels of Service

Government Code Section 17514 defines "costs mandated by the state" as any increased costs which a local agency or school district is required to incur as a result of any statute or executive order implementing any statute which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The repealed Education Code Sections and Attachment 4 requirements as described by CCC are limited in scope. They did not include the following new programs or higher levels of service[19] now required by the minimum conditions for Comprehensive Plans:

Comprehensive Master Plan

(1) For the governing board to create, establish policies for, approve and implement comprehensive master plans for their facilities to meet the following requirements:

a) The plan must include both academic master plans and long range master plans for facilities;
b) The plan must address planning requirements which meet the specifications issued by the Board of Governors;
c) The plans, as well as any annual updates or changes to the plans, must be submitted to the Chancellor's Office for review and approval.

Capital Construction Master Plans:

[19] For a more detailed statement of the new programs or higher levels of service required by the minimum conditions for Comprehensive Plans, see the test claim, at pages 200-206.

(1) To annually prepare, update and submit to the Board of Governors a plan for capital construction covering a five-year time period.

(2) Ensuring that the five-year plan sets out the estimated capital construction needs of the district with reference to elements including at least all of the following information:

a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

b) The enrollment projections for each district formulated by the Department of Finance expressed in terms of weekly student contact hours, and enrollment projections for each individual college and educational center within a district made cooperatively by the Department of Finance and the community college district.

c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the Board of Governors.

d) District office, library, and supporting facility capacities as derived from standards adopted by the Board of Governors.

e) An annual inventory of all facilities and land of the district using definitions, forms, and instructions adopted by the Board of Governors.

f) An estimate of district funds which must be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors.

(3) For a community college district that submits an additional capital construction plan, to prepare and include documentation justifying that students will be better served by such a plan due to the existence of either of the following circumstances:

a) The isolation of students within a district in terms of either the distance of students from the location of an educational program or the inadequacy of transportation and student financial inability to meet costs of transportation; or

b) The inability of existing colleges and educational centers in the district to meet the unique educational and cultural needs of a significant number of ethnic students.

Educational Master Plans:

(1) To establish and implement policies for, and to approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

(2) Annually submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole.

(3) To submit each educational master plan to the Chancellor on a form provided by the Chancellor, and to contain all information that the Chancellor requires.

(4) Ensuring that each educational master plan contains all of the following information:
   a) The educational objectives of the Community College or district;
   b) The future plans for transfer programs; occupational programs; continuing education courses; and remedial and developmental programs; and
   c) Plans for the development and expansion of all of the following: library; counseling; placement; and financial aid.

The above summary and more detailed activities set forth in the test claim at pages 200-206 clearly demonstrate that the test claim legislation and regulations relative to minimum conditions for Comprehensive Plans require new programs or higher levels of service.

Condition 5 - Equal Employment Opportunity

CCC names a number of federal constitutional and statutory provisions, including the federal Equal Protection Clause, Title VII, the Americans with Disabilities Act and section 504 of the Rehabilitation Act of the Rehabilitation Act and claims that test claimant is subject to these provisions, which, arguably, precludes the finding of a reimbursable mandate.

Although naming all of these fine provisions of law, CCC not only fails to include copies of relevant portions of these federal laws, it also fails to cite specific chapters, articles, sections or page numbers. There are no citations whatsoever. Besides being a violation of Title 2, California Code of Regulations Section 1183.02, subdivision (c)(2), it also makes it impossible to respond to this chimera of a response.

CCC then cites Government Code section 12940, identifies it as part of the California Fair Employment and Housing Act, argues that it is applicable to claimant and, therefore, is a law of general application barring any basis for reimbursement.

CCC is sadly confused as to laws of general application. When making that determination, one must focus on the test claim legislation, not some other law. In other words, as to the statutes and regulations governing Condition 5, one must look at what is required by those provisions, not by Government Code section 12940. For example, the activities alleged in the test claim include:[20]

(1) A requirement that each community college district employer commit to a sustained action to devise recruiting, training and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees.

(2) A requirement to periodically submit to the board of governors an affirmation of compliance as a condition for the receipt of funds.

(3) A requirement to adopt and implement a district policy which describes its equal employment opportunity program.

(4) A requirement to incorporate the definitions for the following terms within the district's policies and procedures: "adverse impact"; "business necessity"; "equal employment opportunity"; "equal employment opportunity plan"; "equal employment opportunity programs", "ethnic minorities"; "ethnic group identification"; "goals for persons with disabilities"; "in-house or promotional only hiring"; "monitored group"; "person with a disability"; "projected representation"; "reasonable accommodation"; "screening or selection procedure"; "significantly underrepresented group"; "target date" and "timetable".

(5) A requirement to adopt and implement a policy statement setting forth the district's commitment to an equal employment opportunity program.

(6) A requirement to develop, adopt and implement a district-wide written equal employment opportunity plan to implement its equal employment opportunity program, and to:
   a) Submit such plans and any revisions to the Chancellor's Office for review and approval.
   b) Review, and if necessary, revise such plans at least every three

[20] For a more detailed statement of the new programs or higher levels of service required by the minimum conditions for equal employment opportunity, see the test claim, at pages 206-231.

years.

c) Notify the Chancellor at least 30 days prior to adopting any other amendments to the plan.

d) For the plan to include the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the plan; the procedure for filing complaints and the person with whom such complaints are to be filed; a process for notifying all district employees of the provisions of the plan and the policy statement; a process for ensuring that district employees who are to participate on screening or selection committees receive appropriate training on the requirements of state and federal nondiscrimination laws; a process for providing annual written notice to appropriate community-based and professional organizations concerning the district's plan and the need for assistance from the community and such organizations in identifying qualified applicants; an analysis of the number of persons from monitored groups who are employed in the district's work force and those who have applied for employment in each of listed job categories; an analysis of the degree to which monitored groups are underrepresented in comparison to the numbers of persons available and qualified to perform the work required for each such job category and whether or not the underrepresentation is significant; methods for addressing any identified underrepresentation; additional steps consistent to remedy any significant underrepresentation identified in the plan; any other measures necessary to further equal employment opportunity throughout the district; and any goals for hiring persons with disabilities.

(7) A requirement to make a continuous good faith effort to comply with the requirements of the plan.

(8) A requirement to survey its employees on an annual basis and to monitor applicants for employment on an ongoing basis in order to evaluate the implementation of its equal employment opportunity plan and to provide data needed for required analyses.

(9) A requirement that each community college district establish an Equal Employment Opportunity Advisory Committee that includes a diverse membership whenever possible, to assist the district in developing and implementing the plan.

(10) A requirement that a district take additional steps to ensure equal employment opportunity if it determines that a particular monitored group is significantly underrepresented with respect to one or more job categories.

(11) A requirement that the governing board implement policies and procedures to ensure that it is ultimately responsible for proper implementation of equal employment opportunity at all levels of district and college operation and for making measurable progress toward equal employment opportunity by the methods described in the district's equal employment opportunity plan.

(12) A requirement to implement policies and procedures to actively recruit from both within and outside the district work force to attract qualified applicants for all new openings.

(13) A requirement to ensure that job announcements clearly state job specifications and set forth the knowledge, skills, and abilities necessary to job performance.

(14) A requirement to implement policies and procedures to analyze the applicant pool for open positions.

(15) A requirement to implement policies and procedures pertaining to screening or selection procedures in the hiring process.

(16) A requirement to implement policies and procedures to afford persons with disabilities equal employment opportunity in community college districts.

(17) A requirement for each community college district to establish and implement a process permitting any person to file a complaint alleging that the requirements of equal employment opportunity have been violated.

(18) A requirement for districts to timely provide the data required or to request and receive an extension of the deadline from the Chancellor, as a condition for receipt of any funds under the Equal Employment Opportunity fund base.

(19) A requirement for districts to submit a report on the use of Equal Employment Opportunity funds to the Chancellor's Office.

Only if it can be said that each of the requirement listed in the 19 paragraphs above, and each of the more detailed requirements listed in the test claim at pages 206-231, also apply to all state residents and entities, can it be said that the test claim legislation and regulations are laws of general application. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-58

Condition 6 - Student Fees

CCC refers to former Education Code Section 1010.10 and argues that the obligation contained in Title 5, California Code of Regulations Section 51012 has continued to apply "without lapse to the present."

Former section 1010.10 was recodified and renumbered as section 72289 by Chapter 1010, Statutes of 1976, Section 2. Section 72289 was repealed by Chapter 973, Statutes of 1988, Section 14.11.

Condition 7 - Approval of New Colleges and Educational Centers

CCC argues that claimant does not allege that it has ever been affected by Title 5, California Code of Regulations Section 51014, that claimant does not allege costs arising from complying with section 51014, and, therefore, any claim under this section should be rejected.

A test claimant acts as a representative of all community college districts in the State. There is no requirement that the test claimant has incurred all or any of the costs alleged.

The regulations for test claims are found in Title 2, California Code of Regulations Section 1183. Subdivision (e) sets forth the requirements for the content of a test claim. Under subparagraph (3), a written narrative must contain what activities were required under prior law or executive order and what new program or higher level of service is required under the statute or executive alleged to contain or impact a mandate. There is no requirement that the test claim statute or executive order impose a new program or higher level of service solely on the test claimant, only that a narrative describes what new program or higher level of service is required of potential claimants.

Under subparagraph (5) of Title 2, California Code of Regulations Section 1183, subdivision (e), a test claim is required to contain a statement that actual and/or estimated costs which result from the alleged mandate exceed a minimum amount. There is no requirement that the test claimant has personally incurred any costs, only that the alleged mandate will result in the minimum cost.

This argument of CCC must fail.

Condition 8 - Accreditation

CCC argues that there was an "expectation" that colleges would be accredited prior to January 1, 1975 and cites former Education Code Section 25522 as its authority.

Former section 25522 read in relevant part:

> "The governing board of a district maintaining a community college may pay the costs of accreditation of the community colleges within the district by the regional accreditation association serving California..." (Emphasis supplied)

Whereas, prior to 1975 districts were permitted to pay the costs of accreditation, they were not required to be accredited. Now:

> "Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation." (Title 5, California Code of Regulations Section 51016) (Emphasis supplied)

Therefore, all of the activities set forth in the test claim at pages 236-256 are new programs and increased levels of service.

Condition 9 - Counseling

(A) The response of CCC to this condition is based, partially, on Attachment 1. Test claimant reserves the right to respond, if needed, when the attachment may be received in the future.

(B) The Test Claim Requires Activities Which Constitute New Programs or Higher Levels of Service

Government Code Section 17514 defines "costs mandated by the state" as any increased costs which a local agency or school district is required to incur as a result of any statute or executive order implementing any statute which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The Attachment 1 requirements, as described by CCC, are limited in scope. They did

not include the following new programs or higher levels of service[21] now required by the minimum conditions for Counseling:

(1) To establish and implement regulations and procedures to provide counseling programs for students in each college within the district.

(2) To file a copy of the community college district's regulations regarding counseling programs with the Chancellor's Office.

(3) To publicize the counseling program.

(4) To ensure the counseling program is organized and functioning and meets the needs of average students and those with special needs.

(5) To ensure the counseling program includes at least all of the following services:
   a) academic counseling;
   b) career counseling;
   c) personal counseling;
   d) skills testing programs;
   e) financial assistance programs; and
   f) job placement services.

(6) To ensure that academic, career and personal counseling services are provided to all of the following students:
   a) First-time students enrolled for more than six units,
   b) Students enrolled provisionally, and
   c) Students on academic or progress probation.

The above summary and the more detailed activities set forth in the test claim at pages 256-257 clearly demonstrate that the test claim legislation and regulations relative to minimum conditions for Counseling require new programs or higher levels of service.

Condition 10 - Objectives

The response of CCC to this condition is based on Attachment 1. Test claimant

[21] For a more detailed statement of the new programs or higher levels of service required by the minimum conditions for Counseling, see the test claim, at pages 256-257.

reserves the right to respond, if needed, when the attachment may be received in the future.

Condition 11 - Curriculum

CCC again cites subdivision (a) of former Education Code Section 25427 which provided:

> "The district governing board shall:
> (a) Establish policies for, and approve, current and long-range education plans and programs and promote orderly growth and development of the community colleges within the district..."

From this, CCC argues that "[I]t can fairly be assumed that such long-range education plans and programs addressed curriculum." CCC errs in believing that the determination of mandated activities can be based upon "assumptions."

CCC also cites pre-1975 Education Code Section 200.9 which relates to criteria and standards for graded and nongraded classes, which, of course, has nothing to do with curriculum.

Finally, CCC quotes from former (1969) Title 5, California Code of Regulations Section 51002(b) which required community colleges to establish programs of education and courses as will permit the realization of the objectives and functions of the community college.

None of these limited and non-relevant statutes and regulations are as extensive and all-inclusive as the test claim legislation, which:[22]

(1) Requires the establishment and implementation of educational programs and courses that will further the objectives of the community college and meet the approval of the Chancellor.

(2) Requires districts to incorporate in district documents and policies the definitions contained in Section 55000 and 55200 for described terms.

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[22] For a more detailed statement of the new programs or higher levels of service required by the minimum conditions for curriculum, see the test claim, at pages 257-296.

(3) Requires districts to adopt and implement policies and procedures to comply with a Handbook issued by the Chancellor's Office.

(4) Requires districts to report the classification of all courses, classes and activities offered to the Chancellor's Office and for such information to include all described data.

(5) Requires districts to establish and implement detailed standards and criteria for associate degree credit courses and classes.

(6) Requires districts to establish and implement detailed standards and criteria for nondegree credit courses and classes.

(7) Requires districts to establish and implement detailed standards and criteria for noncredit courses and classes.

(8) Requires districts to establish and implement policies and procedures to ensure that all community services classes meet detailed minimum requirements.

(9) Requires implementation of policies and procedures to establish standards regarding credit hours.

(10) Requires districts to ensure that courses of instruction in social sciences include a study of the (1) role, (2) participation, and (3) contribution of all of detailed groups to the (a) economic, (b) political, and (c) social development of both California and the United States of America.

(11) Requires districts to ensure that, for each course offered, detailed facts are made available to students through college publications before the students enroll in the course.

(12) Requires the authorities of each community college maintaining credit and non-credit courses and community services classes and activities to keep and submit current records and reports concerning their total activities as may be required by the Chancellor.

(13) Requires districts to submit each course to be offered for approval on forms provided by the Chancellor's Office.

(14) Requires district governing boards to prepare and submit to the

Chancellor an application for approval, on forms provided by the Chancellor, before offering any course as part of an educational program at a college.

(15) Requires submission of all courses or programs offered for noncredit to the Chancellor for approval.

(16) Requires districts to implement policies for the approval and classification of any community services classes conducted by the district and to report the classification of all such classes to the Chancellor.

(17) Requires districts to ensure that approval of the class is obtained in the manner provided for classes of the same type if the district claims state support for a contract class.

(18) Requires the district governing board to apply specific criteria and procedures if reinstating any course which was deleted from the credit or noncredit curriculum during the 1982-83 fiscal year in response to the Budget Act of 1982.

(19) Requires the district's curriculum committee to assess each associate degree credit course to determine if prerequisite or corequisite courses are necessary.

(20) Requires districts to adopt and implement policies for any prerequisites, corequisites, and "advisories on recommended preparation" required by the district.

(21) Requires districts to apply specific additional rules to the establishment of prerequisites and corequisites.

(22) Requires districts to adopt and implement policies and procedures pertaining to distance education that ensure specific conditions.

(23) Requires districts to adopt and implement policies and procedures regarding independent study courses that ensure specific conditions.

(24) Requires districts to adopt and implement policies and procedures to comply with the curriculum standards and criteria for curriculum approval set forth by the Chancellor's Office in the "Program and Course Approval Handbook".

Therefore, the activities summarized in paragraphs (1) through (24), above, and the more detailed activities set forth in the test claim at pages 257-296 are new programs or higher levels of service.

Condition 12 - Instructional Programs[23]

CCC cites three pre-1975 statutes which required districts to have "academic master plans"[24], to have "current and long-range education programs"[25], and to have "educational programs and classes for adults"[26] and concludes that the existence of these statutes indicates "districts would necessarily have developed policies for the establishment, modification, and discontinuance of educational programs.

CCC errs in reading the title to the condition rather than reading the conditions. Had it done so, it would have realized that "Instructional Programs" actually provide the requirements for vocational and occupational training programs:

> "(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.
> (b)..." (Subdivision (b) will be discussed below in reply to Condition 13)
> (Title 5, California Code of Regulations Section 51022)

Section 78016 of the Education Code provides:

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[23] Described in the Test Claim as "Vocational Education Programs".

[24] Former Education Code Section 199 was recodified and renumbered as section 71028 by Chapter 1010, Statutes of 1976, Section 2. Section 71028 was repealed by Chapter 973, Statutes of 1988, Section 12.4.

[25] Former Education Code Section 25427 was recodified and renumbered as section 72231.5 by Chapter 1010, Statutes of 1976, Section 2. Section 72231.5 was repealed by Chapter 973, Statutes of 1988, Section 14.3.

[26] Former Education Code Section 1010.4 was recodified and renumbered as section 72283 by Chapter 1010, Statutes of 1976, Section 2. Section 72283 was repealed by Chapter 1372, Statutes of 1990, Section 331.

"(a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to ensure that each program, as demonstrated by the California Occupational Information System, including the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information, does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) This section shall apply to each program commenced subsequent to July 28, 1983.

(e) A written summary of the findings of each review shall be made available to the public."

It is with this distinction in mind, that the test claim alleges activities, summarized as follows:[27]

(1) A requirement to develop and implement policies for the establishment, modification, or discontinuance of courses or programs, which incorporate statutory responsibilities regarding vocational or occupational training program review.

(2)) A requirement to conduct a job market study of the labor market focusing on whether the anticipated employment demand for students in the

[27] For a more detailed statement of the new programs or higher levels of service required by the minimum conditions for Vocational Education Programs, see the test claim, at pages 296-306.

proposed program justifies the establishment of the proposed course of instruction prior to establishing a vocational educational program.

(3) A requirement for the governing board of the community college district to review every vocational or occupational training program offered by a district every two years to ensure the programs are effective, meet a documented labor market demand, and do not unnecessarily duplicate other manpower training programs in the area.

(4) A requirement to incorporate the definitions contained in Section 55600, for all of the following terms, into district policies, procedures and documents: "Vocational Educational Contract"; "The California State Plan for Vocational Education"; "Contractor"; and "Eligible Cost".

(5) A requirement for the governing board of each district to appoint and supervise a vocational education advisory committee.

(6) A requirement for any community college district that contracts with a private post secondary school, an activity center, work activity center, or sheltered work shop, to implement policies and procedures to ensure all of the following:

a) All contracts must be approved by the Chancellor.
b) All contracts must provide that the amount contracted for per student must not exceed the amount it costs to provide the same training in community colleges or the tuition charged in postsecondary schools;
c) Those students who are currently enrolled in community colleges and are receiving training in another institution, must not be charged additional tuition;
d) All programs, courses and classes of instruction must meet the standards set forth in the California State Plan for Vocational Education or a course of study for adult schools approved by the Department of Education.

(7) A requirement that the governing board of the community college district must approve of and supervise all instruction when the district enters into a contract with a private or public entity for the education of students whose capacity to function is impaired by physical deficiency or injury in vocational education classes

(8) A requirement to adopt and implement policies and procedures to ensure

that contractors provide (1) vocational, (2) technical, and (3) occupational instruction related to attainment of (a) skills, (b) knowledge, and (c) attitudes so that students may be prepared for gainful employment in the occupational area for which training has been provided; or occupational upgrading so students will have higher level skills required by new and changing technology and employment practices; or enrollment in more advanced training programs.

(9) A requirement that vocational education contracts entered into with contractors meet specific conditions.

(10) A requirement to ensure each contract expressly includes listed specific provisions.

The activities summarized in paragraphs (1) through (10), above, and the more detailed activities set forth in the test claim at pages 296-306 provide new programs or higher levels of service.

Condition 13 - Course Articulation - Local

CCC refers to former Education Code Section 200.13[28] which provided:

> "The board of governors shall facilitate articulation with other segments of higher education and with secondary education."

Condition 13, Course Articulation, is required by Subdivision (b), of Title 5, California Code of Regulations Section 51022 which provides:

> "(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools."

CCC argues "[T]herefore, the Board of Governors has been statutorily required to act in this specific area since before January 1, 1975." The error of its argument is that the

[28] CCC also mistakenly states that section 200.13 was renumbered as section 71071 by Chapter 1010, Statutes of 1976. Actually, it was recodified and renumbered as section 71070. It was then repealed by Chapter 973. Statutes of 1988, Section 12.11.

test claim regulation requires the governing board of each community college to act.

Condition 14 - Academic Freedom

CCC cites from former Education Code Sections 200.22 and 1010.13 to argue that the board of governors were required to establish minimum procedures to allow faculty and students the opportunity to "express their opinions" at the campus level and, in turn, require districts to establish procedures not inconsistent with the board of governors.

The test claim alleges[29] the following required activities:

> For community college districts to adopt and implement a policy statement on academic freedom, which includes:
>
> (1) A requirement to make such policy available to faculty;
>
> (2) A requirement to file the policy with the Chancellor; and
>
> (3) A requirement for the district to substantially comply with the adopted policies and procedures.

Therefore, the test claim mandates new programs or higher levels of service.

Condition 15 - Shared Governance

(A) Faculty Shared Governance (Academic Senate)

The response of CCC to this portion of the condition is based on Attachment 1. Test claimant reserves the right to respond, if needed, when the attachment may be received in the future.

(B) Staff Shared Governance

CCC admits that the activities relative to staff shared governance "appear to have developed recently", but stating, without citation of authority, that the Attorney General has determined that a reimbursable mandate has not been created.

Test claimant assumes that CCC is referring to 83 Opinions of the California Attorney

[29] Test claim, page 306

General 111 (2000), for which a reply has already been made commencing at page 13, above. It is repeated here by reference.

(C) Student Shared Governance

CCC again refers to former Education Code Section 1010.13 which permitted students the opportunity "to express their opinions at the campus level."

The test claim activities go far beyond the right to express an opinion at the campus level. The test claim activities can be summarized[30] as follows:

(1) A requirement to adopt and implement policies and procedures to provide students the opportunity to participate effectively in district and college governance, including:

a) Providing students with the opportunity to participate in the formulation and development of district and college policies and procedures that have or will have a significant effect on students, including the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures.

b) Providing students an opportunity to participate in the formulation and development of any matter significantly affecting students, prior to taking action on any such matter, unless an unforeseeable, emergency situation exists.

c) Ensuring that, at the district and college levels, recommendations and positions developed by students are given every reasonable consideration.

d) Ensuring that the selection of student representatives to serve on college or district committees, task forces, or other governance groups are made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district.

[30] For a more detailed statement of the new programs or higher levels of service required by the minimum conditions for Student Shared Governance, see the test claim,

e) Classifying the following as matters that have or will have a "significant effect on students", which thereby require providing students with prior notice and opportunity to participate in the development of any action to be taken on the matter:

1) grading policies;

2) codes of student conduct;

3) academic disciplinary policies;

4) curriculum development;

5) courses or programs which should be initiated or discontinued;

6) processes for institutional planning and budget development;

7) standards and policies regarding student preparation and success;

8) student services planning and development;

9) student fees within the authority of the district to adopt; and

10) any other district and college policy, procedure, or related matter that the district governing board determines will have a significant effect on students.

f) Ensuring that reasonable consideration is given to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff.

Reviewing the summary presented above and the more detailed list of activities in the test claim at pages 315-317 leaves no doubt that the test claim regulations create new programs or higher levels of service.

Condition 16 - Matriculation Services

There are two sources which require community college districts to provide matriculation services. The Seymour-Campbell Matriculation Act of 1986 and the Title 5 regulations set forth in the test claim.

A. The Seymour-Campbell Matriculation Act of 1986

The Seymour-Campbell Matriculation Act of 1986 is found in the Education Code, at Sections 78210 through 78218.

Section 78218 provides that the Board of Governors of the California Community Colleges shall initially provide for full implementation of the matriculation services specified in Section 78212 in as many community colleges as the funds appropriated for this purpose allow. Section 78212, subdivision (b) requires that these services shall include, but are not limited to, all of the following:

(1) Processing of the application for admission.

(2) Orientation and preorientation services designed to provide to students, on a timely basis, information concerning campus procedures, academic expectations, financial assistance, and any other matters the college or district finds appropriate.

(3) Assessment and counseling upon enrollment, which shall include, but not be limited to, all of the following:

a) Administration of assessment instruments to determine student competency in computational and language skills.

b) Assistance to students in the identification of aptitudes, interests and educational objectives, including, but not limited to, associate of arts degrees, transfer for baccalaureate degrees, and vocational certificates and licenses.

c) Evaluation of student study and learning skills.

d) Referral to specialized support services as needed, including, but not limited to, federal, state, and local financial assistance; health services; campus employment placement services; extended opportunity programs and services provided pursuant to Article 8 (commencing with Section 69640) of Chapter 2 of Part 42; campus child care services provided pursuant to Article 4 (commencing with Section 8225) of Chapter 2 of Part 6; programs that teach English as a second language; and disabled student services provided pursuant to Chapter 14 (commencing with Section 67300) of Part 40.

e) Advisement concerning course selection.

(4) Postenrollment evaluation of each student's progress, and required advisement or counseling for students who are enrolled in remedial courses, who have

not declared an educational objective as required, or who are on academic probation, as defined by standards adopted by the Board of Governors of the California Community Colleges and community college districts.

Section 78214, subdivision (a), requires that all participating districts shall, with the assistance of the Chancellor, establish and maintain institutional research to evaluate the effectiveness of the matriculation services described by this article and of programs and services designed to remedy students' skills deficiencies. Subdivision (b) provides that the data base for this research shall include, but not be limited to:

(1) Prior educational experience, including transcripts when appropriate, as determined by the chancellor.

(2) Educational objectives.

(3) Criteria for exemption from assessment or required counseling or advisement, if applicable.

(4) Need for financial assistance.

(5) Ethnicity, sex, and age.

(6) Academic performance.

Subdivision (c) of section 78214 requires that the evaluation provided for by this section shall include an assessment of the effectiveness of the programs and services in attaining at least the following objectives:

(1) Helping students to define their educational goals.

(2) Assisting institutions in the assessment of students' educational needs.

(3) Matching institutional resources with students' educational needs.

(4) Providing students with specialized support services as referred to in subdivision (b) of Section 78212.

Section 78216, subdivision (b), requires the board of governors to develop a formula for funding student matriculation services at community colleges. The formula shall include the requirement that the districts or colleges contribute matching funds in an amount to be established by the board of governors in each case, and shall reflect, but not be

limited to, all of the following considerations:

(1) The number of students to receive matriculation services at each college.

(2) The levels of support for matriculation services provided at each college prior to July 1, 1985, and the need for funding assistance in the implementation of the program set forth in this article.

(3) The relative needs for matriculation services, based on special student populations such as low-income students, students with language differences, students with physical and learning disabilities, and students in need of remedial instruction.

(4) The requirement that funds for matriculation services be expended only for services approved by the board of governors.

(5) The requirement that any district or college receiving funding pursuant to this section agree to implement this article during the period in which it receives that funding.

(6) The need for computer hardware and software to provide approved matriculation services, and for institutional research personnel for ongoing evaluation.

Subdivision (c) of section 78216 requires the board of governors to require participating colleges to develop a plan for student matriculation that reflects all of the following:

(1) A method for providing the services specified in Section 78212.

(2) The college budget for the matriculation services pursuant to Sections 78212 and 78214.

(3) The development and training of staff and faculty to implement the matriculation services.

(4) In multicampus districts, the coordination of the college matriculation plan with other college plans.

(5) Computerized information services and institutional research and evaluation necessary for implementation of this article.

Section 78218 provides that the article, including the instant section, shall only be operative in any given fiscal year, "if funds are specifically appropriated for the

purposes of this article."

Therefore, standing alone, community college districts are required to provide the services detailed in section 78218, establish and maintain research as provided in section 78214, and to develop a plan as required in subdivision (c) of section 78216. However, pursuant to section 78218, districts are only required to perform these mandated duties when funds are specifically appropriated for these purposes.

CCC contends that there are no reimbursable costs when funds are appropriated.

Government Code Section 17556 provides:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:...
> (e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate..."

CCC has not presented any competent evidence to show that the additional revenue, when and if received, is in an amount sufficient to fund the cost of the state mandate. In fact, section 78216 requires the Board of Governors to develop a "formula" for funding that varies from district to district based upon variable factors and is not intended to reimburse districts for their actual cost of implementation.

CCC also suggests that there is nothing that prohibits districts from spending matriculation funding or the matching money from other state resources to satisfy the requirements of Title 5 section 55530. CCC misses the point. Districts will spend matriculation funding and their own matching money to provide matriculation services. But their "own matching money" is a cost mandated by the test claim legislation and is reimbursable by the state. To the extent the cost of mandated matriculation services exceed the formula funding received and their "own matching money", it is also a cost mandated by the test claim legislation and is reimbursable by the state. And, as for administrative costs of compliance, only the board of governors may allocate a portion of the total funds appropriated for state administrative operations, not district operations. Education Code Section 78216, subdivision (d)

In summary, and limited to when the Seymour-Campbell Matriculation Act of 1986 is operative, community college districts are required to comply with the act and the

"formula funding", if and when received, would be an offset to the costs of compliance.

B. Title 5, California Code of Regulations Sections

Independently of the Seymour-Campbell Matriculation Act of 1986, community college districts are required to comply with the Title 5 regulations mandating matriculation services. These requirements are not contingent upon state apportionment.

The Title 5 Regulations are found in Article 3, Sections 55520 through 55526:

Section 55520 provides that each district shall provide matriculation services. Section 55521 provides that districts shall not do proscribed activities relative to assessments. Section 55522 provides that matriculation services for ethnic and language minority student and student with disabilities shall be appropriate to their needs. Section 55523 provides that districts (unless otherwise required) shall do activities relative to counseling and advisement. Section 55525 provides that each district shall establish a process for assisting students with educational goals. Section 55526 provides that each district shall establish a student follow-up process.

Therefore, any argument proffered by CCC to the effect that compliance with the test claim legislation and regulations is discretionary, is without merit because districts are required to comply with the Title 5 regulations requiring them to provide matriculation services, regardless of Seymour-Campbell Matriculation Act of 1986.

Condition 17 - Full-time/Part-Time Faculty

CCC argues that funding has already been provided by the Legislature's "intent" to provide funding by way of future appropriations found in AB 1725 (Chapter 973, Statutes of 1988).

AB 1725, Statutes of 1988, Chapter 973 Programs

At Section 70 (an uncodified section), subdivision (b) (2), states: "It is the intent of the Legislature that moneys appropriated during Phase II fully fund any state mandate created pursuant to this section." At subdivision (e): "Based on estimates provided... the Legislature finds and declares that its estimate of this funding amount is seventy million dollars ($70,000,000), in addition to the seventy million dollars ($70,000,000) estimated under subdivision (d) [for Phase I]."

The appropriations referenced in the Section 70 intent language are assigned to

specific priorities in Education Code section 84755[31] (added by Statutes of 1988,

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[31] Education Code section 84755, as added by Chapter 973/88, Section 21.7

"(a) The Legislature finds and declares that program-based funding, once implemented, will more adequately and accountably fund the costs of providing quality community college education. Given that program-based funding will not be implemented until fiscal year 1991-92, given that community colleges will be entering a period of major reform and incurrence of new state mandates commencing in January 1989, and given that community colleges will be entering this period of reform having lost purchasing power since the 1977-78 fiscal year, the Legislature recognizes the need to create a transitional funding mechanism for program improvement and mandate funding that can operate until program-based funding is implemented.

(b) For the purpose of improving the quality of community college educational programs and services, for the purpose of reimbursing state-mandated local program costs imposed by this act, and for the purposes of initially implementing specified reforms, the board of governors shall, from amounts appropriated for purposes of this section, allocate program improvement revenues to each district on the basis of an amount per unit of average daily attendance funded in the prior fiscal year. However, this amount shall be increased or decreased to provide for equalization in a manner determined by the Board of Governors, consistent with Sections 84703 to 84705, inclusive.

Each community college district shall use its allocation to initially reimburse state-mandated local program costs, and then to implement specified reforms and make authorized program and service improvements as follows:

(1) Developing articulated programs provided for in Section 69 of Chapter 973 of the Statutes of 1988 with school districts and campuses of the University of California and California State University.

(2) Applying minimum qualifications to all newly hired faculty and administrators, including candidates for these positions as required by Section 87356.

(3) Developing and administering a process for waiver of minimum qualifications as required by Section 87359.

(4) Establishing and applying local hiring criteria as required by Section 87360.

(5) Establishing and applying faculty service areas and competency criteria as required by Sections 87743 to 87743.5, inclusive.

(6) Evaluating temporary employees, instituting peer review evaluation, and widely distributing evaluation procedures as required by Section 87663.

(7) Establishing and applying new processes for tenure evaluation

required by Section 87610.1.

(8) Establishing and applying the tenure denial grievance procedure required by Section 87610.1.

(9) Establishing and applying a process for moving administrators into faculty positions as required by Sections 87454 to 87458, inclusive.

(10) Publishing and distributing a report on the affirmative action success rate as required by Section 87102.

(11) Improving instruction by reducing the ratio of full-time equivalent students to full-time equivalent instructors.

(12) Improving instruction by increasing the hiring of full-time instructors and limiting the practice of hiring part-time instructors.

(13) Augmenting budgets for college libraries and learning resources.

(14) Augmenting budgets for plant maintenance and operations.

(15) Adding new courses or programs to serve community need.

(16) Making progress towards affirmative action goals and timetables established by the district.

(17) Developing and maintaining programs and services authorized by Section 78212.5.

(18) Augmenting budgets for student services in the areas of greatest need.

(19) Providing for release time for faculty and staff as deemed appropriate by the governing board of each community college district, to enable faculty and staff participation in implementing reforms.

(c) Except as provided by Section 87482.6, and except as necessary to reimburse the costs of new state mandates, district governing boards shall have full authority to expend program improvement allocations for any or all of the authorized purposes specified in subdivision (b).

(d) As required by the board of governors, the governing board of each community college district shall submit to the board of governors a plan for using the resources allocated pursuant to this section. The board of governors shall review each plan to ensure that proposed expenditures are consistent with the listing of authorized expenditures provided in this section, and the board of governors shall approve all plans to the full extent that expenditures are authorized by this section. To the extent that a community college district expends its program improvement allocation consistent with its plan, the board of governors shall include the district's allocation as part of the district's base budget for subsequent years.

(e) The board of governors, through the annual systemwide budget submitted pursuant to paragraph (5) of subdivision (b) of Section 70901, shall request necessary resources for the purposes of this section. It is the intent of the Legislature that the

Chapter 973, Section 21.7), including Section 87610.1 which is referenced at subdivision (b), items (7) and (8). However, in a preamble, subdivision (b) states that the new funds will be allocated to "each district on the basis of an amount per unit of average daily attendance funded in the prior fiscal year," but only after the amount is "increased or decreased to provide for equalization." This effectively negates any concept of cost reimbursement, which is the actual cost of the increased level of service, it is merely a general funding device disguised as a mandate reimbursement apportionment.

Notwithstanding, this funding scenario, to the extent actually implemented, does not meet the Government Code section 17556, subdivision (e) exception to a finding of "costs mandated by the state," since the statute (Chapter 973/88) did not provide for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or *include additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.* The funding, to the extent it actually was later provided, was provided by *subsequent* legislation, and *the sufficiency* of the funding remains a question of fact (note that Section 70 declares that it is an "estimate"). More to the point, at Section 67 of Chapter 973, Statutes of 1988, the Legislature leaves it to the Commission on State Mandates to determine if there are any reimbursable mandated costs.

To the extent that funding was made available, and continues to be made available each subsequent year, such funding might reduce the reimbursable costs, but does not preclude an initial determination of whether a reimbursable mandate exists. The test claimant is informed and believes that the Chancellor of the California Community Colleges on or about 1991 prepared an AB 1725 cost questionnaire to obtain from each community college the cost of implementing the provisions of AB 1725, that the cost data was specific to each new program enacted, that most of the community colleges provided this data to the Chancellor, and that the Chancellor is in possession of this information. This information can be utilized to establish base-period cost and revenue information.

Condition 18 - Student Equity

CCC again recites a litany of federal law and regulations without citing any specific

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appropriation and allocation of program improvement money not otherwise provided pursuant to subdivision (b) shall be accomplished through the annual state budget process beginning with the 1989-90 fiscal year. After June 30, 1991, if Section 84750 is implemented, it is the intent of the Legislature to fund the ongoing operations of community college districts pursuant to Section 84750."

reference to any portion of these laws. Test claimant has already answered this shotgun type of response in reply to Condition 5 and in paragraph G commencing above at page 15.

This time, CCC does reference the general provisions of 34 Code of Federal Regulations, the implementing provisions for Title IX.

(1) The Requirements of the Test Claim Legislation and Regulations Exceed the Requirements of Title IX and 34 Code of Federal Regulations, Part 106

CCC claims that the requirements of Title IX, a federal law that prohibits sex discrimination and sexual harassment and its implementing regulations appearing at 34, Code of Federal Regulations, part 106, sections 106.1 through 106.71[32] prohibit a finding that the test claim legislation and regulations create a new program or higher level of service.

As authority for this claim, CCC cites subdivision (c) of Government Code section 17556, which provides:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:...
>
> (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation." (Emphasis supplied)

CCC does not direct the Commission to any specific part of Part 106 which establishes a federal requirement or duplicates any of the activities of the test claim legislation or regulations. A possible relevant citation might be section 106.9 of part 106 of 34 CFR where:

(a) Paragraph (a)(1) requires each recipient to implement specific and continuing steps to notify applicants for admission and employment (and others) that it does not discriminate on the basis of sex in educational programs or activities.

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[32] Since CCC has not complied with the Title 2 Regulations that require a copy of these federal regulations be provided, a copy is attached hereto as Exhibit "C".

(b) Paragraph (a)(1) also requires that the notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and this part.

(c) Paragraph (a)(2) requires each recipient to make the initial notification required by paragraph (a)(1) within 90 days of the effective or applicable date in newspapers or other written communications distributed to every student and employee.

(d) Paragraph (b)(1) requires each recipient to prominently include a statement of the policy described in paragraph (a)[33] to be prominently included in each announcement, bulletin, catalog, or application form which it makes available to any person of a type described in paragraph (a)[34], or which is otherwise used in connection with the recruitment of students or employees. (Emphasis supplied)

(e) Paragraph (c) requires each recipient to distribute each publication described in paragraph (b) and to apprise each of its admission and employment recruitment representatives of the policy and require such representatives to adhere to such policy.

In addition to these federal requirements, the test claim alleges[35] the following additional state mandated activities:

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[33] Paragraph (a) describes a policy of nondiscrimination on the basis of sex, but does not otherwise require it to be in writing or be adopted by the governing board.

[34] Paragraph (a) describes applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions and professional organizations holding collective bargaining or professional agreements with the recipient.

[35] For a more detailed statement of the new programs or higher levels of service required by the minimum conditions for Student Equity, see the test claim at pages 348-366.

(A) A requirement to establish and implement policies and procedures and to conduct staff training to ensure that a general prohibition against discrimination exists in community colleges. This includes requirements:, pursuant to Education Code Sections 72010-72014, 221.5, 221.7, 66016 and 66030.

(1) To provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex.

(2) To establish and implement policies and procedures to ensure that community colleges are in compliance with Education Code Sections 221.5 (policy of the state; prohibited discrimination), 221.7 (school-sponsored athletic programs; prohibited discrimination) and 66016 (equal opportunity; participation in athletics), relating to sex discrimination.

(3) To incorporate into district policies and procedures regarding matters within Division 6 of the Education Code, that with respect to access to community college district services, classes, and programs, and with respect to all references within this division, "handicap" and "disability" have the same meaning.

(4) To establish and implement policies and procedures to ensure that no funds under the control of the community college district are ever used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin.

(5) To require all classes and courses to be conducted without regard to the sex of the student enrolled, in the following ways:

a) Districts must ensure that no student is prohibited from enrolling in any class course based upon the sex of the pupil.

b) Districts must ensure that if students of one sex are required to enroll in a particular course, the same course is also required of students of the opposite sex.

c) Districts must ensure that no school counselor, teacher, instructor, administrator, or aide offers any of the following types of guidance to students of one sex that is different from that offered to students

of the opposite sex, based on that student's sex:

(i) vocational;
(ii) school program;
(iii) career; or
(iv) higher education opportunity guidance.

d) Districts must require any school personnel acting in a career counseling or course selection capacity to any student, to affirmatively explore with the student the possibility of careers, or courses leading to careers, that are nontraditional for the student's sex.

e) Districts must notify the parents or legal guardian of a pupil at least once, in advance of career counseling and course selection, and allow such parents to participate in the counseling sessions and decisions (for minor students).

f) Districts must make participation in physical education activities or sports available to students of both sexes if it is required of students of one sex.

(6) To ensure that public funds for athletic programs are only used for those programs that provide equal opportunity to both sexes for participation and for use of facilities.

(7) For the governing boards of community college districts to apportion public funds available for athletics in a manner that ensures that equitable amounts are allocated for all students, insofar as practicable.

(8) To ensure that opportunities for participation in intercollegiate athletic programs be provided on as equal a basis as is practicable to both male and female students.

(9) For the governing boards of the community colleges to ensure and maintain multicultural learning environments free from all forms of discrimination and harassment.

(B) To create and implement a Comprehensive Mission Statement to identify common educational missions shared by educational institutions in California, which includes:

(1) For the Community Colleges to provide the following:

a) Access to education to all qualified Californians, particularly for those who have been underrepresented in both their graduation rates from secondary institutions and in their attendance at higher educational institutions;

b) Quality teaching and programs of excellence for their students; and

c) Educational equity through a diverse student body and faculty, and an environment in which each person, regardless of race, gender, age, disability, or economic circumstances, has a reasonable chance to fully develop his or her potential.

(2) For Community Colleges to establish and implement policies and procedures for intersegmental collaboration and coordination when it can do any of the following:

a) Enhance the achievement of the institutional missions shared by the segments;

b) Provide more effective planning of postsecondary education on a statewide basis;

c) Facilitate achievement of the goals of educational equity;

d) Enable public and independent higher education to meet more effectively the educational needs of a geographic region;

e) Facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions.

(3) For the leaders of community colleges and the Superintendent of Public Instruction to work together to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels.

(4) For the community colleges to make available and for the California

Postsecondary Education Commission to review and evaluate the effectiveness of intersegmental activities in accomplishing the established goals, and report its findings to the Governor and Legislature biennially.

(C) To establish and implement policies and procedures to comply with the Sex Equity in Education Act of 1988, including requirements:

(1) To ensure that equal rights and opportunities in the community colleges are afforded to all persons, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, color, ancestry, sexual orientation, or perception by others that a person has any of the above characteristics.

(2) To affirmatively combat racism, sexism, and other forms of bias.

(3) To incorporate specified terms and definitions into district policies and procedures relating to sex equity in education.

(4) To ensure that no person in the community colleges is subject to discrimination on the basis of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, color, ancestry, sexual orientation, or perception by others that a person has any of the above characteristics.

(5) To establish and implement a written policy on sexual harassment that includes information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(6) To display a copy of the community college's written policy on sexual harassment in all of the following places and manners:

(a) In a prominent location in the main administrative building or other area of the campus or schoolsite.

(b) The policy, as it pertains to students, must be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(c) The policy must be provided to each faculty member, all members

of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(d) The policy must appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

(7) To provide assurance to any agency administering state funds that the activity conducted by the community college will be in compliance with the Sex Equity in Education Act and any other applicable provisions of state law prohibiting discrimination on the basis of sex.

(8) To prepare and submit compliance reports to the Chancellor's office, as that entity may require.

(9) To make all reports submitted pursuant to section 66291(a) available for public inspection during regular business hours.

(10) For the governing board of a community college district to ensure that programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(11) To allow a party to a written complaint of prohibited discrimination to appeal any action taken by the governing board of a community college district.

(12) To advise any person who files a complaint of prohibited discrimination that civil law remedies may also be available to such complainants.

(13) To publish in appropriate informational materials the fact that civil law remedies may be available to complainants of prohibited discrimination.

(D) To establish and implement a Student Equity Plan and:

(1) For the governing board of community college districts to adopt and implement a student equity plan prior to receipt of state aid.

(2) For Community College districts to adopt and implement a student equity plan which includes the following for each college in the district:

(a) Campus-based research as to the extent of student equity in (1) access, (2) retention, (3) degree and certificate completion, (4) ESL and basic skills completion, and (5) transfer and the determination of what activities are most likely to be effective, and

(i) To periodically review the data compiled, and
(ii) To make efforts to address any problems that are identified, pursuant to Chancellor's Revised Guidelines and Information.

(b) Goals for (1) access, (2) retention, (3) degree and certificate completion, (4) ESL and basic skills completion, and (5) transfer; for the overall student population and for each population group of students, as appropriate, and

(i) For these goals to meet the following standards: (1) be written; (2) include specific measures for determining progress toward achieving the desired outcomes; (3) identify the baseline data findings that forms the basis for noting an equity issue; (4) identify the amount and direction of change expected to reflect the desired outcome or amount of progress to be achieved; (5) include target dates and/or timetables to establish a time frame for assessing the effectiveness in achieving expected outcomes.

(c) Race-neutral measures, or, when legally appropriate, race-conscious measures, implemented in accordance with standards adopted by the Board of Governors, to address any disparity in student population if significant underrepresentation of a particular group is found to exist, and

(i) To implement race/gender neutral measures when working to eliminate any noted underrepresentation.

(ii) To take active steps, beyond compliance with nondiscrimination laws, to promote student equity when significant underrepresentation exists.

(iii) To implement the following procedures when significant underrepresentation exists: (1) review its practices and procedures and identify and implement any additional

measures which might reasonably be expected to address the needs of significantly underrepresented groups in the success indicator areas in question; (2) consider various other means of reducing the underrepresentation, which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective; and (3) establish target dates for achieving expected outcomes,

(iv) To use race/gender neutral methods to rectify underrepresentation for at least 3 years before considering mechanisms that take race or gender into account.

(d) Implementation activities designed to attain the goals, including a means of coordinating existing student equity related programs;

(e) Sources of funds for the activities in the plan;

(f) A schedule and process for evaluation, and

(i) To conduct an annual survey of the college's student population and gather ethnicity, gender and disability data for use in evaluating the progress in implementing the goals set forth in its plan.

(ii) For the evaluation schedule to contain specific information about who is doing what and when and how often the plan itself will be evaluated.

(g) An executive summary that includes, at a minimum, (1) the groups for whom goals have been set; (2) the goals; (3) the initiatives that the college or district will undertake to achieve these goals; (4) the resources that have been budgeted for that purpose; and (5) the district official to contact for further information, and

(i) For the designated contact person to be responsible for the following: (1) monitoring, review, and evaluation of student success for all students; (2) guiding the planning and development process to promote student success; (3) compiling the results of the periodic review process to determine effective success strategies; (4) reporting these

findings to the success/equity advisory committee on an annual basis; (5) submitting a copy of this report along with any resulting committee board action to the Chancellor's Office.

(3) To develop the student equity plan with the active involvement of all groups on campus and with the involvement of appropriate people from the community. To implement this requirement, the governing board must determine who may qualify as "appropriate people from the community" and give notice to such people and also to all groups on campus of any meetings or activities regarding the development of the student equity plan.

(4) For the governing board to submit the Board-adopted plan to the Office of the Chancellor.

(E) Community Colleges must ensure that their student equity plans adhere to the Chancellor's criteria for reviewing and evaluating student equity plans.

The activities summarized above in paragraphs (A) through (E) and the more detailed activities of the test claim set forth at pages 348-366 far exceed those required in part 106 of title 34, Code of Federal Regulations and fall within the exception of subdivision (c) of Government Code Section 17556, that is, when "the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."

(2) The Requirements of the Test Claim Legislation and Regulations Exceed the Few Requirements Found in the "Revised Guidance"

CCC also cites general provisions of "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," (hereinafter referred to as the "Revised Guidance") published in January 2001 by the Office for Civil Rights of the U.S. Department of Education.[36] Simply citing this additional publication does not resolve the issue of whether the activities alleged in the test claim exceed those required in the "Revised Guidance", if any.

The "Revised Guidance" reaffirms the compliance standards that OCR applies in

[36] Since CCC has not complied with the Title 2 Regulations that require a copy of this Revised Sexual Harassment Guidance be provided, a copy is attached hereto as Exhibit "D".

investigations and administrative enforcement of Title IX and provides the principles that a school should use to recognize and effectively respond to sexual harassment of students. ("Revised Guidance," Preamble, page i) The "Revised Guidance" provides many examples of "what to do," but provides very little directions on "how to do" them.

For example, at page 14:

> "Schools are required by the Title IX regulations to adopt and publish grievance procedures[37] providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination." (Emphasis supplied)

The specific test claim allegations summarized above at subparagraphs (A) through (E), above, go far beyond the generalized requirement to "disseminate a policy."

At page 19, the "Revised Guidance" continues to explain, with lack of specificity:

> "Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment." (Emphasis supplied)

Most importantly, the "Revised Guidance" states that the adoption of a policy prohibiting sexual harassment is not required. Again, lots of "what to's" (e.g., "provide effective means") but no "how to's" (such as, "how" to provide "effective means"). At pages 19-20, the "Revised Guidance" does indicate:

> "...if, because of a lack of policy...specifically addressing sexual harassment, students are unaware of what kind of conduct constitutes sexual harassment or that such conduct is prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination complaints will not be considered effective."

---

[37] The "Revised Guidance" and CCC use the terms "grievance procedures" and "complaint procedures" interchangeably. Test claimant assumes that their use of "grievance procedures" does not refer to any collective bargaining process.

In other words, if it doesn't work, it's not good enough, but no required "how to's" are included to make it work. The only specificity put forth by OCR are several elements in evaluating whether a school's grievance procedures will not be considered effective, including an unspecific notice to students, parents and employees where complaints may be filed. This, of course, is different from the more specific requirements, above, which requires the inclusion of information in the written policy on where to obtain the rules and procedures for reporting sexual harassment charges and the available remedies.

Then, at page 20, OCR again becomes non specific:

> "Procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience."

Finally, OCR concludes this discussion by commenting:

> "Many schools ensure adequate notice to students by having copies of the procedures available at various locations throughout the school or campus; publishing the procedures as a separate document; including a summary of the procedures in major publications issued by the school, such as handbooks and catalogs for students, ...faculty and staff; and identifying individuals who can explain how the procedures work."

This observation by OCR is no more than that, an observation, perhaps a suggestion. They are not executive orders. The activities of the test claim legislation and regulations mandate costs which exceed any suggestions found in the "Revised Guidance."

Finally, as its last argument against finding the minimum conditions of Student Equity to be a reimbursable mandate, CCC cites Civil Code Section 51 (Unruh Act) for the proposition that the test claim legislation is a law of general application. CCC cites *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57 as its authority.

CCC errs because the test must be applied to the test claim legislation and not to the Unruh Act. The summary of the test claim legislation above in paragraphs (A) through (E) and the more detailed requirements set forth at pages 348-366 of the test claim show why it is not a law which applies generally to all residents and entities in the state.

The decision in *County of Los Angeles v. State of California* was further relied upon and

explained in *Sacramento II*. (supra) There, the California Supreme Court explained its *County of Los Angeles* decision:

> "Most private employers in the state already were required to provide unemployment protection to their employees. Extension of this requirement to local governments, together with the state government and nonprofit corporations, merely makes the local agencies 'indistinguishable in this respect from private employers.'" (Opinion, at page 67)

The above summary of the test claim at paragraphs (A) through (E) and the more detailed requirements set forth at pages 348-366 of the test claim show that community colleges, when complying with the minimum conditions for state aid are, in fact, "distinguishable from private employers" when those private employers are complying with the Unruh Act. The situation is similar to that discussed by the court in *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 172 where the court held that "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function."

Condition 19 - Transfer Centers

No new argument is presented by CCC in opposition to a finding that the minimum conditions relating to Transfer Centers are not new programs or higher levels of service.

Condition 20 - Compliance Enforcement

No new argument is presented by CCC in opposition to a finding that the minimum conditions relating to Compliance Enforcement are not new programs or higher levels of service.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Minimum Conditions for State Aid 02-TC-31
CLAIMANT: Santa Monica Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of May 5, 2004 , addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

FAX: (916) 445-0278

AND per mailing list attached

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 5/5/04 , at San Diego, California.

D. Bramwell

Diane Bramwell

Commission on State Mandates

Original List Date: 6/26/2003
Last Updated:
List Print Date: 10/17/2003
Claim Number: 02-TC-31
Issue: Minimum Conditions for State Aid

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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EXHIBIT "A"
ADDITIONAL STATUTES CITED

electors of the district to authorize the issuance of bonds for such purpose at an election held for such purpose and if the district is unable to obtain adequate facilities within the district with the funds available to the district for such purpose.

SEC. 21. Section 25509.5 of the Education Code is amended to read:

25509.5. The governing board of a community college district may establish and maintain community college classes outside of the state, comprising a part of an aircraft pilot training program conducted by the district under an agreement with the federal government or any agency thereof, during the time that it is unlawful by reason of any law or order of the federal government or any agency thereof for such classes to be maintained within the district.

The governing board may make such expenditures and do such things in connection with the establishment and maintenance of classes under this section as it could do were the classes established and maintained within the district.

SEC. 22. Section 25509.6 of the Education Code is amended to read:

25509.6. The governing board of a community college district may enter into a contract on a full-cost basis with the federal government or any agency of the federal government to provide community college courses and classes to persons in the military service of the United States at any military camp, post, installation, base, vessel, or location, whether within or outside the district or the state.

SEC. 23. Section 25510 of the Education Code is amended to read:

25510. The Board of Governors of the California Community Colleges shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges.

SEC. 24. Section 25510.5 of the Education Code is amended to read:

25510.5. The chancellor's office shall annually investigate each community college to determine whether it has met the standards. As part of such investigation, representatives of the chancellor's office may participate in the accreditation visits conducted by the regional accrediting agency, and one representative of the chancellor's office, who may be appointed by the chancellor, may serve as a member of the accrediting commission which accredits the public community colleges.

SEC. 25. Section 25511 of the Education Code is amended to read:

25511. The Board of Governors of the California Community Colleges shall establish criteria and standards for graded classes in grades 13 and 14.

SEC. 26. Section 25513 of the Education Code is amended to read:

25513. The president of any two-year community college may admit 11th and 12th grade students to vocational education classes

may exclude from any such meeting, whether public or closed to the public, during the examination of a witness, any or all other witnesses in the matter being investigated.

71023. It is the intent of the Legislature that the Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of community colleges as an integral and effective element in the structure of public higher education in the state. The work of the board shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local autonomy and control in the administration of the community colleges.

71024. The Board of Governors of the California Community Colleges has the duties, powers, purposes, responsibilities, and jurisdiction heretofore vested in the State Board of Education, Superintendent of Public Instruction, the Department of Education, and the Director of Education with respect to the management, administration, and control of the community colleges.

Whenever in any law other than a provision of the Education Code, enacted prior to January 1, 1977, relating to the management, administration and control of the community colleges reference is made to the State Board of Education, Superintendent of Public Instruction, the Department of Education, or the Director of Education, such reference shall be deemed to mean the Board of Governors of the California Community Colleges.

71025. The Board of Governors of the California Community Colleges shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges.

71026. The chancellor's office shall annually investigate each community college to determine whether it has met the standards prescribed pursuant to Section 71025. As part of such investigation, representatives of the chancellor's office may participate in the accreditation visits conducted by the regional accrediting agency, and one representative of the chancellor's office, who may be appointed by the chancellor, may serve as a member of the accrediting commission which accredits the public community colleges.

71027. The Board of Governors of the California Community Colleges shall establish criteria and standards for graded classes in grades 13 and 14.

71028. The board of governors shall review and approve academic master plans and master plans for facilities for each community college district. Such plans shall be submitted to the board of governors by the local governing board of each community college district. Master plans for facilities submitted pursuant to Chapter 4 (commencing with Section 81800) of Part 49 of Division 7 of this title shall satisfy the requirements of this section in relation to master plans for facilities. Each district shall annually submit changes in its approved academic master plan for approval by the

(b) Whether the program provides preventative, proactive, social, or educational services.

(c) Whether there is a need to expand the program to a statewide basis, and whether the services provided by the program are duplicative of other state or local services.

(d) The direct and indirect program benefits to the parents and children who are participants in the program.

(e) The effectiveness of the program in preventing family crises, child abuse, and neglect.

(f) The characteristics of the targeted service population.

8219. This article shall become inoperative on June 30, 1992, and, as of January 1, 1993, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1993, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. The sum of thirty-seven thousand five hundred dollars ($37,500) is hereby appropriated from the General Fund to the State Department of Education for the purposes of Article 2.5 (commencing with Section 8216) of Chapter 2 of Part 6 of the Education Code for the period of January 1, 1989, to June 30, 1989, inclusive. It is the intent of the Legislature that funds necessary in future years for the purpose of the Parent-Child Information Pilot Project as added to Article 2.5 (commencing with Section 8216) of Chapter 2 of Part 6 of the Education Code, be appropriated in the Budget Act of subsequent fiscal years.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to initiate the system provided for under Section 1 of this act in response to current critical needs related to child care and development, it is necessary that this act take effect immediately.

CHAPTER 973

An act to amend Sections 66701, 71000, 71001, 78205, 84381, 84713, 87102, 87104, 87454, 87457, 87602, 87663, and 87743 of, to add Sections 71020.5, 71090.5, 78212.5, 84750, 84755, 87001, 87107, 87482.6, 87608.5, 87610.1, 87615, 87743.1, 87743.2, 87743.3, 87743.4, and 87743.5 to, to add Article 5 (commencing with Section 87150) to Chapter 1 of Part 51 of, to add Chapter 9.2 (commencing with Section 66720) to Part 40 of, and Chapter 2.5 (commencing with Section 87350) to Part 51 of, to add Part 43.5 (commencing with Section 70900) to Division 7 of, to repeal and add Sections 71020, 72411.5, 87458, 87605, 87608, 87609, 87610, and 87611 of, to repeal Sections 71023, 71025, 71026, 71027, 71028, 71062, 71063, 71064, 71066, 71068, 71069, 71070, 71071, 71072, 71073, 71075, 71076, 71079, 71080, 71091, 72201, 72230, 72231.5, 72233, 72282, 72284, 72285, 72286, 72287, 72288, 72289, 72290, 72291, 72292,

Trustees of the California State University, with appropriate consultation with the Academic Senates of the respective segments, shall jointly develop, maintain, and disseminate a common core curriculum in general education courses for the purposes of transfer. Any person who has successfully completed the transfer core curriculum, shall be deemed to have thereby completed all lower division general education requirements for the University of California and the California State University.

66721. Upon development of the transfer core curriculum pursuant to Section 66720, and upon any subsequent joint revision of that curriculum, the Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University shall jointly cause the curriculum to be published and distributed to each public school in this state that provides instruction in any of the grades 7 to 12, inclusive, and to each community college in this state, with an emphasis on the communication of that information to each school or college having a high proportion of students who are members of one or more ethnic minorities. In addition, the Board of Governors shall distribute that transfer core curriculum to the State Board of Education, which shall apply that information to ensure, through its curriculum development activities, that public school pupils enrolled in any of the grades 9 to 12, inclusive, are aware of the academic requirements for preparation for higher education and may receive any necessary academic remediation in a timely manner.

66723. No provision of this chapter shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, makes that provision applicable.

SEC. 8. Part 43.5 (commencing with Section 70900) is added to Division 7 of the Education Code, to read:

PART 43.5. THE CALIFORNIA COMMUNITY COLLEGES

70900. There is hereby created the California Community Colleges, a postsecondary education system consisting of community college districts heretofore and hereafter established pursuant to law and the Board of Governors of the California Community Colleges. The board of governors shall carry out the functions specified in Section 70901 and local districts shall carry out the functions specified in Section 70902.

70901. (a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with

established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule

delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

70901.5. (a) The board of governors shall establish procedures for the adoption of rules and regulations governing the California Community Colleges. Among other matters, the procedures shall implement the following requirements:

(1) Written notice of a proposed action shall be provided to each community college district and to all other interested parties and individuals, including the educational policy and fiscal committees of the Legislature and the Department of Finance, at least 45 days in advance of adoption. The regulations shall become effective no earlier than 30 days after adoption.

(2) The proposed regulations shall be accompanied by an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state-mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies.

(3) The board of governors shall ensure that all proposed regulations of the board meet the standards of "necessity," "authority," "clarity," "consistency," "reference," and "nonduplication," as those terms are defined in Section 11349 of the Government Code. A district governing board or any other interested party may challenge any proposed regulatory action regarding the application of these standards.

(4) Prior to the adoption of regulations, the board of governors shall consider and respond to all written and oral comments received during the comment period.

(5) The effective date for a regulation shall be suspended if, within 30 days after adoption by the board of governors, at least two-thirds of all governing boards vote, in open session, to disapprove the regulation. With respect to any regulation so disapproved, the board of governors shall provide at least 45 additional days for review, comment, and hearing, including at least one hearing before the board itself. After the additional period of review, comment, and hearing, the board may do any of the following:

(A) Reject or withdraw the regulation.

(B) Substantially amend the regulation to address the concerns raised during the additional review period, and then adopt the revised regulation. The regulation shall be treated as a newly

adopted regulation, and shall go into effect in accordance with those procedures.

(C) Readopt the regulation as originally adopted, or with those nonsubstantive, technical amendments deemed necessary to clarify the intent of the original regulation. If the board of governors decides to readopt a regulation, with or without technical amendments, it shall also adopt a written declaration and determination regarding the specific state interests it has found necessary to protect by means of the specific language or requirements of the regulation. A readopted regulation may then be challenged pursuant to existing law in a court of competent jurisdiction, and shall not be subject to any further appeal within the California Community Colleges.

(6) As to any regulation which the Department of Finance determines would create a state-mandated local program cost, the board of governors shall not adopt the regulation until the Department of Finance has certified to the board of governors and to the Legislature that a source of funds is available to reimburse that cost.

(7) Any district or other interested party may propose a new regulation or challenge any existing regulation.

(b) Except as expressly provided by this section, and except as provided by resolution of the board of governors, the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to regulations adopted by the board of governors.

70902. (a) Every community college district shall be under the control of a board of trustees, which is referred to herein as the "governing board." The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.

The governing board of each community college district shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district.

(b) In furtherance of the provisions of subdivision (a), the governing board of each community college district shall do all of the following:

(1) Establish policies for, and approve, current and long-range academic and facilities plans and programs and promote orderly growth and development of the community colleges within the district. In so doing, the governing board shall, as required by law, establish policies for, develop, and approve, comprehensive plans. The governing board shall submit the comprehensive plans to the

board of governors for review and approval.

(2) Establish policies for and approve courses of instruction and educational programs. The educational programs shall be submitted to the board of governors for approval. Courses of instruction that are not offered in approved educational programs shall be submitted to the board of governors for approval. The governing board shall establish policies for, and approve, individual courses that are offered in approved educational programs without referral to the board of governors.

(3) Establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors.

(4) Employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors and establish employment practices, salaries, and benefits for all employees not inconsistent with the laws of this state.

(5) To the extent authorized by law, determine and control the district's operational and capital outlay budgets. The district governing board shall determine the need for elections for override tax levies and bond measures and request that those elections be called.

(6) Manage and control district property. The governing board may contract for the procurement of goods and services as authorized by law.

(7) Establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right to participate effectively in district and college governance, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(8) Establish rules and regulations governing student conduct.

(9) Establish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law.

(10) In its discretion, receive and administer gifts, grants, and scholarships.

(11) Provide auxiliary services as deemed necessary to achieve the purposes of the community college.

(12) Within the framework provided by law, determine the district's academic calendar, including the holidays it will observe.

(13) Hold and convey property for the use and benefit of the district. The governing board may acquire by eminent domain any property necessary to carry out the powers or functions of the district.

(14) Participate in the consultation process established by the board of governors for the development and review of policy proposals.

(c) In carrying out the powers and duties specified in subdivision

(b) or other provisions of statute, the governing board of each community college district shall have full authority to adopt rules and regulations, not inconsistent with the regulations of the board of governors and the laws of this state, that are necessary and proper to executing these prescribed functions.

(d) Wherever in this section or any other statute a power is vested in the governing board, the governing board of a community college district, by majority vote, may adopt a rule delegating the power to the district's chief executive officer or any other employee or committee as the governing board may designate; provided, however, that the governing board shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of the delegation.

SEC. 9. Section 71000 of the Education Code is amended to read:

71000. There is in the state government a Board of Governors of the California Community Colleges, consisting of all of the following:

(a) Thirteen members, who are appointed by the Governor with the advice and consent of two-thirds of the Senate. Of the members appointed by the Governor, two shall be current or former elected members of local community college district governing boards. The Governor shall appoint the current or former members of the governing board of a community college district for staggered six-year terms. The voting members who are current or former members of the governing board of a community college district shall first be appointed no later than January 15, 1990, and January 15, 1992, respectively.

(b) One voting student who is enrolled in a community college with a minimum of five semester units, or its equivalent, at the time of the appointment and throughout the period of his or her term of appointment, or until a replacement has been named. A student member shall be enrolled in a community college at least one semester prior to his or her appointment and shall meet and maintain the minimum standards of scholarship prescribed for community college students. The student member shall be appointed by the Governor for a one-year term commencing on June 1.

(c) Two voting tenured faculty members from a community college, who shall be appointed by the Governor for two-year terms. The Governor shall appoint each faculty member from a list of names of at least three persons furnished by the Academic Senate of the California Community Colleges. The first voting tenured faculty member appointed to the board shall occupy the seat on the board that is made available by the next full-term vacancy of a four-year term that exists after January 1, 1984. The first voting tenured faculty member appointed to the additional voting tenured faculty member seat on the board provided by the amendments to this section enacted by the Statutes of 1987 shall occupy the second seat on the board that is made available by the next full-term vacancies that exist after January 1, 1988. Thereafter, each seat shall be designated as a

the Education Code, the adoption of regulations as required by Sections 70901.5, 87356, 87359, 87107, and 87482.6 of the Education Code and Section 69 of this act, the development of a list of disciplines, as required by Section 87357 of the Education Code, and the review required by Section 87359.5 of the Education Code $300,000

(d) For purposes of commencing implementation of Section 84750 of the Education Code, during the period of January 1, 1989, through June 30, 1990 ..... $300,000

(e) For purposes of subdivision (b) of Section 87104 of the Education Code $300,000

(f) For purposes of Section 71020.5 of the Education Code $150,000

(g) To the Community College Fund for instructional improvement pursuant to Section 84381 of the Education Code $200,000

CHAPTER 974

An act to amend and supplement Section 2.00 of the Budget Act of 1988 by augmenting Items 0540-001-001, 2200-001-001, 2240-001-001, 3360-001-465, 3720-001-001, 4170-101-001, 4200-101-001, 4260-101-001, 4260-111-001, 4260-121-001, 4440-101-001, 4440-111-001, 5240-001-001, 5450-001-001, 5460-001-001, 7980-111-001, 7980-121-001, 8260-001-001, 8300-001-001, 8570-001-001, 9800-001-001, 9800-001-494, and 9800-001-988 thereof, amending Items 6440-025-001 and 6610-025-001 thereof, and adding Items 0820-301-001, 2200-001-036, 2200-101-036, and 9210-102-001 thereto, relating to the support of the State of California, and making an appropriation therefor, to take effect immediately, usual current expenses.

[Approved by Governor September 19, 1988. Filed with Secretary of State September 19, 1988.]

I am deleting the $3 million transfer to the General Fund contained in Section 17 of Assembly Bill No. 1903. This action is necessary due to the lack of funds in the Special Account for Capital Outlay.

With this deletion, I approve Assembly Bill No. 1903.

GEORGE DEUKMEJIAN

The people of the State of California do enact as follows:

SECTION 1. Item 0820-301-001 is added to Section 2.00 of the Budget Act of 1988, to read:

EXHIBIT "B"

PEOPLE EX.REL. ETC V. DUQUE (2003)

105 Cal.App.4th 259; 129 Cal.Rptr.2d 298

[No. A098863. First Dist., Div. Five. Jan. 10, 2003.]

THE PEOPLE ex rel. FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS, Plaintiff and Respondent, v. HENRY DUQUE, Defendant and Appellant.

SUMMARY

The trial court entered a judgment that a Public Utilities Commission (PUC) commissioner forfeited his office pursuant to Pub. Util. Code, § 303, subd. (a), for having owned stock in a corporation that was regulated by the PUC. (Superior Court of the City and County of San Francisco, No. 318146, Alfred G. Chiantelli, Judge.)

The Court of Appeal reversed. The court held that because the trial court correctly ruled that defendant held his interest in the stock voluntarily, and since the forfeiture language set forth in the statute applies only when a commissioner acquires an interest in a regulated company "other than voluntarily," the statute, by its terms, did not apply under the facts of the case. The court could not supply an implied remedy to fill the statutory gap. It is particularly appropriate to honor forfeiture limitations where the issue is whether a state constitutional officer has forfeited his or her office. A court must limit itself to interpreting the law as written and leave for the people and the Legislature the task of revising it as they deem wise. Moreover, a commissioner who voluntarily owns stock in a regulated company arguably has neglected his statutory duty under Pub. Util. Code, § 303, subd. (a), and thus would be subject to removal under Cal. Const., art. XII, § 1. (Opinion by Jones, P. J., with Stevens and Simons, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a-1d) Public Officers and Employees § 29—Duration and Termination of Tenure—Forfeiture—Public Utilities Commissioner—Voluntary Ownership of Stock in Regulated Company.—The trial court erred in ruling that a Public Utilities Commission (PUC) commissioner forfeited his office pursuant to Pub. Util. Code, § 303, subd. (a), for

having owned stock in a corporation that was regulated by the PUC. Because the trial court correctly ruled that defendant held his interest in the stock voluntarily, and since the forfeiture language set forth in the statute applies only when a commissioner acquires an interest in a regulated company "other than voluntarily," the statute, by its terms, did not apply under the facts of the case. The court could not supply an implied remedy to fill the statutory gap. It is particularly appropriate to honor forfeiture limitations where the issue is whether a state constitutional officer has forfeited his or her office. A court must limit itself to interpreting the law as written and leave for the People and the Legislature the task of revising it as they deem wise. Moreover, a commissioner who voluntarily owns stock in a regulated company arguably has neglected his statutory duty under Pub. Util. Code, § 303, subd. (a), and thus would be subject to removal under Cal. Const., art. XII, § 1.

[See 8 Witkin, Summary of Cal. Law (9th ed. 1989) Constitutional Law, § 889; West's Key Number Digest, Public Utilities ⚖ 142.]

(2) **Statutes § 30—Construction—Language—Plain Meaning.**—In construing a statute a court ascertains the Legislature's intent in order to effectuate the law's purpose. The court must look to the statute's words and give them their usual and ordinary meaning. The statute's plain meaning controls the court's interpretation unless its words are ambiguous.

(3) **Public Officers and Employees § 29—Duration and Termination of Tenure—Forfeiture.**—Public office forfeiture provisions are disfavored because they encroach on the fundamental right to hold office. The right to hold public office, either by election or appointment, is one of the valuable rights of citizenship. The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Furthermore, the law traditionally disfavors forfeitures, and statutes imposing them are to be strictly construed.

(4) **Statutes § 30—Construction—Language—Plain Meaning.**—Courts are obligated to interpret the language in a statute in accordance with its plain meaning, and may not, under the guise of construction, rewrite a law or give the words an effect different from the plain and direct import of the terms used.

(5) **Statutes § 39—Construction—Conformation of Parts.**—While a court must, if possible, avoid interpreting a statute in an absurd manner, when deciding what is absurd the court is required to read the statute

with reference to the entire scheme of law of which it is part so that the whole may be harmonized.

(6) **State of California § 10—Attorney General—Opinions—Weight.** —An opinion of the Attorney General authorizing a quo warranto action against a Public Utilities Commission commissioner was not controlling on the commissioner's appeal from an adverse judgment. Given that the Attorney General aligned himself with plaintiff, citing the Attorney General's opinion as controlling is analogous to one party arguing that an amicus curiae brief submitted in support of his or her position mandates how an appeal must be resolved. In any event, while opinions of the Attorney General are entitled to considerable weight, they are not binding.

COUNSEL

Remcho, Johansen & Purcell, Joseph Remcho and Thomas A. Willis for Defendant and Appellant.

Harvey Rosenfield, Pamela M. Pressley; Bill Lockyer, Attorney General, and Anthony Davigo, Deputy Attorney General, for Plaintiff and Respondent.

OPINION

JONES, P. J.—The People of the State of California, through relator the Foundation for Taxpayer and Consumer Rights (FTCR) filed a quo warranto action against Commissioner Henry Duque of the Public Utilities Commission (PUC), contending Duque must be removed from office pursuant to Public Utilities Code section 303,[1] subdivision (a), because he formerly held stock in a corporation that was regulated by the PUC. The trial court agreed and ruled Duque had forfeited his office. Duque now appeals claiming the judgment must be reversed because (1) section 303, subdivision (a), is unconstitutional, and (2) the statute, by its terms, did not apply to his conduct. We agree with the second of these arguments and reverse the judgment.

[1]Unless otherwise indicated, all further section references will be to the Public Utilities Code.

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 3, 1995, former Governor Pete Wilson appointed Duque a commissioner on the PUC. The position is a constitutionally mandated office.[2] In December 1996, Governor Wilson reappointed Duque to a full six-year term. His appointment was confirmed by the state senate. Duque's term of office ended on January 1, 2003.

While Duque was a commissioner, his personal investment account was managed by his long-term stockbroker, Michael Golub. Golub made investment decisions for Duque pursuant to a power of attorney without seeking input from Duque. When Duque became a commissioner, he told Golub he could not own stock in companies that were regulated by the PUC.

On May 12, 1999, Golub purchased stock in Nextel Communications, Inc., a wireless communication carrier, and allocated 700 shares to Duque's account. At the time of the purchase, Duque believed that wireless carriers such as Nextel were regulated by the Federal Communications Commission (FCC), and not by the PUC. Golub had a similar understanding. Duque disclosed his ownership of the Nextel stock in his 1999 and 2000 statements of economic interests.

In fact, while states are precluded from regulating the rates charged by wireless carriers (see 47 U.S.C. § 332(c)(3)(A)), other aspects of Nextel's business were and are regulated by the PUC. Three months after Duque acquired his stock, Nextel and all other phone companies in California filed a joint petition seeking an allocation of phone numbers in the 310 area code. The PUC, with Duque voting in dissent, adopted an allocation plan. Duque voted against the interests of Nextel and the other petitioning parties.

In February 2000, the PUC noticed rulemaking proceedings to establish consumer protection rules applicable to telecommunication companies. The rules would apply to all communication companies, including Nextel.

In March 2000, the PUC approved an interconnection agreement between Pacific Bell and Nextel. The agreement was part of a larger consent item agenda that included several similar agreements. All the agreements were approved en masse.

[2]California Constitution, article XII, section 1, states: "The Public Utilities Commission consists of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for staggered 6-year terms. . . . The Legislature may remove a member for incompetence, neglect of duty, or corruption, two thirds of the membership of each house concurring."

On August 16, 2000, Duque received a phone call from Todd Wallack, a reporter for the San Francisco Chronicle, who had reviewed Duque's statements of economic interests. Wallack questioned Duque's ownership of Nextel stock, asserting it was a regulated company whose stock Duque was not permitted to own. Duque contacted the general counsel of the PUC to ask him whether Nextel was regulated by the PUC. The general counsel did not call back.

Duque believed that Wallack sounded knowledgeable. He decided to sell his stock because there was, at a minimum, a perception of conflict. On August 18, 2000, Duque directed his stockbroker to sell his remaining Nextel stock. Duque earned almost $70,000 as the result of his ownership of the stock.

On October 4, 2000, respondent FTCR sought permission from the California Attorney General to file an action against Duque. The Attorney General granted permission in an opinion dated November 29, 2000. (See 83 Ops.Cal.Atty.Gen. 263 (2000).)

In January 2001, FTCR, acting in the name of the People of the State of California, filed a quo warranto action against Duque under Code of Civil Procedure section 803 et seq. FTCR contended that Duque had forfeited his office as a commissioner under section 303, subdivision (a), because he formerly owned a prohibited financial interest in Nextel.

In July 2001, FTCR filed a motion for summary judgment arguing it was entitled to prevail as a matter of law. The judge hearing the motion denied it, ruling that section 303, subdivision (a), "does not provide for the removal from office of a [c]ommissioner . . . for a voluntary acquisition of stock." However, the judge ruled Nextel was in fact subject to regulation by the PUC.

The case then proceeded to a one-day court trial. At the conclusion of the trial, the court issued a statement of decision ruling Duque had forfeited his office under section 303, subdivision (a), because he had voluntarily owned stock in a company that was regulated by the PUC. The court ruled specifically that Duque had *not* been dishonest and that he had *not* acted in bad faith. Instead, the court ruled that Duque had shown poor judgment because he had "not [done] everything, which can reasonably be expected of a public utility commissioner to do in order to avoid a conflict of interest." The court ordered Duque to pay a $5,000 fine, and ruled he must pay FTCR's attorney fees under Code of Civil Procedure section 1021.5.

This appeal followed. While the matter was being briefed, we granted Duque's petition for writ of supersedeas and stayed the court's judgment pending our resolution of the appeal.

II. DISCUSSION[3]

(1a) Duque contends the judgment must be reversed because (1) section 303, subdivision (a) is unconstitutional, and (2) the section, by its terms, did not apply under the facts of this case. Since we do not reach constitutional issues unless absolutely required to do so (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 230 [45 Cal.Rptr.2d 207, 902 P.2d 225]), we turn to the second, and we believe, dispositive argument.

Section 303, subdivision (a), states: "A public utilities commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission. If any commissioner acquires a financial interest in a corporation or person subject to regulation by the commission other than voluntarily, his or her office shall become vacant unless within a reasonable time he or she divests himself or herself of the interest."

Our interpretation of this language is guided by well-settled rules of construction. **(2)** In construing a statute we ascertain the Legislature's intent in order to effectuate the law's purpose. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386 [241 Cal.Rptr. 67, 743 P.2d 1323].) We must look to the statute's words and give them their usual and ordinary meaning. (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601 [7 Cal.Rptr.2d 238, 828 P.2d 140].) "The statute's plain meaning controls the court's interpretation unless its words are ambiguous." (*Kobzoff v. Los Angeles County Harbor/UCLA Medical Center* (1998) 19 Cal.4th 851, 860-861 [80 Cal.Rptr.2d 803, 968 P.2d 514].)

(1b) The language used in section 303, subdivision (a), is reasonably clear. The first sentence states that commissioners are precluded from owning an interest in any company that is subject to regulation by the PUC. Here, the trial court ruled, and the evidence fully supports the conclusion, that Duque held an interest in a corporation that was regulated by the PUC.

[3]While this appeal was being briefed, FTCR filed a request asking this court to take judicial notice of the legislative history of the statutes and constitutional sections that are at issue in this case. We deferred ruling on the request until the merits of the appeal. (See *People v. Preslie* (1977) 70 Cal.App.3d 486, 493-494 [138 Cal.Rptr. 828].) Having now considered FTCR's request, we grant it.

It is undisputed that Duque held Nextel stock. Nextel, as a wireless carrier, was and is subject to regulation by the PUC. Indeed, Duque himself participated in a decision in which the PUC asserted its right to regulate certain aspects of the wireless communication business. (See *In re Mobile Telephone Service and Wireless Communications* (Cal.P.U.C., 1996) 174 Pub.Utl.Rep.4th (West) 543.)

The second sentence of section 303, subdivision (a), then states that if a commissioner comes to possess an interest in a regulated company "*other than voluntarily*" (or in other words involuntarily) he or she must divest himself or herself of that interest "within a reasonable time." If the commissioner fails to do so, his or her office "shall become vacant." Here the trial court held, and the parties both agree, that Duque held his interest in Nextel *voluntarily*. Since the forfeiture language set forth in section 303, subdivision (a), applies only when a commissioner acquires an interest in a regulated company "other than voluntarily," the statute, by its terms, did not apply under the facts of this case.

This application of section 303, subdivision (a), highlights a critical gap in the language of the statute. While section 303, subdivision (a), states that commissioners may not possess an interest in a regulated company, and provides a remedy for the *involuntary* acquisition of such an interest, the statute does not describe what occurs when a commissioner *voluntarily* acquires an interest in a regulated company.[4] The pivotal issue presented here is whether we must fill that gap with an implied remedy: i.e., that a commissioner who voluntarily acquires an interest in a regulated company must forfeit his or her office. We decline to do so.

(3) First, forfeiture provisions are disfavored because they encroach on the fundamental right to hold office. " '[T]he right to hold public office, either by election or appointment, is one of the valuable rights of citizenship . . . *The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law.* . . .' " (*Helena Rubenstein Internat. v.*

[4]The statute's silence as to penalty for a voluntary acquisition is mirrored in a related constitutional provision. Article XII, section 7, of the California Constitution states: "A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission." This language provides a standard of conduct applicable to public utilities commissioners, but does not provide a remedy for a violation of that standard. Article XII, section 7, also states: "A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office." This portion of the section mandates forfeiture of office for certain types of conduct, but states clearly that the remedy does not apply to public utilities commissioners.

Younger (1977) 71 Cal.App.3d 406, 418 [139 Cal.Rptr. 473], italics added in *Helena Rubenstein*, quoting *People v. Washington* (1869) 36 Cal. 658, 662; see also *Carter v. Com. on Qualifications, etc.* (1939) 14 Cal.2d 179, 182 [93 P.2d 140].) Furthermore, the "law traditionally disfavors forfeitures and statutes imposing them are to be strictly construed." (*People v. United Bonding Ins. Co.* (1971) 5 Cal.3d 898, 906 [98 Cal.Rptr. 57, 489 P.2d 1385]; see also 67 Ops.Cal.Atty.Gen. 459, 461 (1984).) **(1c)** We believe it is particularly appropriate to honor these limitations where, as here, the issue is whether a state constitutional officer has forfeited his office.

(4) Second, we are obligated to interpret the language in a statute in accordance with its plain meaning. (*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003 [111 Cal.Rptr.2d 564, 30 P.3d 57].) "We may not, under the guise of construction, rewrite [a] law or give the words an effect different from the plain and direct import of the terms used." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297].) **(1d)** Here, section 303, subdivision (a), describes what occurs when a commissioner involuntarily owns stock in a regulated company. The statute, by its terms, does not describe what occurs when a commissioner voluntarily owns stock in a company that is regulated. "[W]e must limit ourselves to interpreting the law as written and leave for the People and the Legislature the task of revising it as they deem wise." (*People v. Garcia* (1999) 21 Cal.4th 1, 15 [87 Cal.Rptr.2d 114, 980 P.2d 829].)

Our holding does not mean that commissioners may violate section 303, subdivision (a), with impunity. Article XII, section 1, of the California Constitution states that the Legislature may remove a commissioner from office "for incompetence, neglect of duty, or corruption . . . ." A commissioner who voluntarily owns stock in a regulated company arguably has neglected his statutory duty under section 303, subdivision (a), and thus would be subject to removal under article XII, section 1. Furthermore, Duque concedes that commissioners who violate the public trust remain subject to civil and criminal penalties under the Political Reform Act of 1974. (See Gov. Code, § 81000 et seq.) We hold only that a commissioner who violates section 303, subdivision (a), by voluntarily owning stock, does not, under the terms of that statute, forfeit his office.[5]

FTCR contends the interpretation of section 303, subdivision (a), we have adopted is absurd because it would permit forfeiture of office for the

[5]Having reached this conclusion, we need not decide the potentially more troubling issue of whether section 303, subdivision (a), is constitutional in light of article XII, section 1, of the California Constitution, which states: "The Legislature may remove a member [of the Public Utilities Commission] for incompetence, neglect of duty, or corruption, two thirds of the membership of each house concurring." Specifically, we need not decide whether the

involuntary acquisition of an interest in a regulated company, while providing no remedy for the more serious violation that occurs when a commissioner voluntarily acquires an interest in a regulated company. FTCR concedes this argument is premised on the assumption that a voluntary acquisition of an interest in a regulated company is, by its nature, a more serious offense. In our view, FTCR's premise is flawed. A commissioner can voluntarily but inadvertently acquire an interest in a regulated company by, for example, purchasing shares in an unregulated corporation which, unbeknownst to the commissioner, has recently acquired a regulated corporation. There is nothing particularly blameworthy about such an act and it should not necessarily trigger a more severe sanction.

(5) Furthermore, while we must, if possible, avoid interpreting a statute in an absurd manner (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276 [87 Cal.Rptr.2d 222, 980 P.2d 927]), when deciding what is "absurd" we are required to read the statute " ' "with reference to the entire scheme of law of which it is part so that the whole may be harmonized . . . ." ' " (*Ibid.*, quoting *People v. Pieters* (1991) 52 Cal.3d 894, 898-899 [276 Cal.Rptr. 918, 802 P.2d 420].) Section 303, subdivision (a), certainly has a limited scope. It mandates forfeiture of office for an involuntary acquisition of an interest in a regulated company, while stating no remedy for the conflict of interest that arises when a commissioner voluntarily obtains an interest in a regulated company. However, the omissions inherent in section 303, subdivision (a), are largely filled by the power to remove found in article XII, section 1, of the California Constitution, and by the civil and criminal penalties contained in the Political Reform Act of 1974. (See Gov. Code, § 81000 et seq.) When all the related provisions of law are considered together, our interpretation of section 303, subdivision (a), is not absurd.

FTCR also contends the trial court's interpretation of section 303, subdivision (a), is supported by two opinions issued by the California Attorney General. However, the issue in the first opinion, 80 Ops.Cal.Atty.Gen. 27 (1997) was whether the PUC is obligated to discharge an employee who marries an employee of a regulated company. That Attorney General concluded that "on its face, section 303 would prohibit continued employment by an employee of the Commission who marries an employee of a regulated utility." (*Id.* at p. 29.) The opinion does not involve a constitutional officer, does not involve stock ownership, and does not discuss the forfeiture clause

section's grant of the power to remove to the Legislature, bars the judiciary from determining whether removal is necessary or appropriate. (Cf. *In re McGee* (1951) 36 Cal.2d 592 [226 P.2d 1]; *California War Veterans for Justice v. Hayden* (1986) 176 Cal.App.3d 982 [222 Cal.Rptr. 512].)

that is pivotal here. Given these significant differences, we conclude the opinion is not persuasive. (Cf. *Andres v. Young Men's Christian Assn.* (1998) 64 Cal.App.4th 85, 90 [74 Cal.Rptr.2d 788].)

(6) The second opinion, 83 Ops.Cal.Atty.Gen. 263 (2000), is the one in which the Attorney General authorized FTCR to file the present litigation. Given that the Attorney General has aligned himself with FTCR, citing the Attorney General's opinion as controlling is analogous to one party arguing that an amicus brief submitted in support of his position mandates how an appeal must be resolved. In any event, while opinions of the Attorney General are entitled to considerable weight, they are not binding. (*State of Cal. ex rel. State Lands Com. v. Superior Court* (1995) 11 Cal.4th 50, 71 [44 Cal.Rptr.2d 399, 900 P.2d 648].) Here, the Attorney General stated in his opinion that "[Duque's] office became vacant immediately upon his acquisition of the 700 shares of stock in Nextel on May 12, 1999." (83 Ops.Cal.Atty.Gen., *supra*, at p. 265.) In reaching that conclusion, the Attorney General did not discuss the language of the section 303, subdivision (a), in detail and he did not acknowledge that the statute only provides for a forfeiture when a commissioner obtains stock involuntarily. Again, we conclude the Attorney General's opinion is not persuasive.

FTCR next contends the trial court's ruling was correct under the rule that courts must, if possible, give meaning to all the language of a statute. (See, e.g., *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1118 [81 Cal.Rptr.2d 471, 969 P.2d 564].) According to FTCR, interpreting section 303, subdivision (a), to mean that a voluntary acquisition of an interest does not result in a forfeiture would render the second sentence of the subdivision meaningless. This is simply not true. Under our interpretation, the first sentence of section 303, subdivision (a), sets forth the general rule that commissioners may not possess an interest in a company that is regulated by the PUC. The second sentence then provides a limited remedy for a violation of the general rule. If a commissioner obtains an interest involuntarily, he must divest himself of that interest in a reasonable time. If he fails to do so, his office is vacated. Under our interpretation, all language in the statute is given meaning.

Next, FTCR contends the trial court's ruling is supported by the maxim of statutory construction, *expressio unius est exclusio alterius,* meaning the "expression of one thing is the exclusion of another." (See *People v. Anzalone* (1999) 19 Cal.4th 1074, 1078 [81 Cal.Rptr.2d 315, 969 P.2d 160].) As we understand it, FTCR's theory is that the first sentence of section 303, subdivision (a), states the general rule that a commissioner who owns an

interest in a company that is regulated by the PUC forfeits his office. The second sentence then provides for a single exception to the general rule: a commissioner who obtains his interest involuntarily, need not forfeit his office if he disposes of that interest within a reasonable time. According to FTCR, interpreting the statute to mean that a commissioner who voluntarily obtains an interest in a regulated company faces no risk of automatic forfeiture of office would improperly add an additional exception that is not specified in the statute. We reject this argument because it is based on a false premise. Contrary to FTCR's argument, the first sentence of section 303, subdivision (a), does not state that a commissioner who owns an interest in a regulated company forfeits his office. It merely states that a commissioner may not own an interest in a regulated company. No remedy is provided. FTCR's argument, based on a mistaken interpretation of the statute, must fail.

FTCR also argues that its interpretation of section 303, subdivision (a), is supported by a constitutional consideration. Specifically, FTCR notes that the first sentence of subdivision (a) stating: "A public utilities commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission" is identical to language contained in article XII, section 7, of the California Constitution. The language in article XII, section 7, in turn, is based on former article XII, section 22, which stated in part: "no person in the employ of or holding any official relation to any person, firm or corporation, which said person, firm or corporation is subject to regulation by said Public Utilities Commission and no person owning stock or bonds of any such corporation or who is in any manner pecuniarily interested therein, shall be appointed to *or hold* the office of Public Utilities Commissioner." (See Deering's Cal. Codes (1974 ed.) Const., art. XII, § 22, p. 199, italics added.) Since current article XII, section 7, was intended to restate former article XII, section 22, without "substantive change," (see art. XII, § 9) FTCR contends the language we have italicized in former article XII, section 22, must be interpreted to mean that a person cannot simultaneously hold the position of commissioner and possess stock in a regulated company. If a commissioner does so, his office becomes vacant. We reject this argument because it fails to distinguish between a duty and a remedy. Article XII, section 7, and former article XII, section 22, both describe a duty that is imposed on those who serve as commissioners on the PUC. A commissioner cannot hold an interest in a company that is regulated by the PUC. However, neither of those sections provides a remedy for a violation of that duty. It is simply beyond our purview, as an intermediate appellate court, to create or imply such a remedy where it is not statutorily or constitutionally compelled.

Finally, FTCR relies on language from *Lubin v. Wilson* (1991) 232 Cal.App.3d 1422, 1429-1430 [284 Cal.Rptr. 70], where the court said: "A person holds 'office subject to conditions imposed by the state and, where cause for removal is provided by law, the person is deemed to have accepted the office on condition he or she could be removed for that cause and in the manner provided. [Citation.]" FTCR contends that when Duque violated section 303, subdivision (a), by voluntarily owning stock, he failed to satisfy a "condition" of his position and thus forfeited his office.

We have no quarrel with the court's holding in *Lubin*; however, the case is distinguishable. The issue in *Lubin* was whether a member of the State Board of Equalization had forfeited his office when he was convicted of several felonies in federal court. The *Lubin* court ruled the member had forfeited his office, relying in part on Government Code section 1770, subdivision (h), which states that when person is "convict[ed] of a felony" his office becomes vacant. Since the statute at issue expressly mandated forfeiture under the circumstances presented, we agree the *Lubin* court reached the correct conclusion. Here, by contrast, the statute at issue contains a forfeiture provision, however, it clearly does not apply under the facts of this case. *Lubin* is not controlling.

III. DISPOSITION

The judgment is reversed.

Stevens, J., and Simons, J., concurred.

Respondent's petition for review by the Supreme Court was denied April 9, 2003.

EXHIBIT "C"
34 C.F.R., PART 106

and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion.

(4) If an action required to comply with this section would result in that alteration or those burdens, the Department shall take any other action that would not result in the alteration or burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 105.41 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the Department.

(b) As provided in § 105.30, the Department shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Deputy Under Secretary for Management is responsible for coordinating implementation of this section. Complaints may be sent to the U.S. Department of Education, Office of Management, Federal Building No. 6, 400 Maryland Avenue SW., Washington, DC 20202.

(d) The Department shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Department may extend this time period for good cause.

(e) If the Department receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Department shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Department shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Department of the letter required by § 105.41(g). The Department may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Secretary.

(j) If the Secretary determines that additional information is needed for the complainant, he or she shall notify the complainant of the additional information needed to make his or her determination on the appeal.

(k) The Secretary shall notify the complainant of the results of the appeal.

(l) The time limit in paragraph (g) of this section may be extended by the Secretary.

(m) The Secretary may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§ 105.42 Effective date.

The effective date of this part is October 9, 1990.

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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SUBJECT INDEX TO TITLE IX PREAMBLE AND REGULATION

APPENDIX A—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS [NOTE]

AUTHORITY: 20 U.S.C. 1681 *et seq.*, unless otherwise noted.

SOURCE: 45 FR 30955, May 9, 1980, unless otherwise noted.

Subpart A—Introduction

§ 106.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93–568, 88 Stat. 1855, and sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93–380)

§ 106.2 Definitions.

As used in this part, the term:

(a) *Title IX* means title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) *Department* means the Department of Education.

(c) *Secretary* means the Secretary of Education.

(d) *Assistant Secretary* means the Assistant Secretary for Civil Rights of the Department.

(e) *Reviewing Authority* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(f) *Administrative law judge* means a person appointed by the reviewing authority to preside over a hearing held under this part.

(g) *Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *Program or activity* and *program* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 20 U.S.C. 1687)

(i) *Recipient* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

(j) *Applicant* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(k) *Educational institution* means a local educational agency (LEA) as defined by section 1001(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381), a preschool, a private elementary or secondary school, or an applicant or recipient of the type

defined by paragraph (l), (m), (n), or (o) of this section.

(l) *Institution of graduate higher education* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(m) *Institution of undergraduate higher education* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(n) *Institution of professional education* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

(o) *Institution of vocational education* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(p) *Administratively separate unit* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(q) *Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(r) *Student* means a person who has gained admission.

(s) *Transition plan* means a plan subject to the approval of the Secretary pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980; 45 FR 37426, June 3, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students,

treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Assistant Secretary upon request, a description of any modifications made pursuant to paragraph (c)(ii) of this section and of any remedial steps taken pursuant to paragraph (c)(iii) of this section.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.4 Assurance required.

(a) *General.* Every application for Federal financial assistance shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that the education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 45 FR 86298, Dec. 30, 1980; 65 FR 68056, Nov. 13, 2000]

§ 106.5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of subpart B of this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.6 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 292d and 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act

(29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Authority: Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives Federal financial assistance.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.9 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to the Assistant Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in:

(i) Local newspapers;

(ii) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(iii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

Subpart B—Coverage

§ 106.11 Application.

Except as provided in this subpart, this part 106 applies to every recipient and to the education program or activity operated by such recipient which receives Federal financial assistance.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 86298, Dec. 30, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of

1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; sec. 3(a) of P.L. 93-568, 88 Stat. 1862 amending Sec. 901)

§ 106.15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, §§ 106.16 and 106.17, and subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of subpart C.* Except as provided in paragraphs (d) and (e) of this section, subpart C applies to each recipient. A recipient to which subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 45 FR 86298, Dec. 30, 1980]

§ 106.16 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of subpart C unless it is carrying out a transition plan approved by the Secretary as described in § 106.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.17 Transition plans.

(a) *Submission of plans.* An institution to which § 106.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which §106.16 applies shall result in treatment of applicants to or students of such recipient in violation of subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b) (3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b) (4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which §106.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment which emphasizes the institution's commitment to enrolling students of the sex previously excluded.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 106.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 106.16 and 106.17.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admision, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 106.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 106.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 106.31 Education programs or activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which subpart C does not apply, or (2) an entity, not a recipient, to which subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided,* a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to

members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aid, benefits or services not provided by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 47 FR 32527, July 28, 1982; 65 FR 68056, Nov. 13, 2000]

§ 106.32 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(i) Proportionate in quantity and

(ii) Comparable in quality and cost to the student.

A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Authority: Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

§ 106.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

§ 106.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and

activities at the secondary and postsecondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.35 Access to schools operated by LEAs.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.37 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities or other

services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided,* That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 106.41.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484)

§ 106.38 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates subpart E of this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental,

family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 106.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 106.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including those that are social or recreational; and

(10) Any other term, condition, or privilege of employment.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 106.61.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.56 Fringe benefits.

(a) *Fringe benefits defined.* For purposes of this part, *fringe benefits* means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 106.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex

is a *bona-fide* occupational qualification for the particular job in question.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682

Subpart F—Procedures [Interim]

§ 106.71 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6–100.11 and 34 CFR, part 101.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

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EXHIBIT "D"
REVISED SEXUAL HARASSMENT GUIDANCE

REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES

TITLE IX

January 2001

U.S. Department of Education
Office for Civil Rights

PREAMBLE

Summary

The Assistant Secretary for Civil Rights, U.S. Department of Education (Department), issues a new document (revised guidance) that replaces the 1997 document entitled "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," issued by the Office for Civil Rights (OCR) on March 13, 1997 (1997 guidance). We revised the guidance in limited respects in light of subsequent Supreme Court cases relating to sexual harassment in schools.

The revised guidance reaffirms the compliance standards that OCR applies in investigations and administrative enforcement of Title IX of the Education Amendments of 1972 (Title IX) regarding sexual harassment. The revised guidance re-grounds these standards in the Title IX regulations, distinguishing them from the standards applicable to private litigation for money damages and clarifying their regulatory basis as distinct from Title VII of the Civil Rights Act of 1964 (Title VII) agency law. In most other respects the revised guidance is identical to the 1997 guidance. Thus, we intend the revised guidance to serve the same purpose as the 1997 guidance. It continues to provide the principles that a school[1] should use to recognize and effectively respond to sexual harassment of students in its program as a condition of receiving Federal financial assistance.

Purpose and Scope of the Revised Guidance

In March 1997, we published in the Federal Register "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." 62 FR 12034. We issued the guidance pursuant to our authority under Title IX, and our Title IX implementing regulations, to eliminate discrimination based on sex in education programs and activities receiving Federal financial assistance. It was grounded in longstanding legal authority establishing that sexual harassment of students can be a form of sex discrimination covered by Title IX. The guidance was the product of extensive consultation with interested parties, including students, teachers, school administrators, and researchers. We also made the document available for public comment.

Since the issuance of the 1997 guidance, the Supreme Court (Court) has issued several important decisions in sexual harassment cases, including two decisions specifically addressing sexual harassment of students under Title IX: Gebser v. Lago Vista Independent School District (Gebser), 524 U.S. 274 (1998), and Davis v. Monroe County Board of Education (Davis), 526 U.S. 629 (1999). The Court held in Gebser that a school can be liable for monetary damages if a teacher sexually harasses a student, an

[1] As in the 1997 guidance, the revised guidance uses the term "school" to refer to all schools, colleges, universities, and other educational institutions that receive Federal funds from the Department.

official who has authority to address the harassment has actual knowledge of the harassment, and that official is deliberately indifferent in responding to the harassment. In Davis, the Court announced that a school also may be liable for monetary damages if one student sexually harasses another student in the school's program and the conditions of Gebser are met.

The Court was explicit in Gebser and Davis that the liability standards established in those cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. The Court acknowledged, by contrast, the power of Federal agencies, such as the Department, to "promulgate and enforce requirements that effectuate [Title IX's] nondiscrimination mandate," even in circumstances that would not give rise to a claim for money damages. See, Gebser, 524 U.S. at 292.

In an August 1998 letter to school superintendents and a January 1999 letter to college and university presidents, the Secretary of Education informed school officials that the Gebser decision did not change a school's obligations to take reasonable steps under Title IX and the regulations to prevent and eliminate sexual harassment as a condition of its receipt of Federal funding. The Department also determined that, although in most important respects the substance of the 1997 guidance was reaffirmed in Gebser and Davis, certain areas of the 1997 guidance could be strengthened by further clarification and explanation of the Title IX regulatory basis for the guidance.

On November 2, 2000, we published in the Federal Register a notice requesting comments on the proposed revised guidance (62 FR 66092). A detailed explanation of the Gebser and Davis decisions, and an explanation of the proposed changes in the guidance, can be found in the preamble to the proposed revised guidance. In those decisions and a third opinion, Oncale v. Sundowner Offshore Services, Inc. (Oncale), 523 U.S. 75 (1998) (a sexual harassment case decided under Title VII), the Supreme Court confirmed several fundamental principles we articulated in the 1997 guidance. In these areas, no changes in the guidance were necessary. A notice regarding the availability of this final document appeared in the Federal Register on January 19, 2001.

Enduring Principles from the 1997 Guidance

It continues to be the case that a significant number of students, both male and female, have experienced sexual harassment, which can interfere with a student's academic performance and emotional and physical well-being. Preventing and remedying sexual harassment in schools is essential to ensuring a safe environment in which students can learn. As with the 1997 guidance, the revised guidance applies to students at every level of education. School personnel who understand their obligations under Title IX, e.g., understand that sexual harassment can be sex discrimination in violation of Title IX, are in the best position to prevent harassment and to lessen the harm to students if, despite their best efforts, harassment occurs.

One of the fundamental aims of both the 1997 guidance and the revised guidance has been to emphasize that, in addressing allegations of sexual harassment, the good judgment and common sense of teachers and school administrators are important elements of a response that meets the requirements of Title IX.

A critical issue under Title IX is whether the school recognized that sexual harassment has occurred and took prompt and effective action calculated to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. If harassment has occurred, doing nothing is always the wrong response. However, depending on the circumstances, there may be more than one right way to respond. The important thing is for school employees or officials to pay attention to the school environment and not to hesitate to respond to sexual harassment in the same reasonable, commonsense manner as they would to other types of serious misconduct.

It is also important that schools not overreact to behavior that does not rise to the level of sexual harassment. As the Department stated in the 1997 guidance, a kiss on the cheek by a first grader does not constitute sexual harassment. School personnel should consider the age and maturity of students in responding to allegations of sexual harassment.

Finally, we reiterate the importance of having well- publicized and effective grievance procedures in place to handle comp laints of sex discrimination, including sexual harassment complaints. Nondiscrimination policies and procedures are required by the Title IX regulations. In fact, the Supreme Court in Gebser specifically affirmed the Department's authority to enforce this requirement administratively in order to carry out Title IX's nondiscrimination mandate. 524 U.S. at 292. Strong policies and effective grievance procedures are essential to let students and employees know that sexual harassment will not be tolerated and to ensure that they know how to report it.

Analysis of Comments Received Concerning the Proposed Revised Guidance and the Resulting Changes

In response to the Assistant Secretary's invitation to comment, OCR received approximately 11 comments representing approximately 15 organizations and individuals. Commenters provided specific suggestions regarding how the revised guidance could be clarified. Many of these suggested changes have been incorporated. Significant and recurring issues are grouped by subject and discussed in the following sections:

Distinction Between Administrative Enforcement and Private Litigation for Monetary Damages

In Gebser and Davis, the Supreme Court addressed for the first time the appropriate standards for determining when a school district is liable under Title IX for money damages in a private lawsuit brought by or on behalf of a student who has been sexually harassed. As explained in the preamble to the proposed revised guidance, the Court was explicit in Gebser and Davis that the liability standards established in these cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. at 283, and Davis, 526 U.S. at 639. The Gebser Court recognized and contrasted lawsuits for money damages with the incremental nature of administrative enforcement of Title IX. In Gebser, the Court was concerned with the possibility of a money damages award against a school for harassment about which it had not known. In contrast, the process of administrative enforcement requires enforcement agencies such as OCR to make schools

aware of potential Title IX violations and to seek voluntary corrective action before pursuing fund termination or other enforcement mechanisms.

Commenters uniformly agreed with OCR that the Court limited the liability standards established in Gebser and Davis to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. Commenters also agreed that the administrative enforcement standards reflected in the 1997 guidance remain valid in OCR enforcement actions.[2] Finally, commenters agreed that the proposed revisions provided important clarification to schools regarding the standards that OCR will use and that schools should use to determine compliance with Title IX as a condition of the receipt of Federal financial assistance in light of Gebser and Davis.

Harassment by Teachers and Other School Personnel

Most commenters agreed with OCR's interpretation of its regulations regarding a school's responsibility for harassment of students by teachers and other school employees. These commenters agreed that Title IX's prohibitions against discrimination are not limited to official policies and practices governing school programs and activities. A school also engages in sex-based discrimination if its employees, in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students (such as teaching, counseling, supervising, and advising students) deny or limit a student's ability to participate in or benefit from the schools program on the basis of sex. Under the Title IX regulations, the school is responsible for discrimination in these cases, whether or not it knew or should have known about it, because the discrimination occurred as part of the school's undertaking to provide nondiscriminatory aid, benefits, and services to students. The revised guidance distinguishes these cases from employee harassment that, although taking place in a school's program, occurs outside of the context of the employee's provision of aid, benefits, and services to students. In these latter cases, the school's responsibilities are not triggered until the school knew or should have known about the harassment.

One commenter expressed concern that it was inappropriate ever to find a school out of compliance for harassment about which it knew nothing. We reiterate that, although a school may in some cases be responsible for harassment caused by an employee that occurred before other responsible employees of the school knew or should have known about it, OCR always provides the school with actual notice and the opportunity to take appropriate corrective action before issuing a finding of violation. This is consistent with the Court's underlying concern in Gebser and Davis.

Most commenters acknowledged that OCR has provided useful factors to determine whether harassing conduct took place "in the context of providing aid, benefits, or services." However, some commenters stated that additional clarity and examples regarding the issue were needed. Commenters also suggested clarifying

[2] It is the position of the United States that the standards set out in OCR's guidance for finding a violation and seeking voluntary corrective action also would apply to private actions for injunctive and other equitable relief. See brief of the United States as Amicus Curiae in Davis v. Monroe County.

references to quid pro quo and hostile environment harassment as these two concepts, though useful, do not determine the issue of whether the school itself is considered responsible for the harassment. We agree with these concerns and have made significant revisions to the sections "Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program" and "Harassment by Teachers and Other Employees" to clarify the guidance in these respects.

Gender-based Harassment, Including Harassment Predicated on Sex-stereotyping

Several commenters requested that we expand the discussion and include examples of gender-based harassment predicated on sex stereotyping. Some commenters also argued that gender-based harassment should be considered sexual harassment, and that we have "artificially" restricted the guidance only to harassment in the form of conduct of a sexual nature, thus, implying that gender-based harassment is of less concern and should be evaluated differently.

We have not further expanded this section because, while we are also concerned with the important issue of gender-based harassment, we believe that harassment of a sexual nature raises unique and sufficiently important issues that distinguish it from other types of gender-based harassment and warrants its own guidance.

Nevertheless, we have clarified this section of the guidance in several ways. The guidance clarifies that gender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity and femininity. Although this type of harassment is not covered by the guidance, if it is sufficiently serious, gender-based harassment is a school's responsibility, and the same standards generally will apply. We have also added an endnote regarding Supreme Court precedent for the proposition that sex stereotyping can constitute sex discrimination.

Several commenters also suggested that we state that sexual and non-sexual (but gender-based) harassment should not be evaluated separately in determining whether a hostile environment exists. We note that both the proposed revised guidance and the final revised guidance indicate in several places that incidents of sexual harassment and non-sexual, gender-based harassment can be combined to determine whether a hostile environment has been created. We also note that sufficiently serious harassment of a sexual nature remains covered by Title IX, as explained in the guidance, even though the hostile environment may also include taunts based on sexual orientation.

Definition of Harassment

One commenter urged OCR to provide distinct definitions of sexual harassment to be used in administrative enforcement as distinguished from criteria used to maintain private actions for monetary damages. We disagree. First, as discussed in the preamble to the proposed revised guidance, the definition of hostile environment sexual harassment used by the Court in Davis is consistent with the definition found in the proposed guidance. Although the terms used by the Court in Davis are in some ways different from

the words used to define hostile environment harassment in the 1997 guidance (see, e.g., 62 FR 12041, "conduct of a sexual nature is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment"), the definitions are consistent. Both the Court's and the Department's definitions are contextual descriptions intended to capture the same concept -- that under Title IX, the conduct must be sufficiently serious that it adversely affects a student's ability to participate in or benefit from the school's program. In determining whether harassment is actionable, both Davis and the Department tell schools to look at the "constellation of surrounding circumstances, expectations, and relationships" (526 U.S. at 651 (citing Oncale)), and the Davis Court cited approvingly to the underlying core factors described in the 1997 guidance for evaluating the context of the harassment. Second, schools benefit from consistency and simplicity in understanding what is sexual harassment for which the school must take responsive action. A multiplicity of definitions would not serve this purpose.

Several commenters suggested that we develop a unique Title IX definition of harassment that does not rely on Title VII and that takes into account the special relationship of schools to students. Other commenters, by contrast, commended OCR for recognizing that Gebser and Davis did not alter the definition of hostile environment sexual harassment found in OCR's 1997 guidance, which derives from Title VII caselaw, and asked us to strengthen the point. While Gebser and Davis made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the Davis Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX. We also believe that the factors described in both the 1997 guidance and the revised guidance to determine whether sexual harassment has occurred provide the necessary flexibility for taking into consideration the age and maturity of the students involved and the nature of the school environment.

Effective Response

One commenter suggested that the change in the guidance from "appropriate response" to "effective response" implies a change in OCR policy that requires omniscience of schools. We disagree. Effectiveness has always been the measure of an adequate response under Title IX. This does not mean a school must overreact out of fear of being judged inadequate. Effectiveness is measured based on a reasonableness standard. Schools do not have to know beforehand that their response will be effective. However, if their initial steps are ineffective in stopping the harassment, reasonableness may require a series of escalating steps.

The Relationship Between FERPA and Title IX

In the development of both the 1997 guidance and the current revisions to the guidance, commenters raised concerns about the interrelation of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and Title IX. The concerns relate to two issues: (1) the harassed student's right to information about the outcome of a sexual harassment complaint against another student, including information about sanctions imposed on a student found guilty of harassment; and (2) the due process rights of

individuals, including teachers, accused of sexual harassment by a student, to obtain information about the identity of the complainant and the nature of the allegations.

FERPA generally forbids disclosure of information from a student's "education record" without the consent of the student (or the student's parent). Thus, FERPA may be relevant when the person found to have engaged in harassment is another student, because written information about the complaint, investigation, and outcome is part of the harassing student's education record. Title IX is also relevant because it is an important part of taking effective responsive action for the school to inform the harassed student of the results of its investigation and whether it counseled, disciplined, or otherwise sanctioned the harasser. This information can assure the harassed student that the school has taken the student's complaint seriously and has taken steps to eliminate the hostile environment and prevent the harassment from recurring.

The Department currently interprets FERPA as not conflicting with the Title IX requirement that the school notify the harassed student of the outcome of its investigation, i.e., whether or not harassment was found to have occurred, because this information directly relates to the victim. It has been the Department's position that there is a potential conflict between FERPA and Title IX regarding disclosure of sanctions, and that FERPA generally prevents a school from disclosing to a student who complained of harassment information about the sanction or discipline imposed upon a student who was found to have engaged in that harassment.[3]

There is, however, an additional statutory provision that may apply to this situation. In 1994, as part of the Improving America's Schools Act, Congress amended the General Education Provisions Act (GEPA) -- of which FERPA is a part -- to state that nothing in GEPA "shall be construed to affect the applicability of ... title IX of the Education Amendments of 1972...."[4] The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between requirements of FERPA and requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. The Department is in the process of developing a consistent approach and specific factors for implementing this provision. OCR and the Department's Family Policy Compliance Office (FPCO) intend to issue joint guidance, discussing specific areas of potential conflict between FERPA and Title IX.

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[3] Exceptions include the case of a sanction that directly relates to the person who was harassed (e.g., an order that the harasser stay away from the harassed student), or sanctions related to offenses for which there is a statutory exception, such as crimes of violence or certain sex offenses in postsecondary institutions.

[4] 20 U.S.C. 1221(d). A similar amendment was originally passed in 1974 but applied only to Title VI of the Civil Rights Act of 1964 (prohibiting race discrimination by recipients). The 1994 amendments also extended 20 U.S.C. 1221(d) to Section 504 of the Rehabilitation Act of 1973 (prohibiting disability-based discrimination by recipients) and to the Age Discrimination Act.

FERPA is also relevant when a student accuses a teacher or other employee of sexual harassment, because written information about the allegations is contained in the student's education record. The potential conflict arises because, while FERPA protects the privacy of the student accuser, the accused individual may need the name of the accuser and information regarding the nature of the allegations in order to defend against the charges. The 1997 guidance made clear that neither FERPA nor Title IX override any federally protected due process rights of a school employee accused of sexual harassment.

Several commenters urged the Department to expand and strengthen this discussion. They argue that in many instances a school's failure to provide information about the name of the student accuser and the nature of the allegations seriously undermines the fairness of the investigative and adjudicative process. They also urge the Department to include a discussion of the need for confidentiality as to the identity of the individual accused of harassment because of the significant harm that can be caused by false accusations. We have made several changes to the guidance, including an additional discussion regarding the confidentiality of a person accused of harassment and a new heading entitled "Due Process Rights of the Accused," to address these concerns.

REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS[1] BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES

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I. Introduction

Title IX of the Education Amendments of 1972 (Title IX) and the Department of Education's (Department) implementing regulations prohibit discrimination on the basis of sex in federally assisted education programs and activities.[2] The Supreme Court, Congress, and Federal executive departments and agencies, including the Department, have recognized that sexual harassment of students can constitute discrimination prohibited by Title IX.[3] This guidance focuses on a school's[4] fundamental compliance responsibilities under Title IX and the Title IX regulations to address sexual harassment of students as a condition of continued receipt of Federal funding. It describes the regulatory basis for a school's compliance responsibilities under Title IX, outlines the circumstances under which sexual harassment may constitute discrimination prohibited by the statute and regulations, and provides information about actions that schools should take to prevent sexual harassment or to address it effectively if it does occur.[5]

II. Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.[6] Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program. Sexual harassment of students is, therefore, a form of sex discrimination prohibited by Title IX under the circumstances described in this guidance.

It is important to recognize that Title IX's prohibition against sexual harassment does not extend to legitimate nonsexual touching or other nonsexual conduct. For example, a high school athletic coach hugging a student who made a goal or a kindergarten teacher's consoling hug for a child with a skinned knee will not be considered sexual harassment.[7] Similarly, one student's demonstration of a sports maneuver or technique requiring contact with another student will not be considered sexual harassment. However, in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher's repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment.

III. Applicability of Title IX

Title IX applies to all public and private educational institutions that receive Federal funds, i.e., recipients, including, but not limited to, elementary and secondary schools, school districts, proprietary schools, colleges, and universities. The guidance uses the terms "recipients" and "schools" interchangeably to refer to all of those institutions. The "education program or activity" of a school includes all of the school's operations.[8] This means that Title IX protects students in connection with all of the academic, educational, extra-curricular, athletic, and other programs of the school,

whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere.

A student may be sexually harassed by a school employee,[9] another student, or a non-employee third party (e.g., a visiting speaker or visiting athletes). Title IX protects any "person" from sex discrimination. Accordingly, both male and female students are protected from sexual harassment[10] engaged in by a school's employees, other students, or third parties. Moreover, Title IX prohibits sexual harassment regardless of the sex of the harasser, i.e., even if the harasser and the person being harassed are members of the same sex.[11] An example would be a campaign of sexually explicit graffiti directed at a particular girl by other girls.[12]

Although Title IX does not prohibit discrimination on the basis of sexual orientation,[13] sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX under the circumstances described in this guidance.[14] For example, if a male student or a group of male students target a gay student for physical sexual advances, serious enough to deny or limit the victim's ability to participate in or benefit from the school's program, the school would need to respond promptly and effectively, as described in this guidance, just as it would if the victim were heterosexual. On the other hand, if students heckle another student with comments based on the student's sexual orientation (e.g., "gay students are not welcome at this table in the cafeteria"), but their actions do not involve conduct of a sexual nature, their actions would not be sexual harassment covered by Title IX.[15]

Though beyond the scope of this guidance, gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping,[16] but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond, if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program.[17] For example, the repeated sabotaging of female graduate students' laboratory experiments by male students in the class could be the basis of a violation of Title IX. A school must respond to such harassment in accordance with the standards and procedures described in this guidance.[18] In assessing all related circumstances to determine whether a hostile environment exists, incidents of gender-based harassment combined with incidents of sexual harassment could create a hostile environment, even if neither the gender-based harassment alone nor the sexual harassment alone would be sufficient to do so.[19]

IV. Title IX Regulatory Compliance Responsibilities

As a condition of receiving funds from the Department, a school is required to comply with Title IX and the Department's Title IX regulations, which spell out prohibitions against sex discrimination. The law is clear that sexual harassment may constitute sex discrimination under Title IX.[20]

Recipients specifically agree, as a condition for receiving Federal financial assistance from the Department, to comply with Title IX and the Department's Title IX regulations. The regulatory provision requiring this agreement, known as an assurance of

compliance, specifies that recipients must agree that education programs or activities operated by the recipient will be operated in compliance with the Title IX regulations, including taking any action necessary to remedy its discrimination or the effects of its discrimination in its programs.[21]

The regulations set out the basic Title IX responsibilities a recipient undertakes when it accepts Federal financial assistance, including the following specific obligations.[22] A recipient agrees that, in providing any aid, benefit, or service to students, it will not, on the basis of sex—

- Treat one student differently from another in determining whether the student satisfies any requirement or condition for the provision of any aid, benefit, or service;[23]
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;[24]
- Deny any student any such aid, benefit, or service;[25]
- Subject students to separate or different rules of behavior, sanctions, or other treatment;[26]
- Aid or perpetuate discrimination against a student by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students;[27] and
- Otherwise limit any student in the enjoyment of any right, privilege, advantage, or opportunity.[28]

For the purposes of brevity and clarity, this guidance generally summarizes this comprehensive list by referring to a school's obligation to ensure that a student is not denied or limited in the ability to participate in or benefit from the school's program on the basis of sex.

The regulations also specify that, if a recipient discriminates on the basis of sex, the school must take remedial action to overcome the effects of the discrimination.[29]

In addition, the regulations establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination[30] and adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints of sex discrimination.[31] The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance.[32]

To comply with these regulatory requirements, schools need to recognize and respond to sexual harassment of students by teachers and other employees, by other students, and by third parties. This guidance explains how the requirements of the Title IX regulations apply to situations involving sexual harassment of a student and outlines measures that schools should take to ensure compliance.

V. Determining a School's Responsibilities

In assessing sexually harassing conduct, it is important for schools to recognize that two distinct issues are considered. The first issue is whether, considering the types of harassment discussed in the following section, the conduct denies or limits a student's ability to participate in or benefit from the program based on sex. If it does, the second issue is the nature of the school's responsibility to address that conduct. As discussed in a following section, this issue depends in part on the identity of the harasser and the context in which the harassment occurred.

A. Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program

This guidance moves away from specific labels for types of sexual harassment.[33] In each case, the issue is whether the harassment rises to a level that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. However, an understanding of the different types of sexual harassment can help schools determine whether or not harassment has occurred that triggers a school's responsibilities under, or violates, Title IX or its regulations.

The type of harassment traditionally referred to as quid pro quo harassment occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct.[34] Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the student has been treated differently, or the student's ability to participate in or benefit from the school's program has been denied or limited, on the basis of sex in violation of the Title IX regulations.[35]

By contrast, sexual harassment can occur that does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct. Harassment of this type is generally referred to as hostile environment harassment.[36] This type of harassing conduct requires a further assessment of whether or not the conduct is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program based on sex.[37]

Teachers and other employees can engage in either type of harassment. Students and third parties are not generally given responsibility over other students and, thus, generally can only engage in hostile environment harassment.

1. Factors Used to Evaluate Hostile Environment Sexual Harassment

As outlined in the following paragraphs, OCR considers a variety of related factors to determine if a hostile environment has been created, i.e., if sexually harassing conduct by an employee, another student, or a third party is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. OCR considers the conduct from both a subjective[38] and objective[39] perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all relevant circumstances, i.e., "the constellation of surrounding circumstances, expectations, and relationships."[40] Schools should also use these factors to evaluate conduct in order to draw commonsense distinctions between conduct that constitutes

sexual harassment and conduct that does not rise to that level. Relevant factors include the following:

- The degree to which the conduct affected one or more students' education. OCR assesses the effect of the harassment on the student to determine whether it has denied or limited the student's ability to participate in or benefit from the school's program. For example, a student's grades may go down or the student may be forced to withdraw from school because of the harassing behavior.[41] A student may also suffer physical injuries or mental or emotional distress.[42] In another situation, a student may have been able to keep up his or her grades and continue to attend school even though it was very difficult for him or her to do so because of the teacher's repeated sexual advances. Similarly, a student may be able to remain on a sports team, despite experiencing great difficulty performing at practices and games from the humiliation and anger caused by repeated sexual advances and intimidation by several team members that create a hostile environment. Harassing conduct in these examples would alter a reasonable student's educational environment and adversely affect the student's ability to participate in or benefit from the school's program on the basis of sex.

  A hostile environment can occur even if the harassment is not targeted specifically at the individual complainant.[43] For example, if a student, group of students, or a teacher regularly directs sexual comments toward a particular student, a hostile environment may be created not only for the targeted student, but also for others who witness the conduct.

- The type, frequency, and duration of the conduct. In most cases, a hostile environment will exist if there is a pattern or practice of harassment, or if the harassment is sustained and nontrivial.[44] For instance, if a young woman is taunted by one or more young men about her breasts or genital area or both, OCR may find that a hostile environment has been created, particularly if the conduct has gone on for some time, or takes place throughout the school, or if the taunts are made by a number of students. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. For instance, if the conduct is more severe, e.g., attempts to grab a female student's breasts or attempts to grab any student's genital area or buttocks, it need not be as persistent to create a hostile environment. Indeed, a single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.[45] On the other hand, conduct that is not severe will not create a hostile environment, e.g., a comment by one student to another student that she has a nice figure. Indeed, depending on the circumstances, this may not even be conduct of a sexual nature.[46] Similarly, because students date one another, a request for a date or a gift of flowers, even if unwelcome, would not create a hostile environment. However, there may be circumstances in which repeated, unwelcome requests for dates or similar conduct could create a hostile environment. For example, a person, who has been refused previously, may request dates in an intimidating or threatening manner.

- The identity of and relationship between the alleged harasser and the subject or subjects of the harassment. A factor to be considered, especially in cases involving allegations of sexual harassment of a student by a school employee, is the identity of

and relationship between the alleged harasser and the subject or subjects of the harassment. For example, due to the power a professor or teacher has over a student, sexually based conduct by that person toward a student is more likely to create a hostile environment than similar conduct by another student.[47]

- The number of individuals involved. Sexual harassment may be committed by an individual or a group. In some cases, verbal comments or other conduct from one person might not be sufficient to create a hostile environment, but could be if done by a group. Similarly, while harassment can be directed toward an individual or a group,[48] the effect of the conduct toward a group may vary, depending on the type of conduct and the context. For certain types of conduct, there may be "safety in numbers." For example, following an individual student and making sexual taunts to him or her may be very intimidating to that student, but, in certain circumstances, less so to a group of students. On the other hand, persistent unwelcome sexual conduct still may create a hostile environment if directed toward a group.

- The age and sex of the alleged harasser and the subject or subjects of the harassment. For example, in the case of younger students, sexually harassing conduct is more likely to be intimidating if coming from an older student.[49]

- The size of the school, location of the incidents, and context in which they occurred. Depending on the circumstances of a particular case, fewer incidents may have a greater effect at a small college than at a large university campus. Harassing conduct occurring on a school bus may be more intimidating than similar conduct on a school playground because the restricted area makes it impossible for students to avoid their harassers.[50] Harassing conduct in a personal or secluded area, such as a dormitory room or residence hall, can have a greater effect (e.g., be seen as more threatening) than would similar conduct in a more public area. On the other hand, harassing conduct in a public place may be more humiliating. Each incident must be judged individually.

- Other incidents at the school. A series of incidents at the school, not involving the same students, could — taken together — create a hostile environment, even if each by itself would not be sufficient.[51]

- Incidents of gender-based, but nonsexual harassment. Acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex, but not involving sexual activity or language, can be combined with incidents of sexual harassment to determine if the incidents of sexual harassment are sufficiently serious to create a sexually hostile environment.[52]

It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists. Consequently, in using the factors discussed previously to evaluate incidents of alleged harassment, it is always important to use common sense and reasonable judgement in determining whether a sexually hostile environment has been created.

2. Welcomeness

The section entitled "Sexual Harassment" explains that in order for conduct of a sexual nature to be sexual harassment, it must be unwelcome. Conduct is unwelcome if

the student did not request or invite it and "regarded the conduct as undesirable or offensive."[53] Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.[54] For example, a student may decide not to resist sexual advances of another student or may not file a complaint out of fear. In addition, a student may not object to a pattern of demeaning comments directed at him or her by a group of students out of a concern that objections might cause the harassers to make more comments. The fact that a student may have accepted the conduct does not mean that he or she welcomed it.[55] Also, the fact that a student willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwelcome on a subsequent occasion. On the other hand, if a student actively participates in sexual banter and discussions and gives no indication that he or she objects, then the evidence generally will not support a conclusion that the conduct was unwelcome.[56]

If younger children are involved, it may be necessary to determine the degree to which they are able to recognize that certain sexual conduct is conduct to which they can or should reasonably object and the degree to which they can articulate an objection. Accordingly, OCR will consider the age of the student, the nature of the conduct involved, and other relevant factors in determining whether a student had the capacity to welcome sexual conduct.

Schools should be particularly concerned about the issue of welcomeness if the harasser is in a position of authority. For instance, because students may be encouraged to believe that a teacher has absolute authority over the operation of his or her classroom, a student may not object to a teacher's sexually harassing comments during class; however, this does not necessarily mean that the conduct was welcome. Instead, the student may believe that any objections would be ineffective in stopping the harassment or may fear that by making objections he or she will be singled out for harassing comments or other retaliation.

In addition, OCR must consider particular issues of welcomeness if the alleged harassment relates to alleged "consensual" sexual relationships between a school's adult employees and its students. If elementary students are involved, welcomeness will not be an issue: OCR will never view sexual conduct between an adult school employee and an elementary school student as consensual. In cases involving secondary students, there will be a strong presumption that sexual conduct between an adult school employee and a student is not consensual. In cases involving older secondary students, subject to the presumption,[57] OCR will consider a number of factors in determining whether a school employee's sexual advances or other sexual conduct could be considered welcome.[58] In addition, OCR will consider these factors in all cases involving postsecondary students in making those determinations.[59] The factors include the following:

- The nature of the conduct and the relationship of the school employee to the student, including the degree of influence (which could, at least in part, be affected by the student's age), authority, or control the employee has over the student.
- Whether the student was legally or practically unable to consent to the sexual conduct in question. For example, a student's age could affect his or her ability to do so. Similarly, certain types of disabilities could affect a student's ability to do so.

If there is a dispute about whether harassment occurred or whether it was welcome — in a case in which it is appropriate to consider whether the conduct would be welcome — determinations should be made based on the totality of the circumstances. The following types of information may be helpful in resolving the dispute:

- Statements by any witnesses to the alleged incident.
- Evidence about the relative credibility of the allegedly harassed student and the alleged harasser. For example, the level of detail and consistency of each person's account should be compared in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist. However, the absence of witnesses may indicate only the unwillingness of others to step forward, perhaps due to fear of the harasser or a desire not to get involved.
- Evidence that the alleged harasser has been found to have harassed others may support the credibility of the student claiming the harassment; conversely, the student's claim will be weakened if he or she has been found to have made false allegations against other individuals.
- Evidence of the allegedly harassed student's reaction or behavior after the alleged harassment. For example, were there witnesses who saw the student immediately after the alleged incident who say that the student appeared to be upset? However, it is important to note that some students may respond to harassment in ways that do not manifest themselves right away, but may surface several days or weeks after the harassment. For example, a student may initially show no signs of having been harassed, but several weeks after the harassment, there may be significant changes in the student's behavior, including difficulty concentrating on academic work, symptoms of depression, and a desire to avoid certain individuals and places at school.
- Evidence about whether the student claiming harassment filed a complaint or took other action to protest the conduct soon after the alleged incident occurred. However, failure to immediately complain may merely reflect a fear of retaliation or a fear that the complainant may not be believed rather than that the alleged harassment did not occur.
- Other contemporaneous evidence. For example, did the student claiming harassment write about the conduct and his or her reaction to it soon after it occurred (e.g., in a diary or letter)? Did the student tell others (friends, parents) about the conduct (and his or her reaction to it) soon after it occurred?

B. Nature of the School's Responsibility to Address Sexual Harassment

A school has a responsibility to respond promptly and effectively to sexual harassment. In the case of harassment by teachers or other employees, the nature of this responsibility depends in part on whether the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

1. Harassment by Teachers and Other Employees

Sexual harassment of a student by a teacher or other school employee can be discrimination in violation of Title IX.[60] Schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed. The extent of a recipient's responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

A recipient is responsible under the Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. Recipients generally provide aid, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual harassment – generally this means harassment that is carried out during an employee's performance of his or her responsibilities in relation to students, including teaching, counseling, supervising, advising, and transporting students – and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of sex,[61] the recipient is responsible for the discriminatory conduct.[62] The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has "notice" of the harassment. (As explained in the section on "Notice of Employee, Peer, or Third Party Harassment," for purposes of this guidance, a school has notice of harassment if a responsible school employee actually knew or, in the exercise of reasonable care, should have known about the harassment.) Of course, under OCR's administrative enforcement, recipients always receive actual notice and the opportunity to take appropriate corrective action before any finding of violation or possible loss of federal funds.

Whether or not sexual harassment of a student occurred within the context of an employee's responsibilities for providing aid, benefits, or services is determined on a case-by-case basis, taking into account a variety of factors. If an employee conditions the provision of an aid, benefit, or service that the employee is responsible for providing on a student's submission to sexual conduct, i.e., conduct traditionally referred to as quid pro quo harassment, the harassment is clearly taking place in the context of the employee's responsibilities to provide aid, benefits, or services. In other situations, i.e., when an employee has created a hostile environment, OCR will consider the following factors in determining whether or not the harassment has taken place in this context, including:

- The type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally;
- the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place;
- where and when the harassment occurred;
- the age and educational level of the student involved; and

- as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

These factors are applicable to all recipient educational institutions, including elementary and secondary schools, colleges, and universities. Elementary and secondary schools, however, are typically run in a way that gives teachers, school officials, and other school employees a substantial degree of supervision, control, and disciplinary authority over the conduct of students.[63] Therefore, in cases involving allegations of harassment of elementary and secondary school-age students by a teacher or school administrator during any school activity,[64] consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee's provision of aid, benefits, or services.

For example, a teacher sexually harasses an eighth- grade student in a school hallway. Even if the student is not in any of the teacher's classes and even if the teacher is not designated as a hall monitor, given the age and educational level of the student and the status and degree of influence of teachers in elementary and secondary schools, it would be reasonable for the student to believe that the teacher had at least informal disciplinary authority over students in the hallways. Thus, OCR would consider this an example of conduct that is occurring in the context of the employee's responsibilities to provide aid, benefits, or services.

Other examples of sexual harassment of a student occurring in the context of an employee's responsibilities for providing aid, benefits, or services include, but are not limited to -- a faculty member at a university's medical school conditions an intern's evaluation on submission to his sexual advances and then gives her a poor evaluation for rejecting the advances; a high school drama instructor does not give a student a part in a play because she has not responded to sexual overtures from the instructor; a faculty member withdraws approval of research funds for her assistant because he has rebuffed her advances; a journalism professor who supervises a college newspaper continually and inappropriately touches a student editor in a sexual manner, causing the student to resign from the newspaper staff; and a teacher repeatedly asks a ninth grade student to stay after class and attempts to engage her in discussions about sex and her personal experiences while they are alone in the classroom, causing the student to stop coming to class. In each of these cases, the school is responsible for the discriminatory conduct, including taking prompt and effective action to end the harassment, prevent it from recurring, and remedy the effects of the harassment on the victim.

Sometimes harassment of a student by an employee in the school's program does not take place in the context of the employee's provision of aid, benefits, or services, but nevertheless is sufficiently serious to create a hostile educational environment. An example of this conduct might occur if a faculty member in the history department at a university, over the course of several weeks, repeatedly touches and makes sexually suggestive remarks to a graduate engineering student while waiting at a stop for the university shuttle bus, riding on the bus, and upon exiting the bus. As a result, the student stops using the campus shuttle and walks the very long distances between her classes. In this case, the school is not directly responsible for the harassing conduct because it did not occur in the context of the employee's responsibilities for the provision

of aid, benefits, or services to students. However, the conduct is sufficiently serious to deny or limit the student in her ability to participate in or benefit from the recipient's program. Thus, the school has a duty, upon notice of the harassment,[65] to take prompt and effective action to stop the harassment and prevent its recurrence.

If the school takes these steps, it has avoided violating Title IX. If the school fails to take the necessary steps, however, its failure to act has allowed the student to continue to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program. The school, therefore, has engaged in its own discrimination. It then becomes responsible, not just for stopping the conduct and preventing it from happening again, but for remedying the effects of the harassment on the student that could reasonably have been prevented if the school had responded promptly and effectively. (For related issues, see the sections on "OCR Case Resolution" and "Recipient's Response.")

2. Harassment by Other Students or Third Parties

If a student sexually harasses another student and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program, and if the school knows or reasonably should know[66] about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence.[67] As long as the school, upon notice of the harassment, responds by taking prompt and effective action to end the harassment and prevent its recurrence, the school has carried out its responsibility under the Title IX regulations. On the other hand, if, upon notice, the school fails to take prompt, effective action, the school's own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program on the basis of sex.[68] In this case, the school is responsible for taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had it responded promptly and effectively.

Similarly, sexually harassing conduct by third parties, who are not themselves employees or students at the school (e.g., a visiting speaker or members of a visiting athletic team), may also be of a sufficiently serious nature to deny or limit a student's ability to participate in or benefit from the education program. As previously outlined in connection with peer harassment, if the school knows or should know[69] of the harassment, the school is responsible for taking prompt and effective action to eliminate the hostile environment and prevent its recurrence.

The type of appropriate steps that the school should take will differ depending on the level of control that the school has over the third party harasser.[70] For example, if athletes from a visiting team harass the home school's students, the home school may not be able to discipline the athletes. However, it could encourage the other school to take appropriate action to prevent further incidents; if necessary, the home school may choose not to invite the other school back. (This issue is discussed more fully in the section on "Recipient's Response.")

If, upon notice, the school fails to take prompt and effective corrective action, its own failure has permitted the student to be subjected to a hostile environment that limits

the student's ability to participate in or benefit from the education program.[71] In this case, the school is responsible for taking corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had the school responded promptly and effectively.

C. Notice of Employee, Peer, or Third Party Harassment

As described in the section on "Harassment by Teachers and Other Employees," schools may be responsible for certain types of employee harassment that occurred before the school otherwise had notice of the harassment. On the other hand, as described in that section and the section on "Harassment by Other Students or Third Parties," in situations involving certain other types of employee harassment, or harassment by peers or third parties, a school will be in violation of the Title IX regulations if the school "has notice" of a sexually hostile environment and fails to take immediate and effective corrective action.[72]

A school has notice if a responsible employee "knew, or in the exercise of reasonable care should have known," about the harassment.[73] A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.[74] Accordingly, schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

A school can receive notice of harassment in many different ways. A student may have filed a grievance with the Title IX coordinator[75] or complained to a teacher or other responsible employee about fellow students harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, bus driver, teacher, affirmative action officer, or staff in the office of student affairs. A teacher or other responsible employee of the school may have witnessed the harassment. The school may receive notice about harassment in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The school also may have learned about the harassment from flyers about the incident distributed at the school or posted around the school. For the purposes of compliance with the Title IX regulations, a school has a duty to respond to harassment about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a "reasonably diligent inquiry."[76]

For example, in some situations if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents.[77] In other cases, the pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment — if the harassment is widespread, openly practiced, or well-known to students and staff

(such as sexual harassment occurring in the hallways, graffiti in public areas, or harassment occurring during recess under a teacher's supervision.)[78]

If a school otherwise knows or reasonably should know of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX even if the student has failed to use the school's existing grievance procedures or otherwise inform the school of the harassment.

D. The Role of Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination.[79] (These issues are discussed in the section on "Prompt and Equitable Grievance Procedures.") These procedures provide a school with a mechanism for discovering sexual harassment as early as possible and for effectively correcting problems, as required by the Title IX regulations. By having a strong policy against sex discrimination and accessible, effective, and fairly applied grievance procedures, a school is telling its students that it does not tolerate sexual harassment and that students can report it without fear of adverse consequences.

Without a disseminated policy and procedure, a student does not know either of the school's policy against and obligation to address this form of discrimination, or how to report harassment so that it can be remedied. If the alleged harassment is sufficiently serious to create a hostile environment and it is the school's failure to comply with the procedural requirements of the Title IX regulations that hampers early notification and intervention and permits sexual harassment to deny or limit a student's ability to participate in or benefit from the school's program on the basis of sex,[80] the school will be responsible under the Title IX regulations, once informed of the harassment, to take corrective action, including stopping the harassment, preventing its recurrence, and remedying the effects of the harassment on the victim that could reasonably have been prevented if the school's failure to comply with the procedural requirements had not hampered early notification.

VI. OCR Case Resolution

If OCR is asked to investigate or otherwise resolve incidents of sexual harassment of students, including incidents caused by employees, other students, or third parties, OCR will consider whether — (1) the school has a disseminated policy prohibiting sex discrimination under Title IX[81] and effective grievance procedures;[82] (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment;[83] and (3) the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.[84] (Issues related to appropriate investigative and corrective actions are discussed in detail in the section on "Recipient's Response.")

If the school has taken, or agrees to take, each of these steps, OCR will consider the case against the school resolved and will take no further action, other than monitoring compliance with an agreement, if any, between the school and OCR. This is true in cases

in which the school was in violation of the Title IX regulations (e.g., a teacher sexually harassed a student in the context of providing aid, benefits, or services to students), as well as those in which there has been no violation of the regulations (e.g., in a peer sexual harassment situation in which the school took immediate, reasonable steps to end the harassment and prevent its recurrence). This is because, even if OCR identifies a violation, Title IX requires OCR to attempt to secure voluntary compliance.[85] Thus, because a school will have the opportunity to take reasonable corrective action before OCR issues a formal finding of violation, a school does not risk losing its Federal funding solely because discrimination occurred.

VII. Recipient's Response

Once a school has notice of possible sexual harassment of students — whether carried out by employees, other students, or third parties — it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps

reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.[86] As described in the next section, in appropriate circumstances the school will also be responsible for taking steps to remedy the effects of the harassment on the individual student or students who were harassed. What constitutes a reasonable response to information about possible sexual harassment will differ depending upon the circumstances.

A. Response to Student or Parent Reports of Harassment; Response to Direct Observation of Harassment by a Responsible Employee

If a student or the parent of an elementary or secondary student provides information or complains about sexual harassment of the student, the school should initially discuss what actions the student or parent is seeking in response to the harassment. The school should explain the avenues for informal and formal action, including a description of the grievance procedure that is available for sexual harassment complaints and an explanation of how the procedure works. If a responsible school employee has directly observed sexual harassment of a student, the school should contact the student who was harassed (or the parent, depending upon the age of the student),[87] explain that the school is responsible for taking steps to correct the harassment, and provide the same information described in the previous sentence.

Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student's behalf (including in cases involving direct observation by a responsible employee), the school must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial. (Requests by the student who

was harassed for confidentiality or for no action to be taken, responding to notice of harassment from other sources, and the components of a prompt and equitable grievance procedure are discussed in subsequent sections of this guidance.)

It may be appropriate for a school to take interim measures during the investigation of a complaint. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes or in different housing arrangements on a campus, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate. In cases involving potential criminal conduct, school personnel should determine whether appropriate law enforcement authorities should be notified. In all cases, schools should make every effort to prevent disclosure of the names of all parties involved -- the complainant, the witnesses, and the accused -- except to the extent necessary to carry out an investigation.

If a school determines that sexual harassment has occurred, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation.[88] Appropriate steps should be taken to end the harassment. For example, school personnel may need to counsel, warn, or take disciplinary action against the harasser, based on the severity of the harassment or any record of prior incidents or both.[89] A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.[90] In some cases, it may be appropriate to further separate the harassed student and the harasser, e.g., by changing housing arrangements[91] or directing the harasser to have no further contact with the harassed student. Responsive measures of this type should be designed to minimize, as much as possible, the burden on the student who was harassed. If the alleged harasser is not a student or employee of the recipient, OCR will consider the level of control the school has over the harasser in determining what response would be appropriate.[92]

Steps should also be taken to eliminate any hostile environment that has been created. For example, if a female student has been subjected to harassment by a group of other students in a class, the school may need to deliver special training or other interventions for that class to repair the educational environment. If the school offers the student the option of withdrawing from a class in which a hostile environment occurred, the school should assist the student in making program or schedule changes and ensure that none of the changes adversely affect the student's academic record. Other measures may include, if appropriate, directing a harasser to apologize to the harassed student. If a hostile environment has affected an entire school or campus, an effective response may need to include dissemination of information, the issuance of new policy statements, or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and will be responsive to any student who reports that conduct.

In some situations, a school may be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student.[93] For example, if an instructor gives a student a low grade because the student failed to respond to his sexual advances, the school may be required to make arrangements for an independent reassessment of the student's work, if feasible, and change the grade accordingly; make arrangements for the student to take the course again

with a different instructor; provide tutoring; make tuition adjustments; offer reimbursement for professional counseling; or take other measures that are appropriate to the circumstances. As another example, if a school delays responding or responds inappropriately to information about harassment, such as a case in which the school ignores complaints by a student that he or she is being sexually harassed by a classmate, the school will be required to remedy the effects of the harassment that could have been prevented had the school responded promptly and effectively.

Finally, a school should take steps to prevent any further harassment[94] and to prevent any retaliation against the student who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses.[95] At a minimum, this includes making sure that the harassed students and their parents know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any retaliation. To prevent recurrences, counseling for the harasser may be appropriate to ensure that he or she understands what constitutes harassment and the effects it can have. In addition, depending on how widespread the harassment was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.[96]

B. Confidentiality

The scope of a reasonable response also may depend upon whether a student, or parent of a minor student, reporting harassment asks that the student's name not be disclosed to the harasser or that nothing be done about the alleged harassment. In all cases, a school should discuss confidentiality standards and concerns with the complainant initially. The school should inform the student that a confidentiality request may limit the school's ability to respond. The school also should tell the student that Title IX prohibits retaliation and that, if he or she is afraid of reprisals from the alleged harasser, the school will take steps to prevent retaliation and will take strong responsive actions if retaliation occurs. If the student continues to ask that his or her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.

OCR enforces Title IX consistent with the federally protected due process rights of public school students and employees. Thus, for example, if a student, who was the only student harassed, insists that his or her name not be revealed, and the alleged harasser could not respond to the charges of sexual harassment without that information, in evaluating the school's response, OCR would not expect disciplinary action against an alleged harasser.

At the same time, a school should evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors that a school may consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the

accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.[97]

Similarly, a school should be aware of the confidentiality concerns of an accused employee or student. Publicized accusations of sexual harassment, if ultimately found to be false, may nevertheless irreparably damage the reputation of the accused. The accused individual's need for confidentiality must, of course, also be evaluated based on the factors discussed in the preceding paragraph in the context of the school's responsibility to ensure a safe environment for students.

Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual complaint of harassment, other means may be available to address the harassment. There are steps a recipient can take to limit the effects of the alleged harassment and prevent its recurrence without initiating formal action against the alleged harasser or revealing the identity of the complainant. Examples include conducting sexual harassment training for the school site or academic department where the problem occurred, taking a student survey concerning any problems with harassment, or implementing other systemic measures at the site or department where the alleged harassment has occurred.

In addition, by investigating the complaint to the extent possible — including by reporting it to the Title IX coordinator or other responsible school employee designated pursuant to Title IX — the school may learn about or be able to confirm a pattern of harassment based on claims by different students that they were harassed by the same individual. In some situations there may be prior reports by former students who now might be willing to come forward and be identified, thus providing a basis for further corrective action. In instances affecting a number of students (for example, a report from a student that an instructor has repeatedly made sexually explicit remarks about his or her personal life in front of an entire class), an individual can be put on notice of allegations of harassing behavior and counseled appropriately without revealing, even indirectly, the identity of the student who notified the school. Those steps can be very effective in preventing further harassment.

C. Response to Other Types of Notice

The previous two sections deal with situations in which a student or parent of a student who was harassed reports or complains of harassment or in which a responsible school employee directly observes sexual harassment of a student. If a school learns of harassment through other means, for example, if information about harassment is received from a third party (such as from a witness to an incident or an anonymous letter or telephone call), different factors will affect the school's response. These factors include the source and nature of the information; the seriousness of the alleged incident; the specificity of the information; the objectivity and credibility of the source of the report; whether any individuals can be identified who were subjected to the alleged harassment; and whether those individuals want to pursue the matter. If, based on these factors, it is reasonable for the school to investigate and it can confirm the allegations, the considerations described in the previous sections concerning interim measures and appropriate responsive action will apply.

For example, if a parent visiting a school observes a student repeatedly harassing a group of female students and reports this to school officials, school personnel can speak with the female students to confirm whether that conduct has occurred and whether they view it as unwelcome. If the school determines that the conduct created a hostile environment, it can take reasonable, age-appropriate steps to address the situation. If on the other hand, the students in this example were to ask that their names not be disclosed or indicate that they do not want to pursue the matter, the considerations described in the previous section related to requests for confidentiality will shape the school's response.

In a contrasting example, a student newspaper at a large university may print an anonymous letter claiming that a professor is sexually harassing students in class on a daily basis, but the letter provides no clue as to the identity of the professor or the department in which the conduct is allegedly taking place. Due to the anonymous source and lack of specificity of the information, a school would not reasonably be able to investigate and confirm these allegations. However, in response to the anonymous letter, the school could submit a letter or article to the newspaper reiterating its policy against sexual harassment, encouraging persons who believe that they have been sexually harassed to come forward, and explaining how its grievance procedures work.

VIII. Prevention

A policy specifically prohibiting sexual harassment and separate grievance procedures for violations of that policy can help ensure that all students and employees understand the nature of sexual harassment and that the school will not tolerate it. Indeed, they might even bring conduct of a sexual nature to the school's attention so that the school can address it before it becomes sufficiently serious as to create a hostile environment. Further, training for administrators, teachers, and staff and age-appropriate classroom information for students can help to ensure that they understand what types of conduct can cause sexual harassment and that they know how to respond.

IX. Prompt and Equitable Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex.[98] Accordingly, regardless of whether harassment occurred, a school violates this requirement of the Title IX regulations if it does not have those procedures and policy in place.[99]

A school's sex discrimination grievance procedures must apply to complaints of sex discrimination in the school's education programs and activities filed by students against school employees, other students, or third parties.[100] Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment. Thus, if, because of the lack of a policy or procedure specifically addressing sexual harassment, students are unaware of what kind of conduct constitutes sexual harassment or that such conduct is

prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination complaints will not be considered effective.[101]

OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for —

- Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- Application of the procedure to comp laints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to the parties of the outcome of the complaint;[102] and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.[103]

Many schools also provide an opportunity to appeal the findings or remedy, or both. In addition, because retaliation is prohibited by Title IX, schools may want to include a provision in their procedures prohibiting retaliation against any individual who files a complaint or participates in a harassment inquiry.

Procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience. In addition, whether complaint resolutions are timely will vary depending on the complexity of the investigation and the severity and extent of the harassment. During the investigation it is a good practice for schools to inform students who have alleged harassment about the status of the investigation on a periodic basis.

A grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language appropriate to the age of the school's students, easily understood, and widely disseminated. Distributing the procedures to administrators, or including them in the school's administrative or policy manual, may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community. Many schools ensure adequate notice to students by having copies of the procedures available at various locations throughout the school or campus; publishing the procedures as a separate document; including a summary of the procedures in major publications issued by the school, such as handbooks and catalogs for students, parents of elementary and secondary students, faculty, and staff; and identifying individuals who can explain how the procedures work.

A school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities.[104] The school must notify all of its students and employees of the name, office address, and telephone number of the employee or employees designated.[105] Because it is possible that an employee designated to handle Title IX complaints may himself or herself engage in harassment, a school may want to designate more than one employee to be responsible for handling complaints in order to ensure that students have an effective means of reporting harassment.[106] While a school may choose to have a number of employees responsible for Title IX matters, it is also advisable to give one official responsibility for overall coordination and oversight of all sexual harassment complaints to ensure consistent practices and standards in handling complaints. Coordination of recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator) will also ensure that the school can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them.[107] Finally, the school must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.[108]

Grievance procedures may include informal mechanisms for resolving sexual harassment complaints to be used if the parties agree to do so.[109] OCR has frequently advised schools, however, that it is not appropriate for a student who is complaining of harassment to be required to work out the problem directly with the individual alleged to be harassing him or her, and certainly not without appropriate involvement by the school (e.g., participation by a counselor, trained mediator, or, if appropriate, a teacher or administrator). In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis. Title IX also permits the use of a student disciplinary procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, as long as the procedure meets the requirement of affording a complainant a "prompt and equitable" resolution of the complaint.

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.[110] Similarly, schools are cautioned about using the results of insurance company investigations of sexual harassment allegations. The purpose of an insurance investigation is to assess liability under the insurance policy, and the applicable standards may well be different from those under Title IX. In addition, a school is not relieved of its responsibility to respond to a sexual harassment complaint filed under its grievance procedure by the fact that a complaint has been filed with OCR.[111]

X. Due Process Rights of the Accused

A public school's employees have certain due process rights under the United States Constitution. The Constitution also guarantees due process to students in public and State-supported schools who are accused of certain types of infractions. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding. Furthermore, the Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of persons accused of sexual harassment. Procedures that ensure the Title IX rights of the complainant, while at the same time according due process to both parties involved, will lead to sound and supportable decisions. Of course, schools should ensure that steps to accord due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant. In both public and private schools, additional or separate rights may be created for employees or students by State law, institutional regulations and policies, such as faculty or student handbooks, and collective bargaining agreements. Schools should be aware of these rights and their legal responsibilities to individuals accused of harassment.

XI. First Amendment

In cases of alleged harassment, the protections of the First Amendment must be considered if issues of speech or expression are involved.[112] Free speech rights apply in the classroom (e.g., classroom lectures and discussions)[113] and in all other education programs and activities of public schools (e.g., public meetings and speakers on campus; campus debates, school plays and other cultural events[114]; and student newspapers, journals, and other publications[115]). In addition, First Amendment rights apply to the speech of students and teachers.[116]

Title IX is intended to protect students from sex discrimination, not to regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a sexually hostile environment under Title IX.[117] In order to establish a violation of Title IX, the harassment must be sufficiently serious to deny or limit a student's ability to participate in or benefit from the education program.[118]

Moreover, in regulating the conduct of its students and its faculty to prevent or redress discrimination prohibited by Title IX (e.g., in responding to harassment that is sufficiently serious as to create a hostile environment), a school must formulate, interpret, and apply its rules so as to protect academic freedom and free speech rights. For instance, while the First Amendment may prohibit a school from restricting the right of students to express opinions about one sex that may be considered derogatory, the school can take steps to denounce those opinions and ensure that competing views are heard. The age of the students involved and the location or forum may affect how the school can respond consistently with the First Amendment.[119] As an example of the application of free speech rights to allegations of sexual harassment, consider the following:

Example 1: In a college level creative writing class, a professor's required reading list includes excerpts from literary classics that contain descriptions of explicit

sexual conduct, including scenes that depict women in submissive and demeaning roles. The professor also assigns students to write their own materials, which are read in class. Some of the student essays contain sexually derogatory themes about women. Several female students complain to the Dean of Students that the materials and related classroom discussion have created a sexually hostile environment for women in the class. What must the school do in response?

Answer: Academic discourse in this example is protected by the First Amendment even if it is offensive to individuals. Thus, Title IX would not require the school to discipline the professor or to censor the reading list or related class discussion.

Example 2: A group of male students repeatedly targets a female student for harassment during the bus ride home from school, including making explicit sexual comments about her body, passing around drawings that depict her engaging in sexual conduct, and, on several occasions, attempting to follow her home off the bus. The female student and her parents complain to the principal that the male students' conduct has created a hostile environment for girls on the bus and that they fear for their daughter's safety. What must a school do in response?

Answer: Threatening and intimidating actions targeted at a particular student or group of students, even though they contain elements of speech, are not protected by the First Amendment. The school must take prompt and effective actions, including disciplinary action if necessary, to stop the harassment and prevent future harassment.

Endnotes

[1] This guidance does not address sexual harassment of employees, although that conduct may be prohibited by Title IX. 20 U.S.C. 1681 et seq.; 34 CFR part 106, subpart E. If employees file Title IX sexual harassment complaints with OCR, the complaints will be processed pursuant to the Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance. 28 CFR 42.604. Employees are also protected from discrimination on the basis of sex, including sexual harassment, by Title VII of the Civil Rights Act of 1964. For information about Title VII and sexual harassment, see the Equal Employment Opportunity Commission's (EEOC's) Guidelines on Sexual Harassment, 29 CFR 1604.11, for information about filing a Title VII charge with the EEOC, see 29 CFR 1601.7–1607.13, or see the EEOC's website at www.eeoc.gov.

[2] 20 U.S.C. 1681; 34 CFR part 106.

[3] See, e.g., Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 649-50 (1999); Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274, 281 (1998); Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60, 75 (1992); S. REP. NO. 100-64, 100th Cong., 1st Sess. 14 (1987); Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (1997 guidance), 62 FR 12034 (1997).

[4] As described in the section on "Applicability," this guidance applies to all levels of education.

[5] For practical information about steps that schools can take to prevent and remedy all types of harassment, including sexual harassment, see "Protecting Students from Harassment and Hate Crime, A Guide for Schools," which we issued jointly with the National Association of Attorneys General. This Guide is available at our web site at: www.ed.gov/pubs/Harassment.

[6] See, e.g., Davis, 526 U.S. at 653 (alleged conduct of a sexual nature that would support a sexual harassment claim included verbal harassment and "numerous acts of objectively offensive touching;" Franklin, 503 U.S. at 63 (conduct of a sexual nature found to support a sexual harassment claim under Title IX included kissing, sexual intercourse); Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 60-61 (1986) (demands for sexual favors, sexual advances, fondling, indecent exposure, sexual intercourse, rape, sufficient to raise hostile environment claim under Title VII); Ellison v. Brady, 924 F.2d 872, 873-74, 880 (9th Cir. 1991) (allegations sufficient to state sexual harassment claim under Title VII included repeated requests for dates, letters making explicit references to sex and describing the harasser's feelings for plaintiff); Lipsett v. University of Puerto Rico, 864 F.2d 881, 904-5 (1st Cir. 1988) (sexually derogatory comments, posting of sexually explicit drawing of plaintiff, sexual advances may support sexual harassment claim); Kadiki v. Virginia Commonwealth University, 892 F.Supp. 746, 751 (E.D. Va. 1995)

(professor's spanking of university student may constitute sexual conduct under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65 (N.D. Cal. 1996) (sexually derogatory taunts and innuendo can be the basis of a harassment claim); Denver School Dist. #2, OCR Case No. 08-92-1007 (same to allegations of vulgar language and obscenities, pictures of nude women on office walls and desks, unwelcome touching, sexually offensive jokes, bribery to perform sexual acts, indecent exposure); Nashoba Regional High School, OCR Case No. 01-92-1377 (same as to year-long campaign of derogatory, sexually explicit graffiti and remarks directed at one student.

[7] See also Shoreline School Dist., OCR Case No. 10-92-1002 (a teacher's patting a student on the arm, shoulder, and back, and restraining the student when he was out of control, not conduct of a sexual nature); Dartmouth Public Schools, OCR Case No. 01-90-1058 (same as to contact between high school coach and students); San Francisco State University, OCR Case No. 09-94-2038 (same as to faculty advisor placing her arm around a graduate student's shoulder in posing for a picture); Analy Union High School Dist., OCR Case No. 09-92-1249 (same as to drama instructor who put his arms around both male and female students who confided in him).

[8] 20 U.S.C. 1687 (codification of the amendment to Title IX regarding scope of jurisdiction, enacted by the Civil Rights Restoration Act of 1987). See 65 FR 68049 (November 13, 2000) (Department's amendment of the Title IX regulations to incorporate the statutory definition of "program or activity").

[9] If a school contracts with persons or organizations to provide benefits, services, or opportunities to students as part of the school's program, and those persons or employees of those organizations sexually harass students, OCR will consider the harassing individual in the same manner that it considers the school's employees, as described in this guidance. (See section on "Harassment by Teachers and Other Employees.") See Brown v. Hot, Sexy, and Safer Products, Inc., 68 F.3d 525, 529 (1st Cir. 1995) (Title IX sexual harassment claim brought for school's role in permitting contract consultant hired by it to create allegedly hostile environment).

In addition, if a student engages in sexual harassment as an employee of the school, OCR will consider the harassment under the standards described for employees. (See section on "Harassment by Teachers and Other Employees.") For example, OCR would consider it harassment by an employee if a student teaching assistant who is responsible for assigning grades in a course, i.e., for providing aid, benefits, or services to students under the recipient's program, required a student in his or her class to submit to sexual advances in order to obtain a certain grade in the class.

[10] Cf. John Does 1 v. Covington County Sch. Bd., 884 F.Supp. 462, 464-65 (M.D. Ala. 1995) (male students alleging that a teacher sexually harassed and abused them stated cause of action under Title IX).

[11] Title IX and the regulations implementing it prohibit discrimination "on the basis of sex;" they do not restrict protection from sexual harassment to those circumstances in

which the harasser only harasses members of the opposite sex. See 34 CFR 106.31. In Oncale v. Sundowner Offshore Services, Inc. the Supreme Court held unanimously that sex discrimination consisting of same-sex sexual harassment can violate Title VII's prohibition against discrimination because of sex. 523 U.S. 75, 82 (1998). The Supreme Court's holding in Oncale is consistent with OCR policy, originally stated in its 1997 guidance, that Title IX prohibits sexual harassment regardless of whether the harasser and the person being harassed are members of the same sex. 62 FR 12039. See also Kinman v. Omaha Public School Dist., 94 F.3d 463, 468 (8th Cir. 1996), rev'd on other grounds, 171 F.3d 607 (1999) (female student's allegation of sexual harassment by female teacher sufficient to raise a claim under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65, 1575 (N.D. Cal. 1996) (female junior high student alleging sexual harassment by other students, including both boys and girls, sufficient to raise a claim under Title IX); John Does 1, 884 F.Supp. at 465 (same as to male students' allegations of sexual harassment and abuse by a male teacher.) It can also occur in certain situations if the harassment is directed at students of both sexes. Chiapuzo v. BLT Operating Corp., 826 F.Supp. 1334, 1337 (D.Wyo. 1993) (court found that if males and females were subject to harassment, but harassment was based on sex, it could violate Title VII); but see Holman v. Indiana, 211 F.3d 399, 405 (7th Cir. 2000) (if male and female both subjected to requests for sex, court found it could not violate Title VII).

In many circumstances, harassing conduct will be on the basis of sex because the student would not have been subjected to it at all had he or she been a member of the opposite sex; e.g., if a female student is repeatedly propositioned by a male student or employee (or, for that matter, if a male student is repeatedly propositioned by a male student or employee.) In other circumstances, harassing conduct will be on the basis of sex if the student would not have been affected by it in the same way or to the same extent had he or she been a member of the opposite sex; e.g, pornography and sexually explicit jokes in a mostly male shop class are likely to affect the few girls in the class more than it will most of the boys.

In yet other circumstances, the conduct will be on the basis of sex in that the student's sex was a factor in or affected the nature of the harasser's conduct or both. Thus, in Chiapuzo, a supervisor made demeaning remarks to both partners of a married couple working for him, e.g., as to sexual acts he wanted to engage in with the wife and how he would be a better lover than the husband. In both cases, according to the court, the remarks were based on sex in that they were made with an intent to demean each member of the couple because of his or her respective sex. 826 F.Supp. at 1337. See also Steiner v. Showboat Operating Co., 25 F.3d 1459, 1463-64 (9th Cir. 1994), cert. denied, 115 S.Ct. 733 (1995); but see Holman, 211 F.3d at 405 (finding that if male and female both subjected to requests for sex, Title VII could not be violated).

[12] Nashoba Regional High School, OCR Case No. 01-92-1397. In Conejo Valley School Dist., OCR Case No. 09-93-1305, female students allegedly taunted another female student about engaging in sexual activity; OCR found that the alleged comments were sexually explicit and, if true, would be sufficiently severe, persistent, and pervasive to create a hostile environment.

[13] See Williamson v. A.G. Edwards & Sons, Inc., 876 F2d 69, 70 (8th Cir. 1989, cert. denied 493 U.S. 1089 (1990); DeSantis v. Pacific Tel. & Tel. Co., Inc., 608 F.2d 327, 329-30 (9th Cir. 1979)(same); Blum v. Gulf Oil Corp., 597 F.2d 936, 938 (5th Cir. 1979)(same).

[14] It should be noted that some State and local laws may prohibit discrimination on the basis of sexual orientation. Also, under certain circumstances, courts may permit redress for harassment on the basis of sexual orientation under other Federal legal authority. See Nabozny v. Podlesny, 92 F.3d 446, 460 (7th Cir. 1996) (holding that a gay student could maintain claims alleging discrimination based on both gender and sexual orientation under the Equal Protection Clause of the United States Constitution in a case in which a school district failed to protect the student to the same extent that other students were protected from harassment and harm by other students due to the student's gender and sexual orientation).

[15] However, sufficiently serious sexual harassment is covered by Title IX even if the hostile environment also includes taunts based on sexual orientation.

[16] See also, Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989) (plurality opinion) (where an accounting firm denied partnership to a female candidate, the Supreme Court found Title VII prohibits an employer from evaluating employees by assuming or insisting that they match the stereotype associated with their sex).

[17] See generally Gebser; Davis; See also Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 65-66 (1986); Harris v. Forklift Systems Inc., 510 U.S. 14, 22 (1993); see also Hicks v. Gates Rubber Co., 833 F.2d 1406, 1415 (10th Cir. 1987) (concluding that harassment based on sex may be discrimination whether or not it is sexual in nature); McKinney v. Dole, 765 F.2d 1129, 1138 (D.C. Cir. 1985) (physical, but nonsexual, assault could be sex-based harassment if shown to be unequal treatment that would not have taken place but for the employee's sex); Cline v. General Electric Capital Auto Lease, Inc., 757 F.Supp. 923, 932-33 (N.D. Ill. 1991).

[18] See, e.g., sections on "Harassment by Teachers and Other Employees," "Harassment by Other Students or Third Parties," "Notice of Employee, Peer, or Third Party Harassment," "Factors Used to Evaluate a Hostile Environment," "Recipient's Response," and "Prompt and Equitable Grievance Procedures."

[19] See Lipsett, 864 F.2d at 903-905 (general antagonism toward women, including stated goal of eliminating women from surgical program, statements that women shouldn't be in the program, and assignment of menial tasks, combined with overt sexual harassment); Harris, 510 U.S. at 23; Andrews v. City of Philadelphia, 895 F.2d 1469, 1485-86 (3rd Cir. 1990) (court directed trial court to consider sexual conduct as well as theft of female employees' files and work, destruction of property, and anonymous phone calls in determining if there had been sex discrimination); see also Hall v. Gus Construction Co., 842 F.2d 1010, 1014 (8th Cir. 1988) (affirming that harassment due to the employee's sex

may be actionable even if the harassment is not sexual in nature); Hicks, 833 F.2d at 1415; Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (the boys made lewd comments about male anatomy and tormented the girls by pretending to stab them with rubber knives; while the stabbing was not sexual conduct, it was directed at them because of their sex, i.e., because they were girls).

[20] Davis, 526 U.S. at 650 ("Having previously determined that 'sexual harassment' is 'discrimination' in the school context under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute."); Franklin, 503 U.S. at 75 ("Unquestionably, Title IX placed on the [school] the duty not to discriminate on the basis of sex, and 'when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor "discriminate[s]" on the basis of sex.' ... We believe the same rule should apply when a teacher sexually harasses and abuses a student." (citation omitted)).

OCR's longstanding interpretation of its regulations is that sexual harassment may constitute a violation. 34 CFR 106.31; See Sexual Harassment Guidance, 62 FR 12034 (1997). When Congress enacted the Civil Rights Restoration Act of 1987 to amend Title IX to restore institution-wide coverage over federally assisted education programs and activities, the legislative history indicated not only that Congress was aware that OCR interpreted its Title IX regulations to prohibit sexual harassment, but also that one of the reasons for passing the Restoration Act was to enable OCR to investigate and resolve cases involving allegations of sexual harassment. S. REP. NO. 64, 100th Cong., 1st Sess. at 12 (1987). The examples of discrimination that Congress intended to be remedied by its statutory change included sexual harassment of students by professors, id. at 14, and these examples demonstrate congressional recognition that discrimination in violation of Title IX can be carried out by school employees who are providing aid, benefits, or services to students. Congress also intended that if discrimination occurred, recipients needed to implement effective remedies. S. REP. NO. 64 at 5.

[21] 34 CFR 106.4.

[22] These are the basic regulatory requirements. 34 CFR 106.31(a)(b). Depending upon the facts, sexual harassment may also be prohibited by more specific regulatory prohibitions. For example, if a college financial aid director told a student that she would not get the student financial assistance for which she qualified unless she slept with him, that also would be covered by the regulatory provision prohibiting discrimination on the basis of sex in financial assistance, 34 CFR 106.37(a).

[23] 34 CFR 106.31(b)(1).

[24] 34 CFR 106.31(b)(2).

[25] 34 CFR 106.31(b)(3).

[26] 34 CFR 106.31(b)(4).

[27] 34 CFR 106.31(b)(6).

[28] 34 CFR 106.31(b)(7).

[29] 34 CFR 106.3(a).

[30] 34 CFR 106.9.

[31] 34 CFR 106.8(b).

[32] 34 CFR 106.8(a).

[33] The 1997 guidance referred to quid pro quo harassment and hostile environment harassment. 62 FR 12038–40.

[34] See Alexander v. Yale University, 459 F.Supp. 1, 4 (D.Conn. 1977), aff'd, 631 F.2d 178 (2nd Cir. 1980)(stating that a claim "that academic advancement was conditioned upon submission to sexual demands constitutes [a claim of] sex discrimination in education..."); Crandell v. New York College, Osteopathic Medicine, 87 F.Supp.2d 304, 318 (S.D.N.Y. 2000) (finding that allegations that a supervisory physician demanded that a student physician spend time with him and have lunch with him or receive a poor evaluation, in light of the totality of his alleged sexual comments and other inappropriate behavior, constituted a claim of quid pro quo harassment); Kadiki, 892 F.Supp. at 752 (reexamination in a course conditioned on college student's agreeing to be spanked should she not attain a certain grade may constitute quid pro quo harassment).

[35] 34 CFR 106.31(b).

[36] Davis, 526 U.S. at 651 (confirming, by citing approvingly both to Title VII cases (Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57,67 (1986) (finding that hostile environment claims are cognizable under Title VII), and Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 82 (1998)) and OCR's 1997 guidance, 62 FR at 12041-42, that determinations under Title IX as to what conduct constitutes hostile environment sexual harassment may continue to rely on Title VII caselaw).

[37] 34 CFR 106.31(b). See Davis, 526 U.S. at 650 (concluding that allegations of student-on-student sexual harassment that is "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits" supports a claim for money damages in an implied right of action).

[38] In Harris, the Supreme Court explained the requirement for considering the "subjective perspective" when determining the existence of a hostile environment. The Court stated– – "... if the victim does not subjectively perceive the environment to be abusive, the

conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." 510 U.S. at 21-22.

[39] See Davis, 526 U.S. at 650 (conduct must be "objectively offensive" to trigger liability for money damages); Elgamil v. Syracuse University, 2000 U.S. Dist. LEXIS 12598 at 17 (N.D.N.Y. 2000) (citing Harris); Booher v. Board of Regents, 1998 U.S. Dist. LEXIS 11404 at 25 (E.D. Ky. 1998) (same). See Oncale, 523 U.S. at 81, in which the Court "emphasized ... that the objective severity of harassment should be judged from the perspective of a reasonable person in the [victim's] position, considering 'all the circumstances,'" and citing Harris, 510 U.S. at 20, in which the Court indicated that a "reasonable person" standard should be used to determine whether sexual conduct constituted harassment. This standard has been applied under Title VII to take into account the sex of the subject of the harassment, see, e.g., Ellison, 924 F.2d at 878-79 (applying a "reasonable woman" standard to sexual harassment), and has been adapted to sexual harassment in education under Title IX, Patricia H. v. Berkeley Unified School Dist., 830 F.Supp. 1288, 1296 (N.D. Cal. 1993) (adopting a "reasonable victim" standard and referring to OCR's use of it).

[40] See Davis, 526 U.S. at 651, citing both Oncale, 523 U.S. at 82, and OCR's 1997 guidance (62 FR 12041-12042).

[41] See, e.g., Davis, 526 U.S. at 634 (as a result of the harassment, student's grades dropped and she wrote a suicide note); Doe v. Petaluma, 830 F. Supp. at 1566 (student so upset about harassment by other students that she was forced to transfer several times, including finally to a private school); Modesto City Schools, OCR Case No. 09-93-1391 (evidence showed that one girl's grades dropped while the harassment was occurring); Weaverville Elementary School, OCR Case No. 09-91-1116 (students left school due to the harassment). Compare with College of Alameda, OCR Case No. 09-90-2104 (student not in instructor's class and no evidence of any effect on student's educational benefits or service, so no hostile environment).

[42] Doe v. Petaluma, 830 F.Supp. at 1566.

[43] See Waltman v. Int'l Paper Co., 875 F.2d 468, 477 (5th Cir. 1989) (holding that although not specifically directed at the plaintiff, sexually explicit graffiti on the walls was "relevant to her claim"); Monteiro v. Tempe Union High School, 158 F.3d 1022, 1033-34 (9th Cir. 1998) (Title VI racial harassment case, citing Waltman; see also Hall, 842 F. 2d at 1015 (evidence of sexual harassment directed at others is relevant to show hostile environment under Title VII).

[44] See, e.g., Elgmil 2000 U.S. Dist. LEXIS at 19 ("in order to be actionable, the incidents of harassment must occur in concert or with a regularity that can reasonably be termed pervasive"); Andrews, 895 F.2d at 1484 ("Harassment is pervasive when 'incidents of harassment occur either in concert or with regularity'"); Moylan v. Maries County, 792 F.2d 746, 749 (8th Cir. 1986).

[45] 34 CFR 106.31(b). See Vance v. Spencer County Public School District, 231 F.3d 253 (6th Cir. 2000); Doe v. School Admin. Dist. No. 19, 66 F.Supp.2d 57, 62 (D. Me. 1999). See also statement of the U.S. Equal Employment Opportunity Commission (EEOC): "The Commission will presume that the unwelcome, intentional touching of [an employee's] intimate body areas is sufficiently offensive to alter the conditions of her working environment and constitute a violation of Title VII. More so than in the case of verbal advances or remarks, a single unwelcome physical advance can seriously poison the victim's working environment." EEOC Policy Guidance on Current Issues of Sexual Harassment, 17. Barrett v. Omaha National Bank, 584 F. Supp. 22, 30 (D. Neb. 1983), aff'd, 726 F. 2d 424 (8th Cir. 1984) (finding that hostile environment was created under Title VII by isolated events, i.e., occurring while traveling to and during a two-day conference, including the co-worker's talking to plaintiff about sexual activities and touching her in an offensive manner while they were inside a vehicle from which she could not escape).

[46] See also Ursuline College, OCR Case No. 05-91-2068 (a single incident of comments on a male student's muscles arguably not sexual; however, assuming they were, not severe enough to create a hostile environment).

[47] Davis, 526 U.S. at 653 ("The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX's guarantee of equal access to educational benefits and to have a systemic effect on a program or activity. Peer harassment, in particular, is less likely to satisfy these requirements than is teacher student harassment."); Patricia H., 830 F. Supp. at 1297 (stating that the "grave disparity in age and power" between teacher and student contributed to the creation of a hostile environment); Summerfield Schools, OCR Case No. 15-92-1929 ("impact of the ... remarks was heightened by the fact that the coach is an adult in a position of authority"); cf. Doe v. Taylor I.S.D., 15 F.3d 443, 460 (5th Cir. 1994) (Sec. 1983 case; taking into consideration the influence that the teacher had over the student by virtue of his position of authority to find that a sexual relationship between a high school teacher and a student was unlawful).

[48] See, e.g., McKinney, 765 F.2d at 1138-49; Robinson v. Jacksonville Shipyards, 760 F. Supp. 1486, 1522 (M.D. Fla. 1991).

[49] Cf. Patricia H., 830 F. Supp. at 1297.

[50] See, e.g., Barrett, 584 F. Supp. at 30 (finding harassment occurring in a car from which the victim could not escape particularly severe).

[51] See Hall, 842 F. 2d at 1015 (stating that "evidence of sexual harassment directed at employees other than the plaintiff is relevant to show a hostile environment") (citing Hicks, 833 F. 2d, 1415-16). Cf. Midwest City-Del City Public Schools, OCR Case No. 06-92-1012 (finding of racially hostile environment based in part on several racial incidents at school shortly before incidents in complaint, a number of which involved the same student involved in the complaint).

[52] In addition, incidents of racial or national origin harassment directed at a particular individual may also be aggregated with incidents of sexual or gender harassment directed at that individual in determining the existence of a hostile environment. Hicks, 833 F.2d at 1416; Jefferies v. Harris County Community Action Ass'n, 615 F.2d 1025, 1032 (5th Cir. 1980).

[53] Does v. Covington Sch. Bd. of Educ., 930 F.Supp. 554, 569 (M.D. Ala. 1996); Henson v. City of Dundee, 682 F.2d 897, 903 (11th Cir. 1982).

[54] See Meritor Savings Bank, 477 U.S. at 68. "[T]he fact that sex-related conduct was 'voluntary,' in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII.... The correct inquiry is whether [the subject of the harassment] by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary."

[55] Lipsett, 864 F.2d at 898 (while, in some instances, a person may have the responsibility for telling the harasser "directly" that the conduct is unwelcome, in other cases a "consistent failure to respond to suggestive comments or gestures may be sufficient...."); Danna v. New York Tel. Co., 752 F.Supp. 594, 612 (despite a female employee's own foul language and participation in graffiti writing, her complaints to management indicated that the harassment was not welcome); see also Carr v. Allison Gas Turbine Div. GMC., 32 F.3d 1007, 1011 (7th Cir. 1994) (finding that cursing and dirty jokes by a female employee did not show that she welcomed the sexual harassment, given her frequent complaints about it: "Even if ... [the employee's] testimony that she talked and acted as she did [only] in an effort to be one of the boys is ... discounted, her words and conduct cannot be compared to those of the men and used to justify their conduct.... The asymmetry of positions must be considered. She was one woman; they were many men. Her use of [vulgar] terms ... could not be deeply threatening....").

[56] See Reed v. Shepard, 939 F.2d 484, 486-87, 491-92 (7th Cir. 1991) (no harassment found under Title VII in a case in which a female employee not only tolerated, but also instigated the suggestive joking activities about which she was now complaining); Weinsheimer v. Rockwell Int'l Corp., 754 F.Supp. 1559, 1563-64 (M.D. Fla. 1990) (same, in case in which general shop banter was full of vulgarity and sexual innuendo by men and women alike, and plaintiff contributed her share to this atmosphere.) However, even if a student participates in the sexual banter, OCR may in certain circumstances find that the conduct was nevertheless unwelcome if, for example, a teacher took an active role in the sexual banter and a student reasonably perceived that the teacher expected him or her to participate.

[57] The school bears the burden of rebutting the presumption.

[58] Of course, nothing in Title IX would prohibit a school from implementing policies prohibiting sexual conduct or sexual relationships between students and adult employees.

[59] See note 58.

[60] Gebser, 524 U.S. at 281 ("Franklin ... establishes that a school district can be held liable in damages [in an implied action under Title IX] in cases involving a teacher's sexual harassment of a student...."; 34 CFR 106.31; See 1997 Sexual Harassment Guidance, 62 FR 12034.

[61] See Davis, 526 U.S. at 653 (stating that harassment of a student by a teacher is more likely than harassment by a fellow student to constitute the type of effective denial of equal access to educational benefits that can breach the requirements of Title IX).

[62] 34 CFR 106.31(b). Cf. Gebser, 524 U.S. at 283-84 (Court recognized in an implied right of action for money damages for teacher sexual harassment of a student that the question of whether a violation of Title IX occurred is a separate question from the scope of appropriate remedies for a violation).

[63] Davis, 526 U.S. at 646.

[64] See section on "Applicability of Title IX" for scope of coverage.

[65] See section on "Notice of Employee, Peer, or Third Party Harassment."

[66] See section on "Notice of Employee, Peer, or Third Party Harassment."

[67] 34 CFR 106.31(b).

[68] 34 CFR 106.31(b).

[69] See section on "Notice of Employee, Peer, or Third Party Harassment."

[70] Cf. Davis, 526 U.S. at 646.

[71] 34 CFR 106.31(b).

[72] 34 CFR 106.31(b).

[73] Consistent with its obligation under Title IX to protect students, cf. Gebser, 524 U.S. at 287, OCR interprets its regulations to ensure that recipients take reasonable action to address, rather than neglect, reasonably obvious discrimination. Cf. Gebser, 524 U.S. at 287-88; Davis, 526 U.S. at 650 (actual notice standard for obtaining money damages in private lawsuit).

[74] Whether an employee is a responsible employee or whether it would be reasonable for a student to believe the employee is, even if the employee is not, will vary depending on

factors such as the age and education level of the student, the type of position held by the employee, and school practices and procedures, both formal and informal.
The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. Gebser, 524 U.S. at 290, and Davis, 526 U.S. at 642. The concept of a "responsible employee" under our guidance is broader. That is, even if a responsible employee does not have the authority to address the discrimination and take corrective action, he or she does have the obligation to report it to appropriate school officials.

[75] The Title IX regulations require that recipients designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulations, including complaint investigations. 34 CFR 106.8(a).

[76] 34 CFR 106.31. See Yates v. Avco Corp., 819 F.2d 630, 636 (6th Cir. 1987); Katz v. Dole, 709 F.2d 251, 256 (4th Cir. 1983).

[77] For example, a substantiated report indicating that a high school coach has engaged in inappropriate physical conduct of a sexual nature in several instances with different students may suggest a pattern of conduct that should trigger an inquiry as to whether other students have been sexually harassed by that coach. See also Doe v. School Administrative Dist. No. 19, 66 F.Supp.2d 57, 63-64 and n.6 (D.Me. 1999) (in a private lawsuit for money damages under Title IX in which a high school principal had notice that a teacher may be engaging in a sexual relationship with one underage student and did not investigate, and then the same teacher allegedly engaged in sexual intercourse with another student, who did not report the incident, the court indicated that the school's knowledge of the first relationship may be sufficient to serve as actual notice of the second incident).

[78] Cf. Katz, 709 F.2d at 256 (finding that the employer "should have been aware of the problem both because of its pervasive character and because of [the employee's] specific complaints ..."); Smolsky v. Consolidated Rail Corp., 780 F.Supp. 283, 293 (E.D. Pa. 1991), reconsideration denied, 785 F.Supp. 71 (E.D. Pa. 1992) "where the harassment is apparent to all others in the work place, supervisors and coworkers, this may be sufficient to put the employer on notice of the sexual harassment" under Title VII); Jensen v. Eveleth Taconite Co., 824 F.Supp. 847, 887 (D.Minn. 1993); "[s]exual harassment ... was so pervasive that an inference of knowledge arises .... The acts of sexual harassment detailed herein were too common and continuous to have escaped Eveleth Mines had its management been reasonably alert."); Cummings v. Walsh Construction Co., 561 F.Supp. 872, 878 (S.D. Ga. 1983) ("... allegations not only of the [employee] registering her complaints with her foreman ... but also that sexual harassment was so widespread that defendant had constructive notice of it" under Title VII); but see Murray v. New York Univ. College of Dentistry, 57 F.3d 243, 250-51 (2nd Cir. 1995) (concluding that other students' knowledge of the conduct was not enough to charge the school with notice, particularly because these students may not have been aware that the conduct was offensive or abusive).

[79] 34 CFR 106.9 and 106.8(b).

[80] 34 CFR 106.8(b) and 106.31(b).

[81] 34 CFR 106.9.

[82] 34 CFR 106.8(b).

[83] 34 CFR 106.31.

[84] 34 CFR 106.31 and 106.3. Gebser, 524 U.S. at 288 ("In the event of a violation, [under OCR's administrative enforcement scheme] a funding recipient may be required to take 'such remedial action as [is] deem[ed] necessary to overcome the effects of [the] discrimination.' §106.3.").

[85] 20 U.S.C. 1682. In the event that OCR determines that voluntary compliance cannot be secured, OCR may take steps that may result in termination of Federal funding through administrative enforcement, or, alternatively, OCR may refer the case to the Department of Justice for judicial enforcement.

[86] Schools have an obligation to ensure that the educational environment is free of discrimination and cannot fulfill this obligation without determining if sexual harassment complaints have merit.

[87] In some situations, for example, if a playground supervisor observes a young student repeatedly engaging in conduct toward other students that is clearly unacceptable under the school's policies, it may be appropriate for the school to intervene without contacting the other students. It still may be necessary for the school to talk with the students (and parents of elementary and secondary students) afterwards, e.g., to determine the extent of the harassment and how it affected them.

[88] Gebser, 524 U.S. at 288; Bundy v. Jackson, 641 F.2d 934, 947 (D.C. Cir. 1981) (employers should take corrective and preventive measures under Title VII); accord, Jones v. Flagship Int'l, 793 F.2d 714, 719-720 (5th Cir. 1986) (employer should take prompt remedial action under Title VII).

[89] See Doe ex rel. Doe v. Dallas Indep. Sch. Dist., 220 F.3d 380 (5th Cir. 2000) (citing Waltman); Waltman, 875 F.2d at 479 (appropriateness of employer's remedial action under Title VII will depend on the "severity and persistence of the harassment and the effectiveness of any initial remedial steps"); Dornhecker v. Malibu Grand Prix Corp., 828 F.2d 307, 309-10 (5th Cir. 1987); holding that a company's quick decision to remove the harasser from the victim was adequate remedial action).

[90] See Intlekofer v. Turnage, 973 F.2d 773, 779-780 (9th Cir. 1992)(holding that the employer's response was insufficient and that more severe disciplinary action was

necessary in situations in which counseling, separating the parties, and warnings of possible discipline were ineffective in ending the harassing behavior).

[91] Offering assistance in changing living arrangements is one of the actions required of colleges and universities by the Campus Security Act in cases of rape and sexual assault. See 20 U.S.C. 1092(f).

[92] See section on "Harassment by Other Students or Third Parties."

[93] University of California at Santa Cruz, OCR Case No. 09-93-2141 (extensive individual and group counseling); Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (counseling).

[94] Even if the harassment stops without the school's involvement, the school may still need to take steps to prevent or deter any future harassment — to inform the school community that harassment will not be tolerated. Wills v. Brown University, 184 F.3d 20, 28 (1st Cir. 1999) (difficult problems are posed in balancing a student's request for anonymity or limited disclosure against the need to prevent future harassment); Fuller v. City of Oakland, 47 F.3d 1522, 1528-29 (9th Cir. 1995) (Title VII case).

[95] 34 CFR 106.8(b) and 106.71, incorporating by reference 34 CFR 100.7(e). The Title IX regulations prohibit intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX.

[96] Tacoma School Dist. No. 10, OCR Case No. 10-94-1079 (due to the large number of students harassed by an employee, the extended period of time over which the harassment occurred, and the failure of several of the students to report the harassment, the school committed as part of corrective action plan to providing training for students); Los Medanos College, OCR Case No. 09-84-2092 (as part of corrective action plan, school committed to providing sexual harassment seminar for campus employees); Sacramento City Unified School Dist., OCR Case No. 09-83-1063 (same as to workshops for management and administrative personnel and in-service training for non-management personnel).

[97] In addition, if information about the incident is contained in an "education record" of the student alleging the harassment, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, the school should consider whether FERPA would prohibit the school from disclosing information without the student's consent. Id. In evaluating whether FERPA would limit disclosure, the Department does not interpret FERPA to override any federally protected due process rights of a school employee accused of harassment.

[98] 34 CFR 106.8(b). This requirement has been part of the Title IX regulations since their inception in 1975. Thus, schools have been required to have these procedures in place since that time. At the elementary and secondary level, this responsibility generally lies

with the school district. At the postsecondary level, there may be a procedure for a particular campus or college or for an entire university system.

[99] Fenton Community High School Dist. #100, OCR Case 05-92-1104.

[100] While a school is required to have a grievance procedure under which complaints of sex discrimination (including sexual harassment) can be filed, the same procedure may also be used to address other forms of discrimination.

[101] See generally Meritor, 477 U.S. at 72-73 (holding that "mere existence of a grievance procedure" for discrimination does not shield an employer from a sexual harassment claim).

[102] The Family Educational Rights and Privacy Act (FERPA) does not prohibit a student from learning the outcome of her complaint, i.e., whether the complaint was found to be credible and whether harassment was found to have occurred. It is the Department's current position under FERPA that a school cannot release information to a complainant regarding disciplinary action imposed on a student found guilty of harassment if that information is contained in a student's education record unless — (1) the information directly relates to the complainant (e.g., an order requiring the student harasser not to have contact with the complainant); or (2) the harassment involves a crime of violence or a sex offense in a postsecondary institution. See note 97. If the alleged harasser is a teacher, administrator, or other non-student employee, FERPA would not limit the school's ability to inform the complainant of any disciplinary action taken.

[103] The section in the guidance on "Recipient's Response" provides examples of reasonable and appropriate corrective action.

[104] 34 CFR 106.8(a).

[105] Id.

[106] See Meritor, 477 U.S. at 72-73.

[107] University of California, Santa Cruz, OCR Case No. 09-93-2131. This is true for formal as well as informal complaints. See University of Maine at Machias, OCR Case No. 01-94-6001 (school's new procedures not found in violation of Title IX in part because they require written records for informal as well as formal resolutions). These records need not be kept in a student's or employee's individual file, but instead may be kept in a central confidential location.

[108] For example, in Cape Cod Community College, OCR Case No. 01-93-2047, the College was found to have violated Title IX in part because the person identified by the school as the Title IX coordinator was unfamiliar with Title IX, had no training, and did not even realize he was the coordinator.

[109] Indeed, in University of Maine at Machias, OCR Case No. 01-94-6001, OCR found the school's procedures to be inadequate because only formal complaints were investigated. While a school isn't required to have an established procedure for resolving informal complaints, they nevertheless must be addressed in some way. However, if there are indications that the same individual may be harassing others, then it may not be appropriate to resolve an informal complaint without taking steps to address the entire situation.

[110] Academy School Dist. No 20, OCR Case No. 08-93-1023 (school's response determined to be insufficient in a case in which it stopped its investigation after complaint filed with police); Mills Public School Dist., OCR Case No. 01-93-1123, (not sufficient for school to wait until end of police investigation).

[111] Cf. EEOC v. Board of Governors of State Colleges and Universities, 957 F.2d 424 (7th Cir. 1992), cert. denied, 506 U.S. 906 (1992).

[112] The First Amendment applies to entities and individuals that are State actors. The receipt of Federal funds by private schools does not directly subject those schools to the U.S. Constitution. See Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982). However, all actions taken by OCR must comport with First Amendment principles, even in cases involving private schools that are not directly subject to the First Amendment.

[113] See, e.g., George Mason University, OCR Case No. 03-94-2086 (law professor's use of a racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment); Portland School Dist. 1J, OCR Case No. 10-94-1117 (reading teacher's choice to substitute a less offensive term for a racial slur when reading an historical novel aloud in class constituted an academic decision on presentation of curriculum, not racial harassment).

[114] See Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 993 F.2d 386 (4th Cir. 1993) (fraternity skit in which white male student dressed as an offensive caricature of a black female constituted student expression).

[115] See Florida Agricultural and Mechanical University, OCR Case No. 04-92-2054 (no discrimination in case in which campus newspaper, which welcomed individual opinions of all sorts, printed article expressing one student's viewpoint on white students on campus.)

[116] Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969) (neither students nor teachers shed their constitutional rights to freedom of expression at the schoolhouse gates); Cf. Cohen v. San Bernardino Valley College, 92 F.3d 968, 972 (9th Cir. 1996) (holding that a college professor could not be punished for his longstanding teaching methods, which included discussion of controversial subjects such as obscenity and consensual sex with children, under an unconstitutionally vague sexual harassment policy); George Mason University, OCR Case No. 03-94-2086 (law professor's use of a

racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment.)

[117] See, e.g., University of Illinois, OCR Case No. 05-94-2104 (fact that university's use of Native American symbols was offensive to some Native American students and employees was not dispositive, in and of itself, in assessing a racially hostile environment claim under Title VI.)

[118] See Meritor, 477 U.S. at 67 (the "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee" would not affect the conditions of employment to a sufficient degree to violate Title VII), quoting Henson, 682 F.2d at 904; cf. R.A.V. v. City of St. Paul, 505 U.S. 377, 389 (1992) (citing with approval EEOC's sexual harassment guidelines); Monteiro, 158 F.3d at 1032-34 (9th Cir. 1998) (citing with approval OCR's racial harassment investigative guidance).

[119] Compare Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986) (Court upheld discipline of high school student for making lewd speech to student assembly, noting that "[t]he undoubted freedom to advocate unpopular and controversial issues in schools must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior."), with Iota Xi, 993 F.2d 386 (holding that, notwithstanding a university's mission to create a culturally diverse learning environment and its substantial interest in maintaining a campus free of discrimination, it could not punish students who engaged in an offensive skit with racist and sexist overtones).

SixTen and Associates
Mandate Reimbursement Services

Exhibit G

EITH B. PETERSEN, MPA, JD, President
252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
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E-Mail: Kbpsixten@aol.com

September 21, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-31
Santa Monica Community College District
Minimum Conditions for State Aid

Dear Ms. Higashi:

By letter dated May 5, 2004, I responded to the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 11, 2004. At pages 15-16 of my response, I pointed out that CCC had represented that it was attaching copies of historic regulation packages as Attachments 1, 2, 3 and 4. I also called your attention to the fact that the comments provided to me did not have any attachments and, therefore, test claimant reserved the right to respond, if needed, when the attachments may be received in the future.

On July 29, 2004, copies of those attachments were supplied to me by your office.[1] Therefore, I am now augmenting my prior response of May 5, 2004 to further respond to the comments of CCC to address the issues raised by the Attachments and to address facts discovered through additional research facilitated by the Attachments.

[1] Page 11 of Attachment 1 was not received.

Condition 1 - Standards of Scholarship

CCC refers to Attachment 1[2] and Attachment 2[3]. These references, however, are incomplete. The complete Title 5 regulations pertaining to Standards of Scholarship, as they existed on December 31, 1974, are found in former Division 2, Chapter 4, sections 51300 through 51308. A copy of those regulations is attached hereto as Exhibit "A" and is incorporated herein by reference.

Former Chapter 4 (Standards of Scholarship) was amended thereafter as follows:

Sections 51301 (Grading Practices), 51302 (Grade Options), 51302.5 (Credit by Examination), 51303 (Standards for Probation), 51304 (Standards for Dismissal), 51305 (Units Attempted), 51306 (Grade Point Average), 51307 (Notification of Probation and Dismissal), and 51308 (Grades Offered) were amended to make technical changes. (See: Register 77, No. 45)

Section 51315 (District Policy for Course Repetition) was added on April 29, 1977. (See: Register 77, No. 18) Therefore, for the first time, community college districts were required to adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work had been recorded. Community college districts were also required, for the first time, when course repetition occurred to annotate the permanent academic record in such a manner that all work remains legible, ensuring a true and complete academic history.

Section 51316 (Course Repetition: Implementation) was added on April 29, 1977 and amended on November 4, 1977. (See: Register 77, No. 18 and Register 77, No.45) Therefore, for the first time, community college districts were (a) required to refrain from adopting any regulation or procedure which conflicted with other specified Education Code sections, (b) allowed to permit repetition of any course taken in any accredited college or university and for which substandard academic performance was recorded, (c) required to indicate which courses or categories of courses were exempt from

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[2] Attachment 1 is a document approved for filing on August 26, 1969. My subsequent research reveals that it was published in Register 69, No. 35, as an emergency measure on that date.

[3] Attachment 2 is a document approved for filing on July 1, 1971. My subsequent research reveals that it was published in Register 71, No. 27, on that date.

consideration under these regulations, (d) required to deem any course repetition permitted to constitute "unusual circumstances" and, therefore, require prior written permission from the district superintendent, (e) required to clearly indicate any courses repeated on the student's permanent academic record, using an appropriate symbol, (f) required to publish adopted procedures or regulations, (g) allowed to honor similar prior course repetition actions by other accredited colleges and universities, and (h) required to maintain a careful record of actions taken under course repetition procedures or regulations to include in periodic reports which may be required by the Chancellor.

Section 51318 (District Policy for Academic Renewal Without Course Repetition) was added on April 29, 1977. (See: Register 77, No. 18) Therefore, for the first time, the governing boards of community college districts were required to adopt and publish procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance which was not reflective of a student's demonstrated ability. And, when previously recorded, substandard course work was to be disregarded in the computation of grade point averages, and districts were required to annotate the student's permanent academic record in such a manner that all work remained legible, insuring a true and complete academic history.

Section 51319 (Academic Renewal Without Course Repetition: Implementation) was added on April 29, 1977. (See: Register 77, No. 18) Therefore, for the first time, governing boards of community college districts, in adopting procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance which was not reflective of a student's demonstrated ability, were (a) restrained from adopting any regulation or procedure which conflicted with specified Education Code sections, (b) required to state specified data, and (c) required to publish adopted procedures to be followed in implementing the procedures or regulations adopted stating at a minimum the procedure to be followed by students and naming district officers and personnel responsible for implementing the procedures.

Section 51302.5 was amended to make a technical correction on November 15, 1979. (See: Register 79, No. 46)

Section 51301 was amended on March 14, 1980 to delete the provision allowing governing boards to establish a deadline and make provisions for a student to withdraw from a class without penalty, and to make technical corrections. (See: Register 80, No. 11)

Section 51302 was amended on March 14, 1980. (See: Register 80, No. 11) Subdivision (a) was amended to require, for the first time, that the governing board of a

district shall specify in its catalog the category into which each course falls. Subdivision (e) was added to provide, for the first time, that independent study courses may be graded on a "credit/no credit" basis. Subdivision (f) was added to provide, for the first time, that when a district offers courses in which there is a single satisfactory standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades.

Section 51302.5 (Credit by Examination) was amended on March 14, 1980. (See: Register 80, No. 11) Subdivision (a) was added to require, for the first time, that governing boards adopt and publish procedures and regulations pertaining to credit by examination. The provisions of the section prior to 1980 were placed in subparagraph (b). Subdivision (c) was added to require, for the first time, that the student's academic record be clearly annotated to reflect that credit was earned by examination. Subdivision (d) was added to provide that units for which credit was given by examination shall not be counted in determining the required 12 semester hours in residence.

Section 51303 (Standards for Probation) was amended on March 14, 1980 and again on May 8, 1980. (See: Register 80, No. 11, and Register 80, No. 19) The provisions of the section prior to 1980 were placed in subparagraph (a). Subparagraph (b) was added to provide, for the first time, that certain students be placed on progress probation. Subparagraph (c) was added to provide that governing boards of community college districts may adopt standards of probation that do not exceed those standards specified in subdivisions (a) and (b).

Section 51303.5 (Removal from Probation) was added on March 14, 1980 and amended on May 8, 1980. (See: Register 80, No. 19) New subdivision (a) required, for the first time, that a student shall be removed from academic probation when the student's accumulated grade point average was 2.0 or higher. New subdivision (b) required, for the first time, that a student on progress probation shall be removed from probation when the entries of "W," "I," and "NC" dropped below 50 percent. New subdivision (c) required, for the first time, that the governing board of a district adopt and publish procedures and conditions for probation, appeals from probation and requests for removal from probation.

Section 51304 (Standards for Dismissal) was amended on March 14, 1980 and again on May 8, 1980. (See: Register 80, No. 11, and Register 80, No. 19) An introductory paragraph was added to require community college districts to consider certain semesters and quarters as being consecutive. The provisions of the section prior to 1980 (when students on academic probation shall be subject to dismissal) were placed

in subparagraph (a). Subdivision (b) was added to provide, for the first time, when a student who has been placed on progress probation shall be subject to dismissal. Subdivision (c) was added to require, for the first time, that the governing board of a district adopt and publish procedures and conditions for dismissal, appeal of dismissal and requests for reinstatement. The former provisions requiring district boards to adopt rules setting forth the circumstances that warrant exceptions to the standards for dismissal were placed in new subdivision (d).

Section 51306 (former heading: Grade Point Average - amended now to "Academic Record Symbols and Grade Point Average") was amended on March 14, 1980 and again on May 8, 1980. (See: Register 80, No. 11, and Register 80, No. 19). Subdivision (a) was amended to require, for the first time, that only specified evaluative symbols be used for grading. Subdivision (b) was amended to require, for the first time, that the governing board of a district publish the point equivalencies for grades. Subdivision (c) was added and amended to provide that the governing board may authorize the use of certain non-evaluative symbols.

Section 51307 (Notification of Probation and Dismissal) was amended on March 14, 1980. (See: Register 80, No. 11) In addition to technical changes, the section was amended to provide, for the first time, that each community college also make every reasonable effort to provide counseling and support services to a student on probation. The amendment also required districts, for the first time, to make every reasonable effort to notify a student of the student's removal from probation or reinstatement after dismissal within established timelines. The amendment also required districts, for the first time, to publish their probation and dismissal policies and procedures in the college catalog.

Former Section 51308 (Grades Offered) was repealed on March 14, 1980 and a new Section 51308 (Grade Changes) was added on that date. (See: Register 80, No. 11) New subdivision (a) required the instructor of any course to determine the grade to be awarded. New subdivision (b) authorized the governing board to authorize a student who has received credit for a course taken on a "credit-no credit" basis within the district to convert that grade to a grade based on a grading scale by taking an appropriate examination. New subdivision (c) required, for the first time, that the governing board of a district adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded and to make appropriate annotations of any courses repeated on the student's permanent academic record.

Section 51315 (District Policy for Course Repetition) was amended on March 14, 1980. (See: Register 80, No. 11) For purposes of course repetition, academic renewal and all

other related provisions, the term "substandard" was defined. In addition, in such cases, the procedures in specified regulation sections were to be followed.

Section 51316 (Course Repetition: Implementation), Section 51318 (District Policy for Academic Renewal Without Course Repetition), and Section 51319 (Academic Renewal Without Course Repetition: Implementation) were amended on March 14, 1980 to make technical changes. (See: Register 80, No. 11)

Section 51325 was added on March 14, 1980 to provide, for the first time, that the governing board of a district may request a reasonable phase-in period from the Chancellor when adopting regulations or otherwise implementing the provisions of the Chapter.

Section 51302 (Credit - No Credit Options) was amended on May 14, 1982 to delete former subdivision (c) which provided that a governing board could authorize a student to convert his or her grade by taking an appropriate examination. (See: Register 82, No. 20)

Section 51302.5 (Credit by Examination) was amended on May 14, 1982 to delete the reference to subdivision (f) of Section 55002. (See: Register 82, No. 20)

Section 51305 (Units Attempted) was amended on May 14, 1982 to delete units of credit earned when the student was enrolled in any college, university, or grades 13 and 14 from required calculations and limit the calculations only to those when enrolled in the current community college of attendance. (See: Register 82, No. 20)

Section 51306 (Academic Record Symbols and Grade Point Average) was amended on May 14, 1982. (See: Register 82, No. 20) Subdivision (c) was amended to limit the use of designated non-evaluative symbols only under specified controls and conditions. The definition of the "IP" symbol was amended to require the appropriate faculty to assign an evaluative symbol (grade) when a student was enrolled in an "open-entry, open-exit" course, was assigned an "IP" at the end of an attendance period, and did not enroll in that course in the subsequent attendance period. The definition of the "W" symbol was amended to provide for authorization to withdraw, upon petition, in extenuating circumstances, and to define "appropriate faculty." Other technical corrections were also made.

Section 51307 (Notification of Probation and Dismissal) was amended on May 14, 1982 to delete three requirements to make "every reasonable effort" to require only "reasonable efforts" (See: Register 82, No. 20)

Section 51308 (Grade Changes) was amended on May 14, 1982 to delete former subdivision (b) allowing the governing board to authorize a student to convert a "credit-no credit" basis to a grade based on a grading scale. A new subdivision (b) was added to require the governing board of a district, for the first time, to adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work had been recorded and to require appropriate notations of any courses repeated. (See: Register 82, No. 20)

Section 51315 (District Policy for Course Repetition) was amended on May 14, 1982 to delete references to certain regulation sections. (See: Register 82, No. 20)

Section 51317 (Course Repetition: Special Circumstances) was added on May 14, 1982 to add, for the first time, procedures or regulations pertaining to courses for which substandard work had not been recorded. Subdivision (b) required annotation of the student's permanent record when course repetition under the section occurred. (See: Register 82, No. 20)

Section 51325 (Request for Phase-In) was repealed on May 14, 1982. (See: Register 82, No. 20)

Chapter 4 (Sections 51300 through 51319, not consecutive) was repealed on July 13, 1983. (See: Register 83, No. 29)

The test claim regulations (Title 5, sections 51002 and 55750 through 55765 mostly[4] added on July 13, 1983) are attached to the test claim in Exhibit 4.

A comparison of the requirements of the pre-1975 regulations (Exhibit "A"), the regulations added since 1975, and the test claim regulations (Exhibit 4), clearly shows that the test claim requirements are much more extensive than those required before 1975. For example, but not by way of limitation:

1. Pre-1975 regulations did not require that adopted regulations be filed with the Chancellor's office. [Title 5, Section 55750]

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[4] Section 55765.5 (Remedial Coursework Limit) was added on June 5, 1990. (See: Register 90, No. 37) Section 55758.5 (Grade Point Averaging) was added on October 25, 1991. (See: Register 92, No. 7) Sections 55753.5 (Articulation of High School Courses) and 55753.7 (Advanced Placement Examinations) were added on January 4, 2002. (See: Register 2002, No. 8)

2. Pre-1975 regulations did not provide for "credit-no credit" grading for independent study courses. [Title 5, Section 55752(d)]

3. Pre-1975 regulations did not require adoption and publication of procedures and regulations pertaining to credit by examination, the nature and content of which is to be determined solely by faculty, separate examinations for each course, annotations on students' records and offering students a credit-no credit option. [Title 5, Section 55753(a)(c)(d)(e)(f)]

4. Pre-1975 regulations did not address articulation of high school courses. [Title 5, Section 55753.5]

5. Pre-1975 regulations did not address advanced placement examinations. [Title 5, Section 55753.7]

6. Pre-1975 regulations did not consider progress probations or limit adoption of standards for probation. [Title 5, 55754(b)(c)]

7. Pre-1975 regulations did not detail specific requirements for a student's removal from probation. [Title 5, Section 55755]

8. Pre-1975 regulations did not govern standards for dismissal of students placed on progress probation and did not require publication of procedures and conditions for dismissal and appeal of dismissal and requests for reinstatement. [Title 5, Section 55756(b)(c)]

9. Pre-1975 regulations did not place limits on the amount of remedial coursework that students may take. [Title 5, Section 55756.5]

10. Pre-1975 regulations did not govern academic record symbols and grade point averages. [Title 5, Section 55758]

11. Pre-1975 regulations did not require districts to make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties; or to make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district; or publish probation and dismissal policies and procedures in the college catalog. [Title 5, Section 55759]

12. Pre-1975 regulations did not govern grade changes. [Title 5, Section 55760]

13. Pre-1975 regulations did not require adoption and publication of procedures pertaining to the repetition of courses for which substandard work has been recorded. [Title 5, Section 55761]

14. Pre-1975 regulations did not govern the implementation of procedures or regulations for course repetitions. [Title 5, Section 55762]

15. Pre-1975 regulations did not govern special circumstances when courses may be repeated. [Title 5, Section 55763]

16. Pre-1975 regulations did not require adoption and publication of procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance which is not reflective of a student's demonstrated ability. [Title 5, Section 55764]

17. Pre-1975 regulations did not govern implementation of procedures or regulations pertaining to academic renewal without course repetition. [Title 5, Section 55765]

Condition 2 - Degrees and Certificates

CCC refers to Attachment 1 (for former Section 51005) and Attachment 3[5]. Attachment 3, as published, added former Chapter 8 (Sections 51620 through 51626) pertaining to Degrees and Certificates granted after September 1, 1973. Degrees granted prior to that date were governed by Chapter 7 (Sections 51600 through 51606) which is not relevant to this test claim. The Title 5 regulations pertaining to Degrees and Certificates, as they existed on December 31, 1974, are attached hereto as Exhibit "B" and are incorporated herein by reference.

Sections 51625 (Certificate of Achievement) and 51626 (Duty to Grant Degree or Diploma) were repealed and replaced by new sections 51628 and 51629 on June 9, 1982. The new section headings and text were substantially similar to the repealed sections. (See: Register 82, No. 24)

A new Section 51626 governing the minimum requirements for the Associate Degree was added on June 9, 1982. (See: Register 82, No. 24)

[5] Attachment 3 is a document approved for filing on October 1, 1971. My subsequent research reveals that it was published in Register 71, No. 40, on that date.

Former Chapter 8 (Degrees and Certificates), Sections 51620 through 51629, was repealed on July 13, 1983. (See: Register 83, No. 29)

The test claim regulations (Title 5, sections 51004 and 55800 through 55810 mostly[6] added on July 18, 1983) are attached to the test claim in Exhibit 4.

A comparison of the requirements of the pre-1975 regulations (Exhibit "B"), the new regulations since 1975, and the test claim regulations (Exhibit 4), show that the test claim requirements are more extensive than required before 1975. For example, but not by way of limitation:

1. Pre-1975 regulations did not require that the policy adopted by the board regarding degrees and certificates be published in the college catalog and filed with the Chancellor's Office. [Section 55800]

2. Pre-1975 regulations did not require the district to receive and process student petitions seeking that noncredit courses be counted toward associate degrees. [Section 55807]

Condition 3 - Open Courses

CCC again refers to Attachments 1 and 2 in order to cite former Section 51003, subdivision (c) and former Section 51102. Copies of those sections, as they existed on December 31, 1974, are attached hereto as Exhibit "C." As can be seen, these two sections really have nothing to do with "Open Courses."

A new Division 9[7], chapters[8] 1 through 4 (Sections 58000-58253), was added on December 29, 1971. (See: Register 71, No. 1) This included sections 58100 through 58110 which regulated Open Courses. This Division 9 was repealed on December 21,

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[6] Section 55805.5 (Types of Courses Appropriate to the Associate Degree) was added on October 7, 1988. (See: Register 88, No. 42) Section 55800.5 (Minimum Credit Hours for Graduation from Two-Year Course) was added on March 4, 1991. (See: Register 91, No. 23)

[7] Effective April 1, 1990 the hierarchical headings used within the California Code of Regulations were renamed. Division 9 is now Chapter 9.

[8] See footnote 7. Chapters are now subchapters.

1981, effective January 20, 1982. (See: Register 81, No. 52) A replacement Division 9 was not added until July 29, 1982, effective August 28, 1982. (See: Register 82, No. 31) Therefore, all of the provisions of Division 9 (now Chapter 9), including Subchapter 2 (Limitations on State Aid), Article 1 - (Open Courses), Sections 58102, 58104, 58106, 58107, and 58108 (the test claim regulations) are all new programs.

The test claim regulations (Title 5, sections 51006 and 58102 through 58108, not consecutive) are attached to the test claim in Exhibit 4.

Condition 4 - Comprehensive Plans

CCC refers to Attachment 4[9]. The Title 5 regulations pertaining to Educational Master Plans, as they existed on December 31, 1974, are found in former Division 6[10], Chapter 5, sections 55400 et seq. A copy of those regulations is attached hereto as Exhibit "D" and is incorporated herein by reference.

The test claim regulations (Title 5, Sections 51008 and 55401 through 55404) are attached to the test claim in Exhibit 4.

A comparison of the Exhibit "D" regulations to the test claim regulations show that the regulations as they existed on December 31, 1974 did not include comprehensive or long range master plans for facilities.

Condition 7 - New Colleges and Education Centers

All of the test claim regulations (Sections 51014, 55825, 55827, 55828, 55829, 55830, and 55831) were added on July 13, 1983. (See: Register 1983, No. 29).

My additional research has discovered that former Chapter 10 (Sections 51800 through 51808, not consecutive) also regulated the approval of new colleges and educational

[9] Attachment 4 is a document approved for filing on June 28, 1971. My subsequent research reveals that it was published in Register 71, No. 27, on July 1, 1971.

[10] As of December 31, 1974, the only regulations affirming and fixing the minimum standards for entitlement to state aid were found in Division 2. (former Title 5, Section 51000) This fact is not relevant to the determination of what test claim duties, if any, existed prior to 1975.

centers. This chapter, however, was not added until June 27, 1975. (See: Register 1975, No. 26) This chapter was repealed on July 13, 1983. (See: Register 83, No. 29)

Therefore, all of the regulations governing new colleges and educational centers were enacted after 1974.

Condition 9 - Counseling

CCC refers to Attachment 1. The Title 5 regulations pertaining to Counseling, as they existed on December 31, 1974, are found in former Division 2, Chapter 6, sections 51500 et seq. A copy of those regulations is attached hereto as Exhibit "E" and is incorporated herein by reference.

The test claim regulation (Title 5, section 51018) is attached to the test claim in Exhibit 4.

A comparison of the requirements of the pre-1975 regulations (Exhibit "E") and the test claim regulation (Exhibit 4) clearly shows that the test claim requirements are much more extensive than required before 1975. For example, but not by way of limitation:

1. Pre-1975 regulations did not require governing boards to adopt regulations and file those regulations, as well as any amendments, with the Chancellor's Office. [Title 5, Section 51018(a)]

2. Pre-1975 regulations did not require governing boards to publicize organized and functioning counseling programs in each college within the district. [Title 5, Section 51018(b)]

3. Pre-1975 regulations did not require career counseling. [Title 5, Section 51018(b)(2)]

4. Pre-1975 regulations did not require personal counseling. [Title 5, Section 51018(b)(3)]

5. Pre-1975 regulations did not require coordination with the counseling aspects of other services to students. [Title 5, Section 51018(b)(4)]

Condition 15 - Shared Governance

CCC refers to former section 51004 in Attachment 1. The Title 5 regulation pertaining to Shared Governance, as it existed on December 31, 1974, is found in former Division 2, Chapter 1, section 51004. A copy of that regulation is attached hereto as Exhibit "F" and is incorporated herein by reference.

It would appear from the best available evidence that former Section 51004 was repealed sometime after its enactment on August 26, 1969 (See: Register 69, No. 35) and prior to April 18, 1970. (See: Declaration of Leo Shaw, submitted herewith) If this best evidence is correct, all of the requirements relative to shared governance are new programs since current Section 51023 was not enacted until July 13, 1983. (See: Register 83, No. 29)

Current Sections 51023.5 (Staff) and 51023.7 (Students) were not enacted until March 12, 1991. (See: Register 91, No. 23) Therefore, the current regulations found in these two latter sections are all new programs.

The test claim regulations (Title 5, sections 51023, 51023.5 and 51023.7) are attached to the test claim in Exhibit 4.

Even if the Commission should find that former Section 51004 was not repealed when suggested by the best evidence available, or was replaced by some other yet unidentified pre-1975 regulation, a comparison of the requirements of the pre-1975 regulation (Exhibit "F") and the test claim regulations (Exhibit 4) clearly show that the test claim requirements are much more extensive than required before 1975. For example, but not by way of limitation:

1. Pre-1975 regulations did not require governing boards to adopt policy statements on academic freedom, make them available to faculty and file them with the Chancellor. [Title 5, Section 51023(a)]

2. Pre-1975 regulations did not require governing boards to adopt detailed policies and procedures pertaining to staff. [Title 5, Section 51023.5(a)(1)(2)]

3. Pre-1975 regulations did not require consultations between the governing board and representatives of existing staff councils, committees, employee organizations, and other such bodies; and, where no groups or structures for participation exist that provide group staff representation, to broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views. [Title 5, Section 51023.5(a)(3)]

4. Pre-1975 regulations did not require that all staff be provided with opportunities to participate in the formulation and development of district and college policies and procedures. [Title 5, Section 51023.5(a)(4)(5)(6)]

5. Pre-1975 regulations did not require districts to adopt or implement policies and procedures that provide students the opportunity to participate effectively in district and college governance. [Title 5, Section 51023.7]

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF LEO SHAW

I, Leo Shaw, the undersigned declare:

1. I am now, and have been for the past four years, an employee of SixTen and Associates where I have been designated an Associate. My primary duties are to assist management with the preparation and written presentation of test claims and incorrect reduction claims.

2. All of the statements contained in this declaration are made and based on my own personal knowledge and, if called as a witness, I could testify competently thereto.

3. I hold a Juris Doctorate degree awarded in 1971 by the University of San Diego School of Law. I have been doing law library research, or directing others in law library research, now for thirty-seven (37) years.

4. Researching the California Code of Regulations, especially historical derivations, is difficult. The reason for the difficulty is that current regulations, as published, do not usually provide annotations to prior or similar regulations or identify repealed sections.

5. New regulations and amended regulations are published in registers. The number of the register indicates the year of publication. The new regulations and amendments are then numbered. For example, a citation of Register 80, No. 4, would indicate that it was the fourth publication in 1980. This method of citation is not always accurate and there are some gaps in the process.

6. I researched, or caused to be researched, the original Title 5 Regulations

which comprised the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitled Community Colleges to receive state aid.

7. The section pertaining to Academic Senates or Faculty Councils was originally found in Title 5, Part VI, Chapter 1, Article 5, Section 51004. Article 5, Sections 51000 through 51005, was published on August 26, 1969, as an emergency measure. (See: Register 69, No. 35)

8. Sections 51001 through 51005 no longer appeared thereafter. For example, Chapter 1 was published again on April 18, 1970 in Register 70, No. 16. Sections 51001 through 51005 no longer appeared in the Table of Contents or in the text of Chapter 1. A copy of that portion of Register 70, No. 16 is attached hereto as Exhibit "A" and is incorporated herein by reference.

9. I have researched, and have caused others to research, the "disappearance" of Sections 51001 through 51005 after August 26, 1969 and have been unable to determine why those sections no longer appear.

10. The absence of Sections 51001 through 51005 does not appear to be an error in Register 70, No. 16. Those sections also do not appear in the Table of Contents or the text of Chapter 1 as printed on July 3, 1971 in Register 71, No. 27, a copy of which is attached hereto as Exhibit "B" and is incorporated herein by reference.

11. A new Chapter 1, captioned "Minimum Standards," was added on July 13, 1983. (See: Register 83, No. 29) The history of new Section 51000, as published in Register 83, No. 29, notes the repeal of former Chapter 1 (consisting only of Section

51000) on the same date.

12. Although, I have not been able to find the repealer of former Section 51004, the best evidence found indicates that it was repealed prior to 1975.

13. I have read Attachments 1, 2, 3 and 4 as they were supplied to SixTen and Associates by staff of the Commission on State Mandates. Have those attachments allowed me to locate regulations published on August 26, 1969 in Register 69, No. 35, on April 18, 1970 in Register 70, No. 16, on July 1, 1971 in Register 71, No. 27 and on October 1, 1971 in Register 71, No. 40.

14 I have prepared Exhibits "A" through "F", inclusive, attached to the augmented response of SixTen and Associates dated September 15, 2004. I am informed and believe that the text of those exhibits accurately summarize the additions, renumbering and amendments of the Title 5 Regulations set forth therein. I am informed and believe that those exhibits accurately represent the text of those Title 5 Regulations as of December 31, 1974.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing statements are true and correct, except as to those matters which are stated upon my information and belief, and, as to those matters I believe them to be true.

Executed on September 21, 2004 at San Diego, California

Leo Shaw

EXHIBIT "A"

DIVISION 2. COMMUNITY COLLEGE STANDARDS

Detailed Analysis

CHAPTER 1. GENERAL PROVISIONS

Section
51000. State Aid

CHAPTER 2. INSTRUCTIONAL PROGRAM

Section
51100. Objectives
51101. Curriculum
51102. Grades Offered

CHAPTER 3. FACULTY

Section
51200. Faculty Personnel
51201. Conditions of Instruction

CHAPTER 4. STANDARDS OF SCHOLARSHIP

Section
51300. Regulations
51301. Standards for Probation and Dismissal
51302. Reinstatement

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CHAPTER 1. GENERAL PROVISIONS

51000. State Aid. The provisions of this division are adopted under the authority of Education Code Section 25510 and comprise the rules and regulations affirming and fixing the minimum standards the satisfaction of which entitles a district maintaining Community Colleges to receive state aid for the support of their Community Colleges.

Note: Authority cited for Division 2: Sections 193, 197 and 25510, Education Code.

CHAPTER 2. INSTRUCTIONAL PROGRAM.

51100. Objectives. Each Community College shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

51101. Curriculum. Each Community College shall establish such programs of education and courses as will permit the realization of the objectives and functions of the Community College. All courses shall be approved by the Chancellor in the manner provided in Chapter 2 (commencing with Section 55100) of Division 6 of this part.

51102. Grades Offered. (a) The governing board of a district maintaining a Community College may by regulation offer courses in either or both of the following categories and shall specify in its catalog the category or categories in which the course falls:

(1) Courses wherein all students are evaluated on a "credit—no credit" basis.

(2) Courses wherein each student may elect on registration, or within a reasonable time thereafter, whether the basis of his evaluation is to be a "credit—no credit" or a letter grade.

(b) All units earned on a "credit—no credit" basis in California institutions of higher education or equivalent out-of-state institutions shall be counted in satisfaction of Community College curriculum requirements. Such units shall be disregarded in determining a student's grade point average for all purposes for which a grade point average is required.

(c) The governing board of a district maintaining a Community College may authorize a student who has received credit for a course taken on a "credit—no credit" basis within the district to convert this grade to a letter grade by taking an appropriate examination.

(d) In the absence of a regulation of the type authorized in subdivision (a) of this section a course will be presumed to be offered on a letter-grade basis.

EXHIBIT "B"

DIVISION 2. COMMUNITY COLLEGE STANDARDS

Detailed Analysis

CHAPTER 1. GENERAL PROVISIONS

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51000. State Aid

CHAPTER 2. INSTRUCTIONAL PROGRAM

Section
51100. Objectives
51101. Curriculum
51102. Identification of Courses
51103. College Credit Course

CHAPTER 3. FACULTY

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51200. Faculty Personnel
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CHAPTER 4. STANDARDS OF SCHOLARSHIP

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CHAPTER 5. FACILITIES

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51400. Library
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CHAPTER 6. COUNSELING SERVICES

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51500. Counseling Services
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51600. Regulations
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51602. Associate in Arts Degree
51603. Associate in Science Degree
51604. Certificate of Achievement
51605. Credit by Examination
51606. Duty to Grant Degree or Diploma

CHAPTER 1. GENERAL PROVISIONS

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NOTE: Authority cited for Division 2: Sections 198, 197 and 25510, Education Code.

CHAPTER 2. INSTRUCTIONAL PROGRAM

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51101. Curriculum. Each Community College shall establish such programs of education and courses as will permit the realization of the objectives and functions of the Community College. All courses shall be approved by the Chancellor in the manner provided in Chapter 2 (commencing with Section 55100) of Division 6 of this part.

***51102. Identification of Courses.** For each course offered, a Community College shall make available to students through college publications at least all of the following facts before he enrolls in the course:

(a) Whether the course is offered on the basis of credit—no credit and, if so, which provision of Section 51302, subdivision (a) is applicable.

(b) Whether the course is other than a graded course.

(c) Whether the course is a college credit course under the provisions of Section 51103.

NOTE: Authority cited: Sections 193, 197 and 25510, Education Code.

History: 1. New section filed 7-1-71; effective thirtieth day thereafter (Register 71, No. 27). Former section 51102 renumbered to 51302.

***51103. College Credit Course.** A "college credit course" is a course given in a Community College which meets one or more of the following requirements:

(a) The course is part of an approved educational program.

(b) The credit awarded by the Community College for completion of the course is accepted as completion of a portion of an appropriate educational sequence leading to an associate degree or baccalaureate degree by one or more of the following:

(1) The University of California
(2) A California State College
(3) An accredited independent college or university.

NOTE: Authority cited: Sections 193, 197 and 25510, Education Code.

History: 1. New section filed 7-1-71; effective thirtieth day thereafter (Register 71, No. 27).

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* The community colleges may identify their courses and maintain their grading practices in accordance with these regulations on and after July 31, 1971. The community colleges shall identify courses to be offered during and after the fall semester or quarter, 1972, in accordance with these regulations and shall maintain their grading practices beginning on the first day of the fall semester or quarter, 1972, in accordance with these regulations.

Exhibit "A"

TITLE 5, CALIFORNIA CODE OF REGULATIONS
Part VI. California Community Colleges
(As of December 31,.1974)

Chapter 4. Standards of Scholarship

Section 51300 Regulations

The governing board of a district maintaining a Community College shall adopt regulations consistent with the provisions of this chapter. The regulations shall be published in the college catalog under appropriate headings.

(New Section filed 4-18-70. Register 70, No. 16) (Amendment filed 7-1-71; effective thirtieth day thereafter. Register 71, No.27)

Section 51301 Grading Practices

The governing board of the district maintaining a Community College shall determine the grading practice to be used in that Community College. The grading practice shall be based on sound academic principles and shall conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma, or license shall be graded.

(b) Work shall be graded in accordance with the provisions of Section 51302 or Section 51605 or in accordance with a grading scale.

The grading practice adopted by the governing board shall be published as a part of the catalog or class schedule of the Community College to which it applies. The governing board of a district may provide for withdrawal without penalty for students who withdraw from a class before the deadline established by the governing board.

(Repealer and new section filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Section 51302 Credit Courses

(a) The governing board of a district maintaining a Community College may offer courses in either or both of the following categories:

(1) Courses wherein all students are evaluated on a "credit – no credit" basis.

(2) Courses wherein each student may elect on registration, or within such time thereafter as the district governing board may determine by rules and regulations, whether the basis of his evaluation is to be "credit – no credit" or a grading scale.

(b) All units earned on a "credit – no credit" basis in accredited California institutions of higher education or equivalent out-of-state institutions shall be counted in satisfaction of Community College curriculum requirements. Such units shall be disregarded in determining a student's grade point average for all purposes for which a grade point average is required.

(c) The governing board of a district maintaining a Community College may authorize a student who has received credit for a course taken on a "credit – no credit" basis within the district to convert this to a grade based on a grading scale by taking an appropriate examination.

(d) In the absence of a regulation of the type authorized in subdivision (a) of this section, the work in a course will be presumed to be evaluated on the basis of a grading scale.

(e) The governing board shall establish a policy describing the standards for the award of a "credit" grade for a course.

(Former section 51102 amendment and renumbering filed 7-1-71; effective thirtieth day thereafter. Register 71, No.27) (Former section 51302 renumbered to 51308)

Section 51302.5 Credit by Examination

The governing board of a district maintaining a Community College may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing for a course listed in the catalog of a public Community College.

Units for which credit is given pursuant to the provisions of this section shall not

be counted in determining the 12 semester hours of credit in residence required by Section 51602.

(Amendment filed 7-1-71; effective thirtieth day thereafter. Register 71, No.27) (Renumbered from Section 51605 filed 10-1-71; effective thirtieth day thereafter. Register 71, No. 40)

Section 51303 Standards for Probation

A student shall be placed on probation if he has earned a grade point average below 2.0 in all units attempted which were graded on the basis of a grading scale. The district board shall adopt "credit – no credit" probation rules.

The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for probation herein set forth and shall file a copy of such rules with the Chancellor of the California Community Colleges.

(New sections 51303 through 51307 filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Section 51304 Standards for Dismissal

A student shall be dismissed if he earned a grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of a grading scale. The district board shall adopt "credit – no credit" dismissal rules.

The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor of the California Community Colleges.

(New sections 51303 through 51307 filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Section 51305 Units Attempted

For the purposes of Sections 51303 and 51304, "all units attempted" means all units of credit for which the student was enrolled in any college, university, or grades 13 and 14, regardless of whether he completed the course or received any credit or grade. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion from "all units attempted" of units in which a student did not receive a grade or "credit – no credit" or from which the student withdrew in accordance

with rules adopted by the district governing board.

(New sections 51303 through 51307 filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Section 51306 Probation and Dismissal - Grade Point Average

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points.

(b) The governing board for each Community College shall establish the point equivalencies for the grades used from the grading scale at that Community College in accordance with subsection (a) of this section. These equivalencies shall be published in the catalog of that Community College as a part of the grading practices for that Community College.

(New sections 51303 through 51307 filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Section 51307 Determination of Probation and Dismissal.

Each Community College shall make every reasonable effort to notify a student of his academic probation or dismissal no later than the fifth day of classes of the semester or quarter in which it will be in effect.

(New sections 51303 through 51307 filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Section 51308 Grades Offered

(a) The governing board of a district maintaining a Community College may by regulation offer courses in either or both of the following categories and shall specify in its catalog the category or categories in which the course falls:

(1) Courses wherein all students are evaluated on a "credit – no credit" basis.

(2) Courses wherein each student may elect on registration, or within a reasonable time thereafter, whether the basis of his evaluation is to be a "credit – no credit" or a letter grade.

(b) All units earned on a "credit – no credit" basis in California institutions of higher education or equivalent out-of-state institutions shall be counted in satisfaction of Community College curriculum requirements. Such units shall be disregarded in determining a student's grade point average for all purposes for which a grade point average is required.

(c) The governing board of a district maintaining a Community College may authorize a student who has received credit for a course taken on a "credit – no credit" basis within the district to convert this grade to a letter grade by taking an appropriate examination.

(d) In the absence of a regulation of the type authorized in subdivision (a) of this section, a course will be presumed to be offered on a letter-grade basis.

(Renumbering from former Section 51102 filed 7-1-71; effective thirtieth day thereafter. Register 71, No.27)

Exhibit "B"

TITLE 5, CALIFORNIA CODE OF REGULATIONS
Part VI. California Community Colleges
(As of December 31, 1974)

DIVISION 2. COMMUNITY COLLEGE STANDARDS

Section 51005. Requirement for Degrees and Certificates

(a) The governing board of a district maintaining a community college shall confer the degree of associate in arts upon the satisfactory completion in grades 13 and 14 of from 60 to 64 semester hours of work in curriculum which the district accepts toward the degree (as shown by its catalog) and which includes the requirements listed in (1) through (5), provided that 12 of the required hours were secured in residence at that community college. (The governing board may make exceptions to the residence requirement in any instance in which the governing board determines that an injustice or hardship would otherwise be placed upon an individual student.) "Satisfactory completion" means either credit earned on a "credit-no credit" basis or a grade point average of 2.0 (grade C on a five point scale with zero for an F grade) or better in 13th and 14th year graded courses in the curriculum upon which the degree is based.

(1) A major consisting of at least 20 semester hours in a specified field of study;

(2) Three semester hours in the Constitution of the United States, and in American history, including the study of American institutions and ideals, and of the principles of state and local government established under the Constitution of this State, and the satisfactory passing of an examination on said courses.

(3) Two semester hours of community and personal hygiene; except that a community college student, who is a minor whose parents or guardian state in writing that the course in community and personal hygiene is contrary to the religious beliefs of the student, or if the student is not a minor if he so states in writing, may be excused from such course and permitted to substitute a two-hour course in a field or fields specifically designated by the governing board of the district in lieu of the required two-hour course in community and personal hygiene.

(4) Two semester hours in physical education earned at the rate of one-

half credit per semester for a minimum of 120 minutes per week in directed physical education activities, except as a student may be exempted in accordance with Section 8162, Education Code; and

(5) Such requirements in oral and written English as the governing board of the school district may establish.

(b) The governing board of a district maintaining a community college may confer the degree of associate in science upon the satisfactory completion in grades 13 and 14 of a minimum of 60 semester hours of work which shall satisfy all the requirements for an associate in arts degree, and which work shall include a major of at least 20 semester hours in any of the following fields: engineering, physical and biological science, vocational-technical curriculums.

(c) The governing board of a district maintaining a community college shall award the appropriate diploma or degree whenever a student shall have completed all requirements of a full curriculum of the community college without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student who satisfactorily completes the requirements of any course of study in less than the prescribed time the full number of semester hours scheduled for such course.

(d) The governing board of a district maintaining a community college shall issue a certificate of achievement (as determined by the governing board and specified in the catalog) to any student who successfully completes any course of study or curriculum in length less than the full number of years and grades maintained by the community college.

(e) The governing board of a district maintaining a community college may grant credit (but it shall not count toward the 12 semester hours of credit in residence required in (a)) to any student who satisfactorily passes an examination approved and conducted by proper authorities of the college. Such credit may be granted only:

(1) To a student who is registered at the college and in good standing.

(2) For a course listed in the catalog of a California public community college.

(f) The examination shall be made at the expense of the person being examined.

(g) Information contained in the physician's report is confidential, and the contents of the report shall not be divulged by an official or employee who has access to the report except to the Board of Governors of the California Community Colleges, the Teachers Retirement Board, any county superintendent of schools, the representative of any of them, or to the governing board of a district which has requested such information.

(h) The person shall file with the governing board of any district employing him as a substitute instructor the notice, or a photostatic copy or certified copy of the notice, from the county superintendent, stating that the person has passed the physical examination prescribed by the Board of Governors.

(New Article 5 (§§51000 through 51005) filed 8-26-69, as an emergency measure; effective upon filing. Register 69, No. 35)

Chapter 8. Degrees and Certificates (Post September 1, 1973)

Section 51620 Effective Date

The provisions of this chapter shall apply to all degrees and certificates granted by a Community College district on and after September 1, 1973. The provisions of this chapter may be made applicable to all degrees and certificates granted on and after July 1, 1972, if the governing board of a community college district adopts regulations consistent with the provisions of this chapter which are effective on July, 1, 1972.

A student who enrolls in a community college prior to September 1, 1973, shall have the option of earning his degree under the provisions of Chapter 7 or Chapter 8 of this division if the community college in which he is enrolled has changed its degree requirements in accordance with this chapter before the degree is awarded. No degree or diploma shall be awarded under the provisions of Chapter 7 after September 1, 1975.

(New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day thereafter. Register 71, No. 40)

Section 51621 Regulations

The governing board of a community college district shall adopt regulations consistent with the provisions of this chapter.

(New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day

thereafter. Register 71, No. 40)

Section 51622 Definitions

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit-no credit" basis or a grade point average of 2.0 or better in 13th and 14th year graded courses in the curriculum upon which the degree is based.

(New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day thereafter. Register 71, No. 40)

Section 51623 Associate in Arts Degree

The governing board of a Community College District shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that Community College:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas:

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to man as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate

acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

Students taking these courses may elect to use them to satisfy partially the general education requirements for a baccalaureate degree at the California State Colleges in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

(New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day thereafter. Register 71, No. 40)

Section 51624 Associate in Science Degree

The governing board of a Community College district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall include a major of at least 18 semester hours in the fields of engineering, physical and biological sciences or occupational curriculums.

(New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day thereafter. Register 71, No. 40)

Section 51625 Certificate of Achievement

The governing board of a Community College district shall issue a certificate of achievement, when so determined by the governing board to any student who has completed successfully any course of study or curriculum as specified in the college catalog.

(New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day

thereafter. Register 71, No. 40)

Section 51626 Duty to Grant Degree or Diploma

The governing board of a Community College district shall award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student, who has satisfactorily completed the requirements of any course of study in less than the prescribed time, credit for the full number of semester hours scheduled for such course.

(New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day thereafter. Register 71, No. 40)

Exhibit "C"

TITLE 5, CALIFORNIA CODE OF REGULATIONS
Part VI. California Community Colleges
(As of December 31, 1974)

DIVISION 2. COMMUNITY COLLEGE STANDARDS

Section 51003 Criteria and Standards for Graded Community College Courses in Grades 13 and 14.

(a) **Definition**. For the purposes of this subsection, a course of study is defined as an organized sequence of courses of a college within a given subject area.

(b) **Criteria**. A graded course (class) in grade 13 or grade 14 shall possess one or more of the following characteristics:

(1) The course provides credit toward an associate degree; is normally considered of collegiate level; and is approved by the Board of Governors as a component of, a prerequisite to, or eligible as a required or elective course within, a course of study which leads toward an associate degree.

(2) The course is approved by the Board of Governors and is part of an occupational course of study of beyond high school level within the scope of the term "vocational and technical fields leading to employment" as the term is used in Education Code Section 22651 which leads toward an associate degree, an occupational certificate, or both.

(3) The course is approved by the Board of Governors and is recognized upon transfer by the University of California, a California state college, or an accredited independent college or university in California, as part of:

(A) The required preparation toward a major;
(B) The general, or general education, requirement; or
(C) The permissible or recommended elective credits.

(c) **Standards**. Any course meeting one or more of the above criteria shall meet all of the following standards:

(1) It is a course, approved by the Board of Governors the content of which is organized to meet the requirements for the associate degree as

specified in Section 51005 or the requirements for an occupational certificate and is a part of a course of study not exceeding 70 units in length.

(2) It must be offered as described in the college catalog or a supplement thereto which provides an appropriate title, number, and accurate description of course content. A course outline is available at the college. Course requirements and credit awarded are consistent with Education Code Section 22651.

(3) It is a course in which are enrolled only those students who have met the prerequisites for the course.

(4) It is subject to the published standards of matriculation, attendance and achievement of the college, and the enrollees are awarded marks or grades on the basis of methods of evaluation set forth by the college and are subject to the standards of retention set forth in Section 51002 or to such additional standards as may be established by the governing board of the district.

(5) It is a course in which enrollment shall not be repeated except in unusual circumstances and with the prior written permission from the district superintendent or his authorized representative or representatives.

(New Article 5 (§§51000 through 51005) filed 8-26-69, as an emergency measure; effective upon filing. Register 69, No. 35)

Section 51102 Identification of Courses

For each course offered, a Community College shall make available to students through college publications at least all of the following facts before he enrolls in the course:

(a) Whether the course is offered on the basis of credit – no credit and, if so, which provision of Section 51302, subdivision (a) is applicable.

(b) Whether the course is other than a graded course.

(c) Whether the course is a college credit course under the provisions of Section 51103.

(New section filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27.)
(Former section 51102 renumbered to 51302)

Exhibit "C"
Open Courses
As of December 31, 1974

Exhibit "D"

TITLE 5, CALIFORNIA CODE OF REGULATIONS
Part VI. California Community Colleges
(As of December 31, 1974)

DIVISION 6. CURRICULUM AND INSTRUCTION

Chapter 5. Educational Master Plans

Section 55400 Definitions

The definitions provided in the *Handbook of Definitions* issued by the Chancellor shall apply to the provisions of this chapter.

(New Chapter 5 (sections 55400 through 55405) filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Section 55401 Current and Long Range Plans

The governing board of each Community College district shall establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

(New Chapter 5 (sections 55400 through 55405) filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Section 55402 Educational Master Plans

On or before January 1, 1972, the governing board of each Community College district shall submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor on or before November 1 of each year thereafter.

(New Chapter 5 (sections 55400 through 55405) filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Section 55403 Form

such information as the Chancellor shall require.

(New Chapter 5 (sections 55400 through 55405) filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Section 55404 Contents

Each plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. On the basis of current and future enrollment, it shall contain plans for the development and expansion of ancillary services, including services in the library and for counseling, placement and financial aids.

(New Chapter 5 (sections 55400 through 55405) filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Section 55405 Review and Approval

The Chancellor shall review each master plan. On or before February 1 following the submission of each plan, he shall send a copy of his approval of it to the superintendent of each district.

(New Chapter 5 (sections 55400 through 55405) filed 7-1-71; effective thirtieth day thereafter. Register 71, No. 27)

Exhibit "E"

TITLE 5, CALIFORNIA CODE OF REGULATIONS
Part VI. California Community Colleges
(As of December 31, 1974)

DIVISION 2. COMMUNITY COLLEGE STANDARDS

Chapter 6. Counseling Services

Section 51500 Counseling Services

Each Community College shall have an adequate counseling staff, both in training and experience, and shall establish procedures to provide, and shall provide, the counseling services listed in Sections 51501 through 51503.

(New Section filed 4-18-70. Register 70, No. 16)

Section 51501 Services for Students

The counseling services shall assist each student in the college in the following ways:

(a) To determine his educational goals.

(b) To make a self-appraisal toward progress toward his goals.

(New Section filed 4-18-70. Register 70, No. 16)

Section 51502 Services for First-time Freshman

The counseling services shall provide to each first-time freshman described in subdivisions (a) and (b) below, who is enrolled in more than six units, special individual or group counseling and guidance, shall arrange a study load suitable to the needs of each such student, and shall keep an appropriate record of each such student.

(a) He is a high school graduate, his scores on a qualifying test or tests were below an acceptable minimum for the college of attendance, and his grade point average in the last three years in high school was less than 2.0 (grade C on a five point scale with zero for an F grade), excluding only physical education and military science; or

(b) He is not a high school graduate, and his scores on a qualifying test or tests were below an acceptable minimum for the college of attendance and his grade point average in the years of high school attendance was less than 2.0 (grade C on a five point scale with zero for an F grade), excluding only physical education and military science.

(New Section filed 4-18-70. Register 70, No. 16)

Section 51503 Services for Students on Probation

The counseling service shall provide to each student who is on probation individual counseling and guidance service, including the regulation of his program according to his aptitude and achievements.

(New Section filed 4-18-70. Register 70, No. 16)

Exhibit "F"

TITLE 5, CALIFORNIA CODE OF REGULATIONS
Part VI. California Community Colleges
(As of December 31, 1974)

DIVISION 2. COMMUNITY COLLEGE STANDARDS

Section 51004. Academic Senates or Faculty Councils.

(a) For the purposes of this section:

(1) "Faculty" means those certificated persons who teach full time in a community college or other full-time certificated persons who do not perform any services for the college that require an administrative or supervisory credential.

(2) "Academic senate" or "faculty council" means an organization formed in accordance with this section whose primary function is, as the representative of the faculty, to make recommendations to the administration and the governing board of a district with respect to academic and professional matters.

(b) In order that the faculty may have a formal and effective procedure for participating in the formation of district policies on academic and professional matters described in (a)(2), the faculty first must decide by secret ballot to have an "academic senate" or "faculty council," in which case the governing board of each district shall establish such an "academic senate" or "faculty council" in each community college by authorizing the faculty to:

(1) Fix, and amend, by vote of the faculty, the composition, structure, and procedures of the academic senate or faculty council.

(2) Select, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.

(c) After consultation with the administration, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.

(d) Upon the request of the academic senate or faculty council and subject to Government Code Section 54950 ff. (The Brown Act), when applicable, the governing board, or such board members or administrative officers as it may designate, shall meet

and confer with representatives of the academic senate of faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board members or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.

(e) The academic senates or faculty councils may assume such responsibilities and perform such functions as may be requested of it by the administration or board of trustees.

(New Article 5 (§§51000 through 51005) filed 8-26-69, as an emergency measure; effective upon filing. Register 69, No. 35)

DECLARATION OF SERVICE

RE: Minimum Conditions for State Aid 02-TC-31
CLAIMANT: Santa Monica Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of September 21, 2004 and Declaration of Leo Shaw dated September 21, 2004 , addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 9/21/04 , at San Diego, California.

Diane Bramwell

Commission on State Mandates

Original List Date: 6/26/2003
Last Updated:
List Print Date: 10/17/2003
Claim Number: 02-TC-31
Issue: Minimum Conditions for State Aid

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Thomas J. Nussbaum (G-01)
California Community Colleges
Chancellor's Office
1102 Q Street, Suite 300
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Tel: (916) 445-2738
Fax: (916) 323-8245

Mr. Keith B. Petersen
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Claimant Representative
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Mr. Thomas J. Donner
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Claimant
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Mr. Paul Minney
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Ms. Harmeet Barkschat
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Ms. Sandy Reynolds
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Sun City, CA 92586

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Mr. Gerald Shelton
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Fiscal and Administrative Services Division
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Mr. Keith Gmeinder
Department of Finance (A-15)
915 L Street, 8th Floor
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Ms. Jill Bowers
Office of the Attorney General (D-08)
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SixTen and Associates
Mandate Reimbursement Services

Exhibit H

KEITH B. PETERSEN, MPA, JD, President
E-Mail: Kbpsixten@aol.com

San Diego
5252 Balboa Avenue, Suite 900
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Sacramento
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834
Telephone: (916) 565-6104
Fax: (916) 564-6103

RECEIVED
OCT 23 2007
COMMISSION ON
STATE MANDATES

October 22, 2007

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Chapter 187, Statutes of 2000
Test Claim 02-TC-25
State Center Community College District
Notice to Students

Dear Ms. Higashi:

Please find enclosed the response to your request for supplemental information on the above referenced test claim. Specifically, a history of the Title 5, CCR, sections included in the test claim.

Sincerely,

Keith B. Petersen

C: Distribution List Attached

Keith B. Petersen
SixTen and Associates
3841 North Freeway Blvd, Suite 170
Sacramento, CA 95834
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kbpsixten@aol.com

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Supplement to the:	No. CSM. 02-TC -25
Test Claim Filed June 05, 2003	Notice to Students
	History Index for Title 5, California Code of Regulations
by Los Rios Community College District	Section 51006 Section 54626 Section 54805 Section 55005 Section 55202 Section 55530 Section 55534 Section 55750 Section 55752 Section 55753 Section 55758 Section 55759 Section 55760 Section 55761 Section 55762 Section 55764 Section 55765 Section 55800 Section 58102 Section 58104 Section 59404 Section 59410

REQUEST FOR SUPPLEMENTAL INFORMATION

In a letter October 2, 2007, the Commission on State Mandates requested that the claimant "specify the effective dates and register numbers of the regulations alleged to contain mandates," and that the claimant "provide a copy of each regulation from the register number specified for each regulation."

In response, this supplement to the test claim provides an index and copy of each change to the Title 5, CCR, sections included in the test claim. The Registers cited are attached as Exhibit A. Amended language is underlined (new language) or stricken out (deleted language).

HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

Register 71-09	§ 55005: Previously part of § 55002.
Register 72-01	§ 58102: Prior History of the section (Repealed in 77-45).
Register 76-10	§ 54626: Added.
Register 77-12	§ 54626: Amended section (see attachment).
Register 77-45	§ 54626: Amendment of subsection (d).
	§ 58102: Repealed.
Register 78-31	§ 54626: Amendment of subsection (b) and (d).
Register 79-46	§ 58102: Reprint for Repealer in 77-45.
Register 80-11	§ 55005: Prior History, previously part of § 55002.
Register 81-52	§ 55005: Added.
Register 82-31	§ 58102: Added.
	§ 58104: Added.

Register 83-18 § 54626: Amendment of section.

Register 83-29 § 51006: Added.

§ 55750: Added.

§ 55758: Added.

§ 55759: Added.

§ 55760: Added.

§ 55761: Added.

§ 55762: Added.

§ 55763: Added.

§ 55764: Added.

§ 55765: Added.

§ 55800: Added.

Register 85-20 § 59404: Added.

Register 88-20 § 54805: Added.

Register 90-37 § 55530: Amended

§ 55534: Added.

Register 91-23 § 51006: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 54805: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55005: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55750: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55752.5: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55753: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55758: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55759: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55760: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55761: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55762: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55763: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55764: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

§ 55765: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.

	§ 55800: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.
	§ 59404: Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8.
	§ 59410: Added.
Register 91-31	§ 55758: Amended subsection (c).
Register 91-43	§ 55758: Editorial correction of printing error in NOTE.
	§ 55765: Editorial correction of printing error in NOTE.
Register 92-05	§ 55758: Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE.
Register 92-15	§ 55530: Amended subsection (b).
Register 93-25	§ 58102: Amendment of NOTE.
	§ 58104: Amendment of NOTE.
Register 93-42	§ 51006: Amendment of subsections (a) and (b) for reprinting.
	§ 55202: Added.
	§ 55530: Amendment of subsections (a), (b), and (d).
	§ 55534: Amendments of subsections (a) and (b) for reprinting.
Register 94-38	§ 51006: Amendment of subsection (b).
	§ 55534: Amendment of subsection (b).
	§ 59404: Amendment of NOTE.
	§ 59410: New subchapter heading.
Register 95-15	§ 51006: Editorial correction of HISTORY 1.

Register 95-20 § 54805: Editorial correction of HISTORY 2.

§ 55005: Editorial correction of HISTORY 1.

Register 95-22 § 55750: Editorial correction of HISTORY 2.

§ 55752: Editorial correction of HISTORY 1.

§ 55753: Editorial correction of HISTORY 1.

§ 55758: Editorial correction of HISTORY 1.

§ 55759: Editorial correction of HISTORY 1.

§ 55760: Editorial correction of HISTORY 1.

§ 55761: Editorial correction of HISTORY 1.

§ 55762: Editorial correction of HISTORY 1.

§ 55763: Editorial correction of HISTORY 1.

§ 55764: Editorial correction of HISTORY 1.

§ 55765: Editorial correction of HISTORY 1.

Register 95-29 § 59404: Editorial correction of HISTORY 1.

§ 59410: Editorial correction of HISTORY 1.

Register 98-03 § 55758: Amendment of subsection (a), new subsection (b), subsection relettering, amendment of newly designated subsection (c), and amendment of NOTE.

Register 00-50 § 55758: Amendment of subsection (a), new subsection (c), subsection relettering, and amendment of newly designated subsections (d) and (e).

Register 02-08 § 55753: Amendment to section.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and complete to the best of my own knowledge or information or belief, and that the attached regulations are true and correct copies of documents from archives of a recognized law library.

EXECUTED this 22 day of October 2007, at Sacramento, California

FOR THE TEST CLAIMANT

Keith Petersen, President

SixTen and Associates

ATTACHMENT

Exhibit A Title 5, CCR Registers

Distributed to COSM mailing list dated 10/02/2007.

DECLARATION OF SERVICE

Re: Test Claim 02-TC-25
Notice to Students
Los Rios Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimants. I am 18 years of age or older and not a party to the entitled matter. My business address is 3841 North Freeway Blvd, Suite 170, Sacramento, CA 95834.

On the date indicated below, I served the attached letter dated October 22, 2007, with attachments, to Paula Higashi, Executive Director, Commission on State Mandates, to the Commission mailing list dated 10/02/07 for this test claim, and to:

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 22, 2007, at Sacramento, California.

Michael B. Indrajana

CHAPTER 4. COORDINATED INSTRUCTION SYSTEMS PROGRAMS

Article 1. General Provisions

Section		Section	
55300.	Implementation	55308.	"Coordinated Instruction System Program"
55301.	Coordinated Instruction System	55309.	"Direct Expenses"
55302.	Definitions	55310.	"Evaluation"
55303.	"Automated Audio-visual System"	55311.	"Other Similar Teaching Techniques"
55304.	"College"	55312.	"Programmed Learning Materials"
55305.	"Course"	55313.	"System"
55306.	"Computer-assisted Instruction"	55314.	"Teach"
55307.	"Coordinate"	55315.	"Television"

Article 2. Approval of Programs

Section		Section	
55320.	Eligibility for State Apportionments	55323.	Approval
55321.	Action by the Governing Board	55324.	Approval Date
55322.	Request for Approval	55325.	Duration of Approval

Article 3. Operation of a Coordinated Instruction Systems Program

Section		Section	
55331.	Supervision of Program	55335.	Support Services
55332.	Instructor	55336.	Attendance
55333.	Supervision of Activities	55337.	Credit
55333.5.	Availability of Instructor	55338.	Records
55334.	Enrollment	55339.	Academic Standards

Article 4. State Support

Section		Section	
55340.	Requirements for State Support	55342.	Current Costs
55341.	Extent of Support	55343.	Operation Reports
		55344.	Evaluation Reports

CHAPTER 1. COURSE OF STUDY

SUBCHAPTER 1. COURSE STANDARDS

55000. Definitions. For the purposes of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specific subject offered by a Community College for grades 13 and 14.

(b) "Course of study" means an organized sequence of courses offered by a Community College for grades 13 and 14 within a general subject area.

NOTE: Authority cited for Chapters 1 and 2: Sections 198, 197, 25515.5 and 25516.5, Education Code.

55001. Criteria. A graded course shall possess one or more of the following characteristics:

(a) It provides credit toward an associate degree, is normally considered of collegiate level, and is approved by the board as a component of, a prerequisite to, or eligible as a required or elective course within a course of study which leads toward an associate degree.

(b) It is approved by the board and is part of an occupational course of study beyond high school level within the scope of the term "vocational and technical fields leading to employment," as the term is used in Education Code Section 22651, which leads toward an associate degree, an occupational certificate, or both.

(c) It is approved by the board and is recognized upon transfer by the University of California, a California state college, or an accredited independent college or university in California, as a part of:

(1) The required preparation toward a major;
(2) The general, or general education, requirement; or
(3) The permissible or recommended elective credits.

55002. Standards. A graded course shall meet all of the following standards:

(a) The content is organized to meet the requirements for the associate degree as specified in Chapter 7 (commencing with Section 51600) of Division 2 of this part or the requirements for an occupational certificate and is a part of a course of study not exceeding 70 units in length.

(b) It is offered as described in the college catalog, or a supplement thereto, which provides an appropriate title, number, and accurate description of course content. A course outline is available at the college. Course requirements and credit awarded are consistent with Education Code Section 22651.

(c) Only those students who have met the prerequisites for the course are enrolled.

(d) It is subject to the published standards of matriculation, attendance, and achievement of the college.

(e) The enrollees are awarded marks or grades on the basis of methods of evaluation set forth by the college and are subject to the standards of retention set forth in Chapter 4 (commencing with Section 51300) of Division 2 of this part or to such additional standards as may be established by the governing board of the district.

(f) Enrollment cannot be repeated except in unusual circumstances and with the prior written permission from the district superintendent or his authorized representative or representatives.

SUBCHAPTER 2. APPROVAL OF COURSES

55100. Approval. Each course to be offered by a Community College shall be approved by the Chancellor before the course is offered by the college.

The course shall be submitted to the Chancellor on forms provided by his office.

55101. Chancellor's Report. The Chancellor shall report to the board at a fall and a spring meeting the actions which he has taken in approving courses submitted to him pursuant to the provisions of this chapter.

CHAPTER 1. GENERAL PROVISIONS

58000. Continuing Education. Continuing education in Community Colleges is comprised of the following kinds of classes:

(a) Adult classes.

(b) Graded classes.

(c) Community service classes offered under the provisions of Article 12 (commencing with Section 6321) of Chapter 6, Division 6, of the Education Code.

(d) Contract classes.

NOTE: Authority cited for Division 9: Sections 197, 5708, 22650, Education Code.

History: 1. New Division 9, Chapters 1 through 4 (§§ 58000–58253, not consecutive) filed 12-29-71; effective thirtieth day thereafter (Register 72, No. 1).

58001. Function of Community Colleges. Continuing education is one of the major functions of the Community Colleges and should be fully supported, organized, and supervised.

CHAPTER 2. ADULT CLASSES

SUBCHAPTER 1. GENERAL PROVISIONS

58100. Credit. District boards of trustees may grant credit toward an associate of arts or sciences degree for an adult class provided that the class also meets the criteria and standards for graded classes as set forth in Sections 55001 and 55002 of this title.

58101. Definitions. For purposes of this chapter the following definitions are adopted:

(a) "District" means a Community College district.

(b) "Adult class" means an ungraded course which has been designed primarily to meet the special needs of adult students and determined to be an adult class by the governing board of the district.

58102. Payment for Attendance. For the purposes of Section 5753 of the Education Code, state support may not be claimed for students attending an adult class (except classes in hospitals for military personnel) who are paid by their employers while in attendance when all the following conditions exist:

(a) Class membership consists of persons regularly employed by one company, concern, or agency public or private.

(b) The class is conducted on other than school premises.

(c) The class is conducted during the hours of paid employment of class members.

SUBCHAPTER 2. STANDARDS FOR CONTINUING EDUCATION CENTERS

58110. Standards Defined. In addition to the requirements established elsewhere in the law for the conduct of adult classes, continuing education centers must meet the requirements set forth in this article.

Article 1. General

54600. Purpose. This chapter is adopted pursuant to and for implementation of Chapter 1.5 (commencing with Section 25430) of Division 18.5 of the Education Code regarding Student Records.

NOTE: Authority cited: Sections 25430.2, 25430.7 and 25430.18, Education Code. Reference: Chapter 1.5 (commencing with Section 25430), Division 18.5 Education Code.

History: 1. New Chapter 6 Articles 1–7, (Sections 54600–54662, not consecutive) filed 3-5-76; effective thirtieth day thereafter (Register 76, No. 10).

54602. Construction. The provisions of this Chapter shall be construed consistent with the rights of students as students as provided under Chapter 816, Statutes of 1975 and the needs of the institution to meet their responsibilities, and in a manner to achieve conformity with the Federal Family Educational Rights and Privacy Act.

54604. Policy. Community College districts may establish and maintain only such information on students relevant to admission, registration, academic history, career, student benefits or services, extracurricular activities, counseling and guidance, discipline or matters relating to student conduct, and shall establish and maintain such information required by law.

54606. Definitions.

(a) **Student.** "Student" as used in this Chapter means a currently enrolled or formerly enrolled student.

(b) **Access.** "Access" means a personal inspection and review of a record, an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, or a request to release a copy of any record.

(c) **Student Record.** "Student Record" means any item of information directly related to an identifiable student maintained by a Community College or required to be maintained by an employee in the performance of his duties, whether recorded by handwriting, print, tapes, film, microfilm or other means, except:

(1) Information provided by a student's parents relating to applications for financial aid or scholarships,

(2) Information related to a student compiled by a Community College officer or employee:

(A) appropriate for such officer or employee's performance of his or her responsibility; and

(B) which remains in the sole possession of the maker thereof; and

(C) is not accessible or revealed to any other person, provided that information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in that capacity, and which are created, maintained, or used only in connection with treatment to the student may be available to other officers or employees providing such treatment; and provided further, that such records may be reviewed personally by a physician or other appropriate professional of the student's choice.

54622. Discretionary Access. Access may be permitted to the following:

(a) Appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other persons.

(b) Officials and employees of other public or private schools or school systems, including local, county, or state correctional facilities where educational programs are provided, where the student has been enrolled, intends to enroll, or is directed to enroll, subject to the rights of students as provided in Section 25430.7 of the Education Code, and set forth in Article 5 of this chapter.

(c) Agencies or organizations in connection with a student's application for, or receipt of, financial aid.

(d) Accrediting associations carrying out accrediting functions.

(e) Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, provided;

(1) such studies are conducted in such a manner as will not permit personal identification of students or their parents by persons other than representatives of such organizations, and

(2) such information will be destroyed when no longer needed for the purpose for which it is conducted.

No person, persons, agency or organization permitted access to student records pursuant to this subsection (e) shall permit access to any information obtained from such records by any other person, persons, agency or organization without the written consent of the student. Prior student consent is not required when information obtained pursuant to this section is shared with other persons within the educational institution, agency, or organization obtaining access, provided such persons have an equal legitimate interest in the information.

54624. Access to Statistical Data. Districts may provide statistical data from which no student may be identified to any public agency or entity or private nonprofit college, university, or educational research and development organization when such actions would be in the best educational interest of students.

54626. Directory Information.

(a) Community College districts shall adopt a policy identifying any of the following categories of directory information which may be released: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student.

'b) Directory information, as established by the local governing rd, may be released as to any student currently attending the Community College, provided that public notice is given at least annually of the categories of information which the district plans to release and of the recipients. No directory information shall be released regarding any student when the student has notified the school in writing pursuant to procedures established by the district that such information shall not be released.

(c) Other information may be added to the categories set forth in (a) of this subsection, provided that release of such information shall be authorized in writing by the student.

(d) Any district may, in its discretion, limit or deny the release of specific categories of directory information to any public or private nonprofit organization based upon a determination of the best interests of students.

(1) The district shall determine which officials or organizations may receive directory information, provided, however, that no information may be released to a private profitmaking entity other than prospective employers and representatives of the news media, including, but not limited to, newspapers, magazines, and radio and television stations.

(2) The names and addresses of students may be provided to a private school or college operating under the provisions of Division 21 of the Education Code, provided, however, that no such private school or college shall use such information for other than purposes directly related to the academic or professional goals of the institution.

268. Record of Access. The district shall maintain a log or record to each student's record which lists all persons or organizations (excepting school personnel as authorized in Section 54618(a)) requesting or receiving information from the record, and the reasons therefor. The log shall be open to inspection only by the student and the official or his designee responsible for the maintenance of student records.

Article 4. Challenge

54630. Request. (a) Any student may file a written request with the chief administrative officer of a district to remove information recorded in his student records which he alleges to be: (1) inaccurate, (2) an unsubstantiated personal conclusion of inference, (3) a conclusion or inference outside of the observer's area of competence, or (4) not based on the personal observation of a named person with the time and place of the observation noted.

(b) Within 30 days of receipt of such request, the chief administrative officer or his designee shall meet with the student and the employee who recorded the information in question, if any, and if such employee is presently employed by the district. The chief administrative officer shall then sustain or deny the allegations.

No person, persons, agency or organization permitted access to student records pursuant to this section shall permit access to any information obtained from such records by any other person, persons, agency or organization without the written consent of the student; provided, however, that this paragraph shall not be construed as to require prior student consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency or organization obtaining access, so long as such persons have a legitimate educational interest in the information.

History: 1. Repealer and new section filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).

54624. Access to Statistical Data. Districts may provide statistical data from which no student may be identified to any public agency or entity or private nonprofit college, university, or educational research and development organization when such actions would be in the best educational interest of students.

54626. Directory Information. (a) Community College districts shall adopt a policy identifying any of the following categories of directory information which may be released: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student.

(b) Directory information, as established by the local governing board, may be released as to any student currently attending the Community College, provided that public notice is given at least annually of the categories of information which the district plans to release and of the recipients. Such notice shall also specify the period of time within which the student must inform the district in writing that such personally identifiable information is not to be designated as directory information with respect to that student. No directory information shall be released regarding any student when the student has notified the school in writing pursuant to procedures established by the district that such information shall not be released.

(c) Other information may be added to the categories set forth in (a) of this subsection, provided that release of such information shall be authorized in writing by the student.

(d) Any district may, in its discretion, limit or deny the release of specific categories of directory information to any public or private nonprofit organization based upon a determination of the best interests of students. The names and addresses of students may be provided to a private school or college operating under the provisions of Division 21 of the Education Code, provided, however, that no such private school or college shall use such information for other than purposes directly related to the academic or professional goals of the institution.

History: 1. Amendment filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).

Register 77-45

§ 51006
§ 54626
§ 58102

CHAPTER 1. GENERAL PROVISIONS

51000. State Aid. The provisions of this division are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining Community Colleges to receive state aid for the support of their Community Colleges. Other regulations fixing minimum standards are contained in this part.

NOTE: Authority cited for Division 2: Sections 71020, 71024 and 71025, Education Code.

History: 1. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

CHAPTER 2. INSTRUCTIONAL PROGRAM

51100. Objectives. Each Community College shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 71028 and 72231.5, Education Code.

History: 1. New NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

51101. Curriculum. Each Community College shall establish such programs of education and courses as will permit the realization of the objectives and functions of the Community College. All courses shall be approved by the Chancellor in the manner provided in Chapter 2 (commencing with Section 55100) of Division 6 of this part.

51102. Identification of Courses. For each course offered, a Community College shall make available to students through college publications at least all of the following facts before he enrolls in the course:

(a) Whether the course is offered on the basis of credit—no credit and, if so, which provision of Section 51302, subdivision (a) is applicable.

(b) Whether the course is other than a graded course.

(c) Whether the course is a college credit course under the provisions of Section 51103.

History: 1. New section filed 7-1-71; effective thirtieth day thereafter (Register 71, No. 27). Former section 51102 renumbered to 51302.
2. Repealer of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

51103. College Credit Course. A "college credit course" is a course given in a Community College which meets one or more of the following requirements:

(a) The course is part of an approved educational program.

(b) The credit awarded by the Community College for completion of the course is accepted as completion of a portion of an appropriate educational sequence leading to an associate degree or baccalaureate degree by one or more of the following:

(1) The University of California
(2) A California State College
(3) An accredited independent college or university.

History: 1. New section filed 7-1-71; effective thirtieth day thereafter (Register 71, No. 27).
2. Repealer of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

No person, persons, agency or organization permitted access to student records pursuant to this section shall permit access to any information obtained from such records by any other person, persons, agency or organization without the written consent of the student; provided, however, that this paragraph shall not be construed as to require prior student consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency or organization obtaining access, so long as such persons have a legitimate educational interest in the information.

History 1. Repealer and new section filed 3-15-77, effective thirtieth day thereafter (Register 77, No 12).

54624. Access to Statistical Data. Districts may provide statistical data from which no student may be identified to any public agency or entity or private nonprofit college, university, or educational research and development organization when such actions would be in the best educational interest of students.

54626. Directory Information. (a) Community College districts shall adopt a policy identifying any of the following categories of directory information which may be released: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student.

(b) Directory information, as established by the local governing board, may be released as to any student currently attending the Community College, provided that public notice is given at least annually of the categories of information which the district plans to release and of the recipients. Such notice shall also specify the period of time within which the student must inform the district in writing that such personally identifiable information is not to be designated as directory information with respect to that student. No directory information shall be released regarding any student when the student has notified the school in writing pursuant to procedures established by the district that such information shall not be released.

(c) Other information may be added to the categories set forth in (a) of this subsection, provided that release of such information shall be authorized in writing by the student.

(d) Any district may, in its discretion, limit or deny the release of specific categories of directory information to any public or private nonprofit organization based upon a determination of the best interests of students. The names and addresses of students may be provided to a private school or college operating under the provisions of Division 10 of the Education Code, provided, however, that no such private school or college shall use such information for other than purposes directly related to the academic or professional goals of the institution.

History 1. Amendment filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).

2. Amendment of subsection (d) filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

CHAPTER 1. COURSE OF STUDY

SUBCHAPTER 1. COURSE STANDARDS

55000. Definitions. For the purposes of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specific subject offered by a Community College for grades 13 and 14.

(b) "Course of study" means an organized sequence of courses offered by a Community College for grades 13 and 14 within a general subject area.

NOTE: Authority cited for Chapter 1: Sections 71020, 71024, 71027, 78200 and 78203, Education Code.

History: 1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55001. Criteria. A graded course shall possess one or more of the following characteristics:

(a) It provides credit toward an associate degree, is normally considered of collegiate level, and is approved by the board as a component of, a prerequisite to, or eligible as required or elective course within a course of study which leads toward an associate degree.

(b) It is approved by the board and is part of an occupational course of study beyond high school level within the scope of the term "vocational and technical fields leading to employment," as the term is used in Education Code Section 66701, which leads toward an associate degree, an occupational certificate, or both.

(c) It is approved by the board and is recognized upon transfer by the University of California, a California state college, or an accredited independent college or university in California, as a part of:

(1) The required preparation toward a major;
(2) The general, or general education, requirement; or
(3) The permissible or recommended elective credits.

History: 1. Amendment of subsection (b) filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55002. Standards. A graded course shall meet all of the following standards:

(a) The content is organized to meet the requirements for the associate degree as specified in Chapter 7 (commencing with Section 51600) of Division 2 of this part or the requirements for an occupational certificate and is a part of a course of study not exceeding 70 units in length.

(b) It is offered as described in the college catalog, or a supplement thereto, which provides an appropriate title, number, and accurate description of course content. A course outline is available at the college. Course requirements and credit awarded are consistent with Education Code Section 66701.

(c) Only those students who have met the prerequisites for the course are enrolled.

(d) It is subject to the published standards of matriculation, attendance, and achievement of the college.

(e) The enrollees are awarded marks or grades on the basis of methods of evaluation set forth by the college and are subject to the standards of retention set forth in Chapter 4 (commencing with Section 51300) of Division 2 of this part or to such additional standards as may be established by the governing board of the district.

(f) Enrollment cannot be repeated except in unusual circumstances and with the prior written permission from the district superintendent or authorized representative or representatives.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

SUBCHAPTER 2. APPROVAL OF COURSES

55100. Approval. Each course to be offered by a Community College shall be approved by the Chancellor before the course is offered by the college.

The course shall be submitted to the Chancellor on forms provided by the Chancellor's office.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55101. Chancellor's Report. The Chancellor shall report to the board at a fall and a spring meeting the actions which the Chancellor has taken in approving courses submitted to the Chancellor pursuant to the provisions of this chapter.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

SUBCHAPTER 3. APPROVAL OF EDUCATIONAL PROGRAMS

Article 1. General Provisions

55130. Definitions. For the purposes of this subchapter, the following definitions will apply:

(a) "Course of instruction" means an instructional unit of an area or field of organized knowledge, usually provided on a quarter, semester, year, or prescribed length-of-time basis.

(b) "Educational program" is an organized sequence of courses of instruction leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

NOTE: Authority cited for Subchapter 3: Sections 71025, 71026, 71027 and 78200, Education Code.

History: 1. New Subchapter 3 (Sections 55130–55132, 55135–55138, 55140–55144) filed 2-26-71; effective thirtieth day thereafter (Register 71, No. 9).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

CHAPTER 1. GENERAL PROVISIONS

58000. Continuing Education. Continuing education in Community Colleges is comprised of the following kinds of classes:
(a) Adult classes.
(b) Graded classes.
(c) Community service classes offered under the provisions of Article 7 (commencing with Section 78300) of Chapter 2, Division 7, of the Education Code.
(d) Contract classes.

NOTE: Authority cited for Division 9: Sections 71020, 78405 and 66700, Education Code.

History: 1. New Division 9, Chapters 1 through 4 (§§ 58000–58253, not consecutive) filed 12-29-71; effective thirtieth day thereafter (Register 72, No. 1).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

58001. Function of Community Colleges. Continuing education is one of the major functions of the Community Colleges and should be fully supported, organized, and supervised.

CHAPTER 2. ADULT CLASSES

SUBCHAPTER 1. GENERAL PROVISIONS

58100. Credit. District boards of trustees may grant credit toward an associate of arts or sciences degree for an adult class provided that the class also meets the criteria and standards for graded classes as set forth in Sections 55001 and 55002 of this title.

58101. Definitions. For purposes of this chapter the following definitions are adopted:
(a) "District" means a Community College District.
(b) "Adult class" means an ungraded course which has been designed primarily to meet the special needs of adult students and determined to be an adult class by the governing board of the district.

58102. Payment for Attendance.

History: 1. Repealer filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

SUBCHAPTER 2. STANDARDS FOR CONTINUING EDUCATION CENTERS

58110. Standards Defined. In addition to the requirements established elsewhere in the law for the conduct of adult classes, continuing education centers must meet the requirements set forth in this article.

58111. Standards for Continuing Education Centers. Continuing education centers may be defined as adult schools under the provisions of Education Code Sections 78400 and 78410.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

(h) Appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other persons, or subject to such regulations as may be issued by the Secretary of Health, Education, and Welfare.

No person, persons, agency or organization permitted access to student records pursuant to this section shall permit access to any information obtained from such records by any other person, persons, agency or organization without the written consent of the student; provided, however, that this paragraph shall not be construed as to require prior student consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency or organization obtaining access, so long as such persons have a legitimate educational interest in the information.

History: 1. Repealer and new section filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment filed 8-4-78; effective thirtieth day thereafter (Register 78, No. 31).

54624. Access to Statistical Data. Districts may provide statistical data from which no student may be identified to any public agency or entity or private nonprofit college, university, or educational research and development organization when such actions would be in the best educational interest of students.

54626. Directory Information. (a) Community College districts shall adopt a policy identifying any of the following categories of directory information which may be released: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student.

(b) Directory information, as established by the local governing board, may be released as to any student or former student currently attending the Community College, provided that public notice is given at least annually of the categories of information which the district plans to release and of the recipients. Such notice shall also specify the period of time within which the student must inform the district in writing that such personally identifiable information is not to be designated as directory information with respect to that student. No directory information shall be released regarding any student or former student when the student or former student has notified the school in writing pursuant to procedures established by the district that such information shall not be released.

(c) Other information may be added to the categories set forth in (a) of this subsection, provided that release of such information shall be authorized in writing by the student.

(d) Any district may, in its discretion, limit or deny the release of specific categories of directory information to any public or private nonprofit organization based upon a determination of the best interests of students. The names and addresses of students may be provided to a private school or college operating under the provisions of Division 10 of the Education Code, or its authorized representative, provided, however, that no such private school or college shall use such information for other than purposes directly related to the academic or professional goals of the institution.

History: 1. Amendment filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment of subsection (d) filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment of subsections (b) and (d) filed 8-4-78; effective thirtieth day thereafter (Register 78, No. 31).

54628. Record of Access. A log or record shall be maintained for each student's record which lists all persons, agencies, or organizations requesting or receiving information from the record and the legitimate interests therefor. Such listing need not include:

(a) Students to whom access is granted pursuant to Section 54610 of this Chapter.

(b) Parties to whom directory information is released pursuant to Section 54626 of this Chapter.

(c) Parties for whom written consent has been executed by the student pursuant to Section 54616 of this Chapter.

(d) Officials or employees having a legitimate educational interest pursuant to subdivision (a) of Section 54622 of this Chapter.

The log or record shall be open to inspection only by the student and the community college official or his designee responsible for the maintenance of student records, and to the Comptroller General of the United States, the Secretary of Health, Education, and Welfare, and administrative head of an education agency as defined in Public Law 93-380, and state educational authorities as a means of auditing the operation of the system.

History: 1. Repealer and new section filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment of subsection (d) filed 8-4-78; effective thirtieth day thereafter (Register 78, No. 31).

Article 4. Challenge

54630. Request. (a) Any student may file a written request with the chief administrative officer of a district to correct or remove information recorded in the student's own records which the student alleges to be: (1) inaccurate, (2) an unsubstantiated personal conclusion or inference, (3) a conclusion or inference outside of the observer's area of competence, or (4) not based on the personal observation of a named person with the time and place of the observation noted.

CHAPTER 1. GENERAL PROVISIONS

58000. Continuing Education.

Continuing education in Community Colleges is comprised of the following kinds of classes:

(a) Adult classes.

(b) Graded classes.

(c) Community service classes offered under the provisions of Article 7 (commencing with Section 78300) of Chapter 2, Division 7, of the Education Code.

(d) Contract classes.

NOTE: Authority cited for Division 9: Sections 71020, 78405 and 66700, Education Code.

HISTORY:

1. New Division 9, Chapters 1 through 4 (§§ 58000–58253, not consecutive) filed 12-29-71; effective thirtieth day thereafter (Register 72, No. 1).

2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

58001. Function of Community Colleges.

Continuing education is one of the major functions of the Community Colleges and should be fully supported, organized, and supervised.

CHAPTER 2. ADULT CLASSES

SUBCHAPTER 1. GENERAL PROVISIONS

58100. Credit.

District boards of trustees may grant credit toward an associate of arts or sciences degree for an adult class provided that the class also meets the criteria and standards for graded classes as set forth in Sections 55001 and 55002 of this title.

58101. Definitions.

For purposes of this chapter the following definitions are adopted:

(a) "District" means a Community College District.

(b) "Adult class" means an ungraded course which has been designed primarily to meet the special needs of adult students and determined to be an adult class by the governing board of the district.

58102. Payment for Attendance.

HISTORY:

1. Repealer filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

SUBCHAPTER 2. STANDARDS FOR CONTINUING EDUCATION CENTERS

58110. Standards Defined.

In addition to the requirements established elsewhere in the law for the conduct of adult classes, continuing education centers must meet the requirements set forth in this article.

58111. Standards for Continuing Education Centers.

Continuing education centers may be defined as adult schools under the provisions of Education Code Sections 78400 and 78410.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

CHAPTER 1. COURSE OF STUDY

SUBCHAPTER 1. COURSE STANDARDS

55000. Definitions.

For the purposes of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specific subject offered by a Community College for grades 13 and 14.

(b) "Course of study" means an organized sequence of courses offered by a Community College for grades 13 and 14 within a general subject area.

NOTE: Authority cited for Chapter 1: Sections 71020, 71024, 71027, 78200 and 78208, Education Code.

HISTORY:

1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55001. Criteria.

A graded course shall possess one or more of the following characteristics:

(a) It provides credit toward an associate degree, is normally considered of collegiate level, and is approved by the board as a component of, a prerequisite to, or eligible as required or elective course within a course of study which leads toward an associate degree.

(b) It is approved by the board and is part of an occupational course of study beyond high school level within the scope of the term "vocational and technical fields leading to employment," as the term is used in Education Code Section 66701, which leads toward an associate degree, an occupational certificate, or both.

(c) It is approved by the board and is recognized upon transfer by the University of California, a California state college, or an accredited independent college or university in California, as a part of:

(1) The required preparation toward a major;

(2) The general, or general education, requirement; or

(3) The permissible or recommended elective credits.

HISTORY:

1. Amendment of subsection (b) filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55002. Standards.

A graded course shall meet all of the following standards:

(a) The content is organized to meet the requirements for the associate degree as specified in Chapter 7 (commencing with Section 51600) of Division 2 of this part or the requirements for an occupational certificate and is a part of a course of study not exceeding 70 units in length.

(b) It is offered as described in the college catalog, or a supplement thereto, which provides an appropriate title, number, and accurate description of course content. A course outline is available at the college. Course requirements and credit awarded are consistent with Education Code Section 66701.

(c) Only those students who have met the prerequisites for the course are enrolled.

(d) It is subject to the published standards of matriculation, attendance, and achievement of the college.

(e) The students are awarded marks or grades on the basis of methods of evaluation set forth in Chapter 4 (commencing with Section 51300) of Division 2 of this part or to such additional standards as may be established by the governing board of the district.

(f) Enrollment cannot be repeated except: to alleviate substandard work which has been recorded on the student's record; or as permitted in Section 51315 of this part; or in unusual circumstances and with the prior written permission from the district superintendent or authorized representative or representatives.

NOTE: Authority cited: Sections 66700, 71020, 71025, and 71027, Education Code. Reference: Section 71027, Education Code.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 3-14-80; effective thirtieth day thereafter (Register 80, No. 11).

SUBCHAPTER 2. APPROVAL OF COURSES

55100. Approval.

Each course to be offered by a Community College shall be approved by the Chancellor before the course is offered by the college.

The course shall be submitted to the Chancellor on forms provided by the Chancellor's office.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55101. Chancellor's Report.

The Chancellor shall report to the board at a fall and a spring meeting the actions which the Chancellor has taken in approving courses submitted to the Chancellor pursuant to the provisions of this chapter.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

SUBCHAPTER 3. APPROVAL OF EDUCATIONAL PROGRAMS

Article 1. General Provisions

55130. Definitions.

For the purposes of this subchapter, the following definitions will apply:

(a) "Course of instruction" means an instructional unit of an area or field of organized knowledge, usually provided on a quarter, semester, year, or prescribed length-of-time basis.

(b) "Educational program" is an organized sequence of courses of instruction leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

NOTE: Authority cited for Subchapter 3: Sections 71025, 71026, 71027 and 78200, Education Code.

HISTORY:

1. New Subchapter 3 (Sections 55130–55132, 55135–55138, 55140–55144) filed 2-26-71; effective thirtieth day thereafter (Register 71, No. 9).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

CHAPTER 1. PROGRAMS, COURSES AND CLASSES

Article 1. Program, Course and Class Classification and Standards

55000. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.

(b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

(c) "Class" means a community services offering.

NOTE: Authority cited: Sections 71020 and 71062, Education Code. Reference: Sections 78200 and 78201, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Subchapters 1–3, Sections 55000–55144, not consecutive) and new Chapter 1 (Articles 1–2, Sections 55000–55180, not consecutive) filed 12-21-81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 80, No. 11; 77, No. 45; and 71, No. 9.

55001. Community College Educational Program.

(a) The instructional services of community colleges include:

(1) Liberal Arts and Sciences Education

(A) Baccalaureate Oriented/Transfer Programs and Courses

(B) Associate Degree Programs and Courses

(C) Developmental Programs and Courses

1. Compensatory Programs and Courses

2. Adult Elementary and Secondary Basic Skills Programs and Courses

(D) Community Education Programs and Courses

1. Personal Development and Survival Courses

2. Parenting and Family Support Courses

3. Community and Civic Development Courses

4. General and Cultural Courses

(2) Occupational Education

(A) Vocational/Technical Transfer Programs and Courses

(B) Vocational/Technical Associate Degree and Certificate Programs and Courses

(C) Continuing Education Vocational/Technical Certificates, Programs and Courses

(b) The community services (Non ADA generating) of community colleges include:

(1) Community Services Classes

(A) Avocational Classes

(B) Recreational Classes

(C) Seminars, Lecture Series, Forum Series, Workshops, and Conferences

(D) Professional and Occupational Inservice Classes

(2) Community Services Activities

(A) Civic Center Act Activities

(B) Cultural Activities

(C) Community Development Activities

(D) Recreational Activities

(c) All districts shall report the classification of all courses, classes, and activities offered in accordance with the system contained in subsections (a) and (b) and the standards in Section 55002 by transmitting the following information to the Chancellor's Office:

(1) The unique static course identifier and the course title for all credit and noncredit courses.

(2) The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor.

(3) Whether the course is offered as credit or noncredit.

(4) Whether the course transfers to CSUC or UC or both.

(5) The number of community services classes in each category, and the number of participants.

(6) The number of community services activities in each category and the number of participants.

(d) Not later than January 21, 1982, the chief executive officer of each community college district, in consultation with the academic senate or other appropriate faculty body and other appropriate persons or groups, shall report in the manner required by subsection (c) on the initial classification of all existing courses, classes and activities. The Chancellor shall review and comment upon, as necessary, this initial classification of courses, classes, and activities by districts. Not later than June 30, 1982, the governing board of each district, after a public hearing, shall adopt and report to the Chancellor on the classification of all existing courses, classes and activities.

(e) For courses, classes and activities which are added after June 30, 1982, the district shall report the classification of all courses, classes and activities in the manner provided by subsection (c). The Chancellor shall review and comment upon, as necessary, the classification of such courses, classes and activities.

NOTE: Authority cited: Sections 66700, 71020, 71027, 71062, and 78405, Education Code. Reference: Sections 66701, 71027, 78200, 78201, 78300, 78401, 78405, 84603, and 84621, Education Code.

55002. Standards and Criteria for Courses and Classes.

(a) A credit course is a course which, at a minimum:

(1) Is recommended by the responsible college officials and the academic senate or other appropriate faculty body as being of appropriate rigor and has been approved by the local district governing board as a collegiate course meeting the needs of the students eligible for admission.

(2) Is taught by a credentialed instructor.

(3) Is offered as described in an outline and/or curriculum guide in official college files. That outline and/or curriculum guide shall specify the unit value, scope, objectives, content instructional methodology and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Is taught in accordance with a set of instructional objectives common to all students.

(5) Provides for measurement of student performance in terms of the stated course objectives and culminates in a formal recorded grade based upon uniform standards which is permanently recorded and is available as an official student evaluation.

(6) Grants units of credit based upon a specified relationship between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline.

(7) Only those students who have met the prerequisites for the course are enrolled.

(8) Allows repeated enrollment only as permitted by provisions of Division 2 (commencing with Section 51000 of this part).

(b) A noncredit course is a course which, at a minimum:

(1) Is approved by the local district governing board as a course meeting the educational needs of the enrolled students.

(2) Is taught by a credentialed instructor. A supplementary lecturer need not hold a credential if he or she lectures fewer than four times in a semester or quarter.

(3) Treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement appropriate for the enrolled students.

(4) Is conducted in accordance with a course outline and/or curriculum guide in official college files. That outline and/or curriculum guide shall specify the scope, objectives, content, instructional methodology, and methods of evaluation for determining whether the course objectives have been met.

(c) A community services class at a minimum:

(1) Is approved by the local district governing board.

(2) Is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein.

(3) Provides subject matter content, resource materials, and teaching methods appropriate for the enrolled students.

(4) Is conducted in accordance with a predetermined strategy or plan.

(5) Is open to all members of the community.

(6) Attendance in community services classes may not be claimed for apportionment purposes.

NOTE: Authority cited: Sections 66700, 71020, 71027, and 78405, Education Code. Reference: Sections 71027, 78200, and 78405, Education Code.

55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four-year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit-no credit, and if so, which provision of subsection (a) of Section 51302 is applicable.

NOTE: Authority cited: Sections 66700, 71020, and 71062, Education Code. Reference: Sections 66700 and 71020, Education Code.

55006. Records and Reports.

Authorities of each community college maintaining credit and non-credit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700, 71020, and 71062, Education Code. Reference: Sections 78200, 78401, 78405, and 84603, Education Code.

Register 82-31

§ 58102
§ 58104

CHAPTER 2. LIMITATIONS ON STATE AID

Article 1. Open Courses

58100. Open Enrollment.

Unless specifically exempted by statute, every course, course section or class for which average daily attendance is to be reported for state aid shall be open for enrollment and participation by any person who has been admitted to the college and who meets the prerequisites of such course as defined in Section 58104 of this chapter.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

58106. Prerequisites.

Prerequisites shall not state or imply that enrollment in a course is limited to a specialized clientele, unless such limitation is specifically authorized by law.

(a) Academic prerequisites for a course shall be clearly related to course content and academic foundation of such course.

(b) In activity or laboratory type courses, prerequisites may require demonstrated ability or technical performance to a level of proficiency to be determined by equitable district procedures. Experience requirements may not be established solely on the basis of "hours of exposure."

(c) That a course is one in a related sequence of courses in which understanding or technical performance of the one is dependent upon successful completion of the preceding is an acceptable prerequisite.

(d) "Permission of the instructor" as an alternative to a prerequisite shall be limited in application to the determination of equivalence to stated academic prerequisites or performance standards in activity or laboratory type courses.

(e) Concurrent enrollment in a course may be a prerequisite only when the objectives of the courses are clearly complementary and the interrelation of the units of instruction is evident.

54612. Waiver.

A student may waive his or her right to access to student records as provided in Education Code Section 76231. Such waivers shall be in writing and signed by the student.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76231, Education Code; 20 USC 1232(g); and 45 CFR 99.6.

HISTORY:

1. Amendment filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment filed 8-4-78; effective thirtieth day thereafter (Register 78, No. 31).
3. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

54614. Confidential Maintenance of Records.

HISTORY:

1. Repealer of Article 3 heading and Section 54614 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

54616. Consent.

A community college district may, when the student has provided consent, permit access to the student's records pursuant to Education Code Section 76242. Such consent must be signed and dated by the student.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Sections 76230 and 76242, Education Code; 20 USC 1232(g); and 45 CFR 99.30–99.40.

HISTORY:

1. Amendment filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

54618. Mandatory Access.

HISTORY:

1. Repealer filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).

54620. Court Orders.

HISTORY:

1. Amendment filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

54622. Access.

HISTORY:

1. Repealer and new section filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment filed 8-4-78; effective thirtieth day thereafter (Register 78, No. 31).
3. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

54624. Access to Statistical Data.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

54626. Directory Information.

(a) Community college districts shall adopt a policy identifying any of the following categories of directory information which may be released: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student.

(b) Directory information, as established by the local governing board, may be released as to any student or former student currently attending the community college, provided that public notice is given at least annually of the categories of information which the district plans to release and of the recipients. Such notice shall also specify the period of time within which the student must inform the district in writing that such personally identifiable information is not to be designated as directory information with respect to that student. No directory information shall be released regarding any student or former student when the student or former student has notified the school in writing pursuant to procedures established by the district that such information shall not be released.

(c) Other information may be added to the categories set forth in subsection (a) of this section, provided that release of such information shall be authorized in writing by the student.

(d) Any district may, in its discretion, limit or deny the release of specific categories of directory information to any public or private nonprofit organization based upon a determination of the best interests of students. The names and addresses of students may be provided to a private school or college operating under the provisions of Division 10 of the Education Code, or its authorized representative, provided, however, that no such private school or college shall use such information for other than purposes directly related to the academic or professional goals of the institution.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Sections 76240 and 76242, Education Code; 20 USC 1232(g); and 45 CFR 99.40.

HISTORY:

1. Amendment filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment of subsection (d) filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment of subsections (b) and (d) filed 8-4-78; effective thirtieth day thereafter (Register 78, No. 31).
4. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

54628. Record of Access.

HISTORY:

1. Repealer and new section filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment of subsection (d) filed 8-4-78; effective thirtieth day thereafter (Register 78, No. 31).
3. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

54630. Challenging Content of Records.

Any student may challenge the content of his or her student records pursuant to Education Code Section 76232. The decision of the chief administrative officer and governing board must be in writing.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76232, Education Code; 20 USC 1232(g); and 45 CFR 99.20–99.22.

HISTORY:

1. Amendment filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment of subsections (a) and (b) filed 8-4-78; effective thirtieth day thereafter (Register 78, No. 31).
4. Repealer of Article 4 heading and Section 54630 and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Register 83-29

§ 51006
§ 55750
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§ 55800

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55825) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

CHAPTER 9. STANDARDS OF SCHOLARSHIP

55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with the provisions of this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by Section 51002 of this part.

NOTE: Authority cited: Sections 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY:

1. New Chapter 9 (Sections 55750–55765) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with Section 55758.

(b) Such work shall also be graded in accordance with the provisions of Section 55752 or Section 55753.

NOTE: Authority cited: Sections 66700, 71020, 71024, 71025, 71027 and 71066, Education Code. Reference: Sections 71066 and 72285, Education Code.

55752. Credit—No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specifiy in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit—no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit—no credit" or a letter grade.

(b) All units earned on a "credit—no credit" basis in accredited California institutions of higher education or equivalent out-of-state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit—no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in Section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with Sections 55300–55352 of this part may be graded on a "credit—no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single satisfactory standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71027, 71066 and 78207, Education Code.

55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	Definition	Grade Point
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	Definition
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the

Symbol	Definition
	student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawl from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W."

For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer.

The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in Sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures.

Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs.

A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.

NOTE: Authority cited: Sections 71020, 71025 and 71066, Education Code. Reference: Sections 72285 and 76000, Education Code.

55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 71020, 71025 and 71066, Education Code. Reference: Sections 72285 and 76000, Education Code.

55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with Section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with Sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71066 and 76224, Education Code.

55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in Section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71066 and 72285, Education Code.

55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code Section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with Section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of Section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in Section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under Section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives;"

(e) Shall clearly indicate any courses repeated under the provisions of this section and Section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and Section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700, 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71066, 72285, 76224, 78205 and 78207, Education Code.

55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the district superintendent or authorized representative based on a finding that circumstances exist which justify such repetition.

(b) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

(c) Grades awarded for courses repeated under the provisions of this section shall not be counted in calculating a student's grade point average.

NOTE: Authority cited: Sections 71020, 71025 and 71066, Education Code. Reference: Sections 72285 and 76000, Education Code.

55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in Section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700, 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71066, 72285, 76224, 78205 and 78207, Education Code.

55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in Section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code Section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with Section 59020) of Division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of Section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and Section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700, 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71066, 72285, 76224, 78205 and 78207, Education Code.

CHAPTER 10. DEGREES AND CERTIFICATES

55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by Section 51004 of this part.

NOTE: Authority cited: Sections 66700, 71022 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

HISTORY:

1. New Chapter 10 (Sections 55800–55810, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit—no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700, 71022 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

55802. Associate in Arts Degree (Applicable Until July 1, 1983).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas:

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

CHAPTER 7. INSTRUCTIONAL AND OTHER MATERIALS

59400. Required Instructional and Other Materials.

(a) The governing board of a district may, consistent with the provisions of this chapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.

(b) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.

NOTE: Authority cited: Sections 66700, 71020, 71025 and 71028, Education Code; and Section 2, Chapter 1252, Statutes of 1984. Reference: Sections 71025, 72223 and 78260, Education Code; and Section 2, Chapter 1252, Statutes of 1984.

HISTORY:

1. New Chapter 7 (Sections 59400–59406, not consecutive) filed 5-16-85; effective thirtieth day thereafter (Register 85, No. 20).

59402. Definitions.

For the purposes of this chapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost; and:

(1) The material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or

(2) The material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

NOTE: Authority cited: Sections 66700, 71020, 71025 and 71028, Education Code; and Section 2, Chapter 1252, Statutes of 1984. Reference: Sections 71025, 72223 and 78260, Education Code; and Section 2, Chapter 1252, Statutes of 1984.

59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course shall adopt policies or regulations, consistent with the provisions of this chapter, which specify the conditions under which such materials will be required.

(b) The policies or regulations specified in subsection (a) shall be adopted no later than January 1, 1986, forwarded to the Chancellor's Office upon adoption, and thereafter published in each college catalog developed after the date of adoption.

NOTE: Authority cited: Sections 66700, 71020, 71025 and 71028, Education Code; and Section 2, Chapter 1252, Statutes of 1984. Reference: Sections 71025, 72263 and 78020, Education Code; and Section 2, Chapter 1252, Statutes of 1984.

59406. Report to Chancellor.

The governing board of a community college district which prescribes required instructional and other materials for its courses shall respond to periodic surveys or inquiries of the Chancellor on the subject.

NOTE: Authority cited: Sections 66700, 71020, 71025 and 71028, Education Code; and Section 2, Chapter 1252, Statutes of 1984. Reference: Sections 71025, 72263 and 78020, Education Code; and Section 2, Chapter 1252, Statutes of 1984.

59408. Operative Date and Violations of Chapter.

(a) The regulations in this chapter shall become operative on August 15, 1985, provided that a district governing board which wishes to implement these regulations earlier may do so.

(b) The governing board of a district which prescribes required instructional and other materials in violation of this chapter shall be deemed to have established a student fee not expressly established by law.

NOTE: Authority cited: Sections 66700, 71020, 71025 and 71028, Education Code; and Section 2, Chapter 1252, Statutes of 1984. Reference: Sections 71025, 72263 and 78020, Education Code; and Section 2, Chapter 1252, Statutes of 1984.

CHAPTER 8. STUDENT ORGANIZATION

Article 1. Student Representation Fee

54801. Calling of Election.

The governing body of each student body association authorized by Education Code Section 76060 shall establish procedures for elections conducted for the purpose of collecting a student representation fee, and call an election for such purpose. The election shall, at a minimum, meet the following criteria:

(a) The student body association on each campus shall maintain in its office written information regarding election procedures. Such information shall be made available to the public upon request.

(b) Adequate notice of the election shall be given by the student body association. Adequate notice is deemed to be at least ten school days prior to the election date.

(c) Each election shall be held on a day which counts toward the 175 day requirement (Education Code Section 84370) as defined in Section 58120 of this part. In instances where an election is conducted for more than one day, those days shall be consecutive and shall be limited to a maximum of five days.

NOTE: Authority cited: Section 76060.5, Education Code. Reference: Sections 76060 and 76060.5, Education Code.

HISTORY:

1. New section filed 5-12-88; operative 5-12-88 (Register 88, No. 20).

54803. Termination of Fee.

(a) Any student representation fee that has been instituted pursuant to the procedures enumerated in Section 54801 may be terminated by a majority of the students voting in an election called in one of the following two manners:

(1) By placing the issue on the ballot for the next regular associated student body election. The issue shall be placed on the ballot upon receipt of a petition indicating an interest in the termination of the representation fee signed by a majority of the number of students who voted in the election establishing the fee.

(2) Pursuant to procedures pre-established by the student body association for calling such an election. Such procedures shall be available for public inspection during regular business hours.

(b) The elections shall be conducted in accordance with the procedures established pursuant to Section 54801.

NOTE: Authority cited: Section 76060.5, Education Code. Reference: Sections 76060 and 76060.5, Education Code.

HISTORY:

1. New section filed 5-12-88; operative 5-12-88 (Register 88, No. 20).

54805. Collection of the Fee.

District governing boards shall include in the materials given to each student at registration, information pertaining to the representation fee. The form used by a college for the purpose of collecting the fee shall contain, at a minimum, the following:

(a) a statement indicating that the money collected pursuant to this article shall be expended to provide support for students or representatives who may be stating their positions and viewpoints before city, county, and district government, and before offices and agencies of the state and federal government;

(b) the amount of the fee;

(c) a statement informing the students of their right to refuse to pay the fee for religious, political, moral or financial reasons.

NOTE: Authority cited: Section 76060.5, Education Code. References: Sections 76060 and 76060.5, Education Code.

HISTORY:

1. New section filed 5-12-88; operative 5-12-88 (Register 88, No. 20).

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printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 4. Assessment.

The Chancellor shall establish and update, at least annually, a list of approved assessment instruments and guidelines for their use by community college districts. These guidelines shall identify modifications of an assessment instrument or the procedures for its use which may be made in order to provide special accommodations required by section 55522 without separate approval by the Chancellor. Such guidelines shall also describe the procedure by which districts may seek to have assessment instruments approved and added to the list. The Chancellor shall ensure that all assessment instruments included on the list minimize or eliminate cultural or linguistic bias, are normed on the appropriate populations, yield valid and reliable information, identify the learning needs of students, make efficient use of student and staff time, and are otherwise consistent with the educational and psychological testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55525. Student Educational Plan.

(a) Each community college district shall establish a process for assisting students to select a specific educational goal within a reasonable time after admission as required by section 55530 (d). This shall include, but not be limited to, the provision of counseling as required by section 55523(a)(2).

(b) Once a student has selected a specific educational goal, the district shall afford the student the opportunity to develop a student educational plan describing the responsibilities of the student, the requirements he or she must meet, and the courses, programs, and services required to achieve the stated goal.

(c) The student educational plan developed pursuant to subsection (b) shall be recorded in written or electronic form. The plan, and its implementation shall be reviewed as necessary to ensure that it continues to accurately reflect the needs and goals of the student.

(d) If a student believes the district has failed to make good faith efforts to develop a plan, has failed to provide services specified in the student educational plan, or has otherwise violated the requirements of this section, a student may file a complaint pursuant to section 55534 (c).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55526. Student Follow-up.

Each community college district shall establish a student follow-up process to assist the student in achieving his/her educational goal. The follow-up system shall ensure that the academic progress of each student is regularly monitored to detect early signs of academic difficulty and students shall be provided with advice or referral to specialized services or curriculum offerings where necessary. Districts shall also identify and refer to counseling or advisement, as appropriate pursuant to section 55523(a), any students who have not declared a specific educational goal as required by section 55530, who are enrolled in pre–collegiate basic skills courses, or who have been placed on probation.

NOTE: Authority cited: Sections 66700 and 70901, Educational Code. Reference: Section 78212, Education Code.

HISTORY

1. Section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 4. Appeals, Waivers, Student Rights and Responsibilities

§ 55530. Student Rights and Responsibilities.

(a) Nothing in this chapter shall be construed to interfere with the right of a student, if admitted to a community college in accord with district admission policies adopted pursuant to Education Code section 76000 et seq., from enrolling in any course for which he or she can meet necessary and valid prerequisites, if any, which have been established pursuant to the requirements of section 58106 of division 9 of this part.

(b) Community college districts shall take steps to ensure that information, in written form, is available to all students, in class schedules, catalogues, or other appropriate publications, describing their rights and responsibilities under this chapter.

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to avoid additional testing by submitting scores on recently taken tests which correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission, declare a specific educational objective within a reasonable period after admission, participate in counseling or advisement pursuant to section 55523(a)(1),(2), and (3), diligently attend class and complete assigned coursework, and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of chapter 9 (commencing with section 55750) of division 6 of this part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree applicable credit coursework, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to section 55525. If a student fails to fulfill the responsibilities listed in this subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his/her specific educational goal, or fails to abide by the terms of his/her student educational plan, the district may, subject to the requirements of this chapter, suspended or terminate the provision of services authorized in section 55520; provided however, the nothing in this section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of chapter 6 (commencing with section 54600) of Division 5 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such

policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Where students are required by a community college district to meet prerequisites under section 58106(b)(2) or (b)(3), a student may object to such requirement on the grounds that the necessary course is not available. The district shall promptly (within 5 working days) determine whether, the required course was available and if not, the district shall waive the prerequisite for that term.

(b) An allegation that a community college district has violated the provisions of subsection (f) of section 55521 or has established a discriminatory prerequisite subject to challenge under subsection (d)(3) of section 58106 shall be considered a complaint of unlawful discrimination and shall be filed, investigated and resolved pursuant to chapter 5 (commencing with section 59300) of Division 10 of this part.

(c) Each community college district shall establish written procedures by which students may challenge any other alleged violation of the provisions of this chapter or of section 58106. Districts shall investigate and attempt to resolve any such complaints. Such complaint procedures may, by action of the governing board, be consolidated with existing student grievance procedures. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the state wide evaluation required under section 55512(c).

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135–11139.5, Government Code; Sections 78211, and 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) Vocational education contract means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of Article 5 (commencing with Section 8090) of Chapter 1, Part 6 of the Education Code.

(b) The California State Plan for Vocational Education means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94–482 and 95–40), Part A, Vocational Education, or any subsequent federal legislation.

(c) Contractor as used in Education Code Section 8092 means any private postsecondary school authorized or approved pursuant to the provisions of Chapter 3 (commencing with Section 94300), and which has been in operation not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this Code.

(d) Eligible costs means all direct and indirect related instructional costs but does not include expenditures for capital outlay (600 category in the California Community Colleges Budget and Accounting Manual).

NOTE: Authority cited: Sections 8092 and 71020, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. New Chapter 7 (Sections 55600 through 55631, not consecutive) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Subchapter 1 heading, amendment of Article 1 heading, and repealer and new Section 55600 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55601. Definitions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of subsection (g) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55602. Occupational Purposes.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55603. Instructional Purpose.

Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

NOTE: Authority cited: Sections 8092 and 71020, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55604. Application for Approval.

NOTE: Authority cited: Sections 8092, 71020, 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

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4. Designated employees in Category 4 must report any business entity n v hey have an investment or business position, and income if the)usi. ntity or source of income provides education, training, or expe- ience to persons toward attaining a valid credential for employment as n instructor, supervisor, chief administrative officer, librarian, counsel- r, supervisor of health, student personnel worker, or other similar posi- lon within a Community College district.

Subchapter 3. Committees

History

Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

ubchapter 1. Minimum Conditions

51000. Scope.

The provisions of this chapter are adopted under the authority of Edu- ation Code section 70901(b)(6) and comprise the rules and regulations firming and fixing the minimum conditions, satisfaction of which en- les a district maintaining community colleges to receive state aid for e support of their community colleges.

OTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: ections 66700 and 70901, Education Code.

History

Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000-51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.

Amendment of section submitted to OAL for printing only pursuant to Govern- ment Code section 11343.8 (Register 91, No. 23).

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship lo y the Board of Governors, as contained in chapter 9 (commenc- ig ection 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the hancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

(i) Sabbatical expenses for health service personnel.

Nothing within these provisions should deny a student participating in athletic programs a service which is properly supported by student health services.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 72246, Education Code.

HISTORY

1. New section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18). For prior history, see Register 79, No. 28.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54708. Fundable Expenses.

Student health fees may be expended for the following.

(a) Cost of instructional materials for health education;

(b) Consultants directly involved in student health service programs;

(c) Rental and lease of space for the conduct of student health programs and services;

(d) Cost of equipment and medical supplies;

(e) Salaries of student health personnel (including fringe benefits);

(f) Student health and/or hospitalization insurance.

(g) Travel with student health services funds is limited to student health personnel and only for student health related activities.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 72246, Education Code.

HISTORY

1. New section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18). For prior history, see Register 79, No. 28.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54710. Emergency Information.

For the protection of a student's health and welfare the governing board of a community college district may require the parent or legal guardian of a minor to keep current at the minor's school of attendance, emergency information including the home address and telephone number, business address, and telephone number of the parents or guardian, and the name, address, and telephone number of a relative or friend who is authorized to care for the student in any emergency situation if the parent or legal guardian cannot be reached.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 8. Student Organization

Article 1. Student Representation Fee

§ 54801. Calling of Election.

The governing body of each student body association authorized by Education Code section 76060 shall establish procedures for elections conducted for the purpose of collecting a student representation fee, and call an election for such purpose. The election shall, at a minimum, meet the following criteria:

(a) The student body association on each campus shall maintain in its office written information regarding election procedures. Such information shall be made available to the public upon request.

(b) Adequate notice of the election shall be given by the student body association. Adequate notice is deemed to be at least ten school days prior to the election date.

(c) Each election shall be held on a day which counts toward the 175 day requirement as defined in section 58120 of this part. In instances where an election is conducted for more than one day, those days shall be consecutive and shall be limited to a maximum of five days.

NOTE: Authority cited: Section 66700, 70901, and 76060.5, Education Code. Reference: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54803. Termination of Fee.

(a) Any student representation fee that has been instituted pursuant to the procedures enumerated in section 54801 may be terminated by a majority of the students voting in an election called in one of the following two manners:

(1) By placing the issue on the ballot for the next regular associated student body election. The issue shall be placed on the ballot upon receipt of a petition indicating an interest in the termination of the representation fee signed by a majority of the number of students who voted in the election establishing the fee.

(2) Pursuant to procedures pre–established by the student body association for calling such an election. Such procedures shall be available for public inspection during regular business hours.

(b) The elections shall be conducted in accordance with the procedures established pursuant to section 54801.

NOTE: Authority cited: Section 66700, 70901 and 76060.5, Education Code. Reference: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54805. Collection of the Fee.

District governing boards shall include in the materials given to each student at registration, information pertaining to the representation fee. The form used by a college for the purpose of collecting the fee shall contain, at a minimum, the following:

(a) a statement indicating that the money collected pursuant to this article shall be expended to provide support for students or representatives who may be stating their positions and viewpoints before city, county, and district government, and before offices and agencies of the state and federal government;

(b) the amount of the fee;

(c) a statement informing the students of their right to refuse to pay the fee for religious, political, moral or financial reasons.

NOTE: Authority cited: Sections 66700, 70901 and 76060.5, Education Code. References: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54912. Residence Questionnaires.

(a) Each community college district shall use a residence questionnaire in making residence classifications.

(b) The residence questionnaire shall ask each student where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subsection (f) of section 54024.

(c) The questionnaire shall ask each student under 19 years of age where the parent has lived for the last two years and whether the parent has engaged in any activity listed in subsection (f) of section 54024.

(d) If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024.

(e) The Chancellor shall provide a sample residence questionnaire which districts may use in complying with this requirement.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55004. Social Science Courses.

The course of instruction in social sciences shall include a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States of America.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four-year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit–no credit, and if so, which provision of subsection (a) of section 51302 is applicable.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55006. Records and Reports.

Authorities of each community college maintaining credit and noncredit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55008. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

The governing board of each community college district participating in a vocational education program shall appoint a vocational education advisory committee to develop recommendations on the program and to provide liaison between the district and potential employers.

The committee shall consist of one or more representatives of the general public knowledgeable about the disadvantage, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 2. Approval of Courses, Programs and Classes

§ 55100. Course Approval.

Except as provided in subsection (b) and section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not approval by the Chancellor is required, the district shall designate the appropriate classification of the course or activity in accordance with section 55001.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55101. Chancellor's Report.

History

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer filed 3–7–85; effective thirtieth day thereafter (Register 85, No. 10).

§ 55130. Approval of Credit Programs.

(a) Before offering any course as part of an educational program at a college, the governing board of a district shall obtain approval of the educational program from the Chancellor in accordance with the provisions of this article. Approval shall be requested on forms provided by the Chancellor.

(b) The application for approval shall contain at least the following:

(1) The name of the proposed program.

(2) The description of the proposed program.

(3) The purposes and specific objectives of the proposed program.

(4) The place of the proposed program in the district master plan.

(5) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning.

(6) The need for the proposed program ascertained with regard to at least the following factors:

(A) Other community colleges in the area currently offering the program.

(B) Other programs closely related to the proposed program offered by the college.

(C) Relation of the proposed program to job market analysis.

(D) Enrollment projection for the proposed program.

(E) Recommendations of area vocational master plan committees when applicable.

(F) The classification of the courses in the program in accordance with section 55001.

(7) The need for and present adequacy of the following resources shall be determined in relation to the proposed program:

(A) Library and media center resources.

(B) Facilities and equipment required to initiate and sustain the program. If a new facility is to be used, reference should be made to the five-year master plan.

(C) Availability of adequate or proposed financial support.

(D) Availability of faculty.

(c) The development, establishment and evaluation of an education program shall include representative faculty involvement.

(d) An approval is effective until the program or implementation of the program is discontinued or modified in any substantial way. From time to time the Chancellor may evaluate an educational program, after its approval, on the basis of factors listed in this section. If on the basis of such an evaluation the Chancellor determines that an educational program should no longer be offered, the Chancellor may terminate the approval and determine the effective date of termination.

(e) In multicollege districts, program approval is granted for a specific college.

ommendations on staff, student, and instructional improvement activities.

(f) Provide, upon request of the Chancellor, copies of documents and information specified in Subsections (a) through (d), inclusive.

NOTE: Authority cited: Sections 71020 and 84890, Education Code. Reference: Section 84894, Education Code.

§ 55732. Ongoing Responsibilities of the Chancellor.

The Chancellor shall:

(a) Adjust state aid for districts with approved flexible calendar operations in accordance with the provisions of Sections 84895 and 84895.5 of the Education Code. For fiscal year 1982–83, the Chancellor shall also adjust the ADA of any district which has been newly approved to operate a flexible calendar operation during that fiscal year. The adjustment shall be made in order that those districts do not experience an arbitrary gain or loss in average daily attendance as a result of shifting to a flexible calendar operation.

(b) Periodically review documentation from selected districts to determine whether they are in compliance with the provisions of Sections 55726, 55728, and 55730, and to determine whether they are conducting their flexible calendar operations in a manner consistent with the approved requests. Districts which are found to be out of compliance shall be notified and be given an opportunity to respond.

(c) Terminate approval of any flexible calendar operation if it is found that the district has, without good cause:

(1) Failed to conduct its flexible calendar operation in a manner consistent with its approved request.

(2) Failed to carry out the responsibilities specified in Section 55726.

(3) Failed to meet its ongoing responsibilities as specified in Section 55730.

(d) Withhold the appropriate amount of state aid whenever there is a final audit finding that an instructor did not spend at least as much time performing staff, student, and instructional improvement activities as the amount of time he or she was released from classroom instruction.

(e) Report to the Legislature as required by Section 84896 of the Education Code.

NOTE: Authority cited: Sections 71020 and 84890, Education Code. Reference: Sections 84890, 84893, 84894, 84895, 84895.5 and 84896, Education Code.

Subchapter 9. Standards of Scholarship

§ 55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by section 51002 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. New chapter 9 (sections 55750–55765) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with section 55758.

(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55752. Credit–No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit–no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit–no credit" or a letter grade.

(b) All units earned on a "credit–no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit–no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300–55352 of this part may be graded on a "credit–no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55753. Credit by Examination.

(a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community–based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college–level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college–level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college–level courses, request reinstatement to proceed with college–level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit–no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 72285 and 76000, Education Code.

History

1. ...dment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timeliness established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55760. Grade Changes.

(a) ...n any course of instruction in a community college district for wh... ...ades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 ar... ...762. When grade changes are made in accordance with these secti... ...propriate annotations of any courses repeated shall be entered on the ...dent's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55761. District Policy for Course Repetition.

... governing board of a district maintaining a community college sha... ...dopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of co...s for which substandard academic performance has been previous... ...ded, the governing board of a district maintaining a community co... ...ge:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

(b) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

(c) Grades awarded for courses repeated under the provisions of this section shall not be counted in calculating a student's grade point average.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 including, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902, and 76624, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55800.5. Minimum Credit Hours for Graduation from Two-Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1983).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

(d) The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55803. Associate in Science Degree (Applicable Until July 1, 1983).

The governing board of a community college district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall

Subchapter 7. Instructional and Other Materials

§ 59400. Required Instructional and Other Materials.

(a) The governing board of a district may, consistent with the provisions of this chapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.

(b) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.

NOTE: Authority cited: Sections 66700, 70901 and 72249, Education Code. Reference: Sections 70901, 70902 and 72249, Education Code.

HISTORY

1. New chapter 7 (sections 59400–59408, not consecutive) filed 5–16–85; effective thirtieth day thereafter (Register 85, No. 20).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59402. Definitions.

For the purposes of this chapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost; and:

(1) The material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or

(2) The material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

NOTE: Authority cited: Sections 66700, 70901 and 72249, Education Code. Reference: Sections 70901, 70902 and 72249, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course shall adopt policies or regulations, consistent with the provisions of this chapter, which specify the conditions under which such materials will be required.

(b) The policies or regulations specified in subsection (a) shall be adopted no later than January 1, 1986, forwarded to the Chancellor's Office upon adoption, and thereafter published in each college catalog developed after the date of adoption.

NOTE: Authority cited: Sections 66700, 70901 and 72249, Education Code. Reference: Sections 70901, 70902 and 72249, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59406. Report to Chancellor.

The governing board of a community college district which prescribes required instructional and other materials for its courses shall respond to periodic surveys or inquiries of the Chancellor on the subject.

NOTE: Authority cited: Sections 66700, 70901 and 72249, Education Code. Reference: Sections 70901, 70902 and 72249, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59406.5. Reports Re Instructional Materials Used.

Each district board shall make reports, whenever required, directly to the Board of Governors or Chancellor's Office, concerning the instructional materials used in its colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59408. Operative Date and Violations of Chapter.

(a) The regulations in this chapter shall become operative on August 15, 1985, provided that a district governing board which wishes to implement these regulations earlier may do so.

(b) The governing board of a district which prescribes required instructional and other materials in violation of this chapter shall be deemed to have established a student fee not expressly established by law.

NOTE: Authority cited: Sections 66700, 70901 and 72249, Education Code. Reference: Sections 70901, 70902 and 72249, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59410. Withholding Grades, Transcripts, etc., for Nonrepayment of Financial Obligations.

The governing board of a community college district may provide by appropriate rules and regulations that grades, transcripts, diplomas and registration privileges, or any combination thereof, shall be withheld from any student or former student who has been provided with written notice that he or she has failed to pay a proper financial obligation due to the district or a college. Any item or items withheld shall be released when the student satisfactorily meets the financial obligation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Chapter 11. Regulations of the Chancellor

Subchapter 1. Standards for the Determination of Proportional Level of Service for Adult Noncredit Programs for Substantially Handicapped Persons

§ 59500. Purpose.

NOTE: Authority cited: Section 84730, Education Code. Reference: Section 84730, Education Code.

HISTORY

1. New Chapter 1 (Sections 59500–59503) filed 10–3–80; effective thirtieth day thereafter (Register 80, No. 40).
2. Repealer filed 3–29–88; operative 4–28–88 (Register 88, No. 16).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.

Symbol	*Definition*
	Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following:
	"Military withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990, and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 72285 and 76000, Education Code.

HISTORY

1. ndment of sections submitted to OAL for printing only pursuant to Gov- ent Code section 11343.8 (Register 91, No. 23).
2. Amendment of subsection (c) filed 5-20-91 and submitted to OAL on 5-24-91 for printing only pursuant to Education Code section 10901.5; operative 6-19-91 (Register 91, No. 31).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timeliness established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

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§ 55765

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the following point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open–entry, open–exit" course is assigned an "IP" at the end of an attendance period and does not re–enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning

of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error (Register 91, No. 43).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certificated employment records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

(b) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

(c) Grades awarded for courses repeated under the provisions of this section shall not be counted in calculating a student's grade point average.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55800.5. Minimum Credit Hours for Graduation from Two-Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1983).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

(d) The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55803. Associate in Science Degree (Applicable Until July 1, 1983).

The governing board of a community college district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall include a major of at least 18 semester hours in the fields of engineering, physical and biological sciences, or occupational curriculum.

The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open–entry, open–exit" course is assigned an "IP" at the end of an attendance period and does not re–enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy. Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following: "Military withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal

symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of subsection (c) filed 5-20-91 and submitted to OAL on 5-24-91 for printing only pursuant to Education Code section 10901.5; operative 6-19-91 (Register 91, No. 31).
3. Editorial correction of printing error in NOTE (Register 91, No. 43).
4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).

§ 55759. Notification of Probation and Dismissal.

F ...ommunity college shall make reasonable efforts to notify a student ...oject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismi... policies and procedures shall be published in the college catalog.

N... ...thority cited: Sections 66700 and 70901, Education Code. Reference: Sec... 70901 and 70902, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error (Register 91, No. 43).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the gra... be awarded each student in accordance with section 55758 of this ch... The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repeti... courses for which substandard work has been recorded. For pur... course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

(b) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

(c) Grades awarded for courses repeated under the provisions of this section shall not be counted in calculating a student's grade point average.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

(3) make reasonable efforts to ensure that all nonexempt students who [illegible]rolled in pre-collegiate basic skills courses participate in counseling/advisement; and

(4) make available to all students, as defined in section 55502(i), advisement or counseling on general academic requirements and the selection of specific courses by counselors or appropriately trained instructor/advisors, and/or other appropriately trained staff working in consultation with counselors.

(b) Counseling by appropriately trained counselors or advisement by appropriately trained staff may also be made available in any other area the district deems appropriate, including but not limited to, the interpretation of assessment results and the development of a student's educational plan as required by section 55525.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55524. Assessment.

The Chancellor shall establish and update, at least annually, a list of ap[illegible]ed assessment instruments and guidelines for their use by community college districts. These guidelines shall identify modifications of an assessment instrument or the procedures for its use which may be made in order to provide special accommodations required by section 55522 without separate approval by the Chancellor. Such guidelines shall also describe the procedure by which districts may seek to have assessment instruments approved and added to the list. The Chancellor shall ensure that all assessment instruments included on the list minimize or eliminate cultural or linguistic bias, are normed on the appropriate populations, y[illegible]valid and reliable information, identify the learning needs of stu[illegible]make efficient use of student and staff time, and are otherwise consistent with the educational and psychological testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78213, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55525. Student Educational Plan.

(a) Each community college district shall establish a process for assisting students to select a specific educational goal within a reasonable time after admission as required by section 55530 (d). This shall include, but not be limited to, the provision of counseling as required by section 55523(a)(2).

(b) Once a student has selected a specific educational goal, the district shall afford the student the opportunity to develop a student educational plan describing the responsibilities of the student, the requirements he or she must meet, and the courses, programs, and services required to achieve the stated goal.

(c) The student educational plan developed pursuant to subsection (b) shall be recorded in written or electronic form. The plan, and its implementation shall be reviewed as necessary to ensure that it continues to accurately reflect the needs and goals of the student.

(d) If a student believes the district has failed to make good faith efforts to develop a plan, has failed to provide services specified in the student educational plan, or has otherwise violated the requirements of this sec[illegible]he student may file a complaint pursuant to section 55534 (c).

Authority cited: Sections 66700 and 70901, Education Code. Reference: Se[illegible]n 78212, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55526. Student Follow-up.

Each community college district shall establish a student follow-up process to assist the student in achieving his/her educational goal. The follow-up system shall ensure that the academic progress of each student is regularly monitored to detect early signs of academic difficulty and students shall be provided with advice or referral to specialized services or curriculum offerings where necessary. Districts shall also identify and refer to counseling or advisement, as appropriate pursuant to section 55523(a), any students who have not declared a specific educational goal as required by section 55530, who are enrolled in pre-collegiate basic skills courses, or who have been placed on probation.

NOTE: Authority cited: Sections 66700 and 70901, Educational Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 4. Appeals, Waivers, Student Rights and Responsibilities

§ 55530. Student Rights and Responsibilities.

(a) Nothing in this chapter shall be construed to interfere with the right of a student, if admitted to a community college in accord with district admission policies adopted pursuant to Education Code Sections 76000, et seq., from enrolling in any course for which he or she can meet necessary and valid prerequisites, if any, which have been established pursuant to the requirements of Section 58106 of Division 9 of this Part.

(b) Community college districts shall take steps to ensure that information, in written form, is available to all students during or prior to enrollment (e.g., during orientation) and is included in class schedules, catalogs or other appropriate publications, describing their rights and responsibilities under this chapter.

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to avoid additional testing by submitting scores on recently taken tests which correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission, declare a specific educational goal within a reasonable period after admission, participate in counseling or advisement pursuant to Section 55523(a)(1), (2) and (3), diligently attend class and complete assigned coursework, and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of Chapter 9 (commencing with Section 55750) of Division 6 of this Part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree-applicable credit coursework, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to Section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to Section 55525. If a student fails to fulfill the responsibilities listed in this subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring

his/her specific educational goal, or fails to abide by the terms of his/her student educational plan, the district may, subject to the requirements of ...apter, suspend or terminate the provision of services authorized in ...on 55520; provided however, that nothing in this section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of Chapter 6 (commencing with Section 54600) of Division 5 of this Part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 76000, 76001, 76001.5 and 78212, Education Code.

HISTORY

1. Amendment filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (b) filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under sec... 5510 and the number of students so exempted shall be reported, by ca... ry, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criteri... exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

N... Authority cited: Sections 66700, 70901, and 78215, Education Code. Ref... Section 78215, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Where students are required by a community college district to meet prerequisites under section 58106(b)(2) or (b)(3), a student may object to such requirement on the grounds that the necessary course is not available. The district shall promptly (within 5 working days) determine whether, the required course was available and if not, the district shall waive the prerequisite for that term.

(b) An allegation that a community college district has violated the provisions of subsection (f) of section 55521 or has established a discriminatory prerequisite subject to challenge under subsection (d)(3) of section 58106 shall be considered a complaint of unlawful discrimination and shall be filed, investigated and resolved pursuant to chapter 5 (commencing with section 59300) of Division 10 of this part.

(c) Each community college district shall establish written procedures by which students may challenge any other alleged violation of the provisions of this chapter or of section 58106. Districts shall investigate and attempt to resolve any such complaints. Such complaint procedures may, by action of the governing board, be consolidated with existing student grievance procedures. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under section 55512(c).

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135-11139.5, Government Code; Sections 78211, and 78213, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) Vocational education contract means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled

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work, salary and other compensation, work to be performed, and employment classification; and,

(3) The district compensates the person according to an adopted salary or wage schedule which complies with the provisions of Article 8 (commencing with Section 87801), Chapter 3, Part 51 of the Education Code.

(b) For the purposes of complying with the requirements of this section, a district may also contract for instruction to be provided by a public or private agency. Such contracts shall specify that the district has the primary right to control and direct the activities of the person or persons furnished by the public or private agency during the term of the contract. In addition, the district shall enter into a written contract with each person furnished by the public or private agency; and said contracts shall meet the requirements of subsection (a)(1) and (2) of this section. In this manner an individual employed will continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

NOTE: Authority cited: Sections 66700, 70901 and 84500, Education Code. Reference: Sections 70901, 84500 and 87801, Education Code.

HISTORY

1. Amendment of subsections (a) and (a)(3) and NOTE filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 58060. Valid Employment Qualifications.

For the purposes of Sections 58051 and 58056, the employee is deemed authorized to perform the services because he or she is employed pursuant to a valid, unrevoked credential issued by the Board of Governors or pursuant to minimum qualifications adopted by the Board of Governors or equivalencies pursuant to Section 53430.

(a) If the person serves pursuant to a credential,

(1) It must authorize the holder to provide instruction in the particular subject matter or matters; and

(2) It must authorize the holder to provide that instruction during the period in which the holder is providing it.

(b) If the person serves pursuant to minimum qualifications adopted by the Board of Governors or equivalencies, the qualifications or equivalencies must be related to the asignment and effective during the period of instruction for which attendance is being claimed.

(c) For purposes of this section, an employee is deemed authorized to perform the services if he or she is employed as a faculty intern.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 84500 and 87487, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

Subchapter 2. Limitations on State Aid

Article 1. Open Courses

§ 58100. Open Enrollment.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Section 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58106. Prerequisites and Other Limitations On Enrollment.

(a) In order to be claimed for purposes of State apportionment, all courses shall be open to enrollment by any student who has been admitted to the college, except that students may be required to meet prerequisites established pursuant to this section. In addition, a community college district may also limit enrollment in a course based on health and safety considerations, facility limitations, faculty workload, the availability of qualified instructors, funding limitations, the constraints of regional planning, or legal requirements imposed by statute, regulations or contracts. The district governing board shall adopt policies identifying any such requirements and establishing fair and equitable procedures for determining who may enroll in affected courses. Such procedures may:

(1) limit enrollment on a "first come first served" basis or utilize other nonevaluative selection techniques to determine who may enroll; or

(2) limit enrollment to those students capable of safely performing required tasks as measured by relevant skill prerequisites established pursuant to subsection (b)(3) of this section.

(b) After review pursuant to Sections 53200–53203, and 55002 of this Part, a district may, subject to the conditions set forth in subdivision (c), require a student to meet any of the following types of prerequisites as a condition for enrollment in a course:

(1) It is permissible to require, as a prerequisite, the completion of any course where understanding or technical performance taught in that course is necessary for success in later courses.

(2) As used in this section, the term "prerequisite" also includes "corequisites" which require a student to concurrently enroll in one course as a condition of enrollment in another course. A student may be required to concurrently enroll in a corequisite only when the college has conducted a comprehensive assessment of the student using multiple measures and the objectives of the courses are clearly complementary, the interrelation of the units of instruction is evident, and completion of the corequisite is necessary for success in the related course. In addition, community college districts shall ensure that corequisite courses are available at the college in sufficient numbers to accommodate all students who are required to take them. If this is not the case, the corequisite shall be waived pursuant to Section 55534(a) of this Division.

(3) Prerequisites may be defined in terms of skills necessary to success in a particular course or program. This includes, but is not limited to, skill competencies in reading, written expression, and mathematics established pursuant to Section 55806 of this Division. The determination of whether a student possesses the required skills shall be based on a comprehensive assessment using multiple measures and any assessment instruments relied upon shall be selected and used in accordance with the provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division. Community college districts shall ensure that pre–collegiate basic skills courses designed to teach required skills are available to accommodate students required to meet the associated skill prerequisites. Any student obtaining a satisfactory grade in such a pre–collegiate basic skills course shall be deemed to meet the associated skill prerequisite.

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History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of this Division."

(b) The statement of policy adopted by the board pursuant to Subsection (a) of this Section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance* is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

* The reference to average daily attendance (ADA) rather than full-time equivalent student (FTES) is being retained in this Section to accommodate prior year recalculations. Title 5, Section 58782, provides the transition from ADA to FTES.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002 of this Division;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003 of this Division;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004 of this Division;

(d) ensure that a program of recruitment is carried out as required by Section 53021 of this Division; and

(e) ensure that screening and selection procedures are developed and utilized in accordance with Section 53024 of this Division;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) of this Division.

Note: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

History
1. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

be resolved in a timely manner and, if the challenge is upheld, the student shall be permitted to enroll in the course or program in question. Grounds for challenge are:

(1) The prerequisite or corequisite has not been established in accordance with the district's process for establishing prerequisites and corequisites;

(2) The prerequisite or corequisite is in violation of this Article;

(3) The prerequisite or corequisite is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(4) The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite;

(5) The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available; and

(6) Such other grounds for challenge as may be established by the district governing board.

(g) In the case of a challenge under Subsection (f)(3) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

(h) District policies adopted pursuant to this section shall be submitted to the Chancellor as part of the district's matriculation plan pursuant to Section 55510 of Subchapter 6 of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

55202. Additional Rules.

The following additional rules apply to the establishment of prerequisites and corequisites:

(a) Prerequisites, corequisites, and advisories on recommended preparation must be identified in college publications available to students as well as the course outline of any course for which they are established.

(b) Prerequisites establishing communication or computational skill requirements may not be established across the entire curriculum unless established on a course–by–course basis.

(c) The determination of whether a student meets a prerequisite shall be based on successful completion of an appropriate course or on an assessment using multiple measures. Any assessment instrument used shall be selected and used in accordance with the provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

(d) If a prerequisite requires precollegiate skills in reading, written expression, or mathematics, the governing board of a district shall ensure that precollegiate basic skills courses designed to teach the required skills are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course.

(e) Whenever a corequisite course is established, sufficient sections shall be offered to reasonably accommodate all students who are required to take the corequisite. A Corequisite shall be waived as to any student for whom space in the corequisite course is not available.

(f) No exit test may be required to satisfy a prerequisite or corequisite unless it is incorporated into the grading for the prerequisite or corequisite course.

(g) The determination of whether a student meets a prerequisite shall be made prior to his or her enrollment in the course requiring the prerequisite, provided, however, that enrollment may be permitted pending verification that the student has met the prerequisite or corequisite. If the verification shows that the student has failed to meet the prerequisite, the student may be involuntarily dropped from the course if the applicable enrollment fees are promptly refunded. Otherwise a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or to the student code of conduct.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

Article 3. Bilingual Crosscultural Programs and Courses

§ 55225. Annual Articulation Agreement Plans.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 52150–52158, Education Code.

HISTORY

1. New article 3 (section 55225) filed 6–8–83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Subchapter 2. Programs and Classes Outside of District

NOTE: Authority cited: Section 72012, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 55200–55204) filed 12–21–81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Register 77, No. 45.
2. Amendment of subchapter 2 heading filed 5–15–93; operative 6–14–93 (Register 93, No. 25).

§ 55230. Classes, Property and Buildings Outside of District.

The governing board of a community college district may conduct community college classes and acquire the necessary property and erect the necessary buildings therefor, outside of the boundaries of the district if all of the following conditions exist:

(a) The proposed location is within the state.

(b) the activities, trades, businesses, or work to be carried on at the proposed location is such as to offer educational opportunities to students who are residents of the district in the subject or all of the subjects proposed to be taught at that location, and facilities for such instruction are not available either at the location of the principal buildings of the community college, or elsewhere within the district.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55231. Establishment of Classes Outside of District.

The governing board of a community college district may establish courses outside the district primarily for students who are nonresidents of the district, providing the following conditions are fulfilled:

(a) The governing board of a high school district or another community college district, requests that community college classes be offered in the high school district or community college district.

(b) The community college district annually reports to the Board of Governors, in advance of their offering, on the classes to be established or continued pursuant to this authorization.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

(commencing with section 56200) of division 7 of this part, to provide specialized matriculation services and modified or alternative matriculation services to their respective student populations. Notwithstanding this authorization, participation in the EOPS and DSPS programs is voluntary and no student may be denied necessary accommodations in the assessment process because he or she chooses not to use specialized matriculation services provided by these programs. Modified or alternative matriculation services for limited or non–English–speaking students may be provided in English as a Second Language programs.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700, 70901, and 84500.1, Education Code. Reference: Section 11135, Government Code; Sections 72011, 78211, 78213, and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55523. Counseling and Advisement.

(a) If not already required to do so by the minimum standards for counseling services set forth in section 51018 of division 1 of this Part, each community college district shall do all of the following:

(1) make reasonable efforts to ensure that all nonexempt students who are on probation participate in counseling as provided in section 55759 of this Part;

(2) make reasonable efforts to ensure that all nonexempt students who have not declared a specific educational goal participate in counseling to assist them in the process of selecting a specified educational goal pursuant to section 55525;

(3) make reasonable efforts to ensure that all nonexempt students who are enrolled in pre–collegiate basic skills courses participate in counseling or advisement; and

(4) make available to all students, as defined in section 55502(i), advisement or counseling on general academic requirements and the selection of specific courses by counselors or appropriately trained instructor/advisors, and/or other appropriately trained staff working in consultation with counselors.

(b) Counseling by appropriately trained counselors or advisement by appropriately trained staff may also be made available in any other area the district deems appropriate, including but not limited to, the interpretation of assessment results and the development of a student's educational plan as required by section 55525.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55524. Assessment.

The Chancellor shall establish and update, at least annually, a list of approved assessment instruments and guidelines for their use by community college districts. These guidelines shall identify modifications of an assessment instrument or the procedures for its use which may be made in order to provide special accommodations required by section 55522 without separate approval by the Chancellor. Such guidelines shall also describe the procedure by which districts may seek to have assessment instruments approved and added to the list. The Chancellor shall ensure that all assessment instruments included on the list minimize or eliminate cultural or linguistic bias, are normed on the appropriate populations, yield valid and reliable information, identify the learning needs of students, make efficient use of student and staff time, and are otherwise consistent with the educational and psychological testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55525. Student Educational Plan.

(a) Each community college district shall establish a process for assisting students to select a specific educational goal within a reasonable time after admission as required by section 55530 (d). This shall include, but not be limited to, the provision of counseling as required by section 55523(a)(2).

(b) Once a student has selected a specific educational goal, the district shall afford the student the opportunity to develop a student educational plan describing the responsibilities of the student, the requirements he or she must meet, and the courses, programs, and services required to achieve the stated goal.

(c) The student educational plan developed pursuant to subsection (b) shall be recorded in written or electronic form. The plan, and its implementation shall be reviewed as necessary to ensure that it continues to accurately reflect the needs and goals of the student.

(d) If a student believes the district has failed to make good faith efforts to develop a plan, has failed to provide services specified in the student educational plan, or has otherwise violated the requirements of this section, the student may file a complaint pursuant to section 55534 (c).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55526. Student Follow–up.

Each community college district shall establish a student follow–up process to assist the student in achieving his/her educational goal. The follow–up system shall ensure that the academic progress of each student is regularly monitored to detect early signs of academic difficulty and students shall be provided with advice or referral to specialized services or curriculum offerings where necessary. Districts shall also identify and refer to counseling or advisement, as appropriate pursuant to section 55523(a), any students who have not declared a specific educational goal as required by section 55530, who are enrolled in pre–collegiate basic skills courses, or who have been placed on probation.

NOTE: Authority cited: Sections 66700 and 70901, Educational Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 4. Appeals, Waivers, Student Rights and Responsibilities

§ 55530. Student Rights and Responsibilities.

(a) Nothing in this Subchapter shall be construed to interfere with the right of a student admitted to a community college in accord with district admission policies adopted pursuant to Education Code Section 76000, et seq. to enroll in any course for which he or she can meet necessary and appropriate prerequisites, if any, which have been established pursuant to the requirements of Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of this Division.

(b) Community college districts shall take steps to ensure that information is available in written form to all students during or prior to enrollment (e.g., during orientation) and is included in class schedules, catalogs or other appropriate publications, describing their rights and responsibilities under this Chapter.

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to

avoid additional testing by submitting scores on recently taken tests that correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission; declare a specific educational goal within a reasonable period after admission; participate in counseling or advisement pursuant to Section 55523(a)(1), (2), and (3); diligently attend class and complete assigned coursework; and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of Chapter 9 (commencing with Section 55750) of Division 6 of this Part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this Subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree-applicable credit course work, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to Section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to Section 55525. If a student fails to fulfill the responsibilities listed in this Subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his or her specific educational goal, or fails to abide by the terms of his or her student educational plan, the district may, subject to the requirements of this Chapter, suspend or terminate the provision of services authorized in Section 55520, provided however, that nothing in this Section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of Chapter 5 (commencing with Section 54600) of Division 5 of this Part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 76000, 76001, 76001.5 and 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (b) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
3. Amendment of subsections (a), (b) and (d) filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Each community college district shall establish written procedures by which students may challenge any alleged violation of the provisions of this Subchapter. Districts shall investigate and attempt to resolve any such complaints in a timely manner. Such complaint procedures may be consolidated with existing student grievance procedures by action of the governing board. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under Section 55512(c).

(b) When a challenge contains an allegation that a community college district has violated the provisions of Subsection (f) of Section 55521, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135–11139.5, Government Code; Sections 78211 and 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) "Vocational education contract" means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) "The California State Plan for Vocational Education" means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94–482 and 95–40), part A, Vocational Education, or any subsequent federal legislation.

(c) "Contractor" as used in section 55602 means any private postsecondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300), and which has been in operation not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this Code.

(d) "Eligible costs" means all direct and indirect related instructional costs but does not include expenditures for capital outlay (6000 category in the California Community Colleges Budget and Accounting Manual).

Register 94-38

§ 51006
§ 55534
§ 59404
§ 59410

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51006. Open Courses.

The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to avoid additional testing by submitting scores on recently taken tests that correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission; declare a specific educational goal within a reasonable period after admission; participate in counseling or advisement pursuant to Section 55523(a)(1), (2), and (3); diligently attend class and complete assigned coursework; and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of Chapter 9 (commencing with Section 55750) of Division 6 of this Part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this Subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree-applicable credit course work, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to Section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to Section 55525. If a student fails to fulfill the responsibilities listed in this Subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his or her specific educational goal, or fails to abide by the terms of his or her student educational plan, the district may, subject to the requirements of this Chapter, suspend or terminate the provision of services authorized in Section 55520, provided however, that nothing in this Section shall be construed to permit a district to suspend or terminate any service which a student is otherwise entitled under any other provision of law.

Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of Chapter 6 (commencing with Section 54600) of Division 5 of this Part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 76000, 76001, 76001.5 and 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (b) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
3. Amendment of subsections (a), (b) and (d) filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Each community college district shall establish written procedures by which students may challenge any alleged violation of the provisions of this Subchapter. Districts shall investigate and attempt to resolve any such complaints in a timely manner. Such complaint procedures may be consolidated with existing student grievance procedures by action of the governing board. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under Section 55512(c).

(b) When a challenge contains an allegation that a community college district has violated the provisions of Section 55521(a)(6), the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135–11139.5, Government Code; Sections 78211 and 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment of subsection (b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) "Vocational education contract" means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) "The California State Plan for Vocational Education" means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94–482 and 95–40), part A, Vocational Education, or any subsequent federal legislation.

(c) "Contractor" as used in section 55602 means any private postsecondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300), and which has been in operation

Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.

(b) Notify the district and the complainant that there is no reasonable cause to believe the district has violated the provisions of this chapter.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59358. Hearing.

If the Chancellor finds the district has violated the provisions of this chapter, and if the district does not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant to Chapter 5 (commencing with Section 11500) of Part I, Division 3, Title 2 of the Government Code, to determine whether the violation did occur.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59360. Enforcement.

(a) Upon a determination that a district has violated the provisions of this chapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including:

(1) Withhold all or part of the district's state support;

(2) Probationary eligibility for future state support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state funding to a district under this chapter shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59362. Judicial Review.

A decision by the Chancellor pursuant to Section 59360 is subject to judicial review by the district, as provided by Section 1094.5 of the Code of Civil Procedure.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, and 11138, Government Code.

Subchapter 6. Waiver of Part-Time Instructor Limit

NOTE: Authority cited: Sections 71020 and 87613, Education Code. Reference: Section 87613, Education Code.

HISTORY

1. New Chapter 6 (Sections 59380–59388, not consecutive) filed 6–1–82; effective thirtieth day thereafter (Register 82, No. 23).
2. Repealer of Chapter 6 (Sections 59380–59388, not consecutive) filed 3–7–85; effective thirtieth day thereafter (Register 85, No. 10).

Subchapter 7. Instructional and Other Materials

§ 59400. Required Instructional and Other Materials.

(a) The governing board of a district may, consistent with the provisions of this Subchapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.

(b) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. New chapter 7 (sections 59400–59408, not consecutive) filed 5–16–85; effective thirtieth day thereafter (Register 85, No. 20).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment of subsection (a) and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 59402. Definitions.

For the purposes of this Subchapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost and:

(1) the material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or

(2) the material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of opening statement, subsections (a) and (c)–(c)(2) and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course shall adopt policies or regulations, consistent with the provisions of this Subchapter, which specify the conditions under which such materials will be required.

(b) The policies or regulations specified in Subsection (a) shall be adopted no later than January 1, 1986, forwarded to the Chancellor's Office upon adoption, and thereafter published in each college catalog developed after the date of adoption.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of section and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 59406. Report to Chancellor.

The governing board of a community college district which prescribes required instructional and other materials for its courses shall respond to periodic surveys or inquiries of the Chancellor on the subject.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of Note filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 59406.5. Reports Re Instructional Materials Used.

Each district board shall make reports, whenever required, directly to the Board of Governors or Chancellor's Office, concerning the instructional materials used in its colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 59408. Operative Date and Violations of Subchapter.

(a) The regulations in this Subchapter shall become operative on August 15, 1985, provided that a district governing board which wishes to implement these regulations earlier may do so.

(b) The governing board of a district which prescribes required instructional and other materials in violation of this Subchapter shall be deemed to have established a student fee not expressly established by law.

Note: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of section heading, text and Note filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 7.5. Student Financial Obligations

§ 59410. Withholding Grades, Transcripts, etc., for Nonrepayment of Financial Obligations.

The governing board of a community college district may provide by appropriate rules and regulations that grades, transcripts, diplomas and registration privileges, or any combination thereof, shall be withheld from any student or former student who has been provided with written notice that he or she has failed to pay a proper financial obligation due to the district or a college. Any item or items withheld shall be released when the student satisfactorily meets the financial obligation.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. New subchapter 7.5 heading filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 8. District Reorganization

§ 59420. Newly Formed District.

A community college district is a newly formed district up to the close of the fiscal year in which its formation became effective for all purposes.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. New subchapter 8 and section filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 59422. Use of Bond Proceeds.

When the territory of a district is reorganized, any funds derived from the sale of the bonds issued by the former district shall be used for the acquisition, construction, or improvement of college property only in the territory which comprised the former district or to discharge the bonded indebtedness of the former district, except that if the bonded indebtedness is assumed by the new district, the funds may be used in any area of the new district for the purposes for which the bonds were originally voted.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Renumbering and amendment of former section 53530 to section 59422 filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 59424. Territory of District Becoming Part of Two or More Districts; Disposition of Records.

If all the territory of any reorganized district becomes part of two or more districts, and the inclusion in the two or more districts of the several portions of territory comprising the whole of the original district is effective for all purposes on the same date, the records of the original district shall be disposed of as follows:

(a) All records of the original district which are required by law to be kept on file shall be deposited with the governing board of the district which, after the reorganization has become effective for all purposes, has located within its boundaries the former office of the superintendent of the original district.

(b) Records of employees shall be transferred to the district thereafter employing the personnel or thereafter maintaining the last place of employment.

(c) Records of students shall be transferred to the district which, after the date on which the reorganization becomes effective for all purposes, maintains the college in which a student was last enrolled.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Renumbering and amendment of former section 53540 to section 59424 filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

Subchapter 9. Minority, Women, and Disabled Veteran Business Enterprise Participation Goals for the California Community Colleges

§ 59500. Scope of Subchapter.

(a) The California Community Colleges shall provide opportunities for minority, women, and disabled veteran business enterprise participation in the award of district contracts consistent with this Subchapter. The statewide goal for such participation is not less than 15 percent minority business enterprise participation, not less than 5 percent women business enterprise participation, and not less than 3 percent disabled veteran business enterprise participation of the dollar amount expended by all districts each year for construction, professional services, materials, supplies, equipment, alteration, repair, or improvement. However, each district shall have flexibility to determine whether or not to seek participation by minority, women, and disabled veteran business enterprises for any given contract.

(b) Nothing in this Subchapter authorizes any district to discriminate in awarding contracts on the basis of ethnic group identification, ancestry, religion, age, sex, race, color, or physical or mental disability.

Note: Authority cited: Sections 66700, 70901 and 71028, Education Code. Reference: Section 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code.

History

1. New subchapter 9 and section filed 12-29-93; operative 1-28-94. Submitted to OAL for printing only (Register 94, No. 6).

§ 59502. Definitions.

The definitions set forth in Subsections (d), (e), and (f) of Section 10115.1 of the Public Contract Code, as they may be amended from time to time, apply to this Subchapter and are incorporated herein as though fully set forth in addition, for purposes of this Subchapter:

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

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(d) Athletic insurance for the intercollegiate athletic team;

(e) Medical supplies for athletics;

(f) Physical examinations for intercollegiate athletics;

(g) Ambulance services and salaries of health professionals for athletic events;

(h) Any deductible expenses for accident claims filed for athletic team members;

(i) Sabbatical expenses for health service personnel.

Nothing within these provisions should deny a student participating in athletic programs a service which is properly supported by student health fees.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 72246, Education Code.

HISTORY

1. New section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18). For prior history, see Register 79, No. 28.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 54708. Fundable Expenses.

Student health fees may be expended for the following.

(a) Cost of instructional materials for health education;

(b) Consultants directly involved in student health service programs;

(c) Rental and lease of space for the conduct of student health programs and services;

(d) Cost of equipment and medical supplies;

(e) Salaries of student health personnel (including fringe benefits);

(f) Student health and/or hospitalization insurance.

(g) Travel with student health services funds is limited to student health personnel and only for student health related activities.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 72246, Education Code.

HISTORY

1. New section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18). For prior history, see Register 79, No. 28.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 54710. Emergency Information.

For the protection of a student's health and welfare the governing board of a community college district may require the parent or legal guardian of a minor to keep current at the minor's school of attendance, emergency information including the home address and telephone number, business address, and telephone number of the parents or guardian, and the name, address, and telephone number of a relative or friend who is authorized to care for the student in any emergency situation if the parent or legal guardian cannot be reached.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

Subchapter 8. Student Organization

Article 1. Student Representation Fee

§ 54801. Calling of Election.

The governing body of each student body association authorized by Education Code section 76060 shall establish procedures for elections conducted for the purpose of collecting a student representation fee, and call an election for such purpose. The election shall, at a minimum, meet the following criteria:

(a) The student body association on each campus shall maintain in its office written information regarding election procedures. Such information shall be made available to the public upon request.

(b) Adequate notice of the election shall be given by the student body association. Adequate notice is deemed to be at least ten school days prior to the election date.

(c) Each election shall be held on a day which counts toward the 175 day requirement as defined in section 58120 of this part. In instances where an election is conducted for more than one day, those days shall be consecutive and shall be limited to a maximum of five days.

NOTE: Authority cited: Section 66700, 70901, and 76060.5, Education Code. Reference: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 54803. Termination of Fee.

(a) Any student representation fee that has been instituted pursuant to the procedures enumerated in section 54801 may be terminated by a majority of the students voting in an election called in one of the following two manners:

(1) By placing the issue on the ballot for the next regular associated student body election. The issue shall be placed on the ballot upon receipt of a petition indicating an interest in the termination of the representation fee signed by a majority of the number of students who voted in the election establishing the fee.

(2) Pursuant to procedures pre–established by the student body association for calling such an election. Such procedures shall be available for public inspection during regular business hours.

(b) The elections shall be conducted in accordance with the procedures established pursuant to section 54801.

NOTE: Authority cited: Section 66700, 70901 and 76060.5, Education Code. Reference: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 54805. Collection of the Fee.

District governing boards shall include in the materials given to each student at registration, information pertaining to the representation fee. The form used by a college for the purpose of collecting the fee shall contain, at a minimum, the following:

(a) a statement indicating that the money collected pursuant to this article shall be expended to provide support for students or representatives who may be stating their positions and viewpoints before city, county, and district government, and before offices and agencies of the state and federal government;

(b) the amount of the fee;

(c) a statement informing the students of their right to refuse to pay the fee for religious, political, moral or financial reasons.

NOTE: Authority cited: Sections 66700, 70901 and 76060.5, Education Code. References: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

dards of attendance and achievement that the committee deems appropriate for the enrolled students. In order to be eligible for state apportionment, such courses are limited to the categories of instruction listed in Education Code Section 84711 and must be approved by the Chancellor's Office as noted in Title 5, Section 55150.

(2) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the scope, objectives, contents, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met.

(3) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

(d) Community Services Class. A community services class is a class that meets the following minimum requirements:

(1) is approved by the local district governing board;

(2) is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein;

(3) provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students;

(4) is conducted in accordance with a predetermined strategy or plan;

(5) is open to all members of the community; and

(6) may not be claimed for apportionment purposes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of subsection (a) filed 12–28–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 5–18–84; effective thirtieth day thereafter (Register 84, No. 20).
3. Repealer and new section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).
6. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
7. Editorial correction of HISTORY 4 (Register 95, No. 20).

§ 55002.5. Credit Hour; Allowance for Shorter Term.

One credit hour of community college work is approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks. Where a term is more or less than 16 weeks, more or less than one credit hour shall be allowed in the same ratio that the length of the term is to 16 weeks.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55004. Social Science Courses.

The course of instruction in social sciences shall include a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States of America.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four–year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit–no credit, and if so, which provision of subsection (a) of section 51302 is applicable.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55006. Records and Reports.

Authorities of each community college maintaining credit and noncredit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55008. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error in second paragraph (Register 91, No. 43).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
4. Editorial correction of HISTORY 1 (Register 95, No. 20).

Article 2. Approval of Courses, Programs and Classes

§ 55100. Course Approval.

Except as provided in subsection (b) and section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not approval by the Chancellor is required, the district shall designate the appropriate classification of the course or activity in accordance with section 55001.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

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§ 55728. Flexible Calendar Attendance Reporting.

(a) On forms provided by the Chancellor, districts with approved flexible calendar operations shall report at least the following:

(1) the total hours of classroom assignments (teaching time) which instructors specified in the district's approved plan were required to teach;

(2) of the total in Subsection (a)(1), the total faculty contact hours of instruction for which staff, student, and instructional improvement activities are being substituted. This total of faculty contact hours shall further be reported in terms of credit and noncredit faculty contact hours of instruction; and

(3) the number of faculty contact hours of instruction for which instruction during the designated days is being substituted. Such instruction during the designated days meeting the attendance accounting standards may be claimed for apportionment; and the faculty contact hours shall not be eligible for adjustment pursuant to Section 55729.

(b) Districts with approved flexible calendar operations shall also report such additional data as deemed necessary by the Chancellor including any data necessary to compute the FTES adjustment specified in Section 55729.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. New section filed 11-10-82; effective thirtieth day thereafter (Register 82, No. 46).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 7).
3. Amendment of subsections (a)(1), (a)(3), (b) and NOTE filed 5-15-93; operative 6-4-93 (Register 93, No. 25).
4. Amendment of subsections (a)(2)-(b) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55729. Full-time Equivalent Student (FTES) Units; Adjustments to Reflect Activities; Computation by Multiplier Factor.

(a) The Chancellor's Office shall adjust the actual units of full-time equivalent student of a district operating under a plan approved in accordance with Sections 55720-32 to reflect the conduct of staff, student, and instructional improvement activities in lieu of scheduled instruction during flexible time. The adjusted units of full-time equivalent student shall be computed by multiplying the actual units of full-time equivalent student in the academic year, exclusive of any intersessions, computed pursuant to Section 58003.1, by a factor which does not change the full-time equivalent student which would have otherwise been generated if the time for the improvement activities had not been permitted and scheduled instruction had instead taken place.

(b) For courses other than those described in Subsection (b) of Section 58003.1, the multiplier factor shall equal the sum of the following:

(1) 1.0; and

(2) the total of all the actual hours of flexible time of all instructors pursuant to Section 55720 in the fiscal year, divided by the total of all the actual hours of classroom instruction of all instructors in the academic year, exclusive of any intersessions.

(c) For those courses described in Subsection (b) of Section 58003.1, this multiplier factor shall equal the maximum term length multiplier set forth in that Subsection.

(d) The Chancellor shall also withhold the appropriate amount of state aid whenever there is a final audit finding that an instructor did not spend at least as much time performing staff, student, and instructional improvement activities as the amount of time he or she was released from classroom instruction.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 5-15-93; operative 6-4-93 (Register 93, No. 25).
2. Amendment of section heading and text filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55730. Ongoing Responsibilities of Districts.

Any district conducting an approved flexible calendar shall do all of the following to ensure effective use of resources during flex days:

(a) conduct and annually update a survey of the most critical staff, student, and instructional improvement needs in the district;

(b) develop and carry out a plan of activities to address the critical needs;

(c) maintain records on the description, type and number of activities scheduled and the number of district employees and students participating in these activities;

(d) evaluate annually the effectiveness of conducted activities and update the plan to reflect needed changes;

(e) appoint and hold regular meetings of an advisory committee composed of faculty, students, administrators and other interested persons to make recommendations on staff, student, and instructional improvement activities; and

(f) provide, upon request of the Chancellor, copies of documents and information specified in Subsections (a) through (d), inclusive.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 7).

§ 55732. Ongoing Responsibilities of the Chancellor.

The Chancellor shall:

(a) Adjust state aid for districts with approved flexible calendar operations in accordance with the provisions of section 55729 of this Part;

(b) Periodically review documentation from selected districts to determine whether they are in compliance with the provisions of sections 55726, 55728, and 55730, and to determine whether they are conducting their flexible calendar operations in a manner consistent with the approved requests. Districts which are found to be out of compliance shall be notified and be given an opportunity to respond; and

(c) Terminate approval of any flexible calendar operation if it is found that the district has, without good cause:

(1) failed to conduct its flexible calendar operation in a manner consistent with its approved request;

(2) failed to carry out the responsibilities specified in section 55726; or

(3) failed to meet its ongoing responsibilities as specified in section 55730.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 7).
2. Amendment filed 5-15-93; operative 6-14-93 (Register 93, No. 25).

Subchapter 9. Standards of Scholarship

§ 55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by section 51002 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. New chapter 9 (sections 55750-55765) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with section 55758.

(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55752. Credit–No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit–no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit–no credit" or a letter grade.

(b) All units earned on a "credit–no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit–no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300–55352 of this part may be graded on a "credit–no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55753. Credit by Examination.

(a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been

enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 25). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community–based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college–level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college–level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college–level courses, request reinstatement to proceed with college–level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit–no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned.

Symbol	Definition
	The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open–entry, open–exit" course is assigned an "IP" at the end of an attendance period and does not re–enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy. Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following: "Military withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of subsection (c) filed 5–20–91 and submitted to OAL on 5–24–91 for printing only pursuant to Education Code section 10901.5; operative 6–19–91 (Register 91, No. 31).
3. Editorial correction of printing error in NOTE (Register 91, No. 43).
4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).
5. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55758.5. Grade Point Averaging.

(a) This section augments and should be read in conjunction with Section 55758 relating to academic record symbols and grade point average.

(b) In calculating students' degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–25–91; operative 11–24–91 (Register 92, No. 7).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning

of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

(b) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

(c) Grades awarded for courses repeated under the provisions of this section shall not be counted in calculating a student's grade point average.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of

grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55800.5. Minimum Credit Hours for Graduation from Two–Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1983).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

Register 95-29

§ 59404
§ 59410

HISTORY

1. New chapter 7 (sections 59400–59408, not consecutive) filed 5–16–85; effective thirtieth day thereafter (Register 85, No. 20).
2. ...ment filed 3–4–91 by Board of Governors of California Community ... with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Sub...tted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of subsection (a) and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59402. Definitions.

For the purposes of this Subchapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost and:

(1) the material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or

(2) the material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Amendment of opening statement, subsections (a) and (c)–(c)(2) and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Editorial correction of HISTORY 1 (Register 95, No. 29).

59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course shall adopt policies or regulations, consistent with the provisions of this subchapter, which specify the conditions under which such materials will be required.

(b) The policies or regulations specified in Subsection (a) shall be adopted no later than January 1, 1986, forwarded to the Chancellor's Office upon adoption, and thereafter published in each college catalog developed after the date of adoption.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Amendment of section and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59406. Report to Chancellor.

The governing board of a community college district which prescribes required instructional and other materials for its courses shall respond to periodic surveys or inquiries of the Chancellor on the subject.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59406.5. Reports Re Instructional Materials Used.

Each district board shall make reports, whenever required, directly to the Board of Governors or Chancellor's Office, concerning the instructional materials used in its colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59408. Operative Date and Violations of Subchapter.

(a) The regulations in this Subchapter shall become operative on August 15, 1985, provided that a district governing board which wishes to implement these regulations earlier may do so.

(b) The governing board of a district which prescribes required instructional and other materials in violation of this Subchapter shall be deemed to have established a student fee not expressly established by law.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of section heading, text and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

Subchapter 7.5. Student Financial Obligations

§ 59410. Withholding Grades, Transcripts, etc., for Nonrepayment of Financial Obligations.

The governing board of a community college district may provide by appropriate rules and regulations that grades, transcripts, diplomas and registration privileges, or any combination thereof, shall be withheld from any student or former student who has been provided with written notice that he or she has failed to pay a proper financial obligation due to the district or a college. Any item or items withheld shall be released when the student satisfactorily meets the financial obligation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. New subchapter 7.5 heading filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(e) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community–based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college–level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college–level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college–level courses, request reinstatement to proceed with college–level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit–no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average using only the following evaluative symbols, except as provided in subsection (b):

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board of a community college district may use "plus" and "minus" designations in combination with letter grades, except that the grade of C minus shall not be used. If pluses and minuses are used, the grade point value of a plus shall be computed by adding 0.3 to the value assigned to the letter grade with which it is combined, and the grade point value of a minus shall be computed by subtracting 0.3 from the value assigned to the letter grade with which it is combined, except that no grade point value shall be less than 0 or greater than 4.0.

(c) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) or subsections (a) and (b) (if pluses and minuses are used) in the catalog or catalogs of that community college district as a part of its grading practices.

(d) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	Definition
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open–entry, open–exit" course is assigned an "IP" at the end of an attendance period and does not re–enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy. Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following: "Military withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment of subsection (c) filed 5–20–91 and submitted to OAL on 5–24–91 for printing only pursuant to Education Code section 10901.5; operative 6–19–91 (Register 91, No. 31).
3. Editorial correction of printing error in NOTE (Register 91, No. 43).
4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).
5. Editorial correction of HISTORY 1 (Register 95, No. 22).
6. Amendment of subsection (a), new subsection (b), subsection relettering, amendment of newly designated subsection (c), and amendment of NOTE filed 1–12–98; operative 2–11–98. Submitted to OAL for printing only (Register 98, No. 3).

§ 55758.5. Grade Point Averaging.

(a) This section augments and should be read in conjunction with Section 55758 relating to academic record symbols and grade point average.

(b) In calculating students' degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–25–91; operative 11–24–91 (Register 92, No. 7).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

(c) The governing board of a district shall adopt and publish proce-s and conditions for dismissal and appeal of dismissal and request for tatement. Such procedures and conditions may establish standards ower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 56.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of divi- f this part. However, except as provided in subsection (c) of this s , no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community-based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second guage (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college-level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college-level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college-level courses, request reinstatement to proceed with college-level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to en he Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit-no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average using only the following evaluative symbols, except as provided in subsections (b) and (c):

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board of a community college district may use "plus" and "minus" designations in combination with letter grades, except that the grade of C minus shall not be used. If pluses and minuses are used, the grade point value of a plus shall be computed by adding 0.3 to the value assigned to the letter grade with which it is combined, and the grade point value of a minus shall be computed by subtracting 0.3 from the value assigned to the letter grade with which it is combined, except that no grade point value shall be less than 0 or greater than 4.0.

(c) Regardless of whether the governing board elects to use plus and minus grading, it may provide for the use of the "FW" grade symbol to indicate that a student has both ceased participating in a course some time after the last day to officially withdraw from the course without having achieved a final passing grade, and that the student has not received district authorization to withdraw from the course under extenuating circumstances. The "FW" symbol may not be used if a student has qualified for and been granted military withdrawal. If "FW" is used, its grade point value shall be zero (0).

(d) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) or subsections (a) and (b) (if pluses and minuses are used) in the catalog or catalogs of that community college district as a part of its grading practices. In the event the governing board chooses to use the "FW" described in subsection (c), it shall be included in the grading scale and point equivalencies published in the catalog.

(e) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in this Section other than a "W."

Symbol	*Definition*
	The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in Sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.
MW	Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following: "Military Withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s. In no case would a military withdrawal result in a student being assigned an "FW" grade.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

...endment of subsection (c) filed 5-20-91 and submitted to OAL on 5-24-91 ...printing only pursuant to Education Code section 70901.5; operative ...9-91 (Register 91, No. 31).

3. Editorial correction of printing error in NOTE (Register 91, No. 43).

4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).

5. Editorial correction of HISTORY 1 (Register 95, No. 22).

6. Amendment of subsection (a), new subsection (b), subsection relettering, amendment of newly designated subsection (c), and amendment of NOTE filed 1-12-98; operative 2-11-98. Submitted to OAL for printing only (Register 98, No. 3).

7. Amendment of subsection (a), new subsection (c), subsection relettering, and amendment of newly designated subsections (d) and (e) filed 12-8-2000; operative 1-7-2001. Submitted to OAL for printing only (Register 2000, No. 50).

§ 55758.5. Grade Point Averaging.

(a) This section augments and should be read in conjunction with Section 55758 relating to academic record symbols and grade point average.

(b) In calculating students' degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. ...section filed 10-25-91; operative 11-24-91 (Register 92, No. 7).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of printing error (Register 91, No. 43).

3. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section ...(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(e) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(f) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(g) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 22).

3. Repealer of subsection (d), subsection relettering, and amendment of NOTE filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded.

(b) Except as provided in Subsection (c), repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the gov-

(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55752. Credit–No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit–no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit–no credit" or a letter grade.

(b) All units earned on a "credit–no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit–no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300–55352 of this part may be graded on a "credit–no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55753. Credit by Examination.

(a) The governing board of each community college district shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this Subchapter.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The nature and content of the examination shall be determined solely by faculty in the discipline that normally teaches the course for which credit is to be granted in accordance with policies and procedures approved by the curriculum committee established pursuant to Section 55002. The faculty shall determine that the examination adequately measures mastery of the course content as set forth in the outline of record. The faculty may accept an examination conducted at a location other than the community college for this purpose.

(d) A separate examination shall be conducted for each course for which credit is to be granted. Credit may be awarded for prior experience or prior learning only in terms of individually identified courses for which examinations are conducted pursuant to this section.

(e) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(f) Grading shall be according to the regular grading scale approved by the governing board pursuant to Section 55758, except that students shall be offered a credit–no credit option if that option is ordinarily available for the course.

(g) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Amendment filed 1–4–2002; operative 7–1–2002. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2002, No. 8).

§ 55753.5. Articulation of High School Courses.

(a) For purposes of this section, the term "articulated high school course" means a high school course or courses that the faculty in the appropriate discipline, using policies and procedures approved by the curriculum committee established pursuant to Section 55002, have determined to be comparable to a specific community college course.

(b) The governing board of a community college district may adopt policies to permit articulated high school courses to be applied to community college requirements in accordance with this Section. Articulated high school courses may be accepted in lieu of comparable community college courses to partially satisfy:

(1) requirements for a certificate program, including the total number of units required for the certificate; or,

(2) the major requirements in a degree program.

(c) Articulated high school courses used to partially satisfy certificate or major requirements shall be clearly noted as such on the student's academic record. Notations of community college course credit shall be made only if community college courses are successfully completed or if credit is earned via credit by examination.

(d) Except through credit by examination, as defined in Section 55753, high school courses may not be used to satisfy:

(1) the requirement of Section 55806 that students complete at least 60 semester or 90 quarter units in order to receive an associate degree; or,

(2) any general education requirement for the associate degree established by the district.

(e) All community college district–high school articulation agreements shall be subject to the provisions of this Section. However, any student who, prior to the date this Section takes effect, has successfully completed a high school course articulated under the terms of a previous agreement shall be permitted to apply the credit so earned according to the terms of the previous agreement.

NOTE: Authority cited: Sections 66700, 70901 and 70902, Education Code. Reference: Sections 66700, 70901 and 70902, Education Code.

HISTORY

1. New section filed 1–4–2002; operative 7–1–2002. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2002, No. 8).

§ 55753.7. Advanced Placement Examinations.

The governing board of a community college district may adopt policies to grant credit for satisfactory completion of advanced placement examinations typically recognized by colleges and universities as measuring competencies comparable to those achieved in baccalaureate level courses.

The faculty in the appropriate discipline must approve advanced placement examinations, scores deemed to constitute satisfactory performance, courses offered by the college for which credit will be granted, and requirements that may be met by such examinations in accordance with policies and procedures approved by the curriculum committee established pursuant to Section 55002.

The student's academic record shall be clearly annotated to reflect that credit was earned through an advanced placement examination.

NOTE: Authority cited: Sections 66700, 70901 and 70902, Education Code. Reference: Sections 66700, 70901 and 70902, Education Code.

HISTORY

. New section filed 1-4-2002; operative 7-1-2002. Submitted to OAL for printing pursuant to Education Code section 70901.5 (Register 2002, No. 8).

5. . Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall e placed on academic probation if the student has earned a grade point verage below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 2 semester or 18 quarter units as shown by the official academic record hall be placed on progress probation when the percentage of all units in hich a student has enrolled and for which entries of "W," "I," and "NC" is defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt andards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 2 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of W," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: sections 70901, 70902 and 76000, Education Code.

HISTORY

Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Editorial correction of HISTORY 1 (Register 95, No. 22).

55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0;

(2) A district may establish, as the minimum percentage of units of W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: sections 70901, 70902 and 76000, Education Code.

HISTORY

Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Editorial correction of HISTORY 1 (Register 95, No. 22).

55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 on all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community-based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college-level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college-level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX (916) 445-0278
E-mail: csminfo@csm.ca.gov

Exhibit I

November 2, 2007

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Submission of Additional Information
Notice to Students (02-TC-25)
Los Rios Community College District, Claimant
Education Code sections 66281.5, 66721.5
California Code of Regulations, title 5, sections 51006, 54626, 54805, 55005, 55202, 55530, 55534, 55750, 55752, 55753, 55758, 55759, 55760, 55761, 55762, 55764, 55765, 55800, 58102, 58104, 59404, and 59410.

Dear Mr. Petersen:

The California Community Colleges – Chancellor's Office has submitted the enclosed information in response to staff's October 19, 2007, request for additional information.

If you have questions on the above, please contact Kenny Louie at (916) 323-2611.

Sincerely,

Paula Higashi

PAULA HIGASHI
Executive Director

cc: Mailing list (enclosed)

Enclosures

Paula Higashi

From: Skinner, Erik [eskinner@CCCCO.edu]
Sent: Wednesday, October 31, 2007 5:33 PM
To: Paula Higashi
Cc: Oropeza, Jeannie; Podesto, Lynn; Todd, Thomas; Lee, Jonathan; Harris, Fred; Brady, Diane
Subject: Information Request--Notice to Students 02-TC-25
Attachments: Funding sources Oct 30 07.xls

Ms. Paula Higashi,

In a letter dated October 19, you requested information related to the test claim Notice to Students (02-TC-25). Specifically, you asked for: 1) community college funding broken down by State, Federal, and Local sources for 2001-02 through the present; and 2) information regarding specific State appropriations for printing of official catalogs, schedules, and notices.

The attached spreadsheet provides the response to the first item. In regards to the second item, no specific appropriations were made in the State Budget for the identified activities during the specified time period.

I hope this response meets you needs. Please let me know if any further information or clarification is needed.

Regards,

Erik Skinner

Vice Chancellor for Fiscal Policy

Chancellor's Office

California Community Colleges

1102 Q Street, Sacramento, CA 95814-6511

www.cccco.edu

phone: 916-323-7007

fax: 916-322-4783

<<Funding sources Oct 30 07.xls>>

FUNDING SOURCES FOR COMMUNITY COLLEGE FUNDING
(in millions)

	2001-02		2002-03		2003-04		2004-05		2005-06		2006-07		2007-08	
	$	%	$	%	$	%	$	%	$	%	$	%	$	%
FEDERAL	225.9	3.5%	250.9	3.8%	249.2	3.7%	244.1	3.3%	249.8	3.2%	266.2	3.2%	268.2	3.1%
STATE														
General Fund	2,847.0	44.1%	2,879.5	43.7%	2,554.8	38.1%	3,277.5	44.9%	3,934.5	50.7%	4,322.0	52.3%	4,479.6	52.2%
Other state funds	10.5	0.2%	11.3	0.2%	8.6	0.1%	9.3	0.1%	13.3	0.2%	15.7	0.2%	15.6	0.2%
Lottery funds	138.1	2.1%	141.2	2.1%	140.9	2.1%	143.3	2.0%	177.9	2.3%	155.3	1.9%	155.3	1.8%
LOCAL														
Property tax	1,854.1	28.7%	1,990.4	30.2%	2,100.4	31.4%	1,754.4	24.0%	1,800.6	23.2%	1,872.5	22.6%	2,056.4	24.0%
Local miscellaneous	1,217.5	18.9%	1,145.9	17.4%	1,400.2	20.9%	1,537.5	21.1%	1,244.7	16.0%	1,326.2	16.0%	1,326.2	15.4%
STUDENT FEES	164.1	2.5%	169.2	2.6%	243.5	3.6%	334.7	4.6%	344.1	4.4%	311.6	3.8%	283.7	3.3%
TOTAL REVENUES	6,457.2	100.0%	6,588.4	100.0%	6,697.6	100.0%	7,300.8	100.0%	7,764.9	100.0%	8,269.5	100.0%	8,585.0	100.0%

Federal funds include Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF), and Vocational and Technical Education Act (VTEA, or Perkins) funds.

Local miscellaneous funds include contract instruction, rental and interest income, endowments, and locally-collected fees.

Commission on State Mandates

Original List Date: 6/19/2003
Last Updated: 4/26/2007
List Print Date: 11/02/2007
Claim Number: 02-TC-25
Issue: Notice to Students

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Tel: (916) 323-5849
Fax: (916) 327-0832

Ms. Carla Castaneda
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 323-9584

Mr. Erik Skinner
California Community Colleges
Chancellor's Office (G-01)
1102 Q Street, Suite 300
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Tel: (916) 322-4005
Fax: (916) 323-8245

Mr. Jon Sharpe
Los Rios Community College District
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Sacramento, CA 95825

Claimant

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Fax: (559) 243-1949

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Temecula, CA 92589

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Fax: (951) 303-6607

Ms. Harmeet Barkschat
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Sacramento, CA 95842

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Fax: (916) 727-1734

Mr. Steve Smith
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Fax: (916) 972-0873

Mr. Robert Miyashiro
Education Mandated Cost Network
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Fax: (916) 446-2011

Mr. Steve Shields
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Fax: (916) 454-7312

Mr. Arthur Palkowitz
San Diego Unified School District
Office of Resource Development
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Fax: (619) 725-7564

Ms. Beth Hunter
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Rancho Cucamonga, CA 91730
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Fax: (866) 481-2682

Mr. David E. Scribner
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Fax: (916) 323-6527

Ms. Carol Bingham
California Department of Education (E-08)
Fiscal Policy Division
1430 N Street, Suite 5602
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Fax: (916) 319-0116

Ms. Jeannie Oropeza
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Ms. Susan Geanacou
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Fax: (916) 324-4888

Mr. J. Bradley Burgess
Public Resource Management Group
895 La Sierra Drive
Sacramento, CA 95864

Tel: (916) 595-2646

Fax:

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

Claimant Representative

Tel: (916) 565-6104

Fax: (916) 564-6103

Exhibit J

DEPARTMENT OF FINANCE
ARNOLD SCHWARZENEGGER, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

November 9, 2007

RECEIVED
NOV 15 2007
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance has completed its review of Test Claim No. 02-TC-25, Notice to Students, submitted by the Los Rios Community College District (LRCCD). Based on our review of the claim, as well as relevant statutes and regulations, we assert that the procedures, definitions, and general instructions provided in this claim do not constitute a reimbursable state mandated activity on local community college districts.

The claimant alleges that there are reimbursable mandated costs that arise through the creation of two Education Code sections and 22 regulations adopted by the Board of Governors of the California Community Colleges. Claimants assert that prior to January 1, 1975, there were no statutes, codes, or regulations requiring specific notices to students. As a result, these new statutes and regulations require community college districts to "prepare, publish, and implement various policies, procedures, and notices to students" above and beyond what was required prior to their enactment.

Education Code Section 66281.5

The purpose of this Education Code Section 66281.5 is to "provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies." More specifically, this section requires that each postsecondary educational institution have a written policy on sexual harassment. This policy is required to be displayed in a prominent location, and a copy of that policy "shall be provided as a part of any orientation program conducted for new students." The code section also requires that a copy of this written policy be provided to each faculty member, all members of the administrative staff, and all members of support staff. Finally, the written policy is required to be published in any work that sets forth comprehensive rules, regulations, procedures and standards of conduct for the institution.

We concur with the Chancellor's Office of the California Community Colleges (COCCC) that the new requirements are not substantially different than those already prescribed by federal law. Title IX and Title VII both prohibit sex discrimination and sexual harassment within the workplace, which includes community college districts. Any mandated costs that could result from these federal laws are precluded from state reimbursement by Government Code Section 17556 (c). This section states there cannot be a finding of a reimbursable mandate where a federal mandate results in the claimed costs. Both Title IX and Title VII are pre-existing federal laws that require the community college districts to undertake the same activities required by Education Code Section 66281.5.

Title IX, enacted in 1972, was created to "eliminate...discrimination on the basis of sex in any education program or activity receiving Federal financial assistance..." (34 CFR § 106.1). We would note that according to the COCCC's Fiscal Data Abstract, Summary of General Fund Revenues Fiscal Year 2005-06, every community college district chose to receive federal financial assistance and are therefore subject to the requirements of Title IX. Under Title IX, districts must "adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part" (34 CFR §§106.8(b), 106.9).

Title IX also specifically addresses the issue of sexual harassment. The Office of Civil Rights (OCR), which is charged with the enforcement of Title IX, requires districts to have an effective sexual harassment policy which addresses the issue. Failure to implement such a policy violates Title IX regulations. Among the required policies is the distribution of sexual harassment policy and procedures. In January 2001 the OCR published its Title IX "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties" which outlined the requirements, as follows:

> "Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination" (*Id.* at 14).

One facet of "prompt and equitable" resolutions is the requirement that students and employees are notified of the procedure, "including where complaints may be filed" (*Id.* at 20).

Title VII of the Civil Rights Act of 1964 also imposes notice requirements on community college districts. Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin. Inclusive within Title VII rules requirements is the following language:

> "An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned" (29 CFR § 1604.11(f)).

In light of these two federal requirements governing the activities of community college districts and Government Code 17756 (c), Education Code Section 66281.5 does not impose costs mandated by the state, and therefore does not create a reimbursable state mandate.

Education Code Section 66721.5

Education Code Section 66721.5 requires the governing board of each community college district to provide each of their students with a copy of the current transfer core curriculum. This is defined as lower-division, general education transfer curriculum that is fully articulated between the California Community Colleges and the California State University and the University of California.

The claimant posits that this section creates a reimbursable state mandate by requiring that the text of the transfer core curriculum be included in the published class schedule for each academic term. We note that any costs that may be incurred from this code section are relatively minor, and fall well within the established purposes of each community college districts current general purpose funding provided in Schedule (1) of Item 6870-101-0001 of the annual Budget Act, pursuant to Chapter 5, of Part 50, of Division 7, of Title 3 of the Education Code.

Regulations of the Board of Governors of the California Community Colleges

The claimant has identified 22 regulations adopted by the Board that allegedly create state mandates. These regulations require community college districts to perform a wide ranging degree of functions, which include:

- Publishing information about educational programs and services to students and members of the public
- Adopting by the community college districts of an open policy in regards to enrollment
- Identifying categories of directory information to be released to the student body
- Providing information concerning student representation fees
- Ensuring the availability of college publications to students
- Identifying the prerequisites, corequisites, and advisories on recommended preparation
- Adopting and implementing regulations addressing standards of scholarship
- Categorizing credit and non-credit classes
- Publishing information on regulations related to credit by examination
- Publishing point equivalencies of grades
- Making reasonable efforts to notify students of probation or dismissal and to provide counseling to those students
- Establishing procedures and regulations pertaining to repetition of courses and completion of courses with substandard scores
- Creating policies on degrees and certificates
- Providing clear description of courses
- Creating requirements for instructional materials for classes
- Adopting a policy to withhold grades, transcripts, diplomas, and registration privileges for students who fail to fulfill financial obligations.

One common theme that runs through all these regulations are that they require community college districts to give some form of notice regarding various aspects of their programs. Notice requirements, however, do not in and of themselves create mandates. This is discussed in *Department of Finance v. Commission on State Mandates (Kern High School (2003) 30 Cal.4th 727.* In *Kern*, the California Supreme Court found that the "notice" requirements set forth by the Brown Act did not create a mandated program "because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary notice and agenda related expenses."

Community college districts receive general purpose funding from the state to support broad instructional services and programs of study for their students. As such, this source of funding is available and appropriate to support any costs of implementing the requirements set forth by the regulations. As in *Kern*, these are "reasonable" expenses that can be incurred. We further contend that the activities outlined in these notice regulations are more than just a general framework. These regulations provide a guideline for fundamental activities that are integral to providing instructional services and operating instructional programs, and in our view are fully supported by general purpose apportionment funding allocated annually to community colleges in Schedule (1) Apportionments, of Item 6870-101-0001 of the annual Budget Act pursuant to the aforementioned Chapter 5.

In light of the fact that the additions to the Education Code and California Code of Regulations do not create costs mandated by the state, we believe this claim should be denied in its entirety.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your April 17, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Thomas Todd, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A
DECLARATION OF THOMAS TODD
DEPARTMENT OF FINANCE
CLAIM NO. 02-TC-25

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

11-09-07
at Sacramento, CA

Thomas Todd

PROOF OF SERVICE

Test Claim Name: Notice to Students
Test Claim Number: 02-TC-25

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On November 9, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

Ms. Carla Castandeda
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Mr. Jon Sharpe
Los Rios Community College District
1919 Spanos Court
Sacramento, CA 95825

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Mr. Arthur Palkowitz
San Diego Unified School District
Office of Resource Development
4100 Normal Street, Room 3209
San Diego, CA 92103-8363

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Mr. Erik Skinner
California Community Colleges
Chancellor's Office (G-01)
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
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Temecula, CA 92589

Mr. Steve Smith
Steve Smith Enterprises, Inc.
3323 Watt Avenue #291
Sacramento, CA 95821

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Mr. David E. Scribner
Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, CA 95834

Ms. Ginny Brummels
State Controller's Office (-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Ms. Carol Bingham
California Department of Education (E-08)
Fiscal Policy Division
1430 N Street, Suite 5601
Sacramento, CA 95814

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 9, 2007 at Sacramento, California.

Annette Waite

ICC: OROPEZA, PODESTO, TODD, LEE, FEREBEE, GEANACOU, FILE

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
CRAMENTO, CA 95814
NE: (916) 323-3562
(916) 445-0278
E-mail: csminfo@csm.ca.gov

Exhibit K

January 9, 2008

Mr. Keith Petersen
SixTen and Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

Re: Notice of Consolidation of Test Claims and Hearing Date
Notice to Students; 02-TC-25
Education Code sections 66281.5, 66721.5
California Code of Regulations, title 5, sections 51006, 54626, 54805, 55005, 55202, 55530, 55534, 55750, 55752, 55753, 55758, 55759, 55760, 55761, 55762, 55764, 55765, 55800, 58102, 58104, 59404, and 59410.
Los Rios Community College District, Claimant

Minimum Conditions for State Aid; 02-TC-31
(See attachment for statutes and regulations pled)
Santa Monica Community College District, Claimant

Dear Mr. Petersen:

After review of the analysis for *Notice to Students* (02-TC-25), which is set for hearing on March 27, 2008, it has been determined that test claims *Notice to Students* (02-TC-25) and *Minimum Conditions for State Aid* (02-TC-31) share common issues, and allegations. Specifically, the test claims address statutes and administrative regulations that establish minimum conditions for the receipt of state aid by community college districts. For the sake of efficiency, the claims shall be consolidated pursuant to my authority under California Code of Regulations, title 2, section 1183.06, effective 10 days from the service of this letter.

For future correspondence, the test claims will be designated *Minimum Conditions for State Aid*, test claim number 02-TC-25 and 02-TC-31, Los Rios Community College District and Santa Monica Community College District, Co-claimants. A consolidated mailing list is enclosed.

As provided in the Commission's regulations this action and decision of the executive director may be appealed to the Commission for review. Please refer to California Code of Regulations, title 2, section 1181, subdivision (c).

Please contact me at (916) 323-3562 if you have any questions or concerns regarding this matter.

Sincerely,

PAULA HIGASHI
Executive Director

cc: Mailing list (enclosed)

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only

RECEIVED

JUN 13 2003

COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Claim No. 02-TC-31

Local Agency or School District Submitting Claim

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person

Keith B. Petersen, President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, California 92117

Telephone Number

Voice: 858-514-8605
Fax: 858-514-8645

Claimants Addresses

Thomas J. Donner, Executive Vice President, Business/Administration
Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

(1169/02) Minimum Conditions for State Aid
See Attached

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Thomas J. Donner
Executive Vice President, Business/Administration

Telephone No.

VOICE: (310) 434-4201
FAX: (310) 434-8200

Signature of Authorized Representative

x Thomas J. Donner

Date

June 13, 2003

Attached Exhibit to Form CSM 2
Test Claim of Santa Monica Community College District
Minimum Conditions for State Aid (1169/02)

Chaptered Bills:

Chapter 1169, Statutes of 2002
Chapter 187, Statutes of 2000
Chapter 587, Statutes of 1999
Chapter 1023, Statutes of 1998
Chapter 914, Statutes of 1998
Chapter 365, Statutes of 1998
Chapter 758, Statutes of 1995
Chapter 493, Statutes of 1995
Chapter 1198, Statutes of 1991
Chapter 1188, Statutes of 1991
Chapter 1038, Statutes of 1991
Chapter 1667, Statutes of 1990
Chapter 1372, Statutes of 1990
Chapter 1514, Statutes of 1988
Chapter 973, Statutes of 1988
Chapter 1467, Statutes of 1986
Chapter 1371, Statutes of 1984
Chapter 537, Statutes of 1983
Chapter 143, Statutes of 1983
Chapter 1329, Statutes of 1982
Chapter 1117, Statutes of 1982
Chapter 891, Statutes of 1981
Chapter 470, Statutes of 1981
Chapter 910, Statutes of 1980
Chapter 977, Statutes of 1979
Chapter 797, Statutes of 1979
Chapter 967, Statutes of 1977
Chapter 36, Statutes of 1977
Chapter 1176, Statutes of 1976
Chapter 1010, Statutes of 1976
Chapter 783, Statutes of 1976
Chapter 275, Statutes of 1976
Chapter 802, Statutes of 1975

Education Code Sections:

212
212.5
213
214
221.5
221.7
66010.2
66010.7
66016
66030
66251
66252
66261
66261.5
66262
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78211.5
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78214
78215
78216
81820
81821
81823
87101
87102
87482.6
87482.7

California Code of Regulations:

51000
51002
51004
51006
51008
51010
51012
51014
51016
51018
51020
51021
51022
51023
51023.5
51023.7
51024
51025
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Commission on State Mandates

Original List Date: 6/19/2003
Last Updated: 4/26/2007
List Print Date: 01/09/2008
Claim Number: 02-TC-25
Issue: Notice to Students

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Fax: (866) 481-2682

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Sacramento, CA 95834

Claimant Representative
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Exhibit L

SixTen and Associates
Mandate Reimbursement Services

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March 14, 2008

RECEIVED
MAR 18 2008
COMMISSION ON
STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: No. CSM. 02-TC-31
Minimum Conditions for State Aid

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 5, CCR, sections included in the test claim.

Sincerely,

Keith B. Petersen

C: Douglas Brinkley, Vice-Chancellor
Finance and Administration
State Center Community College District
1525 East Weldon
Fresno, CA 93704-6398

Keith B. Petersen
SixTen and Associates
3841 North Freeway Blvd, Suite 170
Sacramento, CA 95834
Voice: (916) 565-6104
Fax: (916) 564-6103
kbpsixten@aol.com

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Supplement to the:	No. CSM. 02-TC-31
Test Claim Filed June 23, 2003	Minimum Conditions for State Aid:
	History Index for
	Title 5, California Code of Regulations
by **Santa Monica Community College District**	
	Section 51000
	Section 51002
	Section 51004
	Section 51006
	Section 51008
	Section 51010
	Section 51012
	Section 51014
	Section 51016
	Section 51018
	Section 51020
	Section 51021
	Section 51022
	Section 51023
	Section 51023.5
	Section 51023.7
	Section 51024
	Section 51025
	Section 51026
	Section 51027
	Section 51100
	Section 51102
	Section 53000

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) Section 55006
) Section 55100

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SUPPLEMENTAL INFORMATION

This supplement to the test claim provides an index and copy of each change to the Title 5, CCR, sections included in the test claim. The Registers cited are attached as Exhibit A. Amended language is underlined (new language) or stricken out (deleted language).

HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

Register 71-27 New Chapter 5 (§§ 55400 - 55405).

Register 72-01 New Division 9, Subchapter 2, Article 1 (§§ 58100 - 58110).

Register 74-17 New chapter 7 (sections 55600-55631, not consecutive).

Register 77-30 New Chapter 1 (§§ 53000 - 53004).

Renumbering of Chapter 1 (Sections 53100 - 53205) to Chapter 2 (Sections 53100 -53205).

Register 77-45 § 53200: Amendment of NOTE.

	§ 55400: Amendment of section and NOTE.
	§ 55405: Amendment of section.
	§ 55600: Amendment of section and NOTE.
	§ 55601: Amendment of section.
	§ 55602: Amendment of section.
	§ 55604: Amendment of section.
	§ 55605: Amendment of section.
	§ 55607: Amendment of section.
	§ 55620: Amendment of section.
	§ 55631: Amendment of section.
Register 78-06	§ 53201: Amendment of section.
	§ 53202: Amendment of section.
Register 78-19	§ 53206: New section filed.
Register 78-51	Repealer of chapter 4 (sections 55300 - 55344, not consecutive) and new chapter 4 (articles 1-5; sections 55300 - 55360, not consecutive).
Register 79-46	§ 55300: Amendment of section.
	§ 55310: Amendment of section.
	§ 55604: Amendment of section.
Register 81-03	§ 53203: Amendment of section.
	§ 53205: Amendment of section.

Register 81-52	Repealer of Chapter 1 (Subchapters 1-3, Sections 55000 - 55144, not consecutive) and new Chapter 1 (Articles 1-2, Sections 55000-55180, not consecutive).
	Repealer of Division 9, Subchapter 2, Article 1 (§§ 58100 - 58110).
Register 82-06	Repealer of Chapter 1 (Subchapter 1, §§ 53000 - 53004) and new Chapter 1 (Subchapters 1 - 4, §§ 53000 - 53052, not consecutive).
Register 82-09	§ 53023: New section filed.
Register 82-31	New Division 9, Subchapter 2, Article 1 (§§ 58100 - 58110).
Register 83-18	§ 53200: Amendment of NOTE.
	§ 53201: Amendment of NOTE.
	§ 53202: Amendment of section.
	§ 53204: Amendment of section.
	§ 53205: Amendment of NOTE.
	§ 53206: Amendment of section.
	§ 55300: Amendment of chapter 4 heading, repealer of article 1 heading, and amendment of section.
	§ 55310: Repealer of Article 2 heading.
	§ 55312: Repealed.
	§ 55314: Amendment of section.
	§ 55316: Amendment of section.
	§ 55318: Amendment of NOTE.

§ 55320: Repealer of article 3 heading.

§ 55321: Amendment of section.

§ 55322: Amendment of NOTE.

§ 55323: Amendment of NOTE.

§ 55340: Repealer of article 4 heading and amendment of section.

§ 55342: Repealed.

§ 55343: Repealed.

§ 55344: Repealed.

§ 55346: Repealed.

§ 55348: Repealed.

§ 55350: Amendment of section.

§ 55360: Repealed.

§ 55600: Repealer of subchapter 1 heading, amendment of article 1 heading, and repealer and new section 55600.

§ 55601: Repealed.

§ 55602: Repealed.

§ 55603: Added new NOTE.

§ 55604: Repealed.

§ 55605: Repealed, new section filed.

§ 55606: Repealed.

§ 55607: Amendment of section.

	§ 55608: Repealed.
	§ 55620: Repealer, new section added.
	§ 55630: Repealer, new section added.
Register 83-29	Repealer of Chapter 1 (Section 51000) and new Chapter 1
	(Sections 51000-51021, not consecutive).
	Repealer of Chapter 2 (sections 51100 and 51101) and new
	Chapter 2 (sections 51100 and 51102).
	New Chapter 9 (sections 55750 - 55765).
	New Chapter 10 (Sections 55800 - 55810).
	New Chapter 11 (sections 55825-55831, not consecutive).
	§ 55806: Editorial correction of subsection (b)(1)(A).
Register 83-53	§ 55002: Amendment of subsection (a).
	§ 55182: Added new section.
Register 84-20	§ 55002: Amendment of section.
Register 84-26	§ 51022: Added new section.
	§ 51023: Added new section.
Register 84-51	§ 55323: Repealed.
Register 88-42	§ 55002: Repealer and new section.
	§ 55805.5: new section filed.
Register 90-37	§ 51024: New section by the Board of Governors, California
	Community Colleges, with the Secretary of State.

Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53300: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53302: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53310: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53311: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53312: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education

Code section 70901.5(b).

§ 53314: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55756.5: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55500: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55502: Amendment of subsection (a) and (b) and new subsections (g), (h), (i), (j) and (k) filed by the Board of Governors, California Community Colleges, with the Secretary of State; submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55510: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education

Code section 70901.5(b).

§ 55512: Amendment filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55514: Amendment filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55516: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55518: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55520: Amendment filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55521: Amendment of subsection (d), (e), and (f) filed by the Board of Governors, California Community Colleges, with the Secretary of State; submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55522: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55523: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55524: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55525: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55526: New section by the Board of Governors, California

Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55530: Amendment filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55532: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55534: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 58106: Repealer and new section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Register 90-41 § 58106: Editorial correction of printing error inadvertently omitting text.

Register 90-45 § 53060: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State.

§ 53061: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State.

§ 53062: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State.

§ 53063: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State.

§ 53064: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State.

Register 90-49 § 53200: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53201: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53202: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to

Education Code section 70901.5(b).

§ 53203: Repealer and new section filed with Secretary of State by Board of Governors, California Community Colleges; submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53204: Repealer and new section filed with Secretary of State by Board of Governors, California Community Colleges; submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53205: Repealer filed with Secretary of State by Board of Governors, California Community Colleges; submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 91-23 § 51000: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51002: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51004: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51006: Amendment of section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

§ 51008: Amendment of section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

§ 51010: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51012: Amendment by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Code Section 70901.5(b).

§ 51014: Amendment filed by Board of Governors of California

Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 51016: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 51018: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 51020: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 51021: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 51022: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.

Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51023: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51203.5: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51203.7: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51100: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51102: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to

Education Code section 70901.5(b).

§ 53206: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55000: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55000.5: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55001: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55002: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55002.5: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55004: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55005: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55006: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55008: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55100: Amendment filed by Board of Governors of California

Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55130: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55150: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55160: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55170: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55180: Repealer filed by Board of Governors of California
Community Colleges with the Secretary of State.

Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55182: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55300: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55310: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55314: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55316: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to

Education Code section 70901.5(b).

§ 55318: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55320: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55321: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55322: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55340: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55350: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55400: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55600: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55602: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55602.5: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55603: New section filed by Board of Governors of California

Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55605: New section filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55607: New section filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55620: New section filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55630: New section filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55750: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.

Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55751: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55752: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55753: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55754: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55755: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to

Education Code section 70901.5(b).

§ 55756: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55757: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55758: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55759: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55760: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55761: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55762: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55763: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55764: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55765: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55800: Amendment filed by Board of Governors of California

Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55800.5: New Section filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55801: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55802: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55803: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55805: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.

Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55805.5: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55806: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55807: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55808: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55809: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to

Education Code section 70901.5(b).

§ 55810: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55825: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55827: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55828: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55829: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55830: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55831: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 58107: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Register 91-31

§ 53061: Editorial correction of printing error in subsection (c).

§ 53300: Editorial correction of printing error in Subchapter 3 heading.

§ 53310: Editorial correction of printing error in Article 2 heading.

§ 55758: Amendment of subsection (c) and submitted to OAL for printing only pursuant to Education Code section 10901.5.

Register 91-43

§ 51203.5: Editorial correction of printing errors in subsection (b) and HISTORY 1.

§ 51203.7: Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1.

§ 55008: Editorial correction of printing error in second paragraph.

§ 55602.5: Editorial correction of printing error.

§ 55758: Editorial correction of printing error in NOTE.

§ 55759: Editorial correction of printing error.

§ 55765: Editorial correction of printing error in NOTE.

§ 55806: Editorial correction of printing error in NOTE.

§ 55825: Editorial correction of printing error.

Register 91-45 § 55400: Amendment filed; submitted to OAL for printing only pursuant to Government Code section 11343.8.

Register 91-46 § 51025: New section filed and submitted to OAL for printing only pursuant to Education Code 70901.5.

Register 92-01 § 55400: Amendment of NOTE; submitted to OAL for printing only pursuant to Government Code section 11343.8.

Register 92-04 § 51027: Added new section.

Register 92-05 § 55758: Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE.

Register 92-07 § 55002: Amendment of section.

§ 55758.5: New section filed.

Register 92-09 § 53300: Amendment of section.

Register 92-15
§ 51024: Amendment of first paragraph and subsection (e).
§ 55300: New article heading.
§ 55521: Amendment of subsection (a) and redesignating following subsections (1)-(6), adoption of subsection (b) and amendment of NOTE.
§ 55530: Amendment of subsection (b).
§ 58100: Section repealed.
§ 58110: Section repealed.

Register 92-17
§ 53000: Repealed; new section filed.
§ 53001: Repealed; new section filed.
§ 53002: Repealed, new section filed.
§ 53003: Repealed, new section filed.
§ 53004: Repealed, new section filed.
§ 53005: Repealed, new section filed.
§ 53010: Repealed.
§ 53011: Repealed.
§ 53012: Repealed.
§ 53020: Repealed, new section filed.
§ 53021: Repealed, new section filed.
§ 53022: Repealed, new section filed.
§ 53023: Repealed, new section filed.

§ 53024: Repealed, new section filed.

§ 53025: Repealed, new section filed.

§ 53026: Repealed, new section filed.

§ 53027: Repealed, new section filed.

§ 53028: Repealed.

§ 53029: Repealed.

§ 53030: Repealed, new section filed.

§ 53031: Repealed, new section filed.

§ 53032: New section filed.

§ 53033: New section filed.

§ 53034: New section filed.

§ 53040: Repealed.

§ 53041: Repealed.

§ 53042: Repealed.

§ 53043: Repealed.

§ 53044: Repealed.

§ 53045: Repealed.

§ 53046: Repealed.

§ 53049: Repealed.

§ 53050: Repealed.

§ 53051: Repealed.

§ 53052: Repealed.

§ 53060: Repealed.

§ 53061: Repealed.

§ 53062: Repealed.

§ 53063: Repealed.

§ 53064: Repealed.

§ 55500: Amendment of subsection (a) and repealer of subsection (c).

Register 92-34 § 51025: New first paragraph, amendment of subsections (a)-(a)(4) and (c) and NOTE.

§ 53300: Repealer and new section and amendment of NOTE.

§ 53302: Amendment of NOTE.

§ 53310: New subsections (f)-(h) and amendment of NOTE.

§ 53311: Amendment of section heading, text and NOTE.

§ 53312: Amendment of subsections (a) and (c) and NOTE and new subsection (d).

§ 53314: Repealer and new section and amendment of NOTE.

Register 93-06 § 54220: New Subchapter 4 and section.

§ 53310: Amendment of subsection (h).

Register 93-25 § 53200: Relocation of article 2 heading.

§ 55008: Section repealed.

§ 55600: Amendment of section.

§ 58102: Amendment of NOTE.

§ 58104: Amendment of NOTE.

§ 58108: Amendment of NOTE.

Register 93-42 § 55002: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55200: New article 2.5 and section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55201: Added new section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55202: Added new section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55510: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55530: Amendment of subsections (a), (b) and (d). Submitted to OAL only pursuant to Education Code section 70901.5(b).

§ 55534: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 58106: Repealer and new section; submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Register 94-18 § 55314: Repealed. Submitted to OAL for printing only.

§ 55316: Amendment of opening statement, subsection (b) and NOTE.

§ 55316.5: New section filed; submitted to OAL for printing only.

§ 55317: New section filed, submitted to OAL for printing only.

§ 55318: Repealed. Submitted to OAL for printing only.

§ 55340: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 55352: Repealer and new section. Submitted to OAL for printing only.

Register 94-38

§ 51000: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51002: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51004: Amendment of section. Submitted to OAL for printing only pursuant to Education Code Section 70901.5.

§ 51006: Amendment of section; submitted to OAL for printing only pursuant to Education Code Section 70901.5.

§ 51008: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51010: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51014: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51016: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51018: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51021: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51023: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51203.5: Amendment of subsections (a)(1), (a)(3), (a)(5), (a)(7), (b), (c), and (d). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51203.7: Amendment of subsections (a)(2), (a)(4), (b), (b)(10), (d) and (e). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51025: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51027: Amendment of section; submitted to OAL for printing only pursuant to Education Code Section 70901.5.

§ 51100: Amendment of subsection (a). Submitted to OAL for

printing only pursuant to Education Code section 70901.5.

§ 51102: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53001: Amendment of subsections (a), (b)(1) - (b)-(3), (c), (k) and (m). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53002: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53003: Amendment of subsections (c)(4) and (7). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53020: Amendment of subsections (a) and (c). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53021: Amendment of subsections (b) and (d)-(e)(2). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53025: Amendment of section and NOTE. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53026: Amendment of section. Submitted to OAL for printing only

pursuant to Education Code section 70901.5.

§ 53030: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5..

§ 53031: Amendment of subsection (a). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53200: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53203: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53204: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53206: Amendment of subsection (a). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53300: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53302: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53310: Amendment of subsections (d), (e), (g), and (h). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53311: Amendment of section. Submitted to OAL for printing only

pursuant to Education Code section 70901.5.

§ 53314: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 55001: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 55502: Amendment of first paragraph and subsections (a) and (c)-(k). Submitted to OAL for printing only pursuant to Education Code Section 70901.5.

§ 55510: Amendment of subsection (a)(6), new subsection (a)(7) and subsection renumbering. Submitted to OAL for printing only pursuant to Education Code Section 70901.5.

§ 55525: Amendment of subsections (a), (c) and (d). Submitted to OAL for printing only pursuant to Education Code 70901.5.

§ 55534: Amendment of subsection (b). Submitted to OAL for printing only pursuant to Education Code 70901.5.

§ 55602.5: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 55827: Amendment of subsections (a), (a)(3) and (b). Submitted to OAL for printing only pursuant to Education Code

section 70901.5.

Register 95-15 § 51000: Editorial correction of HISTORY 2.

§ 51002: Editorial correction of HISTORY 1.

§ 51004: Editorial correction of HISTORY 1.

§ 51006: Editorial correction of HISTORY 1.

§ 51008: Editorial correction of HISTORY 1.

§ 51010: Editorial correction of HISTORY 1.

§ 51012: Editorial correction of HISTORY 1.

§ 51014: Editorial correction of HISTORY 1.

§ 51016: Editorial correction of HISTORY 1.

§ 51018: Editorial correction of HISTORY 1.

§ 51020: Editorial correction of HISTORY 1.

§ 51021: Editorial correction of HISTORY 1.

§ 51022: Editorial correction of HISTORY 2.

§ 51023: Editorial correction of HISTORY 2.

§ 51100: Editorial correction of HISTORY 2.

§ 51102: Editorial correction of HISTORY 1.

Register 95-19 § 53206: Editorial correction of HISTORY 3.

Register 95-20 § 55000: Editorial correction of HISTORY 2.

§ 55000.5: Editorial correction of HISTORY 1.

§ 55001: Editorial correction of HISTORY 1.

§ 55002: Editorial correction of HISTORY 4.

§ 55002.5: Editorial correction of HISTORY 1.

§ 55004: Editorial correction of HISTORY 1.

§ 55005: Editorial correction of HISTORY 1.

§ 55006: Editorial correction of HISTORY 1.

§ 55008: Editorial correction of HISTORY 1.

§ 55100: Editorial correction of HISTORY 1.

§ 55130: Editorial correction of HISTORY 1.

§ 55150: Editorial correction of HISTORY 1.

§ 55160: Editorial correction of HISTORY 1.

§ 55170: Editorial correction of HISTORY 1.

§ 55180: Editorial correction of HISTORY 2.

§ 55182: Editorial correction of HISTORY 2.

§ 55200: Editorial correction of Article heading.

§ 55300: Editorial correction of HISTORY 4.

§ 55310: Editorial correction of HISTORY 3.

§ 55314: Editorial correction of HISTORY 2.

§ 55316: Editorial correction of HISTORY 2.

§ 55318: Editorial correction of HISTORY 2.

§ 55320: Editorial correction of HISTORY 2.

§ 55321: Editorial correction of HISTORY 2.

1		§ 55322: Editorial correction of HISTORY 2.
2		§ 55340: Editorial correction of HISTORY 2.
3		§ 55350: Editorial correction of HISTORY 2.
4		§ 55400: Editorial correction of HISTORY 3.
5	**Register 95-22**	§ 55600: Editorial correction of HISTORY 4.
6		§ 55602: Editorial correction of HISTORY 1.
7		§ 55602.5: Editorial correction of HISTORY 1.
8		§ 55603: Editorial correction of HISTORY 2.
9		§ 55605: Editorial correction of HISTORY 3.
10		§ 55607: Editorial correction of HISTORY 3.
		§ 55620: Editorial correction of HISTORY 3.
12		§ 55630: Editorial correction of HISTORY 2.
13		§ 55750: Editorial correction of HISTORY 2.
14		§ 55751: Editorial correction of HISTORY 1.
15		§ 55752: Editorial correction of HISTORY 1.
16		§ 55753: Editorial correction of HISTORY 1.
17		§ 55754: Editorial correction of HISTORY 1.
18		§ 55755: Editorial correction of HISTORY 1.
19		§ 55756: Editorial correction of HISTORY 1.
20		§ 55757: Editorial correction of HISTORY 1.
21		§ 55758: Editorial correction of HISTORY 1.

§ 55759: Editorial correction of HISTORY 1.

§ 55760: Editorial correction of HISTORY 1.

§ 55761: Editorial correction of HISTORY 1.

§ 55762: Editorial correction of HISTORY 1.

§ 55763: Editorial correction of HISTORY 1.

§ 55764: Editorial correction of HISTORY 1.

§ 55765: Editorial correction of HISTORY 1.

§ 55800: Editorial correction of HISTORY 2.

§ 55800.5: Editorial correction of HISTORY 1.

§ 55801: Editorial correction of HISTORY 1.

§ 55802: Editorial correction of HISTORY 1.

§ 55803: Editorial correction of HISTORY 1.

§ 55805: Editorial correction of HISTORY 1.

§ 55805.5: Editorial correction of HISTORY 2.

§ 55806: Editorial correction of HISTORY 3.

§ 55807: Editorial correction of HISTORY 1.

§ 55808: Editorial correction of HISTORY 1.

§ 55809: Editorial correction of HISTORY 1.

§ 55810: Editorial correction of HISTORY 1.

§ 55825: Editorial correction of HISTORY 2.

§ 55827: Editorial correction of HISTORY 1.

§ 55828: Editorial correction of HISTORY 1.

§ 55829: Editorial correction of HISTORY 1.

§ 55830: Editorial correction of HISTORY 1.

§ 55831: Editorial correction of HISTORY 1.

Register 95-23 § 58107: Editorial correction of HISTORY 1.

Register 96-23 § 53000: Amendment of subsection (a) and NOTE. Submitted to OAL for printing only.

§ 53001: Amendment of subsections (a), (b), (e), (f), (h), (j), and (m), new subsections (m)(1)-(q)(3), and amendment of NOTE. Submitted to OAL for printing only.

§ 53003: Amendment of subsections (b), (c), and (c)(7), new subsections (c)(8)-(9) and subsection renumbering, amendment of newly designated subsection (c)(10), and new subsection (f). Submitted to OAL for printing only.

§ 53004: Amendment of subsections (a) and (b). Submitted to OAL for printing only.

§ 53006: New section added. Submitted to OAL for printing only.

§ 53021: Amendment of subsections (a) and (b)(1)-(b)(2), repealer of subsection (b)(3), amendment of subsections (c), (d) and (e)(1)-(e)(4) and new subsection (e)(5). Submitted to OAL for printing only.

§ 53023: Amendment of subsections (a) and (b), repealer of subsection (b)(2) and subsection renumbering, and amendment of subsection (c)(2). Submitted to OAL for printing only.

§ 53024: Amendment of subsections (a)(2)-(c), (e) and (g). Submitted to OAL for printing only.

§ 53025: Repealer of subsections (a) and (b) and deletion of subsection designator. Submitted to OAL for printing only.

§ 53030: Amendment of subsections (b) and (b)(3) and repealer of subsections (b)(4) and (b)(5). Submitted to OAL for printing only.

§ 53031: Repealed. Submitted to OAL for printing only.

§ 53032: Repealed. Submitted to OAL for printing only.

§ 53033: Amendment of section. Submitted to OAL for printing only.

Register 98-03

§ 51026: Added new section. Submitted to OAL for printing only.

§ 54220: Amendment of subsections (a)(1), (a)(2) and (b), repealer of subsections (d)-(d)(2), and new subsection (d). Submitted to OAL for printing only.

§ 55758: Amendment of subsection (a), new subsection (b), subsection relettering, and amendment of newly

designated subsection (c). Submitted to OAL for printing only.

Register 98-07 § 55201: Amendment of subsection (c), new subsections (e)(1)-(e)(2)(B) and amendment of NOTE. Submitted to OAL for printing only.

Register 98-14 § 51025: Amendment of subsections (a)-(a)(4), (b) and (c). Submitted to OAL for printing only.

§ 53300: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53302: Amendment of section heading and section. Submitted to OAL for printing only.

§ 53310: Amendment of section heading and section. Submitted to OAL for printing only.

§ 53311: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 55762: Repealer of subsection (d), subsection relettering, and amendment of NOTE. Submitted to OAL for printing only.

§ 55763: Amendment of section and NOTE. Submitted to OAL for printing only.

Register 98-36 § 55316.5: Amendment of last paragraph and NOTE. Submitted to OAL for printing only.

§ 55317: Amendment of subsection (b), last paragraph and NOTE. Submitted to OAL for printing only.

Register 2000-26 § 51025: Amendment of section. Submitted to OAL for printing only.

§ 53301: Added new section. Submitted to OAL for printing only.

§ 53302: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53308: Added new section. Submitted to OAL for printing only.

§ 53309: Added new section. Submitted to OAL for printing only.

§ 53310: Repealer and new section filed. Submitted to OAL for printing only.

§ 53311: Amendment of section. Submitted to OAL for printing only.

§ 53312: Amendment of subsection (a). Submitted to OAL for printing only.

§ 53314: Amendment of section. Submitted to OAL for printing only.

Register 2000-50 § 55758: Amendment of subsection (a), new subsection (c), subsection relettering, and amendment of newly designated subsections (d) and (e). Submitted to OAL for printing only.

Register 2001-06 § 53002: Amendment of section. Submitted to OAL for printing only.

Register 2001-43 § 53309: Amendment of subsection (i). Submitted to OAL for printing only.

§ 53310: New subsection (c)(4). Submitted to OAL for printing only.

Register 2001-50 § 55316.5: Amendment of subsection (b). Submitted to OAL for printing only.

§ 55317: Amendment of subsections (b)-(c). Submitted to OAL for printing only.

Register 2002-08 § 55753.5: New section filed. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 55753.7: New section filed. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

Register 2002-26 § 55205: New article 3 (sections 55205 - 55219) and section. Submitted to OAL for printing only.

§ 55207: Added new section. Submitted to OAL for printing only.

§ 55209: Added new section. Submitted to OAL for printing only.

§ 55211: Added new section. Submitted to OAL for printing only.

§ 55213: Added new section. Submitted to OAL for printing only.

§ 55215: Added new section. Submitted to OAL for printing only.

§ 55217: Added new section. Submitted to OAL for printing only.

§ 55219: Added new section. Submitted to OAL for printing only.

§ 55316.5: Repealed.

§ 55317: Repealed.

§ 55352: Repealed. Submitted to OAL for printing only.

Register 2002-35 § 53000: Amendment of subchapter heading, section and NOTE. Submitted to OAL for printing only.

§ 53001: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53002: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53003: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53004: Amendment of subsections (a) and (b) and amendment of NOTE. Submitted to OAL for printing only.

§ 53005: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53006: Amendment of section heading, section and NOTE. Submitted to OAL for printing only.

§ 53020: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53021: Amendment of section and NOTE. Submitted to OAL for

printing only.

§ 53022: Amendment of section heading, section and NOTE. Submitted to OAL for printing only.

§ 53024: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53025: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53026: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53027: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53030: Amendment of section heading, section and NOTE. Submitted to OAL for printing only.

§ 53033: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53034: Amendment of section and NOTE. Submitted to OAL for printing only.

Register 2003-18 § 53207: New section filed. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and complete to the best of my own knowledge or information or belief, and that the attached regulations are true and correct copies of documents from archives of a recognized law library.

EXECUTED this 14th day of March 2008, at Sacramento, California

FOR THE TEST CLAIMANT

Keith Petersen, President

SixTen and Associates

ATTACHMENT

Exhibit A Title 5, CCR Registers

No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 01: Standards of Scholarship

History Index for
Title 5, California Code of Regulations

Section 51002
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Register 83-29 Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000-51021, not consecutive).
New Chapter 9 (sections 55750 - 55765).

Register 90-37 § 55756.5: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 91-23 § 51002: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55750: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55751: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55752: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55753: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55754: Amendment filed by Board of Governors of California

Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55755: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55756: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55757: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55758: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55759: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.

Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55760: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55761: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55762: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55763: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55764: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to

	Education Code section 70901.5(b).
	§ 55765: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
Register 91-31	§ 55758: Amendment of subsection (c) and submitted to OAL for printing only pursuant to Education Code section 10901.5.
Register 91-43	§ 55758: Editorial correction of printing error in NOTE.
	§ 55759: Editorial correction of printing error.
	§ 55765: Editorial correction of printing error in NOTE.
Register 92-05	§ 55758: Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE.
Register 92-07	§ 55758.5: New section filed.
Register 94-38	§ 51002: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.
Register 95-15	§ 51002: Editorial correction of HISTORY 1.
Register 95-22	§ 55750: Editorial correction of HISTORY 2.
	§ 55751: Editorial correction of HISTORY 1.
	§ 55752: Editorial correction of HISTORY 1.
	§ 55753: Editorial correction of HISTORY 1.

§ 55754: Editorial correction of HISTORY 1.

§ 55755: Editorial correction of HISTORY 1.

§ 55756: Editorial correction of HISTORY 1.

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§ 55760: Editorial correction of HISTORY 1.

§ 55761: Editorial correction of HISTORY 1.

§ 55762: Editorial correction of HISTORY 1.

§ 55763: Editorial correction of HISTORY 1.

§ 55764: Editorial correction of HISTORY 1.

§ 55765: Editorial correction of HISTORY 1.

Register 98-03 § 55758: Amendment of subsection (a), new subsection (b), subsection relettering, and amendment of newly designated subsection (c). Submitted to OAL for printing only.

Register 98-14 § 55762: Repealer of subsection (d), subsection relettering, and amendment of NOTE. Submitted to OAL for printing only.

§ 55763: Amendment of section and NOTE. Submitted to OAL for printing only.

Register 2000-50 § 55758: Amendment of subsection (a), new subsection (c),

subsection relettering, and amendment of newly designated subsections (d) and (e). Submitted to OAL for printing only.

Register 2002-08 § 55753.5: New section filed. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 55753.7: New section filed. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

Register 1983-29

§ 51002
§§ 55750 - 55765

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55025) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

CHAPTER 9. STANDARDS OF SCHOLARSHIP

55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with the provisions of this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by Section 51002 of this part.

NOTE: Authority cited: Sections 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY:

1. New Chapter 9 (Sections 55750–55765) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with Section 55758.

(b) Such work shall also be graded in accordance with the provisions of Section 55752 or Section 55753.

NOTE: Authority cited: Sections 66700, 71020, 71024, 71025, 71027 and 71066, Education Code. Reference: Sections 71066 and 72285, Education Code.

55752. Credit—No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specifiy in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit—no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit—no credit" or a letter grade.

(b) All units earned on a "credit—no credit" basis in accredited California institutions of higher education or equivalent out-of-state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit—no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in Section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with Sections 55300–55352 of this part may be graded on a "credit—no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single satisfactory standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71027, 71066 and 78207, Education Code.

55753. Credit by Examination.

(a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of Sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 71020, 71025, 71066 and 78207, Education Code. Reference: Sections 71066, 72285, 78205 and 78207, Education Code.

55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in Section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in Section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700, 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in Section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700, 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in Section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of "W," "I," and "NC" (as defined in Section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with Section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700, 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

55757. Units Attempted.

For the purposes of Sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit—no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 71020, 71025 and 71066, Education Code. Reference: Sections 72285 and 76000, Education Code.

55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	Definition	Grade Point
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	Definition
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the

Symbol	Definition
	student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawl from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W."

For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer.

The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in Sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures.

Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs.

A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.

NOTE: Authority cited: Sections 71020, 71025 and 71066, Education Code. Reference: Sections 72285 and 76000, Education Code.

55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 71020, 71025 and 71066, Education Code. Reference: Sections 72285 and 76000, Education Code.

55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with Section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with Sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71066 and 76224, Education Code.

55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in Section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71066 and 72285, Education Code.

55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code Section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with Section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of Section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in Section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under Section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives;"

(e) Shall clearly indicate any courses repeated under the provisions of this section and Section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and Section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700, 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71066, 72285, 76224, 78205 and 78207, Education Code.

55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the district superintendent or authorized representative based on a finding that circumstances exist which justify such repetition.

(b) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

(c) Grades awarded for courses repeated under the provisions of this section shall not be counted in calculating a student's grade point average.

NOTE: Authority cited: Sections 71020, 71025 and 71066, Education Code. Reference: Sections 72285 and 76000, Education Code.

55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in Section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700, 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71066, 72285, 76224, 78205 and 78207, Education Code.

55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in Section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code Section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with Section 59020) of Division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of Section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and Section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700, 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71066, 72285, 76224, 78205 and 78207, Education Code.

proved requests. Districts which are found to be out of compliance shall be notified and be given an opportunity to respond.

(c) Terminate approval of any flexible calendar operation if it is found that the district has, without good cause:

(1) Failed to conduct its flexible calendar operation in a manner consistent with its approved request.

(2) Failed to carry out the responsibilities specified in Section 55726.

(3) Failed to meet its ongoing responsibilities as specified in Section 55730.

(d) Withhold the appropriate amount of state aid whenever there is a final audit finding that an instructor did not spend at least as much time performing staff, student, and instructional improvement activities as the amount of time he or she was released from classroom instruction.

(e) Report to the Legislature as required by Section 84896 of the Education Code.

NOTE: Authority cited: Sections 71020 and 84890, Education Code. Reference: Sections 84890, 84893, 84894, 84895, 84895.5 and 84896, Education Code.

Subchapter 9. Standards of Scholarship

§ 55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with the provisions of this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by Section 51002 of this part.

NOTE: Authority cited: Sections 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY

1. New Chapter 9 (Sections 55750–55765) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).

§ 55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with Section 55758.

(b) Such work shall also be graded in accordance with the provisions of Section 55752 or Section 55753.

NOTE: Authority cited: Sections 66700, 71020, 71024, 71025, 71027 and 71066, Education Code. Reference: Sections 71066 and 72285, Education Code.

§ 55752. Credit—No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit—no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit—no credit" or a letter grade.

(b) All units earned on a "credit—no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit—no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in Section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with Sections 55300–55352 of this part may be graded on a "credit—no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single satisfactory standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 71020, 71025, 71027 and 71066, Education Code. Reference: Sections 71027, 71066 and 78207, Education Code.

§ 55753. Credit by Examination.

(a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of Sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 71020, 71025, 71066 and 78207, Education Code. Reference: Sections 71066, 72285, 78205 and 78207, Education Code.

§ 55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in Section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in Section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700, 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

§ 55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in Section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700, 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in Section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of "W," "I," and "NC" (as defined in Section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with Section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700, 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community-based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college-level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college-level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college-level courses, request reinstatement to proceed with college-level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of Sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit—no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 71020, 71025 and 71066, Education Code. Reference: Sections 72285 and 76000, Education Code.

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open–entry, open–exit" course is assigned an "IP" at the end of an attendance period and does not re–enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W."

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4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income if the business entity or source of income provides education, training, or experience to persons toward attaining a valid credential for employment as an instructor, supervisor, chief administrative officer, librarian, counselor, supervisor of health, student personnel worker, or other similar position within a Community College district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations affirming and fixing the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in chapter 9 (commencing with section 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

(c) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 o. the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

ommendations on staff, student, and instructional improvement activities.

(f) Provide, upon request of the Chancellor, copies of documents and information specified in Subsections (a) through (d), inclusive.

NOTE: Authority cited: Sections 71020 and 84890, Education Code. Reference: Section 84894, Education Code.

§ 55732. Ongoing Responsibilities of the Chancellor.

The Chancellor shall:

(a) Adjust state aid for districts with approved flexible calendar operations in accordance with the provisions of Sections 84895 and 84895.5 of the Education Code. For fiscal year 1982–83, the Chancellor shall also adjust the ADA of any district which has been newly approved to operate a flexible calendar operation during that fiscal year. The adjustment shall be made in order that those districts do not experience an arbitrary gain or loss in average daily attendance as a result of shifting to a flexible calendar operation.

(b) Periodically review documentation from selected districts to determine whether they are in compliance with the provisions of Sections 55726, 55728, and 55730, and to determine whether they are conducting their flexible calendar operations in a manner consistent with the approved requests. Districts which are found to be out of compliance shall be notified and be given an opportunity to respond.

(c) Terminate approval of any flexible calendar operation if it is found that the district has, without good cause:

(1) Failed to conduct its flexible calendar operation in a manner consistent with its approved request.

(2) Failed to carry out the responsibilities specified in Section 55726.

(3) Failed to meet its ongoing responsibilities as specified in Section 55730.

(d) Withhold the appropriate amount of state aid whenever there is a final audit finding that an instructor did not spend at least as much time performing staff, student, and instructional improvement activities as the amount of time he or she was released from classroom instruction.

(e) Report to the Legislature as required by Section 84896 of the Education Code.

NOTE: Authority cited: Sections 71020 and 84890, Education Code. Reference: Sections 84890, 84893, 84894, 84895, 84895.5 and 84896, Education Code.

Subchapter 9. Standards of Scholarship

§ 55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by section 51002 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. New chapter 9 (sections 55750–55765) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with section 55758.

(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55752. Credit–No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit–no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit–no credit" or a letter grade.

(b) All units earned on a "credit–no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit–no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300–55352 of this part may be graded on a "credit–no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55753. Credit by Examination.

(a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0;

or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community-based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college-level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college-level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college-level courses, request reinstatement to proceed with college-level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit-no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 72285 and 76000, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timeliness established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

(b) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

(c) Grades awarded for courses repeated under the provisions of this section shall not be counted in calculating a student's grade point average.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902, and 76624, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55800.5. Minimum Credit Hours for Graduation from Two-Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1983).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

(d) The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55803. Associate in Science Degree (Applicable Until July 1, 1983).

The governing board of a community college district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall

ommendations on staff, student, and instructional improvement activities.

(f) Provid^ upon request of the Chancellor, copies of documents and information specified in Subsections (a) through (d), inclusive.

NOTE: Authority cited: Sections 71020 and 84890, Education Code. Reference: Section 84894, Education Code.

§ 55732. Ongoing Responsibilities of the Chancellor.

The Chancellor shall:

(a) Adjust state aid for districts with approved flexible calendar operations in accordance with the provisions of Sections 84895 and 84895.5 of the Education Code. For fiscal year 1982–83, the Chancellor shall also adjust the ADA of any district which has been newly approved to operate a flexible calendar operation during that fiscal year. The adjustment shall be made in order that those districts do not experience an arbitrary gain or loss in average daily attendance as a result of shifting to a flexible calendar operation.

(b) Periodically review documentation from selected districts to determine whether they are in compliance with the provisions of Sections 55726, 55728, and 55730, and to determine whether they are conducting their flexible calendar operations in a manner consistent with the approved requests. Districts which are found to be out of compliance shall be notified and be given an opportunity to respond.

(c) Terminate approval of any flexible calendar operation if it is found that the district has, without good cause:

(1) Failed to conduct its flexible calendar operation in a manner consistent with its approved request.

(2) Failed to carry out the responsibilities specified in Section 55726.

(3) Failed to meet its ongoing responsibilities as specified in Section 55730.

(d) Withhold the appropriate amount of state aid whenever there is a final audit finding that an instructor did not spend at least as much time performing staff, student, and instructional improvement activities as the amount of time he or she was released from classroom instruction.

(e) Report to the Legislature as required by Section 84896 of the Education Code.

NOTE: Authority cited: Sections 71020 and 84890, Education Code. Reference: Sections 84890, 84893, 84894, 84895, 84895.5 and 84896, Education Code.

Subchapter 9. Standards of Scholarship

§ 55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by section 51002 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. New chapter 9 (sections 55750–55765) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with section 55758.

(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55752. Credit–No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit–no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit–no credit" or a letter grade.

(b) All units earned on a "credit–no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit–no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300–55352 of this part may be graded on a "credit–no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55753. Credit by Examination.

(a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community–based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college–level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college–level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college–level courses, request reinstatement to proceed with college–level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit–no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.

Symbol	*Definition*
	Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following:
	"Military withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990, and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 72285 and 76000, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of subsection (c) filed 5–20–91 and submitted to OAL on 5–24–91 for printing only pursuant to Education Code section 10901.5; operative 6–19–91 (Register 91, No. 31).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timeliness established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

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(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances at shall warrant exceptions to the standards for dismissal herein set rth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community–based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college–level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college–level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college–level courses, request reinstatement to proceed with college–level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit–no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning

of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error (Register 91, No. 43).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

(b) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

(c) Grades awarded for courses repeated under the provisions of this section shall not be counted in calculating a student's grade point average.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55800.5. Minimum Credit Hours for Graduation from Two-Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1983).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

(d) The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55803. Associate in Science Degree (Applicable Until July 1, 1983).

The governing board of a community college district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall include a major of at least 18 semester hours in the fields of engineering, physical and biological sciences, or occupational curriculum.

The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

§ 55732. Ongoing Responsibilities of the Chancellor.

The Chancellor shall:

(a) Adjust state aid for districts with approved flexible calendar operations in accordance with the provisions of Sections 84895 and 84895.5 of the Education Code. For fiscal year 1982–83, the Chancellor shall also adjust the ADA of any district which has been newly approved to operate a flexible calendar operation during that fiscal year. The adjustment shall be made in order that those districts do not experience an arbitrary gain or loss in average daily attendance as a result of shifting to a flexible calendar operation.

(b) Periodically review documentation from selected districts to determine whether they are in compliance with the provisions of Sections 55726, 55728, and 55730, and to determine whether they are conducting their flexible calendar operations in a manner consistent with the approved requests. Districts which are found to be out of compliance shall be notified and be given an opportunity to respond.

(c) Terminate approval of any flexible calendar operation if it is found that the district has, without good cause:

(1) Failed to conduct its flexible calendar operation in a manner consistent with its approved request.

(2) Failed to carry out the responsibilities specified in Section 55726.

(3) Failed to meet its ongoing responsibilities as specified in Section 55730.

(d) Withhold the appropriate amount of state aid whenever there is a final audit finding that an instructor did not spend at least as much time performing staff, student, and instructional improvement activities as the amount of time he or she was released from classroom instruction.

(e) Report to the Legislature as required by Section 84896 of the Education Code.

NOTE: Authority cited: Sections 71020 and 84890, Education Code. Reference: Sections 84890, 84893, 84894, 84895, 84895.5 and 84896, Education Code.

Subchapter 9. Standards of Scholarship

§ 55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by section 51002 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. New chapter 9 (sections 55750–55765) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with section 55758.

(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55752. Credit–No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit–no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit–no credit" or a letter grade.

(b) All units earned on a "credit–no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit–no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300–55352 of this part may be graded on a "credit–no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55753. Credit by Examination.

(a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open–entry, open–exit" course is assigned an "IP" at the end of an attendance period and does not re–enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy. Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following: "Military withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal

symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of subsection (c) filed 5-20-91 and submitted to OAL on 5-24-91 for printing only pursuant to Education Code section 10901.5; operative 6-19-91 (Register 91, No. 31).
3. Editorial correction of printing error in NOTE (Register 91, No. 43).
4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error (Register 91, No. 43).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

(b) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

(c) Grades awarded for courses repeated under the provisions of this section shall not be counted in calculating a student's grade point average.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

History
1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

History
1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55800.5. Minimum Credit Hours for Graduation from Two-Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History
1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1983).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

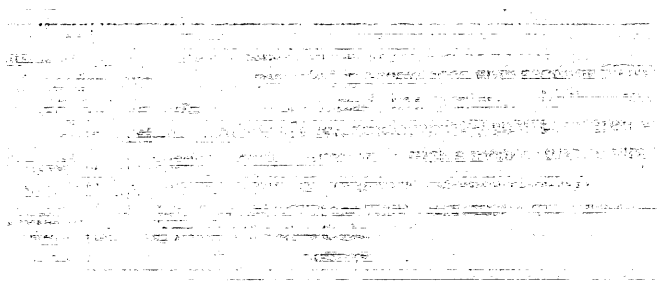
(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

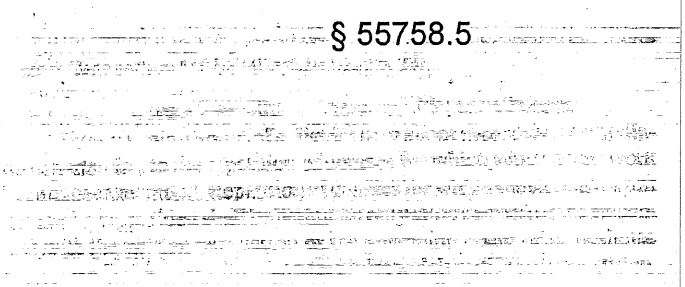
(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.





sonably assure success in college-level courses, request reinstatement to proceed with college-level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit-no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned.
	The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty.

Symbol	*Definition*
	Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W."
	For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer.
	The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures.
	Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs.
	A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.
	Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following:
	"Military withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of subsection (c) filed 5-20-91 and submitted to OAL on 5-24-91 for printing only pursuant to Education Code section 10901.5; operative 6-19-91 (Register 91, No. 31).
3. Editorial correction of printing error in NOTE (Register 91, No. 43).
4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).

§ 55758.5. Grade Point Averaging.

(a) This section augments and should be read in conjunction with Section 55758 relating to academic record symbols and grade point average.

(b) In calculating students' degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10-25-91; operative 11-24-91 (Register 92, No. 7).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error (Register 91, No. 43).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, inclicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

(b) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

(c) Grades awarded for courses repeated under the provisions of this section shall not be counted in calculating a student's grade point average.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55800.5. Minimum Credit Hours for Graduation from Two-Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

may be claimed for apportionment; and the faculty contact hours shall not be eligible for adjustment pursuant to Section 58188 of this Part.

(b) Districts with approved flexible calendar operations shall also report such additional data as deemed necessary by the Chancellor including any data necessary to compute the ADA adjustment specified in Section 58188 of this Part.

NOTE: Authority cited: Section 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. New section filed 11-10-82; effective thirtieth day thereafter (Register 82, No. 46).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 7).

§ 55730. Ongoing Responsibilities of Districts.

A district conducting an approved flexible calendar shall do all of the following to ensure effective use of resources during flex days:

(a) conduct and annually update a survey of the most critical staff, student, and instructional improvement needs in the district;

(b) develop and carry out a plan of activities to address the critical needs;

(c) maintain records on the description, type and number of activities scheduled and the number of district employees and students participating in these activities;

(d) evaluate annually the effectiveness of conducted activities and update the plan to reflect needed changes;

(e) appoint and hold regular meetings of an advisory committee composed of faculty, students, administrators and other interested persons to make recommendations on staff, student, and instructional improvement activities; and

(f) provide, upon request of the Chancellor, copies of documents and information specified in Subsections (a) through (d), inclusive.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 7).

§ 55732. Ongoing Responsibilities of the Chancellor.

The Chancellor shall:

(a) adjust state aid for districts with approved flexible calendar operations in accordance with the provisions of Section 58188 of this Part;

(b) periodically review documentation from selected districts to determine whether they are in compliance with the provisions of Sections 55726, 55728, and 55730, and to determine whether they are conducting their flexible calendar operations in a manner consistent with the approved requests. Districts which are found to be out of compliance shall be notified and be given an opportunity to respond; and

(c) terminate approval of any flexible calendar operation if it is found that the district has, without good cause:

(1) failed to conduct its flexible calendar operation in a manner consistent with its approved request;

(2) failed to carry out the responsibilities specified in Section 55726.; or

(3) failed to meet its ongoing responsibilities as specified in Section 55730.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 7).

Subchapter 9. Standards of Scholarship

§ 55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by section 51002 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. New chapter 9 (sections 55750-55765) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with section 55758.

(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55752. Credit-No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit-no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit-no credit" or a letter grade.

(b) All units earned on a "credit-no credit" basis in accredited California institutions of higher education or equivalent out-of-state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit-no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300-55352 of this part may be graded on a "credit-no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55753. Credit by Examination.

(a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community-based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college-level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college-level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will rea-

Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full-time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81505, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each

Senior Accounting Officers (Specialists) 3
Accounting Officers (Specialists) 3
Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of History 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

ıbmitted to OAL for printing only pursuant to Education Code Section ,0901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, ınning, and implementing his or her immediate and long–range aca- ıic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

(3) In performing the requirements of Subsections (a)(1) and (2), the governing board or its designees shall consult with the representatives of existing staff councils, committees, employee organizations, and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this Section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views.

(4) Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this Section.

(6) The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration.

(7) The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations, or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category that they represent.

(b) In developing and carrying out policies and procedures pursuant to Subsection (a), the district governing board shall ensure that its actions do not dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code Sections 3540, et seq., such procedures for staff participation shall not intrude on matters within the scope of representation under Section 3543.2 of the Government Code. In addition, governing boards shall not interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer–employee relations. Nothing in this Section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards. It is the intent of the Board of Governors to respect lawful agreements between staff and exclusive representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to staff pursuant to these regulations.

(c) Nothing in this Section shall be construed to impinge upon the policies and procedures governing the participation rights of faculty and students pursuant to Sections 53200–53204, and Section 51023.7, respectively.

(d) The governing board of a community college district shall comply substantially with the provisions of this Section.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b), (Register 91, No. 23).
2. Editorial correction of printing error in subsection (b) and HISTORY 1. (Register 91, No. 43).
3. Amendment of subsections (a)(1), (a)(3), (a)(5), (a)(7), (b), (c) and (d) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51023.7. Students.

(a) The governing board of a community college district shall adopt policies and procedures that provide students the opportunity to participate effectively in district and college governance. Among other matters, said policies and procedures shall include the following:

(1) Students shall be provided an opportunity to participate in formulation and development of district and college policies and procedures that have or will have a significant effect on students. This right includes the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures.

(2) Except in unforeseeable, emergency situations, the governing board shall not take action on a matter having a significant effect on students until it has provided students with an opportunity to participate in the formulation of the policy or procedure or the joint development of recommendations regarding the action.

(3) Governing board procedures shall ensure that at the district and college levels, recommendations and positions developed by students are given every reasonable consideration.

(4) For the purpose of this Section, the governing board shall recognize each associated student organization or its equivalent within the district as provided by Education Code Section 76060, as the representative body of the students to offer opinions and to make recommendations to the administration of a college and to the governing board of a district with regard to district and college policies and procedures that have or will have a significant effect on students. The selection of student representatives to serve on college or district committees, task forces, or other governance groups shall be made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district.

(b) For the purposes of this Section, district and college policies and procedures that have or will have a "significant effect on students" includes the following:

(1) grading policies;
(2) codes of student conduct;
(3) academic disciplinary policies;
(4) curriculum development;
(5) courses or programs which should be initiated or discontinued;
(6) processes for institutional planning and budget development;
(7) standards and policies regarding student preparation and success;
(8) student services planning and development;
(9) student fees within the authority of the district to adopt; and
(10) any other district and college policy, procedure, or related matter that the district governing board determines will have a significant effect on students.

(c) The governing board shall give reasonable consideration to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff.

(d) Nothing in this Section shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiations or negotiated agreements between collective bargaining agents and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining agents as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to the regulations on academic senates contained in Sections 53200–53206.

(e) The governing board of a community college district shall comply substantially with policies and procedures adopted in accordance with this Section.

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901 (b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 23).
2. Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1 (Register 91, No. 43).
3. Amendment of subsections (a)(2), (a)(4), (b), (b)(10), (d) and (e) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51024. Matriculation Services.

The governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under Section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under Section 55512(c);

(c) provide matriculation services to its students in accordance with Sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with Section 55534; and

(e) substantially comply with all other provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210–78218, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 7).

Amendment of first paragraph and subsection (e) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 51025. Full–Time/Part–Time Faculty.

This Section relates to and should be read in conjunction with Subchapter 3 (commencing with Section 53300) of Chapter 4 of this Division.

(a) Community college districts which have less than 75 percent of their hours of credit instruction taught by full–time instructors, as determined from their base data calculated pursuant to Section 53311, shall apply the growth revenues received related to increases in credit FTES in accordance with Section 58774 and a portion of the program improvement allocation received in accordance with Section 58775, as follows:

(1) Of the growth revenues received related to increases in credit FTES pursuant to Section 58774, the districts shall increase the base number of full–time instructors, subject to Subsection (e) below, by the Fall term of the succeeding fiscal year, by the product of their base number of full–time faculty multiplied by the percentage change in funded credit FTES, rounded down to the nearest whole number.

(2) Districts which, as determined from their base data, had 67 percent or greater, but less than 75 percent of their hours of credit instruction taught by full–time instructors shall apply up to 33 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(3) Districts which, as determined from their base data, had less than 67 percent of their hours of credit instruction taught by full–time instructors shall apply up to 40 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(4) Of the program improvement funds identified in Subsection (a)(2) or (3), as appropriate, the district shall increase the number of full–time instructors, by the Fall term of the succeeding fiscal year, by the quotient of the applicable program improvement funds divided by the statewide average replacement cost, rounded down to the nearest whole number.

(5) If the number of full–time faculty derived in Subsections (a)(1) and (4) result in the district exceeding the 75 percent standard, the Chancellor shall reduce the number to a whole number to a whole number that leaves the district as close as possible to, but in excess of, the 75 percent standard.

(b) Statewide average replacement cost is the statewide average faculty salary plus benefits, minus the product of the statewide average hourly rate of compensation for part–time instructors times the statewide average full–time teaching load.

(c) On or before December 31 of each year, the Chancellor shall determine, based on information submitted by districts, the extent to which each district, by the Fall term of that year, has maintained or hired the number of additional full–time instructors determined pursuant to Subsection (a) for the prior fiscal year. To the extent that the number of full–time faculty has not been maintained or additional full–time instructors have not been retained, the Chancellor shall reduce the district's revenue for the current fiscal year by an amount equivalent to the average replacement cost for the prior fiscal year times the deficiency in the number of full–time faculty. To the extent a district hires the additional full–time instructors in subsequent fiscal years the reductions made to the district's revenue shall be restored.

(d) All revenues available due to reductions made pursuant to Subsection (c), shall be made available on a one–time basis for that fiscal year, for purposes of faculty and staff diversity pursuant to Education Code, Section 87107.

(e) By January 20 of each fiscal year the Board of Governors shall determine whether adequate growth funds and adequate cost–of–living funds have been provided to allow full or partial implementation of the provisions of Subsection (a)(1).

(f) For districts that experience a reduction in base credit FTES, the Chancellor shall make a proportionate reduction to their base number of full–time faculty.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 7–3–91 and submitted to OAL on 7–12–91 for printing only pursuant to Education Code section 70901.5; operative 8–3–91 (Register 91, No. 46).
2. New first paragraph, amendment of subsections (a)–(a)(4) and (c) and NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51027. Transfer Centers: Minimum Program Standards.

(a) The governing board of each community college district shall recognize transfer as one of its primary missions, and shall place priority emphasis on the preparation and transfer of underrepresented students, including African–American, Chicano/Latino, American Indian, disabled, low–income and other students historically and currently underrepresented in the transfer process.

(b) Each community college district governing board shall direct the development and adoption of a transfer center plan describing the activities of the transfer center and the services to be provided to students, incorporating the provisions established in the standards outlined below. Plans shall identify target student populations and shall establish target increases in the number of applicants baccalaureate institutions from these populations, including specific targets for increasing the transfer applications of underrepresented students among transfer students. Plans shall be developed in consultation with baccalaureate college and university personnel as available.

Plan components shall include, but not be limited to: services to be provided to students; facilities; staffing; advisory committee; and evaluation and reporting.

(1) Required Services. Districts shall:

(A) Identify, contact, and provide transfer support services to targeted student populations as identified in the transfer center plan, with a priority emphasis placed on African–American, Chicano/Latino, American Indian, disabled, low–income, and other underrepresented students. These

activities shall be developed and implemented in cooperation with student services departments and with faculty.

(B) Ensure the provision of academic planning for transfer, the development and use of transfer admission agreements with baccalaureate institutions where available and as appropriate, and the development and use of course-to-course and major articulation agreements. Academic planning and articulation activities shall be provided in cooperation with student services, with faculty, and with baccalaureate institution personnel as available.

(C) Ensure that students receive accurate and up-to-date academic and transfer information through coordinated transfer counseling services.

(D) Monitor the progress of transfer students to the point of transfer, in accordance with monitoring activities established in the Transfer Center Plan.

(E) Support the progress of transfer students through referral as necessary, to such services as ability and diagnostic testing, tutoring, financial assistance, counseling, and to other instructional and student services on campus as appropriate.

(F) Assist students in the transition process, including timely completion and submittal of necessary forms and applications.

(G) In cooperation with baccalaureate institution personnel as available, develop and implement a schedule of services for transfer students to be provided by baccalaureate institution staff.

(H) Provide a resource library of college catalogs, transfer guides, articulation information and agreements, applications to baccalaureate institutions, and related transfer information.

(2) Facilities. Each district governing board shall provide space and facilities adequate to support the transfer center and its activities. Each district shall designate a particular location on campus as the focal point of transfer functions. This location should be readily identifiable and accessible to students, faculty, and staff.

(3) Staffing. Each district governing board shall provide clerical support for the transfer center and assign college staff to coordinate the activities of the transfer center; to coordinate underrepresented student transfer efforts; to serve as liaison to articulation, to student services, and to instructional programs on campus; and to work with baccalaureate institution personnel.

(4) Advisory Committee. Each district shall designate an advisory committee to plan the development, implementation, and ongoing operations of the transfer center. Membership shall be representative of campus departments and services. Baccalaureate institution personnel shall be included as available.

(5) Evaluation and Reporting. Each district governing board shall include in its transfer center plan a plan of institutional research for ongoing internal evaluation of the effectiveness of the college's transfer efforts, and the achievement of its transfer center plan.

Each community college district shall submit an annual report to the Chancellor describing the status of the district's efforts to implement its transfer center(s), achievement of transfer center plan targets and goals, and expenditures supporting transfer center operations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66010.4 and 70901, Education Code.

HISTORY

1. New section filed 7-22-91; operative 8-21-91 (Register 92, No. 4).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 2. Investigation and Enforcement of Minimum Conditions

§ 51100. Review of Colleges.

(a) At least once each seven years, and at such other times as he or she deems necessary, the Chancellor shall review each community college to determine whether it has met the minimum conditions contained in Subchapter 1 (commencing with Section 51000) of Chapter 2.

(b) In the event that the Chancellor determines that a visit to the college is necessary to investigate compliance, he or she shall inform the chief executive officer of the district at least one month in advance of such visit, and shall specify the particular minimum conditions which will be investigated.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 51100 and 51101) and new chapter 2 (sections 51100 and 51102) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 2, see Registers 81, No. 52; 77, No. 45; and 71, No. 27.
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of subsection (a) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51102. Enforcement.

(a) If any review pursuant to Section 51100 discloses that a college is not in compliance with the provisions of Subchapter 1 (commencing with Section 51100) of Chapter 2, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

(1) accept in whole or part the district's response regarding noncompliance;

(2) require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

(3) withhold all or part of the district's state aid. The amount of withholding shall be related to the extent and gravity of noncompliance and shall require approval of the Board of Governors.

(c) The Chancellor shall report to the Board of Governors on any actions taken pursuant to Subsection (b) of this Section, provided that, in the event he or she determines to withhold all or a portion of a district's state aid, the Chancellor shall inform and obtain the approval of the Board prior to the withholding.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

Subchapter 3. Faculty

NOTE: Authority cited: Sections 71020, 71024 and 71025, Education Code.

HISTORY

1. Repealer of Chapter 3[216z (Sections 51200 and 51201) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 4. Standards of Scholarship

NOTE: Authority cited: Section 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY

1. Repealer of Chapter 4 (Sections 51300-51319, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 4, see Registers 82, No. 20; 80, No. 19; 80, No. 11; 77, No. 45; and 71, No. 27.

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§ 55728. Flexible Calendar Attendance Reporting.

(a) On forms provided by the Chancellor, districts with approved flexible calendar operations shall report at least the following:

(1) the total hours of classroom assignments (teaching time) which instructors specified in the district's approved plan were required to teach;

(2) of the total in Subsection (a)(1), the total faculty contact hours of instruction for which staff, student, and instructional improvement activities are being substituted. This total of faculty contact hours shall further be reported in terms of credit and noncredit faculty contact hours of instruction; and

(3) the number of faculty contact hours of instruction for which instruction during the designated days is being substituted. Such instruction during the designated days meeting the attendance accounting standards may be claimed for apportionment; and the faculty contact hours shall not be eligible for adjustment pursuant to Section 55729.

(b) Districts with approved flexible calendar operations shall also report such additional data as deemed necessary by the Chancellor including any data necessary to compute the FTES adjustment specified in Section 55729.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. New section filed 11–10–82; effective thirtieth day thereafter (Register 82, No. 46).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).
3. Amendment of subsections (a)(1), (a)(3), (b) and NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
4. Amendment of subsections (a)(2)–(b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55729. Full–time Equivalent Student (FTES) Units; Adjustments to Reflect Activities; Computation by Multiplier Factor.

(a) The Chancellor's Office shall adjust the actual units of full–time equivalent student of a district operating under a plan approved in accordance with Sections 55720–32 to reflect the conduct of staff, student, and instructional improvement activities in lieu of scheduled instruction during flexible time. The adjusted units of full–time equivalent student shall be computed by multiplying the actual units of full–time equivalent student in the academic year, exclusive of any intersessions, computed pursuant to Section 58003.1, by a factor which does not change the full–time equivalent student which would have otherwise been generated if the time for the improvement activities had not been permitted and scheduled instruction had instead taken place.

(b) For courses other than those described in Subsection (b) of Section 58003.1, the multiplier factor shall equal the sum of the following:

(1) 1.0; and

(2) the total of all the actual hours of flexible time of all instructors pursuant to Section 55720 in the fiscal year, divided by the total of all the actual hours of classroom instruction of all instructors in the academic year, exclusive of any intersessions.

(c) For those courses described in Subsection (b) of Section 58003.1, this multiplier factor shall equal the maximum term length multiplier set forth in that Subsection.

(d) The Chancellor shall also withhold the appropriate amount of state aid whenever there is a final audit finding that an instructor did not spend at least as much time performing staff, student, and instructional improvement activities as the amount of time he or she was released from classroom instruction.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
2. Amendment of section heading and text filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only purruant to Education Code section 70901.5 (Register 94, No. 38).

§ 55730. Ongoing Responsibilities of Districts.

A district conducting an approved flexible calendar shall do all of the following to ensure effective use of resources during flex days:

(a) conduct and annually update a survey of the most critical staff, student, and instructional improvement needs in the district;

(b) develop and carry out a plan of activities to address the critical needs;

(c) maintain records on the description, type and number of activities scheduled and the number of district employees and students participating in these activities;

(d) evaluate annually the effectiveness of conducted activities and update the plan to reflect needed changes;

(e) appoint and hold regular meetings of an advisory committee composed of faculty, students, administrators and other interested persons to make recommendations on staff, student, and instructional improvement activities; and

(f) provide, upon request of the Chancellor, copies of documents and information specified in Subsections (a) through (d), inclusive.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).

§ 55732. Ongoing Responsibilities of the Chancellor.

The Chancellor shall:

(a) Adjust state aid for districts with approved flexible calendar operations in accordance with the provisions of section 55729 of this Part;

(b) Periodically review documentation from selected districts to determine whether they are in compliance with the provisions of sections 55726, 55728, and 55730, and to determine whether they are conducting their flexible calendar operations in a manner consistent with the approved requests. Districts which are found to be out of compliance shall be notified and be given an opportunity to respond; and

(c) Terminate approval of any flexible calendar operation if it is found that the district has, without good cause:

(1) failed to conduct its flexible calendar operation in a manner consistent with its approved request;

(2) failed to carry out the responsibilities specified in section 55726; or

(3) failed to meet its ongoing responsibilities as specified in section 55730.

NOTE: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).
2. Amendment filed 5–15–93; operative 6–14–93 (Register 93, No. 25).

Subchapter 9. Standards of Scholarship

§ 55750. Regulations.

The governing board of a district maintaining a community college shall adopt regulations consistent with this chapter. The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by section 51002 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. New chapter 9 (sections 55750–55765) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55751. Grading Practices.

Each governing board maintaining one or more community colleges shall determine a uniform grading practice for the district which shall be based on sound academic principles and conform to the following standards:

(a) Work in all courses acceptable in fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license shall be graded in accordance with a grading scale adopted by the governing board consistent with section 55758.

(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55752. Credit–No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit–no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit–no credit" or a letter grade.

(b) All units earned on a "credit–no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit–no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300–55352 of this part may be graded on a "credit–no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55753. Credit by Examination.

(a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been

enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community–based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college–level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college–level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college–level courses, request reinstatement to proceed with college–level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit–no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average. The highest grade shall receive four points, and the lowest grade shall receive 0 points, using only the following evaluative symbols:

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) of this section in the catalog or catalogs of that community college district as a part of its grading practices.

(c) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned.

Symbol	*Definition*
	The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open–entry, open–exit" course is assigned an "IP" at the end of an attendance period and does not re–enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty.

Symbol	*Definition*
	Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy. Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following: "Military withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of subsection (c) filed 5–20–91 and submitted to OAL on 5–24–91 for printing only pursuant to Education Code section 10901.5; operative 6–19–91 (Register 91, No. 31).
3. Editorial correction of printing error in NOTE (Register 91, No. 43).
4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).
5. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55758.5. Grade Point Averaging.

(a) This section augments and should be read in conjunction with Section 55758 relating to academic record symbols and grade point average.

(b) In calculating students' degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–25–91; operative 11–24–91 (Register 92, No. 7).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning

of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

(b) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

(c) Grades awarded for courses repeated under the provisions of this section shall not be counted in calculating a student's grade point average.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of

grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55800.5. Minimum Credit Hours for Graduation from Two–Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1989).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55752. Credit–No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit–no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit–no credit" or a letter grade.

(b) All units earned on a "credit–no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit–no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300–55352 of this part may be graded on a "credit–no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55753. Credit by Examination.

(a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been

enrolled for which entries of "W," "I," and "NC" (as defined in section 58) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community–based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college–level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college–level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college–level courses, request reinstatement to proceed with college–level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit–no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average using only the following evaluative symbols, except as provided in subsection (b):

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board of a community college district may use "plus" and "minus" designations in combination with letter grades, except that the grade of C minus shall not be used. If pluses and minuses are used, the grade point value of a plus shall be computed by adding 0.3 to the value assigned to the letter grade with which it is combined, and the grade point value of a minus shall be computed by subtracting 0.3 from the value assigned to the letter grade with which it is combined, except that no grade point value shall be less than 0 or greater than 4.0.

(c) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) or subsections (a) and (b) (if pluses and minuses are used) in the catalog or catalogs of that community college district as a part of its grading practices.

(d) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open–entry, open–exit" course is assigned an "IP" at the end of an attendance period and does not re–enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy. Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following: "Military withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Amendment of subsection (c) filed 5-20-91 and submitted to OAL on 5-24-91 for printing only pursuant to Education Code section 10901.5; operative 6-19-91 (Register 91, No. 31).

3. Editorial correction of printing error in NOTE (Register 91, No. 43).
4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).
5. Editorial correction of HISTORY 1 (Register 95, No. 22).
6. Amendment of subsection (a), new subsection (b), subsection relettering, amendment of newly designated subsection (c), and amendment of NOTE filed 1-[illegible]-98; operative 2-11-98. Submitted to OAL for printing only (Register 98, No. 3).

§ 55758.5. Grade Point Averaging.

(a) This section augments and should be read in conjunction with Section 55758 relating to academic record symbols and grade point average.

(b) In calculating students' degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10-25-91; operative 11-24-91 (Register 92, No. 7).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall, in accordance, deem any course repetition permitted under section 55761 to require "prior written permission from the district superintendent or the district superintendent's authorized representative or representatives";

(e) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(f) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(g) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(h) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55763. Course Repetition: Special Circumstances.

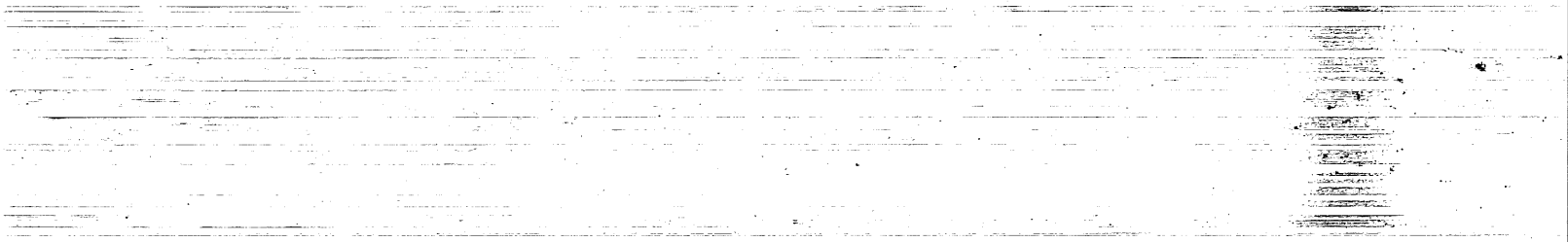
(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded. Repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition.

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open–entry, open–exit" course is assigned an "IP" at the end of an attendance period and does not re–enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in Section 55758 of this part, other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy. Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following: "Military withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).



(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23) Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22)

§ 55752. Credit-No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit-no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit-no credit" or a letter grade.

(b) All units earned on a "credit-no credit" basis in accredited California institutions of higher education or equivalent out-of-state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit-no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300-55352 of this part may be graded on a "credit-no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State, operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55753. Credit by Examination.

(a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the student was not enrolled in the winter quarter of that academic year).

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community-based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college-level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college-level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college-level courses, request reinstatement to proceed with college-level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit–no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average using only the following evaluative symbols, except as provided in subsections (b) and (c):

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board of a community college district may use "plus" and "minus" designations in combination with letter grades, except that the grade of C minus shall not be used. If pluses and minuses are used, the grade point value of a plus shall be computed by adding 0.3 to the value assigned to the letter grade with which it is combined, and the grade point value of a minus shall be computed by subtracting 0.3 from the value assigned to the letter grade with which it is combined, except that no grade point value shall be less than 0 or greater than 4.0.

(c) Regardless of whether the governing board elects to use plus and minus grading, it may provide for the use of the "FW" grade symbol to indicate that a student has both ceased participating in a course some time after the last day to officially withdraw from the course without having achieved a final passing grade, and that the student has not received district authorization to withdraw from the course under extenuating circumstances. The "FW" symbol may not be used if a student has qualified for and been granted military withdrawal. If "FW" is used, its grade point value shall be zero (0).

(d) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) or subsections (a) and (b) (if pluses and minuses are used) in the catalog or catalogs of that community college district as a part of its grading practices. In the event the governing board chooses to use the "FW" described in subsection (c), it shall be included in the grading scale and point equivalencies published in the catalog.

(e) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in this Section other than a "W." The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in Sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.
MW	Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following: "Military Withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s. In no case would a military withdrawal result in a student being assigned an "FW" grade.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment of subsection (c) filed 5-20-91 and submitted to OAL on 5-24-91 for printing only pursuant to Education Code section 10901.5; operative 6-19-91 (Register 91, No. 31).
3. Editorial correction of printing error in NOTE (Register 91, No. 43).
4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).
5. Editorial correction of HISTORY 1 (Register 95, No. 22).
6. Amendment of subsection (a), new subsection (b), subsection relettering, amendment of newly designated subsection (c), and amendment of NOTE filed 1-12-98; operative 2-11-98. Submitted to OAL for printing only (Register 98, No. 3).
7. Amendment of subsection (a), new subsection (c), subsection relettering, and amendment of newly designated subsections (d) and (e) filed 12-8-2000; operative 1-7-2001. Submitted to OAL for printing only (Register 2000, No. 50).

§ 55758.5. Grade Point Averaging.

(a) This section augments and should be read in conjunction with Section 55758 relating to academic record symbols and grade point average.

(b) In calculating students' degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10-25-91; operative 11-24-91 (Register 92, No. 7).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(e) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(f) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(g) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Repealer of subsection (d), subsection relettering, and amendment of NOTE filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded.

(b) Except as provided in Subsection (c), repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the gov-

erning board or its designee based on a finding that circumstances exist which justify such repetition. Grades awarded for courses repeated under the provisions of this subsection shall not be counted in calculating a student's grade point average.

(c) If a district permits repetition of courses where substandard work has not been recorded, repetition shall be permitted, without petition, in instances when such repetition is necessary for a student to meet a legally mandated training requirement as a condition of continued paid or volunteer employment. Such courses must conform to all attendance accounting, course approval, and other requirements imposed by applicable provisions of law. Such courses may be repeated for credit any number of times, regardless of whether or not substandard work was previously recorded, and the grade received each time shall be included for purposes of calculating the student's grade point average. The governing board of a district may establish policies and procedures requiring students to certify or document that course repetition is necessary to complete legally mandated training pursuant to this subsection.

(d) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Amendment of section and NOTE filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of

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(b) Such work shall also be graded in accordance with the provisions of section 55752 or section 55753.

NOTE: Authority cited: Sections 66700, 70901, 71020, and 71024, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55752. Credit–No Credit Options.

(a) The governing board of a district maintaining a community college may by resolution and regulation offer courses in either or both of the following categories and shall specify in its catalog the category into which each course falls:

(1) Courses wherein all students are evaluated on a "credit–no credit" basis.

(2) Courses wherein each student may elect on registration, or no later than the end of the first 30% of the term, whether the basis of evaluation is to be "credit–no credit" or a letter grade.

(b) All units earned on a "credit–no credit" basis in accredited California institutions of higher education or equivalent out–of–state institutions shall be counted in satisfaction of community college curriculum requirements.

(c) Units earned on a "credit–no credit" basis shall not be used to calculate grade point averages. However, units attempted for which "NC" (as defined in section 55758) is recorded shall be considered in probation and dismissal procedures.

(d) Independent study courses offered in accordance with sections 55300–55352 of this part may be graded on a "credit–no credit" basis in accordance with subdivision (a) of this section.

(e) When a district offers courses in which there is a single standard of performance for which unit credit is assigned, the "CR/NC" grading system shall be used to the exclusion of other grades. Credit shall be assigned for meeting that standard, no credit for failure to do so.

NOTE: Authority cited: Sections 70901 and 71020, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55753. Credit by Examination.

(a) The governing board of each community college district shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this Subchapter.

(b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.

(c) The nature and content of the examination shall be determined solely by faculty in the discipline that normally teaches the course for which credit is to be granted in accordance with policies and procedures approved by the curriculum committee established pursuant to Section 55002. The faculty shall determine that the examination adequately measures mastery of the course content as set forth in the outline of record. The faculty may accept an examination conducted at a location other than the community college for this purpose.

(d) A separate examination shall be conducted for each course for which credit is to be granted. Credit may be awarded for prior experience or prior learning only in terms of individually identified courses for which examinations are conducted pursuant to this section.

(e) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.

(f) Grading shall be according to the regular grading scale approved by the governing board pursuant to Section 55758, except that students shall be offered a credit–no credit option if that option is ordinarily available for the course.

(g) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Amendment filed 1–4–2002; operative 7–1–2002. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2002, No. 8).

§ 55753.5. Articulation of High School Courses.

(a) For purposes of this section, the term "articulated high school course" means a high school course or courses that the faculty in the appropriate discipline, using policies and procedures approved by the curriculum committee established pursuant to Section 55002, have determined to be comparable to a specific community college course.

(b) The governing board of a community college district may adopt policies to permit articulated high school courses to be applied to community college requirements in accordance with this Section. Articulated high school courses may be accepted in lieu of comparable community college courses to partially satisfy:

(1) requirements for a certificate program, including the total number of units required for the certificate; or,

(2) the major requirements in a degree program.

(c) Articulated high school courses used to partially satisfy certificate or major requirements shall be clearly noted as such on the student's academic record. Notations of community college course credit shall be made only if community college courses are successfully completed or if credit is earned via credit by examination.

(d) Except through credit by examination, as defined in Section 55753, high school courses may not be used to satisfy:

(1) the requirement of Section 55806 that students complete at least 60 semester or 90 quarter units in order to receive an associate degree; or,

(2) any general education requirement for the associate degree established by the district.

(e) All community college district–high school articulation agreements shall be subject to the provisions of this Section. However, any student who, prior to the date this Section takes effect, has successfully completed a high school course articulated under the terms of a previous agreement shall be permitted to apply the credit so earned according to the terms of the previous agreement.

NOTE: Authority cited: Sections 66700, 70901 and 70902, Education Code. Reference: Sections 66700, 70901 and 70902, Education Code.

HISTORY

1. New section filed 1–4–2002; operative 7–1–2002. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2002, No. 8).

§ 55753.7. Advanced Placement Examinations.

The governing board of a community college district may adopt policies to grant credit for satisfactory completion of advanced placement examinations typically recognized by colleges and universities as measuring competencies comparable to those achieved in baccalaureate level courses.

The faculty in the appropriate discipline must approve advanced placement examinations, scores deemed to constitute satisfactory performance, courses offered by the college for which credit will be granted, and requirements that may be met by such examinations in accordance with policies and procedures approved by the curriculum committee established pursuant to Section 55002.

The student's academic record shall be clearly annotated to reflect that credit was earned through an advanced placement examination.

NOTE: Authority cited: Sections 66700, 70901 and 70902, Education Code. Reference: Sections 66700, 70901 and 70902, Education Code.

HISTORY

w section filed 1-4-2002; operative 7-1-2002. Submitted to OAL for print-..g only pursuant to Education Code section 70901.5 (Register 2002, No. 8).

§ 55754. Standards for Probation.

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale described in section 55758.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded reaches or exceeds fifty percent (50%).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

'orial correction of HISTORY 1 (Register 95, No. 22).

.5755. Removal from Probation.

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756. Standards for Dismissal.

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment (i.e., a fall quarter followed by a spring quarter shall be considered consecutive if the stu- was not enrolled in the winter quarter of that academic year).

A student who is on academic probation shall be subject to dismiss- the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading scale described in section 55758.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of "W," "I," and "NC" (as defined in section 55758) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55754.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subsections (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth and shall file a copy of such rules with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, "remedial coursework" refers to precollegiate basic skills courses as defined in subsection (d) of section 55502 of this part.

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to chapter 6 (commencing with section 55500) of division 6 of this part. However, except as provided in subsection (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by college, adult school, community-based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in subsection (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section 56014 of this part.

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college-level courses. Such waivers, if granted, shall be provided pursuant to locally developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college-level work within the limit described in subsection (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college-level courses, request reinstatement to proceed with college-level coursework.

(g) The governing board of a each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

(1) The effect of this section on students by sex, age, and ethnicity;

(2) Success rates for students enrolled in "remedial coursework";

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55757. Units Attempted.

For the purposes of sections 55754 and 55756, "all units attempted" means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or "credit-no credit" or from which the student withdrew in accordance with rules adopted by the district governing board.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55758. Academic Record Symbols and Grade Point Average.

(a) Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student's grade point average using only the following evaluative symbols, except as provided in subsections (b) and (c):

Symbol	*Definition*	*Grade Point*
A	Excellent	4
B	Good	3
C	Satisfactory	2
D	Passing, less than satisfactory	1
F	Failing	0
CR	Credit (at least satisfactory—units awarded not counted in GPA)	
NC	No Credit (less than satisfactory, or failing—units not counted in GPA)	

(b) The governing board of a community college district may use "plus" and "minus" designations in combination with letter grades, except that the grade of C minus shall not be used. If pluses and minuses are used, the grade point value of a plus shall be computed by adding 0.3 to the value assigned to the letter grade with which it is combined, and the grade point value of a minus shall be computed by subtracting 0.3 from the value assigned to the letter grade with which it is combined, except that no grade point value shall be less than 0 or greater than 4.0.

(c) Regardless of whether the governing board elects to use plus and minus grading, it may provide for the use of the "FW" grade symbol to indicate that a student has both ceased participating in a course some time after the last day to officially withdraw from the course without having achieved a final passing grade, and that the student has not received district authorization to withdraw from the course under extenuating circumstances. The "FW" symbol may not be used if a student has qualified for and been granted military withdrawal. If "FW" is used, its grade point value shall be zero (0).

(d) The governing board for each community college district shall publish the point equivalencies for the grades used in subsection (a) or subsections (a) and (b) (if pluses and minuses are used) in the catalog or catalogs of that community college district as a part of its grading practices. In the event the governing board chooses to use the "FW" described in subsection (c), it shall be included in the grading scale and point equivalencies published in the catalog.

(e) The governing board of each community college district may authorize the use under specified controls and conditions of only the following nonevaluative symbols:

Symbol	*Definition*
I	Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an "I" symbol being entered in the student's record. The condition for the removal of the "I" shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the "I" and the grade assigned in lieu of its removal. This record must be given to the student with a copy on file with the registrar until the "I" is made up or the time limit has passed. A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed. The "I" may be made up no later than one year following the end of the term in which it was assigned. The "I" Symbol shall not be used in calculating units attempted nor for grade points. The governing board shall provide a process whereby a student may petition for a time extension due to unusual circumstances.
IP	In progress: The "IP" symbol shall be used only in those courses which extend beyond the normal end of an academic term. It indicates that work is "in progress," but that assignment of an evaluative symbol (grade) must await its completion. The "IP" symbol shall remain on the student's permanent record in order to satisfy enrollment documentation. The appropriate evaluative symbol (grade) and unit credit shall be assigned and appear on the student's permanent record for the term in which the course is completed. The "IP" shall not be used in calculating grade point averages. If a student enrolled in an "open-entry, open-exit" course is assigned an "IP" at the end of an attendance period and does not re-enroll in that course during the subsequent attendance period, the appropriate faculty will assign an evaluative symbol (grade) in accordance with subsection (a) of this part to be recorded on the student's permanent record for the course.
RD	Report Delayed: The "RD" symbol may be assigned by the registrar only. It is to be used when there is a delay in reporting the grade of a student due to circumstances beyond the control of the student. It is a temporary notation to be replaced by a permanent symbol as soon as possible. "RD" shall not be used in calculating grade point averages.
W	Withdrawal: The governing board of a district which decides to provide a withdrawal procedure shall adopt a policy consistent with the following: Withdrawal from a class or classes shall be authorized through the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The governing board, however, may establish a final withdrawal date which prohibits withdrawal after a designated point in time between the end of the fourth week of instruction (or 30% of a term, whichever is less) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less). The academic record of a student who remains in a class beyond the time allowed by district policy must reflect a symbol as authorized in this Section other than a "W."

Symbol	Definition
	The governing board may by regulation authorize withdrawal from a class or classes in extenuating circumstances after the last day of the fourteenth week (or 75% of the term, whichever is less) upon petition of the student or his or her representative and after consultation with the instructor(s) or appropriate faculty. Extenuating circumstances are verified cases of accidents, illnesses or other circumstances beyond the control of the student. No notation ("W" or other) shall be made on the academic record of the student who withdraws during the first four weeks or 30% of a term, whichever is less. The governing board may establish a period of time shorter than the first four weeks or 30% of a term, during which no notation shall be made. Withdrawal between the end of the fourth week (or such time as established by the district) and the last day of the fourteenth week of instruction (or 75% of a term, whichever is less) shall be authorized after informing the appropriate faculty. Withdrawal after the end of the fourteenth week (or 75% of a term, whichever is less) when the district has authorized such withdrawal in extenuating circumstances, after consultation with appropriate faculty, shall be recorded as a "W." For purposes of withdrawal policies, the term "appropriate faculty" means the instructor of each course in question or, in the event the instructor cannot be contacted, the department chair or equivalent faculty officer. The "W" shall not be used in calculating grade point averages, but excessive "W"s (as defined in Sections 55754 and 55756 of this part) shall be used as factors in probation and dismissal procedures. Within these guidelines, criteria for withdrawal and the procedures to accomplish it shall be established by governing boards and published in college catalogs. A district's responsibilities with respect to enrollment or attendance accounting shall not be modified or superseded in any way by adoption of a withdrawal policy.
MW	Military Withdrawal: The governing board of a district which decides to provide a withdrawal policy shall also adopt military withdrawal procedures consistent with the following: "Military Withdrawal" occurs when a student who is a member of an active or reserve United States military service receives orders compelling a withdrawal from courses. Upon verification of such orders, a withdrawal symbol may be assigned at any time after the period established by the governing board during which no notation is made for withdrawals. The withdrawal symbol so assigned may be a "W" or, if necessary to distinguish military withdrawals, may be a "MW." Military withdrawals shall not be counted in progress probation and dismissal calculations. "W"s incurred during the period between January 1, 1990 and the effective date of this paragraph, which meet the definition of military withdrawal herein, shall not be counted in progress probation and dismissal calculations and may be changed to "MW"s. In no case would a military withdrawal result in a student being assigned an "FW" grade.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of subsection (c) filed 5-20-91 and submitted to OAL on 5-24-91 for printing only pursuant to Education Code section 10901.5; operative 6-19-91 (Register 91, No. 31).
3. Editorial correction of printing error in NOTE (Register 91, No. 43).
4. Editorial correction restoring omitted definition of "Military Withdrawal" and its HISTORY NOTE (Register 92, No. 5).
5. Editorial correction of HISTORY 1 (Register 95, No. 22).
6. Amendment of subsection (a), new subsection (b), subsection relettering, amendment of newly designated subsection (c), and amendment of NOTE filed 1-12-98; operative 2-11-98. Submitted to OAL for printing only (Register 98, No. 3).
7. Amendment of subsection (a), new subsection (c), subsection relettering, and amendment of newly designated subsections (d) and (e) filed 12-8-2000; operative 1-7-2001. Submitted to OAL for printing only (Register 2000, No. 50).

§ 55758.5. Grade Point Averaging.

(a) This section augments and should be read in conjunction with Section 55758 relating to academic record symbols and grade point average.

(b) In calculating students' degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10-25-91; operative 11-24-91 (Register 92, No. 7).

§ 55759. Notification of Probation and Dismissal.

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55760. Grade Changes.

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections, appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 76224, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this part, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," and/or "NC" (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55762. Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the repetition of courses for which substandard academic performance has been previously recorded, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instructors, and

(2) Chapter 2.5 (commencing with section 59020) of Division 10 of this part, pertaining to the retention and destruction of records and particularly subdivision (d) of section 59023, relating to the permanency of certain student records;

(b) May permit repetition of any course which was taken in an accredited college or university and for which substandard academic performance as defined in section 55761 is recorded;

(c) Shall, when adopted procedures or regulations permit course repetition, indicate any specific courses or categories of courses which are exempt from consideration under these regulations;

(d) Shall clearly indicate any courses repeated under the provisions of this section and section 55761 on the student's permanent academic record, using an appropriate symbol;

(e) Shall, when adopted procedures or regulations permit course repetition, publish specific procedures to implement this section;

(f) May, in determining transfer of a student's credits, honor similar, prior course repetition actions by other accredited colleges and universities; and

(g) Shall maintain a careful record of actions taken under course repetition procedures or regulations adopted in compliance with this section and section 55761, since periodic reports may be required by the Chancellor.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Repealer of subsection (d), subsection relettering, and amendment of NOTE filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 55763. Course Repetition: Special Circumstances.

(a) The governing board of a district may adopt procedures or regulations pertaining to the repetition of courses for which substandard work has not been recorded.

(b) Except as provided in Subsection (c), repetition of courses for which substandard work has not been recorded shall be permitted only upon petition of the student and with the written permission of the governing board or its designee based on a finding that circumstances exist which justify such repetition. Grades awarded for courses repeated under the provisions of this subsection shall not be counted in calculating a student's grade point average.

(c) If a district permits repetition of courses where substandard work has not been recorded, repetition shall be permitted, without petition, in instances when such repetition is necessary for a student to meet a legally mandated training requirement as a condition of continued paid or volunteer employment. Such courses must conform to all attendance accounting, course approval, and other requirements imposed by applicable provisions of law. Such courses may be repeated for credit any number of times, regardless of whether or not substandard work was previously recorded, and the grade received each time shall be included for purposes of calculating the student's grade point average. The governing board of a district may establish policies and procedures requiring students to certify or document that course repetition is necessary to complete legally mandated training pursuant to this subsection.

(d) When course repetition under this section occurs, the student's permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 76000, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).
3. Amendment of section and NOTE filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 55764. District Policy for Academic Renewal Without Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance, as defined in section 55761, which is not reflective of a student's demonstrated ability. Such procedures or regulations shall include a clear statement of the educational principles upon which they are based, and shall be referred to as academic renewal regulations. When academic renewal procedures or regulations adopted by the districts permit previously recorded, substandard course work to be disregarded in the computation of

[The next page is 360.4(c).]

No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 02: Degrees and Certificates

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Title 5, California Code of Regulations

Section 51004
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Register 83-29 Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000-51021, not consecutive).

New Chapter 10 (Sections 55800 - 55810).

§ 55806: Editorial correction of subsection (b)(1)(A).

Register 88-42 § 55805.5: new section filed.

Register 91-23 § 51004: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55800: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55800.5: New Section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55801: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55802: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55803: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55805: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55805.5: Amendment filed by Board of Governors of California

Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55806: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55807: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55808: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55809: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55810: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State.

Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 91-43 § 55806: Editorial correction of printing error in NOTE.

Register 94-38 § 51004: Amendment of section. Submitted to OAL for printing only pursuant to Education Code Section 70901.5.

Register 95-15 § 51004: Editorial correction of HISTORY 1.

Register 95-22 § 55800: Editorial correction of HISTORY 2.

§ 55800.5: Editorial correction of HISTORY 1.

§ 55801: Editorial correction of HISTORY 1.

§ 55802: Editorial correction of HISTORY 1.

§ 55803: Editorial correction of HISTORY 1.

§ 55805: Editorial correction of HISTORY 1.

§ 55805.5: Editorial correction of HISTORY 2.

§ 55806: Editorial correction of HISTORY 3.

§ 55807: Editorial correction of HISTORY 1.

§ 55808: Editorial correction of HISTORY 1.

§ 55809: Editorial correction of HISTORY 1.

§ 55810: Editorial correction of HISTORY 1.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

§ 51004
§ 55800
§ 55801
§ 55802
§ 55803
§ 55805
§ 55806
§ 55807
§ 55808
§ 55809
§ 55810

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55825) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

CHAPTER 10. DEGREES AND CERTIFICATES

55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by Section 51004 of this part.

NOTE: Authority cited: Sections 66700, 71022 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

HISTORY:

1. New Chapter 10 (Sections 55800–55810, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit—no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700, 71022 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

55802. Associate in Arts Degree (Applicable Until July 1, 1983).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas:

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

(d) The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of Section 55810.

NOTE: Authority cited: Sections 66700, 71022 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

55803. Associate in Science Degree (Applicable Until July 1, 1983).

The governing board of a community college district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall include a major of at least 18 semester hours in the fields of engineering, physical and biological sciences, or occupational curriculum.

The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of Section 55810.

NOTE: Authority cited: Sections 66700, 71022 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

55805. Philosophy and Criteria for Associate Degree and General Education.

(a) The governing board of a community college district shall adopt policy which states its specific philosophy on General Education. In developing this policy governing boards shall consider the following policy of the Board of Governors:

The awarding of an Associate Degree is intended to represent more than an accumulation of units. It is to symbolize a successful attempt on the part of the college to lead students through patterns of learning experiences designed to develop certain capabilities and insights. Among these are the ability to think and to communicate clearly and effectively both orally and in writing; to use mathematics; to understand the modes of inquiry of the major disciplines; to be aware of other cultures and times; to achieve insights gained through experience in thinking about ethical problems; and to develop the capacity for self-understanding. In addition to these accomplishments, the student shall possess sufficient depth in some field of knowledge to contribute to lifetime interest.

Central to an Associate Degree, General Education is designed to introduce students to the variety of means through which people comprehend the modern world. It reflects the conviction of colleges that those who receive their degrees must possess in common certain basic principles, concepts and methodologies both unique to and shared by the various disciplines. College educated persons must be able to use this knowledge when evaluating and appreciating the physical environment, the culture, and the society in which they live. Most importantly, General Education should lead to better self-understanding.

In establishing or modifying a general education program, ways shall be sought to create coherence and integration among the separate requirements. It is also desirable that general education programs involve students actively in examining values inherent in proposed solutions to major social problems.

(b) The governing board of a community college district shall also establish criteria to determine which courses may be used in implementing its philosophy on the associate degree and general education.

(c) The governing board of a community college district shall, on a regular basis, review the policy and criteria established pursuant to subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 66700, 71022 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

55806. Minimum Requirements for the Associate Degree (Applicable July 1, 1983).

The governing board of a community college district shall confer the degree of Associate in Arts or Associate in Science upon a student who has demonstrated competence in reading, in written expression, and in mathematics, and who has satisfactorily completed at least 60 semester units or 90 quarter units of college work. This course work requirement must be fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). It must include at least 18 semester or 27 quarter units in General Education and at least 18 semester or 27 quarter units in a major as prescribed in this section. Of the required units, at least 12 semester or 18 quarter units must be completed in residence at the college granting the degree. Exceptions to residence requirements for the Associate Degree may be made by the governing board when it determines that an injustice or undue hardship would be placed on the student.

(a) Major Requirements. At least 18 semester or 27 quarter units of study taken in a single discipline or related disciplines, as listed in the Community Colleges "Taxonomy of Programs," shall be required.

(b) General Education Requirements.

(1) Students receiving an Associate Degree shall complete a minimum of 18 semester or 27 quarter units of general education, including a minimum of three semester or four quarter units in each of the areas (A), (B) and (C) and the same minimum in each part of (D). The remainder of the unit requirement is also to be selected from among these four divisions of learning or as determined by local option:

(A) Natural Sciences. Courses in the natural sciences are those which examine the physical universe, its life forms, and its natural phenomena. To satisfy the General Education Requirement in natural sciences, a course shall be designed to help the student develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities. This category would include introductory or integrative courses in astronomy, biology, chemistry, general physical science, geology, meteorology, oceanography, physical geography, physical anthropology, physics and other scientific disciplines.

(B) Social and Behavioral Sciences. Courses in the social and behavioral sciences are those which focus on people as members of society. To satisfy the general education requirement in social and behavioral sciences, a course shall be designed to develop an awareness of the method of inquiry used by the social and behavioral sciences. It shall be designed to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate. This category would include introductory or integrative survey courses in cultural anthropology, cultural geography, economics, history, political science, psychology, sociology and related disciplines.

(C) Humanities. Courses in the humanities are those which study the cultural activities and artistic expressions of human beings. To satisfy the general education requirement in the humanities, a course shall be designed to help the student develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and an ability to make value judgments. Such courses could include introductory or integrative courses in the arts, foreign languages, literature, philosophy, and religion.

(D) Language and Rationality. Courses in language and rationality are those which develop for the student the principles and applications of language toward logical thought, clear and precise expression and critical evaluation of communication in whatever symbol system the student uses.

1. English Composition. Courses fulfilling the written composition requirement shall be designed to include both expository and argumentative writing.

2. Communication and Analytical Thinking. Courses fulfilling the communication and analytical thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines.

(2) While a course might satisfy more than one general education requirement, it may not be counted more than once for these purposes. A course may be used to satisfy both a general education requirement and a major requirement. Whether it may be counted again for a different degree requirement is a matter for each college to determine. Students may use the same course to meet a general education requirement for the Associate Degree and to partially satisfy a general education requirement at the California State University, if such course is eligible under the provisions of Section 40405 of this title.

(3) Ethnic Studies will be offered in at least one of the required areas.

(c) The provisions of this section shall be applicable to all students who enter a community college on or after July 1, 1983, provided that a governing board may specify an earlier implementation date pursuant to subsection (b) of Section 55810.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

HISTORY:

1. Editorial correction of subsection (b) (1) (A) filed 7-19-83; designated effective 8-12-83 (Register 83, No. 29).

55807. Conversion to Credit.

Upon student petition to and certification by a local board of trustees of credit-level achievement and prescribed academic rigor, and evidence of prescribed competence as approved by the faculty, noncredit courses may count toward associate degrees.

NOTE: Authority cited: Sections 71020, 71027 and 78405, Education Code. Reference: Sections 66701, 78200, 78201 and 78405, Education Code.

55808. Certificate of Achievement.

The governing board of a community college district shall issue a certificate of achievement to any student whom the governing board determines has completed successfully any course of study or curriculum for which a certificate of achievement is offered.

NOTE: Authority cited: Sections 66700, 71020 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

55809. Duty to Grant Diploma.

The governing board of a community college district shall award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student, who has satisfactorily completed the requirements of any course of study in less than the prescribed time, credit for the full number of semester hours scheduled for such course.

NOTE: Authority cited: Sections 66700, 71020 and 71066, Education Code. Reference: Sections 71066 and 72285, Education Code.

55810. Implementation by Governing Boards.

(a) The governing board of a community college district shall adopt necessary policies and procedures to implement the transition between degree requirements applicable until July 1, 1983 (Sections 55802 and 55803) and requirements applicable on or after July 1, 1983 (Sections 55805 and 55806).

(b) The governing board of a community college may implement Sections 55805 and 55806 prior to July 1, 1983, provided that it develops the necessary policies and procedures to implement the transition and notifies the Chancellor as to when the implementation will commence.

NOTE: Authority cited: Sections 66700, 71022 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

(b) The governing board of a community college district shall also establish criteria to determine which courses may be used in implementing its philosophy on the associate degree and general education.

(c) The governing board of a community college district shall, on a regular basis, review the policy and criteria established pursuant to subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 66700, 71022 and 71066, Education Code. Reference: Sections 66701, 71066 and 72235, Education Code.

55805.5. Types of Courses Appropriate to the Associate Degree.

The criteria established by the governing board of a community college district to implement its philosophy on the associate degree shall permit only courses that conform to the standards specified in Section 55002(a) and that fall into the following categories to be offered for associate degree credit:

(a) All lower division courses accepted toward the baccalaureate degree by the California State University or University of California or designed to be offered for transfer.

(b) Courses that apply to the major in non-baccalaureate occupational fields.

(c) English courses not more than one level below the first transfer level composition course, typically known as English 1A. Each student may count only one such course as credit toward the associate degree.

(d) All mathematics courses above and including Elementary Algebra.

(e) Credit courses in English and mathematics taught in or on behalf of other departments and which, as determined by the local board of trustees, require entrance skills at a level equivalent to those necessary for the courses specified in subsection (c) and (d) above.

NOTE: Authority cited: Sections 66700, 71020 and 71066, Education Code. Reference: Sections 66701, 71066 and 72235, Education Code.

HISTORY:

1. New section filed 10-7-88; operative 11-6-88 (Register 88, No. 42).

55806. Minimum Requirements for the Associate Degree (Applicable July 1, 1983).

The governing board of a community college district shall confer the degree of Associate in Arts or Associate in Science upon a student who has demonstrated competence in reading, in written expression, and in mathematics, and who has satisfactorily completed at least 60 semester units or 90 quarter units of college work. This course work requirement must be fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). It must include at least 18 semester or 27 quarter units in General Education and at least 18 semester or 27 quarter units in a major as prescribed in this section. Of the required units, at least 12 semester or 18 quarter units must be completed in residence at the college granting the degree. Exceptions to residence requirements for the Associate Degree may be made by the governing board when it determines that an injustice or undue hardship would be placed on the student.

(a) Major Requirements. At least 18 semester or 27 quarter units of study taken in a single discipline or related disciplines, as listed in the Community Colleges "Taxonomy of Programs," shall be required.

(b) General Education Requirements.

(1) Students receiving an Associate Degree shall complete a minimum of 18 semester or 27 quarter units of general education, including a minimum of three semester or four quarter units in each of the areas (A), (B) and (C) and the same minimum in each part of (D). The remainder of the unit requirement is also to be selected from among these four divisions of learning or as determined by local option:

(A) Natural Sciences. Courses in the natural sciences are those which examine the physical universe, its life forms, and its natural phenomena. To satisfy the General Education Requirement in natural sciences, a course shall be designed to help the student develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities. This category would include introductory or integrative courses in astronomy, biology, chemistry, general physical science, geology, meteorology, oceanography, physical geography, physical anthropology, physics and other scientific disciplines.

(B) Social and Behavioral Sciences. Courses in the social and behavioral sciences are those which focus on people as members of society. To satisfy the general education requirement in social and behavioral sciences, a course shall be designed to develop an awareness of the method of inquiry used by the social and behavioral sciences. It shall be designed to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate. This category would include introductory or integrative survey courses in cultural anthropology, cultural geography, economics, history, political science, psychology, sociology and related disciplines.

(C) Humanities. Courses in the humanities are those which study the cultural activities and artistic expressions of human beings. To satisfy the general education requirement in the humanities, a course shall be designed to help the student develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and an ability to make value judgments. Such courses could include introductory or integrative courses in the arts, foreign languages, literature, philosophy, and religion.

(D) Language and Rationality. Courses in language and rationality are those which develop for the student the principles and applications of language toward logical thought, clear and precise expression and critical evaluation of communication in whatever symbol system the student uses.

1. English Composition. Courses fulfilling the written composition requirement shall be designed to include both expository and argumentative writing.

2. Communication and Analytical Thinking. Courses fulfilling the communication and analytical thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines.

(2) While a course might satisfy more than one general education requirement, it may not be counted more than once for these purposes. A course may be used to satisfy both a general education requirement and a major requirement. Whether it may be counted again for a different degree requirement is a matter for each college to determine. Students may use the same course to meet a general education requirement for the Associate Degree and to partially

satisfy a general education requirement at the California State University, if such course is eligible under the provisions of Section 40405 of this title.

(3) Ethnic Studies will be offered in at least one of the required areas.

(c) The provisions of this section shall be applicable to all students who enter a community college on or after July 1, 1983, provided that a governing board may specify an earlier implementation date pursuant to subsection (b) of Section 55810.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

HISTORY:

1. Editorial correction of subsection (b) (1) (A) filed 7-19-83; designated effective 8-12-83 (Register 83, No. 29).

55807. Conversion to Credit.

Upon student petition to and certification by a local board of trustees of credit-level achievement and prescribed academic rigor, and evidence of prescribed competence as approved by the faculty, noncredit courses may count toward associate degrees.

NOTE: Authority cited: Sections 71020, 71027 and 78405, Education Code. Reference: Sections 66701, 78200, 78201 and 78405, Education Code.

55808. Certificate of Achievement.

The governing board of a community college district shall issue a certificate of achievement to any student whom the governing board determines has completed successfully any course of study or curriculum for which a certificate of achievement is offered.

NOTE: Authority cited: Sections 66700, 71020 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

55809. Duty to Grant Diploma.

The governing board of a community college district shall award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student, who has satisfactorily completed the requirements of any course of study in less than the prescribed time, credit for the full number of semester hours scheduled for such course.

NOTE: Authority cited: Sections 66700, 71020 and 71066, Education Code. Reference: Sections 71066 and 72285, Education Code.

55810. Implementation by Governing Boards.

(a) The governing board of a community college district shall adopt necessary policies and procedures to implement the transition between degree requirements applicable until July 1, 1983 (Sections 55802 and 55803) and requirements applicable on or after July 1, 1983 (Sections 55805 and 55806).

(b) The governing board of a community college may implement Sections 55805 and 55806 prior to July 1, 1983, provided that it develops the necessary policies and procedures to implement the transition and notifies the Chancellor as to when the implementation will commence.

NOTE: Authority cited: Sections 66700, 71023 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

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§ 51004
§ 55800
§ 55800.5
§ 55801
§ 55802
§ 55803
§ 55805
§ 55805.5
§ 55806
§ 55807
§ 55808
§ 55809
§ 55810

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income if the business entity or source of income provides education, training, or experience to persons toward attaining a valid credential for employment as an instructor, supervisor, chief administrative officer, librarian, counselor, supervisor of health, student personnel worker, or other similar position within a Community College district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations affirming and fixing the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in chapter 9 (commencing with section 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

(c) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 o. the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902, and 76624, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55800.5. Minimum Credit Hours for Graduation from Two-Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1993).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

(d) The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55803. Associate in Science Degree (Applicable Until July 1, 1993).

The governing board of a community college district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall

clude a major of at least 18 semester hours in the fields of engineering, physical and biological sciences, or occupational curriculum.

The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55805. Philosophy and Criteria for Associate Degree and General Education.

(a) The governing board of a community college district shall adopt policy which states its specific philosophy on General Education. In developing this policy governing boards shall consider the following policy of the Board of Governors:

The awarding of an Associate Degree is intended to represent more than an accumulation of units. It is to symbolize a successful attempt on the part of the college to lead students through patterns of learning experiences designed to develop certain capabilities and insights. Among these are the ability to think and to communicate clearly and effectively both orally and in writing; to use mathematics; to understand the modes of inquiry of the major disciplines; to be aware of other cultures and times; to achieve insights gained through experience in thinking about ethical problems; and to develop the capacity for self-understanding. In addition to these accomplishments, the student shall possess sufficient depth in some field of knowledge to contribute to lifetime interest.

Central to an Associate Degree, General Education is designed to introduce students to the variety of means through which people comprehend the modern world. It reflects the conviction of colleges that those who receive their degrees must possess in common certain basic principles, concepts and methodologies both unique to and shared by the various disciplines. College educated persons must be able to use this knowledge when evaluating and appreciating the physical environment, the culture, and the society in which they live. Most importantly, General Education should lead to better self-understanding.

In establishing or modifying a general education program, ways shall be sought to create coherence and integration among the separate requirements. It is also desirable that general education programs involve students actively in examining values inherent in proposed solutions to major social problems.

(b) The governing board of a community college district shall also establish criteria to determine which courses may be used in implementing its philosophy on the associate degree and general education.

(c) The governing board of a community college district shall, on a regular basis, review the policy and criteria established pursuant to subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55805.5. Types of Courses Appropriate to the Associate Degree.

The criteria established by the governing board of a community college district to implement its philosophy on the associate degree shall permit only courses that conform to the standards specified in section 55002(a) and that fall into the following categories to be offered for associate degree credit:

(a) All lower division courses accepted toward the baccalaureate degree by the California State University or University of California or designed to be offered for transfer.

(b) Courses that apply to the major in non-baccalaureate occupational fields.

(c) English courses not more than one level below the first transfer level composition course, typically known as English 1A. Each student may count only one such course as credit toward the associate degree.

(d) All mathematics courses above and including Elementary Algebra.

(e) Credit courses in English and mathematics taught in or on behalf of other departments and which, as determined by the local governing board require entrance skills at a level equivalent to those necessary for the courses specified in subsections (c) and (d) above.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New section filed 10-7-88; operative 11-6-88 (Register 88, No. 42).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55806. Minimum Requirements for the Associate Degree (Applicable July 1, 1983).

The governing board of a community college district shall confer the degree of Associate in Arts or Associate in Science upon a student who has demonstrated competence in reading, in written expression, and in mathematics, and who has satisfactorily completed at least 60 semester units or 90 quarter units of college work. This course work requirement must be fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). It must include at least 18 semester or 27 quarter units in General Education and at least 18 semester or 27 quarter units in a major as prescribed in this section. Of the required units, at least 12 semester or 18 quarter units must be completed in residence at the college granting the degree. Exceptions to residence requirements for the Associate Degree may be made by the governing board when it determines that an injustice or undue hardship would be placed on the student.

(a) Major Requirements. At least 18 semester or 27 quarter units of study taken in a single discipline or related disciplines, as listed in the Community Colleges "Taxonomy of Programs," shall be required.

(b) General Education Requirements.

(1) Students receiving an Associate Degree shall complete a minimum of 18 semester or 27 quarter units of general education, including a minimum of three semester or four quarter units in each of the areas (A), (B) and (C) and the same minimum in each part of (D). The remainder of the unit requirement is also to be selected from among these four divisions of learning or as determined by local option:

(A) Natural Sciences. Courses in the natural sciences are those which examine the physical universe, its life forms, and its natural phenomena. To satisfy the General Education Requirement in natural sciences, a course shall be designed to help the student develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities. This category would include introductory or integrative courses in astronomy, biology, chemistry, general physical science, geology, meteorology, oceanography, physical geography, physical anthropology, physics and other scientific disciplines.

(B) Social and Behavioral Sciences. Courses in the social and behavioral sciences are those which focus on people as members of society. To satisfy the general education requirement in social and behavioral sciences, a course shall be designed to develop an awareness of the method of inquiry used by the social and behavioral sciences. It shall be designed to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate. This category would include introductory or integrative survey courses in cultural anthropology, cultural geography, economics, history, political science, psychology, sociology and related disciplines.

(C) Humanities. Courses in the humanities are those which study the cultural activities and artistic expressions of human beings. To satisfy the general education requirement in the humanities, a course shall be designed to help the student develop an awareness of the ways in which people throughout the ages and in different cultures have responded to them-

selves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and an ability to make value judgments. Such courses could include introductory or integrative courses in the arts, foreign languages, literature, philosophy, and religion.

(D) Language and Rationality. Courses in language and rationality are those which develop for the student the principles and applications of language toward logical thought, clear and precise expression and critical evaluation of communication in whatever symbol system the student uses.

1. English Composition. Courses fulfilling the written composition requirement shall be designed to include both expository and argumentative writing.

2. Communication and Analytical Thinking. Courses fulfilling the communication and analytical thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines.

(2) While a course might satisfy more than one general education requirement, it may not be counted more than once for these purposes. A course may be used to satisfy both a general education requirement and a major requirement. Whether it may be counted again for a different degree requirement is a matter for each college to determine. Students may use the same course to meet a general education requirement for the Associate Degree and to partially satisfy a general education requirement at the California State University, if such course is eligible under the provisions of section 40405 of this title.

(3) Ethnic Studies will be offered in at least one of the required areas.

(c) The provisions of this section shall be applicable to all students who enter a community college on or after July 1, 1983, provided that a governing board may specify an earlier implementation date pursuant to subsection (b) of Section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70902 and 70902, Education Code.

HISTORY

1. Editorial correction of subsection (b)(1)(A) filed 7-19-83; designated effective 8-12-83 (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55807. Conversion to Credit.

Upon student petition to and certification by a governing board of credit-level achievement and prescribed academic rigor, and evidence of prescribed competence as approved by the faculty, noncredit courses may count toward associate degrees.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 78405, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55808. Certificate of Achievement.

The governing board of a community college district shall issue a certificate of achievement to any student whom the governing board determines has completed successfully any course of study or curriculum for which a certificate of achievement is offered.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55809. Duty to Grant Diploma.

The governing board of a community college district shall award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student, who has satisfactorily completed the requirements of any course of study in less than the prescribed time, credit for the full number of semester hours scheduled for such course.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55810. Implementation by Governing Boards.

(a) The governing board of a community college district shall adopt necessary policies and procedures to implement the transition between degree requirements applicable until July 1, 1983 (sections 55802 and 55803) and requirements applicable on or after July 1, 1983 (sections 55805 and 55806).

(b) The governing board of a community college may implement sections 55805 and 55806 prior to July 1, 1983, provided that it develops the necessary policies and procedures to implement the transition and notifies the Chancellor as to when the implementation will commence.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 11. New Colleges and Education Centers

§ 55825. Responsibilities of District Governing Boards.

The governing board of a community college district planning the formation of a new college or educational center as defined in section 51827 shall employ and comply with the standards contained in sections 51829, 51830 and 51831 of this chapter.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

HISTORY

1. New chapter 11 (sections 55825–55831, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55827. Definitions.

(a) College. As used in this chapter, "college" means a degree-granting institution intended to provide instruction through the second year of college, including but not limited to one or more of the following categories:

(1) standard collegiate courses for transfer to higher institutions;

(2) vocational and technical fields leading to employment; or

(3) general or liberal arts courses and for which institution the district intends to obtain accreditation.

(b) Education Center. As used in this chapter, "educational center" means a postsecondary operation established and administered by an existing college or district at a location away from the campus of the parent institution. An educational center is an operation planned to continue for three or more years and expected to enroll over 500 ADA by the third year of operation. The center typically has an on-site administrator and may offer programs leading to certificates and/or degrees conferred by the parent institution.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 66700, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55828. Responsibilities of the Chancellor's Office, Community College Districts and the Board of Governors.

(a) The Chancellor's Office shall maintain an inventory of all off-campus programs and facilities in the community colleges. This inventory shall be updated annually, and shall be distributed to each community

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§ 55806

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55800.5. Minimum Credit Hours for Graduation from Two-Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1983).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

(d) The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55803. Associate in Science Degree (Applicable Until July 1, 1983).

The governing board of a community college district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall include a major of at least 18 semester hours in the fields of engineering, physical and biological sciences, or occupational curriculum.

The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

History

Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55805. Philosophy and Criteria for Associate Degree and General Education.

(a) The governing board of a community college district shall adopt policy which states its specific philosophy on General Education. In developing this policy governing boards shall consider the following policy of the Board of Governors:

The awarding of an Associate Degree is intended to represent more than an accumulation of units. It is to symbolize a successful attempt on the part of the college to lead students through patterns of learning experiences designed to develop certain capabilities and insights. Among these are the ability to think and to communicate clearly and effectively both orally and in writing; to use mathematics; to understand the modes of inquiry of the major disciplines; to be aware of other cultures and times; to achieve insights gained through experience in thinking about ethical problems; and to develop the capacity for self-understanding. In addition to these accomplishments, the student shall possess sufficient depth in some field of knowledge to contribute to lifetime interest.

Central to an Associate Degree, General Education is designed to introduce students to the variety of means through which people comprehend the modern world. It reflects the conviction of colleges that those who receive their degrees must possess in common certain basic principles, concepts and methodologies both unique to and shared by the various disciplines. College educated persons must be able to use this knowledge when evaluating and appreciating the physical environment, the culture, and the society in which they live. Most importantly, General Education should lead to better self-understanding.

In establishing or modifying a general education program, ways shall be sought to create coherence and integration among the separate requirements. It is also desirable that general education programs involve students actively in examining values inherent in proposed solutions to major social problems.

(b) The governing board of a community college district shall also establish criteria to determine which courses may be used in implementing its philosophy on the associate degree and general education.

(c) The governing board of a community college district shall, on a regular basis, review the policy and criteria established pursuant to subsections (a) and (b) of this section.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55803.5. Types of Courses Appropriate to the Associate Degree.

The criteria established by the governing board of a community college district to implement its philosophy on the associate degree shall permit only courses that conform to the standards specified in section 55002(a) and that fall into the following categories to be offered for associate degree credit:

(a) All lower division courses accepted toward the baccalaureate degree by the California State University or University of California or designed to be offered for transfer.

(b) Courses that apply to the major in non-baccalaureate occupational fields.

(c) English courses not more than one level below the first transfer level composition course, typically known as English 1A. Each student may count only one such course as credit toward the associate degree.

(d) All mathematics courses above and including Elementary Algebra.

(e) Credit courses in English and mathematics taught in or on behalf of other departments and which, as determined by the local governing board require entrance skills at a level equivalent to those necessary for the courses specified in subsections (c) and (d) above.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

History

1. New section filed 10-7-88; operative 11-6-88 (Register 88, No. 42).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55806. Minimum Requirements for the Associate Degree (Applicable July 1, 1983).

The governing board of a community college district shall confer the degree of Associate in Arts or Associate in Science upon a student who has demonstrated competence in reading, in written expression, and in mathematics, and who has satisfactorily completed at least 60 semester units or 90 quarter units of college work. This course work requirement must be fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). It must include at least 18 semester or 27 quarter units in General Education and at least 18 semester or 27 quarter units in a major as prescribed in this section. Of the required units, at least 12 semester or 18 quarter units must be completed in residence at the college granting the degree. Exceptions to residence requirements for the Associate Degree may be made by the governing board when it determines that an injustice or undue hardship would be placed on the student.

(a) Major Requirements. At least 18 semester or 27 quarter units of study taken in a single discipline or related disciplines, as listed in the Community Colleges "Taxonomy of Programs," shall be required.

(b) General Education Requirements.

(1) Students receiving an Associate Degree shall complete a minimum of 18 semester or 27 quarter units of general education, including a minimum of three semester or four quarter units in each of the areas (A), (B) and (C) and the same minimum in each part of (D). The remainder of the unit requirement is also to be selected from among these four divisions of learning or as determined by local option:

(A) Natural Sciences. Courses in the natural sciences are those which examine the physical universe, its life forms, and its natural phenomena. To satisfy the General Education Requirement in natural sciences, a course shall be designed to help the student develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities. This category would include introductory or integrative courses in astronomy, biology, chemistry, general physical science, geology, meteorology, oceanography, physical geography, physical anthropology, physics and other scientific disciplines.

(B) Social and Behavioral Sciences. Courses in the social and behavioral sciences are those which focus on people as members of society. To satisfy the general education requirement in social and behavioral sciences, a course shall be designed to develop an awareness of the method of inquiry used by the social and behavioral sciences. It shall be designed to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate. This category would include introductory or integrative survey courses in cultural anthropology, cultural geography, economics, history, political science, psychology, sociology and related disciplines.

(C) Humanities. Courses in the humanities are those which study the cultural activities and artistic expressions of human beings. To satisfy the general education requirement in the humanities, a course shall be designed to help the student develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and an ability to make value judgments. Such courses could include introductory or integrative courses in the arts, foreign languages, literature, philosophy, and religion.

(D) Language and Rationality. Courses in language and rationality are those which develop for the student the principles and applications of language toward logical thought, clear and precise expression and critical

evaluation of communication in whatever symbol system the student uses.

1. English Composition. Courses fulfilling the written composition requirement shall be designed to include both expository and argumentative writing.

2. Communication and Analytical Thinking. Courses fulfilling the communication and analytical thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines.

(2) While a course might satisfy more than one general education requirement, it may not be counted more than once for these purposes. A course may be used to satisfy both a general education requirement and a major requirement. Whether it may be counted again for a different degree requirement is a matter for each college to determine. Students may use the same course to meet a general education requirement for the Associate Degree and to partially satisfy a general education requirement at the California State University, if such course is eligible under the provisions of section 40405 of this title.

(3) Ethnic Studies will be offered in at least one of the required areas.

(c) The provisions of this section shall be applicable to all students who enter a community college on or after July 1, 1983, provided that a governing board may specify an earlier implementation date pursuant to subsection (b) of Section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Editorial correction of subsection (b)(1)(A) filed 7-19-83; designated effective 8-12-83 (Register 83, No. 29).
2. New section filed 10-7-88; operative 11-6-88 (Register 88, No. 42).
3. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
4. Editorial correction of printing error in NOTE (Register 91, No. 43).

§ 55807. Conversion to Credit.

Upon student petition to and certification by a governing board of credit-level achievement and prescribed academic rigor, and evidence of prescribed competence as approved by the faculty, noncredit courses may count toward associate degrees.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 78405, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55808. Certificate of Achievement.

The governing board of a community college district shall issue a certificate of achievement to any student whom the governing board determines has completed successfully any course of study or curriculum for which a certificate of achievement is offered.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55809. Duty to Grant Diploma.

The governing board of a community college district shall award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student, who has satisfactorily completed the requirements of any course of study in less than the prescribed time, credit for the full number of semester hours scheduled for such course.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55810. Implementation by Governing Boards.

(a) The governing board of a community college district shall adopt necessary policies and procedures to implement the transition between degree requirements applicable until July 1, 1983 (sections 55802 and 55803) and requirements applicable on or after July 1, 1983 (sections 55805 and 55806).

(b) The governing board of a community college may implement sections 55805 and 55806 prior to July 1, 1983, provided that it develops the necessary policies and procedures to implement the transition and notifies the Chancellor as to when the implementation will commence.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 11. New Colleges and Education Centers

§ 55825. Responsibilities of District Governing Boards.

The governing board of a community college district planning the formation of a new college or educational center as defined in section 55827 shall employ and comply with the standards contained in sections 55829, 55830 and 55831 of this chapter.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

HISTORY

1. New chapter 11 (sections 55825-55831, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
3. Editorial correction of printing error (Register 91, No. 43).

§ 55827. Definitions.

(a) College. As used in this chapter, "college" means a degree-granting institution intended to provide instruction through the second year of college, including but not limited to one or more of the following categories:

(1) standard collegiate courses for transfer to higher institutions;

(2) vocational and technical fields leading to employment; or

(3) general or liberal arts courses and for which institution the district intends to obtain accreditation.

(b) Education Center. As used in this chapter, "educational center" means a postsecondary operation established and administered by an existing college or district at a location away from the campus of the parent institution. An educational center is an operation planned to continue for three or more years and expected to enroll over 500 ADA by the third year of operation. The center typically has an on-site administrator and may offer programs leading to certificates and/or degrees conferred by the parent institution.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 66700, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55828. Responsibilities of the Chancellor's Office, Community College Districts and the Board of Governors.

(a) The Chancellor's Office shall maintain an inventory of all off-campus programs and facilities in the community colleges. This inventory shall be updated annually, and shall be distributed to each community college district and the Postsecondary Education Commission for use in planning activities.

(b) The Chancellor's Office shall develop procedures to identify and review plans for new colleges and new educational centers within the district's Five-Year Academic and Capital Outlay Master Plans.

Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each

Senior Accounting Officers (Specialists)	3
Accounting Officers (Specialists)	3
Accounting I (Specialist)	3
Administrators Fiscal Planning and Administration	1
Specialists Fiscal Planning and Administration	2
Business Services Officer I (Specialist)	3
Property Controller I	1
Administrator Facilities Planning and Utilization	1
Specialist Facilities Planning and Utilization	2
Specialist Student Services Planning and Development	2
Staff Services Manager I	3
State Financial Examiner III	2
Consultants*	2
Student Services Division	
Vice Chancellor	1, 4
Specialists Student Services Planning and Development	2, 4
Administrator Student Services Planning and Development	1
Consultants*	2
Transfer/General Education Division	
Vice Chancellor	1, 4
Specialists/Lib. Planning and Development	2
Administrators Academic Planning and Development	1
Specialists Academic Planning and Development	2
Specialist Student Services Planning and Development	2
Consultants*	2
Economic Development/Vocational Education Division	
Vice Chancellor	1, 4
Specialists General Vocational Education	2
Specialists Business Education	2
Specialist Criminal Justice	2
Specialist Agricultural Education	2
Specialist Health Occupations	2
Specialists Industrial Education	2
Specialists Employment and Certification	2
Administrator Vocational Education	1
Consultants*	2
Management Information Services Division	
Vice Chancellor	1, 4
Specialists Information Systems and Analysis	2
Staff Information Systems Analyst (Supervisor)	3
Staff Programmer Analyst (Specialist)	3
Senior Programmer Analyst (Supervisor)	3
Consultants*	2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of History 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full-time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long–range academic goals;

(2) career counseling, in which the student is assisted in assessing his /her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

§ 55800
§ 55800.5
§ 55801
§ 55802
§ 55803
§ 55805
§ 55805.5
§ 55806
§ 55807
§ 55808
§ 55809
§ 55810

grade point averages, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55765. Academic Renewal Without Course Repetition: Implementation.

In adopting procedures or regulations pertaining to the alleviation of previously recorded, substandard academic performance, as defined in section 55764, which is not reflective of a student's demonstrated ability, the governing board of a district maintaining a community college:

(a) Shall not adopt any regulation or procedure which conflicts with:

(1) Education Code section 76224, pertaining to the finality of grades assigned by instruction, and

(2) Chapter 2.5 (commencing with section 59020) of division 10 of this part pertaining to the retention and destruction of records, and particularly subdivision (d) of section 59023, relating to the permanency of certain student records.

(b) Shall, when the adopted procedures or regulations permit such alleviation, state:

(1) The maximum amount of coursework that may be alleviated;

(2) The amount of academic work to have been completed at a satisfactory level (minimum 2.00) subsequent to the coursework to be alleviated;

(3) The length of time to have elapsed since the coursework to be alleviated was recorded; and

(4) A description of any specific courses and/or categories of courses that are, for any reason, exempt from consideration under the alleviation regulations.

(c) Shall, when the adopted procedures or regulations permit such alleviation, publish specific procedures to be followed in implementing procedures or regulations adopted pursuant to this section and section 55764 stating, at a minimum:

(1) The procedures to be followed by students in petitioning for alleviation; and

(2) The officers and/or personnel responsible for implementing the procedures or regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 76224, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 22).

Subchapter 10. Degrees and Certificates

§ 55800. Regulations.

The governing board of community college districts shall adopt policy consistent with the provisions of this chapter. The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New chapter 10 (sections 55800–55810, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55800.5. Minimum Credit Hours for Graduation from Two–Year Course.

An associate degree shall be awarded to any student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average, the course of study required for the student's major, and any required academic elective courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55801. Definitions.

For the purpose of this chapter, "satisfactorily completed" means either credit earned on a "credit–no credit" basis or a grade point average of 2.0 or better in community college credit courses in the curriculum upon which the degree is based.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55802. Associate in Arts Degree (Applicable Until July 1, 1993).

The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:

(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges "Classification of Instructional Disciplines."

(b) 15 semester units of general education which shall include at least one course in each of the following areas

(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).

(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).

(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).

(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.

These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.

(c) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).

The community college may determine which courses satisfy the requirements of this subdivision.

The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.

(d) The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55803. Associate in Science Degree (Applicable Until July 1, 1983).

The governing board of a community college district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall include a major of at least 18 semester hours in the fields of engineering, physical and biological sciences, or occupational curriculum.

The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection (b) of section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55805. Philosophy and Criteria for Associate Degree and General Education.

(a) The governing board of a community college district shall adopt policy which states its specific philosophy on General Education. In developing this policy governing boards shall consider the following policy of the Board of Governors:

The awarding of an Associate Degree is intended to represent more than an accumulation of units. It is to symbolize a successful attempt on the part of the college to lead students through patterns of learning experiences designed to develop certain capabilities and insights. Among these are the ability to think and to communicate clearly and effectively both orally and in writing; to use mathematics; to understand the modes of inquiry of the major disciplines; to be aware of other cultures and times; to achieve insights gained through experience in thinking about ethical problems; and to develop the capacity for self–understanding. In addition to these accomplishments, the student shall possess sufficient depth in some field of knowledge to contribute to lifetime interest.

Central to an Associate Degree, General Education is designed to introduce students to the variety of means through which people comprehend the modern world. It reflects the conviction of colleges that those who receive their degrees must possess in common certain basic principles, concepts and methodologies both unique to and shared by the various disciplines. College educated persons must be able to use this knowledge when evaluating and appreciating the physical environment, the culture, and the society in which they live. Most importantly, General Education should lead to better self–understanding.

In establishing or modifying a general education program, ways shall be sought to create coherence and integration among the separate requirements. It is also desirable that general education programs involve students actively in examining values inherent in proposed solutions to major social problems.

(b) The governing board of a community college district shall also establish criteria to determine which courses may be used in implementing its philosophy on the associate degree and general education.

(c) The governing board of a community college district shall, on a regular basis, review the policy and criteria established pursuant to subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55805.5. Types of Courses Appropriate to the Associate Degree.

The criteria established by the governing board of a community college district to implement its philosophy on the associate degree shall permit only courses that conform to the standards specified in section 55002(a) and that fall into the following categories to be offered for associate degree credit:

(a) All lower division courses accepted toward the baccalaureate degree by the California State University or University of California or designed to be offered for transfer.

(b) Courses that apply to the major in non–baccalaureate occupational fields.

(c) English courses not more than one level below the first transfer level composition course, typically known as English 1A. Each student may count only one such course as credit toward the associate degree.

(d) All mathematics courses above and including Elementary Algebra.

(e) Credit courses in English and mathematics taught in or on behalf of other departments and which, as determined by the local governing board require entrance skills at a level equivalent to those necessary for the courses specified in subsections (c) and (d) above.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. New section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55806. Minimum Requirements for the Associate Degree (Applicable July 1, 1983).

The governing board of a community college district shall confer the degree of Associate in Arts or Associate in Science upon a student who has demonstrated competence in reading, in written expression, and in mathematics, and who has satisfactorily completed at least 60 semester units or 90 quarter units of college work. This course work requirement must be fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). It must include at least 18 semester or 27 quarter units in General Education and at least 18 semester or 27 quarter units in a major as prescribed in this section. Of the required units, at least 12 semester or 18 quarter units must be completed in residence at the college granting the degree. Exceptions to residence requirements for the Associate Degree may be made by the governing board when it determines that an injustice or undue hardship would be placed on the student.

(a) Major Requirements. At least 18 semester or 27 quarter units of study taken in a single discipline or related disciplines, as listed in the Community Colleges "Taxonomy of Programs," shall be required.

(b) General Education Requirements.

(1) Students receiving an Associate Degree shall complete a minimum of 18 semester or 27 quarter units of general education, including a minimum of three semester or four quarter units in each of the areas (A), (B) and (C) and the same minimum in each part of (D). The remainder of the unit requirement is also to be selected from among these four divisions of learning or as determined by local option:

(A) Natural Sciences. Courses in the natural sciences are those which examine the physical universe, its life forms, and its natural phenomena. To satisfy the General Education Requirement in natural sciences, a course shall be designed to help the student develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities. This

category would include introductory or integrative courses in astronomy, biology, chemistry, general physical science, geology, meteorology, oceanography, physical geography, physical anthropology, physics and other scientific disciplines.

(B) Social and Behavioral Sciences. Courses in the social and behavioral sciences are those which focus on people as members of society. To satisfy the general education requirement in social and behavioral sciences, a course shall be designed to develop an awareness of the method of inquiry used by the social and behavioral sciences. It shall be designed to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate. This category would include introductory or integrative survey courses in cultural anthropology, cultural geography, economics, history, political science, psychology, sociology and related disciplines.

(C) Humanities. Courses in the humanities are those which study the cultural activities and artistic expressions of human beings. To satisfy the general education requirement in the humanities, a course shall be designed to help the student develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and an ability to make value judgments. Such courses could include introductory or integrative courses in the arts, foreign languages, literature, philosophy, and religion.

(D) Language and Rationality. Courses in language and rationality are those which develop for the student the principles and applications of language toward logical thought, clear and precise expression and critical evaluation of communication in whatever symbol system the student uses.

1. English Composition. Courses fulfilling the written composition requirement shall be designed to include both expository and argumentative writing.

2. Communication and Analytical Thinking. Courses fulfilling the communication and analytical thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines.

(2) While a course might satisfy more than one general education requirement, it may not be counted more than once for these purposes. A course may be used to satisfy both a general education requirement and a major requirement. Whether it may be counted again for a different degree requirement is a matter for each college to determine. Students may use the same course to meet a general education requirement for the Associate Degree and to partially satisfy a general education requirement at the California State University, if such course is eligible under the provisions of section 40405 of this title.

(3) Ethnic Studies will be offered in at least one of the required areas.

(c) The provisions of this section shall be applicable to all students who enter a community college on or after July 1, 1983, provided that a governing board may specify an earlier implementation date pursuant to subsection (b) of Section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Editorial correction of subsection (b)(1)(A) filed 7–19–83; designated effective 8–12–83 (Register 83, No. 29).
2. New section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of printing error in NOTE (Register 91, No. 43).
5. Editorial correction of HISTORY 3 (Register 95, No. 22).

§ 55807. Conversion to Credit.

Upon student petition to and certification by a governing board of credit-level achievement and prescribed academic rigor, and evidence of prescribed competence as approved by the faculty, noncredit courses may count toward associate degrees.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 78405, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55808. Certificate of Achievement.

The governing board of a community college district shall issue a certificate of achievement to any student whom the governing board determines has completed successfully any course of study or curriculum for which a certificate of achievement is offered.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55809. Duty to Grant Diploma.

The governing board of a community college district shall award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student, who has satisfactorily completed the requirements of any course of study in less than the prescribed time, credit for the full number of semester hours scheduled for such course.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55810. Implementation by Governing Boards.

(a) The governing board of a community college district shall adopt necessary policies and procedures to implement the transition between degree requirements applicable until July 1, 1983 (sections 55802 and 55803) and requirements applicable on or after July 1, 1983 (sections 55805 and 55806).

(b) The governing board of a community college may implement sections 55805 and 55806 prior to July 1, 1983, provided that it develops the necessary policies and procedures to implement the transition and notifies the Chancellor as to when the implementation will commence.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

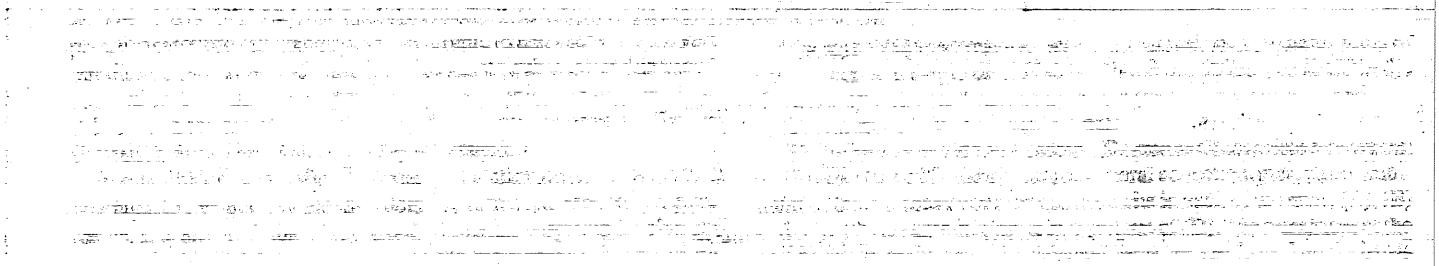
1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

Subchapter 11. New Colleges and Education Centers

§ 55825. Responsibilities of District Governing Boards.

The governing board of a community college district planning the formation of a new college or educational center as defined in section 55827 shall employ and comply with the standards contained in sections 55829, 55830 and 55831 of this chapter.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.



No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 03. Open Courses

History Index for
Title 5, California Code of Regulations

Section 51006
Section 58102
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Register 72-01 New Division 9, Subchapter 2, Article 1 (§§ 58100 - 58110).

Register 81-52 Repealer of Division 9, Subchapter 2, Article 1 (§§ 58100 - 58110).

Register 82-31 New Division 9, Subchapter 2, Article 1 (§§ 58100 - 58110).

Register 83-29 Repealer of Chapter 1 (section 51000) and new Chapter 1 (sections 51000-51021, not consecutive).

Register 90-37 § 58106: Repealer and new section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Register 90-41 § 58106: Editorial correction of printing error inadvertently omitting text.

Register 91-23 § 51006: Amendment of section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to

Education Code Section 70901.5(b).

§ 58107: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Register 92-15 § 58100: Section repealed.

§ 58110: Section repealed.

Register 93-25 § 58102: Amendment of NOTE.

§ 58104: Amendment of NOTE.

§ 58108: Amendment of NOTE.

Register 93-42: § 58106: Repealer and new section; submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Register 94-38 § 51006: Amendment of section; submitted to OAL for printing only pursuant to Education Code Section 70901.5.

Register 95-15 § 51006: Editorial correction of HISTORY 1.

Register 95-23 § 58107: Editorial correction of HISTORY 1.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

Register 1972-01

§§ 58100 - 58110

CHAPTER 1. GENERAL PROVISIONS

58000. Continuing Education. Continuing education in Community Colleges is comprised of the following kinds of classes:

(a) Adult classes.

(b) Graded classes.

(c) Community service classes offered under the provisions of Article 12 (commencing with Section 6321) of Chapter 6, Division 6, of the Education Code.

(d) Contract classes.

NOTE: Authority cited for Division 9: Sections 197, 5708, 22650, Education Code.

History: 1. New Division 9, Chapters 1 through 4 (§§ 58000–58253, not consecutive) filed 12-29-71; effective thirtieth day thereafter (Register 72, No. 1).

58001. Function of Community Colleges. Continuing education is one of the major functions of the Community Colleges and should be fully supported, organized, and supervised.

CHAPTER 2. ADULT CLASSES

SUBCHAPTER 1. GENERAL PROVISIONS

58100. Credit. District boards of trustees may grant credit toward an associate of arts or sciences degree for an adult class provided that the class also meets the criteria and standards for graded classes as set forth in Sections 55001 and 55002 of this title.

58101. Definitions. For purposes of this chapter the following definitions are adopted:

(a) "District" means a Community College district.

(b) "Adult class" means an ungraded course which has been designed primarily to meet the special needs of adult students and determined to be an adult class by the governing board of the district.

58102. Payment for Attendance. For the purposes of Section 5753 of the Education Code, state support may not be claimed for students attending an adult class (except classes in hospitals for military personnel) who are paid by their employers while in attendance when all the following conditions exist:

(a) Class membership consists of persons regularly employed by one company, concern, or agency public or private.

(b) The class is conducted on other than school premises.

(c) The class is conducted during the hours of paid employment of class members.

SUBCHAPTER 2. STANDARDS FOR CONTINUING EDUCATION CENTERS

58110. Standards Defined. In addition to the requirements established elsewhere in the law for the conduct of adult classes, continuing education centers must meet the requirements set forth in this article.

58111. Standards for Continuing Education Centers. Continuing education centers may be defined as adult schools under the provisions of Education Code Sections 5701 and 5716.

58112. Program of Studies. Each continuing education center shall establish a program of studies based upon the educational needs of persons eligible for admission.

58116. Personnel. District boards of trustees shall make a sufficient assignment of properly credentialed personnel for instruction, administration, supervision, evaluation, curriculum development, and guidance and counseling in the continuing education center.

SUBCHAPTER 3. STANDARDS FOR ADULT CLASSES

58120. Approval. The district shall file an application with the Chancellor for the approval of each adult class not part of the educational program (Administrative Code, Title 5, Sections 55130–55144) for which it desires state support.

58121. Requirements. Adult classes shall meet the following criteria in order to be approved:

(a) The class is designed to meet educational needs and capabilities of adults.

(b) The class is conducted in accordance with a course outline. Adult classes may require prerequisites before a student can enroll. Adult classes need not be a part of an organized sequence of classes.

58122. Non State-Supported Classes. Attendance in the following adult classes shall not qualify for state support:

(a) Recreational physical education, which is an activity program organized primarily for adult participation as a recreational outlet and includes all classes organized primarily for participation in sports and games.

(b) Recreational dancing.

(c) Military subjects, if the class is offered only to military personnel and conducted on military establishments.

(d) Classes for which the district receives compensation from any public or private agency, individual, or group of individuals, except fees authorized by Section 5757 of the Education Code and apportionments from the state and federal government.

(e) Classes which are not open to the general public.

58123. Vocational Training for Military Personnel. Vocational training adult classes provided to military personnel on a military establishment shall not duplicate any military training received by the students in that field.

58124. Summer Adult Classes. Adult classes offered between the close of one academic year and the beginning of the next academic year shall meet the same standards and are subject to the same rules and regulations as those offered during the academic year.

58125. Enrollment. The district board of trustees may establish the regular enrollment procedures for adult classes of the Community College.

58126. Course Outlines. Course outlines in all subjects offered in adult classes shall be on file in the Community College offering the courses.

58127. Governing Law. Continuing education centers and classes shall be governed by, and operated in accordance with, the provisions of Chapter 5.5 (commencing with Section 5701) of Division 6 of the Education Code.

SUBCHAPTER 4. SPECIAL ADULT CLASSES

Article 1. General Provisions

58130. Applicability of Other Provisions. Each adult class which is a physical education, crafts, forum series or lecture series class shall be conducted in accordance with the requirements of Subchapter 3 (commencing with Section 58120) of this chapter as well as the requirements of the appropriate article in this subchapter.

58131. Approval. In considering an application for approval of an adult class which is a physical education, crafts, forum series or lecture series class, the Chancellor shall evaluate the class on the basis of the provisions of the appropriate article of this subchapter in addition to the requirements set forth in Subchapter 3 (commencing with Section 58120 of this chapter). These classes and forum or lecture series shall be approved by the Chancellor prior to their first meeting in order for attendance in these sessions to receive credit for purposes of state support.

Article 2. Physical Education Classes

58135. Permitted Classes. Community College adult classes in physical education shall include only those organized primarily for instruction and which are planned to:

(a) Develop individual and public safety through swimming and life saving.

(b) Develop leaders in physical and recreational education.

(c) Provide education for improved posture, efficient body movement, and physical conditioning.

58136. Application for Approval. All applications for approval of physical education adult classes shall be accompanied by evidence that the class is instructional and shall include the following information:

(a) Purpose of course
(b) Instructional units (in detail)
(c) Hours planned for each unit
(d) Methods and procedures used

Article 3. Craft Classes

58140. Application. In the application for approval of adult courses in crafts, including leather, clay, plastic, metals, and needle craft, there shall be a statement stipulating maximum number of course hours to be allowed for each student to complete the courses in this field.

58141. Maximum Hours. The maximum number of hours allowed for completion of adult crafts classes shall be approved by the Chancellor.

Article 4. Forum Series

58150. Definition. A "forum series" as used in this article is an adult class which provides for free discussion of public affairs under qualified leadership.

58151. Discussion Subject. The subject for discussion at any class session may be presented by the regular forum leader or other qualified persons. In either case the forum leader shall be responsible for leadership and guidance of discussion.

58152. Credentialed Personnel. Each forum series shall be conducted under the immediate supervision and direction of an employee of the community college district who holds a credential.

58153. Active Participation. A forum series shall be conducted in such a manner as to provide opportunity for active participation in discussion by the members. Enrollment in a forum series shall be limited to insure such participation.

58154. Minimum Sessions. Each forum series shall comprise at least four class sessions relating to the same general topic unless a fewer number of sessions has previously been approved by the Chancellor. Not more than one session in the same forum series shall be held the same day.

A class session may be repeated for different groups of students as many times in a single day or on different days as the governing board may determine.

58155. Limitation of Attendance. The number of persons attending each class session of a forum series shall be limited to a number which will permit effective participation in discussion.

Article 5. Lecture Series

58160. Definition. A "lecture series" is an adult class concerned with regulated subjects of educational value excluding those in public affairs.

58161. Credential. A lecturer shall hold a California credential authorizing teaching service for the level and subject in which he is lecturing if he lectures more than four times in a semester or quarter, whichever system is used at the particular Community College.

58162. Minimum Sessions. Each lecture series shall comprise at least four class sessions related to the same general topic unless a fewer number of sessions has been approved previously by the Chancellor. No more than one session in the same lecture series shall be held on the same day.

A class session may be repeated for different groups of students as many times in a single day or on different days as the governing board may determine.

SUBCHAPTER 5. ATTENDANCE AND APPORTIONMENTS

58185. State Support. State support shall be provided in accordance with the provisions of the Education Code on the basis of actual attendance, except as provided in this chapter.

58186. Records and Reports. Authorities of each Community College maintaining adult classes shall keep such current records and reports concerning their total activities as may be required by the Chancellor.

58187. Attendance. Attendance of persons not regularly enrolled in a class shall not be counted. A person is regularly enrolled only when his class enrollment has been entered on forms which meet the requirements of the Chancellor. Sign-up sheets used at a class session for attendance keeping purposes do not constitute regular enrollment.

58188. Supplementary Lectures. Where lectures are used in adult classes to supplement instruction, only attendance of regularly enrolled students shall be credited for apportionment purposes.

58190. Crafts. Attendance of persons who have completed the maximum hours allowed in an adult crafts class pursuant to Article 3 shall not thereafter be counted in such course.

58191. Lecture. No person shall be counted in attendance in a lecture series who has not been in attendance for at least two sessions.

58192. Forum. Attendance of only regularly enrolled persons in a forum series shall be credited for apportionment purposes. Attendance for any class session of a forum series which is primarily for entertainment purposes or which is conducted for the general public rather than for regularly enrolled members of the forum series shall not be credited for apportionment purposes.

CHAPTER 3. STANDARDS FOR COMMUNITY SERVICE CLASSES

58210. Authority. Districts are authorized, without the approval of the Chancellor, to establish and maintain community service classes in accordance with the provisions of Article 12 (commencing with Section 6321) of Chapter 6, Division 6, of the Education Code.

58211. Purpose of Class. Such classes shall be designed for the physical, mental, moral, economic, or civic development of persons enrolled therein, to provide instruction in subjects not entitled to state apportionment under the provisions of this division.

58212. Admission. Community services shall be available and open for admission of adults and such minors who may profit therefrom, as the governing board of the district may decide.

58213. Hours. District boards of trustees may determine the hours for such community service classes, length of time during the day or evening, and length of time during the school year for presentation.

58214. Certificates. District boards of trustees may grant appropriate certificates of recognition for completion of community service classes.

58215. Apportionment. No state apportionment shall be made to districts for establishment or maintenance of community service classes.

58216. Attendance. Attendance and average daily attendance in community service classes need not be reported to the Chancellor.

58217. Funds. District boards of trustees may expend from the general fund of the college district any money budgeted for community services to establish and maintain community service classes. Student fees not to exceed cost of maintaining such classes may be charged. Fees may be paid to the district on the basis of a contract or by contributions or donations from individuals or groups.

CHAPTER 4. CONTRACT CLASSES

58250. Contract Classes. "Contract classes" means those classes which a Community College district offers in fulfillment of a contract between itself and a public or private agency, corporation, association, or other body or person. For purposes of state support for such classes, the contract payment will be deemed to be tuition.

58251. Approval. No approval of a contract class is required if the district does not claim state support for the class. If the district claims state support for a contract class, approval of the class shall be obtained in the manner provided for classes of the same type. State support for contract classes shall not be greater than the difference between the amount provided per ADA under terms of the contract and the average current expenditures by the district for such classes.

58252. Operation. Contract classes shall be operated in accordance with the applicable provisions of the law and in accordance with the provisions of the contract to the extent that they are not inconsistent with the applicable provisions of law.

58253. Funds. Under experimental, pilot, or model programs, the district may collect state A.D.A. or other funds for such purposes.

The criteria specified above are to be applied in recognition of the fact that the need for immediate supervision will vary according to the course being offered, as well as with the design or mode of instruction of such course or program.

(b) Under the following limited circumstances, attendance of students enrolled in a course or program which does not meet the requirements of subdivision (a) shall qualify for apportionment purposes if:

(1) The course or program is approved and being conducted as independent study in accordance with Chapter 4 (commencing with Section 55300) of Division 6 of this part; or

(2) The course or program is approved and being conducted as work experience education in accordance with Chapter 3 (commencing with Section 55250) of Division 6 of this part; or

(3) The course or program is approved and is being conducted as health sciences education in accordance with Section 84500.5 of the Education Code.

(c) Attendance generated solely under an instructional assistant or aide does not qualify for apportionment. In addition, instructional aides shall not be used to increase the number of students in relation to the number of classroom teachers in the district. However, attendance may qualify for apportionment under the following limited circumstances:

(1) The assistant or aide functions under the exclusive direction of the certificated employee assigned to that educational activity, and not independently; and

(2) The assistant or aide performs only those duties specifically authorized by law, including, but not limited to, Sections 88240–88249 of the Education Code; and,

(3) The certificated employee is able, in terms of physical proximity and range of communication, to provide necessary supervision and control of students, so that by working in conjunction with the assistant or aide, the requirements of subsection (a) of this section are met.

NOTE: Authority cited: Sections 71020, 76300 and 78405, Education Code. Reference: Sections 76300, 78405, 84500 84500.5, 84520, 84530 and 88240–88249, Education Code.

§ 58058. Employee of the District.

(a) A person is an "employee of the district" within the meaning of subdivision (a)(1) of Section 84500 of the Education Code if:

(1) The district has the primary right to control and direct the person's activities during the time such person is serving the district; and

(2) A contract exists between the person and the district, indicia of which may include provisions which specify the terms and conditions of work, salary and other compensation, work to be performed, and employment classification; and,

(3) The district compensates the person according to an adopted salary or wage schedule which complies with the provisions of Article 8 (commencing with Section 87800), Chapter 3, Part 51 of the Education Code.

(b) For the purposes of complying with the requirements of this section, a district may also contract for instruction to be provided by a public or private agency. Such contracts shall specify that the district has the primary right to control and direct the activities of the person or persons furnished by the public or private agency during the term of the contract. In addition, the district shall enter into a written contract with each person furnished by the public or private agency; and said contracts shall meet the requirements of subsection (a)(1) and (2) of this section. In this manner an individual employed will continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

NOTE: Authority cited: Sections 71020, 76300 and 78405, Education Code. Reference: Sections 76300, 78405 and 84500, Education Code.

§ 58060. Valid Certification Document.

For the purposes of Section 84500 of the Education Code, a certification document must meet the following requirements relative to the activity for which attendance is being claimed:

(a) It must authorize the holder to provide instruction in the particular subject matter or matters; and

(b) It must authorize the holder to provide that instruction during the period in which the holder is providing it.

NOTE: Authority cited: Sections 71020, 76300 and 78405, Education Code. Reference: Sections 76300, 78405 and 84500, Education Code.

Subchapter 2. Limitations on State Aid

Article 1. Open Courses

§ 58100. Open Enrollment.

Unless specifically exempted by statute, every course, course section or class for which average daily attendance is to be reported for state aid shall be open for enrollment and participation by any person who has been admitted to the college and who meets the prerequisites of such course as defined in Section 58104 of this chapter.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58106. Prerequisites.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. Organizational headings of CCR were renamed as a result of CCR Reformat Project as follows: "Chapter" was renamed to "Subchapter"; "Division" was renamed to "Chapter"; and "Part" was renamed to "Division." The organizational headings referenced in this regulation and/or HISTORY/NOTE have not been renamed; refer to the renamed organizational headings described in this paragraph.
2. Repealer and new section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 58108. Registration and Enrollment Procedures.

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off-campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58110. Enrollment Limitations.

Nothing in this chapter shall be deemed to impose obligations upon colleges to admit students to classes, courses, or programs beyond the limitations imposed by the size of physical facilities, availability of qualified instructors, funding limitations, and the constraints of regional planning. In all cases, when limitations do exist it is incumbent upon the governing board of a district to insure that each college establishes fair and equitable procedures for admission of qualified students.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

Article 2. 175-Day Rule

§ 58120. Conditions for Inclusion as a Day.

(a) For a day to count towards meeting the requirements of Education Code Section 84370, the total hours of course offerings scheduled during the day must be at least fifty percent (50%) of the average daily hours of course offerings for the academic year. The average daily hours of course offerings shall be computed by dividing the previous fiscal year's total scheduled hours of course offerings by the total number of days in which instruction was scheduled during the same fiscal year.

(b) Notwithstanding subsection (a) of this section, days of final examination may be counted toward meeting the requirements of Education Code Section 84370, provided that:

(1) Such examinations are administered under the immediate supervision and control of an appropriately certificated employee of the district; and

(2) Not more than fourteen days of final examinations shall be counted for any academic year, as defined by the district.

NOTE: Authority cited: Sections 71020, 76300, 78405 and 84370, Education Code. Reference: Sections 76301, 76302, 76311, 76320, 78206, 79000, 79028 and 84370, Education Code.

Article 3. (Reserved)

Article 4. (Reserved)

Article 5. Other Limitations

§ 58160. Noncredit Course Funding.

(a) Only those noncredit courses which are eligible for funding pursuant to Section 84711 of the Education Code may be claimed for purposes of state apportionments.

(b) The provisions of Education Code Sections 8538, 78412, 78460, 84500, and 84500.1 also apply in determining whether a noncredit course is eligible for funding.

NOTE: Authority cited: Sections 71020, 71062, 76300 and 78405, Education Code. Reference: Sections 8538, 78412, 78460, 84500, 84500.1 and 84711, Education Code.

HISTORY

1. Amendment of subsection (a) filed 3-7-85; effective thirtieth day thereafter (Register 85, No. 10).

§ 58161. State Apportionment for Course Repetition.

(a) Except as specifically authorized by statute or by this section, no state apportionment shall be allowed for the attendance of a student in a course in which the student has previously received a grade from the district.

(b) State apportionment may be claimed for the attendance of a student in a course in which the student has received a grade only if:

(1) The student is repeating the course to alleviate substandard work which has been recorded on the student's record. The term "substandard" shall be defined as course work for which the grading symbol "D," "F," or "N/C" has been recorded; or

(2) The district finds that the student's previous grade is, at least in part, the result of extenuating circumstances. Extenuating circumstances are verified cases of accidents, illness or other circumstances beyond the control of the student; or

(3) The district has determined that a student should repeat a course because there has been a significant lapse of time since the student previously took the course.

The attendance of students repeating a course as authorized by this subsection may be claimed only once for state apportionment.

(c) State apportionment for repetition of courses not expressly authorized by this section may be claimed upon approval of the Chancellor in accordance with the following procedure:

(1) The district must identify the courses which are to be repeatable, and designate such courses in its catalog;

(2) The district must determine and certify that each identified course is one in which the course content differs each time it is offered, and that the student who repeats it is gaining an expanded educational experience for one of the two of the following reasons:

(A) Skills or proficiencies are enhanced by supervised repetition and practice within class periods; or

(B) Active participatory experience in individual study or group assignments is the basic means by which learning objectives are obtained.

(3) The district must develop and implement a mechanism for the proper monitoring of such repetition.

The attendance of students repeating a course pursuant to this subsection, when approved by the Chancellor, may be claimed for state apportionment for not more than three semesters or five quarters.

NOTE: Authority cited: Sections 71020 and 76300, Education Code. Reference: Sections 76300 and 84500, Education Code.

HISTORY

1. New section filed 8-25-83; effective thirtieth day thereafter (Register 83, No. 35).

Register 1990-41

§ 58106

The criteria specified above are to be applied in recognition of the fact that the need for immediate supervision will vary according to the course being offered, as well as with the design or mode of instruction of such course or program.

(b) Under the following limited circumstances, attendance of students enrolled in a course or program which does not meet the requirements of subdivision (a) shall qualify for apportionment purposes if:

(1) The course or program is approved and being conducted as independent study in accordance with Chapter 4 (commencing with Section 55300) of Division 6 of this part; or

(2) The course or program is approved and being conducted as work experience education in accordance with Chapter 3 (commencing with Section 55250) of Division 6 of this part; or

(3) The course or program is approved and is being conducted as health sciences education in accordance with Section 84500.5 of the Education Code.

(c) Attendance generated solely under an instructional assistant or aide does not qualify for apportionment. In addition, instructional aides shall not be used to increase the number of students in relation to the number of classroom teachers in the district. However, attendance may qualify for apportionment under the following limited circumstances:

(1) The assistant or aide functions under the exclusive direction of the certificated employee assigned to that educational activity, and not independently; and

(2) The assistant or aide performs only those duties specifically authorized by law, including, but not limited to, Sections 88240–88249 of the Education Code; and,

(3) The certificated employee is able, in terms of physical proximity and range of communication, to provide necessary supervision and control of students, so that by working in conjunction with the assistant or aide, the requirements of subsection (a) of this section are met.

NOTE: Authority cited: Sections 71020, 76300 and 78405, Education Code. Reference: Sections 76300, 78405, 84500 84500.5, 84520, 84530 and 88240–88249, Education Code.

§ 58058. Employee of the District.

(a) A person is an "employee of the district" within the meaning of subdivision (a)(1) of Section 84500 of the Education Code if:

(1) The district has the primary right to control and direct the person's activities during the time such person is serving the district; and

(2) A contract exists between the person and the district, indicia of which may include provisions which specify the terms and conditions of work, salary and other compensation, work to be performed, and employment classification; and,

(3) The district compensates the person according to an adopted salary or wage schedule which complies with the provisions of Article 8 (commencing with Section 87800), Chapter 3, Part 51 of the Education Code.

(b) For the purposes of complying with the requirements of this section, a district may also contract for instruction to be provided by a public or private agency. Such contracts shall specify that the district has the primary right to control and direct the activities of the person or persons furnished by the public or private agency during the term of the contract. In addition, the district shall enter into a written contract with each person furnished by the public or private agency; and said contracts shall meet the requirements of subsection (a)(1) and (2) of this section. In this manner an individual employed will continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

NOTE: Authority cited: Sections 71020, 76300 and 78405, Education Code. Reference: Sections 76300, 78405 and 84500, Education Code.

§ 58060. Valid Certification Document.

For the purposes of Section 84500 of the Education Code, a certification document must meet the following requirements relative to the activity for which attendance is being claimed:

(a) It must authorize the holder to provide instruction in the particular subject matter or matters; and

(b) It must authorize the holder to provide that instruction during the period in which the holder is providing it.

NOTE: Authority cited: Sections 71020, 76300 and 78405, Education Code. Reference: Sections 76300, 78405 and 84500, Education Code.

Subchapter 2. Limitations on State Aid

Article 1. Open Courses

§ 58100. Open Enrollment.

Unless specifically exempted by statute, every course, course section or class for which average daily attendance is to be reported for state aid shall be open for enrollment and participation by any person who has been admitted to the college and who meets the prerequisites of such course as defined in Section 58104 of this chapter.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58106. Prerequisites and Other Limitations On Enrollment.

(a) In order to be claimed for purposes of State apportionment, all courses shall be open to enrollment by any student who has been admitted to the college, except that students may be required to meet necessary and valid prerequisites established pursuant to this section. In addition, a community college district may also limit enrollment in a course based on health and safety considerations, facility limitations, or legal requirements imposed by statute or regulations. The district governing board shall adopt policies identifying any such requirements and establishing fair and equitable procedures for determining who may enroll in affected courses. Such procedures may:

(1) limit enrollment on a "first come first served" basis or utilize other nonevaluative selection techniques to determine who may enroll; or

(2) limit enrollment to those students capable of meeting relevant skill prerequisites established pursuant to subsection (b)(3) of this section.

(b) Upon recommendation by the curriculum committee, pursuant to section 55002 of this part, a district may, subject to the conditions set forth in subdivision (c), require completion of any of the following types of prerequisites:

(1) It is permissible to require, as a prerequisite, the completion of any course in a sequence of related courses in a given discipline in which understanding or technical performance in such course is necessary for success in later courses in the sequence.

(2) As used in this section, the term "prerequisite" also includes "corequisites" which require a student to concurrently enroll in one course as a condition of enrollment in another course. A student may be required

to concurrently enroll in a corequisite only when the college has conducted a comprehensive assessment of the student using multiple measures and the objectives of the courses are clearly complementary, the interrelation of the units of instruction is evident, and completion of the corequisite is necessary for success in the related course. In addition, community college districts shall ensure that corequisite courses are available at the college in sufficient numbers to accommodate all students who are required to take them.

(3) Prerequisites may be defined in terms of skills measured by relevant assessment instruments, methods or procedures where the required level of performance is necessary to success in a particular course or program and the assessment instruments are selected and used in accordance with the provisions of chapter 6 (commencing with section 55500) of division 6 of this part. Community college districts shall ensure that precollegiate basic skills courses designed to teach required skills are available to accommodate students required to meet the associated skill prerequisites. Any student obtaining a passing grade in such a pre-collegiate basic skills course shall be deemed to satisfy the associated the skill prerequisite.

(4) Eligibility for enrollment in entry level associate degree courses in English and/or mathematics may be used in a prerequisite where communication or computation skills are necessary for success in a course.

(c) No prerequisite described in subdivision (b) may be imposed unless it conforms to all of the following requirements:

(1) Prerequisites shall not state or imply that enrollment in a course is limited to a specialized clientele unless such limitation is directly and specifically authorized by statute or regulation.

(2) Prerequisites for a course shall be clearly related to course content and must be validated as being necessary for success in such course. A sequential coursework prerequisite described in subdivision (b)(1) need not be validated if it was established prior to the effective date of this section or is required to ensure transferability of subsequent courses to a four-year institution.

(3) Prerequisites involving experience requirements may not be established solely on the basis of "hours of exposure."

(4) Community college districts may not establish communication or computational skill prerequisites which apply across the entire curriculum.

(d) Any prerequisite may be challenged by a student, using the procedures provided for in subsections (b) and (c) of section 55534 on one or more of the following grounds:

(1) the prerequisite is not valid because it is not necessary to success in the course for which it is required;

(2) the student has the knowledge or ability to succeed in the course despite not meeting the prerequisite; or

(3) the prerequisite is discriminatory or is being applied in a discriminatory manner.

(e) Districts shall adopt policies and procedures for validating prerequisites in accord with the provisions of this section. The Chancellor shall, as part of the evaluation required pursuant to section 55512(c), review district policies and procedures for validation of prerequisites.

(f) Notwithstanding the provisions of this section, prerequisites for Work Experience shall be as stated in chapter 3 (commencing with section 55250) of division 6 of this part.

NOTE: Authority cited: Sections 66700, 70901 and 84500.1, Education Code. Reference: Sections 78211, 78213 and 84500.1, Education Code.

HISTORY

1. Organizational headings of CCR were renamed as a result of CCR Reformat Project as follows: "Chapter" was renamed to "Subchapter"; "Division" was renamed to "Chapter"; and "Part" was renamed to "Division." The organizational headings referenced in this regulation and/or HISTORY/NOTE have not been renamed; refer to the renamed organizational headings described in this paragraph.
2. Repealer and new section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
3. Editorial correction of printing error inadvertently omitting text (Register 90, No. 41).

§ 58108. Registration and Enrollment Procedures.

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off-campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58110. Enrollment Limitations.

Nothing in this chapter shall be deemed to impose obligations upon colleges to admit students to classes, courses, or programs beyond the limitations imposed by the size of physical facilities, availability of qualified instructors, funding limitations, and the constraints of regional planning. In all cases, when limitations do exist it is incumbent upon the governing board of a district to insure that each college establishes fair and equitable procedures for admission of qualified students.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

Article 2. 175-Day Rule

§ 58120. Conditions for Inclusion as a Day.

(a) For a day to count towards meeting the requirements of Education Code Section 84370, the total hours of course offerings scheduled during the day must be at least fifty percent (50%) of the average daily hours of course offerings for the academic year. The average daily hours of course offerings shall be computed by dividing the previous fiscal year's total scheduled hours of course offerings by the total number of days in which instruction was scheduled during the same fiscal year.

(b) Notwithstanding subsection (a) of this section, days of final examination may be counted toward meeting the requirements of Education Code Section 84370, provided that:

(1) Such examinations are administered under the immediate supervision and control of an appropriately certificated employee of the district; and

(2) Not more than fourteen days of final examinations shall be counted for any academic year, as defined by the district.

Register 1981-52

§§ 58100 - 58110

DIVISION 9. CONTINUING EDUCATION

NOTE: Authority cited for Division 9: Sections 71020, 78405 and 66700, Education Code.

HISTORY:

1. New Division 9, Chapters 1 through 4 (§§ 58000–58253, not consecutive) filed 12-29-71; effective thirtieth day thereafter (Register 72, No. 1).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Division 9 (Chapters 1–4, Sections 58000–58253, not consecutive) filed 12-21-81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 79, No. 46; 77, No. 45; and 72, No. 1.

Register 1982-31

§§ 58100 - 58110

CHAPTER 1. ATTENDANCE

Article 1. General Provisions

58000. Introduction.

The documentation requirements set forth in this chapter have been developed to promote standardized, accurate reporting of data used for calculating the State general apportionment, and to facilitate audits of related community college records. This documentation, based on detailed tabulations of course sections and appropriate support records as described below, shall be available to the auditor retained by the district pursuant to Education Code Section 84040, the Department of Finance, the Auditor General, and the Chancellor's Office. These records may also be required by federal auditors when federal funds are involved.

NOTE: Authority cited: Sections 71020, 71062, 76300 and 78405, Education Code. Reference: Sections 84040 and 84040.5, Education Code.

HISTORY:

1. New Division 9, Chapters 1 through 4 (§§ 58000–58253, not consecutive) filed 12-29-71; effective thirtieth day thereafter (Register 72, No. 1).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Division 9 (Chapters 1–4, Sections 58000–58253, not consecutive) filed 12-21-81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 79, No. 46; 77, No. 45; and 72, No. 1.
4. New Division 9 (Chapters 1–4, Sections 58000–58306, not consecutive) filed 7-29-82; effective thirtieth day thereafter (Register 82, No. 31).

58002. Change in Academic Year Terms.

Prior to any change in academic year terms, including the addition, deletion, shortening or lengthening of any term, the governing board of a district shall request and obtain the approval of the Chancellor. The provisions of Chapter 8 (commencing with Section 55700) of Division 6 shall govern the content, review and approval of such requests.

NOTE: Authority cited: Sections 71020, 71062, 78002 and 84520, Education Code. Reference: Sections 78002 and 84520, Education Code.

Article 2. Attendance Reporting Procedures

58006. Application of Actual Student Contact Hours of Attendance Procedure.

The actual student contact hours of attendance procedure is based upon a count of students present at each course meeting, and shall apply to:

(a) All credit courses, exclusive of independent study and work experience education courses, scheduled to meet for fewer than five days, or credit courses of five or more days which are scheduled irregularly with respect to the number of days of the week and the number of hours the course meets;

(b) All open entry/open exit courses;

(c) All noncredit courses otherwise eligible for state aid;

(d) Inservice training courses in the areas of police, fire, corrections, and other criminal justice system occupations as defined in subdivision (c) of Education Code Section 84500.

(e) The attendance of students other than indentured apprentices who are actively enrolled in apprenticeship courses of related and supplemental instruction.

CHAPTER 2. LIMITATIONS ON STATE AID

Article 1. Open Courses

58100. Open Enrollment.

Unless specifically exempted by statute, every course, course section or class for which average daily attendance is to be reported for state aid shall be open for enrollment and participation by any person who has been admitted to the college and who meets the prerequisites of such course as defined in Section 58104 of this chapter.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

58106. Prerequisites.

Prerequisites shall not state or imply that enrollment in a course is limited to a specialized clientele, unless such limitation is specifically authorized by law.

(a) Academic prerequisites for a course shall be clearly related to course content and academic foundation of such course.

(b) In activity or laboratory type courses, prerequisites may require demonstrated ability or technical performance to a level of proficiency to be determined by equitable district procedures. Experience requirements may not be established solely on the basis of "hours of exposure."

(c) That a course is one in a related sequence of courses in which understanding or technical performance of the one is dependent upon successful completion of the preceding is an acceptable prerequisite.

(d) "Permission of the instructor" as an alternative to a prerequisite shall be limited in application to the determination of equivalence to stated academic prerequisites or performance standards in activity or laboratory type courses.

(e) Concurrent enrollment in a course may be a prerequisite only when the objectives of the courses are clearly complementary and the interrelation of the units of instruction is evident.

(f) Where health, safety, legal requirements or the facility is a limiting factor in the conduct of a course, the governing board shall establish official policy delineating prerequisites, requirements and fair and equitable procedures to meet such limitation.

(g) Prerequisites for Work Experience shall be as stated in Division 6, Chapter 3 (commencing with Section 55250) of Title 5 of the California Administrative Code.

(h) Scoring on a relevant standardized examination or test at a level sufficient to clearly indicate ability to benefit from instruction is an acceptable prerequisite.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

58108. Registration and Enrollment Procedures.

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off-campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

58110. Enrollment Limitations.

Nothing in this chapter shall be deemed to impose obligations upon colleges to admit students to classes, courses, or programs beyond the limitations imposed by the size of physical facilities, availability of qualified instructors, funding limitations, and the constraints of regional planning. In all cases, when limitations do exist it is incumbent upon the governing board of a district to insure that each college establishes fair and equitable procedures for admission of qualified students.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

Article 2. 175-Day Rule

58120. Conditions for Inclusion as a Day.

(a) For a day to count towards meeting the requirements of Education Code Section 84370, the total hours of course offerings scheduled during the day must be at least fifty percent (50%) of the average daily hours of course offerings for the academic year. The average daily hours of course offerings shall be computed by dividing the previous fiscal year's total scheduled hours of course offerings by the total number of days in which instruction was scheduled during the same fiscal year.

(b) Notwithstanding subsection (a) of this section, days of final examination may be counted toward meeting the requirements of Education Code Section 84370, provided that:

(1) Such examinations are administered under the immediate supervision and control of an appropriately certificated employee of the district; and

(2) Not more than fourteen days of final examinations shall be counted for any academic year, as defined by the district.

NOTE: Authority cited: Sections 71020, 76300, 78405 and 84370, Education Code. Reference: Sections 76301, 76302, 76311, 76320, 78206, 79000, 79028 and 84370, Education Code.

Article 3. (Reserved)

Article 4. (Reserved)

Article 5. Other Limitations

58160. Noncredit Course Funding.

(a) Only those noncredit courses which are eligible for funding pursuant to Section 84641 of the Education Code may be claimed for purposes of state apportionments.

(b) The provisions of Education Code Sections 8538, 78412, 78460, 84500, and 84500.1 also apply in determining whether a noncredit course is eligible for funding.

NOTE: Authority cited: Sections 71020, 71062, 76300 and 78405, Education Code. Reference: Sections 8538, 78412, 78460, 84500, 84500.1 and 84641, Education Code.

58162. Intercollegiate Athletics.

(a) State apportionment may be claimed for the attendance of students enrolled in approved courses of intercollegiate athletics otherwise eligible for state assistance.

(b) State apportionment for students in courses of intercollegiate athletics shall not be claimed for more than 175 hours of attendance for each enrolled student in each fiscal year for each sport in which the student participates.

NOTE: Authority cited: Sections 71020 and 76300, Education Code. Reference: Section 76300, Education Code.

58164. Open Entry/Open Exit Courses.

(a) The term "open entry/open exit courses" refers to courses in which students may enroll at various times, which students may complete at various times or at varying paces, and for which students may receive varying credit. Open entry/open exit courses may be conducted with or without regularly scheduled hours.

(b) Average daily attendance of students enrolled in open entry/open exit courses shall be computed pursuant to the provisions of subdivision (e) of Education Code Section 84520.

(c) State apportionment for the attendance of students in open entry/open exit courses shall not be claimed for more than two times the class hours normally required to complete the course as determined by the district governing board.

NOTE: Authority cited: Sections 71020 and 76300, Education Code. Reference: Section 76300, Education Code.

58166. Field Trips.

(a) State apportionment may be claimed for the attendance of students in courses which include a field trip or excursion pursuant to Education Code Section 72640.

(b) State apportionment for the attendance of students in courses which include a field trip or excursion shall not be claimed for more than forty-eight hours per unit of credit earned. No more attendance may be claimed for a field trip or excursion than if the class were held on campus.

NOTE: Authority cited: Sections 71020 and 76300, Education Code. Reference: Sections 72640 and 76300, Education Code.

Register 1983-29

§ 51006

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55825) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

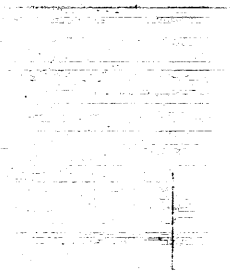
Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.



4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income if the business entity or source of income provides education, training, or experience to persons toward attaining a valid credential for employment as an instructor, supervisor, chief administrative officer, librarian, counselor, supervisor of health, student personnel worker, or other similar position within a Community College district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations affirming and fixing the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in chapter 9 (commencing with section 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

(3) The course or program is approved and is being conducted as health sciences education in accordance with Section 84500.5 of the Education Code.

(c) Attendance generated solely under an instructional assistant or aide does not qualify for apportionment. In addition, instructional aides shall not be used to increase the number of students in relation to the number of classroom teachers in the district. However, attendance may qualify for apportionment under the following limited circumstances:

(1) The assistant or aide functions under the exclusive direction of the certificated employee assigned to that educational activity, and not independently; and

(2) The assistant or aide performs only those duties specifically authorized by law, including, but not limited to, Sections 88240–88249 of the Education Code; and,

(3) The certificated employee is able, in terms of physical proximity and range of communication, to provide necessary supervision and control of students, so that by working in conjunction with the assistant or aide, the requirements of subsection (a) of this section are met.

NOTE: Authority cited: Sections 71020, 76300 and 78405, Education Code. Reference: Sections 76300, 78405, 84500 84500.5, 84520, 84530 and 88240–88249, Education Code.

§ 58058. Employee of the District.

(a) A person is an "employee of the district" within the meaning of subdivision (a)(1) of Section 84500 of the Education Code if:

(1) The district has the primary right to control and direct the person's activities during the time such person is serving the district; and

(2) A contract exists between the person and the district, indicia of which may include provisions which specify the terms and conditions of work, salary and other compensation, work to be performed, and employment classification; and,

(3) The district compensates the person according to an adopted salary or wage schedule which complies with the provisions of Article 8 (commencing with Section 87800), Chapter 3, Part 51 of the Education Code.

(b) For the purposes of complying with the requirements of this section, a district may also contract for instruction to be provided by a public or private agency. Such contracts shall specify that the district has the primary right to control and direct the activities of the person or persons furnished by the public or private agency during the term of the contract. In addition, the district shall enter into a written contract with each person furnished by the public or private agency; and said contracts shall meet the requirements of subsection (a)(1) and (2) of this section. In this manner an individual employed will continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

NOTE: Authority cited: Sections 71020, 76300 and 78405, Education Code. Reference: Sections 76300, 78405 and 84500, Education Code.

§ 58060. Valid Certification Document.

For the purposes of Section 84500 of the Education Code, a certification document must meet the following requirements relative to the activity for which attendance is being claimed:

(a) It must authorize the holder to provide instruction in the particular subject matter or matters; and

(b) It must authorize the holder to provide that instruction during the period in which the holder is providing it.

NOTE: Authority cited: Sections 71020, 76300 and 78405, Education Code. Reference: Sections 76300, 78405 and 84500, Education Code.

Subchapter 2. Limitations on State Aid

Article 1. Open Courses

§ 58100. Open Enrollment.

Unless specifically exempted by statute, every course, course section or class for which average daily attendance is to be reported for state aid shall be open for enrollment and participation by any person who has been admitted to the college and who meets the prerequisites of such course as defined in Section 58104 of this chapter.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58106. Prerequisites and Other Limitations On Enrollment.

(a) In order to be claimed for purposes of State apportionment, all courses shall be open to enrollment by any student who has been admitted to the college, except that students may be required to meet necessary and valid prerequisites established pursuant to this section. In addition, a community college district may also limit enrollment in a course based on health and safety considerations, facility limitations, or legal requirements imposed by statute or regulations. The district governing board shall adopt policies identifying any such requirements and establishing fair and equitable procedures for determining who may enroll in affected courses. Such procedures may:

(1) limit enrollment on a "first come first served" basis or utilize other nonevaluative selection techniques to determine who may enroll; or

(2) limit enrollment to those students capable of meeting relevant skill prerequisites established pursuant to subsection (b)(3) of this section.

(b) Upon recommendation by the curriculum committee, pursuant to section 55002 of this part, a district may, subject to the conditions set forth in subdivision (c), require completion of any of the following types of prerequisites:

(1) It is permissible to require, as a prerequisite, the completion of any course in a sequence of related courses in a given discipline in which understanding or technical performance in such course is necessary for success in later courses in the sequence.

(2) As used in this section, the term "prerequisite" also includes "corequisites" which require a student to concurrently enroll in one course as a condition of enrollment in another course. A student may be required to concurrently enroll in a corequisite only when the college has conducted a comprehensive assessment of the student using multiple measures and the objectives of the courses are clearly complementary, the interrelation of the units of instruction is evident, and completion of the corequisite is necessary for success in the related course. In addition, community college districts shall ensure that corequisite courses are available at the college in sufficient numbers to accommodate all students who are required to take them.

(3) Prerequisites may be defined in terms of skills measured by relevant assessment instruments, methods or procedures where the required level of performance is necessary to success in a particular course or program and the assessment instruments are selected and used in accordance with the provisions of chapter 6 (commencing with section 55500) of di-

vision 6 of this part. Community college districts shall ensure that pre-collegiate basic skills courses designed to teach required skills are available to accommodate students required to meet the associated skill prerequisites. Any student obtaining a passing grade in such a pre-collegiate basic skills course shall be deemed to satisfy the associated the skill prerequisite.

(4) Eligibility for enrollment in entry level associate degree courses in English and/or mathematics may be used in a prerequisite where communication or computation skills are necessary for success in a course.

(c) No prerequisite described in subdivision (b) may be imposed unless it conforms to all of the following requirements:

(1) Prerequisites shall not state or imply that enrollment in a course is limited to a specialized clientele unless such limitation is directly and specifically authorized by statute or regulation.

(2) Prerequisites for a course shall be clearly related to course content and must be validated as being necessary for success in such course. A sequential coursework prerequisite described in subdivision (b)(1) need not be validated if it was established prior to the effective date of this section or is required to ensure transferability of subsequent courses to a four-year institution.

(3) Prerequisites involving experience requirements may not be established solely on the basis of "hours of exposure."

(4) Community college districts may not establish communication or computational skill prerequisites which apply across the entire curriculum.

(d) Any prerequisite may be challenged by a student, using the procedures provided for in subsections (b) and (c) of section 55534 on one or more of the following grounds:

(1) the prerequisite is not valid because it is not necessary to success in the course for which it is required;

(2) the student has the knowledge or ability to succeed in the course despite not meeting the prerequisite; or

(3) the prerequisite is discriminatory or is being applied in a discriminatory manner.

(e) Districts shall adopt policies and procedures for validating prerequisites in accord with the provisions of this section. The Chancellor shall, as part of the evaluation required pursuant to section 55512(c), review district policies and procedures for validation of prerequisites.

(f) Notwithstanding the provisions of this section, prerequisites for Work Experience shall be as stated in chapter 3 (commencing with section 55250) of division 6 of this part.

NOTE: Authority cited: Sections 66700, 70901 and 84500.1, Education Code. Reference: Sections 78211, 78213 and 84500.1, Education Code.

HISTORY

1. Organizational headings of CCR were renamed as a result of CCR Reformat Project as follows: "Chapter" was renamed to "Subchapter"; "Division" was renamed to "Chapter"; and "Part" was renamed to "Division." The organizational headings referenced in this regulation and/or HISTORY/NOTE have not been renamed; refer to the renamed organizational headings described in this paragraph.
2. Repealer and new section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
3. Editorial correction of printing error inadvertently omitting text (Register 90, No. 41).

§ 58107. Facilities and Opportunities for Participation.

Notwithstanding any other provision of law, no public funds shall be used in connection with athletic programs conducted under the auspices of a community college district governing board or any student organization within the district, which do not provide facilities and opportunities for participation by both sexes on an equitable basis. Facilities and opportunities for participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 58108. Registration and Enrollment Procedures.

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off-campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58110. Enrollment Limitations.

Nothing in this chapter shall be deemed to impose obligations upon colleges to admit students to classes, courses, or programs beyond the limitations imposed by the size of physical facilities, availability of qualified instructors, funding limitations, and the constraints of regional planning. In all cases, when limitations do exist it is incumbent upon the governing board of a district to insure that each college establishes fair and equitable procedures for admission of qualified students.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

Article 2. 175-Day Rule

§ 58120. Conditions for Inclusion as a Day.

(a) For a day to count towards meeting the requirements of Education Code Section 84370, the total hours of course offerings scheduled during the day must be at least fifty percent (50%) of the average daily hours of course offerings for the academic year. The average daily hours of course offerings shall be computed by dividing the previous fiscal year's total scheduled hours of course offerings by the total number of days in which instruction was scheduled during the same fiscal year.

(b) Notwithstanding subsection (a) of this section, days of final examination may be counted toward meeting the requirements of Education Code Section 84370, provided that:

(1) Such examinations are administered under the immediate supervision and control of an appropriately certificated employee of the district; and

(2) Not more than fourteen days of final examinations shall be counted for any academic year, as defined by the district.

(2) The course or program is approved and being conducted as work experience education in accordance with Subchapter 3 (commencing with Section 55250) of Chapter 6 of this part; or

(3) The course or program is approved and is being conducted as health sciences education in accordance with Section 58055(a).

(c) Attendance generated solely under an instructional assistant or aide does not qualify for apportionment. In addition, instructional aides shall not be used to increase the number of students in relation to the number of classroom instructors in the district. However, attendance may qualify for apportionment under the following limited circumstances:

(1) The assistant or aide functions under the exclusive direction of the authorized employee assigned to that educational activity, and not independently; and

(2) The assistant or aide performs only those duties specifically authorized by law, including, but not limited to, Sections 88240–88249 of the Education Code; and,

(3) The authorized employee is able, in terms of physical proximity and range of communication, to provide necessary supervision and control of students, so that by working in conjunction with the assistant or aide, the requirements of subsection (a) of this section are met.

NOTE: Authority cited: Sections 66700, 70901 and 84500, Education Code. Reference: Sections 70901, 84500 and 88240–88249, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 58058. Employee of the District.

(a) A person is an "employee of the district" within the meaning of subdivision (a)(1) of Section 58051 if:

(1) The district has the primary right to control and direct the person's activities during the time such person is serving the district; and

(2) A contract exists between the person and the district, indicia of which may include provisions which specify the terms and conditions of work, salary and other compensation, work to be performed, and employment classification; and,

(3) The district compensates the person according to an adopted salary or wage schedule which complies with the provisions of Article 8 (commencing with Section 87801), Chapter 3, Part 51 of the Education Code.

(b) For the purposes of complying with the requirements of this section, a district may also contract for instruction to be provided by a public or private agency. Such contracts shall specify that the district has the primary right to control and direct the activities of the person or persons furnished by the public or private agency during the term of the contract. In addition, the district shall enter into a written contract with each person furnished by the public or private agency; and said contracts shall meet the requirements of subsection (a)(1) and (2) of this section. In this manner an individual employed will continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

NOTE: Authority cited: Sections 66700, 70901 and 84500, Education Code. Reference: Sections 70901, 84500 and 87801, Education Code.

HISTORY

1. Amendment of subsections (a) and (a)(3) and NOTE filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 58060. Valid Employment Qualifications.

For the purposes of Sections 58051 and 58056, the employee is deemed authorized to perform the services because he or she is employed pursuant to a valid, unrevoked credential issued by the Board of Governors or pursuant to minimum qualifications adopted by the Board of Governors or equivalencies pursuant to Section 53430.

(a) If the person serves pursuant to a credential,

(1) It must authorize the holder to provide instruction in the particular subject matter or matters; and

(2) It must authorize the holder to provide that instruction during the period in which the holder is providing it.

(b) If the person serves pursuant to minimum qualifications adopted by the Board of Governors or equivalencies, the qualifications or equivalencies must be related to the asignment and effective during the period of instruction for which attendance is being claimed.

(c) For purposes of this section, an employee is deemed authorized to perform the services if he or she is employed as a faculty intern.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 84500 and 87487, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

Subchapter 2. Limitations on State Aid

Article 1. Open Courses

§ 58100. Open Enrollment.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Section 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58106. Prerequisites and Other Limitations On Enrollment.

(a) In order to be claimed for purposes of State apportionment, all courses shall be open to enrollment by any student who has been admitted to the college, except that students may be required to meet prerequisites established pursuant to this section. In addition, a community college district may also limit enrollment in a course based on health and safety considerations, facility limitations, faculty workload, the availability of qualified instructors, funding limitations, the constraints of regional planning, or legal requirements imposed by statute, regulations or contracts. The district governing board shall adopt policies identifying any such requirements and establishing fair and equitable procedures for determining who may enroll in affected courses. Such procedures may:

(1) limit enrollment on a "first come first served" basis or utilize other nonevaluative selection techniques to determine who may enroll; or

(2) limit enrollment to those students capable of safely performing required tasks as measured by relevant skill prerequisites established pursuant to subsection (b)(3) of this section.

(b) After review pursuant to Sections 53200–53203, and 55002 of this Part, a district may, subject to the conditions set forth in subdivision (c), require a student to meet any of the following types of prerequisites as a condition for enrollment in a course:

(1) It is permissible to require, as a prerequisite, the completion of any course where understanding or technical performance taught in that course is necessary for success in later courses.

(2) As used in this section, the term "prerequisite" also includes "corequisites" which require a student to concurrently enroll in one course as a condition of enrollment in another course. A student may be required to concurrently enroll in a corequisite only when the college has conducted a comprehensive assessment of the student using multiple measures and the objectives of the courses are clearly complementary, the interrelation of the units of instruction is evident, and completion of the corequisite is necessary for success in the related course. In addition, community college districts shall ensure that corequisite courses are available at the college in sufficient numbers to accommodate all students who are required to take them. If this is not the case, the corequisite shall be waived pursuant to Section 55534(a) of this Division.

(3) Prerequisites may be defined in terms of skills necessary to success in a particular course or program. This includes, but is not limited to, skill competencies in reading, written expression, and mathematics established pursuant to Section 55806 of this Division. The determination of whether a student possesses the required skills shall be based on a comprehensive assessment using multiple measures and any assessment instruments relied upon shall be selected and used in accordance with the provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division. Community college districts shall ensure that pre–collegiate basic skills courses designed to teach required skills are available to accommodate students required to meet the associated skill prerequisites. Any student obtaining a satisfactory grade in such a pre–collegiate basic skills course shall be deemed to meet the associated skill prerequisite.

(4) Eligibility for enrollment in entry level associate degree courses in English and/or mathematics may be used as a prerequisite where communications or computation skills are necessary for success in a course.

(c) No prerequisite described in subdivision (b) may be imposed unless it conforms to all of the following requirements:

(1) Prerequisites shall not state or imply that enrollment in a course is limited to a specialized clientele unless such limitation is directly and specifically authorized by statute or regulation.

(2) Prerequisites for a course shall be clearly related to course content and must be validated as being necessary for success in such course. Provided, however, that a prerequisite need not be validated if it:

(A) was established prior to the effective date of this section and is part of a sequence of degree–applicable courses within a given discipline;

(B) is required by statute or regulation;

(C) is part of a closely related lecture–laboratory course pairing which requires concurrent enrollment; or

(D) is required by a four–year institution to ensure transferability of subsequent courses.

(3) Prerequisites involving experience requirements may not be established solely on the basis of "hours of exposure."

(4) Community college districts may not establish communication or computational skill prerequisites which apply across the entire curriculum.

(d) Any prerequisite may be challenged by a student, using the procedures provided for in subsections (b) and (c) of Section 55534, on one or more of the grounds listed below. Challenges shall be resolved in a timely manner and the student shall be permitted to enroll in the course in question if the challenge is upheld. Grounds for challenge are:

(1) a prerequisite which must be validated pursuant to subdivision (c)(2) has not been so validated or is being applied in a discriminatory manner;

(2) the student has the knowledge or ability to succeed in the course despite not meeting the prerequisite; or

(3) a prerequisite which need not be validated under subdivision (c)(2) and has not been so validated is discriminatory or is being applied in a discriminatory manner.

(e) Districts shall adopt policies and procedures for validating prerequisites in accord with the provisions of this section. In order to show that a prerequisite is necessary to success in a particular course, the validation procedure must establish that a student who has not met the prerequisite is highly unlikely to obtain a satisfactory grade in the course. The Chancellor shall, as part of the evaluation required pursuant to Section 55512(c), review district policies and procedures for validation of prerequisites.

(f) Notwithstanding the provisions of this section, prerequisites for Work Experience shall be as stated in Subchapter 3 (commencing with Section 55250) of Chapter 6 of this Division.

(g) The determination of whether a student meets a prerequisite shall be made prior to his or her enrollment in the course requiring that prerequisite; provided, however, that enrollment may be permitted pending verification that the student obtained a satisfactory grade in a prerequisite course. If the verification shows that the student has failed to meet the prerequisite, the student may be involuntarily dropped from the course if the applicable enrollment fees are promptly refunded. Otherwise, a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or the student code of conduct.

(h) A student who obtains a satisfactory grade in a prerequisite course described in subsection (b)(1) shall be deemed to meet the prerequisite for enrollment in a subsequent course in the sequence. No "exit" test may be required unless it is incorporated into the grading for the prerequisite course. A student who obtains satisfactory grades in all required courses in a program shall be deemed to have completed the program and no additional "exit" test may be required.

(i) As used in this section, the term "satisfactory grade" means that, for the course in question, the student's academic record has been annotated with the symbol A, B, C or "CR" as those symbols are defined in Section 55758 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78211 and 78213, Education Code.

HISTORY

1. Organizational headings of CCR were renamed as a result of CCR Reformat Project as follows: "chapter" was renamed to "subchapter"; "division" was renamed to "chapter"; and "part" was renamed to "division." The organizational headings referenced in this regulation and/or HISTORY/NOTE have not been renamed; refer to the renamed organizational headings described in this paragraph.
2. Repealer and new section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
3. Editorial correction of printing error restoring text (Register 91, No. 29).
4. Amendment filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 58107. Facilities and Opportunities for Participation.

Notwithstanding any other provision of law, no public funds shall be used in connection with athletic programs conducted under the auspices of a community college district governing board or any student organization within the district, which do not provide facilities and opportunities for participation by both sexes on an equitable basis. Facilities and opportunities for participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 58108. Registration and Enrollment Procedures.

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off–campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

§ 58110. Enrollment Limitations.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

Article 2. 175–Day Rule

§ 58120. Conditions for Inclusion as a Day.

(a) For a day to count towards meeting the requirements of Education Code Section 84370, the total hours of course offerings scheduled during the day must be at least fifty percent (50%) of the average daily hours of course offerings for the academic year. The average daily hours of course

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work, salary and other compensation, work to be performed, and employment classification; and,

(3) The district compensates the person according to an adopted salary or wage schedule which complies with the provisions of Article 8 (commencing with Section 87801), Chapter 3, Part 51 of the Education Code.

(b) For the purposes of complying with the requirements of this section, a district may also contract for instruction to be provided by a public or private agency. Such contracts shall specify that the district has the primary right to control and direct the activities of the person or persons furnished by the public or private agency during the term of the contract. In addition, the district shall enter into a written contract with each person furnished by the public or private agency; and said contracts shall meet the requirements of subsection (a)(1) and (2) of this section. In this manner an individual employed will continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

NOTE: Authority cited: Sections 66700, 70901 and 84500, Education Code. Reference: Sections 70901, 84500 and 87801, Education Code.

HISTORY

1. Amendment of subsections (a) and (a)(3) and NOTE filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 58060. Valid Employment Qualifications.

For the purposes of Sections 58051 and 58056, the employee is deemed authorized to perform the services because he or she is employed pursuant to a valid, unrevoked credential issued by the Board of Governors or pursuant to minimum qualifications adopted by the Board of Governors or equivalencies pursuant to Section 53430.

(a) If the person serves pursuant to a credential,

(1) It must authorize the holder to provide instruction in the particular subject matter or matters; and

(2) It must authorize the holder to provide that instruction during the period in which the holder is providing it.

(b) If the person serves pursuant to minimum qualifications adopted by the Board of Governors or equivalencies, the qualifications or equivalencies must be related to the asignment and effective during the period of instruction for which attendance is being claimed.

(c) For purposes of this section, an employee is deemed authorized to perform the services if he or she is employed as a faculty intern.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 84500 and 87487, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

Subchapter 2. Limitations on State Aid

Article 1. Open Courses

§ 58100. Open Enrollment.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Section 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58106. Prerequisites and Other Limitations On Enrollment.

(a) In order to be claimed for purposes of State apportionment, all courses shall be open to enrollment by any student who has been admitted to the college, except that students may be required to meet prerequisites established pursuant to this section. In addition, a community college district may also limit enrollment in a course based on health and safety considerations, facility limitations, faculty workload, the availability of qualified instructors, funding limitations, the constraints of regional planning, or legal requirements imposed by statute, regulations or contracts. The district governing board shall adopt policies identifying any such requirements and establishing fair and equitable procedures for determining who may enroll in affected courses. Such procedures may:

(1) limit enrollment on a "first come first served" basis or utilize other nonevaluative selection techniques to determine who may enroll; or

(2) limit enrollment to those students capable of safely performing required tasks as measured by relevant skill prerequisites established pursuant to subsection (b)(3) of this section.

(b) After review pursuant to Sections 53200–53203, and 55002 of this Part, a district may, subject to the conditions set forth in subdivision (c), require a student to meet any of the following types of prerequisites as a condition for enrollment in a course:

(1) It is permissible to require, as a prerequisite, the completion of any course where understanding or technical performance taught in that course is necessary for success in later courses.

(2) As used in this section, the term "prerequisite" also includes "corequisites" which require a student to concurrently enroll in one course as a condition of enrollment in another course. A student may be required to concurrently enroll in a corequisite only when the college has conducted a comprehensive assessment of the student using multiple measures and the objectives of the courses are clearly complementary, the interrelation of the units of instruction is evident, and completion of the corequisite is necessary for success in the related course. In addition, community college districts shall ensure that corequisite courses are available at the college in sufficient numbers to accommodate all students who are required to take them. If this is not the case, the corequisite shall be waived pursuant to Section 55534(a) of this Division.

(3) Prerequisites may be defined in terms of skills necessary to success in a particular course or program. This includes, but is not limited to, skill competencies in reading, written expression, and mathematics established pursuant to Section 55806 of this Division. The determination of whether a student possesses the required skills shall be based on a comprehensive assessment using multiple measures and any assessment instruments relied upon shall be selected and used in accordance with the provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division. Community college districts shall ensure that pre–collegiate basic skills courses designed to teach required skills are available to accommodate students required to meet the associated skill prerequisites. Any student obtaining a satisfactory grade in such a pre–collegiate basic skills course shall be deemed to meet the associated skill prerequisite.

(4) Eligibility for enrollment in entry level associate degree courses in English and/or mathematics may be used as a prerequisite where communications or computation skills are necessary for success in a course.

(c) No prerequisite described in subdivision (b) may be imposed unless it conforms to all of the following requirements:

(1) Prerequisites shall not state or imply that enrollment in a course is limited to a specialized clientele unless such limitation is directly and specifically authorized by statute or regulation.

(2) Prerequisites for a course shall be clearly related to course content and must be validated as being necessary for success in such course. Provided, however, that a prerequisite need not be validated if it:

(A) was established prior to the effective date of this section and is part of a sequence of degree–applicable courses within a given discipline;

(B) is required by statute or regulation;

(C) is part of a closely related lecture–laboratory course pairing which requires concurrent enrollment; or

(D) is required by a four–year institution to ensure transferability of subsequent courses.

(3) Prerequisites involving experience requirements may not be established solely on the basis of "hours of exposure."

(4) Community college districts may not establish communication or computational skill prerequisites which apply across the entire curriculum.

(d) Any prerequisite may be challenged by a student, using the procedures provided for in subsections (b) and (c) of Section 55534, on one or more of the grounds listed below. Challenges shall be resolved in a timely manner and the student shall be permitted to enroll in the course in question if the challenge is upheld. Grounds for challenge are:

(1) a prerequisite which must be validated pursuant to subdivision (c)(2) has not been so validated or is being applied in a discriminatory manner;

(2) the student has the knowledge or ability to succeed in the course despite not meeting the prerequisite; or

(3) a prerequisite which need not be validated under subdivision (c)(2) and has not been so validated is discriminatory or is being applied in a discriminatory manner.

(e) Districts shall adopt policies and procedures for validating prerequisites in accord with the provisions of this section. In order to show that a prerequisite is necessary to success in a particular course, the validation procedure must establish that a student who has not met the prerequisite is highly unlikely to obtain a satisfactory grade in the course. The Chancellor shall, as part of the evaluation required pursuant to Section 55512(c), review district policies and procedures for validation of prerequisites.

(f) Notwithstanding the provisions of this section, prerequisites for Work Experience shall be as stated in Subchapter 3 (commencing with Section 55250) of Chapter 6 of this Division.

(g) The determination of whether a student meets a prerequisite shall be made prior to his or her enrollment in the course requiring that prerequisite; provided, however, that enrollment may be permitted pending verification that the student obtained a satisfactory grade in a prerequisite course. If the verification shows that the student has failed to meet the prerequisite, the student may be involuntarily dropped from the course if the applicable enrollment fees are promptly refunded. Otherwise, a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or the student code of conduct.

(h) A student who obtains a satisfactory grade in a prerequisite course described in subsection (b)(1) shall be deemed to meet the prerequisite for enrollment in a subsequent course in the sequence. No "exit" test may be required unless it is incorporated into the grading for the prerequisite course. A student who obtains satisfactory grades in all required courses in a program shall be deemed to have completed the program and no additional "exit" test may be required.

(i) As used in this section, the term "satisfactory grade" means that, for the course in question, the student's academic record has been annotated with the symbol A, B, C or "CR" as those symbols are defined in Section 55758 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78211 and 78213, Education Code.

HISTORY

1. Organizational headings of CCR were renamed as a result of CCR Reformat Project as follows: "chapter" was renamed to "subchapter"; "division" was renamed to "chapter"; and "part" was renamed to "division." The organizational headings referenced in this regulation and/or HISTORY/NOTE have not been renamed; refer to the renamed organizational headings described in this paragraph.
2. Repealer and new section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
3. Editorial correction of printing error restoring text (Register 91, No. 29).
4. Amendment filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 58107. Facilities and Opportunities for Participation.

Notwithstanding any other provision of law, no public funds shall be used in connection with athletic programs conducted under the auspices of a community college district governing board or any student organization within the district, which do not provide facilities and opportunities for participation by both sexes on an equitable basis. Facilities and opportunities for participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 58108. Registration and Enrollment Procedures.

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off–campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58110. Enrollment Limitations.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

work, salary and other compensation, work to be performed, and employment classification; and,

(3) The district compensates the person according to an adopted salary or wage schedule which complies with the provisions of Article 8 (commencing with Section 87801), Chapter 3, Part 51 of the Education Code.

(b) For the purposes of complying with the requirements of this section, a district may also contract for instruction to be provided by a public or private agency. Such contracts shall specify that the district has the primary right to control and direct the activities of the person or persons furnished by the public or private agency during the term of the contract. In addition, the district shall enter into a written contract with each person furnished by the public or private agency; and said contracts shall meet the requirements of subsection (a)(1) and (2) of this section. In this manner an individual employed will continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

NOTE: Authority cited: Sections 66700, 70901 and 84500, Education Code. Reference: Sections 70901, 84500 and 87801, Education Code.

HISTORY

1. Amendment of subsections (a) and (a)(3) and NOTE filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 58060. Valid Employment Qualifications.

For the purposes of Sections 58051 and 58056, the employee is deemed authorized to perform the services because he or she is employed pursuant to a valid, unrevoked credential issued by the Board of Governors or pursuant to minimum qualifications adopted by the Board of Governors or equivalencies pursuant to Section 53430.

(a) If the person serves pursuant to a credential,

(1) It must authorize the holder to provide instruction in the particular subject matter or matters; and

(2) It must authorize the holder to provide that instruction during the period in which the holder is providing it.

(b) If the person serves pursuant to minimum qualifications adopted by the Board of Governors or equivalencies, the qualifications or equivalencies must be related to the asignment and effective during the period of instruction for which attendance is being claimed.

(c) For purposes of this section, an employee is deemed authorized to perform the services if he or she is employed as a faculty intern.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 84500 and 87487, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

Subchapter 2. Limitations on State Aid

Article 1. Open Courses

§ 58100. Open Enrollment.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Section 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58106. Limitations on Enrollment.

In order to be claimed for purposes of state apportionment, all courses shall be open to enrollment by any student who has been admitted to the college, provided that enrollment in specific courses or programs may be limited as follows:

(a) Enrollment may be limited to students meeting prerequisites and corequisites established pursuant to Sections 55200–55202 of this Division,

(b) Enrollment may be limited due to health and safety considerations, facility limitations, faculty workload, the availability of qualified instructors, funding limitations, the constraints of regional planning or legal requirements imposed by statutes, regulations, or contracts. The governing board shall adopt policies identifying any such limitations and requiring fair and equitable procedures for determining who may enroll in affected courses or programs. Such procedures shall be consistent with one or more of the following approaches:

(1) limiting enrollment to a "first–come, first–served" basis or using other nonevaluative selection techniques to determine who may enroll; or

(2) limiting enrollment using a registration procedure authorized by Section 58108; or

(3) in the case of intercollegiate completion, honors courses, or public performance courses, allocating available seats to those students judged most qualified; or

(4) limiting enrollment in one or more sections of a course to a cohort of students enrolled in one or more other courses, provided however, that a reasonable percentage of all sections of the course do not have such restrictions; or

(5) with respect to students on probation or subject to dismissal, the governing board may, consistent with the provisions of Sections 55754–55755 of this Part, limit enrollment to a total number of units or to selected courses, or require students to follow a prescribed educational plan.

(c) A student may challenge an enrollment limitation established pursuant to Subsection (b) of this Section on any of the following grounds:

(1) the enrollment limitation is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(2) the district is not following its policy on enrollment limitations;

(3) the basis upon which the district has established an enrollment limitation does not in fact exist; or

(4) any other criteria established by the district.

(d) The student shall bear the burden of showing that grounds exists for the challenge. Challenges shall be handled in a timely manner, and if the challenge is upheld, the district shall waive the enrollment limitation with respect to that student.

(e) In the case of a challenge under Subsection (c)(1) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of

tion 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer and new section filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42). For prior history, see Register 92, No. 15.

§ 58107. Facilities and Opportunities for Participation.

Notwithstanding any other provision of law, no public funds shall be used in connection with athletic programs conducted under the auspices of a community college district governing board or any student organization within the district, which do not provide facilities and opportunities for participation by both sexes on an equitable basis. Facilities and opportunities for participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 58108. Registration and Enrollment Procedures.

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in a class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off-campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 58110. Enrollment Limitations.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

Article 2. 175-Day Rule

120. Conditions for Inclusion as a Day.

(a) For a day to count towards meeting the requirements of section 58142, the total hours of course offerings scheduled during the day must be at least fifty percent (50%) of the average daily hours of course offerings for the academic year. The average daily hours of course offerings shall be computed by dividing the previous fiscal year's total scheduled hours of course offerings by the total number of days in which instruction was scheduled during the same fiscal year.

(b) Notwithstanding subsection (a) of this section, days of final examination may be counted toward meeting the requirements of section 58142, provided that:

(1) such examinations are administered under the immediate supervision and control of an appropriate academic employee of the district; and

(2) not more than fourteen days of final examinations shall be counted for any academic year, as defined by the district.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section and NOTE filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

Article 3. (Reserved)

Article 4. (Reserved)

Article 5. Other Limitations

§ 58130. Noncredit Classes in Dancing or Recreational Physical Education; State Aid or Apportionment for Attendance.

No state aid or apportionment may be claimed on account of the attendance of students in noncredit classes in dancing or recreational physical education.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 58130.5. Estimate of School Money to Be Apportioned.

The Chancellor shall, not later than the 25th day of July in each year, prepare an estimate of the amount of state school money that will be apportioned to each community college district during the current school year, and furnish a certified copy of the estimate to each community college district.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 58131. Second Principal Apportionment.

The Chancellor shall on or before June 25th of each year apportion to each community college district the total amounts allowed to them under section 84850. This apportionment shall be called the second principal apportionment.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correcton of printing error (Register 91, No. 43).

§ 58132. Final Apportionment.

The Chancellor shall on or before June 25th of each year apportion to each community college district the total of the amounts allowed to the district. This apportionment shall be called the final apportionment.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each

Senior Accounting Officers (Specialists) 3
Accounting Officers (Specialists) 3
Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of History 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full-time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

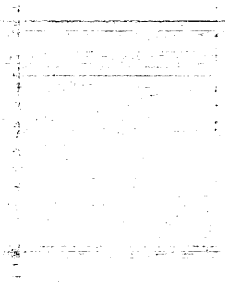
(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).



NOTE: Authority cited: Sections 66700, 70901 and 84500, Education Code. Reference: Sections 70901, 84500 and 88240–88249, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 58058. Employee of the District.

(a) A person is an "employee of the district" within the meaning of subdivision (a)(1) of Section 58051 if:

(1) The district has the primary right to control and direct the person's activities during the time such person is serving the district; and

(2) A contract exists between the person and the district, indicia of which may include provisions which specify the terms and conditions of work, salary and other compensation, work to be performed, and employment classification; and,

(3) The district compensates the person according to an adopted salary or wage schedule which complies with the provisions of Article 8 (commencing with Section 87801), Chapter 3, Part 51 of the Education Code.

(b) For the purposes of complying with the requirements of this section, a district may also contract for instruction to be provided by a public or private agency. Such contracts shall specify that the district has the primary right to control and direct the activities of the person or persons furnished by the public or private agency during the term of the contract. In addition, the district shall enter into a written contract with each person furnished by the public or private agency; and said contracts shall meet the requirements of subsection (a)(1) and (2) of this section. In this manner an individual employed will continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

NOTE: Authority cited: Sections 66700, 70901 and 84500, Education Code. Reference: Sections 70901, 84500 and 87801, Education Code.

HISTORY

1. Amendment of subsections (a) and (a)(3) and NOTE filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 58060. Valid Employment Qualifications.

For the purposes of Sections 58051 and 58056, the employee is deemed authorized to perform the services because he or she is employed pursuant to a valid, unrevoked credential issued by the Board of Governors or pursuant to minimum qualifications adopted by the Board of Governors or equivalencies pursuant to Section 53430.

(a) If the person serves pursuant to a credential,

(1) It must authorize the holder to provide instruction in the particular subject matter or matters; and

(2) It must authorize the holder to provide that instruction during the period in which the holder is providing it.

(b) If the person serves pursuant to minimum qualifications adopted by the Board of Governors or equivalencies, the qualifications or equivalencies must be related to the assignment and effective during the period of instruction for which attendance is being claimed.

(c) For purposes of this section, an employee is deemed authorized to perform the services if he or she is employed as a faculty intern.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 84500 and 87487, Education Code.

HISTORY

1. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

Subchapter 2. Limitations on State Aid

Article 1. Open Courses

§ 58100. Open Enrollment.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Section 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 58102. Course Description.

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58104. Dissemination of Information.

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58106. Limitations on Enrollment.

In order to be claimed for purposes of state apportionment, all courses shall be open to enrollment by any student who has been admitted to the college, provided that enrollment in specific courses or programs may be limited as follows:

(a) Enrollment may be limited to students meeting prerequisites and corequisites established pursuant to Sections 55200–55202 of this Division,

(b) Enrollment may be limited due to health and safety considerations, facility limitations, faculty workload, the availability of qualified instructors, funding limitations, the constraints of regional planning or legal requirements imposed by statutes, regulations, or contracts. The governing board shall adopt policies identifying any such limitations and requiring fair and equitable procedures for determining who may enroll in affected courses or programs. Such procedures shall be consistent with one or more of the following approaches:

(1) limiting enrollment to a "first–come, first–served" basis or using other nonevaluative selection techniques to determine who may enroll; or

(2) limiting enrollment using a registration procedure authorized by Section 58108; or

(3) in the case of intercollegiate completion, honors courses, or public performance courses, allocating available seats to those students judged most qualified; or

(4) limiting enrollment in one or more sections of a course to a cohort of students enrolled in one or more other courses, provided however, that a reasonable percentage of all sections of the course do not have such restrictions; or

(5) with respect to students on probation or subject to dismissal, the governing board may, consistent with the provisions of Sections 55754–55755 of this Part, limit enrollment to a total number of units or to selected courses, or require students to follow a prescribed educational plan.

(c) A student may challenge an enrollment limitation established pursuant to Subsection (b) of this Section on any of the following grounds:

(1) the enrollment limitation is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(2) the district is not following its policy on enrollment limitations;

(3) the basis upon which the district has established an enrollment limitation does not in fact exist; or

(4) any other criteria established by the district.

(d) The student shall bear the burden of showing that grounds exists for the challenge. Challenges shall be handled in a timely manner, and if the challenge is upheld, the district shall waive the enrollment limitation with respect to that student.

(e) In the case of a challenge under Subsection (c)(1) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer and new section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42). For prior history, see Register 92, No. 15.

§ 58107. Facilities and Opportunities for Participation.

Notwithstanding any other provision of law, no public funds shall be used in connection with athletic programs conducted under the auspices of a community college district governing board or any student organization within the district, which do not provide facilities and opportunities for participation by both sexes on an equitable basis. Facilities and opportunities for participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58108. Registration and Enrollment Procedures.

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off–campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 84500, Education Code.

HISTORY

1. Amendment of NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 58110. Enrollment Limitations.

NOTE: Authority cited: Sections 71020, 71062 and 84500.1, Education Code. Reference: Sections 84500 and 84500.1, Education Code.

HISTORY

1. Repealer filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

Article 2. 175–Day Rule

§ 58120. Conditions for Inclusion as a Day.

(a) For a day to count towards meeting the requirements of section 58142, the total hours of course offerings scheduled during the day must be at least fifty percent (50%) of the average daily hours of course offerings for the academic year. The average daily hours of course offerings shall be computed by dividing the previous fiscal year's total scheduled hours of course offerings by the total number of days in which instruction was scheduled during the same fiscal year.

(b) Notwithstanding subsection (a) of this section, days of final examination may be counted toward meeting the requirements of section 58142, provided that:

(1) such examinations are administered under the immediate supervision and control of an appropriate academic employee of the district; and

(2) not more than fourteen days of final examinations shall be counted for any academic year, as defined by the district.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section and NOTE filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Article 3. (Reserved)

Article 4. (Reserved)

Article 5. Other Limitations

§ 58130. Noncredit Classes in Dancing or Recreational Physical Education; State Aid or Apportionment for Attendance.

No state aid or apportionment may be claimed on account of the attendance of students in noncredit classes in dancing or recreational physical education.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58130.5. Estimate of School Money to Be Apportioned.

The Chancellor shall, not later than the 25th day of July in each year, prepare an estimate of the amount of state school money that will be apportioned to each community college district during the current school year, and furnish a certified copy of the estimate to each community college district.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

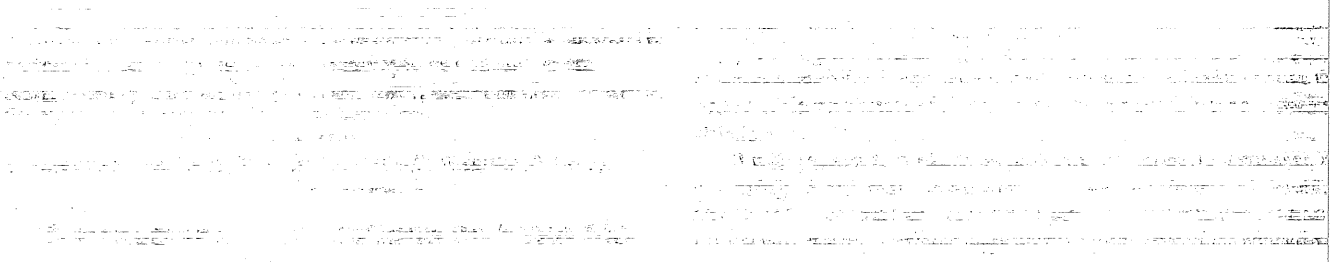
1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

3. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58131. Second Principal Apportionment.

The Chancellor shall on or before June 25th of each year apportion to each community college district the total amounts allowed to them under



No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 04. Comprehensive Plan

History Index for
Title 5, California Code of Regulations

Section 51008
Section 55401
Section 55402
Section 55403
Section 55404
Section 55405

Register 71-27 New Chapter 5 (§§ 55400 - 55405).

Register 77-45 § 55400: Amendment of section and NOTE.

§ 55405: Amendment of section.

Register 83-29 Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000-51021, not consecutive).

Register 91-23 § 51008: Amendment of section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

§ 55400: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 91-45 § 55400: Amendment filed; submitted to OAL for printing only

pursuant to Government Code section 11343.8.

Register 92-01 § 55400: Amendment of NOTE; submitted to OAL for printing only pursuant to Government Code section 11343.8.

Register 94-38 § 51008: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

Register 95-15 § 51008: Editorial correction of HISTORY 1.

Register 95-20 § 55400: Editorial correction of HISTORY 3.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

Register 1971-27

§§ 55400 - 55405

CHAPTER 5. EDUCATIONAL MASTER PLANS

55400. Definitions. The definitions provided in the *Handbook of Definitions* issued by the Chancellor shall apply to the provisions of this chapter.

NOTE: Authority cited: Section 199, Education Code.

History: 1. New Chapter 5 (§§ 55400 through 55405) filed 7-1-71; effective thirtieth day thereafter (Register 71, No. 27).

55401. Current and Long Range Plans. The governing board of each Community College district shall establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

55402. Educational Master Plans. On or before January 1, 1972, the governing board of each Community College district shall submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor on or before November 1 of each year thereafter.

55403. Form. Each plan shall be submitted on a form provided by the Chancellor and shall contain such information as the Chancellor shall require.

55404. Contents. Each plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. On the basis of current and future enrollment, it shall contain plans for the development and expansion of ancillary services, including services in the library and for counseling, placement, and financial aids.

55405. Review and Approval. The Chancellor shall review each master plan. On or before February 1 following the submission of each plan, he shall send a copy of his approval of it to the superintendent of each district.

Register 1977-45

§ 55400
§ 55405

CHAPTER 5. EDUCATIONAL MASTER PLANS

55400. Definitions. The definitions provided in the *Student Attendance Accounting Manual* issued by the Chancellor shall apply to the provisions of this chapter.

NOTE: Authority cited for Chapter 5: Sections 71028, 72231.5 and 71026, Education Code.

History: 1. New Chapter 5 (§§ 55400 through 55405) filed 7-1-71; effective thirtieth day thereafter (Register 71, No. 27).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55401. Current and Long Range Plans. The governing board of each Community College district shall establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

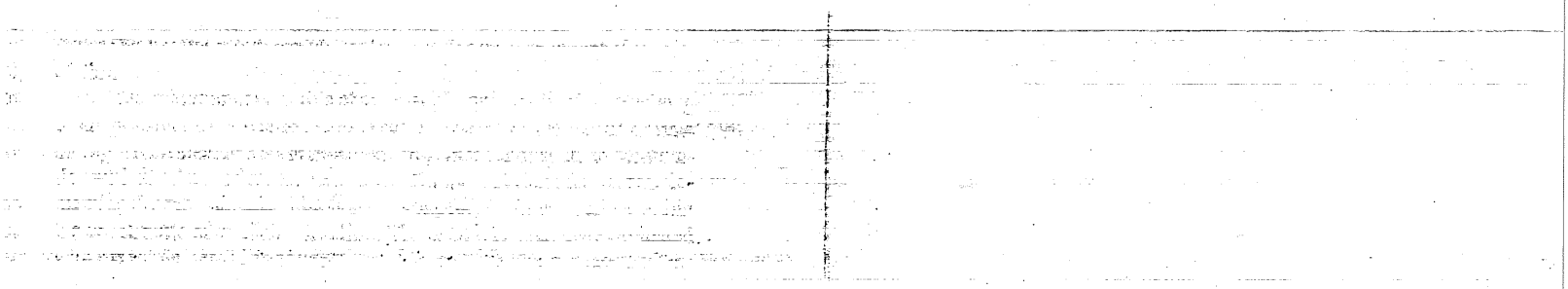
55402. Educational Master Plans. On or before January 1, 1972, the governing board of each Community College district shall submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor on or before November 1 of each year thereafter.

55403. Form. Each plan shall be submitted on a form provided by the Chancellor and shall contain such information as the Chancellor shall require.

55404. Contents. Each plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. On the basis of current and future enrollment, it shall contain plans for the development and expansion of ancillary services, including services in the library and for counseling, placement, and financial aids.

55405. Review and Approval. The Chancellor shall review each master plan. On or before February 1 following the submission of each plan, the Chancellor shall send a copy of the approval of it to the superintendent of each district.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).



CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55825) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

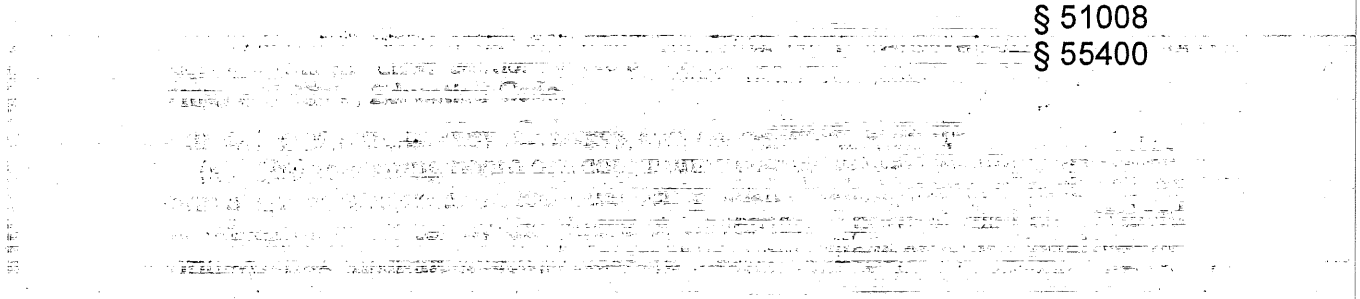
51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

Register 1991-23

§ 51008
§ 55400



4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income if the business entity or source of income provides education, training, or experience to persons toward attaining a valid credential for employment as an instructor, supervisor, chief administrative officer, librarian, counselor, supervisor of health, student personnel worker, or other similar position within a Community College district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations affirming and fixing the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in chapter 9 (commencing with section 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55323. Learning Assistance.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12–17–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 55340. Eligibility for State Funds.

(a) In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this chapter, the course must be reported as required by this chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

(b) For purposes of computing attendance, one weekly student contact hour shall be counted for each unit of independent study credit for which a student is enrolled.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 4 heading and amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55342. Average Daily Attendance.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55343. Grades Awarded.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55344. Enrollment.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55346. Records.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55348. Supervision.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55350. Instruction.

The instructor assigned to a course conducted pursuant to this chapter shall:

(a) Be qualified to provide service in that capacity during the period in which that service is rendered;

(b) Be responsible for the supervision, control, and evaluation of the course and the enrolled students;

(c) Provide orientation, guidance, and information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college; and

(d) Provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, this schedule to be included in the written record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55352. Number of Students.

The number of students assigned to any one instructor of courses offered pursuant to this section shall not exceed 125 students per instructor unless exempted by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55360. Evaluation Reports.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer of Article 5 heading and Section 55360 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Subchapter 5. Educational Master Plans

§ 55400. Definitions.

The definitions provided in the Student Attendance Accounting Manual issued by the Chancellor shall apply to the provisions of this chapter.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New chapter 5 (sections 55400 through 55405) filed 7–1–71; effective thirtieth day thereafter (Register 71, No. 27).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55401. Current and Long Range Plans.

The governing board of each Community College district shall establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

§ 55402. Educational Master Plans.

On or before January 1, 1972, the governing board of each Community College district shall submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor on or before November 1 of each year thereafter.

§ 55403. Form.

Each plan shall be submitted on a form provided by the Chancellor and shall contain such information as the Chancellor shall require.

§ 55404. Contents.

Each plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. On the basis of current and future enrollment, it shall contain plans for the development and expansion of ancillary services,

including services in the library and for counseling, placement, and financial aids.

§ 55405. Review and Approval.

The Chancellor shall review each master plan. On or before February 1 following the submission of each plan, the Chancellor shall send a copy of the approval of it to the superintendent of each district.

History

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

§ 55450. Excursions of Field Trips.

The governing board of a community college district may:

(a) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or college band activities to and from places in the state, or any other state, the District of Columbia, or a foreign country for students enrolled in a college. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district's course of study for the students.

(b) Engage instructors, supervisors, and other personnel who desire to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for the field trip or excursion.

(c) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of students, instructors, supervisors or other personnel to and from places in the state, any other state, the District of Columbia, or a foreign country where the excursions and field trips are being conducted; provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, the liability insurance shall be secured from a carrier licensed to transact insurance business in the foreign country.

(d) Provide supervision of students involved in field trips or excursions by academic employees of the district.

No student shall be required to pay a fee to participate in an instructionally related field trip or excursion within the state.

No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance that would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if a class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of students taking out-of-state field trips or excursions shall sign a statement waiving such claims.

(e) Nothing in this section shall be construed to require the governing board to pay the costs of meals, lodging, and other incidental expenses for students participating in field trips and excursions. The costs of meals and lodging are incidental in nature and shall not be applied in determining the funds necessary for a student to participate in a filed trip or excursion.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55451. Provision for Medical or Hospital Service for Pupils; Duration of Section.

The governing board of any community college district conducting excursions and field trips pursuant to this article shall provide, or make available, medical or hospital service, or both, through nonprofit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from authorized insurer, for students of the district injured while participating in the excursions and field trips under the jurisdiction of, or sponsored or controlled by, the district or the authorities of any college of the district. The cost of the insurance or membership shall be paid from the funds of the district.

The insurance may be purchased from, or the membership may be taken in, only companies or corporations that are authorized to do business in this state.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 6. Matriculation Programs

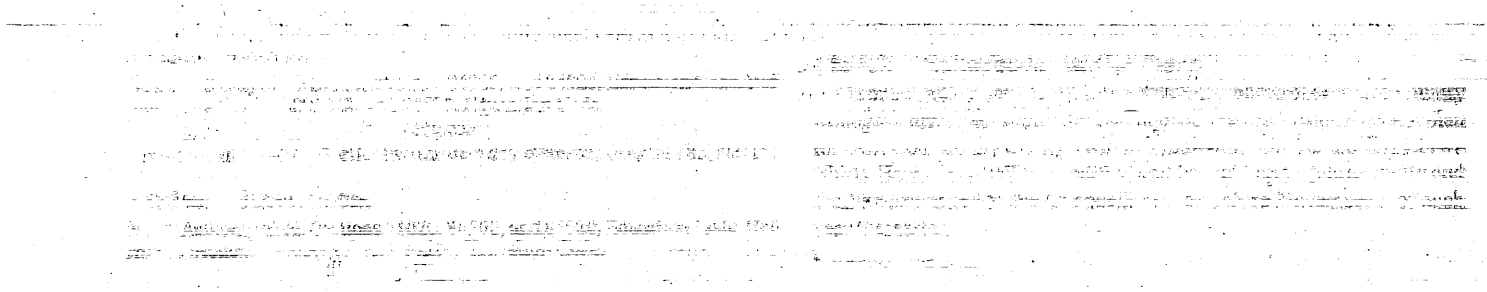
Article 1. Scope and Definitions

§ 55500. Scope and Implementation.

(a) This chapter implements and should be read in conjunction with the provisions of the Seymour-Campbell Matriculation Act of 1986, c. 1467, Stats. 1986, codified as Education Code section 78210 et seq. The purpose of this chapter is to further equality of educational opportunity and success for all students in the California Community Colleges. This chapter sets forth minimum standards for district matriculation programs and further elaborates requirements for the assessment component of matriculation.

(b) The requirements of this chapter apply only to districts receiving funds pursuant to Education Code section 78216 for the period of time during which such funds are received. The Chancellor shall, in consultation with districts and other interested parties, adopt a schedule for implementing the provisions of this chapter as expeditiously as possible within the constraints of available funding. The schedule shall be coordinated with the implementation and funding of the systemwide management information system and the accountability mechanisms established pursuant to Education Code section 71020.5.

(c) Minimum standards for the enforcement of this chapter, as set forth in section 51024, shall not become effective until the Chancellor certifies, in accordance with established policies of the Board of Governors, that matriculation has been fully funded. Until that time, the Chancellor shall ensure that funds allocated to community college districts pursuant to Education Code section 78216 are used in accordance with district matriculation plans developed as provided in section 55510.



instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55323. Learning Assistance.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12–17–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 55340. Eligibility for State Funds.

(a) In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this chapter, the course must be reported as required by this chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

(b) For purposes of computing attendance, one weekly student contact hour shall be counted for each unit of independent study credit for which a student is enrolled.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 4 heading and amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55342. Average Daily Attendance.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55343. Grades Awarded.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55344. Enrollment.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55346. Records.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55348. Supervision.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55350. Instruction.

The instructor assigned to a course conducted pursuant to this chapter shall:

(a) Be qualified to provide service in that capacity during the period in which that service is rendered;

(b) Be responsible for the supervision, control, and evaluation of the course and the enrolled students;

(c) Provide orientation, guidance, and information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college; and

(d) Provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, this schedule to be included in the written record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55352. Number of Students.

The number of students assigned to any one instructor of courses offered pursuant to this section shall not exceed 125 students per instructor unless exempted by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55360. Evaluation Reports.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer of Article 5 heading and Section 55360 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Subchapter 5. Educational Master Plans

§ 55400. Definitions.

The definitions provided in the Student Attendance Accounting Manualissued by the Chancellor shall apply to the provisions of this chapter.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New chapter 5 (sections 55400 through 55405) filed 7–1–71; effective thirtieth day thereafter (Register 71, No. 27).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
4. Amendment of section filed 6–11–91; operative 7–11–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 45).

§ 55401. Current and Long Range Plans.

The governing board of each Community College district shall establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

§ 55402. Educational Master Plans.

On or before January 1, 1972, the governing board of each Community College district shall submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor on or before November 1 of each year thereafter.

§ 55403. Form.

Each plan shall be submitted on a form provided by the Chancellor and shall contain such information as the Chancellor shall require.

§ 55404. Contents.

Each plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. On the basis of current and future enrollment, it shall contain plans for the development and expansion of ancillary services, including services in the library and for counseling, placement, and financial aids.

§ 55405. Review and Approval.

The Chancellor shall review each master plan. On or before February 1 following the submission of each plan, the Chancellor shall send a copy of the approval of it to the superintendent of each district.

History

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

§ 55450. Excursions or Field Trips.

The governing board of a community college district may:

(a) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or college band activities to and from places in the state, or any other state, the District of Columbia, or a foreign country for students enrolled in a college. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district's course of study for the students.

(b) Engage instructors, supervisors, and other personnel who desire to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for the field trip or excursion.

(c) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of students, instructors, supervisors or other personnel to and from places in the state, any other state, the District of Columbia, or a foreign country where the excursions and field trips are being conducted; provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, the liability insurance shall be secured from a carrier licensed to transact insurance business in the foreign country.

(d) Provide supervision of students involved in field trips or excursions by academic employees of the district.

No student shall be required to pay a fee to participate in an instructionally related field trip or excursion within the state.

No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance that would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if the class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of students taking out-of-state field trips or excursions shall sign a statement waiving such claims.

(e) Nothing in this section shall be construed to require the governing board to pay the costs of meals, lodging, and other incidental expenses for students participating in field trips and excursions. The costs of meals and lodging are incidental in nature and shall not be applied in determining the funds necessary for a student to participate in a field trip or excursion.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in section heading and subsection (e) (Register 91, No. 43).

§ 55451. Provision for Medical or Hospital Service for Pupils; Duration of Section.

The governing board of any community college district conducting excursions and field trips pursuant to this article shall provide, or make available, medical or hospital service, or both, through nonprofit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from authorized insurer, for students of the district injured while participating in the excursions and field trips under the jurisdiction of, or sponsored or controlled by, the district or the authorities of any college of the district. The cost of the insurance or membership shall be paid from the funds of the district.

The insurance may be purchased from, or the membership may be taken in, only companies or corporations that are authorized to do business in this state.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 6. Matriculation Programs

Article 1. Scope and Definitions

§ 55500. Scope and Implementation.

(a) This chapter implements and should be read in conjunction with the provisions of the Seymour-Campbell Matriculation Act of 1986, c. 1467, Stats. 1986, codified as Education Code section 78210 et seq. The purpose of this chapter is to further equality of educational opportunity and success for all students in the California Community Colleges. This chapter sets forth minimum standards for district matriculation programs and further elaborates requirements for the assessment component of matriculation.

(b) The requirements of this chapter apply only to districts receiving funds pursuant to Education Code section 78216 for the period of time during which such funds are received. The Chancellor shall, in consultation with districts and other interested parties, adopt a schedule for implementing the provisions of this chapter as expeditiously as possible within the constraints of available funding. The schedule shall be coordinated with the implementation and funding of the systemwide management information system and the accountability mechanisms established pursuant to Education Code section 71020.5.

(c) Minimum standards for the enforcement of this chapter, as set forth in section 51024, shall not become effective until the Chancellor certifies, in accordance with established policies of the Board of Governors, that matriculation has been fully funded. Until that time, the Chancellor shall ensure that funds allocated to community college districts pursuant to Education Code section 78216 are used in accordance with district matriculation plans developed as provided in section 55510.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 71020.5, 78210-78218, Education Code.

History

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

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§ 55400

instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55323. Learning Assistance.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12–17–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 55340. Eligibility for State Funds.

(a) In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this chapter, the course must be reported as required by this chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

(b) For purposes of computing attendance, one weekly student contact hour shall be counted for each unit of independent study credit for which a student is enrolled.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 4 heading and amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55342. Average Daily Attendance.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55343. Grades Awarded.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55344. Enrollment.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55346. Records.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55348. Supervision.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55350. Instruction.

The instructor assigned to a course conducted pursuant to this chapter shall:

(a) Be qualified to provide service in that capacity during the period in which that service is rendered;

(b) Be responsible for the supervision, control, and evaluation of the course and the enrolled students;

(c) Provide orientation, guidance, and information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college; and

(d) Provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, this schedule to be included in the written record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55352. Number of Students.

The number of students assigned to any one instructor of courses offered pursuant to this section shall not exceed 125 students per instructor unless exempted by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55360. Evaluation Reports.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer of Article 5 heading and Section 55360 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Subchapter 5. Educational Master Plans

§ 55400. Definitions.

The definitions provided in the Student Attendance Accounting Manual issued by the Chancellor shall apply to the provisions of this chapter.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New chapter 5 (sections 55400 through 55405) filed 7–1–71; effective thirtieth day thereafter (Register 71, No. 27).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
4. Amendment of section filed 6–11–91; operative 7–11–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 45).
5. Amendment of NOTE filed 6–11–91; operative 7–11–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 92, No. 1).

§ 55401. Current and Long Range Plans.

The governing board of each Community College district shall establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

§ 55402. Educational Master Plans.

On or before January 1, 1972, the governing board of each Community College district shall submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor on or before November 1 of each year thereafter.

§ 55403. Form.

Each plan shall be submitted on a form provided by the Chancellor and shall contain such information as the Chancellor shall require.

§ 55404. Contents.

Each plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. On the basis of current and future enrollment, it shall contain plans for the development and expansion of ancillary services,

including services in the library and for counseling, placement, and financial aids.

§ 55405. Review and Approval.

The Chancellor shall review each master plan. On or before February 1 following the submission of each plan, the Chancellor shall send a copy of the approval of it to the superintendent of each district.

History

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

§ 55450. Excursions or Field Trips.

The governing board of a community college district may:

(a) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or college band activities to and from places in the state, or any other state, the District of Columbia, or a foreign country for students enrolled in a college. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district's course of study for the students.

(b) Engage instructors, supervisors, and other personnel who desire to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for the field trip or excursion.

(c) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of students, instructors, supervisors or other personnel to and from places in the state, any other state, the District of Columbia, or a foreign country where the excursions and field trips are being conducted; provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, the liability insurance shall be secured from a carrier licensed to transact insurance business in the foreign country.

(d) Provide supervision of students involved in field trips or excursions by academic employees of the district.

No student shall be required to pay a fee to participate in an instructionally related field trip or excursion within the state.

No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance that would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if the class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of students taking out-of-state field trips or excursions shall sign a statement waiving such claims.

(e) Nothing in this section shall be construed to require the governing board to pay the costs of meals, lodging, and other incidental expenses for students participating in field trips and excursions. The costs of meals and lodging are incidental in nature and shall not be applied in determining the funds necessary for a student to participate in a field trip or excursion.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in section heading and subsection (e) (Register 91, No. 43).

§ 55451. Provision for Medical or Hospital Service for Pupils; Duration of Section.

The governing board of any community college district conducting excursions and field trips pursuant to this article shall provide, or make available, medical or hospital service, or both, through nonprofit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from authorized insurer, for students of the district injured while participating in the excursions and field trips under the jurisdiction of, or sponsored or controlled by, the district or the authorities of any college of the district. The cost of the insurance or membership shall be paid from the funds of the district.

The insurance may be purchased from, or the membership may be taken in, only companies or corporations that are authorized to do business in this state.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 6. Matriculation Programs

Article 1. Scope and Definitions

§ 55500. Scope and Implementation.

(a) This chapter implements and should be read in conjunction with the provisions of the Seymour-Campbell Matriculation Act of 1986, c. 1467, Stats. 1986, codified as Education Code section 78210 et seq. The purpose of this chapter is to further equality of educational opportunity and success for all students in the California Community Colleges. This chapter sets forth minimum standards for district matriculation programs and further elaborates requirements for the assessment component of matriculation.

(b) The requirements of this chapter apply only to districts receiving funds pursuant to Education Code section 78216 for the period of time during which such funds are received. The Chancellor shall, in consultation with districts and other interested parties, adopt a schedule for implementing the provisions of this chapter as expeditiously as possible within the constraints of available funding. The schedule shall be coordinated with the implementation and funding of the systemwide management information system and the accountability mechanisms established pursuant to Education Code section 71020.5.

(c) Minimum standards for the enforcement of this chapter, as set forth in section 51024, shall not become effective until the Chancellor certifies, in accordance with established policies of the Board of Governors, that matriculation has been fully funded. Until that time, the Chancellor shall ensure that funds allocated to community college districts pursuant to Education Code section 78216 are used in accordance with district matriculation plans developed as provided in section 55510.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 71020.5, 78210-78218, Education Code.

History

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each

Senior Accounting Officers (Specialists) 3
Accounting Officers (Specialists) 3
Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full-time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long-range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000-53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

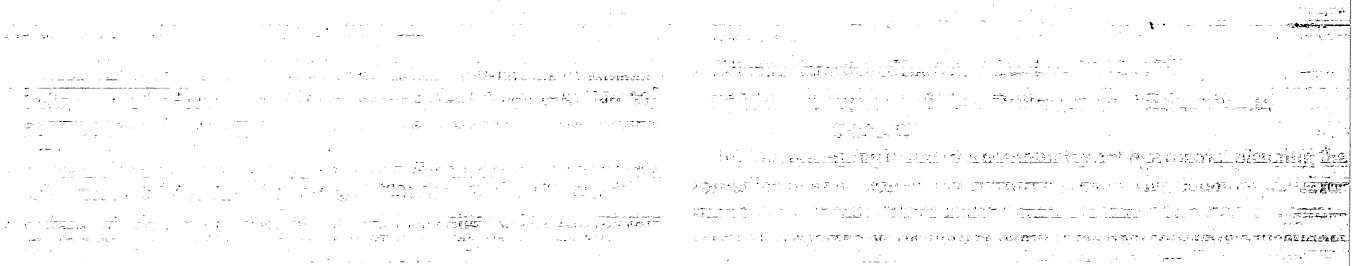
§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

Register 1995-20

§ 55400



History

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment of section heading and text filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55378. Separate Course Approval.

Each proposed or existing course if delivered by distance education, shall be separately reviewed and approved, according to the district's certified course approval procedures.

Note: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

History

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55380. Faculty Selection.

Instructors of sections delivered via distance education technology shall be selected by the same procedures used to determine all instructional assignments. Instructors shall possess the minimum qualifications for the discipline into which the course's subject matter most appropriately falls, in accordance with Article 2 of Chapter 4 of Division 4 of this Part (commencing with Section 53410), and with the list of disciplinary definitions and requirements adopted by the Board of Governors to implement that Article, as such list may be amended from time to time.

Note: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

History

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

Subchapter 5. Educational Master Plans

§ 55400. Definitions.

The definitions provided in the Student Attendance Accounting Manual issued by the Chancellor shall apply to the provisions of this chapter.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. New chapter 5 (sections 55400 through 55405) filed 7–1–71; effective thirtieth day thereafter (Register 71, No. 27).
2. Amendment of section and Note filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Amendment of section filed 6–11–91; operative 7–11–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 45).
5. Amendment of Note filed 6–11–91; operative 7–11–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 92, No. 1).
6. Editorial correction of History 3 (Register 95, No. 20).

§ 55401. Current and Long Range Plans.

The governing board of each Community College district shall establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

§ 55402. Educational Master Plans.

On or before January 1, 1972, the governing board of each Community College district shall submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor on or before November 1 of each year thereafter.

§ 55403. Form.

Each plan shall be submitted on a form provided by the Chancellor and shall contain such information as the Chancellor shall require.

§ 55404. Contents.

Each plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. On the basis of current and future enrollment, it shall contain plans for the development and expansion of ancillary services, including services in the library and for counseling, placement, and financial aids.

§ 55405. Review and Approval.

The Chancellor shall review each master plan. On or before February 1 following the submission of each plan, the Chancellor shall send a copy of the approval of it to the superintendent of each district.

History

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

§ 55450. Excursions or Field Trips.

The governing board of a community college district may:

(a) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or college band activities to and from places in the state, or any other state, the District of Columbia, or a foreign country for students enrolled in a college. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district's course of study for the students.

(b) Engage instructors, supervisors, and other personnel who desire to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for the field trip or excursion.

(c) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of students, instructors, supervisors or other personnel to and from places in the state, any other state, the District of Columbia, or a foreign country where the excursions and field trips are being conducted; provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, the liability insurance shall be secured from a carrier licensed to transact insurance business in the foreign country.

(d) Provide supervision of students involved in field trips or excursions by academic employees of the district.

No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance that would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if the class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and

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Minimum Conditions for State Aid:
Part 05. Equal Employment Opportunity

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Register 77-30 New Chapter 1 (§§ 53000 - 53004).

Register 82-06 Repealer of Chapter 1 (Subchapter 1, §§ 53000 - 53004) and new Chapter 1 (Subchapters 1 - 4, §§ 53000 - 53052, not consecutive).

Register 82-09 § 53023: New section filed.

Register 83-29 Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000-51021, not consecutive).

Register 90-45 § 53060: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State.

§ 53061: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State.

§ 53062: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State.

§ 53063: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State.

§ 53064: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State.

Register 91-23 § 51010: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 91-31 § 53061: Editorial correction of printing error in subsection (c).

Register 92-17 § 53000: Repealed; new section filed.

§ 53001: Repealed; new section filed.

§ 53002: Repealed, new section filed.

§ 53003: Repealed, new section filed.

§ 53004: Repealed, new section filed.

§ 53005: Repealed, new section filed.

§ 53010: Repealed.

§ 53011: Repealed.

§ 53012: Repealed.

§ 53020: Repealed, new section filed.

§ 53021: Repealed, new section filed.

§ 53022: Repealed, new section filed.

§ 53023: Repealed, new section filed.

§ 53024: Repealed, new section filed.

§ 53025: Repealed, new section filed.

§ 53026: Repealed, new section filed.

§ 53027: Repealed, new section filed.

§ 53028: Repealed.

§ 53029: Repealed.

§ 53030: Repealed, new section filed.

§ 53031: Repealed, new section filed.

§ 53032: New section filed.

§ 53033: New section filed.

§ 53034: New section filed.

§ 53040: Repealed.

§ 53041: Repealed.

§ 53042: Repealed.

§ 53043: Repealed.

§ 53044: Repealed.

§ 53045: Repealed.

§ 53046: Repealed.

§ 53049: Repealed.

§ 53050: Repealed.

§ 53051: Repealed.

§ 53052: Repealed.

§ 53060: Repealed.

§ 53061: Repealed.

§ 53062: Repealed.

§ 53063: Repealed.

§ 53064: Repealed.

Register 94-38 § 51010: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53001: Amendment of subsections (a), (b)(1) - (b)-(3), (c), (k) and (m). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53002: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53003: Amendment of subsections (c)(4) and (7). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53020: Amendment of subsections (a) and (c). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53021: Amendment of subsections (b) and (d)-(e)(2). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53025: Amendment of section and NOTE. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53026: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53030: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5..

§ 53031: Amendment of subsection (a). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

Register 95-15 § 51010: Editorial correction of HISTORY 1.

Register 96-23 § 53000: Amendment of subsection (a) and NOTE. Submitted to OAL for printing only.

§ 53001: Amendment of subsections (a), (b), (e), (f), (h), (j), and (m), new subsections (m)(1)-(q)(3), and amendment of NOTE. Submitted to OAL for printing only.

§ 53003: Amendment of subsections (b), (c), and (c)(7), new

subsections (c)(8)-(9) and subsection renumbering, amendment of newly designated subsection (c)(10), and new subsection (f). Submitted to OAL for printing only.

§ 53004: Amendment of subsections (a) and (b). Submitted to OAL for printing only.

§ 53006: New section added. Submitted to OAL for printing only.

§ 53021: Amendment of subsections (a) and (b)(1)-(b)(2), repealer of subsection (b)(3), amendment of subsections (c), (d) and (e)(1)-(e)(4) and new subsection (e)(5). Submitted to OAL for printing only.

§ 53023: Amendment of subsections (a) and (b), repealer of subsection (b)(2) and subsection renumbering, and amendment of subsection (c)(2). Submitted to OAL for printing only.

§ 53024: Amendment of subsections (a)(2)-(c), (e) and (g). Submitted to OAL for printing only.

§ 53025: Repealer of subsections (a) and (b) and deletion of subsection designator. Submitted to OAL for printing only.

§ 53030: Amendment of subsections (b) and (b)(3) and repealer of subsections (b)(4) and (b)(5). Submitted to OAL for printing only.

§ 53031: Repealed. Submitted to OAL for printing only.

§ 53032: Repealed. Submitted to OAL for printing only.

§ 53033: Amendment of section. Submitted to OAL for printing only.

Register 2001-06 § 53002: Amendment of section. Submitted to OAL for printing only.

Register 2002-35 § 53000: Amendment of subchapter heading, section and NOTE. Submitted to OAL for printing only.

§ 53001: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53002: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53003: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53004: Amendment of subsections (a) and (b) and amendment of NOTE. Submitted to OAL for printing only.

§ 53005: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53006: Amendment of section heading, section and NOTE. Submitted to OAL for printing only.

§ 53020: Amendment of section and NOTE. Submitted to OAL for

printing only.

§ 53021: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53022: Amendment of section heading, section and NOTE. Submitted to OAL for printing only.

§ 53024: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53025: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53026: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53027: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53030: Amendment of section heading, section and NOTE. Submitted to OAL for printing only.

§ 53033: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 53034: Amendment of section and NOTE. Submitted to OAL for printing only.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

Register 1977-30

§§ 53000 - 53004

DIVISION 4. EMPLOYEES

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CHAPTER 3. CLASSIFIED POSITIONS (No Provisions)

CHAPTER 1. PROVISIONS RELATING TO ALL EMPLOYEES

SUBCHAPTER 1. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

53000. Rationale and Intent. (a) Community Colleges have an obligation to promote cultural, racial, and human understanding within the communities they serve as well as within their spheres of influence.

(b) It is educationally sound for all students attending California Community Colleges to have available positive images provided by individuals from historically underrepresented groups, and to observe that such individuals can assume responsible and diverse roles in society.

(c) The richness which cultural and racial diversity brings to our national heritage and the exercise of democratic principles can best be taught in the presence of staffs of mixed races and ethnic groups as well as both sexes working toward mutually established goals.

(d) Efforts toward the adoption of affirmative action and equal employment opportunity policies and programs, leading to successful recruitment, employment and promotion of historically under-represented groups, should be increased.

(e) These regulations and the guidelines developed hereunder are aimed not only at correction of employment deficiencies but seek to improve and strengthen the total personnel programs of the California Community Colleges by providing opportunities for equitable consideration of all candidates for employment and promotion.

(f) The Board of Governors of the California Community Colleges reaffirms its commitment to equal employment opportunities. It emphasizes the determination that those practices employed by California Community College districts which result in certain groups of job applicants being excluded and/or underrepresented in the institution's workforce be eliminated and that the results of their employment practices through affirmative action will be increased representation and retention of historically underrepresented groups as defined by Federal regulations.

(g) Policies which call for efforts to promote action in the recruitment, employment, and promotion of persons, regardless of race, color, religion, national origin, sex, age, handicap, or marital status, should be more than proclamations of nondiscrimination in employment practice but should be affirmative and result-oriented efforts to produce a substantial increase in employment opportunities of underrepresented groups, in all areas and at all levels, including executive, administrative, and managerial.

(h) Since past efforts of Community College districts have been constrained by the multiplicity of Federal and State regulations and changing definitions within these regulations, guidelines are needed in order to provide assistance to Community College districts in implementing the provisions of this subchapter. Such guidelines shall be designed by the Chancellor's Office of the California Community Colleges to clarify and consolidate existing regulations and to respond to future additions and modifications to Federal and State regulations.

NOTE: Authority cited: Sections 66700, 71020, 71025, 71062 and 71068, Education Code. Reference: Sections 66700, 71023, 71025 and 71068, Education Code.

History: 1. New Chapter 1 (Sections 53000–53004) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).

53001. Definitions. As used in this subchapter:

(a) **Affirmative Action Programs.** "Affirmative action programs" means all the various methods by which equal employment opportunity for all is made a reality. Equal employment opportunity is a condition, and affirmative action is the means by which the condition is achieved. Further, an affirmative action program with goals and timetables is a set of specific and result-oriented procedures. The objective of such a program is to achieve equal employment opportunity by recognizing and overcoming the effects of past discrimination in employment.

(b) **Board of Governors.** "Board of Governors" means the Board of Governors of the California Community Colleges.

(c) **Chancellor.** "Chancellor" means the Chancellor of the California Community Colleges.

(d) **College.** "College" means a public Community College established pursuant to laws of this state.

(e) **District.** "District" means any college district in California that maintains one or more colleges pursuant to the provisions of the Education Code.

(f) **Ethnic Minorities.** "Ethnic minorities" means those protected ethnic minority groups so designated by Federal compliance agencies and includes Alaskan Natives/American Indians, Asians or Pacific Islanders, Blacks, and Hispanics.

(g) **Goals and Timetables.** "Goals and timetables" means projected new levels of employment of women and historically underrepresented ethnic minority groups as specified in Federal regulations to be worked toward on a specific schedule, given the expected turnover in the workforce and the availability of persons who are qualified through appropriate training or experience within a reasonable length of time. Goals are not "quotas" or rigid proportions. Quantitative measurements should only be used as management tools to assess the over-all effectiveness of the programs. They should relate both to the qualitative and quantitative needs of the district.

(h) **Handicapped Person.** "Handicapped person" is any individual who has or had a physical or mental disability who is otherwise qualified for employment, and who can perform the functions of the job when the district makes a reasonable physical accommodation in work location.

(i) **Historically underrepresented groups.** "Historically underrepresented groups" means women, ethnic minorities, handicapped persons, and persons forty to sixty-five years of age.

53002. Responsibilities of the Chancellor. The Chancellor shall provide guidelines for the development of policies, programs and procedures for affirmative action and equal employment opportunity programs. The Chancellor shall render assistance to Community Colleges in carrying out the provisions of this subchapter. These guidelines shall be available no later than July 1, 1977. The Chancellor shall review and approve programs submitted by districts pursuant to Section 53003.

The Chancellor shall report biannually to the Board of Governors on the progress of all California Community College districts in meeting the provisions of this subchapter.

53003. Responsibilities of Community College Districts. (a) The governing board of each California Community College district shall adopt by resolution an Affirmative Action Employment policy which will outline the district's commitment to implement "affirmatively" equal employment opportunity programs for all employees and applicants for employment regardless of race, color, religion, sex, national origin, age, handicap, or marital status. This policy shall cover all aspects of personnel policy and practice.

Each affirmative action and equal employment opportunity program designed to implement the adopted policy shall comply with the provisions of this subchapter. The policy statement shall be adopted no later than January 1, 1978.

(b) Each district shall develop and adopt a district-wide affirmative action and equal employment opportunity program to be submitted in writing for review and approval to the Chancellor no later than July 1, 1978. Documents submitted by districts shall become public records and shall be treated as such by the Chancellor's Office.

(c) Each affirmative action and equal employment opportunity program shall include goals and timetables for the implementation of these goals, including adequate enforcement procedures.

(d) Districts shall report every two years to the Chancellor in a manner designated by the Chancellor, their progress in reaching affirmative action goals.

(e) Such program shall provide adequate safeguards for the privacy of employees and prospective employees and shall include a requirement that no person be subjected to sanctions or discriminatory action for failing to identify himself or herself by age, race, color, ethnicity or religion.

53004. Minimum Standards. Policies and programs as provided herein shall constitute minimum standards within the meaning of Education Code Section 71025.

Register 1982-06

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CHAPTER 1. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

SUBCHAPTER 1. GENERAL

53000. Rationale and Intent.

(a) Community Colleges have an obligation to promote cultural, racial, and human understanding within the communities they serve as well as within their spheres of influence.

(b) It is educationally sound for all students attending California Community Colleges to have available positive images provided by individuals from historically underrepresented groups, and to observe that such individuals can assume responsible and diverse roles in society.

(c) The richness which cultural and racial diversity brings to our national heritage and the exercise of democratic principles can best be taught in the presence of staffs of mixed races and ethnic groups as well as both sexes working toward mutually established goals.

(d) Efforts toward the adoption of affirmative action and equal employment opportunity policies and programs, leading to successful recruitment, employment and promotion of historically underrepresented groups, should be increased.

(e) The intent of these regulations and the guidelines developed hereunder is not only to correct employment deficiencies but to seek to improve and strengthen the total personnel programs of the California Community Colleges by providing opportunities for equitable consideration of all candidates for employment and promotion.

(f) The Board of Governors of the California Community Colleges reaffirms its commitment to equal employment opportunities. It emphasizes the determination that those practices employed by California Community College districts which result in certain groups of job applicants being excluded and/or underrepresented in the institution's work force be eliminated and that the results of their employment practices through affirmative action will be increased representation and retention of historically underrepresented groups as defined by federal regulations.

(g) Policies which call for efforts to promote action in the recruitment, employment, and promotion of persons, regardless of race, color, religion, national origin, sex, age, handicap, or marital status, should be more than proclamations of nondiscrimination in employment practice but should be affirmative and result-oriented efforts to produce a substantial increase in employment opportunities of underrepresented groups, in all areas and at all levels, including executive, administrative, and managerial.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87100, Education Code.

HISTORY:

1. New Chapter 1 (Sections 53000–53004) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).
2. Repealer of Chapter 1 (Subchapter 1, Sections 53000–53004) and new Chapter 1 (Subchapters 1–4, Sections 53000–53052, not consecutive) filed 2-1-82; effective thirtieth day thereafter (Register 82, No. 6).

53001. Definitions.

As used in this subchapter:

(a) Affirmative Action Programs. "Affirmative action programs" means all the various methods by which equal employment opportunity for all is made a reality. Equal employment opportunity is a condition, and affirmative action is the means by which the condition is achieved. Further, an affirmative action program with goals and timetables is a set of specific and result-oriented procedures. The objective of such a program is to achieve equal employment opportunity by recognizing and overcoming the effects of past discrimination in employment. Affirmative action programs specifically address the underrepresentation of ethnic minorities, women, handicapped persons and Vietnam-Era veterans in the labor market and in certain employment classifications.

(b) Affirmative Action Plan. The "Affirmative Action Plan" is a written plan in which a district's work force is analyzed and includes a plan of specific result-oriented procedures to insure equal employment opportunity and proportionate representation of qualified representatives of protected class members.

(c) Business Necessity. "Business necessity" means circumstances necessitating an employment practice. Business necessity exists where the employment practice is necessary to avoid substantial extra costs or human risk. Business necessity requires greater cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.

(d) Equal Employment Opportunity. "Equal employment opportunity" is the goal of affirmative action programs. It means that individuals must have access to employment and are not to be excluded from participation in any employment process, advancement, or benefits of employment because of their race, color, religion, sex, national origin, age, marital status or handicap.

(e) Ethnic Minorities. "Ethnic minorities" means those protected ethnic minority groups so designated by federal compliance agencies for goal-setting and includes Alaskan Natives/American Indians, Asians or Pacific Islanders, Blacks, and Hispanics.

A person may be included in the group to which he or she appears to belong, identifies as his or her group, or is regarded in the community as belonging, but shall be counted in only one ethnic group.

(1) American Indian or Alaskan Native means all persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.

(2) Asian or Pacific Islanders means all persons having origins in any of the original peoples of the Far East, Southeast Asia or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, Samoa, and the Indian subcontinent.

(3) Black (not of Hispanic origin) means all persons having origins in any of the black racial groups of Africa.

(4) Hispanic means all persons of Chicano, Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race.

(f) Filipino. "Filipino" means all persons having origins in the original peoples of the Philippine Islands. Filipinos are to be counted and reported as part of the Asian/Pacific Islander group as well as in a separate group as required by state law. However, in the goal-setting process, separate employment goals are not needed for Filipinos.

(g) White Persons. "White persons" means all persons having origins in any of the original peoples of Europe, North Africa, the Middle East, and not of Hispanic origin.

(h) Goals and Timetables. "Goals and timetables" means projected new levels of employment of women and historically underrepresented ethnic minority groups as specified in federal regulations to be worked toward on a specific schedule, given the expected turnover in the work force and the availability of persons who are qualified through appropriate training or experience within a reasonable length of time. Goals are not "quotas" or rigid proportions. Quantitative measurements should only be used as management tools to assess the overall effectiveness of the programs. They should relate both to the qualitative and quantitative needs of the district.

Filipinos shall be included in the Asian/Pacific Islander group for goal setting purposes.

(i) Handicapped Persons. "Handicapped person" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment or (3) is regarded as having such an impairment. A handicapped individual is "substantially limited" if he or she is likely to experience difficulty in securing, retaining or advancing in employment because of a handicap.

(j) Protected Groups. "Protected groups" means ethnic minorities, women, handicapped persons and Vietnam-era veterans.

(k) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the employer to remove artificial or real barriers, which prevent or limit the employment and upward mobility of disabled persons.

(*l*) Sexual Harassment. "Sexual harassment" means unwelcome sexual conduct which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87101, Education Code; Section 11092, Government Code; 29 C.F.R. 1602.48 (1981); 29 U.S.C. 793; 41 C.F.R. 60-741-2 (1980).

53002. District Affirmative Action Policy.

The governing board of each California Community College district shall adopt by resolution an Affirmative Action Employment policy which will outline the district's commitment to implement "affirmatively" equal employment opportunity programs for all employees and applicants for employment regardless of race, color, religion, sex, national origin, age, handicap, status as a Vietnam-era veteran, or marital status. This policy shall cover all aspects of personnel policy and practice for all personnel.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

53003. District Affirmative Action Plan.

(a) Each community college district shall develop and adopt a district-wide written affirmative action and equal employment opportunity plan to implement its Affirmative Action Policy. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) Each community college district shall revise its affirmative action goals and timetables every three years and submit them to the Chancellor's Office for approval. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its affirmative action plan.

(c) The plans submitted to the Chancellor shall be public records.

(d) Each community college district shall make a continuous good faith effort to comply with the requirements of its affirmative action plan.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

53004. District Evaluation and Report to Chancellor.

Each district shall annually survey its employment patterns in an effort to evaluate its progress in reaching the goals set forth in its affirmative action plan. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey.

The Chancellor's Office shall seek field input from community college districts in developing reporting formats.

NOTE: Authority cited: Sections 71020, 71025, 71060 and 87105, Education Code. Reference: Section 87100, Education Code.

53005. Minimum Standards.

The compliance with the requirements of Sections 53002, 53003, 53004, and 53021 shall be a minimum standard which a community college district must satisfy to receive state aid.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 71025 and 87100, Education Code.

SUBCHAPTER 2. RESPONSIBILITIES OF THE CHANCELLOR

53010. Assistance.

The Chancellor shall provide guidelines for the development of policies, programs and procedures for affirmative action and equal employment opportunity programs. The Chancellor shall cooperate with and render assistance to community colleges in carrying out the provisions of this subchapter. The Chancellor shall review and approve programs submitted by districts pursuant to Section 53003.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87103, Education Code.

53011. Report.

The Chancellor shall report annually to the Board of Governors and Legislature on the progress and/or effectiveness of all California Community College districts in meeting the provisions of this chapter.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87104, Education Code.

53012. Periodic Evaluation.

The Chancellor shall periodically evaluate community college districts to determine their compliance with the requirements of their affirmative action plans and this chapter. If the Chancellor finds that a district has failed to substantially comply with the requirements of its plan, the Chancellor shall offer assistance and take whatever action he or she deems necessary to effect compliance.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87102, Education Code.

SUBCHAPTER 3. RESPONSIBILITIES OF COMMUNITY COLLEGE DISTRICTS

53020. Implement Affirmative Action Plan.

The means specified in this subchapter are the essential requirements for implementing a district affirmative action plan.

NOTE: Authority cited: Sections 71020 and 87105, Education Code; Section 11138, Government Code. Reference: Section 87102, Education Code.

53021. Recruitment.

Community college districts shall undertake a program of verifiable affirmative action recruitment for protected group members in all job categories which reflect underrepresentation, including categorically funded positions and in all executive/administrative/managerial positions. Upward mobility programs may be used in conjunction with a recruitment effort when it promotes the goals of the district's affirmative action plan. "In house" or "promotional only" recruitment shall not be used except when "business necessity" dictates.

NOTE: Authority cited: Sections 71020 and 87105, Education Code; Section 11138, Government Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980); Section 87100, Education Code.

53022. Job Announcements.

Job announcements shall state clearly job specifications setting forth those skills necessary to job performance and the required training and experience related to those skills. The requirements are to be based on a careful analysis of the job. Only bona fide occupational qualifications may be included in job announcements.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980); Section 87100, Education Code.

53024. Screening.

All selection testing for employees shall follow procedures as outlined in Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures." Selection procedures established in the district's affirmative action plan shall be used to identify a reasonable number of qualified candidates for interviews for all recruited positions.

Selection committees shall include members of protected groups whenever possible.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980); 29 C.F.R. 1607 (1978).

53025. Agents.

Any individual or group of individuals acting on behalf of the local governing board for the recruitment and screening of personnel, including superintendentships, are agents of the district and subject to all state and federal laws and regulations.

NOTE: Authority cited: Sections 71020 and 87105, Education Code; Section 11138, Government Code. Reference: Section 87100, Education Code.

53026. Selection Procedure.

(a) Selection devices such as interviews shall be solely based on job-related requirements.

(b) The Affirmative Action Officer shall ensure that the entire selection process shall be solely based on job-related criteria, a fair impartial examination of the candidates based on job-related criteria, with job-related questions prepared in advance.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980).

53027. Final Selection.

(a) The results of the selection procedures shall be reviewed by the affirmative action officer to ensure that selection of a qualified candidate is supported by factual data and that the elimination of other candidates is based upon bona fide occupational qualifications.

(b) Throughout the entire selection process, the Affirmative Action Officer is responsible for monitoring for adverse impact. If discriminatory intent or effect is identified, the Affirmative Action Officer shall implement solutions and/or confer with the chief administrative officer or designee of the district or college to determine necessary remedies.

(c) Length of service in the district shall not be used as the sole determinant for decisions affecting hiring and promotions.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980).

53028. Affirmative Action Commitment.

All employment practices, including selection, assignment, promotion, transfer, demotion, or termination decisions, shall be based on job-related factors which include qualifications and capabilities. Seniority shall be considered only where required by law. The goals of the affirmative action program shall also be designed to meet the special needs and aspirations of minority groups, students and the community in counseling, bilingual/multicultural education, and school-staff mobility.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53029. Handicapped.

Districts shall make reasonable accommodation for the handicapped applicant or employee.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code; Section 11135, Government Code; 29 U.S.C. 705 and 706.

53030. Sexual Harassment Policy.

A work place free of sexual harassment and intimidation shall be maintained.

NOTE: Authority cited: Sections 71020, 71068 and 87105, Education Code; Section 11138, Government Code. Reference: 42 U.S.C. 2000e, et seq.; 29 C.F.R. 1604.11 (1981).

SUBCHAPTER 4. ESSENTIAL ELEMENTS OF AN AFFIRMATIVE ACTION PLAN

53040. Governing Board's Affirmative Action Employment Policy Statement.

Each affirmative action plan shall have a written policy statement adopted by the district governing board which sets forth the district's obligation and commitment to equal employment opportunity through affirmative action. The statement must include a plan to ensure nondiscrimination in employment, promotion, transfer, and assignment on the basis of race, color, religion, national origin, sex, age, handicap, status as Vietnam-era veteran and/or marital status. This plan must be applied to all levels of employment procedure and to all position classifications.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Section 87101, Education Code; Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 20 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980).

53041. Affirmative Action Responsibilities and Duties.

The affirmative action plan shall state that the community college district governing board and the chief district administrator have the overall responsibility for ensuring affirmative action and equal employment opportunity including, but not limited to, recruitment, assignment, promotion, retention, compensation, and training; and for improving representation of minority racial and ethnic groups, women, handicapped persons and Vietnam-era veterans.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53042. Affirmative Action Officer.

In the affirmative action plan the community college district shall designate an affirmative action officer to administer the affirmative action program. This officer shall report to the chief district administrator or designee who reports to the chief district administrator.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53043. Internal Dissemination.

The affirmative action plan shall require that all district employees shall be apprised of the equal employment opportunity/affirmative action policy, affirmative action plan, and the importance of the employee's participation and responsibility in ensuring the plan's implementation.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53044. External Dissemination.

The affirmative action plan shall require that a written notice be provided at least annually to various community organizations concerning the district's affirmative action policy and to solicit their assistance in recruiting ethnic minority, female, handicapped, and Vietnam-era veteran candidates.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53045. Complaint Procedure.

The district affirmative action plan shall state that an employee or applicant for employment may file a complaint with the district affirmative action officer alleging that the district has failed to satisfy the requirements of this chapter. The affirmative action plan shall state the district's procedure for responding to complaints.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53046. Work Force Analysis.

Each affirmative action plan shall contain a work force analysis in which the district shall determine statistically the racial, ethnic, and sex composition of existing staff by the following seven job categories:

Executive/Administrative/Managerial, Faculty and Other Instructional Staff, Professional Nonfaculty, Secretarial/Clerical, Technical and Paraprofessional, Skilled Crafts, Service and Maintenance.

Districts shall supply the information required by the Chancellor's Office Information System, Staff Data File.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: 29 C.F.R. 1602.48 (1981).

53049. Utilization Analysis.

The affirmative action plan shall include a utilization analysis that includes a determination of whether minorities and women are being underrepresented or underutilized in any job category. The district shall consider the numbers and percentages of staff in each position category within each of the job categories by ethnic and sex classification compared with the general availability of minorities and women in the relevant work force having requisite skills to fill vacancies as they occur.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980).

53050. Corrective Action.

The affirmative action plan shall require that when imbalances exist in the various job categories of the district work force, district practices and policies must be examined to determine the factors contributing to the imbalance. Employment practices within the personnel system which constitute barriers to equal opportunity shall be identified and corrective action designed to eliminate the barriers.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980).

53051. Goals and Timetables.

The affirmative action plan shall require that affirmative action programs be designed to eliminate discriminatory employment practices. Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies in representation from ethnic minority groups and women at all employment levels within the district.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980).

53052. Affirmative Action Advisory Committee.

The district affirmative action plan shall require that an affirmative action advisory committee be established to assist the district to achieve understanding and support of affirmative action/equal employment opportunity policies and programs, and shall assist in developing the affirmative action program in conformity with state and federal statutes, regulations, and guidelines, monitoring its progress and acting as an advisory body to the affirmative action officer. The membership of the Affirmative Action Advisory Committee shall include ethnic minorities, women, the handicapped and Vietnam-era veterans whenever possible.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

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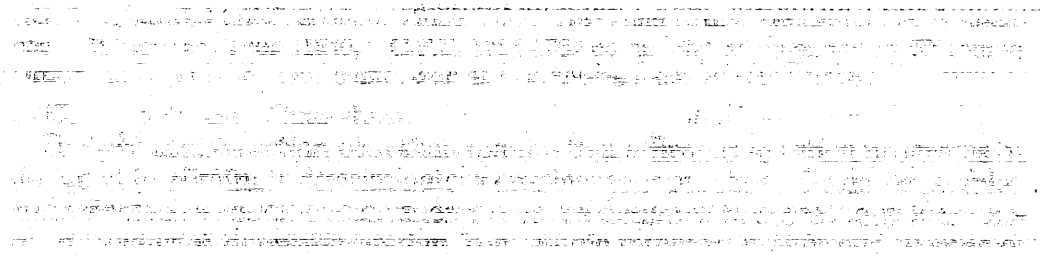

SUBCHAPTER 2. RESPONSIBILITIES OF THE CHANCELLOR

53010. Assistance.

The Chancellor shall provide guidelines for the development of policies, programs and procedures for affirmative action and equal employment opportunity programs. The Chancellor shall cooperate with and render assistance to community colleges in carrying out the provisions of this subchapter. The Chancellor shall review and approve programs submitted by districts pursuant to Section 53003.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87103, Education Code.

53011. Report.

The Chancellor shall report annually to the Board of Governors and Legislature on the progress and/or effectiveness of all California Community College districts in meeting the provisions of this chapter.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87104, Education Code.

53012. Periodic Evaluation.

The Chancellor shall periodically evaluate community college districts to determine their compliance with the requirements of their affirmative action plans and this chapter. If the Chancellor finds that a district has failed to substantially comply with the requirements of its plan, the Chancellor shall offer assistance and take whatever action he or she deems necessary to effect compliance.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87102, Education Code.

SUBCHAPTER 3. RESPONSIBILITIES OF COMMUNITY COLLEGE DISTRICTS

53020. Implement Affirmative Action Plan.

The means specified in this subchapter are the essential requirements for implementing a district affirmative action plan.

NOTE: Authority cited: Sections 71020 and 87105, Education Code; Section 11138, Government Code. Reference: Section 87102, Education Code.

53021. Recruitment.

Community college districts shall undertake a program of verifiable affirmative action recruitment for protected group members in all job categories which reflect underrepresentation, including categorically funded positions and in all executive/administrative/managerial positions. Upward mobility programs may be used in conjunction with a recruitment effort when it promotes the goals of the district's affirmative action plan. "In house" or "promotional only" recruitment shall not be used except when "business necessity" dictates.

NOTE: Authority cited: Sections 71020 and 87105, Education Code; Section 11138, Government Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980); Section 87100, Education Code.

53022. Job Announcements.

Job announcements shall state clearly job specifications setting forth those skills necessary to job performance and the required training and experience related to those skills. The requirements are to be based on a careful analysis of the job. Only bona fide occupational qualifications may be included in job announcements.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980); Section 87100, Education Code.

53023. Applicant Pool.

All applicants shall be given an opportunity to identify themselves as being a member of a protected group when their application is submitted for purposes of monitoring employment practices. This confidential information will be maintained in the affirmative action office for use in research and in evaluating the effectiveness of the district's affirmative action program.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965, comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967, comp. 320; 41 C.F.R. 60–2.; 29 U.S.C. 793; 41 C.F.R. 60–741; 38 U.S.C. 2012; 41 C.F.R. 60–250.

HISTORY:

1. New section filed 2-26-82; designated effective 2-28-82 pursuant to Government Code Section 11346.2(d) (Register 82, No. 9).

53024. Screening.

All selection testing for employees shall follow procedures as outlined in Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures." Selection procedures established in the district's affirmative action plan shall be used to identify a reasonable number of qualified candidates for interviews for all recruited positions.

Selection committees shall include members of protected groups whenever possible.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980); 29 C.F.R. 1607 (1978).

53025. Agents.

Any individual or group of individuals acting on behalf of the local governing board for the recruitment and screening of personnel, including superintendentships, are agents of the district and subject to all state and federal laws and regulations.

NOTE: Authority cited: Sections 71020 and 87105, Education Code; Section 11138, Government Code. Reference: Section 87100, Education Code.

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55825) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

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§ 53063
§ 53064

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

§ 53046. Work Force Analysis.

Each affirmative action plan shall contain a work force analysis in which the district shall determine statistically the racial, ethnic, and sex composition of existing staff by the following seven job categories:

Executive/Administrative/Managerial, Faculty and Other Instructional Staff, Professional Nonfaculty, Secretarial/Clerical, Technical and Paraprofessional, Skilled Crafts, Service and Maintenance.

Districts shall supply the information required by the Chancellor's Office Information System, Staff Data File.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: 29 C.F.R. 1602.48 (1981).

§ 53049. Utilization Analysis.

The affirmative action plan shall include a utilization analysis that includes a determination of whether minorities and women are being underrepresented or underutilized in any job category. The district shall consider the numbers and percentages of staff in each position category within each of the job categories by ethnic and sex classification compared with the general availability of minorities and women in the relevant work force having requisite skills to fill vacancies as they occur.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

§ 53050. Corrective Action.

The affirmative action plan shall require that when imbalances exist in the various job categories of the district work force, district practices and policies must be examined to determine the factors contributing to the imbalance. Employment practices within the personnel system which constitute barriers to equal opportunity shall be identified and corrective action designed to eliminate the barriers.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

§ 53051. Goals and Timetables.

The affirmative action plan shall require that affirmative action programs be designed to eliminate discriminatory employment practices. Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies in representation from ethnic minority groups and women at all employment levels within the district.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp.

§ 53052. Affirmative Action Advisory Committee.

The district affirmative action plan shall require that an affirmative action advisory committee be established to assist the district to achieve understanding and support of affirmative action/equal employment opportunity policies and programs, and shall assist in developing the affirmative action program in conformity with state and federal statutes, regulations, and guidelines, monitoring its progress and acting as an advisory body to the affirmative action officer. The membership of the Affirmative Action Advisory Committee shall include ethnic minorities, women, the handicapped and Vietnam-era veterans whenever possible.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

§ 53060. Fund Allocation.

Prior to the end of the fiscal year preceding the year of allocation, the Chancellor shall recommend to the Board of Governors an allocation formula for distribution of the Faculty and Staff Diversity Fund established pursuant to Education Code section 87170. The allocation shall be consistent with the following:

(a) A proportion of the fund, but not more than 25 percent, shall be set aside for the purposes of Education Code section 87107(c), provided that:

(1) sufficient funds to provide technical assistance, service, monitoring, and compliance functions shall be designated from these monies; and

(2) the remainder of these funds shall be distributed on the basis of the average daily attendance or full-time equivalent students of each district as a proportion of the total average daily attendance or full-time equivalent for all districts. These funds are to be used to reimburse costs as specified in Education Code section 87107.

(b) That portion of the funds not allocated pursuant to subsection (a) may be allocated to the districts in the following five categories:

(1) an amount proportional to the average daily attendance or full-time equivalent students of each district to the total average daily attendance or full-time equivalent students for all districts;

(2) an equal dollar amount to each district;

(3) an amount related success in employing ethnic minorities in EEO6 categories 1 through 3 (professional positions);

(4) an amount related to success in employing ethnic minorities in EEO6 categories 4 through 7 (non-professional positions); and

(5) an amount related to past success in employing ethnic minorities, women and, persons with disabilities, as evidenced by the proportion of ethnic minority and women staff in each of the EEO6 categories and for the proportion of persons with disabilities in the general staff. The inclusion of persons with disabilities will commence with the Fiscal Year 1991–92 allocation.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53061. Success.

For the purpose of this subchapter, "success" is defined as:

(a) for ethnic minorities, a hiring rate of 30 percent (30%) in each of the professional occupational areas and a hiring rate equivalent to the Standard Metropolitan Statistical Area (SMSA)/county availability rate, as provided by the Chancellor's Office, in each of the non-professional occupational areas;

(b) a hiring and staffing rate for women and a staffing rate for ethnic minorities equivalent to the availability rate, as provided by the Chancellor's Office; and

(c) an overall staffing rate for persons with disabilities equivalent to the general availability rate, as provided by the Chancellor's Office

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53062. Point Factors.

(a) In determining the sub-allocations for section 53060(b)(3), (4), (5), a point-factor system shall be used. A district will receive points as shown below for (1) each of the above sections dealing with ethnic minorities and women in each EEO6 category, based on the latest annual survey required under section 53004 of this chapter; and (2) the total hiring reported in the section 53004 survey, or in a special survey of persons with disabilities, if necessary.

Degree of Success	*Proportion of Goal Met*	*Points*
None	0.00 %	0
Low	0.01 – 33.32 %	1
Moderate	33.33 – 66.66 %	2
High	66.67 – 99.99 %	3
Successful	100.00 %	4

(b) For each district, a statistical quantity will be calculated for each EEO6 category, or on the total staffing in the case of persons with disabilities, based on the ratio of points awarded to the district, divided by the total points awarded to all districts. The sum of a district's category calcu-

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income if the business entity or source of income provides education, training, or experience to persons toward attaining a valid credential for employment as an instructor, supervisor, chief administrative officer, librarian, counselor, supervisor of health, student personnel worker, or other similar position within a Community College district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations affirming and fixing the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in chapter 9 (commencing with section 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

(c) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

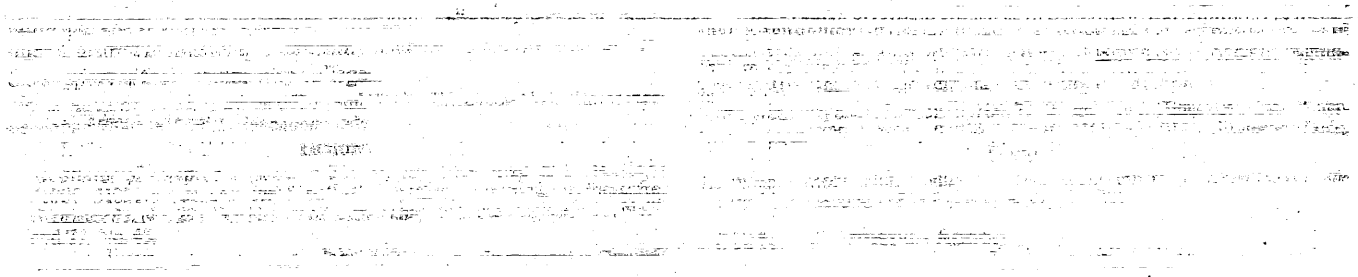
HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,



NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

§ 53048. Work Force Analysis.

Each affirmative action plan shall contain a work force analysis in which the district shall determine statistically the racial, ethnic, and sex composition of existing staff by the following seven job categories:

Executive/Administrative/Managerial, Faculty and Other Instructional Staff, Professional Nonfaculty, Secretarial/Clerical, Technical and Paraprofessional, Skilled Crafts, Service and Maintenance.

Districts shall supply the information required by the Chancellor's Office Information System, Staff Data File.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: 29 C.F.R. 1602.48 (1981).

§ 53049. Utilization Analysis.

The affirmative action plan shall include a utilization analysis that includes a determination of whether minorities and women are being underrepresented or underutilized in any job category. The district shall consider the numbers and percentages of staff in each position category within each of the job categories by ethnic and sex classification compared with the general availability of minorities and women in the relevant work force having requisite skills to fill vacancies as they occur.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

§ 53050. Corrective Action.

The affirmative action plan shall require that when imbalances exist in the various job categories of the district work force, district practices and policies must be examined to determine the factors contributing to the imbalance. Employment practices within the personnel system which constitute barriers to equal opportunity shall be identified and corrective action designed to eliminate the barriers.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

§ 53051. Goals and Timetables.

The affirmative action plan shall require that affirmative action programs be designed to eliminate discriminatory employment practices. Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies in representation from ethnic minority groups and women at all employment levels within the district.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp.

§ 53052. Affirmative Action Advisory Committee.

The district affirmative action plan shall require that an affirmative action advisory committee be established to assist the district to achieve understanding and support of affirmative action/equal employment opportunity policies and programs, and shall assist in developing the affirmative action program in conformity with state and federal statutes, regulations, and guidelines, monitoring its progress and acting as an advisory body to the affirmative action officer. The membership of the Affirmative Action Advisory Committee shall include ethnic minorities, women, the handicapped and Vietnam-era veterans whenever possible.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

§ 53060. Fund Allocation.

Prior to the end of the fiscal year preceding the year of allocation, the Chancellor shall recommend to the Board of Governors an allocation formula for distribution of the Faculty and Staff Diversity Fund established pursuant to Education Code section 87170. The allocation shall be consistent with the following:

(a) A proportion of the fund, but not more than 25 percent, shall be set aside for the purposes of Education Code section 87107(c), provided that:

(1) sufficient funds to provide technical assistance, service, monitoring, and compliance functions shall be designated from these monies; and

(2) the remainder of these funds shall be distributed on the basis of the average daily attendance or full-time equivalent students of each district as a proportion of the total average daily attendance or full-time equivalent for all districts. These funds are to be used to reimburse costs as specified in Education Code section 87107.

(b) That portion of the funds not allocated pursuant to subsection (a) may be allocated to the districts in the following five categories:

(1) an amount proportional to the average daily attendance or full-time equivalent students of each district to the total average daily attendance or full-time equivalent students for all districts;

(2) an equal dollar amount to each district;

(3) an amount related success in employing ethnic minorities in EEO6 categories 1 through 3 (professional positions);

(4) an amount related to success in employing ethnic minorities in EEO6 categories 4 through 7 (non-professional positions); and

(5) an amount related to past success in employing ethnic minorities, women and, persons with disabilities, as evidenced by the proportion of ethnic minority and women staff in each of the EEO6 categories and for the proportion of persons with disabilities in the general staff. The inclusion of persons with disabilities will commence with the Fiscal Year 1991–92 allocation.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53061. Success.

For the purpose of this subchapter, "success" is defined as:

(a) for ethnic minorities, a hiring rate of 30 percent (30%) in each of the professional occupational areas and a hiring rate equivalent to the Standard Metropolitan Statistical Area (SMSA)/county availability rate, as provided by the Chancellor's Office, in each of the non-professional occupational areas;

(b) a hiring and staffing rate for women and a staffing rate for ethnic minorities equivalent to the availability rate, as provided by the Chancellor's Office; and

(c) an overall staffing rate for persons with disabilities equivalent to the general availability rate, as provided by the Chancellor's Office.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Editorial correction of printing error in subsection (c) (Register 91, No. 31).

§ 53062. Point Factors.

(a) In determining the sub-allocations for section 53060(b)(3), (4), (5), a point-factor system shall be used. A district will receive points as shown below for (1) each of the above sections dealing with ethnic minorities and women in each EEO6 category, based on the latest annual survey required under section 53004 of this chapter; and (2) the total hiring reported in the section 53004 survey, or in a special survey of persons with disabilities, if necessary.

Degree of Success	*Proportion of Goal Met*	*Points*
None	0.00 %	0
Low	0.01 – 33.32 %	1
Moderate	33.33 – 66.66 %	2
High	66.67 – 99.99 %	3
Successful	100.00 %	4

(b) For each district, a statistical quantity will be calculated for each EEO6 category, or on the total staffing in the case of persons with disabilities, based on the ratio of points awarded to the district, divided by the

total points awarded to all districts. The sum of a district's category calculations, divided by the number of categories in which hiring/staffing took place, shall determine the share of the sub-allocation provided the district.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9-10-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10-10-90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53063. Failure to Report.

Any district failing to provide the data required under section 53004 is not in compliance with this chapter. Faculty and Staff Diversity funds for any given fiscal year, other than those under section 53060(a) and (b)(1), (2), shall not be granted unless the district provides the data no later than March 31 of the year.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9-10-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10-10-90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53064. Required Report.

Districts shall submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30 of the fiscal year following the use of the funds. Until such time as a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required under section 53004, districts will report the rate by a separate survey conducted, as directed by the Chancellor's Office.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9-10-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10-10-90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Subchapter 2. Certificated Positions

Article 1. Special Non-Credentialed Employees

§ 53100. Prerequisites for Employment Under Education Code Section 87401.

Prior to the employment of any noncredentialed instructor pursuant to Education Code Section 87401, the employee candidate shall:

(a) Furnish reasonable evidence, and be, of good character and answer the following questions:

(1) Have you ever had a diploma, credential, permit, or certificate, denied, revoked, or suspended?

(2) Have you ever failed or refused to fulfill a contract of employment entered into by you with any school district?

(3) Have you ever left the service of any school district without the consent of the superintendent or the governing board of such district?

(4) Have you ever been found guilty of immoral conduct or dismissed from any teaching position for immoral or unprofessional conduct or for unfitness for service?

(5) Have you ever been found guilty of or dismissed from any teaching position for persistent defiance of or refusal to obey the laws regulating the duties of persons serving in the public school system?

(6) Have you ever been arrested for any crime (other than a minor traffic violation) which resulted in a conviction or a plea of nolo contendere? If this has occurred, this question must be answered "yes" regardless of subsequent court action under Penal Code Section 1203.4 resulting in dismissal or "expungement." If this has occurred with subsequent court action sealing the juvenile record under Penal Code Section 1203.45, this question may be answered "no."

(7) Have you had military service? (Both men and women must answer this question.)

If yes, state type of discharge: _____

If other than honorable discharge, explain fully.

(b) Execute the oath prescribed in Education Code Section 87214.

(c) Be free from any contagious and communicable disease or other disabling disease or defect unfitting the applicant to instruct or associate with minors.

(d) Submit personal identification cards to the governing board of the district which is to employ such person upon the special form provided by the Chancellor and in the manner prescribed in Sections 52130 and 52135 of this title.

(e) Not be disqualified to receive a teaching credential under the provisions of Education Code Sections 87289 and 87290.

The governing board of the prospective employee district shall determine whether these requirements have been satisfied.

NOTE: Authority cited: Sections 71020, 71064, and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Renumbering of Chapter 1 (Sections 53100-53205) to Chapter 2 (Sections 53100-53205) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 53101. Processing of Fingerprint Cards.

The governing board shall submit the personal identification fingerprint cards of candidates for teaching positions under the provisions of this subchapter, in duplicate, to the Bureau of Criminal Identification and Investigation of the Department of Justice, Sacramento, California, with a request in writing that the Bureau render a report thereon for such governing board to the Chancellor's Office, California Community Colleges, Sacramento, California. At that time the governing board shall also notify the county superintendent of schools of the county in which the Community College is located that such request has been made. The governing board shall not employ any person pursuant to Education Code Section 87401 unless and until the board has received a report from the Credentials Office in connection therewith. Any processing charges shall be borne by the submitting governing board.

NOTE: Authority cited: Sections 71020, 71064, 87220 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 53102. Cause for Dismissal.

No person employed pursuant to Education Code Section 87401 and this subchapter, who has engaged in any conduct which would constitute cause for denial of an application for teaching credential under Education Code Sections 87289 and 87290 or cause for dismissal under Education Code Section 87732 shall be retained in employment after discovery thereof by the employing governing board.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 53103. Report of Persons Employed.

Promptly after the close of each school year, every governing board which employs noncredentialed persons pursuant to Education Code Section 87401 shall file a report with the Credentials Office, California

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History

1. Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52310. Action by the Chancellor.

Note: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 87332, 87340, 87341 and 87342, Education Code.

History

1. Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52311. Special Revocation.

Note: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 87332, 87340, 87341 and 87342, Education Code.

History

1. Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Subarticle 3. Administrative Hearing Procedure

§ 52320. Administrative Hearing.

Note: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 11503 and 11504, Government Code.

History

1. Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Subchapter 2. Validation of Service Without a Credential

§ 52400. Application.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52401. Approval.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52402. Verification.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52403. Investigation and Recommendation.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3–4–91; operative 4–5–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Chapter 4. Employees

Subchapter 1. Affirmative Action and Equal Employment Opportunity Programs

Article 1. General

§ 53000. Scope and Intent.

(a) This Subchapter implements and should be read in conjunction with Education Code Sections 87100 et seq.

(b) The regulations in this Subchapter require affirmative steps to promote faculty and staff diversity which are in addition to the nondiscrimination requirements of state or federal law. Therefore, compliance with these regulations or approval of the district's faculty and staff diversity plan pursuant to Section 53003 does not imply and should not be construed to mean that a district has necessarily complied with its obligations under any other applicable laws or regulations. The Chancellor shall assist districts in identifying other applicable state or federal laws which may affect district affirmative action or nondiscrimination policies.

Note: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

History

1. New chapter 1 (sections 53000–53004) filed 7–19–77; effective thirtieth day thereafter (Register 77, No. 30).
2. Repealer of chapter 1 (subchapter 1, sections 53000–53004) and new chapter 1 (subchapters 1–4, sections 53000–53052, not consecutive) filed 2–1–82; effective thirtieth day thereafter (Register 82, No. 6).
3. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53001. Definitions.

As used in this Subchapter:

(a) Affirmative Action Employment Programs. "Affirmative action employment programs" means all the various methods by which equal employment opportunity and proportionate representation is to be achieved for qualified members of historically underrepresented groups.

(b) Faculty and Staff Diversity Plan. A "faculty and staff diversity plan" is a written document in which a district's work force is analyzed and specific result–oriented plans and procedures for achieving equal employment opportunity and proportionate representation of qualified members of historically underrepresented groups are set forth.

(c) Business Necessity. "Business Necessity" means circumstances which justify an exception to the requirements of Section 53021 because compliance with that section would result insubstantial additional financial cost to the district or pose a significant threat to human life or safety. Business necessity requires greater financial cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.

(d) Equal Employment Opportunity. "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and to enjoy the benefits of employment with the district.

(e) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks, and Hispanics. A person shall be included in the group with which he or she identifies as his or her group, but may be counted in only one ethnic group. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.

(f) Goals and Timetables. "Goals and timetables" means projected new levels of employment of historically underrepresented groups to be worked toward on a specific schedule, given the expected turnover in the work force and the availability of persons who are qualified to perform a particular job through appropriate training or experience or who will become so qualified within a reasonable length of time. Goals are not "quotas" or rigid proportions.

(g) Person with a Disability. "Person with a disability" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A person with a disability is "substantially limited" if he or she is likely to experience difficulty in securing, retaining or advancing in employment because of such an impairment.

(h) Historically Underrepresented Group. "Historically underrepresented group" means any group for which the percentage of persons from that group in the applicable work force is now, and has historically been, significantly lower than the percentage that members of that group represent in the pool of persons who are determined by the Chancellor to be available and qualified to perform the work in question. The Board of Governors has determined that, on a statewide basis, ethnic minorities, women, and persons with disabilities are historically underrepresented groups.

(i) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the employer to remove artificial or real barriers which prevent or limit the employment and upward mobility of persons with disabilities.

(j) Proportionate Representation. "Proportionate representation" means that the percentage of persons from an historically underrepresented group in the applicable work force is at least equal to the percentage that members of that group represent in the pool of persons who are determined by the Chancellor to be available and qualified to perform the work in question.

(k) In-house or Promotional Only Hiring. "In-house" or "promotional only" hiring means that only existing district employees are allowed to apply for a position.

(l) Screening or Selection Procedure. "Screening or selection procedure" means any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques, including but not limited to, traditional paper and pencil tests, performance tests, and physical, educational, and work experience requirements, interviews, and review of application forms.

(m) Adverse or Disparate Impact. "Adverse impact" or "disparate impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure, and demonstrates a disproportionate negative impact on a historically underrepresented group as defined in subsection (h).

NOTE: Authority cited: Sections 66700, 70901 and 87105, Education Code. Reference: Sections 87101, Education Code; Section 11092, Government Code; 29 C.F.R. 1602.48 (1981); 29 U.S.C. 793; 41 C.F.R. 60-741-2 (1980).

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53002. Policy Statement.

The governing board of each community college district shall adopt a policy statement setting forth the district's commitment to an affirmative action employment program. This statement may also incorporate the nondiscrimination policy statement required pursuant to Section 59304 of this Division and other similar nondiscrimination or equal employment opportunity statements which may be required under other provisions of state and federal law.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53003. District Plan.

(a) The governing board of each community college district shall develop and adopt a district-wide written faculty and staff diversity plan to implement its affirmative action employment program. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) This plan shall include the goals and timetables for hiring and promotion of members of historically underrepresented groups for each college in the district and for the district as a whole. These goals and timetables shall be revised every three years and submitted to the Chancellor's Office for approval. When the district achieves proportionate representation for any historically underrepresented group in one or more of the categories specified in Section 53004(a), it shall so indicate when it next revises its goals and timetables. Thereafter, goals and timetables shall not be required for such a group in that job category or categories, unless underrepresentation subsequently recurs. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its plan.

(c) In addition, the plan shall include all of the following:

(1) the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this Subchapter pursuant to Section 53020;

(2) the procedure for filing complaints pursuant to Section 53026 and the person with whom such complaints are to be filed;

(3) a process for notifying all district employees of the provisions of the plan and the policy statement required under Section 53002;

(4) a process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this Subchapter and of state and federal non-discrimination laws.

(5) a process for providing annual written notice to appropriate community organizations concerning the district's plan and the need for assistance from the community in identifying qualified members of historically underrepresented groups for openings with the district;

(6) an analysis of the number of persons from historically underrepresented groups who are employed in the district's work force and those who have applied for employment in each of the job categories listed in Section 53004(a);

(7) an analysis of the degree to which women, ethnic minorities, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups who the Chancellor determines to be available and qualified to perform the work required for each such job category; and

(8) a plan of corrective action, including goals and timetables for hiring and promotion, which is necessary to remedy any underrepresentation identified in the plan by achieving proportionate representation for all historically underrepresented groups in all job classifications.

(d) The plans submitted to the Chancellor shall be public records.

(e) Each community college district shall make a continuous good faith effort to comply with the requirements of the plan required under this Section.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53004. District Evaluation and Report to Chancellor.

(a) Each district shall annually survey its employees and shall monitor applicants for employment on an ongoing basis in order to evaluate its progress in reaching the goals set forth in its faculty and staff diversity plan. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey of employees at each college in the district. Each employee shall be reported so that he or she may be identified as belonging to one of the following seven job categories:

(1) executive/administrative/managerial;

(2) faculty and other instructional staff;

(3) professional nonfaculty;

(4) secretarial/clerical;

(5) technical and paraprofessional;
(6) skilled crafts; and
(7) service and maintenance.

(b) For purposes of the report to the Chancellor, Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part of the Asian/Pacific Islander group as well as in separate subcategories. However, in the goal-setting process, separate employment goals are not needed for these subgroups.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; and Section 8310.5, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53005. Advisory Committee.

Each community college district shall establish a Faculty and Staff Diversity Advisory Committee to assist the district in developing and implementing the plan required under Section 53003. This advisory committee shall include members of all historically underrepresented groups whenever possible.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53010. Assistance.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87103, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53011. Report.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87104, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53012. Periodic Evaluation.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87102, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

Article 2. Other Specific Responsibilities of Community College Districts

§ 53020. Responsibility; Delegation of Authority; Complaints.

(a) The governing board of each community college district is ultimately responsible for proper implementation of this Subchapter at all levels of district and college operation and for making measurable progress toward the goals established in the district's faculty and staff diversity plan. In carrying out this responsibility, the governing board, upon the recommendation of the chief executive officer, shall ensure that an affirmative action officer is designated to oversee the day to day implementation of the requirements set forth in this Subchapter.

(b) The administrative structure created by any delegation of authority to the affirmative action officer or others shall be described in the district's faculty and staff diversity plan submitted pursuant to Section 53003 and shall be designed in such a manner so as to ensure prompt and effective implementation of the requirements of this Subchapter. The plan shall also designate a single officer, who may be the affirmative action officer, who shall be given authority and responsibility for receiving complaints filed pursuant to Section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by Sections 53023 and 53024.

(c) any organization or individual, whether or not an employee of the district, who acts on behalf of the governing board with regard to the recruitment and screening of personnel is an agent of the district and is subject to all of the requirements of this Subchapter.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53021. Recruitment.

(a) Community college districts shall undertake a program of verifiable affirmative action recruitment of qualified members of historically underrepresented groups in all job categories and classifications, including, but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions.

(b) "In house or promotional only" recruitment shall not be used to fill any new opening except when:

(1) the pool of eligible district employees has achieved proportionate representation and the district has an upward mobility program which is included in the faculty and staff diversity plan approved by the Chancellor;

(2) the position is being filled on an interim basis (not to exceed one year) to allow for full and open recruitment; or

(3) justified by "business necessity" as defined in Section 53001(c).

(c) If a district believes justification exists for use of the "business necessity" exception, it shall so notify the Faculty and Staff Diversity Advisory Committee established pursuant to Section 53005 and the Chancellor at least ten (10) working days prior to offering the position to a candidate.

(d) Even where in-house or promotional only recruitment is permitted pursuant to subsection (b), all qualified district employees shall be afforded the opportunity to apply.

(e) For purposes of this section, a new opening is not created when:

(1) there is a reorganization or series of transfers that does not result in a net increase in the number of employees;

(2) a position which is currently occupied by an incumbent and is upgraded, reclassified, or renamed without significantly altering the duties being performed by the individual;

(3) the faculty in a division or department elect one faculty member to serve as a chairperson for a prescribed limited term; or

(4) the position is filled by a temporary appointment using recruitment procedures authorized by other provisions of law.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53022. Job Announcements and Required Qualifications.

Job announcements shall state clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance. For faculty and administrative positions, job requirements shall include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. Job specifications, including any "desired" or "required" qualifications beyond the state minimum qualifications (set forth in Subchapter 4, commencing with Section 53400 of this Chapter) which the district wishes to utilize, shall be reviewed before the position is announced, to ensure conformity with the requirements of this Subchapter and state and federal nondiscrimination laws.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

History

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53023. Applicant Pool.

(a) All applicants shall be given an opportunity to identify themselves as being a member of a historically underrepresented group when their application is submitted. This information shall be kept confidential and shall be used only in research, validation, monitoring, evaluating the effectiveness of the district's affirmative action employment program, or any other purpose specifically authorized in this Subchapter, or by any applicable statute or regulation.

(b) After the application deadline has passed, applications shall be screened to determine which candidates satisfy job specifications set forth in the job announcement. Before the selection process begins, the composition of the qualified applicant pool shall be analyzed to ensure that the goals established in the district's faculty and staff diversity plan may be furthered and that members of historically underrepresented groups are not adversely impacted. If this is not the case, the chief executive officer or his or her designee shall take effective steps to address the adverse impact before the selection process is begun. Such steps may include, but are not limited to:

(1) the deadline is extended and additional recruitment focused on historically underrepresented groups is undertaken;

(2) applicants from historically underrepresented groups who were initially screened out because they failed to meet locally established "desirable or preferred" qualifications beyond state minimum qualifications are included in the applicant pool where such applicants may be expected to meet these additional qualifications through appropriate training or experience within a reasonable length of time;

(3) locally established qualifications beyond state minimum qualifications are modified or removed and the application deadline is extended.

(c) If adverse impact persists after taking steps required under subdivision (b), the selection process may proceed only if:

(1) the job announcement does not require qualifications beyond the statewide minimum qualifications;

(2) locally established qualifications beyond state minimum qualifications, if any, are shown to be job related and consistent with business necessity through a process meeting the requirements of federal law; or

(3) the particular requirements beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job–related and consistent with business necessity throughout the community college system.

Note: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; 42 U.S.C. 2000e–2.

History

1. New section filed 2–26–82; designated effective 2–28–82 pursuant to Government Code section 11346.2(d) (Register 82, No. 9).
2. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53024. Screening or Selection Procedures.

(a) All screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, shall be:

(1) provided to the Chancellor upon request;

(2) designed to ensure that for faculty and administrative positions, consideration is given to the extent to which applicants have a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students;

(3) based solely on job–related criteria, provided that, when a particular candidate who meets the minimum qualifications for the job is also a member of an historically underrepresented group, this membership may be taken into account as one factor in the final selection process where this would further achievement of the goals set forth in the district's faculty and staff diversity plan; and

(4) designed and monitored to ensure that they do not have an adverse impact on members of historically underrepresented groups.

(b) If monitoring pursuant to subsection (a)(4) reveals that any selection technique or procedure has adversely impacted any historically underrepresented group, the chief executive officer or his/her designee shall suspend the selection process and timely and effective steps shall be taken to remedy the problem before the selection process resumes. The affirmative action officer, or other official charged with responsibility for monitoring selection procedures, may assist the screening committee by discussing the overall composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact, provided that confidential information about individual candidates is not disclosed. Where necessary, the position may be re–opened at any time and a new selection process initiated in a way designed to avoid adverse impact.

(c) A district may not designate or set aside particular positions to be filled by members of any group defined in terms of race, ethnicity, gender, age, disability, or any other characteristic which would result in discriminatory treatment prohibited by state or federal law. Nor may a district apply goals set forth in the district's faculty and staff diversity plan in a rigid manner which has the purpose or effect of so discriminating.

(d) Seniority or length of service may be taken into consideration only to the extent it is job related, is not the sole criterion, and is included in the job announcement consistent with the requirements of Section 53022.

(e) Selection testing for employees shall follow procedures as outlined in Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures."

(f) Selection committees shall include members of historically underrepresented groups whenever possible.

(g) Notwithstanding any other provision of this Division, the governing board or its designee shall have the authority to make all final hiring decisions based upon careful review of the candidate or candidates recommended by a screening committee. This includes the right to reject all candidates and order further review by the screening committee or reopening of the position where necessary to further achievement of the goals established in the faculty and staff diversity plan. However, consistent failure to select qualified candidates from historically underrepresented groups who are recommended by screening committees shall constitute a violation of Section 51010 of this Division.

Note: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

History

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53025. Persons with Disabilities.

(a) By July 1, 1992, each community college district shall establish goals and timetables for hiring and promotion of persons with disabilities, provided that data on the availability of persons with disabilities who are qualified for employment by community colleges is furnished by the Chancellor.

(b) For academic year 1992–93, and each year thereafter, districts shall monitor for adverse impact on persons with disabilities consistent with the requirements of Sections 53004, 53023, and 53024 and shall report on the numbers of persons with disabilities who are employed by the district pursuant to Section 53004.

(c) Community college districts shall ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code Sections 11135 et seq., and Section 504 of the Rehabilitation Act of 1973. Such accommodations may include, but are not limited to, job site modifications, job restructuring, flexible scheduling, adaptive equipment, and auxiliary aids such as readers, interpreters, and notetakers. Such accommodations may be paid for with faculty and staff diversity funds provided pursuant to Article 3 (commencing with Section 53030) of this Subchapter.

Note: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; Sections 11135 et seq., Government Code; 29 U.S.C. 794.

History
1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53026. Complaints.

Each community college district shall establish a process permitting any person to file a complaint alleging that the requirements of this Subchapter have been violated. A copy of the complaint shall immediately be forwarded to the Chancellor who may require that the district provide a written investigative report within ninety (90) days. Complaints which also allege discrimination prohibited by Government Code Sections 11135 et seq. shall be processed according to the procedures set forth in Subchapter 4 (commencing with Section 59300) of Chapter 10 of this Division.

Note: Authority Cited: Sections 70901 and 87105, Education Code; and Sections 11135 et seq. Government Code. Reference: Sections 87100 et seq., Education Code.

History
1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53027. Applicability to Districts Operating on the Merit System.

Nothing in this Subchapter shall be construed to conflict with or be inconsistent with the provisions of Article 3 (commencing with Section 88060) of Chapter 4 of Part 51 of the Education Code which apply to districts operating a merit system for classified employees.

Note: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq. and 88060 et seq., Education Code.

History
1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53028. Affirmative Action Commitment.

Note: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

History
1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53029. Handicapped.

Note: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code; Section 11135, Government Code; 29 U.S.C. 705 and 706.

History
1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Article 3. Faculty and Staff Diversity Fund

§ 53030. Fund Allocation.

Prior to the end of the fiscal year preceding the year of allocation, the Chancellor shall recommend to the Board of Governors an allocation formula for distribution of the Faculty and Staff Diversity Fund established pursuant to Education Code Section 87107. The allocation shall be consistent with the following:

(a) A portion of the fund, but not more than 25 percent, shall be set aside for the purposes of Education Code Section 87107(c), provided that:

(1) sufficient funds to provide technical assistance, service, monitoring, and compliance functions shall be designated from these monies; and

(2) the remainder of these funds shall be distributed on the basis of the average daily attendance or full–time equivalent students of each district as a proportion of the total average daily attendance or full–time equivalent students for all districts. These funds are to be used to reimburse costs as specified in Education Code Section 87107.

(b) That portion of the funds not allocated pursuant to subsection (a) may be allocated to the districts in the following five categories:

(1) an amount proportional to the average daily attendance or full–time equivalent students of each district to the total average daily attendance or full–time equivalent students for all districts;

(2) an equal dollar amount to each district;

(3) an amount related to success in employing ethnic minorities in EEO6 categories 1 through 3 (professional positions);

(4) an amount related to success in employing ethnic minorities in EEO6 categories 4 through 7 (non–professional positions); and

(5) an amount related to past success in employing ethnic minorities, women, and persons with disabilities, as evidenced by the proportion of ethnic minority and women staff in each of the EEO6 categories and for the proportion of persons with disabilities in the general staff.

Note: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

History
1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53031. Success.

For the purpose of this Subchapter, "success" is defined as:

(a) for ethnic minorities, a hiring rate of 30 percent (30%) in each of the professional occupational areas and a hiring rate equivalent to the Standard Metropolitan Statistical Area (SMSA)/COUNTY availability rate, as provided by the Chancellor's Office, in each of the non–professional occupational areas;

(b) a hiring and staffing rate for women and a staffing rate for ethnic minorities equivalent to the availability rate, as provided by the Chancellor's Office; and

(c) an overall staffing rate for persons with disabilities equivalent to the general availability rate, as provided by the Chancellor's Office.

Note: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

History
1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53032. Point Factors.

(a) In determining the sub–allocations for Section 53030(b)(3), (4), and (5), a point–factor system shall be used. A district will receive points as shown below for: (1) each of the above sections dealing with ethnic minorities and women in each EEO6 category, based on the latest annual survey required under Section 53004 of this Subchapter; and (2) the total hiring reported in the Section 53004 survey, or in a special survey of persons with disabilities, if necessary.

Degree of Success	*Proportion of Goal Met*	*Points*
None	0.00%	0
Low	0.01–33.32%	1
Moderate	33.33–66.66%	2
High	66.67–99.99%	3
Successful	100.00%	4

(b) For each district, a statistical quantity will be calculated for each EEO6 category, or on the total staffing in the case of persons with disabilities, based on the ratio of points awarded to the district, divided by the total points awarded to all districts. The sum of a district's category calculations, divided by the number of categories in which hiring/staffing took place, shall determine the share of the sub–allocation provided the district.

Note: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

History
1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53033. Failure to Report.

Any district failing to provide the data required under Section 53004 is not in compliance with this Subchapter. Faculty and Staff Diversity funds for any given fiscal year, other than those under Section 53030(a) and (b)(1) and (2), shall not be granted unless the district provides the data no later than March 31st of the preceding fiscal year.

Note: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

History
1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53034. Required Report.

Districts shall submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. Until such time as a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required under Section 53004, districts will report that rate by a separate survey conducted, as directed by the Chancellor's Office.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53040. Governing Board's Affirmative Action Employment Policy Statement.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Section 87101, Education Code; Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980); 20 U.S.C. 793; 41 C.F.R. 60–741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60–250.1–.9, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53041. Affirmative Action Responsibilities and Duties.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53042. Affirmative Action Officer.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53043. Internal Dissemination.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53044. External Dissemination.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53045. Complaint Procedure.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53046. work force Analysis.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: 29 C.F.R. 1602.48 (1981).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53049. Utilization Analysis.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53050. Corrective Action.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53051. Goals and Timetables.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53052. Affirmative Action Advisory Committee.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53060. Fund Allocation.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53061. Success.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Editorial correction of printing error in subsection (c) (Register 91, No. 31).
3. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53062. Point Factors.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53063. Failure to Report.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53064. Required Report.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Subchapter 2. Certificated Positions

Article 1. Special Non-Credentialed Employees

§ 53100. Prerequisites for Employment Under Education Code Section 87401.

Prior to the employment of any noncredentialed instructor pursuant to Education Code Section 87401, the employee candidate shall:

(a) Furnish reasonable evidence, and be, of good character and answer the following questions:

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52310. Action by the Chancellor.

Note: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 87332, 87340, 87341 and 87342, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52311. Special Revocation.

Note: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 87332, 87340, 87341 and 87342, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Subarticle 3. Administrative Hearing Procedure

§ 52320. Administrative Hearing.

Note: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 11503 and 11504, Government Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Subchapter 2. Validation of Service Without a Credential

§ 52400. Application.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52401. Approval.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52402. Verification.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52403. Investigation and Recommendation.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Chapter 4. Employees

Subchapter 1. Affirmative Action and Equal Employment Opportunity Programs

Article 1. General

§ 53000. Scope and Intent.

(a) This Subchapter implements and should be read in conjunction with Education Code Sections 87100 et seq.

(b) The regulations in this Subchapter require affirmative steps to promote faculty and staff diversity which are in addition to the nondiscrimination requirements of state or federal law. Therefore, compliance with these regulations or approval of the district's faculty and staff diversity plan pursuant to Section 53003 does not imply and should not be construed to mean that a district has necessarily complied with its obligations under any other applicable laws or regulations. The Chancellor shall assist districts in identifying other applicable state or federal laws which may affect district affirmative action or nondiscrimination policies.

Note: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

History

1. New chapter 1 (sections 53000-53004) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).
2. Repealer of chapter 1 (subchapter 1, sections 53000-53004) and new chapter 1 (subchapters 1-4, sections 53000-53052, not consecutive) filed 2-1-82; effective thirtieth day thereafter (Register 82, No. 6).
3. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53001. Definitions.

As used in this Subchapter:

(a) Affirmative Action Employment Programs. "Affirmative action employment programs" means all the various methods by which equal employment opportunity and proportionate representation are to be achieved for qualified members of historically underrepresented groups.

(b) Faculty and Staff Diversity Plan. A "faculty and staff diversity plan" is a written document in which a district's work force is analyzed and specific result-oriented plans and procedures are set forth for achieving equal employment opportunity and proportionate representation of qualified members of historically underrepresented groups.

(c) Business Necessity. "Business necessity" means circumstances which justify an exception to the requirements of Section 53021 because compliance with that Section would result in substantial additional financial cost to the district or pose a significant threat to human life or safety. Business necessity requires greater financial cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.

(d) Equal Employment Opportunity. "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and to enjoy the benefits of employment with the district.

(e) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks, and Hispanics. A person shall be included in the group with which he or she identifies as his or her group, but may be counted in only one ethnic group. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.

(f) Goals and Timetables. "Goals and timetables" means projected new levels of employment of historically underrepresented groups to be worked toward on a specific schedule, given the expected turnover in the work force and the availability of persons who are qualified to perform a particular job through appropriate training or experience or who will become so qualified within a reasonable length of time. Goals are not "quotas" or rigid proportions.

(g) Person with a Disability. "Person with a disability" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A person with a disability is "substantially limited" if he or she is likely to experience difficulty in securing, retaining or advancing in employment because of such an impairment.

(h) Historically Underrepresented Group. "Historically underrepresented group" means any group for which the percentage of persons from that group in the applicable work force is now, and has historically been, significantly lower than the percentage that members of that group represent in the pool of persons who are determined by the Chancellor to be available and qualified to perform the work in question. The Board of Governors has determined that, on a statewide basis, ethnic minorities, women, and persons with disabilities are historically underrepresented groups.

(i) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the employer to remove artificial or real barriers which prevent or limit the employment and upward mobility of persons with disabilities.

(j) Proportionate Representation. "Proportionate representation" means that the percentage of persons from an historically underrepresented group in the applicable work force is at least equal to the percentage that members of that group represent in the pool of persons who are determined by the Chancellor to be available and qualified to perform the work in question.

(k) In-house or Promotional Only Hiring. "In-house or promotional only" hiring means that only existing district employees are allowed to apply for a position.

(l) Screening or Selection Procedure. "Screening or selection procedure" means any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques, including but not limited to, traditional paper and pencil tests, performance tests, and physical, educational, and work experience requirements, interviews, and review of application forms.

(m) Adverse or Disparate Impact. "Adverse impact" or "disparate impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on a historically underrepresented group as defined in Subsection (h).

NOTE: Authority cited: Sections 66700, 70901 and 87105, Education Code. Reference: Sections 87101, Education Code; Section 11092, Government Code; 29 C.F.R. 1602.48 (1981); 29 U.S.C. 793; 41 C.F.R. 60-741-2 (1980).

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a), (b)(1)-(b)-(3), (e), (k) and (m) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53002. Policy Statement.

The governing board of each community college district shall adopt a policy statement setting forth the district's commitment to an affirmative action employment program. This statement may also incorporate the nondiscrimination policy statement required pursuant to Section 59301 and other similar nondiscrimination or equal employment opportunity statements which may be required under other provisions of state and federal law.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53003. District Plan.

(a) The governing board of each community college district shall develop and adopt a district-wide written faculty and staff diversity plan to implement its affirmative action employment program. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) This plan shall include the goals and timetables for hiring and promotion of members of historically underrepresented groups for each college in the district and for the district as a whole. These goals and timetables shall be revised every three years and submitted to the Chancellor's Office for approval. When the district achieves proportionate representation for any historically underrepresented group in one or more of the categories specified in Section 53004(a), it shall so indicate when it next revises its goals and timetables. Thereafter, goals and timetables shall not be required for such a group in that job category or categories, unless underrepresentation subsequently recurs. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its plan.

(c) In addition, the plan shall include all of the following:

(1) the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this Subchapter pursuant to Section 53020;

(2) the procedure for filing complaints pursuant to Section 53026 and the person with whom such complaints are to be filed;

(3) a process for notifying all district employees of the provisions of the plan and the policy statement required under Section 53002;

(4) a process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this Subchapter and of state and federal nondiscrimination laws;

(5) a process for providing annual written notice to appropriate community organizations concerning the district's plan and the need for assistance from the community in identifying qualified members of historically underrepresented groups for openings with the district;

(6) an analysis of the number of persons from historically underrepresented groups who are employed in the district's work force and those who have applied for employment in each of the job categories listed in Section 53004(a);

(7) an analysis of the degree to which women, ethnic minorities, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each such job category; and

(8) a plan of corrective action, including goals and timetables for hiring and promotion, which is necessary to remedy any underrepresentation identified in the plan by achieving proportionate representation for all historically underrepresented groups in all job classifications.

(d) The plans submitted to the Chancellor shall be public records.

(e) Each community college district shall make a continuous good faith effort to comply with the requirements of the plan required under this Section.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (c)(4) and (7) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53004. District Evaluation and Report to Chancellor.

(a) Each district shall annually survey its employees and shall monitor applicants for employment on an ongoing basis in order to evaluate its progress in reaching the goals set forth in its faculty and staff diversity plan. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey of em-

ployees at each college in the district. Each employee shall be reported so that he or she may be identified as belonging to one of the following seven job categories:

(1) executive/administrative/managerial;
(2) faculty and other instructional staff;
(3) professional nonfaculty;
(4) secretarial/clerical;
(5) technical and paraprofessional;
(6) skilled crafts; and
(7) service and maintenance.

(b) For purposes of the report to the Chancellor, Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part of the Asian/Pacific Islander group as well as in separate subcategories. However, in the goal-setting process, separate employment goals are not needed for these subgroups.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; and Section 8310.5, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53005. Advisory Committee.

Each community college district shall establish a Faculty and Staff Diversity Advisory Committee to assist the district in developing and implementing the plan required under Section 53003. This advisory committee shall include members of all historically underrepresented groups whenever possible.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53010. Assistance.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87103, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53011. Report.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87104, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53012. Periodic Evaluation.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87102, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

Article 2. Other Specific Responsibilities of Community College Districts

§ 53020. Responsibility; Delegation of Authority; Complaints.

(a) The governing board of each community college district is ultimately responsible for proper implementation of this Subchapter at all levels of district and college operation and for making measurable progress toward the goals established in the district's faculty and staff diversity plan. In carrying out this responsibility, the governing board, upon the recommendation of the chief executive officer, shall ensure that an affirmative action officer is designated to oversee the day-to-day implementation of the requirements set forth in this Subchapter.

(b) The administrative structure created by any delegation of authority to the affirmative action officer or others shall be described in the district's faculty and staff diversity plan submitted pursuant to Section 53003 and shall be designed in such a manner so as to ensure prompt and effective implementation of the requirements of this Subchapter. The plan shall also designate a single officer, who may be the affirmative action officer, who shall be given authority and responsibility for receiving complaints filed pursuant to Section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by Sections 53023 and 53024.

(c) Any organization or individual, whether or not an employee of the district, who acts on behalf of the governing board with regard to the recruitment and screening of personnel is an agent of the district and is subject to all of the requirements of this Subchapter.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a) and (c) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53021. Recruitment.

(a) Community college districts shall undertake a program of verifiable affirmative action recruitment of qualified members of historically underrepresented groups in all job categories and classifications, including, but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions.

(b) "In-house or promotional only" recruitment shall not be used to fill any new opening except when:

(1) the pool of eligible district employees has achieved proportionate representation and the district has an upward mobility program which is included in the faculty and staff diversity plan approved by the Chancellor;

(2) the position is being filled on an interim basis (not to exceed one year) to allow for full and open recruitment; or

(3) justified by "business necessity" as defined in Section 53001(c).

(c) If a district believes justification exists for use of the "business necessity" exception, it shall so notify the Faculty and Staff Diversity Advisory Committee established pursuant to Section 53005 and the Chancellor at least ten (10) working days prior to offering the position to a candidate.

(d) Even where in-house or promotional only recruitment is permitted pursuant to Subsection (b), all qualified district employees shall be afforded the opportunity to apply.

(e) For purposes of this Section, a new opening is not created when:

(1) there is a reorganization or series of transfers that do not result in a net increase in the number of employees;

(2) a position which is currently occupied by an incumbent and is upgraded, reclassified, or renamed without significantly altering the duties being performed by the individual;

(3) the faculty in a division or department elect one faculty member to serve as a chairperson for a prescribed limited term; or

(4) the position is filled by a temporary appointment using recruitment procedures authorized by other provisions of law.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment subsections (b) and (d)-(e)(2) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53022. Job Announcements and Required Qualifications.

Job announcements shall state clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance. For faculty and administrative positions, job requirements shall include a sensitivity to and understanding of the diverse academic, socioeconomic, cul-

tural, disability, and ethnic backgrounds of community college students. Job specifications, including any "desired" or "required" qualifications beyond the state minimum qualifications (set forth in Subchapter 4, commencing with Section 53400 of this Chapter) which the district wishes to utilize, shall be reviewed before the position is announced, to ensure conformity with the requirements of this Subchapter and state and federal nondiscrimination laws.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53023. Applicant Pool.

(a) All applicants shall be given an opportunity to identify themselves as being a member of a historically underrepresented group when their application is submitted. This information shall be kept confidential and shall be used only in research, validation, monitoring, evaluating the effectiveness of the district's affirmative action employment program, or any other purpose specifically authorized in this Subchapter, or by any applicable statute or regulation.

(b) After the application deadline has passed, applications shall be screened to determine which candidates satisfy job specifications set forth in the job announcement. Before the selection process begins, the composition of the qualified applicant pool shall be analyzed to ensure that the goals established in the district's faculty and staff diversity plan may be furthered and that members of historically underrepresented groups are not adversely impacted. If this is not the case, the chief executive officer or his or her designee shall take effective steps to address the adverse impact before the selection process is begun. Such steps may include, but are not limited to:

(1) the deadline is extended and additional recruitment focused on historically underrepresented groups is undertaken;

(2) applicants from historically underrepresented groups who were initially screened out because they failed to meet locally established "desirable or preferred" qualifications beyond state minimum qualifications are included in the applicant pool where such applicants may be expected to meet these additional qualifications through appropriate training or experience within a reasonable length of time;

(3) locally established qualifications beyond state minimum qualifications are modified or removed and the application deadline is extended.

(c) If adverse impact persists after taking steps required under subdivision (b), the selection process may proceed only if:

(1) the job announcement does not require qualifications beyond the statewide minimum qualifications;

(2) locally established qualifications beyond state minimum qualifications, if any, are shown to be job related and consistent with business necessity through a process meeting the requirements of federal law; or

(3) the particular requirements beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job–related and consistent with business necessity throughout the community college system.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; 42 U.S.C. 2000e–2.

HISTORY

1. New section filed 2–26–82; designated effective 2–28–82 pursuant to Government Code section 11346.2(d) (Register 82, No. 9).
2. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53024. Screening or Selection Procedures.

(a) All screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, shall be:

(1) provided to the Chancellor upon request;

(2) designed to ensure that for faculty and administrative positions, consideration is given to the extent to which applicants have a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students;

(3) based solely on job–related criteria, provided that, when a particular candidate who meets the minimum qualifications for the job is also a member of an historically underrepresented group, this membership may be taken into account as one factor in the final selection process where this would further achievement of the goals set forth in the district's faculty and staff diversity plan; and

(4) designed and monitored to ensure that they do not have an adverse impact on members of historically underrepresented groups.

(b) If monitoring pursuant to subsection (a)(4) reveals that any selection technique or procedure has adversely impacted any historically underrepresented group, the chief executive officer or his/her designee shall suspend the selection process and timely and effective steps shall be taken to remedy the problem before the selection process resumes. The affirmative action officer, or other official charged with responsibility for monitoring selection procedures, may assist the screening committee by discussing the overall composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact, provided that confidential information about individual candidates is not disclosed. Where necessary, the position may be re–opened at any time and a new selection process initiated in a way designed to avoid adverse impact.

(c) A district may not designate or set aside particular positions to be filled by members of any group defined in terms of race, ethnicity, gender, age, disability, or any other characteristic which would result in discriminatory treatment prohibited by state or federal law. Nor may a district apply goals set forth in the district's faculty and staff diversity plan in a rigid manner which has the purpose or effect of so discriminating.

(d) Seniority or length of service may be taken into consideration only to the extent it is job related, is not the sole criterion, and is included in the job announcement consistent with the requirements of Section 53022.

(e) Selection testing for employees shall follow procedures as outlined in Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures."

(f) Selection committees shall include members of historically underrepresented groups whenever possible.

(g) Notwithstanding any other provision of this Division, the governing board or its designee shall have the authority to make all final hiring decisions based upon careful review of the candidate or candidates recommended by a screening committee. This includes the right to reject all candidates and order further review by the screening committee or reopening of the position where necessary to further achievement of the goals established in the faculty and staff diversity plan. However, consistent failure to select qualified candidates from historically underrepresented groups who are recommended by screening committees shall constitute a violation of Section 51010 of this Division.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53025. Persons with Disabilities.

(a) Each community college district shall establish goals and timetables for hiring and promoting of persons with disabilities, provided that data on the availability of persons with disabilities who are qualified for employment by community colleges is furnished by the Chancellor.

(b) During each academic year, districts shall monitor for adverse impact on persons with disabilities consistent with the requirements of Sections 53004, 53023, and 53024 and shall report pursuant to Section 53004 on the numbers of persons with disabilities who are employed by the district.

(c) Districts shall ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code Sections 11135 et seq., Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Such accommodations may include, but are not limited to, job site modifications, job restructuring, flexible scheduling, adaptive equipment, and

auxiliary aids such as readers, interpreters, and notetakers. Such accommodations may be paid for with faculty and staff diversity funds provided pursuant to Article 3 (commencing with Section 53030) of this Subchapter.

NOTE: Authority cited: Sections 70901 and 87103, Education Code. Reference: Sections 87100 et seq., Education Code; Sections 11135 et seq., Government Code; 29 U.S.C. 794; 42 U.S.C. Sections 12101, et seq.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of section and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53026. Complaints.

Each community college district shall establish a process permitting any person to file a complaint alleging that the requirements of this Subchapter have been violated. A copy of the complaint shall immediately be forwarded to the Chancellor who may require that the district provide a written investigative report within ninety (90) days. Complaints which also allege discrimination prohibited by Government Code Sections 11135 et seq. shall be processed according to the procedures set forth in Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division.

NOTE: Authority Cited: Sections 70901 and 87105, Education Code; and Sections 11135 et seq. Government Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53027. Applicability to Districts Operating on the Merit System.

Nothing in this Subchapter shall be construed to conflict with or be inconsistent with the provisions of Article 3 (commencing with Section 88060) of Chapter 4 of Part 51 of the Education Code which apply to districts operating a merit system for classified employees.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq. and 88060 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53028. Affirmative Action Commitment.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53029. Handicapped.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code; Section 11135, Government Code; 29 U.S.C. 705 and 706.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Article 3. Faculty and Staff Diversity Fund

§ 53030. Fund Allocation.

Before the end of the fiscal year preceding the year of allocation, the Chancellor shall recommend to the Board of Governors an allocation formula for distribution of the Faculty and Staff Diversity Fund established pursuant to Education Code Section 87107. The allocation shall be consistent with the following:

(a) A portion of the fund, but not more than 25 percent, shall be set aside for the purposes of Education Code Section 87107(c), provided that:

(1) sufficient funds to provide technical assistance, service, monitoring, and compliance functions shall be designated from these monies; and

(2) the remainder of these funds shall be distributed on the basis of the full-time equivalent students of each district as a proportion of the total full-time equivalent students for all districts. These funds are to be used to reimburse costs as specified in Education Code Section 87107.

(b) That portion of the funds not allocated pursuant to Subsection (a) may be allocated to the districts in the following five categories:

(1) an amount proportional to the full-time equivalent students of each district to the total full-time equivalent students for all districts;

(2) an equal dollar amount to each district;

(3) an amount related to success in employing ethnic minorities in Equal Employment Opportunity ("EEO") 6 categories 1 through 3 (professional positions);

(4) an amount related to success in employing ethnic minorities in EEO6 categories 4 through 7 (nonprofessional positions); and

(5) an amount related to past success in employing ethnic minorities, women, and persons with disabilities, as evidenced by the proportion of ethnic minority and women staff in each of the EEO6 categories and for the proportion of persons with disabilities in the general staff.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53031. Success.

For the purpose of this Subchapter, "success" is defined as:

(a) for ethnic minorities, a hiring rate of 30 percent (30%) in each of the professional occupational areas and a hiring rate equivalent to the Standard Metropolitan Statistical Area (SMSA)/COUNTY availability rate, as provided by the Chancellor's Office, in each of the nonprofessional occupational areas;

(b) a hiring and staffing rate for women and a staffing rate for ethnic minorities equivalent to the availability rate, as provided by the Chancellor's Office; and

(c) an overall staffing rate for persons with disabilities equivalent to the general availability rate, as provided by the Chancellor's Office.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of subsection (a) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53032. Point Factors.

(a) In determining the sub-allocations for Section 53030(b)(3), (4), and (5), a point-factor system shall be used. A district will receive points as shown below for: (1) each of the above sections dealing with ethnic minorities and women in each EEO6 category, based on the latest annual survey required under Section 53004 of this Subchapter; and (2) the total hiring reported in the Section 53004 survey, or in a special survey of persons with disabilities, if necessary.

Degree of Success	*Proportion of Goal Met*	*Points*
None	0.00%	0
Low	0.01–33.32%	1
Moderate	33.33–66.66%	2
High	66.67–99.99%	3
Successful	100.00%	4

(b) For each district, a statistical quantity will be calculated for each EEO6 category, or on the total staffing in the case of persons with disabilities, based on the ratio of points awarded to the district, divided by the total points awarded to all districts. The sum of a district's category calculations, divided by the number of categories in which hiring/staffing took place, shall determine the share of the sub-allocation provided the district.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53033. Failure to Report.

Any district failing to provide the data required under Section 53004 is not in compliance with this Subchapter. Faculty and Staff Diversity funds for any given fiscal year, other than those under Section 53030(a) and (b)(1) and (2), shall not be granted unless the district provides the data no later than March 31st of the preceding fiscal year.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53034. Required Report.

Districts shall submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. Until such time as a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required under Section 53004, districts will report that rate by a separate survey conducted, as directed by the Chancellor's Office.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53040. Governing Board's Affirmative Action Employment Policy Statement.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Section 87101, Education Code; Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980); 20 U.S.C. 793; 41 C.F.R. 60–741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60–250.1–.9, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53041. Affirmative Action Responsibilities and Duties.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53042. Affirmative Action Officer.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53043. Internal Dissemination.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53044. External Dissemination.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53045. Complaint Procedure.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53046. Work Force Analysis.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: 29 C.F.R. 1602.48 (1981).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Editorial correction of section heading (Register 94, No. 38).

§ 53049. Utilization Analysis.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53050. Corrective Action.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53051. Goals and Timetables.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53052. Affirmative Action Advisory Committee.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53060. Fund Allocation.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53061. Success.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Editorial correction of printing error in subsection (c) (Register 91, No. 31).
3. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53062. Point Factors.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53063. Failure to Report.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53064. Required Report.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9–10–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10–10–90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Subchapter 2. Certificated Positions

Article 1. Special Non-Credentialed Employees

§ 53100. Prerequisites for Employment Under Education Code Section 87401.

NOTE: Authority cited: Sections 71020, 71064, and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Renumbering of chapter 1 (sections 53100–53205) to chapter 2 (sections 53100–53205) filed 7–19–77; effective thirtieth day thereafter (Register 77, No. 30).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53101. Processing of Fingerprint Cards.

NOTE: Authority cited: Sections 71020, 71064, 87220 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53102. Cause for Dismissal.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53103. Report of Persons Employed.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Article 1.5. Sick Leave Transfer

§ 53125. Transfer of Accumulated Sick Leave.

This Section prescribes the manner in which the amount of accumulated sick leave is certified for transfer under Sections 87782, 87783, and 87785 of the Education Code.

(a) As used in this Section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code Section 87781 but is unused.

(b) Transfer shall be certified as follows:

(1) The person who accumulated the sick leave or the new employing agency requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave,

(2) Upon receipt of the request, the former employing agency transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is charged with maintaining employee attendance records,

(3) The new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code Section 87785.

NOTE: Authority cited: Sections 70901, 71024 and 87782, Education Code. Reference: Sections 87781, 87782, 87783 and 87785, Education Code.

HISTORY

1. New subchapter 1.5 (section 53125) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Article 1.6. Evaluation of Academic Employees

§ 53130. Availability of Rules and Regulations for Evaluation of Performance.

The governing board of a community college district shall adopt and cause to be printed and made available to each academic employee of the district reasonable rules and regulations providing for the evaluation of the performance of academic employees in their assigned duties.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. New article 1.6 heading filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Article 2. Academic Senates

§ 53200. Definitions.

For the purpose of this Subchapter:

(a) "Faculty" means those employees of a community college district who are employed in positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code, and for which minimum qualifications for hire are specified by the Board of Governors.

(b) "Academic senate," "faculty council," and "faculty senate" means an organization formed in accordance with the provisions of this Subchapter whose primary function, as the representative of the faculty, is to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters. For purposes of this Subchapter, reference to the term "academic senate" also constitutes reference to "faculty council" or "faculty senate."

(c) "Academic and professional matters" means the following policy development and implementation matters:

(1) curriculum, including establishing prerequisites and placing courses within disciplines;

(2) degree and certificate requirements;

(3) grading policies;

(4) educational program development;

(5) standards or policies regarding student preparation and success;

(6) district and college governance structures, as related to faculty roles;

(7) faculty roles and involvement in accreditation processes, including self-study and annual reports;

(8) policies for faculty professional development activities;

(9) processes for program review;

(10) processes for institutional planning and budget development; and

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(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

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History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52310. Action by the Chancellor.

Note: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 87332, 87340, 87341 and 87342, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52311. Special Revocation.

Note: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 87332, 87340, 87341 and 87342, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Subarticle 3. Administrative Hearing Procedure

§ 52320. Administrative Hearing.

Note: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 11503 and 11504, Government Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Subchapter 2. Validation of Service Without a Credential

§ 52400. Application.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52401. Approval.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52402. Verification.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52403. Investigation and Recommendation.

Note: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

History

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Chapter 4. Employees

Subchapter 1. Affirmative Action and Equal Employment Opportunity Programs

Article 1. General

§ 53000. Scope and Intent.

(a) This Subchapter implements and should be read in conjunction with Government Code Sections 11135–11139.5, Education Code Section 200 et seq., Education Code Sections 87100 et seq., Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101).

(b) The regulations in this Subchapter require affirmative steps to promote faculty and staff diversity which are in addition to the nondiscrimination requirements of state or federal law. Therefore, compliance with these regulations or approval of the district's faculty and staff diversity plan pursuant to Section 53003 does not imply and should not be construed to mean that a district has necessarily complied with its obligations under any other applicable laws or regulations. The Chancellor shall assist districts in identifying other applicable state or federal laws which may affect district affirmative action or nondiscrimination policies.

Note: Authority cited: Sections 70901 and 87105, Education Code; and Section 11138, Government Code. Reference: Sections 200 et seq., and 87100 et seq., Education Code; Sections 11135–11139.5, Government Code; Title 20, United States Code, Section 1681; Title 29, United States Code, Section 794; and Title 42, United States Code, Sections 2000d, 6101 and 12100, et seq.

History

1. New chapter 1 (sections 53000–53004) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).
2. Repealer of chapter 1 (subchapter 1, sections 53000–53004) and new chapter 1 (subchapters 1–4, sections 53000–53052, not consecutive) filed 2-1-82; effective thirtieth day thereafter (Register 82, No. 6).
3. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
4. Amendment of subsection (a) and Note filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53001. Definitions.

As used in this Subchapter:

(a) Affirmative Action Employment Programs. "Affirmative action employment programs" means all the various methods by which equal employment opportunity is ensured and expected representation is to be achieved for qualified members of historically underrepresented groups. Such methods include, but are not limited to, using nondiscriminatory employment practices, actively recruiting, monitoring and taking other steps to ensure equal employment opportunities, promoting diversity in the work force, and taking corrective action consistent with the requirements of Section 53006.

(b) Faculty and Staff Diversity Plan. A "faculty and staff diversity plan" is a written document in which a district's work force is analyzed and specific result-oriented plans and procedures are set forth for ensuring equal employment opportunity, promoting diversity, and achieving expected representation of qualified members of historically underrepresented groups.

(c) Business Necessity. "Business necessity" means circumstances which justify an exception to the requirements of Section 53021 because compliance with that Section would result in substantial additional financial cost to the district or pose a significant threat to human life or safety. Business necessity requires greater financial cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.

(d) Equal Employment Opportunity. "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity

to compete for hiring and promotion and to enjoy the benefits of employment with the district.

(e)(1) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks/African-Americans, and Hispanics/Latinos.

(2) Ethnicity. "Ethnicity" means the ethnic group in which an individual is included or with which an individual identifies. A person shall be included in the group with which he or she identifies as his or her group, but may be counted in only one ethnic group. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.

(f) Goals. "Goals" means a statement that the district will strive to attract and hire additional qualified members of an historically underrepresented group in order to achieve the level of expected representation for that group by a target date established by taking into account the expected turnover in the work force and the availability of persons from that group who are qualified to perform a particular job. Goals are not "quotas" or rigid proportions.

(g) Person with a Disability. "Person with a disability" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A person with a disability is "substantially limited" if he or she is likely to experience difficulty in securing, retaining or advancing in employment because of such an impairment.

(h) Historically Underrepresented Group. "Historically underrepresented group" means ethnic minorities, women and persons with disabilities. The Board of Governors recognizes that ethnic minorities, women and persons with disabilities have historically faced discrimination and other obstacles that limited their opportunities for education, employment and upward mobility. The Board of Governors further acknowledges that as early as 1983 evidence became available documenting that these groups were underrepresented in many job classifications in many community college districts throughout the system.

(i) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the employer to remove artificial or real barriers which prevent or limit the employment and upward mobility of persons with disabilities.

(j) Expected Representation. "Expected representation" means that the percentage of persons from an historically underrepresented group in the applicable work force is substantially the same as the percentage that members of that group would be expected to represent given the number of persons from that group in the pool of persons who are determined by the Chancellor to be available and qualified to perform the work in question.

(k) In-house or Promotional Only Hiring. "In-house or promotional only" hiring means that only existing district employees are allowed to apply for a position.

(l) Screening or Selection Procedure. "Screening or selection procedure" means any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques, including but not limited to, traditional paper and pencil tests, performance tests, and physical, educational, and work experience requirements, interviews, and review of application forms.

(m) Adverse or Disparate Impact. "Adverse impact" or "disparate impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on any group defined in terms of ethnicity, gender, or disability. A disparity identified in a given selection process will not be considered to constitute adverse impact if:

(1) the numbers involved are too small to permit a meaningful comparison;

(2) the disparity is attributable to the fact that affirmative action recruitment resulted in large numbers of persons from historically underrepresented groups in the applicant pool; or

(3) the disparity occurs because the district is taking corrective action pursuant to Section 53006 to overcome the significant underrepresentation of another group.

(n) Diversity. "Diversity" means a condition each district must strive to achieve in which the district's work force includes men and women, persons with disabilities, and individuals from all ethnic groups in numbers adequate to ensure that the community college provides an inclusive educational and employment environment which fosters cooperation, acceptance, democracy and free expression of ideas. Diversity should exist at all levels and in all job categories listed in Section 53004(a). Although there is no universal or specific measure for determining when diversity has been achieved, the demographics of the adult population of the state and of the community served by the district should both be considered.

(o) Target Date. "Target date" means a point in time by which the district plans to meet an established goal and achieve expected representation for a particular historically underrepresented group in a particular job category.

(p) Timetable. "Timetable" means a set of specific annual hiring objectives that will lead to meeting a goal by a projected target date.

(q) Significantly Underrepresented Group. "Significantly underrepresented group" means any historically underrepresented group for which:

(1) the percentage of persons from that group employed by the district in any job category listed in Section 53004(a) is below seventy percent (70%) of the percentage that members of that group would be expected to represent given the pool of persons who are available and qualified to perform the work in question; or

(2) the number of persons from that group employed by the district in any job category listed in Section 53004(a) is lower than the number that would be expected given the number of persons from that group in the pool of persons available and qualified to perform the work in question, and that discrepancy is found to be statistically significant using the chi square test or any other statistical test the Chancellor determines to be appropriate for this purpose; or

(3) where small numbers are involved, both (1) and (2) are satisfied. The Chancellor shall issue guidelines to assist districts with the proper application of these rules in determining significant underrepresentation.

NOTE: Authority cited: Sections 66700, 70901 and 87105, Education Code. Reference: Sections 87101, Education Code; Section 11092, Government Code; 29 C.F.R. 1602.48 (1981); 29 C.F.R. 1607, 29 U.S.C. 793; 41 C.F.R. 60-741-2 (1980).

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a), (b)(1)-(b)-(3), (c), (k) and (m) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (a), (b), (e), (f), (h), (j) and (m), new subsections (m)(1)-(q)(3), and amendment of NOTE filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53002. Policy Statement.

The governing board of each community college district shall adopt a policy statement setting forth the district's commitment to an affirmative action employment program. This statement may also incorporate the nondiscrimination policy statement required pursuant to Section 59301 and other similar nondiscrimination or equal employment opportunity statements which may be required under other provisions of state and federal law.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

History

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53003. District Plan.

(a) The governing board of each community college district shall develop and adopt a district-wide written faculty and staff diversity plan to implement its affirmative action employment program. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) This plan shall include the goals and timetables, as appropriate, for hiring and promotion of members of historically underrepresented groups developed pursuant to Section 53006 for each college in the district and for the district as a whole. Such plans shall be reviewed at least every three years and, if necessary, revised and submitted to the Chancellor's Office for approval. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its plan.

(c) In particular, the plan shall include all of the following:

(1) the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this Subchapter pursuant to Section 53020;

(2) the procedure for filing complaints pursuant to Section 53026 and the person with whom such complaints are to be filed;

(3) a process for notifying all district employees of the provisions of the plan and the policy statement required under Section 53002;

(4) a process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this Subchapter and of state and federal nondiscrimination laws;

(5) a process for providing annual written notice to appropriate community organizations concerning the district's plan and the need for assistance from the community in identifying qualified members of historically underrepresented groups for openings with the district;

(6) an analysis of the number of persons from historically underrepresented groups who are employed in the district's work force and those who have applied for employment in each of the job categories listed in Section 53004(a);

(7) an analysis of the degree to which women, ethnic minorities, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each such job category and whether or not the underrepresentation is significant;

(8) the steps the district will take to achieve diversity in its work force;

(9) goals for addressing any underrepresentation identified pursuant to Subparagraph (7); and

(10) a plan of corrective action consistent with Section 53006, including goals and timetables for hiring and promotion, if necessary, to remedy any significant underrepresentation identified in the plan by achieving expected representation for all historically underrepresented groups in all job categories listed in Section 53004(a).

(d) The plans submitted to the Chancellor shall be public records.

(e) Each community college district shall make a continuous good faith effort to comply with the requirements of the plan required under this Section.

(f) In developing the availability data called for in Subsection (c)(7), the Chancellor shall work through the established Consultation Process.

Note: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

History

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (c)(4) and (7) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (b), (c) and (c)(7), new subsections (c)(8)-(9) and subsection renumbering, amendment of newly designated subsection (c)(10) and new subsection (f) filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53004. District Evaluation and Report to Chancellor.

(a) Each district shall annually survey its employees and shall monitor applicants for employment on an ongoing basis in order to evaluate its progress in implementing its faculty and staff diversity plan and to provide data needed for the analyses required by Sections 53003, 53006, 53023, and 53024. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey of employees at each college in the district. Each employee shall be reported so that he or she may be identified as belonging to one of the following seven job categories:

(1) executive/administrative/managerial;
(2) faculty and other instructional staff;
(3) professional nonfaculty;
(4) secretarial/clerical;
(5) technical and paraprofessional;
(6) skilled crafts; and
(7) service and maintenance.

(b) For purposes of the survey and report required pursuant to Subsection (a) of this Section, each applicant or employee shall be afforded the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability. Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part of the Asian/Pacific Islander group as well as in separate subcategories. However, in determining whether corrective action is necessary, analysis of the separate subgroups is not necessary.

Note: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; and Section 8310.5, Government Code.

History

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a) and (b) filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53005. Advisory Committee.

Each community college district shall establish a Faculty and Staff Diversity Advisory Committee to assist the district in developing and implementing the plan required under Section 53003. This advisory committee shall include members of all historically underrepresented groups whenever possible.

Note: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

History

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53006. Corrective Action.

(a) Continuation of Existing Goals. If a district established a goal prior to the effective date of this Section and significant underrepresentation still exists, it shall update that goal, set a new target date for achieving expected representation for that group in the category or categories in question, and concurrently do the following:

(1) review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group;

(2) consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective; and

(3) Comply with Subsection (c) of this Section.

(b) New Goals. If a district determines, pursuant to Section 53003(c)(7), that a particular group is significantly underrepresented with respect to one or more job categories, and no goal has previously been set, the district shall take corrective action consistent with this Section. At a minimum, the district shall:

(1) review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group;

(2) consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective;

(3) determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in (1) and (2) have been in place a reasonable period of time; and

(4) if significant underrepresentation persists, the district shall set a goal with a target date for achieving expected representation for the significantly underrepresented group in each job category where significant underrepresentation persists. The staffing rate for the significantly underrepresented group in the specified job category or categories shall be monitored on an ongoing basis and the use of goals shall be discontinued when expected representation has been achieved for that group in the category or categories in question.

(c) Additional Measures. If a goal has been set, and after a reasonable period of time significant underrepresentation persists for a particular group in the job category in question, the district shall establish a specific timetable to project the levels of annual hiring of persons from the significantly underrepresented group which will be necessary to meet the goal by the target date. In addition, the district shall implement one or more of the following additional corrective measures until expected representation has been achieved for that group in the category in question.

(1) include in the applicant pool applicants from significantly underrepresented groups who were initially screened out because they failed to meet locally established "desirable or preferred" qualifications beyond state minimum qualifications, where such applicants can be expected to meet the additional qualifications through appropriate training or experience within one year.

(2) consider, as one factor in the final selection process, the fact that a candidate is a member of a significantly underrepresented group, provided that the qualifications of the candidates under consideration are reasonably considered to be substantially equivalent.

(d) New Goals for Women or Persons with Disabilities. Where either women or persons with disabilities are found to be significantly underrepresented, and no goal has previously been set for that group, the measures required under Subsections (b)(1) and (b)(2) shall be implemented concurrently with setting a goal with a target date for achieving expected representation for that group in each job category where the underrepresentation was found to exist. Goals shall remain in effect only until expected representation has been achieved for that group in the category or categories in question. Until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category, an aggregate labor force availability rate shall be utilized for setting goals for hiring persons with disabilities with respect to the total district work force. The district may also concurrently take other corrective action which takes gender or disability into account, so long as such measures are discontinued when expected representation is achieved for that group in the category or categories in question.

(e) Definition of Reasonable Period. For purposes of this Section, "a reasonable period of time" means three years, or such longer period as the Chancellor may approve, upon the request of the faculty and staff diversity committee and the chief executive officer, where the district has not filled enough positions to appreciably alter the composition of its work force in the job category in question.

(f) Other Voluntary Measures. Nothing in this Subchapter shall be construed to prohibit a district from taking any other steps it concludes are necessary to ensure equal employment opportunity, provided that such actions are consistent with the requirements of federal and state constitutional and statutory nondiscrimination law.

NOTE: Authority cited: Sections 70901 and 87105, Education Code; and Section 11138, Government Code. Reference: Sections 87100 et seq., Education Code; and Sections 11135–111139.5, Government Code.

HISTORY

1. New section filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53010. Assistance.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87103, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53011. Report.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87104, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53012. Periodic Evaluation.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87102, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Article 2. Other Specific Responsibilities of Community College Districts

§ 53020. Responsibility; Delegation of Authority; Complaints.

(a) The governing board of each community college district is ultimately responsible for proper implementation of this Subchapter at all levels of district and college operation and for making measurable progress toward the goals established in the district's faculty and staff diversity plan. In carrying out this responsibility, the governing board, upon the recommendation of the chief executive officer, shall ensure that an affirmative action officer is designated to oversee the day–to–day implementation of the requirements set forth in this Subchapter.

(b) The administrative structure created by any delegation of authority to the affirmative action officer or others shall be described in the district's faculty and staff diversity plan submitted pursuant to Section 53003 and shall be designed in such a manner so as to ensure prompt and effective implementation of the requirements of this Subchapter. The plan shall also designate a single officer, who may be the affirmative action officer, who shall be given authority and responsibility for receiving complaints filed pursuant to Section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by Sections 53023 and 53024.

(c) Any organization or individual, whether or not an employee of the district, who acts on behalf of the governing board with regard to the recruitment and screening of personnel is an agent of the district and is subject to all of the requirements of this Subchapter.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of subsections (a) and (c) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53021. Recruitment.

(a) Except as otherwise provided in this Section, community college districts shall actively recruit from both within and outside the district work force to attract qualified applicants for all new openings. This shall include focused outreach to historically underrepresented groups. The requirement of open recruitment shall apply to all new full–time and part–time openings in all job categories and classifications, including, but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. Recruitment for full–time faculty and educational administrator positions shall be at least statewide and, at a

minimum, shall include seeking qualified applicants listed in the California Community Colleges Faculty and Staff Diversity Registry. Recruitment for part-time faculty positions may be conducted separately for each new opening or by annually establishing a pool of eligible candidates, but in either case full and open affirmative action recruitment is required consistent with this Section.

(b) "In-house or promotional only" recruitment shall not be used to fill any new opening except when:

(1) the pool of eligible district employees has achieved expected representation for all historically underrepresented groups and the district has an upward mobility program which is included in the faculty and staff diversity plan approved by the Chancellor;

(2) the position is being filled on an interim basis for the minimum time necessary to allow for full and open recruitment; provided however, that no interim appointment or series of interim appointments exceed one year in duration. The Chancellor may approve an extension of up to one additional year if the district demonstrates "business necessity" as defined in Section 53001(c).

(c) If a district believes justification exists for use of any of the exceptions listed in Subsection (b), it shall so notify the Faculty and Staff Diversity Advisory Committee established pursuant to Section 53005 and the Chancellor at least ten (10) working days prior to offering the position to a candidate.

(d) Even where in-house or promotional only recruitment is permitted pursuant to Subsection (b), the district shall comply with its established hiring procedures and all qualified district employees shall be afforded the opportunity to apply.

(e) For purposes of this Section, a new opening is not created when:

(1) there is a reorganization or series of lateral transfers that do not result in a net increase in the number of employees;

(2) a position which is currently occupied by an incumbent is upgraded, reclassified, or renamed without significantly altering the duties being performed by the individual;

(3) the faculty in a division or department elect one faculty member to serve as a chairperson for a prescribed limited term;

(4) the position is filled by a temporary, short-term, or substitute employee appointed pursuant to Education Code Sections 87422, 87480, 87482.5(b) 88003, 88106 or 88109; or

(5) a part-time faculty member is assigned to teach the same or fewer hours he or she has previously taught in the same discipline without a substantial break in service. For purposes of this Section, "a substantial break in service" means more than one calendar year or such different period as may be defined by a collective bargaining agreement.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment subsections (b) and (d)-(e)(2) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (a) and (b)(1)-(b)(2), repealer of subsection (b)(3), amendment of subsections (c), (d) and (e)(1)-(e)(4) and new subsection (e)(5) filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53022. Job Announcements and Required Qualifications.

Job announcements shall state clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance. For faculty and administrative positions, job requirements shall include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. Job specifications, including any "desired" or "required" qualifications beyond the state minimum qualifications (set forth in Subchapter 4, commencing with Section 53400 of this Chapter) which the district wishes to utilize, shall be reviewed before the position is announced, to ensure conformity with the requirements of this Subchapter and state and federal nondiscrimination laws.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer and new section filed 2-26-82; designated effective 2-28-82 pursuant to Government Code section 11346.2(d) (Register 82, No. 9).
3. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
4. Amendment of subsections (a) and (b), repealer of subsection (b)(2) and subsection renumbering, and amendment of subsection (c)(2) filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53023. Applicant Pool.

(a) The application for employment shall afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability. This information shall be kept confidential and shall be used only in research, validation, monitoring, evaluating the effectiveness of the district's affirmative action employment program, or any other purpose specifically authorized in this Subchapter, or by any applicable statute or regulation.

(b) After the application deadline has passed, the composition of the initial applicant pool shall be analyzed to ensure that expected representation has been achieved for historically underrepresented groups. If necessary the application deadline shall be extended and additional focused recruitment shall be conducted for any historically underrepresented group for which expected representation has not been achieved. When the expected representation of historically underrepresented groups is achieved, or further recruitment efforts would be futile, applications shall be screened to determine which candidates satisfy job specifications set forth in the job announcement. Before the selection process continues, the composition of the qualified applicant pool shall be analyzed to ensure that no group, defined in terms of ethnicity, gender or disability, is adversely impacted pursuant to Section 53001(m). If adverse impact is found to exist, the chief executive officer or his or her designee shall take effective steps to address the adverse impact before the selection process is begun. Such steps may include, but are not limited to:

(1) the deadline is extended and additional recruitment focused on historically underrepresented groups is undertaken;

(2) locally established qualifications beyond state minimum qualifications are modified or removed and the application deadline is extended.

(c) If adverse impact persists after taking steps required under subdivision (b), the selection process may proceed only if:

(1) the job announcement does not require qualifications beyond the statewide minimum qualifications;

(2) locally established qualifications beyond state minimum qualifications, if any, are validated as job related and consistent with business necessity through a process meeting the requirements of federal law; or

(3) the particular requirements beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; 42 U.S.C. 2000e-2.

HISTORY

1. New section filed 2-26-82; designated effective 2-28-82 pursuant to Government Code section 11346.2(d) (Register 82, No. 9).
2. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
3. Amendment of subsections (a) and (b), repealer of subsection (b)(2) and subsection renumbering, and amendment of subsection (c)(2) filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53024. Screening or Selection Procedures.

(a) All screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, shall be:

(1) provided to the Chancellor upon request;

(2) designed to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students;

(3) based solely on job-related criteria, except as authorized by Section 53006; and

(4) designed and monitored to ensure that they do not have an adverse impact, as defined in Section 53001(m), on any group defined in terms of ethnicity, gender, or disability.

(b) If monitoring pursuant to subsection (a)(4) reveals that any selection technique or procedure has adversely impacted any such group, the chief executive officer or his/her designee shall suspend the selection process and timely and effective steps shall be taken to remedy the problem before the selection process resumes. The affirmative action officer, or other official charged with responsibility for monitoring selection procedures, may assist the screening committee by discussing the overall composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact, provided that confidential information about individual candidates is not disclosed. Where necessary, the position may be re-opened at any time and a new selection process initiated in a way designed to avoid adverse impact.

(c) A district may not designate or set aside particular positions to be filled by members of any group defined in terms of race, ethnicity, gender, age, or disability, or engage in any other practice which would result in discriminatory treatment prohibited by state or federal law. Nor may a district apply the goals, if any, set forth in the district's faculty and staff diversity plan in a rigid manner which has the purpose or effect of so discriminating.

(d) Seniority or length of service may be taken into consideration only to the extent it is job related, is not the sole criterion, and is included in the job announcement consistent with the requirements of Section 53022.

(e) Selection testing for employees shall follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures."

(f) Selection committees shall include members of historically underrepresented groups whenever possible.

(g) Notwithstanding any other provision of this Division, the governing board or its designee shall have the authority to make all final hiring decisions based upon careful review of the candidate or candidates recommended by a screening committee. This includes the right to reject all candidates and order further review by the screening committee or reopening of the position where necessary to further achievement of the goals, if any, established in the faculty and staff diversity plan. However, consistent failure to select qualified candidates from historically underrepresented groups who are recommended by screening committees shall constitute a violation of Section 51010 of this Division.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a)(2)-(c), (e) and (g) filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53025. Persons with Disabilities.

Districts shall ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code Sections 11135 et seq., Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Such accommodations may include, but are not limited to, job site modifications, job restructuring, flexible scheduling, adaptive equipment, and auxiliary aids such as readers, interpreters, and notetakers. Such accommodations may be paid for with faculty and staff diversity funds provided pursuant to Article 3 (commencing with Section 53030) of this Subchapter.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; Sections 11135 et seq., Government Code; 29 U.S.C. 794; 42 U.S.C. Sections 12101, et seq.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of section and NOTE filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Repealer of subsections (a) and (b) and deletion of subsection designator filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53026. Complaints.

Each community college district shall establish a process permitting any person to file a complaint alleging that the requirements of this Subchapter have been violated. A copy of the complaint shall immediately be forwarded to the Chancellor who may require that the district provide a written investigative report within ninety (90) days. Complaints which also allege discrimination prohibited by Government Code Sections 11135 et seq. shall be processed according to the procedures set forth in Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division.

NOTE: Authority Cited: Sections 70901 and 87105, Education Code; and Sections 11135 et seq. Government Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53027. Applicability to Districts Operating on the Merit System.

Nothing in this Subchapter shall be construed to conflict with or be inconsistent with the provisions of Article 3 (commencing with Section 88060) of Chapter 4 of Part 51 of the Education Code which apply to districts operating a merit system for classified employees.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq. and 88060 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53028. Affirmative Action Commitment.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53029. Handicapped.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code; Section 11135, Government Code; 29 U.S.C. 705 and 706.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

Article 3. Faculty and Staff Diversity Fund

§ 53030. Fund Allocation.

Before the end of the fiscal year preceding the year of allocation, the Chancellor shall recommend to the Board of Governors an allocation formula for distribution of the Faculty and Staff Diversity Fund established pursuant to Education Code Section 87107. The allocation shall be consistent with the following:

(a) A portion of the fund, but not more than 25 percent, shall be set aside for the purposes of Education Code Section 87107(c), provided that:

(1) sufficient funds to provide technical assistance, service, monitoring, and compliance functions shall be designated from these monies; and

(2) the remainder of these funds shall be distributed on the basis of the full-time equivalent students of each district as a proportion of the total

full-time equivalent students for all districts. These funds are to be used to reimburse costs as specified in Education Code Section 87107.

(b) That portion of the funds not allocated pursuant to Subsection (a) may be allocated to the districts in the following five categories:

(1) an amount proportional to the full-time equivalent students of each district to the total full-time equivalent students for all districts;

(2) an equal dollar amount to each district;

(3) an amount related to success in promoting diversity. Multiple methods of measuring success shall be identified by the Chancellor working through the established Consultation Process.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (b) and (b)(3) and repealer of subsections (b)(4) and (b)(5) filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53031. Success.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsection (a) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Repealer of section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53032. Point Factors.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer of section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53033. Failure to Report.

Any district failing to provide the data required under Section 53004 is not in compliance with this Subchapter. Faculty and Staff Diversity funds for any given fiscal year, other than those under Section 53030(a), shall not be granted unless the district provides the data no later than March 31st of the preceding fiscal year.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53034. Required Report.

Districts shall submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. Until such time as a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required under Section 53004, districts will report that rate by a separate survey conducted, as directed by the Chancellor's Office.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53040. Governing Board's Affirmative Action Employment Policy Statement.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Section 87101, Education Code; Executive Order 11246, 3 C.F.R. 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980); 20 U.S.C. 793; 41 C.F.R. 60-741.1-.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1-.9, et seq. (1980).

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53041. Affirmative Action Responsibilities and Duties.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53042. Affirmative Action Officer.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53043. Internal Dissemination.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53044. External Dissemination.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53045. Complaint Procedure.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53046. Work Force Analysis.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: 29 C.F.R. 1602.48 (1981).

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Editorial correction of section heading (Register 94, No. 38).

§ 53049. Utilization Analysis.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980).

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53050. Corrective Action.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980).

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53051. Goals and Timetables.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53052. Affirmative Action Advisory Committee.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53060. Fund Allocation.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9-10-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10-10-90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

to compete for hiring and promotion and to enjoy the benefits of employment with the district.

(e)(1) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks/African-Americans, and Hispanics/Latinos.

(2) Ethnicity. "Ethnicity" means the ethnic group in which an individual is included or with which an individual identifies. A person shall be included in the group with which he or she identifies as his or her group, but may be counted in only one ethnic group. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.

(f) Goals. "Goals" means a statement that the district will strive to attract and hire additional qualified members of an historically underrepresented group in order to achieve the level of expected representation for that group by a target date established by taking into account the expected turnover in the work force and the availability of persons from that group who are qualified to perform a particular job. Goals are not "quotas" or rigid proportions.

(g) Person with a Disability. "Person with a disability" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A person with a disability is "substantially limited" if he or she is likely to experience difficulty in securing, retaining or advancing in employment because of such an impairment.

(h) Historically Underrepresented Group. "Historically underrepresented group" means ethnic minorities, women and persons with disabilities. The Board of Governors recognizes that ethnic minorities, women and persons with disabilities have historically faced discrimination and other obstacles that limited their opportunities for education, employment and upward mobility. The Board of Governors further acknowledges that as early as 1983 evidence became available documenting that these groups were underrepresented in many job classifications in many community college districts throughout the system.

(i) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the employer to remove artificial or real barriers which prevent or limit the employment and upward mobility of persons with disabilities.

(j) Expected Representation. "Expected representation" means that the percentage of persons from an historically underrepresented group in the applicable work force is substantially the same as the percentage that members of that group would be expected to represent given the number of persons from that group in the pool of persons who are determined by the Chancellor to be available and qualified to perform the work in question.

(k) In-house or Promotional Only Hiring. "In-house or promotional only" hiring means that only existing district employees are allowed to apply for a position.

(l) Screening or Selection Procedure. "Screening or selection procedure" means any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques, including but not limited to, traditional paper and pencil tests, performance tests, and physical, educational, and work experience requirements, interviews, and review of application forms.

(m) Adverse or Disparate Impact. "Adverse impact" or "disparate impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on any group defined in terms of ethnicity, gender, or disability. A disparity identified in a given selection process will not be considered to constitute adverse impact if:

(1) the numbers involved are too small to permit a meaningful comparison;

(2) the disparity is attributable to the fact that affirmative action recruitment resulted in large numbers of persons from historically underrepresented groups in the applicant pool; or

(3) the disparity occurs because the district is taking corrective action pursuant to Section 53006 to overcome the significant underrepresentation of another group.

(n) Diversity. "Diversity" means a condition each district must strive to achieve in which the district's work force includes men and women, persons with disabilities, and individuals from all ethnic groups in numbers adequate to ensure that the community college provides an inclusive educational and employment environment which fosters cooperation, acceptance, democracy and free expression of ideas. Diversity should exist at all levels and in all job categories listed in Section 53004(a). Although there is no universal or specific measure for determining when diversity has been achieved, the demographics of the adult population of the state and of the community served by the district should both be considered.

(o) Target Date. "Target date" means a point in time by which the district plans to meet an established goal and achieve expected representation for a particular historically underrepresented group in a particular job category.

(p) Timetable. "Timetable" means a set of specific annual hiring objectives that will lead to meeting a goal by a projected target date.

(q) Significantly Underrepresented Group. "Significantly underrepresented group" means any historically underrepresented group for which:

(1) the percentage of persons from that group employed by the district in any job category listed in Section 53004(a) is below seventy percent (70%) of the percentage that members of that group would be expected to represent given the pool of persons who are available and qualified to perform the work in question; or

(2) the number of persons from that group employed by the district in any job category listed in Section 53004(a) is lower than the number that would be expected given the number of persons from that group in the pool of persons available and qualified to perform the work in question, and that discrepancy is found to be statistically significant using the chi square test or any other statistical test the Chancellor determines to be appropriate for this purpose; or

(3) where small numbers are involved, both (1) and (2) are satisfied. The Chancellor shall issue guidelines to assist districts with the proper application of these rules in determining significant underrepresentation.

NOTE: Authority cited: Sections 66700, 70901 and 87105, Education Code. Reference: Sections 87101, Education Code; Section 11092, Government Code; 29 C.F.R. 1602.48 (1981); 29 C.F.R. 1607, 29 U.S.C. 793; 41 C.F.R. 60-741-2 (1980).

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a), (b)(1)-(b)-(3), (c), (k) and (m) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (a), (b), (e), (f), (h), (j) and (m), new subsections (m)(1)-(q)(3), and amendment of NOTE filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53002. Policy Statement.

The governing board of each community college district shall adopt a policy statement setting forth the district's commitment to an affirmative action employment program. This statement may also incorporate the nondiscrimination policy statement required pursuant to Section 59300 and other similar nondiscrimination or equal employment opportunity statements which may be required under other provisions of state and federal law.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

2. Amendment filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 53003. District Plan.

(a) The governing board of each community college district shall develop and adopt a district-wide written faculty and staff diversity plan to implement its affirmative action employment program. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) This plan shall include the goals and timetables, as appropriate, for hiring and promotion of members of historically underrepresented groups developed pursuant to Section 53006 for each college in the district and for the district as a whole. Such plans shall be reviewed at least every three years and, if necessary, revised and submitted to the Chancellor's Office for approval. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its plan.

(c) In particular, the plan shall include all of the following:

(1) the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this Subchapter pursuant to Section 53020;

(2) the procedure for filing complaints pursuant to Section 53026 and the person with whom such complaints are to be filed;

(3) a process for notifying all district employees of the provisions of the plan and the policy statement required under Section 53002;

(4) a process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this Subchapter and of state and federal nondiscrimination laws;

(5) a process for providing annual written notice to appropriate community organizations concerning the district's plan and the need for assistance from the community in identifying qualified members of historically underrepresented groups for openings with the district;

(6) an analysis of the number of persons from historically underrepresented groups who are employed in the district's work force and those who have applied for employment in each of the job categories listed in Section 53004(a);

(7) an analysis of the degree to which women, ethnic minorities, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each such job category and whether or not the underrepresentation is significant;

(8) the steps the district will take to achieve diversity in its work force;

(9) goals for addressing any underrepresentation identified pursuant to Subparagraph (7); and

(10) a plan of corrective action consistent with Section 53006, including goals and timetables for hiring and promotion, if necessary, to remedy any significant underrepresentation identified in the plan by achieving expected representation for all historically underrepresented groups in all job categories listed in Section 53004(a).

(d) The plans submitted to the Chancellor shall be public records.

(e) Each community college district shall make a continuous good faith effort to comply with the requirements of the plan required under this Section.

(f) In developing the availability data called for in Subsection (c)(7), the Chancellor shall work through the established Consultation Process.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (c)(4) and (7) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (b), (c) and (c)(7), new subsections (c)(8)-(9) and subsection renumbering, amendment of newly designated subsection (c)(10) and new subsection (f) filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53004. District Evaluation and Report to Chancellor.

(a) Each district shall annually survey its employees and shall monitor applicants for employment on an ongoing basis in order to evaluate its progress in implementing its faculty and staff diversity plan and to provide data needed for the analyses required by Sections 53003, 53006, 53023, and 53024. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey of employees at each college in the district. Each employee shall be reported so that he or she may be identified as belonging to one of the following seven job categories:

(1) executive/administrative/managerial;

(2) faculty and other instructional staff;

(3) professional nonfaculty;

(4) secretarial/clerical;

(5) technical and paraprofessional;

(6) skilled crafts; and

(7) service and maintenance.

(b) For purposes of the survey and report required pursuant to Subsection (a) of this Section, each applicant or employee shall be afforded the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability. Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part of the Asian/Pacific Islander group as well as in separate subcategories. However, in determining whether corrective action is necessary, analysis of the separate subgroups is not necessary.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; and Section 8310.5, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a) and (b) filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53005. Advisory Committee.

Each community college district shall establish a Faculty and Staff Diversity Advisory Committee to assist the district in developing and implementing the plan required under Section 53003. This advisory committee shall include members of all historically underrepresented groups whenever possible.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53006. Corrective Action.

(a) Continuation of Existing Goals. If a district established a goal prior to the effective date of this Section and significant underrepresentation still exists, it shall update that goal, set a new target date for achieving expected representation for that group in the category or categories in question, and concurrently do the following:

(1) review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group;

(2) consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective; and

(3) Comply with Subsection (c) of this Section.

(b) New Goals. If a district determines, pursuant to Section 53003(c)(7), that a particular group is significantly underrepresented with respect to one or more job categories, and no goal has previously been set, the district shall take corrective action consistent with this Section. At a minimum, the district shall:

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§ 53000
§ 53001
§ 53002
§ 53003
§ 53004
§ 53005
§ 53006
§ 53020
§ 53021
§ 53022
§ 53024
§ 53025
§ 53026
§ 53027
§ 53030
§ 53033
§ 53034

HISTORY

repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for ...ting only pursuant to Government Code section 11343.8 (Register 91, No. ...).

§ 52310. Action by the Chancellor.

NOTE: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 87332, 87340, 87341 and 87342, Education Code.

HISTORY

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52311. Special Revocation.

NOTE: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 87332, 87340, 87341 and 87342, Education Code.

HISTORY

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Subarticle 3. Administrative Hearing Procedure

§ 52320. Administrative Hearing.

NOTE: Authority cited: Sections 71020, 87274 and 87295, Education Code. Reference: Sections 11503 and 11504, Government Code.

HISTORY

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Subchapter 2. Validation of Service Without a Credential

§ 52400. Application.

NOTE: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

HISTORY

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52401. Approval.

NOTE: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

HISTORY

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52402. Verification.

NOTE: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

HISTORY

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

§ 52403. Investigation and Recommendation.

NOTE: Authority cited: Section 87810, Education Code. Reference: Sections 87275, 87278, 87281, 87284 and 87295, Education Code.

HISTORY

1. Repealer of section filed 3-4-91; operative 4-5-91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 43).

Chapter 4. Employees

Subchapter 1. Equal Employment Opportunity Programs

Article 1. General

§ 53000. Scope and Intent.

(a) This subchapter implements and should be read in conjunction with Government Code sections 11135–11139.5, Education Code sections 66010.2, 66030, and Chapter 4.5 of Part 40 of Title 3, commencing with section 66250; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101). Nothing in this subchapter shall be construed to conflict with or be inconsistent with the provisions of article 1, section 31 of the California Constitution or to authorize conduct that is in conflict with or is inconsistent with such provisions.

(b) The regulations in this subchapter require steps to promote faculty and staff equal employment opportunity which are in addition to and consistent with the nondiscrimination requirements of state or federal law. Therefore, compliance with these regulations or approval of the district's equal employment opportunity plan pursuant to section 53003 does not imply and should not be construed to mean that a district has necessarily complied with its obligations under any other applicable laws or regulations. The Chancellor shall assist districts in identifying other applicable state or federal laws which may affect district equal employment opportunity or nondiscrimination policies.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; Sections 11135–11139.5, Government Code; Title 20, United States Code, Section 1681; Title 29, United States Code, Section 794; and Title 42, United States Code, Sections 2000d, 6101 and 12100, et seq.

HISTORY

1. New chapter 1 (sections 53000–53004) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).
2. Repealer of chapter 1 (subchapter 1, sections 53000–53004) and new chapter 1 (subchapters 1–4, sections 53000–53052, not consecutive) filed 2-1-82; effective thirtieth day thereafter (Register 82, No. 6).
3. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
4. Amendment of subsection (a) and NOTE filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
5. Amendment of subchapter heading, section and NOTE filed 7-12-2002; operative 8-11-2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53001. Definitions.

As used in this subchapter:

(a) Adverse Impact. "Adverse impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on any group defined in terms of ethnic group identification, gender, or disability. A disparity identified in a given selection process will not be considered to constitute adverse impact if the numbers involved are too small to permit a meaningful comparison.

(b) Business Necessity. "Business necessity" means circumstances which justify an exception to the requirements of section 53021 because compliance with that section would result in substantial additional financial cost to the district or pose a significant threat to human life or safety. Business necessity requires greater financial cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.

(c) Equal Employment Opportunity. "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity

to compete for hiring and promotion and to enjoy the benefits of employment with the district. Equal employment opportunity should exist at all levels and in all job categories listed in section 53004(a). Ensuring equal employment opportunity also involves creating an environment which fosters cooperation, acceptance, democracy, and free expression of ideas and is welcoming to men and women, persons with disabilities, and individuals from all ethnic and other groups protected from discrimination by this subchapter.

(d) Equal Employment Opportunity Plan. An "equal employment opportunity plan" is a written document in which a district's work force is analyzed and specific plans and procedures are set forth for ensuring equal employment opportunity.

(e) Equal Employment Opportunity Programs. "Equal employment opportunity programs" means all the various methods by which equal employment opportunity is ensured. Such methods include, but are not limited to, using nondiscriminatory employment practices, actively recruiting, monitoring and taking additional steps consistent with the requirements of section 53006.

(f)(1) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks/African-Americans, and Hispanics/Latinos.

(2) Ethnic Group Identification. "Ethnic group identification" means an individual's identification in one or more of the ethnic groups reported to the Chancellor pursuant to section 53004. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.

(g) Goals for Persons with Disabilities. "Goals for persons with disabilities" means a statement that the district will strive to attract and hire additional qualified persons with a disability in order to achieve the level of projected representation for that group by a target date established by taking into account the expected turnover in the work force and the availability of persons with disabilities who are qualified to perform a particular job. Goals are not "quotas" or rigid proportions.

(h) In-house or Promotional Only Hiring. "In-house or promotional only" hiring means that only existing district employees are allowed to apply for a position.

(i) Monitored Group. "Monitored group" means those groups identified in section 53004(b) for which monitoring and reporting is required pursuant to section 53004(a).

(j) Person with a Disability. "Person with a disability" means any person who (1) has a physical or mental impairment as defined in Government Code section 12926 which limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A person with a disability is "limited" if the condition makes the achievement of the major life activity difficult.

(k) Projected Representation. "Projected representation" means the percentage of persons from a monitored group determined by the Chancellor to be available and qualified to perform the work in question.

(l) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the district to remove artificial or real barriers which prevent or limit the employment and upward mobility of persons with disabilities. "Reasonable accommodations" may include the items designated in section 53025.

(m) Screening or Selection Procedure. "Screening or selection procedure" means any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques, including but not limited to, traditional paper and pencil tests, performance tests, and physical, educational, and work experience requirements, interviews, and review of application forms.

(n) Significantly Underrepresented Group. "Significantly underrepresented group" means any monitored group for which the percentage of persons from that group employed by the district in any job category listed in section 53004(a) is below eighty percent (80%) of the projected representation for that group in the job category in question.

(o) Target Date. "Target date" means a point in time by which the district plans to meet an established goal for persons with disabilities and thereby achieve projected representation in a particular job category.

(p) Timetable. "Timetable" means a set of specific annual hiring objectives that will lead to meeting a goal for persons with a disability by a projected target date.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; Sections 11135-11139.5, 11092 and 12926, Government Code; 29 C.F.R. 1602.48 (1981); 29 C.F.R. 1607, 29 U.S.C. 793; 41 C.F.R. 60-741-2 (1980).

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a), (b)(1)-(b)-(3), (c), (k) and (m) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (a), (b), (e), (f), (h), (j) and (m), new subsections (m)(1)-(q)(3), and amendment of NOTE filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
4. Amendment of section and NOTE filed 7-12-2002; operative 8-11-2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53002. Policy Statement.

The governing board of each community college district shall adopt a policy statement setting forth the district's commitment to an equal employment opportunity program. This statement may also incorporate the nondiscrimination policy statement required pursuant to section 59300 and other similar nondiscrimination or equal employment opportunity statements which may be required under other provisions of state and federal law.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.1, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135-11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
4. Amendment of section and NOTE filed 7-12-2002; operative 8-11-2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53003. District Plan.

(a) The governing board of each community college district shall develop and adopt a district-wide written equal employment opportunity plan to implement its equal employment opportunity program. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) Such plans shall be reviewed at least every three years and, if necessary, revised and submitted to the Chancellor's Office for approval. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its plan.

(c) In particular, the plan shall include all of the following:

(1) the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this subchapter pursuant to section 53020;

(2) the procedure for filing complaints pursuant to section 53026 and the person with whom such complaints are to be filed;

(3) a process for notifying all district employees of the provisions of the plan and the policy statement required under section 53002;

(4) a process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this subchapter and of state and federal nondiscrimination laws;

(5) a process for providing annual written notice to appropriate community-based and professional organizations concerning the district's plan and the need for assistance from the community and such organizations in identifying qualified applicants;

(6) an analysis of the number of persons from monitored groups who employed in the district's work force and those who have applied for ployment in each of the job categories listed in section 53004(a);

(7) an analysis of the degree to which monitored groups are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each such job category and whether or not the underrepresentation is significant;

(8) methods for addressing any underrepresentation identified pursuant to subparagraph (7)

(9) additional steps consistent with section 53006 to remedy any significant underrepresentation identified in the plan; and

(10) any other measures necessary to further equal employment opportunity throughout the district.

(d) The plan shall include any goals for hiring persons with disabilities that are required by section 53025.

(e) The plans submitted to the Chancellor shall be public records.

(f) Each community college district shall make a continuous good faith effort to comply with the requirements of the plan required under this section.

(g) In developing the availability data called for in subsection (c)(7), the Chancellor shall work through the established Consultation Process.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and sections 11135-11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (c)(4) and (7) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (b), (c) and (c)(7), new subsections (c)(8)-(9) and section renumbering, amendment of newly designated subsection (c)(10) new subsection (f) filed 5-31-96; operative 6-30-96. Submitted to OAL printing only (Register 96, No. 23).
4. Amendment of section and NOTE filed 7-12-2002; operative 8-11-2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53004. District Evaluation and Report to Chancellor.

(a) Each district shall annually survey its employees and shall monitor applicants for employment on an ongoing basis in order to evaluate the implementation of its equal employment opportunity plan and to provide data needed for the analyses required by sections 53003, 53006, 53023, and 53024. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey of employees at each college in the district. Each employee shall be reported so that he or she may be identified as belonging to one of the following seven job categories:

(1) executive/administrative/managerial;
(2) faculty and other instructional staff;
(3) professional nonfaculty;
(4) secretarial/clerical;
(5) technical and paraprofessional;
(6) skilled crafts; and
(7) service and maintenance.

(b) For purposes of the survey and report required pursuant to subsection (a) of this section, each applicant or employee shall be afforded the opportunity to identify his or her gender, ethnic group identification and, if applicable, his or her disability. A person may designate multiple ethnic groups with which he or she identifies, but shall be counted in only one ethnic group for reporting purposes. Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part of the Asian/Pacific Islander group as well as in separate subcategories. ever, in determining whether additional steps are necessary to enat monitored groups have not been excluded on an impermissible , analysis of the separate subgroups is not necessary.

NOTE: Authority cited: Sections 66271.1, 66700, 70901 and 87105, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 8310.5 and 11135-11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a) and (b) filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
4. Amendment of subsections (a) and (b) and amendment of NOTE filed 7-12-2002; operative 8-11-2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53005. Advisory Committee.

Each community college district shall establish an Equal Employment Opportunity Advisory Committee to assist the district in developing and implementing the plan required under section 53003. This advisory committee shall include a diverse membership whenever possible.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135-11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of section and NOTE filed 7-12-2002; operative 8-11-2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53006. Additional Steps to Ensure Equal Employment Opportunity.

(a) If a district determines that a particular monitored group is significantly underrepresented with respect to one or more job categories, the district shall take additional steps consistent with this section. At a minimum, the district shall:

(1) review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group;

(2) consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective;

(3) determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in (1) and (2) have been in place a reasonable period of time; and

(4) if significant underrepresentation persists, the staffing rate for the significantly underrepresented group in the specified job category or categories shall be monitored on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question.

(b) If a reasonable period of time passes and significant underrepresentation persists for a particular group in the job category in question, the district shall:

(1) review each locally established "required," "desired" or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job-related and consistent with business necessity through a process meeting the requirements of federal law or is among those qualifications which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system;

(2) discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in paragraph (1) of this subdivision; and

(3) continue using qualification standards meeting the requirements of paragraph (1) only where no alternative qualification standard is reasonably available which would select for the same characteristics, meet the requirements of paragraph (1) and be expected to have a less exclusionary effect.

(c) For purposes of this section, "a reasonable period of time" means three years, or such longer period as the Chancellor may approve, upon the request of the equal employment opportunity advisory committee and the chief executive officer, where the district has not filled enough positions to appreciably affect its work force in the job category in question.

(d) Nothing in this subchapter shall be construed to prohibit a district from taking any other steps it concludes are necessary to ensure equal employment opportunity, provided that such actions are consistent with the requirements of federal and state constitutional and statutory nondiscrimination law.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. New section filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
2. Amendment of section heading, section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53010. Assistance.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87103, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53011. Report.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87104, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53012. Periodic Evaluation.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87102, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Article 2. Other Specific Responsibilities of Community College Districts

§ 53020. Responsibility; Delegation of Authority; Complaints.

(a) The governing board of each community college district is ultimately responsible for proper implementation of this subchapter at all levels of district and college operation and for making measurable progress toward equal employment opportunity by the methods described in the district's equal employment opportunity plan. In carrying out this responsibility, the governing board, upon the recommendation of the chief executive officer, shall ensure that an equal employment opportunity officer is designated to oversee the day–to–day implementation of the requirements set forth in this subchapter.

(b) The administrative structure created by any delegation of authority to the equal employment opportunity officer or others shall be described in the district's equal employment opportunity plan submitted pursuant to section 53003 and shall be designed in such a manner so as to ensure prompt and effective implementation of the requirements of this subchapter. The plan shall also designate a single officer, who may be the equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints filed pursuant to section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by sections 53023 and 53024.

(c) Any organization or individual, whether or not an employee of the district, who acts on behalf of the governing board with regard to the recruitment and screening of personnel is an agent of the district and is subject to all of the requirements of this subchapter.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of subsections (a) and (c) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53021. Recruitment.

(a) Except as otherwise provided in this section, community college districts shall actively recruit from both within and outside the district work force to attract qualified applicants for all new openings. This shall include outreach designed to ensure that all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. The requirement of open recruitment shall apply to all new full–time and part–time openings in all job categories and classifications, including, but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. Recruitment for full–time faculty and educational administrator positions shall be at least statewide and, at a minimum, shall include seeking qualified applicants listed in the California Community Colleges Equal Employment Opportunity Registry. Recruitment for part–time faculty positions may be conducted separately for each new opening or by annually establishing a pool of eligible candidates, but in either case full and open recruitment is required consistent with this section.

(b) "In–house or promotional only" recruitment shall not be used to fill any new opening except when the position is being filled on an interim basis for the minimum time necessary to allow for full and open recruitment; provided however, that no interim appointment or series of interim appointments exceed one year in duration. The Chancellor may approve an extension of up to one additional year if the district demonstrates "business necessity" as defined in section 53001(b).

(c) If a district believes justification exists for use of the exception listed in subsection (b), it shall so notify the Equal Employment Opportunity Advisory Committee established pursuant to section 53005 and the Chancellor at least ten (10) working days prior to offering the position to a candidate.

(d) Even where in–house or promotional only recruitment is permitted pursuant to subsection (b), the district shall comply with its established hiring procedures and all qualified district employees shall be afforded the opportunity to apply.

(e) For purposes of this section, a new opening is not created when:

(1) there is a reorganization or series of lateral transfers that do not result in a net increase in the number of employees;

(2) a position which is currently occupied by an incumbent is upgraded, reclassified, or renamed without significantly altering the duties being performed by the individual;

(3) the faculty in a division or department elect one faculty member to serve as a chairperson for a prescribed limited term;

(4) the position is filled by a temporary, short–term, or substitute employee appointed pursuant to Education Code sections 87422, 87480, 87482.5(b) 88003, 88106 or 88109; or

(5) a part–time faculty member is assigned to teach the same or fewer hours he or she has previously taught in the same discipline without a substantial break in service. For purposes of this section, "a substantial break in service" means more than one calendar year or such different period as may be defined by a collective bargaining agreement.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment subsections (b) and (d)–(e)(2) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (a) and (b)(1)–(b)(2), repealer of subsection (b)(3), amendment of subsections (c), (d) and (e)(1)–(e)(4) and new subsection (e)(5) filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).

4. Amendment of section and NOTE filed 7-12-2002; operative 8-11-2002. Submitted to OAL for printing only (Register 2002, No. 35).

...d022. Job Announcements and Qualifications.

Job announcements shall state clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance. For faculty and administrative positions, job requirements shall include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. Job specifications, including any "required," "desired" or "preferred" qualifications beyond the state minimum qualifications (set forth in subchapter 4, commencing with section 53400 of this chapter) which the district wishes to utilize, shall be reviewed before the position is announced, to ensure conformity with the requirements of this subchapter and state and federal nondiscrimination laws.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 973, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135-11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of section heading, section and NOTE filed 7-12-2002; operative 8-11-2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53023. Applicant Pool.

(a) The application for employment shall afford each applicant an opportunity to voluntarily identify his or her gender, ethnic group identification and, if applicable, his or her disability. This information shall be kept confidential and shall be used only in research, validation, monitoring, evaluating the effectiveness of the district's equal employment opportunity program, or any other purpose specifically authorized in this subchapter, or by any applicable statute or regulation.

(b) After the application deadline has passed, the composition of the ... applicant pool shall be analyzed to ensure that any failure to obtain ...ed representation for any monitored group is not due to discrimi... recruitment procedures. If necessary, the application deadline shall be extended and additional recruitment shall be conducted that eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants. When recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile, applications shall be screened to determine which candidates satisfy job specifications set forth in the job announcement.

(c) Before the selection process continues, the composition of the qualified applicant pool shall be analyzed to ensure that no monitored group is adversely impacted pursuant to section 53001(a). If adverse impact is found to exist, the chief executive officer or his or her designee shall take effective steps to address the adverse impact before the selection process continues. Such steps may include, but are not limited to:

(1) extending the deadline and undertaking inclusive outreach efforts to ensure that members of the adversely impacted group have equal opportunity to seek employment with the district;

(2) including all applicants who were screened out on the basis of any locally established qualifications beyond state minimum qualifications which have not been specifically demonstrated to be job-related and consistent with business necessity through a process meeting the requirements of federal law or which are not among those which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system.

(d) If adverse impact persists after taking steps required under subdivision (c), the selection process may proceed only if:

(1) the job announcement does not require qualifications beyond the statewide minimum qualifications; or

...ically established qualifications beyond state minimum qualifica... any, are demonstrated to be job-related and consistent with busi... necessity through a process meeting the requirements of federal law and suitable alternative selection procedures to reduce the adverse impact were unavailable; or

(3) the particular qualification beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system.

(e) The district may not advertise or utilize in future hiring processes for the same position or a substantially similar position any locally established qualifications beyond state minimum qualifications that the district was unable to verify under subsection (b)(2) unless such qualifications are so verified in advance of commencing any such future hiring process.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135-11139.5, Government Code

HISTORY

1. New section filed 2-26-82; designated effective 2-28-82 pursuant to Government Code section 11346.2(d) (Register 82, No. 9).
2. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
3. Amendment of subsections (a) and (b), repealer of subsection (b)(2) and subsection renumbering, and amendment of subsection (c)(2) filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
4. Amendment of section and NOTE filed 7-12-2002; operative 8-11-2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53024. Screening or Selection Procedures.

(a) All screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, shall be:

(1) provided to the Chancellor upon request;

(2) designed to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students;

(3) based solely on job-related criteria; and

(4) designed to avoid an adverse impact, as defined in section 53001(a), and monitored by means consistent with this section to detect and address any adverse impact which does occur for any monitored group.

(b) If monitoring pursuant to subsection (a)(4) reveals that any selection technique or procedure has adversely impacted any such group, the chief executive officer or his/her designee shall suspend the selection process and timely and effective steps shall be taken to remedy the problem before the selection process resumes. The equal employment opportunity officer, or other official charged with responsibility for monitoring selection procedures, may assist the screening committee by discussing the overall composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact, provided that confidential information about individual candidates is not disclosed. If adverse impact results from locally established qualifications beyond state minimum qualifications that have not been verified as described in section 53023(c)(2) or replaced with suitable alternatives having a lesser adverse impact, the use of such qualifications shall be immediately discontinued and any applicant eliminated on the basis of that qualification shall be continued in the hiring process. Where necessary, the position may be re-opened at any time and a new selection process initiated in a way designed to avoid adverse impact.

(c) A district may not designate or set aside particular positions to be filled by members of any group defined in terms of ethnic group identification, race, color, national origin, religion, age, gender, disability, ancestry or sexual orientation, or engage in any other practice which would result in discriminatory or preferential treatment prohibited by state or federal law. Nor may a district apply the district's equal employment opportunity plan in a rigid manner which has the purpose or effect of so discriminating.

(d) Seniority or length of service may be taken into consideration only to the extent it is job related, is not the sole criterion, and is included in the job announcement consistent with the requirements of section 53022.

(e) Selection testing for employees shall follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures."

(f) Whenever possible, screening committees shall include a diverse membership which will bring a variety of perspectives to the assessment of applicant qualifications.

(g) Notwithstanding any other provision of this division, the governing board or its designee shall have the authority to make all final hiring decisions based upon careful review of the candidate or candidates recommended by a screening committee. This includes the right to reject all candidates and to order further review by the screening committee or to reopen the position where necessary to further achievement of the objectives of the equal employment opportunity plan or to ensure equal employment opportunity. However, a consistent pattern of not hiring qualified candidates from a monitored group who are recommended by screening committees may give rise to an inference that the selections are not consistent with the objectives of equal employment opportunity that are required by this subchapter.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; and Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of subsections (a)(2)–(c), (e) and (g) filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53025. Persons with Disabilities.

(a) Districts shall ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code sections 11135 et seq. and 12940(m), section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Such accommodations may include, but are not limited to, job site modifications, job restructuring, part–time work schedules, flexible scheduling, reassignment to a reasonably equivalent vacant position, adaptive equipment, and auxiliary aids such as readers, interpreters, and notetakers. Such accommodations may be paid for with funds provided pursuant to article 3 (commencing with section 53030) of this subchapter.

(b) If a district established a goal for persons with disabilities prior to the effective date of this subsection and if significant underrepresentation still exists, it shall update that goal, set a new target date for achieving projected representation in the category or categories in question, and concurrently comply with subsections (a)(1), (a)(2) and (b) of section 53006 with respect to persons with disabilities.

(c) Where persons with disabilities are found to be significantly underrepresented, measures required under subsections (a)(1) and (a)(2) of section 53006 shall be implemented concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where the underrepresentation was found to exist. Goals shall remain in effect only until projected representation has been achieved for that group in the category or categories in question. Until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category, an aggregate labor force availability rate shall be utilized for setting goals for hiring persons with disabilities with respect to the total district work force. The district may also concurrently take other additional steps which take disability into account, so long as such measures are discontinued when projected representation is achieved for persons with disabilities in the category or categories in question.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code; 29 U.S.C. 794, and 42 U.S.C. Sections 12101, et seq.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of section and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Repealer of subsections (a) and (b) and deletion of subsection designator filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
4. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53026. Complaints.

Each community college district shall establish a process permitting any person to file a complaint alleging that the requirements of this subchapter have been violated. A copy of the complaint shall immediately be forwarded to the Chancellor who may require that the district provide a written investigative report within ninety (90) days. Complaints which also allege discrimination prohibited by Government Code sections 11135 et seq. shall be processed according to the procedures set forth in subchapter 5 (commencing with section 59300) of chapter 10 of this division.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; and Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53027. Applicability to Districts Operating on the Merit System.

Nothing in this subchapter shall be construed to conflict with or be inconsistent with the provisions of article 3 (commencing with section 88060) of chapter 4 of part 51 of the Education Code which apply to districts operating a merit system for classified employees.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; and Sections 66010.2, 66030, 66071, 66270, 87360 and 88060 et seq., Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53028. Affirmative Action Commitment.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53029. Handicapped.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code; Section 11135, Government Code; 29 U.S.C. 705 and 706.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Article 3. Faculty and Staff Diversity Fund

§ 53030. Equal Employment Opportunity Fund Allocation.

Resources provided to the Board of Governors for the purpose of promoting equal employment opportunity in hiring and promotion within the system shall be placed in an Equal Employment Opportunity Fund and shall be allocated consistent with the following:

(a) A portion of the fund, but not more than 25 percent, shall be set aside to provide technical assistance, service, monitoring, and compliance functions.

(b) That portion of the funds not allocated pursuant to subsection (a) may be allocated to the districts in the following categories:

(1) an amount proportional to the full-time equivalent students of each district to the total full-time equivalent students for all districts;

(2) an equal dollar amount to each district;

(3) an amount related to success in promoting equal employment opportunity. Multiple methods of measuring success shall be identified by the Chancellor working through the established Consultation Process.

(c) funds provided pursuant to this section may be used for:

(1) outreach and recruitment;

(2) in-service training on equal employment opportunity;

(3) accommodations for applicants and employees with disabilities pursuant to section 53025; and

(4) other activities to promote equal employment opportunity.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; and Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. Repealer and new section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of subsections (b) and (b)(3) and repealer of subsections (b)(4) and (b)(5) filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
4. Amendment of section heading, section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53031. Success.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of subsection (a) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Repealer of section filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53032. Point Factors.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Repealer of section filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).

§ 53033. Failure to Report.

Any district failing to provide the data required under Section 53004 is not in compliance with this subchapter. Equal Employment Opportunity funds for any given fiscal year, other than those under section 53030(a), shall not be granted unless the district provides the data no later than March 31st of the preceding fiscal year or receives an extension of the deadline from the Chancellor.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; and Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of section filed 5–31–96; operative 6–30–96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53034. Required Report.

Districts shall submit a report on the use of Equal Employment Opportunity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. Until such time as a data set to calculate the staffing rate of persons with disabilities has been integrated into the report required under section 53004, districts will report that rate by a separate survey conducted, as directed by the Chancellor's Office.

NOTE: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; and Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and Sections 11135–11139.5, Government Code.

HISTORY

1. New section filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Amendment of section and NOTE filed 7–12–2002; operative 8–11–2002. Submitted to OAL for printing only (Register 2002, No. 35).

§ 53040. Governing Board's Affirmative Action Employment Policy Statement.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Section 87101, Education Code; Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980); 20 U.S.C. 793; 41 C.F.R. 60–741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60–250.1–.9, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53041. Affirmative Action Responsibilities and Duties.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53042. Affirmative Action Officer.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53043. Internal Dissemination.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53044. External Dissemination.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53045. Complaint Procedure.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53046. Work Force Analysis.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: 29 C.F.R. 1602.48 (1981).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
2. Editorial correction of section heading (Register 94, No. 38).

§ 53049. Utilization Analysis.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53050. Corrective Action.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60–2.1–3.2, et seq. (1980).

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53051. Goals and Timetables.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp.

HISTORY

1. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

§ 53052. Affirmative Action Advisory Committee.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

HISTORY

1. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53060. Fund Allocation.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9-10-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10-10-90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53061. Success.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9-10-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10-10-90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Editorial correction of printing error in subsection (c) (Register 91, No. 31).
3. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53062. Point Factors.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9-10-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10-10-90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53063. Failure to Report.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9-10-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10-10-90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

§ 53064. Required Report.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

HISTORY

1. New section filed 9-10-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 10-10-90 (Register 90, No. 45). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

Subchapter 2. Certificated Positions

Article 1. Special Non-Credentialed Employees

§ 53100. Prerequisites for Employment Under Education Code Section 87401.

NOTE: Authority cited: Sections 71020, 71064, and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Renumbering of chapter 1 (sections 53100-53205) to chapter 2 (sections 53100-53205) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53101. Processing of Fingerprint Cards.

NOTE: Authority cited: Sections 71020, 71064, 87220 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53102. Cause for Dismissal.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53103. Report of Persons Employed.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

Article 1.5. Sick Leave Transfer

§ 53125. Transfer of Accumulated Sick Leave.

This Section prescribes the manner in which the amount of accumulated sick leave is certified for transfer under Sections 87782, 87783, and 87785 of the Education Code.

(a) As used in this Section, accumulated siek leave means a leave of absence for illness or injury that is earned under Education Code Section 87781 but is unused.

(b) Transfer shall be certified as follows:

(1) The person who accumulated the sick leave or the new employing agency requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave,

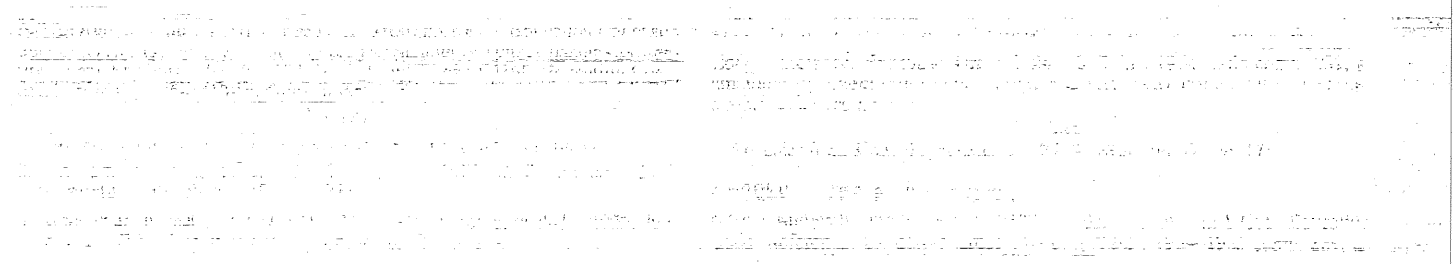
(2) Upon receipt of the request, the former employing agency transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is charged with maintaining employee attendance records,

(3) The new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code Section 87785.

NOTE: Authority cited: Sections 70901, 71024 and 87782, Education Code. Reference: Sections 87781, 87782, 87783 and 87785, Education Code.

HISTORY

1. New subchapter 1.5 (section 53125) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Editorial correction of HISTORY 4 (Register 95, No. 19).



No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 06: Student Fees

History Index for
Title 5, California Code of Regulations

Section 51012

Register 83-29 Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000-51021, not consecutive).

Register 91-23 § 51012: Amendment by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

Register 95-15 § 51012: Editorial correction of HISTORY 1.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

Register 1983-29

§ 51012

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55025) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income if the business entity or source of income provides education, training, or experience to persons toward attaining a valid credential for employment as an instructor, supervisor, chief administrative officer, librarian, counselor, supervisor of health, student personnel worker, or other similar position within a Community College district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations affirming and fixing the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in chapter 9 (commencing with section 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

(c) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

Senior Accounting Officers (Specialists) 3
Accounting Officers (Specialists) 3
Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of History 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long–range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 07: Approval of New Colleges & Ed Centers

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Section 51014
Section 55825
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Register 83-29 Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000-51021, not consecutive).

New Chapter 11 (sections 55825-55831, not consecutive).

Register 91-23 § 51014: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55825: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55827: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to

Education Code section 70901.5(b).

§ 55828: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55829: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55830: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55831: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 91-43 § 55825: Editorial correction of printing error.

Register 94-38 § 51014: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 55827: Amendment of subsections (a), (a)(3) and (b). Submitted

to OAL for printing only pursuant to Education Code section 70901.5.

Register 95-15 § 51014: Editorial correction of HISTORY 1.

Register 95-22 § 55825: Editorial correction of HISTORY 2.

§ 55827: Editorial correction of HISTORY 1.

§ 55828: Editorial correction of HISTORY 1.

§ 55829: Editorial correction of HISTORY 1.

§ 55830: Editorial correction of HISTORY 1.

§ 55831: Editorial correction of HISTORY 1.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55825) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

CHAPTER 11. NEW COLLEGES AND EDUCATION CENTERS

55825. Responsibilities of District Governing Boards.

The governing board of a community college district planning the formation of a new college or educational center as defined in Section 51827 shall employ and comply with the standards contained in Sections 51829, 51830 and 51831 of this chapter.

NOTE: Authority cited: Sections 66700 and 71020, Education Code. Reference: Sections 66700 and 81810, Education Code.

HISTORY:

1. New Chapter 11 (Sections 55825–55831, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

55827. Definitions.

(a) College. As used in this chapter, "college" means a degree-granting institution intended to provide instruction through the second year of college, including but not limited to one or more of the following categories: (1) standard collegiate courses for transfer to higher institutions; (2) vocational and technical fields leading to employment; or (3) general or liberal arts courses and for which institution the district intends to obtain accreditation.

(b) Education Center. As used in this chapter, "educational center" means a postsecondary operation established and administered by an existing college or district at a location away from the campus of the parent institution. An educational center is an operation planned to continue for three or more years and expected to enroll over 500 ADA by the third year of operation. The center typically has an on-site administrator and may offer programs leading to certificates and/or degrees conferred by the parent institution.

NOTE: Authority cited: Sections 66700 and 71020, Education Code. Reference: Section 66700, Education Code.

55828. Responsibilities of the Chancellor's Office, Community College Districts and the Board of Governors.

(a) The Chancellor's Office shall maintain an inventory of all off-campus programs and facilities in the community colleges. This inventory shall be updated annually, and shall be distributed to each community college district and the Postsecondary Education Commission for use in planning activities.

(b) The Chancellor's Office shall develop procedures to identify and review plans for new colleges and new educational centers within the district's Five-Year Academic and Capital Outlay Master Plans.

(c) Community college districts shall prepare and submit to the Chancellor's Office proposals for new colleges and new educational centers as defined in this chapter. These proposals should contain at least the following elements: (1) Assessment of Needs and Preferences (Section 55829), (2) Definition of Objectives (Section 55830), and (3) Analysis of Alternative Delivery Systems (Section 55831).

(d) The Chancellor's Office shall review each proposed new college and new educational center and shall recommend approval or disapproval to the Board of Governors. The Chancellor's Office analysis of these proposals shall stress inter-district concerns and evaluation of the delivery system proposed.

(e) The Board of Governors shall approve or disapprove each new college or educational center and transmit its findings to the community college district initiating the proposal and to the California Postsecondary Education Commission.

NOTE: Authority cited: Sections 66700 and 71020, Education Code. Reference: Sections 66700 and 81810, Education Code.

55829. Assessment of Needs and Preferences.

(a) The community area and characteristics of individuals to be served must be identified adequately.

(b) Projections of potential enrollment demand in the service area must demonstrate significant unmet need, taking into account plans of nearby secondary and postsecondary institutions.

(c) Significant community support must be evident and possible community opposition must be identified.

(d) Preferences for community college programs and services on the part of individuals in the service area must be identified.

(e) Insofar as possible, present and future labor market requirements must be identified for the proposed service area, a broader adjacent region, and the state.

(f) Projected labor market requirements and community program preferences must be reconciled, if possible.

NOTE: Authority cited: Sections 66700 and 71020, Education Code. Reference: Sections 66700 and 81810, Education Code.

55830. Identification of Objectives.

(a) Proposed college or educational center programs and services must be directed to the identified educational needs and preferences of the community to be served.

(b) Objectives of the proposed programs and services must be sufficiently specific that the district board may evaluate the success with which needs and preferences are met.

NOTE: Authority cited: Sections 66700 and 71020, Education Code. Reference: Sections 66700 and 81810, Education Code.

55831. Analysis of Alternative Delivery Systems.

(a) The proposed operation must be the most effective and equitable of feasible delivery system alternatives for providing intended programs and services.

(b) Criteria for selecting the proposed delivery system must include:

(1) accessibility of programs and services to individuals in the service area,

(2) content and quality of programs and services, and

(3) cost of programs and services.

(c) Depending on the delivery system proposed, alternatives for providing the proposed programs and services must include, but need not be limited to:

(1) increased utilization of existing district resources,

(2) forming a new college, educational center, and/or outreach locations, and

(3) use of media such as television, computer-assisted instruction or programmed learning packages.

Alternative delivery systems considered must be adequately described, generally mutually exclusive, and limited to a manageable number to facilitate analysis and review.

(d) Proposed sources of funding for needed resources must be identified for both short and long-term operations.

NOTE: Authority cited: Sections 66700 and 71020, Education Code. Reference: Sections 66700 and 81810, Education Code.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income if the business entity or source of income provides education, training, or experience to persons toward attaining a valid credential for employment as an instructor, supervisor, chief administrative officer, librarian, counselor, supervisor of health, student personnel worker, or other similar position within a Community College district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations affirming and fixing the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in chapter 9 (commencing with section 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

(c) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

selves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and an ability to make value judgments. Such courses could include introductory or integrative courses in the arts, foreign languages, literature, philosophy, and religion.

(D) Language and Rationality. Courses in language and rationality are those which develop for the student the principles and applications of language toward logical thought, clear and precise expression and critical evaluation of communication in whatever symbol system the student uses.

1. English Composition. Courses fulfilling the written composition requirement shall be designed to include both expository and argumentative writing.

2. Communication and Analytical Thinking. Courses fulfilling the communication and analytical thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines.

(2) While a course might satisfy more than one general education requirement, it may not be counted more than once for these purposes. A course may be used to satisfy both a general education requirement and a major requirement. Whether it may be counted again for a different degree requirement is a matter for each college to determine. Students may use the same course to meet a general education requirement for the Associate Degree and to partially satisfy a general education requirement at the California State University, if such course is eligible under the provisions of section 40405 of this title.

(3) Ethnic Studies will be offered in at least one of the required areas.

(c) The provisions of this section shall be applicable to all students who enter a community college on or after July 1, 1983, provided that a governing board may specify an earlier implementation date pursuant to subsection (b) of Section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70902 and 70902, Education Code.

HISTORY

1. Editorial correction of subsection (b)(1)(A) filed 7–19–83; designated effective 8–12–83 (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55807. Conversion to Credit.

Upon student petition to and certification by a governing board of credit–level achievement and prescribed academic rigor, and evidence of prescribed competence as approved by the faculty, noncredit courses may count toward associate degrees.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 78405, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55808. Certificate of Achievement.

The governing board of a community college district shall issue a certificate of achievement to any student whom the governing board determines has completed successfully any course of study or curriculum for which a certificate of achievement is offered.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55809. Duty to Grant Diploma.

The governing board of a community college district shall award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student, who has satisfactorily completed the requirements of any course of study in less than the prescribed time, credit for the full number of semester hours scheduled for such course.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55810. Implementation by Governing Boards.

(a) The governing board of a community college district shall adopt necessary policies and procedures to implement the transition between degree requirements applicable until July 1, 1983 (sections 55802 and 55803) and requirements applicable on or after July 1, 1983 (sections 55805 and 55806).

(b) The governing board of a community college may implement sections 55805 and 55806 prior to July 1, 1983, provided that it develops the necessary policies and procedures to implement the transition and notifies the Chancellor as to when the implementation will commence.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 11. New Colleges and Education Centers

§ 55825. Responsibilities of District Governing Boards.

The governing board of a community college district planning the formation of a new college or educational center as defined in section 51827 shall employ and comply with the standards contained in sections 51829, 51830 and 51831 of this chapter.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

HISTORY

1. New chapter 11 (sections 55825–55831, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55827. Definitions.

(a) College. As used in this chapter, "college" means a degree–granting institution intended to provide instruction through the second year of college, including but not limited to one or more of the following categories:

(1) standard collegiate courses for transfer to higher institutions;

(2) vocational and technical fields leading to employment; or

(3) general or liberal arts courses and for which institution the district intends to obtain accreditation.

(b) Education Center. As used in this chapter, "educational center" means a postsecondary operation established and administered by an existing college or district at a location away from the campus of the parent institution. An educational center is an operation planned to continue for three or more years and expected to enroll over 500 ADA by the third year of operation. The center typically has an on–site administrator and may offer programs leading to certificates and/or degrees conferred by the parent institution.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 66700, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55828. Responsibilities of the Chancellor's Office, Community College Districts and the Board of Governors.

(a) The Chancellor's Office shall maintain an inventory of all off–campus programs and facilities in the community colleges. This inventory shall be updated annually, and shall be distributed to each community

ollege district and the Postsecondary Education Commission for use in anning activities.

(b) The Chancellor's Office shall develop procedures to identify and review plans for new colleges and new educational centers within the district's Five–Year Academic and Capital Outlay Master Plans.

(c) Community college districts shall prepare and submit to the Chancellor's Office proposals for new colleges and new educational centers as defined in this chapter. These proposals should contain at least the following elements:

(1) Assessment of Needs and Preferences (section 55829),

(2) Identification of Objectives (section 55830), and

(3) Analysis of Alternative Delivery Systems (section 55831).

(d) The Chancellor's Office shall review each proposed new college and new educational center and shall recommend approval or disapproval to the Board of Governors. The Chancellor's Office analysis of these proposals shall stress inter–district concerns and evaluation of the delivery system proposed.

(e) The Board of Governors shall approve or disapprove each new college or educational center and transmit its findings to the community college district initiating the proposal and to the California Postsecondary Education Commission.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55829. Assessment of Needs and Preferences.

(a) The community area and characteristics of individuals to be served must be identified adequately.

(b) Projections of potential enrollment demand in the service area must nonstrate significant unmet need, taking into account plans of nearby ondary and postsecondary institutions.

(c) Significant community support must be evident and possible community opposition must be identified.

(d) Preferences for community college programs and services on the part of individuals in the service area must be identified.

(e) Insofar as possible, present and future labor market requirements must be identified for the proposed service area, a broader adjacent region, and the state.

(f) Projected labor market requirements and community program preferences must be reconciled, if possible.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55830. Identification of Objectives.

(a) Proposed college or educational center programs and services must be directed to the identified educational needs and preferences of the community to be served.

(b) Objectives of the proposed programs and services must be sufficiently specific that the district board may evaluate the success with which needs and preferences are met.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55831. Analysis of Alternative Delivery Systems.

(a) The proposed operation must be the most effective and equitable feasible delivery system alternatives for providing intended programs id services.

(b) Criteria for selecting the proposed delivery system must include:

(1) accessibility of programs and services to individuals in the service area,

(2) content and quality of programs and services, and

(3) cost of programs and services.

(c) Depending on the delivery system proposed, alternatives for providing the proposed programs and services must include, but need not be limited to:

(1) increased utilization of existing district resources,

(2) forming a new college, educational center, and/or outreach locations, and

(3) use of media such as television, computer–assisted instruction or programmed learning packages.

Alternative delivery systems considered must be adequately described, generally mutually exclusive, and limited to a manageable number to facilitate analysis and review.

(d) Proposed sources of funding for needed resources must be identified for both short and long–term operations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55840. Appointment and Qualification of District Librarian.

The governing board of a community college district maintaining its own library or libraries may appoint a librarian who shall meet minimum qualifications established pursuant to chapter 4 (commencing with section 53400) of division 4 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55841. Annual Report by Governing Board to Department of Education.

The governing board of a district shall, on or before August 31st, in each year, report to the Chancellor on the condition of district libraries, for the year ending June 30th preceding. The report shall, in addition to other matters deemed expedient by the governing board or the librarians, contain such statistical and other information as is deemed desirable by the Chancellor. For this purpose the Chancellor may send to the districts instructions or question blanks so as to obtain the material for a comparative study of library conditions in the state.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Chapter 7. Special Programs

Subchapter 1. Disabled Student Programs and Services

Article 1. General Provisions and Definitions

§ 56000. Scope of Chapter.

This chapter applies to community college districts offering educational programs and support services, on and/or off campus, to students with disabilities pursuant to Education Code Sections 78600 and 84850.

Programs receiving funds apportioned pursuant to Education Code Section 84850 shall meet the requirements of this chapter. Any expenditures under the authority of this chapter must meet the following conditions:

evaluation of communication in whatever symbol system the student uses.

1. English Composition. Courses fulfilling the written composition requirement shall be designed to include both expository and argumentative writing.

2. Communication and Analytical Thinking. Courses fulfilling the communication and analytical thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines.

(2) While a course might satisfy more than one general education requirement, it may not be counted more than once for these purposes. A course may be used to satisfy both a general education requirement and a major requirement. Whether it may be counted again for a different degree requirement is a matter for each college to determine. Students may use the same course to meet a general education requirement for the Associate Degree and to partially satisfy a general education requirement at the California State University, if such course is eligible under the provisions of section 40405 of this title.

(3) Ethnic Studies will be offered in at least one of the required areas.

(c) The provisions of this section shall be applicable to all students who enter a community college on or after July 1, 1983, provided that a governing board may specify an earlier implementation date pursuant to subsection (b) of Section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Editorial correction of subsection (b)(1)(A) filed 7–19–83; designated effective 8–12–83 (Register 83, No. 29).
2. New section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
3. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
4. Editorial correction of printing error in NOTE (Register 91, No. 43).

§ 55807. Conversion to Credit.

Upon student petition to and certification by a governing board of credit–level achievement and prescribed academic rigor, and evidence of prescribed competence as approved by the faculty, noncredit courses may count toward associate degrees.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 78405, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55808. Certificate of Achievement.

The governing board of a community college district shall issue a certificate of achievement to any student whom the governing board determines has completed successfully any course of study or curriculum for which a certificate of achievement is offered.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55809. Duty to Grant Diploma.

The governing board of a community college district shall award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student, who has satisfactorily completed the requirements of any course of study in less than the prescribed time, credit for the full number of semester hours scheduled for such course.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55810. Implementation by Governing Boards.

(a) The governing board of a community college district shall adopt necessary policies and procedures to implement the transition between degree requirements applicable until July 1, 1983 (sections 55802 and 55803) and requirements applicable on or after July 1, 1983 (sections 55805 and 55806).

(b) The governing board of a community college may implement sections 55805 and 55806 prior to July 1, 1983, provided that it develops the necessary policies and procedures to implement the transition and notifies the Chancellor as to when the implementation will commence.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 11. New Colleges and Education Centers

§ 55825. Responsibilities of District Governing Boards.

The governing board of a community college district planning the formation of a new college or educational center as defined in section 55827 shall employ and comply with the standards contained in sections 55829, 55830 and 55831 of this chapter.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

HISTORY

1. New chapter 11 (sections 55825–55831, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
3. Editorial correction of printing error (Register 91, No. 43).

§ 55827. Definitions.

(a) College. As used in this chapter, "college" means a degree–granting institution intended to provide instruction through the second year of college, including but not limited to one or more of the following categories:

(1) standard collegiate courses for transfer to higher institutions;

(2) vocational and technical fields leading to employment; or

(3) general or liberal arts courses and for which institution the district intends to obtain accreditation.

(b) Education Center. As used in this chapter, "educational center" means a postsecondary operation established and administered by an existing college or district at a location away from the campus of the parent institution. An educational center is an operation planned to continue for three or more years and expected to enroll over 500 ADA by the third year of operation. The center typically has an on–site administrator and may offer programs leading to certificates and/or degrees conferred by the parent institution.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 66700, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55828. Responsibilities of the Chancellor's Office, Community College Districts and the Board of Governors.

(a) The Chancellor's Office shall maintain an inventory of all off–campus programs and facilities in the community colleges. This inventory shall be updated annually, and shall be distributed to each community college district and the Postsecondary Education Commission for use in planning activities.

(b) The Chancellor's Office shall develop procedures to identify and review plans for new colleges and new educational centers within the district's Five–Year Academic and Capital Outlay Master Plans.

(c) Community college districts shall prepare and submit to the Chancellor's Office proposals for new colleges and new educational centers as defined in this chapter. These proposals should contain at least the following elements:

(1) Assessment of Needs and Preferences (section 55829),

(2) Identification of Objectives (section 55830), and

(3) Analysis of Alternative Delivery Systems (section 55831).

(d) The Chancellor's Office shall review each proposed new college and new educational center and shall recommend approval or disapproval to the Board of Governors. The Chancellor's Office analysis of these proposals shall stress inter–district concerns and evaluation of the delivery system proposed.

(e) The Board of Governors shall approve or disapprove each new college or educational center and transmit its findings to the community college district initiating the proposal and to the California Postsecondary Education Commission.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55829. Assessment of Needs and Preferences.

(a) The community area and characteristics of individuals to be served must be identified adequately.

(b) Projections of potential enrollment demand in the service area must demonstrate significant unmet need, taking into account plans of nearby secondary and postsecondary institutions.

(c) Significant community support must be evident and possible community opposition must be identified.

(d) Preferences for community college programs and services on the part of individuals in the service area must be identified.

(e) Insofar as possible, present and future labor market requirements must be identified for the proposed service area, a broader adjacent region, and the state.

(f) Projected labor market requirements and community program preferences must be reconciled, if possible.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55830. Identification of Objectives.

(a) Proposed college or educational center programs and services must be directed to the identified educational needs and preferences of the community to be served.

(b) Objectives of the proposed programs and services must be sufficiently specific that the district board may evaluate the success with which needs and preferences are met.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55831. Analysis of Alternative Delivery Systems.

(a) The proposed operation must be the most effective and equitable of feasible delivery system alternatives for providing intended programs and services.

(b) Criteria for selecting the proposed delivery system must include:

(1) accessibility of programs and services to individuals in the service area,

(2) content and quality of programs and services, and

(3) cost of programs and services.

(c) Depending on the delivery system proposed, alternatives for providing the proposed programs and services must include, but need not be limited to:

(1) increased utilization of existing district resources,

(2) forming a new college, educational center, and/or outreach locations, and

(3) use of media such as television, computer–assisted instruction or programmed learning packages.

Alternative delivery systems considered must be adequately described, generally mutually exclusive, and limited to a manageable number to facilitate analysis and review.

(d) Proposed sources of funding for needed resources must be identified for both short and long–term operations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55840. Appointment and Qualification of District Librarian.

The governing board of a community college district maintaining its own library or libraries may appoint a librarian who shall meet minimum qualifications established pursuant to chapter 4 (commencing with section 53400) of division 4 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55841. Annual Report by Governing Board to Department of Education.

The governing board of a district shall, on or before August 31st, in each year, report to the Chancellor on the condition of district libraries, for the year ending June 30th preceding. The report shall, in addition to other matters deemed expedient by the governing board or the librarians, contain such statistical and other information as is deemed desirable by

[The next page is 358.7.]

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each

college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long-range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000-53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

(3) In performing the requirements of Subsections (a)(1) and (2), the governing board or its designees shall consult with the representatives of existing staff councils, committees, employee organizations, and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this Section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views.

(4) Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this Section.

(6) The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration.

(7) The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations, or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category that they represent.

(b) In developing and carrying out policies and procedures pursuant to Subsection (a), the district governing board shall ensure that its actions do not dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code Sec-

(b) The governing board of a community college may implement sections 55805 and 55806 prior to July 1, 1983, provided that it develops the necessary policies and procedures to implement the transition and notifies the Chancellor as to when the implementation will commence.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 11. New Colleges and Education Centers

§ 55825. Responsibilities of District Governing Boards.

The governing board of a community college district planning the formation of a new college or educational center as defined in section 55827 shall employ and comply with the standards contained in sections 55829, 55830 and 55831 of this chapter.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

HISTORY

1. New chapter 11 (sections 55825–55831, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
3. Editorial correction of printing error (Register 91, No. 43).

§ 55827. Definitions.

(a) College. As used in this Chapter, "college" means a degree-granting institution intended to provide instruction through the second year of college, including but not limited, to one or more of the following categories:

(1) standard collegiate courses for transfer to higher institutions;

(2) vocational and technical fields leading to employment; or

(3) general or liberal arts courses for which institution the district intends to obtain accreditation.

(b) Educational Center. As used in this Chapter, "educational center" means a postsecondary operation established and administered by an existing college or district at a location away from the campus of the parent institution. An educational center is an operation planned to continue for three or more years and expected to enroll over 500 FTES by the third year of operation. The center typically has an on-site administrator and may offer programs leading to certificates and/or degrees conferred by the parent institution.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 66700, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of subsections (a), (a)(3) and (b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55828. Responsibilities of the Chancellor's Office, Community College Districts and the Board of Governors.

(a) The Chancellor's Office shall maintain an inventory of all off-campus programs and facilities in the community colleges. This inventory shall be updated annually, and shall be distributed to each community college district and the Postsecondary Education Commission for use in planning activities.

(b) The Chancellor's Office shall develop procedures to identify and review plans for new colleges and new educational centers within the district's Five-Year Academic and Capital Outlay Master Plans.

(c) Community college districts shall prepare and submit to the Chancellor's Office proposals for new colleges and new educational centers as defined in this chapter. These proposals should contain at least the following elements:

(1) Assessment of Needs and Preferences (section 55829),

(2) Identification of Objectives (section 55830), and

(3) Analysis of Alternative Delivery Systems (section 55831).

(d) The Chancellor's Office shall review each proposed new college and new educational center and shall recommend approval or disapproval to the Board of Governors. The Chancellor's Office analysis of these proposals shall stress inter-district concerns and evaluation of the delivery system proposed.

(e) The Board of Governors shall approve or disapprove each new college or educational center and transmit its findings to the community college district initiating the proposal and to the California Postsecondary Education Commission.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55829. Assessment of Needs and Preferences.

(a) The community area and characteristics of individuals to be served must be identified adequately.

(b) Projections of potential enrollment demand in the service area must demonstrate significant unmet need, taking into account plans of nearby secondary and postsecondary institutions.

(c) Significant community support must be evident and possible community opposition must be identified.

(d) Preferences for community college programs and services on the part of individuals in the service area must be identified.

(e) Insofar as possible, present and future labor market requirements must be identified for the proposed service area, a broader adjacent region, and the state.

(f) Projected labor market requirements and community program preferences must be reconciled, if possible.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55830. Identification of Objectives.

(a) Proposed college or educational center programs and services must be directed to the identified educational needs and preferences of the community to be served.

(b) Objectives of the proposed programs and services must be sufficiently specific that the district board may evaluate the success with which needs and preferences are met.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55831. Analysis of Alternative Delivery Systems.

(a) The proposed operation must be the most effective and equitable of feasible delivery system alternatives for providing intended programs and services.

(b) Criteria for selecting the proposed delivery system must include,

(1) accessibility of programs and services to individuals in the service area,

(2) content and quality of programs and services, and

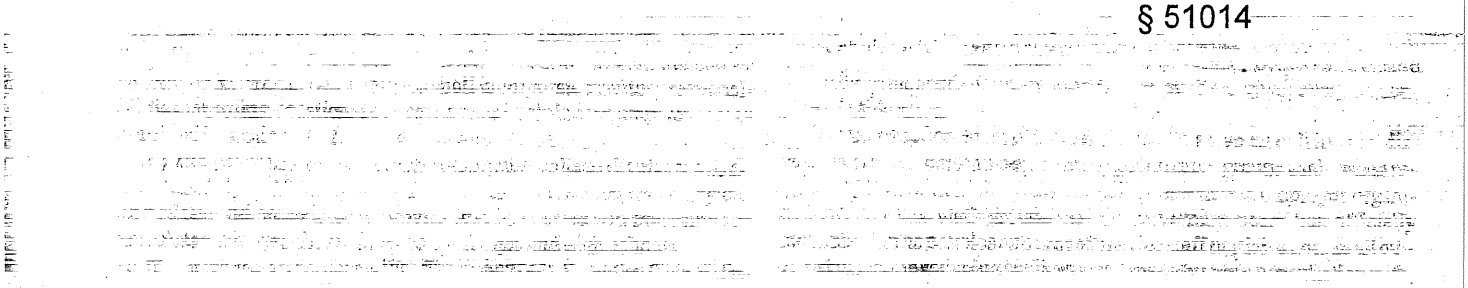
(3) cost of programs and services.

(c) Depending on the delivery system proposed, alternatives for providing the proposed programs and services must include, but need not be limited to:

(1) increased utilization of existing district resources,

(2) forming a new college, educational center, and/or outreach locations, and

(3) use of media such as television, computer-assisted instruction or programmed learning packages.



Senior Accounting Officers (Specialists) 3
Accounting Officers (Specialists) 3
Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of History 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

4. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

5. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long–range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

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category would include introductory or integrative courses in astronomy, biology, chemistry, general physical science, geology, meteorology, oceanography, physical geography, physical anthropology, physics and other scientific disciplines.

(B) Social and Behavioral Sciences. Courses in the social and behavioral sciences are those which focus on people as members of society. To satisfy the general education requirement in social and behavioral sciences, a course shall be designed to develop an awareness of the method of inquiry used by the social and behavioral sciences. It shall be designed to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate. This category would include introductory or integrative survey courses in cultural anthropology, cultural geography, economics, history, political science, psychology, sociology and related disciplines.

(C) Humanities. Courses in the humanities are those which study the cultural activities and artistic expressions of human beings. To satisfy the general education requirement in the humanities, a course shall be designed to help the student develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and an ability to make value judgments. Such courses could include introductory or integrative courses in the arts, foreign languages, literature, philosophy, and religion.

(D) Language and Rationality. Courses in language and rationality are those which develop for the student the principles and applications of language toward logical thought, clear and precise expression and critical evaluation of communication in whatever symbol system the student uses.

1. English Composition. Courses fulfilling the written composition requirement shall be designed to include both expository and argumentative writing.

2. Communication and Analytical Thinking. Courses fulfilling the communication and analytical thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines.

(2) While a course might satisfy more than one general education requirement, it may not be counted more than once for these purposes. A course may be used to satisfy both a general education requirement and a major requirement. Whether it may be counted again for a different degree requirement is a matter for each college to determine. Students may use the same course to meet a general education requirement for the Associate Degree and to partially satisfy a general education requirement at the California State University, if such course is eligible under the provisions of section 40405 of this title.

(3) Ethnic Studies will be offered in at least one of the required areas.

(c) The provisions of this section shall be applicable to all students who enter a community college on or after July 1, 1983, provided that a governing board may specify an earlier implementation date pursuant to subsection (b) of Section 55810.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Editorial correction of subsection (b)(1)(A) filed 7–19–83; designated effective 8–12–83 (Register 83, No. 29).
2. New section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of printing error in NOTE (Register 91, No. 43).
5. Editorial correction of HISTORY 3 (Register 95, No. 22).

§ 55807. Conversion to Credit.

Upon student petition to and certification by a governing board of credit-level achievement and prescribed academic rigor, and evidence of prescribed competence as approved by the faculty, noncredit courses may count toward associate degrees.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 78405, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55808. Certificate of Achievement.

The governing board of a community college district shall issue a certificate of achievement to any student whom the governing board determines has completed successfully any course of study or curriculum for which a certificate of achievement is offered.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55809. Duty to Grant Diploma.

The governing board of a community college district shall award the appropriate diploma, degree or certificate whenever a student has completed all requirements for the degree, diploma or certificate without regard to the length of time actually taken by the student to complete such requirements. The governing board shall grant to any student, who has satisfactorily completed the requirements of any course of study in less than the prescribed time, credit for the full number of semester hours scheduled for such course.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55810. Implementation by Governing Boards.

(a) The governing board of a community college district shall adopt necessary policies and procedures to implement the transition between degree requirements applicable until July 1, 1983 (sections 55802 and 55803) and requirements applicable on or after July 1, 1983 (sections 55805 and 55806).

(b) The governing board of a community college may implement sections 55805 and 55806 prior to July 1, 1983, provided that it develops the necessary policies and procedures to implement the transition and notifies the Chancellor as to when the implementation will commence.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701, 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

Subchapter 11. New Colleges and Education Centers

§ 55825. Responsibilities of District Governing Boards.

The governing board of a community college district planning the formation of a new college or educational center as defined in section 55827 shall employ and comply with the standards contained in sections 55829, 55830 and 55831 of this chapter.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

History

1. New chapter 11 (sections 55825–55831, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of printing error (Register 91, No. 43).
4. Editorial correction of History 2 (Register 95, No. 22).

§ 55827. Definitions.

(a) College. As used in this Chapter, "college" means a degree–granting institution intended to provide instruction through the second year of college, including but not limited, to one or more of the following categories:

(1) standard collegiate courses for transfer to higher institutions;

(2) vocational and technical fields leading to employment; or

(3) general or liberal arts courses for which institution the district intends to obtain accreditation.

(b) Educational Center. As used in this Chapter, "educational center" means a postsecondary operation established and administered by an existing college or district at a location away from the campus of the parent institution. An educational center is an operation planned to continue for three or more years and expected to enroll over 500 FTES by the third year of operation. The center typically has an on–site administrator and may offer programs leading to certificates and/or degrees conferred by the parent institution.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 66700, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of subsections (a), (a)(3) and (b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of History 1 (Register 95, No. 22).

§ 55828. Responsibilities of the Chancellor's Office, Community College Districts and the Board of Governors.

(a) The Chancellor's Office shall maintain an inventory of all off–campus programs and facilities in the community colleges. This inventory shall be updated annually, and shall be distributed to each community college district and the Postsecondary Education Commission for use in planning activities.

(b) The Chancellor's Office shall develop procedures to identify and review plans for new colleges and new educational centers within the district's Five–Year Academic and Capital Outlay Master Plans.

(c) Community college districts shall prepare and submit to the Chancellor's Office proposals for new colleges and new educational centers as defined in this chapter. These proposals should contain at least the following elements:

(1) Assessment of Needs and Preferences (section 55829),

(2) Identification of Objectives (section 55830), and

(3) Analysis of Alternative Delivery Systems (section 55831).

(d) The Chancellor's Office shall review each proposed new college and new educational center and shall recommend approval or disapproval to the Board of Governors. The Chancellor's Office analysis of these proposals shall stress inter–district concerns and evaluation of the delivery system proposed.

(e) The Board of Governors shall approve or disapprove each new college or educational center and transmit its findings to the community college district initiating the proposal and to the California Postsecondary Education Commission.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700, 81800 and 81805, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 22).

§ 55829. Assessment of Needs and Preferences.

(a) The community area and characteristics of individuals to be served must be identified adequately.

(b) Projections of potential enrollment demand in the service area must demonstrate significant unmet need, taking into account plans of nearby secondary and postsecondary institutions.

(c) Significant community support must be evident and possible community opposition must be identified.

(d) Preferences for community college programs and services on the part of individuals in the service area must be identified.

(e) Insofar as possible, present and future labor market requirements must be identified for the proposed service area, a broader adjacent region, and the state.

(f) Projected labor market requirements and community program preferences must be reconciled, if possible.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 22).

§ 55830. Identification of Objectives.

(a) Proposed college or educational center programs and services must be directed to the identified educational needs and preferences of the community to be served.

(b) Objectives of the proposed programs and services must be sufficiently specific that the district board may evaluate the success with which needs and preferences are met.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 22).

§ 55831. Analysis of Alternative Delivery Systems.

(a) The proposed operation must be the most effective and equitable of feasible delivery system alternatives for providing intended programs and services.

(b) Criteria for selecting the proposed delivery system must include:

(1) accessibility of programs and services to individuals in the service area,

(2) content and quality of programs and services, and

(3) cost of programs and services.

(c) Depending on the delivery system proposed, alternatives for providing the proposed programs and services must include, but need not be limited to:

(1) increased utilization of existing district resources,

(2) forming a new college, educational center, and/or outreach locations, and

(3) use of media such as television, computer–assisted instruction or programmed learning packages.

Alternative delivery systems considered must be adequately described, generally mutually exclusive, and limited to a manageable number to facilitate analysis and review.

(d) Proposed sources of funding for needed resources must be identified for both short and long–term operations.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 81810, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 22).

Subchapter 12. Libraries

§ 55840. Appointment and Qualification of District Librarian.

The governing board of a community college district maintaining its own library or libraries may appoint a librarian who shall meet minimum qualifications established pursuant to chapter 4 (commencing with section 53400) of division 4 of this part.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. New subchapter 12 heading filed 5–15–93; operative 6–14–93 (Register 93, No. 25).
3. Editorial correction of History 1 (Register 95, No. 22).

§ 55841. Annual Report by Governing Board to Department of Education.

The governing board of a district shall, on or before August 31st, in each year, report to the Chancellor on the condition of district libraries for the year ending June 30th preceding. The report shall, in addition to other matters deemed expedient by the governing board or the librarians, contain such statistical and other information as is deemed desirable by the Chancellor. For this purpose the Chancellor may send to the districts instructions or question blanks so as to obtain the material for a comparative study of library conditions in the state.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 22).

Chapter 7. Special Programs

Subchapter 1. Disabled Student Programs and Services

Article 1. General Provisions and Definitions

§ 56000. Scope of Chapter.

This subchapter applies to community college districts offering support services, or instruction through Disabled Student Programs and Services (DSPS), on and/or off campus, to students with disabilities pursuant to Education Code Sections 67310–12 and 84850.

Programs receiving funds allocated pursuant to Education Code Section 84850 shall meet the requirements of this subchapter. Any support services or instruction funded, in whole or in part, under the authority of this subchapter must:

(a) not duplicate services or instruction which are otherwise available to all students;

(b) be directly related to the educational limitations of the verified disabilities of the students to be served;

(c) be directly related to the students' participation in the educational process;

(d) promote the maximum independence and integration of students with disabilities; and

(e) support participation of students with disabilities in educational activities consistent with the mission of the community colleges as set forth in Education Code Section 66701.

Note: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: Sections 66701, 67310–12 and 84850, Education Code.

History

1. Repealer of chapter 1 (sections 56000–56062) and new chapter 1 (sections 56000–56088, not consecutive) filed 12–17–76 as an emergency; effective upon filing. Designated inoperative 90 days after filing (Register 76, No. 51). For prior history, see Register 73, No. 44.
2. Repealer of chapter 1 (sections 56000–56088, not consecutive) and new chapter 1 (sections 56000–56088) filed 3–15–77; effective thirtieth day thereafter (Register 77, No. 12).
3. Amendment of section and Note filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
4. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
5. Repealer of chapter 1 (sections 56000–56088, not consecutive) and new chapter 1 (sections 56000–56088, not consecutive) filed 3–29–88; operative 4–28–99 (Register 88, No. 16).
6. Amendment of first and second paragraphs, repealer of subsections (a) and (f), amendment of newly designated subsections (a)–(d), new subsection (e), and amendment of Note filed 2–4–93; operative 3–6–93 (Register 93, No. 6).

§ 56002. Student with a Disability.

A "student with a disability" or "disabled student" is a person enrolled at a community college who has a verified impairment which limits one or more major life activities, as defined in 28 C.F.R. 35.104, and which imposes an educational limitation as defined in Section 56004. For purposes of reporting to the Chancellor under Section 56030, students with disabilities shall be reported in the categories described in Sections 56032–44.

Note: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: Sections 67310–12 and 84850, Education Code.

History

1. Repealer and new section filed 3–29–88; operative 4–28–88 (Register 88, No. 16). For prior history, see Register 83, No. 18.
2. Repealer and new section filed 2–4–93; operative 3–6–93 (Register 93, No. 6).

§ 56004. Educational Limitation.

As used in this subchapter, "educational limitation" means disability related functional limitation in the educational setting. This occurs when the limitation prevents the student from fully benefiting from classes, activities, or services offered by the college to nondisabled students, without specific additional support services or instruction as defined in Section 56005.

Note: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: Sections 67310–12 and 84850, Education Code.

History

1. Repealer and new section filed 3–29–88; operative 4–28–88 (Register 88, No. 16). For prior history, see Register 83, No. 18.
2. Repealer and new section filed 2–4–93; operative 3–6–93 (Register 93, No. 6).

§ 56005. Support Services or Instruction.

As used in this subchapter, "support services or instruction" means any one or more of the services listed in Section 56026, special class instruction authorized under Section 56028, or both.

Note: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: Sections 67310–12 and 84850, Education Code.

History

1. Repealer and new section filed 3–29–88; operative 4–28–88 (Register 88, No. 16). For prior history, see Register 83, No. 18.
2. New section filed 2–4–93; operative 3–6–93 (Register 93, No. 6).

§ 56006. Determination of Eligibility.

(a) In order to be eligible for support services or instruction authorized under this chapter, a student with a disability must have an impairment which is verified pursuant to subdivision (b) which results in an educational limitation identified pursuant to subdivision (c) of this section.

(b) The existence of an impairment may be verified, using procedures prescribed by the Chancellor, by one of the following means:

No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 08: Accreditation

History Index for
Title 5, California Code of Regulations

Section 51016

Register 83-29 Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000-51021, not consecutive).

Register 91-23 § 51016: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 94-38 § 51016: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

Register 95-15 § 51016: Editorial correction of HISTORY 1.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

Register 1983-29

§ 51016

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51006. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55825) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

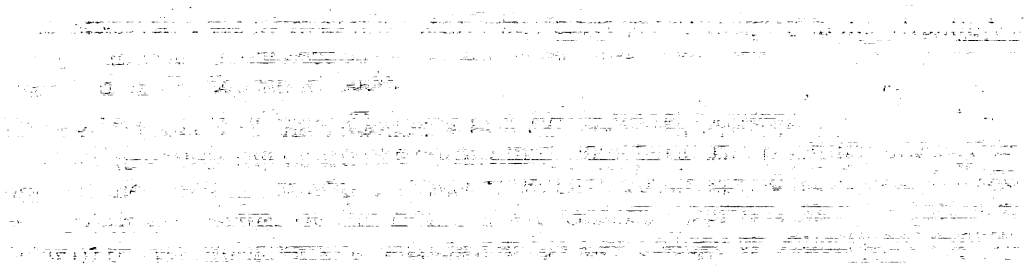
51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

Register 1991-23

§ 51016



4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income if the business entity or source of income provides education, training, or experience to persons toward attaining a valid credential for employment as an instructor, supervisor, chief administrative officer, librarian, counselor, supervisor of health, student personnel worker, or other similar position within a Community College district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations affirming and fixing the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in chapter 9 (commencing with section 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

(e) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

Register 1994-38

§ 51016

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each

college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long-range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000-53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

(3) In performing the requirements of Subsections (a)(1) and (2), the governing board or its designees shall consult with the representatives of existing staff councils, committees, employee organizations, and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this Section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views.

(4) Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this Section.

(6) The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration.

(7) The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations, or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category that they represent.

(b) In developing and carrying out policies and procedures pursuant to Subsection (a), the district governing board shall ensure that its actions do not dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code Sec-

Register 1995-15

§ 51016

Senior Accounting Officers (Specialists) 3
Accounting Officers (Specialists) 3
Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of History 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long–range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

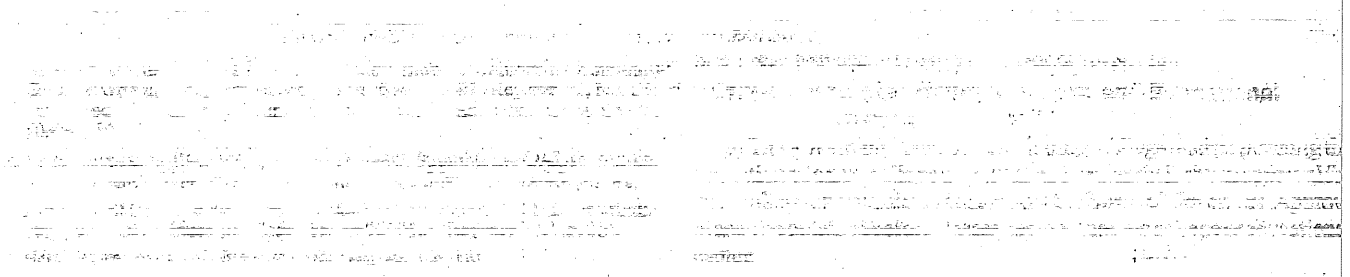
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.



No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 09: Counseling

History Index for
Title 5, California Code of Regulations

Section 51018

Register 83-29 Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000-51021, not consecutive).

Register 91-23 § 51018: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 94-38 § 51018: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

Register 95-15 § 51018: Editorial correction of HISTORY 1.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55825) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

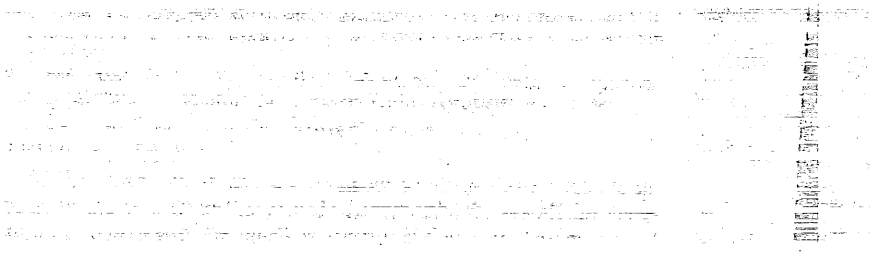
51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

Register 1991-23

§ 51018



4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income if the business entity or source of income provides education, training, or experience to persons toward attaining a valid credential for employment as an instructor, supervisor, chief administrative officer, librarian, counselor, supervisor of health, student personnel worker, or other similar position within a Community College district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations affirming and fixing the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in chapter 9 (commencing with section 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

(c) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each

college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long-range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000-53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

(3) In performing the requirements of Subsections (a)(1) and (2), the governing board or its designees shall consult with the representatives of existing staff councils, committees, employee organizations, and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this Section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views.

(4) Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this Section.

(6) The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration.

(7) The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations, or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category that they represent.

(b) In developing and carrying out policies and procedures pursuant to Subsection (a), the district governing board shall ensure that its actions do not dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code Sec-

Senior Accounting Officers (Specialists) 3
Accounting Officers (Specialists) 3
Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of History 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long–range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

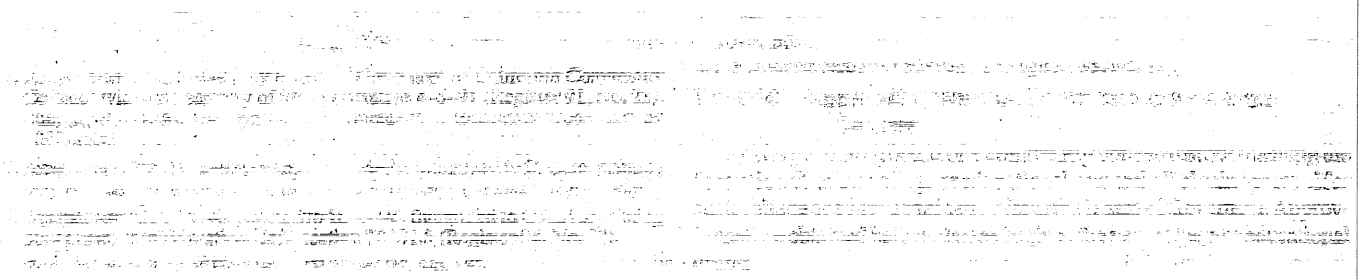
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.



No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 10: Objectives

History Index for
Title 5, California Code of Regulations

Section 51020

Register 83-29 Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000-51021, not consecutive).

Register 91-23 § 51020: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 95-15 § 51020: Editorial correction of HISTORY 1.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55825) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

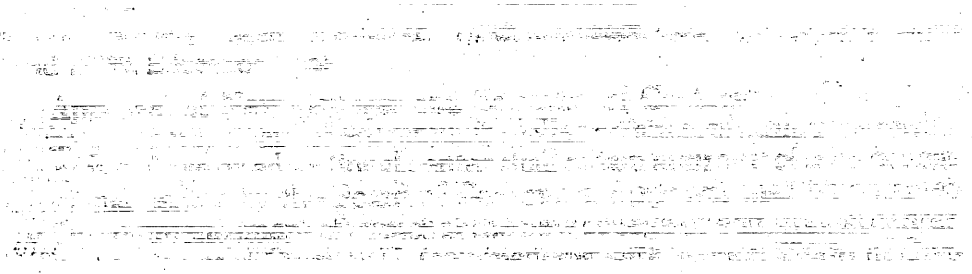
51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

Register 1991-23

§ 51020



4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income if the business entity or source of income provides education, training, or experience to persons toward attaining a valid credential for employment as an instructor, supervisor, chief administrative officer, librarian, counselor, supervisor of health, student personnel worker, or other similar position within a Community College district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations affirming and fixing the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in chapter 9 (commencing with section 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

(c) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

Senior Accounting Officers (Specialists) 3
Accounting Officers (Specialists) 3
Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long–range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

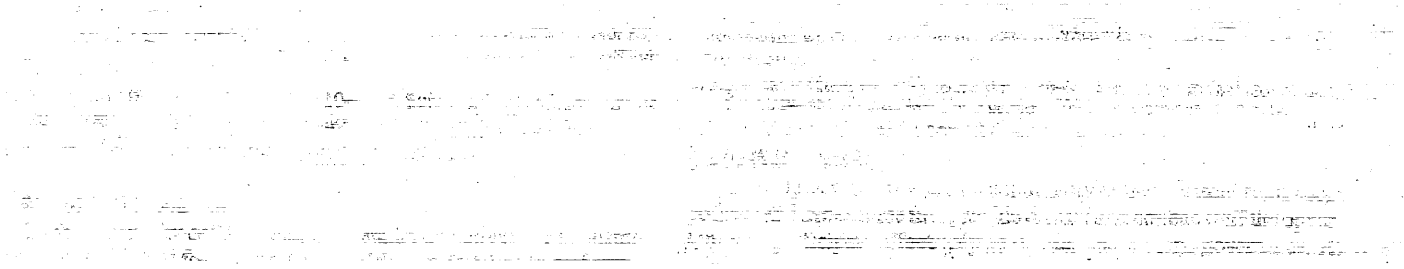
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.



No. CSM. 02-TC-31

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COMMISSION ON
STATE MANDATES

Minimum Conditions for State Aid:
Part 11: Curriculum

History Index for
Title 5, California Code of Regulations

Section 51021	Section 55160	Section 55217
Section 55000	Section 55170	Section 55219
Section 55000.5	Section 55182	Section 55300
Section 55001	Section 55200	Section 55310
Section 55002	Section 55201	Section 55316
Section 55002.5	Section 55202	Section 55316.5
Section 55004	Section 55205	Section 55320
Section 55005	Section 55207	Section 55321
Section 55006	Section 55209	Section 55322
Section 55100	Section 55211	Section 55340
Section 55130	Section 55213	Section 55350
Section 55150	Section 55215	

Register 78-51	Repealer of chapter 4 (sections 55300 - 55344, not consecutive) and new chapter 4 (articles 1-5; sections 55300 - 55360, not consecutive).
Register 79-46	§ 55300: Amendment of section. § 55310: Amendment of section.
Register 81-52	Repealer of chapter 1 (subchapters 1-3, sections 55000 - 55144, not consecutive) and new chapter 1 (articles 1-2, sections 55000-55180, not consecutive).
Register 83-18	§ 55300: Amendment of chapter 4 heading, repealer of article 1 heading, and amendment of section. § 55310: Repealer of Article 2 heading.

§ 55312: Repealed.

§ 55314: Amendment of section.

§ 55316: Amendment of section.

§ 55318: Amendment of NOTE.

§ 55320: Repealer of article 3 heading.

§ 55321: Amendment of section.

§ 55322: Amendment of NOTE.

§ 55323: Amendment of NOTE.

§ 55340: Repealer of article 4 heading and amendment of section.

§ 55342: Repealed.

§ 55343: Repealed.

§ 55344: Repealed.

§ 55346: Repealed.

§ 55348: Repealed.

§ 55350: Amendment of section.

§ 55352: Amendment of NOTE.

§ 55360: Repealed.

Register 83-29 Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000-51021, not consecutive).

Register 83-53 § 55002: Amendment of subsection (a).

§ 55182: Added new section.

Register 84-20 § 55002: Amendment of section.

Register 84-51 § 55323: Repealed.

Register 88-42 § 55002: Repealer and new section.

Register 91-23 § 51021: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55000: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55000.5: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55001: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55002: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State.

Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55002.5: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55004: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55005: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55006: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55008: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education

Code section 70901.5(b).

§ 55100: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55130: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55150: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55160: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55170: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55180: Repealer filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55182: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55300: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55310: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55314: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55316: Amendment filed by Board of Governors of California

Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55318: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55320: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55321: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55322: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.
Submitted to OAL for printing only pursuant to
Education Code section 70901.5(b).
§ 55340: Amendment filed by Board of Governors of California
Community Colleges with the Secretary of State.

	Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
	§ 55350: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
Register 91-43	§ 55008: Editorial correction of printing error in second paragraph.
Register 92-07	§ 55002: Amendment of section.
Register 92-15	§ 55300: New article heading.
Register 93-25	§ 55008: Section repealed.
Register 93-42	§ 55002: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
	§ 55200: New article 2.5 and section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
	§ 55201: Added new section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
	§ 55202: Added new section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
Register 94-18	§ 55314: Repealed. Submitted to OAL for printing only.
	§ 55316: Amendment of opening statement, subsection (b) and NOTE.

§ 55316.5: New section filed; submitted to OAL for printing only.

§ 55317: New section filed, submitted to OAL for printing only.

§ 55318: Repealed. Submitted to OAL for printing only.

§ 55340: Amendment of section and NOTE. Submitted to OAL for printing only.

§ 55352: Repealer and new section. Submitted to OAL for printing only.

Register 94-38 § 51021: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 55001: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

Register 95-15 § 51021: Editorial correction of HISTORY 1.

Register 95-20 § 55000: Editorial correction of HISTORY 2.

§ 55000.5: Editorial correction of HISTORY 1.

§ 55001: Editorial correction of HISTORY 1.

§ 55002: Editorial correction of HISTORY 4.

§ 55002.5: Editorial correction of HISTORY 1.

§ 55004: Editorial correction of HISTORY 1.

§ 55005: Editorial correction of HISTORY 1.

§ 55006: Editorial correction of HISTORY 1.

§ 55008: Editorial correction of HISTORY 1.

§ 55100: Editorial correction of HISTORY 1.

§ 55130: Editorial correction of HISTORY 1.

§ 55150: Editorial correction of HISTORY 1.

§ 55160: Editorial correction of HISTORY 1.

§ 55170: Editorial correction of HISTORY 1.

§ 55180: Editorial correction of HISTORY 2.

§ 55182: Editorial correction of HISTORY 2.

§ 55200: Editorial correction of Article heading.

§ 55300: Editorial correction of HISTORY 4.

§ 55310: Editorial correction of HISTORY 3.

§ 55314: Editorial correction of HISTORY 2.

§ 55316: Editorial correction of HISTORY 2.

§ 55318: Editorial correction of HISTORY 2.

§ 55320: Editorial correction of HISTORY 2.

§ 55321: Editorial correction of HISTORY 2.

§ 55322: Editorial correction of HISTORY 2.

§ 55340: Editorial correction of HISTORY 2.

§ 55350: Editorial correction of HISTORY 2.

Register 98-07 § 55201: Amendment of subsection (c), new subsections (e)(1)-(e)(2)(B) and amendment of NOTE. Submitted to OAL for printing only.

Register 98-36 § 55316.5: Amendment of last paragraph and NOTE. Submitted to OAL for printing only.

§ 55317: Amendment of subsection (b), last paragraph and NOTE. Submitted to OAL for printing only.

Register 2001-50 § 55316.5: Amendment of subsection (b). Submitted to OAL for printing only.

§ 55317: Amendment of subsections (b)-(c). Submitted to OAL for printing only.

Register 2002-26 § 55205: New article 3 (sections 55205 - 55219) and section. Submitted to OAL for printing only.

§ 55207: Added new section. Submitted to OAL for printing only.

§ 55209: Added new section. Submitted to OAL for printing only.

§ 55211: Added new section. Submitted to OAL for printing only.

§ 55213: Added new section. Submitted to OAL for printing only.

§ 55215: Added new section. Submitted to OAL for printing only.

§ 55217: Added new section. Submitted to OAL for printing only.

§ 55219: Added new section. Submitted to OAL for printing only.

§ 55316.5: Repealed.

§ 55317: Repealed.

§ 55352: Repealed. Submitted to OAL for printing only.

Subsequent Registers: There may be changes to the regulations after the date the

1 test claim was filed, which are not included.

Register 1978-51

§ 55300
§ 55302
§ 55310
§ 55312
§ 55314
§ 55316
§ 55320
§ 55321
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§ 55342
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§ 55344
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§ 55350
§ 55352
§ 55360

CHAPTER 4. REGULATIONS FOR COURSES AND PROGRAMS CONDUCTED AS INDEPENDENT STUDY

Article 1. General Provisions

55300. Application of Chapter.

The provisions of this chapter apply to and implement the provisions of sections 84500 and 84520 of the Education Code in relation to attendance in approved courses and programs designed and conducted as independent study.

Courses or programs designed and conducted as independent study shall be approved by the Chancellor under conditions contained in Chapter 1, Course of Study, subchapters 1 and 2 of California Administrative Code, Title 5, except that all conditions in sections 55001 (a), 55001 (c) and 55132 shall apply, for study by students who are under the supervision, control, and evaluation, but not necessarily in the immediate presence of the assigned instructor.

All heretofore approved credit courses offered in whatever mode meeting the above requirements shall remain approved provided such courses meet the requirements of this subchapter.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY:

1. Repealer of Chapter 4 (Sections 55300–55344, not consecutive) and new Chapter 4 (Articles 1–5; Sections 55300–55360, not consecutive) filed 12-18-78; effective thirtieth day thereafter (Register 78, No. 51). For prior history, see Registers 77, No. 45 and 71, No. 9.

55302. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) College level course. For the purposes of this Chapter, a college level course shall be an organized pattern of instruction on a postsecondary lower division level which is accepted for completion of an appropriate educational sequence leading to an associate degree and which is recognized upon transfer by an institution of the Univerity of California or the California State University and Colleges as meeting either elective or major requirements for a baccalaureate degree.

(b) Credit. Credits are the number of units specified by a college for a course as approved by the Chancellor.

(c) Credit Course. A credit course is a course which carries certification of specified learning accomplishments, the successful completion of which are recognized by the granting of units and the awarding of a grade in the context of a particular program of study and which is recognized upon transfer by an institution of the University of California or the California State University and Colleges.

(d) Independent Study. Independent study is learning undertaken by a student enrolled in a course without the immediate presence of the assigned instructor, to be completed in accordance with prescribed objectives, for the number of credits to be awarded on satisfactory completion of the specified learning accomplishments.

(e) Program of Independent Study. An educational program of independent study is an organized sequence of courses of instruction conducted as independent studies and meeting all the requirements of this chapter.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

Article 2. Approval of Independent Study Courses and Programs

55310. Reporting.

Each independent study course, whether or not it is part of an approved program, must be reported to the Chancellor in a manner and form required by him.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55312. Transfer.

Evidence of transferability to California State University and Colleges or to the University of California shall be deemed to exist when the Community College certifies that the course is recognized upon transfer.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55314. Faculty and Student Participation.

In the development and evaluation of courses and programs subject to the requirements of this chapter, the district shall include input from, and participation by, faculty who are selected by academic senates or faculty councils, and students.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55316. Criteria.

Courses offered pursuant to this chapter shall:

(a) be accepted by the college for completion of an appropriate educational sequence leading to an associate degree, and

(b) shall be recognized by an institution of the University of California or the California State University and Colleges upon transfer to that institution.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55318. Written Record.

In submitting a report for each course offered pursuant to this chapter, a college shall certify that the components of each course are set out in a written record for each student enrolled, and have been developed and evaluated with the participation of faculty and students as noted in this chapter.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

Article 3. Standards and Criteria

55320. Academic Standards.

Academic standards applicable to courses of independent study shall be the same as those applied to other credit courses in the college.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55321. Student Progress.

Procedures for evaluation of student progress shall be in accordance with regulations set by the faculty and college. A report by an instructor on appropriate records bearing the student's name for purposes of state apportionment shall certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by the student.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55322. Availability of Instructor.

The college shall provide access to the instructor for the students enrolled in courses offered pursuant to this chapter at least equivalent to that commonly available to students enrolled in courses conducted by other instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55323. Learning Assistance.

Learning assistance, when provided by the college, shall be considered a component of the course and shall not authorize or constitute credit increments for the course or for the sequence of such courses applicable to the college degree or certificate.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

Article 4. Eligibility for State Apportionment

55340. Eligibility for State Funds.

In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this chapter, the course must be reported as required by this chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55342. Average Daily Attendance.

For purposes of computing the average daily attendance, one weekly student contact hour shall be counted for each unit of independent study credit for which a student is enrolled in a course conducted during any census period.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55343. Grades Awarded.

Units of credit earned and grades awarded shall be based on the number of units in which the student is enrolled in each census week.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55344. Enrollment.

A student for whom attendance will be recorded for state apportionment pursuant to this chapter must be enrolled in an approved course. Enrollment shall be in the manner prescribed by the college in the catalog and/or schedule of classes.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55346. Records.

Enrollment, evaluations, and credit for courses conducted pursuant to this chapter shall be entered on the student's record in the same manner and with the same provisions governing such records for all other courses.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55348. Supervision.

The college shall provide appropriate supervision of instruction in courses conducted pursuant to this chapter as with other courses and programs.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55350. Instruction.

The instructor assigned to a course conducted pursuant to this chapter shall:

(a) Possess a valid teaching certificate, registered as required by law, authorizing service in that capacity during the period in which that service is rendered;

(b) Be responsible for the supervision, control, and evaluation of the course and the enrolled students;

(c) Provide orientation, guidance, and information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college; and

(d) Provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, this schedule to be included in the written record.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55352. Number of Students.

The number of students assigned to any one instructor of courses offered pursuant to this section shall not exceed 125 students per instructor unless exempted by the Chancellor.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

Article 5. Assessment of Effects

55360. Evaluation Reports.

Each college conducting courses of independent study shall develop and maintain information required for the report to be rendered to the Legislature prior to June 30, 1981, on the educational and fiscal effects of such courses. Recording, preparation, and forwarding of information relative to these reports shall be conducted in a manner and format established by the Chancellor.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

(Next page is 646.4.3)

Register 1979-46

§ 55300
§ 55310

CHAPTER 4. REGULATIONS FOR COURSES AND PROGRAMS CONDUCTED AS INDEPENDENT STUDY

Article 1. General Provisions

55300. Application of Chapter.

The provisions of this chapter apply to and implement the provisions of sections 84500 and 84520 of the Education Code in relation to attendance in approved courses and programs designed and conducted as independent study.

Courses or programs designed and conducted as independent study shall be approved by the Chancellor under conditions contained in Chapter 1, Course of Study, subchapters 1 and 2 of California Administrative Code, Title 5, except that all conditions in sections 55001 (a), 55001 (c) and 55132 shall apply, for study by students who are under the supervision, control, and evaluation, but not necessarily in the immediate presence of the assigned instructor.

All heretofore approved credit courses offered in whatever mode meeting the above requirements shall remain approved provided such courses meet the requirements of this chapter.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500 and 84520, Education Code.

HISTORY:

1. Repealer of Chapter 4 (Sections 55300–55344, not consecutive) and new Chapter 4 (Articles 1–5; Sections 55300–55360, not consecutive) filed 12-18-78; effective thirtieth day thereafter (Register 78, No. 51). For prior history, see Registers 77, No. 45 and 71, No. 9.
2. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).

55302. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) College level course. For the purposes of this Chapter, a college level course shall be an organized pattern of instruction on a postsecondary lower division level which is accepted for completion of an appropriate educational sequence leading to an associate degree and which is recognized upon transfer by an institution of the Univerity of California or the California State University and Colleges as meeting either elective or major requirements for a baccalaureate degree.

(b) Credit. Credits are the number of units specified by a college for a course as approved by the Chancellor.

(c) Credit Course. A credit course is a course which carries certification of specified learning accomplishments, the successful completion of which are recognized by the granting of units and the awarding of a grade in the context of a particular program of study and which is recognized upon transfer by an institution of the University of California or the California State University and Colleges.

(d) Independent Study. Independent study is learning undertaken by a student enrolled in a course without the immediate presence of the assigned instructor, to be completed in accordance with prescribed objectives, for the number of credits to be awarded on satisfactory completion of the specified learning accomplishments.

(e) Program of Independent Study. An educational program of independent study is an organized sequence of courses of instruction conducted as independent studies and meeting all the requirements of this chapter.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

Article 2. Approval of Independent Study Courses and Programs

55310. Reporting.

Each independent study course, whether or not it is part of an approved program, must be reported to the Chancellor in a manner and form required by the Chancellor.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500 and 84520, Education Code.

HISTORY:

1. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).

55312. Transfer.

Evidence of transferability to California State University and Colleges or to the University of California shall be deemed to exist when the Community College certifies that the course is recognized upon transfer.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55314. Faculty and Student Participation.

In the development and evaluation of courses and programs subject to the requirements of this chapter, the district shall include input from, and participation by, faculty who are selected by academic senates or faculty councils, and students.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55316. Criteria.

Courses offered pursuant to this chapter shall:

(a) be accepted by the college for completion of an appropriate educational sequence leading to an associate degree, and

(b) shall be recognized by an institution of the University of California or the California State University and Colleges upon transfer to that institution.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

55318. Written Record.

In submitting a report for each course offered pursuant to this chapter, a college shall certify that the components of each course are set out in a written record for each student enrolled, and have been developed and evaluated with the participation of faculty and students as noted in this chapter.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

Article 3. Standards and Criteria

55320. Academic Standards.

Academic standards applicable to courses of independent study shall be the same as those applied to other credit courses in the college.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

Register 1981-52

§ 55000
§ 55001
§ 55002
§ 55005
§ 55006
§ 55100
§ 55130
§ 55150
§ 55160
§ 55170
§ 55180

CHAPTER 1. PROGRAMS, COURSES AND CLASSES

Article 1. Program, Course and Class Classification and Standards

55000. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.

(b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

(c) "Class" means a community services offering.

NOTE: Authority cited: Sections 71020 and 71062, Education Code. Reference: Sections 78200 and 78201, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Subchapters 1–3, Sections 55000–55144, not consecutive) and new Chapter 1 (Articles 1–2, Sections 55000–55180, not consecutive) filed 12-21-81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 80, No. 11; 77, No. 45; and 71, No. 9.

55001. Community College Educational Program.

(a) The instructional services of community colleges include:

(1) Liberal Arts and Sciences Education

(A) Baccalaureate Oriented/Transfer Programs and Courses

(B) Associate Degree Programs and Courses

(C) Developmental Programs and Courses

1. Compensatory Programs and Courses

2. Adult Elementary and Secondary Basic Skills Programs and Courses

(D) Community Education Programs and Courses

1. Personal Development and Survival Courses

2. Parenting and Family Support Courses

3. Community and Civic Development Courses

4. General and Cultural Courses

(2) Occupational Education

(A) Vocational/Technical Transfer Programs and Courses

(B) Vocational/Technical Associate Degree and Certificate Programs and Courses

(C) Continuing Education Vocational/Technical Certificates, Programs and Courses

(b) The community services (Non ADA generating) of community colleges include:

(1) Community Services Classes

(A) Avocational Classes

(B) Recreational Classes

(C) Seminars, Lecture Series, Forum Series, Workshops, and Conferences

(D) Professional and Occupational Inservice Classes

(2) Community Services Activities

(A) Civic Center Act Activities

(B) Cultural Activities

(C) Community Development Activities

(D) Recreational Activities

(c) All districts shall report the classification of all courses, classes, and activities offered in accordance with the system contained in subsections (a) and (b) and the standards in Section 55002 by transmitting the following information to the Chancellor's Office:

(1) The unique static course identifier and the course title for all credit and noncredit courses.

(2) The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor.

(3) Whether the course is offered as credit or noncredit.

(4) Whether the course transfers to CSUC or UC or both.

(5) The number of community services classes in each category, and the number of participants.

(6) The number of community services activities in each category and the number of participants.

(d) Not later than January 21, 1982, the chief executive officer of each community college district, in consultation with the academic senate or other appropriate faculty body and other appropriate persons or groups, shall report in the manner required by subsection (c) on the initial classification of all existing courses, classes and activities. The Chancellor shall review and comment upon, as necessary, this initial classification of courses, classes, and activities by districts. Not later than June 30, 1982, the governing board of each district, after a public hearing, shall adopt and report to the Chancellor on the classification of all existing courses, classes and activities.

(e) For courses, classes and activities which are added after June 30, 1982, the district shall report the classification of all courses, classes and activities in the manner provided by subsection (c). The Chancellor shall review and comment upon, as necessary, the classification of such courses, classes and activities.

NOTE: Authority cited: Sections 66700, 71020, 71027, 71062, and 78405, Education Code. Reference: Sections 66701, 71027, 78200, 78201, 78300, 78401, 78405, 84603, and 84621, Education Code.

55002. Standards and Criteria for Courses and Classes.

(a) A credit course is a course which, at a minimum:

(1) Is recommended by the responsible college officials and the academic senate or other appropriate faculty body as being of appropriate rigor and has been approved by the local district governing board as a collegiate course meeting the needs of the students eligible for admission.

(2) Is taught by a credentialed instructor.

(3) Is offered as described in an outline and/or curriculum guide in official college files. That outline and/or curriculum guide shall specify the unit value, scope, objectives, content instructional methodology and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Is taught in accordance with a set of instructional objectives common to all students.

(5) Provides for measurement of student performance in terms of the stated course objectives and culminates in a formal recorded grade based upon uniform standards which is permanently recorded and is available as an official student evaluation.

(6) Grants units of credit based upon a specified relationship between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline.

(7) Only those students who have met the prerequisites for the course are enrolled.

(8) Allows repeated enrollment only as permitted by provisions of Division 2 (commencing with Section 51000 of this part).

(b) A noncredit course is a course which, at a minimum:

(1) Is approved by the local district governing board as a course meeting the educational needs of the enrolled students.

(2) Is taught by a credentialed instructor. A supplementary lecturer need not hold a credential if he or she lectures fewer than four times in a semester or quarter.

(3) Treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement appropriate for the enrolled students.

(4) Is conducted in accordance with a course outline and/or curriculum guide in official college files. That outline and/or curriculum guide shall specify the scope, objectives, content, instructional methodology, and methods of evaluation for determining whether the course objectives have been met.

(c) A community services class at a minimum:

(1) Is approved by the local district governing board.

(2) Is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein.

(3) Provides subject matter content, resource materials, and teaching methods appropriate for the enrolled students.

(4) Is conducted in accordance with a predetermined strategy or plan.

(5) Is open to all members of the community.

(6) Attendance in community services classes may not be claimed for apportionment purposes.

NOTE: Authority cited: Sections 66700, 71020, 71027, and 78405, Education Code. Reference: Sections 71027, 78200, and 78405, Education Code.

55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four-year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit-no credit, and if so, which provision of subsection (a) of Section 51302 is applicable.

NOTE: Authority cited: Sections 66700, 71020, and 71062, Education Code. Reference: Sections 66700 and 71020, Education Code.

55006. Records and Reports.

Authorities of each community college maintaining credit and non-credit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700, 71020, and 71062, Education Code. Reference: Sections 78200, 78401, 78405, and 84603, Education Code.

Article 2. Approval of Courses, Programs and Classes

55100. Course Approval.

Except as provided in subsection (b) and Section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not Chancellor's Office approval is required, the district shall designate the appropriate classification of the course or activity in accordance with Section 55001.

NOTE: Authority cited: Sections 66700, 71020, 71062, and 71091, Education Code. Reference: Sections 71091, 78200, 78401, and 78405, Education Code.

55130. Approval of Credit Programs.

(a) Before offering any course as part of an educational program at a college, the governing board of a district shall obtain approval of the educational program from the Chancellor in accordance with the provisions of this article. Approval shall be requested on forms provided by the Chancellor.

(b) The application for approval shall contain at least the following:

(1) The name of the proposed program.

(2) The description of the proposed program.

(3) The purposes and specific objectives of the proposed program.

(4) The place of the proposed program in the district master plan.

(5) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning.

(6) The need for the proposed program ascertained with regard to at least the following factors:

(A) Other community colleges in the area currently offering the program.

(B) Other programs closely related to the proposed program offered by the college.

(C) Relation of the proposed program to job market analysis.

(D) Enrollment projection for the proposed program.

(E) Recommendations of area vocational master plan committees when applicable.

(F) The classification of the courses in the program in accordance with Section 55001.

(7) The need for and present adequacy of the following resources shall be determined in relation to the proposed program:

(A) Library resources.

(B) Facilities and equipment required to initiate and sustain the program. If a new facility is to be used, reference should be made to the five-year master plan.

(C) Availability of adequate or proposed financial support.

(D) Availability of faculty.

(c) The development, establishment and evaluation of an education program shall include representative faculty involvement.

(d) An approval is effective until the program or implementation of the program is discontinued or modified in any substantial way. From time to time the Chancellor may evaluate an educational program, after its approval, on the basis of factors listed in this section. If on the basis of such an evaluation the Chancellor determines that an educational program should no longer be offered, the Chancellor may terminate the approval and determine the effective date of termination.

(e) In multicollege districts, program approval is granted for a specific college.

NOTE: Authority cited: Sections 71020, 71027, 71062, and 71091, Education Code. Reference: Sections 71027, 71091, 78200, and 78405, Education Code.

55150. Approval of Noncredit Courses and Programs.

(a) Courses or programs offered for noncredit shall be approved by the Chancellor in accordance with Section 55100 on forms provided by the Chancellor's Office.

(b) Course outlines for all noncredit courses shall be on file in the community college offering the course.

(c) Authorities of each community college maintaining noncredit courses shall keep such current records and reports as may be required by the Chancellor.

NOTE: Authority cited: Sections 66700, 71020, 71062, and 71091, Education Code. Reference: Sections 71091, 78200, 78401, and 78405, Education Code.

55160. Approval of Community Service Classes.

(a) Districts are authorized in accordance with the provisions of Article 7 (commencing with Section 78300) of Chapter 2, Part 48 of the Education Code to approve and conduct community services classes without the approval of the Chancellor. The classification of all such classes shall be reported to the Chancellor in accordance with Section 55001.

(b) Community services classes shall not be referred to as noncredit classes.

NOTE: Authority cited: Sections 8092, 71020, 71062, and 71091, Education Code. Reference: Sections 71091 and 78300, Education Code.

55170. Contract Classes.

(a) Notwithstanding subdivision (c) of Section 55000, "contract classes" means those classes which a community college district offers in fulfillment of a contract with a public or private agency, corporation, association, or other body or person.

(b) No approval of a contract class is required if the district does not claim state support for the class and if the legislation which authorizes that class does not require approval. If the district claims state support for a contract class, approval of the class shall be obtained in the manner provided for classes of the same type, as provided in this article. Approval of the contract shall be obtained in the manner provided for by law.

NOTE: Authority cited: Sections 8092, 66700, 71020, 71062, and 71091, Education Code. Reference: Sections 8092, 71091, 78200, and 78401, Education Code.

55180. Chancellor's Report.

The Chancellor shall report to the Board at a fall meeting, the actions which have been taken in approving courses and programs submitted to the Chancellor pursuant to the provisions of this chapter.

NOTE: Authority cited: Sections 66700 and 71020, Education Code. Reference: Sections 71091, 78200, and 78401, Education Code.

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CHAPTER 4. COURSES AND PROGRAMS CONDUCTED AS INDEPENDENT STUDY

55300. Application of Chapter.

The provisions of this chapter apply to and implement the provisions of sections 84500 and 84520 of the Education Code in relation to attendance in approved courses and programs designed and conducted as independent study.

Approved courses conducted as independent study shall be reported to the Chancellor in accordance with specified procedures as required by law.

All heretofore approved credit courses offered in whatever mode meeting the above requirements shall remain approved provided such courses meet the requirements of this chapter.

NOTE: Authority cited: Sections 71020, 84500 and 84520, Education Code. Reference: Article 8 (commencing with Section 78310), Chapter 2, Part 48, Education Code.

HISTORY:

1. Repealer of Chapter 4 (Sections 55300–55344, not consecutive) and new Chapter 4 (Articles 1–5; Sections 55300–55360, not consecutive) filed 12-18-78; effective thirtieth day thereafter (Register 78, No. 51). For prior history, see Registers 77, No. 45 and 71, No. 9.
2. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
3. Amendment of Chapter 4 heading, repealer of Article 1 heading, and amendment of Section 55300 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55302. Definitions.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55310. Reporting.

Each independent study course, whether or not it is part of an approved program, must be reported to the Chancellor in a manner and form required by the Chancellor.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500 and 84520, Education Code.

HISTORY:

1. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
2. Repealer of Article 2 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55312. Transfer.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55314. Faculty and Student Participation.

In the development and evaluation of courses and programs subject to the requirements of this chapter, the district shall include input from, and participation by, faculty who are selected by academic senates or appropriate faculty bodies, and students.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY:

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55316. Criteria.

Courses offered pursuant to this chapter shall:

(a) Be accepted by the college toward completion of an appropriate educational sequence leading to an associate degree, and

(b) Shall be recognized by an institution of the University of California or the California State University upon transfer to that institution.

Evidence of transferability to California State University or to the University of California shall be deemed to exist when the community college certifies that the course is recognized upon transfer.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY:

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55318. Written Record.

In submitting a report for each course offered pursuant to this chapter, a college shall certify that the components of each course are set out in a written record for each student enrolled, and have been developed and evaluated with the participation of faculty and students as noted in this chapter.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY:

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55320. Academic Standards.

Academic standards applicable to courses of independent study shall be the same as those applied to other credit courses in the college.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:

1. Repealer of Article 3 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55321. Student Progress.

Procedures for evaluation of student progress shall be in accordance with regulations set by the college. A report by an instructor on appropriate records bearing the student's name for purposes of state apportionment shall certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by the student.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY:

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55322. Availability of Instructor.

The college shall provide access to the instructor for the students enrolled in courses offered pursuant to this chapter at least equivalent to that commonly available to students enrolled in courses conducted by other instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY:

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55323. Learning Assistance.

Learning assistance, when provided by the college, shall be considered a component of the course and shall not authorize or constitute credit increments for the course or for the sequence of such courses applicable to the college degree or certificate.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY:

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55340. Eligibility for State Funds.

(a) In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this chapter, the course must be reported as required by this chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

(b) For purposes of computing the average daily attendance, one weekly student contact hour shall be counted for each unit of independent study credit for which a student is enrolled in a course conducted during any census period.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY:

1. Repealer of Article 4 heading and amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55342. Average Daily Attendance.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55343. Grades Awarded.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55344. Enrollment.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55346. Records.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55348. Supervision.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55350. Instruction.

The instructor assigned to a course conducted pursuant to this chapter shall:

(a) Possess a valid teaching certificate authorizing service in that capacity during the period in which that service is rendered;

(b) Be responsible for the supervision, control, and evaluation of the course and the enrolled students;

(c) Provide orientation, guidance, and information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college; and

(d) Provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, this schedule to be included in the written record.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY:

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55352. Number of Students.

The number of students assigned to any one instructor of courses offered pursuant to this section shall not exceed 125 students per instructor unless exempted by the Chancellor.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY:

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55360. Evaluation Reports.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:

1. Repealer of Article 5 heading and Section 55360 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700, 71025 and 84500.1, Education Code. Reference: Sections 71025 and 84500.1, Education Code.

51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 71028 of the Education Code and regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 71025 and 81805, Education Code. Reference: Sections 71025, 71028, 71091, 72231.5, 81820, 81821 and 81822, Education Code.

51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of Section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of Section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by Section 53004 of this part;

(d) Undertake a program of recruitment as required by Section 53021 of this part; and

(e) Substantially comply with the provisions of Chapter 1 (commencing with Section 53000) of Division 4 of this part.

NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55825) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

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CHAPTER 1. PROGRAMS, COURSES AND CLASSES

Article 1. Program, Course and Class Classification and Standards

55000. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.

(b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

(c) "Class" means a community services offering.

NOTE: Authority cited: Sections 71020 and 71062, Education Code. Reference: Sections 78300 and 78301, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Subchapters 1–3, Sections 55000–55144, not consecutive) and new Chapter 1 (Articles 1–2, Sections 55000–55180, not consecutive) filed 12-21-81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 80, No. 11; 77, No. 45; and 71, No. 9.

55001. Community College Educational Program.

(a) The instructional services of community colleges include:

(1) Liberal Arts and Sciences Education

(A) Baccalaureate Oriented/Transfer Programs and Courses

(B) Associate Degree Programs and Courses

(C) Developmental Programs and Courses

1. Compensatory Programs and Courses

2. Adult Elementary and Secondary Basic Skills Programs and Courses

(D) Community Education Programs and Courses

1. Personal Development and Survival Courses

2. Parenting and Family Support Courses

3. Community and Civic Development Courses

4. General and Cultural Courses

(2) Occupational Education

(A) Vocational/Technical Transfer Programs and Courses

(B) Vocational/Technical Associate Degree and Certificate Programs and Courses

(C) Continuing Education Vocational/Technical Certificates, Programs and Courses

(b) The community services (Non ADA generating) of community colleges include:

(1) Community Services Classes

(A) Avocational Classes

(B) Recreational Classes

(C) Seminars, Lecture Series, Forum Series, Workshops, and Conferences

(D) Professional and Occupational Inservice Classes

(2) Community Services Activities

(A) Civic Center Act Activities

(B) Cultural Activities

(C) Community Development Activities

(D) Recreational Activities

(c) All districts shall report the classification of all courses, classes, and activities offered in accordance with the system contained in subsections (a) and (b) and the standards in Section 55002 by transmitting the following information to the Chancellor's Office:

(1) The unique static course identifier and the course title for all credit and noncredit courses.

(2) The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor.

(3) Whether the course is offered as credit or noncredit.

(4) Whether the course transfers to CSUC or UC or both.

(5) The number of community services classes in each category, and the number of participants.

(6) The number of community services activities in each category and the number of participants.

(d) Not later than January 21, 1982, the chief executive officer of each community college district, in consultation with the academic senate or other appropriate faculty body and other appropriate persons or groups, shall report in the manner required by subsection (c) on the initial classification of all existing courses, classes and activities. The Chancellor shall review and comment upon, as necessary, this initial classification of courses, classes, and activities by districts. Not later than June 30, 1982, the governing board of each district, after a public hearing, shall adopt and report to the Chancellor on the classification of all existing courses, classes and activities.

(e) For courses, classes and activities which are added after June 30, 1982, the district shall report the classification of all courses, classes and activities in the manner provided by subsection (c). The Chancellor shall review and comment upon, as necessary, the classification of such courses, classes and activities.

NOTE: Authority cited: Sections 66700, 71020, 71027, 71062, and 78405, Education Code. Reference: Sections 66701, 71027, 78200, 78201, 78300, 78401, 78405, 84603, and 84621, Education Code.

55002. Standards and Criteria for Courses and Classes.

(a) A credit course is a course which, at a minimum:

(1) Is recommended by the responsible college officials and the academic senate or other appropriate faculty body as being of appropriate academic rigor and has been approved by the local district governing board as a collegiate course meeting the needs of the students eligible for admission.

(2) Is taught by a credentialed instructor.

(3) Is offered as described in an outline and/or curriculum guide in official college files. That outline and/or curriculum guide shall specify the unit value, scope, objectives, content in terms of a specific body of knowledge, appropriate readings and writing, and outside assignments, instructional methodology and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Is taught in accordance with a set of instructional objectives common to all students.

(5) Provides for measurement of student performance in terms of the stated course objectives and culminates in a formal recorded grade based upon uniform standards in accordance with Section 55758 of this part and which is permanently recorded as an evaluation of student performance.

(6) Grants units of credit based upon a specified relationship between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline.

(7) Shall require the completion of appropriate prerequisites for the course before students are enrolled.

(8) Allows repeated enrollment only as permitted by provisions of Division 2 (commencing with Section 51000 of this part).

(b) A noncredit course is a course which, at a minimum:

(1) Is approved by the local district governing board as a course meeting the educational needs of the enrolled students.

(2) Is taught by a credentialed instructor. A supplementary lecturer need not hold a credential if he or she lectures fewer than four times in a semester or quarter.

(3) Treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement appropriate for the enrolled students.

(4) Is conducted in accordance with a course outline and/or curriculum guide in official college files. That outline and/or curriculum guide shall specify the scope, objectives, content, instructional methodology, and methods of evaluation for determining whether the course objectives have been met.

(c) A community services class at a minimum:

(1) Is approved by the local district governing board.

(2) Is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein.

(3) Provides subject matter content, resource materials, and teaching methods appropriate for the enrolled students.

(4) Is conducted in accordance with a predetermined strategy or plan.

(5) Is open to all members of the community.

(6) Attendance in community services classes may not be claimed for apportionment purposes.

NOTE: Authority cited: Sections 66700, 71020, 71027 and 78405 Education Code. Reference: Sections 71027, 78900 and 78405, Education Code.

HISTORY:

1. Amendment of subsection (a) filed 12-28-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 53).

55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four-year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit-no credit, and if so, which provision of subsection (a) of Section 51302 is applicable.

NOTE: Authority cited: Sections 66700, 71020, and 71062, Education Code. Reference: Sections 66700 and 71020, Education Code.

55006. Records and Reports.

Authorities of each community college maintaining credit and non-credit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700, 71020, and 71062, Education Code. Reference: Sections 78200, 78401, 78405, and 84603, Education Code.

Article 2. Approval of Courses, Programs and Classes

55100. Course Approval.

Except as provided in subsection (b) and Section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not Chancellor's Office approval is required, the district shall designate the appropriate classification of the course or activity in accordance with Section 55001.

NOTE: Authority cited: Sections 66700, 71020, 71062, and 71091, Education Code. Reference: Sections 71091, 78200, 78401, and 78405, Education Code.

55101. Chancellor's Report.

The Chancellor shall report to the board at a fall and a spring meeting the actions which the Chancellor has taken in approving courses submitted to the Chancellor pursuant to the provisions of this chapter.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55130. Approval of Credit Programs.

(a) Before offering any course as part of an educational program at a college, the governing board of a district shall obtain approval of the educational program from the Chancellor in accordance with the provisions of this article. Approval shall be requested on forms provided by the Chancellor.

(b) The application for approval shall contain at least the following:

(1) The name of the proposed program.

(2) The description of the proposed program.

(3) The purposes and specific objectives of the proposed program.

(4) The place of the proposed program in the district master plan.

(5) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning.

(6) The need for the proposed program ascertained with regard to at least the following factors:

(A) Other community colleges in the area currently offering the program.

(B) Other programs closely related to the proposed program offered by the college.

(C) Relation of the proposed program to job market analysis.

(D) Enrollment projection for the proposed program.

(E) Recommendations of area vocational master plan committees when applicable.

(F) The classification of the courses in the program in accordance with Section 55001.

(7) The need for and present adequacy of the following resources shall be determined in relation to the proposed program:

(A) Library resources.

(B) Facilities and equipment required to initiate and sustain the program. If a new facility is to be used, reference should be made to the five-year master plan.

(C) Availability of adequate or proposed financial support.

(D) Availability of faculty.

(c) The development, establishment and evaluation of an education program shall include representative faculty involvement.

(d) An approval is effective until the program or implementation of the program is discontinued or modified in any substantial way. From time to time the Chancellor may evaluate an educational program, after its approval, on the basis of factors listed in this section. If on the basis of such an evaluation the Chancellor determines that an educational program should no longer be offered, the Chancellor may terminate the approval and determine the effective date of termination.

(e) In multicollege districts, program approval is granted for a specific college.

NOTE: Authority cited: Sections 71020, 71027, 71062, and 71091, Education Code. Reference: Sections 71027, 71091, 78200, and 78405, Education Code.

55150. Approval of Noncredit Courses and Programs.

(a) Courses or programs offered for noncredit shall be approved by the Chancellor in accordance with Section 55100 on forms provided by the Chancellor's Office.

(b) Course outlines for all noncredit courses shall be on file in the community college offering the course.

(c) Authorities of each community college maintaining noncredit courses shall keep such current records and reports as may be required by the Chancellor.

NOTE: Authority cited: Sections 66700, 71020, 71062, and 71091, Education Code. Reference: Sections 71091, 78200, 78401, and 78405, Education Code.

55160. Approval of Community Service Classes.

(a) Districts are authorized in accordance with the provisions of Article 7 (commencing with Section 78300) of Chapter 2, Part 48 of the Education Code to approve and conduct community services classes without the approval of the Chancellor. The classification of all such classes shall be reported to the Chancellor in accordance with Section 55001.

(b) Community services classes shall not be referred to as noncredit classes.

NOTE: Authority cited: Sections 8092, 71020, 71062, and 71091, Education Code. Reference: Sections 71091 and 78300, Education Code.

55170. Contract Classes.

(a) Notwithstanding subdivision (c) of Section 55000, "contract classes" means those classes which a community college district offers in fulfillment of a contract with a public or private agency, corporation, association, or other body or person.

(b) No approval of a contract class is required if the district does not claim state support for the class and if the legislation which authorizes that class does not require approval. If the district claims state support for a contract class, approval of the class shall be obtained in the manner provided for classes of the same type, as provided in this article. Approval of the contract shall be obtained in the manner provided for by law.

NOTE: Authority cited: Sections 8092, 66700, 71020, 71062, and 71091, Education Code. Reference: Sections 8092, 71091, 78200, and 78401, Education Code.

55180. Chancellor's Report.

The Chancellor shall report to the Board at a fall meeting, the actions which have been taken in approving courses and programs submitted to the Chancellor pursuant to the provisions of this chapter.

NOTE: Authority cited: Sections 66700 and 71020, Education Code. Reference: Sections 71091, 78200, and 78401, Education Code.

55182. Reinstatement of Deleted Courses.

The governing board of a community college district may reinstate any course which was deleted from the credit or noncredit curriculum during the 1982–83 fiscal year, in response to provision Number 11 of Item 6870-101-001 of the Budget Act of 1982 (Chapter 326, Statutes of 1982); provided that the following criteria and procedures shall be applied in conjunction with such reinstatement:

(a) The governing board of the district shall only reinstate such courses in a manner which is consistent with the policy of the Board of Governors that offerings which are primarily avocational, or recreational shall be offered as community services classes, and not as credit or noncredit courses;

(b) The governing board of the district shall determine that the course meets the criteria and standards for courses specified in Section 55002;

(c) The governing board may act to reinstate a course only after it has been reviewed through the college's or district's established procedure for the approval of new courses;

(d) The governing board must submit the course to the Chancellor for approval, or report approval of the course, depending on the requirements of Section 55100. A separate designation shall be used to distinguish reinstated courses from new courses; and

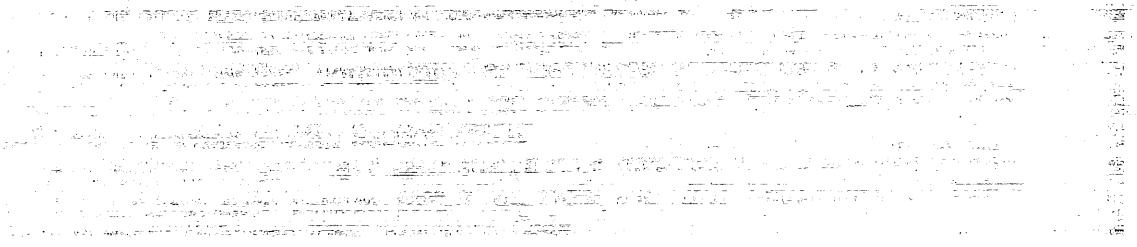
(e) The governing board must determine that reinstatement of the course maintains or improves the curriculum balance of the district in accordance with the mission of the community college and local needs.

(f) Any category of courses restored to the curriculum pursuant to a separate authorization of the Board of Governors shall be exempt from the requirements of this section.

NOTE: Authority cited: Sections 66700, 71020, 71027, 71027.5 and 78405, Education Code. Reference: Sections 71027, 71027.5, 78200 and 78405, Education Code.

HISTORY:

1. New Section filed 12-29-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 53).



(6) Grants units of credit based upon a specified relationship between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline.

(7) Shall require, when so designated; the completion of appropriate prerequisites for the course before students are enrolled.

(8) Allows repeated enrollment only as permitted by provisions of Division 2 (commencing with Section 51000 of this part).

(b) A noncredit course is a course which, at a minimum:

(1) Is approved by the local district governing board as a course meeting the educational needs of the enrolled students.

(2) Is taught by a credentialed instructor. A supplementary lecturer need not hold a credential if he or she lectures fewer than four times in a semester or quarter.

(3) Treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement appropriate for the enrolled students.

(4) Is conducted in accordance with a course outline and/or curriculum guide in official college files. That outline and/or curriculum guide shall specify the scope, objectives, content, instructional methodology, and methods of evaluation for determining whether the course objectives have been met.

(c) A community services class at a minimum:

(1) Is approved by the local district governing board.

(2) Is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein.

(3) Provides subject matter content, resource materials, and teaching methods appropriate for the enrolled students.

(4) Is conducted in accordance with a predetermined strategy or plan.

(5) Is open to all members of the community.

(6) Attendance in community services classes may not be claimed for apportionment purposes.

NOTE: Authority cited: Sections 66700, 71020, 71027 and 78405 Education Code. Reference: Sections 71027, 78200 and 78405, Education Code.

HISTORY:

1. Amendment of subsection (a) filed 12-28-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 5-18-84; effective thirtieth day thereafter (Register 84, No. 20).

55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four-year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit-no credit, and if so, which provision of subsection (a) of Section 51302 is applicable.

NOTE: Authority cited: Sections 66700, 71020, and 71062, Education Code. Reference: Sections 66700 and 71020, Education Code.

55323. Learning Assistance.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY:
1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12-17-84; effective thirtieth day thereafter (Register 84, No. 51).

55340. Eligibility for State Funds.

(a) In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this chapter, the course must be reported as required by this chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

(b) For purposes of computing the average daily attendance, one weekly student contact hour shall be counted for each unit of independent study credit for which a student is enrolled in a course conducted during any census period.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY:
1. Repealer of Article 4 heading and amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55342. Average Daily Attendance.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:
1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55343. Grades Awarded.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:
1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55344. Enrollment.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:
1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55346. Records.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a) (2) and 84520, Education Code.

HISTORY:
1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Register 1988-42

§ 55002

CHAPTER 1. PROGRAMS, COURSES AND CLASSES

Article 1. Program, Course and Class Classification and Standards

55000. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.

(b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

(c) "Class" means a community services offering.

NOTE: Authority cited: Sections 71020 and 71062, Education Code. Reference: Sections 78200 and 78201, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Subchapters 1–3, Sections 55000–55144, not consecutive) and new Chapter 1 (Articles 1–2, Sections 55000–55180, not consecutive) filed 12-21-81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 80, No. 11; 77, No. 45; and 71, No. 9.

55001. Community College Educational Program.

(a) The instructional services of community colleges include:

(1) Liberal Arts and Sciences Education

(A) Baccalaureate Oriented/Transfer Programs and Courses

(B) Associate Degree Programs and Courses

(C) Developmental Programs and Courses

1. Compensatory Programs and Courses

2. Adult Elementary and Secondary Basic Skills Programs and Courses

(D) Community Education Programs and Courses

1. Personal Development and Survival Courses

2. Parenting and Family Support Courses

3. Community and Civic Development Courses

4. General and Cultural Courses

(2) Occupational Education

(A) Vocational/Technical Transfer Programs and Courses

(B) Vocational/Technical Associate Degree and Certificate Programs and Courses

(C) Continuing Education Vocational/Technical Certificates, Programs and Courses

(b) The community services (Non ADA generating) of community colleges include:

(1) Community Services Classes

(A) Avocational Classes

(B) Recreational Classes

(C) Seminars, Lecture Series, Forum Series, Workshops, and Conferences

(D) Professional and Occupational Inservice Classes

(2) Community Services Activities

(A) Civic Center Act Activities

(B) Cultural Activities

(C) Community Development Activities

(D) Recreational Activities

(c) All districts shall report the classification of all courses, classes, and activities offered in accordance with the system contained in subsections (a) and (b) and the standards in Section 55002 by transmitting the following information to the Chancellor's Office:

(1) The unique static course identifier and the course title for all credit and noncredit courses.

(2) The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor.

(3) Whether the course is offered as credit or noncredit.

(4) Whether the course transfers to CSUC or UC or both.

(5) The number of community services classes in each category, and the number of participants.

(6) The number of community services activities in each category and the number of participants.

(d) Not later than January 21, 1982, the chief executive officer of each community college district, in consultation with the academic senate or other appropriate faculty body and other appropriate persons or groups, shall report in the manner required by subsection (c) on the initial classification of all existing courses, classes and activities. The Chancellor shall review and comment upon, as necessary, this initial classification of courses, classes, and activities by districts. Not later than June 30, 1982, the governing board of each district, after a public hearing, shall adopt and report to the Chancellor on the classification of all existing courses, classes and activities.

(e) For courses, classes and activities which are added after June 30, 1982, the district shall report the classification of all courses, classes and activities in the manner provided by subsection (c). The Chancellor shall review and comment upon, as necessary, the classification of such courses, classes and activities.

NOTE: Authority cited: Sections 66700, 71020, 71027, 71062, and 78405, Education Code. Reference: Sections 66701, 71027, 78200, 78201, 78300, 78401, 78405, 84603, and 84621, Education Code.

55002. Standards and Criteria for Courses and Classes.

(a) Associate Degree Credit Course. An associate degree credit course is a course which has been designated as appropriate to the associate degree in accordance with the requirements of Section 55805.5, and which has been recommended by the college and/or district curriculum committee and approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission.

(1) Curriculum Committee. The college and/or district curriculum committee recommending the course shall be established by the mutual agreement of the college and/or district administration and the academic senate. The committee shall either be a committee of the academic senate or a committee which includes faculty and is otherwise comprised in a way that is mutually agreeable to the college and/or district administration and the academic senate.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the following standards:

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with

Section 55758 of this part. The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays, or, in courses where the curriculum committee deems them to be appropriate, problem solving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board, between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline; and requires a minimum of three hours of work per week, including class time for each unit of credit, prorated for short term, laboratory and activity courses.

(C) Intensity. The course treats subject matter with a scope and intensity which requires students to study independently outside of class time.

(D) Entrance Requirements. When the college and/or district curriculum committee deems appropriate, the course shall require entrance skills and consequent prerequisites for the course before students are enrolled.

(E) Basic Skills Requirements. If success in the course is deemed by the curriculum committee to be sufficiently dependent upon communication or computation skills, then the course shall require as pre- or co-requisites eligibility for enrollment in associate degree credit courses in English and/or mathematics, respectively.

(F) Difficulty. The coursework calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level.

(G) Level. The course requires learning skills and a vocabulary which the curriculum committee deems appropriate for a college course.

(3) Course Outline of Record. The course is described in a course outline of record which shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside of class assignments, instructional methodology and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Conduct of Course. All sections of the course are to be taught by a credentialed instructor in accordance with a set of objectives and other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Division 2 (commencing with Section 51000), Sections 55761–55763 and 58161 of this part.

(b) Non-degree Credit Course. A credit course designated by the governing board as not applicable to the associate degree is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under subdivision (a) (1) of this section) and approved by the district governing board as a course meeting the needs of the students eligible for admission.

(1) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the following standards:

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal,

permanently recorded grade based upon uniform standards in accordance with Section 55758 of this part.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board, between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline.

(C) Entrance Requirements. When the college and/or district curriculum committee deems appropriate, the course shall require entrance skills and consequent prerequisites for the course before students are enrolled.

(2) Course Outline of Record. The course is described in a course outline of record which shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside of class assignments, instructional methodology and methods of evaluation for determining whether the stated objectives have been met by students.

(3) Conduct of Course. All sections of the course are to be taught by a credentialed instructor in accordance with a set of objectives and other specifications defined in the course outline of record.

(4) Repetition. Repeated enrollment is allowed only in accordance with provisions of Division 2 (commencing with Section 51000), Sections 55761–55763 and 58161 of this part.

(c) Noncredit Course. A noncredit course is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under subdivision (a) (1) of this section) and approved by the district governing board as a course meeting the needs of enrolled students.

(1) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course if the course treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement which the committee deems appropriate for the enrolled students.

(2) Course Outline of Record. The course is described in a course outline of record which shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the scope, objectives, contents, instructional methodology and methods of evaluation for determining whether the stated objectives have been met.

(3) Conduct of Course. All sections of the course are to be taught by a credentialed instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

(d) Community Services Class. A community services class is a class which meets the following minimum requirements:

(1) Is approved by the local district governing board.

(2) Is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein.

(3) Provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students.

(4) Is conducted in accordance with a predetermined strategy or plan.

(5) Is open to all members of the community.

(6) May not be claimed for apportionment purposes.

(c) Not later than the initial day of registration for fall 1990, district governing boards shall have completed necessary steps for implementation of subsections (a), (b) and (c) of this section, such that by this date, each district shall have published in its college catalogues or in an addendum to be available to all students at fall 1990 registration, a statement, symbol, numbering system or the equivalent that clearly indicates whether each course is degree applicable, non-degree applicable, or noncredit.

NOTE: Authority cited: Sections 66700, 71020, 71027, 71066 and 71079, Education Code. Reference: Sections 66701, 71027, 71066 and 72285, Education Code.

HISTORY:

1. Amendment of subsection (a) filed 12-28-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 5-18-84; effective thirtieth day thereafter (Register 84, No. 20).
3. Repealer and new section filed 10-7-88; operative 11-6-88 (Register 88, No. 42).

55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four-year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit-no credit, and if so, which provision of subsection (a) of Section 51302 is applicable.

NOTE: Authority cited: Sections 66700, 71020, and 71062, Education Code. Reference: Sections 66700 and 71020, Education Code.

55006. Records and Reports.

Authorities of each community college maintaining credit and non-credit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700, 71020, and 71062, Education Code. Reference: Sections 78200, 78401, 78405, and 84603, Education Code.

Article 2. Approval of Courses, Programs and Classes

55100. Course Approval.

Except as provided in subsection (b) and Section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

§ 51021
§ 55000
§ 55000.5
§ 55001
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§ 55100
§ 55130
§ 55150
§ 55160
§55170
§ 55182
§ 55300
§ 55310
§ 55314
§ 55316
§ 55318
§ 55320
§ 55321
§ 55322
§ 55340
§ 55350

(e) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Chapter 6. Curriculum and Instruction

Subchapter 1. Programs, Courses and Classes

Article 1. Program, Course and Class Classification and Standards

§ 55000. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.

(b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

(c) "Class" means a community services offering.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Repealer of chapter 1 (subchapters 1–3, sections 55000–55144, not consecutive) and new chapter 1 (articles 1–2, sections 55000–55180, not consecutive) filed 12–21–81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 80, No. 11; 77, No. 45; and 71, No. 9.

Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55000.5. Handbook; Monitoring and Review of Approved Courses and Programs.

(a) The Chancellor shall prepare, distribute, and maintain a detailed handbook for use by the local educational agencies. The handbook shall contain course approval criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals.

(b) The Chancellor shall monitor and review courses and programs which were approved under the provisions of section 70901 of the Education Code for compliance with applicable statutes and regulations on a periodic basis.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55001. Community College Educational Program.

(a) The instructional services of community colleges include:

(1) Liberal Arts and Sciences Education

(A) Baccalaureate Oriented/Transfer Programs and Courses

(B) Associate Degree Programs and Courses

(C) Developmental Programs and Courses

1. Compensatory Programs and Courses

2. Adult Elementary and Secondary Basic Skills Programs and Courses

(D) Community Education Programs and Courses

1. Personal Development and Survival Courses

2. Parenting and Family Support Courses

3. Community and Civic Development Courses

4. General and Cultural Courses

(2) Occupational Education

(A) Vocational/Technical Transfer Programs and Courses

(B) Vocational/Technical Associate Degree and Certificate Programs and Courses

(C) Continuing Education Vocational/Technical Certificates, Programs and Courses

(b) The community services (Non ADA generating) of community colleges include:

(1) Community Services Classes

(A) Avocational Classes

(B) Recreational Classes

(C) Seminars, Lecture Series, Forum Series, Workshops, and Conferences

(D) Professional and Occupational Inservice Classes

(2) Community Services Activities

(A) Civic Center Act Activities

(B) Cultural Activities

(C) Community Development Activities

(D) Recreational Activities

(c) All districts shall report the classification of all courses, classes, and activities offered in accordance with the system contained in subsections (a) and (b) and the standards in section 55002 by transmitting the following information to the Chancellor's Office:

(1) The unique static course identifier and the course title for all credit and noncredit courses.

(2) The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor.

(3) Whether the course is offered as credit or noncredit.

(4) Whether the course transfers to the California State University or the University of California or both.

(5) The number of community services classes in each category, and the number of participants.

(6) The number of community services activities in each category and the number of participants.

(d) For courses, classes and activities which are added after June 30, 1982, the district shall report the classification of all courses, classes and activities in the manner provided by subsection (c). The Chancellor shall review and comment upon, as necessary, the classification of such courses, classes and activities.

Note: Authority cited: Sections 66700, 70901, and 78401, Education Code. Reference: Sections 66701, 70901, 70902, 78300, and 78401, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55002. Standards and Criteria for Courses and Classes.

(a) Associate Degree Credit Course. An associate degree credit course is a course which has been designated as appropriate to the associate degree in accordance with the requirements of section 55805.5, and which has been recommended by the college and/or district curriculum committee and approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission.

(1) Curriculum Committee. The college and/or district curriculum committee recommending the course shall be established by the mutual agreement of the college and/or district administration and the academic senate. The committee shall either be a committee of the academic senate or a committee which includes faculty and is otherwise comprised in a way that is mutually agreeable to the college and/or district administration and the academic senate.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the following standards:

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this part. The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays, or, in courses where the curriculum committee deems them to be appropriate, problem solving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board, between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline; and requires a minimum of three hours of work per week, including class time for each unit of credit, prorated for short term, laboratory and activity courses.

(C) Intensity. The course treats subject matter with a scope and intensity which requires students to study independently outside of class time.

(D) Entrance Requirements. When the college and/or district curriculum committee deems appropriate, the course shall require entrance skills and consequent prerequisites for the course before students are enrolled.

(E) Basic Skills Requirements. If success in the course is deemed by the curriculum committee to be sufficiently dependent upon communication or computation skills, then the course shall require as pre– or co–requisites eligibility for enrollment in associate degree credit courses in English and/or mathematics, respectively.

(F) Difficulty. The coursework calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level.

(G) Level. The course requires learning skills and a vocabulary which the curriculum committee deems appropriate for a college course.

(3) Course Outline of Record. The course is described in a course outline of record which shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide reading and writing assignments, other outside of class examples of required assignments, instructional methodology and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with a set of objectives and other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of division 2 (commencing with section 51000), sections 55761–55763 and 58161 of this part.

(b) Non–degree Credit Course. A credit course designated by the governing board as not applicable to the associate degree is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under subdivision (a)(1) of this section) and approved by the district governing board as a course meeting the needs of the students eligible for admission.

(1) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the following standards:

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this part.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board, between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline.

(C) Entrance Requirements. When the college and/or district curriculum committee deems appropriate, the course shall require entrance skills and consequent prerequisites for the course before students are enrolled.

(2) Course Outline of Record. The course is described in a course outline of record which shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside class assignments, instructional methodology and methods of evaluation for determining whether the stated objectives have been met by students.

(3) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with a set of objectives and other specifications defined in the course outline of record.

(4) Repetition. Repeated enrollment is allowed only in accordance with provisions of division 2 (commencing with section 51000), sections 55761–55763 and 58161 of this part.

(c) Noncredit Course. A noncredit course is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under subdivision (a)(1) of this section) and approved by the district governing board as a course meeting the needs of enrolled students.

(1) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course if the course treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement which the committee deems appropriate for the enrolled students.

(2) Course Outline of Record. The course is described in a course outline of record which shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the scope, objectives, contents, instructional methodology and methods of evaluation for determining whether the stated objectives have been met.

(3) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

(d) Community Services Class. A community services class is a class which meets the following minimum requirements:

(1) Is approved by the local district governing board.

(2) Is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein.

(3) Provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students.

(4) Is conducted in accordance with a predetermined strategy or plan.

(5) Is open to all members of the community.

(6) May not be claimed for apportionment purposes.

(e) Not later than the initial day of registration for fall 1990, district governing boards shall have completed necessary steps for implementation of subsections (a), (b) and (c) of this section, such that by this date, each district shall have published in its college catalogues or in an addendum to be available to all students at fall 1990 registration, a statement, symbol, numbering system or the equivalent that clearly indicates whether each course is degree applicable, non–degree applicable, or noncredit.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment of subsection (a) filed 12–28–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 5–18–84; effective thirtieth day thereafter (Register 84, No. 20).
3. Repealer and new section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55002.5. Credit Hour; Allowance for Shorter Term.

One credit hour of community college work is approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks. Where a term is more or less than 16 weeks, more or less than one credit hour shall be allowed in the same ratio that the length of the term is to 16 weeks.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55004. Social Science Courses.

The course of instruction in social sciences shall include a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States of America.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four–year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit–no credit, and if so, which provision of subsection (a) of section 51302 is applicable.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55006. Records and Reports.

Authorities of each community college maintaining credit and noncredit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55008. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

The governing board of each community college district participating in a vocational education program shall appoint a vocational education advisory committee to develop recommendations on the program and to provide liaison between the district and potential employers.

The committee shall consist of one or more representatives of the general public knowledgeable about the disadvantage, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 2. Approval of Courses, Programs and Classes

§ 55100. Course Approval.

Except as provided in subsection (b) and section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not approval by the Chancellor is required, the district shall designate the appropriate classification of the course or activity in accordance with section 55001.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55101. Chancellor's Report.

History

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer filed 3–7–85; effective thirtieth day thereafter (Register 85, No. 10).

§ 55130. Approval of Credit Programs.

(a) Before offering any course as part of an educational program at a college, the governing board of a district shall obtain approval of the educational program from the Chancellor in accordance with the provisions of this article. Approval shall be requested on forms provided by the Chancellor.

(b) The application for approval shall contain at least the following:

(1) The name of the proposed program.

(2) The description of the proposed program.

(3) The purposes and specific objectives of the proposed program.

(4) The place of the proposed program in the district master plan.

(5) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning.

(6) The need for the proposed program ascertained with regard to at least the following factors:

(A) Other community colleges in the area currently offering the program.

(B) Other programs closely related to the proposed program offered by the college.

(C) Relation of the proposed program to job market analysis.

(D) Enrollment projection for the proposed program.

(E) Recommendations of area vocational master plan committees when applicable.

(F) The classification of the courses in the program in accordance with section 55061.

(7) The need for and present adequacy of the following resources shall be determined in relation to the proposed program:

(A) Library and media center resources.

(B) Facilities and equipment required to initiate and sustain the program. If a new facility is to be used, reference should be made to the five–year master plan.

(C) Availability of adequate or proposed financial support.

(D) Availability of faculty.

(c) The development, establishment and evaluation of an education program shall include representative faculty involvement.

(d) An approval is effective until the program or implementation of the program is discontinued or modified in any substantial way. From time to time the Chancellor may evaluate an educational program, after its approval, on the basis of factors listed in this section. If on the basis of such an evaluation the Chancellor determines that an educational program should no longer be offered, the Chancellor may terminate the approval and determine the effective date of termination.

(e) In multicollege districts, program approval is granted for a specific college.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55150. Approval of Noncredit Courses and Programs.

(a) Courses or programs offered for noncredit shall be approved by the Chancellor in accordance with section 55100 on forms provided by the Chancellor's Office.

(b) Course outlines for all noncredit courses shall be on file in the community college offering the course.

(c) Authorities of each community college maintaining noncredit courses shall keep such current records and reports as may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55160. Approval of Community Service Classes.

(a) Districts are authorized in accordance with the provisions of article 7 (commencing with section 78300) of chapter 2, part 48 of the Education Code to approve and conduct community services classes without the approval of the Chancellor. The classification of all such classes shall be reported to the Chancellor in accordance with section 55001.

(b) Community services classes shall not be referred to as noncredit classes.

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Sections 70901 and 78300, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55170. Contract Classes.

(a) Notwithstanding subdivision (c) of section 55000, "contract classes" means those classes which a community college district offers in fulfillment of a contract with a public or private agency, corporation, association, or other body or person.

(b) No approval of a contract class is required if the district does not claim state support for the class and if the legislation which authorizes that class does not require approval. If the district claims state support for a contract class, approval of the class shall be obtained in the manner provided for classes of the same type, as provided in this article. Approval of the contract shall be obtained in the manner provided for by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 8092, 70902 and Article 1.5 (commencing with Section 78020) of Chapter 1, Part 48, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55180. Chancellor's Report.

NOTE: Authority cited: Sections 66700 and 71020, Education Code. Reference: Sections 71091, 78200, and 78401, Education Code.

HISTORY

1. Repeal of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55182. Reinstatement of Deleted Courses.

The governing board of a community college district may reinstate any course which was deleted from the credit or noncredit curriculum during the 1982–83 fiscal year, in response to provision Number 11 of Item 6870–101–001 of the Budget Act of 1982 (Chapter 326, Statutes of 1982); provided that the following criteria and procedures shall be applied in conjunction with such reinstatement:

(a) The governing board of the district shall only reinstate such courses in a manner which is consistent with the policy of the Board of Governors that offerings which are primarily avocational, or recreational shall be offered as community services classes, and not as credit or noncredit courses;

(b) The governing board of the district shall determine that the course meets the criteria and standards for courses specified in section 55002;

(c) The governing board may act to reinstate a course only after it has been reviewed through the college's or district's established procedure for the approval of new courses;

(d) The governing board must submit the course to the Chancellor for approval, or report approval of the course, depending on the requirements of section 55100. A separate designation shall be used to distinguish reinstated courses from new courses; and

(e) The governing board must determine that reinstatement of the course maintains or improves the curriculum balance of the district in accordance with the mission of the community college and local needs.

(f) Any category of courses restored to the curriculum pursuant to a separate authorization of the Board of Governors shall be exempt from the requirements of this section.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 70902 and 78401, Education Code.

HISTORY

1. New section filed 12–28–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 3. Bilingual Crosscultural Programs and Courses

§ 55225. Annual Articulation Agreement Plans.

(a) Each community college district which participates in the Bilingual Teacher Grant Program, established pursuant to Education Code section 52150 et seq., shall develop and update annually a written articulation program plan with each four–year public college, university or independent college to which 25% or more of its students are expected to transfer.

(b) These plans shall be negotiated between the personnel on the respective campuses who are designated, under section 52156 of the Education Code, to coordinate the Bilingual Teacher Grant Program and to provide supplementary services to grant recipients.

(c) The articulation program plan shall, at a minimum, contain:

(1) a course–by–course list specifying each community college bilingual education program course and its four–year college or university equivalent. The course description shall include: the number and title of the course; the number of units; the general education requirements met by the course; and the Commission for Teacher Preparation and Licensing requirements met by the course.

(2) the name, title, telephone number and campus address of the persons designated as negotiators for articulation on behalf of the community college district and the four–year institution.

(3) a brief description of the process that the institutions will use to update articulation program plans on an annual basis, to include the date by which all plans shall be reviewed.

(4) a statement of the dissemination process which the institutions will use to ensure that students who identify themselves as candidates for the four–year career ladder program know: those courses that are transferable and those that are not; entry and exit requirements at the four–year institutions; and the name of their student advisor.

(5) a description of the language and cultural assessment process as determined by the Commission for Teacher Preparation and Licensing.

(6) the name, title, telephone number, and campus address of the person designated as student advisor. If this person is not the same as the Bilingual Teacher Grant Program coordinator, the responsibilities of the two persons shall be clearly distinguished.

(d) The governing board of the community college district and the chief executive officer of the four–year institution shall also sign and date a formal cooperation agreement, updated annually, stating their specific plans for fully implementing the provisions of the Bilingual Teacher

(c) Employers or designated representatives agree to provide adequate supervision, facilities, equipment, and materials at the learning stations to achieve on-the-job learning objectives.

(d) Employers as required by law agree to comply with all appropriate federal and state employment regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78249, Education Code.

HISTORY

1. Amendment filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment filed 9-29-78; designated effective 1-2-79 (Register 78, No. 39).
3. New NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 4. Courses and Programs Conducted As Independent Study

§ 55300. Application of Chapter.

The provisions of this chapter apply to and implement the provisions of sections 58051 and 58003.1 in relation to attendance in approved courses and programs designed and conducted as independent study.

Approved courses conducted as independent study shall be reported to the Chancellor in accordance with specified procedures as required by law.

All heretofore approved credit courses offered in whatever mode meeting the above requirements shall remain approved provided such courses meet the requirements of this chapter.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: ction 78310, Education Code.

HISTORY

1. Repealer of chapter 4 (sections 55300-55344, not consecutive) and new chapter 4 (articles 1-5; sections 55300-55360, not consecutive) filed 12-18-78; effective thirtieth day thereafter (Register 78, No. 51). For prior history, see Registers 77, No. 45 and 71, No. 9.
2. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
3. Amendment of chapter 4 heading, repealer of article 1 heading, and amendment of section 55300 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55302. Definitions.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55310. Reporting.

Each independent study course, whether or not it is part of an approved program, must be reported to the Chancellor in a manner and form required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
2. Repealer of article 2 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55312. Transfer.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55314. Faculty and Student Participation.

In the development and evaluation of courses and programs subject to the requirements of this chapter, the district shall include input from, and participation by, faculty who are selected by academic senates or appropriate faculty bodies, and students.

NOTE: Authority cited: Sections 66700, 70901 and 78301, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55316. Criteria.

Courses offered pursuant to this chapter shall:

(a) Be accepted by the college toward completion of an appropriate educational sequence leading to an associate degree, and

(b) Shall be recognized by an institution of the University of California or the California State University upon transfer to that institution.

Evidence of transferability to California State University or to the University of California shall be deemed to exist when the community college certifies that the course is recognized upon transfer.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55318. Written Record.

In submitting a report for each course offered pursuant to this chapter, a college shall certify that the components of each course are set out in a written record for each student enrolled, and have been developed and evaluated with the participation of faculty and students as noted in this chapter.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902, and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55320. Academic Standards.

Academic standards applicable to courses of independent study shall be the same as those applied to other credit courses in the college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 3 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55321. Student Progress.

Procedures for evaluation of student progress shall be in accordance with regulations set by the college. A report by an instructor on appropriate records bearing the student's name for purposes of state apportionment shall certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by the student.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55322. Availability of Instructor.

The college shall provide access to the instructor for the students enrolled in courses offered pursuant to this chapter at least equivalent to that commonly available to students enrolled in courses conducted by other

instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55323. Learning Assistance.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12–17–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 55340. Eligibility for State Funds.

(a) In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this chapter, the course must be reported as required by this chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

(b) For purposes of computing attendance, one weekly student contact hour shall be counted for each unit of independent study credit for which a student is enrolled.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 4 heading and amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55342. Average Daily Attendance.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55343. Grades Awarded.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55344. Enrollment.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55346. Records.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55348. Supervision.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55350. Instruction.

The instructor assigned to a course conducted pursuant to this chapter shall:

(a) Be qualified to provide service in that capacity during the period in which that service is rendered;

(b) Be responsible for the supervision, control, and evaluation of the course and the enrolled students;

(c) Provide orientation, guidance, and information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college; and

(d) Provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, this schedule to be included in the written record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55352. Number of Students.

The number of students assigned to any one instructor of courses offered pursuant to this section shall not exceed 125 students per instructor unless exempted by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55360. Evaluation Reports.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer of Article 5 heading and Section 55360 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Subchapter 5. Educational Master Plans

§ 55400. Definitions.

The definitions provided in the Student Attendance Accounting Manual issued by the Chancellor shall apply to the provisions of this chapter.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New chapter 5 (sections 55400 through 55405) filed 7–1–71; effective thirtieth day thereafter (Register 71, No. 27).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55401. Current and Long Range Plans.

The governing board of each Community College district shall establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

§ 55402. Educational Master Plans.

On or before January 1, 1972, the governing board of each Community College district shall submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor on or before November 1 of each year thereafter.

§ 55403. Form.

Each plan shall be submitted on a form provided by the Chancellor and shall contain such information as the Chancellor shall require.

§ 55404. Contents.

Each plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. On the basis of current and future enrollment, it shall contain plans for the development and expansion of ancillary services,

Register 1991-43

§ 55008

§ 55004. Social Science Courses.

The course of instruction in social sciences shall include a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States of America.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four-year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit-no credit, and if so, which provision of subsection (a) of section 51302 is applicable.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55006. Records and Reports.

Authorities of each community college maintaining credit and noncredit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55008. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

The governing board of each community college district participating in a vocational education program shall appoint a vocational education advisory committee to develop recommendations on the program and to provide liaison between the district and potential employers.

The committee shall consist of one or more representatives of the general public knowledgeable about the disadvantaged, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in second paragraph (Register 91, No.43).

Article 2. Approval of Courses, Programs and Classes

§ 55100. Course Approval.

Except as provided in subsection (b) and section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not approval by the Chancellor is required, the district shall designate the appropriate classification of the course or activity in accordance with section 55001.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55101. Chancellor's Report.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer filed 3-7-85; effective thirtieth day thereafter (Register 85, No. 10).

§ 55130. Approval of Credit Programs.

(a) Before offering any course as part of an educational program at a college, the governing board of a district shall obtain approval of the educational program from the Chancellor in accordance with the provisions of this article. Approval shall be requested on forms provided by the Chancellor.

(b) The application for approval shall contain at least the following:

(1) The name of the proposed program.

(2) The description of the proposed program.

(3) The purposes and specific objectives of the proposed program.

(4) The place of the proposed program in the district master plan.

(5) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning.

(6) The need for the proposed program ascertained with regard to at least the following factors:

(A) Other community colleges in the area currently offering the program.

(B) Other programs closely related to the proposed program offered by the college.

(C) Relation of the proposed program to job market analysis.

(D) Enrollment projection for the proposed program.

(E) Recommendations of area vocational master plan committees when applicable.

(F) The classification of the courses in the program in accordance with section 55001.

(7) The need for and present adequacy of the following resources shall be determined in relation to the proposed program:

(A) Library and media center resources.

(B) Facilities and equipment required to initiate and sustain the program. If a new facility is to be used, reference should be made to the five-year master plan.

(C) Availability of adequate or proposed financial support.

(D) Availability of faculty.

(c) The development, establishment and evaluation of an education program shall include representative faculty involvement.

(d) An approval is effective until the program or implementation of the program is discontinued or modified in any substantial way. From time to time the Chancellor may evaluate an educational program, after its approval, on the basis of factors listed in this section. If on the basis of such an evaluation the Chancellor determines that an educational program should no longer be offered, the Chancellor may terminate the approval and determine the effective date of termination.

(e) In multicollege districts, program approval is granted for a specific college.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Register 1992-07

§ 55002

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Chapter 6. Curriculum and Instruction

Subchapter 1. Programs, Courses and Classes

Article 1. Program, Course and Class Classification and Standards

§ 55000. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.

(b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

(c) "Class" means a community services offering.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History
1. Repealer of chapter 1 (subchapters 1–3, sections 55000–55144, not consecutive) and new chapter 1 (articles 1–2, sections 55000–55180, not consecutive) filed 12–21–81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 80, No. 11; 77, No. 45; and 71, No. 9.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55000.5. Handbook; Monitoring and Review of Approved Courses and Programs.

(a) The Chancellor shall prepare, distribute, and maintain a detailed handbook for use by the local educational agencies. The handbook shall contain course approval criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals.

(b) The Chancellor shall monitor and review courses and programs which were approved under the provisions of section 70901 of the Education Code for compliance with applicable statutes and regulations on a periodic basis.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History
1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55001. Community College Educational Program.

(a) The instructional services of community colleges include:

(1) Liberal Arts and Sciences Education

(A) Baccalaureate Oriented/Transfer Programs and Courses

(B) Associate Degree Programs and Courses

(C) Developmental Programs and Courses

1. Compensatory Programs and Courses

2. Adult Elementary and Secondary Basic Skills Programs and Courses

(D) Community Education Programs and Courses

1. Personal Development and Survival Courses

2. Parenting and Family Support Courses

3. Community and Civic Development Courses

4. General and Cultural Courses

(2) Occupational Education

(A) Vocational/Technical Transfer Programs and Courses

(B) Vocational/Technical Associate Degree and Certificate Programs and Courses

(C) Continuing Education Vocational/Technical Certificates, Programs and Courses

(b) The community services (Non ADA generating) of community colleges include:

(1) Community Services Classes

(A) Avocational Classes

(B) Recreational Classes

(C) Seminars, Lecture Series, Forum Series, Workshops, and Conferences

(D) Professional and Occupational Inservice Classes

(2) Community Services Activities

(A) Civic Center Act Activities

(B) Cultural Activities

(C) Community Development Activities

(D) Recreational Activities

(c) All districts shall report the classification of all courses, classes, and activities offered in accordance with the system contained in subsections (a) and (b) and the standards in section 55002 by transmitting the following information to the Chancellor's Office:

(1) The unique static course identifier and the course title for all credit and noncredit courses.

(2) The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor.

(3) Whether the course is offered as credit or noncredit.

(4) Whether the course transfers to the California State University or the University of California or both.

(5) The number of community services classes in each category, and the number of participants.

(6) The number of community services activities in each category and the number of participants.

(d) For courses, classes and activities which are added after June 30, 1982, the district shall report the classification of all courses, classes and activities in the manner provided by subsection (c). The Chancellor shall review and comment upon, as necessary, the classification of such courses, classes and activities.

NOTE: Authority cited: Sections 66700, 70901, and 78401, Education Code. Reference: Sections 66701, 70901, 70902, 78300, and 78401, Education Code.

History
1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55002. Standards and Criteria for Courses and Classes.

(a) Associate Degree Credit Course. An associate degree credit course is a course which has been designated as appropriate to the associate degree in accordance with the requirements of section 55805.5, and which has been recommended by the college and/or district curriculum committee and approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission.

(1) Curriculum Committee. The college and/or district curriculum committee recommending the course shall be established by the mutual agreement of the college and/or district administration and the academic senate. The committee shall either be a committee of the academic senate or a committee which includes faculty and is otherwise comprised in a way that is mutually agreeable to the college and/or district administration and the academic senate.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the following standards:

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays, or, in courses where the curriculum committee deems them to be appropriate, problem solving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board, between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline; and requires a minimum of three hours of work per week, including class time for each unit of credit, prorated for short term, laboratory and activity courses.

(C) Intensity. The course treats subject matter with a scope and intensity which requires students to study independently outside of class time.

(D) Entrance Requirements. When the college and/or district curriculum committee deems appropriate, the course may require entrance skills and consequent prerequisites or corequisites for the course pursuant to Section 58106 of this Division.

(E) Basic Skills Requirements. If success in the course is dependent upon communication or computation skills, then the course shall require, consistent with the provisions of Section 58106 of this Division, as pre- or co-requisites eligibility for enrollment in associate degree credit courses in English and/or mathematics, respectively.

(F) Difficulty. The coursework calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level.

(G) Level. The course requires learning skills and a vocabulary which the curriculum committee deems appropriate for a college course.

(3) Course Outline of Record. The course is described in a course outline of record which shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide reading and writing assignments, other outside of class examples of required assignments, instructional methodology and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Conduct of Course. Each section of the course is to be taught by a qualified instructor in accordance with a set of objectives and other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of division 2 (commencing with section 51000), sections 55761–55763 and 58161 of this Division.

(b) Non-degree Credit Course. A credit course designated by the governing board as not applicable to the associate degree is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under subdivision (a)(1) of this section) and is approved by the district governing board and falls within one of the categories described in subdivision (1) of this subsection.

(1) Types of Courses. Nondegree applicable credit courses are:

(A) Precollegiate basic skills courses as defined in Section 55502(d) of this Division;

(B) Courses designed to enable students to suceed in college level work which integrate basic skills instruction throughout and assign grades partly upon the demonstrated mastery of those skills;

(C) Precollegiate occupational preparation courses designed to provide foundation skills for students preparing for entry into college level occupational courses or programs;

(D) Essential occupational instruction for which meeting the standards of 55502(a) is neither necessary nor required.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the standards which follow. In order to be eligible for state apportionment, such courses must be approved (as courses not part of programs) by the Chancellor's Office as provided by Section 55100 of this Division.

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in the subject matter and the ability to demonstrate that proficiency, at least in part, by means of written expression which may include essays, or, in courses where the curriculum committee deems them to be appropriate, problem solving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board, between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline; and requires a minimum of three hours of student work per week, per unit, including class time and/or demonstrated competency, for each unit of credit, prorated for short-term, laboratory and activity courses.

(C) Intensity. The course provides instruction in critical thinking and generally treats subject matter with a scope and intensity which prepares students to study independently outside of class time and includes reading and writing assignments and homework. In particular, the assignments will be sufficiently rigorous that students completing each such course successfully will, upon completion of the required sequence of such courses, have acquired the skills necessary to successfully complete college level work.

(D) Entrance Requirements. When the college and/or district curriculum committee deems appropriate, the course may require entrance skills and consequent prerequisites or corequisites for the course pursuant to Section 58106 of this Division.

(3) Course Outline of Record. The course is described in a course outline of record which shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside class assignments, instructional methodology and methods of evaluation for determining whether the stated objectives have been met by students. Taken together, these course specifications shall be such as to typically enable any student who successfully completes all of the assigned work prescribed in the outline of record to successfully meet the course objectives.

(4) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with a set of objectives and other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of division 2 (commencing with section 51000), sections 55761–55763 and 58161 of this Division.

(c) Noncredit Course. A noncredit course is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under subdivision (a)(1) of this section) and approved by the district governing board as a course meeting the needs of enrolled students.

(1) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course if the course treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement which the committee deems appropriate for the enrolled students. In order to be eligible for state apportionment, such courses are limited to the categories of instruction listed in Education Code Section 84711, and must be approved by the Chancellor's Office as noted in Title 5, Section 55150.

(2) Course Outline of Record. The course is described in a course outline of record which shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the scope, objectives, contents, instructional methodology and methods of evaluation for determining whether the stated objectives have been met.

(3) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

(d) Community Services Class. A community services class is a class which meets the following minimum requirements:

(1) Is approved by the local district governing board.

(2) Is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein.

(3) Provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students.

(4) Is conducted in accordance with a predetermined strategy or plan.

(5) Is open to all members of the community.

(6) May not be claimed for apportionment purposes.

(e) Not later than the initial day of registration for fall 1990, district governing boards shall have completed necessary steps for implementation of subsections (a), (b) and (c) of this section, such that by this date, each district shall have published in its college catalogues or in an addendum to be available to all students at fall 1990 registration, a statement, symbol, numbering system or the equivalent that clearly indicates whether each course is degree applicable, non-degree applicable, or noncredit.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment of subsection (a) filed 12-28-83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 5-18-84; effective thirtieth day thereafter (Register 84, No. 20).
3. Repealer and new section filed 10-7-88; operative 11-6-88 (Register 88, No. 42).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 7).

§ 55002.5. Credit Hour; Allowance for Shorter Term.

One credit hour of community college work is approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks. Where a term is more or less than 16 weeks, more or less than one credit hour shall be allowed in the same ratio that the length of the term is to 16 weeks.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55004. Social Science Courses.

The course of instruction in social sciences shall include a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States of America.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four-year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit-no credit, and if so, which provision of subsection (a) of section 51302 is applicable.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55006. Records and Reports.

Authorities of each community college maintaining credit and noncredit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55008. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

The governing board of each community college district participating in a vocational education program shall appoint a vocational education advisory committee to develop recommendations on the program and to provide liaison between the district and potential employers.

The committee shall consist of one or more representatives of the general public knowledgeable about the disadvantaged, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in second paragraph (Register 91, No.43).

Article 2. Approval of Courses, Programs and Classes

§ 55100. Course Approval.

Except as provided in subsection (b) and section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not approval by the Chancellor is required, the district shall designate the appropriate classification of the course or activity in accordance with section 55001.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55101. Chancellor's Report.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer filed 3-7-85; effective thirtieth day thereafter (Register 85, No. 10).

§ 55130. Approval of Credit Programs.

(a) Before offering any course as part of an educational program at a college, the governing board of a district shall obtain approval of the educational program from the Chancellor in accordance with the provisions of this article. Approval shall be requested on forms provided by the Chancellor.

(b) The application for approval shall contain at least the following:

(1) The name of the proposed program.

(2) The description of the proposed program.

(3) The purposes and specific objectives of the proposed program.

(4) The place of the proposed program in the district master plan.

(5) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning.

(6) The need for the proposed program ascertained with regard to at least the following factors:

(A) Other community colleges in the area currently offering the program.

(B) Other programs closely related to the proposed program offered by the college.

(C) Relation of the proposed program to job market analysis.

(D) Enrollment projection for the proposed program.

(E) Recommendations of area vocational master plan committees when applicable.

(F) The classification of the courses in the program in accordance with section 55001.

(7) The need for and present adequacy of the following resources shall be determined in relation to the proposed program:

(A) Library and media center resources.

(B) Facilities and equipment required to initiate and sustain the program. If a new facility is to be used, reference should be made to the five-year master plan.

(C) Availability of adequate or proposed financial support.

(D) Availability of faculty.

(c) The development, establishment and evaluation of an education program shall include representative faculty involvement.

(d) An approval is effective until the program or implementation of the program is discontinued or modified in any substantial way. From time to time the Chancellor may evaluate an educational program, after its approval, on the basis of factors listed in this section. If on the basis of such an evaluation the Chancellor determines that an educational program should no longer be offered, the Chancellor may terminate the approval and determine the effective date of termination.

(e) In multicollege districts, program approval is granted for a specific college.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

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(c) Employers or designated representatives agree to provide adequate supervision, facilities, equipment, and materials at the learning stations to achieve on-the-job learning objectives.

(d) Employers as required by law agree to comply with all appropriate federal and state employment regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78249, Education Code.

HISTORY

1. Amendment filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment filed 9-29-78; designated effective 1-2-79 (Register 78, No. 39).
3. New NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 4. Courses and Programs Conducted As Independent Study

Article 1. General Provision and Requirements

§ 55300. Application of Chapter.

The provisions of this chapter apply to and implement the provisions of sections 58051 and 58003.1 in relation to attendance in approved courses and programs designed and conducted as independent study.

Approved courses conducted as independent study shall be reported to the Chancellor in accordance with specified procedures as required by law.

All heretofore approved credit courses offered in whatever mode meeting the above requirements shall remain approved provided such courses meet the requirements of this chapter.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78310, Education Code.

HISTORY

1. Repealer of chapter 4 (sections 55300-55344, not consecutive) and new chapter 4 (articles 1-5; sections 55300-55360, not consecutive) filed 12-18-78; effective thirtieth day thereafter (Register 78, No. 51). For prior history, see Registers 77, No. 45 and 71, No. 9.
2. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
3. Amendment of chapter 4 heading, repealer of article 1 heading, and amendment of section 55300 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. New article heading filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 55302. Definitions.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55310. Reporting.

Each independent study course, whether or not it is part of an approved program, must be reported to the Chancellor in a manner and form required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
2. Repealer of article 2 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55312. Transfer.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55314. Faculty and Student Participation.

In the development and evaluation of courses and programs subject to the requirements of this chapter, the district shall include input from, and participation by, faculty who are selected by academic senates or appropriate faculty bodies, and students.

NOTE: Authority cited: Sections 66700, 70901 and 78301, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55316. Criteria.

Courses offered pursuant to this chapter shall:

(a) Be accepted by the college toward completion of an appropriate educational sequence leading to an associate degree, and

(b) Shall be recognized by an institution of the University of California or the California State University upon transfer to that institution.

Evidence of transferability to California State University or to the University of California shall be deemed to exist when the community college certifies that the course is recognized upon transfer.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55318. Written Record.

In submitting a report for each course offered pursuant to this chapter, a college shall certify that the components of each course are set out in a written record for each student enrolled, and have been developed and evaluated with the participation of faculty and students as noted in this chapter.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902, and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55320. Academic Standards.

Academic standards applicable to courses of independent study shall be the same as those applied to other credit courses in the college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 3 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55321. Student Progress.

Procedures for evaluation of student progress shall be in accordance with regulations set by the college. A report by an instructor on appropriate records bearing the student's name for purposes of state apportionment shall certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by the student.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55322. Availability of Instructor.

The college shall provide access to the instructor for the students enrolled in courses offered pursuant to this chapter at least equivalent to that commonly available to students enrolled in courses conducted by other instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55323. Learning Assistance.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12–17–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 55340. Eligibility for State Funds.

(a) In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this chapter, the course must be reported as required by this chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

(b) For purposes of computing attendance, one weekly student contact hour shall be counted for each unit of independent study credit for which a student is enrolled.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 4 heading and amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55342. Average Daily Attendance.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55343. Grades Awarded.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55344. Enrollment.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55346. Records.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55348. Supervision.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55350. Instruction.

The instructor assigned to a course conducted pursuant to this chapter shall:

(a) Be qualified to provide service in that capacity during the period in which that service is rendered;

(b) Be responsible for the supervision, control, and evaluation of the course and the enrolled students;

(c) Provide orientation, guidance, and information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college; and

(d) Provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, this schedule to be included in the written record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55352. Number of Students.

The number of students assigned to any one instructor of courses offered pursuant to this section shall not exceed 125 students per instructor unless exempted by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55360. Evaluation Reports.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer of Article 5 heading and Section 55360 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Article 2. Telecourses

§ 55370. Definition and Application.

Telecourses are courses or sections in which instruction is delivered over distance, and in which a significant portion of instruction is delivered through electronic technology, such as one of the following:

(a) open broadcast, cable, or low power television;
(b) instructional television fixed service;
(c) radio;
(d) computers, when linked over distance;
(e) integrated broad band communications; and
(f) video and/or audio cassettes.

All telecourses are independent study courses, and are subject to the general requirements of Article 1 as well as the specific requirements of this Article.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 55372. Course Quality Standards.

The same standards of course quality shall be applied to telecourses as are applied to traditional classroom courses, in regard to the course quality judgments made pursuant to the requirements of Section 55002 of this Part, and in regard to any local course quality determination or review process.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 55374. Course Quality Determinations.

Determinations and judgments about the quality of telecourses, under the course quality standards referred to in Section 55372, shall be made with the full involvement of faculty in accordance with the provisions of Subchapter 2 (commencing with Section 53200) of Chapter 2 of Division 4 of this Part.

(1) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course if the course treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement which the committee deems appropriate for the enrolled students. In order to be eligible for state apportionment, such courses are limited to the categories of instruction listed in Education Code Section 84711, and must be approved by the Chancellor's Office as noted in Title 5, Section 55150.

(2) Course Outline of Record. The course is described in a course outline of record which shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the scope, objectives, contents, instructional methodology and methods of evaluation for determining whether the stated objectives have been met.

(3) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

(d) Community Services Class. A community services class is a class which meets the following minimum requirements:

(1) Is approved by the local district governing board.

(2) Is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein.

(3) Provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students.

(4) Is conducted in accordance with a predetermined strategy or plan.

(5) Is open to all members of the community.

(6) May not be claimed for apportionment purposes.

(e) Not later than the initial day of registration for fall 1990, district governing boards shall have completed necessary steps for implementation of subsections (a), (b) and (c) of this section, such that by this date, each district shall have published in its college catalogues or in an addendum to be available to all students at fall 1990 registration, a statement, symbol, numbering system or the equivalent that clearly indicates whether each course is degree applicable, non-degree applicable, or noncredit.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.

HISTORY

1. Amendment of subsection (a) filed 12-28-83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 5-18-84; effective thirtieth day thereafter (Register 84, No. 20).
3. Repealer and new section filed 10-7-88; operative 11-6-88 (Register 88, No. 42).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 7).

§ 55002.5. Credit Hour; Allowance for Shorter Term.

One credit hour of community college work is approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks. Where a term is more or less than 16 weeks, more or less than one credit hour shall be allowed in the same ratio that the length of the term is to 16 weeks.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55004. Social Science Courses.

The course of instruction in social sciences shall include a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, other ethnic groups to the economic, political, and social development of California and the United States of America.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four-year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit-no credit, and if so, which provision of subsection (a) of section 51302 is applicable.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55006. Records and Reports.

Authorities of each community college maintaining credit and noncredit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55008. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in second paragraph (Register 91, No.43).
3. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

Article 2. Approval of Courses, Programs and Classes

§ 55100. Course Approval.

Except as provided in subsection (b) and section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not approval by the Chancellor is required, the district shall designate the appropriate classification of the course or activity in accordance with section 55001.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55101. Chancellor's Report.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

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The form used by a college for the purpose of collecting the fee shall contain, at a minimum, the following:

(a) a statement indicating that the money collected pursuant to this article shall be expended to provide support for students or representatives who may be stating their positions and viewpoints before city, county, and district government, and before offices and agencies of the state and federal government;

(b) the amount of the fee;

(c) a statement informing the students of their right to refuse to pay the fee for religious, political, moral or financial reasons.

NOTE: Authority cited: Sections 66700, 70901 and 76060.5, Education Code. References: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54912. Residence Questionnaires.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Chapter 6. Curriculum and Instruction

Subchapter 1. Programs, Courses and Classes

Article 1. Program, Course and Class Classification and Standards

§ 55000. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.

(b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

(c) "Class" means a community services offering.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer of chapter 1 (subchapters 1–3, sections 55000–55144, not consecutive) and new chapter 1 (articles 1–2, sections 55000–55180, not consecutive) filed 12–21–81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 80, No. 11; 77, No. 45; and 71, No. 9.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55000.5. Handbook; Monitoring and Review of Approved Courses and Programs.

(a) The Chancellor shall prepare, distribute, and maintain a detailed handbook for use by the local educational agencies. The handbook shall contain course approval criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals.

(b) The Chancellor shall monitor and review courses and programs which were approved under the provisions of section 70901 of the Education Code for compliance with applicable statutes and regulations on a periodic basis.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55001. Community College Educational Program.

(a) The instructional services of community colleges include:

(1) Liberal Arts and Sciences Education

(A) Baccalaureate Oriented/Transfer Programs and Courses

(B) Associate Degree Programs and Courses

(C) Developmental Programs and Courses

1. Compensatory Programs and Courses

2. Adult Elementary and Secondary Basic Skills Programs and Courses

(D) Community Education Programs and Courses

1. Personal Development and Survival Courses

2. Parenting and Family Support Courses

3. Community and Civic Development Courses

4. General and Cultural Courses

(2) Occupational Education

(A) Vocational/Technical Transfer Programs and Courses

(B) Vocational/Technical Associate Degree and Certificate Programs and Courses

(C) Continuing Education Vocational/Technical Certificates, Programs and Courses

(b) The community services (Non ADA generating) of community colleges include:

(1) Community Services Classes

(A) Avocational Classes

(B) Recreational Classes

(C) Seminars, Lecture Series, Forum Series, Workshops, and Conferences

(D) Professional and Occupational Inservice Classes

(2) Community Services Activities

(A) Civic Center Act Activities

(B) Cultural Activities

(C) Community Development Activities

(D) Recreational Activities

(c) All districts shall report the classification of all courses, classes, and activities offered in accordance with the system contained in subsections (a) and (b) and the standards in section 55002 by transmitting the following information to the Chancellor's Office:

(1) The unique static course identifier and the course title for all credit and noncredit courses.

(2) The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor.

(3) Whether the course is offered as credit or noncredit.

(4) Whether the course transfers to the California State University or the University of California or both.

(5) The number of community services classes in each category, and the number of participants.

(6) The number of community services activities in each category and the number of participants.

(d) For courses, classes and activities which are added after June 30, 1982, the district shall report the classification of all courses, classes and activities in the manner provided by subsection (c). The Chancellor shall review and comment upon, as necessary, the classification of such courses, classes and activities.

NOTE: Authority cited: Sections 66700, 70901, and 78401, Education Code. Reference: Sections 66701, 70901, 70902, 78300, and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55002. Standards and Criteria for Courses and Classes.

(a) Associate Degree Credit Course. An associate degree credit course is a course which has been designated as appropriate to the associate degree in accordance with the requirements of Section 55805.5, and which has been recommended by the college and/or district curriculum committee and approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission.

(1) Curriculum Committee. The college and/or district curriculum committee recommending the course shall be established by the mutual agreement of the college and/or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college and/or district administration and the academic senate.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course for associate degree credit if it meets the following standards:

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays, or, in courses where the curriculum committee deems them to be appropriate, by problem-solving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course also requires a minimum of three hours of work per week, including class time for each unit of credit, prorated for short-term, laboratory and activity courses.

(C) Intensity. The course treats subject matter with a scope and intensity that requires students to study independently outside of class time.

(D) Prerequisites and Corequisites. When the college and/or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course, then the course shall require prerequisites or corequisites that are established, reviewed, and applied in accordance with the requirements of Article 2.5 (commencing with Section 55200) of this Subchapter.

(E) Basic Skills Requirements. If success in the course is dependent upon communication or computation skills, then the course shall require, consistent with the provisions of Article 2.5 (commencing with Section 55200) of this Subchapter, as prerequisites or corequisites eligibility for enrollment in associate degree credit courses in English and/or mathematics, respectively.

(F) Difficulty. The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level.

(G) Level. The course requires learning skills and a vocabulary that the curriculum committee deems appropriate for a college course.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside-of-class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Conduct of Course. Each section of the course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Chapter 2 (commencing with Section 51000), sections 55761-55763 and 58161 of this Division.

(b) Nondegree Credit Course. A credit course designated by the governing board as not applicable to the associate degree is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under Subdivision (a)(1) of this Section) and is approved by the district governing board and falls within one of the categories described in Subdivision (1) of this Subsection.

(1) Types of Courses. Nondegree applicable credit courses are:

(A) precollegiate basic skills courses as defined in Section 55502(d) of this Division;

(B) courses designed to enable students to succeed in college-level work (including, but not limited to, college orientation and guidance courses, and discipline-specific preparatory courses such as biology, history, or electronics) that integrate basic skills instruction throughout and assign grades partly upon the demonstrated mastery of those skills;

(C) precollegiate occupational preparation courses designed to provide foundation skills for students preparing for entry into college-level occupational courses or programs;

(D) essential occupational instruction for which meeting the standards of Section 55002(a) is neither necessary nor required.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the standards which follow. In order to be eligible for state apportionment, such courses must be approved (as courses not part of programs) by the Chancellor's Office as provided by Section 55100 of this Division.

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in the subject matter and the ability to demonstrate that proficiency, at least in part, by means of written expression that may include essays, or, in courses where the curriculum committee deems them to be appropriate, by problemsolving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course requires a minimum of three hours of student work per week, per unit, including class time and/or demonstrated competency, for each unit of credit, prorated for short-term, laboratory, and activity courses.

(C) Intensity. The course provides instruction in critical thinking and generally treats subject matter with a scope and intensity that prepares students to study independently outside of class time and includes reading and writing assignments and homework. In particular, the assignments will be sufficiently rigorous that students completing each such course successfully will have acquired the skills necessary to successfully complete college-level work upon completion of the required sequence of such courses.

(D) Prerequisites and corequisites. When the college and/or district curriculum committee deems appropriate, the course may require prerequisites or corequisites for the course that are established, reviewed, and applied in accordance with Article 2.5 (commencing with Section 55200) of this Subchapter.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside-of-class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students. Taken together, these course specifications shall be such as to typically enable any student who successfully completes all of the assigned work prescribed in the outline of record to successfully meet the course objectives.

(4) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Division 2 (commencing with Section 51000), Sections 55761-55763 and 58161 of this Division.

(c) Noncredit Course. A noncredit course is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under Subdivision (a)(1) of this Section) and approved by the district governing board as a course meeting the needs of enrolled students.

(1) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course if the course treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement that the committee deems appropriate for the enrolled students. In order to be eligible for state apportionment, such courses are limited to the categories of instruction listed in Education Code Section 84711 and must be approved by the Chancellor's Office as noted in Title 5, Section 55150.

(2) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the scope, objectives, contents, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met.

(3) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

(d) Community Services Class. A community services class is a class that meets the following minimum requirements:

(1) is approved by the local district governing board;

(2) is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein;

(3) provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students;

(4) is conducted in accordance with a predetermined strategy or plan;

(5) is open to all members of the community; and

(6) may not be claimed for apportionment purposes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of subsection (a) filed 12–28–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 5–18–84; effective thirtieth day thereafter (Register 84, No. 20).
3. Repealer and new section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).
6. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55002.5. Credit Hour; Allowance for Shorter Term.

One credit hour of community college work is approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks. Where a term is more or less than 16 weeks, more or less than one credit hour shall be allowed in the same ratio that the length of the term is to 16 weeks.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55004. Social Science Courses.

The course of instruction in social sciences shall include a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States of America.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four–year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit–no credit, and if so, which provision of subsection (a) of section 51302 is applicable.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55006. Records and Reports.

Authorities of each community college maintaining credit and noncredit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55008. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in second paragraph (Register 91, No.43).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Article 2. Approval of Courses, Programs and Classes

§ 55100. Course Approval.

Except as provided in subsection (b) and section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not approval by the Chancellor is required, the district shall designate the appropriate classification of the course or activity in accordance with section 55001.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55101. Chancellor's Report.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer filed 3–7–85; effective thirtieth day thereafter (Register 85, No. 10).

§ 55130. Approval of Credit Programs.

(a) Before offering any course as part of an educational program at a college, the governing board of a district shall obtain approval of the educational program from the Chancellor in accordance with the provisions of this article. Approval shall be requested on forms provided by the Chancellor.

(b) The application for approval shall contain at least the following:

(1) The name of the proposed program.

(2) The description of the proposed program.

(3) The purposes and specific objectives of the proposed program.

(4) The place of the proposed program in the district master plan.

(5) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning.

(6) The need for the proposed program ascertained with regard to at least the following factors:

(A) Other community colleges in the area currently offering the program.

(B) Other programs closely related to the proposed program offered by the college.

(C) Relation of the proposed program to job market analysis.

(D) Enrollment projection for the proposed program.

(E) Recommendations of area vocational master plan committees when applicable.

(F) The classification of the courses in the program in accordance with section 55001.

(7) The need for and present adequacy of the following resources shall be determined in relation to the proposed program:

(A) Library and media center resources.

(B) Facilities and equipment required to initiate and sustain the program. If a new facility is to be used, reference should be made to the five-year master plan.

(C) Availability of adequate or proposed financial support.

(D) Availability of faculty.

(c) The development, establishment and evaluation of an education program shall include representative faculty involvement.

(d) An approval is effective until the program or implementation of the program is discontinued or modified in any substantial way. From time to time the Chancellor may evaluate an educational program, after its approval, on the basis of factors listed in this section. If on the basis of such an evaluation the Chancellor determines that an educational program should no longer be offered, the Chancellor may terminate the approval and determine the effective date of termination.

(e) In multicollege districts, program approval is granted for a specific college.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55150. Approval of Noncredit Courses and Programs.

(a) Courses or programs offered for noncredit shall be approved by the Chancellor in accordance with section 55100 on forms provided by the Chancellor's Office.

(b) Course outlines for all noncredit courses shall be on file in the community college offering the course.

(c) Authorities of each community college maintaining noncredit courses shall keep such current records and reports as may be required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55160. Approval of Community Service Classes.

(a) Districts are authorized in accordance with the provisions of article 7 (commencing with section 78300) of chapter 2, part 48 of the Education Code to approve and conduct community services classes without the approval of the Chancellor. The classification of all such classes shall be reported to the Chancellor in accordance with section 55001.

(b) Community services classes shall not be referred to as noncredit classes.

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Sections 70901 and 78300, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55170. Contract Classes.

(a) Notwithstanding subdivision (c) of section 55000, "contract classes" means those classes which a community college district offers in fulfillment of a contract with a public or private agency, corporation, association, or other body or person.

(b) No approval of a contract class is required if the district does not claim state support for the class and if the legislation which authorizes that class does not require approval. If the district claims state support for a contract class, approval of the class shall be obtained in the manner provided for classes of the same type, as provided in this article. Approval of the contract shall be obtained in the manner provided for by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 8092, 70902 and Article 1.5 (commencing with Section 78020) of Chapter 1, Part 48, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55180. Chancellor's Report.

NOTE: Authority cited: Sections 66700 and 71020, Education Code. Reference: Sections 71091, 78200, and 78401, Education Code.

HISTORY

1. Repeal of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55182. Reinstatement of Deleted Courses.

The governing board of a community college district may reinstate any course which was deleted from the credit or noncredit curriculum during the 1982–83 fiscal year, in response to provision Number 11 of Item 6870–101–001 of the Budget Act of 1982 (Chapter 326, Statutes of 1982); provided that the following criteria and procedures shall be applied in conjunction with such reinstatement:

(a) The governing board of the district shall only reinstate such courses in a manner which is consistent with the policy of the Board of Governors that offerings which are primarily avocational, or recreational shall be offered as community services classes, and not as credit or noncredit courses;

(b) The governing board of the district shall determine that the course meets the criteria and standards for courses specified in section 55002;

(c) The governing board may act to reinstate a course only after it has been reviewed through the college's or district's established procedure for the approval of new courses;

(d) The governing board must submit the course to the Chancellor for approval, or report approval of the course, depending on the requirements of section 55100. A separate designation shall be used to distinguish reinstated courses from new courses; and

(e) The governing board must determine that reinstatement of the course maintains or improves the curriculum balance of the district in accordance with the mission of the community college and local needs.

(f) Any category of courses restored to the curriculum pursuant to a separate authorization of the Board of Governors shall be exempt from the requirements of this section.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 70902 and 78401, Education Code.

History
. New section filed 12–28–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 2.5 Prerequisites, Corequisites, and Recommended Preparation

§ 55200. Definitions.

For the purposes of this Division, the following definitions apply:

(a) "Prerequisite" means a condition of enrollment that a student is required to meet in order to demonstrate current readiness for enrollment in a course or educational program.

(b) "Corequisite" means a condition of enrollment consisting of a course that a student is required to simultaneously take in order to enroll in another course.

(c) "Advisory on recommended preparation" means a condition of enrollment that a student is advised, but not required, to meet before or in conjunction with enrollment in a course or educational program.

(d) "Satisfactory grade" means that, for the course in question, the student's academic record has been annotated with the symbol A, B, C or "CR" as those symbols are defined in Section 55758 of this Division.

(e) "Necessary and appropriate" means that a strong rational basis exists for concluding that a prerequisite or corequisite is reasonably needed to achieve the purpose that it purports to serve. This standard does not require absolute necessity.

(f) "content review" means a rigorous, systematic process developed in accordance with Sections 53200 to 53204, approved by the Chancellor as part of the district matriculation plan required under Section 55510, and is conducted by faculty to identify the necessary and appropriate body of knowledge or skills students need to possess prior to enrolling a course, or which students need to acquire through concurrent enrollment in a corequisite course.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History
1. New article 2.5 and section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55201. Policies for Prerequisites, Corequisites, and Advisories on Recommended Preparation.

(a) The governing board of a community college district may establish prerequisites, corequisites, and advisories on recommended preparation, but must do so in accordance with the provisions of this Article. Nothing in this subchapter shall be construed to require a district to establish prerequisites, corequisites, or advisories on recommended preparation; provided however, that a prerequisite or corequisite shall be required if the course is to be offered for associate degree credit and the curriculum committee finds that the prerequisite or corequisite is necessary pursuant to Section 55002(a)(2)(D) or 55002(a)(2)(E).

(b) A governing board choosing to establish prerequisites, corequisites, or advisories on recommended preparation shall, in accordance with the provisions of Sections 53200–53204 of this Division, adopt policies for the following:

(1) The process for establishing prerequisites, corequisites, and advisories on recommended preparation. Such policies shall provide that in order to establish a prerequisite or corequisite, the prerequisite or corequisite must be determined to be necessary and appropriate for achieving the purpose for which it is being established. District policies shall also specify the level of scrutiny that shall be required in order to establish different types of prerequisites, corequisites, and advisories on recommended preparation. At a minimum, prerequisites, corequisites, and advisories on recommended preparation shall be based on content review, with additional methods of scrutiny being applied depending on the type of prerequisite or corequisite being established. The policy shall provide that the types of prerequisites described in Subsection (e) may be established only on the basis of data collected using sound research practices. Determinations about prerequisites and corequisites shall be made on a course–by–course or program–by–program basis.

(2) Procedures to assure that courses for which prerequisites or corequisites are established will be taught in accordance with the course outline particularly those aspects of the course outline that are the basis for justifying the establishment of the prerequisite or corequisite.

(3) The process, including levels of scrutiny, for reviewing prerequisites and corequisites to assure that they remain necessary and appropriate. These processes shall provide that at least once each six years all prerequisites and corequisites established by the district shall be reviewed. These processes shall also provide for the periodic review of advisories on recommended preparation.

(4) The bases and process for an individual student to challenge the application of a prerequisite or corequisite.

(c) Prerequisites or corequisites may be established only for any of the following purposes:

(1) the prerequisite or corequisite is expressly required or expressly authorized by statute or regulation; or

(2) the prerequisite will assure, consistent with Section 55002(a)(2)(D), that a student has the skills, concepts, and/or information that is presupposed in terms of the course or program for which it is being established, such that a student who has not met the prerequisite is highly unlikely to receive a satisfactory grade in the course (or at least one course within the program) for which the prerequisite is being established; or

(3) the corequisite course will assure, consistent with Section 55002(a)(2)(D), that a student acquires the necessary skills, concepts, and/or information, such that a student who has not enrolled in the corequisite is highly unlikely to receive a satisfactory grade in the course or program for which the corequisite is being established; or

(4) the prerequisite or corequisite is necessary to protect the health and safety of a student or the health and safety of others.

(d) Except as provided in this Subsection, no prerequisite or corequisite may be established or renewed pursuant to Subsection (b)(3) unless it is determined to be necessary and appropriate to achieve the purpose for which it has been established. A prerequisite or corequisite need not be so scrutinized until it is reviewed pursuant to Subsection (b)(3) if:

(1) it was established prior to July 6, 1990, and is part of a sequence of degree–applicable courses within a given discipline; or

(2) it was established between July 6, 1990, and the effective date of this regulation, in accordance with regulations in effect during this period of time; or

(3) it is required by statute or regulation; or

(4) it is part of a closely–related lecture–laboratory course pairing within a discipline; or

(5) it is required by four–year institutions.

(e) A course in communication or computation skills may be established as a prerequisite or corequisite for any course other than another course in communication or computation skills only if, in addition to conducting a content review, the district gathers data according to sound research practices and shows that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or corequisite. If the curriculum committee initially determines, pursuant to Section 55002(a)(2)(E), that a new course needs to have a communication or computation skill prerequisite or corequisite, then, despite Subsection (d) of this Section, the prerequisite or corequisite may be established for a single period of not more than two years while the research is being conducted and the final determination is being made, provided that all other requirements for establishing the prerequisite or corequisite have been met.

(f) Any prerequisite or corequisite may be challenged by a student on one or more of the grounds listed below. The student shall bear the initial burden of showing that grounds exist for the challenge. Challenges shall

be resolved in a timely manner and, if the challenge is upheld, the student shall be permitted to enroll in the course or program in question. Grounds for challenge are:

(1) The prerequisite or corequisite has not been established in accordance with the district's process for establishing prerequisites and corequisites;

(2) The prerequisite or corequisite is in violation of this Article;

(3) The prerequisite or corequisite is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(4) The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite;

(5) The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available; and

(6) Such other grounds for challenge as may be established by the district governing board.

(g) In the case of a challenge under Subsection (f)(3) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

(h) District policies adopted pursuant to this section shall be submitted to the Chancellor as part of the district's matriculation plan pursuant to Section 55510 of Subchapter 6 of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55202. Additional Rules.

The following additional rules apply to the establishment of prerequisites and corequisites:

(a) Prerequisites, corequisites, and advisories on recommended preparation must be identified in college publications available to students as well as the course outline of any course for which they are established.

(b) Prerequisites establishing communication or computational skill requirements may not be established across the entire curriculum unless established on a course–by–course basis.

(c) The determination of whether a student meets a prerequisite shall be based on successful completion of an appropriate course or on an assessment using multiple measures. Any assessment instrument used shall be selected and used in accordance with the provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

(d) If a prerequisite requires precollegiate skills in reading, written expression, or mathematics, the governing board of a district shall ensure that precollegiate basic skills courses designed to teach the required skills are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course.

(e) Whenever a corequisite course is established, sufficient sections shall be offered to reasonably accommodate all students who are required to take the corequisite. A Corequisite shall be waived as to any student for whom space in the corequisite course is not available.

(f) No exit test may be required to satisfy a prerequisite or corequisite unless it is incorporated into the grading for the prerequisite or corequisite course.

(g) The determination of whether a student meets a prerequisite shall be made prior to his or her enrollment in the course requiring the prerequisite, provided, however, that enrollment may be permitted pending verification that the student has met the prerequisite or corequisite. If the verification shows that the student has failed to meet the prerequisite, the student may be involuntarily dropped from the course if the applicable enrollment fees are promptly refunded. Otherwise a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or to the student code of conduct.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

Article 3. Bilingual Crosscultural Programs and Courses

§ 55225. Annual Articulation Agreement Plans.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 52150–52158, Education Code.

HISTORY

1. New article 3 (section 55225) filed 6–8–83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Subchapter 2. Programs and Classes Outside of District

NOTE: Authority cited: Section 72012, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 55200–55204) filed 12–21–81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Register 77, No. 45.
2. Amendment of subchapter 2 heading filed 5–15–93; operative 6–14–93 (Register 93, No. 25).

§ 55230. Classes, Property and Buildings Outside of District.

The governing board of a community college district may conduct community college classes and acquire the necessary property and erect the necessary buildings therefor, outside of the boundaries of the district if all of the following conditions exist:

(a) The proposed location is within the state.

(b) the activities, trades, businesses, or work to be carried on at the proposed location is such as to offer educational opportunities to students who are residents of the district in the subject or all of the subjects proposed to be taught at that location, and facilities for such instruction are not available either at the location of the principal buildings of the community college, or elsewhere within the district.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55231. Establishment of Classes Outside of District.

The governing board of a community college district may establish courses outside the district primarily for students who are nonresidents of the district, providing the following conditions are fulfilled:

(a) The governing board of a high school district or another community college district, requests that community college classes be offered in the high school district or community college district.

(b) The community college district annually reports to the Board of Governors, in advance of their offering, on the classes to be established or continued pursuant to this authorization.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

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§ 55257. Job Learning Stations.

Job learning stations shall meet the following criteria:

(a) Employers or designated representatives agree with the intent and purposes of Cooperative Work Experience Education for students and are given a copy of each student's approved on-the-job learning objectives.

(b) Job learning stations offer a reasonable probability of continuous work experience for students during the current work experience enrollment term.

(c) Employers or designated representatives agree to provide adequate supervision, facilities, equipment, and materials at the learning stations to achieve on-the-job learning objectives.

(d) Employers as required by law agree to comply with all appropriate federal and state employment regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78249, Education Code.

HISTORY

1. Amendment filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment filed 9-29-78; designated effective 1-2-79 (Register 78, No. 39).
3. New NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 4. Courses and Programs Conducted As Independent Study

Article 1. General Provision and Requirements

§ 55300. Application of Chapter.

The provisions of this chapter apply to and implement the provisions of sections 58051 and 58003.1 in relation to attendance in approved courses and programs designed and conducted as independent study.

Approved courses conducted as independent study shall be reported to the Chancellor in accordance with specified procedures as required by law.

All heretofore approved credit courses offered in whatever mode meeting the above requirements shall remain approved provided such courses meet the requirements of this chapter.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78310, Education Code.

HISTORY

1. Repealer of chapter 4 (sections 55300-55344, not consecutive) and new chapter 4 (articles 1-5; sections 55300-55360, not consecutive) filed 12-18-78; effective thirtieth day thereafter (Register 78, No. 51). For prior history, see Registers 77, No. 45 and 71, No. 9.
2. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46)
3. Amendment of chapter 4 heading, repealer of article 1 heading, and amendment of section 55300 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. New article heading filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 55302. Definitions.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55310. Reporting.

Each independent study course, whether or not it is part of an approved program, must be reported to the Chancellor in a manner and form required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
2. Repealer of article 2 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55312. Transfer.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55314. Faculty and Student Participation.

NOTE: Authority cited: Sections 66700, 70901 and 78301, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Repealer filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55316. Criteria.

Courses offered pursuant to this Chapter shall:

(a) Be accepted by the college toward completion of an appropriate educational sequence leading to an associate degree, and

(b) Be recognized by an institution of the University of California or the California State University upon transfer to that institution.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment of opening statement, subsection (b) and NOTE filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55316.5. Additional Courses.

Notwithstanding any other provision of law, after June 1, 1994, the following additional types of courses may be offered pursuant to this Chapter, consistent with guidelines developed by the Chancellor:

(a) Nontransferable courses designed to meet the requirements of Sections 55805.5, 55806, and 55002(a) or (b);

(b) Noncredit courses conducted as distance education independent study.

This Section shall become inoperative on July 1, 2000, unless a later-adopted regulation deletes or extends this date.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. New section filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55317. Ongoing Responsibilities of Districts.

Any district conducting courses under Section 55316 or 55316.5 shall:

(a) Maintain records and report data through the Chancellor's Office Management Information System on the number of students and faculty participating in new courses or sections of established courses;

(b) Provide to the local governing board no later than July 1, 1995, and annually thereafter, a report on all distance education activity.

(c) Provide other information consistent with reporting guidelines which shall be developed by the Chancellor pursuant to Section 409 of the Procedures and Standing Orders of the Board of Governors.

This Section shall become inoperative on July 1, 2000, unless a later-adopted regulation deletes or extends this date.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

History
1. New section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55318. Written Record.

Note: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902, and 78310, Education Code.

History
1. Amendment of Note filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Repealer filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55320. Academic Standards.

Academic standards applicable to courses of independent study shall be the same as those applied to other credit courses in the college.

Note: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

History
1. Repealer of article 3 heading filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55321. Student Progress.

Procedures for evaluation of student progress shall be in accordance with regulations set by the college. A report by an instructor on appropriate records bearing the student's name for purposes of state apportionment shall certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by the student.

Note: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

History
1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55322. Availability of Instructor.

The college shall provide access to the instructor for the students enrolled in courses offered pursuant to this chapter at least equivalent to that commonly available to students enrolled in courses conducted by other instructional methods in addition to regularly scheduled office hours as practiced at that college.

Note: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

History
1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55323. Learning Assistance.

Note: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

History
1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12–17–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 55340. Eligibility for State Funds.

In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this Chapter, the course must be reported as required by this Chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

History
1. Repealer of article 4 heading and amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment of section and Note filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55342. Average Daily Attendance.

Note: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

History
1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55343. Grades Awarded.

Note: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

History
1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55344. Enrollment.

Note: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

History
1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55346. Records.

Note: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

History
1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55348. Supervision.

Note: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

History
1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55350. Instruction.

The instructor assigned to a course conducted pursuant to this chapter shall:

(a) Be qualified to provide service in that capacity during the period in which that service is rendered;

(b) Be responsible for the supervision, control, and evaluation of the course and the enrolled students;

(c) Provide orientation, guidance, and information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college; and

(d) Provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, this schedule to be included in the written record.

Note: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

History
1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55352. Number of Students.

The number of students assigned to any one course section offered by distance education shall be determined by and be consistent with other district procedures related to faculty assignment. Procedures for determining the number of students assigned to a course section offered by distance education may include a review by the curriculum committee established pursuant to Section 55002(a)(1).

Nothing in this section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

History
1. Repealer and new section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18). For prior history, see Register 91, No. 23.

§ 55360. Evaluation Reports.

Note: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

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college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long-range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000-53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

(3) In performing the requirements of Subsections (a)(1) and (2), the governing board or its designees shall consult with the representatives of existing staff councils, committees, employee organizations, and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this Section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views.

(4) Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this Section.

(6) The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration.

(7) The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations, or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category that they represent.

(b) In developing and carrying out policies and procedures pursuant to Subsection (a), the district governing board shall ensure that its actions do not dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code Sec-

tions 3540, et seq., such procedures for staff participation shall not intrude on matters within the scope of representation under Section 3543.2 of the Government Code. In addition, governing boards shall not interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer–employee relations. Nothing in this Section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards. It is the intent of the Board of Governors to respect lawful agreements between staff and exclusive representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to staff pursuant to these regulations.

(c) Nothing in this Section shall be construed to impinge upon the policies and procedures governing the participation rights of faculty and students pursuant to Sections 53200–53204, and Section 51023.7, respectively.

(d) The governing board of a community college district shall comply substantially with the provisions of this Section.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b), (Register 91, No. 23).
2. Editorial correction of printing error in subsection (b) and HISTORY 1. (Register 91, No. 43).
3. Amendment of subsections (a)(1), (a)(3), (a)(5), (a)(7), (b), (c) and (d) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51023.7. Students.

(a) The governing board of a community college district shall adopt policies and procedures that provide students the opportunity to participate effectively in district and college governance. Among other matters, said policies and procedures shall include the following:

(1) Students shall be provided an opportunity to participate in formulation and development of district and college policies and procedures that have or will have a significant effect on students. This right includes the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures.

(2) Except in unforeseeable, emergency situations, the governing board shall not take action on a matter having a significant effect on students until it has provided students with an opportunity to participate in the formulation of the policy or procedure or the joint development of recommendations regarding the action.

(3) Governing board procedures shall ensure that at the district and college levels, recommendations and positions developed by students are given every reasonable consideration.

(4) For the purpose of this Section, the governing board shall recognize each associated student organization or its equivalent within the district as provided by Education Code Section 76060, as the representative body of the students to offer opinions and to make recommendations to the administration of a college and to the governing board of a district with regard to district and college policies and procedures that have or will have a significant effect on students. The selection of student representatives to serve on college or district committees, task forces, or other governance groups shall be made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district.

(b) For the purposes of this Section, district and college policies and procedures that have or will have a "significant effect on students" includes the following:

(1) grading policies;
(2) codes of student conduct;
(3) academic disciplinary policies;
(4) curriculum development;
(5) courses or programs which should be initiated or discontinued;
(6) processes for institutional planning and budget development;
(7) standards and policies regarding student preparation and success;
(8) student services planning and development;
(9) student fees within the authority of the district to adopt; and
(10) any other district and college policy, procedure, or related matter that the district governing board determines will have a significant effect on students.

(c) The governing board shall give reasonable consideration to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff.

(d) Nothing in this Section shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiations or negotiated agreements between collective bargaining agents and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining agents as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to the regulations on academic senates contained in Sections 53200–53206.

(e) The governing board of a community college district shall comply substantially with policies and procedures adopted in accordance with this Section.

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901 (b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 23).
2. Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1 (Register 91, No. 43).
3. Amendment of subsections (a)(2), (a)(4), (b), (b)(10), (d) and (e) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51024. Matriculation Services.

The governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under Section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under Section 55512(c);

(c) provide matriculation services to its students in accordance with Sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with Section 55534; and

(e) substantially comply with all other provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210–78218, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of first paragraph and subsection (e) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 51025. Full–Time/Part–Time Faculty.

This Section relates to and should be read in conjunction with Subchapter 3 (commencing with Section 53300) of Chapter 4 of this Division.

(a) Community college districts which have less than 75 percent of their hours of credit instruction taught by full–time instructors, as determined from their base data calculated pursuant to Section 53311, shall apply the growth revenues received related to increases in credit FTES in accordance with Section 58774 and a portion of the program improvement allocation received in accordance with Section 58775, as follows:

The form used by a college for the purpose of collecting the fee shall contain, at a minimum, the following:

(a) a statement indicating that the money collected pursuant to this article shall be expended to provide support for students or representatives who may be stating their positions and viewpoints before city, county, and district government, and before offices and agencies of the state and federal government;

(b) the amount of the fee;

(c) a statement informing the students of their right to refuse to pay the fee for religious, political, moral or financial reasons.

NOTE: Authority cited: Sections 66700, 70901 and 76060.5, Education Code. References: Sections 76060 and 76060.5, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54912. Residence Questionnaires.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Repealer filed 5–19–93; operative 6–4–93 (Register 93, No. 25).

Chapter 6. Curriculum and Instruction

Subchapter 1. Programs, Courses and Classes

Article 1. Program, Course and Class Classification and Standards

§ 55000. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.

(b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

(c) "Class" means a community services offering.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer of chapter 1 (subchapters 1–3, sections 55000–55144, not consecutive) and new chapter 1 (articles 1–2, sections 55000–55180, not consecutive) filed 12–21–81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 80, No. 11; 77, No. 45; and 71, No. 9.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55000.5. Handbook; Monitoring and Review of Approved Courses and Programs.

(a) The Chancellor shall prepare, distribute, and maintain a detailed handbook for use by the local educational agencies. The handbook shall contain course approval criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals.

(b) The Chancellor shall monitor and review courses and programs which were approved under the provisions of section 70901 of the Education Code for compliance with applicable statutes and regulations on a periodic basis.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55001. Community College Educational Program.

(a) The instructional services of community colleges include:

(1) liberal arts and sciences education:

(A) baccalaureate oriented/transfer programs and courses

(B) associate degree programs and courses

(C) developmental programs and courses

1. compensatory programs and courses

2. adult elementary and secondary basic skills programs and courses

(D) community education programs and courses

1. personal development and survival courses

2. parenting and family support courses

3. community and civic development courses

4. general and cultural courses

(2) occupational education:

(A) vocational/technical transfer programs and courses

(B) vocational/technical associate degree and certificate programs and courses

(C) continuing education vocational/technical certificates, programs and courses

(b) The community services (Non FTES generating) of community colleges include:

(1) community services classes:

(A) avocational classes

(B) recreational classes

(C) seminars, lecture series, forum series, workshops, and conferences

(D) professional and occupational in–service classes

(2) community services activities:

(A) Civic Center Act activities

(B) cultural activities

(C) community development activities

(D) recreational activities

(c) All districts shall report the classification of all courses, classes, and activities offered in accordance with the system contained in Subsections (a) and (b) and the standards in Section 55002 by transmitting the following information to the Chancellor's Office:

(1) the unique static course identifier and the course title for all credit and noncredit courses;

(2) the classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor;

(3) whether the course is offered as credit or noncredit;

(4) whether the course transfers to the California State University or the University of California or both;

(5) the number of community services classes in each category, and the number of participants; and

(6) the number of community services activities in each category and the number of participants.

(d) For courses, classes, and activities which are added after June 30, 1982, the district shall report the classification of all courses, classes and activities in the manner provided by Subsection (c). The Chancellor shall review and comment upon, as necessary, the classification of such courses, classes, and activities.

NOTE: Authority cited: Sections 66700, 70901, and 78401, Education Code. Reference: Sections 66701, 70901, 70902, 78300, and 78401, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55002. Standards and Criteria for Courses and Classes.

(a) Associate Degree Credit Course. An associate degree credit course is a course which has been designated as appropriate to the associate degree in accordance with the requirements of Section 55805.5, and which has been recommended by the college and/or district curriculum committee and approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission.

Senior Accounting Officers (Specialists) 3
Accounting Officers (Specialists) 3
Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of History 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full–time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long–range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

Register 1995-20

§ 55000
§ 55000.5
§ 55001
§ 55002
§ 55002.5
§ 55004
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§ 55006
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§ 55170
§ 55182
§ 55200
§ 55300
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§ 55316
§ 55318
§ 55320
§ 55321
§ 55322
§ 55340
§ 55350

§ 54912. Residence Questionnaires.

NOTE: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68062, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Chapter 6. Curriculum and Instruction

Subchapter 1. Programs, Courses and Classes

Article 1. Program, Course and Class Classification and Standards

§ 55000. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(a) "Course" means an organized pattern of instruction on a specified subject offered by a community college.

(b) "Educational program" is an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.

(c) "Class" means a community services offering.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer of chapter 1 (subchapters 1–3, sections 55000–55144, not consecutive) and new chapter 1 (articles 1–2, sections 55000–55180, not consecutive) filed 12–21–81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 80, No. 11; 77, No. 45; and 71, No. 9.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55000.5. Handbook; Monitoring and Review of Approved Courses and Programs.

(a) The Chancellor shall prepare, distribute, and maintain a detailed handbook for use by the local educational agencies. The handbook shall contain course approval criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals.

(b) The Chancellor shall monitor and review courses and programs which were approved under the provisions of section 70901 of the Education Code for compliance with applicable statutes and regulations on a periodic basis.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55001. Community College Educational Program.

(a) The instructional services of community colleges include:

(1) liberal arts and sciences education:

(A) baccalaureate oriented/transfer programs and courses

(B) associate degree programs and courses

(C) developmental programs and courses

1. compensatory programs and courses
2. adult elementary and secondary basic skills programs and courses

(D) community education programs and courses

1. personal development and survival courses
2. parenting and family support courses
3. community and civic development courses
4. general and cultural courses

(2) occupational education:

(A) vocational/technical transfer programs and courses

(B) vocational/technical associate degree and certificate programs and courses

(C) continuing education vocational/technical certificates, programs and courses

(b) The community services (Non FTES generating) of community colleges include:

(1) community services classes:

(A) avocational classes

(B) recreational classes

(C) seminars, lecture series, forum series, workshops, and conferences

(D) professional and occupational in–service classes

(2) community services activities:

(A) Civic Center Act activities

(B) cultural activities

(C) community development activities

(D) recreational activities

(c) All districts shall report the classification of all courses, classes, and activities offered in accordance with the system contained in Subsections (a) and (b) and the standards in Section 55002 by transmitting the following information to the Chancellor's Office:

(1) the unique static course identifier and the course title for all credit and noncredit courses;

(2) the classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor;

(3) whether the course is offered as credit or noncredit;

(4) whether the course transfers to the California State University or the University of California or both;

(5) the number of community services classes in each category, and the number of participants; and

(6) the number of community services activities in each category and the number of participants.

(d) For courses, classes, and activities which are added after June 30, 1982, the district shall report the classification of all courses, classes and activities in the manner provided by Subsection (c). The Chancellor shall review and comment upon, as necessary, the classification of such courses, classes, and activities.

NOTE: Authority cited: Sections 66700, 70901, and 78401, Education Code. Reference: Sections 66701, 70901, 70902, 78300, and 78401, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55002. Standards and Criteria for Courses and Classes.

(a) Associate Degree Credit Course. An associate degree credit course is a course which has been designated as appropriate to the associate degree in accordance with the requirements of Section 55805.5, and which has been recommended by the college and/or district curriculum committee and approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission.

(1) Curriculum Committee. The college and/or district curriculum committee recommending the course shall be established by the mutual agreement of the college and/or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college and/or district administration and the academic senate.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course for associate degree credit if it meets the following standards:

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays, or, in courses where the curriculum committee deems them to be appropriate, by problem-solving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course also requires a minimum of three hours of work per week, including class time for each unit of credit, prorated for short-term, laboratory and activity courses.

(C) Intensity. The course treats subject matter with a scope and intensity that requires students to study independently outside of class time.

(D) Prerequisites and Corequisites. When the college and/or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course, then the course shall require prerequisites or corequisites that are established, reviewed, and applied in accordance with the requirements of Article 2.5 (commencing with Section 55200) of this Subchapter.

(E) Basic Skills Requirements. If success in the course is dependent upon communication or computation skills, then the course shall require, consistent with the provisions of Article 2.5 (commencing with Section 55200) of this Subchapter, as prerequisites or corequisites eligibility for enrollment in associate degree credit courses in English and/or mathematics, respectively.

(F) Difficulty. The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level.

(G) Level. The course requires learning skills and a vocabulary that the curriculum committee deems appropriate for a college course.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside-of-class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Conduct of Course. Each section of the course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Chapter 2 (commencing with Section 51000), sections 55761-55763 and 58161 of this Division.

(b) Nondegree Credit Course. A credit course designated by the governing board as not applicable to the associate degree is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under Subdivision (a)(1) of this Section) and is approved by the district governing board and falls within one of the categories described in Subdivision (1) of this Subsection.

(1) Types of Courses. Nondegree applicable credit courses are:

(A) precollegiate basic skills courses as defined in Section 55502(d) of this Division;

(B) courses designed to enable students to succeed in college-level work (including, but not limited to, college orientation and guidance courses, and discipline-specific preparatory courses such as biology, history, or electronics) that integrate basic skills instruction throughout and assign grades partly upon the demonstrated mastery of those skills;

(C) precollegiate occupational preparation courses designed to provide foundation skills for students preparing for entry into college-level occupational courses or programs;

(D) essential occupational instruction for which meeting the standards of Section 55002(a) is neither necessary nor required.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the standards which follow. In order to be eligible for state apportionment, such courses must be approved (as courses not part of programs) by the Chancellor's Office as provided by Section 55100 of this Division.

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 of this Division. The grade is based on demonstrated proficiency in the subject matter and the ability to demonstrate that proficiency, at least in part, by means of written expression that may include essays, or, in courses where the curriculum committee deems them to be appropriate, by problemsolving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course requires a minimum of three hours of student work per week, per unit, including class time and/or demonstrated competency, for each unit of credit, prorated for short-term, laboratory, and activity courses.

(C) Intensity. The course provides instruction in critical thinking and generally treats subject matter with a scope and intensity that prepares students to study independently outside of class time and includes reading and writing assignments and homework. In particular, the assignments will be sufficiently rigorous that students completing each such course successfully will have acquired the skills necessary to successfully complete college-level work upon completion of the required sequence of such courses.

(D) Prerequisites and corequisites. When the college and/or district curriculum committee deems appropriate, the course may require prerequisites or corequisites for the course that are established, reviewed, and applied in accordance with Article 2.5 (commencing with Section 55200) of this Subchapter.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside-of-class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students. Taken together, these course specifications shall be such as to typically enable any student who successfully completes all of the assigned work prescribed in the outline of record to successfully meet the course objectives.

(4) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Division 2 (commencing with Section 51000), Sections 55761-55763 and 58161 of this Division.

(c) Noncredit Course. A noncredit course is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under Subdivision (a)(1) of this Section) and approved by the district governing board as a course meeting the needs of enrolled students.

(1) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course if the course treats subject matter and uses resource materials, teaching methods, and stan-

dards of attendance and achievement that the committee deems appropriate for the enrolled students. In order to be eligible for state apportionment, such courses are limited to the categories of instruction listed in Education Code Section 84711 and must be approved by the Chancellor's Office as noted in Title 5, Section 55150.

(2) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the scope, objectives, contents, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met.

(3) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

(d) Community Services Class. A community services class is a class that meets the following minimum requirements:

(1) is approved by the local district governing board;

(2) is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein;

(3) provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students;

(4) is conducted in accordance with a predetermined strategy or plan;

(5) is open to all members of the community; and

(6) may not be claimed for apportionment purposes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of subsection (a) filed 12–28–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 5–18–84; effective thirtieth day thereafter (Register 84, No. 20).
3. Repealer and new section filed 10–7–88; operative 11–6–88 (Register 88, No. 42).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 7).
6. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
7. Editorial correction of HISTORY 4 (Register 95, No. 20).

§ 55002.5. Credit Hour; Allowance for Shorter Term.

One credit hour of community college work is approximately three hours of recitation, study, or laboratory work per week throughout a term of 16 weeks. Where a term is more or less than 16 weeks, more or less than one credit hour shall be allowed in the same ratio that the length of the term is to 16 weeks.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55004. Social Science Courses.

The course of instruction in social sciences shall include a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States of America.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55005. Publication of Course Standards.

For each course offered, a community college shall make available to students through college publications all of the following facts before they enroll in the course:

(a) Whether the course is offered as a credit or noncredit course, or a community services class.

(b) Whether the course is transferable to four–year colleges and universities.

(c) Whether the course fulfills a major or general education requirement.

(d) Whether the course is offered on the basis of credit–no credit, and if so, which provision of subsection (a) of section 51302 is applicable.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55006. Records and Reports.

Authorities of each community college maintaining credit and noncredit courses and community services classes and activities shall keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 20).

§ 55008. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error in second paragraph (Register 91, No. 43).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
4. Editorial correction of HISTORY 1 (Register 95, No. 20).

Article 2. Approval of Courses, Programs and Classes

§ 55100. Course Approval.

Except as provided in subsection (b) and section 55160, each course to be offered by a community college shall be approved by the Chancellor before the course is offered by the college. The course shall be submitted to the Chancellor on forms provided by the Chancellor's Office.

(b) If an educational program has been approved by the Chancellor, the governing board of a district shall establish policies for, and may approve individual courses which are offered as part of an approved program. Such courses need not be approved by the Chancellor, but shall be reported in the manner provided in subsection (c).

(c) For each course approved by a district, whether or not approval by the Chancellor is required, the district shall designate the appropriate classification of the course or activity in accordance with section 55001.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78401, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55101. Chancellor's Report.

History

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer filed 3–7–85; effective thirtieth day thereafter (Register 85, No. 10).

§ 55130. Approval of Credit Programs.

(a) Before offering any course as part of an educational program at a college, the governing board of a district shall obtain approval of the educational program from the Chancellor in accordance with the provisions of this article. Approval shall be requested on forms provided by the Chancellor.

(b) The application for approval shall contain at least the following:

(1) The name of the proposed program.

(2) The description of the proposed program.

(3) The purposes and specific objectives of the proposed program.

(4) The place of the proposed program in the district master plan.

(5) An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning.

(6) The need for the proposed program ascertained with regard to at least the following factors:

(A) Other community colleges in the area currently offering the program.

(B) Other programs closely related to the proposed program offered by the college.

(C) Relation of the proposed program to job market analysis.

(D) Enrollment projection for the proposed program.

(E) Recommendations of area vocational master plan committees when applicable.

(F) The classification of the courses in the program in accordance with section 55001.

(7) The need for and present adequacy of the following resources shall be determined in relation to the proposed program:

(A) Library and media center resources.

(B) Facilities and equipment required to initiate and sustain the program. If a new facility is to be used, reference should be made to the five-year master plan.

(C) Availability of adequate or proposed financial support.

(D) Availability of faculty.

(c) The development, establishment and evaluation of an education program shall include representative faculty involvement.

(d) An approval is effective until the program or implementation of the program is discontinued or modified in any substantial way. From time to time the Chancellor may evaluate an educational program, after its approval, on the basis of factors listed in this section. If on the basis of such an evaluation the Chancellor determines that an educational program should no longer be offered, the Chancellor may terminate the approval and determine the effective date of termination.

(e) In multicollege districts, program approval is granted for a specific college.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55150. Approval of Noncredit Courses and Programs.

(a) Courses or programs offered for noncredit shall be approved by the Chancellor in accordance with section 55100 on forms provided by the Chancellor's Office.

(b) Course outlines for all noncredit courses shall be on file in the community college offering the course.

(c) Authorities of each community college maintaining noncredit courses shall keep such current records and reports as may be required by the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78401, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55160. Approval of Community Service Classes.

(a) Districts are authorized in accordance with the provisions of article 7 (commencing with section 78300) of chapter 2, part 48 of the Education Code to approve and conduct community services classes without the approval of the Chancellor. The classification of all such classes shall be reported to the Chancellor in accordance with section 55001.

(b) Community services classes shall not be referred to as noncredit classes.

Note: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Sections 70901 and 78300, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55170. Contract Classes.

(a) Notwithstanding subdivision (c) of section 55000, "contract classes" means those classes which a community college district offers in fulfillment of a contract with a public or private agency, corporation, association, or other body or person.

(b) No approval of a contract class is required if the district does not claim state support for the class and if the legislation which authorizes that class does not require approval. If the district claims state support for a contract class, approval of the class shall be obtained in the manner provided for classes of the same type, as provided in this article. Approval of the contract shall be obtained in the manner provided for by law.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 8092, 70902 and Article 1.5 (commencing with Section 78020) of Chapter 1, Part 48, Education Code.

History

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55180. Chancellor's Report.

Note: Authority cited: Sections 66700 and 71020, Education Code. Reference: Sections 71091, 78200, and 78401, Education Code.

History

1. Repealer filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 20).

§ 55182. Reinstatement of Deleted Courses.

The governing board of a community college district may reinstate any course which was deleted from the credit or noncredit curriculum during the 1982–83 fiscal year, in response to provision Number 11 of Item 6870–101–001 of the Budget Act of 1982 (Chapter 326, Statutes of 1982); provided that the following criteria and procedures shall be applied in conjunction with such reinstatement:

(a) The governing board of the district shall only reinstate such courses in a manner which is consistent with the policy of the Board of Governors that offerings which are primarily avocational, or recreational shall be offered as community services classes, and not as credit or noncredit courses;

(b) The governing board of the district shall determine that the course meets the criteria and standards for courses specified in section 55002;

(c) The governing board may act to reinstate a course only after it has been reviewed through the college's or district's established procedure for the approval of new courses;

(d) The governing board must submit the course to the Chancellor for approval, or report approval of the course, depending on the requirements of section 55100. A separate designation shall be used to distinguish reinstated courses from new courses; and

(e) The governing board must determine that reinstatement of the course maintains or improves the curriculum balance of the district in accordance with the mission of the community college and local needs.

(f) Any category of courses restored to the curriculum pursuant to a separate authorization of the Board of Governors shall be exempt from the requirements of this section.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 70902 and 78401, Education Code.

HISTORY

1. New section filed 12–28–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

Article 2.5. Prerequisites, Corequisites, and Recommended Preparation

§ 55200. Definitions.

For the purposes of this Division, the following definitions apply:

(a) "Prerequisite" means a condition of enrollment that a student is required to meet in order to demonstrate current readiness for enrollment in a course or educational program.

(b) "Corequisite" means a condition of enrollment consisting of a course that a student is required to simultaneously take in order to enroll in another course.

(c) "Advisory on recommended preparation" means a condition of enrollment that a student is advised, but not required, to meet before or in conjunction with enrollment in a course or educational program.

(d) "Satisfactory grade" means that, for the course in question, the student's academic record has been annotated with the symbol A, B, C or "CR" as those symbols are defined in Section 55758 of this Division.

(e) "Necessary and appropriate" means that a strong rational basis exists for concluding that a prerequisite or corequisite is reasonably needed to achieve the purpose that it purports to serve. This standard does not require absolute necessity.

(f) "content review" means a rigorous, systematic process developed in accordance with Sections 53200 to 53204, approved by the Chancellor as part of the district matriculation plan required under Section 55510, and is conducted by faculty to identify the necessary and appropriate body of knowledge or skills students need to possess prior to enrolling in a course, or which students need to acquire through concurrent enrollment in a corequisite course.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New article 2.5 and section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
2. Editorial correction of Article heading (Register 95, No. 20).

§ 55201. Policies for Prerequisites, Corequisites, and Advisories on Recommended Preparation.

(a) The governing board of a community college district may establish prerequisites, corequisites, and advisories on recommended preparation, but must do so in accordance with the provisions of this Article. Nothing in this subchapter shall be construed to require a district to establish prerequisites, corequisites, or advisories on recommended preparation; provided however, that a prerequisite or corequisite shall be required if the course is to be offered for associate degree credit and the curriculum committee finds that the prerequisite or corequisite is necessary pursuant to Section 55002(a)(2)(D) or 55002(a)(2)(E).

(b) A governing board choosing to establish prerequisites, corequisites, or advisories on recommended preparation shall, in accordance with the provisions of Sections 53200–53204 of this Division, adopt policies for the following:

(1) The process for establishing prerequisites, corequisites, and advisories on recommended preparation. Such policies shall provide that in order to establish a prerequisite or corequisite, the prerequisite or corequisite must be determined to be necessary and appropriate for achieving the purpose for which it is being established. District policies shall also specify the level of scrutiny that shall be required in order to establish different types of prerequisites, corequisites, and advisories on recommended preparation. At a minimum, prerequisites, corequisites, and advisories on recommended preparation shall be based on content review, with additional methods of scrutiny being applied depending on the type of prerequisite or corequisite being established. The policy shall provide that the types of prerequisites described in Subsection (e) may be established only on the basis of data collected using sound research practices. Determinations about prerequisites and corequisites shall be made on a course–by–course or program–by–program basis.

(2) Procedures to assure that courses for which prerequisites or corequisites are established will be taught in accordance with the course outline particularly those aspects of the course outline that are the basis for justifying the establishment of the prerequisite or corequisite.

(3) The process, including levels of scrutiny, for reviewing prerequisites and corequisites to assure that they remain necessary and appropriate. These processes shall provide that at least once each six years all prerequisites and corequisites established by the district shall be reviewed. These processes shall also provide for the periodic review of advisories on recommended preparation.

(4) The bases and process for an individual student to challenge the application of a prerequisite or corequisite.

(c) Prerequisites or corequisites may be established only for any of the following purposes:

(1) the prerequisite or corequisite is expressly required or expressly authorized by statute or regulation; or

(2) the prerequisite will assure, consistent with Section 55002(a)(2)(D), that a student has the skills, concepts, and/or information that is presupposed in terms of the course or program for which it is being established, such that a student who has not met the prerequisite is highly unlikely to receive a satisfactory grade in the course (or at least one course within the program) for which the prerequisite is being established; or

(3) the corequisite course will assure, consistent with Section 55002(a)(2)(D), that a student acquires the necessary skills, concepts, and/or information, such that a student who has not enrolled in the corequisite is highly unlikely to receive a satisfactory grade in the course or program for which the corequisite is being established; or

(4) the prerequisite or corequisite is necessary to protect the health and safety of a student or the health and safety of others.

(d) Except as provided in this Subsection, no prerequisite or corequisite may be established or renewed pursuant to Subsection (b)(3) unless it is determined to be necessary and appropriate to achieve the purpose for which it has been established. A prerequisite or corequisite need not be so scrutinized until it is reviewed pursuant to Subsection (b)(3) if:

(1) it was established prior to July 6, 1990, and is part of a sequence of degree-applicable courses within a given discipline; or

(2) it was established between July 6, 1990, and the effective date of this regulation, in accordance with regulations in effect during this period of time; or

(3) it is required by statute or regulation; or

(4) it is part of a closely-related lecture-laboratory course pairing within a discipline; or

(5) it is required by four-year institutions.

(e) A course in communication or computation skills may be established as a prerequisite or corequisite for any course other than another course in communication or computation skills only if, in addition to conducting a content review, the district gathers data according to sound research practices and shows that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or corequisite. If the curriculum committee initially determines, pursuant to Section 55002(a)(2)(E), that a new course needs to have a communication or computation skill prerequisite or corequisite, then, despite Subsection (d) of this Section, the prerequisite or corequisite may be established for a single period of not more than two years while the research is being conducted and the final determination is being made, provided that all other requirements for establishing the prerequisite or corequisite have been met.

(f) Any prerequisite or corequisite may be challenged by a student on one or more of the grounds listed below. The student shall bear the initial burden of showing that grounds exist for the challenge. Challenges shall be resolved in a timely manner and, if the challenge is upheld, the student shall be permitted to enroll in the course or program in question. Grounds for challenge are:

(1) The prerequisite or corequisite has not been established in accordance with the district's process for establishing prerequisites and corequisites;

(2) The prerequisite or corequisite is in violation of this Article;

(3) The prerequisite or corequisite is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(4) The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite;

(5) The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available; and

(6) Such other grounds for challenge as may be established by the district governing board.

(g) In the case of a challenge under Subsection (f)(3) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

(h) District policies adopted pursuant to this section shall be submitted to the Chancellor as part of the district's matriculation plan pursuant to Section 55510 of Subchapter 6 of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55202. Additional Rules.

The following additional rules apply to the establishment of prerequisites and corequisites:

(a) Prerequisites, corequisites, and advisories on recommended preparation must be identified in college publications available to students as well as the course outline of any course for which they are established.

(b) Prerequisites establishing communication or computational skill requirements may not be established across the entire curriculum unless established on a course-by-course basis.

(c) The determination of whether a student meets a prerequisite shall be based on successful completion of an appropriate course or on an assessment using multiple measures. Any assessment instrument used shall be selected and used in accordance with the provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

(d) If a prerequisite requires precollegiate skills in reading, written expression, or mathematics, the governing board of a district shall ensure that precollegiate basic skills courses designed to teach the required skills are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course.

(e) Whenever a corequisite course is established, sufficient sections shall be offered to reasonably accommodate all students who are required to take the corequisite. A Corequisite shall be waived as to any student for whom space in the corequisite course is not available.

(f) No exit test may be required to satisfy a prerequisite or corequisite unless it is incorporated into the grading for the prerequisite or corequisite course.

(g) The determination of whether a student meets a prerequisite shall be made prior to his or her enrollment in the course requiring the prerequisite, provided, however, that enrollment may be permitted pending verification that the student has met the prerequisite or corequisite. If the verification shows that the student has failed to meet the prerequisite, the student may be involuntarily dropped from the course if the applicable enrollment fees are promptly refunded. Otherwise a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or to the student code of conduct.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

Article 3. Bilingual Crosscultural Programs and Courses

§ 55225. Annual Articulation Agreement Plans.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 52150-52158, Education Code.

HISTORY

1. New article 3 (section 55225) filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

Subchapter 2. Programs and Classes Outside of District

NOTE: Authority cited: Section 72012, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 55200-55204) filed 12-21-81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Register 77, No. 45.
2. Amendment of subchapter 2 heading filed 5-15-93; operative 6-14-93 (Register 93, No. 25).

§ 55230. Classes, Property and Buildings Outside of District.

The governing board of a community college district may conduct community college classes and acquire the necessary property and erect

3. New subsection (a)(4) filed 9–29–78; designated effective 7–1–80 (Register 78, No. 39).

4. Amendment of subsection (a) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).

5. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

6. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

7. Editorial correction of HISTORY 6 (Register 95, No. 20).

§ 55256.5. Work Experience Credit.

(a) One student contact hour is counted for each unit of work experience credit in which a student is enrolled during any census period. In no case shall duplicate student contact hours be counted for any classroom instruction and Cooperative Work Experience Education. The maximum contact hours counted for a student shall not exceed the maximum number of Cooperative Work Experience Education units for which the student may be granted credit as described in section 55253.

(b) The learning experience and the identified on–the–job learning objectives shall be sufficient to support the units to be awarded.

(c) The following formula will be used to determine the number of units to be awarded:

(1) Each 75 hours of paid work equals one semester credit or 50 hours equals one quarter credit.

(2) Each 60 hours of non–paid work equals one semester credit or 40 hours equals one quarter credit.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 9–29–78; designated effective 1–2–79 (Register 78, No. 39).

2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

4. Editorial correction of HISTORY 3 (Register 95, No. 20).

§ 55257. Job Learning Stations.

Job learning stations shall meet the following criteria:

(a) Employers or designated representatives agree with the intent and purposes of Cooperative Work Experience Education for students and are given a copy of each student's approved on–the–job learning objectives.

(b) Job learning stations offer a reasonable probability of continuous work experience for students during the current work experience enrollment term.

(c) Employers or designated representatives agree to provide adequate supervision, facilities, equipment, and materials at the learning stations to achieve on–the–job learning objectives.

(d) Employers as required by law agree to comply with all appropriate federal and state employment regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78249, Education Code.

HISTORY

1. Amendment filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).

2. Amendment filed 9–29–78; designated effective 1–2–79 (Register 78, No. 39).

3. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

5. Editorial correction of HISTORY 4 (Register 95, No. 20).

Subchapter 4. Courses and Programs Conducted As Independent Study

Article 1. General Provision and Requirements

§ 55300. Application of Chapter.

The provisions of this chapter apply to and implement the provisions of sections 58051 and 58003.1 in relation to attendance in approved courses and programs designed and conducted as independent study.

Approved courses conducted as independent study shall be reported to the Chancellor in accordance with specified procedures as required by law.

All heretofore approved credit courses offered in whatever mode meeting the above requirements shall remain approved provided such courses meet the requirements of this chapter.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78310, Education Code.

HISTORY

1. Repealer of chapter 4 (sections 55300–55344, not consecutive) and new chapter 4 (articles 1–5; sections 55300–55360, not consecutive) filed 12–18–78; effective thirtieth day thereafter (Register 78, No. 51). For prior history, see Registers 77, No. 45 and 71, No. 9.

2. Amendment filed 11–15–79; effective thirtieth day thereafter (Register 79, No. 46).

3. Amendment of chapter 4 heading, repealer of article 1 heading, and amendment of section 55300 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

5. New article heading filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

6. Editorial correction of HISTORY 4 (Register 95, No. 20).

§ 55302. Definitions.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55310. Reporting.

Each independent study course, whether or not it is part of an approved program, must be reported to the Chancellor in a manner and form required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 11–15–79; effective thirtieth day thereafter (Register 79, No. 46).

2. Repealer of article 2 heading filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

4. Editorial correction of HISTORY 3 (Register 95, No. 20).

§ 55312. Transfer.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55314. Faculty and Student Participation.

NOTE: Authority cited: Sections 66700, 70901 and 78301, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55316. Criteria.

Courses offered pursuant to this Chapter shall:

(a) Be accepted by the college toward completion of an appropriate educational sequence leading to an associate degree, and

(b) Be recognized by an institution of the University of California or the California State University upon transfer to that institution.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of opening statement, subsection (b) and NOTE filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55316.5. Additional Courses.

Notwithstanding any other provision of law, after June 1, 1994, the following additional types of courses may be offered pursuant to this Chapter, consistent with guidelines developed by the Chancellor:

(a) Nontransferable courses designed to meet the requirements of Sections 55805.5, 55806, and 55002(a) or (b);

(b) Noncredit courses conducted as distance education independent study.

This Section shall become inoperative on July 1, 2000, unless a later–adopted regulation deletes or extends this date.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. New section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55317. Ongoing Responsibilities of Districts.

Any district conducting courses under Section 55316 or 55316.5 shall:

(a) Maintain records and report data through the Chancellor's Office Management Information System on the number of students and faculty participating in new courses or sections of established courses;

(b) Provide to the local governing board no later than July 1, 1995, and annually thereafter, a report on all distance education activity.

(c) Provide other information consistent with reporting guidelines which shall be developed by the Chancellor pursuant to Section 409 of the Procedures and Standing Orders of the Board of Governors.

This Section shall become inoperative on July 1, 2000, unless a later–adopted regulation deletes or extends this date.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. New section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55318. Written Record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902, and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55320. Academic Standards.

Academic standards applicable to courses of independent study shall be the same as those applied to other credit courses in the college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 3 heading filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55321. Student Progress.

Procedures for evaluation of student progress shall be in accordance with regulations set by the college. A report by an instructor on appropriate records bearing the student's name for purposes of state apportionment shall certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by the student.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55322. Availability of Instructor.

The college shall provide access to the instructor for the students enrolled in courses offered pursuant to this chapter at least equivalent to that commonly available to students enrolled in courses conducted by other instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55323. Learning Assistance.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12–17–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 55340. Eligibility for State Funds.

In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this Chapter, the course must be reported as required by this Chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 4 heading and amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of section and NOTE filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55342. Average Daily Attendance.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55343. Grades Awarded.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55344. Enrollment.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55346. Records.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55348. Supervision.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55350. Instruction.

The instructor assigned to a course conducted pursuant to this chapter shall:

(a) Be qualified to provide service in that capacity during the period which that service is rendered;

(b) Be responsible for the supervision, control, and evaluation of the course and the enrolled students;

(c) Provide orientation, guidance, and information regarding course content materials and services for each student as soon as possible subsequent to the student's official enrollment by the college; and

(d) Provide each student with the instructor's consultation schedule for the semester, quarter, or other prescribed term of the course, this schedule to be included in the written record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55352. Number of Students.

The number of students assigned to any one course section offered by distance education shall be determined by and be consistent with other district procedures related to faculty assignment. Procedures for determining the number of students assigned to a course section offered by distance education may include a review by the curriculum committee established pursuant to Section 55002(a)(1).

Nothing in this section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

Repealer and new section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18). For prior history, see Register 91, No. 23.

§ 55360. Evaluation Reports.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer of Article 5 heading and Section 55360 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Article 2. Distance Education

§ 55370. Definition and Application.

Distance education means instruction in which the instructor and student are separated by distance and interact through the assistance of communication technology.

All distance education is independent study, and subject to the general requirements of Article 1 as well as the specific requirements of this Article. Provided however, that fully interactive distance education courses, as defined in guidelines adopted by the Chancellor, shall not be considered independent study for purposes of calculating state apportionment pursuant to Section 58003.1. In addition, instruction provided as distance education is subject to the requirements that may be imposed by the Americans with Disabilities Act (42 U.S.C. Sec. 12100 et seq).

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment of article heading and section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55372. Course Quality Standards.

The same standards of course quality shall be applied to distance education as are applied to traditional classroom courses, in regard to the course quality judgments made pursuant to the requirements of Section 55002 of this Part, and in regard to any local course quality determination or review process.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

§ 55374. Course Quality Determinations.

Determinations and judgments about the quality of distance education, under the course quality standards referred to in Section 55372, shall be made with the full involvement of faculty in accordance with the provisions of Subchapter 2 (commencing with Section 53200) of Chapter 2 of Division 4 of this Part.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).

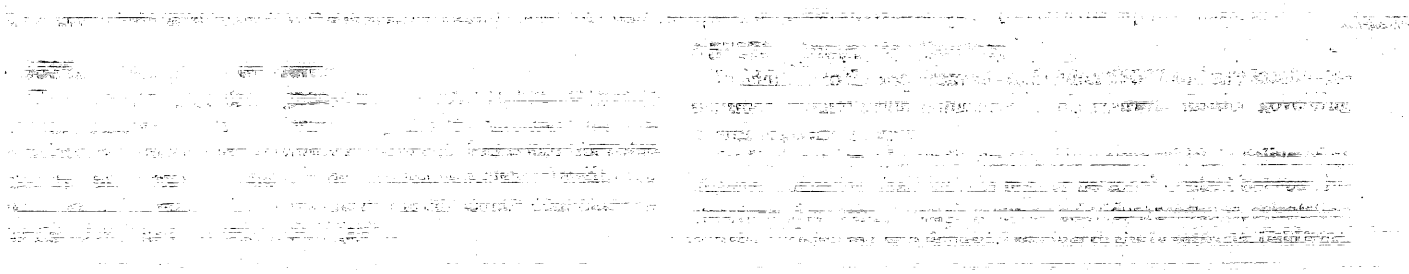
§ 55376. Instructor Contact.

In addition to the requirements of Section 55002 and any locally-established requirements applicable to all courses, district governing boards shall ensure that:

(a) Each section of a credit transferable course which is delivered as distance education shall include regular personal contact between instructor and students, through group or individual meetings, orientation and review sessions, supplemental seminar or study sessions, field trips, library workshops, or other in-person activities. Personal contact may be supplemented by telephone contact and correspondence.

(b) All other approved courses offered by distance education shall include regular contact between instructors and students consistent with guidelines issued by the Chancellor pursuant to Section 409 of the Procedures and Standing Orders of the Board of Governors.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901–70902, Education Code.



(a) The governing board of the district shall only reinstate such courses in a manner which is consistent with the policy of the Board of Governors that offerings which are primarily avocational, or recreational shall be offered as community services classes, and not as credit or noncredit courses;

(b) The governing board of the district shall determine that the course meets the criteria and standards for courses specified in section 55002;

(c) The governing board may act to reinstate a course only after it has been reviewed through the college's or district's established procedure for the approval of new courses;

(d) The governing board must submit the course to the Chancellor for approval, or report approval of the course, depending on the requirements of section 55100. A separate designation shall be used to distinguish reinstated courses from new courses; and

(e) The governing board must determine that reinstatement of the course maintains or improves the curriculum balance of the district in accordance with the mission of the community college and local needs.

(f) Any category of courses restored to the curriculum pursuant to a separate authorization of the Board of Governors shall be exempt from the requirements of this section.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 70902 and 78401, Education Code.

HISTORY

1. New section filed 12–28–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 53).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

Article 2.5. Prerequisites, Corequisites, and Recommended Preparation

§ 55200. Definitions.

For the purposes of this Division, the following definitions apply:

(a) "Prerequisite" means a condition of enrollment that a student is required to meet in order to demonstrate current readiness for enrollment in a course or educational program.

(b) "Corequisite" means a condition of enrollment consisting of a course that a student is required to simultaneously take in order to enroll in another course.

(c) "Advisory on recommended preparation" means a condition of enrollment that a student is advised, but not required, to meet before or in conjunction with enrollment in a course or educational program.

(d) "Satisfactory grade" means that, for the course in question, the student's academic record has been annotated with the symbol A, B, C or "CR" as those symbols are defined in Section 55758 of this Division.

(e) "Necessary and appropriate" means that a strong rational basis exists for concluding that a prerequisite or corequisite is reasonably needed to achieve the purpose that it purports to serve. This standard does not require absolute necessity.

(f) "content review" means a rigorous, systematic process developed in accordance with Sections 53200 to 53204, approved by the Chancellor as part of the district matriculation plan required under Section 55510, and is conducted by faculty to identify the necessary and appropriate body of knowledge or skills students need to possess prior to enrolling in a course, or which students need to acquire through concurrent enrollment in a corequisite course.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New article 2.5 and section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
2. Editorial correction of Article heading (Register 95, No. 20).

§ 55201. Policies for Prerequisites, Corequisites, and Advisories on Recommended Preparation.

(a) The governing board of a community college district may establish prerequisites, corequisites, and advisories on recommended preparation, but must do so in accordance with the provisions of this Article. Nothing in this subchapter shall be construed to require a district to establish prerequisites, corequisites, or advisories on recommended preparation; provided however, that a prerequisite or corequisite shall be required if the course is to be offered for associate degree credit and the curriculum committee finds that the prerequisite or corequisite is necessary pursuant to Section 55002(a)(2)(D) or 55002(a)(2)(E).

(b) A governing board choosing to establish prerequisites, corequisites, or advisories on recommended preparation shall, in accordance with the provisions of Sections 53200–53204 of this Division, adopt policies for the following:

(1) The process for establishing prerequisites, corequisites, and advisories on recommended preparation. Such policies shall provide that in order to establish a prerequisite or corequisite, the prerequisite or corequisite must be determined to be necessary and appropriate for achieving the purpose for which it is being established. District policies shall also specify the level of scrutiny that shall be required in order to establish different types of prerequisites, corequisites, and advisories on recommended preparation. At a minimum, prerequisites, corequisites, and advisories on recommended preparation shall be based on content review, with additional methods of scrutiny being applied depending on the type of prerequisite or corequisite being established. The policy shall provide that the types of prerequisites described in Subsection (e) may be established only on the basis of data collected using sound research practices. Determinations about prerequisites and corequisites shall be made on a course–by–course or program–by–program basis.

(2) Procedures to assure that courses for which prerequisites or corequisites are established will be taught in accordance with the course outline particularly those aspects of the course outline that are the basis for justifying the establishment of the prerequisite or corequisite.

(3) The process, including levels of scrutiny, for reviewing prerequisites and corequisites to assure that they remain necessary and appropriate. These processes shall provide that at least once each six years all prerequisites and corequisites established by the district shall be reviewed. These processes shall also provide for the periodic review of advisories on recommended preparation.

(4) The bases and process for an individual student to challenge the application of a prerequisite or corequisite.

(c) Prerequisites or corequisites may be established only for any of the following purposes:

(1) the prerequisite or corequisite is expressly required or expressly authorized by statute or regulation; or

(2) the prerequisite will assure, consistent with Section 55002(a)(2)(D), that a student has the skills, concepts, and/or information that is presupposed in terms of the course or program for which it is being established, such that a student who has not met the prerequisite is highly unlikely to receive a satisfactory grade in the course (or at least one course within the program) for which the prerequisite is being established; or

(3) the corequisite course will assure, consistent with Section 55002(a)(2)(D), that a student acquires the necessary skills, concepts, and/or information, such that a student who has not enrolled in the corequisite is highly unlikely to receive a satisfactory grade in the course or program for which the corequisite is being established; or

(4) the prerequisite or corequisite is necessary to protect the health and safety of a student or the health and safety of others.

(d) Except as provided in this Subsection, no prerequisite or corequisite may be established or renewed pursuant to Subsection (b)(3) unless it is determined to be necessary and appropriate to achieve the purpose for which it has been established. A prerequisite or corequisite need not be so scrutinized until it is reviewed pursuant to Subsection (b)(3) if:

(1) it was established prior to July 6, 1990, and is part of a sequence of degree-applicable courses within a given discipline; or

(2) it was established between July 6, 1990, and the effective date of this regulation, in accordance with regulations in effect during this period of time; or

(3) it is required by statute or regulation; or

(4) it is part of a closely-related lecture-laboratory course pairing within a discipline; or

(5) it is required by four-year institutions.

(e) A course in communication or computation skills may be established as a prerequisite or corequisite for any course other than another course in communication or computation skills only if, in addition to conducting a content review, the district gathers data according to sound research practices and shows that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or corequisite. If the curriculum committee initially determines, pursuant to Section 55002(a)(2)(E), that a new course needs to have a communication or computation skill prerequisite or corequisite, then, despite Subsection (d) of this Section, the prerequisite or corequisite may be established for a single period of not more than two years while the research is being conducted and the final determination is being made, provided that all other requirements for establishing the prerequisite or corequisite have been met. The requirements of this subdivision related to collection of data shall not apply when:

(1) four-year institutions will not grant credit for a course unless it has the particular communication or computation skill prerequisite; or

(2) the prerequisite or corequisite is required for enrollment in a program, that program is subject to approval by a state agency other than the Chancellor's Office and both of the following conditions are satisfied:

(A) colleges in at least six different districts have previously satisfied the data collection requirements of this subdivision with respect to the same prerequisite or corequisite for the same program; and

(B) the district establishing the prerequisite or corequisite conducts an evaluation to determine whether the prerequisite or corequisite has a disproportionate impact on particular groups of students described in terms of race, ethnicity, gender, age or disability, as defined by the Chancellor. When there is a disproportionate impact on any such group of students, the district shall, in consultation with the Chancellor, develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact.

(f) Any prerequisite or corequisite may be challenged by a student on one or more of the grounds listed below. The student shall bear the initial burden of showing that grounds exist for the challenge. Challenges shall be resolved in a timely manner and, if the challenge is upheld, the student shall be permitted to enroll in the course or program in question. Grounds for challenge are:

(1) The prerequisite or corequisite has not been established in accordance with the district's process for establishing prerequisites and corequisites;

(2) The prerequisite or corequisite is in violation of this Article;

(3) The prerequisite or corequisite is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(4) The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite;

(5) The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available; and

(6) Such other grounds for challenge as may be established by the district governing board.

(g) In the case of a challenge under Subsection (f)(3) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

(h) District policies adopted pursuant to this section shall be submitted to the Chancellor as part of the district's matriculation plan pursuant to Section 55510 of Subchapter 6 of Chapter 6 of this Division.

NOTE: Authority cited: Section 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
2. Amendment of subsection (e), new subsections (e)(1)-(e)(2)(B) and amendment of NOTE filed 2-9-98; operative 3-11-98. Submitted to OAL for printing only (Register 98, No. 7).

§ 55202. Additional Rules.

The following additional rules apply to the establishment of prerequisites and corequisites:

(a) Prerequisites, corequisites, and advisories on recommended preparation must be identified in college publications available to students as well as the course outline of any course for which they are established.

(b) Prerequisites establishing communication or computational skill requirements may not be established across the entire curriculum unless established on a course-by-course basis.

(c) The determination of whether a student meets a prerequisite shall be based on successful completion of an appropriate course or on an assessment using multiple measures. Any assessment instrument used shall be selected and used in accordance with the provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

(d) If a prerequisite requires precollegiate skills in reading, written expression, or mathematics, the governing board of a district shall ensure that precollegiate basic skills courses designed to teach the required skills are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course.

(e) Whenever a corequisite course is established, sufficient sections shall be offered to reasonably accommodate all students who are required to take the corequisite. A Corequisite shall be waived as to any student for whom space in the corequisite course is not available.

(f) No exit test may be required to satisfy a prerequisite or corequisite unless it is incorporated into the grading for the prerequisite or corequisite course.

(g) The determination of whether a student meets a prerequisite shall be made prior to his or her enrollment in the course requiring the prerequisite, provided, however, that enrollment may be permitted pending verification that the student has met the prerequisite or corequisite. If the verification shows that the student has failed to meet the prerequisite, the student may be involuntarily dropped from the course if the applicable enrollment fees are promptly refunded. Otherwise a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or to the student code of conduct.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

Article 3. Bilingual Crosscultural Programs and Courses

§ 55225. Annual Articulation Agreement Plans.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 52150-52158, Education Code.

HISTORY

1. New article 3 (section 55225) filed 6-8-83; effective thirtieth day thereafter (Register 83, No. 24).

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2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55316. Criteria.

Courses offered pursuant to this Chapter shall:

(a) Be accepted by the college toward completion of an appropriate educational sequence leading to an associate degree, and

(b) Be recognized by an institution of the University of California or the California State University upon transfer to that institution.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of opening statement, subsection (b) and NOTE filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55316.5. Additional Courses.

Notwithstanding any other provision of law, after June 1, 1994, the following additional types of courses may be offered pursuant to this Chapter, consistent with guidelines developed by the Chancellor:

(a) Nontransferable courses designed to meet the requirements of Sections 55805.5, 55806, and 55002(a) or (b);

(b) Noncredit courses conducted as distance education independent study.

This Section shall become inoperative on January 1, 2002 unless a later-adopted regulation deletes or extends this date.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. New section filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).
2. Amendment of last paragraph and NOTE filed 8-31-98; operative 9-30-98. Submitted to OAL for printing only (Register 98, No. 36).

§ 55317. Ongoing Responsibilities of Districts.

Any district conducting courses under Section 55316 or 55316.5 shall:

(a) Maintain records and report data through the Chancellor's Office Management Information System on the number of students and faculty participating in new courses or sections of established courses;

(b) Provide to the local governing board no later than August 31, 1998, and annually thereafter, a report on all distance education activity.

(c) Provide other information consistent with reporting guidelines which shall be developed by the Chancellor pursuant to Section 409 of the Procedures and Standing Orders of the Board of Governors.

This Section shall become inoperative on January 1, 2002, unless a later-adopted regulation deletes or extends this date.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. New section filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).
2. Amendment of subsection (b), last paragraph and NOTE filed 8-31-98; operative 9-30-98. Submitted to OAL for printing only (Register 98, No. 36).

§ 55318. Written Record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902, and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55320. Academic Standards.

Academic standards applicable to courses of independent study shall be the same as those applied to other credit courses in the college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 3 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55321. Student Progress.

Procedures for evaluation of student progress shall be in accordance with regulations set by the college. A report by an instructor on appropriate records bearing the student's name for purposes of state apportionment shall certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by the student.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55322. Availability of Instructor.

The college shall provide access to the instructor for the students enrolled in courses offered pursuant to this chapter at least equivalent to that commonly available to students enrolled in courses conducted by other instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55323. Learning Assistance.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12-17-84; effective thirtieth day thereafter (Register 84, No. 51).

§ 55340. Eligibility for State Funds.

In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this Chapter, the course must be reported as required by this Chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 4 heading and amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23).

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2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55316. Criteria.

Courses offered pursuant to this Chapter shall:

(a) Be accepted by the college toward completion of an appropriate educational sequence leading to an associate degree, and

(b) Be recognized by an institution of the University of California or the California State University upon transfer to that institution.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of opening statement, subsection (b) and NOTE filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55316.5. Additional Courses.

Notwithstanding any other provision of law, after June 1, 1994, the following additional types of courses may be offered pursuant to this Chapter, consistent with guidelines developed by the Chancellor:

(a) Nontransferable courses designed to meet the requirements of Sections 55805.5, 55806, and 55002(a) or (b);

(b) Noncredit courses conducted as distance education independent study.

This Section shall become inoperative on July 1, 2002 unless a later-adopted regulation deletes or extends this date.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. New section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
2. Amendment of last paragraph and NOTE filed 8–31–98; operative 9–30–98. Submitted to OAL for printing only (Register 98, No. 36).
3. Amendment of subsection (b) filed 12–3–2001; operative 1–2–2002. Submitted to OAL for printing only (Register 2001, No. 50).

§ 55317. Ongoing Responsibilities of Districts.

Any district conducting courses under Section 55316 or 55316.5 shall:

(a) Maintain records and report data through the Chancellor's Office Management Information System on the number of students and faculty participating in new courses or sections of established courses;

(b) Provide a report on all distance education activity to the local governing board no later than August 31 of each year.

(c) Provide other information consistent with reporting guidelines which shall be developed by the Chancellor pursuant to Section 409 of the Procedures and Standing Orders of the Board of Governors.

This Section shall become inoperative on July 1, 2002, unless a later-adopted regulation deletes or extends this date.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. New section filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
2. Amendment of subsection (b), last paragraph and NOTE filed 8–31–98; operative 9–30–98. Submitted to OAL for printing only (Register 98, No. 36).
3. Amendment of subsections (b)–(c) filed 12–3–2001; operative 1–2–2002. Submitted to OAL for printing only (Register 2001, No. 50).

§ 55318. Written Record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902, and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 4–29–94; operative 5–29–94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55320. Academic Standards.

Academic standards applicable to courses of independent study shall be the same as those applied to other credit courses in the college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 3 heading filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55321. Student Progress.

Procedures for evaluation of student progress shall be in accordance with regulations set by the college. A report by an instructor on appropriate records bearing the student's name for purposes of state apportionment shall certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by the student.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55322. Availability of Instructor.

The college shall provide access to the instructor for the students enrolled in courses offered pursuant to this chapter at least equivalent to that commonly available to students enrolled in courses conducted by other instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55323. Learning Assistance.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY

1. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12–17–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 55340. Eligibility for State Funds.

In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this Chapter, the course must be reported as required by this Chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 4 heading and amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

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§ 55211
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(1) it was established prior to July 6, 1990, and is part of a sequence of degree-applicable courses within a given discipline; or

(2) it was established between July 6, 1990, and the effective date of this regulation, in accordance with regulations in effect during this period of time; or

(3) it is required by statute or regulation; or

(4) it is part of a closely-related lecture-laboratory course pairing within a discipline; or

(5) it is required by four-year institutions.

(e) A course in communication or computation skills may be established as a prerequisite or corequisite for any course other than another course in communication or computation skills only if, in addition to conducting a content review, the district gathers data according to sound research practices and shows that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or corequisite. If the curriculum committee initially determines, pursuant to Section 55002(a)(2)(E), that a new course needs to have a communication or computation skill prerequisite or corequisite, then, despite Subsection (d) of this Section, the prerequisite or corequisite may be established for a single period of not more than two years while the research is being conducted and the final determination is being made, provided that all other requirements for establishing the prerequisite or corequisite have been met. The requirements of this subdivision related to collection of data shall not apply when:

(1) four-year institutions will not grant credit for a course unless it has the particular communication or computation skill prerequisite; or

(2) the prerequisite or corequisite is required for enrollment in a program, that program is subject to approval by a state agency other than the Chancellor's Office and both of the following conditions are satisfied:

(A) colleges in at least six different districts have previously satisfied the data collection requirements of this subdivision with respect to the same prerequisite or corequisite for the same program; and

(B) the district establishing the prerequisite or corequisite conducts an evaluation to determine whether the prerequisite or corequisite has a disproportionate impact on particular groups of students described in terms of race, ethnicity, gender, age or disability, as defined by the Chancellor. When there is a disproportionate impact on any such group of students, the district shall, in consultation with the Chancellor, develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact.

(f) Any prerequisite or corequisite may be challenged by a student on one or more of the grounds listed below. The student shall bear the initial burden of showing that grounds exist for the challenge. Challenges shall be resolved in a timely manner and, if the challenge is upheld, the student shall be permitted to enroll in the course or program in question. Grounds for challenge are:

(1) The prerequisite or corequisite has not been established in accordance with the district's process for establishing prerequisites and corequisites;

(2) The prerequisite or corequisite is in violation of this Article;

(3) The prerequisite or corequisite is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(4) The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite;

(5) The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available; and

(6) Such other grounds for challenge as may be established by the district governing board.

(g) In the case of a challenge under Subsection (f)(3) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

(h) District policies adopted pursuant to this section shall be submitted to the Chancellor as part of the district's matriculation plan pursuant to Section 55510 of Subchapter 6 of Chapter 6 of this Division.

NOTE: Authority cited: Section 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
2. Amendment of subsection (e), new subsections (e)(1)-(e)(2)(B) and amendment of NOTE filed 2-9-98; operative 3-11-98. Submitted to OAL for printing only (Register 98, No. 7).

§ 55202. Additional Rules.

The following additional rules apply to the establishment of prerequisites and corequisites:

(a) Prerequisites, corequisites, and advisories on recommended preparation must be identified in college publications available to students as well as the course outline of any course for which they are established.

(b) Prerequisites establishing communication or computational skill requirements may not be established across the entire curriculum unless established on a course-by-course basis.

(c) The determination of whether a student meets a prerequisite shall be based on successful completion of an appropriate course or on an assessment using multiple measures. Any assessment instrument used shall be selected and used in accordance with the provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

(d) If a prerequisite requires precollegiate skills in reading, written expression, or mathematics, the governing board of a district shall ensure that precollegiate basic skills courses designed to teach the required skills are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course.

(e) Whenever a corequisite course is established, sufficient sections shall be offered to reasonably accommodate all students who are required to take the corequisite. A Corequisite shall be waived as to any student for whom space in the corequisite course is not available.

(f) No exit test may be required to satisfy a prerequisite or corequisite unless it is incorporated into the grading for the prerequisite or corequisite course.

(g) The determination of whether a student meets a prerequisite shall be made prior to his or her enrollment in the course requiring the prerequisite, provided, however, that enrollment may be permitted pending verification that the student has met the prerequisite or corequisite. If the verification shows that the student has failed to meet the prerequisite, the student may be involuntarily dropped from the course if the applicable enrollment fees are promptly refunded. Otherwise a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or to the student code of conduct.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

Article 3. Distance Education

§ 55205. Definition and Application.

Distance education means instruction in which the instructor and student are separated by distance and interact through the assistance of communication technology. All distance education is subject to the general requirements of this chapter as well as the specific requirements of this article. In addition, instruction provided as distance education is subject to the requirements that may be imposed by the Americans with Disabili-

ties Act (42 U.S.C. Sec. 12100 et seq.) and section 508 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 794d).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New article 3 (sections 55205-55219) and section filed 5-20-2002; operative 6-19-2002. Submitted to OAL for printing only (Register 2002, No. 26). For prior history of article 3 (section 55225), see Register 95, No. 20.

§ 55207. Course Quality Standards.

The same standards of course quality shall be applied to distance education as are applied to traditional classroom courses, in regard to the course quality judgments made pursuant to the requirements of section 55002 of this part, and in regard to any local course quality determination or review process.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-20-2002; operative 6-19-2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55209. Course Quality Determinations.

Determinations and judgments about the quality of distance education under the course quality standards referred to in section 55207, shall be made with the full involvement of faculty in accordance with the provisions of subchapter 2 (commencing with section 53200) of chapter 2 of division 4 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-20-2002; operative 6-19-2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55211. Instructor Contact.

In addition to the requirements of section 55002 and any locally established requirements applicable to all courses, district governing boards shall ensure that:

(a) All approved courses offered as distance education include regular effective contact between instructor and students, through group or individual meetings, orientation and review sessions, supplemental seminar or study sessions, field trips, library workshops, telephone contact, correspondence, voice mail, e-mail, or other activities.

(b) All distance education courses are delivered consistent with guidelines issued by the Chancellor pursuant to section 409 of the Procedures and Standing Orders of the Board of Governors. Regular effective contact is an academic and professional matter pursuant to title 5, section 53200.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-20-2002; operative 6-19-2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55213. Separate Course Approval.

Each proposed or existing course, if delivered by distance education, shall be separately reviewed and approved according to the district's certified course approval procedures.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-20-2002; operative 6-19-2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55215. Faculty Selection.

Instructors of sections delivered via distance education technology shall be selected by the same procedures used to determine all instructional assignments. Instructors shall possess the minimum qualifications in the discipline into which the course's subject matter most appropriately falls, in accordance with article 2 of chapter 4 of division 4 of this part (commencing with section 53410), and with the list of disciplinary definitions and requirements adopted by the Board of Governors to implement that article, as such list may be amended from time to time.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-20-2002; operative 6-19-2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55217. Number of Students.

The number of students assigned to any one course section offered by distance education shall be determined by and be consistent with other district procedures related to faculty assignment. Procedures for determining the number of students assigned to a course section offered by distance education may include a review by the curriculum committee established pursuant to section 55002(a)(1).

Nothing in this section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-20-2002; operative 6-19-2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55219. Ongoing Responsibility of Districts.

Any district conducting courses under section 55316.5 shall:

(a) Maintain records and report data through the Chancellor's Office Management Information System on the number of students and faculty participating in new courses or sections of established courses,

(b) Provide to the local governing board, no later than August 31st of each year, a report on all distance education activity,

(c) Provide other information consistent with reporting guidelines developed by the Chancellor pursuant to section 409 of the Procedures and Standing Orders of the Board of Governors.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-20-2002; operative 6-19-2002. Submitted to OAL for printing only (Register 2002, No. 26).

Subchapter 2. Programs and Classes Outside of District

NOTE: Authority cited: Section 72012, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 55200-55204) filed 12-21-81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Register 77, No. 45.
2. Amendment of subchapter 2 heading filed 5-15-93; operative 6-14-93 (Register 93, No. 25).

§ 55230. Classes, Property and Buildings Outside of District.

The governing board of a community college district may conduct community college classes and acquire the necessary property and erect the necessary buildings therefor, outside of the boundaries of the district if all of the following conditions exist:

(a) The proposed location is within the state.

(b) the activities, trades, businesses, or work to be carried on at the proposed location is such as to offer educational opportunities to students who are residents of the district in the subject or all of the subjects proposed to be taught at that location, and facilities for such instruction are not available either at the location of the principal buildings of the community college, or elsewhere within the district.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

contact hours counted for a student shall not exceed the maximum number of Cooperative Work Experience Education units for which the student may be granted credit as described in section 55253.

(b) The learning experience and the identified on-the-job learning objectives shall be sufficient to support the units to be awarded.

(c) The following formula will be used to determine the number of units to be awarded:

(1) Each 75 hours of paid work equals one semester credit or 50 hours equals one quarter credit.

(2) Each 60 hours of non-paid work equals one semester credit or 40 hours equals one quarter credit.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 9-29-78; designated effective 1-2-79 (Register 78, No. 39).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 20).

§ 55257. Job Learning Stations.

Job learning stations shall meet the following criteria:

(a) Employers or designated representatives agree with the intent and purposes of Cooperative Work Experience Education for students and are given a copy of each student's approved on-the-job learning objectives.

(b) Job learning stations offer a reasonable probability of continuous work experience for students during the current work experience enrollment term.

(c) Employers or designated representatives agree to provide adequate supervision, facilities, equipment, and materials at the learning stations to achieve on-the-job learning objectives.

(d) Employers as required by law agree to comply with all appropriate federal and state employment regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78249, Education Code.

HISTORY

1. Amendment filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment filed 9-29-78; designated effective 1-2-79 (Register 78, No. 39).
3. New NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Editorial correction of HISTORY 4 (Register 95, No. 20).

Subchapter 4. Courses and Programs Conducted As Independent Study

Article 1. General Provision and Requirements

§ 55300. Application of Chapter.

The provisions of this chapter apply to and implement the provisions of sections 58051 and 58003.1 in relation to attendance in approved courses and programs designed and conducted as independent study.

Approved courses conducted as independent study shall be reported to the Chancellor in accordance with specified procedures as required by law.

All heretofore approved credit courses offered in whatever mode meeting the above requirements shall remain approved provided such courses meet the requirements of this chapter.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78310, Education Code.

HISTORY

1. Repealer of chapter 4 (sections 55300-55344, not consecutive) and new chapter 4 (articles 1-5; sections 55300-55360, not consecutive) filed 12-18-78; effective thirtieth day thereafter (Register 78, No. 51). For prior history, see Registers 77, No. 45 and 71, No. 9.
2. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
3. Amendment of chapter 4 heading, repealer of article 1 heading, and amendment of section 55300 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. New article heading filed 4-3-92; operative 5-4-92 (Register 92, No. 15).
6. Editorial correction of HISTORY 4 (Register 95, No. 20).

§ 55302. Definitions.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55310. Reporting.

Each independent study course, whether or not it is part of an approved program, must be reported to the Chancellor in a manner and form required by the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
2. Repealer of article 2 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 20).

§ 55312. Transfer.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55314. Faculty and Student Participation.

NOTE: Authority cited: Sections 66700, 70901 and 78301, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20)

§ 55316. Criteria.

Courses offered pursuant to this Chapter shall:

(a) Be accepted by the college toward completion of an appropriate educational sequence leading to an associate degree, and

(b) Be recognized by an institution of the University of California or the California State University upon transfer to that institution.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment of opening statement, subsection (b) and NOTE filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55316.5. Additional Courses.

Notwithstanding any other provision of law, after June 1, 1994, the following additional types of courses may be offered as independent study if conducted by distance education consistent with the requirements of article 3 of subchapter 1 (commencing with section 55205) of this chapter and the guidelines developed by the Chancellor:

(a) Nontransferable courses designed to meet the requirements of sections 55805.5, 55806, and 55002(a) or (b);

(b) Noncredit courses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).
2. Amendment of last paragraph and NOTE filed 8-31-98; operative 9-30-98. Submitted to OAL for printing only (Register 98, No. 36).
3. Amendment of subsection (b) filed 12-3-2001; operative 1-2-2002. Submitted to OAL for printing only (Register 2001, No. 50).
4. Amendment of section and NOTE filed 5-20-2002; operative 6-19-2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55317. Ongoing Responsibilities of Districts.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. New section filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).
2. Amendment of subsection (b), last paragraph and NOTE filed 8-31-98; operative 9-30-98. Submitted to OAL for printing only (Register 98, No. 36).
3. Amendment of subsections (b)-(c) filed 12-3-2001; operative 1-2-2002. Submitted to OAL for printing only (Register 2001, No. 50).
4. Repealer filed 5-20-2002; operative 6-19-2002. Submitted to OAL for printing only (Register 2002, No. 26).

§ 55318. Written Record.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902, and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55320. Academic Standards.

Academic standards applicable to courses of independent study shall be the same as those applied to other credit courses in the college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 3 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55321. Student Progress.

Procedures for evaluation of student progress shall be in accordance with regulations set by the college. A report by an instructor on appropriate records bearing the student's name for purposes of state apportionment shall certify that adequate and proper progress toward accomplishment of the course objectives is being maintained by the student.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55322. Availability of Instructor.

The college shall provide access to the instructor for the students enrolled in courses offered pursuant to this chapter at least equivalent to that commonly available to students enrolled in courses conducted by other instructional methods in addition to regularly scheduled office hours as practiced at that college.

NOTE: Authority cited: Sections 66700, 70901 and 78310, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55323. Learning Assistance.

NOTE: Authority cited: Sections 71020, 78310, 84500 and 84520, Education Code. Reference: Sections 78310, 84500 and 84520, Education Code.

HISTORY

1. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 12-17-84; effective thirtieth day thereafter (Register 84, No. 51).

§ 55340. Eligibility for State Funds.

In order for attendance in a course of independent study to be eligible for state apportionment pursuant to the provisions of this Chapter, the course must be reported as required by this Chapter, and meet all other requirements of statute and regulation relative to eligibility for state apportionment.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 78310, Education Code.

HISTORY

1. Repealer of article 4 heading and amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of section and NOTE filed 4-29-94; operative 5-29-94. Submitted to OAL for printing only (Register 94, No. 18).
4. Editorial correction of HISTORY 2 (Register 95, No. 20).

§ 55342. Average Daily Attendance.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55343. Grades Awarded.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55344. Enrollment.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55346. Records.

NOTE: Authority cited: Sections 71020, 84500, and 84520, Education Code. Reference: Sections 84500(a)(2) and 84520, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 12: Instructional Programs

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Register 77-45	§ 55600: Amendment of section and NOTE.
	§ 55601: Amendment of section.
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	§ 55605: Amendment of section.
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Register 79-46	§ 55604: Amendment of section.
Register 83-18	§ 55600: Repealer of subchapter 1 heading, amendment of article 1 heading, and repealer and new section 55600.

§ 55601: Repealed.

§ 55602: Repealed.

§ 55603: Added new NOTE.

§ 55604: Repealed.

§ 55605: Repealed, new section filed.

§ 55606: Repealed.

§ 55607: Amendment of section.

§ 55608: Repealed.

§ 55620: Repealer, new section added.

§ 55630: Repealer, new section added.

Register 84-26 § 51022: Added new section.

Register 91-23 § 51022: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55600: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55602: Adoption of section filed by Board of Governors of California Community Colleges with the Secretary of

State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55602.5: Adoption of section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55603: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55605: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55607: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55620: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to

Education Code section 70901.5(b).

§ 55630: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 91-43 § 55602.5: Editorial correction of printing error.

Register 93-25 § 55600: Amendment of section.

Register 94-38 § 55602.5: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

Register 95-15 § 51022: Editorial correction of HISTORY 2.

Register 95-22 § 55600: Editorial correction of HISTORY 4.

§ 55602: Editorial correction of HISTORY 1.

§ 55602.5: Editorial correction of HISTORY 1.

§ 55603: Editorial correction of HISTORY 2.

§ 55605: Editorial correction of HISTORY 3.

§ 55607: Editorial correction of HISTORY 3.

§ 55620: Editorial correction of HISTORY 3.

§ 55630: Editorial correction of HISTORY 2.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

§ 55600
§ 55601
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CHAPTER 7. OCCUPATIONAL EDUCATION
SUBCHAPTER 1. VOCATIONAL EDUCATION CONTRACTS
Article 1. General Provisions

55600. Scope. Provisions of this chapter apply to all Vocational Education contracts established and maintained under the authority of Education Code Section 30133.

NOTE: Authority cited: Sections 193, 197 and 30133, Education Code. Reference: Chapter 5 (commencing with Section 30133), Division 21, Education Code.

History: 1. New Chapter 7 (Sections 55600 through 55631, not consecutive) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).

55601. Definitions. For the purposes of this chapter the following definitions apply:

(a) Vocational education contract means a written agreement between any Community College district and a private postsecondary school which meets standards prescribed herein to provide vocational instruction to students enrolled in Community Colleges.

(b) The California State Plan for Vocational Education means an official agreement between the United States Commissioner of Education and the California State Board of Education. Part 1 of the California State Plan for Vocational Education provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Vocational Education Amendments of 1968 (Public Law 90-576) or any subsequent federal legislation.

(c) A course means an organized pattern of instruction in a specific subject offered by a Community College. The course meets the provisions of Administrative Code Title 5, Sections 55001 and 55002 or Sections 58000 to 58192 and 58250 to 58253.

(d) An educational program means an organized sequence of courses of instruction leading to a defined objective, degree, certificate, diploma, or license. All new programs must be approved according to Administrative Code Section 55130–55144.

(e) A school unit means any Community College district.

(f) Public entity as used in Education Code Section 30133 for Community Colleges means any Community College district governing board.

(g) Contractor means any private postsecondary school which, prior to the effective date of a contract, has received final approval or has been operational for a period of 2 years pursuant to the provisions of Education Code Division 21, Chapter 5 (commencing with Section 29001), to provide vocational education authorized by the Code. Provided, however, that any private postsecondary school that holds a contract with a Community College on the effective date of this article is exempt from the 2 year requirement.

(h) Eligible costs means all related instructional costs but does not include expenditures for capital outlay (600 category in the California Community College Budget and Accounting Manual) and shall not exceed the same cost to provide the same training in the public entity or the tuition the private postsecondary school charges its students, whichever is lower.

(i) Accounting manual means California Community Colleges Budget and Accounting Manual (October 30, 1973) and all similar subsequent documents.

(j) Teacher or instructor means an individual who holds a valid California Teaching credential authorizing the holder to teach applicable vocational education subjects in a Community College.

(k) Student means any individual enrolled in and under the control of a Community College.

55602. Occupational Purposes. The purpose of vocational education contracts is to provide a means whereby vocational, technical, and occupational preparation opportunities can be extended through private postsecondary schools approved pursuant to the provisions of Education Code Division 21, Chapter 1 (commencing with Section 29001).

55603. Instructional Purpose. Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

55604. Application for Approval. The contract shall include such details to explain and justify intended offerings, including compliance with Education Code Sections 29001 through 30205. All contracts between Community College districts and private postsecondary schools will be submitted to the Chancellor for approval.

55605. Contract Approval and Limitations. Vocational education contracts pursuant to Education Code Section 30133 shall: (1) not exceed one year, (2) be approved by the Chancellor, and (3) all programs, courses, and classes of instruction shall meet standards set forth in the California State Plan for Vocational Education.

55606. Administration. Vocational education contracts shall be maintained in conformity with applicable provisions of the Education Code, Title 5 of the Administrative Code, California Community Colleges Budget and Accounting Manual, and the California State Plan for Vocational Education.

55607. Reporting. Each Community College district that has entered into a contract with a private postsecondary school, pursuant to Education Code Section 30133, shall submit annually to the Chancellor statistical and evaluative reports as provided for and described in the California State Plan for Vocational Education.

55608. Accounting Procedure. Vocational education contracts shall be organized and administered by Community College districts in such a manner there will be separate accounts for all income and expenditures applicable to the contract. These records will be retained for five (5) years or one year after audited by state auditors, whichever comes first, and shall be made available for audit by the federal government.

Article 2. Contracting Standards

55620. Standards. The following conditions shall be used to determine the appropriateness of vocational education contracts with private postsecondary schools:

(a) Manpower needs and job opportunities are identified and established for the instruction program.

(b) The program or courses do not unnecessarily duplicate offerings available in the region served.

(c) The program or courses provide vocational education opportunities not otherwise available.

(d) Each student eligible for enrollment under a contract between a Community College district and a private postsecondary school must: (1) have reached his sixteenth birthday and (2) be enrolled in a Community College.

(e) The programs or courses shall not reduce or supplant the vocational education efforts of any district.

(f) The Community College district may contract with respect to the use of any building which, if applicable thereto, does not conform to provisions of the Field Act (Education Code Section 15356).

(g) The private postsecondary school must be accredited by an accrediting agency recognized by the United States Office of Education or conforms to guidelines on contractual relationships with nonaccredited organizations established by the agency accrediting the Community College.

Article 3. Contract Provisions

55630. Support. The private postsecondary school and the Community College district will insure that ancillary and supportive services, such as counseling and guidance, and placement assistance are provided for the students.

55631. Terms and Conditions. Each contract shall expressly include but not be limited to, the following provisions:

(a) Methods for identifying costs and payment procedures for compliance with Education Code Section 30133 subdivisions (2) and (3).

(b) Performance objectives for each instructional area and a report regarding accomplishment of the objectives at the end of each contract period.

(c) Designation of responsibility for maintaining records of student attendance and achievement. Such records shall be available for review at all times.

(d) After July 1, 1976, instruction under contract shall be provided under the immediate supervision and control of teachers who hold a valid credential to teach the vocational subject in a California Community College.

(e) That the contractor provide indemnity and defense for the state and the Community College district and their respective officers and employees, against any and all claims and liability for death, injury, loss and damage arising out of, or in any manner connected with, the performance of the contract. Such indemnity and defense shall be provided by an appropriate hold harmless clause and a policy of liability insurance coverage, the cost of which is to be borne by the contractor. Such policy shall name the Board of Governors of the California Community Colleges, the State and public entity, along with their respective officers and employees as additional insureds.

(f) Where required by law, the contractor provides, at his own expense, workmen's compensation insurance coverage for any student.

(g) That the contractor is in compliance with the Civil Rights Act of 1964, Title 9 of the Higher Education Act of 1972, the U.S. Presidential Executive Order 11246 and subsequent amendments (if applicable) and the intent of the Board of Governors of the California Community Colleges affirmative action resolution adopted April 12, 1973, and all applicable local, state and federal health and safety regulations.

(h) Procedures relating to: transfer of students between the Community College district and contractor, number of class hours sufficient to meet the stated performance objectives, and withdrawal of students prior to completion of a course or program.

(i) Terms and conditions relating to enrollment period, cancellation and termination of the contract, and supervision and evaluation of students attending private postsecondary schools.

(j) That the contractor be responsible for keeping records on student attendance and achievements and for submitting these records on a schedule developed by the Community College district.

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CHAPTER 7. OCCUPATIONAL EDUCATION

SUBCHAPTER 1. VOCATIONAL EDUCATION CONTRACTS

Article 1. General Provisions

55600. Scope. Provisions of this chapter apply to all Vocational Education contracts established and maintained under the authority of Education Code Section 8092.

NOTE: Authority cited for Chapter 7: Sections 71020, 71024 and 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

History: 1. New Chapter 7 (Sections 55600 through 55631, not consecutive) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55601. Definitions. For the purposes of this chapter the following definitions apply:

(a) Vocational education contract means a written agreement between any Community College district and a private postsecondary school which meets standards prescribed herein to provide vocational instruction to students enrolled in Community Colleges.

(b) The California State Plan for Vocational Education means an official agreement between the United States Commissioner of Education and the California State Board of Education. Part 1 of the California State Plan for Vocational Education provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Vocational Education Amendments of 1968 (Public Law 90-576) or any subsequent federal legislation.

(c) A course means an organized pattern of instruction in a specific subject offered by a Community College. The course meets the provisions of Administrative Code Title 5, Sections 55001 and 55002 or Sections 58000 to 58192 and 58250 to 58253.

(d) An educational program means an organized sequence of courses of instruction leading to a defined objective, degree, certificate, diploma, or license. All new programs must be approved according to Administrative Code Section 55130–55144.

(e) A school unit means any Community College district.

(f) Public entity as used in Education Code Section 8092 for Community Colleges means any Community College district governing board.

(g) Contractor means any private postsecondary school which, prior to the effective date of a contract, has received final approval or has been operational for a period of 2 years pursuant to the provisions of Education Code Division 10, Chapter 3 (commencing with Section 94300), to provide vocational education authorized by the Code. Provided, however, that any private postsecondary school that holds a contract with a Community College on the effective date of this article is exempt from the 2 year requirement.

(h) Eligible costs means all related instructional costs but does not include expenditures for capital outlay (600 category in the *California Community College Budget and Accounting Manual*) and shall not exceed the same cost to provide the same training in the public entity or the tuition the private postsecondary school charges its students, whichever is lower.

(i) Accounting manual means *California Community Colleges Budget and Accounting Manual* (Revised, April 22, 1977) and all similar subsequent documents.

(j) Teacher or instructor means an individual who holds a valid California Teaching credential authorizing the holder to teach applicable vocational education subjects in a Community College.

(k) Student means any individual enrolled in and under the control of a Community College.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55602. Occupational Purposes. The purpose of vocational education contracts is to provide a means whereby vocational, technical, and occupational preparation opportunities can be extended through private postsecondary schools approved pursuant to the provisions of Education Code Division 10, Chapter 3 (commencing with Section 94300).

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55603. Instructional Purpose. Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

55604. Application for Approval. The contract shall include such details to explain and justify intended offerings, including compliance with Education Code Sections 94300 through 9084. All contracts between Community College districts and private postsecondary schools will be submitted to the Chancellor for approval.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55605. Contract Approval and Limitations. Vocational education contracts pursuant to Education Code Section 8092 shall: (1) not exceed one year, (2) be approved by the Chancellor, and (3) all programs, courses, and classes of instruction shall meet standards set forth in the California State Plan for Vocational Education.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55606. **Administration.** Vocational education contracts shall be maintained in conformity with applicable provisions of the Education Code, Title 5 of the Administrative Code, California Community Colleges Budget and Accounting Manual, and the California State Plan for Vocational Education.

55607. **Reporting.** Each Community College district that has entered into a contract with a private postsecondary school, pursuant to Education Code Section 8092, shall submit annually to the Chancellor statistical and evaluative reports as provided for and described in the California State Plan for Vocational Education.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55608. **Accounting Procedure.** Vocational education contracts shall be organized and administered by Community College districts in such a manner there will be separate accounts for all income and expenditures applicable to the contract. These records will be retained for five (5) years or one year after audited by state auditors, whichever comes first, and shall be made available for audit by the federal government.

Article 2. Contracting Standards

55620. **Standards.** The following conditions shall be used to determine the appropriateness of vocational education contracts with private postsecondary schools:

(a) Manpower needs and job opportunities are identified and established for the instruction program.

(b) The program or courses do not unnecessarily duplicate offerings available in the region served.

(c) The program or courses provide vocational education opportunities not otherwise available.

(d) Each student eligible for enrollment under a contract between a Community College district and a private postsecondary school must: (1) have reached his sixteenth birthday and (2) be enrolled in a Community College.

(e) The programs or courses shall not reduce or supplant the vocational education efforts of any district.

(f) The Community College district may contract with respect to the use of any building which, if applicable thereto, does not conform to provisions of the Field Act (Education Code Section 81064).

(g) The private postsecondary school must be accredited by an accrediting agency recognized by the United States Office of Education or conform to guidelines on contractual relationships with nonaccredited organizations established by the agency accrediting the Community College.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

Article 3. Contract Provisions

55630. **Support.** The private postsecondary school and the Community College district will insure that ancillary and supportive services, such as counseling and guidance, and placement assistance are provided for the students.

55631. **Terms and Conditions.** Each contract shall expressly include but not be limited to, the following provisions:

(a) Methods for identifying costs and payment procedures for compliance with Education Code Section 8092 subdivisions 2 and 3.

(b) Performance objectives for each instructional area and a report regarding accomplishment of the objectives at the end of each contract period.

(c) Designation of responsibility for maintaining records of student attendance and achievement. Such records shall be available for review at all times.

(d) After July 1, 1976, instruction under contract shall be provided under the immediate supervision and control of teachers who hold a valid credential to teach the vocational subject in a California Community College.

(e) That the contractor provide indemnity and defense for the state and the Community College district and their respective officers and employees, against any and all claims and liability for death, injury, loss and damage arising out of, or in any manner connected with, the performance of the contract. Such indemnity and defense shall be provided by an appropriate hold harmless clause and a policy of liability insurance coverage, the cost of which is to be borne by the contractor. Such policy shall name the Board of Governors of the California Community Colleges, the State and public entity, along with their respective officers and employees as additional insureds.

(f) Where required by law, the contractor provides, at the contractor's own expense, workmen's compensation insurance coverage for any student.

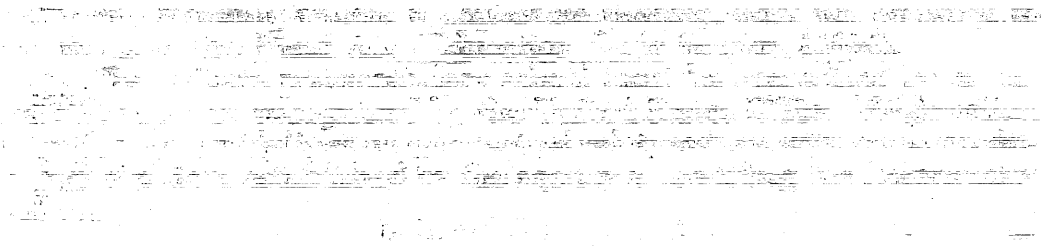
(g) That the contractor is in compliance with the Civil Rights Act of 1964, Title 9 of the Higher Education Act of 1972, the U.S. Presidential Executive Order 11246 and subsequent amendments (if applicable) and the intent of the Board of Governors of the California Community Colleges affirmative action resolution adopted April 12, 1973, and all applicable local, state and federal health and safety regulations.

(h) Procedures relating to: transfer of students between the Community College district and contractor, number of class hours sufficient to meet the stated performance objectives, and withdrawal of students prior to completion of a course or program.

(i) Terms and conditions relating to enrollment period, cancellation and termination of the contract, and supervision and evaluation of students attending private postsecondary schools.

(j) That the contractor be responsible for keeping records on student attendance and achievements and for submitting these records on a schedule developed by the Community College district.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).



CHAPTER 7. OCCUPATIONAL EDUCATION

SUBCHAPTER 1. VOCATIONAL EDUCATION CONTRACTS

Article 1. General Provisions

55600. Scope.

Provisions of this chapter apply to all Vocational Education contracts established and maintained under the authority of Education Code Section 8092.

NOTE: Authority cited for Chapter 7: Sections 71020, 71024 and 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY:

1. New Chapter 7 (Sections 55600 through 55631, not consecutive) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55601. Definitions.

For the purposes of this chapter the following definitions apply:

(a) Vocational education contract means a written agreement between any Community College district and a private postsecondary school which meets standards prescribed herein to provide vocational instruction to students enrolled in Community Colleges.

(b) The California State Plan for Vocational Education means an official agreement between the United States Commissioner of Education and the California State Board of Education. Part 1 of the California State Plan for Vocational Education provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Vocational Education Amendments of 1968 (Public Law 90-576) or any subsequent federal legislation.

(c) A course means an organized pattern of instruction in a specific subject offered by a Community College. The course meets the provisions of Administrative Code Title 5, Sections 55001 and 55002 or Sections 58000 to 58192 and 58250 to 58253.

(d) An educational program means an organized sequence of courses of instruction leading to a defined objective, degree, certificate, diploma, or license. All new programs must be approved according to Administrative Code Section 55130-55144.

(e) A school unit means any Community College district.

(f) Public entity as used in Education Code Section 8092 for Community Colleges means any Community College district governing board.

(g) Contractor means any private postsecondary school which, prior to the effective date of a contract, has received final approval or has been operational for a period of 2 years pursuant to the provisions of Education Code Division 10, Chapter 3 (commencing with Section 94300), to provide vocational education authorized by the Code. Provided, however, that any private postsecondary school that holds a contract with a Community College on the effective date of this article is exempt from the 2 year requirement.

(h) Eligible costs means all related instructional costs but does not include expenditures for capital outlay (600 category in the *California Community College Budget and Accounting Manual*) and shall not exceed the same cost to provide the same training in the public entity or the tuition the private postsecondary school charges its students, whichever is lower.

(i) Accounting manual means *California Community Colleges Budget and Accounting Manual* (Revised, April 22, 1977) and all similar subsequent documents.

(j) Teacher or instructor means an individual who holds a valid California Teaching credential authorizing the holder to teach applicable vocational education subjects in a Community College.

(k) Student means any individual enrolled in and under the control of a Community College.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55602. Occupational Purposes.

The purpose of vocational education contracts is to provide a means whereby vocational, technical, and occupational preparation opportunities can be extended through private postsecondary schools approved pursuant to the provisions of Education Code Division 10, Chapter 3 (commencing with Section 94300).

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

55603. Instructional Purpose.

Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

55604. Application for Approval.

The contract shall include such details to explain and justify intended offerings, including compliance with Education Code Sections 8080 through 8084. All contracts between Community College districts and private postsecondary schools will be submitted to the Chancellor for approval.

NOTE: Authority cited: Sections 8092, 71020, 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).

55605. Contract Approval and Limitations.

Vocational education contracts pursuant to Education Code Section 8092 shall: (1) not exceed one year, (2) be approved by the Chancellor, and (3) all programs, courses, and classes of instruction shall meet standards set forth in the California State Plan for Vocational Education.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

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CHAPTER 7. OCCUPATIONAL EDUCATION

Article 1. Vocational Education Contracts

55600. Definitions.

For the purposes of this article the following definitions apply:

(a) Vocational education contract means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of Article 5 (commencing with Section 8090) of Chapter 1, Part 6 of the Education Code.

(b) The California State Plan for Vocational Education means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94-482 and 95-40), Part A, Vocational Education, or any subsequent federal legislation.

(c) Contractor as used in Education Code Section 8092 means any private postsecondary school authorized or approved pursuant to the provisions of Chapter 3 (commencing with Section 94300), and which has been in operation not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this Code.

(d) Eligible costs means all direct and indirect related instructional costs but does not include expenditures for capital outlay (600 category in the California Community Colleges Budget and Accounting Manual).

NOTE: Authority cited: Sections 8092 and 71020, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY:

1. New Chapter 7 (Sections 55600 through 55631, not consecutive) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Subchapter 1 heading, amendment of Article 1 heading, and repealer and new Section 55600 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55601. Definitions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of subsection (g) filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
3. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55602. Occupational Purposes.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55603. Instructional Purpose.

Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

NOTE: Authority cited: Sections 8092 and 71020, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1, Education Code.

HISTORY:

1. New NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55604. Application for Approval.

NOTE: Authority cited: Sections 8092, 71020, 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
3. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55605. Contract Approval and Limitations.

Vocational education contracts entered into pursuant to Education Code Section 8092 shall:

(a) Not exceed one year;

(b) Be approved by the Chancellor;

(c) Include such details to explain and justify intended offerings, including compliance with Education Code Sections 8080 through 8084;

(d) Be maintained in conformity with applicable provisions of the Education Code, Title 5 of the Administrative Code, California Community Colleges Budget and Accounting Manual, and the California State Plan for Vocational Education; and

(e) Be organized and administered by community college districts in such a manner that there will be separate accounts for all income and expenditures applicable to the contract.

NOTE: Authority cited: Sections 8092, 71020 and 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55606. Administration.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55607. Reporting.

Each Community College district that has entered into a contract with a contractor pursuant to Education Code Section 8092, shall submit annually to the Chancellor statistical and evaluative reports on forms provided by the Chancellor. All records related to income and expenditures applicable to the contract shall be made available for audit by the state or federal government and will be retained for five (5) years or one year after audited, whichever comes first.

NOTE: Authority cited: Sections 8092 and 71020, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55608. Accounting Procedure.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 2. Contracting Standards

55620. Standards.

The following conditions shall be used to determine the appropriateness of vocational education contracts with contractors:

(a) Manpower needs and job opportunities are identified and established for the instruction program.

(b) The program or courses do not unnecessarily duplicate offerings available in the region served.

(c) The program or courses provide vocational education opportunities not otherwise available.

(d) The programs or courses shall not reduce or supplant the vocational education efforts of any district.

(e) Eligible costs shall not exceed the same cost to provide the same training in the public entity or the tuition the private postsecondary school charges its private students, whichever is lower.

(f) The community college student may not be charged additional tuition for any training included in the contract.

(g) Each student eligible for enrollment under a contract between a community college district and a contractor must: (1) have reached his or her sixteenth birthday and (2) be enrolled in a community college.

(h) The community college district may contract with respect to the use of any building which, if applicable thereto, does not conform to provisions of the Field Act (Education Code Section 81064).

(i) The contractor must be accredited by an accrediting agency recognized by the United States Office of Education or conform to guidelines on contractual relationships with nonaccredited organizations established by the agency accrediting the community college.

NOTE: Authority cited: Sections 8090, 8092 and 71020, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 3. Contract Provisions

55630. Terms and Conditions.

Each contract shall expressly include but not be limited to, the following provisions:

(a) The governing board of the community college district has determined, by resolution, the appropriateness of offering the program through a contract with a contractor pursuant to Education Code Section 78015.

(b) Methods for identifying eligible costs and payment procedures for compliance with Education Code Section 8092 subdivisions 2 and 3.

(c) Procedures, terms and conditions relating to (1) enrollment period; (2) transfer of students between the community college district and contractor; (3) number of class hours sufficient to meet the stated performance objectives; (4) supervision and evaluation of students; and (5) withdrawal of students prior to completion of a course or program.

(d) The contractor and the community college district will insure that ancillary and support services are provided for the students including, but not limited to (1) counseling and guidance, and (2) placement assistance.

(e) Instruction provided under the immediate supervision and control of an employee of the district as defined in Section 58056 of this part who holds a valid credential authorizing instruction in the vocational subject in a California community college.

(f) Performance objectives for each instructional area and a report regarding accomplishment of the objectives at the end of each contract period.

(g) Designation of responsibility to the contractor for maintaining records of student attendance and achievement. Such records shall be available for review at all times and submitted on a schedule developed by the community college district.

(h) Terms and conditions relating to cancellation and termination of the contract.

(i) The contractor is in compliance with the Civil Rights Act of 1964, Title 9 of the Higher Education Act of 1972, the U.S. Presidential Executive Order 11246 and subsequent amendments (if applicable), and all applicable state and federal health and safety regulations.

(j) The contractor provides, when required by law and at the contractor's own expense, workers' compensation insurance coverage for any student.

(k) The contractor provides indemnity and defense for the state and the community college district and their respective officers and employees, against any and all claims and liability for death, injury, loss and damage arising out of, or in any manner connected with, the performance of the contract. Such indemnity and defense shall be provided by an appropriate hold harmless clause and a policy of liability insurance coverage, the cost of which is to be borne by the contractor. Such policy shall name the Board of Governors of the California Community Colleges, the State and public entity, along with their respective officers and employees as additional insureds.

NOTE: Authority cited: Sections 8090, 8092 and 71020, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY:

1. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

55631. Terms and Conditions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of subsection (d) filed 1-16-81; effective thirtieth day therafter (Register 81, No. 3).
3. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 4. Regional Adult and Vocational Education Councils

55650. Regulations Reference.

Pursuant to the authority vested by Sections 8023, 8024, 8029 and 8034 of the Education Code, the Superintendent of Public Instruction and the Chancellor of the California Community Colleges have jointly adopted Administrative Code regulations on the establishment and operation of Regional Adult and Vocational Education Councils. These regulations are set forth in Chapter 13 (commencing with Section 11610) of Division 11, Part 1 of Title 5, California Administrative Code, and shall govern the establishment and operation of Regional Adult and Vocational Educational Councils with respect to Community Colleges.

NOTE: Authority cited: Section 8023, Education Code. Reference: Article 2, Chapter 1 (commencing with Section 8020), Division 1, Education Code.

HISTORY:

1. New Subchapter 2 (Section 55650) filed 4-22-76; effective thirtieth day thereafter (Register 76, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Redesignation of Subchapter 2 (Section 55650) to Article 4 (Section 55650) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 5. Calculation and Payment of Excess Costs of Apprenticeship Classes

55675. Regulations Reference.

Pursuant to the authority vested by Section 3074 of the Labor Code, the State Board of Education, the Board of Governors of the California Community Colleges and the Division of Apprenticeship Standards have jointly issued regulations regarding excess costs to be borne by local apprenticeship program sponsors. These regulations are set forth in Article 11 (commencing with Section 235) of Chapter 2, Part 1 of Title 8, California Administrative Code, and shall govern the calculation and payment of excess costs of apprenticeship classes which are maintained in connection with Community Colleges.

NOTE: Authority cited: Section 71020, Education Code. Reference: Section 3074, Labor Code.

HISTORY:

1. New Subchapter 3 (Section 55675) filed 7-8-76; effective thirtieth day thereafter (Register 76, No. 28).
2. Editorial correction replacing text inadvertently omitted during printing (Register 80, No. 9).
3. Redesignation of Subchapter 3 (Section 55675) to Article 5 (Section 55675) and amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

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§ 51022

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding program review as specified in Section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 71025 and 78405, Education Code. Reference: Sections 71025, 71070, 78016, 78200 and 78405, Education Code.

HISTORY:

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of Sections 53200–53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700, 71025 and 71068, Education Code. Reference: Sections 71025, 71068 and 72292, Education Code.

HISTORY:

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

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(c) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) Vocational education contract means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) The California State Plan for Vocational Education means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94–482 and 95–40), part A, Vocational Education, or any subsequent federal legislation.

(c) Contractor as used in Education Code section 8092 means any private postsecondary school authorized or approved pursuant to the provisions of Chapter 3 (commencing with section 94300), and which has been in operation not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this Code.

(d) Eligible costs means all direct and indirect related instructional costs but does not include expenditures for capital outlay (600 category in the California Community Colleges Budget and Accounting Manual).

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. New chapter 7 (sections 55600 through 55631, not consecutive) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of subchapter 1 heading, amendment of article 1 heading, and repealer and new section 55600 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55601. Definitions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of subsection (g) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55602. Authority to Contract.

Any community college district or districts may contract with a private post secondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300) of part 59 of the Education Code and which has been in operation not less than two full calendar years prior to the effective date of such contract to provide vocational skill training authorized by the Education Code. Any community college district may contract with an activity center, work activity center, or sheltered work shop to provide vocational skill training authorized by the Education Code in any adult education program for substantially handicapped persons operated pursuant to subdivision (e) of section 41976 of the Education Code.

All contracts between a community college district and a private postsecondary school entered into pursuant to this section, or an activity center, work center, or sheltered workshop shall do all of the following:

(1) Be approved by the Chancellor.

(2) Provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in the community colleges or the tuition the private postsecondary school charges its private students, whichever is lower.

(3) Provide that the community college students receiving training in a private postsecondary school, or an activity center, work activity center, or sheltered workshop pursuant to that contract may not be charged additional tuition for any training included in the contract. The attendance of those students pursuant to a contract authorized by this section shall be credited to the community college district for the purposes of apportionments from the State School Fund.

(4) Provide that all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Vocational Education, or is a course of study for adult schools approved by the Department of Education under section 51056 of the Education Code.

The students who attend a private postsecondary school or an activity center, work activity center or sheltered workshop pursuant to a contract under this section shall be enrollees of the community college and the vocational instruction provided pursuant to that contract shall be under the exclusive control and management of the governing body of the contracting community college district. The Chancellor may audit the accounts of both the district and the private party involved in these contracts to the extent necessary to assure the integrity of the public funds involved.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55602.5. Contracts for Vocational Education for Students with Impaired Physical Capacity.

Notwithstanding any provision in the Education Code to the contrary, the governing board of a community college district and a proprietary or nonprofit organization, a public entity, or a proprietary or nonprofit private corporation may enter into a contract for the education of community college students whose capacity to function is impaired by physical deficiency or injury, in vocational education classes to be conducted for such students by the proprietary or nonprofit organization, the public entity, or the proprietary or nonprofit private corporation maintaining the vocational education classes. All instruction pursuant to this section shall be approved of and supervised by the governing board of the community college district and shall be conducted by academic employees. The average daily attendance of such community college students attending classes, under the provisions of this section, shall be credited to the community college district and college credit may be granted students who satisfactorily complete the course of instructions in such classes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55603. Instructional Purpose.

Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

History

. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55604. Application for Approval.

Note: Authority cited: Sections 8092, 71020, 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

History

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

2. Amendment filed 11–15–79; effective thirtieth day thereafter (Register 79, No. 46).

3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55605. Contract Approval and Limitations.

Vocational education contracts entered into pursuant to section 55602 shall:

(a) Not exceed one year;

(b) Be approved by the Chancellor;

(c) Include such details to explain and justify intended offerings.

(d) Be maintained in conformity with applicable provisions of the Education Code, Title 5 of the California Code of Regulations, California Community Colleges Budget and Accounting Manual, and the California State Plan for Vocational Education; and

(e) Be organized and administered by community college districts in such a manner that there will be separate accounts for all income and expenditures applicable to the contract.

Note: Authority cited: Sections 8092, 66700, 70901, 70902 and 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

History

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

2. Repealer and new section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55606. Administration.

History

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55607. Reporting.

Each Community College district that has entered into a contract with a contractor pursuant to Education Code section 55602, shall submit annually to the Chancellor statistical and evaluative reports on forms provided by the Chancellor. All records related to income and expenditures applicable to the contract shall be made available for audit by the state or federal government and will be retained for five (5) years or one year after audited, whichever comes first.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

History

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55608. Accounting Procedure.

History

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Article 2. Contracting Standards

§ 55620. Standards.

The following conditions shall be used to determine the appropriateness of vocational education contracts with contractors:

(a) Manpower needs and job opportunities are identified and established for the instruction program.

(b) The program or courses do not unnecessarily duplicate offerings available in the region served.

(c) The program or courses provide vocational education opportunities not otherwise available.

(d) The programs or courses shall not reduce or supplant the vocational education efforts of any district.

(e) Eligible costs shall not exceed the same cost to provide the same training in the public entity or the tuition the private postsecondary school charges its private students, whichever is lower.

(f) The community college student may not be charged additional tuition for any training included in the contract.

(g) Each student eligible for enrollment under a contract between a community college district and a contractor must: (1) have reached his or her sixteenth birthday and (2) be enrolled in a community college.

(h) The contractor must be accredited by an accrediting agency recognized by the United States Office of Education or conform to guidelines on contractual relationships with nonaccredited organizations established by the agency accrediting the community college.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

History

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

2. Repealer and new section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 3. Contract Provisions

§ 55630. Terms and Conditions.

Each contract shall expressly include but not be limited to, the following provisions:

(a) The governing board of the community college district has determined, by resolution, the appropriateness of offering the program through a contract with a contractor pursuant to Education Code section 78015.

(b) Methods for identifying eligible costs and payment procedures for compliance with section 55602 subdivisions 2 and 3.

(c) Procedures, terms and conditions relating to (1) enrollment period; (2) transfer of students between the community college district and contractor; (3) number of class hours sufficient to meet the stated performance objectives; (4) supervision and evaluation of students; and (5) withdrawal of students prior to completion of a course or program.

(d) The contractor and the community college district will insure that ancillary and support services are provided for the students including, but not limited to (1) counseling and guidance, and (2) placement assistance.

(e) Instruction provided under the immediate supervision and control of qualified faculty of the district.

(f) Performance objectives for each instructional area and a report regarding accomplishment of the objectives at the end of each contract period.

(g) Designation of responsibility to the contractor for maintaining records of student attendance and achievement. Such records shall be available for review at all times and submitted on a schedule developed by the community college district.

(h) Terms and conditions relating to cancellation and termination of the contract.

(i) The contractor is in compliance with the Civil Rights Act of 1964, title 9 of the Higher Education Act of 1972, the U.S. Presidential Executive Order 11246 and subsequent amendments (if applicable), and all applicable state and federal health and safety regulations.

(j) The contractor provides, when required by law and at the contractor's own expense, workers' compensation insurance coverage for any student.

(k) The contractor provides indemnity and defense for the state and the community college district and their respective officers and employees, against any and all claims and liability for death, injury, loss and damage arising out of, or in any manner connected with, the performance of the contract. Such indemnity and defense shall be provided by an appropriate hold harmless clause and a policy of liability insurance coverage, the cost of which is to be borne by the contractor. Such policy shall name the Board of Governors of the California Community Colleges, the State and public entity, along with their respective officers and employees as additional insureds.

NOTE: Authority cited: Sections 8090, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Repealer and new section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55631. Terms and Conditions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of subsection (d) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Article 4. Regional Adult and Vocational Education Councils

§ 55650. Regulations Reference.

NOTE: Authority cited: Section 8023, Education Code. Reference: Article 2, Chapter 1 (commencing with Section 8020), Division 1, Education Code.

HISTORY

1. New subchapter 2 (section 55650) filed 4–22–76; effective thirtieth day thereafter (Register 76, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Redesignation of subchapter 2 (section 55650) to article 4 (section 55650) filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Repealer of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 5. Calculation and Payment of Excess Costs of Apprenticeship Classes

§ 55675. Regulations Reference.

Pursuant to the authority vested by section 3074 of the Labor Code, the State Board of Education, the Board of Governors of the California Community Colleges and the Division of Apprenticeship Standards have jointly issued regulations regarding excess costs to be borne by program sponsors. These regulations are set forth in article 11 (commencing with section 235) of chapter 2, part 1 of title 8, California Administrative Code, and shall govern the calculation and payment of excess costs of apprenticeship classes which are maintained in connection with Community Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 3074, Labor Code.

HISTORY

1. New subchapter 3 (section 55675) filed 7–8–76; effective thirtieth day thereafter (Register 76, No. 28).
2. Editorial correction replacing text inadvertently omitted during printing (Register 80, No. 9).
3. Redesignation of subchapter 3 (section 55675) to article 5 (section 55675) and amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 8. Academic Calendar

Article 1. 175–Day Minimum Academic Calendar

§ 55700. Scope.

The provisions of this article pertain to changes made on or after July 1, 1982, to any traditional academic year calendar consisting of at least 175 days of instruction and evaluation. The conversion to a flexible calendar operation is not addressed by the provisions of this article; rather, the provisions of article 2 (commencing with section 55720) govern the flexible calendar option.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New chapter 8, articles 1–4 (sections 55700–55731, not consecutive) filed 5–7–76; effective thirtieth day thereafter (Register 76, No. 19).
2. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of chapter 8 (articles 1–4, sections 55700–55731, not consecutive) and new chapter 8 (articles 1 and 2, sections 55700–55732, not consecutive) filed 7–26–82; designated effective 7–30–82 pursuant to Government Code section 11346.2(d) (Register 82, No. 31). For prior history, see Register 80, No. 11.
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55700.1. Studies on a Quarter System, Trimester Basis or Flexible Calendar.

At the request of a community college district, the Chancellor may approve a program of studies on a quarter system or a trimester basis, or a flexible calendar.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55702. Approval of Changes.

(a) Prior to any change in academic year configuration, including the addition, deletion, shortening or lengthening of any term, the governing board of a district shall obtain the approval of the Chancellor.

(b) Requests for approval shall be made on a form provided by the Chancellor, and shall address:

(1) A complete description of the calendar configuration;

(2) The district's ability to comply with the 175–Day Rule as provided in section 58142; and

(3) The educational implications, positive and negative, of the proposed change.

(c) The Chancellor shall approve a requested change in academic year terms if it is found that:

(1) The state aid implications of the requested change have been addressed; and

(2) The district will be able to comply with the 175–Day Rule; and

(3) The change in configuration is consistent with the continued delivery of quality education.

NOTE: Authority cited: Sections 66700, 70901, 84890 and 84890, Education Code. Reference: Section 84890, Education Code.

Register 1991-43

§ 55602.5

Article 4. Appeals, Waivers, Student Rights and Responsibilities

§ 55530. Student Rights and Responsibilities.

(a) Nothing in this chapter shall be construed to interfere with the right of a student, if admitted to a community college in accord with district admission policies adopted pursuant to Education Code section 76000 et seq., from enrolling in any course for which he or she can meet necessary and valid prerequisites, if any, which have been established pursuant to the requirements of section 58106 of division 9 of this part.

(b) Community college districts shall take steps to ensure that information, in written form, is available to all students, in class schedules, catalogues, or other appropriate publications, describing their rights and responsibilities under this chapter.

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to avoid additional testing by submitting scores on recently taken tests which correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission, declare a specific educational objective within a reasonable period after admission, participate in counseling or advisement pursuant to section 55523(a)(1),(2), and (3), diligently attend class and complete assigned coursework, and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of chapter 9 (commencing with section 55750) of division 6 of this part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree applicable credit coursework, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to section 55525. If a student fails to fulfill the responsibilities listed in this subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his/her specific educational goal, or fails to abide by the terms of his/her student educational plan, the district may, subject to the requirements of this chapter, suspended or terminate the provision of services authorized in section 55520; provided however, the nothing in this section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of chapter 6 (commencing with section 54600) of Division 5 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Where students are required by a community college district to meet prerequisites under section 58106(b)(2) or (b)(3), a student may object to such requirement on the grounds that the necessary course is not available. The district shall promptly (within 5 working days) determine whether, the required course was available and if not, the district shall waive the prerequisite for that term.

(b) An allegation that a community college district has violated the provisions of subsection (f) of section 55521 or has established a discriminatory prerequisite subject to challenge under subsection (d)(3) of section 58106 shall be considered a complaint of unlawful discrimination and shall be filed, investigated and resolved pursuant to chapter 5 (commencing with section 59300) of Division 10 of this part.

(c) Each community college district shall establish written procedures by which students may challenge any other alleged violation of the provisions of this chapter or of section 58106. Districts shall investigate and attempt to resolve any such complaints. Such complaint procedures may, by action of the governing board, be consolidated with existing student grievance procedures. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under section 55512(c).

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135–11139.5, Government Code; Sections 78211, and 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) Vocational education contract means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled

in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) The California State Plan for Vocational Education means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94–482 and 95–40), part A, Vocational Education, or any subsequent federal legislation.

(c) Contractor as used in Education Code section 8092 means any private postsecondary school authorized or approved pursuant to the provisions of Chapter 3 (commencing with section 94300), and which has been in operation not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this Code.

(d) Eligible costs means all direct and indirect related instructional costs but does not include expenditures for capital outlay (600 category in the California Community Colleges Budget and Accounting Manual).

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. New chapter 7 (sections 55600 through 55631, not consecutive) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of subchapter 1 heading, amendment of article 1 heading, and repealer and new section 55600 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55601. Definitions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of subsection (g) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55602. Authority to Contract.

Any community college district or districts may contract with a private post secondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300) of part 59 of the Education Code and which has been in operation not less than two full calendar years prior to the effective date of such contract to provide vocational skill training authorized by the Education Code. Any community college district may contract with an activity center, work activity center, or sheltered work shop to provide vocational skill training authorized by the Education Code in any adult education program for substantially handicapped persons operated pursuant to subdivision (e) of section 41976 of the Education Code.

All contracts between a community college district and a private postsecondary school entered into pursuant to this section, or an activity center, work center, or sheltered workshop shall do all of the following:

(1) Be approved by the Chancellor.

(2) Provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in the community colleges or the tuition the private postsecondary school charges its private students, whichever is lower.

(3) Provide that the community college students receiving training in a private postsecondary school, or an activity center, work activity center, or sheltered workshop pursuant to that contract may not be charged additional tuition for any training included in the contract. The attendance of those students pursuant to a contract authorized by this section shall be credited to the community college district for the purposes of apportionments from the State School Fund.

(4) Provide that all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Vocational Education, or is a course of study for adult schools approved by the Department of Education under section 51056 of the Education Code.

The students who attend a private postsecondary school or an activity center, work activity center or sheltered workshop pursuant to a contract under this section shall be enrollees of the community college and the vocational instruction provided pursuant to that contract shall be under the exclusive control and management of the governing body of the contracting community college district. The Chancellor may audit the accounts of both the district and the private party involved in these contracts to the extent necessary to assure the integrity of the public funds involved.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55602.5. Contracts for Vocational Education for Students with Impaired Physical Capacity.

Notwithstanding any provision in the Education Code to the contrary, the governing board of a community college district and a proprietary or nonprofit organization, a public entity, or a proprietary or nonprofit private corporation may enter into a contract for the education of community college students whose capacity to function is impaired by physical deficiency or injury, in vocational education classes to be conducted for such students by the proprietary or nonprofit organization, the public entity, or the proprietary or nonprofit private corporation maintaining the vocational education classes. All instruction pursuant to this section shall be approved of and supervised by the governing board of the community college district and shall be conducted by academic employees. The average daily attendance of such community college students attending classes, under the provisions of this section, shall be credited to the community college district and college credit may be granted students who satisfactorily complete the course of instruction in such classes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error (Register 91, No. 43).

§ 55603. Instructional Purpose.

Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55604. Application for Approval.

NOTE: Authority cited: Sections 8092, 71020, 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 11–15–79; effective thirtieth day thereafter (Register 79, No. 46).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55605. Contract Approval and Limitations.

Vocational education contracts entered into pursuant to section 55602 shall:

(a) Not exceed one year;

(b) Be approved by the Chancellor;

(c) Include such details to explain and justify intended offerings.

(d) Be maintained in conformity with applicable provisions of the Education Code, Title 5 of the California Code of Regulations, California Community Colleges Budget and Accounting Manual, and the California State Plan for Vocational Education; and

(e) Be organized and administered by community college districts in such a manner that there will be separate accounts for all income and expenditures applicable to the contract.

NOTE: Authority cited: Sections 8092, 66700, 70901, 70902 and 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55606. Administration.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55607. Reporting.

Each Community College district that has entered into a contract with a contractor pursuant to Education Code section 55602, shall submit annually to the Chancellor statistical and evaluative reports on forms provided by the Chancellor. All records related to income and expenditures applicable to the contract shall be made available for audit by the state or federal government and will be retained for five (5) years or one year after audited, whichever comes first.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55608. Accounting Procedure.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Article 2. Contracting Standards

§ 55620. Standards.

The following conditions shall be used to determine the appropriateness of vocational education contracts with contractors:

(a) Manpower needs and job opportunities are identified and established for the instruction program.

(b) The program or courses do not unnecessarily duplicate offerings available in the region served.

(c) The program or courses provide vocational education opportunities not otherwise available.

(d) The programs or courses shall not reduce or supplant the vocational education efforts of any district.

(e) Eligible costs shall not exceed the same cost to provide the same training in the public entity or the tuition the private postsecondary school charges its private students, whichever is lower.

(f) The community college student may not be charged additional tuition for any training included in the contract.

(g) Each student eligible for enrollment under a contract between a community college district and a contractor must: (1) have reached his or her sixteenth birthday and (2) be enrolled in a community college.

(h) The contractor must be accredited by an accrediting agency recognized by the United States Office of Education or conform to guidelines on contractual relationships with nonaccredited organizations established by the agency accrediting the community college.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 3. Contract Provisions

§ 55630. Terms and Conditions.

Each contract shall expressly include but not be limited to, the following provisions:

(a) The governing board of the community college district has determined, by resolution, the appropriateness of offering the program through a contract with a contractor pursuant to Education Code section 78015.

(b) Methods for identifying eligible costs and payment procedures for compliance with section 55602 subdivisions 2 and 3.

(c) Procedures, terms and conditions relating to (1) enrollment period; (2) transfer of students between the community college district and contractor; (3) number of class hours sufficient to meet the stated performance objectives; (4) supervision and evaluation of students; and (5) withdrawal of students prior to completion of a course or program.

(d) The contractor and the community college district will insure that ancillary and support services are provided for the students including, but not limited to (1) counseling and guidance, and (2) placement assistance.

(e) Instruction provided under the immediate supervision and control of qualified faculty of the district.

(f) Performance objectives for each instructional area and a report regarding accomplishment of the objectives at the end of each contract period.

(g) Designation of responsibility to the contractor for maintaining records of student attendance and achievement. Such records shall be available for review at all times and submitted on a schedule developed by the community college district.

(h) Terms and conditions relating to cancellation and termination of the contract.

(i) The contractor is in compliance with the Civil Rights Act of 1964, title 9 of the Higher Education Act of 1972, the U.S. Presidential Executive Order 11246 and subsequent amendments (if applicable), and all applicable state and federal health and safety regulations.

(j) The contractor provides, when required by law and at the contractor's own expense, workers' compensation insurance coverage for any student.

(k) The contractor provides indemnity and defense for the state and the community college district and their respective officers and employees, against any and all claims and liability for death, injury, loss and damage arising out of, or in any manner connected with, the performance of the contract. Such indemnity and defense shall be provided by an appropriate hold harmless clause and a policy of liability insurance coverage, the cost of which is to be borne by the contractor. Such policy shall name the Board of Governors of the California Community Colleges, the State and

public entity, along with their respective officers and employees as additional insureds.

NOTE: Authority cited: Sections 8090, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Repealer and new section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55631. Terms and Conditions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of subsection (d) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Article 4. Regional Adult and Vocational Education Councils

§ 55650. Regulations Reference.

NOTE: Authority cited: Section 8023, Education Code. Reference: Article 2, Chapter 1 (commencing with Section 8020), Division 1, Education Code.

HISTORY

1. New subchapter 2 (section 55650) filed 4–22–76; effective thirtieth day thereafter (Register 76, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Redesignation of subchapter 2 (section 55650) to article 4 (section 55650) filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Repealer of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 5. Calculation and Payment of Excess Costs of Apprenticeship Classes

§ 55675. Regulations Reference.

Pursuant to the authority vested by section 3074 of the Labor Code, the State Board of Education, the Board of Governors of the California Community Colleges and the Division of Apprenticeship Standards have jointly issued regulations regarding excess costs to be borne by program sponsors. These regulations are set forth in article 11 (commencing with section 235) of chapter 2, part 1 of title 8, California Administrative Code, and shall govern the calculation and payment of excess costs of apprenticeship classes which are maintained in connection with Community Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 3074, Labor Code.

HISTORY

1. New subchapter 3 (section 55675) filed 7–8–76; effective thirtieth day thereafter (Register 76, No. 28).
2. Editorial correction replacing text inadvertently omitted during printing (Register 80, No. 9).
3. Redesignation of subchapter 3 (section 55675) to article 5 (section 55675) and amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Editorial correction of first paragraph (Register 91, No. 31).

Subchapter 8. Academic Calendar

Article 1. 175–Day Minimum Academic Calendar

§ 55700. Scope.

The provisions of this article pertain to changes made on or after July 1, 1982, to any traditional academic year calendar consisting of at least 175 days of instruction and evaluation. The conversion to a flexible calendar operation is not addressed by the provisions of this article; rather, the provisions of article 2 (commencing with section 55720) govern the flexible calendar option.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New chapter 8, articles 1–4 (sections 55700–55731, not consecutive) filed 5–7–76; effective thirtieth day thereafter (Register 76, No. 19).
2. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of chapter 8 (articles 1–4, sections 55700–55731, not consecutive) and new chapter 8 (articles 1 and 2, sections 55700–55732, not consecutive) filed 7–26–82; designated effective 7–30–82 pursuant to Government Code section 11346.2(d) (Register 82, No. 31). For prior history, see Register 80, No. 11.
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55700.1. Studies on a Quarter System, Trimester Basis or Flexible Calendar.

At the request of a community college district, the Chancellor may approve a program of studies on a quarter system or a trimester basis, or a flexible calendar.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55702. Approval of Changes.

(a) Prior to any change in academic year configuration, including the addition, deletion, shortening or lengthening of any term, the governing board of a district shall obtain the approval of the Chancellor.

(b) Requests for approval shall be made on a form provided by the Chancellor, and shall address:

(1) A complete description of the calendar configuration;

(2) The district's ability to comply with the 175–Day Rule as provided in section 58142; and

(3) The educational implications, positive and negative, of the proposed change.

(c) The Chancellor shall approve a requested change in academic year terms if it is found that:

(1) The state aid implications of the requested change have been addressed; and

(2) The district will be able to comply with the 175–Day Rule; and

(3) The change in configuration is consistent with the continued delivery of quality education.

NOTE: Authority cited: Sections 66700, 70901, and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).

Article 2. Flexible Calendar Operations

§ 55720. Existing Flexible Calendar Pilot Operations.

(a) Districts with flexible calendar pilot operations approved by the Board of Governors prior to December 31, 1981, may continue such op-

sonable period after admission, participate in counseling or advisement pursuant to Section 55523(a)(1), (2) and (3), diligently attend class and complete assigned coursework, and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of Chapter 9 (commencing with Section 55750) of Division 6 of this Part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree-applicable credit coursework, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to Section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to Section 55525. If a student fails to fulfill the responsibilities listed in this subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his/her specific educational goal, or fails to abide by the terms of his/her student educational plan, the district may, subject to the requirements of this chapter, suspend or terminate the provision of services authorized in Section 55520; provided however, that nothing in this section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of Chapter 6 (commencing with Section 54600) of Division 5 of this Part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: ections 76000, 76001, 76001.5 and 78212, Education Code.

HISTORY

1. Amendment filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

2. Amendment of subsection (b) filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Where students are required by a community college district to meet prerequisites under section 58106(b)(2) or (b)(3), a student may object to such requirement on the grounds that the necessary course is not available. The district shall promptly (within 5 working days) determine whether, the required course was available and if not, the district shall waive the prerequisite for that term.

(b) An allegation that a community college district has violated the provisions of subsection (f) of section 55521 or has established a discriminatory prerequisite subject to challenge under subsection (d)(3) of section 58106 shall be considered a complaint of unlawful discrimination and shall be filed, investigated and resolved pursuant to chapter 5 (commencing with section 59300) of Division 10 of this part.

(c) Each community college district shall establish written procedures by which students may challenge any other alleged violation of the provisions of this chapter or of section 58106. Districts shall investigate and attempt to resolve any such complaints. Such complaint procedures may, by action of the governing board, be consolidated with existing student grievance procedures. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under section 55512(c).

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135-11139.5, Government Code; Sections 78211, and 78213, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) "Vocational education contract" means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) "The California State Plan for Vocational Education" means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94-482 and 95-40), part A, Vocational Education, or any subsequent federal legislation.

(c) "Contractor" as used in section 55602 means any private postsecondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300), and which has been in operation not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this Code.

(d) "Eligible costs" means all direct and indirect related instructional costs but does not include expenditures for capital outlay (6000 category in the California Community Colleges Budget and Accounting Manual).

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

History

1. New chapter 7 (sections 55600 through 55631, not consecutive) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of subchapter 1 heading, amendment of article 1 heading, and repealer and new section 55600 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Amendment filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 55601. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

The governing board of each community college district participating in a vocational education program shall appoint a vocational education advisory committee to develop recommendations on the program and to provide liaison between the district and potential employers.

The committee shall consist of one or more representative of the general public knowledgeable about the disadvantaged, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. New section filed 5–15–93; operative 6–4–93 (Register 93, No. 25). For prior history, see Register 83, No. 18.

§ 55602. Authority to Contract.

Any community college district or districts may contract with a private post secondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300) of part 59 of the Education Code and which has been in operation not less than two full calendar years prior to the effective date of such contract to provide vocational skill training authorized by the Education Code. Any community college district may contract with an activity center, work activity center, or sheltered work shop to provide vocational skill training authorized by the Education Code in any adult education program for substantially handicapped persons operated pursuant to subdivision (e) of section 41976 of the Education Code.

All contracts between a community college district and a private postsecondary school entered into pursuant to this section, or an activity center, work center, or sheltered workshop shall do all of the following:

(1) Be approved by the Chancellor.

(2) Provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in the community colleges or the tuition the private postsecondary school charges its private students, whichever is lower.

(3) Provide that the community college students receiving training in a private postsecondary school, or an activity center, work activity center, or sheltered workshop pursuant to that contract may not be charged additional tuition for any training included in the contract. The attendance of those students pursuant to a contract authorized by this section shall be credited to the community college district for the purposes of apportionments from the State School Fund.

(4) Provide that all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Vocational Education, or is a course of study for adult schools approved by the Department of Education under section 51056 of the Education Code.

The students who attend a private postsecondary school or an activity center, work activity center or sheltered workshop pursuant to a contract under this section shall be enrollees of the community college and the vocational instruction provided pursuant to that contract shall be under the exclusive control and management of the governing body of the contracting community college district. The Chancellor may audit the accounts of both the district and the private party involved in these contracts to the extent necessary to assure the integrity of the public funds involved.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55602.5. Contracts for Vocational Education for Students with Impaired Physical Capacity.

Notwithstanding any provision in the Education Code to the contrary, the governing board of a community college district and a proprietary or nonprofit organization, a public entity, or a proprietary or nonprofit private corporation may enter into a contract for the education of community college students whose capacity to function is impaired by physical deficiency or injury, in vocational education classes to be conducted for such students by the proprietary or nonprofit organization, the public entity, or the proprietary or nonprofit private corporation maintaining the vocational education classes. All instruction pursuant to this section shall be approved of and supervised by the governing board of the community college district and shall be conducted by academic employees. The average daily attendance of such community college students attending classes, under the provisions of this section, shall be credited to the community college district and college credit may be granted students who satisfactorily complete the course of instruction in such classes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error (Register 91, No. 43).

§ 55603. Instructional Purpose.

Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

History

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55604. Application for Approval.

NOTE: Authority cited: Sections 8092, 71020, 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

History

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 11–15–79; effective thirtieth day thereafter (Register 79, No. 46).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55605. Contract Approval and Limitations.

Vocational education contracts entered into pursuant to section 55602 shall:

(a) Not exceed one year;

(b) Be approved by the Chancellor;

(c) Include such details to explain and justify intended offerings.

(d) Be maintained in conformity with applicable provisions of the Education Code, Title 5 of the California Code of Regulations, California Community Colleges Budget and Accounting Manual, and the California State Plan for Vocational Education; and

(e) Be organized and administered by community college districts in such a manner that there will be separate accounts for all income and expenditures applicable to the contract.

NOTE: Authority cited: Sections 8092, 66700, 70901, 70902 and 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55606. Administration.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55607. Reporting.

Each Community College district that has entered into a contract with a contractor pursuant to Education Code section 55602, shall submit annually to the Chancellor statistical and evaluative reports on forms provided by the Chancellor. All records related to income and expenditures applicable to the contract shall be made available for audit by the state or federal government and will be retained for five (5) years or one year after audited, whichever comes first.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55608. Accounting Procedure.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 2. Contracting Standards

§ 55620. Standards.

The following conditions shall be used to determine the appropriateness of vocational education contracts with contractors:

(a) Manpower needs and job opportunities are identified and established for the instruction program.

(b) The program or courses do not unnecessarily duplicate offerings available in the region served.

(c) The program or courses provide vocational education opportunities not otherwise available.

(d) The programs or courses shall not reduce or supplant the vocational education efforts of any district.

(e) Eligible costs shall not exceed the same cost to provide the same training in the public entity or the tuition the private postsecondary school charges its private students, whichever is lower.

(f) The community college student may not be charged additional tuition for any training included in the contract.

(g) Each student eligible for enrollment under a contract between a community college district and a contractor must: (1) have reached his or her sixteenth birthday and (2) be enrolled in a community college.

(h) The contractor must be accredited by an accrediting agency recognized by the United States Office of Education or conform to guidelines on contractual relationships with nonaccredited organizations established by the agency accrediting the community college.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 3. Contract Provisions

§ 55630. Terms and Conditions.

Each contract shall expressly include but not be limited to, the following provisions:

(a) The governing board of the community college district has determined, by resolution, the appropriateness of offering the program through a contract with a contractor pursuant to Education Code section 78015.

(b) Methods for identifying eligible costs and payment procedures for compliance with section 55602 subdivisions 2 and 3.

(c) Procedures, terms and conditions relating to (1) enrollment period; (2) transfer of students between the community college district and contractor; (3) number of class hours sufficient to meet the stated performance objectives; (4) supervision and evaluation of students; and (5) withdrawal of students prior to completion of a course or program.

(d) The contractor and the community college district will insure that ancillary and support services are provided for the students including, but not limited to (1) counseling and guidance, and (2) placement assistance.

(e) Instruction provided under the immediate supervision and control of qualified faculty of the district.

(f) Performance objectives for each instructional area and a report regarding accomplishment of the objectives at the end of each contract period.

(g) Designation of responsibility to the contractor for maintaining records of student attendance and achievement. Such records shall be available for review at all times and submitted on a schedule developed by the community college district.

(h) Terms and conditions relating to cancellation and termination of the contract.

(i) The contractor is in compliance with the Civil Rights Act of 1964, title 9 of the Higher Education Act of 1972, the U.S. Presidential Executive Order 11246 and subsequent amendments (if applicable), and all applicable state and federal health and safety regulations.

(j) The contractor provides, when required by law and at the contractor's own expense, workers' compensation insurance coverage for any student.

(k) The contractor provides indemnity and defense for the state and the community college district and their respective officers and employees, against any and all claims and liability for death, injury, loss and damage arising out of, or in any manner connected with, the performance of the contract. Such indemnity and defense shall be provided by an appropriate hold harmless clause and a policy of liability insurance coverage, the cost of which is to be borne by the contractor. Such policy shall name the Board of Governors of the California Community Colleges, the State and public entity, along with their respective officers and employees as additional insureds.

NOTE: Authority cited: Sections 8090, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55631. Terms and Conditions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

2. Amendment of subsection (d) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).

Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Article 4. Regional Adult and Vocational Education Councils

§ 55650. Regulations Reference.

NOTE: Authority cited: Section 8023, Education Code. Reference: Article 2, Chapter 1 (commencing with Section 8020), Division 1, Education Code.

HISTORY

1. New subchapter 2 (section 55650) filed 4–22–76; effective thirtieth day thereafter (Register 76, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Redesignation of subchapter 2 (section 55650) to article 4 (section 55650) filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Repealer of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 5. Calculation and Payment of Excess Costs of Apprenticeship Classes

§ 55675. Regulations Reference.

Pursuant to the authority vested by section 3074 of the Labor Code, the State Board of Education, the Board of Governors of the California Community Colleges and the Division of Apprenticeship Standards have jointly issued regulations regarding excess costs to be borne by program sponsors. These regulations are set forth in article 11 (commencing with section 235) of chapter 2, part 1 of title 8, California Administrative Code, and shall govern the calculation and payment of excess costs of apprenticeship classes which are maintained in connection with Community Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 3074, Labor Code.

HISTORY

1. New subchapter 3 (section 55675) filed 7–8–76; effective thirtieth day thereafter (Register 76, No. 28).
2. Editorial correction replacing text inadvertently omitted during printing (Register 80, No. 9).
3. Redesignation of subchapter 3 (section 55675) to article 5 (section 55675) and amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Editorial correction of first paragraph (Register 91, No. 31).

Subchapter 8. Academic Calendar

Article 1. 175–Day Minimum Academic Calendar

§ 55700. Scope.

The provisions of this article pertain to changes made on or after July 1, 1982, to any traditional academic year calendar consisting of at least 175 days of instruction and evaluation. The conversion to a flexible calendar operation is not addressed by the provisions of this article; rather, the provisions of article 2 (commencing with section 55720) govern the flexible calendar option.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New chapter 8, articles 1–4 (sections 55700–55731, not consecutive) filed 5–7–76; effective thirtieth day thereafter (Register 76, No. 19).
2. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of chapter 8 (articles 1–4, sections 55700–55731, not consecutive) and new chapter 8 (articles 1 and 2, sections 55700–55732, not consecutive) filed 7–26–82; designated effective 7–30–82 pursuant to Government Code section 11346.2(d) (Register 82, No. 31). For prior history, see Register 80, No. 11.
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55700.1. Studies on a Quarter System, Trimester Basis or Flexible Calendar.

At the request of a community college district, the Chancellor may approve a program of studies on a quarter system or a trimester basis, or a flexible calendar.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55701. College and Academic Year.

The "college year" begins on the first day of July and ends on the last day of June. The "academic year" means that portion of the college year during which the community college is maintained, which period shall include not less than the number of days required by regulations adopted by the Board of Governors.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 55702. Approval of Changes.

(a) Prior to any change in academic year configuration, including the addition, deletion, shortening or lengthening of any term, the governing board of a district shall obtain the approval of the Chancellor.

(b) Requests for approval shall be made on a form provided by the Chancellor, and shall address:

(1) A complete description of the calendar configuration;

(2) The district's ability to comply with the 175–Day Rule as provided in section 58142; and

(3) The educational implications, positive and negative, of the proposed change.

(c) The Chancellor shall approve a requested change in academic year terms if it is found that:

(1) The state aid implications of the requested change have been addressed; and

(2) The district will be able to comply with the 175–Day Rule; and

(3) The change in configuration is consistent with the continued delivery of quality education.

NOTE: Authority cited: Sections 66700, 70901, and 84890, Education Code. Reference: Section 84890, Education Code.

HISTORY

1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).

Article 2. Flexible Calendar Operations

§ 55720. Offering Classes Under Flexible Calendar: Accountability of Employees Under Contract for 175 Days; Activities.

(a) Subject to the approval of the Chancellor pursuant to Section 55724, a community college district may designate an amount of time in each fiscal year for employees to conduct staff, student, and instructional improvement activities. These activities may be conducted at any time during the fiscal year. The tine designated for these activities shall be known as flexible time.

(b) A district with an approved flexible calendar may designate as flexible time for an employee not more than 8.57 percent of that employee's contractual obligation for hours of classroom instruction which are eligible for state apportionments in that academic year, exclusive of any intersessions.

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to avoid additional testing by submitting scores on recently taken tests that correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission; declare a specific educational goal within a reasonable period after admission; participate in counseling or advisement pursuant to Section 55523(a)(1), (2), and (3); diligently attend class and complete assigned coursework; and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of Chapter 9 (commencing with Section 55750) of Division 6 of this Part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this Subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree-applicable credit course work, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to Section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to Section 55525. If a student fails to fulfill the responsibilities listed in this Subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his or her specific educational goal, or fails to abide by the terms of his or her student educational plan, the district may, subject to the requirements of this Chapter, suspend or terminate the provision of services authorized in Section 55520, provided however, that nothing in this Section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of Chapter 6 (commencing with Section 54600) of Division 5 of this Part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 76000, 76001, 76001.5 and 78212, Education Code.

HISTORY

1. Amendment filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (b) filed 4-3-92; operative 5-4-92 (Register 92, No. 15).
3. Amendment of subsections (a), (b) and (d) filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Each community college district shall establish written procedures by which students may challenge any alleged violation of the provisions of this Subchapter. Districts shall investigate and attempt to resolve any such complaints in a timely manner. Such complaint procedures may be consolidated with existing student grievance procedures by action of the governing board. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under Section 55512(c).

(b) When a challenge contains an allegation that a community college district has violated the provisions of Section 55521(a)(6), the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135-11139.5, Government Code; Sections 78211 and 78213, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment of subsection (b) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) "Vocational education contract" means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) "The California State Plan for Vocational Education" means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94-482 and 95-40), part A, Vocational Education, or any subsequent federal legislation.

(c) "Contractor" as used in section 55602 means any private postsecondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300), and which has been in operation

not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this Code.

(d) "Eligible costs" means all direct and indirect related instructional costs but does not include expenditures for capital outlay (6000 category in the California Community Colleges Budget and Accounting Manual).

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. New chapter 7 (sections 55600 through 55631, not consecutive) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of subchapter 1 heading, amendment of article 1 heading, and repealer and new section 55600 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Amendment filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 55601. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

The governing board of each community college district participating in a vocational education program shall appoint a vocational education advisory committee to develop recommendations on the program and to provide liaison between the district and potential employers.

The committee shall consist of one or more representative of the general public knowledgeable about the disadvantaged, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 5–15–93; operative 6–4–93 (Register 93, No. 25). For prior history, see Register 83, No. 18.

§ 55602. Authority to Contract.

Any community college district or districts may contract with a private post secondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300) of part 59 of the Education Code and which has been in operation not less than two full calendar years prior to the effective date of such contract to provide vocational skill training authorized by the Education Code. Any community college district may contract with an activity center, work activity center, or sheltered work shop to provide vocational skill training authorized by the Education Code in any adult education program for substantially handicapped persons operated pursuant to subdivision (e) of section 41976 of the Education Code.

All contracts between a community college district and a private postsecondary school entered into pursuant to this section, or an activity center, work center, or sheltered workshop shall do all of the following:

(1) Be approved by the Chancellor.

(2) Provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in the community colleges or the tuition the private postsecondary school charges its private students, whichever is lower.

(3) Provide that the community college students receiving training in a private postsecondary school, or an activity center, work activity center, or sheltered workshop pursuant to that contract may not be charged additional tuition for any training included in the contract. The attendance of those students pursuant to a contract authorized by this section shall be credited to the community college district for the purposes of apportionments from the State School Fund.

(4) Provide that all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Vocational Education, or is a course of study for adult schools approved by the Department of Education under section 51056 of the Education Code.

The students who attend a private postsecondary school or an activity center, work activity center or sheltered workshop pursuant to a contract under this section shall be enrollees of the community college and the vocational instruction provided pursuant to that contract shall be under the exclusive control and management of the governing body of the contracting community college district. The Chancellor may audit the accounts of both the district and the private party involved in these contracts to the extent necessary to assure the integrity of the public funds involved.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55602.5. Contracts for Vocational Education for Students with Impaired Physical Capacity.

Notwithstanding any provision in the Education Code to the contrary, the governing board of a community college district and a proprietary or nonprofit organization, a public entity, or a proprietary or nonprofit private corporation may enter into a contract for the education of community college students whose capacity to function is impaired by physical deficiency or injury in vocational education classes to be conducted for such students by the proprietary or nonprofit organization, the public entity, or the proprietary or nonprofit private corporation maintaining the vocational education classes. All instruction pursuant to this Section shall be approved of and supervised by the governing board of the community college district and shall be conducted by academic employees. The full–time equivalent student of such community college students attending classes under the provisions of this Section shall be credited to the community college district, and college credit may be granted to students who satisfactorily complete the course of instruction in such classes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error (Register 91, No. 43).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55603. Instructional Purpose.

Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55604. Application for Approval.

NOTE: Authority cited: Sections 8092, 71020, 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 11–15–79; effective thirtieth day thereafter (Register 79, No. 46).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55605. Contract Approval and Limitations.

Vocational education contracts entered into pursuant to section 55602 shall:

(a) Not exceed one year;

(b) Be approved by the Chancellor;

(c) Include such details to explain and justify intended offerings.

(d) Be maintained in conformity with applicable provisions of the Education Code, Title 5 of the California Code of Regulations, California

Community Colleges Budget and Accounting Manual, and the California State Plan for Vocational Education; and

(e) Be organized and administered by community college districts in such a manner that there will be separate accounts for all income and expenditures applicable to the contract.

NOTE: Authority cited: Sections 8092, 66700, 70901, 70902 and 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55606. Administration.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55607. Reporting.

Each Community College district that has entered into a contract with a contractor pursuant to Education Code section 55602, shall submit annually to the Chancellor statistical and evaluative reports on forms provided by the Chancellor. All records related to income and expenditures applicable to the contract shall be made available for audit by the state or federal government and will be retained for five (5) years or one year after audited, whichever comes first.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55608. Accounting Procedure.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 2. Contracting Standards

§ 55620. Standards.

The following conditions shall be used to determine the appropriateness of vocational education contracts with contractors:

(a) Manpower needs and job opportunities are identified and established for the instruction program.

(b) The program or courses do not unnecessarily duplicate offerings available in the region served.

(c) The program or courses provide vocational education opportunities not otherwise available.

(d) The programs or courses shall not reduce or supplant the vocational education efforts of any district.

(e) Eligible costs shall not exceed the same cost to provide the same training in the public entity or the tuition the private postsecondary school charges its private students, whichever is lower.

(f) The community college student may not be charged additional tuition for any training included in the contract.

(g) Each student eligible for enrollment under a contract between a community college district and a contractor must: (1) have reached his or her sixteenth birthday and (2) be enrolled in a community college.

(h) The contractor must be accredited by an accrediting agency recognized by the United States Office of Education or conform to guidelines on contractual relationships with nonaccredited organizations established by the agency accrediting the community college.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 3. Contract Provisions

§ 55630. Terms and Conditions.

Each contract shall expressly include but not be limited to, the following provisions:

(a) The governing board of the community college district has determined, by resolution, the appropriateness of offering the program through a contract with a contractor pursuant to Education Code section 78015.

(b) Methods for identifying eligible costs and payment procedures for compliance with section 55602 subdivisions 2 and 3.

(c) Procedures, terms and conditions relating to (1) enrollment period; (2) transfer of students between the community college district and contractor; (3) number of class hours sufficient to meet the stated performance objectives; (4) supervision and evaluation of students; and (5) withdrawal of students prior to completion of a course or program.

(d) The contractor and the community college district will insure that ancillary and support services are provided for the students including, but not limited to (1) counseling and guidance, and (2) placement assistance.

(e) Instruction provided under the immediate supervision and control of qualified faculty of the district.

(f) Performance objectives for each instructional area and a report regarding accomplishment of the objectives at the end of each contract period.

(g) Designation of responsibility to the contractor for maintaining records of student attendance and achievement. Such records shall be available for review at all times and submitted on a schedule developed by the community college district.

(h) Terms and conditions relating to cancellation and termination of the contract.

(i) The contractor is in compliance with the Civil Rights Act of 1964, title 9 of the Higher Education Act of 1972, the U.S. Presidential Executive Order 11246 and subsequent amendments (if applicable), and all applicable state and federal health and safety regulations.

(j) The contractor provides, when required by law and at the contractor's own expense, workers' compensation insurance coverage for any student.

(k) The contractor provides indemnity and defense for the state and the community college district and their respective officers and employees, against any and all claims and liability for death, injury, loss and damage arising out of, or in any manner connected with, the performance of the contract. Such indemnity and defense shall be provided by an appropriate hold harmless clause and a policy of liability insurance coverage, the cost of which is to be borne by the contractor. Such policy shall name the Board of Governors of the California Community Colleges, the State and public entity, along with their respective officers and employees as additional insureds.

NOTE: Authority cited: Sections 8090, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55631. Terms and Conditions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

History
1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of subsection (d) filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
3. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 4. Regional Adult and Vocational Education Councils

§ 55650. Regulations Reference.

NOTE: Authority cited: Section 8023, Education Code. Reference: Article 2, Chapter 1 (commencing with Section 8020), Division 1, Education Code.

History
1. New subchapter 2 (section 55650) filed 4-22-76; effective thirtieth day thereafter (Register 76, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Redesignation of subchapter 2 (section 55650) to article 4 (section 55650) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Repealer of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 5. Calculation and Payment of Excess Costs of Apprenticeship Classes

§ 55675. Regulations Reference.

Pursuant to the authority vested by section 3074 of the Labor Code, the State Board of Education, the Board of Governors of the California Community Colleges and the Division of Apprenticeship Standards have jointly issued regulations regarding excess costs to be borne by program sponsors. These regulations are set forth in article 11 (commencing with section 235) of chapter 2, part 1 of title 8, California Administrative Code, and shall govern the calculation and payment of excess costs of apprenticeship classes which are maintained in connection with Community Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 3074, Labor Code.

History
1. New subchapter 3 (section 55675) filed 7-8-76; effective thirtieth day thereafter (Register 76, No. 28).
2. Editorial correction replacing text inadvertently omitted during printing (Register 80, No. 9).
3. Redesignation of subchapter 3 (section 55675) to article 5 (section 55675) and amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Editorial correction of first paragraph (Register 91, No. 31).

Subchapter 8. Academic Calendar

Article 1. 175-Day Minimum Academic Calendar

§ 55700. Scope.

The provisions of this article pertain to changes made on or after July 1, 1982, to any traditional academic year calendar consisting of at least 175 days of instruction and evaluation. The conversion to a flexible calendar operation is not addressed by the provisions of this article; rather, the provisions of article 2 (commencing with section 55720) govern the flexible calendar option.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History
1. New chapter 8, articles 1-4 (sections 55700-55731, not consecutive) filed 5-7-76; effective thirtieth day thereafter (Register 76, No. 19).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of chapter 8 (articles 1-4, sections 55700-55731, not consecutive) and new chapter 8 (articles 1 and 2, sections 55700-55732, not consecutive) filed 7-26-82; designated effective 7-30-82 pursuant to Government Code section 11346.2(d) (Register 82, No. 31). For prior history, see Register 80, No. 11.
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55700.1. Studies on a Quarter System, Trimester Basis or Flexible Calendar.

At the request of a community college district, the Chancellor may approve a program of studies on a quarter system or a trimester basis, or a flexible calendar.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History
1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 55701. College and Academic Year.

The "college year" begins on the first day of July and ends on the last day of June. The "academic year" means that portion of the college year during which the community college is maintained, which period shall include not less than the number of days required by regulations adopted by the Board of Governors.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History
1. New section filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 55702. Approval of Changes.

(a) Prior to any change in academic year configuration, including the addition, deletion, shortening or lengthening of any term, the governing board of a district shall obtain the approval of the Chancellor.

(b) Requests for approval shall be made on a form provided by the Chancellor, and shall address:

(1) A complete description of the calendar configuration;

(2) The district's ability to comply with the 175-Day Rule as provided in section 58142; and

(3) The educational implications, positive and negative, of the proposed change.

(c) The Chancellor shall approve a requested change in academic year terms if it is found that:

(1) The state aid implications of the requested change have been addressed; and

(2) The district will be able to comply with the 175-Day Rule; and

(3) The change in configuration is consistent with the continued delivery of quality education.

NOTE: Authority cited: Sections 66700, 70901, and 84890, Education Code. Reference: Section 84890, Education Code.

History
1. Amendment of sections submitted to OAL for printing only pursuant to Government Code sections 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in NOTE (Register 91, No. 43).

Article 2. Flexible Calendar Operations

§ 55720. Offering Classes Under Flexible Calendar: Accountability of Employees Under Contract for 175 Days; Activities.

(a) Subject to the approval of the Chancellor pursuant to Section 55724, a community college district may designate an amount of time in each fiscal year for employees to conduct staff, student, and instructional improvement activities. These activities may be conducted at any time during the fiscal year. The time designated for these activities shall be known as "flexible time."

(b) A district with an approved flexible calendar may designate as flexible time for an employee not more than 8.57 percent of that employee's contractual obligation for hours of classroom instruction which are eligible for state apportionments in that academic year, exclusive of any intersessions.

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long–range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

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(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to avoid additional testing by submitting scores on recently taken tests that correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission; declare a specific educational goal within a reasonable period after admission; participate in counseling or advisement pursuant to Section 55523(a)(1), (2), and (3); diligently attend class and complete assigned coursework; and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of Chapter 9 (commencing with Section 55750) of Division 6 of this Part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this Subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree-applicable credit course work, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to Section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to Section 55525. If a student fails to fulfill the responsibilities listed in this Subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his or her specific educational goal, or fails to abide by the terms of his or her student educational plan, the district may, subject to the requirements of this Chapter, suspend or terminate the provision of services authorized in Section 55520, provided however, that nothing in this Section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of Chapter 6 (commencing with Section 54600) of Division 5 of this Part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 76000, 76001, 76001.5 and 78212, Education Code.

HISTORY

1. Amendment filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (b) filed 4-3-92; operative 5-4-92 (Register 92, No. 15).
3. Amendment of subsections (a), (b) and (d) filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Each community college district shall establish written procedures by which students may challenge any alleged violation of the provisions of this Subchapter. Districts shall investigate and attempt to resolve any such complaints in a timely manner. Such complaint procedures may be consolidated with existing student grievance procedures by action of the governing board. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under Section 55512(c).

(b) When a challenge contains an allegation that a community college district has violated the provisions of Section 55521(a)(6), the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135-11139.5, Government Code; Sections 78211 and 78213, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment of subsection (b) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) "Vocational education contract" means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) "The California State Plan for Vocational Education" means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94-482 and 95-40), part A, Vocational Education, or any subsequent federal legislation.

(c) "Contractor" as used in section 55602 means any private postsecondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300), and which has been in operation

not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this Code.

(d) "Eligible costs" means all direct and indirect related instructional costs but does not include expenditures for capital outlay (6000 category in the California Community Colleges Budget and Accounting Manual).

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. New chapter 7 (sections 55600 through 55631, not consecutive) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of subchapter 1 heading, amendment of article 1 heading, and repealer and new section 55600 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Amendment filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
6. Editorial correction of HISTORY 4 (Register 95, No. 22).

§ 55601. Appointment of Vocational Education Advisory Committee by School District Participating in Vocational Education Program.

The governing board of each community college district participating in a vocational education program shall appoint a vocational education advisory committee to develop recommendations on the program and to provide liaison between the district and potential employers.

The committee shall consist of one or more representative of the general public knowledgeable about the disadvantaged, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 5–15–93; operative 6–4–93 (Register 93, No. 25). For prior history, see Register 83, No. 18.

§ 55602. Authority to Contract.

Any community college district or districts may contract with a private post secondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300) of part 59 of the Education Code and which has been in operation not less than two full calendar years prior to the effective date of such contract to provide vocational skill training authorized by the Education Code. Any community college district may contract with an activity center, work activity center, or sheltered work shop to provide vocational skill training authorized by the Education Code in any adult education program for substantially handicapped persons operated pursuant to subdivision (e) of section 41976 of the Education Code.

All contracts between a community college district and a private postsecondary school entered into pursuant to this section, or an activity center, work center, or sheltered workshop shall do all of the following:

(1) Be approved by the Chancellor.

(2) Provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in the community colleges or the tuition the private postsecondary school charges its private students, whichever is lower.

(3) Provide that the community college students receiving training in a private postsecondary school, or an activity center, work activity center, or sheltered workshop pursuant to that contract may not be charged additional tuition for any training included in the contract. The attendance of those students pursuant to a contract authorized by this section shall be credited to the community college district for the purposes of apportionments from the State School Fund.

(4) Provide that all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Vocational Education, or is a course of study for adult schools approved by the Department of Education under section 51056 of the Education Code.

The students who attend a private postsecondary school or an activity center, work activity center or sheltered workshop pursuant to a contract under this section shall be enrollees of the community college and the vocational instruction provided pursuant to that contract shall be under the exclusive control and management of the governing body of the contracting community college district. The Chancellor may audit the accounts of both the district and the private party involved in these contracts to the extent necessary to assure the integrity of the public funds involved.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55602.5. Contracts for Vocational Education for Students with Impaired Physical Capacity.

Notwithstanding any provision in the Education Code to the contrary, the governing board of a community college district and a proprietary or nonprofit organization, a public entity, or a proprietary or nonprofit private corporation may enter into a contract for the education of community college students whose capacity to function is impaired by physical deficiency or injury in vocational education classes to be conducted for such students by the proprietary or nonprofit organization, the public entity, or the proprietary or nonprofit private corporation maintaining the vocational education classes. All instruction pursuant to this Section shall be approved of and supervised by the governing board of the community college district and shall be conducted by academic employees. The full-time equivalent student of such community college students attending classes under the provisions of this Section shall be credited to the community college district, and college credit may be granted to students who satisfactorily complete the course of instruction in such classes.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55603. Instructional Purpose.

Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

NOTE: Authority cited: Sections 8092, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55604. Application for Approval.

NOTE: Authority cited: Sections 8092, 71020, 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

2. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
3. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55605. Contract Approval and Limitations.

Vocational education contracts entered into pursuant to section 55602 shall:

(a) Not exceed one year;

(b) Be approved by the Chancellor;

(c) Include such details to explain and justify intended offerings.

(d) Be maintained in conformity with applicable provisions of the Education Code, Title 5 of the California Code of Regulations, California Community Colleges Budget and Accounting Manual, and the California State Plan for Vocational Education; and

(e) Be organized and administered by community college districts in such a manner that there will be separate accounts for all income and expenditures applicable to the contract.

NOTE: Authority cited: Sections 8092, 66700, 70901, 70902 and 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 22).

§ 55606. Administration.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55607. Reporting.

Each Community College district that has entered into a contract with a contractor pursuant to Education Code section 55602, shall submit annually to the Chancellor statistical and evaluative reports on forms provided by the Chancellor. All records related to income and expenditures applicable to the contract shall be made available for audit by the state or federal government and will be retained for five (5) years or one year after audited, whichever comes first.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 22).

§ 55608. Accounting Procedure.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 2. Contracting Standards

§ 55620. Standards.

The following conditions shall be used to determine the appropriateness of vocational education contracts with contractors:

(a) Manpower needs and job opportunities are identified and established for the instruction program.

(b) The program or courses do not unnecessarily duplicate offerings available in the region served.

(c) The program or courses provide vocational education opportunities not otherwise available.

(d) The programs or courses shall not reduce or supplant the vocational education efforts of any district.

(e) Eligible costs shall not exceed the same cost to provide the same training in the public entity or the tuition the private postsecondary school charges its private students, whichever is lower.

(f) The community college student may not be charged additional tuition for any training included in the contract.

(g) Each student eligible for enrollment under a contract between a community college district and a contractor must: (1) have reached his or her sixteenth birthday and (2) be enrolled in a community college.

(h) The contractor must be accredited by an accrediting agency recognized by the United States Office of Education or conform to guidelines on contractual relationships with nonaccredited organizations established by the agency accrediting the community college.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 22).

Article 3. Contract Provisions

§ 55630. Terms and Conditions.

Each contract shall expressly include but not be limited to, the following provisions:

(a) The governing board of the community college district has determined, by resolution, the appropriateness of offering the program through a contract with a contractor pursuant to Education Code section 78015.

(b) Methods for identifying eligible costs and payment procedures for compliance with section 55602 subdivisions 2 and 3.

(c) Procedures, terms and conditions relating to (1) enrollment period; (2) transfer of students between the community college district and contractor; (3) number of class hours sufficient to meet the stated performance objectives; (4) supervision and evaluation of students; and (5) withdrawal of students prior to completion of a course or program.

(d) The contractor and the community college district will insure that ancillary and support services are provided for the students including, but not limited to (1) counseling and guidance, and (2) placement assistance.

(e) Instruction provided under the immediate supervision and control of qualified faculty of the district.

(f) Performance objectives for each instructional area and a report regarding accomplishment of the objectives at the end of each contract period.

(g) Designation of responsibility to the contractor for maintaining records of student attendance and achievement. Such records shall be available for review at all times and submitted on a schedule developed by the community college district.

(h) Terms and conditions relating to cancellation and termination of the contract.

(i) The contractor is in compliance with the Civil Rights Act of 1964, title 9 of the Higher Education Act of 1972, the U.S. Presidential Executive Order 11246 and subsequent amendments (if applicable), and all applicable state and federal health and safety regulations.

(j) The contractor provides, when required by law and at the contractor's own expense, workers' compensation insurance coverage for any student.

(k) The contractor provides indemnity and defense for the state and the community college district and their respective officers and employees, against any and all claims and liability for death, injury, loss and damage

arising out of, or in any manner connected with, the performance of the contract. Such indemnity and defense shall be provided by an appropriate hold harmless clause and a policy of liability insurance coverage, the cost of which is to be borne by the contractor. Such policy shall name the Board of Governors of the California Community Colleges, the State and public entity, along with their respective officers and employees as additional insureds.

NOTE: Authority cited: Sections 8090, 66700 and 70901, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. Repealer and new section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 22).

§ 55631. Terms and Conditions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of subsection (d) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Article 4. Regional Adult and Vocational Education Councils

§ 55650. Regulations Reference.

NOTE: Authority cited: Section 8023, Education Code. Reference: Article 2, Chapter 1 (commencing with Section 8020), Division 1, Education Code.

HISTORY

1. New subchapter 2 (section 55650) filed 4–22–76; effective thirtieth day thereafter (Register 76, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Redesignation of subchapter 2 (section 55650) to article 4 (section 55650) filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Repealer filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Editorial correction of HISTORY 4 (Register 95, No. 22).

Article 5. Calculation and Payment of Excess Costs of Apprenticeship Classes

§ 55675. Regulations Reference.

Pursuant to the authority vested by section 3074 of the Labor Code, the State Board of Education, the Board of Governors of the California Community Colleges and the Division of Apprenticeship Standards have jointly issued regulations regarding excess costs to be borne by program sponsors. These regulations are set forth in article 11 (commencing with section 235) of chapter 2, part 1 of title 8, California Administrative Code, and shall govern the calculation and payment of excess costs of apprenticeship classes which are maintained in connection with Community Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 3074, Labor Code.

HISTORY

1. New subchapter 3 (section 55675) filed 7–8–76; effective thirtieth day thereafter (Register 76, No. 28).
2. Editorial correction replacing text inadvertently omitted during printing (Register 80, No. 9).
3. Redesignation of subchapter 3 (section 55675) to article 5 (section 55675) and amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Editorial correction of first paragraph (Register 91, No. 31).

Subchapter 8. Academic Calendar

Article 1. 175–Day Minimum Academic Calendar

§ 55700. Scope.

The provisions of this article pertain to changes made on or after July 1, 1982, to any traditional academic year calendar consisting of at least 175 days of instruction and evaluation. The conversion to a flexible calendar operation is not addressed by the provisions of this article; rather, the provisions of article 2 (commencing with section 55720) govern the flexible calendar option.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New chapter 8, articles 1–4 (sections 55700–55731, not consecutive) filed 5–7–76; effective thirtieth day thereafter (Register 76, No. 19).
2. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of chapter 8 (articles 1–4, sections 55700–55731, not consecutive) and new chapter 8 (articles 1 and 2, sections 55700–55732, not consecutive) filed 7–26–82; designated effective 7–30–82 pursuant to Government Code section 11346.2(d) (Register 82, No. 31). For prior history, see Register 80, No. 11.
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Editorial correction of HISTORY 4 (Register 95, No. 22).

§ 55700.1. Studies on a Quarter System, Trimester Basis or Flexible Calendar.

At the request of a community college district, the Chancellor may approve a program of studies on a quarter system or a trimester basis, or a flexible calendar.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 22).

§ 55701. College and Academic Year.

The "college year" begins on the first day of July and ends on the last day of June. The "academic year" means that portion of the college year during which the community college is maintained, which period shall include not less than the number of days required by regulations adopted by the Board of Governors.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 55702. Approval of Changes.

(a) Prior to any change in academic year configuration, including the addition, deletion, shortening or lengthening of any term, the governing board of a district shall obtain the approval of the Chancellor.

(b) Requests for approval shall be made on a form provided by the Chancellor, and shall address:

(1) A complete description of the calendar configuration;

(2) The district's ability to comply with the 175–Day Rule as provided in section 58142; and

(3) The educational implications, positive and negative, of the proposed change.

(c) The Chancellor shall approve a requested change in academic year terms if it is found that:

No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 13: Course Articulation-Local

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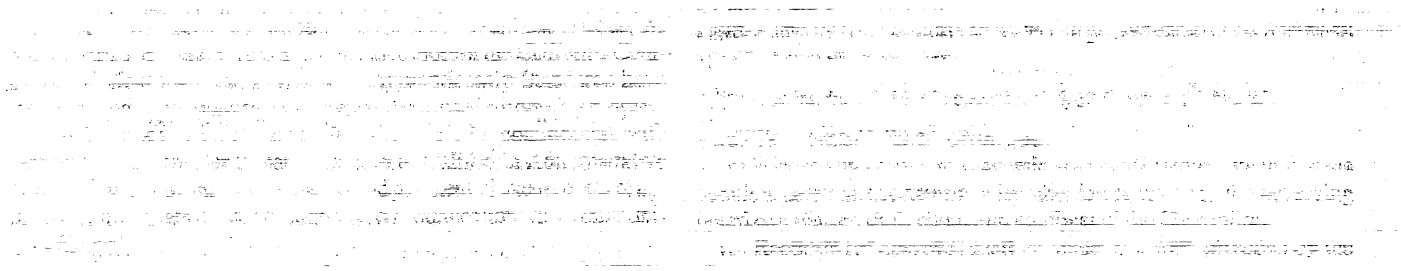
Section 51022

Register 84-26 § 51022: Added new section.

Register 91-23 § 51022: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 95-15 § 51022: Editorial correction of HISTORY 2.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.



51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding program review as specified in Section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 71025 and 78405, Education Code. Reference: Sections 71025, 71070, 78016, 78200 and 78405, Education Code.

HISTORY:

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of Sections 53200–53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700, 71025 and 71068, Education Code. Reference: Sections 71025, 71068 and 72292, Education Code.

HISTORY:

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

(e) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long–range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 14: Academic Freedom

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Register 84-26 § 51023: Added new section.

Register 91-23 § 51023: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 94-38 § 51023: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

Register 95-15 § 51023: Editorial correction of HISTORY 2.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

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51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding program review as specified in Section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 71025 and 78405, Education Code. Reference: Sections 71025, 71070, 78016, 78200 and 78405, Education Code.

HISTORY:

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of Sections 53200–53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700, 71025 and 71068, Education Code. Reference: Sections 71025, 71068 and 72292, Education Code.

HISTORY:

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

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(c) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

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college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long-range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000-53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

(3) In performing the requirements of Subsections (a)(1) and (2), the governing board or its designees shall consult with the representatives of existing staff councils, committees, employee organizations, and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this Section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views.

(4) Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this Section.

(6) The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration.

(7) The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations, or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category that they represent.

(b) In developing and carrying out policies and procedures pursuant to Subsection (a), the district governing board shall ensure that its actions do not dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code Sec-

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Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long–range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 15: Shared Governance

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Register 77-45	§ 53200: Amendment of NOTE.
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	§ 53202: Amendment of section.
Register 78-19	§ 53206: New section filed.
Register 81-03	§ 53203: Amendment of section.
	§ 53205: Amendment of section.
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	§ 53201: Amendment of NOTE.
	§ 53202: Amendment of section.
	§ 53204: Amendment of section.

§ 53205: Amendment of NOTE.

§ 53206: Amendment of section.

Register 84-26 § 51023: Added new section.

Register 90-49 § 53200: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53201: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53202: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53203: Repealer and new section filed with Secretary of State by Board of Governors, California Community Colleges; submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53204: Repealer and new section filed with Secretary of State by Board of Governors, California Community Colleges;

submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53205: Repealer filed with Secretary of State by Board of Governors, California Community Colleges; submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

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§ 51023: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51203.5: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51203.7: New section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to

Education Code section 70901.5(b).

Register 91-43 § 51203.5: Editorial correction of printing errors in subsection (b) and HISTORY 1.

§ 51203.7: Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1.

Register 93-25 § 53200: Relocation of article 2 heading.

Register 94-38 § 51023: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51203.5: Amendment of subsections (a)(1), (a)(3), (a)(5), (a)(7), (b), (c), and (d). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51203.7: Amendment of subsections (a)(2), (a)(4), (b), (b)(10), (d) and (e). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53200: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53203: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53204: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53206: Amendment of subsection (a). Submitted to OAL for

printing only pursuant to Education Code section 70901.5.

Register 95-15 § 51023: Editorial correction of HISTORY 2.

Register 95-19 § 53206: Editorial correction of HISTORY 3.

Register 2003-18 § 53207: New section filed. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

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CHAPTER 2. CERTIFICATED POSITIONS

SUBCHAPTER 1. SPECIAL NON-CREDENTIALED EMPLOYEES

53100. Prerequisites for Employment Under Education Code Section 25423.5. Prior to the employment of any noncredentialed instruction pursuant to Education Code Section 25423.5, the employee candidate shall:

(a) Furnish reasonable evidence, and be, of good character and answer the following questions:

(1) Have you ever had a diploma, credential, permit, or certificate, denied, revoked, or suspended?

(2) Have you ever failed or refused to fulfill a contract of employment entered into by you with any school district?

(3) Have you ever left the service of any school district without the consent of the superintendent or the governing board of such district?

(4) Have you ever been found guilty of immoral conduct or dismissed from any teaching position for immoral or unprofessional conduct or for unfitness for service?

(5) Have you ever been found guilty of or dismissed from any teaching position for persistent defiance of or refusal to obey the laws regulating the duties of persons serving in the public school system?

(6) Have you ever (1) forfeited bail, or been (2) arrested, or (3) convicted, or (4) fined, or (5) jailed, or (6) placed on probation for any violation of law other than minor traffic offenses? (If any of these events have occurred, this question must be answered "yes" regardless of subsequent court action under Penal Code Section 1203.4 resulting in dismissal or "expungement.")

(7) Have you had military service? (Both men and women must answer this question.)

If yes, state type of discharge: _____

If other than honorable discharge, explain fully.

(b) Execute the oath prescribed in Education Code Section 13121.

(c) Meet the citizenship requirements prescribed in Education Code Section 13123.

(d) Be free from any contagious and communicable disease or other disabling disease or defect unfitting the applicant to instruct or associate with minors.

(e) Submit personal identification cards to the governing board of the district which is to employ him upon the special form provided by the Department of Education and in the manner prescribed in Section 6026 of this title.

(f) Not be disqualified to receive a teaching credential under the provisions of Education Code Sections 13129 and 13130.

The governing board of the prospective employee district shall determine whether these requirements have been satisfied.

NOTE: Authority cited: Sections 66700, 71020, 71025, 71062 and 71068, Education Code. Reference: Sections 66700, 71023, 71025 and 71068, Education Code.

History: 1. Renumbering of Chapter 1 (Sections 53100–53205) to Chapter 2 (Sections 53100–53205) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).

53101. Processing of Fingerprint Cards. The governing board shall submit the personal identification fingerprint cards of candidates for teaching positions under the provisions of this subchapter, in duplicate, to the Bureau of Criminal Identification and Investigation of the Department of Justice, Sacramento, California, with a request in writing that the Bureau render a report thereon for such governing board to the Credentials Office, Department of Education, Sacramento, California. At that time the governing board shall also notify the secretary of the Committee of Credentials for the State of California and the county superintendent of schools of the county in which the Community College is located that such request has been made. The governing board shall not employ any person pursuant to Education Code Section 25423.5 unless and until the board has received a report from the Committee of Credentials in connection therewith. Any processing charges shall be borne by the submitting governing board.

53102. Cause for Dismissal. No person employed pursuant to Education Code Section 25423.5 and this subchapter, who has engaged in any conduct which would constitute cause for denial of an application for teaching credential under Education Code Sections 13129 and 13130 or cause for dismissal under Education Code Section 13403 shall be retained in employment after discovery thereof by the employing governing board.

SUBCHAPTER 2. ACADEMIC SENATES

53200. Definitions. For the purpose of this subchapter:

(a) "Faculty" means those certificated persons who teach full time in a Community College or other full-time certificated persons who do not perform any services for the college that require an administrative or supervisory credential.

(b) "Academic senate" and "faculty council" means an organization formed in accordance with the provisions of this subchapter whose primary function is, as the representative of the faculty, to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters.

NOTE: Authority cited for Chap. 1, Subchap. 2: Sections 193, 197 and 22650, Education Code.

53201. Academic Senate or Faculty Council. In order that the faculty may have a formal and effective procedure for participating in the formation of district policies on academic and professional matters, an academic senate or faculty council may be established.

53202. Formation; Procedures; Membership. The following procedure shall be used to establish an academic senate or faculty council:

(a) The faculty of a Community College shall decide by secret ballot to have an academic senate or faculty council.

(b) The governing board of the district maintaining that Community College shall establish the academic senate or faculty council by authorizing the faculty to:

(1) Fix and amend by vote of the faculty the composition, structure, and procedures of the academic senate or faculty council.

(2) Select, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.

53203. Powers. After consultation with the administration of its Community College, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.

53204. "Meet and Confer." Upon the request of the academic senate or faculty council and subject to Chapter 9 (commencing with Section 54950) of Part 1, Division 2, Title 5 of the Government Code relating to public meetings when applicable, the governing board or such board members or administrative officers as it may designate shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board member or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.

53205. Duties Assigned by Administration and Governing Board. An academic senate or faculty council may assume such responsibilities and perform such functions as may be requested of it by the administration of its Community College or the governing board of the district maintaining its Community College.

CHAPTER 3. CLASSIFIED POSITIONS
(No provisions)

History: 1. Renumbering of Chapter 2 (no provisions) to Chapter 3 (no provisions) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).

SUBCHAPTER 1.5. SICK LEAVE TRANSFER

53125. Transfer of Accumulated Sick Leave. The provisions of this section are to implement Section 87792 of the Education Code relative to the manner in which accumulated sick leave shall be certified by one employer to another when an employee changes employment from one employer to another.

(a) **Accumulated Sick Leave.** As used in this section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code Section 87781 but is unused.

(b) **Transfer.** A transfer of accumulated sick leave from a school district or office of the county superintendent of schools to another school district or office of the county superintendent of schools or from either to the Chancellor's Office; or a transfer from the Chancellor's Office to a school district or county superintendent of schools is authorized by Education Code Section 87782, 87783, and 87785, provided the certificated employee meets the eligibility requirements stated therein.

Transfer shall be accomplished as follows: (1) the person who accumulated the sick leave or the new employing agency using a form prescribed by the Chancellor's Office requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave, (2) upon receipt of the request the former employing agency forthwith transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is in charge with maintaining employee attendance records, (3) the new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code Section 87785, which provides that the accumulated sick leave transferred may not exceed that amount of accumulated sick leave that the person would have earned had he been an employee of the state.

NOTE: Authority cited: Sections 71020, 71024 and 87782, Education Code. Reference: Sections 87782, 87783, and 87785, Education Code.

History: 1. New Subchapter 1.5 (Section 53125) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

SUBCHAPTER 2. ACADEMIC SENATES

53200. Definitions. For the purpose of this subchapter:

(a) "Faculty" means those certificated persons who teach full time in a Community College or other full-time certificated persons who do not perform any services for the college that require an administrative or supervisory credential.

(b) "Academic senate" and "faculty council" means an organization formed in accordance with the provisions of this subchapter whose primary function is, as the representative of the faculty, to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters.

NOTE: Authority cited for Chap. 1, Subchap. 2: Sections 71020, 71024 and 66700, Education Code.

History: 1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

53201. Academic Senate or Faculty Council. In order that the faculty may have a formal and effective procedure for participating in the formation of district policies on academic and professional matters, an academic senate or faculty council may be established.

53202. Formation; Procedures; Membership. The following procedure shall be used to establish an academic senate or faculty council:

(a) The faculty of a Community College shall decide by secret ballot to have an academic senate or faculty council.

(b) The governing board of the district maintaining that Community College shall establish the academic senate or faculty council by authorizing the faculty to:

(1) Fix and amend by vote of the faculty the composition, structure, and procedures of the academic senate or faculty council.

(2) Select, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.

53203. Powers. After consultation with the administration of its Community College, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.

53204. "Meet and Confer." Upon the request of the academic senate or faculty council and subject to Chapter 9 (commencing with Section 54950) of Part 1, Division 2, Title 5 of the Government Code relating to public meetings when applicable, the governing board or such board members or administrative officers as it may designate shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board member or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.

53205. Duties Assigned by Administration and Governing Board. An academic senate or faculty council may assume such responsibilities and perform such functions as may be requested of it by the administration of its Community College or the governing board of the district maintaining its Community College.

CHAPTER 3. CLASSIFIED POSITIONS
(No provisions)

History: 1. Renumbering of Chapter 2 (no provisions) to Chapter 3 (no provisions) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).

Register 1978-06

§ 53201
§ 53202

SUBCHAPTER 1.5. SICK LEAVE TRANSFER

53125. Transfer of Accumulated Sick Leave. The provisions of this section are to implement Section 87792 of the Education Code relative to the manner in which accumulated sick leave shall be certified by one employer to another when an employee changes employment from one employer to another.

(a) **Accumulated Sick Leave.** As used in this section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code Section 87781 but is unused.

(b) **Transfer.** A transfer of accumulated sick leave from a school district or office of the county superintendent of schools to another school district or office of the county superintendent of schools or from either to the Chancellor's Office; or a transfer from the Chancellor's Office to a school district or county superintendent of schools is authorized by Education Code Section 87782, 87783, and 87785, provided the certificated employee meets the eligibility requirements stated therein.

Transfer shall be accomplished as follows: (1) the person who accumulated the sick leave or the new employing agency using a form prescribed by the Chancellor's Office requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave, (2) upon receipt of the request the former employing agency forthwith transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is in charge with maintaining employee attendance records, (3) the new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code Section 87785, which provides that the accumulated sick leave transferred may not exceed that amount of accumulated sick leave that the person would have earned had he been an employee of the state.

NOTE: Authority cited: Sections 71020, 71024 and 87782, Education Code. Reference: Sections 87782, 87783, and 87785, Education Code.

History: 1. New Subchapter 1.5 (Section 53125) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

SUBCHAPTER 2. ACADEMIC SENATES

53200. Definitions. For the purpose of this subchapter:

(a) "Faculty" means those certificated persons who teach full time in a Community College or other full-time certificated persons who do not perform any services for the college that require an administrative or supervisory credential.

(b) "Academic senate" and "faculty council" means an organization formed in accordance with the provisions of this subchapter whose primary function is, as the representative of the faculty, to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters.

NOTE: Authority cited for Chap. 1, Subchap. 2: Sections 71020, 71024 and 66700, Education Code.

History: 1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

53201. Academic Senate or Faculty Council. In order that the faculty may have formal and effective procedure for participating in the formation of district policies on academic and professional matters, an academic senate or faculty council may be established at the college and/or district level.

NOTE: Additional Authority cited: Section 71079, Education Code.

History: 1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).

53202. Formation; Procedures; Membership. The following procedure shall be used to establish an academic senate or faculty council:

(a) The faculty of a community college shall vote by secret ballot to form an academic senate or faculty council.

(b) In multi-college districts, the faculty of the district colleges may vote whether or not to form a district academic senate. Such vote shall be by secret ballot.

(c) The governing board of the district shall recognize the academic senate or faculty council and authorize the faculty to:

(1) Fix and amend by vote of the faculty the composition, structure, and procedures of the academic senate or faculty council.

(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.

(d) The faculty may provide for the membership of part-time faculty members in the academic senate or faculty council.

(e) In the absence of any full-time faculty members in a community college, the part-time faculty of such community college may form an academic senate or faculty council with the same functions as stated in 53200(b) and 53201.

NOTE: Additional Authority cited: Section 71079, Education Code.

History: 1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).

53203. Powers. After consultation with the administration of its Community College, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.

53204. "Meet and Confer." Upon the request of the academic senate or faculty council and subject to Chapter 9 (commencing with Section 54950) of Part 1, Division 2, Title 5 of the Government Code relating to public meetings when applicable, the governing board or such board members or administrative officers as it may designate shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board member or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.

53205. Duties Assigned by Administration and Governing Board. An academic senate or faculty council may assume such responsibilities and perform such functions as may be requested of it by the administration of its Community College or the governing board of the district maintaining its Community College.

CHAPTER 3. CLASSIFIED POSITIONS
(No provisions)

History: 1. Renumbering of Chapter 2 (no provisions) to Chapter 3 (no provisions) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).

53204. "Meet and Confer." Upon the request of the academic senate or faculty council and subject to Chapter 9 (commencing with Section 54950) of Part 1, Division 2, Title 5 of the Government Code relating to public meetings when applicable, the governing board or such board members or administrative officers as it may designate shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board member or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.

53205. Duties Assigned by Administration and Governing Board. An academic senate or faculty council may assume such responsibilities and perform such functions as may be requested of it by the administration of its Community College or the governing board of the district maintaining its Community College.

53206. Academic Senate for California Community Colleges.
(a) In order that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters, an Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils.
(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of Community College academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 71020 and 66700, Education Code. Reference: Section 66700, Education Code.

History: 1. New section filed 5-9-78; effective thirtieth day thereafter (Register 78, No. 19).

CHAPTER 3. CLASSIFIED POSITIONS
(No provisions)

History: 1. Renumbering of Chapter 2 (no provisions) to Chapter 3 (no provisions) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).

Register 1981-03

§ 53203
§ 53205

SUBCHAPTER 1.5. SICK LEAVE TRANSFER

53125. Transfer of Accumulated Sick Leave.

The provisions of this section are to implement Section 87792 of the Education Code relative to the manner in which accumulated sick leave shall be certified by one employer to another when an employee changes employment from one employer to another.

(a) Accumulated Sick Leave. As used in this section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code Section 87781 but is unused.

(b) Transfer. A transfer of accumulated sick leave from a school district or office of the county superintendent of schools to another school district or office of the county superintendent of schools or from either to the Chancellor's Office; or a transfer from the Chancellor's Office to a school district or county superintendent of schools is authorized by Education Code Section 87782, 87783, and 87785, provided the certificated employee meets the eligibility requirements stated therein.

Transfer shall be accomplished as follows: (1) the person who accumulated the sick leave or the new employing agency using a form prescribed by the Chancellor's Office requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave, (2) upon receipt of the request the former employing agency forthwith transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is in charge with maintaining employee attendance records, (3) the new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code Section 87785, which provides that the accumulated sick leave transferred may not exceed that amount of accumulated sick leave that the person would have earned had he been an employee of the state.

NOTE: Authority cited: Sections 71020, 71024 and 87782, Education Code. Reference: Sections 87782, 87783, and 87785, Education Code.

HISTORY:

1. New Subchapter 1.5 (Section 53125) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

SUBCHAPTER 2. ACADEMIC SENATES

53200. Definitions.

For the purpose of this subchapter:

(a) "Faculty" means those certificated persons who teach full time in a Community College or other full-time certificated persons who do not perform any services for the college that require an administrative or supervisory credential.

(b) "Academic senate" and "faculty council" means an organization formed in accordance with the provisions of this subchapter whose primary function is, as the representative of the faculty, to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters.

NOTE: Authority cited for Chap. 1, Subchap. 2: Sections 71020, 71024 and 66700, Education Code.

HISTORY:

1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

53201. Academic Senate or Faculty Council.

In order that the faculty may have formal and effective procedure for participating in the formation of district policies on academic and professional matters, an academic senate or faculty council may be established at the college and/or district level.

NOTE: Additional Authority cited: Section 71079, Education Code.

HISTORY:

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).

53202. Formation; Procedures; Membership.

The following procedure shall be used to establish an academic senate or faculty council:

(a) The faculty of a community college shall vote by secret ballot to form an academic senate or faculty council.

(b) In multi-college districts, the faculty of the district colleges may vote whether or not to form a district academic senate. Such vote shall be by secret ballot.

(c) The governing board of the district shall recognize the academic senate or faculty council and authorize the faculty to:

(1) Fix and amend by vote of the faculty the composition, structure, and procedures of the academic senate or faculty council.

(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.

(d) The faculty may provide for the membership of part-time faculty members in the academic senate or faculty council.

(e) In the absence of any full-time faculty members in a community college, the part-time faculty of such community college may form an academic senate or faculty council with the same functions as stated in 53200(b) and 53201.

NOTE: Additional Authority cited: Section 71079, Education Code.

HISTORY:

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).

53203. Powers.

After consultation with the administration of its community college, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.

NOTE: Authority cited: Sections 71020, 71062, 71079, Education Code. Reference: Section 71079, Education Code.

HISTORY:

1. Amendment filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

53204. "Meet and Confer."

Upon the request of the academic senate or faculty council and subject to Chapter 9 (commencing with Section 54950) of Part 1, Division 2, Title 5 of the Government Code relating to public meetings when applicable, the governing board or such board members or administrative officers as it may designate shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board member or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.

53205. Duties Assigned by Administration and Governing Board.

An academic senate or faculty council may assume such responsibilities and perform such functions as may be requested of it by the administration of its community college or the governing board of the district maintaining its community college.

NOTE: Authority cited: Sections 71020, 71062, 71079, Education Code. Reference: Section 71079, Education Code.

HISTORY:

1. Amendment filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

53206. Academic Senate for California Community Colleges.

(a) In order that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters, an Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of Community College academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 71020 and 66700, Education Code. Reference: Section 66700, Education Code.

HISTORY:

1. New section filed 5-9-78; effective thirtieth day thereafter (Register 78, No. 19).

CHAPTER 3. CLASSIFIED POSITIONS
(No provisions)

HISTORY:

1. Renumbering of Chapter 2 (no provisions) to Chapter 3 (no provisions) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).

SUBCHAPTER 2. ACADEMIC SENATES

53200. Definitions.

For the purpose of this subchapter:

(a) "Faculty" means those certificated persons who teach full time in a Community College or other full-time certificated persons who do not perform any services for the college that require an administrative or supervisory credential.

(b) "Academic senate" and "faculty council" means an organization formed in accordance with the provisions of this subchapter whose primary function is, as the representative of the faculty, to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY:

1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

53201. Academic Senate or Faculty Council.

In order that the faculty may have formal and effective procedure for participating in the formation of district policies on academic and professional matters, an academic senate or faculty council may be established at the college and/or district level.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY:

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

53202. Formation; Procedures; Membership.

The following procedure shall be used to establish an academic senate or faculty council:

(a) The faculty of a community college shall vote by secret ballot to form an academic senate or faculty council.

(b) In multi-college districts, the faculty of the district colleges may vote whether or not to form a district academic senate. Such vote shall be by secret ballot.

(c) The governing board of the district shall recognize the academic senate or faculty council and authorize the faculty to:

(1) Fix and amend by vote of the faculty the composition, structure, and procedures of the academic senate or faculty council.

(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.

(d) The faculty may provide for the membership of part-time faculty members in the academic senate or faculty council.

(e) In the absence of any full-time faculty members in a community college, the part-time faculty of such community college may form an academic senate or faculty council with the same functions as stated in subsection (b) of Section 53200 and Section 53201.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY:

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

53203. Powers.

After consultation with the administration of its community college, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.

NOTE: Authority cited: Sections 71020, 71062, 71079, Education Code. Reference: Section 71079, Education Code.

HISTORY:

1. Amendment filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

53204. Meet and Confer.

Upon the request of the academic senate or faculty council and subject to Chapter 9 (commencing with Section 54950) of Part 1, Division 2, Title 5 of the Government Code relating to public meetings when applicable, the governing board or such board members or administrative officers as it may designate shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board members or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY:

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

53205. Duties Assigned by Administration and Governing Board.

An academic senate or faculty council may assume such responsibilities and perform such functions as may be requested of it by the administration of its community college or the governing board of the district maintaining its community college.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY:

1. Amendment filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding program review as specified in Section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 71025 and 78405, Education Code. Reference: Sections 71025, 71070, 78016, 78200 and 78405, Education Code.

HISTORY:

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of Sections 53200–53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700, 71025 and 71068, Education Code. Reference: Sections 71025, 71068 and 72292, Education Code.

HISTORY:

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

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the preceding school year and certifying that in connection with each such employee all of the provisions of Education Code Section 87401 and this subchapter have been satisfied.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 1.5. Sick Leave Transfer

§ 53125. Transfer of Accumulated Sick Leave.

The provisions of this section are to implement Section 87782 of the Education Code relative to the manner in which accumulated sick leave shall be certified by one employer to another when an employee changes employment from one employer to another.

(a) Accumulated Sick Leave. As used in this section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code Section 87781 but is unused.

(b) Transfer. A transfer of accumulated sick leave from a school district or office of the county superintendent of schools to another school district or office of the county superintendent of schools or from either to the Chancellor's Office; or a transfer from the Chancellor's Office to a school district or county superintendent of schools is authorized by Education Code Section 87782, 87783, and 87785, provided the certificated employee meets the eligibility requirements stated therein.

Transfer shall be accomplished as follows: (1) the person who accumulated the sick leave or the new employing agency using a form prescribed by the Chancellor's Office requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave, (2) upon receipt of the request the former employing agency forthwith transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is in charge with maintaining employee attendance records, (3) the new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code Section 87785, which provides that the accumulated sick leave transferred may not exceed that amount of accumulated sick leave that the person would have earned had he been an employee of the state.

NOTE: Authority cited: Sections 71020, 71024 and 87782, Education Code. Reference: Sections 87782, 87783 and 87785, Education Code.

HISTORY

1. New Subchapter 1.5 (Section 53125) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 2. Academic Senates

§ 53200. Definitions.

For the purpose of this subchapter:

(a) "Faculty" means those employees of a community college district who are employed in positions that are not designated as supervisory or management for the purposes of article 5 (commencing with section 3540) of chapter 10.7 of division 4 of title 1 of the Government Code, and for which minimum qualifications for hire are specified by the Board of Governors.

(b) "Academic senate," "faculty council," and "faculty senate" means an organization formed in accordance with the provisions of this subchapter whose primary function is, as the representative of the faculty, to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters. For purposes of this subchapter, reference to the term "academic senate" shall also constitute reference to "faculty council" or "faculty senate."

(c) "Academic and professional matters" means the following policy development and implementation matters:

(1) Curriculum, including establishing prerequisites and placing courses within disciplines

(2) Degree and certificate requirements

(3) Grading policies

(4) Educational program development

(5) Standards or policies regarding student preparation and success

(6) District and college governance structures, as related to faculty roles

(7) Faculty roles and involvement in accreditation processes, including selfstudy and annual reports

(8) Policies for faculty professional development activities

(9) Processes for program review

(10) Processes for institutional planning and budget development, and

(11) Other academic and professional matters as mutually agreed uponbetween the governing board and the academic senate.

(d) "Consult collegially" means that the district governing board shall develop policies on academic and professional matters through either or both of the following methods, according to its own discretion:

(1) Relying primarily upon the advice and judgment of the academic senate; or

(2) That the district governing board, or such representatives as it may designate, and the representatives of the academic senate shall have the obligation to reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53201. Academic Senate or Faculty Council.

In order that the faculty may have a formal and effective procedure for participating in the formation and implementation of district policies on academic and professional matters, an academic senate may be established at the college and/or district level.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53202. Formation; Procedures; Membership.

The following procedure shall be used to establish an academic senate:

(a) The full-time faculty of a community college shall vote by secret ballot to form an academic senate.

(b) In multi-college districts, the full-time faculty of the district colleges may vote on whether or not to form a district academic senate. Such vote shall be by secret ballot.

(c) The governing board of a district shall recognize the academic senate and authorize the faculty to:

(1) Fix and amend by vote of the full-time faculty the composition, structure, and procedures of the academic senate.

(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate.

(d) The full-time faculty may provide for the membership and participation of part-time faculty members in the academic senate.

(e) In the absence of any full-time faculty members in a community college, the part-time faculty of such community college may form an academic senate.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53203. Powers.

(a) The governing board of a community college district shall adopt policies for appropriate delegation of authority and responsibility to its college and/or district academic senate. Among other matters, said policies, at a minimum, shall provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. This requirement to consult collegially shall not limit other rights and responsibilities of the academic senate which are specifically provided in statute or other regulations contained in this part.

(b) In adopting the policies and procedures described in subsection (a), the governing board or its designees, shall consult collegially with representatives of the academic senate.

(c) While in the process of consulting collegially, the academic senate shall retain the right to meet with or appear before the governing board with respect to the views, recommendations, or proposals of the senate. In addition, after consultation with the administration of the college and/or district, the academic senate may present its views and recommendations to the governing board.

(d) The governing board of a district shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:

(1) In instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

(e) An academic senate may assume such responsibilities and perform such functions as may be delegated to it by the governing board of the district pursuant to subsection (a) of this section.

(f) The appointment of faculty members to serve on college or district committees, task forces, or other grounds dealing with academic and professional matters, shall be made, after consultation with the chief executive officer or his or her designee, by the academic senate. Notwithstanding this subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 81, No. 3.

§ 53204. Scope of Regulations.

Nothing in this subchapter shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements between collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66730 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) In order that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters, an Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. New section filed 5-9-78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Subchapter 3. Full-Time and Part-Time Facility

Article 1. Scope and Definitions

§ 53300. Scope.

This chapter implements and should be read in conjunction with the requirements of Education Code section 87482.6 concerning the proportion of full-time and part-time instructors on the faculty of community colleges. The requirements of this chapter apply only until the provisions of Education Code section 84750 regarding program-based funding are implemented by a standard adopted by the Board of Governors that establishes the appropriate percentage of hours of credit instruction that should be taught by full-time instructors.

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(c) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

For the purposes of this section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

(3) In performing the requirements of subsections (1) and (2) of this section, the governing board or its designees shall consult with the representatives of existing staff councils, committees, employee organizations and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views.

(4) Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this section.

(6) The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration.

(7) The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category that they represent.

(b) In developing and carrying out policies and procedures pursuant to subsection (a), the district governing board shall ensure that its actions do not dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code sections 3540, et seq., such procedures for staff participation shall not intrude on matters within the scope of representation under section 3543.2 of the Government Code. In addition, governing boards shall not interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer–employee relations. Nothing in this section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards. It is the intent of the Board of Governors to respect lawful agreements between staff and exclusive representatives as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to staff pursuant to these regulations.

(c) Nothing in this section shall be construed to impinge upon the policies and procedures governing the participation rights of faculty and students pursuant to sections 53200–53205, and section 51023.7, respectively, of this division.

(d) The governing board of a community college district shall comply substantially with the provisions of this section.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51023.7. Students.

(a) The governing board of a community college district shall adopt policies and procedure that provide students the opportunity to participate effectively in district and college governance. Among other matters, said policies and procedures shall include the following:

(1) Students shall be provided an opportunity to participate in formulation and development of district and college policies and procedures that have or will have a significant effect on students. This right includes the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures.

(2) Except in unforeseeable, emergency situations the governing board shall not take action on a matter having a significant effect on students until it has provided students with an opportunity to participate in the formulation of the policy or procedure or the joint development of recommendations regarding the action.

(3) Governing board procedures shall ensure that at the district and college levels, recommendations and positions developed by students are given every reasonable consideration.

(4) For the purpose of this section, the governing board shall recognize each associated student organization or its equivalent within the district as provided by Education Code section 76060, as the representative body of the students to offer opinions and to make recommendations to the administration of a college and to the governing board of a district with regard to district and college policies and procedures that have or will have a significant effect on students. The selection of student representatives to serve on college or district committees, task forces, or other governance groups shall be made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district.

(b) For the purposes of this section, district and college policies and procedures that have or will have a "significant effect on students" includes the following:

(1) grading policies;
(2) codes of student conduct;
(3) academic disciplinary policies;
(4) curriculum development;
(5) courses or programs which should be initiate or discontinued;
(6) processes for institutional planning and budget development;
(7) standards and policies regarding student preparation and success;
(8) student services planning and development;
(9) student fees within the authority of the district to adopt; and
(10) any other district and college policy, procedure or related matter that the district governing board determines will have a significant effect on students.

(c) The governing board shall give reasonable consideration to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff.

(d) Nothing in this section shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiations or negotiated agreements between collective bargaining agents and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining agents as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to the regulations on academic senates contained in sections 53200–53205 of chapter IV of this division.

(e) The governing board of a community college district shall comply substantially with policies and procedures adopted in accordance with this section.

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901(b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3-12-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51024. Matriculation Services.

When matriculation services have been fully funded, as certified by the Chancellor in accord with policies adopted by the Board of Governors, the governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under section 55512(c);

(c) provide matriculation services to its students in accordance with sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with section 55534; and

(e) substantially comply with all other provisions of chapter 6 (commencing with section 55500) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210-78218, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Subchapter 2. Investigation and Enforcement of Minimum Conditions

§ 51100. Review of Colleges.

(a) The Chancellor, at least once each seven years, and at such other times or as he or she deems necessary, shall review each community college to determine whether it has met the minimum conditions contained in chapter 1 (commencing with section 51000) of this division.

(b) In the event that the Chancellor determines that a visit to the college is necessary to investigate compliance, he or she shall inform the chief executive officer of the district at least one month in advance of such visit, and shall specify the particular minimum conditions which will be investigated.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 51100 and 51101) and new chapter 2 (sections 51100 and 51102) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 2, see Registers 81, No. 52; 77, No. 45; and 71, No. 27.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51102. Enforcement.

(a) If any review pursuant to section 51100 discloses that a college is not in compliance with the provisions of chapter 1 (commencing with section 51000) of this division, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

(1) Accept in whole or part the district's response regarding noncompliance;

(2) Require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

(3) Withhold all or part of the district's state aid. The amount of withholding shall be related to the extent and gravity of noncompliance, and shall require approval of the Board of Governors.

(c) The Chancellor shall report to the Board of Governors on any actions taken pursuant to subsection (b) of this section; provided that in the event he or she determines to withhold all or a portion of a district's state aid, the Chancellor shall inform and obtain the approval of the Board prior to the withholding.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 3. Faculty

NOTE: Authority cited: Sections 71020, 71024 and 71025, Education Code.

HISTORY

1. Repealer of Chapter 3[216z (Sections 51200 and 51201) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 4. Standards of Scholarship

NOTE: Authority cited: Section 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY

1. Repealer of Chapter 4 (Sections 51300-51319, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 4, see Registers 82, No. 20; 80, No. 19; 80, No. 11; 77, No. 45; and 71, No. 27.

Subchapter 5. Facilities

HISTORY

1. Repealer of Chapter 5 (Sections 51400 and 51401) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

Subchapter 6. Counseling Services

HISTORY

1. Repealer of Chapter 6 (Sections 51500-51503) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 7. Degrees and Certificates

HISTORY

1. Repealer of Chapter 7 (Sections 51600-51606) filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 71, No. 40.

Subchapter 8. Degrees and Certificates

NOTE: Authority cited: Sections 66700, 71020 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

HISTORY

1. New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day thereafter (Register 71, No. 40).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 6-9-82; designated effective 7-1-83 (Register 82, No. 24).
4. Repealer of Chapter 8 (Sections 51620-51629) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

Subchapter 9. Minimum Class Size

NOTE: Authority cited for Chapter 9: Section 71027, Education Code.

HISTORY

1. New Chapter (§§ 51700 through 51703) filed 11-12-71; effective thirtieth day thereafter (Register 71, No. 46).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Chapter 9 (Sections 51700-51703) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

the preceding school year and certifying that in connection with each such employee all of the provisions of Education Code Section 87401 and this subchapter have been satisfied.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Article 1.5. Sick Leave Transfer

§ 53125. Transfer of Accumulated Sick Leave.

The provisions of this section are to implement section 87782 of the Education Code relative to the manner in which accumulated sick leave shall be certified by one employer to another when an employee changes employment from one employer to another.

(a) Accumulated Sick Leave. As used in this section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code section 87781 but is unused.

(b) Transfer. A transfer of accumulated sick leave from a school district or office of the county superintendent of schools to another school district or office of the county superintendent of schools or from either to the Chancellor's Office; or a transfer from the Chancellor's Office to a school district or county superintendent of schools is authorized by Education Code section 87782, 87783, and 87785, provided the certificated or academic employee meets the eligibility requirements stated therein.

Transfer shall be accomplished as follows:

(1) the person who accumulated the sick leave or the new employing agency using a form prescribed by the Chancellor's Office requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave,

(2) upon receipt of the request the former employing agency forthwith transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is in charge with maintaining employee attendance records,

(3) the new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code section 87785, which provides that the accumulated sick leave transferred may not exceed that amount of accumulated sick leave that the person would have earned had he or she been an employee of the state.

NOTE: Authority cited: Sections 70901, 71024 and 87782, Education Code. Reference: Sections 87781, 87782, 87783 and 87785, Education Code.

HISTORY

1. New subchapter 1.5 (section 53125) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 2. Academic Senates

§ 53130. Availability of Rules and Regulations for Evaluation of Performance.

The governing board of a community college district shall adopt and cause to be printed and made available to each academic employee of the district reasonable rules and regulations providing for the evaluation of the performance of academic employees in their assigned duties.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 53200. Definitions.

For the purpose of this subchapter:

(a) "Faculty" means those employees of a community college district who are employed in positions that are not designated as supervisory or management for the purposes of article 5 (commencing with section 3540) of chapter 10.7 of division 4 of title 1 of the Government Code, and for which minimum qualifications for hire are specified by the Board of Governors.

(b) "Academic senate," "faculty council," and "faculty senate" means an organization formed in accordance with the provisions of this subchapter whose primary function is, as the representative of the faculty, to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters. For purposes of this subchapter, reference to the term "academic senate" shall also constitute reference to "faculty council" or "faculty senate."

(c) "Academic and professional matters" means the following policy development and implementation matters:

(1) Curriculum, including establishing prerequisites and placing courses within disciplines

(2) Degree and certificate requirements

(3) Grading policies

(4) Educational program development

(5) Standards or policies regarding student preparation and success

(6) District and college governance structures, as related to faculty roles

(7) Faculty roles and involvement in accreditation processes, including selfstudy and annual reports

(8) Policies for faculty professional development activities

(9) Processes for program review

(10) Processes for institutional planning and budget development, and

(11) Other academic and professional matters as mutually agreed uponbetween the governing board and the academic senate.

(d) "Consult collegially" means that the district governing board shall develop policies on academic and professional matters through either or both of the following methods, according to its own discretion:

(1) Relying primarily upon the advice and judgment of the academic senate; or

(2) That the district governing board, or such representatives as it may designate, and the representatives of the academic senate shall have the obligation to reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53201. Academic Senate or Faculty Council.

In order that the faculty may have a formal and effective procedure for participating in the formation and implementation of district policies on academic and professional matters, an academic senate may be established at the college and/or district level.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2–10–78; effective thirtieth day thereafter (Register 78, No. 6).

2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53202. Formation; Procedures; Membership.

The following procedure shall be used to establish an academic senate:

(a) The full–time faculty of a community college shall vote by secret ballot to form an academic senate.

(b) In multi–college districts, the full–time faculty of the district colleges may vote on whether or not to form a district academic senate. Such vote shall be by secret ballot.

(c) The governing board of a district shall recognize the academic senate and authorize the faculty to:

(1) Fix and amend by vote of the full–time faculty the composition, structure, and procedures of the academic senate.

(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate.

(d) The full–time faculty may provide for the membership and participation of part–time faculty members in the academic senate.

(e) In the absence of any full–time faculty members in a community college, the part–time faculty of such community college may form an academic senate.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2–10–78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53203. Powers.

(a) The governing board of a community college district shall adopt policies for appropriate delegation of authority and responsibility to its college and/or district academic senate. Among other matters, said policies, at a minimum, shall provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. This requirement to consult collegially shall not limit other rights and responsibilities of the academic senate which are specifically provided in statute or other regulations contained in this part.

(b) In adopting the policies and procedures described in subsection (a), the governing board or its designees, shall consult collegially with representatives of the academic senate.

(c) While in the process of consulting collegially, the academic senate shall retain the right to meet with or appear before the governing board with respect to the views, recommendations, or proposals of the senate. In addition, after consultation with the administration of the college and/or district, the academic senate may present its views and recommendations to the governing board.

(d) The governing board of a district shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:

(1) In instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

(e) An academic senate may assume such responsibilities and perform such functions as may be delegated to it by the governing board of the district pursuant to subsection (a) of this section.

(f) The appointment of faculty members to serve on college or district committees, task forces, or other grounds dealing with academic and professional matters, shall be made, after consultation with the chief executive officer or his or her designee, by the academic senate. Notwithstanding this subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 81, No. 3.

§ 53204. Scope of Regulations.

Nothing in this subchapter shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements between collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) In order that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters, an Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–9–78; effective thirtieth day thereafter (Register 78, No. 19).

2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 3. Full-Time and Part-Time Facility

Article 1. Scope and Definitions

§ 53300. Scope.

This chapter implements and should be read in conjunction with the requirements of Education Code section 87482.6 concerning the proportion of full-time and part-time instructors on the faculty of community colleges. The requirements of this chapter apply only until the provisions of Education Code section 84750 regarding program-based funding are implemented by a standard adopted by the Board of Governors that establishes the appropriate percentage of hours of credit instruction that should be taught by full-time instructors.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53302. Full-Time Instructor.

For purposes of this chapter only, a full-time instructor shall be defined as any regular and contact faculty member teaching credit instruction.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Article 2. Proportions of Full-Time and Part-Time Facility, Computation and Reports

§ 53310. Hours of Instruction.

In computing the percentage of hours of credit instruction taught by full-time instructors, the following rules shall be applied:

(a) Overload. The hours of overload teaching by full-time instructors shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(b) Sabbatical. The hours of a full-time instructor on sabbatical, whether paid or unpaid, shall be included in both the total hours of credit instruction taught by full-time and part-time instructors and total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(c) Released/Reassigned Time. The hours of a full-time instructor on released or reassigned time shall be counted as if the instructor was teaching full-time and had not been provided released or reassigned time. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(d) Unpaid Leave. The hours of a full-time instructor on unpaid leave shall be counted as if the instructor was teaching full time and had not been provided with unpaid leave. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(e) Teaching by Others. The hours of instruction taught by counselors, librarians, classified staff or administrators who are appropriately certified to teach shall, under the following conditions, be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors:

(1) Only the actual hours of teaching by such individuals shall be included;

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment,

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53311. Base Year.

For purposes of this chapter, fiscal year 1988-89 shall be the base year from which improvement in the percentage of hours of credit instruction taught by full-time instructors shall be measured.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53312. Additional Full-Time Faculty Positions.

(a) The Chancellor shall compute and report to each community college district the number of full-time faculty (FTF) which are to be secured through the use of the prescribed portion of program improvement revenue allocated to each district.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for part-time instructors times the statewide average full-time teaching load).

(c) If the quotient is not a whole number, then the quotient shall be rounded down to the nearest whole number. If the quotient, once applied, will result in the district exceeding the 75 percent standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code.Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53314. Report to Districts.

(a) By March 15th of each year, the Chancellor shall report to each district an estimate of the number of FTF to be secured based upon the appropriation of revenues contained in the annual Budget Bill.

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(c) Substantially comply with the provisions of chapter 1 (commencing with section 53000) of division 4 of this part.

NOTE: Authority cited: Sections 66700, 70901, and 87105, Education Code. Reference: Sections 70901 and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of chapter 11 (commencing with section 55825) of division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in chapter 1 (commencing with section 55000) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that,

for the purposes of this section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

(3) In performing the requirements of subsections (1) and (2) of this section, the governing board or its designees shall consult with the representatives of existing staff councils, committees, employee organizations and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views.

(4) Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this section.

(6) The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration.

(7) The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category that they represent.

(b) In developing and carrying out policies and procedures pursuant to subsection (a), the district governing board shall ensure that its actions do not dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code sections 3540, et seq., such procedures for staff participation shall not intrude on matters within the scope of representation under section 3543.2 of the Government Code. In addition, governing boards shall not interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Nothing in this section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards. It is the intent of the Board of Governors to respect lawful agreements between staff and exclusive representatives as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to staff pursuant to these regulations.

(c) Nothing in this section shall be construed to impinge upon the policies and procedures governing the participation rights of faculty and students pursuant to sections 53200–53205, and section 51023.7, respectively, of this division.

(d) The governing board of a community college district shall comply substantially with the provisions of this section.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b), (Register 91, No. 23).
2. Editorial correction of printing error in subsection (b) and HISTORY 1. (Register 91, No. 43).

§ 51023.7. Students.

(a) The governing board of a community college district shall adopt policies and procedures that provide students the opportunity to participate effectively in district and college governance. Among other matters, said policies and procedures shall include the following:

(1) Students shall be provided an opportunity to participate in formulation and development of district and college policies and procedures that have or will have a significant effect on students. This right includes the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures.

(2) Except in unforeseeable, emergency situations the governing board shall not take action on a matter having a significant effect on students until it has provided students with an opportunity to participate in the formulation of the policy or procedure or the joint development of recommendations regarding the action.

(3) Governing board procedures shall ensure that at the district and college levels, recommendations and positions developed by students are given every reasonable consideration.

(4) For the purpose of this section, the governing board shall recognize each associated student organization or its equivalent within the district as provided by Education Code Section 76060, as the representative body of the students to offer opinions and to make recommendations to the administration of a college and to the governing board of a district with regard to district and college policies and procedures that have or will have a significant effect on students. The selection of student representatives to serve on college or district committees, task forces, or other governance groups shall be made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district.

(b) For the purposes of this section, district and college policies and procedures that have or will have a "significant effect on students" includes the following:

(1) grading policies;
(2) codes of student conduct;
(3) academic disciplinary policies;
(4) curriculum development;
(5) courses or programs which should be initiated or discontinued;
(6) processes for institutional planning and budget development;
(7) standards and policies regarding student preparation and success;
(8) student services planning and development;
(9) student fees within the authority of the district to adopt; and
(10) any other district and college policy, procedure or related matter that the district governing board determines will have a significant effect on students.

(c) The governing board shall give reasonable consideration to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff.

(d) Nothing in this section shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiations or negotiated agreements between collective bargaining agents and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining agents as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pur-

Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

3. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

4. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53101. Processing of Fingerprint Cards.

NOTE: Authority cited: Sections 71020, 71064, 87220 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53102. Cause for Dismissal.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53103. Report of Persons Employed.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Article 1.5. Sick Leave Transfer

§ 53125. Transfer of Accumulated Sick Leave.

The provisions of this section are to implement section 87782 of the Education Code relative to the manner in which accumulated sick leave shall be certified by one employer to another when an employee changes employment from one employer to another.

(a) Accumulated Sick Leave. As used in this section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code section 87781 but is unused.

(b) Transfer. A transfer of accumulated sick leave from a school district or office of the county superintendent of schools to another school district or office of the county superintendent of schools or from either to the Chancellor's Office; or a transfer from the Chancellor's Office to a school district or county superintendent of schools is authorized by Education Code section 87782, 87783, and 87785, provided the certificated or academic employee meets the eligibility requirements stated therein.

Transfer shall be accomplished as follows:

(1) the person who accumulated the sick leave or the new employing agency using a form prescribed by the Chancellor's Office requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave,

(2) upon receipt of the request the former employing agency forthwith transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is in charge with maintaining employee attendance records,

) the new employing agency credits the person with the accumulated leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code section 87785, which provides that the accumulated sick leave transferred may not exceed that amount of accumulated sick leave that the person would have earned had he or she been an employee of the state.

NOTE: Authority cited: Sections 70901, 71024 and 87782, Education Code. Reference: Sections 87781, 87782, 87783 and 87785, Education Code.

HISTORY

1. New subchapter 1.5 (section 53125) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).

2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

3. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 1.6. Evaluation of Academic Employees

§ 53130. Availability of Rules and Regulations for Evaluation of Performance.

The governing board of a community college district shall adopt and cause to be printed and made available to each academic employee of the district reasonable rules and regulations providing for the evaluation of the performance of academic employees in their assigned duties.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

2. New article 1.6 heading filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Article 2. Academic Senates

§ 53200. Definitions.

For the purpose of this subchapter:

(a) "Faculty" means those employees of a community college district who are employed in positions that are not designated as supervisory or management for the purposes of article 5 (commencing with section 3540) of chapter 10.7 of division 4 of title 1 of the Government Code, and for which minimum qualifications for hire are specified by the Board of Governors.

(b) "Academic senate," "faculty council," and "faculty senate" means an organization formed in accordance with the provisions of this subchapter whose primary function is, as the representative of the faculty, to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters. For purposes of this subchapter, reference to the term "academic senate" shall also constitute reference to "faculty council" or "faculty senate."

(c) "Academic and professional matters" means the following policy development and implementation matters:

(1) Curriculum, including establishing prerequisites and placing courses within disciplines

(2) Degree and certificate requirements

(3) Grading policies

(4) Educational program development

(5) Standards or policies regarding student preparation and success

(6) District and college governance structures, as related to faculty roles

(7) Faculty roles and involvement in accreditation processes, including selfstudy and annual reports

(8) Policies for faculty professional development activities

(9) Processes for program review

(10) Processes for institutional planning and budget development, and

(11) Other academic and professional matters as mutually agreed upon between the governing board and the academic senate.

(d) "Consult collegially" means that the district governing board shall develop policies on academic and professional matters through either or both of the following methods, according to its own discretion:

(1) Relying primarily upon the advice and judgment of the academic senate; or

(2) That the district governing board, or such representatives as it may designate, and the representatives of the academic senate shall have the obligation to reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
4. Relocation of article 2 heading filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53201. Academic Senate or Faculty Council.

In order that the faculty may have a formal and effective procedure for participating in the formation and implementation of district policies on academic and professional matters, an academic senate may be established at the college and/or district level.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53202. Formation; Procedures; Membership.

The following procedure shall be used to establish an academic senate:

(a) The full-time faculty of a community college shall vote by secret ballot to form an academic senate.

(b) In multi-college districts, the full-time faculty of the district colleges may vote on whether or not to form a district academic senate. Such vote shall be by secret ballot.

(c) The governing board of a district shall recognize the academic senate and authorize the faculty to:

(1) Fix and amend by vote of the full-time faculty the composition, structure, and procedures of the academic senate.

(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate.

(d) The full-time faculty may provide for the membership and participation of part-time faculty members in the academic senate.

(e) In the absence of any full-time faculty members in a community college, the part-time faculty of such community college may form an academic senate.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53203. Powers.

(a) The governing board of a community college district shall adopt policies for appropriate delegation of authority and responsibility to its college and/or district academic senate. Among other matters, said policies, at a minimum, shall provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. This requirement to consult collegially shall not limit other rights and responsibilities of the academic senate which are specifically provided in statute or other regulations contained in this part.

(b) In adopting the policies and procedures described in subsection (a), the governing board or its designees, shall consult collegially with representatives of the academic senate.

(c) While in the process of consulting collegially, the academic senate shall retain the right to meet with or appear before the governing board with respect to the views, recommendations, or proposals of the senate. In addition, after consultation with the administration of the college and/or district, the academic senate may present its views and recommendations to the governing board.

(d) The governing board of a district shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:

(1) In instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

(e) An academic senate may assume such responsibilities and perform such functions as may be delegated to it by the governing board of the district pursuant to subsection (a) of this section.

(f) The appointment of faculty members to serve on college or district committees, task forces, or other grounds dealing with academic and professional matters, shall be made, after consultation with the chief executive officer or his or her designee, by the academic senate. Notwithstanding this subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 81, No. 3.

§ 53204. Scope of Regulations.

Nothing in this subchapter shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements between collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Repealer and new section filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

History

1. Amendment filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) In order that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters, an Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. New section filed 5-9-78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 3. Full-Time and Part-Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This subchapter relates to and should be read in conjunction with the requirements of Section 51025 of Subchapter 1 of Chapter 2 of this Division concerning the proportion of full-time and part-time instructors on the faculty of community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

History

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).

§ 53302. Full-Time Instructor.

For purposes of this chapter only, a full-time instructor shall be defined as any regular and contact faculty member teaching credit instruction.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.6, Education Code.

History

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).

Article 2. Proportions of Full-Time and Part-Time Faculty, Computation and Reports

§ 53310. Hours of Instruction.

In computing the percentage of hours of credit instruction taught by full-time instructors, the following rules shall be applied:

(a) Overload. The hours of overload teaching by full-time instructors shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(b) Sabbatical. The hours of a full-time instructor on sabbatical, whether paid or unpaid, shall be included in both the total hours of credit instruction taught by full-time and part-time instructors and total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(c) Released/Reassigned Time. The hours of a full-time instructor on released or reassigned time shall be counted as if the instructor was teaching full-time and had not been provided released or reassigned time. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(d) Unpaid Leave. The hours of a full-time instructor on unpaid leave shall be counted as if the instructor was teaching full time and had not been provided with unpaid leave. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(e) Teaching by Others. The hours of instruction taught by counselors, librarians, classified staff or administrators who are appropriately certified to teach shall, under the following conditions, be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors:

(1) Only the actual hours of teaching by such individuals shall be included;

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

(f) Outreach Locations. The hours of instruction taught by full-time and part-time instructors at any outreach location that is more than 25 miles from the main campus and generates less than 200 FTES, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(g) Late Retirement. The hours of a full-time instructor who resigned or retired and who provided written notice thereof within 45 faculty duty days of the end of the previous Spring primary term and whose position has not been replaced by another full-time instructor by the current Fall primary term, shall be included in both the total hours of credit instruction

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college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long-range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000-53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, those policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

(3) In performing the requirements of Subsections (a)(1) and (2), the governing board or its designees shall consult with the representatives of existing staff councils, committees, employee organizations, and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this Section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views.

(4) Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this Section.

(6) The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration.

(7) The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations, or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category that they represent.

(b) In developing and carrying out policies and procedures pursuant to Subsection (a), the district governing board shall ensure that its actions do not dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code Sec-

tions 3540, et seq., such procedures for staff participation shall not intrude on matters within the scope of representation under Section 3543.2 of the Government Code. In addition, governing boards shall not interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer–employee relations. Nothing in this Section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards. It is the intent of the Board of Governors to respect lawful agreements between staff and exclusive representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to staff pursuant to these regulations.

(c) Nothing in this Section shall be construed to impinge upon the policies and procedures governing the participation rights of faculty and students pursuant to Sections 53200–53204, and Section 51023.7, respectively.

(d) The governing board of a community college district shall comply substantially with the provisions of this Section.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b), (Register 91, No. 23).
2. Editorial correction of printing error in subsection (b) and HISTORY 1. (Register 91, No. 43).
3. Amendment of subsections (a)(1), (a)(3), (a)(5), (a)(7), (b), (c) and (d) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51023.7. Students.

(a) The governing board of a community college district shall adopt policies and procedures that provide students the opportunity to participate effectively in district and college governance. Among other matters, said policies and procedures shall include the following:

(1) Students shall be provided an opportunity to participate in formulation and development of district and college policies and procedures that have or will have a significant effect on students. This right includes the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures.

(2) Except in unforeseeable, emergency situations, the governing board shall not take action on a matter having a significant effect on students until it has provided students with an opportunity to participate in the formulation of the policy or procedure or the joint development of recommendations regarding the action.

(3) Governing board procedures shall ensure that at the district and college levels, recommendations and positions developed by students are given every reasonable consideration.

(4) For the purpose of this Section, the governing board shall recognize each associated student organization or its equivalent within the district as provided by Education Code Section 76060, as the representative body of the students to offer opinions and to make recommendations to the administration of a college and to the governing board of a district with regard to district and college policies and procedures that have or will have a significant effect on students. The selection of student representatives to serve on college or district committees, task forces, or other governance groups shall be made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district.

(b) For the purposes of this Section, district and college policies and procedures that have or will have a "significant effect on students" includes the following:

(1) grading policies;
(2) codes of student conduct;
(3) academic disciplinary policies;
(4) curriculum development;
(5) courses or programs which should be initiated or discontinued;
(6) processes for institutional planning and budget development;
(7) standards and policies regarding student preparation and success;
(8) student services planning and development;
(9) student fees within the authority of the district to adopt; and
(10) any other district and college policy, procedure, or related matter that the district governing board determines will have a significant effect on students.

(c) The governing board shall give reasonable consideration to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff.

(d) Nothing in this Section shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiations or negotiated agreements between collective bargaining agents and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining agents as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to the regulations on academic senates contained in Sections 53200–53206.

(e) The governing board of a community college district shall comply substantially with policies and procedures adopted in accordance with this Section.

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901 (b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 23).
2. Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1 (Register 91, No. 43).
3. Amendment of subsections (a)(2), (a)(4), (b), (b)(10), (d) and (e) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51024. Matriculation Services.

The governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under Section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under Section 55512(c);

(c) provide matriculation services to its students in accordance with Sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with Section 55534; and

(e) substantially comply with all other provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210–78218, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of first paragraph and subsection (e) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 51025. Full–Time/Part–Time Faculty.

This Section relates to and should be read in conjunction with Subchapter 3 (commencing with Section 53300) of Chapter 4 of this Division.

(a) Community college districts which have less than 75 percent of their hours of credit instruction taught by full–time instructors, as determined from their base data calculated pursuant to Section 53311, shall apply the growth revenues received related to increases in credit FTES in accordance with Section 58774 and a portion of the program improvement allocation received in accordance with Section 58775, as follows:

2. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Subchapter 2. Certificated Positions

Article 1. Special Non–Credentialed Employees

§ 53100. Prerequisites for Employment Under Education Code Section 87401.

NOTE: Authority cited: Sections 71020, 71064, and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Renumbering of chapter 1 (sections 53100–53205) to chapter 2 (sections 53100–53205) filed 7–19–77; effective thirtieth day thereafter (Register 77, No. 30).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53101. Processing of Fingerprint Cards.

NOTE: Authority cited: Sections 71020, 71064, 87220 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53102. Cause for Dismissal.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53103. Report of Persons Employed.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Article 1.5. Sick Leave Transfer

§ 53125. Transfer of Accumulated Sick Leave.

This Section prescribes the manner in which the amount of accumulated sick leave is certified for transfer under Sections 87782, 87783, and 87785 of the Education Code.

(a) As used in this Section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code Section 87781 but is unused.

(b) Transfer shall be certified as follows.

(1) The person who accumulated the sick leave or the new employing agency requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave,

(2) Upon receipt of the request, the former employing agency transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is charged with maintaining employee attendance records,

(3) The new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code Section 87785.

NOTE: Authority cited: Sections 70901, 71024 and 87782, Education Code. Reference: Sections 87781, 87782, 87783 and 87785, Education Code.

HISTORY

1. New subchapter 1.5 (section 53125) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
5. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Article 1.6. Evaluation of Academic Employees

§ 53130. Availability of Rules and Regulations for Evaluation of Performance.

The governing board of a community college district shall adopt and cause to be printed and made available to each academic employee of the district reasonable rules and regulations providing for the evaluation of the performance of academic employees in their assigned duties.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. New article 1.6 heading filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Article 2. Academic Senates

§ 53200. Definitions.

For the purpose of this Subchapter:

(a) "Faculty" means those employees of a community college district who are employed in positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code, and for which minimum qualifications for hire are specified by the Board of Governors.

(b) "Academic senate," "faculty council," and "faculty senate" means an organization formed in accordance with the provisions of this Subchapter whose primary function, as the representative of the faculty, is to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters. For purposes of this Subchapter, reference to the term "academic senate" also constitutes reference to "faculty council" or "faculty senate."

(c) "Academic and professional matters" means the following policy development and implementation matters:

(1) curriculum, including establishing prerequisites and placing courses within disciplines;

(2) degree and certificate requirements;

(3) grading policies;

(4) educational program development;

(5) standards or policies regarding student preparation and success;

(6) district and college governance structures, as related to faculty roles;

(7) faculty roles and involvement in accreditation processes, including self–study and annual reports;

(8) policies for faculty professional development activities;

(9) processes for program review;

(10) processes for institutional planning and budget development; and

(11) other academic and professional matters as are mutually agreed upon between the governing board and the academic senate.

(d) "Consult collegially" means that the district governing board shall develop policies on academic and professional matters through either or both of the following methods, according to its own discretion:

(1) relying primarily upon the advice and judgment of the academic senate; or

(2) agreeing that the district governing board, or such representatives as it may designate, and the representatives of the academic senate shall have the obligation to reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
4. Relocation of article 2 heading filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
5. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53201. Academic Senate or Faculty Council.

In order that the faculty may have a formal and effective procedure for participating in the formation and implementation of district policies on academic and professional matters, an academic senate may be established at the college and/or district level.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2–10–78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53202. Formation; Procedures; Membership.

The following procedure shall be used to establish an academic senate:

(a) The full–time faculty of a community college shall vote by secret ballot to form an academic senate.

(b) In multi–college districts, the full–time faculty of the district colleges may vote on whether or not to form a district academic senate. Such vote shall be by secret ballot.

(c) The governing board of a district shall recognize the academic senate and authorize the faculty to:

(1) Fix and amend by vote of the full–time faculty the composition, structure, and procedures of the academic senate.

(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate.

(d) The full–time faculty may provide for the membership and participation of part–time faculty members in the academic senate.

(e) In the absence of any full–time faculty members in a community college, the part–time faculty of such community college may form an academic senate.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2–10–78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53203. Powers.

(a) The governing board of a community college district shall adopt policies for appropriate delegation of authority and responsibility to its college and/or district academic senate. Among other matters, said policies, at a minimum, shall provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. This requirement to consult collegially shall not limit other rights and responsibilities of the academic senate which are specifically provided in statute or other Board of Governors regulations.

(b) In adopting the policies and procedures described in Subsection (a), the governing board or its designees shall consult collegially with representatives of the academic senate.

(c) While in the process of consulting collegially, the academic senate shall retain the right to meet with or to appear before the governing board with respect to the views, recommendations, or proposals of the senate. In addition, after consultation with the administration of the college and/or district, the academic senate may present its views and recommendations to the governing board.

(d) The governing board of a district shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:

(1) in instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) in instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

(e) An academic senate may assume such responsibilities and perform such functions as may be delegated to it by the governing board of the district pursuant to Subsection (a).

(f) The appointment of faculty members to serve on college or district committees, task forces, or other groups dealing with academic and professional matters, shall be made, after consultation with the chief executive officer or his or her designee, by the academic senate. Notwithstanding this Subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 81, No. 3.
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53204. Scope of Regulations.

Nothing in this Subchapter shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements between collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) An Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils so that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–9–78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
4. Amendment of subsection (a) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 3. Full–Time and Part–Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This Subchapter relates to and should be read in conjunction with the requirements of Section 51020 concerning the proportion of full–time and part–time instructors on the faculty of community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
5. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53302. Full–Time Instructor.

For purposes of this Chapter only, a full–time instructor shall be defined as any regular and contract faculty member teaching credit instruction.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Article 2. Proportions of Full–Time and Part–Time Faculty, Computation and Reports

§ 53310. Hours of Instruction.

In computing the percentage of hours of credit instruction taught by full–time instructors, the following rules shall be applied:

(a) Overload. The hours of overload teaching by full–time instructors shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(b) Sabbatical. The hours of a full–time instructor on sabbatical, whether paid or unpaid, shall be included in both the total hours of credit instruction taught by full–time and part–time instructors and total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(c) Released/Reassigned Time. The hours of a full–time instructor on released or reassigned time shall be counted as if the instructor was teaching full–time and had not been provided released or reassigned time. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

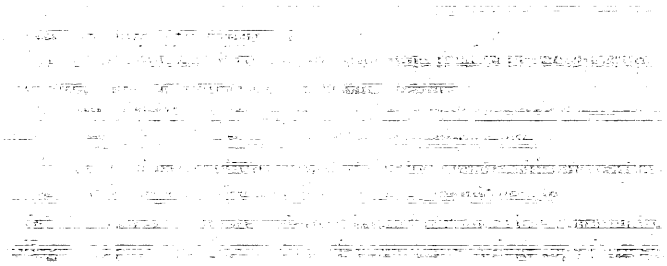
(d) Unpaid Leave. The hours of a full–time instructor on unpaid leave shall be counted as if the instructor was teaching full–time and had not been provided with unpaid leave. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

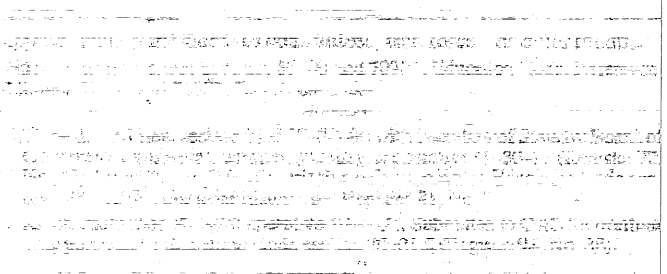
(e) Teaching by Others. The hours of instruction taught by counselors, librarians, classified staff or administrators who are appropriately qualified to teach shall, under the following conditions, be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors:

(1) Only the actual hours of teaching by such individuals shall be included;

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

(f) Outreach Locations. The hours of instruction taught by full–time and part–time instructors at any outreach location that is more than 25 miles from the main campus and generates less than 200 FTES, shall be





Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of district regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district. Counseling programs shall include, but not be limited to, the following:

(1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long–range academic goals;

(2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;

(3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student's education; and

(4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in Subsection (b)(1), (2), and (3) shall be provided to first–time students enrolled for more than six units, students enrolled provisionally, and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 72620, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Subchapter 1 (commencing with Section 55000) of Chapter 6.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901, 70902 and 71020.5, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four–year colleges and high schools.

NOTE: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, 78016, and 70902, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty and be filed with the Chancellor;

(b) adopt procedures which are consistent with the provisions of Sections 53000–53206, regarding the role of academic senates and faculty councils and are filed with the Chancellor;

(c) substantially comply with district adopted policy and procedures adopted pursuant to Subsections (a) and (b).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 6–27–84; effective thirtieth day thereafter (Register 84, No. 26).

2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmangement positions or groups of positions shall be separately defined or categorized.

2. Repealer filed 3–26–92; operative 4–24–92 (Register 92, No. 17).

Subchapter 2. Certificated Positions

Article 1. Special Non–Credentialed Employees

§ 53100. Prerequisites for Employment Under Education Code Section 87401.

NOTE: Authority cited: Sections 71020, 71064, and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Renumbering of chapter 1 (sections 53100–53205) to chapter 2 (sections 53100–53205) filed 7–19–77; effective thirtieth day thereafter (Register 77, No. 30).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53101. Processing of Fingerprint Cards.

NOTE: Authority cited: Sections 71020, 71064, 87220 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53102. Cause for Dismissal.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 53103. Report of Persons Employed.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Article 1.5. Sick Leave Transfer

§ 53125. Transfer of Accumulated Sick Leave.

This Section prescribes the manner in which the amount of accumulated sick leave is certified for transfer under Sections 87782, 87783, and 87785 of the Education Code.

(a) As used in this Section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code Section 87781 but is unused.

(b) Transfer shall be certified as follows:

(1) The person who accumulated the sick leave or the new employing agency requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave,

(2) Upon receipt of the request, the former employing agency transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is charged with maintaining employee attendance records,

(3) The new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code Section 87785.

NOTE: Authority cited: Sections 70901, 71024 and 87782, Education Code. Reference: Sections 87781, 87782, 87783 and 87785, Education Code.

HISTORY

1. New subchapter 1.5 (section 53125) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Editorial correction of HISTORY 4 (Register 95, No. 19).

Article 1.6. Evaluation of Academic Employees

§ 53130. Availability of Rules and Regulations for Evaluation of Performance.

The governing board of a community college district shall adopt and cause to be printed and made available to each academic employee of the district reasonable rules and regulations providing for the evaluation of the performance of academic employees in their assigned duties.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by the Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. New article 1.6 heading filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
3. Editorial correction of HISTORY 1 (Register 95, No. 19).

Article 2. Academic Senates

§ 53200. Definitions.

For the purpose of this Subchapter:

(a) "Faculty" means those employees of a community college district who are employed in positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code, and for which minimum qualifications for hire are specified by the Board of Governors.

(b) "Academic senate," "faculty council," and "faculty senate" means an organization formed in accordance with the provisions of this Subchapter whose primary function, as the representative of the faculty, is to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters. For purposes of this Subchapter, reference to the term "academic senate" also constitutes reference to "faculty council" or "faculty senate."

(c) "Academic and professional matters" means the following policy development and implementation matters:

(1) curriculum, including establishing prerequisites and placing courses within disciplines;

(2) degree and certificate requirements;

(3) grading policies;

(4) educational program development;

(5) standards or policies regarding student preparation and success;

(6) district and college governance structures, as related to faculty roles;

(7) faculty roles and involvement in accreditation processes, including self-study and annual reports;

(8) policies for faculty professional development activities;

(9) processes for program review;

(10) processes for institutional planning and budget development; and

(11) other academic and professional matters as are mutually agreed upon between the governing board and the academic senate.

(d) "Consult collegially" means that the district governing board shall develop policies on academic and professional matters through either or both of the following methods, according to its own discretion:

(1) relying primarily upon the advice and judgment of the academic senate; or

(2) agreeing that the district governing board, or such representatives as it may designate, and the representatives of the academic senate shall have the obligation to reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
4. Relocation of article 2 heading filed 5-15-93; operative 6-4-93 (Register 93, No. 25).
5. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53201. Academic Senate or Faculty Council.

In order that the faculty may have a formal and effective procedure for participating in the formation and implementation of district policies on academic and professional matters, an academic senate may be established at the college and/or district level.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53202. Formation; Procedures; Membership.

The following procedure shall be used to establish an academic senate:

(a) The full-time faculty of a community college shall vote by secret ballot to form an academic senate.

(b) In multi-college districts, the full-time faculty of the district colleges may vote on whether or not to form a district academic senate. Such vote shall be by secret ballot.

(c) The governing board of a district shall recognize the academic senate and authorize the faculty to:

(1) Fix and amend by vote of the full-time faculty the composition, structure, and procedures of the academic senate.

(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate.

(d) The full-time faculty may provide for the membership and participation of part-time faculty members in the academic senate.

(e) In the absence of any full-time faculty members in a community college, the part-time faculty of such community college may form an academic senate.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53203. Powers.

(a) The governing board of a community college district shall adopt policies for appropriate delegation of authority and responsibility to its college and/or district academic senate. Among other matters, said policies, at a minimum, shall provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. This requirement to consult collegially shall not limit other rights and responsibilities of the academic senate which are specifically provided in statute or other Board of Governors regulations.

(b) In adopting the policies and procedures described in Subsection (a), the governing board or its designees shall consult collegially with representatives of the academic senate.

(c) While in the process of consulting collegially, the academic senate shall retain the right to meet with or to appear before the governing board with respect to the views, recommendations, or proposals of the senate. In addition, after consultation with the administration of the college and/or district, the academic senate may present its views and recommendations to the governing board.

(d) The governing board of a district shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:

(1) in instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) in instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

(e) An academic senate may assume such responsibilities and perform such functions as may be delegated to it by the governing board of the district pursuant to Subsection (a).

(f) The appointment of faculty members to serve on college or district committees, task forces, or other groups dealing with academic and professional matters, shall be made, after consultation with the chief executive officer or his or her designee, by the academic senate. Notwithstanding this Subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 81, No. 3.
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53204. Scope of Regulations.

Nothing in this Subchapter shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements

between collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) An Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils so that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–9–78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Amendment of subsection (a) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
5. Editorial correction of HISTORY 3 (Register 95, No. 19).

Subchapter 3. Full–Time and Part–Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This Subchapter relates to and should be read in conjunction with the requirements of Section 51020 concerning the proportion of full–time and part–time instructors on the faculty of community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
5. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53302. Full–Time Instructor.

For purposes of this Chapter only, a full–time instructor shall be defined as any regular and contract faculty member teaching credit instruction.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Article 2. Proportions of Full–Time and Part–Time Faculty, Computation and Reports

§ 53310. Hours of Instruction.

In computing the percentage of hours of credit instruction taught by full–time instructors, the following rules shall be applied:

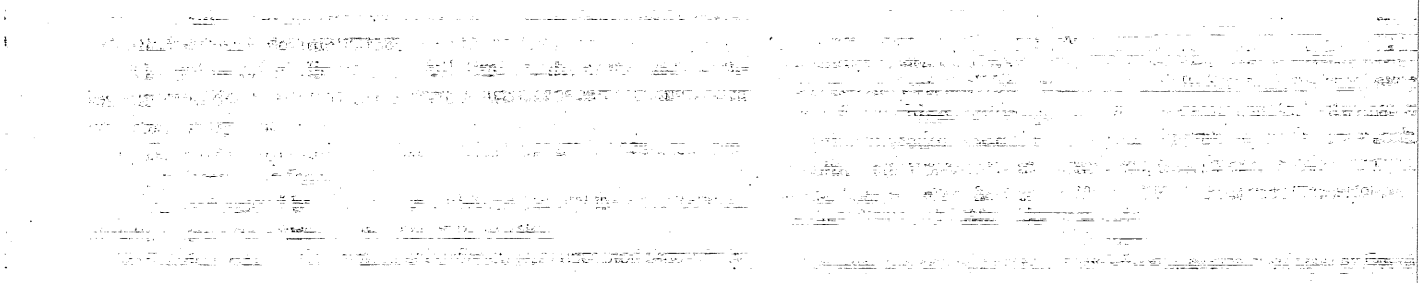
(a) Overload. The hours of overload teaching by full–time instructors shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(b) Sabbatical. The hours of a full–time instructor on sabbatical, whether paid or unpaid, shall be included in both the total hours of credit instruction taught by full–time and part–time instructors and total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(c) Released/Reassigned Time. The hours of a full–time instructor on released or reassigned time shall be counted as if the instructor was teaching full–time and had not been provided released or reassigned time. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(d) Unpaid Leave. The hours of a full–time instructor on unpaid leave shall be counted as if the instructor was teaching full–time and had not been provided with unpaid leave. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(e) Teaching by Others. The hours of instruction taught by counselors, librarians, classified staff or administrators who are appropriately quali-



(7) faculty roles and involvement in accreditation processes, including self-study and annual reports;

(8) policies for faculty professional development activities;

(9) processes for program review;

(10) processes for institutional planning and budget development; and

(11) other academic and professional matters as are mutually agreed upon between the governing board and the academic senate.

(d) "Consult collegially" means that the district governing board shall develop policies on academic and professional matters through either or both of the following methods, according to its own discretion:

(1) relying primarily upon the advice and judgment of the academic senate; or

(2) agreeing that the district governing board, or such representatives as it may designate, and the representatives of the academic senate shall have the obligation to reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
4. Relocation of article 2 heading filed 5-15-93; operative 6-4-93 (Register 93, No. 25).
5. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53201. Academic Senate or Faculty Council.

In order that the faculty may have a formal and effective procedure for participating in the formation and implementation of district policies on academic and professional matters, an academic senate may be established at the college and/or district level.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53202. Formation; Procedures; Membership.

The following procedure shall be used to establish an academic senate:

(a) The full-time faculty of a community college shall vote by secret ballot to form an academic senate.

(b) In multi-college districts, the full-time faculty of the district colleges may vote on whether or not to form a district academic senate. Such vote shall be by secret ballot.

(c) The governing board of a district shall recognize the academic senate and authorize the faculty to:

(1) Fix and amend by vote of the full-time faculty the composition, structure, and procedures of the academic senate.

(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate.

(d) The full-time faculty may provide for the membership and participation of part-time faculty members in the academic senate.

(e) In the absence of any full-time faculty members in a community college, the part-time faculty of such community college may form an academic senate.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53203. Powers.

(a) The governing board of a community college district shall adopt policies for appropriate delegation of authority and responsibility to its college and/or district academic senate. Among other matters, said policies, at a minimum, shall provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. This requirement to consult collegially shall not limit other rights and responsibilities of the academic senate which are specifically provided in statute or other Board of Governors regulations.

(b) In adopting the policies and procedures described in Subsection (a), the governing board or its designees shall consult collegially with representatives of the academic senate.

(c) While in the process of consulting collegially, the academic senate shall retain the right to meet with or to appear before the governing board with respect to the views, recommendations, or proposals of the senate. In addition, after consultation with the administration of the college and/or district, the academic senate may present its views and recommendations to the governing board.

(d) The governing board of a district shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:

(1) in instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) in instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

(e) An academic senate may assume such responsibilities and perform such functions as may be delegated to it by the governing board of the district pursuant to Subsection (a).

(f) The appointment of faculty members to serve on college or district committees, task forces, or other groups dealing with academic and professional matters, shall be made, after consultation with the chief executive officer or his or her designee, by the academic senate. Notwithstanding this Subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 81, No. 3.
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53204. Scope of Regulations.

Nothing in this Subchapter shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements between collective bargaining representatives and district governing

boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) An Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils so that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-9-78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Amendment of subsection (a) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
5. Editorial correction of HISTORY 3 (Register 95, No. 19).

§ 53207. Reimbursement for Release or Reassigned Time.

(a) Except as provided in subdivisions (d) and (e), the faculty members elected to serve as president and vice president of the Academic Senate of the California Community Colleges (ASCCC) shall be granted release or reassigned time from their local responsibilities by the districts by which they are employed during their terms of office.

(b) The amount of release or reassigned time required will be determined by the ASCCC and reported to the district employing the person elected ASCCC president by May 1st and to the district employing the person elected ASCC vice president by June 1st of the year in which these individuals will assume office, unless the election has not been conducted by those dates, in which case the information will be reported immediately upon completion of the election.

(c) The districts employing the president and the vice president of the ASCCC will be reimbursed by February 1 from the state appropriation for the ASCCC for the release or reassigned time at the part-time replacement cost identified by the district prior to September of each year. If the release or reassigned time need identified is 100 percent and the position to be filled is in a hard to replace discipline area, the district shall so certify to the Chancellor of the California Community Colleges by August 1. If the Chancellor confirms the district certification, the district shall be reimbursed at the full-time temporary replacement cost. In addition, districts shall be reimbursed by the ASCCC for reasonable and documented administrative costs associated with hiring faculty to replace the faculty serving as president and vice president of the ASCCC.

(d) A local district will not be required to grant release or reassigned time for the president or vice president of the ASCCC if it certifies by August 1 to the Chancellor, and he or she confirms, that the faculty member is in a position for which a qualified part-time or full-time temporary replacement cannot be found to meet the needs of the students.

(e) No district shall be required to grant release or reassigned time for an individual serving as president or vice president of the ASCCC for a period exceeding four years.

(f) This section shall only be operative during any fiscal year in which sufficient funds are provided therefore to the ASCCC in the annual Budget Act for that fiscal year or other legislation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3-12-2003; operative 4-11-2003. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 2003, No. 18).

Subchapter 3. Full-Time and Part-Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This Subchapter relates to and should be read in conjunction with the requirements of Section 51025 concerning the proportion of full-time and part-time faculty to be employed by community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
5. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Amendment filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 53301. Part-Time Faculty.

The term "part-time faculty" includes any faculty member, as defined in Section 53402(c), who is not a regular employee or contract employee of the district pursuant to Sections 87601, 87605, 87608, 87608.5, or 87609 of the Education Code.

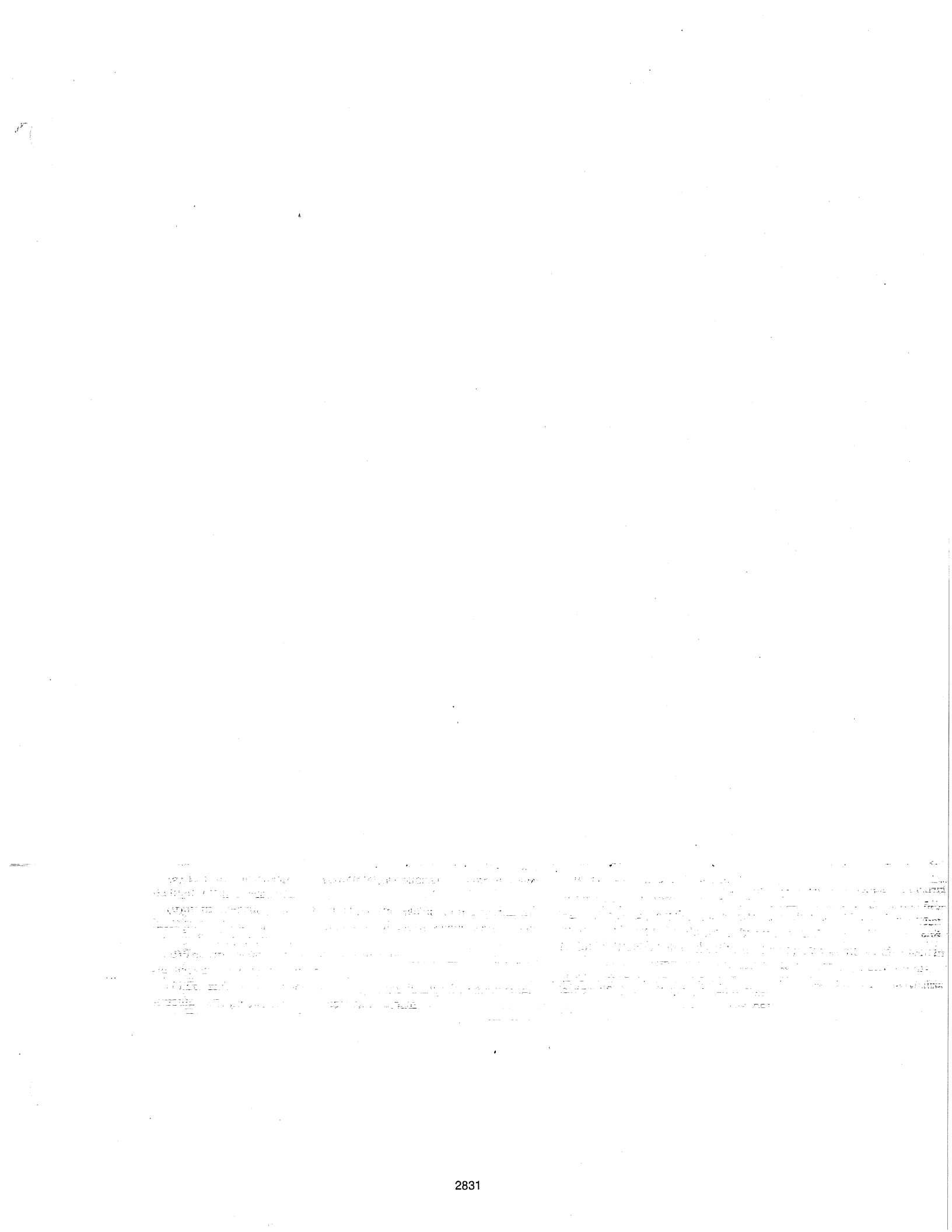
NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750, 87482.7, 87601, 87605, 87608, 87608.5 and 87609, Education Code.

HISTORY

1. New section filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53302. Full-Time Faculty.

For purposes of this Chapter the term "full-time faculty" means any faculty member, as defined in Section 53402(c), who is a regular or contract employee of the district pursuant to Sections 87601, 87605, 87608, 87608.5 or 87609 of the Education Code.



No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 16: Matriculation

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Register 90-37 § 51024: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55500: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55502: Amendment of subsection (a) and (b) and new subsections (g), (h), (i), (j) and (k) filed by the Board of Governors, California Community Colleges, with the Secretary of State; submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55510: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55512: Amendment filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55514: Amendment filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55516: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55518: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55520: Amendment filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55521: Amendment of subsection (d), (e), and (f) filed by the Board of Governors, California Community Colleges, with the Secretary of State; submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55522: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55523: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55524: New section by the Board of Governors, California

Community Colleges, with the Secretary of State.
Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55525: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55526: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55530: Amendment filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55532: New section by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55534: New section by the Board of Governors, California Community Colleges, with the Secretary of State.

Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 92-15 § 51024: Amendment of first paragraph and subsection (e).

§ 55521: Amendment of subsection (a) and redesignating following subsections (1)-(6), adoption of subsection (b) and amendment of NOTE.

§ 55530: Amendment of subsection (b).

Register 92-17 § 55500: Amendment of subsection (a) and repealer of subsection (c).

Register 93-42 § 55510: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 55530: Amendment of subsections (a), (b) and (d). Submitted to OAL only pursuant to Education Code section 70901.5(b).

§ 55534: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 94-38 § 55502: Amendment of first paragraph and subsections (a) and (c)-(k). Submitted to OAL for printing only pursuant to Education Code Section 70901.5.

§ 55510: Amendment of subsection (a)(6), new subsection (a)(7) and subsection renumbering. Submitted to OAL for printing only pursuant to Education Code Section

70901.5.

§ 55525: Amendment of subsections (a), (c) and (d). Submitted to OAL for printing only pursuant to Education Code 70901.5.

§ 55534: Amendment of subsection (b). Submitted to OAL for printing only pursuant to Education Code 70901.5.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

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NOTE: Authority cited: Sections 66700, 71025, 71068 and 87105, Education Code. Reference: Sections 71025, 71068, and Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72289, Education Code.

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval of such college or educational center by the Board of Governors. Approval shall be obtained prior to the commencement of classes at the new college or educational center.

(b) The provisions of Chapter 11 (commencing with Section 55825) of Division 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

§ 51016. Accreditation.

Each community college within a district shall be an accredited institution. Accreditation shall be determined by the Accrediting Commission for Community and Junior Colleges.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 78050, Education Code.

§ 51018. Counseling Programs.

(a) The governing board of a community college district shall adopt regulations and procedures consistent with the provisions of this section. A copy of these regulations and procedures, as well as any amendments, shall be filed with the Chancellor's Office.

(b) The governing board of a community college district shall provide and publicize in each college within the district, an organized and functioning counseling program. Counseling programs shall include, but not be limited to, the following:

(1) Academic counseling, in which the student is assisted in assessing, planning and implementing his or her immediate and long-range academic goals.

(2) Career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends.

(3) Personal counseling in which the student is assisted with personal, family or other social concerns, when that assistance is related to the student's education.

(4) Coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

(c) Counseling services as specified in subparagraphs (1) through (3) of subsection (b) shall be provided to first-time students enrolled for more than six units, students enrolled provisionally and students on academic or progress probation.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 72620, Education Code.

§ 51020. Objectives.

Each community college shall have stated objectives for its instructional program and for the functions which it undertakes to perform.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71028 and 72231.5, Education Code.

§ 51021. Curriculum.

Each community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. All courses shall be approved by the Chancellor in the manner provided in Chapter 1 (commencing with Section 55000) of Division 6 of this part.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025 and 78200, Education Code.

§ 51022. Instructional Programs.

(a) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding program review as specified in Section 78016 of the Education Code.

(b) The governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor, and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year colleges and high schools.

NOTE: Authority cited: Sections 66700, 71025 and 78405, Education Code. Reference: Sections 71025, 71070, 78016, 78200 and 78405, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

§ 51023. Faculty.

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of Sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

NOTE: Authority cited: Sections 66700, 71025 and 71068, Education Code. Reference: Sections 71025, 71068 and 72292, Education Code.

HISTORY

1. New section filed 6-27-84; effective thirtieth day thereafter (Register 84, No. 26).

§ 51024. Matriculation Services.

When matriculation services have been fully funded, as certified by the Chancellor in accord with policies adopted by the Board of Governors, the governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under section 55512(c);

(c) provide matriculation services to its students in accordance with sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with section 55534; and

(e) substantially comply with all other provisions of chapter 6 (commencing with section 55500) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210-78218, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Subchapter 2. Investigation and Enforcement of Minimum Standards

§ 51100. Review of Colleges.

(a) The Chancellor, at least once each seven years, and at such other times as he or she deems necessary, shall review each community college to determine whether it has met the minimum standards contained in Chapter 1 (commencing with Section 51000) of this Division.

(b) In the event that the Chancellor determines that a visit to the college is necessary to investigate compliance, he or she shall inform the chief

§ 55401. Current and Long Range Plans.

The governing board of each Community College district shall establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole.

§ 55402. Educational Master Plans.

On or before January 1, 1972, the governing board of each Community College district shall submit to the Chancellor an educational master plan for each Community College which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor on or before November 1 of each year thereafter.

§ 55403. Form.

Each plan shall be submitted on a form provided by the Chancellor and shall contain such information as the Chancellor shall require.

§ 55404. Contents.

Each plan shall contain the educational objectives of the Community College or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. On the basis of current and future enrollment, it shall contain plans for the development and expansion of ancillary services, including services in the library and for counseling, placement, and financial aids.

§ 55405. Review and Approval.

The Chancellor shall review each master plan. On or before February 1 following the submission of each plan, the Chancellor shall send a copy of the approval of it to the superintendent of each district.

History

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).

Subchapter 6. Matriculation Programs

Article 1. Scope and Definitions

§ 55500. Scope and Implementation.

(a) This chapter implements and should be read in conjunction with the provisions of the Seymour–Campbell Matriculation Act of 1986, c. 1467, Stats. 1986, codified as Education Code section 78210 et seq. The purpose of this chapter is to further equality of educational opportunity and success for all students in the California Community Colleges. This chapter sets forth minimum standards for district matriculation programs and further elaborates requirements for the assessment component of matriculation.

(b) The requirements of this chapter apply only to districts receiving funds pursuant to Education Code section 78216 for the period of time during which such funds are received. The Chancellor shall, in consultation with districts and other interested parties, adopt a schedule for implementing the provisions of this chapter as expeditiously as possible within the constraints of available funding. The schedule shall be coordinated with the implementation and funding of the systemwide management information system and the accountability mechanisms established pursuant to Education Code section 71020.5.

(c) Minimum standards for the enforcement of this chapter, as set forth in section 51024, shall not become effective until the Chancellor certifies, in accordance with established policies of the Board of Governors, that matriculation has been fully funded. Until that time, the Chancellor shall ensure that funds allocated to community college districts pursuant to Education Code section 78216 are used in accordance with district matriculation plans developed as provided in section 55510.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 71020.5, 78210–78218, Education Code.

History

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55502. Definitions.

For purposes of this chapter, the following definitions shall apply:

(a) "Matriculation" means a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational goal through the college's established programs, policies, and requirements. This agreement is to be implemented by means of the student's individual educational plan developed pursuant to section 55525.

(b) "Assessment" means the process of gathering information about individual students to facilitate student success. Assessment shall include, but is not limited to, information regarding the student's study skills, English language proficiency, computational skills, aptitudes, goals, learning skills, career aspirations, academic performance, and need for special services. Assessment involves the collection of such information at any time before or after enrollment, except that the process of assigning a grade by an instructor shall not be considered part of the assessment process. Once a grade has been assigned and recorded in a student's transcript, it can be used in the assessment process.

(c) "Assessment instruments, methods or procedures" means one or more assessment instruments, assessment methods, or assessment procedures, or any combination thereof. These include, but are not limited to, interviews, standardized tests, holistic scoring processes, attitude surveys, vocational or career aptitude and interest inventories, high school or college transcripts, specialized certificates or licenses, educational histories and other measures of performance. The term "assessment instruments, methods or procedures" also includes assessment procedures such as the identification of test scores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment sessions are conducted, manner in which assessment results are made available and the length of time required before such results are available.

(d) "Pre–collegiate basic skills courses" are those courses in reading, writing, computation, learning skills, study skills, and English as a Second Language which are designated by the community college district as non–degree credit courses pursuant to section 55002(b) of this part.

(e) "Disproportionate impact" occurs when the percentage of persons from a particular racial, ethnic, gender, age or disability group who are directed to a particular service or placement based on an assessment instrument, method or procedure is significantly different than the representation of that group in the population of persons being assessed and that discrepancy is not justified by empirical evidence demonstrating that the assessment instrument, method or procedure is a valid and reliable predictor of performance in the relevant educational setting.

(f) "Exemption" means waiving or deferring a student's participation in orientation, assessment, counseling or advisement required pursuant to subsections (b),(c), and (f) of section 55520.

(g) "matriculation services" are those services listed in section 55520.

(h) "matriculation practices: means one or more instruments, methods or procedures, or any combination thereof, used in providing any of the matriculation services listed in section 55520.

(i) "student" means a person enrolled in at lease one credit course.

(j) "orientation" is a process which acquaints students and potential students with college programs, service, facilities and grounds, academic expectations, and institutional procedures.

(k) "student follow–up" is the process of monitoring a student's progress toward his or her educational goals and providing the student with appropriate advice based on the results of such monitoring.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78212 and 78213, Education Code.

History

1. Amendment of subsection (a) and (b) and new subsections (g), (h), (i), (j) and (k) filed 6–5–90 by the Board of Governors, California Community Colleges,

with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Article 2. Planning and Administration

§ 55510. Matriculation Plans.

(a) Each community college district shall adopt a matriculation plan describing the services to be provided to its students. The plan shall include, but not be limited to, a description of the methods by which required services will be delivered, the district's budget for matriculation, plans for faculty and staff development, computerized information services and institutional research and evaluation necessary to implement this chapter, criteria for exempting students from participation in the matriculation process, procedures for establishing and validating prerequisites pursuant to section 58106, and, in districts with more than one college, arrangements for coordination by the district of the matriculation plans of its various colleges.

(b) The plan shall be developed in consultation with representatives of faculty, students, and staff with appropriate expertise.

(c) Such plans shall conform to the requirements of this chapter and shall be submitted to the Chancellor for review an approval. Plans submitted prior to the effective date of this section need not be revised or resubmitted, if the Chancellor finds that they meet the requirements of this Chapter. Regardless of when plans are initially submitted, the Chancellor may require periodic updates of such plans.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55512. Evaluation and Audits.

(a) Each community college district shall establish a program of institutional research for ongoing evaluation of its matriculation process to ensure compliance with the requirements of this chapter.

As part of this evaluation, all assessment instruments, methods or procedures shall be evaluated to ensure that they minimize or eliminate cultural or linguistic bias and are being used in a valid manner. Based on this evaluation, districts shall determine whether any assessment instrument, method or procedure has a disproportionate impact on particular groups of students described in terms of ethnicity, gender, age or disability, as defined by the Chancellor. When there is a disproportionate impact on any such group of students, the district shall, in consultation with the Chancellor, develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact. The evaluation shall include, but not be limited to, an analysis of the degree to which the matriculation program:

(1) impacts on particular courses, programs, and facilities;

(2) helps students to define their educational goals;

(3) promotes student success, as evidenced by outcome and retention data such as student persistence, goal attainment, skill improvement, and grades;

(4) assists the district in the assessment of students' educational needs;

(5) matches district resources with students' educational needs; and

(6) provides students with the support services described in section 545520(g).

(b) Each district shall also, as part of its annual financial audit, provide for a review of the revenue and expenditures of the matriculation program.

(c) The Chancellor shall establish a system for evaluation of the matriculation program on a statewide basis, including procedures for monitoring compliance with the requirements of this chapter.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: section 78214 and 78217, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55514. Data Collection.

Each community college district shall submit an annual report describing the district's efforts to implement its matriculation plan and expenditures made for that purpose. In this report, or through the established management information system or otherwise, the data to be collected for evaluation purposes pursuant to Education Code section 78214 and section 55512 of this part. Such data shall specifically include, but is not limited to, the information necessary to permit the Chancellor to determine the following:

(a) the proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who are placed in pre–collegiate, associate–degree applicable, or transfer level courses in reading, writing, computation or English as a Second Language.

(b) the proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who enter and complete pre–collegiate basic skills courses.

(c) The proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, completing pre–collegiate basic skills courses who subsequently enter and complete courses applicable to the associate degree;

(d) outcome and retention data, as described in section 55512(a), indicating the effectiveness of matriculation;

(e) the basis on which the use of particular assessment instruments, methods or procedures was validated by a district;

(f) the numbers of students exempted, pursuant to section 55532, from participation in the district's matriculation program, by category of exemption;

(g) the number of students filing complaints pursuant to 55534 and the bases of those complaints;

(h) the particular matriculation services, as listed in section 55520, which each student received; and

(i) any other matter the Chancellor, after consultation with community college districts, deems necessary for the effective evaluation of matriculation programs.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78214, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55516. Training and Staff Development.

Each community college district shall develop and implement a program for providing all faculty and staff with training appropriate to their needs on the provision of matriculation services, including but not limited to, the proper purpose, design, evaluation, and use of assessment instruments, methods or procedures, as well as their limitations and possible misuse.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55518. Funding.

(a) The Chancellor shall adopt a funding formula, consistent with the requirements of this section, for allocating matriculation funds to community college districts complying with the requirements of this chapter.(b) Each dollar of state matriculation funding shall be matched by three dollars of other district resources devoted to the matriculation program.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 3. Matriculation Services

§ 55520. Required Services.

At a minimum, each community college district shall provide students, except as exempted pursuant to section 55532, with all of the following matriculation services:

(a) the processing of applications for admission;

(b) orientation and pre–orientation services designed to provide nonexempt students and potential students, on a timely basis, information concerning college procedures and course scheduling, academic expectations, financial assistance, and any other matters the college or district finds appropriate;

(c) assessment for all nonexempt students pursuant to section 55524;

(d) counseling or advisement for nonexempt students pursuant to section 55523;

(e) assistance in developing a student educational plan pursuant to section 55525, which identifies the student's educational objectives and the courses, services, and programs to be used to achieve them;

(f) post enrollment evaluation, pursuant to section 55526, of each student's progress; and

(g) referral of students to:

(1) support services which may be available, including, but not limited to, counseling, financial aid, health services, campus employment placement services, Extended Opportunity Programs and Services, campus child care services, tutorial services, and Disabled Students Programs and Services; and

(2) specialized curriculum offerings including but not limited to, pre–collegiate basic skills courses and programs in English as a Second Language.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55521. Prohibited Practices.

In implementing matriculation services, community college districts shall not do any of the following:

(a) use an assessment instrument which has not been approved by the Chancellor pursuant to section 55524, except that the Chancellor may permit limited field–testing, under specified conditions, of new or alternative assessment instruments where such instruments are not used for placement and are evaluated only in order to determine whether they should be added to the list of approved instruments;

(b) use any assessment instrument in a manner or for a purpose other than that for which it was developed or has been otherwise validated;

(c) use any single assessment instrument, method or procedure, by itself, for placement, required referral to appropriate services, or subsequent evaluation of any student; provided however that in the case of assessment instruments, the use of two or more highly correlated instruments does not satisfy the requirement for use of multiple measures;

(d) use any assessment instrument, method or procedure to exclude any person from admission to a community college;

(e) use any assessment instrument, method or procedure for mandatory placement of a student in or exclusion from any particular course or educational program, except that districts may establish appropriate prerequisites pursuant to sections 55002, and 58106 of Division 9 of this Part; or

(f) use any matriculation practice which has the purpose or effect of subjecting any person to unlawful discrimination prohibited by Chapter 5 (commencing with section 59300) of division 10 of this part.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700, 70901, and 84500.1, Education Code. Reference: Section 11135, Government Code; Sections 72011, 78211, 78213, and 84500.1, Education Code.

HISTORY

1. Amendment of subsections (d), (e) and (f) filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55522. Special Accommodations.

Matriculation services for ethnic and language minority students and students with disabilities, shall be appropriate to their needs, and community college districts shall, where necessary, make modifications in the matriculation process or use alternative instruments, methods or procedures to accommodate the needs of such students. Districts may require students requesting such accommodations to provide proof of need. Extended Opportunity Programs and Services (EOPS) and Disabled Students Programs and Services (DSPS) are authorized, consistent with the provisions of chapter 1 (commencing with section 56000) and chapter 2.5 (commencing with section 56200) of division 7 of this part, to provide specialized matriculation services and modified or alternative matriculation services to their respective student populations. Notwithstanding this authorization, participation in the EOPS and DSPS programs is voluntary and no student may be denied necessary accommodations in the assessment process because he or she chooses not to use specialized matriculation services provided by these programs. Modified or alternative matriculation services for limited or non–English–speaking students may be provided in English as a Second Language programs.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700, 70901, and 84500.1, Education Code. Reference: Section 11135, Government Code; Sections 72011, 78211, 78213, and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55523. Counseling and Advisement.

(a) If not already required to do so by the minimum standards for counseling services set forth in section 51018 of division 1 of this Part, each community college district shall do all of the following:

(1) make reasonable efforts to ensure that all nonexempt students who are on probation participate in counseling as provided in section 55759 of this Part;

(2) make reasonable efforts to ensure that all nonexempt students who have not declared a specific educational goal participate in counseling to assist them in the process of selecting a specified educational goal pursuant to section 55525;

(3) make reasonable efforts to ensure that all nonexempt students who are enrolled in pre–collegiate basic skills courses participate in counseling or advisement; and

(4) make available to all students, as defined in section 55502(i), advisement or counseling on general academic requirements and the selection of specific courses by counselors or appropriately trained instructor/advisors, and/or other appropriately trained staff working in consultation with counselors.

(b) Counseling by appropriately trained counselors or advisement by appropriately trained staff may also be made available in any other area the district deems appropriate, including but not limited to, the interpretation of assessment results and the development of a student's educational plan as required by section 55525.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for

printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55524. Assessment.

The Chancellor shall establish and update, at least annually, a list of approved assessment instruments and guidelines for their use by community college districts. These guidelines shall identify modifications of an assessment instrument or the procedures for its use which may be made in order to provide special accommodations required by section 55522 without separate approval by the Chancellor. Such guidelines shall also describe the procedure by which districts may seek to have assessment instruments approved and added to the list. The Chancellor shall ensure that all assessment instruments included on the list minimize or eliminate cultural or linguistic bias, are normed on the appropriate populations, yield valid and reliable information, identify the learning needs of students, make efficient use of student and staff time, and are otherwise consistent with the educational and psychological testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55525. Student Educational Plan.

(a) Each community college district shall establish a process for assisting students to select a specific educational goal within a reasonable time after admission as required by section 55530 (d). This shall include, but not be limited to, the provision of counseling as required by section 55523(a)(2).

(b) Once a student has selected a specific educational goal, the district shall afford the student the opportunity to develop a student educational plan describing the responsibilities of the student, the requirements he or she must meet, and the courses, programs, and services required to achieve the stated goal.

(c) The student educational plan developed pursuant to subsection (b) shall be recorded in written or electronic form. The plan, and its implementation shall be reviewed as necessary to ensure that it continues to accurately reflect the needs and goals of the student.

(d) If a student believes the district has failed to make good faith efforts to develop a plan, has failed to provide services specified in the student educational plan, or has otherwise violated the requirements of this section, the student may file a complaint pursuant to section 55534 (c).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55526. Student Follow–up.

Each community college district shall establish a student follow–up process to assist the student in achieving his/her educational goal. The follow–up system shall ensure that the academic progress of each student is regularly monitored to detect early signs of academic difficulty and students shall be provided with advice or referral to specialized services or curriculum offerings where necessary. Districts shall also identify and refer to counseling or advisement, as appropriate pursuant to section 55523(a), any students who have not declared a specific educational goal as required by section 55530, who are enrolled in pre–collegiate basic skills courses, or who have been placed on probation.

NOTE: Authority cited: Sections 66700 and 70901, Educational Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 4. Appeals, Waivers, Student Rights and Responsibilities

§ 55530. Student Rights and Responsibilities.

(a) Nothing in this chapter shall be construed to interfere with the right of a student, if admitted to a community college in accord with district admission policies adopted pursuant to Education Code section 76000 et seq., from enrolling in any course for which he or she can meet necessary and valid prerequisites, if any, which have been established pursuant to the requirements of section 58106 of division 9 of this part.

(b) Community college districts shall take steps to ensure that information, in written form, is available to all students, in class schedules, catalogues, or other appropriate publications, describing their rights and responsibilities under this chapter.

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to avoid additional testing by submitting scores on recently taken tests which correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission, declare a specific educational objective within a reasonable period after admission, participate in counseling or advisement pursuant to section 55523(a)(1),(2), and (3), diligently attend class and complete assigned coursework, and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of chapter 9 (commencing with section 55750) of division 6 of this part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree applicable credit coursework, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to section 55525. If a student fails to fulfill the responsibilities listed in this subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his/her specific educational goal, or fails to abide by the terms of his/her student educational plan, the district may, subject to the requirements of this chapter, suspended or terminate the provision of services authorized in section 55520; provided however, the nothing in this section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of chapter 6 (commencing with section 54600) of Division 5 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such

policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Where students are required by a community college district to meet prerequisites under section 58106(b)(2) or (b)(3), a student may object to such requirement on the grounds that the necessary course is not available. The district shall promptly (within 5 working days) determine whether, the required course was available and if not, the district shall waive the prerequisite for that term.

(b) An allegation that a community college district has violated the provisions of subsection (f) of section 55521 or has established a discriminatory prerequisite subject to challenge under subsection (d)(3) of section 58106 shall be considered a complaint of unlawful discrimination and shall be filed, investigated and resolved pursuant to chapter 5 (commencing with section 59300) of Division 10 of this part.

(c) Each community college district shall establish written procedures by which students may challenge any other alleged violation of the provisions of this chapter or of section 58106. Districts shall investigate and attempt to resolve any such complaints. Such complaint procedures may, by action of the governing board, be consolidated with existing student grievance procedures. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under section 55512(c).

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135–11139.5, Government Code; Sections 78211, and 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) Vocational education contract means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of Article 5 (commencing with Section 8090) of Chapter 1, Part 6 of the Education Code.

(b) The California State Plan for Vocational Education means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94–482 and 95–40), Part A, Vocational Education, or any subsequent federal legislation.

(c) Contractor as used in Education Code Section 8092 means any private postsecondary school authorized or approved pursuant to the provisions of Chapter 3 (commencing with Section 94300), and which has been in operation not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this Code.

(d) Eligible costs means all direct and indirect related instructional costs but does not include expenditures for capital outlay (600 category in the California Community Colleges Budget and Accounting Manual).

NOTE: Authority cited: Sections 8092 and 71020, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090), Division 1, Education Code.

HISTORY

1. New Chapter 7 (Sections 55600 through 55631, not consecutive) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Subchapter 1 heading, amendment of Article 1 heading, and repealer and new Section 55600 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55601. Definitions.

NOTE: Authority cited: Sections 71020, 8092, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of subsection (g) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
3. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55602. Occupational Purposes.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55603. Instructional Purpose.

Contractors shall provide vocational, technical, and occupational instruction related to attainment of skills, knowledge, and attitudes so that students may be prepared for:

(a) Gainful employment in the occupational area for which training was provided, or

(b) Occupational upgrading so students will have higher level skills required by new and changing technology and employment practices, or

(c) Enrollment in more advanced training programs.

NOTE: Authority cited: Sections 8092 and 71020, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 55604. Application for Approval.

NOTE: Authority cited: Sections 8092, 71020, 71024, Education Code. Reference: Chapter 1, Article 5 (commencing with Section 8090) of Division 1 of the Education Code.

(c) Nothing in this section shall be construed to impinge upon the policies and procedures governing the participation rights of faculty and students pursuant to sections 53200–53205, and section 51023.7, respectively, of this division.

(d) The governing board of a community college district shall comply substantially with the provisions of this section.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b), (Register 91, No. 23).
2. Editorial correction of printing error in subsection (b) and HISTORY 1. (Register 91, No. 43).

§ 51023.7. Students.

(a) The governing board of a community college district shall adopt policies and procedures that provide students the opportunity to participate effectively in district and college governance. Among other matters, said policies and procedures shall include the following:

(1) Students shall be provided an opportunity to participate in formulation and development of district and college policies and procedures that have or will have a significant effect on students. This right includes the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures.

(2) Except in unforeseeable, emergency situations the governing board shall not take action on a matter having a significant effect on students until it has provided students with an opportunity to participate in the formulation of the policy or procedure or the joint development of recommendations regarding the action.

(3) Governing board procedures shall ensure that at the district and college levels, recommendations and positions developed by students are given every reasonable consideration.

(4) For the purpose of this section, the governing board shall recognize each associated student organization or its equivalent within the district as provided by Education Code Section 76060, as the representative body of the students to offer opinions and to make recommendations to the administration of a college and to the governing board of a district with regard to district and college policies and procedures that have or will have a significant effect on students. The selection of student representatives to serve on college or district committees, task forces, or other governance groups shall be made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district.

(b) For the purposes of this section, district and college policies and procedures that have or will have a "significant effect on students" includes the following:

(1) grading policies;
(2) codes of student conduct;
(3) academic disciplinary policies;
(4) curriculum development;
(5) courses or programs which should be initiated or discontinued;
(6) processes for institutional planning and budget development;
(7) standards and policies regarding student preparation and success;
(8) student services planning and development;
(9) student fees within the authority of the district to adopt; and
(10) any other district and college policy, procedure or related matter that the district governing board determines will have a significant effect on students.

(c) The governing board shall give reasonable consideration to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff.

(d) Nothing in this section shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiations or negotiated agreements between collective bargaining agents and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining agents as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to the regulations on academic senates contained in sections 53200–53205 of chapter IV of this division.

(e) The governing board of a community college district shall comply substantially with policies and procedures adopted in accordance with this section.

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901 (b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 23).
2. Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1. (Register 91, No. 43). (Subchapter 15, section 51950, and chapter 3, section 52000)

§ 51024. Matriculation Services.

The governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under Section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under Section 55512(c);

(c) provide matriculation services to its students in accordance with Sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with Section 55534; and

(e) substantially comply with all other provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210–78218, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of first paragraph and subsection (e) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 51025. Full-time/Part-time Faculty.

(a) Community College districts which have less than 75 percent of their hours of credit instruction taught by full-time instructors, in the prior fiscal year, shall apply the growth revenues received related to increases in credit FTES in accordance with section 58774 of this division and a portion of the program improvement allocation received in accordance with section 58775 of this division, as follows:

(1) Of the growth revenues received related to increases in credit FTES pursuant to section 58774 of this division, the districts shall increase the number of full-time instructors, by September 30 of the succeeding fiscal year, by the product of their base number of full-time faculty multiplied by the percentage change in funded credit FTES, rounded down to the nearest whole number.

(2) Districts which, in the prior fiscal year, had 67 percent or greater, but less than 75 percent of their hours of credit instruction taught by full-time instructors shall apply up to 33 percent of their program improvement allocation pursuant to subdivision (b) of section 58775 of this division, as necessary to reach the 75 percent standard pursuant to paragraph (4).

(3) Districts which, in the prior fiscal year, had less than 67 percent of their hours of credit instruction taught by full-time instructors shall apply up to 40 percent of their program improvement allocation pursuant to subdivision (b) of section 58775 of this division, as necessary to reach the 75 percent standard pursuant to paragraph (4).

(4) Of the program improvement funds identified in paragraph (2) or (3), as appropriate, the district shall increase the number of full-time instructors, by September of the succeeding fiscal year, by the quotient of

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance that would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if the class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of students taking out-of-state field trips or excursions shall sign a statement waiving such claims.

(e) Nothing in this section shall be construed to require the governing board to pay the costs of meals, lodging, and other incidental expenses for students participating in field trips and excursions. The costs of meals and lodging are incidental in nature and shall not be applied in determining the funds necessary for a student to participate in a field trip or excursion.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in section heading and subsection (e) (Register 91, No. 43).

§ 55451. Provision for Medical or Hospital Service for Pupils; Duration of Section.

The governing board of any community college district conducting excursions and field trips pursuant to this article shall provide, or make available, medical or hospital service, or both, through nonprofit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from authorized insurer, for students of the district injured while participating in the excursions and field trips under the jurisdiction of, or sponsored or controlled by, the district or the authorities of any college of the district. The cost of the insurance or membership shall be paid from the funds of the district.

The insurance may be purchased from, or the membership may be taken in, only companies or corporations that are authorized to do business in this state.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 6. Matriculation Programs

Article 1. Scope and Definitions

§ 55500. Scope and Implementation.

(a) This chapter implements and should be read in conjunction with the provisions of the Seymour–Campbell Matriculation Act of 1986, c. 1467, Stats. 1986, codified as Education Code Sections 78210, et seq. The purpose of this chapter is to further equality of educational opportunity and success for all students in the California Community Colleges.

(b) The requirements of this chapter apply only to districts receiving funds pursuant to Education Code Section 78216 for the period of time during which such funds are received. The Chancellor shall, in consultation with districts and other interested parties, adopt a schedule for implementing the provisions of this chapter as expeditiously as possible within the constraints of available funding. The schedule shall be coordinated with the implementation and funding of the systemwide management information system and the accountability mechanisms established pursuant to Education Code Section 71020.5.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 71020.5 and 78210–78218, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (a) and repealer of subsection (c) filed 4–3–92; operative 5–4–92 (Register 92, No. 17).

§ 55502. Definitions.

For purposes of this chapter, the following definitions shall apply:

(a) "Matriculation" means a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational goal through the college's established programs, policies, and requirements. This agreement is to be implemented by means of the student's individual educational plan developed pursuant to section 55525.

(b) "Assessment" means the process of gathering information about individual students to facilitate student success. Assessment shall include, but is not limited to, information regarding the student's study skills, English language proficiency, computational skills, aptitudes, goals, learning skills, career aspirations, academic performance, and need for special services. Assessment involves the collection of such information at any time before or after enrollment, except that the process of assigning a grade by an instructor shall not be considered part of the assessment process. Once a grade has been assigned and recorded in a student's transcript, it can be used in the assessment process.

(c) "Assessment instruments, methods or procedures" means one or more assessment instruments, assessment methods, or assessment procedures, or any combination thereof. These include, but are not limited to, interviews, standardized tests, holistic scoring processes, attitude surveys, vocational or career aptitude and interest inventories, high school or college transcripts, specialized certificates or licenses, educational histories and other measures of performance. The term "assessment instruments, methods or procedures" also includes assessment procedures such as the identification of test scores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment sessions are conducted, manner in which assessment results are made available and the length of time required before such results are available.

(d) "Pre-collegiate basic skills courses" are those courses in reading, writing, computation, learning skills, study skills, and English as a Second Language which are designated by the community college district as non-degree credit courses pursuant to section 55002(b) of this part.

(e) "Disproportionate impact" occurs when the percentage of persons from a particular racial, ethnic, gender, age or disability group who are directed to a particular service or placement based on an assessment instrument, method or procedure is significantly different than the representation of that group in the population of persons being assessed and that discrepancy is not justified by empirical evidence demonstrating that the assessment instrument, method or procedure is a valid and reliable predictor of performance in the relevant educational setting.

(f) "Exemption" means waiving or deferring a student's participation in orientation, assessment, counseling or advisement required pursuant to subsections (b),(c), and (f) of section 55520.

(g) "matriculation services" are those services listed in section 55520.

(h) "matriculation practices: means one or more instruments, methods or procedures, or any combination thereof, used in providing any of the matriculation services listed in section 55520.

(i) "student" means a person enrolled in at lease one credit course.

(j) "orientation" is a process which acquaints students and potential students with college programs, service, facilities and grounds, academic expectations, and institutional procedures.

(k) "student follow-up" is the process of monitoring a student's progress toward his or her educational goals and providing the student with appropriate advice based on the results of such monitoring.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78212 and 78213, Education Code.

HISTORY

1. Amendment of subsection (a) and (b) and new subsections (g), (h), (i), (j) and (k) filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Article 2. Planning and Administration

§ 55510. Matriculation Plans.

(a) Each community college district shall adopt a matriculation plan describing the services to be provided to its students. The plan shall include, but not be limited to, a description of the methods by which required services will be delivered, the district's budget for matriculation, plans for faculty and staff development, computerized information services and institutional research and evaluation necessary to implement this chapter, criteria for exempting students from participation in the matriculation process, procedures for establishing and validating prerequisites pursuant to section 58106, and, in districts with more than one college, arrangements for coordination by the district of the matriculation plans of its various colleges.

(b) The plan shall be developed in consultation with representatives of faculty, students, and staff with appropriate expertise.

(c) Such plans shall conform to the requirements of this chapter and shall be submitted to the Chancellor for review an approval. Plans submitted prior to the effective date of this section need not be revised or resubmitted, if the Chancellor finds that they meet the requirements of this Chapter. Regardless of when plans are initially submitted, the Chancellor may require periodic updates of such plans.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55512. Evaluation and Audits.

(a) Each community college district shall establish a program of institutional research for ongoing evaluation of its matriculation process to ensure compliance with the requirements of this chapter.

As part of this evaluation, all assessment instruments, methods or procedures shall be evaluated to ensure that they minimize or eliminate cultural or linguistic bias and are being used in a valid manner. Based on this evaluation, districts shall determine whether any assessment instrument, method or procedure has a disproportionate impact on particular groups of students described in terms of ethnicity, gender, age or disability, as defined by the Chancellor. When there is a disproportionate impact on any such group of students, the district shall, in consultation with the Chancellor, develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact. The evaluation shall include, but not be limited to, an analysis of the degree to which the matriculation program:

(1) impacts on particular courses, programs, and facilities;

(2) helps students to define their educational goals;

(3) promotes student success, as evidenced by outcome and retention data such as student persistence, goal attainment, skill improvement, and grades;

(4) assists the district in the assessment of students' educational needs;

(5) matches district resources with students' educational needs; and

(6) provides students with the support services described in section 545520(g).

(b) Each district shall also, as part of its annual financial audit, provide for a review of the revenue and expenditures of the matriculation program.

(c) The Chancellor shall establish a system for evaluation of the matriculation program on a statewide basis, including procedures for monitoring compliance with the requirements of this chapter.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: section 78214 and 78217, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55514. Data Collection.

Each community college district shall submit an annual report describing the district's efforts to implement its matriculation plan and expenditures made for that purpose. In this report, or through the established management information system or otherwise, the data to be collected for evaluation purposes pursuant to Education Code section 78214 and section 55512 of this part. Such data shall specifically include, but is not limited to, the information necessary to permit the Chancellor to determine the following:

(a) the proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who are placed in pre–collegiate, associate–degree applicable, or transfer level courses in reading, writing, computation or English as a Second Language.

(b) the proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who enter and complete pre–collegiate basic skills courses.

(c) The proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, completing pre–collegiate basic skills courses who subsequently enter and complete courses applicable to the associate degree;

(d) outcome and retention data, as described in section 55512(a), indicating the effectiveness of matriculation;

(e) the basis on which the use of particular assessment instruments, methods or procedures was validated by a district;

(f) the numbers of students exempted, pursuant to section 55532, from participation in the district's matriculation program, by category of exemption;

(g) the number of students filing complaints pursuant to 55534 and the bases of those complaints;

(h) the particular matriculation services, as listed in section 55520, which each student received; and

(i) any other matter the Chancellor, after consultation with community college districts, deems necessary for the effective evaluation of matriculation programs.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78214, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55516. Training and Staff Development.

Each community college district shall develop and implement a program for providing all faculty and staff with training appropriate to their needs on the provision of matriculation services, including but not limited to, the proper purpose, design, evaluation, and use of assessment instruments, methods or procedures, as well as their limitations and possible misuse.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55518. Funding.

(a) The Chancellor shall adopt a funding formula, consistent with the requirements of this section, for allocating matriculation funds to community college districts complying with the requirements of this chapter.(b) Each dollar of state matriculation funding shall be matched by three dollars of other district resources devoted to the matriculation program.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 3. Matriculation Services

§ 55520. Required Services.

At a minimum, each community college district shall provide students, except as exempted pursuant to section 55532, with all of the following matriculation services:

(a) the processing of applications for admission;

(b) orientation and pre–orientation services designed to provide nonexempt students and potential students, on a timely basis, information concerning college procedures and course scheduling, academic expectations, financial assistance, and any other matters the college or district finds appropriate;

(c) assessment for all nonexempt students pursuant to section 55524;

(d) counseling or advisement for nonexempt students pursuant to section 55523;

(e) assistance in developing a student educational plan pursuant to section 55525, which identifies the student's educational objectives and the courses, services, and programs to be used to achieve them;

(f) post enrollment evaluation, pursuant to section 55526, of each student's progress; and

(g) referral of students to:

(1) support services which may be available, including, but not limited to, counseling, financial aid, health services, campus employment placement services, Extended Opportunity Programs and Services, campus child care services, tutorial services, and Disabled Students Programs and Services; and

(2) specialized curriculum offerings including but not limited to, pre–collegiate basic skills courses and programs in English as a Second Language.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55521. Prohibited Practices.

(a) In implementing matriculation services, community college districts shall not, except as provided in subdivision (b), do any of the following:

(1) use an assessment instrument which has not been approved by the Chancellor pursuant to Section 55524, except that the Chancellor may permit limited field–testing, under specified conditions, of new or alternative assessment instruments, where such instruments are not used for placement and are evaluated only in order to determine whether they should be added to the list of approved instruments;

(2) use any assessment instrument in a manner or for a purpose other than that for which it was developed or has been otherwise validated;

(3) use any single assessment instrument, method or procedure, by itself, for placement, required referral to appropriate services, or subsequent evaluation of any student; provided however that, in the case of assessment instruments, the use of two or more highly correlated instruments does not satisfy the requirement for use of multiple measures;

(4) use any assessment instrument, method or procedure to exclude any person from admission to a community college;

(5) use any assessment instrument, method or procedure for mandatory placement of a student in or exclusion from any particular course or educational program, except that districts may establish appropriate prerequisites pursuant to Sections 55002 and 58106 of Division 9 of this Part; or

(6) use any matriculation practice which has the purpose or effect of subjecting any person to unlawful discrimination prohibited by Chapter 5 (commencing with Section 59300) of Division 10 of this Part.

(b) Notwithstanding the provisions of subdivisions (a)(1) and (2), assessment instruments approved by the Secretary of the United States Department of Education may be used to determine "ability to benefit" in the process of establishing a student's eligibility for federal financial aid pursuant to subdivision (d) of Section 1091 of Title 20 of the United States Code.

NOTE: Authority cited: Section 11138, Government Code; and Sections 66700 and 70901, Education Code. Reference: Section 11135, Government Code; and Sections 72011, 78211 and 78213, Education Code.

HISTORY

1. Amendment of subsections (d), (e) and (f) filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (a) and redesignating following subsections (1)–(6), adoption of subsection (b) and amendment of NOTE filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 55522. Special Accommodations.

Matriculation services for ethnic and language minority students and students with disabilities, shall be appropriate to their needs, and community college districts shall, where necessary, make modifications in the matriculation process or use alternative instruments, methods or procedures to accommodate the needs of such students. Districts may require students requesting such accommodations to provide proof of need. Extended Opportunity Programs and Services (EOPS) and Disabled Students Programs and Services (DSPS) are authorized, consistent with the provisions of chapter 1 (commencing with section 56000) and chapter 2.5 (commencing with section 56200) of division 7 of this part, to provide specialized matriculation services and modified or alternative matriculation services to their respective student populations. Notwithstanding this authorization, participation in the EOPS and DSPS programs is voluntary and no student may be denied necessary accommodations in the assessment process because he or she chooses not to use specialized matriculation services provided by these programs. Modified or alternative matriculation services for limited or non–English–speaking students may be provided in English as a Second Language programs.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700, 70901, and 84500.1, Education Code. Reference: Section 11135, Government Code; Sections 72011, 78211, 78213, and 84500.1, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55523. Counseling and Advisement.

(a) If not already required to do so by the minimum standards for counseling services set forth in section 51018 of division 1 of this Part, each community college district shall do all of the following:

(1) make reasonable efforts to ensure that all nonexempt students who are on probation participate in counseling as provided in section 55759 of this Part;

(2) make reasonable efforts to ensure that all nonexempt students who have not declared a specific educational goal participate in counseling to assist them in the process of selecting a specified educational goal pursuant to section 55525;

(3) make reasonable efforts to ensure that all nonexempt students who are enrolled in pre–collegiate basic skills courses participate in counseling or advisement; and

(4) make available to all students, as defined in section 55502(i), advisement or counseling on general academic requirements and the selection of specific courses by counselors or appropriately trained instructor/advisors, and/or other appropriately trained staff working in consultation with counselors.

(b) Counseling by appropriately trained counselors or advisement by appropriately trained staff may also be made available in any other area the district deems appropriate, including but not limited to, the interpretation of assessment results and the development of a student's educational plan as required by section 55525.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55524. Assessment.

The Chancellor shall establish and update, at least annually, a list of approved assessment instruments and guidelines for their use by community college districts. These guidelines shall identify modifications of an assessment instrument or the procedures for its use which may be made in order to provide special accommodations required by section 55522 without separate approval by the Chancellor. Such guidelines shall also describe the procedure by which districts may seek to have assessment instruments approved and added to the list. The Chancellor shall ensure that all assessment instruments included on the list minimize or eliminate cultural or linguistic bias, are normed on the appropriate populations, yield valid and reliable information, identify the learning needs of students, make efficient use of student and staff time, and are otherwise consistent with the educational and psychological testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55525. Student Educational Plan.

(a) Each community college district shall establish a process for assisting students to select a specific educational goal within a reasonable time after admission as required by section 55530 (d). This shall include, but not be limited to, the provision of counseling as required by section 55523(a)(2).

(b) Once a student has selected a specific educational goal, the district shall afford the student the opportunity to develop a student educational plan describing the responsibilities of the student, the requirements he or she must meet, and the courses, programs, and services required to achieve the stated goal.

(c) The student educational plan developed pursuant to subsection (b) shall be recorded in written or electronic form. The plan, and its implementation shall be reviewed as necessary to ensure that it continues to accurately reflect the needs and goals of the student.

(d) If a student believes the district has failed to make good faith efforts to develop a plan, has failed to provide services specified in the student educational plan, or has otherwise violated the requirements of this section, the student may file a complaint pursuant to section 55534 (c).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55526. Student Follow–up.

Each community college district shall establish a student follow–up process to assist the student in achieving his/her educational goal. The follow–up system shall ensure that the academic progress of each student is regularly monitored to detect early signs of academic difficulty and students shall be provided with advice or referral to specialized services or curriculum offerings where necessary. Districts shall also identify and refer to counseling or advisement, as appropriate pursuant to section 55523(a), any students who have not declared a specific educational goal as required by section 55530, who are enrolled in pre–collegiate basic skills courses, or who have been placed on probation.

NOTE: Authority cited: Sections 66700 and 70901, Educational Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 4. Appeals, Waivers, Student Rights and Responsibilities

§ 55530. Student Rights and Responsibilities.

(a) Nothing in this chapter shall be construed to interfere with the right of a student, if admitted to a community college in accord with district admission policies adopted pursuant to Education Code Sections 76000, et seq., from enrolling in any course for which he or she can meet necessary and valid prerequisites, if any, which have been established pursuant to the requirements of Section 58106 of Division 9 of this Part.

(b) Community college districts shall take steps to ensure that information, in written form, is available to all students during or prior to enrollment (e.g., during orientation) and is included in class schedules, catalogs or other appropriate publications, describing their rights and responsibilities under this chapter.

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to avoid additional testing by submitting scores on recently taken tests which correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission, declare a specific educational goal within a reasonable period after admission, participate in counseling or advisement pursuant to Section 55523(a)(1), (2) and (3), diligently attend class and complete assigned coursework, and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of Chapter 9 (commencing with Section 55750) of Division 6 of this Part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree–applicable credit coursework, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to Section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to Section 55525. If a student fails to fulfill the responsibilities listed in this subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring

his/her specific educational goal, or fails to abide by the terms of his/her tudent educational plan, the district may, subject to the requirements of this chapter, suspend or terminate the provision of services authorized in Section 55520; provided however, that nothing in this section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(c) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of Chapter 6 (commencing with Section 54600) of Division 5 of this Part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 76000, 76001, 76001.5 and 78212, Education Code.

HISTORY

1. Amendment filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (b) filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation rocess.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Where students are required by a community college district to meet prerequisites under section 58106(b)(2) or (b)(3), a student may object to such requirement on the grounds that the necessary course is not available. The district shall promptly (within 5 working days) determine whether, the required course was available and if not, the district shall waive the prerequisite for that term.

(b) An allegation that a community college district has violated the provisions of subsection (f) of section 55521 or has established a discriminatory prerequisite subject to challenge under subsection (d)(3) of section 58106 shall be considered a complaint of unlawful discrimination and shall be filed, investigated and resolved pursuant to chapter 5 (commencing with section 59300) of Division 10 of this part.

(c) Each community college district shall establish written procedures by which students may challenge any other alleged violation of the provisions of this chapter or of section 58106. Districts shall investigate and attempt to resolve any such complaints. Such complaint procedures may, by action of the governing board, be consolidated with existing student grievance procedures. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under section 55512(c).

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135-11139.5, Government Code; Sections 78211, and 78213, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) Vocational education contract means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled

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No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance that would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if the class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of students taking out-of-state field trips or excursions shall sign a statement waiving such claims.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in section heading and subsection (e) (Register 91, No. 43).
3. Amendment of subsection (d) and repealer of subsection (e) filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 55451. Provision for Medical or Hospital Service for Students.

The governing board of any community college district conducting excursions and field trips pursuant to these regulations shall provide, or make available, medical or hospital service, or both, through nonprofit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from an authorized insurer, for students of the district injured while participating in the excursions and field trips under the jurisdiction of, or sponsored or controlled by, the district or the authorities of any college of the district. The cost of the insurance or membership may be paid from the funds of the district, or by the insured student, or his or her parent or guardian.

The insurance may be purchased from, or the membership may be taken in, only companies or corporations that are authorized to do business in this state.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of section heading and text filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

Subchapter 6. Matriculation Programs

Article 1. Scope and Definitions

§ 55500. Scope and Implementation.

(a) This chapter implements and should be read in conjunction with the provisions of the Seymour–Campbell Matriculation Act of 1986, c. 1467, Stats. 1986, codified as Education Code Sections 78210, et seq. The purpose of this chapter is to further equality of educational opportunity and success for all students in the California Community Colleges.

(b) The requirements of this chapter apply only to districts receiving funds pursuant to Education Code Section 78216 for the period of time during which such funds are received. The Chancellor shall, in consultation with districts and other interested parties, adopt a schedule for implementing the provisions of this chapter as expeditiously as possible within the constraints of available funding. The schedule shall be coordinated with the implementation and funding of the systemwide management information system and the accountability mechanisms established pursuant to Education Code Section 71020.5.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 71020.5 and 78210–78218, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (a) and repealer of subsection (c) filed 4-3-92; operative 5-4-92 (Register 92, No. 17).

§ 55502. Definitions.

For purposes of this chapter, the following definitions shall apply:

(a) "Matriculation" means a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational goal through the college's established programs, policies, and requirements. This agreement is to be implemented by means of the student's individual educational plan developed pursuant to section 55525.

(b) "Assessment" means the process of gathering information about individual students to facilitate student success. Assessment shall include, but is not limited to, information regarding the student's study skills, English language proficiency, computational skills, aptitudes, goals, learning skills, career aspirations, academic performance, and need for special services. Assessment involves the collection of such information at any time before or after enrollment, except that the process of assigning a grade by an instructor shall not be considered part of the assessment process. Once a grade has been assigned and recorded in a student's transcript, it can be used in the assessment process.

(c) "Assessment instruments, methods or procedures" means one or more assessment instruments, assessment methods, or assessment procedures, or any combination thereof. These include, but are not limited to, interviews, standardized tests, holistic scoring processes, attitude surveys, vocational or career aptitude and interest inventories, high school or college transcripts, specialized certificates or licenses, educational histories and other measures of performance. The term "assessment instruments, methods or procedures" also includes assessment procedures such as the identification of test scores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment sessions are conducted, manner in which assessment results are made available and the length of time required before such results are available.

(d) "Pre-collegiate basic skills courses" are those courses in reading, writing, computation, learning skills, study skills, and English as a Second Language which are designated by the community college district as non-degree credit courses pursuant to section 55002(b) of this part.

(e) "Disproportionate impact" occurs when the percentage of persons from a particular racial, ethnic, gender, age or disability group who are directed to a particular service or placement based on an assessment instrument, method or procedure is significantly different than the representation of that group in the population of persons being assessed and that discrepancy is not justified by empirical evidence demonstrating that the assessment instrument, method or procedure is a valid and reliable predictor of performance in the relevant educational setting.

(f) "Exemption" means waiving or deferring a student's participation in orientation, assessment, counseling or advisement required pursuant to subsections (b),(c), and (f) of section 55520.

(g) "matriculation services" are those services listed in section 55520.

(h) "matriculation practices: means one or more instruments, methods or procedures, or any combination thereof, used in providing any of the matriculation services listed in section 55520.

(i) "student" means a person enrolled in at lease one credit course.

(j) "orientation" is a process which acquaints students and potential students with college programs, service, facilities and grounds, academic expectations, and institutional procedures.

(k) "student follow-up" is the process of monitoring a student's progress toward his or her educational goals and providing the student with appropriate advice based on the results of such monitoring.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78212 and 78213, Education Code.

HISTORY

1. Amendment of subsection (a) and (b) and new subsections (g), (h), (i), (j) and (k) filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Article 2. Planning and Administration

§ 55510. Matriculation Plans.

(a) Each community college district shall adopt a matriculation plan describing the services to be provided to its students. The plan shall include, but not be limited to:

(1) a description of the methods by which required services will be delivered;

(2) the district's budget for matriculation;

(3) plans for faculty and staff development;

(4) computerized information services and institutional research and evaluation necessary to implement this Chapter;

(5) criteria for exempting students from participation in the matriculation process;

(6) procedures for establishing and validating prerequisites pursuant to Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of this Division; and

(7) in districts with more than one college, arrangements for coordination by the district of the matriculation plans of its various colleges.

(b) The plan shall be developed through consultation with representatives of the academic senate, students, and staff with appropriate expertise, pursuant to Section 51023 et seq.

(c) Such plans shall conform to the requirements of this Chapter and shall be submitted to the Chancellor for review and approval. Plans submitted prior to the effective date of this Section need not be revised or resubmitted if the Chancellor finds that they meet the requirements of this Chapter. Regardless of when plans are initially submitted, the Chancellor may require periodic updates of such plans.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55512. Evaluation and Audits.

(a) Each community college district shall establish a program of institutional research for ongoing evaluation of its matriculation process to ensure compliance with the requirements of this chapter.

As part of this evaluation, all assessment instruments, methods or procedures shall be evaluated to ensure that they minimize or eliminate cultural or linguistic bias and are being used in a valid manner. Based on this evaluation, districts shall determine whether any assessment instrument, method or procedure has a disproportionate impact on particular groups of students described in terms of ethnicity, gender, age or disability, as defined by the Chancellor. When there is a disproportionate impact on any such group of students, the district shall, in consultation with the Chancellor, develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact. The evaluation shall include, but not be limited to, an analysis of the degree to which the matriculation program:

(1) impacts on particular courses, programs, and facilities;

(2) helps students to define their educational goals;

(3) promotes student success, as evidenced by outcome and retention data such as student persistence, goal attainment, skill improvement, and grades;

(4) assists the district in the assessment of students' educational needs;

(5) matches district resources with students' educational needs; and

(6) provides students with the support services described in section 55520(g).

(b) Each district shall also, as part of its annual financial audit, provide for a review of the revenue and expenditures of the matriculation program.

(c) The Chancellor shall establish a system for evaluation of the matriculation program on a statewide basis, including procedures for monitoring compliance with the requirements of this chapter.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: section 78214 and 78217, Education Code.

HISTORY

1. Amendment filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55514. Data Collection.

Each community college district shall submit an annual report describing the district's efforts to implement its matriculation plan and expenditures made for that purpose. In this report, or through the established management information system or otherwise, the data to be collected for evaluation purposes pursuant to Education Code section 78214 and section 55512 of this part. Such data shall specifically include, but is not limited to, the information necessary to permit the Chancellor to determine the following:

(a) the proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who are placed in pre-collegiate, associate-degree applicable, or transfer level courses in reading, writing, computation or English as a Second Language.

(b) the proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who enter and complete pre-collegiate basic skills courses.

(c) The proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, completing pre-collegiate basic skills courses who subsequently enter and complete courses applicable to the associate degree;

(d) outcome and retention data, as described in section 55512(a), indicating the effectiveness of matriculation;

(e) the basis on which the use of particular assessment instruments, methods or procedures was validated by a district;

(f) the numbers of students exempted, pursuant to section 55532, from participation in the district's matriculation program, by category of exemption;

(g) the number of students filing complaints pursuant to 55534 and the bases of those complaints;

(h) the particular matriculation services, as listed in section 55520, which each student received; and

(i) any other matter the Chancellor, after consultation with community college districts, deems necessary for the effective evaluation of matriculation programs.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78214, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55516. Training and Staff Development.

Each community college district shall develop and implement a program for providing all faculty and staff with training appropriate to their needs on the provision of matriculation services, including but not limited to, the proper purpose, design, evaluation, and use of assessment instruments, methods or procedures, as well as their limitations and possible misuse.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55518. Funding.

(a) The Chancellor shall adopt a funding formula, consistent with the requirements of this section, for allocating matriculation funds to community college districts complying with the requirements of this chapter.(b) Each dollar of state matriculation funding shall be matched by three dollars of other district resources devoted to the matriculation program.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 3. Matriculation Services

§ 55520. Required Services.

At a minimum, each community college district shall provide students, except as exempted pursuant to section 55532, with all of the following matriculation services:

(a) the processing of applications for admission;

(b) orientation and pre–orientation services designed to provide nonexempt students and potential students, on a timely basis, information concerning college procedures and course scheduling, academic expectations, financial assistance, and any other matters the college or district finds appropriate;

(c) assessment for all nonexempt students pursuant to section 55524;

(d) counseling or advisement for nonexempt students pursuant to section 55523;

(e) assistance in developing a student educational plan pursuant to section 55525, which identifies the student's educational objectives and the courses, services, and programs to be used to achieve them;

(f) post enrollment evaluation, pursuant to section 55526, of each student's progress; and

(g) referral of students to:

(1) support services which may be available, including, but not limited to, counseling, financial aid, health services, campus employment placement services, Extended Opportunity Programs and Services, campus child care services, tutorial services, and Disabled Students Programs and Services; and

(2) specialized curriculum offerings including but not limited to, precollegiate basic skills courses and programs in English as a Second Language.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55521. Prohibited Practices.

(a) In implementing matriculation services, community college districts shall not, except as provided in subdivision (b), do any of the following:

(1) use an assessment instrument which has not been approved by the Chancellor pursuant to Section 55524, except that the Chancellor may permit limited field–testing, under specified conditions, of new or alternative assessment instruments, where such instruments are not used for placement and are evaluated only in order to determine whether they should be added to the list of approved instruments;

(2) use any assessment instrument in a manner or for a purpose other than that for which it was developed or has been otherwise validated;

(3) use any single assessment instrument, method or procedure, by itself, for placement, required referral to appropriate services, or subsequent evaluation of any student; provided however that, in the case of assessment instruments, the use of two or more highly correlated instruments does not satisfy the requirement for use of multiple measures;

(4) use any assessment instrument, method or procedure to exclude any person from admission to a community college;

(5) use any assessment instrument, method or procedure for mandatory placement of a student in or exclusion from any particular course or educational program, except that districts may establish appropriate prerequisites pursuant to Sections 55002 and 58106 of Division 9 of this Part; or

(6) use any matriculation practice which has the purpose or effect of subjecting any person to unlawful discrimination prohibited by Chapter 5 (commencing with Section 59300) of Division 10 of this Part.

(b) Notwithstanding the provisions of subdivisions (a)(1) and (2), assessment instruments approved by the Secretary of the United States Department of Education may be used to determine "ability to benefit" in the process of establishing a student's eligibility for federal financial aid pursuant to subdivision (d) of Section 1091 of Title 20 of the United States Code.

NOTE: Authority cited: Section 11138, Government Code; and Sections 66700 and 70901, Education Code. Reference: Section 11135, Government Code; and Sections 72011, 78211 and 78213, Education Code.

HISTORY

1. Amendment of subsections (d), (e) and (f) filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (a) and redesignating following subsections (1)–(6), adoption of subsection (b) and amendment of NOTE filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 55522. Special Accommodations.

Matriculation services for ethnic and language minority students and students with disabilities, shall be appropriate to their needs, and community college districts shall, where necessary, make modifications in the matriculation process or use alternative instruments, methods or procedures to accommodate the needs of such students. Districts may require students requesting such accommodations to provide proof of need. Extended Opportunity Programs and Services (EOPS) and Disabled Students Programs and Services (DSPS) are authorized, consistent with the provisions of chapter 1 (commencing with section 56000) and chapter 2.5

(commencing with section 56200) of division 7 of this part, to provide specialized matriculation services and modified or alternative matriculation services to their respective student populations. Notwithstanding this authorization, participation in the EOPS and DSPS programs is voluntary and no student may be denied necessary accommodations in the assessment process because he or she chooses not to use specialized matriculation services provided by these programs. Modified or alternative matriculation services for limited or non-English-speaking students may be provided in English as a Second Language programs.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700, 70901, and 84500.1, Education Code. Reference: Section 11135, Government Code; Sections 72011, 78211, 78213, and 84500.1, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55523. Counseling and Advisement.

(a) If not already required to do so by the minimum standards for counseling services set forth in section 51018 of division 1 of this Part, each community college district shall do all of the following:

(1) make reasonable efforts to ensure that all nonexempt students who are on probation participate in counseling as provided in section 55759 of this Part;

(2) make reasonable efforts to ensure that all nonexempt students who have not declared a specific educational goal participate in counseling to assist them in the process of selecting a specified educational goal pursuant to section 55525;

(3) make reasonable efforts to ensure that all nonexempt students who are enrolled in pre-collegiate basic skills courses participate in counseling or advisement; and

(4) make available to all students, as defined in section 55502(i), advisement or counseling on general academic requirements and the selection of specific courses by counselors or appropriately trained instructor/advisors, and/or other appropriately trained staff working in consultation with counselors.

(b) Counseling by appropriately trained counselors or advisement by appropriately trained staff may also be made available in any other area the district deems appropriate, including but not limited to, the interpretation of assessment results and the development of a student's educational plan as required by section 55525.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55524. Assessment.

The Chancellor shall establish and update, at least annually, a list of approved assessment instruments and guidelines for their use by community college districts. These guidelines shall identify modifications of an assessment instrument or the procedures for its use which may be made in order to provide special accommodations required by section 55522 without separate approval by the Chancellor. Such guidelines shall also describe the procedure by which districts may seek to have assessment instruments approved and added to the list. The Chancellor shall ensure that all assessment instruments included on the list minimize or eliminate cultural or linguistic bias, are normed on the appropriate populations, yield valid and reliable information, identify the learning needs of students, make efficient use of student and staff time, and are otherwise consistent with the educational and psychological testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78213, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55525. Student Educational Plan.

(a) Each community college district shall establish a process for assisting students to select a specific educational goal within a reasonable time after admission as required by section 55530 (d). This shall include, but not be limited to, the provision of counseling as required by section 55523(a)(2).

(b) Once a student has selected a specific educational goal, the district shall afford the student the opportunity to develop a student educational plan describing the responsibilities of the student, the requirements he or she must meet, and the courses, programs, and services required to achieve the stated goal.

(c) The student educational plan developed pursuant to subsection (b) shall be recorded in written or electronic form. The plan, and its implementation shall be reviewed as necessary to ensure that it continues to accurately reflect the needs and goals of the student.

(d) If a student believes the district has failed to make good faith efforts to develop a plan, has failed to provide services specified in the student educational plan, or has otherwise violated the requirements of this section, the student may file a complaint pursuant to section 55534 (c).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55526. Student Follow-up.

Each community college district shall establish a student follow-up process to assist the student in achieving his/her educational goal. The follow-up system shall ensure that the academic progress of each student is regularly monitored to detect early signs of academic difficulty and students shall be provided with advice or referral to specialized services or curriculum offerings where necessary. Districts shall also identify and refer to counseling or advisement, as appropriate pursuant to section 55523(a), any students who have not declared a specific educational goal as required by section 55530, who are enrolled in pre-collegiate basic skills courses, or who have been placed on probation.

NOTE: Authority cited: Sections 66700 and 70901, Educational Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 4. Appeals, Waivers, Student Rights and Responsibilities

§ 55530. Student Rights and Responsibilities.

(a) Nothing in this Subchapter shall be construed to interfere with the right of a student admitted to a community college in accord with district admission policies adopted pursuant to Education Code Section 76000, et seq. to enroll in any course for which he or she can meet necessary and appropriate prerequisites, if any, which have been established pursuant to the requirements of Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of this Division.

(b) Community college districts shall take steps to ensure that information is available in written form to all students during or prior to enrollment (e.g., during orientation) and is included in class schedules, catalogs or other appropriate publications, describing their rights and responsibilities under this Chapter.

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to

avoid additional testing by submitting scores on recently taken tests that correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission; declare a specific educational goal within a reasonable period after admission; participate in counseling or advisement pursuant to Section 55523(a)(1), (2), and (3); diligently attend class and complete assigned coursework; and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of Chapter 9 (commencing with Section 55750) of Division 6 of this Part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this Subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree-applicable credit course work, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to Section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to Section 55525. If a student fails to fulfill the responsibilities listed in this Subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his or her specific educational goal, or fails to abide by the terms of his or her student educational plan, the district may, subject to the requirements of this Chapter, suspend or terminate the provision of services authorized in Section 55520, provided however, that nothing in this Section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of Chapter 6 (commencing with Section 54600) of Division 5 of this Part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 76000, 76001, 76001.5 and 78212, Education Code.

HISTORY

1. Amendment filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (b) filed 4-3-92; operative 5-4-92 (Register 92, No. 15).
3. Amendment of subsections (a), (b) and (d) filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Each community college district shall establish written procedures by which students may challenge any alleged violation of the provisions of this Subchapter. Districts shall investigate and attempt to resolve any such complaints in a timely manner. Such complaint procedures may be consolidated with existing student grievance procedures by action of the governing board. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under Section 55512(c).

(b) When a challenge contains an allegation that a community college district has violated the provisions of Subsection (f) of Section 55521, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135-11139.5, Government Code; Sections 78211 and 78213, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) "Vocational education contract" means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) "The California State Plan for Vocational Education" means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94-482 and 95-40), part A, Vocational Education, or any subsequent federal legislation.

(c) "Contractor" as used in section 55602 means any private postsecondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300), and which has been in operation not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this Code.

(d) "Eligible costs" means all direct and indirect related instructional costs but does not include expenditures for capital outlay (6000 category in the California Community Colleges Budget and Accounting Manual).

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No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance that would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if the class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of students taking out-of-state field trips or excursions shall sign a statement waiving such claims.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of sections submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Editorial correction of printing error in section heading and subsection (e) (Register 91, No. 43).
3. Amendment of subsection (d) and repealer of subsection (e) filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 55451. Provision for Medical or Hospital Service for Students.

The governing board of any community college district conducting excursions and field trips pursuant to these regulations shall provide, or make available, medical or hospital service, or both, through nonprofit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from an authorized insurer, for students of the district injured while participating in the excursions and field trips under the jurisdiction of, or sponsored or controlled by, the district or the authorities of any college of the district. The cost of the insurance or membership may be paid from the funds of the district, or by the insured student, or his or her parent or guardian.

The insurance may be purchased from, or the membership may be taken in, only companies or corporations that are authorized to do business in this state.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of section heading and text filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

Subchapter 6. Matriculation Programs

Article 1. Scope and Definitions

§ 55500. Scope and Implementation.

(a) This chapter implements and should be read in conjunction with the provisions of the Seymour–Campbell Matriculation Act of 1986, c. 1467, Stats. 1986, codified as Education Code Sections 78210, et seq. The purpose of this chapter is to further equality of educational opportunity and success for all students in the California Community Colleges.

(b) The requirements of this chapter apply only to districts receiving funds pursuant to Education Code Section 78216 for the period of time during which such funds are received. The Chancellor shall, in consultation with districts and other interested parties, adopt a schedule for implementing the provisions of this chapter as expeditiously as possible within the constraints of available funding. The schedule shall be coordinated with the implementation and funding of the systemwide management information system and the accountability mechanisms established pursuant to Education Code Section 71020.5.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 71020.5 and 78210–78218, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (a) and repealer of subsection (c) filed 4–3–92; operative 5–4–92 (Register 92, No. 17).

§ 55502. Definitions.

For purposes of this Chapter, the following definitions shall apply:

(a) "Matriculation" means a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student's educational goal through the college's established programs, policies, and requirements. This agreement is to be implemented by means of the student's individual educational plan developed pursuant to Section 55525.

(b) "Assessment" means the process of gathering information about individual students to facilitate student success. Assessment shall include, but is not limited to, information regarding the student's study skills, English language proficiency, computational skills, aptitudes, goals, learning skills, career aspirations, academic performance, and need for special services. Assessment involves the collection of such information at any time before or after enrollment, except that the process of assigning a grade by an instructor shall not be considered part of the assessment process. Once a grade has been assigned and recorded in a student's transcript, it can be used in the assessment process.

(c) "Assessment instruments, methods, or procedures" means one or more assessment instruments, assessment methods, or assessment procedures, or any combination thereof. These include, but are not limited to, interviews, standardized tests, holistic scoring processes, attitude surveys, vocational or career aptitude and interest inventories, high school or college transcripts, specialized certificates or licenses, educational histories and other measures of performance. The term "assessment instruments, methods, or procedures" also includes assessment procedures such as the identification of test scores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment sessions are conducted, manner in which assessment results are made available, and the length of time required before such results are available.

(d) "Pre-collegiate basic skills courses" are those courses in reading, writing, computation, and English as a Second Language which are designated by the community college district as nondegree credit courses pursuant to Section 55002(b).

(e) "Disproportionate impact" occurs when the percentage of persons from a particular racial, ethnic, gender, age or disability group who are directed to a particular service or placement based on an assessment instrument, method, or procedure is significantly different from the representation of that group in the population of persons being assessed, and that discrepancy is not justified by empirical evidence demonstrating that the assessment instrument, method or procedure is a valid and reliable predictor of performance in the relevant educational setting.

(f) "Exemption" means waiving or deferring a student's participation in orientation, assessment, counseling, or advisement required pursuant to Subsections (b),(c), and (f) of Section 55520.

(g) "Matriculation services" are those services listed in Section 55520.

(h) "Matriculation practices" means one or more instruments, methods, or procedures, or any combination thereof, used in providing any of the matriculation services listed in Section 55520.

(i) "Student" means a person enrolled in at lease one credit course.

(j) "Orientation" is a process which acquaints students and potential students with college programs, services, facilities and grounds, academic expectations, and institutional procedures.

(k) "Student follow-up" is the process of monitoring a student's progress toward his or her educational goals and providing the student with appropriate advice based on the results of such monitoring.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78212 and 78213, Education Code.

HISTORY

1. Amendment of subsection (a) and (b) and new subsections (g), (h), (i), (j) and (k) filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of first paragraph and subsections (a) and (c)–(k) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Article 2. Planning and Administration

§ 55510. Matriculation Plans.

(a) Each community college district shall adopt a matriculation plan describing the services to be provided to its students. The plan shall include, but not be limited to:

(1) a description of the methods by which required services will be delivered;

(2) the district's budget for matriculation;

(3) plans for faculty and staff development;

(4) computerized information services and institutional research and evaluation necessary to implement this Chapter;

(5) criteria for exempting students from participation in the matriculation process;

(6) procedures for establishing and periodically reviewing prerequisites pursuant to Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of this Division;

(7) procedures for considering student challenges to prerequisites established pursuant to Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of this Division; and

(8) in districts with more than one college, arrangements for coordination by the district of the matriculation plans of its various colleges.

(b) The plan shall be developed through consultation with representatives of the academic senate, students, and staff with appropriate expertise, pursuant to Section 51023 et seq.

(c) Such plans shall conform to the requirements of this Chapter and shall be submitted to the Chancellor for review and approval. Plans submitted prior to the effective date of this Section need not be revised or resubmitted if the Chancellor finds that they meet the requirements of this Chapter. Regardless of when plans are initially submitted, the Chancellor may require periodic updates of such plans.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment of subsection (a)(6), new subsection (a)(7) and subsection renumbering filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55512. Evaluation and Audits.

(a) Each community college district shall establish a program of institutional research for ongoing evaluation of its matriculation process to ensure compliance with the requirements of this chapter.

As part of this evaluation, all assessment instruments, methods or procedures shall be evaluated to ensure that they minimize or eliminate cultural or linguistic bias and are being used in a valid manner. Based on this evaluation, districts shall determine whether any assessment instrument, method or procedure has a disproportionate impact on particular groups of students described in terms of ethnicity, gender, age or disability, as defined by the Chancellor. When there is a disproportionate impact on any such group of students, the district shall, in consultation with the Chancellor, develop and implement a plan setting forth the steps the district will take to correct the disproportionate impact. The evaluation shall include, but not be limited to, an analysis of the degree to which the matriculation program:

(1) impacts on particular courses, programs, and facilities;

(2) helps students to define their educational goals;

(3) promotes student success, as evidenced by outcome and retention data such as student persistence, goal attainment, skill improvement, and grades;

(4) assists the district in the assessment of students' educational needs;

(5) matches district resources with students' educational needs; and

(6) provides students with the support services described in section 545520(g).

(b) Each district shall also, as part of its annual financial audit, provide for a review of the revenue and expenditures of the matriculation program.

(c) The Chancellor shall establish a system for evaluation of the matriculation program on a statewide basis, including procedures for monitoring compliance with the requirements of this chapter.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: section 78214 and 78217, Education Code.

HISTORY

1. Amendment filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55514. Data Collection.

Each community college district shall submit an annual report describing the district's efforts to implement its matriculation plan and expenditures made for that purpose. In this report, or through the established management information system or otherwise, the data to be collected for evaluation purposes pursuant to Education Code section 78214 and section 55512 of this part. Such data shall specifically include, but is not limited to, the information necessary to permit the Chancellor to determine the following:

(a) the proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who are placed in pre-collegiate, associate-degree applicable, or transfer level courses in reading, writing, computation or English as a Second Language.

(b) the proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, who enter and complete pre-collegiate basic skills courses.

(c) The proportion of students from various ethnic, gender, age or disability groups, as defined by the Chancellor, completing pre-collegiate basic skills courses who subsequently enter and complete courses applicable to the associate degree;

(d) outcome and retention data, as described in section 55512(a), indicating the effectiveness of matriculation;

(e) the basis on which the use of particular assessment instruments, methods or procedures was validated by a district;

(f) the numbers of students exempted, pursuant to section 55532, from participation in the district's matriculation program, by category of exemption;

(g) the number of students filing complaints pursuant to 55534 and the bases of those complaints;

(h) the particular matriculation services, as listed in section 55520, which each student received; and

(i) any other matter the Chancellor, after consultation with community college districts, deems necessary for the effective evaluation of matriculation programs.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78214, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55516. Training and Staff Development.

Each community college district shall develop and implement a program for providing all faculty and staff with training appropriate to their needs on the provision of matriculation services, including but not limited to, the proper purpose, design, evaluation, and use of assessment instruments, methods or procedures, as well as their limitations and possible misuse.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55518. Funding.

(a) The Chancellor shall adopt a funding formula, consistent with the requirements of this section, for allocating matriculation funds to community college districts complying with the requirements of this chapter.(b) Each dollar of state matriculation funding shall be matched by three dollars of other district resources devoted to the matriculation program.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78216, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 3. Matriculation Services

§ 55520. Required Services.

At a minimum, each community college district shall provide students, except as exempted pursuant to section 55532, with all of the following matriculation services:

(a) the processing of applications for admission;

(b) orientation and pre–orientation services designed to provide nonexempt students and potential students, on a timely basis, information concerning college procedures and course scheduling, academic expectations, financial assistance, and any other matters the college or district finds appropriate;

(c) assessment for all nonexempt students pursuant to section 55524;

(d) counseling or advisement for nonexempt students pursuant to section 55523;

(e) assistance in developing a student educational plan pursuant to section 55525, which identifies the student's educational objectives and the courses, services, and programs to be used to achieve them;

(f) post enrollment evaluation, pursuant to section 55526, of each student's progress; and

(g) referral of students to:

(1) support services which may be available, including, but not limited to, counseling, financial aid, health services, campus employment placement services, Extended Opportunity Programs and Services, campus child care services, tutorial services, and Disabled Students Programs and Services; and

(2) specialized curriculum offerings including but not limited to, pre–collegiate basic skills courses and programs in English as a Second Language.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55521. Prohibited Practices.

(a) In implementing matriculation services, community college districts shall not, except as provided in subdivision (b), do any of the following:

(1) use an assessment instrument which has not been approved by the Chancellor pursuant to Section 55524, except that the Chancellor may permit limited field–testing, under specified conditions, of new or alternative assessment instruments, where such instruments are not used for placement and are evaluated only in order to determine whether they should be added to the list of approved instruments;

(2) use any assessment instrument in a manner or for a purpose other than that for which it was developed or has been otherwise validated;

(3) use any single assessment instrument, method or procedure, by itself, for placement, required referral to appropriate services, or subsequent evaluation of any student; provided however that, in the case of assessment instruments, the use of two or more highly correlated instruments does not satisfy the requirement for use of multiple measures;

(4) use any assessment instrument, method or procedure to exclude any person from admission to a community college;

(5) use any assessment instrument, method or procedure for mandatory placement of a student in or exclusion from any particular course or educational program, except that districts may establish appropriate prerequisites pursuant to Sections 55002 and 58106 of Division 9 of this Part; or

(6) use any matriculation practice which has the purpose or effect of subjecting any person to unlawful discrimination prohibited by Chapter 5 (commencing with Section 59300) of Division 10 of this Part.

(b) Notwithstanding the provisions of subdivisions (a)(1) and (2), assessment instruments approved by the Secretary of the United States Department of Education may be used to determine "ability to benefit" in the process of establishing a student's eligibility for federal financial aid pursuant to subdivision (d) of Section 1091 of Title 20 of the United States Code.

NOTE: Authority cited: Section 11138, Government Code; and Sections 66700 and 70901, Education Code. Reference: Section 11135, Government Code; and Sections 72011, 78211 and 78213, Education Code.

HISTORY

1. Amendment of subsections (d), (e) and (f) filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (a) and redesignating following subsections (1)–(6), adoption of subsection (b) and amendment of NOTE filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 55522. Special Accommodations.

Matriculation services for ethnic and language minority students and students with disabilities, shall be appropriate to their needs, and community college districts shall, where necessary, make modifications in the matriculation process or use alternative instruments, methods or procedures to accommodate the needs of such students. Districts may require students requesting such accommodations to provide proof of need. Ex-

tended Opportunity Programs and Services (EOPS) and Disabled Students Programs and Services (DSPS) are authorized, consistent with the provisions of chapter 1 (commencing with section 56000) and chapter 2.5 (commencing with section 56200) of division 7 of this part, to provide specialized matriculation services and modified or alternative matriculation services to their respective student populations. Notwithstanding this authorization, participation in the EOPS and DSPS programs is voluntary and no student may be denied necessary accommodations in the assessment process because he or she chooses not to use specialized matriculation services provided by these programs. Modified or alternative matriculation services for limited or non-English-speaking students may be provided in English as a Second Language programs.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700, 70901, and 84500.1, Education Code. Reference: Section 11135, Government Code; Sections 72011, 78211, 78213, and 84500.1, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55523. Counseling and Advisement.

(a) If not already required to do so by the minimum standards for counseling services set forth in section 51018 of division 1 of this Part, each community college district shall do all of the following:

(1) make reasonable efforts to ensure that all nonexempt students who are on probation participate in counseling as provided in section 55759 of this Part;

(2) make reasonable efforts to ensure that all nonexempt students who have not declared a specific educational goal participate in counseling to assist them in the process of selecting a specified educational goal pursuant to section 55525;

(3) make reasonable efforts to ensure that all nonexempt students who are enrolled in pre-collegiate basic skills courses participate in counseling or advisement; and

(4) make available to all students, as defined in section 55502(i), advisement or counseling on general academic requirements and the selection of specific courses by counselors or appropriately trained instructor/advisors, and/or other appropriately trained staff working in consultation with counselors.

(b) Counseling by appropriately trained counselors or advisement by appropriately trained staff may also be made available in any other area the district deems appropriate, including but not limited to, the interpretation of assessment results and the development of a student's educational plan as required by section 55525.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

§ 55524. Assessment.

The Chancellor shall establish and update, at least annually, a list of approved assessment instruments and guidelines for their use by community college districts. These guidelines shall identify modifications of an assessment instrument or the procedures for its use which may be made in order to provide special accommodations required by section 55522 without separate approval by the Chancellor. Such guidelines shall also describe the procedure by which districts may seek to have assessment instruments approved and added to the list. The Chancellor shall ensure that all assessment instruments included on the list minimize or eliminate cultural or linguistic bias, are normed on the appropriate populations, yield valid and reliable information, identify the learning needs of students, make efficient use of student and staff time, and are otherwise consistent with the educational and psychological testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Section 78213, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55525. Student Educational Plan.

(a) Each community college district shall establish a process for assisting students to select a specific educational goal within a reasonable time after admission as required by Section 55530 (d). This shall include, but not be limited to, the provision of counseling as required by Section 55523(a)(2).

(b) Once a student has selected a specific educational goal, the district shall afford the student the opportunity to develop a student educational plan describing the responsibilities of the student, the requirements he or she must meet, and the courses, programs, and services required to achieve the stated goal.

(c) The student educational plan developed pursuant to Subsection (b) shall be recorded in written or electronic form. The plan and its implementation shall be reviewed as necessary to ensure that it continues to accurately reflect the needs and goals of the student.

(d) If a student believes the district has failed to make good faith efforts to develop a plan, has failed to provide services specified in the student educational plan, or has otherwise violated the requirements of this Section, the student may file a complaint pursuant to Section 55534 (a).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).
2. Amendment of subsections (a), (c) and (d) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 55526. Student Follow-up.

Each community college district shall establish a student follow-up process to assist the student in achieving his/her educational goal. The follow-up system shall ensure that the academic progress of each student is regularly monitored to detect early signs of academic difficulty and students shall be provided with advice or referral to specialized services or curriculum offerings where necessary. Districts shall also identify and refer to counseling or advisement, as appropriate pursuant to section 55523(a), any students who have not declared a specific educational goal as required by section 55530, who are enrolled in pre-collegiate basic skills courses, or who have been placed on probation.

NOTE: Authority cited: Sections 66700 and 70901, Educational Code. Reference: Section 78212, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governor's, California Community Colleges, with the Secretary of State, operative 7-6-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (b) (Register 90, No. 37).

Article 4. Appeals, Waivers, Student Rights and Responsibilities

§ 55530. Student Rights and Responsibilities.

(a) Nothing in this Subchapter shall be construed to interfere with the right of a student admitted to a community college in accord with district admission policies adopted pursuant to Education Code Section 76000, et seq. to enroll in any course for which he or she can meet necessary and appropriate prerequisites, if any, which have been established pursuant to the requirements of Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of this Division.

(b) Community college districts shall take steps to ensure that information is available in written form to all students during or prior to enrollment (e.g., during orientation) and is included in class schedules, catalogs or other appropriate publications, describing their rights and responsibilities under this Chapter.

(c) Districts shall also take steps to ensure that the matriculation process is efficient so that students are not discouraged from participating in college programs. Whenever possible, students should be permitted to avoid additional testing by submitting scores on recently taken tests that correlate with those used by the district.

(d) Students shall be required to express at least a broad educational intent upon admission; declare a specific educational goal within a reasonable period after admission; participate in counseling or advisement pursuant to Section 55523(a)(1), (2), and (3); diligently attend class and complete assigned coursework; and complete courses and maintain progress toward an educational goal according to standards established by the district, consistent with the requirements of Chapter 9 (commencing with Section 55750) of Division 6 of this Part. The governing board of each community college district shall adopt clear written policies not inconsistent with law, specifically defining these responsibilities of students and the consequences of failure to fulfill such responsibilities. This policy shall define the period of time within which a student must identify a specific educational goal as required by this Subsection, provided however, that all students shall be required to declare such a goal during the term after which the student completes 15 semester units or 22 quarter units of degree-applicable credit course work, unless the district policy establishes a shorter period. Once the student has developed a specific educational goal, the district must provide the student with an opportunity to develop a student educational plan pursuant to Section 55525. Student responsibilities shall also be identified in the student's educational plan developed pursuant to Section 55525. If a student fails to fulfill the responsibilities listed in this Subsection, fails to cooperate with the district in the development of a student educational plan within 90 days after declaring his or her specific educational goal, or fails to abide by the terms of his or her student educational plan, the district may, subject to the requirements of this Chapter, suspend or terminate the provision of services authorized in Section 55520, provided however, that nothing in this Section shall be construed to permit a district to suspend or terminate any service to which a student is otherwise entitled under any other provision of law.

(e) Information obtained from the matriculation process shall be considered student records and shall be subject to the requirements of Chapter 6 (commencing with Section 54600) of Division 5 of this Part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 76000, 76001, 76001.5 and 78212, Education Code.

HISTORY

1. Amendment filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsection (b) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
3. Amendment of subsections (a), (b) and (d) filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).

§ 55532. Exemptions.

(a) Community college districts may elect to exempt certain students from participation in orientation, assessment, counseling or advisement, as required by subsections (b), (c), or (d) of section 55520. Each such district shall establish policies specifying the grounds for exemption. Such policies shall be identified in the matriculation plan required under section 55510 and the number of students so exempted shall be reported, by category, to the Chancellor pursuant to section 55514.

(b) District policies may exempt from orientation, assessment, counseling, or advisement any student who; has completed a associate degree or higher.

(c) Any student exempted pursuant to this section shall be notified that he or she is covered by an exemption and shall be given the opportunity to choose whether or not to participate in that part of the matriculation process.

(d) District policies may not use any of the following as the sole criterion for exempting any student who does not wish to participate:

(1) the student has enrolled only in evening classes;

(2) the student has enrolled in fewer than some specified number of units;

(3) the student is undecided about his or her educational objectives; or

(4) the student does not intend to earn a degree or certificate.

(e) As part of the statewide evaluation provided for under subsection (c) of section 55512, the Chancellor shall analyze and recommend necessary changes regarding the impact on the matriculation program of the exemption policies adopted by community college districts.

NOTE: Authority cited: Sections 66700, 70901, and 78215, Education Code. Reference: Section 78215, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 55534. Violations, Waivers and Appeals.

(a) Each community college district shall establish written procedures by which students may challenge any alleged violation of the provisions of this Subchapter. Districts shall investigate and attempt to resolve any such complaints in a timely manner. Such complaint procedures may be consolidated with existing student grievance procedures by action of the governing board. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under Section 55512(c).

(b) When a challenge contains an allegation that a community college district has violated the provisions of Section 55521(a)(6), the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

NOTE: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135–11139.5, Government Code; Sections 78211 and 78213, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–6–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment of subsection (b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 7. Occupational Education

Article 1. Vocational Education Contracts

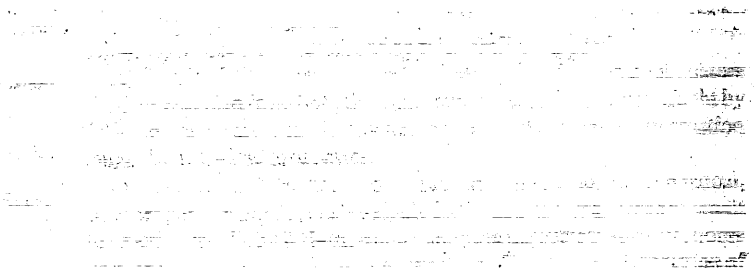
§ 55600. Definitions.

For the purposes of this article the following definitions apply:

(a) "Vocational education contract" means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) "The California State Plan for Vocational Education" means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94–482 and 95–40), part A, Vocational Education, or any subsequent federal legislation.

(c) "Contractor" as used in section 55602 means any private postsecondary school authorized or approved pursuant to the provisions of chapter 3 (commencing with section 94300), and which has been in operation



No. CSM. 02-TC-31

Minimum Conditions for State Aid:
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Register 90-37 § 53300: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53302: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53310: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53311: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53312: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53314: New section filed by the Board of Governors, California Community Colleges, with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 91-31 § 53300: Editorial correction of printing error in Subchapter 3 heading.

§ 53310: Editorial correction of printing error in Article 2 heading.

Register 91-46 § 51025: New section filed and submitted to OAL for printing only pursuant to Education Code 70901.5.

Register 92-09 § 53300: Amendment of section.

Register 92-34 § 51025: New first paragraph, amendment of subsections (a)-(a)(4) and (c) and NOTE.

§ 53300: Repealer and new section and amendment of NOTE.

§ 53302: Amendment of NOTE.

§ 53310: New subsections (f)-(h) and amendment of NOTE.

§ 53311: Amendment of section heading, text and NOTE.

§ 53312: Amendment of subsections (a) and (c) and NOTE and new subsection (d).

§ 53314: Repealer and new section and amendment of NOTE.

Register 93-06 § 53310: Amendment of subsection (h).

Register 94-38 § 51025: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53300: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53302: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53310: Amendment of subsections (d), (e), (g), and (h). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53311: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 53314: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

Register 98-14 § 51025: Amendment of subsections (a)-(a)(4), (b) and (c).

Submitted to OAL for printing only.
§ 53300: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.
§ 53302: Amendment of section heading and section. Submitted to OAL for printing only.
§ 53310: Amendment of section heading and section. Submitted to OAL for printing only.
§ 53311: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

Register 2000-26 § 51025: Amendment of section. Submitted to OAL for printing only.
§ 53301: Added new section. Submitted to OAL for printing only.
§ 53302: Amendment of section and NOTE. Submitted to OAL for printing only.
§ 53308: Added new section. Submitted to OAL for printing only.
§ 53309: Added new section. Submitted to OAL for printing only.
§ 53310: Repealer and new section filed. Submitted to OAL for printing only.
§ 53311: Amendment of section. Submitted to OAL for printing only.
§ 53312: Amendment of subsection (a). Submitted to OAL for

printing only.

§ 53314: Amendment of section. Submitted to OAL for printing only.

Register 2001-43 § 53309: Amendment of subsection (i). Submitted to OAL for printing only.

§ 53310: New subsection (c)(4). Submitted to OAL for printing only.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

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(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.

(d) The faculty may provide for the membership of part–time faculty members in the academic senate or faculty council.

(e) In the absence of any full–time faculty members in a community college, the part–time faculty of such community college may form an academic senate or faculty council with the same functions as stated in subsection (b) of Section 53200 and Section 53201.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 2–10–78; effective thirtieth day thereafter (Register 78, No. 6).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 53203. Powers.

After consultation with the administration of its community college, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.

NOTE: Authority cited: Sections 71020, 71062, 71079, Education Code. Reference: Section 71079, Education Code.

HISTORY

1. Amendment filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).

§ 53204. Meet and Confer.

Upon the request of the academic senate or faculty council and subject to Chapter 9 (commencing with Section 54950) of Part 1, Division 2, Title 5 of the Government Code relating to public meetings when applicable, the governing board or such board members or administrative officers as it may designate shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board members or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 53205. Duties Assigned by Administration and Governing Board.

An academic senate or faculty council may assume such responsibilities and perform such functions as may be requested of it by the administration of its community college or the governing board of the district maintaining its community college.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 53206. Academic Senate for California Community Colleges.

(a) In order that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters, an Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. New section filed 5–9–78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

Subchapter 3. Full–Time and Part–Time Facility

Article 1. Scope and Definitions

§ 53300. Scope.

This chapter implements and should be read in conjunction with the requirements of Education Code section 87482.6 concerning the proportion of full–time and part–time instructors on the faculty of community colleges. The requirements of this chapter apply only until the provisions of Education Code section 84750 regarding program–based funding are implemented by a standard adopted by the Board of Governors that establishes the appropriate percentage of hours of credit instruction that should be taught by full–time instructors.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53302. Full–Time Instructor.

For purposes of this chapter only, a full–time instructor shall be defined as any regular and contact faculty member teaching credit instruction

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Article 2. Proportions of Full–Time and Part–Time Facility, Computation and Reports

§ 53310. Hours of Instruction.

In computing the percentage of hours of credit instruction taught by full–time instructors, the following rules shall be applied:

(a) Overload. The hours of overload teaching by full–time instructors shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(b) Sabbatical. The hours of a full–time instructor on sabbatical, whether paid or unpaid, shall be included in both the total hours of credit instruction taught by full–time and part–time instructors and total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(c) Released/Reassigned Time. The hours of a full–time instructor on released or reassigned time shall be counted as if the instructor was teaching full–time and had not been provided released or reassigned time. The hours of instruction shall thereby be included in both the total hours of

credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(d) Unpaid Leave. The hours of a full-time instructor on unpaid leave shall be counted as if the instructor was teaching full time and had not been provided with unpaid leave. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(e) Teaching by Others. The hours of instruction taught by counselors, librarians, classified staff or administrators who are appropriately certified to teach shall, under the following conditions, be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors:

(1) Only the actual hours of teaching by such individuals shall be included;

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment,

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53311. Base Year.

For purposes of this chapter, fiscal year 1988-89 shall be the base year from which improvement in the percentage of hours of credit instruction taught by full-time instructors shall be measured.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53312. Additional Full-Time Faculty Positions.

(a) The Chancellor shall compute and report to each community college district the number of full-time faculty (FTF) which are to be secured through the use of the prescribed portion of program improvement revenue allocated to each district.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for part-time instructors times the statewide average full-time teaching load).

(c) If the quotient is not a whole number, then the quotient shall be rounded down to the nearest whole number. If the quotient, once applied, will result in the district exceeding the 75 percent standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code.Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53314. Report to Districts.

(a) By March 15th of each year, the Chancellor shall report to each district an estimate of the number of FTF to be secured based upon the appropriation of revenues contained in the annual Budget Bill.

(b) The final computation of the number of full-time instructors actually required shall be based upon full-year data submitted by districts.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Article 3. Enforcement

§ 53320. Funding Reductions.

On or before December 31, 1991, the Chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to section 53312 for the 1989-90 and 1990-91 fiscal years. To the extent that cumulative number of FTF have not been retained, the Chancellor shall reduce the district's base budget for 1991-92 and subsequent fiscal years by an amount equivalent to the average replacement costs times the deficiency in the number of FTF.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This chapter implements and should be read in conjunction with the requirements of Education Code sections 87001, 87356 and 87539 concerning minimum qualifications for community college faculty and administrators. The provisions of this chapter shall become effective in accordance with the provisions of section 70 of chapter 973 of the Statues of 1989.

NOTE: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 87356 and 87359, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a community college district in a supervisorial or management position as defined in Article 5 (commencing with section 3540) of chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Instructional or student services administrator" means an administrator who is employed in a position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Instructional and student services administrators include, but are not limited to, chancellors, presidents, and instructional or student service managers.

(c) "Faculty" means those employees of a community college district who are employed in positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with section 3540) of chapter 10.7 of division 4 of Title 1 of the Government Code and for which minimum qualifications for hire are specified in section 53410. Faculty include, but are not limited to, instructors, librarians, counselors,

2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 3. Full–Time and Part–Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This chapter implements and should be read in conjunction with the requirements of Education Code section 87482.6 concerning the proportion of full–time and part–time instructors on the faculty of community colleges. The requirements of this chapter apply only until the provisions of Education Code section 84750 regarding program–based funding are implemented by a standard adopted by the Board of Governors that establishes the appropriate percentage of hours of credit instruction that should be taught by full–time instructors.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).

§ 53302. Full–Time Instructor.

For purposes of this chapter only, a full–time instructor shall be defined as any regular and contract faculty member teaching credit instruction.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Article 2. Proportions of Full–Time and Part–Time Faculty, Computation and Reports

§ 53310. Hours of Instruction.

In computing the percentage of hours of credit instruction taught by full–time instructors, the following rules shall be applied:

(a) Overload. The hours of overload teaching by full–time instructors shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(b) Sabbatical. The hours of a full–time instructor on sabbatical, whether paid or unpaid, shall be included in both the total hours of credit instruction taught by full–time and part–time instructors and total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(c) Released/Reassigned Time. The hours of a full–time instructor on released or reassigned time shall be counted as if the instructor was teaching full–time and had not been provided released or reassigned time. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(d) Unpaid Leave. The hours of a full–time instructor on unpaid leave shall be counted as if the instructor was teaching full time and had not been provided with unpaid leave. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(e) Teaching by Others. The hours of instruction taught by counselors, librarians, classified staff or administrators who are appropriately certified to teach shall, under the following conditions, be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors:

(1) Only the actual hours of teaching by such individuals shall be included;

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in article 2 heading (Register 91, No. 31).

§ 53311. Base Year.

For purposes of this chapter, fiscal year 1988–89 shall be the base year from which improvement in the percentage of hours of credit instruction taught by full–time instructors shall be measured.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53312. Additional Full–Time Faculty Positions.

(a) The Chancellor shall compute and report to each community college district the number of full–time faculty (FTF) which are to be secured through the use of the prescribed portion of program improvement revenue allocated to each district.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for part–time instructors times the statewide average full–time teaching load).

(c) If the quotient is not a whole number, then the quotient shall be rounded down to the nearest whole number. If the quotient, once applied, will result in the district exceeding the 75 percent standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53314. Report to Districts.

(a) By March 15th of each year, the Chancellor shall report to each district an estimate of the number of FTF to be secured based upon the appropriation of revenues contained in the annual Budget Bill.

(b) The final computation of the number of full–time instructors actually required shall be based upon full–year data submitted by districts.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Article 3. Enforcement

§ 53320. Funding Reductions.

On or before December 31, 1991, the Chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to section 53312 for the 1989–90 and 1990–91 fiscal years. To the extent that cumulative number of FTF have not been retained, the Chancellor shall reduce the district's base budget for 1991–92 and subsequent fiscal years by an amount equivalent to the average replacement costs times the deficiency in the number of FTF.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This chapter implements and should be read in conjunction with the requirements of Education Code sections 87001, 87356 and 87539 concerning minimum qualifications for community college faculty and administrators. The provisions of this chapter shall become effective in accordance with the provisions of section 70 of chapter 973 of the Statues of 1989.

NOTE: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 87356 and 87359, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a community college district in a supervisorial or management position as defined in Article 5 (commencing with section 3540) of chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Instructional or student services administrator" means an administrator who is employed in a position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Instructional and student services administrators include, but are not limited to, chancellors, presidents, and instructional or student service managers.

(c) "Faculty" means those employees of a community college district who are employed in positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with section 3540) of chapter 10.7 of division 4 of Title 1 of the Government Code and for which minimum qualifications for hire are specified in section 53410. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, handicapped student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisorial, nonmanagement certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Section 87001, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Article 2. Qualifications and Equivalencies

§ 53410. Minimum Qualifications for Instructors of Credit Courses.

The minimum qualifications for hire as a community college faculty member teaching any credit course shall be satisfied by meeting any one of the following requirements:

(a) Possession of master's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(b) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment and possession of bachelor's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(c) For faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available, which are, generally, disciplines in specialized technical, trade, or industrial fields, either of the following:

(1) Possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment, plus two years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available; or

(2) Possession of an associate degree from an accredited institution in a discipline reasonably related to the faculty member's assignment, plus six years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 87356, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53412. Minimum Qualifications for Instructors of Noncredit Courses.

The minimum qualifications for hire as a community college faculty member teaching a noncredit course shall be satisfied by meeting both of the following requirements:

(a) Successful completion of four years of higher education with a major in a discipline, or completion of four years of occupational experience in a discipline; and

(b) Certification by the district that the applicant has adequate training and experience to teach the classes for which he or she is to be employed.

The provisions of this section shall become inoperative on July 1, 1991.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

HISTORY

1. New section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53413. Minimum Qualifications for Apprenticeship Instructors.

(a) Until July 1, 1993, the minimum qualifications for hire as a community college faculty member teaching credit or noncredit apprentice-

suant to the regulations on academic senates contained in sections 53200–53205 of chapter IV of this division.

(e) The governing board of a community college district shall comply substantially with policies and procedures adopted in accordance with this section.

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901 (b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 23).
2. Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1. (Register 91, No. 43). (Subchapter 15, section 51950, and chapter 3, section 52000)

§ 51024. Matriculation Services.

When matriculation services have been fully funded, as certified by the Chancellor in accord with policies adopted by the Board of Governors, the governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under section 55512(c);

(c) provide matriculation services to its students in accordance with sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with section 55534; and

(e) substantially comply with all other provisions of chapter 6 (commencing with section 55500) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210–78218, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 51025. Full–time/Part–time Faculty.

(a) Community College districts which have less than 75 percent of their hours of credit instruction taught by full–time instructors, in the prior fiscal year, shall apply the growth revenues received related to increases in credit FTES in accordance with section 58774 of this division and a portion of the program improvement allocation received in accordance with section 58775 of this division, as follows:

(1) Of the growth revenues received related to increases in credit FTES pursuant to section 58774 of this division, the districts shall increase the number of full–time instructors, by September 30 of the succeeding fiscal year, by the product of their base number of full–time faculty multiplied by the percentage change in funded credit FTES, rounded down to the nearest whole number.

(2) Districts which, in the prior fiscal year, had 67 percent or greater, but less than 75 percent of their hours of credit instruction taught by full–time instructors shall apply up to 33 percent of their program improvement allocation pursuant to subdivision (b) of section 58775 of this division, as necessary to reach the 75 percent standard pursuant to paragraph (4).

(3) Districts which, in the prior fiscal year, had less than 67 percent of their hours of credit instruction taught by full–time instructors shall apply up to 40 percent of their program improvement allocation pursuant to subdivision (b) of section 58775 of this division, as necessary to reach the 75 percent standard pursuant to paragraph (4).

(4) Of the program improvement funds identified in paragraph (2) or (3), as appropriate, the district shall increase the number of full–time instructors, by September of the succeeding fiscal year, by the quotient of the applicable program improvement funds divided by the statewide average replacement cost, rounded down to the nearest whole number.

(5) If the number of full–time faculty derived in paragraphs (1) and (4), result in the district exceeding the 75 percent standard, the Chancellor shall reduce the number to a whole number that leaves the district as close as possible to, but in excess of, the 75 percent standard.

(b) Statewide average replacement cost is the statewide average faculty salary plus benefits, minus the product of the statewide average hourly rate of compensation for part–time instructors times the statewide average full–time teaching load.

(c) On or before December 31 of each year, the Chancellor shall determine the extent to which each district, by September 30 of that year, has hired the number of additional full–time instructors determined pursuant to subdivision (a) for the prior fiscal year. To the extent that the number of additional full–time instructors have not been retained, the Chancellor shall reduce the district's revenue for the current fiscal year by an amount equivalent to the average replacement cost for the prior fiscal year times the deficiency in the number of full–time faculty. To the extent a district hires the additional full–time instructors in subsequent fiscal years the reductions made to the district's revenue shall be restored.

(d) All revenues available due to reductions made pursuant to subdivision (c), shall be made available on a one–time basis for that fiscal year, for purposes of faculty and staff diversity pursuant to Education Code section 87107.

(e) By January 20 of each fiscal year the Board of Governors shall determine whether adequate growth funds and adequate cost–of–living funds have been provided to allow full or partial implementation of the provisions of subparagraph (a)(1).

(f) For districts that experience a reduction in base credit FTES, the Chancellor shall make a proportionate reduction to their base number of full–time faculty.

NOTE: Authority cited: Sections 66700, 70901 and 84750, Education Code. Reference: Section 84750, Education Code.

HISTORY

1. New section filed 7–3–91 and submitted to OAL on 7–12–91 for printing only pursuant to Education Code section 70901.5; operative 8–3–91 (Register 91, No. 46).

Subchapter 2. Investigation and Enforcement of Minimum Conditions

§ 51100. Review of Colleges.

(a) The Chancellor, at least once each seven years, and at such other times or as he or she deems necessary, shall review each community college to determine whether it has met the minimum conditions contained in chapter 1 (commencing with section 51000) of this division.

(b) In the event that the Chancellor determines that a visit to the college is necessary to investigate compliance, he or she shall inform the chief executive officer of the district at least one month in advance of such visit, and shall specify the particular minimum conditions which will be investigated.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 51100 and 51101) and new chapter 2 (sections 51100 and 51102) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 2, see Registers 81, No. 52; 77, No. 45; and 71, No. 27.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51102. Enforcement.

(a) If any review pursuant to section 51100 discloses that a college is not in compliance with the provisions of chapter 1 (commencing with section 51000) of this division, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 3. Full-Time and Part-Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This subchapter implements and should be read in conjunction with the requirements of Education Code Section 87482.6 concerning the proportion of hours of credit instruction taught by full-time and part-time instructors on the faculty of community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).

§ 53302. Full-Time Instructor.

For purposes of this chapter only, a full-time instructor shall be defined as any regular and contact faculty member teaching credit instruction.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Article 2. Proportions of Full-Time and Part-Time Faculty, Computation and Reports

§ 53310. Hours of Instruction.

In computing the percentage of hours of credit instruction taught by full-time instructors, the following rules shall be applied:

(a) Overload. The hours of overload teaching by full-time instructors shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(b) Sabbatical. The hours of a full-time instructor on sabbatical, whether paid or unpaid, shall be included in both the total hours of credit instruction taught by full-time and part-time instructors and total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(c) Released/Reassigned Time. The hours of a full-time instructor on released or reassigned time shall be counted as if the instructor was teaching full-time and had not been provided released or reassigned time. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(d) Unpaid Leave. The hours of a full-time instructor on unpaid leave shall be counted as if the instructor was teaching full time and had not been provided with unpaid leave. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(e) Teaching by Others. The hours of instruction taught by counselors, librarians, classified staff or administrators who are appropriately certified to teach shall, under the following conditions, be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors:

(1) Only the actual hours of teaching by such individuals shall be included;

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in article 2 heading (Register 91, No. 31).

§ 53311. Base Year.

For purposes of this chapter, fiscal year 1988-89 shall be the base year from which improvement in the percentage of hours of credit instruction taught by full-time instructors shall be measured.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53312. Additional Full-Time Faculty Positions.

(a) The Chancellor shall compute and report to each community college district the number of full-time faculty (FTF) which are to be secured through the use of the prescribed portion of program improvement revenue allocated to each district.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for part-time instructors times the statewide average full-time teaching load).

(c) If the quotient is not a whole number, then the quotient shall be rounded down to the nearest whole number. If the quotient, once applied, will result in the district exceeding the 75 percent standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 53314. Report to Districts.

(a) By March 15th of each year, the Chancellor shall report to each district an estimate of the number of FTF to be secured based upon the appropriation of revenues contained in the annual Budget Bill.

(b) The final computation of the number of full-time instructors actually required shall be based upon full-year data submitted by districts.

NOTE: Authority cited: Sections 66700, 70901, and 87482.6, Education Code.

History

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Article 3. Enforcement

§ 53320. Funding Reductions.

On or before December 31, 1991, the Chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to Section 53312 for the 1989–90 and 1990–91 fiscal years. To the extent that cumulative number of FTF have not been retained, the Chancellor shall reduce the district's allocation for 1991–92 by an amount equivalent to the average replacement costs times the deficiency in the number of FTF. To the extent a district hires the additional FTF in subsequent fiscal years, the reduction made to the district's revenue shall be restored.

Note: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

History

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This subchapter implements and should be read in conjunction with the requirements of Education Code Sections 87001, 87002, 87003, 87356 and 87539 concerning minimum qualifications for community college faculty and administrators. The provisions of this subchapter shall become effective in accordance with the provisions of Section 70 of Chapter 973 of the Statutes of 1989.

Note: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 87002, 87003, 87356 and 87359, Education Code.

History

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Educational administrator" means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(c) "Faculty" or "faculty member" means those employees of a district who are employed in academic positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code and for which minimum qualifications for service are specified in Section 53410–53414 or other provisions of this division. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisorial, nonmanagement community college certification qualifications.

Note: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002 and 87003, Education Code.

History

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

Article 2. Qualifications and Equivalencies

§ 53410. Minimum Qualifications for Instructors of Credit Courses.

The minimum qualifications for service as a community college faculty member teaching any credit course shall be satisfied by meeting any one of the following requirements:

(a) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(b) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment and possession of bachelor's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(c) For faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available, which are, generally, disciplines in specialized technical, trade, or industrial fields, either of the following:

(1) Possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment, plus two years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available; or

(2) Possession of an associate degree from an accredited institution in a discipline reasonably related to the faculty member's assignment, plus six years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

Note: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 87356, Education Code.

History

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of first paragraph and subsections (a) and (b) filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 53412. Minimum Qualifications for Instructors of Noncredit Courses.

The minimum qualifications for service as a community college faculty member teaching a noncredit course shall be satisfied by meeting both of the following requirements:

(a) Successful completion of four years of higher education with a major in a discipline, or completion of four years of occupational experience in a discipline; and

(b) Certification by the district that the applicant has adequate training and experience to teach the classes for which he or she is to be employed. The provisions of this section shall become inoperative on July 1, 1992.

Note: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

History

1. New section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

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(c) Nothing in this section shall be construed to impinge upon the policies and procedures governing the participation rights of faculty and students pursuant to sections 53200–53205, and section 51023.7, respectively, of this division.

(d) The governing board of a community college district shall comply substantially with the provisions of this section.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b), (Register 91, No. 23).
2. Editorial correction of printing error in subsection (b) and HISTORY 1. (Register 91, No. 43).

§ 51023.7. Students.

(a) The governing board of a community college district shall adopt policies and procedures that provide students the opportunity to participate effectively in district and college governance. Among other matters, said policies and procedures shall include the following:

(1) Students shall be provided an opportunity to participate in formulation and development of district and college policies and procedures that have or will have a significant effect on students. This right includes the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures.

(2) Except in unforeseeable, emergency situations the governing board shall not take action on a matter having a significant effect on students until it has provided students with an opportunity to participate in the formulation of the policy or procedure or the joint development of recommendations regarding the action.

(3) Governing board procedures shall ensure that at the district and college levels, recommendations and positions developed by students are given every reasonable consideration.

(4) For the purpose of this section, the governing board shall recognize each associated student organization or its equivalent within the district as provided by Education Code Section 76060, as the representative body of the students to offer opinions and to make recommendations to the administration of a college and to the governing board of a district with regard to district and college policies and procedures that have or will have a significant effect on students. The selection of student representatives to serve on college or district committees, task forces, or other governance groups shall be made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district.

(b) For the purposes of this section, district and college policies and procedures that have or will have a "significant effect on students" includes the following:

(1) grading policies;
(2) codes of student conduct;
(3) academic disciplinary policies;
(4) curriculum development;
(5) courses or programs which should be initiated or discontinued;
(6) processes for institutional planning and budget development;
(7) standards and policies regarding student preparation and success;
(8) student services planning and development;
(9) student fees within the authority of the district to adopt; and
(10) any other district and college policy, procedure or related matter that the district governing board determines will have a significant effect on students.

(c) The governing board shall give reasonable consideration to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff.

(d) Nothing in this section shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiations or negotiated agreements between collective bargaining agents and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining agents as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to the regulations on academic senates contained in sections 53200–53205 of chapter IV of this division.

(e) The governing board of a community college district shall comply substantially with policies and procedures adopted in accordance with this section.

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901 (b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 23).
2. Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1. (Register 91, No. 43). (Subchapter 15, section 51950, and chapter 3, section 52000)

§ 51024. Matriculation Services.

The governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under Section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under Section 55512(c);

(c) provide matriculation services to its students in accordance with Sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with Section 55534; and

(e) substantially comply with all other provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210–78218, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of first paragraph and subsection (e) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 51025. Full–Time/Part–Time Faculty.

This section relates to and should be read in conjunction with Subchapter 3 (commencing with Section 53300) of Chapter 4 of this Division.

(a) Community college districts which have less than 75 percent of their hours of credit instruction taught by full–time instructors, as determined from their base data calculated pursuant to Section 53311, shall apply the growth revenues received related to increases in credit FTES in accordance with section 58774 of this division and a portion of the program improvement allocation received in accordance with section 58775 of this division, as follows:

(1) Of the growth revenues received related to increases in credit FTES pursuant to section 58774 of this division, the districts shall increase the base number of full–time instructors, subject to subdivision (e) of this Section, by Fall of the succeeding fiscal year, by the product of their base number of full–time faculty multiplied by the percentage change in funded credit FTES, rounded down to the nearest whole number.

(2) Districts which, as determined from their base data, had 67 percent or greater, but less than 75 percent of their hours of credit instruction taught by full–time instructors shall apply up to 33 percent of their program improvement allocation pursuant to subdivision (b) of section 58775 of this division, as necessary to reach the 75 percent standard pursuant to paragraph (4).

(3) Districts which, as determined from their base data, had less than 67 percent of their hours of credit instruction taught by full–time instructors shall apply up to 40 percent of their program improvement allocation pursuant to subdivision (b) of section 58775 of this division, as necessary to reach the 75 percent standard pursuant to paragraph (4).

(4) Of the program improvement funds identified in paragraph (2) or (3), as appropriate, the district shall increase the number of full–time instructors, by Fall of the succeeding fiscal year, by the quotient of the applicable program improvement funds divided by the statewide average replacement cost, rounded down to the nearest whole number.

(5) If the number of full–time faculty derived in paragraphs (1) and (4), result in the district exceeding the 75 percent standard, the Chancellor shall reduce the number to a whole number to a whole number that leaves the district as close as possible to, but in excess of, the 75 percent standard.

(b) Statewide average replacement cost is the statewide average faculty salary plus benefits, minus the product of the statewide average hourly rate of compensation for part–time instructors times the statewide average full–time teaching load.

(c) On or before December 31 of each year, the Chancellor shall determine, based on information submitted by districts, the extent to which each district, by Fall of that year, has maintained or hired the number of additional full–time instructors determined pursuant to subdivision (a) for the prior fiscal year. To the extent that the number of full–time faculty has not been maintained or additional full–time instructors have not been retained, the Chancellor shall reduce the district's revenue for the current fiscal year by an amount equivalent to the average replacement cost for the prior fiscal year times the deficiency in the number of full–time faculty. To the extent a district hires the additional full–time instructors in subsequent fiscal years the reductions made to the district's revenue shall be restored.

(d) All revenues available due to reductions made pursuant to subdivision (c), shall be made available on a one–time basis for that fiscal year, for purposes of faculty and staff diversity pursuant to Education Code section 87107.

(e) By January 20 of each fiscal year the Board of Governors shall determine whether adequate growth funds and adequate cost–of–living funds have been provided to allow full or partial implementation of the provisions of subparagraph (a)(1).

(f) For districts that experience a reduction in base credit FTES, the Chancellor shall make a proportionate reduction to their base number of full–time faculty.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 7–3–91 and submitted to OAL on 7–12–91 for printing only pursuant to Education Code section 70901.5; operative 8–3–91 (Register 91, No. 46).

2. New first paragraph, amendment of subsections (a)–(a)(4) and (c) and NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

§ 51027. Transfer Centers: Minimum Program Standards.

(a) The governing board of each community college district shall recognize transfer as one of its primary missions, and shall place priority emphasis on the preparation and transfer of underrepresented students, including African–American, Chicano/Latino, American Indian, disabled, low–income and other students historically and currently underrepresented in the transfer process.

(b) Each community college district governing board shall direct the development and adoption of a Transfer Center Plan describing the activities of the transfer center and the services to be provided to students, incorporating the provisions established in these standards, as outlined below. Plans shall identify target student populations and shall establish target increases in the number of applicants to the four–year segments from these populations, including specific targets for increasing the transfer applications of those underrepresented among transfer students. Plans shall be developed in consultation with four–year college and university personnel as available.

Plan components shall include, but not be limited to: services to be provided to students; facilities; staffing; advisory committee; and evaluation and reporting.

(1) Required Services. The following services shall be provided to students:

(A) Identify, contact and provide transfer support services to targeted student populations as identified in the Transfer Center Plan, with a priority emphasis placed on African–American, Chicano/Latino, American Indian, disabled, low–income and other underrepresented students. These activities shall be developed and implemented in cooperation with student services departments and with faculty.

(B) Ensure the provision of academic planning for transfer, the development and utilization of transfer admission agreements with four–year institutions where available and as appropriate, and the development and utilization of course–to–course and major articulation agreements. Academic planning and articulation activities shall be provided in cooperation with student services, with faculty, and with four–year college and university personnel as available.

(C) Ensure that students receive accurate and up–to–date academic and transfer information through the provision of coordinated transfer counseling services.

(D) Monitor the progress of transfer students to the point of transfer, in accordance with monitoring activities established in the Transfer Center Plan.

(E) Support the progress of transfer students through referral as necessary, to such services as ability and diagnostic testing, tutoring, financial assistance, and counseling, and other instructional and student services on campus as appropriate.

(F) Assist students in the transition process, including the timely completion and submittal of necessary forms and applications.

(G) In cooperation with four–year college and university personnel as available, develop and implement a schedule of services for transfer students to be provided by four–year staff.

(H) Provide a resource library of college catalogs, transfer guides, articulation information and agreements, applications to four–year colleges and universities, and related transfer information.

(2) Facilities. Each district governing board shall designate a particular location on campus which is readily identifiable and accessible to students, faculty and staff as the focal point of transfer functions. Space and facilities adequate to support the Transfer Center and its activities shall be provided.

(3) Staffing. Each district governing board shall ensure that college staff are assigned to coordinate the activities of the transfer center; to coordinate underrepresented student transfer efforts; to serve as liaison to articulation, to student services, and to instructional programs on campus; and to work with four–year college and university personnel. Clerical support for the transfer center shall also be provided.

(4) Advisory Committee. An advisory committee shall be designated to plan the development, implementation, and ongoing operations of the transfer center. Membership shall be representative of campus departments and services. Four–year college and university personnel shall be included as available.

(5) Evaluation and Reporting. Each district governing board shall include in its Transfer Center Plan a plan of institutional research for ongoing internal evaluation of the effectiveness of the college's transfer efforts, and the achievement of its Transfer Center Plan.

Each community college district shall submit an annual report to the Chancellor describing the status of the district's efforts to implement its transfer center(s), achievement of Transfer Center Plan targets and goals, and expenditures supporting transfer center operations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66010.4 and 70901, Education Code.

HISTORY

1. New section filed 7–22–91; operative 8–21–91 (Register 92, No. 4).

with respect to the views, recommendations, or proposals of the senate. In addition, after consultation with the administration of the college and/or district, the academic senate may present its views and recommendations to the governing board.

(d) The governing board of a district shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:

(1) In instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

(e) An academic senate may assume such responsibilities and perform such functions as may be delegated to it by the governing board of the district pursuant to subsection (a) of this section.

(f) The appointment of faculty members to serve on college or district committees, task forces, or other grounds dealing with academic and professional matters, shall be made, after consultation with the chief executive officer or his or her designee, by the academic senate. Notwithstanding this subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 81, No. 3.

§ 53204. Scope of Regulations.

Nothing in this subchapter shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements between collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No.18).

Repealer filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) In order that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters, an Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–9–78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 3. Full–Time and Part–Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This subchapter relates to and should be read in conjunction with the requirements of Section 51025 of Subchapter 1 of Chapter 2 of this Division concerning the proportion of full–time and part–time instructors on the faculty of community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

§ 53302. Full–Time Instructor.

For purposes of this chapter only, a full–time instructor shall be defined as any regular and contact faculty member teaching credit instruction.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

Article 2. Proportions of Full–Time and Part–Time Faculty, Computation and Reports

§ 53310. Hours of Instruction.

In computing the percentage of hours of credit instruction taught by full–time instructors, the following rules shall be applied:

(a) Overload. The hours of overload teaching by full–time instructors shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(b) Sabbatical. The hours of a full–time instructor on sabbatical, whether paid or unpaid, shall be included in both the total hours of credit

instruction taught by full–time and part–time instructors and total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(c) Released/Reassigned Time. The hours of a full–time instructor on released or reassigned time shall be counted as if the instructor was teaching full–time and had not been provided released or reassigned time. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(d) Unpaid Leave. The hours of a full–time instructor on unpaid leave shall be counted as if the instructor was teaching full time and had not been provided with unpaid leave. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(e) Teaching by Others. The hours of instruction taught by counselors, librarians, classified staff or administrators who are appropriately certified to teach shall, under the following conditions, be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors:

(1) Only the actual hours of teaching by such individuals shall be included;

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

(f) Outreach Locations. The hours of instruction taught by full–time and part–time instructors at any outreach location that is more than 25 miles from the main campus and generates less than 200 FTES, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(g) Late Retirement. The hours of a full–time instructor who resigned or retired and who provided written notice thereof within 45 faculty duty days of the end of the previous Spring primary term and whose position has not been replaced by another full–time instructor by the current Fall primary term, shall be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

Districts are required to fill the position(s) by the following Spring primary term unless designees for the district governing board and academic senate jointly agree that it is in the best interests of the district to delay the filling of the position. In such cases, replacement must be made by the following primary term of the Chancellor shall reduce the district's state apportionment revenues for the current year in accordance with the provisions of Section 51025.

(h) Librarians. A number of hours equivalent to the number of hours taught by a full–time instructor shall be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors for each full–time librarian hired in excess of the number of full–time librarians in the previous year's base.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in article 2 heading (Register 91, No. 31).
3. New subsections (f)–(h) and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

§ 53311. Base Data.

For purposes of this subchapter, "base data" means the base percentage of hours of credit instruction taught by full–time instructors and the base number of full–time faculty required to be maintained or additional hires to be made by the fall of the subsequent year. This data shall be determined from the current year's fall management information system staff data submission to the Chancellor's office.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of section heading, text and NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

§ 53312. Additional Full–Time Faculty Positions.

(a) The Chancellor shall compute each community college district's number of full–time faculty (FTF) which are to be secured in accordance with the provisions of Section 51025, as the result of additional funded growth in credit full–time equivalent students and through the use of the prescribed portion of program improvement revenue allocated to each district.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for part–time instructors times the statewide average full–time teaching load).

(c) If the quotient determined in paragraph (b) is not a whole number, then the quotient shall be rounded down to the nearest whole number. If the quotient, once applied, will result in the district exceeding the 75 percent standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

(d) The computation for the funded growth in full–time equivalent student workload obligation to secure additional full–time faculty shall, when required pursuant to the provisions of Section 51025(a)(1) and (e), be made by multiplying the percentage of funded credit FTES growth times the base number of full–time faculty that were to be in place by Fall of the current year.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsections (a) and (c) and NOTE and new subsection (d) filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

§ 53314. Report to Districts.

The Chancellor shall report to districts by Spring of each year the estimated number of FTF each district must secure by the following Fall based upon the appropriation of revenues contained in that year's Budget Act and the Board of Governors action pursuant to section 51025(e).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for

printing c...' pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Repealer and new section and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

Article 3. Enforcement

§ 53320. Funding Reductions.

On or before December 31, 1991, the Chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to Section 53312 for the 1989–90 and 1990–91 fiscal years. To the extent that cumulative number of FTF have not been retained, the Chancellor shall reduce the district's allocation for 1991–92 by an amount equivalent to the average replacement costs times the deficiency in the number of FTF. To the extent a district hires the additional FTF in subsequent fiscal years, the reduction made to the district's revenue shall be restored.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This subchapter implements and should be read in conjunction with the requirements of Education Code Sections 87001, 87002, 87003, 87356 and 87539 concerning minimum qualifications for community college faculty and administrators. The provisions of this subchapter shall become effective in accordance with the provisions of Section 70 of Chapter 973 of the Statutes of 1989.

NOTE: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 87002, 87003, 87356 and 87359, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 53401. Applicability to Community Services and Contract Classes.

Community service or contract classes which do not award college credit and are not supported by state apportionment are not subject to the provisions of this subchapter. Contract classes which award college credit are subject to this subchapter, even if they are not supported by state apportionment.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 78020 through 78023 and 78300, Education Code.

HISTORY

1. New section filed 6–26–92; operative 7–27–92 (Register 92, No. 26).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Educational administrator" means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(c) "Faculty" or "faculty member" means those employees of a district who are employed in academic positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code and for which minimum qualifications for service are specified in Section 53410–53414 or other provisions of this division. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisorial, nonmanagement community college certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002 and 87003, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 53403. Applicability of Amendments.

Notwithstanding changes that may be made to the minimum qualifications established in this division, or to the implementing discipline lists adopted by the Board of Governors, the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if he or she, at the time of initial hire by the district, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

HISTORY

1. New section filed 6–26–92; operative 7–27–92 (Register 92, No. 26).

§ 53404. Definition of Experience.

Where years of professional or occupational experience are referred to in this subchapter, the requirement is for the stated number of years of full–time experience, or the equivalent in part–time experience. Unpaid experience may be counted if it entailed responsibilities substantially similar to those of relevant paid positions in the field.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

HISTORY

1. New section filed 6–26–92; operative 7–27–92 (Register 92, No. 26).

Article 2. Qualifications and Equivalencies

§ 53410. Minimum Qualifications for Instructors of Credit Courses.

The minimum qualifications for service as a community college faculty member teaching any credit course shall be satisfied by meeting any one of the following requirements:

(a) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(b) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment and possession of bachelor's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(c) For faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available, which are, generally, disciplines in specialized technical, trade, or industrial fields, either of the following:

with respect to the views, recommendations, or proposals of the senate. In addition, after consultation with the administration of the college and/or district, the academic senate may present its views and recommendations to the governing board.

(d) The governing board of a district shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:

(1) In instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

(e) An academic senate may assume such responsibilities and perform such functions as may be delegated to it by the governing board of the district pursuant to subsection (a) of this section.

(f) The appointment of faculty members to serve on college or district committees, task forces, or other grounds dealing with academic and professional matters, shall be made, after consultation with the chief executive officer or his or her designee, by the academic senate. Notwithstanding this subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 81, No. 3.

§ 53204. Scope of Regulations.

Nothing in this subchapter shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements between collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) In order that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters, an Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–9–78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 3. Full–Time and Part–Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This subchapter relates to and should be read in conjunction with the requirements of Section 51025 of Subchapter 1 of Chapter 2 of this Division concerning the proportion of full–time and part–time instructors on the faculty of community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

§ 53302. Full–Time Instructor.

For purposes of this chapter only, a full–time instructor shall be defined as any regular and contact faculty member teaching credit instruction.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

Article 2. Proportions of Full–Time and Part–Time Faculty, Computation and Reports

§ 53310. Hours of Instruction.

In computing the percentage of hours of credit instruction taught by full–time instructors, the following rules shall be applied:

(a) Overload. The hours of overload teaching by full–time instructors shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(b) Sabbatical. The hours of a full–time instructor on sabbatical, whether paid or unpaid, shall be included in both the total hours of credit instruction taught by full–time and part–time instructors and total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(c) Released/Reassigned Time. The hours of a full–time instructor on released or reassigned time shall be counted as if the instructor was teaching full–time and had not been provided released or reassigned time. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(d) Unpaid Leave. The hours of a full–time instructor on unpaid leave shall be counted as if the instructor was teaching full time and had not been provided with unpaid leave. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(e) Teaching by Others. The hours of instruction taught by counselors, librarians, classified staff or administrators who are appropriately certified to teach shall, under the following conditions, be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors:

(1) Only the actual hours of teaching by such individuals shall be included;

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

(f) Outreach Locations. The hours of instruction taught by full–time and part–time instructors at any outreach location that is more than 25 miles from the main campus and generates less than 200 FTES, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(g) Late Retirement. The hours of a full–time instructor who resigned or retired and who provided written notice thereof within 45 faculty duty days of the end of the previous Spring primary term and whose position has not been replaced by another full–time instructor by the current Fall primary term, shall be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

Districts are required to fill the position(s) by the following Spring primary term unless designees for the district governing board and academic senate jointly agree that it is in the best interests of the district to delay the filling of the position. In such cases, replacement must be made by the following primary term of the Chancellor shall reduce the district's state apportionment revenues for the current year in accordance with the provisions of Section 51025.

(h) Librarians. A number of hours equivalent to the number of hours taught by a full–time instructor shall be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors for each full–time librarian hired in excess of the number of full–time librarians in the previous year's base. A comparable number of hours shall be counted for each year thereafter unless the position(s) is vacant or eliminated. This subdivision shall become inoperative on July 1, 1994, unless a later–adopted regulation deletes or extends this date.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in article 2 heading (Register 91, No. 31).
3. New subsections (f)–(h) and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
4. Amendment of subsection (h) filed 2–4–93; operative 3–6–93 (Register 93, No. 6).

§ 53311. Base Data.

For purposes of this subchapter, "base data" means the base percentage of hours of credit instruction taught by full–time instructors and the base number of full–time faculty required to be maintained or additional hires to be made by the fall of the subsequent year. This data shall be determined from the current year's fall management information system staff data submission to the Chancellor's office.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of section heading, text and NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

§ 53312. Additional Full–Time Faculty Positions.

(a) The Chancellor shall compute each community college district's number of full–time faculty (FTF) which are to be secured in accordance with the provisions of Section 51025, as the result of additional funded growth in credit full–time equivalent students and through the use of the prescribed portion of program improvement revenue allocated to each district.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for part–time instructors times the statewide average full–time teaching load).

(c) If the quotient determined in paragraph (b) is not a whole number, then the quotient shall be rounded down to the nearest whole number. If the quotient, once applied, will result in the district exceeding the 75 percent standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

(d) The computation for the funded growth in full–time equivalent student workload obligation to secure additional full–time faculty shall, when required pursuant to the provisions of Section 51025(a)(1) and (e), be made by multiplying the percentage of funded credit FTES growth times the base number of full–time faculty that were to be in place by Fall of the current year.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsections (a) and (c) and NOTE and new subsection (d) filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

§ 53314. Report to Districts.

The Chancellor shall report to districts by Spring of each year the estimated number of FTF each district must secure by the following Fall based upon the appropriation of revenues contained in that year's Budget Act and the Board of Governors action pursuant to section 51025(e).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Repealer and new section and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).

Article 3. Enforcement

§ 53320. Funding Reductions.

On or before December 31, 1991, the Chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to Section 53312 for the 1989–90 and 1990–91 fiscal years. To the extent that cumulative number of FTF have not been retained, the Chancellor shall reduce the district's allocation for 1991–92 by an amount equivalent to the average replacement costs times the deficiency in the number of FTF. To the extent a district hires the additional FTF in subsequent fiscal years, the reduction made to the district's revenue shall be restored.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This subchapter implements and should be read in conjunction with the requirements of Education Code Sections 87001, 87002, 87003, 87356 and 87539 concerning minimum qualifications for community college faculty and administrators. The provisions of this subchapter shall become effective in accordance with the provisions of Section 70 of Chapter 973 of the Statutes of 1989.

NOTE: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 87002, 87003, 87356 and 87359, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 53401. Applicability to Community Services and Contract Classes.

Community service or contract classes which do not award college credit and are not supported by state apportionment are not subject to the provisions of this subchapter. Contract classes which award college credit are subject to this subchapter, even if they are not supported by state apportionment.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 78020 through 78023 and 78300, Education Code.

HISTORY

1. New section filed 6–26–92; operative 7–27–92 (Register 92, No. 26).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Educational administrator" means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(c) "Faculty" or "faculty member" means those employees of a district who are employed in academic positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code and for which minimum qualifications for service are specified in Section 53410–53414 or other provisions of this division. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisorial, nonmanagement community college certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002 and 87003, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 53403. Applicability of Amendments.

Notwithstanding changes that may be made to the minimum qualifications established in this division, or to the implementing discipline lists adopted by the Board of Governors, the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if he or she, at the time of initial hire by the district, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

HISTORY

1. New section filed 6–26–92; operative 7–27–92 (Register 92, No. 26).

§ 53404. Definition of Experience.

Where years of professional or occupational experience are referred to in this subchapter, the requirement is for the stated number of years of full–time experience, or the equivalent in part–time experience. Unpaid experience may be counted if it entailed responsibilities substantially similar to those of relevant paid positions in the field.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

HISTORY

1. New section filed 6–26–92; operative 7–27–92 (Register 92, No. 26).

Article 2. Qualifications and Equivalencies

§ 53410. Minimum Qualifications for Instructors of Credit Courses.

The minimum qualifications for service as a community college faculty member teaching any credit course shall be satisfied by meeting any one of the following requirements:

(a) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

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tions 3540, et seq., such procedures for staff participation shall not intrude on matters within the scope of representation under Section 3543.2 of the Government Code. In addition, governing boards shall not interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer–employee relations. Nothing in this Section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards. It is the intent of the Board of Governors to respect lawful agreements between staff and exclusive representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to staff pursuant to these regulations.

(c) Nothing in this Section shall be construed to impinge upon the policies and procedures governing the participation rights of faculty and students pursuant to Sections 53200–53204, and Section 51023.7, respectively.

(d) The governing board of a community college district shall comply substantially with the provisions of this Section.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b), (Register 91, No. 23).
2. Editorial correction of printing error in subsection (b) and HISTORY 1. (Register 91, No. 43).
3. Amendment of subsections (a)(1), (a)(3), (a)(5), (a)(7), (b), (c) and (d) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51023.7. Students.

(a) The governing board of a community college district shall adopt policies and procedures that provide students the opportunity to participate effectively in district and college governance. Among other matters, said policies and procedures shall include the following:

(1) Students shall be provided an opportunity to participate in formulation and development of district and college policies and procedures that have or will have a significant effect on students. This right includes the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures.

(2) Except in unforeseeable, emergency situations, the governing board shall not take action on a matter having a significant effect on students until it has provided students with an opportunity to participate in the formulation of the policy or procedure or the joint development of recommendations regarding the action.

(3) Governing board procedures shall ensure that at the district and college levels, recommendations and positions developed by students are given every reasonable consideration.

(4) For the purpose of this Section, the governing board shall recognize each associated student organization or its equivalent within the district as provided by Education Code Section 76060, as the representative body of the students to offer opinions and to make recommendations to the administration of a college and to the governing board of a district with regard to district and college policies and procedures that have or will have a significant effect on students. The selection of student representatives to serve on college or district committees, task forces, or other governance groups shall be made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district.

(b) For the purposes of this Section, district and college policies and procedures that have or will have a "significant effect on students" includes the following:

(1) grading policies;
(2) codes of student conduct;
(3) academic disciplinary policies;
(4) curriculum development;
(5) courses or programs which should be initiated or discontinued;
(6) processes for institutional planning and budget development;
(7) standards and policies regarding student preparation and success;
(8) student services planning and development;
(9) student fees within the authority of the district to adopt; and
(10) any other district and college policy, procedure, or related matter that the district governing board determines will have a significant effect on students.

(c) The governing board shall give reasonable consideration to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff.

(d) Nothing in this Section shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiations or negotiated agreements between collective bargaining agents and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining agents as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to the regulations on academic senates contained in Sections 53200–53206.

(e) The governing board of a community college district shall comply substantially with policies and procedures adopted in accordance with this Section.

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901 (b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 23).
2. Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1 (Register 91, No. 43).
3. Amendment of subsections (a)(2), (a)(4), (b), (b)(10), (d) and (e) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51024. Matriculation Services.

The governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under Section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under Section 55512(c);

(c) provide matriculation services to its students in accordance with Sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with Section 55534; and

(e) substantially comply with all other provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210–78218, Education Code.

HISTORY

1. New section filed 5–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of first paragraph and subsection (e) filed 4–3–92; operative 5–4–92 (Register 92, No. 15).

§ 51025. Full–Time/Part–Time Faculty.

This Section relates to and should be read in conjunction with Subchapter 3 (commencing with Section 53300) of Chapter 4 of this Division.

(a) Community college districts which have less than 75 percent of their hours of credit instruction taught by full–time instructors, as determined from their base data calculated pursuant to Section 53311, shall apply the growth revenues received related to increases in credit FTES in accordance with Section 58774 and a portion of the program improvement allocation received in accordance with Section 58775, as follows:

(1) Of the growth revenues received related to increases in credit FTES pursuant to Section 58774, the districts shall increase the base number of full-time instructors, subject to Subsection (e) below, by the Fall term of the succeeding fiscal year, by the product of their base number of full-time faculty multiplied by the percentage change in funded credit FTES, rounded down to the nearest whole number.

(2) Districts which, as determined from their base data, had 67 percent or greater, but less than 75 percent of their hours of credit instruction taught by full-time instructors shall apply up to 33 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(3) Districts which, as determined from their base data, had less than 67 percent of their hours of credit instruction taught by full-time instructors shall apply up to 40 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(4) Of the program improvement funds identified in Subsection (a)(2) or (3), as appropriate, the district shall increase the number of full-time instructors, by the Fall term of the succeeding fiscal year, by the quotient of the applicable program improvement funds divided by the statewide average replacement cost, rounded down to the nearest whole number.

(5) If the number of full-time faculty derived in Subsections (a)(1) and (4) result in the district exceeding the 75 percent standard, the Chancellor shall reduce the number to a whole number to a whole number that leaves the district as close as possible to, but in excess of, the 75 percent standard.

(b) Statewide average replacement cost is the statewide average faculty salary plus benefits, minus the product of the statewide average hourly rate of compensation for part-time instructors times the statewide average full-time teaching load.

(c) On or before December 31 of each year, the Chancellor shall determine, based on information submitted by districts, the extent to which each district, by the Fall term of that year, has maintained or hired the number of additional full-time instructors determined pursuant to Subsection (a) for the prior fiscal year. To the extent that the number of full-time faculty has not been maintained or additional full-time instructors have not been retained, the Chancellor shall reduce the district's revenue for the current fiscal year by an amount equivalent to the average replacement cost for the prior fiscal year times the deficiency in the number of full-time faculty. To the extent a district hires the additional full-time instructors in subsequent fiscal years the reductions made to the district's revenue shall be restored.

(d) All revenues available due to reductions made pursuant to Subsection (c), shall be made available on a one-time basis for that fiscal year, for purposes of faculty and staff diversity pursuant to Education Code, Section 87107.

(e) By January 20 of each fiscal year the Board of Governors shall determine whether adequate growth funds and adequate cost-of-living funds have been provided to allow full or partial implementation of the provisions of Subsection (a)(1).

(f) For districts that experience a reduction in base credit FTES, the Chancellor shall make a proportionate reduction to their base number of full-time faculty.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 7-3-91 and submitted to OAL on 7-12-91 for printing only pursuant to Education Code section 70901.5; operative 8-3-91 (Register 91, No. 46).
2. New first paragraph, amendment of subsections (a)-(a)(4) and (c) and NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51027. Transfer Centers: Minimum Program Standards.

(a) The governing board of each community college district shall recognize transfer as one of its primary missions, and shall place priority emphasis on the preparation and transfer of underrepresented students, including African-American, Chicano/Latino, American Indian, disabled, low-income and other students historically and currently underrepresented in the transfer process.

(b) Each community college district governing board shall direct the development and adoption of a transfer center plan describing the activities of the transfer center and the services to be provided to students, incorporating the provisions established in the standards outlined below. Plans shall identify target student populations and shall establish target increases in the number of applicants baccalaureate institutions from these populations, including specific targets for increasing the transfer applications of underrepresented students among transfer students. Plans shall be developed in consultation with baccalaureate college and university personnel as available.

Plan components shall include, but not be limited to: services to be provided to students; facilities; staffing; advisory committee; and evaluation and reporting.

(1) Required Services. Districts shall:

(A) Identify, contact, and provide transfer support services to targeted student populations as identified in the transfer center plan, with a priority emphasis placed on African-American, Chicano/Latino, American Indian, disabled, low-income, and other underrepresented students. These activities shall be developed and implemented in cooperation with student services departments and with faculty.

(B) Ensure the provision of academic planning for transfer, the development and use of transfer admission agreements with baccalaureate institutions where available and as appropriate, and the development and use of course-to-course and major articulation agreements. Academic planning and articulation activities shall be provided in cooperation with student services, with faculty, and with baccalaureate institution personnel as available.

(C) Ensure that students receive accurate and up-to-date academic and transfer information through coordinated transfer counseling services.

(D) Monitor the progress of transfer students to the point of transfer, in accordance with monitoring activities established in the Transfer Center Plan.

(E) Support the progress of transfer students through referral as necessary, to such services as ability and diagnostic testing, tutoring, financial assistance, counseling, and to other instructional and student services on campus as appropriate.

(F) Assist students in the transition process, including timely completion and submittal of necessary forms and applications.

(G) In cooperation with baccalaureate institution personnel as available, develop and implement a schedule of services for transfer students to be provided by baccalaureate institution staff.

(H) Provide a resource library of college catalogs, transfer guides, articulation information and agreements, applications to baccalaureate institutions, and related transfer information.

(2) Facilities. Each district governing board shall provide space and facilities adequate to support the transfer center and its activities. Each district shall designate a particular location on campus as the focal point of transfer functions. This location should be readily identifiable and accessible to students, faculty, and staff.

(3) Staffing. Each district governing board shall provide clerical support for the transfer center and assign college staff to coordinate the activities of the transfer center; to coordinate underrepresented student transfer efforts; to serve as liaison to articulation, to student services, and to instructional programs on campus; and to work with baccalaureate institution personnel.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71052 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) An Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils so that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–9–78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
4. Amendment of subsection (a) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 3. Full–Time and Part–Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This Subchapter relates to and should be read in conjunction with the requirements of Section 51020 concerning the proportion of full–time and part–time instructors on the faculty of community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
5. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53302. Full–Time Instructor.

For purposes of this Chapter only, a full–time instructor shall be defined as any regular and contract faculty member teaching credit instruction.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Article 2. Proportions of Full–Time and Part–Time Faculty, Computation and Reports

§ 53310. Hours of Instruction.

In computing the percentage of hours of credit instruction taught by full–time instructors, the following rules shall be applied:

(a) Overload. The hours of overload teaching by full–time instructors shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(b) Sabbatical. The hours of a full–time instructor on sabbatical, whether paid or unpaid, shall be included in both the total hours of credit instruction taught by full–time and part–time instructors and total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(c) Released/Reassigned Time. The hours of a full–time instructor on released or reassigned time shall be counted as if the instructor was teaching full–time and had not been provided released or reassigned time. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(d) Unpaid Leave. The hours of a full–time instructor on unpaid leave shall be counted as if the instructor was teaching full–time and had not been provided with unpaid leave. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors. The hours of instruction of replacement faculty, whether full–time or part–time, shall be excluded from both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors.

(e) Teaching by Others. The hours of instruction taught by counselors, librarians, classified staff or administrators who are appropriately qualified to teach shall, under the following conditions, be included in both the total hours of credit instruction taught by full–time and part–time instructors and the total hours of instruction taught by full–time instructors:

(1) Only the actual hours of teaching by such individuals shall be included;

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

(f) Outreach Locations. The hours of instruction taught by full–time and part–time instructors at any outreach location that is more than 25 miles from the main campus and generates less than 200 FTES, shall be

excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(g) Late Retirement. The hours of a full-time instructor who resigned or retired and who provided written notice thereof within 45 faculty duty days of the end of the previous Spring primary term and whose position has not been replaced by another full-time instructor by the current Fall primary term, shall be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

Districts are required to fill the position(s) by the following Spring primary term unless designees for the district governing board and academic senate jointly agree that it is in the best interests of the district to delay the filling of the position. In such cases, replacement must be made by the following primary term or the Chancellor shall reduce the district's state apportionment revenues for the current year in accordance with the provisions of Section 51025.

(h) Librarians. A number of hours equivalent to the number of hours taught by a full-time instructor shall be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors for each full-time librarian hired in excess of the number of full-time librarians in the previous year's base. A comparable number of hours shall be counted for each year thereafter unless the position(s) is vacant or eliminated. This subdivision shall become inoperative on July 1, 1995, unless a later-adopted regulation deletes or extends this date.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in article 2 heading (Register 91, No. 31).
3. New subsections (f)-(h) and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
4. Amendment of subsection (h) filed 2-4-93; operative 3-6-93 (Register 93, No. 6).
5. Amendment of subsections (d), (e), (g) and (h) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53311. Base Data.

For purposes of this Subchapter, "base data" means both the base percentage of hours of credit instruction taught by full-time instructors and the base number of full-time faculty required to be maintained or additional hires to be made by the fall term of the subsequent year. This data shall be determined from the current year's fall management information system staff data submission to the Chancellor's office.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of section heading, text and NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53312. Additional Full-Time Faculty Positions.

(a) The Chancellor shall compute each community college district's number of full-time faculty (FTF) which are to be secured in accordance with the provisions of Section 51025, as the result of additional funded growth in credit full-time equivalent students and through the use of the prescribed portion of program improvement revenue allocated to each district.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for part-time instructors times the statewide average full-time teaching load).

(c) If the quotient determined in paragraph (b) is not a whole number, then the quotient shall be rounded down to the nearest whole number. If the quotient, once applied, will result in the district exceeding the 75 percent standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

(d) The computation for the funded growth in full-time equivalent student workload obligation to secure additional full-time faculty shall, when required pursuant to the provisions of Section 51025(a)(1) and (e), be made by multiplying the percentage of funded credit FTES growth times the base number of full-time faculty that were to be in place by Fall of the current year.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsections (a) and (c) and NOTE and new subsection (d) filed 8-19-92; operative 9-18-92 (Register 92, No. 34).

§ 53314. Report to Districts.

By the spring term of each year, the Chancellor shall report to districts the estimated number of FTF each district must secure by the following Fall term based upon the appropriation of revenues contained in that year's Budget Act and the Board of Governors action pursuant to Section 51025(e).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Repealer and new section and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Article 3. Enforcement

§ 53320. Funding Reductions.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
3. Repealer filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This Subchapter implements and should be read in conjunction with the requirements of Education Code Sections 87001, 87002, 87003,

§ 51025
§ 53300
§ 53302
§ 53310
§ 53311

(c) The governing board of a community college district shall comply substantially with policies and procedures adopted in accordance with this Section.

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901 (b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3-12-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 23).
2. Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1 (Register 91, No. 43).
3. Amendment of subsections (a)(2), (a)(4), (b), (b)(10), (d) and (e) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 36).

§ 51024. Matriculation Services.

The governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under Section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under Section 55512(c);

(c) provide matriculation services to its students in accordance with Sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with Section 55534; and

(e) substantially comply with all other provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210-78218, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of first paragraph and subsection (e) filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 51025. Full-Time/Part-Time Faculty.

This Section relates to and should be read in conjunction with Subchapter 3 (commencing with Section 53300) of Chapter 4 of this Division.

(a) Community college districts which have less than 75 percent of their total faculty workload hours taught/worked by full-time faculty, as determined from their base data calculated pursuant to Section 53311, shall apply the growth revenues received related to increases in credit FTES in accordance with Section 58774 and a portion of the program improvement allocation received in accordance with Section 58775, as follows:

(1) Of the growth revenues received related to increases in credit FTES pursuant to Section 58774, the districts shall increase the base number of full-time faculty, subject to Subsection (c) below, by the Fall term of the succeeding fiscal year, by the product of their base number of full-time faculty multiplied by the percentage change in funded credit FTES, rounded down to the nearest whole number.

(2) Districts which, as determined from their base data, had 67 percent or greater, but less than 75 percent of their total faculty workload hours taught/worked by full-time faculty shall apply up to 33 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(3) Districts which, as determined from their base data, had less than 67 percent of their total faculty workload hours taught/worked by full-time faculty shall apply up to 40 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(4) Of the program improvement funds identified in Subsection (a)(2) or (3), as appropriate, the district shall increase the number of full-time faculty, by the Fall term of the succeeding fiscal year, by the quotient of the applicable program improvement funds divided by the statewide average replacement cost, rounded down to the nearest whole number.

(5) If the number of full-time faculty derived in Subsections (a)(1) and (4) result in the district exceeding the 75 percent standard, the Chancellor shall reduce the number to a whole number to a whole number that leaves the district as close as possible to, but in excess of, the 75 percent standard.

(b) Statewide average replacement cost is the statewide average faculty salary plus benefits, minus the product of the statewide average hourly rate of compensation for part-time faculty times the statewide average full-time teaching load.

(c) On or before December 31 of each year, the Chancellor shall determine, based on information submitted by districts, the extent to which each district, by the Fall term of that year, has maintained or hired the number of additional full-time faculty determined pursuant to Subsection (a) for the prior fiscal year. To the extent that the number of full-time faculty has not been maintained or additional full-time faculty have not been retained, the Chancellor shall reduce the district's revenue for the current fiscal year by an amount equivalent to the average replacement cost for the prior fiscal year times the deficiency in the number of full-time faculty. To the extent a district hires the additional full-time faculty in subsequent fiscal years, the reductions made to the district's revenue shall be restored.

(d) All revenues available due to reductions made pursuant to Subsection (c), shall be made available on a one-time basis for that fiscal year, for purposes of faculty and staff diversity pursuant to Education Code, Section 87107.

(e) By January 20 of each fiscal year the Board of Governors shall determine whether adequate growth funds and adequate cost-of-living funds have been provided to allow full or partial implementation of the provisions of Subsection (a)(1).

(f) For districts that experience a reduction in base credit FTES, the Chancellor shall make a proportionate reduction to their base number of full-time faculty.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 7-3-91 and submitted to OAL on 7-12-91 for printing only pursuant to Education Code section 70901.5; operative 8-3-91 (Register 91, No. 46).
2. New first paragraph, amendment of subsections (a)-(a)(4) and (c) and NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 36).
4. Amendment of subsections (a)-(a)(4), (b) and (c) filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 51026. Student Equity.

In accordance with the provisions of Section 54220, the governing board of a community college district shall adopt a student equity plan.

HISTORY

1. New section filed 1-12-98; operative 2-11-98. Submitted to OAL for printing only (Register 98, No. 3).

§ 51027. Transfer Centers: Minimum Program Standards.

(a) The governing board of each community college district shall recognize transfer as one of its primary missions, and shall place priority emphasis on the preparation and transfer of underrepresented students, including African-American, Chicano/Latino, American Indian, disabled, low-income and other students historically and currently underrepresented in the transfer process.

(b) Each community college district governing board shall direct the development and adoption of a transfer center plan describing the activities of the transfer center and the services to be provided to students, incorporating the provisions established in the standards outlined below. Plans shall identify target student populations and shall establish target increases in the number of applicants baccalaureate institutions from these populations, including specific targets for increasing the transfer applications of underrepresented students among transfer students. Plans

shall be developed in consultation with baccalaureate college and university personnel as available.

Plan components shall include, but not be limited to: services to be provided to students; facilities; staffing; advisory committee; and evaluation and reporting.

(l) Required Services. Districts shall:

(A) Identify, contact, and provide transfer support services to targeted student populations as identified in the transfer center plan, with a priority emphasis placed on African–American, Chicano/Latino, American Indian, disabled, low–income, and other underrepresented students. These

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tween collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) An Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils so that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-9-78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Amendment of subsection (a) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
5. Editorial correction of HISTORY 3 (Register 95, No. 19).

Subchapter 3. Full-Time and Part-Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This Subchapter relates to and should be read in conjunction with the requirements of Section 51025 concerning the proportion of full-time and part-time faculty to be employed by community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
5. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Amendment filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 53302. Full-Time Faculty.

For purposes of this Chapter only, full-time faculty shall be defined as any regular and contract faculty member.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment of section heading and section filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

Article 2. Proportions of Full-Time and Part-Time Faculty, Computation and Reports

§ 53310. Total Faculty Workload Hours Taught/Worked.

For purposes of this Subchapter, "total faculty workload hours taught/worked" means the total hours of credit instruction taught by instructional faculty and the total hours worked by non-instructional faculty converted to a time base equivalent to that of instructional faculty in terms of the standard number of instructional hours as specified in the bargaining agreement. If there is no bargaining agreement for faculty or the agreement does not specify a standard number of hours for instructional faculty, then district policy or practice shall be controlling. In computing the percentage of total faculty workload hours taught/worked by full-time faculty, the following rules shall be applied:

(a) Overload. The hours of overload teaching/work by full-time faculty shall be excluded from both the total faculty workload hours taught/worked by full-time and part-time faculty and the total faculty workload hours taught/worked by full-time faculty.

(b) Sabbatical. The hours of a full-time faculty member on sabbatical, whether paid or unpaid, shall be included in both the total faculty workload hours taught/worked by full-time and part-time faculty and the total faculty workload hours taught/worked by full-time faculty. The faculty workload hours taught/worked by replacement faculty, whether full-time or part-time, shall be excluded from both the total faculty workload hours taught/worked by full-time and part-time faculty and the total faculty workload hours taught/worked by full-time faculty.

(c) Released/Reassigned Time. The hours of a full-time faculty member on released or reassigned time shall be counted as if the faculty member was teaching/working full-time and had not been provided released or reassigned time. The faculty workload hours of released/reassigned time shall thereby be included in both the total faculty workload hours taught/worked by full-time and part-time faculty and the total faculty workload hours taught/worked by full-time faculty. The faculty workload hours of replacement faculty, whether full-time or part-time, shall be excluded from both the total faculty workload hours taught/worked by full-time and part-time faculty and the total faculty workload hours taught/worked by full-time faculty.

(d) Unpaid Leave. The hours of a full-time faculty member on unpaid leave shall be counted as if the faculty member was teaching/working full-time and had not been provided with unpaid leave. The faculty work-

load hours of unpaid leave shall thereby be included in both the total faculty workload hours taught/worked by full-time and part-time faculty and the total faculty workload hours taught/worked by full-time faculty. The faculty workload hours of replacement faculty, whether full-time or part-time, shall be excluded from both the total faculty workload hours taught/worked by full-time and part-time faculty and the total faculty workload hours taught/worked by full-time faculty.

(e) Teaching by Others. The hours of instruction taught by classified staff or administrators who are appropriately qualified to teach shall, under the following conditions, be included in both the total faculty workload hours taught/worked by full-time and part-time faculty and the total faculty workload hours taught/worked by full-time faculty:

(1) Only the actual hours of teaching by such individuals shall be included;

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

(f) Outreach Locations. The faculty workload hours taught/worked by full-time and part-time faculty at any outreach location that is more than 25 miles from the main campus and generates less than 200 FTES, shall be excluded from both the total faculty workload hours taught/worked by full-time and part-time faculty and the total faculty workload hours taught/worked by full-time faculty.

(g) Late Retirement. The hours of a full-time faculty member who resigned or retired and who provided written notice thereof within 45 faculty duty days of the end of the previous Spring primary term and whose position has not been replaced by another full-time faculty member by the current Fall primary term, shall be included in both the total faculty workload hours taught/worked by full-time and part-time faculty and the total faculty workload hours taught/worked by full-time faculty. The faculty workload hours taught/worked by replacement faculty, whether full-time or part-time, shall be excluded from both the total faculty workload hours taught/worked by full-time and part-time faculty and the total faculty workload hours taught/worked by full-time faculty.

Districts are required to fill the position(s) by the following Spring primary term unless designees for the district governing board and academic senate jointly agree that it is in the best interests of the district to delay the filling of the position. In such cases, replacement must be made by the following primary term or the Chancellor shall reduce the district's state apportionment revenues for the current year in accordance with the provisions of Section 51025. If the number of late retirees exceeds 15% of the district's total number of full-time faculty, and the district's governing board and academic senate jointly agree, a district may file a request with the Chancellor's Office for a one-year extension to fulfill its hiring obligation to replace those retirees.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in article 2 heading (Register 91, No. 31).
3. New subsections (f)-(h) and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
4. Amendment of subsection (h) filed 2-4-93; operative 3-6-93 (Register 93, No. 6).
5. Amendment of subsections (d), (e), (g) and (h) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Amendment of section heading and section filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 53311. Base Data.

For purposes of this Subchapter, "base data" means both the base percentage of faculty workload hours taught/worked by full-time faculty and the base number of full-time faculty required to be maintained or additional hires to be made by the fall term of the subsequent year. This data shall be determined from the current year's fall management information system staff data submission to the Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of section heading, text and NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 53312. Additional Full-Time Faculty Positions.

(a) The Chancellor shall compute each community college district's number of full-time faculty (FTF) which are to be secured in accordance with the provisions of Section 51025, as the result of additional funded growth in credit full-time equivalent students and through the use of the prescribed portion of program improvement revenue allocated to each district.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for part-time instructors times the statewide average full-time teaching load).

(c) If the quotient determined in paragraph (b) is not a whole number, then the quotient shall be rounded down to the nearest whole number. If the quotient, once applied, will result in the district exceeding the 75 percent standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

(d) The computation for the funded growth in full-time equivalent student workload obligation to secure additional full-time faculty shall, when required pursuant to the provisions of Section 51025(a)(1) and (e), be made by multiplying the percentage of funded credit FTES growth times the base number of full-time faculty that were to be in place by Fall of the current year.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsections (a) and (c) and NOTE and new subsection (d) filed 8-19-92; operative 9-18-92 (Register 92, No. 34).

§ 53314. Report to Districts.

By the spring term of each year, the Chancellor shall report to districts the estimated number of FTF each district must secure by the following Fall term based upon the appropriation of revenues contained in that year's Budget Act and the Board of Governors action pursuant to Section 51025(e).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Repealer and new section and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Article 3. Enforcement

§ 53320. Funding Reductions.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
3. Repealer filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This Subchapter implements and should be read in conjunction with the requirements of Education Code Sections 87001, 87002, 87003, 87356 and 87359 concerning minimum qualifications for community college faculty and administrators. The provisions of this subchapter are effective July 1, 1990.

NOTE: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 87002, 87003, 87356 and 87359, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
3. Amendment filed 5-15-93; operative 6-4-93 (Register 93, No. 25).
4. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53401. Applicability to Community Services and Contract Classes.

Community service or contract classes which do not award college credit and are not supported by state apportionment are not subject to the provisions of this Subchapter. Contract classes which award college credit are subject to this Subchapter, even if they are not supported by state apportionment.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 78020 through 78023 and 78300, Education Code.

HISTORY

1. New section filed 6-26-92; operative 7-27-92 (Register 92, No. 26).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Educational administrator" means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(c) "Faculty" or "faculty member" means those employees of a district who are employed in academic positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code and for which minimum qualifications for service are specified in Section 53410-53414 or other provisions of this division. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisorial, nonmanagement community college certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002 and 87003, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).

§ 53403. Applicability of Amendments.

Notwithstanding changes that may be made to the minimum qualifications established in this division, or to the implementing discipline lists adopted by the Board of Governors, the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if he or she, at the time of initial hire by the district, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

Every person authorized to serve under a credential shall retain the right to serve under the terms of that credential, and, for that purpose, shall be deemed to possess the minimum qualifications specified for every discipline or service covered by the credential until the expiration of that credential. However, a credential shall be invalid when the holder has been convicted of any crime that, under former law, would have been mandatory grounds for revocation, or when the Chancellor's Office has determined that the credential was obtained by fraud.

NOTE: Authority cited: Sections 70901, 87355 and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 87355 and 87356, Education Code.

HISTORY

1. New section filed 6-26-92; operative 7-27-92 (Register 92, No. 26).
2. New second paragraph and amendment of NOTE filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

§ 53404. Definition of Experience.

Where years of professional or occupational experience are referred to in this Subchapter, the requirement is for the stated number of years of full-time experience or the equivalent in part-time experience. Unpaid experience may be counted if it entailed responsibilities substantially similar to those of relevant paid positions in the field. Applicants bear the responsibility for verifying all experience by documentation satisfactory to the districts.

As used in this Subchapter, "professional experience" includes teaching experience. "Occupational experience" does not include teaching experience.

As used in this Section, "year" means that period of time which in that occupation is accepted by contract or general agreement as a regular work year for that occupation on a full-time basis.

NOTE: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

HISTORY

1. New section filed 6-26-92; operative 7-27-92 (Register 92, No. 26).
2. Amendment of section and NOTE filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53405. Certificated Employees.

Whenever in this Division, reference is made to "certificated employees" or to employees in "positions with certification qualifications," where such references are to certificates or credentials issued by the Board of Governors, these references are deemed to also apply to persons

Register 2000-26

§ 51025
§ 53301
§ 53302
§ 53308
§ 53309
§ 53310
§ 53311
§ 53312
§ 53314

HISTORY

New section filed 3-12-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 23).

2. Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1 (Register 91, No. 43).

3. Amendment of subsections (a)(2), (a)(4), (b), (b)(10), (d) and (e) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51024. Matriculation Services.

The governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under Section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under Section 55512(c);

(c) provide matriculation services to its students in accordance with Sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with Section 55534; and

(e) substantially comply with all other provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210-78218, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

2. Amendment of first paragraph and subsection (e) filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 51025. Full-Time/Part-Time Faculty.

This Section relates to and should be read in conjunction with Subchapter 3 (commencing with Section 53300) of Chapter 4 of this Division.

(a) If a district's full-time faculty percentage, as calculated pursuant to Section 53308, is less than 75 percent, the following shall apply:

(1) For growth revenues received related to increases in credit FTES pursuant to Section 58774, the district shall increase the base full-time faculty obligation (as defined in Section 53311), subject to Subsection (c) below, by the Fall term of the succeeding fiscal year, by the product of their base full-time faculty obligation multiplied by the percentage change in funded credit FTES, rounded down to the nearest whole number.

In computing the district's full-time faculty obligation for the succeeding fiscal year, the base obligation will be increased by the lower of the projected fundable growth at the time of the budget enactment or the actual percentage change in funded credit FTES. For the second succeeding Fall term the obligation will be adjusted to the actual percentage change in funded credit FTES.

(2) Districts which, as determined from their base data, had a full-time faculty percentage of 67 percent or greater, but less than 75 percent shall apply up to 33 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(3) Districts which, as determined from their base data, had a full-time faculty percentage of less than 67 percent shall apply up to 40 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(4) For program improvement funds identified in Subsection (a)(2) or (3), as appropriate, the district shall increase the number of full-time faculty, by the Fall term of the succeeding fiscal year, by the quotient of the applicable program improvement funds divided by the statewide average replacement cost, rounded down to the nearest whole number.

(5) If the number of full-time faculty derived in Subsections (a)(1) and (4) result in the district exceeding the 75 percent standard, the Chancellor shall reduce the number that leaves the district as close as possible to, but in excess of, the 75 percent standard.

(b) Statewide average replacement cost is the statewide average faculty salary plus benefits, minus the product of the statewide average hourly rate of compensation for part-time faculty times the statewide average full-time teaching load.

(c) On or before January 31 of each year, the Chancellor shall determine, based on information submitted by districts, the extent to which each district, by the Fall term of that year, has maintained or hired the number of additional full-time faculty determined pursuant to Subsection (a) for the prior fiscal year. To the extent that the number of full-time faculty has not been maintained or additional full-time faculty have not been retained, the Chancellor shall reduce the district's revenue for the current fiscal year by an amount equal to the average replacement cost for the prior fiscal year times the deficiency in the number of full-time faculty. To the extent a district hires the additional full-time faculty in subsequent fiscal years, the reductions made to the district's revenue shall be restored.

(d) All revenues available due to reductions made pursuant to Subsection (c), shall be made available on a one-time basis for that fiscal year, for purposes of faculty and staff diversity pursuant to Education Code, Section 87107.

(e) By January 20 of each fiscal year the Board of Governors shall determine whether adequate growth funds and adequate cost-of-living funds have been provided to allow full or partial implementation of the provisions of Subsection (a)(1).

(f) For districts that experience a reduction in base credit FTES, the Chancellor shall make a proportionate reduction to their base number of full-time faculty.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 7-3-91 and submitted to OAL on 7-12-91 for printing only pursuant to Education Code section 70901.5; operative 8-3-91 (Register 91, No. 46).

2. New first paragraph, amendment of subsections (a)-(a)(4) and (c) and NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).

3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

4. Amendment of subsections (a)-(a)(4), (b) and (c) filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

5. Amendment filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 51026. Student Equity.

In accordance with the provisions of Section 54220, the governing board of a community college district shall adopt a student equity plan.

HISTORY

1. New section filed 1-12-98; operative 2-11-98. Submitted to OAL for printing only (Register 98, No. 3).

§ 51027. Transfer Centers: Minimum Program Standards.

(a) The governing board of each community college district shall recognize transfer as one of its primary missions, and shall place priority emphasis on the preparation and transfer of underrepresented students, including African-American, Chicano/Latino, American Indian, disabled, low-income and other students historically and currently underrepresented in the transfer process.

(b) Each community college district governing board shall direct the development and adoption of a transfer center plan describing the activities of the transfer center and the services to be provided to students, incorporating the provisions established in the standards outlined below. Plans shall identify target student populations and shall establish target increases in the number of applicants baccalaureate institutions from these populations, including specific targets for increasing the transfer applications of underrepresented students among transfer students. Plans shall be developed in consultation with baccalaureate college and university personnel as available.

between collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) An Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils so that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5–9–78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Amendment of subsection (a) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
5. Editorial correction of HISTORY 3 (Register 95, No. 19).

Subchapter 3. Full–Time and Part–Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This Subchapter relates to and should be read in conjunction with the requirements of Section 51025 concerning the proportion of full–time and part–time faculty to be employed by community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
5. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Amendment filed 3–25–98; operative 4–24–98. Submitted to OAL for printing only (Register 98, No. 14).

§ 53301. Part–Time Faculty.

The term "part–time faculty" includes any faculty member, as defined in Section 53402(c), who is not a regular employee or contract employee of the district pursuant to Sections 87601, 87605, 87608, 87608.5, or 87609 of the Education Code.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750, 87482.7, 87601, 87605, 87608, 87608.5 and 87609, Education Code.

HISTORY

1. New section filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53302. Full–Time Faculty.

For purposes of this Chapter the term "full–time faculty" means any faculty member, as defined in Section 53402(c), who is a regular or contract employee of the district pursuant to Sections 87601, 87605, 87608, 87608.5 or 87609 of the Education Code.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750, 87482.6, 87601, 87605, 87608, 87608.5 and 87609, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment of section heading and section filed 3–25–98; operative 4–24–98. Submitted to OAL for printing only (Register 98, No. 14).
5. Amendment of section and NOTE filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53308. Full–Time Faculty Percentage.

For purposes of this Subchapter and Section 51025, a district's full–time faculty percentage is determined as follows:

(a) Using the rules set forth in Section 53309, calculate the district's full–time equivalent faculty (FTEF) attributable to full–time faculty, as defined in Section 53302.

(b) Determine the district's total FTEF by adding together:

(1) FTEF attributable to full–time faculty, using the rules set forth in Section 53309; and

(2) FTEF attributable to part–time faculty, calculated using the rules set forth in Section 53310.

(c) To obtain the full–time faculty percentage, divide the figure from subdivision (a) (FTEF attributable to full–time faculty) by the figure from subdivision (b) (total FTEF).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53309. Rules for Calculating Full–Time Equivalent Faculty (FTEF) Attributable to Full–Time Faculty.

In calculating full–time equivalent faculty (FTEF) attributable to full–time faculty, the following rules shall be applicable:

(a) With respect to instruction, FTEF shall be calculated based on the percentage of instructional hours per week considered a full–time assignment for regular instructional employees having comparable duties, excluding any noncredit instructional assignments.

(b) With respect to non-instructional activities, FTEF shall be calculated based on the percentage of working hours per week considered a full-time assignment for regular non-instructional employees having comparable duties.

(c) Regular Assignment. Include the regular assignment of full-time faculty as defined in Section 53302.

(d) Overload. Exclude full-time faculty overload from the calculation of FTEF.

(e) Sabbatical. Include full-time faculty sabbatical FTEF, whether paid or unpaid, and exclude the FTEF of replacement faculty, whether full-time or part-time, from the computation to determine the full-time faculty percentage pursuant to Section 53308.

(f) Released/Reassigned Time. Include FTEF for full-time faculty who are released or reassigned. The FTEF of a full-time faculty member on released or reassigned time shall be counted as if the faculty member was teaching/working full-time and had not been provided released or reassigned time. The FTEF of replacement faculty, whether full-time or part-time, shall be excluded from the computation to determine the full-time faculty percentage pursuant to Section 53308.

(g) Unpaid Leave. Include unpaid leave FTEF for a faculty member on unpaid leave. The FTEF of a full-time faculty member on unpaid leave shall be counted as if the faculty member was teaching/working full-time and had not been provided with unpaid leave. The FTEF of replacement faculty, whether full-time or part-time, shall be excluded from the computation to determine the full-time faculty percentage pursuant to Section 53308.

(h) Teaching by Others. Include credit instruction FTEF taught by classified staff or administrators who are appropriately qualified to teach, under the following conditions:

(1) Only the actual hours of teaching by such individuals shall be included in determining the FTEF; and

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

(i) Late Retirement. The FTEF of a faculty member who resigned or retired and who provided written notice thereof within 45 faculty duty days of the end of the previous Spring primary term and whose position has not been replaced by another full-time faculty member by the current Fall primary term, shall be included.

Districts are required to fill the position(s) by the following Spring primary term unless designees for the district governing board and academic senate jointly agree that it is in the best interests of the district to delay the filling of the position. In such cases, replacement must be made by the following primary term or the Chancellor shall reduce the district's state apportionment revenues for the current year in accordance with the provisions of Section 51025. If the number of late retirees exceeds 15% of the district's total number of full-time faculty, and the district's governing board and academic senate jointly agree, a district may file a request with the Chancellor's Office for a one-year extension to fulfill its hiring obligation to replace those retirees.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

Article 2. Proportions of Full-Time and Part-Time Faculty, Computation and Reports

§ 53310. Rules for Calculating Full-Time Equivalent Faculty (FTEF) Attributable to Part-Time Faculty.

In calculating full-time equivalent faculty (FTEF) attributable to part-time faculty, the following rules shall be applicable:

(a) With respect to instruction, FTEF shall be calculated based on the percentage of instructional hours per week considered a full-time assignment for regular instructional employees having comparable duties, excluding any noncredit instructional assignments.

(b) With respect to non-instructional activities, FTEF shall be calculated based on the percentage of working hours per week considered a full-time assignment for regular non-instructional employees having comparable duties.

(c) All instructional and noninstructional activities of part-time faculty shall be included, except the following:

(1) FTEF attributable to part-time faculty who replace full-time faculty on sabbatical leave.

(2) FTEF attributable to part-time faculty who replace full-time faculty on released or reassigned time.

(3) FTEF of part-time faculty replacing full-time faculty on unpaid leave.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in article 2 heading (Register 91, No. 31).
3. New subsections (f)-(h) and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
4. Amendment of subsection (h) filed 2-4-93; operative 3-6-93 (Register 93, No. 6).
5. Amendment of subsections (d), (e), (g) and (h) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Amendment of section heading and section filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).
7. Repealer and new section filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53311. Base Data.

For purposes of this Subchapter, "base data" means both the district's base full-time faculty percentage and its base full-time faculty obligation (the number of full-time faculty the district is required to maintain or the number of additional full-time faculty to be hired by the Fall term of the subsequent year.) The data necessary to calculate the base full-time faculty percentage shall be determined from the current year's Fall management information system staff data submission to the Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of section heading, text and NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).
5. Amendment filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53312. Additional Full-Time Faculty Positions.

(a) The Chancellor shall compute the number of full-time faculty which each district is to secure in accordance with Sections 51025 and 53308, as the result of applying additional FTES growth and program improvement revenue allotments.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for part-time instructors times the statewide average full-time teaching load).

(c) If the quotient determined in paragraph (b) is not a whole number, then the quotient shall be rounded down to the nearest whole number. If

the quotient, once applied, will result in the district exceeding the 75 percent standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

(d) The computation for the funded growth in full-time equivalent student workload obligation to secure additional full-time faculty shall, when required pursuant to the provisions of Section 51025(a)(1) and (c), be made by multiplying the percentage of funded credit FTES growth times the base number of full-time faculty that were to be in place by Fall of the current year.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsections (a) and (c) and NOTE and new subsection (d) filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment of subsection (a) filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53314. Report to Districts.

By the Spring term of each year, the Chancellor shall report to districts the estimated number of full-time faculty each district must secure by the following Fall term based upon the appropriation of revenues contained in that year's Budget Act and the Board of Governors' action pursuant to Section 51025(e).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
   Repealer and new section and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

Article 3. Enforcement

§ 53320. Funding Reductions.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
3. Repealer filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This Subchapter implements and should be read in conjunction with the requirements of Education Code Sections 87001, 87002, 87003, 87356 and 87359 concerning minimum qualifications for community lege faculty and administrators. The provisions of this subchapter are ective July 1, 1990.

NOTE: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 87002, 87003, 87356 and 87359, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
3. Amendment filed 5-15-93; operative 6-4-93 (Register 93, No. 25).
4. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53401. Applicability to Community Services and Contract Classes.

Community service or contract classes which do not award college credit and are not supported by state apportionment are not subject to the provisions of this Subchapter. Contract classes which award college credit are subject to this Subchapter, even if they are not supported by state apportionment.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 78020 through 78023 and 78300, Education Code.

HISTORY

1. New section filed 6-26-92; operative 7-27-92 (Register 92, No. 26).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Educational administrator" means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(c) "Faculty" or "faculty member" means those employees of a district who are employed in academic positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code and for which minimum qualifications for service are specified in Section 53410-53414 or other provisions of this division. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisorial, nonmanagement community college certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002 and 87003, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).

§ 53403. Applicability of Amendments.

Notwithstanding changes that may be made to the minimum qualifications established in this division, or to the implementing discipline lists adopted by the Board of Governors, the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if he or she, at the time of initial hire by the district, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

Every person authorized to serve under a credential shall retain the right to serve under the terms of that credential, and, for that purpose, shall be deemed to possess the minimum qualifications specified for every discipline or service covered by the credential until the expiration of that credential. However, a credential shall be invalid when the holder has been convicted of any crime that, under former law, would have been

boards. It is the intent of the Board of Governors to respect agreements tween academic senates and collective bargaining representatives as how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) An Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils so that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters.

(b) The Board of Governors recognizes the Academic Senate of the fornia Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-9-78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Amendment of subsection (a) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
5. Editorial correction of HISTORY 3 (Register 95, No. 19).

Subchapter 3. Full-Time and Part-Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This Subchapter relates to and should be read in conjunction with the requirements of Section 51025 concerning the proportion of full-time and part-time faculty to be employed by community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
5. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Amendment filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 53301. Part-Time Faculty.

The term "part-time faculty" includes any faculty member, as defined in Section 53402(c), who is not a regular employee or contract employee of the district pursuant to Sections 87601, 87605, 87608, 87608.5, or 87609 of the Education Code.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750, 87482.7, 87601, 87605, 87608, 87608.5 and 87609, Education Code.

HISTORY

1. New section filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53302. Full-Time Faculty.

For purposes of this Chapter the term "full-time faculty" means any faculty member, as defined in Section 53402(c), who is a regular or contract employee of the district pursuant to Sections 87601, 87605, 87608, 87608.5 or 87609 of the Education Code.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750, 87482.6, 87601, 87605, 87608, 87608.5 and 87609, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment of section heading and section filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).
5. Amendment of section and NOTE filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53308. Full-Time Faculty Percentage.

For purposes of this Subchapter and Section 51025, a district's full-time faculty percentage is determined as follows:

(a) Using the rules set forth in Section 53309, calculate the district's full-time equivalent faculty (FTEF) attributable to full-time faculty, as defined in Section 53302.

(b) Determine the district's total FTEF by adding together:

(1) FTEF attributable to full-time faculty, using the rules set forth in Section 53309; and

(2) FTEF attributable to part-time faculty, calculated using the rules set forth in Section 53310.

(c) To obtain the full-time faculty percentage, divide the figure from subdivision (a) (FTEF attributable to full-time faculty) by the figure from subdivision (b) (total FTEF).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53309. Rules for Calculating Full-Time Equivalent Faculty (FTEF) Attributable to Full-Time Faculty.

In calculating full-time equivalent faculty (FTEF) attributable to full-time faculty, the following rules shall be applicable:

(a) With respect to instruction, FTEF shall be calculated based on the percentage of instructional hours per week considered a full-time assignment for regular instructional employees having comparable duties, excluding any noncredit instructional assignments.

(b) With respect to non-instructional activities, FTEF shall be calculated based on the percentage of working hours per week considered a full-time assignment for regular non-instructional employees having comparable duties.

(c) Regular Assignment. Include the regular assignment of full-time faculty as defined in Section 53302.

(d) Overload. Exclude full-time faculty overload from the calculation of FTEF.

(e) Sabbatical. Include full-time faculty sabbatical FTEF, whether paid or unpaid, and exclude the FTEF of replacement faculty, whether full-time or part-time, from the computation to determine the full-time faculty percentage pursuant to Section 53308.

(f) Released/Reassigned Time. Include FTEF for full-time faculty who are released or reassigned. The FTEF of a full-time faculty member on released or reassigned time shall be counted as if the faculty member was teaching/working full-time and had not been provided released or reassigned time. The FTEF of replacement faculty, whether full-time or part-time, shall be excluded from the computation to determine the full-time faculty percentage pursuant to Section 53308.

(g) Unpaid Leave. Include unpaid leave FTEF for a faculty member on unpaid leave. The FTEF of a full-time faculty member on unpaid leave shall be counted as if the faculty member was teaching/working full-time and had not been provided with unpaid leave. The FTEF of replacement faculty, whether full-time or part-time, shall be excluded from the computation to determine the full-time faculty percentage pursuant to Section 53308.

(h) Teaching by Others. Include credit instruction FTEF taught by classified staff or administrators who are appropriately qualified to teach, under the following conditions:

(1) Only the actual hours of teaching by such individuals shall be included in determining the FTEF; and

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

(i) Late Retirement. The FTEF of a faculty member who resigned or retired and who provided written notice thereof within 45 faculty duty days of the end of the previous Spring primary term and whose position has not been replaced by another full-time faculty member by the current Fall primary term, shall be included. The FTEF of replacement faculty, whether full-time or part-time, shall be excluded from the computation to determine the full-time faculty percentage pursuant to Section 53308.

Districts are required to fill the position(s) by the following Spring primary term unless designees for the district governing board and academic senate jointly agree that it is in the best interests of the district to delay the filling of the position. In such cases, replacement must be made by the following primary term or the Chancellor shall reduce the district's state apportionment revenues for the current year in accordance with the provisions of Section 51025. If the number of late retirees exceeds 15% of the district's total number of full-time faculty, and the district's governing board and academic senate jointly agree, a district may file a request with the Chancellor's Office for a one-year extension to fulfill its hiring obligation to replace those retirees.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).
2. Amendment of subsection (i) filed 10-16-2001; operative 11-15-2001. Submitted to OAL for printing only (Register 2001, No. 43).

Article 2. Proportions of Full-Time and Part-Time Faculty, Computation and Reports

§ 53310. Rules for Calculating Full-Time Equivalent Faculty (FTEF) Attributable to Part-Time Faculty.

In calculating full-time equivalent faculty (FTEF) attributable to part-time faculty, the following rules shall be applicable:

(a) With respect to instruction, FTEF shall be calculated based on the percentage of instructional hours per week considered a full-time assignment for regular instructional employees having comparable duties, excluding any noncredit instructional assignments.

(b) With respect to non-instructional activities, FTEF shall be calculated based on the percentage of working hours per week considered a full-time assignment for regular non-instructional employees having comparable duties.

(c) All instructional and noninstructional activities of part-time faculty shall be included, except the following:

(1) FTEF attributable to part-time faculty who replace full-time faculty on sabbatical leave.

(2) FTEF attributable to part-time faculty who replace full-time faculty on released or reassigned time.

(3) FTEF of part-time faculty replacing full-time faculty on unpaid leave.

(4) FTEF of part-time faculty replacing full-time faculty who resigned or retired late as defined in section 53309(i).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in article 2 heading (Register 91, No. 31).
3. New subsections (f)-(h) and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
4. Amendment of subsection (h) filed 2-4-93; operative 3-6-93 (Register 93, No. 6).
5. Amendment of subsections (d), (e), (g) and (h) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Amendment of section heading and section filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).
7. Repealer and new section filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).
8. New subsection (c)(4) filed 10-16-2001; operative 11-15-2001. Submitted to OAL for printing only (Register 2001, No. 43).

§ 53311. Base Data.

For purposes of this Subchapter, "base data" means both the district's base full-time faculty percentage and its base full-time faculty obligation (the number of full-time faculty the district is required to maintain or the number of additional full-time faculty to be hired by the Fall term of the subsequent year.) The data necessary to calculate the base full-time faculty percentage shall be determined from the current year's Fall management information system staff data submission to the Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of section heading, text and NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).
5. Amendment filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53312. Additional Full-Time Faculty Positions.

(a) The Chancellor shall compute the number of full-time faculty which each district is to secure in accordance with Sections 51025 and 53308, as the result of applying additional FTES growth and program improvement revenue allotments.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for

-time instructors times the statewide average full-time teaching load).

(c) If the quotient determined in paragraph (b) is not a whole number, then the quotient shall be rounded down to the nearest whole number. If the quotient, once applied, will result in the district exceeding the 75 percent standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

(d) The computation for the funded growth in full-time equivalent student workload obligation to secure additional full-time faculty shall, when required pursuant to the provisions of Section 51025(a)(1) and (c), be made by multiplying the percentage of funded credit FTES growth times the base number of full-time faculty that were to be in place by Fall of the current year.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsections (a) and (c) and NOTE and new subsection (d) filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment of subsection (a) filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53314. Report to Districts.

By the Spring term of each year, the Chancellor shall report to districts the estimated number of full-time faculty each district must secure by the following Fall term based upon the appropriation of revenues contained in that year's Budget Act and the Board of Governors' action pursuant to Section 51025(c).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Repealer and new section and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

Article 3. Enforcement

§ 53320. Funding Reductions.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
3. Repealer filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This Subchapter implements and should be read in conjunction with the requirements of Education Code Sections 87001, 87002, 87003, 87356 and 87359 concerning minimum qualifications for community college faculty and administrators. The provisions of this subchapter are effective July 1, 1990.

NOTE: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 87002, 87003, 87356 and 87359, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
3. Amendment filed 5-15-93; operative 6-4-93 (Register 93, No. 25).
4. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53401. Applicability to Community Services and Contract Classes.

Community service or contract classes which do not award college credit and are not supported by state apportionment are not subject to the provisions of this Subchapter. Contract classes which award college credit are subject to this Subchapter, even if they are not supported by state apportionment.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 78020 through 78023 and 78300, Education Code.

HISTORY

1. New section filed 6-26-92; operative 7-27-92 (Register 92, No. 26).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Educational administrator" means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(c) "Faculty" or "faculty member" means those employees of a district who are employed in academic positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code and for which minimum qualifications for service are specified in Section 53410-53414 or other provisions of this division. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisorial, nonmanagement community college certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002 and 87003, Education Code.

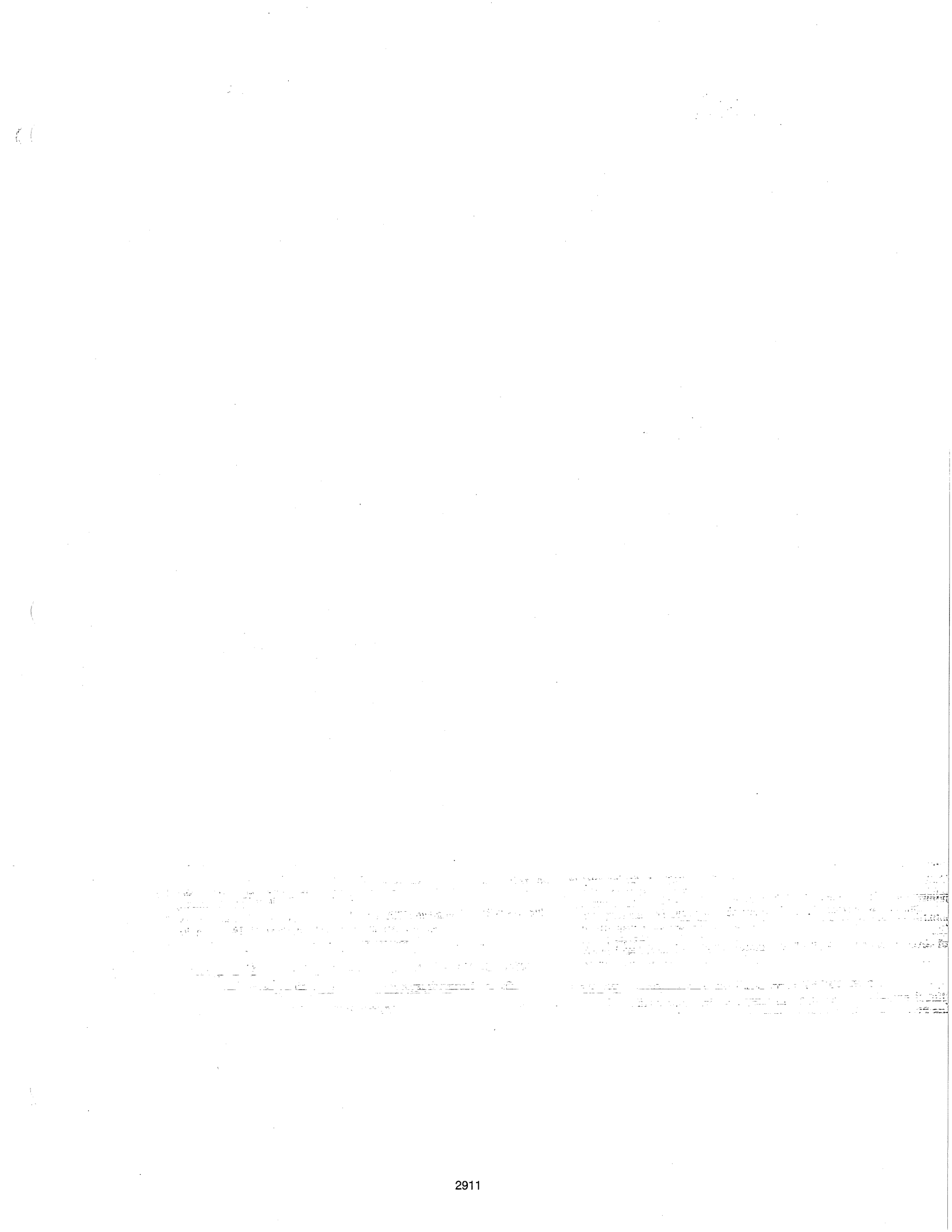
HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).

§ 53403. Applicability of Amendments.

Notwithstanding changes that may be made to the minimum qualifications established in this division, or to the implementing discipline lists adopted by the Board of Governors, the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if he or she, at the time of initial hire by the district, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

Every person authorized to serve under a credential shall retain the right to serve under the terms of that credential, and, for that purpose, shall be deemed to possess the minimum qualifications specified for every discipline or service covered by the credential until the expiration of that credential. However, a credential shall be invalid when the holder has been convicted of any crime that, under former law, would have been



No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 18: Student Equity

History Index for
Title 5, California Code of Regulations

Section 51026
Section 54220

Register 93-06 § 54220: New Subchapter 4 and section.

Register 98-03 § 51026: Added new section. Submitted to OAL for printing only.

§ 54220: Amendment of subsections (a)(1), (a)(2) and (b), repealer of subsections (d)-(d)(2), and new subsection (d). Submitted to OAL for printing only.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

Register 1993-06

§ 54220

portation to such persons, in those parking areas which are most accessible to facilities which the district finds are most used by students.

(f) Each community college district shall post in conspicuous places notice that parking is available to students with disabilities and those providing transportation for such students.

(g) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for students with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

(h) Revenue form parking fees collected pursuant to Education Code Section 72247 may be used to offset the costs of implementing this section.

NOTE: Authority cited: Sections 66260, 67311.5, 66700 and 70901, Education Code. Reference: Sections 66260, 67311.5 and 72247, Education Code; and Sections 21458, 22507 and 22511.5, Vehicle Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer of Chapter 2 (Section 54150) filed 7–29–82; effective thirtieth day thereafter (Register 82, No. 31).
3. New section filed 1–16–92; operative 2–18–92 (Register 92, No. 12).

Subchapter 2.5. Medical Insurance for Hazardous Activities

NOTE: Authority cited: Sections 71020, 72246.5, Education Code. Reference: Section 72246.5, Education Code.

HISTORY

1. New Chapter 2.5 (Articles 1–3, Sections 54161–54184, not consecutive) filed 12–13–78 as an emergency; effective upon filing. Certificate of Compliance included (Register 78, No. 50).
2. Repealer of Chapter 2.5 (Sections 54160–54184) filed 11—15–79; effective thirtieth day thereafter (Register 79, No. 46).

Subchapter 3. Attendance

NOTE: Authority cited: Sections 66700, 71020, 76300, 78405, 84500.1, and 84530, Education Code. Reference: Sections 8512, 76300, 78203, 78412, 84500, 84500.1, 84500.5, and 84530, Education Code.

HISTORY

1. Repealer of Chapter 3 (Subchapters 1 and 2, Sections 54200–54222, not consecutive) and new Chapter 3 (Articles 1 and 2, Sections 54180–54228, not consecutive) filed 8–12–80; effective thirtieth day thereafter (Register 80, No. 33). For prior history, see Registers 79, No. 46; 77, No. 45; and 74, No. 10.
2. Repealer of Chapter 3 (Articles 1 and 2, Sections 54180–54223, not consecutive) filed 7–29–82; effective thirtieth day thereafter (Register 82, No. 31). For prior history, see Register 81, No. 3.

§ 54200. Certain Students' Residences More than 60 Miles from Nearest Attendance Center.

Any student under 21 years of age, and any student under 25 years of age who has been honorably discharged or is otherwise returning from active or inactive military service within the armed forces of the United States, who resides in this state and more than 60 miles from the nearest community college measured by the usual vehicular route between the student's home and the college, may request to attend credit courses at any community college in the state, whether or not the student's residence is in a district maintaining a community college. The governing board of the district maintaining the community college designated by the student shall admit the student provided all requirements for admission are met.

The provisions of this section shall not apply to any student residing in a district maintaining a community college if that district maintains adequate dormitories or housing facilities or provides adequate transportation for the student between the student's home and community college attendance center.

If the student resides within territory not included within any district and resides more than 60 miles from the nearest community college, measured by the usual vehicular route between the students home and the attendance center, there shall be paid to the parents or other persons having charge or control of the student and directly to adult students and married minors, by the district in which the student attends, a maintenance allowance not to exceed four dollars ($4) per calendar day, including weekends and school holidays, for the portion of a semester, quarter, or other session or term in which the student is enrolled full time in credit classes in a community college under this section. Districts shall receive reimbursement from the Chancellor's Office for allowances paid to students from nondistrict territory for the prior fiscal year not to exceed the maximum amount as provided by law.

No later than 60 days after the close of each fiscal year the Chancellor shall determine the daily allowance rate for the prior fiscal year. If claims made by community colleges exceed total funds raised by nondistrict territories for that purpose prior to July 1, 1978, the Chancellor shall prorate the allowances made under this section. No later than 90 days after the close of each fiscal year the community college districts shall pay eligible students at the rate prescribed by the Chancellor and verification of the claims by the appropriate county superintendent of schools.

The Chancellor shall prescribe procedures for the submission of claims by districts.

For the purpose of this section, a person shall be deemed to be honorably discharged from the armed forces (a) if he or she was honorable discharged from the armed forces of the United States or (b) if he or she was inducted into the armed forces of the United States under the "Universal Military Training and Service Act," and

(1) satisfactorily completes his or her period of training and service under that act and is issued a certificate to that effect pursuant to that act, or

(2) having served honorably on active duty was transferred to a reserve component of the armed forces of the United States pursuant to that act, or

(3) was otherwise released pursuant to that act under honorable conditions.

For the purposes of this section, the term "armed forces of the United States" shall include all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretaries of the Army, Navy and Air Force, and all components of the Coast Guard.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment of third and fifth paragraphs filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

Subchapter 4. Student Equity

§ 54220. Student Equity Plans.

(a) In order to promote student success for all students, the governing board of each community college district shall adopt, by July 1, 1993, a student equity plan which includes for each college in the district:

(1) Campus–based research as to the extent of student equity and as to institutional barriers to equity in order to provide a basis for the development of goals and the determination of what activities are most likely to be effective;

(2) Goals for access, retention, degree and certificate completion, ESL and basic skills completion, and transfer; for each of the historically underrepresented groups as appropriate;

(3) Implementation activities designed to attain the goals, including a means of coordinating existing student equity related programs;

(4) Sources of funds for the activities in the plan;

(5) Schedule and process for evaluation; and

(6) An executive summary that includes, at a minimum, the groups for whom goals have been set, the goals, the initiatives that the college or district will undertake to achieve these goals, the resources that have been

budgeted for that purpose, and the district official to contact for further information.

(b) These plans should be developed with the active involvement of all groups on campus as required by law, and with the involvement of appropriate people from the community who can articulate the perspective and concerns of the historically underrepresented groups.

(c) The Board-adopted plan shall be submitted to the Office of the Chancellor, which shall publish all executive summaries, sending copies to every college and district, the chair of each consultation group that so requests, and such additional individuals and organizations as deemed appropriate.

(d) Definitions. For purposes of this section the following definitions will apply:

(1) Historically Underrepresented Group. "Historically underrepresented group" means any group for which the percentage of persons from that group who enroll and complete their educational goals is now, and historically has been, significantly lower than the percentage that members of that group represent in the adult population of the state. The Board of Governors has determined that, on a statewide basis, ethnic minorities, women, and persons with disabilities are historically underrepresented groups.

(2) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks and Hispanics. A person shall be included in the group with which he or she identifies as his or her group, but may be counted in only one ethnic group. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 66010.2, 66010.7, 66030 and 70901, Education Code.

HISTORY

1. New subchapter 4 and section filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

Subchapter 5. Enrollment Accounting

NOTE: Authority cited: Section 71020 and 84522, Education Code.

HISTORY

1. New Chapter 5 (Sections 54500-54510, not consecutive) filed 12-13-74; effective thirtieth day thereafter (Register 74, No. 50).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Chapter 5 (Sections 54500-54512, not consecutive) filed 7-29-82; effective thirtieth day thereafter (Register 82, No. 31). For prior history, see Registers 76, No. 41 and 75, No. 26.

Subchapter 6. Student Records

§ 54600. Purpose.

This chapter is adopted pursuant to and for implementation of Chapter 1.5 (commencing with Section 76200), Part 47 of Division 7 of the Education Code regarding Student Records. The provisions of this Chapter should be read and interpreted in conjunction with the provisions of Chapter 1.5.

NOTE: Authority cited: Sections 76220, 76225 and 76246, Education Code. Reference: Chapter 1.5 (commencing with Section 76200), Part 47, Division 7, Education Code; and 20 USC 1232(g).

HISTORY

1. New Chapter 6 Articles 1-7, (Sections 54600-54662, not consecutive) filed 3-5-76; effective thirtieth day thereafter (Register 76, No. 10).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of article heading and amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54602. Construction.

HISTORY

1. Amendment filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54604. Policy.

Community College districts may establish and maintain only such information on students relevant to admission, registration, academic history, career, student benefits or services, extracurricular activities, counseling and guidance, discipline or matters relating to student conduct, and shall establish and maintain such information required by law.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76210, Education Code; and 20 USC 1232(g).

HISTORY

1. New NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54606. Definitions.

(a) "Student" as used in this Chapter means a currently enrolled or formerly enrolled student.

(b) "Access" means a personal inspection and review of a record, an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, or a request to release a copy of any record. The student shall be permitted to select the means of access.

(c) "Student Record" means any item of information directly related to an identifiable student maintained by a Community College or required to be maintained by an employee in the performance of the employee's duties, whether recorded by handwriting, print, tapes, film, microfilm or other means, except:

(1) Information provided by a student's parents relating to applications for financial aid or scholarships,

(2) Information related to a student compiled by a Community College officer or employee:

(A) appropriate for such officer or employee's performance of his or he responsibility; and

(B) which remains in the sole possession of the maker thereof; and

(C) is not accessible or revealed to any other person except a substitute. For the purposes of this subdivision, "substitute" shall mean a person who performs on a temporary basis the duties of the individual who made the notes and does not refer to a person who permanently succeeds the maker of the notes in his or her position.

(3) Information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional:

[The next page is 339.]

(c) The governing board of a community college district shall comply substantially with policies and procedures adopted in accordance with this Section.

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901 (b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3-12-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 23).
2. Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1 (Register 91, No. 43).
3. Amendment of subsections (a)(2), (a)(4), (b), (b)(10), (d) and (e) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51024. Matriculation Services.

The governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under Section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under Section 55512(c);

(c) provide matriculation services to its students in accordance with Sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with Section 55534; and

(e) substantially comply with all other provisions of Subchapter 6 (commencing with Section 55500) of Chapter 6 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210-78218, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of first paragraph and subsection (e) filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 51025. Full-Time/Part-Time Faculty.

This Section relates to and should be read in conjunction with Subchapter 3 (commencing with Section 53300) of Chapter 4 of this Division.

(a) Community college districts which have less than 75 percent of their hours of credit instruction taught by full-time instructors, as determined from their base data calculated pursuant to Section 53311, shall apply the growth revenues received related to increases in credit FTES in accordance with Section 58774 and a portion of the program improvement allocation received in accordance with Section 58775, as follows:

(1) Of the growth revenues received related to increases in credit FTES pursuant to Section 58774, the districts shall increase the base number of full-time instructors, subject to Subsection (e) below, by the Fall term of the succeeding fiscal year, by the product of their base number of full-time faculty multiplied by the percentage change in funded credit FTES, rounded down to the nearest whole number.

(2) Districts which, as determined from their base data, had 67 percent or greater, but less than 75 percent of their hours of credit instruction taught by full-time instructors shall apply up to 33 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(3) Districts which, as determined from their base data, had less than 67 percent of their hours of credit instruction taught by full-time instructors shall apply up to 40 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(4) Of the program improvement funds identified in Subsection (a)(2) or (3), as appropriate, the district shall increase the number of full-time instructors, by the Fall term of the succeeding fiscal year, by the quotient of the applicable program improvement funds divided by the statewide average replacement cost, rounded down to the nearest whole number.

(5) If the number of full-time faculty derived in Subsections (a)(1) and (4) result in the district exceeding the 75 percent standard, the Chancellor shall reduce the number to a whole number to a whole number that leaves the district as close as possible to, but in excess of, the 75 percent standard.

(b) Statewide average replacement cost is the statewide average faculty salary plus benefits, minus the product of the statewide average hourly rate of compensation for part-time instructors times the statewide average full-time teaching load.

(c) On or before December 31 of each year, the Chancellor shall determine, based on information submitted by districts, the extent to which each district, by the Fall term of that year, has maintained or hired the number of additional full-time instructors determined pursuant to Subsection (a) for the prior fiscal year. To the extent that the number of full-time faculty has not been maintained or additional full-time instructors have not been retained, the Chancellor shall reduce the district's revenue for the current fiscal year by an amount equivalent to the average replacement cost for the prior fiscal year times the deficiency in the number of full-time faculty. To the extent a district hires the additional full-time instructors in subsequent fiscal years the reductions made to the district's revenue shall be restored.

(d) All revenues available due to reductions made pursuant to Subsection (c), shall be made available on a one-time basis for that fiscal year, for purposes of faculty and staff diversity pursuant to Education Code, Section 87107.

(e) By January 20 of each fiscal year the Board of Governors shall determine whether adequate growth funds and adequate cost-of-living funds have been provided to allow full or partial implementation of the provisions of Subsection (a)(1).

(f) For districts that experience a reduction in base credit FTES, the Chancellor shall make a proportionate reduction to their base number of full-time faculty.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 7-3-91 and submitted to OAL on 7-12-91 for printing only pursuant to Education Code section 70901.5; operative 8-3-91 (Register 91, No. 46).
2. New first paragraph, amendment of subsections (a)-(a)(4) and (c) and NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51026. Student Equity.

In accordance with the provisions of Section 54220, the governing board of a community college district shall adopt a student equity plan.

HISTORY

1. New section filed 1-12-98; operative 2-11-98. Submitted to OAL for printing only (Register 98, No. 3).

§ 51027. Transfer Centers: Minimum Program Standards.

(a) The governing board of each community college district shall recognize transfer as one of its primary missions, and shall place priority emphasis on the preparation and transfer of underrepresented students, including African-American, Chicano/Latino, American Indian, disabled, low-income and other students historically and currently underrepresented in the transfer process.

(b) Each community college district governing board shall direct the development and adoption of a transfer center plan describing the activities of the transfer center and the services to be provided to students, incorporating the provisions established in the standards outlined below. Plans shall identify target student populations and shall establish target increases in the number of applicants baccalaureate institutions from these populations, including specific targets for increasing the transfer applications of underrepresented students among transfer students. Plans

History

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer of Chapter 2 (Section 54150) filed 7-29-82; effective thirtieth day thereafter (Register 82, No. 31).
3. New section filed 1-16-92; operative 2-18-92 (Register 92, No. 12).

Subchapter 2.5. Medical Insurance for Hazardous Activities

Note: Authority cited: Sections 71020, 72246.5, Education Code. Reference: Section 72246.5, Education Code.

History

1. New Chapter 2.5 (Articles 1-3, Sections 54161-54184, not consecutive) filed 12-13-78 as an emergency; effective upon filing. Certificate of Compliance included (Register 78, No. 50).
2. Repealer of Chapter 2.5 (Sections 54160-54184) filed 11—15-79; effective thirtieth day thereafter (Register 79, No. 46).

Subchapter 3. Attendance

Note: Authority cited: Sections 66700, 71020, 76300, 78405, 84500.1, and 84530, Education Code. Reference: Sections 8512, 76300, 78203, 78412, 84500, 84500.1, 84500.5, and 84530, Education Code.

History

1. Repealer of Chapter 3 (Subchapters 1 and 2, Sections 54200-54222, not consecutive) and new Chapter 3 (Articles 1 and 2, Sections 54180-54228, not consecutive) filed 8-12-80; effective thirtieth day thereafter (Register 80, No. 33). For prior history, see Registers 79, No. 46; 77, No. 45; and 74, No. 10.
2. Repealer of Chapter 3 (Articles 1 and 2, Sections 54180-54228, not consecutive) filed 7-29-82; effective thirtieth day thereafter (Register 82, No. 31). For prior history, see Register 81, No. 3.

§ 54200. Certain Students' Residences More than 60 Miles from Nearest Attendance Center.

Any student under 21 years of age, and any student under 25 years of age who has been honorably discharged or is otherwise returning from active or inactive military service within the armed forces of the United States, who resides in this state and more than 60 miles from the nearest community college measured by the usual vehicular route between the student's home and the college, may request to attend credit courses at any community college in the state, whether or not the student's residence is in a district maintaining a community college. The governing board of the district maintaining the community college designated by the student shall admit the student provided all requirements for admission are met.

The provisions of this Section shall not apply to any student residing in a district maintaining a community college if that district maintains adequate dormitories or housing facilities or provides adequate transportation for the student between the student's home and community college attendance center.

If the student resides within territory not included within any district and resides more than 60 miles from the nearest community college, measured by the usual vehicular route between the students home and the attendance center, there shall be paid to the parents or other persons having charge or control of the student and directly to adult students and married minors, by the district in which the student attends, a maintenance allowance not to exceed four dollars ($4) per calendar day, including weekends and school holidays, for the portion of a semester, quarter, or other session or term in which the student is enrolled full time in credit classes in a community college under this Section. Districts shall receive reimbursement from the Chancellor's Office for allowances paid to students from nondistrict territory for the prior fiscal year not to exceed the maximum amount as provided by law.

No later than 60 days after the close of each fiscal year the Chancellor shall determine the daily allowance rate for the prior fiscal year. If claims made by community colleges exceed total funds raised by nondistrict territories for that purpose prior to July 1, 1978, the Chancellor shall prorate the allowances made under this Section. No later than 90 days after the close of each fiscal year the community college districts shall pay eligible students at the rate prescribed by the Chancellor and verification of the claims by the appropriate county superintendent of schools.

The Chancellor shall prescribe procedures for the submission of claims by districts.

For the purpose of this Section, a person shall be deemed to be honorably discharged from the armed forces (a) if he or she was honorable discharged from the armed forces of the United States or (b) if he or she was inducted into the armed forces of the United States under the "Universal Military Training and Service Act," and

(1) satisfactorily completes his or her period of training and service under that Act and is issued a certificate to that effect pursuant to that Act, or

(2) having served honorably on active duty was transferred to a reserve component of the armed forces of the United States pursuant to that Act, or

(3) was otherwise released pursuant to that Act under honorable conditions.

For the purposes of this Section, the term "armed forces of the United States" shall include all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretaries of the Army, Navy and Air Force, and all components of the Coast Guard.

Students residing in a nondistrict territory that has been annexed to a community college district and residing more than 60 miles from the nearest community college shall be provided a maintenance allowance as prescribed by this Section for up to four years from the date of annexation.

Note: Authority cited: Sections 66700, 70901 and 84750, Education Code. Reference: Section 70901, Education Code.

History

1. New section filed 3-4-91 by the Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of third and fifth paragraphs filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
3. Editorial correction of History 1 (Register 95, No. 19).
4. Amendment of section and Note filed 11-6-97; operative 12-6-97. Submitted to OAL for printing only (Register 97, No. 46).

Subchapter 4. Student Equity

§ 54220. Student Equity Plans.

(a) In order to promote student success for all students, the governing board of each community college district shall adopt, by July 1, 1993, a student equity plan which includes for each college in the district:

(1) Campus-based research as to the extent of student equity in the five areas described in paragraph (2) and the determination of what activities are most likely to be effective;

(2) Goals for access, retention, degree and certificate completion, ESL and basic skills completion, and transfer; for the overall student population and for each population group of students, as appropriate. Where significant underrepresentation is found to exist in accordance with standards adopted by the Board of Governors, the plan shall include race-neutral measures for addressing the disparity, and, when legally appropriate, race-conscious measures for addressing the disparity;

(3) Implementation activities designed to attain the goals, including a means of coordinating existing student equity related programs;

(4) Sources of funds for the activities in the plan;

(5) Schedule and process for evaluation; and

(6) An executive summary that includes, at a minimum, the groups for whom goals have been set, the goals, the initiatives that the college or district will undertake to achieve these goals, the resources that have been budgeted for that purpose, and the district official to contact for further information.

(b) These plans should be developed with the active involvement of all groups on campus as required by law, and with the involvement of appropriate people from the community.

(c) The Board-adopted plan shall be submitted to the Office of the Chancellor, which shall publish all executive summaries, sending copies to every college and district, the chair of each consultation group that so requests, and such additional individuals and organizations as deemed appropriate.

(d) For the purposes of this section, "each population group of students" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks, Hispanics, Whites, men, women, and persons with disabilities. A person shall be included in the group with which he or she identifies as his or her group.

NOTE: Authority cited: Section 70901, Education Code. Reference: Sections 66010.2, 66010.7, 66030 and 70901, Education Code.

HISTORY

1. New subchapter 4 and section filed 2-4-93; operative 3-6-93 (Register 93, No. 6).
2. Amendment of subsections (a)(1), (a)(2) and (b), repealer of subsections (d)-(d)(2), and new subsection (d) filed 1-12-98; operative 2-11-98. Submitted to OAL for printing only (Register 98, No. 3).

Subchapter 5. Enrollment Accounting

NOTE: Authority cited: Section 71020 and 84522, Education Code.

HISTORY

1. New Chapter 5 (Sections 54500-54510, not consecutive) filed 12-13-74; effective thirtieth day thereafter (Register 74, No. 50).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Chapter 5 (Sections 54500-54512, not consecutive) filed 7-29-82; effective thirtieth day thereafter (Register 82, No. 31). For prior history, see Registers 76, No. 41 and 75, No. 26.

Subchapter 6. Student Records

§ 54600. Purpose.

This chapter is adopted pursuant to and for implementation of Chapter 1.5 (commencing with Section 76200), Part 47 of Division 7 of the Education Code regarding Student Records. The provisions of this Chapter should be read and interpreted in conjunction with the provisions of Chapter 1.5.

NOTE: Authority cited: Sections 76220, 76225 and 76246, Education Code. Reference: Chapter 1.5 (commencing with Section 76200), Part 47, Division 7, Education Code; and 20 USC 1232(g).

HISTORY

1. New Chapter 6 Articles 1-7, (Sections 54600-54662, not consecutive) filed 3-5-76; effective thirtieth day thereafter (Register 76, No. 10).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of article heading and amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54602. Construction.

HISTORY

1. Amendment filed 3-15-77; effective thirtieth day thereafter (Register 77, No. 12).
2. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54604. Policy.

Community College districts may establish and maintain only such information on students relevant to admission, registration, academic history, career, student benefits or services, extracurricular activities, counseling and guidance, discipline or matters relating to student conduct, and shall establish and maintain such information required by law.

NOTE: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76210, Education Code; and 20 USC 1232(g).

HISTORY

1. New NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 54606. Definitions.

(a) "Student" as used in this Chapter means a currently enrolled or formerly enrolled student.

(b) "Access" means a personal inspection and review of a record, an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, or a request to release a copy of any record. The student shall be permitted to select the means of access.

(c) "Student Record" means any item of information directly related to an identifiable student maintained by a Community College or required to be maintained by an employee in the performance of the employee's duties, whether recorded by handwriting, print, tapes, film, microfilm or other means, except:

(1) Information provided by a student's parents relating to applications for financial aid or scholarships,

(2) Information related to a student compiled by a Community College officer or employee:

(A) appropriate for such officer or employee's performance of his or he responsibility; and

(B) which remains in the sole possession of the maker thereof; and

(C) is not accessible or revealed to any other person except a substitute. For the purposes of this subdivision, "substitute" shall mean a person who performs on a temporary basis the duties of the individual who made the notes and does not refer to a person who permanently succeeds the maker of the notes in his or her position.

(3) Information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional:

(A) acting or assisting in his professional or paraprofessional capacity; and

(B) the record is created, maintained or used in connection with the provision of treatment to the student; and

(C) the record is not available to anyone other than persons providing such treatment; provided, however, that such a record may be personally reviewed by a physician or other appropriate professional of the student's choice.

(4) Information maintained by a Community College law enforcement unit:

(A) necessary and appropriate to enable such law enforcement unit to carry out its duties and responsibilities as required by law or as may be assigned by the district

(B) unit personnel do not have access to other student records; and

(C) such information is kept apart from other student records; and

(D) maintained solely for law enforcement purposes; and

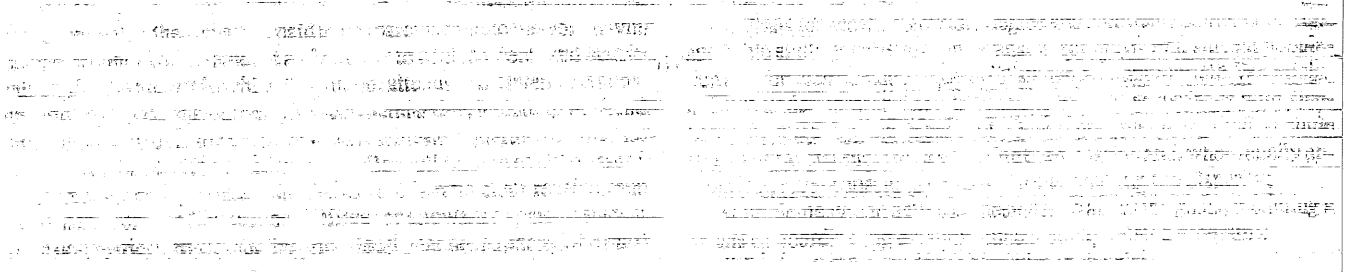
(E) is available only to other law enforcement officials of the same jurisdiction.

(5) Confidential letters and statements of recommendations maintained by a Community College on or before January 1, 1975, provided that such letters or statements are not used for purposes other than those for which they were specifically intended.

(6) Information maintained in the normal course of business pertaining to persons who are employed by a community college, provided that such information relates exclusively to such person in that person's capacity as an employee and is not available for use for any other purpose.

(7) Information related to a student compiled by a community college officer or employee which remains in the sole possession of the maker and is not available to any other person except a substitute who performs the duties of the individual who made the notes on a temporary basis.

(d) "Directory Information" means one or more of the following items: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous



No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part 19: Transfer Centers

History Index for
Title 5, California Code of Regulations

Section 51027

Register 92-04 § 51027: Added new section.

Register 94-38 § 51027: Amendment of section; submitted to OAL for printing only pursuant to Education Code Section 70901.5.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

suant to the regulations on academic senates contained in sections 53200–53205 of chapter IV of this division.

(e) The governing board of a community college district shall comply substantially with policies and procedures adopted in accordance with this section.

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901 (b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3–12–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 23).
2. Editorial correction of printing errors in subsections (a) and (b) and HISTORY 1. (Register 91, No. 43). (Subchapter 15, section 51950, and chapter 3, section 52000)

§ 51024. Matriculation Services.

When matriculation services have been fully funded, as certified by the Chancellor in accord with policies adopted by the Board of Governors, the governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under section 55512(c);

(c) provide matriculation services to its students in accordance with sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with section 55534; and

(e) substantially comply with all other provisions of chapter 6 (commencing with section 55500) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210–78218, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

§ 51025. Full-time/Part-time Faculty.

(a) Community College districts which have less than 75 percent of their hours of credit instruction taught by full–time instructors, in the prior fiscal year, shall apply the growth revenues received related to increases in credit FTES in accordance with section 58774 of this division and a portion of the program improvement allocation received in accordance with section 58775 of this division, as follows:

(1) Of the growth revenues received related to increases in credit FTES pursuant to section 58774 of this division, the districts shall increase the number of full–time instructors, by September 30 of the succeeding fiscal year, by the product of their base number of full–time faculty multiplied by the percentage change in funded credit FTES, rounded down to the nearest whole number.

(2) Districts which, in the prior fiscal year, had 67 percent or greater, but less than 75 percent of their hours of credit instruction taught by full–time instructors shall apply up to 33 percent of their program improvement allocation pursuant to subdivision (b) of section 58775 of this division, as necessary to reach the 75 percent standard pursuant to paragraph (4).

(3) Districts which, in the prior fiscal year, had less than 67 percent of their hours of credit instruction taught by full–time instructors shall apply up to 40 percent of their program improvement allocation pursuant to subdivision (b) of section 58775 of this division, as necessary to reach the 75 percent standard pursuant to paragraph (4).

(4) Of the program improvement funds identified in paragraph (2) or (3), as appropriate, the district shall increase the number of full–time instructors, by September of the succeeding fiscal year, by the quotient of the applicable program improvement funds divided by the statewide average replacement cost, rounded down to the nearest whole number.

(5) If the number of full–time faculty derived in paragraphs (1) and (4), result in the district exceeding the 75 percent standard, the Chancellor shall reduce the number to a whole number that leaves the district as close as possible to, but in excess of, the 75 percent standard.

(b) Statewide average replacement cost is the statewide average faculty salary plus benefits, minus the product of the statewide average hourly rate of compensation for part–time instructors times the statewide average full–time teaching load.

(c) On or before December 31 of each year, the Chancellor shall determine the extent to which each district, by September 30 of that year, has hired the number of additional full–time instructors determined pursuant to subdivision (a) for the prior fiscal year. To the extent that the number of additional full–time instructors have not been retained, the Chancellor shall reduce the district's revenue for the current fiscal year by an amount equivalent to the average replacement cost for the prior fiscal year times the deficiency in the number of full–time faculty. To the extent a district hires the additional full–time instructors in subsequent fiscal years the reductions made to the district's revenue shall be restored.

(d) All revenues available due to reductions made pursuant to subdivision (c), shall be made available on a one–time basis for that fiscal year, for purposes of faculty and staff diversity pursuant to Education Code section 87107.

(e) By January 20 of each fiscal year the Board of Governors shall determine whether adequate growth funds and adequate cost–of–living funds have been provided to allow full or partial implementation of the provisions of subparagraph (a)(1).

(f) For districts that experience a reduction in base credit FTES, the Chancellor shall make a proportionate reduction to their base number of full–time faculty.

NOTE: Authority cited: Sections 66700, 70901 and 84750, Education Code. Reference: Section 84750, Education Code.

HISTORY

1. New section filed 7–3–91 and submitted to OAL on 7–12–91 for printing only pursuant to Education Code section 70901.5; operative 8–3–91 (Register 91, No. 46).

§ 51027. Transfer Centers: Minimum Program Standards.

(a) The governing board of each community college district shall recognize transfer as one of its primary missions, and shall place priority emphasis on the preparation and transfer of underrepresented students, including African–American, Chicano/Latino, American Indian, disabled, low–income and other students historically and currently underrepresented in the transfer process.

(b) Each community college district governing board shall direct the development and adoption of a Transfer Center Plan describing the activities of the transfer center and the services to be provided to students, incorporating the provisions established in these standards, as outlined below. Plans shall identify target student populations and shall establish target increases in the number of applicants to the four–year segments from these populations, including specific targets for increasing the transfer applications of those underrepresented among transfer students. Plans shall be developed in consultation with four–year college and university personnel as available.

Plan components shall include, but not be limited to: services to be provided to students; facilities; staffing; advisory committee; and evaluation and reporting.

(1) Required Services. The following services shall be provided to students:

(A) Identify, contact and provide transfer support services to targeted student populations as identified in the Transfer Center Plan, with a priority emphasis placed on African–American, Chicano/Latino, American Indian, disabled, low–income and other underrepresented students. These activities shall be developed and implemented in cooperation with student services departments and with faculty.

(B) Ensure the provision of academic planning for transfer, the development and utilization of transfer admission agreements with four–year institutions where available and as appropriate, and the development and utilization of course–to–course and major articulation agreements. Academic planning and articulation activities shall be provided in coopera-

tion with student services, with faculty, and with four–year college and university personnel as available.

(C) Ensure that students receive accurate and up–to–date academic and transfer information through the provision of coordinated transfer counseling services.

(D) Monitor the progress of transfer students to the point of transfer, in accordance with monitoring activities established in the Transfer Center Plan.

(E) Support the progress of transfer students through referral as necessary, to such services as ability and diagnostic testing, tutoring, financial assistance, and counseling, and other instructional and student services on campus as appropriate.

(F) Assist students in the transition process, including the timely completion and submittal of necessary forms and applications.

(G) In cooperation with four–year college and university personnel as available, develop and implement a schedule of services for transfer students to be provided by four–year staff.

(H) Provide a resource library of college catalogs, transfer guides, articulation information and agreements, applications to four–year colleges and universities, and related transfer information.

(2) Facilities. Each district governing board shall designate a particular location on campus which is readily identifiable and accessible to students, faculty and staff as the focal point of transfer functions. Space and facilities adequate to support the Transfer Center and its activities shall be provided.

(3) Staffing. Each district governing board shall ensure that college staff are assigned to coordinate the activities of the transfer center; to coordinate underrepresented student transfer efforts; to serve as liaison to articulation, to student services, and to instructional programs on campus; and to work with four–year college and university personnel. Clerical support for the transfer center shall also be provided.

(4) Advisory Committee. An advisory committee shall be designated to plan the development, implementation, and ongoing operations of the transfer center. Membership shall be representative of campus departments and services. Four–year college and university personnel shall be included as available.

(5) Evaluation and Reporting. Each district governing board shall include in its Transfer Center Plan a plan of institutional research for ongoing internal evaluation of the effectiveness of the college's transfer efforts, and the achievement of its Transfer Center Plan.

Each community college district shall submit an annual report to the Chancellor describing the status of the district's efforts to implement its transfer center(s), achievement of Transfer Center Plan targets and goals, and expenditures supporting transfer center operations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66010.4 and 70901, Education Code.

HISTORY

1. New section filed 7–22–91; operative 8–21–91 (Register 92, No. 4).

Subchapter 2. Investigation and Enforcement of Minimum Conditions

§ 51100. Review of Colleges.

(a) The Chancellor, at least once each seven years, and at such other times or as he or she deems necessary, shall review each community college to determine whether it has met the minimum conditions contained in chapter 1 (commencing with section 51000) of this division.

(b) In the event that the Chancellor determines that a visit to the college is necessary to investigate compliance, he or she shall inform the chief executive officer of the district at least one month in advance of such visit, and shall specify the particular minimum conditions which will be investigated.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 51100 and 51101) and new chapter 2 (sections 51100 and 51102) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 2, see Registers 81, No. 52; 77, No. 45; and 71, No. 27.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51102. Enforcement.

(a) If any review pursuant to section 51100 discloses that a college is not in compliance with the provisions of chapter 1 (commencing with section 51000) of this division, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

(1) Accept in whole or part the district's response regarding noncompliance;

(2) Require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

(3) Withhold all or part of the district's state aid. The amount of withholding shall be related to the extent and gravity of noncompliance, and shall require approval of the Board of Governors.

(c) The Chancellor shall report to the Board of Governors on any actions taken pursuant to subsection (b) of this section; provided that in the event he or she determines to withhold all or a portion of a district's state aid, the Chancellor shall inform and obtain the approval of the Board prior to the withholding.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 3. Faculty

NOTE: Authority cited: Sections 71020, 71024 and 71025, Education Code.

HISTORY

1. Repealer of Chapter 3[216z (Sections 51200 and 51201) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 4. Standards of Scholarship

NOTE: Authority cited: Section 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY

1. Repealer of Chapter 4 (Sections 51300–51319, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 4, see Registers 82, No. 20; 80, No. 19; 80, No. 11; 77, No. 45; and 71, No. 27.

Subchapter 5. Facilities

HISTORY

1. Repealer of Chapter 5 (Sections 51400 and 51401) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).

Subchapter 6. Counseling Services

HISTORY

1. Repealer of Chapter 6 (Sections 51500–51503) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 7. Degrees and Certificates

HISTORY

1. Repealer of Chapter 7 (Sections 51600–51606) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 71, No. 40.

(1) Of the growth revenues received related to increases in credit FTES pursuant to Section 58774, the districts shall increase the base number of full–time instructors, subject to Subsection (e) below, by the Fall term of the succeeding fiscal year, by the product of their base number of full–time faculty multiplied by the percentage change in funded credit FTES, rounded down to the nearest whole number.

(2) Districts which, as determined from their base data, had 67 percent or greater, but less than 75 percent of their hours of credit instruction taught by full–time instructors shall apply up to 33 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(3) Districts which, as determined from their base data, had less than 67 percent of their hours of credit instruction taught by full–time instructors shall apply up to 40 percent of their program improvement allocation pursuant to Subsection (b) of Section 58775, as necessary to reach the 75 percent standard pursuant to Subsection (a)(4) below.

(4) Of the program improvement funds identified in Subsection (a)(2) or (3), as appropriate, the district shall increase the number of full–time instructors, by the Fall term of the succeeding fiscal year, by the quotient of the applicable program improvement funds divided by the statewide average replacement cost, rounded down to the nearest whole number.

(5) If the number of full–time faculty derived in Subsections (a)(1) and (4) result in the district exceeding the 75 percent standard, the Chancellor shall reduce the number to a whole number to a whole number that leaves the district as close as possible to, but in excess of, the 75 percent standard.

(b) Statewide average replacement cost is the statewide average faculty salary plus benefits, minus the product of the statewide average hourly rate of compensation for part–time instructors times the statewide average full–time teaching load.

(c) On or before December 31 of each year, the Chancellor shall determine, based on information submitted by districts, the extent to which each district, by the Fall term of that year, has maintained or hired the number of additional full–time instructors determined pursuant to Subsection (a) for the prior fiscal year. To the extent that the number of full–time faculty has not been maintained or additional full–time instructors have not been retained, the Chancellor shall reduce the district's revenue for the current fiscal year by an amount equivalent to the average replacement cost for the prior fiscal year times the deficiency in the number of full–time faculty. To the extent a district hires the additional full–time instructors in subsequent fiscal years the reductions made to the district's revenue shall be restored.

(d) All revenues available due to reductions made pursuant to Subsection (c), shall be made available on a one–time basis for that fiscal year, for purposes of faculty and staff diversity pursuant to Education Code, Section 87107.

(e) By January 20 of each fiscal year the Board of Governors shall determine whether adequate growth funds and adequate cost–of–living funds have been provided to allow full or partial implementation of the provisions of Subsection (a)(1).

(f) For districts that experience a reduction in base credit FTES, the Chancellor shall make a proportionate reduction to their base number of full–time faculty.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 7–3–91 and submitted to OAL on 7–12–91 for printing only pursuant to Education Code section 70901.5; operative 8–3–91 (Register 91, No. 46).
2. New first paragraph, amendment of subsections (a)–(a)(4) and (c) and NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51027. Transfer Centers: Minimum Program Standards.

(a) The governing board of each community college district shall recognize transfer as one of its primary missions, and shall place priority emphasis on the preparation and transfer of underrepresented students, including African–American, Chicano/Latino, American Indian, disabled, low–income and other students historically and currently underrepresented in the transfer process.

(b) Each community college district governing board shall direct the development and adoption of a transfer center plan describing the activities of the transfer center and the services to be provided to students, incorporating the provisions established in the standards outlined below. Plans shall identify target student populations and shall establish target increases in the number of applicants baccalaureate institutions from these populations, including specific targets for increasing the transfer applications of underrepresented students among transfer students. Plans shall be developed in consultation with baccalaureate college and university personnel as available.

Plan components shall include, but not be limited to: services to be provided to students; facilities; staffing; advisory committee; and evaluation and reporting.

(1) Required Services. Districts shall:

(A) Identify, contact, and provide transfer support services to targeted student populations as identified in the transfer center plan, with a priority emphasis placed on African–American, Chicano/Latino, American Indian, disabled, low–income, and other underrepresented students. These activities shall be developed and implemented in cooperation with student services departments and with faculty.

(B) Ensure the provision of academic planning for transfer, the development and use of transfer admission agreements with baccalaureate institutions where available and as appropriate, and the development and use of course–to–course and major articulation agreements. Academic planning and articulation activities shall be provided in cooperation with student services, with faculty, and with baccalaureate institution personnel as available.

(C) Ensure that students receive accurate and up–to–date academic and transfer information through coordinated transfer counseling services.

(D) Monitor the progress of transfer students to the point of transfer, in accordance with monitoring activities established in the Transfer Center Plan.

(E) Support the progress of transfer students through referral as necessary, to such services as ability and diagnostic testing, tutoring, financial assistance, counseling, and to other instructional and student services on campus as appropriate.

(F) Assist students in the transition process, including timely completion and submittal of necessary forms and applications.

(G) In cooperation with baccalaureate institution personnel as available, develop and implement a schedule of services for transfer students to be provided by baccalaureate institution staff.

(H) Provide a resource library of college catalogs, transfer guides, articulation information and agreements, applications to baccalaureate institutions, and related transfer information.

(2) Facilities. Each district governing board shall provide space and facilities adequate to support the transfer center and its activities. Each district shall designate a particular location on campus as the focal point of transfer functions. This location should be readily identifiable and accessible to students, faculty, and staff.

(3) Staffing. Each district governing board shall provide clerical support for the transfer center and assign college staff to coordinate the activities of the transfer center; to coordinate underrepresented student transfer efforts; to serve as liaison to articulation, to student services, and to instructional programs on campus; and to work with baccalaureate institution personnel.

(4) Advisory Committee. Each district shall designate an advisory committee to plan the development, implementation, and ongoing operations of the transfer center. Membership shall be representative of campus departments and services. Baccalaureate institution personnel shall be included as available.

(5) Evaluation and Reporting. Each district governing board shall include in its transfer center plan a plan of institutional research for ongoing internal evaluation of the effectiveness of the college's transfer efforts, and the achievement of its transfer center plan.

Each community college district shall submit an annual report to the Chancellor describing the status of the district's efforts to implement its transfer center(s), achievement of transfer center plan targets and goals, and expenditures supporting transfer center operations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66010.4 and 70901, Education Code.

HISTORY

1. New section filed 7-22-91; operative 8-21-91 (Register 92, No. 4).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 2. Investigation and Enforcement of Minimum Conditions

§ 51100. Review of Colleges.

(a) At least once each seven years, and at such other times as he or she deems necessary, the Chancellor shall review each community college to determine whether it has met the minimum conditions contained in Subchapter 1 (commencing with Section 51000) of Chapter 2.

(b) In the event that the Chancellor determines that a visit to the college is necessary to investigate compliance, he or she shall inform the chief executive officer of the district at least one month in advance of such visit, and shall specify the particular minimum conditions which will be investigated.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 51100 and 51101) and new chapter 2 (sections 51100 and 51102) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 2, see Registers 81, No. 52; 77, No. 45; and 71, No. 27.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment of subsection (a) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51102. Enforcement.

(a) If any review pursuant to Section 51100 discloses that a college is not in compliance with the provisions of Subchapter 1 (commencing with Section 51100) of Chapter 2, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

(1) accept in whole or part the district's response regarding noncompliance;

(2) require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

(3) withhold all or part of the district's state aid. The amount of withholding shall be related to the extent and gravity of noncompliance and shall require approval of the Board of Governors.

(c) The Chancellor shall report to the Board of Governors on any actions taken pursuant to Subsection (b) of this Section, provided that, in the event he or she determines to withhold all or a portion of a district's state aid, the Chancellor shall inform and obtain the approval of the Board prior to the withholding.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 3. Faculty

NOTE: Authority cited: Sections 71020, 71024 and 71025, Education Code.

HISTORY

1. Repealer of Chapter 3[216z (Sections 51200 and 51201) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 4. Standards of Scholarship

NOTE: Authority cited: Section 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY

1. Repealer of Chapter 4 (Sections 51300-51319, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 4, see Registers 82, No. 20; 80, No. 19; 80, No. 11; 77, No. 45; and 71, No. 27.

Subchapter 5. Facilities

HISTORY

1. Repealer of Chapter 5 (Sections 51400 and 51401) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

Subchapter 6. Counseling Services

HISTORY

1. Repealer of Chapter 6 (Sections 51500-51503) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 7. Degrees and Certificates

HISTORY

1. Repealer of Chapter 7 (Sections 51600-51606) filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 71, No. 40.

Subchapter 8. Degrees and Certificates

NOTE: Authority cited: Sections 66700, 71020 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

HISTORY

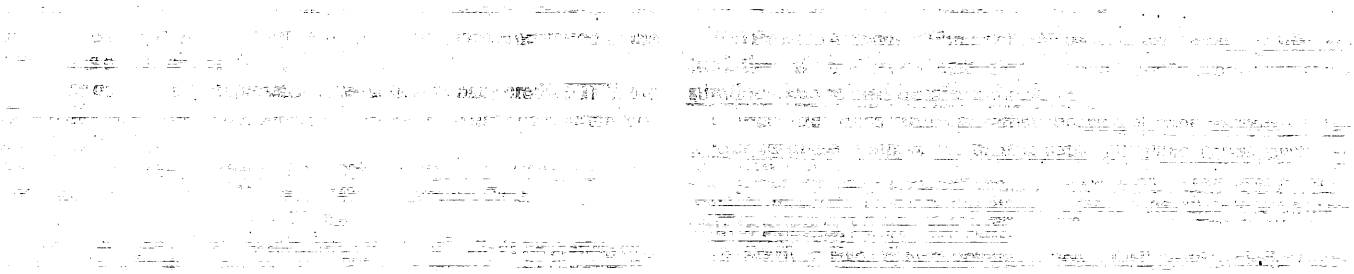
1. New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day thereafter (Register 71, No. 40).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 6-9-82; designated effective 7-1-83 (Register 82, No. 24).
4. Repealer of Chapter 8 (Sections 51620-51629) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

Subchapter 9. Minimum Class Size

NOTE: Authority cited for Chapter 9: Section 71027, Education Code.

HISTORY

1. New Chapter (§§ 51700 through 51703) filed 11-12-71; effective thirtieth day thereafter (Register 71, No. 46).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Chapter 9 (Sections 51700-51703) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).



No. CSM. 02-TC-31

Minimum Conditions for State Aid:
Part. 20: Compliance Enforcement

History Index for
Title 5, California Code of Regulations

Section 51000
Section 51100
Section 51102

Register 83-29 Repealer of Chapter 1 (section 51000) and new Chapter 1 (sections 51000-51021, not consecutive).
Repealer of Chapter 2 (sections 51100 and 51101) and new Chapter 2 (sections 51100 and 51102).

Register 91-23 § 51000: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
§ 51100: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
§ 51102: Amendment filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Register 94-38 § 51000: Amendment of section; submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51100: Amendment of subsection (a). Submitted to OAL for printing only pursuant to Education Code section 70901.5.

§ 51102: Amendment of section. Submitted to OAL for printing only pursuant to Education Code section 70901.5.

Register 95-15 § 51000: Editorial correction of HISTORY 2.

§ 51100: Editorial correction of HISTORY 2.

§ 51102: Editorial correction of HISTORY 1.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

Register 1983-29

§ 51000
§ 51100
§ 51102

CHAPTER 1. MINIMUM STANDARDS

51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code Section 71025 and comprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges. The provisions of this chapter are to be distinguished from the regulations contained in Chapter 15 (commencing with Section 51950) of this division. Those regulations constitute minimum standards for the formation and operation of a college which operates pursuant to Education Code Section 78007 and which will not receive or utilize state or local funds.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 66700 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 1 (Section 51000) and new Chapter 1 (Sections 51000–51021, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 1, see Registers 81, No. 4 and 77, No. 45.

51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in Chapter 9 (commencing with Section 55750) of Division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in Chapter 10 (commencing with Section 55800) of Division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, 71025 and 71066, Education Code. Reference: Sections 71025, 71066 and 72285, Education Code.

51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute, every course, course section or class, the average daily attendance of which is to be reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 1 (commencing with Section 58100) of Chapter 2, Division 9 of Title 5 of the California Administrative Code."

CHAPTER 2. INVESTIGATION AND ENFORCEMENT OF MINIMUM STANDARDS

51100. Review of Colleges.

(a) The Chancellor, at least once each seven years, and at such other times as he or she deems necessary, shall review each community college to determine whether it has met the minimum standards contained in Chapter 1 (commencing with Section 51000) of this Division.

(b) In the event that the Chancellor determines that a visit to the college is necessary to investigate compliance, he or she shall inform the chief executive officer of the district at least one month in advance of such visit, and shall specify the particular minimum standards which will be investigated.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Section 71026, Education Code.

HISTORY:

1. Repealer of Chapter 2 (Sections 51100 and 51101) and new Chapter 2 (Sections 51100 and 51102) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 2, see Registers 81, No. 52; 77, No. 45; and 71, No. 27.

51102. Enforcement.

(a) If any review pursuant to Section 51100 discloses that a college is not in compliance with the provisions of Chapter 1 (commencing with Section 51000) of this Division, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

(1) Accept in whole or part the district's response regarding noncompliance;

(2) Require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

(3) Withhold all or part of the district's state aid. The amount of withholding shall be related to the extent and gravity of noncompliance, and shall require approval of the Board of Governors.

(c) The Chancellor shall report to the Board of Governors on any actions taken pursuant to subsection (b) of this section; provided that in the event he or she determines to withhold all or a portion of a district's state aid, the Chancellor shall inform and obtain the approval of the Board prior to the withholding.

NOTE: Authority cited: Sections 66700 and 71025, Education Code. Reference: Sections 71025, 71026 and 84373, Education Code.

CHAPTER 3. FACULTY

NOTE: Authority cited: Sections 71020, 71024 and 71025, Education Code.

HISTORY:

1. Repealer of Chapter 3 (Sections 51200 and 51201) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

CHAPTER 4. STANDARDS OF SCHOLARSHIP

NOTE: Authority cited: Section 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY:

1. Repealer of Chapter 4 (Sections 51300–51319, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 4, see Registers 82, No. 20; 80, No. 19; 80, No. 11; 77, No. 45; and 71, No. 27.

CHAPTER 5. FACILITIES

HISTORY:
1. Repealer of Chapter 5 (Sections 51400 and 51401) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

CHAPTER 6. COUNSELING SERVICES

HISTORY:
1. Repealer of Chapter 6 (Sections 51500–51503) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

CHAPTER 7. DEGREES AND CERTIFICATES

HISTORY:
1. Repealer of Chapter 7 (Sections 51600–51606) filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 71, No. 40.

CHAPTER 8. DEGREES AND CERTIFICATES

NOTE: Authority cited: Sections 66700, 71020 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

HISTORY:
1. New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day thereafter (Register 71, No. 40).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 6-9-82; designated effective 7-1-83 (Register 82, No. 24).
4. Repealer of Chapter 8 (Sections 51620–51629) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

CHAPTER 9. MINIMUM CLASS SIZE

NOTE: Authority cited for Chapter 9: Section 71027, Education Code.

HISTORY:
1. New Chapter (§§ 51700 through 51703) filed 11-12-71; effective thirtieth day thereafter (Register 71, No. 46).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Chapter 9 (Sections 51700–51703) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

CHAPTER 10. NEW COLLEGES AND EDUCATIONAL CENTERS

HISTORY:
1. New Chapter 10 (Sections 51800–51808, not consecutive) filed 6-27-75; effective thirtieth day thereafter (Register 75, No. 26).
2. Amendment filed 3-18-77; effective thirtieth day thereafter (Register 77, No. 12).
3. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
4. Amendment of subsection (a) filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
5. Repealer of Chapter 10 (Sections 51800–51808, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

CHAPTER 11. OPEN COURSES

NOTE: Authority cited: Sections 71020, 78452 and 84500, Education Code. Reference Sections 78452 and 84500, Education Code.

HISTORY:

1. New Chapter 11 (Sections 51820–51826) filed 12-17-76; effective thirtieth day thereafter (Register 76, No. 51).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Chapter 11 (Sections 51820–51826) filed 7-29-82; effective thirtieth day thereafter (Register 82, No. 31).

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4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income if the business entity or source of income provides education, training, or experience to persons toward attaining a valid credential for employment as an instructor, supervisor, chief administrative officer, librarian, counselor, supervisor of health, student personnel worker, or other similar position within a Community College district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this chapter are adopted under the authority of Education Code section 70901(b)(6) and comprise the rules and regulations affirming and fixing the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) Adopt regulations consistent with the standards of scholarship adopted by the Board of Governors, as contained in chapter 9 (commencing with section 55750) of division 6 of this part;

(b) File a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) Adopt regulations consistent with regulations of the Board of Governors pertaining to degrees and certificates, which are contained in chapter 10 (commencing with section 55800) of division 6 of this part;

(b) File a copy of its regulations and any amendments thereto with the Chancellor; and

(c) Substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

Note: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "It is the policy of this district that, unless specifically exempted by statute or regulation, every course, course section or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in article 1 (commencing with section 58100) of chapter 2, division 9 of title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to subsection (a) of this section shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which average daily attendance is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for and approve comprehensive or master plans which include, among other plans, academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that they shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in accordance with section 70901(b)(9) of the Education Code and regulations of the Board of Governors pertaining to such plans.

Note: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

History

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51010. Affirmative Action.

The governing board of a community college shall:

(a) Adopt a district affirmative action policy which meets the requirements of section 53002 of this part;

(b) Develop and adopt a district affirmative action plan which meets the requirements of section 53003 of this part;

(c) Annually survey its employment patterns in the manner required by section 53004 of this part;

(d) Undertake a program of recruitment as required by section 53021 of this part; and

NOTE: Authority cited: Sections 66700 and 70901(b)(1)(E), Education Code. Reference: Sections 70901(b)(1)(E), 70902(b)(7) and 76060, Education Code.

HISTORY

1. New section filed 3-12-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 51024. Matriculation Services.

When matriculation services have been fully funded, as certified by the Chancellor in accord with policies adopted by the Board of Governors, the governing board of each community college district shall:

(a) adopt and submit to the Chancellor a matriculation plan as required under section 55510;

(b) evaluate its matriculation program and participate in statewide evaluation activities as required under section 55512(c);

(c) provide matriculation services to its students in accordance with sections 55520 and 55521;

(d) establish procedures for waivers and appeals in connection with its matriculation program in a manner consistent with section 55534; and

(e) substantially comply with all other provisions of chapter 6 (commencing with section 55500) of division 6 of this part.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 78210-78218, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).

Subchapter 2. Investigation and Enforcement of Minimum Conditions

§ 51100. Review of Colleges.

(a) The Chancellor, at least once each seven years, and at such other times or as he or she deems necessary, shall review each community college to determine whether it has met the minimum conditions contained in chapter 1 (commencing with section 51000) of this division.

(b) In the event that the Chancellor determines that a visit to the college is necessary to investigate compliance, he or she shall inform the chief executive officer of the district at least one month in advance of such visit, and shall specify the particular minimum conditions which will be investigated.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 51100 and 51101) and new chapter 2 (sections 51100 and 51102) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 2, see Registers 81, No. 52; 77, No. 45; and 71, No. 27.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 51102. Enforcement.

(a) If any review pursuant to section 51100 discloses that a college is not in compliance with the provisions of chapter 1 (commencing with section 51000) of this division, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

(1) Accept in whole or part the district's response regarding noncompliance;

(2) Require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

(3) Withhold all or part of the district's state aid. The amount of withholding shall be related to the extent and gravity of noncompliance, and shall require approval of the Board of Governors.

(c) The Chancellor shall report to the Board of Governors on any actions taken pursuant to subsection (b) of this section; provided that in the event he or she determines to withhold all or a portion of a district's state aid, the Chancellor shall inform and obtain the approval of the Board prior to the withholding.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 3. Faculty

NOTE: Authority cited: Sections 71020, 71024 and 71025, Education Code.

HISTORY

1. Repealer of Chapter 3 [216z (Sections 51200 and 51201) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 4. Standards of Scholarship

NOTE: Authority cited: Section 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY

1. Repealer of Chapter 4 (Sections 51300-51319, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 4, see Registers 82, No. 20; 80, No. 19; 80, No. 11; 77, No. 45; and 71, No. 27.

Subchapter 5. Facilities

HISTORY

1. Repealer of Chapter 5 (Sections 51400 and 51401) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

Subchapter 6. Counseling Services

HISTORY

1. Repealer of Chapter 6 (Sections 51500-51503) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 7. Degrees and Certificates

HISTORY

1. Repealer of Chapter 7 (Sections 51600-51606) filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 71, No. 40.

Subchapter 8. Degrees and Certificates

NOTE: Authority cited: Sections 66700, 71020 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

HISTORY

1. New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day thereafter (Register 71, No. 40).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 6-9-82; designated effective 7-1-83 (Register 82, No. 24).
4. Repealer of Chapter 8 (Sections 51620-51629) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

Subchapter 9. Minimum Class Size

NOTE: Authority cited for Chapter 9: Section 71027, Education Code.

HISTORY

1. New Chapter (§§ 51700 through 51703) filed 11-12-71; effective thirtieth day thereafter (Register 71, No. 46).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Chapter 9 (Sections 51700-51703) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

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Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

(4) Advisory Committee. Each district shall designate an advisory committee to plan the development, implementation, and ongoing operations of the transfer center. Membership shall be representative of campus departments and services. Baccalaureate institution personnel shall be included as available.

(5) Evaluation and Reporting. Each district governing board shall include in its transfer center plan a plan of institutional research for ongoing internal evaluation of the effectiveness of the college's transfer efforts, and the achievement of its transfer center plan.

Each community college district shall submit an annual report to the Chancellor describing the status of the district's efforts to implement its transfer center(s), achievement of transfer center plan targets and goals, and expenditures supporting transfer center operations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66010.4 and 70901, Education Code.

HISTORY

1. New section filed 7-22-91; operative 8-21-91 (Register 92, No. 4).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 2. Investigation and Enforcement of Minimum Conditions

§ 51100. Review of Colleges.

(a) At least once each seven years, and at such other times as he or she deems necessary, the Chancellor shall review each community college to determine whether it has met the minimum conditions contained in Subchapter 1 (commencing with Section 51000) of Chapter 2.

(b) In the event that the Chancellor determines that a visit to the college is necessary to investigate compliance, he or she shall inform the chief executive officer of the district at least one month in advance of such visit, and shall specify the particular minimum conditions which will be investigated.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 51100 and 51101) and new chapter 2 (sections 51100 and 51102) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 2, see Registers 81, No. 52; 77, No. 45; and 71, No. 27.
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
3. Amendment of subsection (a) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 51102. Enforcement.

(a) If any review pursuant to Section 51100 discloses that a college is not in compliance with the provisions of Subchapter 1 (commencing with Section 51100) of Chapter 2, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

(1) accept in whole or part the district's response regarding noncompliance;

(2) require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

(3) withhold all or part of the district's state aid. The amount of withholding shall be related to the extent and gravity of noncompliance and shall require approval of the Board of Governors.

(c) The Chancellor shall report to the Board of Governors on any actions taken pursuant to Subsection (b) of this Section, provided that, in the event he or she determines to withhold all or a portion of a district's state aid, the Chancellor shall inform and obtain the approval of the Board prior to the withholding.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 3. Faculty

NOTE: Authority cited: Sections 71020, 71024 and 71025, Education Code.

HISTORY

1. Repealer of Chapter 3 [216z (Sections 51200 and 51201) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 4. Standards of Scholarship

NOTE: Authority cited: Section 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY

1. Repealer of Chapter 4 (Sections 51300-51319, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 4, see Registers 82, No. 20; 80, No. 19; 80, No. 11; 77, No. 45; and 71, No. 27.

Subchapter 5. Facilities

HISTORY

1. Repealer of Chapter 5 (Sections 51400 and 51401) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

Subchapter 6. Counseling Services

HISTORY

1. Repealer of Chapter 6 (Sections 51500-51503) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 7. Degrees and Certificates

HISTORY

1. Repealer of Chapter 7 (Sections 51600-51606) filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 71, No. 40.

Subchapter 8. Degrees and Certificates

NOTE: Authority cited: Sections 66700, 71020 and 71066, Education Code. Reference: Sections 66701, 71066 and 72285, Education Code.

HISTORY

1. New Chapter 8 (§§ 51620 through 51626) filed 10-1-71; effective thirtieth day thereafter (Register 71, No. 40).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 6-9-82; designated effective 7-1-83 (Register 82, No. 24).
4. Repealer of Chapter 8 (Sections 51620-51629) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

Subchapter 9. Minimum Class Size

NOTE: Authority cited for Chapter 9: Section 71027, Education Code.

HISTORY

1. New Chapter (§§ 51700 through 51703) filed 11-12-71; effective thirtieth day thereafter (Register 71, No. 46).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Chapter 9 (Sections 51700-51703) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

Senior Accounting Officers (Specialists) 3
Accounting Officers (Specialists) 3
Accounting I (Specialist) 3
Administrators Fiscal Planning and Administration 1
Specialists Fiscal Planning and Administration 2
Business Services Officer I (Specialist) 3
Property Controller I 1
Administrator Facilities Planning and Utilization 1
Specialist Facilities Planning and Utilization 2
Specialist Student Services Planning and Development 2
Staff Services Manager I 3
State Financial Examiner III 2
Consultants* 2

Student Services Division
Vice Chancellor 1, 4
Specialists Student Services Planning and Development 2, 4
Administrator Student Services Planning and Development 1
Consultants* 2

Transfer/General Education Division
Vice Chancellor 1, 4
Specialists/Lib. Planning and Development 2
Administrators Academic Planning and Development 1
Specialists Academic Planning and Development 2
Specialist Student Services Planning and Development 2
Consultants* 2

Economic Development/Vocational Education Division
Vice Chancellor 1, 4
Specialists General Vocational Education 2
Specialists Business Education 2
Specialist Criminal Justice 2
Specialist Agricultural Education 2
Specialist Health Occupations 2
Specialists Industrial Education 2
Specialists Employment and Certification 2
Administrator Vocational Education 1
Consultants* 2

Management Information Services Division
Vice Chancellor 1, 4
Specialists Information Systems and Analysis 2
Staff Information Systems Analyst (Supervisor) 3
Staff Programmer Analyst (Specialist) 3
Senior Programmer Analyst (Supervisor) 3
Consultants* 2

*Note: With respect to consultants, the Chancellor may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope. If the duties of the consultant are limited in scope, the consultant is not required to comply with the disclosure requirements described in this category. The Chancellor's determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor's determination will be maintained at the offices of the Chancellor in the same location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) any interest in real property; and

(b) any business entity in which the designated employee has an investment or a business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) instructional materials, (2) equipment, or (3) services, when such materials, equipment or services are of the type utilized by community college districts or the Chancellor's Office.

2. Designated employees in Category 2 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(a) instructional materials;

(b) equipment; or

(c) services, when such materials, equipment, or services are of the type utilized by community college districts or the Chancellor's Office.

3. Designated employees in Category 3 must report any business entity in which they have an investment or business position, and income if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(a) instructional materials;

(b) equipment; or,

(c) services, when such materials, equipment, or services are of the type utilized by the Chancellor's Office.

4. Designated employees in Category 4 must report any business entity in which they have an investment or business position, and income, if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

Subchapter 3. Committees

History

1. Repealer of Chapter 3 (Sections 50200–50208) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 16.

Subchapter 4. Coordinating Council of Higher Education

History

1. Repealer of Chapter 4 (Sections 50300 and 50301) filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45). For prior history, see Register 70, No. 44.

Subchapter 5. Chancellor

History

1. Repealer of Chapter 5 (Sections 50400–50407) filed 5–17–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Registers 77, No. 45 and 70, No. 44.

Subchapter 6. Board of Governors and Chancellor's Office—Conflict of Interest Code

History

1. Redesignation of Chapter 6 (Sections 50500–50510, Exhibits A and B) to Chapter 1, Article 10 (Sections 50500–50510, Exhibits A and B) filed 5–16–78 as procedural and organizational; effective upon filing (Register 78, No. 20). For prior history, see Register 77, No. 9.

Chapter 2. Community College Standards

Subchapter 1. Minimum Conditions

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code.

History

1. Repealer of chapter 1 (section 51000) and new chapter 1 (sections 51000–51021, not consecutive) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 1, see Registers 81, No. 4 and 77, No. 45.
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of History 2 (Register 95, No. 15).

§ 51002. Standards of Scholarship.

The governing board of a community college district shall:

(a) adopt regulations consistent with the standards of scholarship contained in Subchapter 9 (commencing with Section 55750) of Chapter 6;

activities shall be developed and implemented in cooperation with student services departments and with faculty.

(B) Ensure the provision of academic planning for transfer, the development and use of transfer admission agreements with baccalaureate institutions where available and as appropriate, and the development and use of course-to-course and major articulation agreements. Academic planning and articulation activities shall be provided in cooperation with student services, with faculty, and with baccalaureate institution personnel as available.

(C) Ensure that students receive accurate and up-to-date academic and transfer information through coordinated transfer counseling services.

(D) Monitor the progress of transfer students to the point of transfer, in accordance with monitoring activities established in the Transfer Center Plan.

(E) Support the progress of transfer students through referral as necessary, to such services as ability and diagnostic testing, tutoring, financial assistance, counseling, and to other instructional and student services on campus as appropriate.

(F) Assist students in the transition process, including timely completion and submittal of necessary forms and applications.

(G) In cooperation with baccalaureate institution personnel as available, develop and implement a schedule of services for transfer students to be provided by baccalaureate institution staff.

(H) Provide a resource library of college catalogs, transfer guides, articulation information and agreements, applications to baccalaureate institutions, and related transfer information.

(2) Facilities. Each district governing board shall provide space and facilities adequate to support the transfer center and its activities. Each district shall designate a particular location on campus as the focal point of transfer functions. This location should be readily identifiable and accessible to students, faculty, and staff.

(3) Staffing. Each district governing board shall provide clerical support for the transfer center and assign college staff to coordinate the activities of the transfer center; to coordinate underrepresented student transfer efforts; to serve as liaison to articulation, to student services, and to instructional programs on campus; and to work with baccalaureate institution personnel.

(4) Advisory Committee. Each district shall designate an advisory committee to plan the development, implementation, and ongoing operations of the transfer center. Membership shall be representative of campus departments and services. Baccalaureate institution personnel shall be included as available.

(5) Evaluation and Reporting. Each district governing board shall include in its transfer center plan a plan of institutional research for ongoing internal evaluation of the effectiveness of the college's transfer efforts, and the achievement of its transfer center plan.

Each community college district shall submit an annual report to the Chancellor describing the status of the district's efforts to implement its transfer center(s), achievement of transfer center plan targets and goals, and expenditures supporting transfer center operations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66010.4 and 70901, Education Code.

HISTORY

1. New section filed 7-22-91; operative 8-21-91 (Register 92, No. 4).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 2. Investigation and Enforcement of Minimum Conditions

§ 51100. Review of Colleges.

(a) At least once each seven years, and at such other times as he or she deems necessary, the Chancellor shall review each community college to determine whether it has met the minimum conditions contained in Subchapter 1 (commencing with Section 51000) of Chapter 2.

(b) In the event that the Chancellor determines that a visit to the college is necessary to investigate compliance, he or she shall inform the chief executive officer of the district at least one month in advance of such visit, and shall specify the particular minimum conditions which will be investigated.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Repealer of chapter 2 (sections 51100 and 51101) and new chapter 2 (sections 51100 and 51102) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former chapter 2, see Registers 81, No. 52; 77, No. 45; and 71, No. 27.
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of subsection (a) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 15).

§ 51102. Enforcement.

(a) If any review pursuant to Section 51100 discloses that a college is not in compliance with the provisions of Subchapter 1 (commencing with Section 51100) of Chapter 2, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

(1) accept in whole or part the district's response regarding noncompliance;

(2) require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

(3) withhold all or part of the district's state aid. The amount of withholding shall be related to the extent and gravity of noncompliance and shall require approval of the Board of Governors.

(c) The Chancellor shall report to the Board of Governors on any actions taken pursuant to Subsection (b) of this Section, provided that, in the event he or she determines to withhold all or a portion of a district's state aid, the Chancellor shall inform and obtain the approval of the Board prior to the withholding.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

Subchapter 3. Faculty

NOTE: Authority cited: Sections 71020, 71024 and 71025, Education Code.

HISTORY

1. Repealer of Chapter 3[216z (Sections 51200 and 51201) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 77, No. 45.

Subchapter 4. Standards of Scholarship

NOTE: Authority cited: Section 71020, 71025 and 71066, Education Code. Reference: Sections 71066, 72285 and 76000, Education Code.

HISTORY

1. Repealer of Chapter 4 (Sections 51300-51319, not consecutive) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former Chapter 4, see Registers 82, No. 20; 80, No. 19; 80, No. 11; 77, No. 45; and 71, No. 27.

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
TEL: (916) 323-3562
FAX (916) 445-0278
E-mail: csminfo@csm.ca.gov

ARNOLD SCHWARZENEGGER, *Governor*

Exhibit M

April 2, 2008

Mr. Keith Petersen
SixTen and Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

Re: NOTICE OF SEVERANCE AND CONSOLIDATION:
California Code of Regulations, Title 2, Sections 55522 and 55602.5

Disabled Student Programs and Services (02-TC-22)
West Kern Community College District, Claimant

Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)
Los Rios Community College District and
Santa Monica Community College District, Co-claimants

Dear Mr. Petersen:

After review of *Disabled Student Programs and Services* (02-TC-22) and *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31), it has been determined that both test claims have pled California Code of Regulations, title 5, sections 55522 and 55602.5, which address student matriculation and vocational education programs, respectively. However, in *Disabled Student Programs and Services,* the claim is limited to disabled students, while in *Minimum Conditions for State Aid* the claim addresses sections 55522 and 55602.5 in light of the whole administrative scheme, including its applicability to disabled students.

For the sake of efficiency, California Code of Regulations, title 5, sections 55522 and 55602.5 will be severed from West Kern Community College District's *Disabled Student Programs and Services* test claim and consolidated with the *Minimum Conditions for State Aid* (and *Notices to Students*) test claim. This action is being taken pursuant to my authority under Government Code section 17530 and California Code of Regulations, title 2, section 1183.06, and will be effective 10 days from the service of this letter.

All future references to the *Minimum Conditions for State Aid* test claim will include West Kern Community College District as a co-claimant with Los Rios Community College District and Santa Monica Community College District. A consolidated mailing list is enclosed.

As provided in the Commission's regulations this action and decision of the executive director may be appealed to the Commission for review. Please refer to California Code of Regulations, title 2, section 1181, subdivision (c).

Please contact Kenny Louie at (916) 323-2611 if you have any questions or concerns regarding this matter.

Sincerely,

PAULA HIGASHI
Executive Director

Commission on State Mandates

Original List Date: 6/26/2003
Last Updated: 4/26/2007
List Print Date: 04/02/2008
Claim Number: 02-TC-31
Issue: Minimum Conditions for State Aid

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Erik Skinner
California Community Colleges
Chancellor's Office (G-01)
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Tel: (916) 322-4005
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Mr. Jim Spano
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Division of Audits
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State Center Community College District
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Mr. Jon Sharpe Los Rios Community College District 1919 Spanos Court Sacramento, CA 95825	Tel: Fax:	(559) 244-5910 (559) 243-1949
Mr. William Duncan West Kern Community College District 29 Emmons Park Drive Taft, CA 93268	Tel: Fax:	(661) 763-7700
Mr. Thomas J. Donner Santa Monica Community College District 1900 Pico Blvd. Santa Monica, CA 90405-1628	**Claimant** Tel: Fax:	 (310) 434-4201 (310) 434-8200
Ms. Harmeet Barkschat Mandate Resource Services 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: Fax:	(916) 727-1350 (916) 727-1734
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: Fax:	(951) 303-3034 (951) 303-6607
Mr. Steve Smith Steve Smith Enterprises, Inc. 2200 Sunrise Blvd., Suite 220 Gold River, CA 95670	Tel: Fax:	(916) 852-8970 (916) 852-8978
Mr. Arthur Palkowitz San Diego Unified School District Office of Resource Development 4100 Normal Street, Room 3209 San Diego, CA 92103-8363	Tel: Fax:	(619) 725-7785 (619) 725-7564
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: Fax:	(916) 446-7517 (916) 446-2011
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: Fax:	(866) 481-2621 (866) 481-2682
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street	Tel: Fax:	(916) 454-7310 (916) 454-7312

Sacramento, CA 95816

Ms. Carol Bingham
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Fiscal Policy Division
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Claimant Representative
Tel: (916) 565-6104
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COMMISSION ON STATE MANDATES
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EXHIBIT N

April 21, 2008

Mr. Erik Skinner
California Community Colleges
Chancellor's Office
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

And Interested Parties and Affected State Agencies

Re: Request for Comments
Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)
(See attachment for a complete pleadings list)
Los Rios Community College District and
Santa Monica Community College District,
West Kern Community College District, Co-claimants

Dear Mr. Skinner and Ms. Oropeza:

Staff has reviewed the administrative record of this test claim and determined that the following information is needed to complete an analysis of the claim. Pursuant to the Commission's regulations, all assertions or representations of fact must be supported by documentary evidence, and copies of any law cited and relied upon (with the exception of state mandates statutes and case law) must be included in the comments (Cal. Code Regs., tit. 2, § 1183.02). As a result, staff requests the following:

1. Page 3 of the California Community Colleges, Chancellor's Office comments regarding test claim number 02-TC-31, dated March 11, 2004, provides "Although most community college districts seek state aid in the form of apportionment, districts are not required to do so, and some districts do not receive apportionment."
    a. Please provide a breakdown of what "state aid" consists of. Specifically, what forms of state aid are there other than apportionment?
    b. Beginning in the 2001-2002 fiscal year, provide which community college districts <u>have not</u> sought state aid in the form of apportionment.
    c. Did the districts that did not seek state aid in the form of apportionment receive state aid in any other form of state aid?
    d. If so, what are the sources of the state aid?

e. How much did each of these districts receive for each fiscal year since 2001-2002 from these sources?

f. Beginning in the 2001-2002 fiscal year, provide which community college districts have sought state aid in the form of apportionment.

g. For each fiscal year beginning with 2001-2002, please provide a break down of how much each district has received in state aid in the form of apportionment.

h. For each fiscal year beginning with 2001-2002, please provide a break down of how much each district has received in state aid that was in a form other than apportionment.

2. Page 12 of the March 11, 2004 comments provides that "Claimant is not required to seek funding from the Employment Opportunity Fund."

   a. Are there any districts that do not seek funding from the Employment Opportunity Fund? If so which districts?

   b. For each fiscal year beginning in 2001-2002, how much funding has each district received from the Employment Opportunity Fund? What is the total amount of funding for all districts each fiscal year?

3. Page 18 of the March 11, 2004 comments provides that "Matriculation obligations are directly tied to participation in matriculation funding."

   a. For each fiscal year beginning in 2001-2002, how much is appropriated for matriculation funding?

   b. Please cite to a specific line item and schedule which contains funding for the matriculation obligations in the budget acts for each fiscal year beginning in 2001-2002.

   c. Which districts do not receive matriculation funding?

   d. Which districts receive matriculation funding?

   e. For each fiscal year since 2001-2002, how much has each district received?

4. In regard to "Full-time/Part-time Faculty," page 19 of the March 11, 2004 comments provides, "Amounts were added to the base of the community college districts as Program Improvement monies after the 1989-90 fiscal year."

   a. What was the amount added?

   b. How much did each district receive?

   c. If possible, please cite to a specific line item and schedule which indicates this increase in the 1989-1990 budget act.

Please submit this information as soon as possible, but **not later than May 2, 2008.** If you have any questions please contact Kenny Louie at (916) 323-2611.

Sincerely,

Paula Higashi

PAULA HIGASHI
Executive Director

Attachments: California Community Colleges, Chancellor's Office Comments on Test Claim 02-TC-31, dated March 11, 2004, and Mailing List

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU

March 11, 2004

RECEIVED
MAR 16 2004
COMMISSION ON
STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: CSM 02-TC-31
Santa Monica Community College District, Claimant
Minimum Conditions for State Aid

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above-referenced test claim in light of the following questions addressing key issues before the Commission:

Do the subject statutes or regulations result in a mandated new program or a mandated higher level of service within an existing program upon local entities within the meaning of section 6, article XIIIB of the California Constitution and section 17514 of the Government Code? If so, are costs associated with the mandate reimbursable?

Do any of the provisions of Government Code section 17556 preclude the Commission from finding that the provisions of the subject statutes or regulations impose a reimbursable state-mandated program upon local entities?

Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

This test claim ("Claim") alleges mandated costs reimbursable by the state for community college district activities related to complying with minimum conditions that are necessary for the receipt of state aid. Test Claimant Santa Monica Community College District ("Claimant") alleges that reimbursable mandated costs arise from a variety of Education Code sections and regulations that appear in title 5 of the California Code of Regulations.

Given the number of statutes and regulations that are invoked by Claimant, and the severe cutbacks suffered by this office, we are unable to provide a thorough response to this Claim. It is regrettable that the lack of funding to support mandate claim reviews could conceivably result in the payment of unwarranted claims. We can offer analytical assistance and provide some historic documentation, but regrettably, we must leave a comprehensive review of the issues to the Commission.

There are several bases for rejecting the Claim in its entirety, and various challenged sections raise other specific defenses to reimbursement.

1. If Claimant Has Complied With The Challenged Provisions In Order To Receive State Aid And Has Received State Aid, Claimant Has Already Been Compensated For Compliance, And No Further Reimbursement Is Warranted.

The provisions raised by Claimant are incorporated into a number of regulations that have been adopted by the Board of Governors for the California Community Colleges as minimum conditions for the receipt of state aid. The Board has long been legislatively required to promulgate such regulations.

If Claimant has not complied with the regulations, Claimant cannot raise an issue of reimbursement because Claimant has not taken action in response to a claimed mandate. If Claimant has complied with the regulations so as to collect state aid, Claimant is not eligible for further reimbursement. That is, funds have already been appropriated and paid for any required actions set out in the Claim.

The California Supreme Court recently addressed the conditions for reimbursement of claimed state mandates. (*Department of Finance v. Commission on State Mandates (Kern High School)* (2003) 30 Cal.4th 727, hereinafter referred to as "*Kern High School.*") The primary focus of the Court's analysis was that districts cannot voluntarily participate in programs, and then claim reimbursement for mandates. This is because there is no mandate under the law if a district has the option of not participating in a program or activity.

Kern High School pointed out that even if costs are incurred, they may be permissibly payable from funds that have already been obtained from the state. *(Id.*, at 747.) For the year 2001-2002, Claimant received state assistance in excess of $133,000. Claimant can use the funds it has already received from the state to satisfy any costs of complying with the regulations that are the subject of this Claim. Claimant is supposed to satisfy the regulations in order to be eligible to collect state funding.

Because Claimant has already received state funding for the purposes of complying with the subject provisions, the Claim should be rejected in its entirety. We will not raise this general defense for each of the regulations assessed below, but by setting out the defense as to all minimum conditions, we incorporate this defense into each of the following analyses.

2. Claimant Is Not Required To Collect State Aid. To The Extent Claimant Chooses To Do So, That Choice Negates The Finding Of A State Mandate For Activities That Are Necessary To Make Claimant Eligible For State Aid.

As noted above, the California Supreme Court recently confirmed that reimbursement is not authorized where the Claimant voluntarily undertakes an activity. (See *Kern High School, supra.)* In *Kern High School*, the District sought reimbursement from the state for the costs of preparing notices and agenda items related to certain programs it offered. The Supreme Court found that the District chose to participate in the programs, and therefore the costs of the programs were also voluntarily assumed. No mandates exist where a district voluntarily participates in a program.

Although most community college districts seek state aid in the form of apportionment, districts are not required to do so, and some districts do not receive apportionment. To the extent Claimant complies with the regulations cited herein in order to obtain the state aid that results from compliance, Claimant voluntarily accepts the obligations.

Under *Kern High School,* Claimant's choice to receive state funding for the purposes of complying with the subject provisions renders the conduct optional. We will not raise this general defense for each of the regulations assessed below, but by setting out the defense as to all minimum conditions, we incorporate this defense into each of the following analyses.

3. Minimum Standards Are Not Eligible For Reimbursement If They Were Required By Legislative Action That Predated January 1, 1975.

The regulations identified by Claimant reflect minimum standards that have been adopted by the Board of Governors.

A recent California Attorney General opinion concluded that reimbursement is often unavailable for minimum standard regulations. The question posed to the Attorney General concerned minimum standards for juvenile justice facilities. The Attorney General concluded that where a statute enacted prior to 1975 required a state body to establish minimum standards, revising those standards does not constitute a new program or increased level of an existing program.

The Attorney General considered a county's claim for reimbursement for bringing a juvenile justice facility into compliance with the minimum standards established by the Board of Corrections. The Attorney General concluded that the Board of Corrections had been required to set minimum standards for suitable juvenile facilities since at least 1915. Therefore, regulations adopted as minimum standards did not constitute a new program because

> "Counties have been required to maintain a 'suitable' place for the detention of minors since at least 1915. [Citations omitted.] Setting the minimum standards for what is 'suitable' does not create a 'higher' level of service--it has long been the level of service required of local agencies. [Citations omitted.]" (83 Ops.Cal.Atty.Gen. 111 (2000).)

The Attorney General considered the language of Welfare and Institutions Code section 210, which provides: "The Board of Corrections shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors." The term "suitable" is not part of the charge to the Board of Corrections in setting minimum standards. The term is implied.

Regulations challenged in this Claim reflect Board of Governors' minimum standards. Based on the premise established by the Attorney General, the minimum standards of the Board of Governors do not constitute either a new program or a higher level of service if the Board of Governors was statutorily obligated to set minimum standards in these areas prior to 1975.

Pre-1975 Requirements

The Board of Governors' minimum conditions regulations are generally adopted pursuant to statutes that appear in the Education Code (in a few isolated instances, regulations are also supported by statutes in other codes). Because the Education Code has been reorganized several

times, it is important to trace statutory requirements to their original sources. This is not always an easy undertaking where the Education Code is concerned.

Most statutes that concerned public schools were first assembled in the School Code in 1929. Prior to that time, such statutes appeared in various codes. The School Code became the Education Code in 1943. The Education Code was reorganized in 1959 and again in 1976. Some sections that appear in today's Education Code show that they were added in 1976 - which date incorrectly suggests that they came into being after January 1, 1975, a critical date for purposes of finding a state mandate. However, for many sections, the 1976 date merely reflects the 1976 comprehensive reorganization of the Education Code. That 1976 date does not represent the date of initial legislative pronouncement. In many instances, the Legislature required the Board of Governors to establish minimum standards in the subject areas prior to 1975.

Under the theory articulated by the Attorney General in his 2000 opinion, no new programs or higher level of services are established by Board of Governors' regulations that set minimum standards if the Legislature required the adoption of minimum standards prior to 1975. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Education Code section 66700

Section 66700 requires the Board of Governors to prescribe minimum standards for the operation of the community colleges. Section 66700 was preceded by section 22650, that was enacted in 1960, when the State Board of Education had jurisdiction over the junior colleges in California. (Stats. 1960, 1st Ex. Sess., ch. 49, p. 396.) Section 22650 required the State Board of Education to adopt minimum standards for the operation of the junior colleges. As the community college system developed, the obligation to adopt minimum standards was assigned to the Board of Governors and junior colleges were redesignated community colleges. (The Legislature created the Board of Governors of the California Community Colleges in 1967 by Statutes 1967, chapter 1549. It also vested in the Board of Governors the "duties, powers, purposes, responsibilities, and jurisdiction" previously vested with the State Board of Education. See Education Code section 71024, previously section 197.) Accordingly, since at least 1960, the Legislature has required the state agency having oversight responsibility to adopt minimum standards for the operation of community college districts. It has vested that responsibility in the Board of Governors since 1967.

Education Code section 70901(b)(6)

Section 70901(b)(6) requires the Board of Governors to adopt minimum standards entitling districts to receive state aid for support of community colleges. Section 70901(b)(6) was added by Statutes 1988. However, section 70901(b)(6) was preceded by section 71025 that was enacted by Statutes 1976. Former section 71025 provided that "the Board of Governors of the California Community Colleges shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges." Section 71025 was preceded by section 25510 that was added by Statutes 1963. (Stats. 1963, ch. 100, p. 760.) A 1970 amendment substituted "community college" for "junior college" and an amendment by Statutes 1974 substituted the Board of Governors of the California Community Colleges for the State Board of Education; thus the section read, "The Board of Governors of the California Community College shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges." (The 1974 amendment

merely conformed the Board of Governors' authority to that previously assigned by the Legislature in 1967.)

Accordingly, since at least 1963[1], the Legislature has required the state agency having oversight responsibility to adopt minimum standards enabling community college districts to receive state aid. As noted above, since 1967, that responsibility has rested with the Board of Governors. Based on the Attorney General's analysis, such minimum standards cannot be the basis for a mandate claim. Virtually all of the minimum conditions regulations challenged herein are based on legislative directives to the Board of Governors that preceded January 1, 1975. On that basis, none of the minimum conditions regulations support a claim for reimbursement, and the Claim may be rejected in its entirety. We will not raise this general defense for each of the regulations assessed below, but by setting out the defense as to all minimum conditions, we incorporate this defense into each of the following analyses.

4. Many Of The Regulations That Are The Subject Of This Claim Existed Prior To January 1, 1975, Under Different Section Numbers. To The Extent Any Mandates Predated January 1, 1975 They Are Not Eligible For Reimbursement.

A number of the regulations that are the subject of this Claim were originally adopted in 1969 or 1971 and later renumbered. In 1983, numerous regulations were renumbered through the process of repealing prior regulations and adding the regulations back into the code of regulations under new numbers. The Commission will note that Claimant alleges that a number of the regulations that are claimed as creating mandates came into existence in 1983. In many cases, that 1983 date represents a reorganization of title 5 and does not reflect the creation of new regulatory requirements.

"Costs mandated by the state" do not include costs associated with statutes that were enacted prior to January 1, 1975. (Government Code section 17514.) Regulatory requirements that existed before January 1, 1975, cannot be the basis for reimbursement.

5. A Number Of The Regulations Address Areas That Are Already Required By Federal Laws That Claimant Must Follow.

California community colleges are subject to a variety of federal mandates that require certain activities. In some of these cases, the mandates are imposed as a condition of the receipt of federal financial assistance. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

6. A Number Of The Regulations Address Areas Of General Law That Are Not Based On Claimant's Status As A Local Governmental Body.

Claimant is a California employer. Claimant is also a California business enterprise. As such, Claimant is required to follow general laws that apply to all such employers and enterprises. To the extent that a general law already requires Claimant to take certain actions, Claimant cannot be reimbursed for duplicative actions that are required under the challenged regulations. Actions required by general law cannot be the basis of a claim for reimbursement. (*County of Los*

[1] In some cases, the statutes cited herein may have existed earlier under different section numbers. However, given our resource limitations, we are not able to explore the full extent of possible previous enactments.

Angeles v. State of California (1987) 43 Cal.3d 46, 56.) Only if Claimant is able to determine that the regulations include specific additional mandates is reimbursement a possibility.

Regulatory Background. In the early times after the Board of Governors was established, the Office of Administrative Law, rather than this office, retained the primary regulatory files. Given our current resource restrictions, we are unable to fully explore the earlier versions of current regulations for purposes of this review.

We are attaching copies of the early regulation packages that remain in our files, and we encourage the Commission's thorough review of the early provisions. These packages verify that many of the issues addressed in the regulations cited by Claimant preexisted January 1, 1975. (See enclosed Attachment 1, regulation packet approved for filing August 26, 1969; Attachment 2, regulation packet approved for filing July 1, 1971; Attachment 3, regulation packet approved for filing October 1, 1971; Attachment 4, regulation packet approved for filing June 28, 1971.)

Condition 1, California Code of Regulations, title 5, section 51002 (Standards of Scholarship) Claimant asserts that this section mandates costs of adopting and complying with standards of scholarship for students. Claimant alleges that section 51002 was added in 1983 and amended in 1994.

In August 1969, the Board of Governors filed regulations with the Secretary of State that included section 51002 as a minimum standard entitling districts to receive state aid. (Attachment 1.) Section 51002(e) addressed standards of scholarship. It required districts to adopt regulations consistent with the state regulation and to publish the district standards in the college catalog under appropriate headings.

Section 51002(e) addressed grading, "credit-no credit" grades, when students should be on probation, and standards for dismissal. Section 51005, the text of which is set out in full below in our response to "condition 2," included subsections (e) and (f) that provided for credit by examination, which currently appears as section 55753.

In July, 1971, the Board of Governors filed additional regulations related to standards of scholarship. (Attachment 2.) These 1971 regulations addressed credit and no credit courses, standards for probation (section 51303 that led to present section 55754), standards for dismissal (section 51304 that led to present section 55756), a definition of "units attempted" (section 51305 which led to present section 55757), and grade point averages. Section 51300 required district governing boards to adopt regulations consistent with the regulations of the Board of Governors and to publish the regulations in the college catalog.

We lack the resources to fully correlate all these regulations, but it is clear that current regulatory provisions addressing standards of scholarship existed prior to January 1, 1975, and are not eligible for reimbursement.

Any Claim under this section must be rejected for the general reasons discussed above and because most if not all of the provisions predated January 1, 1975.

Condition 2. California Code of Regulations, title 5, section 51004 (Degrees and Certificates). Claimant asserts that this section requires districts to adopt and comply with regulations for awarding degrees and certificates. Claimant alleges the section was added in 1983 and amended in 1994.

Regulations that were filed by the Board of Governors in 1969 established minimum standards for degrees and certificates as follows. (See Attachment 1.) Those provisions led to numerous regulations that currently appear at sections 55800-55810. We have indicated some of the current related provisions in bold in the following.

> "51005. Requirements for Degrees and Certificates. (a) The governing board of a district maintaining a community college shall confer the degree of associate in arts upon the satisfactory completion in grades 13 and 14 of from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes the requirements listed in (1) through (5), provided that 12 of the required credit hours were secured in residence at that community college. **(See current section 55806.)** (The governing board may make exceptions to the residence requirement in any instance in which the governing board determines that an injustice or hardship would otherwise be placed upon an individual student.) "Satisfactory completion" means either credit earned on a "credit-no credit" basis or a grade point average of 2.0 (grade C on a five point scale with zero for an F grade) or better in 13th and 14th year graded courses in the curriculum upon which the degree is based. **(See current section 55801.)**
>
> (1) A major consisting of at least 20 semester hours in a specified field of study; **(See current section 55806(a).)**
>
> (2) Three semester hours in the Constitution of the United States, and in American history, including the study of American institutions and ideals, and of the principles of state and local government established under the Constitution of this State, and the satisfactory passing of an examination on said courses;
>
> (3) Two semester hours of community and personal hygiene; except that a community college student, who is a minor whose parents or guardian state in writing that the course in community and personal hygiene is contrary to the religious beliefs of the student, or if the student is not a minor if he so states in writing, may be excused from such course and permitted to substitute a two-hour course in a field or fields specifically designated by the governing board of the district in lieu of the required two-hour course in community and personal hygiene.
>
> (4) Two semester hours in physical education earned at the rate of one-half credit per semester for a minimum of 120 minutes per week in directed physical education activities, except as a student may be exempted in accordance with Section 8162, Education Code; and
>
> (5) Such requirements in oral and written English as the governing board of the school district may establish.
>
> (b) The governing board of a district maintaining a community college may confer the degree of associate in science upon the satisfactory completion in grades 13 and 14 of a minimum of 60 semester hours of work which shall satisfy all the requirements for an associate in arts degree, and which work shall include

a major of at least 20 semester hours in any of the following fields: engineering, physical and biological science, vocational-technical curriculums.

(c) The governing board of a district maintaining a community college shall award the appropriate diploma or degree whenever a student shall have completed all requirements of a full curriculum of the community college without regard to the length of time actually taken by the student to complete such requirements. **(See current section 55809.)** The governing board shall grant to any student who satisfactorily completes the requirements of any course of study in less than the prescribed time the full number of semester hours scheduled for such course.

(d) The governing board of a district maintaining a community college shall issue a certificate of achievement (as determined by the governing board and specified in the catalog) to any student who successfully completes any course of study or curriculum in length less than the full number of years and grades maintained by the community college. **(See current section 55808.)**

(e) The governing board of a district maintaining a community college may grant credit (but it shall not count toward the 12 semester hours of credit in residence required in (a) to any student who satisfactorily passes an examination approved and conducted by proper authorities of the college. Such credit may be granted only:

(1) To a student who is registered at the college and in good standing.

(2) For a course listed in the catalog of a California public community college. **(See current section 55753.)**

(f) The examination shall be made at the expense of the person being examined.

(g) Information contained in the physician's report is confidential, and the contents of the report shall not be divulged by an official or employee who has access to the report except to the Board of Governors of the California Community Colleges, the Teachers Retirement Board, any county superintendent of schools, the representatives of any of them, or to the governing board of a district which has requested such information.

(h) The person shall file with the governing board of any district employing him as a substitute instructor the notice, or a photostatic copy or certified copy of the notice, from the county superintendent, stating that the person has passed the physical examination prescribed by the Board of Governors."

The foregoing language verifies that many of the current regulations identified by Claimant existed in 1969 regulations.

In September 1971, the Board of Governors filed additional regulations that addressed degrees and certificates. (Attachment 3.) It is clear that the 1971 regulations are forerunners to current regulations. For example, former section 51622 (definitions) is current section 55801 and former section 51623 (Associate in arts degree) led to current section 55806.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that a number of the provisions predated January 1, 1975, making them ineligible for reimbursement.

Condition 3. California Code of Regulations, title 5, section 51006 (Open Courses)
Claimant alleges that section 51006 was added in 1983 and amended in 1994.

Claimant alleges that section 51006 incorporates the requirements of other sections, including sections 58102, 58104, and 58106 that require that classes be described in catalogs and/or class schedules.

Education Code section 5754 (added by Stats 1965, ch. 842) provided in part: "No class for adults shall be maintained by any district: . . . (2 if such classes are not open to the general public. . . ." (Emphasis added.) This requirement for open courses was replaced by section 84500.1 (added by Stats. 1978, ch. 909) that required in pertinent part that "[n]o community college shall report for attendance or average daily attendance to the board of governors for apportionment any classes: . . . if such classes are not located in facilities clearly identified in such a manner, and established by procedures, to insure that attendance in such classes is open to the general public. . . ." (Emphasis added.) Section 84500.1 was in effect until January 1, 1991. Accordingly, the open course requirement has been in effect in statute or regulation since 1965.

In August 1969, the Board of Governors filed a number of regulations, including section 51003. (See Attachment 1.) Subsection 51003(c) provided that courses that counted towards the associate degree, that were part of an occupational course of study beyond high school, or that were approved for transfer must be described in the college catalog or supplement thereto.

In July 1971, the Board of Governors adopted a number of regulations concerning standards of scholarship. (See Attachment 2.) Section 51102 required districts to describe all of their courses in college publications. Publication of courses in the public catalogs, that was required by both the 1969 and 1971 regulations, is a core element of open courses that presently resides in sections 58100 and 58102. The existence of these 1969 and 1971 regulations that required publication of course information verify the open nature of courses prior to January 1, 1975.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that open course and publication requirements predated January 1, 1975, making them ineligible for reimbursement.

Condition 4. California Code of Regulations, title 5, section 51008 (Comprehensive Plans).
Claimant asserts that section 51008 was added in 1983 and amended in 1994. The section requires districts to adopt academic master plans and master plans for facilities.

The requirement for district academic master plans and facilities master plans preexisted January 1, 1975, and continued without lapse such that reimbursement should be denied. The requirement originally appeared in the Education Code and was later transferred to title 5 pursuant to the requirement that the Board of Governors establish minimum conditions for the receipt of state aid. Our limited resources prevent a thorough review or tracing of all the provisions, but we offer the following:

Section 200.6 was added to the Education Code by stats. 1969 and was replaced by section 199 (added to the Education Code by stats. 1970). Section 199 provided:

"The board of governors shall review and approve academic master plans and

> master plans for facilities for each community college district. Such plans shall be submitted to the board of governors by the local governing board of each community college district. Master plans for facilities submitted pursuant to Chapter 19 (commencing with Section 20050) of Division 14 shall satisfy the requirements of this section in relation to master plans for facilities. Each district shall annually submit changes in its approved academic master plan for approval by the board of governors." (Emphasis added.)
>
> Section 1010.3 was added to the Education Code through stats. 1969, c. 1026; it was renumbered to section 25427 and amended by stats. 1970, c. 870 until it was renumbered to section 72231.5 by stats. 1976, c. 1010. In 1970, section 25427 provided:
>
> "The district governing board shall:
> (a) Establish policies for, and approve, current and long-range educational plans and programs and promote orderly growth and development of the community colleges within the district.
> (b) Establish policies for, and approve, academic master plans and long-range master plans for facilities. The district governing board shall submit such master plans to the board of governors for review and approval." (Emphasis added.)

The foregoing confirmed the obligation of districts to establish academic and facility master plans well in advance of January 1, 1975.

The Board of Governors also adopted regulations concerning educational master plans well before January 1, 1975. (See Attachment 4.) Sections 55400 through 55405 required districts to "establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole." (Cal. Code Regs., tit. 4, § 55401.) These sections have remained in effect, with some intervening amendments, to the present.

Any Claim under this section must be rejected for the general reasons discussed above and because the requirement for academic master plans and for master plans for facilities predated January 1, 1975, making them ineligible for reimbursement.

Condition 5. California Code of Regulations, title 5, section 51010 (Equal Employment Opportunity).
Claimant asserts that section 51010, regulations that are incorporated by reference under section 51010, and Education Code sections 87100 et seq. require Claimant to provide equal employment opportunity.

Claimant is subject to a number of federal constitutional and statutory requirements that are designed to ensure equal employment opportunity. These include the federal Equal Protection Clause of the Fourteenth Amendment, Title VII, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. These federal laws prohibit discrimination and apply to Claimant because of Claimant's status as a public entity or as an employer, or Claimant's receipt of federal funds. We have determined that Claimant receives federal Vocational and Applied Technology Education Act (VATEA) funding, and it may receive other federal financial support. (Claimant's tentative VATEA allocation for the 2003-04 fiscal year alone is $687,436.00)

Accordingly, Claimant is subject to any obligations that attach to the receipt of such federal funding. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

Equal Protection Clause. The federal Equal Protection Clause is a general constitutional guarantee that requires to Claimant afford equal treatment to all employees. Discrimination on the basis of race, ethnicity, and national origin is particularly suspect, but other bases for discriminatory treatment, such as gender, may also be challenged as a federal constitutional violation.

Title VII. Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex, or national origin. Title VII applies to Claimant in its role as an employer. Title VII is implemented by regulations adopted by the federal Equal Employment Opportunity Commission ("EEOC"). The regulations that appear at 29 C.F.R. 1607 et seq., include a number of obligations to ensure against unlawful discrimination, and the regulations invoked in this Claim frequently reflect the federal provisions.

Americans with Disabilities Act and Section 504 of the Rehabilitation Act. These federal laws require Claimant to ensure that persons with disabilities are not subjected to unlawful discrimination in their employment.

To the extent that the foregoing or other federal laws require activities to ensure equal employment opportunity without discrimination, Government Code section 17556(c) precludes the finding of a reimbursable mandate.

Claimant is also subject to a number of general laws that do not depend on Claimant's status as a local governmental body.

Government Code section 12940. Section 12940 is part of the California Fair Employment and Housing Act ("FEHA"), and it covers virtually all California employers with 15 or more employees. Accordingly, section 12940 applies to Claimant independent of its status as a local government agency.

Section 12940 requires the Claimant to ensure a workplace free of discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. Section 12950 requires Claimant to maintain an employment environment free of sexual harassment.

The FEHA is enforced by the Fair Employment and Housing Commission which has adopted a number of regulations. The Commission has adopted the Uniform Guidelines for Selection Procedures that has been promulgated by the EEOC under Title VII. (See Cal. Code of Regs., tit.2, § 7287.4.) Even if Claimant were not directly subject to Title VII and EEOC regulations, it is subject to the Commission's regulations, and those regulations incorporate the EEOC regulations. As a result, to the extent that the challenged regulations reflect general law requirements that apply to Claimant as a California employer, they cannot be the basis for reimbursement. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

Claimant raises issues under Education Code section 87100, et seq. Section 87102 provides that the activities described in the article are conditions to receipt of funds that are provided by the

Employment Opportunity Fund that is described in section 87107. Therefore, Claimant is not entitled to reimbursement for the activities described in section 87100 et seq. for two reasons.

First, Claimant is not required to seek funding from the Employment Opportunity Fund. If Claimant seeks such funding, it voluntarily assumes the obligations that attach to such funding. Pursuant to *Kern High School*, noted above, such voluntary actions are not reimbursable.

Second, the Employment Opportunity Fund is available for the payment of any documented costs, and reimbursement under this process would be double recovery.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that federal law or general California law may require the challenged actions, and because Claimant has chosen to proceed under Education Code provisions that carry their own funding.

Condition 6. California Code of Regulations, title 5, section 51012 (Student Fees).
Claimant alleges that this regulation requires it to establish and implement policies and procedures to ensure that student fees comply with the law.

The obligation contained in title 5, section 51012 existed prior to January 1, 1975, and has continued to apply to Claimant without lapse to the present. Education Code section 1010.10 was added to the Education Code by stats. 1969, c. 1026. It was renumbered to section 72289 by stats 1976, c. 1010. Both sections provided:

> "The district governing board may establish such student fees as it is authorized to establish by law."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that the obligation predated January 1, 1975.

Condition 7. California Code of Regulations, title 5, section 51014 (Approval of New Colleges & Educational Centers)
Claimant asserts that section 51014 was added in 1983 and amended in 1994, and that it requires districts that are planning new colleges or educational centers to obtain the approval of the Board of Governors prior to the commencement of classes.

Claimant does not allege that it has ever been affected by section 51014. Nothing in the Claim suggests that Claimant has ever sought the Board's approval under section 51014 for a new college or a new educational center, and Claimant alleges no costs arising from complying with section 51014.

Any Claim under this section must be rejected for the general reasons discussed above and because this is a special provision that mandates actions only under special and limited conditions. Claimant does not allege that it ever took those actions. For these reasons, any Claim under this section should be rejected.

Condition 8. California Code of Regulations, title 5, section 51016 (Accreditation)
Claimant asserts that section 51016 was added in 1983 and that the section requires it to establish and implement policies and procedures to ensure compliance with the accreditation standards of

the Accrediting Commission for Community and Junior Colleges ("AACJAC") and to pay the costs of the accreditation process. Claimant alleges that prior to the addition of section 51016, colleges were not specifically required to comply with AACJAC standards and that they were permitted, but not required to pay the costs of the accreditation process.

The expectation that colleges would be accredited predated January 1, 1975. Through stats. of 1967, c. 1562 (amended by stats. 1970, c. 102 and stats. 1974, c. 989), Education Code section 25522 specifically authorized the costs of accreditation of the colleges within a district by "the regional accrediting association serving California." Section 25522 was renumbered to section 78050 by stats. 1976, c. 1010.

Claimant may be correct that no specific statute or regulation required it to pay the costs of accreditation. Our resources do not permit a thorough review of this issue. However, since before January 1, 1975, Claimant was expected to be accredited, and it could not be accredited unless it paid the costs of accreditation.

Accreditation is a condition of eligibility for participation in certain federal programs, including federal funding for higher education resources and student assistance. (See, e.g., 20 U.S.C. § 1058.) To the extent that Claimant chooses to participate in federal programs, it also chooses to participate in the accreditation process. Given Claimant's choice, it cannot claim reimbursement for the costs associated with that choice.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that federal law may require accreditation, because Claimant has chosen to secure federal funding that requires accreditation, and because the expectation of accredited status predated January 1, 1975.

Condition 9. California Code of Regulations, title 5, section 51018. (Counseling)
Claimant asserts that this section requires districts to adopt regulations and procedures regarding counseling programs, to provide the programs to students, and to publicize the counseling programs. Claimant alleges that section 51018 was added in 1983 and amended in 1994.

The obligation for Claimant to have a counseling program preceded January 1, 1975. In August, 1969, the Board of Governors filed regulations with the Secretary of State that included section 51002 as a minimum standard entitling districts to receive state aid. (See Attachment 1.) Section 51001(h) provided as follows:

> Counseling Services. The community college shall have an adequate counseling staff, both in training and experience, and shall have established procedures, to provide, and shall provide, the following counseling services:
> (1) Assisting each student in the college
> (A) To determine his educational goal,
> (B) To make a self-appraisal toward progress toward his goals.
> (2) Providing each first-time freshman described in (A) or (B) below who is enrolled in more than six units special individual or group counseling and guidance, arranging a study load suitable to his needs, and keeping an appropriate record of the student.
>
> (A) He is a high school graduate, his scores on a qualifying test or tests

were below an acceptable minimum for the college of attendance, and his grade point average in the last three years in high school was less than 2.0 (grade C on a five point scale with zero for an F grade), excluding only physical education and military science; or

(B) He is not a high school graduate, and his scores on a qualifying test or tests were below an acceptable minimum for the college of attendance and his grade point average in the years of high school attendance was less than 2.0 (grade C on a five point scale with zero for an F grade), excluding only physical education and military science.

(3) Providing to each student who is on probation individual counseling and guidance service, including regulation of his program according to aptitude and his achievements."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that counseling services were required prior to January 1, 1975.

Condition 10. California Code of Regulations, title 5, section 51020 (Objectives).
Claimant asserts that this section was added in 1983 and amended in 1991, and that it requires Claimant to adopt objectives for its instructional programs and other district functions.

This regulation was first adopted in 1969 as section 51002(a). (See Attachment 1.) Its provisions have remained the same to the present. It provided:

"51002(a) Objectives. The community college shall have stated objectives of its instructional program and the functions which it undertakes to perform."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that objectives were required prior to January 1, 1975.

Condition 11. California Code of Regulations, title 5, section 51021. (Curriculum).
Claimant alleges that this section was added in 1983 and amended in 1994. Claimant alleges that it requires each community college to establish educational programs and courses that will further the objectives and functions of the college and that all courses must be approved by the State Chancellor.

As noted under Condition 4, above, section 1010.3 was added to the Education Code through stats. 1969, c. 1026; it was renumbered to section 25427 and amended by stats. 1970, c. 870 until it was renumbered to section 72231.5 by stats. 1976, c. 1010. Section 25427 required district governing boards to establish policies for and approve, current and long-range educational plans and programs. It can fairly be assumed that such long-range education plans and programs addressed curriculum.

Education Code section 200.9 was added by stats. 1969, c. 1026 and amended by stats. 1970, c. 102. It provided:

"The board of governors shall establish criteria and standards for graded and nongraded classes in community colleges."

Additionally, the curriculum regulation was first adopted in 1969 as section 51002(b) which essentially tracked the language of current section 51021, as follows:

> "51002(b) Curriculum. The community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. Such courses shall be submitted to the Chancellor of the California Community Colleges for prior approval on forms provided by the Chancellor. The Chancellor shall report to the Board of Governors at a fall and a spring meeting the actions which he has taken in approving the courses."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that the curriculum requirement predated January 1, 1975.

Condition 12. California Code of Regulations, title 5, section 51022 (a) (Instructional Programs).
Claimant asserts that section 50122(a) mandates certain responsibilities regarding instructional programs, including vocational or occupational training program review.

Section 51022(a) provides that districts must develop and file with the Chancellor policies for the establishment, modification, and discontinuance of courses or programs.

Districts have long been required to develop and submit to the state their academic master plans which must, of necessity, address instructional programs. (See Ed. Code, § 199, added by stats. 1970, c. 870, and section 1010.3, added by stats. 1969, c. 1026 (renumbered to 25427 by stats. 1970, c. 870) that required district governing boards to "establish policies for, and approve, current and long-range educational plans and programs" and to "establish policies for, and approve, academic master plans. . ." District governing boards have also been required to "establish policies for, and approve, the total educational program of the community college or colleges in the district. . . . approve all classes for adults and shall submit such classes as are eligible for state apportionments to the board of governors for approval." (See Ed. Code, § 1010.4, added by stats. 1969, c. 1026, amended by stats. 1970, c. 102, stats. 1970, c. 870.)

The very reason for Claimant to exist is to offer educational programs and services. The public community colleges were established to "offer instruction through but not beyond the 14th grade level." Their programs could include, but were not limited to "(1) standard collegiate courses for transfer to higher institutions; (b) vocational and technical fields leading to employment; and (3) general or liberal arts courses." (Ed. Code, § 22651, added by stats. 1960, 1st Ex. Sess, c. 49.)

Section 22651 was amended, and ultimately renumbered to section 66701 by stats. 1976, c. 1010. In light of the basic mission of community colleges, the required education master plans, and obligations to establish curriculum (as noted above regarding "Condition 11"), districts would necessarily have developed policies for the establishment, modification, and discontinuance of educational programs and courses apart from the regulation at issue here.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that numerous duties related to instructional

programs and courses existed prior to January 1, 1975.

Condition 13. California Code of Regulations, title 5, section 51022(b) (Course Articulation-Local)
Claimant asserts that section 51022(b) requires it to develop and implement policies and procedures for the articulation of its courses with proximate four-year colleges and high schools.

Through stats. 1969, c. 1026, Education Code section 200.13 was enacted to require the Board of Governors to "facilitate articulation with other segments of higher education and with secondary education." Section 200.13 was renumbered to section 71071 by stats. 1976, c. 1010. Therefore, the Board of Governors has been statutorily required to act in this specific area since before January 1, 1975. This regulation is a necessary part of carrying out this requirement.

Moreover, the community colleges have always been a part of the California public school system. (E.g., see former Ed. Code, § 22650, as amended by stats. 1970, c. 102: "The public community colleges are secondary schools and shall continue to be a part of the public school system of this state.") Being part of a system necessarily involves a level of articulation with other segments of the system.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that articulation with other segments was required prior to January 1, 1975.

Condition 14. California Code of Regulations, title 5, section 51023(a) (Academic Freedom).
Claimant asserts that this section was added in 1984 and amended in 1994, and that it requires districts to adopt and implement a policy statement on academic freedom.

Academic freedom includes the opportunity to express opinions. The requirements of the current regulations grew out of legislative direction to the Board of Governors to establish minimum procedures to insure faculty have the opportunity to express their opinions. Education Code section 200.22 was added by stats. 1969 and provided:

> "The board of governors shall establish minimum procedures to be used by district governing boards to insure to faculty and students the opportunity to express their opinions at the campus level and to insure that these opinions are given every reasonable consideration."

Through stats. 1969, c. 1026, Education Code section 1010.13 required community college districts to "establish procedures not inconsistent with those established by the board of governors to insure faculty and students the opportunity to express their opinions at the campus level." Section 1010.13 was renumbered to section 72292 by stats. 1976. Section 72292 was the original statutory underpinning for the language concerning academic freedom. Section 72292 existed as section 1010.13 well before January 1, 1975.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that the basis for the academic freedom language predated January 1, 1975.

Condition 15. California Code of Regulations, title 5, sections 51023, 51023.5, and 51023.7.

(Shared Governance: Faculty, Staff, Students)
Claimant references the regulations that require shared governance for faculty (§ 51023), staff (§ 51023.5), and students (§ 51023.7).

Faculty. The requirements of section 51023 and sections that are incorporated into section 51023 largely preceded January 1, 1975. The role of academic senates or faculty councils in academic and professional matters was established in 1969 (see Attachment 1) under section 51004 as follows:

> 51004. Academic Senates or Faculty Councils.
> (a) For the purposes of this section:
> (1) "Faculty" means those certificated persons who teach full time in a community college or other full-time certificated persons who do not perform any services for the college that require an administrative or supervisory credential.
> (2) "Academic senate" or "faculty council" means an organization formed in accordance with this section whose primary function is, as the representative of the faculty, to make recommendations to the administration and the governing board of a district with respect to academic and professional matters.
> (b) In order that the faculty may have a formal and effective procedure for participating in the formation of district policies on academic and professional matters described in (a)(2), the faculty first must decide by secret ballot to have an "academic senate" or "faculty council," in which case the governing board of each district shall establish such an "academic senate" or "faculty council" in each community college by authorizing the faculty to:
> (1) Fix, and amend, by vote of the faculty, the composition, structure, and procedures of the academic senate or faculty council.
> (2) Select, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.
> (c) After consultation with the administration, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.
> (d) Upon the request of the academic senate or faculty council and subject to Government Code Sections 54950 ff. (The Brown Act), when applicable, the governing board, or such board members or administrative officers as it may designate, shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board members or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.
> (e) The academic senates or faculty councils may assume such responsibilities and perform such functions as may be requested of it by the administration or board of trustees."

Students. Through stats. 1969, c. 1026, Education Code section 1010.13 required community

college districts to "establish procedures not inconsistent with those established by the board of governors to insure . . . students the opportunity to express their opinions at the campus level." Section 1010.13 was renumbered to section 72292 by stats. 1976.

Staff: The specific details of section 51023.5 appear to have developed recently. However, because they reflect minimum standards, and the Board of Governors has been required to establish minimum standards since before January 1, 1975, the Attorney General has determined that a reimbursable mandate has not been created.

Any Claim under this section must be rejected for the general reasons discussed above. For academic senates or faculty counsels under section 53023, the Commission will be able to confirm that responsibilities predated January 1, 1975. For students, the Commission will also be able to confirm that Claimant was required to provide students with the opportunity to express their opinions prior to January 1, 1975.

Condition 16. California Code of Regulations, title 5, section 51024 (Matriculation Services).
Claimant asserts that the Seymour-Campbell Matriculation Act of 1986 requires certain conduct. Claimant asserts that Education Code sections 78210-78218, and title 5, sections 51024 and 55500-55534 describe these requirements.

Matriculation obligations are directly tied to participation in matriculation funding. Education Code section 78218 verifies that the statutory obligations the regulations implement are only operative if funds are specifically appropriated for matriculation purposes. Moreover, Education Code section 78211.5(b) provides in part that

> "any college or district receiving funding under this article shall agree to carry out its provisions as specified, but shall be bound to that agreement only for the period during which funding is received pursuant to this article."

Accordingly, Claimant's acceptance of matriculation funding is the source of any obligations.

The choice to participate in the matriculation program carries certain obligations so long as the funding is provided. Because participation is discretionary as to districts, under *Kern High School, supra,* 30 Cal.4th 727, the requirements of the Education Code and title 5 sections related to matriculation carry no state mandates.

Districts that do apply for and accept matriculation funding are required to match each dollar of matriculation funding with three dollars of other district resources. (§ 55518.) Some of that matching money is likely other state funding dollars. Nothing in statute or regulation prohibits districts from spending matriculation funding or the matching money from other state resources to satisfy the requirements of section 55530; accordingly, the state should not have to pay again for actions Claimant may already pay for from state resources.

Any Claim under this section must be rejected for the general reasons discussed above, because participation is optional, and because funding for participation is already available.

Condition 17. California Code of Regulations, title 5, section 51025 (Full-time/Part-time Faculty).
Claimant asserts that this section creates mandated costs to reach a full-time/part-time faculty

ratio of 75%/25%. Claimant acknowledges that this provision was adopted in response to Education Code section 87482.6.

Education Code section 87482.6 was added by stats. 1988, c. 973. SEC 70(b)(2) provided that during phase II of the reforms described by AB 1725,

> "the new educational environment created under Phase I, including such reforms as innovative training programs, evaluation procedures, and minimum qualifications, may be utilized to the fullest extent in hiring new full-time faculty. The Legislature finds that this latter step is a major component of successful reform and the eventual attainment of the highest possible quality in the educational programs of the California Community Colleges. It is the intent of the Legislature that moneys appropriated during Phase II fully fund any state-mandate created pursuant to this section."

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review and because funding has been provided.

Amounts were added to the base of community college districts as Program Improvement monies after the 1989-90 fiscal year.

Condition 18. California Code of Regulations, title 5, section 51026 (Student Equity). Claimant asserts that this section requires it to develop policies and procedures for student equity. Although student equity is approached by reference to section 51026, Claimant also identifies a number of state statutory provisions that prohibit discrimination and harassment against students on a variety of bases. For example, Claimant notes that Education Code section 72011 requires it to provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex.

California nondiscrimination laws concerning students frequently reflect the requirements of federal constitutional and statutory requirements, including the federal Equal Protection Clause of the Fourteenth Amendment, Title VI, Title IX, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. These provisions generally prohibit discrimination and harassment by districts as a matter of constitutional principle or as a condition that attaches to the acceptance of federal funds. As noted above, we have determined that Claimant receives federal Vocational and Applied Technology Education Act funding, and it may receive other federal financial support. Accordingly, Claimant is subject to any obligations that attach to the receipt of such federal funding. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

Equal Protection Clause. The federal Equal Protection Clause is a general constitutional guarantee that requires Claimant to treat students equally. Discrimination on the basis of race, ethnicity, and national origin is particularly suspect, but other bases for discriminatory treatment, such as gender, may also be challenged as a federal constitutional violation.

Title VI. Title VI protects students from discrimination under programs that receive federal funding. It provides that "[n]o person . . . shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or subjected to discrimination under

any program or activity receiving Federal financial assistance." (42 U.S.C. § 2000d.) Title VI guarantees equity and nondiscrimination in admissions, services, programs and activities.

It is likely that Claimant receives federal funds and is therefore federally mandated to provide student equity and to prohibit discrimination based on race, color or national origin.

Title IX. Title IX of the Education Amendments of 1972 "is designed to eliminate . . . discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. . . ." (34 CFR § 106.1.) Claimant is therefore subject to the requirements of Title IX and its implementing regulations if Claimant accepts federal education financial assistance. The implementing regulations appear at title 34, Code of Federal Regulations, part 106, sections 106.1 through 106.71. The Office for Civil Rights ("OCR") within the U.S. Department of Education enforces Title IX and the implementing regulations.

Title IX requires community college districts that receive federal financial assistance to adopt and to publish policies prohibiting sex discrimination. Districts must also "adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part." (34 C.F.R. §§ 106.8(b), 106.9.)

Sexual harassment is a form of sex discrimination that is prohibited by Title IX. In January 2001, the OCR published its Title IX "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." As interpreted by the OCR, if a district's required sex discrimination policy does not specifically address sexual harassment, its policy and procedures will not be considered effective. (*Id.*, pp. 19-20.) The failure to have a policy and procedure prohibiting sex discrimination, including sexual harassment, violates the Title IX regulations even if no discrimination or harassment occurs. (*Id.*, p. 19.)

The sexual harassment policy and procedures must be distributed.

> "Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination." (*Id.*, at p. 14.)

OCR examines certain elements in determining whether a district's grievance procedures are prompt and equitable. One element is that students and employees are notified of the procedure, "including where complaints may be filed." (*Id.*, at p. 20.) The OCR notes that schools may ensure notice to students of their rights under Title IX by having copies of the procedures "available at various locations throughout the school or campus" and by "including a summary of the procedures in major publications issued by the school." (*Id.*, at p. 20.)

Based on the foregoing, by accepting federal financial assistance, community college districts obligate themselves to develop and disseminate sexual harassment policies, notify students and employees of the district as to how to file charges, and disseminate information concerning the prohibition to sexual harassment in major district publications.

Americans with Disabilities Act (ADA). The ADA applies to all public (and private) postsecondary educational institutions, and it generally prohibits discrimination against students with disabilities.

Section 504 of the Rehabilitation Act (Section 504). Section 504 applies to those postsecondary educational institutions that receive or benefit from federal financial assistance. Section 504 generally prohibits discrimination against students with disabilities.

Age Discrimination Act of 1975. Public (and private) institutions that receive federal funds must comply with the Age Discrimination Act (42 U.S.C. § 6101 et seq.) that prohibits unreasonable discrimination on the basis of age in programs or activities that receive federal funds. To the extent that Claimant receives federal funds, student equity or nondiscrimination on the basis of age is not a reimbursable state mandate.

There is a second basis for rejecting a Claim based on equity and nondiscrimination requirements. If Claimant is already required by general law to ensure student equity and nondiscrimination, the statutes and regulations cited by Claimant that require nondiscrimination on the same bases do not create reimbursable mandates. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

Civil Code, section 51 (Unruh Act). The Unruh Act prohibits discrimination in business establishments. Public school districts have been found to be business establishments subject to the Unruh Act. For example, the Act ensures student freedom from racial harassment and from sex discrimination in the California public school districts. (*Davison ex rel. Sims v. Santa Barbara High School Dist.*, C.D. Cal.1998, 48 F. Supp.2d 1225; *Nicole M. By and Through Jacqueline M. v. Martinez Unified School Dist.*, N.D.Cal.1997, 964 F. Supp. 1369.)

The Unruh Act has general application to all California businesses and does not impose unique requirements on local government agencies such as community college districts. Accordingly, the requirements to ensure student equity and an educational environment free of discrimination on the basis of sex, race, color, religion, ancestry, national origin, disability, or medical condition already exist apart from the Education Code provisions or title 5 regulations noted by Claimant. Because the Claimant is already required by general law to do these things, these actions cannot be the basis of a claim for reimbursement. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review, because mandates may replicate existing federal requirements, and because general law imposes some of the same requirements.

Condition 19. California Code of Regulations, title 5, section 51027 (Transfer Centers)
Claimant asserts that section 51027 requires each community college district to recognize transfer as one of its primary missions and to develop and adopt a transfer center plan.

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review.

Condition 20. California Code of Regulations, title 5, sections 51100 and 51102 (Compliance Enforcement)

Claimant asserts that sections 51100 and 51102 were added in 1983 and amended in 1984.

Claimant asserts that section 51100 requires the State Chancellor to review each college to determine whether it has met the minimum conditions established by title 5, sections 51000-51027. Section 51102 requires the State Chancellor to notify districts of areas of noncompliance to which districts must respond.

As noted at the beginning of this review, since at least the mid-1960's the Board of Governors has been required to adopt minimum standards entitling districts to receive state aid for support of community colleges. Education Code section 1010.2 was added by stats. 1969, c. 1026 that required Claimant to "establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district. . . ." This section was renumbered to section 72282 through stats. 1976, c. 1010. Accordingly, Claimant has been required to comply with state requirements since well before January 1, 1975. Implicit in the requirement to comply with state requirements is the obligation to demonstrate compliance and to take necessary actions to come into compliance where noncompliance is found.

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review and because the obligation to comply with the rules and regulations of the state Board of Governors predated January 1, 1975, and is therefore not reimbursable under this process.

We hope the foregoing information is useful to you.

Sincerely,

Frederick E. Harris

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning

Commission on State Mandates

Original List Date: 6/26/2003
Last Updated: 4/26/2007
List Print Date: 04/21/2008
Claim Number: 02-TC-31
Issue: Minimum Conditions for State Aid

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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EXHIBIT O

April 23, 2008

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And Interested Parties and Affected State Agencies

Re: Request for Comments
Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)
(See attachment for a complete pleadings list)
Los Rios Community College District
Santa Monica Community College District
West Kern Community College District, Co-claimants

Dear Ms. Oropeza:

On January 11, 2008, the Commission issued a request for comments in regard to the unconsolidated *Minimum Conditions for State Aid* (02-TC-31) test claim. Staff would like to confirm that the Department of Finance intends to reserve comments until the draft staff analysis is issued.

Please contact Kenny Louie at (916) 323-2611 if you have any questions.

Sincerely,

PAULA HIGASHI
Executive Director

Attachments: List of Statutes and Executive Orders Pled, and Mailing List

MAILED: ✓ FAXED: _____
DATE: 4/23/08 INITIAL: AE
CHRON: _____ FILE: _____
WORKING BINDER: ✓

LIST OF STATUTES AND EXECUTIVE ORDERS PLED
CONSOLIDATED TEST CLAIM: *MINIMUM CONDITIONS FOR STATE AID*
(02-TC-25 AND 02-TC-31)

STATUTES

Chaptered Bills:

Statutes 1975, Chapter 802;
Statutes 1976, Chapters 275, 783, 1010, and 1176;
Statutes 1977, Chapters 36, 967;
Statutes 1979, Chapters 797 and 977;
Statutes 1980, Chapter 910;
Statutes 1981, Chapters 470 and 891;
Statutes 1982, Chapters 1117 and 1329;
Statutes 1983, Chapters 143 and 537;
Statutes 1984, Chapter 1371;
Statutes 1986, Chapter 1467;
Statutes 1988, Chapters 973 and 1514;
Statutes 1990, Chapters 1372 and 1667;
Statutes 1991, Chapters 1038, 1188, and 1198;
Statutes 1995, Chapters 493 and 758;
Statutes 1998, Chapter 365, 914, and 1023;
Statutes 1999, Chapter 587;
Statutes 2000, Chapter 187; and
Statutes 2002, Chapter 1169

Education Code Sections:

212	66030	66270	66722	66742	72014	81820
212.5	66251	66271.7	66722.5	66743	78015	81821
213	66252	66281.5	66731	70901	78016	81823
214	66261	66290	66732	70901.5	78211.5	87101
221.5	66261.5	66291	66736	70902	78212	87102
221.7	66262	66292	66737	71027	78213	87482.6
66010.2	66262.5	66292.3	66738	72011	78214	87482.7
66010.7	66263	66721	66740	72012	78215	
66016	66264	66721.5	66741	72013	78216	

California Code of Regulations, Title 5, Sections:

51000	53002	53309	55201	55502	55620	55800.5
51002	53003	53310	55202	55510	55630	55801
51004	53004	53311	55205	55512	55750	55805
51006	53005	53312	55207	55514	55751	55805.5
51008	53006	53314	55209	55516	55752	55806
51010	53020	54220	55211	55518	55753	55807
51012	53021	54626	55213	55520	55753.5	55808
51014	53022	54805	55215	55521	55753.7	55809
51016	53023	55000	55217	55522	55754	55825
51018	53024	55000.5	55219	55523	55755	55827
51020	53025	55001	55300	55524	55756	55828
51021	53026	55002	55316	55525	55756.5	55829
51022	53033	55002.5	55316.5	55526	55757	55830
51023	53034	55004	55320	55530	55758	55831
51023.5	53200	55005	55321	55532	55758.5	58102
51023.7	53202	55006	55322	55534	55759	58104
51024	53203	55100	55340	55600	55760	58106
51025	53204	55130	55350	55601	55761	58107
51026	53207	55150	55401	55602	55762	58108
51027	53300	55160	55402	55602.5	55763	59404
51100	53301	55170	55403	55603	55764	59410
51102	53302	55182	55404	55605	55765	
53001	53308	55200	55500	55607	55800	

Implementing Guidelines Handbooks:

Handbook of Accreditation and Policy Manual,
Accrediting Commission for Community and Junior Colleges (Summer 2002)

"Program and Course Approval Handbook"
Chancellor's Office California Community Colleges (September 2001)

"Student Equity Guidelines for Developing a Plan"
Fall 2002, The Academic Senate for California Community Colleges
(Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions")
(Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, adopted by the Academic Senate fall 2002)

Original List Date: 6/26/2003
Last Updated: 4/26/2007
List Print Date: 04/23/2008
Claim Number: 02-TC-31
Issue: Minimum Conditions for State Aid

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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STATE OF CALIFORNIA

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EXHIBIT P

May 6, 2008

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Response to Request for Comments
Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)
(See attachment for a complete pleadings list)
Los Rios Community College District and
Santa Monica Community College District,
West Kern Community College District, Co-claimants

Dear Mr. Petersen:

The Department of Finance has submitted the enclosed response to staff's April 21, 2008 and April 23, 2008 letters requesting specified information and confirmation of the Department of Finance's decision to reserve comments until the draft staff analysis for *Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)* is issued.

The draft staff analysis on the consolidated test claim will be issued by August 1, 2008. If you have questions on the above, please contact Kenny Louie at (916) 323-2611.

Sincerely,

PAULA HIGASHI
Executive Director

Attachments: Department of Finance Response, List of Statutes and Executive Orders Pled, and Mailing List

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Paula Higashi

From: Todd, Thomas [Thomas.Todd@dof.ca.gov]
Sent: Tuesday, May 06, 2008 10:42 AM
To: Paula Higashi
Cc: Oropeza, Jeannie; Podesto, Lynn; McKinney, Jean-Marie; Geanacou, Susan
Subject: Minimum Conditions for State Aid Correspondence

Paula,

We are in receipt of two separate correspondences from your office on *Minimum Conditions for State Aid (02-TC-25 and 02-TC-31).* In the first correspondence dated April 21, 2008, your office indicates the need to provide a host of supporting documentation related to this claim. We will defer to the Chancellor's Office as the appropriate entity to supply your office with this data, given that they are responsible for the collection and maintenance of the types of information you are seeking. In the second correspondence dated April 23, 2008, your office was attempting to confirm whether or not the Department of Finance intended to reserve comments on this claim until after the issuance of the draft staff analysis. I can confirm for you that this is the case.

I spoke with Kenny Louie in your office about the form of notification needed to communicate these points to your office. I expressed to him, that given our current workload associated with the May Revision, that an email communication was the preferred course of action for us to inform your office. He indicate that this would be acceptable. If it is not, please let our office know as soon as possible.

Thank you.

-Thomas

LIST OF STATUTES AND EXECUTIVE ORDERS PLED
CONSOLIDATED TEST CLAIM: *MINIMUM CONDITIONS FOR STATE AID*
(02-TC-25 AND 02-TC-31)

STATUTES

Chaptered Bills:

Statutes 1975, Chapter 802;
Statutes 1976, Chapters 275, 783, 1010, and 1176;
Statutes 1977, Chapters 36, 967;
Statutes 1979, Chapters 797 and 977;
Statutes 1980, Chapter 910;
Statutes 1981, Chapters 470 and 891;
Statutes 1982, Chapters 1117 and 1329;
Statutes 1983, Chapters 143 and 537;
Statutes 1984, Chapter 1371;
Statutes 1986, Chapter 1467;
Statutes 1988, Chapters 973 and 1514;
Statutes 1990, Chapters 1372 and 1667;
Statutes 1991, Chapters 1038, 1188, and 1198;
Statutes 1995, Chapters 493 and 758;
Statutes 1998, Chapter 365, 914, and 1023;
Statutes 1999, Chapter 587;
Statutes 2000, Chapter 187; and
Statutes 2002, Chapter 1169

Education Code Sections:

212	66030	66270	66722	66742	72014	81820
212.5	66251	66271.7	66722.5	66743	78015	81821
213	66252	66281.5	66731	70901	78016	81823
214	66261	66290	66732	70901.5	78211.5	87101
221.5	66261.5	66291	66736	70902	78212	87102
221.7	66262	66292	66737	71027	78213	87482.6
66010.2	66262.5	66292.3	66738	72011	78214	87482.7
66010.7	66263	66721	66740	72012	78215	
66016	66264	66721.5	66741	72013	78216	

California Code of Regulations, Title 5, Sections:

51000	53002	53309	55201	55502	55620	55800.5
51002	53003	53310	55202	55510	55630	55801
51004	53004	53311	55205	55512	55750	55805
51006	53005	53312	55207	55514	55751	55805.5
51008	53006	53314	55209	55516	55752	55806
51010	53020	54220	55211	55518	55753	55807
51012	53021	54626	55213	55520	55753.5	55808
51014	53022	54805	55215	55521	55753.7	55809
51016	53023	55000	55217	55522	55754	55825
51018	53024	55000.5	55219	55523	55755	55827
51020	53025	55001	55300	55524	55756	55828
51021	53026	55002	55316	55525	55756.5	55829
51022	53033	55002.5	55316.5	55526	55757	55830
51023	53034	55004	55320	55530	55758	55831
51023.5	53200	55005	55321	55532	55758.5	58102
51023.7	53202	55006	55322	55534	55759	58104
51024	53203	55100	55340	55600	55760	58106
51025	53204	55130	55350	55601	55761	58107
51026	53207	55150	55401	55602	55762	58108
51027	53300	55160	55402	55602.5	55763	59404
51100	53301	55170	55403	55603	55764	59410
51102	53302	55182	55404	55605	55765	
53001	53308	55200	55500	55607	55800	

Implementing Guidelines Handbooks:

Handbook of Accreditation and Policy Manual,
Accrediting Commission for Community and Junior Colleges (Summer 2002)

"Program and Course Approval Handbook"
Chancellor's Office California Community Colleges (September 2001)

"Student Equity Guidelines for Developing a Plan"
Fall 2002, The Academic Senate for California Community Colleges
(Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions")
(Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, adopted by the Academic Senate fall 2002)

Commission on State Mandates

Original List Date: 6/26/2003
ast Updated: 4/26/2007
_ist Print Date: 05/06/2008
Claim Number: 02-TC-31
Issue: Minimum Conditions for State Aid

Mailing Information: Other

Mailing List

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Claimant Representative
Tel: (916) 565-6104
Fax: (916) 564-6103

MAILED: 5/6 FAXED: _____
DATE: 5/6 INITIAL: LD
CHRON: ✓ FILE: _____
WORKING BINDER: _____

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

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EXHIBIT Q

June 23, 2008

Mr. Erik Skinner
California Community Colleges
Chancellor's Office
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

And Interested Parties and Affected State Agencies

Re: Request for Comments
Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)
(See attachment for a complete pleadings list)
Los Rios Community College District and
Santa Monica Community College District,
West Kern Community College District, Co-claimants

Dear Mr. Skinner:

On April 21, 2008, staff issued the attached letter requesting additional information from the Department of Finance and/or the Chancellor's Office by May 2, 2008. On May 6, 2008, the Department of Finance responded that it will defer to the Chancellor's Office to supply the requested data, indicating that the Chancellor's Office is responsible for the collection and maintenance of the types of information requested. The Commission has not received a response from the Chancellor's Office as of this date.

This test claim has been tentatively set for hearing on September 26, 2008. In order to keep this test claim on schedule, please submit the information requested in the attached April 21, 2008, Commission letter as soon as possible, but **not later than July 7, 2008**. If you have any questions please contact Kenny Louie at (916) 323-2611.

Sincerely,

PAULA HIGASHI
Executive Director

Attachments: April 21, 2008 Commission Letter, List of Statutes and Executive Orders Pled, and Mailing List.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

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April 21, 2008

Mr. Erik Skinner
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1102 Q Street, Suite 300
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Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

And Interested Parties and Affected State Agencies

Re: Request for Comments
Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)
(See attachment for a complete pleadings list)
Los Rios Community College District and
Santa Monica Community College District,
West Kern Community College District, Co-claimants

Dear Mr. Skinner and Ms. Oropeza:

Staff has reviewed the administrative record of this test claim and determined that the following information is needed to complete an analysis of the claim. Pursuant to the Commission's regulations, all assertions or representations of fact must be supported by documentary evidence, and copies of any law cited and relied upon (with the exception of state mandates statutes and case law) must be included in the comments (Cal. Code Regs., tit. 2, § 1183.02). As a result, staff requests the following:

1. Page 3 of the California Community Colleges, Chancellor's Office comments regarding test claim number 02-TC-31, dated March 11, 2004, provides "Although most community college districts seek state aid in the form of apportionment, districts are not required to do so, and some districts do not receive apportionment."
    a. Please provide a breakdown of what "state aid" consists of. Specifically, what forms of state aid are there other than apportionment?
    b. Beginning in the 2001-2002 fiscal year, provide which community college districts have not sought state aid in the form of apportionment.
    c. Did the districts that did not seek state aid in the form of apportionment receive state aid in any other form of state aid?
    d. If so, what are the sources of the state aid?

e. How much did each of these districts receive for each fiscal year since 2001-2002 from these sources?

f. Beginning in the 2001-2002 fiscal year, provide which community college districts have sought state aid in the form of apportionment.

g. For each fiscal year beginning with 2001-2002, please provide a break down of how much each district has received in state aid in the form of apportionment.

h. For each fiscal year beginning with 2001-2002, please provide a break down of how much each district has received in state aid that was in a form other than apportionment.

2. Page 12 of the March 11, 2004 comments provides that "Claimant is not required to seek funding from the Employment Opportunity Fund."

   a. Are there any districts that do not seek funding from the Employment Opportunity Fund? If so which districts?

   b. For each fiscal year beginning in 2001-2002, how much funding has each district received from the Employment Opportunity Fund? What is the total amount of funding for all districts each fiscal year?

3. Page 18 of the March 11, 2004 comments provides that "Matriculation obligations are directly tied to participation in matriculation funding."

   a. For each fiscal year beginning in 2001-2002, how much is appropriated for matriculation funding?

   b. Please cite to a specific line item and schedule which contains funding for the matriculation obligations in the budget acts for each fiscal year beginning in 2001-2002.

   c. Which districts do not receive matriculation funding?

   d. Which districts receive matriculation funding?

   e. For each fiscal year since 2001-2002, how much has each district received?

4. In regard to "Full-time/Part-time Faculty," page 19 of the March 11, 2004 comments provides, "Amounts were added to the base of the community college districts as Program Improvement monies after the 1989-90 fiscal year."

   a. What was the amount added?

   b. How much did each district receive?

   c. If possible, please cite to a specific line item and schedule which indicates this increase in the 1989-1990 budget act.

Please submit this information as soon as possible, but **not later than May 2, 2008**. If you have any questions please contact Kenny Louie at (916) 323-2611.

Sincerely,

Paula Higashi

PAULA HIGASHI
Executive Director

Attachments: California Community Colleges, Chancellor's Office Comments on Test Claim 02-TC-31, dated March 11, 2004, and Mailing List

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

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EXHIBIT R

July 7, 2008

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Response to Request for Comments
Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)
(See attachment for a complete pleadings list)
Los Rios Community College District and
Santa Monica Community College District,
West Kern Community College District, Co-claimants

Dear Mr. Petersen:

The California Community Colleges, Chancellor's Office, has submitted the enclosed response to staff's April 21, 2008, letter requesting additional information regarding *Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)*.

If you have questions on the above, please contact Kenny Louie at (916) 323-2611.

Sincerely,

PAULA HIGASHI
Executive Director

Attachments: Chancellor's Office Response, List of Statutes and Executive Orders Pled, and Mailing List

STATE OF CALIFORNIA

DIANE WOODRUFF, CHANCELLOR (INTERIM)

CALIFORNIA COMMUNITY COLLEGES
SYSTEM OFFICE
1102 Q STREET
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(916) 445-8752
http://www.cccco.edu

July 7, 2008

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Director Higashi:

This letter responds to your request for additional information concerning test claims titled, *Minimum Conditions for State Aid (02-TC-25 and 02-TC-31).* Below are answers to the questions you posed in your letter concerning these claims.

1. (a) State aid for California Community Colleges other than apportionment consists of categorical funding (twenty three separate categorical funds in the *2007-08 Budget Act* under 6870-101-0001), mandate funding, state teacher retirement system (STRS) funds, and lottery funds. In addition, and for clarity, the state controls through provisions in the state constitution local property tax revenues and directs counties to allocate a share of local property tax dollars to support community college districts. Attached is spreadsheet showing all Proposition 98 funding for the community colleges per the *2007-08 Budget Act* and projected Proposition 98 funding for 2008-09 based on levels proposed in the *2008-09 Governor's May Revision.* The attachment displays the total statewide funding for each of the twenty three categorical programs that are not considered apportionment funds *(Attachment 1).*

   (b) Historically there have been three community college districts that have **not** received state aid through apportionment because their local property tax allocations from their counties are sufficient to meet their funding obligations. We refer to these districts as "basic aid" or non-state general fund districts. These districts are Marin, Mira Costa and South Orange Community College Districts (CCD). At various times over the past seven years, San Mateo CCD also was a "basic aid" district.

   To clarify, these districts did not decline to seek apportionment funding from the state. Rather, they were not eligible and therefore did not receive state apportionment funding because they received local property tax revenue at a sufficient level that state apportionment funding was not required.

   (c) & (d) Yes, they did receive other forms of state aid during this time period in form of categorical funding, STRS funding, and lottery funds.

(e)(f)(g)(h) *Attachment 2- Categorical Funds* provides a breakout of various funding sources for each community college district from 2001-02 through 2007-08. In addition, for your convenience, some of this information is publicly available at the Chancellor's Office Fiscal Services webpage: http://www.cccco.edu/SystemOffice/Divisions/FinanceFacilities/FiscalServices/AllocationsSection/ApportionmentReports/tabid/329/Default.aspx

2. All districts received Employment Opportunity Funds during the period in question. The attachment titled, Employment Opportunity Funds, shows funding by district dating back to 2001-02, *(Attachment 3)*.

3. All districts received Matriculation categorical funding during the periods in question. *Attachment 2* shows Matriculation funding, for both credit and non-credit, by district and cites the statute numbers and schedules for Matriculation funding dating back to 2001-02.

4. $70 million was provided to all districts per Section 36(b) (1) of AB 198, Chapter 83 Statutes of 1989. The attachment titled, Program Improvement, shows funding by district and cites the budget act schedule for 1989-90 *(Attachment 4)*.

Should you have any additional questions, please feel free to call me or my staff, Chris Yatooma at 323-7007 or 324-2564, respectively.

Sincerely,

Erik Skinner
Vice Chancellor for Fiscal Policy

CC: Attachments 1-5

Attachment 1

2008-09 California Community College Proposition 98 Budget
Year-to-Year Comparison - Governor's Budget and May Revision

(dollars in thousands)

BUDGET ITEMS	2007-08 Budget Act	2008-09 Governor's Budget	Change from 2007-08 Budget Act		2008-09 May Revision	Change from 2007-08 Budget Act	
General Apportionment							
General Fund Apportionments	$ 3,279,349	$ 3,240,266	-39,083	-1.2%	[illegible]	[illegible]	2.8%
Growth for Apportionments	107,532	60,118	-47,414	-44.1%	[illegible]	[illegible]	-11.1%
Subtotal General Apportionment	3,386,881	3,300,384	(86,497)	-2.6%	[illegible]	[illegible]	2.3%
Categorical Programs							
Student Success Initiative - Basic Skills	33,100	29,494	(3,606)	-10.9%	[illegible]	[illegible]	-10.9%
Fund for Student Success	6,158	5,487	(671)	-10.9%	[illegible]	[illegible]	-10.9%
Disabled Students	115,011	110,769	(4,242)	-3.7%	[illegible]	[illegible]	-3.7%
Matriculation	101,803	98,049	(3,754)	-3.7%	[illegible]	[illegible]	-3.7%
Extended Opportunity Programs & Services	122,291	117,783	(4,508)	-3.7%	[illegible]	[illegible]	-3.7%
CalWORKs	43,580	38,832	(4,748)	-10.9%	[illegible]	[illegible]	-10.9%
Student Financial Aid Administration	51,640	45,044	(6,596)	-12.8%	[illegible]	[illegible]	-11.4%
Foster Care Education Program	5,254	4,682	(572)	-10.9%	[illegible]	[illegible]	0.0%
Apprenticeship	15,229	14,240	(989)	-6.5%	[illegible]	[illegible]	-10.3%
Academic Senate	467	416	(51)	-10.9%	[illegible]	[illegible]	-10.9%
Equal Employment Opportunity	1,747	1,557	(190)	-10.9%	[illegible]	[illegible]	-10.9%
Part-time Faculty Health Insurance	1,000	891	(109)	-10.9%	[illegible]	[illegible]	-10.9%
Part-time Faculty Compensation	50,828	45,290	(5,538)	-10.9%	[illegible]	[illegible]	-10.9%
Part-time Faculty Office Hours	7,172	6,391	(781)	-10.9%	[illegible]	[illegible]	-10.9%
Telecom & Technology Services	26,197	23,343	(2,854)	-10.9%	[illegible]	[illegible]	-10.9%
Economic Development	46,790	41,692	(5,098)	-10.9%	[illegible]	[illegible]	-10.9%
Transfer Education and Articulation	1,424	1,269	(155)	-10.9%	[illegible]	[illegible]	-10.9%
Physical Plant and Instructional Support	27,345	24,366	(2,979)	-10.9%	[illegible]	[illegible]	-10.9%
Career Technical Education	20,000	17,821	(2,179)	-10.9%	[illegible]	[illegible]	-10.9%
Childcare Tax Bail Out	6,836	6,392	(444)	-6.5%	[illegible]	[illegible]	-6.5%
Nursing Support	22,100	19,692	(2,408)	-10.9%	[illegible]	[illegible]	-10.9%
Subtotal Categorical	705,972	654,008	(52,534)	-7.4%	[illegible]	[illegible]	-7.3%
Total State Apportionment	**4,092,853**	**3,954,392**	(139,031)	-3.4%	[illegible]	[illegible]	0.7%
Property tax assumption	2,056,377	2,196,195	139,818	6.8%	[illegible]	[illegible]	0.1%
Fiscal Crisis Management Assistance Team	570	508	(62)	-10.9%	[illegible]	[illegible]	-10.9%
Lease purchase payments	59,401	68,122	8,721	14.7%	[illegible]	[illegible]	14.7%
Mandates	4,004	4,004	-	0.0%	[illegible]	[illegible]	0.0%
Total Proposition 98 Funding	**6,213,205**	**6,222,713**	9,508	0.2%	[illegible]	[illegible]	0.6%

Notes:

1) General apportionment includes COLA for 2007-08;

2) Governor's Budget provides 11.2% split of Prop. 98; May Revise provides 11.3%

3) Governor's Budget provides 1% for growth; LAO provides 1.67% for growth

4) $10M for CAHSEE included 07-08 growth apportionment item and in 08-09 CAHSEE is included in general apportionment item.

5) May budget proposes two block grants: Student Success & Part-Time Faculty block grants

Attachment 2 - Categorical Funds

California Community Colleges
Categorical Apportionments - Part 1
2007-08 Second Principal Apportionment

06/20/08
Exhibit B-2A

Chps 171/172 - 2007
Schedule - 8

County	District	Fee Waiver Admin. (2%)	Student Financial Aid Admin.	E.O.P.S.	C.A.R.E.	D.S.P.S.	State Hospitals	TANF (GAIN)	Calworks
Alameda	Chabot-Las Positas	$48,147	$575,546	$998,653	$146,996	$1,764,443	$0	$71,167	$529,809
Alameda	Ohlone	$12,110	$215,309	$405,248	$55,590	$1,704,112	$0	$23,750	$108,763
Alameda	Peralta	$96,929	$1,094,684	$3,108,361	$605,355	$2,504,225	$0	$253,809	$858,989
Alameda Total		$157,186	$1,885,539	$4,512,262	$807,941	$5,972,780	$0	$348,726	$1,497,561
Butte	Butte	$53,465	$487,355	$1,514,055	$381,786	$810,570	$0	$146,935	$765,809
Butte Total		$53,465	$487,355	$1,514,055	$381,786	$810,570	$0	$146,935	$765,809
Contra Costa	Contra Costa	$16,393	$935,322	$2,972,538	$429,648	$2,855,692	$0	$145,171	$802,493
Contra Costa Total		$16,393	$935,322	$2,972,538	$429,648	$2,855,692	$0	$145,171	$802,493
El Dorado	Lake Tahoe	$4,514	$107,779	$152,200	$22,331	$463,143	$0	$23,750	$63,250
El Dorado Total		$4,514	$107,779	$152,200	$22,331	$463,143	$0	$23,750	$63,250
Fresno	State Center	$166,879	$1,352,138	$2,850,611	$333,735	$2,310,710	$0	$274,183	$1,799,806
Fresno	West Hills	$24,949	$288,698	$797,353	$234,235	$737,884	$0	$47,500	$264,700
Fresno Total		$191,828	$1,640,836	$3,647,964	$567,970	$3,048,594	$0	$321,683	$2,064,506
Humboldt	Redwoods	$23,600	$265,348	$1,067,230	$158,067	$1,070,545	$0	$45,858	$317,346
Humboldt Total		$23,600	$265,348	$1,067,230	$158,067	$1,070,545	$0	$45,858	$317,346
Imperial	Imperial	$46,927	$335,442	$1,303,461	$203,960	$602,813	$0	$61,519	$317,781
Imperial Total		$46,927	$335,442	$1,303,461	$203,960	$602,813	$0	$61,519	$317,781
Kern	Kern	$107,062	$892,145	$2,623,646	$449,346	$2,072,683	$513,403	$180,281	$769,643
Kern	West Kern	$8,934	$139,823	$306,639	$43,008	$364,890	$0	$61,693	$172,715
Kern Total		$115,996	$1,031,968	$2,930,285	$492,354	$2,437,573	$513,403	$241,974	$942,358
Lassen	Lassen	$8,001	$107,690	$415,931	$67,843	$356,948	$0	$26,727	$175,873
Lassen Total		$8,001	$107,690	$415,931	$67,843	$356,948	$0	$26,727	$175,873
Los Angeles	Antelope Valley	$51,066	$443,898	$1,029,952	$311,861	$842,846	$0	$134,228	$770,500
Los Angeles	Cerritos	$92,190	$761,438	$1,109,632	$104,620	$1,920,748	$0	$110,742	$486,165
Los Angeles	Citrus	$43,662	$399,421	$994,748	$207,978	$805,003	$0	$61,016	$378,544
Los Angeles	Compton	$32,319	$308,773	$1,268,979	$624,997	$252,321	$0	$149,679	$724,866
Los Angeles	El Camino	$47,915	$614,240	$1,769,835	$250,759	$1,639,057	$0	$132,211	$649,413
Los Angeles	Glendale	$66,825	$563,523	$1,986,380	$54,772	$1,935,973	$0	$181,422	$1,108,445
Los Angeles	Long Beach	$114,397	$894,288	$1,809,538	$298,731	$1,583,422	$0	$237,859	$1,344,835
Los Angeles	Los Angeles	$538,030	$4,954,508	$13,302,122	$1,397,093	$6,417,213	$0	$1,015,051	$5,526,674
Los Angeles	Mt. San Antonio	$90,366	$851,795	$1,040,322	$191,545	$2,169,269	$0	$106,357	$499,242
Los Angeles	Pasadena Area	$112,898	$840,481	$1,355,666	$138,088	$1,380,660	$0	$110,846	$707,389
Los Angeles	Rio Hondo	$53,285	$463,726	$1,572,592	$195,343	$811,932	$0	$72,723	$420,608
Los Angeles	Santa Clarita	$25,314	$302,520	$483,882	$58,720	$655,099	$0	$23,750	$80,971
Los Angeles	Santa Monica	$75,528	$676,833	$1,409,659	$102,961	$1,523,248	$0	$79,378	$371,487
Los Angeles Total		$1,343,795	$12,075,444	$29,133,307	$3,937,468	$21,936,791	$0	$2,415,262	$13,069,139
Marin	Marin	$15,044	$186,645	$604,138	$68,637	$1,432,774	$0	$26,821	$167,777
Marin Total		$15,044	$186,645	$604,138	$68,637	$1,432,774	$0	$26,821	$167,777
Mendocino	Mendocino-Lake	$14,738	$182,961	$450,125	$66,955	$488,749	$0	$32,456	$183,955
Mendocino Total		$14,738	$182,961	$450,125	$66,955	$488,749	$0	$32,456	$183,955
Merced	Merced	$43,127	$378,248	$1,469,873	$275,551	$866,747	$0	$132,792	$731,523
Merced Total		$43,127	$378,248	$1,469,873	$275,551	$866,747	$0	$132,792	$731,523
Monterey	Hartnell	$22,686	$281,763	$808,980	$179,699	$660,375	$0	$42,539	$396,700
Monterey	Monterey Peninsula	$14,600	$209,171	$931,429	$111,001	$930,090	$0	$25,407	$157,291
Monterey Total		$37,286	$490,934	$1,740,409	$290,700	$1,590,465	$0	$67,946	$553,991
Napa	Napa Valley	$14,512	$215,815	$670,203	$90,532	$1,979,302	$0	$23,750	$167,324
Napa Total		$14,512	$215,815	$670,203	$90,532	$1,979,302	$0	$23,750	$167,324
Orange	Coast	$123,087	$1,292,000	$3,193,577	$208,270	$2,849,918	$884,819	$124,252	$801,573
Orange	North Orange County	$102,049	$1,024,676	$2,464,121	$312,314	$2,651,704	$0	$133,264	$813,445
Orange	Rancho Santiago	$70,026	$965,815	$2,178,894	$133,347	$2,482,846	$0	$153,882	$673,264
Orange	South Orange County	$41,639	$584,865	$1,584,028	$135,494	$2,219,606	$0	$47,500	$222,947
Orange Total		$336,801	$3,867,356	$9,420,620	$789,425	$10,204,074	$884,819	$458,898	$2,511,229
Placer	Sierra	$48,771	$469,648	$799,172	$184,467	$1,341,627	$0	$56,057	$345,148
Placer Total		$48,771	$469,648	$799,172	$184,467	$1,341,627	$0	$56,057	$345,148
Plumas	Feather River	$3,833	$90,415	$239,468	$40,470	$292,992	$0	$23,750	$101,250
Plumas Total		$3,833	$90,415	$239,468	$40,470	$292,992	$0	$23,750	$101,250
Riverside	Desert	$27,916	$274,040	$489,601	$107,235	$749,257	$0	$40,891	$51,302
Riverside	Mt. San Jacinto	$41,193	$386,579	$714,786	$181,939	$673,378	$0	$65,412	$435,656
Riverside	Palo Verde	$9,051	$110,635	$416,401	$53,537	$239,498	$0	$23,750	$102,123
Riverside	Riverside	$97,589	$867,210	$796,347	$105,618	$1,814,136	$0	$119,841	$686,969
Riverside Total		$175,749	$1,638,464	$2,417,135	$448,329	$3,476,269	$0	$249,894	$1,276,050
Sacramento	Los Rios	$252,954	$2,223,568	$4,658,656	$780,682	$5,064,497	$0	$502,537	$2,433,087
Sacramento Total		$252,954	$2,223,568	$4,658,656	$780,682	$5,064,497	$0	$502,537	$2,433,087

County	District	Fee Waiver Admin. (2%)	Student Financial Aid Admin.	E.O.P.S.	C.A.R.E.	D.S.P.S.	State Hospitals	TANF (GAIN)	Calworks
San Bernardino	Barstow	$14,430	$156,356	$496,838	$102,456	$236,684	$0	$23,866	$134,741
San Bernardino	Chaffey	$49,247	$486,733	$1,047,807	$134,295	$1,171,327	$0	$77,509	$439,431
San Bernardino	Copper Mt.	$6,846	$100,618	$217,622	$72,885	$258,716	$0	$23,750	$61,914
San Bernardino	San Bernardino	$78,756	$715,032	$1,324,811	$204,384	$1,219,270	$0	$169,992	$1,052,133
San Bernardino	Victor Valley	$38,696	$409,618	$1,030,235	$270,047	$833,151	$0	$114,099	$624,182
San Bernardino Total		$187,975	$1,868,357	$4,117,313	$784,067	$3,719,148	$0	$409,216	$2,312,401
San Diego	Grossmont-Cuyamaca	$69,259	$714,978	$1,747,223	$294,291	$1,928,170	$0	$97,640	$613,002
San Diego	Mira Costa	$21,061	$234,911	$782,128	$115,265	$712,144	$0	$36,693	$400,431
San Diego	Palomar	$41,784	$514,708	$1,305,854	$145,042	$1,396,614	$0	$57,000	$340,714
San Diego	San Diego	$139,184	$1,622,142	$2,319,000	$230,249	$4,523,200	$0	$430,473	$1,503,881
San Diego	Southwestern	$77,617	$608,170	$2,383,811	$207,405	$1,361,761	$0	$65,048	$417,877
San Diego Total		$348,905	$3,694,909	$8,538,016	$992,252	$9,921,889	$0	$686,854	$3,275,905
San Francisco	San Francisco	$92,920	$1,038,935	$1,831,079	$101,539	$3,007,918	$0	$163,001	$848,564
San Francisco Total		$92,920	$1,038,935	$1,831,079	$101,539	$3,007,918	$0	$163,001	$848,564
San Joaquin	San Joaquin Delta	$83,116	$659,647	$1,707,326	$362,942	$2,006,611	$0	$174,778	$837,014
San Joaquin Total		$83,116	$659,647	$1,707,326	$362,942	$2,006,611	$0	$174,778	$837,014
San Luis Obispo	San Luis Obispo	$31,468	$321,500	$498,101	$113,282	$948,724	$0	$28,331	$175,388
San Luis Obispo Total		$31,468	$321,500	$498,101	$113,282	$948,724	$0	$28,331	$175,388
San Mateo	San Mateo	$62,499	$790,546	$1,836,000	$121,596	$1,775,723	$0	$71,250	$303,750
San Mateo Total		$62,499	$790,546	$1,836,000	$121,596	$1,775,723	$0	$71,250	$303,750
Santa Barbara	Allan Hancock	$35,226	$312,452	$734,043	$394,066	$1,085,239	$0	$72,957	$561,198
Santa Barbara	Santa Barbara	$49,491	$492,292	$1,295,537	$128,290	$1,121,808	$0	$40,809	$221,308
Santa Barbara Total		$84,717	$804,744	$2,029,580	$522,356	$2,207,047	$0	$113,766	$782,506
Santa Clara	Foothill-DeAnza	$66,743	$961,953	$1,974,631	$190,893	$4,333,222	$0	$82,956	$495,357
Santa Clara	Gavilan	$18,738	$206,643	$560,662	$183,154	$715,790	$0	$24,832	$182,145
Santa Clara	San Jose-Evergreen	$69,134	$670,531	$1,961,392	$257,697	$1,347,672	$0	$120,189	$845,820
Santa Clara	West Valley-Mission	$33,653	$523,535	$1,368,935	$150,608	$1,442,977	$303,778	$56,670	$351,066
Santa Clara Total		$188,268	$2,362,662	$5,865,620	$782,352	$7,839,661	$303,778	$284,647	$1,874,388
Santa Cruz	Cabrillo	$36,424	$388,024	$528,200	$141,681	$1,852,778	$0	$42,368	$268,939
Santa Cruz Total		$36,424	$388,024	$528,200	$141,681	$1,852,778	$0	$42,368	$268,939
Shasta	Shasta-Tehama-Trinity	$28,392	$354,023	$1,217,551	$132,168	$788,502	$0	$82,469	$520,869
Shasta Total		$28,392	$354,023	$1,217,551	$132,168	$788,502	$0	$82,469	$520,869
Siskiyou	Siskiyou	$11,085	$148,364	$436,086	$79,311	$365,785	$0	$26,752	$98,429
Siskiyou Total		$11,085	$148,364	$436,086	$79,311	$365,785	$0	$26,752	$98,429
Solano	Solano	$0	$300,664	$543,638	$87,551	$865,304	$0	$46,137	$287,359
Solano Total		$0	$300,664	$543,638	$87,551	$865,304	$0	$46,137	$287,359
Sonoma	Sonoma	$55,710	$594,712	$749,001	$90,356	$3,138,270	$0	$78,796	$456,585
Sonoma Total		$55,710	$594,712	$749,001	$90,356	$3,138,270	$0	$78,796	$456,585
Stanislaus	Yosemite	$80,784	$684,261	$1,899,280	$251,522	$2,108,087	$0	$138,000	$712,464
Stanislaus Total		$80,784	$684,261	$1,899,280	$251,522	$2,108,087	$0	$138,000	$712,464
Tulare	Sequoias	$48,580	$383,047	$1,169,988	$234,768	$947,854	$0	$90,109	$701,829
Tulare Total		$48,580	$383,047	$1,169,988	$234,768	$947,854	$0	$90,109	$701,829
Ventura	Ventura	$90,537	$973,085	$2,357,456	$332,089	$3,979,878	$0	$99,760	$836,014
Ventura Total		$90,537	$973,085	$2,357,456	$332,089	$3,979,878	$0	$99,760	$836,014
Yuba	Yuba	$0	$385,743	$1,342,715	$266,036	$757,517	$0	$106,760	$607,222
Yuba Total		$0	$385,743	$1,342,715	$266,036	$757,517	$0	$106,760	$607,222
Grand Total	**Statewide**	**$4,335,900**	**$44,370,000**	**$106,785,982**	**$15,500,984**	**$112,523,641**	**$1,702,000**	**$7,995,500**	**$43,387,076**

California Community Colleges
Categorical Apportionments - Part 2
2007-08 Second Principal Apportionment

County	District	Credit Matriculation	Noncredit Matriculation	Faculty & Staff Diversity	Telecomm And Technology	Instruct. Equip. & Library	Part-Time Faculty Allocation	Scheduled Maintenance & Repair
Alameda	Chabot-Las Positas	$1,233,753	$0	$18,817	$99,186	$190,028	$729,253	$190,046
Alameda	Ohlone	$549,329	$0	$13,026	$45,183	$100,000	$366,647	$100,000
Alameda	Peralta	$1,902,918	$0	$20,054	$189,552	$208,118	$789,302	$208,136
Alameda Total		$3,686,000	$0	$51,897	$333,921	$498,146	$1,885,202	$498,182
Butte	Butte	$629,324	$213,266	$14,832	$7,416,293	$120,292	$552,370	$120,303
Butte Total		$629,324	$213,266	$14,832	$7,416,293	$120,292	$552,370	$120,303
Contra Costa	Contra Costa	$1,895,435	$951	$26,530	$144,369	$278,732	$1,458,983	$278,757
Contra Costa Total		$1,895,435	$951	$26,530	$144,369	$278,732	$1,458,983	$278,757
El Dorado	Lake Tahoe	$192,597	$28,091	$8,402	$45,183	$100,000	$97,197	$100,000
El Dorado Total		$192,597	$28,091	$8,402	$45,183	$100,000	$97,197	$100,000
Fresno	State Center	$1,719,260	$21,335	$25,285	$99,186	$285,998	$1,105,044	$286,024
Fresno	West Hills	$468,945	$0	$10,701	$90,366	$100,000	$162,981	$100,000
Fresno Total		$2,188,205	$21,335	$35,986	$189,552	$385,998	$1,268,025	$386,024
Humboldt	Redwoods	$327,433	$1,147	$10,386	$45,183	$100,000	$263,346	$100,000
Humboldt Total		$327,433	$1,147	$10,386	$45,183	$100,000	$263,346	$100,000
Imperial	Imperial	$463,193	$61,056	$11,933	$45,183	$100,000	$238,509	$100,000
Imperial Total		$463,193	$61,056	$11,933	$45,183	$100,000	$238,509	$100,000
Kern	Kern	$1,424,814	$30,303	$19,842	$144,369	$199,704	$796,395	$199,722
Kern	West Kern	$807,401	$32,227	$8,725	$45,183	$100,000	$97,197	$100,000
Kern Total		$2,232,215	$62,530	$28,567	$189,552	$299,704	$893,592	$299,722
Lassen	Lassen	$106,169	$8,272	$8,399	$45,183	$100,000	$114,640	$100,000
Lassen Total		$106,169	$8,272	$8,399	$45,183	$100,000	$114,640	$100,000
Los Angeles	Antelope Valley	$763,488	$12,776	$14,483	$45,183	$117,981	$398,122	$117,992
Los Angeles	Cerritos	$1,064,787	$192,996	$18,637	$45,183	$181,052	$788,495	$181,069
Los Angeles	Citrus	$868,487	$203,642	$15,197	$45,183	$129,749	$519,462	$129,761
Los Angeles	Compton	$337,669	$0	$9,148	$45,183	$100,000	$288,448	$100,000
Los Angeles	El Camino	$1,235,268	$0	$19,920	$45,183	$210,895	$848,408	$210,914
Los Angeles	Glendale	$721,723	$815,757	$17,275	$45,183	$160,478	$702,164	$160,492
Los Angeles	Long Beach	$1,275,629	$255,894	$21,889	$45,183	$232,250	$937,446	$232,271
Los Angeles	Los Angeles	$7,293,940	$983,160	$77,574	$415,467	$1,119,792	$4,427,138	$1,119,893
Los Angeles	Mt. San Antonio	$1,529,098	$1,457,110	$27,451	$45,183	$326,359	$1,141,544	$326,389
Los Angeles	Pasadena Area	$1,699,292	$401,880	$22,693	$45,183	$243,411	$998,221	$243,433
Los Angeles	Rio Hondo	$1,284,180	$406,753	$16,031	$45,183	$143,964	$534,759	$143,977
Los Angeles	Santa Clarita	$984,214	$70,515	$16,238	$45,183	$145,199	$420,171	$145,212
Los Angeles	Santa Monica	$1,436,312	$47,338	$22,238	$45,183	$241,048	$1,000,440	$241,070
Los Angeles Total		$20,294,087	$4,847,821	$298,774	$957,663	$3,352,178	$13,004,818	$3,352,473
Marin	Marin	$380,323	$158,147	$10,087	$45,183	$100,000	$324,991	$100,000
Marin Total		$380,323	$158,147	$10,087	$45,183	$100,000	$324,991	$100,000
Mendocino	Mendocino-Lake	$270,095	$21,171	$9,322	$45,183	$100,000	$124,209	$100,000
Mendocino Total		$270,095	$21,171	$9,322	$45,183	$100,000	$124,209	$100,000
Merced	Merced	$603,253	$217,729	$13,705	$45,183	$100,738	$409,045	$100,747
Merced Total		$603,253	$217,729	$13,705	$45,183	$100,738	$409,045	$100,747
Monterey	Hartnell	$534,515	$0	$11,742	$45,183	$100,000	$319,164	$100,000
Monterey	Monterey Peninsula	$505,670	$142,464	$13,075	$45,183	$100,000	$395,523	$100,000
Monterey Total		$1,040,185	$142,464	$24,817	$90,366	$200,000	$714,687	$200,000
Napa	Napa Valley	$394,068	$184,765	$11,372	$45,183	$100,000	$263,385	$100,000
Napa Total		$394,068	$184,765	$11,372	$45,183	$100,000	$263,385	$100,000
Orange	Coast	$2,567,866	$145,576	$31,252	$144,369	$379,810	$1,584,432	$379,844
Orange	North Orange County	$1,791,719	$1,495,153	$31,360	$99,186	$380,288	$1,561,487	$380,322
Orange	Rancho Santiago	$2,846,733	$2,362,015	$28,622	$99,186	$343,758	$1,381,015	$343,789
Orange	South Orange County	$1,489,695	$109,950	$22,965	$90,366	$250,825	$1,005,110	$250,848
Orange Total		$8,696,013	$4,112,694	$114,199	$433,107	$1,354,681	$5,532,044	$1,354,803
Placer	Sierra	$1,020,728	$0	$17,177	$45,183	$157,734	$564,871	$157,748
Placer Total		$1,020,728	$0	$17,177	$45,183	$157,734	$564,871	$157,748
Plumas	Feather River	$82,785	$737	$8,229	$45,183	$100,000	$97,197	$100,000
Plumas Total		$82,785	$737	$8,229	$45,183	$100,000	$97,197	$100,000

California Community Colleges
Categorical Apportionments - Part 2
2007-08 Second Principal Apportionment

County	District	Credit Matriculation	Noncredit Matriculation	Faculty & Staff Diversity	Telecomm And Technology	Instruct. Equip. & Library	Part-Time Faculty Allocation	Scheduled Maintenance & Repair
Riverside	Desert	$484,702	$214,126	$12,555	$45,183	$100,000	$282,131	$100,000
Riverside	Mt. San Jacinto	$691,731	$80,916	$13,828	$45,183	$105,620	$327,277	$105,629
Riverside	Palo Verde	$340,120	$46,805	$8,459	$45,183	$100,000	$97,197	$100,000
Riverside	Riverside	$1,752,515	$164	$23,541	$45,183	$261,729	$1,083,773	$261,753
Riverside Total		$3,269,068	$342,011	$58,383	$180,732	$567,349	$1,790,378	$567,382
Sacramento	Los Rios	$4,615,967	$0	$41,143	$189,552	$558,443	$1,997,475	$558,493
Sacramento Total		$4,615,967	$0	$41,143	$189,552	$558,443	$1,997,475	$558,493
San Bernardino	Barstow	$189,119	$17,485	$8,864	$45,183	$100,000	$97,197	$100,000
San Bernardino	Chaffey	$1,020,258	$36,773	$17,049	$45,183	$153,568	$591,547	$153,582
San Bernardino	Copper Mt.	$70,266	$0	$8,209	$45,183	$100,000	$97,197	$100,000
San Bernardino	San Bernardino	$1,000,976	$0	$16,683	$99,186	$150,420	$639,324	$150,433
San Bernardino	Victor Valley	$561,130	$29,566	$13,534	$45,183	$100,000	$398,461	$100,000
San Bernardino Total		$2,841,749	$83,824	$64,339	$279,918	$603,988	$1,823,726	$604,015
San Diego	Grossmont-Cuyamaca	$1,362,196	$139,761	$19,821	$99,186	$197,101	$780,847	$197,119
San Diego	Mira Costa	$597,696	$273,748	$12,774	$45,183	$100,000	$337,144	$100,000
San Diego	Palomar	$1,334,983	$351,348	$20,692	$45,183	$211,922	$838,297	$211,941
San Diego	San Diego	$3,106,622	$3,215,159	$35,631	$144,369	$452,165	$1,926,575	$452,206
San Diego	Southwestern	$1,051,320	$136,690	$17,762	$45,183	$167,694	$653,332	$167,709
San Diego Total		$7,452,817	$4,116,706	$106,680	$379,104	$1,128,882	$4,536,195	$1,128,975
San Francisco	San Francisco	$1,631,669	$2,936,415	$32,377	$54,003	$397,535	$1,686,620	$397,571
San Francisco Total		$1,631,669	$2,936,415	$32,377	$54,003	$397,535	$1,686,620	$397,571
San Joaquin	San Joaquin Delta	$981,178	$157,410	$18,065	$45,183	$172,289	$668,433	$172,305
San Joaquin Total		$981,178	$157,410	$18,065	$45,183	$172,289	$668,433	$172,305
San Luis Obispo	San Luis Obispo	$620,393	$47,952	$13,642	$45,183	$100,975	$388,356	$100,984
San Luis Obispo Total		$620,393	$47,952	$13,642	$45,183	$100,975	$388,356	$100,984
San Mateo	San Mateo	$1,467,776	$0	$22,068	$144,369	$231,948	$938,479	$231,969
San Mateo Total		$1,467,776	$0	$22,068	$144,369	$231,948	$938,479	$231,969
Santa Barbara	Allan Hancock	$643,534	$454,090	$13,798	$45,183	$104,615	$418,022	$104,624
Santa Barbara	Santa Barbara	$906,829	$894,135	$18,028	$45,183	$170,013	$624,301	$170,029
Santa Barbara Total		$1,550,363	$1,348,225	$31,826	$90,366	$274,628	$1,042,323	$274,653
Santa Clara	Foothill-DeAnza	$2,406,436	$103,029	$29,735	$90,366	$353,385	$1,475,772	$353,416
Santa Clara	Gavilan	$460,546	$28,460	$10,656	$45,183	$100,000	$206,293	$100,000
Santa Clara	San Jose-Evergreen	$1,308,898	$0	$17,255	$99,186	$159,105	$666,535	$159,119
Santa Clara	West Valley-Mission	$1,271,017	$82,964	$19,749	$90,366	$174,198	$785,215	$174,214
Santa Clara Total		$5,446,897	$214,453	$77,395	$325,101	$786,688	$3,133,815	$786,749
Santa Cruz	Cabrillo	$709,930	$12,817	$14,961	$45,183	$125,165	$495,146	$125,176
Santa Cruz Total		$709,930	$12,817	$14,961	$45,183	$125,165	$495,146	$125,176
Shasta	Shasta-Tehama-Trinity	$483,230	$9,459	$12,187	$45,183	$100,000	$368,306	$100,000
Shasta Total		$483,230	$9,459	$12,187	$45,183	$100,000	$368,306	$100,000
Siskiyou	Siskiyou	$169,596	$164	$8,882	$45,183	$100,000	$117,425	$100,000
Siskiyou Total		$169,596	$164	$8,882	$45,183	$100,000	$117,425	$100,000
Solano	Solano	$649,087	$13,964	$13,628	$45,183	$100,000	$373,804	$100,000
Solano Total		$649,087	$13,964	$13,628	$45,183	$100,000	$373,804	$100,000
Sonoma	Sonoma	$1,369,186	$402,166	$21,404	$45,183	$223,193	$920,304	$223,214
Sonoma Total		$1,369,186	$402,166	$21,404	$45,183	$223,193	$920,304	$223,214
Stanislaus	Yosemite	$1,066,363	$122,931	$18,762	$99,186	$181,752	$753,662	$181,768
Stanislaus Total		$1,066,363	$122,931	$18,762	$99,186	$181,752	$753,662	$181,768
Tulare	Sequoias	$610,670	$0	$12,768	$45,183	$100,000	$396,558	$100,000
Tulare Total		$610,670	$0	$12,768	$45,183	$100,000	$396,558	$100,000
Ventura	Ventura	$1,747,903	$63,718	$24,434	$144,369	$270,962	$1,207,516	$270,987
Ventura Total		$1,747,903	$63,718	$24,434	$144,369	$270,962	$1,207,516	$270,987
Yuba	Yuba	$585,520	$39,803	$12,690	$45,183	$100,000	$382,368	$100,000
Yuba Total		$585,520	$39,803	$12,690	$45,183	$100,000	$382,368	$100,000
Grand Total	**Statewide**	**$81,771,470**	**$19,994,194**	**$1,310,248**	**$12,500,000**	**$13,672,000**	**$50,828,000**	**$13,673,000**

County	District	Economic Development	Nursing Education Program	Other Adjustments	PT Faculty Office Hours	PT Faculty Insurance	Basic Skills	State Career Technical Education
Alameda	Chabot-Las Positas	$205,000	$295,319	$0	$0	$0	$374,134	$0
Alameda	Ohlone	$299,735	$310,534	$0	$0	$0	$100,000	$198,176
Alameda	Peralta	$407,135	$598,171	$0	$88,156	$41,286	$451,555	$0
Alameda Total		$911,870	$1,204,024	$0	$88,156	$41,286	$925,689	$198,176
Butte	Butte	$1,193,500	$355,602	$0	$11,976	$0	$106,615	$200,000
Butte Total		$1,193,500	$355,602	$0	$11,976	$0	$106,615	$200,000
Contra Costa	Contra Costa	$759,247	$506,479	$0	$284,361	$97,480	$823,222	$249,978
Contra Costa Total		$759,247	$506,479	$0	$284,361	$97,480	$823,222	$249,978
El Dorado	Lake Tahoe	$41,600	$55,317	$0	$0	$0	$100,000	$0
El Dorado Total		$41,600	$55,317	$0	$0	$0	$100,000	$0
Fresno	State Center	$990,118	$820,576	$0	$0	$0	$480,392	$124,961
Fresno	West Hills	$0	$158,691	$0	$0	$0	$200,000	$150,000
Fresno Total		$990,118	$979,267	$0	$0	$0	$680,392	$274,961
Humboldt	Redwoods	$205,000	$239,598	$0	$0	$0	$100,000	$0
Humboldt Total		$205,000	$239,598	$0	$0	$0	$100,000	$0
Imperial	Imperial	$50,000	$386,592	$0	$0	$0	$402,784	$0
Imperial Total		$50,000	$386,592	$0	$0	$0	$402,784	$0
Kern	Kern	$696,474	$1,761,414	$0	$0	$0	$507,361	$125,000
Kern	West Kern	$0	$55,579	$0	$9,750	$0	$100,000	$0
Kern Total		$696,474	$1,816,993	$0	$9,750	$0	$607,361	$125,000
Lassen	Lassen	$41,666	$56,780	$0	$0	$0	$100,000	$0
Lassen Total		$41,666	$56,780	$0	$0	$0	$100,000	$0
Los Angeles	Antelope Valley	$0	$505,755	$0	$94,709	$16,424	$405,310	$0
Los Angeles	Cerritos	$663,565	$367,532	$0	$0	$0	$347,069	$198,907
Los Angeles	Citrus	$205,000	$340,540	$0	$7,799	$759	$340,744	$125,000
Los Angeles	Compton	$0	$342,131	$0	$0	$0	$100,000	$0
Los Angeles	El Camino	$1,419,474	$508,099	$0	$0	$1,308	$376,149	$0
Los Angeles	Glendale	$0	$546,527	$0	$296,428	$22,866	$655,860	$75,000
Los Angeles	Long Beach	$1,495,486	$792,059	$0	$0	$0	$568,890	$250,000
Los Angeles	Los Angeles	$2,070,008	$1,911,204	$0	$2,937,498	$93,894	$3,227,912	$199,996
Los Angeles	Mt. San Antonio	$1,014,981	$924,407	$0	$115,899	$16,387	$1,497,910	$74,856
Los Angeles	Pasadena Area	$531,000	$494,772	$0	$0	$0	$359,560	$0
Los Angeles	Rio Hondo	$676,882	$376,584	$0	$0	$0	$558,323	$0
Los Angeles	Santa Clarita	$1,155,010	$717,382	$0	$0	$0	$299,359	$224,970
Los Angeles	Santa Monica	$650,000	$231,324	$0	$79,202	$88,519	$640,128	$125,000
Los Angeles Total		$9,881,406	$8,058,316	$0	$3,531,535	$240,157	$9,377,214	$1,273,729
Marin	Marin	$0	$218,921	$1,667,129	$205,801	$40,898	$100,000	$75,000
Marin Total		$0	$218,921	$1,667,129	$205,801	$40,898	$100,000	$75,000
Mendocino	Mendocino-Lake	$0	$273,096	$0	$7,495	$0	$100,000	$0
Mendocino Total		$0	$273,096	$0	$7,495	$0	$100,000	$0
Merced	Merced	$591,000	$315,817	$0	$0	$0	$689,515	$0
Merced Total		$591,000	$315,817	$0	$0	$0	$689,515	$0
Monterey	Hartnell	$535,336	$439,407	$0	$0	$0	$100,000	$0
Monterey	Monterey Peninsula	$0	$284,830	$0	$6,880	$0	$112,809	$0
Monterey Total		$535,336	$724,237	$0	$6,880	$0	$212,809	$0
Napa	Napa Valley	$500,206	$350,918	$0	$0	$0	$100,000	$125,000
Napa Total		$500,206	$350,918	$0	$0	$0	$100,000	$125,000
Orange	Coast	$205,000	$752,386	$0	$0	$85,582	$410,246	$512,014
Orange	North Orange County	$2,130,693	$388,393	$0	$0	$0	$1,206,862	$0
Orange	Rancho Santiago	$765,000	$352,510	$0	$0	$0	$1,287,715	$75,000
Orange	South Orange County	$205,000	$303,307	$5,258,465	$0	$13,955	$244,521	$525,000
Orange Total		$3,305,693	$1,796,596	$5,258,465	$0	$99,537	$3,149,344	$1,112,014
Placer	Sierra	$838,500	$168,242	$0	$44,748	$0	$160,593	$250,000
Placer Total		$838,500	$168,242	$0	$44,748	$0	$160,593	$250,000
Plumas	Feather River	$41,666	$56,301	$0	$0	$0	$100,000	$0
Plumas Total		$41,666	$56,301	$0	$0	$0	$100,000	$0
Riverside	Desert	$582,500	$891,550	$0	$44,013	$0	$437,895	$25,000
Riverside	Mt. San Jacinto	$0	$296,483	$0	$0	$0	$182,256	$125,000
Riverside	Palo Verde	$0	$59,794	$0	$0	$0	$100,000	$0
Riverside	Riverside	$874,500	$952,540	$0	$135,677	$14,768	$677,465	$199,926
Riverside Total		$1,457,000	$2,200,367	$0	$179,690	$14,768	$1,397,616	$349,926
Sacramento	Los Rios	$1,882,687	$531,659	$0	$0	$0	$774,631	$650,276
Sacramento Total		$1,882,687	$531,659	$0	$0	$0	$774,631	$650,276

County	District	Economic Development	Nursing Education Program	Other Adjustments	PT Faculty Office Hours	PT Faculty Insurance	Basic Skills	State Career Technical Education
San Bernardino	Barstow	$0	$56,685	$0	$0	$0	$100,000	$0
San Bernardino	Chaffey	$224,382	$172,000	$0	$0	$0	$382,914	$458,000
San Bernardino	Copper Mt.	$0	$136,519	$0	$0	$0	$100,000	$0
San Bernardino	San Bernardino	$927,500	$141,077	$0	$29,107	$0	$258,844	$0
San Bernardino	Victor Valley	$0	$457,603	$0	$0	$0	$105,684	$75,000
San Bernardino Total		$1,151,882	$963,884	$0	$29,107	$0	$947,442	$533,000
San Diego	Grossmont-Cuyamaca	$1,172,890	$354,220	$0	$0	$0	$470,242	$0
San Diego	Mira Costa	$50,000	$398,384	$1,675,093	$21,386	$2,140	$258,752	$74,988
San Diego	Palomar	$0	$278,224	$0	$0	$0	$417,872	$0
San Diego	San Diego	$1,206,000	$127,559	$0	$98,204	$97,578	$1,486,123	$175,000
San Diego	Southwestern	$355,000	$373,945	$0	$0	$10,949	$1,052,831	$0
San Diego Total		$2,783,890	$1,532,332	$1,675,093	$119,590	$110,667	$3,685,820	$249,988
San Francisco	San Francisco	$1,781,055	$354,555	$0	$0	$157,979	$2,136,690	$74,772
San Francisco Total		$1,781,055	$354,555	$0	$0	$157,979	$2,136,690	$74,772
San Joaquin	San Joaquin Delta	$401,666	$353,853	$0	$0	$0	$439,416	$0
San Joaquin Total		$401,666	$353,853	$0	$0	$0	$439,416	$0
San Luis Obispo	San Luis Obispo	$91,666	$281,743	$0	$52,843	$22,669	$111,524	$124,565
San Luis Obispo Total		$91,666	$281,743	$0	$52,843	$22,669	$111,524	$124,565
San Mateo	San Mateo	$1,823,544	$264,757	$0	$661,896	$9,295	$513,826	$125,000
San Mateo Total		$1,823,544	$264,757	$0	$661,896	$9,295	$513,826	$125,000
Santa Barbara	Allan Hancock	$310,647	$204,948	$0	$0	$0	$133,056	$199,812
Santa Barbara	Santa Barbara	$781,693	$323,122	$0	$0	$713	$503,223	$124,844
Santa Barbara Total		$1,092,340	$528,070	$0	$0	$713	$636,279	$324,656
Santa Clara	Foothill-DeAnza	$791,317	$218,378	$0	$292,554	$67,983	$280,183	$0
Santa Clara	Gavilan	$246,666	$179,525	$0	$0	$0	$110,635	$0
Santa Clara	San Jose-Evergreen	$172,500	$305,250	$0	$0	$0	$374,581	$125,000
Santa Clara	West Valley-Mission	$2,355,623	$261,415	$0	$351,027	$3,686	$311,831	$124,992
Santa Clara Total		$3,566,106	$964,568	$0	$643,581	$71,669	$1,077,230	$249,992
Santa Cruz	Cabrillo	$150,000	$346,372	$0	$37,935	$14,455	$183,876	$200,000
Santa Cruz Total		$150,000	$346,372	$0	$37,935	$14,455	$183,876	$200,000
Shasta	Shasta-Tehama-Trinity	$530,437	$330,043	$0	$22,555	$0	$100,000	$199,999
Shasta Total		$530,437	$330,043	$0	$22,555	$0	$100,000	$199,999
Siskiyou	Siskiyou	$0	$300,538	$0	$0	$0	$100,000	$125,000
Siskiyou Total		$0	$300,538	$0	$0	$0	$100,000	$125,000
Solano	Solano	$150,000	$207,650	$0	$0	$0	$116,032	$124,750
Solano Total		$150,000	$207,650	$0	$0	$0	$116,032	$124,750
Sonoma	Sonoma	$150,000	$607,816	$0	$1,196,387	$78,427	$364,979	$458,000
Sonoma Total		$150,000	$607,816	$0	$1,196,387	$78,427	$364,979	$458,000
Stanislaus	Yosemite	$265,784	$347,178	$0	$0	$0	$342,907	$124,705
Stanislaus Total		$265,784	$347,178	$0	$0	$0	$342,907	$124,705
Tulare	Sequoias	$139,280	$79,307	$0	$4,145	$0	$212,907	$200,000
Tulare Total		$139,280	$79,307	$0	$4,145	$0	$212,907	$200,000
Ventura	Ventura	$1,313,500	$789,977	$0	$20,822	$0	$317,384	$150,000
Ventura Total		$1,313,500	$789,977	$0	$20,822	$0	$317,384	$150,000
Yuba	Yuba	$592,743	$318,114	$0	$12,747	$0	$205,923	$200,000
Yuba Total		$592,743	$318,114	$0	$12,747	$0	$205,923	$200,000
Grand Total	**Statewide**	**$39,906,862**	**$28,865,879**	**$8,600,687**	**$7,172,000**	**$1,000,000**	**$31,500,000**	**$8,348,487**

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County	District	Fee Waiver Admin. (2%)	Student Financial Aid Admin.	E.O.P.S.	C.A.R.E.	D.S.P.S.	State Hospitals	TANF (GAIN)	Calworks
Alameda	Chabot-Las Positas	$62,403	$574,441	$933,656	$141,613	$1,666,824	$0	$71,157	$398,053
Alameda	Ohlone	$17,008	$220,741	$371,998	$55,979	$1,738,245	$0	$18,421	$79,737
Alameda	Peralta	$115,960	$1,083,684	$2,862,293	$625,756	$2,527,939	$0	$267,167	$833,267
Alameda Total		$195,371	$1,878,866	$4,167,947	$823,348	$5,933,008	$0	$356,745	$1,311,057
Butte	Butte	$67,676	$496,350	$1,356,088	$370,922	$716,713	$0	$146,915	$843,155
Butte Total		$67,676	$496,350	$1,356,088	$370,922	$716,713	$0	$146,915	$843,155
Contra Costa	Contra Costa	$54,573	$973,089	$2,692,114	$406,291	$2,725,949	$0	$145,151	$737,540
Contra Costa Total		$54,573	$973,089	$2,692,114	$406,291	$2,725,949	$0	$145,151	$737,540
El Dorado	Lake Tahoe	$6,038	$110,017	$143,745	$27,217	$445,263	$0	$12,500	$44,160
El Dorado Total		$6,038	$110,017	$143,745	$27,217	$445,263	$0	$12,500	$44,160
Fresno	State Center	$209,112	$1,270,844	$2,573,448	$293,600	$1,725,642	$0	$274,146	$2,092,920
Fresno	West Hills	$30,290	$281,115	$734,267	$225,842	$610,232	$0	$41,234	$371,364
Fresno Total		$239,402	$1,551,959	$3,307,715	$519,442	$2,335,874	$0	$315,380	$2,464,284
Humboldt	Redwoods	$35,067	$292,492	$959,563	$152,723	$1,093,475	$0	$45,852	$261,895
Humboldt Total		$35,067	$292,492	$959,563	$152,723	$1,093,475	$0	$45,852	$261,895
Imperial	Imperial	$53,139	$313,076	$1,155,287	$191,857	$580,392	$0	$64,625	$312,745
Imperial Total		$53,139	$313,076	$1,155,287	$191,857	$580,392	$0	$64,625	$312,745
Kern	Kern	$136,298	$913,992	$2,456,054	$373,695	$2,188,363	$513,403	$180,257	$857,047
Kern	West Kern	$11,715	$152,041	$292,010	$43,309	$302,520	$0	$64,940	$158,647
Kern Total		$148,013	$1,066,033	$2,748,064	$417,004	$2,490,883	$513,403	$245,197	$1,015,694
Lassen	Lassen	$8,692	$112,475	$382,824	$68,318	$348,746	$0	$26,723	$165,944
Lassen Total		$8,692	$112,475	$382,824	$68,318	$348,746	$0	$26,723	$165,944
Los Angeles	Antelope Valley	$63,142	$442,991	$927,182	$297,531	$809,955	$0	$134,210	$576,693
Los Angeles	Cerritos	$103,999	$745,558	$1,095,924	$99,217	$1,528,975	$0	$110,727	$508,387
Los Angeles	Citrus	$52,906	$404,741	$895,111	$209,436	$658,867	$0	$61,008	$503,257
Los Angeles	Compton	$49,655	$308,873	$1,172,570	$663,958	$275,480	$0	$157,557	$848,481
Los Angeles	El Camino	$75,174	$621,469	$1,568,978	$252,617	$1,513,099	$0	$139,169	$703,860
Los Angeles	Glendale	$81,512	$565,377	$1,832,643	$55,156	$1,877,812	$0	$181,397	$774,060
Los Angeles	Long Beach	$146,652	$894,005	$1,793,109	$300,826	$1,544,367	$0	$237,827	$1,428,377
Los Angeles	Los Angeles	$587,407	$4,964,935	$12,334,564	$1,361,752	$6,127,556	$0	$1,014,913	$6,349,593
Los Angeles	Mt. San Antonio	$108,057	$823,500	$985,843	$148,861	$2,032,826	$0	$111,955	$714,760
Los Angeles	Pasadena Area	$143,585	$853,956	$1,340,316	$139,056	$1,118,761	$0	$116,680	$579,349
Los Angeles	Rio Hondo	$69,814	$493,020	$1,425,307	$149,140	$794,470	$0	$72,713	$314,309
Los Angeles	Santa Clarita	$29,576	$286,899	$455,635	$56,681	$626,057	$0	$18,026	$77,323
Los Angeles	Santa Monica	$88,535	$661,146	$1,273,148	$103,889	$1,641,379	$0	$83,556	$435,672
Los Angeles Total		$1,600,014	$12,066,470	$27,100,330	$3,838,020	$20,549,604	$0	$2,439,738	$13,814,121
Marin	Marin	$14,611	$189,249	$543,419	$73,616	$1,448,203	$0	$26,817	$117,330
Marin Total		$14,611	$189,249	$543,419	$73,616	$1,448,203	$0	$26,817	$117,330
Mendocino	Mendocino-Lake	$38,350	$185,074	$423,307	$66,400	$531,623	$0	$32,452	$167,076
Mendocino Total		$38,350	$185,074	$423,307	$66,400	$531,623	$0	$32,452	$167,076
Merced	Merced	$55,958	$385,161	$1,401,859	$254,650	$782,951	$0	$134,001	$707,453
Merced Total		$55,958	$385,161	$1,401,859	$254,650	$782,951	$0	$134,001	$707,453
Monterey	Hartnell	$26,395	$271,315	$766,706	$166,481	$653,889	$0	$42,533	$564,831
Monterey	Monterey Peninsula	$18,307	$219,510	$867,270	$111,779	$887,427	$0	$25,404	$109,928
Monterey Total		$44,702	$490,825	$1,633,976	$278,260	$1,541,316	$0	$67,937	$674,759
Napa	Napa Valley	$22,494	$220,757	$657,524	$88,084	$1,966,310	$0	$23,514	$172,876
Napa Total		$22,494	$220,757	$657,524	$88,084	$1,966,310	$0	$23,514	$172,876
Orange	Coast	$150,221	$1,174,369	$2,933,387	$188,248	$2,673,421	$884,819	$124,548	$922,984
Orange	North Orange County	$133,267	$949,126	$2,331,067	$293,614	$2,451,638	$0	$133,246	$728,771
Orange	Rancho Santiago	$89,065	$957,506	$1,982,851	$129,899	$2,137,429	$0	$161,981	$708,699
Orange	South Orange County	$54,366	$603,268	$1,426,911	$140,942	$2,054,092	$0	$32,730	$177,316
Orange Total		$426,919	$3,684,269	$8,674,216	$752,703	$9,316,580	$884,819	$452,505	$2,537,770
Placer	Sierra	$60,738	$443,446	$725,690	$145,557	$1,271,476	$0	$56,049	$241,140
Placer Total		$60,738	$443,446	$725,690	$145,557	$1,271,476	$0	$56,049	$241,140
Plumas	Feather River	$4,560	$91,817	$236,038	$40,753	$294,537	$0	$12,500	$61,925
Plumas Total		$4,560	$91,817	$236,038	$40,753	$294,537	$0	$12,500	$61,925
Riverside	Desert	$34,060	$271,216	$465,351	$97,773	$658,463	$0	$43,043	$31,633
Riverside	Mt. San Jacinto	$52,864	$393,777	$662,081	$183,215	$590,456	$0	$65,403	$349,508
Riverside	Palo Verde	$9,793	$99,620	$382,992	$60,477	$241,649	$0	$17,339	$90,900
Riverside	Riverside	$134,347	$889,379	$726,785	$88,323	$1,775,456	$0	$119,825	$604,640

County	District	Fee Waiver Admin. (2%)	Student Financial Aid Admin.	E.O.P.S.	C.A.R.E.	D.S.P.S.	State Hospitals	TANF (GAIN)	Calworks
Riverside Total		$231,064	$1,653,992	$2,237,209	$429,788	$3,266,024	$0	$245,610	$1,076,681
Sacramento	Los Rios	$291,730	$2,057,838	$4,257,347	$733,223	$4,368,029	$0	$502,469	$1,642,164
Sacramento Total		$291,730	$2,057,838	$4,257,347	$733,223	$4,368,029	$0	$502,469	$1,642,164
San Bernardino	Barstow	$19,742	$160,657	$469,261	$97,132	$209,708	$0	$23,863	$103,296
San Bernardino	Chaffey	$60,751	$492,880	$930,615	$135,236	$1,134,661	$0	$77,498	$478,353
San Bernardino	Copper Mt.	$10,390	$116,395	$200,696	$77,894	$224,707	$0	$18,170	$45,031
San Bernardino	San Bernardino	$106,784	$750,007	$1,192,613	$206,207	$1,107,550	$0	$169,969	$935,309
San Bernardino	Victor Valley	$51,049	$433,047	$938,314	$269,771	$842,785	$0	$114,084	$545,197
San Bernardino Total		$248,716	$1,952,986	$3,731,399	$786,240	$3,519,411	$0	$403,584	$2,107,186
San Diego	Grossmont-Cuyamaca	$84,435	$718,281	$1,607,617	$291,319	$1,766,009	$0	$97,627	$562,438
San Diego	Mira Costa	$25,808	$239,770	$725,393	$110,501	$607,666	$0	$36,688	$307,019
San Diego	Palomar	$53,254	$528,178	$1,174,859	$126,448	$1,201,412	$0	$56,992	$360,847
San Diego	San Diego	$174,827	$1,627,921	$2,186,377	$207,591	$4,135,133	$0	$453,129	$1,114,202
San Diego	Southwestern	$94,646	$621,359	$2,195,786	$208,859	$1,188,422	$0	$65,039	$343,553
San Diego Total		$432,970	$3,735,509	$7,890,032	$944,718	$8,898,642	$0	$709,475	$2,688,059
San Francisco	San Francisco	$115,769	$978,033	$1,677,885	$76,111	$2,800,971	$0	$162,979	$1,244,670
San Francisco Total		$115,769	$978,033	$1,677,885	$76,111	$2,800,971	$0	$162,979	$1,244,670
San Joaquin	San Joaquin Delta	$113,205	$684,307	$1,579,179	$322,369	$1,734,886	$0	$183,977	$748,390
San Joaquin Total		$113,205	$684,307	$1,579,179	$322,369	$1,734,886	$0	$183,977	$748,390
San Luis Obispo	San Luis Obispo	$40,063	$327,496	$458,025	$114,546	$947,538	$0	$28,327	$239,586
San Luis Obispo Total		$40,063	$327,496	$458,025	$114,546	$947,538	$0	$28,327	$239,586
San Mateo	San Mateo	$76,873	$782,830	$1,704,198	$115,468	$1,719,595	$0	$40,442	$198,588
San Mateo Total		$76,873	$782,830	$1,704,198	$115,468	$1,719,595	$0	$40,442	$198,588
Santa Barbara	Allan Hancock	$41,981	$336,144	$863,723	$307,663	$872,006	$0	$72,947	$516,254
Santa Barbara	Santa Barbara	$62,704	$495,572	$1,166,284	$94,371	$976,477	$0	$40,803	$227,343
Santa Barbara Total		$104,685	$831,716	$1,830,007	$402,034	$1,848,483	$0	$113,750	$743,597
Santa Clara	Foothill-DeAnza	$83,949	$932,829	$1,863,275	$184,817	$4,304,019	$0	$82,945	$501,042
Santa Clara	Gavilan	$24,561	$207,543	$494,685	$133,336	$713,573	$0	$24,829	$344,178
Santa Clara	San Jose-Evergreen	$87,655	$674,934	$1,742,118	$208,423	$1,147,962	$0	$120,173	$1,027,078
Santa Clara	West Valley-Mission	$41,839	$527,876	$1,303,021	$151,663	$1,340,737	$303,778	$56,662	$292,365
Santa Clara Total		$238,004	$2,343,182	$5,403,099	$678,239	$7,506,291	$303,778	$284,609	$2,164,663
Santa Cruz	Cabrillo	$47,209	$395,762	$494,146	$105,469	$1,773,557	$0	$42,362	$371,541
Santa Cruz Total		$47,209	$395,762	$494,146	$105,469	$1,773,557	$0	$42,362	$371,541
Shasta	Shasta-Tehama-Trinity	$41,777	$351,078	$1,093,844	$164,672	$791,421	$0	$82,458	$488,755
Shasta Total		$41,777	$351,078	$1,093,844	$164,672	$791,421	$0	$82,458	$488,755
Siskiyou	Siskiyou	$15,029	$150,958	$390,076	$79,867	$384,401	$0	$26,748	$86,533
Siskiyou Total		$15,029	$150,958	$390,076	$79,867	$384,401	$0	$26,748	$86,533
Solano	Solano	$36,366	$306,359	$509,138	$88,165	$858,233	$0	$46,131	$225,903
Solano Total		$36,366	$306,359	$509,138	$88,165	$858,233	$0	$46,131	$225,903
Sonoma	Sonoma	$69,851	$583,593	$681,193	$86,424	$2,785,948	$0	$78,785	$376,174
Sonoma Total		$69,851	$583,593	$681,193	$86,424	$2,785,948	$0	$78,785	$376,174
Stanislaus	Yosemite	$100,448	$680,103	$1,699,703	$175,967	$2,154,185	$0	$145,068	$734,044
Stanislaus Total		$100,448	$680,103	$1,699,703	$175,967	$2,154,185	$0	$145,068	$734,044
Tulare	Sequoias	$61,332	$392,250	$1,046,874	$186,165	$874,178	$0	$92,133	$700,857
Tulare Total		$61,332	$392,250	$1,046,874	$186,165	$874,178	$0	$92,133	$700,857
Ventura	Ventura	$113,109	$1,002,220	$2,186,560	$287,407	$3,849,998	$0	$99,746	$675,250
Ventura Total		$113,109	$1,002,220	$2,186,560	$287,407	$3,849,998	$0	$99,746	$675,250
Yuba	Yuba	$45,383	$361,363	$1,194,354	$223,963	$821,867	$0	$106,746	$591,564
Yuba Total		$45,383	$361,363	$1,194,354	$223,963	$821,867	$0	$106,746	$591,564
Grand Total	**Statewide**	**$5,499,900**	**$44,123,000**	**$98,373,974**	**$14,516,000**	**$105,276,561**	**$1,702,000**	**$8,000,000**	**$42,755,129**

County	District	Credit Matriculation	Noncredit Matriculation	Faculty & Staff Diversity	Telecomm And Technology	Instruct. Equip. & Library	Part-Time Faculty Allocation	Scheduled Maintenance & Repair
Alameda	Chabot-Las Positas	$1,157,369	$584	$19,021	$104,511	$188,272	$729,253	$188,289
Alameda	Ohlone	$460,412	$0	$12,959	$46,958	$100,000	$366,647	$100,000
Alameda	Peralta	$1,700,500	$12,930	$20,139	$198,427	$209,969	$789,302	$209,988
Alameda Total		$3,318,281	$13,514	$52,119	$349,896	$498,241	$1,885,202	$498,277
Butte	Butte	$632,296	$217,350	$15,421	$6,765,868	$130,697	$552,370	$130,709
Butte Total		$632,296	$217,350	$15,421	$6,765,868	$130,697	$552,370	$130,709
Contra Costa	Contra Costa	$1,811,370	$13,014	$27,144	$151,469	$346,423	$1,458,983	$346,455
Contra Costa Total		$1,811,370	$13,014	$27,144	$151,469	$346,423	$1,458,983	$346,455
El Dorado	Lake Tahoe	$174,840	$27,529	$8,431	$46,958	$100,000	$97,197	$100,000
El Dorado Total		$174,840	$27,529	$8,431	$46,958	$100,000	$97,197	$100,000
Fresno	State Center	$1,686,408	$42,087	$26,072	$104,511	$299,400	$1,105,044	$299,427
Fresno	West Hills	$395,305	$0	$10,860	$93,916	$100,000	$162,981	$100,000
Fresno Total		$2,081,713	$42,087	$36,932	$198,427	$399,400	$1,268,025	$399,427
Humboldt	Redwoods	$328,979	$417	$10,801	$46,958	$100,000	$263,346	$100,000
Humboldt Total		$328,979	$417	$10,801	$46,958	$100,000	$263,346	$100,000
Imperial	Imperial	$465,380	$8,968	$11,865	$46,958	$100,000	$238,509	$100,000
Imperial Total		$465,380	$8,968	$11,865	$46,958	$100,000	$238,509	$100,000
Kern	Kern	$1,269,216	$35,412	$19,837	$151,469	$200,719	$796,395	$200,738
Kern	West Kern	$694,059	$12,138	$8,708	$46,958	$100,000	$97,197	$100,000
Kern Total		$1,963,275	$47,550	$28,545	$198,427	$300,719	$893,592	$300,738
Lassen	Lassen	$106,670	$5,839	$8,523	$46,958	$100,000	$114,640	$100,000
Lassen Total		$106,670	$5,839	$8,523	$46,958	$100,000	$114,640	$100,000
Los Angeles	Antelope Valley	$653,353	$8,467	$14,343	$46,958	$112,964	$398,122	$112,975
Los Angeles	Cerritos	$1,034,338	$168,592	$18,890	$46,958	$189,225	$788,495	$189,242
Los Angeles	Citrus	$619,054	$243,586	$15,360	$46,958	$131,658	$519,462	$131,670
Los Angeles	Compton	$339,263	$0	$10,577	$46,958	$100,000	$288,448	$100,000
Los Angeles	El Camino	$1,195,281	$0	$20,134	$46,958	$207,524	$848,408	$207,543
Los Angeles	Glendale	$702,050	$753,448	$18,211	$46,958	$181,841	$702,164	$181,858
Los Angeles	Long Beach	$1,202,793	$240,291	$20,615	$46,958	$214,102	$937,446	$214,122
Los Angeles	Los Angeles	$6,934,056	$758,954	$74,069	$433,217	$1,007,164	$4,427,138	$1,007,255
Los Angeles	Mt. San Antonio	$1,303,737	$1,266,397	$27,632	$46,958	$321,934	$1,141,544	$321,963
Los Angeles	Pasadena Area	$1,391,973	$412,261	$22,742	$46,958	$251,674	$998,221	$251,697
Los Angeles	Rio Hondo	$1,084,121	$410,509	$15,965	$46,958	$137,598	$534,759	$137,611
Los Angeles	Santa Clarita	$959,632	$32,450	$15,955	$46,958	$139,601	$420,171	$139,613
Los Angeles	Santa Monica	$1,405,472	$51,470	$22,228	$46,958	$242,672	$1,000,440	$242,694
Los Angeles Total		$18,825,123	$4,346,425	$296,721	$996,713	$3,237,958	$13,004,818	$3,238,243
Marin	Marin	$359,977	$127,174	$10,089	$46,958	$100,000	$324,991	$100,000
Marin Total		$359,977	$127,174	$10,089	$46,958	$100,000	$324,991	$100,000
Mendocino	Mendocino-Lake	$260,408	$18,019	$9,138	$46,958	$100,000	$124,209	$100,000
Mendocino Total		$260,408	$18,019	$9,138	$46,958	$100,000	$124,209	$100,000
Merced	Merced	$518,682	$195,453	$13,904	$46,958	$104,304	$409,045	$104,314
Merced Total		$518,682	$195,453	$13,904	$46,958	$104,304	$409,045	$104,314
Monterey	Hartnell	$494,580	$0	$11,819	$46,958	$100,000	$319,164	$100,000
Monterey	Monterey Peninsula	$508,058	$166,840	$12,997	$46,958	$100,000	$395,523	$100,000
Monterey Total		$1,002,638	$166,840	$24,816	$93,916	$200,000	$714,687	$200,000
Napa	Napa Valley	$329,645	$205,922	$11,331	$46,958	$100,000	$263,385	$100,000
Napa Total		$329,645	$205,922	$11,331	$46,958	$100,000	$263,385	$100,000
Orange	Coast	$2,288,369	$142,523	$29,030	$151,469	$346,467	$1,584,432	$346,498
Orange	North Orange County	$1,639,432	$1,476,990	$30,998	$104,511	$381,854	$1,561,487	$381,889
Orange	Rancho Santiago	$2,813,429	$3,024,679	$29,009	$104,511	$346,555	$1,381,015	$346,586
Orange	South Orange County	$1,453,048	$128,842	$21,948	$93,916	$239,567	$1,005,110	$239,588
Orange Total		$8,194,278	$4,773,034	$110,985	$454,407	$1,314,443	$5,532,044	$1,314,561
Placer	Sierra	$925,137	$0	$17,202	$46,958	$159,462	$564,871	$159,477
Placer Total		$925,137	$0	$17,202	$46,958	$159,462	$564,871	$159,477
Plumas	Feather River	$82,172	$1,043	$8,300	$46,958	$100,000	$97,197	$100,000
Plumas Total		$82,172	$1,043	$8,300	$46,958	$100,000	$97,197	$100,000
Riverside	Desert	$432,917	$188,279	$12,379	$46,958	$100,000	$282,131	$100,000
Riverside	Mt. San Jacinto	$601,605	$63,399	$13,427	$46,958	$100,000	$327,277	$100,000
Riverside	Palo Verde	$341,726	$53,764	$8,394	$46,958	$100,000	$97,197	$100,000

County	District	Credit Matriculation	Noncredit Matriculation	Faculty & Staff Diversity	Telecomm And Technology	Instruct. Equip. & Library	Part-Time Faculty Allocation	Scheduled Maintenance & Repair
Riverside	Riverside	$1,494,345	$542	$25,612	$46,958	$299,683	$1,083,773	$299,710
Riverside Total		$2,870,593	$305,984	$59,812	$187,832	$599,683	$1,790,378	$599,710
Sacramento	Los Rios	$4,217,171	$0	$41,723	$198,427	$551,055	$1,997,475	$551,105
Sacramento Total		$4,217,171	$0	$41,723	$198,427	$551,055	$1,997,475	$551,105
San Bernardino	Barstow	$169,076	$21,773	$8,938	$46,958	$100,000	$97,197	$100,000
San Bernardino	Chaffey	$967,570	$24,233	$17,165	$46,958	$146,877	$591,547	$146,890
San Bernardino	Copper Mt.	$70,598	$25,777	$8,240	$46,958	$100,000	$97,197	$100,000
San Bernardino	San Bernardino	$899,442	$0	$16,785	$104,511	$151,284	$639,324	$151,297
San Bernardino	Victor Valley	$564,884	$31,366	$13,972	$46,958	$103,016	$398,461	$103,025
San Bernardino Total		$2,671,570	$103,149	$65,100	$292,343	$601,177	$1,823,726	$601,212
San Diego	Grossmont-Cuyamaca	$1,237,425	$119,082	$19,413	$104,511	$194,635	$780,847	$194,653
San Diego	Mira Costa	$576,006	$287,507	$12,646	$46,958	$100,000	$337,144	$100,000
San Diego	Palomar	$1,224,374	$337,475	$21,062	$471,958	$220,020	$838,297	$220,039
San Diego	San Diego	$2,725,333	$3,209,872	$36,261	$151,469	$464,835	$1,926,575	$464,877
San Diego	Southwestern	$918,449	$170,927	$17,775	$46,958	$171,398	$663,332	$171,413
San Diego Total		$6,681,587	$4,124,863	$107,157	$821,854	$1,150,887	$4,536,195	$1,150,982
San Francisco	San Francisco	$1,548,315	$3,023,053	$32,151	$57,553	$372,795	$1,686,620	$372,828
San Francisco Total		$1,548,315	$3,023,053	$32,151	$57,553	$372,795	$1,686,620	$372,828
San Joaquin	San Joaquin Delta	$879,040	$184,876	$18,073	$46,958	$173,305	$668,433	$173,320
San Joaquin Total		$879,040	$184,876	$18,073	$46,958	$173,305	$668,433	$173,320
San Luis Obispo	San Luis Obispo	$559,733	$36,997	$13,512	$46,958	$100,000	$388,356	$100,000
San Luis Obispo Total		$559,733	$36,997	$13,512	$46,958	$100,000	$388,356	$100,000
San Mateo	San Mateo	$1,383,394	$0	$19,530	$151,469	$193,506	$938,479	$193,524
San Mateo Total		$1,383,394	$0	$19,530	$151,469	$193,506	$938,479	$193,524
Santa Barbara	Allan Hancock	$597,001	$403,418	$14,164	$46,958	$109,639	$418,022	$109,649
Santa Barbara	Santa Barbara	$825,432	$743,521	$18,221	$46,958	$174,643	$624,301	$174,658
Santa Barbara Total		$1,422,433	$1,146,939	$32,385	$93,916	$284,282	$1,042,323	$284,307
Santa Clara	Foothill-DeAnza	$2,290,322	$96,100	$29,937	$93,916	$370,294	$1,475,772	$370,328
Santa Clara	Gavilan	$407,217	$20,146	$10,653	$46,958	$100,000	$206,293	$100,000
Santa Clara	San Jose-Evergreen	$1,244,694	$0	$17,448	$104,511	$165,739	$666,535	$165,753
Santa Clara	West Valley-Mission	$1,108,932	$23,608	$19,161	$93,916	$191,129	$785,215	$191,146
Santa Clara Total		$5,051,165	$139,854	$77,199	$339,301	$827,162	$3,133,815	$827,227
Santa Cruz	Cabrillo	$677,540	$9,385	$15,233	$46,958	$127,043	$495,146	$127,054
Santa Cruz Total		$677,540	$9,385	$15,233	$46,958	$127,043	$495,146	$127,054
Shasta	Shasta-Tehama-Trinity	$431,749	$16,475	$12,765	$46,958	$100,000	$368,306	$100,000
Shasta Total		$431,749	$16,475	$12,765	$46,958	$100,000	$368,306	$100,000
Siskiyou	Siskiyou	$161,876	$0	$8,972	$46,958	$100,000	$117,425	$100,000
Siskiyou Total		$161,876	$0	$8,972	$46,958	$100,000	$117,425	$100,000
Solano	Solano	$625,160	$62,440	$13,798	$46,958	$104,535	$373,804	$104,544
Solano Total		$625,160	$62,440	$13,798	$46,958	$104,535	$373,804	$104,544
Sonoma	Sonoma	$1,290,704	$399,665	$21,718	$46,958	$231,545	$920,304	$231,566
Sonoma Total		$1,290,704	$399,665	$21,718	$46,958	$231,545	$920,304	$231,566
Stanislaus	Yosemite	$998,485	$109,322	$19,028	$104,511	$188,289	$753,662	$188,306
Stanislaus Total		$998,485	$109,322	$19,028	$104,511	$188,289	$753,662	$188,306
Tulare	Sequoias	$530,483	$0	$12,668	$46,958	$100,000	$396,558	$100,000
Tulare Total		$530,483	$0	$12,668	$46,958	$100,000	$396,558	$100,000
Ventura	Ventura	$1,587,727	$55,724	$24,434	$151,469	$275,089	$1,207,516	$275,114
Ventura Total		$1,587,727	$55,724	$24,434	$151,469	$275,089	$1,207,516	$275,114
Yuba	Yuba	$511,411	$45,047	$12,725	$46,958	$100,000	$382,368	$100,000
Yuba Total		$511,411	$45,047	$12,725	$46,958	$100,000	$382,368	$100,000
Grand Total	**Statewide**	**$75,481,000**	**$19,973,951**	**$1,310,250**	**$12,500,000**	**$13,672,000**	**$50,828,000**	**$13,673,000**

County	District	Economic Development	Nursing Education Program	Child Care Tax Bailout	Basic Aid Partnership	PT Faculty Office Hours	PT Faculty Insurance	Basic Skills
Alameda	Chabot-Las Positas	$0	$162,487	$0	$0	$62,186	$0	$367,642
Alameda	Ohlone	$299,999	$350,000	$0	$0	$0	$0	$67,198
Alameda	Peralta	$205,000	$384,537	$722,707	$0	$74,990	$29,661	$362,890
Alameda Total		$504,999	$897,024	$722,707	$0	$137,176	$29,661	$797,730
Butte	Butte	$982,500	$229,147	$0	$0	$12,835	$0	$127,302
Butte Total		$982,500	$229,147	$0	$0	$12,835	$0	$127,302
Contra Costa	Contra Costa	$1,255,400	$271,795	$0	$0	$143,200	$77,251	$669,793
Contra Costa Total		$1,255,400	$271,795	$0	$0	$143,200	$77,251	$669,793
El Dorado	Lake Tahoe	$0	$0	$0	$0	$0	$0	$22,581
El Dorado Total		$0	$0	$0	$0	$0	$0	$22,581
Fresno	State Center	$949,025	$738,693	$0	$0	$0	$0	$434,382
Fresno	West Hills	$0	$0	$0	$0	$2,897	$0	$219,100
Fresno Total		$949,025	$738,693	$0	$0	$2,897	$0	$653,482
Humboldt	Redwoods	$154,165	$190,262	$31,698	$0	$108,004	$2,795	$88,037
Humboldt Total		$154,165	$190,262	$31,698	$0	$108,004	$2,795	$88,037
Imperial	Imperial	$50,000	$384,687	$0	$0	$0	$0	$395,706
Imperial Total		$50,000	$384,687	$0	$0	$0	$0	$395,706
Kern	Kern	$891,994	$937,064	$13,297	$0	$0	$0	$447,228
Kern	West Kern	$0	$0	$0	$0	$0	$0	$30,713
Kern Total		$891,994	$937,064	$13,297	$0	$0	$0	$477,941
Lassen	Lassen	$0	$0	$0	$0	$0	$0	$10,080
Lassen Total		$0	$0	$0	$0	$0	$0	$10,080
Los Angeles	Antelope Valley	$0	$492,847	$0	$0	$0	$0	$402,539
Los Angeles	Cerritos	$729,501	$329,137	$0	$0	$0	$0	$361,729
Los Angeles	Citrus	$563,365	$500,000	$158,232	$0	$6,954	$1,023	$253,869
Los Angeles	Compton	$0	$251,367	$0	$0	$0	$0	$52,924
Los Angeles	El Camino	$1,593,249	$318,027	$0	$0	$0	$1,004	$334,394
Los Angeles	Glendale	$0	$621,035	$0	$0	$272,417	$17,345	$864,353
Los Angeles	Long Beach	$1,440,742	$0	$100,577	$0	$0	$0	$937,055
Los Angeles	Los Angeles	$2,365,641	$896,023	$2,054,809	$0	$2,510,564	$65,410	$3,593,633
Los Angeles	Mt. San Antonio	$1,018,269	$984,558	$173,703	$0	$53,890	$16,072	$1,196,036
Los Angeles	Pasadena Area	$531,000	$273,587	$0	$0	$0	$0	$394,819
Los Angeles	Rio Hondo	$649,901	$306,917	$22,737	$0	$0	$1,361	$468,544
Los Angeles	Santa Clarita	$817,443	$735,481	$0	$0	$0	$0	$189,826
Los Angeles	Santa Monica	$650,000	$106,937	$0	$0	$85,392	$79,952	$559,851
Los Angeles Total		$10,359,111	$5,815,916	$2,510,058	$0	$2,929,217	$182,167	$9,609,572
Marin	Marin	$0	$183,115	$148,101	$1,622,163	$209,517	$29,936	$643,462
Marin Total		$0	$183,115	$148,101	$1,622,163	$209,517	$29,936	$643,462
Mendocino	Mendocino-Lake	$0	$181,667	$0	$0	$7,371	$0	$45,070
Mendocino Total		$0	$181,667	$0	$0	$7,371	$0	$45,070
Merced	Merced	$410,000	$279,427	$0	$0	$0	$0	$731,398
Merced Total		$410,000	$279,427	$0	$0	$0	$0	$731,398
Monterey	Hartnell	$986,756	$0	$69,377	$0	$0	$0	$66,595
Monterey	Monterey Peninsula	$0	$251,307	$0	$0	$7,176	$0	$105,351
Monterey Total		$986,756	$251,307	$69,377	$0	$7,176	$0	$171,946
Napa	Napa Valley	$361,427	$387,615	$129,282	$0	$0	$0	$56,506
Napa Total		$361,427	$387,615	$129,282	$0	$0	$0	$56,506
Orange	Coast	$205,000	$204,961	$0	$0	$0	$68,446	$372,253
Orange	North Orange County	$1,994,907	$297,812	$0	$0	$551,165	$9,594	$1,475,669
Orange	Rancho Santiago	$765,000	$173,597	$451,115	$0	$0	$0	$2,065,895
Orange	South Orange County	$205,000	$229,147	$0	$5,116,635	$0	$0	$260,880
Orange Total		$3,169,907	$905,517	$451,115	$5,116,635	$551,165	$78,040	$4,174,697
Placer	Sierra	$848,500	$218,037	$0	$0	$41,580	$0	$180,650
Placer Total		$848,500	$218,037	$0	$0	$41,580	$0	$180,650
Plumas	Feather River	$0	$0	$0	$0	$9,871	$0	$9,591
Plumas Total		$0	$0	$0	$0	$9,871	$0	$9,591
Riverside	Desert	$577,500	$430,447	$0	$0	$35,284	$0	$443,061
Riverside	Mt. San Jacinto	$0	$326,247	$23,909	$0	$0	$0	$140,944
Riverside	Palo Verde	$0	$0	$0	$0	$0	$0	$42,664
Riverside	Riverside	$864,500	$1,091,988	$137,337	$0	$125,724	$9,503	$600,698
Riverside Total		$1,442,000	$1,848,682	$161,246	$0	$161,008	$9,503	$1,227,367
Sacramento	Los Rios	$1,579,500	$131,937	$353,015	$0	$190,576	$109,828	$909,271
Sacramento Total		$1,579,500	$131,937	$353,015	$0	$190,576	$109,828	$909,271

County	District	Economic Development	Nursing Education Program	Child Care Tax Ballout	Basic Aid Partnership	PT Faculty Office Hours	PT Faculty Insurance	Basic Skills
San Bernardino	Barstow	$0	$0	$0	$0	$0	$0	$61,786
San Bernardino	Chaffey	$224,382	$106,937	$272,347	$0	$0	$0	$420,434
San Bernardino	Copper Mt.	$0	$357,444	$0	$0	$0	$0	$60,573
San Bernardino	San Bernardino	$616,500	$0	$0	$0	$29,059	$0	$233,880
San Bernardino	Victor Valley	$0	$293,587	$0	$0	$0	$0	$143,023
San Bernardino Total		$840,882	$757,968	$272,347	$0	$29,059	$0	$919,696
San Diego	Grossmont-Cuyamaca	$777,829	$157,500	$0	$0	$0	$410	$312,157
San Diego	Mira Costa	$50,000	$0	$0	$1,629,913	$21,241	$1,877	$227,876
San Diego	Palomar	$0	$179,352	$177,729	$0	$11,299	$4,088	$513,113
San Diego	San Diego	$1,387,000	$0	$0	$0	$37,958	$108,300	$1,835,530
San Diego	Southwestern	$355,000	$329,014	$0	$0	$0	$0	$898,338
San Diego Total		$2,569,829	$665,866	$177,729	$1,629,913	$70,498	$114,675	$3,787,014
San Francisco	San Francisco	$1,971,230	$0	$150,618	$0	$53,846	$187,374	$2,900,513
San Francisco Total		$1,971,230	$0	$150,618	$0	$53,846	$187,374	$2,900,513
San Joaquin	San Joaquin Delta	$360,000	$271,937	$0	$0	$0	$0	$452,629
San Joaquin Total		$360,000	$271,937	$0	$0	$0	$0	$452,629
San Luis Obispo	San Luis Obispo	$50,000	$210,937	$0	$0	$45,836	$18,290	$133,778
San Luis Obispo Total		$50,000	$210,937	$0	$0	$45,836	$18,290	$133,778
San Mateo	San Mateo	$1,502,318	$118,047	$0	$0	$392,590	$8,076	$565,683
San Mateo Total		$1,502,318	$118,047	$0	$0	$392,590	$8,076	$565,683
Santa Barbara	Allan Hancock	$391,104	$106,937	$0	$0	$8,473	$0	$165,095
Santa Barbara	Santa Barbara	$802,917	$106,937	$55,199	$0	$0	$259	$552,576
Santa Barbara Total		$1,194,021	$213,874	$55,199	$0	$8,473	$259	$717,671
Santa Clara	Foothill-DeAnza	$655,000	$0	$791,639	$0	$269,434	$62,776	$75,350
Santa Clara	Gavilan	$205,000	$105,345	$40,205	$0	$4,075	$0	$131,004
Santa Clara	San Jose-Evergreen	$677,342	$378,558	$66,977	$0	$322,860	$8,615	$388,351
Santa Clara	West Valley-Mission	$2,587,156	$86,661	$96,207	$0	$315,400	$2,472	$361,669
Santa Clara Total		$4,124,498	$570,564	$995,028	$0	$911,769	$73,863	$956,374
Santa Cruz	Cabrillo	$266,629	$216,445	$120,606	$0	$33,853	$12,207	$211,835
Santa Cruz Total		$266,629	$216,445	$120,606	$0	$33,853	$12,207	$211,835
Shasta	Shasta-Tehama-Trinity	$530,437	$184,707	$0	$0	$21,054	$0	$16,268
Shasta Total		$530,437	$184,707	$0	$0	$21,054	$0	$16,268
Siskiyou	Siskiyou	$0	$64,893	$0	$0	$0	$0	$24,886
Siskiyou Total		$0	$64,893	$0	$0	$0	$0	$24,886
Solano	Solano	$150,000	$271,517	$0	$0	$0	$0	$181,548
Solano Total		$150,000	$271,517	$0	$0	$0	$0	$181,548
Sonoma	Sonoma	$150,000	$273,587	$0	$0	$1,072,502	$65,996	$410,637
Sonoma Total		$150,000	$273,587	$0	$0	$1,072,502	$65,996	$410,637
Stanislaus	Yosemite	$321,746	$106,937	$0	$0	$0	$0	$260,240
Stanislaus Total		$321,746	$106,937	$0	$0	$0	$0	$260,240
Tulare	Sequoias	$135,432	$261,040	$0	$0	$2,044	$0	$5,838
Tulare Total		$135,432	$261,040	$0	$0	$2,044	$0	$5,838
Ventura	Ventura	$1,303,500	$720,797	$178,577	$0	$18,883	$79	$353,416
Ventura Total		$1,303,500	$720,797	$178,577	$0	$18,883	$79	$353,416
Yuba	Yuba	$150,000	$162,487	$0	$0	$0	$0	$209,792
Yuba Total		$150,000	$162,487	$0	$0	$0	$0	$209,792
Grand Total	**Statewide**	**$39,565,806**	**$18,923,495**	**$6,540,000**	**$8,368,711**	**$7,172,000**	**$1,000,000**	**$33,110,000**

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CATEGORICAL APPORTIONMENTS - PART 1

2005-06 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
Alameda	Chabot-Las Positas	53,755	556,604	911,857	137,354	1,198,310	0	58,486	297,145
	Ohlone	14,903	222,536	369,580	49,980	1,001,329	0	16,564	71,597
	Peralta	91,412	1,109,422	2,652,952	602,673	2,146,250	0	263,244	1,109,261
Alameda		160,070	1,888,562	3,934,389	790,007	4,345,889	0	338,294	1,478,003
Butte	Butte	61,987	469,462	1,246,932	351,528	618,278	0	146,154	646,601
Contra Costa	Contra Costa	46,303	964,476	2,493,162	401,336	2,367,040	0	154,807	649,252
El Dorado	Lake Tahoe	5,111	112,259	136,979	26,404	440,328	0	12,500	35,851
Fresno	State Center	197,461	1,343,108	2,384,863	251,795	1,542,007	0	263,282	1,163,618
	West Hills	24,483	202,149	406,620	131,698	350,484	0	38,919	333,860
Fresno		221,944	1,545,257	2,791,483	383,493	1,892,491	0	302,201	1,497,478
Humboldt	Redwoods	35,939	293,587	881,114	131,990	1,031,344	0	47,141	215,021
Imperial	Imperial	48,368	285,181	1,071,510	154,528	512,099	0	68,026	317,626
Kern	Kern	132,491	906,754	2,223,915	347,189	1,912,582	515,198	163,733	636,639
	West Kern	10,882	135,216	275,073	43,040	271,136	0	45,632	194,719
Kern		143,373	1,041,970	2,498,988	390,229	2,183,718	515,198	209,365	831,358
Lassen	Lassen	8,898	119,656	357,111	67,894	347,271	0	27,797	120,893
Los Angeles	Antelope Valley	56,043	422,565	809,740	291,215	771,578	0	127,140	542,529
	Cerritos	103,707	754,059	1,061,661	96,166	1,192,008	0	116,555	533,565
	Citrus	44,819	366,243	822,628	208,137	547,841	0	64,219	302,670
	Compton	55,308	344,770	1,178,508	746,904	256,650	0	150,584	363,841
	El Camino	50,935	662,985	1,484,480	250,951	1,148,356	0	146,494	635,116
	Glendale	80,514	568,919	1,720,296	54,813	1,525,318	0	190,944	814,800
	Long Beach	144,866	919,278	1,774,345	251,965	1,048,903	0	250,344	1,238,270
	Los Angeles	584,884	5,038,200	11,238,289	1,301,628	5,236,500	0	1,068,329	4,584,781
	Mt. San Antonio	102,146	810,927	871,510	130,259	1,538,003	0	117,847	547,517
	Pasadena Area	129,580	845,635	1,356,832	138,193	913,174	0	122,821	530,893
	Rio Hondo	63,775	485,903	1,406,761	113,205	518,953	0	76,359	330,063
	Santa Clarita	27,542	278,095	424,174	53,066	539,265	0	20,261	130,910
	Santa Monica	71,016	689,873	1,196,722	100,810	1,234,732	0	87,954	427,181
Los Angeles		1,515,135	12,187,452	25,345,946	3,737,312	16,471,281	0	2,539,851	10,982,136
Marin	Marin	19,312	201,632	495,005	52,724	1,366,141	0	28,228	123,506

CATEGORICAL APPORTIONMENTS - PART 1

2005-06 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
Mendocino	Mendocino-Lake	30,726	187,372	388,093	63,503	353,392	0	31,633	138,490
Merced	Merced	50,586	361,188	1,305,700	253,070	696,090	0	127,593	678,220
Monterey	Hartnell	29,947	271,088	690,644	159,826	616,666	0	45,524	206,038
	Monterey Peninsula	16,306	223,362	860,329	111,085	776,714	0	23,769	102,742
Monterey		46,253	494,450	1,550,973	270,911	1,393,380	0	69,293	308,780
Napa	Napa Valley	22,856	225,480	598,019	81,305	1,950,820	0	24,752	108,291
Orange	Coast	132,733	1,115,598	2,693,896	167,173	2,418,820	887,913	131,103	598,192
	North Orange County	118,851	856,892	2,111,235	276,254	1,998,022	0	140,259	631,893
	Rancho Santiago	86,078	936,347	1,819,267	128,384	1,794,305	0	170,506	745,999
	South Orange	50,798	573,278	1,339,301	136,086	1,757,093	0	34,453	149,806
Orange		388,460	3,482,115	7,963,699	707,897	7,968,240	887,913	476,321	2,125,890
Placer	Sierra	52,990	433,597	710,148	103,585	1,053,843	0	47,800	190,322
Plumas	Feather River	4,605	92,014	212,815	39,084	270,508	0	12,500	53,846
Riverside	Desert	30,615	259,044	415,185	89,478	527,758	0	45,308	88,235
	Mt. San Jacinto	46,135	378,952	647,035	184,113	526,581	0	61,777	293,424
	Palo Verde	8,778	94,516	350,034	47,510	209,938	0	29,039	122,059
	Riverside	126,372	873,689	679,914	87,552	1,409,054	0	124,067	539,587
Riverside		211,900	1,606,201	2,092,168	408,653	2,673,331	0	260,191	1,043,305
Sacramento	Los Rios	317,575	1,958,820	3,890,707	646,116	3,229,870	0	507,516	1,595,549
San Bernardino	Barstow	6,122	146,122	448,763	94,764	210,189	0	21,533	93,076
	Chaffey	47,724	491,612	849,100	134,397	1,133,899	0	81,577	358,616
	Copper Mt.	10,430	115,294	189,414	74,975	211,597	0	14,039	62,059
	San Bernardino	101,838	643,015	1,087,466	180,761	1,058,424	0	163,733	724,238
	Victor Valley	70,171	542,225	875,175	181,993	802,532	0	58,000	195,184
San Bernardino		236,285	1,938,268	3,449,918	666,890	3,416,641	0	338,882	1,433,173
San Diego	Grossmont-Cuyamaca	81,073	709,960	1,486,489	286,358	1,372,089	0	101,450	530,839
	Mira Costa	23,946	234,682	684,460	102,362	516,978	0	38,619	344,468
	Palomar	36,402	497,171	1,093,764	99,363	895,190	0	59,991	211,471
	San Diego	152,488	1,528,287	2,027,728	196,663	3,446,959	0	476,978	1,634,236
	Southwestern	89,413	620,787	1,956,759	181,018	1,009,764	0	68,462	299,529
San Diego		393,322	3,590,887	7,249,200	865,764	7,240,980	0	745,500	3,020,543

CATEGORICAL APPORTIONMENTS - PART 1

2005-06 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
San Francisco	San Francisco	105,748	925,360	1,674,479	70,821	2,478,649	0	171,557	750,600
San Joaquin	San Joaquin Delta	101,633	660,792	1,545,461	309,228	1,301,563	0	175,855	753,857
San Luis Obispo	San Luis Obispo	38,082	319,944	434,041	109,365	812,124	0	25,789	121,418
San Mateo	San Mateo	72,111	767,156	1,585,258	123,337	1,580,549	0	38,871	170,073
Santa Barbara	Allan Hancock	39,915	338,058	655,735	286,893	843,926	0	68,238	343,613
	Santa Barbara	58,743	477,122	1,085,505	89,315	932,252	0	38,868	168,008
Santa Barbara		98,658	815,180	1,741,240	376,208	1,776,178	0	107,106	511,621
Santa Clara	Foothill-DeAnza	80,315	928,789	1,749,642	135,699	4,119,151	0	67,731	296,337
	Gavilan	18,570	197,633	461,801	130,075	681,098	0	19,045	94,518
	San Jose-Evergreen	83,627	689,051	1,636,933	143,677	883,799	0	110,155	998,269
	West Valley-Mission	37,141	532,102	1,235,480	146,855	1,254,501	304,840	48,780	210,854
Santa Clara		219,653	2,347,575	5,083,856	556,306	6,938,549	304,840	245,711	1,599,978
Santa Cruz	Cabrillo	44,997	387,600	482,087	133,463	1,625,914	0	36,054	141,740
Shasta	Shasta-Tehama-Trinity	32,087	345,428	1,005,962	163,650	627,774	0	86,798	429,742
Siskiyou	Siskiyou	14,792	152,162	359,579	60,423	352,294	0	25,027	109,569
Solano	Solano	32,579	297,501	489,926	87,618	663,806	0	43,544	190,506
Sonoma	Sonoma	64,620	573,708	644,684	83,453	2,175,095	0	69,359	303,457
Stanislaus	Yosemite	78,790	629,158	1,552,706	154,589	1,996,998	0	151,913	658,414
Tulare	Sequoias	61,358	411,923	966,785	174,835	779,671	0	89,859	433,415
Ventura	Ventura	112,525	1,026,902	1,998,103	277,340	2,468,103	0	94,535	337,990
Yuba	Yuba	50,099	350,725	1,058,763	220,140	657,807	0	108,576	469,319
		5,149,730	43,491,000	91,286,989	13,494,999	88,058,049	1,707,951	7,986,899	34,575,833

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	PART-TIME FACULTY ALLOCATION	TELECOM AND TECHNOLOGY	PHYSICAL PLANT &INSTRUCT EQUIP	PART-TIME FACULTY INSURANCE	PART-TIME FACULTY OFFICE
Mendocino	Mendocino-Lake	173,908	17,420	10,041	124,209	52,332	100,000	0	8,856
Merced	Merced	344,351	159,268	14,883	409,045	52,332	221,224	0	0
Monterey	Hartnell	349,510	0	13,054	319,164	52,332	155,674	0	0
	Monterey Peninsula	331,022	155,684	14,463	395,523	52,332	206,003	0	8,599
Monterey		680,532	155,684	27,517	714,687	104,664	361,677	0	8,599
Napa	Napa Valley	276,305	132,690	12,396	263,385	52,332	140,307	0	0
Orange	Coast	1,576,274	98,248	33,875	1,584,432	172,631	819,750	85,062	0
	North Orange County	1,142,332	1,137,173	34,128	1,561,487	120,299	823,913	5,361	604,093
	Rancho Santiago	1,673,030	2,236,751	30,531	1,381,015	120,299	712,408	0	0
	South Orange	991,213	77,279	24,512	1,005,110	104,664	517,720	8,659	0
Orange		5,382,849	3,549,451	123,046	5,532,044	517,893	2,873,792	99,082	604,093
Placer	Sierra	639,710	0	18,306	564,871	52,332	327,457	0	46,500
Plumas	Feather River	62,906	299	8,980	97,197	52,332	100,000	0	7,680
Riverside	Desert	305,638	146,029	13,361	282,131	52,332	171,307	0	16,574
	Mt. San Jacinto	411,448	43,500	14,517	327,277	52,332	205,039	0	0
	Palo Verde	337,231	44,263	9,088	97,197	52,332	100,000	0	0
	Riverside	1,066,948	0	26,783	1,083,773	52,332	590,942	7,781	135,590
Riverside		2,121,265	233,792	63,749	1,790,378	209,328	1,067,287	7,781	152,164
Sacramento	Los Rios	2,919,439	0	43,905	1,997,475	224,963	1,128,432	104,543	229,823
San Bernardino	Barstow	122,976	10,452	9,310	97,197	52,332	100,000	0	0
	Chaffey	622,283	49,108	18,710	591,547	52,332	333,575	0	0
	Copper Mt.	69,955	0	9,039	97,197	52,332	100,000	0	0
	San Bernardino	800,523	3,219	18,688	639,324	120,299	337,869	0	0
	Victor Valley	389,606	21,269	14,907	398,461	52,332	222,992	0	0
San Bernardino		2,005,343	84,048	70,654	1,823,726	329,627	1,094,437	0	0
San Diego	Grossmont-Cuyamaca	880,620	102,761	21,536	780,847	120,299	432,420	0	0
	Mira Costa	358,702	227,388	13,284	337,144	52,332	175,354	2,019	27,342
	Palomar	811,807	261,365	22,436	838,297	282,327	463,558	0	0
	San Diego	1,824,756	2,588,335	38,624	1,926,575	172,631	977,973	107,980	0
	Southwestern	595,746	105,349	19,253	653,332	52,332	342,575	3,204	0
San Diego		4,471,631	3,285,198	115,133	4,536,195	679,921	2,391,879	113,203	27,342

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	PART-TIME FACULTY ALLOCATION	TELECOM AND TECHNOLOGY	PHYSICAL PLANT &INSTRUCT EQUIP	PART-TIME FACULTY INSURANCE	PART-TIME FACULTY OFFICE
Alameda	Chabot-Las Positas	802,107	8,295	20,375	729,253	120,299	391,367	0	64,811
	Ohlone	419,556	0	13,875	366,647	52,332	162,161	0	0
	Peralta	1,166,448	10,617	21,357	789,302	224,963	425,854	20,739	77,005
Alameda		2,388,111	18,912	55,607	1,885,202	397,594	979,382	20,739	141,816
Butte	Butte	442,541	197,426	17,283	552,370	6,367,989	285,536	0	24,158
Contra Costa	Contra Costa	1,255,347	22,861	28,173	1,458,983	172,631	621,754	75,370	133,497
El Dorado	Lake Tahoe	120,553	30,062	9,167	97,197	52,332	100,000	0	4,470
Fresno	State Center	1,119,982	25,549	27,798	1,105,044	120,299	626,585	0	0
	West Hills	172,259	0	11,500	162,981	52,332	112,683	0	0
Fresno		1,292,241	25,549	39,298	1,268,025	172,631	739,268	0	0
Humboldt	Redwoods	234,590	1,294	11,842	263,346	52,332	119,487	2,190	128,847
Imperial	Imperial	259,273	0	12,903	238,509	52,332	143,638	0	0
Kern	Kern	896,795	27,772	22,273	796,395	172,631	449,582	0	0
	West Kern	389,737	7,300	9,437	97,197	52,332	100,000	0	0
Kern		1,286,532	35,072	31,710	893,592	224,963	549,582	0	0
Lassen	Lassen	99,971	8,262	9,430	114,640	52,332	100,000	0	0
Los Angeles	Antelope Valley	429,988	18,017	15,551	398,122	52,332	239,243	20,145	64,638
	Cerritos	703,034	72,799	20,791	788,495	52,332	411,289	0	0
	Citrus	432,319	206,385	16,647	519,462	52,332	270,617	855	7,866
	Compton	336,170	0	12,746	288,448	52,332	153,360	0	0
	El Camino	782,199	0	22,647	848,408	52,332	463,309	1,343	0
	Glendale	478,863	577,081	19,986	702,164	52,332	386,717	13,125	274,094
	Long Beach	816,099	181,267	24,493	937,446	52,332	501,260	0	0
	Los Angeles	4,492,147	471,965	82,915	4,427,138	486,623	2,324,130	72,863	2,575,857
	Mt. San Antonio	898,160	955,806	26,619	1,141,544	52,332	631,775	14,309	74,713
	Pasadena Area	972,099	330,083	24,978	998,221	52,332	529,622	0	0
	Rio Hondo	639,088	208,375	17,483	534,759	52,332	299,552	2,866	0
	Santa Clarita	541,840	0	16,883	420,171	52,332	269,837	0	0
	Santa Monica	987,758	25,416	23,912	1,000,440	52,332	504,102	68,204	86,891
Los Angeles		12,509,764	3,047,194	325,651	13,004,818	1,114,607	6,984,812	193,710	3,084,059
Marin	Marin	262,469	112,549	11,196	324,991	52,332	103,651	30,012	187,353

CATEGORICAL APPORTIONMENTS - PART 2

2005-06 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	PART-TIME FACULTY ALLOCATION	TELECOM AND TECHNOLOGY	PHYSICAL PLANT &INSTRUCT EQUIP	PART-TIME FACULTY INSURANCE	PART-TIME FACULTY OFFICE
San Francisco	San Francisco	1,270,133	2,094,704	35,182	1,686,620	67,967	862,557	201,776	130,475
San Joaquin	San Joaquin Delta	601,956	157,084	19,569	668,433	52,332	361,803	0	0
San Luis Obispo	San Luis Obispo	383,945	13,637	14,907	388,356	52,332	219,891	0	0
San Mateo	San Mateo	1,006,720	0	23,361	938,479	172,631	517,177	0	0
Santa Barbara	Allan Hancock	413,553	321,422	15,278	418,022	52,332	232,304	0	10,445
	Santa Barbara	509,202	493,996	19,147	624,301	52,332	358,961	287	0
Santa Barbara		922,755	815,418	34,425	1,042,323	104,664	591,266	287	10,445
Santa Clara	Foothill-DeAnza	1,442,844	71,637	31,824	1,475,772	104,664	744,593	68,356	279,306
	Gavilan	262,750	14,334	11,392	206,293	52,332	112,005	0	0
	San Jose-Evergreen	902,191	0	18,196	666,535	120,299	318,718	7,173	401,378
	West Valley-Mission	807,942	2,854	21,180	785,215	104,664	422,921	1,381	339,180
Santa Clara		3,415,727	88,825	82,592	3,133,815	381,959	1,598,237	76,910	1,019,864
Santa Cruz	Cabrillo	481,496	7,598	16,415	495,146	52,332	267,350	14,128	41,666
Shasta	Shasta-Tehama-Trinity	290,196	31,588	13,726	368,306	52,332	181,132	0	18,419
Siskiyou	Siskiyou	112,834	0	9,759	117,425	52,332	100,000	0	0
Solano	Solano	425,126	36,632	14,528	373,804	36,697	207,970	0	0
Sonoma	Sonoma	854,983	299,855	23,466	920,304	52,332	489,374	59,682	1,123,954
Stanislaus	Yosemite	649,509	77,643	21,076	753,662	104,664	412,538	0	0
Tulare	Sequoias	363,691	0	14,481	396,558	52,332	206,519	0	3,873
Ventura	Ventura	1,091,103	33	27,503	1,207,516	172,631	609,448	587	19,737
Yuba	Yuba	389,525	35,835	13,834	382,368	52,332	186,136	0	14,310
		51,489,330	14,775,883	1,425,694	50,828,000	12,500,000	27,345,000	1,000,000	7,172,000

CATEGORICAL APPORTIONMENTS - PART 3
2005-06 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	ECONOMIC DEVELOPMENT	TITLE IB STATE LEADERSHIP	TITLE II TECHNICAL PREPARATION	TITLE IC ALLOCATIONS	NURSING CARE	TOTAL ECON DEV AND VTEA ALLOCATIONS
Alameda	Chabot-Las Positas	0	0	336,198	336,198	133,912	806,308
	Ohlone	596,408	0	56,437	106,308	0	759,153
	Peralta	178,875	0	75,250	470,219	479,487	1,203,831
Alameda		775,283	0	467,885	912,725	613,399	2,769,292
Butte	Butte	675,800	270,750	75,250	646,539	179,487	1,847,826
Contra Costa	Contra Costa	652,500	0	112,875	396,243	358,767	1,520,385
El Dorado	Lake Tahoe	0	0	75,250	114,809	0	190,059
Fresno	State Center	872,528	300,000	150,500	1,062,505	179,487	2,565,020
	West Hills	154,445	50,000	0	242,130	0	446,575
Fresno		1,026,973	350,000	150,500	1,304,635	179,487	3,011,595
Humboldt	Redwoods	152,502	0	75,250	181,311	0	409,063
Imperial	Imperial	0	0	295,284	295,284	179,487	770,055
Kern	Kern	676,903	0	225,750	639,279	0	1,541,932
	West Kern	158,158	0	217,257	217,257	0	592,672
Kern		835,061	0	443,007	856,536	0	2,134,604
Lassen	Lassen	0	0	0	22,016	0	22,016
Los Angeles	Antelope Valley	0	0	471,079	471,079	179,487	1,121,645
	Cerritos	357,750	0	37,625	917,419	179,487	1,492,281
	Citrus	178,875	0	75,250	337,071	0	591,196
	Compton	0	0	56,437	247,813	0	304,250
	El Camino	972,791	0	75,250	801,273	479,468	2,328,782
	Glendale	0	0	75,250	446,149	479,487	1,000,886
	Long Beach	1,357,017	0	75,250	964,030	0	2,396,297
	Los Angeles	2,442,640	0	489,123	3,683,955	0	6,615,718
	Mt. San Antonio	650,800	187,500	75,250	1,117,809	441,333	2,472,692
	Pasadena Area	357,751	0	18,812	492,927	104,917	974,407
	Rio Hondo	858,045	225,624	75,250	298,799	179,487	1,637,205
	Santa Clarita	519,888	0	75,250	261,519	479,463	1,336,120
	Santa Monica	300,000	0	56,437	526,477	0	882,914
Los Angeles		7,995,557	413,124	1,656,263	10,566,320	2,523,129	23,154,393
Marin	Marin	170,852	0	56,437	54,061	179,487	460,837

CATEGORICAL APPORTIONMENTS - PART 3

2005-06 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	ECONOMIC DEVELOPMENT	TITLE IB STATE LEADERSHIP	TITLE II TECHNICAL PREPARATION	TITLE IC ALLOCATIONS	NURSING CARE	TOTAL ECON DEV AND VTEA ALLOCATIONS
Mendocino	Mendocino-Lake	149,987	0	75,250	180,618	179,400	585,255
Merced	Merced	357,750	0	18,812	360,950	179,487	916,999
Monterey	Hartnell	652,098	0	75,250	102,030	0	829,378
	Monterey Peninsula	0	0	37,625	127,826	161,158	326,609
Monterey		652,098	0	112,875	229,856	161,158	1,155,987
Napa	Napa Valley	140,550	0	75,250	115,334	179,487	510,621
Orange	Coast	178,875	250,000	225,750	752,178	0	1,406,803
	North Orange County	1,346,875	0	75,250	408,994	0	1,831,119
	Rancho Santiago	677,175	0	112,875	962,979	0	1,753,029
	South Orange	178,875	0	94,062	276,229	0	549,166
Orange		2,381,800	250,000	507,937	2,400,380	0	5,540,117
Placer	Sierra	1,001,924	150,000	56,437	416,349	179,487	1,804,197
Plumas	Feather River	0	0	0	0	0	0
Riverside	Desert	705,716	0	202,300	202,300	179,487	1,289,803
	Mt. San Jacinto	0	0	37,625	265,268	179,487	482,380
	Palo Verde	0	0	74,466	74,466	0	148,932
	Riverside	560,250	118,452	169,312	821,593	478,696	2,148,303
Riverside		1,265,966	118,452	483,703	1,363,627	837,670	4,069,418
Sacramento	Los Rios	1,472,477	300,000	225,750	1,768,121	0	3,766,348
San Bernardino	Barstow	0	0	83,129	83,129	0	166,258
	Chaffey	334,269	0	643,960	643,960	0	1,622,189
	Copper Mt.	0	0	0	0	0	0
	San Bernardino	331,375	0	605,984	605,984	0	1,543,343
	Victor Valley	0	0	402,977	402,977	179,424	985,378
San Bernardino		665,644	0	1,736,050	1,736,050	179,424	4,317,168
San Diego	Grossmont-Cuyamaca	695,066	112,812	150,500	556,755	179,192	1,694,325
	Mira Costa	0	0	75,250	140,407	499,390	715,047
	Palomar	0	0	56,437	263,239	179,487	499,163
	San Diego	1,194,375	0	225,750	2,112,642	0	3,532,767
	Southwestern	319,425	0	75,250	511,839	179,294	1,085,808
San Diego		2,208,866	112,812	583,187	3,584,882	1,037,363	7,527,110

CATEGORICAL APPORTIONMENTS - PART 3

2005-06 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	ECONOMIC DEVELOPMENT	TITLE IB STATE LEADERSHIP	TITLE II TECHNICAL PREPARATION	TITLE IC ALLOCATIONS	NURSING CARE	TOTAL ECON DEV AND VTEA ALLOCATIONS
San Francisco	San Francisco	1,380,210	0	56,437	1,385,346	0	2,821,993
San Joaquin	San Joaquin Delta	140,550	0	37,625	742,722	383,758	1,304,655
San Luis Obispo	San Luis Obispo	225,121	0	75,250	302,973	0	603,344
San Mateo	San Mateo	1,055,641	225,624	169,312	221,785	0	1,672,362
Santa Barbara	Allan Hancock	178,875	0	37,625	583,188	0	799,688
	Santa Barbara	499,918	0	75,250	499,420	0	1,074,588
Santa Barbara		678,793	0	112,875	1,082,608	0	1,874,276
Santa Clara	Foothill-DeAnza	610,280	0	37,625	340,605	0	988,510
	Gavilan	319,425	0	56,437	81,505	179,487	636,854
	San Jose-Evergreen	452,500	300,000	112,875	372,507	179,487	1,417,369
	West Valley-Mission	2,085,759	0	131,687	323,508	413,339	2,954,293
Santa Clara		3,467,964	300,000	338,624	1,118,125	772,313	5,997,026
Santa Cruz	Cabrillo	140,550	0	56,437	250,368	479,487	926,842
Shasta	Shasta-Tehama-Trinity	0	0	320,839	320,839	179,487	821,165
Siskiyou	Siskiyou	0	0	102,010	102,010	499,775	703,795
Solano	Solano	140,550	0	75,250	203,303	0	419,103
Sonoma	Sonoma	378,684	0	75,250	418,856	179,487	1,052,277
Stanislaus	Yosemite	370,326	157,936	75,250	978,930	0	1,582,442
Tulare	Sequoias	212,712	0	75,250	498,396	0	786,358
Ventura	Ventura	868,000	157,936	131,687	575,380	0	1,733,003
Yuba	Yuba	140,550	0	75,250	410,873	179,487	806,160
		31,781,241	2,806,634	9,060,598	36,119,160	9,820,513	89,588,146

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CALIFORNIA COMMUNITY COLLEGES Exhibit B-2A 16:14 Thursday, June 23, 2005
CATEGORICAL APPORTIONMENTS - PART 1
2004-2005 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
Alameda	Chabot-Las Positas	56,554	536,330	819,527	121,246	1,110,596	0	60,557	252,775
	Ohlone	14,430	221,446	344,584	49,421	928,265	0	16,564	71,597
	Peralta	123,010	1,104,423	2,514,892	562,850	2,090,297	0	263,688	1,162,991
Alameda		193,994	1,862,199	3,679,003	733,517	4,129,158	0	340,809	1,487,363
Butte	Butte	60,141	480,115	1,190,920	255,780	627,122	0	146,154	649,427
Contra Costa	Contra Costa	48,713	946,631	2,331,903	380,223	2,220,834	0	145,756	658,752
El Dorado	Lake Tahoe	3,776	116,053	130,975	26,665	446,934	0	12,500	42,269
Fresno	State Center	209,931	1,405,576	2,243,194	223,978	1,390,017	0	265,871	1,362,604
	West Hills	25,756	208,569	396,462	126,521	338,747	0	36,444	178,919
Fresno		235,687	1,614,145	2,639,656	350,499	1,728,764	0	302,315	1,541,523
Humboldt	Redwoods	37,808	320,198	822,646	129,887	1,021,606	0	47,141	205,021
Imperial	Imperial	50,884	291,105	1,010,508	133,042	495,194	0	68,026	318,115
Kern	Kern	139,386	911,591	2,063,004	327,289	1,934,146	494,290	163,733	707,738
	West Kern	11,448	130,994	258,549	43,466	243,283	0	45,632	194,719
Kern		150,834	1,042,585	2,321,553	370,755	2,177,429	494,290	209,365	902,457
Lassen	Lassen	9,361	121,648	346,962	68,566	353,016	0	27,797	120,893
Los Angeles	Antelope Valley	58,959	430,633	764,209	277,103	698,939	0	127,140	542,529
	Cerritos	109,137	826,127	965,722	93,612	1,108,374	0	116,555	523,565
	Citrus	47,151	387,951	768,469	210,200	556,563	0	64,219	290,670
	Compton	58,187	353,991	1,098,052	756,418	260,425	0	150,584	642,575
	El Camino	53,586	676,750	1,424,005	242,240	1,056,749	0	146,494	675,116
	Glendale	84,704	588,350	1,520,465	55,356	1,511,927	0	190,944	782,625
	Long Beach	152,403	992,751	1,791,382	252,407	994,409	0	250,344	1,068,270
	Los Angeles	660,888	5,119,629	10,819,448	1,318,500	4,941,174	0	1,070,766	4,955,843
	Mt. San Antonio	107,461	821,747	816,034	130,560	1,507,993	0	117,847	522,517
	Pasadena Area	136,323	874,148	1,314,668	139,562	928,385	0	122,821	530,893
	Rio Hondo	54,144	520,013	1,303,441	107,814	525,979	0	76,359	344,063
	Santa Clarita	28,976	294,754	405,178	53,646	531,256	0	23,961	84,510
	Santa Monica	74,711	776,770	1,090,305	98,357	1,177,733	0	87,954	400,181
Los Angeles		1,626,630	12,663,614	24,081,378	3,735,775	15,799,906	0	2,545,988	11,363,357
Marin	Marin	20,318	229,542	467,623	44,954	1,374,358	0	28,228	94,436

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
Mendocino	Mendocino-Lake	32,326	199,393	391,399	62,582	325,807	0	0	60,074
Merced	Merced	51,932	280,183	1,236,135	194,923	620,311	0	127,593	695,220
Monterey	Hartnell	31,293	276,487	646,072	155,027	626,268	0	49,550	241,038
	Monterey Peninsula	17,155	219,644	801,473	104,629	730,994	0	26,269	116,232
Monterey		48,448	496,131	1,447,545	259,656	1,357,262	0	75,819	357,270
Napa	Napa Valley	24,046	221,041	588,739	80,522	1,937,342	0	24,752	91,494
Orange	Coast	139,639	1,169,857	2,508,775	164,521	2,357,999	851,879	133,603	584,892
	North Orange County	115,845	1,006,374	1,990,771	271,923	1,956,601	0	140,259	598,082
	Rancho Santiago	90,557	963,397	1,748,072	127,485	1,650,363	0	170,506	844,799
	South Orange	53,441	587,250	1,297,820	132,343	1,560,176	0	34,453	149,806
Orange		399,482	3,726,878	7,545,438	696,272	7,525,139	851,879	478,821	2,177,579
Placer	Sierra	55,748	427,888	659,341	98,204	969,956	0	47,800	203,827
Plumas	Feather River	4,856	94,100	208,560	39,037	273,230	0	12,500	53,846
Riverside	Desert	32,208	268,765	411,474	46,778	476,973	0	22,808	16,235
	Mt. San Jacinto	48,536	417,739	574,390	169,927	490,100	0	61,777	263,424
	Palo Verde	9,235	98,107	340,094	44,329	213,252	0	19,039	122,059
	Riverside	132,949	871,104	632,380	70,069	1,291,155	0	124,067	539,587
Riverside		222,928	1,655,715	1,958,338	331,103	2,471,460	0	227,691	941,305
Sacramento	Los Rios	334,101	1,973,540	3,622,531	541,730	2,935,737	0	507,516	1,796,949
San Bernardino	Barstow	16,096	137,287	397,530	97,485	193,925	0	21,533	93,076
	Chaffey	55,406	384,870	748,898	117,765	1,154,108	0	81,577	352,616
	Copper Mt.	10,973	123,078	170,534	59,082	196,842	0	14,039	62,059
	San Bernardino	107,079	779,897	1,034,099	183,845	955,716	0	166,157	717,738
	Victor Valley	73,823	551,512	790,332	158,036	661,298	0	105,691	450,678
San Bernardino		263,377	1,976,644	3,141,393	616,213	3,161,889	0	388,997	1,676,167
San Diego	Grossmont-Cuyamaca	85,292	735,604	1,400,069	253,935	1,331,805	0	101,450	558,391
	Mira Costa	25,192	238,789	620,315	99,367	479,085	0	43,619	199,968
	Palomar	38,296	499,388	1,017,570	102,457	853,582	0	59,991	279,471
	San Diego	170,943	1,625,330	1,999,507	196,409	3,294,807	0	476,978	1,054,161
	Southwestern	94,065	637,960	1,836,083	173,251	934,125	0	68,462	319,529
San Diego		413,788	3,737,071	6,873,544	825,419	6,893,404	0	750,500	2,411,520

CALIFORNIA COMMUNITY COLLEGES Exhibit B-2A
CATEGORICAL APPORTIONMENTS - PART 1
2004-2005 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
San Francisco	San Francisco	96,645	945,498	1,533,782	60,230	2,300,811	0	171,557	750,600
San Joaquin	San Joaquin Delta	106,922	688,229	1,563,049	277,122	1,182,570	0	175,855	753,857
San Luis Obispo	San Luis Obispo	40,063	328,028	407,953	112,559	727,175	0	25,789	136,418
San Mateo	San Mateo	75,866	745,553	1,494,501	109,773	1,487,620	0	38,871	171,573
Santa Barbara	Allan Hancock	41,991	287,055	603,711	241,653	757,330	0	68,238	392,912
	Santa Barbara	61,800	400,019	987,387	90,200	881,572	0	40,894	215,942
Santa Barbara		103,791	687,074	1,591,098	331,853	1,638,902	0	109,132	608,854
Santa Clara	Foothill-DeAnza	84,495	943,126	1,595,477	136,516	3,970,772	0	67,731	308,737
	Gavilan	19,536	204,998	447,027	114,505	649,574	0	19,045	84,318
	San Jose-Evergreen	89,284	644,991	1,575,910	132,353	815,789	0	110,155	693,877
	West Valley-Mission	37,881	526,901	1,133,306	126,494	1,225,301	292,468	48,780	246,380
Santa Clara		231,196	2,320,016	4,751,720	509,868	6,661,436	292,468	245,711	1,333,312
Santa Cruz	Cabrillo	47,338	389,682	452,871	144,996	1,535,036	0	40,554	199,960
Shasta	Shasta-Tehama-Trinity	33,756	399,069	941,623	161,985	635,163	0	89,222	402,676
Siskiyou	Siskiyou	15,562	160,229	337,409	61,076	358,044	0	25,027	109,569
Solano	Solano	34,275	294,515	457,526	88,486	604,549	0	43,544	190,506
Sonoma	Sonoma	67,983	592,118	594,788	62,724	1,951,708	0	69,359	282,968
Stanislaus	Yosemite	82,891	640,818	1,455,256	155,897	1,660,851	0	151,913	678,226
Tulare	Sequoias	64,550	435,620	915,995	176,568	693,405	0	89,859	364,415
Ventura	Ventura	118,378	1,048,011	1,920,704	276,544	2,388,571	0	96,539	358,883
Yuba	Yuba	52,706	387,121	954,628	215,274	641,664	0	111,000	389,319
		5,461,100	44,538,000	86,068,993	12,720,279	83,313,363	1,638,637	8,000,000	34,580,000

CATEGORICAL APPORTIONMENTS - PART 2

2004-05 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	PART-TIME FACULTY ALLOCATION	TELECOM AND TECHNOLOGY	INSTRUCT EQUIP & SCHED MAINT BLOCK GRANT	PART-TIME FACULTY INSURANCE	PART-TIME FACULTY OFFICE
Alameda	Chabot-Las Positas	732,230	0	18,567	729,253	122,612	347,192	0	0
	Ohlone	398,541	0	13,081	366,647	53,103	174,844	0	0
	Peralta	1,098,631	10,533	20,162	789,302	228,818	399,238	22,225	80,504
Alameda		2,229,402	10,533	51,810	1,885,202	404,533	921,274	22,225	80,504
Butte	Butte	368,589	180,462	15,762	552,370	6,469,568	259,176	0	0
Contra Costa	Contra Costa	1,223,602	25,261	29,489	1,458,983	175,715	671,571	113,518	295,407
El Dorado	Lake Tahoe	116,925	24,799	8,522	97,197	53,103	37,987	0	0
Fresno	State Center	1,006,515	27,045	24,814	1,105,044	122,612	537,005	0	0
	West Hills	157,086	12,350	10,232	162,981	53,103	90,218	0	0
Fresno		1,163,601	39,395	35,046	1,268,025	175,715	627,223	0	0
Humboldt	Redwoods	218,213	2,179	11,268	263,346	53,103	119,724	3,667	161,390
Imperial	Imperial	242,242	0	11,080	238,509	53,103	118,155	0	0
Kern	Kern	845,673	24,337	20,260	796,395	175,715	396,713	0	0
	West Kern	299,101	7,694	8,578	97,197	53,103	39,929	0	0
Kern		1,144,774	32,031	28,838	893,592	228,818	436,642	0	0
Lassen	Lassen	100,746	8,850	9,034	114,640	53,103	46,574	0	0
Los Angeles	Antelope Valley	366,798	19,582	13,989	398,122	53,103	209,964	26,650	76,895
	Cerritos	686,465	73,142	19,625	788,495	53,103	372,058	0	0
	Citrus	365,123	222,102	15,153	519,462	53,103	240,589	862	21,275
	Compton	322,845	0	11,597	288,448	53,103	136,503	0	0
	El Camino	793,946	0	21,628	848,408	53,103	422,260	0	0
	Glendale	439,552	520,880	18,421	702,164	53,103	349,006	14,735	262,358
	Long Beach	807,863	215,531	21,941	937,446	53,103	450,138	0	0
	Los Angeles	4,360,190	419,106	74,425	4,427,138	494,333	2,036,106	108,299	2,292,686
	Mt. San Antonio	831,582	868,959	24,252	1,141,544	53,103	522,963	18,845	77,775
	Pasadena Area	1,037,153	375,189	22,982	998,221	53,103	476,904	0	0
	Rio Hondo	653,252	45,537	16,074	534,759	53,103	273,987	4,079	0
	Santa Clarita	455,647	0	14,975	420,171	53,103	236,041	0	0
	Santa Monica	730,493	35,366	18,443	1,000,440	53,103	340,576	96,379	81,240
Los Angeles		11,850,909	2,795,394	293,505	13,004,818	1,131,569	6,067,095	269,849	2,812,229
Marin	Marin	260,633	156,951	11,030	324,991	53,103	111,532	36,487	87,332
Mendocino	Mendocino-Lake	161,170	16,709	9,250	124,209	53,103	60,275	0	0

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	PART-TIME FACULTY ALLOCATION	TELECOM AND TECHNOLOGY	INSTRUCT EQUIP & SCHED MAINT BLOCK GRANT	PART-TIME FACULTY INSURANCE	PART-TIME FACULTY OFFICE
Merced	Merced	332,255	151,535	13,565	409,045	53,103	196,062	0	0
Monterey	Hartnell	347,317	0	12,248	319,164	53,103	152,421	0	0
	Monterey Peninsula	324,932	92,394	13,473	395,523	53,103	194,163	0	9,764
Monterey		672,249	92,394	25,721	714,687	106,206	346,584	0	9,764
Napa	Napa Valley	261,954	137,369	11,400	263,385	53,103	127,393	0	22,064
Orange	Coast	1,468,132	102,069	29,911	1,584,432	175,715	689,454	0	0
	North Orange County	1,053,628	1,123,191	30,817	1,561,487	122,612	708,590	8,996	668,505
	Rancho Santiago	1,378,456	2,173,867	27,934	1,381,015	122,612	623,762	0	0
	South Orange	916,008	79,152	23,339	1,005,110	106,206	489,203	0	0
Orange		4,816,224	3,478,279	112,001	5,532,044	527,145	2,511,009	8,996	668,505
Placer	Sierra	581,675	4,260	16,901	564,871	53,103	293,787	0	48,527
Plumas	Feather River	51,248	0	8,254	97,197	53,103	28,712	0	8,180
Riverside	Desert	295,117	141,266	12,058	282,131	53,103	148,214	0	17,039
	Mt. San Jacinto	362,541	48,277	13,024	327,277	53,103	172,599	0	0
	Palo Verde	339,847	40,451	8,350	97,197	53,103	35,457	0	0
	Riverside	937,520	5,184	23,654	1,083,773	53,103	498,104	9,451	152,757
Riverside		1,935,025	235,178	57,086	1,790,378	212,412	854,374	9,451	169,796
Sacramento	Los Rios	2,667,217	0	40,004	1,997,475	228,818	983,389	120,785	229,899
San Bernardino	Barstow	123,931	15,322	8,863	97,197	53,103	50,517	0	0
	Chaffey	552,533	164,315	16,930	591,547	53,103	293,278	0	0
	Copper Mt.	70,183	18,162	8,321	97,197	53,103	31,471	0	0
	San Bernardino	616,358	0	17,301	639,324	122,612	303,287	0	0
	Victor Valley	325,685	33,054	13,158	398,461	53,103	180,422	0	0
San Bernardino		1,683,690	230,853	64,573	1,823,726	335,024	858,975	0	0
San Diego	Grossmont-Cuyamaca	785,416	114,056	19,979	780,847	122,612	388,563	0	0
	Mira Costa	333,689	238,547	12,466	337,144	53,103	161,259	2,232	18,871
	Palomar	781,987	270,412	20,667	838,297	53,103	406,682	0	0
	San Diego	1,599,750	2,670,708	36,114	1,926,575	175,715	878,336	177,234	0
	Southwestern	599,203	83,577	17,631	653,332	53,103	320,598	1,218	0
San Diego		4,100,045	3,377,300	106,857	4,536,195	457,636	2,155,438	180,684	18,871
San Francisco	San Francisco	1,279,989	2,289,244	32,764	1,686,620	69,509	778,114	0	0
San Joaquin	San Joaquin Delta	553,114	162,598	18,064	668,433	53,103	331,726	0	0

CATEGORICAL APPORTIONMENTS - PART 2

2004-05 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	PART-TIME FACULTY ALLOCATION	TELECOM AND TECHNOLOGY	INSTRUCT EQUIP & SCHED MAINT BLOCK GRANT	PART-TIME FACULTY INSURANCE	PART-TIME FACULTY OFFICE
San Luis Obispo	San Luis Obispo	338,765	396	13,729	388,356	53,103	197,113	30,854	57,285
San Mateo	San Mateo	960,648	0	21,289	938,479	175,715	429,744	12,236	269,694
Santa Barbara	Allan Hancock	390,043	257,600	13,919	418,022	53,103	200,912	0	9,334
	Santa Barbara	441,299	480,924	17,533	624,301	53,103	320,280	0	0
Santa Barbara		831,342	738,524	31,452	1,042,323	106,206	521,192	0	9,334
Santa Clara	Foothill-DeAnza	1,304,197	58,052	30,453	1,475,772	106,206	707,265	83,963	288,343
	Gavilan	236,187	15,190	10,619	206,293	53,103	98,812	0	0
	San Jose-Evergreen	844,674	0	17,848	666,535	122,612	316,888	9,867	416,132
	West Valley-Mission	775,179	231	20,100	785,215	106,206	394,414	1,395	443,119
Santa Clara		3,160,237	73,473	79,020	3,133,815	388,127	1,517,379	95,225	1,147,594
Santa Cruz	Cabrillo	440,853	7,925	15,505	495,146	53,103	247,106	18,560	45,774
Shasta	Shasta-Tehama-Trinity	292,447	29,092	12,678	368,306	53,103	155,408	0	0
Siskiyou	Siskiyou	104,944	0	9,128	117,425	53,103	56,370	0	0
Solano	Solano	378,506	37,347	13,519	373,804	53,103	189,426	0	0
Sonoma	Sonoma	826,474	306,802	21,810	920,304	53,103	442,509	77,463	1,029,851
Stanislaus	Yosemite	601,705	136,775	19,454	753,662	122,612	373,652	0	0
Tulare	Sequoias	339,920	8,156	13,295	396,558	53,103	184,307	0	0
Ventura	Ventura	1,021,351	20,242	25,480	1,207,516	175,715	558,523	0	0
Yuba	Yuba	378,631	32,361	12,067	382,368	53,103	148,480	0	0
		47,696,314	14,842,667	1,310,250	50,828,000	12,500,000	23,964,000	1,000,000	7,172,000

CALIFORNIA COMMUNITY COLLEGES Exhibit B-3B 16:14 Thursday, June 23, 2005
CATEGORICAL APPORTIONMENTS - PART 3
2004-2005 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	PLANT & INSTRUCTIONAL SUPPORT	ECONOMIC DEVELOPMENT	TITLE IB STATE LEADERSHIP	TITLE II TECHNICAL PREPARATION	TITLE IC ALLOCATIONS	TOTAL ECON DEV AND VTEA ALLOCATIONS
Alameda	Chabot-Las Positas	389,431	0	0	0	387,707	387,707
	Ohlone	196,115	585,750	0	51,600	88,432	725,782
	Peralta	447,809	237,698	0	68,800	438,387	744,885
Alameda		1,033,355	823,448	0	120,400	914,526	1,858,374
Butte	Butte	290,706	724,737	585,340	34,400	633,744	1,978,221
Contra Costa	Contra Costa	753,273	1,293,119	0	34,400	595,948	1,923,467
El Dorado	Lake Tahoe	100,000	0	0	68,800	117,789	186,589
Fresno	State Center	602,336	899,238	150,000	103,200	1,374,235	2,526,673
	West Hills	101,193	174,108	50,000	0	227,588	451,696
Fresno		703,529	1,073,346	200,000	103,200	1,601,823	2,978,369
Humboldt	Redwoods	134,289	147,112	0	68,800	243,478	459,390
Imperial	Imperial	132,529	58,823	0	0	376,260	435,083
Kern	Kern	444,976	801,426	0	206,400	414,371	1,422,197
	West Kern	100,000	145,054	0	0	350,404	495,458
Kern		544,976	946,480	0	206,400	764,775	1,917,655
Lassen	Lassen	100,000	0	0	17,200	101,472	118,672
Los Angeles	Antelope Valley	235,508	58,823	0	0	438,746	497,569
	Cerritos	417,322	416,573	0	68,800	717,911	1,203,284
	Citrus	269,859	178,875	0	68,800	289,086	536,761
	Compton	153,110	58,823	0	34,400	260,267	353,490
	El Camino	473,631	949,340	0	51,600	715,802	1,716,742
	Glendale	391,465	63,937	0	68,800	467,116	599,853
	Long Beach	504,901	1,231,919	100,000	68,800	673,740	2,074,459
	Los Angeles	2,283,815	2,806,224	0	17,200	4,978,471	7,801,895
	Mt. San Antonio	586,585	739,737	93,750	68,800	1,098,077	2,000,364
	Pasadena Area	534,923	492,143	0	51,600	472,008	1,015,751
	Rio Hondo	307,320	842,315	226,240	68,800	341,179	1,478,534
	Santa Clarita	264,757	975,644	0	68,800	202,450	1,246,894
	Santa Monica	382,010	358,823	0	51,600	516,314	926,737
Los Angeles		6,805,206	9,173,176	419,990	688,000	11,171,167	21,452,333
Marin	Marin	125,101	258,857	0	68,800	79,050	406,707

CATEGORICAL APPORTIONMENTS - PART 3

2004-2005 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	PLANT & INSTRUCTIONAL SUPPORT	ECONOMIC DEVELOPMENT	TITLE IB STATE LEADERSHIP	TITLE II TECHNICAL PREPARATION	TITLE IC ALLOCATIONS	TOTAL ECON DEV AND VTEA ALLOCATIONS
Mendocino	Mendocino-Lake	100,000	149,987	0	68,800	173,003	391,790
Merced	Merced	219,915	452,371	0	34,400	348,968	835,739
Monterey	Hartnell	170,964	647,821	0	68,800	231,987	948,608
	Monterey Peninsula	217,784	58,823	0	34,400	145,171	238,394
Monterey		388,748	706,644	0	103,200	377,158	1,187,002
Napa	Napa Valley	142,892	276,164	0	68,800	152,892	497,856
Orange	Coast	773,332	63,937	200,000	206,400	757,908	1,228,245
	North Orange County	794,795	1,441,268	0	103,200	802,258	2,346,726
	Rancho Santiago	699,648	750,998	0	103,200	1,050,764	1,904,962
	South Orange	548,719	416,573	0	68,800	278,133	763,506
Orange		2,816,494	2,672,776	200,000	481,600	2,889,063	6,243,439
Placer	Sierra	329,528	840,748	150,000	68,800	346,903	1,406,451
Plumas	Feather River	100,000	0	0	0	0	0
Riverside	Desert	166,246	711,638	0	0	245,184	956,822
	Mt. San Jacinto	193,597	63,937	0	68,800	352,918	485,655
	Palo Verde	100,000	0	0	0	63,630	63,630
	Riverside	558,702	684,187	65,500	103,200	1,044,839	1,897,726
Riverside		1,018,545	1,459,762	65,500	172,000	1,706,571	3,403,833
Sacramento	Los Rios	1,103,026	1,607,872	93,750	275,200	1,819,176	3,795,998
San Bernardino	Barstow	100,000	0	0	0	91,843	91,843
	Chaffey	328,958	383,338	0	0	592,177	975,515
	Copper Mt.	100,000	0	0	0	0	0
	San Bernardino	340,185	356,375	0	0	684,918	1,041,293
	Victor Valley	202,372	58,823	0	0	430,935	489,758
San Bernardino		1,071,515	798,536	0	0	1,799,873	2,598,409
San Diego	Grossmont-Cuyamaca	435,834	783,542	202,720	137,600	476,183	1,600,045
	Mira Costa	180,878	50,000	0	68,800	156,573	275,373
	Palomar	456,157	63,937	0	51,600	268,706	384,243
	San Diego	985,193	1,278,768	0	206,400	2,387,786	3,872,954
	Southwestern	359,601	378,248	0	68,800	640,298	1,087,346
San Diego		2,417,663	2,554,495	202,720	533,200	3,929,546	7,219,961

CATEGORICAL APPORTIONMENTS - PART 3
2004-2005 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	PLANT & INSTRUCTIONAL SUPPORT	ECONOMIC DEVELOPMENT	TITLE IB STATE LEADERSHIP	TITLE II TECHNICAL PREPARATION	TITLE IC ALLOCATIONS	TOTAL ECON DEV AND VTEA ALLOCATIONS
San Francisco	San Francisco	872,777	1,363,048	0	51,600	1,337,695	2,752,343
San Joaquin	San Joaquin Delta	372,083	199,373	0	68,800	709,517	977,690
San Luis Obispo	San Luis Obispo	221,094	283,540	0	68,800	297,705	650,045
San Mateo	San Mateo	482,026	916,165	222,080	103,200	291,015	1,532,460
Santa Barbara	Allan Hancock	225,355	178,875	100,000	34,400	628,560	941,835
	Santa Barbara	359,245	507,282	0	68,800	568,655	1,144,737
Santa Barbara		584,600	686,157	100,000	103,200	1,197,215	2,086,572
Santa Clara	Foothill-DeAnza	793,309	361,290	0	34,400	421,575	817,265
	Gavilan	110,833	319,425	0	51,600	122,727	493,752
	San Jose-Evergreen	355,440	646,323	93,750	68,800	426,895	1,235,768
	West Valley-Mission	442,397	2,258,461	0	51,600	304,617	2,614,678
Santa Clara		1,701,979	3,585,499	93,750	206,400	1,275,814	5,161,463
Santa Cruz	Cabrillo	277,168	199,373	175,000	68,800	153,027	596,200
Shasta	Shasta-Tehama-Trinity	174,314	84,393	0	0	366,116	450,509
Siskiyou	Siskiyou	100,000	0	0	0	98,936	98,936
Solano	Solano	212,471	199,373	0	68,800	183,618	451,791
Sonoma	Sonoma	496,344	306,046	0	68,800	542,081	916,927
Stanislaus	Yosemite	419,110	496,473	84,840	68,800	959,549	1,609,662
Tulare	Sequoias	206,729	211,023	0	68,800	396,999	676,822
Ventura	Ventura	626,471	1,041,330	100,640	68,800	624,767	1,835,537
Yuba	Yuba	166,544	199,373	0	68,800	465,590	733,763
		27,345,000	35,789,619	2,693,610	4,300,000	39,042,829	81,826,058

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CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 1
2003-2004 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2A (REVISED 6/29/04)

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
Alameda	Chabot-Las Positas	30,174	534,318	754,618	112,548	1,061,590	0	61,564	269,468
	Ohlone	7,169	236,110	328,977	50,798	801,738	0	17,149	75,026
	Peralta	64,608	1,060,155	2,402,905	473,215	1,996,336	0	275,294	1,302,412
Alameda		101,951	1,830,583	3,486,500	636,561	3,859,664	0	354,007	1,646,906
Butte	Butte	38,419	475,042	1,126,562	205,819	638,675	0	154,466	673,081
Contra Costa	Contra Costa	48,963	894,397	2,209,449	383,111	1,954,431	0	151,834	681,844
El Dorado	Lake Tahoe	3,355	112,786	126,423	27,021	457,441	0	12,500	38,271
Fresno	State Center	128,454	1,350,159	2,195,712	228,867	1,370,483	0	249,153	1,071,090
	West Hills	15,644	200,091	363,470	106,444	344,684	0	38,362	165,819
Fresno		144,098	1,550,250	2,559,182	335,311	1,715,167	0	287,515	1,236,909
Humboldt	Redwoods	22,668	311,855	786,760	129,569	1,021,081	0	49,622	215,812
Imperial	Imperial	18,255	241,853	955,717	116,601	492,963	0	71,606	313,291
Kern	Kern	90,847	925,100	1,986,698	331,999	1,900,719	482,657	169,730	742,572
	West Kern	5,271	121,137	252,906	44,677	226,107	0	43,183	184,359
Kern		96,118	1,046,237	2,239,604	376,676	2,126,826	482,657	212,913	926,931
Lassen	Lassen	5,152	120,231	319,709	70,476	326,276	0	29,824	131,813
Los Angeles	Antelope Valley	30,283	405,418	699,722	287,653	647,951	0	120,317	445,664
	Cerritos	69,659	826,767	990,836	99,051	1,010,596	0	110,300	476,773
	Citrus	25,251	365,432	744,957	183,227	517,354	0	60,773	387,834
	Compton	34,775	356,404	1,084,812	775,322	250,924	0	142,503	608,387
	El Camino	41,750	602,464	1,291,831	241,114	1,070,094	0	138,632	591,857
	Glendale	54,701	606,943	1,498,292	56,125	1,545,834	0	180,697	771,449
	Long Beach	95,125	932,915	1,779,763	210,836	911,662	0	236,909	1,011,434
	Los Angeles	376,140	4,427,329	10,432,837	1,265,525	4,843,658	0	1,027,763	4,738,229
	Mt. San Antonio	60,899	827,532	761,908	132,028	1,471,422	0	111,523	499,199
	Pasadena Area	71,451	808,985	1,331,463	132,900	938,561	0	126,805	690,405
	Rio Hondo	41,706	521,063	1,272,699	105,301	471,137	0	74,373	325,454
	Santa Clarita	17,048	257,814	382,907	50,470	510,487	0	19,061	88,846
	Santa Monica	54,837	829,670	1,114,468	99,437	1,079,476	0	92,024	406,876
Los Angeles		973,625	11,768,736	23,386,495	3,638,989	15,269,156	0	2,441,680	11,042,407
Marin	Marin	10,920	248,178	440,397	33,703	1,294,856	0	29,714	130,006
Mendocino	Mendocino-Lake	17,585	194,574	379,252	64,326	303,938	0	0	63,236

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 1
2003-2004 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2A (REVISED 6/29/04)

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
Merced	Merced	32,967	364,851	1,218,240	197,694	617,728	0	134,308	702,600
Monterey	Hartnell	21,802	263,219	631,652	152,476	637,379	0	40,580	191,140
	Monterey Peninsula	9,908	245,785	786,904	106,319	702,060	0	23,607	103,041
Monterey		31,710	509,004	1,418,556	258,795	1,339,439	0	64,187	294,181
Napa	Napa Valley	12,065	224,411	529,448	80,597	1,697,902	0	26,055	113,991
Orange	Coast	86,875	1,161,283	2,384,096	166,934	2,267,771	831,833	125,778	485,591
	North Orange Count	66,553	1,149,520	1,918,012	268,217	1,842,243	0	132,732	566,262
	Rancho Santiago	60,462	939,966	1,613,996	128,567	1,664,362	0	179,480	796,300
	South Orange	30,252	611,148	1,252,094	139,150	1,466,088	0	36,043	157,691
Orange		244,142	3,861,917	7,168,198	702,868	7,240,464	831,833	474,033	2,005,844
Placer	Sierra	29,878	410,064	606,586	77,526	900,538	0	45,235	192,983
Plumas	Feather River	2,711	97,861	194,738	39,623	278,717	0	12,500	26,407
Riverside	Desert	21,578	259,717	399,065	60,231	428,940	0	47,693	108,668
	Mt. San Jacinto	22,661	412,718	566,496	168,743	454,060	0	58,462	309,409
	Palo Verde	4,469	114,338	302,342	45,875	188,880	0	13,286	98,757
	Riverside	72,999	827,643	619,659	76,976	1,192,880	0	130,597	567,986
Riverside		121,707	1,614,416	1,887,562	351,825	2,264,760	0	250,038	1,084,820
Sacramento	Los Rios	158,465	1,944,080	3,208,574	460,522	2,791,205	0	516,569	2,142,760
San Bernardino	Barstow	8,485	149,091	382,334	100,201	171,980	0	21,870	93,348
	Chaffey	40,619	302,157	749,565	99,176	1,066,239	0	81,769	355,097
	Copper Mountain	6,971	119,498	165,246	36,643	182,866	0	13,286	58,757
	San Bernardino	54,434	821,696	987,344	167,137	958,100	0	159,652	681,118
	Victor Valley	35,427	459,791	764,275	147,351	632,991	0	100,019	426,700
San Bernardino		145,936	1,852,233	3,048,764	550,508	3,012,176	0	376,596	1,615,020
San Diego	Grossmont-Cuyamaca	50,790	648,975	1,379,833	254,062	1,068,226	0	108,564	529,353
	Mira Costa	11,390	207,031	610,400	100,090	447,122	0	40,934	177,861
	Palomar	27,078	464,960	1,010,175	103,143	796,258	0	63,148	149,975
	San Diego	107,483	1,632,122	1,937,181	199,991	3,164,697	0	502,082	1,245,683
	Southwestern	57,049	604,987	1,766,991	135,051	843,944	0	72,629	315,294
San Diego		253,790	3,558,075	6,704,580	792,337	6,320,247	0	787,357	2,418,166
San Francisco	San Francisco	51,297	873,305	1,488,738	55,209	2,060,514	0	180,586	790,105

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 1
2003-2004 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2A (REVISED 6/29/04)

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
San Joaquin	San Joaquin Delta	63,831	632,768	1,606,267	284,843	1,114,107	0	185,110	793,534
San Luis Obispo	San Luis Obispo	24,670	308,115	397,327	113,526	697,524	0	24,405	116,883
San Mateo	San Mateo	35,734	683,337	1,411,168	105,804	1,388,069	0	40,917	181,758
Santa Barbara	Allan Hancock	29,406	352,070	547,550	218,676	690,332	0	71,829	338,115
	Santa Barbara	30,438	447,284	988,858	105,055	831,879	0	42,041	235,965
Santa Barbara		59,844	799,354	1,536,408	323,731	1,522,211	0	113,870	574,080
Santa Clara	Foothill-DeAnza	37,237	870,156	1,542,267	125,363	4,010,246	0	71,296	368,508
	Gavilan	13,194	186,707	427,972	102,051	614,918	0	20,047	87,703
	San Jose-Evergreen	37,841	336,750	1,533,277	129,286	793,866	0	109,880	551,653
	West Valley-Mission	25,328	473,302	1,034,710	102,001	1,180,733	285,584	46,940	286,314
Santa Clara		113,600	1,866,915	4,538,226	458,701	6,599,763	285,584	248,163	1,294,178
Santa Cruz	Cabrillo	24,661	368,276	439,685	115,717	1,466,499	0	37,952	214,042
Shasta	Shasta-Tehama-Trinity	31,958	406,507	899,187	166,498	597,944	0	91,366	399,728
Siskiyou	Siskiyou	9,338	156,762	323,159	70,608	333,575	0	26,344	85,030
Solano	Solano	17,985	223,396	441,368	71,501	560,728	0	45,836	200,533
Sonoma	Sonoma	35,979	561,946	556,110	65,719	1,691,116	0	73,009	321,707
Stanislaus	Yosemite	46,626	610,289	1,391,378	155,337	1,835,463	0	159,908	693,067
Tulare	Sequoias	41,540	431,289	890,506	176,122	702,062	0	86,613	374,386
Ventura	Ventura	70,222	990,785	1,795,560	295,781	2,364,162	0	89,462	456,230
Yuba	Yuba	40,275	502,322	954,614	231,444	656,808	0	113,900	387,460
		3,182,040	42,647,000	82,670,997	12,220,999	79,514,195	1,600,074	8,000,000	34,580,000

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 2
2003-2004 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2B (REVISED 6/29/04)

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	TELECOM AND TECHNOLOGY	INSTRUCT EQUIP & SCHED MAINT BLOCK GRANT	PART-TIME FACULTY ALLOCATION	PART-TIME FACULTY INSURANCE	PART-TIME FACULTY OFFICE
Alameda	Chabot-Las Positas	729,616	3,559	19,719	156,338	376,406	729,253	9,758	70,132
	Ohlone	348,023	0	13,291	64,234	178,538	366,647	0	0
	Peralta	1,030,879	5,892	21,203	284,806	419,156	789,302	26,842	76,827
Alameda		2,108,518	9,451	54,213	505,378	974,100	1,885,202	36,600	146,959
Butte	Butte	379,031	96,433	16,134	4,536,834	264,944	552,370	0	18,663
Contra Costa	Contra Costa	1,204,188	14,186	30,001	220,572	692,859	1,458,983	75,562	263,027
El Dorado	Lake Tahoe	120,676	15,102	8,845	64,234	41,422	97,197	0	0
Fresno	State Center	946,455	14,808	25,382	156,338	556,035	1,105,044	0	0
	West Hills	161,905	14,013	10,430	358,468	90,626	162,981	0	0
Fresno		1,108,360	28,821	35,812	514,806	646,661	1,268,025	0	0
Humboldt	Redwoods	220,985	0	11,605	64,234	125,023	263,346	3,277	153,872
Imperial	Imperial	248,836	0	11,158	64,234	114,559	238,509	0	0
Kern	Kern	822,934	12,820	20,610	220,572	392,897	796,395	0	0
	West Kern	302,087	3,197	8,747	64,234	40,245	97,197	0	6,176
Kern		1,125,021	16,017	29,357	284,806	433,142	893,592	0	6,176
Lassen	Lassen	104,066	7,274	9,459	64,234	58,816	114,640	0	0
Los Angeles	Antelope Valley	350,016	7,603	14,372	64,234	212,334	398,122	21,774	38,512
	Cerritos	665,983	37,737	20,045	64,234	391,251	788,495	0	0
	Citrus	363,449	121,228	15,870	64,234	258,863	519,462	1,454	13,395
	Compton	321,957	0	11,854	64,234	135,126	288,448	0	0
	El Camino	748,105	1,330	21,275	64,234	420,828	848,408	0	0
	Glendale	412,182	318,586	19,296	64,234	365,661	702,164	13,479	248,587
	Long Beach	761,361	104,122	21,017	64,234	450,611	937,446	0	0
	Los Angeles	4,281,496	112,624	76,451	605,976	2,135,893	4,427,138	84,295	2,195,615
	Mt. San Antonio	791,334	481,698	25,811	64,234	563,069	1,141,544	19,479	68,939
	Pasadena Area	1,021,016	153,194	23,147	64,234	484,507	998,221	0	0
	Rio Hondo	661,814	109,478	16,062	64,234	269,188	534,759	4,165	0
	Santa Clarita	383,978	0	15,074	64,234	228,768	420,171	0	0
	Santa Monica	741,108	79,465	23,845	64,234	504,352	1,000,440	94,017	71,913
Los Angeles		11,503,799	1,527,065	304,119	1,376,784	6,420,451	13,004,818	238,663	2,636,961
Marin	Marin	268,205	108,649	11,795	64,234	127,742	324,991	28,101	89,840
Mendocino	Mendocino-Lake	155,445	0	9,522	64,234	62,043	124,209	0	8,965

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 2
2003-2004 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2B (REVISED 6/29/04)

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	TELECOM AND TECHNOLOGY	INSTRUCT EQUIP & SCHED MAINT BLOCK GRANT	PART-TIME FACULTY ALLOCATION	PART-TIME FACULTY INSURANCE	PART-TIME FACULTY OFFICE
Merced	Merced	341,727	87,189	13,980	64,234	200,417	409,045	0	0
Monterey	Hartnell	346,015	0	12,563	64,234	158,493	319,164	0	0
	Monterey Peninsula	334,214	48,830	13,697	64,234	192,782	395,523	0	7,019
Monterey		680,229	48,830	26,260	128,468	351,275	714,687	0	7,019
Napa	Napa Valley	250,152	65,469	11,803	64,234	131,639	263,385	0	22,831
Orange	Coast	1,471,047	68,752	32,972	220,572	787,050	1,584,432	98,624	0
	North Orange Count	1,072,661	678,141	32,180	156,338	760,149	1,561,487	8,228	572,603
	Rancho Santiago	1,347,023	1,185,930	28,812	156,338	654,409	1,381,015	0	0
	South Orange	873,778	46,100	23,863	128,468	492,260	1,005,110	8,083	0
Orange		4,764,509	1,978,923	117,827	661,716	2,693,868	5,532,044	114,935	572,603
Placer	Sierra	554,686	0	16,965	64,234	290,423	564,871	0	50,046
Plumas	Feather River	52,417	0	8,570	64,234	30,754	97,197	0	8,533
Riverside	Desert	272,972	78,066	12,292	64,234	146,921	282,131	0	13,883
	Mt. San Jacinto	355,079	23,672	13,026	64,234	171,955	327,277	0	0
	Palo Verde	117,160	22,532	8,648	64,234	41,237	97,197	0	0
	Riverside	884,858	0	24,690	64,234	523,737	1,083,773	7,238	127,803
Riverside		1,630,069	124,270	58,656	256,936	883,850	1,790,378	7,238	141,686
Sacramento	Los Rios	2,365,062	0	39,960	514,806	997,632	1,997,475	94,242	211,765
San Bernardino	Barstow	104,525	9,711	9,037	64,234	46,495	97,197	0	0
	Chaffey	523,614	124,442	17,142	64,234	294,310	591,547	0	0
	Copper Mountain	72,691	0	8,564	64,234	32,744	97,197	0	0
	San Bernardino	628,896	0	18,153	156,338	320,063	639,324	0	0
	Victor Valley	316,309	29,011	13,622	64,234	183,265	398,461	0	0
San Bernardino		1,646,035	163,164	66,518	413,274	876,877	1,823,726	0	0
San Diego	Grossmont-Cuyamaca	730,711	51,232	20,581	156,338	400,664	780,847	0	0
	Mira Costa	332,894	126,135	12,734	64,234	170,775	337,144	2,919	12,706
	Palomar	793,971	132,494	20,801	64,234	404,933	838,297	0	0
	San Diego	1,522,320	1,583,307	38,956	220,572	943,152	1,926,575	155,824	68,397
	Southwestern	562,613	11,231	18,515	64,234	328,023	653,332	1,371	0
San Diego		3,942,509	1,904,399	111,587	569,612	2,247,547	4,536,195	160,114	81,103
San Francisco	San Francisco	919,159	1,277,421	34,363	92,104	802,498	1,686,620	0	67,529

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 2
2003-2004 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2B (REVISED 6/29/04)

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	TELECOM AND TECHNOLOGY	INSTRUCT EQUIP & SCHED MAINT BLOCK GRANT	PART-TIME FACULTY ALLOCATION	PART-TIME FACULTY INSURANCE	PART-TIME FACULTY OFFICE
San Joaquin	San Joaquin Delta	527,481	95,258	18,653	64,234	335,865	668,433	0	0
San Luis Obispo	San Luis Obispo	311,519	0	13,793	64,234	196,849	388,356	27,996	52,793
San Mateo	San Mateo	934,052	0	22,176	220,572	451,081	938,479	6,450	284,743
Santa Barbara	Allan Hancock	363,389	141,220	14,232	64,234	205,788	418,022	0	7,061
	Santa Barbara	420,978	351,641	17,599	64,234	314,400	624,301	0	0
Santa Barbara		784,367	492,861	31,831	128,468	520,188	1,042,323	0	7,061
Santa Clara	Foothill-DeAnza	1,243,527	40,864	30,723	128,468	724,259	1,475,772	79,943	299,804
	Gavilan	233,659	0	10,802	64,234	100,353	206,293	0	0
	San Jose-Evergreen	803,353	0	17,859	156,338	323,837	666,535	10,671	395,738
	West Valley-Mission	736,335	45,063	20,759	128,468	400,786	785,215	1,397	423,142
Santa Clara		3,016,874	85,927	80,143	477,508	1,549,235	3,133,815	92,011	1,118,684
Santa Cruz	Cabrillo	428,936	2,868	15,668	64,234	251,487	495,146	21,240	45,128
Shasta	Shasta-Tehama-Trinity	300,865	21,201	13,161	64,234	174,725	368,306	0	13,800
Siskiyou	Siskiyou	107,070	0	9,354	64,234	57,547	117,425	0	0
Solano	Solano	361,167	21,650	13,509	64,234	182,850	373,804	0	21,772
Sonoma	Sonoma	849,090	170,334	22,221	64,234	452,317	920,304	69,056	1,109,817
Stanislaus	Yosemite	574,406	90,610	19,409	156,338	366,099	753,662	0	0
Tulare	Sequoias	322,196	0	13,623	64,234	187,819	396,558	0	6,378
Ventura	Ventura	1,026,438	18,747	26,166	220,572	570,048	1,207,516	24,515	24,246
Yuba	Yuba	389,340	21,495	13,249	64,234	176,348	382,368	0	0
		45,627,485	8,493,614	1,351,465	12,500,000	24,941,000	50,828,000	1,000,000	7,172,000

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 3
2003-2004 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-3B (REVISED 6/29/04)

COUNTY	DISTRICT	ECON. DEV. 0203 ONE TIME	ECON. DEV. ONGOING	TITLE II A STATE LEADERSHIP	TITLE III E TECHNICAL PREPARATION	TITLE IC ALLOCATIONS	TOTAL ECON DEV AND VTEA ALLOCATIONS
Alameda	Chabot-Las Positas	45,600	0	0	0	388,304	433,904
	Ohlone	0	49,882	0	36,000	92,613	178,495
	Peralta	0	219,812	0	334,000	819,567	1,373,379
Alameda		45,600	269,694	0	370,000	1,300,484	1,985,778
Butte	Butte	117,466	686,586	300,000	36,000	610,724	1,750,776
Contra Costa	Contra Costa	75,041	607,161	0	191,500	559,024	1,432,726
El Dorado	Lake Tahoe	0	0	0	72,000	164,211	236,211
Fresno	State Center	208,837	1,051,634	225,000	167,000	1,372,733	3,025,204
	West Hills	127,452	724,123	50,000	0	209,494	1,111,069
Fresno		336,289	1,775,757	275,000	167,000	1,582,227	4,136,273
Humboldt	Redwoods	0	49,882	0	54,000	247,525	351,407
Imperial	Imperial	0	49,882	0	0	266,773	316,655
Kern	Kern	97,330	890,189	0	216,000	638,456	1,841,975
	West Kern	0	183,522	0	0	354,179	537,701
Kern		97,330	1,073,711	0	216,000	992,635	2,379,676
Lassen	Lassen	45,178	254,887	0	36,000	139,942	476,007
Los Angeles	Antelope Valley	0	49,882	0	0	405,320	455,202
	Cerritos	27,189	389,742	0	83,500	470,781	971,212
	Citrus	62,453	169,930	0	83,500	287,881	603,764
	Compton	9,514	464,322	0	72,000	536,894	1,082,730
	El Camino	181,899	942,540	0	83,500	444,025	1,651,964
	Glendale	55,885	53,676	0	54,000	555,584	719,145
	Long Beach	99,199	559,672	0	83,500	816,592	1,558,963
	Los Angeles	310,438	1,588,179	0	532,000	3,681,706	6,112,323
	Mt. San Antonio	99,834	686,586	300,000	54,000	877,311	2,017,731
	Pasadena Area	54,378	408,712	0	54,000	630,715	1,147,805
	Rio Hondo	107,626	655,502	237,000	54,000	361,455	1,415,583
	Santa Clarita	27,189	229,297	0	83,500	173,602	513,588
	Santa Monica	53,276	49,882	0	54,000	687,436	844,594
Los Angeles		1,088,880	6,247,922	537,000	1,291,500	9,929,302	19,094,604
Marin	Marin	7,600	49,882	0	54,000	79,154	190,636

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 3
2003-2004 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-3B (REVISED 6/29/04)

COUNTY	DISTRICT	ECON. DEV. 0203 ONE TIME	ECON. DEV. ONGOING	TITLE II A STATE LEADERSHIP	TITLE III E TECHNICAL PREPARATION	TITLE IC ALLOCATIONS	TOTAL ECON DEV AND VTEA ALLOCATIONS
Mendocino	Mendocino-Lake	25,292	180,000	0	36,000	175,555	416,847
Merced	Merced	72,010	416,300	0	18,000	408,017	914,327
Monterey	Hartnell	81,789	557,897	0	83,500	168,976	892,162
	Monterey Peninsula	0	49,882	0	83,500	147,846	281,228
Monterey		81,789	607,779	0	167,000	316,822	1,173,390
Napa	Napa Valley	21,364	247,427	0	54,000	150,635	473,426
Orange	Coast	0	53,676	400,000	250,500	792,230	1,496,406
	North Orange Count	133,754	1,071,002	0	72,000	917,387	2,194,143
	Rancho Santiago	120,563	700,222	0	108,000	1,117,769	2,046,554
	South Orange	46,148	389,742	0	101,500	284,254	821,644
Orange		300,465	2,214,642	400,000	532,000	3,111,640	6,558,747
Placer	Sierra	87,868	512,862	400,000	36,000	353,807	1,390,537
Plumas	Feather River	7,600	0	0	0	0	7,600
Riverside	Desert	109,296	699,169	0	0	123,205	931,670
	Mt. San Jacinto	7,600	53,676	0	83,500	342,928	487,704
	Palo Verde	0	0	0	0	87,034	87,034
	Riverside	73,536	393,536	79,000	162,000	1,014,184	1,722,256
Riverside		190,432	1,146,381	79,000	245,500	1,567,351	3,228,664
Sacramento	Los Rios	371,697	1,431,364	631,000	162,000	1,658,452	4,254,513
San Bernardino	Barstow	0	0	0	0	113,627	113,627
	Chaffey	104,954	338,205	0	0	563,580	1,006,739
	Copper Mountain	0	0	0	0	0	0
	San Bernardino	61,978	324,930	0	0	515,437	902,345
	Victor Valley	5,534	56,102	0	0	505,372	567,008
San Bernardino		172,466	719,237	0	0	1,698,016	2,589,719
San Diego	Grossmont-Cuyamaca	68,313	389,742	79,000	167,000	495,561	1,199,616
	Mira Costa	0	0	0	83,500	96,425	179,925
	Palomar	0	53,676	0	36,000	277,838	367,514
	San Diego	187,545	918,502	0	250,500	2,313,018	3,669,565
	Southwestern	101,432	360,362	0	83,500	653,497	1,198,791
San Diego		357,290	1,722,282	79,000	620,500	3,836,339	6,615,411

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 3
2003-2004 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-3B (REVISED 6/29/04)

COUNTY	DISTRICT	ECON. DEV. 0203 ONE TIME	ECON. DEV. ONGOING	TITLE II A STATE LEADERSHIP	TITLE III E TECHNICAL PREPARATION	TITLE IC ALLOCATIONS	TOTAL ECON DEV AND VTEA ALLOCATIONS
San Francisco	San Francisco	184,497	1,160,130	0	54,000	1,188,066	2,586,693
San Joaquin	San Joaquin Delta	52,604	190,432	0	72,000	681,206	996,242
San Luis Obispo	San Luis Obispo	0	49,882	0	54,000	230,067	333,949
San Mateo	San Mateo	119,106	378,606	158,000	162,000	265,425	1,083,137
Santa Barbara	Allan Hancock	45,455	169,930	0	18,000	473,803	707,188
	Santa Barbara	108,361	389,742	0	83,500	544,147	1,125,750
Santa Barbara		153,816	559,672	0	101,500	1,017,950	1,832,938
Santa Clara	Foothill-DeAnza	59,094	393,816	0	72,000	439,771	964,681
	Gavilan	47,978	462,980	0	54,000	60,114	625,072
	San Jose-Evergreen	94,829	672,312	300,000	36,000	396,766	1,499,907
	West Valley-Mission	219,762	1,448,142	0	119,500	247,804	2,035,208
Santa Clara		421,663	2,977,250	300,000	281,500	1,144,455	5,124,868
Santa Cruz	Cabrillo	59,017	435,604	0	54,000	307,686	856,307
Shasta	Shasta-Tehama-Trinity	80,615	727,370	0	0	358,363	1,166,348
Siskiyou	Siskiyou	0	0	0	0	104,794	104,794
Solano	Solano	21,364	190,432	0	0	119,346	331,142
Sonoma	Sonoma	28,964	190,432	0	83,500	433,216	736,112
Stanislaus	Yosemite	37,579	226,415	118,500	36,000	706,172	1,124,666
Tulare	Sequoias	22,005	213,620	0	54,000	396,208	685,833
Ventura	Ventura	128,256	954,748	39,500	144,000	659,262	1,925,766
Yuba	Yuba	227,258	1,090,432	0	54,000	543,868	1,915,558
		5,038,401	29,608,663	3,317,000	5,509,500	37,304,719	80,778,283

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EXHIBIT B-2A

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 1
2002-2003 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (CalWORKS)	CALWORKS
Alameda	Chabot-Las Positas	15,515	79,265	747,110	118,471	1,058,679	0	64,804	267,086
	Fremont-Newark	4,616	20,686	338,316	53,472	789,579	0	18,052	48,179
	Peralta	33,023	220,650	2,442,800	445,382	1,993,679	0	289,783	1,330,802
Alameda		53,154	320,601	3,528,226	617,325	3,841,937	0	372,639	1,646,067
Butte	Butte-Glenn	20,338	95,464	1,153,987	197,368	670,271	0	161,943	908,506
Contra Costa	Contra Costa	18,523	118,970	2,301,679	399,878	1,937,332	0	159,232	696,678
El Dorado	Lake Tahoe	1,633	19,337	135,731	28,443	480,309	0	12,500	30,700
Fresno	State Center	122,624	318,683	2,173,127	240,912	1,349,300	0	237,330	1,013,322
	West Hills	10,834	37,165	353,128	112,046	361,590	0	39,136	171,219
Fresno		133,458	355,848	2,526,255	352,958	1,710,890	0	276,466	1,184,541
Humboldt	Redwoods	12,432	59,281	795,511	136,388	1,014,167	0	52,234	227,170
Imperial	Imperial	20,069	74,330	1,012,858	122,682	518,257	0	75,375	329,780
Kern	Kern	37,849	140,873	2,005,085	307,462	1,974,557	488,648	178,663	781,655
	West Kern	2,773	16,865	255,294	47,028	236,266	0	40,821	178,719
Kern		40,622	157,738	2,260,379	354,490	2,210,823	488,648	219,484	960,374
Lassen	Lassen	3,127	16,309	343,376	49,182	342,358	0	30,800	133,954
Los Angeles	Antelope Valley	17,276	85,077	705,086	284,925	637,795	0	113,736	455,549
	Cerritos	34,964	172,951	1,026,638	101,978	995,295	0	107,175	469,018
	Citrus	14,292	67,345	766,909	190,333	517,464	0	63,464	489,321
	Compton	16,901	77,045	1,092,608	816,128	263,062	0	134,709	589,774
	El Camino	21,786	139,714	1,366,147	253,804	1,053,589	0	131,049	603,750
	Glendale	40,144	111,348	1,468,476	54,199	1,521,889	0	190,285	697,848
	Long Beach	48,901	229,336	1,831,713	273,094	897,474	0	223,951	1,005,491
	Los Angeles	184,448	895,826	10,590,614	1,270,542	5,031,505	0	955,700	4,533,188
	Mt. San Antonio	31,113	149,543	782,900	138,977	1,448,961	0	105,423	575,225
	Pasadena	36,430	162,957	1,459,691	139,895	924,447	0	119,869	524,578
	Rio Hondo	23,619	117,171	1,309,461	105,334	468,972	0	86,076	342,583
	Santa Clarita	6,377	30,242	374,718	53,126	509,626	0	16,962	81,761
	Santa Monica	29,094	134,020	1,174,701	104,671	1,071,790	0	86,991	394,857
Los Angeles		505,345	2,372,575	23,949,662	3,787,006	15,341,869	0	2,335,390	10,762,943

EXHIBIT B-2A

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 1
2002-2003 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (CalWORKS)	CALWORKS
Marin	Marin	5,755	27,334	424,024	35,477	1,362,324	0	31,278	136,848
Mendocino	Mendocino-Lake	5,756	38,196	386,746	67,164	299,424	0	0	65,765
Merced	Merced	22,648	65,538	1,191,973	195,108	648,287	0	141,377	688,526
Monterey	Hartnell Joint	18,297	48,239	608,632	125,026	669,224	0	42,360	195,411
	Monterey Peninsula	11,340	24,357	801,117	111,915	735,753	0	24,775	108,464
Monterey		29,637	72,596	1,409,749	236,941	1,404,977	0	67,135	303,875
Napa	Napa Valley	6,135	30,164	564,154	84,839	1,670,961	0	27,426	119,990
Orange	Coast	43,081	222,483	2,313,018	160,050	2,331,302	842,158	130,303	570,096
	North Orange Count	61,633	171,790	1,948,846	288,685	1,846,216	0	125,472	581,938
	Rancho Santiago	30,553	166,525	1,615,893	131,701	1,654,104	0	188,926	875,160
	South Orange Count	16,073	75,688	1,285,649	146,474	1,462,861	0	37,940	128,490
Orange		151,340	636,486	7,163,406	726,910	7,294,483	842,158	482,641	2,155,684
Placer	Sierra Jt.	14,747	74,477	629,562	71,374	914,385	0	42,761	121,902
Plumas	Feather River	1,499	12,500	208,860	41,708	292,407	0	12,500	24,577
Riverside	Desert	10,540	42,383	422,718	94,980	433,833	0	50,203	94,136
	Mt. San Jacinto	12,738	74,870	603,152	172,256	446,683	0	55,264	241,779
	Palo Verde	1,550	12,500	294,889	34,786	197,910	0	12,559	81,959
	Riverside	25,770	165,999	618,044	81,027	1,174,448	0	137,471	597,880
Riverside		50,598	295,752	1,938,803	383,049	2,252,874	0	255,497	1,015,754
Sacramento	Los Rios	78,534	404,382	3,238,321	465,622	2,775,034	0	490,567	1,670,419
San Bernardino	Barstow	3,615	18,304	388,118	92,832	180,193	0	20,674	15,864
	Chaffey	37,004	99,292	753,117	107,344	1,056,354	0	81,871	434,513
	Copper Mountain	2,744	13,413	176,917	35,955	180,191	0	12,559	56,959
	San Bernardino	23,842	175,972	1,001,730	190,640	995,503	0	154,815	660,280
	Victor Valley	21,180	89,837	765,894	136,335	623,247	0	94,548	273,646
San Bernardino		88,385	396,818	3,085,776	563,106	3,035,488	0	364,467	1,441,262
San Diego	Grossmont-Cuyamaca	26,363	153,110	1,360,365	263,013	1,052,296	0	112,409	461,350
	Mira Costa	5,826	31,178	604,624	105,358	440,339	0	42,792	187,222
	Palomar	13,864	67,558	976,830	112,353	798,915	0	66,472	99,640
	San Diego	57,850	334,600	1,962,251	214,298	3,170,821	0	528,507	538,347

EXHIBIT B-2A

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 1
2002-2003 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (CalWORKS)	CALWORKS
San Diego	Southwestern	30,572	144,440	1,754,265	138,093	830,925	0	75,858	233,827
San Diego		134,475	730,886	6,658,335	833,115	6,293,296	0	826,038	1,520,386
San Francisco	San Francisco	26,107	114,210	1,528,879	58,115	2,142,576	0	190,091	831,689
San Joaquin	San Joaquin Delta	33,182	146,648	1,638,811	303,616	1,145,185	0	176,834	769,257
San Luis Obispo	San Luis Obispo Co	14,873	55,764	407,610	84,247	687,000	0	23,858	115,320
San Mateo	San Mateo County	16,874	89,003	1,418,262	111,372	1,388,111	0	43,071	198,446
Santa Barbara	Allan Hancock	15,896	76,915	554,441	230,185	679,348	0	75,609	846,807
	Santa Barbara	15,099	74,772	955,693	97,593	872,911	0	41,098	268,364
Santa Barbara		30,995	151,687	1,510,134	327,778	1,552,259	0	116,707	1,115,171
Santa Clara	Foothill-DeAnza	19,975	107,432	1,495,385	119,329	4,126,655	0	75,048	358,352
	Gavilan	4,604	27,759	439,080	99,831	645,605	0	21,102	117,319
	San Jose-Evergreen	25,610	149,412	1,540,482	119,942	802,788	0	109,730	580,087
	West Valley	13,453	74,786	1,037,365	93,722	1,209,433	289,129	49,411	259,182
Santa Clara		63,642	359,389	4,512,312	432,824	6,784,481	289,129	255,291	1,314,940
Santa Cruz	Cabrillo	13,109	67,296	452,786	121,807	1,469,529	0	39,949	230,781
Shasta	Shasta-Tehama-Trin	16,491	88,349	915,362	175,261	627,709	0	96,175	337,966
Siskiyou	Siskiyou Jt.	4,696	26,402	339,957	63,798	349,997	0	27,730	87,031
Solano	Solano	9,307	50,333	469,972	74,339	552,193	0	48,248	211,087
Sonoma	Sonoma County	18,991	92,127	558,171	63,915	1,664,376	0	76,852	303,740
Stanislaus	Yosemite	24,001	119,314	1,417,689	152,899	1,960,363	0	166,752	493,136
Tulare	Sequoias	21,434	93,141	906,984	185,392	700,195	0	86,552	378,846
Ventura	Ventura	34,193	165,705	1,780,217	269,304	2,435,401	0	98,064	503,337
Yuba	Yuba	16,126	105,050	923,652	195,200	689,598	0	116,076	377,833
		1,742,231	8,100,000	83,688,171	12,370,000	80,461,126	1,619,935	8,000,000	33,414,281

EXHIBIT B-2B

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 2
2002-2003 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	ONGOING INST. EQUIP. ALLOCATION	PART-TIME FACULTY INS.	PART-TIME FAC. OFFICE	PART-TIME FACULTY ALLOCATION	TELECOM AND TECHNOLOGY
Alameda	Chabot-Las Positas	715,212	0	19,822	249,637	0	0	817,805	160,820
	Fremont-Newark	369,197	0	13,815	123,779	0	0	411,168	75,474
	Peralta	1,016,281	5,399	20,723	283,283	0	0	885,146	296,853
Alameda		2,100,690	5,399	54,360	656,699	0	0	2,114,119	533,147
Butte	Butte-Glenn	373,635	100,186	16,826	186,988	0	0	619,444	143,867
Contra Costa	Contra Costa	1,263,887	25,484	31,196	476,685	123,686	304,027	1,636,146	250,082
El Dorado	Lake Tahoe	119,451	14,166	8,971	26,452	0	0	109,000	71,756
Fresno	State Center	945,437	11,659	25,852	370,604	0	0	1,239,229	199,188
	West Hills	173,284	17,800	10,699	65,314	0	0	182,771	87,933
Fresno		1,118,721	29,459	36,551	435,918	0	0	1,422,000	287,121
Humboldt	Redwoods	230,649	0	12,065	88,952	3,941	207,053	295,324	82,498
Imperial	Imperial	264,790	0	11,492	77,780	0	0	267,471	71,055
Kern	Kern	823,023	12,386	21,452	269,486	0	0	893,100	247,344
	West Kern	294,641	2,359	8,987	27,400	0	19,065	109,000	88,663
Kern		1,117,664	14,745	30,439	296,886	0	19,065	1,002,100	336,007
Lassen	Lassen	112,400	10,591	9,729	41,181	0	0	128,560	84,024
Los Angeles	Antelope Valley	356,269	3,011	14,308	135,287	0	0	446,466	79,040
	Cerritos	692,712	47,423	20,928	265,464	0	0	884,241	93,314
	Citrus	353,899	51,651	16,372	179,080	1,604	7,553	582,540	79,674
	Compton	341,759	0	12,312	99,880	0	0	323,474	66,228
	El Camino	725,365	13,454	21,698	287,741	0	0	951,429	95,654
	Glendale	400,961	309,473	20,077	255,625	30,350	319,479	787,427	94,380
	Long Beach	738,167	83,572	22,722	308,954	0	0	1,051,279	90,319
	Los Angeles	4,259,058	350,399	84,385	1,526,125	75,227	2,075,571	4,964,721	759,207
	Mt. San Antonio	783,689	522,958	27,258	405,623	25,411	81,182	1,280,161	92,954
	Pasadena	930,502	170,171	24,313	338,472	0	0	1,119,434	94,648
	Rio Hondo	699,504	119,351	16,196	181,018	6,818	0	599,694	77,325
	Santa Clarita	373,724	0	15,042	152,469	0	0	471,192	93,557
	Santa Monica	782,971	61,797	24,437	344,723	0	0	1,121,923	89,972
Los Angeles		11,438,580	1,733,260	320,048	4,480,461	139,410	2,483,785	14,583,981	1,806,272
Marin	Marin	285,178	94,683	12,311	95,622	0	0	364,454	67,800

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 2
2002-2003 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	ONGOING INST. EQUIP. ALLOCATION	PART-TIME FACULTY INS.	PART-TIME FAC. OFFICE	PART-TIME FACULTY ALLOCATION	TELECOM AND TECHNOLOGY
Mendocino	Mendocino-Lake	166,115	0	9,789	42,658	0	0	139,291	77,514
Merced	Merced	362,570	101,120	14,543	137,505	0	0	458,715	103,375
Monterey	Hartnell Joint	337,063	0	12,816	105,895	0	0	357,920	96,026
	Monterey Peninsula	354,661	204,688	14,218	133,325	0	9,103	443,551	64,903
Monterey		691,724	204,688	27,034	239,220	0	9,103	801,471	160,929
Napa	Napa Valley	255,400	61,381	12,071	87,714	0	25,609	295,368	69,303
Orange	Coast	1,478,330	52,392	32,766	516,841	149,305	0	1,776,828	265,696
	North Orange Count	1,112,493	643,377	33,608	528,913	9,125	736,081	1,751,097	189,130
	Rancho Santiago	1,392,085	1,094,836	31,115	483,388	0	0	1,548,710	158,687
	South Orange Count	861,943	46,711	23,974	334,681	13,755	0	1,127,159	127,421
Orange		4,844,851	1,837,316	121,463	1,863,823	172,185	736,081	6,203,794	740,934
Placer	Sierra Jt.	544,939	2,967	17,297	194,500	0	50,150	633,463	106,986
Plumas	Feather River	53,533	0	8,856	22,860	0	11,065	109,000	68,711
Riverside	Desert	266,525	73,144	12,458	99,804	0	23,224	316,390	85,512
	Mt. San Jacinto	353,092	11,229	13,039	112,366	0	0	367,018	109,255
	Palo Verde	126,183	24,698	8,798	26,372	0	0	109,000	79,589
	Riverside	857,429	0	27,020	379,990	13,263	172,364	1,215,375	116,663
Riverside		1,603,229	109,071	61,315	618,532	13,263	195,588	2,007,783	391,019
Sacramento	Los Rios	2,395,295	0	40,933	682,523	137,735	243,186	2,240,026	263,773
San Bernardino	Barstow	103,854	8,425	9,250	31,910	0	0	109,000	69,516
	Chaffey	508,572	110,599	17,656	204,249	0	0	663,378	103,045
	Copper Mountain	79,374	727	8,784	21,385	0	0	109,000	69,990
	San Bernardino	615,796	0	18,527	219,557	0	0	716,957	191,795
	Victor Valley	308,376	99,370	13,711	131,544	0	0	446,846	64,971
San Bernardino		1,615,972	219,121	67,928	608,645	0	0	2,045,181	499,317
San Diego	Grossmont-Cuyamaca	711,480	39,368	20,659	267,995	0	0	875,664	200,016
	Mira Costa	324,392	103,865	13,587	117,223	0	0	378,083	75,743
	Palomar	838,616	107,721	22,052	275,267	0	0	940,091	106,832
	San Diego	1,479,310	1,467,070	39,228	659,929	0	82,502	2,160,517	258,473
	Southwestern	550,634	24,564	18,434	222,450	1,595	0	732,666	106,474
San Diego		3,904,432	1,742,588	113,960	1,542,864	1,595	82,502	5,087,021	747,538

EXHIBIT B-2B

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 2
2002-2003 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	ONGOING INST. EQUIP. ALLOCATION	PART-TIME FACULTY INS.	PART-TIME FAC. OFFICE	PART-TIME FACULTY ALLOCATION	TELECOM AND TECHNOLOGY
San Francisco	San Francisco	970,393	1,104,152	35,374	553,140	0	76,591	1,891,425	131,001
San Joaquin	San Joaquin Delta	542,514	79,627	18,989	233,769	0	0	749,600	109,565
San Luis Obispo	San Luis Obispo Co	310,682	0	14,218	134,266	40,029	63,032	435,514	70,561
San Mateo	San Mateo County	910,762	0	20,606	260,907	0	0	1,052,438	248,887
Santa Barbara	Allan Hancock	353,841	131,603	14,471	137,902	0	0	468,782	78,659
	Santa Barbara	409,456	430,515	17,985	212,760	0	0	700,109	99,355
Santa Barbara		763,297	562,118	32,456	350,662	0	0	1,168,891	178,014
Santa Clara	Foothill-DeAnza	1,223,267	33,539	32,664	511,474	94,501	334,317	1,654,974	154,942
	Gavilan	248,814	0	11,177	68,664	0	0	231,343	78,043
	San Jose-Evergreen	843,784	0	18,433	219,578	16,785	568,071	747,472	160,589
	West Valley	722,273	26,923	20,614	261,066	0	0	880,563	134,679
Santa Clara		3,038,138	60,462	82,888	1,060,782	111,286	902,388	3,514,352	528,253
Santa Cruz	Cabrillo	418,731	2,611	16,098	171,013	28,605	58,023	555,271	96,051
Shasta	Shasta-Tehama-Trin	297,976	14,567	13,692	118,913	0	0	413,029	79,437
Siskiyou	Siskiyou Jt.	115,562	0	9,622	39,229	0	0	131,684	74,068
Solano	Solano	361,212	12,000	13,641	124,072	0	35,473	419,195	76,194
Sonoma	Sonoma County	896,636	189,781	22,730	308,610	119,419	1,632,174	1,032,056	115,507
Stanislaus	Yosemite	565,084	128,948	19,754	246,058	0	0	845,178	186,564
Tulare	Sequoias	314,061	1,409	14,037	131,418	0	8,260	444,712	116,588
Ventura	Ventura	1,031,943	9,627	27,134	396,291	108,846	28,845	1,354,144	295,967
Yuba	Yuba	412,689	22,087	13,834	123,845	0	0	428,799	86,421
		45,813,385	8,493,614	1,394,250	17,157,443	1,000,000	7,172,000	57,000,000	9,356,106

EXHIBIT B-3B

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 3
2002-2003 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	ECONOMIC DEVELOPMENT	ECON DEV REVERSION ACT	STATE LEADERSHIP	TECHNICAL PREPARATION	ALLOCATIONS	NON TRADITIONAL
Alameda	Chabot-Las Positas	305,026	0	0	0	528,308	0
	Fremont-Newark	94,209	0	0	63,769	48,360	0
	Peralta	419,866	0	0	255,075	864,204	0
Alameda		819,101	0	0	318,844	1,440,872	0
Butte	Butte-Glenn	313,684	401,740	100,000	42,513	591,037	0
Contra Costa	Contra Costa	527,246	0	0	170,051	453,398	0
El Dorado	Lake Tahoe	0	0	0	85,025	87,287	0
Fresno	State Center	698,047	553,426	225,000	220,050	1,349,353	0
	West Hills	711,158	0	25,000	0	181,622	0
Fresno		1,409,205	553,426	250,000	220,050	1,530,975	0
Humboldt	Redwoods	50,626	0	0	42,513	261,424	0
Imperial	Imperial	50,626	0	0	0	387,707	0
Kern	Kern	469,008	303,372	0	255,075	551,664	0
	West Kern	158,378	0	0	0	342,076	0
Kern		627,386	303,372	0	255,075	893,740	0
Lassen	Lassen	294,444	0	0	21,256	115,957	0
Los Angeles	Antelope Valley	71,921	0	0	0	358,145	0
	Cerritos	50,626	151,686	0	63,769	675,423	0
	Citrus	348,422	0	0	42,513	286,145	0
	Compton	466,010	0	0	63,769	565,904	0
	El Camino	825,721	383,488	0	63,769	720,204	0
	Glendale	213,086	151,686	0	85,025	563,535	0
	Long Beach	452,366	151,686	0	42,513	821,457	0
	Los Angeles	1,684,045	303,372	0	552,664	4,923,799	0
	Mt. San Antonio	306,586	303,372	150,000	63,769	942,487	0
	Pasadena	214,142	151,686	0	63,769	722,264	0
	Rio Hondo	512,859	151,686	341,000	63,769	366,102	0
	Santa Clarita	52,992	151,686	0	63,769	132,154	0
	Santa Monica	347,850	0	0	63,769	510,076	0
Los Angeles		5,546,626	1,900,348	491,000	1,232,867	11,587,695	0
Marin	Marin	93,026	0	0	42,513	77,871	0

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 3
2002-2003 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	ECONOMIC DEVELOPMENT	ECON DEV REVERSION ACT	STATE LEADERSHIP	TECHNICAL PREPARATION	ALLOCATIONS	NON TRADITIONAL
Mendocino	Mendocino-Lake	141,108	0	0	63,769	191,794	0
Merced	Merced	468,928	0	0	85,025	395,742	0
Monterey	Hartnell Joint	355,237	151,686	0	63,769	156,051	0
	Monterey Peninsula	86,117	0	0	42,513	92,472	0
Monterey		441,354	151,686	0	106,282	248,523	0
Napa	Napa Valley	172,178	0	0	63,769	151,416	0
Orange	Coast	51,809	0	156,250	255,075	819,191	0
	North Orange Count	539,710	455,058	0	85,025	564,797	0
	Rancho Santiago	583,382	151,686	0	127,538	984,616	0
	South Orange Count	51,809	303,372	0	127,538	306,849	0
Orange		1,226,710	910,116	156,250	595,176	2,675,453	0
Placer	Sierra Jt.	389,148	151,686	400,000	63,769	368,136	0
Plumas	Feather River	42,400	0	0	0	0	0
Riverside	Desert	458,073	151,686	0	0	246,798	0
	Mt. San Jacinto	93,026	0	0	63,769	260,961	0
	Palo Verde	42,400	0	0	0	0	0
	Riverside	363,663	151,686	78,500	127,538	1,102,967	0
Riverside		957,162	303,372	78,500	191,307	1,610,726	0
Sacramento	Los Rios	1,814,068	606,744	738,000	191,306	2,276,904	0
San Bernardino	Barstow	0	0	0	0	98,781	0
	Chaffey	636,163	0	0	0	446,316	0
	Copper Mountain	0	0	0	0	0	0
	San Bernardino	194,016	151,686	0	0	685,801	0
	Victor Valley	81,500	0	0	0	437,973	0
San Bernardino		911,679	151,686	0	0	1,668,871	0
San Diego	Grossmont-Cuyamaca	313,652	303,372	77,000	170,050	558,797	0
	Mira Costa	0	0	0	85,025	227,021	0
	Palomar	52,992	0	0	42,513	233,284	0
	San Diego	650,798	455,058	0	255,075	3,265,228	0
	Southwestern	616,602	0	0	85,025	763,672	0
San Diego		1,634,044	758,430	77,000	637,688	5,048,002	0

EXHIBIT B-3B

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 3
2002-2003 SECOND PRINCIPAL APPORTIONMENT

COUNTY	DISTRICT	ECONOMIC DEVELOPMENT	ECON DEV REVERSION ACT	STATE LEADERSHIP	TECHNICAL PREPARATION	ALLOCATIONS	NON TRADITIONAL
San Francisco	San Francisco	321,498	758,430	0	63,769	1,248,306	0
San Joaquin	San Joaquin Delta	424,212	0	0	42,513	713,509	0
San Luis Obispo	San Luis Obispo Co	50,626	0	0	42,513	245,768	0
San Mateo	San Mateo County	744,854	0	120,000	191,306	245,201	0
Santa Barbara	Allan Hancock	154,162	151,686	0	42,513	701,457	0
	Santa Barbara	503,480	151,686	0	85,025	524,291	0
Santa Barbara		657,642	303,372	0	127,538	1,225,748	0
Santa Clara	Foothill-DeAnza	177,999	151,686	0	85,025	552,514	0
	Gavilan	119,186	151,368	0	63,769	124,223	0
	San Jose-Evergreen	482,389	151,686	300,000	85,025	638,625	0
	West Valley	676,899	803,480	0	127,538	286,351	0
Santa Clara		1,456,473	1,258,220	300,000	361,357	1,601,713	0
Santa Cruz	Cabrillo	382,239	0	0	85,025	325,596	0
Shasta	Shasta-Tehama-Trin	500,954	0	0	0	284,059	0
Siskiyou	Siskiyou Jt.	0	0	0	0	116,499	0
Solano	Solano	169,812	0	0	0	251,845	0
Sonoma	Sonoma County	212,212	0	0	85,025	480,617	0
Stanislaus	Yosemite	309,483	0	120,000	85,025	650,161	0
Tulare	Sequoias	185,219	0	0	85,025	446,110	0
Ventura	Ventura	689,802	303,372	75,000	148,795	404,960	0
Yuba	Yuba	1,341,194	0	0	63,769	426,128	0
		25,376,969	8,816,000	2,905,750	5,810,458	40,729,750	0

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CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 1
2001-2002 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2A

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
ALAMEDA	Chabot-Las Positas	16,187	68,293	685,897	119,858	997,976	0	129,608	526,780
	Fremont-Newark	4,291	22,984	310,176	58,883	829,504	0	31,103	131,667
	Peralta	34,630	189,922	2,353,624	421,330	2,028,954	0	579,567	2,354,489
ALAMEDA		55,108	281,199	3,349,697	600,071	3,856,434	0	740,278	3,012,936
BUTTE	Butte	21,031	87,396	1,121,214	204,570	745,533	0	323,888	1,506,358
CONTRA COSTA	Contra Costa	18,733	116,612	2,166,533	412,671	1,691,926	0	318,466	1,248,831
EL DORADO	Lake Tahoe	1,152	21,485	125,134	19,571	496,347	0	25,000	100,000
FRESNO	State Center	62,206	236,965	2,123,368	241,194	1,243,767	0	474,662	1,928,313
	West Hills	8,059	30,921	386,055	120,421	346,659	0	78,272	347,799
FRESNO		70,265	267,886	2,509,423	361,615	1,590,426	0	552,934	2,276,112
HUMBOLDT	Redwoods	13,083	56,012	742,574	140,751	1,065,048	0	104,467	486,888
IMPERIAL	Imperial	18,436	63,306	968,095	102,560	521,959	0	150,749	612,449
KERN	Kern	36,360	133,412	1,872,698	332,377	1,855,548	479,067	357,328	1,480,228
	West Kern	2,662	14,301	229,014	48,532	229,370	0	81,642	331,907
KERN		39,022	147,713	2,101,712	380,909	2,084,918	479,067	438,970	1,812,135
LASSEN	Lassen	3,351	17,694	323,991	50,755	343,721	0	61,600	270,687
LOS ANGELES	Antelope Valley	12,949	91,395	680,535	218,562	603,994	0	227,471	972,402
	Cerritos	35,950	153,166	1,020,948	88,650	916,934	0	214,349	871,034
	Citrus	13,850	55,734	726,878	196,112	522,082	0	126,927	619,606
	Compton	16,316	71,849	1,032,657	633,892	264,293	0	269,417	1,390,575
	El Camino	25,349	155,238	1,260,887	220,603	1,132,809	0	262,098	1,065,536
	Glendale	23,663	89,981	1,378,669	42,022	1,281,025	0	341,628	1,388,860
	Long Beach	52,741	211,075	1,689,392	281,831	815,974	0	447,904	1,820,912
	Los Angeles	200,879	774,029	9,928,794	1,146,496	4,785,598	0	1,916,402	7,993,678
	Mt. San Antonio	29,671	127,088	752,137	131,783	1,373,566	0	210,846	904,560
	Pasadena Area	58,106	140,028	1,472,281	144,371	910,124	0	239,738	974,216
	Rio Hondo	22,891	102,931	1,207,830	114,389	438,806	0	156,573	616,225
	Santa Clarita	7,533	26,061	344,311	45,744	486,360	0	33,923	137,913
	Santa Monica	27,232	125,145	1,098,824	108,020	1,003,001	0	173,982	707,305
LOS ANGELES		527,130	2,123,720	22,594,143	3,372,475	14,534,566	0	4,621,258	19,462,822

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 1
2001-2002 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2A

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
MARIN	Marin	6,134	29,353	384,224	26,612	1,430,965	0	62,556	254,146
MENDOCINO	Mendocino-Lake	5,995	31,369	378,381	69,313	293,553	0	70,099	284,982
MERCED	Merced	14,533	72,819	1,100,785	201,350	610,704	0	282,755	1,148,692
MONTEREY	Hartnell	11,134	41,953	598,145	87,166	470,787	0	84,719	393,154
	Monterey Peninsula	5,552	18,314	746,178	115,495	699,354	0	49,549	201,433
MONTEREY		16,686	60,267	1,344,323	202,661	1,170,141	0	134,268	594,587
NAPA	Napa Valley	6,222	31,386	530,959	84,345	1,583,815	0	54,851	222,838
ORANGE	Coast	42,228	188,250	2,228,279	149,333	2,061,808	825,645	260,605	1,212,334
	North Orange Count	37,750	149,937	1,843,348	235,916	1,672,298	0	250,943	1,019,457
	Rancho Santiago	28,613	143,595	1,607,573	120,551	1,410,036	0	377,854	1,565,100
	South Orange Count	17,431	58,574	1,235,937	149,234	1,456,712	0	75,880	341,616
ORANGE		126,022	540,356	6,915,137	655,034	6,600,854	825,645	965,282	4,138,507
PLACER	Sierra	15,234	67,374	601,378	73,657	841,602	0	85,522	189,830
PLUMAS	Feather River	1,403	12,822	212,510	43,042	297,986	0	25,000	100,000
RIVERSIDE	Desert	9,755	42,569	397,151	94,570	442,325	0	100,406	407,921
	Mt. San Jacinto	11,839	46,573	557,410	175,703	489,467	0	110,527	449,018
	Palo Verde	1,432	11,993	299,750	35,899	183,745	0	25,117	105,781
	Riverside	26,735	148,424	598,714	50,185	1,083,083	0	274,943	1,110,348
RIVERSIDE		49,761	249,559	1,853,025	356,357	2,198,620	0	510,993	2,073,068
SACRAMENTO	Los Rios	73,469	338,176	3,020,325	496,493	2,578,394	0	981,135	3,730,690
SAN BERNARDINO	Barstow	3,520	17,116	326,027	80,988	175,766	0	41,348	168,056
SAN BERNARDINO	Chaffey	22,483	97,170	708,646	82,840	1,069,207	0	163,742	665,225
	Copper Mountain	2,483	12,500	171,413	29,387	189,199	0	25,117	83,281
	San Bernardino	23,010	142,534	959,321	191,563	828,207	0	301,842	1,226,234
	Victor Valley	17,039	69,256	724,989	136,796	638,363	0	189,095	588,199
SAN BERNARDINO		68,535	338,576	2,890,396	521,574	2,900,742	0	721,144	2,730,995
SAN DIEGO	Grossmont-Cuyamaca	27,356	123,874	1,258,051	270,978	909,354	0	224,818	1,063,321
	Mira Costa	5,452	29,851	562,568	108,729	455,015	0	85,584	352,698
	Palomar	3,775	51,486	935,003	110,338	735,593	0	132,943	490,105

CALIFORNIA COMMUNITY COLLEGES
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2001-2002 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2A

COUNTY	DISTRICT	FEE WAIVER ADMIN (2%)	STUDENT FINANCIAL AID ADMIN	E.O.P.S.	C.A.R.E.	D.S.P.S.	STATE HOSPITALS	TANF (GAIN)	CALWORKS
SAN DIEGO	San Diego	62,201	311,232	1,865,070	208,188	3,126,501	0	1,057,016	3,812,267
	Southwestern	30,502	119,776	1,671,649	142,511	722,818	0	151,715	574,762
SAN DIEGO		129,286	636,219	6,292,341	840,744	5,949,281	0	1,652,076	6,293,153
SAN FRANCISCO	San Francisco	19,831	109,146	1,427,977	58,210	1,728,788	0	380,183	1,544,566
SAN JOAQUIN	San Joaquin Delta	34,198	134,965	1,592,298	289,855	1,018,493	0	353,669	1,428,621
SAN LUIS OBISPO	San Luis Obispo	13,050	46,389	384,270	76,668	704,999	0	47,716	212,899
SAN MATEO	San Mateo	15,881	76,520	1,385,023	79,662	1,397,813	0	86,142	349,971
SANTA BARBARA	Allan Hancock	16,233	68,552	557,291	225,428	701,583	0	151,217	665,903
	Santa Barbara	15,856	64,988	914,172	100,715	746,108	0	82,195	334,017
SANTA BARBARA		32,089	133,540	1,471,463	326,143	1,447,691	0	233,412	999,920
SANTA CLARA	Foothill-DeAnza	21,054	119,369	1,495,433	123,146	3,965,869	0	150,096	653,144
	Gavilan	5,036	22,913	403,243	89,631	644,783	0	42,204	171,450
	San Jose-Evergreen	28,680	147,856	1,575,249	100,572	784,702	0	219,459	891,591
	West Valley-Missio	16,241	77,188	973,623	94,132	1,248,582	283,460	98,822	431,481
SANTA CLARA		71,011	367,326	4,447,548	407,481	6,643,936	283,460	510,581	2,147,666
SANTA CRUZ	Cabrillo	14,097	61,164	421,728	108,596	1,319,780	0	79,897	324,594
SHASTA	Shasta-Tehama-Trin	16,516	73,645	874,682	180,868	643,216	0	192,350	781,423
SISKIYOU	Siskiyou	4,268	21,087	317,205	63,031	349,709	0	55,460	225,468
SOLANO	Solano	10,260	41,494	433,741	76,717	526,662	0	96,495	392,018
SONOMA	Sonoma County	20,561	87,090	535,175	65,960	1,527,516	0	153,703	624,445
STANISLAUS	Yosemite	23,029	108,380	1,340,142	169,868	2,001,178	0	333,506	1,126,282
TULARE	Sequoias	21,609	84,199	852,589	190,893	690,297	0	173,104	703,572
VENTURA	Ventura	32,282	138,005	1,733,880	266,373	2,475,347	0	188,339	799,731
YUBA	Yuba	10,388	74,751	891,838	197,543	653,022	0	232,152	788,118
		1,619,661	7,149,000	79,635,859	11,774,998	76,515,982	1,588,172	16,000,000	65,000,000

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 2
2001-2002 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2B

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	FACULTY & STAFF DEVELOPMENT	TELECOM AND TECHNOLOGY	ONGOING INST. EQUIP. ALLOCATION	PART-TIME FACULTY INS.	PART-TIME FAC. OFFICE
ALAMEDA	Chabot-Las Positas	993,119	0	19,917	74,456	600,726	215,771	0	0
	Fremont-Newark	512,405	0	13,813	37,115	268,023	108,483	0	0
	Peralta	1,405,329	11,436	20,823	80,004	1,053,814	233,539	0	0
ALAMEDA		2,910,853	11,436	54,553	191,575	1,922,563	557,793	0	0
BUTTE	Butte	518,995	119,477	16,546	53,833	343,236	163,435	0	11,425
CONTRA COSTA	Contra Costa	1,757,444	29,034	30,821	141,163	908,071	431,684	89,674	0
EL DORADO	Lake Tahoe	162,557	14,720	8,975	10,000	239,258	22,890	0	0
FRESNO	State Center	1,316,215	9,112	26,004	111,693	660,652	326,961	0	0
	West Hills	238,194	37,583	10,463	16,622	236,568	48,223	0	0
FRESNO		1,554,409	46,695	36,467	128,315	897,220	375,184	0	0
HUMBOLDT	Redwoods	318,432	3,750	12,014	26,108	264,543	77,919	3,915	203,947
IMPERIAL	Imperial	366,371	0	11,558	23,321	256,782	70,570	0	0
KERN	Kern	1,139,264	6,398	21,188	82,231	846,156	235,637	0	0
	West Kern	408,731	5,532	8,965	10,000	236,194	22,568	0	0
KERN		1,547,995	11,930	30,153	92,231	1,082,350	258,205	0	0
LASSEN	Lassen	152,570	12,172	9,568	10,000	237,216	33,919	0	0

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 2
2001-2002 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2B

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	FACULTY & STAFF DEVELOPMENT	TELECOM AND TECHNOLOGY	ONGOING INST. EQUIP. ALLOCATION	PART-TIME FACULTY INS.	PART-TIME FAC. OFFICE
LOS ANGELES	Antelope Valley	494,555	1,518	14,389	40,640	311,284	117,796	0	0
	Cerritos	966,329	36,681	21,114	81,782	314,840	233,300	0	0
	Citrus	491,249	215,035	16,247	52,008	286,682	153,699	0	0
	Compton	474,753	0	12,359	28,219	255,949	85,346	0	0
	El Camino	1,012,287	29,552	21,752	85,686	334,186	251,027	1,509	0
	Glendale	557,394	458,521	19,321	70,813	312,155	207,756	22,959	340,485
	Long Beach	1,030,882	110,201	23,376	95,619	341,527	277,372	0	0
	Los Angeles	5,998,357	478,849	82,306	456,130	2,542,819	1,309,902	0	2,831,167
	Mt. San Antonio	1,094,830	616,090	26,775	116,415	346,911	337,760	18,414	112,000
	Pasadena Area	1,466,794	217,133	24,307	101,314	330,324	295,354	0	0
	Rio Hondo	975,557	47,492	16,306	52,370	280,157	158,224	6,692	0
	Santa Clarita	556,009	0	14,750	42,852	269,537	124,320	0	0
	Santa Monica	1,092,908	119,090	24,151	100,362	341,340	296,011	92,226	97,149
LOS ANGELES		16,211,904	2,330,162	317,153	1,324,210	6,267,711	3,847,867	141,800	3,380,801
MARIN	Marin	455,137	125,080	13,011	32,208	265,948	96,158	40,983	97,346
MENDOCINO	Mendocino-Lake	228,205	7,845	9,792	12,515	243,166	36,751	0	0
MERCED	Merced	503,952	179,016	14,536	41,541	269,788	121,028	0	0
MONTEREY	Hartnell	467,587	4,258	13,018	32,251	261,302	94,434	0	0
	Monterey Peninsula	552,434	233,466	14,459	41,070	254,832	117,027	0	0
MONTEREY		1,020,021	237,724	27,477	73,321	516,134	211,461	0	0
NAPA	Napa Valley	353,459	79,131	12,103	26,654	260,174	77,931	0	0
ORANGE	Coast	2,057,927	69,529	33,964	160,393	925,804	468,802	110,598	0
	North Orange Count	1,551,517	1,127,553	33,597	158,146	705,477	462,013	7,954	919,417
	Rancho Santiago	2,006,572	1,398,558	30,937	141,872	667,264	408,615	0	0
	South Orange Count	1,199,326	136,980	24,268	101,077	576,449	297,392	8,099	0
ORANGE		6,815,342	2,732,620	122,766	561,488	2,874,994	1,636,822	126,651	919,417

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 2
2001-2002 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2B

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	FACULTY & STAFF DEVELOPMENT	TELECOM AND TECHNOLOGY	ONGOING INST. EQUIP. ALLOCATION	PART-TIME FACULTY INS.	PART-TIME FAC. OFFICE
PLACER	Sierra	759,389	9,275	17,006	56,649	296,565	167,134	0	0
PLUMAS	Feather River	62,250	540	8,817	10,000	231,769	19,111	0	8,246
RIVERSIDE	Desert	368,472	92,644	12,438	28,706	265,131	83,477	0	22,884
	Mt. San Jacinto	490,595	30,842	13,033	32,344	269,739	96,835	0	0
	Palo Verde	171,666	21,722	8,738	10,000	232,616	22,751	0	0
	Riverside	1,252,906	2,210	24,717	103,826	341,090	320,667	6,843	157,551
RIVERSIDE		2,283,639	147,418	58,926	174,876	1,108,576	523,730	6,843	180,435
SACRAMENTO	Los Rios	3,385,225	0	41,331	205,462	976,181	591,013	105,510	289,166
SAN BERNARDINO	Barstow	140,638	14,878	9,287	10,000	234,807	27,358	0	0
	Chaffey	708,824	84,188	17,608	60,331	289,373	175,027	0	0
	Copper Mountain	89,109	5,486	8,809	10,000	232,360	18,884	0	0
	San Bernardino	854,097	0	18,319	64,681	593,205	189,163	0	0
	Victor Valley	427,491	119,782	14,073	38,710	271,389	117,897	0	0
SAN BERNARDINO		2,220,159	224,334	68,096	183,722	1,621,134	528,329	0	0
SAN DIEGO	Grossmont-Cuyamaca	987,753	68,848	20,707	79,293	626,316	231,037	0	0
	Mira Costa	449,859	128,284	13,295	33,947	268,694	99,754	0	0
	Palomar	1,171,329	211,338	20,744	79,520	335,888	248,035	0	0
	San Diego	2,101,205	1,989,182	39,853	196,420	993,097	570,035	221,142	0
	Southwestern	767,137	29,142	18,652	66,717	314,996	193,308	1,455	0
SAN DIEGO		5,477,283	2,426,794	113,251	455,897	2,538,991	1,342,169	222,597	0
SAN FRANCISCO	San Francisco	1,355,471	1,617,975	35,769	171,435	514,430	499,037	0	138,797
SAN JOAQUIN	San Joaquin Delta	755,717	85,621	18,606	66,441	307,451	197,776	0	0
SAN LUIS OBISPO	San Luis Obispo	430,650	0	14,196	39,458	274,665	114,907	32,580	70,835

CALIFORNIA COMMUNITY COLLEGES
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2001-2002 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-2B

COUNTY	DISTRICT	CREDIT MATRICULATION	NONCREDIT MATRICULATION	FACULTY & STAFF DIVERSITY	FACULTY & STAFF DEVELOPMENT	TELECOM AND TECHNOLOGY	ONGOING INST. EQUIP. ALLOCATION	PART-TIME FACULTY INS.	PART-TIME FAC. OFFICE
SAN MATEO	San Mateo	1,262,153	0	21,720	85,491	847,168	277,677	0	0
SANTA BARBARA	Allan Hancock	491,287	187,730	14,626	42,091	279,279	123,684	4,818	9,068
	Santa Barbara	569,821	561,227	18,058	63,083	299,062	184,718	0	0
SANTA BARBARA		1,061,108	748,957	32,684	105,174	578,341	308,402	4,818	9,068
SANTA CLARA	Foothill-DeAnza	1,706,142	76,424	32,450	151,130	615,057	436,652	58,510	343,834
	Gavilan	344,116	17,914	11,240	21,379	250,346	61,038	0	0
	San Jose-Evergreen	1,168,297	0	18,764	67,406	613,215	197,214	0	102,560
	West Valley-Missio	1,002,791	49,404	20,831	80,051	538,786	232,329	0	0
SANTA CLARA		4,221,346	143,742	83,285	319,966	2,017,404	927,233	58,510	446,394
SANTA CRUZ	Cabrillo	582,327	14,054	16,026	50,655	288,109	146,504	23,018	62,506
SHASTA	Shasta-Tehama-Trin	413,008	26,638	13,716	36,524	262,228	108,974	0	0
SISKIYOU	Siskiyou	184,828	3,431	9,694	11,919	240,514	34,744	0	0
SOLANO	Solano	501,506	26,636	13,886	37,561	268,085	110,601	0	33,000
SONOMA	Sonoma County	1,252,597	298,134	23,071	93,752	343,057	272,300	86,653	843,289
STANISLAUS	Yosemite	828,906	181,550	20,463	77,802	603,463	222,993	0	0
TULARE	Sequoias	435,491	0	14,255	39,821	273,248	117,334	0	12,641
VENTURA	Ventura	1,432,267	10,110	27,877	123,152	893,610	357,280	56,448	0
YUBA	Yuba	573,482	25,588	14,082	38,760	265,857	113,135	0	0
		64,356,448	11,931,589	1,394,250	5,133,000	31,600,000	15,000,000	1,000,000	6,707,313

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 3
2001-2002 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-3B

COUNTY	DISTRICT	ECONOMIC DEVELOPMENT	TITLE II A STATE LEADERSHIP	TITLE III E TECHNICAL PREPARATION	TITLE IIC ALLOCATIONS	NON TRADITIONAL
ALAMEDA	Chabot-Las Positas	709,701	0	0	235,868	0
	Fremont-Newark	253,559	0	71,000	72,058	0
	Peralta	495,126	0	213,000	709,226	0
ALAMEDA		1,458,386	0	284,000	1,017,152	0
BUTTE	Butte	1,023,661	67,860	35,500	434,742	0
CONTRA COSTA	Contra Costa	1,605,382	0	177,000	387,707	0
EL DORADO	Lake Tahoe	0	0	71,000	94,996	0
FRESNO	State Center	1,281,174	298,069	106,500	1,090,910	0
	West Hills	547,026	0	0	138,555	0
FRESNO		1,828,200	298,069	106,500	1,229,465	0
HUMBOLDT	Redwoods	59,701	0	71,000	198,951	0
IMPERIAL	Imperial	237,406	0	0	243,900	0
KERN	Kern	1,487,244	0	213,000	372,982	0
	West Kern	0	0	0	301,413	0
KERN		1,487,244	0	213,000	674,395	0
LASSEN	Lassen	50,000	0	71,000	39,749	0

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 3
2001-2002 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-3B

COUNTY	DISTRICT	ECONOMIC DEVELOPMENT	TITLE II A STATE LEADERSHIP	TITLE III E TECHNICAL PREPARATION	TITLE IIC ALLOCATIONS	NON TRADITIONAL
LOS ANGELES	Antelope Valley	84,813	0	0	155,598	0
	Cerritos	936,576	0	71,000	208,605	0
	Citrus	294,875	75,000	71,000	282,774	0
	Compton	59,701	0	71,000	399,756	0
	El Camino	1,162,351	0	53,250	185,332	0
	Glendale	541,353	25,000	53,250	107,019	0
	Long Beach	1,433,451	0	53,250	853,059	0
	Los Angeles	2,843,399	95,541	461,500	1,001,448	0
	Mt. San Antonio	795,791	140,217	53,250	592,374	0
	Pasadena Area	610,276	0	35,500	446,018	0
	Rio Hondo	574,576	317,592	71,000	222,378	0
	Santa Clarita	296,366	0	35,500	151,994	0
	Santa Monica	1,188,055	0	53,250	114,973	0
LOS ANGELES		10,821,583	653,350	1,082,750	4,721,328	0
MARIN	Marin	109,701	0	53,250	54,835	0
MENDOCINO	Mendocino-Lake	48,568	0	71,000	144,193	0
MERCED	Merced	552,981	0	53,250	276,801	0
MONTEREY	Hartnell	588,576	0	53,250	175,936	0
	Monterey Peninsula	101,553	0	17,750	72,367	0
MONTEREY		690,129	0	71,000	248,303	0
NAPA	Napa Valley	203,041	0	71,000	141,387	0
ORANGE	Coast	61,096	75,000	159,750	790,243	0
	North Orange Count	1,316,464	0	71,000	362,066	0
	Rancho Santiago	901,826	0	106,500	447,022	0
	South Orange Count	753,846	309,875	88,750	245,908	0
ORANGE		3,033,232	384,875	426,000	1,845,239	0
PLACER	Sierra	1,534,312	394,373	35,500	322,600	0

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 3
2001-2002 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-3B

COUNTY	DISTRICT	ECONOMIC DEVELOPMENT	TITLE II A STATE LEADERSHIP	TITLE III E TECHNICAL PREPARATION	TITLE IIC ALLOCATIONS	NON TRADITIONAL
PLUMAS	Feather River	50,000	0	0	0	0
RIVERSIDE	Desert	624,576	0	0	110,031	0
	Mt. San Jacinto	50,000	0	53,250	135,054	0
	Palo Verde	50,000	0	0	0	0
	Riverside	642,723	134,784	106,500	471,891	0
RIVERSIDE		1,367,299	134,784	159,750	716,976	0
SACRAMENTO	Los Rios	3,953,408	426,095	159,750	1,107,000	75,000
SAN BERNARDINO	Barstow	0	0	0	68,737	0
	Chaffey	480,191	0	0	432,090	0
	Copper Mountain	0	0	0	0	0
	San Bernardino	432,901	0	0	627,952	0
	Victor Valley	59,701	0	0	298,504	0
SAN BERNARDINO		972,793	0	0	1,427,283	0
SAN DIEGO	Grossmont-Cuyamaca	852,837	412,068	106,500	264,444	0
	Mira Costa	0	0	35,500	102,771	0
	Palomar	62,491	0	53,250	121,255	0
	San Diego	1,629,076	0	213,000	2,423,093	0
	Southwestern	674,001	0	53,250	373,110	0
SAN DIEGO		3,218,405	412,068	461,500	3,284,673	0
SAN FRANCISCO	San Francisco	1,671,980	75,000	35,500	1,267,952	0
SAN JOAQUIN	San Joaquin Delta	594,251	0	53,250	502,089	0
SAN LUIS OBISPO	San Luis Obispo	244,043	0	71,000	237,464	0
SAN MATEO	San Mateo	795,866	0	53,250	81,300	0

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS - PART 3
2001-2002 SECOND PRINCIPAL APPORTIONMENT

EXHIBIT B-3B

COUNTY	DISTRICT	ECONOMIC DEVELOPMENT	TITLE II A STATE LEADERSHIP	TITLE III E TECHNICAL PREPARATION	TITLE IIC ALLOCATIONS	NON TRADITIONAL
SANTA BARBARA	Allan Hancock	503,948	155,419	35,500	338,381	0
	Santa Barbara	1,161,818	0	53,250	342,990	0
SANTA BARBARA		1,665,766	155,419	88,750	681,371	0
SANTA CLARA	Foothill-DeAnza	716,493	209,128	35,500	421,690	0
	Gavilan	140,550	0	35,500	64,772	0
	San Jose-Evergreen	1,300,399	132,740	106,500	448,258	0
	West Valley-Missio	2,321,800	0	88,750	247,221	0
SANTA CLARA		4,479,242	341,868	266,250	1,181,941	0
SANTA CRUZ	Cabrillo	689,994	0	71,000	245,291	0
SHASTA	Shasta-Tehama-Trin	447,881	0	0	285,992	0
SISKIYOU	Siskiyou	0	0	0	99,373	0
SOLANO	Solano	254,872	162,710	17,750	120,740	0
SONOMA	Sonoma County	250,251	0	71,000	369,326	0
STANISLAUS	Yosemite	282,131	293,063	71,000	510,584	0
TULARE	Sequoias	480,313	113,063	71,000	356,660	0
VENTURA	Ventura	2,149,331	30,000	159,747	394,195	0
YUBA	Yuba	1,216,768	75,000	53,250	301,670	0
		49,528,121	4,017,597	4,756,497	25,247,623	75,000

Attachment 3
Employment Opportunity Funds

FSDI Categorical Report

** Verification Report **

4/29/08

Year: 2007- 08 Period: P2

District Name	Initial	Adjustment	Final
Allan Hancock Joint CCD	13,798	0	13,798
Antelope Valley CCD	14,483	0	14,483
Barstow CCD	8,864	0	8,864
Butte - Glen CCD	14,832	0	14,832
Cabrillo CCD	14,961	0	14,961
Cerritos CCD	18,637	0	18,637
Chabot-Las Positas CCD	18,817	0	18,817
Chaffey CCD	17,049	0	17,049
Citrus CCD	15,197	0	15,197
Coast CCD	31,252	0	31,252
Compton CCD	9,148	0	9,148
Contra Costa CCD	26,530	0	26,530
Copper Mountain CCD	8,209	0	8,209
Desert CCD	12,555	0	12,555
El Camino CCD	19,920	0	19,920
Feather River CCD	8,229	0	8,229
Foothill-De Anza CCD	29,735	0	29,735
Gavilan Joint CCD	10,656	0	10,656
Glendale CCD	17,275	0	17,275
Grossmont-Cuyamaca CCD	19,821	0	19,821
Hartnell Joint CCD	11,742	0	11,742
Imperial CCD	11,933	0	11,933
Kern CCD	19,842	0	19,842
Lake Tahoe CCD	8,402	0	8,402
Lassen CCD	8,399	0	8,399
Long Beach CCD	21,889	0	21,889
Los Angeles CCD	77,574	0	77,574
Los Rios CCD	41,143	0	41,143
Marin CCD	10,087	0	10,087
Mendocino-Lake CCD	9,322	0	9,322
Merced CCD	13,705	0	13,705
Mira Costa CCD	12,774	0	12,774
Monterey Peninsula CCD	13,075	0	13,075
Mt. San Antonio CCD	27,451	0	27,451
Mt. San Jacinto CCD	13,828	0	13,828
Napa Valley CCD	11,372	0	11,372
North Orange County CCD	31,360	0	31,360
Ohlone CCD	13,026	0	13,026
Palo Verde CCD	8,459	0	8,459
Palomar CCD	20,692	0	20,692
Pasadena Area CCD	22,693	0	22,693

FSDI Categorical Report

** Verification Report **

Year: 2007- 08 Period: P2

District Name	Initial	Adjustment	Final
Peralta CCD	20,054	0	20,054
Rancho Santiago CCD	28,622	0	28,622
Redwoods CCD	10,386	0	10,386
Rio Hondo CCD	16,031	0	16,031
Riverside CCD	23,541	0	23,541
San Bernardino CCD	16,683	0	16,683
San Diego CCD	35,631	0	35,631
San Francisco CCD	32,377	0	32,377
San Joaquin Delta CCD	18,065	0	18,065
San Jose-Evergreen CCD	17,255	0	17,255
San Luis Obispo County CCD	13,642	0	13,642
San Mateo County CCD	22,068	0	22,068
Santa Barbara CCD	18,028	0	18,028
Santa Clarita CCD	16,238	0	16,238
Santa Monica CCD	22,238	0	22,238
Sequoias CCD, College Of The	12,768	0	12,768
Shasta-Tehama-Trinity Joint CCD	12,187	0	12,187
Sierra Joint CCD	17,177	0	17,177
Siskiyou Joint CCD	8,882	0	8,882
Solano County CCD	13,628	0	13,628
Sonoma County Jr. Coll. District	21,404	0	21,404
South Orange County CCD	22,965	0	22,965
Southwestern CCD	17,762	0	17,762
State Center CCD	25,285	0	25,285
Ventura County CCD	24,434	0	24,434
Victor Valley CCD	13,534	0	13,534
West Hills CCD	10,701	0	10,701
West Kern CCD	8,725	0	8,725
West Valley CCD	19,749	0	19,749
Yosemite CCD	18,762	0	18,762
Yuba CCD	12,690	0	12,690
Totals ========== >	1,310,248	0	1,310,248

Certification Signature: [signature]

Title: Executive Vice Chancellor

Date: 5/7/08

FSDI Categorical Report

** Verification Report **

Year: 2006- 07 Period: R1

District Name	Initial	Adjustment	Final
Allan Hancock Joint CCD	14,164	293	14,457
Antelope Valley CCD	14,343	296	14,639
Barstow CCD	8,938	185	9,123
Butte - Glen CCD	15,421	320	15,741
Cabrillo CCD	15,233	315	15,548
Cerritos CCD	18,890	391	19,281
Chabot-Las Positas CCD	19,021	394	19,415
Chaffey CCD	17,165	355	17,520
Citrus CCD	15,360	318	15,678
Coast CCD	29,030	601	29,631
Compton CCD	10,577	219	10,796
Contra Costa CCD	27,144	562	27,706
)per Mountain CCD	8,240	171	8,411
Desert CCD	12,379	256	12,635
El Camino CCD	20,134	417	20,551
Feather River CCD	8,300	171	8,471
Foothill-De Anza CCD	29,937	620	30,557
Gavilan Joint CCD	10,653	220	10,873
ndale CCD	18,211	377	18,588
ssmont-Cuyamaca CCD	19,413	402	19,815
Hartnell Joint CCD	11,819	244	12,063
Imperial CCD	11,865	245	12,110
Kern CCD	19,837	410	20,247
Lake Tahoe CCD	8,431	175	8,606
Lassen CCD	8,523	177	8,700
g Beach CCD	20,615	427	21,042
Los Angeles CCD	74,069	1,533	75,602
Los Rios CCD	41,723	864	42,587
Marin CCD	10,089	209	10,298
Mendocino-Lake CCD	9,138	189	9,327
Merced CCD	13,904	288	14,192
Mira Costa CCD	12,646	262	12,908
Monterey Peninsula CCD	12,997	269	13,266
Mt. San Antonio CCD	27,632	573	28,205
Mt. San Jacinto CCD	13,427	278	13,705
Napa Valley CCD	11,331	235	11,566
North Orange County CCD	30,998	642	31,640
Ohlone CCD	12,959	269	13,228
Palo Verde CCD	8,394	174	8,568
omar CCD	21,062	436	21,498
Pasadena Area CCD	22,742	471	23,213

FSDI Categorical Report

** Verification Report **

Year: 2006- 07 Period: R1

District Name	Initial	Adjustment	Final
Peralta CCD	20,139	417	20,556
Rancho Santiago CCD	29,009	601	29,610
Redwoods CCD	10,801	224	11,025
Rio Hondo CCD	15,965	331	16,296
Riverside CCD	25,612	530	26,142
San Bernardino CCD	16,785	348	17,133
San Diego CCD	36,261	751	37,012
San Francisco CCD	32,151	665	32,816
San Joaquin Delta CCD	18,073	374	18,447
San Jose-Evergreen CCD	17,448	361	17,809
San Luis Obispo County CCD	13,512	279	13,791
San Mateo County CCD	19,530	405	19,935
Santa Barbara CCD	18,221	378	18,599
Santa Clarita CCD	15,955	331	16,286
Santa Monica CCD	22,228	461	22,689
Sequoias CCD, College Of The	12,668	262	12,930
Shasta-Tehama-Trinity Joint CCD	12,765	264	13,029
Sierra Joint CCD	17,202	356	17,558
Siskiyou Joint CCD	8,972	186	9,158
Solano County CCD	13,798	286	14,084
Sonoma County Jr. Coll. District	21,718	449	22,167
South Orange County CCD	21,948	455	22,403
Southwestern CCD	17,775	369	18,144
State Center CCD	26,072	539	26,611
Ventura County CCD	24,434	506	24,940
Victor Valley CCD	13,972	289	14,261
West Hills CCD	10,860	225	11,085
West Kern CCD	8,708	181	8,889
West Valley CCD	19,161	397	19,558
Yosemite CCD	19,028	394	19,422
Yuba CCD	12,725	263	12,988
Totals ========== >	1,310,250	27,130	1,337,380

Certification Signature: [signature]

Title: Exec Vice Chancellor

Date: 11/7/07

FSDI Categorical Report

** Verification Report **

Year: 2005- 06 Period: R1

District Name	Initial	Adjustment	Final
Allan Hancock Joint CCD	15,278	2,438	17,716
Antelope Valley CCD	15,551	2,529	18,080
Barstow CCD	9,310	460	9,770
Butte - Glen CCD	17,283	3,103	20,386
Cabrillo CCD	16,415	2,815	19,230
Cerritos CCD	20,791	4,265	25,056
Chabot-Las Positas CCD	20,375	4,127	24,502
Chaffey CCD	18,710	3,575	22,285
Citrus CCD	16,647	2,892	19,539
Coast CCD	33,875	8,601	42,476
Compton CCD	12,746	1,600	14,346
Contra Costa CCD	28,173	6,711	34,884
Copper Mountain CCD	9,039	370	9,409
Desert CCD	13,361	1,804	15,165
El Camino CCD	22,647	4,880	27,527
Feather River CCD	8,980	352	9,332
Foothill-De Anza CCD	31,824	7,922	39,746
Gavilan Joint CCD	11,392	1,150	12,542
Glendale CCD	19,986	3,999	23,985
Grossmont-Cuyamaca CCD	21,536	4,512	26,048
Hartnell Joint CCD	13,054	1,701	14,755
Imperial CCD	12,903	1,651	14,554
Kern CCD	22,273	4,756	27,029
Lake Tahoe CCD	9,167	413	9,580
Lassen CCD	9,430	500	9,930
Long Beach CCD	24,493	5,491	29,984
Los Angeles CCD	82,915	24,852	107,767
Los Rios CCD	43,905	11,925	55,830
Marin CCD	11,196	1,086	12,282
Mendocino-Lake CCD	10,041	703	10,744
Merced CCD	14,883	2,307	17,190
Mira Costa CCD	13,284	1,777	15,061
Monterey Peninsula CCD	14,463	2,168	16,631
Mt. San Antonio CCD	26,619	6,196	32,815
Mt. San Jacinto CCD	14,517	2,186	16,703
Napa Valley CCD	12,396	1,483	13,879
North Orange County CCD	34,128	8,685	42,813
Ohlone CCD	13,875	1,973	15,848
Palo Verde CCD	9,088	387	9,475
Palomar CCD	22,436	4,810	27,246
Pasadena Area CCD	24,978	5,653	30,631

FSDI Categorical Report

** Verification Report **

Year: 2005- 06 Period: R1

District Name	Initial	Adjustment	Final
Peralta CCD	21,357	4,453	25,810
Rancho Santiago CCD	30,531	7,493	38,024
Redwoods CCD	11,842	1,299	13,141
Rio Hondo CCD	17,483	3,169	20,652
Riverside CCD	26,783	6,250	33,033
San Bernardino CCD	18,688	3,568	22,256
San Diego CCD	38,624	10,174	48,798
San Francisco CCD	35,182	9,034	44,216
San Joaquin Delta CCD	19,569	3,860	23,429
San Jose-Evergreen CCD	18,196	3,406	21,602
San Luis Obispo County CCD	14,907	2,316	17,223
San Mateo County CCD	23,361	5,117	28,478
Santa Barbara CCD	19,147	3,721	22,868
Santa Clarita CCD	16,883	2,970	19,853
Santa Monica CCD	23,912	5,300	29,212
Sequoias CCD, College Of The	14,481	2,175	16,656
Shasta-Tehama-Trinity Joint CCD	13,726	1,924	15,650
Sierra Joint CCD	18,306	3,442	21,748
Siskiyou Joint CCD	9,759	609	10,368
Solano County CCD	14,528	2,189	16,717
Sonoma County Jr. Coll. District	23,466	5,151	28,617
South Orange County CCD	24,512	5,498	30,010
Southwestern CCD	19,253	3,756	23,009
State Center CCD	27,798	6,587	34,385
Ventura County CCD	27,503	6,489	33,992
Victor Valley CCD	14,907	2,316	17,223
West Hills CCD	11,500	1,187	12,687
West Kern CCD	9,437	502	9,939
West Valley CCD	21,180	4,394	25,574
Yosemite CCD	21,076	4,359	25,435
Yuba CCD	13,834	1,960	15,794
Totals	1,425,694	283,476	1,709,170

Certification Signature: [signature]

Title: Sr. Vice Chancellor

Date: 10-24-06

FSDI Augmentation Report
June 2005

DISTUSRS	DISTCODE	DISTNAME	FY03-04	FY04-05
69096	610	Allan Hancock	11,257	2,414
64253	620	Antelope Valley	11,313	2,426
67629	910	Barstow	7,167	1,537
61416	110	Butte	12,746	2,734
69740	410	Cabrillo	12,539	2,689
64360	810	Cerritos	15,871	3,404
61317	480	Chabot-Las Positas	15,015	3,220
67660	920	Chaffey	13,692	2,936
64386	820	Citrus	12,254	2,628
66639	830	Coast	24,189	5,188
64428	710	Compton	9,379	2,011
61689	310	Contra Costa	23,848	5,115
75606	970	Copper Mt.	6,729	1,443
67025	930	Desert	9,752	2,091
64493	720	El Camino	17,491	3,751
75143	120	Feather River	6,675	1,432
69443	420	Foothill-DeAnza	24,627	5,282
69476	440	Gavilan	8,588	1,842
73486	730	Glendale	14,898	3,195
68148	020	Grossmont-Cuyamaca	16,157	3,465
66043	450	Hartnell	9,905	2,124
63156	030	Imperial	8,961	1,922
63537	520	Kern	16,384	3,514
73775	220	Lake Tahoe	6,892	1,478
64147	130	Lassen	7,305	1,567
73494	840	Long Beach	17,744	3,805
64741	740	Los Angeles	60,188	12,908
67371	230	Los Rios	32,352	6,938
65383	330	Marin	8,920	1,913
73718	140	Mendocino-Lake	7,481	1,604
65797	530	Merced	10,970	2,353
68247	050	Mira Costa	10,082	2,162
66100	460	Monterey Peninsula	10,895	2,337
64824	850	Mt. San Antonio	19,613	4,206
67132	940	Mt. San Jacinto	10,533	2,259
66274	240	Napa Valley	9,219	1,977
66605	860	North Orange County	24,921	5,345
61184	430	Ohlone	10,579	2,269
73510	950	Palo Verde	6,753	1,448
68270	060	Palomar	16,714	3,584
64899	770	Pasadena Area	18,586	3,986
61267	340	Peralta	16,305	3,497
66688	870	Rancho Santiago	22,591	4,845
62992	160	Redwoods	9,113	1,954
64923	880	Rio Hondo	12,999	2,788
67223	960	Riverside	19,129	4,103
67884	980	San Bernardino	13,992	3,001
73528	070	San Diego	29,205	6,264
73536	360	San Francisco	26,496	5,683
68668	550	San Joaquin Delta	14,608	3,133
69658	470	San Jose-Evergreen	14,434	3,096

FSDI Augmentation Report
June 2005

68817	640	San Luis Obispo	11,103	2,381
69054	370	San Mateo	17,217	3,692
69294	650	Santa Barbara	14,179	3,041
64972	660	Santa Clarita	12,111	2,597
73502	780	Santa Monica	14,915	3,199
72124	560	Sequoias	10,751	2,306
70144	170	Shasta-Tehama-Trinity	10,252	2,199
66936	270	Sierra	13,668	2,931
70474	180	Siskiyou	7,382	1,583
70557	280	Solano	10,933	2,345
70946	260	Sonoma	17,638	3,783
66654	890	South Orange County	18,874	4,048
68429	090	Southwestern	14,258	3,058
62463	570	State Center	20,067	4,304
72660	680	Ventura	20,606	4,419
67926	990	Victor Valley	10,641	2,282
62133	580	West Hills	8,274	1,775
63867	690	West Kern	6,937	1,488
69716	490	West Valley-Mission	16,255	3,486
71340	590	Yosemite	15,733	3,374
72777	290	Yuba	9,758	2,093
		TOTAL	1,059,608	227,250

Certification Signature: Moore

Title: Vice Chancellor Govt Relations & External Affairs

Date: 6-3-05

FSDI Categorical Report

** Verification Report **

5/25/04

Year: 2003- 04 Period: P2

District Name	Initial	Adjustment	Final
Allan Hancock Joint CCD	14,232	0	14,232
Antelope Valley CCD	14,372	0	14,372
Barstow CCD	9,037	0	9,037
Butte - Glen CCD	16,134	0	16,134
Cabrillo CCD	15,668	0	15,668
Cerritos CCD	20,045	0	20,045
Chabot-Las Positas CCD	19,719	0	19,719
Chaffey CCD	17,142	0	17,142
Citrus CCD	15,870	0	15,870
Coast CCD	32,972	0	32,972
Compton CCD	11,854	0	11,854
Contra Costa CCD	30,001	0	30,001
Copper Mountain CCD	8,564	0	8,564
Desert CCD	12,292	0	12,292
El Camino CCD	21,275	0	21,275
Feather River CCD	8,570	0	8,570
Foothill-De Anza CCD	30,723	0	30,723
Fremont-Newark CCD	13,291	0	13,291
Gavilan Joint CCD	10,802	0	10,802
Glendale CCD	19,296	0	19,296
Grossmont-Cuyamaca CCD	20,581	0	20,581
Hartnell Joint CCD	12,563	0	12,563
Imperial CCD	11,158	0	11,158
Kern CCD	20,610	0	20,610
Lake Tahoe CCD	8,845	0	8,845
Lassen CCD	9,459	0	9,459
Long Beach CCD	21,017	0	21,017
Los Angeles CCD	76,451	0	76,451
Los Rios CCD	39,960	0	39,960
Marin CCD	11,795	0	11,795
Mendocino-Lake CCD	9,522	0	9,522
Merced CCD	13,980	0	13,980
Mira Costa CCD	12,734	0	12,734
Monterey Peninsula CCD	13,697	0	13,697
Mt. San Antonio CCD	25,811	0	25,811
Mt. San Jacinto CCD	13,026	0	13,026
Napa Valley CCD	11,803	0	11,803
North Orange County CCD	32,180	0	32,180
Palo Verde CCD	8,648	0	8,648
Palomar CCD	20,801	0	20,801
Pasadena Area CCD	23,147	0	23,147

FSDI Categorical Report

** Verification Report **

Year: 2003- 04 Period: P2

District Name	Initial	Adjustment	Final
Peralta CCD	21,203	0	21,203
Rancho Santiago CCD	28,812	0	28,812
Redwoods CCD	11,605	0	11,605
Rio Hondo CCD	16,062	0	16,062
Riverside CCD	24,690	0	24,690
San Bernardino CCD	18,153	0	18,153
San Diego CCD	38,956	0	38,956
San Francisco CCD	34,363	0	34,363
San Joaquin Delta CCD	18,653	0	18,653
San Jose-Evergreen CCD	17,859	0	17,859
San Luis Obispo County CCD	13,793	0	13,793
San Mateo County CCD	22,176	0	22,176
Santa Barbara CCD	17,599	0	17,599
Santa Clarita CCD	15,074	0	15,074
Santa Monica CCD	23,845	0	23,845
Sequoias CCD, College Of The	13,623	0	13,623
Shasta-Tehama-Trinity Joint CCD	13,161	0	13,161
Sierra Joint CCD	16,965	0	16,965
Siskiyou Joint CCD	9,354	0	9,354
Solano County CCD	13,509	0	13,509
Sonoma County Jr. Coll. District	22,221	0	22,221
South Orange County CCD	23,863	0	23,863
Southwestern CCD	18,515	0	18,515
State Center CCD	25,382	0	25,382
Ventura County CCD	26,166	0	26,166
Victor Valley CCD	13,622	0	13,622
West Hills CCD	10,430	0	10,430
West Kern CCD	8,747	0	8,747
West Valley CCD	20,759	0	20,759
Yosemite CCD	19,409	0	19,409
Yuba CCD	13,249	0	13,249
Totals ========== >	1,351,465	0	1,351,465

Certification Signature: _____

Title: Vice Chancellor

Date: 5/25/04

FSDI Categorical Report

** Verification Report **

Year: 2002- 03 Period: P2

District Name	Initial	Adjustment	Final
Allan Hancock Joint CCD	14,471	0	14,471
Antelope Valley CCD	14,308	0	14,308
Barstow CCD	9,250	0	9,250
Butte - Glen CCD	16,826	0	16,826
Cabrillo CCD	16,098	0	16,098
Cerritos CCD	20,928	0	20,928
Chabot-Las Positas CCD	19,822	0	19,822
Chaffey CCD	17,656	0	17,656
Citrus CCD	16,372	0	16,372
Coast CCD	32,766	0	32,766
Compton CCD	12,312	0	12,312
Contra Costa CCD	31,196	0	31,196
Copper Mountain CCD	8,784	0	8,784
Desert CCD	12,458	0	12,458
El Camino CCD	21,698	0	21,698
Feather River CCD	8,856	0	8,856
Foothill-De Anza CCD	32,664	0	32,664
Fremont-Newark CCD	13,815	0	13,815
Gavilan Joint CCD	11,177	0	11,177
Glendale CCD	20,077	0	20,077
Grossmont-Cuyamaca CCD	20,659	0	20,659
Hartnell Joint CCD	12,816	0	12,816
Imperial CCD	11,492	0	11,492
Kern CCD	21,452	0	21,452
Lake Tahoe CCD	8,971	0	8,971
Lassen CCD	9,729	0	9,729
Long Beach CCD	22,722	0	22,722
Los Angeles CCD	84,385	0	84,385
Los Rios CCD	40,933	0	40,933
Marin CCD	12,311	0	12,311
Mendocino-Lake CCD	9,789	0	9,789
Merced CCD	14,543	0	14,543
Mira Costa CCD	13,587	0	13,587
Monterey Peninsula CCD	14,218	0	14,218
Mt. San Antonio CCD	27,258	0	27,258
Mt. San Jacinto CCD	13,039	0	13,039
Napa Valley CCD	12,071	0	12,071
North Orange County CCD	33,608	0	33,608
Palo Verde CCD	8,798	0	8,798
Palomar CCD	22,052	0	22,052
Pasadena Area CCD	24,313	0	24,313

FSDI Categorical Report

** Verification Report **

Year: 2002- 03 Period: P2

District Name	Initial	Adjustment	Final
Peralta CCD	20,723	0	20,723
Rancho Santiago CCD	31,115	0	31,115
Redwoods CCD	12,065	0	12,065
Rio Hondo CCD	16,196	0	16,196
Riverside CCD	27,020	0	27,020
San Bernardino CCD	18,527	0	18,527
San Diego CCD	39,228	0	39,228
San Francisco CCD	35,374	0	35,374
San Joaquin Delta CCD	18,989	0	18,989
San Jose-Evergreen CCD	18,433	0	18,433
San Luis Obispo County CCD	14,218	0	14,218
San Mateo County CCD	20,606	0	20,606
Santa Barbara CCD	17,985	0	17,985
Santa Clarita CCD	15,042	0	15,042
Santa Monica CCD	24,437	0	24,437
Sequoias CCD, College Of The	14,037	0	14,037
Shasta-Tehama-Trinity Joint CCD	13,692	0	13,692
Sierra Joint CCD	17,297	0	17,297
Siskiyou Joint CCD	9,622	0	9,622
Solano County CCD	13,641	0	13,641
Sonoma County Jr. Coll. District	22,730	0	22,730
South Orange County CCD	23,974	0	23,974
Southwestern CCD	18,434	0	18,434
State Center CCD	25,852	0	25,852
Ventura County CCD	27,134	0	27,134
Victor Valley CCD	13,711	0	13,711
West Hills CCD	10,699	0	10,699
West Kern CCD	8,987	0	8,987
West Valley CCD	20,614	0	20,614
Yosemite CCD	19,754	0	19,754
Yuba CCD	13,834	0	13,834
Totals ========== >	1,394,250	0	1,394,250

Certification Signature: _____

Title: VC Chancellor's Office

Date: 5-23-03

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS

Program: FSDIversity

Year: 2002 Period: P1

District	Initial	Adjustment	Final
Allan Hancock Jt CCD	14,626	0	14,626
Antelope Valley CCD	14,389	0	14,389
Barstow CCD	9,287	0	9,287
Butte CCD	16,546	0	16,546
Cabrillo CCD	16,026	0	16,026
Cerritos CCD	21,114	0	21,114
Chabot-Las Positas CCD	19,917	0	19,917
Chaffey CCD	17,608	0	17,608
Citrus CCD	16,247	0	16,247
Coast CCD	33,964	0	33,964
Compton CCD	12,359	0	12,359
Contra Costa CCD	30,821	0	30,821
Copper Mountain CCD	8,809	0	8,809
Desert CCD	12,438	0	12,438
El Camino CCD	21,752	0	21,752
Feather River CCD	8,817	0	8,817
Foothill-DeAnza CCD	32,450	0	32,450
Fremont-Newark CCD	13,813	0	13,813
Gavilan Jt CCD	11,240	0	11,240
Glendale CCD	19,321	0	19,321
Grossmont-Cuyamaca CCD	20,707	0	20,707
Hartnell CCD	13,018	0	13,018
Imperial Valley CCD	11,558	0	11,558
Kern CCD	21,188	0	21,188
Lake Tahoe CCD	8,975	0	8,975
Lassen CCD	9,568	0	9,568
Long Beach CCD	23,376	0	23,376
Los Angeles CCD	82,306	0	82,306
Los Rios CCD	41,331	0	41,331
Marin CCD	13,011	0	13,011
Mendocino-Lake CCD	9,792	0	9,792
Merced CCD	14,536	0	14,536
Mira Costa CCD	13,295	0	13,295
Monterey Peninsula CCD	14,459	0	14,459
Mt. San Antonio CCD	26,775	0	26,775
Mt. San Jacinto CCD	13,033	0	13,033
Napa Valley CCD	12,103	0	12,103
North Orange County CCD	33,597	0	33,597
Palo Verde CCD	8,738	0	8,738
Palomar CCD	20,744	0	20,744
Pasadena Area CCD	24,307	0	24,307
Peralta CCD	20,823	0	20,823
Rancho Santiago CCD	30,937	0	30,937
Redwoods CCD	12,014	0	12,014
Rio Hondo CCD	16,306	0	16,306
Riverside CCD	24,717	0	24,717

CALIFORNIA COMMUNITY COLLEGES
CATEGORICAL APPORTIONMENTS

Program: FSDIversity

Year: 2002 Period: P1

District	Initial	Adjustment	Final
San Bernardino CCD	18,319	0	18,319
San Diego CCD	39,853	0	39,853
San Francisco CCD	35,769	0	35,769
San Joaquin Delta CCD	18,606	0	18,606
San Jose-Evergreen CCD	18,764	0	18,764
San Luis Obispo County CCD	14,196	0	14,196
San Mateo County CCD	21,720	0	21,720
Santa Barbara CCD	18,058	0	18,058
Santa Clarita CCD	14,750	0	14,750
Santa Monica CCD	24,151	0	24,151
College of the Sequoias CCD	14,255	0	14,255
Shasta-Tehama-Trinity Jt CCD	13,716	0	13,716
Sierra Joint CCD	17,006	0	17,006
Siskiyou Joint CCD	9,694	0	9,694
Solano County CCD	13,886	0	13,886
Sonoma County Junior CD	23,071	0	23,071
South Orange County CCD	24,268	0	24,268
Southwestern CCD	18,652	0	18,652
State Center CCD	26,004	0	26,004
Ventura County CCD	27,877	0	27,877
Victor Valley CCD	14,073	0	14,073
West Hills CCD	10,463	0	10,463
West Kern CCD	8,965	0	8,965
West Valley-Mission CCD	20,831	0	20,831
Yosemite CCD	20,463	0	20,463
Yuba CCD	14,082	0	14,082
Statewide Totals ---->	$1394250	$0	$1394250

I certify that this revised allocation is correct and does not exceed our statutory appropriation of funds pursuant to Item 6870-101-001 (h) of the 2001 Budget Act.

Certification Signature: Ralph Black

Title: INTerim - VC Human Resources

Date: 1/28/02

Contact Person: Tosh Shikasho Phone: 323-4990

Attachment 4
Program Improvement

CHANCELLOR'S OFFICE
CALIFORNIA COMMUNITY COLLEGES
1107 NINTH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 445-8752

GEORGE DEUKMEJIAN, *Governor*

FISCAL SERVICES ADMINISTRATIVE MEMO 89/037

December 19, 1989

TO: District Chief Business Officers
County Schools Chief Business Officers

FROM: Gary L. Cook, Administrator
Fiscal Services

RE: Apportionment of Funds Appropriated Pursuant to Assembly Bill 198, Chapter 83/1989.

Synopsis: An Apportionment of funds appropriated pursuant to Section 36(b)(1) of Assembly Bill 198, Chapter 83/1989, has been certified and is shown on the attached Exhibit B. Allocations are made to reimburse state mandated local program costs and to implement reforms and program improvements as set forth in Education Code Section 84755. The estimated allocations are based on each districts' average daily attendance funded in the 1988-89 Second Principal Apportionment and will be revised on the 1989-90 First Principal Apportionment.

Action/Date Requested: Information.

Contact: Roger Merle at (916) 445-1163.

Attachment

GLC:RM:tj

cc: District Superintendent
County Auditor
County Treasurer
David Mertes
Douglas W. Burris
Joseph Newmyer
Roger G. Merle

CHANCELLOR'S OFFICE
CALIFORNIA COMMUNITY COLLEGES
1107 NINTH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 445-8752

GEORGE DEUKMEJIAN, Governo

Exhibit A

NOTICE OF APPORTIONMENT

The State Controller, State Treasurer, Director of Finance, county superintendents of schools, county treasurers, county auditors, and community college districts are hereby notified that an Apportionment in the amount of $70,000,000 has been made from Section B of the State School Fund of funds appropriated pursuant to Section 36(b)(1) of Assembly Bill 198, Chapter 83/1989, for the support of the California Community Colleges.

Warrants will be drawn on the State Treasury by the State Controller in favor of the treasurer of each county for the amounts shown on Exhibit B (attached). The monthly payments have been computed pursuant to Education Code Section 84700. The schedule of apportionment and monthly distribution for February through June 1990 will be included within the 1989-90 First Principal Apportionment in February 1990.

I hereby certify that this apportionment has been made by me as required by law and that the attached abstract is a true and correct statement of such apportionment.

David Mertes

DAVID MERTES, CHANCELLOR

December 19, 1989

CALIFORNIA COMMUNITY COLLEGES
ESTIMATED PROGRAM IMPROVEMENT FUNDS
AB 198, CH 83/89, SECTION 36 (B)(1)
DECEMBER 1989 AND JANUARY 1990 PAYMENT SCHEDULE

EXHIBIT B

COUNTY	DISTRICT	ESTIMATED GENERAL ALLOCATION	ESTIMATED EQUALIZATION ALLOCATION	ESTIMATED TOTAL ALLOCATION	DECEMBER 1989 PAYMENT	JANUARY 1990 PAYMENT
ALAMEDA	FREMONT NEWARK	$343,927	$332,261	$676,188	$351,618	$54,095
	PERALTA	941,153	0	941,153	489,400	75,292
	SOUTH COUNTY	738,867	679,170	1,418,037	737,379	113,443
	COUNTY TOTAL	2,023,947	1,011,431	3,035,378	1,578,397	242,830
BUTTE	BUTTE	492,627	418,994	911,621	474,043	72,930
CONTRA COSTA	CONTRA COSTA	1,489,601	1,439,217	2,928,818	1,522,985	234,305
EL DORADO	LAKE TAHOE	125,000	0	125,000	65,000	10,000
FRESNO	STATE CENTER	854,781	774,628	1,629,409	847,293	130,353
	WEST HILLS	125,000	0	125,000	65,000	10,000
	COUNTY TOTAL	979,781	774,628	1,754,409	912,293	140,353
HUMBOLDT	REDWOODS	289,646	0	289,646	150,616	23,172
IMPERIAL	IMPERIAL	197,076	0	197,076	102,480	15,766
KERN	KERN	695,503	0	695,503	361,662	55,640
	WEST KERN	125,000	0	125,000	65,000	10,000
	COUNTY TOTAL	820,503	0	820,503	426,662	65,640
LASSEN	LASSEN	145,422	50,172	195,594	101,709	15,648
LOS ANGELES	ANTELOPE VALLEY	285,429	280,548	565,977	294,308	45,278
	CERRITOS	794,465	108,736	903,201	469,665	72,256
	CITRUS	442,306	274,999	717,305	372,999	57,384
	COMPTON	196,921	0	196,921	102,399	15,754
	EL CAMINO	953,764	560,516	1,514,280	787,426	121,142
	GLENDALE	582,723	435,667	1,018,390	529,563	81,471
	LONG BEACH	997,836	504,491	1,502,327	781,210	120,186
	LOS ANGELES	3,633,483	0	3,633,483	1,889,411	290,679
	MT. SAN ANTONIO	1,070,274	699,863	1,770,137	920,471	141,611
	PASADENA	1,033,734	803,028	1,836,762	955,116	146,941
	RIO HONDO	570,702	438,847	1,009,549	524,965	80,764
	SANTA CLARITA	174,830	0	174,830	90,912	13,986
	SANTA MONICA	808,254	715,562	1,523,816	792,384	121,905
	COUNTY TOTAL	11,544,721	4,822,257	16,366,978	8,510,829	1,309,357
MARIN	MARIN	452,314	0	452,314	235,203	36,185
MENDOCINO	MENDOCINO-LAKE	125,000	0	125,000	65,000	10,000
MERCED	MERCED	386,451	282,578	669,029	347,895	53,522

CALIFORNIA COMMUNITY COLLEGES
ESTIMATED PROGRAM IMPROVEMENT FUNDS
AB 198, CH 83/89, SECTION 36 (B)(1)
DECEMBER 1989 AND JANUARY 1990 PAYMENT SCHEDULE

EXHIBIT B

COUNTY	DISTRICT	ESTIMATED GENERAL ALLOCATION	ESTIMATED EQUALIZATION ALLOCATION	ESTIMATED TOTAL ALLOCATION	DECEMBER 1989 PAYMENT	JANUARY 1990 PAYMENT
MONTEREY	HARTNELL	293,914	0	293,914	152,835	23,513
	MONTEREY PENINSULA	355,781	270,577	626,358	325,706	50,109
	COUNTY TOTAL	649,695	270,577	920,272	478,541	73,622
NAPA	NAPA	287,970	237,571	525,541	273,281	42,043
ORANGE	COAST	1,864,029	37,253	1,901,282	988,667	152,103
	NORTH ORANGE	1,717,476	0	1,717,476	893,088	137,398
	RANCHO SANTIAGO	1,204,917	0	1,204,917	626,557	96,393
	SADDLEBACK	933,228	0	933,228	485,279	74,658
	COUNTY TOTAL	5,719,650	37,253	5,756,903	2,993,591	460,552
PLACER	SIERRA	431,271	460,624	891,895	463,785	71,352
PLUMAS	FEATHER RIVER	125,000	753	125,753	65,392	10,060
RIVERSIDE	DESERT	299,922	0	299,922	155,959	23,994
	MT. SAN JACINTO	132,368	17,858	150,226	78,118	12,018
	PALO VERDE	125,000	27,918	152,918	79,517	12,233
	RIVERSIDE	627,564	671,177	1,298,741	675,345	103,899
	COUNTY TOTAL	1,184,854	716,953	1,901,807	988,939	152,144
SACRAMENTO	LOS RIOS	1,761,235	1,539,950	3,301,185	1,716,616	264,095
SAN BERNARDINO	BARSTOW	125,000	0	125,000	65,000	10,000
	CHAFFEY	482,720	0	482,720	251,014	38,618
	SAN BERNARDINO	634,263	51,728	685,991	356,715	54,879
	VICTOR VALLEY	218,438	0	218,438	113,588	17,475
	COUNTY TOTAL	1,460,421	51,728	1,512,149	786,317	120,972
SAN DIEGO	GROSSMONT	754,722	688,246	1,442,968	750,343	115,437
	MIRA COSTA	319,494	0	319,494	166,137	25,560
	PALOMAR	726,869	689,057	1,415,926	736,282	113,274
	SAN DIEGO	2,337,607	0	2,337,607	1,215,556	187,009
	SOUTHWESTERN	557,406	569,348	1,126,754	585,912	90,140
	COUNTY TOTAL	4,696,098	1,946,651	6,642,749	3,454,230	531,420
SAN FRANCISCO	SAN FRANCISCO	2,177,122	0	2,177,122	1,132,103	174,170
SAN JOAQUIN	SAN JOAQUIN	744,085	699,299	1,443,384	750,560	115,471
SAN LUIS OBISPO	SAN LUIS OBISPO	296,366	302,917	599,283	311,627	47,943
SAN MATEO	SAN MATEO	1,053,472	0	1,053,472	547,805	84,278

CALIFORNIA COMMUNITY COLLEGES
ESTIMATED PROGRAM IMPROVEMENT FUNDS
AB 198, CH 83/89, SECTION 36 (B)(1)
DECEMBER 1989 AND JANUARY 1990 PAYMENT SCHEDULE

EXHIBIT B

COUNTY	DISTRICT	ESTIMATED GENERAL ALLOCATION	ESTIMATED EQUALIZATION ALLOCATION	ESTIMATED TOTAL ALLOCATION	DECEMBER 1989 PAYMENT	JANUARY 1990 PAYMENT
SANTA BARBARA	ALLAN HANCOCK	427,516	154,988	582,504	302,902	46,600
	SANTA BARBARA	643,255	444,922	1,088,177	565,852	87,054
	COUNTY TOTAL	1,070,771	599,910	1,670,681	868,754	133,654
SANTA CLARA	FOOTHILL	1,694,967	1,525,703	3,220,670	1,674,748	257,654
	GAVILAN	195,763	42,919	238,682	124,115	19,095
	SAN JOSE	746,940	11	746,951	388,415	59,756
	WEST VALLEY	835,502	632,044	1,467,546	763,124	117,404
	COUNTY TOTAL	3,473,172	2,200,677	5,673,849	2,950,402	453,909
SANTA CRUZ	CABRILLO	474,568	447,640	922,208	479,548	73,777
SHASTA	SHASTA-TE-TR	375,872	306,910	682,782	355,047	54,623
SISKIYOU	SISKIYOU	125,000	0	125,000	65,000	10,000
SOLANO	SOLANO	367,278	358,056	725,334	377,174	58,027
SONOMA	SONOMA	918,071	694,077	1,612,148	838,317	128,972
STANISLAUS	YOSEMITE	678,446	0	678,446	352,792	54,276
TULARE	SEQUOIAS	370,975	321,737	692,712	360,210	55,417
VENTURA	VENTURA	1,108,202	1,007,440	2,115,642	1,100,134	169,251
YUBA	YUBA	378,317	0	378,317	196,725	30,265
STATEWIDE TOTAL		$49,000,000	$21,000,000	$70,000,000	$36,400,002	$5,600,001

Notes:
1. The general allocation is equal to approximately $70.10 per total funded ADA from the 1988-89 Second Principal Apportionment, Exhibit "C", dated 6/17/89, with a minimum allocation of $125,000. This allocation will be revised with the 1988-89 First Recalculation in February 1990.
2. The equalization allocation is based on the 1989-90 Advance Apportionment and does not include the effects of Supplemental Equalization. The allocations will be revised based on the 1989-90 First Principal Apportionment which will include Supplemental Equalization.
3. The December payment is 52% of the district's total allocation, which is equivalent to the amount that would have been distributed by December if the monthly payments had started in July 1989. The January 1990 payment is eight percent of the total allocation. Payments for the remainder of the fiscal year will be specified with the 1989-90 First Principal Apportionment.

Fiscal Services: 12/13/89: RM
pgmimp.doc

LIST OF STATUTES AND EXECUTIVE ORDERS PLED
CONSOLIDATED TEST CLAIM: *MINIMUM CONDITIONS FOR STATE AID*
(02-TC-25 AND 02-TC-31)

STATUTES

Chaptered Bills:

Statutes 1975, Chapter 802;
Statutes 1976, Chapters 275, 783, 1010, and 1176;
Statutes 1977, Chapters 36, 967;
Statutes 1979, Chapters 797 and 977;
Statutes 1980, Chapter 910;
Statutes 1981, Chapters 470 and 891;
Statutes 1982, Chapters 1117 and 1329;
Statutes 1983, Chapters 143 and 537;
Statutes 1984, Chapter 1371;
Statutes 1986, Chapter 1467;
Statutes 1988, Chapters 973 and 1514;
Statutes 1990, Chapters 1372 and 1667;
Statutes 1991, Chapters 1038, 1188, and 1198;
Statutes 1995, Chapters 493 and 758;
Statutes 1998, Chapter 365, 914, and 1023;
Statutes 1999, Chapter 587;
Statutes 2000, Chapter 187; and
Statutes 2002, Chapter 1169

Education Code Sections:

212	66030	66270	66722	66742	72014	81820
212.5	66251	66271.7	66722.5	66743	78015	81821
213	66252	66281.5	66731	70901	78016	81823
214	66261	66290	66732	70901.5	78211.5	87101
221.5	66261.5	66291	66736	70902	78212	87102
221.7	66262	66292	66737	71027	78213	87482.6
66010.2	66262.5	66292.3	66738	72011	78214	87482.7
66010.7	66263	66721	66740	72012	78215	
66016	66264	66721.5	66741	72013	78216	

California Code of Regulations, Title 5, Sections:

51000	53002	53309	55201	55502	55620	55800.5
51002	53003	53310	55202	55510	55630	55801
51004	53004	53311	55205	55512	55750	55805
51006	53005	53312	55207	55514	55751	55805.5
51008	53006	53314	55209	55516	55752	55806
51010	53020	54220	55211	55518	55753	55807
51012	53021	54626	55213	55520	55753.5	55808
51014	53022	54805	55215	55521	55753.7	55809
51016	53023	55000	55217	55522	55754	55825
51018	53024	55000.5	55219	55523	55755	55827
51020	53025	55001	55300	55524	55756	55828
51021	53026	55002	55316	55525	55756.5	55829
51022	53033	55002.5	55316.5	55526	55757	55830
51023	53034	55004	55320	55530	55758	55831
51023.5	53200	55005	55321	55532	55758.5	58102
51023.7	53202	55006	55322	55534	55759	58104
51024	53203	55100	55340	55600	55760	58106
51025	53204	55130	55350	55601	55761	58107
51026	53207	55150	55401	55602	55762	58108
51027	53300	55160	55402	55602.5	55763	59404
51100	53301	55170	55403	55603	55764	59410
51102	53302	55182	55404	55605	55765	
53001	53308	55200	55500	55607	55800	

Implementing Guidelines Handbooks:

Handbook of Accreditation and Policy Manual,
Accrediting Commission for Community and Junior Colleges (Summer 2002)

"Program and Course Approval Handbook"
Chancellor's Office California Community Colleges (September 2001)

"Student Equity Guidelines for Developing a Plan"
Fall 2002, The Academic Senate for California Community Colleges
(Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions")
(Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, adopted by the Academic Senate fall 2002)

Commission on State Mandates

Original List Date: 6/26/2003
Last Updated: 4/26/2007
List Print Date: 07/07/2008
Claim Number: 02-TC-31
Issue: Minimum Conditions for State Aid

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Fax: (916) 000-0000

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Sacramento, CA 95814

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Fax:

Mr. Joe Rombold
School Innovations & Advocacy
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Rancho Cordova, CA 95670

Tel: (916) 669-5116
Fax: (888) 487-6441

Mr. Allan Burdick
MAXIMUS
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Fax: (916) 485-0111

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Claimant

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Fax (559) 243-1949

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Claimant

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Fax

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Tel: (916) 445-3274

Fax (916) 323-9584

Mr. Thomas Todd
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Tel:

Fax

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Santa Monica, CA 90405-1628

Claimant

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Fax (310) 434-8200

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
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Tel: (916) 727-1350

Fax (916) 727-1734

Ms. Sandy Reynolds
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P.O. Box 894059
Temecula, CA 92589

Tel: (951) 303-3034

Fax (951) 303-6607

Mr. Steve Smith
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Gold River, CA 95670

Tel: (916) 852-8970

Fax (916) 852-8978

Mr. Arthur Palkowitz
San Diego Unified School District
Office of Resource Development
4100 Normal Street, Room 3209
San Diego, CA 92103-8363

Tel: (619) 725-7785

Fax (619) 725-7564

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Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: Fax:	(866) 481-2621 (866) 481-2682
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: Fax:	(916) 454-7310 (916) 454-7312
Ms. Carol Bingham California Department of Education (E-08) Fiscal Policy Division 1430 N Street, Suite 5602 Sacramento, CA 95814	Tel: Fax:	(916) 324-4728 (916) 319-0116
Mr. David E. Scribner Scribner & Smith, Inc. 2200 Sunrise Boulevard, Suite 220 Gold River, CA 95670	Tel: Fax:	(916) 852-8970 (916) 852-8978
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: Fax:	(916) 324-0256 (916) 323-6527
Ms. Jeannie Oropeza Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-0328 (916) 323-9530
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1190 Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 324-4888
Ms. Jolene Tollenaar MGT of America 455 Capitol Mall, Suite 600 Sacramento, CA 95814	Tel: Fax:	(916) 712-4490 (916) 290-0121

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

Claimant Representative

Tel: (916) 565-6104

Fax: (916) 564-6103

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

EXHIBIT S

June 22, 2010

Mr. Keith Petersen
SixTen and Associates
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

Re: NOTICE OF SEVERANCE:
Education Code Sections 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251, 66252, 66261, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, 72011-72014, 87101, and 87102; California Code of Regulations, Title 5, Sections 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, 53034, and 54220; and "Student Equity: Guidelines for Developing a Plan" Fall 2002, The Academic Senate for California Community Colleges (Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions"), (Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, Adopted by the Academic Senate Fall 2002)

Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)
(See enclosed list for statutes and regulations pled)
Los Rios Community College District,
Santa Monica Community College District, and
West Kern Community College District, Co-claimants

AND CONSOLIDATION WITH:
Discrimination Complaint Procedures (02-TC-46)
Government Code Sections 11135, 11136, 11137, 11138, 11139
California Code of Regulations, Title 5, Sections 59300, 59303, 59304, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330, 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360, and 59362.
Santa Monica Community College District, Claimant

Dear Mr. Petersen:

After review of *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) and *Discrimination Complaint Procedures* (02-TC-46), it has been determined that the test claims share common issues and allegations. Specifically, the test claims address statutes, administrative regulations,

and alleged executive orders regarding the prohibition against discrimination in community college employment and programs. In addition, these test claims raise similar issues regarding federal antidiscrimination laws.

For the sake of efficiency, Education Code sections 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251, 66252, 66261, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, 72011-72014, 87101, and 87102; California Code of Regulations, title 5, sections 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, 53034, and 54220; and "Student Equity: Guidelines for Developing a Plan" Fall 2002, The Academic Senate for California Community Colleges (Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions"), (Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, Adopted by the Academic Senate Fall 2002) will be severed from the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim and consolidated with the *Discrimination Complaint Procedures* (02-TC-46) test claim. This action is being taken pursuant to my authority under Government Code section 17530 and California Code of Regulations, title 2, section 1183.06, and will be effective 10 days from the service of this letter.

All future references to the *Discrimination Complaint Procedures* (02-TC-46) test claim will include Los Rios Community College District and West Kern Community College District as co-claimants with Santa Monica Community College District. A consolidated mailing list is enclosed.

As provided in the Commission's regulations this action and decision of the executive director may be appealed to the Commission for review. Please refer to California Code of Regulations, title 2, section 1181, subdivision (c).

Please contact Kenny Louie at (916) 323-2611 if you have any questions or concerns regarding this matter.

Sincerely,

Paula Higashi

PAULA HIGASHI
Executive Director

Enclosures: List of Statutes and Executive Orders Pled, Consolidated Test Claim: *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) and Consolidated Mailing List

J:mandates/2002/tc/02tc25/consolidatedtc/severeltr062210

LIST OF STATUTES AND EXECUTIVE ORDERS PLED
CONSOLIDATED TEST CLAIM: *MINIMUM CONDITIONS FOR STATE AID*
(02-TC-25 AND 02-TC-31)

STATUTES

Chaptered Bills:

Statutes 1975, Chapter 802;
Statutes 1976, Chapters 275, 783, 1010, and 1176;
Statutes 1977, Chapters 36, 967;
Statutes 1979, Chapters 797 and 977;
Statutes 1980, Chapter 910;
Statutes 1981, Chapters 470 and 891;
Statutes 1982, Chapters 1117 and 1329;
Statutes 1983, Chapters 143 and 537;
Statutes 1984, Chapter 1371;
Statutes 1986, Chapter 1467;
Statutes 1988, Chapters 973 and 1514;
Statutes 1990, Chapters 1372 and 1667;
Statutes 1991, Chapters 1038, 1188, and 1198;
Statutes 1995, Chapters 493 and 758;
Statutes 1998, Chapter 365, 914, and 1023;
Statutes 1999, Chapter 587;
Statutes 2000, Chapter 187; and
Statutes 2002, Chapter 1169

Education Code Sections:

212	66030	66270	66722	66742	72014	81820
212.5	66251	66271.7	66722.5	66743	78015	81821
213	66252	66281.5	66731	70901	78016	81823
214	66261	66290	66732	70901.5	78211.5	87101
221.5	66261.5	66291	66736	70902	78212	87102
221.7	66262	66292	66737	71027	78213	87482.6
66010.2	66262.5	66292.3	66738	72011	78214	87482.7
66010.7	66263	66721	66740	72012	78215	
66016	66264	66721.5	66741	72013	78216	

California Code of Regulations, Title 5, Sections:

51000	53002	53309	55201	55502	55620	55800.5
51002	53003	53310	55202	55510	55630	55801
51004	53004	53311	55205	55512	55750	55805
51006	53005	53312	55207	55514	55751	55805.5
51008	53006	53314	55209	55516	55752	55806
51010	53020	54220	55211	55518	55753	55807
51012	53021	54626	55213	55520	55753.5	55808
51014	53022	54805	55215	55521	55753.7	55809
51016	53023	55000	55217	55522	55754	55825
51018	53024	55000.5	55219	55523	55755	55827
51020	53025	55001	55300	55524	55756	55828
51021	53026	55002	55316	55525	55756.5	55829
51022	53033	55002.5	55316.5	55526	55757	55830
51023	53034	55004	55320	55530	55758	55831
51023.5	53200	55005	55321	55532	55758.5	58102
51023.7	53202	55006	55322	55534	55759	58104
51024	53203	55100	55340	55600	55760	58106
51025	53204	55130	55350	55601	55761	58107
51026	53207	55150	55401	55602	55762	58108
51027	53300	55160	55402	55602.5	55763	59404
51100	53301	55170	55403	55603	55764	59410
51102	53302	55182	55404	55605	55765	
53001	53308	55200	55500	55607	55800	

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Handbook of Accreditation and Policy Manual,
Accrediting Commission for Community and Junior Colleges (Summer 2002)

"Program and Course Approval Handbook"
Chancellor's Office California Community Colleges (September 2001)

"Student Equity Guidelines for Developing a Plan"
Fall 2002, The Academic Senate for California Community Colleges
(Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions")
(Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, adopted by the Academic Senate Fall 2002)

Commission on State Mandates

Original List Date: 6/22/2010
Last Updated:
List Print Date: 06/22/2010
Claim Number: 02-TC-25, 31, 46
Issue: Notice to Students/Minimum Conditions for State Aid/ Discrimination Complaint Procedures (CCD)

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: Fax:	(916) 727-1350 (916) 727-1734
Mr. David E. Scribner Max8550 2200 Sunrise Boulevard, Suite 240 Gold River, California 95670	Tel: Fax:	(916) 852-8970 (916) 852-8978
Mr. Jeff Carosone Department of Finance (A-15))15 L Street, 8th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-8913
Mr. Douglas R. Brinkley State Center Community College District 1525 East Weldon Avenue Fresno, CA 93704-6398	Tel: Fax:	(916) 000-0000 (916) 000-0000
Mr. Arthur Palkowitz Stutz Artiano Shinoff & Holtz 2488 Historic Decatur Road, Suite 200 San Diego, CA 92106	Tel: Fax:	(619) 232-3122 (619) 232-3264
Mr. Steve Bruckman California Community Colleges Chancellor's Office (G-01) 1102 Q Street Sacramento, CA 95814-6511	Tel: Fax:	(916) 323-7007 (916) 322-4783
Mr. Allan Burdick MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: Fax:	(916) 471-5538 (916) 366-4838
Ms. Angie Teng State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Fax:	(916) 323-0706

Ms. Jill Kanemasu State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: Fax:	(916) 322-9891
Mr. Paul Steenhausen Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: Fax:	(916) 319-8324 (916) 324-4281
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Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: Fax:	(951) 303-3034 (951) 303-6607
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: Fax:	(866) 481-2621 (866) 481-2682
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Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 449-5252
Mr. William Duncan West Kern Community College District 29 Emmons Park Drive Taft, CA 93268	Tel: Fax:	(661) 763-7700
Mr. Mike Brown School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: Fax:	(916) 669-5116 (888) 487-6441
Mr. J. Bradley Burgess Public Resource Management Group 895 La Sierra Drive Sacramento, CA 95864	Tel: Fax:	(916)595-2646
Mr. Erik Skinner California Community Colleges Chancellor's Office (G-01) 1102 Q Street Sacramento, CA 95814-6511	Tel: Fax:	(916) 323-7007 (916) 322-4783
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518	Tel: Fax:	(916) 323-5849 (916) 327-0832

Sacramento, CA 95814		
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: Fax:	(916) 446-7517 (916) 446-2011
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Ms. Juliana Morozumi Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-0328
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Mr. Ed Hanson Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-0328

Exhibit T

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

EDMUND G. BROWN JR., Governor

January 19, 2011

Mr. Keith Petersen
SixTen and Associates
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

Re: NOTICE OF SEVERANCE:
Education Code Sections 81820, 81821, and 81823

Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)
Los Rios Community College District and
Santa Monica Community College District, Co-claimants

AND CONSOLIDATION WITH:
Community College Construction (02-TC-47)
Santa Monica Community College District, Claimant

Dear Mr. Petersen:

After review of *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) and *Community College Construction* (02-TC-47), it has been determined that both test claims have pled Education Code sections 81820, 81821 and 81823, which address the preparation of capital construction plans by community college districts and the submission of these plans to the Board of Governors of the California Community Colleges.

For the sake of efficiency, Education Code sections 81820, 81821 and 81823 will be severed from the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim and consolidated with the *Community College Construction* (02-TC-47) test claim. This action is being taken pursuant to my authority under Government Code section 17530 and California Code of Regulations, title 2, section 1183.06, and will be effective 10 days from the service of this letter.

As provided in the Commission's regulations this action and decision of the executive director may be appealed to the Commission for review. Please refer to California Code of Regulations, title 2, section 1181, subdivision (c).

Please contact Eric Feller at (916) 323-3562 if you have any questions or concerns regarding this matter.

Sincerely,

Drew Bohan
Executive Director

J:mandates/2002/tc/02tc25/consolidatedtc/correspondence/severeltr011911

Commission on State Mandates

Original List Date: 7/9/2003
Last Updated: 10/5/2010
List Print Date: 01/20/2011
Claim Number: 02-TC-47
Issue: Community College Construction

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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Commission on State Mandates

Original List Date: 6/22/2010
Last Updated: 12/29/2010
List Print Date: 01/20/2011
Claim Number: 02-TC-25, 31, 46
Issue: Notice to Students/Minimum Conditions for State Aid/ Discrimination Complaint Procedures (CCD)

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Hearing Date: November 9, 2010

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ITEM _

TEST CLAIM

DRAFT STAFF ANALYSIS

Education Code Sections 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251, 66252, 66261, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, 72011, 72012, 72013, 72014, 87101, and 87102

Statutes 1976, Chapter 1010; Statutes 1981, Chapter 470;
Statutes 1982, Chapter 1117; Statutes 1983, Chapter 143; Statutes 1984, Chapter 1371;
Statutes 1988, Chapters 973; Statutes 1990, Chapter 1372; Statutes 1991, Chapter 1198;
Statutes 1998, Chapter 914; Statutes 1999, Chapter 587; and Statutes 2002, Chapter 1169

California Code of Regulations, Title 5, Sections 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, 53034, and 54220

"Student Equity: Guidelines for Developing a Plan" Fall 2002, The Academic Senate for California Community Colleges (Appendix 1: Chancellor's Office "Student Equity Plan Review Procedures and Instructions"), (Appendix 3: Chancellor's Office "Student Equity: Regulations and Guidelines," Revised May 14, 1997, Adopted by the Academic Senate Fall 2002)

(Consolidated With)

Government Code Sections 11135, 11136, 11137, 11138, and 11139

Statutes 1977, Chapter 972; Statutes 1992, Chapter 913; Statutes 1994, Chapter 146;
Statutes 1999, Chapter 591; Statutes 2001, Chapter 708; Statutes 2002, Chapter 300;
Statutes 2002, Chapter 1102

California Code of Regulations, Title 5, Sections 59300, 59303, 59304, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330 , 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360, and 59362

Register 96, number 23; Register 2001, number 6; Register 2002, number 13; and
Register 2002, number 35;

Discrimination Complaint Procedures

02-TC-46 (02-TC-25 and 02-TC-31)

Santa Monica Community College District
Los Rios Community College District, and
West Kern Community College District, Co-Claimant

EXECUTIVE SUMMARY

Background

This consolidated test claim filed by Santa Monica Community College District, Los Rios Community College District, and West Kern Community College District addresses state antidiscrimination laws as they apply to community college districts. The test claim alleges that

community college districts have incurred costs mandated by the state, due to the enactment and/or amendment of 36 California code sections and 44 related title 5 regulations,[1] as well as the "Student Equity: Guidelines for Developing a Plan," issued by the Academic Senate for California Community Colleges in Fall 2002 (Student Equity Guidelines). Activities which are alleged to have resulted in reimbursable costs include taking steps in district hiring to ensure equal employment opportunities for individuals on the basis of ethnic identity, gender, and disability; providing community college programs on an equal basis; having a written policy on sexual harassment; and investigating and resolving complaints of unlawful discrimination. For ease of discussion, the "Student Equity Guidelines" are analyzed separately from the code sections and regulations, and the code sections and regulations are separated into four sections in the analysis: (1) minimum conditions; (2) equal employment opportunity; (3) student equity; and (4) discrimination complaint procedures.

The California Community Colleges Chancellor's Office (Chancellor's Office) dispute the test claim regarding the "minimum conditions," "equal employment opportunity" and "student equity" sections. The Chancellor's Office argues that any claim for reimbursement in these sections must be denied because the alleged state-mandated activities are required by federal law; some of the alleged state-mandated activities are rules of general applicability; and/or some of the alleged state-mandated activities are downstream activities triggered by a districts decision to receive funding pursuant to a voluntary program. Regarding the "discrimination complaint procedures" section, the Chancellor's Office agrees with the claimants that Government Code sections 11135-11139, and the regulations adopted by the Board of Governors to implement the code sections, create a reimbursable state mandate.

The Department of Finance has chosen to reserve comments in regard to the "minimum conditions," "equal employment opportunity" and "student equity" sections of this analysis until the draft staff analysis is issued. In regard to the "discrimination complaint procedures" section, the Department of Finance asserts that the section should be denied in its entirety. The Department of Finance argues that the code sections and regulations pled by the claimants implement federal law and/or are required by a ballot measure, and that the claimants have failed to distinguish the requirements of the code sections and regulations from those required by federal law or by California voters. As a result, Finance argues that the claimants are not entitled to costs pursuant to Government Code

Staff Analysis

Staff makes the following findings:

- The "Student Equity Guidelines."
  An executive order is defined by Government Code section 17516 as any order, plan, requirement, rule, or regulation issued by the Governor; any officer or official serving at the pleasure of the Governor; or any agency, department, board, or commission of state government. The "Student Equity Guidelines" was issued by the Academic Senate for the California Community Colleges, which is a nonprofit organization established through ratification by local academic senates or faculty councils. Therefore, the Academic Senate for the California Community Colleges does not constitute an entity that can issue an executive order as defined by Government Code section 17516. Thus,

[1] References to "title 5" are to the California Code of Regulations, unless otherwise stated.

staff finds that the "Student Equity Guidelines for Developing a Plan" does not constitute an executive order within the meaning of Government Code Section 17516 subject to article XIII B, section 6 of the California Constitution.

- Minimum Conditions (Cal. Code Regs., tit. 5, §§ 51010 and 51026).
  The claimants have pled all of the Education Code sections and title 5 regulations in the "minimum conditions," "equal employment opportunity" and "student equity" sections of this analysis as minimum conditions satisfaction of which entitles a community college district to state aid. However, as relevant to this test claim, based on the plain language of the code sections and title 5 regulations staff finds that only title 5, sections 51010 and 51026, constitute minimum conditions satisfaction of which entitles a community college district to state aid.

  Title 5, sections 51010 and 51026, address equal employment opportunity and student equity, but are written as conditions satisfaction of which entitles community college districts to state aid. Staff finds that title 5, sections 51010 and 51026, do not impose activities mandated by the state, pursuant to the California Supreme Court's decision in *Kern High School Dist*., because community colleges perform the activities as a condition of becoming entitled to state aid.

- Equal Employment Opportunity (Ed. Code, §§ 87101 and 87102; and Cal. Code Regs., Tit. 5, §§ 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, and 53034).
  The code sections and title 5 regulations pled in this section formerly provided for "affirmative action" in employment within community college districts. The court in *Connerly v. State Personnel Bd.* found the code sections to be unconstitutional, and provided dicta suggesting that parts of the title 5 regulations were also unconstitutional. After the *Connerly* decision, the code sections and title 5 regulations were amended to address "equal employment opportunity," which sets forth the duty of community college districts to have a plan to ensure that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and to enjoy the benefits of employment with the district. The claimants have pled both the "affirmative action" version and the "equal employment opportunity" version of the code sections and title 5 regulations.

  Staff finds that statutes subsequently held unconstitutional can constitute a reimbursable state-mandated program. As a result, both the "affirmative action" and the "equal employment opportunity" code sections and title 5 regulations must be analyzed. In addition, although the title 5 regulations were amended after the *Connerly* decision, many of the activities remained the same, as a result, many of the findings apply to both the pre-*Connerly* title 5 regulations, and the post-*Connerly* title 5 regulations.

  Staff further finds that although some of the activities constitute federal mandates; are not state-mandated pursuant to *Kern High School Dist*.; or are not new as compared to the legal requirements in effect immediately prior to the enactment of the code sections and title 5 regulations; the activities on pages 227-237 of this analysis constitute a reimbursable state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

Finally, staff finds that funds received by community college districts from the Faculty Staff Diversity Fund or the Equal Employment Opportunity Fund may constitute offsetting revenue.

- Student Equity (Ed. Code, §§ 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251, 66252, 66261, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, and 72011-72014; and Cal. Code Regs., Tit. 5, § 54220).
  The code sections and title 5 regulation address various duties of community college districts including the provision of educational programs and services free from discrimination and harassment; and intersegmental collaboration and coordination between the California Community Colleges, University of California (UC), and California State University (CSU).

  Staff finds that although some of the activities required by the code sections and title 5 regulations constitute federal mandates; are not state-mandated pursuant to *Kern High School Dist*.; or are not new as compared to legal requirements in effect immediately prior to the enactment of the code sections and title 5 regulation; the activities on page 238 constitute a reimbursable state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

- Discrimination Complaint Procedures (Gov. Code, §§ 11135, 11136, 11137, 11138, 11139; and Cal. Code Regs., Tit. 5, §§ 59300, 59303, 59304, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330, 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360, and 59362).
  These Government Code sections and title 5 regulations set forth the duty of community college districts to establish a process to investigate alleged acts of discrimination in violation of state and federal antidiscrimination laws.

  Staff finds that although some of the activities required by the Government Code sections and title 5 regulations constitute federal mandates, many of the activities exceed the mandates of federal law. Further, staff finds that the activities on pages 238-243, which exceed federal law, constitute a reimbursable state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

  Staff further finds that the state-mandated new program or higher level of service is not necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election, and as a result, the Commission is not precluded from finding costs mandated by the state under Government Code section 17556, subdivision (f).

Conclusion

For the reasons discussed in the analysis, staff finds that the activities listed on pages 227-243 of this analysis constitute a reimbursable state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

In addition, for the reasons discussed on pages 222-223 of this analysis, in regard to the post-*Connerly* decision regulations pled in the "equal employment opportunity" section of this analysis (i.e. the regulations as they existed in Register 2002, No. 35), staff finds that any funds

received from the Equal Employment Opportunity Fund by the claimants and used for the reimbursable state-mandated activities imposed by the test claim regulations constitute offsetting revenue. In the Budget Act of 2003, $1,747,000 was appropriated for the Equal Employment Opportunity Fund.[2]

Also, for reasons discussed on pages 223-224 of this analysis, in regard to the pre-*Connerly* decision Education Code section and regulations pled in the "equal employment opportunity" section of this analysis (i.e. Ed. Code, § 87102 (Stats. 1988, ch. 973); and the regulations as they existed in Register 96, No. 23), staff finds that any funds received by community college districts from the Faculty and Staff Diversity Fund by the claimants may constitute offsetting revenue. In the Budget Act of 2001 and the Budget Act of 2002, $1,859,000 was appropriated for the Faculty and Staff Diversity Fund.[3]

Finally, staff finds that all other test claim statutes and regulations do not constitute a reimbursable state-mandated program because they either do not require any activities on community college districts, are mandated by federal law, are voluntary or are downstream of a voluntary activity, or are not new as compared to the legal requirements in effect immediately prior to their enactment.

Recommendation

Staff recommends that the Commission adopt this analysis.

[2] The Budget Act of 2003 (Stats. 2003, ch. 157) for the 2003-2004 fiscal year (starting July 1, 2003), scheduled $1,747,000 for the Equal Employment Opportunity Fund. See line item 6870-101-0001, schedule 14.

[3] The Budget Act of 2001 (Stats. 2001, ch. 106) for the 2001-2002 fiscal year (starting July 1, 2001), and the Budget Act of 2002 (Stats. 2002, ch. 379) for the 2002-2003 fiscal year (starting July 1, 2002), scheduled $1,859,000 for the Faculty and Staff Diversity Fund. See line item 6870-101-0001, schedule 14.

STAFF ANALYSIS

Co-Claimants

Santa Monica Community College District, Los Rios Community College District, and West Kern Community College District

Chronology

06/27/03	Claimant, Santa Monica Community College District, files test claim *Discrimination Complaint Procedures* (02-TC-46) with the Commission on State Mandates (Commission)[4]
07/11/03	Commission staff issues completeness letter and requests comments for 02-TC-46
08/21/03	The California Community Colleges, Chancellor's Office (Chancellor's Office) requests an extension of time for comments for 02-TC-46
08/28/03	Commission staff grants extension of time for comments for 02-TC-46 to October 11, 2003
10/31/03	The Department of Finance (Finance) requests an extension of time for comment for 02-TC-46
11/07/03	Commission staff grants extension of time for comments for 02-TC-46 to February 7, 2004
02/18/04	Finance requests an extension of time for comment for 02-TC-46
02/18/04	Commission staff grants extension of time for comments for 02-TC-46 to March 19, 2004
03/11/04	The Chancellor's Office files comments to 02-TC-46
03/23/04	Finance files comments to 02-TC-46
04/30/04	Claimant files response to comments of the Chancellor's Office and Finance to 02-TC-46
01/08/07	Claimant files supplement to 02-TC-46
01/09/08	Commission staff issues Notice of Consolidation of 02-TC-25 and 02-TC-31
01/11/08	Commission staff requests comments for 02-TC-31
03/14/08	Claimant files supplement to 02-TC-31
06/22/10	Commission staff issues Notice of Severance and Consolidation of statutes and administrative regulations from consolidated test claim *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) originally filed June 5, 2003 and June 13, 2003, to *Discrimination Complaint Procedures* (02-TC-46)

[4] Potential period of reimbursement begins on July 1, 2001, the start of the 2001-2002 fiscal year. See Government Code section 17557, subdivision (e).

I. Background

On June 22, 2010, the Commission severed a portion of the consolidated test claim *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31), and consolidated the severed portion with the *Discrimination Complaint Procedures* (02-TC-46) test claim.[5] The *Discrimination Complaint Procedures* consolidated test claim addresses state antidiscrimination laws as they apply to community college districts. The test claim alleges that community college districts have incurred costs mandated by the state, due to the enactment and/or amendment of 36 code sections and 44 related title 5 regulations,[6] as well as the "Student Equity: Guidelines for Developing a Plan," issued by the Academic Senate for California Community Colleges in Fall 2002 (Student Equity Guidelines). The code sections and regulations will be addressed in four sections: (1) minimum conditions; (2) equal employment opportunity; (3) student equity; and (4) discrimination complaint procedures.

The "minimum conditions" section addresses title 5, sections 51010 and 51026, which address equal employment opportunity and student equity. Sections 51010 and 51026 are part of a larger regulatory scheme (Cal. Code Regs., tit. 5, §§ 51000-51027) setting forth "minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges."[7] Although sections 51010 and 51026 address issues that are discussed in the "equal employment opportunity" and "student equity" sections, title 5, sections 51010 and 51026 will be analyzed separately from the "equal employment opportunity" and "student equity" sections of this analysis because of similar issues arising from these two regulations. Specifically, the "minimum conditions" section of this analysis will analyze whether minimum conditions, satisfaction of which entitles a community college district to state aid, constitute a reimbursable state-mandated new program or higher level of service.

The "equal employment opportunity" section addresses Education Code sections 87101 and 87102, and California Code of Regulations, title 5, sections 53001-53006, 53020-53027, 53030, and 53033-53034. These code sections and regulations, which used to provide for "affirmative action" in employment within community college districts, set forth the duty of community college districts to have a plan to ensure that all qualified individuals have a full and fair

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[5] The consolidated test claim *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) consists of the *Notice to Students* (02-TC-25) test claim filed on June 5, 2003, and the *Minimum Conditions for State Aid* (02-TC-31) test claim filed on June 13, 2003. The portions of the consolidated *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim that were severed and consolidated with this test claim consist of the "Student Equity Guidelines" and the Education Code sections and title 5 regulations that are discussed in the "minimum conditions," "equal employment opportunity," and "student equity" sections of this analysis. Specifically, Education Code sections 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251, 66252, 66261, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, 72011, 72012, 72013, 72014, 87101, and 87102; and California Code of Regulations, title 5, sections 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, 53034, and 54220.

[6] References to "title 5" are to the California Code of Regulations, unless otherwise stated.

[7] California Code of Regulations, title 5, section 51000.

opportunity to compete for hiring and promotion and to enjoy the benefits of employment with the district.

The "student equity" section addresses Education Code sections 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251, 66252, 66261, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, and 72011-72014; and title 5, section 54220. The code sections and regulation address various duties of community college districts including the provision of educational programs and services free from discrimination and harassment; and intersegmental collaboration and coordination between the California Community Colleges, University of California (UC), and California State University (CSU).

The "discrimination complaint procedures" section address Government Code sections 11135, 11136, 11137, 11138, 11139; and title 5, sections 59300, 59303, 59304, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330, 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360, and 59362. These code sections and regulations set forth the duty of community college districts to establish a process to investigate alleged acts of discrimination in violation of state and federal antidiscrimination laws.

Due to the nature of the record for the *Minimum Conditions for State Aid* test claim, staff has incorporated the whole record of the *Minimum Conditions for State Aid* test claim, rather than separating portions of the record to incorporate with the *Discrimination Complaint Procedures* record. As a result, when referencing an exhibit from the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim, the analysis will cite to "Exhibit F" in the record for the *Discrimination Complaint Procedures* (02-TC-46) test claim, which incorporates the whole record for *Minimum Conditions for State Aid*, and then will identify the specific exhibit in the *Minimum Conditions for State Aid* record.

A. Claimants' Position

The claimants allege that the test claim statutes, regulations, and alleged executive order impose reimbursable state-mandated activities on community college districts involving the provision of equal employment opportunity, equal opportunity in community college programs, and a discrimination complaint procedure.

The claimants acknowledge that some funding may have or has been received by community college districts for some of the claimed activities. However, the claimants question the sufficiency of this funding, arguing that to the extent that funding was made available, is applicable, and continues to be made available each subsequent year, such funding might reduce the reimbursable costs, but does not preclude an initial determination of whether a reimbursable mandate exists.[8]

The claimants filed comments, dated April 30, 2004; and May 5, 2004, in rebuttal to the comments by the Chancellor's Office and the Department of Finance set forth below. The claimants' arguments will be addressed as necessary in the discussion below.

[8] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at pgs. 385-386.

B. California Community Colleges-Chancellor's Office Position (Chancellor's Office)

On March 11, 2004 the Chancellor's Office submitted comments on the "minimum conditions," "equal employment opportunity" and "student equity" sections.[9] On that same date, the Chancellor's Office submitted comments on the "discrimination complaint procedures" section.[10]

Regarding the "minimum conditions," "equal employment opportunity" and "student equity" sections, the Chancellor's Office argues that any claim for reimbursement in these sections must denied because the alleged state-mandated activities are required by federal law, some of the alleged state-mandated activities are rules of general applicability, and/or some of the alleged state-mandated activities are downstream activities triggered by a districts decision to receive funding pursuant to a voluntary program.[11]

Regarding the "discrimination complaint procedures" section, the Chancellor's Office agrees with the claimants that Government Code sections 11135-11139, and the regulations adopted by the Board of Governors to implement the code sections, create a reimbursable state mandate.[12] The Chancellor's Office notes that it notified the Department of Finance (Finance) that the regulations would impose a mandate on community college districts prior to the adoption of the regulations, and that Finance suggested that the regulations did not create a mandate. In the event that the regulations did impose a mandate on community college districts, Finance suggested that the Chancellor's Office pursue reimbursement funding from a source other than the Governor's Budget. Chancellor's Office indicates that "As nearly as we can determine … no funds were provided at that time or at any time thereafter."[13]

C. Department of Finance's Position (Finance)

In regard to the "minimum conditions," "equal employment opportunity" and "student equity" sections, Finance has chosen to reserve comments until the draft staff analysis is issued.[14]

On March 23, 2004, Finance submitted comments on the "discrimination complaint procedures" section, asserting that the section should be denied in its entirety.[15] Finance asserts that the code sections and regulations pled by the claimants implement federal law and/or are required by a ballot measure, and that the claimants have failed to distinguish the requirements of the code sections and regulations from those required by federal law or by California voters. As a result, Finance argues that the claimants are not entitled to costs pursuant to Government Code section 17556, subdivisions (c) and (f).

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[9] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004," p. 10-12, and 19-21.

[10] Exhibit B, Chancellor's Office Comments on 02-TC-46, dated March 11, 2004.

[11] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004," at pgs. 10-12 and 19-21.

[12] Exhibit B, Chancellor's Office Comments on 02-TC-46, *supra*, at pgs. 1-2.

[13] *Id*. at pg. 2.

[14] Exhibit F. See *Minimum Conditions for State Aid* Exhibit P, "Department of Finance Response to Request for Comments, dated May 6, 2008."

[15] Exhibit C, Department of Finance Comments on 02-TC-46, dated March 11, 2004.

II. Discussion

The courts have found that article XIII B, section 6, of the California Constitution[16] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[17] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[18] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[19] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[20]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[21] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[22] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[23] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[24]

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[16] Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[17] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[18] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[19] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[20] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 *(Lucia Mar)*.

[21] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[22] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[23] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[24] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v.*

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[25] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[26]

A. The "Student Equity Guidelines for Developing a Plan" does not constitute an executive order within the meaning of Government Code section 17516 subject to article XIII B, section 6 and therefore is not within the Commission's jurisdiction.

Government Code section 17516 defines "executive order" as:

> [A]ny order, plan, requirement, rule, or regulation issued by any of the following:
>
> (a) The Governor.
>
> (b) Any officer or official serving at the pleasure of the Governor.
>
> (c) Any agency, department, board, or commission of state government.

The claimants have pled the fall 2002 "Student Equity Guidelines for Developing a Plan," including Appendices 1 and 3, issued by the Academic Senate for California Community Colleges as an executive order subject to reimbursement under article XIII B, section 6 of the California Constitution.[27]

Incorporated as a 501 (c)(6) nonprofit organization in 1970,[28] the Academic Senate for California Community Colleges, "established through ratification by local academic senates or faculty councils," is recognized by the Board of Governors as the representative of community college academic senates or faculty councils before the Board of Governors or the Chancellor's Office.[29] The Academic Senate for California Community Colleges is not the Governor; does not serve at the pleasure of the Governor; nor does it constitute an agency, department, board, or commission

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Commission on State Mandates (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[25] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[26] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[27] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31."

[28] Exhibit H, Academic Senate for California Community Colleges, *About the Academic Senate*, <http://www.asccc.org/about> [as of September 2, 2010]. "501 (c)(6) nonprofit organization" refers to Title 26 United States Code 501 (c)(6) which exempts from taxation, "Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

[29] California Code of Regulations, Title 5, section 53206, Register 2006, number 17 (Mar. 15, 2006).

of state government. As a result, the "Student Equity Guidelines for Developing a Plan" does not constitute an executive order.

In regard to Appendices 1 and 3, there is no evidence in the record to indicate that they are documents independent of the Academic Senate for California Community Colleges' "Student Equity Guidelines for Developing a Plan" which, as discussed above, is not an executive order. The claimants refer to Appendices 1 and 3 as "Appendix 1: *Chancellor's Office* 'Student Equity Plan Review Procedures and Instructions,'" and "Appendix 3: *Chancellor's Office* 'Student Equity: Regulations and Guidelines,' Revised May 14, 1997, adopted by the Academic Senate Fall 2002."[30] However, the Academic Senate for California Community Colleges identifies Appendices 1 and 3 only as "Appendix 1: Student Equity Planreview [*sic*] Procedures and Instructions" and "Appendix 3: Student Equity: Regulations & Guidelines."[31] Although the Academic Senate for California Community Colleges identifies the sources of the information in Appendices 1 and 3 as the Chancellor's Office and/or the Board of Governors,[32] there is no evidence in the record to indicate that Appendices 1 and 3 are documents *issued* by the Chancellor's Office and/or the Board of Governors and not documents containing information from the Chancellor's Office and/or the Board of Governors issued by the Academic Senate for California Community Colleges. In addition, the review procedures and instructions found in Appendix 1 are directed at and were used by the Chancellor's Review Committee, and therefore, are not orders issued to community college districts. In regard to Appendix 3, the overview and title of the appendix indicate that the content of Appendix 3 are only guidelines and that they "are not part of the regulations and, therefore, do not have the force and effect of law."[33] As a result, Appendices 1 and 3 of the Academic Senate for California Community Colleges' "Student Equity Guidelines for Developing a Plan" do not constitute executive orders within the meaning of Government Code section 17516, and therefore, are not within the Commission's jurisdiction.

B. Not all of the test claim statutes and regulations mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

To be subject to article XIII B, section 6 of the California Constitution, the test claim statutes and regulations must: (1) mandate a new activity upon the claimant, which (2) constitutes a new program or higher level of service.

To meet the first prong, the language of the test claim statutes and regulations must mandate an activity or task on a local governmental entity or school district. If the language does not mandate or require the claimant to perform a task, article XIII B, section 6, does not apply.

> In statutory construction cases, our fundamental task is to ascertain the intent of lawmakers so as to effectuate the purpose of the statute…If the terms of the

[30] Emphasis added.

[31] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31." Specifically, Exhibit 5 "Student Equity Guidelines for Developing a Plan, Table of Contents," issued by the Academic Senate for the California Community Colleges.

[32] *Id*. at p. 5 and Appendix 3.

[33] *Id*. at Appendix 3.

> statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.][34]

This rule of statutory construction is applicable to administrative regulations, as courts have held that, in general, the same rules of construction apply when interpreting administrative regulations as apply when interpreting statutes.[35]

In addition, the California Supreme Court held in *Kern High School Dist*. that when analyzing state mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[36] The court also held open the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion; where "'certain and severe … penalties', such as 'double … taxation' and other 'draconian' consequences,'"[37] would result if the local entity did not comply with the program.

In order to meet the second prong, the state-mandated activities must constitute a "new program or higher level of service." To constitute a "new program or higher level of service" the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement a state policy.[38] In addition, the requirements must be new in comparison with the pre-existing scheme and must be intended to provide an enhanced service to the public.[39] To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.[40]

When making this comparison courts have held:

> When a statute, although new in form, re-enacts an older statute without substantial change, even though it repeals the older statute, the new statute is but a continuation of the old. There is no break in the continuous operation of the old statute, and no abatement of any of the legal consequences of acts done under the old statute. Especially does this rule apply to the consolidation, revision, or codification of statutes, because, obviously, in such event the intent of the Legislature is to secure clarification, a new arrangement of clauses, and to delete superseded provisions, and not to affect the continuous operation of the law.[41]

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[34] Exhibit H, *Estate of Griswold*, (2001) 25 Cal.4th 904, 910-911.

[35] Exhibit H, *Cal. Drive-In Restaurant Assn. v. Clark* (1943) 22 Cal.2d 287, 292.

[36] *Kern High School Dist*., *supra*, 30 Cal.4th 727, 743.

[37] *Id*. at p. 751, quoting *City of Sacramento*, *supra*, 50 Cal.3d at p. 74.

[38] *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.

[39] *San Diego Unified School Dist*., *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

[40] *Ibid*.

[41] Exhibit H, *In re Dapper* (1969) 71 Cal.2d 184, 189-190, quoting *Sobey v. Molony* (1940) 40 Cal.App.2d 381, 385.

For ease of discussion, the test claim statutes and regulations will be separated and analyzed according to the following sections: (1) minimum conditions; (2) equal employment opportunity; (3) student equity; and (4) discrimination complaint procedures.

(1) Minimum Conditions (Cal. Code Regs., tit. 5, §§ 51010 and 51026)

This section addresses title 5, sections 51010 and 51026, which are part of a larger regulatory scheme consisting of title 5, sections 51000-51027 that set forth activities addressing various areas of community college operation and formation. This regulatory scheme was adopted pursuant to Education Code section 70901, subdivision (b)(6), to set forth the minimum conditions, satisfaction of which entitles community college districts to state aid. As noted above, sections 51010 and 51026 set forth activities associated with "equal employment opportunity" and "student equity" in community colleges, and are being analyzed separately from the "equal employment opportunity" and "student equity" sections of this analysis because of the unique issues associated with "minimum conditions."

The claimants, however, have pled all of the Education Code sections and regulations in the "equal employment opportunity" and "student equity" sections of this analysis, including title 5, sections 51010 and 51026, as "minimum conditions" established pursuant to Education Code section 70901, subdivision (b)(6). As a result, prior to analyzing whether title 5, sections 51010 and 51026, constitute a reimbursable state-mandated new program or higher level of service, it is necessary to determine whether the remaining Education Code sections and regulations in the "equal employment opportunity" and "student equity" sections of this analysis constitute "minimum conditions" established pursuant to Education Code section 70901, subdivision (b)(6).

a. Not all of the Education Code sections and administrative regulations pled by the claimants constitute "minimum conditions" established pursuant to Education Code section 70901, subdivision (b)(6)

Education Code section 70901 provides in relevant part:

> [¶] … [¶]
>
> (b) … the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:
>
> (1) Establish minimum standards as required by law, including, but not limited to, the following:
>
> (A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.
>
> (B) Minimum standards for the employment of academic and administrative staff in community colleges.
>
> (C) Minimum standards for the formation of community colleges and districts.
>
> (D) Minimum standards for credit and noncredit classes.
>
> (E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to

> express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.
>
> [¶] … [¶]
>
> (6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.
>
> [¶] … [¶].

When discussing the regulations pled by the claimants, the Chancellor's Office makes no distinction between "minimum standards" adopted under Education Code section 70901, subdivision (b)(1) and "minimum conditions" adopted under Education Code section 70901, subdivision (b)(6).[42] The claimants, however, argue that there is a distinction between the establishment of "minimum conditions" and the establishment of "minimum standards."[43]

Generally, when interpreting statutory language the plain meaning of the language governs.[44] In addition, where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning.[45] "Standard" is defined as, "A degree or level of requirement, excellence, or attainment."[46] In contrast, "condition" is defined as, "A proposition upon which another proposition depends; the antecedent of a conditional proposition."[47] The Legislature's decision to use "standard" in one section and "condition" in another, and the different meanings of these words, lead to the presumption that a distinction exists between "minimum standards" and "minimum conditions" as used in section 70901, subdivisions (b)(1) and (b)(6).

In addition to the distinction between "minimum standards" and "minimum conditions," the claimants further assert that the "minimum standards" established by the Board of Governors under Education Code section 70901, subdivision (b)(1), "are *only* applicable to" the areas of community college operation set forth by subdivisions (b)(1)(A) – (E).[48] The claimants argue that the test claim statutes and executive orders claimed in this test claim do not constitute

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[42] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on Test Claim 02-TC-31, dated March 11, 2004," p. 4.

[43] Exhibit F. See *Minimum Conditions for State Aid* Exhibit F, "Claimant Response to Chancellor's Office Comments on Test Claim, 02-TC-31, dated May 5, 2004," p. 8.

[44] Exhibit H, *Estate of Griswold*, *supra,* 25 Cal.4th at pgs. 910-911.

[45] Exhibit H, *Campbell v. Zolin* (1995) 33 Cal.App.4th 489, 497.

[46] Exhibit H, American Heritage Dictionary (new college ed. 1979) p. 1256.

[47] Exhibit H, American Heritage Dictionary (new college ed. 1979) p. 277.

[48] Exhibit F. See *Minimum Conditions for State Aid* Exhibit F, "Response to Chancellor's Office Comments on Test Claim, 02-TC-31, dated May 5, 2004," at p. 12. (Emphasis added.)

"minimum standards," rather "[t]his test claim is about the 'minimum conditions' for the receipt of state aid which were established in 1988."[49]

Although staff agrees that there is a distinction between the "minimum standards" established pursuant to subdivision (b)(1) and the "minimum conditions" established pursuant to subdivision (b)(6), the limited scope of subdivision (b)(1) and the broad scope of subdivision (b)(6) asserted by the claimants is contrary to the plain language of Education Code section 70901 and the plain language of the regulations implementing subdivision (b)(6).

Subdivision (b)(1) provides, in relevant part, that the Board of Governors shall "[e]stablish minimum standards as required by law, *including, but not limited to*, [subdivision (b)(1)(A) – (E)]."[50] Thus, contrary to the claimants' assertion that the minimum standards established pursuant to Education Code section 70901, subdivision (b)(1), "are only applicable to" the areas of community college operation set forth in subdivisions (b)(1)(A) – (E), subdivision (b)(1) provides the Board of Governors with broad authority to establish "minimum standards" regarding the general operation of community colleges.

Although the language of Education Code section 70901, subdivision (b)(6), also provides the Board of Governors with broad authority to establish "minimum conditions" entitling districts to receive state aid, within the regulations that implement subdivision (b)(6) the Board of Governors has chosen to limit the scope of what constitutes a "minimum condition." Title 5, section 51000, which sets forth the scope of what constitutes minimum conditions established by the Board of Governors pursuant to Education Code section 70901, subdivision (b)(6), provides:

> The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and *comprise* the rules and regulations fixing and affirming the *minimum conditions*, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges. (Emphasis added.)

Based on the plain language of section 51000, the scope of what "comprise[s] the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district…to receive state aid…" is limited to the "provisions of this Chapter." The "Chapter" referenced in section 51000, consists of title 5, sections 51000, 51002, 51004, 51006, 51008, 51010, 51012, 51014, 51016, 51018, 51020 – 51027, 51100, and 51102. As a result, pursuant to the plain language of section 51000, only title 5, sections 51000, 51002, 51004, 51006, 51008, 51010, 51012, 51014, 51016, 51018, 51020 – 51027, 51100, and 51102 comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a community college district to receive state aid.

The Office of Administrative Law, however, issued a Nomenclature Cross-Reference for title 5,[51] effective April 1, 1990, that provides:

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[49] *Id*. at p. 13.

[50] Education Code section 70901, subdivision (b)(1). (Emphasis added.)

[51] Nomenclature Cross-Reference was issued under the authority of the Office of Administrative Law pursuant to Government Code sections Government Code section 11344.

> Effective April 1, 1990, the Office of Administrative Law authorized the renaming of the hierarchical headings used within the Titles of the *California Code of Regulations*. Until the agencies implement these changes in their regulations, use the following Cross-Reference Table for the new organizational headings used in this Title.[52]

The Cross-Reference Table then provides that "Part" should be read as "Division," "Division" as "Chapter," "Chapter" as "Subchapter," "Subchapter" as "Article," "Article" as "Subarticle," and "Section" remains as "Section."

Title 5, sections 51000, 51002, 51004, 51006, 51008, 51010, 51012, 51014, 51016, 51018, 51020 – 51027, 51100, and 51102, are located under "Chapter 2. Community College Standards." "Chapter 2. Community College Standards" consists of two subchapters, "Subchapter 1. Minimum Conditions," and "Subchapter 2. Investigation and Enforcement of Minimum Conditions." "Subchapter 1. Minimum Conditions" consists of sections 51000, 51002, 51004, 51006, 51008, 51010, 51012, 51014, 51016, 51018, and 51020 – 51027. "Subchapter 2. Investigation and Enforcement of Minimum Conditions" consists of sections 51100 and 51102.

From a plain reading of section 51000 it is unclear whether the Board of Governors has implemented the changes in hierarchical headings in section 51000. As a result, an ambiguity arises as to whether the provisions of "Chapter 2. Community College Standards" (Cal. Code Regs. §§ 51000 – 51102), or only the provisions of "Subchapter 1. Minimum Conditions," (Cal. Code Regs. §§ 51000 – 51027), "comprise the rules and regulations fixing and affirming the minimum conditions … ."

In order to determine whether the Board of Governors implemented the changes in hierarchical headings, it is necessary to look at the hierarchical headings and the language used in section 51000 prior to and after the effective date of the Nomenclature Cross-Reference for title 5. Immediately prior to the effective date of the Nomenclature Cross-Reference for title 5, section 51000 was part of "Chapter 1. Minimum Standards," while sections 51100 and 51102 were part of "Chapter 2. Investigation and Enforcement of Minimum Standards."[53] In 1991, "Chapter 1. Minimum Standards" and "Chapter 2. Investigation and Enforcement of Minimum Standards" were brought under "Chapter 2. Community College Standards" and were renamed to "Subchapter 1. Minimum Conditions" and "Subchapter 2. Investigation and Enforcement of Minimum Conditions" by the Office of Administrative Law.[54] However, the language of section 51000 continued to provide, before and after the effective date of the Nomenclature Cross-Reference, "The provisions of this *chapter* … ."[55] As a result, it is evident that the Board of Governors has not implemented the changes in hierarchical headings in regard to

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[52] Exhibit H, Office of Administrative Law, *Nomenclature Cross Reference*, effective April 1, 1990.

[53] California Code of Regulations, title 5, sections 51000 and 51100 (Register 83, No. 29) (July 16, 1983).

[54] California Code of Regulations, title 5, sections 51000 and 51100 (Register 96, No. 23) June 7, 1991.

[55] California Code of Regulations, title 5, section 51000 has underwent subsequent amendments, and still provides that the "provisions of this *chapter* … ."

section 51000, and thus, pursuant to the Nomenclature Cross-Reference for title 5, "Chapter" should be read as "Subchapter," and thus, limiting the scope of what constitutes a "minimum condition" established pursuant to Education Code section 70901, subdivision (b)(6), to "Subchapter 1. Minimum Conditions."

Therefore, staff finds that the scope of what constitutes a "minimum condition," pursuant to Education Code section 70901, subdivision (b)(6), is limited to title 5, Chapter 2, Subchapter 1, sections 51000 – 51027 (as relevant to this analysis, title 5, sections 51010 and 51026). In addition, staff finds that the Education Code sections, and the remaining regulations pled by the claimants are outside of the scope of what constitutes a "minimum condition" pursuant to Education Code section 70901, subdivision (b)(6).

Now that it has been determined, as relevant to this analysis, that only title 5, sections 51010 and 51026, constitute "minimum conditions," it is necessary to determine whether these regulatory sections impose any state-mandated activities. As discussed below, staff finds that title 5, sections 51010 and 51026, do not impose any state-mandated activities.

b. California Code of Regulations, title 5, sections 51010, and 51026 do not impose any state-mandated activities.

In reference to the regulatory scheme containing sections 51010 and 51026, (Cal. Code Regs., tit. 5, §§ 51000 – 51027), section 51000 provides:

> The provisions of this [Subchapter] [sections 51000 – 51027] are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.[56]

The Chancellor's Office and the claimants both describe the language of section 51000 as providing that most of the regulations pled by the claimants establish minimum conditions *for the receipt of* state aid.[57] Read in this manner, section 51000 conditions the receipt of state aid by community college districts on compliance with the minimum conditions. The resulting implication is that a failure to comply with the minimum conditions results in forgoing the receipt of state aid.

Although it is generally recognized that an agency's interpretation of its own regulations becomes of controlling weight, this weight is not given when the agency's interpretation is plainly erroneous or inconsistent with the regulation.[58] In addition, an agency does not acquire special authority to interpret its own words when, instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language which it aims to

[56] California Code of Regulations, title 5, section 51000 (Register 95, No. 15 (April 14, 1995)).

[57] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004;" Exhibit D, "Chancellor's Office Comments on 02-TC-25, dated March 16, 2004, p. 8 -10;" and Exhibit B, "Test Claim Filing and Attachments for 02-TC-31."

[58] Exhibit H, *U.S. v Larionoff* (1977) 431 U.S. 864, 872.

implement.[59] Title 5, section 51000 paraphrases Education Code section 70901, subdivision (b)(6), which provides that the Board of Governors are to, "[e]stablish minimum conditions *entitling* districts to receive state aid for support of community colleges."[60] However, contrary to the plain language of section 51000 and Education Code section 70901, subdivision (b)(6), the Chancellor's Office response to the 02-TC-25/02-TC-31 test claim appears to have interpreted the language of section 51000 as requiring compliance with the minimum conditions in order to *receive* state aid.[61]

When interpreting regulations, if the terms of the regulation are unambiguous, the plain meaning of the language governs, and an intent that cannot be found in the words of the regulation cannot be found to exist.[62] Additionally, an interpretation of a regulation should not render any language mere surplusage, and the language must be considered in the context of the regulatory framework as a whole.[63]

The plain language of section 51000 indicates that sections 51010 and 51026 are minimum conditions, "satisfaction of which *entitles*" a community college district to state aid. In addition, the plain language of section 51000 does not preclude a community college district which has not satisfied the minimum conditions, and therefore is not *entitled* to state aid, from receiving state aid. This intent cannot be found to exist absent language indicating such intent. As a result, section 51000 provides only that satisfaction of the minimum conditions leads to an *entitlement* to state aid by a community college district.

In addition, interpreting section 51000 as providing that sections 51010 and 51026 constitute minimum conditions *for the receipt* of state aid, would render the language of section 51000 that provides, "…satisfaction of which entitles…" unnecessary and mere surplusage. Giving effect to the usual and ordinary import of this language leads to an interpretation that satisfaction of the minimum conditions results in an *entitlement* to receive state aid.

The plain language interpretation of section 51000 is also consistent with the regulatory scheme regarding minimum conditions. Title 5, section 51102, which addresses enforcement of the minimum conditions by the Chancellor, provides that after the Chancellor has notified a district of the Chancellor's finding of the district's noncompliance with the minimum conditions, and the district has responded or the time for a response has lapsed, the Chancellor shall take one or more of the following actions:

> (1) accept in whole or part the district's response regarding noncompliance;
>
> (2) require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

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[59] Exhibit H, *Gonzales v. Oregon* (2006) 546 U.S. 243, 257.

[60] Emphasis added.

[61] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004."

[62] Exhibit H, *Riebe v. Budget Financial Corp.* (1968) 264 Cal.App.2d 576, 585.

[63] Exhibit H, *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 218.

(3) withhold all or part of the district's state aid. The amount of withholding shall be related to the extent and gravity of noncompliance and shall require approval of the Board of Governors.

The Chancellor has discretion on which action or actions to take upon a finding that a community college district is not in compliance with the "minimum conditions." Each of the actions that the Chancellor is authorized to take allows for the possible provision of state aid to a community college district. Accordingly, even if the Chancellor finds a community college district to be in noncompliance with sections 51010 and 51026, a community college district may still receive state aid. Thus, compliance with the minimum conditions (Cal. Code Regs., tit. 5, §§ 51000 – 51027) is a downstream activity of becoming *entitled* to receive state aid. As a result, pursuant to *Kern High School Dist*., the underlying issue that must be addressed to determine whether sections 51010 and 51026 mandate any activities is whether community college districts are mandated to become *entitled* to receive state aid, and not whether community college districts are mandated to *receive* state aid as discussed by the Chancellor's Office and the claimants.[64]

Pursuant to *Kern High School Dist*., the Commission must look at the underlying program to determine if a claimant's participation in the underlying program is legally compelled. In addition, the court in *Kern High School Dist*. left open the possibility that a state mandate might be found in circumstances of practical compulsion, where a local entity faced certain and severe penalties as a result of noncompliance with a program that is not legally compelled. The court in *Dept. of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355, explained further that a finding of "practical compulsion" requires a concrete showing in the record that a failure to engage in the activity/activities at issue will result in certain and severe penalties.[65]

Here, there nothing in the governing statutes, regulations, or in the record that community college districts are required to become entitled to state aid. As a result, pursuant to *Kern High School Dist*. community college districts do not face *legal* compulsion to become entitled to state aid. In addition, as discussed above, even if the Chancellor finds a community college district to be in noncompliance with the minimum conditions (Cal. Code Regs., tit. 5, §§ 51000-51027), and therefore not entitled to receive state aid, the district may still receive state aid. In the event that a district's state aid is withheld, there being no evidence in the record that this has occurred, the extent of any withholding is uncertain. Thus, there is no concrete showing in the record that community college districts face certain and severe penalties as a result of not becoming entitled to receive state aid, and as a result, pursuant to *POBRA* community college districts do not face *practical* compulsion to comply with the minimum conditions.

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[64] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004, p. 2;" Exhibit D, "Chancellor's Office Comments on 02-TC-25, dated March 16, 2004, p. 9 – 10;" Exhibit E, "Claimant Response to Chancellor's Office Comments on Test Claim, 02-TC-25, dated April 19, 2004, p. 13;" and Exhibit F, "Claimant Response to Chancellor's Office Comments on Test Claim, 02-TC-31, dated May 5, 2004, pgs. 3-7.

[65] *POBRA*, *supra*, 170 Cal.App.4th at pgs. 1366-1369.

As a result, staff finds that title 5, sections 51010 and 51026, do not impose any state-mandated activities upon community college districts, and therefore do not mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

(2) Equal Employment Opportunity[66] (Ed. Code, §§ 87101 and 87102; and Cal. Code Regs., Tit. 5, §§ 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, and 53034):

This section addresses statutes and regulations pertaining to a community college district's equal employment opportunity programs, which seek to promote equal opportunity regardless of gender, ethnicity, or disability. Specifically, this section addresses Education Code sections 87101 and 87102, and title 5, sections 53001-53006, 53020-53027, 53030, and 53033-53034.

a. Background

The first incarnation of the title 5 regulations were adopted by the Board of Governors of the California Community Colleges in 1977 and required community college districts to develop an "affirmative action employment program."[67] In 1978, Education Code sections 87100-87106 were enacted as "substantially a codification of [the] regulations adopted by the Board of Governors" that required the development of an affirmative action program.[68] In 1982, the title 5 regulations were repealed and replaced with regulations that more thoroughly set forth the duties regarding a district's affirmative action program, including the adoption of an affirmative action plan to implement the program.[69] In addition, the 1982 regulations listed Education Code sections 87100 and 87105 as the authority and reference citations for the adoption of the regulations.[70] In 1988, the Legislature amended the Education Code sections to add Education Code section 87107 which created the Faculty and Staff Diversity Fund in order to enable the California Community Colleges as a system to address the goal that the system's work force will reflect proportionately the adult population of the state.[71] In 1992 the title 5 regulations were repealed and replaced again, amending the purpose of the regulations to specifically state that the regulations implement and are to be read in conjunction with Education Code section 87100 et

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[66] Formerly "Affirmative Action and Equal Employment Opportunity."

[67] California Code of Regulations, title 5, section 53003 (Register 77, No. 30) (Aug. 18, 1977).

[68] Statutes 1978, chapter 766, section 2.

[69] California Code of Regulations, title 5, section 53000 et seq. (Register 82, No. 6) (Mar. 3, 1982).

[70] *Ibid*. Education Code sections 87100 and 87105, as added by Statutes 1978, chapter 767, set forth the Legislature's findings and declarations, and the duty and authority of the Board of Governors of the California Community Colleges to adopt all necessary rules and regulations to carry out the intent of Education Code sections 87100-87106.

[71] Statutes 1988, chapter 973. The Budget Act of 1989 (Stats. 1989, ch. 93) for the 1989-1990 fiscal year (starting July 1, 1989) scheduled $1,000,000 to the Faculty Staff Diversity Fund. The Budget Act of 1989 was the first budget act to appropriate money for the purpose of the Faculty Staff Diversity Fund. See line item 6870-101-001, schedule (h).

seq.[72] In 1996, the purpose of the title 5 regulations was amended to not only implement Education Code sections 87100 et seq., but to also be read in conjunction with other state and federal antidiscrimination laws.[73]

On September 4, 2001, Education Code sections 87100-87107 were held unconstitutional by the court in *Connerly v. State Personnel Bd.*[74] Although the court also notes that the regulations pled by the claimants in this test claim "do not come close to implementing [Education Code sections 87100-87107] in a constitutional manner," this statement and the subsequent discussion regarding the constitutionality of specific regulations does not constitute binding precedent because the regulations were not placed in issue in *Connerly v. State Personnel Bd.*, nor were the statements in regard to the regulations necessary to the decision.[75] Thus, while Education Code sections 87100-87107 were held unconstitutional, and therefore void, title 5, section 53000 et seq., as existing prior to the decision, remained in place.

In response to the *Connerly v. State Personnel Bd.* decision, the Legislature repealed Education Code sections 87100-87107, as they were written prior to September 4, 2001, and added Education Code sections 87100-87103, and 87105-87108, with the enactment of Statutes 2002, chapter 1169. The post-*Connerly* Education Code sections removed race and gender conscious techniques used in promoting student and faculty diversity found unconstitutional in *Connerly v. State Personnel Bd.* In addition, the post-*Connerly* Education Code sections replaced the Staff and Faculty Diversity Fund with the Equal Employment Opportunity Fund. Also, the activities required by the code sections were made into conditions for receipt of funds from the Equal Employment Opportunity Fund.

On August 11, 2002, as the Legislature was seeking to repeal and replace Education Code sections 87100-87108, the Board of Governors amended its regulations which implemented former sections 87100-87107.[76] The amendments to the title 5 regulations removed all references to affirmative action, focusing more on equal employment opportunity and diversity. Also, these amendments removed language that could be interpreted as providing an improper

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[72] California Code of Regulations, title 5, section 53000 (Register 92, No. 17) (April 24, 1992).

[73] California Code of Regulations, title 5, section 53000 (Register 96, No. 23) (June 30, 1996).

[74] Exhibit H, *Connerly v. State Personnel Bd.* (2001) 92 Cal.App. 4th 16, 57-61.

[75] Exhibit H, *Gogri v. Jack In The Box Inc.* (2008) 166 Cal.App.4th 255, providing, "Only statements necessary to the decision are binding precedents … [t]he doctrine of precedent … extends only to the ratio decidendi[, rule of law on which a court's decision is founded,] of a decision, not to supplementary or explanatory comments which might be included in an opinion. To determine the precedential value of a statement in an opinion, the language of that statement must be compared with the facts of the case and the issues raised." (*Ibid.* at p. 272.) In *Connerly v. State Personnel Bd.*, the court's comments regarding the regulations were in response to the community colleges' argument that administrative regulations could save a facially invalid statutory scheme. After finding in the negative, the court proceeded to state that even if the regulations could save the statutory scheme, the regulations themselves do not implement the statutes in a constitutional manner. (*Connerly v. State Personnel Bd., supra*, 92 Cal.App.4th at 60-61.)

[76] California Code of Regulations, title 5, section 53000 et seq. (Register 2002, No. 35).

preference or authorizing discrimination on an impermissible basis. In addition, the amendments removed the requirement of district goals and/or timetables for the hiring of minorities and women. Further, the amendments to the title 5 regulations removed almost all reference to Education Code sections 87100-87107, both in the stated purpose of the regulations and in the authority and reference citations of the regulations. As a result, pursuant to title 5, section 53000, the stated purpose of the regulations is to implement the other various state and federal antidiscrimination laws cited to in the 1996 amendment of section 53000.[77] Thus, from the language of the post-*Connerly* title 5 regulations, the regulations and Education Code section 87100 et seq. (Stats. 2002, ch. 1169) are separate efforts to address the same issue of equal employment opportunity.

The reimbursement period for the test claim statutes and regulations pled in this section of the analysis begins on July 1, 2001.[78] The claimants have pled Education Code sections 87101 and 87102, as they existed prior to the decision in *Connerly v. State Personnel Bd*. on September 4, 2001, and as repealed and replaced by Statutes 2002, chapter 1169, in response to the decision.[79] In addition, the claimants have pled the regulations as "added in 1992 and last amended in 2002."[80, 81] These years coincide with amendments made to the regulations in Register 92, number 17, and Register 2002, number 35.

b. Statutes Subsequently Held Unconstitutional Can Constitute a Reimbursable State-Mandated Program.

As can be seen from the above discussion, two versions of Education Code sections 87101 and 87102 exist within the period of reimbursement (beginning July 1, 2001), one of which was held unconstitutional by the court in *Connerly v. State Personnel Bd*. on September 4, 2001. Thus, prior to addressing whether the code sections and regulations pled by the claimants constitute a

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[77] California Code of Regulations, title 5, section 53000 (Register 2002, No. 35) (August 11, 2002). Antidiscrimination laws cited to: Government Code sections 11135-11139.5, Education Code sections 66010.2, 66030, and 66250 et seq., Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.); and the Age Discrimination Act (42 U.S.C. § 6101).

[78] Government Code section 17557, subdivision (e), "A test claim shall be submitted on or before June 30 following the fiscal year in order to establish eligibility for reimbursement for that fiscal year." The claimants filed the *Notice to Students* (02-TC-25), and *Minimum Conditions for State Aid* (02-TC-31) test claims on June 5, 2003, and June 23, 2003. Thus, both test claims were submitted within the 2002-2003 fiscal year. As a result, the reimbursement period for these test claims begins with the 2001-2002 fiscal year which begins on July 1, 2001.

[79] Before being held unconstitutional in *Connerly v. State Personnel Bd*., Education Code section 87101 was last amended by Statutes 1990, chapter 1302, and Education Code section 87102 was last amended by Statutes 1988, chapter 973.

[80] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at pgs. 46-52.

[81] Claimants have pled California Code of Regulations, title 5, section 53006, "as added in 1996 and last amended in 2002." *Id*. at pg. 48.

state-mandated new program or higher level of service, it is necessary to determine whether Education Code sections 87101 and 87102, as they existed in the two month period beginning at the start of the reimbursement period (July 1, 2001) and ending when they were held unconstitutional (September 4, 2001), can constitute a reimbursable state-mandated program during that limited time period.

The effect of an unconstitutional statute is a complex area of law, and no general rule can be cited with regard to the effectiveness of a statute while it was presumed constitutional. The traditional approach was that an unconstitutional statute is "void ab initio," that is, "[a]n unconstitutional statute is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."[82] Under the traditional approach, no reimbursement would be required for activities required by Education Code sections 87101 and 87102 as they existed prior to being held unconstitutional on September 4, 2001. This approach has been criticized in later decisions, however, and the trend nationwide has been toward a more *equity*-oriented view that binding rights and obligations may be based on a statute that is subsequently declared unconstitutional, and that not every declaration of unconstitutionality is retroactive in its effect.[83]

Under California state mandates law, the determination as to whether a mandate exists is a question of law.[84] As stated in *County of Sonoma*, the Commission must strictly construe article XIII B, section 6 and not apply it as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.[85, 86] Nevertheless, the purpose of article XIII B, section 6, as revealed in the ballot measure adopting it, was to prevent the state from forcing programs on local governments without the state paying for them. In 2004, the California Supreme Court in the *San Diego Unified School Dist.* case reaffirmed the purpose of article XIII B, section 6, as follows:

> The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: 'Additionally, this measure: (1) Will not allow the state government to *force programs* on local

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[82] Exhibit H, *Norton v. Shelby County* (1886) 118 U.S. 425.

[83] Exhibit H, *Chicot County Drainage District v. Baxter State Bank* (1940) 308 U.S. 371.

[84] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1279, citing *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[85] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280; see also *City of San Jose v. State of California (City of San Jose)* (1996) 45 Cal.App.4th 1802, 1816-1817, citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180.

[86] The doctrine of equity in this sense means the "recourse to principles of justice to correct or supplement the law as applied to particular circumstances…" Equity is based on a system of law or body of principles originating in the English Court of Chancery and superseding the common and statute law when the two conflict. (See Black's Law Dict. (7th ed., 1999) p. 561, col. 1.)

governments without the state paying for them.' (citations omitted) (italics added.)[87]

Applying the court's ruling that the test claim legislation is unconstitutional retroactively to the original effective date of the legislation could have the effect of forcing programs and costs on local governments without the state paying for them, contrary to the purpose of Article XIII B, section 6. As a result, statutes subsequently held unconstitutional can constitute a reimbursable state-mandated program.

Because binding rights or obligations in the form of reimbursable mandates could have been created while the test claim legislation was presumed to be constitutional, an analysis on the merits should proceed in order to determine whether Education Code sections 87101 and 87102, as they existed between July 1, 2001 (the beginning of the reimbursement period) and September 4, 2001 (the date on which the code sections were held unconstitutional), did in fact mandate a new program or higher level of service and impose costs mandated by the state during that period of time.

The following discussion will first address whether equal employment opportunity code sections and regulations require any activities. Secondly, the discussion will analyze whether the activities required by the code sections and title 5 regulations constitute federal mandates. Thirdly, the discussion will analyze whether the activities required by the code sections and regulations constitute state-mandated activities. Finally, the discussion will address whether the code sections and regulations constitute a new program or higher level of service.

c. Education Code sections 87101 and 87102 (Stats. 1988, ch. 973; Stats. 1990, ch. 1302; and Stats. 2002, ch. 1169); and California Code of Regulations, title 5, sections 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, and 53034 (Register 96, No. 23; and Register 2002, No. 35) require some activities.

As a preliminary matter it is important to note that although the claimants have pled the code sections and regulations as they existed before *and* after the 2002 amendments to the code sections and regulations in response to *Connerly v. State Personnel Bd.*, the activities claimed by the claimants paraphrase the language found in the code sections and regulations *after* the 2002 amendments.[88] However, because many of the provisions of the regulations as they existed before the 2002 amendments are substantially similar to the provisions of the regulations after the 2002 amendments, this analysis will address the claimants' arguments as pertaining to both versions of the regulations where appropriate.

As discussed above, prior to the *Connerly v. State Personnel Bd.* decision the title 5 regulations specifically implemented the affirmative action hiring requirements of the Education Code sections and other state and federal antidiscrimination laws. However, after the *Connerly v. State Personnel Bd.* decision, the Education Code sections and regulations act as separate efforts to address the issue of equal employment opportunity, with the regulations only implementing other state and federal antidiscrimination laws. Thus, although some of the activities required by

[87] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 875.

[88] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at pgs. 206-231.

the post-*Connerly* Education Code sections address similar equal employment opportunity issues as the title 5 regulations, the post-*Connerly* Education Code sections will be identified separately from the title 5 regulations. In contrast, the activities required by the pre-*Connerly* Education Code sections will be combined with the title 5 regulations where appropriate.

In addition, although the title 5 regulations were amended after the *Connerly v. State Personnel Bd.* decision and no longer implemented Education Code section 87100 et seq., the regulations continued to implement other state and federal antidiscrimination laws, and thus, substantial portions of the regulations remained the same. As a result, activities required by the title 5 regulations that did not substantively change after the *Connerly v. State Personnel Bd*. decision, will be identified as continuous activities with a reimbursement period beginning on July 1, 2001 and no date ending the reimbursement period. Activities that ended or began post-*Connerly* will be identified with a date ending the reimbursement period or a start date other than July 1, 2001.

Commitment to Action for Equal Employment Opportunities (Ed. Code, § 87101)

Education Code section 87101, as repealed and replaced in 2002, sets forth the definitions of terms used in the Education Code sections addressing equal employment opportunity hiring.[89] The definitions, in and of themselves, do not require any activities. However, subdivision (c) of Education Code section 87101, requires community college districts that opt to participate in the post-*Connerly* Education Code sections addressing equal employment opportunity hiring are required to engage in the following activity:

> Commit to sustained action to devise recruiting, training, and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees. (Ed. Code, § 87101, subd. (c) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

District Plan: (Ed. Code, § 87102; and Cal. Code Regs., tit. 5, § 53003)

Between July 1, 2001 and September 4, 2001, Education Code section 87102, dealt with community college district compliance with Education Code sections 87100-87107, which addressed the implementation of a district's affirmative action employment program.[90] During this period, title 5, section 53003, as amended in Register 96, number 23, addressed the development and content of a community college district's faculty and staff diversity plan, which implemented the district's affirmative action program.[91] In 2002, title 5, section 53003, was

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[89] See Education Code section 87100 et seq., as repealed and replaced by Statutes 2002, chapter 1169.

[90] See, Statutes 1988, chapter 973.

[91] The term "affirmative action plan" was used in Education Code section 87102 (Stats. 1988, ch. 973) but was not defined in the Education Code. Instead, "affirmative action plan" was defined by California Code of Regulations, title 5, section 53001 (Register 82, No. 6), which preceded and was the basis of the Education Code sections. In 1992, California Code of Regulations, title 5, section 53000 et seq. replaced the term "affirmative action plan" with "faculty and staff diversity plan" by amendments made in Register 92, number 17. The definition of "faculty and staff diversity plan" was substantively the same as "affirmative action plan," and thus, the amendment was in terminology only. No corresponding amendment was made to Education Code section 87102. However, because the Board of Governors is the

amended in response to the *Connerly v. State Personnel Bd*. decision to address the development and content of a community college district's equal employment opportunity plan, which implements the district's equal employment opportunity program.[92]

The faculty and staff diversity plan required pre-*Connerly* and the equal employment opportunity plan required post-*Connerly* are both written documents in which a district's workforce is analyzed and specific plans and procedures are set for ensuring equal employment opportunity.[93] The equal employment opportunity plan, however, removes the achievement of expected representation of historically underrepresented groups (ethnic minorities, women, and persons with disabilities),[94] and the use of goals and timetables from the plan.

As amended in 2002, Education Code section 87102 addresses the duties regarding community college district equal employment opportunity programs and plans for districts opting to participate in the equal employment opportunity hiring requirements as set forth in Education Code sections 87100-87108.[95]

The plain language of the two versions of Education Code section 87102, and the two versions of title 5, section 53003, requires community college districts to engage in the following activities:[96]

1. Periodically submit to the Board of Governors of the California Community Colleges an affirmation of compliance with the provisions of Education Code sections 87100-87107, which address affirmative action hiring (as existing prior to September 4, 2001). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
2. Have goals in the affirmative action employment program that ensure participation in, and commitment to, the program by district personnel, and timetables, for its implementation. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
3. Include steps in the faculty and staff diversity plan that the district will take in meeting and improving hiring goals for both full-time faculty and part-time faculty pursuant to

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administrative agency charged with implementation of Education Code section 87100 et seq., and the Education Code sections were largely a codification of the Board of Governor's regulations, for sake of consistency, the term "faculty and staff diversity plan" will be used when discussing the requirements of Education Code section 87102 (Stats. 1988, ch. 973).

[92] California Code of Regulations, title 5, section 53003, as amended in Register 2002, number 35.

[93] California Code of Regulations, title 5, section 53001, as amended in Register 96, number 23, and Register 2002, number 35.

[94] California Code of Regulations, title 5, section 53001, subdivision (h) (Register 96, number 23).

[95] Education Code section 87102, as repealed and replaced by Statutes 2002, chapter 1169.

[96] Statutes 1988, chapter 973; Statutes 2002, chapter 1169; Register 96, number 23; and Register 2002, No. 35.

Education Code section 87482.6 (Stats. 1988, ch. 973), and the development of the plan shall be a condition for receipt of allowances pursuant to Education Code section 87482.6. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

4. Make the faculty and staff diversity plan/equal employment opportunity plan a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973); Cal. Code Regs., tit. 5, § 53003, subd. (d) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (e) (Register 2002, No. 35), beginning July 1, 2001.)

5. Publish and distribute a record of the success rate of the measurable progress, with respect to the district's goals and timetables, in hiring employees through its affirmative action employment program. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

    a. Make this publication a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), and include data and information specified by the Board of Governors. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

6. Periodically submit an affirmation of compliance with Education Code sections 87100-87108 (Stats. 2002, ch. 1169), which address equal employment opportunity hiring, to the Board of Governors as a condition for the receipt of funds pursuant to Education Code section 87107 (Stats. 2002, ch. 1169) if the community college district opts to participate under Education Code sections 87100-87108. (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

7. Ensure participation in, and commitment to, the equal employment opportunity program by district personnel, if the community college district is a participant under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

8. Include in the equal employment opportunity plan steps that the district will take in eliminating improper discrimination or preferences in its hiring and employment practices if the community college district is a participant in the equal employment opportunity hiring program under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

9. Address in the equal employment opportunity plan how the district will make progress in achieving the ratio of full-time to part-time faculty hiring, as indicated in Education Code section 87482.6, while still ensuring equal employment opportunity, if the community college district is a participant under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

10. Develop and adopt a district-wide written faculty and staff diversity plan/equal employment opportunity plan to implement its affirmative action employment

program/equal employment opportunity program. (Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 2002, No. 35) beginning July 1, 2001.)

11. Submit faculty and staff diversity plans/equal employment opportunity plans and revisions to the Chancellor's Office for review and approval. (Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

12. Review the faculty and staff diversity plan/equal employment opportunity plans at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

13. Notify the Chancellor at least 30 days prior to adopting any amendments to the faculty and staff diversity plan/equal employment opportunity plan other than those made during the three year review. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

14. Include in the faculty and staff diversity plan/equal employment opportunity plan the following:

    a. Goals and timetables, as appropriate, for hiring and promotion of members of historically underrepresented groups developed pursuant to California Code of Regulations, title 5, section 53006 for each college in the district and for the district as a whole. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. The designation of the district employee or employees who have been delegated responsibility and authority for implementing the faculty and staff diversity plan/equal employment opportunity plan and assuring compliance with the requirements of California Code of Regulations, title 5, section 53000 et seq. (Register 96, No. 23; and Register 2002, No. 35), pursuant to California Code of Regulations, title 5, section 53020. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(1) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (c)(1) (Register 2002, No. 35), beginning July 1, 2001.)

    c. The procedure for filing complaints pursuant to California Code of Regulations, title 5, section 53026 (Register 96, No. 23; Register 2002, No. 35) and the person with whom the complaints are to be filed. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(2) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd (c)(2) (Register 2002, No. 35.), beginning July 1, 2001.)

    d. A process for notifying all district employees of the provisions of the faculty and staff diversity plan/equal employment opportunity plan and the commitment to affirmative action employment/equal employment opportunity policy statement required under California Code of Regulations, title 5, section 53002 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(3) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (c)(3) (Register 2002, No. 35), beginning July 1, 2001.)

e. A process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of California Code of Regulations, title 5, section 53000 et seq., which addresses affirmative action/equal employment opportunity programs (Register 96, No. 23; Register 2002, No. 35) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(4) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subdivision (c)(4) (Register 2002, No. 35), beginning July 1, 2001.)

f. A process for providing annual written notice to appropriate community organizations concerning the district's faculty and staff diversity plan and the need for assistance from the community in identifying qualified members of historically underrepresented groups for openings with the district. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(5) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

g. A process for providing annual written notice to appropriate community-based and professional organizations concerning the district's equal employment opportunity plan and the need for assistance from the community and such organizations in identifying qualified applicants. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(5) (Register 2002, No. 35), beginning August 11, 2002.)

h. An analysis of the number of persons from historically underrepresented groups (ethnic minorities, women, and persons with disabilities) are employed in the district's work force and those who have applied for employment in each of the following job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6)skilled crafts; and (7) serve and maintenance (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 96, No. 23) beginning July 1, 2001 through August 10, 2002.)

i. An analysis of the number of persons from monitored groups (groups based on gender, ethnic group identification, and disability) who are employed in the district's work force and those who have applied for employment in each of the following job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6)skilled crafts; and (7) serve and maintenance (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35)). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 2002, No. 35), beginning August 11, 2002.)

j. An analysis of the degree to which women, ethnic minorities, and persons with disabilities in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

k. An analysis of the degree to which monitored groups (groups based on gender, ethnic group identification, and disability) are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 2002, No. 35), beginning August 11, 2002.)

l. The steps the district will take to achieve diversity in its workforce. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

m. Goals for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 96, No. 23). Beginning July 1, 2001 through August 10, 2002.)

n. Methods for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 2002, No. 35). Beginning August 11, 2002.)

o. Additional steps consistent with California Code of Regulations, title 5, section 53006, to remedy any significant underrepresentation identified in the plan. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 2002, No. 35). Beginning August 11, 2002.)

p. A plan for corrective action consistent with California Code of Regulations, title 5, section 53006 (Register 96, No. 23), including goals and timetables for hiring and promotion, if necessary, to remedy any significant underrepresentation identified in the faculty and staff diversity plan by achieving expected representation for all historically underrepresented groups in all job categories listed in California Code of Regulations, title 5, § 53004, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 96, No. 23). Beginning July 1, 2001 through August 10, 2002.)

q. Any other measures necessary to further equal employment opportunity throughout the district. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 2002, No. 35). Beginning August 11, 2002.)

r. Any goals for hiring persons with disabilities that are required by California Code of Regulations, title 5, section 53025. (Cal. Code Regs., tit. 5, § 53003, subd. (d) (Register 2002, No. 35). Beginning August 11, 2002.)

15. Make a continuous good faith effort to comply with the requirements of the faculty and staff diversity plan/equal employment opportunity plan. (Cal. Code Regs., tit. 5, § 53003, subd. (e) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (f) (Register 2002, No. 35), beginning July 1, 2001.)

Adoption of a Policy Statement: (Cal. Code Regs., tit. 5, § 53002)

Title 5, section 53002, addresses the adoption of a policy statement regarding a community college district's affirmative action employment program/equal employment opportunity program. As amended in Register 96, number 23, section 53002 requires the one-time activity of adopting a policy statement setting forth the district's commitment to an affirmative action program. In 2002, after the *Connerly v. State Personnel Board* decision, the term "affirmative action employment program" was replaced with "equal employment opportunity program," and as a result, community college districts were required to engage in the one-time activity of adopting a policy statement setting forth the district's commitment to an equal employment opportunity program. "Affirmative action employment program" and "equal employment opportunity program" are both defined as, "all the various methods by which equal employment opportunity is ensured."[97] However, unlike "affirmative action employment programs," the definition for "equal employment opportunity programs" does not include methods to achieve expected representation for historically underrepresented groups.[98] Thus, title 5, section 53002, requires community college districts to engage in the following activity:

> Adopt a policy statement setting forth the district's commitment to an affirmative action program/equal employment opportunity program. (Cal. Code Regs., tit. 5, § 53002 (Register 96, No. 23), one-time activity for the period beginning July 1, 2001 through August 10, 2002; Cal. Code Regs., tit. 5, § 53002 (Register 2002, No. 35) one-time activity beginning August 11, 2002.)

District Evaluation: (Cal. Code Regs., tit. 5, § 53004)

California Code of Regulations, title 5, section 53004, addresses the efforts of community college districts to evaluate district faculty and staff diversity plans/equal employment opportunity plans and district annual reports to the Chancellor of the results of the evaluations. The plain language of section 53004 requires community college districts to engage in the following activities:

1. Annually survey its employees and monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing its faculty and staff diversity plan/equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)
2. Annually report to the Chancellor, in a manner described by the Chancellor, the results of its annual survey of employees at each college in the district. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)
    a. Report employees so that he or she may be identified as belonging to one of the following seven job categories: (1) executive/administrative/managerial;

[97] California Code of Regulations, title 5, sections 53001, subdivision (a) (Register 96, No. 23), and subdivision (e) (Register 2002, No. 35).

[98] California Code of Regulations, title 5, section 53001, subdivision (e) (Register 2002, No. 35).

(2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

3. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004, subdivision (a) (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Count a person in only one ethnic group for reporting purposes if a person designates multiple ethnic groups with which he or she identifies. (Cal. Code Regs., tit. 5, § 53004, subd (b) (Register 2002, No. 35), beginning August 11, 2002.)

    b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

Advisory Committee: (Cal. Code Regs., tit. 5, § 53005)

Title 5, section 53005, addresses the activity of creating a committee to assist in developing and implementing district faculty and staff diversity plan/equal employment opportunity plan. Specifically, title 5, section 53005 requires community college districts to engage in the following activity:

> Establish a Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee to assist the district in developing and implementing the faculty and staff diversity plan/equal employment opportunity plan required under section 53003 (Register 96, No. 23; Register 2002, No. 35) which includes members of all historically underrepresented groups/diverse membership whenever possible. (Cal. Code Regs., tit. 5, § 53005 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53005 (Register 2002, No. 35), beginning July 1, 2001.)

Corrective Action: (Cal. Code Regs., tit. 5, § 53006)

Title 5, section 53006, addresses the corrective action or steps districts must take to ensure equal employment opportunity in the event that significant underrepresentation of a gender, ethnic group, or disabled individuals persists after the implementation of district affirmative action employment programs/equal employment opportunity programs. Many changes to title 5, section 53006, were made after the *Connerly v. State Personnel Bd.* decision, including the removal of the use of goals and timelines to achieve expected representation. Because of these changes the activities required by the pre-*Connerly* version of title 5, section 53006, will be identified separately from the activities required by the post-*Connerly* version.

The pre-*Connerly* title 5, section 53006, requires community college districts to engage in the following activities:

1. If a community college district has existing goals:
    a. Update goals established prior to June 30, 1996 and set a new target date for achieving expected representation for a group in a job category/categories if significant underrepresentation still exists. (Cal. Code Regs., tit. 5, § 53006, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
    b. Review recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
    c. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
    d. Comply with California Code of Regulations, title 5, section 53006, subdivision (c) (Register 96, No. 23) while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
2. If a community college district has no existing goals:
    a. Take corrective action if, pursuant to California Code of Regulations, title 5, section 53003, subdivision (c)(7), the district determines that a particular group is significantly underrepresented with respect to one or more job categories and no goal has previously been set. (Cal. Code Regs., tit. 5, § 53006, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
    b. The district shall take, at a minimum, the following corrective action:
        i. Review of district recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
        ii. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and

potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iii. Determine whether the group is still significantly underrepresented in the job category or categories in question after the measures described in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) have been in place a reasonable period of time. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iv. Set a goal with a target date for achieving expected representation for the significantly underrepresented group in each job category where significant underrepresentation persists, if significant underrepresentation persists. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

v. Monitor on an ongoing basis the staffing rate for the significantly underrepresented group in the specified job category or categories. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

vi. Discontinue the use of goals when expected representation has been achieved for that group in the job category or categories in question. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

3. Additional measures to be taken if a goal has been set and after a reasonable period of time significant underrepresentation persists:

   a. Establish a specific timetable to project the levels of annual hiring of persons from the significantly underrepresented group which will be necessary to meet the existing goal by the target date. (Cal. Code Regs., tit. 5, § 53006, subd. (c) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

   b. Implement one or more of the following additional corrective measures until expected representation has been achieved for that group in the job category in question:

      i. Include in the applicant pool applicants from significantly underrepresented groups who were initially screened out because they failed to meet locally established "desirable or preferred" qualifications beyond state minimum qualifications, where such applicants can be expected to meet the additional qualifications through appropriate training or experience within one year. (Cal. Code Regs., tit. 5, § 53006, subd. (c)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

      ii. Consider, as one factor in the final selection process, the fact that a candidate is a member of a significantly underrepresented group, provided that the qualifications of the candidates under consideration are reasonably considered to be equivalent. (Cal. Code Regs., tit. 5, § 53006, subd. (c)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

4. If a community college district has no existing goals for women or persons with disabilities:
    a. Implement the measures required in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) concurrently with setting a goal with a target date for achieving expected representation for women or persons with disabilities in each job category that they are found to be significantly underrepresented. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
        i. Goals shall remain in effect only until expected representation has been achieved for the group in the job category or categories in which significant underrepresentation is found. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
        ii. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53006, subd. (d), beginning July 1, 2001 through August 10, 2002.)

The post-*Connerly* title 5, section 53006, requires community college districts to engage in the following activities:

1. Take additional steps if a district determines that a particular monitored group is significantly underrepresented with respect to one or more categories, including at minimum:
    a. Review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 2002, No. 35), beginning August 11, 2002.)
    b. Consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 2002, No. 35), beginning August 11, 2002.)
    c. Determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in subdivisions (a)(1) and (a)(2) of California Code of Regulations, title 5, section 53006, have been in place a reasonable period of time (three years or longer). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 2002, No. 35), beginning August 11, 2002.)
    d. Monitor the staffing rate for the significantly underrepresented group in the specified job category or categories on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question if significant underrepresentation persists. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

2. Review each locally established "required," "desired," or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job related and consistent with business necessity through a process meeting the requirements of federal law or is among those qualifications which the Board of Governors has found to be job related and consistent with business necessity throughout the community college system, if significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(1) (Register 2002, No. 35), beginning August 11, 2002.)

3. Discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in California Code of Regulations, title 5, section 53006, subdivision (b)(1), if significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(2) (Register 2002, No. 35), beginning August 11, 2002.)

4. Continue using qualification standards meeting the requirements of California Code of Regulations, title 5, section 53006, subdivision (b)(1) only where no alternative qualification standard is reasonable available which would select for the same characteristics, meet the requirements of subdivision (b)(1) and be expected to have a less exclusionary effect, if a significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(3) (Register 2002, No. 35), beginning August 11, 2002.)

Delegation of Authority: (Cal. Code Regs., tit. 5, § 53020)

Title 5, section 53020, provides that community college districts are ultimately responsible for the implementation of equal employment opportunity, and addresses the delegation of authority within community college districts. Section 53020 requires community college districts to engage in the following activities:

1. Be ultimately responsible for proper implementation of California Code of Regulations, title 5, section 53000 et seq., at all levels of district and college operation and for making measurable progress toward the goals established/equal employment opportunity by methods described in the district's faculty and staff diversity plan/equal employment opportunity plan. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

2. Ensure that an affirmative action officer/equal employment opportunity officer is designated to oversee the day-to-day implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.), upon the recommendation of the chief executive officer. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)

3. Describe in the district's faculty and staff diversity plan/equal employment opportunity plan the administrative structure created by any delegation of authority to the affirmative action officer/equal employment opportunity officer or others. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

4. Design the administrative structure created by any delegation of authority to the affirmative action officer/equal employment officer or others in such a manner so as to ensure prompt and effective implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23), beginning July 1, 2001.)

5. Designate in the faculty and staff diversity plan/equal employment opportunity plan a single officer, who may be the affirmative action officer/equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints filed pursuant to California Code of Regulations, title 5, section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by California Code of Regulations, title 5, sections 53023 and 53024. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23), beginning July 1, 2001.)

Recruitment: (Cal Code Regs., tit. 5, § 53021)

Title 5, section 53021, addresses recruitment of applicants for employment by community college districts. The claimants allege that section 53021, subdivision (b) requires community college districts to:

> Ensure that "in-house or promotional only" recruitment is not used to fill any new opening except when the position is being filled on an interim basis for the minimum time necessary to allow for full and open recruitment; provided however, that no interim appointment or series of interim appointments exceed one year in duration, pursuant to Title 5, California Code of Regulation, Section 53021(b).[99]

However, the plain language of section 53021, subdivision (b) provides, "'In-house or promotional only' recruitment *shall not* be used to fill any new opening *except* when ... ."[100] As shown by the plain language of subdivision (b), community college districts are prohibited from engaging in an activity but are provided exceptions to this prohibition. Thus, subdivision (b) does not impose any requirement on community college districts.

Title 5, section 53021, requires community college districts to engage in the following activities:

1. Actively recruit from both within and outside the district work force to attract qualified applicants for all new openings except as provided by California Code of Regulations, title 5, section 53021, subdivision (b). (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

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[99] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 219.

[100] California Code of Regulations, title 5, section 53021, Register 96, number 23, and Register 2002, number 35.

a. Active recruitment shall include focused outreach to historically underrepresented groups. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

b. Active recruitment shall include outreach to ensure all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning August 11, 2002.)

c. Open recruitment applies to all new full-time and part-time openings in all job categories and classifications, including but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

2. Recruit at least statewide for full-time faculty and educational administrator positions, and at minimum, seek qualified applicants listed in the California Community Colleges Faculty and Staff Diversity Registry/Equal Employment Opportunity Registry. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

3. Recruit part-time faculty positions separately for each new opening or by annually establishing a pool of eligible candidates. In either case, full and open recruitment is required consistent with California Code of Regulations, title 5, section 53021. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

4. Notify the Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee established pursuant to California Code of Regulations, title 5, section 53005 and the Chancellor, at least ten working days prior to offering the position to a candidate, if the district believes justification exists for use of any of the exceptions listed in section 53021, subdivision(b). (Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

5. Comply with the district's established hiring procedures and afford all qualified district employees the opportunity to apply even where in-house or promotional only recruitment is permitted under California Code of Regulations, title 5, section 53005, subdivision (b). (Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 2002, No. 35), beginning July 1, 2001.)

Job Announcements: (Cal. Code Regs., tit. 5, § 53022)

Title 5, section 53022, addresses the content of job announcements of community college districts. Section 53022 requires community college districts to engage in the following activities:

1. State clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance in job announcements. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

2. Include sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students in job requirements for faculty and administrative positions. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

3. Review job specifications, including any "desired" or "required"/"required," "desired," or "preferred" qualifications beyond the state minimum qualifications (set forth in Subchapter 4 of Cal. Code Regs., tit. 5, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

Applicant Pool: (Cal. Code Regs., tit. 5, § 53023)

Title 5, section 53023, addresses the make-up of the applicant pool for employment with community colleges. The claimants allege that the following language of subdivision (a) of section 53023 imposes an activity on community college districts:

> [An applicant's gender, ethnic group identification, or disability] shall be used only in research, validation, monitoring, evaluating the effectiveness of the district's affirmative action employment program, or any other purpose specifically authorized in [Cal. Code Regs., tit. 5, § 53000 et seq.] or by any applicable statute or regulation.[101]

However, the above quoted language prohibits community college districts from engaging in an activity and provides exceptions to this prohibition.[102] Thus, the above language of subdivision (a) does not require any activity of community college districts.

The claimants also assert that subdivision (c) of the Register 96 version of section 53023 and subdivision (d) of the Register 2002 version of section 53023 require that if an adverse impact persists after steps are taken to address adverse impact in the applicant pool, that a community college district is required to ensure that the selection process for a community college position proceeds only if the job qualification has one of three characteristics.[103] However, the language of those subdivisions provides, "If adverse impact persists after taking steps required under subdivision (b) [Cal. Code Regs., tit. 5, § 53023], the selection process *may only proceed if* [the

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[101] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 221.

[102] California Code of Regulations, title 5, section 53023, subdivision (a) as amended in Register 96, number 23, is substantively the same as subdivision (a) of section 53023 as amended in Register 2002, number 35.

[103] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 223. The claimants' assertion paraphrases language found in California Code of Regulations, title 5, section 53023, subdivision (d) (Register 2002, No. 35). This language is substantially the same as the language of California Code of Regulations, title 5, section 53023, subdivision (c) (Register 96, No. 23).

qualifications required in the job announcement have one of three characteristics]." As shown by the above quoted language, subdivision (c) of the Register 96 version of section 53023 and subdivision (d) of the Register 2002 version of section 53023 do not require community college districts to engage in any activity. Instead, the subdivisions prohibit community college districts from engaging in an activity and provide an exception to this prohibition.

In addition, the claimants assert that title 5, section 53023, subdivision (e), as added in Register 2002, number 35, requires community college districts to:

> [E]nsure that the district does not advertise or utilize in future hiring processes for the same position or a substantially similar position any locally established qualifications beyond state minimum qualifications that the district was unable to verify … .[104]

However, the plain language of subdivision (e) does not require community college districts to ensure that it does not advertise or utilize in future hiring processes for the same position or a substantially similar position any locally established qualifications beyond state minimum qualifications that the district was unable to verify. Subdivision (e) specifically provides:

> The district *may not* advertise or utilize in future hiring processes for the same position or substantially similar position any locally established qualifications beyond state minimum qualifications that the district was unable to verify … .

Thus, subdivision (e) prohibits the any activity, it does not require that community college district ensure that it does not engage in the prohibited activities.

Although the above described subdivisions of section 53023 do not impose any activities on community college districts, section 53023 does require community college districts to engage in the following activities:

1. Afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability, in the district's application for employment. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)
2. Keep information regarding an applicant's gender, ethnicity, and/or disability provided in an application for employment confidential. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)
3. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that expected representation has been achieved for historically underrepresented groups. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
4. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

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[104] *Id.* at p. 224.

5. Extend the application deadline and conduct additional focused recruitment for historically underrepresented groups for which expected representation has not been achieved, if necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

6. Extend the application deadline and conduct additional recruitment, which eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants, if necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

7. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when the expected representation of historically underrepresented groups is achieved, or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

8. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

9. Analyze the composition of the qualified applicant pool to ensure that no group defined in terms of ethnicity, gender, or disability/monitored group, is adversely impacted as defined by California Code of Regulations, title 5, section 53001, subdivision (m) (Register 96, No. 23)/subdivision (a) (Register 2002, No. 35), after the analysis to ensure that expected representation has been achieved for historically underrepresented groups (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23))/after the analysis to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35)) and before the selection process continues. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

10. Take effective steps to address adverse impact found in the district's applicant pool before the selection process is continued. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

Selection Procedures: (Cal. Code Regs., tit. 5, § 53024)

Title 5, section 53024, addresses the employment screening or selection procedures of community college districts. The claimants assert that subdivision (b) of section 53024 requires community college districts to:

> [E]nsure that confidential information is not disclosed if the equal employment opportunity officer, or other official charged with responsibility for monitoring selection procedures, assists the screening committee by discussing the overall

> composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact … .[105]

Section 53024, subdivision (b) provides in relevant part:

> The affirmative action officer, or other official charged with the responsibility for monitoring selection procedures, *may* assist the screening committee by discussing the overall composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact, *provided* that confidential information about individual candidates is not disclosed. (Emphasis added.)

The above language of section 53024 does not require community college districts to engage in any activity. Rather, the language authorizes the affirmative action officer to assist the screening committee, and conditions this authorization on the non-disclosure of confidential information.

In addition, the claimants argue that subdivisions (c) of section 53024 requires community college districts to implement policies and procedures to ensure that the district does not engage in specific activities in the employment process.[106] However, subdivision (c) of section 53024, as amended in Register 96, number 23, provides:

> A district *may not* designate or set aside particular positions to be filled by members of any group defined in terms of race, ethnicity, gender, age, or disability, or engage in any other practice which would result in discriminatory treatment prohibited by state or federal law. *Nor may* a district apply the goals, if any, set forth in the district's faculty and staff diversity plan in a rigid manner which has the purpose or effect of so discriminating. (Emphasis added.)

As shown by the language above, subdivision (c) prohibits a community college district from engaging in specific activities, it does not require community college districts to engage in any activities, including the implementation of policies and procedures to ensure that the district does not engage in prohibited activities.[107]

The claimants also assert that subdivision (d) of section 53024 requires community college districts to "ensure that seniority or length of service is taken into consideration only to the extent … it is job related … it is not the sole criterion … it is included in the job announcement consistent with the requirements of [Cal. Code Regs., tit. 5, § 53022]." However, subdivision provides in relevant part that, "Seniority or length of service *may* be taken into consideration *only to the extent* … ." As shown by the quoted language, subdivision (d) sets limits to the ability to take seniority or length of service into consideration, but it does not require community college districts to engage in any activity.

The claimants also argue that subdivision (g) of section 53024 requires community college districts to implement policies and procedures for the governing board or its designee to have

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[105] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at pgs. 225-226.

[106] *Id*. at p. 226.

[107] Although the language of subdivision (c) of section 53024 was amended in Register 2002, number 35, as relevant to this analysis, the language continued to prohibit community college districts from engaging in specific activities.

specified authority.[108] However, the plain language of subdivision (g) does not require community college districts to engage in any activity, including implementing policies and procedures so that the governing board of the district or its designee has the authority specified in subdivision (g). Subdivision (g) merely sets forth the authority that a district's governing board has in regard to hiring decisions.

The remaining parts of section 53024 require community college districts to engage in the following activities:

1. Provide all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to the Chancellor upon request. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 2002, No. 35), beginning July 1, 2001.)
2. Design all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 2002, No. 35), beginning July 1, 2001.)
3. Base all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole solely on job-related criteria, except as authorized by California Code of Regulations, title 5, section 53006 (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53024, subd. (a)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
4. Base all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole solely on job-related criteria. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(3) (Register 2002, No. 35), beginning August 11, 2002.)
5. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to ensure that they do not have an adverse impact, as defined by California Code of Regulations, title 5, section 53001, subdivision (m), on any group defined in terms of ethnicity, gender, or disability. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
6. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse impact as defined in California Code of Regulations, title 5, section 53001, subdivision (a), and to detect and address any adverse impact which does occur. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)
7. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group before the selection process resumes if monitoring under California

[108] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at pgs. 227-228.

Code of Regulations, title 5, section 53024, subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted such group. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

8. Immediately discontinue the use of any locally established qualifications beyond state minimum qualifications that have not been verified as described in California Code of Regulations, title 5, section 53023, subdivision (c)(2) or replaced with suitable alternatives having a lesser adverse impact if adverse impact results from the locally established qualifications. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)
9. Continue in the hiring process any applicant eliminated on the basis of the locally established qualification discontinued under California Code of Regulations, title 5, section 53024, subdivision (b). (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)
10. Follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures" for selection testing for employees. (Cal. Code Regs., tit. 5, § 53024, subd. (e) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (e) (Register 2002, No. 35), beginning July 1, 2001.)
11. Include members of historically underrepresented groups in screening committees whenever possible. (Cal. Code Regs., tit. 5, § 53024, subd. (f) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
12. Include, whenever possible, a diverse membership in screening committees which will bring a variety of perspectives to the assessment of applicant qualifications. (Cal. Code Regs., tit. 5, § 53024, subd. (f) (Register 2002, No. 35), beginning August 11, 2002.)

Persons with Disabilities: (Cal. Code Regs., tit. 5, § 53025)

Title 5, section 53025, addresses reasonable accommodations provided to applicants or employees with disabilities. Section 53025 requires community college districts to engage in the following activities:

1. Ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code section 11135 et seq. and 12940 (m), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. (Cal. Code Regs., tit. 5, § 53025 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53025, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)
2. Update a goal established prior to July 12, 2002 for persons with disabilities, set a new target date for achieving projected representation in a job category or categories, and concurrently comply with California Code of Regulations, title 5, section 53006, subdivisions (a)(1), (a)(2), and (b) with respect to persons with disability, if significant underrepresentation still exists in the job category or categories. (Cal. Code Regs., tit. 5, § 53025, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)
3. Implement California Code of Regulations, title 5, section 53006, subdivisions (a)(1) and (a)(2) concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where

underrepresentation was found to exist. Goals are to remain in effect only until projected representation has been achieved for that group in the category or categories in question. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

4. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force, until the chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

Complaints: (Cal. Code Regs., tit. 5, § 53026)

Title 5, section 53026, addresses the complaint process for alleged violations of the affirmative action and equal employment opportunity program/equal employment opportunity program regulations set forth in title 5, section 53000 et seq., such as a failure to comply with the recruiting, screening, and selection procedure requirements. Section 53026 requires community college districts to engage in the following activities:

1. Establish a process permitting any person to file a complaint alleging that the requirements of the affirmative action and equal employment opportunity program/equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)
2. Forward immediately to the Chancellor a copy of the complaint. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)
3. Provide a written investigative report within 90 days if required by the Chancellor. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)
4. Process complaints which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

Reporting Employee Statistics and District Use of Funds: (Cal. Code Regs., tit. 5, §§ 53033 and 53034)

Title 5, sections 53033 and 53034, address community college district reporting on employee statistics and the use of Faculty and Staff Diversity funds/Equal Employment Opportunity funds. In 1988, after the Legislature and the Board of Governors had established requirements associated with the development and implementation of affirmative action plans and programs in the late 1970s and early 1980s, the Faculty and Staff Diversity Fund was established by the enactment of Education Code section 87107 (Stats. 1988, ch. 973) for the purpose of reimbursing and funding costs associated these requirements.

Title 5, section 53030, as amended in Register 96, number 23, which was not pled by the claimants, sets forth how the Faculty and Staff Diversity Fund is to be allocated to districts by

the Board of Governors. Title 5, section 53033, as amended in Register 96, number 23, prohibits the granting of most of the Faculty and Staff Diversity funds to districts that fail to provide employee data to the Chancellor as required by California Code of Regulations, title 5, section 53004. Specifically, section 53033 provides:

> Any district failing to provide the data required under Section 53004 is not incompliance with [Cal. Code Regs., tit. 5, § 53000 et seq.] Faculty and Staff Diversity funds for any given fiscal year, other than those under section 53030 (a), shall not be granted unless the district provides the data no later than March 31st of the preceding fiscal year or receives an extension of the deadline from the Chancellor.

The claimants argue that section 53033 requires districts to provide data required under section 53004, as a condition for receipt of any funds from the Faculty and Staff Diversity Fund.[109] The language of section 53033, however, does not support this interpretation of the regulation. Rather, section 53033 sets forth a consequence of failing to provide to the Chancellor employee data required to be reported title 5, section 53004. Section 53033 does not, itself, require any activities and instead prohibits the Board of Governors from engaging in the activity of granting funds in specified instances.

Title 5, section 53034, as amended in Register 96, number 23, requires community college districts to submit a report on district use of funds received from the Faculty and Staff Diversity Fund. In addition, section 53034 directs community college districts to report the staffing rate for persons with disabilities in a separate survey until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by title 5, section 53004.

As discussed above, in 2002 the Education Code sections and title 5 regulations were amended in response to the *Connerly v. State Personnel Bd.* decision. After the amendments the title 5 regulations no longer implemented the Education Code sections. Instead, the Education Code sections and the title 5 regulations act as separate efforts to address the issue of equal employment opportunity. Some of the requirements of the title 5 regulations, however, remained tied to funding through the Equal Employment Opportunity Fund, which functionally replaced the Faculty and Staff Diversity Fund. Specifically, title 5, sections 53033 and 53034, as amended by Register 2002, number 35, tie the reporting requirements under title 5, section 53004 to the receipt of Equal Employment Opportunity funds. Although the language of the Education Code sections was substantially amended, the language of title 5, sections 53033 and 53034, remained largely the same. Thus, for the same reasons discussed above for the Register 96, number 23 version of section 53033, the Register 2002, number 35 version of section 53033 does not require community college districts to engage in any activities.

After the 2002 amendments, the plain language of title 5, section 53034, continued to require community college districts to engage in the following activities:

1. Submit a report on the use of Faculty and Staff Diversity funds/Equal Employment Opportunity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. (Cal. Code Regs., tit. 5, § 53034 (Register 96,

[109] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," p. 231.

No. 23); Cal. Code Regs., tit. 5, § 53034 (Register 2002, No. 35), beginning July 1, 2001.)

2. Report the staffing rate of persons with disabilities by a separate survey as directed by the Chancellor's Office, until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by California Code of Regulations, title 5, section 53004. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53034 (Register 2002, No. 35), beginning July 1, 2001.)

(i) Summary of Required Activities:

1. Commit to sustained action to devise recruiting, training, and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees. (Ed. Code, § 87101, subd. (c) (Stats. 2002, ch. 1169), beginning January 1, 2003.)
2. Periodically submit to the Board of Governors of the California Community Colleges an affirmation of compliance with the provisions of Education Code sections 87100-87107, which address affirmative action hiring (as existing prior to September 4, 2001). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
3. Have goals in the affirmative action employment program that ensure participation in, and commitment to, the program by district personnel, and timetables, for its implementation. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
4. Include steps in the faculty and staff diversity plan that the district will take in meeting and improving hiring goals for both full-time faculty and part-time faculty pursuant to Education Code section 87482.6 (Stats. 1988, ch. 973), and the development of the plan shall be a condition for receipt of allowances pursuant to Education Code section 87482.6. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
5. Make the faculty and staff diversity plan/equal employment opportunity plan a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973); Cal. Code Regs., tit. 5, § 53003, subd. (d) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (e) (Register 2002, No. 35), beginning July 1, 2001.)
6. Publish and distribute a record of the success rate of the measurable progress, with respect to the district's goals and timetables, in hiring employees through its affirmative action employment program. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
    a. Make this publication a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), and shall include data and information specified by the Board of Governors. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

7. Periodically submit an affirmation of compliance with Education Code sections 87100-87108 (Stats. 2002, ch. 1169), which address equal employment opportunity hiring, to the Board of Governors as a condition for the receipt of funds pursuant to Education Code section 87107 (Stats. 2002, ch. 1169) if the community college district opts to participate under Education Code sections 87100-87108. (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

8. Ensure participation in, and commitment to, the equal employment opportunity program by district personnel, if the community college district is a participant under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

9. Include in the equal employment opportunity plan steps that the district will take in eliminating improper discrimination or preferences in its hiring and employment practices if the community college district is a participant in the equal employment opportunity hiring program under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

10. Address in the equal employment opportunity plan how the district will make progress in achieving the ratio of full-time to part-time faculty hiring, as indicated in Education Code section 87482.6, while still ensuring equal employment opportunity, if the community college district is a participant under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

11. Develop and adopt a district-wide written faculty and staff diversity plan/equal employment opportunity plan to implement its affirmative action employment program/equal employment opportunity program. (Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 2002, No. 35) beginning July 1, 2001.)

12. Submit faculty and staff diversity plans/equal employment opportunity plans and revisions to the Chancellor's Office for review and approval. (Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

13. Review the faculty and staff diversity plan/equal employment opportunity plans at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

14. Notify the Chancellor at least 30 days prior to adopting any amendments to the faculty and staff diversity plan/equal employment opportunity plan other than those made during the three year review. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

15. Include in the faculty and staff diversity plan/equal employment opportunity plan the following:

a. Goals and timetables, as appropriate, for hiring and promotion of members of historically underrepresented groups developed pursuant to California Code of Regulations, title 5, section 53006 for each college in the district and for the district as a whole. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

b. The designation of the district employee or employees who have been delegated responsibility and authority for implementing the faculty and staff diversity plan/equal employment opportunity plan and assuring compliance with the requirements of California Code of Regulations, title 5, section 53000 et seq. (Register 96, No. 23; and Register 2002, No. 35), pursuant to California Code of Regulations, title 5, section 53020. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(1) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (c)(1) (Register 2002, No. 35), beginning July 1, 2001.)

c. The procedure for filing complaints pursuant to California Code of Regulations, title 5, section 53026 (Register 96, No. 23; Register 2002, No. 35) and the person with whom the complaints are to be filed. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(2) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd (c)(2) (Register 2002, No. 35.), beginning July 1, 2001.)

d. A process for notifying all district employees of the provisions of the faculty and staff diversity plan/equal employment opportunity plan and the commitment to affirmative action employment/equal employment opportunity policy statement required under California Code of Regulations, title 5, section 53002 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(3) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (c)(3) (Register 2002, No. 35), beginning July 1, 2001.)

e. A process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of California Code of Regulations, title 5, section 53000 et seq., which addresses affirmative action/equal employment opportunity programs (Register 96, No. 23; Register 2002, No. 35) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(4) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subdivision (c)(4) (Register 2002, No. 35), beginning July 1, 2001.)

f. A process for providing annual written notice to appropriate community organizations concerning the district's faculty and staff diversity plan and the need for assistance from the community in identifying qualified members of historically underrepresented groups for openings with the district. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(5) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

g. A process for providing annual written notice to appropriate community-based and professional organizations concerning the district's equal employment opportunity plan and the need for assistance from the community and such organizations in identifying qualified applicants. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(5) (Register 2002, No. 35), beginning August 11, 2002.)

h. An analysis of the number of persons from historically underrepresented groups (ethnic minorities, women, and persons with disabilities) are employed in the district's work force and those who have applied for employment in each of the following job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6)skilled crafts; and (7) serve and maintenance (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 96, No. 23) beginning July 1, 2001 through August 10, 2002.)

i. An analysis of the number of persons from monitored groups (groups based on gender, ethnic group identification, and disability) who are employed in the district's work force and those who have applied for employment in each of the following job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6)skilled crafts; and (7) serve and maintenance (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35)). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 2002, No. 35), beginning August 11, 2002.)

j. An analysis of the degree to which women, ethnic minorities, and persons with disabilities in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

k. An analysis of the degree to which monitored groups (groups based on gender, ethnic group identification, and disability) are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 2002, No. 35), beginning August 11, 2002.)

l. The steps the district will take to achieve diversity in its workforce. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

m. Goals for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

n. Methods for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 2002, No. 35), beginning August 11, 2002.)

o. Additional steps consistent with California Code of Regulations, title 5, section 53006, to remedy any significant underrepresentation identified in the

plan. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 2002, No. 35), beginning August 11, 2002.)

p. A plan for corrective action consistent with California Code of Regulations, title 5, section 53006 (Register 96, No. 23), including goals and timetables for hiring and promotion, if necessary, to remedy any significant underrepresentation identified in the faculty and staff diversity plan by achieving expected representation for all historically underrepresented groups in all job categories listed in California Code of Regulations, title 5, § 53004, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

q. Any other measures necessary to further equal employment opportunity throughout the district. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 2002, No. 35), beginning August 11, 2002.)

r. Any goals for hiring persons with disabilities that are required by California Code of Regulations, title 5, section 53025. (Cal. Code Regs., tit. 5, § 53003, subd. (d) (Register 2002, No. 35), beginning August 11, 2002.)

16. Make a continuous good faith effort to comply with the requirements of the faculty and staff diversity plan/equal employment opportunity plan. (Cal. Code Regs., tit. 5, § 53003, subd. (e) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (f) (Register 2002, No. 35), beginning July 1, 2001.)

17. Adopt a policy statement setting forth the district's commitment to an affirmative action program/equal employment opportunity program. (Cal. Code Regs., tit. 5, § 53002 (Register 96, No. 23), one-time activity for the period beginning July 1, 2001 through August 10, 2002; Cal. Code Regs., tit. 5, § 53002 (Register 2002, No. 35) one-time activity beginning August 11, 2002.)

18. Annually survey its employees and monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing its faculty and staff diversity plan/equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

19. Annually report to the Chancellor, in a manner described by the Chancellor, the results of its annual survey of employees at each college in the district. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Report employees so that he or she may be identified as belonging to one of the following seven job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

20. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004, subdivision (a) (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Count a person in only one ethnic group for reporting purposes if a person designates multiple ethnic groups with which he or she identifies. (Cal. Code Regs., tit. 5, § 53004, subd (b) (Register 2002, No. 35), beginning August 11, 2002.)

    b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

21. Establish a Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee to assist the district in developing and implementing the faculty and staff diversity plan/equal employment opportunity plan required under section 53003 (Register 96, No. 23; Register 2002, No. 35) which includes members of all historically underrepresented groups/diverse membership whenever possible. (Cal. Code Regs., tit. 5, § 53005 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53005 (Register 2002, No. 35), beginning July 1, 2001.)

22. If a community college district has existing goals:

    a. Update goals established prior to June 30, 1996 and set a new target date for achieving expected representation for a group in a job category/categories if significant underrepresentation still exists. (Cal. Code Regs., tit. 5, § 53006, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. Review recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    c. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

d. Comply with California Code of Regulations, title 5, section 53006, subdivision (c) (Register 96, No. 23) while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

23. If a community college district has no existing goals:

a. Take corrective action if, pursuant to California Code of Regulations, title 5, section 53003, subdivision (c)(7), the district determines that a particular group is significantly underrepresented with respect to one or more job categories and no goal has previously been set. (Cal. Code Regs., tit. 5, § 53006, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

b. The district shall take, at a minimum, the following corrective action:

i. Review of district recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

ii. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iii. Determine whether the group is still significantly underrepresented in the job category or categories in question after the measures described in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) have been in place a reasonable period of time. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iv. Set a goal with a target date for achieving expected representation for the significantly underrepresented group in each job category where significant underrepresentation persists, if significant underrepresentation persists. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

v. Monitor on an ongoing basis the staffing rate for the significantly underrepresented group in the specified job category or categories. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

vi. Discontinue the use of goals when expected representation has been achieved for that group in the job category or categories in question. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

24. Additional measures to be taken if a goal has been set and after a reasonable period of time significant underrepresentation persists:

    a. Establish a specific timetable to project the levels of annual hiring of persons from the significantly underrepresented group which will be necessary to meet the existing goal by the target date. (Cal. Code Regs., tit. 5, § 53006, subd. (c) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. Implement one or more of the following additional corrective measures until expected representation has been achieved for that group in the job category in question:

        i. Include in the applicant pool applicants from significantly underrepresented groups who were initially screened out because they failed to meet locally established "desirable or preferred" qualifications beyond state minimum qualifications, where such applicants can be expected to meet the additional qualifications through appropriate training or experience within one year. (Cal. Code Regs., tit. 5, § 53006, subd. (c)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

        ii. Consider, as one factor in the final selection process, the fact that a candidate is a member of a significantly underrepresented group, provided that the qualifications of the candidates under consideration are reasonably considered to be equivalent. (Cal. Code Regs., tit. 5, § 53006, subd. (c)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

25. If a community college district has no existing goals for women or persons with disabilities:

    a. Implement the measures required in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) concurrently with setting a goal with a target date for achieving expected representation for women or persons with disabilities in each job category that they are found to be significantly underrepresented. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

        i. Goals shall remain in effect only until expected representation has been achieved for the group in the job category or categories in which significant underrepresentation is found. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

        ii. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53006, subd. (d), beginning July 1, 2001 through August 10, 2002.)

26. Take additional steps if a district determines that a particular monitored group is significantly underrepresented with respect to one or more categories, including at minimum:

a. Review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 2002, No. 35), beginning August 11, 2002.)

b. Consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 2002, No. 35), beginning August 11, 2002.)

c. Determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in subdivisions (a)(1) and (a)(2) of California Code of Regulations, title 5, section 53006, have been in place a reasonable period of time (three years or longer). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 2002, No. 35), beginning August 11, 2002.)

d. Monitor the staffing rate for the significantly underrepresented group in the specified job category or categories on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question if significant underrepresentation persists. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

27. Review each locally established "required," "desired," or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job related and consistent with business necessity through a process meeting the requirements of federal law or is among those qualifications which the Board of Governors has found to be job related and consistent with business necessity throughout the community college system, if significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(1) (Register 2002, No. 35), beginning August 11, 2002.)

28. Discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in California Code of Regulations, title 5, section 53006, subdivision (b)(1), if significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(2) (Register 2002, No. 35), beginning August 11, 2002.)

29. Continue using qualification standards meeting the requirements of California Code of Regulations, title 5, section 53006, subdivision (b)(1) only where no alternative qualification standard is reasonable available which would select for the same characteristics, meet the requirements of subdivision (b)(1) and be expected to have a less exclusionary effect, if a significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(3) (Register 2002, No. 35), beginning August 11, 2002.)

30. Be ultimately responsible for proper implementation of California Code of Regulations, title 5, section 53000 et seq., at all levels of district and college operation and for making measurable progress toward the goals established/equal employment opportunity by

methods described in the district's faculty and staff diversity plan/equal employment opportunity plan. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

31. Ensure that an affirmative action officer/equal employment opportunity officer is designated to oversee the day-to-day implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.), upon the recommendation of the chief executive officer. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)

32. Describe in the district's faculty and staff diversity plan/equal employment opportunity plan the administrative structure created by any delegation of authority to the affirmative action officer/equal employment opportunity officer or others. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

33. Design the administrative structure created by any delegation of authority to the affirmative action officer/equal employment officer or others in such a manner so as to ensure prompt and effective implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23) beginning July 1, 2001.)

34. Designate in the faculty and staff diversity plan/equal employment opportunity plan a single officer, who may be the affirmative action officer/equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints filed pursuant to California Code of Regulations, title 5, section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by California Code of Regulations, title 5, sections 53023 and 53024. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23), beginning July 1, 2001.)

35. Actively recruit from both within and outside the district work force to attract qualified applicants for all new openings except as provided by California Code of Regulations, title 5, section 53021, subdivision (b). (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Active recruitment shall include focused outreach to historically underrepresented groups. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. Active recruitment shall include outreach to ensure all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning August 11, 2002.)

    c. Open recruitment applies to all new full-time and part-time openings in all job categories and classifications, including but not limited to, faculty, classified

employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

36. Recruit at least statewide for full-time faculty and educational administrator positions, and at minimum, seek qualified applicants listed in the California Community Colleges Faculty and Staff Diversity Registry/Equal Employment Opportunity Registry. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

37. Recruit part-time faculty positions separately for each new opening or by annually establishing a pool of eligible candidates. In either case, full and open recruitment is required consistent with California Code of Regulations, title 5, section 53021. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

38. Notify the Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee established pursuant to California Code of Regulations, title 5, section 53005 and the Chancellor, at least ten working days prior to offering the position to a candidate, if the district believes justification exists for use of any of the exceptions listed in section 53021, subdivision(b). (Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

39. Comply with the district's established hiring procedures and afford all qualified district employees the opportunity to apply even where in-house or promotional only recruitment is permitted under California Code of Regulations, title 5, section 53005, subdivision (b). (Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 2002, No. 35), beginning July 1, 2001.)

40. State clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance in job announcements. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

41. Include sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students in job requirements for faculty and administrative positions. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

42. Review job specifications, including any "desired" or "required"/"required," "desired," or "preferred" qualifications beyond the state minimum qualifications (set forth in Subchapter 4 of Cal. Code Regs., tit. 5, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

43. Afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability, in the district's application for employment. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

44. Keep information regarding an applicant's gender, ethnicity, and/or disability provided in an application for employment confidential. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

45. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that expected representation has been achieved for historically underrepresented groups. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

46. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

47. Extend the application deadline and conduct additional focused recruitment for historically underrepresented groups for which expected representation has not been achieved, if necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

48. Extend the application deadline and conduct additional recruitment, which eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants, if necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

49. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when the expected representation of historically underrepresented groups is achieved, or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

50. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

51. Analyze the composition of the qualified applicant pool to ensure that no group defined in terms of ethnicity, gender, or disability/monitored group, is adversely impacted as defined by California Code of Regulations, title 5, section 53001, subdivision (m) (Register 96, No. 23)/subdivision (a) (Register 2002, No. 35), after the analysis to ensure that expected representation has been achieved for historically underrepresented groups (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23))/after the analysis to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures (Cal. Code Regs., tit. 5, § 53023, subd. (b)

(Register 2002, No. 35)) and before the selection process continues. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

52. Take effective steps to address adverse impact found in the district's applicant pool before the selection process is continued. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

53. Provide all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to the Chancellor upon request. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 2002, No. 35), beginning July 1, 2001.)

54. Design all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 2002, No. 35), beginning July 1, 2001.)

55. Base all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole solely on job-related criteria, except as authorized by California Code of Regulations, title 5, section 53006 (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53024, subd. (a)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

56. Base all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole solely on job-related criteria. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(3) (Register 2002, No. 35), beginning August 11, 2002.)

57. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to ensure that they do not have an adverse impact, as defined by California Code of Regulations, title 5, section 53001, subdivision (m), on any group defined in terms of ethnicity, gender, or disability. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

58. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse impact as defined in California Code of Regulations, title 5, section 53001, subdivision (a), and to detect and address any adverse impact which does occur. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

59. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group before the selection process resumes if monitoring under California Code of Regulations, title 5, section 53024, subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted such group. (Cal. Code Regs., tit. 5,

§ 53024, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

60. Immediately discontinue the use of any locally established qualifications beyond state minimum qualifications that have not been verified as described in California Code of Regulations, title 5, section 53023, subdivision (c)(2) or replaced with suitable alternatives having a lesser adverse impact if adverse impact results from the locally established qualifications. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

61. Continue in the hiring process any applicant eliminated on the basis of the locally established qualification discontinued under California Code of Regulations, title 5, section 53024, subdivision (b). (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

62. Follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures" for selection testing for employees. (Cal. Code Regs., tit. 5, § 53024, subd. (e) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (e) (Register 2002, No. 35), beginning July 1, 2001.)

63. Include members of historically underrepresented groups in screening committees whenever possible. (Cal. Code Regs., tit. 5, § 53024, subd. (f) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

64. Include, whenever possible, a diverse membership in screening committees which will bring a variety of perspectives to the assessment of applicant qualifications. (Cal. Code Regs., tit. 5, § 53024, subd. (f) (Register 2002, No. 35), beginning August 11, 2002.)

65. Ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code section 11135 et seq. and 12940 (m), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. (Cal. Code Regs., tit. 5, § 53025 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53025, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

66. Update a goal established prior to July 12, 2002 for persons with disabilities, set a new target date for achieving projected representation in a job category or categories, and concurrently comply with California Code of Regulations, title 5, section 53006, subdivisions (a)(1), (a)(2), and (b) with respect to persons with disability, if significant underrepresentation still exists in the job category or categories. (Cal. Code Regs., tit. 5, § 53025, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

67. Implement California Code of Regulations, title 5, section 53006, subdivisions (a)(1) and (a)(2) concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where underrepresentation was found to exist. Goals are to remain in effect only until projected representation has been achieved for that group in the category or categories in question. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

68. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force, until the chancellor's Office

provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

69. Establish a process permitting any person to file a complaint alleging that the requirements of the affirmative action and equal employment opportunity program/equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

70. Forward immediately to the Chancellor a copy of the complaint. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

71. Provide a written investigative report within 90 days if required by the Chancellor. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

72. Process complaints which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

73. Submit a report on the use of Faculty and Staff Diversity funds/Equal Employment Opportunity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53034 (Register 2002, No. 35), beginning July 1, 2001.)

74. Report the staffing rate of persons with disabilities by a separate survey as directed by the Chancellor's Office, until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by California Code of Regulations, title 5, section 53004. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53034 (Register 2002, No. 35), beginning July 1, 2001.)

d. Some of the requirements of California Code of Regulations, title 5, sections 53001 – 53006, 53020 – 53026, 53033, and 53034 constitute federal mandates not subject to article XIII B, section 6 of the California Constitution.

Article XIII B places spending limits on both the state and local governments, however, costs mandated by courts or federal law are expressly excluded from these spending limits. Article XIII B, section 9, subdivision (b), of the California Constitution excludes from either the state or local spending limit any "[a]ppropriations required to complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly."

When analyzing federal law in the context of a test claim under article XIII B, section 6, the court in *Hayes v. Commission on State Mandates* held that "[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not required a state subvention. Instead, such costs are exempt from local agencies' taxing and

spending limitations" under article XIII B.[110] Also, the court in *San Diego Unified School Dist.* found that "for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, in context, de minimis—should be treated as part and parcel of the underlying federal mandate."[111] However, the court in *Hayes* also found when federal law imposes a mandate on the state, and the state "freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."[112]

Section 53000 of title 5 of the California Code of Regulations provides that sections 53001 – 53006, 53020 – 53026, 53033, and 53034 implement and should be read in conjunction with various laws, both state and federal.[113] The following discussion will address whether the activities required by the test claim statutes and regulations are mandated by the following federal laws that were cited to by the Chancellor's Office and/or section 53000: (1) Equal Protection Clause of the Fourteenth Amendment (U.S. Const., 14th Amend., § 1); (2) Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.); (3) the Americans with Disabilities Act (42 U.S.C. § 12111 et seq.); (4) section 504 of the Rehabilitation Act (29 U.S.C. § 794); (5) Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.); (6) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); and (7) the Age Discrimination Act (42 U.S.C. § 6101).

(i) Federal Requirements

Equal Protection Clause of the Fourteenth Amendment (U.S. Const., 14th Amend., § 1)

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, "No State shall … deny to any person within its jurisdiction the equal protection of the laws." The Chancellor's Office asserts:

> The federal Equal Protection Clause is a general constitutional guarantee that requires to [*sic*] Claimant afford equal treatment to all employees. Discrimination on the basis of race, ethnicity and national origin is particularly suspect, but other bases for discriminatory treatment, such as gender, may also be challenged.[114]

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[110] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593 citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; see also, Government Code section 17513.

[111] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 890.

[112] *Hayes, supra*, 11 Cal.App.4th at p. 1594.

[113] California Code of Regulations, title 5, section 53000 cites to the following federal laws: (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); (2) Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681); (3) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); (4) the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); and (5) the Age Discrimination Act (42 U.S.C. §61010.

[114] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004," p. 11.

The Chancellor's Office appears to argue that the Equal Protection Clause requires many of the pled activities to ensure equal employment opportunity without discrimination, and as a result, Government Code section 17556, subdivision (c), precludes the finding of a reimbursable state mandate. However, on its own, the Equal Protection Clause of the United States Constitution does not require a community college district to engage in any of the specific administrative activities regarding seeking, hiring, or promoting persons who are underrepresented in job categories in the district. In fact, the Equal Protection Clause was part of the basis for which test claim statutes, Education Code section 87101, as amended by Statutes 1990, chapter 1302, and section 87102, as amended by Statutes 1988, chapter 973, were found invalid.[115]

Thus, as relevant to the activities required by the test claim statutes and title 5 regulations regarding a community college district's affirmative action/equal employment opportunity program, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution does not constitute a federal mandate.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)

The Chancellor's Office states that the regulations claimed by the claimants frequently reflect the federal provisions of Title VII of the Civil Rights Act of 1964 (Title VII) (codified at 42 U.S.C. § 2000e et seq.) and its implementing regulations, specifically 29 Code of Federal Regulations part 1607 et seq.[116] To the extent that claimed activities are required by federal law, the Chancellor's Office argues that the claimants are precluded from reimbursement.[117]

Title VII prohibits employment discrimination based on race, color, religion, sex and national origin by employers of 15 or more employees.[118] Title VII prohibits both intentional discrimination (known as "disparate treatment") as well as, in some cases, practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities (known as "disparate impact").[119] This prohibition is applicable independent of the receipt of any federal funds.

In developing Title VII's statutory scheme, Congress chose cooperation and voluntary compliance as the preferred means of eliminating discriminatory employment practices. This decision resulted in enforcement provisions which involve investigations by the Equal Employment Opportunity Commission (EEOC), efforts by the EEOC at conciliation in instances in which the EEOC finds that reasonable cause exists that employment discrimination has existed, and finally by litigation brought by individuals alleging discrimination or the Attorney General in the federal courts if conciliation by the EEOC fails.[120]

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[115] Exhibit H, *Connerly v. State Personnel Bd.* (App. 3 Dist. 2001) 92 Cal.App.4th 16, 57-61.

[116] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004," p. 11.

[117] *Ibid.*

[118] Title 42 United States Code section 2000e and 2000e-2.

[119] Title 42 United States Code section 2000e-2(a)(1) and (k)(1)(A)(i).

[120] Title 42 United States Code 2000e-5. See also, *Alexander v. Gardner-Denver Co.* (1974) 415 U.S. 36, 44; *Equal Employment Opportunity Commission v. Contour Chair Lounge Company, Inc.* (8th Cir. 1979) 596 F.2d 809, 813.

As shown by Title VII's enforcement scheme, the EEOC was created as the agency with initial enforcement responsibility of Title VII.[121] In order to carry out its duties, the EEOC is given the authority to adopt, issue, amend, or rescind suitable procedural regulations.[122] Under this authority, the EEOC adopted 29 Code of Federal Regulations part 1602. Part 1602 addresses recordkeeping and reporting requirements under Title VII. In regard to recordkeeping and reporting, Title VII, specifically Title 42 United States Code section 2000e-8, provides in relevant part:

> Every employer ... subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder.

Title VII defines an "employer" subject to its provisions as, "a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year … ."[123] Included in the definition of "person" are "governments, governmental agencies, [and] political subdivisions."[124] "Industry affecting commerce" is defined to include, "any governmental industry, business, or activity."[125] Thus, the provisions of Title VII are applicable to community college districts as employers.

Under the plain language of Title VII, community college districts are required to engage in the following activities as the EEOC prescribes by regulation: (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed; (2) Preserve such records for such periods as prescribed by the EEOC; and (3) make such reports from the records as prescribed by the EEOC.

As noted above, the regulations which set forth the EEOC's recordkeeping and reporting requirements are set forth in 29 Code of Federal Regulations part 1602. As relevant to this discussion, part 1602.48 requires community college districts to "make or keep all records, and information therefrom, which are or would be necessary for the completion of Higher Education Staff Information Report EEO-6 whether or not it is required to file such a report under part 1602.50."[126] In 1993, the EEOC, as the agency charged with enforcing Title VII, replaced

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[121] Title 42 United States Code sections 2000e-4 and 5.

[122] Title 42 United States Code section 2000e-12, subdivision (a).

[123] Title 42 United States Code section 2000e, subdivision (b).

[124] Title 42 United States Code section 2000e, subdivision (a).

[125] Title 42 United States Code section 2000e, subdivision (h). "[A]ny governmental industry, business, or activity" language added by 1972 amendment. See also, *Faulkner v. Federation of Preschool & Community Education Centers, Inc.* (9th Cir. 1977) 564 F.2d 327, 328, noting that the 1972 amendments eliminated the educational institution exemption to Title VII coverage.

[126] 29 Code of Federal Regulations part 1602.50 requires a community college district to file with the EEOC copies of its EEO-6 biennially.

the use of the EEO-6 with the National Center for Education Statistics' (NCES) Integrated Postsecondary Education Data System (IPEDS) Fall Staff questionnaire.[127] As a result, community college districts employing 15 or more employees are required to make or keep all records necessary for the completion of IPEDS Fall Staff questionnaire.[128]

As relevant to this discussion, the IPEDS Fall Staff questionnaire requires the following information for all employees:

1. Assigned positions separated by the following job categories: (a) faculty and other instructional staff; (b) executive/administrative/managerial; (c) other professionals (support/service); (d) technical and paraprofessional; (e) clerical and secretarial; (f) skilled crafts; and (g) service/maintenance.[129]
2. Gender.[130]
3. Race/ethnicity separated in the following categories: (a) Hispanic/Latino; (b) American Indian or Alaska Native; (c) Asian; (d) Black or African American; (e) Native Hawaiian or Other Pacific Islander; (f) White; (g) two are more races; (h) nonresident alien; and (i) race and ethnicity unknown.[131]

Part 1602.50 requires the submission of this information, as it exists on a specified date, to be submitted once every other year.[132] Because part 1602.48 requires community college districts to make or keep all records necessary to complete the IPEDS Fall Staff questionnaire, and completion of the questionnaire occurs every other year, districts are only required to make or keep this information every other year as necessary for the IPEDS questionnaire. Districts are required to preserve this information for a period of two years from the date of the making of the record.[133] Thus, read together the language of Title 42 United States Code section 2000e-8,

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[127] Exhibit H, National Center for Education Statistics, "Fall Staff in Postsecondary Institutions," (1993) Introduction, at <http://nces.ed.gov/pubs96/web/96323in.asp> [as of November 3, 2009]. See also, EEOC's "Regional Attorneys' Manual" at <http://www.eeoc.gov/eeoc/litigation/manual/4-1-c_services_orip.html> [as of April 29, 2010]. Note that 29 Code of Federal Regulations part 1602 was never amended to reflect the change in report used.

[128] Exhibit H, National Center for Education Statistics, "Statutory Requirements for Reporting IPEDS Data," at <https://surveys.nces.ed.gov/ipeds/> [as of November 3, 2009].

[129] Exhibit H, IPEDS Survey Material for 2-year degree-granting public institutions and related administrative offices that have 15 or more full-time staff (2009-10), p. 2 Part A, at <https://surveys.nces.ed.gov/ipeds/VisForms.aspx?survey=1&form=61&index=0&ri=3&show=part> [as of October 28, 2009]

[130] *Id*. at p. 3-25, Parts D, E, G-L.

[131] *Id*. at p. 7-25, Parts G-L.

[132] 29 Code of Federal Regulations part 1602.50. The NCES website specifies that this reporting is to occur in odd years (e.g. 2007-2008, 2009-2010, etc.). <https://surveys.nces.ed.gov/ipeds/> [as of February 23, 2010].

[133] 29 Code of Federal Regulations part 1602.49.

29 Code of Federal Regulations parts 1602.48 and 1602.50, and the IPEDS Fall Staff questionnaire imposes a federal mandate which occurs every other year.

The Chancellor's Office argues that 29 Code of Federal Regulations part 1607 et seq., which makes up the EEOC's "Uniform Guidelines on Employee Selection Procedures" (Uniform Guidelines), also constitutes a federal mandate.[134] The Uniform Guidelines were adopted to assist employers with complying with federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin.[135] The Uniform Guidelines address employment selection procedures that result in disparate/adverse impact, and as a result, are possibly in violation of Title VII. Title VII provides:

> An unlawful employment practice based on disparate impact is established under this subchapter only if--
>
> [A] complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or
>
> [T]he complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice. [136] (42 USCA 2000e-2)

The Uniform Guidelines guide the investigations and findings of the EEOC, setting forth the EEOC's interpretation of what constitutes disparate/adverse impact and EEOC's interpretation of how to "validate" or show that a procedure is job related and consistent with business necessity so as to be consistent with Title VII. Staff, however, finds that the Uniform Guidelines do not constitute a federal mandate because there is no legal requirement to comply with the Uniform Guidelines, nor are there any certain penalties assessed for failing to comply with the Uniform Guidelines.[137]

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[134] The Uniform Guidelines were also adopted by other federal enforcement agencies that enforce Title VII and other federal nondiscrimination laws, including those possibly applicable to community college districts based on receipt of federal funds. These agencies include the Department of Labor, the Civil Service Commission, the Department of Justice, and the Office of Revenue Sharing of the Department of the Treasury. However, because the Chancellor's Office is arguing that the Uniform Guidelines constitute a federal mandate as used to enforce Title VII and because there is no evidence in the record that community college districts have received any federal funding from the above listed agencies, this discussion will focus on the use of the Uniform Guidelines by the EEOC and the applicability of the Uniform Guidelines to community college districts as employers of 15 or more employees. See 29 Code of Federal Regulations part 1607.2, subdivision (A).

[135] 29 Code of Federal Regulations part 1607.1, subdivision (B).

[136] Title 42 United States Code section 2000e-2, subdivision (k)(1)(A).

[137] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

As indicated by the title of 29 Code of Federal Regulations part 1607 et seq., the "Uniform Guidelines" are *guidelines*. As such, the provisions of the guidelines contain language such as, "the [employer] *should* include, as a part of the validity study, an investigation of the suitable alternative selection procedures …;"[138] "Where cutoff scores are used, they *should* normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency …;"[139] "When an informal or unscored selection procedure which has an adverse impact is utilized, the [employer] *should* eliminate the adverse impact … ."[140] Thus, the plain language of the Uniform Guidelines does not require community college districts to engage in any activities. Instead, the guidelines set forth suggestions on how to comply with Title VII requirements.

In addition, as noted above, the EEOC has *initial* enforcement responsibility for Title VII. This enforcement responsibility includes investigating employers for violations of Title VII, making findings regarding whether reasonable cause exists for employment discrimination, and efforts at conciliation if a "reasonable cause" finding is made. Absent from the EEOC's Title VII enforcement authority, however, is the ability to adjudicate claims of discrimination or impose administrative sanctions. Congress left this authority and ultimate enforcement responsibility with the federal courts.[141] In the event that a civil action is brought to federal court by an aggrieved individual or the Attorney General, the findings made by the EEOC are not binding on the federal courts, nor are they entitled to the benefit of the "substantial evidence" or "clearly erroneous" standard of review.[142] Instead, a federal court would determine the issue of whether Title VII has been violated by an employer using a de novo standard of review, in which the court decides the matter anew.[143] Although courts have acknowledged that EEOC guidelines, as the administrative interpretation of an enforcing agency of Title VII, are entitled to great deference, courts have consistently found that they do not have the force of law.[144] In addition,

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[138] 29 Code of Federal Regulations part 1607.3, subdivision (B).

[139] 29 Code of Federal Regulations part 1607.5, subdivision (H).

[140] 29 Code of Federal Regulations part 1607.6, subdivision (B)(1).

[141] Exhibit H, *Alexander v. Gardner-Denver Co.* (1874) 415 U.S. 36, 44; *McDonnell Douglas Corporation v. Green* (1973) 411 U.S. 792, 799; and *Associated Dry Goods Corporation v. Equal Employment Opportunity Commission* (4th Cir. 1983) 720 F.2d 804, 809-810.

[142] Exhibit H, *Equal Employment Opportunity Commission v. Contour Chair Lounge Company, Inc.* (8th Cir. 1979) 596 F.2d at 813.

[143] Exhibit H, *Associated Dry Goods Corporation v. Equal Employment Opportunity Commission*, *supra*, 720 F.2d 804, 809-810.

[144] Exhibit H, *Albemarle Paper Co. v. Moody, et al.* (1975) 422 U.S. 405, 430-431, in which the court noted that the EEOC Guidelines are not administrative regulations' promulgated pursuant to formal procedures established by Congress, but were entitled to great deference as the administrative interpretation of Title VII by the enforcing agency. See also, *Guardians Assoc. of the New York Police Dept., Inc. v. Civil Service Commission of the City of New York, et al.* (2nd Cir 1980) 630 F.2d 79, 90-91, noting that although the Supreme Court has relied on some of the Uniform Guidelines, it has not ruled that every deviation from the Guidelines results in a violation of Title VII. The court in *Guardians Assoc.* continues that it appears that the Supreme

deviation from EEOC guidelines has occurred in some instances.[145] Thus, even if a community college district does not comply with the Uniform Guidelines, the district would not be subject to any sanctions by the EEOC, nor would the community college district face certain penalties imposed by a federal court. As a result, staff finds that the Uniform Guidelines (29 C.F.R. § 1607) do not impose a federal mandate on community college districts.

Staff finds that the language of Title VII, its implementing regulations, and the IPEDS questionnaire constitute a federal mandate on community college districts for the following activities:

> Make or keep records necessary to provide the following information relevant to the determinations of whether unlawful employment practices have been or are being committed once every other year (beginning August 1, 1975):
>
> a. Assigned positions of employees separated by the following job categories: (a) faculty and other instructional staff; (b) executive/administrative/managerial; (c) other professionals (support/service); (d) technical and paraprofessional; (e) clerical and secretarial; (f) skilled crafts; and (g) service/maintenance. (42 U.S.C. § 2000e-8; 29 C.F.R. § 1602.48; IPEDS Survey Material for 2-year degree-granting public institutions and related administrative offices that have 15 or more full-time staff (2009-10), p. 2, Part A.)
>
> b. Gender of employees. (42 U.S.C. § 2000e-8; 29 C.F.R. § 1602.48; IPEDS Survey Material for 2-year degree-granting public institutions and related administrative offices that have 15 or more full-time staff (2009-10), p. 3-25, Parts D, E, G-L.)
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> c. Race/ethnicity of employees separated in the following categories: (a) Hispanic/Latino; (b) American Indian or Alaska Native; (c) Asian; (d) Black or African American; (e) Native Hawaiian or Other Pacific Islander; (f) White; (g) two are more races; (h) nonresident alien; and (i) race and ethnicity unknown. (42 U.S.C. § 2000e-8; 29 C.F.R. § 1602.48; IPEDS Survey Material for 2-year degree-granting public institutions and related administrative offices that have 15 or more full-time staff (2009-10), p. 7-25, Parts G-L.)

<u>The Americans with Disabilities Act (42 U.S.C. § 12111-12117)</u>

The Chancellor's Office also cites generally to the Americans with Disabilities Act (ADA) as federal law that may require activities to ensure equal employment opportunity which would constitute a federal mandate.[146] The ADA encompasses Title 42 United States Code

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Court has applied the Uniform Guidelines only to the extent that they are useful, in the particular setting of the case under consideration, for advancing the basic purposes of Title VII.

[145] Exhibit H, *Garcia v. Spun Steak Co.* (9th Cir. 1993) 998 F.2d 1480, 1489, in which the court rejected the EEOC guidelines that an employee meets the prima facie case in a disparate impact cause of action by proving the existence of an "English-only" policy; *Clady v. County of Los Angeles* (9th Cir. 1985) 770 F.2d 1421, 1428, in which the court noted that the Uniform Guidelines are not legally binding when discussing the varying applications/views of the Uniform Guidelines' "80 percent" rule when determining adverse impact.

[146] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, March 11, 2004," p. 11.

sections 12101-12213, however, there is currently a split between federal circuit courts on the issue of whether only Title I of the ADA (42 U.S.C. §§ 12111-12117) applies to employment discrimination claims or if Title II of the ADA (42 U.S.C. §§ 12131-12134) also applies. Title I of the ADA expressly applies to employment discrimination based on disability. In contrast, Title II and its implementing regulations generally prohibit the exclusion of individuals from participation in or the denial of benefits to individuals of the services, programs, or activities of a public entity due to disability, or for the entity to subject an individual to discrimination based on disability. The majority of circuits in the United States Courts of Appeal agree with the United States Department of Justice and its implementing regulations that Title II applies to employment discrimination.[147] In contrast, the 9th Circuit, which is the controlling circuit in California, has declined to follow this view (*Zimmerman v Oregon Dept. of Justice* (9th Cir. 1999) 170 F.3d 1169).[148, 149] As a result, any discussion regarding the ADA in this section, which specifically addresses employment issues, excludes Title II and refers only to Title I of the ADA and its implementing regulations (42 U.S.C. § 12111-12117; 29 C.F.R. § 1630 et seq.).

In 1990, Congress enacted the ADA to ensure that qualified individuals with disabilities are protected from employment discrimination on the basis of disability. Congress directed the EEOC to exercise the same enforcement powers, remedies, and procedures that are set forth in Title VII of the Civil Rights Act for discrimination based on race, color, religion, sex and national origin when enforcing the ADA.[150] In addition, like Title VII, the ADA's prohibition applies to employers of 15 or more employees.[151] As a result, the ADA is applicable to community college districts independent of the receipt of any federal funds and the plain language of the ADA imposes a federal mandate upon community college districts.

As relevant to this discussion, the ADA (42 U.S.C. § 12111-12117) and its implementing regulations (29 C.F.R. § 1630 et seq.) impose the following federal mandated activities:

1. Make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity. (42 U.S.C.A. § 12112, subd. (b)(5)(A); 29 C.F.R § 1630.9.)
2. Post notices in an accessible format to applicants, employees, and members describing the applicable provisions of the ADA (42 U.S.C. § 12101 et seq.) in the manner

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[147] Exhibit H, *Filush v. Town of Weston* (D.Conn. 2003) 266 F.Supp.2d 322, 326-327, noting the split of authority and the majority view.

[148] Exhibit H, *Hart v. Massanari* (9th Cir. 2001) 266 F.3d 1155, 1171. Stating, "Circuit law … binds all courts within a particular circuit, including the court of appeals itself."

[149] Exhibit H, See dissent in *Zimmerman v. Oregon Dept. of Justice* (9th Cir. 1999) 183 F.3d 1161, 1162, which denied petition for rehearing en banc. Dissent notes, "The Ninth Circuit now stands alone in adopting an interpretation of the ADA that deprives disabled persons of a right expressly granted them by Congress-the right to bring an action for employment discrimination under Title II of the ADA."

[150] Title 42 United States Code section 12117.

[151] Title 42 United States Code section 12111.

prescribed by Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-10). (42 U.S.C. § 12115.)

Section 504 of the Rehabilitation Act (29 U.S.C. § 794)

In 1973, Congress enacted the Rehabilitation Act of 1973, section 504 (Section 504) (29 U.S.C. § 794) to extend the protections of the Civil Rights Act of 1964 to the handicapped.[152] Section 504 prohibits discrimination on the basis of physical or mental disability with respect to "any program or activity receiving federal financial assistance." It states the following:

> No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity.

The U.S. Department of Education, Office of Civil Rights, the agency responsible for enforcing the Section 504 in public colleges and universities, adopted 34 Code of Federal Regulations part 104 et seq. to implement the Section 504. Section 504 and its implementing regulations apply to all recipients of federal financial assistance, including colleges, universities, other postsecondary institutions, and public systems of higher education. The federal law extends to all of the operations of a college, including employment, any part of which is extended federal financial assistance.[153] As applicable to community college district employment practices, Section 504's implementing regulations prohibit discrimination on the basis of disability in community college district recruitment, advertising, and processing of applications for employment.[154] In addition, subject to some exceptions, the implementing regulations of Section 504 prohibit the use of employment criteria that have an adverse impact on persons with disabilities.[155]

Compliance with the Section 504 and its implementing regulations is a condition on the receipt of federal financial assistance.

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[152] Exhibit H, *Lloyd v. Regional Transp. Authority* (1977) 548 F.2d 1277, 1285.

[153] Exhibit H, *Consolidated Rail Corp. v. Darrone* (1984) 465 U.S. 624, finding that federal assistance did not need to have a primary purpose to promote employment in order for section 504 to apply to employment practices. *Leake v. Long Island Jewish Medical Center* (E.D.N.Y. 1988) 695 F.Supp. 1414, finding that section 504 applied to all operations of an entity receiving federal financial assistance, not just the specific program receiving assistance.

[154] 34 Code of Federal Regulations part 104.11 (b)(1).

[155] 34 Code of Federal Regulations parts 104.11 (a)(3) and 104.13 (a), which specifically prohibit employment criteria which screen out or tend to screen out persons with disabilities, or in other words has a disparate impact on persons with disabilities, unless: (1) the test score or other selection criteria, as used by the recipient, is shown to be job-related for the position in question; and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director of the United States Department of Education to be available. The "tends to screen out" language indicates that a statistical showing of disparate impact is not necessary as it is with claims of disparate impact based on gender and ethnicity. See Appendix A to 34 Code of Federal Regulations part 104.

> In this regard, section 504 [of the Rehabilitation Act] is similar to other statutes placing conditions on the receipt of federal funding…Congress may attach reasonable conditions to federal financial assistance. The recipients of federal funding are not thereby obligated to accept the conditions, however, because they "may terminate their participation in the program and thus avoid" the conditions imposed by the statute. [Citation omitted.][156]

Thus, community college districts are not legally compelled to comply with the Section 504.

The courts, however, have acknowledged that federal financial assistance to education is pervasive.[157] In addition, violations of the Section 504 can result, and has resulted, in the termination of federal funding to the program in which noncompliance was found.[158] Along with the termination of federal financial assistance, community college districts face litigation by the Attorney General for violations of the Section 504 and its implementing regulations.[159] Litigation by an aggrieved employee or applicant for employment is available for violations of the Section 504 and possibly for violations of its implementing regulations.[160] Further, as noted

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[156] Exhibit H, *Greater Los Angeles Council on Deafness, Inc,* (9th Cir. 1987) 812 F.2d 1103, 1111, fn. 11.

[157] *Hayes, supra,* 11 Cal.App.4th 1564, 1584.

[158] Title 29 United States Code section 794a incorporates Title 42 U.S.C 2000d-1, which authorizes the termination of federal financial assistance to the program in which noncompliance is found. 34 Code of Federal Regulations part 104.61 incorporates the procedures to effect compliance found in 34 Code of Federal Regulations part 100.6-100.10, which authorize the termination of federal financial assistance for failure to comply with regulations promulgated under section 504. See, *Freeman v. Cavazos* (11th Cir. 1991) 939 F.2d 1527, 1531, in which the court found that federal funding of a school district was properly discontinued, noting that compliance with any regulation promulgated under section 504 may be obtained by the termination of or refusal to grant or to continue assistance to a recipient of federal assistance. See also, *Fells v. Brooks* (D.D.C. 1981) 522 F.Supp. 30, 34, in finding that resort to administrative remedies by individual complainants is not required nor intended under section 504 and its implementing regulations, the court noted that federal assistance had been withdrawn from a school district.

[159] Title 29 United States Code section 794a, subdivision (a)(2), incorporating by reference Title 42 United States Code section 2000d et seq. and Title 42 United States Code section 2000e-5, which authorize litigation for violations of section 504 of the Rehabilitation Act.

[160] Although Title 42 United States Code section 2000e-5 authorizes litigation by aggrieved individuals for violations of section 504 of the Rehabilitation Act, district courts in the 9th Circuit have split on whether a private cause of action arises from noncompliance with the regulations implementing section 504. See *Huezo v. Los Angeles Community College Dist*. (C.D. Cal. 2008) 672 F.Supp.2d 1045, 1054, in which a 9th Circuit district court, after noting a split between federal circuits and between district courts within the 9th Circuit, found that there is no private cause of action to enforce self-evaluation regulations implementing the ADA and Section 504 of the Rehabilitation Act. Citing to the Supreme Court's decision in *Alexander v. Sandoval* (2001) 532 U.S. 275, the court found that a regulation by regulation analysis, as

by the United States Supreme Court in *Consolidated Rail Corporation v. Darrone* (1984) 465 U.S. 624, "[E]nhancing employment of the handicapped was so much the focus of the 1973 legislation that Congress the next year felt it necessary to amend the statute to clarify whether § 504 [of the Rehabilitation Act] was intended to prohibit other types of discrimination as well."[161] Thus, a main purpose of the Section 504 is to enhance employment of disabled individuals.

In light of the penalties and legal consequences for failing to comply with the Section 504, and the purpose of the Section 504, staff finds that community colleges are practically compelled to comply with the requirements of the Section 504 and its implementing regulations.[162, 163]

As relevant to this section ("equal employment opportunity"), under Section 504 and its implementing regulations community college districts are required to engage in the following activities:

1. Designate at least one person to coordinate efforts to comply with 34 Code of Federal Regulations part 104 (which implements section 504 of the Rehabilitation Act), if employing 15 people or more. (34 C.F.R. § 104.7 (a)).
2. Adopt grievance procedures for employees that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by 34 Code of Federal Regulations part 104 (which implements section 504 of the Rehabilitation Act), if employing 15 people or more. (34 C.F.R. § 104.7 (b)).
3. Make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the district can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity. (34 C.F.R. § 104.12.)

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opposed to an analysis of the regulations as a whole, is required in order to determine if a regulation exhibits a Congressional intent to create a private right of action.

[161] Exhibit H, *Consolidated Rail Corporation v. Darrone*, *supra*, 465 U.S. at p. 632. See also, Title 29 United States Code section 701.

[162] *City of Sacramento v. State of California*, supra, 50 Cal.3d at p. 76, setting forth the factors to determine whether a federal mandate exists.

[163] Note the court's analysis of section 504 of the Rehabilitation Act in *Hayes, supra*, 11 Cal.App. 4th 1564. While the issue in *Hayes* primarily involved the Education of the Handicapped Act, legislation enacted after the Rehabilitation Act as it applied to the state with regard to elementary and secondary education, the court also discussed the Rehabilitation Act of 1973 since it was the first federal legislation to codify the equal protection rights of citizens with disabilities. Pointing to the facts that federal financial assistance to education is pervasive, failure to comply with the Act has resulted in equal protection lawsuits, and the Rehabilitation Act was essentially a codification of the equal protection rights of citizens with disabilities, the court stated that it "was satisfied that section 504 [the Rehabilitation Act] does impose an obligation upon local school districts to accommodate the needs of handicapped children." 11 Cal.App. 4th at 1586.

It is important to note that, unlike Title VII and title I of the ADA, the provisions of Section 504 address compliance with Section 504 initially through an internal process within the district. In contrast, compliance with Title VII and title I of the ADA is ensured and enforced externally with a combination of efforts by the EEOC and federal courts.

Title IX of Education Amendments of 1972 (20 U.S.C. §1681 et seq.)

Title IX of Education Amendments of 1972 (Title IX) (codified at 20 U.S.C. § 1681 et seq.) and its implementing regulations (34 C.F.R. § 106 et seq.) prohibit discrimination on the basis of sex under any education program or activity receiving federal financial assistance, including employment.[164] Title IX applies to community college districts as recipients of federal financial assistance.[165] Under the implementing regulations of Title IX, the prohibition against discrimination on the basis of gender applies to community college district recruitment, advertising, and processing of applications for employment.[166] In addition, subject to some exceptions, Title IX's implementing regulations prohibit the use of test or criteria in screen or selection procedures for employment that have an adverse impact on persons on the basis of sex.[167]

Like Section 504, compliance with Title IX is a condition of receipt of all federal financial assistance, and as a result, community college districts are not *legally* required to comply with the provisions of Title IX. However, also like Section 504, community college districts face practical compulsion to comply with Title IX and its implementing regulations. A failure to comply with Title IX and its implementing regulations can result in the termination of federal financial assistance to the program in which noncompliance is found.[168] In addition, community college districts face litigation by aggrieved employees or applicants for employment for intentional violations of Title IX.[169] Further, the principal objectives of Title IX are to avoid the

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[164] Title 20 United States Code sections 1681 and 1687; 34 Code of Federal Regulations part 106.51; *North Haven Bd. of Ed. v. Bell* (1982) 456 U.S. 512, 530-535. See also, *Sharif by Salahuddin v. New York State Educ. Dept.* (S.D.N.Y. 1989) 709 F.Supp. 345, 360 fn. 34, noting that Congress broadened the scope of title 20 United States Code section 1687 with the 1988 adoption of the Civil Rights Restoration Act, such that receipt of federal financial assistance results in institution-wide application of Title IX.

[165] *Hayes, supra,* 11 Cal.App.4th 1564, 1584, noting the pervasiveness of federal financial assistance in education.

[166] 34 Code of Federal Regulations part 106.51 (b)(1).

[167] 34 Code of Federal Regulations part 106.52. The use of test or criteria that have a disproportionate adverse effect on individuals based on sex is prohibited unless: (1) use of such test or other criterion is shown to predict validly successful performance in the position in question; and (2) alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

[168] Title 20 United States Code section 1682. See *Dougherty County School System v. Bell* (5th Cir. 1982) 694 F.2d 78, 81, finding that deferring school's federal funding must be done on a program by program basis.

[169] Exhibit H, *Cannon v. University of Chicago* (1979) 441 U.S. 677, 717, in which the court found an implied private right of action under Title IX. *Davis v. Monroe County Bd. of Educ.*

use of federal resources to support discriminatory practices and to provide individual citizens effective protection against those discriminatory practices.[170]

Thus, for reasons similar to those discussed for Section 504, staff finds that community colleges are practically compelled to comply with the requirements and prohibitions of Title IX and its implementing regulations. As relevant to this discussion, Title IX and its implementing regulations require community college districts to engage in the following activities:

1. Designate at least one employee to coordinate efforts to comply with and carry out the responsibilities under 34 Code of Federal Regulations part 106, which implement Title IX, including the investigation of any complaint communicated to the community college district alleging its noncompliance with part 106 or alleging any action that would be prohibited by part 106. (34 C.F.R. § 106.8, subd. (a).)
2. Adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action which would be prohibited by this part. (34 C.F.R. § 106.8, subd. (b).)

Like Section 504, it is important to note that efforts to ensure compliance with Title IX are required to be initially handled internally by the community college district.

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.)

Title VI of the Civil Rights Act of 1964 (Title VI) (codified at 42 U.S.C. § 2000d et seq.) and its implementing regulations (34 C.F.R. § 100) prohibit discrimination on the basis of race, color, or national origin with respect to "any program or activity receiving Federal financial assistance."[171] Like Section 504, compliance with Title VI and its implementing regulations is a condition for the receipt of federal financial assistance, and thus, community college districts are not *legally* required to comply with Title VI and its implementing regulations.

Unlike Section 504, however, the provisions of Title VI apply to employment practices only where a primary objective of the federal financial assistance is to provide employment.[172] Title 42 United States Code section 2000d-3 provides:

> Nothing contained in [Title VI] shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

Despite the fact that the language of Title 42 United States Code section 2000d-3 prohibits action by "any department or agency," many courts, including the 9th Circuit, have held that the limitation in section 2000d-3 applies to private actions as well.[173] In this instance, although

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(1999) 526 U.S. 629, 639-640, finding that liability for damages extends only to recipients of federal funds.

[170] *Id*. at p. 704.

[171] Title 42 United States Code section 2000d.

[172] Title 42 United States Code section 2000d-3. See also,

[173] Exhibit H, *Grimes v. Superior Home Health Care of Middle Tennessee, Inc.* (M.D. Tenn. 1996) 929 F.Supp. 1088, 1092-1093.

courts have acknowledged that federal financial assistance to education is pervasive, there is no evidence in the record that the primary objective of any of the federal financial assistance is to provide employment.[174] Thus, for the purposes of this section (the "Equal Employment Opportunity" section of this analysis) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) does not constitute a federal mandate.

The Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.)

The Age Discrimination Act of 1975 (codified at 42 U.S.C. § 6101 et seq.) and its implementing regulations (34 C.F.R. 110) prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance. However, the Age Discrimination Act of 1975 explicitly excludes employment discrimination from its scope.[175] Thus, for purposes of the discussion in this section (the "Equal Employment Opportunity" section of this analysis) the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.) does not constitute a federal mandate.

(ii) The activities required by the Equal Employment Opportunity regulations that are also mandated by federal law are not subject to reimbursement under Article XIII B, section 6 of the California Constitution.

The following activities required by the Equal Employment Opportunity regulations (Cal. Code Regs., tit. 5, §§ 53001, 53002, 53003, 53004, 53005, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, 53033, and 53034) are mandated or partially mandated by federal law. To the extent that the activities are required by federal law, they do not constitute state-mandated activities.

District Evaluation: (Cal. Code Regs., tit. 5, § 53004)

Title 5, section 53004, as amended by Register 96, number 23, and Register 2002, number 35, require community college districts to engage in the following activities:

1. Annually survey its employees and monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing its faculty and staff diversity plan/equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)
2. Annually report to the Chancellor, in a manner described by the Chancellor, the results of its annual survey of employees at each college in the district. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)
    a. Report employees so that he or she may be identified as belonging to one of the following seven job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance. (Cal. Code Regs., tit. 5, § 53004, subd. (a)

[174] *Hayes, supra,* 11 Cal.App.4th 1564, 1584.

[175] Title 42 United States Code section 6103, subdivision (c)(1).

(Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

3. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004, subdivision (a) (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Count a person in only one ethnic group for reporting purposes if a person designates multiple ethnic groups with which he or she identifies. (Cal. Code Regs., tit. 5, § 53004, subd (b) (Register 2002, No. 35), beginning August 11, 2002.)

    b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

Thus, under California law community college districts are required to annually create a record describing, out of seven job categories, which category each employee falls within. In addition, the record is to include each employee's gender, ethnic group identification, and, if applicable, disability.

Similarly, Title VII (42 U.S.C. § 2000e et seq.) and its implementing regulations (29 C.F.R. § 1602) mandate community college districts to engage in the following activity:

> Make or keep records necessary to provide the following information relevant to the determinations of whether unlawful employment practices have been or are being committed once every other year (beginning August 1, 1975):
>
> a. Assigned positions of employees separated by the following job categories: (a) faculty and other instructional staff; (b) executive/administrative/managerial; (c) other professionals (support/service); (d) technical and paraprofessional; (e) clerical and secretarial; (f) skilled crafts; and (g) service/maintenance. (42 U.S.C. § 2000e-8; 29 C.F.R. § 1602.48; IPEDS Survey Material for 2-year degree-granting public institutions and related administrative offices that have 15 or more full-time staff (2009-10), p. 2, Part A.)
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> b. Gender of employees. (42 U.S.C. § 2000e-8; 29 C.F.R. § 1602.48; IPEDS Survey Material for 2-year degree-granting public institutions and related administrative offices that have 15 or more full-time staff (2009-10), p. 3-25, Parts D, E, G-L.)
>
> c. Race/ethnicity of employees separated in the following categories: (a) Hispanic/Latino; (b) American Indian or Alaska Native; (c) Asian; (d) Black or African American; (e) Native Hawaiian or Other Pacific Islander; (f) White; (g) two are more races; (h) nonresident alien; and (i) race and ethnicity unknown. (42 U.S.C. § 2000e-8; 29 C.F.R. § 1602.48; IPEDS Survey Material for 2-year

degree-granting public institutions and related administrative offices that have 15 or more full-time staff (2009-10), p. 7-25, Parts G-L.)

Although California law mirrors Title VII and its implementing regulations in many ways, it also diverges from the requirements of Title VII in a few aspects. California law requires the creation of a record of employee information annually. Under Title VII, however, community college districts are only required to make a record once every other year (every odd year, e.g. 2007-2008, 2009-2010, etc.). In addition, California law requires the collection of information regarding employee disabilities, while Title VII does not.

Thus, the following activity required by title 5, section 53004, constitutes a federal mandate and is not subject to reimbursement under article XIII B, section 6 of the California Constitution:

> Survey district employees every odd year in order to evaluate the progress in implementing its faculty and staff diversity plan/equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

The following activity required by title 5, section 53004, exceeds the requirements of Title VII, and does not constitute a federal mandate under *Hayes*:

> Survey district employees every even year (except for information regarding disability, which shall occur annually) and monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing its faculty and staff diversity plan/equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

<u>Delegation of Authority: (Cal. Code Regs., tit. 5, § 53020)</u>

Title 5, section 53020, subdivisions (a) and (b) require community college districts to:

1. Ensure that an affirmative action officer/equal employment opportunity officer is designated to oversee the day-to-day implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.), upon the recommendation of the chief executive officer. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)

2. Designate in the faculty and staff diversity plan/equal employment opportunity plan a single officer, who may be the affirmative action officer/equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints filed pursuant to California Code of Regulations, title 5, section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by California Code of Regulations, title 5, sections 53023 and 53024. (Cal. Code Regs., tit. 5, § 53020,

subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23), beginning July 1, 2001.)

The equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) that must be overseen by the affirmative action officer/equal employment opportunity officer include, but are not limited to, requirements regarding the provision of reasonable accommodations to persons with disabilities (Cal. Code Regs., tit. 5, § 53025); job announcements and qualifications (Cal. Code Regs., tit. 5, § 53022); the applicant pool (Cal. Code Regs., tit. 5, § 53023); and the screening or selection procedures for employment (Cal. Code Regs., tit. 5, § 53024); all of which must be designed to avoid discrimination and/or adverse impact on groups based on ethnic group identification, gender, and disability; and the creation of a grievance procedure for violations of the regulations.[176] In addition, the requirements of the equal employment opportunity program regulations are meant to implement and be read in conjunction with various state and federal antidiscrimination laws including, but not limited to, Section 504 and Title IX.[177]

As relevant to this discussion, the implementing regulations of Section 504, which prohibits employment discrimination on the basis of disability, require community college districts to:

1. Designate at least one person to coordinate efforts to comply with 34 Code of Federal Regulations part 104 (which implements section 504 of the Rehabilitation Act), if employing 15 people or more. (34 C.F.R. § 104.7 (a)).
2. Adopt grievance procedures for employees that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by 34 Code of Federal Regulations part 104 (which implements section 504 of the Rehabilitation Act), if employing 15 people or more. (34 C.F.R. § 104.7 (b)).

Similarly, the implementing regulations of Title IX, which prohibits employment discrimination on the basis of gender, require community college districts to:

> Designate at least one employee to coordinate efforts to comply with and carry out the responsibilities under 34 Code of Federal Regulations part 106, including the investigation of any complaint communicated to the community college district alleging its noncompliance with part 106 or alleging any action that would be prohibited by part 106. (34 C.F.R. § 106.8, subd. (a).)

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[176] California Code of Regulations, title 5, sections 53024 and 53026.

[177] California Code of Regulations, title 5, section 53000, as amended in Register 96, number 23, and Register 2002, number 35, provides that the equal employment opportunity program regulations are to meant to implement and be read in conjunction with Government Code sections 11135-11139.5, Education Code sections 66010.2, 66030, and 66250 et seq., Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.); and the Age Discrimination Act (42 U.S.C. § 6101). The Register 96 version of section 53000 also provided that the regulations are meant to implement Education Code section 87100 et seq.

As discussed above, Section 504 and Title IX's implementing regulations prohibit discrimination on the basis of disability and gender in employment; prohibit, with exceptions, the use of employment practices that have an adverse impact on individuals with disabilities or a specific gender; and require a grievance procedure for complaints alleging violations of the prohibitions and requirements of Section 504 and Title IX.[178] Thus, like the affirmative action/equal employment opportunity program regulations, Section 504 and Title IX require the designation of an employee to oversee employment screening and selection procedures, which must be designed to avoid adverse impact on groups based on gender, and disability; and the creation of a grievance procedure for violations of the Section 504 and Title IX regulations, which the district employee must oversee. As a result, the following activities constitute federal mandates not subject to reimbursement under article XIII B, section 6 of the California Constitution:

1. Ensure, upon the recommendation of the chief executive officer, that an affirmative action officer/equal employment opportunity officer is designated to oversee the day-to-day implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.), the portion of which require the provision of reasonable accommodations to disabled individuals (Cal. Code Regs., tit. 5, § 53025), and the portion of which require the job announcements and qualifications (Cal. Code Regs., tit. 5, § 53022), the applicant pool (Cal. Code Regs., tit. 5, § 53023), and the screening and selection procedures for employment (Cal. Code Regs., tit. 5, § 53024), to avoid adverse impact on groups based on disability or gender. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)
2. Designate in the faculty and staff diversity plan/equal employment opportunity plan a single officer, who may be the affirmative action officer/equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints of violations of the equal employment opportunity program regulations based on disability or gender filed pursuant to California Code of Regulations, title 5, section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored for adverse impact on groups based on disability or gender, as required by California Code of Regulations, title 5, sections 53023 and 53024. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23), beginning July 1, 2001.)

However, in addition to avoiding adverse impact on groups based on gender and disability, the equal employment opportunity program regulations also require that the employment screening and selection procedures be designed to avoid adverse impact on groups based on ethnic group identification and to receive complaints of violations of the equal employment opportunity regulations based on ethnic group identification. Further, as summarized below under "Summary of Required Activities that Exceed the Requirements of Federal Law," the equal employment opportunity program regulations impose many other requirements that are not imposed by federal law, the implementation of which must be overseen by the affirmative action employment officer. As a result, the following activities do not constitute federal mandates:

[178] See 34 Code of Federal Regulations parts 104.7 and 106.8.

1. Ensure, upon the recommendation of the chief executive officer, that an affirmative action officer/equal employment opportunity officer is designated to oversee the day-to-day implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.), excluding overseeing the portion of the equal employment opportunity program regulations which require the provision of reasonable accommodations to disabled individuals (Cal. Code Regs., tit. 5, § 53025), and the portion of which require the job announcements and qualifications (Cal. Code Regs., tit. 5, § 53022), the applicant pool (Cal. Code Regs., tit. 5, § 53023), and the screening and selection procedures for employment (Cal. Code Regs., tit. 5, § 53024), to avoid adverse impact on groups based on disability or gender. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)
2. Designate in the faculty and staff diversity plan/equal employment opportunity plan a single officer, who may be the affirmative action officer/equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints of violations of the equal employment opportunity program regulations, filed pursuant to California Code of Regulations, title 5, section 53026, excluding those based on disability or gender, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored for adverse impact, as required by California Code of Regulations, title 5, sections 53023 and 53024, excluding adverse impact on groups based on disability or gender. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23), beginning July 1, 2001.)

Job Announcements and Qualifications: (Cal. Code Regs., tit. 5, § 53022)

Title 5, section 53022, requires community college districts to engage in the following activity:

> Review job specifications, including any "desired" or "required"/"required," "desired," or "preferred" qualifications beyond the state minimum qualifications (set forth in Subchapter 4 of Cal. Code Regs., tit. 5, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

Thus, community college districts are required to review for compliance with state and federal nondiscrimination laws, not simply comply with state and federal nondiscrimination laws. As noted above, Section 504 and Title IX require community college districts to designate an employ to oversee compliance with Section 504 and Title IX. As a result, reviewing job specifications which the district wishes to utilize for conformity with the requirements of the requirements of Section 504 and Title IX constitute a federal mandate not subject to reimbursement under article XIII B, section 6 of the California Constitution.

However, the following activity does not constitute a federal mandate:

> Review job specifications, including any "desired" or "required"/"required," "desired," or "preferred" qualifications beyond the state minimum qualifications

(set forth in Subchapter 4 of Cal. Code Regs., tit. 5, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws, excluding section 504 of the Rehabilitation Act, and Title IX of Education Amendments of 1972. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

Applicant Pool, and Screening or Selection Procedures: (Cal. Code Regs., tit. 5, §§ 53023 and 53024)

As relevant to this discussion, title 5, sections 53023 and 53024, require community college districts to engage in the following activities:

1. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)
2. Analyze the composition of the qualified applicant pool to ensure that no group defined in terms of ethnicity, gender, or disability/monitored group, is adversely impacted as defined by California Code of Regulations, title 5, section 53001, subdivision (m) (Register 96, No. 23)/subdivision (a) (Register 2002, No. 35), after the analysis to ensure that expected representation has been achieved for historically underrepresented groups (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23))/after the analysis to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35)) and before the selection process continues. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)
3. Take effective steps to address adverse impact found in the district's applicant pool before the selection process is continued. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)
4. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to ensure that they do not have an adverse impact, as defined by California Code of Regulations, title 5, section 53001, subdivision (m), on any group defined in terms of ethnicity, gender, or disability. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
5. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse impact as defined in California Code of Regulations, title 5, section 53001, subdivision (a), and to detect and address any adverse impact which does occur. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)
6. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group before the selection process resumes if monitoring under California

Code of Regulations, title 5, section 53024, subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted such group. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

7. Immediately discontinue the use of any locally established qualifications beyond state minimum qualifications that have not been verified as described in California Code of Regulations, title 5, section 53023, subdivision (c)(2) or replaced with suitable alternatives having a lesser adverse impact if adverse impact results from the locally established qualifications. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

The above activities all seek to prevent and/or end the use of discriminatory recruitment procedures, and application, screening, and selection procedures that result in adverse impact. "Adverse impact" is defined by the title 5 regulations as a statistical measure, such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures,"[179] applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on any group defined in terms of ethnic group identification, gender, or disability.[180]

Generally stated, Section 504 and Title IX prohibit employment discrimination on the basis of disability or gender. The implementing regulations of Section 504 and Title IX prohibit community college districts from administering or operating any test or other criterion for any employment opportunity which have an adverse impact on persons on the basis of disability or gender, unless the test or other criterion meets certain requirements.[181] This prohibition is applicable to recruitment, advertising, processing of applications for employment, and employment related decisions.[182] In addition, community college districts are required to

[179] The Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures," sets forth a "four-fifths rule" in which a selection rate for any race, sex or ethnic group which is less than four-fifths of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact. See 29 Code of Federal Regulations part 1607.4(D).

[180] California Code of Regulations, title 5, section 53001, subdivision (m) (Register 96, No. 23); and section 53001, subdivision (a) (Register 2002, No. 35).

[181] 34 Code of Federal Regulations parts 104.13 and 106.52. Tests or selection criteria which tend to screen out handicapped persons or any class of handicapped persons may be used if: (1) the test score or other selection criteria, as used by the recipient, is shown to be job-related for the position in question; and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director of the United States Department of Education to be available. Tests or selection criteria which have an adverse impact on persons based on gender may be used if: (1) use of such test or other criterion is shown to predict validly successful performance in the position in question; and (2) alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

[182] 34 Code of Federal Regulations parts 104.11 and 106.51.

oversee compliance with these prohibitions.[183] Thus, community college districts are required to oversee that district recruitment, advertising, processing of applications for employment, and employment related decisions are not discriminatory and do not have an adverse impact on individuals based on disability or gender.

Under *San Diego Unified School Dist*., state rules or procedures intended to implement an applicable federal law, whose costs are de minimis in context with the federal law, should be treated as part and parcel of the underlying federal mandate.[184] In this instance, the affirmative action/equal employment opportunity regulations specifically implement various state and federal antidiscrimination laws including Section 504 and Title IX.[185] As discussed above, Section 504 and Title IX require community college districts oversee that district recruitment, advertising, processing of applications for employment, and employment related decisions are not discriminatory and do not have an adverse impact on individuals based on disability or gender. In this context, the cost of activities listed above, which seek to prevent and/or end the use of discriminatory recruitment procedures, and application, screening, and selection procedures that result in an adverse impact, is de minimis.

Thus, the above activities should be treated as part and parcel of the underlying federal mandate to the extent that the activities above prevent and/or end the use of employment procedures that discriminate and/or result in an adverse impact on individuals based on disability or gender. As a result, these activities as they relate to a disparate impact and/or discrimination on the basis of disability and gender are not subject to reimbursement under article XIII B, section 6 of the California Constitution.

However, because the above activities also seek to prevent and/or end the use of recruitment procedures that discriminate on the basis of ethnicity, and the use of application, screening, and selection procedures that result in adverse impact on the basis of ethnicity, the following activities do not constitute a federal mandate:

1. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that any failure to obtain projected representation for any group defined in terms of ethnicity is not due to discriminatory recruitment procedures. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)
2. Analyze the composition of the qualified applicant pool to ensure that no group defined in terms of ethnicity is adversely impacted as defined by California Code of Regulations, title 5, section 53001, subdivision (m) (Register 96, No. 23)/subdivision (a) (Register 2002, No. 35), after the analysis to ensure that expected representation has been achieved for historically underrepresented groups (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23))/after the analysis to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35)) and before the selection process continues. (Cal. Code Regs., tit. 5, § 53023, subd. (b)

[183] 34 Code of Federal Regulations parts 104.7 and 106.8.

[184] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 890.

[185] California Code of Regulations, title 5, section 53000 (Register 96, No. 23; and Register 2002, No. 35)

(Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

3. Take effective steps to address adverse impact on any group defined in terms of ethnicity found in the district's applicant pool before the selection process is continued. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)
4. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to ensure that they do not have an adverse impact, as defined by California Code of Regulations, title 5, section 53001, subdivision (m), on any group defined in terms of ethnicity. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
5. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse impact as defined in California Code of Regulations, title 5, section 53001, subdivision (a) on any group defined in terms of ethnicity, and to detect and address any adverse impact on any group defined in terms of ethnicity which does occur. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)
6. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group defined in terms of ethnicity before the selection process resumes if monitoring under California Code of Regulations, title 5, section 53024, subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted such ethnic group. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)
7. Immediately discontinue the use of any locally established qualifications beyond state minimum qualifications that have not been verified as described in California Code of Regulations, title 5, section 53023, subdivision (c)(2) or replaced with suitable alternatives having a lesser adverse impact on any group defined in terms of ethnicity if adverse impact results from the locally established qualifications. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

<u>Persons with Disabilities: (Cal. Code Regs., tit. 5, § 53025)</u>

Title 5, section 53025, requires community college districts to:

> Ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code section 11135 et seq. and 12940 (m), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. (Cal. Code Regs., tit. 5, § 53025 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53025 (Register 2002, No. 35), beginning July 1, 2001.)

Section 504 of the Rehabilitation Act requires community college districts to engage in the following activity:

> Make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the district can

> demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity. (34 C.F.R. § 104.12.)

Similarly the ADA and its implementing regulations require community college districts to engage in the following activity:

> Make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity. (42 U.S.C.A. § 12112, subd. (b)(5)(A); 29 C.F.R § 1630.9.)

The "reasonable accommodations" that are to be provided under Government Code sections 11135 and 12940, subdivision (m), are the same type of "reasonable accommodations" that are required under Section 504 and the ADA.[186, 187] Thus, for the purposes of this discussion, Government Code sections 11135 and 12940, subdivision (m), do not require any reasonable accommodations in excess of those required by section 504 of the Rehabilitation Act or the ADA. According to the plain language of California Code of Regulations, title 5, section 53025, community college districts are required to provide reasonable accommodations "consistent" with section 504 of the Rehabilitation Act, the ADA, and Government Code sections 11135 and 12940, subdivision (m), but does not require anything in excess of those laws. As a result, the requirement of the 1996 version of section 53025 and the 2002 version of section 53025, subdivision (a), to ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code section 11135 et seq. and 12940 (m), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act is mandated by federal law, and as a result, is not subject to reimbursement under article XIII B, section 6 of the California Constitution.

Complaints: (Cal. Code Regs., tit. 5, § 53026):

Title 5, section 53026, require community college districts to engage in the following activity:

> Establish a process permitting any person to file a complaint alleging that the requirements of the affirmative action and equal employment opportunity program/equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. (Cal. Code Regs., tit. 5, § 53026 (Register

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[186] Government Code section 11135 et seq. incorporates the "accessibility requirement" for state funded programs found in Title II of the ADA. Courts have found that to assure meaningful access, *reasonable accommodations* in an entity's program or benefit may have to be made. *Alexander v. Choate* (1985) 469 U.S. 287, 301; *Fry v. Saenz* (2002) 98 Cal.App.4th 256, 268. In addition, courts have often used case law construing the Rehabilitation Act, which requires and defines "reasonable accommodations" to provide guidance in construing the ADA. *Fry v. Saenz*, *supra*, 98 Cal.App.4th at 263.

[187] Exhibit H, *Humphrey v. Memorial Hospitals Assn.* (2001) 239 F.3d 1128, 1133, fn. 6., in which the court notes that Government Code section 12940, subdivision (m), which is part of California's fair Employment and Housing Act (FEHA), is based on the ADA, and as a result, courts have used the ADA in interpreting FEHA's provisions.

96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

Section 504 of the Rehabilitation Act's implementing regulations require the establishment of a complaint process for allegations of discrimination based on disability. Specifically, 34 Code of Federal Regulations part 104.7 provides:

> Adopt grievance procedures for employees that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by 34 Code of Federal Regulations part 104 (which implements section 504 of the Rehabilitation Act), if employing 15 people or more. (34 C.F.R. § 104.7 (b)).

The implementing regulations of Title IX of the Education Amendments of 1972 require community college districts to establish a complaint process for allegations of discrimination based on gender. 34 Code of Federal Regulations part 106.8 provides:

> Adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action which would be prohibited by this part. (34 C.F.R. § 106.8, subd. (b).)

Thus, the establishment of a process permitting *employees* to allege that the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.), to the extent that the requirements coincide with the requirements of Section 504 and Title IX (i.e. failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Cal. Code Regs., tit. 5, § 53020); failure to provide reasonable accommodations (see Cal. Code Regs., tit. 5, § 53020); and employment discrimination on the basis of gender and disability in the employee selection procedures), have been violated is mandated by federal law, and therefore, is not subject to reimbursement under article XIII B, section 6 of the California Constitution.

However, the following activity required by title 5, section 53026, *does not* constitute a federal mandate:

> Establish a process permitting any person to file a complaint alleging that the requirements of the affirmative action and equal employment opportunity program/equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. This excludes the establishment of a process permitting an employee filing a complaint alleging a violation of the equal employment opportunity program regulations on the basis of disability or gender (i.e. failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Cal. Code Regs., tit. 5, § 53020); failure to provide reasonable accommodations (see Cal. Code Regs., tit. 5, § 53020); and employment discrimination on the basis of disability and gender in district employee selection procedures). (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

To the extent that the test claim regulation requirements discussed above constitute federal mandates, the requirements are not subject to Article XIII B, section 6 of the California Constitution. However, if the requirements of a test claim statute or regulation go beyond or exceed the requirements of federal law, those activities are *not* federal mandates and *may* be

subject to article XIII B, section 6. For example, in *Long Beach Unified School Dist. v. State of California*, federal law required school districts to take reasonable steps to alleviate racial and ethnic segregation, and the federal courts suggested certain approaches to comply. State law was enacted to require specific action of school districts to alleviate segregation. The court found that the state law requirements went beyond federal constitutional and case law requirements or suggestions and mandated a higher level of service.[188] In addition, Government Code section 17556, subdivision (c), requires the Commission to not find costs mandated by the state if "[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and imposes costs mandated by the federal government, *unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation*." (Emphasis added.)

In this case, there are several administrative, accounting, and reporting activities that exceed the requirements of federal law and are, thus, not mandated by federal law.

(iii) Summary of Required Activities that Exceed the Requirements of Federal Law:

1. Commit to sustained action to devise recruiting, training, and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees. (Ed. Code, § 87101, subd. (c) (Stats. 2002, ch. 1169), beginning January 1, 2003.)
2. Periodically submit to the Board of Governors of the California Community Colleges an affirmation of compliance with the provisions of Education Code sections 87100-87107, which address affirmative action hiring (as existing prior to September 4, 2001). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
3. Have goals in the affirmative action employment program that ensure participation in, and commitment to, the program by district personnel, and timetables, for its implementation. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
4. Include steps in the faculty and staff diversity plan that the district will take in meeting and improving hiring goals for both full-time faculty and part-time faculty pursuant to Education Code section 87482.6 (Stats. 1988, ch. 973), and the development of the plan shall be a condition for receipt of allowances pursuant to Education Code section 87482.6. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
5. Make the faculty and staff diversity plan/equal employment opportunity plan a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973); Cal. Code Regs., tit. 5, § 53003, subd. (d) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (e) (Register 2002, No. 35), beginning July 1, 2001.)
6. Publish and distribute a record of the success rate of the measurable progress, with respect to the district's goals and timetables, in hiring employees through its affirmative

[188] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 173.

action employment program. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

a. Make this publication a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), and shall include data and information specified by the Board of Governors. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

7. Periodically submit an affirmation of compliance with Education Code sections 87100-87108 (Stats. 2002, ch. 1169), which address equal employment opportunity hiring, to the Board of Governors as a condition for the receipt of funds pursuant to Education Code section 87107 (Stats. 2002, ch. 1169) if the community college district opts to participate under Education Code sections 87100-87108. (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)
8. Ensure participation in, and commitment to, the equal employment opportunity program by district personnel, if the community college district is a participant under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)
9. Include in the equal employment opportunity plan steps that the district will take in eliminating improper discrimination or preferences in its hiring and employment practices if the community college district is a participant in the equal employment opportunity hiring program under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)
10. Address in the equal employment opportunity plan how the district will make progress in achieving the ratio of full-time to part-time faculty hiring, as indicated in Education Code section 87482.6, while still ensuring equal employment opportunity, if the community college district is a participant under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)
11. Develop and adopt a district-wide written faculty and staff diversity plan/equal employment opportunity plan to implement its affirmative action employment program/equal employment opportunity program. (Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 2002, No. 35) beginning July 1, 2001.)
12. Submit faculty and staff diversity plans/equal employment opportunity plans and revisions to the Chancellor's Office for review and approval. (Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)
13. Review the faculty and staff diversity plan/equal employment opportunity plans at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

14. Notify the Chancellor at least 30 days prior to adopting any amendments to the faculty and staff diversity plan/equal employment opportunity plan other than those made during the three year review. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

15. Include in the faculty and staff diversity plan/equal employment opportunity plan the following:

    a. Goals and timetables, as appropriate, for hiring and promotion of members of historically underrepresented groups developed pursuant to California Code of Regulations, title 5, section 53006 for each college in the district and for the district as a whole. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. The designation of the district employee or employees who have been delegated responsibility and authority for implementing the faculty and staff diversity plan/equal employment opportunity plan and assuring compliance with the requirements of California Code of Regulations, title 5, section 53000 et seq. (Register 96, No. 23; and Register 2002, No. 35), pursuant to California Code of Regulations, title 5, section 53020. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(1) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (c)(1) (Register 2002, No. 35), beginning July 1, 2001.)

    c. The procedure for filing complaints pursuant to California Code of Regulations, title 5, section 53026 (Register 96, No. 23; Register 2002, No. 35) and the person with whom the complaints are to be filed. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(2) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd (c)(2) (Register 2002, No. 35.), beginning July 1, 2001.)

    d. A process for notifying all district employees of the provisions of the faculty and staff diversity plan/equal employment opportunity plan and the commitment to affirmative action employment/equal employment opportunity policy statement required under California Code of Regulations, title 5, section 53002 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(3) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (c)(3) (Register 2002, No. 35), beginning July 1, 2001.)

    e. A process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of California Code of Regulations, title 5, section 53000 et seq., which addresses affirmative action/equal employment opportunity programs (Register 96, No. 23; Register 2002, No. 35) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(4) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subdivision (c)(4) (Register 2002, No. 35), beginning July 1, 2001.)

    f. A process for providing annual written notice to appropriate community organizations concerning the district's faculty and staff diversity plan and the need for assistance from the community in identifying qualified members of

historically underrepresented groups for openings with the district. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(5) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

g. A process for providing annual written notice to appropriate community-based and professional organizations concerning the district's equal employment opportunity plan and the need for assistance from the community and such organizations in identifying qualified applicants. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(5) (Register 2002, No. 35), beginning August 11, 2002.)

h. An analysis of the number of persons from historically underrepresented groups (ethnic minorities, women, and persons with disabilities) are employed in the district's work force and those who have applied for employment in each of the following job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6)skilled crafts; and (7) serve and maintenance (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 96, No. 23) beginning July 1, 2001 through August 10, 2002.)

i. An analysis of the number of persons from monitored groups (groups based on gender, ethnic group identification, and disability) who are employed in the district's work force and those who have applied for employment in each of the following job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6)skilled crafts; and (7) serve and maintenance (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35)). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 2002, No. 35), beginning August 11, 2002.)

j. An analysis of the degree to which women, ethnic minorities, and persons with disabilities in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

k. An analysis of the degree to which monitored groups (groups based on gender, ethnic group identification, and disability) are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 2002, No. 35), beginning August 11, 2002.)

l. The steps the district will take to achieve diversity in its workforce. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

m. Goals for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision

(c)(7) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 96, No. 23). Beginning July 1, 2001 through August 10, 2002.)

n. Methods for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 2002, No. 35). Beginning August 11, 2002.)

o. Additional steps consistent with California Code of Regulations, title 5, section 53006, to remedy any significant underrepresentation identified in the plan. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 2002, No. 35), beginning August 11, 2002.)

p. A plan for corrective action consistent with California Code of Regulations, title 5, section 53006 (Register 96, No. 23), including goals and timetables for hiring and promotion, if necessary, to remedy any significant underrepresentation identified in the faculty and staff diversity plan by achieving expected representation for all historically underrepresented groups in all job categories listed in California Code of Regulations, title 5, § 53004, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

q. Any other measures necessary to further equal employment opportunity throughout the district. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 2002, No. 35), beginning August 11, 2002.)

r. Any goals for hiring persons with disabilities that are required by California Code of Regulations, title 5, section 53025. (Cal. Code Regs., tit. 5, § 53003, subd. (d) (Register 2002, No. 35), beginning August 11, 2002.)

16. Make a continuous good faith effort to comply with the requirements of the faculty and staff diversity plan/equal employment opportunity plan. (Cal. Code Regs., tit. 5, § 53003, subd. (e) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (f) (Register 2002, No. 35), beginning July 1, 2001.)

17. Adopt a policy statement setting forth the district's commitment to an affirmative action program/equal employment opportunity program. (Cal. Code Regs., tit. 5, § 53002 (Register 96, No. 23), one-time activity for the period beginning July 1, 2001 through August 10, 2002; Cal. Code Regs., tit. 5, § 53002 (Register 2002, No. 35) one-time activity beginning August 11, 2002.)

18. Survey district employees every even year (except for information regarding disability, which shall occur annually) and monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing its faculty and staff diversity plan/equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

19. Annually report to the Chancellor, in a manner described by the Chancellor, the results of its annual survey of employees at each college in the district. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Report employees so that he or she may be identified as belonging to one of the following seven job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

20. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004, subdivision (a) (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Count a person in only one ethnic group for reporting purposes if a person designates multiple ethnic groups with which he or she identifies. (Cal. Code Regs., tit. 5, § 53004, subd (b) (Register 2002, No. 35), beginning August 11, 2002.)

    b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

21. Establish a Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee to assist the district in developing and implementing the faculty and staff diversity plan/equal employment opportunity plan required under section 53003 (Register 96, No. 23; Register 2002, No. 35) which includes members of all historically underrepresented groups/diverse membership whenever possible. (Cal. Code Regs., tit. 5, § 53005 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53005 (Register 2002, No. 35), beginning July 1, 2001.)

22. If a community college district has existing goals:

    a. Update goals established prior to June 30, 1996 and set a new target date for achieving expected representation for a group in a job category/categories if significant underrepresentation still exists. (Cal. Code Regs., tit. 5, § 53006, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. Review recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006,

subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

c. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

d. Comply with California Code of Regulations, title 5, section 53006, subdivision (c) (Register 96, No. 23) while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

23. If a community college district has no existing goals:

a. Take corrective action if, pursuant to California Code of Regulations, title 5, section 53003, subdivision (c)(7), the district determines that a particular group is significantly underrepresented with respect to one or more job categories and no goal has previously been set. (Cal. Code Regs., tit. 5, § 53006, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

b. The district shall take, at a minimum, the following corrective action:

i. Review of district recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

ii. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iii. Determine whether the group is still significantly underrepresented in the job category or categories in question after the measures described in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) have been in place a reasonable period of time. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iv. Set a goal with a target date for achieving expected representation for the significantly underrepresented group in each job category where significant underrepresentation persists, if significant underrepresentation

persists. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

v. Monitor on an ongoing basis the staffing rate for the significantly underrepresented group in the specified job category or categories. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

vi. Discontinue the use of goals when expected representation has been achieved for that group in the job category or categories in question. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

24. Additional measures to be taken if a goal has been set and after a reasonable period of time significant underrepresentation persists:

a. Establish a specific timetable to project the levels of annual hiring of persons from the significantly underrepresented group which will be necessary to meet the existing goal by the target date. (Cal. Code Regs., tit. 5, § 53006, subd. (c) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

b. Implement one or more of the following additional corrective measures until expected representation has been achieved for that group in the job category in question:

i. Include in the applicant pool applicants from significantly underrepresented groups who were initially screened out because they failed to meet locally established "desirable or preferred" qualifications beyond state minimum qualifications, where such applicants can be expected to meet the additional qualifications through appropriate training or experience within one year. (Cal. Code Regs., tit. 5, § 53006, subd. (c)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

ii. Consider, as one factor in the final selection process, the fact that a candidate is a member of a significantly underrepresented group, provided that the qualifications of the candidates under consideration are reasonably considered to be equivalent. (Cal. Code Regs., tit. 5, § 53006, subd. (c)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

25. If a community college district has no existing goals for women or persons with disabilities:

a. Implement the measures required in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) concurrently with setting a goal with a target date for achieving expected representation for women or persons with disabilities in each job category that they are found to be significantly underrepresented. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

i. Goals shall remain in effect only until expected representation has been achieved for the group in the job category or categories in which

significant underrepresentation is found. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

ii. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53006, subd. (d), beginning July 1, 2001 through August 10, 2002.)

26. Take additional steps if a district determines that a particular monitored group is significantly underrepresented with respect to one or more categories, including at minimum:

    a. Review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 2002, No. 35), beginning August 11, 2002.)

    b. Consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 2002, No. 35), beginning August 11, 2002.)

    c. Determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in subdivisions (a)(1) and (a)(2) of California Code of Regulations, title 5, section 53006, have been in place a reasonable period of time (three years or longer). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 2002, No. 35), beginning August 11, 2002.)

    d. Monitor the staffing rate for the significantly underrepresented group in the specified job category or categories on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question if significant underrepresentation persists. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

27. Review each locally established "required," "desired," or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job related and consistent with business necessity through a process meeting the requirements of federal law or is among those qualifications which the Board of Governors has found to be job related and consistent with business necessity throughout the community college system, if significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(1) (Register 2002, No. 35), beginning August 11, 2002.)

28. Discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in California Code of Regulations, title 5, section 53006, subdivision (b)(1), if significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has

passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(2) (Register 2002, No. 35), beginning August 11, 2002.)

29. Continue using qualification standards meeting the requirements of California Code of Regulations, title 5, section 53006, subdivision (b)(1) only where no alternative qualification standard is reasonable available which would select for the same characteristics, meet the requirements of subdivision (b)(1) and be expected to have a less exclusionary effect, if a significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(3) (Register 2002, No. 35), beginning August 11, 2002.)

30. Be ultimately responsible for proper implementation of California Code of Regulations, title 5, section 53000 et seq., at all levels of district and college operation and for making measurable progress toward the goals established/equal employment opportunity by methods described in the district's faculty and staff diversity plan/equal employment opportunity plan. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

31. Ensure, upon the recommendation of the chief executive officer, that an affirmative action officer/equal employment opportunity officer is designated to oversee the day-to-day implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.), excluding overseeing the portion of the equal employment opportunity program regulations which require the provision of reasonable accommodations to disabled individuals (Cal. Code Regs., tit. 5, § 53025), and the portion of which require the job announcements and qualifications (Cal. Code Regs., tit. 5, § 53022), the applicant pool (Cal. Code Regs., tit. 5, § 53023), and the screening and selection procedures for employment (Cal. Code Regs., tit. 5, § 53024), to avoid adverse impact on groups based on disability or gender. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)

32. Describe in the district's faculty and staff diversity plan/equal employment opportunity plan the administrative structure created by any delegation of authority to the affirmative action officer/equal employment opportunity officer or others. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

33. Design the administrative structure created by any delegation of authority to the affirmative action officer/equal employment officer or others in such a manner so as to ensure prompt and effective implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23) beginning July 1, 2001.)

34. Designate in the faculty and staff diversity plan/equal employment opportunity plan a single officer, who may be the affirmative action officer/equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints of violations of the equal employment opportunity program regulations, filed pursuant to California Code of Regulations, title 5, section 53026, excluding those based on disability or gender, for ensuring that such complaints are promptly and impartially investigated,

and ensuring that selection procedures and the applicant pool are properly monitored for adverse impact, as required by California Code of Regulations, title 5, sections 53023 and 53024, excluding adverse impact on groups based on disability or gender. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23), beginning July 1, 2001.)

35. Actively recruit from both within and outside the district work force to attract qualified applicants for all new openings except as provided by California Code of Regulations, title 5, section 53021, subdivision (b). (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Active recruitment shall include focused outreach to historically underrepresented groups. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. Active recruitment shall include outreach to ensure all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning August 11, 2002.)

    c. Open recruitment applies to all new full-time and part-time openings in all job categories and classifications, including but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

36. Recruit at least statewide for full-time faculty and educational administrator positions, and at minimum, seek qualified applicants listed in the California Community Colleges Faculty and Staff Diversity Registry/Equal Employment Opportunity Registry. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

37. Recruit part-time faculty positions separately for each new opening or by annually establishing a pool of eligible candidates. In either case, full and open recruitment is required consistent with California Code of Regulations, title 5, section 53021. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

38. Notify the Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee established pursuant to California Code of Regulations, title 5, section 53005 and the Chancellor, at least ten working days prior to offering the position to a candidate, if the district believes justification exists for use of any of the exceptions listed in section 53021, subdivision(b). (Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

39. Comply with the district's established hiring procedures and afford all qualified district employees the opportunity to apply even where in-house or promotional only recruitment is permitted under California Code of Regulations, title 5, section 53005, subdivision (b).

(Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 2002, No. 35), beginning July 1, 2001.)

40. State clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance in job announcements. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

41. Include sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students in job requirements for faculty and administrative positions. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

42. Review job specifications, including any "desired" or "required"/"required," "desired," or "preferred" qualifications beyond the state minimum qualifications (set forth in Subchapter 4 of Cal. Code Regs., tit. 5, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws, excluding section 504 of the Rehabilitation Act, and Title IX of Education Amendments of 1972. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

43. Afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability, in the district's application for employment. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

44. Keep information regarding an applicant's gender, ethnicity, and/or disability provided in an application for employment confidential. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

45. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that expected representation has been achieved for historically underrepresented groups. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

46. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that any failure to obtain projected representation for any group defined in terms of ethnicity is not due to discriminatory recruitment procedures. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

47. Extend the application deadline and conduct additional focused recruitment for historically underrepresented groups for which expected representation has not been achieved, if necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

48. Extend the application deadline and conduct additional recruitment, which eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants, if

necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

49. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when the expected representation of historically underrepresented groups is achieved, or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

50. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

51. Analyze the composition of the qualified applicant pool to ensure that no group defined in terms of ethnicity is adversely impacted as defined by California Code of Regulations, title 5, section 53001, subdivision (m) (Register 96, No. 23)/subdivision (a) (Register 2002, No. 35), after the analysis to ensure that expected representation has been achieved for historically underrepresented groups (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23))/after the analysis to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35)) and before the selection process continues. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

52. Take effective steps to address adverse impact on any group defined in terms of ethnicity found in the district's applicant pool before the selection process is continued. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

53. Provide all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to the Chancellor upon request. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 2002, No. 35), beginning July 1, 2001.)

54. Design all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 2002, No. 35), beginning July 1, 2001.)

55. Base all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole solely on job-related criteria, except as authorized by California Code of Regulations, title 5, section 53006 (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53024, subd. (a)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

56. Base all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole solely on job-related criteria. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(3) (Register 2002, No. 35), beginning August 11, 2002.)

57. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to ensure that they do not have an adverse impact, as defined by California Code of Regulations, title 5, section 53001, subdivision (m), on any group defined in terms of ethnicity. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

58. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse impact as defined in California Code of Regulations, title 5, section 53001, subdivision (a) on any group defined in terms of ethnicity, and to detect and address any adverse impact on any group defined in terms of ethnicity which does occur. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

59. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group defined in terms of ethnicity before the selection process resumes if monitoring under California Code of Regulations, title 5, section 53024, subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted such ethnic group. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

60. Immediately discontinue the use of any locally established qualifications beyond state minimum qualifications that have not been verified as described in California Code of Regulations, title 5, section 53023, subdivision (c)(2) or replaced with suitable alternatives having a lesser adverse impact on any group defined in terms of ethnicity if adverse impact results from the locally established qualifications. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

61. Continue in the hiring process any applicant eliminated on the basis of the locally established qualification discontinued under California Code of Regulations, title 5, section 53024, subdivision (b). (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

62. Follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures" for selection testing for employees. (Cal. Code Regs., tit. 5, § 53024, subd. (e) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (e) (Register 2002, No. 35), beginning July 1, 2001.)

63. Include members of historically underrepresented groups in screening committees whenever possible. (Cal. Code Regs., tit. 5, § 53024, subd. (f) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

64. Include, whenever possible, a diverse membership in screening committees which will bring a variety of perspectives to the assessment of applicant qualifications. (Cal. Code Regs., tit. 5, § 53024, subd. (f) (Register 2002, No. 35), beginning August 11, 2002.)

65. Update a goal established prior to July 12, 2002 for persons with disabilities, set a new target date for achieving projected representation in a job category or categories, and concurrently comply with California Code of Regulations, title 5, section 53006, subdivisions (a)(1), (a)(2), and (b) with respect to persons with disability, if significant underrepresentation still exists in the job category or categories. (Cal. Code Regs., tit. 5, § 53025, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

66. Implement California Code of Regulations, title 5, section 53006, subdivisions (a)(1) and (a)(2) concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where underrepresentation was found to exist. Goals are to remain in effect only until projected representation has been achieved for that group in the category or categories in question. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

67. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force, until the chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

68. Establish a process permitting any person to file a complaint alleging that the requirements of the affirmative action and equal employment opportunity program/equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. This excludes the establishment of a process permitting an employee filing a complaint alleging a violation of the equal employment opportunity program regulations on the basis of disability or gender (i.e. failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Cal. Code Regs., tit. 5, § 53020); failure to provide reasonable accommodations (see Cal. Code Regs., tit. 5, § 53020); and employment discrimination on the basis of disability and gender in district employee selection procedures). (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

69. Forward immediately to the Chancellor a copy of the complaint. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

70. Provide a written investigative report within 90 days if required by the Chancellor. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

71. Process complaints which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

72. Submit a report on the use of Faculty and Staff Diversity funds/Equal Employment Opportunity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53034 (Register 2002, No. 35), beginning July 1, 2001.)

73. Report the staffing rate of persons with disabilities by a separate survey as directed by the Chancellor's Office, until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by California Code of Regulations, title 5, section 53004. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53034 (Register 2002, No. 35), beginning July 1, 2001.)

While these activities go beyond the requirements of federal law, staff finds that some of these activities are not mandated by the state because the activities are required only as a condition of receiving funding.

e. Some of the activities required by Education Code sections 87101 and 87102, and California Code of Regulations, title 5, sections 53001 – 53006, 53020 – 53026, 53033, and 53034 do not constitute state-mandated activities.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The court held that when analyzing state mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[189] In addition, the court in *Kern High School Dist*. left open the possibility that a state mandate might be found in circumstances of practical compulsion, where a local entity faced certain and severe penalties as a result of noncompliance with a program that is not legally compelled. The court in *Dept. of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355, explained further that a finding of "practical compulsion" requires a concrete showing in the record that a failure to engage in the activity/activities at issue will result in certain and severe penalties.[190]

District Plan: (Ed. Code, § 87101 and 87102 (Statutes 2002, ch. 1169))

The 2002 version of Education Code sections 87101 and 87102,[191] requires community college districts to engage in the following activities:

1. Commit to sustained action to devise recruiting, training, and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees. (Ed. Code, § 87101, subd. (c) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

2. Periodically submit an affirmation of compliance with Education Code sections 87100-87108 (Stats. 2002, ch. 1169), which address equal employment opportunity hiring, to the Board of Governors as a condition for the receipt of funds pursuant to Education Code

[189] *Kern High School Dist*., *supra*, 30 Cal 4th at p. 743.

[190] *POBRA*, *supra*, 170 Cal.App.4th at pgs. 1366-1369.

[191] Statutes 2002, chapter 1169.

section 87107 (Stats. 2002, ch. 1169) if the community college district opts to participate under Education Code sections 87100-87108. (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

3. Ensure participation in, and commitment to, the equal employment opportunity program by district personnel, if the community college district is a participant under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)
4. Include in the equal employment opportunity plan steps that the district will take in eliminating improper discrimination or preferences in its hiring and employment practices if the community college district is a participant in the equal employment opportunity hiring program under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)
5. Address in the equal employment opportunity plan how the district will make progress in achieving the ratio of full-time to part-time faculty hiring, as indicated in Education Code section 87482.6, while still ensuring equal employment opportunity, if the community college district is a participant under Education Code sections 87100-87108 (Stats. 2002, ch. 1169). (Ed. Code, § 87102, subd. (a) (Stats. 2002, ch. 1169), beginning January 1, 2003.)

However, the requirements of the Education Code sections 87101 and 87102 must be read in context of the whole statutory scheme rather than individual parts or words standing alone.[192] Education Code section 87102 provides in relevant part:

> As a condition for the receipt of funds pursuant to Education Code section 87107 [creating the Equal Employment Opportunity Fund][193], the governing board of community college district [*sic*] that *opts to participate* under the article [87100-87108] … . (Italics added.)

The above language indicates that community college districts opt into participating under Education Code sections 87100-87108 in order to receive funding from the Equal Employment Opportunity Fund. Staff has not found any statute or regulation, nor is there evidence in the

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[192] Exhibit H, *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, p. 218.

[193] Education Code section 87107 (Stats. 2002, ch. 1169) refers to an "Employment Opportunity Fund." However, California Code of Regulations, title 5, sections 53030, 53033, and 53034 refer to an "Equal Employment Opportunity Fund." Viewing these two together it is not clear whether the Education Code refers to the same fund as the regulations. Under the rules of statutory construction, courts correct inadvertent errors in a statute where necessary to give a statute reasonable meaning or where it manifestly appears that the legislature has erroneously used one word for another. *Pepper v. Board of Directors of Bolinas Public Utility Dist.* (1st Dist. 1985) 162 Cal.App.2d 1. Nowhere in the 2003-2004 Budget Act (Assem. Bill No. 1765 (Stats. 2003, ch. 157)) does the legislature create an "Employment Opportunity." However the legislature does provide $1,747,000 for "*Equal* Employment Opportunity pursuant to Ch. 1169, Statutes 2002." Thus, this discussion will refer to the "*Equal* Employment Opportunity Fund" where necessary.

record, that districts are legally or practically required to receive Equal Employment Opportunity funds. Read in this context, compliance with the activities required by the 2002 version of Education Code sections 87101 and 87102 is within the discretion of community college districts and under *Kern High School Dist*. not mandated by the state.

Corrective Action: (Cal. Code Regs., tit. 5, § 53006, subd. (c)(1) (Register 96, no. 23))

The 1996 version of title 5, section 53006, subdivision (c),[194] sets forth additional measures that a community college district must take if a goal has been set, a reasonable time has passed, and significant underrepresentation persists for a particular group in a job category. Subdivision (c) provides in relevant part:

> [A] district shall implement one or more of the following additional corrective measures until expected representation has been achieved for that group in the category in question.
>
> (1) include in the applicant pool applicants from significantly underrepresented groups who were initially screened out because they failed to meet locally established "desirable or preferred" qualifications beyond minimum qualifications, where such applicants can be expected to meet the additional qualifications through appropriate training or experience within one year.
>
> (2) consider, as one factor in the final selection process, the fact that a candidate is a member of a significantly underrepresented group, provided that the qualifications of the candidates under consideration are reasonably considered to be substantially equivalent.

Subdivision (c) of section 53006 requires community college districts to take one of the above activities in specified circumstances. However, subdivision (c)(1) of section 53006, is a downstream activity resulting from a community college district's decision to establish "desirable or preferred" qualifications *beyond state* minimum qualifications. As alluded to in title 5, section 53022, which will be addressed below, community college districts are authorized to use "desired" or "required" qualifications beyond the state minimum qualifications set forth in California Code of Regulations, title 5, section 53400 et seq.[195] Thus, under *Kern High School Dist*. the requirement of the 1996 version of title 5, section 53006, subdivision (c)(1),[196] is not a state-mandated activity.

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[194] Register 96, number 23.

[195] California Code of Regulations, title 5, section 53022, provides, "Job specifications, including any "required," desired" or "preferred" qualifications beyond the state minimum qualifications … which the district *wishes* to utilize, shall be reviewed before the position is announced … ." (Italics added.)

[196] Register 96, number 23.

Additional Steps to Ensure Equal Employment Opportunity: (Cal. Code Regs., tit. 5, § 53006, subds. (b)(1), (2), and (3) (Register 2002, No. 35))

The 2002 version of title 5, section 53006,[197] requires community college districts to engage in the following activities:

1. Review each locally established "required," "desired," or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job related and consistent with business necessity through a process meeting the requirements of federal law or is among those qualifications which the Board of Governors has found to be job related and consistent with business necessity throughout the community college system, if significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(1) (Register 2002, No. 35), beginning August 11, 2002.)
2. Discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in California Code of Regulations, title 5, section 53006, subdivision (b)(1), if significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(2) (Register 2002, No. 35), beginning August 11, 2002.)
3. Continue using qualification standards meeting the requirements of California Code of Regulations, title 5, section 53006, subdivision (b)(1) only where no alternative qualification standard is reasonably available which would select for the same characteristics, meet the requirements of subdivision (b)(1) and be expected to have a less exclusionary effect, if a significant underrepresentation persists for a particular group in the job category in question and a reasonable period of time has passed. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(3) (Register 2002, No. 35), beginning August 11, 2002.)

The above activities, however, are downstream activities resulting from a community college district's decision to establish "required," "desired," or "preferred" qualifications *beyond* the minimum qualifications established by the Board of Governors. As discussed above, community college districts are authorized but not required to use locally established qualifications beyond state minimum qualifications. Thus, the requirements of the 2002 version of title 5, section 53006, subdivision (b)(1), (2), and (3),[198] are not state-mandated activities.

Job Announcements: (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23 and Register 2002, No. 35))

The 1996 version of title 5, section 53022,[199] requires community college districts to engage in the following:

> Review job specifications, including any "desired" or "required" qualifications beyond the state minimum qualifications (Set forth in Subchapter 4, commencing with Section 53400 of this Chapter) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California

[197] Register 2002, number 35.

[198] *Ibid.*

[199] Register 96, number 23.

Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws, excluding section 504 of the Rehabilitation Act, and Title IX of Education Amendments of 1972.

The 2002 version of title 5, section 53022,[200] adds "preferred" qualifications beyond the state minimum qualifications that must be reviewed.

As can be seen by the language, "wishes to utilize," found in section 53022, a district is not required to use any "required," "desired," or "preferred" qualifications beyond the state minimum qualifications. Thus, the review of any locally established "required," "desired," or "preferred" qualifications beyond the state minimum qualification to ensure conformity with California Code of Regulations, title 5, section 53000 et seq. is a downstream activity resulting from a community college district's decision to use the locally established qualifications, and therefore is not state-mandated under *Kern High School Dist*. However, community college districts are required to review job specifications that do not exceed state minimum qualifications to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq. and state and federal nondiscrimination laws (excluding section 504 of the Rehabilitation Act, and Title IX of Education Amendments of 1972).

Selection Procedures: (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35))

The 2002 version of title 5, section 53024, subdivision (b),[201] which addresses what community college districts are required to do if a selection technique or procedure has an adverse impact on a monitored group, requires community college districts to engage in the following activities:

1. Immediately discontinue the use of any locally established qualifications beyond state minimum qualifications that have not been verified as described in California Code of Regulations, title 5, section 53023, subdivision (c)(2) or replaced with suitable alternatives having a lesser adverse impact if adverse impact results from the locally established qualifications. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)
2. Continue in the hiring process any applicant eliminated on the basis of the locally established qualification discontinued under California Code of Regulations, title 5, section 53024, subdivision (b). (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

As discussed above, community college districts are not required to utilize locally established qualifications beyond state minimum qualifications. Without a community college's decision to utilize locally established qualifications, there would be no need to discontinue the use of locally established qualifications, nor would there be a need to continue applicants eliminated on the basis of locally established qualifications in the hiring process. As a result, these activities required by the 2002 version of title 5, section 53024, subdivision (b), are not state-mandated activities under *Kern High School Dist*.

[200] Register 2002, number 35.

[201] *Ibid*.

Reporting Districts Use of Funds: (Cal. Code Regs., tit. 5, § 53034 (Register 2002, No. 35))

As relevant to this discussion, the 2002 version of title 5, section 53034,[202] requires community college districts to engage in the following activity:

> Submit a report on the use of Equal Employment Opportunity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds.

As will be further discussed in "Issue III" of this analysis, the Equal Employment Opportunity Fund, community college districts opt to receive funds from the Equal Employment Opportunity Fund.[203] Thus, the submission of a report on the use of Equal Employment Opportunity funds is a downstream activity resulting from a community college district's decision to receive those funds, and therefore, under *Kern High School Dist*. it is not a state-mandated activity.

(i) Summary of State-Mandated Activities:

1. Periodically submit to the Board of Governors of the California Community Colleges an affirmation of compliance with the provisions of Education Code sections 87100-87107, which address affirmative action hiring (as existing prior to September 4, 2001). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
2. Have goals in the affirmative action employment program that ensure participation in, and commitment to, the program by district personnel, and timetables, for its implementation. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
3. Include steps in the faculty and staff diversity plan that the district will take in meeting and improving hiring goals for both full-time faculty and part-time faculty pursuant to Education Code section 87482.6 (Stats. 1988, ch. 973), and the development of the plan shall be a condition for receipt of allowances pursuant to Education Code section 87482.6. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
4. Make the faculty and staff diversity plan/equal employment opportunity plan a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973); Cal. Code Regs., tit. 5, § 53003, subd. (d) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (e) (Register 2002, No. 35), beginning July 1, 2001.)
5. Publish and distribute a record of the success rate of the measurable progress, with respect to the district's goals and timetables, in hiring employees through its affirmative action employment program. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

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[202] *Ibid.*

[203] Education Code section 87102, as repealed and replaced by Statutes 2002, chapter 1169.

a. Make this publication a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), and shall include data and information specified by the Board of Governors. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

6. Develop and adopt a district-wide written faculty and staff diversity plan/equal employment opportunity plan to implement its affirmative action employment program/equal employment opportunity program. (Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 2002, No. 35) beginning July 1, 2001.)

7. Submit faculty and staff diversity plans/equal employment opportunity plans and revisions to the Chancellor's Office for review and approval. (Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

8. Review the faculty and staff diversity plan/equal employment opportunity plans at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

9. Notify the Chancellor at least 30 days prior to adopting any amendments to the faculty and staff diversity plan/equal employment opportunity plan other than those made during the three year review. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

10. Include in the faculty and staff diversity plan/equal employment opportunity plan the following:

    a. Goals and timetables, as appropriate, for hiring and promotion of members of historically underrepresented groups developed pursuant to California Code of Regulations, title 5, section 53006 for each college in the district and for the district as a whole. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. The designation of the district employee or employees who have been delegated responsibility and authority for implementing the faculty and staff diversity plan/equal employment opportunity plan and assuring compliance with the requirements of California Code of Regulations, title 5, section 53000 et seq. (Register 96, No. 23; and Register 2002, No. 35), pursuant to California Code of Regulations, title 5, section 53020. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(1) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (c)(1) (Register 2002, No. 35), beginning July 1, 2001.)

    c. The procedure for filing complaints pursuant to California Code of Regulations, title 5, section 53026 (Register 96, No. 23; Register 2002, No. 35) and the person with whom the complaints are to be filed. (Cal. Code Regs., tit. 5, § 53003, subd.

(c)(2) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd (c)(2) (Register 2002, No. 35.), beginning July 1, 2001.)

d. A process for notifying all district employees of the provisions of the faculty and staff diversity plan/equal employment opportunity plan and the commitment to affirmative action employment/equal employment opportunity policy statement required under California Code of Regulations, title 5, section 53002 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(3) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (c)(3) (Register 2002, No. 35), beginning July 1, 2001.)

e. A process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of California Code of Regulations, title 5, section 53000 et seq., which addresses affirmative action/equal employment opportunity programs (Register 96, No. 23; Register 2002, No. 35) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(4) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subdivision (c)(4) (Register 2002, No. 35), beginning July 1, 2001.)

f. A process for providing annual written notice to appropriate community organizations concerning the district's faculty and staff diversity plan and the need for assistance from the community in identifying qualified members of historically underrepresented groups for openings with the district. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(5) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

g. A process for providing annual written notice to appropriate community-based and professional organizations concerning the district's equal employment opportunity plan and the need for assistance from the community and such organizations in identifying qualified applicants. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(5) (Register 2002, No. 35), beginning August 11, 2002.)

h. An analysis of the number of persons from historically underrepresented groups (ethnic minorities, women, and persons with disabilities) are employed in the district's work force and those who have applied for employment in each of the following job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6)skilled crafts; and (7) serve and maintenance (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 96, No. 23) beginning July 1, 2001 through August 10, 2002.)

i. An analysis of the number of persons from monitored groups (groups based on gender, ethnic group identification, and disability) who are employed in the district's work force and those who have applied for employment in each of the following job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6)skilled crafts; and (7) serve and maintenance (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35)).

(Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 2002, No. 35), beginning August 11, 2002.)

j. An analysis of the degree to which women, ethnic minorities, and persons with disabilities in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

k. An analysis of the degree to which monitored groups (groups based on gender, ethnic group identification, and disability) are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 2002, No. 35), beginning August 11, 2002.)

l. The steps the district will take to achieve diversity in its workforce. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

m. Goals for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

n. Methods for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 2002, No. 35), beginning August 11, 2002.)

o. Additional steps consistent with California Code of Regulations, title 5, section 53006, to remedy any significant underrepresentation identified in the plan. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 2002, No. 35), beginning August 11, 2002.)

p. A plan for corrective action consistent with California Code of Regulations, title 5, section 53006 (Register 96, No. 23), including goals and timetables for hiring and promotion, if necessary, to remedy any significant underrepresentation identified in the faculty and staff diversity plan by achieving expected representation for all historically underrepresented groups in all job categories listed in California Code of Regulations, title 5, § 53004, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

q. Any other measures necessary to further equal employment opportunity throughout the district. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 2002, No. 35). Beginning August 11, 2002.)

r. Any goals for hiring persons with disabilities that are required by California Code of Regulations, title 5, section 53025. (Cal. Code Regs., tit. 5, § 53003, subd. (d) (Register 2002, No. 35). Beginning August 11, 2002.)

11. Make a continuous good faith effort to comply with the requirements of the faculty and staff diversity plan/equal employment opportunity plan. (Cal. Code Regs., tit. 5, § 53003, subd. (e) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (f) (Register 2002, No. 35), beginning July 1, 2001.)

12. Adopt a policy statement setting forth the district's commitment to an affirmative action program/equal employment opportunity program. (Cal. Code Regs., tit. 5, § 53002 (Register 96, No. 23), one-time activity for the period beginning July 1, 2001 through August 10, 2002; Cal. Code Regs., tit. 5, § 53002 (Register 2002, No. 35) one-time activity beginning August 11, 2002.)

13. Survey district employees every even year (except for information regarding disability, which shall occur annually) and monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing its faculty and staff diversity plan/equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

14. Annually report to the Chancellor, in a manner described by the Chancellor, the results of its annual survey of employees at each college in the district. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Report employees so that he or she may be identified as belonging to one of the following seven job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

15. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004, subdivision (a) (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Count a person in only one ethnic group for reporting purposes if a person designates multiple ethnic groups with which he or she identifies. (Cal. Code Regs., tit. 5, § 53004, subd (b) (Register 2002, No. 35), beginning August 11, 2002.)

    b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

16. Establish a Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee to assist the district in developing and implementing the faculty and staff diversity plan/equal employment opportunity plan required under section 53003 (Register 96, No. 23; Register 2002, No. 35) which includes members of all historically underrepresented groups/diverse membership whenever possible. (Cal. Code Regs., tit. 5, § 53005 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53005 (Register 2002, No. 35), beginning July 1, 2001.)

17. If a community college district has existing goals:

    a. Update goals established prior to June 30, 1996 and set a new target date for achieving expected representation for a group in a job category/categories if significant underrepresentation still exists. (Cal. Code Regs., tit. 5, § 53006, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. Review recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    c. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    d. Comply with California Code of Regulations, title 5, section 53006, subdivision (c) (Register 96, No. 23) while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

18. If a community college district has no existing goals:

    a. Take corrective action if, pursuant to California Code of Regulations, title 5, section 53003, subdivision (c)(7), the district determines that a particular group is significantly underrepresented with respect to one or more job categories and no goal has previously been set. (Cal. Code Regs., tit. 5, § 53006, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. The district shall take, at a minimum, the following corrective action:

        i. Review of district recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code

Regs., tit. 5, § 53006, subd. (b)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

ii. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iii. Determine whether the group is still significantly underrepresented in the job category or categories in question after the measures described in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) have been in place a reasonable period of time. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iv. Set a goal with a target date for achieving expected representation for the significantly underrepresented group in each job category where significant underrepresentation persists, if significant underrepresentation persists. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

v. Monitor on an ongoing basis the staffing rate for the significantly underrepresented group in the specified job category or categories. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

vi. Discontinue the use of goals when expected representation has been achieved for that group in the job category or categories in question. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

19. Additional measures to be taken if a goal has been set and after a reasonable period of time significant underrepresentation persists:

    a. Establish a specific timetable to project the levels of annual hiring of persons from the significantly underrepresented group which will be necessary to meet the existing goal by the target date. (Cal. Code Regs., tit. 5, § 53006, subd. (c) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. Implement one or more of the following additional corrective measures until expected representation has been achieved for that group in the job category in question:

        i. Consider, as one factor in the final selection process, the fact that a candidate is a member of a significantly underrepresented group, provided that the qualifications of the candidates under consideration are reasonably considered to be equivalent. (Cal. Code Regs., tit. 5, § 53006, subd. (c)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

20. If a community college district has no existing goals for women or persons with disabilities:

a. Implement the measures required in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) concurrently with setting a goal with a target date for achieving expected representation for women or persons with disabilities in each job category that they are found to be significantly underrepresented. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    i. Goals shall remain in effect only until expected representation has been achieved for the group in the job category or categories in which significant underrepresentation is found. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    ii. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53006, subd. (d), beginning July 1, 2001 through August 10, 2002.)

21. Take additional steps if a district determines that a particular monitored group is significantly underrepresented with respect to one or more categories, including at minimum:

    a. Review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 2002, No. 35), beginning August 11, 2002.)

    b. Consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 2002, No. 35), beginning August 11, 2002.)

    c. Determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in subdivisions (a)(1) and (a)(2) of California Code of Regulations, title 5, section 53006, have been in place a reasonable period of time (three years or longer). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 2002, No. 35), beginning August 11, 2002.)

    d. Monitor the staffing rate for the significantly underrepresented group in the specified job category or categories on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question if significant underrepresentation persists. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

22. Be ultimately responsible for proper implementation of California Code of Regulations, title 5, section 53000 et seq., at all levels of district and college operation and for making measurable progress toward the goals established/equal employment opportunity by methods described in the district's faculty and staff diversity plan/equal employment

opportunity plan. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

23. Ensure, upon the recommendation of the chief executive officer, that an affirmative action officer/equal employment opportunity officer is designated to oversee the day-to-day implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.), excluding overseeing the portion of the equal employment opportunity program regulations which require the provision of reasonable accommodations to disabled individuals (Cal. Code Regs., tit. 5, § 53025), and the portion of which require the job announcements and qualifications (Cal. Code Regs., tit. 5, § 53022), the applicant pool (Cal. Code Regs., tit. 5, § 53023), and the screening and selection procedures for employment (Cal. Code Regs., tit. 5, § 53024), to avoid adverse impact on groups based on disability or gender. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)

24. Describe in the district's faculty and staff diversity plan/equal employment opportunity plan the administrative structure created by any delegation of authority to the affirmative action officer/equal employment opportunity officer or others. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

25. Design the administrative structure created by any delegation of authority to the affirmative action officer/equal employment officer or others in such a manner so as to ensure prompt and effective implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23) beginning July 1, 2001.)

26. Designate in the faculty and staff diversity plan/equal employment opportunity plan a single officer, who may be the affirmative action officer/equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints of violations of the equal employment opportunity program regulations, filed pursuant to California Code of Regulations, title 5, section 53026, excluding those based on disability or gender, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored for adverse impact, as required by California Code of Regulations, title 5, sections 53023 and 53024, excluding adverse impact on groups based on disability or gender. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23), beginning July 1, 2001.)

27. Actively recruit from both within and outside the district work force to attract qualified applicants for all new openings except as provided by California Code of Regulations, title 5, section 53021, subdivision (b). (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Active recruitment shall include focused outreach to historically underrepresented groups. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

b. Active recruitment shall include outreach to ensure all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning August 11, 2002.)

c. Open recruitment applies to all new full-time and part-time openings in all job categories and classifications, including but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

28. Recruit at least statewide for full-time faculty and educational administrator positions, and at minimum, seek qualified applicants listed in the California Community Colleges Faculty and Staff Diversity Registry/Equal Employment Opportunity Registry. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

29. Recruit part-time faculty positions separately for each new opening or by annually establishing a pool of eligible candidates. In either case, full and open recruitment is required consistent with California Code of Regulations, title 5, section 53021. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

30. Notify the Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee established pursuant to California Code of Regulations, title 5, section 53005 and the Chancellor, at least ten working days prior to offering the position to a candidate, if the district believes justification exists for use of any of the exceptions listed in section 53021, subdivision(b). (Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

31. Comply with the district's established hiring procedures and afford all qualified district employees the opportunity to apply even where in-house or promotional only recruitment is permitted under California Code of Regulations, title 5, section 53005, subdivision (b). (Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 2002, No. 35), beginning July 1, 2001.)

32. State clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance in job announcements. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

33. Include sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students in job requirements for faculty and administrative positions. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

34. Review job specifications, excluding any "desired" or "required"/"required," "desired," or "preferred" qualifications beyond the state minimum qualifications (set forth in

Subchapter 4 of Cal. Code Regs., tit. 5, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws, excluding section 504 of the Rehabilitation Act, and Title IX of Education Amendments of 1972. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

35. Afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability, in the district's application for employment. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

36. Keep information regarding an applicant's gender, ethnicity, and/or disability provided in an application for employment confidential. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

37. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that expected representation has been achieved for historically underrepresented groups. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

38. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that any failure to obtain projected representation for any group defined in terms of ethnicity is not due to discriminatory recruitment procedures. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

39. Extend the application deadline and conduct additional focused recruitment for historically underrepresented groups for which expected representation has not been achieved, if necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

40. Extend the application deadline and conduct additional recruitment, which eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants, if necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

41. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when the expected representation of historically underrepresented groups is achieved, or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

42. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

43. Analyze the composition of the qualified applicant pool to ensure that no group defined in terms of ethnicity is adversely impacted as defined by California Code of Regulations, title 5, section 53001, subdivision (m) (Register 96, No. 23)/subdivision (a) (Register 2002, No. 35), after the analysis to ensure that expected representation has been achieved for historically underrepresented groups (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23))/after the analysis to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35)) and before the selection process continues. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

44. Take effective steps to address adverse impact on any group defined in terms of ethnicity found in the district's applicant pool before the selection process is continued. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

45. Provide all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to the Chancellor upon request. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 2002, No. 35), beginning July 1, 2001.)

46. Design all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 2002, No. 35), beginning July 1, 2001.)

47. Base all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole solely on job-related criteria, except as authorized by California Code of Regulations, title 5, section 53006 (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53024, subd. (a)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

48. Base all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole solely on job-related criteria. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(3) (Register 2002, No. 35), beginning August 11, 2002.)

49. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to ensure that they do not have an adverse impact, as defined by California Code of Regulations, title 5, section 53001, subdivision (m), on any group defined in terms of ethnicity. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

50. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse

impact as defined in California Code of Regulations, title 5, section 53001, subdivision (a) on any group defined in terms of ethnicity, and to detect and address any adverse impact on any group defined in terms of ethnicity which does occur. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

51. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group defined in terms of ethnicity before the selection process resumes if monitoring under California Code of Regulations, title 5, section 53024, subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted such ethnic group. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

52. Follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures" for selection testing for employees. (Cal. Code Regs., tit. 5, § 53024, subd. (e) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (e) (Register 2002, No. 35), beginning July 1, 2001.)

53. Include members of historically underrepresented groups in screening committees whenever possible. (Cal. Code Regs., tit. 5, § 53024, subd. (f) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

54. Include, whenever possible, a diverse membership in screening committees which will bring a variety of perspectives to the assessment of applicant qualifications. (Cal. Code Regs., tit. 5, § 53024, subd. (f) (Register 2002, No. 35), beginning August 11, 2002.)

55. Update a goal established prior to July 12, 2002 for persons with disabilities, set a new target date for achieving projected representation in a job category or categories, and concurrently comply with California Code of Regulations, title 5, section 53006, subdivisions (a)(1), (a)(2), and (b) with respect to persons with disability, if significant underrepresentation still exists in the job category or categories. (Cal. Code Regs., tit. 5, § 53025, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

56. Implement California Code of Regulations, title 5, section 53006, subdivisions (a)(1) and (a)(2) concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where underrepresentation was found to exist. Goals are to remain in effect only until projected representation has been achieved for that group in the category or categories in question. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

57. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force, until the chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

58. Establish a process permitting any person to file a complaint alleging that the requirements of the affirmative action and equal employment opportunity program/equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. This excludes the establishment of a process permitting an employee filing a complaint alleging a violation of the

equal employment opportunity program regulations on the basis of disability or gender (i.e. failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Cal. Code Regs., tit. 5, § 53020); failure to provide reasonable accommodations (see Cal. Code Regs., tit. 5, § 53020); and employment discrimination on the basis of disability and gender in district employee selection procedures). (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

59. Forward immediately to the Chancellor a copy of the complaint. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

60. Provide a written investigative report within 90 days if required by the Chancellor. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

61. Process complaints which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

62. Submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23) beginning July 1, 2001 and ending on August 10, 2002.)

63. Report the staffing rate of persons with disabilities by a separate survey as directed by the Chancellor's Office, until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by California Code of Regulations, title 5, section 53004. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53034 (Register 2002, No. 35), beginning July 1, 2001.)

f. The state-mandated activities imposed by Education Code section 87102 (Statutes 1988, ch. 973) California Code of Regulations, title 5, sections 53002-53006, 53020-53024, 53026, and 53034 (Register 96, No. 23) and sections 53002-53006, 53020-53026, and 53034 (Register 2002, No. 35) constitute a new program or higher level of service.

To constitute a "new program or higher level of service" the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement a state policy.[204] In addition, the requirements must be new in comparison with the pre-existing scheme and must be intended to provide an enhanced service to the public.[205] To make this

[204] *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

[205] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.[206]

The Chancellor's Office asserts that that the equal employment opportunity test claim statutes and title 5 regulations reflect the requirements of the California Fair Employment and Housing Act (FEHA) and its implementing regulations.[207] The FEHA and its implementing regulations prohibit employment discrimination on the basis of a variety of characteristics (e.g. ethnicity, gender, age, etc.). Assuming that the Chancellor's Office assertion that the requirements of the FEHA and its implementing regulations are the same as those of the affirmative action/equal employment opportunity statutes and title 5 regulations is correct, it follows that the requirements of the affirmative action/equal employment opportunity statutes and title 5 regulations are not unique to community college districts. However, the FEHA and its implementing regulations do not require any of the state-mandated activities on employers that are imposed by the affirmative action/equal employment opportunity statutes and title 5 regulations on community college districts. Specifically, although the FEHA and its implementing regulations prohibit employment discrimination, including the use of employee testing and selection practices that have an adverse impact on individuals,[208] the FEHA and its implementing regulations do not require employers to engage in the activities to ensure that their employment selection procedures do not violate these prohibitions, as are required by the affirmative action/equal employment opportunity statutes and title 5 regulations.

Given the above discussion, the provisions of Education Code section 87102, as amended in 1988;[209] the 1996 version of title 5, sections 53002-53006, 53020-53024, 53026, and 53034;[210] and the 2002 version of title 5, sections 53002-53006, 53020-53026, and 53034,[211] which require community college districts to engage in various activities to ensure equal employment opportunity within community college districts, impose unique requirements on community college districts that do not apply to all residents and entities in the state. These requirements are imposed in order to implement the state policy of equal opportunity in employment for all persons, and to prohibit discrimination or preferential treatment based on race, gender, or disability.[212] Thus, the state-mandated activities found in the 1988 version of Education Code section 87102; the 1996 version of title 5, sections 53002-53006, 53020-53024, 53026, and 53034; and the 2002 version of title 5, sections 53002-53006, 53020-53026, and 53034;

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[206] *Ibid.*

[207] The Chancellor's Office cites specifically to Government Code section 12940 et seq., and California Code of Regulations, title 2, section 7287.4. See Exhibit F, Test Claim 02-TC-31 Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004, at p. 11.

[208] Government Code section 12940 et seq., and California Code of Regulations, title 2, section 7287.4.

[209] Statutes 1988, chapter 973.

[210] Register 96, number 23.

[211] Register 2002, number 35.

[212] See Education Code section 87100, subdivision (d), as it existed prior to the 2002 amendment, and section 87100, subdivision (b), as amended by Statutes 2002, chapter 1169, setting forth the legislative findings and declarations for Education Code section 87100 et seq.

constitute "programs" within the meaning of Article XIII B, section 6 of the California Constitution.

Prior to determining whether the state-mandated activities imposed by the code section and regulations are new in comparison with the legal requirements in effect immediately prior, it is necessary to restate that the court's decision in *Connerly v. State Personnel Bd*. did not have the effect of repealing the regulations.[213] As a result, there is no gap between the requirements imposed by the regulations, as they existed in 1996, and the requirements imposed by the regulations, as amended in 2002.[214] In addition, because many of the activities that existed in the 1996 version of the regulations remained in the 2002 version of the regulations, a finding that an activity from the 1996 version is or is not a new program or higher level of service extends to the 2002 version of the regulations, unless otherwise stated.

Finally, it is necessary to note that the claimants pled most of the regulations as added in 1992, which coincides with Register 92, number 17 (March 26, 1992), however, the above analysis has only made findings in regard to the 1996 and 2002 versions of the regulations as these are the versions that fall within the reimbursement period.[215] The 1992 version of the regulations is the version immediately preceding the 1996 version, thus, where the claimant has pled a regulation as added in 1992 it is necessary to determine whether the activities mandated by the 1996 version of the regulations existed in the 1992 version, and if so, did the activities exist prior to 1992.

District Plan: (Ed. Code, § 87102 (Stats. 1988, ch. 973))

The claimants have pled section 87102, as amended by Statutes 1988, chapter 973.[216] Section 87102, as amended by Statutes 1988, chapter 973, mandates:

1. Periodically submit to the Board of Governors of the California Community Colleges an affirmation of compliance with the provisions of Education Code sections 87100-87107, which address affirmative action hiring (as existing prior to September 4, 2001). (Ed.

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[213] Although the court in *Connerly v. State Personnel Bd*. notes that the regulations pled by the claimants in this test claim "do not come close to implementing [Education Code sections 87100-87107] in a constitutional manner," this statement and the subsequent discussion regarding the constitutionality of specific regulations does not constitute binding precedent because the regulations were not placed in issue in *Connerly v. State Personnel Bd*., nor were the statements in regard to the regulations necessary to the decision. Thus, the regulations continued to be operative.

[214] Unless otherwise stated, any reference to the "1996 version of the regulations" or the regulations "as amended in 1996," refers to Register 96, number 23. Similarly, any reference to "the 2002 version of the regulations" or the regulations "as amended in 2002" refers to Register 2002, number 35.

[215] Register 92, number 17 (March 26, 1992) is the Register that coincides with the year in which the claimants have pled that the activities claimed were added. See, Exhibit _, Test Claim 02-TC-31, pgs. 46-52. Unless otherwise stated, any reference to the "1992 version of the regulations" or the regulations "as amended in 1992" refers to Register 92, number 17.

[216] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31." Specifically, "Attached Exhibit to Form CSM 2."

Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

2. Have goals in the affirmative action employment program that ensure participation in, and commitment to, the program by district personnel, and timetables, for its implementation. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
3. Include steps in the faculty and staff diversity plan that the district will take in meeting and improving hiring goals for both full-time faculty and part-time faculty pursuant to Education Code section 87482.6 (Stats. 1988, ch. 973), and the development of the plan shall be a condition for receipt of allowances pursuant to Education Code section 87482.6. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
4. Make the faculty and staff diversity plan/equal employment opportunity plan a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973); Cal. Code Regs., tit. 5, § 53003, subd. (d) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (e) (Register 2002, No. 35), beginning July 1, 2001.)
5. Publish and distribute a record of the success rate of the measurable progress, with respect to the district's goals and timetables, in hiring employees through its affirmative action employment program. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
    a. Make this publication a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), and shall include data and information specified by the Board of Governors. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

However, prior to the Statutes 1988 amendment, Education Code section 87102, was added in 1978,[217] which was not pled by the claimants. The 1978 version requires community college districts to engage in the following activities:

1. Submit to the office of the Chancellor of the California Community Colleges an affirmation of compliance with the provisions of Education Code sections 87100-87106, not later than January 1, 1980.
2. Have goals in the affirmative action employment program, and timetables for its implementation.
3. Make the affirmative action plan a public record within the meaning of the California Public Records Act.

The first activity required by section the 1978 version of 87102 was a one-time activity to submit an affirmation of compliance no later than January 1, 1980. In contrast, the first activity required by the 1988 version of section 87102 is an ongoing activity, and as a result, is new as compared

[217] Statutes 1978, chapter 766.

to the requirement immediately prior to its enactment. The remaining activities of the 1978 version of section 87102 are the same as the second and fourth activities required by the 1988 version of section 87102, subdivision (a). Thus, the requirements to have goals in the affirmative action employment program and timetables for its implementation, and to make the faculty and staff diversity plan a public record, do not constitute a new program or higher level of service. However, the following activities mandated by Education Code section 87102, as amended by Statutes 1988, chapter 973, do constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

1. Periodically submit to the Board of Governors of the California Community Colleges an affirmation of compliance with the provisions of Education Code sections 87100-87107, which address affirmative action hiring (as existing prior to September 4, 2001). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
2. Include steps in the faculty and staff diversity plan that the district will take in meeting and improving hiring goals for both full-time faculty and part-time faculty pursuant to Education Code section 87482.6 (Stats. 1988, ch. 973), and the development of the plan shall be a condition for receipt of allowances pursuant to Education Code section 87482.6. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
3. Publish and distribute a record of the success rate of the measurable progress, with respect to the district's goals and timetables, in hiring employees through its affirmative action employment program. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
    a. Make this publication a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), and shall include data and information specified by the Board of Governors. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

Policy Statement: (Cal. Code Regs., tit. 5, § 53002 (Register 96, No. 23 and Register 2002, No. 35))

Section 53002 as it existed in 1996 and 2002, mandates the adoption of a policy setting forth a community college district's commitment to an affirmative action/equal employment opportunity program. The claimants have pled section 53002, as added in 1992 and last amended in 2002.[218] The activity mandated in 1996 was also required in the 1992 version of section 53002.[219] However, immediately prior to 1992, title 5, section 53002, as amended in 1982,[220] required community college districts to engage in the following activity:

[218] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 47.

[219] California Code of Regulations, title 5, section 53002 (Register 92, No. 17).

[220] Register 82, number 6.

> Adopt by resolution an Affirmative Action Employment policy that covers all aspects of personnel policy and practice for all personnel, which will outline the district's commitment to implement "affirmatively" equal employment opportunity programs for all employees and applicants for employment regardless of race, color, religion, sex, national origin, age, handicap, status as a Vietnam-era veteran, or marital status. (Cal. Code Regs., tit. 5, § 53002 (Register 82, No. 6).)

Thus, immediately prior to 1992, community college districts were required to adopt a policy setting forth the districts' commitment to affirmative action/equal employment opportunity programs. Therefore, the requirement of California Code of Regulations, title 5, section 53002 (Register 96, No. 23 and Register 2002, No. 35) does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

District Plan: (Cal. Code Regs., tit. 5, § 53003 (Register 96, No. 23 and Register 2002, No. 35))

Section 53003, as it existed in 1996 and 2002, addresses the development and adoption of a district-wide faculty and staff diversity plan/equal employment opportunity plan and sets forth required content of the plan. The claimants pled section 53003, as added in 1992 and last amended in 2002.[221] Subdivision (a) of section 53003, as amended in 1996, mandates community college districts to develop and adopt a district-wide written faculty and staff diversity plan to implement its affirmative action employment program. In addition, it mandates community college districts to submit the plan and revisions to the Chancellor's Office for review and approval. These activities were also required by section 53003 in 1992. However, as amended in 1982,[222] section 53003, subdivision (a), also required these activities, and thus, the activities of adopting a district-wide written faculty and staff diversity plan/equal employment opportunity plan to implement its affirmative action employment program/equal employment opportunity program and submitting the plan and revisions of the plan for review and approval by the Chancellor's Office do not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Subdivision (b) of section 53003, as amended in 1996, mandated community college districts to review the faculty and staff diversity plan at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval and to notify the Chancellor at least 30 days prior to adopting any amendments to the faculty and staff diversity plan other than those made during the three year review. A similar activity was present in the 1992 and 1982 versions of 53003.[223] In the 1992 and 1982 versions of subdivision (b) of section 53003, community college districts were required to revise the goals and timetables in the plan every three years and submit them for approval to the Chancellor's Office as opposed to reviewing and possibly revising the *whole plan* every three years. The 1992 and 1982 versions both required community college districts to notify the Chancellor at least 30 days prior to adopting any other amendments. Thus, revising the goals and timetables every three years and notifying the Chancellor at least 30 days prior to any other change to the plan do not constitute new programs or higher levels of

[221] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 47.

[222] Register 82, number 6.

[223] Register 92, number 17; and Register 82, number 6.

service. However, the mandate to review the faculty and staff diversity plan/equal employment opportunity plan, excluding the goals and timetables, every three years does constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Subdivision (b) of section 53003, as amended in 1996, also mandated community college districts to include in the faculty and staff diversity plan goals and timetables for hiring and promotion of members of historically underrepresented groups for each college in the district and for the district as a whole. This activity was required in the 1992 version of section 53003. Section 53051, as amended in Register 82, number 6 (February 1, 1982), similarly required:

> The affirmative action plan shall require that affirmative action programs be designed to eliminate discriminatory employment practices. Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies in representation from ethnic minority groups and women at all levels within the district.

The distinction between the goals and timetables required in 1982 and 1992 is that the goals and timetables required in 1982 did not include persons with disabilities. Thus, immediately prior to 1992, community college districts were required to include in the district faculty and staff diversity plan goals and timetables for hiring and promotion of members of historically underrepresented groups, excluding persons with disabilities, for each college in the district and for the district as a whole. As a result, including goals and timetables in the faculty and staff diversity plan for historically underrepresented groups, excluding persons with disabilities does not constitute a new program or higher level of service. However, including goals and timetables, as appropriate, for the hiring and promotion of persons with disabilities developed pursuant to California Code of Regulations, title 5, section 53006, for each college in the district and the district as a whole, does constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Subdivision (c)(1) of section 53003, as amended 1996, mandates community college districts to include in the faculty and staff diversity plan the designation of the district employee or employees who have been delegated responsibility and authority for implementing the faculty and staff diversity plan and assuring compliance with the requirements of California Code of Regulations, title 5, section 53000 et seq. (Register 96, No. 23), which addresses community college districts' affirmative action/equal employment opportunity plans. This activity was also required in 1992, by section 53003, subdivision (c)(1), as amended 1992. Immediately prior to 1992, however, California Code of Regulations, title 5, section 53042, as amended in1982,[224] required community college districts to designate in the affirmative action plan an affirmative action officer to administer the affirmative action plan. As a result, the requirement to designate a district employee in the plan with the authority to implement, and duty to assure compliance with, the faculty and staff diversity plan/equal employment opportunity plan existed immediately prior to 1992, and thus, does not constitute a new program or higher level of service subject to article XIII B, section 6, of the California Constitution.

Subdivision (c)(2) of section 53003, as amended in 1996, mandates community college districts to include in the faculty and staff diversity plan the procedure for filing complaints and the

[224] Register 82, number 6.

person with whom to file the complaints. This activity is also required in the 1992 version of section 53003, subdivision (c)(2). Immediately prior to 1992, however, California Code of Regulations, title 5, section 53045, as amended in Register 82, number 6 (February 1, 1982), required community college districts to state in the affirmative action plan that an employee or applicant for employment may file a complaint with the district affirmative action officer alleging that the district has failed to satisfy the requirements of California Code of Regulations, title 5, section 53000 et seq. (Register 82, No. 6), and state the procedure for responding to complaints. Thus, the requirement to include in the faculty and staff diversity plan/equal employment opportunity plan the procedure for filing complaints and with whom to file the complaints was required prior to 1992, and therefore, does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Subdivision (c)(3) of section 53003, as amended 1996, mandates community college districts to include in the faculty and staff diversity plan a process for notifying all district employees of the provisions of the faculty and staff diversity plan and district policy statement. This requirement was also present in section 53003, subdivision (c)(3), as amended in 1992. Immediately prior to 1992, however, community college districts were already required to engage in this activity. Section 53043, as amended in1982,[225] required the affirmative action plan to require that all district employees be apprised of the equal employment opportunity/affirmative action policy, affirmative action plan, and the importance of the employee's participation and responsibility in ensuring the plan's implementation. Thus, the activity to include a process to notify all district employees of the provisions of the faculty and staff diversity plan/equal employment opportunity plan and district policy statement does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Subdivision (c)(5) of section 53003, as amended in 1992 and 1996, mandates community college districts to include in the faculty and staff diversity plan a process for providing annual written notice to appropriate community organizations concerning the district's faculty and staff diversity plan and the need for assistance from the community in identifying qualified members of historically underrepresented groups (ethnic minorities, women, and persons with disabilities)[226] for openings with the district. However, community college districts were already required to engage in this activity. Section 53044, as amended in 1982,[227] requires community college districts to require in the affirmative action plan that a written notice be provided at least annually to various community organizations concerning the district's affirmative action policy and to solicit their assistance in recruiting ethnic minority, female, handicapped, and Vietnam-era veteran candidates. Thus, the activity to include a process in the faculty and staff diversity plan to provide an annual notice to community organizations regarding the plan and the need for assistance in recruiting does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

The 2002 version of subdivision (c)(5) of section 53003, however, added the requirement to include in the district equal employment opportunity plan a process for providing annual notice

[225] Register 82, number 6.

[226] California Code of Regulations, title 5, section 53001, subdivision (h) (Register 92, No. 15; and Register 96, No. 23).

[227] *Ibid*.

to professional organizations concerning the district's plan and the need for assistance from such organizations in identifying qualified applicants (not just qualified ethnic minorities, females, and disabled individuals. Thus, the following activity mandated by the 2002 version of subdivision (c)(5) of section 53003 constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

> Include in the equal employment opportunity plan the following:
>
> > A process for providing annual written notice to professional organizations concerning the district's equal employment opportunity plan and the need for assistance from the organizations in identifying qualified applicants. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(5) (Register 2002, No. 35), beginning August 11, 2002.)

Subdivision (c)(6) of section 53003, as amended in 1992 and 1996, mandates community college districts to include in the faculty and staff diversity plan an analysis of the number of persons from historically underrepresented groups who are employed in the district's work force and those who have applied for employment in each of the following job categories: (1) executive/administrative/managerial, (2) faculty and other instructional staff, (3) professional nonfaculty, (4) secretarial/clerical, (5) technical and paraprofessional, (6) skilled crafts, and (7) service and maintenance. California Code of Regulations, title 5, section 53046, as amended in Register 82, number 6 (February 1, 1982) required the affirmative action plan to include a work force analysis in which the district determines statistically the racial, ethnic, and sex composition of existing staff by the seven job categories. Although the 1982 activity is similar, the activity as mandated in 1996 includes an analysis of the number of persons with disabilities who are employed in the workforce and the number of historically underrepresented groups (including those with disabilities) who have applied for employment. As a result, only the following activity mandated by the 1996 version of subdivision (c)(6) constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

> Include in the faculty and staff diversity plan an analysis of the number of *persons with disabilities* who are employed in the district's work force and the number of historically underrepresented groups (including persons with disabilities) who have applied for employment in the following job categories: (1) executive/administrative/managerial, (2) faculty and other instructional staff, (3) professional nonfaculty, (4) secretarial/clerical, (5) technical and paraprofessional, (6) skilled crafts, and (7) service and maintenance.

Subdivision (c)(6) of section 53003, as amended in 2002, imposes a similar mandate on community college districts, as was imposed by the 1996 version of subdivision (c)(6), however, the 2002 version requires an analysis of monitored groups (groups identified by gender, ethnic group identification, and disability) rather than an analysis of historically underrepresented groups (ethnic minorities, women, and persons with disabilities).[228] Thus, in 2002, the scope of the analysis that must be done was broadened to include the ethnic majority and men. As a

[228] California Code of Regulations, title 5, section 53001, subdivision (i) (Register 2002, No. 35) defining "monitored group." California Code of Regulations, title 5, section 53001, subdivision (h) (Register 96, No. 23) defining "historically underrepresented group."

result, the following activity mandated by the 2002 version of title 5, section 53003, subdivision (c)(6), constitutes a new program or higher level of service:

> An analysis of the number of persons within the ethnic majority, men, and persons with disabilities who are employed in the district's work force and the number of persons from monitored groups who have applied for employment in each of the following job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6)skilled crafts; and (7) serve and maintenance (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35)). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 2002, No. 35), beginning August 11, 2002.)

Subdivision (c)(7) of section 53003, as amended in 1992 and 1996, requires community college districts to include in the faculty and staff diversity plan an analysis of the degree to which women, ethnic minorities, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. Prior to 1992, California Code of Regulations, title 5, section 53049, as amended in Register 82, number 6 (February 1, 1982), required community college districts to include in the affirmative action plan:

> [A] utilization analysis that includes a determination of whether minorities and women are being underrepresented or underutilized in any job category. The district shall consider the numbers and percentages of staff in each position category within each of the job categories by ethnic and sex classification compared with the general availability of minorities and women in the relevant work force having requisite skills to fill vacancies as they occur.

Missing from the 1982 regulation is the requirement to include in the analysis persons with disabilities. In addition, the 1982 regulation did not require districts to determine if the underrepresentation was significant. As a result, only the following activity mandated by subdivision (c)(7) constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

> Include in the faculty and staff diversity plan an analysis of the degree to which persons with disabilities are underrepresented in comparison to the numbers of disabled persons whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation for women, ethnic minorities, or persons with disabilities is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

The 2002 version of title 5, section 53003, subdivision (c)(7), broadens the the analysis of underrepresentation to include the ethnic majority, and men. Thus, the following activity mandated by the 2002 version of section 53003, subdivision (c)(7) constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

> Include in the equal employment opportunity plan an analysis of the degree to which persons within the ethnic majority, men, and persons with disabilities are

> underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 2002, No. 35), beginning August 11, 2002.)

Subdivision (d) of section 53003, as amended in 1992 and 1996, and subdivision (e) of section 53003, as amended in 2002, require community college districts to make the faculty and staff diversity plan a public record. Immediately prior to 1992, this activity was required by California Code of Regulations, title 5, section 53003, subdivision (c), as amended in Register 82, number 6 (February 1, 1982).[229] As a result, making the faculty and staff diversity plan/equal employment opportunity plan a public record does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Subdivision (e) of section 53003, as amended in 1992 and 1996, and subdivision (f) of section 53003, as amended in 2002, require community college districts to make a continuous good faith effort to comply with the requirements of the faculty and staff diversity plan/equal employment opportunity plan. Immediately prior to 1992, California Code of Regulations, title 5, section 53003, as amended in Register 82, number 6 (February 1, 1982), required this activity. As a result, the mandate to make a continuous good faith effort to comply with the requirements of the faculty and staff diversity plan/equal employment opportunity plan does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Section 53003, subdivisions (c)(4), (8), (9), and (10), as amended in 1996 and 2002, require community college districts to include other information in district faculty and staff diversity plans/equal employment opportunity plans, including, but not limited to: (1) a process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of the affirmative action/equal employment opportunity regulations, and state and federal antidiscrimination laws; (2) steps the district will take to achieve diversity in its workforce; and (3) methods for addressing any underrepresentation. Immediately prior to 1992, community college districts were not required to engage in the activities mandated by section 53003, subdivisions (c)(4), (8), (9), and (10), as amended in 1996 and 2002, and as a result, these activities constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

<u>District Evaluation: (Cal Code Regs., tit. 5, § 53004 (Register 96, No. 23 and Register 2002, No. 35))</u>

Section 53004, subdivision (a), as it existed in 1996 and 2002, mandates community college districts to engage in the following activities:

1. Survey district employees every even year (except for information regarding disability, which shall occur annually) and monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing its faculty and staff diversity plan/equal

[229] Note also, Education Code section 87102, as added in Statutes 1978, chapter 766, required community college districts to make districts' affirmative action/faculty staff diversity/equal employment opportunity plan a public record.

employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

2. Annually report to the Chancellor, in a manner described by the Chancellor, the results of its annual survey of employees at each college in the district. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

    g. Report employees so that he or she may be identified as belonging to one of the following seven job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

3. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004, subdivision (a) (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Count a person in only one ethnic group for reporting purposes if a person designates multiple ethnic groups with which he or she identifies. (Cal. Code Regs., tit. 5, § 53004, subd (b) (Register 2002, No. 35), beginning August 11, 2002.)

    b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

The claimants have pled section 53004, as added in 1992 and last amended in 2002.[230] Immediately prior to 1992, however, California Code of Regulations, title 5, section 53004, as amended in Register 82, number 6 (February 1, 1982), required community college districts to engage in the following activities:

1. Annually survey its employment patterns in an effort to evaluate its progress in reaching the goals set forth in its affirmative action plan. (Cal. Code Regs., tit. 5, § 53004 (Register 82, No. 6).)

[230] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 48.

2. Annually report the results of the annual survey in a manner prescribed by the Chancellor. (Cal. Code Regs., tit. 5, § 53004 (Register 82, No. 6).)

Thus, the requirements to conduct a biennial survey to evaluate the district's faculty and staff diversity plan/equal employment opportunity plan, and to report the results of the survey to the Chancellor existed prior to 1992, and as a result, do not constitute a new program or higher level of service. However, the following activities mandated by section 53004, did not exist prior to 1992, and therefore, constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

1. Monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing its faculty and staff diversity plan/equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)
2. In the report to the Chancellor's Office of the results of the employee survey, report employees so that they may be identified as belonging to one of the following seven job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)
3. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004, subdivision (a) (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)
    a. Count a person in only one ethnic group for reporting purposes if a person designates multiple ethnic groups with which he or she identifies. (Cal. Code Regs., tit. 5, § 53004, subd (b) (Register 2002, No. 35), beginning August 11, 2002.)
    b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

Advisory Committee: (Cal. Code Regs., tit. 5, § 53005 (Register 96, No. 23 and Register 2002, No. 35))

The claimants have pled section 53005, as added in 1992 and last amended in 2002.[231] Section 53005, as it existed in 1992 and 2002, mandates community college districts to establish

[231] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 48.

a Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee to assist districts in developing and implementing districts' faculty and staff diversity plan/equal employment opportunity plan. In addition, in 1992 the committee was required to include members of all historically underrepresented groups whenever possible. In 2002 the committee was required to include a diverse membership whenever possible. However, immediately prior to 1992 California Code of Regulations, title 5, section 53052, as amended in Register 82, number 6 (February 1, 1982) required community college districts to engage in the following activity:

> Establish an affirmative action advisory committee to assist the district to achieve understanding and support of affirmative action/equal employment opportunity policies and programs, and shall assist in the developing of the affirmative action program in conformity with state and federal statutes, regulations, and guidelines, monitoring its progress and acting as an advisory body to the affirmative action officer. The committee shall include ethnic minorities, women, the handicapped and Vietnam-era veterans whenever possible. (Cal. Code Regs., tit. 5, § 53052 (Register 82, No. 6).)

Thus, immediately prior to 1992, community college districts were required to establish a committee to assist districts in developing and implementing faculty and staff diversity/equal employment opportunity plans. In addition, the committee was to have a diverse membership whenever possible. As a result, the activity mandated by California Code of Regulations, title 5, section 53005, as amended by Register 96, number 23, and Register 2002, number 35, does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Corrective Action and Additional Steps; (Cal. Code Regs., tit. 5, § 53006 (Register 96, No. 23 and Register 2002, No. 35))

The claimants have pled section 53006, as added in 1996 and last amended in 2002.[232] Section 53006, as it existed in 1996 and in 2002, mandates community college districts to take specific actions if significant underrepresentation exists in a job category, including but not limited to: (1) taking corrective action if the community college district determines that a particular group is significantly underrepresented; (2) reviewing district recruitment procedures; and (3) monitoring the staffing rates for significantly underrepresented groups. Immediately prior to 1996, none of the activities mandated by section 53006 were required. As a result, the activities required by section 53006, as amended by Register 96, number 23, and Register 2002, number 35, constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Delegation of Authority: (Cal. Code Regs., tit. 5, § 53020 (Register 96, No. 23 and Register 2002, No. 35):

Section 53020, as it existed in 1996 and 2002, mandate activities related to the responsibility for implementing district faculty and staff diversity/equal employment opportunity plans and the delegation of authority within a district. The claimants have pled section 53020, as added in

[232] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 48.

1992 and last amended in 2002.[233] Section 53020, as it existed in 1996 and 2002, places ultimate responsibility on community college districts for the proper implementation of the regulations addressing affirmative action/equal employment opportunity, and for making measurable progress toward equal employment opportunity as set forth in its faculty and staff diversity plan/equal employment opportunity plan.[234] This requirement existed in the 1992 version of section 53020. Immediately prior to 1992, however, California Code of Regulations, title 5, section 53041, as amended by Register 82, number 6 (February 1, 1982), places:

> [O]verall responsibility [on community college districts] for ensuring affirmative action and equal employment opportunity including, but not limited to, recruitment, assignment, promotion, retention, compensation, and training, and for improving representation of minority racial and ethnic groups, women, handicapped persons and Vietnam-era veterans.

Thus, the overall or ultimate responsibility for implementing affirmative action/equal employment opportunity in community college districts was placed on community college districts prior to 1992. However, the requirement to be responsible for "measurable progress" toward equal employment opportunity as set forth in its faculty and staff diversity plan/equal employment opportunity plan was not required prior to 1992, and therefore constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

In addition section 53020, as it existed in 1996 and 2002, mandates community college districts to designate an affirmative action/equal employment opportunity officer to oversee the day-to-day implementation of the requirements of the regulations.[235] Section 53020 requires that the administrative structure created by the delegation of authority to the affirmative action/equal employment opportunity officer be described in the faculty and staff diversity/equal employment opportunity plan.[236] These requirements were also present in the Register 92 version of section 53020. Immediately prior to 1992, California Code of Regulations, title 5, section 53042, as amended in Register 82, number 6 (February 1, 1982), required community college districts to designate in its affirmative action plan an affirmative action officer to administer the affirmative action program. In addition, section 53042 required the affirmative action officer designated in the plan to report to the chief district administrator, or designee who reports to the chief district administrator, thus setting forth the administrative structure created by the delegation of authority to the affirmative action officer. As a result, the requirements to designate an affirmative action/equal employment officer and to describe the administrative

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[233] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at pgs. Exhibit A, Test Claim 02-TC-31, p. 49.

[234] California Code of Regulations, title 5, section 53020, subdivision (a) (Register 96, No. 23 and Register 2002, No. 35).

[235] California Code of Regulations, title 5, section 53020, subdivision (a) (Register 96, No. 23 and Register 2002, No. 35).

[236] California Code of Regulations, title 5, section 53020, subdivision (b) (Register 96, No. 23 and Register 2002, No. 35).

structure created by the delegation of authority do not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Section 53020, as it existed n 1996 and 2002, also mandated that community college districts design the administrative structure created by the delegation of authority to the affirmative action/equal employment opportunity officer so as to ensure prompt and effective implementation of the requirements of the regulations.[237] This requirement existed in 1992 but did not exist prior to 1992, and as result, constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Finally, section 53020, as it existed in 1996 and 2002, mandates that districts designate a single officer, that may be the affirmative action/equal employment opportunity officer, who is given the authority and responsibility for receiving complaints, for ensuring that such complaints are promptly and impartially investigated, and for ensuring that selection procedures and the applicant pool are properly monitored as required by California Code of Regulations, title 5, sections 53023 and 53024 (Register 96, No. 23 and Register 2002, No. 35).[238] As relevant to this discussion, section 53024 requires the selection process as a whole to be based solely on job related criteria, and designed and monitored to avoid an adverse impact. These activities were required in the Register 92 version of sections 53020 and 53024.

Immediately prior to 1992, California Code of Regulations, title 5, section 53045, as amended by Register 82, number 6 (February 1, 1982), required community college districts to state in its affirmative action plan that an employee or applicant for employment may file a complaint with the district affirmative action officer alleging that the district has failed to satisfy the requirements of California Code of Regulations, title 5, section 53000 et seq. (Register 82, No. 6). In addition, California Code of Regulations, title 5, section 53026, as amended by Register 82, number 6 (February 1, 1982), required the affirmative action officer to ensure that the entire selection process be solely based on job-related criteria, a fair impartial examination of the candidates based on job-related criteria, with job-related questions prepared in advance. California Code of Regulations, title 5, section 53027, as amended by Register 82, number 6 (February 1, 1982), required the affirmative action officer to monitor throughout the entire selection process for adverse impact. Thus, the mandates to designate an employee to receive complaints, and for the affirmative action/equal employment opportunity officer to ensure that the selection procedures be based solely on job related criteria and monitored to avoid an adverse impact, do not constitute a new program or higher level of service. However, the following mandate does constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

> Designate in the faculty and staff diversity plan/equal employment opportunity plan a single officer, who may be the affirmative action officer/equal employment opportunity officer, for ensuring complaints of violations of the equal employment opportunity program regulations (excluding those based on disability or gender), filed pursuant to California Code of Regulations, title 5, section 53026, are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored (excluding ensuring that

[237] *Ibid.*

[238] *Ibid.*

the selection procedure is based solely on job-related criteria and monitoring for adverse impact) as required by California Code of Regulations, title 5, sections 53023 and 53024. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23), beginning July 1, 2001.)

Recruitment: (Cal. Code Regs., tit. 5, § 53021 (Register 96, No. 23 and Register 2002, No. 35))

The claimants have pled section 53021, as added in 1992 and last amended in 2002.[239] Section 53021 mandates community college districts to engage in specific activities associated with recruiting applicants for employment with the district. Although some of the activities mandated by the 1996 and 2002 version of 53021 did not exist in 1992, it is unnecessary to identify which activities were present because none of the activities were required prior to 1992. As a result, the activities mandated by section 53021 (Register 96, No. 23 and Register 2002, No. 35) constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Job Announcements: (Cal. Code of Regs., tit. 5, § 53022 (Register 96, No. 23 and Register 2002, No. 35))

The claimants have pled section 53022, as added in 1992 and last amended in 2002.[240] Section 53022, as amended in 1996 and 2002, mandates community college districts to engage in activities associated with job announcements and required qualifications. These activities include the mandate for community college districts to state clearly in job announcements the job specifications setting forth the knowledge, skills, and abilities necessary to job performance. This activity was also required in the Register 92 version of section 53022. However, immediately prior to 1992, California Code of Regulations, title 5, section 53022, as amended in 1982,[241] required community college districts to state clearly in job announcements the job specifications setting forth those skills necessary to job performance and the required training and experience related to those skills. As a result, this portion of section 53022, as it existed in 1992 and 2002, does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

California Code of Regulations, title 5, section 53022, as it existed in 1996 and 2002, also required the job requirements for faculty and administrative positions to include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. Finally, section 53022 mandates district job specifications, excluding locally established "desired," "required," or "preferred" qualifications beyond state minimum qualifications, to be reviewed before the position is announced. These activities were also required in the Register 92 version of section 53022, but were not required prior to 1992, and as a result, constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

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[239] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 49.

[240] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 49.

[241] Register 82, number 6.

Applicant Pool: (Cal. Code Regs., tit. 5, § 53023 (Register 96, No. 23 and Register 2002, No. 35):

The claimants have pled section 53023, as added in 1992 and last amended in 2002.[242] Section 53023, as amended in 1996 and 2002, mandates activities associated with community college districts' application for employment and response to a failure to obtain expected representation of a gender, ethnic group, or persons with disabilities. Although some of these activities were not present in 1992, none of these activities were required prior to 1992, and as a result, constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Selection Procedures: (Cal. Code Regs., tit. 5, § 53024 (Register 96, No. 23 and Register 2002, No. 35):

The claimants have pled section 53024, as added in 1992 and last amended in 2002.[243] Section 53024, as it existed in 1996 and 2002, mandates community college districts to engage in activities associated with the employee screening and selection procedures of a community college district. In 1996 and 1992, subdivision (a)(3) of section 53024 mandated community college districts to base all screening or selection techniques and the selection process as a whole solely on job-related criteria. However, in 1982 section 53026, as amended in Register 82, number 6, required selection procedures such as interviews to be solely based on job-related requirements, and required the affirmative action officer to ensure that the entire selection process be solely based on job-related criteria, a fair impartial examination of candidates based on job-related criteria, with job related questions prepared in advance. Thus, the requirement to base employee screening and selection techniques and the selection process as a whole solely on job-related criteria existed prior to 1992, and therefore, does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Subdivisions (e) and (f) of section 53024, as amended in Register 92, number 17, and Register 96, number 23, requires community college districts to follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures" for selection testing for employees, and to include members of historically underrepresented groups in selection committees whenever possible. Immediately prior to 1992, California Code of Regulations, title 5, section 53024, as amended in Register 82, number 6 (February 1, 1982), already required these activities, and as a result, these activities do not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

However, the following activities mandated by section 53024, as amended in 1996 and 2002, were not required immediately prior to 1996, and as a result, constitute a new program or higher level of service subject article XIII B, section 6 of the California Constitution:

1. Provide all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to the Chancellor upon request.

[242] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 50.

[243] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 50.

(Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 2002, No. 35), beginning July 1, 2001.)

2. Design all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 2002, No. 35), beginning July 1, 2001.)

3. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to ensure that they do not have an adverse impact, as defined by California Code of Regulations, title 5, section 53001, subdivision (m), on any group defined in terms of ethnicity. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

4. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse impact as defined in California Code of Regulations, title 5, section 53001, subdivision (a) on any group defined in terms of ethnicity, and to detect and address any adverse impact on any group defined in terms of ethnicity which does occur. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

5. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group defined in terms of ethnicity before the selection process resumes if monitoring under California Code of Regulations, title 5, section 53024, subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted such ethnic group. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

Persons with Disabilities: (Cal. Code Regs., tit. 5, § 53025 (Register 2002, No. 35))

The claimants have pled section 53025, as added in 1992 and last amended in 2002.[244] As discussed above in the federal mandate analysis for section 53025, the 1996 version of section 53025 does not impose any state-mandated activities. The 2002 version of 53025, however, imposes various mandated activities related to setting goals for hiring persons with disabilities. The state-mandated activities found in the 2002 version of section 53025, did not exist in the 1996 version of section 53025, which was the version immediately preceding the 2002 version. As a result, the state-mandated activities found in California Code of Regulations, title 5, section 53025, as amended in Register 2002, number 35, constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

[244] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 51.

Complaints: (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23 and Register 2002, No. 35))

The claimants have pled section 53026, as added in 1992 and last amended in 2002.[245] In relevant part, section 53026, as amended in 1992 and 2002, requires community college districts to establish a process permitting any person[246] to file a complaint alleging that the requirements of California Code of Regulations, title 5, section 53000 et seq. have been violated. Immediately prior to 1992, California Code of Regulations, title 5, section 53045, as amended in 1982,[247] required community college districts to allow employees or applicants for employment to file a complaint with the district affirmative action officer alleging that the district has failed to satisfy the requirements of California Code of Regulations, title 5, section 53000 et seq. Thus, establishing a complaint process for employees and applicants for employment does not constitute a new program or higher level of service.

The section 53026 requirement, however, exceeds the requirement set forth in section 53045, because it allows "any person" to file a complaint alleging a violation of California Code of Regulations, title 5, section 53000 et seq. Thus, the requirement to establish a process permitting any person, excluding employees and applicants for employment, to file a complaint alleging that the requirements of California Code of Regulations, title 5, section 53000 et seq. has been violated, constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

In addition, to the above discussed activity, the following state-mandated activities found in California Code of Regulations, title 5, section 53026, did not exist prior to 1992, and as a result, constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

1. Forward immediately to the Chancellor a copy of the complaint. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)
2. Provide a written investigative report within 90 days if required by the Chancellor. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)
3. Process complaints which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

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[245] *Ibid.*

[246] Excluding an employee filing a complaint alleging a violation of California Code of Regulations, title 5, section 53000 et seq., to the extent that the requirements coincide with the requirements of Section 504 and Title IX (i.e. failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Cal. Code Regs., tit. 5, § 53020); failure to provide reasonable accommodations (see Cal. Code Regs., tit. 5, § 53020); and employment discrimination on the basis of disability and gender in district employee selection procedures).

[247] Register 82, number 6.

Reporting Use of Funds: (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23; and Register 2002, No. 35):

Section 53034, as amended in 1996 and 2002, mandates community college districts to engage in the following activities:[248]

1. Submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23) beginning July 1, 2001 and ending on August 10, 2002.)
2. Report the staffing rate of persons with disabilities by a separate survey as directed by the Chancellor's Office, until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by California Code of Regulations, title 5, section 53004. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53034 (Register 2002, No. 35), beginning July 1, 2001. There is no evidence in the record indicating whether a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by title 5, section 53004. As a result, staff cannot determine an end date for this activity.)

The claimants have pled section 53034, as added in 1992 and last amended in 2002.[249] These activities existed in 1992. However, the activities did not exist immediately prior to 1992, and thus, constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

(i) Summary of State-Mandated New Program or Higher Level of Service:

1. Periodically submit to the Board of Governors of the California Community Colleges an affirmation of compliance with the provisions of Education Code sections 87100-87107, which address affirmative action hiring (as existing prior to September 4, 2001). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
2. Include steps in the faculty and staff diversity plan that the district will take in meeting and improving hiring goals for both full-time faculty and part-time faculty pursuant to Education Code section 87482.6 (Stats. 1988, ch. 973), and the development of the plan shall be a condition for receipt of allowances pursuant to Education Code section 87482.6. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

[248] Note that the first activity is not mandated by California Code of Regulations, title 5, section 53034, as amended in Register 2002, number 35, because receipt of funds from the "Equal Employment Opportunity Fund" (the functional replacement of the "Faculty and Staff Diversity Fund") is optional. Thus, reporting the use of the funds is a downstream activity triggered by a discretionary decision, and as a result, is not a mandated activity, after August 10, 2002.

[249] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 52.

3. Publish and distribute a record of the success rate of the measurable progress, with respect to the district's goals and timetables, in hiring employees through its affirmative action employment program. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

    a. Make this publication a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), and shall include data and information specified by the Board of Governors. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)

4. Review the faculty and staff diversity plan/equal employment opportunity plans, excluding goals and timetables, at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

5. Include in the faculty and staff diversity plan/equal employment opportunity plan the following:

    a. Goals and timetables, as appropriate, for hiring and promotion of persons with disabilities developed pursuant to California Code of Regulations, title 5, section 53006 for each college in the district and for the district as a whole. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. A process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of California Code of Regulations, title 5, section 53000 et seq., which addresses affirmative action/equal employment opportunity programs (Register 96, No. 23; Register 2002, No. 35) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(4) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subdivision (c)(4) (Register 2002, No. 35), beginning July 1, 2001.)

    c. A process for providing annual written notice to professional organizations concerning the district's equal employment opportunity plan and the need for assistance from the organizations in identifying qualified applicants. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(5) (Register 2002, No. 35), beginning August 11, 2002.)

    d. An analysis of the number of *persons with disabilities* who are employed in the district's work force and the number of historically underrepresented groups (including persons with disabilities) who have applied for employment in the following job categories: (1) executive/administrative/managerial, (2) faculty and other instructional staff, (3) professional nonfaculty, (4) secretarial/clerical, (5) technical and paraprofessional, (6) skilled crafts, and (7) service and maintenance. (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 96, No. 23) beginning July 1, 2001 through August 10, 2002.)

e. An analysis of the number of ethnic majority, men, and persons with disabilities who are employed in the district's work force and the number of persons from monitored groups who have applied for employment in each of the following job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6)skilled crafts; and (7) serve and maintenance (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35)). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 2002, No. 35), beginning August 11, 2002.)

f. An analysis of the degree to which persons with disabilities are underrepresented in comparison to the numbers of disabled persons whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation for women, ethnic minorities, or persons with disabilities is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

g. An analysis of the degree to which persons within the ethnic majority, men, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 2002, No. 35), beginning August 11, 2002.)

h. The steps the district will take to achieve diversity in its workforce. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

i. Goals for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

j. Methods for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 2002, No. 35), beginning August 11, 2002.)

k. Additional steps consistent with California Code of Regulations, title 5, section 53006, to remedy any significant underrepresentation identified in the plan. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 2002, No. 35), beginning August 11, 2002.)

l. A plan for corrective action consistent with California Code of Regulations, title 5, section 53006 (Register 96, No. 23), including goals and timetables for hiring and promotion, if necessary, to remedy any significant underrepresentation identified in the faculty and staff diversity plan by achieving expected representation for all historically underrepresented groups in all job categories listed in California Code of Regulations, title 5, § 53004, subdivision (a) (Register

96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

m. Any other measures necessary to further equal employment opportunity throughout the district. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 2002, No. 35), beginning August 11, 2002.)

n. Any goals for hiring persons with disabilities that are required by California Code of Regulations, title 5, section 53025. (Cal. Code Regs., tit. 5, § 53003, subd. (d) (Register 2002, No. 35), beginning August 11, 2002.)

6. Monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing its faculty and staff diversity plan/equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

7. In the report to the Chancellor's Office of the results of the employee survey, report employees so that they may be identified as belonging to one of the following seven job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

8. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004, subdivision (a) (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Count a person in only one ethnic group for reporting purposes if a person designates multiple ethnic groups with which he or she identifies. (Cal. Code Regs., tit. 5, § 53004, subd (b) (Register 2002, No. 35), beginning August 11, 2002.)

    b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

9. If a community college district has existing goals:

    a. Update goals established prior to June 30, 1996 and set a new target date for achieving expected representation for a group in a job category/categories if significant underrepresentation still exists. (Cal. Code Regs., tit. 5, § 53006, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

b. Review recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

c. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

d. Comply with California Code of Regulations, title 5, section 53006, subdivision (c) (Register 96, No. 23) while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

10. If a community college district has no existing goals:

a. Take corrective action if, pursuant to California Code of Regulations, title 5, section 53003, subdivision (c)(7), the district determines that a particular group is significantly underrepresented with respect to one or more job categories and no goal has previously been set. (Cal. Code Regs., tit. 5, § 53006, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

b. The district shall take, at a minimum, the following corrective action:

i. Review of district recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

ii. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iii. Determine whether the group is still significantly underrepresented in the job category or categories in question after the measures described in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) have been in place a reasonable period of time. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iv. Set a goal with a target date for achieving expected representation for the significantly underrepresented group in each job category where significant underrepresentation persists, if significant underrepresentation persists. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

v. Monitor on an ongoing basis the staffing rate for the significantly underrepresented group in the specified job category or categories. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

vi. Discontinue the use of goals when expected representation has been achieved for that group in the job category or categories in question. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

11. Additional measures to be taken if a goal has been set and after a reasonable period of time significant underrepresentation persists:

    a. Establish a specific timetable to project the levels of annual hiring of persons from the significantly underrepresented group which will be necessary to meet the existing goal by the target date. (Cal. Code Regs., tit. 5, § 53006, subd. (c) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. Implement one or more of the following additional corrective measures until expected representation has been achieved for that group in the job category in question:

        i. Consider, as one factor in the final selection process, the fact that a candidate is a member of a significantly underrepresented group, provided that the qualifications of the candidates under consideration are reasonably considered to be equivalent. (Cal. Code Regs., tit. 5, § 53006, subd. (c)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

12. If a community college district has no existing goals for women or persons with disabilities:

    a. Implement the measures required in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) concurrently with setting a goal with a target date for achieving expected representation for women or persons with disabilities in each job category that they are found to be significantly underrepresented. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

        i. Goals shall remain in effect only until expected representation has been achieved for the group in the job category or categories in which significant underrepresentation is found. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

        ii. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force until

the Chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53006, subd. (d), beginning July 1, 2001 through August 10, 2002.)

13. Take additional steps if a district determines that a particular monitored group is significantly underrepresented with respect to one or more categories, including at minimum:

    a. Review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 2002, No. 35), beginning August 11, 2002.)

    b. Consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 2002, No. 35), beginning August 11, 2002.)

    c. Determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in subdivisions (a)(1) and (a)(2) of California Code of Regulations, title 5, section 53006, have been in place a reasonable period of time (three years or longer). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 2002, No. 35), beginning August 11, 2002.)

    d. Monitor the staffing rate for the significantly underrepresented group in the specified job category or categories on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question if significant underrepresentation persists. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

14. Be ultimately responsible for making measurable progress toward the goals established/equal employment opportunity by methods described in the district's faculty and staff diversity plan/equal employment opportunity plan. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

15. Design the administrative structure created by any delegation of authority to the affirmative action officer/equal employment officer or others in such a manner so as to ensure prompt and effective implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23) beginning July 1, 2001.)

16. Designate in the faculty and staff diversity plan/equal employment opportunity plan a single officer, who may be the affirmative action officer/equal employment opportunity officer, for ensuring complaints of violations of the equal employment opportunity program regulations (excluding those based on disability or gender), filed pursuant to California Code of Regulations, title 5, section 53026, are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored (excluding ensuring that the selection procedure is based solely on job-related

criteria and monitoring for adverse impact) as required by California Code of Regulations, title 5, sections 53023 and 53024. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23), beginning July 1, 2001.)

17. Actively recruit from both within and outside the district work force to attract qualified applicants for all new openings except as provided by California Code of Regulations, title 5, section 53021, subdivision (b). (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Active recruitment shall include focused outreach to historically underrepresented groups. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. Active recruitment shall include outreach to ensure all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning August 11, 2002.)

    c. Open recruitment applies to all new full-time and part-time openings in all job categories and classifications, including but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

18. Recruit at least statewide for full-time faculty and educational administrator positions, and at minimum, seek qualified applicants listed in the California Community Colleges Faculty and Staff Diversity Registry/Equal Employment Opportunity Registry. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

19. Recruit part-time faculty positions separately for each new opening or by annually establishing a pool of eligible candidates. In either case, full and open recruitment is required consistent with California Code of Regulations, title 5, section 53021. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

20. Notify the Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee established pursuant to California Code of Regulations, title 5, section 53005 and the Chancellor, at least ten working days prior to offering the position to a candidate, if the district believes justification exists for use of any of the exceptions listed in section 53021, subdivision(b). (Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

21. Comply with the district's established hiring procedures and afford all qualified district employees the opportunity to apply even where in-house or promotional only recruitment is permitted under California Code of Regulations, title 5, section 53005, subdivision (b).

(Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 2002, No. 35), beginning July 1, 2001.)

22. Include sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students in job requirements for faculty and administrative positions. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

23. Review job specifications, excluding any "desired" or "required"/"required," "desired," or "preferred" qualifications beyond the state minimum qualifications (set forth in Subchapter 4 of Cal. Code Regs., tit. 5, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws, excluding section 504 of the Rehabilitation Act, and Title IX of Education Amendments of 1972. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

24. Afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability, in the district's application for employment. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

25. Keep information regarding an applicant's gender, ethnicity, and/or disability provided in an application for employment confidential. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

26. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that expected representation has been achieved for historically underrepresented groups. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

27. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that any failure to obtain projected representation for any group defined in terms of ethnicity is not due to discriminatory recruitment procedures. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

28. Extend the application deadline and conduct additional focused recruitment for historically underrepresented groups for which expected representation has not been achieved, if necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

29. Extend the application deadline and conduct additional recruitment, which eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants, if necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

30. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when the expected representation of historically underrepresented

groups is achieved, or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

31. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

32. Analyze the composition of the qualified applicant pool to ensure that no group defined in terms of ethnicity is adversely impacted as defined by California Code of Regulations, title 5, section 53001, subdivision (m) (Register 96, No. 23)/subdivision (a) (Register 2002, No. 35), after the analysis to ensure that expected representation has been achieved for historically underrepresented groups (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23))/after the analysis to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35)) and before the selection process continues. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

33. Take effective steps to address adverse impact on any group defined in terms of ethnicity found in the district's applicant pool before the selection process is continued. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

34. Provide all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to the Chancellor upon request. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 2002, No. 35), beginning July 1, 2001.)

35. Design all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 2002, No. 35), beginning July 1, 2001.)

36. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to ensure that they do not have an adverse impact, as defined by California Code of Regulations, title 5, section 53001, subdivision (m), on any group defined in terms of ethnicity. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

37. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse impact as defined in California Code of Regulations, title 5, section 53001, subdivision

(a) on any group defined in terms of ethnicity, and to detect and address any adverse impact on any group defined in terms of ethnicity which does occur. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

38. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group defined in terms of ethnicity before the selection process resumes if monitoring under California Code of Regulations, title 5, section 53024, subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted such ethnic group. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

39. Update a goal established prior to July 12, 2002 for persons with disabilities, set a new target date for achieving projected representation in a job category or categories, and concurrently comply with California Code of Regulations, title 5, section 53006, subdivisions (a)(1), (a)(2), and (b) with respect to persons with disability, if significant underrepresentation still exists in the job category or categories. (Cal. Code Regs., tit. 5, § 53025, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

40. Implement California Code of Regulations, title 5, section 53006, subdivisions (a)(1) and (a)(2) concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where underrepresentation was found to exist. Goals are to remain in effect only until projected representation has been achieved for that group in the category or categories in question. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

41. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force, until the chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

42. Establish a process permitting any person (excluding employees and applicants for employment) to file a complaint alleging that the requirements of the affirmative action and equal employment opportunity program/equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. This excludes the establishment of a process permitting an employee filing a complaint alleging a violation of the equal employment opportunity program regulations on the basis of disability or gender (i.e. failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Cal. Code Regs., tit. 5, § 53020); failure to provide reasonable accommodations (see Cal. Code Regs., tit. 5, § 53020); and employment discrimination on the basis of disability and gender in district employee selection procedures). (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

43. Forward immediately to the Chancellor a copy of the complaint. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

44. Provide a written investigative report within 90 days if required by the Chancellor. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

45. Process complaints which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

46. Submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23) beginning July 1, 2001 and ending on August 10, 2002.)

47. Report the staffing rate of persons with disabilities by a separate survey as directed by the Chancellor's Office, until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by California Code of Regulations, title 5, section 53004. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53034 (Register 2002, No. 35), beginning July 1, 2001. There is no evidence in the record indicating whether a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by title 5, section 53004. As a result, staff cannot determine an end date for this activity.)

(3) Student Equity (Ed. Code, §§ 212, 212.5, 213, 214, 221.5, 221.7, 66010.2, 66010.7, 66016, 66030, 66251, 66252, 66261, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, and 72011-72014; and Cal. Code Regs., Tit. 5, § 54220):[250]

This section addresses the provision of community college services, classes, and programs on an equal basis to all students. The claimants have pled code sections addressing nondiscrimination (Ed. Code, §§ 212, 212.5, 213, 214, 221.5, 221.7), code sections from the Sex Equity in Education Act (Ed. Code, §§ 66251, 66252, 66261.5, 66262, 66262.5, 66263, 66264, 66270, 66271.7, 66281.5, 66290, 66291, 66292, and 66292.3), general provisions applicable to the three segments of higher education (Ed. Code, §§ 66010.2, 66010.7, 66016, and 66030), and nondiscrimination provisions applicable specifically to community college districts (Ed. Code, §§ 72011-72014). In addition, this section addresses the adoption of a student equity plan (Cal. Code Regs., tit. 5, § 54220).

[250] Although the claimants have pled the "Student Equity: Guidelines for Developing a Plan" issued by the Academic Senate for California Community Colleges as part of the "student equity" section, the guidelines do not constitute an executive order, and as a result, is not within the Commission's jurisdiction. Thus, the "Student Equity Guidelines for Developing a Plan" will not be addressed in this section.

a. Background:

Some of the law governing educational equity was originally adopted to be applicable to both K-12 school districts and postsecondary institutions, including community college districts.[251] In 1998, legislation was enacted to create parallel legislative schemes governing educational equity, one for K-12 school districts (Ed. Code, § 200 et seq.) and one for postsecondary educational institutions (Ed. Code, § 66250 et seq.).[252] Although community college districts were included in the legislative scheme applicable to postsecondary educational institutions, Education Code section 72012, which was added as part of the legislation, required community colleges to comply with part of the K-12 school district legislative scheme (Ed. Code, §§221.5 and 221.6) in addition to the postsecondary legislative scheme. Education Code section 72012 continued to require community colleges to comply with a portion of the K-12 school district legislative scheme until 2007.[253] Thus, during the reimbursement period for this test claim (starting July 1, 2001), community college districts were subject to parts of both the K-12 school district and the postsecondary educational district statutory schemes.[254] The claimants have pled some of the "parallel" code sections, and for ease of discussion, this analysis will address these sections together when appropriate. It is also necessary to note that the Commission is not taking jurisdiction over the code sections from the K-12 school district statutory scheme as applicable to K-12 school districts, rather these sections are being analyzed as applicable to community college districts.

b. Education Code sections 221.5, 66010.2, 66010.7, 66281.5, 66290, 66291, 66292, 66292.3, and 72012; and California Code of Regulations, title 5, section 54220 require community college districts to engage in activities.

Institutional Goals and Intersegmental Collaboration: (Ed. Code, §§ 66010.2 and 66010.7)

In 1959, a study titled, "A Master Plan for Higher Education in California, 1960-75 (Master Plan)" was prepared primarily to address the need to differentiate the functions of the segments of higher education and rapidly increasing enrollments.[255] Legislation was enacted to implement some of the recommendations of the Master Plan, including the Donahoe Higher Education Act (Ed. Code, §§ 66000-67400), which outlines the general mission and structure of governance for

[251] Former Education Code section 210, as added by Statutes 1982, chapter 1117.

[252] Statutes 1998, chapter 914.

[253] Statutes 2007, chapter 569, section 51. The 2007 version of Education Code section 72012 removes reference to the K-12 legislative scheme (Ed. Code, § 200 et seq.), and replaces it with reference to the postsecondary educational institution legislative scheme (Ed. Code, § 66250 et seq.).

[254] Test Claim number 02-TC-31, was filed June 23, 2003. See Government Code section 17557, subdivision (e).

[255] Education Code section 66002, as added by Statutes 1991, chapter 1198.

each of the three public higher education segments (the University of California (UC), the California State University (CSU), and the California Community Colleges).[256]

Sections 66010.2 and 66010.7 were enacted as part of Assembly Bill number 617 (AB 617).[257] AB 617 was enacted in response to the 1989 report "California Faces…California's future: Education for Citizenship in a Multicultural Democracy," that affirmed the achievements of the basic structure of the Master Plan and identified new challenges for California's institutions of higher education. As part of AB 617 the Legislature enacted Education Code sections 66002 and 66003, which set forth the legislative findings and intent for the Donahoe Higher Education Act. Noting the dramatic change in ethnic composition that California was undergoing, and that the state's future economic, social, and cultural development depends on ensuring that all citizens have opportunities to contribute their best to society, the Legislature found, among other things, that California must support an educational system which prepares all Californians for responsible citizenship and meaningful careers in a multicultural society.[258] In addition, Education Code section 66003 provides, "It is the intent of the Legislature to outline in statute the broad policy and programmatic goals of the master plan and to expect higher education segments to be accountable for attaining those goals."

In the context of the Legislature's findings and intent to outline in statute the broad policy and programmatic goals of the Master Plan, sections 66010.2 and 66010.7 were enacted as part of the "Comprehensive Mission Statement" (Ed. Code, §§ 66010.1-66010.8) of the Donahoe Higher Education Act. The plain language of sections 66010.2 and 66010.7 requires community college districts to engage in the following activities:

1. Provide access to education, and the opportunity for educational success, for all qualified Californians. (Ed. Code, § 66010.2, subd. (a) (Stats. 1991, ch. 1198).)
2. Provide quality teaching and programs of excellence for their students, providing all students the opportunity to address issues, including ethical issues, that are central to their full development as responsible citizens. (Ed. Code, § 66010.2, subd. (b) (Stats. 1991, ch. 1198).)
3. Provide educational equity not only through a diverse and representative student body and faculty, but also through educational environments in which each person, regardless of race, gender, age, disability, or economic circumstances, has a reasonable chance to fully develop his or her potential. (Ed. Code, § 66010.2, subd. (c) (Stats. 1991, ch. 1198).)
4. Undertake intersegmental collaboration and coordination (with the University of California and California State University) particularly when it can do any of the following: (1) enhance the achievement of the institutional missions shared by the segments; (2) provide more effective planning of postsecondary education on a statewide basis; (3) facilitate achievement of the goals of educational equity; (4) enable public and

[256] Former Education Code sections 22500-22705, as added by Statutes 1960, 1st Extraordinary Session, chapter 49; renumbered to Education Code section 66000 et seq., by Statutes 1976, chapter 1010.

[257] Statutes 1991, chapter 1198.

[258] Education Code section 66003, Statutes 1991, chapter 1198.

independent higher education to meet more effectively the educational needs of a geographic region; and (5) facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions. (Ed. Code, § 66010.7, subd. (b) (Stats. 1991, ch. 1198).)

5. Work together with other leaders responsible for public (University of California and California State University) and independent institutions of higher education and the Superintendent of Public Instruction to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels. (Ed. Code, § 66010.7, subd. (c) (Stats. 1991, ch. 1198).)

Equal Opportunity in Athletics: (Ed. Code, § 66016)

Section 66016 provides in relevant part, "It is the intent of the Legislature that opportunities for participation in intercollegiate athletic programs in the community colleges … be provided on as equal a basis as is practicable to male and female students." This language, sets forth legislative intent, but does not require community college districts to engage in any activity. In addition, even if the language of section 66016 were construed to require an activity associated with providing equal opportunity to participate in intercollegiate athletic programs, there is no requirement to offer intercollegiate athletic programs.[259] Thus, staff finds that Education Code section 66016, as amended in by Statutes 1983, chapter 143, does not require community college districts to engage in any activities.

Educational Equity: (Ed. Code, § 66030)

Section 66030, as added in 1991,[260] sets forth the Legislature's intent regarding educationally equitable environments in institutions of higher education, including community colleges. Section 66030 provides, in relevant part:

> It is the responsibility of the governing boards of institutions of higher education to ensure and maintain multicultural learning environments free from all forms of discrimination and harassment in accordance with state and federal law. (Ed. Code, § 66030,subd. (b) (Stats. 1991, ch. 1198).)

The above language of section 66030, subdivision (b), provides that it is the responsibility of community college districts to engage in a specific act "*in accordance with state and federal law*," or in other words, to comply with state and federal law. However, if "state and federal law" do not require community college districts to ensure or maintain multicultural learning environments free from all forms of discrimination and harassment, then there is nothing for community college districts to act in accordance with. Thus, staff finds that Education Code

[259] Education Code section 78223, as added by Statutes 1981, chapter 470, provides that districts may enforce rules and regulations relating to eligibility for and participation in intercollegiate athletics, however, does not require the creation of intercollegiate athletics. The discretionary decision to offer intercollegiate athletic programs, would trigger any alleged activity in Education Code section 66016, and as a result, would not constitute a state-mandated activity under *Kern High School Dist.*

[260] Statutes 1991, chapter 1198.

section 66030, as added by Statutes 1991, chapter 1198, in and of itself, does not require community college districts to engage in any activities.

In addition, even if "state and federal law" require community college districts to ensure and maintain multicultural environments free from all forms of discrimination and harassment, the activity of acting in accordance with these laws is already required of community college districts due to the fact that they are subject to those laws, and as a result, cannot constitute a new program.

Sex Equity in Education: (Ed. Code, sections 221.5, 221.7, 66271.7, and 72012:

Education Code section 72012, as amended in 1998,[261] provides that community colleges "shall comply with [Education Code] Sections 221.5, 221.7, and 66016, relating to sex discrimination." As amended in 1998,[262] Education Code sections 221.5 and 221.7 are part of the legislative scheme addressing sex equity in education for K-12 school districts. In addition to being subject to a portion of the K-12 legislative scheme, community college districts are subject to a parallel scheme applicable to postsecondary educational institutions. Education Code section 66271.7, as amended in 1998,[263] is the parallel provision to Education Code sections 221.5 and 221.7.

Section 66271.7, subdivisions (a)-(e) provide:

> (a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.
>
> (b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.
>
> (c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.
>
> (d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.
>
> (e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.
>
> (f) The Legislature finds and declares that female students are not accorded opportunities for participation in community college athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities

[261] Statutes 1998, chapter 914.

[262] *Ibid.*

[263] Statutes 1998, chapter 914.

for participation in community college athletics be provided equally to male and female students and on an equitable basis to all students.

(g) Insofar as practicable, in apportioning public funds, community college district governing boards shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of the governing board of a community college district, or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and opportunities for participation shall include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(h) It is the further intent of the Legislature that females be given the same opportunity to participate in athletics and compete with other females in individual and team sports as is available to males who compete with other males in individual and team sports. Nothing in this section shall be construed to require a community college to require competition between male and female students in school-sponsored athletic programs.

As relevant to this test claim, section 221.5 is substantively the same as section 66271.7 except that section 221.5, subdivision (d), includes the following language:

> The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for grade 7 so that they may participate in the counseling sessions and decisions.

Although this provision was written to be applicable to K-12 school districts (a fact emphasized by career counseling and course selection starting at grade 7), application to community college districts (as required by section 72012) does not result in absurd results because community colleges are authorized to admit high school students.[264] However, this provision is only applicable to students attending community college districts who are not emancipated or adults as defined by Family Code section 6501.[265]

In addition, the language of section 221.7 parallels the language of subdivisions (f)-(h) of section 66271.7, except 221.7 does not contain the language of section 66271.7, subdivision (g) regarding apportioning public funds for athletic programs.

The plain language of subdivisions (a)-(c) of sections 221.5 and 66271.7 do not require community college districts to engage in any activities. Instead, subdivisions (a)-(c) of sections 221.5 and 66271.7 set forth a policy statement and prohibit community college districts from engaging in specific activities.

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[264] See Education Code section 76001.

[265] Family Code sections 6501 defines "adult" as an individual who is 18 years of age or older. See Family Code section 7050, for effect of emancipation on parental rights.

Subdivision (d) of sections 221.5 and 66271.7 require that any school personnel acting in a career counseling or course selection capacity to any pupil must affirmatively explore with the pupil the possibility of careers, or course leading to careers, that are nontraditional for that pupil's sex. In addition, as quoted above, subdivision (d) of section 221.5 also requires that parents or the legal guardian of the pupil be notified in a general manner at least once in advance of career counseling and course selection.

Subdivisions (f) and (h) of section 66271.7 and section 221.7 do not require community college districts to engage in any activities. Rather, the plain language of those subdivisions sets forth findings by the Legislature, legislative intent, and prohibit community colleges from engaging in activities.

The language of subdivision (g) of section 66271.7, however, does require community college districts to engage in the following activity:

> Apportion public fund amounts available for athletics to ensure that equitable amounts will be allocated for all students, insofar as practicable, except that allowances may be made for differences in the costs of various athletic programs. (Ed. Code, § 66271.7, subd. (g) (Stats. 1998, ch. 914).)

Education Code section 72012 requires community college districts to comply with sections 221.5, 221.7, and 66016. However, most of sections 221.5, 221.7, and all of section 66016 either do not require community college districts to engage in any activities or prohibit community college districts from engaging in an activity. To the extent that sections 221.5 and 221.7 require activities, section 72012 requires community college districts to comply with those activities.

Pursuant to the above discussion, staff finds Education Code sections 72012 and 221.5, subdivision (d); 66271.7, subdivisions (d) and (g) require the following activities:

1. Notify the parents or legal guardian of a student, who is under the age of 18 and not emancipated, in a general manner at least once in the manner prescribed by Education Code section 48980, in advance of career counseling and course selection so that they may participate in the counseling sessions and decisions. (Ed. Code, §§ 221.5, subd. (d); and 72012 (Stats. 1998, ch. 914).)
2. Any school personnel acting in a career counseling or course selection capacity to any pupil must affirmatively explore with the pupil the possibility of careers, or course leading to careers, that are nontraditional for that pupil's sex. (Ed. Code, §§ 221.5, subd. (d); 72012; and 66271.7, subd. (d) (Stats. 1998, ch. 914).)
3. Apportion public fund amounts available for athletics to ensure that equitable amounts will be allocated for all students, insofar as practicable, except that allowances may be made for differences in the costs of various athletic programs. (Ed. Code, § 66271.7, subd. (g) (Stats. 1998, ch. 914).)

Sex Equity in Education – Policy, Legislative Findings, Prohibited Discrimination: (Ed. Code, §§ 66251, 66252, 66270, and 66281.5)

Sections 66251, 66252, 66270, 66281.5, like section 66271.7 discussed above, are part of the legislative scheme addressing sex equity in postsecondary educational institutions (Sex Equity in Education Act).[266]

Sections 66251, as amended 1999,[267] sets forth the policy behind the Sex Equity in Education Act. Section 66251 provides:

> It is the policy of the State of California to afford all persons, regardless of disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, equal rights and opportunities in the postsecondary institutions of the state. The purpose of [the Sex Equity in Education Act] is to prohibit acts that are contrary to that policy and to provide remedies therefor [*sic*].[268]

The plain language of section 66251 does not impose any state-mandated activities on community college districts. Instead, the language sets forth a policy prohibiting discrimination in the postsecondary institutions of the state. Thus, staff finds that Education Code section 66251 does not mandate community college districts to engage in any activities.

Section 66252, as added in 1998,[269] sets forth the findings and intent of the Legislature in regard to the Sex Equity in Education Act. Section 66252 provides:

> (a) All students have the right to participate fully in the educational process, free from discrimination and harassment.
>
> (b) California's postsecondary educational institutions have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.
>
> (c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.

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[266] The Sex Equity in Education Act was amended and renamed the Equity in Higher Education Act by Statutes 2007, chapter 569. For purposes of this analysis, the Education Code sections 66250-66292.4 will continue to be referred to as the Sex Equity in Education Act.

[267] Statutes 1999, chapter 587.

[268] Penal Code section 422.6, subdivision (a), cites to Penal Code section 422.55, which defines "hate crime" as a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: (1) Disability, (2) Gender, (3) Nationality, (4) Race or ethnicity, (5) Religion, (6) Sexual orientation, and (7) Association with a person or group with one or more of these actual or perceived characteristics.

[269] Statutes 1998, chapter 914.

(d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.

(e) There is an urgent need to teach and inform students in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase students' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in postsecondary educational institutions and in society as a means of responding to potential harassment and hate violence.

(f) It is the intent of the Legislature that each postsecondary educational institution undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of students to equal educational opportunity.

(g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 (a)), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.

As stated by the court in *Shamsian v. Department of Conservation*, "the Courts of Appeal have repeatedly held, a statement of legislative intent may not give rise to a mandatory duty."[270] In *Shamsian* the plaintiff argued that the language of a statute imposed a joint mandatory duty on the defendants, including the state government, to engage in specific activities associated with recycling of beverage containers. However, noting that the statute was unofficially entitled "Legislative Findings and Declarations," that the statute begins with the phrase "The Legislature finds and declares as follows…," and that the language of the statute, "simply states, 'The responsibility to provide convenient, efficient, and economical redemption opportunities rests jointly with manufacturers, distributors, …, and the Department of Conservation,'" the court in *Shamsian* found that a plain reading of the statute in question reveals that it is a statement of legislative intent.[271] As a result, the court found that the statute does not impose a mandatory duty.

[270] Exhibit H, *Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 633-634.

[271] *Ibid*.

Here, section 66252 is unofficially entitled, "Legislative findings and intent."[272] In addition, like the statutory language in *Shamsian*, section 66252 sets forth broad findings, statements of intent, and statements of the rights, obligations, and needs of the parties involved in postsecondary education (i.e. students and postsecondary institutions). Thus, staff finds that section 66252, is simply a statement of legislative intent, and as a result, does not require community college districts to engage in any activities.

Section 66270, as amended in 1999,[273] addresses prohibited discrimination in community college districts. Section 66270 provides:

> No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of section 422.6 of the Penal Code in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.[274]

The claimants assert that section 66270 requires community college districts to ensure that no person is subject to discrimination in the community colleges on the basis of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, color, ancestry, sexual orientation, or perception by others that the person has any of these characteristics.[275] However, the plain language of section 66270 prohibits certain activities, it does not require any activities. As a result, staff finds that Education Code section 66270 does not require community college districts to engage in any activities.

As amended 1998,[276] section 66281.5 addresses the state and community college district policy prohibiting sexual harassment as a form of sexual discrimination. Section 66281.5 was enacted as part of the Sex Equity in Education Act (Ed. Code, §§ 66250-66292.4). The plain language of section 66281.5, subdivision (a), sets forth the state's policy against sexual harassment in postsecondary educational institutions, and provides that "the purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies." Subdivision (b) requires each postsecondary educational institution in the State of California to have a written policy on sexual harassment. Subdivision (b) also provides that "[i]t is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document." Subdivision (c) requires the policy to include

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[272] See West's Annotated California Codes, Education Code section 66252. Similarly, Deering's Annotated California Codes, Education Code section 66252, is entitled "Findings and legislative intent."

[273] Statutes 1999, chapter 587.

[274] After Test Claim 02-TC-31 was filed, Education Code section 66270 was subsequently amended by Statutes 2007, chapter 569.

[275] Exhibit F. See *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 357.

[276] Statutes 1998, chapter 914.

information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing remedies. Subdivision (d) requires a copy of the policy to be displayed in a prominent location on campus. Subdivision (e) requires that the policy, as it pertains to students, to be provided to new students as part of any orientation program conducted at the beginning of each session. Subdivision (f) requires school employees to receive the policy at the beginning of each year or at the time a new employee is hired. Subdivision (g) requires a copy of the policy to appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

The claimant asserts that section 66281.5 also requires a community college to implement its written policy on sexual harassment. However, the plain language of the section does not provide for implementation of a community college's policy, rather section 66281.5 sets forth the *notice* requirements of a community college's sexual harassment policy, and thus, implementation of the sexual harassment policy is not required by Education Code section 66281.5.

Therefore, staff finds that Education Code section 66281.5 requires community college districts to engage in the following activities:

1. Have a written policy on sexual harassment, which includes information on where to obtain specific rules and procedures for reporting charges of sexual harassment and for pursuing remedies (Ed. Code, § 66281.5, subd. (b) and (c) (Stats. 1998, ch. 914).)
2. Display the policy in a prominent location on campus (Ed. Code, § 66281.5, subd. (d) (Stats. 1998, ch. 914).)
3. Provide the policy, as it pertains to students, to new students as part of any orientation program conducted at the beginning of each session (Ed. Code, § 66281.5, subd. (e) (Stats. 1998, ch. 914).)
4. Provide school employees with the policy at the beginning of each year or at the time a new employee is hired (Ed. Code, § 66281.5, subd. (f) (Stats. 1998, ch. 914).)
5. Include a copy of the policy in any publication of the community college that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the college (Ed. Code, § 66281.5, subd. (g) (Stats. 1998, ch. 914).)

Sex Equity in Education – Assurance of Compliance, Reports, Responsibilities, Remedies: (Ed. Code, §§ 66290, 66291, 66292, and 66292.3)

Sections 66290, 66291, 66292, and 66292.3 are part of the compliance and enforcement provisions of the Sex Equity in Education Act. As added or amended in 1998,[277] these code sections require community college districts to engage in the following activities:

1. Provide assurance to the agency administering state financial assistance or state student financial aid, in the manner required by the funding agency, that each program or activity will be conducted in compliance with the Sex Equity in Education Act and all other applicable provisions of state law prohibiting discrimination on the basis of sex, prior to receipt of any state financial assistance or state student financial aid. (Ed. Code, § 66290 (Stats. 1998, ch. 914).)

[277] Statutes 1998, chapter 914.

2. Submit timely, complete, and accurate compliance reports to the Chancellor's Office, as that entity may require. (Ed. Code, § 66291, subd. (a) (Stats. 1998, ch. 914).)
3. Make all reports submitted pursuant to Education Code section 66291, subdivision (a), available for public inspection during business hours. (Ed. Code, § 66291, subd. (b) (Stats. 1998, ch. 914).)
4. Have primary responsibility for ensuring that community college district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability. (Ed. Code, § 66292, subd. (a) (Stats. 1998, ch. 914).)
5. Advise persons who have filed a complaint pursuant to the Sex Equity in Education Act, with the community college district that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 66292.3, subd. (b) (Stats. 1998, ch. 914).)
6. Make the information regarding the availability of civil remedies to people who have filed a complaint pursuant to the Sex Equity in Education Act available by publication in appropriate informational materials. (Ed. Code, § 66292.3, subd. (b) (Stats. 1998, ch. 914).)

Nondiscrimination: (Ed. Code, §§ 72011, 72013, and 72014)

Education Code sections 72011, 72013, and 72014, as added in 1981 and 1990;[278] generally address discrimination in community colleges. None of the code sections, however, impose any activities on community college districts.

As added in 1981, section 72011 provides, "Every community college district shall provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex." The language of section 72011 is prohibitory in nature. The use of the language "without regard to" indicates that community college districts must not provide its services, classes, and programs with regard to race, religious creed, color, national origin, ancestry, handicap, or sex. In other words, section 72011 prohibits the provision of community college district services in a discriminatory manner, and as a result, does not require community college districts to engage in any activities.

As added in 1990, section 72013 states that "handicap" and "disability" have the same meaning for purposes of access to community college services, classes, and programs, and for all references within Education Code sections 70900-88551. Section 72013 indicates the Legislature's intent to define two different terms in the same manner, however, it does not require any activity of community college districts.

Section 72014, as added in 1990, provides in relevant part:

> No funds under the control of a community college district shall ever be used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated

[278] Education Code section 72011, as added by Statutes 1981, chapter 470; and Education Code sections 72013 and 72014, as added by Statutes 1990, chapter 1372.

therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin.

The above language prohibits community college districts from using community college district funds for specified purposes, it does not, however, require districts to engage in any activities.

Thus, staff finds that Education Code sections 72011, as added by Statutes 1981, chapter 470; 72013 and 72014, as added by Statutes 1990, chapter 1372; do not require community college districts to engage in any activities.

Student Equity Plan: (Cal. Code Regs., tit. 5, § 54220 (Register 98, No. 3))

As amended in 1998,[279] section 54220 addresses the adoption of student equity plans by community college districts. The plain language of section 54220 requires community college districts to adopt a student equity plan which is required to include specific information. In addition, the activity of adopting a student equity plan is a one-time activity. Although section 54220 requires an activity, it also provides that community college districts "shall adopt, *by July 1, 1993*, a student equity plan … ." Under Government Code section 17557, subdivision (e), the reimbursement period for these test claims begins on July 1, 2001.[280] Because the one-time activity required by section 54220 was required to be done outside the period of reimbursement and there is no evidence in the record that a district incurred costs for this activity within the reimbursement period, it is not reimbursable under article XIII B, section 6 of the California Constitution.

(i) Summary of Required Activities:

1. Provide access to education, and the opportunity for educational success, for all qualified Californians. (Ed. Code, § 66010.2, subd. (a) (Stats. 1991, ch. 1198).)
2. Provide quality teaching and programs of excellence for their students, providing all students the opportunity to address issues, including ethical issues that are central to their full development as responsible citizens. (Ed. Code, § 66010.2, subd. (b) (Stats. 1991, ch. 1198).)
3. Provide educational equity not only through a diverse and representative student body and faculty, but also through educational environments in which each person, regardless of race, gender, age, disability, or economic circumstances, has a reasonable chance to fully develop his or her potential. (Ed. Code, § 66010.2, subd. (c) (Stats. 1991, ch. 1198).)
4. Undertake intersegmental collaboration and coordination (with the University of California and California State University) particularly when it can do any of the following: (1) enhance the achievement of the institutional missions shared by the segments; (2) provide more effective planning of postsecondary education on a statewide basis; (3) facilitate achievement of the goals of educational equity; (4) enable public and independent higher education to meet more effectively the educational needs of a

[279] Register 98, number 3.

[280] The claimants filed Test Claim 02-TC-25, and Test Claim 02-TC-31, on June 5, 2003, and June 23, 2003, alleging reimbursable costs mandated by the state under Article XIII B resulting from the Education Code sections and the regulations.

geographic region; and (5) facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions. (Ed. Code, § 66010.7, subd. (b) (Stats. 1991, ch. 1198).)

5. Work together with other leaders responsible for public (University of California and California State University) and independent institutions of higher education and the Superintendent of Public Instruction to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels. (Ed. Code, § 66010.7, subd. (c) (Stats. 1991, ch. 1198).)
6. Notify the parents or legal guardian of a student, who is under the age of 18 and not emancipated, in a general manner at least once in the manner prescribed by Education Code section 48980, in advance of career counseling and course selection so that they may participate in the counseling sessions and decisions. (Ed. Code, §§ 221.5, subd. (d); and 72012 (Stats. 1998, ch. 914).)
7. Any school personnel acting in a career counseling or course selection capacity to any pupil must affirmatively explore with the pupil the possibility of careers, or course leading to careers, that are nontraditional for that pupil's sex. (Ed. Code, §§ 221.5, subd. (d); 72012; and 66271.7, subd. (d) (Stats. 1998, ch. 914).)
8. Apportion public fund amounts available for athletics to ensure that equitable amounts will be allocated for all students, insofar as practicable, except that allowances may be made for differences in the costs of various athletic programs. (Ed. Code, § 66271.7, subd. (g) (Stats. 1998, ch. 914).)
9. Have a written policy on sexual harassment, which includes information on where to obtain specific rules and procedures for reporting charges of sexual harassment and for pursuing remedies (Ed. Code, § 66281.5, subd. (b) and (c) (Stats. 1998, ch. 914).)
10. Display the policy on sexual harassment in a prominent location on campus (Ed. Code, § 66281.5, subd. (d) (Stats. 1998, ch. 914).)
11. Provide the policy on sexual harassment, as it pertains to students, to new students as part of any orientation program conducted at the beginning of each session (Ed. Code, § 66281.5, subd. (e) (Stats. 1998, ch. 914).)
12. Provide school employees with the policy on sexual harassment at the beginning of each year or at the time a new employee is hired (Ed. Code, § 66281.5, subd. (f) (Stats. 1998, ch. 914).)
13. Include a copy of the policy on sexual harassment in any publication of the community college that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the college (Ed. Code, § 66281.5, subd. (g) (Stats. 1998, ch. 914).)
14. Provide assurance to the agency administering state financial assistance or state student financial aid, in the manner required by the funding agency, that each program or activity will be conducted in compliance with the Sex Equity in Education Act and all other applicable provisions of state law prohibiting discrimination on the basis of sex, prior to

receipt of any state financial assistance or state student financial aid. (Ed. Code, § 66290 (Stats. 1998, ch. 914).)

15. Submit timely, complete, and accurate compliance reports to the Chancellor's Office, as that entity may require. (Ed. Code, § 66291, subd. (a) (Stats. 1998, ch. 914).)
16. Make all reports submitted pursuant to Education Code section 66291, subdivision (a), available for public inspection during business hours. (Ed. Code, § 66291, subd. (b) (Stats. 1998, ch. 914).)
17. Have primary responsibility for ensuring that community college district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability. (Ed. Code, § 66292, subd. (a) (Stats. 1998, ch. 914).)
18. Advise persons who have filed a complaint pursuant to the Sex Equity in Education Act, with the community college district that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 66292.3, subd. (b) (Stats. 1998, ch. 914).)
19. Make the information regarding the availability of civil remedies to people who have filed a complaint pursuant to the Sex Equity in Education Act available by publication in appropriate informational materials. (Ed. Code, § 66292.3, subd. (b) (Stats. 1998, ch. 914).)

    c. Some of the requirements of Education Code sections 221.5, 66010.2, 66010.7, 66281.5, 66290, 66291, 66292, 66292.3, and 72012 constitute federal mandates not subject to article XIII B, section 6 of the California Constitution.

The Chancellor's Office asserts that the regulations pled in this section are not subject to article XIII B, section 6 of the California Constitution, arguing that the activities that may be required by the Education Code sections are federally mandated by the federal Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, the Age Discrimination Act of 1975.[281]

Article XIII B places spending limits on both the state and local governments, however, costs mandated by courts or federal law are expressly excluded from these spending limits. Article XIII B, section 9, subdivision (b), of the California Constitution excludes from either the state or local spending limit any "[a]ppropriations required to complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly."

When analyzing federal law in the context of a test claim under article XIII B, section 6, the court in *Hayes v. Commission on State Mandates* held that "[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not required a state subvention. Instead, such costs are exempt from local agencies' taxing and

[281] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004," pgs. 19-21.

spending limitations" under article XIII B.[282] However, when federal law imposes a mandate on the state, and the state "freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."[283]

The following discussion will address whether the activities required by the test claim statutes and regulations are mandated by the following federal laws that were cited by the Chancellor's Office and/or section 53000: (1) Equal Protection Clause of the Fourteenth Amendment (U.S. Const., 14th Amend., § 1); (2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); (3) Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.); (4) the Americans with Disabilities Act (42 U.S.C. § 12111 et seq.); (5) section 504 of the Rehabilitation Act (29 U.S.C. § 794); and (6) the Age Discrimination Act (42 U.S.C. § 6101).

(i) Federal Requirements

Equal Protection Clause of the Fourteenth Amendment (U.S. Const., 14th Amend., § 1)

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, "No State shall … deny to any person within its jurisdiction the equal protection of the laws." As discussed above in the "equal employment opportunity" section of this analysis, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution does not require any specific administrative activities. Instead, the Equal Protection Clause generally prohibits different treatment of similarly situated individuals in community college programs and activities.

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.)

Title VI of the Civil Rights Act of 1964 (Title VI) (codified at 42 U.S.C. § 2000d et seq.) and its implementing regulations (34 C.F.R. § 100 et seq.) prohibit discrimination on the basis of race, color, or national origin with respect to "any program or activity receiving Federal financial assistance."[284] Compliance with Title VI and its implementing regulations is a condition for the receipt of any federal financial assistance, and thus, community college districts are not *legally* required to comply with Title VI and its implementing regulations.

The courts, however, have acknowledged that federal financial assistance to education is pervasive.[285] Failure to comply with the provisions of Title VI and its implementing regulations can result in termination of, refusal to grant, or refusal to continue federal financial assistance to the program in which noncompliance has been found.[286] Community college districts also face

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[282] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593 citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; see also, Government Code section 17513.

[283] *Hayes, supra*, 11 Cal.App.4th at p. 1594.

[284] Title 42 United States Code section 2000d.

[285] *Hayes, supra*, 11 Cal.App.4th 1564, 1584.

[286] Title 42 United States Code section 2000d-1 and 34 Code of Federal Regulations part 100.8 (2009). See U.S. Department of Justice, Civil Rights Division, Title VI Legal Manual (Jan. 11, 2001) pgs. 93-98, for discussion of the "pin-point" provision of section 2000d-1.

lawsuits by private individuals and the United States Department of Justice to enforce Title VI.[287] In addition, the purpose of Title VI is to "halt federal funding of entities that violate a prohibition of discrimination similar to that of the Constitution."[288] As a result, staff finds that Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and its implementing regulations (34 C.F.R. § 100 et seq.) constitute a federal mandate.

As relevant to the "Student Equity" section of this analysis, Title VI requires:

> No person in the United States shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under all the operations of a community college district receiving federal financial assistance. (42 U.S.C. § 2000d, and 34 C.F.R. § 100.3 (2009).)

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.):

Title IX of Education Amendments of 1972 (Title IX) (codified at 20 U.S.C. § 1681 et seq.) and its implementing regulations (34 C.F.R. § 106 et seq.) prohibit discrimination on the basis of sex under any education program or activity receiving federal financial assistance, including employment.[289] Title IX applies to community college districts as recipients of federal financial assistance.[290] In addition, Title IX and its implementing regulations extend to all of the operations of a college, including employment, any part of which is extended federal financial assistance.[291] However, compliance with Title IX is a condition of receipt of all federal financial assistance, and as a result, community college districts are not *legally* required to comply with the provisions of Title IX.

However, community college districts face practical compulsion to comply with Title IX and its implementing regulations. A failure to comply with Title IX and its implementing regulations can result in the termination of federal financial assistance to the program in which

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[287] Exhibit H, *Barnes v. Gorman* (2002) 536 U.S. 181, 185, finding that Title VI has an implied private right of action. For referral to the Department of Justice to initiate enforcement proceedings see, Title 42 United States Code section 2000d-1 34 Code of Federal Regulations part 100.8 (2009).

[288] Exhibit H, *Regents of University of California v. Bakke* (1978) 438 U.S. 265, 284.

[289] Title 20 United States Code section 1681; 34 Code of Federal Regulations part 106.51; and *North Haven Bd. of Ed. v. Bell* (1982) 456 U.S. 512, 530-535.

[290] *Hayes, supra,* 11 Cal.App.4th 1564, 1584, noting the pervasiveness of federal financial assistance in education.

[291] Title 20 United States Code section 1687. See *Sharif by Salahuddin v. New York State Educ. Dept.* (S.D.N.Y. 1989) 709 F.Supp. 345, 360 fn. 34, noting that Congress broadened the scope of title 20 United States Code section 1687 with the 1988 adoption of the Civil Rights Restoration Act, such that receipt of federal financial assistance results in institution-wide application of Title IX.

noncompliance is found.[292] In addition, community college districts face litigation by aggrieved employees or applicants for employment for violations of Title IX.[293] Further, the principal objectives of Title IX are to avoid the use of federal resources to support discriminatory practices and to provide individual citizens effective protection against those discriminatory practices.[294] Thus, staff finds the requirements of Title IX (20 U.S.C. § 1681 et seq.) and its implementing regulations constitute a federal mandate (34 C.F.R. § 106 et seq.).

As relevant to the "Student Equity" section of this analysis, Title IX requires:

1. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under all the operations of a community college district receiving federal financial assistance. (20 U.S.C. 1681.)
2. Notify all students and employees of the name, office address and telephone number of the employee or employees appointed to coordinate community college district efforts to comply with and carry out district responsibilities under 34 Code of Federal Regulations part 106 et seq., including any investigation of any complaint communicated to the district alleging noncompliance or any act that would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8, subd. (a) (2009).)
3. Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8, subd. (b) (2009).)
4. Implement specific and continuing steps to notify applicants for admission and employment, and employees, that it does not discriminate on the basis of sex and that it is required by Title IX and 34 Code of Federal Regulations part 106 et seq. not to discriminate in such a manner. (34 C.F.R. § 106.9, subd. (a) (2009).)
5. Prominently include a statement of the policy prohibiting discrimination on the basis of sex, required under 34 Code of Federal Regulations part 106.9, subdivision (a), in each announcement, bulletin, catalog, application form which it makes available to any person listed in part 106.9, subdivision (a), including applicants for admission and employment, students, and employees, or which is otherwise used in connection with the recruitment of students or employees. (34 C.F.R. § 106.9, subd. (b) (2009).)
6. Provide equal athletic opportunity for members of both sexes, if the district operates or sponsors interscholastic, intercollegiate, club, or intramural athletics. (34 C.F.R. § 106.41, subd. (c) (2009).)
    a. Equal opportunity is determined based on various factors, including: (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes; (2) The provision of equipment

[292] Title 20 United States Code section 1682. See *Dougherty County School System v. Bell* (5th Cir. 1982) 694 F.2d 78, 81, finding that deferring school's federal funding must be done on a program by program basis.

[293] Exhibit H, *Cannon v. University of Chicago* (1979) 441 U.S. 677, 717, in which the court found an implied private right of action under Title IX.

[294] *Id*. at p. 704.

> and supplies; (3) Scheduling of games and practice time; (4) Travel and per diem allowance; (5) Opportunity to receive coaching and academic tutoring; (6) Assignment and compensation of coaches and tutors; (7) Provision of locker rooms, practice facilities and services; (8) Provision of medical and training facilities and services; (9) Provision of housing and dining facilities and services; (10) Publicity; and (11) Failure to provide necessary funds for teams for one sex. (34 C.F.R. § 106.41, subd. (c) (2009).)

The Americans with Disabilities Act (42 U.S.C. § 12131-12134):

The Chancellor's Office also cites generally to the Americans with Disabilities Act (ADA) as federal law that may require activities to ensure student equity which would constitute a federal mandate.[295] In the "equal employment opportunity" section of this analysis, staff found that Title I of the ADA which specifically applies to employment discrimination based on disability constitutes a federal mandate. This section focuses on discrimination in services to students, and thus, will focus on Title II of the ADA, which consists of Title 42 United States Code sections 12131-12134, and its implementing regulations (28 C.F.R. § 35 et seq.). Title II of the ADA prohibits the exclusion of individuals from participation in or the denial of benefits to individuals of the services, programs, or activities of a public entity due to disability, or for the entity to subject an individual to discrimination based on disability. This prohibition applies to community college districts as "public entities" without regard to the receipt of any federal funds. [296]

As relevant to the "Student Equity" section of this analysis, Title II of the ADA requires:

> No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a community college district, or be subjected to discrimination by any district. (42 U.S.C. § 12132 and 28 C.F.R. § 35.130, subd. (a) (2009).)

Section 504 of the Rehabilitation Act (29 U.S.C. § 794):

The Rehabilitation Act of 1973, section 504 (Section 504) (29 U.S.C. § 794) and its implementing regulations (34 C.F.R. § 104 et seq.) prohibits discrimination on the basis of physical or mental disability with respect to "any program or activity receiving federal financial assistance." For the same reasons discussed in the "equal employment opportunity" section, Section 504 constitutes a federal mandate.

As relevant to the "Student Equity" section of this analysis, Section 504 requires:

> No otherwise qualified individual with a disability, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of,

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[295] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004," p. 21.

[296] Title 42 United States Code sections 12132 and 12131(1)(A) and (B). See, *Coleman v. Zatechka* (D.Neb. 1993) 824 F.Supp. 1360, 1367-1368, finding that the University of Nebraska was established by the Nebraska Legislature as a state institution, and is properly considered a "public entity" within the meaning of the ADA. Similarly, California Community Colleges were established by the California Legislature and fall within the meaning of public entity.

or be subjected to discrimination under all operations of a community college district receiving Federal financial assistance. (29 U.S.C. § 794 and 34 C.F.R. 104.4 (2009).)

The Age Discrimination Act (42 U.S.C. § 6101):

The Age Discrimination Act of 1975 (codified at 42 U.S.C. § 6101 et seq.) and its implementing regulations (34 C.F.R. 110) prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.[297] The Age Discrimination Act defines "programs or activities" in the same manner as Title IX, Title VI, and Section 504, thus, the Age Discrimination Act extends to all of the operations of a college, any part of which is extended federal financial assistance. As noted above, courts have acknowledged that federal financial assistance to education is pervasive.[298] Also like Section 504, Title IX, and Title VI, violations of the Age Discrimination Act can result in the termination of federal funding to the program in which noncompliance is found.[299] In addition, community college districts face litigation by the Attorney General to enforce the Age Discrimination Act and its implementing regulations.[300] Thus, staff finds that the Age Discrimination Act constitutes a federal mandate.

As relevant to the "Student Equity" section of this analysis, the Age Discrimination Act requires:

1. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under all operations of a community college district receiving Federal financial assistance. (42 U.S.C. § 6101; and 45 C.F.R. § 90.12.)
2. Have primary responsibility to ensure that its programs or activities are in compliance with the Age Discrimination Act and shall take steps to eliminate violations of the Act. (34 C.F.R. § 110.20.)

(ii) The activities required by the Student Equity statutes that are also mandated by federal law are not subject to reimbursement under Article XIII B, section 6 of the California Constitution.

The following activities required by the Student Equity statutes (Ed. Code, §§ 221.5, 66010.2, 66271.7, 66281.5, 66290, 66291, 66292, 66292.3, and 72012) are mandated or partially mandated by federal law. To the extent that the activities are required by federal law, they do not constitute state-mandated activities subject to article XIII B, section 6 of the California Constitution.

[297] Title 42 United States Code section 6102.

[298] *Hayes, supra*, 11 Cal.App.4th 1564, 1584.

[299] Title 42 United States Code section 6104 and 34 Code of Federal Regulations part 110.35 (2009).

[300] *Ibid*.

Institutional Goals and Sex Equity in Education – Legislative Findings, Responsibilities: (Ed. Code, §§ 66010.2, subd. (b) (Stats. 1991, ch. 1198); and 66292, subd. (a) (Stats. 1998, ch. 914))

Education Code section 66010.2, subdivision (b), as added in 1991,[301] and Education Code section 66292, subdivision (a), as it existed in 1998,[302] require community college districts to engage in the following activities:

1. Provide educational equity not only through a diverse and representative student body and faculty but also through educational environments in which each person, regardless of race, gender, age, disability, or economic circumstances, has a reasonable chance to fully develop his or her potential. (Ed. Code, § 66010.2, subd. (c) (Stats. 1991, ch. 1198).)
2. Have primary responsibility for ensuring that community college district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability. (Ed. Code, § 66292, subd. (a) (Stats. 1998, ch. 914).)

These requirements, read in the context of the statutory scheme in which they are contained, require that community college districts do not provide programs and activities containing impermissible discrimination.[303] However, as discussed above, community college districts are subject to the requirements of the Equal Protection Clause, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and the Age Discrimination Act. As an entity directly subject to the federal mandates prohibiting discrimination based on ethnicity, religion,[304] age, sex color, or disability, it is also the entity that is primarily responsible for ensuring that its programs and activities are in compliance with the federal mandates, and thus for providing equal educational opportunity.

Thus, staff finds that the activities required by Education Code sections 66010.2, subdivision (b), as added by Statutes 1991, chapter 1198; and 66292, subdivision (a), as it existed in Statutes 1998, chapter 914, constitute federal mandates, and therefore, are not subject to reimbursement under article XIII B, section 6 of the California Constitution.

Sex Equity in Education – Written Policy: (Ed. Code, § 66281.5, subds. (b), (c), (e), and (f) (Stats. 1998, ch. 914))

As added in 1998, Education Code section 66281.5, subdivisions (b), (c), (e), and (f),[305] requires community college districts to engage in the following activities:

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[301] Statutes 1991, chapter 1198.

[302] Statutes 1998, chapter 914.

[303] See Education Code sections 66002 and 66030 as added by Statutes 1991, chapter 1198, and 66250-66252, as added by Statutes 1998, chapter 914.

[304] Classifications, or discrimination, on the basis of religion has been held to violate the Equal Protection Clause, see *Christian Science Reading Room Jointly Maintained v. City and County of San Francisco* (9th Cir. 1986) 784 F.2d 1010.

[305] Statutes 1998, chapter 914.

1. Have a written policy on sexual harassment, which includes information on where to obtain specific rules and procedures for reporting charges of sexual harassment and for pursuing remedies (Ed. Code, § 66281.5, subd. (b) and (c)).
2. Provide the policy on sexual harassment, as it pertains to students, to new students as part of any orientation program conducted at the beginning of each session (Ed. Code, § 66281.5, subd. (e)).
3. Provide school employees with the policy on sexual harassment at the beginning of each year or at the time a new employee is hired (Ed. Code, § 66281.5, subd. (f)).

Title IX requires community college districts to engage in the following activities:

1. Notify all students and employees of the name, office address and telephone number of the employee or employees appointed to coordinate community college district efforts to comply with and carry out district responsibilities under 34 Code of Federal Regulations part 106 et seq., including any investigation of any complaint communicated to the district alleging noncompliance or any act that would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8, subd. (a) (2009).)
2. Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8, subd. (b) (2009).)
3. Implement specific and continuing steps to notify applicants for admission and employment, and employees, that it does not discriminate on the basis of sex and that it is required by Title IX and 34 Code of Federal Regulations part 106 et seq. not to discriminate in such a manner. (34 C.F.R. § 106.9, subd. (a) (2009).)
4. Prominently include a statement of the policy prohibiting discrimination on the basis of sex, required under 34 Code of Federal Regulations part 106.9, subdivision (a), in each announcement, bulletin, catalog, application form which it makes available to any person listed in part 106.9, subdivision (a), including applicants for admission and employment, students, and employees, or which is otherwise used in connection with the recruitment of students or employees. (34 C.F.R. § 106.9, subd. (b) (2009).)

Courts have recognized claims of sexual harassment as part of Title IX's prohibition against gender discrimination.[306] In addition, the Office for Civil Rights (OCR) of the United States

[306] Exhibit H, *Davis v. Monroe County Bd. of Educ.* (1999) 526 U.S. 629, 650, stating "Having previously determined that 'sexual harassment' is 'discrimination' in the school context under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute." See also, *Franklin v. Gwinnett County Public Schools* (1992) 503 U.S. 60, 75. In which the court states, "Unquestionably, Title IX placed on the Gwinnet County Public Schools the duty not to discriminate on the basis of sex, and 'when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex.'"

Department of Education,[307] maintains that sexual harassment is prohibited as gender discrimination by Title IX and the regulations adopted by OCR to implement Title IX.[308]

Education Code section 66281.5, subdivisions (b) and (c) require districts to have a written policy on sexual harassment, including information on where to obtain specific rules and procedures for reporting charges of sexual harassment. As shown above, however, community college districts are mandated by Title IX and its implementing regulations to have a policy against gender discrimination, including sexual harassment, and to notify all students and employees of the name and contact information of the employee designated to carry out the grievance procedures for allegations of gender discrimination.[309] In addition, this policy is required to be prominently included in announcements, bulletins, catalogs, and applications, and thus, the policy must be written.[310] As a result, the activity required by Education Code section 66281.5, subdivisions (b) and (c), constitute a federal mandate, and as a result is not subject to article XIII B, section 6 of the California Constitution.

Education Code section 66281.5, subdivisions (e) and (f), require that the policy on sexual harassment be given to new students as part of any orientation program conducted at the beginning of each session and to employees each year or when a new employee is hired. As noted above, Title IX's implementing regulations require community college districts to implement specific steps to notify applicants for admission and employment, and employees that it does not discriminate on the basis of gender, and to include the policy against sexual harassment in various publications used for recruitment purposes or made available to applicants for admission and employment, students, and employees. However, Title IX's implementing regulations do not specify that community college districts are required to provide the sexual harassment policy to students as part of an orientation program at the beginning of each session, or to provide the policy on sexual harassment to employees each time a new employee is hired or at the beginning of each year. Thus, staff finds that the requirements of Education Code section 66281.5, subdivisions (e), and (f), as added by Statutes 1998, chapter 914, exceed the requirements of federal law, and as a result, do not constitute federal mandates.

If the requirements of a test claim statute or regulation go beyond or exceed the requirements of federal law, those activities are *not* federal mandates and *may* be subject to article XIII B, section 6. For example, in *Long Beach Unified School Dist. v. State of California*, federal law required school districts to take reasonable steps to alleviate racial and ethnic segregation, and the federal courts suggested certain approaches to comply. State law was enacted to require specific action of school districts to alleviate segregation. The court found that the state law requirements went beyond federal constitutional and case law requirements or suggestions and

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[307] The primary federal agency responsible for implementing and enforcing Title IX in institutions of education.

[308] Exhibit H, Office for Civil Rights of the United States Department of Education, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, (Jan. 2001), pgs. 3-4.

[309] 34 Code of Federal Regulations part 106.9 (a).

[310] 34 Code of Federal Regulations part 106.9 (b).

mandated a higher level of service.[311] In addition, Government Code section 17556, subdivision (c), requires the Commission to not find costs mandated by the state if "[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and imposes costs mandated by the federal government, *unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation*." (Emphasis added.) In this case, there are several activities that exceed the requirements of federal law and are, thus, not mandated by federal law.

(iii) Summary of Required Activities that Exceed the Requirements of Federal Law:

1. Provide access to education, and the opportunity for educational success, for all qualified Californians. (Ed. Code, § 66010.2, subd. (a) (Stats. 1991, ch. 1198).)
2. Provide quality teaching and programs of excellence for their students, providing all students the opportunity to address issues, including ethical issues that are central to their full development as responsible citizens. (Ed. Code, § 66010.2, subd. (b) (Stats. 1991, ch. 1198).)
3. Undertake intersegmental collaboration and coordination (with the University of California and California State University) particularly when it can do any of the following: (1) enhance the achievement of the institutional missions shared by the segments; (2) provide more effective planning of postsecondary education on a statewide basis; (3) facilitate achievement of the goals of educational equity; (4) enable public and independent higher education to meet more effectively the educational needs of a geographic region; and (5) facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions. (Ed. Code, § 66010.7, subd. (b) (Stats. 1991, ch. 1198).)
4. Work together with other leaders responsible for public (University of California and California State University) and independent institutions of higher education and the Superintendent of Public Instruction to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels. (Ed. Code, § 66010.7, subd. (c) (Stats. 1991, ch. 1198).)
5. Notify the parents or legal guardian of a student, who is under the age of 18 and not emancipated, in a general manner at least once in the manner prescribed by Education Code section 48980, in advance of career counseling and course selection so that they may participate in the counseling sessions and decisions. (Ed. Code, §§ 221.5, subd. (d); and 72012 (Stats. 1998, ch. 914).)
6. Any school personnel acting in a career counseling or course selection capacity to any pupil must affirmatively explore with the pupil the possibility of careers, or course leading to careers, that are nontraditional for that pupil's sex. (Ed. Code, §§ 221.5, subd. (d); 72012; and 66271.7, subd. (d) (Stats. 1998, ch. 914).)

[311] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 173.

7. Apportion public fund amounts available for athletics to ensure that equitable amounts will be allocated for all students, insofar as practicable, except that allowances may be made for differences in the costs of various athletic programs. (Ed. Code, § 66271.7, subd. (g) (Stats. 1998, ch. 914).)
8. Provide the policy on sexual harassment, as it pertains to students, to new students as part of any orientation program conducted at the beginning of each session (Ed. Code, § 66281.5, subd. (e) (Stats. 1998, ch. 914).)
9. Provide school employees with the policy on sexual harassment at the beginning of each year or at the time a new employee is hired (Ed. Code, § 66281.5, subd. (f) (Stats. 1998, ch. 914).)
10. Display the policy on sexual harassment in a prominent location on campus (Ed. Code, § 66281.5, subd. (d) (Stats. 1998, ch. 914).)
11. Include a copy of the policy on sexual harassment in any publication of the community college that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the college (Ed. Code, § 66281.5, subd. (g) (Stats. 1998, ch. 914).)
12. Provide assurance to the agency administering state financial assistance or state student financial aid, in the manner required by the funding agency, that each program or activity will be conducted in compliance with the Sex Equity in Education Act and all other applicable provisions of state law prohibiting discrimination on the basis of sex, prior to receipt of any state financial assistance or state student financial aid. (Ed. Code, § 66290 (Stats. 1998, ch. 914).)
13. Submit timely, complete, and accurate compliance reports to the Chancellor's Office, as that entity may require. (Ed. Code, § 66291, subd. (a) (Stats. 1998, ch. 914).)
14. Make all reports submitted pursuant to Education Code section 66291, subdivision (a), available for public inspection during business hours. (Ed. Code, § 66291, subd. (b) (Stats. 1998, ch. 914).)
15. Advise persons who have filed a complaint pursuant to the Sex Equity in Education Act, with the community college district that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 66292.3, subd. (b) (Stats. 1998, ch. 914).)
16. Make the information regarding the availability of civil remedies to people who have filed a complaint pursuant to the Sex Equity in Education Act available by publication in appropriate informational materials. (Ed. Code, § 66292.3, subd. (b) (Stats. 1998, ch. 914).)

While these activities go beyond the requirements of federal law, staff finds that some of these activities are not mandated by the state because they are downstream requirements triggered by discretionary decisions by community college districts.

d. Some of the activities required by Education Code sections 221.5, 66010.2, 66010.7, 66271.7, 66281.5, 66290, 66291, 66292.3, and 72012 do not constitute state-mandated activities.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The court held that when analyzing state mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[312]

Sex Equity in Education: (Ed. Code, §§ 221.5, subd. (d); 66271.7, subds. (d) and (g); and 72012 (Stats. 1998, ch. 914))

Education Code sections 221.5, subdivision (d); 66271.7, subdivision (d), and 72012, as these sections existed in 1998,[313] require community college districts to engage in the following activities:

1. Notify the parents or legal guardian of a student, who is under the age of 18 and not emancipated, in a general manner at least once in the manner prescribed by Education Code section 48980, in advance of career counseling and course selection so that they may participate in the counseling sessions and decisions. (Ed. Code, §§ 221.5, subd. (d); and 72012 (Stats. 1998, ch. 914).)
2. Any school personnel acting in a career counseling or course selection capacity to any pupil must affirmatively explore with the pupil the possibility of careers, or course leading to careers, that are nontraditional for that pupil's sex. (Ed. Code, §§ 221.5, subd. (d); 72012; and 66271.7, subd. (d) (Stats. 1998, ch. 914).)
3. Apportion public fund amounts available for athletics to ensure that equitable amounts will be allocated for all students, insofar as practicable, except that allowances may be made for differences in the costs of various athletic programs. (Ed. Code, § 66271.7, subd. (g) (Stats. 1998, ch. 914).)

However, notifying parents or legal guardians of students prior to career counseling and course selection, and affirmatively exploring careers or courses leading to careers that are nontraditional for a pupil's sex, are downstream activities triggered by community college districts offering career and course counseling. Similarly, the apportionment of public funds available for athletics to ensure that equitable amounts are allocated for all students is a downstream activity triggered by community college districts offering athletic programs. Thus, it is necessary to determine whether offering career counseling, course counseling, and athletic programs are discretionary activities.

Although, California Code of Regulations, title 5, section 51018 provides that the "governing board of a community college district shall provide and publicize an organized and functioning counseling program in each college within the district," for the same reasons discussed in section "(II)(B)(1). Minimum Conditions (Cal. Code Regs., tit. 5, §§ 51010 and 51026)," of this analysis addressing title 5, sections 51010 and 51026, the requirements of title 5, section 51018,

[312] *Kern High School Dist., supra,* 30 Cal 4th at p. 743.

[313] Statutes 1998, chapter 914.

are a condition to be entitled to state aid, and as a result do not constitute state-mandated activities. In addition, Education Code section 72620, which is cited as a reference for section 51018, provides that the "governing board of a community college district *may* provide in each college within the district an organized and functioning counseling program," but does not require that a district provide a counseling program. However, Education Code section 66736, which is part of the statutory scheme addressing the transfer functions of public post secondary institutions (UC, CSU, and community colleges), provides in relevant part:

> Each community college district governing board shall ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students.

Thus, as part of its *transfer* functions a community college district is required to have *course* counseling. However, staff has not found a statute or regulation, nor is there evidence in the record, that requires community college districts to provide *career* counseling.

In regard to athletic programs, there are no statutes requiring community college districts to provide athletic programs. Education Code section 78223 provides community college districts the authority to enforce rules and regulations relating to eligibility for and participation in intercollegiate athletics, however, it does not require districts to use this authority or to provide intercollegiate athletics.

Thus, staff finds the activities required by Education Code sections 221.5, subdivision (d); 66271.7, subdivision (d), and 72012, as they relate to career counseling do not constitute state-mandated activities under *Kern High School Dist*. Also, Education Code section 66271.7, subdivision (g), does not constitute a state-mandated activity under *Kern High School Dist*. However, the following activities required by Education Code sections 221.5, subdivision (d); 66271.7, subdivision (d), and 72012, do constitute state-mandated activities:

1. Notify the parents or legal guardian of a student, who is under the age of 18 and not emancipated, in a general manner at least once in the manner prescribed by Education Code section 48980, in advance of course selection so that they may participate in the counseling sessions and decisions. (Ed. Code, §§ 221.5, subd. (d); and 72012 (Stats. 1998, ch. 914).)
2. Any school personnel acting in a course selection capacity to any pupil must affirmatively explore with the pupil the possibility of careers, or course leading to careers, that are nontraditional for that pupil's sex. (Ed. Code, §§ 221.5, subd. (d); 72012; and 66271.7, subd. (d) (Stats. 1998, ch. 914).)

(i) Summary of State-Mandated Activities:

1. Provide access to education, and the opportunity for educational success, for all qualified Californians. (Ed. Code, § 66010.2, subd. (a) (Stats. 1991, ch. 1198).)
2. Provide quality teaching and programs of excellence for their students, providing all students the opportunity to address issues, including ethical issues that are central to their full development as responsible citizens. (Ed. Code, § 66010.2, subd. (b) (Stats. 1991, ch. 1198).)

3. Undertake intersegmental collaboration and coordination (with the University of California and California State University) particularly when it can do any of the following: (1) enhance the achievement of the institutional missions shared by the segments; (2) provide more effective planning of postsecondary education on a statewide basis; (3) facilitate achievement of the goals of educational equity; (4) enable public and independent higher education to meet more effectively the educational needs of a geographic region; and (5) facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions. (Ed. Code, § 66010.7, subd. (b) (Stats. 1991, ch. 1198).)
4. Work together with other leaders responsible for public (University of California and California State University) and independent institutions of higher education and the Superintendent of Public Instruction to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels. (Ed. Code, § 66010.7, subd. (c) (Stats. 1991, ch. 1198).)
5. Notify the parents or legal guardian of a student, who is under the age of 18 and not emancipated, in a general manner at least once in the manner prescribed by Education Code section 48980, in advance of course selection so that they may participate in the counseling sessions and decisions. (Ed. Code, §§ 221.5, subd. (d); and 72012 (Stats. 1998, ch. 914).)
6. Any school personnel acting in a course selection capacity to any pupil must affirmatively explore with the pupil the possibility of careers, or course leading to careers, that are nontraditional for that pupil's sex. (Ed. Code, §§ 221.5, subd. (d); 72012; and 66271.7, subd. (d) (Stats. 1998, ch. 914).)
7. Display the policy on sexual harassment in a prominent location on campus. (Ed. Code, § 66281.5, subd. (d) (Stats. 1998, ch. 914).)
8. Provide the policy on sexual harassment, as it pertains to students, to new students as part of any orientation program conducted at the beginning of each session. (Ed. Code, § 66281.5, subd. (e).)
9. Provide school employees with the policy on sexual harassment at the beginning of each year or at the time a new employee is hired. (Ed. Code, § 66281.5, subd. (f).)
10. Include a copy of the policy on sexual harassment in any publication of the community college that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the college (Ed. Code, § 66281.5, subd. (g) (Stats. 1998, ch. 914).)
11. Provide assurance to the agency administering state financial assistance or state student financial aid, in the manner required by the funding agency, that each program or activity will be conducted in compliance with the Sex Equity in Education Act and all other applicable provisions of state law prohibiting discrimination on the basis of sex, prior to receipt of any state financial assistance or state student financial aid. (Ed. Code, § 66290 (Stats. 1998, ch. 914).)
12. Submit timely, complete, and accurate compliance reports to the Chancellor's Office, as that entity may require. (Ed. Code, § 66291, subd. (a) (Stats. 1998, ch. 914).)

13. Make all reports submitted pursuant to Education Code section 66291, subdivision (a), available for public inspection during business hours. (Ed. Code, § 66291, subd. (b) (Stats. 1998, ch. 914).)

14. Advise persons who have filed a complaint pursuant to the Sex Equity in Education Act, with the community college district that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 66292.3, subd. (b) (Stats. 1998, ch. 914).)

15. Make the information regarding the availability of civil remedies to people who have filed a complaint pursuant to the Sex Equity in Education Act available by publication in appropriate informational materials. (Ed. Code, § 66292.3, subd. (b) (Stats. 1998, ch. 914).)

e. Some of the state-mandated activities imposed by Education Code sections 66010.2 and 66010.7 (Stats. 1991, ch. 1198) constitute a new program or higher level of service.

To constitute a "new program or higher level of service" the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement a state policy.[314] In addition, the requirements must be new in comparison with the pre-existing scheme and must be intended to provide an enhanced service to the public.[315] To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.[316]

The Chancellor's Office argues that Civil Code section 51 (Unruh Act) imposes on all businesses in California the requirements imposed on community colleges by the statutes plead in the "Student Equity" section of this analysis, and "[b]ecause the Claimant is already required by general law to do these things, these actions cannot be the basis of a claim for reimbursement."[317] Thus, the Chancellor's Office argument suggests that the state-mandated activities imposed by the student equity statutes are not unique to local government (here, community college districts), and as a result, do not constitute a "program" subject to article XIII B, section 6 of the California Constitution. The Unruh Act provides in relevant part:

> All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.[318]

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[314] *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.

[315] *San Diego Unified School Dist*., *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

[316] *Ibid*.

[317] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004," p. 21.

[318] Civil Code section 51, subdivision (b).

The Unruh Act, however, does not require any of the specific administrative acts required by the student equity statutes, including activities associated with course counseling, and submitting reports to the Chancellor's Office. Instead, all of the activities mandated by Education Code sections 221.5, 66010.2, 66010.7, 66271.7, 66281.5, 66290, 66294, 66292.3, and 72012 impose unique requirements on community college districts that do not apply to all residents and entities in the state in order to implement a state policy to "support an educational system which prepares all Californians for responsible citizenship and meaningful careers in a multicultural society…."[319] Thus, staff finds that these state-mandated activities constitute programs. Some of these programs, however, are not new as compared with the legal requirements in effect immediately prior to the enactment of the state-mandated activities as discussed below, and therefore do not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Institutional Goals: (Ed. Code, § 66010.2 (Stats. 1991, ch. 1198))

The claimants pled Education Code section 66010.2, as added in 1991.[320] As added in 1991, Education Code section 66010.2 mandates community college districts to engage in the following activities:

1. Provide access to education, and the opportunity for educational success, for all qualified Californians. (Ed. Code, § 66010.2, subd. (a) (Stats. 1991, ch. 1198).)
2. Provide quality teaching and programs of excellence for their students, providing all students the opportunity to address issues, including ethical issues that are central to their full development as responsible citizens. (Ed. Code, § 66010.2, subd. (b) (Stats. 1991, ch. 1198).)

Since at least 1974, however, community college districts have been directed in various Education Code sections to provide access to education and the opportunity for educational success for all qualified Californians. Former Education Code section 25502.5, as amended in 1974, required community colleges to provide for the education of students in the 13th and 14th grades and for the education of such adults and minors as may properly be admitted but who are not classified by grade.[321] Similarly former Education Code section 22651, as amended in 1974, directed community colleges to offer instruction through but not beyond the second year of college.[322] By requiring community colleges to provide for the education or to offer instruction to qualified individuals, community colleges were providing access to education and the opportunity for educational success. The requirement for community college districts to provide education was continuous since at least 1974.[323] Thus, prior to 1975 community college districts

[319] Education Code section 66002, subdivision (e)(3), setting forth the legislative findings of the Donahoe Higher Education Act.

[320] Statutes 1991, chapter 1198. See , Exhibit A, Test Claim 02-TC-31, p. 130.

[321] Statutes 1974, chapter 989.

[322] Statutes 1974, chapter 921.

[323] Former Education Code section 22502.5, was renumbered to former Education Code section 78000 by Statutes 1976, chapter 1010, and repealed by Statutes 1977, chapter 36. However, former Education Code section 22651, was renumbered to former Education Code

were already required to provide for all qualified Californians access to education and an opportunity for educational success.

In addition, in 1960 the Legislature identified the three segments of public higher education as community colleges, state colleges (CSU), and the UC, and set forth the role of each segment in higher education.[324] Along with identifying the three segments of public higher education and the roles of each segment, the Legislature required, "Each segment of public higher education [to] strive for excellence in its sphere."[325] The "sphere" as described in 1960 was to offer instruction through the 14th grade level. This requirement exists today at Education Code section 66013.[326] Thus, community college districts were already required to strive for excellence in the programs and teaching in the programs that districts offered since 1960. However, prior to 1991, community college districts were not required to provide as part of its quality teaching and programs of excellence, opportunities to address issues, including ethical issues that are central to their full development as responsible citizens.

As a result, staff finds that Education Code section 66010.2, subdivisions (a) and (b), as added by Statutes 1991, chapter 1198, do constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution, except for the following activity:

> Provide all students the opportunity to address issues, including ethical issues that are central to their full development as responsible citizens, in community college programs. (Ed. Code, § 66010.2, subd. (b) (Stats. 1991, ch. 1198).)

Intersegmental Collaboration: (Ed. Code, § 66010.7, subds. (b) and (c) (Stats. 1991, ch. 1198))

The claimants pled Education Code section 66010.7, as added in 1991.[327] Education Code section 66010.7, subdivisions (b) and (c), mandates community college districts to engage in the following activities:

1. Undertake intersegmental collaboration and coordination (with the University of California and California State University) particularly when it can do any of the following: (1) enhance the achievement of the institutional missions shared by the segments; (2) provide more effective planning of postsecondary education on a statewide basis; (3) facilitate achievement of the goals of educational equity; (4) enable public and independent higher education to meet more effectively the educational needs of a geographic region; and (5) facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the

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section 66701 by Statutes 1976, chapter 1010, and renumbered again to Education Code section 66010.4, as added by Statutes 1990, chapter 1587.

[324] Former Education Code section 22500, as added by Statutes 1961, 1st Extraordinary Session, chapter 49.

[325] Former Education Code section 22502, as added by Statutes 1961, 1st Extraordinary Session, chapter 49.

[326] Former Education Code section 22502 was renumbered to Education Code section 66013, by Statutes 1976, chapter 1010.

[327] Statutes 1991, chapter 1198. See Exhibit F; *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at p. 130.

transfer from the California Community Colleges to four-year institutions. (Ed. Code, § 66010.7, subd. (b) (Stats. 1991, ch. 1198).)

2. Work together with other leaders responsible for public (University of California and California State University) and independent institutions of higher education and the Superintendent of Public Instruction to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels. (Ed. Code, § 66010.7, subd. (c) (Stats. 1991, ch. 1198).)

Former Education Code section 23521, as added in 1974, required community college districts to:[328]

> Undertake intersegmental cooperation when it can: (1) enhance the achievement of the institutional missions shared by the segments; (2) enable public and private postsecondary education to more effectively meet the educational needs of a geographical region; and (3) provide more effective planning of postsecondary education on a statewide basis.

Former Education Code section 23521 required intersegmental cooperation by a community college district "when it can" achieve specific goals. Section 66010.7 requires intersegmental cooperation by a community college district "particularly when it can" achieve specific goals. With the addition of the word "particularly," even if a community college district cannot achieve the specified goals the district still must engage in intersegmental cooperation.

Thus, prior to 1991, community college districts were already required to engage in intersegemental cooperation when it could (1) enhance the achievement of the institutional missions shared by the segments; (2) enable public and private postsecondary education to more effectively meet the educational needs of a geographical region; and (3) provide more effective planning of postsecondary education on a statewide basis. Thus, this activity required by Education Code section 66010.7, subdivision (b), as added 1991, is not new as compared with the legal requirements in effect immediately prior to its enactment.

However, the following state-mandated activity imposed by Education Code section 66010.7, subdivision (b), constitutes a new program or higher level of service:

> Undertake intersegmental collaboration and coordination (with the University of California and California State University) particularly when it can do any of the following: (1) facilitate achievement of the goals of educational equity; (2) facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions. Excluding instances in which cooperation can (1) enhance the achievement of the institutional missions shared by the segments; (2) enable public and private postsecondary education to more effectively meet the educational needs of a geographical

[328] Education Code section 23521,as added by Statutes 1974, chapter 921, was renumbered to Education Code section 22670, by Statutes 1976, chapter 1079, which was renumbered to Education Code section 66020, by Statutes 1976, chapter 1010, operative April 30 1977.

region; and (3) provide more effective planning of postsecondary education on a statewide basis. (Ed. Code, § 66010.7, subd. (b) (Stats. 1991, ch. 1198).)

In addition, immediately prior 1991 community college districts were not required to engage in the activity mandated by Education Code section 66010.7, subdivision (c), as added in 1991, and thus, constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Sex Equity in Education: (Ed. Code, §§ 221.5, 66271.7, and 72012)

The claimants pled Education Code sections 221.5, 66271.7, and 72012, as amended in 1998.[329] These Education Code sections mandate community college districts to engage in the following activities:

1. Notify the parents or legal guardian of a student, who is under the age of 18 and not emancipated, in a general manner at least once in the manner prescribed by Education Code section 48980, in advance of course selection so that they may participate in the counseling sessions and decisions. (Ed. Code, §§ 221.5, subd. (d); and 72012 (Stats. 1998, ch. 914).)
2. Any school personnel acting in a course selection capacity to any pupil must affirmatively explore with the pupil the possibility of careers, or course leading to careers, that are nontraditional for that pupil's sex. (Ed. Code, §§ 221.5, subd. (d); 72012; and 66271.7, subd. (d) (Stats. 1998, ch. 914).)

However, immediately prior to 1998 former Education Code section 40, as it existed in 1990,[330] required the same activities as required by Education Code sections 221.5 and 66271.7, above.[331]

Thus, the requirements of Education Code sections 221.5, subdivision (d), as made applicable to community college districts by Education Code section 72012; and Education Code section 66271.7, subdivision (d), do not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Sex Equity in Education – Written Policy, Assurance of Compliance, Compliance Reports, Remedies: (Ed. Code, §§ 66281.5, subds. (d) and (g); 66290; 66291, subds. (a) and (b); 66292.3, subd. (b) (Stats. 1998, ch. 914))

The claimants pled Education Code sections 66281.5, 66290, 66291, and 66292.3, as added in 1998.[332] These Education Code sections mandate community college districts to engage in the following activities:

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[329] Statutes 1998, chapter 914. See Exhibit F; *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at pgs. 132 and 140.

[330] Statutes 1990, chapter 1372.

[331] Former Education Code section 40, was made applicable to community college districts by Education Code section 72012 (Stats. 1981, ch. 470) and former Education Code section 72015 (Stats. 1990, ch. 1372).

[332] Statutes 1998, chapter 914. See Exhibit F; *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," at pgs. 136-139.

1. Display the policy on sexual harassment in a prominent location on campus. (Ed. Code, § 66281.5, subd. (d) (Stats. 1998, ch. 914).)
2. Provide the policy on sexual harassment, as it pertains to students, to new students as part of any orientation program conducted at the beginning of each session. (Ed. Code, § 66281.5, subd. (e).)
3. Provide school employees with the policy on sexual harassment at the beginning of each year or at the time a new employee is hired. (Ed. Code, § 66281.5, subd. (f).)
4. Include a copy of the policy on sexual harassment in any publication of the community college that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the college (Ed. Code, § 66281.5, subd. (g) (Stats. 1998, ch. 914).)
5. Provide assurance to the agency administering state financial assistance or state student financial aid, in the manner required by the funding agency, that each program or activity will be conducted in compliance with the Sex Equity in Education Act and all other applicable provisions of state law prohibiting discrimination on the basis of sex, prior to receipt of any state financial assistance or state student financial aid. (Ed. Code, § 66290 (Stats. 1998, ch. 914).)
6. Submit timely, complete, and accurate compliance reports to the Chancellor's Office, as that entity may require. (Ed. Code, § 66291, subd. (a) (Stats. 1998, ch. 914).)
7. Make all reports submitted pursuant to Education Code section 66291, subdivision (a), available for public inspection during business hours. (Ed. Code, § 66291, subd. (b) (Stats. 1998, ch. 914).)
8. Advise persons who have filed a complaint pursuant to the Sex Equity in Education Act, with the community college district that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 66292.3, subd. (b) (Stats. 1998, ch. 914).)
9. Make the information regarding the availability of civil remedies to people who have filed a complaint pursuant to the Sex Equity in Education Act available by publication in appropriate informational materials. (Ed. Code, § 66292.3, subd. (b) (Stats. 1998, ch. 914).)

However, immediately prior to 1998 community college districts were required to engage in all of the above activities.

In 1992, former Education Code section 212.6, subdivisions (d), (e), (f), and (g), already required community college districts to display their policies on sexual harassment in a prominent location on campus, provide the policy on sexual harassment to new students as part of any orientation program conducted at the beginning of each session, provide school employees with the policy on sexual harassment at the beginning of each year or at the time a new employee is hired, and include a copy of the policy on sexual harassment in any publication of the institution that sets forth the comprehensive rules for the college.[333] In 1982, former Education Code section 250 required community college districts to provide assurance to the agency administering state financial assistance or state student financial aid that each program or activity

[333] Statutes 1992, chapter 906.

will be conducted in compliance with state law prohibiting discrimination on the basis of sex.[334] In 1982, former Education Code section 251, required community college districts to submit timely, complete, and accurate compliance reports to the Chancellor's Office, and to make all reports available for public inspection during business hours.[335] In 1988, former Education Code section 265 required community college districts to advise persons who have filed a complaint with the district that civil law remedies may also be available to complainants, and to make this information available by publication in appropriate informational materials.[336]

Thus, the above requirements of Education Code sections 66281.5, 66290, 66291, and 66292.3, do not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

(i) Summary of State-Mandated New Program or Higher Level of Service:

1. Provide all students the opportunity to address issues, including ethical issues that are central to their full development as responsible citizens, in community college programs. (Ed. Code, § 66010.2, subd. (b) (Stats. 1991, ch. 1198), beginning July 1, 2001.)
2. Undertake intersegmental collaboration and coordination (with the University of California and California State University) particularly when it can do any of the following: (1) facilitate achievement of the goals of educational equity; (2) facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions. Excluding instances in which cooperation can (1) enhance the achievement of the institutional missions shared by the segments; (2) enable public and private postsecondary education to more effectively meet the educational needs of a geographical region; and (3) provide more effective planning of postsecondary education on a statewide basis. (Ed. Code, § 66010.7, subd. (b) (Stats. 1991, ch. 1198), beginning July 1, 2001.)
3. Work together with other leaders responsible for public (University of California and California State University) and independent institutions of higher education and the Superintendent of Public Instruction to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels. (Ed. Code, § 66010.7, subd. (c) (Stats. 1991, ch. 1198), beginning July 1, 2001.)

Discrimination Complaint Procedures (Gov. Code, §§ 11135, 11136, 11137, 11138, 11139; and Cal. Code Regs., Tit. 5, §§ 59300, 59303, 59304, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330, 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360, and 59362)

This section addresses the complaint procedures for violations of state and federal antidiscrimination laws prohibiting discrimination on the basis of ethnic group identification,

[334] Statutes 1982, chapter 1117.

[335] *Ibid.*

[336] Statutes 1988, chapter 1514.

national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability in community college districts. Specifically, this section addresses Government Code sections 11135-11139, and California Code of Regulations, title 5, section 59300, 59303, 59304, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330, 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360, and 59362.

a. Background

In 1977, Government Code sections 11135-11139 were enacted to prohibit state-funded programs or activities from unlawfully denying benefits or unlawfully discriminating on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability. In addition, sections 11135-11139 require a state agency to determine if a violation of the provisions of sections 11135-11139 has occurred by a contractor, grantee, or local agency receiving state financial assistance from the agency, and if so the state agency is required to sanction the violator. Section 11138 also requires the adoption of regulations by state agencies to carry out the provisions of sections 11135-11139. The primary purpose for enacting Government Code sections 11135-11139 was to shift the burden of proving unlawful discrimination in a state-funded program from the person being discriminated against to the state agency administering the program.[337] In 1981 the Board of Governors of the California Community Colleges adopted California Code of Regulations, title 5, section 59300 et seq., pursuant to the directive in Government Code section 11138. Among other things, the regulations adopted by the Board of Governors set forth the complaint procedures within community college districts for alleged violations Government Code sections 11135-11139.

Since the enactment of the Government Code sections in 1977 and the adoption of the implementing regulations in 1981, subsequent amendments were made to the Government Code sections and implementing regulations. These amendments include specific provisions that indicate that certain federal laws are applicable to state entities covered by Government Code section 11135 et seq. Some of these amendments have occurred after the start of the reimbursement period (July 1, 2001).[338] Any substantive amendment made to the Government Code sections and the implementing regulations after the start of the reimbursement period will be addressed below where appropriate.

b. Government Code Section 11135; and California Code of Regulations, Title 5, Sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340, 59342, require some activities.

Prohibition Against Discrimination (Gov. Code, § 11135)

Government Code section 11135 addresses the prohibition of unlawful discrimination in programs and activities funded directly or receiving any financial assistance by the state. Community college districts, as entities that provide programs and activities funded directly or receive financial assistance by the state, are subject to section 11135. The claimants have pled multiple versions of section 11135, including as amended by Statutes 1994, chapter 146; Statutes

[337] Exhibit H, Senate Committee on Governmental Organization, Staff Analysis of Assembly Bill No. 803 (1976-1977 Reg. Sess.) as amended June 21, 1977.

[338] Test claim 02-TC-46 was filed June 27, 2003. See also, Government Code section 17557, subdivision (e).

2001, chapter 708; and Statutes 2002, chapter 1102, section 2.7.[339] All three versions were effective within the reimbursement of this test claim beginning on July 1, 2001.[340] As amended by Statutes 1994, chapter 146, Government Code section 11135 provides:

> (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.
>
> (b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.
>
> (c) As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment as described in paragraph (1), or (3) being regarded as having an impairment as described in paragraph (1).

Statutes 2001, chapter 708, amended Government Code section 11135, subdivision (a) by adding the language "full and equal access to" between "be unlawfully" and "denied." In addition, the language "conducted, operated, or administered by the state or by any state agency, is" between "that is" and "funded directly." Subdivision (c) was amended to provide:

> (c) As used in this section, "disability" means any mental or physical disability as defined in [Government Code] Section 12926.

In 2002, section 11135 was amended by Statutes 2002, chapter 1102, section 2.5, and became effective January 1, 2003. Government Code section 11135 was amended to add "race" and "national origin" as prohibited bases for unlawful discrimination. In addition, section 11135 was amended to require state-funded entities to comply with the section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d) and its implementing regulations. Specifically, section 11135 was amended to add subdivision (d) which provides:

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[339] Statutes 2002, chapter 1102, section 2.5 incorporates the amendments made to Government Code section 11135, by Statutes 2002, chapter 300. Pursuant to section 7 of Statutes 2002, chapter 1102, Government Code section 11135 as amended in section 2.5 became operative was amended as provided in Statutes 2002, chapter 1102, section 2.5 and chapter 300 became operative as opposed to the Statutes 2002, chapter 1102, section 2 version of Government Code section 11135.

[340] The Statutes 2001, chapter 708 version of Government Code section 11135 was effective January 1, 2002. Thus, between July 1, 2001 and December 31, 2001, the Statutes 1994, chapter 146 version was still in effect.

(d) (1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

As shown by the plain language above, all versions of subdivisions (a) and (c) of Government Code section 11135 do not impose any activities on community college districts. Rather, subdivision (a) prohibits community college districts from engaging in unlawful activities. Subdivision (c) defines "disability" as used in Government Code section 11135, however, it does not, in and of itself, require any activities.

In contrast, subdivisions (b) and (d), require community college districts to comply with federal antidiscrimination laws regarding disability. Subdivision (b) requires any program or activity funded directly by the state or that receives any financial assistance from the state to comply with the provisions of Title II of the ADA (42 U.S.C. § 12132 et seq.) and its implementing regulations. As an entity that receives state funding to provide programs and activities, community college districts are subject to the provisions of subdivision (b). It is important to note that "program or activity," includes the provisions of employment.[341]

Subdivision (d)(2) requires *state governmental entities* to comply with the accessibility requirements of section 508 of the Rehabilitation Act and its implementing regulations when developing, procuring, maintaining, or using electronic information technology. However, subdivision (d)(3) provides "Any entity that contracts with a state *or local entity* subject to *this section* for the provision of electronic or information technology … ." The language of subdivision (d)(3) suggests that community college districts are subject to the provisions of subdivision (d)(2). Courts have held that where the provisions of a statute are ambiguous or conflict, the court may look to the legislative record and committee reports to determine the

[341] "Program or activity" is undefined in Government Code section 11135, as originally enacted by Statutes 1977, chapter 972, however, the Board of Governors' original regulations (Cal. Code Regs., tit. 5, § 59310 (Register 81, No. 16)) incorporated the definitions adopted by the Secretary of the Health and Welfare Agency (see Cal. Code Regs., tit. 22, § 98100 et seq., whose terms are generally defined by § 98010), which defines the term to include "the provisions of employment."

legislative intent.[342] The Senate Rules Committee third reading analysis of Senate Bill number 105 indicates:

> This bill:
>
> [¶] … [¶]
>
> 7. Requires state entities *and state-funded entities*, in developing, procuring, maintaining, or using electronic or information technology, to comply with the accessibility requirements of the federal Rehabilitation Act of 1973 … . (Emphasis added.)[343]

The Senate Rules Committee analysis indicates that the Legislature intended the provisions of subdivision (d)(2) to apply to state-funded entities. Thus, community college districts, as state-funded entities, are subject to the provisions of subdivision (d)(2).

Thus, Government Code section 11135 requires community college districts to engage in the following activities:

1. Meet the protections and prohibitions contained in section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in providing its programs and activities where state law does not provide stronger protections and prohibitions. (Gov. Code, § 11135, subd. (b) (Stats. 2001, ch. 708).)
2. Comply with the accessibility requirements of section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology. (Gov. Code, § 11135, subd. (d)(2) (Stats. 2002, ch. 1102), beginning January 1, 2003.)

The extent that these activities may or may not be federal mandates will be discussed below.

<u>District Responsibility and Investigation (Cal. Code Regs., tit. 5, § 59320)</u>

Title 5, section 59320 addresses a community college district's responsibility to insure that there is no unlawful discrimination within its programs and activities. Specifically, section 59320 requires community college districts to engage in the following activities:

1. Have primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, or physical or mental disability. (Cal. Code Regs., tit. 5, § 59320 (Register 2001, No. 6; and Register 2002, No. 13).)
2. Investigate complaints of unlawful discrimination in district programs or activities and seek to resolve those complaints. (Cal. Code Regs., tit. 5, § 59320 (Register 2001, No. 6; and Register 2002, No. 13).)

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[342] Exhibit H, *DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal. 4th 382, 394.

[343] Exhibit H, Senate Rules Com., Office of Senate Floor Analyses, 3d reading analysis of Senate Bill number 105 (2001-2002 Reg. Sess.) as amended July 18, 2002.

District Policies (Cal. Code Regs., tit. 5, § 59322)

Title 5, section 59322 addresses the adoption of district policies consistent with title 5, sections 59320-59342, which address community college district discrimination complaint and enforcement procedures. Section 59322 requires community college districts to engage in the following activities:

1. Establish and adopt written policies consistent with California Code of Regulations, title 5, sections 59320-59342, which address community college district discrimination complaint and enforcement procedures. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13).)
2. Submit district policies, which address community college district discrimination complaint and enforcement procedures (adopted pursuant to Cal. Code Regs., tit. 5, § 59322) to the Chancellor for review and approval within 90 days of the effective date of adopting or amending the policies. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13).)

Responsible District Officer (Cal. Code Regs., tit. 5, § 59324)

Title 5, section 59324 addresses the identification of a district officer responsible for receiving and coordinating the investigation of complaints. In addition, section 59324 allows for the actual investigation of complaints to be assigned to other staff, or outside persons or organizations. Section 59324 requires community college districts to engage in the following activities:

1. Identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to California Code of Regulations, title 5, section 59328 and coordinating their investigation. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13).)
2. Use other staff or outside persons or organizations under contract with the district whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13).)

Notice to Students and Employees (Cal. Code Regs., tit. 5, § 59326)

Title 5, section 59326 requires community college districts to engage in the following activity:

> Notify students and employees of the provisions of California Code of Regulations, title 5, section 59300 et seq., which addresses the two levels of discrimination complaint procedures for community college districts (beginning at the community college district level and ending at the state level). (Cal. Code Regs., tit. 5, § 59326 (Register 2001, No. 6; and Register 2002, No. 13).)

Complaint Process (Cal. Code Regs., tit. 5, §§ 59327, 59328, 59329, 59330, 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360, and 59362)

Title 5, sections 59327, 59328, 59329, 59330, 59332, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59356, 59358, 59360, and 59362 set forth the discrimination complaint process for community college districts. The complaint process

includes processes on both the district level (Cal. Code Regs., tit. 5, §§ 59327-59342) and the state (Chancellor's Office) level (Cal. Code Regs., tit. 5, §§ 59350-59362).

On the community college district level the complaint process (as set forth in Cal. Code Regs., tit. 5, §§ 59327-59342) involves an individual bringing charges of discrimination to the attention of the district officer, efforts at informal resolution of the charges by the district officer, notification to the complainant by the district officer of other remedies or complaint processes, filing of formal charges by the complainant with the Chancellor or the district officer, a district investigation, a determination of the existence of probable cause that the discrimination occurred, and the ability of a complainant to appeal a district decision with the Chancellor if the complainant is unsatisfied with the district's decision.

If a complainant appeals the decision to the Chancellor, the process on the Chancellor's Office level (as set forth in Cal. Code Regs., tit. 5, §§ 59350-59362) involves the Chancellor reviewing the district's decision, the materials that the decision was based upon, and the complainant's appeal in order to determine if there is reasonable cause to believe that the district violated California Code of Regulations, title 5, section 59300 et seq. If reasonable cause is found, the Chancellor must investigate to determine if there is probable cause to believe a violation has occurred. During the course of the investigation, attempts at informal resolution must be made. If probable cause is found and the district does not agree with this finding, the Chancellor must initiate a hearing to determine if a violation did occur. If it is determined that a violation has occurred, the Chancellor is authorized to use various means of effecting compliance. Finally, the district has the ability to seek judicial review of the Chancellor's decision. The plain language of the discrimination complaint process on the Chancellor's Office level does not require community college districts to engage in any activities. Instead, it sets forth activities that the Chancellors' Office must engage in.

In contrast with the activities required of the Chancellor's Office, the discrimination complaint process at the community college district level (Cal. Code Regs., § tit. 5, §§ 59327-59342) does require community college districts to engage in activities. Before describing the activities that community college districts are required to engage in, it is necessary to note that the regulations were amended after the beginning of the reimbursement period on July 1, 2001. Substantive amendments made after the beginning of the reimbursement period will be identified in the below description of the required activities by a start date other than July1, 2001. California Code of Regulations, title 5, sections 59327-59342, require community college districts to engage in the following activities:

1. The district officer shall undertake efforts to informally resolve the charges whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(1) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
2. The district officer shall advise the complainant that he or she need not participate in informal resolution whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(2) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
3. As part of the informal resolution process, the district officer shall notify the person bringing the charges of the right to file a formal complaint, as defined by California Code of Regulations, title 5, section 59311, and the procedure for filing a formal complaint

pursuant to California Code of Regulations, title 5, section 59328 whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(3) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

4. As part of the informal resolution process, the district officer shall advise the complainant that he or she may file his or her non-employment based complaint with the Office of Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(4) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
5. As part of the informal resolution process, the district officer shall advise the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(5) (Register 2002, No. 13), beginning April 19, 2002.)
6. Include investigation in efforts at informal resolution if the responsible district officer determines that an investigation is warranted by the seriousness of the charges. (Cal. Code Regs., tit. 5, § 59327, subd. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
7. After a formal complaint is filed the formal investigation conducted pursuant to California Code of Regulations, title 5, section 59334 must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint. (Cal. Code of Regs., tit. 5, § 59327, subd. (c) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)
8. After a complaint is filed the formal investigation conducted pursuant to California Code of Regulations, title 5, section 59334 must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint or the complainant files with the Department of Fair Employment and Housing and the Chancellor elects not to require further investigation pursuant to California Code of Regulations, title 5, section 59328, subd. (f)(2). (Cal. Code of Regs., tit. 5, § 59327, subd. (c) (Register 2002, No. 13), beginning April 19, 2002.)
9. As part of the formal complaint process, advise any complainant alleging discrimination in employment that he or she may file his or her complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing where the complaint is within the jurisdiction of those agencies. (Cal. Code Regs., tit. 5, § 59328, subd. (f)(1) (Register 2002, No. 13), beginning April 19, 2002.)
10. As part of the formal complaint process, for any complaint alleging discrimination in employment, forward a copy of any filing by the complainant with the Department of Fair Employment and Housing to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of the discrimination complaint procedure regulations (Cal. Code Regs., tit. 5,

§ 53000 et seq.). (Cal. Code Regs., tit. 5, § 59328, subd. (f)(2) (Register 2002, No. 13), beginning April 19, 2002.)

11. Forward a copy of the formal complaint to the Chancellor immediately upon receiving a formal complaint filed in accordance with California Code of Regulations, title 5, section 59328. (Cal. Code Regs., tit. 5, § 59330 (Register 2001, No. 6; and Register 2002, No. 13.), beginning July 1, 2001.)
12. Immediately notify the complainant that his or her formal complaint does not meet the requirements of California Code of Regulations, title 5, section 59328, and specify in what requirement the complaint is defective, if the district receives a complaint that does not meet the requirements of section 59328. (Cal. Code Regs., tit. 5, § 59332 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
13. Commence an impartial fact-finding investigation of a properly filed formal complaint and notify the complainant and Chancellor that it is doing so upon receiving a formal complaint which is properly filed. (Cal. Code Regs., tit. 5, § 59334 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
14. Set forth the results of the investigation conducted in the formal complaint process in a written report that includes at least all of the following:
    a. A description of the circumstances giving rise to the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
    b. A summary of the testimony provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (b) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)
    c. A summary of the testimony provided by each *viable* witness, including the complainant and any witnesses identified by the complainant in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (b) (Register 2002, No. 13), beginning April 19, 2002.)
    d. An analysis of any relevant data or other evidence collected during the course of the investigation. (Cal. Code Regs., tit. 5, § 59334, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
    e. A specific finding as to whether the discrimination did or did not occur with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (d) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)
    f. A specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (d) (Register 2002, No. 13), beginning April 19, 2002.)
    g. Any other information deemed appropriate by the district. (Cal. Code Regs., tit. 5, § 59334, subd. (e) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

15. Complete the district investigation conducted during the formal complaint process and forward a copy of the investigative report required pursuant to California Code of Regulations, title 5, section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:

    a. The determination of the chief executive officer or his/her designee as to whether discrimination did or did not occur with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (a) (Register 20 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)

    b. The determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (a) (Register 2002, No. 13), beginning April 19, 2002.)

    c. A description of the actions taken, if any, to prevent similar problems from occurring in the future. (Cal. Code Regs., tit. 5, § 59336, sub. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    d. The proposed resolution of the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    e. The complainant's right to appeal to the district governing board and the Chancellor pursuant to California Code of Regulations, title 5, sections 59338 and 59339. (Cal. Code Regs., tit. 5, § 59336, subd. (d) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

16. Forward to the complainant and the Chancellor a copy of the final district decision rendered by the governing board that includes a complainant's right to appeal the district's decision to the Chancellor pursuant to California Code of Regulations, title 5, section 59339. Administrative determinations are made final by the district issuing a decision or by taking no action 45 days after an appeal to the district governing board by complainant not satisfied by the administrative determination (Cal. Code Regs., tit. 5, § 59338, subd. (a) and (c). (Cal. Code Regs., tit. 5, § 59338 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

17. Forward the following to the Chancellor within 150 days of receiving a formal complaint:

    a. A copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to California Code of Regulations, title 5, section 59338, subdivision (a). (Cal. Code Regs., tit. 5, § 59340, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    b. A copy of the notice to the complainant required pursuant to California Code of Regulations, title 5, section 59338, subdivision (a). (Cal. Code Regs., tit. 5, § 59340, subd. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

c. Such other information as the Chancellor may require. (Cal. Code Regs., tit. 5, § 59340, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

18. File a written request that the Chancellor grant an extension of the 90 day or 150 day deadline to forward the investigative report to the Chancellor or to forward the final district decision to the Chancellor (specified in Cal. Code Regs., tit. 5, §§ 59336 or 59340), 10 days before the expiration of the deadline, if for reasons beyond the districts control the district is unable to comply with the deadline. (Cal. Code Regs., tit. 5, § 59342, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

19. Set the reasons for the request for an extension of the 90 day or 150 day deadline to forward the investigative report to the Chancellor or to forward the final district decision t the Chancellor, and the date by which the district expects to be able to submit the required materials in the request. (Cal. Code Regs., tit. 5 § 59342, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

c. Some of the requirements of Government Code section 11135; and California Code of Regulations, title 5, sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342 constitute federal mandates, and therefore, are not subject to article XIII B, section 6 of the California Constitution.

Article XIII B places spending limits on both the state and local governments, however, costs mandated by courts or federal law are expressly excluded from these spending limits. Article XIII B, section 9, subdivision (b), of the California Constitution excludes from either the state or local spending limit any "[a]ppropriations required to complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly."

When analyzing federal law in the context of a test claim under article XIII B, section 6, the court in *Hayes v. Commission on State Mandates* held that "[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not required a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations" under article XIII B.[344] Also, the court in *San Diego Unified School Dist.* found that "for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, in context, de minimis—should be treated as part and parcel of the underlying federal mandate."[345] However, the court in *Hayes* also found when federal law imposes a mandate on the state, and the state "freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."[346]

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[344] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593 citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; see also, Government Code section 17513.

[345] *San Diego Unified School Dist*., *supra*, 33 Cal.4th 859, 890.

[346] *Hayes*, *supra*, 11 Cal.App.4th at p. 1594.

Finance argues that the claimants fail "to distinguish any State statutory or regulatory requirements from those requirements existing at the federal level."[347] The following discussion will address whether the activities required by the test claim statutes and regulations are mandated by the following federal laws: (1) Equal Protection Clause of the Fourteenth Amendment (U.S. Const., 14th Amend. § 1); (2) Title IV of the Civil Rights Act of 1964; (3) Title VI of the Civil Rights Act of 1964; (4) the Age Discrimination Act of 1975; (5) Title IX of the Education Amendments of 1972 and its implementing regulations (34 C.F.R. § 106); (6) section 504 of the Rehabilitation Act of 1973 and its implementing regulations (34 C.F.R. § 104); and (7) the Americans with Disabilities Act of 1990 (ADA).

(i) Federal Requirements

Equal Protection Clause of the Fourteenth Amendment (U.S. Const., 14th Amend., § 1)

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, "No State shall … deny to any person within its jurisdiction the equal protection of the laws." As discussed above in the "equal employment opportunity" and "student equity" sections of this analysis, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution does not require any specific administrative activities. Instead, as general statement the Equal Protection Clause prohibits different treatment of similarly situated individuals in community college programs and activities.

Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c et seq)

Title IV of the Civil Rights Act of 1964 (Title IV) (codified at 42 U.S.C. § 2000c et seq.) addresses the desegregation public schools. As relevant to community college districts, Title IV authorizes the Attorney General to institute a civil action for an individual alleging that he/she has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin, and the Attorney General believes such action will materially further the orderly achievement of desegregation in public education.[348]

Although Title IV authorizes civil action against a community college district for engaging in specific activities, as relevant to the discussion in this test claim, Title IV does not require community college districts to engage in any of the activities required by the test claim statutes and regulations in the "discrimination complaint procedures" section of this analysis. Thus, staff finds that Title IV of the Civil Rights Act of 1964 does not constitute federal mandate.

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.)

Title VI of the Civil Rights Act of 1964 (Title VI) (codified at 42 U.S.C. § 2000d et seq.) and its implementing regulations (34 C.F.R. § 100 et seq.) prohibit discrimination on the basis of race, color, or national origin with respect to "any program or activity receiving Federal financial assistance."[349] As discussed above in the "equal employment opportunity" section of this analysis, the provisions of Title VI apply to employment practices only where a primary objective of the federal financial assistance is to provide employment. In addition, there is no evidence in the record to suggest than any of the federal financial assistance received by

[347] Exhibit C, Department of Finance Comments on 02-TC-46, dated March 23, 2004.

[348] Title 42 United States Code section 2000c-6.

[349] Title 42 United States Code section 2000d.

community college districts has the primary objective of providing employment. Thus, in regard to employment discrimination staff cannot make a finding that Title VI applies to community college districts.

However, as discussed above in the "student equity" section of this analysis, Title VI of the Civil Rights Act constitutes a federal mandate on community college districts for purposes other than employment. Specifically, Title VI requires:

> No person in the United States shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under all the operations of a community college district receiving federal financial assistance. (42 U.S.C. § 2000d, and 34 C.F.R. § 100.3 (2009).)

Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.)

For the reasons discussed above in the "equal employment opportunity" and the "student equity" sections of this analysis, the Age Discrimination Act, like Title VI above, does not constitute a federal mandate on community college districts in regard to employment. However, the Age Discrimination Act does constitute a federal mandate on community college districts for purposes other than employment. Specifically, the Age Discrimination Act requires:

1. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under all operations of a community college district receiving Federal financial assistance. (42 U.S.C. § 6101; and 34 C.F.R. § 110.10.)
2. Have primary responsibility to ensure that its programs or activities are in compliance with the Age Discrimination Act and shall take steps to eliminate violations of the Act. (34 C.F.R. § 110.20.)

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.)

Title IX of Education Amendments of 1972 (Title IX) (codified at 20 U.S.C. § 1681 et seq.) and its implementing regulations (34 C.F.R. § 106 et seq.) prohibit discrimination on the basis of sex under any education program or activity receiving federal financial assistance. Courts and the Office for Civil Rights (OCR) of the United States Department States Department of Education have recognized claims of sexual harassment as part of Title IX's prohibition against gender discrimination.[350] For the reasons discussed in the "equal employment opportunity" and the "student equity" sections above, Title IX and its implementing regulations (34 C.F.R. § 106 et seq.) constitute a federal mandate.

As relevant to the "Discrimination Complaint Procedures" section of this analysis, Title IX requires:

[350] See, *Davis v. Monroe County Bd. of Educ.*, *supra*, 526 U.S. at 650; *Franklin v. Gwinnet County Public Schools*, *supra*, 503 U.S. at 75; and Office for Civil Rights of the United States Department of Education, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, (Jan. 2001), pgs. 3-4.

1. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under all the operations of a community college district receiving federal financial assistance. (20 U.S.C. 1681.)
2. Designate at least one employee to coordinate efforts to comply with and carry out the responsibilities under 34 Code of Federal Regulations part 106, including the investigation of any complaint communicated to the community college district alleging its noncompliance with part 106 or alleging any action that would be prohibited by part 106. (34 C.F.R. § 106.8, subd. (a).)
3. Notify all students and employees of the name, office address and telephone number of the employee or employees appointed to coordinate community college district efforts to comply with and carry out district responsibilities under 34 Code of Federal Regulations part 106 et seq., including any investigation of any complaint communicated to the district alleging noncompliance or any act that would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8, subd. (a) (2009).)
4. Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8, subd. (b) (2009).)
5. Implement specific and continuing steps to notify applicants for admission and employment, employees, that it does not discriminate on the basis of sex and that it is required by Title IX and 34 Code of Federal Regulations part 106 et seq. not to discriminate in such a manner, and that inquiries concerning the application of title IX and part 106 et seq. to the community college may be referred to the employee designated to coordinate efforts to comply and carry out the responsibilities of part 106 et seq. (34 C.F.R. § 106.9, subd. (a) (2009).)

It must be noted that the OCR interprets Title IX and its implementing regulations as prohibiting sexual harassment based on sexual orientation in certain situations. Specifically, OCR states:

> Although Title IX does not prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX … .[351]

Thus, the prohibition and associated requirements regarding discrimination on the basis of sex includes sexual harassment on the basis of sexual orientation in certain instances.

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[351] Exhibit H, Office for Civil Rights of the United States Department of Education, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, *supra*, at pg. 12. See also, *Nichols v. Azteca Restaurant Enterprises, Inc.* (9th Cir. 2001) 256 F.3d 864, 874-875, in which the court overturned its finding in *DeSantis v. Pacific Telephone & Telegraph Co., Inc.* (9th Cir. 1979) 608 F.2d 327, that discrimination based on a stereotype that a man "should have a virile rather than an effeminate appearance" does not fall within Title VII's purview. See *OONA, R.-S v. McCaffrey* (9th Cir. 1998) 143 F.3d 473, 476-477, finding that Title VII standards apply to hostile environment claims under Title IX.

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794)

The Rehabilitation Act of 1973, section 504 (Section 504) (29 U.S.C. § 794) and its implementing regulations (34 C.F.R. § 104 et seq.) prohibits discrimination on the basis of physical or mental disability with respect to "any program or activity receiving federal financial assistance." For the same reasons discussed in the "equal employment opportunity" and the "student equity" sections of this analysis, Section 504 constitutes a federal mandate. As relevant to section, Section 504 requires:

1. No otherwise qualified individual with a disability, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under all operations of a community college district receiving Federal financial assistance. (29 U.S.C. § 794 and 34 C.F.R. 104.4 (2009).)
2. Adopt grievance procedures for employees and students that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by 34 Code of Federal Regulations part 104 (which implements section 504 of the Rehabilitation Act), if employing 15 people or more. (34 C.F.R. § 104.7, subd. (b).)
3. Take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees of community college district programs or activitites, and unions or professional organizations holding collective bargaining or professional agreements with the community college district of the identification of the employee responsible for coordinating the districts efforts to comply with 34 Code of Federal Regulations part 104, which prohibits discrimination based on disability. (34 C.F.R. § 104.8, subd. (a).)

The Americans with Disabilities Act (42 U.S.C. § 12131-12134)

For the same reasons discussed in the "student equity" section of this analysis, Title II of the ADA (42 U.S.C. § 12131-12134) and its implementing regulations (28 C.F.R. § 35 et seq.) constitutes a federal mandate. However, as discussed above, it is important to note that Title II and its implementing regulations do not apply to employment discrimination.[352] As relevant to this discussion, Title II of the ADA (42 U.S.C. § 12131-12134) and its implementing regulations (28 C.F.R. § 35 et seq.) impose the following activities on community college districts:

1. Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under 28 Code of Federal Regulations part 35 et seq., including any investigation of any [non-employment related] complaint communicated to it alleging non compliance with part 35 or alleging any actions that would be prohibited by part 35. (28 C.F.R. § 35.107, subd. (a).)
2. Make available to all interested individuals the name, office address, and telephone number of the employee or employees responsible for the community college districts efforts to comply with and carry out the responsibilities under 28 Code of Federal Regulations part 35 et seq. (28 C.F.R. § 35.107, subd. (a).)

[352] Exhibit H, *Zimmerman v Oregon Dept. of Justice* (9th Cir. 1999) 170 F.3d 1169

3. Adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by 28 Code of Federal Regulations part 35 et seq., if employing 50 or more persons. (28 C.F.R. § 35.107, subd. (b).)

(ii) The Activities Required by the Discrimination Complaint Procedure Code Sections and Regulations that are also Mandated by Federal Law are not Subject to Reimbursement Under Article XIII B, Section 6 of the California Constitution.

The following activities required by the regulations pled in this section of the analysis ("discrimination complaint procedures") are mandated or partially mandated by federal law. To the extent that the activities are required by federal law, they do not constitute state-mandated activities.

Prohibition Against Discrimination (Gov. Code, § 11135)

Government Code section 11135 requires community college districts to engage in the following activities:

1. Meet the protections and prohibitions contained in section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in providing district programs and activities where state law does not provide stronger protections and prohibitions. (Gov. Code, § 11135, subd. (b) (Stats. 2001, ch. 708).)
2. Comply with the accessibility requirements of section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology. (Gov. Code, § 11135, subd. (d)(2) (Stats. 2002, ch. 1102), beginning January 1, 2003.)

The activity required by Government Code section 11135, subdivision (b) applies to all programs or activities provided by community college districts, including employment. As discussed above in the "Student Equity" section of this analysis, Title II of the ADA (42 U.S.C. § 12131-12134) and its implementing regulations (28 C.F.R. § 35 et seq.) constitute a federal mandate on community college districts for non-employment programs and activities. Thus, the requirement to meet the protections and prohibitions of Section 202 of the ADA (42 U.S.C. § 12132), which is part of Title II of the ADA, for *non-employment* programs and activities within community college districts constitutes a federal mandate, and therefore is not subject to reimbursement under article XIII B, section 6 of the California Constitution.

However, the 9th Circuit Court of Appeals in the case, *Zimmerman v Oregon Dept. of Justice*, found that Title II of the ADA (42 U.S.C. §§ 12131-12134) unambiguously does not apply to employment discrimination.[353] As noted above, however, Government Code section 11135 requires that community college districts meet the protections and prohibitions of Section 202 of the ADA (42 U.S.C. § 12132) and its implementing rules and regulations in any of its programs and activities, including employment. Thus, the requirement of Government Code section 11135 for community college districts to meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing

[353] Exhibit H, *Zimmerman v Oregon Dept. of Justice*, *supra*, 170 F.3d 1169

regulations (28 C.F.R. § 35 et seq.) in *employment* within community college districts exceeds the requirements of federal law and as a result do not constitute a federal mandate.

Similarly, Government Code section 11135, subdivision (d)(2), imposes a requirement on community college districts that is not required by federal law. Subdivision (d)(2) requires community college districts to comply with Section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.). However, the plain language of Section 508 of the Rehabilitation Act and its implementing regulations indicates that Section 508 and its implementing regulations apply only to *federal* agencies. Thus, absent Government Code section 11135, subdivision (d)(2), community college districts are not required to comply with the provisions of Section 508 and its implementing regulations.

As a result, the following activities do not constitute activities mandated by federal law:

1. Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts where state law does not provide stronger protections and prohibitions. (Gov. Code, § 11135, subd. (b) (Stats. 2001, ch. 708).)
2. Comply with the accessibility requirements of Section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology. (Gov. Code, § 11135, subd. (d)(2) (Stats. 2002, ch. 1102), beginning January 1, 2003.)

District Responsibility (Cal. Code Regs., tit. 5, § 59320)

Title 5, section 59320 requires community college districts to engage in the following activity:

> Have primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, national origin, religion, age, race, sex, color or physical or mental disability. (Cal. Code Regs., tit. 5, § 59320 (Register 2001, No. 6; and Register 2002, No. 13).)

Section 59320 requires that community college districts do not provide programs and activities containing impermissible discrimination.[354] However, as discussed above, community college districts are subject to the requirements of the Equal Protection Clause, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and the Age Discrimination Act. As an entity directly subject to the federal mandates prohibiting discrimination based on ethnicity, religion,[355] age, sex, color, sexual orientation, or disability, it is also the entity that is primarily responsible for ensuring that its programs and activities are in compliance with the federal mandates, and thus for providing equal educational opportunity.

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[354] See Education Code sections 66002 and 66030 as added by Statutes 1991, chapter 1198, and 66250-66252, as added by Statutes 1998, chapter 914.

[355] Classifications, or discrimination, on the basis of religion has been held to violate the Equal Protection Clause, see *Christian Science Reading Room Jointly Maintained v. City and County of San Francisco* (9th Cir. 1986) 784 F.2d 1010.

Thus, staff finds that the above activity required by title 5, section 59320, constitutes a federal mandate, and therefore, is not subject to reimbursement under article XIII B, section 6 of the California Constitution.

Investigation of Complaints (Cal. Code Regs., tit. 5, §§ 59320 and 59334)

Title 5, sections 59320 and 59334 requires community college districts to engage in the following activities:

1. Investigate complaints of unlawful discrimination in district programs or activities and seek to resolve those complaints. (Cal. Code Regs., tit. 5, § 59320 (Register 2001, No. 6; and Register 2002, No. 13).)
2. Commence an impartial fact-finding investigation of a properly filed formal complaint and notify the complainant and Chancellor that it is doing so upon receiving a formal complaint which is properly filed. (Cal. Code Regs., tit. 5, § 59334 (Register 2001, No. 6; and Register 2002, No. 13).)

The implementing regulations of Title IX require community college districts to engage in the following activities:

1. Notify all students and employees of the name, office address and telephone number of the employee or employees appointed to coordinate community college district efforts to comply with and carry out district responsibilities under 34 Code of Federal Regulations part 106 et seq., including any investigation of any complaint communicated to the district alleging noncompliance or any act that would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8, subd. (a) (2009).)
2. Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8, subd. (b) (2009).)

As noted above, Title IX and its implementing regulations have been interpreted as prohibiting sexual harassment, including sexual harassment on the basis of sexual orientation that is sufficiently serious to limit or deny an individual's ability to participate in or benefit from the community college's programs.

Like the requirements of Title IX's implementing regulations, the implementing regulations of Title II of the ADA require community college districts to engage in the following activities:

1. Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under 28 Code of Federal Regulations part 35 et seq., including any investigation of any [non-employment related] complaint communicated to it alleging non compliance with part 35 or alleging any actions that would be prohibited by part 35. (28 C.F.R. § 35.107.)
2. Adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by 28 Code of Federal Regulations part 35 et seq., if employing 50 or more persons. (28 C.F.R. § 35.107, subd. (b).)

As shown by the language above, the implementing regulations of Title IX, which prohibits discrimination on the basis of gender, and Title II of the ADA, which prohibits discrimination on

the basis of disability, require community college districts to investigate complaints of discrimination on the basis of gender (Title IX)[356] and complaints of non-employment discrimination on the basis of disability (Title II of the ADA) and to resolve these complaints. However, it is important to note that under California Code of Regulations, title 5, section 59320 et seq., the ability to file a complaint is not limited to students and employees, as is the requirement in Title IX. In addition, the requirements of Title IX and Title II of the ADA do not require community college districts to notify the complainant or the Chancellor that an investigation has been initiated. Thus, the requirement to investigate and resolve complaints of gender discrimination by students and employees and complaints of non-employment discrimination based on disability constitutes a federal mandate.

The following activities required by California Code of Regulations, title 5, sections 59320 and 59334 *do not* constitute federal mandates:

1. Investigate complaints of unlawful discrimination (i.e. discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation) in district programs or activities and seek to resolve those complaints. This does not include complaints of gender discrimination, including complaints of sexual harassment on the basis of sexual orientation, by employees and students, and complaints of non-employment discrimination on the basis of disability. (Cal. Code Regs., tit. 5, § 59320 (Register 2001, No. 6; and Register 2002, No. 13).)
2. Notify the complainant and the Chancellor that it has commenced an investigation of a properly filed formal complaint. (Cal. Code Regs., tit. 5, § 59334 (Register 2001, No. 6; and Register 2002, No. 13).)

District Policies (Cal. Code Regs., tit. 5, § 59322):

California Code of Regulations, title 5, section 59322, requires community college districts to engage in the following activity:

> Establish and adopt written policies consistent with California Code of Regulations, title 5, sections 59320-59342. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13).)

California Code of Regulations, title 5, sections 59320-59342 set forth the discrimination grievance/complaint procedures for community college districts. As a result, section 59322 requires community college districts to establish and adopt policies for discrimination complaint procedures.

When construing administrative regulations, the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it its plainly erroneous or inconsistent with the regulation.[357] The Chancellor's Office issued legal advisories in 2004 and 2006, suggesting that no distinction exists between the words "policies," "procedures," or "policies and procedures" when interpreting the above requirement of section 59322.[358] This interpretation of

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[356] Including sexual harassment on the basis of sexual orientation.

[357] Exhibit H, *U.S. v Larionoff* (1977) 431 U.S. 864, 872.

[358] Exhibit H, Nondiscrimination Complaint Processing, Legal Advisory 04-04, (September 15, 2004), in which the Chancellor's Office entitles the section discussing title 5,

section 59322 is not plainly erroneous or inconsistent with the section, and thus, section 59322 requires the establishment and adoption of written policies and/or procedures for community college district discrimination complaint procedures.

The implementing regulations of Title IX require community college districts to engage in the following activities:

> Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8, subd. (b) (2009).)

Similarly the implementing regulations of Title II of the ADA require community college districts to engage in the following activity:

> Adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by 28 Code of Federal Regulations part 35 et seq., if employing 50 or more persons. (28 C.F.R. § 35.107, subd. (b).)

In addition, the implementing regulations of Section 504 require community college districts to engage in the following activity:

> Adopt grievance procedures for employees and students that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by 34 Code of Federal Regulations part 104 (which implements section 504 of the Rehabilitation Act), if employing 15 people or more. (34 C.F.R. § 104.7, subd. (b).)

As shown by the language above, the implementing regulation of Title IX, which prohibits discrimination on the basis of gender, and Title II of the ADA and Section 504, which prohibits discrimination on the basis of disability, require community college districts to adopt and publish grievance procedures for complaints of gender discrimination and disability discrimination. However, it is necessary to note that the requirement for the adoption of complaint procedures under California Code of Regulations, title 5, section 59322 is not limited to employees and students as it is under Title IX and Section 504, which prohibit discrimination on the basis of gender and disability. Nor does the requirement of California Code of Regulations, title 5, section 59322 exclude complaints of employment discrimination on the basis of disability like Title II of the ADA does.

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section 59322 as "Policies and Procedures." In addition, although the language of section 59322 provides that districts are to establish and adopt written "policies," the Chancellor identifies problems districts have in complying with the requirements of section 59322, including: (1) districts failing to send the Chancellor's Office their "current policies and procedures;" (2) districts have not sent "subsequently amended policies and/or procedures to the Chancellor's Office;" and (3) districts having "outdated policies and procedures." See also, Changes to Nondiscrimination Regulations, Legal Advisory A 06-01, (May 18, 2006), in which the Chancellor's Office states "title 5, section 59322 requires that the most current version of the district's unlawful discrimination complaint policies and procedures be filed with this office."

Thus, the requirement to establish and adopt policies for discrimination complaint procedures for employees and students alleging gender and disability discrimination and for individuals alleging non-employment discrimination on the basis of disability constitutes a federal mandate. However, the following activity required by California Code of Regulations, title 5, section 59322 *does not* constitute a federal mandate:

> Establish and adopt written policies consistent with the regulations addressing district discrimination complaint procedures for complaints of discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation (Cal. Code Regs., tit. 5, §§ 59320-59342). This does not include complaint procedures for: (1) employees and students alleging gender discrimination (including sexual harassment) and disability discrimination; (2) employees and students alleging sexual harassment on the basis of sexual orientation; and (3) for individuals alleging non-employment discrimination on the basis of disability. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13).)

Responsible District Officer (Cal. Code Regs., tit. 5, § 59324)

California Code of Regulations, title 5, section 59324 requires community college districts to engage in the following activity:

> Identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to California Code of Regulations, title 5, section 59328 and coordinating their investigation. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13).)

The implementing regulations of Title IX require community college districts to engage in the following activities:

1. Notify all students and employees of the name, office address and telephone number of the employee or employees appointed to coordinate community college district efforts to comply with and carry out district responsibilities under 34 Code of Federal Regulations part 106 et seq., including any investigation of any complaint communicated to the district alleging noncompliance or any act that would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8, subd. (a) (2009).)
2. Implement specific and continuing steps to notify applicants for admission and employment, employees, that it does not discriminate on the basis of sex and that it is required by Title IX and 34 Code of Federal Regulations part 106 et seq. not to discriminate in such a manner, and that inquiries concerning the application of title IX and part 106 et seq. to the community college may be referred to the employee designated to coordinate efforts to comply and carry out the responsibilities of part 106 et seq. (34 C.F.R. § 106.9, subd. (a) (2009).)

The above federal mandates imposed on community college districts by Title IX's implementing regulations require districts to identify to students, employees, student applicants, and applicants for employment the district officer responsible for receiving complaints of discrimination on the basis of gender. However, this federal mandate does not include identifying the district officer to the Chancellor or to the public (excluding student, employees, student applicants, and applicants

for employment), and is limited to the district officer's responsibilities as it applies to discrimination based on gender.

The implementing regulations of Section 504 require community college districts to engage in the following activity:

> Take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees of community college district programs or activities, and unions or professional organizations holding collective bargaining or professional agreements with the community college district of the identification of the employee responsible for coordinating the districts efforts to comply with 34 Code of Federal Regulations part 104, which prohibits discrimination based on disability. (34 C.F.R. § 104.8, subd. (a).)

The implementing regulations of Section 504 mandate community college districts to identify the district officer responsible for receiving complaints of discrimination on the basis of disability to participants, beneficiaries, applicants, and employees of the district's programs or activities, and unions or professional organizations holding collective bargaining or professional agreements with the community college district. Although this federal mandate notifies a broader range of individuals than the mandate of Title IX, it also does not include the Chancellor or the broad group of individuals encompassed in the term "the public." In addition, the federal mandate is limited to the district officer's responsibilities as it applies to discrimination based on disability.

The implementing regulations of Title II of the ADA require community college districts to engage in the following activity:

> Make available to all interested individuals the name, office address, and telephone number of the employee or employees responsible for the community college districts efforts to comply with and carry out the responsibilities under 28 Code of Federal Regulations part 35 et seq. (28 C.F.R. § 35.107, subd. (a).)

The federal mandate imposed by the implementing regulations of Title II of the ADA requires a community college district to identify the district officer responsible for receiving non-employment complaints of discrimination based on disability to all interested individuals. The broad term "all interested individuals" is inclusive of not only the Chancellor but also the public. However, the federal mandate is limited to the district officer's responsibilities as it applies to non-employment discrimination based on disability.

Based on the above discussion, a portion of the activity required by California Code of Regulations, title 5, section 59324, constitutes a federal mandate. However, the following activity required by section 59324 exceeds what is mandated by federal law and as a result *does not* constitute a federal mandate:

> Identify to the Chancellor and to the public a single person as the district officer responsible for receiving discrimination complaints based on ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation (filed pursuant to Cal. Code Regs., tit. 5, § 59328) and coordinating their investigation. This does not include the identification of the district officer responsible for receiving complaints of discrimination on the basis of gender to students, employees, student applicants, and applicants for employment. This also does not include the identification of the district officer responsible for

receiving complaints of discrimination on the basis of disability to participants, beneficiaries, applicants, and employees of the district's programs or activities, and unions or professional organizations holding collective bargaining or professional agreements with the community college district. In addition, this does not include the identification of the district officer for receiving complaints of non-employment discrimination on the basis of disability to the Chancellor and the public. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13).)

If the requirements of a test claim statute or regulation go beyond or exceed the requirements of federal law, those activities are *not* federal mandates and *may* be subject to article XIII B, section 6. For example, in *Long Beach Unified School Dist. v. State of California*, federal law required school districts to take reasonable steps to alleviate racial and ethnic segregation, and the federal courts suggested certain approaches to comply. State law was enacted to require specific action of school districts to alleviate segregation. The court found that the state law requirements went beyond federal constitutional and case law requirements or suggestions and mandated a higher level of service.[359] In this case, there are several activities that exceed the requirements of federal law and are, thus, not mandated by federal law. In addition, none of the excess activities are downstream activities triggered by a discretionary decision of a community college district, and as a result, the excess activities are mandated by the state.

(iii) Summary of State-Mandated Activities that Exceed the Requirements of Federal Law:

1. Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts where state law does not provide stronger protections and prohibitions. (Gov. Code, § 11135, subd. (b) (Stats. 2001, ch. 708), beginning July 1, 2001.)
2. Comply with the accessibility requirements of section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology. (Gov. Code, § 11135, subd. (d)(2) (Stats. 2002, ch. 1102), beginning January 1, 2003.)
3. Investigate complaints of unlawful discrimination (i.e. discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation) in district programs or activities and seek to resolve those complaints. This does not include complaints of gender discrimination, including complaints of sexual harassment on the basis of sexual orientation, by employees and students, and complaints of non-employment discrimination on the basis of disability. (Cal. Code Regs., tit. 5, § 59320 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
4. Establish and adopt written policies consistent with the regulations addressing district discrimination complaint procedures for complaints of discrimination on the basis of discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation (Cal. Code Regs., tit. 5, §§ 59320-59342).

[359] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 173.

This does not include complaint procedures for: (1) employees and students alleging gender discrimination (including sexual harassment) and disability discrimination; (2) employees and students alleging sexual harassment on the basis of sexual orientation; and (3) for individuals alleging non-employment discrimination on the basis of disability. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

5. Submit district policies, which address community college district discrimination complaint and enforcement procedures (adopted pursuant to Cal. Code Regs., tit. 5, § 59322), to the Chancellor for review and approval within 90 days of the effective date of adopting or amending the policies. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
6. Identify to the Chancellor and to the public a single person as the district officer responsible for receiving discrimination complaints based on ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation (filed pursuant to Cal. Code Regs., tit. 5, § 59328) and coordinating their investigation. This does not include the identification of the district officer responsible for receiving complaints of discrimination on the basis of gender to students, employees, student applicants, and applicants for employment. This also does not include the identification of the district officer responsible for receiving complaints of discrimination on the basis of disability to participants, beneficiaries, applicants, and employees of the district's programs or activities, and unions or professional organizations holding collective bargaining or professional agreements with the community college district. In addition, this does not include the identification of the district officer for receiving complaints of non-employment discrimination on the basis of disability to the Chancellor and the public. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
7. Use other staff or outside persons or organizations under contract with the district whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
8. Notify students and employees of the provisions of California Code of Regulations, title 5, section 59300 et seq., which addresses the two levels of discrimination complaint procedures for community college districts (beginning at the community college district level and ending at the state level). (Cal. Code Regs., tit. 5, § 59326 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
9. The district officer shall undertake efforts to informally resolve the charges whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(1) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
10. The district officer shall advise the complainant that he or she need not participate in informal resolution whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(2) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

11. As part of the informal resolution process, the district officer shall notify the person bringing the charges of the right to file a formal complaint, as defined by California Code of Regulations, title 5, section 59311, and the procedure for filing a formal complaint pursuant to California Code of Regulations, title 5, section 59328 whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(3) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
12. As part of the informal resolution process, the district officer shall advise the complainant that he or she may file his or her non-employment based complaint with the Office of Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(4) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
13. As part of the informal resolution process, the district officer shall advise the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(5) (Register 2002, No. 13), beginning April 19, 2002.)
14. Include investigation in efforts at informal resolution if the responsible district officer determines that an investigation is warranted by the seriousness of the charges. (Cal. Code Regs., tit. 5, § 59327, subd. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
15. After a formal complaint is filed the formal investigation conducted pursuant to California Code of Regulations, title 5, section 59334 must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint. (Cal. Code of Regs., tit. 5, § 59327, subd. (c) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)
16. After a complaint is filed the formal investigation conducted pursuant to California Code of Regulations, title 5, section 59334 must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint or the complainant files with the Department of Fair Employment and Housing and the Chancellor elects not to require further investigation pursuant to California Code of Regulations, title 5, section 59328, subd. (f)(2). (Cal. Code of Regs., tit. 5, § 59327, subd. (c) (Register 2002, No. 13), beginning April 19, 2002.)
17. As part of the formal complaint process, advise any complainant alleging discrimination in employment that he or she may file his or her complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing where the complaint is within the jurisdiction of those agencies. (Cal. Code Regs., tit. 5, § 59328, subd. (f)(1) (Register 2002, No. 13), beginning April 19, 2002.)
18. As part of the formal complaint process, for any complaint alleging discrimination in employment, forward a copy of any filing by the complainant with the Department of Fair Employment and Housing to the Chancellor's Office for a determination of whether

the issues presented require an independent investigation of the matter under the provisions of the discrimination complaint procedure regulations (Cal. Code Regs., tit. 5, § 53000 et seq.). (Cal. Code Regs., tit. 5, § 59328, subd. (f)(2) (Register 2002, No. 13), beginning April 19, 2002.)

19. Forward a copy of the formal complaint to the Chancellor immediately upon receiving a formal complaint filed in accordance with California Code of Regulations, title 5, section 59328. (Cal. Code Regs., tit. 5, § 59330 (Register 2001, No. 6; and Register 2002, No. 13.), beginning July 1, 2001.)
20. Immediately notify the complainant that his or her formal complaint does not meet the requirements of California Code of Regulations, title 5, section 59328, and specify in what requirement the complaint is defective, if the district receives a complaint that does not meet the requirements of section 59328. (Cal. Code Regs., tit. 5, § 59332 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
21. Notify the complainant and the Chancellor that it has commenced an investigation of a properly filed formal complaint. (Cal. Code Regs., tit. 5, § 59334 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
22. Set forth the results of the investigation conducted in the formal complaint process in a written report that includes at least all of the following:
    a. A description of the circumstances giving rise to the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
    b. A summary of the testimony provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (b) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)
    c. A summary of the testimony provided by each *viable* witness, including the complainant and any witnesses identified by the complainant in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (b) (Register 2002, No. 13), beginning April 19, 2002.)
    d. An analysis of any relevant data or other evidence collected during the course of the investigation. (Cal. Code Regs., tit. 5, § 59334, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
    e. A specific finding as to whether the discrimination did or did not occur with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (d) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)
    f. A specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (d) (Register 2002, No. 13), beginning April 19, 2002.)
    g. Any other information deemed appropriate by the district. (Cal. Code Regs., tit. 5, § 59334, subd. (e) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

23. Complete the district investigation conducted during the formal complaint process and forward a copy of the investigative report required pursuant to California Code of Regulations, title 5, section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:

    a. The determination of the chief executive officer or his/her designee as to whether discrimination did or did not occur with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (a) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)

    b. The determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (a) (Register 2002, No. 13), beginning April 19, 2002.)

    c. A description of the actions taken, if any, to prevent similar problems from occurring in the future. (Cal. Code Regs., tit. 5, § 59336, sub. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    d. The proposed resolution of the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    e. The complainant's right to appeal to the district governing board and the Chancellor pursuant to California Code of Regulations, title 5, sections 59338 and 59339. (Cal. Code Regs., tit. 5, § 59336, subd. (d) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

24. Forward to the complainant and the Chancellor a copy of the final district decision rendered by the governing board that includes a complainant's right to appeal the district's decision to the Chancellor pursuant to California Code of Regulations, title 5, section 59339. Administrative determinations are made final by the district issuing a decision or by taking no action 45 days after an appeal to the district governing board by complainant not satisfied by the administrative determination (Cal. Code Regs., tit. 5, § 59338, subd. (a) and (c). (Cal. Code Regs., tit. 5, § 59338 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

25. Forward the following to the Chancellor within 150 days of receiving a formal complaint:

    a. A copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to California Code of Regulations, title 5, section 59338, subdivision (a). (Cal. Code Regs., tit. 5, § 59340, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    b. A copy of the notice to the complainant required pursuant to California Code of Regulations, title 5, section 59338, subdivision (a). (Cal. Code Regs., tit. 5, § 59340, subd. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

c. Such other information as the Chancellor may require. (Cal. Code Regs., tit. 5, § 59340, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

26. File a written request that the Chancellor grant an extension of the 90 day or 150 day deadline to forward the investigative report to the Chancellor or to forward the final district decision to the Chancellor (specified in Cal. Code Regs., tit. 5, §§ 59336 or 59340), 10 days before the expiration of the deadline, if for reasons beyond the districts control the district is unable to comply with the deadline. (Cal. Code Regs., tit. 5, § 59342, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

27. Set the reasons for the request for an extension of the 90 day or 150 day deadline to forward the investigative report to the Chancellor or to forward the final district decision t the Chancellor, and the date by which the district expects to be able to submit the required materials in the request. (Cal. Code Regs., tit. 5 § 59342, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

d. The state-mandated activities imposed by Education Code section 11135; and California Code of Regulations, title 5, sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342 constitute a new program or higher level of service.

To constitute a "new program or higher level of service" the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement a state policy.[360] In addition, the requirements must be new in comparison with the pre-existing scheme and must be intended to provide an enhanced service to the public.[361] To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.[362]

Prohibition Against Discrimination (Gov. Code, § 11135, subds. (b) and (d)(2))

The claimants have pled Government Code section 11135, as first added in 1977, last amended in 2002, and every amendment in between.[363] Section 11135, subdivisions (b) and (d)(2), mandate community college districts to engage in the following activities:

1. Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts where state law does not provide stronger protections and prohibitions. (Gov. Code, § 11135, subd. (b) (Stats. 2001, ch. 708).)

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[360] *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

[361] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[362] *Ibid.*

[363] Statutes 1977, chapter 972; Statutes 1992, chapter 913; Statutes 1994, chapter 146; Statutes 2001, chapter 708; and Statutes 2002, chapters 300 and 1102.

2. Comply with the accessibility requirements of Section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology. (Gov. Code, § 11135, subd. (d)(2) (Stats. 2002, ch. 1102), beginning January 1, 2003.)

The above activities constitute a "program" under article XIII B, section 6 of the California Constitution, by carrying out the governmental function of prohibiting the use of public funds for unlawfully discriminatory purposes in the peculiarly government function of providing education.[364] Prior to 1992, community college districts were not required to meet the protections and prohibitions contained in Section 202 of the Rehabilitation Act in employment within community college districts. In addition, prior to 2002, community college districts were not required to comply with the accessibility requirements of Section 508 of the Rehabilitation Act in developing, procuring, maintaining, or using electronic or information technology. Keeping in mind that these activities are also not mandated on community college districts by federal law, the activities mandated by subdivisions (b) an (d)(2) are new as compared with the legal requirements in effect immediately prior to their enactment.

Thus, staff finds that the following state-mandated activities imposed by Government Code section 11135, subdivisions (b) and (d)(2), constitute a new program or higher level of service:

1. Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts where state law does not provide stronger protections and prohibitions. (Gov. Code, § 11135, subd. (b) (Stats. 2001, ch. 708).)
2. Comply with the accessibility requirements of Section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology. (Gov. Code, § 11135, subd. (d)(2) (Stats. 2002, ch. 1102), beginning January 1, 2003.)

<u>District Investigation, Policies, Officer, Complaint Process (Cal. Code Regs., tit. 5, §§ 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342)</u>

The claimants have pled title 5, sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342, as added in 1981,[365] and all subsequent amendments and additions through 2002.[366] Prior to 1981, community college districts were not required to engage in any of the activities mandated by sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342. Thus, the activities mandated by sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342 are new as compared to the regulatory scheme existing prior to the addition and amendments to the regulation sections.

In addition, like the activities mandated by Government Code section 11135, the state-mandated activities imposed by California Code of Regulations, title 5, sections 59320, 59322, 59324,

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[364] *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d at 172.

[365] Register 81, number 16.

[366] Register 2002, number 23.

59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342 constitute a "program" under article XIII B, section 6 of the California Constitution, by carrying out the governmental function of prohibiting the use of public funds for unlawfully discriminatory purposes in the peculiarly government function of providing education.[367] Thus, staff finds that the activities mandated by California Code of Regulations, title 5, sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342, constitute a state-mandated new program or higher level of service.

(i) Summary of State-Mandated New Program or Higher Level of Service

1. Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts where state law does not provide stronger protections and prohibitions. (Gov. Code, § 11135, subd. (b) (Stats. 2001, ch. 708), beginning July 1, 2001.)
2. Comply with the accessibility requirements of section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology. (Gov. Code, § 11135, subd. (d)(2) (Stats. 2002, ch. 1102), beginning January 1, 2003.)
3. Investigate complaints of unlawful discrimination (i.e. discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation) in district programs or activities and seek to resolve those complaints. This does not include complaints of gender discrimination, including complaints of sexual harassment on the basis of sexual orientation, by employees and students, and complaints of non-employment discrimination on the basis of disability. (Cal. Code Regs., tit. 5, § 59320 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
4. Establish and adopt written policies consistent with the regulations addressing district discrimination complaint procedures for complaints of discrimination on the basis of discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation (Cal. Code Regs., tit. 5, §§ 59320-59342). This does not include complaint procedures for: (1) employees and students alleging gender discrimination (including sexual harassment) and disability discrimination; (2) employees and students alleging sexual harassment on the basis of sexual orientation; and (3) for individuals alleging non-employment discrimination on the basis of disability. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
5. Submit district policies, which address community college district discrimination complaint and enforcement procedures (adopted pursuant to Cal. Code Regs., tit. 5, § 59322) to the Chancellor for review and approval within 90 days of the effective date of adopting or amending the policies. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
6. Identify to the Chancellor and to the public a single person as the district officer responsible for receiving discrimination complaints based on ethnic group identification,

[367] *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d at 172.

national origin, religion, age, race, color, ancestry, and sexual orientation (filed pursuant to Cal. Code Regs., tit. 5, § 59328) and coordinating their investigation. This does not include the identification of the district officer responsible for receiving complaints of discrimination on the basis of gender to students, employees, student applicants, and applicants for employment. This also does not include the identification of the district officer responsible for receiving complaints of discrimination on the basis of disability to participants, beneficiaries, applicants, and employees of the district's programs or activities, and unions or professional organizations holding collective bargaining or professional agreements with the community college district. In addition, this does not include the identification of the district officer for receiving complaints of non-employment discrimination on the basis of disability to the Chancellor and the public. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

7. Use other staff or outside persons or organizations under contract with the district whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
8. Notify students and employees of the provisions of California Code of Regulations, title 5, section 59300 et seq., which addresses the two levels of discrimination complaint procedures for community college districts (beginning at the community college district level and ending at the state level). (Cal. Code Regs., tit. 5, § 59326 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
9. The district officer shall undertake efforts to informally resolve the charges whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(1) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
10. The district officer shall advise the complainant that he or she need not participate in informal resolution whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(2) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
11. As part of the informal resolution process, the district officer shall notify the person bringing the charges of the right to file a formal complaint, as defined by California Code of Regulations, title 5, section 59311, and the procedure for filing a formal complaint pursuant to California Code of Regulations, title 5, section 59328 whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(3) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
12. As part of the informal resolution process, the district officer shall advise the complainant that he or she may file his or her non-employment based complaint with the Office of Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(4) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

13. As part of the informal resolution process, the district officer shall advise the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(5) (Register 2002, No. 13), beginning April 19, 2002.)

14. Include investigation in efforts at informal resolution if the responsible district officer determines that an investigation is warranted by the seriousness of the charges. (Cal. Code Regs., tit. 5, § 59327, subd. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

15. After a formal complaint is filed the formal investigation conducted pursuant to California Code of Regulations, title 5, section 59334 must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint. (Cal. Code of Regs., tit. 5, § 59327, subd. (c) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)

16. After a complaint is filed the formal investigation conducted pursuant to California Code of Regulations, title 5, section 59334 must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint or the complainant files with the Department of Fair Employment and Housing and the Chancellor elects not to require further investigation pursuant to California Code of Regulations, title 5, section 59328, subd. (f)(2). (Cal. Code of Regs., tit. 5, § 59327, subd. (c) (Register 2002, No. 13), beginning April 19, 2002.)

17. As part of the formal complaint process, advise any complainant alleging discrimination in employment that he or she may file his or her complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing where the complaint is within the jurisdiction of those agencies. (Cal. Code Regs., tit. 5, § 59328, subd. (f)(1) (Register 2002, No. 13), beginning April 19, 2002.)

18. As part of the formal complaint process, for any complaint alleging discrimination in employment, forward a copy of any filing by the complainant with the Department of Fair Employment and Housing to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of the discrimination complaint procedure regulations (Cal. Code Regs., tit. 5, § 53000 et seq.). (Cal. Code Regs., tit. 5, § 59328, subd. (f)(2) (Register 2002, No. 13), beginning April 19, 2002.)

19. Forward a copy of the formal complaint to the Chancellor immediately upon receiving a formal complaint filed in accordance with California Code of Regulations, title 5, section 59328. (Cal. Code Regs., tit. 5, § 59330 (Register 2001, No. 6; and Register 2002, No. 13.), beginning July 1, 2001.)

20. Immediately notify the complainant that his or her formal complaint does not meet the requirements of California Code of Regulations, title 5, section 59328, and specify in what requirement the complaint is defective, if the district receives a complaint that does not meet the requirements of section 59328. (Cal. Code Regs., tit. 5, § 59332 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

21. Notify the complainant and the Chancellor that it has commenced an investigation of a properly filed formal complaint. (Cal. Code Regs., tit. 5, § 59334 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

22. Set forth the results of the investigation conducted in the formal complaint process in a written report that includes at least all of the following:

    a. A description of the circumstances giving rise to the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    b. A summary of the testimony provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (b) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)

    c. A summary of the testimony provided by each *viable* witness, including the complainant and any witnesses identified by the complainant in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (b) (Register 2002, No. 13), beginning April 19, 2002.)

    d. An analysis of any relevant data or other evidence collected during the course of the investigation. (Cal. Code Regs., tit. 5, § 59334, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    e. A specific finding as to whether the discrimination did or did not occur with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (d) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)

    f. A specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (d) (Register 2002, No. 13), beginning April 19, 2002.)

    g. Any other information deemed appropriate by the district. (Cal. Code Regs., tit. 5, § 59334, subd. (e) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

23. Complete the district investigation conducted during the formal complaint process and forward a copy of the investigative report required pursuant to California Code of Regulations, title 5, section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:

    a. The determination of the chief executive officer or his/her designee as to whether discrimination did or did not occur with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (a) (Register 20 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)

    b. The determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (a) (Register 2002, No. 13), beginning April 19, 2002.)

c. A description of the actions taken, if any, to prevent similar problems from occurring in the future. (Cal. Code Regs., tit. 5, § 59336, sub. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

d. The proposed resolution of the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

e. The complainant's right to appeal to the district governing board and the Chancellor pursuant to California Code of Regulations, title 5, sections 59338 and 59339. (Cal. Code Regs., tit. 5, § 59336, subd. (d) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

24. Forward to the complainant and the Chancellor a copy of the final district decision rendered by the governing board that includes a complainant's right to appeal the district's decision to the Chancellor pursuant to California Code of Regulations, title 5, section 59339. Administrative determinations are made final by the district issuing a decision or by taking no action 45 days after an appeal to the district governing board by complainant not satisfied by the administrative determination (Cal. Code Regs., tit. 5, § 59338, subd. (a) and (c). (Cal. Code Regs., tit. 5, § 59338 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

25. Forward the following to the Chancellor within 150 days of receiving a formal complaint:

    a. A copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to California Code of Regulations, title 5, section 59338, subdivision (a). (Cal. Code Regs., tit. 5, § 59340, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    b. A copy of the notice to the complainant required pursuant to California Code of Regulations, title 5, section 59338, subdivision (a). (Cal. Code Regs., tit. 5, § 59340, subd. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    c. Such other information as the Chancellor may require. (Cal. Code Regs., tit. 5, § 59340, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

26. File a written request that the Chancellor grant an extension of the 90 day or 150 day deadline to forward the investigative report to the Chancellor or to forward the final district decision to the Chancellor (specified in Cal. Code Regs., tit. 5, §§ 59336 or 59340), 10 days before the expiration of the deadline, if for reasons beyond the districts control the district is unable to comply with the deadline. (Cal. Code Regs., tit. 5, § 59342, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

27. Set the reasons for the request for an extension of the 90 day or 150 day deadline to forward the investigative report to the Chancellor or to forward the final district decision t the Chancellor, and the date by which the district expects to be able to submit the required materials in the request. (Cal. Code Regs., tit. 5 § 59342, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

C. The state-mandated new program or higher level of service imposes costs mandated by the state on community college districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556

In order for the test claim statutes to impose a reimbursable state-mandated program under the California Constitution, the test claim statutes must impose costs mandated by the state.[368] Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The claimants estimate that more than $1000 in staffing and other costs in excess of any funding provided to districts was incurred between July 1, 2001 through June 30, 2002 to implement all the duties alleged by the claimants to be mandated by the state.[369] Thus, the claimants have met the minimum burden of showing costs necessary to file a test claim pursuant to Government Code section 17564.

However, pursuant to Government Code section 17556, subdivisions (e) and (f), the Chancellor's Office and Finance argue that the claimants are not entitled to reimbursement for state-mandated activities associated with the code sections and title 5 regulations pled in the "equal employment opportunity" section of this analysis (Ed. Code, §§ 87101 and 87102; Cal. Code Regs., tit. 5, § 53001 et seq.), and the code sections and title 5 regulations pled in the "discrimination complaint procedures" section of this analysis (Govt. Code, § 11135, subd.. (b) and (d)(2); and Cal. Code Regs., tit. 5, §§ 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342), because the activities mandated by the code sections and title 5 regulations are either fully funded or necessary to implement a ballot measure approved by voters.

(1) The Commission is not prohibited by Government Code section 17556, subdivisions (e) and (f), from finding costs mandated by the state, as defined by Government Code section 17514 for the state-mandated new programs or higher levels of service imposed by the test claim statutes and regulations pled in the "equal employment opportunity" and "discrimination complaint procedures" sections of this analysis

The following discussion will address whether the Commission is prohibited from finding costs mandated by the state resulting from the test claim statutes and regulations pled in the "equal employment opportunity" and the "discrimination complaint procedures" sections of this analysis pursuant to Government Code section 17556, subdivisions (e) and (f). Because two versions of the test claim statutes and regulations pled in the "equal employment opportunity"

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[368] *Lucia Mar*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[369] Exhibit F; *Minimum Conditions for State Aid* Exhibit B, "Test Claim Filing and Attachments for 02-TC-31," Exhibit 1, Declaration of Piedad F. Robertson, President of Santa Monica Community College District. Also, Exhibit B, Test Claim 02-TC-46, Exhibit 1, Declaration of Thomas J. Donner, Executive Vice President of Santa Monica Community College District.

section existed after the start of the reimbursement period (July 1, 2001), each version will be addressed separately below.

a. Equal Employment Opportunity: (Ed. Code, §§ 87101 and 87102; Cal. Code Regs., tit. 5, § 53001 et seq.)

Government Code section 17556, subdivision (e), prohibits a finding of costs mandated by the state if additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the state-mandated new program or higher level of service has been provided in the statute, executive order, or an appropriation in a Budget Act or other bill. In regard to the code sections and regulations discussed in the "equal employment opportunity" section of this analysis, the Chancellor's Office argues:

> Claimant raises issues under Education Code section 87100, et seq. Section 87102 provides that the activities described in the article are conditions to receipt of funds that are provided by the Equal Employment Opportunity Fund that is described in section 87107. Therefore, Claimant is not entitled to reimbursement for the activities described in section 87100 et seq. for two reasons.
>
> [¶] … [¶]
>
> Second, the Employment Opportunity Fund is available for the payment of any documented costs, and reimbursement under this process would be double recovery.[370]

Before addressing the Chancellor's arguments, it is necessary to repeat two issues previously discussed in the "equal employment opportunity" section of this analysis. First, two versions of Education Code sections 87101 and 87102 existed after the start of the reimbursement period (July 1, 2001) as a result of Education Code sections 87100 et seq. being found unconstitutional by the court in *Connerly v. State Personnel Bd.* on September 4, 2001.[371] Second, the pre-September 4, 2001 version of Education Code sections 87100 et seq. were specifically implemented by California Code of Regulations, title 5, section 53001 et seq. However, after the after the September 4, 2001, decision in *Connerly v. State Personnel Bd*. Education Code sections 87100 et seq. and California Code of Regulations, title 5, section 53001 et seq. were amended as separate efforts to address the same issue of equal employment opportunity. Thus, California Code of Regulations, title 5, section 53001 et seq. no longer implements Education Code sections 87101 and 87102, but rather acts as a separate directive on community college districts.

The following discussion will address the application of Government Code section 17556, subdivision (e), to Education Code sections 87101 and 87102, and California Code of Regulations, title 5, section 53001 et seq., as they existed: (1) after the *Connerly v. State Personnel Bd*. decision; and (2) before the *Connerly v. State Personnel Bd*. decision.

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[370] Exhibit F. See *Minimum Conditions for State Aid* Exhibit C, "Chancellor's Office Comments on 02-TC-31, dated March 11, 2004," pgs. 10-12.

[371] Exhibit H, *Connerly v. State Personnel Bd.*, *supra*, 92 Cal.App. 4th at pgs. 57-61.

(i) Equal Employment Opportunity Code Sections and Title 5 Regulations After the *Connerly v. Personnel Bd.* Decision

The Chancellor's Office reference to the "Equal Employment Opportunity Fund" as established by Education Code section 87107, indicates that the Chancellor's arguments are directed only at Education Code sections 87101 and 87102, as repealed and replaced by Statutes 2002, chapter 1169 (post *Connerly v. State Personnel Bd.*). Prior to the Statutes 2002, chapter 1169, version of Education Code section 87100 et seq., section 87107 established the "Faculty and Staff Diversity Fund," which was used to reimburse community college districts for certain costs mandated by Education Code section 87100 et seq. and its implementing regulations. In contrast, the "Equal Employment Opportunity Fund" was established in 2002 as a source of funds conditioned on compliance with Education Code section 87100 et seq.

As established in 2002, the Equal Employment Opportunity Fund" is intended to be used for the "purpose of promoting equal employment opportunities in hiring and promotion at community college districts."[372] Education Code section 87108, specifies that the Board of Governors of the California Community Colleges shall adopt regulations for the use of the fund, of which at least 75 percent may be used for : (1) Activities designed to encourage community college students to become qualified for, and seek, employment as community college faculty or administrators; (2) outreach and recruitment; (3) In-service training on equal employment opportunities; (4) accommodations for applicants and employees with disabilities; and (5) activities to promote equal employment opportunities and implement the requirements of Education Code section 87100 et seq.

The Board of Governors' regulations limit the use of the 75 percent of the Equal Employment Opportunity Funds to: (1) outreach and recruitment; (2) in-service training on equal employment opportunity; (3) accommodations for applicants and employees with disabilities; and (4) other activities to promote equal employment opportunity.[373] All of the activities mandated by the title 5 regulations pled in the equal employment opportunity section of this analysis promote or are intended to promote equal employment opportunity, and thus, fall within the permitted uses of the Equal Employment Opportunity funds.

However, as mentioned immediately above, the title 5 regulations addressing equal employment opportunity (Cal. Code Regs., tit. 5, section 53001 et seq.), act as a separate directive on community college districts, and as a result, districts are required to engage in these activities whether or not the district chooses to receive funds from the "Equal Employment Opportunity Fund" established by Education Code section 87107. Although, funds from the "Equal Employment Opportunity Fund" can be spent by community college districts on the activities mandated by the title 5 regulations addressing equal employment opportunity, as discussed above, community college districts are not required to receive funds from the "Equal Employment Opportunity Fund" nor is there evidence in the record that districts have received these funds. In addition, there is no evidence in the record indicating that the districts have used any funds received from the "Equal Employment Opportunity Fund" for the state-mandated activities, or that the amount received was sufficient to fully fund the costs of the state-mandated

[372] Education Code section 87107, as added by Statutes 2002, chapter 1169.

[373] California Code of Regulations, title 5, section 53030, subdivision (c) (Register 2002, No. 35).

activities. Thus, community college districts are entitled to reimbursement for the costs resulting from the state-mandated new program or higher level of service imposed by California Code of Regulations, title 5, section 53001 et seq., as amended in 2002 in response to the *Connerly v. State Personnel Bd.* decision, summarized below.

To the extent that community college districts choose to receive funds from the "Equal Employment Opportunity Fund," and to the extent these funds are used for the state-mandated new program or higher level of service imposed by California Code of Regulations, title 5, section 53001 et seq., as amended in 2002 in response to the *Connerly v. State Personnel Bd.* decision, then these funds would constitute offsetting revenue and will be identified in the parameters and guidelines.[374]

(ii) Equal Employment Opportunity Code Sections and Title 5 Regulations Before the *Connerly v. State Personnel Bd*. Decision

In regard to Education Code sections 87101 and 87102, and California Code of Regulations, title 5, section 53001 et seq., as they existed before the amendments made in response to the *Connerly v. State Personnel Bd*. decision, the "Faculty and Staff Diversity Fund" was established by Education Code section 87107 to pay for costs on the state and district level associated with the state-mandated activities imposed by these code sections and regulations, which seek to promote faculty and staff diversity. Specifically, Education Code section 87107, subdivisions (c) and (d), as added by Statutes 1988, chapter 973, provides:

> (c) The board of governors shall utilize up to 25 percent of the fund to do all of the following:
>
> (1) Reimburse districts for the costs of publishing, distributing, and reporting affirmative action success rates as provided in [Education Code] Section 87102.
>
> (2) Reimburse districts for the costs of preparing and updating affirmative action plans.
>
> (3) Carry out the assistance, service, monitoring, and compliance functions specified in [Education Code] Section 87104.
>
> (d) The remainder of the fund shall be allocated to districts, in accordance with regulations of the board of governors, to provide for extended outreach and recruitment of underrepresented groups, for incentives to hire members of underrepresented groups, for in-service training and for other related staff diversity programs.

The Board of Governors' regulations adopted to allocate the remaining 75 percent of the Faculty and Staff Diversity Fund (Cal. Code Regs., tit. 5, § 53030 (Register 96, No. 23), provides that the 25 percent of the funds described in Education Code section 87107, subdivision (c), shall first be used to pay for the State costs of providing technical assistance, service, monitoring, and compliance functions. Any remainder of the funds shall be used for the purposes described in Education Code section 87107, subdivision (c)(1) and (2), on a basis of full-time equivalent

[374] In the Budget Act of 2003 (Stats. 2003, ch. 157) for the 2003-2004 fiscal year (starting July 1, 2003), $1,747,000 was scheduled for the Equal Employment Opportunity Fund. See line item 6870-101-0001, schedule 14.

students of each district as a portion of the total full-time students for all districts. The remaining 75 percent of the "Faculty and Staff Diversity Fund," could be allocated in three ways: (1) in an amount proportional to the full-time equivalent students of each district to the total full-time equivalent students for all districts; (2) an equal dollar amount to each district; or (3) an amount related to the success in promoting diversity.

Although, as described above, districts will receive, at minimum, 75 percent of the "Faculty Staff Diversity Fund," and that amount was to be used for the state-mandated activities imposed by the code sections and regulations, as they existed prior to the amendments in response to the *Connerly v. State Personnel Bd.* decision, there is no evidence in the record to suggest that this amount was sufficient to cover all of the costs of the state-mandated activities. Thus, Government Code section 17556, subdivision (e), does not prohibit a finding of costs mandated by the state. However, any funds received by community college districts from the "Staff Diversity Fund," maybe offsetting revenues for the state-mandated new program or higher level of service imposed by California Code of Regulations, title 5, section 53001 et seq., as they existed prior to the 2002 amendments in response to the *Connerly v. State Personnel Bd*. and will be identified in the parameters and guidelines.[375]

b. Discrimination Complaint Procedures: (Govt. Code, § 11135, subd.. (b) and (d)(2); and Cal. Code Regs., tit. 5, §§ 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342)

Government Code section 17556, subdivision (f), prohibits a finding of costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election.[376] The court in *California School Boards Association v. State of California*, found that duties imposed by a test claim statute or executive order are necessary to implement a ballot measure approved by the voters in a statewide or local election pursuant to Government Code section 17556, subdivision (f), when: (1) a local agency and/or school district is mandated by a ballot measure to perform a duty; (2) the Legislature or any state agency enacts a statute or executive order intended to implement the ballot measure mandate and also requires additional duties that are not expressly included in the ballot measure; (3) absent the statute or executive order enacted by the Legislature or any state agency, the local agency and/or school district is still required to comply with the duty mandated by the ballot measure; and (4) the requirements imposed by the statute or executive order that exceed the ballot measure mandate are not reimbursable, but are considered part and parcel to the underlying ballot measure mandate, when the excess requirements are intended to

[375] In the Budget Act of 2001 (Stats. 2001, ch. 106) for the 2001-2002 fiscal year (starting July 1, 2001), and the Budget Act of 2002 (Stats. 2002, ch. 379) for the 2002-2003 fiscal year (starting July 1, 2002), $1,859,000 was scheduled for the Faculty and Staff Diversity Fund. See line item 6870-101-0001, schedule 14.

[376] Government Code section 17556, subdivision (f). See *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, finding that the language, "reasonably within the scope of," to be violative of the California Constitution.

implement (i.e., are incidental to) the ballot measure mandate, and whose costs are, in context, de minimis.[377]

In regard to the code sections and regulations discussed in the "discrimination complaint procedures" section of this analysis, Finance argues:

> Section 31 of Article I of the California Constitution, enacted by the voters in 1996, prohibits discrimination against anyone on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, or public contracting. While the claimant mentions Section 31 of Article I of the California Constitution (adopted by initiative measure in 1996) in its claim, the claimant has failed to discuss how State statutes and regulations included in the test claim relate to this Section.[378]

Article I, section 31 was added to the California Constitution by Proposition 209 of the 1996 general election. Although article I, section 31 of the California Constitution prohibits community college districts from discriminating against or giving preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin, none of the state-mandated requirements of Government Code section 11135 or the title 5 regulations are expressly included in the ballot measure.[379]

In addition, the state mandates imposed by the code section and regulations are not necessary to implement the general prohibition found in article I, section 31 of the California Constitution (and adopted by the passage of Proposition 209) because the code section and the regulations were not intended to implement Proposition 209. The intent of Proposition 209 was to eliminate voluntary state and local government affirmative action programs targeting race, sex, color, ethnicity, or national origin, in various areas including education.[380]

Government Code section 11135, subdivisions (b) and (d)(2), require community college districts to comply with Title II of the ADA as applicable to employment and Section 508 of the Rehabilitation Act. Title II of the ADA and Section 508 generally address discrimination on the basis of disability. Thus, Government Code section 11135, subdivisions (b) and (d)(2), were not meant to implement Proposition 209, which does not address discrimination against or preferential treatment to persons with disabilities.

The title 5 regulations, which mandate activities associated with community college districts' discrimination complaint procedures (e.g. investigations, attempts at resolution of the complaint, and reports of the results to the Chancellor's Office) are intended to implement various state and

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[377] Exhibit H, *California School Boards Association v. State of California*, *supra*, 171 Cal.App. 4th at p. 1217.

[378] Exhibit C, Department of Finance Comments on 02-TC-46, dated March 23, 2004.

[379] See Government Code section 11135; and California Code of Regulations, title 5, sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342.

[380] Exhibit H, "Legislative Analyst's Analysis of Proposition 209 for the 1996 General Election" at <http://library.uchastings.edu/cgibin/starfinder/0?path=calprop.txt&id=webber& pass=webber&OK=OK> [as of August 24, 2010].

federal antidiscrimination laws. Specifically, title 5, section 59300, which sets forth the purpose of the discrimination complaint procedure regulations, provides:

> The purpose of this subchapter[, (Cal. Code Regs., tit. 5, § 59300 et seq.), which make up the discrimination complaint procedure regulations,] is to implement the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code, § 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101), to the end that no person in the State of California shall, on the basis of ethnic group identification, national origin, religion, age, sex race, color, ancestry, sexual orientation, or physical or mental disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under any program or activity that is administered by, funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.[381]

As shown by the above language, the discrimination complaint procedure regulations were not adopted to implement article I, section 31 of the California Constitution, which was adopted by California voters with the approval of Proposition 209.

Thus staff finds that Government Code section 17556, subdivision (f), does not preclude the Commission from finding costs mandated by the state for the new program or higher level of service imposed by Government Code section 11135; and California Code of Regulations, title 5, sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, and 59342.

(2) The Test Claim Statutes and Regulations that Constitute a State-Mandated New Program or Higher Level of Service Impose Costs Mandated by the State on Community College Districts Within the Meaning of Article XIII B, Section 6, and Government Code Sections 17514 and 17556

For the reasons discussed above, staff finds that the test claim statutes and regulations addressing "equal employment opportunity," "student equity," and "discrimination complaint procedures" that constitute a state-mandated new program or higher level of service[382] impose costs mandated

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[381] California Code of Regulations, title 5, section 59300 (Register 2002, No. 13).

[382] Specifically, portions of the following test claim statutes and regulations regarding "equal employment opportunity" constitute a state-mandated new program or higher level of service: Education Code section 87102; and California Code of Regulations, title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034. Similarly portions of the following test claim statutes regarding "student equity" constitute a state-mandated new program or higher level of service: Education Code sections 66010.2 and 66010.7. Finally, portions of the following test claim statutes and regulations regarding "discrimination complaint procedures" constitute a state-mandated new program or higher level of service: Education Code sections 66010.2 and 66010.7; and Government Code section 11135, and California Code of Regulations, title 5, sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340 and 59342.

by the state on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

III. Conclusion

For the reasons discussed above, staff finds that the following activities constitute a reimbursable state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514:

Equal Employment Opportunity (Ed Code, § 87102; and Cal. Code Regs., tit. 5, §§ 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034):

1. Periodically submit to the Board of Governors of the California Community Colleges an affirmation of compliance with the provisions of Education Code sections 87100-87107, which address affirmative action hiring (as existing prior to September 4, 2001). (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
2. Include steps in the faculty and staff diversity plan that the district will take in meeting and improving hiring goals for both full-time faculty and part-time faculty pursuant to Education Code section 87482.6 (Stats. 1988, ch. 973), and the development of the plan shall be a condition for receipt of allowances pursuant to Education Code section 87482.6. (Ed. Code, § 87102, subd. (a) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
3. Publish and distribute a record of the success rate of the measurable progress, with respect to the district's goals and timetables, in hiring employees through its affirmative action employment program. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
    a. Make this publication a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), and shall include data and information specified by the Board of Governors. (Ed. Code, § 87102, subd. (b) (Stats. 1988, ch. 973), beginning July 1, 2001 through September 3, 2001.)
4. Review the faculty and staff diversity plan/equal employment opportunity plans, excluding goals and timetables, at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)
5. Include in the faculty and staff diversity plan/equal employment opportunity plan the following:
    a. Goals and timetables, as appropriate, for hiring and promotion of persons with disabilities developed pursuant to California Code of Regulations, title 5, section 53006 for each college in the district and for the district as a whole. (Cal. Code Regs., tit. 5, § 53003, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
    b. A process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of

California Code of Regulations, title 5, section 53000 et seq., which addresses affirmative action/equal employment opportunity programs (Register 96, No. 23; Register 2002, No. 35) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(4) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53003, subdivision (c)(4) (Register 2002, No. 35), beginning July 1, 2001.)

c. A process for providing annual written notice to professional organizations concerning the district's equal employment opportunity plan and the need for assistance from the organizations in identifying qualified applicants. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(5) (Register 2002, No. 35), beginning August 11, 2002.)

d. An analysis of the number of *persons with disabilities* who are employed in the district's work force and the number of historically underrepresented groups (including persons with disabilities) who have applied for employment in the following job categories: (1) executive/administrative/managerial, (2) faculty and other instructional staff, (3) professional nonfaculty, (4) secretarial/clerical, (5) technical and paraprofessional, (6) skilled crafts, and (7) service and maintenance. (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 96, No. 23) beginning July 1, 2001 through August 10, 2002.)

e. An analysis of the number of ethnic majority, men, and persons with disabilities who are employed in the district's work force and the number of persons from monitored groups who have applied for employment in each of the following job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6)skilled crafts; and (7) serve and maintenance (listed in Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35)). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(6) (Register 2002, No. 35), beginning August 11, 2002.)

f. An analysis of the degree to which persons with disabilities are underrepresented in comparison to the numbers of disabled persons whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation for women, ethnic minorities, or persons with disabilities is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

g. An analysis of the degree to which persons within the ethnic majority, men, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(7) (Register 2002, No. 35), beginning August 11, 2002.)

h. The steps the district will take to achieve diversity in its workforce. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

i. Goals for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

j. Methods for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(8) (Register 2002, No. 35), beginning August 11, 2002.)

k. Additional steps consistent with California Code of Regulations, title 5, section 53006, to remedy any significant underrepresentation identified in the plan. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(9) (Register 2002, No. 35), beginning August 11, 2002.)

l. A plan for corrective action consistent with California Code of Regulations, title 5, section 53006 (Register 96, No. 23), including goals and timetables for hiring and promotion, if necessary, to remedy any significant underrepresentation identified in the faculty and staff diversity plan by achieving expected representation for all historically underrepresented groups in all job categories listed in California Code of Regulations, title 5, § 53004, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

m. Any other measures necessary to further equal employment opportunity throughout the district. (Cal. Code Regs., tit. 5, § 53003, subd. (c)(10) (Register 2002, No. 35), beginning August 11, 2002.)

n. Any goals for hiring persons with disabilities that are required by California Code of Regulations, title 5, section 53025. (Cal. Code Regs., tit. 5, § 53003, subd. (d) (Register 2002, No. 35), beginning August 11, 2002.)

6. Monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing its faculty and staff diversity plan/equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

7. In the report to the Chancellor's Office of the results of the employee survey, report employees so that they may be identified as belonging to one of the following seven job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance. (Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

8. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004, subdivision (a) (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96,

No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

a. Count a person in only one ethnic group for reporting purposes if a person designates multiple ethnic groups with which he or she identifies. (Cal. Code Regs., tit. 5, § 53004, subd (b) (Register 2002, No. 35), beginning August 11, 2002.)

b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53004, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

9. If a community college district has existing goals:

a. Update goals established prior to June 30, 1996 and set a new target date for achieving expected representation for a group in a job category/categories if significant underrepresentation still exists. (Cal. Code Regs., tit. 5, § 53006, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

b. Review recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

c. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

d. Comply with California Code of Regulations, title 5, section 53006, subdivision (c) (Register 96, No. 23) while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006, subdivision (a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

10. If a community college district has no existing goals:

a. Take corrective action if, pursuant to California Code of Regulations, title 5, section 53003, subdivision (c)(7), the district determines that a particular group is significantly underrepresented with respect to one or more job categories and no goal has previously been set. (Cal. Code Regs., tit. 5, § 53006, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

b. The district shall take, at a minimum, the following corrective action:

i. Review of district recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(1) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

ii. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iii. Determine whether the group is still significantly underrepresented in the job category or categories in question after the measures described in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) have been in place a reasonable period of time. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(3) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

iv. Set a goal with a target date for achieving expected representation for the significantly underrepresented group in each job category where significant underrepresentation persists, if significant underrepresentation persists. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

v. Monitor on an ongoing basis the staffing rate for the significantly underrepresented group in the specified job category or categories. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

vi. Discontinue the use of goals when expected representation has been achieved for that group in the job category or categories in question. (Cal. Code Regs., tit. 5, § 53006, subd. (b)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

11. Additional measures to be taken if a goal has been set and after a reasonable period of time significant underrepresentation persists:

a. Establish a specific timetable to project the levels of annual hiring of persons from the significantly underrepresented group which will be necessary to meet the existing goal by the target date. (Cal. Code Regs., tit. 5, § 53006, subd. (c) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

b. Implement one or more of the following additional corrective measures until expected representation has been achieved for that group in the job category in question:

i. Consider, as one factor in the final selection process, the fact that a candidate is a member of a significantly underrepresented group, provided that the qualifications of the candidates under consideration are reasonably

considered to be equivalent. (Cal. Code Regs., tit. 5, § 53006, subd. (c)(2) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

12. If a community college district has no existing goals for women or persons with disabilities:

    a. Implement the measures required in California Code of Regulations, title 5, section 53006, subdivision (b)(1) and (2) (Register 96, No. 23) concurrently with setting a goal with a target date for achieving expected representation for women or persons with disabilities in each job category that they are found to be significantly underrepresented. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

        i. Goals shall remain in effect only until expected representation has been achieved for the group in the job category or categories in which significant underrepresentation is found. (Cal. Code Regs., tit. 5, § 53006, subd. (d) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

        ii. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53006, subd. (d), beginning July 1, 2001 through August 10, 2002.)

13. Take additional steps if a district determines that a particular monitored group is significantly underrepresented with respect to one or more categories, including at minimum:

    a. Review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(1) (Register 2002, No. 35), beginning August 11, 2002.)

    b. Consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(2) (Register 2002, No. 35), beginning August 11, 2002.)

    c. Determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in subdivisions (a)(1) and (a)(2) of California Code of Regulations, title 5, section 53006, have been in place a reasonable period of time (three years or longer). (Cal. Code Regs., tit. 5, § 53006, subd. (a)(3) (Register 2002, No. 35), beginning August 11, 2002.)

    d. Monitor the staffing rate for the significantly underrepresented group in the specified job category or categories on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question if significant underrepresentation persists. (Cal. Code Regs., tit. 5, § 53006, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

14. Be ultimately responsible for making measurable progress toward the goals established/equal employment opportunity by methods described in the district's faculty and staff diversity plan/equal employment opportunity plan. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

15. Design the administrative structure created by any delegation of authority to the affirmative action officer/equal employment officer or others in such a manner so as to ensure prompt and effective implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23) beginning July 1, 2001.)

16. Designate in the faculty and staff diversity plan/equal employment opportunity plan a single officer, who may be the affirmative action officer/equal employment opportunity officer, for ensuring complaints of violations of the equal employment opportunity program regulations (excluding those based on disability or gender), filed pursuant to California Code of Regulations, title 5, section 53026, are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored (excluding ensuring that the selection procedure is based solely on job-related criteria and monitoring for adverse impact) as required by California Code of Regulations, title 5, sections 53023 and 53024. (Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53020, subd. (b) (Register 2002, No. 23), beginning July 1, 2001.)

17. Actively recruit from both within and outside the district work force to attract qualified applicants for all new openings except as provided by California Code of Regulations, title 5, section 53021, subdivision (b). (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

    a. Active recruitment shall include focused outreach to historically underrepresented groups. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

    b. Active recruitment shall include outreach to ensure all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning August 11, 2002.)

    c. Open recruitment applies to all new full-time and part-time openings in all job categories and classifications, including but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

18. Recruit at least statewide for full-time faculty and educational administrator positions, and at minimum, seek qualified applicants listed in the California Community Colleges Faculty and Staff Diversity Registry/Equal Employment Opportunity Registry. (Cal.

Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

19. Recruit part-time faculty positions separately for each new opening or by annually establishing a pool of eligible candidates. In either case, full and open recruitment is required consistent with California Code of Regulations, title 5, section 53021. (Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

20. Notify the Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee established pursuant to California Code of Regulations, title 5, section 53005 and the Chancellor, at least ten working days prior to offering the position to a candidate, if the district believes justification exists for use of any of the exceptions listed in section 53021, subdivision(b). (Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)

21. Comply with the district's established hiring procedures and afford all qualified district employees the opportunity to apply even where in-house or promotional only recruitment is permitted under California Code of Regulations, title 5, section 53005, subdivision (b). (Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53021, subd. (d) (Register 2002, No. 35), beginning July 1, 2001.)

22. Include sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students in job requirements for faculty and administrative positions. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

23. Review job specifications, excluding any "desired" or "required"/"required," "desired," or "preferred" qualifications beyond the state minimum qualifications (set forth in Subchapter 4 of Cal. Code Regs., tit. 5, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws, excluding section 504 of the Rehabilitation Act, and Title IX of Education Amendments of 1972. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

24. Afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability, in the district's application for employment. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

25. Keep information regarding an applicant's gender, ethnicity, and/or disability provided in an application for employment confidential. (Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (a) (Register 2002, No. 35), beginning July 1, 2001.)

26. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that expected representation has been achieved for historically

underrepresented groups. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

27. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that any failure to obtain projected representation for any group defined in terms of ethnicity is not due to discriminatory recruitment procedures. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)
28. Extend the application deadline and conduct additional focused recruitment for historically underrepresented groups for which expected representation has not been achieved, if necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
29. Extend the application deadline and conduct additional recruitment, which eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants, if necessary. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)
30. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when the expected representation of historically underrepresented groups is achieved, or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)
31. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)
32. Analyze the composition of the qualified applicant pool to ensure that no group defined in terms of ethnicity is adversely impacted as defined by California Code of Regulations, title 5, section 53001, subdivision (m) (Register 96, No. 23)/subdivision (a) (Register 2002, No. 35), after the analysis to ensure that expected representation has been achieved for historically underrepresented groups (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23))/after the analysis to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 2002, No. 35)) and before the selection process continues. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)
33. Take effective steps to address adverse impact on any group defined in terms of ethnicity found in the district's applicant pool before the selection process is continued. (Cal. Code Regs., tit. 5, § 53023, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53023, subd. (c) (Register 2002, No. 35), beginning July 1, 2001.)
34. Provide all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to the Chancellor upon request.

(Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(1) (Register 2002, No. 35), beginning July 1, 2001.)

35. Design all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (a)(2) (Register 2002, No. 35), beginning July 1, 2001.)

36. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to ensure that they do not have an adverse impact, as defined by California Code of Regulations, title 5, section 53001, subdivision (m), on any group defined in terms of ethnicity. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 96, No. 23), beginning July 1, 2001 through August 10, 2002.)

37. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse impact as defined in California Code of Regulations, title 5, section 53001, subdivision (a) on any group defined in terms of ethnicity, and to detect and address any adverse impact on any group defined in terms of ethnicity which does occur. (Cal. Code Regs., tit. 5, § 53024, subd. (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

38. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group defined in terms of ethnicity before the selection process resumes if monitoring under California Code of Regulations, title 5, section 53024, subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted such ethnic group. (Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53024, subd. (b) (Register 2002, No. 35), beginning July 1, 2001.)

39. Update a goal established prior to July 12, 2002 for persons with disabilities, set a new target date for achieving projected representation in a job category or categories, and concurrently comply with California Code of Regulations, title 5, section 53006, subdivisions (a)(1), (a)(2), and (b) with respect to persons with disability, if significant underrepresentation still exists in the job category or categories. (Cal. Code Regs., tit. 5, § 53025, subd. (b) (Register 2002, No. 35), beginning August 11, 2002.)

40. Implement California Code of Regulations, title 5, section 53006, subdivisions (a)(1) and (a)(2) concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where underrepresentation was found to exist. Goals are to remain in effect only until projected representation has been achieved for that group in the category or categories in question. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

41. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force, until the chancellor's Office

provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, § 53025, subd. (c) (Register 2002, No. 35), beginning August 11, 2002.)

42. Establish a process permitting any person (excluding employees and applicants for employment) to file a complaint alleging that the requirements of the affirmative action and equal employment opportunity program/equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. This excludes the establishment of a process permitting an employee filing a complaint alleging a violation of the equal employment opportunity program regulations on the basis of disability or gender (i.e. failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Cal. Code Regs., tit. 5, § 53020); failure to provide reasonable accommodations (see Cal. Code Regs., tit. 5, § 53020); and employment discrimination on the basis of disability and gender in district employee selection procedures). (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

43. Forward immediately to the Chancellor a copy of the complaint. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

44. Provide a written investigative report within 90 days if required by the Chancellor. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

45. Process complaints which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

46. Submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23) beginning July 1, 2001 and ending on August 10, 2002.)

47. Report the staffing rate of persons with disabilities by a separate survey as directed by the Chancellor's Office, until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by California Code of Regulations, title 5, section 53004. (Cal. Code Regs., tit. 5, § 53034 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53034 (Register 2002, No. 35), beginning July 1, 2001. There is no evidence in the record indicating whether a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by title 5, section 53004. As a result, staff cannot determine an end date for this activity.)

Student Equity (Ed. Code, §§ 66010.2 and 66010.7):

1. Provide all students the opportunity to address issues, including ethical issues that are central to their full development as responsible citizens, in community college programs. (Ed. Code, § 66010.2, subd. (b) (Stats. 1991, ch. 1198), beginning July 1, 2001.)
2. Undertake intersegmental collaboration and coordination (with the University of California and California State University) particularly when it can do any of the following: (1) facilitate achievement of the goals of educational equity; (2) facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions. Excluding instances in which cooperation can (1) enhance the achievement of the institutional missions shared by the segments; (2) enable public and private postsecondary education to more effectively meet the educational needs of a geographical region; and (3) provide more effective planning of postsecondary education on a statewide basis. (Ed. Code, § 66010.7, subd. (b) (Stats. 1991, ch. 1198), beginning July 1, 2001.)
3. Work together with other leaders responsible for public (University of California and California State University) and independent institutions of higher education and the Superintendent of Public Instruction to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels. (Ed. Code, § 66010.7, subd. (c) (Stats. 1991, ch. 1198), beginning July 1, 2001.)

Discrimination Complaint Procedures (Gov. Code, § 11135; and Cal. Code Regs., tit. 5, §§ 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340 and 59342):

1. Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts where state law does not provide stronger protections and prohibitions. (Gov. Code, § 11135, subd. (b) (Stats. 2001, ch. 708), beginning July 1, 2001.)
2. Comply with the accessibility requirements of section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology. (Gov. Code, § 11135, subd. (d)(2) (Stats. 2002, ch. 1102), beginning January 1, 2003.)
3. Investigate complaints of unlawful discrimination (i.e. discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation) in district programs or activities and seek to resolve those complaints. This does not include complaints of gender discrimination, including complaints of sexual harassment on the basis of sexual orientation, by employees and students, and complaints of non-employment discrimination on the basis of disability. (Cal. Code Regs., tit. 5, § 59320 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
4. Establish and adopt written policies consistent with the regulations addressing district discrimination complaint procedures for complaints of discrimination on the basis of

discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation (Cal. Code Regs., tit. 5, §§ 59320-59342). This does not include complaint procedures for: (1) employees and students alleging gender discrimination (including sexual harassment) and disability discrimination; (2) employees and students alleging sexual harassment on the basis of sexual orientation; and (3) for individuals alleging non-employment discrimination on the basis of disability. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

5. Submit district policies, which address community college district discrimination complaint and enforcement procedures (adopted pursuant to Cal. Code Regs., tit. 5, § 59322) to the Chancellor for review and approval within 90 days of the effective date of adopting or amending the policies. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
6. Identify to the Chancellor and to the public a single person as the district officer responsible for receiving discrimination complaints based on ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation (filed pursuant to Cal. Code Regs., tit. 5, § 59328) and coordinating their investigation. This does not include the identification of the district officer responsible for receiving complaints of discrimination on the basis of gender to students, employees, student applicants, and applicants for employment. This also does not include the identification of the district officer responsible for receiving complaints of discrimination on the basis of disability to participants, beneficiaries, applicants, and employees of the district's programs or activities, and unions or professional organizations holding collective bargaining or professional agreements with the community college district. In addition, this does not include the identification of the district officer for receiving complaints of non-employment discrimination on the basis of disability to the Chancellor and the public. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
7. Use other staff or outside persons or organizations under contract with the district whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
8. Notify students and employees of the provisions of California Code of Regulations, title 5, section 59300 et seq., which addresses the two levels of discrimination complaint procedures for community college districts (beginning at the community college district level and ending at the state level). (Cal. Code Regs., tit. 5, § 59326 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
9. The district officer shall undertake efforts to informally resolve the charges whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(1) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
10. The district officer shall advise the complainant that he or she need not participate in informal resolution whenever any person brings charges of unlawful discrimination to the

attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(2) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

11. As part of the informal resolution process, the district officer shall notify the person bringing the charges of the right to file a formal complaint, as defined by California Code of Regulations, title 5, section 59311, and the procedure for filing a formal complaint pursuant to California Code of Regulations, title 5, section 59328 whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(3) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

12. As part of the informal resolution process, the district officer shall advise the complainant that he or she may file his or her non-employment based complaint with the Office of Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(4) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

13. As part of the informal resolution process, the district officer shall advise the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies. (Cal. Code Regs., tit. 5, § 59327, subd. (a)(5) (Register 2002, No. 13), beginning April 19, 2002.)

14. Include investigation in efforts at informal resolution if the responsible district officer determines that an investigation is warranted by the seriousness of the charges. (Cal. Code Regs., tit. 5, § 59327, subd. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

15. After a formal complaint is filed the formal investigation conducted pursuant to California Code of Regulations, title 5, section 59334 must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint. (Cal. Code of Regs., tit. 5, § 59327, subd. (c) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)

16. After a complaint is filed the formal investigation conducted pursuant to California Code of Regulations, title 5, section 59334 must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint or the complainant files with the Department of Fair Employment and Housing and the Chancellor elects not to require further investigation pursuant to California Code of Regulations, title 5, section 59328, subd. (f)(2). (Cal. Code of Regs., tit. 5, § 59327, subd. (c) (Register 2002, No. 13), beginning April 19, 2002.)

17. As part of the formal complaint process, advise any complainant alleging discrimination in employment that he or she may file his or her complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing where the complaint is within the jurisdiction of those agencies. (Cal. Code Regs., tit. 5, § 59328, subd. (f)(1) (Register 2002, No. 13), beginning April 19, 2002.)

18. As part of the formal complaint process, for any complaint alleging discrimination in employment, forward a copy of any filing by the complainant with the Department of Fair Employment and Housing to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of the discrimination complaint procedure regulations (Cal. Code Regs., tit. 5, § 53000 et seq.). (Cal. Code Regs., tit. 5, § 59328, subd. (f)(2) (Register 2002, No. 13), beginning April 19, 2002.)
19. Forward a copy of the formal complaint to the Chancellor immediately upon receiving a formal complaint filed in accordance with California Code of Regulations, title 5, section 59328. (Cal. Code Regs., tit. 5, § 59330 (Register 2001, No. 6; and Register 2002, No. 13.), beginning July 1, 2001.)
20. Immediately notify the complainant that his or her formal complaint does not meet the requirements of California Code of Regulations, title 5, section 59328, and specify in what requirement the complaint is defective, if the district receives a complaint that does not meet the requirements of section 59328. (Cal. Code Regs., tit. 5, § 59332 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
21. Notify the complainant and the Chancellor that it has commenced an investigation of a properly filed formal complaint. (Cal. Code Regs., tit. 5, § 59334 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
22. Set forth the results of the investigation conducted in the formal complaint process in a written report that includes at least all of the following:
    a. A description of the circumstances giving rise to the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
    b. A summary of the testimony provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (b) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)
    c. A summary of the testimony provided by each *viable* witness, including the complainant and any witnesses identified by the complainant in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (b) (Register 2002, No. 13), beginning April 19, 2002.)
    d. An analysis of any relevant data or other evidence collected during the course of the investigation. (Cal. Code Regs., tit. 5, § 59334, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)
    e. A specific finding as to whether the discrimination did or did not occur with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (d) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)
    f. A specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59334, subd. (d) (Register 2002, No. 13), beginning April 19, 2002.)

g. Any other information deemed appropriate by the district. (Cal. Code Regs., tit. 5, § 59334, subd. (e) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

23. Complete the district investigation conducted during the formal complaint process and forward a copy of the investigative report required pursuant to California Code of Regulations, title 5, section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:

    a. The determination of the chief executive officer or his/her designee as to whether discrimination did or did not occur with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (a) (Register 2001, No. 6), beginning July 1, 2001 to April 18, 2002.)

    b. The determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (a) (Register 2002, No. 13), beginning April 19, 2002.)

    c. A description of the actions taken, if any, to prevent similar problems from occurring in the future. (Cal. Code Regs., tit. 5, § 59336, sub. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    d. The proposed resolution of the complaint. (Cal. Code Regs., tit. 5, § 59336, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    e. The complainant's right to appeal to the district governing board and the Chancellor pursuant to California Code of Regulations, title 5, sections 59338 and 59339. (Cal. Code Regs., tit. 5, § 59336, subd. (d) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

24. Forward to the complainant and the Chancellor a copy of the final district decision rendered by the governing board that includes a complainant's right to appeal the district's decision to the Chancellor pursuant to California Code of Regulations, title 5, section 59339. Administrative determinations are made final by the district issuing a decision or by taking no action 45 days after an appeal to the district governing board by complainant not satisfied by the administrative determination (Cal. Code Regs., tit. 5, § 59338, subd. (a) and (c). (Cal. Code Regs., tit. 5, § 59338 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

25. Forward the following to the Chancellor within 150 days of receiving a formal complaint:

    a. A copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to California Code of Regulations, title 5, section 59338, subdivision (a). (Cal. Code Regs., tit. 5, § 59340, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

    b. A copy of the notice to the complainant required pursuant to California Code of Regulations, title 5, section 59338, subdivision (a). (Cal. Code Regs., tit. 5,

§ 59340, subd. (b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

c. Such other information as the Chancellor may require. (Cal. Code Regs., tit. 5, § 59340, subd. (c) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

26. File a written request that the Chancellor grant an extension of the 90 day or 150 day deadline to forward the investigative report to the Chancellor or to forward the final district decision to the Chancellor (specified in Cal. Code Regs., tit. 5, §§ 59336 or 59340), 10 days before the expiration of the deadline, if for reasons beyond the districts control the district is unable to comply with the deadline. (Cal. Code Regs., tit. 5, § 59342, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

27. Set the reasons for the request for an extension of the 90 day or 150 day deadline to forward the investigative report to the Chancellor or to forward the final district decision t the Chancellor, and the date by which the district expects to be able to submit the required materials in the request. (Cal. Code Regs., tit. 5 § 59342, subd. (a) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

In addition, for the reasons discussed above, in regard to the post-*Connerly* decision regulations pled in the "equal employment opportunity" section of this analysis (i.e. the regulations as they existed in Register 2002, No. 35), staff finds that any funds received from the Equal Employment Opportunity Fund by the claimants and used for the reimbursable state-mandated activities imposed by the test claim regulations constitute offsetting revenue. In the Budget Act of 2003, $1,747,000 was appropriated for the Equal Employment Opportunity Fund.[383]

Also, for reasons discussed above, in regard to the pre-*Connerly* decision Education Code section and regulations pled in the "equal employment opportunity" section of this analysis (i.e. Ed. Code, § 87102 (Stats. 1988, ch. 973); and the regulations as they existed in Register 96, No. 23), staff finds that any funds received by community college districts from the Faculty and Staff Diversity Fund by the claimants may constitute offsetting revenue. In the Budget Act of 2001 and the Budget Act of 2002, $1,859,000 was appropriated for the Faculty and Staff Diversity Fund.[384]

Finally, staff finds that all other test claim statutes and regulations do not constitute a reimbursable state-mandated program because they either do not require any activities on community college districts, are mandated by federal law, are voluntary or are downstream of a voluntary activity, or are not new as compared to the legal requirements in effect immediately prior to their enactment.

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[383] The Budget Act of 2003 (Stats. 2003, ch. 157) for the 2003-2004 fiscal year (starting July 1, 2003), scheduled $1,747,000 for the Equal Employment Opportunity Fund. See line item 6870-101-0001, schedule 14.

[384] The Budget Act of 2001 (Stats. 2001, ch. 106) for the 2001-2002 fiscal year (starting July 1, 2001), and the Budget Act of 2002 (Stats. 2002, ch. 379) for the 2002-2003 fiscal year (starting July 1, 2002), scheduled $1,859,000 for the Faculty and Staff Diversity Fund. See line item 6870-101-0001, schedule 14.

IV. Recommendation

Staff recommends that the Commission adopt this analysis.

Exhibit H

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

February 8, 2011

RECEIVED
FEB 0 8 2011
COMMISSION ON
STATE MANDATES

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Mr. Bohan:

We reviewed the Commission on State Mandates (Commission) September 15, 2010, draft staff analysis of the *Discrimination Complaint Procedures* test claim (02-TC-46) submitted by the Santa Monica Community College District, Los Rios Community College District, and West Kern Community College District.

We disagree with the Commission's conclusion that Government Code Section 11135(d)(2) imposes a reimbursable state-mandated activity because we believe that the plain language of the statute requires the compliance of "state governmental entities", not community colleges. The Commission notes that community colleges are included in the definition of "state governmental entities" based on the premise that Government Code Section 11135(d)(3) suggests that community colleges are subject to the provisions of Government Code Section 11135(d)(2). Specifically, that Section 11135(d)(3) refers to nongovernmental entities contracting with "state or local entities" and thus casts doubt on the simple meaning of "state governmental entities" as noted on Section 11135(d)(2). Because of this perceived inconsistency, the Commission reviewed the legislative committee staff analysis of the implementing legislation. The staff analysis summary of Section 11135(d)(2) refers to "state entities and state-funded entities" and thus the Commission concluded that the legislative intent of the phrase "state governmental entities" includes state-funded entities as well.

We do not believe there is any doubt in the meaning of "state governmental entities" and that it does not include community colleges. As reflected in Section 11135(d)(3), the Legislature would have included the reference to local entities in Section 11135(d)(2) if that was the intent. Secondly, we do not believe that legislative committee staff analysis is an appropriate basis for determining a reimbursable state-mandated activity when the plain language of the statute clearly identifies state governmental entities only. The legislative staff analysis appears to overreach in its attempt to summarize the bill since the plain language of the bill specifically refers to state governmental entities. Furthermore, the Section 11135(c)(2) goes to great lengths to clarify that the California State University (CSU) is subject to Section 11135(d)(2). It seems inconsistent that the Legislature would be so specific in Section 11135(c)(2) when referring to the CSU and then again in Section 11135(d)(3) when referring to state and local entities, but then be so imprecise in Section 11135(d)(2) when referring to state governmental entities. The fact that Section 11135(d)(2) only refers to state governmental entities when imposing a requirement and that Section 11135(d)(3) refers to state and local entities when imposing requirements on nongovernmental entities contracting with governmental entities could simply reflect the legislative intent to avoid a reimbursable state-mandated activity.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your February 4, 2011 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Ed Hanson, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,

Jeannie Oropeza
Program Budget Manager

Enclosure

Attachment A

DECLARATION OF ED HANSON
DEPARTMENT OF FINANCE
CLAIM NO. 02-TC-46

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the statutes, regulations and an executive order sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

2/8/11
at Sacramento, CA

Edward F. Hanson
Ed Hanson

PROOF OF SERVICE

Test Claim Name: Discrimination Complaint Procedures
Test Claim Number: 02-TC-46

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7 Floor, Sacramento, CA 95814.

On 2/8/11, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7 Floor, for Interagency Mail Service, addressed as follows:

A-16
Mr. Drew Bohan, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

Sixten & Associates
Attention: Keith Petersen
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834

B-08
Ms. Angie Teng
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

A-15
Ms. Jeannie Oropeza
Department of Finance
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

B-08
Ms. Jill Kanemasu
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Ms. Harmeet Barkschat
Mandate Resource Services, LCC
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Ms. Jolene Tollenaar
MGT of America
2001 P Street, Suite 200
Sacramento, CA 95811

Mr. William Duncan
West Kern Community College District
29 Emmons Park Drive
Taft, CA 93268

Mr. Douglas R. Brinkley
State Center Community College District
1525 East Weldon
Fresno, CA 93704-6398

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 894059
Temecula, CA 92589

B-08
Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Mr. Michael Johnston
Clovis Unified School District
1450 Herndon Ave
Clovis, CA 936110599

B-29
Mr. Paul Steenhausen
Legislative Analyst's Office
925 L Street, Suite 1000
Sacramento, CA 95814

Mr. Jon Sharpe
Los Rios Community College District
1919 Spanos Court
Sacramento, CA 95825

Mr. Mike Brown
School Innovations & Advocacy
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Mr. David E. Scribner
Scribner Consulting Group, Inc.
2200 Sunrise Blvd., Suite #240
Gold River, CA 95670

G-01
Mr. Erik Skinner
California Community Colleges
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1102 Q Street, Suite 300
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Ms. Beth Hunter
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B-08
Mr. Jay Lal
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Mr. Chris Bonvenuto
Santa Monica Community College District, CA
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G-01
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A-15
Ms. Susan Geanacou
Department of Finance
915 L Street, Suite 1280
Sacramento, CA 95814

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

E-08
Ms. Carol Bingham
California Department of Education
Fiscal Policy Division
1430 N Street, Suite 5602
Sacramento, CA 95814

Ms. Cheryl Miller
CLM Financial Consultants, Inc.
1241 North Fairvale Avenue
Covina, CA 91722

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 2/8/11 at Sacramento, California.

Annette Waite

Annette Waite

Received
March 1, 2011
Commission on
State Mandates

SixTen and Associates
Mandate Reimbursement Services

Exhibit I

KEITH B. PETERSEN, President

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March 1, 2011

Drew Bohan, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: CSM 02-TC-46
(02-TC-25 and 02-TC-31)
Discrimination Complaint Procedures

Dear Mr. Bohan:

I have received the Commission's Draft Staff Analysis (DSA) for the above referenced consolidated test claim dated September 15, 2010, to which I respond on behalf of the test claimants. By letters dated January 9, 2008, and June 22, 2010, the Commission consolidated two programs from the Minimum Conditions for State Aid (02-TC-25 and 02-TC-31) test claim with the Discrimination Complaint Procedures test claim: the equal employment opportunity program and the student equity plan program. The DSA (8) has incorporated the whole record for Minimum Conditions for State Aid.

This response will first address procedural and threshold legal issues, then respond to exceptions to the analysis of each program's mandated activities. Issues raised by the DSA, but not responded to by this letter, are not waived.

PART 1. ABANDONMENT OF THE PRE-*CONNERLY* REIMBURSEMENT PERIOD

As a result of the *Connerly* decision, the Commission must make a distinction between reimbursable activities prior to the court decision date of September 4, 2001, and activities reimbursable thereafter. The pre-*Connerly* reimbursement period is about two months, based on the July 1, 2001, effective date of the test claim. Because of this short-period of reimbursement and the complexity of making the pre- and post-*Connerly* distinctions in the parameters and guidelines later, the test claimants abandon their request for reimbursement during the pre-*Connerly* period. However, this is not

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intended to prejudice any Commission approved activities based on the continuity of the law for the program activities since January 1,1975, that is, mandated activities that are deemed new programs or increased levels of service pre- and post-*Connerly*, nor is it intended to circumscribe the test claimants' dispute regarding pre- and post-*Connerly* activities not approved for reimbursement by the Commission. This letter is notice that the test claimants have abandoned the pre-*Connerly* reimbursement period for the relevant statutes and regulations.

PART 2. NEW PROGRAM STANDARD OF REVIEW

The DSA (10) states that to determine if a program is new or imposes a higher level of service, the statutes pled "must be compared with the legal requirements in effect immediately before the enactment." This is incorrect. The Discrimination Complaints Procedures test claim was filed June 27, 2003. The Minimum Conditions for State Aid test claim was filed June 23, 2003. These filings are effective prior to the September 30, 2003, effective date of Statutes of 2002, Chapter 1124 (for mandates that became effective before January 1, 2002)[1], which first established at Government Code section 17551, subdivision (c), time limits for filing on statutes enacted after December 31, 1974. Based on the date these test claims were submitted, the standard of review is to compare the statutes pled on the effective date of the test claim filing (here July 1, 2001) to the status of the law as of December 31, 1974, pursuant to Government Code Section 17514. The DSA needs to be revised to compare the statutes and laws effective July 1, 2001 to the law as it existed on December 31, 1974.

PART 3. FEDERAL MANDATE STANDARD OF REVIEW

A. Effective Date of Federal Mandates

The DSA analyses of each of the federal mandates do not indicate how the effective dates of the federal mandates comport with the two versions (1984 and 2004) of Government Code Section 17513. The language of Government Code Section 17513, added by Statutes of 1984, Chapter 1459, extant at the time the test claim was filed, with the changes indicated that resulted from Statutes of 2004, Chapter 890, is as

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[1] Statutes of 2002, Chapter 1124, is generally effective September 30, 2002. However, the amendment that added Government Code section 17551, subdivision (c), delayed the effective date of that subdivision for mandates effective before January 1, 2002, by one year to September 30, 2003:

(c) Local agency and school district test claims shall be filed not later than three years following the date the mandate became effective, *or in the case of mandates that became effective before January 1, 2002,* the time limit shall be one year from the effective date of this subdivision. (Emphasis added)

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follows:

> "Costs mandated by the federal government" means any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements imposed upon the state would result in substantial monetary penalties or loss of funds to public or private persons in the state whether the federal law was enacted before or after the enactment of the state law, regulation, or executive order. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

The language of Government Code Section 17556, subdivision (c), as last amended by Statutes of 1989, Chapter 589, extant at the time the test claim was filed, with the changes indicated that result from Statutes of 2004, Chapter 895, is as follows:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: . . .
>
> (c) The statute or executive order ~~implemented a~~ imposes a requirement that is mandated by a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs ~~which~~ that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued."

Therefore, at the time the test claims were filed, it is relevant whether the federal mandate cited by the DSA was imposed before or after the state statute or regulation alleged as the source of the mandate to which the alleged federal rate is being applied. For example, the DSA (171, 196, 198, 200, etc.) cites the Code of Federal Regulations as it existed in 2009, which would not necessarily be applicable to the state mandate as of July 1, 2001. Similarly, several references to the United States Code do not indicate the effective date of the code sections cited. The DSA should be revised to cite the version of the federal law contemporaneous to the effective date of the test claim.

B. Direct and Coercive Federal Mandates

As a general matter, the DSA applies the existing statutory and court tests for federal mandates consistent with previous test claim decisions. The federal mandates are directly imposed upon the local governmental entity based on its status as an employer

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or a recipient of federal funds. Or, the federal program is deemed to be coercive, and the claimants are practically compelled to comply because of the pervasive nature of federal funding, potential termination of funding where noncompliance is discovered, and potential litigation by an aggrieved person. Note, however, that the DSA does not quantify the amount of federal funds at risk, other than state that they are pervasive as a matter of law (*Hayes*), nor quantify the actual risk and liability of potential litigation.

Most of the cited federal mandates have been the subject of previous test claims and there is no reason here for the Commission to depart from the standard of review historically utilized to determine if a federal mandate exists. However, this is not a waiver by the test claimants of any issues regarding the standard of review, just a recognition that previous arguments are not productive at this juncture as a matter of administrative futility.

The DSA has concluded that the following federal laws are federal mandates that reduce the scope of the state statutes and regulations:

1. Title VII of the Civil Rights Act of 1964
(42 U.S.C., Sections 2000e et seq.)

Regarding the Equal Employment Opportunity (EEO) program, the DSA (64) concludes that there is a direct federal mandate that prohibits discrimination in all operations of a community college district pursuant to 29 CFR, Section 1607 et seq. The DSA (69) concludes that there is a federal mandate directly upon the college districts to keep records relevant to assigned positions of employees by job category, gender, and ethnicity, preserve those records, and to report this information every two years pursuant to 29 CFR, Section 1602.48 and the IPEDS Survey material for FY 2009-10.

2. The Americans with Disabilities Act
(42 U.S.C., Sections 12111-12117 and 12131-12134)

Regarding the EEO program, the DSA (70) concludes that the Americans with Disabilities Act applies directly to all employers of 15 or more employees and that it applies independent of the receipt of federal funds. The federally mandated duties are identified as making a reasonable accommodation to job applicants pursuant to 29 CFR, Section 1630.9, and posting notices pursuant to 42 U.S.C, Section 12101, et seq. Regarding the Student Equity Plan (SEP) program, the DSA (170) cites to 28 CFR, Section 35.130 (2009) for a federal mandate that prohibits discrimination based on disability.

Regarding the Discrimination Complaint Procedures (DCP) program, the DSA (200) cites to 28 CFR, Section 35.107 (no date cited) for the federal mandate to designate a coordinator, notify persons of the identity of the coordinator, and to adopt a grievance procedure.

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3. Title VI of the Civil Rights Act of 1964
(42 U.S.C., Sections 2000d et seq.)

Regarding the SEP program, the DSA (167) concludes that there is a coercive federal mandate that prohibits discrimination in all programs as a condition of the receipt of any federal financial assistance pursuant to 34 CFR, Section 100 et seq. The DSA concludes that colleges are practically compelled to comply with Title VI because of the pervasive nature of federal funding (*Hayes*), potential termination or refusal of funding where noncompliance is discovered, and potential litigation by an aggrieved person. The federally mandated duties are identified (168) as prohibiting discrimination in all operations of a college receiving federal financial assistance pursuant to 34 CFR, Section 100.3 (2009).

Regarding the DCP program, the DSA (198) makes the same citation to 34 CFR, Section 100.3 (2009), which prohibits discrimination in all operations other than employment of a community college district receiving federal financial assistance.

4. Section 504 of the Rehabilitation Act
(29 U.S.C., Section 794)

Regarding the EEO program, the DSA (71) concludes that Section 504 coercively applies to all "programs" as a condition of receiving federal financial assistance, which applies to government and other institutions of higher education pursuant to 34 CFR, Section 104. The DSA concludes (73) that colleges are "practically compelled" to comply with Section 504, because of the pervasive nature of federal funding (*Hayes*), potential termination or refusal of funding where noncompliance is discovered, and potential litigation by aggrieved persons. The federally mandated duties are to designate a person to coordinate efforts to comply with 34 CFR, Section 104.7 (a), adopt grievance procedures (104.7(b)), and make reasonable accommodations (104.12).

Regarding the SEP program, the DSA (170) cites 34 CFR, Section 104.4 (2009), for the federally mandated prohibition of discrimination based on disability in all operations of the college.

Regarding the DCP program, the DSA (200) cites 34 CFR, Sections 104.4, 104.7, and 104.8 for the federal mandate to prohibit discrimination based on disability in all operations of the college, adopt grievance procedures, and provide notice to persons of the name of the district coordinator.

5. Title IX of Education Amendments of 1972
(20 U.S.C., Sections 1681 et seq.)

Regarding the EEO program, the DSA (74) concludes that Title IX, which prohibits sex

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discrimination in any program receiving federal financial assistance, coercively applies to community college districts because of the pervasive nature of federal funding (*Hayes*), potential termination of funding where noncompliance is discovered, and potential litigation by aggrieved persons. The federally mandated duties are to designate a person to coordinate efforts and to adopt complaint resolution procedures to comply with 34 CFR, Section 106.8.

Regarding the SEP program, the DSA (169) cites 34 CFR, Section 106.8 (2009), for several specific federally mandated duties: 1) prohibition of discrimination, 2) notification of the identity of the coordinator, 3) adoption of grievances procedures, 4) notification of nondiscrimination, 5) written policy statements, and 6) providing equal athletic opportunity (at Section 106.41).

Regarding the DCP program, the DSA (199) cites 34 CFR, Section 106.8 and 106.9 (2009), for the federally mandated duties of notice to persons, grievance procedures, and policy statements.

6. The Age Discrimination Act
(42 U.S.C., Section 6101)

Regarding the SEP program, the DSA (171) concludes that colleges are practically compelled to comply with the Age Discrimination Act because of the pervasive nature of federal funding (*Hayes*), potential termination of funding where noncompliance is discovered, and potential litigation by aggrieved persons. The DSA cites to 34 CFR, Sections 90.12 and 110.20 (no date cited), for the federal mandate to prohibit age discrimination and to ensure compliance with the Age Discrimination Act.

Regarding the DCP program, the DSA (198) cites 34 CFR, Sections 110.10 and 110.20 (no date cited), for the federally mandated duties to prohibit age discrimination and to ensure compliance with the Age Discrimination Act.

C. Limitations to the Application of the Federal Mandates

As previously stated, the DSA analysis of the federal mandates needs to be perfected to indicate the effective dates of the cited federal laws and regulations before they can be applied to the state mandates identified in the test claims.

Where the federal language states only a duty to prohibit discrimination or enforce the anti-discrimination laws, these general duties do not require any specific activities upon college districts so they cannot be applied to reduce any state mandated specific activities. This is the standard used by the DSA for state laws and regulations that have only duties of prohibition or enforcement (e.g., DSA 43, re: Title 5, CCR, Section 53024), so the same standard should be applied to the federal mandates.

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Where the federal mandates merely require that the districts adopt procedures, but do not mention implementing procedures, these federal mandates cannot be applied to state mandates where implementation is required, consistent with the Commission's past practice. This is similar to test claim decisions (such as Comprehensive School Safety Plans) where the Commission has determined that districts were mandated to prepare plans, but not mandated to implement them.

PART 4. MINIMUM CONDITIONS THRESHOLD ISSUE-SECTION 51000

A. Statutory Analysis

The DSA (18) has concluded that what constitutes a "minimum condition" is limited to Title 5, CCR, Chapter 2, Subchapter 1, Sections 51000-51027, pursuant to Education Code section 70901, subdivision (b) (6). This excludes Subchapter 2, Sections 51100 and 51102, regarding enforcement of Subchapter 1.

The DSA (12, 13, 19) analysis is based on standards of statutory construction that state that the fundamental task is to ascertain the intent of the lawmakers to give effect to the purpose of the statute, and if the terms of the regulation are unambiguous, the plain meaning of the language governs and a different intent cannot be concluded that is not supported by the words of the language. Further, that the interpretation cannot render any language mere surplusage. Finally, the language must be considered in the context of the regulatory framework as a whole. These standards also apply to administrative regulations.

The DSA (19) concludes that the test claimants have erred in concluding that *compliance* is required to *receive state aid*. The DSA (19) instead asserts that compliance is required only to establish *entitlement*, as if there were a legal or substantive difference between entitlement and compliance. At the very least, this only begs the question: entitlement to what? The answer must be entitlement to state funding or the entirety of the Section 51000 language is meaningless. The DSA subverts the plain language review standard by inventing an unstated intent that Section 51000 "does not preclude" districts from receiving state aid if the districts have not satisfied the minimum conditions. The DSA seeks to make the plain language meaning clearly erroneous by creating a new standard of what the language may not "preclude." The plain language of Section 51000 (as last amended by Register 94-38 and corrected by Register 95-15), clearly states that the provisions of that Chapter (commencing with Section 51000 and ending with Section 51102), establish and state positively ("fix and affirm") the minimum conditions the satisfaction of which entitles a district to receive state aid for the support of the district colleges. Compliance ("satisfaction of which") with the requirements of the Chapter is required to entitle the district to general state aid appropriations.

Regardless, the DSA concludes that since the plain language of Section 51000 "does

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not preclude" a district that has not satisfied the minimum conditions, and therefore is not entitled to receive general state aid, from receiving state aid, that there was an absence of regulatory intent to prevent entitlement to state aid where there is no satisfaction of the minimum conditions. The DSA creation of language to satisfy the opposite intent of the regulation is unnecessary and artificial. The fact that the regulation does not include this surplusage indicates that it is an unnecessary interpretation of the scope of the regulation that only becomes an issue when the DSA artificially separates entitlement from payment. The Section 51000 language stands on its own: districts must comply with the minimum conditions to be entitled to general state funding.

The DSA interpretation is inconsistent with the statutory scheme created by Education Code section 70901, subdivision (b) (6), to have the Board of Governors establish and enforce minimum conditions for entitlement to the receipt of state aid. Section 51100 (as amended by Register 94-38) requires the Chancellor to review each district, at least once very seven years, to determine if the district has met the minimum conditions contained in Subchapter 1. Section 51102 allows the Chancellor, upon the prior approval of the Board of Governors, to withhold a portion of state funds related to the gravity of the finding of noncompliance. Other possible Section 51102 responses to the review findings include agreeing with the district's explanation regarding the perceived noncompliance or accepting a district plan to mitigate the noncompliance. All of these Board of Governors compliance procedures occur after the appropriation of the general state aid. The appropriation is not conditioned on the review every seven years by the Board of Governors. The DSA incorrectly relies upon Section 51102, the Chancellor's enforcement power, as the source of actual control of general state aid, as if Section 51102 granted the Board of Governors the original power to appropriate funds. The Board of Governors cannot legislate state apportionment, it can only punish for noncompliance. The district receives the apportionment and may then be subject to post-facto punishment for noncompliance, but the appropriation remains.

B. The *Kern* analysis is Unnecessary and Not Relevant

Because the Chancellor's Section 51100 review requirement and possible enforcement actions against a district deemed to be out of compliance, the DSA (20) concludes that compliance is a "downstream activity of becoming *entitled* to receive state aid," thus invoking the *Kern* argument. This is erroneous on its face. Compliance is not a program activity. Section 51000 does not define new program activities; the referenced program regulations do that. The minimum conditions program activities (e.g., Sections 51010 and 51026) are not downstream of any other programs. Performing the program activities remains the condition precedent to obtaining state aid.

Section 51000 entitlement to state aid is based on compliance with the program regulations, not the subsequent Section 51100 compliance review. The Section 51100

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review is qualitative in nature, it does not determine the amount of program appropriation or entitlement. The discretion allowed the Board of Governors by Section 51102 to resolve the perceived noncompliance is not a condition precedent to Section 51000, nor is it a condition of the Section 51000 coercion. Section 51102 does not address original entitlement, but only describes the scope of potential penalties for noncompliance and is not a condition of appropriation for the programs either retroactively or prospectively.

The *Kern* issues are not reached. Section 51000 is a legally compelling regulation that needs no further qualification. Neither entitlement nor coercive compliance is a "program." The DSA treatment of program compliance as a downstream activity of "becoming entitled" is a contrived use of *Kern*.

C. The *POBRA* analysis is not relevant

The DSA (20) cites *POBRA* to assert a need for a "concrete showing" that a failure to perform the programs would result in "certain and severe penalties." This additional test is not necessary, since Section 51000 is alone legally compelling. Notwithstanding, the failure to implement a program can remove the entitlement for *all* state funding, *all* general program funding, that is, funding for other programs and needs beyond the scope of the single minimum condition program not implemented, subject only to the Board of Governors post facto unilateral unlimited discretion regarding the degree of noncompliance.

The potential loss of all funds is certainly severe. The test claim exhibits (pages 6112-6120) for the Minimum Conditions for State Aid included the minutes of the Board of Governors meeting of November 12, 2002, regarding Item 13: "Enforcement of Minimum Condition for the Receipt of State Aide at the San Mateo County Community College District." The agenda material for Item 13 is attached here. The minutes describe the extensive discussion regarding several program and contractual issues associated with the hiring process used for the interim Chancellor of SMCCD. The Item 13 agenda material, at page 5, indicates that the Chancellor recommended a penalty of $550,513 for the perceived noncompliance in this one instance. This amount is ten percent of the appropriation to the district from the Partnership for Excellence Funds, a program and funding source not related to the perceived Section 53021 violation. Since the proposed penalty bears no relationship to the perceived noncompliance and is not derived from the fund used for the equal employment opportunity program, the amount would be punitive rather than compensatory.

What degree of "certainty" is needed? Must the test claimants show that a district intentionally failed to implement a mandated program, or intentionally received and misspent the appropriations, and was severely penalized by the Chancellor upon approval of the Board of Governors? That no district was ever severely penalized is not

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the proof that the coercion for compliance exists. Does the DSA demand for proof either neglect or malfeasance on the part of one district, or worse, a pattern by many districts, that results in severe fiscal punishment by the Board of Governors at its unfettered discretion? Catastrophic malfeasance is not a practice of the professional public servants who lead the community colleges.

Regarding the magnitude of the coercion, compare the standard used by the DSA for federal mandates. Generally, the DSA concludes that it is sufficient for a finding of a practical compulsion or coercion to be based on the never quantified "pervasiveness" of federal funding (regardless of amounts actually received by the district), the potential post-facto termination or prospective refusal of program funding where noncompliance is discovered, and potential litigation by aggrieved persons. The aggrieved party for the state minimum conditions scheme is the Board of Governors whose power to fiscally penalize exceeds the scope of the funding provided for the program perceived to be out of compliance. These penalties can be imposed without the benefit of evidentiary standards of either the Administrative Procedure Act or the judicial system. The DSA thus sets a higher standard for the *state* minimum conditions coercion analysis than the federal coercion analysis, and does so without benefit of a court decision on point. There is no legal or factual basis for this higher state standard.

Rather, it is the magnitude of coercion created by the threat of penalty, not any proof of actual penalty, that is the measure of the issue. To decide otherwise is to make the Section 51000 coercion language surplusage, since the Board of Governors has the independent Section 51100 duty to review compliance notwithstanding the original Section 51000 entitlement issue.

The Board of Governors has made it quite clear that the districts are required to implement the programs included in the Chapter by conditioning receipt of general college funding on that implementation and providing a post-facto audit and penalty system to evaluate the measure of compliance. The fact that no district has catastrophically failed to comply and has been severely punished thereafter does not make this regulatory structure a sham. There is no reason to reach the *POBRA* severe consequences practical compulsion issue, since the districts are already legally compelled by Section 51000 to comply with the program regulations.

PART 5. DERIVATIVE BASIS FOR MANDATES

The DSA (16, 17, 18) has concluded that the scope of the potentially mandated activities based on the minimum conditions for state aid is limited to Title 5, CCR, Section 51010, in the case of equal employment opportunity programs, and Section 51026 for the student equity plan program, and that the other code or regulation sections included in the test claim pertinent to these programs are outside the scope of what constitutes a minimum condition because the other regulations or code sections are outside of the Chapter.

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Notwithstanding and independently of the determination regarding Section 51000 above, pursuant to rules of statutory construction, for the equal employment opportunity program, the test claimants assert that because Title 5, CCR, Section 51010 cites the requirements of Sections 53000 through 53034, either specifically as in Section 51010 subdivision (a), or inclusively as in subdivision (h), compliance with Section 51010 requires compliance with any other sections cited in 51010 as required by those cited sections. Similarly, for the student equity plan program, the test claimants assert that because Section 51026 cites the requirements of Section 54220, compliance with Section 51026 requires compliance with the scope of Section 54220. Districts cannot comply with Section 51000 without complying with the sections listed in Sections 51010 and 51026 that require compliance with other sections located outside of Subchapter 1 to implement the mandated minimum condition. Section 51000 is an independent derivative basis for a finding of legal compulsion to implement the activities in Sections 53001 through 53034 and Section 54220. The Section 53000 et seq., and Section 54220 program activities derive their mandate status from the mandate established by Sections 51010 and 51026.

Similarly, for all other code sections and regulations pled, the test claimants assert the sections referenced within a statute or regulation included in the test claims as mandatory activities are to that degree derived from the source statute or regulation, but may also be independently mandated. For example, Section 51000 mandates performance of Section 51026, which then mandates performance of Section 54220. However, both 51026 and 54220 can alternatively be determined to be mandates irrespective of any determination regarding Section 51000 and the DSA has in fact analyzed them in that manner.

PART 6. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

The subject of this part is Education Code sections 87101 and 87102, and Title 5, sections 53001 through 53034 originally included in the Minimum Conditions for State Aid test claim. As stated before, Section 51010 cites the requirements of Sections 53000 through 53034, either specifically as in Section 51010 subdivision (a), or inclusively as in subdivision (h). Compliance with Section 51010 requires compliance with any other sections cited as required by those cited sections.

The DSA (104) concludes the equal employment opportunity program is discretionary and an option exercised by the college districts in order to obtain equal employment opportunity fund money. However, the only statutory requirement for receipt of the Fund money is stated in Section 87102, subdivision (a): "[a]s a condition for the receipt of funds pursuant to Section 87107, the governing board of community college district that opts to participate under the article shall periodically submit to the board of governors an affirmation of compliance with this article." The rest of the language of subdivision (a) is only descriptive of the scope of the plan, not a condition of the receipt of funds.

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The mandated program activities to develop and implement the equal employment opportunity plan are not conditioned on requesting the funds or the related periodic affirmation of compliance. Section 53033 states that "[a]ny district failing to provide the data required under Section 53004 is not in compliance with" the Subchapter. The subsequent sentence, that funds shall not be granted, is only conditioned upon the district providing a report to the Chancellor on the use of the funds no later than March 31 each year. Similarly, Section 53034 requires an annual report on September 30 on the use of funds until this information can be incorporated into the Section 53004 report. This requirement is also independent of the other mandated program activities.

Section 53030 describes the allowable uses of the funds which encompasses only some of the mandated activities. To the extent that funds are appropriated by the state for this purpose from year-to-year, and there is no finding in the DSA that these funds are consistently available, and to the extent the district requests the funds, the funds would be an appropriate offset to the cost of the discrete mandated activities to which the funds were utilized by the district as concluded by the DSA (223). The *potential* availability of the funds at the Legislature's future discretion is not a sufficient (Government Code section 17556) basis for a finding of costs not mandated by the state for any of the program activities.

The *Kern* issue is not relevant because the program activities are not a program "downstream" to a request for funds. Requesting funds is not a program. All subsequent *Kern* analyses are invalid and unnecessary, that is, the "downstream" analyses for Sections 53006 (DSA 105, 106), 53022 (DSA 106), 53024 (DSA 107), and 53034 (DSA 108). These activities are neither downstream nor conditioned on the request or receipt of funding.

As the DSA has concluded, one of the reasons the equal employment opportunity program was established to comply with state and federal mandates. Section 53000, subdivision (b) notes that compliance with the program is not automatic compliance with all applicable laws or regulations. Section 53006 recognizes that job descriptions may reflect historical specific factual needs of the districts as employers and seeks to alleviate any under representation effects those local needs may have by providing a process to mitigate those effects. Contrary to the conclusion of the DSA (105), mitigating the historic under representation is the mandate, not the scope of the local job qualification statements.

PART 7. STUDENT EQUITY PLAN PROGRAM

The subject of this part is the cited Education Code sections 212 through 221.7, 66010.2 through 66292.5, and 72011 through 72014, and Title 5, CCR, sections 51000, 51026, and 54220, all of which were originally included in the Minimum Conditions for State Aid test claim. As stated before, Section 51026 cites the requirements of Section

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54220. Compliance with Section 51026 requires compliance with the scope of Section 54220.

Consistent with Commission practice regarding statutes that only state legislative intent and prohibitions (for example, Education Code section 66016 (DSA 155)), the DSA concludes that this language does not require any activity by the districts. To the contrary, in the absence of more specific goals and measures for the student equity plan (Section 54220 speaks generally to "promote student success," and "goals for access, retention, degree . . . ESL and basic skills completion"), the intent and prohibition language in the Education Code provide the necessary framework to define the successful outcomes of the plan that defines the means and methods to achieve these outcomes.

The DSA (164) concludes that the plain language of Section 54220 only requires the one-time adoption by the July 1, 1993, of a student equity plan, which predates the July 1, 2001 reimbursement eligibility period. The July 1, 1993, adoption language was established by the original regulation (Register 93-06) and continued when the regulation was otherwise amended (Register 98-03), even though that amendment was after the July 1, 1993, filing date. It should be noted that the next amendment to Section 54220, the current version (Register 2006-17), replaces the July 1, 1993, filing date language with the requirement that "districts shall maintain a student equity plan." "Maintaining" the Plan implies that the Board of Governors understood that the Plan may need to be revised as relevant state and federal laws are revised or as other circumstances may require. Even without reliance on Register 2006-17, the Commission can reasonably conclude as a practical matter that a once-adopted plan will need amendment for the reasons cited and thus it is a continuing activity.

The DSA (177) concludes that the requirements of Education Code sections 221.5 (d), 66271.7 (d), and 72012, are "downstream activities" of a district offering career and counseling services and funding for athletic programs. The DSA (178) concludes that there is no state mandate to provide career counseling, Section 51018 (part of the Minimum Conditions for State Aid test claim not consolidated into the Discrimination Complaint Procedures test claim as later consolidated) notwithstanding. Regarding the funding for athletic programs, the DSA (178) cites Education Code section 78223 and concludes there is no state mandate to provide intercollegiate athletics. The DSA makes an unwarranted distinction between intercollegiate athletics and regular curricular athletic programs. Section 66271.7 (g) is not by its language restricted to intercollegiate athletics. The discrimination prohibition would also apply to district facilities and equipment used for athletics offered as part of the regular curriculum. The DSA has made no finding of law of fact in this test claim that general state funding for any or all community college curriculum and other services, including counseling and athletics, results in a *Hayes* exception to legal compulsion.

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PART 8. DISCRIMINATION COMPLAINT PROCEDURES PROGRAM

The subject of this part is the cited Government Code Sections 11135 through 11139 and Title 5, CCR, sections 59300 through and 59362 (not inclusive), all of which were originally included in the Discrimination Complaint Procedures test claim, as well as Sections 59300, 59303, and 59304 which were included in the Minimum Conditions for State Aid test claim.

The DSA (192-196) determined that the district-level complaint process, Sections 59327 through 59342, require districts to engage in 19 listed activities. However, the DSA concludes that the plain language of the Chancellor's process, Sections 59350 through 59362, do not require any district activity. To the contrary, the district is required by Section 59340 to submit its findings to the Chancellor. Persons not satisfied with the district process can unilaterally file an appeal. Section 59350 indicates that the lack of an appeal by the complaining person does not preclude the Chancellor's review of the district's decision. So, whether there is an appeal or not, the district process is subject to review by the Chancellor and the district is required to participate in the Chancellor's Section 59350 review process.

The appeal is an independent action by the complainant and response to the appeal is not discretionary to either the district or Chancellor. Section 59351 requires the district to respond to new issues or facts raised by the complainant on appeal to the Chancellor's office. Section 59352 provides for a Chancellor's investigation, presumably of the district's due process, which would require the participation of the district. Section 59354 provides for the Chancellor to seek an informal resolution of an alleged violation by written conciliation agreement when resolution is achieved. "Conciliation" would infer that the district would need to participate since it would be the party charged for any violation. Section 59356 requires the Chancellor to notify the district of its findings and to allow the district the choice to acquiesce, a choice that requires affirmative action by the district. Section 59358 requires the Chancellor to proceed with a formal hearing process if it finds a violation by the district and if the district does not acquiesce. The administrative adjudication referenced in this Section commences at Government Code Section 11500, and by this reference in Section 59358, this process is a mandate on the district.[2] Section 59360 enumerates the

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[2] The administrative adjudication formal hearing process commencing at Government Code Section 11500:

(A) Pursuant to Government Code Section 11505, subdivision (a), completing and returning a post card, or other form, entitled Notice of Defense which, when signed by or on behalf of the district and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506. Contacting the designated person to obtain the names and addresses of witnesses or to inspect and copy the documents described in section 11507.6. When good cause exists, notifying the agency that a hearing should be postponed.

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(B) Pursuant to Government Code Section 11506, when filing a notice of defense, making all appropriate actions, including:
(1) Requesting a hearing,
(2) Objecting to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.
(3) Objecting to the form of the accusation on the ground that is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense,
(4) Admitting the accusation in whole or in part,
(5) Presenting new matter by way of defense, or
(6) Object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

(C) Pursuant to Government Code Section 11507.3, subdivision (b), moving for a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues, in furtherance of convenience or to avoid prejudice or when separate hearings would be conducive to expedition and economy.

(D) Pursuant to Government Code Section 11507.6, obtaining the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and inspecting and making a copy of any of the following in the possession or custody or under the control of the other party:
(1) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;
(2) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;
(3) Statements of witnesses then proposed to be called by the party and of the persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (1) or (2) above;
(4) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;
(5) Any other writing or thing which is relevant and which would be admissible in evidence;
(6) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (1) to (5), inclusive, or summary thereof.

(E) Pursuant to Government Code Section 11507.7, serving and filing motions to compel discovery.

(F) Pursuant to Government Code Sections 11509 and 11513, appearing at a hearing of the cause, calling and examining witnesses, introducing exhibits, cross-examining opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, impeaching any witness regardless of which party first called him or her to testify, and rebutting evidence against him or her. If respondent district does not testify in its own behalf, being called and examined as if under cross-examination.

(G) Pursuant to Government Code Section 11511, appearing and participating in the deposition of a witness when that witness is being deposed.

(H) Pursuant to Government Code Section 11511.5, attending a prehearing conference on motion of a party or by order of an administrative law judge. Pursuant to subdivision (d), participating when the prehearing conference may be converted into alternative dispute resolution or an informal hearing.

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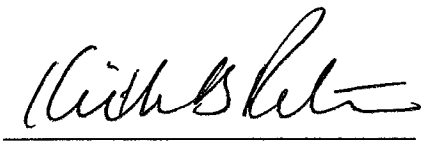
Chancellor's enforcement power which can be applied whether or not there has been a Government Code Section 11500 et seq., hearing process. All three listed actions are sufficiently coercive to practically compel the entire discrimination complaint process upon the districts. Section 59362 empowers the district to file a writ to contest the Chancellor's 59360 enforcement action and is thus an extension of the mandated process as a remedy to incorrect action by the Chancellor.

Certification

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the best of my own knowledge or information or belief, and that the attached documents are true and correct copies of documents received from or sent by the state agency which originated the document.

Executed on March 1, 2011 at Sacramento, California, by



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(I) Pursuant to Government Code Section 11511.7, when required by an administrative law judge, attending and participating in a settlement conference.

(J) Pursuant to Government Code Section 11514, mailing or delivering to the opposing party a copy of any affidavit which the district proposes to introduce in evidence, together with a notice as provided in subdivision (b). Upon receipt of an affidavit and notice, when necessary, delivering to the proponent of the affidavit a request to cross-examine the affiant.

(K) Pursuant to Government Code Section 11515, requesting an opportunity to refute officially noticed matters by evidence or by written or oral presentation of authority.

(L) Pursuant to Government Code Section 11516, showing that the district will be prejudiced unless the case is reopened to permit the introduction of additional evidence in its behalf after an amendment of the accusation after submission of the case for decision.

(M) Pursuant to Government Code Section 11517, subdivision (c)(2)(E)(i), the cost of a copy of the record.

(N) Pursuant to Government Code Section 11518.5, applying for a correction of a mistake or clerical error in the decision, stating the specific ground on which the application is made.

(O) Pursuant to Government Code Section 11521, participating in a reconsideration of all or part of the case on the district's motion or the petition of any party.

(P) Pursuant to Government Code Section 11523, filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure when seeking judicial review of a decision.

(Q) Pursuant to Government Code Section 11524, applying for continuances when necessary or appropriate.

(R) Pursuant to Government Code Section 11506, the cost of legal counsel when necessary or appropriate when complying with the requirements relative to administrative adjudication.

Received
March 1, 2011
Commission on
State Mandates

Attachment: Board of Governors Meeting, November 12-13, 2002, Item 13: "Enforcement of Minimum Condition for the Receipt of State Aid at the San Mateo County Community College District."

C: Commission electronic service list

Board of Governors
California Community Colleges
November 12-13, 2002

ENFORCEMENT OF MINIMUM CONDITIONS FOR THE RECEIPT OF STATE AID AT THE SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

13

ACTION SCHEDULED

Committee of: *The Whole*
Richard H. Leib, President

Presentation: *Thomas J. Nussbaum, Chancellor*
Ralph Black, General Counsel

Issue

The Chancellor's Office received a complaint concerning the actions of the San Mateo County Community College District (SMCCCD) Board of Trustees in appointing the Chancellor-Superintendent of the District in May of 2001 and January 2002. The complaint included allegations of violations of the open recruitment and other requirements of the Board of Governors' regulations that establish minimum conditions for districts to receive state aid. The investigation that followed revealed that the SMCCCD Board violated minimum conditions requirements (as well as other state statutes and Board of Governors' regulations). Efforts at reaching a mutually agreeable remedy for the violations with the SMCCCD Board have thus far proven to be unsuccessful. This item presents the Board with options for responding to the violations.

Background

In accordance with its usual process, the Chancellor's Office initially attempted to resolve the complaint on an informal level. However, although the District (acting through its attorney) agreed to respond on an informal level, no response was forthcoming. Accordingly, the matter proceeded to formal investigation. The findings of that formal investigation are discussed below.

The Board of Governors is required by the Education Code to establish minimum conditions for districts to receive state aid. The minimum conditions appear as regulations that are set out in

title 5 of the California Code of Regulations[1], at sections 51000 through 51027. Section 51010, at all times pertinent to this matter, incorporated requirements set out in sections 53000 through 53034. Section 53003 required districts to adopt faculty and staff diversity plans, and section 53021 required districts to provide a program of full and open recruitment for open administrative positions.

The District's diversity plan pursuant to section 53003 requires recruitment, screening, selection and hiring processes that are in accordance with principles of equal opportunity. The District's standards for recruitment processes call for documented selection processes, including position announcements, lists of recruitment sources, logs of applicants, and reasons for the nonselection of applicants. The District's plan permits "in-house" recruitment only for interim appointments of up to one year.

Section 53021 requires recruitment that is at least statewide for educational administrators, such as the Chancellor-Superintendent position at the SMCCCD. In connection with that recruitment, the SMCCCD Board was required to seek qualified applicants listed in the Community College Registry. The SMCCCD Board was authorized to conduct an "in-house only" search for the Chancellor-Superintendent if it hired someone on an interim basis. A proper interim hire required the SMCCCD Board to comply with its established hiring procedures, to provide all in-house qualified District employees with the opportunity to apply, and to notify both the District's Faculty and Staff Diversity Advisory Committee and the Chancellor's Office at least ten working days prior to offering the position to a candidate. An initial interim appointment cannot exceed one year. The one year term allows for full and open recruitment for the position.

On May 23, 2001, the SMCCCD Board hired Mr. Ron Galatolo as its interim Chancellor-Superintendent. Prior to this appointment, Mr. Galatolo was a classified administrator with the District.

The Board conducted no recruitment activities for the position. It did not follow its own plan, it did not afford any other qualified District employees the opportunity to be considered for the position, it did not notify its Advisory Committee or the Chancellor's Office of its intention to hire on an interim basis, and the appointment exceeded the one-year limitation on the term of appointment.

The SMCCCD Board did not substantially comply with the requirements of its own Plan that was developed under section 53003. It did not conduct full and open recruitment for the position nor comply with the requirements for making an interim selection. Following one of these two options is necessary to comply with section 53021. In violating sections 53003 and 53021 in these ways, the Board also violated section 51010, which is a minimum condition for the receipt of state aid.

On January 25, 2002, the SMCCCD Board appointed Mr. Galatolo to a four-year term as Chancellor-Superintendent. The SMCCCD Board was required to use full and open recruitment that was at least statewide, and to seek qualified applicants listed in the Registry. The Board

[1] Attachment 1 contains the text of the statutes and regulations referred to herein, with the exception of sections 51001-51027, which set forth those minimum conditions that do not apply here.

again engaged in no recruitment activities and did not comply with the hiring requirements set out in its diversity plan when it appointed Mr. Galatolo for a four-year term. In violating sections 53003 and 53021 in these ways, the Board again violated section 51010.

In addition to violating the minimum conditions for the receipt of state aid, the SMCCCD Board also violated other provisions of the Education Code and title 5. Education Code section 87400 and title 5, section 53420 require districts to hire as educational administrators only persons who meet at least the minimum qualifications for employment. If persons do not meet the minimum qualifications for hire, a local board can determine that the person possesses qualifications that are equivalent to those minimum qualifications. If equivalencies are used, Education Code section 87359 and title 5, section 53430 require the board to reflect the equivalence criteria used in its hiring action.

When the SMCCCD Board hired Mr. Galatolo in January, 2002, its action cited the need to hire Mr. Galatolo on the basis of equivalencies because he did not possess the usual minimum qualifications for employment. However, when it hired him in May, 2001, it did not include any equivalency finding. Therefore, the Board violated the requirements of Education Code section 87359 and title 5, section 53430 in its May 2001 appointment.

Education Code section 87360 requires that the hiring criteria for administrators include "a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students." The SMCCCD Board could not demonstrate that it complied with this requirement.

A draft final investigative report was issued to the District to allow the District to provide further input or to make corrections. The District offered no revisions and did not contest any of the factual findings or conclusions. Accordingly, the final investigative report was issued.

The District's primary defense to the investigative findings is that it was not obligated to follow the open recruitment requirements for the January 2002 appointment because it believed, based on its attorney's legal advice, that the decision in *Connerly v. State Personnel Board*, issued September 4, 2001, invalidated the Board of Governors' regulations. According to the SMCCCD Board, it was therefore free to appoint a Chancellor-Superintendent without recruitment or following its own selection processes.

The Chancellor's Office maintains that the *Connerly* decision did not invalidate the regulations. We advised the District that the decision criticized only small portions of the regulations that might require or permit preferential treatment on an impermissible basis. Consequently, regulations requiring full and open recruitment, that do not discriminate or grant a preference on any basis, clearly applied. The portions of the District's Plan that called for equal employment opportunity also applied. We advised the SMCCCD Board that the Superior Court's judgment concurred with our analysis. We advised the SMCCCD Board that the Office of the California Attorney General confirmed our legal analysis. Moreover, the District's defense cannot excuse the SMCCCD Board's minimum conditions violations in May 2001 that occurred prior to the September 2001 *Connerly* decision.

At the same time that we issued our investigative findings, we offered the SMCCCD Board a proposed settlement to resolve the adverse findings. The settlement proposed that the District conduct a search for an interim Chancellor-Superintendent (that would give all qualified District employees the opportunity to apply) and then conduct a full and open search for the position. The interim position could not extend beyond April 1, 2003.

The full and open search would need to be at least statewide, would be based on a job description that established the qualifications for the position, and would use a well-defined and thoughtful search and selection process that would include students and representatives of the faculty and other employees. It would require that all qualified applicants be given full and fair consideration for the position. Persons serving in the selection process would be trained in equal employment opportunity requirements and the Chancellor's Office would monitor the hiring process.

The settlement agreement also proposed that the District submit selection processes for all administrative/management positions to the State Chancellor and that the State Chancellor (or designee) would review such hiring processes for a period of three years. The Chancellor would conduct an on-site review of the District's compliance with the equal employment opportunity regulations and would conduct an in-service for the SMCCCD Board on the regulations. Additionally, the Chancellor's Office would conduct a review of the District's application of minimum qualifications for hire, which review could be made by a team of community college faculty, administrators and trustees.

To assist in the resolution effort, Chancellor Nussbaum and legal staff met with representatives of the SMCCD Board to discuss the results of the investigation and explore options for resolution. However, these discussions did not lead to any agreement and the SMCCCD Board did not accept the settlement offer.

Among other things, the SMCCD Board has maintained that a settlement of a recruitment violation by another district over ten years earlier did not include a new selection process. However, the previous situation occurred under markedly different regulatory language and the actions of the SMCCCD Board reflect numerous violations. Significant differences distinguish the two circumstances, and staff does not feel that the previous resolution limits our current actions.

Nevertheless, in the interest of compromise, we modified the proposed agreement to permit an interim appointment to remain in effect for up to two years, as opposed to the few months indicated in the original proposal. Other provisions of the original settlement remained intact (e.g., a search based on a defined job description and a selection process that includes students and employees).

The SMCCCD Board rejected the modified settlement offer. The SMCCCD Board continues to assert that it was not required to follow the minimum conditions regulations for its January 2002 hiring action. It maintains the violations connected with its May 2001 hiring action or the other violations of statute and regulation described in the investigative report are not so serious as to justify proposed remedies that it views as extreme.

The SMCCCD Board submitted a counter-offer to resolve the violations. Under the counter-offer there would be no commitment to reopen the Chancellor-Superintendent position. For a period of one and a half years the Chancellor's Office would have the opportunity for a limited review of hiring processes for three positions - Chancellor, Executive Vice Chancellor, and President- should any openings occur. The District would "seriously consider" our comments, but the job descriptions, including the job-related qualifications, would not be submitted to the Chancellor's Office, nor would the paper screening criteria, the committee composition, or the interview questions be provided to the Chancellor's Office. Furthermore, the Chancellor's Office would not be permitted to review the bases for the elimination of candidates in these processes. By contrast, the resolution we proposed would have required a careful review by the Chancellor's Office of all administrative/management hiring processes for a period of three years.

In addition, the counter-offer indicates that the District "intends" to revise its hiring processes for executive management positions and that it would consult with the Chancellor about the revisions. The SMCCCD Board also agrees to abide by the new regulations on equal employment opportunity recently adopted by the Board of Governors.

Staff believes the SMCCCD Board proposal falls short of remedying the violations of the Board's minimum conditions regulations. The commitments being made are far from absolute and refuse to address ways of rectifying the violations in the hiring of the Chancellor.

Analysis

The minimum conditions that the SMCCCD Board violated relate to providing equal employment opportunity to all qualified candidates. Open recruitment and verifiable hiring processes are consistent with equal employment opportunity and important for finding the best qualified candidate for any position. The District's own plan requires open recruitment and verifiable hiring processes. In appointing an inside person without recruitment or process, the SMCCCD Board violated the minimum conditions for receipt of state aid and its own plan. The violations found in the investigation are numerous and significant, and they suggest an appropriately strong remedy.

Efforts at resolution with the SMCCCD Board have failed to produce a mutually agreeable settlement agreement that adequately addresses the extent and gravity of the violations.

The Chancellor's Office is authorized to enforce the minimum conditions for the receipt of state aid. One enforcement option is the withholding of all or part of a district's state aid. Withholding state aid from a district requires the approval of the Board of Governors. In light of the actions of the SMCCCD Board of Trustees, should the Board of Governors decide to withhold apportionment, it is recommended that the Board approve the withholding of an amount of money equal to 10 percent of the amount otherwise due to the San Mateo County Community College District from Partnership for Excellence Funds for 2002-2003. This amount would be $550,513.00.

The SMCCCD Board has been specifically invited to attend this Board meeting and to present any information it wishes to encourage the Board to adopt the settlement resolution it has proposed.

Recommended Action

That the Board consider the findings and conclusions from the investigation of the subject minimum conditions complaint and any presentation made on behalf of the San Mateo County Community College District in support of the offer made by the SMCCCD Board and provide direction to the Chancellor regarding the following actions:

1. Direct the Chancellor to continue efforts to reach a mutually agreeable resolution of the violations by the San Mateo County Community College District; or

2. Approve the proposed resolution agreement offered by the San Mateo County Community College District Board of Trustees; or

3. Approve and direct the Chancellor to withhold up to $550,513.00 from the amount otherwise due to the San Mateo County Community College District from Partnership for Excellence Funds for 2002-2003 at the earliest possible opportunity and redistribute the funds on an equal basis among the other community college districts.

ATTACHMENT 1

California Code of Regulations, Title 5

§51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.

§51010. Equal Employment Opportunity.

The governing board of a community college district shall:

(a) adopt a district policy which describes its equal employment opportunity program and meets the requirements of section 53002;

(b) develop and adopt a district equal employment opportunity plan which meets the requirements of section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by section 53004;

(d) ensure that a program of recruitment is carried out as required by section 53021;

(e) ensure that screening and selection procedures are developed and used in accordance with section 53024;

(f) ensure that, where necessary, additional steps are taken consistent with the requirements of section 53006;

(g) ensure that the pattern of hiring and retention, when viewed over time, is consistent with the objectives established in the district's equal employment opportunity plan; and

(h) substantially comply with the other provisions of subchapter 1 (commencing with section 53000) of chapter 4.

§51102. Enforcement.

(a) If any review pursuant to Section 51100 discloses that a college is not in compliance with the provisions of Subchapter 1 (commencing with Section 51100) of Chapter 2, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

(1) accept in whole or part the district's response regarding noncompliance;

(2) require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

(3) withhold all or part of the district's state aid. The amount of

withholding shall be related to the extent and gravity of noncompliance and shall require approval of the Board of Governors.

(c) The Chancellor shall report to the Board of Governors on any actions taken pursuant to Subsection (b) of this Section, provided that, in the event he or she determines to withhold all or

a portion of a district's state aid, the Chancellor shall inform and obtain the approval of the Board prior to the withholding.

§53000. Scope and Intent.

(a) This subchapter implements and should be read in conjunction with Government Code sections 11135-11139.5, Education Code sections 66010.2, 66030, and Chapter 4.5 of Part 40 of Title 3, commencing with section 66250; Title VI of the Civil Rights Act of 1964 (42 U.S.C. s 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. s 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. s 794), the Americans with Disabilities Act of 1990 (42 U.S.C. s 12100 et seq.) and the Age Discrimination Act (42 U.S.C. s 6101). Nothing in this subchapter shall be construed to conflict with or be inconsistent with the provisions of article 1, section 31 of the California Constitution or to authorize conduct that is in conflict with or is inconsistent with such provisions.

(b) The regulations in this subchapter require steps to promote faculty and staff equal employment opportunity which are in addition to and consistent with the nondiscrimination requirements of state or federal law. Therefore, compliance with these regulations or approval of the district's equal employment opportunity plan pursuant to section 53003 does not imply and should not be construed to mean that a district has necessarily complied with its obligations under any other applicable laws or regulations. The Chancellor shall assist districts in identifying other applicable state or federal laws which may affect district equal employment opportunity or nondiscrimination policies.

§53001. Definitions.

As used in this subchapter:

(a) Adverse Impact. "Adverse impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on any group defined in terms of ethnic group identification, gender, or disability. A disparity identified in a given selection process will not be considered to constitute adverse impact if the numbers involved are too small to permit a meaningful comparison.

(b) Business Necessity. "Business necessity" means circumstances which justify an exception to the requirements of section 53021 because compliance with that section would result in substantial additional financial cost to the district or pose a significant threat to human life or safety. Business necessity requires greater financial cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.

(c) Equal Employment Opportunity. "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and to enjoy the benefits of employment with the district. Equal employment opportunity should exist at all levels and in all job categories listed in section 53004(a). Ensuring equal employment opportunity also involves creating an environment which fosters cooperation, acceptance, democracy, and free expression of ideas and is welcoming to men and women, persons with

disabilities, and individuals from all ethnic and other groups protected from discrimination by this subchapter.

(d) Equal Employment Opportunity Plan. An "equal employment opportunity plan" is a written document in which a district's work force is analyzed and specific plans and procedures are set forth for ensuring equal employment opportunity.

(e) Equal Employment Opportunity Programs. "Equal employment opportunity programs" means all the various methods by which equal employment opportunity is ensured. Such methods include, but are not limited to, using nondiscriminatory employment practices, actively recruiting, monitoring and taking additional steps consistent with the requirements of section 53006.

(f)(1) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks/African-Americans, and Hispanics/Latinos.

(2) Ethnic Group Identification. "Ethnic group identification" means an individual's identification in one or more of the ethnic groups reported to the Chancellor pursuant to section 53004. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.

(g) Goals for Persons with Disabilities. "Goals for persons with disabilities" means a statement that the district will strive to attract and hire additional

qualified persons with a disability in order to achieve the level of projected representation for that group by a target date established by taking into account the expected turnover in the work force and the availability of persons with disabilities who are qualified to perform a particular job. Goals are not "quotas" or rigid proportions.

(h) In-house or Promotional Only Hiring. "In-house or promotional only" hiring means that only existing district employees are allowed to apply for a position.

(i) Monitored Group. "Monitored group" means those groups identified in section 53004(b) for which monitoring and reporting is required pursuant to section 53004(a).

(j) Person with a Disability. "Person with a disability" means any person who (1) has a physical or mental impairment as defined in Government Code section 12926 which limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A person with a disability is "limited" if the condition makes the achievement of the major life activity difficult.

(k) Projected Representation. "Projected representation" means the percentage of persons from a monitored group determined by the Chancellor to be available and qualified to perform the work in question.

(l) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the district to remove artificial or real barriers which prevent or limit the employment and upward mobility of persons with disabilities. "Reasonable accommodations" may include the items designated in section 53025.

(m) Screening or Selection Procedure. "Screening or selection procedure" means any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques, including but not limited to, traditional paper and pencil tests, performance tests, and physical, educational, and work experience requirements, interviews, and review of application forms.

(n) Significantly Underrepresented Group. "Significantly underrepresented group" means any monitored group for which the percentage of persons from that group employed by the

district in any job category listed in section 53004(a) is below eighty percent (80%) of the projected representation for that group in the job category in question.

(o) Target Date. "Target date" means a point in time by which the district plans to meet an established goal for persons with disabilities and thereby achieve projected representation in a particular job category.

(p) Timetable. "Timetable" means a set of specific annual hiring objectives that will lead to meeting a goal for persons with a disability by a projected target date.

§53002. Policy Statement.

The governing board of each community college district shall adopt a policy statement setting forth the district's commitment to an equal employment opportunity program. This statement may also incorporate the nondiscrimination policy statement required pursuant to section 59300 and other similar nondiscrimination or equal employment opportunity statements which may be required under other provisions of state and federal law.

§53003. District Plan.

(a) The governing board of each community college district shall develop and adopt a district-wide written equal employment opportunity plan to implement its equal employment opportunity program. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) Such plans shall be reviewed at least every three years and, if necessary, revised and submitted to the Chancellor's Office for approval. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its plan.

(c) In particular, the plan shall include all of the following:

(1) the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this subchapter pursuant to section 53020;

(2) the procedure for filing complaints pursuant to section 53026 and the person with whom such complaints are to be filed;

(3) a process for notifying all district employees of the provisions of the plan and the policy statement required under section 53002;

(4) a process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this subchapter and of state and federal nondiscrimination laws;

(5) a process for providing annual written notice to appropriate community- based and professional organizations concerning the district's plan and the

need for assistance from the community and such organizations in identifying qualified applicants;

(6) an analysis of the number of persons from monitored groups who are employed in the district's work force and those who have applied for employment in each of the job categories listed in section 53004(a);

(7) an analysis of the degree to which monitored groups are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and

qualified to perform the work required for each such job category and whether or not the underrepresentation is significant;

(8) methods for addressing any underrepresentation identified pursuant to subparagraph (7)

(9) additional steps consistent with section 53006 to remedy any significant underrepresentation identified in the plan; and

(10) any other measures necessary to further equal employment opportunity throughout the district.

(d) The plan shall include any goals for hiring persons with disabilities that are required by section 53025.

(e) The plans submitted to the Chancellor shall be public records.

(f) Each community college district shall make a continuous good faith effort to comply with the requirements of the plan required under this section.

(g) In developing the availability data called for in subsection (c)(7), the Chancellor shall work through the established Consultation Process.

§53004. District Evaluation and Report to Chancellor.

(a) Each district shall annually survey its employees and shall monitor applicants for employment on an ongoing basis in order to evaluate the implementation of its equal employment opportunity plan and to provide data needed for the analyses required by sections 53003, 53006, 53023, and 53024. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey of employees at each college in the district. Each employee shall be reported so that he or she may be identified as belonging to one of the following seven job categories:

(1) executive/administrative/managerial;

(2) faculty and other instructional staff;

(3) professional nonfaculty;

(4) secretarial/clerical;

(5) technical and paraprofessional;

(6) skilled crafts; and

(7) service and maintenance.

(b) For purposes of the survey and report required pursuant to subsection (a) of this section, each applicant or employee shall be afforded the opportunity to identify his or her gender, ethnic group identification and, if applicable, his or her disability. A person may designate multiple ethnic groups with which he or she identifies, but shall be counted in only one ethnic group for reporting purposes. Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian

Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part of the Asian/Pacific Islander group as well as in separate subcategories. However, in determining whether additional steps are necessary to ensure that monitored groups have not been excluded on an impermissible basis, analysis of the separate subgroups is not necessary.

§53005. Advisory Committee.

Each community college district shall establish an Equal Employment Opportunity Advisory Committee to assist the district in developing and implementing the plan required under section 53003. This advisory committee shall include a diverse membership whenever possible.

§53006. Additional Steps to Ensure Equal Employment Opportunity.

(a) If a district determines that a particular monitored group is significantly underrepresented with respect to one or more job categories, the district shall take additional steps consistent with this section. At a minimum, the district shall:

(1) review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group;

(2) consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective;

(3) determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in (1) and (2) have been in place a reasonable period of time; and

(4) if significant underrepresentation persists, the staffing rate for the significantly underrepresented group in the specified job category or categories shall be monitored on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question.

(b) If a reasonable period of time passes and significant underrepresentation persists for a particular group in the job category in question, the district shall:

(1) review each locally established "required," "desired" or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job-related and consistent with business necessity through a process meeting the requirements of federal law or is among those qualifications which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system;

(2) discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in paragraph (1) of this subdivision; and

(3) continue using qualification standards meeting the requirements of paragraph (1) only where no alternative qualification standard is reasonably available which would select for the same characteristics, meet the requirements of paragraph (1) and be expected to have a less exclusionary effect.

(c) For purposes of this section, "a reasonable period of time" means three years, or such longer period as the Chancellor may approve, upon the request of the equal employment opportunity advisory committee and the chief executive officer, where the district has not filled enough positions to appreciably affect its work force in the job category in question.

(d) Nothing in this subchapter shall be construed to prohibit a district from taking any other steps it concludes are necessary to ensure equal employment opportunity, provided that such actions are consistent with the requirements of federal and state constitutional and statutory nondiscrimination law.

§53020. Responsibility; Delegation of Authority; Complaints.

(a) The governing board of each community college district is ultimately responsible for proper implementation of this subchapter at all levels of district and college operation and for making measurable progress toward equal employment opportunity by the methods described in the district's equal employment opportunity plan. In carrying out this responsibility, the governing board, upon the recommendation of the chief executive officer, shall ensure that an equal employment opportunity officer is designated to oversee the day-to-day implementation of the requirements set forth in this subchapter.

(b) The administrative structure created by any delegation of authority to the equal employment opportunity officer or others shall be described in the district's equal employment opportunity plan submitted pursuant to section 53003 and shall be designed in such a manner so as to ensure prompt and effective implementation of the requirements of this subchapter. The plan shall also designate a single officer, who may be the equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints filed pursuant to section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by sections 53023 and 53024.

(c) Any organization or individual, whether or not an employee of the district, who acts on behalf of the governing board with regard to the recruitment and screening of personnel is an agent of the district and is subject to all of the requirements of this subchapter.

§53021. Recruitment.

(a) Except as otherwise provided in this section, community college districts shall actively recruit from both within and outside the district work force to attract qualified applicants for all new openings. This shall include outreach designed to ensure that all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. The requirement of open recruitment shall apply to all new full-time and part-time openings in all job categories and classifications, including, but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. Recruitment for full-time faculty and educational administrator positions shall be at least statewide and, at a minimum, shall include seeking qualified applicants listed in the California Community Colleges Equal Employment Opportunity Registry. Recruitment for part-time faculty positions may be conducted separately for each new opening or by annually establishing a pool of eligible candidates, but in either case full and open recruitment is required consistent with this section.

(b) "In-house or promotional only" recruitment shall not be used to fill any new opening except when the position is being filled on an interim basis for the minimum time necessary to allow for full and open recruitment; provided however, that no interim appointment or series of interim appointments exceed one year in duration. The Chancellor may approve an extension of up to one additional year if the district demonstrates "business necessity" as defined in section 53001(b).

(c) If a district believes justification exists for use of the exception listed in subsection (b), it shall so notify the Equal Employment Opportunity Advisory Committee established pursuant to section 53005 and the Chancellor at least ten (10) working days prior to offering the position to a candidate.

(d) Even where in-house or promotional only recruitment is permitted pursuant to subsection (b), the district shall comply with its established hiring procedures and all qualified district employees shall be afforded the opportunity to apply.

(e) For purposes of this section, a new opening is not created when:

(1) there is a reorganization or series of lateral transfers that do not result in a net increase in the number of employees;

(2) a position which is currently occupied by an incumbent is upgraded, reclassified, or renamed without significantly altering the duties being performed by the individual;

(3) the faculty in a division or department elect one faculty member to serve as a chairperson for a prescribed limited term;

(4) the position is filled by a temporary, short-term, or substitute employee appointed pursuant to Education Code sections 87422, 87480, 87482.5(b) 88003, 88106 or 88109; or

(5) a part-time faculty member is assigned to teach the same or fewer hours he or she has previously taught in the same discipline without a substantial break in service. For purposes of this section, "a substantial break in service" means more than one calendar year or such different period as may be defined by a collective bargaining agreement.

§53022. Job Announcements and Required Qualifications.

Job announcements shall state clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance. For faculty and administrative positions, job requirements shall include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. Job specifications, including any "desired" or "required" qualifications beyond the state minimum qualifications (set forth in Subchapter 4, commencing with Section 53400 of this Chapter) which the district wishes to utilize, shall be reviewed before the position is announced, to ensure conformity with the requirements of this Subchapter and state and federal nondiscrimination laws.

§53023. Applicant Pool.

(a) The application for employment shall afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability. This information shall be kept confidential and shall be used only in research, validation, monitoring, evaluating the effectiveness of the district's affirmative action employment program, or any other purpose specifically authorized in this Subchapter, or by any applicable statute or regulation.

(b) After the application deadline has passed, the composition of the initial applicant pool shall be analyzed to ensure that expected representation has been achieved for historically underrepresented groups. If necessary the application deadline shall be extended and additional focused recruitment shall be conducted for any historically underrepresented group for which expected representation has not been achieved. When the expected representation of historically underrepresented groups is achieved, or further recruitment efforts would be futile, applications shall be screened to determine which candidates satisfy job specifications set forth in the job announcement. Before the selection process continues, the composition of the qualified applicant pool shall be analyzed to ensure that no group, defined in terms of ethnicity, gender or disability, is adversely impacted pursuant to Section 53001(m). If adverse impact is found to exist, the chief

executive officer or his or her designee shall take effective steps to address the adverse impact before the selection process is begun. Such steps may include, but are not limited to:

(1) the deadline is extended and additional recruitment focused on historically underrepresented groups is undertaken;

(2) locally established qualifications beyond state minimum qualifications are modified or removed and the application deadline is extended.

(c) If adverse impact persists after taking steps required under subdivision (b), the selection process may proceed only if:

(1) the job announcement does not require qualifications beyond the statewide minimum qualifications;

(2) locally established qualifications beyond state minimum qualifications, if any, are validated as job related and consistent with business necessity through a process meeting the requirements of federal law; or

(3) the particular requirements beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system.

§53024. Screening or Selection Procedures.

(a) All screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, shall be:

(1) provided to the Chancellor upon request;

(2) designed to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students;

(3) based solely on job-related criteria, except as authorized by Section 53006; and

(4) designed and monitored to ensure that they do not have an adverse impact, as defined in Section 53001(m), on any group defined in terms of ethnicity, gender, or disability.

(b) If monitoring pursuant to subsection (a)(4) reveals that any selection technique or procedure has adversely impacted any such group, the chief executive officer or his/her designee shall suspend the selection process and timely and effective steps shall be taken to remedy the problem before the selection process resumes. The affirmative action officer, or other official charged with responsibility for monitoring selection procedures, may assist the screening committee by discussing the overall composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact, provided that confidential information about individual candidates is not disclosed. Where necessary, the position may be re-opened at any time and a new selection process initiated in a way designed to avoid adverse impact.

(c) A district may not designate or set aside particular positions to be filled by members of any group defined in terms of race, ethnicity, gender, age, or disability, or engage in any other practice which would result in discriminatory treatment prohibited by state or federal law. Nor may a district apply the goals, if any, set forth in the district's faculty and staff diversity plan in a rigid manner which has the purpose or effect of so discriminating.

(d) Seniority or length of service may be taken into consideration only to the extent it is job related, is not the sole criterion, and is included in the job announcement consistent with the requirements of Section 53022.

(e) Selection testing for employees shall follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures."

(f) Selection committees shall include members of historically underrepresented groups whenever possible.

(g) Notwithstanding any other provision of this Division, the governing board or its designee shall have the authority to make all final hiring decisions based upon careful review of the candidate or candidates recommended by a screening committee. This includes the right to reject all candidates and order further review by the screening committee or reopening of the position where necessary to further achievement of the goals, if any, established in the faculty and staff diversity plan. However, consistent failure to select qualified candidates from historically underrepresented groups who are recommended by screening committees shall constitute a violation of Section 51010 of this Division.

§53025. Persons with Disabilities.

Districts shall ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code Sections 11135 et seq., Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Such accommodations may include, but are not limited to, job site modifications, job restructuring, flexible scheduling, adaptive equipment, and auxiliary aids such as readers, interpreters, and notetakers. Such accommodations may be paid for with faculty and staff diversity funds provided pursuant to Article 3 (commencing with Section 53030) of this Subchapter.

§53026. Complaints.

Each community college district shall establish a process permitting any person to file a complaint alleging that the requirements of this Subchapter have been violated. A copy of the complaint shall immediately be forwarded to the Chancellor who may require that the district provide a written investigative report within ninety (90) days. Complaints which also allege discrimination prohibited by Government Code Sections 11135 et seq. shall be processed according to the procedures set forth in Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division.

§53027 Applicability to Districts Operating on the Merit System.

Nothing in this Subchapter shall be construed to conflict with or be inconsistent with the provisions of Article 3 (commencing with Section 88060) of Chapter 4 of Part 51 of the Education Code which apply to districts operating a merit system for classified employees .

Note: Authority cited: Sections 70901 and 87105, Education Code.
Reference: Sections 87100 et seq. and 88060 et seq., Education Code.

§53028. *Repealed*
§58029. *Repealed*

§53030. Fund Allocation.

Before the end of the fiscal year preceding the year of allocation, the Chancellor shall recommend to the Board of Governors an allocation formula for distribution of the Faculty and Staff Diversity Fund established pursuant to Education Code Section 87107. The allocation shall be consistent with the following:

(a) A portion of the fund, but not more than 25 percent, shall be set aside for the purposes of Education Code Section 87107(c), provided that:

(1) sufficient funds to provide technical assistance, service, monitoring, and compliance functions shall be designated from these monies; and

(2) the remainder of these funds shall be distributed on the basis of the full-time equivalent students of each district as a proportion of the total full-time equivalent students for all districts. These funds are to be used to reimburse costs as specified in Education Code Section 87107.

(b) That portion of the funds not allocated pursuant to Subsection (a) may be allocated to the districts in the following five categories:

(1) an amount proportional to the full-time equivalent students of each district to the total full-time equivalent students for all districts;

(2) an equal dollar amount to each district;

(3) an amount related to success in promoting diversity. Multiple methods of measuring success shall be identified by the Chancellor working through the established Consultation Process.

Note: Authority cited: Sections 70901 and 87107, Education Code.
Reference: Section 87107, Education Code.

§53031. Repealed
§53032. Repealed

§53033. Failure to Report.

Any district failing to provide the data required under Section 53004 is not in compliance with this Subchapter. Faculty and Staff Diversity funds for any given fiscal year, other than those under Section 53030(a), shall not be granted unless the district provides the data no later than March 31st of the preceding fiscal year.

§53034. Required Report.

Districts shall submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. Until such time as a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required under Section 53004, districts will report that rate by a separate survey conducted, as directed by the Chancellor's Office.

§53420. Minimum Qualifications for Educational Administrators.

The minimum qualifications for service as an educational administrator shall be both of the following:

(a) Possession of a master's degree; and

(b) One year of formal training, internship, or leadership experience reasonably related to the administrator's administrative assignment.

§53430. Equivalencies.

(a) No one may be hired to serve as a community college faculty or educational administrator unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in this Article or elsewhere in this Division. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual faculty employed under the authority granted by this Section possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in this Division.

(c) The process shall further require that the academic senate be provided with an opportunity to present its views to the governing board before the governing board makes a determination; and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Education Code Section 87358.

(d) Until a joint agreement is reached and approved pursuant to Subdivision (b), the district shall be bound by the minimum qualifications set forth in this Subchapter.

Education Code

§87400. Employment for academic positions

Governing boards of community college districts shall employ for academic positions , only persons who possess the qualifications therefore prescribed by regulation of the board of governors. It shall be contrary to the public policy of this state for any person or persons charged, by those governing boards, with the responsibility of recommending persons for employment by those boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of those applicants for that employment.

§87359. Employment of faculty and administrators not meeting applicable minimum qualifications; process

The board of governors shall adopt regulations setting forth a process authorizing local governing boards to employ faculty members and educational administrators who do not meet the applicable minimum qualifications specified in the regulations adopted by the board of

governors pursuant to Section 87356. Unless and until amended pursuant to the process described in Section 87357, the regulations shall require all of the following:

(a) No one may be hired to serve as a community college faculty member or educational administrator under the authority granted by the regulations unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board of governors adopted pursuant to Section 87356. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty members, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual faculty member employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination, and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.

§87360. Development of criteria; inclusions; agreement; process in effect prior to agreement; times

(a) In establishing hiring criteria for faculty and administrators, district governing boards shall, no later than July 1, 1990, develop criteria that include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students.

(b) No later than July 1, 1990, hiring criteria, policies, and procedures for new faculty members shall be developed and agreed upon jointly by representatives of the governing board, and the academic senate, and approved by the governing board.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the existing district process in existence on January 1, 1989, shall remain in effect.

Supreme Court of the United States

ALBEMARLE PAPER COMPANY et al., Petitioners,

v.

Joseph P. MOODY et al.

HALIFAX LOCAL NO. 425, UNITED PAPERMAKERS AND PAPERWORKERS, AFL-CIO, Petitioner,

v.

Joseph P. MOODY et al.

Nos. 74-389, 74-428.

Argued April 14, 1975.

Decided June 25, 1975.

Class action was brought against employer for injunctive relief against any policy, practice, custom or usage violative of equal employment opportunity provisions of Civil Rights Act. The United States District Court for the Eastern District of North Carolina found that Negro employees had been locked in lower paying job classifications and ordered implementation of system of plantwide seniority but refused to order back pay for losses sustained under the discriminatory system and refused to enjoin or limit employer's preemployment testing program and plaintiffs appealed. The Court of Appeals, 474 F.2d 134, reversed and certiorari was granted. The Supreme Court, Mr. Justice Stewart, held that given a finding of unlawful discrimination, back pay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination; that the absence of bad faith was not a sufficient reason for denying back pay; that whether employer was prejudiced by plaintiffs having initially disclaimed any interest in back pay, first asserting their claim five years after the complaint was filed, and whether plaintiffs' trial conduct was excusable, were questions open to review by the Court of Appeals if the District Court, on remand, should decline to make any award of back pay; and that measured against Equal Employment Opportunity Commission's guidelines for employers seeking to determine through professional validation studies whether employment tests are job related, employer's validation study was materially defective.

Judgment vacated and cases remanded to district court.

Mr. Justice Marshall and Mr. Justice Rehnquist filed concurring opinions.

Mr. Chief Justice Burger filed opinion concurring in part and dissenting in part.

Mr. Justice Blackmun filed opinion concurring in the judgment.

Mr. Justice Powell took no part in the consideration or decision of the case.

West Headnotes

[1] Civil Rights 78 1571

78 Civil Rights

78IV Remedies Under Federal Employment Discrimination Statutes

78k1569 Monetary Relief; Restitution

78k1571 k. Back Pay or Lost Earnings. Most Cited Cases

(Formerly 78k401, 78k46)

Back pay may be awarded on a class basis under equal employment opportunity provisions of Civil Rights Act without exhaustion of administrative procedures by the unnamed class members. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[2] Civil Rights 78 1571

78 Civil Rights

78IV Remedies Under Federal Employment Discrimination Statutes

78k1569 Monetary Relief; Restitution

78k1571 k. Back Pay or Lost Earnings. Most Cited Cases

(Formerly 78k401, 78k46)

Back pay is not an automatic or mandatory remedy under the equal employment opportunity provisions of the Civil Rights Act; like all other remedies under the Act, it is one which the courts "may" invoke. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[3] Civil Rights 78 1571

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78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1569 Monetary Relief; Restitution
78k1571 k. Back Pay or Lost Earnings. Most Cited Cases
(Formerly 78k401, 78k46)
Court must exercise its power to award back pay under the equal employment opportunity provisions of Civil Rights Act in the light of the large objectives of the Act. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[4] Civil Rights 78 ⚿1571

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1569 Monetary Relief; Restitution
78k1571 k. Back Pay or Lost Earnings. Most Cited Cases
(Formerly 78k401, 78k46)
That court's discretion to award back pay under the equal employment opportunity provisions of Civil Rights Act is equitable in nature hardly means that it is unfettered by meaningful standards or shielded from thorough appellate review. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[5] Civil Rights 78 ⚿1107

78 Civil Rights
78II Employment Practices
78k1107 k. Discrimination by Reason of Race, Color, Ethnicity, or National Origin, in General. Most Cited Cases
(Formerly 78k102.1, 78k102, 78k2)
Primary objective of equal employment opportunity provisions of Civil Rights Act was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[6] Civil Rights 78 ⚿1104

78 Civil Rights
78II Employment Practices
78k1102 Constitutional and Statutory Provisions
78k1104 k. Purpose and Construction in General. Most Cited Cases
(Formerly 78k102.1, 78k102, 78k2)
A purpose of the equal employment provisions of the Civil Rights Act is to make persons whole for injuries suffered on account of unlawful employment discrimination. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[7] Civil Rights 78 ⚿1560

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1560 k. In General. Most Cited Cases
(Formerly 78k391.1, 78k391, 78k46)
Under the equal employment opportunity provisions of the Civil Rights Act, where racial discrimination is concerned, the district court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[8] Damages 115 ⚿95

115 Damages
115VI Measure of Damages
115VI(A) Injuries to the Person
115k95 k. Mode of Estimating Damages in General. Most Cited Cases

Damages 115 ⚿103

115 Damages
115VI Measure of Damages
115VI(B) Injuries to Property
115k103 k. Mode of Estimating Damages in General. Most Cited Cases

Damages 115 ⚿117

115 Damages
115VI Measure of Damages
115VI(C) Breach of Contract
115k117 k. Mode of Estimating Damages in General. Most Cited Cases
Where a legal injury is of an economic character, the general rule is, that when a wrong has been done, and the law gives a remedy, the compensation shall be equal to the

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injury and the injured party is to be placed as near as may be in the situation he would have occupied if the wrong had not been committed.

[9] Civil Rights 78 ⚿1571

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1569 Monetary Relief; Restitution
78k1571 k. Back Pay or Lost Earnings. Most Cited Cases
(Formerly 78k401, 78k46)
Amendment to equal employment opportunity provisions of Civil Rights Act to remove anomaly in provisions that court "may" issue injunctions, but "shall" order appropriate affirmative action discloses no intent to back away from the National Labor Relations Act model or to denigrate in any way the status of back pay relief. National Labor Relations Act, § 10(c) as amended 29 U.S.C.A. § 160(c); Civil Rights Act of 1964, § 706(g) as amended 42 U.S.C.A. § 2000e-5(g).

[10] Civil Rights 78 ⚿1571

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1569 Monetary Relief; Restitution
78k1571 k. Back Pay or Lost Earnings. Most Cited Cases
(Formerly 78k401, 78k46)
Given a finding of unlawful discrimination under the equal employment opportunity provisions of the Civil Rights Act, back pay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination. Civil Rights Act of 1964, § 706(g) as amended 42 U.S.C.A. § 2000e-5(g).

[11] Civil Rights 78 ⚿1554

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1554 k. Trial in General. Most Cited Cases
(Formerly 78k389, 78k46)
If district court, having found unlawful discrimination under the equal employment opportunity provisions of the Civil Rights Act, declines to award back pay, it is necessary that the court carefully articulate its reasons. Civil Rights Act of 1964, § 706(g) as amended 42 U.S.C.A. § 2000e-5(g).

[12] Civil Rights 78 ⚿1571

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1569 Monetary Relief; Restitution
78k1571 k. Back Pay or Lost Earnings. Most Cited Cases
(Formerly 78k401, 78k46)
That employer's breach of equal employment opportunity provisions of the Civil Rights Act had not been in "bad faith" was not a sufficient reason for denying back pay to Negro employees who had been locked in the lower paying job classifications. Civil Rights Act of 1964, § 706(g) as amended 42 U.S.C.A. § 2000e-5(g).

[13] Civil Rights 78 ⚿1137

78 Civil Rights
78II Employment Practices
78k1137 k. Motive or Intent; Pretext. Most Cited Cases
(Formerly 78k153, 78k9.10)
The mere absence of bad faith in employer's breach of equal employment opportunity provisions of Civil Rights Act simply opens the door to equity; it does not depress the scales in the employer's favor. Civil Rights Act of 1964, § 706(g) as amended 42 U.S.C.A. § 2000e-5(g).

[14] Civil Rights 78 ⚿1137

78 Civil Rights
78II Employment Practices
78k1137 k. Motive or Intent; Pretext. Most Cited Cases
(Formerly 78k153, 78k9.10)

Civil Rights 78 ⚿1140

78 Civil Rights
78II Employment Practices
78k1140 k. Disparate Impact. Most Cited Cases
(Formerly 78k153, 78k9.10)
Equal employment opportunity provisions of Civil Rights Act are not concerned with employer's good intent or ab-

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sence of discriminatory intent but are directed to the consequences of employment practices. Civil Rights Act of 1964, § 706(g) as amended 42 U.S.C.A. § 2000e-5(g).

[15] Civil Rights 78 ⚿1571

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1569 Monetary Relief; Restitution
78k1571 k. Back Pay or Lost Earnings. Most Cited Cases
(Formerly 78k401, 78k46)
Equal employment opportunity provisions of Civil Rights Act contain no legal bar to raising back pay claims after complaint for injunctive relief has been filed, or after a trial on that complaint has been had. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.; Fed.Rules Civ.Proc. rule 54(c), 28 U.S.C.A.

[16] Federal Civil Procedure 170A ⚿2582

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(D) On Trial of Issues
170Ak2582 k. Nature and Extent of Relief in General. Most Cited Cases
A party may not be "entitled" to relief for purpose of rule directing that every final judgment shall grant the relief to which party is entitled if party's conduct of the cause has improperly and substantially prejudiced the other party. Fed.Rules Civ.Proc. rule 54(c), 28 U.S.C.A.

[17] Federal Courts 170B ⚿916.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)8 Subsequent Appeals
170Bk916 In General
170Bk916.1 k. In General. Most Cited Cases
(Formerly 170Bk916, 106k406.8)
Whether employer was prejudiced by fact that plaintiffs who brought class action under equal employment opportunity provisions of the Civil Rights Act initially disclaimed any interest in back pay and first asserted claim for back pay five years after the complaint was filed, and whether plaintiffs' trial conduct was excusable, were questions open to review by the Court of Appeals if the district court, on remand, should decline to award back pay. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.; Fed.Rules Civ.Proc. rule 54(c), 28 U.S.C.A.

[18] Federal Courts 170B ⚿813

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk813 k. Allowance of Remedy and Matters of Procedure in General. Most Cited Cases
(Formerly 106k406.3(25))

Federal Courts 170B ⚿877

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)5 Questions of Fact, Verdicts and Findings
170Bk870 Particular Issues and Questions
170Bk877 k. Other Particular Cases, Damages and Relief. Most Cited Cases
(Formerly 106k406.5(12))
Standard of review of district court's decision to decline to make any award of back pay in class action under equal employment opportunity provisions of Civil Rights Act would be whether the court was clearly erroneous in its special findings and whether it abused its discretion to locate a just result in light of the circumstances peculiar to the case. Civil Rights Act of 1964, § 706(g) as amended 42 U.S.C.A. § 2000e-5(g).

[19] Civil Rights 78 ⚿1536

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1534 Presumptions, Inferences, and Burden of Proof
78k1536 k. Effect of Prima Facie Case; Shifting Burden. Most Cited Cases
(Formerly 78k378, 78k43)
Employer's burden of showing that preemployment tests have manifest relationship to the employment in question arises only after the complaining party or class has made out a prima facie case of discrimination by showing that the tests in question select applicants for hire or promotion

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in a racial pattern significantly different from that of the pool of applicants. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[20] Civil Rights 78 ⚿1546

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1546 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k384, 78k44(2))
If employer meets burden of proving that its preemployment tests are "job related," it remains open to the complaining party to show that other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate interest in efficient and trustworthy workmanship, and such showing would be evidence that employer was using its tests merely as a pretext for discrimination. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[21] Civil Rights 78 ⚿1546

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1546 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k384, 78k44(2))
Job relatedness of employer's preemployment tests cannot be proved through vague and unsubstantiated hearsay. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[22] Statutes 361 ⚿219(6.1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(6) Particular Federal Statutes
361k219(6.1) k. In General. Most Cited Cases
(Formerly 361k219(6))
Although EEOC guidelines for employers seeking to determine, through professional validation studies, whether their employment tests are job related are not administrative "regulations" promulgated pursuant to formal procedures established by Congress, as the administrative interpretation of the Act by the enforcing agency, they are entitled to great deference. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[23] Civil Rights 78 ⚿1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k150, 78k9.13, 78k13)
Employer's validation study for preemployment tests used at paper mill was defective in view of odd patchwork of results, the comparison of test scores with subjective supervisorial rankings, the focus of the study, in most cases, on job groups near the top of the various lines of progression rather than the qualifications of new workers entering lower level jobs, and in that the study dealt only with job-experienced white worker while the tests were given to new job applicants who were younger, largely inexperienced and in many instances nonwhite. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[24] Civil Rights 78 ⚿1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k150, 78k9.13)
Preemployment test may be used in jobs other than those for which it has been professionally validated as job related only if there are no significant differences between the studied and unstudied jobs. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[25] Civil Rights 78 ⚿1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k150, 78k9.13)
Employer's validation study of preemployment tests, conducted without neutral, on-the-scene oversights, at time when litigation is about to come to trial, must be examined

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with great care. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[26] Civil Rights 78 ⚿1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k150, 78k9.13)
The fact that the best of those employees working near the top of a line of progression score well on a test does not necessarily mean that that test, or some particular cut-off score on the test, is a permissible measure of the minimal qualifications of new workers entering lower level jobs; in drawing any such conclusion, detailed consideration must be given to the normal speed of promotion, to the efficacy of on-the-job training in the scheme of promotion, and to the possible use of testing as a promotion device, rather than as a screen for entry into low-level jobs. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[27] Federal Courts 170B ⚿462

170B Federal Courts
170BVII Supreme Court
170BVII(B) Review of Decisions of Courts of Appeals
170Bk462 k. Determination and Disposition of Cause. Most Cited Cases
Inasmuch as employer, during the appellate stages of litigation, had been amending its preemployment tests which the district court had found not to violate the equal employment opportunity provisions of the Civil Rights Act, and although the Court of Appeals and the Supreme Court agreed that the district court had erred, the precise fashioning of the necessary relief would be left to the district court in the first instance rather than to require that an injunction issue immediately against all testing. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

****2365** Syllabus[FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

***405** Respondents, a certified class of present and former Negro employees, brought this action against petitioners, their employer, Albemarle Paper Co., and the employees' union, seeking injunctive relief against 'any policy, practice, custom or usage' at the plant violative of Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, and after several years of discovery moved to add a class backpay demand. At the trial, the major issues were the plant's seniority system, its program of employment testing, and backpay. The District ****2366** Court found that, following a reorganization under a new collective-bargaining agreement, the Negro employees had been "locked' in the lower paying job classifications,' and ordered petitioners to implement a system of plant wide seniority. The court refused, however, to order backpay for losses sustained by the plaintiff class under the discriminatory system, on the grounds that (1) Albemarle's breach of Title VII was found not to have been in 'bad faith,' and (2) respondents, who had initially disclaimed interest in backpay, had delayed making their backpay claim until five years after the complaint was filed, thereby prejudicing petitioners. The court also refused to enjoin or limit Albemarle's testing program, which respondents had contended had a disproportionate adverse impact on blacks and was not shown to be related to job performance, the court concluding that 'personnel tests administered at the plant have undergone validation studies and have been proven to be job related.' Respondents appealed on the backpay and preemployment tests issues. The Court of Appeals reversed the District Court's judgment. Held:

1. Given a finding of unlawful discrimination, backpay should be denied only for reasons that, if applied generally, would not frustrate the central statutory purposes manifested by Congress in enacting Title VII of eradicating discrimination throughout the ***406** economy and making persons whole for injuries suffered through past discrimination. Pp. 2369-2373.

2. The absence of bad faith is not a sufficient reason for denying backpay, Title VII not being concerned with the employer's 'good intent or absence of discriminatory intent,' for 'Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation,' Griggs v. Duke Power Co., 401 U.S. 424, 432, 91 S.Ct. 849, 854, 28 L.Ed.2d 158. Pp. 2373-2374.

3. Whether respondents' tardiness and inconsistency in

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making their backpay demand were excusable and whether they actually prejudiced petitioners are matters that will be open to review by the Court of Appeals if the District Court, on remand, decides again to decline a backpay award. Pp. 2374-2375.

4. As is clear from Griggs, supra, and the Equal Employment Opportunity Commission's Guidelines for employers seeking to determine through professional validation studies whether employment tests are job related, such tests are impermissible unless shown, by professionally acceptable methods, to be 'predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.' Measured against that standard, Albemarle's validation study is materially defective in that (1) it would not, because of the odd patchwork of results from its application have 'validated' the two general ability tests used by Albemarle for all the skilled lines of progression for which the two tests are, apparently, now required; (2) it compared test scores with subjective supervisorial rankings, affording no means of knowing what job-performance criteria the supervisors were considering; (3) it focused mostly on job groups near the top of various lines of progression, but the fact that the best of those employees working near the top of a line of progression score well on a test does not necessarily mean that the test permissibly measures the qualifications of new workers entering lower level jobs; and (4) it dealt only with job-experienced, white workers, but the tests themselves are given to new job applicants, who are younger, largely inexperienced, and in many instances nonwhite. Pp. 2375-2380.

5. In view of the facts that during the appellate stages of this litigation Albemarle has apparently been amending its departmental organization and the use made of its tests; that issues of **2367 standards of proof for job relatedness and of evidentiary procedures involving validation tests have not until now been clarified; *407 and that provisional use of tests pending new validation efforts may be authorized, the District Court on remand should initially fashion the necessary relief. Pp. 2380-2381.

474 F.2d 134, vacated and remanded.

Francis V. Lowden, Jr., Richmond, Va., for Albemarle Paper Co.

Warren Woods, Washington, D.C., for Halifax Local No. 425.

J. LeVonne Chambers, charlotte, N.C., for Joseph Moody and others.

James P. Turner, Atty., Dept. of Justice, Civil Rights Div., Washington, D.C., for the United States, as amicus curiae, by special leave of Court.

*408 Mr. Justice STEWART delivered the opinion of the Court.

These consolidated cases raise two important questions under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, 86 Stat. 103, 42 U.S.C. s 2000e et seq. (1970 ed. and Supp. III): First: When employees or applicants for employment have lost the opportunity to earn wages because an employer has engaged in an unlawful discriminatory employment practice, what standards should a federal district court follow in deciding whether to award or deny backpay? Second: What must an employer show to establish that pre-employment tests racially discriminatory in effect, though not in intent, are sufficiently 'job related' to survive challenge under Title VII?

I

The respondents-plaintiffs in the District Court-are a certified class of present and former Negro employees at a paper mill in Roanoke Rapids, N.C.; the petitioners-defendants in the District Court-are the plant's owner, the Albemarle Paper Co., and the plant employees' labor union, Halifax Local No. 425.[FN1] In August 1966, after filing a complaint with the Equal Employment Opportunity Commission (EEOC), and receiving notice of their right to sue,[FN2] the *409 respondents brought a class action in the United States District Court for the Eastern District of North Carolina, asking permanent injunctive relief against 'any policy, practice, custom or usage' at the plant that violated Title VII. The respondents assured the court that the suit involved no claim for any monetary awards on a class basis, but in June 1970, after several years of discovery, the respondents moved to add a class demand for backpay. The court ruled that this issue would be considered at trial.

FN1. The paper mill has changed hands during this litigation, but these changes are irrelevant to the issues considered in this opinion, and the employer interest will be referred to throughout as Albemarle or the Company. The labor union is involved in only the backpay aspect of this liti-

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gation.

FN2. The relevant procedures may be found at 42 U.S.C. s 2000e-5(f)(1) (1970 ed., Supp. III). See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798, 93 S.Ct. 1817, 1822, 36 L.Ed.2d 668 (1973); Alexander v. Gardner-Denver Co., 415 U.S. 36, 44-45, 94 S.Ct. 1011, 1017-1018, 39 L.Ed.2d 147 (1974). See also n. 8, infra.

At the trial, in July and August 1971, the major issues were the plant's seniority system, its program of employment testing, and the question of backpay. In its opinion of November 9, 1971, the court found that the petitioners had 'strictly segregated' the plant's departmental 'lines of progression' prior to January 1, 1964, reserving the higher paying and more skilled lines for whites. The 'racial identifiability' of whole lines of progression persisted until 1968, when the lines were reorganized under a new collective-bargaining agreement. The court found, however, that this reorganization left Negro employees "locked' in the lower paying job classifications.' The formerly 'Negro' lines **2368 of progression had been merely tacked on to the bottom of the formerly 'white' lines, and promotions, demotions, and layoffs continued to be governed-where skills were 'relatively equal'-by a system of 'job seniority.' Because of the plant's previous history of overt segregation, only whites had seniority in the higher job categories. Accordingly, the court ordered the petitioners to implement a system of 'plantwide' seniority.

*410 The court refused, however, to award backpay to the plaintiff class for losses suffered under the 'job seniority' program.[FN3] The court explained:

FN3. Under Title VII backpay liability exists only for practices occurring after the effective date of the Act, July 2, 1965, and accrues only from a date two years prior to the filing of a charge with the EEOC. See 42 U.S.C. s 2000e-5(g) (1970 ed., Supp. III). Thus no award was possible with regard to the plant's pre-1964 policy of 'strict segregation.'

'In the instant case there was no evidence of bad faith non-compliance with the Act. It appears that the company as early as 1964 began active recruitment of blacks for its Maintenance Apprentice Program. Certain lines of progression were merged on its own initiative, and as judicial decisions expanded the then existing interpretations of the Act, the defendants took steps to correct the abuses without delay. . . .

'In addition, an award of back pay is an equitable remedy. . . . The plaintiffs' claim for back pay was filed nearly five years after the institution of this action. It was not prayed for in the pleadings. Although neither party can be charged with deliberate dilatory tactics in bringing this cause to trial, it is apparent that the defendants would be substantially prejudiced by the granting of such affirmative relief. The defendants might have chosen to exercise unusual zeal in having this court determine their rights at an earlier date had they known that back pay would be at issue.'

The court also refused to enjoin or limit Albemarle's testing program. Albemarle had required applicants for employment in the skilled lines of progression to have a high school diploma and to pass two tests, the Revised Beta Examination, allegedly a measure of nonverbal intelligence,*411 and the Wonderlic Personnel Test (available in alternative Forms A and B), allegedly a measure of verbal facility. After this Court's decision in Griggs v. Duke Power Co., 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971), and on the eve of trial, Albemarle engaged an industrial psychologist to study the 'job relatedness' of its testing program. His study compared the test scores of current employees with supervisorial judgments of their competence in ten job groupings selected from the middle or top of the plant's skilled lines of progression. The study showed a statistically significant correlation with supervisorial ratings in three job groupings for the Beta Test, in seven job groupings for either Form A or Form B of the Wonderlic Test, and in two job groupings for the required battery of both the Beta and the Wonderlic Tests. [FN4] The respondents' experts challenged the reliability of these studies, but the court concluded:

FN4. See infra, at 2377-2378.

'The personnel tests administered at the plant have undergone validation studies and have been proven to be job related. The defendants have carried the burden of proof in proving that these tests are 'necessary for the safe and efficient operation of the business' and are, therefore, permitted by the Act. However, the high school education requirement used in conjunction with the testing requirements is unlawful in that the personnel tests alone are adequate to measure the mental ability and reading skills required for the job classifications.'

**2369 The petitioners did not seek review of the court's judgment, but the respondents appealed the denial of a

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backpay award and the refusal to enjoin or limit Albemarle's use of pre-employment tests. A divided Court of Appeals for the Fourth Circuit reversed the judgment of ***412** the District Court, ruling that backpay should have been awarded and that use of the tests should have been enjoined, 474 F.2d 134 (1973). As for backpay, the Court of Appeals held that an award could properly be requested after the complaint was filed and that an award could not be denied merely because the employer had not acted in 'bad faith,' id., at 142:

'Because of the compensatory nature of a back pay award and the strong congressional policy embodied in Title VII, a district court must exercise its discretion as to back pay in the same manner it must exercise discretion as to attorney fees under Title II of the Civil Rights Act. . . . Thus, a plaintiff or a complaining class who is successful in obtaining an injunction under Title VII of the Act should ordinarily be awarded back pay unless special circumstances would render such an award unjust. Newman v. Piggie Park Enterprises, 390 U.S. 400, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1968).' (Footnote omitted.)

As for the pre-employment tests, the Court of Appeals held, id., 138, that it was error
'to approve a validation study done without job analysis, to allow Albemarle to require tests for 6 lines of progression where there has been no validation study at all, and to allow Albemarle to require a person to pass two tests for entrance into 7 lines of progression when only one of those tests was validated for that line of progression.'

In so holding the Court of Appeals 'gave great deference' to the 'Guidelines on Employee Selection Procedures,' 29 CFR pt. 1607, which the EEOC has issued 'as a workable set of standards for employers, unions and employment agencies in determining whether their selection ***413** procedures conform with the obligations contained in title VII . . .' 29 CFR s 1607.1(c).

We granted certiorari[FN5] because of an evident Circuit conflict as to the standards governing awards of backpay[FN6] and as to the showing required to establish the 'job relatedness' of pre-employment tests.[FN7]

FN5. 419 U.S. 1068, 95 S.Ct. 654, 42 L.Ed.2d 664 (1974). The Fourth Circuit initially granted a petition to rehear this case en banc. But that petition was ultimately denied, after this Court ruled, on a certified question, that 'senior circuit judges who are members of the originally assigned division hearing a case are not authorized by Congress to participate in the determination whether to rehear that case in banc.' 417 U.S. 622, 624, 94 S.Ct. 2513, 2514, 41 L.Ed.2d 358 (1974).

FN6. For example, compare Kober v. Westinghouse Electric Corp., 480 F.2d 240 (CA3 1973), with Pettway v. American Cast Iron Pipe Co., 494 F.2d 211 (CA5 1974), and Head v. Timken Roller Bearing Co., 486 F.2d 870 (CA6 1973).

FN7. For example, compare Pettway v. American Cast Iron Pipe Co., supra, with Castro v. Beecher, 459 F.2d 725 (CA1 1972).

II

[1] Whether a particular member of the plaintiff class should have been awarded any backpay and, if so, how much, are questions not involved in this review. The equities of individual cases were never reached. Though at least some of the members of the plaintiff class obviously suffered a loss of wage opportunities on account of Albemarle's unlawfully discriminatory system of job seniority, the District Court decided that no backpay should be awarded to anyone in the class. The court declined to make such an award on two stated grounds: the lack of 'evidence of bad faith non-compliance with the Act,' and the fact that 'the defendants would be substantially prejudiced' by an award of ****2370** backpay that was demanded contrary to an earlier representation and late in the progress of the litigation. Relying directly ***414** on Newman v. Piggie Park Enterprises, 390 U.S. 400, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1968), the Court of Appeals reversed, holding that backpay could be denied only in 'special circumstances.' The petitioners argue that the Court of Appeals was in error-that a district court has virtually unfettered discretion to award or deny backpay, and that there was no abuse of that discretion here.[FN8]

FN8. The petitioners also contend that no backpay can be awarded to those unnamed parties in the plaintiff class who have not themselves filed charges with the EEOC. We reject this contention. The Courts of Appeals that have confronted the issue are unanimous in recognizing that backpay may be awarded on a class basis under Title VII without exhaustion of administrative procedures by the unnamed class members. See, e.g., Rosen v. Public Service Electric & Gas Co., 409 F.2d 775, 780 (CA3 1969), and 477 F.2d 90,

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95-96 (CA3 1973); Robinson v. Lorillard Corp., 444 F.2d 791, 802 (CA4 1971); United States v. Georgia Power Co., 474 F.2d 906, 919-921 (CA5 1973); Head v. Timken Roller Bearing Co., supra, at 876; Bowe v. Colgate-Palmolive Co., 416 F.2d 711, 719-721 (CA7 1969); United States v. N.L. Industries, Inc., 479 F.2d 354, 378-379 (CA8 1973). The Congress plainly ratified this construction of the Act in the course of enacting the Equal Employment Opportunity Act of 1972, Pub.L. 92-261, 86 Stat. 103. The House of Representatives passed a bill, H.R. 1746, 92d Cong., 1st Sess., that would have barred, in s 3(e), an award of backpay to any individual who 'neither filed a charge (with the EEOC) nor was named in a charge or amendment thereto.' But the Senate Committee on Labor and Public Welfare recommended, instead, the re-enactment of-the backpay provision without such a limitation, and cited with approval several cases holding that backpay was awardable to class members who had not personally filed, nor been named in, charges to the EEOC, S.Rep.No. 92-415, p. 27 (1971). See also 118 Cong.Rec. 4942 (1972). The Senate passed a bill without the House's limitation, id., at 4944, and the Conference Committee adopted the Senate position. A Section-by-Section Analysis of the Conference Committee's resolution notes that '(a) provision limiting class actions was contained in the House bill and specifically rejected by the Conference Committee,' id., at 7168, 7565. The Conference Committee bill was accepted by both Chambers. Id., at 7170, 7573.

*415 Piggie Park Enterprises, supra, is not directly in point. The Court held there that attorneys' fees should 'ordinarily' be awarded-i.e., in all but 'special circumstances'-to plaintiffs successful in obtaining injunctions against discrimination in public accommodations, under Title II of the Civil Rights Act of 1964. While the Act appears to leave Title II fee awards to the district court's discretion, 42 U.S.C. s 2000a-3(b), the court determined that the great public interest in having injunctive actions brought could be vindicated only if successful plaintiffs, acting as 'private attorneys general,' were awarded attorneys' fees in all but very unusual circumstances. There is, of course, an equally strong public interest in having injunctive actions brought under Title VII, to eradicate discriminatory employment practices. But this interest can be vindicated by applying the Piggie Park standard to the attorneys' fees provision of Title VII, 42 U.S.C. s 2000e-5(k), see Northcross v. Memphis Board of Education, 412 U.S. 427, 428, 93 S.Ct. 2201, 2202, 37 L.Ed.2d 48 (1973). For guidance as to the granting and denial of backpay, one must, therefore, look elsewhere.

[2][3][4] The petitioners contend that the statutory scheme provides no guidance, beyond indicating that backpay awards are within the district court's discretion. We disagree. It is true that backpay is not an automatic or mandatory remedy; like all other remedies under the Act, it is one which the courts 'may' invoke. [FN9] The *416 scheme implicitly **2371 recognizes that there may be cases calling for one remedy but not another, and-owing to the structure of the federal judiciary-these choices are, of course, left in the first instance to the district courts. However, such discretionary choices are not left to a court's 'inclination, but to its judgment; and its judgment is to be guided by sound legal principles.' United States v. Burr, 25 F.Cas. No.14,692d, pp. 30, 35 (CC Va.1807) (Marshall, C.J.). The power to award backpay was bestowed by Congress, as part of a complex legislative design directed at a historic evil of national proportions. A court must exercise this power 'in light of the large objectives of the Act,' Hecht Co. v. Bowles, 321 U.S. 321, 331, 64 S.Ct. 587, 592, 88 L.Ed. 754 (1944). That the court's discretion is equitable in nature, see Curtis v. Loether, 415 U.S. 189, 197, 94 S.Ct. 1005, 1010, 39 L.Ed.2d 260 (1974), hardly means that it is unfettered by meaningful standards or shielded from thorough appellate review. In Mitchell v. Robert DeMario Jewelry, 361 U.S. 288, 292, 80 S.Ct. 332, 335, 4 L.Ed.2d 323 (1960), this Court held, in the face of a silent statute, that district courts enjoyed the 'historic power of equity' to award lost wages to workmen unlawfully discriminated *417 against under s 17 of the Fair Labor Standards Act of 1938, 52 Stat. 1069, as amended, 29 U.S.C. s 217 (1958 ed). The Court simultaneously noted that 'the statutory purposes (leave) little room for the exercise of discretion not to order reimbursement.' 361 U.S., at 296, 80 S.Ct. at 337.

FN9. Title 42 U.S.C. s 2000e-5(g) (1970 ed., Supp. III) provides:

'If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees,

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> with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.'

It is true that '(e)quity eschews mechanical rules . . . (and) depends on flexibility.' Holmberg v. Armbrecht, 327 U.S. 392, 396, 66 S.Ct. 582, 584, 90 L.Ed. 743 (1946). But when Congress invokes the Chancellor's conscience to further transcendant legislative purposes, what is required is the principled application of standards consistent with those purposes and not 'equity (which) varies like the Chancellor's foot.'[FN10] Important national goals would be frustrated by a regime of discretion that 'produce(d) different results for breaches of duty in situations that cannot be differentiated in policy.' Moragne v. States Marine Lines, 398 U.S. 375, 405, 90 S.Ct. 1772, 1790, 26 L.Ed.2d 339 (1970).

> FN10. Eldon, L.C., in Gee v. Pritchard, 2 Swans. *403, *414, 36 Eng.Rep. 670, 674 (1818).

[5] The District Court's decision must therefore be measured against the purposes which inform Title VII. As the Court observed in Griggs v. Duke Power Co., 401 U.S., at 429-430, 91 S.Ct., at 853, the primary objective was a prophylactic one:

'It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees.'

Backpay has an obvious connection with this purpose. If employers faced only the prospect of an injunctive order, they would have little incentive to shun practices of dubious legality. It is the reasonably certain prospect of a backpay award that 'provide(s) the spur or catalyst**2372 *418 which causes employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of an unfortunate and ignominious page in this country's history.' United States v. N.L. Industries, Inc., 8 Cir., 479 F.2d at 354, 379 (CA8 1973).

[6][7][8] It is also the purpose of Title VII to make persons whole for injuries suffered on account of unlawful employment discrimination. This is shown by the very fact that Congress took care to arm the courts with full equitable powers. For it is the historic purpose of equity to 'secur(e) complete justice,' Brown v. Swann, 10 Pet. 497, 503, 9 L.Ed. 508 (1836); see also Porter v. Warner Holding Co., 328 U.S. 395, 397-398, 66 S.Ct. 1086, 1088-1089, 90 L.Ed. 1332 (1946). '(W)here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.' Bell v. Hood, 327 U.S. 678, 684, 66 S.Ct. 773, 777, 90 L.Ed. 939 (1946). Title VII deals with legal injuries of an economic character occasioned by racial or other antiminority discrimination. The terms 'complete justice' and 'necessary relief' have acquired a clear meaning in such circumstances. Where racial discrimination is concerned, 'the (district) court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.' Louisiana v. United States, 380 U.S. 145, 154, 85 S.Ct. 817, 822, 13 L.Ed.2d 709 (1965). And where a legal injury is of an economic character,

'(t)he general rule is, that when a wrong has been done, and the law gives a remedy, the compensation shall be equal to the injury. The latter is the standard by which the former is to be measured. The injured party is to be placed, as near as may be, in *419 the situation he would have occupied if the wrong had not been committed.' Wicker v. Hoppock, 6 Wall. 94, 99, 18 L.Ed. 752 (1867).

[9] The 'make whole' purpose of Title VII is made evident by the legislative history. The backpay provision was expressly modeled on the backpay provision of the National Labor Relations Act.[FN11] Under that Act, '(m)aking the workers whole for losses suffered on account of an unfair labor practice is part of the vindication of the public policy

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which the Board enforces.' Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 197, 61 S.Ct. 845, 854, 85 L.Ed. 1271 (1941). See also Nathanson v. NLRB, 344 U.S. 25, 27, 73 S.Ct. 80, 82, 97 L.Ed. 23; NLRB v. J.H. Rutter-Rex Mfg. Co., 396 U.S. 258, 263, 90 S.Ct. 417, 420, 24 L.Ed.2d 405 (1969). We may assume that Congress was aware that the Board, ***420** since its inception, has awarded backpay as a matter of course-not randomly or in the exercise of a ****2373** standardless discretion, and not merely where employer violations are peculiarly deliberate, egregious, or inexcusable.[FN12] Furthermore, in passing the Equal Employment Opportunity Act of 1972, Congress considered several bills to limit the judicial power to award backpay. These limiting efforts were rejected, and the backpay provision was re-enacted substantially in its original form.[FN13] A Section-by-Section Analysis introduced by Senator Williams to accompany the Conference Committee Report on the 1972 Act ***421** strongly reaffirmed the 'make whole' purpose of Title VII:

> 'The provisions of this subsection are intended to give the courts wide discretion exercising their equitable powers to fashion the most complete relief possible. In dealing with the present section 706(g) the courts have stressed that the scope of relief under that section of the Act is intended to make the victims of unlawful discrimination whole, and that the attainment of this objective rests not only upon the elimination of the particular unlawful employment practice complained of, but also requires that persons aggrieved by the consequences and effects of the unlawful employment practice be, so far as possible, restored to a position where

FN11. Section 10(c) of the NLRA, 49 Stat. 454, as amended, 29 U.S.C. s 160(c), provides that when the Labor Board has found that a person has committed an 'unfair labor practice,' the Board 'shall issue' an order 'requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter.' The backpay provision of Title VII provides that when the court has found 'an unlawful employment practice,' it 'may enjoin' the practice 'and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . ..' 42 U.S.C. s 2000e-5(g) (1970 ed., Supp. III). The framers of Title VII stated that they were using the NLRA provision as a model. 110 Cong.Rec. 6549 (1964) (remarks of Sen. Humphrey); id., at 7214 (interpretative memorandum by Sens. Clark and Case). In early versions of the Title VII provision on remedies, it was stated that a court 'may' issue injunctions, but 'shall' order appropriate affirmative action. This anomaly was removed by Substitute Amendment No. 656, 110 Cong.Rec. 12814, 12819 (1964). The framers regarded this as merely a 'minor language change,' id., at 12723-12724 (remarks of Sen. Humphrey). We can find here no intent to back away from the NLRA model or to denigrate in any way the status of backpay relief.

FN12. 'The finding of an unfair labor practice and discriminatory discharge is presumptive proof that some back pay is owed by the employer,' NLRB v. Mastro Plastics Corp., 354 F.2d 170, 178 (CA2 1965). While the backpay decision rests in the NLRB's discretion, and not with the courts, NLRB v. J.H. Rutter-Rex Mfg. Co., 396 U.S. 258, 263, 90 S.Ct. 417, 420, 24 L.Ed.2d 405 (1969), the Board has from its inception pursued 'a practically uniform policy with respect to these orders requiring affirmative action.' NLRB, First Annual Report 124 (1936).

'(I)n all but a few cases involving discriminatory discharges, discriminatory refusals to employ or reinstate, or discriminatory demotions in violation of section 8(3), the Board has ordered the employer to offer reinstatement to the employee discriminated against and to make whole such employee for any loss of pay that he has suffered by reason of the discrimination.' NLRB Annual Report, Second p. 148 (1937).

FN13. As to the unsuccessful effort to restrict class actions for backpay, see n. 8, supra. In addition, the Senate rejected an amendment which would have required a jury trial in Title VII cases involving backpay, 118 Cong.Rec. 4917, 4919-4920 (1972) (remarks of Sens. Ervin and Javits), and rejected a provision that would have limited backpay liability of a date two years prior to filing a complaint in court. Compare H.R. 1746, which passed the House, with the successful Conference Committee bill, analyzed at 118 Cong.Rec. 7168 (1972), which adopted a substantially more liberal limitation, i.e., a date two years prior to filing a charge with the EEOC. See 42 U.S.C. s 2000e-5(g) (1970 ed., Supp. III).

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they would have been were it not for the unlawful discrimination.' 118 Cong.Rec. 7168 (1972).
As this makes clear, Congress' purpose in vesting a variety of 'discretionary' powers in the courts was not to limit appellate review of trial courts, or to invite inconsistency and caprice, but rather to make possible the 'fashion(ing) (of) the most complete relief possible.'

[10][11] It follows that, given a finding of unlawful discrimination, backpay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination. FN14 The courts of appeals must maintain a consistent and principled application of the backpay provision, consonant with the twin statutory objectives, while at the same time recognizing that the trial court will often have the keener appreciation*422 of those facts and circumstances peculiar to particular cases.

FN14. It is necessary, therefore, that if a district court does decline to award backpay, it carefully articulate its reasons.

[12][13][14] The District Court's stated grounds for denying backpay in this case must be tested against these standards. The first ground was that Albemarle's breach of Title VII had not been **2374 in 'bad faith.' FN15 This is not a sufficient reason for denying backpay. Where an employer has shown bad faith-by maintaining a practice which he knew to be illegal or of highly questionable legality-he can make no claims whatsoever on the Chancellor's conscience. But, under Title VII, the mere absence of bad faith simply opens the door to equity; it does not depress the scales in the employer's favor. If backpay were awardable only upon a showing of bad faith, the remedy would become a punishment for moral turpitude, rather than a compensation for workers' injuries. This would read the 'make whole' purpose right out of Title VII, for a worker's injury is no less real simply because his employer did not inflict it in 'bad faith.' FN16 Title VII is not concerned with the employer's 'good intent or obsence of discriminatory intent' for 'Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation.' *423Griggs v. Duke Power Co., 401 U.S., at 432, 91 S.Ct., at 854. See also Watson v. City of Memphis, 373 U.S. 526, 535, 83 S.Ct. 1314, 1319-1320, 10 L.Ed.2d 529 (1963); Wright v. Council of City of Emporia, 407 U.S. 451, 461-462, 92 S.Ct. 2196, 2202-2203, 33 L.Ed.2d 51 (1972). FN17 To condition the awarding of backpay on a showing of 'bad faith' would be to open an enormous chasm between injunctive and backpay relief under Title VII. There is nothing on the face of the statute or in its legislative history that justifies the creation of drastic and categorical distinctions between those two remedies. FN18

FN15. The District Court thought that the breach of Title VII had not been in 'bad faith' because judicial decisions had only recently focused directly on the discriminatory impact of seniority systems. The court also noted that Albemarle had taken some steps to recruit black workers into one of its departments and to eliminate strict segregation through the 1968 departmental merger.

FN16. The backpay remedy of the NLRA on which the Title VII remedy was modeled, see n. 11, supra, is fully available even where the 'unfair labor practice' was committed in good faith. See, e.g., NLRB v. J.H. Rutter-Rex Mfg. Co., 396 U.S., at 265, 90 S.Ct. 417, 421, 24 L.Ed.2d 405; American Machinery Corp. v. NLRB, 5 Cir., 424 F.2d 1321, 1328-1330 (CA5 1970); Laidlaw Corp. v. NLRB, 7 Cir., 414 F.2d 99, 107 (CA7 1969).

FN17. Title VII itself recognizes a complete, but very narrow, immunity for employer conduct shown to have been undertaken 'in good faith, in conformity with, and in reliance on any written interpretation or opinion of the (Equal Employment Opportunity) Commission.' 42 U.S.C. s 2000e-12(b). It is not for the courts to upset this legislative choice to recognize only a narrowly defined 'good faith' defense.

FN18. We note that some courts have denied backpay, and limited their judgments to declaratory relief, in cases where the employer discriminated on sexual grounds in reliance on state 'female protective' statutes that were inconsistent with Title VII. See, e.g., Kober v. Westinghouse Electric Corp., 3 Cir., 480 F.2d 240 (CA3 1973); LeBlanc v. Southern Bell Telephone & Telegraph Co., 5 Cir., 460 F.2d 1228 (CA5 1972); Manning v. General Motors Corp., 466 F.2d 812 (CA6 1972); Rosenfeld v. Southern Pacific Co., 9 Cir., 444 F.2d 1219 (CA9 1971). There is no occasion in this case to decide whether these decisions were correct. As to the effect of Title VII on state statutes inconsistent with it, see 42 U.S.C. s

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2000e-7.

The District Court also grounded its denial of backpay on the fact that the respondents initially disclaimed any interest in backpay, first asserting their claim five years after the complaint was filed. The court concluded that the petitioners had been 'prejudiced' by this conduct. The Court of Appeals reversed on the ground 'that the broad aims of Title VII require that the issue of back pay be fully developed and determined even though it was not raised until the post-trial stage of litigation,' 474 F.2d, at 141.

[15][16][17][18] ***424** It is true that Title VII contains no legal bar to raising backpay claims after the complaint for injunctive relief has been filed, or indeed after a trial on that complaint has been had. [FN19] ****2375** Furthermore, Fed.Rule Civ.Proc. 54(c) directs that

> FN19. See Rosen v. Public Service Electric & Gas Co., 409 F.2d, at 780 n. 20; Robinson v. Lorillard Corp., 444 F.2d, at 802-803; United States v. Hayes International Corp., 5 Cir., 456 F.2d 112, 116, 121 (CA5 1972).

'every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.'
But a party may not be 'entitled' to relief if its conduct of the cause has improperly and substantially prejudiced the other party. The respondents here were not merely tardy, but also inconsistent, in demanding backpay. To deny backpay because a particular cause has been prosecuted in an eccentric fashion, prejudicial to the other party, does not offend the broad purposes of Title VII. This is not to say, however, that the District Court's ruling was necessarily correct. Whether the petitioners were in fact prejudiced, and whether the respondents' trial conduct was excusable, are questions that will be open to review by the Court of Appeals, if the District Court, on remand, decides again to decline to make any award of backpay.[FN20] But the standard of review will be the familiar one of whether the District Court was 'clearly erroneous' in its factual findings and whether it 'abused' its traditional discretion to locate 'a just result' in light of the circumstances peculiar to the case, ***425** Langnes v. Green, 282 U.S. 531, 541, 51 S.Ct. 243, 247, 75 L.Ed. 520 (1931). On these issues of procedural regularity and prejudice, the 'broad aims of Title VII' provide no ready solution.

> FN20. The District Court's stated grounds for denying backpay were, apparently, cumulative rather than independent. The District Court may, of course, reconsider its backpay determination in light of our ruling on the 'good faith' question.

III

[19][20] In Griggs v. Duke Power Co., 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971), this Court unanimously held that Title VII forbids the use of employment tests that are discriminatory in effect unless the employer meets 'the burden of showing that any given requirement (has) . . . a manifest relationship to the employment in question.' Id., at 432, 91 S.Ct. at 854. [FN21] This burden arises, of course, only after the complaining party or class has made out a prima facie case of discrimination, i.e. has shown that the tests in question select applicants for hire or promotion in a racial pattern significantly different from that of the pool of applicants. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973). If an employer does then meet the burden of proving that its tests are 'job related,' it remains open to the complaining party to show that other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate interest in 'efficient and trustworthy workmanship.' Id., at 801, 93 S.Ct. at 1823. Such a showing would be evidence that the employer was using its tests merely as a 'pretext' for discrimination. Id., at 804-805, 93 S.Ct. at 1825-1826. In the present case, however, we are concerned only with the question whether Albemarle has shown its tests to be job related.

> FN21. In Griggs, the Court was construing 42 U.S.C. s 2000e-2(h), which provides in pertinent part that it shall not 'be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin.'

***426** The concept of job relatedness takes on meaning from the facts of the Griggs case. A power company in North Carolina had reserved its skilled jobs for whites prior to 1965. Thereafter, the company allowed Negro workers to transfer to skilled jobs, but all transferees-white and Negro-were required to attain national median scores on two tests:

****2376** '(T)he Wonderlic Personnel Test, which purports

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to measure general intelligence, and the Bennett Mechanical Comprehension Test. Neither was directed or intended to measure the ability to learn to perform a particular job or category of jobs. . .

'. . . Both were adopted, as the Court of Appeals noted, without meaningful study of their relationship to job-performance ability. Rather, a vice president of the Company testified, the requirements were instituted on the Company's judgment that they generally would improve the overall quality of the work force.' 401 U.S., at 428-431, 91 S.Ct., at 852.

The Court took note of 'the inadequacy of broad and general testing devices as well as the infirmity of using diplomas or degrees as fixed measures of capability,' id., at 433, and concluded:
'Nothing in the Act precludes the use of testing or measuring procedures; obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. . . . What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract.' Id., at 436, 91 S.Ct. at 856.

*427 Like the employer in Griggs, Albemarle uses two general ability tests, the Beta Examination, to test nonverbal intelligence, and the Wonderlic Test (Forms A and B), the purported measure of general verbal facility which was also involved in the Griggs case. Applicants for hire into various skilled lines of progression at the plant are required to score 100 on the Beta Exam and 18 on one of the Wonderlic Test's two alternative forms.[FN22]

> FN22. Albemarle has informed us that it has now reduced the cut-off score to 17 on the Wonderlic Test.

The question of job relatedness must be viewed in the context of the plant's operation and the history of the testing program. The plant, which now employes about 650 persons, converts raw wood into paper products. It is organized into a number of functional departments, each with one or more distinct lines of progression, the theory being that workers can move up the line as they acquire the necessary skills. The number and structure of the lines have varied greatly over time. For many years, certain lines were themselves more skilled and paid higher wages than others, and until 1964 these skilled lines were expressly reserved for white workers. In 1968, many of the unskilled 'Negro' lines were 'end-tailed' onto skilled 'white' lines, but it apparently remains true that at least the top jobs in certain lines require greater skills than the top jobs in other lines. In this sense, at least, it is still possible to speak of relatively skilled and relatively unskilled lines.

[21] In the 1950's while the plant was being modernized with new and more sophisticated equipment, the Company introduced a high school diploma requirement for entry into the skilled lines. Though the Company soon concluded that this requirement did not improve the quality of the labor force, the requirement was continued *428 until the District Court enjoined its use. In the late 1950's, the Company began using the Beta Examination and the Bennett Mechanical Comprehension Test (also involved in the Griggs case) to screen applicants for entry into the skilled lines. The Bennett Test was dropped several years later, but use of the Beta Test continued.[FN23]

> FN23. While the Company contends that the Bennett and Beta Tests were 'locally validated' when they were introduced, no record of this validation was made. Plant officials could recall only the barest outlines of the alleged validation. Job relatedness cannot be proved through vague and unsubstantiated hearsay.

**2377 The Company added the Wonderlic Tests in 1963, for the skilled lines, on the theory that a certain verbal intelligence was called for by the increasing sophistication of the plant's operations. The Company made no attempt to validate the test for job relatedness,[FN24] and simply adopted the national 'norm' score of 18 as a cut-off point for new job applicants. After 1964, when it discontinued overt segregation in the lines of progression, *429 the Company allowed Negro workers to transfer to the skilled lines if they could pass the Beta and Wonderlic Tests, but few succeeded in doing so. Incombents in the skilled lines, some of whom had been hired before adoption of the tests, were not required to pass them to retain their jobs or their promotion rights. The record shows that a number of white incumbents in high-ranking job groups could not pass the tests.[FN25]

> FN24. As explained by the responsible plant official, the Wonderlic Test was chosen in rather casual fashion:
>
> 'I had had experience with using the Wonderlic befor, which is a short form Verbal Intelligence Test, and knew that it had, uh, probably more

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> validation studies behind it than any other short form Verbal Intelligence Test. So, after consultation we decided to institute the Wonderlic, in addition to the Beta, in view of the fact that the mill had changed quite a bit and it had become exceedingly more complex in operation . . .. (W)e did not, uh, validate it, uh, locally, primarily, because of the, the expense of conducting such a validation, and there were some other considerations, such as, uh, we didn't know whether we would get the co-operation of the employees that we'd need to validate it against in taking the test, and we certainly have to have that, so, we used National Norms and on my suggestion after study of the Wonderlic and Norms had been established nationally for skilled jobs, we developed a, uh, cut-off score of eighteen (18).'
>
> FN25. In the course of a 1971 validation effort, see supra, at 2368 and infra, this page and 2378, test scores were accumulated for 105 incumbent employees (101 of whom were white) working in relatively high-ranking jobs. Some of these employees apparently took the tests for the first time as part of this study. The Company's expert testified that the test cut-off scores originally used to screen these incumbents for employment or promotion 'couldn't have been . . . very high scores because some of these guys tested very low, as low as 8 in the Wonderlic test, and as low as 95 in the Beta. They couldn't have been using very high cut-off scores or they wouldn't have these low testing employees.'

Because departmental reorganization continued up to the point of trial, and has indeed continued since that point, the details of the testing program are less than clear from the record. The District Court found that, since 1963, the Beta and Wonderlic Tests have been used in 13 lines of progression, within eight departments. Albemarle contends that at present the tests are used in only eight lines of progression, within four departments.

Four months before this case went to trial, Albemarle engaged an expert in industrial psychology to 'validate' the job relatedness of its testing program. He spent a half day at the plant and devised a 'concurrent validation' study, which was conducted by plant officials, without his supervision. The expert then subjected the results to statistical analysis. The study dealt with 10 job groupings, selected from near the top of nine of the ***430** lines of progression.[FN26] Jobs were grouped together solely by their proximity in the line of progression; no attempt was made to analyze jobs in terms of the particular skills they might require. All, or nearly all, employees in the selected groups participated in the study-105 employees in all, but only four Negroes. Within each job grouping the study compared the test scores of each employee with an independent 'ranking' of the employee, relative to each of his coworkers, made by two of the employee's supervisors. The supervisors, who did not know the test scores, were asked to

> FN26. See the charts appended to this opinion. It should be noted that testing is no longer required for some of the job groups listed.

****2378** 'determine which ones they felt irrespective of the job that they were actually doing, but in their respective jobs, did a better job than the person they were rating against . . ..'[FN27]

> FN27. This 'standard' for the ranking was described by the plant official who oversaw the conduct of the study.

For each job grouping, the expert computed the 'Phi coefficient' of statistical correlation between the test scores and an average of the two supervisorial rankings. Consonant with professional conventions, the expert regarded as 'statistically significant' any correlation that could have occurred by chance only five times, or fewer in 100 trials.[FN28] On the basis of these results, the District Court found that '(t)he personnel test administered at the plant have undergone validation studies and have been proven to be job related.' Like the Court of Appeals, we are constrained to disagree.

> FN28. The results of the study are displayed on Chart A in the Appendix to this opinion.

[22] The EEOC has issued 'Guidelines' for employers seeking to determine, through professional validation studies, ***431** whether their employment tests are job related. 29 CFR pt. 1607. These Guidelines draw upon and make reference to professional standards of test validation established by the American Psychological Association.[FN29] The EEOC Guidelines are not administrative regulations' promulgated pursuant to formal procedures established by the Congress. But, as this Court has heretofore noted, they do constitute '(t)he administrative interpretation of the Act by the enforcing agency,' and consequently they are 'entitled to great deference.' Griggs v. Duke Power Co., 401

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U.S., at 433-434, 91 S.Ct., at 854. See also Espinoza v. Farah Mfg. Co., 414 U.S. 86, 94, 94 S.Ct. 334, 339, 38 L.Ed.2d 287 (1973).

> FN29. American Psychological Association, Standards for Educational and Psychological Tests and Manuals (1966) (hereafter APA Standards). A volume of the same title, containing modifications, was issued in 1974. The EEOC Guidelines refer to the APA Standards at 29 CFR s 1607.5(a). Very similar guidelines have been issued by the Secretary of Labor for the use of federal contractors. 41 CFR s 60-3.1 et seq.

The message of these Guidelines is the same as that of the Griggs case-that discriminatory tests are impermissible unless shown, by professionally acceptable methods, to be 'predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.' 29 CFR s 1607.4(c).

Measured against the Guidelines, Albemarle's validation study is materially defective in several respects:

[23][24] (1) Even if it had been otherwise adequate, the study would not have 'validated' the Beta and Wonderlic test battery for all of the skilled lines of progression for which the two tests are, apparently, now required. The study showed significant correlations for the Beta Exam in only three of the eight lines. Though the Wonderlic Test's Form A and Form B are in theory identical and ***432** interchangeable measures of verbal facility, significant correlations for one form but not for the other were obtained in four job groupings. In two job groupings neither form showed a significant correlation. Within some of the lines of progression, one form was found acceptable for some job groupings but not for others. Even if the study were otherwise reliable, this odd patchwork of results would not entitle Albemarle to impose its testing program under the Guidelines. A test may be used in jobs other than those for which it has been professionally validated only if there are 'no significant differences' between the studied and unstudied jobs. 29 CFR s 1607.4(c)(2). The study in this case involved no analysis of the attributes of, or the particular skills needed in, the studied job groups. There is accordingly no basis for concluding that 'no significant differences' exist among the lines of progression, or among distinct****2379** job groupings within the studied lines of progression. Indeed, the study's checkered results appear to compel the opposite conclusion.

[25] (2) The study compared test scores with subjective supervisorial rankings. While they allow the use of supervisorial rankings in test validation, the Guidelines quite plainly contemplate that the rankings will be elicited with far more care than was demonstrated here.[FN30] ***433** Albemarle's supervisors were asked to rank employees by a 'standard' that was extremely vague and fatally open to divergent interpretations. As previously noted, each 'job grouping' contained a number of different jobs, and the supervisors were asked, in each grouping to

> FN30. The Guidelines provide, at 29 CFR ss 1607.5(b)(3) and (4):
>
> '(3) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.
>
> '(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisor's prejudice, as when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.'

'determine which ones (employees) they felt irrespective of the job that they were actually doing, but in their respective jobs, did a better job than the person they were rating against . . ..'[FN31]

> FN31. See n. 27, supra.

There is no way of knowing precisely what criteria of job performance the supervisors were considering, whether

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each of the supervisors was considering the same criteria or whether, indeed, any of the supervisors actually applied a focused and stable body of criteria of any kind.[FN32] There is, in short, simply no way to determine whether the criteria actually considered were sufficiently related to the Company's legitimate interest in job-specific ability to justify a testing system with a racially discriminatory impact.

> FN32. It cannot escape notice that Albemarle's study was conducted by plant officials, without neutral, on-the-scene oversight, at a time when this litigation was about to come to trial. Studies so closely controlled by an interested party in litigation must be examined with great care.

[26] (3) The Company's study focused, in most cases, on job groups near the top of the various lines of progression. In Griggs v. Duke Power Co., supra, the Court ***434** left open 'the question whether testing requirements that take into account capability for the next succeeding position or related future promotion might be utilized upon a showing that such long-range requirements fulfill a genuine business need.' 401 U.S., at 432, 91 S.Ct., at 854. The Guidelines take a sensible approach to this issue, and we now endorse it:

'If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level.' 29 CFR s 1607.4(c)(1).

The fact that the best of those employees working near the top of a line of ****2380** progression score well on a test does not necessarily mean that that test, or some particular cutoff score on the test, is a permissible measure of the minimal qualifications of new workers entering lower level jobs. In drawing any such conclusion, detailed consideration must be given to the normal speed of promotion, to the efficacy of on-the-job training in the scheme of promotion, and to the possible use of testing as a promotion device, rather than as a screen for entry into low-level jobs. The District Court made no findings on these issues. The issues take on special importance in a case, such as this one, where incumbent employees are permitted to work at even high-level jobs without passing the company's test battery. See 29 CFR s 1607.11.

***435** (4) Albemarle's validation study dealt only with job-experienced, white workers; but the tests themselves are given to new job applicants, who are younger, largely inexperienced, and in many instances nonwhite. The APA Standards state that it is 'essential' that

'(t)he validity of a test should be determined on subjects who are at the age or in the same educational or vocational situation as the persons for whom the test is recommended in practice.' C 5.4.

The EEOC Guidelines likewise provide that '(d)ata must be generated and results separately reported for minority and nonminority groups wherever technically feasible.' 29 CFR s 1607.5(b)(5). In the present case, such 'differential validation' as to racial groups was very likely not 'feasible,' because years of discrimination at the plant have insured that nearly all of the upper level employees are white. But there has been no clear showing that differential validation was not feasible for lower level jobs. More importantly, the Guidelines provide:
'If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.' 29 CFR s 1607.5(b)(1).

'. . . (E)vidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question.' 29 CFR s 1607.5(b) (5).

[27] For all these reasons, we agree with the Court of Appeals that the District Court erred in concluding that ***436** Albemarle had proved the job relatendness of its testing program and that the respondents were consequently not entitled to equitable relief. The outright reversal by the Court of Appeals implied that an injunction should immediately issue against all use of testing at the plant. Because of the particular circumstances here, however, it appears that the more prudent course is to leave to the District Court the precise fashioning of the necessary relief in the first instance. During the appellate stages of this litigation, the plant has apparently been amending its departmental organization and the use made of its tests.

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The appropriate standard of proof for job relatedness has not been clarified until today. Similarly, the respondents have not until today been specifically apprised of their opportunity to present evidence that even validated tests might be a 'pretext' for discrimination in light of alternative selection procedures available to the Company. We also note that the Guidelines authorize provisional use of tests, pending new validation efforts, in certain very limited circumstances. 29 CFR s 1607.9. Whether such circumstances now obtain is a matter best decided, in the first instance, by the District Court. That court will be free to take such new evidence, and to exercise such control of the Company's **2381 use and validation of employee selection procedures, as are warranted by the circumstances and by the controlling law.

Accordingly, the judgment is vacated, and these cases are remanded to the District Court for proceedings consistent with this opinion.

It is so ordered.

Judgment vacated and cases remanded.

Mr. Justice POWELL took no part in the consideration or decision of these cases.

*437 APPENDIX TO OPINION OF THE COURT

CHART A

Results of Validation Study

Job Group	N	Test Beta	Test W-A	Test W-B
1. Caustic Operator, Lime Kiln Operator	8	.25	1.00 **	.47
2. C. E. Recovery Operator, C. E. Recovery 1st Helpers & Evaporator Operators	12	.64 **	.32	.17
3. Wood Yard: Long Log Operators, Log Stackers, Small Equipment Operators & Oilers	14	.00	1.00 **	.72 *
4. Technical Services: B Mill Shift Testmen, Additive men, General Lab. Testmen, General Lab. asst., A Mill Testmen, Samplemen...		.50 *	.75 **	.64 *

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5. B Paper Mill: Machine Tenders and Back Tenders....	16 .00	.50 **	.34
6. B Paper Mill: Stock Room Operator, Stock Room 1st Helper.....	8 -.50	.00	.00
7. B Paper Mill: 3rd Hands, 4th Hands & 5th Hands.....	21 .43	.81 **	.60 **
8. Wood Yard: Chipper Unloader, Chipper Operator, No. 2 Chain Operator	6 .76 *	-.25	1.00 **
9. Pulp Mill: Stock Room Operator, Stock Room 1st Helpers.....	8 .50	.80 *	.76 *
10. Power Plant: Power Plant Operator, Power Plant 1st Helper, Power Plant 2nd Helper.....	12 .34	.75 **	.66 *

NOTE

FNThe job groups are identified in Chart B. N indicates the number of employees tested. A single (double) asterisk indicates the "Phi" coefficient of correlation, shown on the chart, is statistically significant at a 95% (99%) level of confidence. The other coefficients are not statistically significant.

*438 **2382 CHART B

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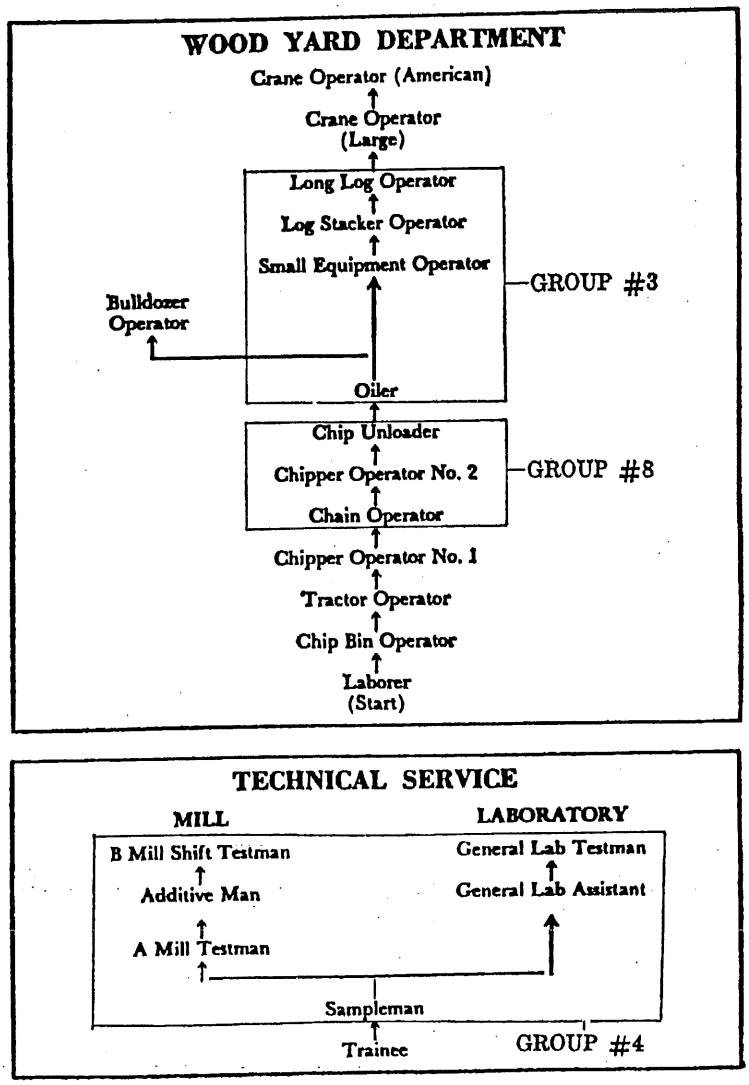
Albemarle's Skilled Lines of Progression

NOTE: The numbered job groups are those examined in the validation study summarized in Chart A. Testing is no longer required for entry into the Woodyard Department.



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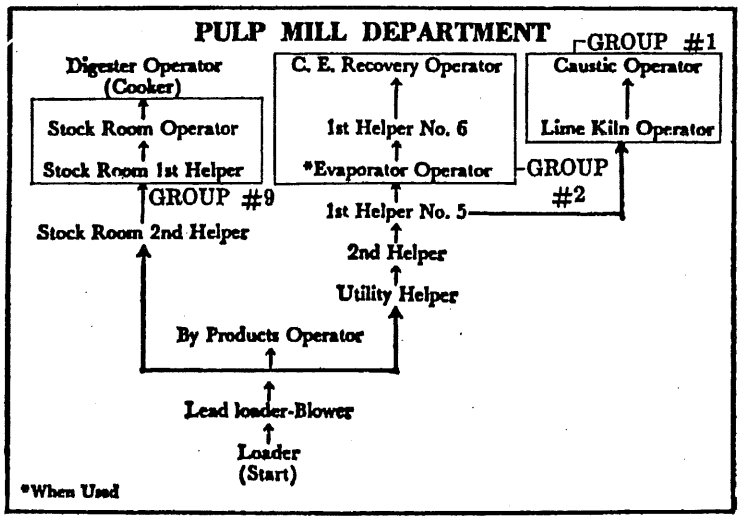

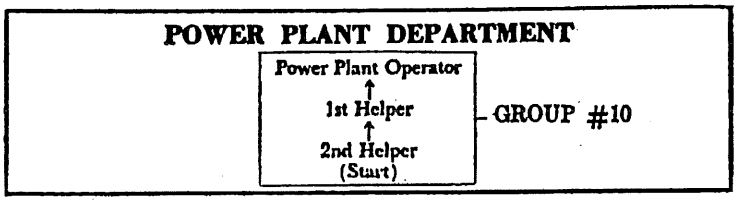

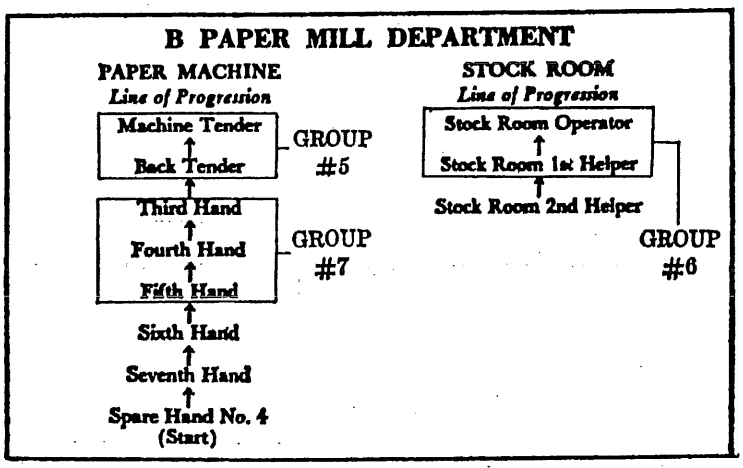

**2383 *440 Mr. Justice MARSHALL, concurring.

I agree with the opinion of the Court. I write today to make the following observations about the proceedings in the District Court on remand relative to the backpay issue.

As the Court affirms, there is no legal bar to raising a claim for backpay under Title VII at any time in the proceedings, even 'indeed after a trial on (the) complaint (for injunctive relief) has been had.' Ante, at 2374. Furthermore, only **2384 the most unusual circumstances would constitute an equitable barrier to the award of make-whole relief where liability is otherwise established. The bar of laches, predicated on the prejudice to a defendant's case from the tardy entry of a prayer for compensation, should be particularly difficult to establish.

Backpay in Title VII cases is generally computed, with respect to each affected employee or group of employees, by determining the amount of compensation lost as a direct result of the employer's discriminatory decision not to hire or promote. In litigation such as this, where the plaintiff

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class is limited to present and former employees of petitioner company who were denied promotions into the more lucrative positions because of their race, there is no need to make additional findings and offsetting computations for wages earned in alternative employment during the relevant period.

The information needed in order to compute backpay for nonpromotion is contained in the personnel records and pay schedules normally maintained by an employer, some under compulsion of law. These data include the time at which an employee in the favored group was promoted over an otherwise more senior member of the disfavored class, and the wage differential that the promotion entailed. Rarely, if ever, could an employer plausibly invoke the doctrine of laches on the usual ***441** ground that the passage of time has put beyond reach evidence or testimony necessary to his case.

The prejudice on which the District Court relied here was, indeed, of a different and more speculative variety. The court made no findings of fact relevant to the subject, but found it 'apparent' that prejudice would accrue because '(t)he defendants might have chosen to exercise unusual zeal in having this court determine their rights at an earlier date had they known that back pay would be at issue.' 2 App. 498. This indulgent speculation is clearly not an adequate basis on which to deny the successful Title VII complainant compensatory backpay and surely even less of a reason for penalizing the members of the class that he represents.[FN*] In posing as an issue on remand '(w)hether the petitioners were in fact prejudiced,' ante, at 2375 (emphasis added), the Court recognized as much.

> FN* Even the District Court's formulation, if founded upon proof that the defendants would have 'chosen to exercise unusual zeal,' would only justify a limitation on the award of backpay to reflect the earlier date at which the court would have awarded it; in no event would it support the denial of all backpay relief.

Although on the record now before us I have no doubt that respondents' tardiness in asserting their claim to backpay was excusable in light of the uncertain state of the law during the first years of this litigation, I agree that the District Court should be the first to pass upon the issues as the Court has posed them. Doubtful though I remain about their ability to do so, petitioners are entitled at least to an opportunity to prove that respondents' delay prejudiced their defense so substantially as to make an award of compensatory relief oppressive.

Mr. Justice REHNQUIST, concurring.

I join the opinion of the Court. The manner in which 42 U.S.C. s 2000e-5(g) (1970 ed., Supp. III) is construed***442** has important consequences not only as to the circumstances under which backpay may be awarded, but also as to the method by which any such award is to be determined.

To the extent that an award of backpay were to be analogized to an award of damages, such an award upon proper proof would follow virtually as a matter of course from a finding that an employer had unlawfully discriminated contrary to the provisions of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, 86 Stat. 103, 42 U.S.C. s 200e et seq. (1970 ed. and Supp. III). Plaintiffs would be entitled to the benefit of the rule enunciated***2385** in Bigelow v. RKO Radio Pictures, 327 U.S. 251, 265, 66 S.Ct. 574, 580, 90 L.Ed. 652 (1946):

"The constant tendency of the courts is to find some way in which damages can be awarded where a wrong has been done. Difficulty of ascertainment is no longer confused with right of recovery' for a proven invasion of the plaintiff's rights. Story Parchment Co. v. Patterson Co., (282 U.S. 555, 51 S.Ct. 248, 76 L.Ed. 544,) 565.'

But precisely to the extent that an award of backpay is thought to flow as a matter of course from a finding of wrongdoing, and thereby becomes virtually indistinguishable from an award for damages, the question (not raised by any of the parties, and therefore quite properly not discussed in the Court's opinion), of whether either side may demand a jury trial under the Seventh Amendment becomes critical. We said in Curtis v. Loether, 415 U.S. 189, 197, 94 S.Ct. 1005, 1010, 39 L.Ed.2d 260 (1974), in explaining the difference between the provision for damages under s 812 of the Civil Rights Act of 1968, 82 Stat. 88, ***443**42 U.S.C. s 3612, and the authorization for the award of backpay which we treat here:

'In Title VII cases, also, the courts have relied on the fact that the decision whether to award back-pay is committed to the discretion of the trial judge. There is no comparable discretion here: if a plaintiff proves unlawful discrimination and actual damages, he is entitled to judgment for that amount. . . . Whatever may be the merit of the 'equitable' characterization in Title VII cases, there is surely no basis for characterizing the award of compensatory and punitive damages here as equitable relief.' (Footnote omitted.)

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In Curtis, supra, the Court further quoted the description of the Seventh Amendment in Mr. Justice Story's opinion for this Court in Parsons v. Bedford, 3 Pet. 433, 447, 7 L.Ed. 732 (1830), to the effect that:

'In a just sense, the amendment then may well be construed to embrace all suits which are not of equity and admiralty jurisdiction, whatever may be the peculiar form which they may assume to settle legal rights.'

To the extent, then, that the District Court retains substantial discretion as to whether or not to award backpay notwithstanding a finding of unlawful discrimination, the nature of the jurisdiction which the court exercises is equitable, and under our cases neither party may demand a jury trial. To the extent that discretion is replaced by awards which follow as a matter of course from a finding of wrongdoing, the action of the court in making such awards could not be fairly characterized as equitable in character, and would quite arguably be subject to the provisions of the Seventh Amendment.

Thus I believe that the broad latitude which the ***444** Court's opinion reposes in the district courts in the decision as to whether backpay shall be awarded is not only consistent with the statute, but is supported by policy considerations which would favor the more expeditious disposition which may be made of numerous claims on behalf of frequently large classes by a court sitting without a jury. As the Court states, ante, at 2372, the backpay remedy provided by Title VII is modeled on the remedial provisions of the NLRA. This Court spoke to the breadth of the latter provision in Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 198, 61 S.Ct. 845, 854, 85 L.Ed. 1271 (1941), when it said:

'(W)e must avoid the rigidities of an either-or rule. The remedy of back pay, it must be remembered, is entrusted to the Board's discretion; it is not mechanically compelled by the Act. And in applying its authority over back pay orders, the Board has not used stereotyped formulas but has availed itself of the freedom given it ****2386** by Congress to attain just results in diverse, complicated situations.'

I agree, nonetheless, with the Court that the District Court should not have denied backpay in this litigation simply on the ground that Albemarle's breach of Title VII had not been in 'bad faith.' Good faith is a necessary condition for obtaining equitable consideration, but in view of the narrower 'good faith' defense created by statute, 42 U.S.C. s 2000e-12(b), it is not for this Court to expand such a defense beyond those situations to which Congress had made it applicable. I do not read the Court's opinion to say, however, that the facts upon which the District Court based its conclusion, ante, at 2374 n. 15, would not have supported a finding that the conduct of Albemarle was reasonable under the circumstances as well as being simply in good faith. Nor do I read the Court's opinion to say that such a combination of factors might not, in appropriate circumstances, be an ***445** adequate basis for denial of backpay. See Schaeffer v. San Diego Yellow Cabs, Inc., 462 F.2d 1002, 1006 (CA9 1972); United States v. Georgia Power Co., 474 F.2d 906, 922 (CA5 1973).

A cursory canvass of the decisions of the District Courts and Courts of Appeals which confront these problems much more often than we do suggests that the most frequently recurring problem in this area in the difficulty of ascertaining a sufficient causal connection between the employer's conduct properly found to have been in violation of the statute and an ascertainable amount of backpay lost by a particular claimant as a result of that conduct. United States v. St. Louis-S.F.R. Co., 464 F.2d 301, 311 (CA8 1972), cert. denied, 409 U.S. 1116, 93 S.Ct. 913, 34 L.Ed.2d 700 (1973). The Court of Appeals for the Eighth Circuit aptly described the difficulty of fashioning an award of backpay in the circumstances before it, and upheld the District Court's refusal to award backpay, in Norman v. Missouri P.R. Co., 497 F.2d 594, 597 (1974), cert. denied, 420 U.S. 908, 95 S.Ct. 826, 42 L.Ed.2d 837 (1975).

'No standard could determine the right to back pay itself nor the date from which to compute any right to back pay. Courts that have found back pay awards to be appropriate remedies in Title VII actions have generally recognized that such awards should be limited to actual damages . . ..'

As the Court recongizes, ante, at 2374-2375, another factor presented here which is relevant to the District Court's exercise of discretion is the possible detrimental reliance of petitioners on prior representations of respondents that they were not seeking classwide backpay. In 1966 respondents in replying to a motion for summary judgment expressly represented to the District Court that they had no interest in classwide backpay:

'It is important to understand the exact nature of ***446** the class relief being sought by plaintiffs. No money damages are sought for any member of the class not before the court . . ..

'. . . (T)he matter of specific individual relief for other class

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members is not before this Court.' 1 App. 13-14.

Five years later, respondents reversed their position and asserted a claim for classwide backpay. Petitioners have argued here and below that they reasonably relied to their detriment on respondents' statement in numerous ways including an interim sale of the mill at a price which did not take into account the ruinous liability with which the new owners are now faced, failure to investigate and prepare defenses to individual backpay claims which are now nine years old, and failure to speed resolution of this lawsuit. 474 F.2d 134, 146 n. 16 (CA4 1973). This conduct by the respondents presents factual and legal questions to be resolved in the first instance**2387 by the District Court, reviewable only on whether its factual findings are 'clearly erroneous' and whether its ultimate conclusion is an 'abuse of discretion' under all the circumstances of this case. Ante, at 2375. In the same manner that the good faith of an employer may not be viewed in isolation as precluding backpay under any and all circumstances, the excusable nature of respondents' conduct, if found excusable will not necessarily preclude denial of a backpay award if petitioners are found to have substantially and justifiably relied on respondents' prior representations.

If the award of backpay is indeed governed by equitable considerations, and not simply a thinly disguised form of damages, factors such as these and others, which may argue in favor of or against the equities of either plaintiff or defendants, must be open for consideration *447 by the District Court. It, like the NLRB, must avail itself 'of the freedom given it by Congress to attain just results in diverse, complicated situations.' Phelps Dodge Corp. v. NLRB, 313 U.S. at 198, 61 S.Ct. 854, 85 L.Ed. 1271.

*449 Mr. Chief Justice BURGER, concurring in part and dissenting in part.

I agree with the Court's opinion insofar as it holds that the availability of backpay is a matter which Title VII commits to the sound equitable discretion of the trial court. I cannot agree with the Court's application of that principle in this case, or with its method of reviewing the District Court's findings regarding Albemarle's testing policy.

*450 With respect to the backpay issue, it must be emphasized that Albemarle was not held liable for practicing overt racial discrimination. It is undisputed that it voluntarily discontinued such practices prior to the effective date of Title VII and that the statute does not-and could not-apply to acts occurring before its passage. The basis of Albemarle's liability was that its seniority system perpetuated the effects of past discrimination and, as the District Court pointed out, the law regarding an employer's obligation to cure such effects was unclear for a considerable period of time. Moreover, the District Court's finding that Albemarle did not act in bad faith was not simply a determination that it thought its seniority system was legal but, rather, a finding that both prior to and after the filing of this lawsuit it took steps to integrate minorities into its labor force and to promptly fulfill its obligations under the law as it developed.[FN1]

> FN1. The District Court concluded that Albemarle was entirely justified in maintaining some type of seniority system which insured that its employees would have 'a certain degree of training and experience.' Its findings regarding the absence of bad faith were as follows:
>
> 'It appears that the company as early as 1964 began active recruitment of blacks for its Maintenance Apprentice Program. Certain lines of progression were merged on its own initiative, and as judicial decisions expanded the then existing interpretations of the Act, the defendants took steps to correct the abuses without delay.' 2 App. 498.

In light of this background, the Court's suggestion that the district Court 'conditioned' awards of backpay upon a showing of bad faith, ante, at 2374, is incorrect. Moreover, the District Court's findings on this point cannot be disregarded as irrelevant. As the Court's opinion notes, one of Congress' major purposes in giving district courts discretion to award backpay in Title VII *451 actions was to encourage employers and unions "to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of an unfortunate and ignominious page in this country's history." Ante, at 2372. By the same taken, if employers are to be assessed backpay even where they have attempted in good faith to conform to the law, they will have little incentive to eliminate marginal practices until bound by a court **2388 judgment. Plainly, then, the District Court's findings relate to 'reasons which, if applied generally, would not frustrate the central statutory purposes . . ..' Ante, at 2373. Because respondents waited five years before changing their original position disclaiming backpay and belatedly seeking it, thus suggesting that a desire to be 'made whole' was not a major reason for their pursuit of this litigation, I cannot say that the District Court abused its discretion by denying that remedy.[FN2]

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FN2. As the Court points out, ante, at 2375 n. 20, the District Court's reasons for denying backpay were cumulative. It did not favor one policy of Title VII to the exclusion of all others, as I fear this Court is now doing.

The Court's treatment of the testing issue is equally troubling. Its entire analysis is based upon a wooden application of EEOC Guidelines which, it says, are entitled to 'great deference' as an administrative interpretation of Title VII under Griggs v. Duke Power Co., 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971). The Court's reliance upon Griggs is misplaced. There we were dealing with Guidelines which state that a test must be demonstrated to be job related before it can qualify for the exemption contained in s 703(h) of Title VII, 78 Stat. 257, 42 U.S.C. s 2000e-2(h), as a device not 'designed, intended or used to discriminate. . ..' Because this interpretation ***452** of specific statutory language was supported by both the Act and its legislative history, we observed that there was 'good reason to treat the guidelines as expressing the will of Congress.' 401 U.S., at 434, 91 S.Ct., at 855. See also Espinoza v. Farah Mfg. Co., 414 U.S. 86, 93-95, 94 S.Ct. 334, 339-340, 38 L.Ed.2d 287 (1973).

In contrast, the Guidelines upon which the Court now relies relate to methods for proving job relatedness; they interpret no section of Title VII and are nowhere referred to in its legislative history. Moreover, they are not federal regulations which have been submitted to public comment and scrutiny as required by the Administrative Procedure Act.[FN3] Thus, slavish adherence to the EEOC Guidelines regarding test validation should not be required; those provisions are, as their title suggests, guides entitled to the same weight as other well-founded testimony by experts in the field of employment testing.

FN3. Such comment would not be a mere formality in light of the fact that many of the EEOC Guidelines are not universally accepted. For example, the Guideline relating to 'differential validation,' upon which the Court relies in this case, ante, at 2380, has been questioned by the American Psychological Association. See United States v. Georgia Power Co., 474 F.2d 906, 914 n. 8 (CA5 1973).

The District Court so considered the Guidelines in this case and resolved any conflicts in favor of Albemarle's experts. For example, with respect to the question whether validating tests for persons at or near the top of a line of progression 'is a permissible measure of the minimal qualifications of new workers,' ante, at 2379-2380, the District Court found:

'The group tested was typical of employees in the skilled lines of progression. They were selected from the top and middle of various lines. Professional studies have shown that when tests are validated***453** in such a narrow range of competence, there is a greater chance that the test will validate even a broader range, that is, if job candidates as well as present employees are tested.' 2 App. 490-491.

Unless this Court is prepared to hold that this and similar factual findings are clearly erroneous, the District Court's conclusion that Albemarle had sustained its burden of showing that its tests were job related is entitled to affirmance, if we follow traditional standards of review. At the very least, the case should be remanded to the Court of Appeals with instructions that it reconsider the testing issue, giving the District Court's findings of fact the deference to which they are entitled.

****2389** Mr. Justice BLACKMUN, concurring in the judgment.

I concur in the judgment of the Court, but I do not agree with all that is said in the Court's opinion.

The statutory authority for making awards of backpay in Title VII cases is cast in language that emphasizes flexibility and discretion in fashioning an appropriate remedy:

'If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . . or any other equitable relief as the court deems appropriate.' 78 Stat. 261, as amended, 86 Stat. 107, 42 U.S.C. s 2000e-5(g) (1970 ed., Supp. III) (emphasis added).

Despite this statutory emphasis on discretion, the Court of Appeals in this case reasoned by analogy to Newman v. Piggie Park Enterprises, 390 U.S. 400, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1968), that once a violation of Title VII had been established, '(back pay) should ordinarily by awarded . . . unless special circumstances would render such an award unjust.' 474 F.2d 134, 142 (CA4 1973). Today the Court rejects the 'special circumstances' test adopted by the Court of Appeals and holds that the power to award

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backpay is a discretionary power, the exercise of which must be measured against 'the purposes which ***448** inform Title VII.' Ante, at 2370-2371. With this much of the Court's opinion I agree. The Court goes on to suggest, however, that an employer's good faith is never a sufficient reason for refusing to award backpay. Ante, at 2373-2374. With this suggestion I do not agree. Instead, I believe that the employer's good faith may be a very relevant factor for a court to consider in exercising its discretionary power to fashion an appropriate affirmative action order. Thus, to take a not uncommon example, an employer charged with sex discrimination may defend on the ground that the challenged conduct was required by a State's 'female protective' labor statute. See, e.g., Kober v. Westinghouse Electric Corp., 480 F.2d 240 (CA3 1973); Manning v. General Motors, 466 F.2d 812 (CA6 1972), cert. denied, 410 U.S. 946, 93 S.Ct. 1366, 35 L.Ed.2d 613 (1973); Schaeffer v. San Diego Yellow Cabs, Inc., 462 F.2d 1002 (CA9 1972); LeBlanc v. Southern Bell Telephone & Telegraph Co., 460 F.2d 1228 (CA5), cert. denied, 409 U.S. 990, 93 S.Ct. 320, 34 L.Ed.2d 257 (1972). In such a case, the employer may be thrust onto the horns of a dilemma: either he must violate Title VII or he must violate a presumptively valid state law. Even though good-faith reliance on the state statute may not exonerate an employer from a finding that he has intentionally violated Title VII, see, e.g., Kober v. Westinghouse Electric Corp., supra; cf., ante, at 2374 nn. 17-18, surely the employer's good-faith effort to comply with Title VII to the extent possible under state law is a relevant consideration in considering whether to award backpay. Although backpay in such a case would serve the statutory purpose of making the discriminatee whole, it would do so at the expense of an employer who had no alternative under state law and who derived no economic benefit from the challenged conduct.

I also agree with the decision of the Court to vacate the judgment of the Court of Appeals insofar as it appeared to require an injunction against all testing by Albemarle. I cannot join, however, in the Court's apparent view that absolute compliance with the EEOC Guidelines is a sine qua non of pre-employment test validation. The Guidelines, of course, deserve that deference ****2390** normally due agency statements based on agency experience and expertise. Nevertheless, the Guidelines in question have never been subjected to the test of adversary comment. Nor are the theories on which the Guidelines are based beyond dispute. The simple truth is that pre-employment tests, like most attempts to predict the future, will never be completely accurate. We should bear in mind that pre-employment testing, so long as it is fairly related to the job skills or work characteristics desired, possesses the potential of being an effective weapon in protecting equal employment opportunity because it has a unique capacity to measure all applicants objectively on a standardized basis. I fear that a too-rigid application of the EEOC Guidelines will leave the employer little choice, save an impossibly expensive and complex validation study, but to engage in a subjective quota system of employment selection. This, of course, is far from the intent of Title VII.

U.S.N.C. 1975.
Albemarle Paper Co. v. Moody
422 U.S. 405, 95 S.Ct. 2362, 10 Fair Empl.Prac.Cas. (BNA) 1181, 9 Empl. Prac. Dec. P 10,230, 45 L.Ed.2d 280

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Supreme Court of the United States
ALEXANDER, Governor of Tennessee, et al.
v.
CHOATE et al.
No. 83-727.

Argued Oct. 1, 1984.
Decided Jan. 9, 1985.

Medicaid recipients brought class action for declaratory and injunctive relief against state's reduction from 20 to 14 of the number of inpatient hospital days that state medicaid would pay hospitals on behalf of a medicaid recipient in each year. The United States District Court for the Middle District of Tennessee, 518 F.Supp. 877, denied relief and medicaid recipients appealed. The Court of Appeals for the Sixth Circuit, 715 F.2d 1036, reversed and remanded. Upon granting certiorari, the Supreme Court, Justice Marshall, held that: (1) not all disparate impact showings constitute a prima facie case under the Rehabilitation Act; (2) for purposes of Rehabilitation Act analysis, benefit provided for medicaid is not "adequate health care" but, rather, a particular package of health care services; (3) reduction of inpatient coverage did not violate the Rehabilitation Act; and (4) not all annual durational limits on medicaid patient hospital usage violate the Rehabilitation Act.

Reversed.

West Headnotes

[1] Health 198H 462

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk462 k. State Participation in Federal Programs. Most Cited Cases
(Formerly 356Ak241.60)
Once a state voluntarily chooses to participate in medicaid, state must comply with requirements of the act and applicable regulations. Social Security Act, § 1901 et seq., as amended, 42 U.S.C.A. § 1396 et seq.

[2] Civil Rights 78 1417

78 Civil Rights
78III Federal Remedies in General
78k1416 Weight and Sufficiency of Evidence
78k1417 k. In General. Most Cited Cases
(Formerly 78k242(1), 78k13.13(3))
Not all disparate impact showings constitute a prima facie case under the Rehabilitation Act. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794.

[3] Civil Rights 78 1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k107(1), 78k9.16)
Otherwise qualified handicapped individual must be provided with meaningful access to the benefit which the governmental grantee offers; the benefit itself cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to insure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794.

[4] Civil Rights 78 1053

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1051 Public Services, Programs, and Benefits
78k1053 k. Discrimination by Reason of Handicap, Disability, or Illness. Most Cited Cases
(Formerly 78k107(1), 78k9.16)
Action of state of Tennessee in reducing from 20 to 14 the number of annual inpatient hospital days that state medicaid would pay hospitals on behalf of a medicaid recipient did not violate the Rehabilitation Act as it did not deny the handicapped meaningful access to medicaid services or exclude them from those services

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and was neutral on its face. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794; Social Security Act, § 1901 et seq., as amended, 42 U.S.C.A. § 1396 et seq.

[5] Health 198H 473

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk473 k. In General. Most Cited Cases
(Formerly 356Ak241.55)
Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs; benefit provided through medicaid is a particular package of health care services. Social Security Act, § 1901 et seq., as amended, 42 U.S.C.A. § 1396 et seq.

[6] Health 198H 473

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk473 k. In General. Most Cited Cases
(Formerly 356Ak241.60)
For purposes of determining whether state medicaid regulations violate the Rehabilitation Act, the benefit provided through the program is not "adequate health care" but, rather, a package of health care services. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794; Social Security Act, § 1901 et seq., as amended, 42 U.S.C.A. § 1396 et seq.

[7] Civil Rights 78 1053

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1051 Public Services, Programs, and Benefits
78k1053 k. Discrimination by Reason of Handicap, Disability, or Illness. Most Cited Cases
(Formerly 78k107(1), 78k9.16)
Regulations of the Department of Health and Human Services do not preclude state from setting limit on number of annual inpatient hospital days that it will pay hospitals for care provided to each medicaid recipient on theory that such a limitation discriminates against the handicapped. Social Security Act, § 1901 et seq., as amended, 42 U.S.C.A. § 1396 et seq.

[8] Civil Rights 78 1053

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1051 Public Services, Programs, and Benefits
78k1053 k. Discrimination by Reason of Handicap, Disability, or Illness. Most Cited Cases
(Formerly 78k107(1), 78k9.16)
Rehabilitation Act does not bar all annual durational limitations on inpatient coverage in state medicaid plans. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794; Social Security Act, § 1901 et seq., as amended, 42 U.S.C.A. § 1936 et seq.

****713** *Syllabus* FN*

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499 (1906).

***287** Faced with Medicaid costs beyond its budget, Tennessee proposed to reduce from 20 to 14 the number of annual inpatient hospital days that state Medicaid would pay hospitals on behalf of a Medicaid recipient. Before the reduction took effect, respondent Medicaid recipients brought a class action in Federal District Court for declaratory and injunctive relief. Respondents alleged that the proposed 14-day limitation would have a disproportionate effect on the handicapped and hence was discriminatory in violation of § 504 of the Rehabilitation Act of 1973-which provides that no otherwise qualified handicapped person shall, solely by reason of his handicap, be subjected to discrimination under any program receiving federal financial assistance-and its implementing regulations, and moreover that any annual limitation on inpatient coverage would disadvantage the handicapped disproportionately in violation of § 504. The District

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Court dismissed the complaint on the ground that the 14-day limitation was not the type of discrimination that § 504 was intended to proscribe. The Court of Appeals held that respondent had established a prima facie case of a § 504 violation, because both the 14-day and any annual limitation on inpatient coverage would disproportionately affect the handicapped.

Held: Assuming that § 504 or its implementing regulations reach some claims of disparate-impact discrimination, the effect of Tennessee's reduction in annual inpatient hospital coverage is not among them. Pp. 716-725.

(a) The 14-day limitation is neutral on its face, is not alleged to rest on a discriminatory motive, and does not deny the handicapped meaningful access to or exclude them from the particular package of Medicaid services Tennessee has chosen to provide. The State has made the same benefit equally accessible to both handicapped and nonhandicapped persons, and is not required to assure the handicapped "adequate health care" by providing them with more coverage than the non-handicapped. Nothing in the Rehabilitation Act's legislative history supports the conclusion that the Act requires the States to view certain illnesses, *i.e.,* those particularly affecting the handicapped, as more important than others and more worthy of cure through government subsidization. Section 504 does not require the State to alter its definition of the benefit ***288** it will be providing as 14 days of inpatient coverage simply to meet the reality that the handicapped have greater medical needs. While § 504 seeks to assure evenhanded treatment and the opportunity for handicapped individuals to participate in and benefit from programs receiving federal financial assistance, the Act does not guarantee the handicapped equal results from the provision of state Medicaid. Pp. 721-723.

(b) In addition, the State is not obligated to modify its Medicaid program by abandoning reliance on annual durational limitations on inpatient coverage. Section 504 does not require the State to redefine its Medicaid program, and nothing in its legislative history suggests that Congress desired to make major inroads on the States' longstanding discretion to choose the proper mix of amount, scope, and durational limitations on services covered by Medicaid. Moreover, § 504 does not require that federal grantees make a broad-based distributive decision always in the way most favorable, or least disadvantageous, to the handicapped. To do so would impose a virtually ****714** unworkable requirement on state Medicaid administrators. Pp. 723-725.

715 F.2d 1036 (CA6 1983), reversed.

W.J. Michael Cody, Attorney General of Tennessee, argued the cause for petitioners. With him on the briefs were *William M. Leech, Jr.,* former Attorney General, *William B. Hubbard,* Chief Deputy Attorney General, and *Frank J. Scanlon,* Deputy Attorney General.

Deputy Solicitor General Bator argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Lee, Assistant Attorney General Reynolds, Deputy Assistant Attorney General Cooper, John H. Garvey,* and *Brian K. Landsberg.*

Gordon Bonnyman argued the cause for respondents. With him on the brief were *Brian Paddock, Arlene Mayerson, J. LeVonne Chambers,* and *Eric Schnapper.**

* *Robert E. Williams* and *Douglas S. McDowell* filed a brief for the Equal Employment Advisory Council as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Center for Independent Living--San Gabriel/Pomona Valleys et al. by *Marilyn Holle* and *Timothy Cook;* and for United Cerebral Palsy of New York City, Inc., by *Michael A. Rebell.*

Justice MARSHALL delivered the opinion of the Court.

***289** In 1980, Tennessee proposed reducing the number of annual days of inpatient hospital care covered by its state Medicaid program. The question presented is whether the effect upon the handicapped that this reduction will have is cognizable under § 504 of the Rehabilitation Act of 1973 or its implementing regulations. We hold that it is not.

I

[1] [FN1] Faced in 1980-1981 with projected state Medicaid costs of $42 million more than the State's Medicaid budget of $388 million, the directors of the Tennessee

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Medicaid program decided to institute a variety of cost-saving measures. Among these changes was a reduction from 20 to 14 in the number of inpatient hospital days per fiscal year that Tennessee Medicaid would pay hospitals on behalf of a Medicaid recipient. Before the new measures took effect, respondents, Tennessee Medicaid recipients, brought a class action for declaratory and injunctive relief in which they alleged, *inter alia,* that the proposed 14-day limitation on inpatient coverage would have a discriminatory effect on the handicapped.[FN2] Statistical evidence, which petitioners do not ***290** dispute, indicated that in the 1979-1980 fiscal year, 27.4% of all handicapped users of hospital services who received Medicaid required more than 14 days of care, while only 7.8% of nonhandicapped users required more than 14 days of inpatient care.

FN1. Medicaid was established by Title XIX of the Social Security Act of 1965, 79 Stat. 343, as amended, 42 U.S.C. § 1396 *et seq.* Medicaid is a joint state-federal funding program for medical assistance in which the Federal Government approves a state plan for the funding of medical services for the needy and then subsidizes a significant portion of the financial obligations the State has agreed to assume. Once a State voluntarily chooses to participate in Medicaid, the State must comply with the requirements of Title XIX and applicable regulations. *Harris v. McRae,* 448 U.S. 297, 301, 100 S.Ct. 2671, 2680, 65 L.Ed.2d 784 (1980).

FN2. The State proposed an array of other changes in its Medicaid program. Although respondents challenged many of these other changes, settlement was reached on all the proposed changes other than the reduction in the number of inpatient days covered. Thus none of the other changes is before this Court. Respondents also asserted a number of causes of action other than their § 504 claim in their original and amended complaints. These additional legal theories are similarly not before the Court.

Since the District Court's decision, the State has amended its Medicaid program in two minor ways not materially significant to the issues presented on certiorari.

Based on this evidence, respondents asserted that the reduction would violate § 504 of the Rehabilitation Act of 1973, 87 Stat. 394, as amended, 29 U.S.C. § 794, and its implementing regulations. Section 504 provides:

> "No otherwise qualified handicapped individual ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...." 29 U.S.C. § 794.

Respondents' position was twofold. First, they argued that the change from 20 to 14 days of coverage would have a disproportionate effect on the handicapped and hence was discriminatory.[FN3] The second, and major, thrust of respondents' attack ****715** was directed at the use of *any* annual limitation on the number of inpatient days covered, for respondents acknowledged that, given the special needs of the handicapped for medical care, any such limitation was likely to disadvantage the handicapped disproportionately. Respondents noted, however, that federal law does not require States to impose any annual durational limitation on inpatient coverage,***291** and that the Medicaid programs of only 10 States impose such restrictions.[FN4] Respondents therefore suggested that Tennessee follow these other States and do away with any limitation on the number of annual inpatient days covered. Instead, argued respondents, the State could limit the number of days of hospital coverage on a per-stay basis, with the number of covered days to vary depending on the recipient's illness (for example, fixing the number of days covered for an appendectomy); the period to be covered for each illness could then be set at a level that would keep Tennessee's Medicaid program as a whole within its budget.[FN5] The State's refusal to adopt this plan was said to result in the imposition of gratuitous costs on the handicapped and thus to constitute discrimination under § 504.

FN3. The evidence indicated that, if 19 days of coverage were provided, 16.9% of the handicapped, as compared to 4.2% of the nonhandicapped, would not have their needs for inpatient care met.

FN4. As of 1980 the average ceiling in those States was 37.6 days. Six States also limit the

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number of reimbursable days per admission, per spell of illness, or per benefit period. See App. B to Brief for United States as *Amicus Curiae*.

FN5. See *Jennings v. Alexander*, 518 F.Supp. 877, 883, n. 7 (MD Tenn.1981). Respondents' diagnosis-related reimbursement proposal is supported by a committee of the Tennessee Legislature, which has recommended that the State adopt such a plan. The Medicaid System of the Tennessee Department of Public Health, A Report of the Special Joint Committee to the Ninety-Third General Assembly 24, 26 (1983). The Court of Appeals seems to have mischaracterized this proposal of respondents as an attempt to limit "the total number of visits per annum rather than the number of days." *Jennings v. Alexander*, 715 F.2d 1036, 1044 (CA6 1983).

A divided panel of the Court of Appeals for the Sixth Circuit held that respondents had indeed established a prima facie case of a § 504 violation. *Jennings v. Alexander*, 715 F.2d 1036 (1983). The majority apparently concluded that any action by a federal grantee that disparately affects the handicapped states a cause of action under § 504 and its implementing regulations. Because both the 14-day rule and any annual limitation on inpatient coverage disparately ***292** affected the handicapped, the panel found that a prima facie case had been made out, and the case was remanded [FN6] to give Tennessee an opportunity for rebuttal. According to the panel majority, the State on remand could either demonstrate the unavailability of alternative plans that would achieve the State's legitimate cost-saving goals with a less disproportionate impact on the handicapped, or the State could offer "a substantial justification for the adoption of the plan with the greater discriminatory impact." *Id.*, at 1045. We granted certiorari to consider whether the type of impact at issue in this case is cognizable under § 504 or its implementing regulations, 465 U.S. 1021, 104 S.Ct. 1271, 79 L.Ed.2d 677 (1984), and we now reverse.

FN6. The District Court had dismissed respondents' complaint under Federal Rule of Civil Procedure 12(b)(6) on the basis, *inter alia*, that the effect on the handicapped of the plan that included the 14-day limitation was "not the type of discrimination that § 504 was intended to proscribe." 518 F.Supp., at 881.

II

The first question the parties urge on the Court is whether proof of discriminatory animus is always required to establish a violation of § 504 and its implementing regulations, or whether federal law also reaches action by a recipient of federal funding that discriminates against the handicapped by effect rather than by design. The State of Tennessee argues that § 504 reaches only purposeful discrimination against the handicapped. As support for this position, the State relies heavily on our recent decision in *Guardians Assn. v. Civil Service Comm'n of New York City*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983).

****716** In *Guardians*, we confronted the question whether Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, which prohibits discrimination against racial and ethnic minorities in programs receiving federal aid, reaches both ***293** intentional and disparate-impact discrimination. [FN7] No opinion commanded a majority in *Guardians*, and Members of the Court offered widely varying interpretations of Title VI. Nonetheless, a two-pronged holding on the nature of the discrimination proscribed by Title VI emerged in that case. First, the Court held that Title VI itself directly reached only instances of intentional discrimination. [FN8] Second, the Court held that actions having an unjustifiable disparate impact on minorities could be redressed through agency regulations designed to implement the purposes of Title VI.[FN9] In essence, then, we held that Title VI had delegated to the agencies in the first instance the complex determination of what sorts of disparate impacts upon minorities constituted sufficiently significant social problems, and were readily ***294** enough remediable, to warrant altering the practices of the federal grantees that had produced those impacts.

FN7. Section 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assis-

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tance."

The premise of the State's reliance on *Guardians* is that § 504 was modeled in part on Title VI, and that the evolution of Title VI regulatory and judicial law is therefore relevant to ascertaining the intended scope of § 504. We agree with this basic premise. See S.Rep. No. 93-1297, p. 39 (1974) U.S.Code Cong. & Admin.News 1974, pp. 6373, 6390-91 ("Section 504 was patterned after and is almost identical to, the antidiscrimination language of section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1 (relating to race, color, or national origin) and section 901 of the Education Amendments of 1972, 42 U.S.C. 1683 (relating to sex)"). Nonetheless, as we point out *infra,* at 718-719, and n. 13, too facile an assimilation of Title VI law to § 504 must be resisted.

FN8. 463 U.S., at 607-608, 103 S.Ct., at 3235-3236 (opinion of POWELL, J., in which BURGER, C.J., and REHNQUIST, J., joined); *id.,* at 612, 103 S.Ct., at 3237 (opinion of O'CONNOR, J.); *id.,* at 634, 103 S.Ct., at 3249 (opinion of STEVENS, J., in which BRENNAN and BLACKMUN, JJ., joined).

FN9. *Id.,* at 584, 103 S.Ct., at 3223 (WHITE, J., announcing the judgment of the Court); *id.,* at 623, n. 15, 103 S.Ct., at 3244, n. 15 (opinion of MARSHALL, J.); *id.,* at 634, 103 S.Ct., at 3249 (opinion of STEVENS, J., in which BRENNAN and BLACKMUN, JJ., joined).

Guardians, therefore, does not support petitioners' blanket proposition that federal law proscribes only intentional discrimination against the handicapped. Indeed, to the extent our holding in *Guardians* is relevant to the interpretation of § 504, *Guardians* suggests that the regulations implementing § 504, upon which respondents in part rely, could make actionable the disparate impact challenged in this case.[FN10] Moreover, there are reasons to pause before too quickly extending even the first prong of *Guardians* to § 504. Cf. *Consolidated Rail Corp. v. Darrone,* 465 U.S. 624, 632-633, n. 13, 104 S.Ct. 1248, 1253-1254, n. 13, 79 L.Ed.2d 568 (1984) (recognizing distinctions between Title VI and § 504).[FN11]

FN10. See also *Lau v. Nichols,* 414 U.S. 563, 569, 94 S.Ct. 786, 789, 39 L.Ed.2d 1 (1974) (Stewart, J., concurring). We conclude *infra,* at 722-723, and n. 24, that in this case the regulations do not in fact support respondents' action.

FN11. In addition to the nature of the problems with which the § 504 Congress was concerned, see *infra,* at 718-719, at least two other considerations counsel hesitation before reading Title VI and § 504 *in pari materia* with respect to the effect/intent issue. First, for seven Justices, the outcome in the first prong of *Guardians* was settled by their view that a majority of the Court in *University of California Regents v. Bakke,* 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978), had already concluded that Title VI reached only intentional discrimination. See 463 U.S., at 607, 103 S.Ct., at 3235 (opinion of POWELL, J., in which BURGER, C.J., and REHNQUIST, J., joined); *id.,* at 612, 103 S.Ct., at 3237 (opinion of O'CONNOR, J.); *id.,* at 634, and 641, n. 12, 103 S.Ct., at 3249 and 3253, n. 12 (STEVENS, J., joined by BRENNAN and BLACKMUN, JJ., dissenting). Although two of the five Justices who were said to have reached such a conclusion in *Bakke* wrote in *Guardians* to reject this interpretation of *Bakke,* see 463 U.S., at 590-591 and 590, n. 11, 103 S.Ct., at 3226-3227 and 3226, n. 11 (WHITE, J., announcing the judgment of the Court); *id.,* at 616-618, 103 S.Ct., at 3240-3241 (MARSHALL, J., dissenting), in the view of the seven Justices *Bakke* controlled as a matter of *stare decisis.* Had these Justices not felt the force of this constraint, it is unclear whether they would have read an intent requirement into Title VI. See 463 U.S., at 626, 103 S.Ct., at 3245 (O'CONNOR, J., concurring in judgment) ("Were we construing Title VI without the benefit of any prior interpretation from this Court, one might well conclude that the statute was designed to redress more than purposeful discrimination") (citation omitted). For that reason, the conclusion that, in

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response to factors peculiar to Title VI, *Bakke* locked in a certain construction of Title VI would not seem to have any obvious or direct applicability to § 504.

> Second, by the time Congress enacted the Rehabilitation Act in 1973, nearly a decade of experience had been accumulated with the operation of the nondiscrimination provisions of Titles VI and VII. By this time, model Title VI enforcement regulations incorporating a disparate-impact standard had been drafted by a Presidential task force and the Justice Department, and every Cabinet Department and about 40 federal agencies had adopted standards in which Title VI was interpreted to bar programs with a discriminatory impact. See *Guardians*, 463 U.S., at 629-630, 103 S.Ct., at 3247 (MARSHALL, J., dissenting). These regulations provoked some controversy in Congress, and in 1966 the House of Representatives rejected a proposed amendment that would have limited Title VI to only intentional discrimination. *Id.*, at 630-631, 103 S.Ct., at 3247-3248. Thus, when Congress in 1973 adopted virtually the same language for § 504 that had been used in Title VI, Congress was well aware of the intent/impact issue and of the fact that similar language in Title VI consistently had been interpreted to reach disparate-impact discrimination. In refusing expressly to limit § 504 to intentional discrimination, Congress could be thought to have approved a disparate-impact standard for § 504. See *United States v. Rutherford*, 442 U.S. 544, 554, 99 S.Ct. 2470, 2476, 61 L.Ed.2d 68 (1979); *Cannon v. University of Chicago*, 441 U.S. 677, 698-699, 99 S.Ct. 1946, 1958-1959, 60 L.Ed.2d 560 (1979).

****717 *295** Discrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference-of benign neglect.[FN12] Thus, Representative Vanik, introducing the predecessor to § 504 in the House, [FN13] described the treatment***296** of the handicapped as one of the country's "shameful oversights," which caused the handicapped to live among society "shunted aside, hidden, and ignored." 117 Cong.Rec. 45974 (1971). Similarly, Senator Humphrey, who introduced a companion measure in the Senate, asserted that "we can no longer tolerate the invisibility of the handicapped in America ...." 118 Cong.Rec. 525-526 (1972). And Senator Cranston, the Acting Chairman of the Subcommittee that drafted § 504,[FN14] described the Act as a response to "previous societal neglect." 119 Cong.Rec. 5880, 5883 (1973). See also 118 Cong.Rec. 526 (1972) (statement of cosponsor Sen. Percy) (describing the legislation leading to the 1973 Act as a national commitment to eliminate the "glaring neglect" of the handicapped).****718** [FN15] Federal agencies and commentators on the plight of the handicapped similarly have found that discrimination against the handicapped is primarily the result of apathetic attitudes rather than affirmative animus.[FN16]

> FN12. To be sure, well-cataloged instances of invidious discrimination against the handicapped do exist. See, *e.g.*, United States Commission on Civil Rights, Accommodating the Spectrum of Individual Abilities, Ch. 2 (1983); Wegner, The Antidiscrimination Model Reconsidered: Ensuring Equal Opportunity Without Respect to Handicap Under Section 504 of the Rehabilitation Act of 1973, 69 Cornell L.Rev. 401, 403, n. 2 (1984).

> FN13. Although § 504 ultimately was passed as part of the Rehabilitation Act of 1973, the nondiscrimination principle later codified in § 504 was initially proposed as an amendment to Title VI. This proposal was first introduced by Representative Vanik in the House. See H.R. 14033, 92d Cong., 2d Sess., 118 Cong.Rec. 9712 (1972); H.R. 12154, 92d Cong., 1st Sess., 117 Cong.Rec. 45945 (1971). A companion measure was introduced in the Senate by Senators Humphrey and Percy. See S. 3044, 92d Cong., 2d Sess., 118 Cong.Rec. 525-526 (1972). The principle underlying these bills was reshaped in the next Congress and inserted as § 504 into major vocational-rehabilitation legislation then pending. Senator Humphrey and Representative Vanik indicated that the intent of the original bill had been carried forward into § 504. See 119 Cong.Rec. 6145 (1973)

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(statement of Sen. Humphrey); 118 Cong.Rec. 32310 (1972) (same); 119 Cong.Rec. 7114 (1973) (statement of Rep. Vanik). Given the lack of debate devoted to § 504 in either the House or Senate when the Rehabilitation Act was passed in 1973, see R. Cappalli, Federal Grants and Cooperative Agencies § 20:03 (1982), the intent with which Congressman Vanik and Senator Humphrey crafted the predecessor to § 504 is a primary signpost on the road toward interpreting the legislative history of § 504.

FN14. 118 Cong.Rec. 30680 (1972) (statement of Sen. Randolph describing origins of § 504).

FN15. Senator Percy was both a cosponsor of the predecessor to § 504 and of the Senate version of the Rehabilitation Act of 1973.

FN16. See, *e.g.*, United States Commission on Civil Rights, Accommodating the Spectrum of Individual Abilities 17 (1983); Note, Accommodating the Handicapped: The Meaning of Discrimination Under Section 504 of the Rehabilitation Act, 55 N.Y.U.L.Rev. 881, 883 (1980).

In addition, much of the conduct that Congress sought to alter in passing the Rehabilitation Act would be difficult if ***297** not impossible to reach were the Act construed to proscribe only conduct fueled by a discriminatory intent. For example, elimination of architectural barriers was one of the central aims of the Act, see, *e.g.*, S.Rep. No. 93-318, p. 4 (1973), U.S.Code Cong. & Admin.News 1973, pp. 2076, 2080, yet such barriers were clearly not erected with the aim or intent of excluding the handicapped. Similarly, Senator Williams, the chairman of the Labor and Public Welfare Committee that reported out § 504, asserted that the handicapped were the victims of "[d]iscrimination in access to public transportation" and "[d]iscrimination because they do not have the simplest forms of special educational and rehabilitation services they need ...." 118 Cong.Rec. 3320 (1972). And Senator Humphrey, again in introducing the proposal that later became § 504, listed, among the instances of discrimination that the section would prohibit, the use of "transportation and architectural barriers," the "discriminatory effect of job qualification ... procedures," and the denial of "special educational assistance" for handicapped children. *Id.*, at 525-526. These statements would ring hollow if the resulting legislation could not rectify the harms resulting from action that discriminated by effect as well as by design. FN17

FN17. All the Courts of Appeals that have addressed the issue have agreed that, at least under some circumstances, § 504 reaches disparate-impact discrimination. See, *e.g.*, *New Mexico Assn. for Retarded Citizens v. New Mexico*, 678 F.2d 847, 854 (CA10 1982); *Pushkin v. Regents of University of Colorado*, 658 F.2d 1372, 1384-1385 (CA10 1981); *Dopico v. Goldschmidt*, 687 F.2d 644, 652-653 (CA2 1982); *NAACP v. Wilmington Medical Center*, 657 F.2d 1322, 1331 (CA3 1981) (en banc); *Majors v. Housing Authority of County of DeKalb, Georgia*, 652 F.2d 454, 457-458 (CA5 1981); *Jones v. Illinois Dept. of Rehabilitation Services*, 689 F.2d 724 (CA7 1982); *Stutts v. Freeman*, 694 F.2d 666 (CA11 1983); *Georgia Assn. of Retarded Citizens v. McDaniel*, 716 F.2d 1565, 1578-1580 (CA11 1983), vacated for further consideration in light of *Smith v. Robinson*, 468 U.S. 992, 104 S.Ct. 3457, 82 L.Ed.2d 746 (1984); 468 U.S. 1213, 104 S.Ct. 3581, 82 L.Ed.2d 880 (1984); cf. *Joyner by Lowry v. Dumpson*, 712 F.2d 770, 775-776, and n. 7 (CA2 1983) (rejecting use of "adverse impact" theory as grounds for challenging state statute that requires parents who desire special state-subsidized residential child-care services for handicapped children to transfer temporary custody of their children to State, but reserving question of whether that test might be used in employment discrimination actions).

At least 24 federal agencies have reached the same conclusion. See 5 CFR § 900.704(b)(3) (OPM) (1984); 7 CFR § 15b.4(b)(4)(DOA) (1984); 10 CFR § 4.121(b)(4) (NRC) (1984); 10 CFR § 1040.63(b)(4) (DOE) (1984); 14 CFR § 1251.103(b)(5) (NASA) (1984); 15 CFR § 8b.4(b)(4) (DOC) (1984); 18 CFR § 1307.4(b)(3) (TVA) (1984); 22 CFR § 142.4(b)(4) (DOS) (1984); 22 CFR §

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217.4(b)(4) (AID/IDCA) (1984); 28 CFR §§ 41.51(b)(3), 42.503(b)(3) (DOJ) (1984); 29 CFR § 32.4(b)(4)(DOL) (1984); 31 CFR §§ 51.52(b)(1)(vi), 51.55(b)(1)(viii) (Dept. of Treas. (OST)) (1984); 32 CFR § 56.8(a)(6) (DOD) (1984); 34 CFR § 104.4(b)(4) (Dept. of Ed.) (1984); 38 CFR § 18.404(b)(4) (VA) (1984); 49 Fed.Reg. 1656 (EPA) (1984) (to be codified at 40 CFR pt. 7); 41 CFR § 101-8.303(d) (GSA) (1984); 43 CFR § 17.203(b)(4) (DOI) (1984); 45 CFR § 84.4(b)(4) (HHS) (1984); 45 CFR § 605.4(b)(4) (NSF) (1984); 45 CFR § 1151.17(c) (NEA) (1984); 45 CFR § 1170.12(c) (NEH) (1984); 45 CFR § 1232.4(b)(3) (ACTION) (1984); 49 CFR § 27.7(b)(4) (DOT) (1984). We are unaware of any case challenging the facial validity of these regulations.

298** At the same time, the position urged by respondents-that we interpret § 504 to reach all action disparately affecting the handicapped-is also troubling. Because the handicapped typically are not similarly situated to the nonhandicapped, respondents'*719** position would in essence require each recipient of federal funds first to evaluate the effect on the handicapped of every proposed action that might touch the interests of the handicapped, and then to consider alternatives for achieving the same objectives with less severe disadvantage to the handicapped. The formalization and policing of this process could lead to a wholly unwieldy administrative and adjudicative burden. See Note, Employment Discrimination Against the Handicapped and Section 504 of the Rehabilitation Act: An Essay on Legal Evasiveness, 97 Harv.L.Rev. 997, 1008 (1984) (describing problems with pure disparate-impact model in context of employment discrimination against the handicapped). Had Congress intended § 504 to be a National Environmental Policy Act [FN18] for the handicapped, requiring the preparation of "Handicapped Impact ***299** Statements" before any action was taken by a grantee that affected the handicapped, we would expect some indication of that purpose in the statute or its legislative history. Yet there is nothing to suggest that such was Congress' purpose. Thus, just as there is reason to question whether Congress intended § 504 to reach only intentional discrimination, there is similarly reason to question whether Congress intended § 504 to embrace all claims of disparate-impact discrimination.

FN18. 42 U.S.C. § 4321 *et seq.*

[2] Any interpretation of § 504 must therefore be responsive to two powerful but countervailing considerations-the need to give effect to the statutory objectives and the desire to keep § 504 within manageable bounds. Given the legitimacy of both of these goals and the tension between them, we decline the parties' invitation to decide today that one of these goals so overshadows the other as to eclipse it. While we reject the boundless notion that all disparate-impact showings constitute prima facie cases under § 504, we assume without deciding that § 504 reaches at least some conduct that has an unjustifiable disparate impact upon the handicapped. On that assumption, we must then determine whether the disparate effect of which respondents complain is the sort of disparate impact that federal law might recognize.

III

To determine which disparate impacts § 504 might make actionable, the proper starting point is *Southeastern Community College v. Davis*, 442 U.S. 397, 99 S.Ct. 2361, 60 L.Ed.2d 980 (1979), our major previous attempt to define the scope of § 504.[FN19] *Davis* involved a plaintiff with a major hearing disability who sought admission ***300** to a college to be trained as a registered nurse, but who would not be capable of safely performing as a registered nurse even with full-time personal supervision. We stated that, under some circumstances, a "refusal to modify an existing program might become unreasonable and discriminatory. Identification of those instances where a refusal to accommodate the needs of a disabled person amounts to discrimination against the handicapped [is] an important responsibility of HEW." *Id.*, at 413, 99 S.Ct., at 2370. We held that the college was not required to admit Davis because it appeared unlikely that she could benefit from any modifications that the relevant HEW regulations required, *id.*, at 409, 99 S.Ct., at 2368, and because the further modifications Davis sought-full-time, personal supervision whenever she attended patients and elimination of all clinical courses-would have compromised the essential nature of the college's nursing program, *id.*, at 413-414, 99 S.Ct., at 2370-2371. Such a "fundamental alteration in ****720** the nature of a program" was far more than the reasonable modifications the statute or regulations required. *Id.*, at 410, 99 S.Ct., at 2369.

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Davis thus struck a balance between the statutory rights of the handicapped to be integrated into society and the legitimate interests of federal grantees in preserving the integrity of their programs: while a grantee need not be required to make "fundamental" or "substantial" modifications to accommodate the handicapped, it may be required to make "reasonable" ones. Compare *ibid.* with *id.*, at 412-413, 99 S.Ct., at 2370.[FN20]

FN19. *Davis* addressed that portion of § 504 which requires that a handicapped individual be "otherwise qualified" before the nondiscrimination principle of § 504 becomes relevant. However, the question of who is "otherwise qualified" and what actions constitute "discrimination" under the section would seem to be two sides of a single coin; the ultimate question is the extent to which a grantee is required to make reasonable modifications in its programs for the needs of the handicapped.

FN20. In *Davis,* we stated that § 504 does not impose an "affirmative-action obligation on all recipients of federal funds." 442 U.S., at 411, 99 S.Ct., at 2369-2370. Our use of the term "affirmative action" in this context has been severely criticized for failing to appreciate the difference between affirmative action and reasonable accommodation; the former is said to refer to a remedial policy for the victims of past discrimination, while the latter relates to the elimination of existing obstacles against the handicapped. See Note, Accommodating the Handicapped: The Meaning of Discrimination Under Section 504 of the Rehabilitation Act, 55 N.Y.U.L.Rev. 881, 885-886 (1980); Note, Accommodating the Handicapped: Rehabilitating Section 504 After *Southeastern,* 80 Colum.L.Rev. 171, 185-186 (1980); see also *Dopico v. Goldschmidt,* 687 F.2d 644, 652 (CA2 1982) ("Use of the phrase 'affirmative action' in this context is unfortunate, making it difficult to talk about any kind of affirmative efforts without importing the special legal and social connotations of that term."). Regardless of the aptness of our choice of words in *Davis,* it is clear from the context of *Davis* that the term "affirmative action" referred to those "changes," "adjustments," or "modifications" to existing programs that would be "substantial," 442 U.S., at 410, 411, n. 10, 413, 99 S.Ct., at 2369, 2369-2370, n. 10, 2370, or that would constitute "fundamental alteration[s] in the nature of a program ...," *id.*, at 410, 99 S.Ct., at 2369, rather than to those changes that would be reasonable accommodations.

***301** [3] The balance struck in *Davis* requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made.[FN21] In this ***302** case, respondents argue that the 14-day rule, or any annual durational limitation, denies meaningful access to Medicaid services in Tennessee. We examine each of these arguments in turn.

FN21. As the Government states: "Antidiscrimination legislation can obviously be emptied of meaning if every discriminatory policy is 'collapsed' into one's definition of what is the relevant benefit." Brief for United States as *Amicus Curiae* 29, n. 36. At oral argument, the Government also acknowledged that "special measures for the handicapped, as the *Lau* case shows, may sometimes be necessary ...." Tr. of Oral Arg. 14-15 (referring to *Lau v. Nichols,* 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974)).

The regulations implementing § 504 are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access. See, *e.g.,* 45 CFR § 84.12(a) (1984) (requiring an employer to make "reasonable accommodation to the known physical or mental limitations" of a handicapped individual); 45 CFR § 84.22 and § 84.23 (1984) (requiring that new buildings be readily accessible, building alterations be accessible "to the maximum extent feasible," and existing facilities eventually be operated so that a program or

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activity inside is, "when viewed in its entirety," readily accessible); 45 CFR § 84.44(a) (1984) (requiring certain modifications to the regular academic programs of secondary education institutions, such as changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted).

A

[4] The 14-day limitation will not deny respondents meaningful access to Tennessee Medicaid services or exclude them from those services. The new limitation does not invoke criteria that have a particular exclusionary effect on the handicapped; the reduction, neutral on its face, does not distinguish between those whose coverage will be reduced and those whose coverage will not on the basis of any test, judgment, or trait that the handicapped as a class are less capable of meeting or less likely of **721 having. Moreover, it cannot be argued that "meaningful access" to state Medicaid services will be denied by the 14-day limitation on inpatient coverage; nothing in the record suggests that the handicapped in Tennessee will be unable to benefit meaningfully from the coverage they will receive under the 14-day rule. [FN22] The reduction in inpatient coverage will leave both handicapped and nonhandicapped Medicaid users with identical and effective hospital services fully available for their use, with both classes of users subject to the same durational limitation. The 14-day limitation, therefore, does not exclude the handicapped from or deny them the benefits of the 14 days of care the State has chosen to provide. Cf. *Jefferson v. Hackney*, 406 U.S. 535, 92 S.Ct. 1724, 32 L.Ed.2d 285 (1972).

FN22. The record does not contain any suggestion that the illnesses uniquely associated with the handicapped or occurring with greater frequency among them cannot be effectively treated, at least in part, with fewer than 14 days' coverage. In addition, the durational limitation does not apply to only particular handicapped conditions and takes effect regardless of the particular cause of hospitalization.

[5][6] To the extent respondents further suggest that their greater need for prolonged inpatient care means that, to provide meaningful access to Medicaid services, Tennessee must single out the handicapped for *more* than 14 days of *303 coverage, the suggestion is simply unsound. At base, such a suggestion must rest on the notion that the benefit provided through state Medicaid programs is the amorphous objective of "adequate health care." But Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs. Instead, the benefit provided through Medicaid is a particular package of health care services, such as 14 days of inpatient coverage. That package of services has the general aim of assuring that individuals will receive necessary medical care, but the benefit provided remains the individual services offered-not "adequate health care."

The federal Medicaid Act makes this point clear. The Act gives the States substantial discretion to choose the proper mix of amount, scope, and duration limitations on coverage, as long as care and services are provided in "the best interests of the recipients." 42 U.S.C. § 1396a(a)(19). The District Court found that the 14-day limitation would fully serve 95% of even handicapped individuals eligible for Tennessee Medicaid, and both lower courts concluded that Tennessee's proposed Medicaid plan would meet the "best interests" standard. That unchallenged conclusion [FN23] indicates that Tennessee is free, as a matter of the Medicaid Act, to choose to define the benefit it will be providing as 14 days of inpatient coverage.

FN23. Because that conclusion is unchallenged, we express no opinion on whether annual limits on hospital care are in fact consistent with the Medicaid Act. See, *e.g.*, *Charleston Memorial Hospital v. Conrad*, 693 F.2d 324, 329-330 (CA4 1982) (upholding 12-day-a-year limitation on inpatient hospital coverage); *Virginia Hospital Assn. v. Kenley*, 427 F.Supp. 781 (ED Va.1977) (upholding 21-day limitation).

Section 504 does not require the State to alter this definition of the benefit being offered simply to meet the reality that the handicapped have greater medical needs. To conclude otherwise would be to find that the Rehabilitation Act requires States to view certain illnesses, *i.e.*, those *304 particularly affecting the

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handicapped, as more important than others and more worthy of cure through government subsidization. Nothing in the legislative history of the Act supports such a conclusion. Cf. *Doe v. Colautti*, 592 F.2d 704 (CA3 1979) (State may limit covered-private-inpatient-psychiatric care to 60 days even though State sets no limit on duration of coverage for physical illnesses). Section 504 seeks to assure even-handed treatment and the opportunity for handicapped individuals to participate in and benefit from programs receiving federal assistance. **722*Southeastern Community College v. Davis*, 442 U.S. 397, 99 S.Ct. 2361, 60 L.Ed.2d 980 (1979). The Act does not, however, guarantee the handicapped equal results from the provision of state Medicaid, even assuming some measure of equality of health could be constructed. *Ibid.*

[7] Regulations promulgated by the Department of Health and Human Services (HHS) pursuant to the Act further support this conclusion.[FN24] These regulations state that recipients of federal funds who provide health services cannot "provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 84.4(b)) as the benefits or services provided to others." 45 CFR § 84.52(a)(3) (1984). The regulations also prohibit a recipient of federal funding from adopting "criteria or methods of administration that ***305** have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to the handicapped." 45 CFR § 84.4(b)(4)(ii) (1984). [FN25]

FN24. We have previously recognized these regulations as an important source of guidance on the meaning of § 504. See *Consolidated Rail Corporation v. Darrone*, 465 U.S. 624, 104 S.Ct. 1248, 79 L.Ed.2d 568 (1984) (holding that 1978 Amendments to the Act were intended to codify the regulations enforcing § 504); *Southeastern Community College v. Davis*, 442 U.S., at 413, 99 S.Ct., at 2370 ("Identification of those instances where a refusal to accommodate the needs of a disabled person amounts to discrimination against the handicapped person continues to be an important responsibility of HEW"); see generally *Guardians Assn. v. Civil Service Comm'n of New York City*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983). 1974 Amendments to the Act clarified the scope of § 504 by making clear that those charged with administering the Act had substantial leeway to explore areas in which discrimination against the handicapped posed particularly significant problems and to devise regulations to prohibit such discrimination. See, *e.g.*, S.Rep. No. 93-1297, pp. 40-41, 56 (1974).

FN25. Respondents also rely on a variety of other regulations. See, *e.g.*, 45 CFR § 84.52(a)(2) (1984) (stating that a recipient who provides health services cannot "[a]fford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons"); § 84.4(b)(1)(iii) (prohibiting a recipient of federal funds from providing "a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others"); § 84.4(b)(1)(ii) (stating that a recipient cannot "[a]fford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others").

While these regulations, read in isolation, could be taken to suggest that a state Medicaid program must make the handicapped as healthy as the nonhandicapped, other regulations reveal that HHS does not contemplate imposing such a requirement. Title 45 CFR § 84.4(b)(2) (1984), referred to in the regulations quoted above, makes clear that

> "[f]or purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement ...."

This regulation, while indicating that adjustments to existing programs are contemplated,[FN26] also makes clear that ***306** Tennessee is not required to assure that its handicapped Medicaid users will be as healthy as its nonhandicapped users. Thus, to the extent respondents are seeking a distinct durational limitation for the handicapped, Tennessee is entitled to respond

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by asserting that the relevant benefit is 14 days of coverage. Because the handicapped have meaningful and equal access to that benefit, Tennessee is not obligated to reinstate its 20-day rule or to provide the handicapped with more than 14 days of inpatient coverage.

> FN26. The interpretive analysis accompanying these regulations states:
>
> "[T]he term 'equally effective,' defined in paragraph (b)(2), is intended to encompass the concept of equivalent, as opposed to identical, services and to acknowledge the fact that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary." 45 CFR, pt. 84, App. A, ¶ 6 (1984).

****723** B

[8] We turn next to respondents' alternative contention, a contention directed not at the 14-day rule itself but rather at Tennessee's Medicaid *plan* as a whole. Respondents argue that the inclusion of any annual durational limitation on inpatient coverage in a state Medicaid plan violates § 504. The thrust of this challenge is that all annual durational limitations discriminate against the handicapped because (1) the effect of such limitations falls most heavily on the handicapped and because (2) this harm could be avoided by the choice of other Medicaid plans that would meet the State's budgetary constraints without disproportionately disadvantaging the handicapped. Viewed in this light, Tennessee's current plan is said to inflict a gratuitous harm on the handicapped that denies them meaningful access to Medicaid services.

Whatever the merits of this conception of meaningful access, it is clear that § 504 does not require the changes respondents seek. In enacting the Rehabilitation Act and in subsequent amendments,[FN27] Congress did focus on several ***307** substantive areas-employment,[FN28] education, [FN29] and the elimination of physical barriers to access [FN30]-in which it considered the societal and personal costs of refusals to provide meaningful access to the handicapped to be particularly high.[FN31] But nothing in the pre- or post-1973 legislative discussion of § 504 suggests that Congress desired to make major inroads on the States' longstanding discretion to choose the proper mix of amount, scope, and duration limitations on services covered by state Medicaid, see *Beal v. Doe*, 432 U.S. 438, 444, 97 S.Ct. 2366, 2370, 53 L.Ed.2d 464 (1977). And, more generally, we have already stated, *supra*, at 719-720, that § 504 does not impose a general NEPA-like requirement on federal grantees.[FN32]

> FN27. The year after the Rehabilitation Act was passed, Congress returned to it with important amendments that clarified the scope of § 504. See Pub.L. 93-516, 88 Stat. 1617. While these amendments and their history cannot substitute for a clear expression of legislative intent at the time of enactment, *Davis, supra*, 442 U.S., at 411, n. 11, 99 S.Ct., at 2370, n. 11, as virtually contemporaneous and more specific elaborations of the general norm that Congress had enacted into law the previous year, the amendments and their history do shed significant light on the intent with which § 504 was enacted. See, *e.g.*, *Andrus v. Shell Oil Co.*, 446 U.S. 657, 666-671, 100 S.Ct. 1932, 1938-1941, 64 L.Ed.2d 593 (1980); *Seatrain Shipbuilding Corp. v. Shell Oil Co.*, 444 U.S. 572, 596, 100 S.Ct. 800, 813, 63 L.Ed.2d 36 (1980). Congress again amended Title V of the Rehabilitation Act in 1978, in the process incorporating the enforcement mechanisms available under Title VI of the Civil Rights Act of 1964. See Pub.L. 95-602, 92 Stat. 2982, § 505(a)(2), 29 U.S.C. § 794a (1982). We have previously relied on the post-1973 legislative actions to interpret § 504. *Consolidated Rail Corporation v. Darrone*, 465 U.S., at 632-633, 104 S.Ct., at 1253-1254.
>
> FN28. "The primary goal of the Act is to increase employment." *Consolidated Rail Corporation v. Darrone, supra*, at 633, n. 13, 104 S.Ct., at 1254, n. 13. See also 29 U.S.C. § 701(11) (1976 ed.).
>
> FN29. See, *e.g.*, 117 Cong.Rec. 45974 (1971) (statement of Rep. Vanik); 118 Cong.Rec. 525-526 (1972) (statement of Sen. Humphrey); 119 Cong.Rec. 5882-5883

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(1973) (statement of Sen. Cranston); 118 Cong.Rec. 3320-3322 (1972) (statement of Sen. Williams).

FN30. See, *e.g.*, 29 U.S.C. § 701(11) (1976 ed.); S.Rep. No. 93-318, p. 4 (1973); S.Rep. No. 93-1297, p. 50 (1974), U.S.Code Cong. & Admin.News 1974, pp. 6373, 6400.

FN31. Rehabilitation training, of course, was also central to the purposes of the 1973 Act, and such training might involve issues concerning specific health care benefits. In this case, however, respondents have never asserted that the 14-day rule has any effect at all on rehabilitation programs.

FN32. Assuming, *arguendo*, that agency regulations may impose such a requirement in specific areas to further the purposes of § 504, see *Guardians Assn. v. Civil Service Comm'n of New York City*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983), *Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974), the current regulations are drafted in far too broad terms to permit the conclusion that state Medicaid programs must always choose, from among various otherwise legitimate benefit and service options, the particular option most favorable, or least disadvantageous, to the handicapped. Before we would find that these generally worded regulations were intended to limit a State's longstanding discretion to set otherwise reasonable Medicaid coverage rules, that intent would have to be indicated with greater specificity in the regulations themselves or through other agency action.

> The Government agrees that the current regulations are not intended to impose a NEPA-like requirement on state Medicaid administrators.

****724 *308** The costs of such a requirement would be far from minimal, and thus Tennessee's refusal to pursue this course does not, as respondents suggest, inflict a "gratuitous" harm on the handicapped. On the contrary, to require that the sort of broad-based distributive decision at issue in this case always be made in the way most favorable, or least disadvantageous, to the handicapped, even when the same benefit is meaningfully and equally offered to them, would be to impose a virtually unworkable requirement on state Medicaid administrators. Before taking any across-the-board action affecting Medicaid recipients, an analysis of the effect of the proposed change on the handicapped would have to be prepared. Presumably, that analysis would have to be further broken down by class of handicap-the change at issue here, for example, might be significantly less harmful to the blind, who use inpatient services only minimally, than to other subclasses of handicapped Medicaid recipients; the State would then have to balance the harms and benefits to various groups to determine, on balance, the extent to which the action disparately impacts the handicapped. In addition, respondents offer no reason that similar treatment would not have to be accorded other groups protected by statute or regulation from disparate-impact discrimination.

It should be obvious that administrative costs of implementing such a regime would be well beyond the accommodations that are required under *Davis*. As a result, Tennessee need not redefine its Medicaid program to eliminate ***309** durational limitations on inpatient coverage, even if in doing so the State could achieve its immediate fiscal objectives in a way less harmful to the handicapped.

IV

The 14-day rule challenged in this case is neutral on its face, is not alleged to rest on a discriminatory motive, and does not deny the handicapped access to or exclude them from the particular package of Medicaid services Tennessee has chosen to provide. The State has made the same benefit-14 days of coverage-equally accessible to both handicapped and nonhandicapped persons, and the State is not required to assure the handicapped "adequate health care" by providing them with more coverage than the nonhandicapped. In addition, the State is not obligated to modify its Medicaid program by abandoning reliance on annual durational limitations on inpatient coverage. Assuming, then, that § 504 or its implementing regulations reach some claims of disparate-impact discrimination, the effect of Tennessee's reduction in annual inpatient coverage is not among them. For that reason, the Court of Appeals erred in holding that respondents had established a prima facie violation of § 504. The judgment below is accordingly reversed.

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It is so ordered.

U.S.Tenn.,1985.
Alexander v. Choate
469 U.S. 287, 105 S.Ct. 712, 83 L.Ed.2d 661, 53 USLW 4072, 8 Soc.Sec.Rep.Serv. 6, Med & Med GD (CCH) P 34,439, 1 A.D.D. 204

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Supreme Court of the United States
Harrell ALEXANDER, Sr., Petitioner,
v.
GARDNER-DENVER COMPANY.
No. 72-5847.

Argued Nov. 5, 1973.
Decided Feb. 19, 1974.

Civil rights action was based on alleged racially motivated discriminatory employment practices by employer. The United States District Court for the District of Colorado, 346 F.Supp. 1012, granted employer's motion for summary judgment and the Court of Appeals, 466 F.2d 1209, affirmed. The employee petitioned for certiorari. The Supreme Court, Mr. Justice Powell, held that employee's statutory right to trial de novo under the Equal Employment provisions of the Civil Rights Act is not foreclosed by prior submission of claim to final arbitration under the nondiscrimination clause of a collective bargaining agreement.

Judgments of Court of Appeals reversed.

West Headnotes

[1] Civil Rights 78 ⚿1104

78 Civil Rights
78II Employment Practices
78k1102 Constitutional and Statutory Provisions
78k1104 k. Purpose and Construction in General. Most Cited Cases
(Formerly 78k141, 78k9.10, 78k9.14)
The equal employment provisions of the Civil Rights Act were enacted to assure equality of employment opportunities by eliminating those practices and devices that discriminate on the basis of race, color, religion, sex, or national origin. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[2] Civil Rights 78 ⚿1562

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1562 k. Affirmative Action; Recruitment and Hiring. Most Cited Cases
(Formerly 78k393, 78k46(4), 78k46)
Courts retain broad remedial powers under the Equal Employment provisions of the Civil Rights Act to issue injunctive relief and to order such affirmative action as may be appropriate to remedy the facts of unlawful employment practices despite an EEOC finding of no reasonable cause to believe that the Act has been violated. Civil Rights Act of 1964, §§ 701 et seq., 706(f, g) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-5(f, g).

[3] Civil Rights 78 ⚿1502

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1502 k. Existence of Other Remedies; Exclusivity. Most Cited Cases
(Formerly 78k331, 78k31)

Civil Rights 78 ⚿1704

78 Civil Rights
78V State and Local Remedies
78k1704 k. Existence of Other Remedies; Exclusivity. Most Cited Cases
(Formerly 78k441, 78k61)
Congressional intent with respect to equal employment provisions of Civil Rights Act is to allow an individual to pursue independently his rights under both the Civil Rights Act and other applicable state and federal statutes. Civil Rights Act of 1964, § 706(b, c, f) as amended 42 U.S.C.A. § 2000e-5(b, c, f); National Labor Relations Act, § 1 et seq. as amended 29 U.S.C.A. § 151 et seq.; Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

[4] Civil Rights 78 ⚿1104

78 Civil Rights

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78II Employment Practices
78k1102 Constitutional and Statutory Provisions
78k1104 k. Purpose and Construction in General. Most Cited Cases
(Formerly 78k141, 78k9.10)
The equal employment provisions of the Civil Rights Act were designed to supplement, rather than supplant, existing laws and institutions relating to employment discrimination. Civil Rights Act of 1964, § 706(b, c, f) as amended 42 U.S.C.A. § 2000e-5(b, c, f); National Labor Relations Act, § 1 et seq. as amended 29 U.S.C.A. § 151 et seq.; Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

[5] Civil Rights 78 ⚿1529

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1529 k. Defenses in General. Most Cited Cases
(Formerly 78k372, 78k39)
Employee's statutory right to trial de novo under equal employment opportunity provisions of Civil Rights Act was not foreclosed by employee's prior submission of his claim of racially discriminatory discharge to final arbitrations under the nondiscrimination clause of collective-bargaining agreement. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[6] Election of Remedies 143 ⚿3(1)

143 Election of Remedies
143k3 Inconsistency of Alternative Remedies
143k3(1) k. In General. Most Cited Cases
Doctrine of election of remedies refers to situations where an individual pursues remedies that are legally or factually inconsistent.

[7] Election of Remedies 143 ⚿3(1)

143 Election of Remedies
143k3 Inconsistency of Alternative Remedies
143k3(1) k. In General. Most Cited Cases
Doctrine of election of remedies did not preclude employee who had submitted claim of racially discriminatory discharge to final arbitration under the nondiscrimination clause of collective bargaining agreement from maintaining action under the equal employment opportunity provisions of the Civil Rights Act, nor was application of the doctrine required by possibility of unjust enrichment through duplication of recoveries inasmuch as judicial relief could be structured to avoid windfall gains to employee prevailing at arbitration. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[8] Civil Rights 78 ⚿1263

78 Civil Rights
78II Employment Practices
78k1263 k. Waiver; Effect of Labor Contracts. Most Cited Cases
(Formerly 78k155, 78k9.10)
There can be no prospective waiver of an employee's rights under the equal employment opportunity provision of the Civil Rights Act. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[9] Labor and Employment 231H ⚿984

231H Labor and Employment
231HXII Labor Relations
231HXII(A) In General
231Hk984 k. Rights of Employees in General. Most Cited Cases
(Formerly 232Ak171 Labor Relations)
Union may waive certain statutory rights related to collective activity.

[10] Civil Rights 78 ⚿1263

78 Civil Rights
78II Employment Practices
78k1263 k. Waiver; Effect of Labor Contracts. Most Cited Cases
(Formerly 78k155, 78k9.10)
Rights conferred on employee by equal employment opportunity provisions of the Civil Rights Act form no part of the collective bargaining process and are not waived by employee's resorting to arbitration of claim under the nondiscrimination clause of collective bargaining agreement. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[11] Compromise and Settlement 89 ⚿3

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89 Compromise and Settlement
89I In General
89k1 Nature and Requisites
89k3 k. Subject-Matter. Most Cited Cases
Employee may waive his cause of action under the equal employment opportunity provisions of the Civil Rights Act as part of a voluntary settlement. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[12] Civil Rights 78 1263

78 Civil Rights
78II Employment Practices
78k1263 k. Waiver; Effect of Labor Contracts. Most Cited Cases
(Formerly 78k155, 78k38)
Although union may make concessions as part of economic bargain struck with employer providing rights and remedies against discrimination, no additional concession may be exacted from any employee as price for enforcing rights under the equal employment opportunity provisions of the Civil Rights Act. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[13] Labor and Employment 231H 1549(17)

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)3 Arbitration Agreements
231Hk1543 Construction and Operation
231Hk1549 Matters Subject to Arbitration Under Agreement
231Hk1549(17) k. Discrimination. Most Cited Cases
(Formerly 232Ak433 Labor Relations)
A contractual right to submit a claim to arbitration is not displaced simply because Congress also has provided a statutory right against discrimination. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[14] Labor and Employment 231H 1593

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)4 Proceedings
231Hk1590 Award
231Hk1593 k. Conformity to Submission. Most Cited Cases
(Formerly 232Ak478 Labor Relations)
If an arbitral decision is based solely on the arbitrator's view of requirements of enacted legislation, rather than on an interpretation of the collective bargaining agreement, the arbitrator has exceeded the scope of his submission, and the award will not be enforced.

[15] Labor and Employment 231H 1580

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)4 Proceedings
231Hk1577 Authority of Arbitrators
231Hk1580 k. Interpretation of Collective Bargaining Agreement in General. Most Cited Cases
(Formerly 232Ak454 Labor Relations)
Arbitrator has authority to resolve only questions of contractual rights, and authority remains regardless of whether certain contractual rights are similar to, or duplicative of, the substantive rights secured by the equal employment opportunity provisions of the Civil Rights Act. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[16] Civil Rights 78 1511

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1511 k. Civil Actions in General. Most Cited Cases
(Formerly 78k361, 78k38)
Inasmuch as the equal employment opportunity provisions of the Civil Rights Act do not provide employers with a cause of action against employees and an employer cannot be the victim of discriminatory employment practices, permitting employee who has had claim of racial discrimination considered under the nondiscrimination clause of a collective bargaining agreement to bring action under the Civil Rights Act would not be unfair on theory that employee would be given two strings to his bow when the employer has only one. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

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[17] Civil Rights 78 ⚿1511

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1511 k. Civil Actions in General. Most Cited Cases
(Formerly 78k361, 78k38)
Permitting an employee to bring civil rights action for alleged racial discrimination after arbitration procedures have been followed does not undermine the employer's incentive to arbitrate, as most employers will regard the benefits from a no-strike pledge in the arbitration agreement as outweighing any costs resulting from giving employees an arbitral antidiscrimination remedy in addition to their civil rights remedy. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[18] Civil Rights 78 ⚿1511

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1511 k. Civil Actions in General. Most Cited Cases
(Formerly 78k361, 78k38)
A policy of deferral by federal courts to arbitral decisions on claims of racial discrimination would not comport with the congressional objective that federal court should exercise the final responsibility for enforcement of equal employment opportunity provisions and would lead to the arbitrator's emphasis on the law of the shop rather than the law of the land; fact-finding and other procedures less complete than those followed in a judicial forum; and perhaps employee's bypassing arbitration in favor of litigation. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[19] Labor and Employment 231H ⚿1549(17)

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)3 Arbitration Agreements
231Hk1543 Construction and Operation
231Hk1549 Matters Subject to Arbitration Under Agreement
231Hk1549(17) k. Discrimination. Most Cited Cases
(Formerly 232Ak433 Labor Relations)
Since role of arbitrator is to effectuate the intent of parties to collective bargaining agreement rather than the requirements of enacted legislation, when the agreement conflicts with equal employment opportunity provisions of the Civil Rights Act, the arbitrator must follow the agreement. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[20] Civil Rights 78 ⚿1542

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1542 k. Admissibility of Evidence; Statistical Evidence. Most Cited Cases
(Formerly 78k381, 78k43)

Civil Rights 78 ⚿1544

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1544 k. In General. Most Cited Cases
(Formerly 78k382.1, 78k382, 78k44(1))
Decision of arbitrator on employee's claim of racially discriminatory discharge may be admitted as evidence in action under the equal employment opportunity provisions of the Civil Rights Act and accorded such weight as the court deems appropriate. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[21] Civil Rights 78 ⚿1544

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1544 k. In General. Most Cited Cases
(Formerly 78k382.1, 78k382, 78k44(1))
Relevant factors in determining weight to be given decision of arbitrator on employee's claim of racially discriminatory discharge in civil rights action include the existence of provisions in the collective bargaining agreement that substantially conform with the Civil Rights Act, the degree of procedural fairness in the arbitral forum, adequacy of record with respect to issue of discrimination, and special competence of

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particular arbitrators. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[22] **Civil Rights 78 ⚿1544**

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1544 k. In General. Most Cited Cases
(Formerly 78k382.1, 78k382, 78k44(1))
Where an arbitral determination on employee's claim of racially discriminatory discharge gives full consideration to an employee's rights under equal employment opportunity provisions of the Civil Rights Act, court in civil rights action may accord the arbitral determination great weight, especially where issue is solely one of fact, although ultimate resolution of discriminatory employment claims are for the judicial forum. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

****1013 *36** Syllabus[FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Following discharge by his employer, respondent company, petitioner, a black, filed a grievance under the collective-bargaining agreement between respondent and petitioner's union, which contained a broad arbitration clause, petitioner ultimately claiming that his discharge resulted from racial discrimination. Upon rejection by the company of petitioner's claims, an arbitration hearing was held, prior to which petitioner filed with the Colorado Civil Rights Commission a racial discrimination complaint which was referred to the Equal Employment Opportunity Commission (EEOC). The arbitrator ruled that petitioner's discharge was for cause. Following the EEOC's subsequent determination that there was not reasonable ground to believe that a violation of Title VII of the Civil Rights Act of 1964 had occurred, petitioner brought this action****1014** in District Court, alleging that his discharge resulted from a racially discriminatory employment practice in violation of the Act. The District Court granted respondent's motion for summary judgment, holding that petitioner was bound by the prior arbitral decision and had no right to sue under Title VII. The Court of Appeals affirmed. Held: An employee's statutory right to trial de novo under Title VII of the Civil Rights Act of 1964 is not foreclosed by prior submission of his claim to final arbitration under the nondiscrimination clause of a collective-bargaining agreement. Pp. 1017-1025.

(a) Title VII was designed to supplement, rather than supplant, existing laws and institutions relating to employment discrimination, as may be inferred from the legislative history of Title VII, which manifests a congressional intent to allow an individual to pursue rights under Title VII and other applicable state and federal statutes. Pp. 1019-1020.

(b) The doctrine of election of remedies is inapplicable in the present context, which involves statutory rights distinctly separate from the employee's contractual rights, regardless of the fact that violation of both rights may have resulted from the same factual occurrence. Pp. 1020-1021.

***37** (c) By merely resorting to the arbitral forum petitioner did not waive his cause of action under Title VII; the rights conferred thereby cannot be prospectively waived and form no part of the collective-bargaining process. Pp. 1021-1022.

(d) The arbitrator's authority is confined to resolution of questions of contractual rights, regardless of whether they resemble or duplicate Title VII rights. Pp. 1022-1023.

(e) In instituting a Title VII action, the employee is not seeking review of the arbitrator's decision and thus getting (as the District Court put it) 'two strings to his bow when the employer has only one,' but is asserting a right independent of the arbitration process that the statute gives to employees, the only possible victims of discriminatory employment practices. Pp. 1022-1023.

(f) Permitting an employee to resort to the judicial forum after arbitration procedures have been followed does not undermine the employer's incentive to arbitrate, as most employers will regard the benefits from a no-strike pledge in the arbitration agreement as outweighing any costs resulting from giving employees an arbitral antidiscrimination remedy in addi-

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tion to their Title VII judicial remedy. Pp. 1022-1023.

(g) A policy of deferral by federal courts to arbitral decisions (as opposed to adoption of a preclusion rule) would not comport with the congressional objective that federal courts should exercise the final responsibility for enforcement of Title VII and would lead to: the arbitrator's emphasis on the law of the shop rather than the law of the land; factfinding and other procedures less complete than those followed in a judicial forum; and perhaps employees bypassing arbitration in favor of litigation. Pp. 1023-1025.

(h) In considering an employee's claim, the federal court may admit the arbitral decision as evidence and accord it such weight as may be appropriate under the facts and circumstances of each case. P. 1025.

10 Cir., 466 F.2d 1209, reversed.
Paul J. Spiegelman, Washington, D.C., for petitioner.

***38** Lawrence G. Wallace, Washington, D.C., for the U.S., as amicus curiae, by special leave of Court.

Robert G. Good, Denver, Colo., for respondent.

****1015** Mr. Justice POWELL delivered the opinion for a unanimous Court.

This case concerns the proper relationship between federal courts and the grievance-arbitration machinery of collective-bargaining agreements in the resolution and enforcement of an individual's rights to equal employment opportunities under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U.S.C. s 2000e et seq. Specifically, we must decide under what circumstances, if any, an employee's statutory right to a trial de novo under Title VII may be foreclosed by prior submission of his claim to final arbitration under the nondiscrimination clause of a collective-bargining agreement.

I

In May 1966, petitioner Harrell Alexander, Sr., a black, was hired by respondent Gardner-Denver Co. (the company) to perform maintenance work at the company's plant in Denver, Colorado. In June 1968, petitioner was awarded a trainee position as a drill operator. He remained at that job until his discharge from employment on September 29, 1969. The company informed petitioner that he was being discharged for producing too many defective or unusable parts that had to be scrapped.

***39** On October 1, 1969, petitioner filed a grievance under the collective-bargaining agreement in force between the company and petitioner's union, Local No. 3029 of the United Steelworkers of America (the union). The grievance stated: 'I feel I have been unjustly discharged and ask that I be reinstated with full seniority and pay.' No explicit claim of racial discrimination was made.

Under Art. 4 of the collective-bargaining agreement, the company retained 'the right to hire, suspend or discharge (employees) for proper cause.'[FN1] Article 5, s 2, provided, however, that 'there shall be no discrimination against any employee on account of race, color, religion, sex, national origin, or ancestry,'[FN2] and Art. 23, s 6(a), stated that '(n)o employee will be discharged, suspended or given a written warning notice except for just cause.' ***40** The agreement also contained a broad arbitration clause covering 'differences aris(ing) between the Company and the Union as to the meaning and application of the provisions of this Agreement' and 'any trouble aris(ing) in the plant.'[FN3] Disputes were to ****1016** be submitted to a multistep***41** grievance procedure, the first four steps of which involved negotiations between the company and the union. If the dispute remained unresolved, it was to be remitted to compulsory arbitration. The company and the union were to select and pay the arbitrator, and ***42** his decision was to be 'final and binding upon the Company, the Union, and any employee or employees involved.' The agreement further provided that '(t)he arbitrator shall not amend, take away, add to, or change any of the provisions of this Agreement, and the arbitrator's decision must be based solely upon an interpretation of the provisions of this Agreement.' The parties also agreed that there 'shall be no suspension of work' over disputes covered by the grievance arbitration clause.

FN1. Article 4 of the agreement provided:

'MANAGEMENT

'The Union recognizes that all rights to manage the Plant, to determine the products to be manufactured, the methods of manu-

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facturing or assembling, the scheduling of production, the control of raw materials, and to direct the working forces, including the right to hire, suspend or discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reasons, and the right to maintain order and efficiency are vested exclusively in the Company.

'It is understood by the parties that all rights recognized in this Article are subject to the terms of this Agreement.'

FN2. Article 5 of the agreement provided:

'MUTUAL RESPONSIBILITY

'Section 1. The parties agree that during the term of this Agreement there shall be no strike, slow-down or other interruption of production, and that for the same period there shall be no lockout, subject to the provisions of Article 26, Term of Agreement.

'Section 2. The Company and the Union agree that there shall be no discrimination against any employee on account of race, color, religion, sex, national origin, or ancestry. The Company further states and the Union approves that no such discrimination shall be practiced against any applicant for employment.'

FN3. Article 23, containing the grievance-arbitration procedures of the agreement, provided in relevant part:

'Section 5. Should differences arise between the Company and the Union as to the meaning and application of the provisions of this Agreement, or should any trouble arise in the plant, there shall be no suspension of work, but an earnest effort shall be made by both the Company and the Union to settle such differences promptly. Grievances must be presented within five (5) working days after the date of the occurrence giving rise to the grievance or they shall be considered waived. Grievances shall be taken up in the following manner; except that any grievance filed by the Local Union shall be submitted in writing at Step 3 of the grievance procedure as set forth herein:

'Step 1. An attempt shall first be made by the employee with or without his assistant grievance committeeman (at the employee's option), and the employee's foreman to settle the grievance. The foreman shall submit his answer within one (1) working day and if the grievance is not settled, it shall be reduced to writing, signed by the employee and his assistant grievance committeeman, and the foreman shall submit his signed answer of such grievance.

'Step 2. If the grievance is not settled in Step 1, it shall be presented to the Superintendent, or his representative, within two (2) working days after the Union has received the Foreman's answer in Step 1. The Superintendent or his representative shall submit his signed answer two (2) working days after receiving the grievance.

'Step 3. If the grievance is not settled in Step 2, it shall be presented to the manager of Manufacturing or his representative within five (5) working days after the Union has received the Superintendent's answer in Step 2. The Manager of Manufacturing or his representative shall meet with the representatives of the Union to attempt to resolve the grievance within five (5) working days following the presentation of the grievance. The Manager of Manufacturing or his representative shall submit his signed answer within three (3) working days after the date of such meeting.

'Step 4. If the grievance is not settled in Step 3, it shall be referred to the Personnel Manager, and/or his representatives, and the International representative and chairman of the grievance committee within five (5) working days after the Union has received the Step 3 answer. Within ten (10) working days after the grievance has been referred to Step 4, the above mentioned parties shall meet for the purpose of discussing such

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> grievance. Within five (5) working days following the meeting, the Company representatives shall submit their signed answer to the Union. The Union representatives shall signify their concurrence or nonconcurrence and affix their signatures to the grievance.
>
> 'Step 5. Grievances which have not been settled under the foregoing procedure may be referred to arbitration by notice in writing within ten (10) calendar days after the date of the Company's final answer in Step 4. Within five (5) days after receipt of referral to arbitration the parties shall select an impartial arbitrator.
>
> 'Should the parties be unable to agree upon an arbitrator, the selection shall be made by the Senior Judge of the U.S. Circuit Court of Appeals for the Tenth Circuit. The decision of the arbitrator shall be final and binding upon the Company, the Union, and any employee or employees involved. The expenses and fee of the arbitrator shall be divided equally between the Company and the Union. The arbitrator shall not amend, take away, add to, or change any of the provisions of this Agreement, and the arbitrator's decision must be based solely upon an interpretation of the provisions of this Agreement.
>
> 'Section 6. (a) No employee will be discharged, suspended or given a written warning notice except for just cause.
>
> '(g) Should it be determined that the employee has been unjustly suspended or discharged the Company shall reinstate the employee and pay full compensation at the employee's basic hourly rate or earned rate, whichever is the higher, for the time lost.'

The union processed petitioner's grievance through the above machinery. In the final pre-arbitration step, petitioner raised, apparently for the first time, the claim that his discharge resulted from racial discrimination. The company rejected all of petitioner's claims, and the grievance proceeded to arbitration. Prior to the arbitration hearing, however, petitioner filed a charge of racial discrimination with the Colorado Civil Rights Commission, which referred the complaint to the Equal Employment Opportunity Commission on November 5, 1969.

**1017 At the arbitration hearing on November 20, 1969, petitioner testified that his discharge was the result of racial discrimination and informed the arbitrator that he had filed a charge with the Colorado Commission because he 'could not rely on the union.' The union introduced a letter in which petitioner stated that he was 'knowledgeable that in the same plant others have scrapped an equal amount and sometimes in excess, but by all logical reasoning I . . . have been the target of preferential discriminatory treatment.' The union representative also testified that the company's usual practice was to transfer unsatisfactory trainee drill operators back to their former positions.

On December 30, 1969, the arbitrator ruled that petitioner had been 'discharged for just cause.' He made no reference to petitioner's claim of racial discrimination. *43 The arbitrator stated that the union had failed to produce evidence of a practice of transferring rather than discharging trainee drill operators who accumulated excessive scrap, but he suggested that the company and the union confer on whether such an arrangement was feasible in the present case.

On July 25, 1970, the Equal Employment Opportunity Commission determined that there was not reasonable cause to believe that a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. s 2000e et seq., had occurred. The Commission later notified petitioner of his right to institute a civil action in federal court within 30 days. Petitioner then filed the present action in the United States District Court for the District of Colorado, alleging that his discharge resulted from a racially discriminatory employment practice in violation of s 703(a)(1) of the Act, 42 U.S.C. s 2000e-2(a)(1).

The District Court granted respondent's motion for summary judgment and dismissed the action. 346 F.Supp. 1012 (1971). The court found that the claim of racial discrimination had been submitted to the arbitrator and resolved adversely to petitioner.[FN4] It then held that petitioner, having voluntarily elected to pursue his grievance to final arbitration under the nondiscrimination clause of the collective-bargaining agreement, was bound by the arbitral decision and thereby precluded from suing his employer under Title VII. The Court of Appeals for the Tenth Circuit af-

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firmed per curiam on the basis of the District Court's opinion. 466 F.2d 1209 (1972).

> FN4. In reaching this conclusion, the District Court relied on petitioner's deposition acknowledging that he had raised the racial discrimination claim during the arbitration hearing. 346 F.Supp., at 1014.

We granted petitioner's application for certiorari. 410 U.S. 925, 93 S.Ct. 1398, 35 L.Ed.2d 586 (1973). We reverse.

***44** II

[1] Congress enacted Title VII of the Civil Rights Act of 1964, 42 U.S.C. s 2000e et seq., to assure equality of employment opportunities by eliminating those practices and devices that discriminate on the basis of race, color, religion, sex, or national gin. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800, 93 S.Ct. 1817, 1823, 36 L.Ed.2d 668 (1973); Griggs v. Duke Power Co., 401 U.S. 424, 429-430, 91 S.Ct. 849, 852-853, 28 L.Ed.2d 158 (1971). Cooperation and voluntary compliance were selected as the preferred means for achieving this goal. To this end, Congress created the Equal Employment Opportunity Commission and established a procedure whereby existing state and local equal employment opportunity agencies, as well as the Commission, would have an opportunity to settle disputes through conference, conciliation, and persuasion before the aggrieved party was permitted to file a lawsuit. In the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103, Congress amended Title VII to provide the Commission with further authority to investigate individual charges of discrimination, to ****1018** promote voluntary compliance with the requirements of Title VII, and to institute civil actions against employers or unions named in a discrimination charge.

[2] Even in its amended form, however, Title VII does not provide the Commission with direct powers of enforcement. The Commission cannot adjudicate claims or impose administrative sanctions. Rather, final responsibility for enforcement of Title VII is vested with federal courts. The Act authorizes courts to issue injunctive relief and to order such affirmative action as may be appropriate to remedy the effects of unlawful employment practices. 42 U.S.C. ss 2000e-5(f) and (g) (1970 ed., Supp. II). Courts retain these broad remedial powers despite a Commission finding of no reasonable cause to believe that the Act has been violated. McDonnell Douglas Corp. v. Green, supra, 411 U.S., at 798-799, 93 S.Ct., at 1822-1823. ***45** Taken together, these provisions make plain that federal courts have been assigned plenary powers to secure compliance with Title VII.

In addition to reposing ultimate authority in federal courts, Congress gave private individuals a significant role in the enforcement process of Title VII. Individual grievants usually initiate the Commission's investigatory and conciliatory procedures. And although the 1972 amendment to Title VII empowers the Commission to bring its own actions, the private right of action remains an essential means of obtaining judicial enforcement of Title VII. 42 U.S.C. s 2000e-5(f)(1) (1970 ed., Supp. II). In such cases, the private litigant not only redresses his own injury but also vindicates the important congressional policy against discriminatory employment es. Hutchings v. United States Industries, Inc., 428 F.2d 303, 310 (CA5 1970); Bowe v. Colgate-Palmolive Co., 416 F.2d 711, 715 (CA7 1969); Jenkins v. United Gas Corp., 400 F.2d 28, 33 (CA5 1968). See also Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402, 88 S.Ct. 964, 966, 19 L.Ed.2d 1263 (1968).

Pursuant to this statutory scheme, petitioner initiated the present action for judicial consideration of his rights under Title VII. The District Court and the Court of Appeals held, however, that petitioner was bound by the prior arbitral decision and had no right to sue under Title VII.[FN5] Both courts evidently thought that this result was ***46** dictated by notions of election of remedies and waiver and by the federal policy favoring arbitration of labor disputes, as enunciated by this Court in Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 77 S.Ct. 912, 923, 1 L.Ed.2d 972 (1957), and the Steelworkers trilogy[FN6] ****1019** See also Boys Markets, Inc. v. Retail Clerks' Union, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970); Gateway Coal Co. v. United Mine Workers of America, 414 U.S. 368, 94 SCt. 629, 38 L.Ed.2d 583 (1974). ***47** We disagree.

> FN5. The District Court recognized that a conflict of authorities existed on this issue but chose to rely on Dewey v. Reynolds

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Metals Co., 429 F.2d 324, 332 (CA6 1970), affirmed by an equally divided Court, 402 U.S. 689, 91 S.Ct. 2186, 29 L.Ed.2d 267 (1971). There, the Sixth Circuit held that prior submission of an employee's claim to arbitration under a collective-bargaining agreement precluded a later suit under Title VII. The Sixth Circuit appears to have since retreated in part from Dewey by suggesting that there is no preclusion where both arbitration and 'court or agency processes' are pursued simultaneously. See Spann v. Kaywood Division, Joanna Western Mills Co., 446 F.2d 120, 122 (CA6 1971). The Fifth, Seventh, and Ninth Circuits have squarely rejected a preclusion rule. See Hutchings v. United States Industries, Inc., 428 F.2d 303 (CA5 1970); Bowe v. Colgate-Palmolive Co., 416 F.2d 711 (CA7 1969); Oubichon v. North American Rockwell Corp., 482 F.2d 569 (CA9 1973).

FN6. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960). In Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 77 S.Ct. 912, 923, 1 L.Ed.2d 972 (1957), this Court held that a grievance-arbitration provision of a collective-bargaining agreement could be enforced against unions and employers under s 301 of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C. s 185. The Court noted that the congressional policy, as embodied in s 203(d) of the LMRA, 61 Stat. 154, 29 U.S.C. s 173(d), was to promote industrial peace and that the grievance-arbitration provision of a collective agreement was a major factor in achieving this goal. 353 U.S., at 455, 77 S.Ct., at 917. In the Steelworkers trilogy, the Court further advanced this policy by declaring that an order to arbitrate will not be denied 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.' United Steelworkers of America v. Warrior & Gulf Navigation Co., supra, 363 U.S., at 582-583, 80 S.Ct., at 1353. The Court also stated that 'so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.' United Steelworkers of America v. Enterprise Wheel & Car Corp., supra, 363 U.S., at 599, 80 S.Ct., at 1362. And in Republic Steel Corp. v. Maddox, 379 U.S. 650, 85 S.Ct. 614, 13 L.Ed.2d 580 (1965), the Court held that grievance-arbitration procedures of acollective-bargaining agreement must be exhausted before an employee may file suit to enforce contractual rights.

For the reasons stated in Parts III, IV, and V of this opinion, we hold that the federal policy favoring arbitration does not establish that an arbitrator's resolution of a contractual claim is dispositive of a statutory claim under Title VII.

III

Title VII does not speak expressly to the relationship between federal courts and the grievance-arbitration machinery of collective-bargaining agreements. It does, however, vest federal courts with plenary powers to enforce the statutory requirements; and it specifies with precision the jurisdictional prerequisites that an individual must satisfy before he is entitled to institute a lawsuit. In the present case, these prerequisites were met when petitioner (1) filed timely a charge of employment discrimination with the Commission, and (2) received and acted upon the Commission's statutory notice of the right to sue. 42 U.S.C. s 2000e-5(b), (e), and (f). See McDonnell Douglas Corp. v. Green, supra, 411 U.S., at 798, 93 S.Ct., at 1822. There is no suggestion in the statutory scheme that a prior arbitral decision either forecloses an individual's right to sue or divests federal courts of jurisdiction.

[3][4][5] In addition, legislative enactments in this area have long evinced a general intent to accord parallel or overlapping remedies against discrimination.[FN7] In the Civil Rights Act of 1964, 42 U.S.C. s 2000a et seq., Congress indicated that it considered the policy against discrimination to be of the 'highest

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priority.' Newman v. Piggie Park Enterprises, Inc., supra, 390 U.S., at 402, 88 S.Ct. at 966. Consistent with this view, Title VII provides for consideration of employment-discrimination claims in several forums. See 42 U.S.C. s 2000e-5(b) (1970 ed., Supp. II) (EEOC); 42 U.S.C. s 2000e-5(c) (1970 ed., Supp. II) (state and local agencies); 42 U.S.C. s 2000e-5(f) (1970 ed., Supp. II) (federal courts). And, in general, submission of a *48 claim to one forum does not preclude a later submission to another.[FN8] Moreover, the legislative history of Title VII manifests a congressional intent to allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes.[FN9] **1020 The clear inference is that Title VII was designed to supplement rather than supplant, existing laws and institutions relating*49 to employment discrimination. In sum, Title VII's purpose and procedures strongly suggest that an individual does not forfeit his private cause of action if he first pursues his grievance to final arbitration under the nondiscrimination clause of a collective-bargaining agreement.

FN7. See, e.g., 42 U.S.C. s 1981 (Civil Rights Act of 1866); 42 U.S.C. s 1983 (Civil Rights Act of 1871).

FN8. For example, Commission action is not barred by 'findings and orders' of state or local agencies. See 42 U.S.C. s 2000e-5(b) (1970 ed., Supp. II). Similarly, an individual's cause of action is not barred by a Commission finding of no reasonable cause to believe that the Act has been violated. See 42 U.S.C. s 2000e-5(f) (1970 ed., Supp. II); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

FN9. For example, Senator Joseph Clark, one of the sponsors of the bill, introduced an interpretive memorandum which stated: 'Nothing in title VII or anywhere else in this bill affects rights and obligations under the NLRA and the Railway Labor Act. . . . (T)itle VII is not intended to and does not deny to any individual, rights and remedies which he may pursue under other Federal and State statutes. If a given action should violate both title VII and the National Labor Relations Act, the National Labor Relations Board would not be deprived of jurisdiction.' 110 Cong.Rec. 7207 (1964). Moreover, the Senate defeated an amendment which would have made Title VII the exclusive federal remedy for most unlawful employment practices. 110 Cong.Rec. 13650-13652 (1964). And a similar amendment was rejected in connection with the Equal Employment Opportunity Act of 1972. See H.R. 9247, 92d Cong., 1st Sess. (1971); H.R.Rep.No.92-238 (1971). See also 2 U.S.Code Cong. & Admin.News, 92d Cong., 2d Sess., 2137, 2179, 2181-2182 (1972). The report of the Senate Committee responsible for the 1972 Act explained that the 'provisions regarding the individual's right to sue under title VII, nor any of the other provisions of this bill, are meant to affect existing rights granted under other laws.' S.Rep.No.92-415, p. 24 (1971). For a detailed discussion of the legislative history of the 1972 Act, see Sape & Hart. Title VII Reconsidered: The Equal Opportunity Act of 1972, 40 Geo.Wash.L.Rev. 824 (1972).

[6][7] In reaching the opposite conclusion, the District Court relied in part on the doctrine of election of remedies.[FN10] That doctrine, which refers to situations where an individual pursues remedies that are legally or factually inconsistent,[FN11] has no application in the present context. In submitting his grievance to arbitration, an employee seeks to vindicate his contractual right under a collective-bargaining agreement. By contrast, in filing a lawsuit under Title VII, an employee asserts independent statutory*50 rights accorded by Congress. The distinctly separate nature of these contractual and statutory rights is not vitiated merely because both were violated as a result of the same factual occurrence. And certainly no inconsistency results from permitting both rights to be enforced in their respectively appropriate forums. The resulting scheme is somewhat analogous to the procedure under the National Labor Relations Act, as amended,[FN12] where disputed transactions may implicate both contractual and statutory rights. Where the statutory right underlying a particular claim may not be abridged by contractual agreement, the Court has recognized that consideration of the claim by the arbitrator as a contractual dispute under the collective-bargaining agreement does not preclude subsequent consideration of the claim by the National Labor Relations Board as an unfair labor practice charge or

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as a petition for clarification of the union's representation certificate **1021 under the Act. Carey v. Westinghouse Electric Corp., 375 U.S. 261, 84 S.Ct. 401, 11 L.Ed.2d 320 (1964).[FN13] Cf. Smith v. Evening News Assn., 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962). There, as here, the relationship between the forums is complementary since consideration of the claim by both forums may promote the policies underlying*51 each. Thus, the rationale behind the election-of-remedies doctrine cannot support the decision below.[FN14]

FN10. The District Court adopted the reasoning of the Sixth Circuit in Dewey v. Reynolds Metals Co., 429 F.2d, at 332, affirmed by an equally divided Court, 402 U.S. 689, 91 S.Ct. 2186, 29 L.Ed.2d 267 (1971), which was apparently based in part on the doctrine of election of remedies. See n. 5, supra. The Sixth Circuit, however, later described Dewey as resting instead on the doctrine of equitable estoppel and on 'themes of res judicata and collateral estoppel.' Newman v. Avco Corp., 451 F.2d 743, 747 in n. 1 (CA6 1971). Whatever doctrinal label is used, the essence of these holdings remains the same. The policy reasons for rejecting the doctrines of election of remedies and waiver in the context of Title VII are equally applicable to the doctrines of res judicata and collateral estoppel.

FN11. See generally 5A A. Corbin, Contracts ss 1214-1227 (1971 ed.). Most courts have recognized that the doctrine of election of remedies does not apply to suits under Title VII. See, e.g., Bowe v. Colgate-Palmolive Co., 416 F.2d, at 714-715; Hutchings v. United States Industries, Inc., 428 F.2d, at 314; Macklin v. Spector Freight Systems, Inc., 156 U.S.App.D.C. 69, 478 F.2d 979, 990-991 (1973); Voutsis v. Union Carbide Corp., 452 F.2d 889, 893-894 (CA2 1971), cert. denied, 406 U.S. 918, 92 S.Ct. 1768, 32 L.Ed.2d 117 (1972); Newman v. Avco Corp., supra, 451 F.2d, at 746 n. 1; Oubichon v. North American Rockwell Corp., 482 F.2d, at 572-573.

FN12. 61 Stat. 136, 29 U.S.C. s 151 et seq.

FN13. As the Court noted in Carey:

'By allowing the dispute to go to arbitration . . . those conciliatory measures which Congress deemed vital to 'industrial peace' . . . and which may be dispositive of the entire dispute, are encouraged. The superior authority of the Board may be invoked at any time. Meanwhile the therapy of arbitration is brought to bear in a complicated and troubled area.' 375 U.S., at 272, 84 S.Ct., at 409.

Should disagreements arise between the Board and the arbitrator, the Board's ruling would, of course, take precedence as to those issues within its jurisdiction. Ibid.

FN14. Nor can it be maintained that election of remedies is required by the possibility of unjust enrichment through duplicative recoveries. Where, as here, the employer has prevailed at arbitration, there, of course, can be no duplicative recovery. But even in cases where the employee has first prevailed, judicial relief can be structured to avoid such windfall gains. See, e.g., Oubichon v. North American Rockwell Corp., supra; Bowe v. Colgate-Palmolive Co., supra. Furthermore, if the relief obtained by the employee at arbitration were fully equivalent to that obtainable under Title VII, there would be no further relief for the court to grant and hence no need for the employee to institute suit.

[8][9][10] We are also unable to accept the proposition that petitioner waived his cause of action under Title VII. To begin, we think it clear that there can be no prospective waiver of an employee's rights under Title VII. It is true, of course, that a union may waive certain statutory rights related to collective activity, such as the right to strike. Mastro Plastics Corp. v. NLRB, 350 U.S. 270, 76 S.Ct. 349, 100 L.Ed. 309 (1956); Boys Markets, Inc. v. Retail Clerk's Union, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970). These rights are conferred on employees collectively to foster the processes of bargaining and properly may be exercised or relinquished by the union as collective-bargaining agent to obtain economic benefits for union members. Title VII, on the other hand, stands on plainly different ground; it concerns not majoritarian processes, but an individual's right to equal employ-

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ment opportunities. Title VII's strictures are absolute and represent a congressional command that each employee be free from discriminatory practices. Of necessity, the rights conferred can form no part of the collective-bargaining process since waiver of these rights would defeat the paramount congressional purpose behind Title VII. In these circumstances, an employee's rights under Title VII are not susceptible of *52 prospective waiver. See Wilko v. Swan, 346 U.S. 427, 74 S.Ct. 182, 98 L.Ed. 168 (1953).

[11][12] The actual submission of petitioner's grievance to arbitration in the present case does not alter the situation. Although presumably an employee may waive his cause of action under Title VII as part of a voluntary settlement,[FN15] mere resort to the arbitral forum to enforce contractual rights constitutes no such waiver. Since an employee's rights under Title VII may not be waived prospectively, existing contractual rights and remedies against discrimination must result from other concessions already made by the union as part of the economic bargain struck **1022 with the employer. It is settled law that no additional concession may be exacted from any employee as the price for enforcing those rights. J. I. Case Co. v. NLRB, 321 U.S. 332, 338-339, 64 S.Ct. 576, 580-581, 88 L.Ed. 762 (1944).

> FN15. In this case petitioner and respondent did not enter into a voluntary settlement expressly conditioned on a waiver of petitioner's cause of action under Title VII. In determining the effectiveness of any such waiver, a court would have to determine at the outset that the employee's consent to the settlement was voluntary and knowing. In no event can the submission to arbitration of a claim under the nondiscrimination clause of a collective-bargaining agreement constitute a binding waiver with respect to an employee's rights under Title VII.

[13][14][15] Moreover, a contractual right to submit a claim to arbitration is not displaced simply because Congress also has provided a statutory right against discrimination. Both rights have legally independent origins and are equally available to the aggrieved employee. This point becomes apparent through consideration of the role of the arbitrator in the system of industrial self-government.[FN16] *53 As the proctor of the bargain, the arbitrator's task is to effectuate the intent of the parties. His source of authority is the collective-bargaining agreement, and he must interpret and apply that agreement in accordance with the 'industrial common law of the shop' and the various needs and desires of the parties. The arbitrator, however, has no general authority to invoke public laws that conflict with the bargain between the parties:

> FN16. See Meltzer, Labor Arbitration and Overlapping and Conflicting Remedies for Employment Discrimination, 39 U.Chi.L.Rev. 30, 32-35 (1971); Meltzer, Ruminations About Ideology, Law, and Labor Arbitration, 34 U.Chi.L.Rev. 545 (1967). As the late Dean Shulman stated:
>
> 'A proper conception of the arbitrator's function is basic. He is not a public tribunal imposed upon the parties by superior authority which the parties are obliged to accept. He has no general charter to administer justice for a community which transcends the parties. He is rather part of a system of self-government created by and confined to the parties. He serves their pleasure only, to administer the rule of law established by their collective agreement.' Shulman, Reason, Contract, and Law in Labor Relations, 68 Harv.L.Rev. 999, 1016 (1955).

'(A)n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.' United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597, 80 S.Ct. 1358, 1361, 4 L.Ed.2d 1424 (1960).

If an arbitral decision is based 'solely upon the arbitrator's view of the requirements of enacted legislation,' rather than on an interpretation of the collective-bargaining agreement, the arbitrator has 'exceeded the scope of the submission,' and the award will not be enforced. Ibid. Thus the arbitrator has authority to resolve only questions*54 of contractual rights, and this authority remains regardless of whether certain contractual rights are similar to, or

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duplicative of, the substantive rights secured by Title VII.

IV

[16] The District Court and the Court of Appeals reasoned that to permit an employee to have his claim considered in both the arbitral and judicial forums would be unfair since this would mean that the employer, but not the employee, was bound by the arbitral award. In the District Court's words, it could not 'accept a philosophy which gives the employee two strings to his bow when the employer has only one.' 346 F.Supp., at 1019. This argument mistakes the effect of Title VII. Under the Steelworkers trilogy, an arbitral decision is final and binding on the employer and employee, and judicial review is limited as to both. But in instituting an action under Title VII, the employee is not seeking review of the arbitrator's decision. Rather, he is asserting a statutory right independent of the arbitration process. An employer does not have 'two strings to his bow' with respect to an arbitral decision for the simple reason that Title VII does not provide**1023 employers with a cause of action against employees. An employer cannot be the victim of discriminatory employment practices. Oubichon v. North American Rockwell Corp., 482 F.2d 569, 573 (CA9 1973).

[17] The District Court and the Court of Appeals also thought that to permit a later resort to the judicial forum would undermine substantially the employer's incentive to arbitrate and would 'sound the death knell for arbitration clauses in labor contracts.' 346 F.Supp., at 1019. Again, we disagree. The primary incentive for an employer to enter into an arbitration agreement is the union's reciprocal promise not to strike. As the *55 Court stated in Boys Markets, Inc. v. Retail Clerk's Union, 398 U.S., at 248, 90 S.Ct., at 1591, a no-strike obligation, express or implied, is the quid pro quo for an undertaking by the employer to submit grievance disputes to the process of arbitration.' It is not unreasonable to assume that most employers will regard the benefits derived from a no-strike pledge as outweighing whatever costs may result from according employees an arbitral remedy against discrimination in addition to their judicial remedy under Title VII. Indeed, the severe consequences of a strike may make an arbitration clause almost essential from both the employees' and the employer's perspective. Moreover, the grievance-arbitration machinery of the collective-bargaining agreement remains a relatively inexpensive and expeditious means for resolving a wide range of disputes, including claims of discriminatory employment practices. Where the collective-bargaining agreement contains a nondiscriination clause similar to Title VII, and where arbitral procedures are fair and regular, arbitration may well produce a settlement satisfactory to both employer and employee. An employer thus has an incentive to make available the conciliatory and therapeutic processes of arbitration which may satisfy an employee's perceived need to resort to the judicial forum, thus saving the employer the expense and aggravation associated with a lawsuit. For similar reasons, the employee also has a strong incentive to arbitrate grievances, and arbitration may often eliminate those misunderstandings or discriminatory practices that might otherwise precipitate resort to the judicial forum.

V

[18] Respondent contends that even if a preclusion rule is not adopted, federal courts should defer to arbitral decisions on discrimination claims where: (i) the claim *56 was before the arbitrator; (ii) the collective-bargaining agreement prohibited the form of discrimination charged in the suit under Title VII; and (iii) the arbitrator has authority to rule on the claim and to fashion a remedy.[FN17] Under respondent's proposed rule, a court would grant summary judgment and dismiss the employee's action if the above conditions were met. The rule's obvious consequence in the present case would be to deprive the petitioner of his statutory right to attempt to establish his claim in a federal court.

> FN17. Brief for Respondent 37. Respondent's proposed rule is analogous to the NLRB's policy of deferring to arbitral decisions on statutory issues in certain cases. See Spielberg Mfg. Co., 112 N.L.R.B. 1080, 1082 (1955).

At the outset, it is apparent that a deferral rule would be subject to many of the objections applicable to a preclusion rule. The purpose and procedures of Title VII indicate that Congress intended federal courts to exercise final responsibility for enforcement of Title VII; deferral to arbitral decisions would be inconsistent with that goal. Furthermore, we have long recognized that 'the choice of forums inevitably affects the

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scope of the substantive right to be vindicated.' U.S. Bulk Carriers v. Arguelles, 400 U.S. 351, 359-360, 91 S.Ct. 409, 413-414, 27 L.Ed.2d 456 (1971) (Harlan, J., concurring). Respondent's deferral rule is necessarily premised on the assumption **1024 that arbitral processes are commensurate with judicial processes and that Congress impliedly intended federal courts to defer to arbitral decisions on Title VII issues. We deem this supposition unlikely.

[19] Arbitral procedures, while well suited to the resolution of contractual disputes, make arbitration a comparatively inappropriate forum for the final resolution of rights created by Title VII. This conclusion rests first on the special role of the arbitrator, whose task is to effectuate the intent of the parties rather than the *57 requirements of enacted legislation. Where the collective-bargaining agreement conflicts with Title VII, the arbitrator must follow the agreement. To be sure, the tension between contractual and statutory objectives may be mitigated where a collective-bargaining agreement contains provisions facially similar to those of Title VII. But other facts may still render arbitral processes comparatively inferior to judicial processes in the protection of Title VII rights. Among these is the fact that the specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581-583, 80 S.Ct. 1347, 1352-1353, 4 L.Ed.2d 1409 (1960).[FN18] Parties usually choose an arbitrator because they trust his knowledge and judgment concerning the demands and norms of industrial relations. On the other hand, the resolution of statutory or constitutional issues is a primary responsibility of courts, and judicial construction has proved especially necessary with respect to Title VII, whose broad language frequently can be given meaning only by reference to public law concepts.

> FN18. See also Gould, Labor Arbitration of Grievances Involving Racial Discrimination, 118 U.Pa.L.Rev. 40, 47-48 (1969); Platt, The Relationship between Arbitration and Title VII of the Civil Rights Act of 1964, 3 Ga.L.Rev. 398 (1969). Significantly, a substantial proportion of labor arbitrators are not lawyers. See Note, The NLRB and Deference to Arbitration, 77 Yale L.J. 1191, 1194 n. 28 (1968). This is not to suggest, of course, that arbitrators do not possess a high degree of competence with respect to the vital role in implementing the federal policy favoring arbitration of labor disputes.

Moreover, the factfinding process in arbitration usually is not equivalent to judicial factufinding. The record of the arbitration proceedings is not as complete; the usual rules of evidence do not apply; and rights and procedures common to civil trials, such as discovery, compulsory process, cross-examination, and testimony under *58 oath, are often severely limited or unavailable. See Bernhardt v. Polygraphic Co., 350 U.S. 198, 203, 76 S.Ct. 273, 276, 100 L.Ed. 199 (1956); Wilko v. Swan, 346 U.S., at 435-437, 74 S.Ct., at 186-188. And as this Court has recognized, '(a)rbitrators have no obligation to the court to give their reasons for an award.' United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S., at 598, 80 S.Ct., at 1361. Indeed, it is the informality of arbitral procedure that enables it to function as an efficient, inexpensive, and expeditious means for dispute resolution. This same characteristic, however, makes arbitration a less appropriate forum for final resolution of Title VII issues than the federal courts.[FN19]

> FN19. A further concern is the union's exclusive control over the manner and extent to which an individual grievance is presented. See Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967); Republic Steel Corp. v. Maddox, 379 U.S. 650, 85 S.Ct. 614, 13 L.Ed.2d 580 (1965). In arbitration, as in the collective-bargaining process, the interests of the individual employee may be subordinated to the collective intersts of all employees in the bargaining unit. See J. I. Case Co. v. NLRB, 321 U.S. 332, 64 S.Ct. 576, 88 L.Ed. 762 (1944). Moreover, harmony of interest between the union and the individual employee cannot always be presumed, especially where a claim of racial discrimination is made. See, e.g., Steele v. Louisville & N.R. Co., 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173 (1944); Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210, 65 S.Ct. 235, 89 L.Ed. 187 (1944). And a breach of the union's duty of fair representation may prove difficult to establish. See Vaca v. Sipes, supra; Humphrey v. Moore, 375 U.S. 335, 342, 348-351, 84 S.Ct. 363, 367,

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371-373, 11 L.Ed.2d 370 (1964). In this respect, it is noteworthy that Congress thought it necessary to afford the protections of Title VII against unions as well as employers. See 42 U.S.C. s 2000e-2(c).

**1025 It is evident that respondent's proposed rule would not allay these concerns. Nor are we convinced that the solution lies in applying a more demanding deferral standard, such as that adopted by the Fifth Circuit in Rios v. Reynolds Metals Co., 467 F.2d 54 (1972).[FN20] As *59 respondent points out, a standard that adequately insured effectuation of Title VII rights in the arbitral forum would tend to make arbitration a procedurally complex, expensive, and time-consuming process. And judicial enforcement of such a standard would almost require courts to make denovo determinations of the employees' claims. It is uncertain whether any minimal savings in judicial time and expense would justify the risk to vindication of Title VII rights.

FN20. In Rios, the court set forth the following deferral standard: 'First, there may be no deference to the decision of the arbitrator unless the contractual right coincides with rights under Title VII. Second, it must be plain that the arbitrator's decision is in no way violative of the private rights guaranteed by Title VII, nor of the public policy which inheres in Title VII. In addition, before deferring, the district court must be satisfied that (1) the factual issues before it are identical to those decided by the arbitrator; (2) the arbitrator had power under the collective agreement to decide the ultimate issue of discrimination; (3) the evidence presented at the arbitral hearing dealt adequately with all factual issues; (4) the arbitrator actually decided the factual issues presented to the court;(5) the arbitration proceeding was fair and regular and free of procedural infirmities. The burden of proof in establishing these conditions of limitation will be upon the respondent s distinguished from the claimant.' 467 F.2d, at 58.

For a discussion of the problems posed by application of the Rios standard, see Note, Judicial Deference to Arbitrators' Decisions in Title VII Cases, 26 Stan.L.Rev. 421 (1974).

A deferral rule also might adversely affect the arbitration system as well as the enforcement scheme of Title VII. Fearing that the arbitral forum cannot adequately protect their rights under Title VII, some employees may elect to bypass arbitration and institute a lawsuit. The possibility of voluntary compliance or settlement of Title VII claims would thus be reduced, and the result could well be more litigation, not less.

[20][21][22] We think, therefore, that the federal policy favoring arbitration of labor disputes and the federal policy against discriminatory employment practices can best be accommodated by permitting an employee to pursue fully both his remedy under the grievance-arbitration clause *60 of a collective-bargaining agreement and his cause of action undeR titlE VII. the federal court should consider the employee's claim de novo. The arbitral decision may be admitted as evidence and accorded such weight as the court deems appropriate.[FN21]

FN21. We adopt no standards as to the weight to be accorded an arbitral decision, since this must be determined in the court's discretion with regard to the facts and circumstances of each case. Relevant factors include the existence of provisions in the collective-bargaining agreement that conform substantially with Title VII, the degree of procedural fairness in the arbitral forum, adequacy of the record with respect to the issue of discrimination, and the special competence of particular arbitrators. Where an arbitral determination gives full consideration to an employee's Title VII rights, a court may properly accord it great weight. This is especially true where the issue is solely one of fact, specifically addressed by the parties and decided by the arbitrator on the basis of an adequate record. But courts should ever the mindful that Congress, in enacting Title VII, thought it necessary to provide a judicial forum for the ultimate resolution of discriminatory employment claims. It is the duty of courts to assure the full availability of this forum.

The judgment of the Court of Appeals is reversed.

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Reversed.

U.S.Colo. 1974.
Alexander v. Gardner-Denver Co.
415 U.S. 36, 94 S.Ct. 1011, 7 Fair Empl.Prac.Cas. (BNA) 81, 7 Empl. Prac. Dec. P 9148, 39 L.Ed.2d 147

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Supreme Court of the United States
Harrell ALEXANDER, Sr., Petitioner,
v.
GARDNER-DENVER COMPANY.
No. 72-5847.

Argued Nov. 5, 1973.
Decided Feb. 19, 1974.

Civil rights action was based on alleged racially motivated discriminatory employment practices by employer. The United States District Court for the District of Colorado, 346 F.Supp. 1012, granted employer's motion for summary judgment and the Court of Appeals, 466 F.2d 1209, affirmed. The employee petitioned for certiorari. The Supreme Court, Mr. Justice Powell, held that employee's statutory right to trial de novo under the Equal Employment provisions of the Civil Rights Act is not foreclosed by prior submission of claim to final arbitration under the nondiscrimination clause of a collective bargaining agreement.

Judgments of Court of Appeals reversed.

West Headnotes

[1] Civil Rights 78 ⚿1104

78 Civil Rights
78II Employment Practices
78k1102 Constitutional and Statutory Provisions
78k1104 k. Purpose and Construction in General. Most Cited Cases
(Formerly 78k141, 78k9.10, 78k9.14)
The equal employment provisions of the Civil Rights Act were enacted to assure equality of employment opportunities by eliminating those practices and devices that discriminate on the basis of race, color, religion, sex, or national origin. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[2] Civil Rights 78 ⚿1562

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1562 k. Affirmative Action; Recruitment and Hiring. Most Cited Cases
(Formerly 78k393, 78k46(4), 78k46)
Courts retain broad remedial powers under the Equal Employment provisions of the Civil Rights Act to issue injunctive relief and to order such affirmative action as may be appropriate to remedy the facts of unlawful employment practices despite an EEOC finding of no reasonable cause to believe that the Act has been violated. Civil Rights Act of 1964, §§ 701 et seq., 706(f, g) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-5(f, g).

[3] Civil Rights 78 ⚿1502

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1502 k. Existence of Other Remedies; Exclusivity. Most Cited Cases
(Formerly 78k331, 78k31)

Civil Rights 78 ⚿1704

78 Civil Rights
78V State and Local Remedies
78k1704 k. Existence of Other Remedies; Exclusivity. Most Cited Cases
(Formerly 78k441, 78k61)
Congressional intent with respect to equal employment provisions of Civil Rights Act is to allow an individual to pursue independently his rights under both the Civil Rights Act and other applicable state and federal statutes. Civil Rights Act of 1964, § 706(b, c, f) as amended 42 U.S.C.A. § 2000e-5(b, c, f); National Labor Relations Act, § 1 et seq. as amended 29 U.S.C.A. § 151 et seq.; Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

[4] Civil Rights 78 ⚿1104

78 Civil Rights

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78II Employment Practices
78k1102 Constitutional and Statutory Provisions
78k1104 k. Purpose and Construction in General. Most Cited Cases
(Formerly 78k141, 78k9.10)
The equal employment provisions of the Civil Rights Act were designed to supplement, rather than supplant, existing laws and institutions relating to employment discrimination. Civil Rights Act of 1964, § 706(b, c, f) as amended 42 U.S.C.A. § 2000e-5(b, c, f); National Labor Relations Act, § 1 et seq. as amended 29 U.S.C.A. § 151 et seq.; Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

[5] Civil Rights 78 ⚿1529

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1529 k. Defenses in General. Most Cited Cases
(Formerly 78k372, 78k39)
Employee's statutory right to trial de novo under equal employment opportunity provisions of Civil Rights Act was not foreclosed by employee's prior submission of his claim of racially discriminatory discharge to final arbitrations under the nondiscrimination clause of collective-bargaining agreement. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[6] Election of Remedies 143 ⚿3(1)

143 Election of Remedies
143k3 Inconsistency of Alternative Remedies
143k3(1) k. In General. Most Cited Cases
Doctrine of election of remedies refers to situations where an individual pursues remedies that are legally or factually inconsistent.

[7] Election of Remedies 143 ⚿3(1)

143 Election of Remedies
143k3 Inconsistency of Alternative Remedies
143k3(1) k. In General. Most Cited Cases
Doctrine of election of remedies did not preclude employee who had submitted claim of racially discriminatory discharge to final arbitration under the nondiscrimination clause of collective bargaining agreement from maintaining action under the equal employment opportunity provisions of the Civil Rights Act, nor was application of the doctrine required by possibility of unjust enrichment through duplication of recoveries inasmuch as judicial relief could be structured to avoid windfall gains to employee prevailing at arbitration. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[8] Civil Rights 78 ⚿1263

78 Civil Rights
78II Employment Practices
78k1263 k. Waiver; Effect of Labor Contracts. Most Cited Cases
(Formerly 78k155, 78k9.10)
There can be no prospective waiver of an employee's rights under the equal employment opportunity provision of the Civil Rights Act. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[9] Labor and Employment 231H ⚿984

231H Labor and Employment
231HXII Labor Relations
231HXII(A) In General
231Hk984 k. Rights of Employees in General. Most Cited Cases
(Formerly 232Ak171 Labor Relations)
Union may waive certain statutory rights related to collective activity.

[10] Civil Rights 78 ⚿1263

78 Civil Rights
78II Employment Practices
78k1263 k. Waiver; Effect of Labor Contracts. Most Cited Cases
(Formerly 78k155, 78k9.10)
Rights conferred on employee by equal employment opportunity provisions of the Civil Rights Act form no part of the collective bargaining process and are not waived by employee's resorting to arbitration of claim under the nondiscrimination clause of collective bargaining agreement. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[11] Compromise and Settlement 89 ⚿3

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89 Compromise and Settlement
89I In General
89k1 Nature and Requisites
89k3 k. Subject-Matter. Most Cited Cases
Employee may waive his cause of action under the equal employment opportunity provisions of the Civil Rights Act as part of a voluntary settlement. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[12] Civil Rights 78 ⚿1263

78 Civil Rights
78II Employment Practices
78k1263 k. Waiver; Effect of Labor Contracts. Most Cited Cases
(Formerly 78k155, 78k38)
Although union may make concessions as part of economic bargain struck with employer providing rights and remedies against discrimination, no additional concession may be exacted from any employee as price for enforcing rights under the equal employment opportunity provisions of the Civil Rights Act. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[13] Labor and Employment 231H ⚿1549(17)

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)3 Arbitration Agreements
231Hk1543 Construction and Operation
231Hk1549 Matters Subject to Arbitration Under Agreement
231Hk1549(17) k. Discrimination. Most Cited Cases
(Formerly 232Ak433 Labor Relations)
A contractual right to submit a claim to arbitration is not displaced simply because Congress also has provided a statutory right against discrimination. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[14] Labor and Employment 231H ⚿1593

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)4 Proceedings
231Hk1590 Award
231Hk1593 k. Conformity to Submission. Most Cited Cases
(Formerly 232Ak478 Labor Relations)
If an arbitral decision is based solely on the arbitrator's view of requirements of enacted legislation, rather than on an interpretation of the collective bargaining agreement, the arbitrator has exceeded the scope of his submission, and the award will not be enforced.

[15] Labor and Employment 231H ⚿1580

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)4 Proceedings
231Hk1577 Authority of Arbitrators
231Hk1580 k. Interpretation of Collective Bargaining Agreement in General. Most Cited Cases
(Formerly 232Ak454 Labor Relations)
Arbitrator has authority to resolve only questions of contractual rights, and authority remains regardless of whether certain contractual rights are similar to, or duplicative of, the substantive rights secured by the equal employment opportunity provisions of the Civil Rights Act. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[16] Civil Rights 78 ⚿1511

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1511 k. Civil Actions in General. Most Cited Cases
(Formerly 78k361, 78k38)
Inasmuch as the equal employment opportunity provisions of the Civil Rights Act do not provide employers with a cause of action against employees and an employer cannot be the victim of discriminatory employment practices, permitting employee who has had claim of racial discrimination considered under the nondiscrimination clause of a collective bargaining agreement to bring action under the Civil Rights Act would not be unfair on theory that employee would be given two strings to his bow when the employer has only one. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

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[17] Civil Rights 78 ⚿1511

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1511 k. Civil Actions in General. Most Cited Cases
(Formerly 78k361, 78k38)
Permitting an employee to bring civil rights action for alleged racial discrimination after arbitration procedures have been followed does not undermine the employer's incentive to arbitrate, as most employers will regard the benefits from a no-strike pledge in the arbitration agreement as outweighing any costs resulting from giving employees an arbitral antidiscrimination remedy in addition to their civil rights remedy. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[18] Civil Rights 78 ⚿1511

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1511 k. Civil Actions in General. Most Cited Cases
(Formerly 78k361, 78k38)
A policy of deferral by federal courts to arbitral decisions on claims of racial discrimination would not comport with the congressional objective that federal court should exercise the final responsibility for enforcement of equal employment opportunity provisions and would lead to the arbitrator's emphasis on the law of the shop rather than the law of the land; fact-finding and other procedures less complete than those followed in a judicial forum; and perhaps employee's bypassing arbitration in favor of litigation. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[19] Labor and Employment 231H ⚿1549(17)

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)3 Arbitration Agreements
231Hk1543 Construction and Operation
231Hk1549 Matters Subject to Arbitration Under Agreement
231Hk1549(17) k. Discrimination. Most Cited Cases
(Formerly 232Ak433 Labor Relations)
Since role of arbitrator is to effectuate the intent of parties to collective bargaining agreement rather than the requirements of enacted legislation, when the agreement conflicts with equal employment opportunity provisions of the Civil Rights Act, the arbitrator must follow the agreement. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[20] Civil Rights 78 ⚿1542

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1542 k. Admissibility of Evidence; Statistical Evidence. Most Cited Cases
(Formerly 78k381, 78k43)

Civil Rights 78 ⚿1544

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1544 k. In General. Most Cited Cases
(Formerly 78k382.1, 78k382, 78k44(1))
Decision of arbitrator on employee's claim of racially discriminatory discharge may be admitted as evidence in action under the equal employment opportunity provisions of the Civil Rights Act and accorded such weight as the court deems appropriate. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[21] Civil Rights 78 ⚿1544

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1544 k. In General. Most Cited Cases
(Formerly 78k382.1, 78k382, 78k44(1))
Relevant factors in determining weight to be given decision of arbitrator on employee's claim of racially discriminatory discharge in civil rights action include the existence of provisions in the collective bargaining agreement that substantially conform with the Civil Rights Act, the degree of procedural fairness in the arbitral forum, adequacy of record with respect to issue of discrimination, and special competence of

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particular arbitrators. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[22] **Civil Rights 78 ⚿1544**

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1544 k. In General. Most Cited Cases
(Formerly 78k382.1, 78k382, 78k44(1))
Where an arbitral determination on employee's claim of racially discriminatory discharge gives full consideration to an employee's rights under equal employment opportunity provisions of the Civil Rights Act, court in civil rights action may accord the arbitral determination great weight, especially where issue is solely one of fact, although ultimate resolution of discriminatory employment claims are for the judicial forum. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

****1013 *36** Syllabus[FN*]

> FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Following discharge by his employer, respondent company, petitioner, a black, filed a grievance under the collective-bargaining agreement between respondent and petitioner's union, which contained a broad arbitration clause, petitioner ultimately claiming that his discharge resulted from racial discrimination. Upon rejection by the company of petitioner's claims, an arbitration hearing was held, prior to which petitioner filed with the Colorado Civil Rights Commission a racial discrimination complaint which was referred to the Equal Employment Opportunity Commission (EEOC). The arbitrator ruled that petitioner's discharge was for cause. Following the EEOC's subsequent determination that there was not reasonable ground to believe that a violation of Title VII of the Civil Rights Act of 1964 had occurred, petitioner brought this action****1014** in District Court, alleging that his discharge resulted from a racially discriminatory employment practice in violation of the Act. The District Court granted respondent's motion for summary judgment, holding that petitioner was bound by the prior arbitral decision and had no right to sue under Title VII. The Court of Appeals affirmed. Held: An employee's statutory right to trial de novo under Title VII of the Civil Rights Act of 1964 is not foreclosed by prior submission of his claim to final arbitration under the nondiscrimination clause of a collective-bargaining agreement. Pp. 1017-1025.

(a) Title VII was designed to supplement, rather than supplant, existing laws and institutions relating to employment discrimination, as may be inferred from the legislative history of Title VII, which manifests a congressional intent to allow an individual to pursue rights under Title VII and other applicable state and federal statutes. Pp. 1019-1020.

(b) The doctrine of election of remedies is inapplicable in the present context, which involves statutory rights distinctly separate from the employee's contractual rights, regardless of the fact that violation of both rights may have resulted from the same factual occurrence. Pp. 1020-1021.

***37** (c) By merely resorting to the arbitral forum petitioner did not waive his cause of action under Title VII; the rights conferred thereby cannot be prospectively waived and form no part of the collective-bargaining process. Pp. 1021-1022.

(d) The arbitrator's authority is confined to resolution of questions of contractual rights, regardless of whether they resemble or duplicate Title VII rights. Pp. 1022-1023.

(e) In instituting a Title VII action, the employee is not seeking review of the arbitrator's decision and thus getting (as the District Court put it) 'two strings to his bow when the employer has only one,' but is asserting a right independent of the arbitration process that the statute gives to employees, the only possible victims of discriminatory employment practices. Pp. 1022-1023.

(f) Permitting an employee to resort to the judicial forum after arbitration procedures have been followed does not undermine the employer's incentive to arbitrate, as most employers will regard the benefits from a no-strike pledge in the arbitration agreement as outweighing any costs resulting from giving employees an arbitral antidiscrimination remedy in addi-

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tion to their Title VII judicial remedy. Pp. 1022-1023.

(g) A policy of deferral by federal courts to arbitral decisions (as opposed to adoption of a preclusion rule) would not comport with the congressional objective that federal courts should exercise the final responsibility for enforcement of Title VII and would lead to: the arbitrator's emphasis on the law of the shop rather than the law of the land; factfinding and other procedures less complete than those followed in a judicial forum; and perhaps employees bypassing arbitration in favor of litigation. Pp. 1023-1025.

(h) In considering an employee's claim, the federal court may admit the arbitral decision as evidence and accord it such weight as may be appropriate under the facts and circumstances of each case. P. 1025.

10 Cir., 466 F.2d 1209, reversed.
Paul J. Spiegelman, Washington, D.C., for petitioner.

*38 Lawrence G. Wallace, Washington, D.C., for the U.S., as amicus curiae, by special leave of Court.

Robert G. Good, Denver, Colo., for respondent.

**1015 Mr. Justice POWELL delivered the opinion for a unanimous Court.

This case concerns the proper relationship between federal courts and the grievance-arbitration machinery of collective-bargaining agreements in the resolution and enforcement of an individual's rights to equal employment opportunities under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U.S.C. s 2000e et seq. Specifically, we must decide under what circumstances, if any, an employee's statutory right to a trial de novo under Title VII may be foreclosed by prior submission of his claim to final arbitration under the nondiscrimination clause of a collective-bargining agreement.

I

In May 1966, petitioner Harrell Alexander, Sr., a black, was hired by respondent Gardner-Denver Co. (the company) to perform maintenance work at the company's plant in Denver, Colorado. In June 1968, petitioner was awarded a trainee position as a drill operator. He remained at that job until his discharge from employment on September 29, 1969. The company informed petitioner that he was being discharged for producing too many defective or unusable parts that had to be scrapped.

*39 On October 1, 1969, petitioner filed a grievance under the collective-bargaining agreement in force between the company and petitioner's union, Local No. 3029 of the United Steelworkers of America (the union). The grievance stated: 'I feel I have been unjustly discharged and ask that I be reinstated with full seniority and pay.' No explicit claim of racial discrimination was made.

Under Art. 4 of the collective-bargaining agreement, the company retained 'the right to hire, suspend or discharge (employees) for proper cause.'[FN1] Article 5, s 2, provided, however, that 'there shall be no discrimination against any employee on account of race, color, religion, sex, national origin, or ancestry,'[FN2] and Art. 23, s 6(a), stated that '(n)o employee will be discharged, suspended or given a written warning notice except for just cause.' *40 The agreement also contained a broad arbitration clause covering 'differences aris(ing) between the Company and the Union as to the meaning and application of the provisions of this Agreement' and 'any trouble aris(ing) in the plant.'[FN3] Disputes were to **1016 be submitted to a multistep*41 grievance procedure, the first four steps of which involved negotiations between the company and the union. If the dispute remained unresolved, it was to be remitted to compulsory arbitration. The company and the union were to select and pay the arbitrator, and *42 his decision was to be 'final and binding upon the Company, the Union, and any employee or employees involved.' The agreement further provided that '(t)he arbitrator shall not amend, take away, add to, or change any of the provisions of this Agreement, and the arbitrator's decision must be based solely upon an interpretation of the provisions of this Agreement.' The parties also agreed that there 'shall be no suspension of work' over disputes covered by the grievance arbitration clause.

FN1. Article 4 of the agreement provided:

'MANAGEMENT

'The Union recognizes that all rights to manage the Plant, to determine the products to be manufactured, the methods of manu-

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facturing or assembling, the scheduling of production, the control of raw materials, and to direct the working forces, including the right to hire, suspend or discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reasons, and the right to maintain order and efficiency are vested exclusively in the Company.

'It is understood by the parties that all rights recognized in this Article are subject to the terms of this Agreement.'

FN2. Article 5 of the agreement provided:

'MUTUAL RESPONSIBILITY

'Section 1. The parties agree that during the term of this Agreement there shall be no strike, slow-down or other interruption of production, and that for the same period there shall be no lockout, subject to the provisions of Article 26, Term of Agreement.

'Section 2. The Company and the Union agree that there shall be no discrimination against any employee on account of race, color, religion, sex, national origin, or ancestry. The Company further states and the Union approves that no such discrimination shall be practiced against any applicant for employment.'

FN3. Article 23, containing the grievance-arbitration procedures of the agreement, provided in relevant part:

'Section 5. Should differences arise between the Company and the Union as to the meaning and application of the provisions of this Agreement, or should any trouble arise in the plant, there shall be no suspension of work, but an earnest effort shall be made by both the Company and the Union to settle such differences promptly. Grievances must be presented within five (5) working days after the date of the occurrence giving rise to the grievance or they shall be considered waived. Grievances shall be taken up in the following manner; except that any grievance filed by the Local Union shall be submitted in writing at Step 3 of the grievance procedure as set forth herein:

'Step 1. An attempt shall first be made by the employee with or without his assistant grievance committeeman (at the employee's option), and the employee's foreman to settle the grievance. The foreman shall submit his answer within one (1) working day and if the grievance is not settled, it shall be reduced to writing, signed by the employee and his assistant grievance committeeman, and the foreman shall submit his signed answer of such grievance.

'Step 2. If the grievance is not settled in Step 1, it shall be presented to the Superintendent, or his representative, within two (2) working days after the Union has received the Foreman's answer in Step 1. The Superintendent or his representative shall submit his signed answer two (2) working days after receiving the grievance.

'Step 3. If the grievance is not settled in Step 2, it shall be presented to the manager of Manufacturing or his representative within five (5) working days after the Union has received the Superintendent's answer in Step 2. The Manager of Manufacturing or his representative shall meet with the representatives of the Union to attempt to resolve the grievance within five (5) working days following the presentation of the grievance. The Manager of Manufacturing or his representative shall submit his signed answer within three (3) working days after the date of such meeting.

'Step 4. If the grievance is not settled in Step 3, it shall be referred to the Personnel Manager, and/or his representatives, and the International representative and chairman of the grievance committee within five (5) working days after the Union has received the Step 3 answer. Within ten (10) working days after the grievance has been referred to Step 4, the above mentioned parties shall meet for the purpose of discussing such

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> grievance. Within five (5) working days following the meeting, the Company representatives shall submit their signed answer to the Union. The Union representatives shall signify their concurrence or nonconcurrence and affix their signatures to the grievance.
>
> 'Step 5. Grievances which have not been settled under the foregoing procedure may be referred to arbitration by notice in writing within ten (10) calendar days after the date of the Company's final answer in Step 4. Within five (5) days after receipt of referral to arbitration the parties shall select an impartial arbitrator.
>
> 'Should the parties be unable to agree upon an arbitrator, the selection shall be made by the Senior Judge of the U.S. Circuit Court of Appeals for the Tenth Circuit. The decision of the arbitrator shall be final and binding upon the Company, the Union, and any employee or employees involved. The expenses and fee of the arbitrator shall be divided equally between the Company and the Union. The arbitrator shall not amend, take away, add to, or change any of the provisions of this Agreement, and the arbitrator's decision must be based solely upon an interpretation of the provisions of this Agreement.
>
> 'Section 6. (a) No employee will be discharged, suspended or given a written warning notice except for just cause.
>
> '(g) Should it be determined that the employee has been unjustly suspended or discharged the Company shall reinstate the employee and pay full compensation at the employee's basic hourly rate or earned rate, whichever is the higher, for the time lost.'

The union processed petitioner's grievance through the above machinery. In the final pre-arbitration step, petitioner raised, apparently for the first time, the claim that his discharge resulted from racial discrimination. The company rejected all of petitioner's claims, and the grievance proceeded to arbitration. Prior to the arbitration hearing, however, petitioner filed a charge of racial discrimination with the Colorado Civil Rights Commission, which referred the complaint to the Equal Employment Opportunity Commission on November 5, 1969.

**1017 At the arbitration hearing on November 20, 1969, petitioner testified that his discharge was the result of racial discrimination and informed the arbitrator that he had filed a charge with the Colorado Commission because he 'could not rely on the union.' The union introduced a letter in which petitioner stated that he was 'knowledgeable that in the same plant others have scrapped an equal amount and sometimes in excess, but by all logical reasoning I . . . have been the target of preferential discriminatory treatment.' The union representative also testified that the company's usual practice was to transfer unsatisfactory trainee drill operators back to their former positions.

On December 30, 1969, the arbitrator ruled that petitioner had been 'discharged for just cause.' He made no reference to petitioner's claim of racial discrimination. *43 The arbitrator stated that the union had failed to produce evidence of a practice of transferring rather than discharging trainee drill operators who accumulated excessive scrap, but he suggested that the company and the union confer on whether such an arrangement was feasible in the present case.

On July 25, 1970, the Equal Employment Opportunity Commission determined that there was not reasonable cause to believe that a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. s 2000e et seq., had occurred. The Commission later notified petitioner of his right to institute a civil action in federal court within 30 days. Petitioner then filed the present action in the United States District Court for the District of Colorado, alleging that his discharge resulted from a racially discriminatory employment practice in violation of s 703(a)(1) of the Act, 42 U.S.C. s 2000e-2(a)(1).

The District Court granted respondent's motion for summary judgment and dismissed the action. 346 F.Supp. 1012 (1971). The court found that the claim of racial discrimination had been submitted to the arbitrator and resolved adversely to petitioner.[FN4] It then held that petitioner, having voluntarily elected to pursue his grievance to final arbitration under the nondiscrimination clause of the collective-bargaining agreement, was bound by the arbitral decision and thereby precluded from suing his employer under Title VII. The Court of Appeals for the Tenth Circuit af-

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firmed per curiam on the basis of the District Court's opinion. 466 F.2d 1209 (1972).

> FN4. In reaching this conclusion, the District Court relied on petitioner's deposition acknowledging that he had raised the racial discrimination claim during the arbitration hearing. 346 F.Supp., at 1014.

We granted petitioner's application for certiorari. 410 U.S. 925, 93 S.Ct. 1398, 35 L.Ed.2d 586 (1973). We reverse.

*44 II

[1] Congress enacted Title VII of the Civil Rights Act of 1964, 42 U.S.C. s 2000e et seq., to assure equality of employment opportunities by eliminating those practices and devices that discriminate on the basis of race, color, religion, sex, or national gin. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800, 93 S.Ct. 1817, 1823, 36 L.Ed.2d 668 (1973); Griggs v. Duke Power Co., 401 U.S. 424, 429-430, 91 S.Ct. 849, 852-853, 28 L.Ed.2d 158 (1971). Cooperation and voluntary compliance were selected as the preferred means for achieving this goal. To this end, Congress created the Equal Employment Opportunity Commission and established a procedure whereby existing state and local equal employment opportunity agencies, as well as the Commission, would have an opportunity to settle disputes through conference, conciliation, and persuasion before the aggrieved party was permitted to file a lawsuit. In the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103, Congress amended Title VII to provide the Commission with further authority to investigate individual charges of discrimination, to **1018 promote voluntary compliance with the requirements of Title VII, and to institute civil actions against employers or unions named in a discrimination charge.

[2] Even in its amended form, however, Title VII does not provide the Commission with direct powers of enforcement. The Commission cannot adjudicate claims or impose administrative sanctions. Rather, final responsibility for enforcement of Title VII is vested with federal courts. The Act authorizes courts to issue injunctive relief and to order such affirmative action as may be appropriate to remedy the effects of unlawful employment practices. 42 U.S.C. ss 2000e-5(f) and (g) (1970 ed., Supp. II). Courts retain these broad remedial powers despite a Commission finding of no reasonable cause to believe that the Act has been violated. McDonnell Douglas Corp. v. Green, supra, 411 U.S., at 798-799, 93 S.Ct., at 1822-1823. *45 Taken together, these provisions make plain that federal courts have been assigned plenary powers to secure compliance with Title VII.

In addition to reposing ultimate authority in federal courts, Congress gave private individuals a significant role in the enforcement process of Title VII. Individual grievants usually initiate the Commission's investigatory and conciliatory procedures. And although the 1972 amendment to Title VII empowers the Commission to bring its own actions, the private right of action remains an essential means of obtaining judicial enforcement of Title VII. 42 U.S.C. s 2000e-5(f)(1) (1970 ed., Supp. II). In such cases, the private litigant not only redresses his own injury but also vindicates the important congressional policy against discriminatory employment es. Hutchings v. United States Industries, Inc., 428 F.2d 303, 310 (CA5 1970); Bowe v. Colgate-Palmolive Co., 416 F.2d 711, 715 (CA7 1969); Jenkins v. United Gas Corp., 400 F.2d 28, 33 (CA5 1968). See also Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402, 88 S.Ct. 964, 966, 19 L.Ed.2d 1263 (1968).

Pursuant to this statutory scheme, petitioner initiated the present action for judicial consideration of his rights under Title VII. The District Court and the Court of Appeals held, however, that petitioner was bound by the prior arbitral decision and had no right to sue under Title VII.[FN5] Both courts evidently thought that this result was *46 dictated by notions of election of remedies and waiver and by the federal policy favoring arbitration of labor disputes, as enunciated by this Court in Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 77 S.Ct. 912, 923, 1 L.Ed.2d 972 (1957), and the Steelworkers trilogy[FN6] **1019 See also Boys Markets, Inc. v. Retail Clerks' Union, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970); Gateway Coal Co. v. United Mine Workers of America, 414 U.S. 368, 94 SCt. 629, 38 L.Ed.2d 583 (1974). *47 We disagree.

> FN5. The District Court recognized that a conflict of authorities existed on this issue but chose to rely on Dewey v. Reynolds

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Metals Co., 429 F.2d 324, 332 (CA6 1970), affirmed by an equally divided Court, 402 U.S. 689, 91 S.Ct. 2186, 29 L.Ed.2d 267 (1971). There, the Sixth Circuit held that prior submission of an employee's claim to arbitration under a collective-bargaining agreement precluded a later suit under Title VII. The Sixth Circuit appears to have since retreated in part from Dewey by suggesting that there is no preclusion where both arbitration and 'court or agency processes' are pursued simultaneously. See Spann v. Kaywood Division, Joanna Western Mills Co., 446 F.2d 120, 122 (CA6 1971). The Fifth, Seventh, and Ninth Circuits have squarely rejected a preclusion rule. See Hutchings v. United States Industries, Inc., 428 F.2d 303 (CA5 1970); Bowe v. Colgate-Palmolive Co., 416 F.2d 711 (CA7 1969); Oubichon v. North American Rockwell Corp., 482 F.2d 569 (CA9 1973).

FN6. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960). In Texile Workers Union v. Lincoln Mills, 353 U.S. 448, 77 S.Ct. 912, 923, 1 L.Ed.2d 972 (1957), this Court held that a grievance-arbitration provision of a collective-bargaining agreement could be enforced against unions and employers under s 301 of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C. s 185. The Court noted that the congressional policy, as embodied in s 203(d) of the LMRA, 61 Stat. 154, 29 U.S.C. s 173(d), was to promote industrial peace and that the grievance-arbitration provision of a collective agreement was a major factor in achieving this goal. 353 U.S., at 455, 77 S.Ct., at 917. In the Steelworkers trilogy, the Court further advanced this policy by declaring that an order to arbitrate will not be denied 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.' United Steelworkers of America v. Warrior & Gulf Navigation Co., supra, 363 U.S., at 582-583, 80 S.Ct., at 1353. The Court also stated that 'so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.' United Steelworkers of America v. Enterprise Wheel & Car Corp., supra, 363 U.S., at 599, 80 S.Ct., at 1362. And in Republic Steel Corp. v. Maddox, 379 U.S. 650, 85 S.Ct. 614, 13 L.Ed.2d 580 (1965), the Court held that grievance-arbitration procedures of acollective-bargaining agreement must be exhausted before an employee may file suit to enforce contractual rights.

For the reasons stated in Parts III, IV, and V of this opinion, we hold that the federal policy favoring arbitration does not establish that an arbitrator's resolution of a contractual claim is dispositive of a statutory claim under Title VII.

III

Title VII does not speak expressly to the relationship between federal courts and the grievance-arbitration machinery of collective-bargaining agreements. It does, however, vest federal courts with plenary powers to enforce the statutory requirements; and it specifies with precision the jurisdictional prerequisites that an individual must satisfy before he is entitled to institute a lawsuit. In the present case, these prerequisites were met when petitioner (1) filed timely a charge of employment discrimination with the Commission, and (2) received and acted upon the Commission's statutory notice of the right to sue. 42 U.S.C. s 2000e-5(b), (e), and (f). See McDonnell Douglas Corp. v. Green, supra, 411 U.S., at 798, 93 S.Ct., at 1822. There is no suggestion in the statutory scheme that a prior arbitral decision either forecloses an individual's right to sue or divests federal courts of jurisdiction.

[3][4][5] In addition, legislative enactments in this area have long evinced a general intent to accord parallel or overlapping remedies against discrimination.[FN7] In the Civil Rights Act of 1964, 42 U.S.C. s 2000a et seq., Congress indicated that it considered the policy against discrimination to be of the 'highest

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priority.' Newman v. Piggie Park Enterprises, Inc., supra, 390 U.S., at 402, 88 S.Ct. at 966. Consistent with this view, Title VII provides for consideration of employment-discrimination claims in several forums. See 42 U.S.C. s 2000e-5(b) (1970 ed., Supp. II) (EEOC); 42 U.S.C. s 2000e-5(c) (1970 ed., Supp. II) (state and local agencies); 42 U.S.C. s 2000e-5(f) (1970 ed., Supp. II) (federal courts). And, in general, submission of a *48 claim to one forum does not preclude a later submission to another.[FN8] Moreover, the legislative history of Title VII manifests a congressional intent to allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes.[FN9] **1020 The clear inference is that Title VII was designed to supplement rather than supplant, existing laws and institutions relating*49 to employment discrimination. In sum, Title VII's purpose and procedures strongly suggest that an individual does not forfeit his private cause of action if he first pursues his grievance to final arbitration under the nondiscrimination clause of a collective-bargaining agreement.

FN7. See, e.g., 42 U.S.C. s 1981 (Civil Rights Act of 1866); 42 U.S.C. s 1983 (Civil Rights Act of 1871).

FN8. For example, Commission action is not barred by 'findings and orders' of state or local agencies. See 42 U.S.C. s 2000e-5(b) (1970 ed., Supp. II). Similarly, an individual's cause of action is not barred by a Commission finding of no reasonable cause to believe that the Act has been violated. See 42 U.S.C. s 2000e-5(f) (1970 ed., Supp. II); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

FN9. For example, Senator Joseph Clark, one of the sponsors of the bill, introduced an interpretive memorandum which stated: 'Nothing in title VII or anywhere else in this bill affects rights and obligations under the NLRA and the Railway Labor Act. . . . (T)itle VII is not intended to and does not deny to any individual, rights and remedies which he may pursue under other Federal and State statutes. If a given action should violate both title VII and the National Labor Relations Act, the National Labor Relations Board would not be deprived of jurisdiction.' 110 Cong.Rec. 7207 (1964). Moreover, the Senate defeated an amendment which would have made Title VII the exclusive federal remedy for most unlawful employment practices. 110 Cong.Rec. 13650-13652 (1964). And a similar amendment was rejected in connection with the Equal Employment Opportunity Act of 1972. See H.R. 9247, 92d Cong., 1st Sess. (1971); H.R.Rep.No.92-238 (1971). See also 2 U.S.Code Cong. & Admin.News, 92d Cong., 2d Sess., 2137, 2179, 2181-2182 (1972). The report of the Senate Committee responsible for the 1972 Act explained that the 'provisions regarding the individual's right to sue under title VII, nor any of the other provisions of this bill, are meant to affect existing rights granted under other laws.' S.Rep.No.92-415, p. 24 (1971). For a detailed discussion of the legislative history of the 1972 Act, see Sape & Hart. Title VII Reconsidered: The Equal Opportunity Act of 1972, 40 Geo.Wash.L.Rev. 824 (1972).

[6][7] In reaching the opposite conclusion, the District Court relied in part on the doctrine of election of remedies.[FN10] That doctrine, which refers to situations where an individual pursues remedies that are legally or factually inconsistent,[FN11] has no application in the present context. In submitting his grievance to arbitration, an employee seeks to vindicate his contractual right under a collective-bargaining agreement. By contrast, in filing a lawsuit under Title VII, an employee asserts independent statutory*50 rights accorded by Congress. The distinctly separate nature of these contractual and statutory rights is not vitiated merely because both were violated as a result of the same factual occurrence. And certainly no inconsistency results from permitting both rights to be enforced in their respectively appropriate forums. The resulting scheme is somewhat analogous to the procedure under the National Labor Relations Act, as amended,[FN12] where disputed transactions may implicate both contractual and statutory rights. Where the statutory right underlying a particular claim may not be abridged by contractual agreement, the Court has recognized that consideration of the claim by the arbitrator as a contractual dispute under the collective-bargaining agreement does not preclude subsequent consideration of the claim by the National Labor Relations Board as an unfair labor practice charge or

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as a petition for clarification of the union's representation certificate **1021 under the Act. Carey v. Westinghouse Electric Corp.,375 U.S. 261, 84 S.Ct. 401, 11 L.Ed.2d 320 (1964).[FN13] Cf. Smith v. Evening News Assn., 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962). There, as here, the relationship between the forums is complementary since consideration of the claim by both forums may promote the policies underlying*51 each. Thus, the rationale behind the election-of-remedies doctrine cannot support the decision below.[FN14]

FN10. The District Court adopted the reasoning of the Sixth Circuit in Dewey v. Reynolds Metals Co., 429 F.2d, at 332, affirmed by an equally divided Court, 402 U.S. 689, 91 S.Ct. 2186, 29 L.Ed.2d 267 (1971), which was apparently based in part on the doctrine of election of remedies. See n. 5, supra. The Sixth Circuit, however, later described Dewey as resting instead on the doctrine of equitable estoppel and on 'themes of res judicata and collateral estoppel.' Newman v. Avco Corp., 451 F.2d 743, 747 in n. 1 (CA6 1971). Whatever doctrinal label is used, the essence of these holdings remains the same. The policy reasons for rejecting the doctrines of election of remedies and waiver in the context of Title VII are equally applicable to the doctrines of res judicata and collateral estoppel.

FN11. See generally 5A A. Corbin, Contracts ss 1214-1227 (1971 ed.). Most courts have recognized that the doctrine of election of remedies does not apply to suits under Title VII. See, e.g., Bowe v. Colgate-Palmolive Co., 416 F.2d, at 714-715; Hutchings v. United States Industries, Inc., 428 F.2d, at 314; Macklin v. Spector Freight Systems, Inc., 156 U.S.App.D.C. 69, 478 F.2d 979, 990-991 (1973); Voutsis v. Union Carbide Corp., 452 F.2d 889, 893-894 (CA2 1971), cert. denied, 406 U.S. 918, 92 S.Ct. 1768, 32 L.Ed.2d 117 (1972); Newman v. Avco Corp., supra, 451 F.2d, at 746 n. 1; Oubichon v. North American Rockwell Corp., 482 F.2d, at 572-573.

FN12. 61 Stat. 136, 29 U.S.C. s 151 et seq.

FN13. As the Court noted in Carey:

'By allowing the dispute to go to arbitration . . . those conciliatory measures which Congress deemed vital to 'industrial peace' . . . and which may be dispositive of the entire dispute, are encouraged. The superior authority of the Board may be invoked at any time. Meanwhile the therapy of arbitration is brought to bear in a complicated and troubled area.' 375 U.S., at 272, 84 S.Ct., at 409.

Should disagreements arise between the Board and the arbitrator, the Board's ruling would, of course, take precedence as to those issues within its jurisdiction. Ibid.

FN14. Nor can it be maintained that election of remedies is required by the possibility of unjust enrichment through duplicative recoveries. Where, as here, the employer has prevailed at arbitration, there, of course, can be no duplicative recovery. But even in cases where the employee has first prevailed, judicial relief can be structured to avoid such windfall gains. See, e.g., Oubichon v. North American Rockwell Corp., supra; Bowe v. Colgate-Palmolive Co., supra. Furthermore, if the relief obtained by the employee at arbitration were fully equivalent to that obtainable under Title VII, there would be no further relief for the court to grant and hence no need for the employee to institute suit.

[8][9][10] We are also unable to accept the proposition that petitioner waived his cause of action under Title VII. To begin, we think it clear that there can be no prospective waiver of an employee's rights under Title VII. It is true, of course, that a union may waive certain statutory rights related to collective activity, such as the right to strike. Mastro Plastics Corp. v. NLRB, 350 U.S. 270, 76 S.Ct. 349, 100 L.Ed. 309 (1956); Boys Markets, Inc. v. Retail Clerk's Union, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970). These rights are conferred on employees collectively to foster the processes of bargaining and properly may be exercised or relinquished by the union as collective-bargaining agent to obtain economic benefits for union members. Title VII, on the other hand, stands on plainly different ground; it concerns not majoritarian processes, but an individual's right to equal employ-

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ment opportunities. Title VII's strictures are absolute and represent a congressional command that each employee be free from discriminatory practices. Of necessity, the rights conferred can form no part of the collective-bargaining process since waiver of these rights would defeat the paramount congressional purpose behind Title VII. In these circumstances, an employee's rights under Title VII are not susceptible of ***52** prospective waiver. See Wilko v. Swan, 346 U.S. 427, 74 S.Ct. 182, 98 L.Ed. 168 (1953).

[11][12] The actual submission of petitioner's grievance to arbitration in the present case does not alter the situation. Although presumably an employee may waive his cause of action under Title VII as part of a voluntary settlement,[FN15] mere resort to the arbitral forum to enforce contractual rights constitutes no such waiver. Since an employee's rights under Title VII may not be waived prospectively, existing contractual rights and remedies against discrimination must result from other concessions already made by the union as part of the economic bargain struck ****1022** with the employer. It is settled law that no additional concession may be exacted from any employee as the price for enforcing those rights. J. I. Case Co. v. NLRB, 321 U.S. 332, 338-339, 64 S.Ct. 576, 580-581, 88 L.Ed. 762 (1944).

> FN15. In this case petitioner and respondent did not enter into a voluntary settlement expressly conditioned on a waiver of petitioner's cause of action under Title VII. In determining the effectiveness of any such waiver, a court would have to determine at the outset that the employee's consent to the settlement was voluntary and knowing. In no event can the submission to arbitration of a claim under the nondiscrimination clause of a collective-bargaining agreement constitute a binding waiver with respect to an employee's rights under Title VII.

[13][14][15] Moreover, a contractual right to submit a claim to arbitration is not displaced simply because Congress also has provided a statutory right against discrimination. Both rights have legally independent origins and are equally available to the aggrieved employee. This point becomes apparent through consideration of the role of the arbitrator in the system of industrial self-government.[FN16] ***53** As the proctor of the bargain, the arbitrator's task is to effectuate the intent of the parties. His source of authority is the collective-bargaining agreement, and he must interpret and apply that agreement in accordance with the 'industrial common law of the shop' and the various needs and desires of the parties. The arbitrator, however, has no general authority to invoke public laws that conflict with the bargain between the parties:

> FN16. See Meltzer, Labor Arbitration and Overlapping and Conflicting Remedies for Employment Discrimination, 39 U.Chi.L.Rev. 30, 32-35 (1971); Meltzer, Ruminations About Ideology, Law, and Labor Arbitration, 34 U.Chi.L.Rev. 545 (1967). As the late Dean Shulman stated:
>
> 'A proper conception of the arbitrator's function is basic. He is not a public tribunal imposed upon the parties by superior authority which the parties are obliged to accept. He has no general charter to administer justice for a community which transcends the parties. He is rather part of a system of self-government created by and confined to the parties. He serves their pleasure only, to administer the rule of law established by their collective agreement.' Shulman, Reason, Contract, and Law in Labor Relations, 68 Harv.L.Rev. 999, 1016 (1955).

'(A)n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.' United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597, 80 S.Ct. 1358, 1361, 4 L.Ed.2d 1424 (1960).

If an arbitral decision is based 'solely upon the arbitrator's view of the requirements of enacted legislation,' rather than on an interpretation of the collective-bargaining agreement, the arbitrator has 'exceeded the scope of the submission,' and the award will not be enforced. Ibid. Thus the arbitrator has authority to resolve only questions***54** of contractual rights, and this authority remains regardless of whether certain contractual rights are similar to, or

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duplicative of, the substantive rights secured by Title VII.

IV

[16] The District Court and the Court of Appeals reasoned that to permit an employee to have his claim considered in both the arbitral and judicial forums would be unfair since this would mean that the employer, but not the employee, was bound by the arbitral award. In the District Court's words, it could not 'accept a philosophy which gives the employee two strings to his bow when the employer has only one.' 346 F.Supp., at 1019. This argument mistakes the effect of Title VII. Under the Steelworkers trilogy, an arbitral decision is final and binding on the employer and employee, and judicial review is limited as to both. But in instituting an action under Title VII, the employee is not seeking review of the arbitrator's decision. Rather, he is asserting a statutory right independent of the arbitration process. An employer does not have 'two strings to his bow' with respect to an arbitral decision for the simple reason that Title VII does not provide**1023 employers with a cause of action against employees. An employer cannot be the victim of discriminatory employment practices. Oubichon v. North American Rockwell Corp., 482 F.2d 569, 573 (CA9 1973).

[17] The District Court and the Court of Appeals also thought that to permit a later resort to the judicial forum would undermine substantially the employer's incentive to arbitrate and would 'sound the death knell for arbitration clauses in labor contracts.' 346 F.Supp., at 1019. Again, we disagree. The primary incentive for an employer to enter into an arbitration agreement is the union's reciprocal promise not to strike. As the *55 Court stated in Boys Markets, Inc. v. Retail Clerk's Union, 398 U.S., at 248, 90 S.Ct., at 1591, a no-strike obligation, express or implied, is the quid pro quo for an undertaking by the employer to submit grievance disputes to the process of arbitration.' It is not unreasonable to assume that most employers will regard the benefits derived from a no-strike pledge as outweighing whatever costs may result from according employees an arbitral remedy against discrimination in addition to their judicial remedy under Title VII. Indeed, the severe consequences of a strike may make an arbitration clause almost essential from both the employees' and the employer's perspective. Moreover, the grievance-arbitration machinery of the collective-bargaining agreement remains a relatively inexpensive and expeditious means for resolving a wide range of disputes, including claims of discriminatory employment practices. Where the collective-bargaining agreement contains a nondiscriination clause similar to Title VII, and where arbitral procedures are fair and regular, arbitration may well produce a settlement satisfactory to both employer and employee. An employer thus has an incentive to make available the conciliatory and therapeutic processes of arbitration which may satisfy an employee's perceived need to resort to the judicial forum, thus saving the employer the expense and aggravation associated with a lawsuit. For similar reasons, the employee also has a strong incentive to arbitrate grievances, and arbitration may often eliminate those misunderstandings or discriminatory practices that might otherwise precipitate resort to the judicial forum.

V

[18] Respondent contends that even if a preclusion rule is not adopted, federal courts should defer to arbitral decisions on discrimination claims where: (i) the claim *56 was before the arbitrator; (ii) the collective-bargaining agreement prohibited the form of discrimination charged in the suit under Title VII; and (iii) the arbitrator has authority to rule on the claim and to fashion a remedy.[FN17] Under respondent's proposed rule, a court would grant summary judgment and dismiss the employee's action if the above conditions were met. The rule's obvious consequence in the present case would be to deprive the petitioner of his statutory right to attempt to establish his claim in a federal court.

> FN17. Brief for Respondent 37. Respondent's proposed rule is analogous to the NLRB's policy of deferring to arbitral decisions on statutory issues in certain cases. See Spielberg Mfg. Co., 112 N.L.R.B. 1080, 1082 (1955).

At the outset, it is apparent that a deferral rule would be subject to many of the objections applicable to a preclusion rule. The purpose and procedures of Title VII indicate that Congress intended federal courts to exercise final responsibility for enforcement of Title VII; deferral to arbitral decisions would be inconsistent with that goal. Furthermore, we have long recognized that 'the choice of forums inevitably affects the

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scope of the substantive right to be vindicated.' U.S. Bulk Carriers v. Arguelles, 400 U.S. 351, 359-360, 91 S.Ct. 409, 413-414, 27 L.Ed.2d 456 (1971) (Harlan, J., concurring). Respondent's deferral rule is necessarily premised on the assumption ****1024** that arbitral processes are commensurate with judicial processes and that Congress impliedly intended federal courts to defer to arbitral decisions on Title VII issues. We deem this supposition unlikely.

[19] Arbitral procedures, while well suited to the resolution of contractual disputes, make arbitration a comparatively inappropriate forum for the final resolution of rights created by Title VII. This conclusion rests first on the special role of the arbitrator, whose task is to effectuate the intent of the parties rather than the ***57** requirements of enacted legislation. Where the collective-bargaining agreement conflicts with Title VII, the arbitrator must follow the agreement. To be sure, the tension between contractual and statutory objectives may be mitigated where a collective-bargaining agreement contains provisions facially similar to those of Title VII. But other facts may still render arbitral processes comparatively inferior to judicial processes in the protection of Title VII rights. Among these is the fact that the specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581-583, 80 S.Ct. 1347, 1352-1353, 4 L.Ed.2d 1409 (1960).[FN18] Parties usually choose an arbitrator because they trust his knowledge and judgment concerning the demands and norms of industrial relations. On the other hand, the resolution of statutory or constitutional issues is a primary responsibility of courts, and judicial construction has proved especially necessary with respect to Title VII, whose broad language frequently can be given meaning only by reference to public law concepts.

> FN18. See also Gould, Labor Arbitration of Grievances Involving Racial Discrimination, 118 U.Pa.L.Rev. 40, 47-48 (1969); Platt, The Relationship between Arbitration and Title VII of the Civil Rights Act of 1964, 3 Ga.L.Rev. 398 (1969). Significantly, a substantial proportion of labor arbitrators are not lawyers. See Note, The NLRB and Deference to Arbitration, 77 Yale L.J. 1191, 1194 n. 28 (1968). This is not to suggest, of course, that arbitrators do not possess a high degree of competence with respect to the vital role in implementing the federal policy favoring arbitration of labor disputes.

Moreover, the factfinding process in arbitration usually is not equivalent to judicial factufinding. The record of the arbitration proceedings is not as complete; the usual rules of evidence do not apply; and rights and procedures common to civil trials, such as discovery, compulsory process, cross-examination, and testimony under ***58** oath, are often severely limited or unavailable. See Bernhardt v. Polygraphic Co., 350 U.S. 198, 203, 76 S.Ct. 273, 276, 100 L.Ed. 199 (1956); Wilko v. Swan, 346 U.S., at 435-437, 74 S.Ct., at 186-188. And as this Court has recognized, '(a)rbitrators have no obligation to the court to give their reasons for an award.' United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S., at 598, 80 S.Ct., at 1361. Indeed, it is the informality of arbitral procedure that enables it to function as an efficient, inexpensive, and expeditious means for dispute resolution. This same characteristic, however, makes arbitration a less appropriate forum for final resolution of Title VII issues than the federal courts.[FN19]

> FN19. A further concern is the union's exclusive control over the manner and extent to which an individual grievance is presented. See Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967); Republic Steel Corp. v. Maddox, 379 U.S. 650, 85 S.Ct. 614, 13 L.Ed.2d 580 (1965). In arbitration, as in the collective-bargaining process, the interests of the individual employee may be subordinated to the collective intersts of all employees in the bargaining unit. See J. I. Case Co. v. NLRB, 321 U.S. 332, 64 S.Ct. 576, 88 L.Ed. 762 (1944). Moreover, harmony of interest between the union and the individual employee cannot always be presumed, especially where a claim of racial discrimination is made. See, e.g., Steele v. Louisville & N.R. Co., 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173 (1944); Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210, 65 S.Ct. 235, 89 L.Ed. 187 (1944). And a breach of the union's duty of fair representation may prove difficult to establish. See Vaca v. Sipes, supra; Humphrey v. Moore, 375 U.S. 335, 342, 348-351, 84 S.Ct. 363, 367,

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371-373, 11 L.Ed.2d 370 (1964). In this respect, it is noteworthy that Congress thought it necessary to afford the protections of Title VII against unions as well as employers. See 42 U.S.C. s 2000e-2(c).

**1025 It is evident that respondent's proposed rule would not allay these concerns. Nor are we convinced that the solution lies in applying a more demanding deferral standard, such as that adopted by the Fifth Circuit in Rios v. Reynolds Metals Co., 467 F.2d 54 (1972).[FN20] As *59 respondent points out, a standard that adequately insured effectuation of Title VII rights in the arbitral forum would tend to make arbitration a procedurally complex, expensive, and time-consuming process. And judicial enforcement of such a standard would almost require courts to make denovo determinations of the employees' claims. It is uncertain whether any minimal savings in judicial time and expense would justify the risk to vindication of Title VII rights.

FN20. In Rios, the court set forth the following deferral standard: 'First, there may be no deference to the decision of the arbitrator unless the contractual right coincides with rights under Title VII. Second, it must be plain that the arbitrator's decision is in no way violative of the private rights guaranteed by Title VII, nor of the public policy which inheres in Title VII. In addition, before deferring, the district court must be satisfied that (1) the factual issues before it are identical to those decided by the arbitrator; (2) the arbitrator had power under the collective agreement to decide the ultimate issue of discrimination; (3) the evidence presented at the arbitral hearing dealt adequately with all factual issues; (4) the arbitrator actually decided the factual issues presented to the court;(5) the arbitration proceeding was fair and regular and free of procedural infirmities. The burden of proof in establishing these conditions of limitation will be upon the respondent s distinguished from the claimant.' 467 F.2d, at 58.

For a discussion of the problems posed by application of the Rios standard, see Note, Judicial Deference to Arbitrators' Decisions in Title VII Cases, 26 Stan.L.Rev. 421 (1974).

A deferral rule also might adversely affect the arbitration system as well as the enforcement scheme of Title VII. Fearing that the arbitral forum cannot adequately protect their rights under Title VII, some employees may elect to bypass arbitration and institute a lawsuit. The possibility of voluntary compliance or settlement of Title VII claims would thus be reduced, and the result could well be more litigation, not less.

[20][21][22] We think, therefore, that the federal policy favoring arbitration of labor disputes and the federal policy against discriminatory employment practices can best be accommodated by permitting an employee to pursue fully both his remedy under the grievance-arbitration clause *60 of a collective-bargaining agreement and his cause of action undeR titlE VII. the federal court should consider the employee's claim de novo. The arbitral decision may be admitted as evidence and accorded such weight as the court deems appropriate.[FN21]

FN21. We adopt no standards as to the weight to be accorded an arbitral decision, since this must be determined in the court's discretion with regard to the facts and circumstances of each case. Relevant factors include the existence of provisions in the collective-bargaining agreement that conform substantially with Title VII, the degree of procedural fairness in the arbitral forum, adequacy of the record with respect to the issue of discrimination, and the special competence of particular arbitrators. Where an arbitral determination gives full consideration to an employee's Title VII rights, a court may properly accord it great weight. This is especially true where the issue is solely one of fact, specifically addressed by the parties and decided by the arbitrator on the basis of an adequate record. But courts should ever the mindful that Congress, in enacting Title VII, thought it necessary to provide a judicial forum for the ultimate resolution of discriminatory employment claims. It is the duty of courts to assure the full availability of this forum.

The judgment of the Court of Appeals is reversed.

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Reversed.

U.S.Colo. 1974.
Alexander v. Gardner-Denver Co.
415 U.S. 36, 94 S.Ct. 1011, 7 Fair Empl.Prac.Cas.
(BNA) 81, 7 Empl. Prac. Dec. P 9148, 39 L.Ed.2d 147

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Supreme Court of the United States
James ALEXANDER, Director, Alabama Department of Public Safety, et al., Petitioners,
v.
Martha SANDOVAL, Individually and on Behalf of All Others Similarly Situated, et al.
No. 99-1908.

Argued Jan. 16, 2001.
Decided April 24, 2001.

Driver's license applicant brought class action under Title VI, which prohibits discrimination in covered programs and activities, challenging Alabama Department of Public Safety's official policy of administering its driver's license examination only in the English language as violative of federal regulations forbidding funding recipients from using methods that have the effect of discriminating. The United States District Court for the Middle District of Alabama, No. CV-96-D-1875-N, Ira DeMent, J., 7 F.Supp.2d 1234, enjoined English-only policy. The United States Court of Appeals for the Eleventh Circuit, 197 F.3d 484, affirmed. Director of Department petitioned for certiorari. The Supreme Court, Justice Scalia, held that there is no private right of action to enforce disparate-impact regulations promulgated under Title VI of Civil Rights Act of 1964.

Reversed.

Justice Stevens filed dissenting opinion, in which Justices Souter, Ginsburg, and Breyer joined.

West Headnotes

[1] Civil Rights 78 1330(1)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(1) k. In general. Most Cited Cases
(Formerly 78k200)

Civil Rights 78 1450

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1450 k. In general. Most Cited Cases
(Formerly 78k1456, 78k262.1)

Civil Rights 78 1460

78 Civil Rights
78III Federal Remedies in General
78k1458 Monetary Relief in General
78k1460 k. Availability in general. Most Cited Cases
(Formerly 78k269.1)
Private individuals may sue to enforce Section 601 of Title VI prohibiting discrimination in covered programs and activities and obtain both injunctive relief and damages. Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d.

[2] Civil Rights 78 1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly assisted programs. Most Cited Cases
(Formerly 78k126)
Section 601 of Title VI, providing that no person shall be subjected to discrimination under any covered program or activity on basis of race, color, or national origin, prohibits only intentional discrimination. Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d.

[3] Civil Rights 78 1330(1)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(1) k. In general. Most Cited Cases
(Formerly 78k200)
Regulations applying ban on intentional discrimination in Section 601 of Title VI of Civil Rights Act of

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1964, if valid and reasonable, come within private cause of action to enforce that statute. Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d.

[4] Civil Rights 78 ⚿1330(1)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(1) k. In general. Most Cited Cases
(Formerly 78k200)
Private right of action to enforce Section 601 of Title VI of Civil Rights Act of 1964 prohibiting intentional discrimination in covered programs and activities does not include a private right of action to enforce disparate-impact regulations promulgated under Title VI; disparate-impact regulations forbid conduct that is not prohibited by Section 601 proscription against intentional discrimination. Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d.

[5] Action 13 ⚿3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory rights of action. Most Cited Cases
Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress.

[6] Action 13 ⚿3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory rights of action. Most Cited Cases
Statutory intent is determinative in deciding whether statute creates not just private right but also private remedy.

[7] Action 13 ⚿3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory rights of action. Most Cited Cases
Without statutory intent, a cause of action does not exist on basis of a statute, and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.

[8] Action 13 ⚿3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory rights of action. Most Cited Cases
In determining whether statutes create private rights of action, as in interpreting statutes generally, legal context matters only to the extent it clarifies text.

[9] Action 13 ⚿3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory rights of action. Most Cited Cases
Statutes that focus on the person regulated rather than the individuals protected create no implication of an intent to confer rights on a particular class of persons.

[10] Civil Rights 78 ⚿1330(1)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(1) k. In general. Most Cited Cases
(Formerly 78k200)
Section 602 of Title VI of Civil Rights Act of 1964 which limits federal agencies to effectuating rights created by Title VI through rules, regulations and orders, which is devoid of "rights-creating" language, which focuses neither on individuals protected nor on funding recipients, but on regulating agencies, and which expressly provides for and places restrictions on agency enforcement, does not evidence congressional intent to create privately enforceable rights through section itself. Civil Rights Act of 1964, § 602, 42 U.S.C.A. § 2000d-1.

[11] Administrative Law and Procedure 15A ⚿387

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative

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Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak385 Power to Make
15Ak387 k. Statutory limitation. Most Cited Cases
Language in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not.

[12] Statutes 361 ⚷220

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k220 k. Legislative construction. Most Cited Cases
When Congress has not comprehensively revised a statutory scheme but has made only isolated amendments, it is impossible to assert with any degree of assurance that congressional failure to act represents affirmative congressional approval of the Supreme Court's statutory interpretation.

[13] Civil Rights 78 ⚷1330(1)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(1) k. In general. Most Cited Cases
(Formerly 78k200)
There is no private right of action to enforce disparate-impact regulations promulgated under Title VI of Civil Rights Act of 1964. Civil Rights Act of 1964, §§ 601, 602, 42 U.S.C.A. §§ 2000d, 2000d-1.

****1513** Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

***275** As a recipient of federal financial assistance, the Alabama Department of Public Safety (Department), of which petitioner Alexander is the director, is subject to Title VI of the Civil Rights Act of 1964. Section 601 of that title prohibits discrimination based on race, color, or national origin in covered programs and activities. Section 602 authorizes federal agencies to effectuate § 601 by issuing regulations, and the Department of Justice (DOJ) in an exercise of this authority promulgated a regulation forbidding funding recipients to utilize criteria or administrative methods having the effect of subjecting individuals to discrimination based on the prohibited grounds. Respondent Sandoval brought this class action to enjoin the Department's decision to administer state driver's license examinations only in English, arguing that it violated the DOJ regulation because it had the effect of subjecting non-English speakers to discrimination based on their national origin. Agreeing, the District Court enjoined the policy and ordered the Department to accommodate non-English speakers. The Eleventh Circuit affirmed. Both courts rejected petitioners' argument that Title VI did not provide respondents a cause of action to enforce the regulation.

Held: There is no private right of action to enforce disparate-impact regulations promulgated under Title VI. Pp. 1515-1523.

(a) Three aspects of Title VI must be taken as given. First, private individuals may sue to enforce § 601. See, *e.g.*, *Cannon v. University of Chicago*, 441 U.S. 677, 694, 696, 699, 703, 710-711, 99 S.Ct. 1946, 60 L.Ed.2d 560. Second, § 601 prohibits only intentional discrimination. See, *e.g.*, *Alexander v. Choate*, 469 U.S. 287, 293, 105 S.Ct. 712, 83 L.Ed.2d 661. Third, it must be assumed for purposes of deciding this case that regulations promulgated under § 602 may validly proscribe activities that have a disparate impact on racial groups, even though such activities are permissible under § 601. Pp. 1515-1517.

(b) This Court has not, however, held that Title VI disparate-impact regulations may be enforced through a private right of action. *Cannon* was decided on the assumption that the respondent there had intentionally***276** discriminated against the petitioner, see 441 U.S., at 680, 99 S.Ct. 1946. In *Guardians Assn. v. Civil Serv. Comm'n of New York City*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866, the Court ****1514** *held* that private individuals could not recover compensatory damages under Title VI except for intentional discrimination. Of the five Justices who also voted to uphold disparate-impact regulations, three

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expressly reserved the question of a direct private right of action to enforce them, *id.*, at 645, n. 18, 103 S.Ct. 3221. Pp. 1517-1518.

(c) Nor does it follow from the three points taken as given that Congress must have intended such a private right of action. There is no doubt that regulations applying § 601's ban on intentional discrimination are covered by the cause of action to enforce that section. But the disparate-impact regulations do not simply apply § 601-since they forbid conduct that § 601 permits-and thus the private right of action to enforce § 601 does not include a private right to enforce these regulations. See *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 173, 114 S.Ct. 1439, 128 L.Ed.2d 119. That right must come, if at all, from the independent force of § 602. Pp. 1518-1519.

(d) Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress. *Touche Ross & Co. v. Redington*, 442 U.S. 560, 578, 99 S.Ct. 2479, 61 L.Ed.2d 82. This Court will not revert to the understanding of private causes of action, represented by *J.I. Case Co. v. Borak*, 377 U.S. 426, 433, 84 S.Ct. 1555, 12 L.Ed.2d 423, that held sway when Title VI was enacted. That understanding was abandoned in *Cort v. Ash*, 422 U.S. 66, 78, 95 S.Ct. 2080, 45 L.Ed.2d 26. Nor does the Court agree with the Government's contention that cases interpreting statutes enacted prior to *Cort v. Ash* have given dispositive weight to the expectations that the enacting Congress had formed in light of the contemporary legal context. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 378-379, 102 S.Ct. 1825, 72 L.Ed.2d 182; *Cannon, supra*, at 698-699, 99 S.Ct. 1946; and *Thompson v. Thompson*, 484 U.S. 174, 108 S.Ct. 513, 98 L.Ed.2d 512, distinguished. Pp. 1519-1520.

(e) The search for Congress's intent in this case begins and ends with Title VI's text and structure. The "rights-creating" language so critical to *Cannon's* § 601 analysis, 441 U.S., at 690, n. 13, 99 S.Ct. 1946, is completely absent from § 602. Whereas § 601 decrees that "[n]o person ... shall ... be subjected to discrimination," § 602 limits federal agencies to "effectuat[ing]" rights created by § 601. And § 602 focuses neither on the individuals protected nor even on the funding recipients being regulated, but on the regulating agencies. Hence, there is far less reason to infer a private remedy in favor of individual persons, *Cannon, supra*, at 690-691, 99 S.Ct. 1946. The methods § 602 expressly provides for enforcing its regulations, which place elaborate restrictions on agency enforcement, also suggest a congressional intent not to create a private remedy through ***277** § 602. See, *e.g.*, *Karahalios v. Federal Employees*, 489 U.S. 527, 533, 109 S.Ct. 1282, 103 L.Ed.2d 539. Pp. 1520-1522.

(f) The Court rejects arguments that the regulations at issue contain rights-creating language and so must be privately enforceable; that amendments to Title VI in § 1003 of the Rehabilitation Act Amendments of 1986 and § 6 of the Civil Rights Restoration Act of 1987 "ratified" decisions finding an implied private right of action to enforce the regulations; and that the congressional intent to create a right of action must be inferred under *Curran, supra*, at 353, 381-382, 102 S.Ct. 1825. Pp. 1522-1523.

197 F.3d 484, reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined, *post*, p. 1523. ****1515** Jeffrey S. Sutton, Columbus, OH, for petitioners.

Eric P. Schnapper, Seattle, WA, for private respondents.

Seth P. Waxman, Washington, DC, for United States as respondent under this Court's Rule 12.6.

For U.S. Supreme Court briefs, see:2000 WL 1708208 (Pet.Brief)2000 WL 1846063 (Resp.Brief)2000 WL 1846068 (Resp.Brief)2000 WL 1911423 (Reply.Brief)

***278** Justice SCALIA delivered the opinion of the Court.

This case presents the question whether private individuals may sue to enforce disparate-impact regulations promulgated under Title VI of the Civil Rights Act of 1964.

I

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The Alabama Department of Public Safety (Department), of which petitioner James Alexander is the director, accepted grants of financial assistance from the United States Department of Justice (DOJ) and Department of Transportation (DOT) and so subjected itself to the restrictions of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, as amended, 42 U.S.C. § 2000d *et seq.* Section 601 of that Title provides that no person shall, "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity" covered by Title VI. 42 U.S.C. § 2000d. Section 602 authorizes federal agencies "to effectuate the provisions of [§ 601] ... by issuing rules, regulations, or orders of general applicability," 42 U.S.C. § 2000d-1, and the DOJ in an exercise of this authority promulgated a regulation forbidding funding recipients to "utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin ...." 28 CFR § 42.104(b)(2) (2000). See also 49 CFR § 21.5(b)(2) (2000) (similar DOT regulation).

The State of Alabama amended its Constitution in 1990 to declare English "the official language of the state of ***279** Alabama." Amdt. 509. Pursuant to this provision and, petitioners have argued, to advance public safety, the Department decided to administer state driver's license examinations only in English. Respondent Sandoval, as representative of a class, brought suit in the United States District Court for the Middle District of Alabama to enjoin the English-only policy, arguing that it violated the DOJ regulation because it had the effect of subjecting non-English speakers to discrimination based on their national origin. The District Court agreed. It enjoined the policy and ordered the Department to accommodate non-English speakers. *Sandoval v. Hagan,* 7 F.Supp.2d 1234 (M.D.Ala.1998). Petitioners appealed to the Court of Appeals for the Eleventh Circuit, which affirmed. *Sandoval v. Hagan,* 197 F.3d 484 (C.A.11 1999). Both courts rejected petitioners' argument that Title VI did not provide respondents a cause of action to enforce the regulation.

We do not inquire here whether the DOJ regulation was authorized by § 602, or whether the courts below were correct to hold that the English-only policy had the effect of discriminating on the basis of national origin. The petition for writ of certiorari raised, and we agreed to review, only the question posed in the first paragraph of this opinion: whether there is a private cause of action to enforce the regulation. 530 U.S. 1305, 121 S.Ct. 28, 147 L.Ed.2d 1051 (2000).

II

[1] Although Title VI has often come to this Court, it is fair to say (indeed, perhaps an understatement) that our opinions have not eliminated all uncertainty regarding its commands. For purposes of the present case, however, it is clear from ****1516** our decisions, from Congress's amendments of Title VI, and from the parties' concessions that three aspects of Title VI must be taken as given. First, private individuals may sue to enforce § 601 of Title VI and obtain both injunctive relief and damages. In ***280***Cannon v. University of Chicago,* 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979), the Court held that a private right of action existed to enforce Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U.S.C. § 1681 *et seq.* The reasoning of that decision embraced the existence of a private right to enforce Title VI as well. "Title IX," the Court noted, "was patterned after Title VI of the Civil Rights Act of 1964." 441 U.S., at 694, 99 S.Ct. 1946. And, "[i]n 1972 when Title IX was enacted, the [parallel] language in Title VI had already been construed as creating a private remedy." *Id.,* at 696, 99 S.Ct. 1946. That meant, the Court reasoned, that Congress had intended Title IX, like Title VI, to provide a private cause of action. *Id.,* at 699, 703, 710-711, 99 S.Ct. 1946. Congress has since ratified *Cannon's* holding. Section 1003 of the Rehabilitation Act Amendments of 1986, 100 Stat. 1845, 42 U.S.C. § 2000d-7, expressly abrogated States' sovereign immunity against suits brought in federal court to enforce Title VI and provided that in a suit against a State "remedies (including remedies both at law and in equity) are available ... to the same extent as such remedies are available ... in the suit against any public or private entity other than a State," § 2000d-7(a)(2). We recognized in *Franklin v. Gwinnett County Public Schools,* 503 U.S. 60, 112 S.Ct. 1028, 117 L.Ed.2d 208 (1992), that § 2000d-7 "cannot be read except as a validation of *Cannon's* holding." *Id.,* at 72, 112 S.Ct. 1028; see also *id.,* at 78, 112 S.Ct. 1028 (SCALIA, J., concurring in judgment) (same). It is thus beyond dispute that private individuals may sue to enforce § 601.

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[2] Second, it is similarly beyond dispute-and no party disagrees-that § 601 prohibits only intentional discrimination. In *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978), the Court reviewed a decision of the California Supreme Court that had enjoined the University of California Medical School from "according any consideration to race in its admissions process." *Id.*, at 272, 98 S.Ct. 2733. Essential to the Court's holding reversing that aspect of the California court's decision was the determination that § 601 "proscribe[s] only those racial classifications that would violate the Equal Protection***281** Clause or the Fifth Amendment." *Id.*, at 287, 98 S.Ct. 2733 (opinion of Powell, J.); see also *id.*, at 325, 328, 352, 98 S.Ct. 2733 (opinion of Brennan, White, Marshall, and Blackmun, JJ.). In *Guardians Assn. v. Civil Serv. Comm'n of New York City*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983), the Court made clear that under *Bakke* only intentional discrimination was forbidden by § 601. 463 U.S., at 610-611, 103 S.Ct. 3221 (Powell, J., joined by Burger, C. J., and REHNQUIST, J., concurring in judgment); *id.*, at 612, 103 S.Ct. 3221 (O'CONNOR, J., concurring in judgment); *id.*, at 642, 103 S.Ct. 3221 (STEVENS, J., joined by Brennan and Blackmun, JJ., dissenting). What we said in *Alexander v. Choate*, 469 U.S. 287, 293, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985), is true today: "Title VI itself directly reach[es] only instances of intentional discrimination." [FN1]

> FN1. Since the parties do not dispute this point, it is puzzling to see Justice STEVENS go out of his way to disparage the decisions in *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978), and *Guardians Assn. v. Civil Serv. Comm'n of New York City*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983), as "somewhat haphazard," *post*, at 1531 (dissenting opinion), particularly since he had already accorded *stare decisis* effect to the former 18 years ago, see *Guardians*, 463 U.S., at 639-642, 103 S.Ct. 3221 (dissenting opinion), and since he participated in creating the latter, see *ibid.* Nor does Justice STEVEN's reliance on *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), see *post*, at 1532, explain his about-face, since he expressly reaffirms, see *post*, at 1532, n. 18, the settled principle that decisions of this Court declaring the meaning of statutes prior to *Chevron* need not be reconsidered after *Chevron* in light of agency regulations that were already in force when our decisions were issued, *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 536-537, 112 S.Ct. 841, 117 L.Ed.2d 79 (1992); *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 131, 110 S.Ct. 2759, 111 L.Ed.2d 94 (1990); see also *Sullivan v. Everhart*, 494 U.S. 83, 103-104, n. 6, 110 S.Ct. 960, 108 L.Ed.2d 72 (1990) (STEVENS, J., dissenting) ("It is, of course, of no importance that [an opinion] predates *Chevron* .... As we made clear in *Chevron*, the interpretive maxims summarized therein were 'well-settled principles' ").

1517 Third, we must assume for purposes of deciding this case that regulations promulgated under § 602 of Title VI may validly proscribe activities that have a disparate impact on racial groups, even though such activities are permissible under § 601. Though no opinion of this Court has held that, five Justices in *Guardians* voiced that view of the law at ***282 least as alternative grounds for their decisions, see 463 U.S., at 591-592, 103 S.Ct. 3221 (opinion of White, J.); *id.*, at 623, n. 15, 103 S.Ct. 3221 (Marshall, J., dissenting); *id.*, at 643-645, 103 S.Ct. 3221 (STEVENS, J., joined by Brennan and Blackmun, JJ., dissenting), and dictum in *Alexander v. Choate* is to the same effect, see 469 U.S., at 293, 295, n. 11, 105 S.Ct. 712. These statements are in considerable tension with the rule of *Bakke* and *Guardians* that § 601 forbids only intentional discrimination, see, *e.g.*, *Guardians Assn. v. Civil Serv. Comm'n of New York City, supra*, at 612-613, 103 S.Ct. 3221 (O'CONNOR, J., concurring in judgment), but petitioners have not challenged the regulations here. We therefore assume for the purposes of deciding this case that the DOJ and DOT regulations proscribing activities that have a disparate impact on the basis of race are valid.

Respondents assert that the issue in this case, like the first two described above, has been resolved by our cases. To reject a private cause of action to enforce the disparate-impact regulations, they say, we would "[have] to ignore the actual language of *Guardians* and *Cannon*." Brief for Respondents 13. The language in *Cannon* to which respondents refer does not in fact support their position, as we shall discuss at length below, see *infra*, at 1521. But in any event, this Court

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is bound by holdings, not language. *Cannon* was decided on the assumption that the University of Chicago had intentionally discriminated against petitioner. See 441 U.S., at 680, 99 S.Ct. 1946 (noting that respondents "admitted *arguendo* " that petitioner's "applications for admission to medical school were denied by the respondents because she is a woman"). It therefore *held* that Title IX created a private right of action to enforce its ban on intentional discrimination, but had no occasion to consider whether the right reached regulations barring disparate-impact discrimination.[FN2] In *Guardians,* the Court *held* ****1518** that private individuals***283** could not recover compensatory damages under Title VI except for intentional discrimination. Five Justices in addition voted to uphold the disparate-impact regulations (four would have declared them invalid, see 463 U.S., at 611, n. 5, 103 S.Ct. 3221 (Powell, J., concurring in judgment); *id.,* at 612-614, 103 S.Ct. 3221 (O'CONNOR, J., concurring in judgment)), but of those five, three expressly reserved the question of a direct private right of action to enforce the regulations, saying that "[w]hether a cause of action against private parties exists directly under the regulations ... [is a] questio[n] that [is] not presented by this case." *Id.,* at 645, n. 18, 103 S.Ct. 3221 (STEVENS, J., dissenting).[FN3] Thus, only two Justices had cause to reach the issue ***284** that respondents say the "actual language" of *Guardians* resolves. Neither that case, [FN4] nor any other in this Court, has held that the private right of action exists.

FN2. Although the dissent acknowledges that "the breadth of [*Cannon's*] precedent is a matter upon which reasonable jurists may differ," *post,* at 1534, it disagrees with our reading of *Cannon's* holding because it thinks the distinction we draw between disparate-impact and intentional discrimination was "wholly foreign" to that opinion, see *post,* at 1525. *Cannon,* however, was decided less than one year after the Court in *Bakke* had drawn precisely that distinction *with respect to Title VI,* see *supra,* at 1516, and it is absurd to think that *Cannon* meant, without discussion, to ban under Title IX the very disparate-impact discrimination that *Bakke* said Title VI permitted. The *only* discussion in *Cannon* of Title IX's scope is found in Justice Powell's dissenting opinion, which simply assumed that the conclusion that Title IX would be limited to intentional discrimination was "forgone in light of our holding" in *Bakke. Cannon v. University of Chicago,* 441 U.S. 677, 748, n. 19, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979). The dissent's additional claim that *Cannon* provided a private right of action for "all the discrimination prohibited by the *regulatory scheme* contained in Title IX," *post,* at 1526, n. 4 (emphasis added), simply begs the question at the heart of this case, which is whether a right of action to enforce disparate-impact regulations must be independently identified, see *infra,* at 1518-1520.

FN3. We of course accept the statement by the author of the dissent that he "thought" at the time of *Guardians* that disparate-impact regulations could be enforced "in an implied action against private parties," *post,* at 1527, n. 6. But we have the better interpretation of what our colleague *wrote* in *Guardians.* In the closing section of his opinion, Justice STEVENS concluded that because respondents in that case had "violated the petitioners' rights under [the] regulations ... [t]he petitioners were therefore entitled to the compensation they sought under 42 U.S.C. § 1983 and were awarded by the District Court." 463 U.S., at 645, 103 S.Ct. 3221. The passage omits any mention of a direct private right of action to enforce the regulations, and the footnote we have quoted in text-which appears immediately after this concluding sentence, see *id.,* at 645, n. 18, 103 S.Ct. 3221-makes clear that the omission was not accidental.

FN4. Ultimately, the dissent agrees that "the holding in *Guardians* does not compel the conclusion that a private right of action exists to enforce the Title VI regulations against private parties ....." *Post,* at 1528.

[3] Nor does it follow straightaway from the three points we have taken as given that Congress must have intended a private right of action to enforce disparate-impact regulations. We do not doubt that regulations applying § 601's ban on intentional discrimination are covered by the cause of action to enforce that section. Such regulations, if valid and reasonable, authoritatively construe the statute itself, see *Na-*

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tionsBank of N.C., N.A. v. Variable Annuity Life Ins. Co., 513 U.S. 251, 257, 115 S.Ct. 810, 130 L.Ed.2d 740 (1995); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-844, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), and it is therefore meaningless to talk about a separate cause of action to enforce the regulations apart from the statute. A Congress that intends the statute to be enforced through a private cause of action intends the authoritative interpretation of the statute to be so enforced as well. The many cases that respondents say have "assumed" that a cause of action to enforce a statute includes one to enforce its regulations illustrate (to the extent that cases in which an issue was not presented can illustrate anything) only this point; each involved regulations of the type we have just described, as respondents conceded at oral argument, Tr. of Oral Arg. 33. See *National Collegiate Athletic Assn. v. Smith*, 525 U.S. 459, 468, 119 S.Ct. 924, 142 L.Ed.2d 929 (1999) (regulation defining who is a "recipient" under Title IX); *School Bd. of Nassau Cty. v. Arline*, 480 U.S. 273, 279-281, 107 S.Ct. 1123, 94 L.Ed.2d 307 (1987) (regulations defining the terms "physical impairment" and "major life activities" in § 504 of the Rehabilitation Act of 1973); *Bazemore v. Friday*, 478 U.S. 385, 408-409, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986) (White, J., joined by four other ***285** Justices, concurring) (regulation interpreting Title VI to require "affirmative action" remedying effects of intentional discrimination); *Alexander v. Choate*, 469 U.S., at 299, 309, 105 S.Ct. 712 (regulations clarifying what sorts of disparate impacts upon the handicapped were covered by § 504 of the Rehabilitation Act of 1973, which the Court assumed included ****1519** some such impacts). Our decision in *Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974), falls within the same category. The Title VI regulations at issue in *Lau*, similar to the ones at issue here, forbade funding recipients to take actions which had the effect of discriminating on the basis of race, color, or national origin. *Id.*, at 568, 94 S.Ct. 786. Unlike our later cases, however, the Court in *Lau* interpreted § 601 itself to proscribe disparate-impact discrimination, saying that it "rel[ied] solely on § 601 ... to reverse the Court of Appeals," *id.*, at 566, 94 S.Ct. 786, and that the disparate-impact regulations simply "[made] sure that recipients of federal aid ... conduct[ed] any federally financed projects consistently with § 601," *id.*, at 567, 94 S.Ct. 786. [FN5]

FN5. It is true, as the dissent points out, see *post*, at 1525, that three Justices who concurred in the result in *Lau* relied on regulations promulgated under § 602 to support their position, see 414 U.S., at 570-571, 94 S.Ct. 786, 39 L.Ed.2d 1 (Stewart, J., concurring in result). But the five Justices who made up the majority did not, and their holding is not made coextensive with the concurrence because their opinion does not expressly preclude (is "consistent with," see *post*, at 1525) the concurrence's approach. The Court would be in an odd predicament if a concurring minority of the Justices could force the majority to address a point they found it unnecessary (and did not wish) to address, under compulsion of Justice STEVEN's new principle that silence implies agreement.

[4] We must face now the question avoided by *Lau*, because we have since rejected *Lau's* interpretation of § 601 as reaching beyond intentional discrimination. See *supra*, at 1516. It is clear now that the disparate-impact regulations do not simply apply § 601-since they indeed forbid conduct that § 601 permits-and therefore clear that the private right of action to enforce § 601 does not include a private right to enforce these regulations. See ***286***Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 173, 114 S.Ct. 1439, 128 L.Ed.2d 119 (1994) (a "private plaintiff may not bring a [suit based on a regulation] against a defendant for acts not prohibited by the text of [the statute]"). That right must come, if at all, from the independent force of § 602. As stated earlier, we assume for purposes of this decision that § 602 confers the authority to promulgate disparate-impact regulations;[FN6] the question remains whether it confers a private right of action to enforce them. If not, we must conclude that a failure to comply with regulations promulgated under § 602 that is not also a failure to comply with § 601 is not actionable.

FN6. For this reason, the dissent's extended discussion of the scope of agencies' regulatory authority under § 602, see *post*, at 1530-1531, is beside the point. We cannot help observing, however, how strange it is to say that disparate-impact regulations are "inspired by, at the service of, and inseparably intertwined with" § 601, *post*, at 1531, when § 601 permits the very behavior that the regulations forbid. See *Guardians*, 463 U.S.,

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> at 613, 103 S.Ct. 3221 (O'CONNOR, J., concurring in judgment) ("If, as five Members of the Court concluded in *Bakke*, the purpose of Title VI is to proscribe *only* purposeful discrimination ..., regulations that would proscribe conduct by the recipient having only a discriminatory *effect* ... do not simply 'further' the purpose of Title VI; they go well *beyond* that purpose").

[5][6][7] Implicit in our discussion thus far has been a particular understanding of the genesis of private causes of action. Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress. *Touche Ross & Co. v. Redington*, 442 U.S. 560, 578, 99 S.Ct. 2479, 61 L.Ed.2d 82 (1979) (remedies available are those "that Congress enacted into law"). The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy. *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 15, 100 S.Ct. 242, 62 L.Ed.2d 146 (1979). Statutory intent on this latter point is determinative. See, *e.g.*, **1520 *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1102, 111 S.Ct. 2749, 115 L.Ed.2d 929 (1991); *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 812, n. 9, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986) (collecting cases). Without it, a cause of action does not exist and courts may not *287 create one, no matter how desirable that might be as a policy matter, or how compatible with the statute. See, *e.g.*, *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 145, 148, 105 S.Ct. 3085, 87 L.Ed.2d 96 (1985); *Transamerica Mortgage Advisors, Inc. v. Lewis*, *supra*, at 23, 100 S.Ct. 242; *Touche Ross & Co. v. Redington*, *supra*, at 575-576, 99 S.Ct. 2479. "Raising up causes of action where a statute has not created them may be a proper function for common-law courts, but not for federal tribunals." *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 365, 111 S.Ct. 2773, 115 L.Ed.2d 321 (1991) (SCALIA, J., concurring in part and concurring in judgment).

Respondents would have us revert in this case to the understanding of private causes of action that held sway 40 years ago when Title VI was enacted. That understanding is captured by the Court's statement in *J.I. Case Co. v. Borak*, 377 U.S. 426, 433, 84 S.Ct. 1555, 12 L.Ed.2d 423 (1964), that "it is the duty of the courts to be alert to provide such remedies as are necessary to make effective the congressional purpose" expressed by a statute. We abandoned that understanding in *Cort v. Ash*, 422 U.S. 66, 78, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975)-which itself interpreted a statute enacted under the *ancien regime*-and have not returned to it since. Not even when interpreting the same Securities Exchange Act of 1934 that was at issue in *Borak* have we applied *Borak's* method for discerning and defining causes of action. See *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N. A.*, *supra*, at 188, 114 S.Ct. 1439; *Musick, Peeler & Garrett v. Employers Ins. of Wausau*, 508 U.S. 286, 291-293, 113 S.Ct. 2085, 124 L.Ed.2d 194 (1993); *Virginia Bankshares, Inc. v. Sandberg*, *supra*, at 1102-1103, 111 S.Ct. 2749; *Touche Ross & Co. v. Redington*, *supra*, at 576-578, 99 S.Ct. 2479. Having sworn off the habit of venturing beyond Congress's intent, we will not accept respondents' invitation to have one last drink.

[8] Nor do we agree with the Government that our cases interpreting statutes enacted prior to *Cort v. Ash* have given "dispositive weight" to the "expectations" that the enacting Congress had formed "in light of the 'contemporary legal *288 context.' " Brief for United States 14. Only three of our legion implied-right-of-action cases have found this sort of "contemporary legal context" relevant, and two of those involved Congress's enactment (or reenactment) of the verbatim statutory text that courts had previously interpreted to create a private right of action. See *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 378-379, 102 S.Ct. 1825, 72 L.Ed.2d 182 (1982); *Cannon v. University of Chicago*, 441 U.S., at 698-699, 99 S.Ct. 1946. In the third case, this sort of "contemporary legal context" simply buttressed a conclusion independently supported by the text of the statute. See *Thompson v. Thompson*, 484 U.S. 174, 108 S.Ct. 513, 98 L.Ed.2d 512 (1988). We have never accorded dispositive weight to context shorn of text. In determining whether statutes create private rights of action, as in interpreting statutes generally, see *Blatchford v. Native Village of Noatak*, 501 U.S. 775, 784, 111 S.Ct. 2578, 115 L.Ed.2d 686 (1991), legal context matters only to the extent it clarifies text.

[9][10] We therefore begin (and find that we can end) our search for Congress's intent with the text and structure of Title VI.[FN7] Section 602 authorizes federal agencies**1521 "to effectuate the provisions of [§

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601] ... by issuing rules, regulations, or orders of general applicability." 42 U.S.C. § 2000d-1. It is immediately clear that the "rights-creating" language so critical to the Court's analysis in *Cannon* of § 601, see 441 U.S., at 690, n. 13, 99 S.Ct. 1946, is completely absent from § 602. Whereas § 601 decrees that "[n]o person ... shall ... be subjected to discrimination," 42 U.S.C. § 2000d, the text of § 602 provides that "[e]ach Federal department and ***289** agency ... is authorized and directed to effectuate the provisions of [§ 601]," 42 U.S.C. § 2000d-1. Far from displaying congressional intent to create new rights, § 602 limits agencies to "effectuat [ing]" rights already created by § 601. And the focus of § 602 is twice removed from the individuals who will ultimately benefit from Title VI's protection. Statutes that focus on the person regulated rather than the individuals protected create "no implication of an intent to confer rights on a particular class of persons." *California v. Sierra Club*, 451 U.S. 287, 294, 101 S.Ct. 1775, 68 L.Ed.2d 101 (1981). Section 602 is yet a step further removed: It focuses neither on the individuals protected nor even on the funding recipients being regulated, but on the agencies that will do the regulating. Like the statute found not to create a right of action in *Universities Research Assn., Inc. v. Coutu*, 450 U.S. 754, 101 S.Ct. 1451, 67 L.Ed.2d 662 (1981), § 602 is "phrased as a directive to federal agencies engaged in the distribution of public funds," *id.*, at 772, 101 S.Ct. 1451. When this is true, "[t]here [is] far less reason to infer a private remedy in favor of individual persons," *Cannon v. University of Chicago, supra*, at 690-691, 99 S.Ct. 1946. So far as we can tell, this authorizing portion of § 602 reveals no congressional intent to create a private right of action.

> FN7. Although the dissent claims that we "adop[t] a methodology that blinds itself to important evidence of congressional intent," see *post*, at 1534, our methodology is not novel, but well established in earlier decisions (including one authored by Justice STEVENS, see *Northwest Airlines, Inc. v. Transport Workers*, 451 U.S. 77, 94, n. 31, 101 S.Ct. 1571, 67 L.Ed.2d 750 (1981)), which explain that the interpretive inquiry begins with the text and structure of the statute, see *id.*, at 91, 101 S.Ct. 1571, and ends once it has become clear that Congress did not provide a cause of action.

Nor do the methods that § 602 goes on to provide for enforcing its authorized regulations manifest an intent to create a private remedy; if anything, they suggest the opposite. Section 602 empowers agencies to enforce their regulations either by terminating funding to the "particular program, or part thereof," that has violated the regulation or "by any other means authorized by law," 42 U.S.C. § 2000d-1. No enforcement action may be taken, however, "until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means." *Ibid.* And every agency enforcement action is subject to judicial review. § 2000d-2. If an agency attempts to terminate program funding, still ***290** more restrictions apply. The agency head must "file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action." § 2000d-1. And the termination of funding does not "become effective until thirty days have elapsed after the filing of such report." *Ibid.* Whatever these elaborate restrictions on agency enforcement may imply for the private enforcement of rights created *outside* of § 602, compare *Cannon v. University of Chicago, supra*, at 706, n. 41, 712, n. 49, 99 S.Ct. 1946; *Regents of Univ. of Cal. v. Bakke*, 438 U.S., at 419, n. 26, 98 S.Ct. 2733 (STEVENS, J., concurring in judgment in part and dissenting in part), with *Guardians Assn. v. Civil Serv. Comm'n of New York City*, 463 U.S., at 609-610, 103 S.Ct. 3221 (Powell, J., concurring in judgment); *Regents of Univ. of Cal. v. Bakke, supra*, at 382-383, 98 S.Ct. 2733 (opinion of White, J.), they tend to contradict a congressional intent to create privately enforceable rights through § 602 itself. The express provision of one method of enforcing****1522** a substantive rule suggests that Congress intended to preclude others. See, *e.g.*, *Karahalios v. Federal Employees*, 489 U.S. 527, 533, 109 S.Ct. 1282, 103 L.Ed.2d 539 (1989); *Northwest Airlines, Inc. v. Transport Workers*, 451 U.S. 77, 93-94, 101 S.Ct. 1571, 67 L.Ed.2d 750 (1981); *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S., at 19-20, 100 S.Ct. 242. Sometimes the suggestion is so strong that it precludes a finding of congressional intent to create a private right of action, even though other aspects of the statute (such as language making the would-be plaintiff "a member of the class for whose benefit the statute was enacted") suggest the contrary. *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S., at 145, 105 S.Ct. 3085; see *id.*, at 146-147, 105 S.Ct. 3085.

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And as our Rev. Stat. § 1979, 42 U.S.C. § 1983, cases show, some remedial schemes foreclose a private cause of action to enforce even those statutes that admittedly create substantive private rights. See, *e.g.*, *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U.S. 1, 19-20, 101 S.Ct. 2615, 69 L.Ed.2d 435 (1981). In the present case, the claim of exclusivity for the ***291** express remedial scheme does not even have to overcome such obstacles. The question whether § 602's remedial scheme can overbear other evidence of congressional intent is simply not presented, since we have found no evidence anywhere in the text to suggest that Congress intended to create a private right to enforce regulations promulgated under § 602.

[11] Both the Government and respondents argue that the *regulations* contain rights-creating language and so must be privately enforceable, see Brief for United States 19-20; Brief for Respondents 31, but that argument skips an analytical step. Language in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not. *Touche Ross & Co. v. Redington*, 442 U.S., at 577, n. 18, 99 S.Ct. 2479 ("[T]he language of the statute and not the rules must control"). Thus, when a statute has provided a general authorization for private enforcement of regulations, it may perhaps be correct that the intent displayed in each regulation can determine whether or not it is privately enforceable. But it is most certainly incorrect to say that language in a regulation can conjure up a private cause of action that has not been authorized by Congress. Agencies may play the sorcerer's apprentice but not the sorcerer himself.

[12] The last string to respondents' and the Government's bow is their argument that two amendments to Title VI "ratified" this Court's decisions finding an implied private right of action to enforce the disparate-impact regulations. See Rehabilitation Act Amendments of 1986, § 1003, 42 U.S.C. § 2000d-7; Civil Rights Restoration Act of 1987, § 6, 102 Stat. 31, 42 U.S.C. § 2000d-4a. One problem with this argument is that, as explained above, none of our decisions establishes (or even assumes) the private right of action at issue here, see *supra*, at 1517-1519, which is why in *Guardians* three Justices were able expressly to reserve the question. See 463 U.S., at 645, n. 18, 103 S.Ct. 3221 (STEVENS, J., dissenting). Incorporating ***292** our cases in the amendments would thus not help respondents. Another problem is that the incorporation claim itself is flawed. Section 1003 of the Rehabilitation Act Amendments of 1986, on which only respondents rely, by its terms applies only to suits "for a violation of a *statute*," 42 U.S.C. § 2000d-7(a)(2) (emphasis added). It therefore does not speak to suits for violations of regulations that go beyond the statutory proscription of § 601. Section 6 of the Civil Rights Restoration Act of 1987 is even less on point. That provision amends Title VI to make the term "program or activity" cover larger portions of the institutions receiving federal financial aid than it had previously covered, see *Grove City College v. Bell*, 465 U.S. 555, 104 S.Ct. 1211, 79 L.Ed.2d 516 (1984). It ****1523** is impossible to understand what this has to do with implied causes of action-which is why we declared in *Franklin v. Gwinnett County Public Schools*, 503 U.S., at 73, 112 S.Ct. 1028, that § 6 did not "in any way alte[r] the existing rights of action and the corresponding remedies permissible under ... Title VI." Respondents point to *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S., at 381-382, 102 S.Ct. 1825, which inferred congressional intent to ratify lower court decisions regarding a particular statutory provision when Congress comprehensively revised the statutory scheme but did not amend that provision. But we recently criticized *Curran's* reliance on congressional inaction, saying that "[a]s a general matter ... [the] argumen[t] deserve[s] little weight in the interpretive process." *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N. A.*, 511 U.S., at 187, 114 S.Ct. 1439. And when, as here, Congress has not comprehensively revised a statutory scheme but has made only isolated amendments, we have spoken more bluntly: "It is 'impossible to assert with any degree of assurance that congressional failure to act represents' affirmative congressional approval of the Court's statutory interpretation." *Patterson v. McLean Credit Union*, 491 U.S. 164, 175, n. 1, 109 S.Ct. 2363, 105 L.Ed.2d 132 (1989) (quoting ***293***Johnson v. Transportation Agency, Santa Clara Cty.*, 480 U.S. 616, 671-672, 107 S.Ct. 1442, 94 L.Ed.2d 615 (1987) (SCALIA, J., dissenting)).

[13] Neither as originally enacted nor as later amended does Title VI display an intent to create a freestanding private right of action to enforce regulations promulgated under § 602.[FN8] We therefore hold that no such right of action exists. Since we reach this conclusion applying our standard test for discerning private causes of action, we do not address petitioners' addi-

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tional argument that implied causes of action against States (and perhaps nonfederal state actors generally) are inconsistent with the clear statement rule of *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981). See *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629, 656-657, 684-685, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999) (KENNEDY, J., dissenting).

> FN8. The dissent complains that we "offe[r] little affirmative support" for this conclusion. *Post,* at 1535. But as Justice STEVENS has previously recognized in an opinion for the Court, "affirmative" evidence of congressional intent must be provided *for* an implied remedy, not against it, for without such intent "the essential predicate for implication of a private remedy simply does not exist," *Northwest Airlines, Inc.*, 451 U.S., at 94, 101 S.Ct. 1571. The dissent's assertion that "respondents *have* marshaled substantial affirmative evidence that a private right of action exists to enforce Title VI *and the regulations validly promulgated thereunder,*" *post,* at 1535-1536, n. 26 (second emphasis added), once again begs the question whether authorization of a private right of action to enforce a statute constitutes authorization of a private right of action to enforce regulations that go beyond what the statute itself requires.

The judgment of the Court of Appeals is reversed.

It is so ordered.

Justice STEVENS, with whom Justice SOUTER, Justice GINSBURG, and Justice BREYER join, dissenting.

In 1964, as part of a groundbreaking and comprehensive civil rights Act, Congress prohibited recipients of federal funds from discriminating on the basis of race, ethnicity, or national origin. Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-7. Pursuant to powers***294** expressly delegated by that Act, the federal agencies and departments responsible for awarding and administering federal contracts immediately adopted regulations prohibiting federal contractees from adopting policies that have the "effect" of discriminating on those bases. At the time of the promulgation of these regulations, prevailing principles of statutory construction assumed that Congress intended****1524** a private right of action whenever such a cause of action was necessary to protect individual rights granted by valid federal law. Relying both on this presumption and on independent analysis of Title VI, this Court has repeatedly and consistently affirmed the right of private individuals to bring civil suits to enforce rights guaranteed by Title VI. A fair reading of those cases, and coherent implementation of the statutory scheme, requires the same result under Title VI's implementing regulations.

In separate lawsuits spanning several decades, we have endorsed an action identical in substance to the one brought in this case, see *Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974); demonstrated that Congress intended a private right of action to protect the rights guaranteed by Title VI, see *Cannon v. University of Chicago*, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979); and concluded that private individuals may seek declaratory and injunctive relief against state officials for violations of regulations promulgated pursuant to Title VI, see *Guardians Assn. v. Civil Serv. Comm'n of New York City*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983). Giving fair import to our language and our holdings, every Court of Appeals to address the question has concluded that a private right of action exists to enforce the rights guaranteed both by the text of Title VI and by any regulations validly promulgated pursuant to that Title, and Congress has adopted several statutes that appear to ratify the status quo.

Today, in a decision unfounded in our precedent and hostile to decades of settled expectations, a majority of this Court carves out an important exception to the right of private action long recognized under Title VI. In so doing, the ***295** Court makes three distinct, albeit interrelated, errors. First, the Court provides a muddled account of both the reasoning and the breadth of our prior decisions endorsing a private right of action under Title VI, thereby obscuring the conflict between those opinions and today's decision. Second, the Court offers a flawed and unconvincing analysis of the relationship between §§ 601 and 602 of the Civil Rights Act of 1964, ignoring more plausible and persuasive explanations detailed in our prior opinions. Finally, the Court badly misconstrues the theoretical linchpin of our decision in *Cannon v. University of Chicago*, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979),

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mistaking that decision's careful contextual analysis for judicial fiat.

I

The majority is undoubtedly correct that this Court has never said in so many words that a private right of action exists to enforce the disparate-impact regulations promulgated under § 602. However, the failure of our cases to state this conclusion explicitly does not absolve the Court of the responsibility to canvass our prior opinions for guidance. Reviewing these opinions with the care they deserve, I reach the same conclusion as the Courts of Appeals: This Court has already considered the question presented today and concluded that a private right of action exists.[FN1]

FN1. Just about every Court of Appeals has either explicitly or implicitly held that a private right of action exists to enforce all of the regulations issued pursuant to Title VI, including the disparate-impact regulations. For decisions holding so most explicitly, see, *e.g.*, *Powell v. Ridge*, 189 F.3d 387, 400 (C.A.3 1999); *Chester Residents Concerned for Quality Living v. Seif*, 132 F.3d 925, 936-937 (C.A.3 1997), summarily vacated and remanded, 524 U.S. 974, 119 S.Ct. 22, 141 L.Ed.2d 783 (1998); *David K. v. Lane*, 839 F.2d 1265, 1274 (C.A.7 1988); *Sandoval v. Hagan*, 197 F.3d 484 (C.A.11 1999) (case below). See also *Latinos Unidos De Chelsea v. Secretary of Housing and Urban Development*, 799 F.2d 774, 785, n. 20 (C.A.1 1986); *New York Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (C.A.2 1995); *Ferguson v. Charleston*, 186 F.3d 469 (C.A.4 1999), rev'd on other grounds, 532 U.S. 67, 121 S.Ct. 1281, 149 L.Ed.2d 205 (2001); *Castaneda v. Pickard*, 781 F.2d 456, 465, n. 11 (C.A.5 1986); *Buchanan v. Bolivar*, 99 F.3d 1352, 1356, n. 5 (C.A.6 1996); *Larry P. v. Riles*, 793 F.2d 969, 981-982 (C.A.9 1986); *Villanueva v. Carere*, 85 F.3d 481, 486 (C.A.10 1996). No Court of Appeals has ever reached a contrary conclusion. But cf. *New York City Environmental Justice Alliance v. Giuliani*, 214 F.3d 65, 72 (C.A.2 2000) (suggesting that the question may be open).

**1525 *296 When this Court faced an identical case 27 years ago, all the Justices believed that private parties could bring lawsuits under Title VI and its implementing regulations to enjoin the provision of governmental services in a manner that discriminated against non-English speakers. See *Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974). While five Justices saw no need to go beyond the command of § 601, Chief Justice Burger, Justice Stewart, and Justice Blackmun relied specifically and exclusively on the regulations to support the private action, see *id.*, at 569, 94 S.Ct. 786 (Stewart, J., concurring in result) (citing *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 369, 93 S.Ct. 1652, 36 L.Ed.2d 318 (1973); *Thorpe v. Housing Authority of Durham*, 393 U.S. 268, 280-281, 89 S.Ct. 518, 21 L.Ed.2d 474 (1969)). There is nothing in the majority's opinion in *Lau*, or in earlier opinions of the Court, that is not fully consistent with the analysis of the concurring Justices or that would have differentiated between private actions to enforce the text of § 601 and private actions to enforce the regulations promulgated pursuant to § 602. See *Guardians*, 463 U.S., at 591, 103 S.Ct. 3221 (principal opinion of White, J.) (describing this history and noting that, up to that point, no Justice had ever expressed disagreement with Justice Stewart's analysis in *Lau*).[FN2]

FN2. Indeed, it would have been remarkable if the majority had offered any disagreement with the concurring analysis as the concurring Justices grounded their argument in well-established principles for determining the availability of remedies under regulations, principles that all but one Member of the Court had endorsed the previous Term. See *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 369, 93 S.Ct. 1652, 36 L.Ed.2d 318 (1973); *id.*, at 378, 93 S.Ct. 1652 (Douglas, J., joined by Stewart and REHNQUIST, JJ., concurring in part and dissenting in part) (agreeing with the majority's analysis of the regulation in question); but see *id.*, at 383, n. 1, 93 S.Ct. 1652 (Powell, J., dissenting) (reserving analysis of the regulation's validity). The other decision the concurring Justices cited for this well-established principle was unanimous and only five years old. See *Thorpe v. Housing Authority of Durham*, 393 U.S. 268, 89 S.Ct. 518, 21 L.Ed.2d 474 (1969).

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*297 Five years later, we more explicitly considered whether a private right of action exists to enforce the guarantees of Title VI and its gender-based twin, Title IX. See *Cannon v. University of Chicago*, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979). In that case, we examined the text of the statutes, analyzed the purpose of the laws, and canvassed the relevant legislative history. Our conclusion was unequivocal: "We have no doubt that Congress intended to create Title IX remedies comparable to those available under Title VI and that it understood Title VI as authorizing an implied private cause of action for victims of the prohibited discrimination." *Id.*, at 703, 99 S.Ct. 1946.

The majority acknowledges that *Cannon* is binding precedent with regard to both Title VI and Title IX, *ante*, at 1515-1516, but seeks to limit the scope of its holding to cases involving allegations of intentional discrimination. The distinction the majority attempts to impose is wholly foreign to *Cannon's* text and reasoning. The opinion in *Cannon* consistently treats the question presented in that case as whether a private right of action exists to enforce "Title IX" (and by extension "Title VI"), [FN3] and does not draw any distinctions between the various types of discrimination outlawed by the operation of those statutes. Though the opinion did not reach out to affirmatively preclude the drawing of every conceivable distinction, it could hardly have been more clear as to the scope of its holding: A private right of action exists **1526 for "victims of *the* prohibited discrimination." 441 U.S., at 703, 99 S.Ct. 1946 (emphasis added). Not some of the prohibited discrimination, but all of it.[FN4]

FN3. See *Cannon*, 441 U.S., at 687, 699, 702, n. 33, 703, 706, n. 40, 709, 99 S.Ct. 1946.

FN4. The majority is undoubtedly correct that *Cannon* was not a case about the substance of Title IX but rather about the remedies available under that statute. Therefore, *Cannon* cannot stand as a precedent for the proposition either that Title IX and its implementing regulations reach intentional discrimination or that they do not do so. What *Cannon* did hold is that all the discrimination prohibited by the regulatory scheme contained in Title IX may be the subject of a private lawsuit. As the Court today concedes that *Cannon's* holding applies to Title VI claims as well as Title IX claims, *ante*, at 1515-1516, and assumes that the regulations promulgated pursuant to § 602 are validly promulgated antidiscrimination measures, *ante*, at 1517, it is clear that today's opinion is in substantial tension with *Cannon's* reasoning and holding.

*298 Moreover, *Cannon* was itself a disparate-impact case. In that case, the plaintiff brought suit against two private universities challenging medical school admissions policies that set age limits for applicants. Plaintiff, a 39-year-old woman, alleged that these rules had the effect of discriminating against women because the incidence of interrupted higher education is higher among women than among men. In providing a shorthand description of her claim in the text of the opinion, we ambiguously stated that she had alleged that she was denied admission "because she is a woman," but we appended a lengthy footnote setting forth the details of her disparate-impact claim. Other than the shorthand description of her claim, there is not a word in the text of the opinion even suggesting that she had made the improbable allegation that the University of Chicago and Northwestern University had intentionally discriminated against women. In the context of the entire opinion (including both its analysis and its uncontested description of the facts of the case), that single ambiguous phrase provides no basis for limiting the case's holding to incidents of intentional discrimination. If anything, the fact that the phrase "because she is a woman" encompasses both intentional and disparate-impact claims should have made it clear that the reasoning in the opinion was equally applicable to both types of claims. In any event, the *holding* of the case certainly applied to the disparate-impact claim that was described in detail in footnote 1 of the opinion, *id.*, at 680, 99 S.Ct. 1946.

Our fractured decision in *Guardians Assn. v. Civil Serv. Comm'n of New York City*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983), reinforces the conclusion that this issue is effectively settled. While *299 the various opinions in that case took different views as to the spectrum of relief available to plaintiffs in Title VI cases, a clear majority of the Court expressly stated that private parties may seek injunctive relief against governmental practices that have the effect of discriminating against racial and ethnic minorities. *Id.*, at 594-595, 607, 103 S.Ct. 3221 (White, J.); *id.*, at 634, 103 S.Ct. 3221 (Marshall, J., dissent-

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ing); *id.*, at 638, 103 S.Ct. 3221 (STEVENS, J., joined by Brennan and Blackmun, JJ., dissenting). As this case involves just such an action, its result ought to follow naturally from *Guardians.*

As I read today's opinion, the majority declines to accord precedential value to *Guardians* because the five Justices in the majority were arguably divided over the mechanism through which private parties might seek such injunctive relief.[FN5] This **1527 argument inspires two responses. First, to the extent that the majority denies relief to the respondents merely because they neglected to mention 42 U.S.C. § 1983 *300 in framing their Title VI claim, this case is something of a sport. Litigants who in the future wish to enforce the Title VI regulations against state actors in all likelihood must only reference § 1983 to obtain relief; indeed, the plaintiffs in this case (or other similarly situated individuals) presumably retain the option of re-challenging Alabama's English-only policy in a complaint that invokes § 1983 even after today's decision.

FN5. None of the relevant opinions was absolutely clear as to whether it envisioned such suits as being brought directly under the statute or under 42 U.S.C. § 1983. However, a close reading of the opinions leaves little doubt that all of the Justices making up the *Guardians* majority contemplated the availability of private actions brought directly under the statute. Justice White fairly explicitly rested his conclusion on *Cannon's* holding that an implied right of action exists to enforce the terms of both Title VI and Title IX. *Guardians*, 463 U.S., at 594-595, 103 S.Ct. 3221. Given that fact and the added consideration that his opinion appears to have equally contemplated suits against private and public parties, it is clear that he envisioned the availability of injunctive relief directly under the statute. Justice Marshall's opinion never mentions § 1983 and refers simply to "Title VI actions." *Id.*, at 625, 103 S.Ct. 3221. In addition, his opinion can only be read as contemplating suits on equal terms against both public and private grantees, thus also suggesting that he assumed such suits could be brought directly under the statute. That leaves my opinion. Like Justice White, I made it quite clear that I believed the right to sue to enforce the disparate-impact regulations followed directly from *Cannon* and, hence, was built directly into the statute. 463 U.S., at 635-636, and n. 1, 103 S.Ct. 3221. However, I did also note that, in the alternative, relief would be available in that particular case under § 1983.

More importantly, the majority's reading of *Guardians* is strained even in reference to the broader question whether injunctive relief is available to remedy violations of the Title VI regulations by nongovernmental grantees. As *Guardians* involved an action against a governmental entity, making § 1983 relief available, the Court might have discussed the availability of judicial relief without addressing the scope of the implied private right of action available directly under Title VI. See 463 U.S., at 638, 103 S.Ct. 3221 (STEVENS, J.) ("Even if it were not settled by now that Title VI authorizes appropriate relief, both prospective and retroactive, to victims of racial discrimination at the hands of recipients of federal funds, the same result would follow in this case because the petitioners have sought relief under 42 U.S.C. § 1983" (emphasis deleted)). However, the analysis in each of the relevant opinions did not do so.[FN6] Rather than focusing on considerations *301 specific to **1528 § 1983, each of these opinions looked instead to our opinion in *Cannon,* to the intent of the Congress that adopted Title VI and the contemporaneous executive decisionmakers who crafted the disparate-impact regulations, and to general principles of remediation.[FN7]

FN6. The Court today cites one sentence in my final footnote in *Guardians* that it suggests is to the contrary. *Ante,* at 1518 (citing 463 U.S., at 645, n. 18, 103 S.Ct. 3221). However, the Court misreads that sentence. In his opinion in *Guardians,* Justice Powell had stated that he would affirm the judgment for the reasons stated in his dissent in *Cannon,* see 463 U.S., at 609-610, 103 S.Ct. 3221 (opinion concurring in judgment), and that he would also hold that private actions asserting violations of Title VI could not be brought under § 1983, *id.*, at 610, and n. 3, 103 S.Ct. 3221. One reason that he advanced in support of these conclusions was his view that the standard of proof in a § 1983 action against public officials would differ from the stan-

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dard in an action against private defendants. *Id.*, at 608, n. 1, 103 S.Ct. 3221. In a footnote at the end of my opinion, *id.*, at 645, n. 18, 103 S.Ct. 3221, I responded (perhaps inartfully) to Justice Powell. I noted that the fact that § 1983 authorizes a lawsuit against the police department based on its violation of the governing administrative regulations did not mean, as Justice Powell had suggested, "that a similar action would be unavailable against a similarly situated private party." *Ibid.* I added the sentence that the Court quotes today, *ante,* at 1518, not to reserve a question, but rather to explain that the record did not support Justice Powell's hypothesis regarding the standard of proof. I thought then, as I do now, that a violation of regulations adopted pursuant to Title VI may be established by proof of discriminatory impact in a § 1983 action against state actors and also in an implied action against private parties. See n. 5, *supra.* Contrary to the Court's partial quotation of my opinion, see *ante,* at 1518, n. 3, what I wrote amply reflected what I thought. See 463 U.S., at 635, 103 S.Ct. 3221 ("a private action against recipients of federal funds"); *id.*, at 636, 103 S.Ct. 3221 ("implied caus[e] of action"); *id.*, at 638, 103 S.Ct. 3221 ("Title VI authorizes appropriate relief").

> Justice Powell was quite correct in noting that it would be anomalous to assume that Congress would have intended to make it easier to recover from public officials than from private parties. That anomaly, however, does not seem to trouble the majority today.

FN7. See n. 5, *supra.*

In summary, there is clear precedent of this Court for the proposition that the plaintiffs in this case can seek injunctive relief either through an implied right of action or through § 1983. Though the holding in *Guardians* does not compel the conclusion that a private right of action exists to enforce the Title VI regulations against private parties, the rationales of the relevant opinions strongly imply that result. When that fact is coupled with our holding in *Cannon* and our unanimous decision in *Lau,* the answer to the question presented in this case is overdetermined. [FN8] Even absent my ***302** continued belief that Congress intended a private right of action to enforce both Title VI and its implementing regulations, I would answer the question presented in the affirmative and affirm the decision of the Court of Appeals as a matter of *stare decisis.* [FN9]

FN8. See also *Bazemore v. Friday,* 478 U.S. 385, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986) *(per curiam)* (adjudicating on the merits a claim brought under Title VI regulations).

FN9. The settled expectations the Court undercuts today derive not only from judicial decisions, but also from the consistent statements and actions of Congress. Congress' actions over the last two decades reflect a clear understanding of the existence of a private right of action to enforce Title VI and its implementing regulations. In addition to numerous other small-scale amendments, Congress has twice adopted legislation expanding the reach of Title VI. See Civil Rights Restoration Act of 1987, § 6, 102 Stat. 31 (codified at 42 U.S.C. § 2000d-4a) (expanding definition of "program"); Rehabilitation Act Amendments of 1986, § 1003, 100 Stat. 1845 (codified at 42 U.S.C. § 2000d-7) (explicitly abrogating States' Eleventh Amendment immunity in suits under Title VI).

> Both of these bills were adopted after this Court's decisions in *Lau, Cannon,* and *Guardians,* and after most of the Courts of Appeals had affirmatively acknowledged an implied private right of action to enforce the disparate-impact regulations. Their legislative histories explicitly reflect the fact that both proponents and opponents of the bills assumed that the full breadth of Title VI (including the disparate-impact regulations promulgated pursuant to it) would be enforceable in private actions. See, *e.g.,* Civil Rights Act of 1984: Hearings on S. 2658 before the Subcommittee on the Constitution of the Senate Committee on the Judiciary, 98th Cong., 2d Sess., 530 (1984) (memo from the Office of Management and Budget objecting

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to the Civil Rights Restoration Act of 1987 because it would bring more entities within the scope of Title VI, thereby subjecting them to "private lawsuits" to enforce the disparate-impact regulations); *id.,* at 532 (same memo warning of a proliferation of "discriminatory effects" suits by "members of the bar" acting as "private Attorneys General"); 134 Cong. Rec. 4257 (1988) (statement of Sen. Hatch) (arguing that the disparate-impact regulations go too far and noting that that is a particular problem because, "[o]f course, advocacy groups will be able to bring private lawsuits making the same allegations before federal judges"); see also Brief for United States 24, n. 16 (collecting testimony of academics advising Congress that private lawsuits were available to enforce the disparate-impact regulations under existing precedent).

Thus, this case goes well beyond the normal situation in which, "after a comprehensive reexamination and significant amendment," Congress "left intact the statutory provisions under which the federal courts had implied a private cause of action." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran,* 456 U.S. 353, 381-382, 102 S.Ct. 1825, 72 L.Ed.2d 182 (1982). Here, there is no need to rest on presumptions of knowledge and ratification, because the direct evidence of Congress' understanding is plentiful.

***303** II

Underlying the majority's dismissive treatment of our prior cases is a flawed understanding of the structure of Title VI and, more particularly, of the relationship between §§ 601 and 602. To some extent, confusion as to the relationship between the provisions is understandable, as Title VI is a deceptively simple statute. Section 601 of the Act lays out its straightforward commitment: "No person in the United ****1529** States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Section 602 "authorize[s] and direct[s]" all federal departments and agencies empowered to extend federal financial assistance to issue "rules, regulations, or orders of general applicability" in order to "effectuate" § 601's antidiscrimination mandate. 42 U.S.C. § 2000d-1.[FN10]

FN10. The remainder of Title VI provides for judicial and administrative review of agency actions taken pursuant to the statute, 42 U.S.C. § 2000d-2; imposes certain limitations not at issue in this case, §§ 2000d-3 to 2000d-4; and defines some of the terms found in the other provisions of the statute, § 2000d-4a.

On the surface, the relationship between §§ 601 and 602 is unproblematic-§ 601 states a basic principle, § 602 authorizes agencies to develop detailed plans for defining the contours of the principle and ensuring its enforcement. In the context of federal civil rights law, however, nothing is ever so simple. As actions to enforce § 601's antidiscrimination principle have worked their way through the courts, we have developed a body of law giving content to § 601's broadly worded commitment. *E.g., United States v. Fordice,* 505 U.S. 717, 732, n. 7, 112 S.Ct. 2727, 120 L.Ed.2d 575 (1992); ***304***Guardians Assn. v. Civil Serv. Comm'n of New York City,* 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983); *Regents of Univ. of Cal. v. Bakke,* 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978). As the majority emphasizes today, the Judiciary's understanding of what conduct may be remedied in actions brought directly under § 601 is, in certain ways, more circumscribed than the conduct prohibited by the regulations. See, *e.g., ante,* at 1516.

Given that seeming peculiarity, it is necessary to examine closely the relationship between §§ 601 and 602, in order to understand the purpose and import of the regulations at issue in this case. For the most part, however, the majority ignores this task, assuming that the judicial decisions interpreting § 601 provide an authoritative interpretation of its true meaning and treating the regulations promulgated by the agencies charged with administering the statute as poor stepcousins-either parroting the text of § 601 (in the case of regulations that prohibit intentional discrimination) or forwarding an agenda untethered to § 601's mandate (in the case of disparate-impact regulations).

The majority's statutory analysis does violence to both

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the text and the structure of Title VI. Section 601 does not stand in isolation, but rather as part of an integrated remedial scheme. Section 602 exists for the sole purpose of forwarding the antidiscrimination ideals laid out in § 601. [FN11] The majority's persistent belief that the two sections somehow forward different agendas finds no support in the statute. Nor does Title VI anywhere suggest, let alone state, that for the purpose of determining their legal effect, the "rules, regulations, [and] orders of general applicability" adopted by the agencies are to be bifurcated by the Judiciary into two categories based on how closely the courts believe the regulations track the text of § 601.

> FN11. See 42 U.S.C. § 2000d-1 (§ 602) ("Each Federal department and agency which is empowered to extend Federal financial assistance ... is authorized and directed to effectuate the provisions of [§ 601] ... by issuing rules, regulations, or orders of general applicability").

***305** What makes the Court's analysis even more troubling is that our cases have already adopted a simpler and more sensible model for understanding the relationship between the two sections. For three decades, we have treated § 602 as granting the responsible agencies the power to issue broad prophylactic rules aimed at realizing the vision laid out in § 601, even if the ****1530** conduct captured by these rules is at times broader than that which would otherwise be prohibited.

In *Lau*, our first Title VI case, the only three Justices whose understanding of § 601 required them to reach the question explicitly endorsed the power of the agencies to adopt broad prophylactic rules to enforce the aims of the statute. As Justice Stewart explained, regulations promulgated pursuant to § 602 may "go beyond ... § 601" as long as they are "reasonably related" to its antidiscrimination mandate. 414 U.S., at 571, 94 S.Ct. 786 (Stewart, J., joined by Burger, C. J., and Blackmun, J., concurring in result). In *Guardians*, at least three Members of the Court adopted a similar understanding of the statute. See 463 U.S., at 643, 103 S.Ct. 3221 (STEVENS, J., joined by Brennan and Blackmun, JJ., dissenting). Finally, just 16 years ago, our unanimous opinion in *Alexander v. Choate*, 469 U.S. 287, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985), treated this understanding of Title VI's structure as settled law. Writing for the Court, Justice Marshall aptly explained the interpretation of § 602's grant of regulatory power that necessarily underlies our prior case law: "In essence, then, we [have] held that Title VI[has] delegated to the agencies in the first instance the complex determination of what sorts of disparate impacts upon minorities constituted sufficiently significant social problems, and [are] readily enough remediable, to warrant altering the practices of the federal grantees that [have] produced those impacts." *Id.*, at 293-294, 105 S.Ct. 712.

This understanding is firmly rooted in the text of Title VI. As § 602 explicitly states, the agencies are authorized to adopt regulations to "effectuate" § 601's antidiscrimination mandate. 42 U.S.C. § 2000d-1. The plain meaning of the ***306** text reveals Congress' intent to provide the relevant agencies with sufficient authority to transform the statute's broad aspiration into social reality. So too does a lengthy, consistent, and impassioned legislative history.[FN12]

> FN12. See, *e.g.*, 110 Cong. Rec. 6543 (1964) (statement of Sen. Humphrey) ("Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination"); *id.*, at 1520 (statement of Rep. Celler) (describing § 602 as requiring federal agencies to "reexamine" their programs "to make sure that adequate action has been taken to preclude ... discrimination").

This legislative design reflects a reasonable-indeed inspired-model for attacking the often-intractable problem of racial and ethnic discrimination. On its own terms, the statute supports an action challenging policies of federal grantees that explicitly or unambiguously violate antidiscrimination norms (such as policies that on their face limit benefits or services to certain races). With regard to more subtle forms of discrimination (such as schemes that limit benefits or services on ostensibly race-neutral grounds but have the predictable and perhaps intended consequence of materially benefiting some races at the expense of others), the statute does not establish a static approach but instead empowers the relevant agencies to evaluate social circumstances to determine whether there is a need for stronger measures.[FN13] ****1531** ***307** Such an approach builds into the law flexibility, an ability to make nuanced assessments of complex social realities,

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and an admirable willingness to credit the possibility of progress.

> FN13. It is important, in this context, to note that regulations prohibiting policies that have a disparate impact are not necessarily aimed only-or even primarily-at unintentional discrimination. Many policies whose very intent is to discriminate are framed in a race-neutral manner. It is often difficult to obtain direct evidence of this motivating animus. Therefore, an agency decision to adopt disparate-impact regulations may very well reflect a determination by that agency that substantial intentional discrimination pervades the industry it is charged with regulating but that such discrimination is difficult to prove directly. As I have stated before: "Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor." *Washington v. Davis*, 426 U.S. 229, 253, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976) (concurring opinion). On this reading, Title VI simply accords the agencies the power to decide whether or not to credit such evidence.

The "effects" regulations at issue in this case represent the considered judgment of the relevant agencies that discrimination on the basis of race, ethnicity, and national origin by federal contractees are significant social problems that might be remedied, or at least ameliorated, by the application of a broad prophylactic rule. Given the judgment underlying them, the regulations are inspired by, at the service of, and inseparably intertwined with § 601's antidiscrimination mandate. Contrary to the majority's suggestion, they "appl [y]" § 601's prohibition on discrimination just as surely as the intentional discrimination regulations the majority concedes are privately enforceable. *Ante,* at 1518.

To the extent that our prior cases mischaracterize the relationship between §§ 601 and 602, they err on the side of underestimating, not overestimating, the connection between the two provisions. While our cases have explicitly adopted an understanding of § 601's scope that is somewhat narrower than the reach of the regulations,[FN14] they have done so in an unorthodox and somewhat haphazard fashion.

> FN14. See, *e.g., Alexander v. Choate*, 469 U.S. 287, 293, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985) (stating, in dicta, "Title VI itself directly reach[es] only instances of intentional discrimination"); *Guardians Assn. v. Civil Serv. Comm'n of New York City*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983) (in separate opinions, seven Justices indicate that § 601 on its face bars only intentional discrimination).

Our conclusion that the legislation only encompasses intentional discrimination was never the subject of thorough consideration by a Court focused on that question. In *Bakke,* five Members of this Court concluded that § 601 only prohibits race-based affirmative-action programs in situations where the Equal Protection Clause would impose a similar ban. 438 U.S., at 287, 98 S.Ct. 2733 (principal opinion of Powell, J.); ***308***id.,* at 325, 328, 352, 98 S.Ct. 2733 (Brennan, J., joined by White, Marshall, and Blackmun, JJ., concurring in judgment in part and dissenting in part).[FN15] In *Guardians,* the majority of the Court held that the analysis of those five Justices in *Bakke* compelled *as a matter of stare decisis* the conclusion that § 601 does not on its own terms reach disparate-impact cases. 463 U.S., at 610-611, 103 S.Ct. 3221 (Powell, J., concurring in judgment); *id.,* at 612, 103 S.Ct. 3221 (O'CONNOR, J., concurring in judgment); *id.,* at 642, 103 S.Ct. 3221 (STEVENS, J., joined by Brennan and Blackmun, JJ., dissenting). However, the opinions adopting that conclusion did not engage in any independent analysis of the reach of § 601. Indeed, the only writing on this subject came from two of the five Members of the *Bakke* "majority," each of whom wrote separately to reject the remaining Justices' understanding of their opinions in *Bakke* and to insist that § 601 does in fact reach some instances of unintentional discrimination. 463 U.S., at 589-590, 103 S.Ct. 3221 (White, J.); *id.,* at 623-624, 103 S.Ct. 3221 (Marshall, J., dissenting).[FN16] The Court's occasional rote invocation of this ****1532***Guardians* majority in later cases ought not obscure the fact that the question whether § 601 applies to disparate-impact claims has never been analyzed by this Court on the merits.[FN17]

> FN15. Of course, those five Justices divided over the application of the Equal Protection Clause-and by extension Title VI-to affirma-

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tive action cases. Therefore, it is somewhat strange to treat the opinions of those five Justices in *Bakke* as constituting a majority for any particular substantive interpretation of Title VI.

FN16. The fact that Justices Marshall and White both felt that the opinion they coauthored in *Bakke* did not resolve the question whether Title VI on its face reaches disparate-impact claims belies the majority's assertion that *Bakke* "had drawn precisely that distinction," *ante,* at 1517, n. 2, much less its implication that it would have been "absurd" to think otherwise, *ibid.*

FN17. In this context, it is worth noting that in a variety of other settings the Court has interpreted similarly ambiguous civil rights provisions to prohibit some policies based on their disparate impact on a protected group. See, *e.g., Griggs v. Duke Power Co.,* 401 U.S. 424, 432, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971) (Title VII); *City of Rome v. United States,* 446 U.S. 156, 172-173, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980) (§ 5 of the Voting Rights Act); cf. *Alexander v. Choate,* 469 U.S., at 292-296, 105 S.Ct. 712 (explaining why the Rehabilitation Act of 1973, which was modeled after § 601, might be considered to reach some instances of disparate impact and then assuming that it does for purposes of deciding the case).

***309** In addition, these Title VI cases seemingly ignore the well-established principle of administrative law that is now most often described as the "*Chevron* doctrine." See *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). In most other contexts, when the agencies charged with administering a broadly worded statute offer regulations interpreting that statute or giving concrete guidance as to its implementation, we treat their interpretation of the statute's breadth as controlling unless it presents an unreasonable construction of the statutory text. See *ibid.* While there may be some dispute as to the boundaries of *Chevron* deference, see, *e.g., Christensen v. Harris County,* 529 U.S. 576, 120 S.Ct. 1655, 146 L.Ed.2d 621 (2000), it is paradigmatically appropriate when Congress has clearly delegated agencies the power to issue regulations with the force of law and established formal procedures for the promulgation of such regulations.[FN18]

FN18. In relying on the *Chevron* doctrine, I do not mean to suggest that our decision in *Chevron* stated a new rule that requires the wholesale reconsideration of our statutory interpretation precedents. Instead, I continue to adhere to my position in *Sullivan v. Everhart,* 494 U.S. 83, 103-104, n. 6, 110 S.Ct. 960, 108 L.Ed.2d 72 (1990) (stating that *Chevron* merely summarized "well-settled principles"). In suggesting that, with regard to Title VI, we might reconsider whether our prior decisions gave sufficient deference to the agencies' interpretation of the statute, I do no more than question whether in this particular instance we paid sufficient consideration to those "well-settled principles."

If we were writing on a blank slate, we might very well conclude that *Chevron* and similar cases decided both before and after *Guardians* provide the proper framework for understanding the structure of Title VI. Under such a reading there would be no incongruity between §§ 601 and 602. Instead, we would read § 602 as granting the federal agencies responsible for distributing federal funds the authority ***310** to issue regulations interpreting § 601 on the assumption that their construction will-if reasonable-be incorporated into our understanding of § 601's meaning. [FN19]

FN19. The legislative history strongly indicates that the Congress that adopted Title VI and the administration that proposed the statute intended that the agencies and departments would utilize the authority granted under § 602 to shape the substantive contours of § 601. For example, during the hearings that preceded the passage of the statute, Attorney General Kennedy agreed that the administrators of the various agencies would have the power to define "what constitutes discrimination" under Title VI and "what acts or omissions are to be forbidden." Civil Rights-The President's Program, 1963: Hearings before the Senate Committee on the Judiciary, 88th Cong., 1st Sess., 399-400 (1963); see also Civil Rights: Hearings be-

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fore the House Committee on the Judiciary, 88th Cong., 1st Sess., pt. 4, p. 2740 (1963) (remarks of Attorney General Kennedy) (only after the agencies "establish the rules" will recipients "understand what they can and cannot do"). It was, in fact, concern for this broad delegation that inspired Congress to amend the pending bill to ensure that all regulations issued pursuant to Title VI would have to be approved by the President. See 42 U.S.C. § 2000d-1 (laying out the requirement); 110 Cong. Rec. 2499 (1964) (remarks of Rep. Lindsay introducing the amendment). For further discussion of this legislative history, see *Guardians,* 463 U.S., at 615-624, 103 S.Ct. 3221 (Marshall, J., dissenting); Abernathy, Title VI and the Constitution: A Regulatory Model for Defining "Discrimination," 70 Geo. L.J. 1 (1981).

**1533 To resolve this case, however, it is unnecessary to answer the question whether our cases interpreting the reach of § 601 should be reinterpreted in light of *Chevron.* If one understands the relationship between §§ 601 and 602 through the prism of *either Chevron* or our prior Title VI cases, the question presented all but answers itself. If the regulations promulgated pursuant to § 602 are either an authoritative construction of § 601's meaning or prophylactic rules necessary to actualize the goals enunciated in § 601, then it makes no sense to differentiate between private actions to enforce § 601 and private actions to enforce § 602. There is but one private action to enforce Title VI, and we already know that such an action exists.[FN20] See *Cannon,* 441 U.S., at 703, 99 S.Ct. 1946.

FN20. The majority twice suggests that I "be[g] the question" whether a private right of action to enforce Title VI necessarily encompasses a right of action to enforce the regulations validly promulgated pursuant to the statute. *Ante,* at 1517, n. 2, 1523, n. 8. As the above analysis demonstrates, I do no such thing. On the contrary, I demonstrate that the disparate-impact regulations promulgated pursuant to § 602 are-and have always been considered to be-an important part of an integrated remedial scheme intended to promote the statute's antidiscrimination goals. Given that fact, there is simply no logical or legal justification for differentiating between actions to enforce the regulations and actions to enforce the statutory text. Furthermore, as my integrated approach reflects the longstanding practice of this Court, see n. 2, *supra,* it is the majority's largely unexplained assumption that a private right of action to enforce the disparate-impact regulations must be independently established that "begs the question."

*311 III

The majority couples its flawed analysis of the structure of Title VI with an uncharitable understanding of the substance of the divide between those on this Court who are reluctant to interpret statutes to allow for private rights of action and those who are willing to do so if the claim of right survives a rigorous application of the criteria set forth in *Cort v. Ash,* 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975). As the majority narrates our implied right of action jurisprudence, *ante,* at 1519-1520, the Court's shift to a more skeptical approach represents the rejection of a common-law judicial activism in favor of a principled recognition of the limited role of a contemporary "federal tribuna[l]." *Ante,* at 1520. According to its analysis, the recognition of an implied right of action when the text and structure of the statute do not absolutely compel such a conclusion is an act of judicial self-indulgence. As much as we would like to help those disadvantaged by discrimination, we must resist the temptation to pour ourselves "one last drink." *Ibid.* To do otherwise would be to "ventur[e] beyond Congress's intent." *Ibid.*

Overwrought imagery aside, it is the majority's approach that blinds itself to congressional intent. While it remains true that, if Congress intends a private right of action to support statutory rights, "the far better course is for it to specify as much when it creates those rights," *312*Cannon,* 441 U.S., at 717, 99 S.Ct. 1946, its failure to do so does not absolve us of the responsibility to endeavor to discern its intent. In a series of cases since *Cort v. Ash,* we have laid out rules and developed strategies for this task.

The very existence of these rules and strategies assumes that we will sometimes find manifestations of an implicit intent to create such a right. Our decision in *Cannon* represents one such occasion. As the *Cannon*

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opinion iterated and reiterated, the question whether the plaintiff had a right of action that could be asserted in federal court was a "question of statutory construction," 441 U.S., at 688, 99 S.Ct. 1946; see also *id.*, at 717, 99 S.Ct. 1946 (REHNQUIST, J., concurring), not a question of policy for the Court to decide. Applying the *Cort v. Ash* factors, we examined the nature of the rights at issue, the text and structure of the statute, and the **1534 relevant legislative history.[FN21] Our conclusion was that Congress unmistakably intended a private right of action to enforce both Title IX and Title VI. Our reasoning-and, as I have demonstrated, our holding-was equally applicable to intentional discrimination and disparate-impact claims. [FN22]

FN21. The text of the statute contained "an unmistakable focus on the benefited class," 441 U.S., at 691, 99 S.Ct. 1946; its legislative history "rather plainly indicates that Congress intended to create such a remedy," *id.*, at 694, 99 S.Ct. 1946; the legislators' repeated references to private enforcement of Title VI reflected "their intent with respect to Title IX," *id.*, at 696-698, 99 S.Ct. 1946; and the absence of legislative action to change the prevailing view with respect to Title VI left us with "no doubt that Congress intended to create Title IX remedies comparable to those available under Title VI and that it understood Title VI as authorizing an implied private cause of action for victims of prohibited discrimination," *id.*, at 703, 99 S.Ct. 1946.

FN22. We should not overlook the fact that *Cannon* was decided after the *Bakke* majority had concluded that the coverage of Title VI was co-extensive with the coverage of the Equal Protection Clause.

Underlying today's opinion is the conviction that *Cannon* must be cabined because it exemplifies an "expansive rights-creating*313 approach." *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 77, 112 S.Ct. 1028, 117 L.Ed.2d 208 (1992) (SCALIA, J., concurring in judgment). But, as I have taken pains to explain, it was Congress, not the Court, that created the cause of action, and it was the Congress that later ratified the *Cannon* holding in 1986 and again in 1988. See 503 U.S., at 72-73, 112 S.Ct. 1028.

In order to impose its own preferences as to the availability of judicial remedies, the Court today adopts a methodology that blinds itself to important evidence of congressional intent. It is one thing for the Court to ignore the import of our holding in *Cannon*, as the breadth of that precedent is a matter upon which reasonable jurists may differ. It is entirely another thing for the majority to ignore the reasoning of that opinion and the evidence contained therein, as those arguments and that evidence speak directly to the question at issue today. As I stated above, see n. 21, *supra*, *Cannon* carefully explained that both Title VI and Title IX were intended to benefit a particular class of individuals, that the purposes of the statutes would be furthered rather than frustrated by the implication of a private right of action, and that the legislative histories of the statutes support the conclusion that Congress intended such a right. See also Part IV, *infra*. Those conclusions and the evidence supporting them continue to have force today.

Similarly, if the majority is genuinely committed to deciphering congressional intent, its unwillingness to even consider evidence as to the context in which Congress legislated is perplexing. Congress does not legislate in a vacuum. As the respondents and the Government suggest, and as we have held several times, the objective manifestations of congressional intent to create a private right of action must be measured in light of the enacting Congress' expectations as to how the judiciary might evaluate the question. See *Thompson v. Thompson*, 484 U.S. 174, 108 S.Ct. 513, 98 L.Ed.2d 512 (1988); *314*Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 378-379, 102 S.Ct. 1825, 72 L.Ed.2d 182 (1982); *Cannon*, 441 U.S., at 698-699, 99 S.Ct. 1946.[FN23]

FN23. Like any other type of evidence, contextual evidence may be trumped by other more persuasive evidence. Thus, the fact that, when evaluating older statutes, we have at times reached the conclusion that Congress did not imply a private right of action does not have the significance the majority suggests. *Ante*, at 1520.

At the time Congress was considering Title VI, it was normal practice for the courts to infer that Congress intended a private right of action whenever it passed a statute designed to protect a particular **1535 class that did not contain enforcement mechanisms which

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would be thwarted by a private remedy. See *Merrill Lynch*, 456 U.S., at 374-375, 102 S.Ct. 1825 (discussing this history). Indeed, the very year Congress adopted Title VI, this Court specifically stated that "it is the duty of the courts to be alert to provide such remedies as are necessary to make effective the congressional purpose." *J.I. Case Co. v. Borak*, 377 U.S. 426, 433, 84 S.Ct. 1555, 12 L.Ed.2d 423 (1964). Assuming, as we must, that Congress was fully informed as to the state of the law, the contemporary context presents important evidence as to Congress' intent-evidence the majority declines to consider.

Ultimately, respect for Congress' prerogatives is measured in deeds, not words. Today, the Court coins a new rule, holding that a private cause of action to enforce a statute does not encompass a substantive regulation issued to effectuate that statute unless the regulation does nothing more than "authoritatively construe the statute itself." *Ante*, at 1518.[FN24] This rule might be proper if we were the kind of ***315** "common-law court" the majority decries, *ante*, at 1520, inventing private rights of action never intended by Congress. For if we are not construing a statute, we certainly may refuse to create a remedy for violations of federal regulations. But if we are faithful to the commitment to discerning congressional intent that all Members of this Court profess, the distinction is untenable. There is simply no reason to assume that Congress contemplated, desired, or adopted a distinction between regulations that merely parrot statutory text and broader regulations that are authorized by statutory text.[FN25]

FN24. Only one of this Court's myriad private right of action cases even hints at such a rule. See *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N. A.*, 511 U.S. 164, 173, 114 S.Ct. 1439, 128 L.Ed.2d 119 (1994). Even that decision, however, does not fully support the majority's position for two important reasons. First, it is not at all clear that the majority opinion in that case simply held that the regulation in question could not be enforced by private action; the opinion also permits the reading, assumed by the dissent, that the majority was in effect invalidating the regulation in question. *Id.*, at 200, 114 S.Ct. 1439 (STEVENS, J., dissenting) ("The majority leaves little doubt that the Exchange Act does not even permit the SEC to pursue aiders and abettors in civil enforcement actions under § 10(b) and Rule 10b-5"). Second, that case involved a right of action that the Court has forthrightly acknowledged was judicially created in exactly the way the majority now condemns. See, *e.g.*, *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 737, 95 S.Ct. 1917, 44 L.Ed.2d 539 (1975) (describing private actions under Rule 10b-5 as "a judicial oak which has grown from little more than a legislative acorn"). As the action in question was in effect a common-law right, the Court was more within its rights to limit that remedy than it would be in a case, such as this one, where we have held that Congress clearly intended such a right.

FN25. See *Guardians*, 463 U.S., at 636, 103 S.Ct. 3221 (STEVENS, J., dissenting) ("It is one thing to conclude, as the Court did in *Cannon*, that the 1964 Congress, legislating when implied causes of action were the rule rather than the exception, reasonably assumed that the intended beneficiaries of Title VI would be able to vindicate their rights in court. It is quite another thing to believe that the 1964 Congress substantially qualified that assumption but thought it unnecessary to tell the Judiciary about the qualification").

IV

Beyond its flawed structural analysis of Title VI and an evident antipathy toward implied rights of action, the majority offers little affirmative support for its conclusion that Congress did not intend to create a private remedy for violations of the Title VI regulations.[FN26] The Court offers****1536** essentially***316** two reasons for its position. First, it attaches significance to the fact that the "rights-creating" language in § 601 that defines the classes protected by the statute is not repeated in § 602. *Ante*, at 1521. But, of course, there was no reason to put that language in § 602 because it is perfectly obvious that the regulations authorized by § 602 must be designed to protect precisely the same people protected by § 601. Moreover, it is self-evident that, linguistic niceties notwithstanding, any statutory provision whose stated purpose is to "effectuate" the eradication of racial and ethnic discrimination has as its "focus" those individuals who, absent such legis-

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lation, would be subject to discrimination.

> FN26. The majority suggests that its failure to offer such support is irrelevant, because the burden is on the party seeking to establish the existence of an implied right of action. *Ante,* at 1523, n. 8. That response confuses apples and oranges. Undoubtedly, anyone seeking to bring a lawsuit has the burden of establishing that private individuals have the right to bring such a suit. However, once the courts have examined the statutory scheme under which the individual seeks to bring a suit and determined that a private right of action does exist, judges who seek to impose heretofore unrecognized limits on that right have a responsibility to offer reasoned arguments drawn from the text, structure, or history of that statute in order to justify such limitations. Moreover, in this case, the respondents *have* marshaled substantial affirmative evidence that a private right of action exists to enforce Title VI and the regulations validly promulgated thereunder. See *supra,* at 1534. It strikes me that it aids rather than hinders their case that this evidence is already summarized in an opinion of this Court. See Cannon, 441 U.S., at 691-703, 99 S.Ct. 1946.

Second, the Court repeats the argument advanced and rejected in Cannon that the express provision of a fund cutoff remedy "suggests that Congress intended to preclude others." *Ante,* at 1522. In Cannon, 441 U.S., at 704-708, 99 S.Ct. 1946, we carefully explained why the presence of an explicit mechanism to achieve one of the statute's objectives (ensuring that federal funds are not used "to support discriminatory practices") does not preclude a conclusion that a private right of action was intended to achieve the statute's other principal objective ("to provide individual citizens effective protection against those practices"). In support of our analysis, we offered policy arguments, cited evidence from the legislative history, and noted the active support of the relevant agencies. *Ibid.* In today's decision, the Court does not grapple ***317** with-indeed, barely acknowledges-our rejection of this argument in Cannon.

Like much else in its opinion, the present majority's unwillingness to explain its refusal to find the reasoning in Cannon persuasive suggests that today's decision is the unconscious product of the majority's profound distaste for implied causes of action rather than an attempt to discern the intent of the Congress that enacted Title VI of the Civil Rights Act of 1964. Its colorful disclaimer of any interest in "venturing beyond Congress's intent," *ante,* at 1520, has a hollow ring.

V

The question the Court answers today was only an open question in the most technical sense. Given the prevailing consensus in the Courts of Appeals, the Court should have declined to take this case. Having granted certiorari, the Court should have answered the question differently by simply according respect to our prior decisions. But most importantly, even if it were to ignore all of our post-1964 writing, the Court should have answered the question differently on the merits.

I respectfully dissent.

U.S.Ala.,2001.
Alexander v. Sandoval
532 U.S. 275, 121 S.Ct. 1511, 80 Empl. Prac. Dec. P 40,456, 149 L.Ed.2d 517, 69 USLW 4249, 69 USLW 4250, 01 Cal. Daily Op. Serv. 3194, 2001 Daily Journal D.A.R. 3941, 14 Fla. L. Weekly Fed. S 206, 2001 DJCAR 2042

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720 F.2d 804, 33 Fair Empl.Prac.Cas. (BNA) 181, 32 Empl. Prac. Dec. P 33,887
(Cite as: 720 F.2d 804)

H

United States Court of Appeals,
Fourth Circuit.
ASSOCIATED DRY GOODS CORPORATION,
Appellee,
v.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Appellant.
No. 82-1905.

Argued March 9, 1983.
Decided Nov. 1, 1983.

Employer against whom discrimination charges were filed under the Civil Rights Act of 1964 brought action seeking declaratory judgment that Equal Employment Opportunity Commission's rules and procedures for disclosure of information procured by it in course of its investigation to charging parties were invalid. Consolidated therewith was the Commission's application to enforce administrative subpoena duces tecum against employer's subsidiary. The United States District Court for the Eastern District of Virginia, Robert R. Merhige, Jr., J., 454 F.Supp. 387, granted enforcement of subpoena subject to restrictions on use of data to be obtained, and cross appeals were taken. The Court of Appeals, Harrison L. Winter, Chief Judge, 607 F.2d 1075, affirmed, and certiorari was granted. The Supreme Court, Justice Stewart, 449 U.S. 590, 101 S.Ct. 817, 66 L.Ed.2d 762, reversed and remanded. On remand, the District Court, Robert R. Merhige, J., 543 F.Supp. 950, again found the Commission's disclosure rules and regulations invalid, and the Commission appealed. The Court of Appeals, Donald Russell, Circuit Judge, held that: (1) Commission's destruction of the subject files did not render the action moot; (2) the rules and regulations were procedural rather than substantive and, thus, were not unauthorized under the Civil Rights Act of 1964; and (3) the rules and regulations fell within procedural and interpretative rule exception to notice and comment requirements of the Administrative Procedure Act.

Reversed and remanded with direction.

West Headnotes

[1] Declaratory Judgment 118A 204

118A Declaratory Judgment
118AII Subjects of Declaratory Relief
118AII(K) Public Officers and Agencies
118Ak204 k. State Officers and Boards. Most Cited Cases
(Formerly 118Ak205)
Action challenging legal validity of Equal Employment Opportunity Commission's disclosure rules and procedures was not rendered moot by Commission's destruction of files involved in the case.

[2] Administrative Law and Procedure 15A 382.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak382 Nature and Scope
15Ak382.1 k. In General. Most Cited Cases
(Formerly 15Ak382)
An administrative rule or regulation is not to be classified as substantive or procedural simply because the rule itself denominates itself to be substantive or procedural; courts look rather at actual function and effect of the rule or regulation in question in resolving whether it is substantive or procedural.

[3] Administrative Law and Procedure 15A 382.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak382 Nature and Scope
15Ak382.1 k. In General. Most Cited Cases
(Formerly 15Ak382)
If a regulation or rule enforces rights or imposes definite obligations on the parties, it is ordinarily considered substantive; if, however, it really regulates procedure, i.e., manner in which an administrative agency carries out its administrative function and

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responsibilities, the rule is to be deemed procedural.

[4] **Administrative Law and Procedure 15A ⚷309.1**

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(A) In General
15Ak309 Proceedings in General
15Ak309.1 k. In General. Most Cited Cases
(Formerly 15Ak385.1, 15Ak385)
Administrative agencies are free to fashion their own rules of procedure without judicial constraint or supervision.

[5] **Civil Rights 78 ⚷1506**

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1506 k. Charges and Investigations. Most Cited Cases
(Formerly 78k343, 78k34)
Equal Employment Opportunity Commission's rules and procedures allowing disclosure of information procured by it in course of its investigation to charging parties were procedural rather than substantive and, thus, were not unauthorized under the Civil Rights Act of 1964. Civil Rights Act of 1964, §§ 706(a), 709(e), 713(a), 42 U.S.C.A. §§ 2000e-5(b), 2000e-8(e), 2000e-12(a).

[6] **Civil Rights 78 ⚷1506**

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1506 k. Charges and Investigations. Most Cited Cases
(Formerly 78k343, 78k34)
Equal Employment Opportunity Commission's rules and procedures allowing disclosure of information procured by it in course of its investigation to charging parties fell within procedural and interpretative rule exemption of notice and comment requirements of the Administrative Procedure Act. 5 U.S.C.A. § 553(b)(3)(A).

*805 Colleen M. O'Connor, Washington, D.C. (Michael N. Martinez, Gen. Counsel, Salt Lake City, Utah, Philip B. Sklover, Associate Gen. Counsel, Vella M. Fink, Asst. Gen. Counsel, Washington, D.C., on brief), for appellant.

Andrew A. Peterson, New York City (Roger S. Kaplan, Jackson, Lewis, Schnitzler*806 & Krupman, New York City, on brief), for appellee.

Robert E. Williams, Douglas S. McDowell, Jeffrey A. Norris, Lorence L. Kessler, McGuiness & Williams, Washington, D.C., on brief, for amicus curiae.

Before RUSSELL and HALL, Circuit Judges, and HAYNSWORTH, Senior Circuit Judge.

DONALD RUSSELL, Circuit Judge:

This proceeding arose out of certain discrimination charges filed under Title VII of the Civil Rights Act of 1964 by a number of its employees against the Joseph Horne Company (hereafter Horne), a division of the appellee, Associated Dry Goods Corporation (hereafter Associated), with the Equal Employment Opportunity Commission (hereafter Commission).[FN1] In connection with the investigation of such charges, the Commission requested of Horne "the employment records of the complainants, and statistics, documents, and other information relating to Horne's general personnel practices" and, when this request was refused unless the Commission would give "an assurance of absolute secrecy," a condition found unacceptable by the Commission, a subpoena was issued by the Commission for the same material and information. At this point, Associated (acting on behalf of its division Horne) filed this action to enjoin the enforcement of the subpoena because of the Commission's restricted rules allowing disclosure of information procured by it in the course of its investigation to charging parties. These rules and procedures for disclosure were alleged by Associated to be invalid and, in its action, Associated asked for a declaratory judgment to that effect.

FN1. Jurisdiction was predicated on Title VII of the Civil Rights Act of 1964, 42 U.S.C., § 2000e, et seq. (1972) and other federal sta-

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tutes and 28 U.S.C. § 1331.

Broadly stated, the Commission's rules and procedures on disclosure of materials to the parties to a charge allowed limited disclosure to a charging party of material in its investigation of the party's individual claim after the expiration of 180 days from the filing of the party's charge with the Commission, or after a Notice of a Right-to-Sue letter had been issued but only "for the purpose of reviewing information in the file in connection with pending or contemplated litigation," and on "the condition that the person requesting disclosure agrees in writing not to make the information obtained public except in the normal course of a civil action or other proceeding instituted under Title VII." [FN2] The right of disclosure to the party charged, on the other hand, accrues only after suit has been filed by the charging party.[FN3]

FN2. There was in the rule a provision for earlier disclosure in extremely extraordinary circumstances. That exception is not involved in this proceeding and we do not discuss it.

FN3. The rules and procedures for such disclosure are embraced in §§ 1601.22 and 1610.17(d), 29 C.F.R., and Section 83 of the Commission's Compliance Manual. § 1601.22 merely repeated Title VII's own protection against public disclosure of the Commission's proceedings prior to suit under the Act but provided such prohibition did not extend to the parties to the charge. § 1610.17(d) simply specified the availability of the rules for disclosure "in the public areas of the Commission." The rules for disclosure themselves, as referred to in § 1610.17(d) are set forth in Section 83 of the Commission's Compliance Manual and are in fact the subject matter of Associated's attack.

The ground on which Associated based its claim of invalidity of these rules and procedures were 1) that the Commission's rules and procedures for limited disclosures were violative of the statutory prohibition against public disclosure of these records as set forth in § 2000e-5(b) and 8(e), 42 U.S.C., [FN4] 2) that they are substantive and are unauthorized since the Act restricts the rulemaking power of the Commission to procedural rules and procedures (§ 2000e-12(a), 42 U.S.C.); and 3) that, as substantive rules, they were not issued in compliance with the notice and comment provision ***807** of the Administrative Procedure Act (APA), §§ 551, and 553, 5 U.S.C.[FN5]

FN4. These prohibitions against public disclosure are summarized in *EEOC v. Associated Dry Goods Corp.*, 449 U.S. 590, 596, 101 S.Ct. 817, 821, 66 L.Ed.2d 762 (1981) and need not be repeated here.

FN5. Associated raised a number of other grounds as noted by the Supreme Court in note 4 on page 594, 449 U.S., note 4 on page 820, 101 S.Ct. However, other than those listed in the text, Associated has not raised on this appeal any of such grounds.

On Associated's motion for summary judgment, the District Court granted declaratory judgment in favor of Associated on the sole ground that under § 2000e the Commission was prohibited from disclosing "its investigative files to anyone outside the government, including charging parties." It did not rule on the other grounds asserted by Associated. *Associated Dry Goods Corp. v. Equal Emp., Etc.*, 454 F.Supp. 387 (E.D.Va.1978). We affirmed on appeal this decision in *Equal Emp. Opportunity Com'n. v. Jos. Horne Co.*, 607 F.2d 1075 (4th Cir.1979). The Supreme Court granted certiorari and reversed. *EEOC v. Associated Dry Goods Corp.*, 449 U.S. 590, 101 S.Ct. 817, 66 L.Ed.2d 762 (1981). In its decision, the Supreme Court confined its decision to the single ground which had been assigned by the District Court as the basis for its decision, and emphasized that, since neither the District Court nor the Court of Appeals addressed the other grounds raised by Associated, those issues were not before it. 449 U.S. at 594, n. 4, 101 S.Ct. at 820, n. 4. It held on the point reviewed that "charging parties [were not included] within the 'public' to whom disclosure [was] ... illegal" under § 2000e-5(b). 449 U.S. at 598, 101 S.Ct. at 822. It did hold, however, that "there is no reason why the charging party should know the content of any other employee's charge, and [that] he must be considered a member of the public with respect to charges filed by other people." *Id.*, at 603, 101 S.Ct. at 825. It remanded the cause to this Court for the resolution of the other challenges of Associated to the Commission's disclosure rules and regulations and we in turn remanded the action to the District Court for the disposition of those issues.

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(Cite as: 720 F.2d 804)

On remand both parties moved in the District Court for summary judgment. In resolving these motions, the District Court again found the Commission's disclosure rules and regulations invalid. *Associated Dry Goods Corp. v. E.E.O.C.*, 543 F.Supp. 950 (E.D.Va.1982). In reaching this conclusion, the Court first held that such rules and procedures were substantive and not "procedural." In reaching this conclusion, it found that the disclosure rules and regulations "affect[ed] ... the rights of charging parties, respondents and members of the public to access to ... the EEOC's investigative files" by "enhancing or diminishing a party's willingness to settle, and thereby affects a charging party's decision on whether to exercise his or her right to sue." Since the Commission was only authorized under § 2000e-12(a) of the Act to "issue, amend, or rescind suitable *procedural* regulations to carry out the provisions of [Title VII]," these disclosure rules and regulations, being substantive and not procedural, were beyond the Commission's authority and were invalid. *Id.* at 953, 956-57. However, it chose not to rest its decision on this ground, recognizing that, whether authorized under the Commission's power as granted by the Act, the Commission's rules might be accorded judicial deference as within the inherent power of the Commission in implementing the purposes of the Act. It held, though, that rules and regulations which gave the charging party access, before access was given the party being charged, were neither fair nor consistent and that only a disclosure procedure which made the investigative files available to both parties at the same time would justify judicial deference. It accordingly concluded that, in the District Court's opinion, these regulations and procedures were not entitled to judicial deference and could not be sustained as valid interpretative rules and regulations. The District Court then addressed the question whether the validity of the Commission's disclosure of the rules and regulations depended on compliance in their issuance with the procedures for notice and comment prescribed by § 553, 5 U.S.C. of the Administrative Procedure Act. It held that, though that section expressly exempted*808 " 'interpretative rules, general statements of policy, or rules of agency organization, procedure or practice,' " [FN6] it applied to these particular rules and procedures because they had a "substantial impact" on the rights of the parties. It, therefore, as an alternative ground invalidated § 1610.17 and § 83 of the Manual for failure to comply with § 553.[FN7] The Commission has appealed that decision and we reverse.

FN6. *Id.* at 962.

FN7. § 1601 had been adopted after notice and comment and was found valid. It, however, had no relevancy to the issues as they were presented at this stage of the proceedings.

[1] Before addressing the merits of the appeal, we are confronted with a motion of the Commission, filed after appeal to this Court, to dismiss the present action as moot. The basis for such motion was the claim that during the pendency of this proceeding the files involved had been destroyed by the Commission and that any objection to their disclosure has been thereby rendered moot. We tarry to observe that it is odd that the Commission would have destroyed these files while this appeal was pending and would use its own act of destruction as a basis for dismissal of the action as moot. In any event, we are not disposed under the circumstances to dismiss the action. As Associated has said, it is anomalous "to ask an appellate court to vacate a lower court decision because the losing party has destroyed what it belatedly purports (sic) to be the subject matter of the law-suit." Contrary to the Commission's assumption, the issue here is not the disclosure of these particular files so much as the legal validity of the Commission's disclosure rules and procedures. That validity is an issue that will likely recur often and it is one which it would seem the Commission itself, as much as Associated, should have wished to have resolved. Undoubtedly it is an issue Associated, as a national concern with subsidiaries employing thousands of persons within the Act, is likely to be concerned with in the future. We conclude that both parties-the Commission and Associated-have a substantial stake in the subject matter of this action, which is the validity of the Commission's disclosure rules and procedures.[FN8] They have been litigating this issue for years. Both parties are represented by able counsel, who are thoroughly acquainted with the points in issue and the law involved, and both have the financial resources and have given every indication of an intention to litigate this issue to the final court of appeal. This is shown by the fact that this is the second time we have had the cause presented to us. And the Supreme Court has demonstrated its own recognition of the importance of the issue involved herein by its grant of certiorari to resolve an earlier issue. We accordingly are not persuaded that

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this appeal presenting an issue of such importance with its likelihood of reasonable recurrence, should be dismissed for mootness.

> FN8. *See* *Delta Air Lines, Inc. v. Civil Aeronautics Bd.*, 674 F.2d 1, 4 (D.C.Cir.1982).

We now turn to the merits of the appeal and the grounds on which the District Court based its finding of invalidity of the Commission's disclosure rules and procedures. Its first basis of invalidity raised the issue whether such rules were substantive or procedural. The reason why such issue was particularly important in this case was that the power of the Commission to issue rules is, by the Act, restricted to procedural rules and does not embrace substantive rules. We shall accordingly consider first whether these rules and procedures under review are substantive or procedural.

[2][3] The Administrative Procedure Act, which deals with the distinction between "substantive" and "procedural" rules, offers no definition of either term nor does it provide any criteria for their classification. As Justice Rehnquist observed in *Chrysler Corp. v. Brown*, 441 U.S. 281, 302, 99 S.Ct. 1705, 1718, 60 L.Ed.2d 208 (1979), "other authoritative sources essentially offer definitions (of the two terms) by negative inference." One rule for distinguishing the two concepts, however, is well settled ***809** and that is that an administrative rule or regulation is not to be classified as substantive or procedural simply because the rule itself denominates itself to be substantive or procedural. *Columbia Broadcasting System v. U.S.*, 316 U.S. 407, 416, 62 S.Ct. 1194, 1200, 86 L.Ed. 1563 (1942). The courts look rather at the actual function and effect of the rule or regulation in question in resolving whether it is substantive or procedural. If a regulation or rule enforces rights or imposes definite obligations on the parties, it is ordinarily considered substantive. If, however, it "really regulates procedure," *i.e.*, the manner in which an administrative agency carries out its administrative function and responsibilities, the rule is to be deemed procedural. The distinction thus phrased seems to be implicit in the authoritative declaration of the Supreme Court in *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14, 61 S.Ct. 422, 426, 85 L.Ed. 479 (1941):

> "The test must be whether a rule really regulates procedure,-the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them. That the rules in question are such is admitted."

[4] In keeping with this distinction as stated in *Sibbach,* rules and regulations relating to disclosure in administrative proceedings are generally held to "really regulate procedure" and are, therefore, considered to be procedural. This follows from what is characterized as a "basic tenet of administrative law" that administrative agencies are "free to fashion their own rules of procedure," without judicial constraint or supervision. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 544, 98 S.Ct. 1197, 1212, 55 L.Ed.2d 460 (1978). Illustrative of this is *Sibbach* itself, *supra.* That case involved the validity as a procedural rule of Rule 35 of the then new Federal Rules of Civil Procedure. This rule provided a procedure for securing a physical examination of the plaintiff at the instance of the defendant in a personal injury suit. The Supreme Court sustained the rule as procedural and thus within the discretion of the Court. *FCC v. Schreiber*, 381 U.S. 279, 85 S.Ct. 1459, 14 L.Ed.2d 383 (1965) presented an issue almost identical with that posed by Associated here. The controversy centered on an agency regulation authorizing disclosure of financial information furnished by regulated parties under the regulations. The regulated party contended the regulation was substantive and not procedural and was void for failure to comply with the Administrative Procedure Act. The Supreme Court, though, upheld the regulation as a valid procedural regulation. We perceive no distinction between those cases and the one before us.

[5] The District Court, on the other hand, found that the disclosure rules and regulations involved here were substantive because they met the test of rules " 'affecting individual rights and obligations,' " as stated in *Brown, supra,* 441 U.S. at 302, 99 S.Ct. at 1718 as a basis for finding the rules in that case "substantive." It found the test it deduced from *Brown* to be similar to the "substantial impact" criterion followed in determining "the applicability of the notice and comment procedures of § 553 of the APA to the agency's rulemaking." 543 F.Supp. at 953-54. The infirmity in this reasoning of the District Court is the erroneous assumption that any action taken by the Commission in its proceedings affects the ultimate

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rights of either the charging party or the party charged. In two recent cases, we have made it plain that the Commission cannot, by any action it may take "enforce any rights or impose any obligations" and that it is "only by a voluntary conciliation agreement or by a court after a trial *de novo*" that the parties can be subjected to any obligation or secure any right. *Georator Corp. v. Equal Emp. Opp. Com'n.*, 592 F.2d 765, 768 (4th Cir.1979); *E.E.O.C. v. Raymond Metal Products Co.*, 530 F.2d 590, 593 (4th Cir.1976). It was because of this limitation on the power of the Commission that we in *Raymond* held that a regulation of the Commission delegating the authority to make a final, probable cause or dismissal determination after investigation and review of a charge by the Commission was effective as a "procedural" rule. The reasons***810** for finding the regulations under review to be procedural rather than substantive appear far more compelling than those in *Raymond.*

Even though the District Court found, as we have said, that the rules and regulations were not procedural and thus without the statutory grant of authority given the Commission for rulemaking, it did not rest its decision that such rules were invalid on that finding. The Court recognized that, while an administrative agency might be without statutory authority to issue substantive rules, still it had inherent power to issue what are characterized as interpretative rules in the exercise of its discretionary function under its enabling statute in order to carry out and perform its discretionary function. *General Electric Co. v. Gilbert*, 429 U.S. 125, 141, 97 S.Ct. 401, 410, 50 L.Ed.2d 343 (1976); *American Trucking Ass'n. v. United States*, 688 F.2d 1337, 1341, n. 5 (11th Cir.1982) 2 K. Davis, *Administrative Law Treatise* § 7.13 (2d ed. 1979). In its earlier decision herein, the Supreme Court did not find occasion to discuss whether the rules and procedures involved herein were substantive or procedural but it did make some comments which implied strongly that such rules and procedures could be treated as valid interpretative rules. This implication follows from the Supreme Court's suggestion in note 17, at 600, 449 U.S., note 17, at 823, 101 S.Ct., that the rules were entitled to judicial deference. In adumbrating the reasons for this dictum the Supreme Court discussed, in relation to the history of these rules, the various criteria used for resolving the validity of interpretative rules. Thus, the Supreme Court noted that these rules and procedures were substantially adopted almost contemporaneously with the Act itself and had, for practical purposes, "remained consistent over a long period of time." Moreover, it added that *[i]n the 15 years during which the Commission has consistently allowed limited disclosure to the charging party,* Congress has never expressed its disapproval, and its silence in this regard suggests its consent to the Commission's practice." [FN9] It went further and said that the Commission's disclosure rules and procedures provided "the statutory goal of maximum possible reliance upon voluntary conciliation and administrative resolution of claims" since the charging party, if "impecunious" would be likely even "in a hopeless case" to be "tempted to file a lawsuit ... if the statute did not allow the Commission to give him essential investigative information before he filed suit." 449 U.S. at 602, and n. 19, 101 S.Ct. at 824, and n. 19. It concluded by declaring that "even if disclosure may encourage litigation in some instances, that result is not inconsistent with the ultimate purposes of Title VII," particularly in the light of a charging party's possible role as "a 'private attorney general,' ... in enforcing the ban on discrimination ...." 449 U.S. at 602, 101 S.Ct. at 824. It seems fair to deduce from these comments that the Supreme Court considered these rules to qualify as interpretative rules.

> FN9. 449 U.S. at 600, n. 17, 101 S.Ct. at 823, n. 17. (Italics added)

Despite these contrary indications, if not specific holdings, of the Supreme Court in its earlier decision herein, the District Court found these disclosure rules and procedures, even when treated as interpretative rules, to be invalid and not entitled to judicial deference. It assigned a number of reasons for this conclusion, practically all of which seem to run counter to what we have seen was at least the indication of the Supreme Court's view. The first of these reasons on which the District Court relied was that the Commission's rules and procedure, as set forth in Section 83 of the Compliance Manual did not "comport with either the legislative history of Title VII or the enforcement mechanism established by Congress," which it found expressive of the conclusion that Congress "expected [by the Act] that disclosure would be made to the parties to the charge" at the same time.[FN10] The District Court assigned as its basis for this assumption two quotations from statements made by the Senatorial sponsors of Title VII, ***811** Senators Humphrey and Dirksen, during Senate consideration of the Act. However, neither of these statements made the slightest reference to disclosure to "the parties to the

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charge." Both statements were mere justifications for the provisions of the Act denying "public" disclosure before suit, which was the issue decided by the Supreme Court in the earlier appeal. The legislative record is completely silent on the specific point in issue here, *i.e.,* the timing of disclosure, if any, to the parties to the charge. That decision was left to the discretion of the Commission by the Congress.

FN10. 543 F.Supp. at 960.

The District Court next would fault the rules and procedure of the Commission as valid interpretative rules because of what it considered to be inconsistent and wavering rulings by the Commission over the years on the timing of disclosure. In so finding, the District Court seems to reach a contrary conclusion from that expressed by the Supreme Court in its earlier opinion that these rules had "remained consistent over a long period of time." *See* 449 U.S. at 600, n. 17, 101 S.Ct. at 823, n. 17. Actually, a review of even the facts detailed by the District Court for its finding of "inconsistency and confusion" leads us to a conclusion contrary to that of the District Court. As early as November 9, 1965, the procedure established by the Commission for disclosure to the parties involved in a charge allowed disclosure to the charging party or his attorney "after the expiration of the conciliation period and to counsel for the respondent once suit is filed." These early instructions thus limited the right to disclosure to the time "after the expiration of the conciliation period" or until the charging party would have been entitled to a right-to-sue letter or, under the later amendments, to sue without a right-to-sue letter. The 1974 amendment merely made more specific that disclosure to the charging party must await that point in time when the right of such party to sue had arrived and accordingly provided that the right accorded "in contemplation of litigation, and for purposes of drawing up a complaint." The present form of the rules was adopted in 1975. Irrespective of some slight difference in phraseology, the Commission, in our opinion, has never deviated significantly in its practice from the rule that disclosure to the charging party might be made after his entitlement to a right-to-sue letter had accrued, provided the disclosed material was to be used exclusively for purposes of filing a complaint and further that disclosure to the party charged should await the actual filing of suit.

Finally, the District Court found the Commission's procedures to be unfair and discriminatory and assigned this as a reason for refusing deference to such procedures. We do not agree with such conclusion. As we have said, any right of the charging party to disclosure accrued in favor of the charging party only after 180 days following the filing of such charge. At that point, the charging party's right to sue had accrued and presumably attempts at conciliation were at an end. He was entitled, if he filed suit, to disclosure. By filing suit then he could secure access to the Commission's investigative file and could thereby obtain as of right the very disclosure the Commission's procedure offers him. No prejudice to the party charged could accrue by allowing access to the charging party before he files suit under the limitations fixed by the Commission. The charging party is given no advantage under the Commission's procedures which he could not as easily secure by filing at the time his complaint in the District Court. If, after securing access to material in the Commission's investigative file, the charging party, however, determines not to sue, the party charged would have no interest in securing access to any information in the Commission's file nor would it suffer any prejudice or "impact" from the absence of access. Should, however, the charging party sue, the charged party would need access to the Commission's investigative file only at that time and at that time it would be entitled forthwith to access to the information in the investigative file. We find nothing unfair or discriminatory in such a procedure. In fact, the Supreme Court in the earlier appeal found that, allowing the charging ***812** party to have access at the point and under the circumstances provided by the rules might well benefit the party charged by saving him the burden of defending an action obviously without merit. *See* 449 U.S. at 602, 101 S.Ct. at 824. Without further laboring the point, we do not think that the reasons suggested by the District Court are sufficient justifications for a denial of approval of the rules and procedures herein as valid interpretative rules.

[6] Finally, the District Court held that, whether regarded as procedural or interpretative rules, these rules and procedure were invalid for failure to comply with the notice and comment requirements of § 553, 5 U.S.C. of the Administrative Procedure Act. It held that the specific exemption in Section 553(b)(3)(A), 5 U.S.C., for procedural and interpretative rules from this requirement, as inapplicable where such rules had a "substantial impact" on a party's rights. However, as we have already observed, no rule or decision of the

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Commission, however denominated, can affect the rights or impose any obligation on any party. *See Georator* and *Raymond, supra.* In view of this limitation of power of the Commission, it is difficult to see any basis for finding "substantial impact" on Associated's rights by any grant of access to the charging party to the investigative file of his charge after that party's right to sue had in effect accrued. We find no reason in this case not to give full effect to the exemption incorporated in section 553(b)(3)(A) for procedural and interpretative rules.

The decision and judgment of the District Court are accordingly reversed and the cause is remanded with direction to the District Court to grant the Commission's motion for summary judgment.

C.A.Va.,1983.
Associated Dry Goods Corp. v. E.E.O.C.
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Supreme Court of the United States
Kay BARNES, in Her Official Capacity as Member of the Board of Police Commissioners of Kansas City, Missouri, et al., Petitioners,
v.
Jeffrey GORMAN.
No. 01-682.

Argued April 23, 2002.
Decided June 17, 2002.

Wheelchair-bound arrestee who was injured while being transported in a police van which was not equipped with wheelchair restraints brought action against members of city board of police commissioners, city police chief, and officer who drove the van, alleging violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The United States District Court for the Western District of Missouri, 925 F.Supp. 653, entered judgment on jury verdict for compensatory damages, but vacated punitive damages award. Both parties appealed. The Court of Appeals for the Eighth Circuit, 257 F.3d 738, reversed and remanded. Defendants applied for writ of certiorari which was granted. The Supreme Court, Justice Scalia, held that punitive damages may not be awarded in private suits brought under the ADA and the Rehabilitation Act.

Reversed.

Justice Souter filed concurring opinion in which Justice O'Connor joined.

Justice Stevens filed opinion concurring in the judgment in which Justices Ginsburg and Breyer joined.

West Headnotes

[1] Civil Rights 78 1448

78 Civil Rights
78III Federal Remedies in General
78k1448 k. Judgment and Relief in General. Most Cited Cases
(Formerly 78k261)

The remedies for violations of the ADA and the Rehabilitation Act are coextensive with the remedies available in a private cause of action brought under Title VI. Rehabilitation Act of 1973, §§ 504, 505(a)(2), as amended, 29 U.S.C.A. §§ 794, 794a(a)(2); Civil Rights Act of 1964, § 601 et seq., 42 U.S.C.A. § 2000d et seq.; Americans with Disabilities Act of 1990, §§ 202, 203, 42 U.S.C.A. §§ 12132, 12133.

[2] Civil Rights 78 1005

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1002 Constitutional and Statutory Provisions
78k1005 k. Power to Enact and Validity. Most Cited Cases
(Formerly 78k103)
Title VI which prohibits discrimination in program or activity which receives federal funds invokes Congress's power under the Spending Clause to place conditions on the grant of federal funds. U.S.C.A. Const. Art. 1, § 8, cl. 1; Civil Rights Act of 1964, § 601 et seq., 42 U.S.C.A. § 2000d et seq.

[3] Civil Rights 78 1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k126)

Civil Rights 78 1448

78 Civil Rights
78III Federal Remedies in General
78k1448 k. Judgment and Relief in General. Most Cited Cases
(Formerly 78k261)
A remedy is "appropriate relief" in private suits under Spending Clause legislation such as Title VI only if the funding recipient is on notice that, by accepting federal funding, it exposes itself to liability of that

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nature; a funding recipient is generally on notice that it is subject not only to those remedies explicitly provided in the relevant legislation, but also to those remedies traditionally available in suits for breach of contract. U.S.C.A. Const. Art. 1, § 8, cl. 1; Civil Rights Act of 1964, § 601 et seq., 42 U.S.C.A. § 2000d et seq.

[4] Damages 115 89(2)

115 Damages
115V Exemplary Damages
115k88 Injuries for Which Exemplary Damages May Be Awarded
115k89 In General
115k89(2) k. Breach of Contract. Most Cited Cases
Punitive damages, unlike compensatory damages and injunction, are generally not available for breach of contract.

[5] Civil Rights 78 1465(1)

78 Civil Rights
78III Federal Remedies in General
78k1458 Monetary Relief in General
78k1465 Exemplary or Punitive Damages
78k1465(1) k. In General. Most Cited Cases
(Formerly 78k275(1))
Because punitive damages may not be awarded in private suits brought under Title VI of the 1964 Civil Rights Act, it follows that they may not be awarded in private suits brought under the ADA provision prohibiting discrimination against the disabled by public entities and the Rehabilitation Act provision prohibiting discrimination against the disabled by recipients of federal funding. Rehabilitation Act of 1973, §§504, 505(a)(2), as amended, 29 U.S.C.A. §§ 794, Rehabilitation Act of 1973, §§ 504, 505(a)(2), as amended, 29 794a(a)(2); Civil Rights Act of 1964, § 601 et seq., 42 U.S.C.A. § 2000d et seq.; Americans with Disabilities Act of 1990, §§ 202, 203, 42 U.S.C.A. §§ 12132, 12133.

****2098 *181 Syllabus*** [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

Respondent, a paraplegic, suffered serious injuries that left him unable to work full time when, after arrest, he was transported to a Kansas City police station in a van that was not equipped to accommodate the disabled. He sued petitioner police officials and officers for discriminating against him on the basis of his disability, in violation of § 202 of the Americans with Disabilities Act of 1990(ADA) and § 504 of the Rehabilitation Act of 1973, by failing to maintain appropriate policies for the arrest and transportation of persons with spinal cord injuries. A jury awarded him compensatory and punitive damages, but the District Court vacated as to punitive damages, holding that they are unavailable in private suits brought under § 202 of the ADA and § 504 of the Rehabilitation Act. In reversing, the Eighth Circuit found punitive damages available under the "general rule" of *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 70-71, 112 S.Ct. 1028, 117 L.Ed.2d 208, that "absent clear direction to the contrary by Congress, the federal courts have the power to award any appropriate relief" for violation of a federal right.

Held: Punitive damages may not be awarded in private suits brought under § 202 of the ADA and § 504 of the Rehabilitation Act. These sections are enforceable through private causes of action, whose remedies are coextensive with those available in a private action under Title VI of the Civil Rights Act of 1964. See § 203 of the ADA and § 505(a)(2) of the Rehabilitation Act. Title VI invokes Congress's Spending Clause power to place conditions on the grant of federal funds. This Court has regularly applied a contract-law analogy in defining the scope of conduct for which funding recipients may be held liable in money damages, and in finding a damages remedy available, in private suits under Spending Clause legislation. The same analogy applies in determining the scope of damages remedies. A remedy is appropriate relief only if the recipient is on notice that, by accepting federal funding, it ****2099** exposes itself to such liability. A funding recipient is generally on notice that it is subject not only to those remedies explicitly provided in the relevant legislation but also to those traditionally available in breach of contract suits. Title VI mentions no remedies; and punitive damages are ***182** generally not available for breach of contract. Nor could it be

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said that Title VI funding recipients have, merely by accepting funds, implicitly consented to a remedy which is not normally available for contract actions, and the indeterminate magnitude of which could produce liability exceeding the level of federal funding. Because punitive damages may not be awarded in private suits under Title VI, it follows that they may not be awarded in suits under § 202 of the ADA and § 504 of the Rehabilitation Act. Pp. 2100-2103.

257 F.3d 738, reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and O'CONNOR, KENNEDY, SOUTER, and THOMAS, JJ., joined. SOUTER, J., filed a concurring opinion, in which O'CONNOR, J., joined, *post,* p. 2103. STEVENS, J., filed an opinion concurring in the judgment, in which GINSBURG and BREYER, JJ., joined, *post,* p. 2103. Lawrence S. Robbins, Washington, DC, for petitioners.

Gregory G. Garre, Washington, DC, for the United States as amicus curiae, by special leave of the Court, supporting the petitioners.

Scott L. Nelson, Washington, DC, for respondent.

For U.S. Supreme Court briefs, see:2002 WL 333253 (Pet.Brief)2002 WL 649406 (Reply.Brief)

***183** Justice SCALIA delivered the opinion of the Court.

We must decide whether punitive damages may be awarded in a private cause of action brought under § 202 of the Americans with Disabilities Act of 1990(ADA), 104 Stat. 337, 42 U.S.C. § 12132 (1994 ed.), and § 504 of the Rehabilitation Act of 1973, 87 Stat. 394, 29 U.S.C. § 794(a).

I

Respondent Jeffrey Gorman, a paraplegic, is confined to a wheelchair and lacks voluntary control over his lower torso, including his bladder, forcing him to wear a catheter attached to a urine bag around his waist. In May 1992, he was arrested for trespass after fighting with a bouncer at a Kansas City, Missouri, nightclub. While waiting for a police van to transport him to the station, he was denied permission to use a restroom to empty his urine bag. When the van arrived, it was not equipped to receive respondent's wheelchair. Over respondent's objection, the officers removed him from his wheelchair and used a seatbelt and his own belt to strap him to a narrow bench in the rear of the van. During the ride to the police station, respondent released his seatbelt, fearing it placed excessive pressure on his urine bag. Eventually, the other belt came loose and respondent fell to the floor, rupturing his urine bag and injuring his shoulder and back. The driver, the only officer in the van, finding it impossible to lift respondent, fastened him to a support for the remainder of the trip. Upon arriving***184** at the station, respondent was booked, processed, and released; later he was convicted of misdemeanor trespass. After these events, respondent suffered serious medical problems-including a bladder infection, serious lower back pain, and uncontrollable spasms in his paralyzed areas-that left him unable to work full time.

Respondent brought suit against petitioners-members of the Kansas City Board of Police Commissioners, the chief of police, and the officer who drove the van-in the United States District Court for the Western District of Missouri. The suit claimed petitioners had discriminated against respondent on the basis of his disability,****2100** in violation of § 202 of the ADA and § 504 of the Rehabilitation Act, by failing to maintain appropriate policies for the arrest and transportation of persons with spinal cord injuries.

A jury found petitioners liable and awarded over $1 million in compensatory damages and $1.2 million in punitive damages. The District Court vacated the punitive damages award, holding that punitive damages are unavailable in suits under § 202 of the ADA and § 504 of the Rehabilitation Act. The Court of Appeals for the Eighth Circuit reversed, relying on this Court's decision in *Franklin v. Gwinnett County Public Schools,* 503 U.S. 60, 70-71, 112 S.Ct. 1028, 117 L.Ed.2d 208 (1992), which stated the "general rule" that "absent clear direction to the contrary by Congress, the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute." Punitive damages are appropriate relief, the Eighth Circuit held, because they are "an integral part of the common law tradition and the judicial arsenal," 257 F.3d 738, 745 (2001), and Congress did nothing to disturb this tradition in enacting or amending the relevant statutes,

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id., at 747. We granted certiorari. 534 U.S. 1103, 122 S.Ct. 865, 151 L.Ed.2d 739 (2002).

II

[1] Section 202 of the ADA prohibits discrimination against the disabled by public entities; § 504 of the Rehabilitation Act ***185** prohibits discrimination against the disabled by recipients of federal funding, including private organizations, 29 U.S.C. § 794(b)(3). Both provisions are enforceable through private causes of action. Section 203 of the ADA declares that the "remedies, procedures, and rights set forth in [§ 505(a)(2) of the Rehabilitation Act] shall be the remedies, procedures, and rights this subchapter provides" for violations of § 202. 42 U.S.C. § 12133. Section 505(a)(2) of the Rehabilitation Act, in turn, declares that the "remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 ... shall be available" for violations of § 504, as added, 92 Stat. 2983, 29 U.S.C. § 794a(a)(2). Thus, the remedies for violations of § 202 of the ADA and § 504 of the Rehabilitation Act are coextensive with the remedies available in a private cause of action brought under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, which prohibits racial discrimination in federally funded programs and activities.

Although Title VI does not mention a private right of action, our prior decisions have found an *implied* right of action, *e.g.*, *Cannon v. University of Chicago*, 441 U.S. 677, 703, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979), and Congress has acknowledged this right in amendments to the statute, leaving it "beyond dispute that private individuals may sue to enforce" Title VI, *Alexander v. Sandoval*, 532 U.S. 275, 280, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001). It is less clear what remedies are available in such a suit. In *Franklin, supra*, at 73, 112 S.Ct. 1028, we recognized "the traditional presumption in favor of *any appropriate relief* for violation of a federal right," and held that since this presumption applies to suits under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, monetary damages were available. (Emphasis added.) And the Court has interpreted Title IX consistently with Title VI, see *Cannon, supra*, at 694-698, 99 S.Ct. 1946. *Franklin*, however, did not describe the scope of "appropriate relief." We take up this question today.

[2] Title VI invokes Congress's power under the Spending Clause, U.S. Const., Art. I, § 8, cl. 1, to place conditions on ***186** the grant of federal funds. See *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629, 640, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999) (Title IX). We have repeatedly characterized this statute and other Spending Clause legislation as "much in the nature of a *contract:* in return for federal funds, ****2101** the [recipients] agree to comply with federally imposed conditions." *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981) (emphasis added); [FN1] see also *Davis, supra*, at 640, 119 S.Ct. 1661; *Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274, 286, 118 S.Ct. 1989, 141 L.Ed.2d 277 (1998); *Guardians Assn. v. Civil Serv. Comm'n of New York City*, 463 U.S. 582, 599, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983) (opinion of White, J.); *id.*, at 632-633, 103 S.Ct. 3221 (Marshall, J., dissenting); *Lau v. Nichols*, 414 U.S. 563, 568-569, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974). Just as a valid contract requires offer and acceptance of its terms, "[t]he legitimacy of Congress' power to legislate under the spending power ... rests on whether the [recipient] voluntarily and knowingly accepts the terms of the 'contract.' ... Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." *Pennhurst, supra*, at 17, 101 S.Ct. 1531; see also *Davis, supra*, at 640, 119 S.Ct. 1661; *Gebser, supra*, at 287, 118 S.Ct. 1989; *Franklin*, 503 U.S., at 74, 112 S.Ct. 1028. Although we have been careful not to imply that *all* contract-law rules apply to Spending Clause legislation, see, *e.g.*, *Bennett v. Kentucky Dept. of Ed.*, 470 U.S. 656, 669, 105 S.Ct. 1544, 84 L.Ed.2d 590 (1985) (Title I), we have regularly applied the contract-law analogy in cases defining the scope of conduct for which funding recipients may be held liable for money damages. Thus, ***187** a recipient may be held liable to third-party beneficiaries for intentional conduct that violates the clear terms of the relevant statute, *Davis, supra*, at 642, 119 S.Ct. 1661, but not for its failure to comply with vague language describing the objectives of the statute, *Pennhurst, supra*, at 24-25, 101 S.Ct. 1531; and, if the statute implies that only violations brought to the attention of an official with power to correct them are actionable, not for conduct unknown to any such official, see *Gebser, supra*, at 290, 118 S.Ct. 1989. We have also applied the contract-law analogy in finding a damages remedy available in private suits under Spending Clause legislation. *Franklin, supra*, at 74-75, 112 S.Ct. 1028.

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FN1. Justice STEVENS believes that our reliance on *Pennhurst* is "inappropriate" because that case addressed legislation imposing affirmative obligations on recipients whereas Title VI "simply prohibit[s] certain discriminatory conduct." *Post,* at 2104 (opinion concurring in judgment). He does not explain why he thinks this distinction-which played no role in the Court's application of contract-law principles in *Pennhurst,* 451 U.S., at 24-25, 101 S.Ct. 1531-ought to make a difference. Whatever his reason, we have regularly applied *Pennhurst's* contract analogy to legislation that "simply prohibit[s] certain discriminatory conduct." See, *e.g., Davis v. Monroe County Bd. of Ed.,* 526 U.S. 629, 640, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999) (Title IX); *Gebser v. Lago Vista Independent School Dist.,* 524 U.S. 274, 287, 118 S.Ct. 1989, 141 L.Ed.2d 277 (1998) (same).

[3][4] The same analogy applies, we think, in determining the *scope* of damages remedies. We said as much in *Gebser:* "Title IX's contractual nature has implications for our construction of the scope of available remedies." 524 U.S., at 287, 118 S.Ct. 1989. One of these implications, we believe, is that a remedy is "appropriate relief," *Franklin,* 503 U.S., at 73, 112 S.Ct. 1028, only if the funding recipient is *on notice* that, by accepting federal funding, it exposes itself to liability of that nature. A funding recipient is generally on notice that it is subject not only to those remedies explicitly provided in the relevant legislation, but also to those remedies traditionally available in suits for breach of contract. Thus we have held that under Title IX, which contains no express remedies, a recipient of federal funds is nevertheless subject to suit for compensatory damages, *id.,* at 76, 112 S.Ct. 1028, and injunction, *Cannon, supra,* at 711-712, 99 S.Ct. 1946, forms of relief traditionally available in suits for breach of contract. See, *e.g.,* Restatement (Second) of Contracts § 357 (1981); 3 S. Williston, Law of Contracts §§ 1445-1450 (1920); J. Pomeroy,**2102 A Treatise on the Specific Performance of Contracts 1-5 (1879). Like Title IX, Title VI mentions no remedies-indeed, it fails to mention even a private right of action (hence this Court's decision finding an *implied* right of action in *Cannon*). But punitive damages, unlike compensatory damages and injunction, are generally not available for breach of contract, see 3 E. Farnsworth, Contracts § 12.8, *188 pp. 192-201 (2d ed.1998); Restatement (Second) of Contracts § 355; 1 T. Sedgwick, Measure of Damages § 370 (8th ed. 1891).

Nor (if such an interpretive technique were available) could an *implied* punitive damages provision reasonably be found in Title VI. Some authorities say that reasonably implied contractual terms are those that the parties would have agreed to if they had adverted to the matters in question. See 2 Farnsworth, *supra,* § 7.16, at 335, and authorities cited. More recent commentary suggests that reasonably implied contractual terms are simply those that "compor[t] with community standards of fairness," Restatement (Second) of Contracts, *supra,* § 204, Comment *d;* see also 2 Farnsworth, *supra,* § 7.16, at 334-336. Neither approach would support the implication here of a remedy that is not normally available for contract actions and that is of indeterminate magnitude. We have acknowledged that compensatory damages alone "might well exceed a recipient's level of federal funding," *Gebser, supra,* at 290, 118 S.Ct. 1989; punitive damages on top of that could well be disastrous. Not only is it doubtful that funding recipients would have agreed to exposure to such unorthodox and indeterminate liability; it is doubtful whether they would even have *accepted the funding* if punitive damages liability was a required condition. "Without doubt, the scope of potential damages liability is one of the most significant factors a school would consider in deciding whether to receive federal funds." *Davis, supra,* at 656, 119 S.Ct. 1661 (KENNEDY, J., dissenting). And for the same reason of unusual and disproportionate exposure, it can hardly be said that community standards of fairness support such an implication. In sum, it must be concluded that Title VI funding recipients have not, merely by accepting funds, implicitly consented to liability for punitive damages.[FN2]

FN2. We cannot understand Justice STEVENS' Chicken-Little statement that today's decision "has potentially far-reaching consequences that go well beyond the issues briefed and argued in this case." *Post,* at 2104. Our decision merely applies a principle expressed and applied many times before: that the "contractual nature" of Spending Clause legislation "has *implications* for our construction of the scope of available reme-

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dies." *Gebser*, 524 U.S., at 287, 118 S.Ct. 1989 (emphasis added). We do not imply, for example, that suits under Spending Clause legislation are suits in contract, or that contract-law principles apply to all issues that they raise. Since Justice STEVENS is unable to identify any "far-reaching consequenc[e]" that might reasonably follow from our decision today, and since we are merely occupying ground that the Court has long held, we surely do not deserve his praise that we are "fearless crusaders," *post,* at 2104, n. 2.

***189** Our conclusion is consistent with the "well settled" rule that "where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." *Bell v. Hood*, 327 U.S. 678, 684, 66 S.Ct. 773, 90 L.Ed. 939 (1946); see also *Franklin, supra,* at 66, 112 S.Ct. 1028. When a federal-funds recipient violates conditions of Spending Clause legislation, the wrong done is the failure to provide what the contractual obligation requires; and that wrong is "made good" when the recipient *compensates* the Federal Government or a third-party beneficiary (as in this case) for the loss caused by that failure. See *Guardians*, 463 U.S., at 633, 103 S.Ct. 3221 (Marshall, J., dissenting) ("When a court concludes that a recipient has breached its contract, it should enforce the broken promise by protecting the expectation that the recipient would not discriminate. ... The obvious way to do this is to put private parties in as good a ****2103** position as they would have been had the contract been performed"). Punitive damages are not compensatory, and are therefore not embraced within the rule described in *Bell.*

* * *

[5] Because punitive damages may not be awarded in private suits brought under Title VI of the 1964 Civil Rights Act, it follows that they may not be awarded in suits brought under § 202 of the ADA and § 504 of the Rehabilitation Act.[FN3] This ***190** makes it unnecessary to reach petitioners' alternative argument-neither raised nor passed on below [FN4]-invoking the traditional presumption against imposition of punitive damages on government entities. *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 784-785, 120 S.Ct. 1858, 146 L.Ed.2d 836 (2000); *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 262-263, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981). The judgment of the Court of Appeals is reversed.

FN3. Justice STEVENS believes that our analysis of Title VI does not carry over to the ADA because the latter is not Spending Clause legislation, and identifies "tortious conduct." *Post,* at 2104-2105, n. 2. Perhaps he thinks that it *should not* carry over, but that is a question for Congress, and Congress has unequivocally said otherwise. The ADA could not be clearer that the "remedies, procedures, and rights ... this subchapter provides" for violations of § 202 are the same as the "remedies, procedures, and rights set forth in" § 505(a)(2) of the Rehabilitation Act, which *is* Spending Clause legislation. 42 U.S.C. § 12133. Section 505(a)(2), in turn, explains that the "remedies, procedures, and rights set forth in title VI ... shall be available" for violations of § 504 of the Rehabilitation Act. 29 U.S.C. § 794a(a)(2). These explicit provisions make discussion of the ADA's status as a "non Spending Clause" tort statute quite irrelevant.

FN4. Justice STEVENS suggests that our decision likewise rests on a theory neither presented nor passed on below. *Post,* at 2103-2104. But the parties raised, and the courts below passed on, the applicability of *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 112 S.Ct. 1028, 117 L.Ed.2d 208 (1992), to the question presented. That case addressed Spending Clause legislation (Title IX) and cited the contract-analogy discussion in *Pennhurst* as the basis for its acknowledgment of a notice requirement. See 503 U.S., at 74-75, 112 S.Ct. 1028. Respondent did argue (quite correctly) that petitioners had failed to rely on the *Newport* ground that Justice STEVENS uses, *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 262-263, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981), see Brief for Respondent 41-43, but not that they had failed to rely on the contract analogy initiated in *Pennhurst,* Brief for Respondent 35-41.

It is so ordered.

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Justice SOUTER, with whom Justice O'CONNOR joins, concurring.

I join the Court's opinion because I agree that analogy to the common law of contract is appropriate in this instance, with the conclusion that punitive damages are not available under the statute. Punitive damages, as the Court points out, may range in orders of "indeterminate magnitude," ***191** *ante,* at 2102, untethered to compensable harm, and would thus pose a concern that recipients of federal funding could not reasonably have anticipated. I realize, however, and read the Court's opinion as acknowledging, that the contract-law analogy may fail to give such helpfully clear answers to other questions that may be raised by actions for private recovery under Spending Clause legislation, such as the proper measure of compensatory damages.

Justice STEVENS, with whom Justice GINSBURG and Justice BREYER join, concurring in the judgment.

The judgment of the Court of Appeals might be reversed on any of three different theories: (1) as the Court held in *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981), absent clear congressional intent to the contrary, municipalities are not subject to punitive damages; (2) an analysis of the text and legislative history of § 504 of Rehabilitation Act of 1973 and Title II of ****2104** the Americans with Disabilities Act of 1990(ADA) indicates that Congress did not intend to authorize a punitive damages remedy for violations of either statute; [FN1] or (3) applying reasoning akin to that used in *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981), that the remedies for violations of federal statutes enacted pursuant to Congress' spending power should be defined by the common law of contracts, third-party beneficiaries are not allowed to recover punitive damages.

> FN1. This was the theory that was adopted by the Court of Appeals for the Sixth Circuit in *Moreno v. Consolidated Rail Corp.*, 99 F.3d 782, 788-792 (C.A.6 1996). It was also the only theory discussed and rejected by the Court of Appeals below.

Petitioners did not rely on either the first or the third of those theories in either the District Court or the Court of Appeals. Nevertheless, because it presents the narrowest basis for resolving the case, I am convinced that it is an appropriate exercise of judicial restraint to decide the case ***192** on the theory that petitioners are immune from punitive damages under *Newport.* There is, however, no justification for the Court's decision to reach out and decide the case on a broader ground that was not argued below. The Court's reliance on, and extension of, *Pennhurst*-a case that was not even cited in petitioners' briefs in the Court of Appeals-is particularly inappropriate.

In *Pennhurst* we were faced with the question whether the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. § 6010, had imposed affirmative obligations on participating States. Relying in part on the important distinction between statutory provisions that "simply prohibited certain kinds of state conduct" and those that "impose *affirmative* obligations on the States to fund certain services," 451 U.S., at 16-17, 101 S.Ct. 1531, we first held that § 6010 was enacted pursuant to the Spending Clause. We then concluded that the "affirmative obligations" that the Court of Appeals had found in § 6010 could "hardly be considered a 'condition' of the grant of federal funds." *Id.*, at 23, 101 S.Ct. 1531. "When Congress does impose affirmative obligations on the States, it usually makes a far more substantial contribution to defray costs .... It defies common sense, in short, to suppose that Congress implicitly imposed this massive obligation on participating States." *Id.*, at 24, 101 S.Ct. 1531.

The case before us today involves a municipality's breach of a condition that simply prohibits certain discriminatory conduct. The prohibition is set forth in two statutes, one of which, Title II of the ADA, was not enacted pursuant to the Spending Clause. Our opinion in *Pennhurst* says nothing about the remedy that might be appropriate for such a breach. Nor do I believe that the rules of contract law on which the Court relies are necessarily relevant to the tortious conduct described in this record. Moreover, the Court's novel reliance on what has been, at most, a useful analogy to contract law has potentially far-reaching consequences that go well beyond the issues briefed and argued ***193** in this case.[FN2] In light of the fact that ****2105** the petitioners-in addition to most defendants sued for violations of Title II of the ADA and § 504 of the Rehabilitation Act of 1973-are clearly not subject to punitive damages pursuant to our holding in *Newport,* I see no reason to decide the case on the expansive basis asserted by the Court.

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> FN2. Although rejected by the Sixth Circuit, see *Westside Mothers v. Haveman,* 289 F.3d 852 (C.A.6 2002), one District Court applied the *Pennhurst* contract analogy in order to support its conclusion that Spending Clause legislation is not the "supreme law of the land." *Westside Mothers v. Haveman,* 133 F.Supp.2d 549, 561 (E.D.Mich.2001). The Court fortunately does cabin the potential reach of today's decision by stating that "[w]e do not imply, for example, that suits under Spending Clause legislation are suits in contract, or that contract-law principles apply to all issues that they raise," *ante,* at 2102, n. 2, but whenever the Court reaches out to adopt a broad theory that was not discussed in the early stages of the litigation, and that implicates statutes that are not at issue, its opinion is sure to have unforeseen consequences. When it does so unnecessarily, it tends to assume a legislative, rather than a judicial, role. Reliance on a narrower theory that was not argued below does not create that risk. I am not persuaded that "Chicken-Little," *ibid.,* is an appropriate characterization of judicial restraint; it is, however, a rhetorical device appropriately used by fearless crusaders.

Accordingly, I do not join the Court's opinion, although I do concur in its judgment in this case.

U.S.,2002.
Barnes v. Gorman
536 U.S. 181, 122 S.Ct. 2097, 153 L.Ed.2d 230, 70 USLW 4539, 70 USLW 4548, 13 A.D. Cases 193, 24 NDLR P 15, 02 Cal. Daily Op. Serv. 5308, 2002 Daily Journal D.A.R. 6713, 15 Fla. L. Weekly Fed. S 373

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CALIFORNIA DRIVE-IN RESTAURANT ASSOCIATION, et al., Respondents,
v.
MARGARETE L. CLARK, as Chief of the Division of Industrial Welfare, etc., et al., Appellants.
L. A. No. 18093.

Supreme Court of California
June 16, 1943.

HEADNOTES

(1) Administrative Law--Rules of Administrative Agencies--Interpretation.
Generally, the same rules of construction and interpretation which apply to statutes govern the construction and interpretation of rules and regulations of administrative agencies.

(2) Statutes § 87, 92--Repeal by Implication--Rule AgainstRepeal by Inconsistent Statute--Necessity for Clear Repugnancy.
The presumption is against repeals by implication, especially where the prior act has been generally understood and acted upon; and to overcome the presumption the two acts must be irreconcilable, clearly repugnant and so inconsistent that they cannot have concurrent operation.
See 23 **Cal.Jur.** 694; 25 **R.C.L.** 918.
(3) Statutes § 124--Construction--Circumstances Indicating Legislative Intent--Object to Be Accomplished.
The purpose and object sought to be accomplished by legislation is an important factor in determining the legislative intent.

(4a, 4b) Labor § 17--Regulation of Tipping--Rules and Statutes.
Section 3 of Order 12-A of the Industrial Welfare Commission and Lab. Code, §§ 350-356, are not irreconcilable, but entirely harmonious, since the basic policy underlying the order is the regulation of wages, hours and working conditions for minors and adult female employees in eating establishments, the subject of tipping being embraced only incidentally in furtherance of that general purpose, and the statute is concerned exclusively with tipping in respect to its relation to the public, the Legislature having expressly stated that its purpose was to prevent fraud upon the public.

(5) Labor § 17--Regulation of Tipping--Construction of Order.
Conceding that the effect of § 3 of Order 12-A of the Industrial Welfare Commission is to prohibit deduction of tips from employees' wages and that Lab. Code, §§ 350-356, impliedly authorizes their deduction, such prohibition should be strictly limited, and the section will not be violated in instances where the employer retains the entire amount of all tips received above the minimum wage, or deducts the tips from the amount of any wages it has agreed to pay in excess of a specified minimum.

(6) Labor § 17--Regulation of Tipping--Construction of Lab. Code, §§ 350-356.
That Lab. Code, §§ 350-356, authorize tipping is not a necessary conclusion, since the statute does not purport to legalize the retention or deduction of tips received by employees and is nothing more than a comprehensive regulation requiring that the public be informed of an employer's retention of tips.

(7) Labor § 17--Regulation of Tipping--Construction of Order.
Section 3 of Order 12-A of the Industrial Welfare Commission, given a liberal meaning to effectuate the ends in view, prohibits the retention by the employer of any amount of tips received by the employee below the minimum wage.

(8) Labor § 17--Regulation of Tipping--Purpose of Lab. Code, §§ 350-356.
If it be assumed that the Legislature in enacting Lab. Code, §§ 350-356, was endeavoring to avoid the difficulty encountered in reference to Stats. 1917, p. 257, still it did not purport to authorize deduction of tips from the minimum wage but merely regulated the retention of tips by employers regardless of whether such retention was or was not a violation of § 3 of Order 12-A of the Industrial Welfare Commission.

(9) Statutes § 180(2)--Aids to Construction--Contemporaneous Construction-- Executive or

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Departmental Construction.
While it is a rule of statutory interpretation that the construction given a statute by the administrative agency charged with its enforcement is a significant factor to be considered by the courts in ascertaining the meaning of the statute, where there is no ambiguity and the interpretation is clearly erroneous, such administrative interpretation does not give legal sanction to a long continued incorrect construction.

(10) Trial § 379--Findings--Conclusiveness.
A finding constituting a conclusion of law is not binding upon the appellate court.

(11) Labor § 17--Regulation of Tipping--Validity of Order.
Section 3 of Order 12-A of the Industrial Welfare Commission is not invalid as an unconstitutional interference with freedom of contract as between employer and employee, since in the field of regulation of wages and hours by legislative authority constitutional guarantees relating to freedom of contract must give way to reasonable police regulations, and the Legislature did not act arbitrarily or capriciously, but reasonable grounds appear for the policy established by § 3 of the order.
See 15 **Cal.Jur.** 575; 31 **Am.Jur.** 1080.
(12) Labor § 17--Regulation of Tipping--Validity of Order.
Section 3 of Order 12-A of the Industrial Welfare Commission does not create an improper discrimination in respect to employers or the employees affected. The particular evils at which it is aimed are a part of the minimum wage policy and must be viewed in that light, hence it applies only to situations where such wages are fixed.
See 31 **Am.Jur.** 1038.
(13) Labor § 17--Regulation of Tipping--Validity of Order--Finding of Commission.
The fact that no finding by the Industrial Welfare Commission as a basis for Order 12-A appears in the order itself is not of importance, since § 6(a) of the minimum wage law (Stats. 1913, p. 632, as amended by Stats. 1921, p. 378) merely requires that the order shall specify "the minimum wage for women and minors in the occupation in question, maximum hours ... and the standard conditions of labor. ..."

(14a, 14b) Labor § 17--Regulation of Tipping--As Implied Power.
The adoption of § 3 of Order 12-A is within the implied power of the Industrial Welfare Commission, flowing from its power to fix minimum wages delegated to the commission.

(15) Administrative Law--Power of Administrative Agency to Adopt Rules and Regulations.
While an administrative agency may not, under the guise of its rule-making power, abridge or enlarge its authority or exceed the powers given to it by statutes, the authority of an administrative board or officer to adopt reasonable rules and regulations deemed necessary to the due and efficient exercise of the powers expressly granted cannot be questioned, and is implied from the power granted.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles D. Ballard, Judge. Reversed.

Action for injunction and declaratory relief. Judgment for plaintiffs reversed.

COUNSEL

Robert W. Kenny, Attorney General, Earl Warren, Attorney General, Burdette J. Daniels and Alberta Belford, Deputies *290 Attorney General, Leo L. Schaumer and E. A. Lackmann for Appellants.

Thorpe & Bridges, Gerald Bridges, Frank R. Johnston and E. R. Young for Respondents.

CARTER, J.

Plaintiffs, operators of drive-in restaurants, successfully challenged in the superior court the validity of a regulation of the Industrial Welfare Commission, designated Order 12-A. Defendants, the Chief of the Division of Industrial Welfare of the Department of Industrial Relations and the members of the Industrial Welfare Commission of the Division of Industrial Welfare of the Department of Industrial Relations, appeal from the judgment entered for plaintiffs.

Plaintiffs are independent owners of establishments serving food and beverages. Their patronage consists chiefly of motorists who are served while remaining in their vehicles, however, service may be obtained in the

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owner's restaurant buildings. Most of the employees are girls and women commonly referred to as "car hops." The employment arrangement contemplates that the tips received by the employees shall constitute their wages, except that the employers make up the difference if the tips received fall below the minimum wage for minors and adult females fixed by the Industrial Welfare Commission. Plaintiffs posted in their business establishments, the notices required by a statute of 1929, hereinafter set forth. In 1940, plaintiffs were advised by the Chief of the Division of Industrial Welfare that their employment arrangement violated Order 12-A, in that they could not consider the tips received by the minor and female adult employees in computing and paying the minimum wage, and that they would be required to comply with said order.

Order 12-A became effective on June 8, 1923. In section 1 it fixed a minimum wage of $16 per week to be paid to all female adult or minor employees in restaurants or other places where food and drinks were sold. Section 2 fixed the maximum amount the employer could deduct from the minimum wage for meals and lodging furnished the employee. Section 3, here in question, reads: "No employer may include tips or gratuities received by employees designated in section ***291** 1 hereof as part of the legal minimum wages fixed by said section of this Order." The remaining nine sections deal with hours of labor, working conditions, the employer's duty to keep records, and the like.

In 1929 (Stats. 1929, p. 1971), a statute was passed by the Legislature, now appearing in sections 350-356 of the Labor Code. Section 351 of the Labor Code reads:

"Every employer or agent who collects, takes, or receives any gratuity or a part thereof, paid, given to, or left for an employee by a patron, or who deducts any amount from wages due an employee on account of such gratuity, or who requires an employee to credit the amount, or any part thereof, of such gratuity against and as a part of the wages due the employee from the employer, shall keep posted in a conspicuous place at the location where his business is carried on, in a place where it can easily be seen by the patrons thereof, a notice, in lettering or printing of not less than 48-point black- face type, to the following effect:

"(a) If not shared by the employees, that any gratuities paid, given to, or left for employees by patrons go to and belong to the business or employer and are not shared by the employees thereof.

"(b) If shared by the employees, the extent to which gratuities are shared between employer and employees."

Section 352 specifies that the notice shall also state the extent to which employees are required to accept gratuities in lieu of wages or permit them to be credited against their wages. The provisions apply to all businesses having one or more persons in service. A gratuity "includes any tip, gratuity, money, or part thereof, which has been paid or given to or left for an employee by a patron of a business over and above the actual amount due such business for services rendered or for goods, food, drink, or articles sold or served to such patron."

A penalty is imposed for violation of the act, and it is declared that:

"The Legislature expressly declares that the purpose of this article is to prevent fraud upon the public in connection with the practice of tipping and declares that this article is passed for a public reason and cannot be contravened by a private agreement. As a part of the social public policy ***292** of this State, this article is binding upon all departments of the State." (Lab. Code, sec. 356.)

Whether the 1929 statute impliedly annulled section 3 of said Order 12-A must be determined in the light of the appropriate rules of statutory construction. (1) Generally, the same rules of construction and interpretation which apply to statutes govern the construction and interpretation of rules and regulations of administrative agencies. (*Miller v. United States*, 294 U.S. 435 [55 St.Ct. 440, 79 L.Ed. 977].) (2) With reference to implied repeals of statutes this court stated in *Penziner v. West American Finance Co.*, 10 Cal.2d 160, 176 [74 P.2d 252]:

"The presumption is against repeals by implication, especially where the prior act has been generally understood and acted upon. To overcome the presumption the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. The courts are bound, if possible, to maintain the integrity of both statutes if the two

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may stand together. Where a modification will suffice, a repeal will not be presumed." (See 23 Cal.Jur. 694, et seq.) (3) The purpose and object sought to be accomplished by legislation is an important factor in determining the legislative intent. (*San Francisco v. San Mateo County,* 17 Cal.2d 814 [112 P.2d 595].)

(4a) Applying those rules to the instant case we find no repugnancy. The statute of 1929 and section 3 of Order 12-A rather than being irreconcilable are entirely harmonious. The basic policy underlying the order is the regulation of wages, hours and working conditions for minors and adult female employees in eating establishments. The subject of tipping is embraced only incidentally in the furtherance of that general purpose. Broadly, it was designed to deal with the industrial welfare of such employees, and the relation of their welfare to the general public interest. On the other hand the statute is concerned exclusively with tipping in respect to its relation to the public which patronizes not only restaurant establishments but many other businesses. The Legislature expressly stated that its purpose is "to prevent fraud upon the public," a policy underlying no part of the order. Section 3 of the order states that tips received by the designated employees may not be included in the minimum wage therein fixed. (5) If it be conceded that the effect ***293** of said section is to prohibit the deduction of tips from the employees' wages, and that the statute impliedly authorizes such deduction as asserted by plaintiffs, such prohibition should be strictly limited, and said section would not be violated in instances where the employer retained the entire amount of all tips received *above* the minimum wage, or deducted the tips from the amount of any wages he agreed to pay in excess of the specified minimum. It does not apply to male employees or persons employed in businesses other than those mentioned.

(6) Further, it is not necessary to conclude that the statute authorizes tipping. It does not purport to authorize or legalize the retention or deduction of the tips received by the employees. It is nothing more than a comprehensive regulation in respect to advising the public of the retention of tips by the employer whether such retention is legal or not, the essential requirement being that the public be informed of the practice. Fairly interpreted, the posting of the notice is required regardless of whether such retention or deduction is being made from the minimum legal wage fixed by section 3. (7) It may be said that section 3 given a liberal meaning to effectuate the ends in view, prohibits the retention by the employer of any amount of tips received by the employee below the minimum wage, because if the employer could retain such tips he would be, in effect, accomplishing indirectly that which he could not do directly, namely, including the tips in the legal wage. It would be a subterfuge for him to receive all the tips and pay the minimum wage. The end result would be counting the tips as a part of the legal wage. That conclusion does not mean that section 3 and the statute are inconsistent to that extent. (4b) The purpose of the statute and section 3 are entirely different. The statute does not purport to cover the special field of tipping in regard to its effect on the minimum wage law. It is aimed at the protection of the public against fraud.

(8) For the same reasons the historical arguments advanced by plaintiffs are not persuasive. True, a statute was enacted in 1917 (Stats. 1917, p. 257) which made it unlawful for an employer to demand tips received by his employee in consideration of the latter's being hired or retained. That act, like the 1929 act, was broad in its scope and did not purport ***294** to affect tipping in relation to minimum wages. It was declared invalid in *In re Farb,* 178 Cal. 592 [174 P. 320, 3 A.L.R. 301], and thereafter the 1929 act was passed. Both of those statutes were aimed at the prevention of a fraud on the public and were not concerned with the effect on the inclusion of tips in minimum wages and the purpose of section 3 of said Order 12-A. If it be assumed that the Legislature in passing the 1929 statute was endeavoring to avoid the difficulty encountered with reference to the 1917 act in *In re Farb, supra,* still it did not purport to authorize the deduction of tips from the minimum wage. It was regulating the retention of tips by employers regardless of whether such retention was or was not a violation of section 3 of Order 12-A. The statute and the order were designed for fundamentally different purposes.

(9) Plaintiffs urge that because the predecessors in office of defendants did not enforce section 3 of Order 12-A, they must have considered it annulled by the 1929 statute, and some of the plaintiffs having been so advised by executive officers of defendants predecessors, the statute should be interpreted to annul said section 3. It is undoubtedly a rule of statutory interpretation that the construction given a statute by the administrative agency charged with the enforcement

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of it is a significant factor to be considered by the courts in ascertaining the meaning of such statute. (*Los Angeles County v. Superior Court,* 17 Cal.2d 707 [112 P.2d 10]; 23 Cal.Jur. 776-7.) But where there is no ambiguity and the interpretation is clearly erroneous, such administrative interpretation does not give legal sanction to a long continued incorrect construction. The administrative interpretation cannot alter the clear meaning of a statute. (*Los Angeles County v. Superior Court, supra;* 23 Cal.Jur. 776.) We have seen that the 1929 statute does not purport to legalize the deduction or retention of tips by an employer, nor does section 3 of Order 12-A prohibit tipping; it merely prohibits the inclusion of tips in the minimum wage for certain employees. The alleged implied nullification which is not favored in the law does not exist.

(10) The trial court found: "... that in adopting section 3 of Order 12A ... defendant ... acted in excess of its jurisdiction." That finding is not, as claimed by plaintiffs, binding upon this court, inasmuch as it is a conclusion of law. In ***295** support of it plaintiffs challenge the constitutionality of section 3, and the validity of the adoption of the order.

(11) Plaintiffs contend that section 3 is invalid because it is an unconstitutional interference with the freedom of contract as between employer and employee. (United States Const., Fourteenth Amendment; Cal.Const., art. I, secs. 1, 13; art. XX, sec. 18.) The main premise relied upon by plaintiffs is that section 3 prohibits an employer and his employee from agreeing that the former shall retain all tips received by the latter, citing *In re Farb, supra,* declaring unconstitutional the 1917 act (*supra.*), and denouncing such practice. It has heretofore been pointed out that the 1917 act was not aimed at and did not involve any restrictions on such contracts directly as a part and in aid of the minimum wage requirements. The 1917 act applied expressly to any and all employees without regard to whether a legal wage was fixed for them. For that reason we do not consider the Farb case as necessarily supporting plaintiffs' position. Furthermore, the reasoning of the Farb case is out of line with the later authorities upholding minimum wage legislation. (See *United States v. Darby,* 312 U.S. 100 [61 S.Ct. 451, 85 L.Ed. 609, 132 A.L.R. 1430]; *West Coast Hotel Co. v. Parrish,* 300 U.S. 379 [57 S.Ct. 578, 81 L.Ed. 703, 108 A.L.R. 1330]; 31 Am.Jur., Labor, sec. 503; 130 A.L.R. 273; 132 A.L.R. 1443.) There is a distinct difference between a comprehensive prohibition of retention of tips by employers, and the prohibition of such practice as a part of an order fixing minimum wages.

It must be remembered that in the field of regulation of wages and hours by legislative authority, constitutional guarantees relating to freedom of contract must give way to reasonable police regulations. The Supreme Court of the United States in discussing the regulation of hours and wages of women employees stated in *West Coast Hotel Co. v. Parrish, supra,* at 392:

"This power under the Constitution to restrict freedom of contract has had many illustrations. That it may be exercised in the public interest with respect to contracts between employer and employee is undeniable. Thus statutes have been sustained limiting employment in underground mines and smelters to eight hours a day (***296***Holden v. Hardy,* 169 U.S. 366 [18 S.Ct. 383, 42 L.Ed. 780]; in requiring redemption in cash of store orders or other evidences of indebtedness issued in the payment of wages (*Knoxville Iron Co. v. Harbison,* 183 U.S. 13 [22 S.Ct. 1, 46 L.Ed. 55]); in forbidding the payment of seamen's wages in advance (*Patterson v. Bark Eudora,* 190 U.S. 169 [23 S.Ct. 821, 47 L.Ed. 1002]); in making it unlawful to contract to pay miners employed at quantity rates upon the basis of screened coal instead of the weight of the coal as originally produced in the mine (*McLean v. Arkansas,* 211 U.S. 539 [29 S.Ct. 206, 53 L.Ed. 315]); in prohibiting contracts limiting liability for injuries to employees (*Chicago, B. & Q. R. Co. v. McGuire supra* [219 U.S. 549 (31 S.Ct. 259, 55 L.Ed. 328)]); in limiting hours of work of employees in manufacturing establishments (*Bunting v. Oregon,* 243 U.S. 426 [37 S.Ct. 435, 61 L.Ed. 830]); and in maintaining workmen's compensation laws (*New York Central R. Co. v. White,* 243 U.S. 188 [37 S.Ct. 247, 61 L.Ed. 667]; *Mountain Timber Co. v. Washington,* 243 U.S. 219 [37 S.Ct. 260, 61 L.Ed. 685]). In dealing with the relation of employer and employed, the Legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. *Chicago, B. & Q. R. Co. v. McGuire, supra,* p. 570." And at page 399:

"The legislature had the right to consider that its

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minimum wage requirements would be an important aid in carrying out its policy of protection. The adoption of similar requirements by many States evidences a deepseated conviction both as to the presence of the evil and as to the means adapted to check it. *Legislative response to that conviction cannot be regarded as arbitrary or capricious, and that is all we have to decide.* Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment." (Emphasis added.) Many other illustrations could be given. In the recent case of *Williams* v. [*Jacksonville*] *Terminal Co.*, 315 U.S. 386 [62 S.Ct. 659, 86 L.Ed. 914], the court had before it the question of whether the tips received by red caps could be counted as a part of the minimum wage under the Fair Labor Standards Act (29 U.S.C.A. 201 et seq.) It was held ***297** that they could and that legally speaking such tips were wages under the agreement between the employer and employee. However, the court was careful to point out that the Fair Labor Standards Act did not prohibit the inclusion of tips in the minimum wage, and it recognized that such a prohibition might well be valid. It stated at page 388:

"The Fair Labor Standards Act is not intended to do away with tipping. Nor does it appear that Congress intended by the general minimum wage to give the tipping employments an earnings-preference over the nonservice vocations. The petitioners do not dispute the railroad's contention that, during the entire period, each red cap received as earnings-cash pay plus tips-a sum equal to the required minimum wage. Nor is there denial of increased pay to the red caps on account of the minimum wage guarantee of the challenged plan as compared with the former tipping system. The guarantee also betters the mischief of irregular income from tips and increases wage security. *The desirability of considering tips in setting a minimum wage, that is whether tips from the viewpoint of social welfare should be counted as part of that legal wage, is not for judicial decision. We deal here only with the petitioners' assertion that the wages Act requires railroads to pay the red caps the minimum wage without regard to their earnings from tips.*" (Emphasis added.)

The presumption is that the Legislature had adequate and reasonable basis for its police regulations and that a statute providing for such regulations is constitutional (5 Cal.Jur. 628, et seq.), and, as expressed in *West Coast Hotel Co. v. Parrish, supra,* the only question to be decided is whether it acted arbitrarily or capriciously. There may be others, but certain reasonable grounds appear for the policy established by section 3 of Order 12-A. As we have seen from the foregoing quotation from *Williams v. Terminal Co., supra,* that possibility is recognized where the court declared that whether the social welfare required that tips be not counted as part of the minimum wage was not for "judicial decision." It cited for that statement, Anderson, *Tips & Legal Minimum Wages,* XXXI American Labor Legislation Review 11, at page 13, where it was aptly said that if the tips received were to be counted as a part of the minimum ***298** wage "... the employee would be required to report to her employer the amount of tips received each week, in order that he in turn could know the amount of wage he must pay to make up the $16.

"If this practice were followed the purpose of the minimum-wage law would soon be defeated. It would not be long before employers discovered which of their employees were costing them the most money. Obviously, the girls who received the least in tips would have to be paid the highest wages to make up the $16. Gradually the girls receiving low tips would be dismissed, whether efficient or not, and those with ability to wile larger tips from an irresponsible public would be employed in their places. The workers would be no slower than the employers in discovering the effects of the reporting system on their welfare. The dismissal of one or two workers would be sufficient to warn the others that if they were to retain their jobs their tips must equal those of their more fortunate co-workers. There is always one effective way out of a situation like this for a worker who is desperately in need of a job, and that is to report to the employer a greater amount of tips than actually is received. The whole purpose of the minimum wage law, that of guaranteeing the worker a living wage, would be defeated if this practice were permitted and the State authorities would be almost helpless to correct the situation. To prevent just this kind of abuse, most State minimum-wage orders for hotels and restaurants contain a provision that under no circumstances shall tips be counted as a part of the legal minimum wage." In order that the welfare of the employees be advanced and the benefits of the minimum wage law be preserved, it may well be said that section 3 has a reasonable basis. If the employees may be induced, and in effect coerced, by fear of dismissal by an employment contract requiring the tips to be counted as a part of the

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minimum wage, to report their tips as equal to the minimum wage even though they are not, the minimum wage requirement is seriously undermined. By indirect method they would be forced into a position of receiving less than the standard fixed. If the employer is permitted to retain the tips in an amount equal to the minimum wage, which as seen would be a violation of section 3, the same condition would exist. The fear of dismissal might well coerce the employees to turn over as tips ***299** a portion of their own funds when the tips received were not equal to the legal wage. The effectiveness of the minimum wage law would be thus impaired. With the employer prevented from retaining tips in the amount of the minimum legal wage, a salutary result would follow. The benefits of the minimum wage law would be preserved, and the dignity of the laborer and his social position would be advanced by relieving him of the necessity of resorting to the undignified conduct encouraged by the tipping practice.

The Legislature clearly sets forth the purpose sought to be obtained by the fixing of minimum wages as that adequate to supply the necessary cost of proper living and to maintain the health and welfare of the employees. (Lab. Code, sec. 1182.) We perceive that that purpose may be thwarted if tips may be included in the minimum wage.

The foregoing discussion does not mean that tips may not be considered wages under certain circumstances such as, computation of compensation under workmen's compensation laws. (*Hartford Acc. & Indem. Co. v. Industrial Acc. Com.*, 41 Cal.App. 543 [183 P. 234]; 29 Cal.L.Rev. 774; 75 A.L.R. 1223, and generally *Williams v. Terminal Co., supra.*) An employer may permit his employee to retain the tips and the arrangement may be that they shall be compensation, but section 3 is aimed at the evils above-mentioned in connection with *minimum wages,* and merely because tips may be termed wages under certain circumstances does not mean that they may be counted as part of the minimum wage where to do so would contravene the policy of section 3 and permit the evils there denounced.

(12) In their contention that section 3 is not uniform and is discriminatory (United States Const., Fourteenth Amendment; Cal.Const., art. I, sec. 21; art. IV, sec. 25), plaintiffs suggest that section 3 would not be violated if the employment contract called for all tips to be retained by the employer, citing *Settrie v. Falkner,* Commerce Clearing House Labor Law Service, 3d ed. sec. 60, 779. Apparently that case does not appear in the reporter system nor the Ohio Appellate Reports, but in any event we are not persuaded by its reasoning. Section 3 does present such a situation.

Section 3 creates no improper discrimination in respect to employers or the employees affected. The particular evils ***300** at which it is aimed are a part of the minimum wage policy and must be viewed in that light, hence it applies only to situations where such wages are fixed. A reasonable classification has been made. There are many instances where classifications with reference to wages and hours have been upheld. (See *Matter of Application of Martin,* 157 Cal. 51 [106 P. 235, 26 L.R.A. N.S. 242], hours of employment in underground mines; *Matter of Application of Miller,* 162 Cal. 687 [124 P. 427], hours of labor for women but not men.) It is said in 31 Am.Jur., Labor, sec. 414:

"The relation of employer and employee has long been the basis for specific legislation, and statutes applicable only to such relation are not subject to the objection that they constitute class legislation. Moreover, the equal protection of the laws is not denied by the classification of occupations if such classification has a reasonable basis. Such classification may be based upon matters which are personal to the individuals who are acting as employees. For example, statutory regulations with reference to labor of women or children or both may be sustained as against the objection that they constitute an arbitrary discrimination because they do not extend to men. Moreover, the classification may be based not only on the character of the employees but upon the nature of the employer's business, since the character of the work may largely depend upon the nature and the incidents of the business in connection with which the work is done. A statute dealing with employees in a particular line of business does not create an arbitrary discrimination merely because the operation of the statute is not extended to other lines of business having their own circumstances and conditions, or to domestic service."

(13) It is contended that there was no finding by the Industrial Welfare Commission as a basis for its Order 12-A, and that such finding was necessary to the validity of said order; that is, that the wages fixed were adequate to supply the cost of proper living as speci-

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fied in the minimum wage law at the time of its adoption. (Stats. 1913, p. 632, as amended.) That contention must necessarily be limited to the claim that such finding must appear in the order itself inasmuch as the appeal is on the judgment roll alone and hence all of the court's findings must be deemed to have been supported by the evidence. Plaintiffs, respondents herein, are bound by those ***301** findings. The trial court found that the order was adopted by the commission pursuant to and under the authority of the minimum wage laws; that on "June 8, 1923, the ... Commission promulgated Order 12-A for the hotel and restaurant industries. That *prior to the formulation and adoption* of said Order 12-A, and in the manner and form prescribed by statute, a conference denominated a wage board of the employers and employees of the said hotel and restaurant industries was called by said commission; that thereafter and prior to the adoption of said Order 12-A, and within the time and in the manner prescribed by law a public hearing was called and held upon said proposed Order 12-A, at which said meeting and wage board conference the employers and employees of said restaurant industry of the State of California were regularly represented.

"That at said public hearing and other meetings witnesses were sworn, testimony taken, and evidence received. It is further true that *every act and thing required by statute to be done by said Commission in the promulgation and adoption of said Order 12-A was done by said Commission within the time and in the manner and form required by statute.*" (Emphasis added.) It was also found that the order was in full force and effect except as otherwise found in the findings referring to its constitutionality and implied repeal by the 1929 statute.

There have been decisions by the United States Supreme Court both ways upon the question of the necessity of findings by an administrative agency as a basis for a rule or regulation issued by it. In *Panama Ref. Co. v. Ryan*, 293 U.S. 388 [55 S.Ct. 241, 79 L.Ed. 446], findings were declared necessary to support a presidential order. The most recent holding by that court in *Pacific States Box & Basket Co. v. White*, 296 U.S. 176 [56 S.Ct. 159, 80 L.Ed. 138, 101 A.L.R. 853], is that no findings are necessary where the statute does not require them to support the order of the Department of Agriculture of the State of Oregon fixing the sizes for containers of horticultural products, although a violation of the order is a misdemeanor. That holding is a definite departure from the broad rule announced in *Panama Ref. Co. v. Ryan, supra.* (See 49 Harv.L.Rev. 827.) Other cases have considered the question. (See *American Telephone & Telegraph Co. v. United States*, 14 F.Supp. 121; *Bayley v. Southland Gasoline Co.*, 131 F.2d 412; ***302***Twin City Milk Producers Assn. v. McNutt*, 122 F.2d 564.) We have not been referred to and have been unable to find any case in California on the subject, and while some of the federal court cases indicate that the findings must appear in the order, plaintiffs have suffered no prejudice. The findings of the trial court show that if findings were required by the statute the commission made them. The mere fact that they do not appear on the face of the order is not therefore of importance. The statute did not require that the findings appear on the face of the order. Section 6(c) of the act states merely that the order shall specify "the minimum wage for women and minors in the occupation in question, the maximum hours ... and the standard conditions of labor. ..." (Stats. 1913, p. 632, as amended Stats. 1921, p. 378.)

(14a) The adoption of section 3 of Order 12-A was within the power and authority delegated to the Industrial Welfare Commission by the Legislature. The Constitution authorizes the Legislature to provide a minimum wage for women and minors and for the comfort, health, safety and general welfare of employees, and to confer upon a commission the authority it deems necessary to carry out those purposes. (Cal. Const., art. XX, sec. 17 I/2.) The act under which Order 12-A was promulgated empowers the commission to fix "a minimum wage to be paid to women and minors engaged in any occupation, which shall not be less than a wage adequate to supply such women and minors the necessary cost of proper living and to maintain the health and welfare of such women and minors," and to establish the maximum working hours and the standard conditions of labor. (Stats. 1913, p. 632, sec. 6, as amended Stats. 1921, p. 378.) In our previous discussion of the constitutionality of section 3 we have shown that it had a direct relation to minimum wages and was a natural and important incident thereof. It is an incident of the establishment of minimum wages similar to the provisions in Order 12-A, which specify to what extent board and lodging furnished by the employer may be considered wages. The power to provide safeguards to insure the receipt of the minimum wage and to prevent evasion and subterfuge, is necessarily an implied power flowing from the power to fix a minimum wage delegated to

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the commission.

(15) It is true that an administrative agency may not, under the guise of its rule making power, abridge or enlarge its authority or exceed the powers given to it by the statute ***303** the source of its power. (*Boone v. Kingsbury*, 206 Cal. 148 [273 P. 797]; *California E. Com. v. Black-Foxe Military Inst.*, 43 Cal.App.2dSupp. 868 [110 P.2d 729]; *Hodge v. McCall*, 185 Cal. 330 [197 P. 86]; *Bank of Italy v. Johnson*, 200 Cal. 1 [251 P. 784].) However, "the authority of an administrative board or officer, ... to adopt reasonable rules and regulations which are deemed necessary to the due and efficient exercise of the powers expressly granted cannot be questioned. This authority is implied from the power granted." (*Bank of Italy v. Johnson, supra,* 20.) (See, also, *Crawford v. Imperial Irrigation Dist.*, 200 Cal. 318 [253 P. 725]; 21 Cal.Jur. 874.) (14b) In the instant case the power to adopt section 3 may be implied as a power to make effective the order fixing the minimum wage. The power to fix that wage does not confine the agency to that single act. It may adopt rules to make it effective. Plaintiffs cite *Adolph Coors Co. v. Corbett*, (Cal.App.) 123 P.2d 74, decided by the District Court of Appeal. A hearing was granted by this court in that case and thereafter it was dismissed. It is not a controlling authority.

The judgment is reversed.

Gibson, C. J., Shenk, J., Curtis, J., and Edmonds, J., concurred.
Traynor, J., and Schauer, J., did not participate herein.
Respondents' petition for a rehearing was denied July 15, 1943. Traynor, J., and Schauer, J., did not participate therein. ***304**

Cal.
California Drive-In Restaurant Ass'n v. Clark
22 Cal.2d 287, 140 P.2d 657, 147 A.L.R. 1028, 7 Lab.Cas. P 61,672

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171 Cal.App.4th 1183, 90 Cal.Rptr.3d 501, 09 Cal. Daily Op. Serv. 2982, 2009 Daily Journal D.A.R. 3466
(Cite as: 171 Cal.App.4th 1183, 90 Cal.Rptr.3d 501)

C

Court of Appeal, Third District, California.
CALIFORNIA SCHOOL BOARDS ASSOCIATION et al., Plaintiffs and Appellants,
v.
STATE of California et al., Defendants and Appellants.
Department of Finance, Intervener and Appellant.
No. C055700.

March 9, 2009.

Background: Education interest groups and local government entities filed petition for writ of mandate and complaint for injunctive and declaratory relief, challenging amended statute limiting reimbursement to local governments for costs imposed as a result of ballot measures, and directing the Commission on State Mandates to set aside or reconsider specific test claims decisions that were issued before the amendment of the statute. The Superior Court, Sacramento County, No. 06CS01335,Gail D. Ohanesian, J., granted the request for injunctive and declaratory relief and directed issuance of a writ of mandate. Parties appealed.

Holdings: The Court of Appeal, Nicholson, Acting P.J., held that:
(1) Legislature's directing the Commission on State Mandates to set aside or reconsider certain final test claims decisions violated separation of powers doctrine;
(2) legislative declarations concerning whether a state mandate exists are irrelevant to the determination of the Commission on State Mandates as to whether a state mandate exists;
(3) State's constitutional duty to reimburse local governments for mandated costs does not include ballot measure mandates;
(4) statutory provision declaring that no reimbursement is necessary for costs resulting from "duties that are necessary to implement a ballot measure," does not violate state constitution;
(5) statutory provision declaring that no reimbursement is necessary for "duties that are reasonably within the scope of a ballot measure" is impermissibly broad; and
(6) statutes imposing duties on local governments do not give rise to reimbursable costs if the duties are incidental to the ballot measure mandate and produce at most de minimis added costs.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] Constitutional Law 92 ⚿2383

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)2 Encroachment on Judiciary
92k2381 Imposition of Legislative Preference in Particular Proceedings
92k2383 k. Prescribing Rule of Decision or Directing Specific Result. Most Cited Cases

States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Legislature's directing the Commission on State Mandates, a quasi-judicial body, to set aside or reconsider certain final test claims decisions violated separation of powers doctrine. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17500 et seq.

[2] Constitutional Law 92 ⚿2330

92 Constitutional Law
92XX Separation of Powers
92XX(A) In General
92k2330 k. In General. Most Cited Cases

Constitutional Law 92 ⚿2332

92 Constitutional Law
92XX Separation of Powers
92XX(A) In General
92k2332 k. Encroachment in General. Most Cited Cases

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"Separation of powers doctrine" places limits upon the actions of each branch of state government with respect to the other branches; the state constitution vests each branch with certain core or essential functions that may not be usurped by another branch. West's Ann.Cal. Const. Art. 3, § 3.

[3] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Commission on State Mandates, as a quasi-judicial body established to carry out a comprehensive administrative procedure for resolving claims for reimbursement of state-mandated local costs, has the sole and exclusive authority to adjudicate whether a state mandate exists. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17500 et seq.

[4] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Authority of Commission on State Mandates to issue a final decision that solely and exclusively adjudicates a test claim is limited only by judicial review. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17500 et seq.

[5] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Once a decision of the Commission on State Mandates becomes final and has not been set aside by a court pursuant to a petition for writ of administrative mandamus, it is not subject to collateral attack. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17500 et seq.; West's Ann.Cal.C.C.P. § 1094.5.

[6] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Once decisions of the Commission on State Mandates are final, whether after judicial review or without judicial review, they are binding, just as are judicial decisions.

[7] Administrative Law and Procedure 15A ⚿501

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak501 k. Res Judicata. Most Cited Cases
An administrative agency's quasi-judicial decision is binding in later civil actions.

[8] Administrative Law and Procedure 15A ⚿501

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak501 k. Res Judicata. Most Cited Cases
Unless a party to a quasi-judicial proceeding challenges the agency's adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions.

[9] Administrative Law and Procedure 15A ⚿501

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak501 k. Res Judicata. Most Cited Cases
A party to a final adjudication of an administrative agency is collaterally estopped from relitigating the issues if (1) the agency acted in a judicial capacity, (2) it resolved the disputed issues, and (3) all parties had the opportunity to fully and fairly litigate the issues.

[10] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities

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360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Legislative declarations concerning whether a state mandate exists are irrelevant to the determination of the Commission on State Mandates as to whether a state mandate exists. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17500 et seq.

[11] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
State's constitutional duty to reimburse local governments for mandated costs does not include ballot measure mandates. West's Ann.Cal. Const. Art. 13B, § 6.
See Cal. Jur. 3d, State of California, §§ 102, 104; 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, §§ 119, 121.

[12] Constitutional Law 92 2340

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)1 In General
92k2340 k. Nature and Scope in General. Most Cited Cases
The entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the state constitution.

[13] Constitutional Law 92 1002

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1001 Doubt
92k1002 k. In General. Most Cited Cases

Constitutional Law 92 2340

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)1 In General
92k2340 k. Nature and Scope in General. Most Cited Cases
If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action; such restrictions and limitations imposed by the state constitution are to be construed strictly, and are not to be extended to include matters not covered by the language used.

[14] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
The term "Legislature" in state constitutional provision requiring the state to reimburse local government "[w]henever the Legislature or any state agency mandates a new program or higher level of service," does not include the people acting pursuant to the power of initiative. West's Ann.Cal. Const. Art. 13B, § 6.

[15] Constitutional Law 92 592

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k590 Meaning of Language in General
92k592 k. Plain, Ordinary, or Common Meaning. Most Cited Cases
When interpreting the state constitution, courts must choose the plain meaning of the provision if the language is clear and unambiguous.

[16] Constitutional Law 92 603

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k603 k. Extrinsic Aids to Construction in General. Most Cited Cases

Constitutional Law 92 604

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92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k604 k. History in General. Most Cited Cases
If state constitutional language is ambiguous, courts turn to extrinsic evidence, such as ballot arguments, for its interpretation.

[17] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Statutory provision declaring that no reimbursement of local government is necessary for costs resulting from "duties that are necessary to implement a ballot measure," does not violate state constitutional provision requiring the state to reimburse local government whenever the Legislature or any state agency mandates a new program or higher level of service. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17556(f).

[18] Constitutional Law 92 2488

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2485 Inquiry Into Legislative Judgment
92k2488 k. Policy. Most Cited Cases

Constitutional Law 92 2489

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2485 Inquiry Into Legislative Judgment
92k2489 k. Wisdom. Most Cited Cases
The judiciary, in reviewing statutes enacted by the Legislature, may not undertake to evaluate the wisdom of the policies embodied in such legislation; absent a constitutional prohibition, the choice among competing policy considerations in enacting laws is a legislative function.

[19] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Statutory provision declaring that no reimbursement of local governments is necessary for "duties that are reasonably within the scope of a ballot measure" is impermissibly broad, as it allows for denial of reimbursement when reimbursement is constitutionally required. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17556(f).

[20] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Statutes imposing duties on local governments do not give rise to reimbursable costs if the duties are incidental to the ballot measure mandate and produce at most de minimis added costs. West's Ann.Cal. Const. Art. 13B, § 6.

West Codenotes
Held UnconstitutionalWest's Ann.Cal.Gov.Code § 17556 ****504** Olson, Hagel & Fishburn, Deborah B. Caplan, and N. Eugene Hill, Sacramento, for Plaintiffs and Appellants.

Edmund G. Brown, Jr., Attorney General, Christopher E. Krueger, Senior Assistant Attorney General, Jonathan K. Renner, Steven M. Gevercer, and Ross C. Moody, Deputy Attorneys General, for Defendants and Appellants.

Camille Shelton, Sacramento, and Katherine A. Tokarski, for Intervener and Appellant.

NICHOLSON, Acting P.J.

***1189** The Legislature recently amended the law with respect to reimbursement to local governments for costs imposed as a result of ballot measures. The

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amended statute provides that the state need not provide reimbursement if "[t]he statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included, in a ballot measure approved by voters in a statewide or local election...." (gov.code, § 17556, SUBD. (F).) THE Legislature also directEd tHe commission on State Mandates to set aside or reconsider specific test claims decisions that were issued before the amendment of the statute.

In this case, we must determine whether the Legislature's direction to the Commission to redecide cases that were already final violated the separation of powers doctrine. We conclude that such direction exceeds the Legislature's power.

****505** We also must determine whether the amended statute is consistent with article XIII B, section 6 of the California Constitution, which requires the state to reimburse local governments for certain costs imposed on the local governments by the Legislature and state agencies. We conclude that, to the extent that the amended statute provides that the state need not reimburse local governments for imposing duties that are expressly included in or necessary to implement a ballot measure, the statute is consistent with article XIII B, section 6. However, any duty not expressly included in or necessary ***1190** to implement the ballot measure gives rise to a reimbursable state mandate, even if the duty is reasonably within the scope of the ballot measure.

THE PARTIES

The appellants and cross-respondents include the State of California, Department of Finance, Office of State Controller, and Commission on State Mandates. Except for the Commission on State Mandates, these parties filed a joint brief. We refer to them as the State. The Commission on State Mandates filed its own brief, and we refer to it simply as the Commission.

The respondents and cross-appellants include two associations (California School Boards Association (CSBA) and Education Legal Alliance (ELA)) and four local government entities (County of Fresno, City of Newport Beach, Sweetwater Union High School District, and County of Los Angeles). Because the respondents and cross-appellants are represented by the same counsel and make the same arguments, we will refer to the respondents and cross-appellants collectively using the acronym for the first named party, CSBA.

BACKGROUND

A. *Law and Procedure Relating to Mandates*

In 1978, the voters of California passed Proposition 13 to limit the power of state and local governments to increase taxes. The next year, the voters passed Proposition 4, called the "Spirit of 13" to limit growth in governmental spending. (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574, 7 Cal.Rptr.2d 245, 828 P.2d 147.) Proposition 4 imposed government spending limits and required the state to reimburse local governments for the costs of complying with state-imposed programs.[FN1] (Cal. Const., art. XIII B, § 6 (hereafter, art. XIII B, § 6); *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282, 101 Cal.Rptr.2d 784.)

> FN1. We use the term "local governments" to refer, generally, to cities, counties, school districts, and other governmental entities that may be entitled to reimbursement for state-mandated costs.

Subdivision (a) of article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...." Section 6 grants three exceptions to this ***1191** general rule: (1) mandates requested by the local government, (2) legislation concerning crimes, and (3) mandates implemented prior to January 1, 1975. (Art. XIII B, § 6, subd. (a).)

The Legislature responded to Proposition 4 by creating the Commission on State Mandates (Commission) to determine whether reimbursement was required for new state mandates. Local governments ****506** may file test claims, which the Commission adjudicates. (Stats.1984, ch. 1459, § 1; Gov.Code, § 17500 et seq.; *County of Fresno v. State* (1991) 53 Cal.3d 482, 484, 280 Cal.Rptr. 92, 808 P.2d 235.) Decisions of the Commission are subject to judicial review under Code of Civil Procedure section 1094.5. (Gov.Code, §

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17559, subd. (b).)

In the same legislation that created the Commission, the Legislature directed the Commission not to find local government costs reimbursable if, among other things, "[t]he statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election" (ballot measure mandates). (Stats.1984, ch. 1459, § 1, pp. 5118, 5119; former Gov.Code, § 17556, subds. (a)(3) & (a)(6).)

Applying article XIII B, section 6, and Government Code section 17556, the Commission resolved several test claims relevant to this action (and described below) involving ballot measure mandates. In those decisions, the Commission found costs reimbursable to the local governments because the legislation imposed costs exceeding the ballot measure mandates (not expressly included in a ballot measure).

In 2005, the Legislature made changes to Government Code section 17556 and directed the Commission to "set aside" some of its test claim decisions and to "reconsider" other test claim decisions. (Stats.2005, ch. 72 (Assem. Bill No. 138).)

Assembly Bill No. 138 changed the wording of Government Code section 17556, subdivision (f) with respect to ballot measure mandates. The 2005 provision stated that costs are not reimbursable if "[t]he statute or executive order imposes duties that *are necessary to implement, reasonably within the scope of, or* expressly included in a ballot measure approved by the voters in a statewide or local election. *This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was* ***1192** *approved by the voters.*" [FN2] (Stats.2005, ch. ****507** 72, § 7; Gov.Code, § 17556, subdivision (f), italics added for new statutory language.)

FN2. Government Code section 17556 states:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:
>
> "(a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision.
>
> "(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.
>
> "(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.
>
> "(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
>
> "(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

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> "(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.
>
> "(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

Complying with the Legislature's requirement that it set aside or reconsider certain test claims, the Commission held new hearings on the test claims. It found that, pursuant to new laws and the amendment to Government Code section 17556, the costs that it had previously concluded were reimbursable costs were no longer reimbursable. Below we summarize each of those test claim decisions.

CSBA filed a petition for writ of mandate and complaint for injunctive and declaratory relief in the trial court. It asserted that the language of subdivision (f) of Government Code section 17556 conflicts with the requirements of article XIII B, section 6. CSBA also asserted that the legislation forcing the Commission to set aside or reconsider its prior decisions violated the separation of powers doctrine in the California Constitution.

***1193** After a hearing, the trial court considered CSBA's arguments that subdivision (f) of Government Code section 17556 conflicts with article XIII B, section 6 because (1) ballot measure mandates fall within the category of mandates from "the Legislature or any state agency" (art. XIII B, § 6), and, (2), even if ballot measure mandates are not reimbursable pursuant to article XIII B, section 6, the statute's provision that mandates "necessary to implement [or] reasonably within the scope of ... a ballot measure" is overly broad and therefore conflicts with article XIII B, section 6. The court concluded that the plain language of article XIII B, section 6 (mandates of "the Legislature or any state agency") does not include ballot measure mandates, meaning that the state is not required to reimburse local governments for mandates "expressly included" in ballot measures. However, the court determined that the new language of the statute relieving the state of reimbursement for mandates that are "necessary to implement [or] reasonably within the scope of ... a ballot measure" violates article XIII B, section 6.

The trial court then considered CSBA's arguments that the legislation forcing the Commission to set aside or reconsider its ballot measure mandate decisions constituted a violation of the separation of powers doctrine. The court held that the legislation requiring the Commission to "set aside" its decisions was a violation of the separation of powers doctrine because it was an attempt to dictate to the Commission a finding that there is no reimbursable mandate and it directed the Commission to set aside a determination that was already final. On the other hand, the court held that the Legislature's direction to the Commission to "reconsider" other decisions was merely a procedural requirement with no retroactive application and therefore did not violate the separation of powers doctrine.

Based on these conclusions, the trial court granted the request for injunctive and declaratory relief and directed issuance of a writ of mandate. The court ordered the Commission to set aside the ****508** decisions that relied on Government Code section 17556, subdivision (f), as amended by Assembly Bill No. 138, in finding that costs were not reimbursable and to take no action in reliance on the amendment to that subdivision.

B. *Test Claims*

1. *Open Meetings Act* (CSM 4257) and *Brown Act Reform* (CSM 4469) Test Claims [FN3]

> FN3. The numbers in parentheses after the names of the test claims are those assigned to the test claims by the Commission.

In 1988 and 2001, the Commission decided the *Open Meetings Act* and *Brown Act Reform* test claims, respectively. In each decision, the Commission ***1194** found that the state must reimburse costs to the local governments for costs mandated by the legislation.

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In the *Open Meetings Act* decision, the Commission considered Government Code provisions that required the legislative body of a local agency to post an agenda for its meetings before the meeting and prohibited action at the meeting on any item not previously posted. The provisions also required the legislative body to provide to members of the public the opportunity to address the legislative body on items of interest. The Commission concluded that these provisions mandated a higher level of service and increased costs. Therefore, the costs were reimbursable by the state.

In the *Brown Act Reform* decision, the Commission considered additional Government Code provisions concerning open meetings. Those provisions required the legislative body of a local agency to include in the posted agenda and to disclose in an open meeting a description of any items to be discussed in a closed session. The provisions also required the legislative body to reconvene in an open meeting to report the actions taken in the closed session and provide copies of documents from the closed session. The Commission concluded that the provisions mandated a higher level of service and increased costs, thereby necessitating reimbursement from the state.

In 2004, the voters passed Proposition 59. This constitutional amendment provided: "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, § 3(b)(1).)

Assembly Bill No. 138 repealed the Government Code provisions that the Commission had found resulted in reimbursable costs mandated by the state. (Stats.2005, ch. 72, §§ 11, 13.) It then reenacted the provisions verbatim, except that it added a subdivision to each provision stating, "This section is necessary to implement and reasonably within the scope of [Proposition 59]." (Stats.2005, ch. 72, §§ 12, 14; Gov.Code, §§ 54954.2, subd. (c), 54957.1, subd. (f).) Assembly Bill No. 138 directed the Commission to "set-aside all decisions, reconsiderations, and parameters and guidelines on the Open Meetings Act (CSM-4257) and Brown Act Reform (CSM-4469) test claims," retroactive to the effective date of Assembly Bill No. 138. (Stats.2005, ch. 72, § 17(b).)

Complying with Assembly Bill No. 138's direction to set aside its decisions in the *Open Meetings Act* and *Brown Act Reform* test claims, the Commission set aside those decisions in September 2005, retroactive to the effective date of Assembly Bill No. 138. In doing so, the ***1195** Commission recognized Assembly Bill No. 138's finding that the ****509** Government Code provisions in question are necessary to implement and reasonably within the scope of Proposition 59. Beyond that recognition, however, the Commission independently came to the same conclusion, that the Government Code provisions are necessary to implement and reasonably within the scope of Proposition 59. Therefore, the *Open Meetings Act* and *Brown Act Reform* test claim decisions no longer result in costs reimbursable by the state.

The trial court determined that the provision in Assembly Bill No. 138 directing the Commission to set aside its decisions, reconsiderations, parameters, and guidelines in the *Open Meetings Act* and *Brown Act Reform* test claims violated the separation of powers doctrine. The court also determined that the language in Assembly Bill No. 138 stating that the Government Code provisions in question were necessary to implement and reasonably within the scope of Proposition 59 constituted an unlawful attempt, in violation of the separation of powers doctrine, to dictate to the Commission that it find no reimbursable costs as to those test claims. Based on these determinations, the court ordered issuance of a writ commanding the Commission to set aside its September 2005 decision with respect to the *Open Meetings Act* and *Brown Reform Act* test claims and to take no further action on those test claims inconsistent with the court's judgment.

2. *Mandate Reimbursement Process* Test Claims (CSM 4204/4485 and 05-TC-05)

In 1986, the Commission rendered a decision concluding that the process imposed on local governments for preparing and submitting a claim for reimbursable costs for state mandates was itself a state mandate for which costs were reimbursable to the local government. This test claim is referred to as *Mandate Reimbursement Process I.*

Assembly Bill No. 138 directed the Commission to reconsider its *Mandate Reimbursement Process I* test

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claim decision. It also directed that any changes in that decision were to be retroactive to July 1, 2006.[FN4] (Stats.2005, ch. 72, § 17(a).)

> FN4. Assembly Bill No. 138 referred to this test claim using the wrong claim number. It directed the Commission to reconsider claim number CSM 4202, instead of the actual number, which is CSM 4204. The Commission concluded that this was merely an inconsequential error, as the clear legislative intent was for the Commission to reconsider CSM 4204. The parties do not mention this mistake in their briefs.

Complying with Assembly Bill No. 138, the Commission reconsidered the *Mandate Reimbursement Process I* test claim. ***1196** It concluded that the statutes concerning the mandate reimbursement process do not impose reimbursable costs because the statutes are necessary to implement and reasonably within the scope of Proposition 4.

In 2005, after the passage of Assembly Bill No. 138, a second test claim was filed with the Commission, asserting that legislative changes made since 1986 to the process of claiming reimbursable costs imposed further reimbursable costs on the local government. This test claim is referred to as *Mandate Reimbursement Process II.*

The Commission issued a decision in *Mandate Reimbursement Process II.* It concluded that, even though the statutes concerning the mandate reimbursement process imposed costs on the local government, the costs are not reimbursable because they are necessary to implement and reasonably within the scope of Proposition 4. However, the Commission did not ****510** make its own determination that the statutes are necessary to implement and reasonably within the scope of Proposition 4. Instead, the Commission simply cited the Legislature's declaration in Government Code section 17500 that the Legislature's intent in enacting the statutes was "to provide for the implementation of [Proposition 4]."

The trial court determined that the provision in Assembly Bill No. 138 directing the Commission to reconsider the *Mandate Reimbursement Process I* test claim decision did not violate the separation of powers doctrine because it was merely procedural, did not dictate a result, and had prospective effect only. As to both the *Mandate Reimbursement Process I* and *Mandate Reimbursement Process II* test claims, however, the court determined that the Commission's decisions must be set aside because the Commission applied Government Code section 17556, subdivision (f), which states that mandates that are necessary to implement or reasonably within the scope of a ballot measure are not reimbursable.

3. *School Accountability Report Cards* Test Claim (97-TC-21)

In 1988, the voters passed Proposition 98, which included a provision requiring school districts to issue school accountability report cards for each school in the district based on a model to be prepared by the State Superintendent of Public Instruction and adopted by the State Board of Education. The ballot measure required the model to include assessment of 13 school elements, although it did not limit the model to those elements. [FN5] (Former Educ.Code, §§ 33126, 35256, as added by Prop. 98.)

> FN5. Proposition 98 added former Education Code section 33126, subdivision (a), which stated:
>
> "The model School Accountability Report Card shall include, but is not limited to, assessment of the following school conditions:
>
> "(1) Student achievement in and progress toward meeting reading, writing, arithmetic and other academic goals.
>
> "(2) Progress toward reducing drop-out rates.
>
> "(3) Estimated expenditures per student, and types of services funded.
>
> "(4) Progress toward reducing class sizes and teaching loads.
>
> "(5) Any assignment of teachers outside their subject areas of competence.
>
> "(6) Quality and currency of textbooks and

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other instructional materials.

"(7) The availability of qualified personnel to provide counseling and other student support services.

"(8) Availability of qualified substitute teachers.

"(9) Safety, cleanliness and adequacy of school facilities.

"(10) Adequacy of teacher evaluations and opportunities for professional improvement.

"(11) Classroom discipline and climate for learning.

"(12) Teacher and staff training, and curriculum improvement programs.

"(13) Quality of school instruction and leadership."

Over the years, the Legislature has added numerous additional elements to the school accountability report card, such as information on salaries paid to ***1197** teachers and administrators, the degree to which pupils are prepared to enter the work force, the number of instructional minutes offered in the school year, SAT scores, dropout rates, class sizes, teacher credentialing, and suspension and expulsion rates. (Educ.Code, § 33126.)

In 1998, the Commission rendered a decision stating that the 13 elements required by Proposition 98 to be included in the school accountability report cards are not reimbursable because they were expressly included in the ballot measure. As to the additional elements added by the Legislature, however, the Commission concluded****511** that the legislation "impose[d] a new program or higher level of service upon local school districts and therefore are reimbursable under section 6, article XIII B of the California Constitution...."

In 2004 and again in 2005, the Legislature directed the Commission to reconsider its decision in the *School Accountability Report Cards* test claim in light of new federal and state laws and state court decisions.[FN6] The legislation directed that the decision of the Commission be made retroactive to January 1, 2005. (Stats.2004, ch. 895, § 18; Stats.2005, ch. 677, § 53.) Upon reconsideration, the Commission concluded that, although the additional elements added to the school accountability report card were not expressly included in Proposition 98, they were reasonably within the scope of the ballot measure and, therefore, were not reimbursable. The Commission also stated two alternative grounds for denying the claim: (1) the additional school accountability report card elements added by the Legislature required only a minimal reallocation of resources and (2) the State essentially funds the school accountability report cards through Proposition 98's mandatory funding.

FN6. The 2005 legislation directing reconsideration was necessary because the 2004 legislation had failed to include each of the Education Code amendments that the Legislature wanted the Commission to reconsider. (See Stats.2005, ch. 677, § 53.)

***1198** The trial court held that, while the Legislature could validly direct reconsideration of the *School Accountability Report Cards* test claim, the new decision was improper because of its reliance on the amended language of Government Code section 17556, subdivision (f), excepting from the mandate requirement any duties that are necessary to implement or reasonably within the scope of ballot measures. The court directed the Commission to set aside its new decision and take no further action inconsistent with the court's ruling.

DISCUSSION

I

Separation of Powers

[1] We first consider the separation of powers arguments because, as will be seen, application of that constitutional limitation on the Legislature's power resolves the definitive issues concerning all but one of the test claim decisions. We conclude that the Legislature's direction to set aside or reconsider the decisions in the *Open Meetings Act* and *Brown Act Reform* test claims, the *Mandate Reimbursement I* test claim, and the *School Accountability Report Cards* test claim

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exceeded the Legislature's power and, therefore, the Commission's new decisions must be set aside. This does not affect the *Mandate Reimbursement Process II* test claim decision because it was not made pursuant to a legislative directive to set aside or reconsider a prior decision.

[2] " 'From its inception, the California Constitution has contained an explicit provision embodying the separation of powers doctrine.' [Citation.] That Constitution apportions the powers of state government among the three branches familiar to all students of government in this country-legislative, executive, and judicial-and states that '[p]ersons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.' (Cal. Const., art. III, § 3.) Despite the apparent sharp division of powers among the governmental branches that the California Constitution provides, in reality the branches are mutually dependent in many respects, and the actions of one branch may significantly ****512** affect another branch. [Citation.] ... [¶] 'At the same time, this doctrine unquestionably places limits upon the actions of each branch with respect to the other branches.' [Citation.] The Constitution 'vest[s] each branch with certain "core" [citation] or "essential" [citation] functions that may not be usurped by another branch.' [Citation.]" (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1102, 29 Cal.Rptr.3d 249, 112 P.3d 636.)

***1199** The State asserts that the trial court erred in finding that the Legislature violated the separation of powers doctrine when it directed the Commission to *set aside* its decisions in the *Open Meetings Act* and *Brown Act Reform* test claims. CSBA disagrees and additionally asserts that the Legislature violated the separation of powers doctrine when it directed the Commission to *reconsider* its decisions in the *School Accountability Report Cards* and *Mandate Reimbursement I* test claims. We conclude that the Legislature's direction to the Commission to set aside or reconsider final test claim decisions exceeded the Legislature's power.

In Assembly Bill No. 138 and corresponding legislation, the Legislature directed the Commission to set aside, in one instance, and reconsider, in the others, its decisions on the test claims at issue here. The trial court decided that the direction to reconsider test claims "is procedural only; it operates, or can be construed to operate prospectively only; it does not dictate the result; and, therefore, it does not violate the separation of powers doctrine." As for the Legislature's direction to the Commission to set aside a test claim decision, however, the trial court concluded that it violated the separation of powers doctrine because it did not merely require the Commission to reconsider them. This is the extent of the distinction identified by the trial court.

[3] On appeal, the State urges us to find that the direction to set aside test claims did not violate the separation of powers doctrine because doing so was functionally the same as directing the Commission to reconsider the test claim decisions. On the other hand, CSBA, in its cross-appeal, argues that the Legislature violated the separation of powers as to the direction to reconsider test claim decisions as well as the direction to set aside a test claim decision. We conclude that CSBA is correct. The Legislature exceeded its power and therefore violated the separation of powers doctrine when it directed the Commission to set aside and reconsider test claim decisions. As a quasi-judicial decision maker, the Commission does its work independent of legislative oversight and is not subject to review by the Legislature. The Legislature had no power to direct the Commission to set aside or reconsider specific test claim decisions.

"In [Government Code] section 17500 et seq., the Legislature established the Commission as a quasi-judicial body to carry out a comprehensive administrative procedure for resolving claims for reimbursement of state-mandated local costs arising out of article XIII B, section 6 ... of the California Constitution.

***1200** " 'The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. [Citation.]

" ' "It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of [article XIII B,] section 6 lies ****513** in these procedures. The statutes create an administrative forum for resolution of state mandate

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claims, and establishes [*sic*] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created.... [¶] ... In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce [article XIII B,] section 6." [Citation.]

" 'Thus, the statutory scheme contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists.' [Citation.]" (*Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1192-1193, 51 Cal.Rptr.2d 100, italics omitted.)

[4] The Commission's authority to issue a final decision that solely and exclusively adjudicates a test claim is limited only by judicial review. "A claimant or the state may commence a proceeding in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure to set aside a decision of the commission on the ground that the commission's decision is not supported by substantial evidence...." (Gov.Code, § 17559, subd. (b).)

[5] The Legislature's direction to the Commission to reconsider or set aside its final decisions is an unlawful collateral attack on those decisions. Once a decision of the Commission becomes final and has not been set aside by a court pursuant to a petition for writ of administrative mandamus (Code Civ. Proc., 1094.5), it is not subject to collateral attack. As a collateral attack, the Legislature's direction to the Commission to set aside or reconsider Commission decisions went beyond the power of the Legislature.

The Legislature is powerless to overturn a specific judicial decision. (*Mandel v. Myers* (1981) 29 Cal.3d 531, 547, 174 Cal.Rptr. 841, 629 P.2d 935 (*Mandel*).) "Our Constitution assigns the resolution of such specific controversies to the judicial branch of government (Cal. Const., art. VI, § 1) and provides the Legislature with no authority to set itself above the judiciary by discarding the outcome or readjudicating the merits of particular judicial ***1201** proceedings." (*Mandel, supra,* at p. 547, 174 Cal.Rptr. 841, 629 P.2d 935.) "[T]he fundamental separation of powers doctrine embodied in article III, section 3 of the California Constitution [citation] forbids any such legislative usurpation of traditional judicial authority." (*Mandel, supra,* at p. 547, 174 Cal.Rptr. 841, 629 P.2d 935.)

[6][7][8] Once the Commission's decisions are final, whether after judicial review or without judicial review, they are binding, just as are judicial decisions. An administrative agency's quasi-judicial decision is binding in later civil actions. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65, 99 Cal.Rptr.2d 316, 5 P.3d 874.) "[U]nless a party to a quasi-judicial proceeding challenges the agency's adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions." (*Id.* at pp. 69-70, 99 Cal.Rptr.2d 316, 5 P.3d 874.) Therefore, like a judicial decision, a quasi-judicial decision of the Commission is not subject to the whim of the Legislature. Only the courts can set aside a specific Commission decision and command the Commission to reconsider, and, even then, this can be done only within the bounds of statutory procedure. (Gov.Code, § 17559, subd. (b).)

There is no legally defensible basis for distinguishing between the Legislature's ****514** direction to set aside, on one hand, and to reconsider, on the other, a final determination by the Commission. The trial court found that the direction to reconsider was merely procedural and therefore did not overstep the Legislature's bounds. However, the effect of the direction to reconsider was to nullify the finality of specific Commission decisions. Such a case-by-case legislative abrogation of Commission decisions violates the separation of powers doctrine.

The conclusion that the Commission's decisions are beyond the reach of legislative encroachment is supported in *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 234 Cal.Rptr. 795 (*Carmel Valley*). In that case, the State required counties to supply firefighters with protective clothing and equipment. The counties filed a petition for reimbursement with the Board of Control, the Commission's predecessor. The Board of Control found that the clothing and equipment requirement constituted a state mandate and ordered reimbursement. The State did not challenge the decision of the Board of Control by seeking a writ of mandate during the statutory time limit. The Legislature then refused to appropriate funds for reimbursement. (*Id.* at pp. 530-533, 234 Cal.Rptr. 795.)

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When the counties sought judicial relief for the failure to provide reimbursement, the State attempted to argue that the decision of the Board of Control was incorrect. The court held, however, that the State could not obtain relief in this manner, even if the decision of the Board of Control was ***1202** incorrect, because the State waived the right to challenge the decision and was collaterally estopped from doing so. (*Carmel Valley, supra,* 190 Cal.App.3d at pp. 534-537, 234 Cal.Rptr. 795.)

[9] As in *Carmel Valley,* the State, in this case, is not entitled to nullify the finality of the prior Commission decisions, whether by refusing to fund a mandate or directing the Commission to reconsider. The State is bound by those decisions. As noted in *Carmel Valley,* a party to a final adjudication of an administrative agency is collaterally estopped from relitigating the issues if (1) the agency acted in a judicial capacity, (2) it resolved the disputed issues, and (3) all parties had the opportunity to fully and fairly litigate the issues. (*Carmel Valley, supra,* 190 Cal.App.3d at p. 535, 234 Cal.Rptr. 795.) Each of the elements is present in this case. Therefore, the State may not attack the test claim decisions by having the Legislature require the Commission to set aside or reconsider its decisions.

Because the Legislature had no power to direct the Commission to set aside or reconsider its test case decisions, the Commission's actions in response to that direction were unauthorized. The Commission, itself, stated in its new decisions that it was acting to reconsider or set aside the decisions pursuant to the direction of the Legislature.

Therefore, the setting aside and reconsideration of the test claims at issue here (*Open Meetings Act* and *Brown Act Reform* test claims, the *Mandate Reimbursement I* test claim, and the *School Accountability Report Cards* test claim) was unauthorized, and we direct the trial court to modify its judgment and the writ of mandate accordingly. The lone exception is the *Mandate Reimbursement Process II* test claim decision, which was heard pursuant to a new test claim and was not a reconsideration of a prior test claim.

Over time, any particular decision of the Commission may be rendered obsolete by changes in the law and material circumstances that originally justified the Commission's decision. While decisions of the ****515** Commission are not subject to collateral attack, logic may dictate that they must be subject to some procedure for modification after changes in the law or material circumstances. CSBA argues that the most analogous procedure is the inherent power of a court to modify a continuing injunction to take into account changes in the law and material circumstances. We conclude that we need not decide this question.

In deciding that the Legislature cannot direct, on a case-by-case basis, that a final decision of the Commission be set aside or reconsidered, we do not imply that there is no way to obtain reconsideration of a Commission ***1203** decision when the law or material circumstances have changed. We only conclude that the Legislature's attempt to force a reconsideration in this case violated the separation of powers doctrine. Whether the Commission, exercising inherent powers, may agree to reconsider a decision or the Legislature may provide, generally, a process for obtaining reconsideration of a decision is beyond the scope of this opinion.[FN7]

> FN7. The Commission is authorized by statute to reconsider a decision within 30 days, with a possible 30-day extension, after issuing the decision. (Gov.Code, § 17559, subd. (a).) The statutory time to obtain reconsideration is well past.

II

Additional Separation of Powers Argument

Because we have already determined that the setting aside and reconsideration of all but one of the test claim decisions at issue in this appeal was unauthorized, we need not consider further arguments concerning those test claim decisions. Accordingly, the remaining discussion relates to the *Mandate Reimbursement Process II* test claim.

In finding that the duties imposed by the State did not give rise to reimbursable costs in the *Mandate Reimbursement Process II* test claim decision, the Commission did not decide for itself whether those duties were expressly included in or necessary to implement a ballot measure. Instead, the Commission simply cited the Legislature's declaration in Government Code section 17500 that the Legislature's intent in enacting the statutes was "to provide for the implementation of [Proposition 4]." "Thus," concluded the

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Commission, "the test claim statutes and executive orders, as part of that statutory scheme, meet the standard of section 17556, subdivision (f), in that they are 'necessary to implement [or] reasonably within the scope of' article XIII B, section 6." (Brackets in original.)

[10] The Commission's conclusion that the Legislature's statement of intent resolved the matter was unjustified because legislative declarations concerning whether a state mandate exists are irrelevant to the Commission's determination of whether a state mandate exists. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 818, 38 Cal.Rptr.2d 304 (*County of Los Angeles*).)

In *County of Los Angeles,* the court considered a Penal Code statute imposing duties on local governments and providing for state mandate reimbursement to local governments for implementing the duties. (32 Cal.App.4th at pp. 811-812, 38 Cal.Rptr.2d 304.) When the State discontinued payments, the county filed a test claim, asserting that the Legislature's ***1204** provision granting state mandate reimbursement was a "final and unchallengeable determination that [the statute] constitute[d] a state mandate." (*Id.* at p. 818, 38 Cal.Rptr.2d 304.) The *County of Los Angeles* court disagreed. It held that "the Commission,****516** as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists, and the Commission properly determined that no state mandate existed." (*Id.* at p. 819, 38 Cal.Rptr.2d 304.)

Applying the holding in *County of Los Angeles,* we conclude that the Legislature's declarations concerning its intent in enacting the state mandate reimbursement provisions are simply irrelevant to the determination of whether a state mandate exists. We discern no conflict between this conclusion and article III, section 3.5 of the Constitution, stating that an administrative agency has no power to declare a statute unconstitutional or refuse to enforce it on that basis. A legislative finding that a mandate exists is irrelevant to the Commission's determination and, therefore, it is unnecessary to determine whether the finding conflicts with the Constitution. (*County of Los Angeles, supra,* 32 Cal.App.4th at pp. 819, 38 Cal.Rptr.2d 304.) On remand, the Commission must disregard any declarations of legislative intent and, instead, decide for itself whether a reimbursable state mandate exists.

III

Alternative Basis for Rejecting Claim

In reconsidering the *School Accountability Report Cards* test claim, after it was directed to do so by the Legislature, the Commission determined that the application of the amended version of Government Code section 17556, subdivision (f) resulted in a finding that there were no reimbursable costs. The Commission then continued: "Even in the absence of Government Code section 17556, subdivision (f), there is a separate and independent ground for finding that the test claim legislation does not impose costs mandated by the state." The Commission then found that (1) the additional school accountability report card elements added by the Legislature required only a minimal reallocation of resources and (2) the State essentially funds the school accountability report cards through Proposition 98's mandatory funding.

In its separate appeal, the Commission asserts that, even if we determine that the statutes that required reconsideration are unconstitutional, we should reverse the trial court's judgment as to the *School Accountability Report Cards* test claim because the trial court did not consider the alternative grounds that the Commission gave for its finding that there were no reimbursable costs. CSBA argues that we should disregard this assertion because it was not raised in the trial court. CSBA also argues that the alternative ***1205** grounds cited by the Commission are not a valid basis for upholding the Commission's decision because the Commission acted only pursuant to the Legislature's invalid direction to reconsider the test claim decision. We conclude that the alternative grounds cited by the Commission have no bearing on the outcome because the Legislature's direction to the Commission to reconsider the *School Accountability Report Cards* test claim decision exceeded the Legislature's power.

The Commission agrees that the issue of whether the alternative grounds were sufficient to uphold the decision on reconsideration is moot if we find that the Legislature exceeded its power in directing reconsideration of the *School Accountability Report Cards* test claim decision. The Commission states: "[I]f the

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appellate court finds that the reconsideration statutes are constitutionally invalid, as argued in CSBA's cross appeal [citation], the Commission's reconsideration decision must be set aside, the alternative grounds issue is moot, and no further analysis is ****517** required." We agree. The reconsideration statutes were invalid. Therefore, the Commission's reconsideration based on those statutes must be nullified, regardless of the decision's merits.[FN8]

> FN8. The Commission requests that we take judicial notice that CSBA, ELA, and the Sweetwater Union High School District jointly filed a petition for writ of mandate and complaint for injunctive and declaratory relief against the State on October 19, 2007, challenging, among other things, the alternative grounds relied on by the Commission in the *School Accountability Report Cards* test claim. The request for judicial notice is denied because the newly-filed petition and complaint is not of substantial consequence to the determination of this action. (Evid.Code, §§ 452, subd. (d); 459.)
>
> CSBA filed a request to submit supplemental briefing on the merits of the alternative grounds stated in the Commission's decision in the *School Accountability Report Cards* test claim. Because we do not reach the merits of the alternative grounds, we deny CSBA's request for supplemental briefing.

IV

Costs Expressly Included in Ballot Measures

[11] In its cross-appeal, CSBA contends that ballot measure mandates imposed on local governments must be reimbursed under article XIII B, section 6. It argues that the provision in the original version of Government Code section 17556, subdivision (f), that the State need not reimburse costs resulting from "duties which were expressly included in a ballot measure approved by the voters in a statewide election" (Stats.1984, ch. 1459, § 1, p. 5119, enacting former Gov.Code, § 17556, subd. (a)(6)), was in conflict with article XIII B, section 6. We turn first to this contention. As did the trial court, we conclude that CSBA's contention is without merit, based on the plain ***1206** meaning of article XIII B, section 6. The State's constitutional duty to reimburse local governments for mandated costs does not include ballot measure mandates.

A. *Constitutional Challenge to Legislative Enactment*

[12][13] "In deciding whether the Legislature has exceeded its power, we are guided 'by well settled rules of constitutional construction. Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. [Citations.] Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] In other words, "we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited." [Citation.] [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: "If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used." ' [Citations.] On the other hand, 'we also must enforce the provisions of our Constitution and "may not lightly disregard or blink at ... a clear constitutional mandate." ' [Citation.]" (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 284-285, 132 Cal.Rptr.2d 713, 66 P.3d 718.)

B. *Plain Meaning of the Constitutional Provision*

[14] Article XIII B, section 6 requires the state to reimburse the local government****518** "[w]henever the Legislature or any state agency mandates a new program or higher level of service...." Although the text refers to mandates by "the Legislature or any state agency," which does not appear to include ballot measures passed by voters, CSBA claims that "Legislature" is ambiguous and can include the voters. It further claims that by turning to Proposition 4's history and ballot arguments, the ambiguity must be resolved in favor of including the voters in the meaning of "Legislature." We reject this argument because

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"Legislature" is not ambiguous.

[15][16] When interpreting the Constitution, we must choose the plain meaning of the provision if the language is clear and unambiguous. If the language is ambiguous, however, we turn to extrinsic evidence, such as ballot arguments. (*Silicon Valley Taxpayers Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 444-445, 79 Cal.Rptr.3d 312, 187 P.3d 37.)

***1207** "Legislature" is not ambiguous in the context of reimbursement for state mandates: "The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum." (cal. const., art. IV, § 1.) although the "legislative power" is shared by the Legislature and the people, the two sources of legislation are distinct. If they were not distinct, it would have been unnecessary for the people to " reserve to themselves the powers of initiative and referendum." (*Ibid.*)

Article XIII B, section 6 requires reimbursement for mandates imposed by the "Legislature" and not by ballot measures. If the voters had intended to include ballot measure mandates-that is, mandates imposed by the voters themselves-they could have done so by using (1) more general but inclusive language, such as providing that reimbursement is required whenever "the state" mandates a new program or higher level of service and (2) additional specific language, such as providing that reimbursement is required whenever "a ballot measure" mandates a new program or higher level of service. The voters did neither. Therefore, we must not read into the language of Proposition 4 an interpretation that goes beyond the plain meaning of the provision.

C. *Introducing Ambiguity*

But CSBA attempts to introduce ambiguity by referring to cases holding that an extension or limitation on the power of the "Legislature" in some contexts in the state Constitution includes an extension of or limitation on the people's power of initiative. (See *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 194 Cal.Rptr. 781, 669 P.2d 17; *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 279 Cal.Rptr. 325, 806 P.2d 1360; *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 44 Cal.Rptr.3d 644, 136 P.3d 178.) This attempt to introduce ambiguity fails because the cases upon which CSBA relies are distinguishable.

1. *Legislature v. Deukmejian*

In *Legislature v. Deukmejian,* the Supreme Court considered the validity of a proposed initiative that would have realigned voting districts. At the time *Legislature v. Deukmejian* was decided, article XXI, section 1 of the California Constitution stated: "In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the ... congressional ... districts...." (Former Cal. Const., art. XXI, § 1.) The proposed ****519** initiative sought to realign the districts even though the Legislature had already acted pursuant to its decennial duty. ***1208**(*Legislature v. Deukmejian, supra,* 34 Cal.3d at p. 663, 194 Cal.Rptr. 781, 669 P.2d 17.) The specific issue resolved by the Supreme Court was whether it should " create an exception to the constitutionally mandated and long-established rule that redistricting may occur only once within the 10-year period following a federal census." (*Ibid.*) Assuming, without deciding, that the people have the authority to realign districts through the initiative process (*id.* at p. 673, 194 Cal.Rptr. 781, 669 P.2d 17), the court concluded that, " based upon the principle that in the enactment of statutes the constitutional limitations that bind the Legislature apply with equal force to the people's reserved power of initiative, that such an exception cannot be justified." (*Id.* at p. 663, 194 Cal.Rptr. 781, 669 P.2d 17.)

Contrary to CSBA's argument, *Legislature v. Deukmejian* does not lead to the conclusion that the term "Legislature" in the Constitution applies equally to what we normally refer to as the Legislature and to the voters acting pursuant to the power of initiative and referendum. The Supreme Court specifically declined to decide whether "redistricting by initiative is permissible." (*Legislature v. Deukmejian, supra,* 34 Cal.3d at p. 673, 194 Cal.Rptr. 781, 669 P.2d 17.) Instead, it held that, even if it is permissible, the limitations imposed by the Constitution apply to redistricting by initiative. (*Id.* at pp. 673-674, 194 Cal.Rptr. 781, 669 P.2d 17.)

This holding does not support CSBA's argument that

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the term "Legislature" in article XIII B, section 6 includes the voters. The Constitution narrowly granted the Legislature the power to realign districts. Even if the people have the power to exercise the initiative power to realign districts, which power is not specifically granted to the people by the Constitution, such power must be limited, as is the Legislature's power. This holding did not blur the definition of "Legislature." It simply refused to grant the people power in excess of the Legislature's as to redistricting.

2. *Kennedy Wholesale, Inc. v. State Board of Equalization*

In *Kennedy Wholesale, Inc. v. State Board of Equalization, supra,* the Supreme Court addressed the issue of whether Proposition 13 impliedly repealed the people's power to raise taxes by initiative. Proposition 13 provided, in part, that "any changes in State taxes enacted for the purpose of increasing revenues ... must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature...." Noting that the provision referred to the Legislature but not to the people's power of initiative, thereby supporting at least an inference that the people do not have the power to raise taxes, the court found the provision ambiguous because it conflicts with article IV, section 1 of the Constitution, which reserves to the people the power of initiative. Based on this contextual ambiguity, the court referred to extrinsic evidence and found there was nothing to support an argument that Proposition 13 impliedly repealed the people's power to raise taxes. (*Kennedy Wholesale, Inc. v. State Bd. of Equalization, supra,* 53 Cal.3d at pp. 248-251, 279 Cal.Rptr. 325, 806 P.2d 1360.)

***1209** CSBA claims that the *Kennedy Wholesale, Inc. v. State Board of Equalization* court "held that the reference to 'the Legislature' in [Proposition 13] refers both to the Legislature and to the People acting by initiative." We read the case differently. The court held that the two-thirds ****520** majority limitation on the Legislature's power to raise taxes *did not* implicate the people's power to raise taxes by initiative with a simple majority vote. (*Kennedy Wholesale, Inc. v. State Bd. of Equalization, supra,* 53 Cal.3d at p. 251, 279 Cal.Rptr. 325, 806 P.2d 1360.) In that way, the case makes it clear that the Legislature's lawmaking power and the people's power of initiative are separate and distinct.

3. *Independent Energy Producers Assn. v. McPherson*

In *Independent Energy Producers Assn. v. McPherson, supra,* 38 Cal.4th 1020, 44 Cal.Rptr.3d 644, 136 P.3d 178, the Supreme Court held that "language in the California Constitution recognizing the authority of the Legislature to take specified action generally is interpreted to encompass the exercise of such legislative power either by the Legislature or by the people through the initiative process." (*Id.* at p. 1025, 44 Cal.Rptr.3d 644, 136 P.3d 178.) From this, CSBA claims that when the Constitution says "Legislature" it also means the voters, or, at least, it is ambiguous. We disagree.

The Supreme Court, in *Independent Energy Producers Assn. v. McPherson,* considered the constitutionality of a proposed ballot initiative to confer additional regulatory authority on the California Public Utilities Commission. The Court of Appeal had determined that the proposed provision was unconstitutional, based on the language of article XII, section 5 of the Constitution, which states: " 'The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission....' " (*Independent Energy Producers Assn. v. McPherson, supra,* 38 Cal.4th at pp. 1031-1032, 44 Cal.Rptr.3d 644, 136 P.3d 178.)

The Supreme Court concluded that this provision does not prevent the people from acting pursuant to the power of initiative also to confer additional authority on the Public Utilities Commission. Although the language of article XII, section 5 of the Constitution gives the Legislature plenary power to confer additional authority on the commission, it is silent, and therefore ambiguous, concerning the power of the people also to confer additional authority on the commission. Having found this ambiguity, the court stated: "[I]n view of the long-standing California decisions establishing that references in the California Constitution to the authority of the Legislature to enact specified legislation generally are interpreted to include the people's reserved right to legislate through the initiative power, and in light of the background and purpose of the relevant language of article XII, section 5, we conclude that this constitutional provision does not preclude the people, ***1210** through their

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(Cite as: 171 Cal.App.4th 1183, 90 Cal.Rptr.3d 501)

exercise of the initiative process, from conferring additional powers or authority upon the [Public Utilities Commission]." (*Independent Energy Producers Assn. v. McPherson, supra,* 38 Cal.4th at pp. 1043-1044, 44 Cal.Rptr.3d 644, 136 P.3d 178, fn. omitted.)

This holding that the lawmaking power given to the Legislature is generally interpreted to include the same authority given to the people acting pursuant to the power of initiative does not support the assertion that the use of the word "Legislature" in article XIII B, section 6 includes ballot measures. This is so because the Constitution can (and does) limit the Legislature's power in ways that the people's power of initiative is not limited, such as requiring the Legislature to raise taxes only on a two-thirds majority vote. Accordingly, the holding in ****521***Independent Energy Producers Assn. v. McPherson* does not lead logically or rationally to the conclusion that the use of the term "Legislature" in article XIII B, section 6, really means "Legislature or voters."

4. No Contextual Ambiguity

Citing these three cases- *Legislature v. Deukmejian; Kennedy Wholesale, Inc. v. State Bd. of Equalization;* and *Independent Energy Producers Assn. v. McPherson*-CSBA contends that "the People's lawmaking powers are identical to the Legislature's and subject to the same limitations." We are unconvinced that the Supreme Court's holdings in these cases create ambiguity in the use of the term "Legislature" in article XIII B, section 6. As we noted above, article IV, section 1 of the California Constitution identifies the "Legislature" as the Senate and Assembly. Although in the cases cited by CSBA, the people's power of initiative, for reasons specifically associated with each of the constitutional provisions considered, has been found, to some extent, to be limited or extended in the same way that the Constitution limited or extended the Legislature's power, CSBA gives no reason, and we know of none, to go beyond the plain meaning of Proposition 4, referring to mandates imposed by "the Legislature or any state agency" in determining the meaning of the provision. "Legislature" does not include the people acting pursuant to the power of initiative. We therefore reject CSBA's assertion that article XIII B, section 6, requiring reimbursement to local governments for certain state mandates, applies to ballot measures.

V

Costs Necessary to Implement and Reasonably Within the Scope of Ballot Measures

Having established that costs imposed on local governments by ballot measure mandates need not be reimbursed by the state, we turn to ***1211** whether the further limiting of reimbursable costs in Assembly Bill No. 138 violates article XIII B, section 6. We conclude that, to the extent that Government Code section 17556, subdivision (f), as amended by Assembly Bill No. 138, declares that no reimbursement is necessary for costs resulting from " duties that are necessary to implement ... a ballot measure," the amendment does not violate article XIII B, section 6. However, the additional language declaring that no reimbursement is necessary for "duties that are ... reasonably within the scope of ... a ballot measure" is impermissibly broad because it allows for denial of reimbursement when reimbursement is required by article XIII B, section 6.

A. *Government Code section 17556, subdivision (f), as amended*

We first consider the language of the statute to determine the scope of the issue raised by the parties. As amended by Assembly Bill No. 138, subdivision (f) of Government Code section 17556 included three categories of duties imposed on local governments for which the state need not provide reimbursement. The first and narrowest category, also found in the version of the statute before the amendment, includes duties that are "expressly included in" a ballot measure. The second category includes duties that are "necessary to implement" a ballot measure. And the third and most broad category includes duties that are "reasonably within the scope of" a ballot measure. Every duty that is "expressly included in" a ballot measure is also "necessary to implement" and "reasonably within the scope of" that ballot measure. Also, every duty that is "necessary to implement" a ballot measure is "reasonably within the scope of" that ****522** ballot measure. But not every duty that is "reasonably within the scope of" a ballot measure is "expressly included in" or "necessary to implement" that ballot measure.

We note that, although the State defends the "necessary to implement" language of Government Code

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section 17556, subdivision (f), it does not similarly defend the "reasonably within the scope of" language. The State asserts that the "necessary to implement" language is consistent with article XIII B, section 6 and is severable from the "reasonably within the scope of" language. As will be seen, we agree with both the implicit concession that the "reasonably within the scope of" language is indefensibly broad when measured against the constitutional provision and the express argument that the "necessary to implement" language is consistent with the constitutional provision and is severable from the "reasonably within the scope of" language.

B. *San Diego Unified School District v. Commission on State Mandates*

Before we consider the arguments, we summarize the most recent decision from the California Supreme Court relevant to these arguments- ***1212***San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589 (*San Diego Unified*). In that case, the Supreme Court specified what costs associated with expulsion of a student from a public school were reimbursable as state mandates. The court determined that although some costs were reimbursable as state mandates, others were not because they were incidental to federal mandates and were de minimis. [FN9] (*Id.* at pp. 889-890, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

> FN9. Former Government Code section 17556, subdivision (c) stated that costs are not reimbursable if "[t]he statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation." (Stats.1989, ch. 589, § 1, p. 1973.)

The *San Diego Unified* court observed that federal due process requires certain procedural safeguards when a public school is considering expelling a student. Provisions of the Education Code in effect at the time relevant to the *San Diego Unified* decision mandated procedures complying with the federal due process requirements. The Education Code provisions also mandated procedures not required by federal due process, thus producing costs that were not federally mandated. The claimant recognized that it was not entitled to state reimbursement for costs that were federally mandated, but asserted a claim for those costs that resulted from state mandates that exceeded the federal due process requirements. (*San Diego Unified, supra,* 33 Cal.4th at p. 885, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

The *San Diego Unified* court considered the claim in the context of two scenarios: mandatory and discretionary expulsion.

First, the court considered a provision requiring a principal to recommend to the school board that a public school student be expelled if the student possessed a firearm. Because neither federal due process nor, at the time, any federal law required this recommendation of expulsion, the costs were reimbursable as a state mandate. The court reasoned that, although federal due process only required the school district to expend resources if the school district decided to pursue expulsion, the state law required it to do so. Thus, it was a reimbursable state mandate. ****523**(*San Diego Unified, supra,* 33 Cal.4th at pp. 881-883, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

Second, the *San Diego Unified* court considered the scenario in which the school district pursued expulsion under circumstances not required by state law. The court determined that no reimbursable costs resulted under these circumstances because, although the state law imposed requirements exceeding the requirements of federal due process, the additional state requirements were incidental to the federal requirements and imposed additional costs that ***1213** were de minimis. The court held that, "for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law-and whose costs are, in context, de minimis-should be treated as part and parcel of the underlying federal mandate." (*San Diego Unified, supra,* 33 Cal.4th at pp. 888-890, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

C. *Constitutionality of Statutory Language*

1. Necessary to Implement

[17] The language of subdivision (f) of Government Code section 17556 relieving the State of the obligation to reimburse a local government for duties "necessary to implement" a ballot measure is unobjec-

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tionable because it corresponds to the Supreme Court's holding in *San Diego Unified* that state statutes codifying federal mandates are not reimbursable because they are part and parcel of the federal mandate. Therefore, contrary to the decision of the trial court, we conclude that the "necessary to implement" language of the subdivision is not inconsistent with article XIII B, section 6.

In *San Diego Unified,* some of the Education Code provisions concerning expulsions were viewed as codifying federal due process requirements. (33 Cal.4th at p. 868, 16 Cal.Rptr.3d 466, 94 P.3d 589.) The court held that the Education Code provisions "adopted to implement a federal due process mandate" produce costs that are "nonreimbursable under article XIII B, section 6...." (*San Diego Unified, supra,* at p. 888, 16 Cal.Rptr.3d 466, 94 P.3d 589, italics omitted.) By the same reasoning, statutes that are adopted to implement ballot measure mandates produce costs that are nonreimbursable. Thus, the "necessary to implement" language of Government Code section 17556, subdivision (f) is consistent with article XIII B, section 6 because it denies reimbursement only to the extent that costs imposed by a statute are necessary to implement the ballot measure. (See *County of Riverside v. Superior Court, supra,* 30 Cal.4th pp. 284-285, 132 Cal.Rptr.2d 713, 66 P.3d 718 [holding that Legislature has power to legislate limited only by Constitution].) Therefore, the "necessary to implement" language of Government Code section 17556, subdivision (f) does not violate article XIII B, section 6.

But CSBA objects to this application of the *San Diego Unified* holding. It asserts that we cannot import the analysis from *San Diego Unified* to this case because (1) the provisions concerning federal mandates and ballot measure mandates in Government Code section 17556, subdivisions (c) and (f) are worded differently and (2) federal mandates and ballot measure mandates are not treated the same in the spending limit provisions of Proposition 4, found at article XIII B, section 9 of the Constitution. Neither argument has merit.

As CSBA observes, the two subdivisions of Government Code section 17556 concerning federal mandates and ballot measure mandates feature ***1214** different wording. Subdivision (c) provides that costs are nonreimbursable****524** if "[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation." Subdivision (f) approaches the same issue from a different angle, stating that costs are nonreimbursable if "[t]he statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election."

The difference in wording is that subdivision (c) refers to "impos[ing] a requirement that is mandated by federal law," while subdivision (f) refers to "impos[ing] duties that are necessary to implement ... a ballot measure." (Gov.Code, § 17556.) Although the wording is different, there is no difference in the effect when considering the interpretation placed on subdivision (c) by the *San Diego Unified* court. There, the court stated that statutes "adopted to implement" federal law are nonreimbursable. Subdivision (f) is even more restrictive, stating that there is no reimbursement obligation if the statute is "necessary to implement" a ballot measure. Therefore, the difference in wording does not support an argument that the "necessary to implement" language of Government Code section 17556, subdivision (f) violates article XIII B, section 6.

[18] Proposition 4 limited the spending authority of state and local government. (*Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) Not included in that spending limitation, however, is spending required to comply with a federal mandate. (Cal. Const., art. XIII B, § 9(b).) There is no similar exception for spending required to comply with ballot measure mandates. Citing this difference, CSBA argues that relieving the state of its reimbursement obligation for ballot measure mandates is unjustified. This argument fails because it is, at its core, a policy argument. It posits that the Legislature should not be able to impose nonreimbursable costs if the costs are not excepted from the constitutional spending limits. Nonetheless, that is the Legislature's prerogative, as long as it does not violate the Constitution. "The judiciary, in reviewing statutes enacted by the Legislature, may not undertake to evaluate the wisdom of the policies embodied in such legislation; absent a constitutional prohibition, the choice among competing policy considerations in enacting laws is a legislative function." (*Superior Court v. County of Mendocino*

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(Cite as: 171 Cal.App.4th 1183, 90 Cal.Rptr.3d 501)

(1996) 13 Cal.4th 45, 53, 51 Cal.Rptr.2d 837, 913 P.2d 1046 .)

CSBA's objections to the application of the *San Diego Unified* decision to the interpretation of Government Code section 17556, ***1215** subdivision (f) are without merit. We therefore conclude that, to the extent that Government Code section 17556, subdivision (f) allows the Legislature to impose on local governments nonreimbursable costs resulting from duties that are "necessary to implement" or "expressly included in" a ballot measure, it does not violate article XIII B, section 6.

2. Reasonably Within the Scope Of

[19] As we noted above, the State makes no attempt to defend the "reasonably within the scope of" language of Government Code section 17556, subdivision (f). And for good reason. That language is so broad that it cannot be used as a standard for determining whether the State must reimburse the local government for having imposed a duty resulting in costs. Determining whether such a duty is reasonably within the scope of a ****525** ballot measure lends itself to sweeping imposition of duties on local governments without reimbursement, contrary to the intent of Proposition 4. The State offers no interpretation of the language that would properly limit the language to be consistent with Proposition 4.

One example suffices to show that the "reasonably within the scope of" language is overly broad. As we discussed with respect to the *Open Meetings Act* and *Brown Act Reform* test claims, the Commission had decided that the costs imposed on local governments under these acts constituted reimbursable state mandates. Then, in 2004, the voters passed Proposition 59, generally stating that the people have the right to governmental transparency. (Cal. Const., art. I, § 3(b)(1).) Any statute that has anything to do with open government is "reasonably within the scope of" Proposition 59. However, it is unlikely that the voters intended to grant carte blanche to the Legislature to impose unlimited, unreimbursable costs on local governments for all duties associated with open government. Because the phrase "reasonably within the scope of" so clearly contravenes the intent the voters in passing Proposition 4, that language must be limited.

In light of the remaining language of the subdivision, relieving the State of the obligation to reimburse local governments if the duty is "expressly included in" or "necessary to implement" a ballot measure, which phrases are much more limited than "reasonably within the scope of," the best course-the course that is consistent with Proposition 4-is to interpret "reasonably within the scope of" to extend only to duties that are "expressly included in" or "necessary to implement" ballot measures. This may be seen as a limiting ***1216** of the language to what is constitutionally permissible or as a severance of the "reasonably within the scope of" language from the subdivision. Either way, it limits the expansive language in a workable and constitutionally permissible solution.

If this limiting of the phrase "reasonably within the scope of" amounts to a severance of that language from the statute, we consider such severance justified and proper.[FN10] "[A] statute that is invalid as inconsistent with the California Constitution is not ineffective and inoperative to the extent that its invalid parts can be severed from any valid ones. [Citation.] An invalid part can be severed if, and only if, it is 'grammatically, functionally and volitionally separable.' [Citation.] It is 'grammatically' separable if it is 'distinct' and 'separate' and, hence, 'can be removed as a whole without affecting the wording of any' of the measure's 'other provisions.' [Citation.] It is 'functionally' separable if it is not necessary to the measure's operation and purpose. [Citation.] And it is 'volitionally' separable if it was not of critical importance to the measure's enactment. [Citation.]" (*Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 613, 88 Cal.Rptr.2d 56, 981 P.2d 990.)

> FN10. CSBA argues that we should not consider the severability of the "reasonably within the scope of" language because severability was not raised by the State in its trial court arguments. We decline to take such a myopic course. The issue to be resolved is the proper interpretation of Government Code section 17556, subdivision (f) within constitutional restraints. That general issue was argued in the trial court, and it would serve no valid purpose to ignore the application of severability to that issue.

"Reasonably within the scope of" is grammatically,

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(Cite as: 171 Cal.App.4th 1183, 90 Cal.Rptr.3d 501)

functionally and volitionally separable from the remainder of Government Code section 17556, subdivision (f). Grammatically, it can be taken out without harming the meaning of any other part of **526 the subdivision. Functionally, it is not necessary to the overall operation and purpose of the subdivision, which still defines the limits of the state's obligation to reimburse local governments. And volitionally, the severance does not affect the Legislature's apparent purpose to limit, to the extent allowed by the Constitution, its obligation to reimburse local governments. "Reasonably within the scope of," therefore, can and must be severed from the remaining language in Government Code section 17556, subdivision (f).

3. Incidental and De Minimis

[20] We also conclude that statutes imposing duties on local governments do not give rise to reimbursable costs if the duties are incidental to the ballot measure mandate and produce at most de minimis added costs. (*San Diego Unified, supra,* 33 Cal.4th at p. 889, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

*1217 In *San Diego Unified,* the court considered whether costs resulting from statutes that were not adopted to implement federal due process requirements were reimbursable under article XIII B, section 6, and Government Code section 17556, subdivision (c). The court determined that " the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections." (*San Diego Unified, supra,* 33 Cal.4th at p. 889, 16 Cal.Rptr.3d 466, 94 P.3d 589.) It also determined that the statutes, "viewed singly or cumulatively, [ ] did not significantly increase the cost of compliance with the federal mandate." (*Ibid.*) The court concluded that, "for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law-and whose costs are, in context, de minimis-should be treated as part and parcel of the underlying federal mandate." (*Id.* at p. 890, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

There is no reason not to apply this practical holding similarly to ballot measure mandates. Thus, the Commission must consider the holding of *San Diego Unified* in determining whether costs are reimbursable for ballot measure mandates.

D. *Remand*

We are not in a position to determine whether, under our interpretation of Government Code section 17556, subdivision (f), the State is obligated to provide reimbursement with respect to the *Mandate Reimbursement Process II* test claim. Because there was no case interpreting the subdivision, the Commission was required to apply it, as written. Therefore, the Commission must have the opportunity to resolve the question first. (See *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 920, 58 Cal.Rptr.3d 762 [Commission resolves mandates questions first].)

In the *Mandate Reimbursement Process II* test claim decision, the Commission noted that it had no authority to refuse to apply Government Code section 17556, subdivision (f), even if the subdivision was inconsistent with the Constitution. Now that we have held that the subdivision is, in part, inconsistent with article XIII B, section 6, and must be interpreted to eliminate that inconsistency, the Commission can apply the subdivision properly.[FN11]

> FN11. Assembly Bill No. 138 also inserted the following language into Government Code section 17556, subdivision (f): "This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters." (Stats.2005, ch. 72, § 7.) There is no reason, in this case, to opine concerning the validity of this provision.

*1218 **527 DISPOSITION

The judgment is reversed in part and affirmed in part. The trial court is directed to modify the judgment consistent with this opinion and to modify its writ of mandate to direct the Commission to set aside the decisions challenged in this action with respect to the *Open Meetings Act* and *Brown Act Reform* test claims, the *Mandate Reimbursement I* test claim, and the *School Accountability Report Cards* test claim and to reinstate the prior decisions. The writ must also be modified to direct the Commission to reconsider the *Mandate Reimbursement Process II* test claim in a manner consistent with this opinion. Each party shall bear its own costs on appeal.

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We concur: ROBIE and CANTIL-SAKAUYE, JJ.
Cal.App. 3 Dist.,2009.
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33 Cal.App.4th 489, 39 Cal.Rptr.2d 348
(Cite as: 33 Cal.App.4th 489)

H KENNETH L. CAMPBELL, Plaintiff and Appellant,
v.
FRANK S. ZOLIN, as Director, etc., Defendant and Respondent.
No. H012143.

Court of Appeal, Sixth District, California.
Mar 24, 1995.

[Opinion certified for partial publication. FN*]

FN* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts I, IV, and V of the Discussion.

SUMMARY

The Department of Motor Vehicle suspended defendant's driver's license for failure to comply with the Financial Responsibility Laws following an accident with another vehicle in a parking lot. (Superior Court of Santa Clara County, No.734178, James H. Chang, Judge.)

The Court of Appeal affirmed. The court held that under Veh. Code, §§ 16000 and 16000.1, which expanded the Financial Responsibility Laws to include specified "off-highway accidents," the exclusion under Veh. Code, § 16000.1, subd. (b), was intended to apply only where there is a single-car accident in which all of the damage occurs to the property of the driver or owner of the single vehicle involved. A construction permitting application of the exclusion to multiple-car accidents could make the reportability of an accident vary depending upon the perspective of each driver involved. Accordingly, the court held that since defendant was involved in an accident on private property with another vehicle that sustained over $500 damage, defendant's license was properly suspended by the Department of Motor Vehicles for noncompliance with the Financial Responsibility Laws. (Opinion by Mihara, J., with Cottle, P. J., and Wunderlich, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Automobiles and Highway Traffic § 15--Operators' Licenses--Revocation or Suspension--Administrative Hearing--Review.
When an administrative agency initiates an action to suspend or revoke a driver's license, the burden of proving the facts necessary to support the action rests with the agency making the allegation. Until the agency has met its burden of going forward with the evidence necessary to sustain a finding, the licensee has no duty to rebut the allegations or otherwise respond. Since the retention of a driver's license constitutes a fundamental vested right, the trial court must exercise its independent judgment to determine whether the weight of the evidence supported the administrative decision.

(2) Mandamus and Prohibition § 74--Mandamus--Judicial Review--Construction of Statute.
In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial, credible, and competent evidence. This limitation, however, is inapplicable to the construction of a statute, an issue which constitutes a question of law. In such cases the appellate court is not bound by the trial court's decision, but may make its own determination.

(3a, 3b) Automobiles and Highway Traffic § 13--Operators' Licenses-- Revocation or Suspension--Grounds--Lack of Insurance--Reportable Off-highway Accident--Statutory Construction.
Under Veh. Code, §§ 16000 and 16000.1, which expanded the Financial Responsibility Laws to include specified "off-highway accidents," the exclusion under Veh. Code, § 16000.1, subd. (b), was intended to apply only where there is a single-car accident in which all of the damage occurs to the property of the driver or owner of the single vehicle involved. A construction permitting application of the exclusion to multiple-car accidents could make the reportability of an accident vary depending upon the perspective of each driver involved. Accordingly, the license of an uninsured driver, who was involved in an accident on

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private property with another vehicle that sustained over $500 damage, was properly suspended by the Department of Motor Vehicles for noncompliance with the Financial Responsibility Laws.
[See 6 **Witkin,** Summary of Cal. Law (9th ed. 1988), Torts § 1114.]
(4) Statutes § 45--Construction--Presumptions--Different Words.
Ordinarily, where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning.

COUNSEL

Kenneth L. Campbell, in pro. per., for Plaintiff and Appellant. ***491**

Daniel E. Lungren, Attorney General, Henry G. Ullerich, Assistant Attorney General, Jose R. Guerrero and Robert R. Buell, Deputy Attorneys General, for Defendant and Respondent.

MIHARA, J.

Introduction

Kenneth Campbell appeals from a judgment denying a petition for mandamus following the Department of Motor Vehicle's suspension of his driving license for failure to comply with the financial responsibility laws. We affirm.

Facts

On December 29, 1992, while driving an automobile owned by his mother, Lee Campbell, appellant was involved in a traffic accident with a car owned and operated by Teawood Kung. The accident occurred in the parking lot of the apartment complex where appellant resided.

On January 9, 1993, Kung prepared and signed a "Report of Traffic Accident" (Department of Motor Vehicles form SR 1A) notifying the Department of Motor Vehicles (DMV) of the accident, providing information concerning his insurance coverage, and estimating the cost of repairs to his vehicle to be $550. [FN1] Kung stated that the accident did not result in any injuries.

FN1 Vehicle Code section 16000, subdivision (a), requires the filing of such a report within 10 days after the accident.

Lee Campbell signed a similar report on February 17, 1993, wherein she estimated the cost of repairs to her vehicle to be $1,200 and asserted that Kung's car suffered only $100 in damages. Campbell admitted that her car was not insured at the time of the accident. As had Kung, Campbell reported no injuries resulting from the collision.

On March 12, 1993, the DMV sent appellant notice of its intent to suspend his driving privilege for failure to comply with the financial responsibility laws. (See Veh. Code, [FN2] § 16070.) Following appellant's timely request, the suspension was stayed pending an administrative hearing. (§ 16075, subd. (b).) ***492**

FN2 All unspecified section references are to the Vehicle Code.

At the administrative hearing conducted on June 9, 1993, appellant submitted a written demurrer to the order of suspension in which he contested the jurisdiction of the DMV on the ground that the accident had occurred on private property. In the demurrer, appellant admitted that on the date in question, he was operating a motor vehicle and was involved in a collision with a second vehicle driven by Teawood Kung.

During questioning by the hearing officer, appellant reiterated that he was the driver of the vehicle involved in the accident and also conceded that he did not have any "financial responsibility insurance in effect" at the time of the incident. Appellant testified that the cost of repairs to his mother's vehicle was between $1,000 and $1,200, and introduced a copy of a check in the amount of $618.47 issued to him by Kung's insurance company as payment for the damages. The hearing officer introduced into evidence as a departmental exhibit a repair estimate of $542.66 for Kung's vehicle. Additional estimates of $684.40 and $699.49 were also submitted. [FN3]

FN3 At oral argument, we granted appellant's request to augment the record on appeal to include these additional repair estimates.

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(Evid. Code, § 459.)

It was uncontroverted that there were no deaths or injuries resulting from the accident. The only contested issue at the hearing was whether the accident, having occurred on private property, fell within the scope of the financial responsibility laws.

Following the hearing, the DMV issued a decision suspending appellant's license for a one-year period effective June 13, 1993. [FN4] The decision was based on the hearing officer's findings that (1) appellant was the driver or owner of a vehicle involved in an accident on December 29, 1992; [FN5] (2) the accident resulted in property damage over $500; and (3) appellant had not established that financial responsibility covered the driver of the vehicle involved in the accident. On July 30, 1993, the decision was sustained upon departmental review. (§ 14105.5.)

FN4 The suspension order permits appellant restricted driving privileges for work purposes upon payment of a penalty fee and proof of financial responsibility.

FN5 The notice states that the accident occurred on December 29, 1993. Based on the record on appeal, however, it is clear that the accident actually occurred the previous year, on December 29, 1992. Appellant does not argue otherwise.

Thereafter appellant filed a petition seeking a peremptory writ of mandate directing the DMV to set aside its order of suspension. On December 17, 1993, the superior court heard the matter and issued an order sustaining the suspension. Appellant appealed from the order on January 18, 1994. A formal judgment denying the writ of mandate was entered on February 14, 1994. ***493**

Discussion

I. *Premature Filing of the Notice of Appeal* [FN*]

FN* See footnote, *ante*, page 489.

. . . . . .

II. *Standard of Review*

(1) "When an administrative agency initiates an action to suspend or revoke a [driver's] license, the burden of proving the facts necessary to support the action rests with the agency making the allegation. Until the agency has met its burden of going forward with the evidence necessary to sustain a finding, the licensee has no duty to rebut the allegations or otherwise respond. [Citations.]" (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 532, 536 [189 Cal.Rptr. 512, 658 P.2d 1313].)

Since the retention of a driver's license constitutes a fundamental vested right, the trial court must exercise its independent judgment to determine whether the weight of the evidence supported the administrative decision reached by the DMV. (*Berlinghieri v. Department of Motor Vehicles* (1983) 33 Cal.3d 392, 394-397 [188 Cal.Rptr. 891, 657 P.2d 383].)

(2) " 'In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial, credible and competent evidence.' " (*McNabb v. Department of Motor Vehicles* (1993) 20 Cal.App.4th 832, 837 [24 Cal.Rptr.2d 641], quoting *Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 502 [2 Cal.Rptr.2d 50].) This limitation, however, is inapplicable to the construction of a statute, an issue which constitutes a question of law. (20 Cal.App.4th at p. 837.) "In such cases ... the appellate court is not bound by the trial court's decision, but may make its own determination." (*Ibid.*)

III. *Was Appellant Involved in a Reportable Traffic Accident Within the Meaning of Sections 16000 and 16000.1?*

In one form or another, California has required its drivers to be financially responsible for driving-related injuries since 1929. (*King v. Meese* (1987) 43 Cal.3d 1217, 1220 [240 Cal.Rptr. 829, 743 P.2d 889].) Generally, this obligation is satisfied by means of insurance. (*Ibid.*) Until 1990, only those accidents which occurred on a public street or highway qualified as a "reportable accident" triggering a driver's duty to establish compliance with ***494** the state's financial responsibility laws. (See former § 16000; Stats. 1984, ch. 1324, § 2, p. 4556.) Effective in 1989, however, the Legislature amended section 16000 and added

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section 16000.1 to the Vehicle Code for the express purpose of expanding the financial responsibility laws to include specified "off-highway accidents."

Findings and declarations accompanying the legislation explain the public policy considerations supporting these measures: "The Legislature finds and declares as follows: [¶] (a) The current provisions of the Financial Responsibility Laws inadvertently do not permit the Department of Motor Vehicles to exercise its authority to suspend the driving privilege of an uninsured motorist who inflicts bodily injury or death upon individuals or who damages vehicles, buildings, or other property located on public and private property off the streets and highways. The Legislature further finds and declares that untold numbers of Californians are victims involved in these accidents. [¶] (b) It is the intent of the Legislature in amending the Financial Responsibility Laws to strengthen enforcement actions against uninsured motorists and to provide additional remedies for the victims of uninsured motorist accidents occurring off the streets and highways as soon as the department can reasonably implement the changes in Section 16000 of the Vehicle Code made by this act." (Stats. 1989, ch. 808, § 1, p. 2674.)

Section 16000, subdivision (a) [FN6] now defines a motorist's reporting duty as follows: "The driver of every motor vehicle who is in any manner involved in an accident originating from the operation of a motor vehicle on any street or highway or any reportable off-highway accident defined in Section 16000.1 ... shall, within 10 days after the accident, report the accident" on a form approved by the DMV.

FN6 The word "subdivision" shall be deleted from all further statutory references.

Section 16000.1(a) defines a "reportable off-highway accident" as one which: (1) occurs off the street or highway; (2) involves a vehicle subject to registration under the Vehicle Code; and (3) results in damage to the property of any one person in excess of $500 or in bodily injury or death.

Section 16000.1(b) excludes from the financial responsibility laws any accident which "occurs off-highway in which damage occurs only to the property of the driver or owner of the motor vehicle and no bodily injury or death of a person occurs."

In the instant case, appellant contends that the accident which is the subject of this action does not qualify as a "reportable off-highway accident," as that term is defined in section 16000.1(b), because the accident did ***495** not involve physical injury or death. Stated another way, he contends that off-highway accidents which involve only property damage are not reportable.

In contrast, the trial court found, and the DMV agrees, that the accident was reportable because the exclusion contained in section 16000.1 applies only where the accident does not involve personal injury or death and where all of the property damage is sustained by the driver or owner whose compliance with the financial responsibility laws is in question.

Though we concur with the trial court's ultimate conclusion that appellant's accident qualified as a reportable off-highway accident under section 16000.1, the exclusionary provision is not reasonably susceptible to either of the foregoing interpretations.

"[O]ur first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.] Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.]" (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387 [241 Cal.Rptr. 67, 743 P.2d 1323].) A statute must be construed so as to avoid an unjust and absurd result. (*McNabb v. Department of Motor, supra*, 20 Cal.App.4th 832, 837.)

(3a) Appellant's construction of section 16000.1(b) would exclude from coverage all off-highway accidents involving only property damage. This construction is unsupportable. First, such an interpretation would render as mere surplusage that portion of sec-

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tion 16000.1(a)(3) defining a reportable off-highway accident as one which results in property damage exceeding $500. Had the Legislature intended to exclude from the reporting requirements *all* off-highway accidents involving only property damage, it would not have included property damage as a component of the general definition of a reportable off-highway accident.

Second, the legislative declaration of findings and purpose demonstrates an explicit intent to broaden the scope of the financial responsibility laws to ***496** include off-highway accidents resulting in damage to "*vehicles*, buildings, *or other property* located on public and private property off the streets and highways." (Stats. 1989, ch. 808, § 1, p. 2675, italics added.) Appellant's construction would completely frustrate this objective.

Read in context with section 16000.1(a)(3), and in light of the purpose of section 16000.1, the exclusionary provision must be construed as providing a narrow exception which may be invoked only when an otherwise reportable off-highway accident results in property damage of a limited and specific nature. [FN7] Though the parameters of this exception are difficult to ascertain due to the ambiguous language of section 16000.1(b), we believe that the exception was intended to apply only where there is a single-car accident in which all of the damage occurs to the property of the driver or owner of the single vehicle involved. We find support for our construction in the language of the relevant statutes, public policy considerations, and the consequences which would flow from an interpretation permitting the exclusion of off-highway accidents involving multiple vehicles.

> FN7 The parties effectively concede that an accident resulting in bodily injury or death will not fall within the exception. Our discussion thus focuses only on the construction of the property damage exception specified in section 16000.1(b).

First, were we to adopt a construction permitting application of the exception to multiple-car accidents, it is conceivable that the reportability of an accident might vary depending upon the perspective of each driver involved. In such cases, it is possible that the exception could act as a shield insulating the conduct of the uninsured motorist by permitting him to escape the reporting requirements and avoid suspension. [FN8] Such a scenario would contravene both the language of the pertinent statutes and the legislative intent to deter uninsured motorists and protect the state's drivers from suffering uncompensated damages. Our limited construction of section 16000.1(b), on the other hand, is entirely consistent with the statutory language and the legislative purpose in that it ensures application of the exclusion only where there can be no question that the uninsured motorist has not harmed anyone else as a result of his unlawful conduct.

> FN8 Consider the following scenario: Driver A is uninsured and sustains property damage to his vehicle exceeding $500; Driver B is insured and sustains no property damage. Since Driver A's vehicle sustained all of the damage, it is conceivable that he could avoid the reporting requirements specified in section 16000 and escape suspension since the "damage occur [red] only to the property of the driver or owner of the motor vehicle." (§ 16000.1(b).) At the same time, Driver B would conceivably be required to file a report and show proof of insurance.

Examining section 16000(a), we see that the reporting duty is framed in language which indicates that the duty to report is not dependent upon a ***497** particular driver's perspective but is conditioned upon the occurrence of a triggering event, i.e., a reportable accident, as that term is defined in sections 16000(a) and 16000.1(a). When such an accident occurs, the statute imposes a duty to report upon "[t]he driver of *every* motor vehicle who is *in any manner involved*" in such an accident.

A comparison of the general definitions of reportable accidents found in sections 16000(a) and 16000.1(a)(3) with the language describing the exclusionary provision of section 16000.1(b) lends further support to our interpretation.

The Legislature painted with a broad brush when it set forth the ele ments of a reportable accident. The language of sections 16000(a) and 16000.1(a)(3) encompasses the possibility of multiple vehicles, and multiple instances of injury, death or significant property damage. Thus, any accident-whether it occurs on public or private property-is reportable whenever it results in significant "damage to the

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property of *any one person* ... or in bodily injury or in the death of *any* person ...." (§§ 16000(a); 16000.1(a)(3).) In contrast, the exception delineated in section 16000.1(b) speaks narrowly of "*the* property of *the* driver or owner of *the* motor vehicle," language which conveys the involvement of a single vehicle, a single driver, and a single instance of property damage to the owner or driver of that vehicle.

(4) Ordinarily, where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning. (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 507 [247 Cal.Rptr. 362, 754 P.2d 708].) (3b) In the instant case, the restrictive terminology of section 16000.1(b) compared with the expansive language used in the related provisions of sections 16000(a) and 16000.1(a)(3) supports our conclusion that the Legislature intended the exception to apply only in limited circumstances we have described.

For the foregoing reasons, we hold that the exception in section 16000.1(b) may be invoked only when a single car is involved in an accident and that accident results in property damage to no one but the driver or owner of that vehicle. [FN9] ***498**

FN9 We are aware that the government vehicle exception in section 16000(b) contains language similar to that found in section 16000.1(b). That provision exempts from the reporting requirements vehicles owned, leased, or under the direction of federal, state or local governments and provides: "A report is not required pursuant to subdivision (a) if the motor vehicle involved in the accident was owned or leased by, or under the direction of, the United States, this state, another state, or a local agency." This provision could result in a situation where one driver is statutorily obligated to comply with the reporting requirements while a government driver involved in the accident is exempted. However, section 16000(b) is sui generis. Obviously, the statutory purpose of ensuring financial responsibility for driving-related injuries or property damage is not at issue where the full force and power of a government agency stands behind the vehicle in question. Accordingly, the government exclusion outlined in section 16000(b) does not undermine our construction of section 16000.1(b).

IV., V. [FN*]

FN* See footnote, *ante*, page 489.

. . . . . .

Disposition

The judgment is affirmed.

Cottle, P. J., and Wunderlich, J., concurred.
A petition for a rehearing was denied April 19, 1995, and appellant's petition for review by the Supreme Court was denied June 1, 1995. ***499**

Cal.App.6.Dist.
Campbell v. Zolin
33 Cal.App.4th 489, 39 Cal.Rptr.2d 348

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Supreme Court of the United States
Geraldine G. CANNON, Petitioner,
v.
UNIVERSITY OF CHICAGO et al.
No. 77-926.

Argued Jan. 9, 1979.
Decided May 14, 1979.

Female, who was denied admission to medical schools at two private universities, brought civil rights suit charging the schools with discriminating against her on basis of sex. The United States District Court for the Northern District of Illinois, 406 F.Supp. 1257, dismissed the complaint, and appeal was taken. The United States Court of Appeals for the Seventh Circuit, 559 F.2d 1063, affirmed, ruling that plaintiff had no private cause of action under Title IX of the Education Amendments which prohibits sex discrimination by universities receiving federal financial assistance. On certiorari, the Supreme Court, Mr. Justice Stevens, held that plaintiff had right under Title IX of the Education Amendments of 1972 to pursue a private cause of action against the universities.

Reversed and remanded.

Mr. Chief Justice Burger concurred in judgment.

Mr. Justice Rehnquist filed concurring opinion in which Mr. Justice Stewart joined.

Mr. Justice White filed dissenting opinion in which Mr. Justice Blackmun joined.

Mr. Justice Powell filed dissenting opinion.

Order remanding to District Court, 605 F.2d 560.

Opinion on appeal after remand to District Court, 648 F.2d 1104.

West Headnotes

[1] Action 13 ⚿3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory Rights of Action. Most Cited Cases
Fact that federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person.

[2] Civil Rights 78 ⚿1330(2)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(2) k. Education. Most Cited Cases
(Formerly 78k200, 78k13.1)
Female, who was allegedly denied admission to medical schools of two private universities which were receiving federal financial assistance, on basis of her sex, had right under Title IX of Education Amendments of 1972 to pursue private cause of action against universities. Education Amendments of 1972, §§ 901-903, 20 U.S.C.A. §§ 1681-1683.

[3] Statutes 361 ⚿212.1

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.1 k. Knowledge of Legislature. Most Cited Cases
In analyzing legislative history of statutes, it is always appropriate to assume that elected representatives, like other citizens, know the law.

[4] Statutes 361 ⚿243

361 Statutes
361VI Construction and Operation
361VI(B) Particular Classes of Statutes
361k242 Statutes Relating to Remedies and Procedure
361k243 k. In General. Most Cited Cases

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When remedy is necessary or at least helpful to accomplishment of statutory purpose, court is decidedly receptive to its implication under statute.

[5] Civil Rights 78 1067(1)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(1) k. In General. Most Cited Cases
(Formerly 78k127.1, 78k127, 78k9)
Through enactment of Title IX of Education Amendments of 1972, Congress sought to avoid use of federal resources to support discriminatory practices and to provide individual citizens effective protection against practices. Education Amendments of 1972, §§ 901-903, 20 U.S.C.A. §§ 1681-1683.

[6] Action 13 3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory Rights of Action. Most Cited Cases
When Congress intends private litigants to have a cause of action to support their statutory rights, far better course is for it to specify as much when it creates those rights.

****1947** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

***677** Section 901(a) of Title IX of the Education Amendments of 1972 (Title IX) provides in part that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Petitioner instituted litigation in Federal District Court, alleging that she had been excluded from participation in the medical education programs of respondent private universities on the basis of her gender and that these programs were receiving federal financial assistance at the time of her exclusion. The District Court granted respondents' motions to dismiss the complaints since Title IX does not expressly authorize a private right of action by a person injured by a violation of § 901, and since the court concluded that no private remedy should be inferred. The Court of Appeals agreed that the statute did not contain an implied private remedy. It concluded, *inter alia,* that Congress intended the remedy in § 902 of Title IX, establishing a procedure for the termination of federal financial support for institutions that violated § 901, to be the exclusive means of enforcement, and that Title VI of the Civil Rights Act of 1964, upon which Title IX was patterned, did not include an implied private cause of action.

Held: Petitioner may maintain her lawsuit, despite the absence of any express authorization for it in Title IX. Pp. 1953-1968.

(a) Before concluding that Congress intended to make a remedy available to a special class of litigants, a court must carefully analyze the following four factors that ****1948***Cort v. Ash*, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26, identifies as indicative of such an intent: (1) whether the statute was enacted for the benefit of a special class of which the plaintiff is a member, (2) whether there is any indication of legislative intent to create a private remedy, (3) whether implication of such a remedy is consistent with the underlying purposes of the legislative scheme, and (4) whether implying a federal remedy is inappropriate because the subject matter involves an area basically of concern to the States. P. 1953.

(b) The first factor is satisfied here since Title IX explicitly confers a benefit on persons discriminated against on the basis of sex, and petitioner***678** is clearly a member of that class for whose special benefit the statute was enacted. Pp. 1953-1956.

(c) As to the second factor, the legislative history of Title IX rather plainly indicates that Congress intended to create a private cause of action. Title IX was patterned after Title VI of the Civil Rights Act of 1964, and the drafters of Title IX explicitly assumed that it would be interpreted and enforced in the same manner as Title VI, which had already been construed by lower federal courts as creating a private remedy

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when Title IX was enacted. Pp. 1956-1961.

(d) The third factor is satisfied, since implication of a private remedy will not frustrate the underlying purposes of the legislative scheme but, instead, will assist in achieving the statutory purpose of providing individual citizens effective protection against discriminatory practices. Pp. 1961-1963.

(e) As to the fourth factor since the Civil War, the Federal Government and the federal courts have been the primary and powerful reliances in protecting citizens against invidious discrimination of any sort, including that on the basis of sex. Moreover, it is the expenditure of federal funds that provides the justification for this particular statutory prohibition. Pp. 1963-1964.

(f) Respondents' principal argument against implying a cause of action under Title IX-that it is unwise to subject admissions decisions of universities to judicial scrutiny at the behest of disappointed applicants on a case-by-case basis because this kind of litigation is burdensome and inevitably will have an adverse effect on the independence of members of university committees-is without merit. The congressional majorities that passed Title VI of the Civil Rights Act of 1964 and Title IX rejected the same argument when advanced by the congressional opponents of the two statutes, and there is nothing to demonstrate that private Title VI litigation has been so costly or voluminous that either the academic community or the courts have been unduly burdened, or that university administrators will be so concerned about the risk of litigation that they will fail to discharge their important responsibilities in an independent and professional manner. P. 1964.

(g) Nor is there any merit to respondents' arguments, starting from the premise that Title IX and Title VI should receive the same construction, that a comparison of Title VI with other titles of the Civil Rights Act of 1964 demonstrates that Congress created express private remedies whenever it found them desirable, and that certain excerpts from the legislative history of Title VI foreclose the implication of a private remedy. The fact that other provisions of a complex statutory scheme create express remedies has not been accepted as a sufficient ***679** reason, by itself, for refusing to imply an otherwise appropriate remedy under a separate section, and none of the excerpts from the legislative history cited by respondents evidences any hostility toward an implied private remedy for terminating the offending discrimination. Pp. 1964-1967.

559 F.2d 1063, reversed and remanded.

John M. Cannon, Chicago, Ill., for petitioner.

Wade H. McCree, Jr., Sol. Gen. of the U. S. Dept. of Justice, Washington, D. C., for federal respondents, supporting petitioner.

Stuart Bernstein, Chicago, Ill., for non-federal respondents.

****1949 *680** Mr. Justice STEVENS delivered the opinion of the Court.

Petitioner's complaints allege that her applications for admission to medical school were denied by the respondents because she is a woman.[FN1] Accepting the truth of those allegations for the purpose of its decision, the Court of Appeals held that petitioner has no right of action against respondents that may be asserted in a federal court. 559 F.2d 1063. We granted certiorari to review that holding. 438 U.S. 914, 98 S.Ct. 3142, 57 L.Ed.2d 1159.

> FN1. Each of petitioner's two complaints names as defendant a private university-the University of Chicago and Northwestern University-and various officials of the medical school operated by that university. In addition, both complaints name the Secretary, and the Region V Director of the Office for Civil Rights, of the Department of Health, Education, and Welfare. Although all of these defendants prevailed below, and are respondents here, the federal defendants have taken a position that basically accords with the position advanced by petitioner. See Brief for Federal Respondents. Unless otherwise clear in context, all references to respondents in this opinion will refer to the private defendants named in petitioner's complaints.

Only two facts alleged in the complaints are relevant to our decision. First, petitioner was excluded from participation in the respondents' medical education programs because of her sex. Second, these education

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programs were receiving federal financial assistance at the time of her exclusion. These facts, admitted *arguendo* by respondents' motion to dismiss the complaints, establish a violation of § 901(a) of Title IX of the Education Amendments of 1972 hereinafter Title IX).[FN2]

FN2. Petitioner's complaints allege violations of various federal statutes including Title IX. Although the District Court and Court of Appeals ruled adversely on all of these theories, petitioner confined her petition for a writ of certiorari to the Title IX question. Pet. for Cert. 3. On that question, the District Court and Court of Appeals ruled favorably on respondents' motion to dismiss the complaints for failure to state a cause of action. See App. 22. Although respondents sought summary judgment simultaneously with their motion to dismiss, and submitted supporting affidavits, the courts below did not purport to rule on summary judgment or to make factual findings. Accordingly, all of the facts alleged in petitioner's complaints must be taken as true for purposes of review.

According to her complaints, petitioner was qualified to attend both of the respondent medical schools based on both objective (*i. e.,* grade-point average and test scores) and subjective criteria. In fact, both schools admitted some persons to the classes to which she applied despite the fact that those persons had less impressive objective qualifications than she did. Id., at 6-7, 12-13.

Both medical schools receive federal aid, *id.,* at 15-16, and both have policies against admitting applicants who are more than 30 years old (petitioner was 39 years old at the time she applied), at least if they do not have advanced degrees. *Id.,* at 7. Northwestern Medical School absolutely disqualifies applicants over 35. *Id.,* at 7 n. 3. These policies, it is alleged, prevented petitioner from being asked to an interview at the medical schools, so that she was denied even the opportunity to convince the schools that her personal qualifications warranted her admission in place of persons whose objective qualifications were better than hers. *Id.,* at 10, and n. 4, 11-12. Because the incidence of interrupted higher education is higher among women than among men, it is further claimed, the age and advanced-degree criteria operate to exclude women from consideration even though the criteria are not valid predictors of success in medical schools or in medical practice. *Id.,* at 7-11. As such, the existence of the criteria either makes out or evidences a violation of the medical school's duty under Title IX to avoid discrimination on the basis of sex. *Id.,* at 13. Petitioner also claimed that the schools accepted a far smaller percentage of women than their percentage in the general population and in the class of persons with bachelor's degrees. *Id.,* at 9. But cf. 559 F.2d 1063, 1067, referring to statistics submitted by the University of Chicago in its affidavit accompanying its summary judgment motion indicating that the percentage of women admitted to classes from 1972 to 1975, 18.3%, was virtually identical to the percentage of women applicants. Of course, the dampening impact of a discriminatory rule may undermine the relevance of figures relating to *actual* applicants. See *Dothard v. Rawlinson,* 433 U.S. 321, 330, 97 S.Ct. 2720, 2727, 53 L.Ed.2d 786.

Upon her rejection by both schools, petitioner sought reconsideration of the decisions by way of written and telephonic communications with admissions officials. Finding these avenues of no avail, she filed a complaint with the local office of HEW in April 1975, alleging, *inter alia,* violations of Title IX. App. 16. Three months later, having received only an acknowledgment of receipt of her letter from HEW, petitioner filed suit in the District Court for the Northern District of Illinois against the private defendants. After she amended her complaints to include the federal defendants and requested injunctive relief ordering them to complete their investigation, she was informed that HEW would not begin its investigation of her complaint until early 1976. 559 F.2d at 1068, and n. 3; App. 49. In June 1976, HEW informed petitioner that the local stages of its investigation had been completed but that its national headquarters planned to conduct a further

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"in-depth study of the issues raised" because those issues were "of first impression and national in scope." App. to Pet. for Cert., A-35. As far as the record indicates HEW has announced no further action in this case. See 559 F.2d, at 1077.

***681** That section, in relevant part, provides:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the ***682** benefits of, or be subjected to discrimination under****1950** any education program or activity receiving Federal financial assistance . . . ." [FN3]

FN3. In relevant part, § 901, 86 Stat. 373, as amended, as set forth in 20 U.S.C. § 1681, provides:

"(a)... No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

"(1)... in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

"(2)... in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education, whichever is the later;

"(3)... this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

"(4)... this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine; [and]

"(5)... in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex.

"(b)... Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided,* That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

"(c)... For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such

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school, college, or department."

***683** The statute does not, however, expressly authorize a private right of action by a person injured by a violation of § 901. For that reason, and because it concluded that no private remedy should be inferred, the District Court granted the respondents' motions to dismiss. 406 F.Supp. 1257, 1259.

The Court of Appeals agreed that the statute did not contain an implied private remedy. Noting that § 902 of Title IX establishes a procedure for the termination ****1951** of federal financial support for institutions violating § 901, the Court of Appeals concluded that Congress intended that remedy to ***684** be the exclusive means of enforcement.[FN4] It recognized that the statute was patterned after Title VI of the Civil Rights ***685** Act of 1964 (hereinafter Title VI),[FN5] but rejected petitioner's argument that Title VI included an implied private cause of action. 559 F.2d, at 1071-1075.

FN4. Section 902, 86 Stat. 374, as set forth in 20 U.S.C. § 1682, provides:

"Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report."

Section 903 of Title IX, 86 Stat. 374, as set forh in 20 U.S.C. § 1683, provides for judicial review of actions taken under § 902:

"Any department or agency action taken pursuant to section 1682 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title."

FN5. Section 601 of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d, provides:

"No person in the United States shall, on the

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> ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

After the Court of Appeals' decision was announced, Congress enacted the Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, which authorizes an award of fees to prevailing private parties in actions to enforce Title IX.[FN6] The *686 court therefore **1952 granted a petition for rehearing to consider whether, in the light of that statute, its original interpretation of Title IX had been correct. After receiving additional briefs, the court concluded that the 1976 Act was not intended to create a remedy that did not previously exist.[FN7] The court *687 also noted that the Department of Health, Education, and Welfare had taken the position that a private cause of action under Title IX should be implied,[FN8] but the court disagreed **1953 *688 with that agency's interpretation of the Act. In sum, it adhered to its original view, 559 F.2d, at 1077-1080.

> FN6. The Civil Rights Attorney's Fees Awards Act of 1976 amended 42 U.S.C. § 1988. That section, in relevant part, provides:
>
> ". . . In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX [of the Education Amendments of 1972], or in any civil action or proceedings, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964,... the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."
>
> Respondents have argued that the amendment to § 1988 was merely intended to allow attorney's fees to the prevailing party in actions brought under the express provision in Title IX, 20 U.S.C. § 1683, quoted in n. 4, *supra,* authorizing alleged discriminators to obtain judicial review of Government decisions to cut off federal funds. See 559 F.2d, at 1078. The legislative history of § 1988, as amended, belies this argument. The provision was clearly intended, *inter alia,* to allow awards of fees on behalf of "private" victims of discrimination who have successfully brought suit in court where authorized by the enumerated statutes:
>
> "All of these civil rights laws [referred to in § 1988] depend heavily upon *private* enforcement, and fee awards have proved an essential remedy if *private* citizens are to have a meaningful opportunity to vindicate the important Congressional policies which these laws contain." S.Rep.No.94-1011, p. 2 (1976); U.S.Code Cong. & Admin.News 1976, pp. 5908, 5910 (emphasis added):
>
> Furthermore, the attorney's fee amendment passed in 1976 was designed to expand the availability of § 718 of the Education Amendments of 1972, 20 U.S.C. § 1617, quoted in n. 25, *infra,* which unequivocally provides fees to litigants "other than the United States" who secure judicial relief against certain defendants for discrimination in violation of Title VI. Hence, although the language in §§ 718 and 1988 is not parallel, it appears that both authorize attorney's fees to certain private plaintiffs where the specified statute itself authorizes the relief sought by that plaintiff and the plaintiff proves his entitlement to such relief.
>
> FN7. We find nothing objectionable in this conclusion, as far as it goes. The legislative history quoted in the opinion of the Court of Appeals makes clear that the supporters of the legislation did not intend it to amend Title IX to include an express cause of action where none existed before. Instead, they clearly only meant to provide attorney's fees in the event that that statute as it had always existed implicitly created a cause of action. 559 F.2d, at 1079-1080.
>
> On the other hand, the language added to § 1988 by the 1976 amendment, and the legislative history surrounding it, do indicate that many "members of Congress may have assumed that private suits were authorized under" Title IX, 559 F.2d, at 1079, and, more importantly, that many Members felt that

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private enforcement of Title IX was entirely consistent with, and even necessary to, the enforcement of Title IX and the other statutes listed in § 1988. In addition to reflecting this sentiment in the Senate Report on the 1976 amendment, see n. 6, *supra,* numerous legislators said as much on the floor of the two Houses:

"It is Congress['] obligation to enforce the 14th amendment by eliminating entirely such forms of discrimination, and that is why both title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972 have been included [in the amendment to § 1988]. As basic provisions of the civil rights enforcement scheme that Congress has created, it is essential that private enforcement be made possible by authorizing attorneys' fees in this essential area of the law." 122 Cong.Rec. 31472 (1976) (remarks of Sen. Kennedy).

See also *id.*, at 31471 (Sen. Scott); *id.,* at 31482 (Sen. Allen); *id.*, at 31832 (Sen. Hathaway); *id.*, at 33313 (Sen. Tunney); *id.,* at 33314 (Sen. Abourezk); *id.*, at 35122 (Rep. Drinan); *id.,* at 35125-35126 (Rep. Kastenmeier); *id.,* at 35127 (Rep. Holtzman); *id.,* at 35128 (Rep. Seiberling).

Although we cannot accord these remarks the weight of contemporary legislative history, we would be remiss if we ignored these authoritative expressions concerning the scope and purpose of Title IX and its place within "the civil rights enforcement scheme" that successive Congresses have created over the past 110 years.

FN8. At least since September 17, 1974, HEW has taken the position that an implied cause of action does exist under Title IX in certain circumstances. Letter from HEW Assistant General Counsel Theodore A. Miles to Dr. Bernice Sandler (Sept. 17, 1974), reproduced in App. to Pet. for Cert. A-36 to A-38. See also Memorandum for United States as *Amicus Curiae* in *Lau v. Nichols,* O.T. 1973, No. 72-6520, p. 13 n. 5, in which the Justice Department on behalf of HEW, took the position that an implied cause of action exists under Title VI; n. 31, *infra.* It is represented that "communication lapses between national and regional HEW offices" accounted for HEW's taking the contrary position throughout the early stages of this suit and until petitioner asked for rehearing before the Seventh Circuit. Brief for Federal Respondents 6 n. 9.

HEW's position on the interaction between the private cause of action that it recognizes and the administrative remedy provided by 20 U.S.C. § 1682 and HEW regulations was less clear until recently. In the Assistant General Counsel's 1974 letter mentioned above, the question of exhaustion of administrative remedies was raised but not answered. Since 1974, HEW has apparently never taken the position that exhaustion is required in every case. In submissions made to the Court in *Terry v. Methodist Hospital,* Civ. No. 76-373 (ND Ind.), however, the Department apparently took the position that it should always have the *opportunity (i. e.,* "primary jurisdiction") to exercise its expertise through the § 1682 process in advance of judicial consideration of a private suit. Statement in Support of HEW's Motion for Reconsideration, Oct. 13, 1977, pp. 6, 10. It was apparently contemplated that the administrative results would be due some amount of deference in subsequent private litigation. Later, HEW advanced the position that the choice lay with the alleged victim of discrimination, but that if that person initiated administrative proceedings prior to suit (as petitioner did here), the only judicial remedy would be through judicial review of the agency action. See *NAACP v. Wilmington Medical Center,* 453 F.Supp. 280, 300 (Del.1978). Now, however, HEW, in conjunction with the Department of Justice, has rejected any strict-exhaustion, primary-jurisdiction, or election-of-remedies position in favor of a more flexible approach. In its view, a district court might choose to defer to the decision of the relevant administrative agency, if, unlike here, one has been reached in advance of trial, and it may wish to stay its hand upon request of HEW if an administrative investigation or informal negotiations

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are in progress and might be hampered by judicial action. See Brief for Federal Respondents 58-60, n. 36.

[1][2] The Court of Appeals quite properly devoted careful attention to this question of statutory construction. As our recent cases-particularly *Cort v. Ash*, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26-demonstrate, the fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person. Instead, before concluding that Congress intended to make a remedy available to a special class of litigants, a court must carefully analyze the four factors that *Cort* identifies as indicative of such an intent.[FN9] Our review of those factors persuades us, however, ***689** that the Court of Appeals reached the wrong conclusion and that petitioner does have a statutory right to pursue her claim that respondents rejected her application on the basis of her sex. After commenting on each of the four factors, we shall explain why they are not overcome by respondents' countervailing arguments.

FN9. "In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff 'one of the class for whose *especial* benefit the statute was enacted,' *Texas & Pacific R. Co. v. Rigsby*, 241 U.S. 33, 39, 36 S.Ct. 482, 484, 60 L.Ed. 874 (1916) (emphasis supplied)-that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? See, *e. g., National Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 U.S. 453, 458, 460, 94 S.Ct. 690, 693, 694, 38 L.Ed.2d 646 (1974) *(Amtrak)*. Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? See, *e. g., Amtrak, supra; Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 423, 95 S.Ct. 1733, 1740, 44 L.Ed.2d 263 (1975); *Calhoon v. Harvey*, 379 U.S. 134, 85 S.Ct. 292, 13 L.Ed.2d 190 (1964). And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law? See *Wheeldin v. Wheeler*, 373 U.S. 647, 652, 83 S.Ct. 1441, 1445, 10 L.Ed.2d 605 (1963); *J. I. Case Co. v. Borak*, 377 U.S. 426, 434, 84 S.Ct. 1555, 1560, 12 L.Ed.2d 423 (1964); *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 394-395, 91 S.Ct. 1999, 2003-2004, 29 L.Ed.2d 619 (1971); *id.*, at 400, 91 S.Ct. at 2006 (Harlan, J., concurring in judgment)." 422 U.S., at 78, 95 S.Ct., at 2088.

I

First, the threshold question under *Cort* is whether the statute was enacted for the benefit of a special class of which the plaintiff is a member. That question is answered by looking to the language of the statute itself. Thus, the statutory reference to "any employee of any such common carrier" in the 1893 legislation requiring railroads to equip their cars with secure "grab irons or handholds," see 27 Stat. 532, 531, made "irresistible" the Court's earliest "inference of a private right of action"-in that case in favor of a railway employee who was injured when a grab iron gave way. *Texas & Pacific R. Co. v. Rigsby*, 241 U.S. 33, 40, 36 S.Ct. 482, 484, 60 L.Ed. 874.[FN10]

FN10. In that case the Court stated:

"A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied, according to a doctrine of the common law expressed in 1 Comyn's Dig., *tit,* 'Action upon Statute' (F), in these words: 'So, in every case, where a statute enacts, or prohibits a thing for the benefit of a person, he shall have a remedy upon the same statute for the thing enacted for his advantage, or for the recompense of a wrong done to him contrary to the said law.' (*Per* Holt, C. J., *Anonymous,* 6 Mod. 26, 27.) This is but an application of the maxim, *Ubi jus ibi remedium.* See 3 Black.Com. 51, 123; *Couch v. Steel,* 3 El. & Bl. 402, 411; 23 L.J.Q.B. 121, 125." 241 U.S., at 39-40, 36 S.Ct., at 484.

***690** ****1954** Similarly, it was statutory language

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describing the special class to be benefited by § 5 of the Voting Rights Act of 1965 [FN11] that persuaded the Court that private parties within that class were implicitly authorized to seek a declaratory judgment against a covered State. *Allen v. State Board of Elections*, 393 U.S. 544, 554-555, 89 S.Ct. 817, 825-826, 22 L.Ed.2d 1.[FN12] The dispositive language in that statute-"no person shall be denied the right to vote for failure to comply with [a new state enactment covered by, but not approved under, § 5]"-is remarkably similar to the language used by Congress in Title IX. See n. 3, *supra*.

FN11. 42 U.S.C. § 1973c.

FN12. The Court's entire explanation for inferring a private remedy was as follows:

"The Voting Rights Act does not explicitly grant or deny private parties authorization to seek a declaratory judgment that a State has failed to comply with the provisions of the Act. However, § 5 does provide that 'no person shall be denied the right to vote for failure to comply with [a new state enactment covered by, but not approved under, § 5].' Analysis of this language in light of the major purpose of the Act indicates that appellants may seek a declaratory judgment that a new state enactment is governed by § 5." 393 U.S., at 554-555, 89 S.Ct., at 826 (footnotes omitted).

The language in these statutes-which expressly identifies the class Congress intended to benefit-contrasts sharply with statutory language customarily found in criminal statutes, such as that construed in *Cort, supra*, and other laws enacted for the protection of the general public.[FN13] There **1955 would be far *691 less reason to infer a private remedy in favor of individual persons if Congress, instead of drafting Title IX with an unmistakable focus on the benefited class, had written it simply *692 as a ban on discriminatory conduct by recipients of federal funds or as a prohibition against the disbursement of public *693 funds to educational institutions engaged in discriminatory practices.[FN14]

FN13. Not surprisingly, the right- or duty-creating language of the statute has generally been the most accurate indicator of the propriety of implication of a cause of action. With the exception of one case, in which the relevant statute reflected a special policy against judicial interference, this Court has never refused to imply a cause of action where the language of the statute explicitly conferred a right directly on a class of persons that included the plaintiff in the case. See *Sullivan v. Little Hunting Park*, 396 U.S. 229, 238, 90 S.Ct. 400, 405, 24 L.Ed.2d 386 (42 U.S.C. § 1982: "All citizens of the United States shall have the same RIGHT . . . AS IS ENJOYED BY WHITE CITIZENS THEREOF ..."); *alleN v. State Board of Elections*, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (42 U.S.C. § 1973c: "no person shall be denied the right to vote . . . "); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 414-415, and n. 13, 88 S.Ct. 2186, 2189-2190, 20 L.Ed.2d 1189 (same as in *Sullivan, supra*); *Tunstall v. Locomotive Firemen & Enginemen*, 323 U.S. 210, 213, 65 S.Ct. 235, 237, 89 L.Ed. 187 (§ 2 Fourth of the Railway Labor Act: "Employees shall have the right to organize and bargain collectively through representatives . . . "); *Steele v. Louisville & N. R. Co.*, 323 U.S. 192, 199, 65 S.Ct. 226, 230, 89 L.Ed. 173 (same); *Virginian R. Co. v. Railway Employees*, 300 U.S. 515, 545, 57 S.Ct. 592, 598, 81 L.Ed. 789 (§ 2 Ninth of the Railway Labor Act: "the carrier shall treat with the *representative* so certified" (emphasis added)); *Texas & N. O. R. Co. v. Railway Clerks*, 281 U.S. 548, 567-570, 50 S.Ct. 427, 433, 74 L.Ed. 1034 (§ 2 Third of the Railway Labor Act: "Representatives . . . shall be designated by the respective *parties* . . . without interference, influence, or coercion exercised by either party . . . " (emphasis added)); *Texas & Pacific R. Co. v. Rigsby*, 241 U.S. 33, 40, 36 S.Ct. 482, 484, 60 L.Ed. 874 (27 Stat. 532: "any employee of any such common carrier"). Analogously, the Court has implied causes of action in favor of the United States in cases where the statute creates a duty in favor of the public at large. See *Wyandotte Transportation Co. v. United States*, 389 U.S. 191, 200-202, 88 S.Ct. 379, 385-386, 19 L.Ed.2d 407 (33 U.S.C. § 409: "It shall not be lawful [to obstruct navigable waterways]"); *United States v. Republic Steel Corp.*, 362 U.S. 482, 80 S.Ct. 884, 4 L.Ed.2d 903

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(same).

The only case that deviates from this pattern is *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 98 S.Ct. 1670, 56 L.Ed.2d 106 which involved Title I of the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302(8): "No Indian tribe . . . shall deny to any person within its jurisdiction the equal protection of its laws." *Martinez*, however, involved an attempt to imply a cause of action in a virtually unique situation-*i. e.*, against an Indian tribe, protected by a strong presumption of autonomy and self-government, as well as by a special duty on the part of the Federal Government to deal fairly and openly, and by a legislative history indicative of an intent to limit severely judicial interference in tribal affairs. 436 U.S., at 55, 58-59, 63-64, 67-70, and n. 30, 98 S.Ct., at 1675, 1677, 1680, 1681-1683. In this situation, the fourth *Cort* factor was brought into special play. The *Martinez* Court determined that the strong presumption against implication of federal remedies where they might interfere with matters "traditionally relegated to state law," *Cort, supra*, 422 U.S., at 78, 95 S.Ct., at 2088, was equally applicable in circumstances where the federal remedies would interfere with matters traditionally relegated to the control of semisovereign Indian tribes.

Even *Martinez*, however, "recognized the propriety of inferring a federal cause of action for the enforcement of civil rights, even when Congress has spoken in purely declarative terms." 436 U.S., at 61, 98 S.Ct., at 1678; see *Sullivan v. Little Hunting Park, supra*, 396 U.S., at 238, 90 S.Ct., at 405; *Allen v. State Board of Elections, supra; Jones v. Alfred H. Mayer Co., supra*, 392 U.S. at 414 n. 13, 88 S.Ct., at 2189. This principle, which is directly applicable in the present Title IX context, is but a manifestation of the pattern noted above because a statute declarative of a civil right will almost have to be stated in terms of the benefited class. Put somewhat differently, because the right to be free of discrimination is a "personal" one, see, *e. g., Teamsters v. United States*, 431 U.S. 324, 361-372, 97 S.Ct. 1843, 1867-1873, 52 L.Ed.2d 396; *Franks v. Bowman Transportation Co.*, 424 U.S. 747, 772, 96 S.Ct. 1251, 1267, 47 L.Ed.2d 444, a statute conferring such a right will almost have to be phrased in terms of the persons benefited.

Conversely, the Court has been especially reluctant to imply causes of actions under statutes that create duties on the part of persons for the benefit of the public at large. See *Piper v. Chris-Craft Industries*, 430 U.S. 1, 97 S.Ct. 926, 51 L.Ed.2d 124 ("unlawful" conduct); *Cort v. Ash, supra* ("unlawful" conduct); *Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 95 S.Ct. 1733, 44 L.Ed.2d 263 (duty of SIPC to "discharge its obligations"); *National Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 U.S. 453, 94 S.Ct. 690, 38 L.Ed.2d 646 (forbidding "action, practice, or policy inconsistent" with the Amtrak Act); *Wheeldin v. Wheeler*, 373 U.S. 647, 83 S.Ct. 1441, 10 L.Ed.2d 605 (setting procedure for procuring congressional subpoena); *T. I. M. E., Inc. v. United States*, 359 U.S. 464, 79 S.Ct. 904, 3 L.Ed.2d 952 ("duty of every common carrier . . . to establish . . . just and reasonable rates . . . "); *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 71 S.Ct. 692, 95 L.Ed. 912 (similar duty of gas pipeline companies). The Court has deviated from this pattern on occasion. See *J. I. Case Co. v. Borak*, 377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423 (implying a cause of action under a securities provision describing "unlawful" conduct); *Superintendent of Insurance v. Bankers Life & Cas. Co.*, 404 U.S. 6, 13 n. 9, 92 S.Ct. 165, 169, 30 L.Ed.2d 128 (implying a cause of action under Securities and Exchange Commission Rule 10b-5, which describes certain unlawful manipulative conduct in the securities area); *Machinists v. Central Airlines*, 372 U.S. 682, 83 S.Ct. 956, 10 L.Ed.2d 67 (implied cause of action under section of the Railway Labor Act creating a "duty" on the part of common carriers to establish boards of adjustment). At least the latter two cases can be explained historically, however. In *Superintendent of Insurance*, the Court explicitly acquiesced in

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the 25-year-old acceptance by the lower federal courts of a Rule 10b-5 cause of action. See also *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 196, 96 S.Ct. 1375, 1382, 47 L.Ed.2d 668; *Blue Chips Stamps v. Manor Drug Stores*, 421 U.S. 723, 730, 95 S.Ct. 1917, 1922, 44 L.Ed.2d 539. In *Machinists*, the Court explicitly followed the lead of various earlier cases in which it had implied causes of actions under various sections of the Railway Labor Act, albeit where the statutory provisions more explicitly identified a class of benefited persons. See *Tunstall, supra; Steele, supra; Virginian R. Co., supra; Texas & N. O. R. Co., supra.*

FN14. In adopting Title IX in its present form, in fact, Congress passed over an alternative proposal, offered by Senator McGovern as an amendment to the Higher Education Act of 1965, that was phrased quite differently-as a simple directive to the Secretary of HEW:

"PROHIBITION AGAINST SEX DISCRIMINATION

"Sec. 1206. (a) The Secretary shall not make any grant, loan guarantee, or interest subsidy payment, nor shall the Secretary enter into any contract with any institution of higher education, or any other postsecondary institution, center, training center, or agencies representing such institutions unless the application, contract, or other arrangement for the grant, loan guarantee, interest subsidy payment, or other financial assistance contains assurances satisfactory to the Secretary that any such institution, center, or agency will not discriminate on the basis of sex in the admission of individuals to any program to which the application, contract, or other arrangement is applicable." 117 Cong.Rec. 30411 (1971).

In this connection, it is also interesting to note that as originally introduced Title VI of the Civil Rights Act of 1964, after which Title IX was explicitly patterned, see n. 16, *infra*, was also phrased as a directive to federal agencies engaged in the disbursement of public funds:

"TITLE VI-NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

"Sec. 601. Notwithstanding any provision to the contrary in any law of the United States providing or authorizing direct or indirect financial assistance for or in connection with any program or activity by way of grant, contract, loan, insurance, guaranty, or otherwise, no such law shall be interpreted as requiring that such financial assistance shall be furnished in circumstances under which individuals participating in or benefiting from the program or activity are discriminated against on the ground of race, color, religion, or national origin or are denied participation or benefits therein on the ground of race, color, religion, or national origin. All contracts made in connection with any such program or activity shall contain such conditions as the President may prescribe for the purpose of assuring that there shall be no discrimination in employment by any contractor or subcontractor on the ground of race, color, religion, or national origin." S.1731, 88th Cong., 1st Sess. (1963).

After Senators Keating and Ribicoff raised objections to the bill on the ground that it did not expressly authorize a private remedy for a person against whom discrimination had been practiced, the Department of Justice submitted a revised bill which contained the language now found in § 601. See Hearings before the Senate Committee on the Judiciary on S.1731 and S.1750, 88th Cong., 1st Sess., 334-335, 349-352 (1963); *infra*, at 1966-1967.

****1956** Unquestionably, therefore, the first of the four factors identified in *Cort* favors the implication of a private cause of ***694** action. Title IX explicitly confers a benefit on persons discriminated against on the basis of sex, and petitioner is clearly a member of that class for whose special benefit the statute was enacted.

Second, the *Cort* analysis requires consideration of legislative history. We must recognize, however, that

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the legislative history of a statute that does not expressly create or deny a private remedy will typically be equally silent or ambiguous on the question. Therefore, in situations such as the present one "in which it is clear that federal law has granted a class of persons certain rights, it is not necessary to show an intention to *create* a private cause of action, although an explicit purpose to *deny* such cause of action would be controlling." *Cort*, 422 U.S., at 82, 95 S.Ct., at 2090 (emphasis in original).[FN15] But this is not the typical case. Far from evidencing any purpose to *deny* a private cause of action, the history of Title IX rather plainly indicates that Congress intended to create such a remedy.

FN15. See also *Santa Clara Pueblo v. Martinez*, 436 U.S., at 79, 98 S.Ct., at 1687, (WHITE, J., dissenting).

Title IX was patterned after Title VI of the Civil Rights Act of 1964.[FN16] Except for **1957 the substitution of the word "sex" *695 in Title IX to replace the words "race, color, or national origin" in Title VI, the two statutes use identical language to describe the benefited class.[FN17] Both statutes provide the *696 same administrative mechanism for terminating federal financial support for institutions engaged in prohibited discrimination.[FN18] Neither statute expressly mentions a private remedy for the person excluded from participation in a federally funded program. The drafters of Title IX explicitly assumed that it would be interpreted and applied as Title VI had been during the preceding eight years.[FN19]

FN16. "This is identical language, specifically taken from title VI of the 1964 Civil Rights Act . . . ." 117 Cong.Rec. 30407 (1971) (Sen. Bayh-Senate sponsor). Accord, *id.*, at 30408 ("We are only adding the 3-letter word 'sex' to existing law") (Sen. Bayh); *id.* at 39256 (Rep. Green-House sponsor); 118 Cong.Rec. 5803, 5807, 18437 (Sen. Bayh).

The genesis of Title IX also bears out its kinship with Title VI. In the summer of 1970, Representative Edith Green of Oregon, who later sponsored Title IX on the floor of the House during the debates in 1971 and 1972, chaired a set of hearings on "Discrimination Against Women." Hearings before the Special Subcommittee on Education of the House Committee on Education and Labor on § 805 of H.R.16098, 91st Cong., 2d Sess (1970). Under consideration was a section of a pending bill, H.R.16098, that would simply have added the word "sex" to the list of discriminations prohibited by § 601 of Title VI. See Hearings, *supra*, at 1. During the course of the hearings, which were repeatedly, relied upon in both Houses during the subsequent debates on Title IX, it became clear that education institutions were the primary focus of complaints concerning sex discrimination. See, *e. g.*, *id.*, at 5, 237, 584. In order to conform to that focus, and in order to respond to criticism that certain federally funded programs were properly operating on a single-sex basis (for example, undergraduate colleges and homes for disturbed children), witnesses at the hearings, including representatives of the Justice Department and of the United States Commission on Civil Rights, proposed that a special provision be drawn up that was parallel to, but somewhat more limited than, Title VI. *Id.*, at 664-666, 677-678, 690-691).

Although H.R.16098 never made it through the House, its sex discrimination provision was lifted from it, modified along the lines suggested in the 1970 hearings, and included in the House Resolution that was amended and adopted by the House as its version of what became the Education Amendments of 1972. H.R.32, 92d Cong., 1st Sess., Title X. Of note here, this House proposal was originally phrased as an amendment to Title VI that would have made § 601 of that Title into § 601(a), and would have added the gist of what is now Title IX as § 601(b). H.R. 32, *supra*. After further modifications not relevant here, this proposal was removed from its Title VI moorings, passed by the House, and further modified, and then passed, by the Senate in a form that was adopted by the Conference Committee. See S. Conf.Rep.No. 92-798, pp. 221-222 (1972); U.S.Code Cong. & Admin.News 1972 p. 2462.

FN17. The pertinent provisions of Titles IX and VI are quoted in nn. 3 and 5, *supra*. Al-

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though Title IX is applicable only to certain educational institutions receiving federal financial assistance, Title VI is applicable to additional institutions such as hospitals, highway departments, and housing authorities.

FN18. See n. 4, *supra*.

FN19. "The same [enforcement] procedure that was set up and has operated with great success under the 1964 Civil Rights Act, and the regulations thereunder[,] would be equally applicable to discrimination [prohibited by Title IX]." 117 Cong.Rec. 30408 (1971) (Sen. Bayh). Accord, 118 Cong.Rec. 5807 (1972) (Sen. Bayh); *id.* at 18437 (1972) (Sen. Bayh) ("[E]nforcement of [Title IX] will draw heavily on these precedents" under the Civil Rights Act of 1964).

[3] In 1972 when Title IX was enacted, the critical language in Title VI had already been construed as creating a private remedy. Most particularly, in 1967, a distinguished panel of the Court of Appeals for the Fifth Circuit squarely decided this issue in an opinion that was repeatedly cited with approval and never questioned during the ensuing five years. FN20 In addition, at least a dozen other federal courts reached similar conclusions in the same or related contexts during those years.FN21 It is always appropriate**1958 to assume that our *697 elected representatives, like other citizens, know the law; in this case, because of their repeated references to Title VI and its modes of enforcement, we are especially justified in presuming both that those representatives were aware of the *698 prior interpretation of Title VI and that that interpretation reflects their intent with respect to Title IX.

FN20. *Bossier Parish School Board v. Lemon*, 370 F.2d 847, 852 (CA5 1967), cert. denied, 388 U.S. 911, 87 S.Ct. 2116, 18 L.Ed.2d 1350. The panel included Judge Wisdom, who wrote the opinion, and then Judge (now Chief Justice) Burger sitting by designation, and then Judge (now Chief Judge) Brown. *Bossier* was relied on in, *e. g., Southern Christian Leadership Conference, Inc. v. Connolly*, 331 F.Supp. 940 (ED Mich.1971); *Gautreaux v. Chicago Housing Authority*, 265 F.Supp. 582 (ND Ill.1967).

FN21. In addition to the Fifth Circuit in *Bossier*, at least four other federal courts explicitly relied on Title VI as the basis for a cause of action on the part of a private victim of discrimination against the alleged discriminator. See *Blackshear Residents Org. v. Housing Authority of Austin*, 347 F.Supp. 1138, 1146 (WD Tex.1972); *Hawthorne v. Kenbridge Recreation Assn.*, 341 F.Supp. 1382, 1383-1384 (ED Va.1972); *Gautreaux v. Chicago Housing Authority,supra*; *Lemon v. Bossier Parish School Board*, 240 F.Supp. 709, 713 (WD La.1965), aff'd, 370 F.2d 847 (CA5 1967).

Although 42 U.S.C. § 1983 might have provided an alternative and express cause of action in some of these cases-had it been relied upon-see generally *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 99 S.Ct. 1905, 508 L.Ed.2d 60, that section was certainly not available in *Kenbridge, supra,* involving a private defendant. Moreover, § 1983 was clearly unavailable (and no other express cause of action such as is provided in the Administrative Procedure Act was relied upon) in four other pre-1972 cases that either expressly or impliedly found causes of action under Title VI in a somewhat different context than is involved in this case. Thus, private plaintiffs successfully sued officials of the Federal Government under Title VI, and secured orders requiring those officials either to aid recipients of federal funds in devising nondiscriminatory alternatives to presently discriminatory programs, or to cut off funds to those recipients. See *Gautreaux v. Romney*, 448 F.2d 731, 737-740 (CA7 1971), later appeal, *Gautreaux v. Chicago Housing Authority*, 503 F.2d 930 (CA7 1974), aff'd *sub nom. Hills v. Gautreaux*, 425 U.S. 284, 96 S.Ct. 1538, 47 L.Ed.2d 792; *Shannon v. HUD*, 436 F.2d 809, 820 (CA3 1970) (explicit discussion of cause of action); *Southern Christian Leadership Conference, Inc. v. Connolly*, 331 F.Supp. 940, 943-945 (ED Mich.1971) (explicit discussion of cause of action); *Hicks v. Weaver*, 302 F.Supp. 619, 622-623. (ED La. 1969).

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Finally, several other pre-1972 decisions relied on Title VI as a basis for relief in favor of private litigants, although with language suggesting that § 1983 may have provided the cause of action. See *Alvarado v. El Paso Independent School Dist.*, 445 F.2d 1011 (CA5 1971); *Nashville I-40 Steering Committee v. Ellington*, 387 F.2d 179, 181 (CA6 1967), cert. denied, 390 U.S. 921; *Anderson v. San Francisco Unified School Dist.*, 357 F.Supp. 248 (ND Cal.1972); *McGhee v. Nashville Special School Dist. No. 1*, 11 Race Rel.L.Rep. 698 (WD Ark.1966).

See also *Gautreaux v. Chicago Housing Authority*, 436 F.2d 306 (CA7 1970) (dicta), cert. denied, 402 U.S. 922, 91 S.Ct. 1378, 28 L.Ed.2d 661; *Gautreaux v. Chicago Housing Authority*, 296 F.Supp. 907 (ND Ill.1969) (dicta); *Rolfe v. County Board of Education*, 282 F.Supp. 192 (ED Tenn.1966) (dicta), aff'd, 391 F.2d 77 (CA6 1968).

Moreover, in 1969, in *Allen v. State Board of Elections*, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1, this Court had interpreted the comparable language in § 5 of the Voting Rights Act as sufficient to authorize a private remedy. [FN22] Indeed, during the period between the enactment of Title VI in 1964 and the enactment of Title IX in 1972, this Court had consistently found implied remedies-often in cases much less clear than this.[FN23] It was *after* 1972 that this Court decided *Cort v. Ash* and the other cases cited by the Court of Appeals in support of its strict construction of the remedial aspect of the statute.[FN24] We, of course, adhere to the strict approach followed in our recent cases, but our evaluation of congressional action in 1972 must take into ***699** account its contemporary legal context. In sum, it is not only appropriate but also realistic to presume that Congress was thoroughly familiar with these unusually important precedents from this and other federal courts and that it expected its enactment to be interpreted in conformity with them.

FN22. In fact, Congress enacted Title IX against a backdrop of three recently issued implied-cause-of-action decisions of this Court involving civil rights statutes with language similar to that in Title IX. In all three, a cause of action was found. See *Sullivan v. Little Hunting Park*, 396 U.S. 229, 90 S.Ct. 400, 24 L.Ed.2d 386; Allen; Jones v. Alfred H. Mayer Co., 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189. See generally n. 13, *supra*.

FN23. In the decade preceding the enactment of Title IX, the Court decided six implied-cause-of-action cases. In all of them a cause of action was found. *Superintendent of Insurance v. Bankers Life & Cas. Co.*, 404 U.S. 6, 92 S.Ct. 165, 30 L.Ed.2d 128; *Sullivan v. Little Hunting Park, supra; Allen; Jones v. Alfred H. Mayer Co., supra; Wyandotte Transportation Co. v. United States*, 389 U.S. 191, 88 S.Ct. 379, 19 L.Ed.2d 407; *J. I. Case Co. v. Borak*, 377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423. See generally n. 13, *supra*.

FN24. The Court of Appeals relied on *National Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 U.S. 453, 94 S.Ct. 690, 38 L.Ed.2d 646; *Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 95 S.Ct. 1733, 44 L.Ed.2d 263; and *Cort v. Ash*. In subsequent cases, the Court has continued to give careful attention to claims that a private remedy should be implied in statutes which omit any express remedy. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 98 S.Ct. 1670, 56 L.Ed.2d 106; *Piper v. Chris-Craft Industries*, 430 U.S. 1, 97 S.Ct. 926, 51 L.Ed.2d 124. The Court's decidedly different approach since 1972 to cause of action by implication has not gone without scholarly notice. *E. g.*, Pitt, Standing to Sue Under the Williams Act After *Chris-Craft:* A Leaky Ship on Troubled Waters, 34 Bus.Law. 117, 120, 162 (1978).

It is not, however, necessary to rely on these presumptions. The package of statutes of which Title IX is one part also contains a provision whose language and history demonstrate that Congress itself understood Title VI, and thus its companion, Title IX, as creating a private remedy. Section 718 of the Education Amendments authorizes federal courts to award attorney's fees to the prevailing parties, other than the United States, in private actions ****1959** brought against public educational agencies to enforce Title VI in the context of elementary and secondary educa-

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tion.[FN25] The language of this provision explicitly presumes the availability of private suits to enforce Title VI in the education context.[FN26] For many such ***700** suits, no express cause of action was then available; hence Congress must have assumed that one could be implied under Title VI itself.[FN27] That assumption was made explicit during the debates on § 718.[FN28] It was also aired during the ****1960** debates ***701** on other provisions in the Education Amendments of 1972 [FN29] and on Title IX itself,[FN30] and is consistent with the Executive Branch's apparent understanding of Title VI at the time.[FN31]

FN25. Section 718, 86 Stat. 369, is codified in 20 U.S.C. § 1617:

"Upon the entry of a final order by a court of the United States against a local educational agency, a State (or any agency thereof), or the United States (or any agency thereof), for failure to comply with any provision of this title or for discrimination on the basis of race, color, or national origin in violation of title VI of the Civil Rights Act of 1964, or the fourteenth amendment to the Constitution of the United States as they pertain to elementary and secondary education, the court, in its discretion, upon a finding that the proceedings were necessary to bring about compliance, may allow the prevailing party other than the United States, a reasonable attorney's fee as part of the costs."

This section was a portion of Title VII of the Education Amendments of 1972, also known as the Emergency School Aid Act. Under this Act federal funds are made available to elementary and secondary schools that are going through the process of court-ordered or voluntary desegregation. See § 702 of the Act, 20 U.S.C. § 1601.

FN26. See S.Conf.Rep.No.92-798, *supra,* p. 218 (1972); U.S.Code Cong. & Admin.News, 1972, p. 2668: "*Attorney fees*.-The Senate amendment, but not the House amendment, authorized the payment of attorneys fees to successful plaintiffs in suits brought for violation of . . . Title VI of the Civil Rights Act . . . . The conference substitute contains this provision." See also n. 6, *supra.*

FN27. Although there is nothing in the statute or legislative history that says as much, it may be that Congress expected 42 U.S.C. § 1983 to provide an explicit cause of action for some of the suits contemplated by § 718. But § 1983 is assuredly not available for suits against the United States, nor at the time § 718 was passed was it available for suits against "a State (or any agency thereof)," nor even perhaps for suits against a "local educational agency." See *Mt. Healthy City Board of Education v. Doyle,* 429 U.S. 274, 277-278, 97 S.Ct. 568, 571, 50 L.Ed.2d 471; *Monroe v. Pape,* 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492. Cf. *Monell v. New York City Dept. of Social Services,* 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611. Section 718 has been interpreted liberally by the federal courts. *E. g., Norwood v. Harrison,* 410 F.Supp. 133 (ND Miss.1976), appeal dism'd, 563 F.2d 722 (CA5 1977).

FN28. "Mr. President, it is said that [§ 718] will encourage litigation in the South. . . . .

"I can only say that what [§ 718] does, in essence, is that it says a party is entitled to pursue his remedy if there is a violation [of Title VII of the Education Amendments of 1972], if there is a violation of the 1964 Civil Rights Act, if there is a violation of the 14th amendment to the Constitution of the United States. It says that, in the discretion of the court, if a mandate comes down, if a judgment is rendered, and if it was necessary to bring the action to see to it that the act was enforced, [the court] could allow the cost and a reasonable fee for time expended. That is the extent of it." 117 Cong.Rec. 11725-11726 (1971) (Sen. Cook).

In light of the language of § 718, see n. 25, *supra,* it is, of course, clear that Senator Cook's reference to "the 1964 Civil Rights Act" means Title VI of the Act. Accord, 117 Cong.Rec. 11338 (1971) (Sen. Dominick); *id.*, at 11340 (Sen. Mondale); *id.*, at 11524 (Sen. Allen); *id.* at 11527-11528 (Sen. Cook).

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These same debates provide another important indication that Congress presumed that, wherever necessary, private causes of action must exist in order to justify the suits contemplated by § 718. Section 718 provides attorney's fees in suits seeking compliance with three separate provisions-the Constitution, Title VI, and § 718's sister provisions in Title VII of the Education Amendments of 1972. None of the last-mentioned sister provisions contains an express cause of action. Section 718 also contemplates three types of defendants in those suits-local educational agencies, States and state agencies, and the Federal Government. In exploring the meaning of the provision, the question arose as to what might occur if a private litigant attempted to sue the Federal Government to force compliance with Title VII of the Education Amendments of 1972. The following colloquy took place:

"Mr. COOK. [I]f the Federal Government is defendant, and if the Federal Government is found guilty of violation of this act [Title VII of the Education Amendments of 1972], and it is in fact discriminating, then it is conceivable that the attorney's fees and the costs could go against the Federal Government.

"Mr. PELL. But can an individual sue the Federal Government?

"Mr. COOK. Under this title?

"Mr. PELL. Yes.

"Mr. COOK. Oh yes."

FN29. The question of busing to achieve racial balance caused considerable debate during consideration of the Education Amendments of 1972. During those debates, it was proposed that the jurisdiction of the federal courts be limited to prevent them from ordering such busing. In defending federal jurisdiction in this area, the opponents of the proposal described the courts as an important, even the most important, reliance in the enforcement of Title VI. For example, Senator Javits stated: "We cannot simply strike down these [judicial] enforcement powers without effectively striking down title VI of the Civil Rights Act of 1964." 118 Cong.Rec. 5483 (1972). See also *id.* at 7558-7559; *id.* at 7561 (Rep. Stokes) ("The busing furor is a symptom, like pain, of the effort which has been made to carry out the mandate of Brown against Board of Education and Title VI of the Civil Rights Act. Busing has been used successfully in many communities. The courts have required it because it works").

FN30. Senator Bayh, for example, explained that the time limits provided in Title IX for undergraduate institutions that chose to become coeducational after previously being single sex, § 901(a)(2)(A), 20 U.S.C. § 1681(a)(2)(A), are "consistent with the type of timetable that has been set in the past by *court decisions* under Title VI of the 1964 Civil Rights Act in other areas of discrimination." 117 Cong.Rec. 30409 (1971) (emphasis added). See also *id.*, at 30404 (Sen. Bayh); *id.*, at 30407 (Sen. Javits).

FN31. In 1965, the Justice Department intervened on behalf of the private litigants in the *Bossier* litigation, which resulted in the first two judicial opinions implying a cause of action under Title VI. See nn. 20 and 21, *supra.* As far as those opinions indicate, the Government fully supported the private plaintiffs' position. See *Bossier Parish School Board v. Lemon*, 370 F.2d 847 (CA5 1967); *Lemon v. Bossier Parish School Board*, 240 F.Supp. 709 (WD La. 1965).

***702** Finally, the very persistence-before 1972 and since, among judges and executive officials, as well as among litigants and their counsel, FN32 and even implicit in decisions of this Court FN33-ofthe ***703** assumption ****1961** that both Title VI and Title IX created a private right of action for the victims of illegal discrimination and the absence of legislative action to change that assumption provide further evidence that Congress at least acquiesces in, and apparently affirms, that assumption. See n. 7, *supra.* We have no doubt that Congress intended to create Title

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IX remedies comparable to those available under Title VI and that it understood Title VI as authorizing an implied private cause of action for victims of the prohibited discrimination.[FN34]

FN32. See nn. 8, 21, *supra;* n. 39, *infra.*

FN33. Since 1972, the Court has twice reached the merits in suits brought by private litigants to enforce Title VI. In both cases it determined that Title VI justified at least some of the relief sought by the private litigants. *Lau v. Nichols,* 414 U.S. 563, 566-569, 94 S.Ct. 786, 788-789, 39 L.Ed.2d 1; *Hills v. Gautreaux,* 425 U.S., at 286, 96 S.Ct., at 1541. Although in neither case did the Court in terms address the question of whether Title VI provides a cause of action, in both the issue had been explicitly raised by the parties at one level of the litigation or another. These cases are accordingly consistent, at least, with the widely accepted assumption that Title VI creates a private cause of action.

In *Lau,* the respondents (the defendants below) argued "that the Fourteenth Amendment and the Civil Rights Act do not give a party a federal cause of action every time a School District fails to resolve a problem-not of its making-presented to it by a student." Brief in Opposition, O.T. 1973, No. 72-6520, p. 7. On the other hand, the Federal Government and at least one other *amicus curiae* explicitly took the opposite position-that Title VI was itself sufficient to create a cause of action. Memorandum for United States as *Amicus Curiae,* O.T. 1973, No. 72-6520, p. 13, and n. 5, citing *Bossier Parish School Board v. Lemon, supra.* Brief for Puerto Rican Legal Defense & Education Fund, Inc., as *Amicus Curiae,* O.T. 1973, No. 72-6520, p. 2. But cf. Brief for National Education Assn. et al as *Amici Curiae,* O.T. 1973, No. 72-6520, p. 5 (42 U.S.C. § 1983 provided the cause of action for the relevant breach of Title VI).

In the lengthy litigation culminating in the Court's decision in *Hills v. Gautreaux, supra,* a private litigant who claimed that public housing in Chicago was being located in a racially discriminatory fashion, had filed two separate complaints relying in part on Title VI-one against the Chicago Housing Authority (CHA) and one against the Department of Housing and Urban Development (HUD), which was the agency providing federal funds to CHA. Although the two cases proceeded separately for years, they were consolidated before they reached this Court. In the early stages of the CHA suit, the District Court, over CHA's objection, explicitly determined that there is a cause of action under Title VI even where § 1983 is not relied upon. *Gautreaux v. Chicago Housing Authority,* 265 F.Supp. 582 (ND Ill.1967). In an unreported opinion, that court apparently also found that the Title VI complaint against HUD stated a cause of action. See *Gautreaux v. Romney,* 448 F.2d, at 737-740 (on appeal from the unreported decision; cause of action issue not raised). The complaint in that suit, which is reprinted in the appendix filed by the parties in *Hills v. Gautreaux,* derives the cause-of-action directly from Title VI. App., O.T. 1975, No. 74-1047, p. 35. Section 1983 was not available in this suit against federal officials, and the Administrative Procedure Act was nowhere mentioned. Although by the time the consolidated cases reached this Court the primary contested issue was the propriety of the relief ordered by the District Court against HUD, the Court did note that the agency had "been judicially found to have violated the Fifth Amendment and the Civil Rights Act of 1964 . . . ." 425 U.S., at 286, 96 S.Ct., at 1541. The Government did not raise the cause-of-action question.

FN34. "In sum, we conclude that Congress clearly understood that it was conferring power upon the courts to [grant relief] ... under the statute." See *Dalia v. United States,* 441 U.S. 238, 254, 99 S.Ct. 1682, 1692, 60 L.Ed.2d 177. Indeed, the evidence of legislative intent is so compelling that we have no hesitation in concluding that even the test now espoused by Mr. Justice POWELL, *post,* at 1985, is satisfied in this case.

[4] *Third,* under *Cort,* a private remedy should not be implied if it would frustrate the underlying purpose of the legislative scheme. On the other hand, when that

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remedy is necessary or at least helpful to the accomplishment of the statutory purpose, the Court is decidedly receptive to its implication under the statute.[FN35]

> FN35. See *Allen v. State Board of Elections*, 393 U.S., at 556, 89 S.Ct., at 826; *Wyandotte Transportation Co. v. United States*, 389 U.S., at 202, 88 S.Ct., at 386; *J. I. Case Co. v. Borak*, 377 U.S., at 432, 84 S.Ct., at 1559; *Machinists v. Central Airlines*, 372 U.S., at 690, 83 S.Ct., at 961.

[5] *704 Title IX, like its model Title VI, sought to accomplish two related, but nevertheless somewhat different, objectives. First, Congress wanted to avoid the use of federal resources to support discriminatory practices; second, it wanted to provide individual citizens effective protection against those practices. Both of these purposes were repeatedly identified in the debates on the two statutes.[FN36]

> FN36. With respect to Title VI, for example, the comments of Senator Pastore:
>
> "[T]he purpose of title VI is to make sure that funds of the United States are not used to support racial discrimination," 110 Cong.Rec. 7062 (1964),
>
> should be compared with the comments of Representative Lindsay:
>
> "Everything in this proposed legislation has to do with providing a body of law which will surround and protect the individual from some power complex. This bill is designed for the protection of individuals. When an individual is wronged he can invoke the protection to himself, but if he is unable to do so because of economic distress or because of fear then the Federal Government is authorized to invoke that individual protection for that individual . . .." *Id.*, at 1540.
>
> With respect to Title IX, the comments of Representative Mink:
>
> "Any college or university which has [a] ... policy which discriminates against women applicants . . . is free to do so under [Title IX] but such institutions should not be asking the taxpayers of this country to pay for this kind of discrimination. Millions of women pay taxes into the Federal treasury and we collectively resent that these funds should be used for the support of institutions to which we are denied equal access," 117 Cong.Rec. 39252 (1971),
>
> should be compared with the comments of Senator Bayh:
>
> "[Title IX] is a strong and comprehensive measure which I believe is needed if we are to provide women with solid legal protection as they seek education and training for later careers . . . ." 118 Cong.Rec. 5806-5807 (1972).

The first purpose is generally served by the statutory procedure for the termination of federal financial support for institutions engaged in discriminatory practices.[FN37] That **1962 remedy*705 is, however, severe and often may not provide an appropriate means of accomplishing the second purpose if merely an isolated violation has occurred.[FN38] In that situation, the violation might be remedied more efficiently by an order requiring an institution to accept an applicant who had been improperly excluded.[FN39] Moreover, in that kind of situation it makes little sense to impose on an individual, whose only interest is in obtaining a benefit for herself, or on HEW, the burden of demonstrating that an institution's practices are so pervasively discriminatory that a complete cut-off of federal funding is appropriate. The award of individual relief to a private litigant who has prosecuted her own suit is not only *706 sensible but is also fully consistent with-and in some cases even necessary to-the orderly enforcement of the statute.[FN40]

> FN37. See § 902 of Title IX, 20 U.S.C. § 1682. There are some occasions, however, when even this purpose cannot be served unless a private remedy is available. For a recipient of a one-shot grant of federal money, for example, the temptation to use the fruits of that money in furtherance of a discriminatory policy adopted several years later would not be dampened by any powers given the federal donor agency under Title IX.

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FN38. Congress itself has noted the severity of the fund-cutoff remedy and has described it as a last resort, all else-including "lawsuits"-failing. See, *e. g.*, 110 Cong.Rec. 7067 (1964) (Sen. Ribicoff):

"Personally, I think it would be a rare case when funds would actually be cut off. In most cases alternative remedies, principally lawsuits to end discrimination, would be the preferable and more effective remedy. If a Negro child were kept out of a school receiving Federal funds, I think it would be better to get the Negro child into school than to cut off funds and impair the education of the white children."

See also *id.*, at 5090, 6544 (Sen. Humphrey); *id.*, at 7103 (Sen. Javits).

FN39. This insight is not of recent vintage. In *Cumming v. Richmond County Board of Education*, 175 U.S. 528, 20 S.Ct. 197, 44 L.Ed. 262, several black taxpayers sued a school board that provided free high school education to white children, but not to black children. The remedy they sought under the separate-but-equal doctrine then in force under the Fourteenth Amendment, see *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 was closure of the white high school rather than appropriation of funds for a black high school. Mr. Justice Harlan for the Court rejected this claim, noting that "the result would only be to take from white children . . . without giving to colored children . . . ." 175 U.S., at 544, 20 S.Ct., at 200. He suggested that the result might be different if "the plaintiffs had sought to compel the Board of Education . . . to establish and maintain a high school for colored children . . . ." *Id.*, at 545, 20 S.Ct., at 201.

FN40. In the context of noting the kinship of Title VI and Title IX, Senator Bayh lauded the enforcement procedures available under the former for their "great success" and "their effectiveness and flexibility." 117 Cong.Rec. 30408 (1971); 118 Cong.Rec. 5807 (1972). As noted earlier, private suits had become an important and especially flexible part of those procedures by 1972, and were almost assuredly known to Congress. See also 117 Cong.Rec. 11339 (1971) (Sen. Mondale) (noting that attorney's fees for successful Title VI litigants under § 718 were necessary to forestall a "law enforcement crisis in the field of civil rights").

A further indication of the consistency of Title IX's purposes and the existence of a private remedy is the fact that, until the District Court and Court of Appeals decisions in this case, the federal courts had consistently recognized such a remedy under that Title and under Title VI before it. *E. g., Uzzell v. Friday*, 547 F.2d 801, aff'd en banc, 558 F.2d 727 (CA4 1977), vacated on other grounds, 438 U.S. 912, 98 S.Ct. 3139, 57 L.Ed.2d 1158; *Gilliam v. Omaha*, 524 F.2d 1013 (CA8 1975); *Garrett v. Hamtramck*, 503 F.2d 1236 (CA6 1974); *Serna v. Portales Municipal Schools*, 499 F.2d 1147 (CA10 1974); *Otero v. New York City Housing Authority*, 484 F.2d 1122, 1138 (CA2 1973); *Piascik v. Cleveland Museum of Art*, 426 F.Supp. 779 (ND Ohio 1976); cases cited in n. 21, *supra*. This Court has frequently accepted a history of federal-court recognition of a cause of action as indicative of the propriety of its implication. *E. g., Blue Chip Stamps v. Manor Drug Stores*, 421 U.S., at 730, 95 S.Ct., at 1922-1923; *Machinists v. Central Airlines, supra*, 372 U.S., at 690, 83 S.Ct. at 961; *Texas & Pacific R. Co. v. Rigsby*, 241 U.S., at 39, 36 S.Ct., at 484.

The Department of Health, Education, and Welfare, which is charged with the responsibility for administering Title IX, perceives no inconsistency between the private remedy and the public remedy.[FN41] On **1963 the contrary, the agency takes the *707 unequivocal position that the individual remedy will provide effective assistance to achieving the statutory purposes. See *708 n. 8,*supra*. The agency's position is unquestionably correct. [FN42]

FN41. It has been suggested that, at least in the absence of an exhaustion requirement, private litigation will interfere with HEW's enforcement procedures under § 902 of Title

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IX. The simple answer to this suggestion is that the Government itself perceives no such interference under the circumstances of this case, and argues that if the possibility of interference arises in another case, appropriate action can be taken by the relevant court at that time. See n. 8, *supra.*

In addition, Congress itself was apparently not worried about such interference when it passed Title IX. As discussed *supra*, at 1958-1959, the statute of which Title IX is a part also contains a provision, § 718, allowing attorney's fees under Title VI. No matter how narrowly that provision is read, it certainly envisions private enforcement suits apart from the administrative procedures that Title VI, like Title IX, expressly creates. If such suits would not hamper administrative enforcement of Title VI against local and state school officials, it is hard to see how they would do so with respect to other recipients of federal funds.

True, this Court has sometimes refused to imply private rights of action where administrative or like remedies are expressly available. *E. g., National Railroad Passenger Corp. v. National Assn. of Railroad Passengers,* 414 U.S. 453, 94 S.Ct. 690, 38 L.Ed.2d 646; *T. I. M. E., Inc. v. United States,* 359 U.S. 464, 79 S.Ct. 904, 3 L.Ed.2d 952. But see *Cort v. Ash,* 422 U.S., at 79, 95 S.Ct., at 2088; *Superintendent of Insurance v. Banker's Life & Cas. Co.,* 404 U.S. 6, 92 S.Ct. 165, 30 L.Ed.2d 128; *Wyandotte Transportation Co. v. United States,* 389 U.S. 191, 88 S.Ct. 379, 19 L.Ed.2d 407; *J. I. Case Co. v. Borak,* 377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423. But it has never withheld a private remedy where the statute explicitly confers a benefit on a class of persons and where it does not assure those persons the ability to activate and participate in the administrative process contemplated by the statute. See *Rosado v. Wyman,* 397 U.S. 397, 406 n. 8, 90 S.Ct. 1207, 1214, 25 L.Ed.2d 442; cf. *Cort v. Ash, supra,* 422 U.S., at 74-75, 95 S.Ct., at 2086; *Calhoon v. Harvey,* 379 U.S. 134, 85 S.Ct. 292, 13 L.Ed.2d 190. As the Government itself points out in this case, Title IX not only does not provide such a mechanism, but the complaint procedure adopted by HEW does not allow the complainant to participate in the investigation or subsequent enforcement proceedings. Moreover, even if those proceedings result in a finding of a violation, a resulting voluntary compliance agreement need not include relief for the complainant. Brief for Federal Respondents 59 n. 36. Furthermore, the agency may simply decide not to investigate-a decision that often will be based on a lack of enforcement resources, rather than on any conclusion on the merits of the complaint. See n. 42, *infra.* In that case, if no private remedy exists, the complainant is relegated to a suit under the Administrative Procedure Act to compel the agency to investigate and cut off funds. *E. g., Adams v. Richardson,* 156 U.S.App.D.C. 267, 480 F.2d 1159 (1973). But surely this alternative is far more disruptive of HEW's efforts efficiently to allocate its enforcement resources under Title IX than a private suit against the recipient of federal aid could ever be.

For these same reasons, we are not persuaded that individual suits are inappropriate in advance of exhaustion of administrative remedies. Because the individual complainants cannot assure themselves that the administrative process will reach a decision on their complaints within a reasonable time, it makes little sense to require exhaustion. See 3 K. Davis, Administrative Law Treatise § 20.01, p. 57 (1958).

FN42. In its submissions to this Court, as well as in other public statements, HEW has candidly admitted that it does not have the resources necessary to enforce Title IX in a substantial number of circumstances:

"As a practical matter, HEW cannot hope to police all federally funded education programs, and even if administrative enforcement were always feasible, it often might not redress individual injuries. An implied private right of action is necessary to ensure that the fundamental purpose of Title IX, the elimination of sex discrimination in federally

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funded education programs, is achieved." Reply Brief for Federal Respondents 6.

See also 40 Fed.Reg. 24148-24159 (1975).

In the notice of proposed rulemaking just cited, in fact, HEW proposed to employ its enforcement resources under both Title VI and Title IX *solely* to remedy "systemic discrimination rather than [to use] a reactive or complaint-oriented approach geared toward securing individual relief for persons claiming discrimination." *Id.*, at 24148. The agency explained this approach as necessary to allow it to manage its workload-a workload primarily made up of "complaints involving sex discrimination in higher education academic employment." *Ibid.* Adverse commentary on this proposal led HEW to abandon it, although the result has been a steadily increasing backlog of unprocessed complaints. Nonetheless, its explanation of the proposal supports the conclusion that HEW's enforcement capabilities under Title IX are especially limited in precisely those areas where private suits can be most effective.

Fourth, the final inquiry suggested by *Cort* is whether implying a federal remedy is inappropriate because the subject matter involves an area basically of concern to the States. No such problem is raised by a prohibition against invidious discrimination ****1964** of any sort, including that on the basis of sex. Since the Civil War, the Federal Government and the federal courts have been the " '*primary* and powerful reliances' " in protecting citizens against such discrimination. *Steffel v. Thompson*, 415 U.S. 452, 464, 94 S.Ct. 1209, 1218, 39 L.Ed.2d 505 (emphasis in original), quoting F. Frankfurter & J. Landis, The Business of the Supreme Court 65 (1928). Moreover, it is the expenditure of federal funds ***709** that provides the justification for this particular statutory prohibition. There can be no question but that this aspect of the *Cort* analysis supports the implication of a private federal remedy.

In sum, there is no need in this case to weigh the four *Cort* factors; all of them support the same result. Not only the words and history of Title IX, but also its subject matter and underlying purposes, counsel implication of a cause of action in favor of private victims of discrimination.

II

Respondents' principal argument against implying a cause of action under Title IX is that it is unwise to subject admissions decisions of universities to judicial scrutiny at the behest of disappointed applicants on a case-by-case basis. They argue that this kind of litigation is burdensome and inevitably will have an adverse effect on the independence of members of university committees.

This argument is not original to this litigation. It was forcefully advanced in both 1964 and 1972 by the congressional opponents of Title VI and Title IX,[FN43] and squarely rejected by the congressional majorities that passed the two statutes. In short, respondents' principal contention is not a legal argument at all; it addresses a policy issue that Congress has already resolved.

FN43. *E. g.*, 117 Cong.Rec. 39254 (1971) (Rep. Wyman); 110 Cong.Rec. 5253 (1964) (Sen. Talmadge).

History has borne out the judgment of Congress. Although victims of discrimination on the basis of race, religion, or national origin have had private Title VI remedies available at least since 1965, see n. 21, *supra,* respondents have not come forward with any demonstration that Title VI litigation has been so costly or voluminous that either the academic community or the courts have been unduly burdened. Nothing but speculation supports the argument that university ***710** administrators will be so concerned about the risk of litigation that they will fail to discharge their important responsibilities in an independent and professional manner.[FN44]

FN44. Furthermore, unless respondents are arguing that Title IX (and, by implication, Title VI) is itself unconstitutional, this argument is entirely misconceived. Whatever disruption of the academic community may accompany an occasional individual suit seeking admission is dwarfed by the relief expressly contemplated by the statute-a cutoff of all federal funds. For this reason, in fact, the opponents of Title VI argued that the

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provision should be rejected in favor of reliance on judicial remedies available under the Fourteenth Amendment. For example, in reply to Senator Humphrey's advocacy of the administrative remedy, Senator Talmadge asked:

"Why does not the Senator rely on the court's authority [under the Fourteenth Amendment], instead of giving arbitrary, capricious, wholesale punitive power to some Federal bureaucrat to starve entire cities, towns, States, and regions at one fell swoop?" 110 Cong.Rec. 5254 (1964).

III

Respondents advance two other arguments that deserve brief mention. Starting from the premise that Title IX and Title VI should receive the same construction, respondents argue (1) that a comparison of Title VI with other Titles of the Civil Rights Act of 1964 demonstrates that Congress created express private remedies whenever it found them desirable; [FN45] and (2) that certain excerpts from the legislative**1965 history of Title VI foreclose the implication of a private remedy.[FN46]

FN45. See 42 U.S.C. § 2000a-3 (Title II); 42 U.S.C. §§ 2000e-5(f)(1), (3) (Title VII).

FN46. See 110 Cong.Rec. 1519 (1964) (Rep. Celler); *id.*, at 2467 (Rep. Gill); *id.*, at 6562 (Sen. Kuchel); *id.*, at 7063 (Sen. Pastore); *id.*, at 7065 (Sen. Keating); *id.*, at 8345 (Sen. Proxmire).

Even if these arguments were persuasive with respect to Congress' understanding in 1964 when it passed Title VI, they would not overcome the fact that in 1972 when it passed Title IX, Congress was under the impression that Title VI *711 could be enforced by a private action and that Title IX would be similarly enforceable. See *supra*, at 1957-1958. "For the relevant inquiry is not whether Congress correctly perceived the then state of the law, but rather what its perception of the state of the law was." *Brown v. GSA*, 425 U.S. 820, 828, 96 S.Ct. 1961, 1966, 48 L.Ed.2d 402. But each of respondents' arguments is, in any event, unpersuasive.

The fact that other provisions of a complex statutory scheme create express remedies has not been accepted as a sufficient reason for refusing to imply an otherwise appropriate remedy under a separate section. See, *e. g., J. I. Case Co. v. Borak*, 377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423; *Wyandotte Transportation Co. v. United States*, 389 U.S. 191, 88 S.Ct. 379, 19 L.Ed.2d 407. Rather, the Court has generally avoided this type of "excursion into extrapolation of legislative intent," *Cort v. Ash*, 422 U.S., at 83 n. 14, 95 S.Ct., at 2090, unless there is other, more convincing, evidence that Congress meant to exclude the remedy. See *National Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 U.S., at 458-461, 94 S.Ct., at 693-694.

With one set of exceptions, the excerpts from the legislative history cited by respondents as contrary to implication of a private remedy under Title VI, were all concerned with a procedure for terminating federal funding. [FN47] None of them evidences any hostility toward an implied private remedy to terminate the offending discrimination. They are consistent with the assumption expressed frequently during the debates that such a judicial remedy-either through the kind of broad construction of state action under § 1983 adopted by the Court of Appeals for the Fourth Circuit in *Simkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959 (1963),[FN48] *712 or through an implied remedy [FN49]-would be available to private litigants**1966 regardless of how the fund-cutoff issue was resolved.

FN47. As discussed earlier, that type of procedure is far more severe than individual suits, and was already the subject of express administrative provisions in Title VI.

FN48. Consider the following comment by Senator Humphrey:

"The purpose of Title VI is to make sure that funds of the United States are not used to support racial discrimination. In many instances the practices of segregation or discrimination, which Title VI seeks to end, are unconstitutional. This is clearly so wherever Federal funds go to a State agency which engages in racial discrimination. It may also be so where Federal funds go to support

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private, segregated institutions, under the decision in Simkins v. Moses H. Cone Memorial Hospital, 323 F.2d 959 (CA4 1963), [cert. denied, 376 U.S. 938, 84 S.Ct. 793, 11 L.Ed.2d 659 (1964)]. In all cases, such discrimination is contrary to national policy, and to the moral sense of the Nation. Thus, title VI is simply designed to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation." 110 Cong.Rec. 6544 (1964). See also *ibid.* (Sen. Humphrey); *id.*, at 7062 (Sen. Pastore); *id.*, at 7065 (Sen. Ribicoff); *id.*, at 12677 (Sen. Allott); *id.*, at 12719 (Sen. Javits).

Although it has been suggested that the state-action doctrine in *Simkins* is overbroad, e. g. Greco v. Orange Memorial Hospital Corp., 513 F.2d 873 (CA5 1975), there is no denying that the Title VI Congress assumed and approved the availability of private suits against many private recipients of federal funds.

FN49. Various statements made during the debates suggest an assumption that Title VI would be judicially enforceable apart from the administrative procedures contained in § 602. In addition to Senator Ribicoff's reference to "lawsuits" as the principal and preferable "alternative" to cutting off funds under the administrative remedy, n. 38, *supra,* see for example, Senator Humphrey's statement:

"*Title VI* would have a substantial and eminently desirable impact on programs of assistance to education. Title VI would require elimination of racial discrimination and segregation in all 'impacted area' schools receiving Federal grants under Public Laws 815 and 874. Racial segregation at such schools is now prohibited by the Constitution. The Commissioner of Education would be warranted in relying on any existing plans of desegregation which appeared adequate and effective, and on *litigation by private parties* or by the Attorney General under title IV [of the 1964 Civil Rights Act], *as the primary means of securing compliance with this nondiscriminatory requirement.* It is not expected that funds would be cut off so long as reasonable steps were being taken in good faith to end unconstitutional segregation." 110 Cong.Rec. 6545 (1964) (emphasis added).

Also interesting is a debate on the Senate floor on March 13, 1964. *Id.*, at 5253-5256. Senator Talmadge began the relevant discussion by characterizing the "broad" powers delegated federal agencies under § 602 as "barbarous." *Id.,* at 5253. When Senator Humphrey responded that the "right" against discrimination embodied in § 601 justified those broad enforcement powers, the following exchange ensued:

"Mr. TALMADGE. That right is enforceable in every court of the land, and the Senator from Minnesota knows it.

"Mr. HUMPHREY. That is correct. The existing law of the land is stated in section 601. Sections 602 and 603 . . . do not represent an extension of *that* law. . . . They represent a procedural limitation on the power of an affected *agency* to enforce existing powers." *Id.,* at 5254 (emphasis added).

At this point, the debate began to focus on an argument repeatedly made by the opponents of Title VI until it was subsequently amended. See also *id.*, at 13435-13436 (Sen. Long). Although recipients of federal aid in the form of "a contract of insurance or guaranty" were exempted from the administrative enforcement procedure in § 602, the opponents felt that the exemption should be included in the statement of rights in § 601 as well. Otherwise, they argued, the exemption would not be effective-apparently because of the possibility, mentioned by Senator Talmadge and quoted above, of judicial enforcement outside of § 602. In the midst of discussing this point, Senator Stennis asked if "section 602 is *a* method by which section 601 will be enforced," to which Senator Humphrey replied: "Yes, it is the method for those governmental *agencies* and activities

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covered by Title VI." 110 Cong.Rec. 5255 (1964) (emphasis added).

At this point, Senator Case entered the fray:

"... I wish to make clear that the words and provisions of section 601 and the substantive rights established and stated in that section are not limited by the limiting words of section 602. Section 602 says that when a department or agency of the Government-and I think the Senator was correct, earlier, when he made this careful distinction-in dealing with the kinds of programs which are referred to in section 602, attempts to prevent the discrimination, or what-not, the department must follow this procedure. I agree. My only point is that I do not want my embracement of this bill to be construed as indicating that I believe that the substantive rights of an individual, as they may exist under the Constitution, or as they may be stated in section 601, are limited in any degree whatsoever." *Ibid.*

In his effort to mollify the opponents of Title VI on the issue of federal guarantees, Senator Humphrey at first appeared to disagree with Senator Case's interpretation. However, when the latter reiterated the point that § 602 "is not intended to limit the rights of individuals, if they have any way of enforcing their rights apart from the provisions of the bill, by way of suit or any other procedure," Senator Humphrey agreed-and apparently went further:

"I thoroughly agree with the Senator insofar as an *individual* is concerned. As a *citizen* of the United States, he has his full constitutional rights. He has his right to go to court and institute suit and whatever may be provided in the *law and* in the Constitution. There would be no limitation on the *individual.* The limitation would be on the qualification of Federal *agencies.*" *Id.,* at 5256 (emphasis added).

Senator Keating's conclusion of this debate is discussed in n. 52, *infra.*

Two points need be made about this exchange. First, the controversy over how to treat federal guarantees was later resolved by removing the reference to those guarantees from § 602 and adding a new provision, § 605, which simply exempted them from the effect of the title. This solved the complaints of the Title's opponents, without diluting the declaration of rights in § 601. Second, although this debate may evidence some confusion over the law existing prior to the enactment of Title VI insofar as that law would not reach many of the *private* discriminators affected by § 601, but cf. n. 48, *supra,* it demonstrates a congressional assumption that whatever rights existed under the law were automatically enforceable by private litigants. The administrative provisions in §§ 602 and 603 were simply means by which additional-and far more controversial-procedures were established and then limited.

713** The only excerpt relied upon by respondents that deals precisely with the question whether the victim of discrimination has a private remedy under Title VI was a comment by ***714** Senator Keating. In it, he expressed disappointment at the administration's*1967** failure to include his suggestion for an express remedy in its final proposed bill.[FN50] Our analysis of the ***715** legislative history convinces us, however, that neither the administration's decision not to incorporate that suggestion expressly in its bill, nor Senator Keating's response to that decision, is indicative of a rejection of a private right of action against recipients of federal funds. Instead, the former appears to have been a compromise aimed at protecting individual rights without subjecting the Government to suits,[FN51] ***716** while the latter is merely one Senator's isolated expression of a preference for an express private remedy.[FN52] In short, neither is inconsistent with ****1968** the implication of such a remedy. Nor is there any other indication in the legislative history that any Member of Congress voted in favor of the statute in reliance on an understanding that Title VI did not include a private remedy.

FN50. "Parenthetically, while we favored the inclusion of the right to sue on the part of the agency, the State, or the facility which was deprived of Federal funds, we also favored

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the inclusion of a provision granting the right to sue to the person suffering from discrimination. This was not included in the bill." 110 Cong.Rec. 7065 (1964).

Although not cited by respondents, two other passages in the legislative history are of similar effect. See *id.*, at 5266 (Sen. Keating); Hearings before the Senate Committee on the Judiciary on S.1731 and S.1750, 88th Cong., 1st Sess., 335 (1963) (Sen. Keating).

In August 1963, the Justice Department agreed to redraft its original proposal for Title VI in light of congressional criticism. At that time, Senator Keating, along with Senator Ribicoff, submitted the following suggested provision to the Department for its consideration in the redrafting process.

"(a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by the nondiscrimination requirement of section 601 of the Civil Rights Act of 1963, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted (1) *by the person aggrieved, or* (2) by the Attorney General for or in the name of the United States. In any proceeding hereunder, the United States shall be liable for costs the same as a private person.

"(b) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedy that may be provided by law." 109 Cong.Rec. 15375 (1963) (emphasis added).

Senator Keating explained that this section would have allowed private suits to terminate funding *or* to require "specific performance of the nondiscrimination requirement" in Title VI. *Id.*, at 15376. See generally Hearings, *supra,* at 349-352.

FN51. The Keating suggestion was made in the context of broader complaints that the original version of Title VI, which is quoted in n. 14, *supra,* was too weak and too dependent on the fund-cutoff remedy. See, *e. g.,* 109 Cong.Rec. 14833-14835 (1963) (Sens. Ribicoff and Keating). That version, it should be noted, was not explicitly declarative of any individual right against discrimination. Instead, it merely allowed federal agencies to withhold funds from discriminatory recipients.

The result of the administration's reconsideration of Title VI was a compromise. Although its redraft, which in major part was enacted as Title VI, did not include an express private cause of action either to cut off funds or to end discrimination, it did rephrase § 601 as a declaration of an absolute individual right not to have federal funds spent in aid of discrimination.

There is a plausible reason for this compromise. In its final form, § 601 was far more conducive to implication of a private remedy against a discriminatory recipient than was the original language, but at the same time was arguably *less* conducive to implication of a private remedy against the Government (as well as the recipient) to compel the cutoff of funds. Although willing to extend private rights against discriminatory recipients, the Government may not have been anxious to encourage suits against itself.

In this context, it is also understandable that some Members of Congress, as noted earlier, evidenced dissatisfaction at the unavailability under Title VI of private suits to cut off funds. See remarks cited in n. 46, *supra.* Even the Keating remark relied on by respondents, n. 50, *supra,* can be understood in this light.

FN52. As noted earlier, some of Senator Keating's colleagues came to the view that the absence of an express private remedy would not foreclose the implication of one

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under the right-declarative language in the administration's final proposal. See n. 49, *supra.* Even Senator Keating, after listening to this view expressed by Senator Case in the March 13, 1964, debate quoted *ibid.,* appeared to agree-although he still wished the remedy were express:

"I wish to associate myself with the very careful analysis made by the Senator from New Jersey and say that I agree with him thoroughly. *If the bill does not mean what he has indicated it means, it ought to be made to mean so.* I think the limitation of powers set forth in title VI is too extensive. Under section 603, a State, or political subdivision of a State, or an agency of either, which is denied funds because discrimination is taking place, is given the right of action in court. But there is no correlative right in the citizen. If funds are granted to discriminatory projects by public officials, the citizen who is denied the benefits of the project has no correlative right to bring a suit in court, and he should have." 110 Cong.Rec. 5256 (1964) (emphasis added).

*717 IV

[6] When Congress intends private litigants to have a cause of action to support their statutory rights, the far better course is for it to specify as much when it creates those rights. But the Court has long recognized that under certain limited circumstances the failure of Congress to do so is not inconsistent with an intent on its part to have such a remedy available to the persons benefited by its legislation. Title IX presents the atypical situation in which *all* of the circumstances that the Court has previously identified as supportive of an implied remedy are present. We therefore conclude that petitioner may maintain her lawsuit, despite the absence of any express authorization for it in the statute.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Mr. Chief Justice BURGER concurs in the judgment.

Mr. Justice REHNQUIST, with whom Mr. Justice STEWART joins, concurring.

Having joined the Court's opinion in this case, my only purpose in writing separately is to make explicit what seems to me already implicit in that opinion. I think the approach of the Court, reflected in its analysis of the problem in this case and cases such as *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978); *Cort v. Ash,* 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975), and *National Railroad Passenger Corp. v. National Assn. of Railroad Passengers,* 414 U.S. 453, 94 S.Ct. 690, 38 L.Ed.2d 646 (1974), is quite different from the analysis in earlier cases such as *J. I. Case Co. v. Borak,* 377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423 (1964). The question of the existence of a private right of action is basically one of statutory construction. See *ante,* at 1953. And while state courts of general jurisdiction still enforcing the common law as well as statutory*718 law may be less constrained than are federal courts enforcing laws enacted by Congress, the latter must surely look to those laws to determine whether there was an intent to create a private right of action under them.

We do not write on an entirely clean slate, however, and the Court's opinion demonstrates that Congress, at least during the period of the enactment of the several Titles of the Civil Rights Act tended to rely to a large extent on the courts to *decide* whether there should be a private right of action, rather than determining this question for itself. Cases such as *J. I. Case Co. v. Borak, supra,* and numerous cases from other federal courts, gave Congress good reason to think that the federal judiciary would undertake this task.

I fully agree with the Court's statement that "[w]hen Congress intends private litigants to have a cause of action to support their statutory rights, the far better course is for it to specify as much when it creates those rights." *Ante,* at 1967. It seems to me that the factors to which I have here briefly adverted apprise the lawmaking branch of the Federal Government that the ball, so to speak, may well now be in its court. Not only is it "far better" for Congress to so specify when it intends private litigants to have a cause of action, but for this very reason this Court in the future should be extremely reluctant to imply a **1969 cause of action absent such specificity on the part of the Legislative Branch.

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Mr. Justice WHITE, with whom Mr. Justice BLACKMUN joins, dissenting.

In avowedly seeking to provide an additional means to effectuate the broad purpose of § 901 of the Education Amendments of 1972, 20 U.S.C. § 1681, to end sex discrimination in federally funded educational programs, the Court fails to heed the concomitant legislative purpose not to create a new private remedy to implement this objective. Because in my view the legislative history and statutory scheme show that Congress intended not to provide a new private cause of action, and ***719** because under our previous decisions such intent is controlling,[FN1] I dissent.

FN1. *Cort v. Ash*, 422 U.S. 66, 78, 95 S.Ct. 2080, 2087, 45 L.Ed.2d 26 (1975); *Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 95 S.Ct. 1733, 44 L.Ed.2d 263 (1975); *National Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 U.S. 453, 94 S.Ct. 690, 38 L.Ed.2d 646 (1974).

I

The Court recognizes that because Title IX was explicitly patterned after Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, it is difficult to infer a private cause of action in the former but not in the latter. I have set out once before my reasons for concluding that a new private cause of action to enforce Title VI should not be implied, *University of California Regents v. Bakke*, 438 U.S. 265, 379, 98 S.Ct. 2733, 2794, 57 L.Ed.2d 750 (1978) (separate opinion of WHITE, J.), and I find nothing in the legislative materials reviewed by the Court that convinces me to the contrary. Rather, the legislative history, like the terms of Title VI itself, makes it abundantly clear that the Act was and is a mandate to federal agencies to eliminate discrimination in federally funded programs. Although there was no intention to cut back on private remedies existing under 42 U.S.C. § 1983 to challenge discrimination occurring under color of state law, there is no basis for concluding that Congress contemplated the creation of private remedies either against private parties who previously had been subject to no constitutional or statutory obligation not to discriminate, or against federal officials or agencies involved in funding allegedly discriminatory programs.

The Court argues that because funding termination, authorized by § 602, 42 U.S.C. § 2000d-1, is a drastic remedy, Congress must have contemplated private suits in order directly and less intrusively to terminate the discrimination allegedly being practiced by the recipient institutions. But the Court's conclusion does not follow from its premise because funding termination was not contemplated as the only-or even the primary-agency action to end discrimination. Rather, Congress***720** considered termination of financial assistance to be a remedy of last resort, and expressly obligated federal agencies to take measures to terminate discrimination without resorting to termination of funding.

Title VI was enacted on the proposition that it was contrary at least to the "moral sense of the Nation" [FN2] to expend federal funds in a racially discriminatory manner. This proposition was not new, for every President since President Franklin Roosevelt had, by Executive Order, prohibited racial discrimination in hiring in certain federally assisted programs.[FN3] Further, Congress was aware that most agencies dispensing****1970** federal funds already had "authority to refuse or terminate assistance for failure to comply with a variety of requirements imposed by statute or by administrative action." [FN4] But Congress was plainly dissatisfied with agency efforts to ensure the nondiscriminatory use of federal funds; [FN5] and the predicate for ***721** Title VI was the belief that "the time [had] come . . . to declare a broad principle that is right and necessary, and to make it effective for every Federal program involving financial assistance by grant, loan or contract." [FN6]

FN2. 110 Cong.Rec. 6544 (1964) (Sen. Humphrey). Senator Humphrey noted President Kennedy's message of June 19, 1963:

" 'Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.' " *Id.*, at 6543.

FN3. See, *e. g.*, Exec. Order No. 8802, 3 CFR 957 (1938-1943 Comp.) (Pres. Roosevelt); Exec. Order No. 10210, 3 CFR 390 (1949-1953 Comp.) (Pres. Truman); Exec. Order No. 10479, 3 CFR 961 (1949-1953 Comp.) (Pres. Eisenhower); Exec. Order No.

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10925, 3 CFR 448 (1959-1963 Comp.) (Pres. Kennedy).

FN4. 110 Cong.Rec. 6546 (1964) (Sen. Humphrey).

FN5. Thus, Senator Humphrey noted:

"Much has been done by the executive branch to eliminate racial discrimination from federally assisted programs. President Kennedy, by Executive order, prohibited such discrimination in federally assisted housing, and in employment on federally assisted construction. Individual agencies have taken effective action for the programs they administer." *Id.*, at 6544.

Nonetheless,

"President after President has announced that national policy is to end discrimination in Federal programs and Federal assistance. But, regrettably, there has been open violation of these policies." *Id.*, at 6543.

FN6. *Id.*, at 6544. Enactment of Title VI would remove "any conceivable doubts" as to the authority of agencies to eliminate discrimination in the programs they funded and "give express legislative support to the agency's actions . . . . [S]ome federal agencies appear to have been reluctant to act in this area. Title VI will require them to act." *Ibid.* Senator Humphrey further explained that "[i]n connection with various Federal programs of aid to higher education, language institutes, research grants to colleges, and the like, Title VI would . . . authorize requirements of nondiscrimination. In a number of programs, such action has already been taken." *Id.*, at 6546.

Far from conferring new private authority to enforce the federal policy of nondiscrimination, Title VI contemplated agency action to be the principal mechanism for achieving this end. The proponents of Title VI stressed that it did not "confer sweeping new authority, of undefined scope, to Federal departments and agencies," but instead was intended to require the exercise of existing authority to end discrimination by fund recipients, and to furnish the procedure for this purpose.[FN7] Thus, § 601 states the federal policy of nondiscrimination, and § 602 mandates that the agencies achieve compliance by refusing to grant or continue assistance or by "any other means authorized by law." Under § 602, cutting off funds is forbidden unless the agency determines "that compliance cannot be secured by voluntary means." As Senator Humphrey explained:

FN7. *Ibid.* Senator Humphrey noted that "existing statutory authority is, however, not surrounded by the procedural safeguards which Title VI provides." *Ibid.*

"[Title VI] encourages Federal departments and agencies to be resourceful in finding ways of ending discrimination voluntarily without forcing a termination of funds needed for education, public health, social welfare, disaster relief, *722 and other urgent programs. Cutoff of funds needed for such purposes should be the last step, not the first, in an effective program to end racial discrimination." 110 Cong.Rec. 6546 (1964).[FN8]

FN8. See also *id.*, at 6544:

"Moreover, the purpose of Title VI is not to cut off funds, but to end racial discrimination. . . . In general, cutoff of funds would not be consistent with the objectives of the Federal assistance statute if there are available other effective means of ending discrimination. And section 602, by authorizing the agency to achieve compliance 'by any other means authorized by law' encourages agencies to find ways to end racial discrimination without refusing or terminating assistance."

To be sure, Congress contemplated that there would be litigation brought to enforce Title VI. The "other means" provisions of § 602 include agency suits to enforce contractual antidiscrimination provisions and compliance with agency regulations, as well as suits brought by the Department of Justice under Title IV of the 1964 Act, where the recipient is a public entity.[FN9] Congress **1971 also knew that there would be private suits *723 to enforce § 601; but these suits were not authorized by § 601 itself but by 42 U.S.C. § 1983.[FN10] Every excerpt from the legislative history cited by

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the Court shows full awareness that private suits could redress discrimination contrary to the Constitution and Title VI, if the discrimination were imposed by public agencies; not one statement suggests contemplation of lawsuits against recipients not acting under color of state law.[FN11] Senator Humphrey was quite correct in asserting that the individual's "right to go to court and institute suit" for violation of the Fourteenth Amendment or § 601, see *ante*, at 1965-1966, n. 49, was not limited by the presence of alternative enforcement mechanisms in § 602. Section 1983 provides a private remedy for deprivations under color of state law of any rights "secured by the Constitution and laws," and nothing in Title VI suggests an intent to create an exception to this historic remedy for vindication of federal rights as against ***724** contrary state action.[FN12] The legislative history shows, however, that Congress did not ****1972** intend to add to this already existing private remedy. Particularly, Congress did not intend to create a private remedy for discrimination practiced not under color of state law but by private parties or institutions.[FN13]

FN9. See *id.*, at 7066 (Sen. Ribicoff):

"[An] agency could, for example, ask the Attorney General to initiate a lawsuit under title IV, if the recipient were a school district or public college; or the agency could use any of the remedies available to it by virtue of its own 'rule, regulation, or order of general applicability.' For example, the most effective way for an agency to proceed would often be to adopt a rule that made the nondiscrimination requirement part of a contractual obligation on the part of the recipient . . . or . . . the agency would have authority to sue to enforce compliance with its own regulations."

The mention of "lawsuits," *id.*, at 7067, by Senator Ribicoff, on which the Court relies, see *ante*, at 1961 n. 38; 1965 n. 49, was in reference to the foregoing. As the Senator pointed out: "All of these remedies have the obvious advantage of seeking to end the discrimination, rather than to end the assistance." 110 Cong.Rec. 7066 (1964).

By regulation, see 45 CFR §§ 80.8(a), 86.71 (1978), HEW has provided that "other means" in § 602 include referral to the Department of Justice for enforcement of rights of the United States under any statute or contractual undertaking.

FN10. For instance, the Court quotes Senator Humphrey's statement that "litigation by private parties [would be among] the primary means of securing compliance" with § 601, *ante*, at 1965 n. 49. But reference to the Senator's entire remarks shows he was contemplating suits under § 1983. The "[r]acial segregation . . . prohibited by the Constitution" and "litigation . . . under Title IV of the 1964 Civil Rights Act," 110 Cong.Rec. 6545 (1964), were limited to discrimination under color of law and did not reach discrimination by private parties. Congress was well aware of § 1983 suits against public agencies brought to enforce this prohibition. See *id.*, at 5247-5256.

FN11. The Court, *ante*, at 1965, n. 48, appears to rely on a statement by Senator Humphrey citing *Simkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959 (CA4 1963), cert. denied, 376 U.S. 938, 84 S.Ct. 793, 11 L.Ed.2d 659 (1964), as support for the proposition that Title VI created a new private remedy. But *Simkins* was brought under 42 U.S.C. § 1983. See *University of California Regents v. Bakke*, 438 U.S. 265, 383-385, 98 S.Ct. 2733, 2796-2797, 57 L.Ed.2d 750 (1978) (separate opinion of WHITE, J.). In any event, although there is no doubt that in enacting Title VI Congress intended to proscribe private discrimination, the excerpt quoted by the Court does not suggest that Congress contemplated a private individual remedy against all discrimination thus prohibited. To the contrary, Senator Humphrey recognized the uncertain status of *Simkins* as authoritative exposition of § 1983 and the Fourteenth Amendment.

FN12. Indeed, 42 U.S.C. § 2000c-8, enacted as part of the 1964 Act, expressly preserves pre-existing private remedies against discrimination "in public education," which would include the remedies provided by § 1983.

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Although concluding that Title IX and Title VI confer private causes of action, the Court refrains from addressing the permissible *remedies* available under such a cause of action. Thus, the Court focuses on suits requesting, as injunctive relief, that individuals allegedly discriminated against be admitted to federally assisted educational programs, but does not explicitly foreclose the possibility of a suit against either a recipient institution or a federal funding agency to require termination of funding of the allegedly discriminatory program. In at least two cases apparently brought directly under § 601, both of which are approvingly cited by the Court, the recipient of funds was enjoined from continuing the federally assisted project, and HUD was enjoined to terminate funding. *Blackshear Residents Org. v. Housing Authority of Austin*, 347 F.Supp. 1138, 1150 (WD Tex.1972); *Hicks v. Weaver*, 302 F.Supp. 619, 628 (ED La.1969). Such intervention by federal courts at the behest of private parties cannot be reconciled with the numerous procedural safeguards provided in § 602, see *University of California Regents v. Bakke, supra*, 438 U.S. at 381-383, 98 S.Ct. at 2795-2796 (separate opinion of WHITE, J.). The § 1983 cause of action does not encompass the remedy of funding termination, for it permits only such legal or equitable relief as is appropriate to "redress" the "deprivation" of the right. Cf. *Cumming v. Richmond County Board of Ed.*, 175 U.S. 528, 20 S.Ct. 197, 44 L.Ed. 262 (1899).

FN13. In addition to citations in my separate opinion in *University of California Regents v. Bakke*, 438 U.S., at 385-386, and n. 4, 98 S.Ct., at 2797-2798, see, *e. g.*, 110 Cong.Rec. 5256 (1964):

"Mr. CASE. [Section 602] is not intended to limit the rights of individuals, *if they have any way of enforcing their rights apart from the provisions of the bill*, by way of suit or any other procedure. The provision of the bill is not intended to cut down any rights that exist."

"Mr. HUMPRHEY. I thoroughly agree with the Senator insofar as an individual is concerned. . . ."

The remainder of this colloquy is excerpted in the Court's opinion, *ante*, at 1965-1966 n. 49.

***725** II

The Court further concludes that even if it cannot be persuasively demonstrated that Title VI created a private right of action, nonetheless this remedy should be inferred in Title IX because prior to its enactment several lower courts had entertained private suits to enforce the prohibition on racial discrimination in Title VI. Once again, however, there is confusion between the existing § 1983 right of action to remedy denial of federal rights under color of state law-which, as Congress recognized, FN14 would encompass suits to enforce the nondiscrimination mandate of § 601-and the creation of a new right of action against private discrimination. In the case the Court relies upon most heavily, *Bossier Parish School Board v. Lemon*, 370 F.2d 847 (CA5), cert. denied, 388 U.S. 911, 87 S.Ct. 2116, 18 L.Ed.2d 1350 (1967), the plaintiff class had alleged racial discrimination in violation of both Title VI and the Fourteenth Amendment, and, accordingly, the Attorney General was allowed to intervene under Title IV of the 1964 Act. In concluding that plaintiffs could sue to enforce § 601, the Court of Appeals expressed its view that the prohibition merely repeated "the law as laid down in hundreds of decisions, independent of the statute." 370 F.2d, at 852. Clearly, the defendant was in violation of "the law . . . independent of the statute" only because it was a state entity, and the court was correct in concluding that § 602 did not withdraw the already existing right to sue to enforce this prohibition. However, to the extent the court based its holding on the proposition that an individual protected by a statute always has a right to enforce that statute,FN15 it was in error; FN16 and an ***726** erroneous interpretation of Title VI should not be compounded through importation into Title IX under the guise of effectuating legislative intent. There is not one statement in the ****1973** legislative history indicating that the Congress that enacted Title IX was aware of the *Bossier* litigation, much less that it adopted the particular theory relied on to uphold plaintiffs' standing in that case. FN17

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FN14. See § 718 of the Education Amendments of 1972, 20 U.S.C. § 1617; *infra,* at 1973.

FN15. See 370 F.2d, at 852 ("In the absence of a procedure through which the individuals protected by section 601's prohibition may assert their rights under it, violations of the law are cognizable by the courts").

FN16. Prior to enactment of Title IX, two District Courts directly or indirectly relied on *Bossier* in holding that aggrieved individuals could sue to enforce § 601, but in both of these cases the defendant was acting under color of state law. *Gautreaux v. Chicago Housing Authority,* 265 F.Supp. 582, 583-584 (ND Ill.1967), followed what it believed to be the holding of *Bossier* that individuals had "standing" to enforce § 601 even though the Seventh Circuit in *Green Street Assn. v. Daley,* 373 F.2d 1, 8-9, cert. denied, 387 U.S. 932, 87 S.Ct. 2054, 18 L.Ed.2d 995 (1967), had previously declined to express its agreement with this aspect of *Bossier. Blackshear Residents Org. v. Housing Authority of Austin, supra,* 347 F.Supp., at 1140, in turn relied on *Gautreaux.* Subsequent decisions in the *Gautreaux v. Chicago Housing Authority* litigation expressly noted that plaintiffs sought relief under § 1983 in every count of their complaint, see 296 F.Supp. 907, 908 (ND Ill.1969), and 436 F.2d 306, 307 (CA7 1970) (aff'g 296 F.Supp. 907), cert. denied, 402 U.S. 922, 91 S.Ct. 1378, 28 L.Ed.2d 661 (1971). The one case cited by the Court that was a suit against a private organization did not mention the cause of action issued. *Hawthorne v. Kenbridge Recreation Assn., Inc.,* 341 F.Supp. 1382 (ED Va.1972).

FN17. In addition to *Bossier*, the cases discussed in n. 16, *supra*, and cases explicitly holding that the cause of action was provided by § 1983, see the Court's opinion, *ante*, at 1957-1958, n. 21, the Court relies on cases involving suits against federal officials. Contrary to the Court's assertion, see *ibid.*, none of these cases held that there is a direct cause of action to enforce § 601. In *Shannon v. Department of Housing and Urban Development,* 436 F.2d 809, 818-819, 820 (CA3 1970), the court concluded that allegations of failure to act with respect to specific instances of discrimination were reviewable under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* Similarly, *Southern Christian Leadership Conference, Inc. v. Connolly,* 331 F.Supp. 940, 943 (ED Mich.1971), cited *ante*, at 1957-1958 nn. 20, 21, explicitly held that standing was based on § 10 of the Administrative Procedure Act, 5 U.S.C. § 702, and cited *Bossier* only in a discussion of exhaustion of administrative remedies. Neither *Gautreaux v. Romney,* 448 F.2d 731 (CA7 1971), later appeal, *Gautreaux v. Chicago Housing Authority,* 503 F.2d 930 (CA7 1974), aff'd, *sub nom. Hills v. Gautreaux,* 425 U.S. 284, 96 S.Ct. 1538, 47 L.Ed.2d 792 (1976), nor *Hicks v. Weaver,* 302 F.Supp. 619 (ED La.1969), contains any discussion of the cause-of-action issue or even suggests that the question of the appropriate standard for reviewing such federal funding decisions had been raised.

*727 The Court's reliance on § 718 of the 1972 Act, 20 U.S.C. § 1617, is likewise misplaced. That provision authorizes attorney's fees to the prevailing party other than the United States upon the entry of a final order by a federal court "against a local educational agency, a State (or any agency thereof), or the United States (or any agency thereof), for failure to comply with any provision of this chapter"-which deals with emergency school aid, 20 U.S.C. §§ 1601-1619-"or for discrimination on the basis of race, color, or national origin in violation of Title VI of the Civil Rights Act of 1964, or the fourteenth amendment to the Constitution of the United States as they pertain to elementary and secondary education." Based on this provision, it is argued that Title VI itself must have authorized private actions. However, whatever may be the value of the opinion of Congress in 1972 as to the meaning of the 1964 Civil Rights Act, the attorney's fees provision-far from intimating the existence of a remedy against private discrimination-refers only to suits against public institutions. Insofar as the provision refers to "discrimination ... in violation of Title VI," one must strain to conclude that this was meant to encompass private suits against federal agencies whose mandate under Title VI was to enforce § 601's nondiscrimination provision applicable to all reci-

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pients of federal funds. Rather, in referring to Title VI and the Fourteenth Amendment, § 718 did no more than provide for fees in § 1983 suits brought to end discrimination under color of state law.[FN18]

FN18. There is no basis for the Court's suggestion that at the time § 718 was enacted § 1983 was not available for suits against state or local educational agencies, see *ante*, at 1959 n. 27. As described last Term in *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 663 nn. 5, 6, 98 S.Ct. 2018, 2021-2022 nn. 5, 6, 56 L.Ed.2d 611 (1978), we had never indicated that suits such as *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), or *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), might not be appropriate despite the holding in *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961), that local governments were not "persons" within the meaning of § 1983. It was not until 1973, after passage of both Title IX and § 718, that the principle of municipal immunity established in *Monroe* was extended to suits for injunctive relief. See *Kenosha v. Bruno*, 412 U.S. 507, 93 S.Ct. 2222, 37 L.Ed.2d 109 (1973). Even as the Court unpersuasively suggests that Congress might not have thought that private suits to remedy segregation in violation of the Fourteenth Amendment were available in 1972, it notes the furor in Congress at this time over busing as a desegregation remedy, see *ante*, at 1959-1960 n. 29.

***728** III

The legislative intent not to create a new private remedy for enforcement of Title VI or Title IX cannot be ignored simply because in other cases involving analogous language the Court has recognized private ****1974** remedies. The recent cases inferring a private right of action to enforce various civil rights statutes relied not merely upon the statutory language granting the right sought to be enforced, but also upon the clear compatibility, despite the absence of an explicit legislative mandate, between private enforcement and the legislative purpose demonstrated in the statute itself. Having concluded that 42 U.S.C. § 1982 prohibited private as well as public racial discrimination in the sale or lease of property, the Court had little choice but to hold that aggrieved individuals could enforce this prohibition, for there existed no other remedy to redress such violations of the statute.[FN19] The Court's reliance on *Allen v. State Board of Elections*, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969), is equally unwarranted. The cause of action there recognized-for declaratory relief that a voting change is subject to the authorization requirements of § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c-served to trigger the enforcement mechanism provided in the statute itself. The Court pointedly declined to infer a private cause of action to enforce the suspension requirement of § 4 of the Act, ***729**393 U.S., at 552- 554 89 S.Ct., at 825; nor may those allegedly discriminated against bring suit to test voting changes in covered units against the substantive standard of § 5, either directly or through judicial review of the Attorney General's preclearance decision, *Morris v. Gressette*, 432 U.S. 491, 97 S.Ct. 2411, 53 L.Ed.2d 506 (1977). The cause of action granted today is of a very different nature. It does not trigger the enforcement scheme provided in §§ 902 and 903, 20 U.S.C. §§ 1682, 1683, but entirely displaces that scheme in favor of a different approach.[FN20]

FN19. See *Sullivan v. Little Hunting Park*, 396 U.S. 229, 90 S.Ct. 400, 24 L.Ed.2d 386 (1969); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189 (1968). Cf. *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 459-460, 95 S.Ct. 1716, 44 L.Ed.2d 295 (1975) (implied cause of action under 42 U.S.C. § 1981).

FN20. At the time *Allen* was decided, the Department of Justice in enforcing the Voting Rights Act had not provided any formal means by which an individual could initiate review by the Department of a change affecting voting in an area covered by § 5. Since 1971, the Department has officially urged private parties to inform it of voting law changes in covered areas. 28 CFR §§ 51.12-51.15 (1978); 36 Fed.Reg. 18186 (1971). The Department of Health, Education, and Welfare has provided by regulation that any person may file a written complaint alleging discrimination in violation of Titles VI or IX within 180 days of the occurrence of

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the discrimination, and that after investigation HEW shall seek compliance, formally or informally, or shall inform the complainant in writing that further agency action is unwarranted. 45 CFR §§ 80.7(b), (c), 86.71 (1978). The federal respondents have represented to the Court that they would, "of course, fulfill their responsibility under applicable regulations to conduct an administrative investigation of petitioner's charges" should this Court affirm the decision below. Brief for Federal Respondents 54 n. 33.

Congress decided in Title IX, as it had in Title VI, to prohibit certain forms of discrimination by recipients of federal funds. Where those recipients were acting under color of state law, individuals could obtain redress in the federal courts for violation of these prohibitions. But, excepting post-Civil War enactments dealing with racial discrimination in specified situations, these forms of discrimination by private entities had not previously been subject to individual redress under federal law, and Congress decided to reach such discrimination not by creating a new remedy for individuals, but by relying on the authority of the Federal Government to enforce the terms under which federal assistance would be provided. ***730** Whatever may be the wisdom of this approach to the problem of private discrimination, it was Congress' choice, not to be overridden by this Court.

Mr. Justice POWELL, dissenting.

I agree with Mr. Justice WHITE that even under the standards articulated in our prior decisions, it is clear that no private action should be implied here. It is evident from the legislative history reviewed in his ****1975** dissenting opinion that Congress did not intend to create a private action through Title IX of the Education Amendments of 1972. It also is clear that Congress deemed the administrative enforcement mechanism it did create fully adequate to protect Title IX rights. But as mounting evidence from the courts below suggests, and the decision of the Court today demonstrates, the mode of analysis we have applied in the recent past cannot be squared with the doctrine of the separation of powers. The time has come to reappraise our standards for the judicial implication of private causes of action.[FN1]

FN1. The phrase "private cause of action" may not have a completely clear meaning. As the term is used herein, I refer to the right of a private party to seek judicial relief from injuries caused by another's violation of a legal requirement. In the context of legislation enacted by Congress, the legal requirement involved is a statutory duty.

Under Art. III, Congress alone has the responsibility for determining the jurisdiction of the lower federal courts. As the Legislative Branch, Congress also should determine when private parties are to be given causes of action under legislation it adopts. As countless statutes demonstrate, including Titles of the Civil Rights Act of 1964,[FN2] Congress recognizes that the creation of private actions is a legislative function and frequently exercises it. When Congress chooses not to provide a private civil remedy, federal courts should ***731** not assume the legislative role of creating such a remedy and thereby enlarge their jurisdiction.

FN2. See 42 U.S.C. § 2000a-3 (Title II; limited to preventive relief); § 2000e-5(f)(g) (Title VII; administrative preclearance required).

The facts of this case illustrate the undesirability of this assumption by the Judicial Branch of the legislative function. Whether every disappointed applicant for admission to a college or university receiving federal funds has the right to a civil-court remedy under Title IX is likely to be a matter of interest to many of the thousands of rejected applicants. It certainly is a question of vast importance to the entire higher educational community of this country. But quite apart from the interests of the persons and institutions affected, respect for our constitutional system dictates that the issue should have been resolved by the elected representatives in Congress after public hearings, debate, and legislative decision. It is not a question properly to be decided by relatively uninformed federal judges who are isolated from the political process.

In recent history, the Court has tended to stray from the Art. III and separation-of-powers principle of limited jurisdiction. This, I believe, is evident from a review of the more or less haphazard line of cases that led to our decision in *Cort v. Ash*, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975). The "four factor" analysis of that case is an open invitation to federal courts to legislate causes of action not authorized by Congress. It is an analysis not faithful to constitutional

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principles and should be rejected. Absent the most compelling evidence of affirmative congressional intent, a federal court should not infer a private cause of action.

I

The implying of a private action from a federal regulatory statute has been an exceptional occurrence in the past history of this Court. A review of those few decisions where such a step has been taken reveals in almost every case special historical circumstances that explain the result, if not the Court's analysis. These decisions suggest that the doctrine of ***732** implication applied by the Court today not only represents judicial assumption of the legislative function, but also lacks a principled precedential basis.

A

The origin of implied private causes of actions in the federal courts is said to date back to ****1976***Texas & Pacific R. Co. v. Rigsby,* 241 U.S. 33, 36 S.Ct. 482, 60 L.Ed. 874 (1916). A close look at the facts of that case and the contemporary state of the law indicates, however, that *Rigsby*'s reference to the "inference of a private right of action," *id.,* at 40, 36 S.Ct. at 484, carried a far different connotation than the isolated passage quoted by the Court, *ante,* at 1953-1954 n. 10, might suggest. The narrow question presented for decision was whether the standards of care defined by the Federal Safety Appliance Act's penal provisions applied to a tort action brought against an interstate railroad by an employee not engaged in interstate commerce at the time of his injury. The jurisdiction of the federal courts was not in dispute, the action having been removed from state court on the ground that the defendant was a federal corporation. See *Moore v. Chesapeake & O. R. Co.,* 291 U.S. 205, 215 n. 6, 54 S.Ct. 402, 406, 78 L.Ed. 755 (1934). Under the regime of *Swift v. Tyson,* 16 Pet. 1, 41 U.S. 1, 10 L.Ed. 865 (1842), then in force, the Court was free to create the substantive standards of liability applicable to a common-law negligence claim brought in federal court. The practice of judicial reference to legislatively determined standards of care was a common expedient to establish the existence of negligence. See Thayer, Public Wrong and Private Action, 27 Harv.L.Rev. 317 (1914). *Rigsby* did nothing more than follow this practice, and cannot be taken as authority for the judicial creation of a cause of action not legislated by Congress. *Moore v. Chesapeake & O. R. Co., supra,* at 215-216, 54 S.Ct. at 406; *Jacobson v. New York, N. H. & H. R. Co.,* 206 F.2d 153, 157-158 (CA1 1953) (Magruder, C. J.), aff'd *per curiam,* 347 U.S. 909, 74 S.Ct. 474, 98 L.Ed. 1067 (1954).

733** For almost 50 years after *Rigsby,* this Court recognized an implied private cause of action in only one other statutory context.[FN3] Four decisions held that various provisions of the Railway Labor Act of 1926 could be enforced in a federal court. The case for implication of judicial remedies was especially strong with respect to this Act, as Congress had repealed its predecessor, Title III of the Transportation Act of 1920, after *Pennsylvania R. Co. v. Railroad Labor Board,* 261 U.S. 72, 43 S.Ct. 278, 67 L.Ed. 536 (1923), and *Pennsylvania Federation v. Pennsylvania R. Co.,* 267 U.S. 203, 45 S.Ct. 307, 69 L.Ed. 574 (1925), had held that judicial enforcement of its terms was not available. Convinced that Congress had meant to accomplish more through the 1926 Act, and faced with the absence of an express administrative or judicial enforcement mechanism, the Court in *Texas & N. O. R. Co. v. Railway Clerks,* 281 U.S. 548, 50 S.Ct. 427, 74 L.Ed. 1034 (1930), upheld an injunction enforcing the Act's prohibition of employer interference in employees' organizational activities. Buttressed by 1934 amendments to the Act that indicated congressional approval of this step, the Court in ***734Virginian R. Co. v. Railway Employees,* 300 U.S. 515, 57 S.Ct. 592, 81 L.Ed. 789 (1937), extended judicial enforcement to the Act's requirement that an employer bargain ****1977** with its employees' authorized representative. Finally, in *Steele v. Louisville & N. R. Co.,* 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173 (1944), and *Tunstall v. Locomotive Firemen & Enginemen,* 323 U.S. 210, 65 S.Ct. 235, 89 L.Ed. 187 (1944), the Court further held that the duty of a union not to discriminate among its members also could be enforced through the federal courts.[FN4] In each of these cases enforcement of the Act's various requirements could have been restricted to actions brought by the Board of Mediation (later the Mediation Board), rather than by private parties. But whatever the scope of the judicial remedy, the implication of some kind of remedial mechanism was necessary to provide the enforcement authority Congress clearly intended.[FN5]

FN3. During this period, the Court did uphold the implication of civil remedies in favor of the Government, see *Wyandotte*

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Transportation Co. v. United States, 389 U.S. 191, 88 S.Ct. 379, 19 L.Ed.2d 407 (1967); *United States v. Republic Steel Corp.,* 362 U.S. 482, 80 S.Ct. 884, 4 L.Ed.2d 903 (1960), and strongly suggested that private actions could be implied directly from particular provisions of the Constitution, *Bell v. Hood,* 327 U.S. 678, 684, 66 S.Ct. 773, 776, 90 L.Ed. 939 (1946). See also *Jacobs v. United States,* 290 U.S. 13, 54 S.Ct. 26, 78 L.Ed. 142 (1933). Both of these issues are significantly different from the implication of a private remedy from a federal statute. In *Wyandotte%i and* Republic Steel, *the Government already had a "cause of action" in the form of its power to bring criminal proceedings under the pertinent statutes. Thus, the Court was confronted only with the question whether the Government could exact less drastic civil penalties as an alternative means of enforcing the same obligations. And this Court's traditional responsibility to safeguard constitutionally protected rights, as well as the freer hand we necessarily have in the interpretation of the Constitution, permits greater judicial creativity with respect to implied constitutional causes of action. Moreover, the implication of remedies to enforce constitutional provisions does not interfere with the legislative process in the way that the implication of remedies from statutes can. See Part III,* infra.

FN4. The Act did not refer expressly to an obligation not to discriminate, but in light of its structure, especially its vesting in an authorized union the power to exclude all others from representing employees, the Court felt compelled to imply this duty. This construction of the Act was necessary to avoid a difficult constitutional question, namely, the applicability of the Constitution's prohibition of racial discrimination to a private party enjoying a statutorily created status as an exclusive bargaining agent. See *Steele v. Louisville & N. R. Co.,* 323 U.S., at 202-203, 65 S.Ct., at 231-232; *id.,* at 208-209, 65 S.Ct., at 234-235 (Murphy, J., concurring).

FN5. The Court states that a private cause of action also was implied in *Machinists v. Central Airlines,* 372 U.S. 682, 83 S.Ct. 956, 10 L.Ed.2d 67 (1963), a case involving an amendment of the Railway Labor Act applicable to airlines. *Ante,* at 1955, n. 13. A careful reading of that case suggests that it presented a somewhat different question. Under § 204 of the 1936 amendments to the Act, boards of adjustment were established to resolve labor grievances. The Court held that a claim based on a collective-bargaining agreement that had been interpreted by such a board presented a federal question under 28 U.S.C. § 1331. The cause of action came directly from the agreement, not from any provision of the Act, and the only issue was whether this already existing private cause of action could be brought in a federal court. See Mishkin, The Federal "Question" in the District Courts, 53 Colum.L.Rev. 157, 166 (1953). Cf. *Smith v. Kansas City Title & Trust Co.,* 255 U.S. 180, 41 S.Ct. 243, 65 L.Ed. 577 (1921). Although as a practical matter this result entails many of the same problems involved in the implication of a private cause of action, see n. 17, *infra,* at least analytically the problems are quite different.

***735** During this same period, the Court frequently turned back private plaintiffs seeking to imply causes of action from federal statutes. See, *e. g., Wheeldin v. Wheeler,* 373 U.S. 647, 83 S.Ct. 1441, 10 L.Ed.2d 605 (1963); *T. I. M. E., Inc. v. United States,* 359 U.S. 464, 79 S.Ct. 904, 3 L.Ed.2d 952 (1959); *General Committee v. Southern Pacific Co.,* 320 U.S. 338, 64 S.Ct. 142, 88 L.Ed. 85 (1943); *General Committee v. Missouri-K.-T. R. Co.,* 320 U.S. 323, 64 S.Ct. 146, 88 L.Ed. 76 (1943); *Switchmen v. National Mediation Board,* 320 U.S. 297, 64 S.Ct. 95, 88 L.Ed. 61 (1943). Throughout these cases, the focus of the Court's inquiry generally was on the availability of means other than a private action to enforce the statutory duty at issue. Even in cases where the statute might be said to have been enacted for the benefit of a special class comprising the plaintiff, the factor to which the Court today attaches so much importance, *ante,* at 1953-1956, and n. 13, the Court refused to create a private action if Congress had provided some other means of enforcing such duties. See, *e. g., Switchmen v. National Mediation Board, supra,* at 300-301, 64 S.Ct. at 96-97.

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A break in this pattern occurred in *J. I. Case Co. v. Borak,* 377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423 (1964). There the Court held that a private party could maintain a cause of action under § 14(a) of the Securities Exchange Act of 1934, in spite of Congress' express creation of an administrative mechanism for enforcing that statute. I find this decision both unprecedented [FN6] and *736 incomprehensible as a matter of **1978 public policy. The decision's rationale, which lies ultimately in the judgment that "[p]rivate enforcement of the proxy rules provides a necessary supplement to Commission action," 377 U.S., at 432, 84 S.Ct., at 1560, ignores the fact that Congress, in determining the degree of regulation to be imposed on companies covered by the Securities Exchange Act, already had decided that private enforcement was unnecessary. More significant for present purposes, however, is the fact that *Borak,* rather than signaling the start of a trend in this Court, constitutes a singular and, I believe, aberrant interpretation of a federal regulatory statute.

FN6. None of the authorities cited in the opinion supports the result. *Sola Electric Co. v. Jefferson Electric Co.,* 317 U.S. 173, 63 S.Ct. 172, 87 L.Ed. 165 (1942), and *Deitrick v. Greaney,* 309 U.S. 190, 60 S.Ct. 480, 84 L.Ed. 694 (1940), held that federal law could limit a state-law defense to a state-law cause of action. *Deckert v. Independence Shares Corp.,* 311 U.S. 282, 61 S.Ct. 229, 85 L.Ed. 189 (1940), held that a federal judge could devise equitable remedies to supplement an expressly created private action for damages. Similarly, *Mitchell v. Robert DeMario Jewelry, Inc.,* 361 U.S. 288, 80 S.Ct. 332, 4 L.Ed.2d 323 (1960); *Schine Chain Theatres, Inc. v. United States,* 334 U.S. 110, 68 S.Ct. 947, 92 L.Ed. 1245 (1948); and *Porter v. Warner Holding Co.,* 328 U.S. 395, 66 S.Ct. 1086, 90 L.Ed. 1332 (1946), upheld various equitable remedies devised under an express equitable cause of action. As already noted, *Bell v. Hood,* involved the implication of a private action from a constitutional provision, and *Tunstall v. Locomotive Firemen & Enginemen,* 323 U.S. 210, 65 S.Ct. 235, 89 L.Ed. 187 (1944), was grounded on a statute that provided no express means of enforcement. None of these cases condoned the implication of a private action in circumstances where alternatives means of enforcement were available. Although I do not suggest that we should consider overruling *Borak* at this late date, cf. *Flood v. Kuhn,* 407 U.S. 258, 92 S.Ct. 2099, 32 L.Ed.2d 728 (1972), the lack of precedential support for this decision militates strongly against its extension beyond the facts of the case. *Cf. Santa Fe Industries v. Green,* 430 U.S. 462, 477, 97 S.Ct. 1292, 1302, 51 L.Ed.2d 480 (1977); *Blue Chips Stamps v. Manor Drug Stores,* 421 U.S. 723, 737, 95 S.Ct. 1917, 1926, 44 L.Ed.2d 539 (1975).

Since *Borak,* this Court has upheld the implication of private causes of actions derived from federal statutes in only three extremely limited sets of circumstances. First, the Court in *Jones v. Alfred H. Mayer Co.,* 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189 (1968); *Sullivan v. Little Hunting Park,* 396 U.S. 229, 90 S.Ct. 400, 24 L.Ed.2d 386 (1969); and *Johnson v. Railway Express Agency,* 421 U.S. 454, 95 S.Ct. 1716, 44 L.Ed.2d 295 (1975), recognized the right of private parties to seek relief for violations of 42 U.S.C. §§ 1981 and 1982. But to say these cases "implied" rights of action is somewhat misleading, as Congress at the time these statutes were enacted expressly referred to private enforcement actions.[FN7] Furthermore, as in *737 the Railway Labor Act cases, Congress had provided no alternative means of asserting these rights. Thus, the Court was presented with the choice between regarding these statutes as precatory or recognizing some kind of judicial proceeding.

FN7. Both § 1981 and § 1982 are derived from § 1 of the Civil Rights Act of 1866, which was re-enacted in pertinent part in §§ 16 and 18 of the Civil Rights Act of 1870. Section 3 of the 1866 Act provided:

"[T]he district courts of the United States . . . shall have . . . cognizance . . . of all causes, civil and criminal, affecting persons who are denied . . . any of the rights secured to them by the first section of this act . . . . The jurisdiction in civil and criminal matters hereby conferred on the district and circuit courts of the United States shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable

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to carry the same into effect; but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offences against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of the cause . . . is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern said courts in the trial and disposition of such cause . . . ." 14 Stat. 27.

Section 18 of the 1870 Act made this section applicable to § 16 of the later Act. Subsequently Congress, through § 1 of the Civil Rights Act of 1871, indicated in even more explicit terms that private actions would be available to prevent official interference with the rights guaranteed by § 1 of the 1866 Act. See *Chapman v. Houston Welfare Rights Org.*, 441 U.S., at 627-628, 99 S.Ct., at 1921 (POWELL, J., concurring). Although one might conclude, in light of the 1871 Act, that the 1866 and 1870 Acts did not provide for private actions but merely permitted federal courts to entertain state-law actions affecting the denial of civil rights, an equally plausible reading of those statutes is that Congress created a federal cause of action to enforce § 1 of the 1866 Act.

Second, the Court in **1979*Allen v. State Board of Elections*, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969), permitted private litigants to sue to enforce the preclearance provisions of § 5 of the Voting Rights Act of 1965. As the Court seems to concede, this decision was reached without substantial analysis, *ante*, at 1954, and n. 12, and in my view can be explained only in terms of this Court's special and traditional concern for safeguarding the electoral process.[FN8] In addition, as Mr. Justice WHITE notes, the *738 remedy implied was very limited, thereby reducing the chances that States would be exposed to frivolous or harassing suits.[FN9]

FN8. See, *e. g., Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964); *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962); Wilkinson, The Supreme Court, The Equal Protection Clause, and the Three Faces of Constitutional Equality, 61 Va.L.Rev. 945, 956-976 (1975). Cf. *United States v. Carolene Products Co.*, 304 U.S. 144, 152-153 n. 4, 58 S.Ct. 778, 784, 82 L.Ed. 1234 (1938) (Stone, J., concurring). See also *United States v. Richardson*, 418 U.S. 166, 195 n. 17, 94 S.Ct. 2940, 2955, 41 L.Ed.2d 678 (1974) (POWELL, J., concurring).

FN9. See *ante*, at 1973-1974.

Finally, the Court in *Superintendent of Insurance v. Bankers Life & Cas. Co.*, 404 U.S. 6, 92 S.Ct. 165, 30 L.Ed. 128 (1971), ratified 25 years of lower-court precedent that had held a private cause of action available under the Securities and Exchange Commission's Rule 10b-5. As the Court concedes, *ante*, at 1955 n. 13, this decision reflects the unique history of Rule 10b-5, and did not articulate any standards of general applicability.

These few cases applying *Borak* must be contrasted with the subsequent decisions where the Court refused to imply private actions. In *Calhoon v. Harvey*, 379 U.S. 134, 85 S.Ct. 292, 13 L.Ed.2d 190 (1964), the Court refused to permit private suits in derogation of administrative remedies to enforce Title IV of the Labor-Management Reporting and Disclosure Act of 1959, in spite of that statute's command, *inter alia*, that "every member in good standing . . . shall have the right to vote for or otherwise support the candidate or candidates of his choice . . . ." 29 U.S.C. § 481(e).[FN10] In *National Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 U.S. 453, 94 S.Ct. 690, 38 L.Ed.2d 646 (1974), the Court reversed a lower court's implication of a private action to challenge violations of the Rail Passenger Service Act of 1970, in light of the Attorney General's express enforcement authority. And in *Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 95 S.Ct. 1733, 44 L.Ed.2d 263 (1975), we refused to allow private actions under the Securities Investor Protection Act *739 of 1970, which also was enforceable by administrative proceedings and Government suits.[FN11]

FN10. Section 402 of the Act created an administrative procedure for investigating violations of Title IV and permitted the

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Secretary of Labor to sue in federal court to obtain relief. Section 403 of the Act stated that the administrative remedy was the exclusive means of challenging "an election already conducted" but did not limit attempts to obtain prospective relief, the object of the suit in *Calhoon*.

FN11. Since *Borak*, the Court also has entertained several cases involving challenges to various state welfare programs based in part on the Social Security Act. See, *e. g., Rosado v. Wyman*, 397 U.S. 397, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970); *King v. Smith*, 392 U.S. 309, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968). Most of these decisions did not confront the cause-of-action issue at all; none of them addressed the question whether a private cause of action could be implied. In some instances there were conclusory, and in my view incorrect, statements to the effect that 42 U.S.C. § 1983 might provide a basis for asserting these claims. See *Chapman v. Houston Welfare Rights Org.*, 441 U.S., at 644-646, 99 S.Ct., at 1929-1930 (POWELL, J., concurring). The silence of these decisions with respect to inferring a private cause of action cannot be taken as authority for the implication of one.

B

It was against this background of almost invariable refusal to imply private actions, absent a complete failure of alternative enforcement mechanisms and a clear expression of legislative intent to create such a remedy, that *Cort v. Ash*, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975), was decided.****1980** In holding that no private action could be brought to enforce 18 U.S.C. § 610 (1970 ed. and Supp. III), a criminal statute, the Court referred to four factors said to be relevant to determining generally whether private actions could be implied. 422 U.S., at 78, 95 S.Ct., at 2087[FN12]. As Mr. ***740** Justice WHITE suggests, *ante*, at 1968, and n. 1, these factors were meant only as guideposts for answering a single question, namely, whether Congress intended to provide a private cause of action. The conclusion in that particular case was obvious. But, as the opinion of the Court today demonstrates, the *Cort* analysis too easily may be used to deflect inquiry away from the intent of Congress, and to permit a court instead to substitute its own views as to the desirability of private enforcement.

FN12. The Court stated its analysis as follows:

"First, is the plaintiff 'one of the class for whose *especial* benefit the statute was enacted,' *Texas & Pacific R. Co. v. Rigsby*, 241 U.S. 33, 39, 36 S.Ct. 482, 60 L.Ed. 874 (1916) (emphasis supplied)-that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? See, *e. g., National Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 U.S. 453, 458, 460, 94 S.Ct. 690, 693, 694, 38 L.Ed.2d 646 (1974) (*Amtrak*). Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? See, *e. g., Amtrak, supra; Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 423, 95 S.Ct. 1733, 1740, 44 L.Ed.2d 263 (1975); *Calhoon v. Harvey*, 379 U.S. 134, 85 S.Ct. 292, 13 L.Ed.2d 190 (1964). And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law? See *Wheeldin v. Wheeler*, 373 U.S. 647, 652, 83 S.Ct. 1441, 1445, 10 L.Ed.2d 605 (1963); cf. *J. I. Case Co. v. Borak*, 377 U.S. 426, 434, 84 S.Ct. 1555, 1560, 12 L.Ed.2d 423 (1964); *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 394-395, 91 S.Ct. 1999, 2003-2004, 29 L.Ed.2d 619 (1971); *id.*, at 400, 91 S.Ct. 2006 (Harlan, J., concurring in judgment)." 422 U.S., at 78, 95 S.Ct., at 2088.

Of the four factors mentioned in *Cort*, only one refers expressly to legislative intent. The other three invite independent judicial lawmaking. Asking whether a statute creates a right in favor of a private party, for example, begs the question at issue. What is involved is not the mere existence of a legal right, but a particular person's right to invoke the power of the courts to enforce that right.[FN13] See n. 1, *supra*. Determining whether a private action would be consistent with the

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"underlying purposes" of a legislative scheme permits a court to decide for itself what the goals of a scheme should be, and how those goals should be advanced. See Note, 43 Ford.L.Rev. 441, 454-455, 458 (1974). Finally, looking to state law for parallels to the federal right simply focuses inquiry on a particular policy consideration that Congress already may have weighed in deciding not to create a private action.

> FN13. The Court attempts to avoid the question-begging nature of this inquiry by emphasizing the precise phrasing of the statute at issue. *Ante,* at 1953-1955, and n. 13. Aside from its failure to contend with relevant decisions that do not conform to the perceived pattern, see, *e. g., Calhoon v. Harvey,* 379 U.S. 134, 85 S.Ct. 292, 13 L.Ed.2d 190 (1964); *Switchmen v. National Mediation Board,* 320 U.S. 297, 64 S.Ct. 95, 88 L.Ed.2d 61 (1943), the Court's approach gives undue significance to essentially stylistic differences in legislative draftsmanship.

That the *Cort* analysis too readily permits courts to override***741** the decision of Congress not to create a private action is demonstrated conclusively by the flood of lower-court decisions applying it. Although from the time *Cort* was decided until today this Court consistently has turned back attempts to create private actions, see *Chrysler Corp. v. Brown,* 441 U.S. 281, 99 S.Ct. 1705, 60 L.Ed.2d 208; *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 98 S.Ct. 1670, 56 L.Ed.2d 30 (1978); *Piper v. Chris-Craft Industries,* 430 U.S. 1, 97 S.Ct. 926, 51 L.Ed.2d 124 (1977), other federal courts have tended to proceed in exactly the opposite direction. In the four years since we decided *Cort,* no less than 20 decisions by the Courts of Appeals have implied private actions from federal statutes. *Local 714, Amalgamated Transit Union v. Greater Portland Transit Dist.,* 589 F.2d 1 (CA1 1978) (§ 13(c) of Urban Mass Transportation Act of 1964); ****1981** *Bratton v. Shiffrin,* 585 F.2d 223 (CA7 1978) (§ 1007(a) of Federal Aviation Act of 1958), cert. pending, No. 78-1398; *Redington v. Touche Ross & Co.,* 592 F.2d 617 (CA2) (§ 17(a) of Securities Exchange Act of 1934), cert. granted, 439 U.S. 979, 99 S.Ct. 563, 59 L.Ed.2d --- (1978); *Lodge 1858, AFGE v. Webb,* 188 U.S.App.D.C. 233, 580 F.2d 496 (§ 203 of National Aeronautics and Space Act of 1958), cert. denied *sub nom. Government Employees v. Frosch,* 439 U.S. 927, 99 S.Ct. 311, 58 L.Ed.2d 319 (1978); *Riggle v. California,* 577 F.2d 579 (CA9 1978) (Rivers and Harbors Appropriation Act); *Lewis v. Transamerica Corp.,* 575 F.2d 237 (CA9) (§ 206 of Investment Advisers Act of 1940), cert. granted, 439 U.S. 952, 99 S.Ct. 348, 58 L.Ed.2d 343 (1978); *Davis v. Southeastern Community College,* 574 F.2d 1158 (CA4 1978) (§ 504 of Rehabilitation Act of 1973), cert. granted, 439 U.S. 1065, 99 S.Ct. 830, 59 L.Ed.2d 30 (1979); *Benjamins v. British European Airways,* 572 F.2d 913 (CA2 1978) (Art. 28(1) of Warsaw Convention), cert. denied, 439 U.S. 1114, 99 S.Ct. 1016, 59 L.Ed.2d 72 (1979); *Abrahamson v. Fleschner,* 568 F.2d 862 (CA2 1977) (§ 206 of Investment Advisers Act of 1940), cert. denied, 436 U.S. 913, 98 S.Ct. 2253, 56 L.Ed.2d 414 (1978); *Association of Data Processing Service Orgs. v. Federal Home Loan Bank Board,* 568 F.2d 478 (CA6 1977) (§ 11(e) of Federal Home Loan Bank Act); *Wilson v. First Houston Investment Corp.,* 566 F.2d 1235 (CA5 1978) (§ 206 of InvestmentAdvisers ***742** Act of 1940), cert. pending, No. 77-1717; *New York Stock Exchange, Inc. v. Bloom,* 183 U.S.App.D.C. 217, 562 F.2d 736 (1977) (§§ 16 and 21 of Glass-Steagall Act), cert. denied, 435 U.S. 942, 98 S.Ct. 1520, 55 L.Ed.2d 538 (1978); *Daniel v. International Brotherhood of Teamsters,* 561 F.2d 1223 (CA7 1977) (§ 17(a) of Securities Act of 1933), rev'd on other grounds, 439 U.S. 551, 99 S.Ct. 790, 58 L.Ed.2d 808 (1979); *United Handicapped Federation v. Andre,* 558 F.2d 413 (CA8 1977) (§ 504 of Rehabilitation Act of 1973); *Nedd v. United Mine Workers,* 556 F.2d 190 (CA3 1977) (§ 302 of Labor Management Relations Act, 1947), cert. denied, 434 U.S. 1013, 98 S.Ct. 727, 54 L.Ed.2d 757 (1978); *Kipperman v. Academy Life Ins. Co.,* 554 F.2d 377 (CA9 1977) (39 U.S.C. § 3009); *Kampmeier v. Nyquist,* 553 F.2d 296 (CA2 1977) (§ 504 of Rehabilitation Act of 1973); *Lloyd v. Regional Transportation Authority,* 548 F.2d 1277 (CA7 1977) (same); *McDaniel v. University of Chicago and Argonne,* 548 F.2d 689 (CA7 1977) (§ 1 of Davis-Bacon Act), cert. denied, 434 U.S. 1033, 98 S.Ct. 765, 54 L.Ed.2d 780 (1978); *Hughes v. Dempsey-Tegeler & Co.,* 534 F.2d 156 (CA9) (§ 6 of Securities Exchange Act of 1934), cert. denied, 429 U.S. 896, 97 S.Ct. 259, 50 L.Ed.2d 180 (1976). It defies reason to believe that in each of these statutes Congress absentmindedly forgot to mention an intended private action. Indeed, the accelerating trend evidenced by these decisions attests to the need to re-examine the *Cort* analysis.

II

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In my view, the implication doctrine articulated in *Cort* and applied by the Court today engenders incomparably greater problems than the possibility of occasionally failing to divine an unexpressed congressional intent. If only a matter of statutory construction were involved, our obligation might be to develop more refined criteria which more accurately reflect congressional intent. "But the unconstitutionality of the course pursued has now been made clear" and compels us to abandon the implication doctrine of *Cort. Erie R. Co. v. Tompkins*, 304 U.S. 64, 77-78, 58 S.Ct. 817, 822, 82 L.Ed. 1188 (1938).

***743** As the above-cited 20 decisions of the Courts of Appeals illustrate, *Cort* allows the Judicial Branch to assume policymaking authority vested by the Constitution in the Legislative Branch. It also invites Congress to avoid resolution of the often controversial question whether a new regulatory statute should be enforced through private litigation. Rather than confronting the hard political choices involved, Congress is encouraged to shirk its constitutional obligation and leave the issue to the courts to ****1982** decide. [FN14] When this happens, the legislative process with its public scrutiny and participation has been bypassed, with attendant prejudice to everyone concerned. Because the courts are free to reach a result different from that which the normal play of political forces would have produced, the intended beneficiaries of the legislation are unable to ensure the full measure of protection their needs may warrant. For the same reason, those subject to the legislative constraints are denied the opportunity to forestall through the political process potentially unnecessary and disruptive litigation. Moreover, the public generally is denied the benefits that are derived from the making of important societal choices through the open debate of the democratic process.

> FN14. Mr. Justice REHNQUIST, perhaps considering himself temporarily bound by his position in *University of California Regents v. Bakke*, 438 U.S. 265, 418-421, 98 S.Ct. 2733, 2814-2815, 57 L.Ed.2d 750 (1978) (opinion of STEVENS, J.), concurs in the Court's decision today. But writing briefly, he correctly observes "that Congress, at least during the period of the enactment of the several Titles of the Civil Rights Act tended to rely to a large extent on the courts to *decide* whether there should be a private right of action, rather than determining this question for itself," *ante,* at 1968. It does not follow, however, that this Court is obliged to indulge Congress in its refusal to confront these hard questions. In my view, the very reasons advanced by Mr. Justice REHNQUIST why "this Court in the future should be extremely reluctant to imply a cause of action" absent specific direction by Congress, *ibid.*, apply to this case with special force.

The Court's implication doctrine encourages, as a corollary to the political default by Congress, an increase in the governmental***744** power exercised by the federal judiciary. The dangers posed by judicial arrogation of the right to resolve general societal conflicts have been manifest to this Court throughout its history. See *Schlesinger v. Reservists to Stop the War*, 418 U.S. 208, 222, 94 S.Ct. 2925, 2932, 41 L.Ed.2d 706 (1974); *United States v. Richardson*, 418 U.S. 166, 188-197, 94 S.Ct. 2940, 2952-2957, 41 L.Ed.2d 678 (1974) (POWELL, J., concurring); *Eccles v. Peoples Bank*, 333 U.S. 426, 432, 68 S.Ct. 641, 644, 92 L.Ed. 784 (1948); *Ashwander v. TVA*, 297 U.S. 288, 345-348, 56 S.Ct. 466, 482-483, 80 L.Ed. 688 (1936) (Brandeis, J., concurring); *Muskrat v. United States*, 219 U.S. 346, 362, 31 S.Ct. 250, 255, 55 L.Ed. 246 (1911); *Sinking-Fund Cases*, 99 U.S. 700, 718, 25 L.Ed. 496 (1879) ("One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule"); *Hayburn's Case*, 2 Dall. 409, 1 L.Ed. 436 (1792). As the Court observed only last Term:

"Our system of government is, after all, a tripartite one, with each branch having certain defined functions delegated to it by the Constitution. While '[i]t is emphatically the province and duty of the judicial department to say what the law is,' *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 (1803), it is equally-and emphatically-the exclusive province of the Congress not only to formulate legislative policies and mandate programs and projects, but also to establish their relative priority for the Nation. Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought.

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"Our individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress is to be put aside in the process of interpreting a statute. Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process ***745** comes to an end. We do not sit as a committee of review, nor are we vested with the power of veto." *TVA v. Hill*, 437 U.S. 153, 194-195, 98 S.Ct. 2279, 2301-2302, 57 L.Ed.2d 117 (1978).

See also *United States v. New York Telephone Co.*, 434 U.S. 159, 179, 98 S.Ct. 364, 375, 54 L.Ed.2d 376 (1977) (STEVENS, J., ****1983** dissenting) ("The principle of limited federal jurisdiction is fundamental . . .").[FN15]

FN15. Mr. Justice Frankfurter described these dangers with characteristic eloquence:

"Disregard of inherent limits in the effective exercise of the Court's 'judicial Power' . . . may well impair the Court's position as the ultimate organ of 'the supreme Law of the Land' in that vast range of legal problems, often strongly entangled in popular feeling, on which this Court must pronounce. The Court's authority-possessed of neither the purse nor the sword-ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements." *Baker v. Carr*, 369 U.S., at 267, 82 S.Ct., at 737-738, (dissenting opinion).

Alexander Bickel identified the practical difficulties in judicial exercise of governmental power:

"The judicial process is too principle-prone and principle-bound-it has to be, there is no other justification or explanation for the role it plays. It is also too remote from conditions, and deals, case by case, with too narrow a slice of reality. It is not accessible to all the varied interests that are in play in any decision of great consequence. It is, very properly, independent. It is passive. It has difficulty controlling the stages by which it approaches a problem. It rushes forward too fast, or it lags; its pace hardly ever seems just right. For all these reasons, it is, in a vast, complex, changeable society, a most unsuitable instrument for the formation of policy." The Supreme Court and the Idea of Progress 175 (1970).

It is true that the federal judiciary necessarily exercises substantial powers to construe legislation, including, when appropriate, the power to prescribe substantive standards of conduct that supplement federal legislation. But this power normally is exercised with respect to disputes over which a court already has jurisdiction, and in which the existence of ***746** the asserted cause of action is established.[FN16] Implication of a private cause of action, in contrast, involves a significant additional step. By creating a private action, a court of limited jurisdiction necessarily extends its authority to embrace a dispute Congress has not assigned it to resolve. Cf. *Jacobson v. New York, N. H. & H. R. Co.*, 206 F.2d 153 (CA1 1953) (Magruder, C. J.), aff'd *per curiam*, 347 U.S. 909, 74 S.Ct. 474, 98 L.Ed. 1067 (1954); Note, Implying Civil Remedies From Federal Regulatory Statutes, 77 Harv.L.Rev. 285, 286-287 (1963).[FN17] This ***747** runs contrary to the established principle that "[t]he jurisdiction of the federal courts is carefully guarded against expansion by judicial interpretation . . .," *American Fire & Cas. Co. v. Finn*, 341 U.S. 6, 17, 71 S.Ct. 534, 542, 95 L.Ed. 702 (1951), and conflicts with the authority****1984** of Congress under Art. III to set the limits of federal jurisdiction. *Lockerty v. Phillips*, 319 U.S. 182, 63 S.Ct. 1019, 87 L.Ed. 1339 (1943); *Kline v. Burke Construction Co.*, 260 U.S. 226, 43 S.Ct. 79, 67 L.Ed. 226 (1922); *Sheldon v. Sill*, 8 How. 441, 12 L.Ed. 1147 (1850); *United States v. Nourse*, 6 Pet. 470, 8 L.Ed. 467 (1832); Wechsler, The Courts and the Constitution, 65 Colum.L.Rev. 1001, 1004-1008 (1965).

FN16. See, *e. g., United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 99 S.Ct. 1448, 59 L.Ed.2d 711 (1979); *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957); *Clearfield Trust Co. v. United States*, 318 U.S. 363, 63 S.Ct. 573, 87 L.Ed. 838 (1943); P. Bator, P. Mishkin, D. Shapiro, & H. Wechsler, Hart and Wechsler's The Federal Courts and the Federal System

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756-832 (1973); Friendly, In Praise of *Erie* -And of the New Federal Common Law, 39 N.Y.U.L.Rev. 383 (1964).

FN17. Because a private action implied from a federal statute has as an element the violation of that statute, see n. 1, *supra*, the action universally has been considered to present a federal question over which a federal court has jurisdiction under 28 U.S.C. § 1331. Thus, when a federal court implies a private action from a statute, it necessarily expands the scope of its federal-question jurisdiction.

It is instructive to compare decisions implying private causes of action to those cases that have found nonfederal causes of action cognizable by a federal court under § 1331. *E. g., Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 41 S.Ct. 243, 65 L.Ed. 577 (1921). Where a court decides both that federal-law elements are present in a state-law cause of action, and that these elements predominate to the point that the action can be said to present a "federal question" cognizable in federal court, the net effect is the same as implication of a private action directly from the constitutional or statutory source of the federal-law elements. Compare *Division 1287, Amalgamated Transit Union v. Kansas City Area Transportation Authority*, 582 F.2d 444 (CA8 1978), cert. denied, 439 U.S. 444, 99 S.Ct. 872, 59 L.Ed.2d 56 (1979); *Local 519, Amalgamated Transit Union v. LaCrosse Municipal Transit Utility*, 585 F.2d 1340 (CA7 1978), with *Local 519, Amalgamated Transit Union v. Greater Portland Transit Dist.*, 589 F.2d 1 (CA1 1978). To the extent an expansive interpretation of § 1331 permits federal courts to assume control over disputes which Congress did not consign to the federal judicial process, it is subject to the same criticisms of judicial implication of private actions discussed in the text.

The facts of this case illustrate how the implication of a right of action not authorized by Congress denigrates the democratic process. Title IX embodies a national commitment to the elimination of discrimination based on sex, a goal the importance of which has been recognized repeatedly by our decisions. See, *e. g., Caban v. Mohammed*, 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297; *Orr v. Orr*, 440 U.S. 268, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979); *Califano v. Goldfarb*, 430 U.S. 199, 97 S.Ct. 1021, 51 L.Ed.2d 270 (1977); *Frontiero v. Richardson*, 411 U.S. 677, 93 S.Ct. 1764, 36 L.Ed.2d 583 (1973); *Reed v. Reed*, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971). But because Title IX applies to most of our Nation's institutions of higher learning, it also trenches on the authority of the academic community to govern itself, an authority the free exercise of which is critical to the vitality of our society. See *University of California Regents v. Bakke*, 438 U.S. 265, 311, 98 S.Ct. 2733, 2759, 57 L.Ed.2d 750 (1978) (opinion of POWELL, J.); *Keyishian v. Board of Regents*, 385 U.S. 589, 87 S.Ct. 675, 17 L.Ed.2d 629 (1967); *Sweezy v. New Hampshire*, 354 U.S. 234, 263, 77 S.Ct. 1203, 1218, 1 L.Ed.2d 1311 (1957) (Frankfurter, J., concurring in result) Murphy, Academic Freedom-An Emerging Constitutional Right, 28 Law & Contemp.Prob. 447 (1963); Note, Academic Freedom and Federal Regulation of University Hiring, 92 Harv.L.Rev. 879 (1979). Arming frustrated applicants with the power to challenge in court his or her rejection inevitably will have a constraining effect on admissions programs. The burden of expensive, vexatious litigation upon institutions whose resources often are severely limited may well compel an emphasis on objectively measured academic qualifications ***748** at the expense of more flexible admissions criteria that bring richness and diversity to academic life.[FN18] If such a significant incursion into the arena of academic polity is to be made, it is the constitutional function of the Legislative Branch, subject as it is to the checks of the political process, to make this judgment.[FN19]

FN18. Although the burdens of administrative regulation applied to colleges and universities through Title IX are not insubstantial, that process is at least under the control of Government officials whose personal interests are not directly implicated and whose actions are subject to congressional oversight. Private litigation, by contrast, is subject to no such checks.

FN19. We have recognized in other contexts that implication of a private cause of action can frustrate those alternative processes that exist to resolve such disputes and, given the

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costs of federal litigation today, may dramatically revise the balance of interests struck by the legislation. See *Santa Fe Industries v. Green*, 430 U.S., at 478-479, 97 S.Ct., at 1303-1304; *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S., at 739-744, 95 S.Ct., at 1927-1929. That this concern applies fully to litigation under Title IX is borne out by the facts of this case. Petitioner's undergraduate grade-point average in basic sciences was 3.17, far below the 3.70 overall average of the University of Chicago's entering class, and her medical college admission test scores were in the bottom half of the applicant group. More than 2,000 applicants for the 104 positions at Chicago had better academic qualifications than petitioner. Furthermore, petitioner's age exceeded restrictions at both Chicago and Northwestern. If Title IX prohibits only purposeful discrimination such as would violate the Constitution were state action involved, a conclusion that seems forgone in light of our holding with respect to Title VI of the Civil Rights Act of 1964 in *University of California Regents v. Bakke*, 438 U.S., at 284-287, 98 S.Ct., at 2745-2747 (opinion of POWELL, J.); *id.*, at 328-350, 98 S.Ct., at 2768-2779 (opinion of BRENNAN, WHITE, MARSHALL, and BLACKMUN, JJ.), then the chances of petitioner's proving that the neutral age requirements used by Chicago and Northwestern are unlawful seem infinitesimal. Yet these schools have been forced to use their scarce resources to defend against this suit at three levels of our federal judicial system, and in light of the Court's holding today they must contend with at least one more round of proceedings.

**1985 Congress already has created a mechanism for enforcing the mandate found in Title IX against gender-based discrimination. At least in the view of Congress, the fund-termination power conferred on HEW is adequate to ensure that discrimination*749 in federally funded colleges and universities will not be countenanced. The current position of the Government notwithstanding,[FN20] overlapping judicial and administrative enforcement of these policies inevitably will lead to conflicts and confusion; our national goal of equal opportunity for men and women, as well as the academic community, may suffer. A federal court should resolve all doubts against this kind of self-aggrandizement, regardless of the temptation to lend its assistance to the furtherance of some remedial end deemed attractive.

FN20. See Brief for Federal Respondents 58-60, n. 36.

III

In sum, I believe the need both to restrain courts that too readily have created private causes of action, and to encourage Congress to confront its obligation to resolve crucial policy questions created by the legislation it enacts, has become compelling. Because the analysis suggested by *Cort* has proved inadequate to meet these problems, I would start afresh. Henceforth, we should not condone the implication of any private action from a federal statute absent the most compelling evidence that Congress in fact intended such an action to exist. Where a statutory scheme expressly provides for an alternative mechanism for enforcing the rights and duties created, I would be especially reluctant ever to permit a federal court to volunteer its services for enforcement purposes. Because the Court today is enlisting the federal judiciary in just such an enterprise, I dissent.

U.S.Ill.,1979.
Cannon v. University of Chicago
441 U.S. 677, 99 S.Ct. 1946, 19 Empl. Prac. Dec. P 9202, 60 L.Ed.2d 560

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(Cite as: 784 F.2d 1010)

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United States Court of Appeals,
Ninth Circuit.
CHRISTIAN SCIENCE READING ROOM JOINTLY MAINTAINED, a California non-profit religious corporation, and David M. Sacks, Plaintiffs-Appellees,
v.
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation; Airports Commission of the City and County of San Francisco; Morris Bernstein, J. Edward Fleishell, Ruth E. Kadish, Z.L. Goosby, and William K. Coblentz as members of the Airports Commission of the City and County of San Francisco; and Louis A. Turpen, as Director of Airports of the City and County of San Francisco, Defendants-Appellants.
Nos. 84-2076, 84-2415.

Argued and Submitted June 11, 1985.
Decided March 14, 1986.

Religious organization brought suit challenging airport's termination of its tenancy at airport. The United States District Court for the Northern District of California, Samuel Conti, J., entered judgment in favor of religious organization, and appeal was taken. The Court of Appeals, Reinhardt, Circuit Judge, held that airport's prior policy of renting space to religious organizations did not violate establishment clauses of either State or Federal Constitutions, and therefore new policy of not renting to such organizations, while renting to all others, was unconstitutional under the equal protection clause as not rationally related to airport's purpose of remedying violations of the State and Federal Constitutions.

Affirmed.

West Headnotes

Aviation 48B ⚿225.1

48B Aviation
48BV Airports and Services
48Bk225 Lease of Facilities
48Bk225.1 k. In General. Most Cited Cases
(Formerly 48Bk225)

Constitutional Law 92 ⚿1374

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1374 k. In General. Most Cited Cases
(Formerly 92k84.5(11))

Airport's prior policy of renting space to religious organizations did not violate establishment clauses of either State or Federal Constitutions, and therefore new policy of not renting to such organizations, while renting to all others, was unconstitutional under the equal protection clause as not rationally related to airport's purpose of remedying violations of the State and Federal Constitutions. U.S.C.A. Const.Amends. 1, 14; West's Ann.Cal. Const. Art. 1, § 4; Art. 16, § 5.

***1010** Richard E. Levine, Fenwick, Stone, Davis & West, Palo Alto, Cal., for plaintiffs-appellees.

Diane L. Herman, Dist. Co. Atty., San Francisco, Cal., for defendants-appellants.

Appeal from the United States District Court for the Northern District of California.

Before SKOPIL, REINHARDT, and HALL, Circuit Judges.

REINHARDT, Circuit Judge:

INTRODUCTION

The issue in the case before us is whether the decision of the San Francisco Airports Commission to terminate the tenancy of the Christian Science Reading Room Jointly Maintained because it is a religious organization can stand constitutional muster. The Airport acted in the belief that the provisions of the United States and California Constitutions affecting the establishment of religion required it to evict its longtime tenant. We conclude that the Airport was wrong in that belief and that its attempt to terminate the Reading ***1011** Room's tenancy violated the Equal

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Protection Clause of the United States Constitution. We also affirm certain post-judgment orders entered by the district court.

I. BACKGROUND

Since 1956 the Christian Science Reading Room Jointly Maintained has been a tenant in one of the terminal buildings at San Francisco International Airport which is operated by the appellants (collectively referred to as the Airport). In the space it rents, it has operated a reading room used for meditation and reading of Christian Science texts; reading materials are also offered for sale. Since 1976 the Reading Room has occupied the space under a rental permit.

On April 13, 1981, the Director of Airports sent a letter to the Reading Room stating that its "month-to-month tenancy must be terminated forthwith" because the Reading Room's "continued occupancy of Airport space [would be] contrary to provisions of the California Constitution." Attached to the letter was a supporting opinion of the Airports General Counsel that relied on article I, section 4 and article XVI, section 5 of the California Constitution, both of which prohibit state support of religion. (For purposes of convenience, we sometimes refer to both provisions collectively as the Establishment Clause of the California Constitution.) No further steps were taken at that time, however, and the Reading Room remained a tenant.

On January 10, 1984, the Director of Airports sent another letter to the Reading Room, stating that it was the Airport's current policy not to issue leases or permits for rental space to religious organizations. The Director stated further that "[t]his position is based in part on legal issues which were brought to our attention in 1981" by the Airports General Counsel. The Reading Room was directed to vacate its space permanently when renovation of the terminal building began.

On March 21, 1984, the Director of Airports sent a third letter to the Reading Room, in which he said that the renovation of the terminal building was underway and the time had come for the Reading Room to leave the premises. The requisite thirty-day notice to vacate was given, and the Reading Room was informed that the Airport would not rent it any other space.

On April 3, 1984, an attorney for the Reading Room appeared at a meeting of the Airports Commission and sought to have the Commission revoke the eviction letter. The Commission's concerns regarding the Establishment Clause of the First Amendment of the United States Constitution were discussed. Subsequently, the Reading Room's attorney supplied the Commission with a lengthy brief on the constitutional question. On April 17, the Airports Commission met again, and after further discussion of the requirements of the First Amendment, finally refused to revoke the eviction letter. The Commission also adopted a formal policy statement that the Airport would not rent space to religious organizations. The policy had apparently existed informally since 1981, or possibly even since 1977.

On April 19, the Reading Room filed in federal district court an application for a temporary restraining order and a complaint for a permanent injunction seeking to prohibit the Airport from evicting it. The temporary restraining order was granted on April 20. On May 8, after a trial, the district court granted a permanent injunction and entered judgment for the Reading Room. The permanent injunction declared that the eviction notice of March 21, 1984 was void, and ordered the Airport to allow the Reading Room to rent "comparable rental space and on comparable terms, conditions and covenants as existed at the time [the] action was commenced." Under the court's order, the Airport was permitted to terminate the Reading Room's tenancy at a later date as long as it was done for a "valid, nondiscriminatory reason."

As of May 16, 1984, the parties were unable to agree on what substitute space would be rented to the Reading Room, and the Airport sent it another thirty-day eviction*1012 notice. On June 6, the Airport filed an appeal from the permanent injunction and judgment. On June 18, the Reading Room had not vacated the premises and the Airport began an unlawful detainer action in the Superior Court of California, County of San Mateo. On June 19, the Reading Room requested that the district court stay the state court proceedings and hold the Airport in civil contempt. On June 21, a temporary restraining order was issued, barring the Airport from proceeding any further with the state court litigation.

On July 3, the district court stayed the state court litigation until otherwise ordered, and orally ordered

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the parties to cooperate and to negotiate the issue of what space could be rented. The Airport was further orally ordered to disclose all potential rental locations to the Reading Room.

On July 23, the district court again orally ordered the parties to negotiate and ordered the Reading Room to vacate the premises it was occupying. On July 30, the parties informed the court that a settlement had been reached. The Reading Room withdrew its contempt motion and the Airport stated that it would dismiss the state court action. The Airport agreed to rent space to the Reading Room, but both parties stipulated that the rental was made only "in accordance with [the district] court's orders." The district court orally approved this settlement.

On August 28, the Airport appealed from these post-judgment orders. On September 11, the district court entered a written order detailing and approving the settlement, and vacating the stay of the state court litigation. On September 17, the Airport amended its notice of appeal to make it clear that the Airport was appealing from the oral orders of July 3, 23, and 30, 1984, as embodied in the written order of September 11, 1984.

We review the district court's grant of injunctive relief for an abuse of discretion or for application of an erroneous legal standard. *S.E.C. v. Goldfield Deep Mines Co.*, 758 F.2d 459, 465 (9th Cir.1985). Questions of law, including those relating to the meaning of constitutional provisions, are considered *de novo*. *United States v. McConney*, 728 F.2d 1195, 1201 (9th Cir.) (en banc), *cert. denied*, 469 U.S. 824, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984). Findings of fact are reviewed under the "clearly erroneous" standard of review. *Id.* at 1200; Fed.R.Civ.P. 52(a). We may affirm a judgment on any basis supported by the record, even if the district court did not rely on that basis. *United States v. County of Humboldt*, 628 F.2d 549, 551 (9th Cir.1980).

II. EQUAL PROTECTION: THE RATIONAL RELATIONSHIP TEST

The district court ruled that religions *taken as a whole* constitute a suspect class and that, because the Airport presented no compelling governmental interest in support of its new policy of refusing to rent to religious organizations, the policy violated the Equal Protection Clause of the Fourteenth Amendment. The district court applied the strict scrutiny test and enjoined the Airport from evicting the Reading Room pursuant to that policy. We reach the same result, but by applying a different level of scrutiny to the Airport's actions.

The Airport's policy divides the set of all current and prospective Airport tenants into two classes: religious organizations and all others. It seems clear that an individual religion meets the requirements for treatment as a suspect class. *See, e.g., New Orleans v. Dukes*, 427 U.S. 297, 303, 96 S.Ct. 2513, 2516-17, 49 L.Ed.2d 511 (1976) (religion is an inherently suspect classification) (dicta); *De la Cruz v. Tormey*, 582 F.2d 45, 49 (9th Cir.1978) (religion is an "improper bas[is] for differentiation") (dicta), *cert. denied*, 441 U.S. 965, 99 S.Ct. 2416, 60 L.Ed.2d 1072 (1979); *see also City of Cleburne v. Cleburne Living Center*, 105 S.Ct. 3249, 3254-55 (1985) (describing test for determining whether a particular classification scheme creates a suspect class); *Plyler v. Doe*, 457 U.S. 202, 216 n. 14, 102 S.Ct. 2382, 2394 n. 14, 72 L.Ed.2d 786 (1982) (same). Whether all religions ***1013** together constitute a suspect class for purposes of the Equal Protection Clause is a far more complex question that the courts have not previously addressed. We need not attempt to resolve that question here, however, because, as we conclude *infra*, the Airport's actions do not even meet the rational relationship test, the lower standard that applies when the class affected is *not* a suspect one.[FN1]

> FN1. The Reading Room argues that the Free Exercise Clause of the First Amendment provides an alternative basis for applying strict scrutiny. Because we resolve this case in the Reading Room's favor under the rational relationship standard, we need not consider the Free Exercise Clause, either as a basis for applying strict scrutiny under the Equal Protection Clause or as an independent basis for invalidating the Airport's policy. For the same reason, we need not decide whether the policy of placing religious organizations in a separate category from all other entities would warrant application of the intermediate test set forth in *Plyler v. Doe*, 457 U.S. 202, 217-18, 102 S.Ct. 2382, 2395, 72 L.Ed.2d 786 (1982).

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Under the rational relationship test, a classification will be upheld if it rationally furthers a legitimate state purpose. *See* Hooper v. Bernalillo County Assessor, 472 U.S. 612, 105 S.Ct. 2862, 2866, 86 L.Ed.2d 487 (1985); Zobel v. Williams, 457 U.S. 55, 60 (1982). In determining whether the Airport's new policy meets that test, we must first determine the policy's purpose.

III. PURPOSE OF THE AIRPORT'S POLICY

The Airport has argued that there are three possible purposes for its policy of not renting to religious organizations: first, compliance with its obligations under the Establishment Clauses of the United States and California Constitutions; second, maximization of Airport revenue; third, serving the desires of the traveling public.

We are not bound by the purposes counsel advances when it is clear that they were not the actual purposes of the governmental policy. *See* Weinberger v. Wiesenfeld, 420 U.S. 636, 648 & n. 16, 95 S.Ct. 1225, 1233 & n. 16, 43 L.Ed.2d 514 (1975). The district court found that the sole purpose of the Airport's policy of excluding religious organizations was to correct "violat [ions] [of] the Establishment Clause of the First Amendment to the Constitution." The record fully supports this conclusion, with only one exception. The district court erred to the extent that it found that only the United States Constitution, and not the California Constitution, was involved. The two other purposes advanced by counsel were patently make-weight. The letters of April 13, 1981, January 10, 1984, and March 21, 1984, as well as the discussions at the Airports Commission meetings of April 3 and 17, 1984, are dispositive in this regard. We do not suggest that revenue considerations could not constitute a legitimate basis for determining what entities are entitled to rent Airport space. We merely conclude that, here, it is evident that "maximizing revenue" was not the actual reason for the adoption of the new policy. In short, it is clear that the Airport believed that (1) the Establishment Clauses of both the United States and California Constitutions prohibited it from renting space to religious organizations and (2) it was required to adopt the new policy in order to remedy existing violations of those constitutions.

The purpose of remedying violations of the state and federal constitutions is clearly a legitimate one. Thus we must now determine whether the classification of prospective tenants into two groups, religious organizations and all others, rationally furthers that purpose.

IV. RATIONAL RELATIONSHIP OF AIRPORT'S CLASSIFICATION TO PURPOSE

In determining whether the classification rationally furthers the Airport's purpose of remedying constitutional violations, we must first examine the effect of the Establishment Clauses of the United States and California Constitutions on the Airport's right to rent space. Specifically, the question is: did the Airport's prior policy of renting space to religious groups and, particularly,***1014** its rental of space to the Reading Room, violate the provisions of either constitution? If not, there were no constitutional violations to remedy, and the classifications of religious and non-religious entities could not, under any state of facts, serve to further the objective of remedying such violations. *See* United States Railroad Retirement Board v. Fritz, 449 U.S. 166, 174-76, 101 S.Ct. 453, 459-60, 66 L.Ed.2d 368 (1980) (setting forth applicable test).

A. *The United States Constitution*

The First Amendment to the United States Constitution provides in pertinent part that "Congress shall make no law respecting an establishment of religion." This provision is made applicable to the states through the Fourteenth Amendment. Wallace v. Jaffree, 472 U.S. 38, 105 S.Ct. 2479, 2486-89, 86 L.Ed.2d 29 (1985). The Supreme Court has established a three-part test to determine whether governmental action is in compliance with the Establishment Clause. First, the action must have a secular governmental purpose. Second, the principal or primary effect of the action must be one that neither advances nor inhibits religion. Third, the action must not foster an excessive entanglement with religion. Witters v. Washington Department of Services for the Blind, 474 U.S. 481, 106 S.Ct. 748, 751, 83 L.Ed.2d 846 (1986) (quoting Lemon v. Kurtzman, 403 U.S. 602, 612-13, 91 S.Ct. 2105, 2111, 29 L.Ed.2d 745 (1971)); School District of Grand Rapids v. Ball, 473 U.S. 373, 105 S.Ct. 3216, 3222, 87 L.Ed.2d 267 (1985); Wallace, 105 S.Ct. at 2489-90; Estate of Thornton v. Caldor, Inc., 472 U.S. 703, 105 S.Ct. 2914, 2917, 86 L.Ed.2d 557 (1985).

It appears that the purpose of the Airport's prior policy allowing religious groups to rent space was purely secular: to obtain revenue. The Reading Room's rental

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permit agreement was the standard form agreement that the Airport used for all tenants that rented under a permit. The rent the Reading Room paid was determined by a rent schedule that applied to all such tenants. Given the arm's-length nature of the commercial real estate transaction, and the absence of any evidence suggesting that the Airport was motivated by any other considerations, it is simply not possible to say that the Airport's "actual purpose" was to advance religion in general or the Christian Science religion in particular. *See* Wallace, 105 S.Ct. at 2490.

Nor can we say that the effect of the Airport's prior policy was to advance religion. It is, of course, obvious that the Christian Science Reading Room does receive some benefit from being allowed to rent space at the Airport. The Supreme Court has held however that the benefits to religion are improper only if they are other than "incidental." *Widmar v. Vincent*, 454 U.S. 263, 273-74, 102 S.Ct. 269, 276-77, 70 L.Ed.2d 440 (1981). Two factors have been held to be particularly relevant in determining whether benefits received are incidental: first, there must not be "any imprimatur of state approval on religious sects or practices," and second, the benefits must be generally available to others besides religious groups. *Id.* at 274, 102 S.Ct. at 276-77.

In this case, there is nothing to suggest that the Airport endorsed the religious views and beliefs of the Reading Room or gave favored status to religion in general. First, the San Francisco airport, like other airports, but unlike most other government buildings, is a facility in which commercial space has traditionally been available to those who wish to rent it. In many respects, it operates in a manner similar to that of a shopping mall. An airport does not symbolize or represent governmental authority in the minds of most citizens in the way that a city hall does, or a courthouse, or the Treasury, Defense, or Agriculture Departments. Moreover, there is no suggestion that all religions did not have the same opportunity to rent space, or that groups with views opposed to organized religion, or with any other social or philosophical view, were denied that opportunity. If the Airport endorsed the tenets of Christian Science by renting space to the Reading Room, then it could as easily be ***1015** argued that it is endorsing the business and labor practices of domestic airlines, the politics and policies of the foreign governments that own airlines, the consumption of alcohol and sourdough bread, and the reading of Penthouse magazine. Clearly, it does none of these. Second, the benefits of rental space at the Airport are generally available to all who wish to hawk their wares. The Airport is filled with restaurants, newsstands, florists, candy shops, gift shops, book stores, barbers, and duty free shops; it is not filled principally with religious organizations. *See Widmar*, 454 U.S. at 275, 102 S.Ct. at 277. Thus, we conclude that the prior policy of allowing religious organizations to rent Airport space did not improperly benefit, or advance, religion.

The final prong of the *Lemon* test deals with governmental entanglement with religion. In *Lemon*, the Supreme Court noted that the entanglement test was directed at "programs, whose very nature is apt to entangle the state in details of administration." *Lemon*, 403 U.S. at 615, 91 S.Ct. at 2112 (quoting *Walz v. Tax Commission*, 397 U.S. 664, 695, 90 S.Ct. 1409, 1425, 25 L.Ed.2d 697 (1970)). In this case, the Reading Room did not tell the Airport how to run its business, and the Airport did not tell the Reading Room how to run its operations. In fact, the Airport seems to have been significantly less involved in the operation of the Reading Room than is the case with respect to other tenants. In many instances, the Airport told its tenants what items of merchandise they were required to sell; the Airport never attempted, however, to prescribe the reading material to be maintained in the Reading Room.[FN2]

> FN2. The Airport attempts to argue that we must consider the issue of political entanglement as well as that of administrative entanglement. The claim of political entanglement is based on two newspaper articles which appeared in April, 1984 and which took opposite positions as to whether the Reading Room should be evicted. We note that there was no controversy during the period when the Airport had a policy of renting to religious organizations; the controversy arose well after the Airport changed to a policy of exclusion. Thus, the record contains no facts which support a claim that the prior policy of renting to religious organizations caused any political entanglement.

We conclude then that the Airport's policy of renting space to religious organizations meets all three of the *Lemon* criteria. Our conclusion is based on the par-

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ticular facts of this case. We need not consider what the result might be if the Reading Room had been renting space in a more traditional government building, or in any other area that by its nature might suggest that the government endorsed the religious organization. We hold only that the Reading Room's rental of space at the Airport does not violate the Establishment Clause of the United States Constitution.

B. *The California Constitution*

Article I, section 4 of the California Constitution provides that: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed.... The Legislature shall make no law respecting an establishment of religion." The courts of California have suggested that article I, section 4 is broader than the Establishment Clause of the First Amendment because of the additional language regarding "preference." *See Fox v. City of Los Angeles,* 22 Cal.3d 792, 796, 150 Cal.Rptr. 867, 869, 587 P.2d 663, 665 (1978); *Feminist Women's Health Center v. Philibosian,* 157 Cal.App.3d 1076, 1092, 203 Cal.Rptr. 918, 926 (1984), *cert. denied,* 470 U.S. 1052, 105 S.Ct. 1752, 84 L.Ed.2d 816 (1985). It is irrelevant for our purposes whether this is so. We have already demonstrated above that the Airport's prior policy did not favor or prefer any individual religion, or religion as a whole. Accordingly that policy was not violative of article I, section 4 of the California Constitution.

The Airport also relies on Article XVI, section 5 of the California Constitution.[FN3] ***1016** That provision has been interpreted to "ban [ ] any official involvement, whatever its form, which has the direct, immediate, and substantial effect of promoting religious purposes." *California Teachers Association v. Riles,* 29 Cal.3d 794, 806, 176 Cal.Rptr. 300, 307, 632 P.2d 953, 960 (1981) (quoting *California Educational Facilities Authority v. Priest,* 12 Cal.3d 593, 605 n. 12, 116 Cal.Rptr. 361, 369 n. 12, 526 P.2d 513, 521 n. 12 (1974)). The clause, however, "does not prohibit a religious institution from receiving an indirect, remote or incidental benefit from a [policy] which has a secular primary purpose." *Riles,* 29 Cal.3d at 806, 176 Cal.Rptr. at 307, 632 P.2d at 960. As explained above, the Reading Room received only an indirect or incidental benefit from the Airport's rental policy, and the policy had a solely secular purpose. Furthermore, the Attorney General of California has held that it is proper under article XVI, section 5 for an airport to lease space in one of its buildings to a religious organization as long as the rental transaction is at arm's length. 25 Cal.Op.Att'y Gen. 309 (1955). Thus, we conclude that the Airport's policy of allowing religious organizations to rent space at the Airport did not violate article XVI, section 5 of the California Constitution.

FN3. Article XVI, section 5 provides in part that:

> Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever.

C. *The Rational Relationship Test Applied*

The purpose of the Airport's new policy was to remedy violations of certain provisions of the United States and California Constitutions and to bring its rental rules into compliance with those provisions. However, as we have just explained, the Airport's prior policy, including its rental of space to the Reading Room, already fully complied with the applicable provisions of both federal and state constitutions and there were no violations to remedy. Thus, the new policy that the Airport adopted did absolutely nothing to advance the Airport's purpose. A fortiori, the classification of tenants into two groups, religious organizations and all others, did not rationally further that purpose. We must conclude, therefore, that the new policy fails the rational relationship test and violates the Equal Protection Clause of the Fourteenth Amendment. The Reading Room cannot be evicted pursuant to that policy.

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We do not decide whether a policy barring rental of airport space to religious groups could be adopted for other reasons. We do not even preclude the possibility that such a policy might under some circumstances, constitute a legitimate way of ensuring compliance with the United States and California Constitutions. We hold only that where the Airport adopted its new policy in order to remedy violations of the United States and California constitutions that it thought existed, but in fact there were no violations to be remedied, it cannot be said that the policy (or its classifications) furthers the governmental purpose in any way. While our decision is necessarily a narrow one, we believe the distinctions we have drawn to be of considerable significance. Based on the record before us, it is far from clear that the Airport would have adopted its new policy but for its mistaken view that it was compelled by law to do so. We have no way of knowing what policy the Airport would have adopted had it had a proper understanding of the meaning and effect of the constitutional provisions. Unless and until the Airport again decides to adopt a specific policy regarding the rental of space to religious organizations, it will not be possible for a court to determine whether the Airport actually desires to ban rentals to such organizations, and, if so, whether a constitutionally valid reason for doing so exists. In the meantime, the prior policy of treating religious organizations like all others must remain in effect.

V. POST-JUDGMENT ORDERS

The Airport argues that, because it had previously filed a notice of appeal, there ***1017** was no jurisdiction in the district court to enter the orders of July 2, 23, and 30, 1984 and September 11, 1984.

The order of July 2, which directed a stay of the state court litigation, was vacated on September 11. The Airport is therefore, not aggrieved by the order of July 2, and under elementary rules of appellate procedure has no standing to appeal from that order. *See, e.g.,* Deposit Guaranty National Bank v. Roper, 445 U.S. 326, 333, 100 S.Ct. 1166, 1171, 63 L.Ed.2d 427 (1980).

The orders of July 2 and 23 directing the parties to cooperate and negotiate, and the Airport to show all available rental space, have been fully complied with, and it is clearly impossible to undo the effects of that compliance. The appeal from those orders is therefore moot and cannot now be decided by this court. *See* Honig v. Students of the California School for the Blind, 474 U.S. ----, 105 S.Ct. 1820, 85 L.Ed.2d 114 (1985) (per curiam); University of Texas v. Camenisch, 451 U.S. 390, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981); Western Addition Community Organization v. Alioto, 514 F.2d 542 (9th Cir.), *cert. denied,* 423 U.S. 1014, 96 S.Ct. 446, 46 L.Ed.2d 385 (1975); 13A C.A. Wright, A.R. Miller, & E.H. Cooper, Federal Practice & Procedure § 3533.2 (2d ed. 1984).

We are left then, with the oral order of July 30 and the written order of September 11, both of which approved the settlement between the parties and, pursuant to the settlement, directed the Airport to issue a rental permit to the Reading Room. The normal rule is that a party cannot appeal from an order which it consented to have entered against it. *See, e.g.,* 15 C.A. Wright, A.R. Miller, & E.H. Cooper, Federal Practice & Procedure § 3902 at 408 (1976 & Supp.1985); 9 *Moore's Federal Practice* § 203.06 at 3-27 (1985). There is an exception to this rule, however, when it is clear that a party intended to preserve its right of appeal. *See, e.g.,* Hawaiian Paradise Park Corp. v. Friendly Broadcasting Co., 414 F.2d 750, 752 (9th Cir.1969); 15 Wright, Miller & Cooper, *supra,* § 3902 at n. 26 (Supp.1985). On the record of this case it is clear that the Airport intended to preserve its right to appeal.

Rule 62(c) of the Federal Rules of Civil Procedure provides that "[w]hen an appeal is taken from [a] ... final judgment granting ... an injunction, the court in its discretion may suspend, modify, restore or grant an injunction during the pendency of the appeal." This rule codifies the inherent power of a court "to preserve the status quo where, in its sound discretion, the court deems the circumstances so justify," and specifically authorizes the district court to modify, if necessary, the terms of the injunction being appealed from. McClatchy Newspaper v. Central Valley Typographical Union No. 46, 686 F.2d 731, 734-35 (9th Cir.), *cert. denied,* 459 U.S. 1071, 103 S.Ct. 491, 74 L.Ed.2d 633 (1982) (quoting 7 *Moore's Federal Practice* § 62.05 at 62-19). In light of the progress of the renovation work which necessitated the Reading Room's vacation of the space it then occupied, and the difficulty the parties were having in locating new but comparable space for the Reading Room, we cannot say that the district court abused its discretion by directing the issuance of a rental permit for substitute

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space in order to preserve the status quo and ensure the efficacy of the eventual decision of the court.

CONCLUSION

We hold that the Airport's new policy of refusing to rent to a particular class of tenants, religious organizations, does not rationally further the purpose for which it was adopted, and thus violates the Equal Protection Clause. We also hold that the district court did not abuse its discretion in entering the post-judgment orders. Accordingly, we affirm the judgment and orders of the district court.

AFFIRMED.

C.A.9 (Cal.),1986.
Christian Science Reading Room Jointly Maintained v. City and County of San Francisco
784 F.2d 1010, 54 USLW 2489

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Supreme Court of the United States.
CHICOT COUNTY DRAINAGE DIST.
v.
BAXTER STATE BANK et al.
No. 122.

Argued Dec. 7, 1939.
Decided Jan. 2, 1940.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

Action by the Baxter State Bank and another against Chicot County Drainage District to recover on bonds issued by the defendant. A judgment for plaintiff was affirmed by the Circuit Court of Appeals, 103 F.2d 847, and the defendant brings certiorari.

Reversed and remanded.

West Headnotes

[1] Federal Courts 170B 5

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk3 Jurisdiction in General; Nature and Source
170Bk5 k. Limited Jurisdiction; Dependent on Constitution or Statutes. Most Cited Cases
(Formerly 106k260.2, 106k260)

Federal Courts 170B 30

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk29 Objections to Jurisdiction, Determination and Waiver
170Bk30 k. Power and Duty of Court. Most Cited Cases
(Formerly 106k280(5))
The lower federal courts are all "courts of limited jurisdiction," that is with only the jurisdiction which Congress has prescribed, but nonetheless they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether they have jurisdiction to entertain the cause, and for such purpose to construe and apply the statute under which they are asked to act.

[2] Judgment 228 498

228 Judgment
228XI Collateral Attack
228XI(B) Grounds
228k488 Want of Jurisdiction
228k498 k. Effect of Decision by Court as to Its Own Jurisdiction. Most Cited Cases
The determinations of lower federal courts regarding whether they have jurisdiction to entertain cause are open to direct review but cannot be assailed collaterally.

[3] Judgment 228 498

228 Judgment
228XI Collateral Attack
228XI(B) Grounds
228k488 Want of Jurisdiction
228k498 k. Effect of Decision by Court as to Its Own Jurisdiction. Most Cited Cases
A federal District Court sitting in bankruptcy has authority to pass upon its own jurisdiction, and its decree sustaining jurisdiction against attack, while open to direct review, is res judicata in a collateral action.

[4] Judgment 228 577(2)

228 Judgment
228XIII Merger and Bar of Causes of Action and Defenses
228XIII(A) Judgments Operative as Bar
228k577 Void Judgment
228k577(2) k. Want of Jurisdiction. Most Cited Cases
As respects question of res judicata, where the contention as to jurisdiction of lower federal court, such as District Court sitting in bankruptcy, is one involv-

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ing validity of statute under which court is requested to act, the question is to be considered in the light of the standing of the party who seeks to raise the question and of its particular application.

[5] **Judgment 228 ⚷577(2)**

228 Judgment
228XIII Merger and Bar of Causes of Action and Defenses
228XIII(A) Judgments Operative as Bar
228k577 Void Judgment
228k577(2) k. Want of Jurisdiction. Most Cited Cases

Statutes 361 ⚷63

361 Statutes
361I Enactment, Requisites, and Validity in General
361k63 k. Effect of Total Invalidity. Most Cited Cases
Where bondholders were parties to proceeding for readjustment of debts of state drainage district, wherein bankruptcy court rendered decree forever barring all claims, not presented within one year, from participating in readjustment plan or in funds paid into court, and, except for provision for presentation, enjoining bondholders from thereafter asserting any claim on bonds and bondholders failed to raise question regarding validity of statute purporting to confer jurisdiction on court and made no attempt to have decree reviewed, bondholders were precluded by doctrine of res judicata, notwithstanding the unconstitutionality of such statute, from maintaining subsequent suit on bonds and raising question of constitutionality. Gen.Acts Ark.1909, p. 829; Gen.Acts Ark.1920, Ex.Sess., p. 3742, amended Sp.Acts 1921, p. 896. Bankr.Act, §§ 78-80, 11 U.S.C.A. §§ 301-303.

[6] **Judgment 228 ⚷713(2)**

228 Judgment
228XIV Conclusiveness of Adjudication
228XIV(C) Matters Concluded
228k713 Scope and Extent of Estoppel in General
228k713(2) k. Matters Which Might Have Been Litigated. Most Cited Cases
Res judicata may be pleaded as a bar not only as respects matters actually presentedto sustain or defeat the right asserted in the earlier proceeding, but also as respects any other available matter which might have been presented to that end.

****317 *371** Messrs. E. L. McHaney, Jr., S. Lasker Ehrman, and Grover T. Owens, all of Little Rock, Ark., for petitioner.

****318 *372** Mr. G. W. Hendricks, of Little Rock, Ark., for respondents.

Mr. Chief Justice HUGHES delivered the opinion of the Court.

Respondents brought this suit in the United States District Court for the Western Division of the Eastern District of Arkansas to recover on fourteen bonds of $1,000 each, which had been issued in 1924 by the petitioner, Chicot County Drainage District, organized under statutes of Arkansas,[FN1] and had been in default since 1932.

> FN1 Act No. 405, Extra.Sess., p. 3742, General Assembly of Arkansas, approved February 25, 1920, as amended by Act No. 432 of Sp.Acts 1921, p. 896, and General Drainage Law of Arkansas, Gen.Acts 1909, p. 829, approved May 27, 1909.

In its answer, petitioner pleaded a decree of the same District Court in a proceeding instituted by petitioner to effect a plan of readjustment of its indebtedness under the Act of May 24, 1934,[FN2] providing for 'Municipal-Debt Readjustments'. The decree recited that a plan of readjustment had been accepted by the holders of more than two-thirds of the outstanding indebtedness ***373** and was fair and equitable; that to consummate the plan and with the approval of the court petitioner had issued and sold new serial bonds to the Reconstruction Finance Corporation in the amount of $193,500 and that these new bonds were valid obligations; that, also with the approval of the court, the Reconstruction Finance Corporation had purchased outstanding obligations of petitioner to the amount of $705,087.06 which had been delivered in exchange for new bonds and canceled; that certain proceeds had been turned over to the clerk of the court and that the disbursing agent had filed his report showing that the Reconstruction Finance Corporation had purchased all the old bonds of petitioner other than the amount of $57,449.30. The decree provided

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for the application of the amount paid into court to the remaining old obligations of petitioner, that such obligations might be presented within one year, and that unless so presented they should be forever barred from participating in the plan of readjustment or in the fund paid into court. Except for the provision for such presentation, the decree canceled the old bonds and the holders were enjoined from thereafter asserting any claim thereon.

> FN2 48 Stat. 798, 11 U.S.C.A. ss 301-303. Originally this provision was limited to two years but it was extended to January 1, 1940, by Act approved April 10, 1936, 49 Stat. 1198, 11 U.S.C.A. s 302.

Petitioner pleaded this decree, which was entered in March, 1936, as res judicata. Respondents demurred to the answer. Thereupon the parties stipulated for trial without a jury.

The evidence showed respondents' ownership of the bonds in suit and that respondents had notice of the proceeding for debt readjustment. The record of that proceeding, including the final decree, was introduced. The District Court ruled in favor of respondents and the Circuit Court of Appeals affirmed. 8 Cir., 103 F.2d 847. The decision was placed upon the ground that the decree was void because, subsequent to its entry, this Court in a ***374** proceeding relating to a municipal district in Texas had declared the statute under which the District Court had acted to be unconstitutional. Ashton v. Cameron County District, 298 U.S. 513, 56 S.Ct. 892, 80 L.Ed. 1309. In view of the importance of the question we granted certiorari. October 9, 1939. 308 U.S. 532, 60 S.Ct. 84, 84 L.Ed. 449.

The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. Norton v. Shelby County, 118 U.S. 425, 442, 6 S.Ct. 1121, 1125, 30 L.Ed. 178; Chicago, Indianapolis & Louisville Rwy. Co. v. Hackett, 228 U.S. 559, 566, 33 S.Ct. 581, 584, 57 L.Ed. 966. It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.**319 The effect of the subsequent ruling as to invalidity may have to be considered in various aspects,-with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.[FN3] Without attempting ***375** to review the different classes of cases in which the consequences of a ruling against validity have been determined in relation to the particular circumstances of past transactions, we appropriately confine our consideration to the question of res judicata as it now comes before us.

> FN3 See Field, 'The Effect of an Unconstitutional Statute'; 42 Yale Law Journal 779; 45 Yale Law Journal 1533; 48 Harvard Law Review 1271; 25 Virginia Law Review 210.

First. Apart from the contention as to the effect of the later decision as to constitutionality, all the elements necessary to constitute the defense of res judicata are present. It appears that the proceedings in the District Court to bring about a plan of readjustment were conducted in complete conformity to the statute. The Circuit Court of Appeals observed that no question had been raised as to the regularity of the court's action. The answer in the present suit alleged that the plaintiffs (respondents here) had notice of the proceeding and were parties, and the evidence was to the same effect, showing compliance with the statute in that respect. As parties, these bondholders had full opportunity to present any objections to the proceeding, not only as to its regularity, or the fairness of the proposed plan of readjustment, or the propriety of the terms of the decree, but also as to the validity of the statute under which the proceeding was brought and the plan put into effect. Apparently no question of validity was raised and the cause proceeded to decree on the assumption by all parties and the court itself that the statute was valid. There was no attempt to review the decree. If the general principles governing

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the defense of res judicata are applicable, these bondholders, having the opportunity to raise the question of invalidity, were not the less bound by the decree because they failed to raise it. Cromwell v. County of Sac, 94 U.S. 351, 352, 24 L.Ed. 195; Case v. Beauregard, 101 U.S. 688, 692, 25 L.Ed. 1004; Baltimore Steamship Co. v. Phillips, 274 U.S. 316, 319, 325, 47 S.Ct. 600, 601, 604, 71 L.Ed. 1069; Grubb v. Public Utilities Commission, 281 U.S. 470, 479, 50 S.Ct. 374, 378, 74 L.Ed. 972.

*376 [1][2] Second. The argument is pressed that the District Court was sitting as a court of bankruptcy, with the limited jurisdiction conferred by statute, and that, as the statute was later declared to be invalid, the District Court was without jurisdiction to entertain the proceeding and hence its decree is open to collateral attack. We think the argument untenable. The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. But none the less they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which they are asked to act. Their determinations of such questions, while open to direct review, may not be assailed collaterally.

[3] In the early case of McCormick v. Sullivant, 10 Wheat. 192, 6 L.Ed. 300, where it was contended that the decree of the federal district court did not show that the parties to the proceedings were citizens of different States and hence that the suit was coram non judice and the decree void, this Court said: 'But this reason proceeds upon an incorrect view of the character and jurisdiction of the inferior courts of the United States. They are all of limited jurisdiction; but they are not, on that account, inferior courts, in the technical sense of those words, whose judgments,**320 taken alone, are to be disregarded. If the jurisdiction be not alleged in the proceedings, their judgments and decrees are erroneous, and may, upon a writ of error or appeal, be reversed for that cause. But they are not absolute nullities'. Id., 10 Wheat. page 199, 6 L.Ed. 300. See, also, Skillern's Executors v. May's Executors, 6 Cranch 267, 3 L.Ed. 220; Des Moines Navigation Co. v. Iowa Homestead Co., 123 U.S. 552, 557, 559, 8 S.Ct. 217, 219, 220, 31 L.Ed. 202; Dowell v. Applegate, 152 U.S. 327, 340, 14 S.Ct. 611, 616, 38 L.Ed. 463; Evers v. Watson, 156 U.S. 527, 533, 15 S.Ct. 430, 432, 39 L.Ed. 520; *377Cutler v. Huston, 158 U.S. 423, 430, 431, 15 S.Ct. 868, 870, 871, 39 L.Ed. 1040. This rule applies equally to the decrees of the District Court sitting in bankruptcy, that is, purporting to act under a statute of Congress passed in the exercise of the bankruptcy power. The court has the authority to pass upon its own jurisdiction and its decree sustaining jurisdiction against attack, while open to direct review, is res judicata in a collateral action. Stoll v. Gottlieb, 305 U.S. 165, 171, 172, 59 S.Ct. 134, 137, 83 L.Ed. 104.

[4] Whatever the contention as to jurisdiction may be, whether it is that the boundaries of a valid statute have been transgressed, or that the statute itself is invalid, the question of jurisdiction is still one for judicial determination. If the contention is one as to validity, the question is to be considered in the light of the standing of the party who seeks to raise the question and of its particular application. In the present instance it is suggested that the situation of petitioner, Chicot County Drainage District, is different from that of the municipal district before the court in the Ashton case. Petitioner contends that it is not a political subdivision of the State of Arkansas but an agent of the property owners within the District. See Drainage District No. 7 of Poinsett County v. Hutchins, 184 Ark. 521, 42 S.W.2d 996.[FN4] We do not refer to that phase of the case as now determinative but merely as illustrating the sort of question which the District Court might have been called upon to resolve had the validity of the Act of Congress in the present application been raised. As the question of validity was one which had to be determined by a judicial decision, if determined at all, no reason appears why it should not be regarded as determinable by the District Court like any other question affecting its jurisdiction. There can be no doubt that if the question of the constitutionality of the statute had actually been raised and decided by the District Court in the proceeding*378 to effect a plan of debt readjustment in accordance with the statute, that determination would have been final save as it was open to direct review upon appeal. Stoll v. Gottlieb, supra. [FN5]

FN4 See Drainage District No. 2 of Crittenden County, Ark., v. Mercantile-Commerce Bank, 8 Cir., 69 F.2d 138; In re Drainage District No. 7 of Poinsett County, Ark., D.C., 21 F.Supp. 798.

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FN5 See, also, Miller v. Tyler, 58 N.Y. 477, 480; Drinkard v. Oden, 150 Ala. 475, 477, 478, 43 So. 578; Pulaski Avenue, 220 Pa. 276, 279, 280, 69 A. 749; People v. Russel, 283 Ill. 520, 524, 119 N.E. 617; Beck v. State, 196 Wis. 242, 250, 219 N.W. 197.

[5][6] The remaining question is simply whether respondents having failed to raise the question in the proceeding to which they were parties and in which they could have raised it and had it finally determined, were privileged to remain quiet and raise it in a subsequent suit. Such a view is contrary to the well-settled principle that res judicata may be pleaded as a bar, not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, 'but also as respects any other available matter which might have been presented to that end'. Grubb v. Public Utilities Commission, supra (281 U.S. 470, 50 S.Ct. 378, 74 L.Ed. 972); Cromwell v. County of Sac, supra.

The judgment is reversed and the cause is remanded to the District Court with direction to dismiss the complaint.

It is so ordered.

Reversed and remanded.

U.S. 1940.
Chicot County Drainage Dist. v. Baxter State Bank
308 U.S. 371, 60 S.Ct. 317, 84 L.Ed. 329

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770 F.2d 1421, 38 Fair Empl.Prac.Cas. (BNA) 1575, 38 Empl. Prac. Dec. P 35,516
(Cite as: 770 F.2d 1421)

H

United States Court of Appeals,
Ninth Circuit.
Hershel CLADY, et al., Plaintiffs-Appellants,
v.
COUNTY OF LOS ANGELES, Defendant-Appellee.
No. 83-5900.

Argued and Submitted May 6, 1985.
Decided Sept. 10, 1985.
As Amended on Denial of Rehearing and Rehearing En Banc Nov. 13, 1985.

Civil rights class action was brought challenging the 1979 selection procedures used by county fire department. The United States District Court for the Central District of California, Malcolm M. Lucas, J., entered judgment in favor of county, and plaintiffs appealed. The Court of Appeals, Eugene A. Wright, Circuit Judge, held that although plaintiffs established a prima facie case of disparate impact against blacks and Hispanics for written examination used to select candidates for members of fire department, county's use of the written examination did not violate Title VII where county established that its written examination was job related and where plaintiffs failed to establish an alternative selection device having comparable business utility and less adverse impact.

Affirmed.

West Headnotes

[1] Federal Courts 170B 776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases

De novo standard of review applies to establishment of prima facie case in Title VII action. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[2] Civil Rights 78 1140

78 Civil Rights
78II Employment Practices
78k1140 k. Disparate Impact. Most Cited Cases
(Formerly 78k141, 78k9.10)

Title VII proscribes not only overt discrimination but also practices that are fair in form but discriminatory in operation. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[3] Civil Rights 78 1121

78 Civil Rights
78II Employment Practices
78k1121 k. Hiring. Most Cited Cases
(Formerly 78k141, 78k9.10)

Title VII does not mandate special treatment in hiring merely because a person was formerly the subject of discrimination or because he is a member of a minority group. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[4] Civil Rights 78 1535

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1534 Presumptions, Inferences, and Burden of Proof
78k1535 k. In General. Most Cited Cases
(Formerly 78k377.1, 78k377, 78k43)

To succeed in a Title VII action under disparate impact theory, plaintiff must establish that a facially neutral employment practice produces a significant adverse impact on a protected class and plaintiff can meet that burden through reliable statistics without showing an intent to discriminate; if plaintiff fails to meet initial burden of establishing prima facie case of substantial adverse impact, validity of selection device is irrelevant. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[5] Civil Rights 78 1536

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1534 Presumptions, Inferences, and Burden of Proof

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78k1536 k. Effect of Prima Facie Case; Shifting Burden. Most Cited Cases
(Formerly 78k378, 78k43)
In a disparate impact case, if substantial impact is demonstrated by preponderance of the evidence, burden shifts to employer to validate the selection device, that is, to show that it has a manifest relationship to the employment in question and if employer fails to meet its burden, use of selection device will be deemed a Title VII violation; if employer succeeds, plaintiff may then attempt to rebut employer's evidence by showing that although job related, the test does not constitute a business necessity because an alternative selection device exists which would have comparable business utility and less adverse impact. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[6] Civil Rights 78 ⚿1121

78 Civil Rights
78II Employment Practices
78k1121 k. Hiring. Most Cited Cases
(Formerly 78k141, 78k9.10)
Uniform Guidelines on Employee Selection Procedures, which apply to any selection procedure used as a basis for making employment decisions, were not promulgated as regulations and do not have force of law.

[7] Federal Courts 170B ⚿852

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)5 Questions of Fact, Verdicts and Findings
170Bk850 Clearly Erroneous Findings of Court or Jury in General
170Bk852 k. What Constitutes Clear Error, and Effect Thereof. Most Cited Cases
(Formerly 170Bk3852)
When a trial judge's finding is based on his decision to credit testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error.

[8] Civil Rights 78 ⚿1121

78 Civil Rights
78II Employment Practices
78k1121 k. Hiring. Most Cited Cases
(Formerly 78k141, 78k9, 78k129, 78k10)

Civil Rights 78 ⚿1140

78 Civil Rights
78II Employment Practices
78k1140 k. Disparate Impact. Most Cited Cases
(Formerly 78k141, 78k9, 78k129, 78k10)
An employer is not required to choose the selection device with the least adverse impact on minority applicants. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

[9] Federal Civil Procedure 170A ⚿2283

170A Federal Civil Procedure
170AXV Trial
170AXV(K) Trial by Court
170AXV(K)2 Findings and Conclusions
170Ak2282 Sufficiency
170Ak2283 k. Completeness. Most Cited Cases

Federal Civil Procedure 170A ⚿2284

170A Federal Civil Procedure
170AXV Trial
170AXV(K) Trial by Court
170AXV(K)2 Findings and Conclusions
170Ak2282 Sufficiency
170Ak2284 k. Conformity to Pleadings, Issues and Proofs. Most Cited Cases
District court findings are adequate if they are sufficiently comprehensive to provide a basis of decision and are supported by the record.

[10] Federal Courts 170B ⚿823

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk823 k. Reception of Evidence. Most Cited Cases
Evidentiary rulings are not reversible absent clear abuse of discretion.

[11] Privileged Communications and Confidentiality

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770 F.2d 1421, 38 Fair Empl.Prac.Cas. (BNA) 1575, 38 Empl. Prac. Dec. P 35,516
(Cite as: 770 F.2d 1421)

311H 168

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk168 k. Waiver of Privilege. Most Cited Cases
(Formerly 410k219(3))
In Title VII action challenging selection procedures used by county fire department, trial court did not abuse its discretion in excluding an exhibit containing a legal opinion that the selection procedures had an adverse impact on minority applicants based on determinations that the document was not discoverable because attorney-client privilege attached to it, that the document had been produced inadvertently during discovery and that the privilege had not been waived. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[12] Privileged Communications and Confidentiality 311H 168

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk168 k. Waiver of Privilege. Most Cited Cases
(Formerly 410k219(3))
Voluntary disclosure of a privileged attorney communication constitutes waiver; inadvertence does not as a matter of law prevent occurrence of waiver and is only one factor to be considered.

[13] Civil Rights 78 1546

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1546 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k384, 78k44(2))
Although plaintiffs establish a prima facie case of disparate impact against blacks and Hispanics for written examination used to select candidates for members of fire department, county's use of the written examination did not violate Title VII where county established that its written examination was job related and where plaintiffs failed to establish an alternative selection device having comparable business utility and less adverse impact. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

Federal Courts 170B 850.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)5 Questions of Fact, Verdicts and Findings
170Bk850 Clearly Erroneous Findings of Court or Jury in General
170Bk850.1 k. In General. Most Cited Cases
(Formerly 170Bk850)
Even when trial judge adopts proposed findings verbatim, the findings are those of the court and may be reversed only if clearly erroneous. Fed.Rules Civ.Proc.Rule 52(a), 28 U.S.C.A.

***1423** A. Thomas Hunt, Walter Cochran-Bond, Hunt & Cochran-Bond, Caryle W. Hall, Jr., Center for Law in the Public Interest, Los Angeles, Cal., for plaintiffs-appellants.

De Witt W. Clinton, County Counsel, Halvor S. Melom, Sr. Dep. County Counsel, Los Angeles, Cal., for defendant-appellee.

Appeal from the United States District Court for the Central District of California.

Before WRIGHT, ALARCON and NORRIS, Circuit Judges.

EUGENE A. WRIGHT, Circuit Judge:

This class action for damages and injunctive relief under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* (Title VII), and 42 U.S.C. § 1981 challenges the 1979 selection procedures used by the Los Angeles County Fire Department. Plaintiffs allege that the written examination, education requirement (ER), and physical agility test (PAT) had an adverse impact on black and Hispanic applicants. Following a seven day bench trial, the district court entered judgment for the County of Los Angeles (County). We affirm the judgment.

FACTS AND PROCEEDINGS BELOW

To understand the parties' positions, we provide in some detail the history of prior legal challenges to the County's firefighter selection procedures.

1969 Exam

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770 F.2d 1421, 38 Fair Empl.Prac.Cas. (BNA) 1575, 38 Empl. Prac. Dec. P 35,516
(Cite as: 770 F.2d 1421)

In 1969, firefighter applicants were required to take a civil service examination and a physical agility test. They were ranked according to their performance on both tests. Following successful job interviews, candidates were placed on a hiring eligibility list. The County voluntarily discontinued these procedures after it was determined that they had a disparate adverse impact on minority hiring. *See* County of Los Angeles v. Davis, 440 U.S. 625, 627-28, 99 S.Ct. 1379, 1381-82, 59 L.Ed.2d 642 (1979) (describing 1969 selection procedures).

1972-73 Exam

Hiring procedures were changed in 1971 but court challenges prevented their implementation. The County proposed to eliminate ranking candidates by written exam score. A new written exam was designed to eliminate cultural bias. It was to be graded on a pass/fail basis.

Five hundred applicants who passed the written exam were to be selected at random for oral interviews and physical agility tests. The candidates then would be ranked for appointment to available openings.

***1424** In January 1972, the County conducted a written examination pursuant to this plan. Ninety-seven percent of the applicants passed. Before further selection was made, a lawsuit was filed charging that the random selection procedure violated civil service regulations and the county charter. The County was enjoined from further selection of firefighters.

When staffing needs became critical, the County proposed to interview the top 544 applicants based on written exam scores. Of this number, 492 were white, 10 black, and 33 Mexican-American. Minority applicants objected and this plan, too, was abandoned.

In 1973, unsuccessful black and Mexican-American firefighter applicants brought a Title VII class action against the County, its Board of Supervisors, and its Civil Service Commission challenging selection procedures used in 1969 and 1972-73. District Judge William P. Gray held for the plaintiffs, enjoining future discrimination and mandating good faith affirmative action efforts. Davis v. County of Los Angeles, 8 Fair Empl.Prac.Cas. (BNA) 239 (C.D.Cal.1973), *aff'd in part, rev'd in part,* 566 F.2d 1334 (9th Cir.1977), *vacated as moot,* 440 U.S. 625, 99 S.Ct. 1379, 59 L.Ed.2d 642 (1979).

Judge Gray found that while minorities comprised 29.1% of L.A. County, they comprised 3.3% of the firefighters. *Id.* at 240. Moreover, the County failed to validate the 1972 exam as predictive of job performance. *Id.* at 240-41. The court entered a remedial hiring order requiring that at least 20% of all new recruits be black and 20% be Mexican-American until their percentages equalled the corresponding percentages for those minorities in Los Angeles County. *Id.* at 242.

Between 1973 and 1979 when Judge Gray's order was in effect, all applicants who had passed the 1972 written exam were interviewed. An eligibility list was formulated using the oral interview as a ranking device. The civil service rule then in effect, the "rule of three," required the County to consider only the top three candidates on the eligible list for the next firefighter opening. Pursuant to the court order, the County permitted the first of the top three blacks and the first of the top three Mexican-American candidates to be certified as eligible for any given opening. These procedures yielded a 55% minority hiring level during this period.

Judge Gray's injunction was dissolved by the Supreme Court in March 1979. Specifically, the Court held that any discrimination from the 1972 selection procedures had been vitiated by the more than five years of hiring under Judge Gray's order. Davis, 440 U.S. at 633, 99 S.Ct. at 1384.

1979-80 Exam

When Judge Gray's order was vacated, the County developed the selection procedures at issue here. The process began by posting bulletins which announced filing dates, minimum job qualifications and examination procedures.

Persons who had filed "notice of interest" cards with the County since the last application period also were notified of openings. In addition to the recruitment efforts by County personnel, defendant contracted with an outside organization, the International Association of Firefighters, to recruit and prepare minority candidates.

Applicants had to be at least 18 years of age, but not older than 29. They had to have a high school diploma or general equivalency degree (GED). A written test was administered to all applicants who appeared on the scheduled testing date and who met these minimum requirements.

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The 1979 written exam measured mechanical comprehension, spatial perception, and verbal ability. Applicants who scored less than 53 correct out of 95 multiple-choice questions were excluded from further consideration.

Next was the administration of an oral interview to all applicants qualifying on the written exam. At that time, a panel of three persons assessed the applicant's education, experience and personal suitability for performing firefighter duties.

***1425** An "eligible list" was then created which ranked the applicants who qualified on both the written test and oral interview. The relative ranking was determined by weighting the written exam score by 25% and the oral interview by 75%. A ten point credit was added for qualifying military veterans.

As openings arose, the candidates were administered a physical agility test on a pass/fail basis. It consisted of six parts,[FN1] all of which had to be passed. Selection of candidates from the eligible list was made in accordance with the "rule of three" civil service requirement.

> FN1. The PAT was composed of six parts: 1) a hose line extension task, 2) hydrant manipulation, 3) ladder climb, 4) hose loading, 5) hose tower rope pull, and 6) a hose and ladder storing exercise.

In April 1981, the "rule of three" was replaced with a new civil service rule which authorized a "banding" system for selecting candidates from an eligible list. Banding permitted discretion to select for hire any candidate whose final score was within a band of scores.[FN2] Appointments were made from the highest ranking band until fewer than five persons were available for appointment from that band. Following appointment from the eligible list, all newly hired firefighters were required to complete a training program at the Fire Academy and a one year probation period.

> FN2. The hiring bands, in order, were these: (1) 100 plus (called the veteran's band because only those with the 10 point veteran credit can score over 100); (b) 95-100; (c) 89-94; (d) 83-88; (e) 77-82; and (f) 70-76.

Present Lawsuit

In October 1979, plaintiffs filed this lawsuit alleging a pattern of illegal discrimination by the County based on race, color and national origin. Pretrial orders limited this action to the 1979 firefighter selection procedures.

In May 1980, the court conditionally certified a plaintiff class of:

> (1) All black and Mexican-American applicants for the position of firefighter with the Los Angeles County Fire Department whose applications were processed under the 1979 selection procedures and who were not hired by defendant; and
>
> (2) All black and Mexican-American applicants for the position of firefighter with the Los Angeles County Fire Department who will apply in the future.

Plaintiffs' motion for preliminary injunction was granted in April 1981, ordering defendant to select 35% blacks and Hispanics [FN3] for any future classes.

> FN3. We note that Mexican-Americans are a class within the larger Hispanic population. The complaint was filed on behalf of black and Mexican-American applicants, and the plaintiff class was certified on this basis. As the case proceeded to trial, however, the focus of impact analysis shifted from Mexican-Americans to Hispanics.

Seven recruit classes, totalling 280 persons, were hired pursuant to the 1979 selection procedures. The parties stipulated that the selection rate for blacks and Hispanics was 18% for the first four classes. This rate jumped to 40% for the last three classes hired pursuant to Judge Lucas' preliminary injunction and the civil service banding rule.

The County conducted extensive validation studies covering the period from the imposition of Judge Gray's order until commencement of this action. The three studies were:

> (1) Firefighter Validation Study: Los Angeles County, dated February 1980 (Study);
>
> (2) 1979 Firefighter Validation Study Supplement: Los Angeles County, dated June 1980 (Supplement); and
>
> (3) Analysis of the Job Relatedness of Academy and Recruit Follow-Up Examinations at the Los Angeles

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County Fire Department, dated June 8, 1981 (Academy Study).

The Study compared test scores from the written exam received by the first three ***1426** recruit classes with their performance on four criteria: (1) academy scores, (2) station scores, (3) deficiency points, and (4) academy graduation.[FN4]

> FN4. Academy score was based on four written tests given early in the training program at the academy. Station score represented the score received on a written exam taken six months after becoming a firefighter. Deficiency points were given by training captains at the academy for observed mistakes or omissions in exercises. Academy graduation signified whether or not a candidate was graduated or terminated.

Through its validation studies, the County sought to demonstrate a significant correlation between the exam components and important elements of firefighter training. Correlation coefficients [FN5] derived for the 1979 written test were:

> FN5. Criterion-related validation is established when there is a significant positive correlation between comparative success on a test and comparative success on some measure of job performance. B. Schlei & P. Grossman, *Employment Discrimination Law,* 114 (2d ed. 1983). The degree of this relationship is expressed as a "correlation coefficient," which ranges from -1.0 (completely negative relationship: the better one does on the test, the worse one performs on the job) to +1.0 (total identity of relative test scores and relative job performance).

-.7162 for deficiency points

.6435 for Academy score

.3838 for graduation/termination

Sample size was insufficient to obtain a significant correlation for station score. The County's personnel analyst who had primary responsibility for conducting the studies testified that the negative number on deficiency points meant that those who had more points had lower test scores.

Other witnesses for the County testified that all three studies met professionally accepted standards. Plaintiffs did not contest the appropriateness of the performance criteria against which the exam was correlated.

The Supplement included a utility analysis which estimated that use of the written exam would result in an increase in the selection of qualified recruits from 9% to 48%. Based on this estimate, the County determined that it could save between $39,000 and $180,000 in direct training costs per class.[FN6]

> FN6. In September 1982, the direct cost of training a recruit at the Academy was $9,515.35.

The Academy Study concluded that the Academy training tests and the recruit follow-up exams "were representative of important or critical work behaviors performed by Firefighters." Academy Study, Defendant's Exhibit 202, at 14.

Trial

Plaintiffs' case in chief was brief. There was no direct evidence of discriminatory treatment of blacks or Hispanics. The entire case was founded on stipulated personnel department data. Plaintiffs relied on Dr. James J. Kirkpatrick, an industrial psychologist and experienced expert witness, to interpret the stipulated facts. They also called the County's chief personnel analyst, Frank V. Frazier, and Fire Chief Clyde A. Bragdon as adverse witnesses.

Defendant called 13 expert and lay witnesses, mostly Fire Department personnel, to prove job-relatedness of the selection devices and absence of legally sufficient alternative selection procedures.

The court concluded that plaintiffs failed to establish a *prima facie* case of disparate impact for the overall 1979 selection procedures. The court further concluded that plaintiffs failed to establish disparate impact against blacks and Hispanics for the ER and PAT. Nor did plaintiffs prove disparate impact against Hispanics for the written exam.

The only issue on which plaintiffs established a *prima facie* case was disparate impact against blacks on the written exam as a discrete selection device. However, the court found that the County carried its burden of proving the exam's job-relatedness. Plaintiffs failed to identify

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alternative selection devices that would serve the County's hiring needs with less adverse impact. Finally, the court concluded plaintiffs lacked standing to challenge any subsequent firefighter exam.

STANDARD OF REVIEW

Appellants assert that the findings below are not to be accorded the same weight as ***1427** findings written by the court. They allege that Judge Lucas incorporated 171 of 178 sub-parts from the County's proposed findings. Only certain proposed credibility determinations were rejected.

The recent Supreme Court decision in *Anderson v. City of Bessemer,* 105 S.Ct. 1504 (1985), is instructive. There, the district court adopted petitioner's findings and conclusions following issuance of a preliminary memorandum. The Court rejected the Fourth Circuit's suggestion that the record should be closely scrutinized. *Id.* at 1510-11. Because the party's findings were not "uncritically accepted," the clearly erroneous standard was retained. *Id.* at 1511.

Similarly, we note that Judge Lucas did not uncritically accept the County's proposed findings. He was careful to reject certain credibility findings with which he disagreed. Under these circumstances, "[t]here is no reason to subject those findings to a more stringent appellate review than called for by the applicable rules." *Id.*

We review the district court's findings of fact under the clearly erroneous standard of review. *Id.* at 1511-13; Fed.R.Civ.P. 52(a). "If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *Id.* at 1512.

[1] It is uncertain what standard of review applies to plaintiffs' establishment of a *prima facie* case. *Compare Peters v. Lieuallen,* 746 F.2d 1390, 1392 (9th Cir.1984) (clearly erroneous) *with Moore v. Hughes Helicopters, Inc.,* 708 F.2d 475, 480-81 (9th Cir.1983) (*de novo*). We believe *de novo* review is compelled because "the question requires us to consider legal concepts in the mix of fact and law." *United States v. McConney,* 728 F.2d 1195, 1202 (9th Cir.) (en banc), *cert. denied,* 469 U.S. 824, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984).

ANALYSIS

[2][3] Title VII "proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation." *Griggs v. Duke Power Co.,* 401 U.S. 424, 431, 91 S.Ct. 849, 853, 28 L.Ed.2d 158 (1971). It does not mandate special treatment in hiring merely because a person "was formerly the subject of discrimination, or because he is a member of a minority group." *Id.* Indeed, "[d]iscriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed." *Id.*

[4] To succeed under disparate impact theory, appellants must establish that a facially neutral employment practice produces a significant adverse impact on a protected class. *Connecticut v. Teal,* 457 U.S. 440, 446, 102 S.Ct. 2525, 2530, 73 L.Ed.2d 130 (1982); *Dothard v. Rawlinson,* 433 U.S. 321, 329, 97 S.Ct. 2720, 2726, 53 L.Ed.2d 786 (1977). Appellants can meet this burden through reliable statistics. *See Spaulding v. University of Washington,* 740 F.2d 686, 703 (9th Cir.), *cert. denied,* 469 U.S. 1036, 105 S.Ct. 511, 83 L.Ed.2d 401 (1984).

Intent to discriminate need not be shown. *International Brotherhood of Teamsters v. United States,* 431 U.S. 324, 335 n. 15, 97 S.Ct. 1843, 1854 n. 15, 52 L.Ed.2d 396 (1977). If a plaintiff fails to meet the initial burden of establishing a *prima facie* case of substantial adverse impact, validity of the selection device is irrelevant. *Moore v. Southwestern Bell Telephone Co.,* 593 F.2d 607, 608 (5th Cir.1979) (per curiam).

[5] If substantial impact is demonstrated by a preponderance of the evidence, the burden shifts to the employer to validate the selection device, that is, to show that it has "a manifest relationship to the employment in question." *Griggs,* 401 U.S. at 432, 91 S.Ct. at 854. When scored tests are involved, this circuit has required a showing that the test actually measure "skills, ***1428** knowledge or ability" required for successful performance on the job. *Contreras v. City of Los Angeles,* 656 F.2d 1267, 1283 (9th Cir.1981), *cert. denied,* 455 U.S. 1021, 102 S.Ct. 1719, 72 L.Ed.2d 140 (1982). *Contra Rivera v. City of Wichita Falls,* 665 F.2d 531, 538 n. 9 (5th Cir.1982) (test is legally sufficient if it validly predicts performance at the training academy).

If the employer fails to meet its burden, use of the selection device will be deemed a Title VII violation. If it succeeds, the plaintiff then may attempt to rebut the defendant's evidence by showing that although job-related, the test does not constitute a business necessity because an alter-

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native selection device exists which would have comparable business utility and less adverse impact. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 425, 95 S.Ct. 2362, 2375, 45 L.Ed.2d 280 (1975).

I. *Impact Analysis*

[6] Appellants urge rigid adherence to the so-called "80% rule" found in the Uniform Guidelines on Employee Selection Procedures (Uniform Guidelines), 29 C.F.R. Part 1607 (1984). The Uniform Guidelines apply to any selection procedure "used as a basis for making employment decisions." *Id.*, § 1607.2(C).

For determining adverse impact, the Uniform Guidelines set 80 percent as a "rule of thumb." Thus, a scored test or other selection device normally is considered to have adverse impact if it has a "selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate of the group with the highest rate...." *Id.*, § 1607.4(D). The rule does not require strict adherence.

> Smaller differences in selection rate may nevertheless constitute adverse impact, where they are significant in both statistical and practical terms or where a user's actions have discouraged applicants disproportionately on grounds of race, sex, or ethnic group. Greater differences in selection rate may not constitute adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be atypical of the normal pool of applicants from that group.

Id.

The Uniform Guidelines are not legally binding. *See General Electric Co. v. Gilbert*, 429 U.S. 125, 141-42, 97 S.Ct. 401, 410-11, 50 L.Ed.2d 343 (1976). They have not been promulgated as regulations and do not have the force of law. *Aquilera v. Cook County Police and Corrections Merit Board*, 760 F.2d 844, 847 (7th Cir.1985). Additionally, the 80 percent rule has been sharply criticized by courts and commentators. *See* E. Shoben, *Differential Pass-Fail Rates in Employment Testing: Statistical Proof Under Title VII*, 91 Harv.L.Rev. 793, 805 (1978) (ill-conceived rule capable of producing anomalous results because it fails to take account of differences in sampling size).

There is no consensus on a threshold mathematical showing of variance to constitute substantial disproportionate impact. Some courts have looked to *Castaneda v. Partida*, 430 U.S. 482, 496-97 n. 17, 97 S.Ct. 1272, 1281-82 n. 17 n. 17, 51 L.Ed.2d 498 (1977), which found adverse impact where the selection rate for the protected group was "greater than two or three standard deviations" from the selection rate of their counterparts. *See, e.g., Rivera*, 665 F.2d at 536-37 n. 7; *Guardians Association of the New York City Police Dept. v. Civil Service Commission*, 630 F.2d 79, 88 (2d Cir.1980), *cert. denied*, 452 U.S. 940, 101 S.Ct. 3083, 69 L.Ed.2d 954 (1981).

Others have applied the 80 percent rule of the Uniform Guidelines. *See, e.g., Firefighters Institute for Racial Equality v. City of St. Louis*, 616 F.2d 350, 356-57 (8th Cir.1980), *cert. denied*, 452 U.S. 938, 101 S.Ct. 3079, 69 L.Ed.2d 951 (1981) (finding adverse impact where black selection rate was between 42.5% and 44.4% of whites). Without endorsing either method, this circuit analyzes whether the statistical disparity is "substantial" or "significant" in a ***1429** given case. *Contreras*, 656 F.2d at 1274-75 (passing ratio of 2.45:1 established adverse impact); *Craig v. City of Los Angeles*, 626 F.2d 659, 661-62 (9th Cir.1980), *cert. denied*, 450 U.S. 919, 101 S.Ct. 1364, 67 L.Ed.2d 345 (1981) (failure ratio of 2.5:1 held to establish adverse impact).[FN7]

> FN7. Method of comparison affects whether adverse impact appears "substantial." Most courts compare selection rates; some compare failure rates. As noted above, this circuit has used both.

The plaintiffs concede that there is no "bottom line" adverse impact on blacks and Hispanics when evaluating the total selection process. Significantly, the district court found that there was "[n]o statistically significant difference between hires of Blacks and Hispanics and their representation in the Civilian Labor Force...." Finding No. 14(a)(1).

However, in *Connecticut v. Teal*, the Supreme Court held that discrete pass/fail barriers having adverse impact must be individually validated even if there is no "bottom line" disparate impact for the entire multicomponent selection process.[FN8] 457 U.S. at 442, 452, 102 S.Ct. at 2528, 2533. Here, the written exam, education requirement (ER), and physical agility test (PAT) are pass/fail barriers under *Teal*. Accordingly, we must evaluate each device separately for adverse impact. If plaintiffs establish a *prima facie* case as to any discrete selection device, we must consider whether

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defendant met its burden of proving job-relatedness.

> FN8. Significantly, the Uniform Guidelines take the opposite view. They provide that if the total selection process for a job does not have adverse impact, individual components having impact need not "in usual circumstances" be validated. 29 C.F.R. § 1607.4(C).

A. *Written Exam*

Considering the written exam as a discrete selection device, the district court found no actionable adverse impact for Hispanics while finding actionable impact for blacks. The parties disagree over the proper method to compute the exam's impact. Plaintiffs use failure rates and figures based on self-identification by racial codes. The district court adopted defendant's use of pass rates and figures based on visual survey and surname review by the test monitors. The tests were coded using the County's method, which is the only method of comparing tests over time. The figures are as follows:

	Whites	Blacks	Hispanics
Took Written Test	1816	436	525
Passed Written Test	1375	148	292
Passing Rate	75.7%	33.9%	55.6%

Appellants failed to prove that the court's method of comparison was clearly erroneous.

(1) *Hispanics*

Using the 80 percent rule, the court found that the difference between the passing rate achieved by Hispanics and 80 percent of the passing rate for whites was only 5 percent. Computing five percent of 525 Hispanic examinees, the court found the "relative small number differences ... [to be] unreliable as evidence of actionable adverse impact." Finding No. 15(f).

Appellants assert that the numerical differences here are large and statistically significant. They compare the exam pass rates here with those found to be actionable adverse impact in *Craig*, 626 F.2d at 661 n. 3. In that case, the pass rate for Mexican-Americans taking a test to select Deputy Sheriffs was 55 percent (compared to 55.6 percent here), while the white passing rate was 77 percent (compared to 75.7 percent here). *Id.* We find the appellants' arguments persuasive. The court erred in finding no actionable adverse impact against Hispanics considering the written exam as a pass/fail device.

Appellants also attack use of the written exam as a ranking device. However, they fail to prove that the district court's finding 15(i) [FN9] is clearly erroneous.

> FN9. "No evidence was adduced sufficient to establish the additional adverse impact of the written test as a weighted rather than pass/fail selection device."

***1430** (2) *Blacks*

Appellee does not dispute the finding of actionable impact against blacks taking the written exam. The battleground of this appeal concerns validation and less discriminatory alternatives, discussed later.

B. *Education Requirement (ER)*

The district court found that

> Plaintiffs have failed to show that the education requirement has an adverse impact on Blacks and Hispanics, whether in terms of actual applicants who were disqualified by the educational requirement or potential applicants who otherwise would have applied for the 1979 Firefighter Examination but for the educational requirement.

Finding No. 20.

To refute the court's detailed findings concerning the ER, appellants rely on generalized census figures reflecting percentages of Californians with high school degrees. These statistics are not differentiated by age and, therefore, cannot be used to establish disparate impact for the ER. *See Moore*, 708 F.2d at 482-83 (proxy pool must be that of the local labor force possessing the requisite skills); *Pack v. Energy Research and Development Administration*, 566 F.2d 1111, 1113 (9th Cir.1977) (per curiam) (labor pool

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must possess requisite skills).

Moreover, plaintiffs' expert, Dr. Kirkpatrick, testified at trial that the census figures included illegal aliens, who could not be employed as firefighters.

C. *Physical Agility Test (PAT)*

The district court found that plaintiffs failed to show that the 1979 PAT had any adverse impact on Hispanics, the only group challenging it. Finding No. 23. The court further found that the statistical analysis performed by plaintiffs' expert was unreliable. Appellants concede that the Hispanic pass rate was 81 percent of the white pass rate. They argue, however, that if only 15 more Hispanics had passed, their pass rate would increase by 25 percent.

Appellants' challenge to the PAT must fail. The numerical differences are too small for meaningful comparison. Contreras, 656 F.2d at 1273 n. 4 (statistics untrustworthy when minor numerical variations produce significant percentage fluctuations); *see also* Morita v. Southern California Permanente Medical Group, 541 F.2d 217, 220 (9th Cir.1976), *cert. denied,* 429 U.S. 1050, 97 S.Ct. 761, 50 L.Ed.2d 765 (1977) (statistical evidence derived from small universe has little predictive value and must be disregarded).

II. *Job-Relatedness*

Once plaintiffs have established a *prima facie* case of disparate impact for both blacks and Hispanics taking the written exam, the burden shifts to the County to prove the exam's job-relatedness. This circuit has held that the employer's burden is satisfied by showing "by professionally acceptable methods" that the test is "predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated." Contreras, 656 F.2d at 1280. *See also* 42 U.S.C. § 2000e-2(h) (Title VII expressly authorizes the use of "professionally developed" scored tests).

"A number of validation techniques are professionally acceptable." Craig, 626 F.2d at 664. Some courts use the detailed technical standards for validity studies set forth in the Uniform Guidelines. *See* 29 C.F.R. § 1607.14. It is undisputed that the County's validation studies in the present case do not meet the Guideline's standards. Few validation studies do, however. *See* C. Richey, *Manual on Employment Discrimination Law and Civil Rights Actions in the Federal Courts,* August 1984, at A-44.

This court has held that while noncompliance is "not necessarily fatal," it "diminishes the probative value of the defendants' validation study." Craig, 626 F.2d at 665. ***1431** The Supreme Court has approved validation studies which did not meet the standards of the Uniform Guidelines.[FN10]

> FN10. *See* National Education Assoc. v. South Carolina, 434 U.S. 1026, 98 S.Ct. 756, 54 L.Ed.2d 775 (1978), *aff'g mem.* United States v. South Carolina, 445 F.Supp. 1094, 1113 n. 20 (D.S.C.1977); Washington v. Davis, 426 U.S. 229, 262-63, 96 S.Ct. 2040, 2058-59, 48 L.Ed.2d 597 (1976) (Brennan, J. and Marshall, J., dissenting).

Appellants attempt to impeach the validation studies' reliability because they were prepared as a defense to litigation. As the County noted, it was impossible to assess the written exam's validity until after it was given and job performance of successful applicants measured. Validation studies are time-consuming and expensive. Teal, 457 U.S. at 463, 102 S.Ct. at 2539 (Powell, J., dissenting). Preparation for litigation should not affect their reliability. *See* Albemarle, 422 U.S. at 433 n. 32, 95 S.Ct. at 2379 n. 32; Contreras, 656 F.2d at 1283.

Appellants also raise what they allege to be fatal flaws with the studies: (1) failure to utilize a representative sample, (2) failure to control for racial bias by training captains at the Fire Academy, and (3) failure to perform differential validation for blacks and Hispanics. These claims must fail.

Appellants improperly rely on Blake v. City of Los Angeles, 595 F.2d 1367 (9th Cir.1979), *cert. denied,* 446 U.S. 928, 100 S.Ct. 1865, 64 L.Ed.2d 281 (1980), for their contention that a study must include those who failed. *Blake* was criticized in *Craig,* which approves of restricting the sample to those who passed. *See* Craig, 626 F.2d at 665 (sheriff's department not required to hire and train a sample of failing applicants to provide statisticians with more certain results).

Concerning racial bias at the Academy, the district court relied on the credible testimony of defendant's expert, Ms. Lorrayne Alstadt, who found no bias. Finding No. 17(d)(2)(b). The County established that subjective eval-

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uation in Academy grading was minimized through written standards for scoring drills. *See* Albemarle, 422 U.S. at 432-33, 95 S.Ct. at 2378-79 (vague instructions to supervisors too subjective). Appellants cannot show that the finding of no racial bias is clearly erroneous.

[7] Finally, appellants rely on their expert, Dr. Kirkpatrick, for their contention that differential validation should have been performed for blacks and Hispanics. The district court rejected Dr. Kirkpatrick's testimony as "contradictory; unsupported by sufficient data, analyses of data, or relevant authority; *contra* the consensus of professionals in his field of expertise; and *contra* the opinions of defendant's witnesses, both expert and lay, which were supported by substantial relevant experience, sufficient data, analyses of data, or relevant authority." Finding No. 17(d)(3)(j).

As the Supreme Court recently wrote:

> [W]hen a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error.

Anderson, 105 S.Ct. at 1513. Moreover, appellants' insistence on differential validation lacks support in the technical community. *See* B. Schlei & P. Grossman, *Employment Discrimination Law* 154 n. 151 (2d ed. 1983).

Defendant's evidence demonstrated that the Academy teaches principles and techniques of firefighting including hose lays, ladder techniques, use of ropes and knots, use of breathing apparatus, salvage and rescue techniques, and emergency medical training. These are the basic skills utilized on the job. Moreover, department policy requires that these basic skills be drilled by firefighters for two hours each day.

In conclusion, the County's validation studies demonstrate legally sufficient correlation to success at the Academy and performance on the job. Courts generally ***1432** accept correlation coefficients above +.30 as reliable. *Id.* at 129 n. 131; *see* Craig, 626 F.2d at 664 (accepting correlation coefficient of .60 as significant). As a general principle, the greater the test's adverse impact, the higher the correlation which will be required. *See, e.g.*, Guardians Association, 630 F.2d at 105-06. Here, the correlation coefficients are statistically significant and can be considered reliable under prevailing legal principles.

III. *Alternative Selection Devices*

Appellants assert that they identified two alternative selection devices which met the County's legitimate hiring needs with less adverse impact on protected minorities: 1) the 1973-78 procedures, and 2) the banding procedure adopted in April 1981.

Documentation of the County's search for alternative selection devices is extensive. The County solicited information about selection procedures from 57 county and 44 city fire departments statewide. They surveyed professionally developed tests. Finally, they investigated alternative means of using the same procedures.

[8] An employer is not required to choose the selection device with the least adverse impact on minority applicants. *Id.* at 110. Appellants contend they met the "virtually impossible" burden of identifying alternative selection devices which satisfy the employer's legitimate hiring needs.

A. *1973-78 Procedures*

The district court held that plaintiffs' "unspecified" alternative procedures did not meet the County's needs. Finding No. 19(c). This finding is not clearly erroneous.[FN11]

> FN11. The court found also that the proposed alternative was not legally available to the County in 1979 because it violated County ordinances and federal funding requirements. Finding No. 19(b)(3). We need not review this finding because of our holding that Finding No. 19(c) is not clearly erroneous. Specifically, we do not decide whether a less discriminatory alternative necessarily fails to meet an employer's hiring needs if it violates the employer's own regulations. As shown below, under these facts the court's finding that appellants have not satisfied their burden of establishing that another selection device without a similar discriminatory effect would serve the County's legitimate interest in efficient and trustworthy workmanship is not clearly erroneous. *See* Dothard, 433 U.S. at 329, 97 S.Ct. at 2726.

Appellants rely on testimony from defendant's Fire Chief

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that recruits hired under Judge Gray's hiring order were equally as competent as those hired under the 1979 selection procedures. This testimony falls short of establishing legally sufficient alternative selection procedures.

Appellee introduced evidence that the applicant population in the quota years was of higher quality than in 1979 due to the larger percentage of veterans (71% as opposed to 43% in 1979), who are well suited to the discipline of fire departments. The disparity between selection rates is partially explained by a high quality applicant pool during the quota years and an "atypical" pool during the period at issue here.

It is undisputed that the applicant pool for the 1979 exam was atypical due to special minority recruitment efforts. The percentage of minority applicants was almost double the corresponding percentage in the Civilian Labor Force. Plaintiffs' expert described the "stimulation effect" on minority applications created by the quota hiring years before 1979. Greater differences in the selection ratios are tolerated for an atypical applicant pool. 29 C.F.R. § 1607.4(D) (1984).

Moreover, there was considerable trial testimony concerning the cost savings of the 1979 procedures. Financial concerns are legitimate needs of the employer. *See Chrisner v. Complete Auto Transit, Inc.*, 645 F.2d 1251, 1263 (6th Cir.1981) (marginal cost of another hiring policy and implications for public safety are factors to be considered). The 1972-73 exam was shown to have less validity and greater financial impact than the 1979 exam. Moreover, the 1979 exam improved the chances of selecting qualified recruits.

***1433** Appellants' reliance on *Blake* for the proposition that compliance with Title VII may require modification of departmental policies is misplaced. *Contreras* recites the proper standards. In that case, the plaintiffs relied solely upon expert testimony that Hispanics generally do better in oral interviews than on written examinations. This court held that the use of oral interviews failed to satisfy the City's civil service hiring needs. *Contreras*, 656 F.2d at 1285 and n. 11. Similarly, appellants cannot establish that the procedures used from 1973-78 satisfied the County's civil service hiring needs in 1979.

Lastly, we note that plaintiffs' own expert criticized the validity of the oral interview when used as a ranking device. When Judge Gray's hiring order was in effect, final eligibility was based solely on ranked oral interview scores.

B. *1981-82 Procedures*

Appellants also advance the banding system as a second less discriminatory alternative. They correctly assert that the court's findings fail to address this alternative.

[9] District court findings are adequate if they are sufficiently comprehensive to provide a basis of decision and are supported by the record. *See Irish v. United States*, 225 F.2d 3, 8 (9th Cir.1955). Here, appellants failed to present evidence on the impact of the banding rule alone.

The imposition of the civil service banding rule coincided with Judge Lucas' injunction order. At oral argument, appellants conceded that it is impossible on the present record to evaluate the banding rule's impact on minority hiring. [FN12]

> FN12. The County asserts as a defense that the banding rule was not legally available in 1979. We decline to adopt this "legal unavailability" defense because it is unnecessary to our holding.

In conclusion, appellants have not sustained their burden of identifying alternative selection devices to the 1979 written exam that met the County's legitimate hiring needs.

IV. *Evidentiary Rulings*

[10] Lastly, appellants argue that the court erred in excluding defendant's Exhibit 248 from evidence. This exhibit contains a legal opinion that the 1979 selection procedures had an adverse impact on minority applicants. Evidentiary rulings are not reversible absent clear abuse of discretion. *See M.A.P. Oil Co., Inc. v. Texaco, Inc.*, 691 F.2d 1303, 1310 (9th Cir.1982). We find no abuse of discretion.

[11] In May 1982, U.S. Magistrate James Penne ruled that the portion of Exhibit 248 entitled "Firefighter-EEO Liability Analysis" was not discoverable because the attorney-client privilege attached to it. He found also that the document had been produced inadvertently during discovery and that the privilege had not been waived. It is undisputed that the appellants never appealed the magistrate's ruling. *See* Rule 4.1, *Local Rules Governing the Duties of the Magistrates of the United States District Court, Central District of California* (1981) (ten days for

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appeal of magistrate's order on non-dispositive motion).

At trial, the plaintiffs sought to elicit testimony about the exhibit from the author, Frank Frazier. The plaintiffs asserted that the document was included in the County's exhibits offered at trial. The court sustained the defendant's objection on the ground that the plaintiffs' challenge to the magistrate's ruling was not timely presented.

[12] Voluntary disclosure of a privileged attorney communication constitutes waiver. *Weil v. Investment/Indicators, Research and Management, Inc.*, 647 F.2d 18, 24 (9th Cir.1981). Inadvertence "does not as a matter of law prevent the occurrence of waiver." *Id.* It is only one factor to be considered.

However, the County denies that the challenged exhibit was part of its case. Nor was the exhibit admitted into evidence on the first day of trial as appellants assert.***1434** The court noted that the exhibit was undated, unsigned and unaddressed. In sum, appellants fail to allege facts or other proof that the court abused its discretion in rejecting the exhibit.[FN13]

> FN13. Appellants include other exhibits in their Excerpt of Record at pages 178-255 which were not admitted into evidence. They do not argue reversible error for the exclusion of these exhibits. This court has not considered them.

CONCLUSION

[13] Appellants asserted at oral argument that they should prevail because they established a *prima facie* case of adverse impact and the existence of an alternative selection device that selected equally competent firefighters. We disagree.

Through a meticulous validation analysis, conducted as soon as the 1979 recruit classes could be tested, the County met its burden of showing that the challenged exam was sufficiently correlated with successful job performance. The County also demonstrated that the exam met its needs by accurately screening candidates on the basis of their proficiency in a relatively inexpensive fashion. Finally, plaintiffs failed to establish that less discriminatory alternatives available to the County were equally tailored to its legitimate hiring needs.

"Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications." *Griggs*, 401 U.S. at 430, 91 S.Ct. at 853. "The touchstone [of Title VII] is business necessity." *Id.* at 431, 91 S.Ct. at 854. Unlike the situation in *Griggs*, the County adopted the challenged procedures after meaningful study of their relationship to job performance ability. Appellants would have us overlook those efforts.

In conclusion, appellants established a *prima facie* case of disparate impact against blacks and Hispanics for the written exam. However, they failed to demonstrate that the court's finding of job-relatedness was clearly erroneous. Nor did they establish an alternative selection device having comparable business utility and less adverse impact.

AFFIRMED.

C.A.9 (Cal.),1985.
Clady v. Los Angeles County
770 F.2d 1421, 38 Fair Empl.Prac.Cas. (BNA) 1575, 38 Empl. Prac. Dec. P 35,516

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824 F.Supp. 1360, 2 A.D. Cases 1374, 2 A.D.D. 1280, 4 NDLR P 52
(Cite as: 824 F.Supp. 1360)

C

United States District Court,
D. Nebraska.

Kristy M. COLEMAN, Plaintiff,
v.
Douglas ZATECHKA, Director of Housing for the University of Nebraska, Lincoln, in his Official Capacity; Graham B. Spanier, Chancellor, University of Nebraska, in his Official Capacity; Board of Regents of the University of Nebraska, A body Corporate Politic, Defendants.
No. 4:CV92-3314.

June 8, 1993.

University student who required use of wheelchair and services of personal attendant brought suit against university alleging that university's refusal to assign her roommate violated Americans with Disabilities Act (ADA) and Rehabilitation Act. The District Court, Piester, United States Magistrate Judge, held that: (1) student was qualified under both ADA and Rehabilitation Act to participate in university's roommate assignment program; (2) additional eligibility requirements, that students use no more than half space in room and that students not receive frequent daily visitors which might disrupt their roommate's solitude, were not necessary to roommate assignment program and could not be considered essential eligibility requirements for purposes of Rehabilitation Act and ADA; and (3) university's blanket policy prohibiting assignment of roommates to students with disabilities who require personal attendant care violated both Acts.

So ordered.

West Headnotes

[1] Release 331 ⚿38

331 Release
331II Construction and Operation
331k38 k. Operation and Effect in General. Most Cited Cases
Disabled university student's agreement to withdraw her claim with Department of Education's Office for Civil Rights in return for university's promise to find her a roommate did not bar student from filing lawsuit under Americans with Disabilities Act (ADA) and under Rehabilitation Act challenging university's policy of refusing to assign roommates to students with disabilities using personal attendants; agreement did not mention ADA or Rehabilitation Act and did not purport to resolve any potential claims thereunder, agreement contained no release language, even if university intended agreement to serve as waiver of all discrimination claims, agreement itself did not effectuate such waiver and given plain language of agreement, it was unlikely that student, who had not consulted attorney, would have interpreted agreement to be broad waiver of her rights. Rehabilitation Act of 1973, §§ 2 et seq., 504, as amended, 29 U.S.C.A. §§ 701 et seq., 794; Americans with Disabilities Act of 1990, §§ 2 et seq., 201 et seq., 42 U.S.C.A. §§ 12101 et seq., 12131 et seq.

[2] Civil Rights 78 ⚿1069

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1069 k. Disabled Students. Most Cited Cases
(Formerly 78k127.1)
Disabled university student was "qualified" under Rehabilitation Act to participate in university's roommate assignment program; only academic requirement for participation in program was admission to university and only nonacademic requirement was submission of completed residence hall contract application requesting double room and not specifying particular roommate and student met these requirements. Rehabilitation Act of 1973, § 504(b)(2)(A), as amended, 29 U.S.C.A. § 794(b)(2)(A); § 504, as amended, 29 U.S.C.(1982 Ed.) § 794.

[3] Civil Rights 78 ⚿1053

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General

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824 F.Supp. 1360, 2 A.D. Cases 1374, 2 A.D.D. 1280, 4 NDLR P 52
(Cite as: 824 F.Supp. 1360)

78k1051 Public Services, Programs, and Benefits
78k1053 k. Discrimination by Reason of Handicap, Disability, or Illness. Most Cited Cases
(Formerly 78k107(1))
Although Americans with Disabilities Act (ADA) provides persons with disabilities with same rights and remedies as provided under Rehabilitation Act, ADA is not limited to programs receiving federal funding, but rather applies to all public entities. Rehabilitation Act of 1973, §§ 2 et seq., 504, as amended, 29 U.S.C.A. §§ 701 et seq., 794; Americans with Disabilities Act of 1990, §§ 2 et seq., 201 et seq., 42 U.S.C.A. §§ 12101 et seq., 12131 et seq.

[4] Civil Rights 78 1069

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1069 k. Disabled Students. Most Cited Cases
(Formerly 78k127.1)
University of Nebraska which was established by state legislature as state institution was "public entity" within meaning of Americans with Disabilities Act (ADA). Americans with Disabilities Act of 1990, § 201(1)(A, B), 42 U.S.C.A. § 12131(1)(A, B); Neb.Rev.St. §§ 85-101, 85-103.

[5] Civil Rights 78 1069

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1069 k. Disabled Students. Most Cited Cases
(Formerly 78k127.1)
University student having cerebral palsy was "qualified" under Americans with Disabilities Act (ADA) to participate in university's roommate assignment program; essential eligibility requirements for participation in program were admission to university and submission of completed residence hall contract application requesting double room but not specifying particular roommate and student met these eligibility requirements. Americans with Disabilities Act of 1990, § 201(2), 42 U.S.C.A. § 12131(2).

[6] Civil Rights 78 1069

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1069 k. Disabled Students. Most Cited Cases
(Formerly 78k127.1)
University's eligibility requirement for roommate assignment program, that students use no more than half space in room, was not necessary to program and could not be considered essential eligibility requirement which disabled student who required use of wheelchair and services of personal attendant had to meet in order to be qualified to participate in program under either Rehabilitation Act or Americans with Disabilities Act (ADA); university allowed students who use wheelchairs but do not require attendant care to participate in program and university's concern over equity in amount of physical space utilized by each roommate was not concern generally applied to non-disabled students since there was no requirement that roommates use only half space in double room. Rehabilitation Act of 1973, §§ 2 et seq., 504, as amended, 29 U.S.C.A. §§ 701 et seq., 794; Americans with Disabilities Act of 1990, §§ 2 et seq., 201 et seq., 42 U.S.C.A. §§ 12101 et seq., 12131 et seq.

[7] Civil Rights 78 1069

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1069 k. Disabled Students. Most Cited Cases
(Formerly 78k127.1)
University's assumption that student's use of wheelchair caused her to utilize more than half space in double dormitory room fell far short of individualized assessment required by Americans with Disabilities Act (ADA). Americans with Disabilities Act of 1990, §§ 2 et seq., 201 et seq., 42 U.S.C.A. §§ 12101 et seq., 12131 et seq.

[8] Civil Rights 78 1069

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General

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78k1059 Education
78k1069 k. Disabled Students. Most Cited Cases
(Formerly 78k127.1)
University's eligibility requirement for roommate assignment program, that students not receive frequent daily visitors which might disrupt their roommate's solitude, was not necessary to program and could not be considered essential eligibility requirement which student, who required services of personal attendant to assist her with dressing, showering and toileting three times daily, had to meet in order to be qualified to participate in program under either Americans with Disabilities Act (ADA) or Rehabilitation Act; personal attendant visits were not unusually disruptive, and to extent that visits were disruptive, disruptions were not of sort unique to roommates with disabilities. Rehabilitation Act of 1973, §§ 2 et seq., 504, as amended, 29 U.S.C.A. §§ 701 et seq., 794; Americans with Disabilities Act of 1990, §§ 2 et seq., 201 et seq., 42 U.S.C.A. §§ 12101 et seq., 12131 et seq.

[9] Civil Rights 78 1069

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1069 k. Disabled Students. Most Cited Cases
(Formerly 78k127.1)
University's blanket policy prohibiting assignment of roommates to students with disabilities who require personal attendant care violated both Rehabilitation Act and Americans with Disabilities Act (ADA). Rehabilitation Act of 1973, §§ 2 et seq., 504, as amended, 29 U.S.C.A. §§ 701 et seq., 794; Americans with Disabilities Act of 1990, §§ 2 et seq., 201 et seq., 42 U.S.C.A. §§ 12101 et seq., 12131 et seq.

[10] Civil Rights 78 1069

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1069 k. Disabled Students. Most Cited Cases
(Formerly 78k127.1)
Although university's policy prohibiting assignment of roommates to students with disabilities who require personal attendant care may have been adopted as accommodation to such students who were uncomfortable having roommate present during visits, nothing in Rehabilitation Act or Americans with Disabilities Act (ADA) required that disabled student requiring services of personal attendant accept such accommodations simply because they existed; so long as disabled student was qualified to participate in roommate assignment program, she had to be given option of participating in program. Rehabilitation Act of 1973, §§ 2 et seq., 504, as amended, 29 U.S.C.A. §§ 701 et seq., 794; Americans with Disabilities Act of 1990, §§ 2 et seq., 201 et seq., 42 U.S.C.A. §§ 12101 et seq., 12131 et seq.

[11] Civil Rights 78 1069

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1069 k. Disabled Students. Most Cited Cases
(Formerly 78k127.1)
University's blanket policy prohibiting assignment of roommates to students with disabilities who require personal attendant care unnecessarily separated students with disabilities from those without disabilities and, thus, struck at essence of Americans with Disabilities Act (ADA) and specifically violated statute's stated purpose to provide clear and comprehensive national mandate for elimination of discrimination against individuals with disabilities. Rehabilitation Act of 1973, §§ 2 et seq., 504, as amended, 29 U.S.C.A. §§ 701 et seq., 794; Americans with Disabilities Act of 1990, §§ 2 et seq., 2(b)(1), 201 et seq., 42 U.S.C.A. §§ 12101 et seq., 12101(b)(1), 12131 et seq.

[12] Civil Rights 78 1452

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1452 k. Education. Most Cited Cases
(Formerly 78k267)
University would be required to amend its policy, prohibiting assignment of roommates to students with disabilities who require personal attendant care, to allow student who required use of wheelchair and

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services of personal attendant choice of either rooming alone or participating in university's roommate assignment program since university's policy, as applied to student, violated both Rehabilitation Act and Americans with Disabilities Act (ADA). Rehabilitation Act of 1973, §§ 2 et seq., 504, as amended, 29 U.S.C.A. §§ 701 et seq., 794; Americans with Disabilities Act of 1990, §§ 2 et seq., 201 et seq., 42 U.S.C.A. §§ 12101 et seq., 12131 et seq.

[13] Civil Rights 78 ⚿1464

78 Civil Rights
78III Federal Remedies in General
78k1458 Monetary Relief in General
78k1464 k. Measure and Amount. Most Cited Cases
(Formerly 78k274)
Disabled university student was entitled to compensatory damages in amount of $1,000 under Rehabilitation Act for feelings of isolation and segregation she experienced as result of university's failure to assign her a roommate and university's subsequent efforts in attempting to persuade students to agree to be her roommate. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794.

[14] Civil Rights 78 ⚿1476

78 Civil Rights
78III Federal Remedies in General
78k1476 k. Costs. Most Cited Cases
(Formerly 78k291)

Civil Rights 78 ⚿1482

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1482 k. Results of Litigation; Prevailing Parties. Most Cited Cases
(Formerly 78k296)
Disabled university student was entitled to costs and attorney fees under Rehabilitation Act and Americans with Disabilities Act (ADA) for successfully challenging university's policy prohibiting assignment of roommates to students with disabilities who require personal attendant care. Rehabilitation Act of 1973, § 505, as amended, 29 U.S.C.A. § 794a; Americans with Disabilities Act of 1990, § 505, 42 U.S.C.A. § 12205.

***1362** Randal B. Brown,Rebecca M. Peterson, NE Advocacy Services, Inc., Lincoln, NE, for plaintiff.

John C. Wiltse, Richard R. Wood, University of NE, Lincoln, NE, for defendants.

MEMORANDUM OF DECISION

PIESTER, United States Magistrate Judge.

Plaintiff filed this action alleging defendants have discriminated against her on account of her disability in violation of the Americans with Disabilities Act of 1990, *see* 42 U.S.C. § 12131, *et seq.,* and Section 504 of the Rehabilitation Act of 1973, *see* 29 U.S.C. § 794. Trial was held commencing on April 19, 1993 and continuing for 2 days. For reasons stated more fully below, I shall enter judgment for plaintiff.[FN1]

FN1. The parties consented to have this action proceed before me pursuant to 28 U.S.C. § 636(c). (Filing 31).

I. *Findings of Fact*

Plaintiff, a twenty-one year old student attending the University of Nebraska, Lincoln (UNL), has cerebral palsy. Due to the resulting paresis in her legs plaintiff requires the use of a wheelchair and the services of a personal attendant to assist her with dressing, showering and toileting.

In the summer of 1991 plaintiff applied to and was accepted by UNL as an undergraduate student for the 1991-92 academic year. Prior to beginning classes she completed and submitted a residence housing contract application to secure dormitory housing. On her ***1363** application plaintiff indicated she wanted a double room in Selleck Hall,[FN2] and preferred a nonsmoking roommate. (Exhibit 1). Because plaintiff requested a double room but did not specify a particular individual with whom she wished to be housed, she expected that her name would be placed in the pool of roommate candidates and she would be randomly assigned a roommate by the UNL Housing Department, as is UNL's usual procedure.[FN3] The Residence Hall Handbook, which is provided to all UNL students who request student housing, states that "[b]ecause of Federal and State law, roommate assignments will not be made on the basis of ... handicap...." (Exhibit 6 at 6;

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exhibit 7 at 8).[FN4] There is no dispute that plaintiff, having been admitted to the university and having completed and submitted a residence housing contract application requesting a double room, met all the requirements necessary to be randomly assigned a roommate.

> FN2. The evidence showed that Selleck Hall has undergone more extensive modification than other residence halls and is best equipped to accommodate the needs of students with mobility impairments. Selleck is equipped with ramps, electric door openers, wider doors, bathroom and plumbing modifications, electrical modifications and warning systems. In Selleck, the cafeteria and the modified dorm rooms are located on the first floor. Selleck Hall is a co-ed dorm and has adopted a 24-hour open visitation policy; there is no limit to the number or duration of permissible visits.
>
> FN3. All students who request a double room but do not request a particular roommate are placed into a roommate pool and randomly assigned a roommate by UNL Housing. An attempt is made, when possible, to match potential roommates according to smoking preference, academic interests and hobbies. Students who wish to be assigned a *particular* roommate submit their housing applications together and designate therein the name of the student with whom they wish to be housed.
>
> FN4. The residence hall contract application that plaintiff completed, signed and submitted to the university contained similar language:
>
> > By federal law, room assignments and room changes cannot be made on the basis of race, color, religion, handicap, or national or ethnic origin.
> >
> > (Exhibits 1 and 2).

Upon arriving at UNL in August of 1991, plaintiff discovered she had been assigned a dormitory room in Selleck hall but was disappointed to discover she had not been assigned a roommate. She later was informed that university policy prohibits the assignment of roommates to students with disabilities who require personal attendant care. The policy in question reads as follows:

> Although the University will attempt to assign residence hall living accommodations to all students based upon the choices made in a student's residence hall contract application, the University cannot always do so. *In the case of students with disabilities or special medical considerations, double rooms will not be assigned if personal attendant service, nursing care, or trained animal assistance is required unless there is a mutual room request....* The University will provide a special grant to cover the difference between the double and single room rate for any student assigned to a single room as a result of this policy if the differential cannot be covered by a third party payer.

(Filing 27 at 2-3) (emphasis supplied). Thus, although it is UNL's practice to assign roommates to all students who request double rooms but do not specify particular roommates, UNL policy prohibits the assignment of roommates to students with disabilities requiring personal attendant care. [FN5] This is a blanket policy, and defendants testified that no individualized inquiry is made when a student with a disability requests a roommate to determine the extent of a student's disability, the dimensions of any equipment necessitated by the disability, or the number, duration and nature of any necessary personal attendant visits.

> FN5. The evidence showed that although UNL will not randomly assign a roommate to disabled students requiring personal attendant care, the policy does not prevent such a student from having a "voluntary" roommate-that is, a roommate who willingly agrees in advance to live with the disabled student. As defendants stated in their answer:
>
> > Defendants have repeatedly told plaintiff that she is free to have a roommate but that the University will not require another student to be her roommate.
> >
> > (Filing 4 at 2).

***1364** Defendant Zatechka testified that the policy in question was first implemented roughly thirteen years ago, at a time when UNL had a relatively small

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number of students with disabilities. Responding to complaints from disabled students who expressed embarrassment at having an assigned roommate present during attendant care visits, and hoping to eliminate the room change requests from assigned roommates who found themselves in what Zatechka described as a "less than desirable" situation, the university decided to permanently set aside a block of double rooms to be used as single rooms by students with disabilities requiring attendant care. The policy was intended to accommodate the privacy concerns of students with disabilities requiring attendant care and avoid the hurt feelings and administrative worries that followed the room change requests. It appears plaintiff is the first student at UNL to openly challenge the policy and request the assignment of a roommate. [FN6]

FN6. Two other students with disabilities testified that although they had roomed with friends in the past at UNL, they would not want a roommate randomly assigned to them because they would feel uncomfortable having someone they did not know present during attendant care visits. On cross examination, the students acknowledged that it was their personal choice not to be assigned a roommate.

After plaintiff unsuccessfully renewed her request for an assigned roommate, she filed a formal complaint against UNL with the United States Department of Education's Office for Civil Rights (exhibit 106) charging that UNL did not provide students with disabilities with housing comparable to that provided other students. Shortly after the complaint was filed a meeting was scheduled between plaintiff, UNL, and the Office for Civil Rights (OCR) in an attempt to resolve the dispute. Following formal discussions, plaintiff agreed to withdraw her OCR charge in exchange for UNL's promise to make a prompt and vigorous effort to find her a "mutually acceptable" roommate for the fall 1992 term.[FN7]

FN7. Plaintiff also filed a complaint with the United States Department of Housing and Urban Development (exhibit 104) charging discrimination in housing on the basis of her disability. She dismissed the HUD complaint at the same time she withdrew her complaint with the Office for Civil Rights.

After withdrawing her OCR complaint, plaintiff heard nothing for two months regarding UNL's attempts to find her a roommate. Believing UNL was not living up to the terms of the agreement, plaintiff filed a second OCR complaint against the university. (Exhibit 110).[FN8] Although UNL had not been communicating with plaintiff regarding its efforts to locate a roommate for her, the evidence showed the university had in fact been pursuing the matter during the months following the agreement.

FN8. The evidence indicated that plaintiff's second complaint was formally investigated by the Office for Civil Rights, but there was no testimony regarding the outcome of such investigation.

Shortly after the agreement was signed UNL housing staff was directed by defendant Zatechka to contact certain female students and ask whether they would voluntarily agree to be plaintiff's roommate.[FN9] Six women were contacted; none was interested in rooming with plaintiff. Housing staff then contacted eight additional students, none of whom wanted to room with plaintiff. Plaintiff finished out the 1991-92 school year without a roommate.

FN9. An attempt was made to contact women living in Selleck Hall who were studying in health-related fields.

Prior to beginning classes for the 1992-93 academic year plaintiff again completed and submitted a residence housing application to secure dormitory housing. On her application she once again indicated she wanted a double room in Selleck Hall and preferred a nonsmoking roommate. (Exhibit 2). Due to plaintiff's disability and need for minimal attendant care, her name was not placed in the pool of roommate candidates and she was not assigned a roommate for the 1992-93 academic year.

Despite their persistent refusal to assign plaintiff a roommate, defendants continued their efforts to locate a "voluntary" roommate for her. A form letter was sent to approximately 680 female students who had signed residence hall contracts for the 1992-*1365 93 academic year, informing them that a junior studying human development and the family who uses a wheelchair and requires minimal attendant care wanted to share a room in Selleck Hall with a non-

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smoking female. (Exhibit 4). Interested parties were instructed to contact housing staff. The letter generated only one response, from a student who mistakenly believed her room and board would be paid by the university if she agreed to room with plaintiff. After being informed she would be required to pay the standard rate for a double room, the student lost interest.

In a final effort to locate a voluntary roommate for plaintiff, six female students were contacted by the university and offered $550.00 off the charge for a double room if they would agree to be plaintiff's roommate. Defendant Zatechka testified that this figure was chosen because students are charged $550.00 more for single rooms than double rooms, and it was determined that a further reduction in privacy [FN10] was worth an additional $550.00. No student was interested.

> FN10. The financial incentive was premised upon the university's assumption that rooming with a disabled student such as plaintiff would impinge upon a roommate's privacy more dramatically than rooming with a non-disabled student.

At no time during their extensive efforts to locate a voluntary roommate for plaintiff did the university communicate to plaintiff their plans for approaching students, sending letters to students or offering financial incentives to students to persuade them to be her roommate.[FN11] Plaintiff acknowledges that defendants have expended a great deal of time and energy attempting to locate someone who will agree to be her roommate, but nevertheless is dissatisfied with, and offended by, the approach the university has taken in its efforts. Plaintiff does not wish to be singled out and treated differently merely because she has a disability, and she is not asking that special accommodations be made for her; rather, she wants only to be treated like all other students who request a double room but do not specify a particular roommate-that is, she wants her name placed in the pool of students to be assigned a roommate. The university remains adamant in its position that it "will not require another student to be [plaintiff's] roommate." (Exhibit 115 at 2).

> FN11. Defendant Zatechka testified that although Chancellor Graham Spanier was not personally informed of each attempt to locate a voluntary roommate for plaintiff, Zatechka met with the Chancellor to explain what was being done to comply with the agreement to find plaintiff a voluntary roommate, and Spanier was aware of and approved the $550.00 financial incentive offered to encourage students to be plaintiff's roommate. Further, I note defendant Spanier was familiar with plaintiff's request for an assigned roommate and the university's denial of same. *See* exhibit 3.

Plaintiff testified the university's refusal to assign her a roommate because of her disability, combined with the approach taken in attempting to persuade students to agree to be her roommate, has made her feel isolated and stigmatized.

When asked why she wants a roommate, plaintiff testified that when she transferred to UNL from Peru State College in 1991 she didn't know anyone in Lincoln and believed a roommate would facilitate and enhance her social involvement. Although she has since made some friends and become active in residence-hall government, she continues to believe a roommate would enable her to meet, and perhaps become friends with, people who have different interests, lifestyles and possibly even different cultures from her own. In summary, she wants the growth experience of rooming with another college student while attending UNL.[FN12] Contrary to defendants' suggestion that plaintiff is seeking the assignment of a roommate hoping to obtain free personal attendant care, plaintiff made it very clear that she does not expect, nor would she want, an assigned roommate to provide her with personal attendant care; ***1366** that service is, and will continue to be, provided by trained professionals.[FN13]

> FN12. Many of the reasons given by plaintiff for wanting a roommate were also mentioned by defendant Zatechka when he was asked to identify the advantages to having a roommate. Defendant Zatechka testified that roommates provide opportunities to make new friends and have new experiences; they provide students with someone to share things with, go places with, and attend events with; and he suggested there is educational merit to rooming with another student because students learn to compromise.

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> FN13. Plaintiff's personal attendant care is provided by Heartland Home Health Care Services and is paid for by Medicaid. She is visited three times each day by one of three personal attendants, all of whom are female. Each morning an attendant arrives at plaintiff's dorm room and assists her in getting out of bed, getting showered, and getting dressed and ready for classes. The morning visit lasts roughly one hour; plaintiff and the attendant spend about half this time in the dorm room and the remainder of the visit is spent down the hall in the restroom. Each afternoon an attendant arrives to take plaintiff to the restroom; this visit lasts roughly fifteen minutes. Each evening an attendant arrives and assists plaintiff into her night clothes, takes her to the restroom, helps her into bed and plugs her wheelchair in for recharging. The evening visit lasts twenty to thirty minutes.

Defendants admit plaintiff's name has never been placed in the pool of students to be assigned a roommate, and further admit that due to her disability and need for minimal attendant care, UNL policy excludes her from participating in the assigned roommate program.

II. *Conclusions of Law*

A. *OCR Complaint*

[1] As a preliminary matter, I first address defendants' argument that, by agreeing to withdraw her OCR charge, plaintiff waived her right to pursue remedies afforded her under the ADA and the Rehabilitation Act for discrimination stemming from UNL's refusal to assign her a roommate. The plain language of the agreement does not support such a conclusion.

The agreement in question was clearly limited on its face to withdrawing the OCR complaint in return for the promise to find a roommate; the agreement did not mention the ADA or the Rehabilitation Act and it did not purport to resolve any potential claims thereunder. In fact, the agreement contained no "release" language whatsoever. It is difficult to understand how defendants can suggest the OCR agreement bars future litigation when the agreement did not even bar the filing of a second OCR complaint. Furthermore, even if defendants *intended* the agreement to serve as a waiver of all discrimination claims stemming from their refusal to assign her a roommate, the agreement itself does not effectuate such a waiver, and, given the plain language of the agreement, it is unlikely plaintiff (who did not consult an attorney prior to signing the OCR agreement) would have interpreted the agreement to be attempting such a broad waiver of rights. In short, plaintiff's agreement to withdraw her OCR complaint in return for the University's promise to find her a roommate did not bar her from filing this lawsuit challenging UNL's policy of refusing to assign roommates to students with disabilities using personal attendants.

B. *"Qualified" Individual-Criteria*

Plaintiff has brought this action pursuant to section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.[FN14] The Rehabilitation Act, as amended, provides in relevant part that:

> FN14. Because the relevant portion of the ADA did not become effective until January 26, 1992, plaintiff's ADA claim is limited to the alleged discrimination occurring after that date.

> No otherwise qualified individual with handicaps ... shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....
> 29 U.S.C. § 794 (1988).[FN15]

Defendants do not dispute that plaintiff is an individual with a handicap or that the university is the recipient of federal financial assistance; rather, as discussed more fully below, they contend plaintiff is not "otherwise qualified" to participate in the roommate assignment program.

> FN15. The statute defines "program or activity" as:
>
> > all of the operations of ... a college, university, or other postsecondary institution, or a public system of higher education....
> >
> > 29 U.S.C. § 794(b)(2)(A). Therefore, UNL's practice of randomly assigning

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> roommates to students requesting double rooms is properly considered a "program or activity" within the meaning of the Rehabilitation Act.

In the postsecondary education context, a ***1367** "qualified" handicapped person [FN16] is defined as one who:

> FN16. The regulations explain why the term "qualified handicapped person" is used in the regulations rather than the statutory term "otherwise qualified" handicapped person:
>
> > The Department believes that the omission of the word "otherwise" is necessary in order to comport with the intent of the statute because, read literally, "otherwise" qualified handicapped persons include persons who are qualified except for their handicap, rather than in spite of their handicap. Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be "otherwise qualified" for the job of driving. Clearly, such a result was not intended by Congress. In all other respects, the terms "qualified" and "otherwise qualified" are intended to be interchangeable.
>
> 45 C.F.R. Pt. 84, App. A at 379.

meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity.
45 C.F.R. § 84.3(k)(3). The "technical standards" which must be met in order to be "qualified" refer to "all nonacademic admissions criteria that are essential to participation in the program in question." 45 C.F.R. Pt. 84, App. A at 380. Thus, under the Rehabilitation Act, a handicapped individual is "otherwise qualified" to participate in a postsecondary program or activity so long as he or she meets the academic and nonacademic admissions criteria that are essential for participation in the program.

[2] The evidence showed the only academic requirement for participation in the roommate assignment program is admission to the university. Plaintiff has been admitted to the university and was so admitted at the times she requested an assigned roommate. The evidence showed the only nonacademic criteria essential for participation in the roommate assignment program is submission of a completed residence hall contract application requesting a double room and not specifying a particular roommate. Plaintiff submitted completed residence hall contract applications for both the 1991-92 and the 1992-93 academic years, both times requesting a double room and indicating a preference for a nonsmoking roommate. Thus, having been admitted to the university and having submitted residence housing contract applications requesting a double room, plaintiff has met all the essential academic and nonacademic requirements necessary to be randomly assigned a roommate and is "qualified" under the Rehabilitation Act to participate in the roommate assignment program.

The Americans with Disabilities Act of 1990 provides in relevant part:

> no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132.[FN17] Cerebral palsy is recognized as a disability under the ADA. *See* 28 C.F.R. § 35.104(1)(ii).

> FN17. The regulations explain that use of the term "disability" instead of "handicap" represents an effort to use currently acceptable terminology:
>
> > As with racial and ethnic epithets, the choice of terms to apply to a person with a disability is overlaid with stereotypes, patronizing attitudes, and other emotional connotations. Many individuals with disabilities, and organizations representing such individuals, object to the use of such terms as "handicapped person" or "the handicapped." ... In enacting the Americans with Disabilities Act, Congress concluded that it was important for the current legislation to use terminology most in line with the sensibilities of most Americans with disabilities. No change in definition or substance is intended nor should one be

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824 F.Supp. 1360, 2 A.D. Cases 1374, 2 A.D.D. 1280, 4 NDLR P 52
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attributed to this change in phraseology.

28 C.F.R. Pt. 35, App. A at 432.

[3][4] Although the ADA provides persons with disabilities with the same rights and remedies as provided under the Rehabilitation Act, *see* 42 U.S.C. § 12133, the ADA is not limited to programs receiving federal funding, but rather applies to *all* public entities. 28 C.F.R. Pt. 35, App. A at 429. The term "public entity" includes States and any department, agency or other instrumentality of a State. 42 U.S.C. § 12131(1)(A) and (B). The University of Nebraska was established by the Nebraska Legislature as a state institution, *Neb.Rev.Stat.* § 85-101 (Reissue 1987) [FN18], and properly is considered a "public ***1368** entity" within the meaning of the ADA. *Cf. Petersen v. University of Wisconsin Board of Regents,* 818 F.Supp. 1276 (W.D.Wis.1993) (University of Wisconsin is a "public entity" within the meaning of the ADA).

FN18. The University of Nebraska is governed by the defendant Board of Regents, a board comprised of eight publicly elected individuals. *Neb.Rev.Stat.* § 85-103 (Reissue 1987).

[5] The ADA defines a "qualified" individual with a disability as one who:

with or without reasonable modifications to rules, policies, or practices ... meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C. § 12131(2). As mentioned above, the evidence showed the essential eligibility requirements for participation in the roommate assignment program are: (1) admission to the university; and (2) submission of a completed residence hall contract application requesting a double room but not specifying a particular roommate. There is no dispute that plaintiff met these eligibility requirements. Thus, she is "qualified" under the ADA to participate in the roommate assignment program.

C. *Other Eligibility Criteria*

Defendants argue, however, that plaintiff is not qualified under either the Rehabilitation Act or the ADA to participate in the roommate assignment program because:

her disability requires her to use more space than allotted to a double room occupant and to have attendant care visits at least three times a day, thereby impinging on the physical space and solitude her roommate might otherwise be able to enjoy were it not for the plaintiff's medical needs.

(Defendant's Trial Brief at 6). Defendants' argument essentially implies that, in addition to being admitted to the university and submitting a proper residence hall contract application, there are two additional, implied eligibility requirements which must be met before a student can be considered "qualified" to be assigned a roommate: (1) the student must not use more space than allotted to a double room occupant (presumably half the room), and (2) the student must not routinely have three or more visitors per day. Those who do not meet these additional eligibility requirements, defendants suggest, are not qualified to participate in the roommate assignment program.

The ADA prohibits the utilization of eligibility criteria that:

screen out or tend to screen out ... any class of individuals with disabilities from fully enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

28 C.F.R. § 35.130(b)(8).[FN19] Therefore, I shall consider the additional eligibility requirements advanced by defendants to determine whether they are "necessary" to the roommate assignment program, 28 C.F.R. § 35.130(b)(8), and can properly be considered "essential" eligibility requirements, 42 U.S.C. § 12131(2); 45 C.F.R. Pt. 84, App. A at 380, which must be met in order to be qualified to participate in the roommate assignment program.[FN20]

FN19. Likewise, the Rehabilitation Act prohibits the utilization of criteria that "have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap." 45 C.F.R. § 84.4(b)(4).

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> FN20. The regulations do not offer clarification regarding the meaning of "essential eligibility requirements" due to the variety of situations in which an individual's qualifications will be at issue. *See* 28 C.F.R. pt. 35, App. A at 436.

1. *Equal Space Utilization*

[6] Defendants suggest that to be "qualified" to participate in the roommate assignment program a student must not utilize more than half the space in the room. For the reasons discussed below I conclude this is not an "essential" eligibility requirement under either the ADA or the Rehabilitation Act.

[7] First, although defendants suggest that students using wheelchairs utilize more physical space in a double room than nondisabled students, I cannot conclude from the evidence presented that plaintiff actually utilizes more than half of the space in the ***1369** double room she has been assigned, or that the amount of space she does use would unnecessarily impinge upon an assigned roommate's physical space. Moreover, even if the evidence had shown that plaintiff utilized more than half the space in the room, this is not something defendants knew prior to refusing her request to assign her a roommate, as no individualized inquiry was conducted to determine the amount, size or location of the equipment used by plaintiff. Defendants simply made an assumption that because she uses a wheelchair she will utilize more than half the space in the dormitory room.[FN21] The ADA prohibits using assumptions of this sort rather than facts and conclusions gleaned from individualized inquiry:

> FN21. At trial defendants produced an exhibit, a mechanical drawing, showing the radius space needed to turn a wheelchair in a typical dormitory room. The exhibit demonstrated that more than half of the available floor space may be necessary to accommodate turning around in a wheelchair; however, this exhibit was not created as an individual assessment of plaintiff's space needs prior to excluding her from the roommate assignment program.

> [The provisions of the ADA] are intended to prohibit exclusion and segregation of individuals with disabilities ... based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to ensure their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do.

28 C.F.R. Pt. 35, App. A at 439. Defendants' assumption that plaintiff's use of a wheelchair causes her to utilize more than half the space in a dormitory room falls far short of the individualized assessment that is required by the ADA. *See also Anderson v. Little League Baseball, Inc.*, 794 F.Supp. 342 (D.Ariz.1992) (blanket policy of prohibiting coaches in wheelchairs from being on the field violates the ADA; baseball league needs to make individualized assessments).

Second, although the university purports to be concerned about the amount of dormitory room space utilized by students in wheelchairs, the challenged policy does not prohibit students using wheelchairs from being assigned roommates so long as the students do not also require attendant care. Defendants explain they do not apply the challenged policy to these students because they "expect the roommate to yield some to the needs of the other roommate for slightly more physical space. The roommates must, after all, share the room with each other." (Defendants' Trial Brief at 6-7). The university allows students who use wheelchairs but do not require attendant care to participate in the roommate assignment program; this fact effectively undermines the contention that plaintiff cannot be assigned a roommate because her wheelchair utilizes too much physical space.

Third, it is important to note that defendants' concern over equity in the amount of physical space utilized by each roommate is not a concern generally applied to nondisabled students. There is no requirement, for instance, that roommates use only half the space in a double room; rather, students are allowed-indeed encouraged-to arrange and decorate their room how ever they choose. *See* exhibit 6 at 6; exhibit 7 at 8. There are no limitations placed on the amount of additional furniture, permissible appliances or personal property a student can bring from home to use in his or her dormitory room.[FN22] Defendant Zatechka testified that the university does not police how much personal property a roommate brings in, and would become aware that a particular student was dominating room space only if the other roommate complained to housing staff. Absent evidence that defendants ac-

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tually require*1370 dormitory room space to be evenly divided between roommates and actively enforce such a requirement, I cannot conclude that it is an "essential" eligibility requirement that a student not utilize more than half the floor space in the room.

> FN22. Although there are no limitations placed on the amount of property a student may bring from home, there are some limitations regarding the *type* of property which can be brought into the dormitories. Due to construction limitations students may not have waterbeds, jacuzzis or aquariums larger than 55 gallons in their rooms. Refrigerators, although allowed, can be no larger than 5.0 cubic feet. For health and safety reasons the university does not allow students to use hot plates or electric skillets for cooking, but microwaves are permitted. *See* Exhibit 6 at 6-7; exhibit 7 at 7-8.

In light of the foregoing, I conclude this particular eligibility requirement-that students use no more than half the space in a room-is not "necessary" to the roommate assignment program and cannot properly be considered an "essential" eligibility requirement which a student must meet in order to be qualified to participate in the program. If equal space utilization were necessary to the program, one would expect the university to have and enforce a formal requirement that all roommates divide room space equally; it does neither. Students without disabilities are allowed to participate in the roommate assignment program regardless of the amount of space they utilize in the room. Furthermore, the fact that defendants allow students in wheelchairs to participate in the roommate assignment program (so long as they do not require attendant care), without inquiry into or concern over the amount of room space the students utilize, illustrates that equal space utilization is not paramount when determining roommate eligibility, and suggests that this additional "requirement" is artificial.

2. *Personal Attendant Visits*

[8] Defendants next suggest that plaintiff is not "qualified" to participate in the roommate assignment program because she must be visited three times daily by a personal attendant and it would be unfair, defendants argue, to ask an assigned roommate to endure these daily intrusions. Defendants imply by this argument that to be "qualified" to participate in the roommate assignment program plaintiff cannot receive frequent daily visitors which might disrupt her roommate's solitude. As discussed below, given the nature of dormitory living and the fact that students without disabilities are allowed to participate in the roommate assignment program regardless of the number or frequency of daily visitors, I conclude this is not "necessary" to the roommate assignment program and not an "essential" eligibility requirement under either the ADA or the Rehabilitation Act.

First, I note that the evidence in this case did not indicate that plaintiff's personal attendant visits are unusually disruptive. Two of the three daily visits are relatively brief, and during a good portion of each visit plaintiff and her personal attendant are not even in the room. The daily visits are scheduled, predictable, and amount to nothing more than assisting plaintiff in the daily routine of dressing, showering and toileting-things that all roommates do. No medical care is provided during the visits, and there is no evidence of any reason why the roommate could not remain in the room during the entire visit if she wished.

Second, to the extent the personal attendant visits are disruptive, the disruptions are not of the sort unique to roommates with disabilities, but rather are common disruptions present in all roommate situations. For example, at trial defendants suggested the personal attendant's morning visit (which occurs at either 8:00 or 9:00 a.m. depending on the day of the week) might disturb a roommate who wished to sleep later. While I do not doubt that this could happen, the same problem arises regardless of whether the roommate has a disability. It is not unusual for roommates to awaken and retire at different times due to class schedules or personal preference, and the nature of dormitory living requires that roommates be tolerant of each other's sleeping habits and accept the fact that they may not always operate on identical schedules. While this may be frustrating, it is a frustration shared by all roommates, not merely roommates assigned to live with students who have disabilities. All roommates, with or without disabilities, can awaken one another by being the first to rise, shower and dress for classes; the fact that plaintiff engages in this activity with the help of a personal attendant, while unusual, has not been shown to materially alter the nature of this common disruption.

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Likewise, interruptions caused by frequent visitors are not unique to students who have disabilities. The argument that it is unfair to require an assigned roommate to tolerate ***1371** frequent attendant care visits would carry more weight if students were not generally required to tolerate frequent visitors; however, the evidence shows that Selleck hall has 24-hour unlimited visitation, and interruptions caused by frequent visitors are quite common. In fact, one of the most frequent roommate complaints received by the housing office is that visitors are present in the room to such an extent that the complaining roommate feels he or she has lost control over his or her privacy. [FN23] In short, all roommates, whether they have a disability or not, are confronted to some extent with frequent visitors that disrupt their solitude. [FN24] Frequent daily visits do not uniformly disqualify students without disabilities from participation in the roommate assignment program, and they ought not disqualify plaintiff.[FN25]

> FN23. It may be that a roommate assigned to plaintiff would have more, rather than less, control over their solitude because the roommate would know in advance when to expect the attendant and could plan accordingly. Not all roommates have the luxury of knowing when to expect visitors or how long they will stay.
>
> FN24. The university expects that roommates will tolerate each other's visitors and compromise when necessary to accommodate each other's needs. Should the interruptions become intolerable and the roommates unable to work out an agreeable arrangement, the university has a grievance procedure available to work out any roommate differences; these procedures are available to all students regardless of disability.
>
> FN25. It is important to note this is one person's case. I recognize there may be situations where a student's personal attendant care visits could be exceptionally inconvenient and intrusive due to the type of attendant care required or the length and frequency of the visits, and perhaps, following an individualized inquiry, it would be permissible under those circumstances for the university to refuse to assign a roommate to such a student. However, this is not such a case. The nature, timing and duration of the personal attendant visits in this instance are not remarkably different from those interruptions to which a student without a disability would subject his or her roommate on a daily basis.

Nevertheless, defendants attempt to distinguish the type of intrusion occasioned by attendant care visits from what they term "typical" intrusions encountered by roommates. Defendants suggest that while problems stemming from typical intrusions can be resolved through mutual compromise, plaintiff is not in a position to compromise when it comes to her personal attendant needs and an assigned roommate would be forced to constantly subordinate her interests to accommodate plaintiff's disability. The evidence does not support this argument.

Although plaintiff cannot agree to forgo attendant care altogether (an option which could hardly be termed a compromise), she testified there is some degree of flexibility as to when and where the visits take place. Plaintiff is willing, for example, to modify the times at which the personal attendant arrives so her roommate is less likely to be disturbed by the visit. She is also willing to reduce the amount of time the personal attendant spends in the room by dressing in the restroom, and is willing to have the personal attendant meet her in the restroom for the afternoon visit, thereby effectively limiting the room visits to two per day. It is evident that, should an assigned roommate be disturbed or inconvenienced by the attendant care visits, plaintiff is able and willing to compromise just as she would be with more typical intrusions.

In light of the foregoing, I conclude this particular implied eligibility requirement-that students not receive frequent daily visitors which might disrupt their roommate's solitude-is not necessary to the roommate assignment program and cannot properly be considered an "essential" eligibility requirement which a student must meet in order to be qualified to participate in the program.

Thus, neither of the additional implied "requirements" advanced by defendants can be considered necessary or essential requirements within the meaning of the ADA and the Rehabilitation Act. If these additional requirements were actually intended to screen out

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undesirable roommate candidates who use too much space or who have frequent daily visitors, then one would expect to see the requirements applied to all students requesting an assigned roommate; they are not. The fact that these additional eligibility requirements are not applied to all students indicates the additional requirements are not ***1372** "essential" to the roommate assignment program, but rather were advanced by defendants in an attempt to legitimize the policy of excluding students who have disabilities from the roommate assignment program.

The only "essential" eligibility requirements for participation in the roommate assignment program are admission to the university and submission of a completed residence hall contract application requesting a double room but not specifying a particular roommate. Because plaintiff met both these eligibility requirements, she is a "qualified individual with handicaps" within the meaning of the Rehabilitation Act and a "qualified individual with a disability" within the meaning of the ADA.

D. *Exclusion and Accommodation*

[9] "Qualified" individuals under the Rehabilitation Act and the ADA cannot be excluded from participation in the roommate assignment program by reason of their disability. 29 U.S.C. § 794(a); 42 U.S.C. § 12132. In this instance, the only reason plaintiff has not been allowed to participate in the roommate assignment program is because UNL has a policy prohibiting the assignment of roommates to students with disabilities who require personal attendant care. Under the circumstances, this blanket policy violates both the Rehabilitation Act and the ADA.

[10] I recognize that the policy of requiring students with disabilities to live in single rooms may have been adopted as an accommodation to students with disabilities who were uncomfortable having an assigned roommate present during attendant care visits. However, nothing in the Rehabilitation Act or the ADA requires that plaintiff accept such accommodations. *See* 45 C.F.R. § 84.4(b)(3) and 28 C.F.R. § 35.130(e)(1). Even where special accommodations have been made, qualified individuals with disabilities must be given the option to participate in regular programs if they choose. *See* 45 C.F.R. Pt. 84, App. A at 380; 28 C.F.R. Pt. 35, App. A at 439, 440. As explained in the regulations:

> Even when separate programs are permitted, individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different. This is an important and overarching principle of the Americans with Disabilities Act. Separate, special or different programs that are designed to provide a benefit to persons with disabilities cannot be used to restrict the participation of persons with disabilities in general, integrated activities.... For example, a person who is blind may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his or her own pace with the museum's recorded tour. Modified participation for persons with disabilities must be a choice, not a requirement.

28 C.F.R. Pt. 35, App. A at 440. Thus, although the university has set aside a group of double rooms to be used as single rooms by students with disabilities who require attendant care, plaintiff cannot be required to accept such accommodations simply because they exist. Instead, so long as she is qualified, she must be given the option of participating in the regular roommate assignment program. Because the challenged policy forecloses this option to plaintiff, it runs afoul of both the Rehabilitation Act and the ADA. [FN26]

> FN26. Furthermore, I note defendants neither argued, nor did the evidence indicate, that assigning plaintiff a roommate would fundamentally alter the nature of the roommate assignment program or cause the university undue financial or administrative burden. 28 C.F.R. § 35.150(a)(3) (public entity is not required to "take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or in undue financial or administrative burdens.")

The defendants argued that the policy exists because the university does not want to "require" students without disabilities to room with students who have disabilities and require attendant care, perceiving such a room assignment to be somehow "unfair" to the students without disabilities. [FN27] Yet such ***1373** a policy fosters the very attitudes and stereotypes about individuals with disabilities that the ADA was designed to eliminate. *See* 42 U.S.C. § 12101(a).

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FN27. Although defendants frequently refer to assigned roommates as "involuntary" roommates, this term is a misnomer. The only students who are assigned roommates are those who have requested a double room but not specified a particular individual with whom they would like to live-in essence asking that the university assign them a roommate. As such, all assigned roommates have voluntarily agreed to be assigned to whomever the university chooses for them. Despite defendants' word choice, there would be nothing "involuntary" about being assigned to room with plaintiff, or anyone else.

[11] The ADA's Findings and Purposes illustrate that Congress, in enacting the statute, aimed to bring people with disabilities into society's mainstream, to cause the kinds of interaction which might facilitate recognition of the true equality of human worth as between individuals-regardless of disabilities. In contrast, the university's policy at issue here of excluding plaintiff from the roommate assignment program, how ever well intentioned it may have been, sanctions the attitude that students with disabilities are less desirable and suggests that others should not be required to live with them. Such standoffishness places less value on the human worth of individuals with disabilities-because of their disabilities. As implemented, the policy unnecessarily separates students with disabilities from those without disabilities and thus strikes at the essence of the ADA and specifically violates the statute's stated purpose "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1).

III. *Relief*

Plaintiff has requested declaratory, injunctive and monetary relief for violation of her rights under the Rehabilitation Act and the ADA. She also requests an award of costs and attorney fees. I conclude plaintiff is entitled to the relief she seeks, as set forth below.

A. *Injunctive relief*

[12] The present policy of prohibiting students who have disabilities and require attendant care from participating in the roommate assignment program, as applied to plaintiff, violates both the Rehabilitation Act and the ADA. Accordingly, the University of Nebraska will be required to amend its policy to allow plaintiff the choice of either rooming alone or participating in the roommate assignment program. Should plaintiff return to the UNL this fall to attend classes, and should she submit a completed residence housing contract application for the 1993-94 academic year, she must be assigned a roommate using the same procedures applied to other students.[FN28]

FN28. Of course, she should be assigned a roommate only in the event she requests a double room and does not specify a particular individual with whom she would like to room.

B. *Compensatory damages*

[13] Plaintiff has requested compensatory damages for the feelings of isolation and segregation she experienced as a result of the university's failure to assign her a roommate. The parties have stipulated that plaintiff suffered no physical injury as a result of these feelings and that her compensatory damages do not exceed $5,000.00. (Filing 29). Because the Eighth Circuit Court of Appeals has held that compensatory damages are available for violations of § 504 of the Rehabilitation Act, *see* Miener v. State of Missouri, 673 F.2d 969, 978 (8th Cir.), *cert. denied* 459 U.S. 909, 103 S.Ct. 215, 74 L.Ed.2d 171 (1982), plaintiff is entitled to seek such damages.[FN29]

FN29. *See also* Smith v. Robinson, 468 U.S. 992, 104 S.Ct. 3457, 82 L.Ed.2d 746, n. 24 (1984) (recognizing there is some confusion among the circuit courts as to the availability of damages under § 504 of the Rehabilitation Act, and, without expressing an opinion on the matter, noting that courts generally agree damages are available for violations of § 504). Additionally, in this instance, the state is not immune under the Eleventh Amendment from such a damages award. Section 794a(a)(2) of Title 29 provides that the remedies set forth in 42 U.S.C. § 2000d et seq. for violations of Title VI are available for violations of § 504 of the Rehabilitation Act. Section 2000d-7 of Title 42 provides that:

> A State shall not be immune under the

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> Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 794 of Title 29.... In a suit against a State for a violation of [§ 504 of the Rehabilitation Act], remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.
>
> 42 U.S.C. § 2000d-7(a)(1) and (2).

***1374** The evidence showed that defendants' refusal to assign plaintiff a roommate, combined with the approach taken in attempting to persuade students to agree to be her roommate, made her feel isolated and stigmatized. As a result of these feelings, I conclude she is entitled to compensatory damages in the amount of $1,000.00.[FN30]

> FN30. It is unclear whether compensatory damages are available to remedy discrimination by a public entity under the ADA. The relevant ADA section provides that:
>
> > The remedies, procedures, and rights set forth in section 794a of Title 29 [the Rehabilitation Act] shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.
> >
> > 42 U.S.C. § 12133. Section 794a of Title 29-which sets forth the remedies for violations of § 501 (employment discrimination) and § 504 (discrimination by recipient of federal funding) of the Rehabilitation Act-does not specifically provide for compensatory damages. Thus, although courts have found that compensatory damages are available for violations of § 504 of the Rehabilitation Act, *see, e.g., Miener v. State of Missouri, supra,* such a remedy is not specifically "set forth in section 794a of Title 29" and it is unclear whether the judicially-created damages remedy would be available for violations of the ADA. Furthermore, although the Civil Rights Act of 1991 made compensatory damages available for intentional employment discrimination under § 501 of the Rehabilitation Act and § 102 of the ADA (42 U.S.C. § 12112), *see* 42 U.S.C. § 1981a, the 1991 Act did not attempt to modify the damages available for violations of § 504 of the Rehabilitation Act or § 202 of the ADA (discrimination by public entity on basis of disability). Nevertheless, because the Eighth Circuit has held compensatory damages are available for violations of § 504 of the Rehabilitation Act, I need not determine whether such damages are similarly available under the relevant portions of the ADA.

C. *Attorneys' fees and costs*

[14] Plaintiff has requested she be awarded costs and attorneys' fees in this matter. I conclude she is entitled to such relief under 42 U.S.C. § 12205 and 29 U.S.C. § 794a(b). Therefore, plaintiff will be given an opportunity to file her application for fees and expenses specifically documenting the amount of such costs and fees in accordance with the guidelines of the Local Rules.

JUDGMENT

IT IS ORDERED, in accordance with the memorandum of decision filed this day, judgment hereby is entered as follows:

1. With respect to plaintiff's claims under § 504 of the Rehabilitation Act and the Americans with Disabilities Act, for plaintiff and against defendants, and each of them.

2. The policy of the defendants in prohibiting plaintiff from participation in the random roommate assignment program at UNL is declared to violate both the Rehabilitation Act and the ADA, as applied to plaintiff.

3. The defendants, their agents, successors and assigns are enjoined from further prohibition of the plaintiff from participating in the random roommate assignment program at UNL.

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4. Plaintiff is awarded compensatory damages in the amount of $1,000.00 under § 504 of the Rehabilitation Act, plus costs and attorney's fees to be determined in accordance with the accompanying order. Said award is against the defendants jointly and severally, and as against defendants Spanier and Zatechka, in their official capacities only.

D.Neb.,1993.
Coleman v. Zatechka
824 F.Supp. 1360, 2 A.D. Cases 1374, 2 A.D.D. 1280, 4 NDLR P 52

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(Cite as: 92 Cal.App.4th 16)

WARD CONNERLY, Plaintiff and Appellant,
v.
STATE PERSONNEL BOARD et al., Defendants and Respondents; CALIFORNIA BUSINESS COUNCIL FOR EQUAL OPPORTUNITY et al., Real Parties in Interest and Appellants.
No. C032042.

Court of Appeal, Third District, California.
Sept. 4, 2001.

SUMMARY

The Governor brought an action challenging five statutory affirmative action programs as violative of equal protection principles and Prop. 209 (Cal. Const., art. I, § 31). The statutes in question were Gov. Code, § 8880.32 (State Lottery Commission), Gov. Code, § 16850 et seq. (sale of state bonds), Gov. Code, § 19790 et seq. (state civil service), Ed. Code, § 87100 et seq. (community colleges), and Pub. Contract Code, § 10115 et seq. (state contracting). A private citizen was permitted to join the lawsuit, and he continued the litigation after the Governor left office. The trial court found invalid a portion of the statutory scheme relating to the sale of bonds and all of the statutory scheme applicable to state contracting, but otherwise rejected plaintiff's constitutional challenges. (Superior Court of Sacramento County, No. 96CS01082, Lloyd Connelly, Judge.)

The Court of Appeal reversed and remanded to the trial court with directions to enter a judgment consistent with the Court of Appeal's conclusions. The court held that under taxpayer and citizen standing rules, the private citizen had standing to maintain the suit. It held that the statutory scheme applicable to the state lottery was invalid, and that the scheme applicable to the sale of government bonds was also invalid, but that a portion of the data collection and reporting requirements of that scheme was severable and could be upheld. The court further held that the statutory scheme applicable to the state civil service was partially invalid, but that the remainder of the scheme could be severed and upheld. The statutory scheme applicable to the community colleges was invalid, the court held, and a portion of the data collection and reporting requirements of the scheme relating to state contracting was severable from the invalid portions and could be upheld. (Opinion by Scotland, P. J., with Morrison and Callahan, JJ., concurring.)

HEADNOTES

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(1a, 1b) Parties § 1.2--Standing--Taxpayer and Citizen Lawsuits.
A private citizen did not lack standing to pursue an action challenging five statutory affirmative action programs on the grounds that they impermissibly established classifications and preferences based on race, ethnicity, and gender. Code Civ. Proc., § 526a, permits a taxpayer to bring an action to restrain an illegal expenditure of public money; no showing of special damage to a particular taxpayer is required. Further, citizen suits may be brought without the necessity of showing a legal or special interest in the result, where the issue is one of public right and the object is to procure the enforcement of a public duty. Statutorily enacted affirmative action programs are matters of intense public concern. Hence, a claim that such a program violates principles of equal protection and Prop. 209 (Cal. Const., art. I, § 31) is the type of claim to which citizen and taxpayer standing rules apply. Plaintiff's pursuit of the action was consistent with the purpose of a standing requirement, which is to ensure that courts address actual controversies between parties who have sufficient adverse interests to press their case with vigor.

(2) Parties § 1.2--Standing--State Rules as Compared to Federal Rules.
The California Constitution, unlike its federal counterpart, does not contain a case or controversy limitation on the judicial power. Therefore, restrictive federal rules of justiciability do not necessarily apply in state courts. In particular, there are two related rules of standing applicable in state court actions that are contrary to the rules in federal court-the right to maintain an action as a taxpayer (Code Civ. Proc., § 526a) and the right to maintain an action as a citizen.

(3) Mandamus and Prohibition § 58--Mandamus--Procedure--Parties--Standing--

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Challenge to Affirmative Action Programs.
In an action by a private citizen challenging five statutory affirmative action programs on the grounds that they impermissibly established classifications and preferences based on race, ethnicity, and gender, plaintiff did not lack standing, even though the action was a proceeding in mandate and plaintiff had not introduced proof that defendants were in fact engaging in unconstitutional behavior. First, mandate can be used to test the constitutional validity of a legislative enactment. Second, an assertion that standing should be denied because agencies subject to the statutory schemes might perform their duties in a constitutional manner by either ignoring the statutory directives or by engaging in a strained interpretation thereof was untenable, since an administrative agency lacks the authority to cure a facially unconstitutional statute by refusing to enforce it as written.

(4) Constitutional Law § 76--Equal Protection--Nature and Scope of Equal Protection--Affirmative Action.
The California Constitution cannot permit the state to engage in conduct forbidden by the federal equal protection clause (U.S. Const., 14th Amend.), and the state equal protection guarantee (Cal. Const., art. I, § 7, subd. (a)) imposes no greater restrictions on affirmative action than are imposed by the federal Constitution. Thus, in the affirmative action context, federal and state equal protection standards are identical, and federal standards are controlling.

(5) Constitutional Law § 99--Equal Protection--Classification--Bases of Classification--Sex.
Although, in general, Cal. Const., art. I, § 7, subd. (a) (equal protection), is independent of the federal guarantee, it is applied in most instances in a manner identical with the federal guarantee. The one exception is with respect to gender. Under federal law, distinctions based on gender are subjected to heightened judicial scrutiny, but gender is not a suspect classification, as is race. Under California law, classifications based on gender are considered suspect for purposes of equal protection analysis.

(6) Constitutional Law § 84--Equal Protection--Classification--Judicial Review--Deference to Legislature.
The constitutional guarantee of equal protection applies to governmental classifications, whether they be legislative, executive, judicial, or administrative. Legislative classification is the act of specifying who will and who will not come within the operation of a particular law. A legislative classification satisfies equal protection of law so long as persons similarly situated with respect to the legitimate purpose of the law receive similar treatment. Legislative classifications generally are entitled to judicial deference, are presumptively valid, and may not be rejected by the courts unless they are palpably unreasonable. However, judicial deference does not extend to laws that employ suspect classifications such as race. Because suspect classifications are pernicious and are so rarely relevant to a legitimate governmental purpose, they are subjected to strict judicial scrutiny; i.e., they may be upheld only if they are shown to be necessary for furtherance of a compelling state interest and they address that interest through the least restrictive means available.

(7) Constitutional Law § 100--Equal Protection--Classification--Bases of Classification--Race.
The equal protection clause (U.S. Const., 14th Amend.) recognizes that distinctions between persons based solely on their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. Where the government proposes to assure participation of some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose must be rejected not as insubstantial but as facially invalid. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake.

(8) Constitutional Law § 87.2--Equal Protection--Classification--Judicial Review--Strict Standard of Review--Particular Classifications--Race.
Because the rights guaranteed by U.S. Const., 14th Amend., are not absolute, government may be permitted, in an appropriate case, to make remedial use of racial classifications. However, under long-standing principles of equal protection, governmental distinctions based on race are considered inherently suspect and are subjected to strict scrutiny. The strict scrutiny standard of review applies regardless of whether a law is claimed to be benign or remedial, regardless of the race of those burdened or benefited by a particular classification, and regardless of whether the law may be said to benefit and burden the races equally.

(9) Constitutional Law § 87.2--Equal Protec-

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tion--Classification--Judicial Review--Strict Standard of Review--Particular Classifications--Race--Goals and Quotas.
The strict scrutiny standard does not depend on semantic distinctions such as "goal" rather than "quota." What is constitutionally significant is that the government has drawn a line on the basis of race or has engaged in a purposeful use of racial criteria. A constitutional injury occurs whenever the government treats a person differently because of his or her race.

(10) Constitutional Law § 87.2--Equal Protection--Classification--Judicial Review--Strict Standard of Review--Particular Classifications--Race-- Constitutional Protection as Individual Right.
In applying the strict scrutiny test, the rights created by the equal protection clause (U.S. Const., 14th Amend.) are not group rights; they are personal rights that are guaranteed to the individual. Thus, where an individual is denied an opportunity or benefit or otherwise suffers a detriment as a result of a race-based governmental scheme, it is not relevant that others of his or her race secured the opportunity or benefit or avoided the detriment.

(11) Constitutional Law § 84--Equal Protection--Classification--Judicial Review--Deference to Legislature--Racial Classifications.
When a governmental scheme uses a racial classification, the action is not entitled to the presumption of constitutionality that normally accompanies governmental acts. A governmental actor cannot render race a legitimate proxy for a particular condition merely by declaring that the condition exists, and blind judicial deference to legislative or executive pronouncements of necessity has no place in equal protection analysis. A racial classification is presumptively invalid, and the burden is on the government to demonstrate extraordinary justification. In order to justify a racial classification, the government must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is necessary to the accomplishment of its purpose or the safeguarding of its interest. Judicial review focuses on whether the racial classification is justified by a compelling governmental interest and whether the means chosen are narrowly tailored to serve that interest.

(12) Constitutional Law § 87.2--Equal Protection--Classification--Judicial Review--Strict Standard of Review--Particular Classifications--Race-- Requirement of Specificity.
Under the strict scrutiny test, governmental specificity and precision are demanded. The mere recitation of a benign or legitimate purpose is entitled to little or no weight. Racial classifications are suspect, and that means that simple legislative assurances of good intention cannot suffice. Moreover, generalized assertions of purpose are insufficient, since they provide little or no guidance for the legislative body to narrowly tailor its use of a suspect classification and because they inhibit judicial review under the strict scrutiny test. Thus, before embarking on a program that utilizes racial classifications, a governmental entity must identify its purpose with some degree of specificity and must have convincing evidence that race-based remedial action is necessary.

(13) Constitutional Law § 87.2--Equal Protection--Classification--Judicial Review--Strict Standard of Review--Particular Classifications--Race--Connection Between Justification and Classification.
Under the strict scrutiny standard of review, once a compelling interest is shown, the inquiry focuses on the means chosen to address the interest. It is not enough that the means chosen to accomplish the purpose are reasonable or efficient. Only the most exact connection between justification and classification will suffice. The classification must appear necessary rather than convenient, and the availability of nonracial alternatives-or the failure of the legislative body to consider such alternatives-will be fatal to the classification. In addition, the use of a racial classification must be limited in scope and duration to that which is necessary to accomplish the legislative purpose.

(14) Constitutional Law § 100--Equal Protection--Classification--Bases of Classification--Race--Demonstration of Compelling State Interest.
In order to rise to the level of a compelling state interest, the use of racial classifications to remedy specific discrimination must meet two criteria. First, the discrimination must be identified with some degree of specificity. A generalized assertion that there has been discrimination in a particular industry or region is insufficient, and mere statistical anomalies, without more, do not permit a governmental entity to employ racial classifications. Second, the institution that

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makes the racial distinction must have had a strong basis in evidence to conclude that race-based remedial action is necessary before it embarks on an affirmative action program. A governmental entity cannot satisfy this criterion simply by conceding past discrimination.

(15) Constitutional Law § 100--Equal Protection--Classification--Bases of Classification--Race--Creation of Remedy.
In order to be lawful, the governmental use of racial classification to redress specific discrimination must actually be remedial. The remedy must be created with the awareness that the right to be free of discrimination belongs to the individual rather than any particular group. Thus, the remedy must be designed as nearly as possible to restore the victims of specific discriminatory conduct to the position they would have occupied in the absence of such conduct. Random inclusion of racial groups without individualized consideration whether the particular groups suffered from discrimination will belie a claim of remedial motivation. The lack of any effort to limit the benefits of a remedial scheme to those who actually suffered from specific discrimination will be fatal to the scheme.

(16) Constitutional Law § 87.2--Equal Protection--Classification--Judicial Review--Strict Standard of Review--Particular Classifications--Gender.
On appeal from a judgment partially upholding and partially invalidating five state affirmative action programs as contrary to state and federal principles of equal protection and Prop. 209 (Cal. Const., art. I, § 31), strict scrutiny review was applicable, even though portions of the challenged schemes operated for the benefit of women. While the federal Constitution does not require strict scrutiny for gender classifications, and the United States Supreme Court applies a more lenient level of review (skeptical scrutiny) to gender classifications, the state Constitution mandates strict scrutiny without regard to the gender of the complaining party.

(17) Civil Rights § 1--Prohibition of Affirmative Action--Intent of Voters.
In adopting Prop. 209 (Cal. Const., art. I, § 31), the voters intended, by prohibiting the state from classifying individuals by race or gender, to reinstate the interpretation of the Civil Rights Act and equal protection that had been overturned by recent case law.

(18) Civil Rights § 1--Prohibition of Affirmative Action--Relation to Equal Protection.
Prop. 209 (Cal. Const., art. I, § 31) overlaps but is not synonymous with equal protection principles. Under equal protection principles, all state actions that rely on suspect classifications must be tested under strict scrutiny, but those actions that can meet the rigid strict scrutiny test are constitutionally permissible. Prop. 209, on the other hand, prohibits discrimination against or preferential treatment to individuals or groups regardless of whether the governmental action could be justified under strict scrutiny. To the extent the federal Constitution would permit, but not require, the state to grant preferential treatment to suspect classes, Prop. 209 precludes such action.
[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 777B et seq.; West's Key Number Digest, Constitutional Law k. 215]
(19) Constitutional Law § 87--Equal Protection--Classification--Judicial Review--Strict Standard of Review--Shift of Burden of Proof.
A party challenging a statute as violative of equal protection principles bears the initial and ultimate burden of establishing unconstitutionality. But when the plaintiff has made a sufficient showing to trigger strict scrutiny review, the burden of justification is both demanding and entirely upon the government. If the government succeeds in establishing justification for the use of a suspect classification, the burden shifts back to the complaining party to show that the statutory scheme or its application is nevertheless unconstitutional.

(20) Constitutional Law § 87.2--Equal Protection--Classification--Judicial Review--Strict Standard of Review--Particular Classifications--Race--Express Classifications.
Laws that explicitly distinguish between individuals on racial grounds fall within the core of the prohibition of the equal protection clause (U.S. Const., 14th Amend.), and no inquiry into legislative purpose is necessary when the racial classification appears on the face of the statute. Express racial classifications are immediately suspect, are presumptively invalid, and, without more, trigger strict scrutiny review.

(21) Constitutional Law § 85--Equal Protection--Classification--Judicial Review--Presumptions--Facial Challenge to Racial Classification.
On appeal from a judgment partially upholding and

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partially invalidating five state affirmative action programs as contrary to state and federal principles of equal protection and Prop. 209 (Cal. Const., art. I, § 31), plaintiff was not, simply because he was making a facial challenge to the programs, required to demonstrate a constitutional conflict in every conceivable application. Where a statutory scheme, on its face, employs a suspect classification, the scheme is, on its face, in conflict with the core prohibition of the equal protection clause (U.S. Const., 14th Amend.). It is not entitled to a presumption of validity and is instead presumed invalid. Further, the strict scrutiny standard of review is triggered. Under that standard, specificity and precision are required. The government cannot avoid constitutional conflict simply because a racial classification is part of a statutory scheme that is so broad or amorphous that it might in some instances be employed in a race-neutral manner.

(22) Constitutional Law § 87.2--Equal Protection--Classification--Judicial Review--Strict Standard of Review--Particular Classifications--Race--Race-conscious Laws.
A law need not confer a preference before strict scrutiny applies. The ultimate goal of the equal protection clause (U.S. Const., 14th Amend.) is the complete elimination of irrelevant factors such as race from governmental decision-making. Regardless of the burdens or benefits imposed by or granted under a particular law, the use of a racial classification presents significant dangers to individuals, racial groups, and society at large, and without strict scrutiny a court cannot determine whether a racial classification truly is benign or remedial. On the other hand, a law is not subject to strict scrutiny review merely because it is race conscious. Since the guarantee of equal protection is an individual right, where the operation of the law does not differ between one individual and another based on a suspect classification, strict scrutiny is not required even though the law might mention matters such as race or gender.

(23) Constitutional Law § 26--Constitutionality of Legislation--Rules of Interpretation--Construction in Favor of Constitutionality.
If a statutory provision can, by fair and reasonable interpretation, be given a meaning consistent with the requirements of the Constitution rather than in conflict with it, the statute must be so interpreted in order to preserve its validity.

(24) Civil Rights § 1--Prohibition of Affirmative Action--Laws Aimed at Increasing Competition.
With respect to a benefit or advantage, such as admission to a school of higher education, a government job, or a public contract, the cognizable interest of a competitor is in being able to compete on an equal footing without regard to the race or gender of other competitors. A competitor does not have a constitutionally cognizable interest in limiting the pool of applicants with whom he or she must compete. Therefore, outreach or recruitment efforts that are designed to broaden the pool of potential applicants without reliance on impermissible race or gender classifications are not constitutionally forbidden.

(25) Civil Rights § 1--Prohibition of Affirmative Action--Data Collection and Reporting Programs:Constitutional Law § 76--Nature and Scope of Equal Protection--Data Collection and Reporting Programs.
State monitoring programs that collect and report data concerning the participation of women and minorities in governmental programs do not violate equal protection principles. Accurate and up-to-date information is the sine qua non of intelligent, appropriate legislative and administrative action. A monitoring program designed to collect and report accurate and up-to-date information is justified by the compelling governmental need for such information. Further, so long as the program does not discriminate against or grant a preference to an individual or group, Prop. 209 (Cal. Const., art. I, § 31) is not implicated.

(26) Civil Rights § 1--Prohibition of Affirmative Action--State Lottery Commission:Lotteries § 6--State Lottery Commission.
Gov. Code, § 8880.56, which imposes affirmative action duties on the State Lottery Commission, violates principles of equal protection and Prop. 209 (Cal. Const., art. I, § 31). Even if the statute included procedures for determining that certain White males were disadvantaged, which it does not, the fact that some individuals must prove disadvantage while others are conclusively presumed to be disadvantaged based solely on race, ethnicity, and gender, establishes impermissible race, ethnicity, and gender classifications. The provisions requiring bidders and contractors to include specific plans or arrangements to utilize subcontracts with members of favored groups do not merely attempt to equalize the opportunity to participate, they establish a preference for doing business

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with members of the favored groups. Further, the statute fails to identify instances of past discrimination by the commission, it randomly includes groups without individualized consideration whether those groups suffered from discrimination, and it fails to attempt to disburse the benefits of the scheme in an evenhanded manner to those who actually suffered detriment.

(27) Civil Rights § 1--Prohibition of Affirmative Action--Professional Bond Services:Constitutional Law § 94--Equal Protection--Classification--Bases of Classification--Minority and Women Business Enterprises--Professional Bond Services.
Gov. Code, § 16850 et seq., which imposes affirmative action duties with respect to professional bond services, is, with one exception, violative of equal protection principles and Prop. 209 (Cal. Const., art. I, § 31). The provisions entitle minority and women business enterprises to special notice of the sale or intention to issue bonds, but there is no mechanism by which other businesses can ensure that they receive notice. The fact that all bidders must certify their awareness of the issuing department's goals for the participation of minority and women businesses, coupled with the imposition of a duty on providers of services to make efforts to achieve those goals, only can be intended to result in preferential treatment based on race and gender. Further, the protections of the Subletting and Subcontracting Fair Practices Act (Pub. Contract Code, § 4100 et seq.) are extended to minority and women contractors for professional bond services, but not to other subcontractors. However, the reporting requirements (Gov. Code, § 16855) serve a compelling government need, may be employed without violating equal protection principles or Prop. 209, and are functionally and grammatically severable.

(28) Civil Rights § 1--Prohibition of Affirmative Action--State Civil Service:Constitutional Law § 94--Equal Protection--Classification--Bases of Classification--Race and Gender of State Civil Service Employees.
The state civil service affirmative action provisions (Gov. Code, § 19790 et seq.) are, with two exceptions, violative of equal protection principles and Prop. 209 (Cal. Const., art. I, § 31). The requirement that state agencies and departments establish, and make efforts to achieve, goals and timetables to overcome any identified underutilization of minorities and women in state agencies and departments is invalid either as an attempt to impose a specified percentage of a particular group, or as the establishment of a conclusive presumption of prior discrimination based on statistical disparities, without underlying proof. However, the portions of the scheme which provide for data collection and reporting are valid, because a determination of the underutilization of minorities and women in state service can serve legitimate and important purposes. Further, Gov. Code, § 19798, which authorizes the State Personnel Board, when it finds the existence of past discriminatory hiring practices, to adopt a process that alters layoff and reemployment procedures in order to maintain the racial and gender composition of the affected work force, is not invalid on its face, although any such process would be subject to the strictest scrutiny.

(29) Civil Rights § 1--Prohibition of Affirmative Action--Community Colleges:Constitutional Law § 94--Equal Protection--Classification--Bases of Classification--Race and Gender of Community College Employees.
Ed. Code, § 87100 et seq., which imposes affirmative action duties on public community colleges, violates principles of equal protection and Prop. 209 (Cal. Const., art. I, § 31). The establishment of overall and continuing hiring goals is an invalid preferential hiring scheme; the goal of assuring participation by some specified percentage of a particular group merely because of its race or gender is discrimination for its own sake and is facially invalid; and the requirement to create timetables to seek, hire, and promote minorities and women and to make reasonable progress in doing so, establishes impermissible racial and gender preferences. Further, the data collection and reporting aspects of the scheme, which might otherwise be upheld, are entirely bound and intermixed with the success of the preferential hiring scheme, and thus are not severable.

(30) Civil Rights § 1--Prohibition of Affirmative Action--Public Contracts--Reporting Provisions:Public Works and Contracts § 2--Contracts-- Affirmative Action Program--Reporting Requirements.
Pub. Contract Code, § 10115.5, which contains the reporting requirements of the affirmative action provisions relating to public contracts (Pub. Contract Code, § 10115 et seq.), is functionally severable from the other portions of the scheme, and thus is valid and enforceable, even though the remainder of the scheme

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violates equal protection principles and Prop. 209 (Cal. Const., art. I., § 31).

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Elise S. Rose, and Dorothy Bacskai Egel for Defendant and Respondent California State Personnel Board.

Office of Legal Services and Jeff Marschner for Defendant and Respondent General Services.

Ralph D. Black for Defendants and Respondents Thomas Nussbaum as Chancellor, etc., and Board of Governors of the California Community Colleges. *27

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SCOTLAND, P. J.

In this case, we consider whether five statutory programs that fall within the general rubric of "affirmative action" violate state and federal principles of equal protection and are contrary to article I, section 31, of our state Constitution, added by the adoption of Proposition 209 at the November 1996 General Election (hereafter Proposition 209).

The litigation, commenced by Governor Pete Wilson in his official capacity as Governor, challenges the statutory schemes on the ground that they impermissibly establish classifications and preferences based on race, ethnicity, and gender. The statutes at issue are Government Code section 8880.56, applicable to the State Lottery Commission; Government Code sections 16850 through 16857, applicable to the sale of state bonds; Government Code sections 19790 through 19799, applicable to the state civil service; Education Code sections 87100 through 87107, applicable to the California Community Colleges; and Public Contract Code sections 10115 through 10115.15, applicable to state contracting.

Plaintiff Ward Connerly (hereafter plaintiff) was later permitted to join the lawsuit as a taxpayer litigant, and he continued the litigation after Governor Wilson left office.

The trial court found invalid a portion of the statutory scheme applicable to the sale of government bonds and all of the statutory scheme applicable to state contracting, but otherwise rejected plaintiff's constitutional objections. *28

Plaintiff appeals from the judgment to the extent that it rejects his constitutional challenge to the statutory schemes. The real parties in interest cross-appeal, asserting that the data collection and reporting requirements applicable to state contracting may be severed from the remainder of the statutory scheme and upheld. In addition, respondent California Community Colleges raises the initial question whether plaintiff has standing to pursue this action.

We conclude (1) plaintiff has standing to maintain this litigation; (2) the statutory scheme applicable to the

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92 Cal.App.4th 16, 112 Cal.Rptr.2d 5, 86 Fair Empl.Prac.Cas. (BNA) 1048, 156 Ed. Law Rep. 1190, 01 Cal. Daily Op. Serv. 7754, 2001 Daily Journal D.A.R. 9541
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state lottery is invalid; (3) the statutory scheme applicable to the sale of government bonds is invalid, but a portion of the data collection and reporting requirements of the scheme may be severed and upheld; (4) the statutory scheme applicable to the state civil service is partially invalid, but the remainder of the scheme may be severed and upheld; (5) the statutory scheme applicable to the community colleges is invalid; and (6) a portion of the data collection and reporting requirements of the statutory scheme applicable to state contracting may be severed from the invalid portions of the scheme and upheld.

As we will explain, the statutory schemes at issue here were enacted over many years, some more than 20 years ago, during a time when the manner of applying equal protection principles to affirmative action programs was not settled. It has now been held that all racial classifications imposed by a governmental entity must be analyzed using the strict scrutiny standard of review. And, under our state Constitution, strict scrutiny applies to gender classifications. In addition, Proposition 209 imposes additional restrictions against racial and gender preferences and discriminatory actions.

Insofar as the challenged statutory schemes utilize race and gender classifications, we have reviewed them under strict scrutiny and Proposition 209, with the results that we have detailed above. Because our conclusion differs in some respects from the trial court's rulings, we shall reverse the judgment and remand with directions to enter a new judgment consistent with this opinion.

Discussion

I

(1a) We begin by rejecting the claim that plaintiff lacks standing to pursue this litigation. According to the California Community Colleges, the decision in *Cornelius v. Los Angeles County etc. Authority* (1996) 49 Cal.App.4th 1761 [57 Cal.Rptr.2d 618] "suggests that [plaintiff's] state ***29** taxpayer status should not permit him to proceed; this challenge should be deferred in favor of persons with an actual injury." We disagree.

(2) California's Constitution, unlike its federal counterpart, does not contain a "case or controversy" limitation on the judicial power. (*National Paint & Coatings Assn. v. State of California* (1997) 58 Cal.App.4th 753, 761 [68 Cal.Rptr.2d 360]; see *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560 [112 S.Ct. 2130, 2136, 119 L.Ed.2d 351, 364] [among other things, to establish a case or controversy under federal law, a plaintiff must have suffered an " 'injury in fact' " that is "concrete," "particularized," and " 'actual or imminent, not "conjectural" or "hypothetical" ' "].) Therefore, restrictive federal rules of justiciability do not necessarily apply in state courts. (*White v. Davis* (1975) 13 Cal.3d 757, 763 [120 Cal.Rptr. 94, 533 P.2d 222].) In particular, there are two related rules of standing applicable in state court actions that are contrary to the rules in federal courts-the right to maintain an action as a taxpayer, and the right to maintain an action as a citizen.

(1b) Code of Civil Procedure section 526a permits a taxpayer to bring an action to restrain or prevent an illegal expenditure of public money. No showing of special damage to a particular taxpayer is required as a requisite for bringing a taxpayer suit. (*White v. Davis, supra*, 13 Cal.3d at p. 764.) Rather, taxpayer suits provide a general citizen remedy for controlling illegal governmental activity. (*Id.* at p. 763.)

Citizen suits may be brought without the necessity of showing a legal or special interest in the result where the issue is one of public right and the object is to procure the enforcement of a public duty. (*Green v. Obledo* (1981) 29 Cal.3d 126, 144 [172 Cal.Rptr. 206, 624 P.2d 256].) Citizen suits promote the policy of guaranteeing citizens the opportunity to ensure that governmental bodies do not impair or defeat public rights. (*Ibid.*)

Taxpayer suits and citizen suits are closely related concepts of standing. (See *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439 [261 Cal.Rptr. 574, 777 P.2d 610].) The chief difference is a taxpayer suit seeks preventative relief, to restrain an illegal expenditure, while a citizen suit seeks affirmative relief, to compel the performance of a public duty. (*Ibid.*) Where standing appears under either rule, the action may proceed regardless of the label applied by the plaintiff. (*Ibid.*)

Statutorily enacted affirmative action programs are matters of intense public concern. (*Department of Corrections v. State Personnel Bd.* (1997) 59

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Cal.App.4th 131, 143 [69 Cal.Rptr.2d 34].) Hence, a claim that such a program violates principles of equal protection and Proposition 209 is ***30** precisely the type of claim to which citizen and taxpayer standing rules apply.

Moreover, plaintiff's pursuit of this litigation is consistent with the purpose of a standing requirement, which is to ensure that courts address actual controversies between parties who have sufficient adverse interests to press their case with vigor. (*Common Cause v. Board of Supervisors, supra,* 49 Cal.3d at p. 439.) This case has been litigated intensely, and there is no danger here that the court will be misled by the failure of the parties to adequately explore and argue the issues. (*Van Atta v. Scott* (1980) 27 Cal.3d 424, 450 [166 Cal.Rptr. 149, 613 P.2d 210].)

The California Community Colleges suggest that we should deny standing to plaintiff because application of the challenged statutory schemes will produce potential plaintiffs with personal beneficial interests in the matter who will be entitled to pursue their own actions. However, "[n]umerous decisions have affirmed a taxpayer's standing to sue despite the existence of potential plaintiffs who might also have had standing to challenge the subject actions or statutes." (*Van Atta v. Scott, supra,* 27 Cal.3d at pp. 447-448, fn. omitted.)

Citing the decision in *Cornelius v. Los Angeles County etc. Authority, supra,* 49 Cal.App.4th 1761, 1774-1779, the California Community Colleges argue that we should apply a restrictive definition of "taxpayer" in order to deny taxpayer standing to plaintiff. But that case involved an action against a local government entity by a person who lacked standing as an individual, who was not a resident of the county and did not pay property taxes to the county, and whose state taxes bore only a tangential relationship to the challenged program. Whatever might be the merits of indulging in a restrictive definition of "taxpayer" in such circumstances, the decision is inapposite.

(3) At oral argument, respondents added to their argument on the issue of standing. They assert that this proceeding is in mandate, that mandate addresses conduct rather than the validity of legislation, and that plaintiff cannot proceed in mandate without introducing proof that respondents are in fact engaging in unconstitutional behavior. We reject this contention for three separate reasons. First, it was raised for the first time at oral argument. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138, fn. 6 [269 Cal.Rptr. 844].) Second, mandate can be used to test the constitutional validity of a legislative enactment. (*Floresta, Inc. v. City Council* (1961) 190 Cal.App.2d 599, 612 [12 Cal.Rptr. 182]; see, e.g., *Hollman v. Warren* (1948) 32 Cal.2d 351, 357, 360 [196 P.2d 562]; ***31***Driving Sch. Assn. of Cal. v. San Mateo Union High Sch. Dist.* (1992) 11 Cal.App.4th 1513, 1517, 1521-1525 [14 Cal.Rptr.2d 908].) Third, to the extent respondents suggest that we should deny plaintiff standing to challenge the statutory schemes because agencies subject to those schemes may perform their duties in a constitutional manner by either ignoring the statutory directives or by engaging in a strained interpretation thereof, the argument overlooks a critical principle of law. As we will explain more fully in subsequent portions of this opinion, an administrative agency lacks the authority to cure a facially unconstitutional statute by refusing to enforce it as written.

Here, plaintiff challenges statutory schemes enacted by the Legislature for application throughout the state and which as written, and unless restrained, will result in the expenditure of state funds consistent with their application. Plaintiff's status as a state taxpayer is sufficient to confer taxpayer standing in these circumstances.

II

Before we decide whether the statutory programs challenged by plaintiff violate state and federal principles of equal protection and are contrary to Proposition 209, it is helpful to provide, at the outset, an overview of the rules of law that we must apply in addressing plaintiff's attack on the statutes.

A

The equal protection clause of the Fourteenth Amendment to the United States Constitution is succinct: "No state shall ... deny to any person within its jurisdiction the equal protection of the laws." California's Constitution is equally terse: "A person may not be ... denied equal protection of the laws." (Cal. Const., art. I, § 7, subd. (a).)

(4)**(See fn. 1.)**, (5) Although our state constitutional

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guarantee is independent of the federal guarantee, in the context of this case it is, with one exception, applied in a manner identical with the federal guarantee. (*DeRonde v. Regents of University of California* (1981) 28 Cal.3d 875, 889-890 [172 Cal.Rptr. 677, 625 P.2d 220].) [FN1] The one exception is with respect to gender. Under federal law, distinctions based on gender are ***32** subjected to heightened judicial scrutiny, but gender is not a suspect classification, as is race. (See *United States v. Virginia* (1996) 518 U.S. 515, 532 [116 S.Ct. 2264, 2275, 135 L.Ed.2d 735, 751].) Under California law, classifications based on gender are considered suspect for purposes of equal protection analysis. (*Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 37 [219 Cal.Rptr. 133, 707 P.2d 195]; *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 20 [95 Cal.Rptr. 329, 485 P.2d 529, 46 A.L.R.3d 351].)

FN1 The California Supreme Court considered equal protection challenges to affirmative action programs in *Bakke v. Regents of University of California* (1976) 18 Cal.3d 34 [132 Cal.Rptr. 680, 553 P.2d 1152] (hereafter *Bakke I*), *Price v. Civil Service Com.* (1980) 26 Cal.3d 257 [161 Cal.Rptr. 475, 604 P.2d 1365] (hereafter *Price*), and *DeRonde v. Regents of University of California, supra*, 28 Cal.3d 875 (hereafter *DeRonde*). Those decisions were issued prior to the United States Supreme Court's development of applicable constitutional principles in opinions that we will discuss. Thus, when *Bakke I*, *Price*, and *DeRonde* were decided, it had not been established, as it now has, that strict scrutiny review applies to every racial classification regardless of whether it may be described as benign or remedial. Also, the California Supreme Court did not apply strict scrutiny in *Price* and *DeRonde* and, to that extent, those decisions are inconsistent with current equal protection jurisprudence. It is axiomatic that California's Constitution cannot permit the state to engage in conduct forbidden by the federal equal protection clause, and in *Price* (26 Cal.3d at pp. 284-285) and *DeRonde* (28 Cal.3d at p. 890), the court said that our state equal protection guarantee imposes no greater restrictions on affirmative action than are imposed by the federal Constitution. It follows that, in this context, federal and state equal protection standards are identical and federal standards are controlling here.

Following its adoption, the federal equal protection clause "was relegated to decades of relative desuetude" while the courts adjudicated rights under notions of substantive due process. (*University of California Regents v. Bakke* (1978) 438 U.S. 265, 291 [98 S.Ct. 2733, 2743-2744, 57 L.Ed.2d 750, 772], lead opn. of Powell J. (hereafter *Bakke II*).) With the demise of "the era of substantive due process," the equal protection clause began to attain a "measure of vitality." (*Id.* at pp. 291-292 [98 S.Ct. at p. 2749, 57 L.Ed.2d at p. 772].) In the early development of principles of equal protection, the landmark decisions arose in response to actions that discriminated against minorities, most often African-Americans. (*Id.* at p. 294 [98 S.Ct. at p. 2750, 57 L.Ed.2d at p. 773].)

(6) Development of equal protection jurisprudence established that the constitutional guarantee applies to governmental classifications, whether they be legislative, executive, judicial, or administrative. Legislative classification is the act of specifying who will and who will not come within the operation of a particular law. (*Dare v. Bd. of Medical Examiners* (1943) 21 Cal.2d 790, 802 [136 P.2d 304]; *In re Cardinal* (1915) 170 Cal. 519, 521 [150 P. 348]; *County of Los Angeles v. Hurlbut* (1941) 44 Cal.App.2d 88, 93 [111 P.2d 963].)

A legislative classification satisfies equal protection of law so long as persons similarly situated with respect to the legitimate purpose of the law receive like treatment. (*Brown v. Merlo* (1973) 8 Cal.3d 855, 861 [106 Cal.Rptr. 388, 506 P.2d 212, 66 A.L.R.3d 505].) ***33**

Legislative classifications generally are entitled to judicial deference, are presumptively valid, and may not be rejected by the courts unless they are palpably unreasonable. (*Asbury Hospital v. Cass County* (1945) 326 U.S. 207, 215 [66 S.Ct. 61, 65, 90 L.Ed. 6, 13]; *County of L.A. v. Southern Cal. Tel. Co.* (1948) 32 Cal.2d 378, 392 [196 P.2d 773].) However, judicial deference does not extend to laws that employ suspect classifications, such as race. Because suspect classifications are pernicious and are so rarely relevant to a legitimate governmental purpose (*Richmond v. J. A. Croson Co.* (1989) 488 U.S. 469, 505 [109 S.Ct. 706, 727-728, 102 L.Ed.2d 854, 889] (hereafter *Croson*)), they are subjected to strict judicial scrutiny; i.e., they may be upheld only if they are shown to be necessary

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for furtherance of a compelling state interest and they address that interest through the least restrictive means available. (*Bernal v. Fainter* (1984) 467 U.S. 216, 219-220 [104 S.Ct. 2312, 2315-2316, 81 L.Ed.2d 175, 179-180]; *Weber v. City Council* (1973) 9 Cal.3d 950, 958 [109 Cal.Rptr. 553, 513 P.2d 601].)

With the advent of affirmative action programs, it was inevitable that so-called reverse discrimination cases would come before the courts. In a series of cases, the United States Supreme Court has addressed the question.

In *Bakke II, supra*, 438 U.S. 265 [98 S.Ct. 2733, 57 L.Ed.2d 750], the court affirmed a decision of the California Supreme Court (*Bakke I, supra*, 18 Cal.3d 34), insofar as it held a race-based admissions program unlawful, but reversed insofar as it precluded the school from giving any consideration to race in the admissions process.

In *Wygant v. Jackson Board of Education* (1986) 476 U.S. 267 [106 S.Ct. 1842, 90 L.Ed.2d 260] (hereafter *Wygant*), the court invalidated a public school layoff scheme under which nonminority teachers were laid off while minority teachers with less seniority, including probationary teachers, were retained.

In *Croson, supra*, 488 U.S. 469 [109 S.Ct. 706, 102 L.Ed.2d 854], the court invalidated a city contract scheme that provided a "set-aside" for minority business enterprises.

In *Adarand Constructors, Inc. v. Pena* (1995) 515 U.S. 200 [115 S.Ct. 2097, 132 L.Ed.2d 158] (hereafter *Adarand*), the court held that, pursuant to the equal protection component of the Fifth Amendment, a federal contracting scheme that employed race-based presumptions must be judged under the same strict scrutiny standards applicable to state and local governments.

Then, in a series of cases following the 1990 census, the court found various race-based congressional reapportionment schemes to be invalid. ***34** (*Shaw v. Hunt* (1996) 517 U.S. 899 [116 S.Ct. 1894, 135 L.Ed.2d 207]; *Shaw v. Reno* (1993) 509 U.S. 630 [113 S.Ct. 2816, 125 L.Ed.2d 511]; see also *Hunt v. Cromartie* (1999) 526 U.S. 541 [119 S.Ct. 1545, 143 L.Ed.2d 731]; *Bush v. Vera* (1996) 517 U.S. 952 [116 S.Ct. 1941, 135 L.Ed.2d 248]; *Miller v. Johnson* (1995) 515 U.S. 900 [115 S.Ct. 2475, 132 L.Ed.2d 762].)

The opinions filed in those cases demonstrate the difficulty that the United States Supreme Court has had in applying equal protection principles to affirmative action programs. The cases generally have resulted in multiple opinions from the justices. Although the court has not upheld any of the programs under consideration in those cases, the various opinions indicate that race-based governmental programs are not per se invalid but that, to be constitutionally valid, they must withstand the stringent test of strict judicial scrutiny.

From those opinions, we can distill certain principles that have been endorsed by a majority of the United States Supreme Court and must guide our consideration of the validity of the statutory schemes involved here. [FN2]

FN2 In providing citations for the principles we derive from the decisions of the United States Supreme Court, we will indicate whether the particular point is drawn from a majority opinion, plurality opinion, lead opinion, or a concurring or dissenting opinion. In some instances, the court's decision was announced through a lead opinion that obtained a concurrence of a majority in part but with portions representing a plurality. We indicate the portion of the opinion from which the point is taken.

(7) The equal protection clause recognizes that distinctions between persons based solely upon their ancestry " 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.' [Citation.]" (*Shaw v. Reno, supra*, 509 U.S. at p. 643 [113 S.Ct. at p. 2824, 125 L.Ed.2d at p. 526] (maj. opn.); *Bakke II, supra*, 438 U.S. at pp. 290-291 [98 S.Ct. at pp. 2748-2749, 57 L.Ed.2d at p. 771] (lead opn.).) Accordingly, the core purpose of the equal protection clause is to eliminate governmentally sanctioned racial distinctions. (*Croson, supra*, 488 U.S. at p. 495 [109 S.Ct. at pp. 722-723, 102 L.Ed.2d at p. 883] (plur. opn.); *Wygant, supra*, 476 U.S. at p. 277 [106 S.Ct. at pp. 1848-1849, 90 L.Ed.2d at p. 270] (plur. opn.).) Where the government proposes to assure participation of "some specified percentage of a particular group merely because of its race or ethnic

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origin, such a preferential purpose must be rejected not as insubstantial but as facially invalid. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids." (*Bakke II, supra,* at p. 307 [98 S.Ct. at p. 2757, 57 L.Ed.2d at p. 782] (lead opn.); see also *Croson, supra,* at p. 497 [109 S.Ct. at pp. 723-724, 102 L.Ed.2d at p. 884] (plur. opn.).)

The duty of governmental entities to "eliminate every vestige of racial segregation and discrimination," and their ultimate duty to " 'do away with ***35** all governmentally imposed discriminations based on race,' " are not always harmonious. (*Wygant, supra,* 476 U.S. at p. 277 [106 S.Ct. at p. 1848, 90 L.Ed.2d at p. 270] (plur. opn.).) (8) Because the rights guaranteed by the Fourteenth Amendment are not absolute, government may be permitted, in an appropriate case, to make remedial use of racial classifications. (*Adarand, supra,* 515 U.S. at p. 237 [115 S.Ct. at pp. 2117-2118, 132 L.Ed.2d at p. 188] (maj. opn.).) However, under long-standing principles of equal protection, governmental distinctions based on race are considered inherently suspect and are subjected to strict scrutiny. (*Adarand, supra,* 515 U.S. at pp. 223, 227 [115 S.Ct. at pp. 2110-2111, 2112-2113, 132 L.Ed.2d at pp. 179, 182] (maj. opn.); *Shaw v. Reno, supra,* 509 U.S. at pp. 643-644 [113 S.Ct. at pp. 2824-2825, 125 L.Ed.2d at p. 526] (maj. opn.); *Croson, supra,* 488 U.S. at p. 494 [109 S.Ct. at p. 722, 102 L.Ed.2d at p. 882] (plur. opn.).)

The strict scrutiny standard of review applies regardless of whether a law is claimed to be benign or remedial (see *Shaw v. Reno, supra,* at p. 653 [113 S.Ct. at p. 2830, 125 L.Ed.2d at p. 533] (maj. opn.); *Adarand, supra,* at p. 226 [115 S.Ct. at p. 2112, 132 L.Ed.2d at p. 181] (maj. opn.)), regardless of the race of those burdened or benefited by a particular classification (*Shaw v. Reno, supra,* at pp. 650-651 [113 S.Ct. at pp. 2828-2829, 125 L.Ed.2d at p. 531] (maj. opn.); *Croson, supra,* at p. 494 [109 S.Ct. at p. 722, 102 L.Ed.2d at p. 882] (plur. opn.)), and regardless of whether the law may be said to benefit and burden the races equally (*Shaw v. Reno, supra,* at p. 651 [113 S.Ct. at p. 2829, 125 L.Ed.2d at p. 531] (maj. opn.)).

(9) And the strict scrutiny standard of review does not depend on semantic distinctions, such as "goal" rather than "quota." What is constitutionally significant is that the government has drawn a line on the basis of race or has engaged in a purposeful use of racial criteria. (*Bakke II, supra,* 438 U.S. at p. 289, & fn. 27 [98 S.Ct. at p. 2747, 57 L.Ed.2d at p. 770] (lead opn.).) A constitutional injury occurs whenever the government treats a person differently because of his or her race. (*Adarand, supra,* 515 U.S. at pp. 211, 229-230 [115 S.Ct. at pp. 2104, 2105, 2113-2114, 132 L.Ed.2d at pp. 171, 183] (maj. opn.).)

(10) In applying the strict scrutiny test, it must be remembered that the rights created by the equal protection clause are not group rights; they are personal rights which are guaranteed to the individual. (*Adarand, supra,* 515 U.S. at p. 227 [115 S.Ct. at pp. 2112-2113, 132 L.Ed.2d at p. 182] (maj. opn.); *Bakke II, supra,* 438 U.S. at p. 289 [98 S.Ct. at pp. 2747-2748, 57 L.Ed.2d at p. 770] (lead opn.).) Thus, where an individual is denied an opportunity or benefit or otherwise suffers a detriment as a result of a race-based governmental scheme, it is no answer that others of his or her race secured the opportunity or benefit or avoided the detriment. ***36**

(11) When a governmental scheme uses a racial classification, the action is not entitled to the presumption of constitutionality which normally accompanies governmental acts. (*Croson, supra,* 488 U.S. at p. 500 [109 S.Ct. at p. 725, 102 L.Ed.2d at p. 886] (maj. opn.).) "A governmental actor cannot render race a legitimate proxy for a particular condition merely by declaring that the condition exists," and "blind judicial deference to legislative or executive pronouncements of necessity has no place in equal protection analysis." (*Id.* at pp. 500-501 [109 S.Ct. at p. 725, 102 L.Ed.2d at p. 886] (maj. opn.).)

A racial classification is presumptively invalid, and the burden is on the government to demonstrate extraordinary justification. (*Shaw v. Reno, supra,* 509 U.S. at pp. 643-644 [113 S.Ct. at p. 2824-2825, 125 L.Ed.2d at p. 526]. (maj. opn.); *Bakke II, supra,* 438 U.S. at pp. 305, 311 [98 S.Ct. at pp. 2756, 2759, 57 L.Ed.2d at pp. 781, 784] (lead opn.).) In order to justify a racial classification, the government " 'must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is "necessary ... to the accomplishment" of its purpose or the safeguarding of its interest.' [Citations.]" (*Bakke II, supra,* at p. 305 [98 S.Ct. at p. 2756, 57 L.Ed.2d at p. 781] (lead opn.).)

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Judicial review focuses on whether the racial classification is justified by a compelling governmental interest and whether the means chosen are narrowly tailored to serve that interest. (*Wygant, supra*, 476 U.S. at p. 274 [106 S.Ct. at p. 1847, 90 L.Ed.2d at p. 268] (lead opn.).)

(12) Under the strict scrutiny test, governmental specificity and precision are demanded. The mere recitation of a benign or legitimate purpose is entitled to little or no weight. (*Croson, supra*, 488 U.S. at p. 500 [109 S.Ct. at p. 725, 102 L.Ed.2d at p. 886] (maj. opn.).) "Racial classifications are suspect, and that means that simple legislative assurances of good intention cannot suffice." (*Id.* at p. 500 [109 S.Ct. at p. 725, 102 L.Ed.2d at p. 886] (maj. opn.).) Moreover, generalized assertions of purpose are insufficient since they provide little or no guidance for the legislative body to narrowly tailor its use of a suspect classification and because they inhibit judicial review under the strict scrutiny test. (*Id.* at p. 498 [109 S.Ct. at p. 724, 102 L.Ed.2d at p. 885] (maj. opn.).) Because racial distinctions " 'so seldom provide a relevant basis for disparate treatment, and because classifications based on race are potentially so harmful to the entire body politic, it is especially important that the reasons for any such classification be clearly identified and unquestionably legitimate.' [Citation.]" (*Id.* at p. 505 [109 S.Ct. at pp. 727-728, 102 L.Ed.2d at p. 889] (maj. opn.).)

Accordingly, before embarking upon a program that utilizes racial classifications, a governmental entity must identify its purpose with some degree ***37** of specificity (*Croson, supra*, 488 U.S. at p. 504 [109 S.Ct. at p. 727, 102 L.Ed.2d at p. 889] (maj. opn.)) and must have convincing evidence that race-based remedial action is necessary. (*Shaw v. Hunt, supra*, 517 U.S. at p. 910 [116 S.Ct. at p. 1903, 135 L.Ed.2d at p. 222] (maj. opn.); *Wygant, supra*, 476 U.S. at pp. 277-278 [106 S.Ct. at pp. 1848-1849, 90 L.Ed.2d at p. 271] (plur. opn.).) Absent a prior determination of necessity, supported by convincing evidence, the governmental entity will be unable to narrowly tailor the remedy, and a reviewing court will be unable to determine whether the race-based action is justified. (*Croson, supra*, at p. 510 [109 S.Ct. at pp. 730-731, 102 L.Ed.2d at p. 893] (plur. opn.); *Wygant, supra*, at p. 278 [106 S.Ct. at p. 1849, 90 L.Ed.2d at p. 271] (plur. opn.).)

(13) Once a compelling interest is shown, the inquiry focuses on the means chosen to address the interest. It is not enough that the means chosen to accomplish the purpose are reasonable or efficient. (*Wygant, supra*, 476 U.S. at p. 279 [106 S.Ct. at pp. 1849-1850, 90 L.Ed.2d at p. 272] (plur. opn.).) Only the most exact connection between justification and classification will suffice. (*Adarand, supra*, 515 U.S. at p. 236 [115 S.Ct. at p. 2117, 132 L.Ed.2d at p. 188] (maj. opn.); *Wygant, supra*, at p. 280 [106 S.Ct. at p. 1850, 90 L.Ed.2d at p. 273] (plur. opn.).) The classification must appear necessary rather than convenient, and the availability of nonracial alternatives-or the failure of the legislative body to consider such alternatives-will be fatal to the classification. (*Croson, supra*, 488 U.S. at p. 507 [109 S.Ct. at p. 729, 102 L.Ed.2d at p. 891] (maj. opn.).) In addition, the use of a racial classification must be limited in scope and duration to that which is necessary to accomplish the legislative purpose. (*Croson, supra*, at p. 510 [109 S.Ct. at pp. 730-731, 102 L.Ed.2d at p. 893] (plur. opn.).) For example, in *Wygant,* it was asserted that a school board's interest in providing role models for its minority students could justify a race-based layoff scheme. The plurality opinion noted that nondiscriminatory hiring practices would in time achieve the desired result, while discriminatory practices based upon the role model theory would have no logical stopping point and could even lead to the thoroughly discredited separate-but-equal educational system. (*Wygant, supra*, at pp. 274-276 [106 S.Ct. at pp. 1847-1848, 90 L.Ed.2d at pp. 269-270] (plur. opn.).)

"A State's interest in remedying the effects of past or present racial discrimination may in the proper case justify a government's use of racial distinctions." (*Shaw v. Hunt, supra*, 517 U.S. at p. 909 [116 S.Ct. at p. 1902, 135 L.Ed.2d at p. 221] (maj. opn.).) (14) However, it bears repeating that, in order to rise to the level of a compelling state interest, the use of racial classifications to remedy specific discrimination must meet two criteria. ***38**

First, the discrimination must be identified with some degree of specificity. (*Shaw v. Hunt, supra*, 517 U.S. at p. 909 [116 S.Ct. at pp. 1902-1903, 135 L.Ed.2d at p. 221] (maj. opn.).) A generalized assertion that there has been discrimination in a particular industry or region is insufficient (*ibid.*; *Croson, supra*, 488 U.S. at pp. 498-499 [109 S.Ct. at pp. 724-725, 102 L.Ed.2d at p. 885] (maj. opn.)), and mere statistical anomalies,

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without more, do not permit a governmental entity to employ racial classifications. (*Croson, supra*, at pp. 501-503 [109 S.Ct. at pp. 725-727, 102 L.Ed.2d at pp. 887-888] (maj. opn.).) "[T]he sorry history of both private and public discrimination in this country" (*id.* at p. 499 [109 S.Ct. at p. 724, 102 L.Ed.2d at p. 885] (maj. opn.)) does not justify an effort by government to alleviate, by use of racial distinctions, the effects of societal discrimination generally. (*Ibid.*; *Shaw v. Hunt, supra*, at p. 909 [116 S.Ct. at pp. 1902-1903, 135 L.Ed.2d at p. 221] (maj. opn.).) And "a racial classification cannot withstand strict scrutiny based upon speculation about what 'may have motivated' the legislature.... [T]he State must show that the alleged objective was the legislature's 'actual purpose' for the discriminatory classification ...." (*Shaw v. Hunt, supra*, at p. 908, fn. 4 [116 S.Ct. at p. 1902, 135 L.Ed.2d at p. 221] (maj. opn.).)

Second, "the institution that makes the racial distinction must have had a 'strong basis in evidence' to conclude that [race-based] remedial action was necessary, '*before* it embarks on an affirmative-action program,' [citation]." (*Shaw v. Hunt, supra*, 517 U.S. at p. 910 [116 S.Ct. at p. 1903, 135 L.Ed.2d at p. 222] (maj. opn.), original italics; *Croson, supra*, 488 U.S. at p. 504 [109 S.Ct. at p. 727, 102 L.Ed.2d at p. 889] (maj. opn.).) A governmental entity cannot satisfy this criterion simply by conceding past discrimination. (*Wygant, supra*, 476 U.S. at p. 278, fn. 5 [106 S.Ct. at p. 1849, 90 L.Ed.2d at pp. 271-272] (plur. opn.).) While in an appropriate case, statistical analysis may be valuable evidence, governmental entities do not have "license to create a patchwork of racial preferences based on statistical generalizations about any particular field of endeavor." (*Croson, supra*, at p. 499 [109 S.Ct. at p. 725, 102 L.Ed.2d at p. 885] (maj. opn.).)

(15) Moreover, in order to be lawful, the governmental use of racial classification to redress specific discrimination must *actually* be remedial. (*Shaw v. Hunt, supra*, 517 U.S. at p. 915 [116 S.Ct. at p. 1905, 135 L.Ed.2d at p. 225] (maj. opn.).) In this respect, the remedy must be created with the awareness that the right to be free of discrimination belongs to the individual rather than any particular group. (*Id.* at p. 917 [116 S.Ct. at p. 1906, 135 L.Ed.2d at p. 226] (maj. opn.).) Thus, the remedy must be designed as nearly as possible to restore the victims of specific discriminatory conduct to the position they would have occupied in the absence of such conduct. *39(*Id.* at p. 915 [116 S.Ct. at p. 1905, 135 L.Ed.2d at p. 225] (maj. opn.).) Random inclusion of racial groups without individualized consideration whether the particular groups suffered from discrimination will belie a claim of remedial motivation. (*Croson, supra*, 488 U.S. at p. 506 [109 S.Ct. at p. 728, 102 L.Ed.2d at p. 890] (maj. opn.); *Wygant, supra*, 476 U.S. at p. 284, fn. 13 [106 S.Ct. at p. 1852, 90 L.Ed.2d at p. 275] (plur. opn.).) The lack of any effort to limit the benefits of a remedial scheme to those who actually suffered from specific discrimination will be fatal to the scheme. (*Croson, supra*, at p. 508 [109 S.Ct. at pp. 729-730, 102 L.Ed.2d at p. 891] (maj. opn.).)

B

(16) Respondent California Community Colleges argues that, insofar as the challenged statutory schemes operate for the benefit of women, they are subject to intermediate scrutiny rather than the strict scrutiny applicable to racial classifications.

The United States Supreme Court has not held gender to be a suspect classification, like race or national origin. Instead, the court applies "skeptical scrutiny" to gender classifications. (*United States v. Virginia, supra*, 518 U.S. at p. 531 [116 S.Ct. at pp. 2274-2275, 135 L.Ed.2d at p. 750].) The linguistic formulation of skeptical scrutiny closely parallels that of strict scrutiny. Thus, there is a strong presumption that gender classifications are invalid and they must be carefully inspected by the courts. (*Id.* at pp. 532-533 [116 S.Ct. at pp. 2275-2276, 135 L.Ed.2d at p. 751].) The burden of justification is demanding, is entirely upon the government, and must be exceedingly persuasive. (*Ibid.*) The government must show that the challenged classification serves important governmental objectives and that the means employed are substantially related to the achievement of those objectives. (*Id.* at p. 533 [116 S.Ct. at pp. 2275-2276, 135 L.Ed.2d at p. 751].) "The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation," and "must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." (*Ibid.*) While this standard is similar to the strict scrutiny standard applicable to racial classifications, it is recognized as a somewhat more lenient standard of review. (See *Bakke II, supra*, 438 U.S. at pp. 302-303 [98 S.Ct. at pp. 2754-2755, 57 L.Ed.2d at p. 779] (lead opn.).)

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However, our state Supreme Court has concluded that, under the equal protection guarantee of California's Constitution, gender is a suspect classification subject to strict scrutiny review. (*Koire v. Metro Car Wash, supra,* 40 Cal.3d at p. 37; *Sail'er Inn, Inc. v. Kirby, supra,* 5 Cal.3d at p. 20.)

In view of the difference between state and federal equal protection principles in this respect, respondent California Community Colleges would ***40** have us establish a two-level system of equal protection review, with the level of scrutiny dependent upon the gender of the complaining party. But to do so would ignore the guarantee of equal protection that applies to judicial actions as well as to those of the legislative and executive branches. (See *J. E. B. v. Alabama ex rel. T. B.* (1994) 511 U.S. 127, 129, 140 [114 S.Ct. 1419, 1421-1422, 1426-1427, 128 L.Ed.2d 89, 97, 104].)

The United States Supreme Court consistently has rejected the notion that the degree of equal protection accorded an individual can be based upon the person's race or gender. As Justice Powell explained, "[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to [another] .... If both are not accorded the same protection, then it is not equal." (*Bakke II, supra,* 438 U.S. at pp. 289-290 [98 S.Ct. at p. 2748, 57 L.Ed.2d at pp. 770-771] (lead opn.).) The fact that a statutory scheme "discriminates against males rather than against females does not exempt it from scrutiny or reduce the standard of review." (*Mississippi University for Women v. Hogan* (1982) 458 U.S. 718, 723 [102 S.Ct. 3331, 3335-3336, 73 L.Ed.2d 1090, 1097-1098]; see also *J. E. B. v. Alabama ex rel. T. B., supra,* 511 U.S. at p. 141 [114 S.Ct. at pp. 1427-1428, 128 L.Ed.2d at pp. 104-105].)

We cannot establish different levels of equal protection for men and women out of gender prejudice and/or gender paternalism. No justification for a two-level, gender-based standard of review has been offered, and we perceive none. In fact, in rejecting a claim that it is permissible to offer promotional discounts which favor women, the California Supreme Court concluded "public policy in California mandates the *equal* treatment of men and women." (*Koire v. Metro Car Wash, supra,* 40 Cal.3d at p. 37, original italics.) [FN3]

FN3 *Koire v. Metro Car Wash, supra,* 40 Cal.3d 24, was not a constitutional case. It involved a claim by a male that "Ladies' Day" promotions by private businesses violate the statutory Unruh Civil Rights Act (Civ. Code, § 51). Nevertheless, an exceedingly persuasive justification for unequal treatment based upon gender would have to be derived from public policy, and the decision in *Koire v. Metro Car Wash* forecloses the possibility of a state public policy supporting unequal treatment of men and women.

Consequently, we conclude that, while the federal Constitution does not require strict scrutiny for gender classifications, our state Constitution mandates strict scrutiny without regard to the gender of the complaining party.

C

In addition to equal protection principles, we must apply the dictates of Proposition 209. ***41**

Article I, section 31, subdivision (a) of the Constitution of our state provides: "The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." Subdivision (f) provides that, "[f]or the purposes of this section, 'State' shall include, but not necessarily be limited to, the State itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the State." [FN4]

FN4 The remaining portions of article I, section 31 of our state Constitution are:

"(b) This section shall apply only to action taken after the section's effective date.

"(c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary

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> to the normal operation of public employment, public education, or public contracting.
>
> "(d) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.
>
> "(e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State. [¶] ... [¶]
>
> "(g) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing California antidiscrimination law.
>
> "(h) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section."

In *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537 [101 Cal.Rptr.2d 653, 12 P.3d 1068] (hereafter *Hi-Voltage*), the California Supreme Court construed Proposition 209 in accordance with the ordinary meaning of its words. (*Id.* at p. 559.) To discriminate means " 'to make distinctions in treatment; show partiality (*in favor of*) or prejudice (*against*)' [citation] ...." (*Id.* at pp. 559-560.) Giving preferential treatment "means giving 'preference,' which is 'a giving of priority or advantage to one person ... over others.' [Citation.]" (*Id.* at p. 560, fn. omitted.)

(17) In adopting Proposition 209, the voters "intended to reinstitute the interpretation of the Civil Rights Act and equal protection that predated [the decisions in *Steelworkers v. Weber* (1979) 443 U.S. 193 [99 S.Ct. 2721, 61 L.Ed.2d 480], *Price, supra*, 26 Cal.3d 257, and other cases]," by prohibiting the state from classifying individuals by race or gender. (*Hi-Voltage, supra,* 24 Cal.4th at p. 561.)

The court in *Hi-Voltage* addressed the city's minority business enterprise and women business enterprise (MBE/WBE) contracting scheme. Under that ***42** plan, a contractor bidding to do business with the city was required to either achieve a certain MBE/WBE subcontractor participation level or show that it complied with certain outreach requirements. The court noted: "The outreach component requires contractors to treat MBE/WBE subcontractors more advantageously by providing them notice of bidding opportunities, soliciting their participation, and negotiating for their services, none of which they must do for non-MBE's/WBE's. The fact prime contractors are not precluded from contacting non-MBE's/WBE's is irrelevant. The relevant constitutional consideration is that they are compelled to contact MBE's/WBE's, which are thus accorded preferential treatment within the meaning of section 31." (*Hi-Voltage, supra,* 24 Cal.4th at p. 562.)

In holding the program to be invalid, the court observed: "The participation component authorizes or encourages what amounts to discriminatory quotas or set-asides, or at least raceand sex-conscious numerical goals. [Citations.] A participation goal differs from a quota or set-aside only in degree; by whatever label, it remains 'a line drawn on the basis of race and ethnic status' as well as sex." (*Hi-Voltage, supra,* 24 Cal.4th at pp. 562-563.)

Although finding the city's outreach program unconstitutional under Proposition 209, the court acknowledged "that outreach may assume many forms, not all of which would be unlawful." (*Hi-Voltage, supra,* 24 Cal.4th at p. 565.) "Plainly, the voters intended to preserve outreach efforts to disseminate information about public employment, education, and contracting not predicated on an impermissible classification." (*Ibid.*) However, the court expressed "no opinion regarding the permissible parameters of such efforts." (*Ibid.*)

(18) It can be seen that Proposition 209 overlaps, but is not synonymous with, the principles of equal protection that we have described in part II. A., *ante*. Under equal protection principles, all state actions that rely upon suspect classifications must be tested under strict scrutiny, but those actions which can meet the rigid

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strict scrutiny test are constitutionally permissible. Proposition 209, on the other hand, prohibits discrimination against or preferential treatment to individuals or groups regardless of whether the governmental action could be justified under strict scrutiny.

In this respect, the distinction between what the federal Constitution permits and what it requires becomes particularly relevant. (See *Shaw v. Reno, supra*, 509 U.S. at p. 654 [113 S.Ct. at pp. 2830-2831, 125 L.Ed.2d at p. 533] (maj. opn.).) To the extent the federal Constitution would permit, but not require, the state to grant preferential treatment to suspect classes, ***43** Proposition 209 precludes such action. (*Hi-Voltage, supra*, 24 Cal.4th at p. 567 [Prop. 209 contains no compelling state interest exception].) [FN5]

FN5 The trial court indicated that where federal equal protection principles permit a state entity to utilize race and gender classifications, Proposition 209 must yield. This confuses what the federal Constitution permits with what it requires. Proposition 209 yields where federal law requires the state to engage in particular action, but not where it would merely permit such action.

D

(19) The complaining party bears the initial and ultimate burden of establishing unconstitutionality. (*Wygant, supra*, 476 U.S. at pp. 277-278 [106 S.Ct. at pp. 1848-1849, 90 L.Ed.2d at p. 271] (plur. opn.).) But when the plaintiff has made a sufficient showing to trigger strict scrutiny review, the burden of justification is both demanding and entirely upon the government. (*Bakke II, supra*, 438 U.S. at p. 306 [98 S.Ct. at pp. 2756-2757, 57 L.Ed.2d at p. 781] (lead opn.); *Sail'er Inn, Inc. v. Kirby, supra*, 5 Cal.3d at pp. 16-17; see also *United States v. Virginia, supra*, 518 U.S. at p. 533 [116 S.Ct. at p. 2275, 135 L.Ed.2d at p. 751] [under intermediate scrutiny applicable under federal law to gender classifications, "[t]he burden of justification is demanding and it rests entirely on the State"].) If the government succeeds in establishing justification for the use of a suspect classification, the burden shifts back to the complaining party to show that the statutory scheme or its application is nevertheless unconstitutional. [FN6]

FN6 We are not here concerned with the showing that might be required of the complaining party in such an instance because plaintiff has gone no further than to assert that the statutory schemes, on their face, entail unjustified use of racial and gender classifications.

In this case, plaintiff employs the easiest means by which strict scrutiny is triggered. (20) Laws that explicitly distinguish between individuals on racial grounds fall within the core of the prohibition of the equal protection clause and "[n]o inquiry into legislative purpose is necessary when the racial classification appears on the face of the statute." (*Shaw v. Reno, supra*, 509 U.S. at p. 642 [113 S.Ct. at p. 2824, 125 L.Ed.2d at p. 525] (maj. opn.).) Express racial classifications are immediately suspect, are presumptively invalid, and, without more, trigger strict scrutiny review. (*Id.* at pp. 642-644 [113 S.Ct. at pp. 2824-2825, 125 L.Ed.2d at pp. 525-526] (maj. opn.); see also *Adarand, supra*, 515 U.S. at p. 227 [115 S.Ct. at pp. 2112-2113, 132 L.Ed.2d at p. 182] (maj. opn.); *Bakke II, supra*, 438 U.S. at p. 289 [98 S.Ct. at pp. 2747-2848, 57 L.Ed.2d at p. 770] (lead opn.).)

To the extent the statutory schemes challenged by plaintiff employ express racial and gender classifications, he has met his initial burden by pointing that out. ***44**

(21) Respondents assert that, because plaintiff makes a facial attack on the constitutionality of the statutory schemes at issue, the statutes are presumed constitutional and must be upheld unless plaintiff demonstrates constitutional conflict in every conceivable application. We disagree. (*American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 345-348 [66 Cal.Rptr.2d 210, 940 P.2d 797].)

Where a statutory scheme, on its face, employs a suspect classification, the scheme is, on its face, in conflict with the core prohibition of the equal protection clause. (*Shaw v. Reno, supra*, 509 U.S. at p. 642 [113 S.Ct. at p. 2824, 125 L.Ed.2d at p. 525] (maj. opn.).) It is not entitled to a presumption of validity and is instead presumed invalid. (*Id.* at pp. 643-644 [113 S.Ct. at pp. 2824-2825, 125 L.Ed.2d at p. 526] (maj. opn.); *Croson, supra*, 488 U.S. at p. 500 [109 S.Ct. at p. 725, 102 L.Ed.2d at p. 886] (maj. opn.).) And the express use of suspect classifications in a statutory scheme immediately triggers strict scrutiny

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review. (*Shaw v. Reno, supra*, at pp. 642-644 [113 S.Ct. at pp. 2824-2825, 125 L.Ed.2d at pp. 525-526] (maj. opn.).)

Under the strict scrutiny test, specificity and precision are required. (*Croson, supra*, 488 U.S. at pp. 500, 505 [109 S.Ct. at pp. 725, 727-728, 102 L.Ed.2d at pp. 886, 889] (maj. opn.).) The government cannot avoid constitutional conflict simply because a racial classification is part of a statutory scheme which is so broad and/or amorphous that it might in some instances be employed in a race-neutral manner. If the racial classification is not necessary to the statutory scheme, it may not be employed. (*Shaw v. Hunt, supra*, 517 U.S. at p. 910 [116 S.Ct. at p. 1903, 135 L.Ed.2d at p. 222] (maj. opn.); *Croson, supra*, at p. 507 [109 S.Ct. at p. 729, 102 L.Ed.2d at p. 891] (maj. opn.).) If the racial classification is necessary to the statutory scheme, it must be justified by a compelling governmental interest, and its use must be narrowly tailored to serve that interest. (*Wygant, supra*, 476 U.S. at p. 274 [106 S.Ct. at p. 1847, 90 L.Ed.2d at p. 268] (plur. opn.).)

E

In respondents' view, strict scrutiny applies only where legislation grants a preference based upon race, and not where the legislation is merely "race conscious."

(22) We do not agree that a law must confer a preference before strict scrutiny applies. The United States Supreme Court could not be more certain on this point. The ultimate goal of the equal protection clause is the complete elimination of irrelevant factors such as race from governmental decisionmaking. (***45***_Croson, supra_, 488 U.S. at p. 495 [109 S.Ct. at pp. 722-723, 102 L.Ed.2d at p. 883] (plur. opn.).) Regardless of the burdens or benefits imposed by or granted under a particular law, the use of a racial classification presents significant dangers to individuals, racial groups, and society at large. (*Croson, supra*, at pp. 493-494 [109 S.Ct. at pp. 721-722, 102 L.Ed.2d at p. 882] (plur. opn.).) "Racial classifications of any sort pose the risk of lasting harm to our society." (*Shaw v. Reno, supra*, 509 U.S. at p. 657 [113 S.Ct. at p. 2832, 125 L.Ed.2d at p. 535] (maj. opn.).) And without strict scrutiny, a court cannot determine whether a racial classification truly is benign or remedial. (*Id.* at p. 653 [113 S.Ct. at p. 2830, 125 L.Ed.2d at p. 533] (maj. opn.); *Adarand, supra*, 515 U.S. at p. 226 [115 S.Ct. at p. 2112, 132 L.Ed.2d at p. 181] (maj. opn.).) What is significant under the equal protection clause is that the government has drawn a line on the basis of race or ethnic status (*Bakke II, supra*, 438 U.S. at p. 289 [98 S.Ct. at pp. 2747-2748, 57 L.Ed.2d at p. 770] (lead opn.)), and laws that do so are immediately suspect. (*Shaw v. Reno, supra*, 509 U.S. at p. 642 [113 S.Ct. at p. 2824, 125 L.Ed.2d at p. 525] (maj. opn.).)

Nevertheless, we agree that a law is not subject to strict scrutiny review merely because it is "race conscious." (See *Shaw v. Reno, supra*, 509 U.S. at p. 642 [113 S.Ct. at p. 2824, 125 L.Ed.2d at p. 525] (maj. opn.).) Since the guarantee of equal protection is an individual right, where the operation of the law does not differ between one individual and another based upon a suspect classification, strict scrutiny is not required even though the law might mention matters such as race or gender. Accordingly, to use respondent California Community Colleges' example, a law prohibiting discrimination on the basis of race or gender would be race and gender conscious but would not invite strict scrutiny. [FN7]

FN7 Facially neutral but race-conscious legislation is not immune from strict scrutiny, but strict scrutiny is not required until the challenger makes a more detailed showing than is required for legislation that employs racial classifications. (See *Shaw v. Hunt, supra*, 517 U.S. at p. 907 [116 S.Ct. at pp. 1901-1902, 135 L.Ed.2d at p. 220] (maj. opn.); *Adarand, supra*, 515 U.S. at p. 213 [115 S.Ct. at pp. 2105-2106, 132 L.Ed.2d at p. 172] (maj. opn.).)

(23) In this respect, we agree with respondents that if a statutory provision can, by fair and reasonable interpretation, be given a meaning consistent with the requirements of the Constitution rather than in conflict with it, we must so interpret the statute in order to preserve its validity. (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 371 [285 Cal.Rptr. 231, 815 P.2d 304]; *People v. Davenport* (1985) 41 Cal.3d 247, 264 [221 Cal.Rptr. 794, 710 P.2d 861].)

However, as we shall explain, for the most part the statutory schemes at issue in this case, which employ express racial and gender classifications, cannot be interpreted to preserve their validity. ***46**

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F

Several respondents assert that statutory schemes which may be denominated as outreach, recruitment, or inclusive measures do not violate principles of equal protection or Proposition 209.

(24) With respect to a benefit or advantage, such as admission to a school of higher education, a government job, or a public contract, the cognizable interest of a competitor is in being able to compete on an equal footing without regard to the race or gender of other competitors. (*Adarand, supra*, 515 U.S. at p. 211 [115 S.Ct. at pp. 2104-2105, 132 L.Ed.2d at p. 171] (maj. opn.).) A competitor does not have a constitutionally cognizable interest in limiting the pool of applicants with whom he or she must compete. (See *Alabama Power Co. v. Ickes* (1938) 302 U.S. 464, 479-480 [58 S.Ct. 300, 303-304, 82 L.Ed. 374, 378].) Therefore, outreach or recruitment efforts which are designed to broaden the pool of potential applicants without reliance on an impermissible race or gender classification are not constitutionally forbidden. (See *Hi-Voltage, supra*, 24 Cal.4th at p. 565.)

But if the statutory scheme relies upon race or gender classifications, it must, for equal protection analysis, be subjected to strict judicial scrutiny. And if it discriminates against or grants preference to individuals or groups based upon race or gender, it is prohibited by Proposition 209.

G

(25) Respondents contend that monitoring programs which collect and report data concerning the participation of women and minorities in governmental programs do not violate equal protection principles. We agree.

Throughout the various opinions filed in the United States Supreme Court's affirmative action cases, no justice has suggested that discrimination is a thing of the past which need not concern governmental entities. Governmental entities remain under a duty to eliminate the vestiges of segregation and discrimination. (*Wygant, supra*, 476 U.S. at p. 277 [106 S.Ct. at pp. 1848-1849, 90 L.Ed.2d at p. 270] (plur. opn.).) All of the justices agree that governmental entities may use raceand gender-neutral methods of fostering equal opportunity and that, in some instances, even raceand gender-specific remedies may be employed. Accurate and up-to-date information is the sine qua non of intelligent, appropriate legislative and administrative action. Assuming that strict scrutiny is required, a monitoring program designed to collect and report accurate and up-to-date information is justified by the compelling governmental need for such information. So long as such a ***47** program does not discriminate against or grant a preference to an individual or group, Proposition 209 is not implicated.

III

With all of the aforesaid principles in mind, we proceed to consider the specific statutory schemes challenged in this proceeding.

State Lottery

The statutory provision applicable to the state lottery that plaintiff challenges is contained in Government Code section 8880.56, which is set forth in full in appendix A, *post*. (Further section references are to the Government Code unless otherwise specified.) (26) At issue is subdivision (b)(5), which was added by the Legislature in 1986. (Stats. 1986, ch. 55, § 17, pp. 158-160, eff. Apr. 16, 1986.) [FN8] As we will explain, that subdivision violates principles of equal protection and Proposition 209.

FN8 At the time this litigation arose, the relevant provision was subdivision (b)(4). It has subsequently been renumbered (b)(5), without substantive change. (Stats. 2000, ch. 509, § 2.)

With respect to the advertising or awarding of any contract for the procurement of goods and services exceeding $500,000, section 8880.56, subdivision (b)(5) imposes upon the California State Lottery Commission (the commission) and its director an "affirmative duty" of maximizing the level of participation of "socially and economically disadvantaged small business concerns" in the commission's procurement programs. The commission is required to "adopt proposal evaluation procedures, criteria, and contract terms which ... will achieve the most feasible and practicable level of participation by socially and economically disadvantaged small business concerns

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...." And bidders and contractors are required "to include specific plans or arrangements to utilize subcontracts with socially and economically disadvantaged small business concerns."

Economic disadvantage is a criterion that may be determined through application of race-neutral and gender-neutral financial factors. Social disadvantage is a more amorphous concept that certainly invites reliance on racial and gender classifications. But we do not have to guess as to legislative intent because the fourth paragraph of section 8880.56, subdivision (b)(5) expressly incorporates racial, ethnic, and gender classifications into the statutory meaning of "socially and economically disadvantaged." Individuals from a list of racial and ethnic backgrounds and women are conclusively presumed to be socially and economically disadvantaged regardless of their actual affluence. Persons from the excluded group, apparently only ***48** White males, may be included if found by the commission to be disadvantaged, but the statute provides no definitional criteria, no application procedures, and no procedures for review of the commission's determination.

Even if such procedures were included in the statute, the fact that some individuals must prove disadvantage while others are conclusively presumed to be disadvantaged based solely on race, ethnicity, and gender, establishes impermissible race, ethnicity, and gender classifications. (See *Stanley v. Illinois* (1972) 405 U.S. 645, 657-658 [92 S.Ct. 1208, 1215-1216, 31 L.Ed.2d 551, 562].)

The challenged provision does more than use race, ethnicity, and gender classifications; it establishes preferences for persons from the favored groups. The commission and director are assigned the affirmative duty of maximizing participation by such persons. Selection procedures and criteria are required to accomplish that objective. And bidders and contractors are required to include specific plans or arrangements to utilize subcontracts with members of the favored groups. These provisions do not merely attempt to equalize the opportunity to participate, they establish a preference for doing business with members of the favored groups.

Section 8880.56, subdivision (b)(5) cannot even arguably withstand strict scrutiny. The absence of any identification of past discrimination by the California State Lottery, the random inclusion of groups without individualized consideration whether particular groups suffered from discrimination, the absence of any attempt to measure the recovery by the extent of the injury, the absence of any attempt to disburse the benefits of the scheme in an evenhanded manner to those who actually suffered detriment, and the absence of any geographic or temporal limits to the scheme, all serve to condemn it.

The commission and director do not attempt to justify the statute as written, but argue that they have implemented it in a constitutional manner. Specifically, they assert they have implemented it as a small business outreach statute, using the definition of small business from the Small Business Procurement and Contract Act (§ 14835 et seq.), which does not employ racial and gender classifications. They contend that, as implemented, bidders and contractors are required to make good faith efforts to reach out to minority-owned and women-owned small business concerns, but that no preference or advantage in contracting or subcontracting based on race or gender is applied.

The difficulty with this position is that the commission and director lack the authority to cure a facially unconstitutional statute by refusing to enforce ***49** it as written. (Cal. Const., art. III, § 3.5; *Reese v. Kizer* (1988) 46 Cal.3d 996, 1002 [251 Cal.Rptr. 299, 760 P.2d 495].) We do not deal here with an ambiguous statutory provision that can be interpreted in a constitutional manner; rather, it is a statute that cannot be implemented both constitutionally and in accordance with its express terms. However well intentioned, to the extent that the commission and the director refuse to employ racial and gender preferences in implementing section 8880.56, subdivision (b)(5), they do so in disregard of express statutory requirements. While administrative interpretation may save an ambiguous statute, it cannot cure a facially invalid statute.

Professional Bond Services

(27) The statutory provisions applicable to professional bond services that plaintiff challenges are contained in sections 16850 through 16857, which are set forth in full in appendix B, *post*. For reasons which follow, we conclude that, with one exception, the challenged provisions violate principles of equal protection and Proposition 209.

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Government bonds may be issued for a variety of purposes and on behalf of a variety of state departments and agencies. The bonds must be issued in accordance with the dictates of the particular authorizing act, enacted by the electorate or by a legislative body with authority to provide for the issuance of bonds. (*Golden Gate Bridge etc. Dist. v. Filmer* (1933) 217 Cal. 754, 757-758 [21 P.2d 112, 91 A.L.R. 1].) Matters that are not governed specifically by the authorizing act or otherwise required by law are left to the broad discretion of the issuing department, agency, or officer. (*Ibid.*; see also *Kennedy v. McInturff* (1933) 217 Cal. 509, 514-515 [20 P.2d 315].)

With respect to issuance of state bonds, the State Treasurer is the sole agent for offering and selling bonds. (§ 5702.) In selling bonds on behalf of any state agency or department, the State Treasurer is required to schedule the sale of the bonds so as to coordinate the sale with the program of the department or agency necessitating the sale of the bonds. (*Ibid.*)

In the issuance of government bonds, the state may contract for the services of financial advisers, bond counsel, underwriters, underwriter's counsel, financial printers, feasibility consultants, and other professionals. (§ 16851, subd. (j).) Underwriters essentially serve as transfer agents. The State Treasurer may, in some instances, select an underwriting team without competitive bidding (§ 5703); in those situations, the State Treasurer negotiates a contract with the underwriters, and the underwriters negotiate the sale of bonds to the public. In other instances, bond underwriters are chosen ***50** through competitive bidding; in those situations, the bonds are sold to the underwriter who submits the most favorable bid, and the underwriter then resells the bonds to the investing public.

Sections 16850 through 16857 establish minority and women business "participation goals" for professional bond service contracts. The statutory scheme establishes and utilizes racial and gender classifications. For purposes of the scheme, "minority" is defined to mean "an ethnic person of color ...." (§ 16851, subd. (h).) Minority business enterprises and women business enterprises are defined by reference to majority ownership and control in minorities and/or women. (§ 16851, subds. (i) & (k).) To be a minority business enterprise or a women business enterprise, a business must be at least 51 percent owned and controlled by one or more minorities or women, respectively. (§ 16851, subds. (i) & (k).) A business owned and controlled 50 percent by minorities and 50 percent by women may be counted as either but not both. (§ 16851, subd. (*l*).)

With respect to contracts awarded without competitive bidding, section 16850, subdivision (a) establishes statewide participation goals of 15 percent for MBE's and 5 percent for WBE's. The trial court found that this portion of the statutory scheme is invalid, and it is not at issue in this appeal.

With respect to contracts awarded through competitive bidding, section 16850, subdivision (a) requires each awarding department to establish minority business and women business participation goals. A "goal" is "a numerically expressed objective that awarding departments and providers of professional bond services are required to make efforts to achieve." (§ 16851, subd. (f).) The goals "apply to the overall dollar amount expended by the awarding department with respect to the contracts for professional bond services relating to the issuance of bonds by the awarding department including amounts spent as underwriter's discounts." (§ 16850, subd. (a).) These provisions establish a state preference, at least to the extent of the established goals, for doing business with individuals based upon their race and gender.

When the services of an underwriter are to be obtained by competitive bidding, the awarding department is required to, "at a minimum," (1) "[d]eliver the notice of sale[,] or other notification of intention to the [*sic*] issue the bonds[,] to all minority and women business enterprises that have listed their names with the awarding department for the purpose of this notice and [to] other qualified minority and women business enterprises known to the awarding department," (2) state in all notices that "minority and women business enterprises are encouraged to respond," and (3) require ***51** all submitting bidders "to certify their awareness of the goals of the awarding department [for awarding contracts to minority business enterprises and women business enterprises]." (§ 16852.)

Thus, these statutory provisions entitle minority business enterprises and women business enterprises to special notice of the sale or intention to issue bonds. The State Treasurer disagrees, suggesting that section

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16852 does not require special notice to such enterprises, but includes them only in the notice that is otherwise required under 16754. We are not persuaded. The State Treasurer has considerable discretion in the sale of government bonds, and section 16754 permits the sale of bonds upon such notice as the Treasurer may deem advisable. For purposes of equal protection analysis, we must view the law from the standpoint of the individual. Under the existing statutory scheme, minority businesses and women businesses may ensure that they receive notice by listing their names with the department and, if they have not done so, will receive notice so long as they are known to the department. There is no mechanism by which other businesses can ensure that they receive notice, and there is no requirement that the notice deemed advisable by the State Treasurer be such that any reasonably alert potential bidder will receive it.

Accordingly, this portion of the statutory scheme contravenes Proposition 209's prohibition against the selective dissemination of information. (*Hi-Voltage, supra,* 24 Cal.4th at pp. 562, 564.)

Moreover, the fact that all bidders are required to certify their awareness of the department's goals for the participation of minority businesses and women businesses, coupled with the imposition of a duty on providers of services to make efforts to achieve those goals, only can be intended to result in preferential treatment based upon race and gender. (See *Hi-Voltage, supra,* 24 Cal.4th at p. 562.)

With respect to contracts to be awarded through competitive bidding, the awarding department must require each bidder to identify the minority business enterprises and women business enterprises which will be used to fulfill minority and women participation goals, and to state the portion or the work to be done by each such subcontractor. (§ 16852.5, subd. (a).) And section 16852.5, subdivision (b) makes applicable to those subcontractors the Subletting and Subcontracting Fair Practices Act (Pub. Contract Code, § 4100 et seq.), which requires prime contractors to identify, in their bids, the subcontractors who will perform work under the contract, and prohibits the prime contractor from thereafter substituting any person for the subcontractor unless a statutory exception is established. (Pub. Contract Code, §§ 4104, 4107.) ***52**

Extending protections of the Subletting and Subcontracting Fair Practices Act to minority and women subcontractors for professional bond services, but not to other subcontractors, is itself a suspect classification for purposes of equal protection analysis and an impermissible preference under Proposition 209.

In addition, the statutory scheme requires an awarding department to establish a method of monitoring adherence to its minority and women participation goals, including requiring a follow-up report from all contractors upon completion of any sale of bonds. (§ 16853, subd. (a).) Each awarding department is required to file an annual report with the Governor and the Legislature stating the level of participation of minority and women businesses in professional bond service contracts and, if the department's participation goals are not met, stating the reasons for its inability to achieve the goals and the steps that will be taken in an effort to achieve the goals. (§ 16855.)

The State Treasurer claims that this portion of the statutory scheme should not be subject to strict scrutiny because there is no penalty for a failure to achieve participation goals. According to this argument, competitively bid contracts are awarded to the lowest responsible bidder without consideration of the race or gender of the bidder or of the bidder's subcontractors, and thus minority and women participation goals are irrelevant to the selection process itself. We reject this argument for two reasons.

First, the statutory scheme requires that bidders certify their awareness of participation goals and imposes upon them a duty to make efforts to achieve those goals. (§§ 16851, subd. (f), 16852, subd. (c).) Government contractors are required to act in good faith and, in assessing the validity of a statutory scheme, we cannot presume they will not do so. (Civ. Code, §§ 3529, 3548.) Regardless of whether the statutory scheme imposes a penalty for the failure to comply with the duty that it imposes, it establishes racial and gender preferences.

Second, the economic realities of the statutory scheme inevitably compel bidders to give preferences based on racial and gender classifications. Except for the special minority business enterprise and women business enterprise notice requirements, the State Treasurer and awarding departments have broad discretion in providing notice to potential bidders. While

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some contracts are awarded through competitive bidding, others are not. A bidder who wishes to be ensured of notice for future competitively awarded contracts, and to be considered for negotiated contracts, will know that a demonstrated ability to meet or exceed participation goals inevitably will be ***53** a factor in the notice and selection processes. (See, e.g., § 5703, subd. (a).) Therefore, while an isolated competitive bid contract may be obtained without complying with the duty to make efforts to achieve participation goals, a bidder's hopes for future business inevitably will cause it to employ racial and gender preferences.

The statutory scheme does not arguably withstand strict scrutiny. No justification has been shown. There was no specific finding of identified prior discrimination in the contracting for professional bond services. There was no effort to measure the remedy against the consequences of identified discrimination. There was no effort to limit recovery to those who actually suffered from prior discrimination. There was no showing that non-race-based and non-gender-based remedies would be inadequate or were even considered. The scheme is unlimited in duration. And, except for its limitation to citizens and lawfully admitted aliens, the scheme is unlimited in reach.

It remains to be determined whether reporting requirements of the statutory scheme (§ 16855) may be severed and upheld. We already have decided that monitoring and reporting requirements serve a compelling government need and may be employed without violating principles of equal protection or Proposition 209. The requirement in the first sentence of section 16855, that each awarding department make an annual report "to the Governor and the Legislature on the level of participation by minority and women business enterprises in contracts as identified in this chapter," may be severed functionally and grammatically from the remainder of the statutory scheme. The consistency with which the Legislature has imposed monitoring and reporting duties on state agencies with respect to the participation of minorities and women in various programs, and the importance of such information to the Legislature, convinces us that the Legislature intended to impose this requirement regardless of the validity of the remainder of the statutory scheme. Hence, we sever and uphold this portion of the reporting requirement.

State Civil Service

(28) The state civil service affirmative action provisions that plaintiff challenges are contained in sections 19790 through 19799, which are set forth in full in appendix C, *post*. We find that, with two exceptions, those provisions facially violate principles of equal protection and Proposition 209.

Pursuant to the challenged statutory scheme, each agency and department "is responsible for establishing an effective affirmative action program." ***54** (§ 19790.) The director of each department, in cooperation with the State Personnel Board, has "the major responsibility for monitoring the effectiveness of the affirmative action program of the department." (§ 19794.) The secretary of each agency and the director of each department each is required to appoint an "affirmative action officer" with responsibility over the agency's and the department's programs. (§ 19795, subd. (a).) Bureau and division chiefs "[are] accountable to the department director for the effectiveness and results of the program within their division or bureau." (§ 19796.) All management levels, including first-line supervisors, must "provide program support and take all positive action necessary to ensure and advance equal employment opportunity at their respective levels." (§ 19796.)

An affirmative action program includes, on an annual basis, the establishment of "goals and timetables designed to overcome any identified underutilization of minorities and women in their [agency or department]." (§ 19790.) At a minimum, each agency and department must annually "identify the areas of underutilization of minorities and women within [the agency or department] by job category and level," perform "an equal employment opportunity analysis of all job categories and levels within the hiring jurisdiction," and provide "an explanation and specific actions for improving the representation of minorities and women." (§ 19797.)

For purposes of the statutory scheme, a goal is a projected level of achievement, specific to the smallest reasonable hiring unit, for correcting underutilization of minorities and women. (§ 19791, subd. (a).) A timetable is an estimate of the time required to meet specific goals. (§ 19791, subd. (b).) " 'Underutilization' means having fewer persons of a particular group in an occupation or at a level in a

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department than would reasonably be expected by their availability." (§ 19791, subd. (c).)

The State Personnel Board (hereafter the board) is "responsible for providing statewide advocacy, coordination, enforcement, and monitoring of [agency and department affirmative action] programs." (§§ 19790, 19792.) Among other things, the board must review and approve agency and departmental affirmative action goals and timetables. (§§ 19790, 19792, subd. (d).) The board is required to make an annual report to the Governor, the Legislature, and the Department of Finance on the accomplishment of each agency and department in meeting its goals for the past year. (§ 19793.) The Legislature must then "evaluate the equal employment opportunity efforts and affirmative action progress of state agencies during its evaluation of the Budget Bill." (§ 19793.) ***55**

And section 19798 provides that, "[i]n establishing order and subdivisions of layoff and reemployment, the board, when it finds past discriminatory hiring practices, shall by rule, adopt a process that provides that the composition of the affected work force will be the same after the completion of a layoff, as it was before the layoff procedure was implemented."

In 1995, Governor Wilson issued Executive Order No. W-124-95, which directed state agencies to eliminate employment practices based on racial and gender preferences. Thereafter, the board revised its recommended procedures in an effort to comply with the executive order. The trial court held the statutory scheme is valid because, in light of the executive order, it appears that the statutory scheme can be implemented reasonably without racial and gender preferences.

We conclude, however, that the statutory requirements for the establishment of goals and timetables to overcome identified underutilization of minorities and women violate principles of equal protection and Proposition 209.

As the California Supreme Court noted in *Hi-Voltage, supra*, 24 Cal.4th at page 563, a participation goal differs from a quota or set-aside only in degree; it remains a line drawn on the basis of race and gender. And when the government chooses to rely upon racial and gender distinctions, the scheme is presumptively invalid; we cannot defer to legislative pronouncements, and the burden is on the government to justify the use of the distinction. (*Croson, supra*, 488 U.S. at pp. 500-501 [109 SCt. at pp. 725-726, 102 L.Ed.2d at p. 886] (maj. opn.).)

Pursuant to the statutory scheme, the board must establish requirements for improvement or corrective action to eliminate underutilization of minorities and women. (§ 19792, subd. (e).) In each agency and department, a duty is imposed on every managerial employee, from first line supervisors on up, to attempt to achieve the agency or departmental goals. (§§ 19794-19796.) Such an establishment of specific hiring goals necessarily is, in itself, the establishment of hiring preferences for purposes of equal protection and Proposition 209.

Under equal protection principles, the use of statistical underutilization to establish hiring goals suffers from a fatal flaw. The scheme can be viewed in only two ways. It may represent a decision to assure participation of "some specified percentage of a particular group" merely because of race or gender, which would be impermissible discrimination. (*Bakke II, supra,* ***56**438 U.S. at p. 307 [98 S.Ct. at p. 2757, 57 L.Ed.2d at p. 782] (lead opn.); see also *Croson, supra*, 488 U.S. at p. 497 [109 S.Ct. at pp. 723-724, 102 L.Ed.2d at p. 884] (plur. opn.).) Or the use of statistical underutilization to establish hiring goals may be viewed as the establishment of a conclusive presumption of prior discrimination based upon statistical disparity. The problem with this is that, while statistical underutilization may serve as significant evidence of prior discriminatory hiring practices, it is not conclusive and is not, in itself, proof of discrimination. (*Hazelwood School District v. United States* (1977) 433 U.S. 299, 312-313 [97 S.Ct. 2736, 2743-2744, 53 L.Ed.2d 768, 780].) There may be explanations other than discrimination for statistical variations, and detailed consideration of past hiring practices may rebut the inference suggested by statistical evidence. (*Ibid.*) Constitutional rights cannot be foreclosed through the use of presumptions rather than proof. (*Stanley v. Illinois, supra*, 405 U.S. at pp. 657-658 [92 S.Ct. at pp. 1215-1216, 31 L.Ed.2d at p. 562].) Accordingly, statistical anomalies, without more, do not give a governmental entity the legal authority to employ racial and gender classifications. (*Croson, supra*, 488 U.S. at pp. 499, 501-503 [109 S.Ct. at pp. 725-727, 102 L.Ed.2d at pp. 885, 887-888] (maj. opn.).)

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These constitutional objections may be eliminated by severing and invalidating the requirement that state agencies and departments establish, and make efforts to achieve, goals and timetables to overcome any identified underutilization of minorities and women in state agencies and departments.

In other words, portions of the statutory scheme that provide for data collection and reporting do not suffer a constitutional defect because a determination of the underutilization of minorities and women in state service can serve legitimate and important purposes. Such a determination may indicate the need for further inquiry to ascertain whether there has been specific, prior discrimination in hiring practices. It may indicate the need to evaluate applicable hiring criteria to ensure that they are reasonably job-related and do not arbitrarily exclude members of the underutilized group. And it may indicate the need for inclusive outreach efforts to ensure that members of the underutilized group have equal opportunity to seek employment with the affected department.

One other provision of the statutory scheme requires separate discussion. Section 19798 authorizes the board, when it finds the existence of past discriminatory hiring practices, to adopt a process that alters layoff and reemployment procedures in order to maintain the racial and gender composition of the affected work force. ***57**

The burdens imposed by such a process are not diffused throughout the general population and do not affect mere hopes or expectations. Rather, they interfere with the established employment rights of specific individuals based upon race and/or gender. They are among the most severe race and gender based remedies that might be postulated. (See *Wygant, supra*, 476 U.S. at pp. 294-295 [106 S.Ct. at pp. 1857-1858, 90 L.Ed.2d at p. 282] (conc. opn. of White, J.).) Therefore, the use of such a remedy would require the most compelling justification.

Equal protection jurisprudence of the United States Supreme Court has not disapproved the possibility that such a remedy might be appropriate in some circumstance. While utilization of the authority conferred on the board by section 19798 would be subject to strict judicial scrutiny, the statute is not facially invalid under equal protection principles.

Proposition 209 is more restrictive. Alteration of layoff and reemployment schemes in order to maintain the racial and/or gender composition of the work force unquestionably would discriminate against some individuals and grant preferences to others on the basis of race and/or gender. Proposition 209 generally forbids such action. But there are exceptions to the rule established by Proposition 209. If the failure to employ the scheme authorized by section 19798 would result in ineligibility for a federal program with a loss of federal funds, or if federal law or the United States Constitution required, rather than merely permitted, the use of the scheme, Proposition 209 would not preclude it. (Cal. Const., art. I, § 31, subds. (e), (h).)

While any attempt by the board to implement an altered layoff and reemployment scheme pursuant to section 19798 would be subject to the restrictions of Proposition 209 and to strict judicial scrutiny for equal protection purposes, the granting of authority to the board to utilize such a scheme, should appropriate circumstances arise, is not invalid on its face.

Community Colleges

(29) The community college provisions that plaintiff challenges are contained in Education Code sections 87100 through 87107, which are set forth in full in appendix D, *post*. As will become apparent, they violate principles of equal protection and Proposition 209.

Community colleges are two-year secondary schools that are part of the state public school system. (Ed. Code, §§ 66010.4, 66700.) The community college system is divided into districts. (Ed. Code, § 74000.) Each district is ***58** under the immediate control of a board of trustees (Ed. Code, § 70902), while statewide management, administration, and control over community colleges are vested in a board of governors. (Ed. Code, § 71020 et seq.)

The statutory scheme in question declares that it is "educationally sound" for (1) "the minority student attending a racially impacted school to have available the positive image provided by minority classified and academic employees," (2) "the student from the majority group to have positive experiences with minority people," and (3) "students to observe that women as well as men can assume responsible and diverse roles in society." (Ed. Code, § 87100, subd. (b).) It is

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further declared that "[l]essons concerning democratic principles and the richness which racial diversity brings to our national heritage can be best taught by the presence of staffs of mixed races and ethnic groups working toward a common goal." (Ed. Code, § 87100, subd. (d).)

To this end, the Legislature intended "to promote the total realization of equal employment opportunity through a continuing affirmative action employment program" with the intent "to require educational agencies to adopt and implement plans for increasing the numbers of women and minority persons at all levels of responsibility." (Ed. Code, § 87100, subd. (d).)

For purposes of this statutory scheme, an "affirmative action employment program" means "planned activities designed to seek, hire, and promote persons who are underrepresented in the work force compared to their number in the population, including handicapped persons, women, and persons of minority racial and ethnic backgrounds." It requires employers "to make additional efforts to recruit, employ, and promote members of groups formerly excluded at the various levels of responsibility who meet statewide minimum qualifications, if any, and who, relative to local qualifications beyond the statewide minimum qualifications, are qualified or may become qualified through appropriate training or experience within a reasonable length of time." The program "should be designed to remedy the exclusion, whatever its cause." (Ed. Code, § 87101, subd. (a).)

Each community college district is required to have a plan which ensures that district personnel participate in, and are committed to, the affirmative action employment program. The plan must include hiring goals and timetables for its implementation. (Ed. Code, § 87102, subd. (a).) "Goals and timetables" mean "projected new levels of employment of women and minority racial and ethnic groups to be attained on an annual schedule...." (Ed. Code, § 87101, subd. (b).) The plan must include steps to be ***59** taken "in meeting and improving hiring goals for both full-time faculty and part-time faculty" and "the development of the plan shall be a condition for receipt of allowances [for program improvement]." (Ed. Code, § 87102, subd. (a).)

The governing board of each community college district is accountable for the success or failure of its program. (Ed. Code, § 87102, subd. (a).) The governing board must periodically submit to the board of governors "an affirmation of compliance." (Ed. Code, § 87102, subd. (a).) And the board of governors has the authority to impose conditions necessary to assure reasonable progress of affirmative action, including program improvement allowances and moneys from the Faculty and Staff Diversity Fund. (Ed. Code, § 87104, subd. (a).)

The Faculty and Staff Diversity Fund is available to the board of governors for the purpose of enabling community colleges as a system to meet "the goal that by the year 2005 the system's work force will reflect proportionately the adult population of the state." (Ed. Code, § 87107, subd. (a).) The Legislature expressed the intent that, by fiscal year 1992-1993, 30 percent of all new hires in the system would be ethnic minorities. (Ed. Code, § 87107, subd. (a).) The board of governors is to use the fund for, among other things, providing for extended outreach and recruitment of underrepresented groups, providing incentives to hire members of underrepresented groups, and for in-service training and other related staff diversity programs. (Ed. Code, § 87107, subd. (d).) In administering the Faculty and Staff Diversity Fund, it is the intent that boards of governors "give funding priority and shall afford flexibility and discretion in the use of these funds to districts which have made or are making reasonable progress in contributing to the achievement of the goals of this fund." (Ed. Code, § 87107, subd. (e).)

This statutory scheme suffers from multiple constitutional faults. The establishment of an overall and continuing hiring goal-by fiscal year 1992-1993, 30 percent of new hires will be ethnic minorities and by the year 2005, the work force will proportionately reflect the adult population of the state-is, unquestionably, a preferential hiring scheme in violation of Proposition 209. Moreover, a goal of assuring participation by some specified percentage of a particular group merely because of its race or gender is "discrimination for its own sake" and must be rejected as facially invalid under equal protection principles. (*Bakke II, supra*, 438 U.S. at p. 307 [98 S.Ct. at p. 2757, 57 L.Ed.2d at p. 782] (lead opn.); see also *Croson, supra*, 488 U.S. at p. 497 [109 S.Ct. at pp. 723-724, 102 L.Ed.2d at p. 884] (plur. opn.).) And the requirement to create timetables to seek, hire, and

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promote minorities and women and to make reasonable progress in doing so-with ***60** financial incentives for success and financial detriment for failure-establishes impermissible racial and gender preferences. (*Hi-Voltage, supra,* 24 Cal.4th at p. 563.)

One stated justification for the preferential hiring scheme-the role model theory (Ed. Code, § 87100, subd. (d))-has been rejected by the United States Supreme Court. (*Wygant, supra,* 476 U.S. at pp. 274-276 [106 S.Ct. at pp. 1847-8148, 90 L.Ed.2d at pp. 269-270] (plur. opn.).) The other stated justification is the belief that "[l]essons concerning democratic principles and the richness which racial diversity brings to our national heritage can be best taught by the presence of staffs of mixed races and ethnic groups ...." (Ed. Code, § 87100, subd. (d).) This, too, does not justify the establishment of racial and gender preferences. Lessons concerning democratic principles must include the fundamental rule of law, embodied in our state and federal Constitutions, that individuals should not be classified for different treatment based upon their race or gender.

The statutory scheme is not, as the community colleges state, an "equal employment opportunity" scheme. It says nothing about making inclusive outreach efforts to assure equal opportunity; instead, it requires efforts to seek, hire, and promote minorities and women. Success must be achieved, and underrepresentation must be eliminated. Nor, as the community colleges suggest, is it an attempt to redress specific prior discrimination; under the scheme, underrepresentation must be eliminated regardless of its cause.

And, contrary to the community colleges' claim, regulations adopted to implement the statutory scheme do not make the statutory scheme consistent with constitutional requirements. As we already have noted, administrative implementation cannot save a facially invalid statutory scheme. (Cal. Const., art. III, § 3.5; *Reese v. Kizer, supra,* 46 Cal.3d at p. 1002.)

In any event, the board of governors' regulations do not come close to implementing the scheme in a constitutional manner.

Among other things, the regulations proceed with hiring goals and timetables and require that districts achieve success in reaching numerical workforce parity of women and minorities. (Cal. Code Regs., tit. 5, §§ 53001, subds. (a), (b), (f), (o), (p), 53003, subd. (c)(10), 53020, subd. (a), 53030, subd. (b)(3).) This is invalid discrimination for its own sake.

Although inclusive outreach efforts may be designed and carried out in a manner that does not require strict scrutiny or violate Proposition 209, ***61** calling a scheme an outreach effort does not save it from strict scrutiny or constitutional invalidity if it in fact utilizes suspect classifications. The board's regulations do so. Recruitment must include "focused outreach" to women and minorities, and in-house or promotional only recruitment may not be used unless women and minorities have reached numerical parity in the pool of eligible employees. (Cal. Code Regs., tit. 5, § 53021, subds. (a), (b).) If members of the favored groups have not applied in sufficient numbers by the time the application period has closed, steps must be taken that include reopening the application process for additional focused recruitment. (Cal. Code Regs., tit. 5, § 53023, subd. (b).) And, after applications are screened for eligibility, the regulations specify that the process may have to be reopened again, and local qualifications may have to be abandoned, in order to ensure sufficient applicants from the favored groups. (*Ibid.*) In fact, a requirement that the process be reopened or redone may occur throughout the selection process whenever necessary to ensure there are sufficient applicants from the favored groups. (Cal. Code Regs., tit. 5, §§ 53023-53024.) This is not an inclusive outreach scheme, it is a preferential recruitment and selection process.

In addition, if the preferential recruitment and selection process has not achieved numerical parity in a reasonable time, defined in most circumstances as three years, then additional steps must be taken that include consideration of the race or gender of applicants in the selection process and the inclusion, in the applicant pool, of members of the favored groups who were previously screened out for failure to meet locally established desirable or preferred qualifications. (Cal. Code Regs., tit. 5, § 53006.) By any reckoning, this constitutes the use of hiring preferences.

Moreover, the regulations require the use of racial and gender hiring preferences without a finding of specific discrimination, without evidence that would support such a finding, and in contravention of Proposition 209.

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For all of these reasons, the regulations do not save the statutory scheme.

Although we uphold the data collection and reporting aspects of other statutory schemes, we cannot do so with the community college statutes. Since their data collection and reporting requirements are entirely bound up and intermixed with the success of the preferential hiring scheme, they cannot be severed functionally and grammatically from the remainder of the statutory scheme.

State Contracting

Public Contract Code sections 10115 through 10115.15 concern minority business and women business participation goals for state contracts. In ***62** *Monterey Mechanical Co. v. Wilson* (9th Cir. 1997) 125 F.3d 702 (hereafter *Monterey Mechanical*), the federal court of appeals held this statutory scheme was invalid under principles of equal protection. So, too, did the trial court in this case.

The federal court in *Monterey Mechanical* did not address whether the reporting requirements in the statutory scheme (Pub. Contract Code, § 10115.5) may be severed and upheld. [FN9] The trial court in this case found they may not. Real parties in interest have cross-appealed, asserting that the reporting requirements should be severed and upheld.

> FN9 Public Contract Code section 10115.5, subdivision (a) states: "Notwithstanding Section 7550.5 of the Government Code [since repealed by its own terms (Stats. 1996, ch. 970, § 1)], on January 1 of each year, each awarding department shall report to the Governor and the Legislature on the level of participation by minority, women, and disabled veteran business enterprises in contracts as identified in this article for the fiscal year beginning July 1 and ending June 30. In addition, the report shall contain the levels of participation by minority, women, and disabled veteran business enterprises for the following categories of contracts: [¶] (1) Construction. [¶] (2) Purchases of materials, supplies, and equipment. [¶] (3) Professional services. [¶] (4) All contracts for a dollar amount of less than twenty-five thousand dollars ($25,000)." Subdivision (b) of the statute states: "If the established goals are not being met, the awarding department shall report the reasons for its inability to achieve the standards and identify remedial steps it shall take."

Division One of the Court of Appeal, First Appellate District, addressed this issue in *Barlow v. Davis* (1999) 72 Cal.App.4th 1258 [85 Cal.Rptr.2d 752]. (30) The appellate court held that, although the reporting requirements may be severed mechanically and grammatically from the invalid portions of the statutory scheme, and although the scheme includes a severability clause (Pub. Contract Code, § 10115.8), the reporting requirements find efficacy only when they are correlated with the invalidated portions of the statutory scheme and thus cannot be functionally separated. (*Barlow v. Davis, supra*, 72 Cal.App.4th at p. 1266.) We disagree.

The Legislature's right to obtain accurate and up-to-date information on matters of public concern cannot be disputed. "The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." (*Barenblatt v. United States* (1959) 360 U.S. 109, 111 [79 S.Ct. 1081, 1085, 3 L.Ed.2d 1115, 1120].)

The broad nature of the power of inquiry and the importance thereof have been recognized under state law. "[I]n many instances, in order to the ***63** preparation of wise and timely laws the necessity of investigation of some sort must exist as an indispensable incident and auxiliary to the proper exercise of legislative power." (*In re Battelle* (1929) 207 Cal. 227, 241 [277 P. 725, 65 A.L.R. 1497]; see also *Special Assembly Int. Com. v. Southard* (1939) 13 Cal.2d 497, 503 [90 P.2d 304].)

In our tripartite system of government, legislative function is limited to declaring the law and providing the ways and means of its accomplishment. (*California Radioactive Materials Management Forum v.*

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Department of Health Services (1993) 15 Cal.App.4th 841, 870-871 [19 Cal.Rptr.2d 357], disapproved on another ground in *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 305, fn. 5 [105 Cal.Rptr.2d 636, 20 P.3d 533].) The Legislature cannot exercise direct supervisorial control over the execution of the laws. (*Id.* at p. 872.) In this light, the statutory provisions that require data to be collected and reported to the Legislature cannot be intended as some sort of supervisorial device; they can be intended only as the basis for future legislative consideration, within the power of inquiry, with respect to the need for future legislative action.

Irrespective of the substantive elements of the statutory scheme, information concerning the participation of minority and women business enterprises in state contracts can serve a number of important and valid legislative purposes. As we have noted earlier, it may indicate the need for further inquiry to determine whether specific discrimination is occurring. It may aid the Legislature in determining whether race-neutral and gender-neutral remedies are needed. It may aid the Legislature in determining whether a scheme that does not employ suspect classifications, such as an inclusive outreach scheme, is warranted. It also may satisfy the Legislature that no further legislative action is necessary.

In these respects, the reporting requirements of the statutory scheme applicable to state contracting can serve a legislative interest separate from the substantive provisions of the scheme. The Legislature determined that the enactment of the substantive elements of the statutory scheme would not eliminate the need for further legislative inquiry, and neither will invalidation of the substantive elements of the scheme.

The reporting requirements contained in Public Contract Code section 10115.5, subdivision (a) can be severed mechanically and grammatically from the invalid portions of the act and, we conclude, may be severed functionally. Accordingly, we find the reporting provisions are valid and may be enforced separate from the invalid portions of the statutory scheme. ***64**

Disposition

The judgment is reversed, and the cause is remanded to the trial court with directions to enter a judgment consistent with the conclusions in this opinion.

Morrison, J., and Callahan, J., concurred. ***65**

A

State Lottery

The statutory provision challenged with respect to the state lottery is Government Code section 8880.56, which provides:

"(a) Notwithstanding other provisions of law, the director may purchase or lease goods and services as are necessary for effectuating the purposes of this chapter. The director may not contract with any private party for the operation and administration of the California State Lottery, created by this chapter. However, this section does not preclude procurements which integrate functions such as game design, supply, advertising, and public relations. In all procurement decisions, the director shall, subject to the approval of the commission, award contracts to the responsible supplier submitting the lowest and best proposal that maximizes the benefits to the state in relation to the areas of security, competence, experience, and timely performance, shall take into account the particularly sensitive nature of the California State Lottery and shall act to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery and the objective of raising net revenues for the benefit of the public purpose described in this chapter.

"(b) Notwithstanding any other provision of this chapter, the following shall apply to contracts or procurement by the lottery:

"(1) To ensure the fullest competition, the commission shall adopt and publish competitive bidding procedures for the award of any procurement or contract involving an expenditure of more than one hundred thousand dollars ($100,000). The competitive bidding procedures shall include, but not be limited to, requirements for submission of bids and accompanying documentation, guidelines for the use of requests for proposals, invitations to bid, or other methods of bidding, and a bid protest procedure. The director shall determine whether the goods or services subject to this paragraph are available through existing contracts or

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price schedules of the Department of General Services.

"(2) The contracting standards, procedures, and rules contained in this subdivision shall also apply with respect to any subcontract involving an expenditure of more than one hundred thousand dollars ($100,000). The commission shall establish, as part of its bidding procedures for general contracts, subcontracting guidelines that implement this requirement.

"(3) The provisions of Article 1 (commencing with Section 11250) of Chapter 3 of Part 1 of Division 3 apply to the commission. ***66**

"(4) The commission is subject to the Small Business Procurement and Contract Act, as provided in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3.

"(5) In advertising or awarding any general contract for the procurement of goods and services exceeding five hundred thousand dollars ($500,000), the commission and the director shall require all bidders or contractors, or both, to include specific plans or arrangements to utilize subcontracts with socially and economically disadvantaged small business concerns. The subcontracting plans shall delineate the nature and extent of the services to be utilized, and those concerns or individuals identified for subcontracting if known.

"It is the intention of the Legislature in enacting this section to establish as an objective of the utmost importance the advancement of business opportunities for these small business concerns in the private business activities created by the California State Lottery. In that regard, the commission and the director shall have an affirmative duty to achieve the most feasible and practicable level of participation by socially and economically disadvantaged small business concerns in its procurement programs.

"By July 1, 1986, the commission shall adopt proposal evaluation procedures, criteria, and contract terms which are consistent with the advancement of business opportunities for small business concerns in the private business activities created by the California State Lottery and which will achieve the most feasible and practicable level of participation by socially and economically disadvantaged small business concerns in its procurement programs. The proposal evaluation procedures, criteria, and contract terms adopted shall be reported in writing to both houses of the Legislature on or before July 1, 1986.

"For the purposes of this section, socially and economically disadvantaged persons include women, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other natural persons found by the commission to be disadvantaged.

"The commission shall report to the Legislature by July 1, 1987, and by each July 1 thereafter, on the level of participation of small businesses, socially and economically disadvantaged businesses, and California businesses in all contracts awarded by the commission. ***67**

"(6) The commission shall prepare and submit to the Legislature by October 1 of each year a report detailing the lottery's purchase of goods and services through the Department of General Services. The report shall also include a listing of contracts awarded for more than one hundred thousand dollars ($100,000), the name of the contractor, amount and term of the contract, and the basis upon which the contract was awarded.

"The lottery shall fully comply with the requirements of paragraphs (2) to (5), inclusive, except that any function or role which is otherwise the responsibility of the Department of Finance or the Department of General Services shall instead, for purposes of this subdivision, be the sole responsibility of the lottery, which shall have the sole authority to perform that function or role." ***68**

B

Professional Bond Services

The following sections of the Government Code concern affirmative action with respect to professional bond services. The portions of the statutory scheme

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found to be invalid by the trial court are in italics:

Section 16850: "(a) *Notwithstanding any other provision of law, each awarding department shall have annual statewide participation goals of not less than 15 percent for minority business enterprises and 5 percent for women business enterprises for contracts entered into by the awarding department during the year for each of the professional bond services. This section shall not apply if a contract for professional bond services of an underwriter is to be obtained by competitive bid. However,* each awarding department shall establish goals for contracts to be obtained by competitive bid for professional bond services, as defined in Section 16851.

"These goals shall apply to the overall dollar amount expended by the awarding department with respect to the contracts for professional bond services relating to the issuance of bonds by the awarding department including amounts spent as underwriter's discounts.

"*(b) In attempting to meet the goals set forth in subdivision (a), the awarding department shall consider establishing cocounsel, joint venture, and subcontracting relationships including minority business enterprises and women business enterprises in all contracts for bonds awarded by the awarding department. However, nothing in this article shall preclude the awarding department from achieving the goals set forth in this section without requiring joint ventures, cocounsel, or subcontracting arrangements.*

"*(c) This section shall not limit the ability of any awarding department to meet a goal higher than those set forth in subdivision (a) for participation by minority and women business enterprises in contracts awarded by the awarding department.*

"(d) Nothing in this chapter shall be construed to authorize any awarding department to discriminate in the awarding of any contract on the basis of race, color, sex, ethnic origin, or ancestry."

Section 16851: "As used in this chapter, the following definitions apply:

"(a) 'Awarding department' means any agency, department, constitutional officer, governmental entity, or other officer or entity of the state empowered by law to issue bonds on behalf of the State of California. ***69**

"(b) 'Bonds' means bonds, notes, warrants, certificates of participation, and other evidences of indebtedness issued by or on behalf of the State of California.

"(c) 'Contract' includes any contract, agreement, or joint agreement to provide professional bond services to the State of California or an awarding department.

"(d) 'Contractor' means any provider of professional bond services who enters into a contract with an awarding department.

"(e) 'Foreign corporation,' 'foreign firm,' or 'foreign-based business' means a business entity that is incorporated or has its principal headquarters located outside the United States.

"(f) 'Goal' means a numerically expressed objective that awarding departments and providers of professional bond services are required to make efforts to achieve.

"(g) 'Management and control' means effective and demonstrable management of the business entity.

"(h) 'Minority' means an ethnic person of color including American Indians, Asians (including, but not limited to, Chinese, Japanese, Koreans, Pacific Islanders, Samoans, and Southeast Asians), Blacks, Filipinos, and Hispanics. A minority must be a citizen of the United States or a lawfully admitted permanent resident as defined in Title 8 U.S.C. 1101(a)(20).

"(i) 'Minority business enterprise' means a business concern that meets all of the following requirements:

"(1) A sole proprietorship owned by a minority; a firm or partnership, at least 51 percent of the voting stock or partnership interests of which are owned by one or more minorities; a subsidiary which is wholly owned by a parent corporation but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more minorities; or a joint venture in which at least 51 percent of the joint venture's management of the joint venture business and at least 51 percent of the joint venture's earnings are controlled or retained by the minority participants in the joint venture.

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"(2) Management and control of daily business operations by one or more minorities although not necessarily the same minorities who are owners of the business. *70

"(3) A sole proprietorship, corporation, joint venture, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

"(j) 'Professional bond services' include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter's counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.

"(k) A woman owner of a women business enterprise must be a citizen of the United States or a lawfully admitted permanent resident as defined in Title 8 U.S.C. 1101(a)(20).

" 'Women business enterprise' means a business concern that is all of the following:

"(1) A sole proprietorship owned by a woman; a firm or partnership, at least 51 percent of the voting stock or partnership interests of which are owned by one or more women; a subsidiary which is wholly owned by a parent corporation but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more women; or a joint venture in which at least 51 percent of the joint venture's management of the joint venture business and at least 51 percent of the joint venture's earnings are controlled or retained by the women participants in the joint venture.

"(2) Management and control of daily business operations by one or more women although not necessarily the same women who are the owners of the business.

"(3) A sole proprietorship, corporation, joint venture, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

"(*l*) 'Minority business enterprise' and 'women business enterprise,' include an enterprise of which 50 percent is owned and controlled by one or more minorities and the other 50 percent is owned and controlled by one or more women, or, in the case of a publicly owned business, 50 percent of the stock of which is owned and controlled by one or more minorities and the other 50 percent is owned and controlled by one or more women. Any business enterprise so defined may be counted as either a minority business enterprise or a women business enterprise for purposes of meeting the *71 participation goals, but no one such business enterprise shall be counted as meeting the participation goals in both categories."

Section 16852: "Notwithstanding Section 16850, if a contract for professional bond services of an underwriter is to be obtained by competitive bid, the awarding department shall, at a minimum, take all of the following actions:

"(a) Deliver the notice of sale or other notification of intention to the [*sic*] issue the bonds to all minority and women business enterprises that have listed their names with the awarding department for the purpose of this notice and other qualified minority and women business enterprises known to the awarding department.

"(b) State in all notices of sale and other notifications of intention to issue bonds that minority and women business enterprises are encouraged to respond.

"(c) Require all submitting bidders to certify their awareness of the goals of the awarding department in accordance with this chapter.

"(d) Nothing in this section shall be construed to authorize any awarding department to discriminate in the solicitation of bids or in the awarding of contracts on the basis of race, color, sex, ethnic origin, or ancestry."

Section 16852.5: "(a) Any awarding department taking bids in connection with the award of any contract shall provide, in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

"(1) The name and the location of the place of business of each subcontractor certified as a minority,

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women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

"(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

"(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public *72 Contract Code) shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, and disabled veteran business enterprises.

"(c) For purposes of this section, 'subcontractor' and 'prime contractor' shall have the same meaning as those terms are defined in Section 4113 of the Public Contract Code."

Section 16853: "(a) The awarding department shall establish a method of monitoring adherence to the goals specified in Section 16850, including requiring a followup report from all contractors upon the completion of any sale of bonds.

"(b) The awarding department shall adopt rules and regulations for the purpose of implementing this section. Emergency regulations consistent with this section may be adopted."

Section 16854: "In implementing this chapter, the awarding department shall utilize existing resources such as the Office of Small and Minority Business."

Section 16855: "Beginning July 1, 1989, and on January 1, 1990, and on January 1 of each year thereafter, each awarding department shall report to the Governor and the Legislature on the level of participation by minority and women business enterprises in contracts as identified in this chapter. If the established goals are not met, the awarding department shall report the reasons for its inability to achieve the goals and identify steps it shall take in an effort to achieve the goals."

Section 16856: "(a) Notwithstanding anything in this chapter to the contrary, the validity or enforceability of any bonds to which this chapter applies shall not be affected in any way by the failure of an awarding department to meet the goals established under this chapter.

"(b) No action may be maintained to enjoin the issuance of any bonds to which this chapter applies or the enforcement of any contract for professional bond services based on an awarding department's failure to meet the goals set forth in Section 16850."

Section 16857: "(a) It shall be unlawful for a person to:

"(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or *73 retaining or attempting to obtain or retain, acceptance or certification as a minority, women, or disabled veteran business enterprise, for the purposes of this chapter.

"(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the acceptance or certification or denial of acceptance or certification of any entity as a minority, women, or disabled veteran business enterprise.

"(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity which has requested acceptance or certification as a minority, women, or disabled veteran business enterprise.

"(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person or firm is not entitled under this chapter.

"(5) Establish, or cooperate in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to (4), inclusive. Any person or firm who violates this paragraph is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed fifty thousand dollars ($50,000) for the first

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violation, and a civil penalty not to exceed two hundred thousand dollars ($200,000) for each additional or subsequent violation.

"(6) This section shall not apply to minority and women business enterprise programs conducted by public utility companies pursuant to the California Public Utilities Commission's General Order 156.

"(b) Any person who violates paragraphs (1) to (4), inclusive, of subdivision (a) is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) for the first violation, and a civil penalty not to exceed twenty thousand dollars ($20,000) for each additional or subsequent violation.

"(c) Any person or firm that violates subdivision (a) shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as either a contractor or subcontractor in, any contract awarded by the state for a period of not less than 30 days nor more than one year. However, for an additional or subsequent violation, the period of *74 suspension shall be extended for a period of up to three years. Any person or firm that fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

"(d) The awarding department shall report all alleged violations of this section to the Office of Small and Minority Business. The office shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

"(e) The office shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

"(f) No awarding department shall enter into any contract with any person or firm suspended for violating this section during the period of the person's or firm's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person or firm as a subcontractor suspended for violating this section during the period of the person's or firm's suspension.

"(g) The awarding department shall check the central listing provided by the office to verify that the person, firm, or contractor to whom the contract is being awarded, or any person, or firm, being utilized as a subcontractor by that person, firm, or contractor, is not under suspension for violating this section." *75

C

The State Civil Service

The following Government Code provisions apply to affirmative action in the state civil service:

Section 19790: "Each agency and department is responsible for establishing an effective affirmative action program. The State Personnel Board shall be responsible for providing statewide advocacy, coordination, enforcement, and monitoring of these programs.

"Each agency and department shall establish goals and timetables designed to overcome any identified underutilization of minorities and women in their respective organizations. Agencies and departments shall determine their annual goals and timetables by June 1 of each year beginning in 1978. These goals and timetables shall be made available to the public upon request. All goals and timetables shall then be submitted to the board for review and approval or modification no later than July 1 of each year."

Section 19791: "As used in this chapter:

"(a) 'Goal' means a projected level of achievement resulting from an analysis by the employer of its deficiencies in utilizing minorities and women and what reasonable remedy is available to correct such underutilization. Goals shall be specific by the smallest reasonable hiring unit, and shall be established separately for minorities and women.

"(b) 'Timetable' means an estimate of the time required to meet specific goals.

"(c) 'Underutilization' means having fewer persons of a particular group in an occupation or at a level in a department than would reasonably be expected by their availability."

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(Cite as: 92 Cal.App.4th 16)

Section 19792: "The State Personnel Board shall:

"(a) Provide statewide leadership designed to achieve positive and continuing affirmative action programs in the state civil service.

"(b) Develop, implement, and maintain affirmative action and equal employment opportunity guidelines.

"(c) Provide technical assistance to state departments in the development and implementation of their affirmative action programs. *76

"(d) Review and evaluate departmental affirmative action programs to insure that they comply with federal statutes and regulations.

"(e) Establish requirements for improvement or corrective action to eliminate the underutilization of minorities and women.

"(f) Provide statewide training to departmental affirmative action officers who will conduct supervisory training on affirmative action.

"(g) Review, examine the validity of, and update qualifications standards, selection devices, including oral appraisal panels and career advancement programs.

"(h) Maintain a statistical information system designed to yield the data and the analysis necessary for the evaluation of progress in affirmative action and equal employment opportunity within the state civil service. Such statistical information shall include specific data to determine the underutilization of minorities and women. The statistical information shall be made available during normal working hours to all interested persons. Data generated on a regular basis shall include, but not be limited to, the following:

"(1) Current state civil service work force composition by race, sex, age, department, salary level, occupation, and attrition rates by occupation.

"(2) Current local and regional work force and population data of women and minorities.

"(i) Data analysis shall include, but not be limited to, the following:

"(1) Data relating to the utilization by department of minorities and women compared to their availability in the labor force.

"(2) Turnover data by department and occupation.

"(3) Data relating to salary administration, such as average salaries by race and sex, and comparisons of salaries within state service and comparable state employment.

"(4) Data on employee age, and salary level compared among races and sexes.

"(5) Data on the number of women and minorities recruited for, participating in and passing state civil service examinations. Such data shall be analyzed pursuant to the provisions of Sections 19704 and 19705. *77

"(6) Data on the job classifications, geographic locations, separations, salaries, and other conditions of employment which provide additional information about the composition of the state civil service work force."

Section 19792.5: "(a) In order to permit the public to track the 'glass ceiling' patterns affecting women and minorities in state civil service, the State Personnel Board shall annually track, by incremental levels of ten thousand dollars ($10,000), the salaries of women and minorities in state civil service up to the level of one hundred thousand dollars ($100,000). For purposes of this subdivision, 'glass ceiling' means the artificial barrier caused by discriminatory employment practices that prevents or hinders the advancement of women and minorities to better paying and higher level positions.

"(b) The board shall report salary data collected pursuant to subdivision (a) to the Governor and the Legislature in its Annual Census of State Employees and Affirmative Action Report, and shall include in this report information regarding the progress of women and minorities in attaining high level positions in state employment and affirmative action efforts made in this regard. The salary data shall be reported in annual

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(Cite as: 92 Cal.App.4th 16)

increments of ten thousand dollars ($10,000) by job category, minority group, and gender in a format easily understandable by the public."

Section 19793: "By November 15 of each year beginning in 1978, the State Personnel Board shall report to the Governor, the Legislature, and the Department of Finance on the accomplishment of each state agency and department in meeting its stated affirmative action goals for the past fiscal year. The report shall include information to the Legislature of laws which discriminate or have the effect of discrimination on the basis of race, color, religion, national origin, political affiliation, sex, age, or marital status. The Legislature shall evaluate the equal employment opportunity efforts and affirmative action progress of state agencies during its evaluation of the Budget Bill."

Section 19794: "In cooperation with the State Personnel Board, the director of each department shall have the major responsibility for monitoring the effectiveness of the affirmative action program of the department."

Section 19795: "(a) The secretary of each state agency and the director of each state department shall appoint an affirmative action officer, other than the personnel officer, except in a department with less than 500 employees the affirmative action officer may be the personnel officer who shall report directly, and be under the supervision of, the director of the department, to ***78** develop, implement, coordinate, and monitor the agency or departmental affirmative action program. The departmental or agency affirmative action officer shall, among other duties, analyze and report on appointments of employees, request appropriate action of the departmental director or agency secretary, submit an evaluation of the effectiveness of the total affirmative action program to the State Personnel Board annually, monitor the composition of oral panels in departmental examinations, and perform other duties necessary for the effective implementation of the departmental and agency affirmative action plans.

"(b) Each state agency shall establish a committee of employees who are individuals with a disability to advise the head of the agency on matters relating to the formulation and implementation of the plan to overcome and correct any underrepresentation determined pursuant to Section 19234."

Section 19796: "Bureau or division chiefs within a department or agency shall be accountable to the department director for the effectiveness and results of the program within their division or bureau. Each bureau or division may assign an administrator to assist the departmental affirmative action officer.

"All management levels, including firstline supervisors, shall provide program support and take all positive action necessary to ensure and advance equal employment opportunity at their respective levels."

Section 19797: "Each state agency and department shall develop, update annually, and implement an affirmative action plan which shall at least identify the areas of underutilization of minorities and women within each department by job category and level, contain an equal employment opportunity analysis of all job categories and levels within the hiring jurisdiction, and include an explanation and specific actions for improving the representation of minorities and women."

Section 19798: "In establishing order and subdivisions of layoff and reemployment, the board, when it finds past discriminatory hiring practices, shall by rule, adopt a process that provides that the composition of the affected work force will be the same after the completion of a layoff, as it was before the layoff procedure was implemented. This section does not apply to state employees in State Bargaining Unit 5, 6, or 8."

Section 19799: "When any state agency conducts any survey as to the ancestry or ethnic origin of state civil service employees, or maintains any statistical tabulation of minority group employees, it shall use separate ***79** collection categories for each major Asian and Pacific Islander group, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Hawaiian, Guamanian, Samoan, Laotian, and Cambodian in the survey or tabulation." ***80**

D

Community Colleges

The following sections of the Education Code are

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(Cite as: 92 Cal.App.4th 16)

applicable to community colleges:

Section 87100: "The Legislature finds and declares that:

"(a) Generally, California Community Colleges employ a disproportionately low number of racial and ethnic minority classified employees and faculty and a disproportionately low number of women and members of racial and ethnic minorities in administrative positions.

"(b) It is educationally sound for the minority student attending a racially impacted school to have available the positive image provided by minority classified and academic employees. It is likewise educationally sound for the student from the majority group to have positive experiences with minority people which can be provided, in part, by having minority classified and academic employees at schools where the enrollment is largely made up of majority group students. It is also educationally important for students to observe that women as well as men can assume responsible and diverse roles in society.

"(c) Past employment practices created artificial barriers and past efforts to promote additional action in the recruitment, employment, and promotion of women and minorities have not resulted in a substantial increase in employment opportunities for such persons.

"(d) Lessons concerning democratic principles and the richness which racial diversity brings to our national heritage can be best taught by the presence of staffs of mixed races and ethnic groups working toward a common goal.

"It is the intent of the Legislature to establish and maintain a policy of equal opportunity in employment for all persons and to prohibit discrimination based on race, sex, color, religion, age, handicap, ancestry, or national origin in every aspect of personnel policy and practice in employment, development, advancement, and treatment of persons employed in the public school system, and to promote the total realization of equal employment opportunity through a continuing affirmative action employment program.

"The Legislature recognizes that it is not enough to proclaim that public employers do not discriminate in employment but that effort must also be ***81** made to build a community in which opportunity is equalized. It is the intent of the Legislature to require educational agencies to adopt and implement plans for increasing the numbers of women and minority persons at all levels of responsibility."

Section 87101: "For the purposes of this article:

"(a) 'Affirmative action employment program' means planned activities designed to seek, hire, and promote persons who are underrepresented in the work force compared to their number in the population, including handicapped persons, women, and persons of minority racial and ethnic backgrounds. It is a conscious, deliberate step taken by a hiring authority to assure equal employment opportunity for all staff, both academic and classified. These programs require the employer to make additional efforts to recruit, employ, and promote members of groups formerly excluded at the various levels of responsibility who meet statewide minimum qualifications, if any, and who, relative to local qualifications beyond the statewide minimum qualifications, are qualified or may become qualified through appropriate training or experience within a reasonable length of time. The programs should be designed to remedy the exclusion, whatever its cause. Affirmative action requires imaginative, energetic, and sustained action by each employer to devise recruiting, training, and career advancement opportunities which will result in an equitable representation of women and minorities in relation to all employees of the employer.

"(b) 'Goals and timetables' means projected new levels of employment of women and minority racial and ethnic groups to be attained on an annual schedule, given the expected turnover in the work force and the availability of persons who are, relative to local qualifications beyond the statewide minimum qualifications, qualified or may become qualified through appropriate training or experience within a reasonable length of time. Goals are not quotas or rigid proportions. They should relate both to the qualitative and quantitative needs of the employer.

"(c) 'Public education agency' means the office of the chancellor and the governing board of each community college district in California."

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(Cite as: 92 Cal.App.4th 16)

Section 87102: "(a) The governing board of each community college district shall periodically submit, to the Board of Governors of the California Community Colleges an affirmation of compliance with the provisions of this article. The affirmative action employment program shall have goals that ensure participation in, and commitment to, the program by district personnel, and timetables, for its implementation. The affirmative action ***82** plan shall include steps that the district will take in meeting and improving hiring goals for both full-time faculty and part-time faculty pursuant to Section 87482.6, and the development of the plan shall be a condition for receipt of allowances pursuant to that section.

"The governing board of each community college district shall be held accountable pursuant to this article and other applicable provisions of law for the success or failure of its affirmative action employment program. The plans shall be a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

"(b) The governing board of each community college district shall publish and distribute a record of the success rate of measurable progress, with respect to its goals and timetables, in hiring employees through its affirmative action employment program. This publication shall be a public record within the meaning of the California Public Records Act, and shall include data and information specified by the board of governors."

Section 87103: "The office of the Chancellor of the California Community Colleges shall render assistance in developing and implementing affirmative action employment programs to community college districts under its jurisdiction."

Section 87104: "(a) The Board of Governors of the California Community Colleges, out of funds appropriated for these purposes, (1) shall provide assistance to local community colleges in adopting and maintaining high-quality affirmative action programs; (2) report to the Legislature regarding the number of districts which have adopted and are maintaining affirmative action programs, including the effectiveness of the programs in meeting the intent of this article; (3) develop and disseminate to public community college districts guidelines to assist these agencies in developing and implementing affirmative action employment programs; and (4) shall establish a technical assistance team to review the affirmative action plan of each community college district which fails to make measurable progress in meeting the goals and timetables of its adopted plan. The technical assistance team shall recommend appropriate actions to assure reasonable progress in improving success rates. The board of governors shall prescribe those conditions necessary to assure reasonable progress and otherwise meet the legal requirements of affirmative action. The conditions may include the withholding of allowances made pursuant to Sections 87482.6 and 87107.

"(b) The board of governors shall establish, by July 1, 1989, within the chancellor's office or through other means as deemed necessary, a major ***83** service function to assist community college districts in identifying, locating, and recruiting qualified members of underrepresented groups, and in establishing and maintaining effective affirmative action hiring procedures.

"(c) The board of governors shall, by March 15, 1989, develop and adopt a systemwide plan for strengthening faculty and staff affirmative action policies and programs in the California Community Colleges."

Section 87105: "The Board of Governors of the California Community Colleges shall adopt all necessary rules and regulations to carry out the intent of this article."

Section 87106: "Any activities undertaken pursuant to this article shall be subject to the provisions of Title VII of the Federal Civil Rights Act of 1964, and amendments thereto."

Section 87107: "(a) There is hereby created in the State Treasury a fund which shall be known as the Faculty and Staff Diversity Fund. The money in the fund shall be available to the board of governors upon appropriation by the Legislature for the purpose of enabling the California Community Colleges as a system to address the goal that by the year 2005 the system's work force will reflect proportionately the adult population of the state. For the purpose of administering this fund, the board of governors shall develop and apply availability data and factors for measuring district progress in contributing to this goal

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for the system. Also for the purpose of administering this fund, it is the intent of the Legislature that the board of governors take the steps which are necessary to reach the goal that by fiscal year 1992-93, 30 percent of all new hires in the California Community Colleges as a system will be ethnic minorities.

"(b) By December 1, 1993, the board of governors shall report upon and assess the extent to which the California Community Colleges as a system have met or begun to meet the goals specified in this section. The report shall include conclusions regarding any necessary revisions to these goals. Unless provided otherwise by the Legislature by statute, the board of governors may, on or after September 30, 1994, adopt regulations to revise these goals.

"(c) The board of governors shall utilize up to 25 percent of the fund to do all of the following:

"(1) Reimburse districts for the costs of publishing, distributing, and reporting affirmative action success rates as provided in Section 87102. ***84**

"(2) Reimburse districts for the cost of preparing and updating affirmative action plans.

"(3) Carry out the assistance, service, monitoring, and compliance functions specified in Section 87104.

"(d) The remainder of the fund shall be allocated to districts, in accordance with regulations of the board of governors, to provide for extended outreach and recruitment of underrepresented groups, for incentives to hire members of underrepresented groups, for in-service training and for other related staff diversity programs.

"(e) It is the intent of the Legislature that the board of governors, in administering this fund, shall, pursuant to the provisions of this article, give funding priority and shall afford flexibility and discretion in the use of these funds to districts which have made or are making reasonable progress in contributing to the achievement of the goals of this fund." ***85**

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Connerly v. State Personnel Bd.
92 Cal.App.4th 16, 112 Cal.Rptr.2d 5, 86 Fair Empl.Prac.Cas. (BNA) 1048, 156 Ed. Law Rep. 1190, 01 Cal. Daily Op. Serv. 7754, 2001 Daily Journal D.A.R. 9541

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Supreme Court of the United States
CONSOLIDATED RAIL CORPORATION, Petitioner
v.
Lee Ann LeStrange DARRONE, as Administratrix of Estate of Thomas LeStrange.
No. 82-862.

Argued Nov. 29, 1983.
Decided Feb. 28, 1984.

Plaintiff brought suit under Rehabilitation Act of 1973. A judgment of the United States District Court for the Middle District of Pennsylvania, 501 F.Supp. 964, dismissing the complaint was reversed and remanded by the Court of Appeals, Third Circuit, 687 F.2d 767. Certiorari was granted, and the Supreme Court, Justice Powell, held that language of Rehabilitation Act section prohibiting discrimination against handicapped under "any" program or activity receiving federal financial assistance limits ban on discrimination to specific program that receives federal funds, but suit for back pay could be maintained even if federal aid received by employer was not primarily intended to promote employment.

Judgment of Court of Appeals affirmed.

West Headnotes

[1] Civil Rights 78 ⚿1571

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1569 Monetary Relief; Restitution
78k1571 k. Back Pay or Lost Earnings. Most Cited Cases
(Formerly 78k272, 78k13.17(4), 78k13.17)
Without regard to question as to what extent money damages might be available under Rehabilitation Act section prohibiting discrimination against handicapped under any program or activity receiving federal financial assistance, the section authorizes plaintiff who alleges intentional discrimination to bring equitable action for back pay. Rehabilitation Act of 1973, §§ 2(8), 504, as amended, 29 U.S.C.A. §§ 701(8), 794; Civil Rights Act of 1964, § 601 et seq., as amended, 42 U.S.C.A. § 2000d et seq.

[2] Federal Courts 170B ⚿13.10

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk13.10 k. Civil Rights. Most Cited Cases
(Formerly 170Bk13)
Death of plaintiff in suit under Rehabilitation Act section prohibiting discrimination against handicapped under any program or activity receiving federal financial assistance did not moot the case. Rehabilitation Act of 1973, §§ 2(8), 504, as amended, 29 U.S.C.A. §§ 701(8), 794; Civil Rights Act of 1964, § 601 et seq., as amended, 42 U.S.C.A. § 2000d et seq.

[3] Civil Rights 78 ⚿1216

78 Civil Rights
78II Employment Practices
78k1215 Discrimination by Reason of Handicap, Disability, or Illness
78k1216 k. In General. Most Cited Cases
(Formerly 78k173.1, 78k173, 78k9.16)
Primary goal of Rehabilitation Act of 1973 was to increase employment of the handicapped, and section of the Act prohibiting discrimination against handicapped under any program or activity receiving federal financial assistance was intended to reach employment discrimination. Rehabilitation Act of 1973, §§ 504, 505(a)(1, 2), as amended, 29 U.S.C.A. §§ 794, 794a(a)(1, 2); Regional Rail Reorganization Act of 1973, §§ 101 et seq., 216, 216(b)(1), 702, 702(a), as amended, 45 U.S.C.A. §§ 701 et seq., 726, 726(b)(1), 1143, 1143(a); Civil Rights Act of 1964, § 604, as amended, 42 U.S.C.A. § 2000d-3; Education Amendments of 1972, § 901 et seq., 20 U.S.C.A. § 1681 et seq.

[4] Civil Rights 78 ⚿1055

78 Civil Rights

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78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k107(1), 78k9.16)
In interpretation of Rehabilitation Act section prohibiting discrimination against handicapped under any program or activity receiving federal financial assistance, administrative regulations were particularly deserving of deference from the court in view of fact that the responsible congressional committees participated in their formulation and that both such committees and Congress itself endorsed the regulations in their final form. Rehabilitation Act of 1973, §§ 2(8), 504, 505(a)(2), as amended, 29 U.S.C.A. §§ 701(8), 794, 794a(a)(2); Civil Rights Act of 1964, § 604, as amended, 42 U.S.C.A. § 2000d-3.

[5] Civil Rights 78 1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k107(1), 78k9.16)
Congress in amending Rehabilitation Act in 1978 to make available the remedies, procedures and rights of Title VI of Civil Rights Act of 1964 for suits under Rehabilitation Act section prohibiting discrimination under "any" program or activity receiving federal financial assistance did not incorporate Title VI requirement that "primary objective" of the federal financial assistance be to provide employment, but, rather, the "primary objective" limitation was intended to codify regulations of the Department of Health, Education and Welfare governing enforcement without regard to purpose of federal financial assistance. Rehabilitation Act of 1973, §§ 2(8), 504, 505(a)(2), as amended, 29 U.S.C.A. §§ 701(8), 794, 794a(a)(2); Civil Rights Act of 1964, § 604, as amended, 42 U.S.C.A. § 2000d-3.

[6] Civil Rights 78 1117

78 Civil Rights
78II Employment Practices
78k1108 Employers and Employees Affected
78k1117 k. Publicly Assisted Employers. Most Cited Cases
(Formerly 78k173.1, 78k173, 78k9.16)

Civil Rights 78 1571

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1569 Monetary Relief; Restitution
78k1571 k. Back Pay or Lost Earnings. Most Cited Cases
(Formerly 78k173.1, 78k173, 78k9.16)
Language of Rehabilitation Act section prohibiting discrimination against handicapped under "any" program or activity receiving federal financial assistance limits ban on discrimination to specific program that receives federal funds, but suit for back pay could be maintained even if federal aid to employer was not primarily intended to promote employment. Rehabilitation Act of 1973, §§ 7(6), 501, 503, 504, 505(a)(2), as amended, 29 U.S.C.A. §§ 706(6), 791, 793, 794, 794a(a)(2); Civil Rights Act of 1964, §§ 601, 604, as amended, 42 U.S.C.A. §§ 2000d, 2000d-3; Education Amendments of 1972, § 901 et seq., 20 U.S.C.A. § 1681 et seq.; Executive Order No. 12250, 42 U.S.C.A. § 2000d-1 note.

****1249 *624** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Section 504 of the Rehabilitation Act of 1973 provides that "[n]o ... handicapped individual ... shall, solely by reason of his handicap, ... be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 505(a)(2), which was added to the Act in 1978, makes "available" the "remedies, procedure, and rights" set forth in Title VI of the Civil Rights Act of 1964 (Title VI) for suits under § 504 against "any recipient of federal financial assistance." Petitioner was formed under the Regional Rail Reorganization Act to acquire and operate insolvent railroads, and, as authorized by statute, has sold its securities to the United States, the proceeds of which sales are permitted to be used for maintenance of rail properties, capital needs, refinancing of indebtedness, or working capital. Petitioner also received federal funds to provide for reassignment and re-

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training of railroad workers whose jobs were affected by the reorganization, and now receives federal funds to provide termination allowances to workers who lost their jobs as a result of the reorganization. Respondent's decedent filed suit in Federal District Court against petitioner for violation of his rights under § 504, alleging that while employed as a locomotive engineer by a railroad to which petitioner is the successor in interest, he suffered an accident requiring amputation of his left hand and forearm, and that thereafter the railroad and the petitioner refused to employ him. The District Court granted petitioner's motion for summary judgment on the ground that the decedent had no "standing" to bring a private action under § 504. The court held that § 505(a)(2) had incorporated the limitation in § 604 of Title VI, which provides that employment discrimination is actionable only when the employer receives federal financial assistance the "primary objective" of which is to provide employment, and that the federal assistance to petitioner did not satisfy this "primary objective" test. The Court of Appeals reversed.

Held:

1. The death of respondent's decedent did not moot the case, since it is clear that § 504 authorizes a plaintiff who alleges intentional discrimination (as was done here) to bring an equitable action for backpay. Pp. 1252 - 1253.

***625** 2. The suit may be maintained even if petitioner receives no federal aid ****1250** the primary objective of which is to promote employment. Pp. 1253 - 1255.

(a) Section 504's language suggests that its bar on employment discrimination should not be limited to programs that receive such federal aid. The legislative history, executive interpretation, and the Rehabilitation Act's purpose to promote and expand employment opportunities for the handicapped all are consistent with this construction. Pp. 1253 - 1255.

(b) Nor did Congress intend to enact the "primary objective" requirement of § 604 of Title VI into the Rehabilitation Act when it added § 505(a)(2) to the Act in 1978. Section 505(a)(2)'s language does not incorporate § 604's "primary objective" limitation. Rather, the legislative history reveals that § 505(a)(2) was intended to codify regulations governing enforcement of § 504 that prohibited employment discrimination regardless of the purpose of federal financial assistance. P. 1255.

687 F.2d 767 (CA3 1982), affirmed.

Harry A. Rissetto argued the cause for petitioner. With him on the briefs were *Dennis J. Morikawa* and *Dennis Alan Arouca.*

Joseph P. Lenahan argued the cause for respondent. With him on the brief were *Jack Greenberg, Beth Lief,* and *Eric Schnapper.*

Assistant Attorney General Reynolds argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Lee, Deputy Solicitor General Bator, Deputy Assistant Attorneys General Cooper* and *Wilkinson, John H. Garvey, Brian K. Landsberg,* and *Joan A. Magagna.**

* *Robert E. Williams, Douglas S. McDowell,* and *Edward E. Potter* filed a brief for the Equal Employment Advisory Council as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Council of the Blind et al. by *Arlene Brynne Mayerson;* for the American Federation of State, County and Municipal Employees et al. by *Larry J. Goldberg* and *Marc P. Charmatz;* and for Senator Alan Cranston et al. by *Allen R. Snyder.*

***626** Justice POWELL delivered the opinion of the Court.

This case requires us to clarify the scope of the private right of action to enforce § 504 of the Rehabilitation Act of 1973, 29 U.S.C. (Supp. V) § 794, that prohibits discrimination against the handicapped by federal grant recipients. There is a conflict among the circuits.

I

The Rehabilitation Act of 1973 establishes a comprehensive federal program aimed at improving the lot of the handicapped. Among its purposes are to "promote and expand employment opportunities in the public and private sectors for handicapped individuals and place such individuals in employment." 29 U.S.C. § 701(8). To further these purposes, Congress enacted § 504 of the Act. That section provides that:

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No otherwise qualified handicapped individual ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The language of the section is virtually identical to that of § 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, that similarly bars discrimination (on the ground of race, color, or national origin) in federally-assisted programs.

In 1978, Congress amended the Rehabilitation Act to specify the means of enforcing its ban on discrimination. In particular, § 505(a)(2), 29 U.S.C. §§ 794a, made available the "remedies, procedure, and rights set forth in Title VI of the Civil Rights Acts of 1964" to victims of discrimination in violation of § 504 of the Act.[FN1]

> FN1. Section 505(a)(2) provides in full: "The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under § 794 of this title."
>
> Section 505(a)(1) generally makes available the remedies of Title VII of the Civil Rights Act to persons aggrieved by violation of § 791 of the Rehabilitation Act, which governs the federal government's employment of the handicapped.

***627** Petitioner, Consolidated Rail Corporation ("Conrail"), was formed pursuant to subchapter III of the Regional Rail Reorganization Act, 45 U.S.C. §§ 701 *et seq.* The Act, passed in response to the insolvency of a number of railroads in the Northeast and Midwest, established ****1251** Conrail to acquire and operate the rail properties of the insolvent railroads and to integrate these properties into an efficient national rail transportation system. Under § 216 of the Act, 45 U.S.C. § 726, the United States, acting through the United States Railway Association, purchases debentures and series A preferred stock of the corporation "at such times and in such amounts as may be required and requested by the corporation," but "in accordance with the terms and conditions ... prescribed by the Association ...." *Id.* § 726(b)(1). The statute permits the proceeds from these sales to be devoted to maintenance of rail properties, capital needs, refinancing of indebtedness, or working capital. *Ibid.* Under this statutory authorization, Conrail has sold the United States $3.28 billion in securities. See App. A-15.

Conrail also received federal funds under subchapter V of the Act, now repealed, to provide for reassignment and retraining of railroad workers whose jobs were affected by the reorganization. And Conrail now receives federal funds under § 1143(a) of the Northeast Rail Service Act, 45 U.S.C. § 797a, that provides termination allowances of up to $25,000 to workers who lose their jobs as a result of reorganization.

***628** II

In 1979, Thomas LeStrange filed suit against petitioner for violation of rights conferred by § 504 of the Rehabilitation Act.[FN2] The complaint alleged that the Erie Lackawanna Railroad, to which Conrail is the successor in interest, had employed the plaintiff as a locomotive engineer; that an accident had required amputation of plaintiff's left hand and forearm in 1971; and that, after LeStrange was disabled, the Erie Lackawanna Railroad, and then Conrail, had refused to employ him although it had no justification for finding him unfit to work.

> FN2. Respondent, the administratrix of LeStrange's estate, was substituted as a party before this Court upon the death of LeStrange.

The District Court, following the decision of *Trageser v. Libbie Rehabilitation Center, Inc.*, 590 F.2d 87 (CA4 1978), cert. denied, 442 U.S. 947, 99 S.Ct. 2895, 61 L.Ed.2d 318 (1979), granted petitioner's motion for summary judgment on the ground that the plaintiff did not have "standing" to bring a private action under § 504.[FN3] In *Trageser,* the Fourth Circuit had held that § 505(a)(2) of the Rehabilitation Act incorporated into that act the limitation found in § 604 of Title VI, which provides that employment discrimination is actionable only when the employer receives federal financial assistance the "primary objective" of which is "to provide employment." The District Court concluded that the aid provided to petitioner did not satisfy the "primary objective" test.[FN4]

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FN3. The District Court previously had dismissed constitutional claims raised by LeStrange, 501 F.Supp. 964 (MD Pa.1980).

FN4. Under the analysis of *Trageser,* a private plaintiff also may have "standing" to sue for employment discrimination if he can show "that discrimination in employment necessarily causes discrimination against" the intended beneficiaries of the federal aid, even where that aid itself was not intended to further employment. App. to Pet. for Cert. 33. The District Court found as well that this prong of the *Trageser* test was not satisfied here.

629** The Court of Appeals reversed and remanded to the District Court. 687 F.2d 767 (CA3 1982). There was no opinion for the court, but all three judges of the panel agreed that the cause of action for employment discrimination under § 504 was not properly limited to situations "where a primary objective of the federal financial assistance is to provide employment." Judge Bloch, noting that *North Haven Board of Education v. Bell,* 456 U.S. 512, 102 S.Ct. 1912, 72 L.Ed.2d 299 (1982), had construed Title IX to create a private cause of action for employment discrimination in all federally funded education programs, concluded that the language*1252** and legislative history of § 504 required the same broad construction of that section. Judge Adams, concurring in the judgment, found the result compelled by *North Haven Board of Education* and by the Third Circuit's decision in *Grove City College v. Bell, cert. granted,* 1211 U.S. ----, 104 S.Ct. ----, 78 L.Ed.2d --- (1983).[FN5] Judge Weis, concurring, argued that Congress had not intended the Rehabilitation Act to incorporate Title VI's "primary objective" limitation: that limitation was designed to temper the government's decision to terminate federal funds, a decision that has more drastic consequences for the funded programs than do private suits for individual relief.

FN5. The Third Circuit Court of Appeals had held in *Grove City College* that an entire educational institution is subject to the anti-discrimination provisions of Title IX if any department of the institution receives federal aid.

We granted certiorari to resolve the conflict among the circuits and to consider other questions under the Rehabilitation Act.[FN6] We affirm.

FN6. Three other Courts of Appeals have agreed substantially with the Fourth Circuit decision in *Traseger.* See *Scanlon v. Atascadero State Hospital,* 677 F.2d 1271 (CA9 1982); *United States v. Cabrini Medical Center,* 639 F.2d 908 (CA2 1981); *Carmi v. Metropolitan St. Louis Sewer District,* 620 F.2d 672 (CA8), cert. denied, 449 U.S. 892, 101 S.Ct. 249, 66 L.Ed.2d 117 (1980).

***630** III

[1][2] We are met initially by petitioner's contention that the death of the plaintiff LeStrange has mooted the case and deprives the Court of jurisdiction for that reason.[FN7] Petitioner concedes, however, that there remains a case or controversy if LeStrange's estate may recover money that would have been owed to LeStrange.[FN8] Without determining the extent to which money damages are available under § 504, we think it clear that § 504 authorizes a plaintiff who alleges intentional discrimination to bring an equitable action for backpay. The case therefore is not moot.

FN7. In addition, Conrail argued below, and again in its opening brief, that § 504 does not create a private right of action for employment discrimination. This argument was abandoned at page 3 of Conrail's reply brief. See also Tr. of Oral Arg. 13. In view of this concession it is unnecessary to address the question here beyond noting that the courts below relied on *Cannon v. University of Chicago,* 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979), in holding that such a private right exists under § 504.

FN8. Petitioner also concedes that respondent, as representative of LeStrange's estate, may assert any right to monetary relief under § 504 that was possessed by LeStrange.

In *Guardians Ass'n v. Civil Service Comm'n,* 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983), a majority of the Court expressed the view that a private plaintiff under Title VI could recover backpay; and no member of the Court contended that backpay was

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unavailable, at least as a remedy for intentional discrimination.[FN9] It is unnecessary to review here the grounds ***631** for this interpretation of Title VI. It suffices to state that we now apply this interpretation to § 505(a)(2), that, as we have noted, provides****1253** to plaintiffs under § 504 the remedies set forth in Title VI. Therefore, respondent, having alleged intentional discrimination, may recover backpay in the present § 504 suit.[FN10]

FN9. A majority of the Court agreed that retroactive relief is available to private plaintiffs for all discrimination, whether intentional or unintentional, that is actionable under Title VI. Justice MARSHALL, and Justice STEVENS, joined by Justices BRENNAN and BLACKMUN, argued that both prospective and retroactive relief were fully available to Title VI plaintiffs. --- U.S., at ----, ----, 103 S.Ct., at 3245-3249. Justice O'CONNOR agreed that both prospective and retroactive equitable relief were available, while reserving judgment on the question whether there is a private cause of action for damages relief under Title VI. *Id.*, at ----, n. 1, 103 S.Ct., at 3237, n. 1. Justice WHITE, joined by Justice REHNQUIST, while contending that only relief ordering future compliance with legal obligations was available in other private actions under Title VI, put aside the situation of the private plaintiff who alleged intentional discrimination. *Id.*, at ----, 103 S.Ct., at 3237. THE CHIEF JUSTICE and Justice POWELL did not reach the question, as they would have held that petitioners in that case had no private right of action and had not made the showing of intentional discrimination required to establish a violation of Title VI. *Id.*, at ----, 103 S.Ct., at 3236.

FN10. Although the legislative history of the 1978 amendments does not explicitly indicate that Congress intended to preserve the full measure of courts' equitable power to award backpay, the few references to the question are consistent with our holding. Congress clearly intended to make backpay available to victims of discrimination by the federal government, see S.Rep. No. 95-890, p. 19 (1978); and statements made in relation to subsequent legislation by the Senate Committee on Labor and Human Resources, the committee responsible for the 1978 amendments, endorse the availability of backpay. S.Rep. No. 96-316, pp. 12-13 (1979).

IV

A

The Court of Appeals rejected the argument that petitioner may be sued under § 504 only if the primary objective of the federal aid that it receives is to promote employment. Conrail relies particularly on § 604 of Title VI. This section limits the applicability of Title VI to "employment practice[s] ... where a *primary objective* of the federal financial assistance is to provide employment" (emphasis added).[FN11] As noted above, § 505(a)(2) of the Rehabilitation Act, as amended in 1978, adopted the remedies and rights provided in Title VI. Accordingly, Conrail's basic position in this case is that ***632** § 604's limitation was incorporated expressly into the Rehabilitation Act. The decision of the Court of Appeals therefore should be reversed, Conrail contends, as the primary objective of the federal assistance received by Conrail was not to promote employment.

FN11. Section 604 provides in full: "Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment." 42 U.S.C. § 2000d-3.

[3] It is clear that § 504 itself contains no such limitation. Section 504 neither refers explicitly to § 604 nor contains analogous limiting language; rather, that section prohibits discrimination against the handicapped under "*any* program or activity receiving Federal financial assistance." And it is unquestionable that the section was intended to reach employment discrimination.[FN12] Indeed, enhancing employment of the handicapped was so much the focus of the 1973 legislation that Congress the next year felt it necessary to amend the statute to clarify whether § 504 was intended to prohibit other types of discrimination as

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well. See § 111(a), Pub.L. 93-516, 88 Stat. 1617, 1619 (1974), *amending* 29 U.S.C. § 706(6); S.Rep. No. 93-1297, p. 37 (1974), U.S.Code Cong. & Admin.News 1974, 6373. [FN13] Thus, the language of § 504 ****1254** suggests***633** that its bar on employment discrimination should not be limited to programs that receive federal aid the primary purpose of which is to promote employment.

FN12. Congress recognized that vocational rehabilitation of the handicapped would be futile if those who were rehabilitated could not obtain jobs because of discrimination. Employment discrimination thus would have "a profound effect on the provision of relevant and effective [rehabilitation] services." 119 Cong.Rec. 5862 (1973) (remarks of Sen. Williams). See, *e.g.*, S.Rep. No. 93-318, p. 4 (1973); 119 Cong.Rec. 24587 (1973) (remarks of Sen. Taft), 24588 (remarks of Sen. Williams). Several other sections of Title V of the Rehabilitation Act also were aimed at discrimination in employment: § 501 and § 503 require all federal employers and federal contractors to adopt affirmative action programs for the handicapped.

FN13. We note further that the Court in an analogous statutory context rejected the contention that the terms used in § 504 implicitly contain a "primary objective" limitation. § 901 of Title IX, like § 504, borrowed the language of § 601 of Title VI. *North Haven Board of Education v. Bell*, 456 U.S. 512, 102 S.Ct. 1912, 72 L.Ed.2d 299 (1982), found, however, that Title IX's prohibition of employment discrimination did not incorporate § 604's "primary objective" requirement. The Court stated that, had Congress wished so to limit Title IX, it would have enacted in that Title counterparts to both § 601 and § 604. *Id.*, at 530, 102 S.Ct., at 1922-1923.

> Petitioner suggests that *North Haven* is inapplicable to the construction of § 504 because the Congress considered but rejected a provision explicitly incorporating the language of § 604 of Title VI into Title IX. And other aspects of the legislative history also supported the Court's interpretation of § 901, see *id.*, at 523-529, 102 S.Ct., at 1919-1922. In contrast, Congress did not advert to a "primary objective" limitation when drafting § 504.

Clearly, petitioner's observations do not touch on that aspect of *North Haven* -its analysis of the language of § 601-that is relevant to the present case. But even without the analysis of *North Haven,* petitioner's interpretation of § 504's language is unfounded. For language as broad as that of § 504 cannot be read in isolation from its history and purposes. See, *e.g.*, *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 608, 99 S.Ct. 1905, 1911, 60 L.Ed.2d 508 (1979); *Philbrook v. Glodgett*, 421 U.S. 707, 713, 95 S.Ct. 1893, 1898, 44 L.Ed.2d 525 (1975). In these respects, § 504 differs from Title VI in ways that suggest that § 504 cannot sensibly be interpreted to ban employment discrimination only in programs that receive federal aid the "primary objective" of which is to promote employment. The "primary objective" limitation of Title VI gave the antidiscrimination provision of that Title a scope that well fits its underlying purposes-to ensure "that funds of the United States are not used to support racial discrimination" but "are spent in accordance with the Constitution and the moral sense of the Nation." 110 Cong.Rec. 6544 (1964) (remarks of Sen. Humphrey). As the Court of Appeals observed, it was unnecessary to extend Title VI more generally to ban employment discrimination, as Title VII comprehensively regulates such discrimination.

In contrast, the primary goal of the Act is to increase employment of the handicapped, see *supra,* at 1253 and n. 13. However, Congress chose to ban employment discrimination against the handicapped, not by all employers, but only by the federal government and recipients of federal contracts and grants. As to the latter, Congress apparently determined that it would require contractors and grantees to bear the costs of providing employment for the handicapped as a *quid pro quo* for the

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receipt of federal funds. *Cf.* 118 Cong.Rec. 32305 (1972) (remarks of Sen. Javits). But this decision to limit § 504 to the recipients of federal aid does not require us to limit that section still further, as petitioner urges.

[4] The legislative history, executive interpretation, and purpose of the 1973 enactment all are consistent with this construction. The legislative history contains no mention of a "primary objective" limitation, although the legislators on numerous occasions adverted to § 504's prohibition against ***634** discrimination in employment by programs assisted with federal funds. See, *e.g.*, S.Rep. No. 93-318, at 4, 18, 50, 70 (1973), U.S.Code Cong. & Admin.News 1973, 2076; 119 Cong.Rec. 5862 (remarks of Sen. Cranston), 24587-24588 (1973) (remarks of Sen. Williams, chairman of the Committee on Labor and Public Welfare). Moreover, the Department of Health, Education and Welfare, the agency designated by the President to be responsible for coordinating enforcement of § 504, see Exec. Order No. 11914, from the outset has interpreted that section to prohibit employment discrimination by all recipients of federal financial aid, regardless of the primary objective of that aid.[FN14] This Court generally has deferred to contemporaneous regulations issued by the agency responsible for implementing a congressional enactment. See, *e.g.*, *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 274-275, 94 S.Ct. 1757, 1761-1762, 40 L.Ed.2d 134 (1974). The regulations particularly merit deference in the present case: the responsible congressional committees participated in their formulation, and both these committees and Congress itself endorsed the regulations in their final form.[FN15] Finally, application of § 504 to all programs receiving federal financial assistance****1255** fits the remedial purpose of the Rehabilitation Act "to promote and expand employment opportunities" for the handicapped. 29 U.S.C. § 701(8).

FN14. See 39 Fed.Reg. 18562, 18582 (1974) (revising pre-existing provisions to implement § 504); 41 Fed.Reg. 29548, 29552, 29563 (1976) (proposed department regulations), *promulgated*, 42 Fed.Reg. 22678 (§ 84.2), 22680 (§ 84.11), 22688 ("Employment Practices") (1977); 43 Fed.Reg. 2132, 2138 (1978) (final coordinating regulations).

The Department of Justice, now responsible for coordinating agency implementation of § 504, see Executive Order No. 12250, 45 Fed.Reg. 72995 (1980), adopted the HEW guidelines, 46 Fed.Reg. 440686 (1981). The Department of Transportation, from which Conrail receives federal aid, also has construed § 504 to prohibit employment discrimination in all programs receiving federal financial assistance. 44 Fed.Reg. 31442, 31468 (1979), codified at 49 CFR Pt. 27. See *id.* § 27.31.

FN15. See S.Rep. No. 93-1297, p. 25 (1974). In adopting § 505(a)(2) in the amendments of 1978, Congress incorporated the substance of the Department's regulations into the statute. See *infra*, at n. 17.

***635** B

[5] Nor did Congress intend to enact the "primary objective" requirement of § 604 into the Rehabilitation Act when it amended that Act in 1978. The amendments, as we have noted, make "available" the remedies, procedures and rights of Title VI for suits under § 504 against "*any* recipient of federal assistance." § 505(a)(2), 29 U.S.C. § 794a(a)(2). These terms do not incorporate § 604's "primary objective" limitation. Rather, the legislative history reveals that this section was intended to codify the regulations of the Department of Health, Education and Welfare governing enforcement of § 504, see S.Rep. No. 95-890, at 19, that prohibited employment discrimination regardless of the purpose of federal financial assistance.[FN16] And it would be anomalous to conclude that the section, "designed to enhance the ability of handicapped individuals to assure compliance with [§ 504]," *id.*, at 18, silently adopted a drastic limitation on the handicapped individual's right to sue federal grant recipients for employment discrimination.

FN16. The Committee noted that "the regulations promulgated by the Department of Health, Education and Welfare with respect to procedures, remedies, and rights under § 504 conform with those promulgated under title VI. Thus, this amendment codifies existing practice as a specific statutory requirement." S.Rep. No. 95-890, at 19. Although these Department regulations incorporated Title VI regulations governing

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"complaint and enforcement procedures," see 42 Fed.Reg., at 22685, 22694-22701, the regulations implementing § 504 did not incorporate § 80.3 of the Title VI regulations, which limit Title VI's application to employment discrimination in federal programs to increase employment. The § 504 regulations banned employment discrimination in programs receiving any form of federal financial assistance. See n. 15, *supra.*

V

[6] Section 504, by its terms, prohibits discrimination only by a "program or activity receiving Federal financial assistance." This Court on two occasions has considered the meaning of the terms "program or activity" as used in Title ***636** IX. *Grove City College v. Bell,* 465 U.S. 555, 104 S.Ct. 1211, 78 L.Ed.2d --- (1984); *North Haven Board of Education v. Bell,* 456 U.S., at 535-540, 102 S.Ct., at 1925-1928. Clearly, this language limits the ban on discrimination to the specific program that receives federal funds. Neither opinion, however, provides particular guidance as to the appropriate treatment of the programs before us. *Grove City College* considered grants of financial aid to students. The Court specifically declined to analogize these grants to nonearmarked direct grants and, indeed, characterized them as "*sui generis.*" 465 U.S., at ----, 104 S.Ct., at 1221. *North Haven Board of Education* did not undertake to define the term "program" at all, finding that, in the procedural posture of that case, that task should be left to the District Court in the first instance.[FN17] 456 U.S., at 540, 102 S.Ct., at 1928.

FN17. The Court held that the Court of Appeals in that case had erroneously suggested that HEW regulations issued under Title XI to govern employment discrimination need not be program specific. See 456 U.S., at 536, 102 S.Ct., at 1926.

The procedural posture of the case before us is the same as that of *North Haven Board of Education.* The District Court granted a motion for summary judgment on grounds unrelated to the issue of "program specificity." That judgment was reversed by the Court of Appeals and the case remanded for further proceedings. Thus, neither the District Court nor the Court of Appeals below considered the question whether respondent's decedent had sought and been denied employment in a "program ... receiving federal financial assistance." [FN18] Nor did the District Court ****1256** develop the record or make the factual findings that would be required to define the relevant "program." We therefore do not consider whether federal financial assistance was received by the "program or activity" that discriminated against LeStrange.[FN19]

FN18. Although Judge Adams cited the Third Circuit opinion in *Grove City College,* he did so merely to support his rejection of the *Trageser* "standing" analysis. See *supra,* at 1252.

FN19. Conrail does not contest that it receives Federal financial assistance within the meaning of § 504. Apparently, the government's payments to Conrail exceed the fair market value of the securities issued by Conrail to the government. Tr. of Oral Arg., at 18.

***637** VI

We conclude that respondent may recover backpay due to her decedent under § 504 and that this suit for employment discrimination may be maintained even if petitioner receives no federal aid the primary purpose of which is to promote employment. The judgment of the Court of Appeals is therefore affirmed.

It is so ordered.

U.S.S.C., 1984.
Consolidated Rail Corp. v. Darrone
465 U.S. 624, 104 S.Ct. 1248, 34 Fair Empl.Prac.Cas. (BNA) 79, 33 Empl. Prac. Dec. P 34,157, 79 L.Ed.2d 568, 1 A.D. Cases 567, 1 A.D.D. 141

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526 U.S. 629, 119 S.Ct. 1661, 143 L.Ed.2d 839, 67 USLW 4329, 134 Ed. Law Rep. 477, 99 Cal. Daily Op. Serv. 3861, 1999 Daily Journal D.A.R. 4931, 1999 CJ C.A.R. 2948, 12 Fla. L. Weekly Fed. S 280
(Cite as: 526 U.S. 629, 119 S.Ct. 1661)

Supreme Court of the United States
Aurelia DAVIS, as Next Friend of LaSHONDA D., Petitioner,
v.
MONROE COUNTY BOARD OF EDUCATION, et al.
No. 97-843.

Argued Jan. 12, 1999.
Decided May 24, 1999.

Parent, on behalf of fifth-grade student, sued school board and officials under Title IX for failure to remedy classmate's sexual harassment of student. The United States District Court for the Middle District of Georgia, 862 F.Supp. 363, dismissed for failure to state claim. Parent appealed. The Court of Appeals for the Eleventh Circuit, 120 F.3d 1390, affirmed, and certiorari was granted. The Supreme Court, Justice O'Connor, held that: (1) a private damages action may lie against a school board under Title IX in cases of student-on-student harassment, but only where the funding recipient acts with deliberate indifference and the harassment is so severe that it effectively bars the victim's access to an educational opportunity or benefit; (2) damages liability is not imposed on fund recipient under Title IX based on agency principles; (3) Title IX proscribes harassment with sufficient clarity to satisfy notice requirement for Spending Clause legislation; (4) a fund recipient's damages liability for sexual harassment under Title IX is limited to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs; (5) school boards retain flexibility in dealing with harassment; (6) damages are not available for simple acts of teasing and name-calling, even where these comments target differences in gender; and (7) a claim was stated in the instant case.

Reversed and remanded.

Justice Kennedy, with whom Chief Justice Rehnquist and Justices Scalia and Thomas joined, filed a dissenting opinion.

West Headnotes

[1] Civil Rights 78 1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)

Civil Rights 78 1330(2)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(2) k. Education. Most Cited Cases
(Formerly 78k200)
A private damages action may lie against a school board under Title IX in cases of student-on-student harassment, but only where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities, and only for harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[2] Federal Courts 170B 460.1

170B Federal Courts
170BVII Supreme Court
170BVII(B) Review of Decisions of Courts of Appeals
170Bk460 Review on Certiorari
170Bk460.1 k. In General. Most Cited Cases
In reviewing the legal sufficiency of a cause of action, following dismissal for failure to state a claim, Supreme Court must assume the truth of the material facts as alleged in the complaint. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

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[3] Civil Rights 78 1330(2)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(2) k. Education. Most Cited Cases
(Formerly 78k200)

Civil Rights 78 1462

78 Civil Rights
78III Federal Remedies in General
78k1458 Monetary Relief in General
78k1462 k. Grounds and Subjects; Compensatory Damages. Most Cited Cases
(Formerly 78k271)
There is an implied private right of action under Title IX, and money damages are available in such suits. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[4] Civil Rights 78 1330(2)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(2) k. Education. Most Cited Cases
(Formerly 78k200)
Because Title IX was enacted pursuant to Congress' authority under the Spending Clause, private damages actions are available only where recipients of federal funding had adequate notice that they could be liable for the conduct at issue. U.S.C.A. Const. Art. 1, § 8, cl. 1; Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[5] United States 393 82(1)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(1) k. In General. Most Cited Cases
When Congress acts pursuant to its spending power, it generates legislation much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. U.S.C.A. Const. Art. 1, § 8, cl. 1.

[6] United States 393 82(1)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(1) k. In General. Most Cited Cases
In interpreting language in legislation enacted under the Spending Clause, Supreme Court insists that Congress speak with a clear voice, recognizing that there can be no knowing acceptance of the terms of the putative contract if a State is unaware of the conditions imposed by the legislation or is unable to ascertain what is expected of it. U.S.C.A. Const. Art. 1, § 8, cl. 1.

[7] Civil Rights 78 1337

78 Civil Rights
78III Federal Remedies in General
78k1334 Persons Liable in General
78k1337 k. Education. Most Cited Cases
(Formerly 78k204.1)
A recipient of federal funds may be liable in damages under Title IX only for its own misconduct. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[8] Civil Rights 78 1067(1)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(1) k. In General. Most Cited Cases
(Formerly 78k128)

Civil Rights 78 1337

78 Civil Rights
78III Federal Remedies in General
78k1334 Persons Liable in General
78k1337 k. Education. Most Cited Cases
(Formerly 78k204.1)
The Government's enforcement power under Title IX may only be exercised against the funding recipient,

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and damages liability under Title IX is not extended to parties outside the scope of this power. Education Amendments of 1972, §§ 901(a), 902, as amended, 20 U.S.C.A. §§ 1681(a), 1682.

[9] Civil Rights 78 ⚿1337

78 Civil Rights
78III Federal Remedies in General
78k1334 Persons Liable in General
78k1337 k. Education. Most Cited Cases
(Formerly 78k204.1)

The receiving entity of federal funds under Title IX must have notice that it will be liable for a monetary award before subjecting it to damages liability, but this limitation on private damages actions is not a bar to liability where a funding recipient intentionally violates the statute. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[10] Civil Rights 78 ⚿1337

78 Civil Rights
78III Federal Remedies in General
78k1334 Persons Liable in General
78k1337 k. Education. Most Cited Cases
(Formerly 78k204.1)

Damages liability is not imposed on fund recipient under Title IX based on agency principles or a negligence standard; rather, fund recipients may be liable in damages only where their own deliberate indifference effectively caused the discrimination. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[11] Civil Rights 78 ⚿1005

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1002 Constitutional and Statutory Provisions
78k1005 k. Power to Enact and Validity. Most Cited Cases
(Formerly 78k103)

Civil Rights 78 ⚿1337

78 Civil Rights
78III Federal Remedies in General
78k1334 Persons Liable in General
78k1337 k. Education. Most Cited Cases
(Formerly 78k204.1)

Civil Rights 78 ⚿1346

78 Civil Rights
78III Federal Remedies in General
78k1342 Liability of Municipalities and Other Governmental Bodies
78k1346 k. Education. Most Cited Cases
(Formerly 78k206(1))

United States 393 ⚿82(1)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(1) k. In General. Most Cited Cases

Title IX proscribes harassment with sufficient clarity to satisfy notice requirement for Spending Clause legislation and serve as a basis for a damages action; additionally, the regulatory scheme surrounding Title IX has long provided funding recipients with notice that they may be liable for their failure to respond to the discriminatory acts of certain non-agents, and common law has put schools on notice that they may be held responsible under state law for their failure to protect students from the tortious acts of third parties. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).; 34 C.F.R. §§ 106.31(b)(6), (d), 106.37(a)(2), 106.38(a), 106.51(a)(3); Restatement (Second) of Torts §§ 320, 320 comment.

[12] Civil Rights 78 ⚿1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)

Direct liability may be imposed on fund recipient under Title IX on theory of deliberate indifference to sexual harassment only where the funding recipient has some control over the alleged harassment; a recipient cannot be directly liable for its indifference

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where it lacks the authority to take remedial action. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[13] Civil Rights 78 1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)
If a funding recipient does not engage in harassment directly, it may not be liable for damages under Title IX unless its deliberate indifference subjects its students to harassment; that is, the deliberate indifference must, at a minimum, cause students to undergo harassment or make them liable or vulnerable to it. Education Amendments of 1972, §§ 901(a), 908, as amended, 20 U.S.C.A. §§ 1681(a), 1687.

[14] Civil Rights 78 1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)
A fund recipient's damages liability for sexual harassment under Title IX is limited to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[15] Civil Rights 78 1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)
School board may be liable under Title IX for deliberate indifference to student-on-student sexual harassment occurring during school hours and on school grounds; such misconduct is taking place "under" an "operation" of the funding recipient and takes place where the recipient exercises significant control over the harasser. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[16] Civil Rights 78 1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)
Fund recipients cannot avoid liability for student-on-student sexual harassment only by expelling alleged harassers or acceding to particular remedial demands; rather, school administrators continue to enjoy the flexibility they require and will be deemed "deliberately indifferent" to acts of student-on-student harassment only where the recipient's response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[17] Civil Rights 78 1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)
Sexual harassment is a form of "discrimination" for Title IX purposes. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[18] Civil Rights 78 1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General

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78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)
Student-on-student sexual harassment, if sufficiently severe, can rise to the level of "discrimination" actionable under Title IX. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[19] Civil Rights 78 1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)

Civil Rights 78 1462

78 Civil Rights
78III Federal Remedies in General
78k1458 Monetary Relief in General
78k1462 k. Grounds and Subjects; Compensatory Damages. Most Cited Cases
(Formerly 78k271)
Whether gender-oriented conduct rises to the level of actionable "harassment" under Title IX depends on a constellation of surrounding circumstances, expectations, and relationships, including, but not limited to, the ages of the harasser and the victim and the number of individuals involved, and courts must bear in mind that children may regularly interact in a manner that would be unacceptable among adults; damages are not available for simple acts of teasing and name-calling, even where these comments target differences in gender, and the behavior must be serious enough to have the systemic effect of denying the victim equal access to an educational program or activity. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[20] Civil Rights 78 1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)
A mere decline in grades is not enough to survive a motion to dismiss a Title IX claim against a school board based on student-on-student sexual harassment; the drop-off in grades provides necessary evidence of a potential link between the harassed student's education and the harasser's misconduct, but the harassed student's ability to state a cognizable claim depends equally on the alleged persistence and severity of the harasser's actions and the board's alleged knowledge and deliberate indifference. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[21] Civil Rights 78 1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)
The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX's guarantee of equal access to educational benefits and to have a systemic effect on a program or activity, and peer harassment is less likely to satisfy these requirements than is teacher-student harassment. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

[22] Civil Rights 78 1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k128)
Parent of fifth grade public school student stated a claim for damages against school board under Title IX by allegations that board subjected student to discrimination by failing to respond in any way over a period of five months to complaints from such student

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and other female students of fellow student's in-school sexual harassment; the harassment was not only verbal, but included numerous acts of objectively offensive touching, and parent alleged that the harassment had a concrete, negative effect on her daughter's ability to receive an education and that the school board made no effort whatsoever either to investigate or to put an end to the harassment. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a).

***1664 Syllabus** [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

Petitioner filed suit against respondents, a county school board (Board) and school officials, seeking damages for the sexual harassment of her daughter LaShonda by G. F., a fifth-grade classmate at a public elementary school. Among other things, petitioner alleged that respondents' deliberate indifference to G. F.'s persistent sexual advances toward LaShonda created an intimidating, hostile, offensive, and abusive school environment that violated Title IX of the Education Amendments of 1972, which, in relevant part, prohibits a student from being "excluded from participation in, be[ing] denied the benefits of, or be[ing] subjected to discrimination under any education program or activity receiving Federal financial assistance," 20 U.S.C. § 1681(a). In granting respondents' motion to dismiss, the Federal District Court found that "student-on-student," or peer, harassment provides no ground for a Title IX private cause of action for damages. The en banc Eleventh Circuit affirmed.

Held:

1. A private Title IX damages action may lie against a school board in cases of student-on-student harassment, but only where the funding recipient is deliberately indifferent to sexual harassment, of which the recipient has actual knowledge, and that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school. Pp. 1669-1676.

(a) An implied private right of action for money damages exists under Title IX, *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 112 S.Ct. 1028, 117 L.Ed.2d 208, where funding recipients had adequate notice that they could be liable for the conduct at issue, *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17, 101 S.Ct. 1531, 67 L.Ed.2d 694, but a recipient is liable only for its own misconduct. Here, petitioner attempts to hold the Board liable for its *own* decision to remain idle in the face of known student-on-student harassment in its schools. The standard set out in *Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274, 118 S.Ct. 1989, 141 L.Ed.2d 277-that a school district may be liable for damages under Title IX where it is deliberately indifferent to known acts of teacher-student sexual harassment-also applies in cases ***630** of student-on-student harassment. Initially, in *Gebser*, this Court expressly rejected the use of agency principles to impute liability to the district for the acts of its teachers. *Id.*, at 283, 118 S.Ct. 1989. Additionally, Title IX's regulatory scheme has long provided funding recipients**1665 with notice that they may be liable for their failure to respond to nonagents' discriminatory acts. The common law has also put schools on notice that they may be held responsible under state law for failing to protect students from third parties' tortious acts. Of course, the harasser's identity is not irrelevant. Deliberate indifference makes sense as a direct liability theory only where the recipient has the authority to take remedial action, and Title IX's language itself narrowly circumscribes the circumstances giving rise to damages liability under the statute. If a recipient does not engage in harassment directly, it may not be liable for damages unless its deliberate indifference "subject[s]" its students to harassment, *i.e.*, at a minimum, causes students to undergo harassment or makes them liable or vulnerable to it. Moreover, because the harassment must occur "under" "the operations of" a recipient, 20 U.S.C. §§ 1681(a), 1687, the harassment must take place in a context subject to the school district's control. These factors combine to limit a recipient's damages liability to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs. Where, as here, the misconduct occurs during school hours on school grounds, misconduct is taking place "under" an "operation" of the recipient. In these circumstances, the recipient retains substantial control over the context in which the harassment occurs. More

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importantly, in this setting, the Board exercises significant control over the harasser, for it has disciplinary authority over its students. At the time of the events here, a publication for school attorneys and administrators indicated that student-on-student harassment could trigger Title IX liability, and subsequent Department of Education policy guidelines provide that such harassment falls within Title IX's scope. Contrary to contentions of respondents and the dissent, school administrators will continue to enjoy the flexibility they require in making disciplinary decisions so long as funding recipients are deemed "deliberately indifferent" to acts of student-on-student harassment only where the recipient's response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances. Pp. 1669-1674.

(b) The requirement that recipients receive adequate notice of Title IX's proscriptions also bears on the proper definition of "discrimination" in a private damages action. Title IX proscribes sexual harassment with sufficient clarity to satisfy *Pennhurst's* notice requirement and serve as a basis for a damages action. See *Gebser, supra,* at 281, 118 S.Ct. 1989. Having previously held that such harassment is "discrimination" in the ***631** school context under Title IX, this Court is constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of "discrimination" actionable under the statute. The statute's other prohibitions help to give content to "discrimination" in this context. The statute not only protects students from discrimination but also shields them from being "excluded from participation in" or "denied the benefits of" a recipient's "education program or activity" on the basis of gender. 20 U.S.C. § 1681(a). It is not necessary to show an overt, physical deprivation of access to school resources to make out a damages claim for sexual harassment under Title IX, but a plaintiff must show harassment that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victims are effectively denied equal access to an institution's resources and opportunities. Cf. *Meritor Savings Bank, FSB v. Vinson,* 477 U.S. 57, 67, 106 S.Ct. 2399, 91 L.Ed.2d 49. Whether gender-oriented conduct is harassment depends on a constellation of surrounding circumstances, expectations, and relationships, *Oncale v. Sundowner Offshore Services, Inc.,* 523 U.S. 75, 82, 118 S.Ct. 998, 140 L.Ed.2d 201, including, but not limited to, the harasser's and victim's ages and the number of persons involved. Courts must also bear in mind that schoolchildren may regularly interact in ways that would be unacceptable among adults. Moreover, that the discrimination must occur "under any education program or activity" suggests that the behavior must be serious enough to have the systemic effect of denying the victim equal access to an education ****1666** program or activity. A single instance of severe one-on-one peer harassment could, in theory, be said to have such a systemic effect, but it is unlikely that Congress would have thought so. The fact that it was a teacher who engaged in harassment in *Franklin* and *Gebser* is relevant. Peer harassment is less likely to satisfy the requirements that the misconduct breach Title IX's guarantee of equal access to educational benefits and have a systemic effect on a program or activity. Pp. 1674-1676.

2. Applying this standard to the facts at issue, the Eleventh Circuit erred in dismissing petitioner's complaint. This Court cannot say beyond doubt that she can prove no set of facts that would entitle her to relief. She alleges that LaShonda was the victim of repeated acts of harassment by G.F. over a 5-month period, and allegations support the conclusion that his misconduct was severe, pervasive, and objectively offensive. Moreover, the complaint alleges that multiple victims of G. F.'s misconduct sought an audience with the school principal and that the harassment had a concrete, negative effect on LaShonda's ability to receive an education. The complaint also suggests that petitioner may be able to show both actual knowledge and deliberate indifference ***632** on the part of the Board, which made no effort either to investigate or to put an end to the harassment. P. 1676.

120 F.3d 1390, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined, *post,* p. 1676.
Verna L. Williams, Washington, DC, for petitioner.

Barbara D. Underwood, Washington, DC, for the United States as amicus curiae, by special leave of the Court.

W. Warren Plowden, Jr., Macon, GA, for the respondents.

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For U.S. Supreme Court briefs, see:1998 WL 792418 (Pet.Brief)1998 WL 847573 (Resp.Brief)1998 WL 906317 (Reply.Brief)

Justice O'CONNOR delivered the opinion of the Court.

[1] Petitioner brought suit against the Monroe County Board of Education and other defendants, alleging that her fifth-grade daughter had been the victim of sexual harassment by another student in her class. Among petitioner's claims was a claim for monetary and injunctive relief under Title IX of ***633** the Education Amendments of 1972 (Title IX), 86 Stat. 373, as amended, 20 U.S.C. § 1681 *et seq.* The District Court dismissed petitioner's Title IX claim on the ground that "student-on-student," or peer, harassment provides no ground for a private cause of action under the statute. The Court of Appeals for the Eleventh Circuit, sitting en banc, affirmed. We consider here whether a private damages action may lie against the school board in cases of student-on-student harassment. We conclude that it may, but only where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities. Moreover, we conclude that such an action will lie only for harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit.

I

[2] Petitioner's Title IX claim was dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief could be granted. Accordingly, in reviewing the legal sufficiency of petitioner's cause of action, "we must assume the truth of the material facts as alleged in the complaint." *Summit Health, Ltd.* v. *Pinhas,* 500 U.S. 322, 325, 111 S.Ct. 1842, 114 L.Ed.2d 366 (1991).

A

Petitioner's minor daughter, LaShonda, was allegedly the victim of a prolonged pattern of sexual harassment by one of her fifth-grade classmates at Hubbard Elementary School, a public school in Monroe County, ****1667** Georgia. According to petitioner's complaint, the harassment began in December 1992, when the classmate, G.F., attempted to touch LaShonda's breasts and genital area and made vulgar statements such as " 'I want to get in bed with you' " and " 'I want to feel your boobs.' " Complaint ¶ 7. Similar conduct allegedly occurred on or about January 4 and January 20, 1993. *Ibid.* LaShonda reported each of these incidents to her ***634** mother and to her classroom teacher, Diane Fort. *Ibid.* Petitioner, in turn, also contacted Fort, who allegedly assured petitioner that the school principal, Bill Querry, had been informed of the incidents. *Ibid.* Petitioner contends that, notwithstanding these reports, no disciplinary action was taken against G.F. *Id.,* ¶ 16.

G.F.'s conduct allegedly continued for many months. In early February, G.F. purportedly placed a door stop in his pants and proceeded to act in a sexually suggestive manner toward LaShonda during physical education class. *Id.,* ¶ 8. LaShonda reported G.F.'s behavior to her physical education teacher, Whit Maples. *Ibid.* Approximately one week later, G.F. again allegedly engaged in harassing behavior, this time while under the supervision of another classroom teacher, Joyce Pippin. *Id.,* ¶ 9. Again, LaShonda allegedly reported the incident to the teacher, and again petitioner contacted the teacher to follow up. *Ibid.*

Petitioner alleges that G.F. once more directed sexually harassing conduct toward LaShonda in physical education class in early March, and that LaShonda reported the incident to both Maples and Pippen. *Id.,* ¶ 10. In mid-April 1993, G.F. allegedly rubbed his body against LaShonda in the school hallway in what LaShonda considered a sexually suggestive manner, and LaShonda again reported the matter to Fort. *Id.,* ¶ 11.

The string of incidents finally ended in mid-May, when G.F. was charged with, and pleaded guilty to, sexual battery for his misconduct. *Id.,* ¶ 14. The complaint alleges that LaShonda had suffered during the months of harassment, however; specifically, her previously high grades allegedly dropped as she became unable to concentrate on her studies, *id.,* ¶ 15, and, in April 1993, her father discovered that she had written a suicide note, *ibid.* The complaint further alleges that, at one point, LaShonda told petitioner that she " 'didn't know how much longer she could keep [G.F.] off her.' " *Id.,* ¶ 12.

***635** Nor was LaShonda G.F.'s only victim; it is alleged that other girls in the class fell prey to G.F.'s

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conduct. *Id.,* ¶ 16. At one point, in fact, a group composed of LaShonda and other female students tried to speak with Principal Querry about G.F.'s behavior. *Id.,* ¶ 10. According to the complaint, however, a teacher denied the students' request with the statement, " 'If [Querry] wants you, he'll call you.' " *Ibid.*

Petitioner alleges that no disciplinary action was taken in response to G.F.'s behavior toward LaShonda. *Id.,* ¶ 16. In addition to her conversations with Fort and Pippen, petitioner alleges that she spoke with Principal Querry in mid-May 1993. When petitioner inquired as to what action the school intended to take against G.F., Querry simply stated, " 'I guess I'll have to threaten him a little bit harder.' " *Id.,* ¶ 12. Yet, petitioner alleges, at no point during the many months of his reported misconduct was G.F. disciplined for harassment. *Id.,* ¶ 16. Indeed, Querry allegedly asked petitioner why LaShonda " 'was the only one complaining.' " *Id.,* ¶ 12.

Nor, according to the complaint, was any effort made to separate G.F. and LaShonda. *Id.,* ¶ 16. On the contrary, notwithstanding LaShonda's frequent complaints, only after more than three months of reported harassment was she even permitted to change her classroom seat so that she was no longer seated next to G.F. *Id.,* ¶ 13. Moreover, petitioner alleges that, at the time of the events in question, the Monroe County Board of Education (Board) had not instructed its personnel on how to respond to peer sexual harassment and had not established a policy on the issue. *Id.,* ¶ 17.

B

On May 4, 1994, petitioner filed suit in the United States District Court for the Middle District of Georgia against the Board, Charles Dumas, the school district's superintendent,****1668** and Principal Querry. The complaint alleged that the Board ***636** is a recipient of federal funding for purposes of Title IX, that "[t]he persistent sexual advances and harassment by the student G.F. upon [LaShonda] interfered with her ability to attend school and perform her studies and activities," and that "[t]he deliberate indifference by Defendants to the unwelcome sexual advances of a student upon LaShonda created an intimidating, hostile, offensive and abus[ive] school environment in violation of Title IX." *Id.,* ¶¶ 27, 28. The complaint sought compensatory and punitive damages, attorney's fees, and injunctive relief. *Id.,* ¶ 32.

The defendants (all respondents here) moved to dismiss petitioner's complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief could be granted, and the District Court granted respondents' motion. See *D. v. Monroe Cty. Bd. of Educ.,* 862 F.Supp. 363, 368 (M.D.Ga.1994). With regard to petitioner's claims under Title IX, the court dismissed the claims against individual defendants on the ground that only federally funded educational institutions are subject to liability in private causes of action under Title IX. *Id.,* at 367. As for the Board, the court concluded that Title IX provided no basis for liability absent an allegation "that the Board or an employee of the Board had any role in the harassment." *Ibid.*

Petitioner appealed the District Court's decision dismissing her Title IX claim against the Board, and a panel of the Court of Appeals for the Eleventh Circuit reversed. *Davis v. Monroe Cty. Bd. of Educ.,* 74 F.3d 1186, 1195 (1996). Borrowing from Title VII law, a majority of the panel determined that student-on-student harassment stated a cause of action against the Board under Title IX: "[W]e conclude that as Title VII encompasses a claim for damages due to a sexually hostile working environment created by co-workers and tolerated by the employer, Title IX encompasses a claim for damages due to a sexually hostile educational environment created by a fellow student or students when the supervising authorities knowingly fail to act to eliminate the harassment." *Id.,* at 1193. The ***637** Eleventh Circuit panel recognized that petitioner sought to state a claim based on school "officials' failure to take action to stop the offensive acts of those over whom the officials exercised control," *ibid.,* and the court concluded that petitioner had alleged facts sufficient to support a claim for hostile environment sexual harassment on this theory, *id.,* at 1195.

The Eleventh Circuit granted the Board's motion for rehearing en banc, *Davis v. Monroe Cty. Bd. of Educ.,* 91 F.3d 1418 (1996), and affirmed the District Court's decision to dismiss petitioner's Title IX claim against the Board, 120 F.3d 1390 (1997). The en banc court relied, primarily, on the theory that Title IX was passed pursuant to Congress' legislative authority under the Constitution's Spending Clause, U.S. Const.,

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Art. I, § 8, cl. 1, and that the statute therefore must provide potential recipients of federal education funding with "unambiguous notice of the conditions they are assuming when they accept" it. 120 F.3d, at 1399. Title IX, the court reasoned, provides recipients with notice that they must stop their employees from engaging in discriminatory conduct, but the statute fails to provide a recipient with sufficient notice of a duty to prevent student-on-student harassment. *Id.*, at 1401.

Writing in dissent, four judges urged that the statute, by declining to identify the perpetrator of discrimination, encompasses misconduct by third parties: "The identity of the perpetrator is simply irrelevant under the language" of the statute. *Id.*, at 1412 (Barkett, J., dissenting). The plain language, the dissenters reasoned, also provides recipients with sufficient notice that a failure to respond to student-on-student harassment could trigger liability for the district. *Id.*, at 1414.

We granted certiorari, 524 U.S. 980, 119 S.Ct. 29, 141 L.Ed.2d 789 (1998), in order to resolve a conflict in the Circuits over whether, and under what circumstances, a recipient of federal educational funds can be liable in a private damages action arising from student-on-student sexual harassment, compare ***638**120 F.3d 1390 (C.A.11 1997) (case below), and *Rowinsky v. Bryan Independent School Dist.*, 80 F.3d 1006, 1008 (C.A.5) (holding ****1669** that private damages action for student-on-student harassment is available under Title IX only where funding recipient responds to these claims differently based on gender of victim), cert. denied, 519 U.S. 861, 117 S.Ct. 165, 136 L.Ed.2d 108 (1996), with *Doe v. University of Illinois*, 138 F.3d 653, 668 (C.A.7 1998) (upholding private damages action under Title IX for funding recipient's inadequate response to known student-on-student harassment), vacated and remanded, 526 U.S. 1142, 119 S.Ct. 2016, 143 L.Ed.2d 1028 (1999), *Brzonkala v. Virginia Polytechnic Institute and State University*, 132 F.3d 949, 960-961 (C.A.4 1997) (same), vacated and District Court decision affirmed en banc, 169 F.3d 820 (C.A.4 1999) (not addressing merits of Title IX hostile environment sexual harassment claim and directing District Court to hold this claim in abeyance pending this Court's decision in the instant case), and *Oona R.S. v. McCaffrey*, 143 F.3d 473, 478 (C.A.9 1998) (rejecting qualified immunity claim and concluding that Title IX duty to respond to student-on-student harassment was clearly established by 1992-1993), cert. denied, 526 U.S. 1154, 119 S.Ct. 2039, 143 L.Ed.2d 1047 (1999). We now reverse.

II

Title IX provides, with certain exceptions not at issue here, that

> "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a).

Congress authorized an administrative enforcement scheme for Title IX. Federal departments or agencies with the authority to provide financial assistance are entrusted to promulgate rules, regulations, and orders to enforce the objectives of § 1681, see § 1682, and these departments or agencies may rely on "any ... means authorized by law," including ***639** the termination of funding, *ibid.*, to give effect to the statute's restrictions.

There is no dispute here that the Board is a recipient of federal education funding for Title IX purposes. 74 F.3d, at 1189. Nor do respondents support an argument that student-on-student harassment cannot rise to the level of "discrimination" for purposes of Title IX. Rather, at issue here is the question whether a recipient of federal education funding may be liable for damages under Title IX under any circumstances for discrimination in the form of student-on-student sexual harassment.

A

Petitioner urges that Title IX's plain language compels the conclusion that the statute is intended to bar recipients of federal funding from permitting this form of discrimination in their programs or activities. She emphasizes that the statute prohibits a student from being "*subjected to discrimination* under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a) (emphasis added). It is Title IX's "unmistakable focus on the benefited class," *Cannon v. University of Chicago*, 441 U.S. 677, 691, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979), rather

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than the perpetrator, that, in petitioner's view, compels the conclusion that the statute works to protect students from the discriminatory misconduct of their peers.

[3][4][5][6] Here, however, we are asked to do more than define the scope of the behavior that Title IX proscribes. We must determine whether a district's failure to respond to student-on-student harassment in its schools can support a private suit for money damages. See *Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274, 283, 118 S.Ct. 1989, 141 L.Ed.2d 277 (1998) ("In this case, ... petitioners seek not just to establish a Title IX violation but to recover *damages* ..."). This Court has indeed recognized an implied private right of action under Title IX, see *Cannon v. University of Chicago, supra,* and we have held that money damages are available in such suits, ***640***Franklin v. Gwinnett County Public Schools,* 503 U.S. 60, 112 S.Ct. 1028, 117 L.Ed.2d 208 (1992). Because we have repeatedly treated Title IX as legislation enacted pursuant to Congress' authority under the Spending Clause, however, see, *e.g., Gebser v. Lago Vista Independent School Dist., supra,* at 287, 118 S.Ct. 1989 (Title IX); ****1670***Franklin v. Gwinnett County Public Schools, supra,* at 74-75, and n. 8, 112 S.Ct. 1028 (Title IX); see also *Guardians Assn. v. Civil Serv. Comm'n of New York City,* 463 U.S. 582, 598-599, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983) (opinion of White, J.) (Title VI), private damages actions are available only where recipients of federal funding had adequate notice that they could be liable for the conduct at issue. When Congress acts pursuant to its spending power, it generates legislation "much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Pennhurst State School and Hospital v. Halderman,* 451 U.S. 1, 17, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981). In interpreting language in spending legislation, we thus "insis[t] that Congress speak with a clear voice," recognizing that "[t]here can, of course, be no knowing acceptance [of the terms of the putative contract] if a State is unaware of the conditions [imposed by the legislation] or is unable to ascertain what is expected of it." *Ibid.;* see also *id.,* at 24-25, 101 S.Ct. 1531.

Invoking *Pennhurst,* respondents urge that Title IX provides no notice that recipients of federal educational funds could be liable in damages for harm arising from student-on-student harassment. Respondents contend, specifically, that the statute only proscribes misconduct by grant recipients, not third parties. Respondents argue, moreover, that it would be contrary to the very purpose of Spending Clause legislation to impose liability on a funding recipient for the misconduct of third parties, over whom recipients exercise little control. See also *Rowinsky v. Bryan Independent School Dist.,* 80 F.3d, at 1013.

[7][8] We agree with respondents that a recipient of federal funds may be liable in damages under Title IX only for its own misconduct. The recipient itself must "exclud[e] [persons]***641*** from participation in, ... den[y] [persons] the benefits of, or ... subjec[t] [persons] to discrimination under" its "program[s] or activit[ies]" in order to be liable under Title IX. The Government's enforcement power may only be exercised against the funding recipient, see § 1682, and we have not extended damages liability under Title IX to parties outside the scope of this power. See *National Collegiate Athletic Assn. v. Smith,* 525 U.S. 459, 467, n. 5, 119 S.Ct. 924, 929, n. 5, 142 L.Ed.2d 929 (1999) (rejecting suggestion "that the private right of action available under ... § 1681(a) is potentially broader than the Government's enforcement authority"); cf. *Gebser v. Lago Vista Independent School Dist., supra,* at 289, 118 S.Ct. 1989 ("It would be unsound, we think, for a statute's *express* system of enforcement to require notice to the recipient and an opportunity to come into voluntary compliance while a judicially *implied* system of enforcement permits substantial liability without regard to the recipient's knowledge or its corrective actions upon receiving notice").

[9] We disagree with respondents' assertion, however, that petitioner seeks to hold the Board liable for *G. F.*'s actions instead of its own. Here, petitioner attempts to hold the Board liable for its *own* decision to remain idle in the face of known student-on-student harassment in its schools. In *Gebser,* we concluded that a recipient of federal education funds may be liable in damages under Title IX where it is deliberately indifferent to known acts of sexual harassment by a teacher. In that case, a teacher had entered into a sexual relationship with an eighth-grade student, and the student sought damages under Title IX for the teacher's misconduct. We recognized that the scope of liability in private damages actions under Title IX is circumscribed by *Pennhurst's* requirement that funding recipients have notice of their potential liability. 524 U.S., at 287-288, 118 S.Ct. 1989. Invoking

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Pennhurst, Guardians Assn., and *Franklin,* in *Gebser* we once again required "that 'the receiving entity of federal funds [have] notice that it will be liable for a monetary*642 award' " before subjecting it to damages liability. 524 U.S., at 287, 118 S.Ct. 1989 (quoting *Franklin v. Gwinnett County Public Schools,* 503 U.S., at 74, 112 S.Ct. 1028). We also recognized, however, that this limitation on private damages actions is not a bar to liability where a funding recipient intentionally violates the statute. *Id.,* at 74-75, 112 S.Ct. 1028; see also **1671*Guardians Assn. v. Civil Serv. Comm'n of New York City, supra,* at 597- 598, 103 S.Ct. 3221 (opinion of White, J.) (same with respect to Title VI). In particular, we concluded that *Pennhurst* does not bar a private damages action under Title IX where the funding recipient engages in intentional conduct that violates the clear terms of the statute.

[10] Accordingly, we rejected the use of agency principles to impute liability to the district for the misconduct of its teachers. 524 U.S., at 283, 118 S.Ct. 1989. Likewise, we declined the invitation to impose liability under what amounted to a negligence standard-holding the district liable for its failure to react to teacher-student harassment of which it knew or *should have* known. *Ibid.* Rather, we concluded that the district could be liable for damages only where the district itself intentionally acted in clear violation of Title IX by remaining deliberately indifferent to acts of teacher-student harassment of which it had actual knowledge. *Id.,* at 290, 118 S.Ct. 1989. Contrary to the dissent's suggestion, the misconduct of the teacher in *Gebser* was not "treated as the grant recipient's actions." *Post,* at 1680 (opinion of KENNEDY, J.). Liability arose, rather, from "an official decision by the recipient not to remedy the violation." *Gebser v. Lago Vista Independent School Dist., supra,* at 290, 118 S.Ct. 1989. By employing the "deliberate indifference" theory already used to establish municipal liability under Rev. Stat. § 1979, 42 U.S.C. § 1983, see *Gebser v. Lago Vista Independent School Dist., supra,* at 290-291, 118 S.Ct. 1989 (citing *Board of Comm'rs of Bryan Cty. v. Brown,* 520 U.S. 397, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997), and *City of Canton v. Harris,* 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989)), we concluded in *Gebser* that recipients could be liable in damages only where their own deliberate indifference effectively *643 "cause[d]" the discrimination, 524 U.S., at 291, 118 S.Ct. 1989; see also *Canton v. Harris, supra,* at 385, 109 S.Ct. 1197 (recognizing that a municipality will be liable under § 1983 only if "the municipality *itself* causes the constitutional violation at issue" (emphasis in original)). The high standard imposed in *Gebser* sought to eliminate any "risk that the recipient would be liable in damages not for its own official decision but instead for its employees' independent actions." 524 U.S., at 290-291, 118 S.Ct. 1989.

Gebser thus established that a recipient intentionally violates Title IX, and is subject to a private damages action, where the recipient is deliberately indifferent to known acts of teacher-student discrimination. Indeed, whether viewed as "discrimination" or "subject[ing]" students to discrimination, Title IX "[u]nquestionably ... placed on [the Board] the duty not" to permit teacher-student harassment in its schools, *Franklin v. Gwinnett County Public Schools, supra,* at 75, 112 S.Ct. 1028, and recipients violate Title IX's plain terms when they remain deliberately indifferent to this form of misconduct.

[11] We consider here whether the misconduct identified in *Gebser*-deliberate indifference to known acts of harassment-amounts to an intentional violation of Title IX, capable of supporting a private damages action, when the harasser is a student rather than a teacher. We conclude that, in certain limited circumstances, it does. As an initial matter, in *Gebser* we expressly rejected the use of agency principles in the Title IX context, noting the textual differences between Title IX and Title VII. 524 U.S., at 283, 118 S.Ct. 1989; cf. *Faragher v. City of Boca Raton,* 524 U.S. 775, 791-792, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998) (invoking agency principles on ground that definition of "employer" in Title VII includes agents of employer); *Meritor Savings Bank, FSB v. Vinson,* 477 U.S. 57, 72, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986) (same). Additionally, the regulatory scheme surrounding Title IX has long provided funding recipients with notice that they may be liable for their failure to respond to the discriminatory acts of certain nonagents. The Department of Education requires*644 recipients to monitor third parties for discrimination in specified circumstances and to refrain from particular forms of interaction with outside entities that are known to discriminate. See, *e.g.,* 34 CFR §§ 106.31(b)(6), 106.31(d), 106.37(a)(2), 106.38(a), 106.51(a)(3) (1998).

The common law, too, has put schools on notice that

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they may be held responsible under state law for their failure to protect students from the tortious acts of third parties.****1672** See Restatement (Second) of Torts § 320, and Comment *a* (1965). In fact, state courts routinely uphold claims alleging that schools have been negligent in failing to protect their students from the torts of their peers. See, *e.g., Rupp v. Bryant,* 417 So.2d 658, 666-667 (Fla.1982); *Brahatcek v. Millard School Dist.,* 202 Neb. 86, 99-100, 273 N.W.2d 680, 688 (1979); *McLeod v. Grant County School Dist. No. 128,* 42 Wash.2d 316, 320, 255 P.2d 360, 362-363 (1953).

[12] This is not to say that the identity of the harasser is irrelevant. On the contrary, both the "deliberate indifference" standard and the language of Title IX narrowly circumscribe the set of parties whose known acts of sexual harassment can trigger some duty to respond on the part of funding recipients. Deliberate indifference makes sense as a theory of direct liability under Title IX only where the funding recipient has some control over the alleged harassment. A recipient cannot be directly liable for its indifference where it lacks the authority to take remedial action.

[13] The language of Title IX itself-particularly when viewed in conjunction with the requirement that the recipient have notice of Title IX's prohibitions to be liable for damages-also cabins the range of misconduct that the statute proscribes. The statute's plain language confines the scope of prohibited conduct based on the recipient's degree of control over the harasser and the environment in which the harassment occurs. If a funding recipient does not engage in harassment directly, it may not be liable for damages unless its deliberate indifference "subject[s]" its students to harassment.***645** That is, the deliberate indifference must, at a minimum, "cause [students] to undergo" harassment or "make them liable or vulnerable" to it. Random House Dictionary of the English Language 1415 (1966) (defining "subject" as "to cause to undergo the action of something specified; expose" or "to make liable or vulnerable; lay open; expose"); Webster's Third New International Dictionary 2275 (1961) (defining "subject" as "to cause to undergo or submit to: make submit to a particular action or effect: EXPOSE"). Moreover, because the harassment must occur "under" "the operations of" a funding recipient, see 20 U.S.C. § 1681(a); § 1687 (defining "program or activity"), the harassment must take place in a context subject to the school district's control, Webster's Third New International Dictionary, *supra,* at 2487 (defining "under" as "in or into a condition of subjection, regulation, or subordination"; "subject to the guidance and instruction of"); Random House Dictionary of the English Language, *supra,* at 1543 (defining "under" as "subject to the authority, direction, or supervision of").

[14] These factors combine to limit a recipient's damages liability to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs. Only then can the recipient be said to "expose" its students to harassment or "cause" them to undergo it "under" the recipient's programs. We agree with the dissent that these conditions are satisfied most easily and most obviously when the offender is an agent of the recipient. *Post,* at 1680. We rejected the use of agency analysis in *Gebser,* however, and we disagree that the term "under" somehow imports an agency requirement into Title IX. See *post,* at 1679-1680. As noted above, the theory in *Gebser* was that the recipient was *directly* liable for its deliberate indifference to discrimination. See *supra,* at 1671. Liability in that case did not arise because the "teacher's actions [were] treated" as those of the funding recipient, *post,* at 1680; the district was directly liable for its ***646** *own* failure to act. The terms "subjec[t]" and "under" impose limits, but nothing about these terms requires the use of agency principles.

[15] Where, as here, the misconduct occurs during school hours and on school grounds-the bulk of G.F.'s misconduct, in fact, took place in the classroom-the misconduct is taking place "under" an "operation" of the funding recipient. See *Doe v. University of Illinois,* 138 F.3d, at 661 (finding liability where school fails to respond properly to "student-on-student sexual harassment that takes place while the students are involved in school activities or ****1673** otherwise under the supervision of school employees"). In these circumstances, the recipient retains substantial control over the context in which the harassment occurs. More importantly, however, in this setting the Board exercises significant control over the harasser. We have observed, for example, "that the nature of [the State's] power [over public schoolchildren] is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults." *Vernonia School Dist. 47J v. Acton,* 515 U.S. 646, 655, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995). On

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more than one occasion, this Court has recognized the importance of school officials' "comprehensive authority ..., consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 507, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969); see also *New Jersey v. T.L.O.*, 469 U.S. 325, 342, n. 9, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985) ("The maintenance of discipline in the schools requires not only that students be restrained from assaulting one another, abusing drugs and alcohol, and committing other crimes, but also that students conform themselves to the standards of conduct prescribed by school authorities"); 74 F.3d, at 1193 ("The ability to control and influence behavior exists to an even greater extent in the classroom than in the workplace ..."). The common law, too, recognizes the school's disciplinary authority. See Restatement (Second) of Torts § 152 (1965). We thus conclude that recipients of federal funding may be liable for "subject[ing]" their students ***647** to discrimination where the recipient is deliberately indifferent to known acts of student-on-student sexual harassment and the harasser is under the school's disciplinary authority.

At the time of the events in question here, in fact, school attorneys and administrators were being told that student-on-student harassment could trigger liability under Title IX. In March 1993, even as the events alleged in petitioner's complaint were unfolding, the National School Boards Association issued a publication, for use by "school attorneys and administrators in understanding the law regarding sexual harassment of employees and students," which observed that districts could be liable under Title IX for their failure to respond to student-on-student harassment. See National School Boards Association Council of School Attorneys, Sexual Harassment in the Schools: Preventing and Defending Against Claims v, 45 (rev. ed.). Drawing on Equal Employment Opportunity Commission guidelines interpreting Title VII, the publication informed districts that, "if [a] school district has constructive notice of severe and repeated acts of sexual harassment by fellow students, that may form the basis of a [T]itle IX claim." *Ibid.* The publication even correctly anticipated a form of *Gebser's* actual notice requirement: "It is unlikely that courts will hold a school district liable for sexual harassment by students against students in the absence of actual knowledge or notice to district employees." Sexual Harassment in the Schools, *supra,* at 45. Although we do not rely on this publication as an "indicium of congressional notice," see *post,* at 1685, we do find support for our reading of Title IX in the fact that school attorneys have rendered an analogous interpretation.

Likewise, although they were promulgated too late to contribute to the Board's notice of proscribed misconduct, the Department of Education's Office for Civil Rights (OCR) has recently adopted policy guidelines providing that student-on-student harassment falls within the scope of Title IX's proscriptions. See Department of Education, ***648**Office of Civil Rights, Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed.Reg. 12034, 12039-12040 (1997) (OCR Title IX Guidelines); see also Department of Education, Racial Incidents and Harassment Against Students at Educational Institutions, 59 Fed.Reg. 11448, 11449 (1994).

[16] We stress that our conclusion here-that recipients may be liable for their deliberate indifference to known acts of peer sexual harassment-does not mean that recipients can avoid liability only by purging their schools of actionable peer harassment or that administrators must engage in particular disciplinary****1674** action. We thus disagree with respondents' contention that, if Title IX provides a cause of action for student-on-student harassment, "nothing short of expulsion of every student accused of misconduct involving sexual overtones would protect school systems from liability or damages." See Brief for Respondents 16; see also 120 F.3d, at 1402 (Tjoflat, J.) ("[A] school must immediately suspend or expel a student accused of sexual harassment"). Likewise, the dissent erroneously imagines that victims of peer harassment now have a Title IX right to make particular remedial demands. See *post,* at 1691 (contemplating that victim could demand new desk assignment). In fact, as we have previously noted, courts should refrain from second-guessing the disciplinary decisions made by school administrators. *New Jersey v. T.L.O., supra,* at 342-343, n. 9, 105 S.Ct. 733.

School administrators will continue to enjoy the flexibility they require so long as funding recipients are deemed "deliberately indifferent" to acts of student-on-student harassment only where the recipient's response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances. The dissent consistently mischaracterizes this standard to

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require funding recipients to "remedy" peer harassment, *post* at 1678, 1680, 1683, 1690, and to "ensur[e] that ... students conform their conduct to" certain rules, *post* at 1682. Title IX imposes no such requirements. On the contrary, ***649** the recipient must merely respond to known peer harassment in a manner that is not clearly unreasonable. This is not a mere "reasonableness" standard, as the dissent assumes. See *post,* at 1688. In an appropriate case, there is no reason why courts, on a motion to dismiss, for summary judgment, or for a directed verdict, could not identify a response as not "clearly unreasonable" as a matter of law.

Like the dissent, see *post,* at 1681-1683, we acknowledge that school administrators shoulder substantial burdens as a result of legal constraints on their disciplinary authority. To the extent that these restrictions arise from federal statutes, Congress can review these burdens with attention to the difficult position in which such legislation may place our Nation's schools. We believe, however, that the standard set out here is sufficiently flexible to account both for the level of disciplinary authority available to the school and for the potential liability arising from certain forms of disciplinary action. A university might not, for example, be expected to exercise the same degree of control over its students that a grade school would enjoy, see *post,* at 1682-1683, and it would be entirely reasonable for a school to refrain from a form of disciplinary action that would expose it to constitutional or statutory claims.

While it remains to be seen whether petitioner can show that the Board's response to reports of G.F.'s misconduct was clearly unreasonable in light of the known circumstances, petitioner may be able to show that the Board "subject [ed]" LaShonda to discrimination by failing to respond in any way over a period of five months to complaints of G.F.'s in-school misconduct from LaShonda and other female students.

B

[17][18] The requirement that recipients receive adequate notice of Title IX's proscriptions also bears on the proper definition of "discrimination" in the context of a private damages action. We have elsewhere concluded that sexual harassment is a ***650** form of discrimination for Title IX purposes and that Title IX proscribes harassment with sufficient clarity to satisfy *Pennhurst's* notice requirement and serve as a basis for a damages action. See *Gebser v. Lago Vista Independent School Dist.,* 524 U.S., at 281, 118 S.Ct. 1989; *Franklin v. Gwinnett County Public Schools,* 503 U.S., at 74-75, 112 S.Ct. 1028. Having previously determined that "sexual harassment" is "discrimination" in the school context under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute. See *Bennett v. Kentucky Dept. of Ed.,* 470 U.S. 656, 665-666, 105 S.Ct. 1544, 84 L.Ed.2d 590 (1985) (rejecting claim of insufficient notice under *Pennhurst* where statute made clear that ****1675** there were some conditions placed on receipt of federal funds, and noting that Congress need not "specifically identif[y] and proscrib[e]" each condition in the legislation). The statute's other prohibitions, moreover, help give content to the term "discrimination" in this context. Students are not only protected from discrimination, but also specifically shielded from being "excluded from participation in" or "denied the benefits of" any "education program or activity receiving Federal financial assistance." § 1681(a). The statute makes clear that, whatever else it prohibits, students must not be denied access to educational benefits and opportunities on the basis of gender. We thus conclude that funding recipients are properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.

The most obvious example of student-on-student sexual harassment capable of triggering a damages claim would thus involve the overt, physical deprivation of access to school resources. Consider, for example, a case in which male students physically threaten their female peers every ***651** day, successfully preventing the female students from using a particular school resource-an athletic field or a computer lab, for instance. District administrators are well aware of the daily ritual, yet they deliberately ignore requests for aid from the female students wishing to use the resource. The district's knowing refusal to take any action in response to such behavior would fly in the face of Title IX's core principles, and such deliberate indifference may appropriately be subject to claims for monetary damages. It is not necessary, however, to show physical exclusion to demonstrate

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that students have been deprived by the actions of another student or students of an educational opportunity on the basis of sex. Rather, a plaintiff must establish sexual harassment of students that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities. Cf. *Meritor Savings Bank, FSB v. Vinson,* 477 U.S., at 67, 106 S.Ct. 2399.

[19] Whether gender-oriented conduct rises to the level of actionable "harassment" thus "depends on a constellation of surrounding circumstances, expectations, and relationships," *Oncale v. Sundowner Offshore Services, Inc.,* 523 U.S. 75, 82, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998), including, but not limited to, the ages of the harasser and the victim and the number of individuals involved, see OCR Title IX Guidelines 12041-12042. Courts, moreover, must bear in mind that schools are unlike the adult workplace and that children may regularly interact in a manner that would be unacceptable among adults. See, *e.g.,* Brief for National School Boards Association et al. as *Amici Curiae* 11 (describing "dizzying array of immature ... behaviors by students"). Indeed, at least early on, students are still learning how to interact appropriately with their peers. It is thus understandable that, in the school setting, students often engage in insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students ***652** subjected to it. Damages are not available for simple acts of teasing and name-calling among school children, however, even where these comments target differences in gender. Rather, in the context of student-on-student harassment, damages are available only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect.

[20] The dissent fails to appreciate these very real limitations on a funding recipient's liability under Title IX. It is not enough to show, as the dissent would read this opinion to provide, that a student has been "teased," *post,* at 1688, or "called ... offensive names," *post,* at 1689. Comparisons to an "overweight child who skips gym class because the other children tease her about her size," the student who "refuses to wear glasses to avoid the taunts of 'four-eyes,' " and "the child who refuses to go to school because the school bully calls him a 'scaredy-cat' at recess," *post,* at 1688, are inapposite and misleading. ****1676** Nor do we contemplate, much less hold, that a mere "decline in grades is enough to survive" a motion to dismiss. *Ibid.* The dropoff in LaShonda's grades provides necessary evidence of a potential link between her education and G.F.'s misconduct, but petitioner's ability to state a cognizable claim here depends equally on the alleged persistence and severity of G.F.'s actions, not to mention the Board's alleged knowledge and deliberate indifference. We trust that the dissent's characterization of our opinion will not mislead courts to impose more sweeping liability than we read Title IX to require.

Moreover, the provision that the discrimination occur "under any education program or activity" suggests that the behavior be serious enough to have the systemic effect of denying the victim equal access to an educational program or activity. Although, in theory, a single instance of sufficiently severe one-on-one peer harassment could be said to have such an effect, we think it unlikely that Congress would ***653** have thought such behavior sufficient to rise to this level in light of the inevitability of student misconduct and the amount of litigation that would be invited by entertaining claims of official indifference to a single instance of one-on-one peer harassment. By limiting private damages actions to cases having a systemic effect on educational programs or activities, we reconcile the general principle that Title IX prohibits official indifference to known peer sexual harassment with the practical realities of responding to student behavior, realities that Congress could not have meant to be ignored. Even the dissent suggests that Title IX liability may arise when a funding recipient remains indifferent to severe, gender-based mistreatment played out on a "widespread level" among students. *Post,* at 1690.

[21] The fact that it was a teacher who engaged in harassment in *Franklin* and *Gebser* is relevant. The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX's guarantee of equal access to educational benefits and to have a systemic effect on a program or activity. Peer harassment, in particular, is less likely to satisfy these requirements than is teacher-student harassment.

C

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[22] Applying this standard to the facts at issue here, we conclude that the Eleventh Circuit erred in dismissing petitioner's complaint. Petitioner alleges that her daughter was the victim of repeated acts of sexual harassment by G.F. over a 5-month period, and there are allegations in support of the conclusion that G.F.'s misconduct was severe, pervasive, and objectively offensive. The harassment was not only verbal; it included numerous acts of objectively offensive touching, and, indeed, G.F. ultimately pleaded guilty to criminal sexual misconduct. Moreover, the complaint alleges that there were multiple victims who were sufficiently disturbed by G.F.'s misconduct to seek an audience with the school principal.***654** Further, petitioner contends that the harassment had a concrete, negative effect on her daughter's ability to receive an education. The complaint also suggests that petitioner may be able to show both actual knowledge and deliberate indifference on the part of the Board, which made no effort whatsoever either to investigate or to put an end to the harassment.

On this complaint, we cannot say "beyond doubt that [petitioner] can prove no set of facts in support of [her] claim which would entitle [her] to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). See also *Scheuer v. Rhodes,* 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974) ("The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims"). Accordingly, the judgment of the United States Court of Appeals for the Eleventh Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice KENNEDY, with whom THE CHIEF JUSTICE, Justice SCALIA, and Justice THOMAS join, dissenting.

****1677** The Court has held that Congress' power " 'to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution.' " *South Dakota v. Dole,* 483 U.S. 203, 207, 107 S.Ct. 2793, 97 L.Ed.2d 171 (1987) (quoting *United States v. Butler,* 297 U.S. 1, 66, 56 S.Ct. 312, 80 L.Ed. 477 (1936)). As a consequence, Congress can use its Spending Clause power to pursue objectives outside of "Article I's 'enumerated legislative fields' " by attaching conditions to the grant of federal funds. 483 U.S., at 207, 107 S.Ct. 2793. So understood, the Spending Clause power, if wielded without concern for the federal balance, has the potential to obliterate distinctions between national and local spheres of interest and power by permitting the Federal Government to set policy***655** in the most sensitive areas of traditional state concern, areas which otherwise would lie outside its reach.

A vital safeguard for the federal balance is the requirement that, when Congress imposes a condition on the States' receipt of federal funds, it "must do so unambiguously." *Pennhurst State School and Hospital v. Halderman,* 451 U.S. 1, 17, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981). As the majority acknowledges, "legislation enacted pursuant to the spending power is much in the nature of a contract," and the legitimacy of Congress' exercise of its power to condition funding on state compliance with congressional conditions "rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.' " *Ibid.*; see *ante,* at 1670. " 'There can, of course, be no knowing acceptance [of the terms of the putative contract] if a State is unaware of the conditions [imposed by the legislation] or is unable to ascertain what is expected of it.' " (quoting *Pennhurst,* 451 U.S., at 17, 101 S.Ct. 1531).

Our insistence that "Congress speak with a clear voice" to "enable the States to exercise their choice knowingly, cognizant of the consequences of their participation," *ibid.,* is not based upon some abstract notion of contractual fairness. Rather, it is a concrete safeguard in the federal system. Only if States receive clear notice of the conditions attached to federal funds can they guard against excessive federal intrusion into state affairs and be vigilant in policing the boundaries of federal power. Cf. *Dole, supra,* at 217, 107 S.Ct. 2793 (O'CONNOR, J., dissenting) ("If the spending power is to be limited only by Congress' notion of the general welfare, the reality, given the vast financial resources of the Federal Government, is that the Spending Clause gives 'power to the Congress to tear down the barriers, to invade the states' jurisdiction, and to become a parliament of the whole people, subject to no restrictions save such as are self-imposed' " (quoting *Butler, supra,* at 78, 56 S.Ct. 312)). While the majority purports to give effect to these principles, it eviscerates the clear-notice safeguard of our Spending Clause jurisprudence.

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***656** Title IX provides:

> "No person in the United States shall, on the basis of sex, be [1] excluded from participation in, [2] be denied the benefits of, or [3] be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a).

To read the provision in full is to understand what is most striking about its application in this case: Title IX does not by its terms create any private cause of action whatsoever, much less define the circumstances in which money damages are available. The only private cause of action under Title IX is judicially implied. See *Cannon v. University of Chicago*, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979).

The Court has encountered great difficulty in establishing standards for deciding when to imply a private cause of action under a federal statute which is silent on the subject. We try to conform the judicial judgment to the bounds of likely congressional purpose but, as we observed in *Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274, 118 S.Ct. 1989, 141 L.Ed.2d 277 (1998), defining the scope of the private cause of action in general, and the damages remedy in particular, "inherently entails a degree of speculation, since it addresses an issue on which ****1678** Congress has not specifically spoken." *Id.*, at 284, 118 S.Ct. 1989.

When the statute at issue is a Spending Clause statute, this element of speculation is particularly troubling because it is in significant tension with the requirement that Spending Clause legislation give States clear notice of the consequences of their acceptance of federal funds. Without doubt, the scope of potential damages liability is one of the most significant factors a school would consider in deciding whether to receive federal funds. Accordingly, the Court must not imply a private cause of action for damages unless it can demonstrate that the congressional purpose to create the implied cause of action is so manifest that the State, ***657** when accepting federal funds, had clear notice of the terms and conditions of its monetary liability.

Today the Court fails to heed, or even to acknowledge, these limitations on its authority. The remedial scheme the majority creates today is neither sensible nor faithful to Spending Clause principles. In order to make its case for school liability for peer sexual harassment, the majority must establish that Congress gave grant recipients clear and unambiguous notice that they would be liable in money damages for failure to remedy discriminatory acts of their students. The majority must also demonstrate that the statute gives schools clear notice that one child's harassment of another constitutes "discrimination" on the basis of sex within the meaning of Title IX, and that-as applied to individual cases-the standard for liability will enable the grant recipient to distinguish inappropriate childish behavior from actionable gender discrimination. The majority does not carry these burdens.

Instead, the majority finds statutory clarity where there is none and discovers indicia of congressional notice to the States in the most unusual of places. It treats the issue as one of routine statutory construction alone, and it errs even in this regard. In the end, the majority not only imposes on States liability that was unexpected and unknown, but the contours of which are, as yet, unknowable. The majority's opinion purports to be narrow, but the limiting principles it proposes are illusory. The fence the Court has built is made of little sticks, and it cannot contain the avalanche of liability now set in motion. The potential costs to our schools of today's decision are difficult to estimate, but they are so great that it is most unlikely Congress intended to inflict them.

The only certainty flowing from the majority's decision is that scarce resources will be diverted from educating our children and that many school districts, desperate to avoid Title IX peer harassment suits, will adopt whatever federal code of student conduct and discipline the Department of Education***658** sees fit to impose upon them. The Nation's schoolchildren will learn their first lessons about federalism in classrooms where the Federal Government is the ever-present regulator. The Federal Government will have insinuated itself not only into one of the most traditional areas of state concern but also into one of the most sensitive areas of human affairs. This federal control of the discipline of our Nation's schoolchildren is contrary to our traditions and inconsistent with the sensible administration of our schools. Because Title IX did not give States unambiguous notice that accepting federal funds meant ceding to the Federal Government power over the day-to-day disciplinary decisions of schools, I dissent.

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I

I turn to the first difficulty with the majority's decision. Schools cannot be held liable for peer sexual harassment because Title IX does not give them clear and unambiguous notice that they are liable in damages for failure to remedy discrimination by their students. As the majority acknowledges, Title IX prohibits only misconduct by grant recipients, not misconduct by third parties. *Ante,* at 1670. ("The recipient itself must 'exclud[e] [persons] from participation in, ... den[y] [persons] the benefits of, or ... subjec[t] [persons] to discrimination under' its 'program[s] or activit[ies]' in order to be liable under Title IX"). The majority argues, nevertheless, that a school "subjects" its students to discrimination when it knows of peer ****1679** harassment and fails to respond appropriately.

The mere word "subjected" cannot bear the weight of the majority's argument. As we recognized in Gebser, the primary purpose of Title IX is "to prevent recipients of federal financial assistance from using the funds in a discriminatory manner." 524 U.S., at 292, 118 S.Ct. 1989. We stressed in *Gebser* that Title IX prevents discrimination by the grant recipient, whether through the acts of its principals or the acts of its agents. See *id.,* at 286, 118 S.Ct. 1989 (explaining that Title IX and Title VI ***659** "operate in the same manner, conditioning an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds"). "[W]hereas Title VII aims centrally to compensate victims of discrimination, Title IX focuses more on 'protecting' individuals from discriminatory practices carried out by recipients of federal funds." *Id.,* at 287, 118 S.Ct. 1989. The majority does not even attempt to argue that the school's failure to respond to discriminatory acts by students is discrimination by the school itself.

A

In any event, a plaintiff cannot establish a Title IX violation merely by showing that she has been "subjected to discrimination." Rather, a violation of Title IX occurs only if she is "subjected to discrimination under any education program or activity," 20 U.S.C. § 1681(a), where "program or activity" is defined as "all of the operations of" a grant recipient, § 1687.

Under the most natural reading of this provision, discrimination violates Title IX only if it is authorized by, or in accordance with, the actions, activities, or policies of the grant recipient. See Webster's Third New International Dictionary 2487 (1981) (defining "under" as "required by: in accordance with: bound by"); American Heritage Dictionary 1395 (New College ed.1981) (defining "under" as "[w]ith the authorization of; attested by; by virtue of"); Random House Dictionary of the English Language 2059 (2d ed.1987) (defining "under" as "authorized, warranted, or attested by" or "in accordance with"); see also 43 Words and Phrases 149-152 (1969) (citing cases defining "under" as, *inter alia,* " 'in accordance with' and 'in conformity with' "; "indicating subjection, guidance or control, and meaning 'by authority of' "; " 'by,' 'by reason of,' or 'by means of' "; and " 'by virtue of,' which is defined ... as meaning 'by or through the authority of' "). This reading reflects the common legal usage of the ***660** term "under" to mean pursuant to, in accordance with, or as authorized or provided by. See, *e.g., Gregory v. Ashcroft,* 501 U.S. 452, 469, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991) ("Because Congress nowhere stated its intent to impose mandatory obligations on the States under its § 5 powers, we concluded that Congress did not do so"); *ante,* at 1666 ("Among petitioner's claims was a claim for monetary and injunctive relief under Title IX ...").

It is not enough, then, that the alleged discrimination occur in a "context subject to the school district's control." *Ante,* at 1672. The discrimination must actually be "controlled by"-that is, be authorized by, pursuant to, or in accordance with, school policy or actions. Compare *ante,* at 1672 (defining "under" as "*in* or into *a condition of* subjection, regulation, or subordination" (emphasis added)), with *ibid.* (defining "under" as "*subject to* the guidance and instruction of " (emphasis added)).

This reading is also consistent with the fact that the discrimination must be "under" the "operations" of the grant recipient. The term "operations" connotes active and affirmative participation by the grant recipient, not merely inaction or failure to respond. See Black's Law Dictionary 1092 (6th ed.1990) (defining "operation" as an "[e]xertion of power; the process of operating or mode of action; an effect brought about in accordance with a definite plan; action; activity").

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Teacher sexual harassment of students is "under" the school's program or activity in certain circumstances, but student harassment is not. Our decision in *Gebser* recognizes that a grant recipient acts through its agents and thus, under certain limited circumstances,**1680 even tortious acts by teachers may be attributable to the school. We noted in *Gebser* that, in contrast to Title VII, which defines "employer" to include "any agent"-Title IX "contains no comparable reference to an educational institution's 'agents,' and so does not expressly call for application of agency principles." 524 U.S., at 283, 118 S.Ct. 1989. As a result, we declined to incorporateprinciples *661 of agency liability, such as a strict application of vicarious liability, that would conflict with the Spending Clause's notice requirement and Title IX's express administrative enforcement scheme.

Contrary to the majority's assertion, *ante,* at 1671, however, we did not abandon agency principles altogether. Rather, we sought in *Gebser* to identify those employee actions which could fairly be attributed to the grant recipient by superimposing additional Spending Clause notice requirements on traditional agency principles. 524 U.S., at 288, 118 S.Ct. 1989 ("Title IX contains important clues that Congress did not intend to allow recovery in damages where liability rests solely on principles of vicarious liability or constructive notice"). We concluded that, because of the Spending Clause overlay, a teacher's discrimination is attributable to the school only when the school has actual notice of that harassment and is "deliberately indifferent." The agency relation between the school and the teacher is thus a necessary, but not sufficient, condition of school liability. Where the heightened requirements for attribution are met, the teacher's actions are treated as the grant recipient's actions. In those circumstances, then, the teacher sexual harassment is "under" the operations of the school.

I am aware of no basis in law or fact, however, for attributing the acts of a student to a school and, indeed, the majority does not argue that the school acts through its students. See *ante,* at 1670 ("We disagree with respondents' assertion ... that petitioner seeks to hold the Board liable for *G.F.*'s actions instead of its own. Here, petitioner attempts to hold the Board liable for its *own* decision to remain idle in the face of known student-on-student harassment in its schools"). Discrimination by one student against another therefore cannot be "under" the school's program or activity as required by Title IX. The majority's imposition of liability for peer sexual harassment thus conflicts with the most natural interpretation of Title IX's "under a program *662 or activity" limitation on school liability. At the very least, my reading undermines the majority's implicit claim that Title IX imposes an unambiguous duty on schools to remedy peer sexual harassment.

B

1

Quite aside from its disregard for the "under the program" limitation of Title IX, the majority's reading is flawed in other respects. The majority contends that a school's deliberate indifference to known student harassment "subjects" students to harassment-that is, "cause[s] [students] to undergo" harassment. *Ante,* at 1672. The majority recognizes, however, that there must be some limitation on the third-party conduct that the school can fairly be said to cause. In search of a principle, the majority asserts, without much elaboration, that one causes discrimination when one has some "degree of control" over the discrimination and fails to remedy it. *Ibid.*

To state the majority's test is to understand that it is little more than an exercise in arbitrary line-drawing. The majority does not explain how we are to determine what degree of control is sufficient-or, more to the point, how the States were on clear notice that the Court would draw the line to encompass students.

Agency principles usually mark the outer limits of an entity's liability for the actions of an individual over whom it exercises some control. Cf. *Faragher v. Boca Raton,* 524 U.S. 775, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998) (applying agency principles to delimit Title VII employer liability); *Burlington Industries, Inc. v. Ellerth,* 524 U.S. 742, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998) (same). The Court, for example, has not recognized liability for the actions of nonagents under Title VII, which contains an express private right of action and is not Spending Clause **1681 legislation. The majority nonetheless rejects out-of-hand an agency limitation on Title IX liability based on its cramped reading of *Gebser.* As *663 noted above, the *Gebser* Court rejected the wholesale importation of federal common-law agency principles into Title IX to

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expand liability beyond that which the statute clearly prohibited; it did not, as the majority would have it, reject the proposition that school liability is limited by agency principles. Indeed, to suppose that Congress would have rejected well-established principles of agency law in favor of the majority's vague control principle turns *Gebser* on its head. *Gebser* contemplated that Title IX liability would be less expansive than Title VII liability, not more so. See *Gebser, supra,* at 286-287, 118 S.Ct. 1989.

One would think that the majority would at least limit its control principle by reference to the long-established practice of the Department of Education (DOE). For the first 25 years after the passage of Title IX-until 1997-the DOE's regulations drew the liability line, at its most expansive, to encompass only those to whom the school delegated its official functions. See 34 CFR § 106.51(a)(3) (1998) ("A [grant] recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient"). It is perhaps reasonable to suppose that grant recipients were on notice that they could not hire third parties to do for them what they could not do themselves. For example, it might be reasonable to find that a school was on notice that it could not circumvent Title IX's core prohibitions by, for example, delegating its admissions decisions to an outside screening committee it knew would discriminate on the basis of gender.

Given the state of gender discrimination law at the time Title IX was passed, however, there is no basis to think that Congress contemplated liability for a school's failure to remedy discriminatory acts by students or that the States would ***664** believe the statute imposed on them a clear obligation to do so. When Title IX was enacted in 1972, the concept of "sexual harassment" as gender discrimination had not been recognized or considered by the courts. See generally C. MacKinnon, Sexual Harassment of Working Women: A Case of Sex Discrimination 59-72 (1979). The types of discrimination that were recognized-discriminatory admissions standards, denial of access to programs or resources, hiring, etc.-could not be engaged in by students. See, *e.g.,* 20 U.S.C. § 1681(a)(2) (referencing application of Title IX prohibitions to school admissions).

2

The majority nonetheless appears to see no need to justify drawing the "enough control" line to encompass students. In truth, however, a school's control over its students is much more complicated and limited than the majority acknowledges. A public school does not control its students in the way it controls its teachers or those with whom it contracts. Most public schools do not screen or select students, and their power to discipline students is far from unfettered.

Public schools are generally obligated by law to educate all students who live within defined geographic boundaries. Indeed, the Constitution of almost every State in the country guarantees the State's students a free primary and secondary public education. See, *e.g.,* Cal. Const., Art. IX, § 5; Colo. Const., Art. IX, § 2; Ga. Const., Art. VIII, § 1, ¶ 1; Ind. Const., Art. VIII, § 1; Md. Const., Art. VIII, § 1; Mo. Const., Art. IX, § 1(a); Neb. Const., Art. VII, § 1; N.J. Const., Art. VIII, § 4, ¶ 1; N.M. Const., Art. XII, § 1; N.Y. Const., Art. XI, § 1; N.D. Const., Art. VIII, §§ 1 and 2; Okla. Const., Art. XIII, § 1; S.C. Const., Art. XI, § 3; Tex. Const., Art. VII, § 1; Va. Const., Art. VIII, § 1; Wash. Const., Art. IX, §§ 1 and 2; Wyo. Const., Art. VII, §§ 1 and 9. In at least some States, moreover, there is a continuing duty on schools to educate even students who are suspended or expelled. See, *e.g.,* ***665** *Phillip Leon M. v. Board of Education,* 199 W.Va. 400, 484 S.E.2d 909 (1996) (holding that the education clause of the West Virginia Constitution confers on students a fundamental right to an education and requires ****1682** that a county school board provide alternative educational programs, such as an alternative school, to students who are expelled or suspended for an extended period for bringing guns to school). Schools that remove a harasser from the classroom and then attempt to fulfill their continuing-education obligation by placing the harasser in any kind of group setting, rather than by hiring expensive tutors for each student, will find themselves at continuing risk of Title IX suits brought by the other students in the alternative education program.

In addition, federal law imposes constraints on school disciplinary actions. This Court has held, for example,

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that due process requires, "[a]t the very minimum," that a student facing suspension "be given some kind of notice and afforded some kind of hearing." *Goss v. Lopez,* 419 U.S. 565, 579, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975).

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* (1994 ed., Supp. III), moreover, places strict limits on the ability of schools to take disciplinary actions against students with behavior disorder disabilities, even if the disability was not diagnosed prior to the incident triggering discipline. See, *e.g.,* § 1415(f)(1) (parents entitled to hearing when school proposes to change disabled student's educational placement); § 1415(k)(1)(A) (school authorities can only "order a change in the placement of a child with a disability ... to an appropriate interim alternative educational setting, another setting, or suspension" for up to "10 school days" unless student's offense involved a weapon or illegal drugs); § 1415(k)(8) ("[A] child who has not been determined to be eligible for special education ... and who has engaged in behavior that violated any [school rule] may assert any of the protections" of the subchapter if the school "had knowledge ... that the child was a child with a disability***666** before the behavior that precipitated the disciplinary action occurred"); § 1415(k)(8)(B)(ii) (school "deemed to have knowledge that a child is a child with a disability if ... the behavior or performance of the child demonstrates the need for such [special education and related] services"). "Disability," as defined in the IDEA, includes "serious emotional disturbance," § 1401(3)(A)(i), which the DOE, in turn, has defined as a "condition exhibiting ... over a long period of time and to a marked degree that adversely affects a child's educational performance," an "inability to build or maintain satisfactory interpersonal relationships with peers and teachers," or "[i]nappropriate types of behavior or feelings under normal circumstances." 34 CFR § 300.7(b)(9) (1998). If, as the majority would have us believe, the behavior that constitutes actionable peer sexual harassment so deviates from the normal teasing and jostling of adolescence that it puts schools on clear notice of potential liability, then a student who engages in such harassment may have at least a colorable claim of severe emotional disturbance within the meaning of the IDEA. When imposing disciplinary sanction on a student harasser who might assert a colorable IDEA claim, the school must navigate a complex web of statutory provisions and DOE regulations that significantly limit its discretion.

The practical obstacles schools encounter in ensuring that thousands of immature students conform their conduct to acceptable norms may be even more significant than the legal obstacles. School districts cannot exercise the same measure of control over thousands of students that they do over a few hundred adult employees. The limited resources of our schools must be conserved for basic educational services. Some schools lack the resources even to deal with serious problems of violence and are already overwhelmed with disciplinary problems of all kinds.

Perhaps even more startling than its broad assumptions about school control over primary and secondary school students***667** is the majority's failure to grapple in any meaningful way with the distinction between elementary and secondary schools, on the one hand, and universities on the other. The majority bolsters its argument that schools can control their students' actions by quoting our decision in *Vernonia School Dist. 47J v. Acton,* 515 U.S. 646, 655, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995), for the proposition that " 'the nature of [the State's] power [over ****1683** public school children] is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults.' " *Ante,* at 1673. Yet the majority's holding would appear to apply with equal force to universities, which do not exercise custodial and tutelary power over their adult students.

A university's power to discipline its students for speech that may constitute sexual harassment is also circumscribed by the First Amendment. A number of federal courts have already confronted difficult problems raised by university speech codes designed to deal with peer sexual and racial harassment. See, *e.g., Dambrot v. Central Mich. Univ.,* 55 F.3d 1177 (C.A.6 1995) (striking down university discriminatory harassment policy because it was overbroad, vague, and not a valid prohibition on fighting words); *UWM Post, Inc. v. Board of Regents of Univ. of Wis. System,* 774 F.Supp. 1163 (E.D.Wis.1991) (striking down university speech code that prohibited, *inter alia,* " 'discriminatory comments' " directed at an individual that " 'intentionally ... demean' " the " 'sex ... of the individual' " and " '[c]reate an intimidating, hostile or demeaning environment for education, university related work, or other university-authorized activity' "); *Doe v. University of Mich.,* 721 F.Supp. 852 (E.D.Mich.1989) (similar); *IOTA XI Chapter of Sigma*

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Chi Fraternity v. George Mason Univ., 993 F.2d 386 (C.A.4 1993) (overturning on First Amendment grounds university's sanctions on a fraternity for conducting an "ugly woman contest" with "racist and sexist" overtones).

***668** The difficulties associated with speech codes simply underscore the limited nature of a university's control over student behavior that may be viewed as sexual harassment. Despite the fact that the majority relies on the assumption that schools exercise a great deal of control over their students to justify creating the private cause of action in the first instance, it does not recognize the obvious limits on a university's ability to control its students as a reason to doubt the propriety of a private cause of action for peer harassment. It simply uses them as a factor in determining whether the university's response was reasonable. See *ante,* at 1674.

3

The majority's presentation of its control test illustrates its own discomfort with the rule it has devised. Rather than beginning with the language of Title IX itself, the majority begins with our decision in *Gebser* and appears to discover there a sweeping legal duty-divorced from agency principles-for schools to remedy third-party discrimination against students. The majority then finds that the DOE's Title IX regulations and state common law gave States the requisite notice that they would be liable in damages for failure to fulfill this duty. Only then does the majority turn to the language of Title IX itself-not, it appears, to find a duty or clear notice to the States, for that the majority assumes has already been established, but rather to suggest a limit on the breathtaking scope of the liability the majority thinks is so clear under the statute. See *ante,* at 1672 ("These factors [("subjects" and "under")] combine to limit a recipient's damages liability to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs").

Our decision in *Gebser* did not, of course, recognize some ill-defined, freestanding legal duty on schools to remedy discrimination by third parties. In particular, *Gebser* gave schools no notice whatsoever that they might be liable on the ***669** majority's novel theory that a school "subjects" a student to third-party discrimination if it exercises some measure of control over the third party. We quoted the "subjected to discrimination" language only once in *Gebser,* when we quoted the text of Title IX in full, and we did not use the word "control." Instead, we affirmed that Title IX prohibits discrimination by the grant recipient. See *Gebser,* 524 U.S., at 286, 118 S.Ct. 1989; *id.,* at 291-292, 118 S.Ct. 1989; *supra,* at 1679.

Neither the DOE's Title IX regulations nor state tort law, moreover, could or did provide States the notice required by our Spending Clause principles. The majority ****1684** contends that the DOE's Title IX regulations have "long provided funding recipients with notice that they may be liable for their failure to respond to the discriminatory acts of certain nonagents." *Ante,* at 1671. Even assuming that DOE regulations could give schools the requisite notice, they did not do so. Not one of the regulations the majority cites suggests that schools may be held liable in money damages for failure to respond to third-party discrimination.

In addition, as discussed above, the DOE regulations provide no support for the proposition that schools were on notice that students were among those "nonagents" whose actions the schools were bound to remedy. Most of the regulations cited by the majority merely forbid grant recipients to give affirmative aid to third parties who discriminate. See 34 CFR § 106.31(b)(6) (1998) (A grant "recipient shall not, on the basis of sex," "[a]id or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees"); see also § 106.37(a)(2) (A grant recipient shall not, "[t]hrough solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex"); § 106.38(a) (A grant recipient***670** "which assists any agency, organization or person in making employment available to any of its students [s]hall assure itself that such employment is made available without discrimination on the basis of sex [and] [s]hall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices"). The others forbid grant recipients to delegate the provision of student (or employee) benefits and services to third parties who engage in gender

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discrimination in administering what is, in effect, the school's program. See § 106.51(a)(3) ("A [grant] recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient"); see also § 106.31(d) (A grant recipient "which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments" must take steps to assure itself that the education program or activity is not discriminating on the basis of gender and "shall not facilitate, require, permit, or consider such participation" if the program is discriminating). None of the regulations suggests a generalized duty to remedy discrimination by third parties over whom the school may arguably exercise some control.

Requiring a school to take affirmative steps to remedy harassment by its students imposes a much heavier burden on schools than prohibiting affirmative aid or effective delegation of school functions to an entity that discriminates. Notice of these latter responsibilities, then, can hardly be said ***671** to encompass clear notice of the former. In addition, each of the DOE regulations is predicated on a grant recipient's choice to give affirmative aid to, or to enter into voluntary association with, a discriminating entity. The recipient, moreover, as the regulations envision, is free to terminate that aid or association (or could have so provided through contract). The relationships regulated by the DOE are thus quite different from school-student relationships. The differences confirm that the regulations did not provide adequate notice of a duty to remedy student discrimination.

The majority also concludes that state tort law provided States the requisite notice. It is a non sequitur to suppose, however, that a State knows it is liable under a federal statute simply because the underlying conduct might form the basis for a state tort action. In any event, it is far from clear that Georgia ****1685** law gave the Monroe County Board of Education notice that it would be liable even under state law for failure to respond reasonably to known student harassment. See, *e.g.*, *Holbrook v. Executive Conference Center, Inc.*, 219 Ga.App. 104, 106, 464 S.E.2d 398, 401 (1996) (holding that school districts are entitled to sovereign immunity for claims based on their supervision of students unless the school displayed "wilfulness, malice, or corruption").

The majority's final observation about notice confirms just how far it has strayed from the basic Spending Clause principle that Congress must, through the clear terms of the statute, give States notice as to what the statute requires. The majority contends that schools were on notice because they "were being told" by a 1993 National School Boards Association publication that peer sexual harassment might trigger Title IX liability. *Ante,* at 1673. By treating a publication designed to help school lawyers prevent and guard against school liability as a reliable indicium of congressional notice, the majority has transformed a litigation manual-which, like all such manuals, errs on the side of caution in describing potential liability-into a self-fulfilling prophecy. It seems ***672** schools cannot even discuss potential liabilities amongst themselves without somehow stipulating that Congress had some specified intent.

II

Our decision in *Gebser* makes clear that the Spending Clause clear-notice rule requires both that the recipients be on general notice of the kind of conduct the statute prohibits, and-at least when money damages are sought-that they be on notice that illegal conduct is occurring in a given situation. See, *e.g.*, *Gebser*, 524 U.S., at 287-288, 118 S.Ct. 1989 (rejecting vicarious liability because it would hold schools liable even when they did not know that prohibited discrimination was occurring).

Title IX, however, gives schools neither notice that the conduct the majority labels peer "sexual harassment" is gender discrimination within the meaning of the Act nor any guidance in distinguishing in individual cases between actionable discrimination and the immature behavior of children and adolescents. The majority thus imposes on schools potentially crushing financial liability for student conduct that is not prohibited in clear terms by Title IX and that cannot, even after today's opinion, be identified by either schools or

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courts with any precision.

The law recognizes that children-particularly young children-are not fully accountable for their actions because they lack the capacity to exercise mature judgment. See, *e.g.,* 1 E. Farnsworth, Contracts § 4.4 (2d ed.1998) (discussing minor's ability to disaffirm a contract into which he has entered). It should surprise no one, then, that the schools that are the primary locus of most children's social development are rife with inappropriate behavior by children who are just learning to interact with their peers. The *amici* on the front lines of our schools describe the situation best:

> "Unlike adults in the workplace, juveniles have limited life experiences or familial influences upon which to establish***673** an understanding of appropriate behavior. The real world of school discipline is a rough-and-tumble place where students practice newly learned vulgarities, erupt with anger, tease and embarrass each other, share offensive notes, flirt, push and shove in the halls, grab and offend." Brief for National School Boards Association et al. as *Amici Curiae* 10-11 (hereinafter Brief for School *Amici*).

No one contests that much of this "dizzying array of immature or uncontrollable behaviors by students," *ibid.,* is inappropriate, even "objectively offensive" at times, *ante,* at 1675, and that parents and schools have a moral and ethical responsibility to help students learn to interact with their peers in an appropriate manner. It is doubtless the case, moreover, that much of this inappropriate behavior is directed toward members of the opposite sex, as children in the throes of adolescence struggle to express their emerging sexual identities.

It is a far different question, however, whether it is either proper or useful to label this immature, childish behavior gender discrimination. Nothing in Title IX suggests ****1686** that Congress even contemplated this question, much less answered it in the affirmative in unambiguous terms.

The majority, nevertheless, has no problem labeling the conduct of fifth graders "sexual harassment" and "gender discrimination." Indeed, the majority sidesteps the difficult issue entirely, first by asserting without analysis that respondents do not "support an argument that student-on-student harassment cannot rise to the level of discrimination' for purposes of Title IX," *ante,* at 1669, and then by citing *Gebser* and *Franklin v. Gwinnett County Public Schools,* 503 U.S. 60, 112 S.Ct. 1028, 117 L.Ed.2d 208 (1992), for the proposition that "[w]e have elsewhere concluded that sexual harassment is a form of discrimination for Title IX purposes and that Title IX proscribes harassment with sufficient clarity to satisfy *Pennhurst's* notice-requirement ***674** and serve as a basis for a damages action," *ante,* at 1674.

Contrary to the majority's assertion, however, respondents have made a cogent and persuasive argument that the type of student conduct alleged by petitioner should not be considered "sexual harassment," much less gender discrimination actionable under Title IX:

> "[A]t the time Petitioner filed her complaint, no court, including this Court had recognized the concept of sexual harassment in any context other than the employment context. Nor had any Court extended the concept of sexual harassment to the misconduct of emotionally and socially immature children. The type of conduct alleged by Petitioner in her complaint is not new. However, in past years it was properly identified as misconduct which was addressed within the context of student discipline. The Petitioner now asks this Court to create out of whole cloth a cause of action by labeling childish misconduct as 'sexual harassment,' to stigmatize children as sexual harassers, and have the federal court system take on the additional burden of second guessing the disciplinary actions taken by school administrators in addressing misconduct, something this Court has consistently refused to do." Brief for Respondents 12-13 (citation omitted).

See also Brief for Independent Women's Forum as *Amicus Curiae* 19 (questioning whether "at the primary and secondary school level" it is proper to label "sexual misconduct by students" as "sexual harassment" because there is no power relationship between the harasser and the victim).

Likewise, the majority's assertion that *Gebser* and *Franklin* settled the question is little more than *ipse dixit. Gebser* and *Franklin* themselves did nothing more than cite *Meritor Savings Bank, FSB v. Vinson,* 477 U.S. 57, 64, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986), a Title VII case, for the proposition that "when

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a supervisor*675 sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex." See *Franklin, supra,* at 74, 112 S.Ct. 1028; *Gebser,* 524 U.S., at 282-283, 118 S.Ct. 1989. To treat that proposition as establishing that the student conduct at issue here is gender discrimination is to erase, in one stroke, all differences between children and adults, peers and teachers, schools and workplaces.

In reality, there is no established body of federal or state law on which courts may draw in defining the student conduct that qualifies as Title IX gender discrimination. Analogies to Title VII hostile environment harassment are inapposite, because schools are not workplaces and children are not adults. The norms of the adult workplace that have defined hostile environment sexual harassment, see, *e.g., Oncale v. Sundowner Offshore Services, Inc.,* 523 U.S. 75, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998), are not easily translated to peer relationships in schools, where teenage romantic relationships and dating are a part of everyday life. Analogies to Title IX teacher sexual harassment of students are similarly flawed. A teacher's sexual overtures toward a student are always inappropriate; a teenager's romantic overtures to a classmate (even when persistent and unwelcome) are an inescapable part of adolescence.

The majority admits that, under its approach, "[w]hether gender-oriented conduct rises to the level of actionable 'harassment' **1687 ... 'depends on a constellation of surrounding circumstances, expectations, and relationships,' including, but not limited to, the ages of the harasser and the victim and the number of individuals involved." *Ante,* at 1675 (citations omitted). The majority does not explain how a school is supposed to discern from this mishmash of factors what is actionable discrimination. Its multifactored balancing test is a far cry from the clarity we demand of Spending Clause legislation.

The difficulties schools will encounter in identifying peer sexual harassment are already evident in teachers' manuals *676 designed to give guidance on the subject. For example, one teachers' manual on peer sexual harassment suggests that sexual harassment in kindergarten through third grade includes a boy being "put down" on the playground "because he wants to play house with the girls" or a girl being "put down because she shoots baskets better than the boys." Minnesota Dept. of Education, Girls and Boys Getting Along: Teaching Sexual Harassment Prevention in the Elementary Classroom 65 (1993). Yet another manual suggests that one student saying to another, "You look nice," could be sexual harassment, depending on the "tone of voice," how the student looks at the other, and "who else is around." N. Stein & L. Sjostrom, Flirting or Hurting? A Teacher's Guide on Student-to-Student Sexual Harassment in Schools (Grades 6 through 12), p. 14 (1994). Blowing a kiss is also suspect. *Ibid.* This confusion will likely be compounded once the sexual harassment label is invested with the force of federal law, backed up by private damages suits.

The only guidance the majority gives schools in distinguishing between the "simple acts of teasing and name-calling among school children," said not to be a basis for suit even when they "target differences in gender," *ante,* at 1675, and actionable peer sexual harassment is, in reality, no guidance at all. The majority proclaims that "in the context of student-on-student harassment, damages are available only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect." *Ibid.* The majority does not even purport to explain, however, what constitutes an actionable denial of "equal access to education." Is equal access denied when a girl who tires of being chased by the boys at recess refuses to go outside? When she cannot concentrate during class because she is worried about the recess activities? When she pretends to be sick one day so she can stay home from school? It appears the majority is content to let juries decide.

*677 The majority's reference to a "systemic effect," *ante* at 1676, does nothing to clarify the content of its standard. The majority appears to intend that requirement to do no more than exclude the possibility that a single act of harassment perpetrated by one student on one other student can form the basis for an actionable claim. That is a small concession indeed.

The only real clue the majority gives schools about the dividing line between actionable harassment that denies a victim equal access to education and mere inappropriate teasing is a profoundly unsettling one: On the facts of this case, petitioner has stated a claim because she alleged, in the majority's words, "that the harassment had a concrete, negative effect on her daughter's ability to receive an education." *Ante,* at

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1676. In petitioner's words, the effects that might have been visible to the school were that her daughter's grades "dropped" and her "ability to concentrate on her school work [was] affected." App. to Pet. for Cert. 97a. Almost all adolescents experience these problems at one time or another as they mature.

III

The majority's inability to provide any workable definition of actionable peer harassment simply underscores the myriad ways in which an opinion that purports to be narrow is, in fact, so broad that it will support untold numbers of lawyers who will prove adept at presenting cases that will withstand the defendant school districts' pretrial motions. Each of the barriers to runaway litigation the majority offers us crumbles under the weight of even casual scrutiny.

**1688 For example, the majority establishes what sounds like a relatively high threshold for liability-"denial of equal access" to education-and, almost in the same breath, makes clear that alleging a decline in grades is enough to survive Federal Rule of Civil Procedure 12(b)(6) and, it follows, to state a winning claim. The majority seems oblivious to the *678 fact that almost every child, at some point, has trouble in school because he or she is being teased by his or her peers. The girl who wants to skip recess because she is teased by the boys is no different from the overweight child who skips gym class because the other children tease her about her size in the locker room; or the child who risks flunking out because he refuses to wear glasses to avoid the taunts of "four-eyes"; or the child who refuses to go to school because the school bully calls him a "scaredy-cat" at recess. Most children respond to teasing in ways that detract from their ability to learn. The majority's test for actionable harassment will, as a result, sweep in almost all of the more innocuous conduct it acknowledges as a ubiquitous part of school life.

The string of adjectives the majority attaches to the word "harassment"-"severe, pervasive, and objectively offensive"-likewise fails to narrow the class of conduct that can trigger liability, since the touchstone for determining whether there is Title IX liability is the effect on the child's ability to get an education. *Ante,* at 1675. Indeed, the Court's reliance on the impact on the child's educational experience suggests that the "objective offensiveness" of a comment is to be judged by reference to a reasonable child at whom the comments were aimed. Not only is that standard likely to be quite expansive, it also gives schools-and juries-little guidance, requiring them to attempt to gauge the sensitivities of, for instance, the average seven-year-old.

The majority assures us that its decision will not interfere with school discipline and instructs that, "as we have previously noted, courts should refrain from second-guessing the disciplinary decisions made by school administrators." *Ante,* at 1674. The obvious reason for the majority's expressed reluctance to allow courts and litigants to second-guess school disciplinary decisions is that school officials are usually in the best position to judge the seriousness of alleged harassment and to devise an appropriate response. The problem is that the majority's test, in fact, invites courts *679 and juries to second-guess school administrators in every case, to judge in each instance whether the school's response was "clearly unreasonable." A reasonableness standard, regardless of the modifier, transforms every disciplinary decision into a jury question. Cf. *Doe v. University of Illinois,* 138 F.3d 653, 655 (C.A.7 1998) (holding that college student had stated a Title IX claim for peer sexual harassment even though school officials had suspended two male students for 10 days and transferred another out of her biology class).

Another professed limitation the majority relies upon is that the recipient will be liable only where the acts of student harassment are "known." See, *e.g., ante,* at 1672, 1673. The majority's enunciation of the standard begs the obvious question: known to whom? Yet the majority says not one word about the type of school employee who must know about the harassment before it is actionable.

The majority's silence is telling. The deliberate indifference liability we recognized in *Gebser* was predicated on notice to "an official of the recipient entity with authority to take corrective action to end the discrimination." 524 U.S., at 290, 118 S.Ct. 1989. The majority gives no indication that it believes the standard to be any different in this context and-given its extensive reliance on the *Gebser* standard throughout the opinion-appears to adopt the *Gebser* notice standard by implication. At least the courts adjudicating Title IX peer harassment claims are likely to so conclude.

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By choosing not to adopt the standard in explicit terms, the majority avoids having to confront the bizarre implications of its decision. In the context of teacher harassment, the *Gebser* notice standard imposes some limit on school liability. Where peer harassment is the discrimination, however, it imposes no limitation at all. In most cases of student misbehavior, it is the teacher who ****1689** has authority, at least in the first instance, to punish the student and take other measures to remedy the harassment. The anomalous result will be that, while a school district cannot be held liable for ***680** a teacher's sexual harassment of a student without notice to the school board (or at least to the principal), the district can be held liable for a teacher's failure to remedy peer harassment. The threshold for school liability, then, appears to be lower when the harasser is a student than when the harasser is a teacher who is an agent of the school. The absurdity of this result confirms that it was neither contemplated by Congress nor anticipated by the States.

The majority's limitations on peer sexual harassment suits cannot hope to contain the flood of liability the Court today begins. The elements of the Title IX claim created by the majority will be easy not only to allege but also to prove. A female plaintiff who pleads only that a boy called her offensive names, that she told a teacher, that the teacher's response was unreasonable, and that her school performance suffered as a result, appears to state a successful claim.

There will be no shortage of plaintiffs to bring such complaints. Our schools are charged each day with educating millions of children. Of those millions of students, a large percentage will, at some point during their school careers, experience something they consider sexual harassment. A 1993 study by the American Association of University Women Educational Foundation, for instance, found that "fully 4 out of 5 students (81%) report that they have been the target of some form of sexual harassment during their school lives." Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools 7 (1993). The number of potential lawsuits against our schools is staggering.

The cost of defending against peer sexual harassment suits alone could overwhelm many school districts, particularly since the majority's liability standards will allow almost any plaintiff to get to summary judgment, if not to a jury. In addition, there are no damages caps on the judicially implied private cause of action under Title IX. As a result, school liability in one peer sexual harassment suit could approach, or even exceed, the total federal funding of many school districts.***681** Petitioner, for example, seeks damages of $500,000 in this case. App. to Pet. for Cert. 101a. Respondent school district received approximately $679,000 in federal aid in 1992-1993. Brief for School *Amici* 25, n. 20. The school district sued in *Gebser* received only $120,000 in federal funds a year. 524 U.S., at 289-290, 118 S.Ct. 1989. Indeed, the entire 1992-1993 budget of that district was only $1.6 million. See Tr. of Oral Arg. in No. 96-1866, p. 34.

The limitless liability confronting our schools under the implied Title IX cause of action puts schools in a far worse position than businesses; when Congress established the express cause of action for money damages under Title VII, it prescribed damages caps. See *Gebser, supra,* at 286, 118 S.Ct. 1989 ("It was not until 1991 that Congress made damages available under Title VII, and even then, Congress carefully limited the amount recoverable in any individual case, calibrating the maximum recovery to the size of the employer. See 42 U.S.C. § 1981a(b)(3). Adopting petitioner's position would amount, then, to allowing unlimited recovery of damages under Title IX where Congress has not spoken on the subject of either the right or the remedy, and in the face of evidence that when Congress expressly considered both in Title VII it restricted the amount of damages available"). In addition, in contrast to Title VII, Title IX makes no provision for agency investigation and conciliation of complaints (prior to the filing of a case in federal court) that could weed out frivolous suits or settle meritorious ones at minimal cost.

The prospect of unlimited Title IX liability will, in all likelihood, breed a climate of fear that encourages school administrators to label even the most innocuous of childish conduct sexual harassment. It would appear to be no coincidence that, not long after the DOE issued its proposed policy guidance warning that schools could be liable for peer sexual harassment in the fall of 1996, see 61 Fed.Reg. 42728, a North Carolina school suspended****1690** a 6-year-old boy who kissed a female classmate on the cheek for sexual harassment, on the ***682** theory that "[u]nwelcome is unwelcome at any age." Los Angeles Times, Sept. 25, 1996, p. A11. A week later, a New York school sus-

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pended a second grader who kissed a classmate and ripped a button off her skirt. Buffalo News, Oct. 2, 1996, p. A16. The second grader said that he got the idea from his favorite book "Corduroy," about a bear with a missing button. *Ibid.* School administrators said only, "We were given guidelines as to why we suspend children. We follow the guidelines." *Ibid.*

At the college level, the majority's holding is sure to add fuel to the debate over campus speech codes that, in the name of preventing a hostile educational environment, may infringe students' First Amendment rights. See *supra,* at 1683. Indeed, under the majority's control principle, schools presumably will be responsible for remedying conduct that occurs even in student dormitory rooms. As a result, schools may well be forced to apply workplace norms in the most private of domains.

Even schools that resist overzealous enforcement may find that the most careful and reasoned response to a sexual harassment complaint nonetheless provokes litigation. Speaking with the voice of experience, the school *amici* remind us, "[h]istory shows that, no matter what a school official chooses to do, someone will be unhappy. Student offenders almost always view their punishment as too strict, and student complainants almost always view an offender's punishment as too lax." Brief for School *Amici* 12 (footnotes omitted).

A school faced with a peer sexual harassment complaint in the wake of the majority's decision may well be beset with litigation from every side. One student's demand for a quick response to her harassment complaint will conflict with the alleged harasser's demand for due process. Another student's demand for a harassment-free classroom will conflict with the alleged harasser's claim to a mainstream placement under the IDEA or with his state constitutional right to a continuing, free public education. On college campuses, and ***683** even in secondary schools, a student's claim that the school should remedy a sexually hostile environment will conflict with the alleged harasser's claim that his speech, even if offensive, is protected by the First Amendment. In each of these situations, the school faces the risk of suit, and maybe even multiple suits, regardless of its response. See *Doe v. University of Illinois,* 138 F.3d, at 679 (Posner, C. J., dissenting from denial of rehearing en banc) ("Liability for failing to prevent or rectify sexual harassment of one student by another places a school on a razor's edge, since the remedial measures that it takes against the alleged harasser are as likely to expose the school to a suit by him as a failure to take those measure[s] would be to expose the school to a suit by the victim of the alleged harassment").

The majority's holding in this case appears to be driven by the image of the school administration sitting idle every day while male students commandeer a school's athletic field or computer lab and prevent female students from using it through physical threats. See *ante,* at 1675. Title IX might provide a remedy in such a situation, however, without resort to the majority's unprecedented theory of school liability for student harassment. If the school usually disciplines students for threatening each other and prevents them from blocking others' access to school facilities, then the school's failure to enforce its rules when the boys target the girls on a widespread level, day after day, may support an inference that the school's decision not to respond is itself based on gender. That pattern of discriminatory response could form the basis of a Title IX action.

(Contrary to the majority's assertion, see *ante,* at 1676, I do not suggest that mere indifference to gender-based mistreatment-even if widespread-is enough to trigger Title IX liability. I suggest only that a clear pattern of discriminatory enforcement of school rules could raise an inference that the school itself is discriminating. Recognizing that the school itself might discriminate based on gender in the enforcement***684** of its rules is a far cry from recognizing Title IX liability based on the majority's expansive ****1691** theory that a school "subjects" its students to third-party discrimination when it has some control over the harasser and fails to take corrective action.)

Even more important, in most egregious cases the student will have state-law remedies available to her. The student will often have recourse against the offending student (or his parents) under state tort law. In some cases, like this one, the perpetrator may also be subject to criminal sanctions. And, as the majority notes, the student may, in some circumstances, have recourse against the school under state law. *Ante,* at 1672.

Disregarding these state-law remedies for student misbehavior and the incentives that our schools al-

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ready have to provide the best possible education to all of their students, the majority seeks, in effect, to put an end to student misbehavior by transforming Title IX into a Federal Student Civility Code. See Brief for Independent Women's Forum as *Amicus Curiae* 2 (urging the Court to avoid that result). I fail to see how federal courts will administer school discipline better than the principals and teachers to whom the public has entrusted that task or how the majority's holding will help the vast majority of students, whose educational opportunities will be diminished by the diversion of school funds to litigation. The private cause of action the Court creates will justify a corps of federal administrators in writing regulations on student harassment. It will also embroil schools and courts in endless litigation over what qualifies as peer sexual harassment and what constitutes a reasonable response.

In the final analysis, this case is about federalism. Yet the majority's decision today says not one word about the federal balance. Preserving our federal system is a legitimate end in itself. It is, too, the means to other ends. It ensures that essential choices can be made by a government ***685** more proximate to the people than the vast apparatus of federal power. Defining the appropriate role of schools in teaching and supervising children who are beginning to explore their own sexuality and learning how to express it to others is one of the most complex and sensitive issues our schools face. Such decisions are best made by parents and by the teachers and school administrators who can counsel with them. The delicacy and immense significance of teaching children about sexuality should cause the Court to act with great restraint before it displaces state and local governments.

Heedless of these considerations, the Court rushes onward, finding that the cause of action it creates is necessary to effect the congressional design. It is not. Nothing in Title IX suggests that Congress intended or contemplated the result the Court reaches today, much less dictated it in unambiguous terms. Today's decision cannot be laid at the feet of Congress; it is the responsibility of the Court.

The Court must always use great care when it shapes private causes of action without clear guidance from Congress, but never more so than when the federal balance is at stake. As we recognized in *Gebser*, the definition of an implied cause of action inevitably implicates some measure of discretion in the Court to shape a sensible remedial scheme. 524 U.S., at 284, 118 S.Ct. 1989. Whether the Court ever should have embarked on this endeavor under a Spending Clause statute is open to question. What should be clear beyond any doubt, however, is that the Court is duty bound to exercise that discretion with due regard for federalism and the unique role of the States in our system. The Court today disregards that obligation. I can conceive of few interventions more intrusive upon the delicate and vital relations between teacher and student, between student and student, and between the State and its citizens than the one the Court creates today by its own hand. Trusted principles of federalism are superseded by a more contemporary imperative.

686** Perhaps the most grave, and surely the most lasting, disservice of today's decision is that it ensures the Court's own disregard for the federal balance soon will be imparted to our youngest citizens. The Court clears the way for the Federal Government to claim center stage in America's classrooms. Today's decision mandates to teachers instructing and supervising their students the dubious*1692** assistance of federal court plaintiffs and their lawyers and makes the federal courts the final arbiters of school policy and of almost every disagreement between students. Enforcement of the federal right recognized by the majority means that federal influence will permeate everything from curriculum decisions to day-to-day classroom logistics and interactions. After today, Johnny will find that the routine problems of adolescence are to be resolved by invoking a federal right to demand assignment to a desk two rows away.

As its holding makes painfully clear, the majority's watered-down version of the Spending Clause clear-statement rule is no substitute for the real protections of state and local autonomy that our constitutional system requires. If there be any doubt of the futility of the Court's attempt to hedge its holding about with words of limitation for future cases, the result in this case provides the answer. The complaint of this fifth grader survives and the school will be compelled to answer in federal court. We can be assured that like suits will follow-suits, which in cost and number, will impose serious financial burdens on local school districts, the taxpayers who support them, and the children they serve. Federalism and our struggling school systems deserve better from this

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Court. I dissent.

U.S.,1999.
Davis Next Friend LaShonda D. v. Monroe County Bd. of Educ.
526 U.S. 629, 119 S.Ct. 1661, 143 L.Ed.2d 839, 67 USLW 4329, 134 Ed. Law Rep. 477, 99 Cal. Daily Op. Serv. 3861, 1999 Daily Journal D.A.R. 4931, 1999 CJ C.A.R. 2948, 12 Fla. L. Weekly Fed. S 280

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694 F.2d 78, 30 Fair Empl.Prac.Cas. (BNA) 1307, 31 Empl. Prac. Dec. P 33,365, 7 Ed. Law Rep. 812
(Cite as: 694 F.2d 78)

H

United States Court of Appeals,
Fifth Circuit.[FN*]
DOUGHERTY COUNTY SCHOOL SYSTEM,
Plaintiff-Appellee,
v.
T.H. BELL, Secretary of Education, Defendant-Appellant.
No. 78-3384.

FN* Former Fifth circuit case, Section 9(1) of Public Law 96-452-October 14, 1980.

Dec. 20, 1982.

Appeal was taken from a judgment of the United States District Court for the Middle District of Georgia, Wilbur D. Owens, Jr., J., declaring regulations adopted under Title IX invalid, and the Court of Appeals, 622 F.2d 735, affirmed. The United States Supreme Court, 102 S.Ct. 2264, vacated and remanded for further consideration. On remand, the Court of Appeals, Alvin B. Rubin, Circuit Judge, held that: (1) Department of Education's position that district court's decision should be vacated because administrative proceedings had not been completed could not be raised for first time on appeal, and (2) further district court proceedings were necessary because agency order deferring federal funds made no distinction among programs to which funds were applied, and therefore school system could pursue relief from portion of order deferring funding of programs not discriminating on basis of sex.

Remanded.

West Headnotes

[1] Administrative Law and Procedure 15A 229

15A Administrative Law and Procedure
15AIII Judicial Remedies Prior to or Pending Administrative Proceedings
15Ak229 k. Exhaustion of Administrative Remedies. Most Cited Cases
Failure to exhaust administrative procedures is not a jurisdictional defect which court would be obliged to note sua sponte, but an affirmative defense akin to prematurity.

[2] Administrative Law and Procedure 15A 229

15A Administrative Law and Procedure
15AIII Judicial Remedies Prior to or Pending Administrative Proceedings
15Ak229 k. Exhaustion of Administrative Remedies. Most Cited Cases
A reviewing court need not require exhaustion of administrative remedies if agency fails to assert lack of exhaustion as a ground for denying review.

[3] Schools 345 61

345 Schools
345II Public Schools
345II(C) Government, Officers, and District Meetings
345k51 District Boards
345k61 k. Appeal from Decisions. Most Cited Cases
Where Department of Education did not raise at trial defense that administrative procedures had not been exhausted in suit by school challenging validity of regulations, issue could not be raised on appeal.

[4] Schools 345 19(1)

345 Schools
345II Public Schools
345II(A) Establishment, School Lands and Funds, and Regulation in General
345k16 School Funds
345k19 Apportionment and Disposition
345k19(1) k. In General. Most Cited Cases
Order of Department of Education deferring school's federal funding for new activities for elementary and secondary education on basis of sex discrimination made no distinction among programs to which funds were applied, and therefore, insofar as order deferred funding of programs that did not discriminate on basis of sex, Department's action was ultra vires, and school

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system could pursue relief from that portion of the order in district court.

*79 Denver L. Rampey, Jr., U.S. Atty., Macon, Ga., Drew S. Days, III, Asst. Atty. Gen., Dept. of Justice, Brian K. Landsberg, Marie E. Klimesz, Washington, D.C., for defendant-appellant.

C. Richard Langley, Albany, Ga., Jesse W. Walters, for plaintiff-appellee.

Appeal from the United States District Court for the Middle District of Georgia.

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before RUBIN and POLITZ, Circuit Judges, and DYER, Senior Circuit Judge.

ALVIN B. RUBIN, Circuit Judge:

By an order filed on May 24, 1982, the Supreme Court of the United States vacated the judgment of this court, *Dougherty County School System v. Harris,* 622 F.2d 735 (5th Cir.1980), and remanded the case to us for further consideration in the light of its decision in *North Haven Board of Education v. Bell,* 456 U.S. 986, 102 S.Ct. 1912, 72 L.Ed.2d 299 (1982). *Bell v. Dougherty County School System,* 456 U.S. 986, 102 S.Ct. 2264, 73 L.Ed.2d 1280 (1982). The sole issue raised by the prior appeal was the correctness of the district court's summary judgment declaring invalid the regulations promulgated in 45 C.F.R. §§ 86.51 & 86.54. We affirmed the district court's judgment, stating that "the regulations as written" were invalid, 622 F.2d at 737, because "the Secretary exceeded his authority by enacting general regulations prohibiting sex discrimination in employment without limiting their effect to specific programs that receive federal financial assistance." *Id.* at 738. We said, however, in dictum that the statute was intended to proscribe employment discrimination related to specific programs receiving federal aid. Thereafter, the Second Circuit, in *North Haven Board of Education v. Hufstedler,* 629 F.2d 773 (1980), held that these same regulations were authorized by Title IX, 20 U.S.C. § 1682. The Supreme Court affirmed the Second Circuit's decision in *North Haven,* holding that the language of the statute and its legislative history support the "conclusion that employment discrimination comes within the prohibition of Title IX." *North Haven Bd. of Educ. v. Bell,* 456 U.S. at ----, 102 S.Ct. at 1922-23, 72 L.Ed.2d at 314 (footnote omitted). While agreeing *80 with our statement that the statute is "program-specific," the Supreme Court held, contrary to our conclusion, that "Subpart E is consistent with the Act's program-specificity." *Id.* at ----, 102 S.Ct. at 1927, 72 L.Ed.2d at 319.

[1][2][3] The Department of Education now takes the position that, because administrative proceedings had not been completed when it suspended federal aid to the Dougherty County School System, we should vacate the district court's decision and remand this case with instructions to grant summary judgment in its favor. Failure to exhaust administrative procedures is not a jurisdictional defect, which the court would be obliged to note *sua sponte,* but an affirmative defense akin to prematurity. *NLRB v. Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, Local 22,* 391 U.S. 418, 426 n. 8, 88 S.Ct. 1717, 1723 n. 8, 20 L.Ed.2d 706, 713 n. 8 (1968); *Haitian Refugee Center v. Smith,* 676 F.2d 1023, 1034 (5th Cir.1982); *Ecology Center of Louisiana v. Coleman,* 515 F.2d 860, 865-67 (5th Cir.1975). A reviewing court need not require exhaustion of administrative remedies if the agency fails to assert lack of exhaustion as a ground for denying review. *Compare Weinberger v. Salfi,* 422 U.S. 749, 765, 95 S.Ct. 2457, 2466, 45 L.Ed.2d 522, 538 (1979); *Mathews v. Diaz,* 426 U.S. 67, 76, 96 S.Ct. 1883, 1889, 48 L.Ed.2d 478, 487-88 (1976). *See also* K. Davis, Administrative Law Treatise § 20.13 (1982 Supp.). A fortiori, the issue may not be raised for the first time on appeal. The defense that the administrative procedure had not been exhausted was never raised in the district court and was not raised in this court until after the remand from the Supreme Court.[FN1] The department's position, therefore, cannot be sustained.

> FN1. The record shows that, although the school system argued the administrative exhaustion issue in expectation of a government challenge on that ground, Brief in Support of Plaintiff's Motion for a Temporary Restraining Order, filed June 19, 1978, at 4, the government only once alluded to exhaustion:
>
> > There may also be a question as to whether this Court has subject matter jurisdiction over this action. HEW has established, in

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> accordance with Title IX, an administrative mechanism which provides elaborate procedural safeguards before Federal assistance can be terminated. Plaintiff has attempted to by-pass this procedure even before plaintiff has suffered any injury.
>
> Memorandum of Points and Authorities in Support of Defendant's Opposition to Motion for Preliminary Injunction, filed June 19, 1978, footnote at 3.
>
> This tentative suggestion that the district court might not have jurisdiction over the action because of lack of exhaustion was never incorporated into the pleadings. Moreover, while the administrative proceedings may safeguard against erroneous *termination* of federal funding, they offer no protection against erroneous *deferral* of funding. The failure of administrative proceedings to offer an adequate remedy justifies resort to the federal courts before administrative proceedings are exhausted. *Lewis v. Reagan*, 660 F.2d 124, 127 (5th Cir.1981) (per curiam); *Curtis v. Taylor*, 648 F.2d 946, 949 (5th Cir.1980); *Camenisch v. University of Texas*, 616 F.2d 127, 134 (5th Cir.1980), *vacated on other grounds*, 451 U.S. 390, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981); *Rhodes v. United States*, 574 F.2d 1179, 1181 (5th Cir.1978).

Indeed, the *North Haven* decision implicitly recognizes federal court jurisdiction to determine whether termination of federal funds is permissible. The Court directed that "[w]hether termination of ... federal funds is permissible under Title IX is a question that must be answered by the district court in the first instance." 456 U.S. at ----, 102 S.Ct. at 1927, 72 L.Ed.2d at 319.

As with the cases considered by the Supreme Court in *North Haven,* the procedural posture of this case makes further district court proceedings necessary. In *North Haven,* as here, appeals were taken from grants of summary judgment. The records available to the Court did not provide evidence of discriminatory practices prohibited by Title IX. Nor had the school systems addressed the department's regulatory authority under the Court's reading of the statute. At that stage of the cases' development, the Court declined to examine the merits of the controversies before it, and remanded for consideration by the district ***81** court. *Id.* The undeveloped record in this case compels us to follow the Supreme Court's example.

[4] Further district court proceedings are necessary because the department's order deferring federal funds to the Dougherty County School System makes no distinction among the programs to which the funds are applied. When this action was filed, the school system received almost $5,000,000 in federal funds.[FN2] Although the sole discriminatory practice alleged by the department in administrative proceedings is a disparity between salary supplements paid to industrial arts and home economics teachers,[FN3] the department has deferred funding of all new programs and significant increases in the funding of continuing programs. Insofar as the department's order defers funding of programs that do not discriminate on the basis of sex, the department's action is ultra vires. The school system may pursue relief from that portion of the order in the district court.

> FN2. During the school year 1977-1978 the Dougherty County School System received federal funds either through direct payment or through the Georgia State Department of Education in the total sum of $4,823,551.00. These payments were earmarked as follows:
>
> (a) Title I Academic Programs for disadvantaged students-$1,500,000.
>
> (b) Title IV parts A and B-Money for purchase of books and equipment-$60,000.
>
> (c) Title IV Part C-Programs in Staff development-$15,000.
>
> (d) Funds in lieu of taxes for federally connected students-$500,000.
>
> (e) Secondary vocational funds for programs through the 12th grade-$70,645.
>
> (f) Post-Secondary vocational funds-$216,456.

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(g) Comprehensive Employment Training Act (CETA)-Employee Wages such as Teachers-Aides and maintenance personnel-$735,000.

(h) Education of the Handicapped-$36,450.

(i) Emergency School Assistance Act (ESAA)-Supports efforts for implementation of public schools, desegregation-$110,000.

(j) School lunches for disadvantaged students-$1,500,000.

(k) Commodity Foods-$80,000.

All of the above funds are for on-going programs with the exception of Title IV Part C funds and ESAA funds. These two programs are considered new programs during each school year.

FN3. During the calendar year 1977-1978 Dougherty employed thirteen home economics teachers at the junior high school level. The salaries for these teachers ranged from a low of $10,739.10 to a high of $14,741.40 with the total salary paid to all junior high school home economics teachers being in the sum of $160,037.30. During the same time Dougherty employed eight industrial arts teachers with salaries ranging from a low of $11,660.32 to a high of $17,643.20. The total salary for all junior high school industrial arts teachers was in the sum of $114,335.14. The total budget for Dougherty during the school year 1977-1978 was in excess of $29,000,000.

In a reply brief addressing what action this court should take post-remand, the department suggests for the first time that, "should this Court ... vacat [e] the district court's decision so that the administrative process could proceed, the Department will not exercise its authority to defer Federal financial assistance to the Dougherty County School System." We decline to dispose of the case in that manner for several reasons.

First, the correctness of the department's application of its regulations to the Dougherty County School System, in the light of the Supreme Court's interpretation of the regulations, is a new issue in this case. Prior to the *North Haven* decision, the school system opposed the regulations on the ground that the department had no authority under Title IX to regulate employment discrimination. The issue of whether the department's actions exceed the "program-specific" nature of its regulatory authority under Title IX has not yet been addressed by the parties or by the district court.

Second, we doubt the propriety of the department's suggestion that we dismiss this case on the basis of a negotiated arrangement between the department and the courts. To support its offer, the department submits to us a "declaration" from the Assistant Secretary for Civil Rights in the Department of Education. The declaration promises that, "following ... remand to the district court with instructions to grant summary judgment in favor of the defendants,***82** no Federal financial assistance ... will be deferred upon recommencement of administrative proceedings based on the finding of a violation of Title IX...." Such a bargain for court dismissal of injunctive suits brought by parties seeking relief from agency actions might be struck between the parties, but we cannot countenance a court becoming party to such a proposal. Even were the dismissal bargain proffered to the school board, it might question whether the declaration binds the federal government, for the record does not establish the degree of authority of the Assistant Secretary over the department's deferral of funds or whether his promise will outlast his own tenure.

Third, we doubt the department's authority to defer federal funds while it conducts proceedings to determine whether a school system is in compliance with Title IX. Deferral of funds pending conclusion of administrative proceedings is statutorily authorized for investigations of compliance with Title VI. 42 U.S.C.A. § 2000d-5 (1981). The agency regulations implementing this statutory provision have been adopted as interim procedures for enforcement of Title IX. There is no corresponding statutory authorization, however, for deferral of funds pending administrative investigation of compliance with Title IX. Indeed, the department seems to have realized this: the record shows that the department did not rely on any statutory

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or regulatory provision as authority for deferring funding of Dougherty County school programs. This court's prior opinion disposed of this case on the more fundamental issue whether the department's regulations exceeded its authority. The *North Haven* decision that the regulations are not *ultra vires,* raises the subsidiary question whether they have been correctly applied in this case. This issue, arising for the first time on appeal, can more appropriately be considered by the district court. In its further proceedings, the statutory authority of the department as well as all of the other issues belatedly raised on appeal can be fully explored.

For these reasons, the action is REMANDED to the district court for further proceedings consistent with the opinion of the Supreme Court of the United States.

C.A.Ga.,1982.
Dougherty County School System v. Bell
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SCOTT RUSSELL DuBOIS, Petitioner,
v.
WORKERS' COMPENSATION APPEALS BOARD, ROBERT A. ROHRER et al., Respondents.
No. S018824.

Supreme Court of California
Jun 28, 1993.

SUMMARY

The state Uninsured Employers Fund (UEF) stipulated with an injured employee to pay his workers' compensation benefits. When the UEF failed to make payments, the employee petitioned the Workers' Compensation Appeals Board (WCAB) requesting the assessment against the UEF of a 10 percent penalty for unreasonable delay in the payment of benefits pursuant to Lab. Code, § 5814. The workers' compensation judge found that the UEF had unreasonably delayed payment and assessed the penalty. The WCAB reversed the decision, concluding that Lab. Code, § 3716.2, exempted the UEF from payment of penalties for its own delay in paying benefits. The Court of Appeal, Second Dist., Div. Six, No. B053655, annulled the decision of the WCAB, determining that Lab. Code, § 3716.2, only exempted the UEF from penalties assessed against an employer and that the UEF was liable for penalties for its own unreasonable delay.

The Supreme Court reversed the judgment of the Court of Appeal and remanded to that court with directions to reinstate the decision of the WCAB annulling the penalties for unreasonable delay imposed against the UEF. The court held that Lab. Code, § 3716.2, exempted the UEF from payment of penalties, including penalties for its own delay in paying benefits. The Legislature created the UEF as a source of benefits for injured employees whose employers had failed to obtain workers' compensation liability coverage. However, the Legislature expressed no concern for the timeliness of the UEF's payments of benefits and intended the liability of the UEF to be derivative of the employer's liability rather than vicarious. Nothing suggests a legislative intent that the UEF pay anything other than the amount awarded against the employer. Moreover, Lab. Code, § 5814, was enacted to induce prompt payment from employers and insurers who have an economic incentive not to pay promptly, and the UEF has no such incentive. Further, statutory penalties generally do not apply to public entities. (Opinion by George, J., with Lucas, C. J., Panelli, Kennard, Arabian and Baxter, JJ., concurring. Separate dissenting opinion by Mosk, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d, 1e, 1f, 1g) Workers' Compensation § 86-- Proceedings Before Workers' Compensation Appeals Board--Penalty for Delay of Payment of Benefits--Application of Penalty to State Uninsured Employers Fund.
Lab. Code, § 3716.2, which provides that the state Uninsured Employers Fund (UEF) is not liable for any penalties, exempted the UEF from the 10 percent penalty of Lab. Code, § 5814, for its own unreasonable delay in paying benefits to an injured worker with whom it had stipulated to pay benefits. The Legislature created the UEF as a source of benefits for injured employees whose employers had failed to obtain workers' compensation liability coverage. However, the Legislature expressed no concern for the timeliness of the UEF's payments of benefits and intended the liability of the UEF to be derivative of the employer's rather than vicarious. Nothing suggests a legislative intent that the UEF pay anything other than the amount awarded against the uninsured employer. Moreover, Lab. Code, § 5814, was enacted to induce prompt payment from employers and insurers who have an economic incentive not to pay promptly, and the UEF has no such incentive. Further, statutory penalties generally do not apply to public entities (Gov. Code, § 818).
[See **Cal.Jur.3d**, Work Injury Compensation, §§ 317, 318; 2 **Witkin**, Summary of Cal. Law (9th ed. 1987) Workers' Compensation, §§ 142, 408.]
(2) Statutes § 29--Construction--Language--Legislative Intent.
A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In construing a statute, the court's first task is to look to the language of the statute itself. When the language is clear and

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there is no uncertainty as to the legislative intent, the court looks no further and simply enforces the statute according to its terms.

(3) Statutes § 39--Construction--Giving Effect to Statute--Conformation of Parts.
In construing statutory language, a court must consider the language in the context of the entire statute and the statutory scheme of which it is a part. The court is required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. When used in a statute, words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.

(4) Workers' Compensation § 3--Nature and Purpose.
The right to workers' compensation benefits is wholly statutory and is not derived from common law.

(5) Workers' Compensation § 121--Insurance--Uninsured Employers Fund-- Employers' Nonpayment as Prerequisite to Claim.
Failure of the employer to pay a benefit award within 10 days of notification, as required by Lab. Code, § 3715 (action against employer failing to secure payment of compensation), is a condition precedent to the employee's demand for payment upon the Uninsured Employers Fund.

(6) Statutes § 43--Construction--Aids--Committee Reports.
Reports made by legislative committees and commissions during the legislative process come within the category of material a court may consider when the meaning of a statute is uncertain.

(7) Workers' Compensation § 86--Proceedings Before Workers' Compensation Appeals Board--Penalty for Delay in Payment of Benefits--Purpose of Statute.
The assessment for late payment of workers' compensation benefits, imposed by Lab. Code, § 5814, is designed to compel the employer of the injured employee, or the employer's workers' compensation insurance carrier, to make payments of compensation in a reasonable and timely fashion, and to effect the equally important purpose of the statutory scheme, which is to encourage timely payments of compensation to injured working people to promptly ameliorate economic hardship resulting from the interruption of their employment and concomitant loss of income. The penalty applies to virtually all types of benefits provided by the workers' compensation laws, including temporary and permanent disability indemnity, interest on an award, amounts awarded as reimbursement for self-procured medical costs, and medical-legal costs. Although § 5814 is denominated a penalty statute, it is considered to be both remedial and penal. The 10 percent increase is an increase in the compensation awarded to the injured worker, and the statute itself requires that the award be amended to include the amount of the penalty imposed.

(8) Workers' Compensation § 5--Construction of Statutes.
The rule of liberal construction of workers' compensation statutes, stated in Lab. Code, § 3202, should not be used to defeat the overall statutory framework and fundamental rules of statutory construction.

COUNSEL

William A. Herreras for Petitioner.

Phillip N. Bruce as Amicus Curiae on behalf of Petitioner.

John M. Rea, Leland D. Starkey, Vanessa L. Holton, Raoul Thorbourne and Sue Tuskes for Respondents.

GEORGE, J.

In this case we must determine whether the State of California Uninsured Employers Fund (UEF), whose function it is to pay workers' compensation benefits in the event the employer of an injured worker is not insured for workers' compensation liability, is subject to payment of a penalty pursuant to Labor Code section 5814 [FN1] for the UEF's own unreasonable delay in payment of benefits to the injured worker.

FN1 All further statutory references are to the Labor Code unless otherwise indicated.

The UEF asserts that section 3716.2 exempts it from any penalty for unreasonable delay in the payment of

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benefits pursuant to section 5814, whether the entity responsible for the delay is the employer or the UEF. Scott Russell DuBois, an employee whose benefits were delayed, asserts that section 3716.2 exempts the UEF only from paying those penalties that otherwise would be due from an employer for unreasonable delay or other misconduct on the part of the employer, but not from the UEF's own unreasonable delay in paying benefits. We conclude that sections 3716 and 3716.2, defining the obligations and limiting the liability of the UEF, do not permit imposition of any penalty mandated by section 5814 against the UEF, even for its own unreasonable delay in paying valid claims for workers' compensation. Accordingly, we reverse the judgment of the Court of Appeal and order it to reinstate the decision of the Workers' Compensation Appeals Board (WCAB), which had determined that the UEF is not liable for the payment of a penalty pursuant to section 5814.

I

On June 24, 1988, applicant DuBois sustained an injury to his neck while employed by Robert Rohrer, doing business as Rohrer Trucking, which *386 entity subsequently was determined by the WCAB to be willfully uninsured for its liability to pay workers' compensation. The Rehabilitation Bureau of the Division of Industrial Accidents (Rehabilitation Bureau) determined DuBois was eligible for temporary disability indemnity payments during vocational rehabilitation (§§ 139.5, 3207) and, on April 20, 1989, awarded him vocational rehabilitation temporary disability (VRTD) benefits from the date of October 13, 1988, forward, its decision and order subsequently becoming final when Rohrer Trucking did not object or appeal. Despite its lack of insurance, Rohrer Trucking until mid-1989 paid most of DuBois's medical bills and provided VRTD benefits. On August 22, 1989, after conducting a hearing, a workers' compensation judge (WCJ) made "findings and [an] award" against Rohrer Trucking for the payment of the VRTD benefits to DuBois.

When Rohrer Trucking failed to make such payments, DuBois requested a supplemental hearing before the WCAB, seeking, pursuant to section 3716, subdivision (a), to collect from the UEF the award DuBois had received against Rohrer Trucking, and seeking, pursuant to section 5814, an additional amount in penalties for the unreasonable delay on the part of Rohrer Trucking in paying the benefits. On December 14, 1989, defendant Director of Industrial Relations, as administrator of the UEF Fund (§ 3710), stipulated with DuBois that his injury had caused his temporary disability and had created the need for VRTD benefits from June 25, 1988, to December 14, 1989, and for medical treatment. The UEF further stipulated it would administer and pay the balance of unpaid VRTD benefits that were owed DuBois through December 14, 1989, continue to pay VRTD benefits pursuant to the Rehabilitation Bureau's decision and order of April 20, 1989, satisfy an outstanding lien for rehabilitation services previously received by DuBois, and "pay, adjust or litigate unpaid self-procured medical" expenses. On the same date, this stipulation was entered by a WCJ as an award in favor of DuBois against the UEF. Neither the stipulation nor the award included provision for any penalties.

Not having received any payment from the UEF, DuBois on February 15, 1990, filed a petition with the WCAB, requesting that, pursuant to section 5814, a penalty of 10 percent be assessed against the UEF for its own unreasonable delay in paying the stipulated benefits. On May 24, 1990, the WCJ conducted a hearing to determine whether the UEF unreasonably had delayed making the payments. At that proceeding, DuBois stated he had received no payments under the December 14, 1989, award, and a UEF representative stated that the UEF had been unable to determine whether payments to DuBois had been made. Having requested and received written briefing on the question whether section 3716.2 precluded the assessment of *387 any penalties against the UEF, the WCJ on June 14, 1990, issued findings and an award, determining that the UEF unreasonably had delayed payment of the stipulated benefits, and that the UEF was not exempted by section 3716.2 from penalties for its own unreasonable delay in paying the award. The WCJ ordered the UEF to pay the benefits as well as a penalty of 10 percent of the benefits awarded on December 14, 1989, pursuant to section 5814.

The UEF petitioned the WCAB for reconsideration. After granting the petition, the WCAB reversed the decision of the WCJ, concluding that section 3716.2 exempted the UEF from payment of any penalties for its own failure to pay benefits in a timely manner. Thereafter, the Court of Appeal summarily denied DuBois's petition for a writ of review, and DuBois petitioned for our review. We granted review and

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ordered the case transferred to the Court of Appeal, directing that it issue the writ requested and review the case.

The Court of Appeal, over the dissent of one justice, determined that the language of section 3716.2 is ambiguous, and, relying upon the legislative history of that statute, construed it to provide that, although the UEF may not be held liable for penalties assessed against the uninsured employer, it is not exempt from the payment of penalties for its own unreasonable delay in paying workers' compensation benefits. The dissent concluded that section 3716.2 precludes the imposition of any penalties against the UEF for its own unreasonable delay. We granted review.

II

(1a) The parties and the Court of Appeal have focussed upon the meaning of the sentence, contained in section 3716.2, that provides: "The Uninsured Employers Fund shall not be liable for any penalties or for the payment of interest on any awards." The parties request that we determine whether that directive exempts the UEF from the penalties for unreasonable delay that may be imposed upon employers or their insurance carriers in workers' compensation cases.

(2) A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 294 [285 Cal.Rptr. 86, 814 P.2d 1328]; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224].) In construing a statute, our first task is to look to the language of the statute itself. (*Ibid.*) When the language is clear and there is no uncertainty as to the ***388** legislative intent, we look no further and simply enforce the statute according to its terms. (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 464 [253 Cal.Rptr. 236, 763 P.2d 1326]; *Atlantic Richfield Co. v. Workers' Comp. Appeals Bd.* (1982) 31 Cal.3d 715, 726 [182 Cal.Rptr. 778, 644 P.2d 1257]; see Code Civ. Proc., §§ 1858, 1859.)

(3) Additionally, however, we must consider the above quoted sentence in the context of the entire statute (§ 3716.2) and the statutory scheme of which it is a part. "We are required to give effect to statutes 'according to the usual, ordinary import of the language employed in framing them.' [Citations.]" (*Moyer v. Workmen's Comp. Appeals Bd., supra,* 10 Cal.3d 222, 230; see also *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387 [241 Cal.Rptr. 67, 743 P.2d 1323].) " 'If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.' [Citation.] .... 'When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.' [Citations.] Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. [Citations.]" (*Moyer v. Workmen's Comp. Appeals Bd., supra,* 10 Cal.3d 222, 230-231; see also *Nickelsberg v. Workers' Comp. Appeals Bd., supra,* 54 Cal.3d 288, 298; *Nunn v. State of California* (1984) 35 Cal.3d 616, 624-625 [200 Cal.Rptr. 440, 677 P.2d 846].) (1b) Therefore, to determine whether the Legislature intended to render the UEF liable, pursuant to section 5814, for its own unreasonable delay in paying benefits, we review not only the language of section 3716.2 but the legislative enactments of which it is a part.

III

Pursuant to the "plenary power" the Constitution has granted to the Legislature "to create, and enforce a complete system of workers' compensation" (Cal. Const., art. XIV, § 4), the Legislature has created a statutory scheme requiring all employers to secure the payment of workers' compensation to injured workers, either by obtaining insurance coverage of their liability or by obtaining a certificate of consent to self-insure issued by the Director of Industrial Relations. (§ 3700 et seq.) (4) The right to workers' compensation benefits is wholly statutory and is not derived from common law. (*Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1002-1003 [229 Cal.Rptr. 494, 58 A.L.R.4th 1245].)

In 1971, the California Legislature created the UEF in order to provide a source of funds for injured workers whose employers have failed or refused ***389** either to obtain workers' compensation insurance coverage or to qualify as self-insurers for the employers' liability. (§ 3716, subd. (b); see *Flores v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 171, 173 [113 Cal.Rptr. 217, 520 P.2d 1033]; *Jenkins v. Workmen's Comp. Appeals Bd.* (1973) 31 Cal.App.3d 259, 263 [107

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Cal.Rptr. 130].) The program was "designed to be financed from various penalties which may be assessed against an uninsured employer," as well as from state tax revenues. (1 Herlick, Cal. Workers' Comp. Law (4th ed. 1990) § 3.20, p. 3-18; see also, *id.*, § 11.9, p. 11-8.)

(1c) The nature of the intended restrictions upon the liability of the UEF is reflected in the statutes creating that fund and defining its obligations. Initially, we consider the Legislature's express statement of its intent. Section 3716, subdivision (b), provides in pertinent part that the UEF was created "to ensure that workers who happen to be employed by illegally uninsured employers are not *deprived* of workers' compensation benefits, and is not created as a source of contribution to insurance carriers, or self-insured, or legally insured employers." (Italics added.) The language of this subdivision indicates that the primary concern of the Legislature was to create a source of benefits to the employee who otherwise would receive no benefits because of the failure or refusal of his or her employer to obtain workers' compensation liability coverage. This provision does not express a legislative concern for the timeliness of the benefits to be provided by the UEF. The clause specifying that the UEF is not to be a source of contribution for the benefit of employers or carriers emphasizes the Legislature's intent to limit the purposes for which the UEF's funds are to be applied, and to impose only derivative liability upon the UEF.

Under the statutory scheme, section 3715 requires that an injured employee who seeks payment of compensation and whose employer is uninsured apply to the WCAB, which must make an award against the employer as if the employer *had* complied with the mandate that it secure the payment of workers' compensation. If the uninsured employer fails to pay the compensation or furnish a bond within 10 days after receiving notice of the award entered against the employer, the injured employee then may apply to obtain payment from the UEF. (§ 3716, subd. (a). [FN2])

> FN2 Section 3716, subdivision (a), provides in pertinent part: "If the employer fails to pay the compensation required by Section 3715 to the person entitled thereto, or fails to furnish the bond required by Section 3715 within a period of 10 days after notification of the award, the award, upon application by the person entitled thereto, shall be paid by the director from the Uninsured Employers Fund, which fund is hereby created in the State Treasury."

(5) Pursuant to section 3716, subdivision (a), failure of the employer to pay the award within 10 days of notification thereof is made a condition ***390** precedent to a demand for payment by the employee upon the UEF. (*Ortiz v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 392, 396-397 [5 Cal.Rptr.2d 484]; *Sobiniak v. Workers' Comp. Appeals Bd.* (1984) 156 Cal.App.3d 448, 451-452 [202 Cal.Rptr. 789]; *Symmar, Inc. v. Workers' Comp. Appeals Bd.* (1982) 135 Cal.App.3d 65, 70- 71 [185 Cal.Rptr. 67]; see *Jenkins v. Workmen's Comp. Appeals Bd., supra,* 31 Cal.App.3d 259, 263 [right created (to payment of benefits by UEF) is based upon fact of nonpayment of the preexisting obligation, i.e., the award of compensation]; cf. *Germann v. Workers' Comp. Appeals Bd.* (1981) 123 Cal.App.3d 776, 780, fn. 2 [176 Cal.Rptr. 868].) (1d) Thus, it is apparent the Legislature intended to define the liability of the UEF for the payment of an award as derivative rather than vicarious, and to render the employer primarily responsible for the payment of the award even in a case in which the UEF has participated and ultimately may be required to pay the award. Nothing in these sections suggests the Legislature intended the UEF to pay any amount in excess of, or different from, the amount awarded against the uninsured employer.

We also observe that although section 3716, subdivision (a), requires the UEF to pay benefits upon demand in the event the employer fails to do so within 10 days after being notified of an award against the employer, that statute does not set a deadline by which the UEF must commence making payments. (Contrast, e.g., §§ 4650 [fixing time of commencement of temporary and permanent disability payments by employer or insurer], and 4650.5 [fixing time of commencement of disability payments arising from injury by criminal act].)

In light of the apparent legislative intent to ensure basic compensation to all employees otherwise deprived of benefits, the derivative nature of the UEF's statutory liability, and the failure of the Legislature expressly to provide a deadline within which the UEF must pay benefits after entry of the award and failure by the uninsured employer to pay the award, we be-

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lieve there is no statutory basis to support the underlying assertion of DuBois and amicus curiae that the UEF may be subject to a penalty for its own unreasonable delay in paying benefits.

Subsequent enactments pertaining to the UEF add no support to the foregoing assertion by DuBois and amicus curiae. Following the creation of the UEF, this court in 1976, in *Flores v. Workmen's Comp. Appeals Bd., supra,* 11 Cal.3d 171, interpreted the "award" for which the UEF was liable (pursuant to § 3716) to include a penalty representing a 10 percent increment in the basic amount of the award imposed against an employer wilfully failing to secure the payment of workers' compensation (§ 4554), and to ***391** include additional attorney fees awarded by reason of the employer's failure (whether wilful or negligent) to secure payment of compensation (§ 4555). (11 Cal.3d 171, 175-178.) In reaching this conclusion in *Flores,* we responded to the argument made by the UEF that, "as a matter of policy, the limited money available to the Fund should be reserved for the payment of basic compensation awards rather than statutory 'penalties,' " by observing: "[T]hat is not what the present statutory provisions dictate. As A. P. Herbert so unforgettably quipped: 'If Parliament does not mean what it says it must say so.' (Herbert, The Uncommon Law (6th ed. 1948) p. 313.)" (11 Cal.3d 171, 177.)

It is important to recognize that in *Flores,* the liability of the UEF for its own delay or for other misconduct was not in question, and, in fact, we expressly acknowledged in our decision that the UEF was not at fault. (*Flores v. Workmen's Comp. Appeals Bd., supra,* 11 Cal.3d 171, 177-178.) Thus, although that decision briefly (as explained below) provided authority for the proposition that the UEF could be liable for the entire amount of an award assessed against an employer, including (in excess of basic compensation payments) amounts representing penalties for the *employer's* failure to secure the payment of compensation, the decision did not introduce an interpretation of the basic language of section 3716 or related sections that would permit the UEF to be held liable for similar penalties based upon *its own* misconduct.

In 1976, apparently in response to our decision in *Flores v. Workmen's Comp. Appeals Bd., supra,* 11 Cal.3d 171 (see 1 Herlick, Cal. Workers' Comp. Law, *supra,* § 3.20, pp. 3- 18, 3-19; *id.,* § 11.9, p. 11-10), the Legislature enacted section 3716.2. [FN3] The first sentence of that statute resolves the issue raised in *Flores*-whether the UEF ought to be liable for the penalties (and attorney fees) imposed upon an employer who has failed to secure the payment of workers' compensation-by providing explicitly that the director shall pay only such benefits as would accrue against an employer properly insured for workers' compensation liability.

> FN3 As originally enacted, section 3716.2 provided: "Notwithstanding the precise elements of an award of compensation benefits, and notwithstanding the claim and demand for payment being made therefor to the Director of Industrial Relations, the director, as administrator of the Uninsured Employers Fund, shall pay the claimant only such benefits allowed, recognizing proper liens thereon, that would have accrued against an employer properly insured for workers' compensation liability. However, in civil suits by the director to enforce payment of an award, including procedures pursuant to Section 3717, the total amount of the award, including interest, other penalties and attorney fees granted by the award, shall be sought. Recovery, by the director, in a civil suit, or other means, of awarded benefits in excess of amounts paid the claimant by the Uninsured Employers Fund, shall be paid over to the injured employee, or his representative as the case may be." (Stats. 1976, ch. 1036, § 7, p. 4642.)

More significant to the issue presented in the present case, however, is the Legislature's intent, manifested in section 3716.2, to limit the liability of the ***392** UEF by equating the benefits it must pay with those due from the employer. The imposition of a penalty upon the UEF for its own unreasonable delay would be inconsistent with the express limitation placed upon its liability by this provision. The next sentence of the statute underscores the "employer" limitation upon the liability of the UEF, by authorizing that entity to pursue, in a civil action against the employer, enforcement of payment of the entire award, including penalties, interest, and attorney fees granted by the award (notwithstanding the UEF's own immunity from penalties and interest) and to pay to the employee any amounts collected from the employer that exceed those for which the UEF was liable.

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In 1980, following enactment of section 3716.2, the Legislature also provided that an injured employee whose employer has failed to secure the payment of workers' compensation is not limited to the exclusive remedy of seeking compensation benefits from the UEF. The employee possesses the right to proceed against the employer in the courts, by initiating a civil action for damages (§ 3706), as well as to seek compensation in a proceeding before the WCAB. (§ 3715.) [FN4] The provision of these dual rights is consistent with legislative recognition of the limited resources of the UEF and with a related legislative intent not to render entirely coextensive, with the liability of an employer, the liability of the UEF for penalties.

> FN4 Prior to the creation of the UEF in 1971, the employee of an uninsured employer was not required to elect remedies and could bring a civil action for damages against the employer as well as initiate an administrative proceeding to collect compensation. (*Jenkins v. Workmen's Comp. Appeals Bd., supra,* 31 Cal.App.3d 259, 262-263.) At the time it created the UEF, however, the Legislature amended section 3715 to afford alternative remedies to the injured employee of an uninsured employer, thus providing that any proceeding to obtain compensation ultimately culminating in liability for payment on the part of the UEF would be exclusive. (*Ibid.*) Subsequent to the enactment of section 3716.2 in 1976, and prior to its amendment in 1981 absolving the UEF of liability for penalties and interest on an award, the Legislature in 1980 reinstated cumulative remedies by amending section 3715 to allow the injured employee both a civil action and an administrative proceeding. (Stats. 1980, ch. 1091, § 5, p. 3503; see Historical Note, 44A West's Ann. Lab. Code (1989 ed.) § 3715, p. 251.)

The subsequent amendment of section 3716.2 in 1981 only reinforces the conclusion the Legislature never intended that the UEF should be liable for penalties for its own delay, and in fact intended to narrow further the scope of the UEF's liability. This amendment provides that the UEF "shall not be liable for any penalties or for the payment of interest on any awards." (Assem. Bill No. 1529 (1981-1982 Reg. Sess.), enacted by Stats. 1981, ch. 894, § 4, pp. 3409-3410.) [FN5] ***393**

> FN5 As amended, section 3716.2 provides: "Notwithstanding the precise elements of an award of compensation benefits, and notwithstanding the claim and demand for payment being made therefor to the director, the director, as administrator of the Uninsured Employers Fund, shall pay the claimant only such benefits allowed, recognizing proper liens thereon, that would have accrued against an employer properly insured for workers' compensation liability. *The Uninsured Employers Fund shall not be liable for any penalties or for the payment of interest on any awards.* However, in civil suits by the director to enforce payment of an award, including procedures pursuant to Section 3717, the total amount of the award, including interest, other penalties and attorney fees granted by the award, shall be sought. Recovery, by the director, in a civil suit, or other means, of awarded benefits in excess of amounts paid the claimant by the Uninsured Employers Fund, shall be paid over to the injured employee, or his representative as the case may be." (Italics added.)

DuBois suggests the amendment simply demonstrates a legislative intent to exempt the UEF from liability for penalties accruing because of an employer's failure to secure payment of compensation. In view of the historical development of this statute, however, which we may take into account in ascertaining the Legislature's intent (*Dyna-Med, Inc. v. Fair Employment & Housing Com., supra,* 43 Cal.3d 1379, 1387), it is manifest that the language affording the UEF exemption from any penalties was not added to section 3716.2 merely to establish that the UEF would not be liable for any penalties arising from the employer's failure to secure the payment of workers' compensation (§ 4554; see § 4555), because the Legislature already had accomplished that goal in 1976 simply by enacting, in the wake of our decision in *Flores,* section 3716.2 in its original form, limiting the UEF's liability only to payment of those benefits that would accrue against a properly insured employer. In the period between the 1976 enactment of section 3716.2 and its amendment in 1981, no additional statutory or decisional authority emerged to furnish any basis for

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concluding that the Legislature perceived the need to make more explicit the intent of section 3716.2 effectively to abrogate the holding in *Flores* that the UEF could be liable for penalties and attorney fees imposed upon an employer for its failure to secure the payment of workers' compensation.

DuBois and amicus curiae offer the alternative suggestion that the provision exempting the UEF from the payment of any penalties refers merely to the potential liability of the UEF to pay amounts representing penalties imposed upon the employer for the employer's unreasonable delay in paying benefits (§ 5814) or for some other form of misconduct by the employer (see § 4553 [employee's injury caused by employer's serious and wilful misconduct]; § 4557 [injured employee is a minor illegally employed]), but does not exempt the UEF from liability for its own delay.

(6) In support of this interpretation, DuBois points to various reports, made by legislative committees and commissions during the legislative process, which come within the category of material we may consider when the meaning of a statute is uncertain. (*Hutnick v. United States Fidelity & Guaranty Co., supra,* 47 Cal.3d 456, 465, fn. 7; *Dyna-Med, Inc. v. Fair Employment & Housing Com., supra,* 43 Cal.3d 1379, 1387; see *394*Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 382, fn. 19 [267 Cal.Rptr. 569, 787 P.2d 976]; *Southern Cal. Gas Co. v. Public Utilities Com.* (1979) 24 Cal.3d 653, 659 [156 Cal.Rptr. 733, 596 P.2d 1149].)

(1e) In the course of the Legislature's consideration of the amendment to section 3716.2 exempting the UEF from liability for penalties and interest, the Assembly Committee on Finance, Insurance, and Commerce issued a report explaining the purpose of the amendment as follows: "Section 4 is amended to preclude the Fund from being liable for any penalties or for the payment of interest on awards. Because of the nature of the Uninsured Employers Fund, it has no liability for benefits until after a formal proceeding and the employer has failed to act. *Sanctions should not be applied against the Fund for the employer's wrong,* according to proponents." (Italics added.)

The Legislature also received an analysis of Assembly Bill No. 1529, provided by the Department of Industrial Relations, which noted that in most cases in which the UEF was made a party, a penalty was imposed against the uninsured employer pursuant to section 5814 because of the employer's delay in paying benefits. After observing that the payment of such penalties was a substantial fiscal drain on the UEF, the department stated: "The justification for imposing the penalty does not apply to the U.E.F. The penalty is designed to deter carriers and employers from delaying benefits. Since the U.E.F. has no liability for benefits until after they are demanded after a formal award, imposing the penalty on the U.E.F. for the employer's delay will not hasten the U.E.F.'s payment. *The State should not be penalized for the employer's delay.*" (Italics added.)

On the other hand, the description of Assembly Bill No. 1529 prepared by the Legislative Analyst, after the bill twice had been amended, simply provides that the UEF is exempt from "a penalty of 10% in cases where payments of workers' compensation benefits to workers are delayed." The latter description of the bill thus did not serve to limit the nature of the exemption from penalties granted the UEF to those situations in which such delay is attributable to the employer. (See *Hutnick v. United States Fidelity & Guaranty Co., supra,* 47 Cal.3d 456, 465, fn. 7 [such materials provide some indication of how a measure was understood by those who voted to enact it]; *Napa Valley Wine Train, Inc. v. Public Utilities Com., supra,* 50 Cal.3d 370, 382, fn. 19 [same].)

Even if we were to accept DuBois's interpretation of the amendment to section 3716.2 (based upon statements, in the reports accompanying the bill, that the amendment was intended to exempt the UEF from liability for the *395 delay or other misconduct of the *employer*), such a construction would not alter our conclusion that the Legislature never intended the UEF to be liable-like an employer or an insurer-for its own delay. Construed in the latter manner, the amendment merely provides an additional limitation on the liability of the UEF for any penalties it might be required to pay as a result of misconduct on the part of the employer. The amendment does not alter the circumstance that nothing in section 3716.2 or in any related statute suggests the UEF has any obligation to pay the employee any amount in excess of the amount recoverable by the employee from his or her uninsured employer. [FN6]

FN6 We also take note of the circumstance that, at the time the Legislature added lan-

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guage exempting the UEF from liability for any penalites and interest added to an award, it also amended various other related statutes so as to limit the liability of the UEF, while enhancing the ability of that entity to recover amounts that it had paid out. Section 3716, subdivision (b), was added to declare that the legislative purpose in creating the UEF was to ensure the payment of funds to employees rather than to afford contribution to carriers or employers, and subdivision (c) was added to exempt the UEF from the requirement of reimbursing the State Department of Health Services for treatment provided by that department to injured workers. Section 3717 was amended to provide the UEF the right to obtain reimbursement from any individual owning 15 percent or more of the outstanding stock in a corporation that had failed to secure coverage for its workers' compensation liability. (Stats. 1981, ch. 894, § 2, p. 3408; *id.*, § 5, p. 3410.)

Most significantly, section 5814.1 was added, providing (in language similar to section 5814) that when the payment of compensation unreasonably has been delayed or refused prior to the issuance of an award, and the director has provided discretionary compensation, the WCAB shall award the director a penalty to be paid by the employer in the amount of 10 percent of the compensation provided by the director, "such penalty to be in addition to the penalty imposed by Section 5814." (Stats. 1981, ch. 894, § 10, p. 3413.) The provision of a penalty pursuant to section 5814.1, in favor of the director and against the employer for the latter's unreasonable delay, is inconsistent with any legislative intent to permit imposition of a penalty in favor of the *employee* and against the director pursuant to section 5814.

IV

DuBois contends, nonetheless, that the penalty prescribed by section 5814 was intended to apply to the UEF. Section 5814, first enacted in 1945 (Stats. 1945, ch. 802, § 2, p. 1497), and last amended in 1965 (Stats. 1965, ch. 1513, § 169, p. 3599), was intended to encourage the timely payment of benefits by rendering costly any delay in payment. (*Jensen v. Workers' Comp. Appeals Bd.* (1985) 170 Cal.App.3d 244, 247 [216 Cal.Rptr. 33]; *Jardine v. Workers' Comp. Appeals Bd.* (1984) 163 Cal.App.3d 1, 8 [209 Cal.Rptr. 139].) [FN7] When section 5814 originally was enacted, the UEF was not yet established, and thus it is obvious the Legislature did not have the UEF in mind in creating the penalty provision. ***396**

FN7 Section 5814 provides: "When payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the full amount of the order, decision or award shall be increased by 10 percent. The question of delay and the reasonableness of the cause therefor shall be determined by the appeals board in accordance with the facts. Such delay or refusal shall constitute good cause under Section 5803 to rescind, alter or amend the order, decision or award for the purpose of making the increase provided for herein."

DuBois observes, however, that section 5814, contained in a division of the Labor Code mandated to "be liberally construed by the courts with the purpose of extending [that division's] benefits for the protection of persons injured in the course of their employment" (§ 3202; see also *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234, 241 [193 Cal.Rptr. 547, 666 P.2d 989]; *Webb v. Workers' Comp. Appeals Bd.* (1980) 28 Cal.3d 621, 626 [170 Cal.Rptr. 32, 620 P.2d 618]; *Klee v. Workers' Comp. Appeals Bd.* (1989) 211 Cal.App.3d 1519, 1524 [260 Cal.Rptr. 217]), is not, by its terms, limited specifically to employers or their insurers. By the same token, nothing in the language of section 5814 suggests it *was* intended to extend beyond such employers or insurers to a governmental entity such as the UEF.

(7) Consistent with the other provisions of the workers' compensation scheme, the assessment imposed by section 5814 is designed to compel the employer of the injured employee, or the employer's workers' compensation insurance carrier, to make payments of compensation in a reasonable and timely fashion (*Adams v. Workers' Comp. Appeals Bd.* (1976) 18 Cal.3d 226, 229 [133 Cal.Rptr. 517, 555 P.2d 303]; *Carver v. Workers' Comp. Appeals Bd.* (1990) 217 Cal.App.3d 1539, 1547 [266 Cal.Rptr. 718]), and to effect the "equally important purpose" of the statutory

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scheme-"to encourage timely payments of compensation to injured working people to promptly ameliorate economic hardship [resulting from] the interruption of their employment and concomitant loss of income." (*Consani v. Workers' Comp. Appeals Bd.* (1991) 227 Cal.App.3d 12, 23 [277 Cal.Rptr. 619]; see also *Adams v. Workers' Comp. Appeals Bd., supra,* 18 Cal.3d at p. 229.) "The penalty has been applied to virtually all types of benefits provided by the workers' compensation laws, including temporary and permanent disability indemnity, interest on an award, ... amounts awarded as reimbursement for self-procured medical costs" and medical-legal costs. (*Adams, supra,* 18 Cal.3d 226, 229.)

Although section 5814 is denominated a penalty statute, it is considered to be both remedial and penal. (*Carver v. Workers' Comp. Appeals Bd., supra,* 217 Cal.App.3d 1539, 1547-1548; *Davison v. Industrial Acc. Com.* (1966) 241 Cal.App.2d 15, 18 [50 Cal.Rptr. 76] [the remedial aspect is to facilitate return to work of the injured employee as quickly as possible, the penal aspect is to compel the employer to comply with the law fully and promptly].) The 10 percent increase "has been characterized as an increase in the compensation awarded to the injured worker" (*Carver v. Workers' Comp. Appeals Bd., supra,* 217 Cal.App.3d 1539, 1547, citing ***397***Anderson v. Workers' Comp. Appeals Bd.* (1981) 116 Cal.App.3d 954, 960 [172 Cal.Rptr. 398]), and the statute itself requires that the award be amended to include the amount of the penalty imposed. (E.g., *Davison v. Industrial Acc. Com., supra,* 241 Cal.App.2d 15, 16.)

(1f) It is clear that section 5814 was enacted as an inducement to prompt payment on the part of private employers and their insurers, which otherwise would have an economic incentive to delay or deny the payment of workers' compensation benefits. In contrast, the UEF does not possess this economic incentive. Our decision in *Isaacson v. California Ins. Guarantee Assn.* (1988) 44 Cal.3d 775 [244 Cal.Rptr. 655, 750 P.2d 297] is illustrative of this distinction. In *Isaacson,* we were confronted with a somewhat similar question of statutory interpretation: whether the provisions of the Unfair Practices Act, imposing liability upon an insurer for unreasonably refusing to settle a case, should be applied to the California Insurance Guarantee Association (CIGA), a governmental entity created to provide an insured with coverage for claims in the event his or her insurer becomes insolvent.

In rejecting the insured's attempt to impose liability upon CIGA for its own conduct in unreasonably refusing to settle a case, we relied in part upon the circumstance that CIGA did not share the economic motives of the private insurer. "[T]he protective function served by the Unfair Practices Act is less necessary with CIGA than with an ordinary insurer. Because CIGA is not a private, profit-oriented enterprise, it does not gain financially by refusing to defend or settle claims. It therefore lacks economic incentive to deal unfairly with insureds." (*Isaacson v. California Ins. Guarantee Assn., supra,* 44 Cal.3d 775, 786.) Similarly, in the present case it is clear the protective function of section 5814 would not be served by application of that statute to the UEF in cases in which that entity delays paying benefits, because the UEF does not profit by such delay.

Additionally, the UEF advises that it may have no alternative but to defer payment of benefits whenever it lacks full funding due to state budgetary limitations, a recurring problem since the inception of the UEF. (1 Herlick, Cal. Workers' Comp. Law, *supra,* § 11.9, p. 11-8; see, e.g., *Morris v. County of Marin* (1977) 18 Cal.3d 901, 905- 906, fn. 1 [136 Cal.Rptr. 251, 559 P.2d 606].) The UEF also points out that it does not enjoy the same immediate access to its funds possessed by a private employer or carrier, and, therefore, the threat of penalties for delay would not have the same practical deterrent effect. Checks for disbursements are drawn on the UEF, a fund created in the State Treasury (§ 3716, subd. (a)), necessitating that the UEF apply to the State Controller for the issuance of payment warrants (Gov. Code, § 12440), a process that may be slowed or halted during periods in which the state's budget has not yet been enacted. ***398**

DuBois suggests, however, that in any case in which delay on the part of the UEF in paying benefits is attributable to budgetary limitations, such delay could and would not be found unreasonable within the meaning of section 5814 and, therefore, the UEF would not incur the penalty provided by that statute. Under existing authority, the only delay recognized as reasonable as a matter of law, for the purpose of exonerating the employer or the insurance carrier from the penalty imposed by section 5814, is delay caused by the existence of a genuine medical or legal doubt as

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to the employer's liability for workers' compensation benefits. (*Kerley v. Workmen's Comp. App. Bd.* (1971) 4 Cal.3d 223, 230 [93 Cal.Rptr. 192, 481 P.2d 200]; *Jensen v. Workers' Comp. Appeals Bd., supra,* 170 Cal.App.3d 244, 247.) Delay caused by state budgetary shortfalls (or by the multiple-step disbursement process) does not fall within either category of delay (delay caused by medical or legal doubt) deemed acceptable under present law, and would necessitate the creation of special definitions for "reasonable delay" applicable exclusively to the UEF. This need (under DuBois's theory) for separate definitions contradicts DuBois's assertion that the Legislature intended the UEF to be treated in the same fashion as an employer who unreasonably delays benefit payments.

Apart from the foregoing definitional concerns, as a practical matter the proposal that the UEF be permitted to demonstrate that its delay was reasonable, because necessitated by budgetary shortfalls or procedural hindrances, would require the UEF to establish, at an evidentiary hearing, that its delay was reasonable in each case. We do not believe the Legislature intended that the UEF be required to expend its resources in this manner in each case in which delay has occurred.

Finally, it must be observed that, as a general rule, statutory penalty provisions do not apply to public entities. Government Code section 818 provides: "Notwithstanding any other provision of law, a public entity is not liable for damages awarded under section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant." In light of the partially penal nature of section 5814, we believe that application of the statutory penalty provision to the UEF is not permitted, absent express legislative authorization.

(8) Although, as noted earlier, section 5814 is to be liberally construed, we previously have commented that "the rule of liberal construction stated in section 3202 should not be used to defeat the overall statutory framework and fundamental rules of statutory construction." (*Nickelsberg v. Workers' Comp. Appeals Bd., supra,* 54 Cal.3d 288, 298.) (1g) A number of additional factors must be considered, including the absence of any express ***399** language (rendering the UEF liable for its own unreasonable delay) in the statutes defining the obligations and liability of the UEF (§§ 3716 and 3716.2; contrast § 3743, subd. (b) ["the (Self-Insurers' Security Fund) shall not be liable for the payment of any penalties assessed for any act or omission on the part of any person other than the fund," including the penalties provided in § 5814]), the absence of an express time limit within which the UEF is to pay an award following nonpayment by an employer and the employee's demand for compensation by the UEF (§ 3716, subd. (a)), the presence in sections 3716 and 3716.2 of language limiting the liability of the UEF to the payment of those benefits that would accrue against a properly insured employer and exempting the UEF from the payment of penalties and interest on awards, the absence of express language in section 5814 indicating that the UEF may be liable under that statute, the protective purpose served by the statute, the WCAB's view that the UEF is not liable for penalties pursuant to section 5814 (see *Nickelsberg v. Workers' Comp. Appeals Bd., supra,* 54 Cal.3d 288, 299-300; *Judson Steel Corp. v. Workmen's Comp. Appeals Bd.* (1978) 22 Cal.3d 658, 668-669 [150 Cal.Rptr. 250, 586 P.2d 564] [agency interpretation entitled to significant respect upon judicial review]), and the general immunity afforded governmental entities (such as the UEF) by Government Code section 818. Our examination of all of these factors leads us to conclude that the Legislature did not intend that the UEF be liable, pursuant to section 5814, for penalties premised upon its own delay, even where the delay engaged in by that entity properly may be characterized as unreasonable.

We greatly sympathize with the plight of injured employees who obtain the right to payment from the UEF, only to face delays in recovering the amounts to which they are legally entitled. We believe, however, that the examination and resolution of this apparently recurring problem is most appropriately left to the Legislature, which will be able to address it by enacting legislation tailored to the unique (and limited) statutory role of the UEF.

V

The judgment of the Court of Appeal is reversed and the case is remanded to that court with directions to reinstate the decision of the WCAB annulling the penalties for unreasonable delay imposed against the UEF.

Lucas, C. J., Panelli, J., Kennard, J., Arabian, J., and

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Baxter, J., concurred.

MOSK, J.

I dissent. The government insurance fund responsible for supplying DuBois with compensation benefits while he was disabled acted with ***400** complete incompetence in handling his claim. Though it stipulated to the award, it failed to pay him, failed to respond to his request for payment, appeared at the hearing regarding payment unable to say whether it had paid him or not, and finally, six months after the award was made, asked for a continuance to check its records to see if it had paid him or not.

A government insurance fund that so injures a worker by such unreasonable delay of the payment of a stipulated workers' compensation award should pay the same penalty to the worker that is assessed against a private workers' compensation insurance company or employer for unreasonable delay. I agree with the majority of the Court of Appeal in this case that the goal of our workers' compensation system to provide prompt support for injured workers, our duty to interpret this statutory scheme liberally with a view to promoting the goal of compensation, and the legislative history of the particular statute at issue support this outcome.

We have observed that the underlying policy of the workers' compensation statutes " 'as well as the recurrent theme of countless appellate decisions on the matter has been one of a pervasive and abiding solicitude for the work [er].' " (*Webb v. Workers' Comp. Appeals Bd.* (1980) 28 Cal.3d 621, 626 [170 Cal.Rptr. 32, 620 P.2d 618], quoting *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 233 [110 Cal.Rptr. 144, 514 P.2d 1224].)

Our state's body of workers' compensation laws provides for relief from industrial injury and financial support in order to encourage the worker's ultimate return to the work force. (*Moyer v. Workmen's Comp. Appeals Bd., supra,* 10 Cal.3d at p. 233.)

The prompt payment of statutory benefits-here, vocational rehabilitation benefits-is crucial to the operation of the statutory compensation plan and its central purpose of prompt treatment of industrial injury and encouraging workers' early return to productive labor. Therefore, since 1945 Labor Code section 5814 [FN1] has provided for a penalty for unreasonable delay in payment. [FN2]

FN1 All statutory references are to the Labor Code unless otherwise indicated.

FN2 Section 5814 provides: "When payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the full amount of the order, decision or award shall be increased by 10 percent. The question of delay and the reasonableness of the cause therefor shall be determined by the appeals board in accordance with the facts. Such delay or refusal shall constitute good cause under Section 5803 to rescind, alter or amend the order, decision or award for the purpose of making the increase provided for herein."

"Section 5814 is the goad for securing timely payment of compensation of injured working men and women without delay. [Citation.] One of its ***401** principal purposes is to encourage employers or their workers' compensation insurance carriers to make payments of compensation in a reasonable and *timely* fashion to *speed* the recovery and return to work of injured employees as *rapidly* as possible. [Citation.] An equally important purpose of section 5814 is to encourage *timely* payments of compensation to injured working people to *promptly* ameliorate economic hardship because of the interruption of their employment and concomitant loss of income." (*Consani v. Workers' Comp. Appeals Bd.* (1991) 227 Cal.App.3d 12, 23 [277 Cal.Rptr. 619], italics added.)

The statutory scheme of workers' compensation is to be "liberally construed by the courts with the purpose of extending ... benefits for the protection of persons injured in the course of their employment." (§ 3202.) We have frequently applied the rule of liberal construction to all aspects of workers' compensation law. (*Webb v. Workers' Comp. Appeals Bd., supra,* 28 Cal.3d at p. 626, and cases cited.)

The case law establishes that as to section 5814, providing for penalties for delay in payment of benefits, the rule of liberal construction in favor of the employee is particularly necessary. (*Kerley v. Workmen's Comp. App. Bd.* (1971) 4 Cal.3d 223, 227 [93 Cal.Rptr. 192, 481 P.2d 200]; *Klee v. Workers' Comp. Appeals Bd.* (1989) 211 Cal.App.3d 1519, 1524 [260 Cal.Rptr. 217]; *Pascoe v. Workmen's Comp. Appeals*

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Bd. (1975) 46 Cal.App.3d 146, 157 [120 Cal.Rptr. 199]; see also *Gallamore v. Workers' Comp. Appeals Bd.* (1979) 23 Cal.3d 815, 823, 826 [153 Cal.Rptr. 590, 591 P.2d 1242].)

The majority express the view that the Uninsured Employers Fund (Fund) should be exempt from section 5814. Section 5814 provides for no exemption; the rule of liberal construction in favor of the worker does not permit us to read such an exemption into the statute.

The majority claim that section 3716.2 provides the exemption that is missing from section 5814. The statutory history of the provision persuades me otherwise, as does our duty to interpret any ambiguity in favor of the injured worker.

Until 1971, injured workers of employers who had failed to procure workers' compensation insurance had difficulty obtaining prompt payment of benefits. For this reason the Legislature created the Fund, and obliged the Workers' Compensation Appeals Board (Board) to make awards for such employees, and, if payment was not forthcoming, order the payment of the award to the injured employee out of the Fund of the state treasury. (§§ 3715, 3716.) Soon thereafter we held that the Fund is liable not only for ***402** the underlying compensation award, but also for penalties *imposed on employers* under sections 4554 and 4555. (*Flores v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 171, 176- 178 [113 Cal. Rptr 217, 520 P.2d 1033].)

As the majority concede, the Legislature responded to our decision in *Flores v. Workmen's Comp. Appeals Bd., supra,* 11 Cal.3d 171, in 1976 by adding section 3716.2, which, when enacted, provided in pertinent part that "[n]otwithstanding the precise elements of an award of compensation benefits ... the ... Fund [ ] shall pay the claimant only such benefits allowed ... that would have accrued against an employer properly insured for workers' compensation liability." (Stats. 1976, ch. 1036, § 7, p. 4642.)

Unlike the majority, who view this language as clearly establishing that the Fund was liable only for benefits and not for penalties arising from the employer's failure to pay compensation (maj. opn., *ante,* p. 391), my view is that this enactment left the Legislature's precise intent vague. In fact, unless the reader of the statute knew of the *Flores* decision, the statute on its face relates only to benefits, and says nothing at all about the subject of penalties. Accordingly, it was necessary for the Legislature in 1981 to add the provision that the Fund "shall not be liable for any penalties or for the payment of interest on any awards." (Stats. 1981, ch. 894, § 4, pp. 3409-3410.) But this language must be read in the context of the statute as a whole, which is aimed at limiting the vicarious liability of the Fund for the *misconduct of the employer.* It says nothing at all about the *liability of the Fund for its own misconduct,* that is, unreasonable delay. After all, the misconduct of the Fund had certainly not been an issue in *Flores,* which was the apparent impetus for the enactment of section 3716.2. Thus it is anomalous to seek a rule as to the Fund's liability for penalties in that section.

The majority point to no committee report, letter from a proponent or other direct evidence that the Legislature was concerned with exempting the Fund from penalties for its own misconduct when it enacted section 3716.2. The majority point to circumstantial evidence, as in the right of the employee of an uninsured employer to maintain a civil action as well as a claim for workers' compensation benefits (§§ 3706, 3715), and in the lack of a deadline for the Fund's payment of benefits. The latter is easily disposed of the penalty is imposed for "unreasonable delay," and not for failing to meet the statutory deadline. (§ 5814.) Thus the exact deadline for payment of benefits is not determinative in the imposition of a penalty, whether the delay is attributable to the Fund or to an employer. As for the availability of a civil action, again I see no way in which this reflects any legislative intent with respect to penalties to be imposed upon the Fund for misconduct in cases in which the employee has chosen to maintain a claim for workers' compensation benefits. ***403**

The majority argue that the penalty provision of section 5814 should not apply to the Fund as, unlike a private insurance fund, it has no incentive for delay, and is often slow simply in response to its perpetual shortage of money. The argument is a smokescreen; it has no applicability whatever to the facts of this case. There is no evidence that lack of money was the cause for the delay in the instant case, and, in fact, the Fund offered no explanation or justification for its delay at the hearing before the Board, and ultimately conceded that its delay had been unreasonable. As I demonstrate

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in detail below, the Fund simply acted with gross incompetence in handling the applicant's claim. In any event, in a case in which the issue of budget shortfall was actually presented, I would find that to the extent that delay is attributable to lack of funds it is not "unreasonable" in the terms of the statute, and should not be penalized. The majority's citation to authority limiting excused delay to medical or legal doubt of entitlement to benefits is inapposite; these cases did not consider the question of the Fund's liability for its own institutional misconduct. (See, e.g., *Kerley v. Workmen's Comp. App. Bd., supra,* 4 Cal.3d at p. 230.)

The profit motive may not cause the Fund to delay, but it is clear from the record in this case that some other improper cause of delay is at work and needs to be addressed. There is disturbing evidence in this record that the Fund is operating with chronic, inexcusable delays and is so slow and unresponsive that it has caused workers' compensation attorneys to refuse to take cases in which the Fund will be involved. That there is chaos in the administration of the Fund is demonstrated by the evidence of the representative of the Fund at the hearing on this matter long after the award was stipulated that he still could not say whether the Fund had made any payments to the applicant or not! In fact, counsel for the Fund conceded at oral argument that the Fund did not ultimately determine what it had done with respect to payment for more than a year after the stipulated award.

The Board, the body that originally assessed the penalty against the Fund, evidently found the following chronology of incompetence as striking as I do: "On 12/14/89, a hearing was held .... The Applicant, his attorney, and a representative for the Uninsured Employers Fund signed and submitted Stipulations With Request for Award .... [¶] The Stipulations With Request for Award were reviewed and approved by Workers' Compensation Judge James M. Bass on 12/14/89. Copies of the Award ... [were] served by hand on ... the representative of the Uninsured Employers Fund at the hearing. [¶] On 1/2/90 and 1/24/90, Applicant's Counsel wrote to the Uninsured Employers Fund requesting compliance with the Award .... On 2/15/90, the Applicant filed a ... Petition for Penalty alleging that the Uninsured Employers Fund had not made payment in accordance with the ***404** Award. ... There was no objection or other response filed by the Uninsured Employers Fund. [¶] On 5/24/90, a hearing was held ... [before the Board]. The Applicant made an offer of proof that he had received no payments from the Uninsured Employers Fund .... The representative of the Uninsured Employers Fund noted for the record that he could not say one way or the other whether the Uninsured Employers Fund had made any payments. The parties were allowed 15 days to submit written arguments regarding the penalty issue. [¶] On 5/31/90, the Applicant submitted his written argument regarding the penalty issue. On 6/6/90, the Uninsured Employers Fund filed a motion requesting that submission of this matter be delayed so it could investigate what payments might have been made to the Applicant. [¶] The motion filed by the Uninsured Employers Fund requesting additional time to investigate what payments it might have made to the Applicant is improper and untimely. More than 5 months elapsed between the time of the Award and the penalty hearing. More than 4 months elapsed between the Applicant's first demand for payment for Award and the penalty hearing. More than 3 months elapsed between the filing of the Applicant's DOR/Petition for Penalty and the penalty hearing. There is no indication in the record, and there was no representation made by the representative of the Uninsured Employers Fund at the trial hearing, that the Uninsured Employers Fund had taken any steps to make payment to the Applicant or to investigate what payments ... might have been made."

My only hesitation about urging that a penalty should be assessed against the Fund is that the 10 percent penalty for delay may have little effect on such a torpid agency. Certainly the majority opinion will not be helpful. Hercules's method at the Augean stables may be more to the point.

For the foregoing reasons, I would hold that the mandate of section 5814 relating to benefits to the injured worker must apply to aid employees whose payments should come promptly, subject only to the reasonableness of the efforts of the Fund. I would affirm the decision of the Court of Appeal. ***405**

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(Cite as: 596 F.2d 809)

H

United States Court of Appeals,
Eighth Circuit.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Appellee,
v.
CONTOUR CHAIR LOUNGE COMPANY, INC., Appellant.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Appellant,
v.
CONTOUR CHAIR LOUNGE COMPANY, INC., Appellee.
Nos. 78-1843, 78-1869.

Submitted April 19, 1979.
Decided April 24, 1979.
Rehearing and Rehearing En Banc Denied May 15, 1979.

Equal Employment Opportunity Commission sought specific performance of conciliation agreement containing a quota provision. The United States District Court for the Eastern District of Missouri, John F. Nangle, J., 457 F.Supp. 393, awarded specific performance, and both sides appealed. The Court of Appeals, Henley, Circuit Judge, held that: (1) affirmative action programs involving employment quota systems favorable to minority groups are not per se unconstitutional but, rather, are valid at least where actual racial discrimination in employment is shown; (2) conciliation agreement would be specifically enforced where it was entered into after a complaint of discrimination was made and Commission investigation established reasonable cause to believe that plaintiff had been subjected to racial discrimination and had found that, to some extent, blacks as a class had been discriminated against; (3) in view of employer's failure to comply life of agreement could be extended, and (4) district court was not justified in rejecting claim with respect to one individual merely because he had not filed a charge with the Commission.

Affirmed in part; reversed in part and remanded with directions.

West Headnotes

[1] Civil Rights 78 ⚿1506

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1506 k. Charges and Investigations. Most Cited Cases
(Formerly 78k343, 78k34)

Civil Rights 78 ⚿1510

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1510 k. Judicial Review and Enforcement of Administrative Decisions. Most Cited Cases
(Formerly 78k347, 78k36)
Although Equal Employment Opportunity Commission has investigatory powers, it cannot make binding adjudications or issue cease and desist orders and, furthermore, if its underlying findings are challenged in later litigation they are not entitled to the benefit of the "substantial evidence" or "clearly erroneous" rules. Civil Rights Act of 1964, §§ 701 et seq., 703(a), 706 as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a), 2000e-5.

[2] Civil Rights 78 ⚿1522

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1521 Persons Protected and Entitled to Sue
78k1522 k. In General. Most Cited Cases
(Formerly 78k366.1, 78k366, 78k38)
Ordinarily, an individual discriminatee cannot file an employment discrimination suit against an employer until after a finding by Equal Employment Opportunity Commission that there is reasonable cause to believe that the employee has been a victim of discrimination. Civil Rights Act of 1964, §§ 701 et seq.,

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703(a) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a).

[3] Federal Civil Procedure 170A 184.25

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)3 Particular Classes Represented
170Ak184 Employees
170Ak184.25 k. Prior Administrative Proceeding, Use or Availability; Limitations. Most Cited Cases
(Formerly 170Ak184)
Where private Title VII employment discrimination suit is given class status, members of the class may come into the case or benefit from the relief granted to the class even though they have not personally filed discrimination charges with Equal Employment Opportunity Commission; it makes no difference that the individual plaintiff who started the action loses interest in the case or turns out not to be entitled to any relief. Civil Rights Act of 1964, §§ 701 et seq., 703(a), 706(g) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a), 2000e-5(g); Fed.Rules Civ.Proc. rule 23, 28 U.S.C.A.

[4] Civil Rights 78 1560

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1560 k. In General. Most Cited Cases
(Formerly 78k391.1, 78k391, 78k46(2), 78k46)
In framing its decree in a Title VII employment discrimination suit the district court may take into consideration the terms of the conciliation agreement that has been worked out between an employer and the Equal Employment Opportunity Commission; however, the court is not bound by those terms and they are not binding on individual discriminatees who have not acceded to them. Civil Rights Act of 1964, § 703(a) as amended 42 U.S.C.A. § 2000e-2(a).

[5] Civil Rights 78 1238

78 Civil Rights
78II Employment Practices
78k1236 Affirmative Action; Remedial Measures
78k1238 k. Race, Color, Ethnicity, or National Origin. Most Cited Cases
(Formerly 78k154, 78k9.10)
Affirmative action programs involving employment quotas favorable to members of minority groups are not per se unconstitutional or illegal regardless of the facts; such programs are valid at least where actual racial discrimination in employment situations has been shown. Civil Rights Act of 1964, § 706(g) as amended 42 U.S.C.A. § 2000e-5(g).

[6] Federal Civil Procedure 170A 337

170A Federal Civil Procedure
170AII Parties
170AII(H) Intervention
170AII(H)2 Particular Intervenors
170Ak337 k. Employers, Employees and Labor Unions. Most Cited Cases
Where Equal Employment Opportunity Commission files an employment discrimination suit before a suit has been filed by an employee, affected employees may intervene as a matter of right; on the other hand, if one or more employees sue before the Commission commences any action, the agency is required to seek permissive intervention, at least where the relief sought by the agency is no broader than that sought by the individual plaintiff or plaintiffs. Civil Rights Act of 1964, § 703(a) as amended 42 U.S.C.A. § 2000e-2(a); Fed.Rules Civ.Proc. rule 24(a, b), 28 U.S.C.A.

[7] Civil Rights 78 1510

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1510 k. Judicial Review and Enforcement of Administrative Decisions. Most Cited Cases
(Formerly 78k347, 78k36)
Conciliation agreement, including quota system clause, entered into between employer and Equal Employment Opportunity Commission would be specifically enforced where agreement was entered into after a complaint of discrimination was made, Commission investigation established reasonable cause to believe that complainant had been subjected to racial discrimination and had found that, to some

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extent, blacks as a class had been discriminated against and furthermore, in view of employer's failure to comply with the agreement, its life could be extended appropriately. Civil Rights Act of 1964, § 706(g) as amended 42 U.S.C.A. § 2000e-5(g).

[8] Civil Rights 78 1510

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1510 k. Judicial Review and Enforcement of Administrative Decisions. Most Cited Cases
(Formerly 78k347, 78k36)

Fact that one alleged discriminatee never filed a complaint with Equal Employment Opportunity Commission did not warrant district court's rejecting Equal Employment Opportunity Commission's claim with respect to such individual on that basis, in Commission's suit seeking specific performance of conciliation agreement; however, Commission was not automatically entitled to relief as to such individual or as to any particular relief with respect to him but, rather, a finding was required as to whether failure or refusal to employ such individual was racially discriminatory. Civil Rights Act of 1964, §§ 703(a), 706(g) as amended 42 U.S.C.A. §§ 2000e-2(a), 2000e-5(g).

***811** William Sitzer of Dubail, Judge, Kilker & Maier, St. Louis, Mo., for appellant Contour Chair Lounge Co., Inc.

Leopoldo Fraga, Jr. of Equal Employment Opportunity Commission, Appellate Div., Washington, D. C., for appellee EEOC; Issie L. Jenkins, Acting Gen. Counsel, Joseph T. Eddins, Jr., Associate Gen. Counsel, Beatrice Rosenberg, Asst. Gen. Counsel, Washington, D. C., on brief.

Before ROSS, STEPHENSON and HENLEY, Circuit Judges.

HENLEY, Circuit Judge.

This case involves alleged racial discrimination in employment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. s 2000e Et seq. The case comes to us from the United States District Court for the Eastern District of Missouri, The Honorable John F. Nangle, District Judge.

The plaintiff, Equal Employment Opportunity Commission, an agency of the United States, sought specific performance of an over-all conciliation agreement entered into between it and the defendant, Contour Chair Lounge Company, Inc., and also sought specific relief for an individual black man, George Martin. The defendant denied that the Commission was entitled to any of the relief sought by it and filed a counterclaim seeking an adjudication that the conciliation agreement was unenforceable as involving "reverse discrimination." Cf. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978), and Weber v. Kaiser Aluminum & Chemical Corp., 563 F.2d 216 (5th Cir. 1977),[FN1] Cert. granted, -- U.S. --, 99 S.Ct. 720, 58 L.Ed.2d 704 (1978).

FN1. Affirming Weber v. Kaiser Aluminum & Chemical Co., 415 F.Supp. 761 (E.D.La.1976).

The district court held that the Commission was in general entitled to specific performance of the agreement, but not to any relief with respect to Martin. EEOC v. Contour Chair Lounge Co., 457 F.Supp. 393 (E.D.Mo.1978). The judgment provided, Inter alia, that the life of the agreement which had expired by then be extended to September 28, 1980, a date two years from the date of the decree. Neither side was satisfied with the action taken by the district court, and both sides have appealed. Most of the facts of the case are substantially undisputed.

The Commission is the federal agency charged with enforcement of the antidiscrimination provisions of the Act, and it often proceeds on the basis of complaints filed by individuals who claim to have been the victims of prohibited discrimination on the basis of race, religion, sex or national origin. 42 U.S.C. s 2000e-2(a). The defendant is an employer covered by the Act and is engaged in the manufacture of upholstered furniture, including chairs, at its place of business in the Eastern District of Missouri. During the period with which we are concerned the defendant employed individuals in various crafts and departments, and some of the craft employees were represented for collective bargaining purposes by the Upholsterers Union, Local 25.[FN2]

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> FN2. The collective bargaining agreement contained certain provisions relative to seniority rights of employees. The district court ruled that in the event of conflicts between those provisions and the provisions of the conciliation agreement between the Commission and the defendant, the provisions of the bargaining agreement would control. That particular portion of the decision is not challenged here.

In 1972 Lonnie Anderson, a black male, was employed by the defendant. In December of that year and thereafter Anderson*812 filed discrimination complaints against the defendant, and those complaints were investigated by the Commission. While those charges were pending, the defendant discharged Anderson. On January 24, 1974 the Commission made a formal determination that there was reasonable cause to believe that Anderson had been the victim of racial discrimination. The defendant was duly notified of that determination by a formal "determination letter," a copy of which is in the record before us.

Thereafter, the defendant and the Commission entered into a formal conciliation agreement that expired by its own terms in August, 1977. That agreement was designed not only to benefit Anderson as an individual but also to benefit blacks as a class, the members of which had been or might be the victims of discrimination at the hands of the defendant. It seems that the agreement was complied with as it affected Anderson, and this case presents no issue as to him personally. The basic controversy between the parties is about an employment "quota provision" appearing in the contract.

The agreement provided that during its life the defendant would "use its best efforts to increase its Black utilization rate by hiring one Black for each of its new White employees for the period of this agreement." The agreement also required the defendant to use its best efforts to increase black employment in job classifications in which blacks had not been assigned or in which classifications they were statistically underrepresented, and specifically to hire "a black person" in the sewing and office departments.

Finally, the defendant was required to make semiannual reports to the Commission setting out information as to hirings and discharges and indicating names, races, sex, job classifications and rates of pay of persons hired or discharged.

In entering into the agreement the parties stipulated that in signing the contract the defendant did not admit that it had been or was guilty of prohibited discrimination.

During most of the life of the agreement the defendant consistently failed and refused to comply fully with the reporting requirements of the agreement. After the suit was filed in July, 1977, and shortly before the expiration of the agreement the defendant did file a report that indicated that during the life of the agreement the defendant had employed eleven white persons and only one black.

An individual alleged discriminatee, Martin, has worked as an upholsterer in the St. Louis area since 1971 and has been a member of the Upholsterers Union in St. Louis since 1975. In May, 1977 he applied to the defendant for employment as an upholsterer and was denied employment, being advised in that connection that there were no openings. Presumably, he was qualified for the employment that he sought. "Shortly thereafter," to use the district court's term, the defendant hired two white persons, one as an upholsterer, the other as a "cutter." [FN3]

> FN3. We are not aware of the difference between the qualifications of an "upholsterer," the job sought by Martin, and those of a "cutter." Consequently, we do not know whether Martin was qualified as a "cutter."

The facts, substantially as above stated, were found by the district court to exist, and that court granted and denied relief to the parties to the extent indicated. We observe, however, that the district judge did not make any specific finding that the defendant had been guilty of discrimination during or prior to the execution of the conciliation agreement. Nor did the trial judge make any finding as to whether the refusal of the defendant to employ Martin was racially discriminatory.[FN4]

> FN4. The fact that during the life of the agreement the defendant hired only one black as opposed to eleven whites is suggestive but it does not, standing alone, establish that the disparity in hirings during the life of the

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agreement was discriminatory or that the defendant had practiced discrimination against blacks as a class prior to its entry into the agreement. And the fact that the defendant did not hire Martin but did hire one white upholsterer "shortly" after Martin was turned down does not in itself establish that Martin was denied employment because of his race rather than on some other ground.

***813** I.

The enforcement provisions of Title VII are to be found in the various subdivisions of s 706 of the Act, which is codified as 42 U.S.C. s 2000e-5. Initial enforcement responsibility is on the Commission and ultimate responsibility is on the federal courts within the framework of litigation initiated either by one or more aggrieved employees or by the Commission.

Basically, the statutory scheme involves investigations by the Commission, efforts at conciliation in instances in which the Commission finds that reasonable cause exists for the belief that employment discrimination has existed, and finally by litigation in the federal courts should conciliation fail.

[1][2] The agency has certain powers, including investigatory powers. And ordinarily an individual discriminatee cannot file a suit against an employer until after an agency finding that there is reasonable cause to believe that the employee has been a victim of discrimination. However, the agency has not been given the powers that Congress has bestowed on older regulatory agencies such as the National Labor Relations Board for example. The Commission cannot make binding adjudications or issue cease and desist orders, and if its underlying findings are challenged in later litigation they are not entitled to the benefit of the "substantial evidence" or "clearly erroneous" rule.

If with respect to a given employee litigation in the district court develops, and if the employer loses the case, the court has broad powers to fashion appropriate relief both to prevent continued discrimination in the future and also to remedy the results of discrimination that has occurred in the past. In that connection s 706(g) provides that in proper cases a district court may require "affirmative action" to remedy past discrimination, and that the affirmative action may require hiring or reinstatement of individuals with or without back pay or "any other equitable relief as the court deems appropriate."

[3] A private suit until Title VII may be maintained as a class action under Fed.R.Civ.P. 23, and where class action is approved by the district court, members of the class may come into the case or benefit from the relief granted to members of the class even though they have not personally filed discrimination charges with the Commission. It makes no difference that the individual plaintiff who started the action loses interest in the case or turns out not to be entitled to any relief. Franks v. Bowman Transp. Co., 424 U.S. 747, 770-79, 96 S.Ct. 1251, 47 L.Ed.2d 444 (1976); Albermarle Paper Co. v. Moody, 422 U.S. 405, 414, n. 8, 95 S.Ct. 2362, 45 L.Ed.2d 280 (1975); Reed v. Arlington Hotel Co., 476 F.2d 721 (8th Cir.), Cert. denied, 414 U.S. 854, 94 S.Ct. 153, 38 L.Ed.2d 103 (1973); Parham v. Southwestern Bell Tel. Co., 433 F.2d 421 (8th Cir. 1970).

[4] In framing its decree the district court may take into consideration the terms of a conciliation agreement that has been worked out between an employer and the Commission. But the court is not bound by those terms and they are not binding on individual discriminatees who had not acceded to them. Reed v. Arlington Hotel Co., supra, 476 F.2d at 724-26.

II.

The power of the district courts to order "affirmative action" in Title VII suits was broadened substantially when Congress adopted the Equal Employment Opportunity Act of 1972, Act of March 24, 1972, P.L. 92-261, 86 Stat. 103. And at least since the passage of that Act affirmative action programs mandated by the district courts have at times required that preferential treatment be accorded to members of minority groups in the area of employment. Such programs, which may and often do involve "quota systems" favorable to minorities, have not only been ordered by the courts but in instances have been agreed upon voluntarily and in fields other than employment, notably in institutions of higher ***814** learning. An exhaustive discussion of the subject appears in Weber v. Kaiser Aluminum & Chemical Corp., supra, 563 F.2d 216.

This court has consistently upheld such programs since at least 1972, and its decisions include the following: Firefighters Inst. for Racial Equality v. City of

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St. Louis, 588 F.2d 235 (8th Cir. 1978); United States v. N. L. Indus., Inc., 479 F.2d 354 (8th Cir. 1979); Carter v. Gallagher, 452 F.2d 315 (8th Cir.), Cert. denied, 406 U.S. 950, 92 S.Ct. 2045, 32 L.Ed.2d 338 (1972). See also Germann v. Kipp, 429 F.Supp. 1323 (W.D.Mo.1977), Vacated and remanded for dismissal as moot, 572 F.2d 1258 (8th Cir. 1978), a case involving firefighters employed in Kansas City, Missouri.

Naturally, affirmative action programs calling for racial or other minority favoring quota systems have been attacked by members of majority groups claiming that the programs amount to "reverse" racial discrimination prohibited by the fourteenth amendment or by Title VII of the Act, or by both the amendment and Title VII.

At the moment the present status of these quota system programs is doubtful to say the least. In Bakke, supra, a sharply divided Supreme Court held that the quota system for admission to the medical school of the University of California was unconstitutional. And the holding of the Fifth Circuit in Weber, supra, is now pending before the Supreme Court in certiorari. In that case the district court and the Court of Appeals for the Fifth Circuit struck down a purely voluntary "quota" program established by private contract between an employer and the labor union that was the representative of employees working at one of the employer's plants in Louisiana. The agreement was held invalid as being violative of s 703(a) of the Act, 42 U.S.C. s 2000e-2(a), since there was no history of prior or existing racial discrimination at the plant of the employer affected by the contract.

The Bakke case, Supra, did not involve private employment; it did involve fourteenth amendment considerations that are not present in this case. Hence, that decision is not too helpful here. And the fate of Weber in the Supreme Court is obviously uncertain.

[5] In these circumstances and in view of what has been our consistent line of decision in this area, we decline to hold that affirmative action programs involving employment quotas favorable to members of minority groups are per se unconstitutional or illegal regardless of the facts of particular cases. We adhere to this court's established view that such programs are valid at least where actual racial discrimination in employment situations has been shown.

We turn now to the specific problems presented in this case.

III.

Of primary importance is the holding of the district court that the Commission was entitled to specific enforcement of the general terms of the conciliation agreement, with the life of that agreement being extended for two years from date of the judgment of the district court.

We have already set out adequately what the district court found and what it did not find. It is now necessary to look back at what the Commission found prior to the execution of the conciliation agreement.

It should be remembered that the Commission's investigation was geared originally to the individual claims of Lonnie Anderson. Those claims were that he, like other blacks, had been subjected to more severe discipline by the employer than white employees guilty of the same offenses; that he had been harassed by the defendant on account of his complaints to the Commission; and that he had ultimately been discharged on account of those activities and on account of his race.

The Commission found that there was reasonable cause to believe that Anderson had been subjected to racial discrimination. But, the Commission went somewhat beyond the individual complaints of Anderson.

The Commission found from evidence that it had considered that black employees ***815** of the defendant were subjected to more severe discipline than whites and as a class were reprimanded more frequently for real or supposed misconduct, and that blacks had been systematically and totally excluded from clerical positions.

Having made those findings, the Commission approached the defendant with conciliation in view, and the agreement in suit was the result of the negotiations between the parties.

As we understand it, the Commission did not undertake in the course of the proceedings in the district

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court to prove as an initial proposition that the defendant had been guilty of such discrimination as would have justified the district court in ordering an affirmative action program essentially like the one set out in the agreement. It appears to us that the Commission simply stood on the contract into which the defendant had entered voluntarily, claimed that the defendant had breached the contract, and that specific performance of it over a necessarily extended period should be ordered.

The defendant apparently does not question the proposition that if the district court had actually found that the defendant had been guilty of racial discrimination prior to the execution of the conciliation agreement or even during its life, the court would have had the power to enforce the agreement specifically. The defendant earnestly contends, however, that there was no such finding, and that in view of that fact the conciliation agreement was not enforceable, and, indeed, was forbidden by the Act itself.

In rejecting that contention the district judge said (457 F.Supp. at 394-95):

It is the Court's conclusion that the conciliation agreement and addendum thereto are enforceable. In Weber v. Kaiser Aluminum & Chemical Corp., 563 F.2d 216 (5th Cir. 1977), the court held that 'Title VII outlaws preferences for any group, minority or majority, if based on race or other impermissible classifications, but it does not outlaw preferences favoring victims of discrimination'. Id. at 224. Accordingly, the court held that an affirmative action program contained in a collective bargaining agreement was unlawful where there was no evidence of prior discrimination. Defendant argues herein that since it has never admitted to any discriminatory practice, the conciliation agreement and addendum are unenforceable under the holding of Weber, supra. This Court disagrees. The Weber court specifically noted that:

In United States v. Allegheny-Ludlum Industries, Inc., supra, (517 F.2d 826 (5th Cir. 1975)) which dealt with consent decrees eliminating patterns and practices of discrimination in the steel industry, this court emphasized that voluntary compliance in eliminating unfair employment practices is preferable to court action and that private settlement without litigation is the central theme of Title VII. Id. at 223.

Here, the conciliation agreement was the result of a discrimination charge filed against defendant. It was entered into by defendant and the governmental agency charged with the responsibility of administering Title VII of the Civil Rights Act of 1964, as amended. Were defendant's argument to be adopted herein, it would mean that the conciliatory powers granted to the EEOC by Congress, See 42 U.S.C. s 2000e-5, would be meaningless since only the courts could order affirmative action. Thus, the Court concludes that the EEOC has the authority to enter into such conciliation agreements and that such agreements are enforceable herein. The Court further concludes that an extension of the reporting period is warranted herein to ensure defendant's compliance with the conciliation agreement.

The question raised by the defendant is certainly a valid one and the answer to it is not free from doubt, particularly in view of the present unsettled state of the law. We do not necessarily quarrel with the result that the Fifth Circuit reached in the Weber case. But this case is not Weber. It does not involve an agreement entered into between an employer and a labor union, or ***816** even a tripartite agreement including the Commission, with respect to an employment situation which definitely has not been characterized by racial discrimination.

[6][7] In this case the agreement was entered into after (1) a complaint of discrimination was made to the Commission by an employee; (2) an investigation by the Commission had established reasonable cause to believe that the complaining party had been subjected to racial discrimination; (3) underlying findings that to some extent blacks as a class had been discriminated against by the defendant; and (4) later negotiations between the Commission and the defendant that resulted in the conciliation agreement in suit.

It should be kept in mind that had the defendant refused to enter into a conciliation agreement with the Commission, the agency might have issued a "right to sue" letter to Anderson and he could have filed an individual or class action against the defendant in the district court. Or, the Commission might have filed its own suit.[FN5] In either event, the district court would have been empowered, had it found in favor of the plaintiff or plaintiffs, to order affirmative action on the part of the defendant including essentially the same terms as those contained in the conciliation agreement

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that the district court in fact ordered to be specifically enforced.

> FN5. While the problem is not involved in this particular case, we note in passing that had the Commission filed a suit as generally authorized by the statute before a suit had been filed by any employee, affected employees might have intervened in the suit as a matter of right under Fed.R.Civ.P. 24(a). On the other hand, had one or more employees sued before the Commission commenced any action, the agency would have been required to seek permissive intervention under Rule 24(b), at least where the relief sought by the agency was no broader than that sought by the individual plaintiff or plaintiffs. McClain v. Wagner Elec. Corp., 550 F.2d 1115 (8th Cir. 1977); E.E.O.C. v. Mo. Pac. R. Co., 493 F.2d 71 (8th Cir. 1974). In other words, the view of this circuit is that in general duplicative litigation of the same claim or claims is not permitted under Title VII.

In such circumstances we think that the agreement here involved can be enforced specifically at the suit of the Commission and in that connection that the life of the agreement can be extended appropriately.

We now so hold and affirm the judgment of the district court on this phase of the case.

IV.

[8] As previously observed, the district court made no finding as to whether George Martin was refused employment because of his race. The Commission was denied relief with respect to Martin solely because Martin had never filed a charge of discrimination with the Commission.

In view of the nature of this litigation, we do not think that the district court was justified in rejecting the Commission's claim with respect to Martin on the basis just stated. Cf. Franks v. Bowman Transp. Co., supra, 424 U.S. at 747, 96 S.Ct. 1251, and other cases cited in Section I of this opinion.

Accordingly, on this phase of the case the judgment of the district court will be reversed. It does not follow, however, that the Commission is automatically entitled to relief as to Martin or as to any particular relief with respect to him.

The Martin aspect of the case must be remanded to the district court for further consideration and for a specific finding as to whether the failure or refusal of the defendant to give employment to Martin when he applied for it in late May, 1977, was racially discriminatory. The remand may well involve a supplementing of the record and perhaps an evidentiary hearing. We leave to the discretion of the district court the determination of the nature, timing and scope of such further proceedings as may be necessary in connection with the remand.

Affirmed in part; reversed in part and remanded for further proceedings consistent with this opinion. Costs will go against the defendant.

C.A.Mo., 1979.
Equal Employment Opportunity Commission v. Contour Chair Lounge Co., Inc.
596 F.2d 809, 19 Fair Empl.Prac.Cas. (BNA) 818, 19 Empl. Prac. Dec. P 9189

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Estate of DENIS H. GRISWOLD, Deceased.
NORMA B. DONER-GRISWOLD, Petitioner and Respondent,
v.
FRANCIS V. SEE, Objector and Appellant.
No. S087881.

Supreme Court of California
June 21, 2001.

SUMMARY

After an individual died intestate, his wife, as administrator of the estate, filed a petition for final distribution. Based on a 1941 judgment in a bastardy proceeding in Ohio, in which the decedent's biological father had confessed paternity, an heir finder who had obtained an assignment of partial interest in the estate from the decedent's half siblings filed objections. The biological father had died before the decedent, leaving two children from his subsequent marriage. The father had never told his subsequent children about the decedent, but he had paid court-ordered child support for the decedent until he was 18 years old. The probate court denied the heir finder's petition to determine entitlement, finding that he had not demonstrated that the father was the decedent's natural parent pursuant to Prob. Code, § 6453, or that the father had acknowledged the decedent as his child pursuant to Prob. Code, § 6452, which bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent/child relationship unless the parent or relative acknowledged the child and contributed to the support or care of the child. (Superior Court of Santa Barbara County, No. B216236, Thomas Pearce Anderle, Judge.) The Court of Appeal, Second Dist., Div. Six, No. B128933, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that, since the father had acknowledged the decedent as his child and contributed to his support, the decedent's half siblings were not subject to the restrictions of Prob. Code, § 6452. Although no statutory definition of "acknowledge" appears in Prob. Code, § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had confessed paternity in the 1941 bastardy proceeding, he had acknowledged the decedent under the plain terms of the statute. The court also held that the 1941 Ohio judgment established the decedent's biological father as his natural parent for purposes of intestate succession under Prob. Code, § 6453, subd. (b). Since the identical issue was presented both in the Ohio proceeding and in this California proceeding, the Ohio proceeding bound the parties in this proceeding. (Opinion by Baxter, J., with George, C. J., Kennard, Werdegar, and Chin, JJ., concurring. Concurring opinion by Brown, J. (see p. 925).)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Parent and Child § 18--Parentage of Children-- Inheritance Rights--Parent's Acknowledgement of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.

In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent were precluded by Prob. Code, § 6452, from sharing in the intestate estate. Section 6452 bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative acknowledged the child and contributed to that child's support or care. The decedent's biological father had paid court-ordered child support for the decedent until he was 18 years old. Although no statutory definition of "acknowledge" appears in § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had appeared in a 1941 bastardy proceeding in another state, where he confessed paternity, he had acknowledged the decedent under the plain terms of § 6452. Further, even though the father had not had contact with the decedent and had not told his other children about him, the record disclosed no evidence that he disavowed paternity to anyone with knowledge of the circumstances. Neither the language nor the history of § 6452 evinces a clear intent to make inheritance contingent upon the decedent's awareness of the relatives who claim an inheritance right.

[See 12 Witkin, Summary of Cal. Law (9th ed. 1990)

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Wills and Probate, §§ 153, 153A, 153B.]

(2) Statutes § 29--Construction--Language--Legislative Intent.
In statutory construction cases, a court's fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. A court begins by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs. If there is ambiguity, however, the court may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. In such cases, the court selects the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoids an interpretation that would lead to absurd consequences.

(3) Statutes § 46--Construction--Presumptions--Legislative Intent--Judicial Construction of Certain Language.
When legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, a court may presume that the Legislature intended the same construction, unless a contrary intent clearly appears.

(4) Statutes § 20--Construction--Judicial Function.
A court may not, under the guise of interpretation, insert qualifying provisions not included in a statute.

(5a, 5b) Parent and Child § 18--Parentage of Children--Inheritance Rights--Determination of Natural Parent of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.
In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent, who had been born out of wedlock, were precluded by Prob. Code, § 6453 (only "natural parent" or relative can inherit through intestate child), from sharing in the intestate estate. Prob. Code, § 6453, subd. (b), provides that a natural parent and child relationship may be established through Fam. Code, § 7630, subd. (c), if a court order declaring paternity was entered during the father's lifetime. The decedent's father had appeared in a 1941 bastardy proceeding in Ohio, where he confessed paternity. If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. Since the Ohio bastardy proceeding decided the identical issue presented in this California proceeding, the Ohio proceeding bound the parties in this proceeding. Further, even though the decedent's mother initiated the bastardy proceeding prior to adoption of the Uniform Parentage Act, and all procedural requirements of Fam. Code, § 7630, may not have been followed, that judgment was still binding in this proceeding, since the issue adjudicated was identical to the issue that would have been presented in an action brought pursuant to the Uniform Parentage Act.

(6) Judgments § 86--Res Judicata--Collateral Estoppel--Nature of Prior Proceeding--Criminal Conviction on Guilty Plea.
A trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. The issue of the defendant's guilt was not fully litigated in the prior criminal proceeding; rather, the plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his or her guilt. The defendant's due process right to a civil hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources.

(7) Descent and Distribution § 1--Judicial Function.
Succession of estates is purely a matter of statutory regulation, which cannot be changed by the courts.

COUNSEL

Kitchen & Turpin, David C. Turpin; Law Office of Herb Fox and Herb Fox for Objector and Appellant.

Mullen & Henzell and Lawrence T. Sorensen for Petitioner and Respondent.

BAXTER, J.

Section 6452 of the Probate Code (all statutory references are to this code unless otherwise indicated) bars a "natural parent" or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent and child relationship unless the parent or relative "acknowledged the child" and

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"contributed to the support or the care of the child." In this case, we must determine whether section 6452 precludes the half siblings of a child born out of wedlock from sharing in the child's intestate estate where the record is undisputed that their father appeared in an Ohio court, admitted paternity of the child, and paid court-ordered child support until the child was 18 years old. Although the father and the out-of-wedlock child apparently never met or communicated, and the half siblings did not learn of the child's existence until after both the child and the father died, there is no indication that the father ever denied paternity or knowledge of the out-of-wedlock child to persons who were aware of the circumstances.

Since succession to estates is purely a matter of statutory regulation, our resolution of this issue requires that we ascertain the intent of the lawmakers who enacted section 6452. Application of settled principles of statutory ***908** construction compels us to conclude, on this uncontroverted record, that section 6452 does not bar the half siblings from sharing in the decedent's estate.

Factual and Procedural Background

Denis H. Griswold died intestate in 1996, survived by his wife, Norma B. Doner-Griswold. Doner-Griswold petitioned for and received letters of administration and authority to administer Griswold's modest estate, consisting entirely of separate property.

In 1998, Doner-Griswold filed a petition for final distribution, proposing a distribution of estate property, after payment of attorney's fees and costs, to herself as the surviving spouse and sole heir. Francis V. See, a self-described "forensic genealogist" (heir hunter) who had obtained an assignment of partial interest in the Griswold estate from Margaret Loera and Daniel Draves, [FN1] objected to the petition for final distribution and filed a petition to determine entitlement to distribution.

> FN1 California permits heirs to assign their interests in an estate, but such assignments are subject to court scrutiny. (See § 11604.)

See and Doner-Griswold stipulated to the following background facts pertinent to See's entitlement petition.

Griswold was born out of wedlock to Betty Jane Morris on July 12, 1941 in Ashland, Ohio. The birth certificate listed his name as Denis Howard Morris and identified John Edward Draves of New London, Ohio as the father. A week after the birth, Morris filed a "bastardy complaint" [FN2] in the juvenile court in Huron County, Ohio and swore under oath that Draves was the child's father. In September of 1941, Draves appeared in the bastardy proceeding and "confessed in Court that the charge of the plaintiff herein is true." The court adjudged Draves to be the "reputed father" of the child, and ordered Draves to pay medical expenses related to Morris's pregnancy as well as $5 per week for child support and maintenance. Draves complied, and for 18 years paid the court-ordered support to the clerk of the Huron County court.

> FN2 A "bastardy proceeding" is an archaic term for a paternity suit. (Black's Law Dict. (7th ed. 1999) pp. 146, 1148.)

Morris married Fred Griswold in 1942 and moved to California. She began to refer to her son as "Denis Howard Griswold," a name he used for the rest of his life. For many years, Griswold believed Fred Griswold was his father. At some point in time, either after his mother and Fred Griswold ***909** divorced in 1978 or after his mother died in 1983, Griswold learned that Draves was listed as his father on his birth certificate. So far as is known, Griswold made no attempt to contact Draves or other members of the Draves family.

Meanwhile, at some point after Griswold's birth, Draves married in Ohio and had two children, Margaret and Daniel. Neither Draves nor these two children had any communication with Griswold, and the children did not know of Griswold's existence until after Griswold's death in 1996. Draves died in 1993. His last will and testament, dated July 22, 1991, made no mention of Griswold by name or other reference. Huron County probate documents identified Draves's surviving spouse and two children-Margaret and Daniel-as the only heirs.

Based upon the foregoing facts, the probate court denied See's petition to determine entitlement. In the court's view, See had not demonstrated that Draves was Griswold's "natural parent" or that Draves "acknowledged" Griswold as his child as required by

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section 6452.

The Court of Appeal disagreed on both points and reversed the order of the probate court. We granted Doner-Griswold's petition for review.

Discussion

(1a) Denis H. Griswold died without a will, and his estate consists solely of separate property. Consequently, the intestacy rules codified at sections 6401 and 6402 are implicated. Section 6401, subdivision (c) provides that a surviving spouse's share of intestate separate property is one-half "[w]here the decedent leaves no issue but leaves a parent or parents or their issue or the issue of either of them." (§ 6401, subd. (c)(2)(B).) Section 6402, subdivision (c) provides that the portion of the intestate estate not passing to the surviving spouse under section 6401 passes as follows: "If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent ...."

As noted, Griswold's mother (Betty Jane Morris) and father (John Draves) both predeceased him. Morris had no issue other than Griswold and Griswold himself left no issue. Based on these facts, See contends that Doner-Griswold is entitled to one-half of Griswold's estate and that Draves's issue (See's assignors, Margaret and Daniel) are entitled to the other half pursuant to sections 6401 and 6402.

Because Griswold was born out of wedlock, three additional Probate Code provisions-section 6450, section 6452, and section 6453-must be considered. ***910**

As relevant here, section 6450 provides that "a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person" where "[t]he relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents." (*Id.*, subd. (a).)

Notwithstanding section 6450's general recognition of a parent and child relationship in cases of unmarried natural parents, section 6452 restricts the ability of such parents and their relatives to inherit from a child as follows: "If a child is born out of wedlock, neither a *natural parent* nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied: [¶] (a) The parent or a relative of the parent *acknowledged the child.* [¶] (b) The parent or a relative of the parent contributed to the support or the care of the child." (Italics added.)

Section 6453, in turn, articulates the criteria for determining whether a person is a "natural parent" within the meaning of sections 6450 and 6452. A more detailed discussion of section 6453 appears *post*, at part B.

It is undisputed here that section 6452 governs the determination whether Margaret, Daniel, and See (by assignment) are entitled to inherit from Griswold. It is also uncontroverted that Draves contributed court-ordered child support for 18 years, thus satisfying subdivision (b) of section 6452. At issue, however, is whether the record establishes all the remaining requirements of section 6452 as a matter of law. First, did Draves acknowledge Griswold within the meaning of section 6452, subdivision (a)? Second, did the Ohio judgment of reputed paternity establish Draves as the natural parent of Griswold within the contemplation of sections 6452 and 6453? We address these issues in order.

A. *Acknowledgement*

As indicated, section 6452 precludes a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative "acknowledged the child." (*Id.*, subd. (a).) On review, we must determine whether Draves acknowledged Griswold within the contemplation of the statute by confessing to paternity in court, where the record reflects no other acts of acknowledgement, but no disavowals either.

(2) In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 [***911**105 Cal.Rptr.2d 457, 19 P.3d 1196].) "We begin by examining the statutory language, giving the words their usual and ordinary meaning." (*Ibid.*; *People v. Lawrence* (2000) 24 Cal.4th 219, 230 [99 Cal.Rptr.2d

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570, 6 P.3d 228].) If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272; *People v. Lawrence*, *supra*, 24 Cal.4th at pp. 230-231.) If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272.) In such cases, we " ' "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." ' " (*Ibid.*)

(1b) Section 6452 does not define the word "acknowledged." Nor does any other provision of the Probate Code. At the outset, however, we may logically infer that the word refers to conduct other than that described in subdivision (b) of section 6452, i.e., contributing to the child's support or care; otherwise, subdivision (a) of the statute would be surplusage and unnecessary.

Although no statutory definition appears, the common meaning of "acknowledge " is "to admit to be true or as stated; confess." (Webster's New World Dict. (2d ed. 1982) p. 12; see Webster's 3d New Internat. Dict. (1981) p. 17 ["to show by word or act that one has knowledge of and agrees to (a fact or truth) ... [or] concede to be real or true ... [or] admit"].) Were we to ascribe this common meaning to the statutory language, there could be no doubt that section 6452's acknowledgement requirement is met here. As the stipulated record reflects, Griswold's natural mother initiated a bastardy proceeding in the Ohio juvenile court in 1941 in which she alleged that Draves was the child's father. Draves appeared in that proceeding and publicly " confessed" that the allegation was true. There is no evidence indicating that Draves did not confess knowingly and voluntarily, or that he later denied paternity or knowledge of Griswold to those who were aware of the circumstances. [FN3] Although the record establishes that Draves did not speak of Griswold to Margaret and Daniel, there is no evidence suggesting he sought to actively conceal the facts from them or anyone else. Under the plain terms of section 6452, the only sustainable conclusion on this record is that Draves acknowledged Griswold.

FN3 Huron County court documents indicate that at least two people other than Morris, one of whom appears to have been a relative of Draves, had knowledge of the bastardy proceeding.

Although the facts here do not appear to raise any ambiguity or uncertainty as to the statute's application, we shall, in an abundance of caution, ***912** test our conclusion against the general purpose and legislative history of the statute. (See *Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 274; *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 93 [40 Cal.Rptr.2d 839, 893 P.2d 1160].)

The legislative bill proposing enactment of former section 6408.5 of the Probate Code (Stats. 1983, ch. 842, § 55, p. 3084; Stats. 1984, ch. 892, § 42, p. 3001), the first modern statutory forerunner to section 6452, was introduced to effectuate the Tentative Recommendation Relating to Wills and Intestate Succession of the California Law Revision Commission (the Commission). (See 17 Cal. Law Revision Com. Rep. (1984) p. 867, referring to 16 Cal. Law Revision Com. Rep. (1982) p. 2301.) According to the Commission, which had been solicited by the Legislature to study and recommend changes to the then existing Probate Code, the proposed comprehensive legislative package to govern wills, intestate succession, and related matters would "provide rules that are more likely to carry out the intent of the testator or, if a person dies without a will, the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.) The Commission also advised that the purpose of the legislation was to "make probate more efficient and expeditious." (*Ibid.*) From all that appears, the Legislature shared the Commission's views in enacting the legislative bill of which former section 6408.5 was a part. (See 17 Cal. Law Revision Com. Rep., *supra*, at p. 867.)

Typically, disputes regarding parental acknowledgement of a child born out of wedlock involve factual assertions that are made by persons who are likely to have direct financial interests in the child's estate and that relate to events occurring long before the child's death. Questions of credibility must be resolved without the child in court to corroborate or rebut the claims of those purporting to have witnessed the parent's statements or conduct concerning the child. Recognition that an in-court admission of the parent

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and child relationship constitutes powerful evidence of an acknowledgement under section 6452 would tend to reduce litigation over such matters and thereby effectuate the legislative objective to "make probate more efficient and expeditious." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.)

Additionally, construing the acknowledgement requirement to be met in circumstances such as these is neither illogical nor absurd with respect to the intent of an intestate decedent. Put another way, where a parent willingly acknowledged paternity in an action initiated to establish the parent-child relationship and thereafter was never heard to deny such relationship (§ 6452, subd. (a)), and where that parent paid all court-ordered support for that child for 18 years (*id.*, subd. (b)), it cannot be said that the participation ***913** of that parent or his relative in the estate of the deceased child is either (1) so illogical that it cannot represent the intent that one without a will is most likely to have had (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319) or (2) "so absurd as to make it manifest that it could not have been intended" by the Legislature (*Estate of De Cigaran* (1907) 150 Cal. 682, 688 [89 P. 833] [construing Civ. Code, former § 1388 as entitling the illegitimate half sister of an illegitimate decedent to inherit her entire intestate separate property to the exclusion of the decedent's surviving husband]).

There is a dearth of case law pertaining to section 6452 or its predecessor statutes, but what little there is supports the foregoing construction. Notably, *Lozano v. Scalier* (1996) 51 Cal.App.4th 843 [59 Cal.Rptr.2d 346] (*Lozano*), the only prior decision directly addressing section 6452's acknowledgement requirement, declined to read the statute as necessitating more than what its plain terms call for.

In *Lozano*, the issue was whether the trial court erred in allowing the plaintiff, who was the natural father of a 10-month-old child, to pursue a wrongful death action arising out of the child's accidental death. The wrongful death statute provided that where the decedent left no spouse or child, such an action may be brought by the persons "who would be entitled to the property of the decedent by intestate succession." (Code Civ. Proc., § 377.60, subd. (a).) Because the child had been born out of wedlock, the plaintiff had no right to succeed to the estate unless he had both "acknowledged the child " and "contributed to the support or the care of the child" as required by section 6452. *Lozano* upheld the trial court's finding of acknowledgement in light of evidence in the record that the plaintiff had signed as "Father" on a medical form five months before the child's birth and had repeatedly told family members and others that he was the child's father. (*Lozano*, *supra*, 51 Cal.App.4th at pp. 845, 848.)

Significantly, *Lozano* rejected arguments that an acknowledgement under Probate Code section 6452 must be (1) a witnessed writing and (2) made after the child was born so that the child is identified. In doing so, *Lozano* initially noted there were no such requirements on the face of the statute. (*Lozano*, *supra*, 51 Cal.App.4th at p. 848.) *Lozano* next looked to the history of the statute and made two observations in declining to read such terms into the statutory language. First, even though the Legislature had previously required a witnessed writing in cases where an illegitimate child sought to inherit from the father's estate, it repealed such requirement in 1975 in an apparent effort to ease the evidentiary proof of the parent-child relationship. (*Ibid.*) Second, other statutes that required a parent-child relationship expressly contained more formal acknowledgement requirements for the assertion of certain other rights or privileges. (See *id.* at p. 849, citing ***914**Code Civ. Proc., § 376, subd. (c), Health & Saf. Code, § 102750, & Fam. Code, § 7574.) Had the Legislature wanted to impose more stringent requirements for an acknowledgement under section 6452, *Lozano* reasoned, it certainly had precedent for doing so. (*Lozano*, *supra*, 51 Cal.App.4th at p. 849.)

Apart from Probate Code section 6452, the Legislature had previously imposed an acknowledgement requirement in the context of a statute providing that a father could legitimate a child born out of wedlock for all purposes "by publicly acknowledging it as his own." (See Civ. Code, former § 230.) [FN4] Since that statute dealt with an analogous subject and employed a substantially similar phrase, we address the case law construing that legislation below.

> FN4 Former section 230 of the Civil Code provided: "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such

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> child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption." (Enacted 1 Cal. Civ. Code (1872) § 230, p. 68, repealed by Stats. 1975, ch. 1244, § 8, p. 3196.)
>
> In 1975, the Legislature enacted California's Uniform Parentage Act, which abolished the concept of legitimacy and replaced it with the concept of parentage. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 828-829 [4 Cal.Rptr.2d 615, 823 P.2d 1216].)

In *Blythe v. Ayres* (1892) 96 Cal. 532 [31 P. 915], decided over a century ago, this court determined that the word "acknowledge," as it appeared in former section 230 of the Civil Code, had no technical meaning. (*Blythe v. Ayers*, *supra*, 96 Cal. at p. 577.) We therefore employed the word's common meaning, which was " 'to own or admit the knowledge of.' " (*Ibid.* [relying upon Webster's definition]; see also *Estate of Gird* (1910) 157 Cal. 534, 542 [108 P. 499].) Not only did that definition endure in case law addressing legitimation (*Estate of Wilson* (1958) 164 Cal.App.2d 385, 388-389 [330 P.2d 452]; see *Estate of Gird*, *supra*, 157 Cal. at pp. 542-543), but, as discussed, the word retains virtually the same meaning in general usage today-"to admit to be true or as stated; confess." (Webster's New World Dict., *supra*, at p. 12; see Webster's 3d New Internat. Dict., *supra*, at p. 17.)

Notably, the decisions construing former section 230 of the Civil Code indicate that its public acknowledgement requirement would have been met where a father made a single confession in court to the paternity of a child.

In *Estate of McNamara* (1919) 181 Cal. 82 [183 P. 552, 7 A.L.R. 313], for example, we were emphatic in recognizing that a single unequivocal act could satisfy the acknowledgement requirement for purposes of statutory legitimation. Although the record in that case had contained additional evidence of the father's acknowledgement, we focused our attention on his ***915** one act of signing the birth certificate and proclaimed: "A more public acknowledgement than the act of [the decedent] in signing the child's birth certificate describing himself as the father, it would be difficult to imagine." (*Id.* at pp. 97-98.)

Similarly, in *Estate of Gird*, *supra*, 157 Cal. 534, we indicated in dictum that "a public avowal, made in the courts" would constitute a public acknowledgement under former section 230 of the Civil Code. (*Estate of Gird*, *supra*, 157 Cal. at pp. 542-543.)

Finally, in *Wong v. Young* (1947) 80 Cal.App.2d 391 [181 P.2d 741], a man's admission of paternity in a verified pleading, made in an action seeking to have the man declared the father of the child and for child support, was found to have satisfied the public acknowledgement requirement of the legitimation statute. (*Id.* at pp. 393-394.) Such admission was also deemed to constitute an acknowledgement under former Probate Code section 255, which had allowed illegitimate children to inherit from their fathers under an acknowledgement requirement that was even more stringent than that contained in Probate Code section 6452. [FN5] (*Wong v. Young*, *supra*, 80 Cal.App.2d at p. 394; see also *Estate of De Laveaga* (1904) 142 Cal. 158, 168 [75 P. 790] [indicating in dictum that, under a predecessor to Probate Code section 255, father sufficiently acknowledged an illegitimate child in a single witnessed writing declaring the child as his son].) Ultimately, however, legitimation of the child under former section 230 of the Civil Code was not found because two other of the statute's express requirements, i.e., receipt of the child into the father's family and the father's otherwise treating the child as his legitimate child (see *ante*, fn. 4), had not been established. (*Wong v. Young*, *supra*, 80 Cal.App.2d at p. 394.)

> FN5 Section 255 of the former Probate Code provided in pertinent part: " 'Every illegitimate child, whether born or conceived but unborn, in the event of his subsequent birth, is an heir of his mother, and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock ....' " (*Estate of Ginochio* (1974) 43 Cal.App.3d 412, 416 [117 Cal.Rptr. 565], italics omitted.)

Although the foregoing authorities did not involve section 6452, their views on parental acknowledgement of out-of-wedlock children were part of the legal landscape when the first modern statutory forerunner

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to that provision was enacted in 1985. (See former § 6408.5, added by Stats. 1983, ch. 842, § 55, p. 3084, and amended by Stats. 1984, ch. 892, § 42, p. 3001.) (3) Where, as here, legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, we may presume that the Legislature intended the ***916** same construction, unless a contrary intent clearly appears. (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437 [35 Cal.Rptr.2d 155]; see also *People v. Masbruch* (1996) 13 Cal.4th 1001, 1007 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *Belridge Farms v. Agricultural Labor Relations Bd.* (1978) 21 Cal.3d 551, 557 [147 Cal.Rptr. 165, 580 P.2d 665].) (1c) Since no evidence of a contrary intent clearly appears, we may reasonably infer that the types of acknowledgement formerly deemed sufficient for the legitimation statute (and former § 255, as well) suffice for purposes of intestate succession under section 6452. FN6

FN6 Probate Code section 6452's acknowledgement requirement differs from that found in former section 230 of the Civil Code, in that section 6452 does not require a parent to "publicly" acknowledge a child born out of wedlock. That difference, however, fails to accrue to Doner-Griswold's benefit. If anything, it suggests that the acknowledgement contemplated in section 6452 encompasses a broader spectrum of conduct than that associated with the legitimation statute.

Doner-Griswold disputes whether the acknowledgement required by Probate Code section 6452 may be met by a father's single act of acknowledging a child in court. In her view, the requirement contemplates a situation where the father establishes an ongoing parental relationship with the child or otherwise acknowledges the child's existence to his subsequent wife and children. To support this contention, she relies on three other authorities addressing acknowledgement under former section 230 of the Civil Code: *Blythe v. Ayers*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey* (1967) 257 Cal.App.2d 391 [64 Cal.Rptr. 837].

In *Blythe v. Ayres*, *supra*, 96 Cal. 532, the father never saw his illegitimate child because she resided in another country with her mother. Nevertheless, he "was garrulous upon the subject" of his paternity and "it was his common topic of conversation." (*Id.* at p. 577.) Not only did the father declare the child to be his child, "to all persons, upon all occasions," but at his request the child was named and baptized with his surname. (*Ibid.*) Based on the foregoing, this court remarked that "it could almost be held that he shouted it from the house-tops." (*Ibid.*) Accordingly, we concluded that the father's public acknowledgement under former section 230 of the Civil Code could "hardly be considered debatable." (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577.)

In *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, the evidence showed that the father had acknowledged to his wife that he was the father of a child born to another woman. (*Id.* at p. 389.) Moreover, he had introduced the child as his own on many occasions, including at the funeral of his mother. (*Ibid.*) In light of such evidence, the Court of Appeal upheld the trial court's finding that the father had publicly acknowledged the child within the contemplation of the legitimation statute. ***917**

In *Estate of Maxey*, *supra*, 257 Cal.App.2d 391, the Court of Appeal found ample evidence supporting the trial court's determination that the father publicly acknowledged his illegitimate son for purposes of legitimation. The father had, on several occasions, visited the house where the child lived with his mother and asked about the child's school attendance and general welfare. (*Id.* at p. 397.) The father also, in the presence of others, had asked for permission to take the child to his own home for the summer, and, when that request was refused, said that the child was his son and that he should have the child part of the time. (*Ibid.*) In addition, the father had addressed the child as his son in the presence of other persons. (*Ibid.*)

Doner-Griswold correctly points out that the foregoing decisions illustrate the principle that the existence of acknowledgement must be decided on the circumstances of each case. (*Estate of Baird* (1924) 193 Cal. 225, 277 [223 P. 974].) In those decisions, however, the respective fathers had not confessed to paternity in a legal action. Consequently, the courts looked to what other forms of public acknowledgement had been demonstrated by fathers. (See also *Lozano*, *supra*, 51 Cal.App.4th 843 [examining father's acts both before and after child's birth in ascertaining acknowledgement under § 6452].)

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That those decisions recognized the validity of different forms of acknowledgement should not detract from the weightiness of a father's in-court acknowledgement of a child in an action seeking to establish the existence of a parent and child relationship. (See *Estate of Gird*, *supra*, 157 Cal. at pp. 542-543; *Wong v. Young*, *supra*, 80 Cal.App.2d at pp. 393-394.) As aptly noted by the Court of Appeal below, such an acknowledgement is a critical one that typically leads to a paternity judgment and a legally enforceable obligation of support. Accordingly, such acknowledgements carry as much, if not greater, significance than those made to certain select persons (*Estate of Maxey*, *supra*, 257 Cal.App.2d at p. 397) or "shouted ... from the house-tops " (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577).

Doner-Griswold's authorities do not persuade us that section 6452 should be read to require that a father have personal contact with his out-of-wedlock child, that he make purchases for the child, that he receive the child into his home and other family, or that he treat the child as he does his other children. First and foremost, the language of section 6452 does not support such requirements. (See *Lozano*, *supra*, 51 Cal.App.4th at p. 848.) (4) We may not, under the guise of interpretation, insert qualifying provisions not included in the statute. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297].)

(1d) Second, even though *Blythe v. Ayres*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey*, *supra*, ***918**257 Cal.App.2d 391, variously found such factors significant for purposes of legitimation, their reasoning appeared to flow directly from the express terms of the controlling statute. In contrast to Probate Code section 6452, former section 230 of the Civil Code provided that the legitimation of a child born out of wedlock was dependent upon three distinct conditions: (1) that the father of the child "publicly acknowledg[e] it as his own"; (2) that he "receiv[e] it as such, with the consent of his wife, if he is married, into his family"; and (3) that he "otherwise treat[] it as if it were a legitimate child." (*Ante*, fn. 4; see *Estate of De Laveaga*, *supra*, 142 Cal. at pp. 168-169 [indicating that although father acknowledged his illegitimate son in a single witnessed writing, legitimation statute was not satisfied because the father never received the child into his family and did not treat the child as if he were legitimate].) That the legitimation statute contained such explicit requirements, while section 6452 requires only a natural parent's acknowledgement of the child and contribution toward the child's support or care, strongly suggests that the Legislature did not intend for the latter provision to mirror the former in all the particulars identified by Doner-Griswold. (See *Lozano*, *supra*, 51 Cal.App.4th at pp. 848-849; compare with Fam. Code, § 7611, subd. (d) [a man is "presumed" to be the natural father of a child if "[h]e receives the child into his home and openly holds out the child as his natural child"].)

In an attempt to negate the significance of Draves's in-court confession of paternity, Doner-Griswold emphasizes the circumstance that Draves did not tell his two other children of Griswold's existence. The record here, however, stands in sharp contrast to the primary authority she offers on this point. *Estate of Baird*, *supra*, 193 Cal. 225, held there was no public acknowledgement under former section 230 of the Civil Code where the decedent admitted paternity of a child to the child's mother and their mutual acquaintances but actively concealed the child's existence and his relationship to the child's mother from his own mother and sister, with whom he had intimate and affectionate relations. In that case, the decedent not only failed to tell his relatives, family friends, and business associates of the child (193 Cal. at p. 252), but he affirmatively denied paternity to a half brother and to the family coachman (*id.* at p. 277). In addition, the decedent and the child's mother masqueraded under a fictitious name they assumed and gave to the child in order to keep the decedent's mother and siblings in ignorance of the relationship. (*Id.* at pp. 260-261.) In finding that a public acknowledgement had not been established on such facts, *Estate of Baird* stated: "A distinction will be recognized between a mere failure to disclose or publicly acknowledge paternity and a willful misrepresentation in regard to it; in such circumstances there must be no purposeful concealment of the fact of paternity. " (*Id.* at p. 276.) ***919**

Unlike the situation in *Estate of Baird*, Draves confessed to paternity in a formal legal proceeding. There is no evidence that Draves thereafter disclaimed his relationship to Griswold to people aware of the circumstances (see *ante*, fn. 3), or that he affirmatively denied he was Griswold's father despite his confession

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of paternity in the Ohio court proceeding. Nor is there any suggestion that Draves engaged in contrivances to prevent the discovery of Griswold's existence. In light of the obvious dissimilarities, Doner-Griswold's reliance on *Estate of Baird* is misplaced.

Estate of Ginochio, *supra*, 43 Cal.App.3d 412, likewise, is inapposite. That case held that a judicial determination of paternity following a vigorously contested hearing did not establish an acknowledgement sufficient to allow an illegitimate child to inherit under section 255 of the former Probate Code. (See *ante*, fn. 5.) Although the court noted that the decedent ultimately paid the child support ordered by the court, it emphasized the circumstance that the decedent was declared the child's father *against his will* and at no time did he admit he was the father, or sign any writing acknowledging publicly or privately such fact, or otherwise have contact with the child. (*Estate of Ginochio*, *supra*, 43 Cal.App.3d at pp. 416-417.) Here, by contrast, Draves did not contest paternity, vigorously or otherwise. Instead, Draves stood before the court and openly admitted the parent and child relationship, and the record discloses no evidence that he subsequently disavowed such admission to anyone with knowledge of the circumstances. On this record, section 6452's acknowledgement requirement has been satisfied by a showing of what Draves did and did not do, not by the mere fact that paternity had been judicially declared.

Finally, Doner-Griswold contends that a 1996 amendment of section 6452 evinces the Legislature's unmistakable intent that a decedent's estate may not pass to siblings who had no contact with, or were totally unknown to, the decedent. As we shall explain, that contention proves too much.

Prior to 1996, section 6452 and a predecessor statute, former section 6408, expressly provided that their terms did not apply to "a natural brother or a sister of the child" born out of wedlock. [FN7] In construing former section 6408, *Estate of Corcoran* (1992) 7 Cal.App.4th 1099 [9 Cal.Rptr.2d 475] held that a half sibling was a "natural brother or sister" within the meaning of such ***920** exception. That holding effectively allowed a half sibling and the issue of another half sibling to inherit from a decedent's estate where there had been no parental acknowledgement or support of the decedent as ordinarily required. In direct response to *Estate of Corcoran*, the Legislature amended section 6452 by eliminating the exception for natural siblings and their issue. (Stats. 1996, ch. 862, § 15; see Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as amended June 3, 1996, pp. 17-18 (Assembly Bill No. 2751).) According to legislative documents, the Commission had recommended deletion of the statutory exception because it "creates an undesirable risk that the estate of the deceased out-of-wedlock child will be claimed by siblings with whom the decedent had no contact during lifetime, and of whose existence the decedent was unaware." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as introduced Feb. 22, 1996, p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.)

> FN7 Former section 6408, subdivision (d) provided: "If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child *or a natural brother or sister of the child or the issue of that brother or sister*) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied: [¶] (1) The parent or a relative of the parent acknowledged the child. [¶] (2) The parent or a relative of the parent contributed to the support or the care of the child. " (Stats. 1990, ch. 79, § 14, p. 722, italics added.)

This legislative history does not compel Doner-Griswold's construction of section 6452. Reasonably read, the comments of the Commission merely indicate its concern over the "undesirable risk" that unknown siblings could rely on the statutory exception to make claims against estates. Neither the language nor the history of the statute, however, evinces a clear intent to make inheritance contingent upon the decedent's awareness of or contact with such relatives. (See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.) Indeed, had the Legislature intended to categorically preclude intestate succession by a natural parent or a relative of that parent who had no contact with or was unknown to the deceased child, it could easily have so stated. Instead, by deleting the statutory exception for natural siblings, thereby sub-

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jecting siblings to section 6452's dual requirements of acknowledgement and support, the Legislature acted to prevent sibling inheritance under the type of circumstances presented in *Estate of Corcoran*, *supra*, 7 Cal.App.4th 1099, and to substantially reduce the risk noted by the Commission. [FN8] ***921**

> FN8 We observe that, under certain former versions of Ohio law, a father's confession of paternity in an Ohio juvenile court proceeding was not the equivalent of a formal probate court "acknowledgement" that would have allowed an illegitimate child to inherit from the father in that state. (See *Estate of Vaughan* (2001) 90 Ohio St.3d 544 [740 N.E.2d 259, 262-263].) Here, however, Doner-Griswold does not dispute that the right of the succession claimants to succeed to Griswold's property is governed by the law of Griswold's domicile, i.e., California law, not the law of the claimants' domicile or the law of the place where Draves's acknowledgement occurred. (Civ. Code, §§ 755, 946; see *Estate of Lund* (1945) 26 Cal.2d 472, 493-496 [159 P.2d 643, 162 A.L.R. 606] [where father died domiciled in California, his out-of-wedlock son could inherit where all the legitimation requirements of former § 230 of the Civ. Code were met, even though the acts of legitimation occurred while the father and son were domiciled in two other states wherein such acts were not legally sufficient].)

B. *Requirement of a Natural Parent and Child Relationship*

(5a) Section 6452 limits the ability of a "natural parent" or "a relative of that parent" to inherit from or through the child "on the basis of the parent and child relationship between that parent and the child."

Probate Code section 6453 restricts the means by which a relationship of a natural parent to a child may be established for purposes of intestate succession. [FN9] (See *Estate of Sanders* (1992) 2 Cal.App.4th 462, 474-475 [3 Cal.Rptr.2d 536].) Under section 6453, subdivision (a), a natural parent and child relationship is established where the relationship is presumed under the Uniform Parentage Act and not rebutted. (Fam. Code, § 7600 et seq.) It is undisputed, however, that none of those presumptions applies in this case.

> FN9 Section 6453 provides in full: "For the purpose of determining whether a person is a 'natural parent' as that term is used is this chapter: [¶] (a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code. [¶] (b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist: [¶] (1) A court order was entered during the father's lifetime declaring paternity. [¶] (2) Paternity is established by clear and convincing evidence that the father has openly held out the child as his own. [¶] (3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence."

Alternatively, and as relevant here, under Probate Code section 6453, subdivision (b), a natural parent and child relationship may be established pursuant to section 7630, subdivision (c) of the Family Code, [FN10] if a court order was entered during the father's lifetime declaring paternity. [FN11] (§ 6453, subd. (b)(1).)

> FN10 Family Code section 7630, subdivision (c) provides in pertinent part: "An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 ... may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The pa-

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rental rights of the alleged natural father shall be determined as set forth in Section 7664."

FN11 See makes no attempt to establish Draves's natural parent status under other provisions of section 6453, subdivision (b).

See contends the question of Draves's paternity was fully and finally adjudicated in the 1941 bastardy proceeding in Ohio. That proceeding, he ***922** argues, satisfies both the Uniform Parentage Act and the Probate Code, and should be binding on the parties here.

If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. (*Ruddock v. Ohls* (1979) 91 Cal.App.3d 271, 276 [154 Cal.Rptr. 87].) California courts generally recognize the importance of a final determination of paternity. (E.g., *Weir v. Ferreira* (1997) 59 Cal.App.4th 1509, 1520 [70 Cal.Rptr.2d 33] (*Weir*); *Guardianship of Claralyn S.* (1983) 148 Cal.App.3d 81, 85 [195 Cal.Rptr. 646]; cf. *Estate of Camp* (1901) 131 Cal. 469, 471 [63 P. 736] [same for adoption determinations].)

Doner-Griswold does not dispute that the parties here are in privity with, or claim inheritance through, those who are bound by the bastardy judgment or are estopped from attacking it. (See *Weir*, *supra*, 59 Cal.App.4th at pp. 1516-1517, 1521.) Instead, she contends See has not shown that the issue adjudicated in the Ohio bastardy proceeding is identical to the issue presented here, that is, whether Draves was the natural parent of Griswold.

Although we have found no California case directly on point, one Ohio decision has recognized that a bastardy judgment rendered in Ohio in 1950 was res judicata of any proceeding that might have been brought under the Uniform Parentage Act. (*Birman v. Sproat* (1988) 47 Ohio App.3d 65 [546 N.E.2d 1354, 1357] [child born out of wedlock had standing to bring will contest based upon a paternity determination in a bastardy proceeding brought during testator's life]; see also Black's Law Dict., *supra*, at pp. 146, 1148 [equating a bastardy proceeding with a paternity suit].) Yet another Ohio decision found that parentage proceedings, which had found a decedent to be the "reputed father" of a child, [FN12] satisfied an Ohio legitimation statute and conferred standing upon the illegitimate child to contest the decedent's will where the father-child relationship was established prior to the decedent's death. (*Beck v. Jolliff* (1984) 22 Ohio App.3d 84 [489 N.E.2d 825, 829]; see also *Estate of Hicks* (1993) 90 Ohio App.3d 483 [629 N.E.2d 1086, 1088-1089] [parentage issue must be determined prior to the father's death to the extent the parent-child relationship is being established under the chapter governing descent and distribution].) While we are not bound to follow these Ohio authorities, they persuade us that the 1941 bastardy proceeding decided the identical issue presented here.

FN12 The term "reputed father" appears to have reflected the language of the relevant Ohio statute at or about the time of the 1941 bastardy proceeding. (See *State ex rel. Discus v. Van Dorn* (1937) 56 Ohio App. 82 [8 Ohio Op. 393, 10 N.E.2d 14, 16].)

Next, Doner-Griswold argues the Ohio judgment should not be given res judicata effect because the bastardy proceeding was quasi-criminal in nature. ***923** It is her position that Draves's confession may have reflected only a decision to avoid a jury trial instead of an adjudication of the paternity issue on the merits.

To support this argument, Doner-Griswold relies upon *Pease v. Pease* (1988) 201 Cal.App.3d 29 [246 Cal.Rptr. 762] (*Pease*). In that case, a grandfather was sued by his grandchildren and others in a civil action alleging the grandfather's molestation of the grandchildren. When the grandfather cross-complained against his former wife for apportionment of fault, she filed a demurrer contending that the grandfather was collaterally estopped from asserting the negligent character of his acts by virtue of his guilty plea in a criminal proceeding involving the same issues. On appeal, the judgment dismissing the cross-complaint was reversed. (6) The appellate court reasoned that a trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. "The issue of appellant's guilt was not fully litigated in the prior criminal proceeding; rather, appellant's plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his guilt. Appellant's due process right to a hearing

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thus outweighs any countervailing need to limit litigation or conserve judicial resources." (*Id.* at p. 34, fn. omitted.)

(5b) Even assuming, for purposes of argument only, that *Pease*'s reasoning may properly be invoked where the father's admission of paternity occurred in a bastardy proceeding (see *Reams v. State ex rel. Favors* (1936) 53 Ohio App. 19 [6 Ohio Op. 501, 4 N.E.2d 151, 152] [indicating that a bastardy proceeding is more civil than criminal in character]), the circumstances here do not call for its application. Unlike the situation in *Pease*, neither the in-court admission nor the resulting paternity judgment at issue is being challenged by the father (Draves). Moreover, neither the father, nor those claiming a right to inherit through him, seek to litigate the paternity issue. Accordingly, the father's due process rights are not at issue and there is no need to determine whether such rights might outweigh any countervailing need to limit litigation or conserve judicial resources. (See *Pease*, *supra*, 201 Cal.App.3d at p. 34.)

Additionally, the record fails to support any claim that Draves's confession merely reflected a compromise. Draves, of course, is no longer living and can offer no explanation as to why he admitted paternity in the bastardy proceeding. Although Doner-Griswold suggests that Draves confessed to avoid the publicity of a jury trial, and not because the paternity charge had merit, that suggestion is purely speculative and finds no evidentiary support in the record. ***924**

Finally, Doner-Griswold argues that See and Griswold's half siblings do not have standing to seek the requisite paternity determination pursuant to the Uniform Parentage Act under section 7630, subdivision (c) of the Family Code. The question here, however, is whether the judgment in the bastardy proceeding initiated by Griswold's mother forecloses Doner-Griswold's relitigation of the parentage issue.

Although Griswold's mother was not acting pursuant to the Uniform Parentage Act when she filed the bastardy complaint in 1941, neither that legislation nor the Probate Code provision should be construed to ignore the force and effect of the judgment she obtained. That Griswold's mother brought her action to determine paternity long before the adoption of the Uniform Parentage Act, and that all procedural requirements of an action under Family Code section 7630 may not have been followed, should not detract from its binding effect in this probate proceeding where the issue adjudicated was identical with the issue that would have been presented in a Uniform Parentage Act action. (See *Weir*, *supra*, 59 Cal.App.4th at p. 1521.) Moreover, a prior adjudication of paternity does not compromise a state's interests in the accurate and efficient disposition of property at death. (See *Trimble v. Gordon* (1977) 430 U.S. 762, 772 & fn. 14 [97 S.Ct. 1459, 1466, 52 L.Ed.2d 31] [striking down a provision of a state probate act that precluded a category of illegitimate children from participating in their intestate fathers' estates where the parent-child relationship had been established in state court paternity actions prior to the fathers' deaths].)

In sum, we find that the 1941 Ohio judgment was a court order "entered during the father's lifetime declaring paternity" (§ 6453, subd. (b)(1)), and that it establishes Draves as the natural parent of Griswold for purposes of intestate succession under section 6452.

Disposition

(7) " 'Succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts.' " (*Estate of De Cigaran*, *supra*, 150 Cal. at p. 688.) We do not disagree that a natural parent who does no more than openly acknowledge a child in court and pay court-ordered child support may not reflect a particularly worthy predicate for inheritance by that parent's issue, but section 6452 provides in unmistakable language that it shall be so. While the Legislature remains free to reconsider the matter and may choose to change the rules of succession at any time, this court will not do so under the pretense of interpretation.

The judgment of the Court of Appeal is affirmed.

George, C. J., Kennard, J., Werdegar, J., and Chin, J., concurred. ***925 BROWN, J.**
I reluctantly concur. The relevant case law strongly suggests that a father who admits paternity in court with no subsequent disclaimers "acknowledge[s] the child" within the meaning of subdivision (a) of Probate Code section 6452. Moreover, neither the statutory language nor the legislative history supports an alternative interpretation. Accordingly, we must af-

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firm the judgment of the Court of Appeal.

Nonetheless, I believe our holding today contravenes the overarching purpose behind our laws of intestate succession-to carry out "the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep. (1982) p. 2319.) I doubt most children born out of wedlock would have wanted to bequeath a share of their estate to a "father" who never contacted them, never mentioned their existence to his family and friends, and only paid court-ordered child support. I doubt even more that these children would have wanted to bequeath a share of their estate to that father's other offspring. Finally, I have *no* doubt that most, if not all, children born out of wedlock would have balked at bequeathing a share of their estate to a "forensic genealogist."

To avoid such a dubious outcome in the future, I believe our laws of intestate succession should allow a parent to inherit from a child born out of wedlock only if the parent has some sort of parental connection to that child. For example, requiring a parent to treat a child born out of wedlock as the parent's own before the parent may inherit from that child would prevent today's outcome. (See, e.g., *Bullock v. Thomas* (Miss. 1995) 659 So.2d 574, 577 [a father must "openly treat" a child born out of wedlock "as his own " in order to inherit from that child].) More importantly, such a requirement would comport with the stated purpose behind our laws of succession because that child likely would have wanted to give a share of his estate to a parent that treated him as the parent's own.

Of course, this court may not remedy this apparent defect in our intestate succession statutes. Only the Legislature may make the appropriate revisions. I urge it to do so here. ***926**

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(Cite as: 522 F.Supp. 30)

C

United States District Court, District of Columbia.
Kevin FELLS, et al., Plaintiffs,
v.
Donald BROOKS, et al., Defendants.
Civ. A. No. 80-2981.

March 10, 1981.

A motion for attorney fees was filed in settled action concerning transportation arrangements made by the District of Columbia for the special education of two physically handicapped mentally retarded children. The District Court, John H. Pratt, J., held that: (1) private right of action existed under Rehabilitation Act to challenge adequacy of the transportation provided by the District; (2) failure of plaintiffs to resort to administrative process by filing complaint with Department of Human Services seeking revocation of federal financial assistance to District of Columbia, did not bar their suit, especially since Department, which was responsible for arranging transportation for handicapped children, had already lost most of federal money which would be at stake in the administrative process so that resort to such would have been an empty formality; (3) with respect to determining attorney fees incurred by claimants in settlement of action under Rehabilitation Act, 6.3 hours was not an unreasonably long time for careful drafting of pleadings and motions involved; and (4) attorney who successfully represented plaintiffs in the settlement was entitled to fee at rate of $75 per hour, where he was a specialist in area of special education litigation, he had been in practice for five years, he had taught and was publishing in the field of mental health law, and, in the litigation, he raised novel issues and resolved them promptly in his clients' favor.

Motion for attorney fees granted.

West Headnotes

[1] Civil Rights 78 ⚿1330(1)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(1) k. In General. Most Cited Cases
(Formerly 78k200, 78k13.1, 78k9.16, 78k12.4, 78k13.9)
Private right of action exists to enforce handicapped person's claims under the Rehabilitation Act which forbids discrimination against handicapped people in programs receiving federal assistance and existence of such right is not contingent upon exhaustion of administrative remedies under the Act. Rehabilitation Act of 1973, §§ 504, 505(b) as amended 29 U.S.C.A. §§ 794, 794a(b); 42 U.S.C.A. § 1988.

[2] Schools 345 ⚿159.5(4)

345 Schools
345II Public Schools
345II(L) Pupils
345k159.5 Transportation of Pupils to and from Schools or Provisions in Lieu Thereof
345k159.5(4) k. Handicapped Children. Most Cited Cases
(Formerly 345k1591/2(4), 345k1591/2)
Private right of action existed under Rehabilitation Act to challenge adequacy of transportation provided by the District of Columbia for handicapped children who attended special education programs. Rehabilitation Act of 1973, §§ 504, 505 as amended 29 U.S.C.A. §§ 794, 794a.

[3] Schools 345 ⚿159.5(4)

345 Schools
345II Public Schools
345II(L) Pupils
345k159.5 Transportation of Pupils to and from Schools or Provisions in Lieu Thereof
345k159.5(4) k. Handicapped Children. Most Cited Cases
(Formerly 345k1591/2(4), 345k1591/2)
Failure of plaintiffs to resort to administrative process by filing complaint with Department of Human Services seeking revocation of federal financial assistance to District of Columbia, did not bar them from suing District, especially since Department, which was responsible for arranging transportation for han-

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dicapped children, had already lost most of federal money which would be at stake in the administrative process so that resort to such would have been empty formality. Rehabilitation Act of 1974, § 504 as amended 29 U.S.C.A. § 794.

[4] Civil Rights 78 1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k107(1), 78k9.16)
Cutting off funds under the Rehabilitation Act was not intended to be remedy for discrimination against individual handicapped people who are not provided with benefits to which they are entitled by statute. Rehabilitation Act of 1973, § 504 as amended 29 U.S.C.A. § 794.

[5] Civil Rights 78 1488

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1488 k. Time Expended; Hourly Rates. Most Cited Cases
(Formerly 78k303, 78k13.17(20), 78k13.17)
Under Rehabilitation Act, attorney fee setting inquiry should begin with number of hours reasonably expended by attorney, multiplied by reasonable hourly rates. Rehabilitation Act of 1973, § 504 as amended 29 U.S.C.A. § 794.

[6] Civil Rights 78 1488

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1488 k. Time Expended; Hourly Rates. Most Cited Cases
(Formerly 78k303, 78k13.17(20), 78k13.17)
With respect to determining attorney fees incurred by claimants in settlement of action under Rehabilitation Act, 6.3 hours was not an unreasonably long time for careful drafting of pleadings and motions involved. Rehabilitation Act of 1973, § 504 as amended 29 U.S.C.A. § 794.

[7] Federal Civil Procedure 170A 2737.4

170A Federal Civil Procedure
170AXIX Fees and Costs
170Ak2737 Attorneys' Fees
170Ak2737.4 k. Amount and Elements. Most Cited Cases
(Formerly 170Ak2737)
In determining what a reasonable hourly rate is for attorney services, court must look at prevailing rates in community for similar work by attorneys similarly experienced.

[8] Civil Rights 78 1595

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1585 Attorney Fees
78k1595 k. Time Expended; Hourly Rates. Most Cited Cases
(Formerly 78k419, 78k46(30), 78k13.17)
Attorney who successfully represented plaintiffs in settlement of Rehabilitation Act action involving transportation of handicapped children was entitled to fee at rate of $75 per hour, where he was specialist in area of special education litigation, he had been in practice for five years, he had taught and was publishing in the field of mental health law, and, in the litigation, he raised novel issues and resolved them promptly in his clients' favor. Rehabilitation Act of 1973, § 505 as amended 29 U.S.C.A. § 794a.
***31** Matthew Bogin, Washington, D. C., for plaintiffs.

Nancy R. Dorsch, Asst. Corp. Counsel, Washington, D. C., for defendants.

***32** MEMORANDUM OPINION

JOHN H. PRATT, District Judge.

This is a motion for attorney's fees arising out of an action settled by stipulation. The action challenged arrangements made by the District of Columbia for the education of two physically handicapped, mentally retarded children living at the Forest Haven Home, the District's primary institution for the mentally retarded. In particular, plaintiffs, who are surrogate parents of the two children, alleged that the District's failure to provide adequate transportation from Laurel, Mary-

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land, where Forest Haven is located, to the children's special education program at the Hospital for Sick Children, in Washington, D. C., caused the children to miss half their classes, violating their rights to an appropriate education guaranteed under a variety of federal statutes and decisions of this court. Plaintiffs sought a preliminary injunction to remedy the situation, as well as money damages for the violation of the children's rights.

The parties quickly settled the transportation issues, and stipulated that the District would add one bus and several drivers, repair another bus, and provide alternate transportation if the buses broke down for more than a day. Plaintiffs withdrew their motion for a preliminary injunction and their damage claims, leaving only the issue of attorney's fees for adjudication.

Plaintiffs have moved for fees under s 505 of the Rehabilitation Act of 1973, 29 U.S.C. s 794a(b) (Supp. II 1978), and under the Civil Rights Attorney's Fees Act of 1976, 42 U.S.C. s 1988 (1976 ed.). For the reasons stated below, the motion for fees under the Rehabilitation Act of 1973 is granted. We do not reach the issue of fees under the civil rights statutes.

Discussion

Plaintiffs substantially prevailed in this action, achieving by settlement most of what they sought to achieve by injunctive relief. They have now moved for attorney's fees under s 505(b) of the Rehabilitation Act of 1973, 29 U.S.C. s 794a(b) (Supp. II 1978), which provides that

> in any action or proceeding to enforce or charge a violation of this subchapter, the court, in its discretion may allow the prevailing party ... a reasonable attorney's fee as part of the costs.

The District opposes the motion on three grounds: first, that there is no private right of action under s 504 of the Rehabilitation Act of 1973, 29 U.S.C. s 794 (1976 ed. & Supp. II 1978), which forbids discrimination against handicapped people in programs receiving federal assistance; second, that even if such a right of action exists, plaintiffs' failure to exhaust administrative remedies should bar the award of fees; and third, that the fee sought, $75 an hour for 16.8 hours work, is excessive and should be reduced. None of these contentions has merit.

A. Right of Action

[1] "There is no longer any question about the existence of a private right of action to enforce plaintiff's statutory claims" under s 504 of the Rehabilitation Act of 1973. Larry P. v. Riles, 495 F.Supp. 926, 961 (N.D.Cal.1979). Every court of appeals which has ruled upon the issue has held that there is a private right of action under s 504. Camenisch v. University of Texas, 616 F.2d 127, 131 (5th Cir. 1980), cert. granted, -- U.S. --, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1980); National Ass'n for the Advancement of Colored People v. The Medical Center, Inc., 599 F.2d 1247, 1258-59 (3d Cir. 1979); Davis v. Southeastern Comm. College, 574 F.2d 1158, 1159 (4th Cir. 1978), rev'd on other grounds, 442 U.S. 397, 99 S.Ct. 2361, 60 L.Ed.2d 980 (1979); United Handicapped Federation v. Andre, 558 F.2d 413, 415 (8th Cir. 1977); Kampmeier v. Nyquist, 553 F.2d 296, 299 (2d Cir. 1977); Lloyd v. Regional Transportation Authority, 548 F.2d 1277, 1284-87 (7th Cir. 1977).

The Supreme Court's recent decision in Cannon v. University of Chicago, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979), arising under an analogous statute, reinforces the conclusion that a private right of action exists under s 504. In Cannon, the Court implied a right of action under Title *33 IX of the Education Act Amendments of 1972, 20 U.S.C. s 1681 et seq. (1976 ed.) which forbids sex discrimination in federally-funded educational programs. Section 504 forbids discrimination against otherwise qualified handicapped people in federally-assisted programs, and does so in nearly identical language. Moreover, administrative remedies under both statutes are very similar, since both were modeled on Title VI of the Civil Rights Act of 1964. 42 U.S.C. s 2000d (1976 ed.). Thus private rights of action appear to exist under both statutes, and the existence of these rights is not contingent upon the exhaustion of administrative remedies under the statutes. See Cannon v. University of Chicago, supra, at 703-08, 99 S.Ct. at 1961-1963.

The legislative history of the attorney's fee provision explicitly supports the existence of a private right of action under s 504 of the Rehabilitation Act of 1973. The House Report on the 1978 Amendments stated that

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> The new section (505) permits courts, at their discretion, to award to the prevailing party in any action or proceeding to enforce sections 501, 503, or 504 of the act a reasonable allowance to cover the costs of attorney's fees .... (S)ection 504 relates to nondiscrimination against the handicapped by recipients of federal assistance.

H.R.Rep.No.1149, 95th Cong., 2d Sess. 21 (1978), reprinted in (1978) U.S.Code, Cong. & Ad.News 7312, 7322. Thus Congress recognized that a private right of action exists under s 504, and sought to encourage use of that right of action by providing attorney's fees. See Larry P. v. Riles, supra, at 962 n. 73.

[2] The weight of authority and considerations of practicality favor finding that a private right of action exists to challenge the adequacy of transportation for attendance at special education programs. Courts have already found that such actions may be used to challenge the adequacy of public transportation for handicapped people, see, e. g., Lloyd v. Regional Transportation Authority, supra, and to challenge the adequacy of educational opportunities for handicapped children, e. g., Boxall v. Sequoia Union High School District, 464 F.Supp. 1104 (N.D.Cal.1979). Without adequate transportation these children will be denied an education as effectively as if there were no special education programs at all. Federal regulations recognize this reality, and require that adequate transportation be provided where handicapped children are to be educated outside normal elementary and secondary schools. 45 C.F.R. s 84.33(c)(2) (1979 ed.). Finally, in providing for the award of attorney's fees in 29 U.S.C. s 794a, it is clear that Congress intended that private parties enforce their rights under s 504. Absent a private right of action, there would be no reason to provide for attorney's fees.

Consequently, we find that plaintiffs have a private right of action under s 504 to challenge the transportation arrangements at issue here. The District's contention to the contrary is without merit.

B. Exhaustion of Administrative Remedies

[3] The District argues that even if plaintiffs have a private right of action, they should be denied attorney's fees for their failure to resort to the administrative process by filing "a complaint with the Department of Health, Education and Welfare (sic)," seeking to revoke unspecified federal financial assistance from the District.

[4] This argument fails for three reasons. First of all, the administrative scheme under s 504 contains no provisions for emergency relief. Camenisch v. University of Texas, supra, at 133. Second, cutting off federal funds under s 504 was no more intended to be the remedy for discrimination against individual handicapped people in failing to provide benefits to which such persons are entitled by statute, than the same administrative scheme was under Title IX intended to be the remedy for individual victims of sex discrimination. See Cannon v. University of Chicago, supra, 441 U.S. at 703-08, 99 S.Ct. at 1961-1963. The regulations themselves state that:

> ***34** It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the process requirements of this subpart (concerning procedures for evaluation and placement).

45 C.F.R. s 84, App. A, P 21, p. 387 (1979 ed.).

Resort to administrative remedies would have been pointless here for a third reason; federal assistance to the Forest Haven program has already been withdrawn. During the pendency of this action, the District allowed conditions at Forest Haven to deteriorate to the point where the Home lost its accreditation, and with it, six million dollars in federal funding. The Department of Human Services, apparently by agreement with the school board, is responsible for arranging transportation for the handicapped children to school, and the Department has already lost most of the federal money which would be at stake in the administrative process. Consequently, it is abundantly clear that resort to the administrative process would be an empty formality.

C. Amount of Fee

[5] The District protests that the $1,260 fee sought by plaintiffs' attorney is excessive. The Court of Appeals recently set forth "the appropriate mechanism for calculating an attorney's fee pursuant to statutes like Title VII," such as the Rehabilitation Act of 1973. Copeland v. Marshall, et al., 641 F.2d 880, at 891 (D.C.Cir.1980). The fee setting inquiry should

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begin with the "lodestar: the number of hours reasonably expended multiplied by a reasonable hourly rate." Id.

1. Hours Reasonably Expended

Plaintiffs' attorney spent a total of 16.8 hours on this case, including investigation, drafting of the pleadings and motion for a preliminary injunction, settlement negotiations, and filing of the motion for fees. The time breaks down as follows:

5.3 hours Investigate facts and draft plaintiff's declaration

6.3 hours Draft complaint and other papers

1.2 hours Filing

2.1 hours Settlement talks with defendants' counsel

2.1 hours Draft and file motion for attorney's fees

The District specifically objects that 6.3 hours for drafting the complaint and other papers is too long, given the similarity of this action to several others filed in this district, and given the fact that plaintiffs' attorney used the same memorandum in support of a motion for a preliminary injunction here as he used in another action before this court.

[6] We reject this argument: 6.3 hours is not an unreasonably long time for the careful drafting of the pleadings and motions involved herein. It ill becomes the District to object to the amount of time spent in preparation, given their memorandum's reliance on Copeland v. Marshall, et al., 594 F.2d 244 (D.C.Cir.1978) (Copeland, I), which was reversed en banc last September. Copeland v. Marshall, et al., 641 F.2d 880 (D.C.Cir.1980) (en banc) (Copeland, III). Moreover, it should be noted that the District sought and received an extension of time to answer the pleadings, and found them of sufficient merit to settle the case favorably to the plaintiffs.

2. Reasonable Hourly Rate

[7][8] Plaintiffs' attorney seeks reimbursement for his time at the rate of $75 an hour. The court must decide what a reasonable rate is by looking at prevailing rates in the community for similar work by attorneys of similar experience. Copeland, III, supra, at 892. Plaintiffs' counsel, Mr. Bogin, is a specialist in the area of special education litigation, a fact the District concedes. He has been in practice since 1975, and has taught and is publishing in the field of mental health law. In this litigation, he raised novel issues under the Rehabilitation Act of 1973 and other statutes, and resolved them promptly in his clients' favor.

***35** This case is apparently the first occasion that this Court has invoked s 505 to award fees; thus there is no reported prevailing rate for cases of this kind in this jurisdiction. Two recent cases from the Southern District of New York, Rodriguez v. New York City Police Dept., 80 Civ. 4784, Slip Op. (S.D.N.Y. Jan. 20, 1981); Keyes v. New York City Dept. of Personnel, et al., 79 Civ. 5786, Slip Op. (S.D.N.Y. Aug. 22, 1980), report a number of fee awards under s 505, and show that an hourly rate of $75 an hour is at least $10 an hour less than is being charged by New York attorneys of comparable experience in these cases. This price differential is comparable to that reported between the two cities for other types of specialized litigation. Consequently, the court finds that the requested hourly rate is reasonable in the circumstances of this case.

3. Adjustment to Fee Award

"The burden of justifying any deviation from the 'lodestar' (award) rests on the party proposing the deviation." Copeland, III, supra, at 892. Plaintiffs' counsel seeks no such adjustments for the contingent nature of the case or for the quality of representation, see id., at 892-894, apparently on the theory that the hourly rate adequately accounts for these factors.

The District's other objections to the fee award are not argued as contingency or quality adjustments, but instead focus on whether plaintiffs prevailed in the settlement of this action, and whether a private right of action exists under s 504 of the Rehabilitation Act of 1973. These issues have already been resolved in plaintiffs' favor, and are not a basis for making downward adjustments in the fee. Consequently, we conclude that no adjustment to the lodestar rate is appropriate here.

Conclusion

For the foregoing reasons, the court grants plaintiffs'

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motion for attorney's fees in the amount of $1,260.00. An order consistent with this opinion has been entered this day.

D.C.D.C., 1981.
Fells v. Brooks
522 F.Supp. 30

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266 F.Supp.2d 322, 14 A.D. Cases 1166
(Cite as: 266 F.Supp.2d 322)

C

United States District Court,
D. Connecticut.
John FILUSH
v.
TOWN OF WESTON
No. CIV.A. 302CV1934(SRU).

May 6, 2003.

Police officer brought suit against town, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. On town's partial motion to dismiss for lack of subject matter jurisdiction and for failure to state claim, the District Court, Underhill, J., held that: (1) Title II of the ADA, relating to public services, unambiguously did not apply to employment discrimination or retaliation claims, and (2) regulations of the Department of Justice, in assuming that employment discrimination claims by public employees were within purview of Title II of the ADA, contradicted intent of statute and could not provide basis for officer's discrimination claims against town, including his claim that town failed to keep confidential certain medical information relating to his disability.

Motion granted.

West Headnotes

[1] Civil Rights 78 1220

78 Civil Rights
78II Employment Practices
78k1215 Discrimination by Reason of Handicap, Disability, or Illness
78k1220 k. Particular Cases. Most Cited Cases
(Formerly 78k173.1)

Civil Rights 78 1249(1)

78 Civil Rights
78II Employment Practices
78k1241 Retaliation for Exercise of Rights
78k1249 Public Employment
78k1249(1) k. In General. Most Cited Cases

Officers and Public Employees 283 69.7

283 Officers and Public Employees
283I Appointment, Qualification, and Tenure
283I(G) Resignation, Suspension, or Removal
283k69 Restrictions of Civil Service Laws and Rules as to Removals
283k69.7 k. Grounds for Removal. Most Cited Cases
Title II of the ADA, relating to public services, unambiguously did not apply to employment discrimination or retaliation claims; clause providing that no qualified individual with a disability could be excluded from participation in or denied benefits of services, programs, or activities of public entity applied only to "outputs" of public agency, not to "inputs" such as employment, and second clause stating that no qualified individual with disability shall, by reason of such disability, be subjected to discrimination by any such entity related back to same "services, programs, or activities" of public entity that was covered by first clause. Americans with Disabilities Act of 1990, § 202, 42 U.S.C.A. § 12132; 28 C.F.R. § 35.140(a).

[2] Civil Rights 78 1053

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1051 Public Services, Programs, and Benefits
78k1053 k. Discrimination by Reason of Handicap, Disability, or Illness. Most Cited Cases
(Formerly 78k107(1))

Civil Rights 78 1069

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1069 k. Disabled Students. Most Cited

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Cases
(Formerly 78k127.1)

Civil Rights 78 ⚷1088(1)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1088 Police, Investigative, or Law Enforcement Activities
78k1088(1) k. In General. Most Cited Cases
(Formerly 78k132.1)
Personnel and equipment engaged by municipality to provide services such as public education, public transportation, or law enforcement are not services or programs that citizens seek to participate in or receive benefits from, within meaning of Title II of the Americans with Disabilities Act (ADA), rather they are conduits used by public entity to provide services, programs, and activities. Americans with Disabilities Act of 1990, § 202, 42 U.S.C.A. § 12132.

[3] **Civil Rights 78 ⚷1053**

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1051 Public Services, Programs, and Benefits
78k1053 k. Discrimination by Reason of Handicap, Disability, or Illness. Most Cited Cases
(Formerly 78k107(1))
To prevail on claim under Title II of the ADA, which pertains to non-discrimination on the basis of disability in the provision of public services, plaintiff must prove that he is qualified individual with a disability. Americans with Disabilities Act of 1990, § 202, 42 U.S.C.A. § 12132.

[4] **Statutes 361 ⚷195**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k195 k. Express Mention and Implied Exclusion. Most Cited Cases
Where Congress includes particular language in one section of statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in disparate inclusion or exclusion.

[5] **Civil Rights 78 ⚷1220**

78 Civil Rights
78II Employment Practices
78k1215 Discrimination by Reason of Handicap, Disability, or Illness
78k1220 k. Particular Cases. Most Cited Cases
(Formerly 78k173.1)

Statutes 361 ⚷217.4

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.4 k. Legislative History in General. Most Cited Cases
Where when viewed holistically, text, structure, and context of the ADA all demonstrated that Congress did not intend for Title II, which related to public services, to apply to employment, district court did not need to consider legislative history or Attorney General's regulation to the contrary in interpreting statute. Americans with Disabilities Act of 1990, § 202, 42 U.S.C.A. § 12132; 28 C.F.R. § 35.140(a).

[6] **Civil Rights 78 ⚷1220**

78 Civil Rights
78II Employment Practices
78k1215 Discrimination by Reason of Handicap, Disability, or Illness
78k1220 k. Particular Cases. Most Cited Cases
(Formerly 78k173.1)

Civil Rights 78 ⚷1229

78 Civil Rights
78II Employment Practices
78k1215 Discrimination by Reason of Handicap, Disability, or Illness
78k1229 k. Confidentiality; Disclosure. Most Cited Cases
(Formerly 78k173.1)
As Title II of the ADA, which pertains to

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non-discrimination on the basis of disability in the provision of public services, was not intended to apply to employment, regulations of the Department of Justice, in assuming that discrimination claims by public employees were within purview of Title II, contradicted intent of statute and could not provide basis for police officer's discrimination claims against town, including his claim that town failed to keep confidential certain medical information relating to his disability. Americans with Disabilities Act of 1990, § 202, 42 U.S.C.A. § 12132; 28 C.F.R. § 35.140.

West Codenotes
Held Invalid28 C.F.R. § 35.140. ***324** Gary Edward Phelan, Klebanoff & Phelan, PC, West Hartford, CT, for Plaintiff.

Gary S. Starr, Gabriel Joseph Jiran, Shipman & Goodwin, Martha Anne Shaw, Michael J. Rose, Alexandria L. Voccio, Howd & Ludorf, Hartford, CT, for Defendant.

RULING ON DEFENDANT'S MOTION TO DISMISS

UNDERHILL, District Judge.

John Filush ("Filush") brought this lawsuit against the Town of Weston ("the Town") alleging two claims under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 ("ADA"), and Section 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. § 794, ("Section 504 "). Filush alleges that the Town failed to reasonably accommodate his dyslexia in administering a promotion examination, failed to keep medical information related to his disability confidential, and manipulated the promotion process to ensure that he was not promoted, all in violation of Title II of the ADA. Filush alleges that the Town violated Title V of the ADA by retaliating against him by denying him a fair opportunity for promotion because he requested an accommodation for his disability. Filush alleges that the Town's actions also violated Section 504.

The Town filed this Motion to Dismiss, arguing that counts one and two of the complaint fail to state a claim upon which relief may be granted, and that this court lacks subject matter jurisdiction.

Background

Filush began working for the Town as a police officer in 1978. Filush took the promotional exam for Sergeant in 1990, 1993, 1994, and 1995. Each time, he was not promoted. In January 2000, he was diagnosed with dyslexia and impaired visual memory skills. His condition diminished his ability to rapidly execute written tasks and required extended time in standardized testing situations. Filush's condition qualifies as a disability under the ADA.

In January 2000, Filush sent a confidential memorandum to the Town's Chief of Police, Anthony P. Land, stating that he had a condition that entitled him to certain testing accommodations under the ADA. Filush requested extended time to obtain books on tape, extended time to review required reading materials, limited use of the multiple choice testing format, a quiet test site, un-timed testing, and a spelling exemption.

On January 7, 2000, Chief Land sent a memorandum to Filush requesting medical information from Filush's health care provider explaining the nature of Filush's disabilities and an explanation for why the requested accommodations were necessary to provide Filush with a fair opportunity to take the promotional examination. Chief Land's memorandum assured Filush that his medical information would be shared only on a "need-to-know" basis.

On January 25, 2000, Robert S. Kruger, Ph.D., wrote a letter to Chief Land detailing***325** Filush's disabilities. Kruger also stated that Filush's disabilities would impair his performance on any written task requiring rapid execution, and that Filush would be at a disadvantage in competing against non-disabled candidates on a standardized examination. Kruger indicated that a reasonable accommodation for Filush's disabilities would have to include the provision of extended time to complete an examination.

On or about February 29, 2000, Chief Land wrote a memorandum to Filush confirming the terms under which Filush would take the Sergeant's examination scheduled for March 22, 2000. Chief Land stated that Filush would be allowed 50% more time to complete the written examination.

On March 20, 2000, Filush discovered that a

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co-worker had learned of his disability accommodation for the upcoming examination. Filush requested a meeting with the Town's ADA representative and also requested that Chief Land's office conduct an investigation to determine how Filush's confidential disability-related information was obtained by the co-worker.

On or about March 22, 2000, Filush took the Sergeant's examination. He was allowed an additional hour in which to complete the examination. Six other individuals sat for the exam. Filush ranked second among the candidates. However, another candidate was selected for the Sergeant position. Filush alleges that he was also passed over for other informal leadership opportunities within the police department.

On June 4, 2002, the Police Commission issued a memorandum entitled "Candidate Interview Procedure," which detailed six procedures that would be used in subsequent promotion interviews. On June 10, 2002, Chief Land circulated a memorandum to all officers indicating the dates of the upcoming Sergeant's examination and other details concerning the selection process. On June 15, 2002, Filush filed a grievance indicating that the six procedures outlined in the Commission's memorandum were in violation of Article XXVI of the union contract regarding promotions. On June 17, 2002, Chief Land sent a letter to Filush asking him to clarify the manner in which the Candidate Interview Procedure violated the union contract. Filush responded on June 27, 2002, and his response was submitted to the Commission.

On June 30, 2002, Filush requested that he be provided with the study skills materials provided to other officers competing for the Sergeant's position. Filush alleges that Chief Land responded that he had given Filush the study materials over a year ago and requested that they be returned because Filush had "had more than [his] share." Compl. at ¶ 48.

On July 24, 2002, Filush requested testing accommodations for the upcoming Sergeant's examination. On August 6, 2002, Filush sat for the written portion of the Sergeant's exam and was given an additional hour in which to complete the examination.

Filush contends that Chief Land sent a letter to Lieutenant Mark Grecco regarding the oral component of the Sergeant's exam. Filush alleges that Chief Land, in his letter, encouraged Grecco to probe candidates on technical issues relating to the Sergeant position's staff support role and the candidates' long-term commitment and problem-solving abilities. Filush's combined written and oral scores ranked him fourth among the candidates. Because he was not ranked in the top three, Filush was not considered for Sergeant. Filush alleges that the successful candidate had been given special assignments by Chief ***326** Land, and that those assignments were similar to the staff support duties that the Sergeant position entailed. This experience, Filush contends, was critical in the candidate's successful performance in the oral component of the examination.

Standards of Review

A. Rule 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction

A plaintiff bears the burden of proving the existence of subject matter jurisdiction by a preponderance of the evidence. *See* Makarova v. United States, 201 F.3d 110, 113 (2d Cir.2000). In considering a motion to dismiss for lack of subject matter jurisdiction, a court must "accept as true all material factual allegations in the Complaint and refrain from drawing inferences in favor of the party contesting jurisdiction." Serrano v. 900 5th Ave. Corp., 4 F.Supp.2d 315, 316 (S.D.N.Y.1998) (citations omitted). The Court may consider evidence outside the pleadings, such as affidavits and other documents. *See* Makarova, 201 F.3d at 113.

B. Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim

When considering a Rule 12(b)(6) motion to dismiss, "the court must accept as true the factual allegations in the complaint, and draw all reasonable inferences in favor of the plaintiff." Bolt Electric Inc. v. City of New York, 53 F.3d 465, 469 (2d Cir.1995) (citations omitted). Further, "[t]he district court should grant such a motion only if, after viewing plaintiff's allegations in this favorable light, 'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " *Id.* (quoting Walker v. City of New York, 974 F.2d 293, 298 (2d Cir.1992), and Ricciuti v. New York Transit Auth., 941 F.2d 119, 123 (2d Cir.1991)). "The issue is not whether a plaintiff is likely to prevail ultimately, 'but

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whether the claimant is entitled to offer evidence to support the claims.' " *Gant v. Wallingford Board of Ed.*, 69 F.3d 669, 673 (2d Cir.1995) (citations omitted). When deciding a motion to dismiss, a court may consider not only the complaint, but also "any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference." *See Cortec Indus. Inc. v. Sum Holding L.P.*, 949 F.2d 42, 47 (2d Cir.1991).

Discussion

A. Applicability of Title II to Employment Discrimination Claims

[1] The First Count of the Complaint alleges claims brought under Title II of the ADA. The Town argues that Title II does not apply to claims of employment discrimination and that Title I is the appropriate vehicle for such claims. Because Filush has not brought these claims under Title I, and thus, has not exhausted Title I's administrative remedies, the Town moves to dismiss these claims for lack of subject matter jurisdiction. Filush argues that Title I and Title II are distinct but equally viable alternatives for a public employee to seek relief from unlawful disability discrimination. The question before the court then is whether Title II encompasses employment discrimination claims made against a local governmental entity.

The Justice Department interprets Title II as prohibiting employment discrimination,[FN1] while courts addressing the issue are split, with a majority agreeing with the Justice Department. *See* *327*Dominguez v. City of Council Bluffs*, 974 F.Supp. 732, 736 (S.D.Iowa 1997) (noting split of authority and following the majority view); *cf. Zimmerman v. Oregon Dep't of Justice*, 170 F.3d 1169 (9th Cir.1999) (acknowledging the split and declining to follow the majority view); *Bledsoe v. Palm Beach Soil and Water Conservation Dist.*, 942 F.Supp. 1439, 1443 (S.D.Fla.1996) (listing cases and concluding that the majority view is inconsistent with the ADA). The Second Circuit has not directly addressed the issue, although other district courts within the District of Connecticut have considered the issue and followed the majority view. *See Worthington v. City of New Haven*, 1999 WL 958627 (D.Conn. Oct. 5, 1999); *Hernandez v. Hartford*, 959 F.Supp. 125 (D.Conn.1997). Although reluctant to depart from the rulings of other courts in the district, I decline to follow the majority view. In my view, the plain language of Title II, read in the context of the overall ADA statutory scheme, forecloses the possibility of allowing the plaintiff to bring an employment discrimination claim under Title II.

> FN1. 28 C.F.R. § 35.140(a) ("No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.").

The ADA contains five titles: Employment (Title I), Public Services (Title II), Public Accommodations and Services Operated by Private Entities (Title III), Telecommunications (Title IV), and Miscellaneous Provisions (Title V). Americans with Disabilities Act of 1990, Pub.L. No. 101-336 (1990). As the titles suggest, Title I applies specifically to employment and provides that:

> No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment.

42 U.S.C. § 12112(a). Neither party disputes that Title I ordinarily would apply to Filush's action. Title I, however, incorporates the administrative procedures of Title VII and requires that an employee first file a charge with the EEOC in a timely manner. *See* 42 U.S.C. § 12117(a) (incorporating Title VII's charge requirement).

Title II of the ADA pertains to Public Services. Congress required the Attorney General to promulgate regulations implementing Title II. *See* 42 U.S.C. § 12134(a). Pursuant to that grant of authority, the Attorney General has determined that Title II of the ADA also applies to employment:

> No qualified individual with a disability shall, on the basis of disability be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.

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28 C.F.R. § 35.140(a) (1998). Filush contends that the agency's regulation interpreting Title II's anti-discrimination clause is dispositive and allows employment discrimination claims to be brought under Title II. The Town, conversely, contends that no weight is to be given to the agency regulations because the plain language of the statute clearly indicates Congress' intent to restrict employment discrimination claims to Title I.

Under these circumstances, *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), governs a court's review of an agency regulation interpreting a statute. In *Chevron,* the Supreme Court devised a two-step approach for reviewing an administrative agency's interpretation of a statute it administers. 467 U.S. at 842-44, 104 S.Ct. 2778. The first step of a *Chevron* analysis requires the court to employ "traditional tools of statutory construction" to determine whether Congress has expressed its intent unambiguously on the question presented before the court. ***328**467 U.S. at 843 n. 9, 104 S.Ct. 2778. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43, 104 S.Ct. 2778. If Congress has left a gap for the administrative agency to fill, the second step of the *Chevron* analysis requires the court to uphold the administrative agency's regulation interpreting the statute unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Id.* at 844, 104 S.Ct. 2778. Here, the court's inquiry ends with the first step of the *Chevron* analysis because Congress unambiguously expressed its intent that Title II not apply to employment.

When interpreting a statute, the court "generally look[s] first to the plain language of a statute and interpret[s] it by its ordinary, common meaning." *Luyando v. Grinker,* 8 F.3d 948, 951 (2d Cir.1993). Title II's operative section provides:

> Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132. The section's first clause provides that no qualified individual with a disability may be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity. The phrase "services, programs, or activities ... focuses on a public entity's outputs rather than its inputs." *Decker v. University of Houston,* 970 F.Supp. 575, 578 (S.D.Tex.1997).

[2] If asked what services, programs, and activities it provided, the Town might respond that it provided basic municipal services such as public education, public transportation, or law enforcement. It would not answer that it hired teachers, bus drivers, and police officers. *See Zimmerman,* 170 F.3d at 1174. ("[E]mployment by a public entity is not commonly thought of as a 'service, program, or activity of a public entity.' "). These municipal services are considered the Town's "outputs," while the personnel and equipment engaged to provide such services would be considered the Town's "inputs." The latter are not services or programs that citizens seek to participate in or receive benefits from; they are conduits used by the public entity to provide services, programs, and activities.

Here, Filush is not contending that he sought to avail himself of a public service, such as the use of public transportation, administered by the Town. Instead, he argues that the Town, as his employer, violated his rights as an employee. Essentially, Filush's claims relate to his treatment as an "input," not on discrimination incurred while trying to take advantage of the Town's "outputs." The wording of the section's first clause does not suggest that Congress intended for Title II to apply in such a situation.

The second clause of Title II states that "no qualified individual with a disability shall, by reason of such disability, ... be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Some courts have held that the second clause is independent from the first and that it prohibits *any* form of discrimination by a public entity. *See Bledsoe v. Palm Beach County Soil & Water Conservation Dist.*, 133 F.3d 816, 822 (11th Cir.1998); *Innovative Health Sys., Inc. v. City of White Plains,* 117 F.3d 37, 44-45 (2d Cir.1997) (holding that Title II's anti-discrimination provision was intended as "a catchall phrase that prohibits all discrimination by a public entity,***329** regardless of context.").[FN2]

FN2. Filush relies heavily on *Innovative*

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> *Health Systems* to support his argument that Title II was intended to be broad and all-encompassing, rather than limited to the provision of services, programs, and activities. *Innovative Health Systems,* however, is distinguishable from the case at bar. In *Innovative Health Systems,* the Second Circuit addressed the issue of whether a city's zoning activities were within the ambit of Title II. The case did not pertain to the issue of employment, which raises broader statutory interpretation issues given the fact that employment discrimination under the ADA is explicitly governed by Title I. Moreover, *Innovative Health Systems* was decided in 1997. Since then, other circuits have considered the issue currently presented in this case-whether Title II encompasses employment discrimination claims by public employees. The analysis presented by the decisions of those other courts would likely prove persuasive to the Second Circuit in ruling on the specific question at issue here.

Such a broad interpretation, however, seems far beyond Congress' intentions for Title II. As the Ninth Circuit observed in *Zimmerman v. Oregon Department of Justice,* 170 F.3d 1169 (9th Cir.1999), the second clause of section 12132 appears to "relate[ ] back to the same 'services, programs, and activities' of a public entity that the first clause covers." *Id.* at 1175. The Ninth Circuit also noted that the legislative heading for Title II, "Public Services," suggests that it was intended to pertain only to the provision of public services. *Id.* (citing *Almendarez-Torres v. United States,* 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998)) ("[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.").

[3] In addition to the placement of the second clause and the section heading, the remaining text of Title II strongly suggests that Congress intended for it to apply only to the provision of public services. As the Ninth Circuit noted in *Zimmerman,* to prevail on a Title II claim, a plaintiff must prove that he is a "qualified individual with a disability." 170 F.3d at 1175. Congress has defined the term "qualified individual with a disability" to apply to "an individual with a disability who ... meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12132(2). Under subsection 12132(2), a plaintiff is not qualified to bring a Title II claim unless he "meets the essential eligibility requirements" established for the receipt of services, programs, or activities provided by a public entity. Thus, the second clause of section 12132 thus pertains to the provision of government services; if it did not, a plaintiff would not be qualified to bring a claim under that clause. Again, "service, programs and activities of a public entity" refers to public services-a public entity's outputs. It does not refer to obtaining or retaining employment with a public entity.

Accordingly, the second clause of Title II's anti-discrimination clause, like the first clause, prohibits discrimination only in a public entity's provision of its outputs. The plain language of 42 U.S.C. § 12132 does not "permit the inference that Congress intended for Title II to apply to employment." *Zimmerman,* 170 F.3d at 1176.

Even if the plain language of Title II were ambiguous, the statutory scheme of the ADA demonstrates that Title II was not intended to apply to employment. Specifically, of the ADA's five titles, only Title I is expressly designated as pertaining to employment and contains detailed, comprehensive employment-related provisions. 42 U.S.C. § 12111. Indeed, Title II contains no employment-related provisions and instead, refers only to the "services,***330** programs, and activities" of public entities. 42 U.S.C. § 12132. Even the definitions of terms common to both titles vary in order to accommodate each title's specific focus. For example, in Title I, the term "qualified individual with a disability" refers to a person's qualifications to work and be employed. 42 U.S.C. § 12111(8). In Title II, the term "qualified individual with a disability" refers to a person who is eligible to receive services or participate in programs or activities provided by a public entity. 42 U.S.C. § 12131(2). Similarly, Title I contains the term "reasonable accommodation," which specifically refers to the needs of the disabled in the workplace. 42 U.S.C. § 12111(9). Title II contains the term "reasonable modification," but provides no definition or any context that would associate the term with employment. 42 U.S.C. § 12131.

[4] The plain language of the two titles reveals their intended, distinct applications. It is axiomatic that "where Congress includes particular language in one

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section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983). Here, Congress labeled Title I "Employment" and included a series of provisions that provide detailed information on the accommodation and inclusion of disabled persons in the workplace. Conversely, Title II contains no references to the employment of disabled persons. The plain language of the two titles indicates that Congress purposely included references to employment in Title I, and omitted them from Title II, because it intended that only Title I should apply to employment.

This reading of the statute is supported by the impracticality of allowing employment-related claims to proceed under both titles. The employment practices of state and local government entities are already governed by the provisions of Title I. "To hold that Title II also governs their employment practices would render Congress' special effort to ensure their inclusion in Title I superfluous." *Zimmerman* at 1177. Moreover, allowing claims of employees of state and local governments to be brought under Title II would allow such employees to circumvent the administrative procedures required under Title I. Such a result would essentially render Title I inapplicable to claims by public employees, who could seek relief under Title II, rather than submit to the procedural requirements and limitations of Title I.[FN3] Additionally, allowing employment claims under both titles would grant public employees an exemption from the time limits for filing claims under Title I. It is unlikely that Congress intended to permit public employees multiple avenues by which to bring claims, while allowing private employees only the procedures provided under Title I.

> FN3. In addition to the exhaustion requirement, Title I incorporates by reference the procedural requirements of Title VII and maintains caps on damages available to successful plaintiffs. *See* 42 U.S.C. § 12117(b) (incorporating by reference 29 U.S.C. § 701 et seq.); 42 U.S.C. § 1981a(b)(3)(B) (providing for caps on punitive damages). Title II does not impose these requirements and limitations.

[5] When viewed holistically, the text, structure, and context of the ADA all demonstrate that Congress did not intend for Title II to apply to employment. Under such circumstances, the court need not consider legislative history [FN4] or administrative***331** regulations in interpreting the statute. *Chevron* at 842-43, 104 S.Ct. 2778.

> FN4. Some courts have considered Title II's legislative history and found that the "legislative commentary regarding the applicability of Title II to employment discrimination, however, is so pervasive as to belie any contention that Title II does not apply to employment actions." *Bledsoe v. Palm Beach Cty. Soil and Water Conservation Dist.*, 133 F.3d 816 (11th Cir.1998). The Committee Report, however, is not dispositive. Indeed, the Report states only that the Committee chose "not to list all the types of actions that are included within the term 'discrimination,'as was done in title I and III, because this title essentially simply extends the anti-discrimination prohibition embodied in section 504 to all actions of state and local governments." A reading of this explanation does not require the conclusion that Congress intended for Title II to apply to employment discrimination claims, as the Eleventh Circuit reasoned in *Bledsoe*. Indeed, this explanation could simply mean that Congress intended for the basic anti-discrimination principles embodied in titles I and III to extend to a public entity's provision of services, programs, and activities. In any event, because the plain language of the statute is unambiguous, this court need not consider statements contained in the statute's legislative history.

Title II was not intended to apply to claims of employment discrimination. Rather, Filush's claims should have been brought under Title I. Because Filush did not bring his claims under Title I and, thus, did not exhaust the administrative requirements of Title I, this court lacks subject matter jurisdiction to hear employment discrimination claims. Accordingly, Count One of the Complaint is dismissed.

B. Disclosure of Confidential Medical Information

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[6] Filush alleges that the defendant failed to keep confidential certain medical information relating to his disability, as required by the ADA's regulations set forth at 28 C.F.R. § 1630.14(c). The Town argues that this claim must fail because it was brought under Title II and the cited regulation refers only to Title I.

The ADA provides for the issuance of administrative regulations by various agencies. *See* 42 U.S.C. § 12116; 42 U.S.C. § 12134. The EEOC was charged with promulgating regulations concerning Title I, which relates to equal employment opportunities for individuals with disabilities. Those regulations are set forth 28 C.F.R. § 1630, *et seq.* The Department of Justice ("DOJ") was responsible for promulgating regulations for Title II, which pertains to non-discrimination on the basis of disability in the provision of public services. Those regulations are set forth at 28 C.F.R. § 35.140.

The DOJ's Title II regulations cross-reference Title I in outlining the standards by which to assess claims of employment discrimination brought under Title II:

> For purposes of this part, the requirements of title I of the Act, as established by the regulations of the Equal Employment Opportunity Commission in 29 CFR part 1630, apply to employment in any service, program, or activity conducted by a public entity if that public entity is also subject to the jurisdiction of title I.

28 C.F.R. § 35.140(b)(1). Filush claims that, because the DOJ regulations enforcing Title II expressly adopt the EEOC's regulations governing Title I of the ADA, when the public entity is acting as an employer, he may pursue a Title II claim based on a violation of the EEOC's regulations. Such a conclusion, however, is irreconcilable with the determination, discussed above, that Congress did not intend for Title II to apply to employment discrimination claims. In assuming that employment discrimination claims are within the purview of Title II, the DOJ regulations contradict the intent of the statute and cannot provide a basis for Filush's employment discrimination claims. *See* ***332***Foster v. Celani,* 849 F.2d 91, 92 (2d Cir.1988) (holding that regulations that contravene congressional intent cannot be upheld); *Insurance Co. of North America v. Gee,* 702 F.2d 411 (2d Cir.1983). Accordingly, Filush's claim regarding disclosure of medical information must be dismissed.

C. Retaliation

The Town moves to dismiss the second count of Filush's complaint, which alleges that the defendant retaliated against Filush because he requested reasonable accommodations for his learning disability, on the ground that Filush has failed to establish a prima facie case of retaliation under the ADA.

At oral argument on April 28, 2003, Filush's counsel acknowledged that the retaliation claim, like the claim involving the alleged disclosure of Filush's confidential medical information, was inextricably linked to the overarching question of whether Title II was intended to encompass employment discrimination claims. Because this court holds that Title II does not encompass employment discrimination claims, Filush's retaliation claim, which was brought under Title II, is also dismissed.

D. Punitive Damages

Pursuant to *Barnes v. Gorman,* 536 U.S. 181, 122 S.Ct. 2097, 153 L.Ed.2d 230 (2002), in which the Supreme Court held that punitive damages were not available under either Section 504 of the Rehabilitation Act or Title II of the ADA, Filush withdraws his claims for punitive damages.

Conclusion

For the reasons stated above, Defendant's Motion to Dismiss Count One of the Complaint for lack of subject matter jurisdiction is GRANTED. Defendant's Motion to Dismiss Count Two of the Complaint is also GRANTED. Plaintiff's claims brought under section 504 of the Rehabilitation Act are not affected by this ruling and remain pending.

It is so ordered.

D.Conn.,2003.
Filush v. Town of Weston
266 F.Supp.2d 322, 14 A.D. Cases 1166

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FONTANA UNIFIED SCHOOL DISTRICT,
Plaintiff and Appellant,
v.
NANCY BURMAN, Defendant and Appellant
L.A. No. 32230.

Supreme Court of California
May 12, 1988.

SUMMARY

In a hearing by a commission on professional competence to consider charges against a tenured teacher initiated by a school district's notice of intent to dismiss her (Ed. Code, § 44932, subd. (a)), the commission determined that the teacher should not be dismissed, even though it found her guilty of dishonesty, a cause for discipline and a ground for dismissal. In mandamus proceedings by the school district, the trial court denied the writ. (Superior Court of San Bernardino County, No. 223230, Charles Bierschbach, Judge.) The Court of Appeal, Fourth Dist., Div. Two, No. E001561, reversed.

The Supreme Court reversed the judgment of the Court of Appeal with directions to enter judgment affirming the trial court in part and reversing in part and directing it to enter judgment denying the petition for a writ of mandate and to award the teacher reasonable costs and attorney fees. Stating the principal question on appeal was whether the commission had the discretion to determine that the teacher should not be dismissed as a permanent employee once it found her guilty of dishonesty within the meaning of Ed. Code, § 44932, subd. (a)(3), or whether, as the Court of Appeal found, her dismissal was mandatory once cause for discipline on that ground had been found to exist, the court held a commission on professional competence is empowered to exercise its collective wisdom and discretion to determine that dismissal is not appropriate in a given case. The court also held the commission was not an indispensable party in the administrative mandamus proceedings. (Opinion by Arguelles, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Schools § 46--Teachers--Suspension or Dismissal-- Appeals Before Personnel Commission--Commission on Professional Competence--Discretion.
In a hearing by a commission on professional competence to consider charges against a tenured teacher initiated by the school district's notice of intent to dismiss her (Ed. Code, § 44932, subd. (a)), the commission had the discretion to determine that the teacher should not be dismissed, even though the commission found her guilty of dishonesty, a cause for discipline and a ground for dismissal. Under Ed. Code, § 44944, subd. (c), a commission has only two options when a school district seeks only to dismiss a teacher: It may choose to dismiss or not to dismiss. The fact the commission found a cause for discipline existed did not mandate the imposition of the only statutorily authorized discipline of dismissal and it was prohibited from imposing suspension. The commission's role is not limited to resolving the factual question whether the charged conduct occurred, but also to resolve the ultimate issue presented by a disciplinary proceeding: whether the conduct demonstrates such unfitness to teach as to warrant terminating the teacher's employment.
[See **Cal.Jur.3d**, Schools, § 440; **Am.Jur.2d**, Schools, § 185.]
(2) Statutes § 21--Construction--Legislative Intent.
A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent the court turns first to the words themselves for the answer. It is required to give effect to statutes according to the usual, ordinary import of the language employed in framing them, and, if possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided, and when used in a statute, words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.

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(3) Schools § 40--Teachers--Suspension or Dismissal--Statutory Scheme.
Viewed in the context of the entire statutory scheme, a fair reading of Ed. Code, § 44944, recognizes the discretion given both an employing school district and a commission on professional competence in disciplinary matters. The district may determine when to seek disciplinary action and what discipline to seek. It may, by choosing to pursue only a dismissal sanction, preclude the commission from imposing suspension. And it may, by invoking the procedures of Ed. Code, § 44939, accompany the notice of dismissal with an immediate suspension of the employee without pay. But nothing in the statutory scheme indicates that the commission must be bound by the district's choice to the extent that it is required to approve the employee's dismissal if it is not persuaded, in the exercise of its discretion, that an offense is serious enough to warrant that step.

(4) Statutes § 45--Construction--Presumptions--Prior Judicial Construction.
When the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction. The judicial construction given words and phrases are presumed adopted when those portions of an existing statute are used in a subsequent legislative enactment.

(5) Administrative Law § 104--Judicial Review and Relief--Methods-- Administrative Mandamus--Parties--Dismissal of Teacher--Commission on Professional Competence--Indispensable Parties.
In a mandamus proceeding (Code Civ. Proc., § 1094.5) by a school district to review a decision of a commission on professional competence that the penalty of dismissal should not be imposed on a tenured teacher, in which the teacher was named the respondent, the commission was not an indispensable party. The commission is not a standing body but an ad hoc group whose decision, once made, becomes the decision of the employing school district (Ed. Code, § 44944, subd. (c)), and the commission serves no identifiable function in the remainder of the review process. As the commission need not be before the court to enable the court to accord complete relief between the employing school district and the employee, it is not an indispensable party within the meaning of Code Civ. Proc., § 389, subd. (a).

(6) Costs § 20--Attorney Fees--Statutory Provisions--Teacher Dismissal Proceedings.
Although Ed. Code, § 44944, subd. (e), authorizing the payment of attorney fees to an employee whom the commission on professional competence has determined should not be dismissed or suspended, does not expressly provide for the award of fees if judicial review of a commission decision is sought, fees should be awarded to a prevailing employee for any such review proceedings as well, and costs should be awarded under the general provisions of Code Civ. Proc., § 1032, subd. (b) (costs to prevailing party). The amount of attorney fees is not limited by Gov. Code, § 800, allowing $1,500 in costs and attorney fees on determination that the administrative proceeding was the result of arbitrary or capricious action.

COUNSEL

Wagner, Sisneros & Wagner and John J. Wagner for Plaintiff and Appellant.

Joseph R. Symkowick and Michael E. Hersher as Amici Curiae on behalf of Plaintiff and Appellant.

George W. Shaeffer, Jr., and Silver, Kreisler, Goldwasser & Shaeffer for Defendant and Appellant.

A. Eugene Huguenin, Jr., Kirsten L. Zerger, Diane Ross and Ramon E. Romero as Amici Curiae on behalf of Defendant and Appellant.

ARGUELLES, J.

The decision of a school district to dismiss or to suspend a permanent certificated employee, such as a tenured teacher, for disciplinary or performance-related reasons is subject to review at the employee's request by a local commission on professional competence. The commission is charged by statute with the responsibility of determining whether the employee should or should not be dismissed or suspended, but its powers are circumscribed in part by the employing district's initial choice of sanction. Under Education Code section 44944, subdivision (c), [FN1] the commission has no power "to dispose of [a] charge of dismissal by imposing probation or other alternative sanctions" and may impose suspension as a

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sanction only if the employing district sought that result.

FN1 All further statutory references are to the Education Code unless otherwise indicated.

We are called upon in this case to decide whether the statute requires a local commission on professional competence to sustain a school district's notice of intent to dismiss a tenured elementary school teacher whenever the commission finds that one of the statutorily authorized grounds for dismissal exists, or whether such a commission has discretion to determine that dismissal is not warranted although cause for some measure of ***212** discipline may exist. We conclude the Court of Appeal erred in holding the commission had no discretion and therefore reverse its order mandating the teacher's discharge.

Facts

The facts of this case are not complex and are undisputed on all material points. Nancy Burman, a tenured teacher employed for 14 years with the Fontana Unified School District in San Bernardino County (district) and then serving as a school principal, decided some time prior to December 8, 1983, to call in sick so that she could attend the first California landing of the space shuttle at Edwards Air Force Base on that day. She arranged for a third party to call her school on December 8 to report that she was ill and would not be at work. In fact, she was not ill and the information given at her request was false.

On the evening of December 7, Burman had dinner with the principal of another school. During the course of a long evening that extended into the following morning, Burman (a) invited a custodian from the friend's school to join the two women for dinner during the custodian's duty hours, (b) returned to her own school after dinner and invited the custodian on duty there to go along with the three to a nightclub, where the group remained for several hours and consumed alcoholic beverages, and (c) invited the others to accompany her to see the space shuttle land at 5 in the morning. The shuttle was delayed by computer problems, and the group left without seeing the landing. Burman returned to her house early that afternoon, where she was confronted by the district superintendent and other district personnel. She initially lied about where she had been that day and denied knowing where the other principal was, but confessed after a short period of time that she had not been ill and that the other principal was at that moment inside the house.

The district's board of education voted to discharge Burman for immoral conduct. Proceeding under section 44939, the district placed Burman on immediate suspension without pay and served notice on her that she would be dismissed 30 days later unless she demanded a hearing. [FN2] The notice set ***213** forth four of the statutorily authorized grounds for dismissal of a teacher, charging Burman with immoral conduct, dishonesty, evident unfitness for service, and persistent violation of or refusal to obey district regulations. [FN3]

FN2 Section 44939 provides, in pertinent part: "*Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board, charging a permanent employee of the district with immoral conduct*, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, with violation of Section 51530, with knowing membership by the employee in the Communist Party or with violation of any provision in Sections 7001 to 7007, inclusive [sections repealed by Stats. 1981, ch. 470, § 11, p. 1738], *the governing board may, if it deems such action necessary, immediately suspend the employee from his duties and give notice to him of his suspension, and that 30 days after service of the notice, he will be dismissed, unless he demands a hearing.*" (Italics added.)

This portion of section 44939 augments, at the option of a district and in the limited circumstances specified, the procedures found in section 44934 for disciplining a permanent employee. Section 44934 similarly requires a written statement of charges

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and 30 days notice of the intent to take disciplinary action, but incorporates by reference the full (and more extensive) range of statutory grounds for imposing discipline (see § 44932, subd. (a)) and authorizes proceedings to suspend the employee for a specified period of time rather than to dismiss. Immediate suspension of the employee without pay before expiration of the 30-day notice period is available only if the district institutes a dismissal proceeding based upon one of the grounds specified in section 44939.

FN3 The grounds for dismissal of a teacher are specified in section 44932, subdivision (a): "No permanent employee shall be dismissed except for one or more of the following causes: [¶] (1) Immoral or unprofessional conduct. [¶] (2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof. [¶] (3) Dishonesty. [¶] (4) Incompetency. [¶] (5) Evident unfitness for service. [¶] (6) Physical or mental condition unfitting him to instruct or associate with children. [¶] (7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him. [¶] (8) Conviction of a felony or of any crime involving moral turpitude. [¶] (9) Violation of Section 51530 of this code or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947. [¶] (10) Violation of any provision in Sections 7001 to 7007, inclusive, of this code [sections repealed by Stats. 1981, ch. 470, § 11, p. 1738]. [¶] (11) Knowing membership by the employee in the Communist Party. [¶] (12) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children."

Subdivision (b) of section 44932 provides in turn that, unless the question is governed by a collective bargaining agreement adopted in accordance with Government Code section 3543.2, a permanent employee may be suspended for unprofessional conduct, a ground that under subdivision (a)(1) may also support the dismissal of such an employee. These two provisions are supplemented by section 44933, which allows the suspension or the dismissal of a permanent employee for unprofessional conduct consisting of acts or omissions other than those specified in section 44932.

Burman timely requested a hearing under section 44944, subdivision (a), and a commission on professional competence was convened to consider the matter. [FN4] The commission, on a two-to-one vote, found her guilty only of ***214** the dishonesty charge. The charges of immoral conduct, evident unfitness for duty, and persistent violation of or refusal to obey reasonable regulations of the district were not sustained.

FN4 Subdivision (b) of section 44944 specifies the composition of the body charged with conducting the hearing called for in the section and provides, in pertinent part: "The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. ... [¶] The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and shall hold a currently valid credential and have at least five years' experience within the past 10 years in the discipline of the employee."

Although the commission made a finding that "[c]ause exists for disciplinary action against respondent under Education Code Section 44932(a)(3), based upon the charge of dishonesty," it found dismissal unwarranted. The commission noted that Burman had a previously

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unblemished record and made an express finding that her actions "represented isolated conduct ... not likely of repetition under any set of circumstances in the future." The commission also found by way of mitigation that Burman had not been involved in any prior disciplinary action, that she had received no prior warnings or counseling with regard to abuse of sick leave or her dealings with school custodians, that there was no evidence of any prior abuse of sick leave, and that her evaluations as a district employee had been satisfactory or better. On this record, the commission determined that Burman was not unfit to continue as a teacher and concluded that "the penalty of dismissal should not be imposed." [FN5]

FN5 The commission observed that it would have unanimously found Burman "guilty of unprofessional conduct within the meaning of Sections 44932(a)(1) and 44933" - apparently on the basis of her initial dishonest responses to the superintendent's questions and what it seems to have viewed as "questionable conduct" with the custodians - and would have ordered her suspended had that course been open to it. As the district had sought only Burman's dismissal, the proceeding was not "a suspension proceeding" within the meaning of section 44944, subdivision (c), and the commission lacked the authority to order Burman suspended.

The commission's finding that "[c]ause exists for disciplinary action against respondent under Education Code Section 44932(a)(3), based upon the charge of dishonesty" was therefore technically incorrect - as suspension, which the commission deemed the appropriate discipline, is available only in a proceeding under section 44932, subdivision (b) or section 44933, and cause may have existed for disciplinary action under those statutes, not under subdivision (a) of section 44932. We view the commission's "finding" as an attempt to specify the proper *substantive* ground for the discipline it thought appropriate, not as a determination in favor of dismissal inconsistent with its express conclusion that Burman was not unfit to continue as a teacher.

The district sought review in the superior court by petition for a writ of mandate. [FN6] The petition named only Burman as the respondent, and she demurred on the ground that the commission was the proper party ***215** respondent and the district had accordingly failed to join an indispensable party within the applicable statute of limitations. The trial court overruled the demurrer and considered the merits of the matter, exercising its independent judgment on the evidence as required by section 44945. The court incorporated the commission's findings and decision into its own statement of decision and entered judgment denying the writ, also awarding Burman $1,500 in costs and attorney fees.

FN6 Section 44945 specifies that "[t]he decision of the Commission on Professional Competence may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision made by a hearing officer under Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. ..." Government Code section 11523 in turn states that "[j]udicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure ...." A proceeding in administrative mandamus commenced by a petition under Code of Civil Procedure section 1094.5 is the proper avenue for review of a decision rendered under section 44944. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1982) 135 Cal.App.3d 278, 283 [185 Cal.Rptr. 203].)

The district appealed on the merits, and Burman cross-appealed to challenge the overruling of her demurrer and the trial court's failure to award her a greater amount in costs and attorney fees. The Court of Appeal reversed, rejecting Burman's contention that the commission was an indispensable party and concluding that under section 44944, subdivision (c), neither the commission nor the trial court had any alternative but to rule that Burman should be dismissed "once a cause for discipline under Education Code section 44932, subdivision (a)(3) had been found ... to exist ...." We granted review to determine whether the Court of Appeal properly interpreted the statute.

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Discussion

1. *Commission Discretion*

(1a) The principal question on this appeal is whether the commission had the discretion to determine that Burman should not be dismissed as a permanent employee once it found her "guilty of dishonesty within the meaning of Education Code Section 44932(a)(3)," or whether, as the Court of Appeal held, her dismissal was mandatory once cause for discipline on that ground had been found to exist. Resolution of this question requires us to determine the proper interpretation of subdivision (c) of section 44944, a task we cannot perform without a clear understanding of the statutory framework within which a commission on professional competence acts. We turn first to an examination of that subject.

A. *The Statutory Framework.* The provisions of the Education Code allow a district substantial leeway in determining when to take disciplinary action against a permanent employee and what action to take. Except in the case of an employee charged with certain sex offenses (see §§ 44010, 44940), a district is not required to take action. In all other situations, the district has discretion. It *may*, if it so chooses, initiate disciplinary proceedings under section 44934. It *may*, if it so chooses and if one of the grounds specified in subdivision (a) of section 44932 exists, seek the dismissal rather than the suspension of an employee. And it *may*, if it so chooses and if the ground for dismissal is also one of those specified in section 44939, *216 immediately suspend the employee without pay pending the disposition of the dismissal proceeding. Its discretion is limited only by the requirement that the ground asserted as the basis for taking disciplinary action be one authorized by statute *and* by the provision for review of its decision by a commission on professional competence if the employee requests a hearing.

Sections 44932 and 44933 specify the grounds for dismissal and suspension of teachers. Subdivision (a) of section 44932 identifies 12 specific grounds - including immoral or unprofessional conduct and, most relevant for present purposes, dishonesty - for which a permanent employee may be dismissed. It states, in fact, that "[n]o permanent employee shall be dismissed *except for* one or more of [those] causes ..." (italics added). Subdivision (b) provides in turn that a permanent employee may be suspended on grounds of unprofessional conduct, and section 44933 indicates that either dismissal or suspension may be sought on a charge of unprofessional conduct consisting of acts or omissions other than those enumerated in section 44932. [FN7] In the present case, the district proceeded solely on the basis of subdivision (a) of section 44932 and sought only to dismiss, not to suspend, Burman.

FN7 Although "unprofessional conduct" is identified in section 44932 as one of the 12 specific grounds for which a permanent employee may be dismissed, it appears to have a broader import than the others. The phrase refers generally to conduct demonstrating unfitness to teach (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174 [197 Cal.Rptr. 390]), and a particular act or omission on the part of a teacher may constitute unprofessional conduct as well as one of the other enumerated grounds. (*Id.* at p. 1175; see *Board of Education v. Swan* (1953) 41 Cal.2d 546, 551 [261 P.2d 261].) Section 44933 - by providing that unprofessional conduct may consist of "acts or omissions other than those specified in section 44932" - suggests that each of the specific acts or omissions listed in subdivisions (a)(2) through (a)(12) of section 44932 may also amount to unprofessional conduct supporting either a dismissal proceeding under subdivision (a)(1) or a suspension proceeding under subdivision (b).

The distinction between charges brought under subdivision (a) of section 44932 and those brought under subdivision (b) of that section - and between an attempt under either section 44932 or 44933 to dismiss an employee and an attempt under the statutes only to suspend - is significant. Subdivision (c) of section 44944 offers a commission on professional competence only three choices in resolving a disciplinary proceeding. It must determine either that the employee should be dismissed, that the employee should be suspended, or that the employee should not be dismissed or suspended. And the subdivision expressly provides: "The commission shall not have the power to dispose of [a] charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension ... shall be available only in a suspension proceeding authorized pursuant to subdivi-

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sion (b) of Section 44932 or Section 44933." [FN8] *217

FN8 Subdivision (c) of section 44944 provides in full: "The decision of the Commission on Professional Competence shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition which shall be, solely: [¶] (1) That the employee should be dismissed. [¶] (2) That the employee should be suspended for a specific period of time without pay. [¶] (3) That the employee should not be dismissed or suspended. [¶] The decision of the Commission on Professional Competence that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors. [¶] The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to paragraph (2) shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933. [¶] The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board. [¶] The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section. [¶] The governing board and the employee shall have the right to be represented by counsel."

The statutory scheme thus limits a commission to only two options where, as here, a school district seeks only to dismiss a teacher under subdivision (a) of section 44932. The commission then may not impose suspension, nor may it achieve the same result by ordering dismissal and staying its order on conditions amounting to probation. [FN9] It may only choose to dismiss or not to dismiss.

FN9 The latter possibility, in fact, was foreclosed by the Legislature in direct response to a Court of Appeal decision (*Governing Board v. Commission on Professional Competence (Pickering)* (1977) 72 Cal.App.3d 447 [140 Cal.Rptr. 206]) holding that the power to dismiss included the power to stay an order of dismissal on conditions of probation, effectively resulting in suspension rather than dismissal. (See *Powers v. Commission on Professional Competence* (1984) 157 Cal.App.3d 560, 580-581 [204 Cal.Rptr. 185].) Within six months of the *Pickering* decision, a bill was introduced to "clarify that the commission is limited in its disposition of the case to dismissing the employee or not dismissing the employee" (Legis. Counsel's Dig., Assem. Bill No. 2401, 4 Stats. 1978 (Reg. Sess.) Summary Dig., p. 324), and subdivision (c) of section 44944 was amended to provide: "The commission shall not have the power to dispose of the charge of dismissal by imposing probation, suspension of a dismissal or a nondismissal, or other alternative sanctions." (Stats. 1978, ch. 1172, § 1, p. 3782.)

Although the section was later amended by the Hughes-Hart Educational Reform Act of 1983 (Stats. 1983, ch. 498, § 59, p. 2086) to read in its present form, and the explicit bar against "suspension of a dismissal or a nondismissal" was eliminated, the legislative history indicates that no substantive change was intended. The Senate's attempt to give a commission on professional competence the authority to dispose of a charge of dismissal by suspending the employee (Sen. Bill No. 813 (1982-1983 Reg. Sess.) as amended May 16, 1983) was rejected by the Assembly in favor of the language of the 1978 amendment (Assem. Amend. to Sen. Bill No. 813 (1982-1983 Reg. Sess.) June 8, 1983), and the final bill reported out of conference established the present statutory scheme - for the first time differentiating between dismissal and suspension charges, and expressly limiting the power to suspend to proceedings seeking that end. In light of that limitation, no explicit prohibition against "suspension of a dismissal or a nondismissal" was necessary to effectuate the legislative intent.

In the present case, the commission chose not to dismiss. Although the trial court upheld the commission's action, the Court of Appeal found the decision im-

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proper, ruling that if a commission finds that cause for discipline exists, then, as a matter of law, discipline must be imposed, and that, in light of the statutory limitations on the commission's power to impose suspension, the discipline here could only be dismissal. Burman contends ***218** that the Court of Appeal misinterpreted section 44944, subdivision (c) as barring the exercise of discretion and requiring a commission to authorize dismissal even when the commission concludes that dismissal is inappropriate. The proposition that section 44944, subdivision (c) compels the imposition of discipline, when a finding is made that cause for discipline exists, thus lies at the heart of this case. We turn then to that question.

B. *Education Code Section 44944.* We are guided by numerous precepts of statutory construction as we approach the task of determining whether subdivision (c) of section 44944 should be interpreted to bar the exercise of discretion by a commission on the propriety of the sanction of dismissal where cause for discipline is established. (2) "We begin with the fundamental rule that a court 'should ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation.] In determining such intent '[t]he court turns first to the words themselves for the answer.' [Citation.] We are required to give effect to statutes 'according to the usual, ordinary import of the language employed in framing them.' [Citations.] 'If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.' [citation]; 'a construction making some words surplusage is to be avoided.' [Citation.] 'When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.' [Citations.] Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. [Citations.]" (*Palos Verdes Faculty Assn.* v. *Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 658-659 [147 Cal.Rptr. 359, 580 P.2d 1155] [quoting *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224]].)

(1b) The "words [of the statute] themselves" do not compel the interpretation advanced by the Court of Appeal. Section 44932 provides that a teacher cannot be dismissed unless certain grounds are found to exist; it does not provide that a teacher *must* be dismissed if one of those grounds is found. Similarly, section 44944 provides that the commission is to decide whether a teacher should or should not be dismissed; it does not provide that the commission *must* dismiss a teacher if it finds that one of the statutory grounds exists.

(3) Viewed in the context of the entire statutory scheme, a fair reading of section 44944 recognizes the discretion given both an employing school district and a commission. The district may determine when to seek disciplinary action and what discipline to seek. It may, by choosing to pursue only a dismissal sanction, preclude the commission from imposing ***219** suspension. [FN10] And it may, by invoking the procedures of section 44939, accompany the notice of dismissal with an immediate suspension of the employee without pay. But nothing in the statutory scheme indicates that the commission must be bound by the district's choice to the extent that it is required to approve an employee's dismissal if it is not persuaded, in the exercise of its discretion, that an offense is serious enough to warrant that step.

> FN10 By way of example, the commission's inability here to impose discipline on an employee who plainly merited some measure of punishment flowed not from the commission's exercise of a power it did not possess (i.e., to choose not to dismiss Burman) but from the district's decision to take an all or nothing tack - exercising its power to suspend Burman immediately without pay and seeking perhaps to preclude the commission from determining, as it indicated it would have, that suspension was the more appropriate sanction for Burman's misconduct.

(1c) We thus cannot accept the proposition that discipline *must* be imposed, when a finding is made that cause for discipline exists. The Court of Appeal thought this the clear intent of the 1978 legislative nullification of the decision in *Pickering, supra,* 72 Cal.App.3d 447, that a commission had the power to stay an order of dismissal. But the Legislature acted only to bar a commission from suspending the impact of its order once the statutory determination was made "[t]hat the employee should be dismissed" or "[t]hat the employee should not be dismissed ...." Nothing in either the 1978 or later amendments purported to limit a commission's ability to determine that, although

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cause for *some* discipline existed, the harsh sanction of *dismissal* was not warranted. [FN11]

> FN11 Indeed, the fact that the Legislature acted in 1978 to foreclose a commission from suspending "a nondismissal," as well as a dismissal, suggests on the face of things that a commission had been and remained empowered to choose not to dismiss, and was precluded only from attempting to make other than an all-or-nothing decision.

(4) In addition to the general rules for ascertaining legislative intent previously noted, "[i]t is a well-established principle of statutory construction that when the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction." (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734 [180 Cal.Rptr. 496, 640 P.2d 115, 30 A.L.R.4th 1161].) The judicial construction given words and phrases are presumed adopted when those portions of an existing statute are used in a subsequent legislative enactment. (*Ibid.; People v. Curtis* (1969) 70 Cal.2d 347, 355 [74 Cal.Rptr. 713, 450 P.2d 33].)

This presumption facilitates our examination of a commission's role in disciplinary matters. We held in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 [82 Cal.Rptr. 175, 461 P.2d 375], that the ***220** phrase "immoral or unprofessional conduct," one of the statutory grounds for dismissing or suspending a permanent employee (§ 44932, subd. (a)(1)), embraced only conduct demonstrating unfitness to teach. Reasoning that the phrase was otherwise too vague and too broad to withstand constitutional challenge, we held that the alleged misconduct of a tenured teacher should be measured against seven criteria in determining whether dismissal was warranted: (1) the likelihood that the conduct would recur; (2) the existence of aggravating or extenuating circumstances; (3) the impact of publicity; (4) the effect on teacher-student relationships; (5) any disruption of the educational process; (6) the employee's motive for the conduct; and (7) the proximity or remoteness in time of the conduct. (*Id.* at p. 230; see also *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 696-697 [139 Cal.Rptr. 700, 566 P.2d 602]; *San Dieguito High School Dist., supra*, 135 Cal.App.3d at p. 284.) The Legislature must be presumed to have adopted this construction in its continued use of the identical phrase in both the 1978 and the more extensive 1983 amendments to the Education Code.

(1d) Application of this standard indicates that a commission has broad discretion in disciplinary matters. Its role is not merely to determine whether the charged conduct in fact occurred, but to decide whether that conduct - measured against the *Morrison* criteria (*supra*, 1 Cal.3d 214) - demonstrates unfitness to teach and thus constitutes "immoral or unprofessional conduct" within the meaning of the statute. [FN12]

> FN12 Although *Morrison* concerned itself only with the proper definition of "immoral or unprofessional conduct," its analysis requires an identical approach to an attempt to discipline a permanent employee on grounds of dishonesty, as here. Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute "dishonesty" as a ground for discipline.

We find other provisions relevant to our inquiry in section 44944. Subdivision (c) itself does not merely restrict a commission's options for the disposition of a particular disciplinary proceeding; it also requires a commission to issue "a written decision containing findings of fact, [and] determinations of issues ...." (§ 44944, subd. (c).) That a commission must determine issues as well as make findings of fact supports our conclusion that its role is not limited to resolving the factual question whether the charged conduct occurred, but that it is to resolve the ultimate issue presented by a disciplinary proceeding: whether the conduct demonstrates such unfitness to teach as to warrant terminating the teacher's employment. [FN13]
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> FN13 Still other subdivisions of section 44944 tend to confirm the discretionary role of a commission. Subdivision (a) subjects proceedings before a commission to the provisions of the Administrative Procedure Act (Gov. Code, § 11500 et seq.), with minor exclusions and modifications not relevant to present purposes. Among the provisions so incorporated is Government Code section

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11506, subdivision (d), which allows a respondent to file a statement in mitigation even if no defense to the charges is tendered. This permission would be less relevant in commission proceedings if a commission did not retain the power to take mitigating factors into consideration and to determine that, under the *Morrison* criteria, dismissal was not an appropriate penalty even though a particular charge of misconduct was found to be true. Absent such discretion, there would also seem to be less purpose to the requirement that the members of the commission selected by the district and the employee be credentialed teachers with substantial recent experience in the employee's particular field. (§ 44944, subd. (b).)

That a commission must play a discretionary role is also suggested by contrasting the proceedings for the dismissal or suspension of permanent, tenured employees with those now in effect for the dismissal or suspension of probationary, nontenured employees. A probationary employee may be dismissed during the school year for unsatisfactory performance or for cause or, as an alternative to dismissal, may be suspended without pay for a specified period of time. (§ 44948.3, subds. (a), (b).) [FN14] The employee may demand a hearing, as in the case of a permanent employee, but a commission on professional competence is not convened. Instead, the hearing may be conducted by an administrative law judge, who prepares a "recommended decision" for the governing board of the employing school district. (§ 44948.3, subd. (a)(2).) The final decision, however, is that of the district. The commission occupies a position of greater import in proceedings involving a permanent employee, for "[t]he decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board." (§ 44944, subd. (c).) The Legislature was quite able to specify a procedure placing the final disciplinary decision in the hands of a teacher's employer when it so chose. The significantly different provisions of section 44944 necessarily betoken a greater and a discretionary role for a commission in disciplinary proceedings involving a permanent employee.

FN14 Section 44948.3 (adopted by Stats. 1983, ch. 498, § 61, p. 2090) applies only to probationary employees whose terms commenced during or after the 1983-1984 fiscal year or who are employed by a school district having an average daily attendance of at least 250 pupils. Other probationary employees have greater rights, commensurate with those accorded permanent employees, as far as disciplinary proceedings during the school year are concerned (see §§ 44932, subd. (b), 44948), but are subject to procedures similar to those specified in section 44948.3 in challenging a denial of reemployment for the succeeding school year. (See § 44948.5.)

Given the structure of the proceedings and, in particular, the words of the statute and the need to measure conduct against the criteria specified in *Morrison, supra*, 1 Cal.3d 214, we conclude the Legislature intended more of a commission on professional competence than a simple determination whether cause exists for disciplinary action, resulting inexorably in the imposition of the sanction previously selected by the employing school district. We avoid surplusage, give effect to each portion of the statute and harmonize each part of the entire statutory scheme by recognizing that the commission retains discretion to choose between the options given it by statute. ***222**

This interpretation of the statute works no great infringement on the ability of school districts to govern their affairs and to control the conduct of their permanent employees. The same conduct, in the judgment of the employing district, may constitute grounds for suspending or for dismissing a permanent employee, and nothing in the statutory scheme limits the ability of a district to pursue alternative sanctions, either simultaneously (cf. *Von Durjais v. Board of Trustees* (1978) 83 Cal.App.3d 681, 686-687 [148 Cal.Rptr. 192]; *Board of Education* v. *Commission on Professional Competence (Smyth)* (1976) 61 Cal.App.3d 664, 670 [132 Cal.Rptr. 516]) or, as principles of double jeopardy do not bar successive administrative proceedings to revoke a license (see *Kendall v. Bd. of Osteopathic Examiners* (1951) 105 Cal.App.2d 239, 248-249 [233 P.2d 107]; cf. *Rinaldo v. Board of Medical Examiners* (1932) 123 Cal.App. 712, 716 [12 P.2d 32]), in succession. [FN15]

FN15 Although generally "no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters

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occurring more than four years prior to the filing of the notice" (§ 44944, subd. (a)), this limitation seems to be more of a bar against the use of stale information to buttress a current charge than a true statute of limitations restricting a district's options. To the extent that it might be taken as an explicit statute of limitations, it would seem inapplicable to a successive application based upon the same charge of misconduct and differing only as to the proposed discipline.

Limitations questions in administrative matters are properly evaluated under rules similar to those employed in judicial proceedings. (See 2 Cal.Jur.3d, Administrative Law, § 144, p. 366.) Given that the identical conduct would be at issue in the two proceedings and that the employee would have received timely notice of the charges, could complain of no prejudice in gathering evidence and could ordinarily point to no bad faith or unreasonable conduct on the part of the employing district, the doctrine of equitable tolling would generally preserve a district's right to proceed in this fashion. (See *Addison v. State of California* (1978) 21 Cal.3d 313, 319 [146 Cal.Rptr. 224, 578 P.2d 941].) Complaints of stale claims would be more appropriately subject to a laches analysis than a strict statute of limitations bar. (Cf. *Gore v. Board of Medical Quality Assurance* (1980) 110 Cal.App.3d 184 [167 Cal.Rptr. 881].)

We conclude that a commission on professional competence is empowered to exercise its collective wisdom and discretion to determine that dismissal is not appropriate in a given case. The statutes do not preclude a district from preserving its options by seeking alternative sanctions simultaneously or successively, and no other reading of the statutes is capable of fully implementing the balance struck by the Legislature between the discretion given districts to select the degree of discipline and limit the options available to the commission, and the protection from arbitrary action accorded their permanent employees. [FN16] ***223**

FN16 By recognizing that alternative sanctions may be sought either simultaneously or successively, at a district's option, we harmonize the discretion accorded school districts to select the appropriate degree of discipline and that given a commission on professional competence. Were a school district limited to a single disciplinary proceeding, practical considerations might lead it to charge in the alternative in many, if not most, cases, for to seek an employee's dismissal alone might lead to no discipline being imposed and a district might deem suspension of the employee preferable to that outcome. But to charge in the alternative in every case would vest the commission with the power to opt for suspension in each case - a result that is at odds with the legislative limitations on the options available to a commission. The availablility of successive proceedings allays these concerns.

Nor need we fear that the authority to institute successive proceedings would be invoked routinely to the prejudice of district employees guilty of only minor misconduct. If a district opted to seek first only the dismissal of an employee and its attempt was not sustained by a commission, it would be required to pay the costs of the hearing and the employee's attorney fees (§ 44944, subd. (e)), and the imposition of any lesser discipline would be delayed. Moreover, an employee suspended without pay whose dismissal was then not allowed would be entitled to compensation for lost wages even if some lesser measure of discipline were later permitted. (See *Von Durjais, supra*, 83 Cal.App.3d at p. 687.) These potential costs, and the simple inefficiency of moving separately rather than in a single proceeding, should suffice to limit exercise of the authority to cases in which a district held an abiding belief that no discipline less than dismissal was warranted, while at the same time preserving the district's ability to ensure that it could seek the imposition of some discipline if the commission disagreed with the initial judgment on the appropriate degree of discipline and if the district determined that a successive proceeding was warranted.

2. *Commission as Indispensable Party*

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(5) As we reverse the Court of Appeal on the question of commission discretion, we need not, strictly speaking, address Burman's contention that her demurrer to the district's mandamus petition should have been granted because the commission was an unjoined, indispensable party. We did not limit our grant of review under California Rules of Court, rule 29.2(b), to the discretion issue, however, and we think it appropriate to speak to the indispensable party question for the guidance of the bench and bar in future cases, for on this point we agree with the Court of Appeal and find Burman's contentions unpersuasive.

We must acknowledge that Burman's arguments have facial appeal. The district's challenge to the commission's decision was properly brought under Code of Civil Procedure section 1094.5 (*San Dieguito Union High School Dist., supra*, 135 Cal.App.3d at p. 283), and that statute specifies only two possible dispositions of such a petition: "The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. ..." (Code Civ. Proc., § 1094.5, subd. (f).) Burman accordingly contends only the commission could be the subject of a judgment ordering it as respondent to set aside its decision (see *State of California v. Superior Court* (1974) 12 Cal.3d 237, 255 [115 Cal.Rptr. 524 P.2d 1281] [only the California Coastal Commission and its members could be proper subjects of petition for writ of administrative mandamus]) and asserts that the district's petition should have been dismissed because the statute of limitations specified in Government Code section 11523 expired without the joinder of the commission as an indispensable party. (See *Kupka v. Board of Administration* (1981) 122 Cal.App.3d 791, 794-795 [176 Cal.Rptr. 214]; *Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d 495, 502 [157 Cal.Rptr. 190].) ***224**

Facial appeal is all Burman's arguments have, however, for she overlooks the unusual nature of a commission on professional competence. It is not a standing body; it is an ad hoc group more akin to an arbitration tribunal, two of whose members are named by the parties to the dispute. (§ 44944, subd. (b).) It is a nominal, transitory body whose residence is immaterial for venue purposes in an administrative mandamus proceeding. (*Sutter Union High School Dist. v. Superior Court* (1983) 140 Cal.App.3d 795, 798 [190 Cal.Rptr. 182].) Its decision, once made, becomes the decision of the employing school district (§ 44944, subd. (c)), and the commission serves no identifiable function in the remainder of the review process. (Cf. *Compton v. Board of Trustees* (1975) 49 Cal.App.3d 150, 157-158 [122 Cal.Rptr. 493].) It is a different type of entity than the usual respondent named in a mandamus matter, and although it may be - and usually is - named in proceedings for review of a decision made under section 44944, it is not an indispensable party whose absence is fatal to the court's jurisdiction.

Although Code of Civil Procedure section 1094.5, subdivision (f) generally prescribes that an administrative mandamus proceeding be disposed of by denial of the writ or a direction to a named respondent to set aside its decision, that section comes into play in commission matters only by application of Government Code section 11523, which specifies that judicial review may be had "by filing a petition for writ of mandate in accordance with the provisions of the Code of Civil Procedure, *subject, however, to the statutes relating to the particular agency*." (Italics supplied.) The "statutes relating to the [commission]" include section 44944, subdivision (e), which provides for the allocation of costs if the commission's decision "is finally reversed or vacated" by the reviewing court. The statutes thus recognize the power of a court to directly set aside the order of the commission. As the commission therefore need not be before the court to enable the court to accord complete relief between the employing school district and the employee, it is not an indispensable party within the meaning of Code of Civil Procedure section 389, subdivision (a), and Burman's demurrer was properly overruled. [FN17]

FN17 Moreover, under section 44944, subdivision (c), the decision of the commission becomes "the final decision of the governing board." In effect then, a strict application of the statutes relied on by Burman would require a district to bring an action against itself to set aside its own order. "Statutes are to be given a reasonable and commonsense interpretation consistent with the apparent legislative purpose and intent 'and which, when applied, will result in wise policy rather than mischief or absurdity.' [Citation.]" (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1392 [241

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Cal.Rptr. 67, 743 P.2d 1323].) We decline to construe the statutes as Burman urges.

3. *Award of Attorney Fees*

Finally, Burman contends the trial court erred in awarding her but $1,500 in costs and attorney fees. She requests that we remand the matter to ***225** permit her to demonstrate the greater amount of costs and fees actually incurred. The Court of Appeal had no occasion to address this question in view of its decision on the merits. The point is properly before us, and we will do as Burman requests.

(6) Section 44944, subdivision (e) specifies that "[i]f the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including ... reasonable attorney fees incurred by the employee." Although the statute does not expressly provide for the award of fees if judicial review of a commission decision is sought, fees should be awarded to a prevailing employee for any such review proceedings as well (*Russell v. Thermalito Union School Dist.* (1981) 115 Cal.App.3d 880, 884 [176 Cal.Rptr. 1]; *Board of Education* v. *Commission on Professional Competence (Lujan)* (1980) 102 Cal.App.3d 555, 562-563 [162 Cal.Rptr. 590]), and costs should be awarded under the general provisions of the Code of Civil Procedure. (Code Civ. Proc., § 1032, subd. (b) ["Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding."].)

It appears that the trial court in this case may have awarded Burman $1,500 in costs and attorney fees in the mistaken belief that Government Code section 800 precluded it from awarding a greater amount. That section reads, in pertinent part: "In any civil action to ... review the ... determination of any administrative proceeding ... where it is shown that the ... determination of such proceeding was the result of arbitrary or capricious action ... the complainant if he prevails in the civil action may collect reasonable attorney's fees, but not to exceed one thousand five hundred dollars. ..." Because section 44944, subdivision (e) expressly provides for the award of fees in permanent employee dismissal proceedings, however, its provisions, imposing no limitation, should govern. (*Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13, 21 [206 Cal.Rptr. 303].)

As we cannot tell whether the trial court based its award on an implicit finding that $1,500 was a reasonable fee or whether it erroneously believed that no more than that sum could be awarded, we conclude that Burman's request for a remand on this point should be granted. On remand, she is entitled to request reasonable fees for all trial and appellate proceedings. [FN18] (*Ibid.*) ***226**

FN18 In the Court of Appeal, the district contended that no remand on the attorney fee question was warranted because Burman had failed to provide the trial court with any information showing that she incurred a greater amount of fees. Given that section 44944, subdivision (e) specifies no procedure for claiming fees, it would have been appropriate for Burman to file such a memorandum after judgment was entered. (See Code Civ. Proc., § 1033.5, subd. (a)(10); Cal. Rules of Court, rule 870(a)(1).) The trial court, however, made its award of $1,500 in fees without affording Burman the opportunity to file such a memorandum. As the district has not raised any issue before us on the attorney fee question, we need not decide the appropriate procedure, nor need we discuss at this time Burman's avowed intention to seek enhancement of any fee award under a "lodestar" theory. (See *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76-77 [227 Cal.Rptr. 804].)

Conclusion

We recognize that cogent arguments were made on both sides of this case. On the one hand, the statutory scheme contemplates the exercise of discretion by a commission on professional competence and the rendition of judgments on the propriety of dismissing an employee found guilty of misconduct. On the other hand, we have a clear legislative intent to limit the authority of a commission to dispose of dismissal charges by suspension.

On balance, we believe Education Code section 44944 is best read to vest discretion in a commission on professional competence not to dismiss an employee even though a cause for discipline is found to exist.

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Our interpretation recognizes the discretion initially conferred on an employing school district to determine whether to charge an employee and what charges to pursue, but confirms the commission's role as the professional body charged with determining the appropriateness of a given sanction. We reject Burman's contention that the commission is an indispensable party in proceedings of this nature and remand the attorney fee question to the trial court for further proceedings consistent with this opinion.

The judgment of the Court of Appeal is reversed. The Court of Appeal is directed to enter judgment affirming the trial court in part and reversing in part and directing it to enter judgment denying the petition for a writ of mandate and to award Burman reasonable costs and attorney fees in accordance with this opinion.

Lucas, C. J., Mosk, J., Broussard, J., Panelli, J., Eagleson, J., and Spencer (Vaino H.), J., [FN*] concurred.
*227

FN* Presiding Justice, Court of Appeal, Second Appellate District, Division One, assigned by the Chairperson of the Judicial Council.

Cal.
Fontana Unified School Dist. v. Burman
45 Cal.3d 208, 753 P.2d 689, 246 Cal.Rptr. 733, 46 Ed. Law Rep. 781

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Supreme Court of the United States
Christine FRANKLIN, Petitioner,
v.
GWINNETT COUNTY PUBLIC SCHOOLS and William Prescott.
No. 90-918.

Argued Dec. 11, 1991.
Decided Feb. 26, 1992.

High school student brought Title IX action, seeking damages for alleged intentional gender-based discrimination in connection with alleged sexual harassment and abuse by coach-teacher. The United States District Court for the Northern District of Georgia, Orinda D. Evans, J., dismissed. Student appealed. The Court of Appeals for the Eleventh Circuit, Henley, Senior Circuit Judge, sitting by designation, 911 F.2d 617, affirmed. Certiorari was granted. The Supreme Court, Justice White, held that damages remedy was available for action brought to enforce Title IX.

Reversed and remanded.

Justice Scalia filed opinion concurring in judgment in which Chief Justice Rehnquist and Justice Thomas joined.

West Headnotes

[1] Civil Rights 78 ⚿1330(2)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(2) k. Education. Most Cited Cases
(Formerly 78k200)
Title IX is enforceable through implied right of action. Education Amendments of 1972, §§ 901-909, as amended, 20 U.S.C.A. §§ 1681-1688.

[2] Action 13 ⚿3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory Rights of Action. Most Cited Cases

Action 13 ⚿34

13 Action
13II Nature and Form
13k33 Statutory Remedies
13k34 k. In General. Most Cited Cases
Question of what remedies are available under statute that provides private right of action is analytically distinct from issue of whether such right exists in the first place; thus, although court examines text and history of statute to determine whether Congress intended to create right of action, it presumes availability of all appropriate remedies unless Congress has expressly indicated otherwise.

[3] Action 13 ⚿34

13 Action
13II Nature and Form
13k33 Statutory Remedies
13k34 k. In General. Most Cited Cases
Where legal rights have been invaded and federal statute provides for general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.

[4] Action 13 ⚿34

13 Action
13II Nature and Form
13k33 Statutory Remedies
13k34 k. In General. Most Cited Cases
Absent clear direction to the contrary by Congress, federal courts have power to award any appropriate relief in cognizable cause of action brought pursuant to federal statute.

[5] Civil Rights 78 ⚿1462

78 Civil Rights

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78III Federal Remedies in General
78k1458 Monetary Relief in General
78k1462 k. Grounds and Subjects; Compensatory Damages. Most Cited Cases
(Formerly 78k271)
Damages remedy is available for action brought to enforce Title IX prohibiting exclusion from participation in, denial of benefits of, or discrimination under any education program or activity receiving Federal financial assistance, absent indication in text or history of statute that Congress intended to limit available remedies. Education Amendments of 1972, §§ 901-909, as amended, 20 U.S.C.A. §§ 1681-1688.

[6] Constitutional Law 92 ⚿2503(1)

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2499 Particular Issues and Applications
92k2503 Civil Remedies and Procedure
92k2503(1) k. In General. Most Cited Cases
(Formerly 92k70.1(11))
Unlike finding of cause of action, which authorizes court to hear case or controversy, discretion to award appropriate relief involves no such increase in judicial power, and thus exercise of such discretion does not violate separation of powers principles; federal courts cannot reach out to award remedies when Constitution or laws of United States do not support cause of action.

[7] Action 13 ⚿34

13 Action
13II Nature and Form
13k33 Statutory Remedies
13k34 k. In General. Most Cited Cases

Action 13 ⚿35

13 Action
13II Nature and Form
13k33 Statutory Remedies
13k35 k. Cumulative or Exclusive Remedies. Most Cited Cases
Presumption that remedies are limited under statutes enacted under Spending Clause of United States Constitution does not apply to intentional violations. U.S.C.A. Const. Art. 1, § 8, cl. 1.

[8] Civil Rights 78 ⚿1448

78 Civil Rights
78III Federal Remedies in General
78k1448 k. Judgment and Relief in General. Most Cited Cases
(Formerly 78k261)
Remedies permissible under Title IX are not limited to back pay and prospective relief; both those remedies are equitable in nature, and court must determine adequacy of remedy in law before resorting to equitable relief. Education Amendments of 1972, §§ 901-909, as amended, 20 U.S.C.A. §§ 1681-1688.

[9] Civil Rights 78 ⚿1462

78 Civil Rights
78III Federal Remedies in General
78k1458 Monetary Relief in General
78k1462 k. Grounds and Subjects; Compensatory Damages. Most Cited Cases
(Formerly 78k271)
High school student who was allegedly subjected to sexual harassment and abuse could seek monetary damages under Title IX for alleged intentional gender-based discrimination; equitable remedy of prospective relief was clearly inadequate insofar as subject teacher no longer taught at that school and student no longer attended school in that system. Education Amendments of 1972, §§ 901-909, as amended, 20 U.S.C.A. §§ 1681-1688.

****1029** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Petitioner Franklin, a student in a high school operated by respondent school district, filed an action for damages in Federal District Court under Title IX of the Education Amendments of 1972, alleging, *inter*

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alia, that she had been subjected to continual sexual harassment and abuse by a teacher, Andrew Hill. After the complaint was filed, Hill resigned on the condition that all matters pending against him be dropped, and the school thereupon closed its investigation. The District Court subsequently dismissed the complaint on the ground that Title IX does not authorize an award of damages, and the Court of Appeals affirmed.

Held: A damages remedy is available for an action brought to enforce Title IX. Pp. 1032-1038.

(a) Title IX is enforceable through an implied right of action. *Cannon v. University of Chicago,* 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560. P. 1032.

(b) The longstanding general rule is that absent clear direction to the contrary by Congress, the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute. See, *e.g., Bell v. Hood,* 327 U.S. 678, 684, 66 S.Ct. 773, 777, 90 L.Ed. 939; *Davis v. Passman,* 442 U.S. 228, 246-247, 99 S.Ct. 2264, 2278, 60 L.Ed.2d 846. Pp. 1032-1033.

(c) This Court's adherence to the general rule has not eroded since *Bell.* See, *e.g., J.I. Case Co. v. Borak,* 377 U.S. 426, 433-435, 84 S.Ct. 1555, 1560-1561, 12 L.Ed.2d 423. In declaring that "the question of who may enforce a *statutory* right is fundamentally different from the question of who may enforce a [constitutionally protected] right," *Davis,* 442 U.S., at 241, 99 S.Ct., at 2275, was not limiting the traditional presumption in favor of all appropriate relief to actions claiming constitutional violations. Rather it was merely attempting to decide whether a litigant had a "cause of action," a question that is analytically distinct from, and prior to, the one at issue: what relief, if any a litigant is entitled to receive, see *id.,* at 239, 99 S.Ct., at 2274. Nor did ****1030***Guardians Assn. v. Civil Service Comm'n of New York City,* 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866, and *Consolidated Rail Corporation v. Darrone,* 465 U.S. 624, 104 S.Ct. 1248, 79 L.Ed.2d 568, erode the traditional presumption. In fact, those cases support it, since a clear majority in *Guardians* expressed the view that damages were available in an action seeking remedies for an intentional violation of a statute ***61** closely analogous to Title IX, while a unanimous Court in *Darrone* held that another such statute authorized the award of backpay. Pp. 1034-1035.

(d) Congress did not intend to limit the remedies available in a Title IX suit. Because the *Cannon* Court inferred a cause of action upon concluding that Title IX supported no express right of action, the silence of the pre- *Cannon* statutory text and legislative history on the issue of available remedies is neither surprising nor enlightening. Rather, the appropriate inquiry for the pre- *Cannon* period is the state of the law when Congress passed Title IX. Since, at that time, the traditional presumption in favor of all available remedies was firmly established, and this Court had recently found implied rights of action in six cases and approved a damages remedy in three of them, the lack of any legislative intent to abandon the traditional presumption is amply demonstrated. For the post- *Cannon* period, when Congress was legislating with full cognizance of that decision, analysis of the text and history of the two statutes enacted to amend Title IX-the Civil Rights Remedies Equalization Amendment of 1986 and the Civil Rights Restoration Act of 1987-establishes that Congress validated *Cannon*'s holding and made no effort to alter the traditional presumption. Pp. 1035-1037.

(e) The argument that a damages award would unduly expand the federal courts' power into a sphere properly reserved to the Executive and Legislative Branches in violation of separation of powers principles misconceives the difference between a cause of action and a remedy. Unlike the finding of a cause of action, which authorizes a court to hear a case or controversy, the discretion to award appropriate relief involves no such increase in judicial power and, in fact, historically has been thought necessary to provide an important safeguard against legislative and executive abuses and to insure an independent Judiciary. Moreover, selective adjudication of the sort advocated here would harm separation of powers by giving judges the power to render inutile causes of action authorized by Congress through a decision that *no* remedy is available. P. 1037.

(f) Also rejected is the contention that the normal presumption in favor of all appropriate remedies should not apply because Title IX was enacted pursuant to Congress' Spending Clause power. The Court's observation in *Pennhurst State School and Hospital v. Halderman,* 451 U.S. 1, 28-29, 101 S.Ct. 1531, 1545-46, 67 L.Ed.2d 694, that remedies are limited under Spending Clause statutes when the al-

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leged violation is *unintentional* is based on the theory that an entity receiving federal funds lacks notice that it will be liable for damages for such a violation, see *id.*, at 17, 101 S.Ct., at 1539. This notice problem does not arise in a case such as the present, where intentional discrimination is alleged and is proscribed by the statute in question. Moreover, the notion that Spending Clause statutes do not authorize monetary awards ***62** for intentional violations is belied by the unanimous holding in *Darrone, supra,* 465 U.S., at 628, 104 S.Ct., at 1251. Pp. 1037-1038.

(g) The assertion that Title IX remedies should nevertheless be limited to backpay and prospective relief diverges from this Court's traditional approach to deciding what remedies are available for violation of a federal right. Both suggested remedies are equitable in nature, and it is axiomatic that a court should determine the adequacy of damages at law before resorting to equitable relief. Moreover, both suggested remedies are clearly inadequate in that they would ****1031** provide Franklin no relief: backpay because she was a student when the alleged discrimination occurred, and prospective relief because she no longer attends school in respondent system and Hill no longer teaches there. P. 1038.

911 F.2d 617 (CA11 1985), reversed and remanded.

WHITE, J., delivered the opinion of the Court, in which BLACKMUN, STEVENS, O'CONNOR, KENNEDY, and SOUTER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, in which REHNQUIST, C.J., and THOMAS, J., joined, *post,* p. 1038.

Joel I. Klein, Washington, D.C., for petitioner.

Albert M. Pearson, III, Athens, Ga., for respondents.

Stephen L. Nightingale, Washington, D.C., for respondents as amicus curiae.

Justice WHITE delivered the opinion of the Court.

This case presents the question whether the implied right of action under Title IX of the Education Amendments of ***63** 1972, 20 U.S.C. §§ 1681-1688 (Title IX),[FN1] which this Court recognized in *Cannon v. University of Chicago,* 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979), supports a claim for monetary damages.

FN1. This statute provides in pertinent part that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a).

I

Petitioner Christine Franklin was a student at North Gwinnett High School in Gwinnett County, Georgia, between September 1985 and August 1989. Respondent Gwinnett County School District operates the high school and receives federal funds. According to the complaint filed on December 29, 1988, in the United States District Court for the Northern District of Georgia, Franklin was subjected to continual sexual harassment beginning in the autumn of her tenth grade year (1986) from Andrew Hill, a sports coach and teacher employed by the district. Among other allegations, Franklin avers that Hill engaged her in sexually oriented conversations in which he asked about her sexual experiences with her boyfriend and whether she would consider having sexual intercourse with an older man, Complaint ¶ 10; First Amended Complaint, Exh. A, p. 3; [FN2] that Hill forcibly kissed her on the mouth in the school parking lot, Complaint ¶ 17; that he telephoned her at her home and asked if she would meet him socially, Complaint ¶ 21; First Amended Complaint, Exh. A, pp. 4-5; and that, on three occasions in her junior year, Hill interrupted a class, requested that the teacher excuse Franklin, and took her to a private office where he subjected her to coercive intercourse, Complaint ¶¶ 25, 27, 32. The complaint further alleges that though ***64** they became aware of and investigated Hill's sexual harassment of Franklin and other female students, teachers and administrators took no action to halt it and discouraged Franklin from pressing charges against Hill. Complaint ¶¶ 23, 24, 35. On April 14, 1988, Hill resigned on the condition that all matters pending against him be dropped. Complaint ¶¶ 36, 37. The school thereupon closed its investigation. Complaint ¶ 37.

FN2. This exhibit is the report of the United States Department of Education's Office for Civil Rights based on that office's investigation of this case. Franklin incorporated this

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exhibit into her amended complaint.

In this action,[FN3] the District Court dismissed the complaint on the ground that **1032 Title IX does not authorize an award of damages. The Court of Appeals affirmed. 911 F.2d 617 (CA11 1990). The court noted that analysis of Title IX and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (Title VI), has developed along similar lines. Citing as binding precedent *Drayden v. Needville Independent School Dist.*, 642 F.2d 129 (CA5 1981), a decision rendered prior to the division of the Fifth Circuit, the court concluded that Title VI did not support a claim for monetary damages. The court then analyzed this Court's decision in *Guardians Assn. v. Civil Service Comm'n of New York City*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983), to determine whether it implicitly overruled *Drayden*. The court stated that the absence of a majority opinion left unresolved the question whether a court could award such relief upon a showing of intentional discrimination. As a second basis for its holding that monetary damages were unavailable, the court reasoned that Title IX was enacted under Congress' Spending Clause powers and that *65 "[u]nder such statutes, relief may frequently be limited to that which is equitable in nature, with the recipient of federal funds thus retaining the option of terminating such receipt in order to rid itself of an injunction." 911 F.2d, at 621.[FN4] The court closed by observing it would "proceed with extreme care" to afford compensatory relief absent express provision by Congress or clear direction from this Court. *Id.*, at 622. Accordingly, it held that an action for monetary damages could not be sustained for an alleged intentional violation of Title IX, and affirmed the District Court's ruling to that effect. *Ibid.*[FN5]

FN3. Prior to bringing this lawsuit, Franklin filed a complaint with the Office for Civil Rights of the United States Department of Education (OCR) in August 1988. After investigating these charges for several months, OCR concluded that the school district had violated Franklin's rights by subjecting her to physical and verbal sexual harassment and by interfering with her right to complain about conduct proscribed by Title IX. OCR determined, however, that because of the resignations of Hill and respondent William Prescott and the implementation of a school grievance procedure, the district had come into compliance with Title IX. It then terminated its investigation. First Amended Complaint, Exh. A, pp. 7-9.

FN4. The court also rejected an argument by Franklin that the terms of outright prohibition of Title VII, 42 U.S.C. §§ 2000e to 2000e-17, apply by analogy to Title IX's antidiscrimination provision, and that the remedies available under the two statutes should also be the same. 911 F.2d, at 622. Because Franklin does not pursue this contention here, we need not address whether it has merit.

FN5. Judge Johnson concurred specially, writing that the result was controlled by *Drayden v. Needville Independent School Dist.*, 642 F.2d 129 (CA5 1981), and that there was no need to address whether Titles VI and IX are grounded solely in the Spending Clause and whether Title VII analysis should apply to an action under Titles VI or IX. See 911 F.2d, at 622-623.

Because this opinion conflicts with a decision of the Court of Appeals for the Third Circuit, see *Pfeiffer v. Marion Center Area School Dist.*, 917 F.2d 779, 787-789 (1990), we granted certiorari, 501 U.S. 1204, 111 S.Ct. 2795, 115 L.Ed.2d 969 (1991). We reverse.

II

[1][2] In *Cannon v. University of Chicago*, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979), the Court held that Title IX is enforceable through an implied right of action. We have no occasion here to reconsider that decision. Rather, in this case we must decide what remedies are available in a suit brought pursuant to this implied right. As we have often stated, the question of what remedies are available under a statute that provides a private right of action is "analytically distinct" from the issue *66 of whether such a right exists in the first place. *Davis v. Passman*, 442 U.S. 228, 239, 99 S.Ct. 2264, 2274, 60 L.Ed.2d 846 (1979). Thus, although we examine the text and history of a statute to determine whether Congress intended to create a right of action, *Touche Ross & Co. v. Redington*, 442 U.S. 560, 575-576, 99 S.Ct. 2479, 2489, 61 L.Ed.2d 82 (1979), we presume the availability of all appropriate remedies unless Congress has ex-

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pressly indicated otherwise. *Davis, supra,* 442 U.S., at 246-247, 99 S.Ct., at 2277-2278. This principle has deep roots in our jurisprudence.

****1033** A

[3] "[W]here legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." *Bell v. Hood,* 327 U.S. 678, 684, 66 S.Ct. 773, 777, 90 L.Ed. 939 (1946). The Court explained this longstanding rule as jurisdictional and upheld the exercise of the federal courts' power to award appropriate relief so long as a cause of action existed under the Constitution or laws of the United States. *Ibid.*

The *Bell* Court's reliance on this rule was hardly revolutionary. From the earliest years of the Republic, the Court has recognized the power of the Judiciary to award appropriate remedies to redress injuries actionable in federal court, although it did not always distinguish clearly between a right to bring suit and a remedy available under such a right. In *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 163, 2 L.Ed. 60 (1803), for example, Chief Justice Marshall observed that our Government "has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." This principle originated in the English common law, and Blackstone described it as "a general and indisputable rule, that where there is a legal right, there is also a legal remedy, by suit or action at law, whenever that right is invaded." 3 W. Blackstone, Commentaries 23 (1783). See also *Ashby v. White,* 1 Salk. 19, 21, 87 Eng.Rep.***67** 808, 816 (Q.B.1702) ("If a statute gives a right, the common law will give a remedy to maintain that right ...").

In *Kendall v. United States ex rel. Stokes,* 37 U.S. (12 Pet.) 524, 9 L.Ed. 1181 (1838), the Court applied these principles to an Act of Congress that accorded a right of action in mail carriers to sue for adjustment and settlement of certain claims for extra services but which did not specify the precise remedy available to the carriers. After surveying possible remedies, which included an action against the Postmaster General for monetary damages, the Court held that the carriers were entitled to a writ of mandamus compelling payment under the terms of the statute. "It cannot be denied but that congress had the power to command that act to be done," the Court stated; "and the power to enforce the performance of the act must rest somewhere, or it will present a case which has often been said to involve a monstrous absurdity in a well organized government, that there should be no remedy, although a clear and undeniable right should be shown to exist. And if the remedy cannot be applied by the circuit court of this district, it exists nowhere." *Id.,* at 624. *Dooley v. United States,* 182 U.S. 222, 229, 21 S.Ct. 762, 764, 45 L.Ed. 1074 (1901), also restated "the principle that a liability created by statute without a remedy may be enforced by a common-law action."

The Court relied upon this traditional presumption again after passage of the Federal Safety Appliance Act of 1893, ch. 196, 27 Stat. 531. In *Texas & Pacific R. Co. v. Rigsby,* 241 U.S. 33, 36 S.Ct. 482, 60 L.Ed. 874 (1916), the Court first had to determine whether the Act supported an implied right of action. After answering that question in the affirmative, the Court then upheld a claim for monetary damages: "A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied, according to a doctrine of the common law...." *Id.,* at 39, 36 S.Ct., at 484. The foundation upon which the *Bell v. Hood* Court articulated this traditional presumption,therefore, ***68** was well settled. See also *Texas & New Orleans R. Co. v. Railway Clerks,* 281 U.S. 548, 569, 50 S.Ct. 427, 433, 74 L.Ed. 1034 (1930).

****1034** B

Respondents and the United States as *amicus curiae,* however, maintain that whatever the traditional presumption may have been when the Court decided *Bell v. Hood,* it has disappeared in succeeding decades. We do not agree. In *J.I. Case Co. v. Borak,* 377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423 (1964), the Court adhered to the general rule that all appropriate relief is available in an action brought to vindicate a federal right when Congress has given no indication of its purpose with respect to remedies. Relying on *Bell v. Hood,* the *Borak* Court specifically rejected an argument that a court's remedial power to redress violations of the Securities Exchange Act of 1934 was limited to a declaratory judgment. 377 U.S., at 433-434, 84 S.Ct., at 1560. The Court concluded that

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the federal courts "have the power to grant all necessary remedial relief" for violations of the Act. *Id.*, at 435, 84 S.Ct., at 1561. As Justice Clark's opinion for the Court observed, this holding closely followed the reasoning of a similar case brought under the Securities Act of 1933, in which the Court had stated:

> " 'The power *to enforce* implies the power to make effective the right of recovery afforded by the Act. And the power to make the right of recovery effective implies the power to utilize any of the procedures or actions normally available to the litigant according to the exigencies of the particular case.' " *Id.*, at 433-434, 84 S.Ct., at 1560 (quoting *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 288, 61 S.Ct. 229, 233, 85 L.Ed. 189 (1940)).

That a statute does not authorize the remedy at issue "in so many words is no more significant than the fact that it does not in terms authorize execution to issue on a judgment." *Id.*, at 288, 61 S.Ct., at 233. Subsequent cases have been true to this position.***69** See, *e.g.*, *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 239, 90 S.Ct. 400, 405, 24 L.Ed.2d 386 (1969), stating that the "existence of a statutory right implies the existence of all necessary and appropriate remedies"; *Carey v. Piphus*, 435 U.S. 247, 255, 98 S.Ct. 1042, 1048, 55 L.Ed.2d 252 (1978), upholding damages remedy under Rev.Stat. § 1979, 42 U.S.C. § 1983, even though the enacting Congress had not specifically provided such relief.

The United States contends that the traditional presumption in favor of all appropriate relief was abandoned by the Court in *Davis v. Passman*, 442 U.S. 228, 99 S.Ct. 2264, 60 L.Ed.2d 846 (1979), and that the *Bell v. Hood* rule was limited to actions claiming constitutional violations. The United States quotes language in *Davis* to the effect that "the question of who may enforce a *statutory* right is fundamentally different from the question of who may enforce a right that is protected by the Constitution." *Davis*, 442 U.S., at 241, 99 S.Ct., at 2275. The Government's position, however, mirrors the very misunderstanding over the difference between a cause of action and the relief afforded under it that sparked the confusion we attempted to clarify in *Davis*. Whether Congress may limit the class of persons who have a right of action under Title IX is irrelevant to the issue in this lawsuit. To reiterate, "the question whether a litigant has a 'cause of action' is analytically distinct and prior to the question of what relief, if any, a litigant may be entitled to receive." *Id.*, at 239, 99 S.Ct., at 2274. *Davis*, therefore, did nothing to interrupt the long line of cases in which the Court has held that if a right of action exists to enforce a federal right and Congress is silent on the question of remedies, a federal court may order any appropriate relief. See *id.*, at 247, n. 26, 99 S.Ct., at 2278, n. 26 (contrasting *Brown v. GSA*, 425 U.S. 820, 96 S.Ct. 1961, 48 L.Ed.2d 402 (1976)).[FN6]

> FN6. Cases cited by respondents and the United States since *Davis* are inapposite, either because they involved holdings that plaintiffs had no right of action, see, *e.g.*, *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 111 S.Ct. 2749, 115 L.Ed.2d 929 (1991); *Karahalios v. Federal Employees*, 489 U.S. 527, 109 S.Ct. 1282, 103 L.Ed.2d 539 (1989); *Thompson v. Thompson*, 484 U.S. 174, 108 S.Ct. 513, 98 L.Ed.2d 512 (1988); *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 101 S.Ct. 2061, 68 L.Ed.2d 500 (1981); *California v. Sierra Club*, 451 U.S. 287, 101 S.Ct. 1775, 68 L.Ed.2d 101 (1981); *Northwest Airlines, Inc. v. Transport Workers*, 451 U.S. 77, 101 S.Ct. 1571, 67 L.Ed.2d 750 (1981); *Touche Ross & Co. v. Redington*, 442 U.S. 560, 99 S.Ct. 2479, 61 L.Ed.2d 82 (1979); *Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 95 S.Ct. 1733, 44 L.Ed.2d 263 (1975); or because the Court rejected a claim for damages under a statute that expressly enumerated the remedies available to plaintiffs, *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 105 S.Ct. 3085, 87 L.Ed.2d 96 (1985).

****1035** [4] ***70** Contrary to arguments by respondents and the United States that *Guardians Assn. v. Civil Service Comm'n of New York City*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983), and *Consolidated Rail Corporation v. Darrone*, 465 U.S. 624, 104 S.Ct. 1248, 79 L.Ed.2d 568 (1984), eroded this traditional presumption, those cases in fact support it. Though the multiple opinions in *Guardians* suggest the difficulty of inferring the common ground among the Justices in that case, a clear majority expressed the view that damages were available under Title VI in an action seeking remedies for an intentional violation, and no Justice challenged the traditional presumption in favor

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of a federal court's power to award appropriate relief in a cognizable cause of action. See *Guardians,* 463 U.S., at 595, 103 S.Ct., at 3229 (WHITE, J., joined by REHNQUIST, J.); *id.,* at 607-611, 103 S.Ct., at 3235-3237 (Powell, J., concurring in judgment, joined by Burger, C.J.); *id.,* at 612, and n. 1, 103 S.Ct., at 3237, and n. 1 (O'CONNOR, J., concurring in judgment); *id.,* at 624-628, 103 S.Ct., at 3244-3246 (Marshall, J., dissenting); *id.,* at 636, 103 S.Ct., at 3250 (STEVENS, J., dissenting, joined by Brennan and BLACKMUN, JJ.). The correctness of this inference was made clear the following Term when the Court unanimously held that the 1978 amendment to § 504 of the Rehabilitation Act of 1973-which had expressly incorporated the "remedies, procedures, and rights set forth in title VI" (29 U.S.C. § 794a(a)(2))-authorizes an award of backpay. In *Darrone,* the Court observed that a majority in *Guardians* had "agreed that retroactive relief is available to private plaintiffs for all discrimination ... that is actionable under Title VI." 465 U.S., at 630, n. 9, 104 S.Ct., at 1252 n. 9. The general rule, therefore, is that absent clear direction to the contrary by ***71** Congress, the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute.

III

[5] We now address whether Congress intended to limit application of this general principle in the enforcement of Title IX. See *Bush v. Lucas,* 462 U.S. 367, 378, 103 S.Ct. 2404, 2411-2412, 76 L.Ed.2d 648 (1983); *Wyandotte Transportation Co. v. United States,* 389 U.S. 191, 200, 88 S.Ct. 379, 385, 19 L.Ed.2d 407 (1967). Because the cause of action was inferred by the Court in *Cannon,* the usual recourse to statutory text and legislative history in the period prior to that decision necessarily will not enlighten our analysis. Respondents and the United States fundamentally misunderstand the nature of the inquiry, therefore, by needlessly dedicating large portions of their briefs to discussions of how the text and legislative intent behind Title IX are "silent" on the issue of available remedies. Since the Court in *Cannon* concluded that this statute supported no express right of action, it is hardly surprising that Congress also said nothing about the applicable remedies for an implied right of action.

During the period prior to the decision in *Cannon,* the inquiry in any event is *not* " 'basically a matter of statutory construction,' " as the United States asserts. Brief for United States as *Amicus Curiae* 8 (quoting *Transamerica Mortgage Advisors, Inc. v. Lewis,* 444 U.S. 11, 15, 100 S.Ct. 242, 245, 62 L.Ed.2d 146 (1979)). Rather, in determining ****1036** Congress' intent to limit application of the traditional presumption in favor of all appropriate relief, we evaluate the state of the law when the Legislature passed Title IX. Cf. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran,* 456 U.S. 353, 378, 102 S.Ct. 1825, 1839, 72 L.Ed.2d 182 (1982). In the years before and after Congress enacted this statute, the Court "follow[ed] a common-law tradition [and] regarded the denial of a remedy as the exception rather than the rule." *Id.,* at 375, 102 S.Ct., at 1837 (footnote omitted). As we outlined in Part II, this has been the prevailing presumption in our federal ***72** courts since at least the early 19th century. In *Cannon,* the majority upheld an implied right of action in part because in the decade immediately preceding enactment of Title IX in 1972, this Court had found implied rights of action in six cases.[FN7] In three of those cases, the Court had approved a damages remedy. See, *e.g., J.I. Case Co.,* 377 U.S., at 433, 84 S.Ct., at 1560; *Wyandotte Transportation Co., supra,* 389 U.S., at 207, 88 S.Ct., at 389; *Sullivan v. Little Hunting Park, Inc.,* 396 U.S. 229, 90 S.Ct. 400, 24 L.Ed.2d 386 (1969). Wholly apart from the wisdom of the *Cannon* holding, therefore, the same contextual approach used to justify an implied right of action more than amply demonstrates the lack of any legislative intent to abandon the traditional presumption in favor of all available remedies.

FN7. *J.I. Case Co. v. Borak,* 377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423 (1964); *Wyandotte Transportation Co. v. United States,* 389 U.S. 191, 88 S.Ct. 379, 19 L.Ed.2d 407 (1967); *Jones v. Alfred H. Mayer Co.,* 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189 (1968); *Allen v. State Bd. of Elections,* 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969); *Sullivan v. Little Hunting Park, Inc.,* 396 U.S. 229, 90 S.Ct. 400, 24 L.Ed.2d 386 (1969); and *Superintendent of Ins. of New York v. Bankers Life & Casualty Co.,* 404 U.S. 6, 92 S.Ct. 165, 30 L.Ed.2d 128 (1971).

In the years *after* the announcement of *Cannon,* on the other hand, a more traditional method of statutory analysis is possible, because Congress was legislating

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with full cognizance of that decision. Our reading of the two amendments to Title IX enacted after *Cannon* leads us to conclude that Congress did not intend to limit the remedies available in a suit brought under Title IX. In the Rehabilitation Act Amendments of 1986, 100 Stat. 1845, 42 U.S.C. § 2000d-7, Congress abrogated the States' Eleventh Amendment immunity under Title IX, Title VI, § 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. This statute cannot be read except as a validation of *Cannon* 's holding. A subsection of the 1986 law provides that in a suit against a State, "remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a *73 State." 42 U.S.C. § 2000d-7(a)(2). While it is true that this saving clause says nothing about the nature of those other available remedies, cf. *Milwaukee v. Illinois*, 451 U.S. 304, 329, n. 22, 101 S.Ct. 1784, 1798-1799, n. 22, 68 L.Ed.2d 114 (1981), absent any contrary indication in the text or history of the statute, we presume Congress enacted this statute with the prevailing traditional rule in mind.

In addition to the Rehabilitation Act Amendments of 1986, Congress also enacted the Civil Rights Restoration Act of 1987, Pub.L. 100-259, 102 Stat. 28. Without in any way altering the existing rights of action and the corresponding remedies permissible under Title IX, Title VI, § 504 of the Rehabilitation Act, and the Age Discrimination Act, Congress broadened the coverage of these antidiscrimination provisions in this legislation. In seeking to correct what it considered to be an unacceptable decision on our part in *Grove City College v. Bell*, 465 U.S. 555, 104 S.Ct. 1211, 79 L.Ed.2d 516 (1984), Congress made no effort to restrict the right of action recognized in *Cannon* and ratified in the 1986 Act or to alter the traditional presumption in favor of any appropriate relief for violation of a federal right. We cannot say, therefore, that Congress has limited **1037 the remedies available to a complainant in a suit brought under Title IX.

IV

Respondents and the United States nevertheless suggest three reasons why we should not apply the traditional presumption in favor of appropriate relief in this case.

A

[6] First, respondents argue that an award of damages violates separation of powers principles because it unduly expands the federal courts' power into a sphere properly reserved to the Executive and Legislative Branches. Brief for Respondents 22-25. In making this argument, respondents misconceive the difference between a cause of action and a remedy. Unlike the finding of a cause of action, which authorizes a court to hear a case or controversy, the discretion*74 to award appropriate relief involves no such increase in judicial power. See generally Note, Federal Jurisdiction in Suits for Damages Under Statutes Not Affording Such Remedy, 48 Colum.L.Rev. 1090, 1094-1095 (1948). Federal courts cannot reach out to award remedies when the Constitution or laws of the United States do not support a cause of action. Indeed, properly understood, respondents' position invites us to *abdicate* our historic judicial authority to award appropriate relief in cases brought in our court system. It is well to recall that such authority historically has been thought necessary to provide an important safeguard against abuses of legislative and executive power, see *Kendall v. United States ex rel. Stokes*, 37 U.S. (12 Pet.) 524, 9 L.Ed. 1181 (1838), as well as to ensure an independent Judiciary. See generally Katz, The Jurisprudence of Remedies: Constitutional Legality and the Law of Torts in *Bell v. Hood*, 117 U.Pa.L.Rev. 1, 16-17 (1968). Moreover, selective abdication of the sort advocated here would harm separation of powers principles in another way, by giving judges the power to render inutile causes of action authorized by Congress through a decision that *no* remedy is available.

B

[7] Next, consistent with the Court of Appeals' reasoning, respondents and the United States contend that the normal presumption in favor of all appropriate remedies should not apply because Title IX was enacted pursuant to Congress' Spending Clause power. In *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 28-29, 101 S.Ct. 1531, 1545-1546, 67 L.Ed.2d 694 (1981), the Court observed that remedies were limited under such Spending Clause statutes when the alleged violation was *unintentional*. Respondents and the United States maintain that this presumption should apply equally to

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intentional violations. We disagree. The point of not permitting monetary damages for an unintentional violation is that the receiving entity of federal funds lacks notice that it will be liable for a monetary award. See *id.*, at 17, 101 S.Ct., at 1540. This notice problem does *75 not arise in a case such as this, in which intentional discrimination is alleged. Unquestionably, Title IX placed on the Gwinnett County Public Schools the duty not to discriminate on the basis of sex, and "when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex." *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64, 106 S.Ct. 2399, 2404, 91 L.Ed.2d 49 (1986). We believe the same rule should apply when a teacher sexually harasses and abuses a student. Congress surely did not intend for federal moneys to be expended to support the intentional actions it sought by statute to proscribe. Moreover, the notion that Spending Clause statutes do not authorize monetary awards for intentional violations is belied by our unanimous holding in *Darrone*. See 465 U.S., at 628, 104 S.Ct., at 1251. Respondents and the United States characterize the backpay remedy in *Darrone* as equitable relief, but this description is irrelevant to their underlying objection: that application of the traditional rule in this case will require state entities to pay **1038 monetary awards out of their treasuries for intentional violations of federal statutes. FN8

FN8. Franklin argues that, in any event, Title IX should not be viewed solely as having been enacted under Congress' Spending Clause powers and that it also rests on powers derived from § 5 of the Fourteenth Amendment. See Brief for Petitioner 19, n. 10. Because we conclude that a money damages remedy is available under Title IX for an intentional violation irrespective of the constitutional source of Congress' power to enact the statute, we need not decide which power Congress utilized in enacting Title IX.

C

[8][9] Finally, the United States asserts that the remedies permissible under Title IX should nevertheless be limited to backpay and prospective relief. In addition to diverging from our traditional approach to deciding what remedies are available for violation of a federal right, this position conflicts with sound logic. First, both remedies are equitable in nature, and it is axiomatic that a court should determine *76 the adequacy of a remedy in law before resorting to equitable relief. Under the ordinary convention, the proper inquiry would be whether monetary damages provided an adequate remedy, and if not, whether equitable relief would be appropriate. *Whitehead v. Shattuck*, 138 U.S. 146, 150, 11 S.Ct. 276, 276, 34 L.Ed. 873 (1891). See generally C. McCormick, Damages 1 (1935). Moreover, in this case the equitable remedies suggested by respondent and the Federal Government are clearly inadequate. Backpay does nothing for petitioner, because she was a student when the alleged discrimination occurred. Similarly, because Hill-the person she claims subjected her to sexual harassment-no longer teaches at the school and she herself no longer attends a school in the Gwinnett system, prospective relief accords her no remedy at all. The Government's answer that administrative action helps other similarly situated students in effect acknowledges that its approach would leave petitioner remediless.

V

In sum, we conclude that a damages remedy is available for an action brought to enforce Title IX. The judgment of the Court of Appeals, therefore, is reversed, and the case is remanded for further proceedings consistent with this opinion.

So ordered.

Justice SCALIA, with whom THE CHIEF JUSTICE and Justice THOMAS join, concurring in the judgment.

The substantive right at issue here is one that Congress did not expressly create, but that this Court found to be "implied." See *Cannon v. University of Chicago*, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979). Quite obviously, the search for what was Congress' *remedial* intent as to a right whose very existence Congress did not expressly acknowledge is unlikely to succeed, see *ante*, at 1035-1036; it is "hardly surprising," as the Court says, *ibid.*, that the usual sources yield no explicit answer.

*77 The Court finds an implicit answer, however, in the legislators' presumptive awareness of our practice of using "any available remedy" to redress violations of legal rights. *Bell v. Hood*, 327 U.S. 678, 684, 66 S.Ct. 773, 777, 90 L.Ed. 939 (1946); see *ante*, at

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1036-1037. This strikes me as question begging. We can plausibly assume acquiescence in our *Bell v. Hood* presumption when the Legislature says nothing about remedy in expressly creating a private right of action; perhaps even when it says nothing about remedy in creating a private right of action by clear textual implication; but not, I think, when it says nothing about remedy in a statute in which the courts divine a private right of action on the basis of "contextual" evidence such as that in *Cannon,* which charged Congress with knowledge of a court of appeals' creation of a cause of action under a similarly worded statute. See *Cannon, supra,* 441 U.S., at 696-698, 99 S.Ct., at 1957-58. Whatever one thinks of the validity of the last ****1039** approach, it surely rests on attributed rather than actual congressional knowledge. It does not demonstrate an explicit legislative decision to create a cause of action, and so could not be expected to be accompanied by a legislative decision to alter the application of *Bell v. Hood.* Given the nature of *Cannon* and some of our earlier "implied right of action" cases, what the Court's analytical construct comes down to is this: Unless Congress expressly legislates a more limited remedial policy with respect to rights of action it does not know it is creating, it intends the full gamut of remedies to be applied.

In my view, when rights of action are judicially "implied," categorical limitations upon their remedial scope may be judicially implied as well. Cf. *Cort v. Ash,* 422 U.S. 66, 84-85, 95 S.Ct. 2080, 2091, 45 L.Ed.2d 26 (1975). Although we have abandoned the expansive rights-creating approach exemplified by *Cannon,* see *Touche Ross & Co. v. Redington,* 442 U.S. 560, 575-576, 99 S.Ct. 2479, 2489, 61 L.Ed.2d 82 (1979); *Transamerica Mortgage Advisors, Inc. v. Lewis,* 444 U.S. 11, 18, 23-24, 100 S.Ct. 242, 249, 62 L.Ed.2d 146 (1979)-and perhaps ought to abandon the notion of implied causes of action entirely, see *Thompson v. Thompson,* 484 U.S. 174, 191, 108 S.Ct. 513, 522, 98 L.Ed.2d 512 (1988) (SCALIA, J., concurring ***78** in judgment)-causes of action that came into existence under the *ancien regime* should be limited by the same logic that gave them birth. To require, with respect to a right that is not consciously and intentionally created, that any limitation of remedies must be express, is to provide, in effect, that the most questionable of private rights will also be the most expansively remediable. As the United States puts it, "[w]hatever the merits of 'implying' rights of action may be, there is no justification for treating [congressional] silence as the equivalent of the broadest imaginable grant of remedial authority." Brief for United States as *Amicus Curiae* 12-13.

I nonetheless agree with the Court's disposition of this case. Because of legislation enacted subsequent to *Cannon,* it is too late in the day to address whether a judicially implied exclusion of damages under Title IX would be appropriate. The Rehabilitation Act Amendments of 1986, 42 U.S.C. § 2000d-7(a)(2), must be read, in my view, not only "as a validation of *Cannon*'s holding," *ante,* at 1036, but also as an implicit acknowledgment that damages are available. See 42 U.S.C. § 2000d-7(a)(1) (withdrawing the States' Eleventh Amendment immunity); § 2000d-7(a)(2) (providing that, in suits against States, "remedies (including remedies both at law and in equity) are available for [violations of Title IX] to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State"). I therefore concur in the judgment.

U.S.Ga.,1992.
Franklin v. Gwinnett County Public Schools
503 U.S. 60, 112 S.Ct. 1028, 59 Fair Empl.Prac.Cas. (BNA) 213, 58 Empl. Prac. Dec. P 41,293, 117 L.Ed.2d 208, 60 USLW 4167, 72 Ed. Law Rep. 32

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939 F.2d 1527, 69 Ed. Law Rep. 25
(Cite as: 939 F.2d 1527)

H

United States Court of Appeals,
Eleventh Circuit.
Dr. Robert R. FREEMAN, in his official capacity as Superintendent of the DeKalb County School District, and the DeKalb County School District, Petitioners,
v.
Lauro CAVAZOS, in his official capacity as Secretary of the United States Department of Education, the United States Department of Education, and the Office for Civil Rights, Respondents.
No. 90-8904.

Aug. 30, 1991.

School district brought action challenging Department of Education's (U.S.Dept.Ed. No. 86-504-2) termination of financial assistance for failure to cooperate in investigation into complaints concerning district's provision for services to disabled students. The United States District Court for the District of Columbia, Louis F. Oberdorfer, J., 756 F.Supp. 1, declined to issue temporary restraining order and dismissed action for lack of jurisdiction. Thereafter school district filed emergency petition, which Court of Appeals, 923 F.2d 1434, denied. School district then filed petition for review. The Court of Appeals, Godbold, Senior Circuit Judge, held that school district was precluded from claiming that regulation requiring district to make payments for residential schools in appropriate case called for "affirmative action" which was not authorized under underlying statute, as district had not cooperated with federal investigation, precluding determination whether "affirmative action" was required on facts of pending complaints against it.

Affirmed.

West Headnotes

Schools 345 ⚿148(2.1)

345 Schools
345II Public Schools
345II(L) Pupils
345k148 Nature of Right to Instruction in General
345k148(2) Handicapped Children and Special Services Therefor
345k148(2.1) k. In General. Most Cited Cases
(Formerly 345k148(2))

United States 393 ⚿82(2)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(2) k. Aid to State and Local Agencies in General. Most Cited Cases
Federal funding of a school district was properly discontinued based upon district's violation of regulation requiring cooperation with investigation of school's treatment of handicapped students, even though school claimed that regulation requiring district to make payments for residential schools in appropriate cases called for "affirmative action" not authorized in Rehabilitation Act; because district had entered into a stipulation that it "does not provide residential placements for nonhandicapped students," for purposes of allowing administrative law judge to decide case and permit court review, there had not been the fact intensive administrative proceeding necessary to determine whether district had been required to take "affirmative action," and whether the Education of the Handicapped Act deprived the Department of Education's Office of Civil Rights of jurisdiction. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794; Individuals With Disabilities Education Act, §§ 601-685, as amended, 20 U.S.C.A. §§ 1400-1485.

***1528** Charles L. Weatherly, Julie J. Jennings, Decatur, Ga., Carter G. Phillips, Sidley & Austin, Washington, D.C., for petitioners.

Marie K. McElderry, John R. Dunne, Jessica Dunsay Silver, U.S. Dept. of Justice, Washington, D.C., for respondents.

Petition for Review of an Order of the Department of Education.

Before JOHNSON and COX, Circuit Judges, and GODBOLD, Senior Circuit Judge.

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939 F.2d 1527, 69 Ed. Law Rep. 25
(Cite as: 939 F.2d 1527)

GODBOLD, Senior Circuit Judge:

The U.S. Department of Education terminated federal education funds to the DeKalb County (Georgia) School District because DeKalb refused to cooperate with an investigation by the Department's Office of Civil Rights (OCR) into eight parental complaints of discrimination against handicapped children. DeKalb petitions for review of the Department's decision.[FN1] We affirm.

> FN1. After we heard oral argument in this case the Department informed the court by letter that it had reached a settlement with DeKalb under which it reinstated DeKalb's eligibility for federal education funds effective April 17, 1991. The settlement did not alter the Department's determination that DeKalb was ineligible for federal assistance from September 14, 1990, the date the fund termination order became final, until the effective date of the settlement, and it prohibited DeKalb from using federal funds to meet expenses incurred during the period of ineligibility.

I. BACKGROUND

The parties have been litigating this case since 1986. They were before this court once before, *see* Rogers v. Bennett, 873 F.2d 1387 (11th Cir.1989), and now, after two more years of litigation, much has happened but little has changed. DeKalb contends, as it has since the dispute arose, that the federal statutory scheme relating to education of handicapped children deprives OCR of authority to investigate the complaints at issue. The Department asserts***1529** in response that DeKalb's failure to cooperate with OCR's investigation is itself sufficient to authorize the Department to terminate federal funds and that DeKalb's reason for not cooperating with the investigation is irrelevant. This basic disagreement over what the case is about has given rise to most, if not all, of the obstacles that have delayed resolution of the important and difficult issue at the heart of this case: the proper relation between the Education of the Handicapped Act (EHA), 20 U.S.C. §§ 1400-1485, and § 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 794.[FN2]

> FN2. Our discussion of the statutory scheme summarizes the court in *Rogers'* detailed analysis of this issue.

The Statutes at Issue: the EHA and § 504

Congress enacted the EHA in 1970 "to assure that all handicapped children have available to them a free appropriate education which emphasizes special education and related services designed to meet their unique needs," 20 U.S.C. § 1400(c). The statute established a comprehensive system of federal funding for local special education programs, and in exchange for these funds, state and local educational authorities agree to comply with federal regulations regarding education of the handicapped. In 1975 Congress amended the EHA to supplement its funding provisions with a detailed and exclusive administrative procedure by which parents may challenge the adequacy of the special education programs designed for their children. *See* Education for All Handicapped Children Act, 20 U.S.C. § 1415; *see also* Smith v. Robinson, 468 U.S. 992, 1009, 104 S.Ct. 3457, 3467, 82 L.Ed.2d 746 (1984) (holding that the EHA is a parent's exclusive private remedy).

After Congress passed the substantive provisions of the EHA, but before it established the detailed procedural scheme to administer the statute, it enacted the Rehabilitation Act of 1973. *See* Pub.L. No. 93-112, 87 Stat. 355 (codified at scattered sections of 29 U.S.C.). The Rehabilitation Act was primarily a funding statute, but it also contained an antidiscrimination section that provided:

> No otherwise qualified handicapped individual ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 504, 29 U.S.C. § 794.

The Supreme Court has noted that § 504, unlike the EHA, does not require federal grantees to make "fundamental" or "substantial" modifications in existing programs to accommodate the handicapped, *see* Alexander v. Choate, 469 U.S. 287, 300, 105 S.Ct. 712, 719, 83 L.Ed.2d 661 (1985), but that in some circumstances "refusal to modify an existing program might become unreasonable and discriminatory." Southeastern Community College v. Davis, 442 U.S.

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397, 412-13, 99 S.Ct. 2361, 2370-71, 60 L.Ed.2d 980 (1979). The Court uses the terms "affirmative action" and "reasonable accommodation" to emphasize this distinction between the rights created by the EHA and § 504. "Affirmative action" refers to the sort of substantial changes to existing programs that are required by the EHA, but not § 504, while "reasonable accommodation" refers to the sort of lesser modifications that § 504 requires. *See Alexander*, 469 U.S. at 301, n. 20, 105 S.Ct. at 720, n. 20.

The Department is authorized to promulgate regulations under § 504 that prohibit state and local officials from discriminating against the handicapped in the provision of educational services, 34 C.F.R. § 104.33, and these regulations are enforced by OCR review of educational institutions. If a state or local government does not cooperate with an investigation, OCR may initiate proceedings to terminate federal financial assistance. 34 C.F.R. § 100.8.

Procedural History

1. *In the Department*

In 1984 OCR began an investigation of ***1530** DeKalb's special education program [FN3] based on parental complaints concerning possible violations of 34 C.F.R. § 104.33(c)(3), which the Department promulgated under § 504. The regulation provides:

> If placement in a public or private residential placement program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

DeKalb refused to cooperate with the investigation, contending that the regulation was contrary to § 504 and thus could not authorize a lawful investigation, because (1) by requiring residential placement of handicapped children it imposed a obligation to engage in affirmative action, and (2) alleged violations of the right to a free appropriate education (including residential placement) must be addressed through EHA procedures rather than § 504 fund termination proceedings. OCR insisted that DeKalb was obligated to cooperate with the investigation, and, faced with continued resistance, it initiated a fund termination proceeding in 1986.

> FN3. OCR's proposed investigation originally included the School Districts of Chatham County and the City of Savannah and the Georgia Department of Education, as well as DeKalb. The other entities initially opposed OCR's efforts to investigate and joined with DeKalb in the *Rogers v. Bennett* litigation but subsequently reached settlements with OCR.

2. *Rogers v. Bennett*

Before a hearing was held in the administrative proceedings DeKalb filed an action in the district court for the Northern District of Georgia, asking that court to declare the residential placement regulation invalid. The district court dismissed the action on the ground that DeKalb had failed to exhaust its administrative remedies, and this court affirmed, holding that DeKalb was required to exhaust administrative remedies before we would address the merits of the case because OCR did not plainly lack authority to enforce the residential placement regulation under § 504. *See Rogers*, 873 F.2d at 1393-96. We also noted that exhaustion of administrative remedies would greatly aid judicial review of the difficult statutory and regulatory issues presented by the case by providing the court with the "official agency explanation of the regulations and statutes involved." *Rogers* at 1396.

3. *On remand*

The remand accomplished little toward resolution of the parties' basic dispute over proper interpretation of the EHA and § 504, for OCR and DeKalb at once retreated into the positions that they had staked out previously. DeKalb once again refused to cooperate with the residential placement investigation, and OCR continued to insist that DeKalb's lack of cooperation provided a sufficient basis for termination of its funds. In an attempt to break the deadlock the Administrative Law Judge presiding over the case suggested that the parties enter into a stipulation that would permit him to decide the case on purely legal grounds, thus exhausting DeKalb's administrative remedies and opening the door to judicial review. The parties reached a stipulation based on one of the eight pending complaints that provided:

1. Complaint Number 04-87-1151 alleges that

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> Respondent, DeKalb ... refused to reimburse the Complainant parent for expenses incurred in connection with a private residential placement.... The Complaint thus alleges a violation of the Section 504 regulations found at 34 CFR 104.33(c)(3).
>
> 2. For the present purposes it is assumed that [DeKalb] does not provide residential placements for nonhandicapped students.
>
> 3. To date, [DeKalb] has declined to provide data that OCR needs to determine whether there has been a violation of the above-cited regulations.
>
> 4. [DeKalb] has stated that its refusal is based on its desire to have a determination of the following issues: (a) Jurisdictional preemption of Section 504 by the Education of the Handicapped Act ... and (b) whether Section 104.33(c)(3) ***1531** of the Section 504 Regulations is valid or ultra-vires as applied to this complaint.

The ALJ ruled in favor of OCR without reaching DeKalb's arguments on the merits, holding that DeKalb's failure to cooperate with the investigation constituted a violation of the Department's regulations and authorized the Department to terminate federal funds. The Department then terminated all federal educational funding to DeKalb, which sought a temporary restraining order in the district court for the District of Columbia. That court denied relief and later dismissed the case because it determined that it did not have jurisdiction to review the administrative proceedings.[FN4] DeKalb then sought relief in this court, and, after we denied its emergency petition for stay of the administrative action or a writ of mandamus, *Freeman v. Cavazos*, 923 F.2d 1434 (11th Cir.1991), this petition for review ensued.[FN5]

> FN4. *See Freeman v. Cavazos*, 756 F.Supp. 1 (D.D.C.1990).
>
> FN5. We have jurisdiction over DeKalb's petition for review under 20 U.S.C. 1234g(b).

II. DISCUSSION

DeKalb contends that we should strike down the residential placement regulation and order the Department to restore its terminated funds because the regulation is beyond the scope of § 504, and that the Department may not terminate funds based on DeKalb's failure to cooperate with an investigation into alleged violations of an invalid regulation. In support of these contentions it makes the same arguments that it has made throughout this dispute: (1) OCR lacks authority to investigate alleged violations of the residential placement regulation because the regulation requires affirmative action, and therefore exceeds the scope of § 504, and (2) the EHA establishes the right to a free appropriate education and thus deprives OCR of jurisdiction to investigate alleged violations of that right.

We reject DeKalb's contentions, and affirm the Department's termination of DeKalb's funds, because the ALJ correctly determined that DeKalb violated the Department's regulation requiring grantees to cooperate with OCR's investigations, and the stipulation that DeKalb entered into in order to exhaust its administrative remedies does not provide a sufficient basis for resolving the fact-intensive issues presented by the parties' dispute over the proper interpretation of the EHA and § 504.

A. Violation of the Regulation

The ALJ found that DeKalb had violated the Department's regulation requiring grantees to cooperate with OCR's investigations. The regulation at 34 C.F.R. 100.7(c) authorizes OCR to investigate complaints of violations of the § 504 regulations, and 34 C.F.R. 100.6(c) obligates DeKalb to give OCR access to information relevant to such investigations. Section 602 of Title VI, 42 U.S.C. 2000d-1, made applicable to § 504 enforcement by 29 U.S.C. § 794a(a)(2), provides that compliance with any regulation promulgated under § 504 may be obtained

> by the termination of or refusal to grant or to continue assistance under [a federal funding program] to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement....

42 U.S.C. 2000d-1. The ALJ made the findings required by the statutes and regulations, and those findings were not clearly erroneous. Thus, DeKalb can prevail only if it can establish that the residential

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placement regulation requires affirmative action in violation of § 504.

B. Insufficiency of the stipulation

We reject DeKalb's contention that the residential placement regulation is invalid under § 504. DeKalb's stipulation that it does not provide residential placements to nonhandicapped children is not a sufficient basis for reaching its assertions concerning the validity of the regulation, for whether a measure constitutes reasonable accommodation or affirmative action can only be resolved in reference to the facts of a given case.

***1532** Because DeKalb chose to enter into the stipulation rather than to cooperate with OCR's investigation OCR still has neither gathered information relating to DeKalb's treatment of handicapped children nor applied the residential placement regulation to the eight parental complaints. In the absence of a factual background or application of the regulation to concrete cases we must reject DeKalb's contention that the residential placement regulation requires impermissible affirmative action rather than permissible reasonable accommodation.

The Supreme Court noted in *Davis, supra,* that "[w]e do not intend to suggest that the line between a lawful refusal to extend affirmative action and illegal discrimination against handicapped persons will always be clear." 442 U.S. at 412, 99 S.Ct. at 2370. The inquiry is fact-intensive and focuses on whether the costs and other burdens imposed by the proposed modification to an existing program amount to reasonable accommodation of the handicapped or a substantial modification of the program. *See Id.* at 412-13, 99 S.Ct. at 2370-71; *see also Alexander, supra,* 469 U.S. at 300, 105 S.Ct. at 720 ("*Davis* thus struck a balance between the statutory rights of the handicapped ... and the legitimate interests of federal grantees ...: while a grantee need not be required to make "fundamental" or "substantial" modifications to accommodate the handicapped, it may be required to make "reasonable" ones.")

We cannot apply this fact-bound balancing test to the abstract controversy before us. Until OCR has investigated the eight pending complaints, uncovered the facts relating to DeKalb's treatment of handicapped children, applied the residential placement regulation to the particular facts of those cases, and decided whether DeKalb must take some action to modify its existing special education program, we cannot say whether the required modification, if any, will be "reasonable" or "fundamental." Because DeKalb and OCR have not reached the merits of the eight parental complaints, the record before us provides no information about residential placement: how much it costs, how difficult it is to administer, how many children would qualify for it under the regulation, and a number of other factors that are highly relevant to the balancing test that *Davis* established. Thus, we reject DeKalb's assertions regarding the validity of the residential placement regulation.

We also decline to follow the First Circuit's dictum in *Colin K. v. Schmidt,* 715 F.2d 1, 9 (1st Cir.1983) that reasonable accommodation can never require residential placement. The court in *Colin K.* held, based on its decision in *Smith v. Cumberland School Committee,* 703 F.2d 4 (1st Cir.1983), *aff'd sub nom. Smith v. Robinson,* 468 U.S. 992, 104 S.Ct. 3457, 82 L.Ed.2d 746 (1984), that the EHA is a parent's exclusive remedy for violations of rights established by the EHA, but it also suggested that the plaintiffs' theory that reasonable accommodation under § 504 may require individual attention in the form of residential placement "breaks down where the individualized attention requires the payment of substantial funds for residential placement for handicapped children." 715 F.2d at 9. The First Circuit formed this opinion with the benefit of a record developed through lengthy EHA proceedings on the merits of the underlying claim of discrimination. In the case before us, the record contains no information about the financial and administrative burdens imposed by residential placement.

The insufficiency of the stipulation is also fatal to DeKalb's assertion that the EHA deprives OCR of jurisdiction over parental complaints arising from failure to provide a free appropriate education. The Supreme Court held in *Smith v. Robinson* that a *parent's* private remedy under the EHA is exclusive, *see* 468 U.S. at 1009, 104 S.Ct. at 3467; *Rogers* at 1395, but neither *Smith* nor *Rogers* decided whether the EHA's procedural scheme for parental complaints similarly limited *governmental* actions. *See Rogers* at 1395. This issue is a difficult one, because Congress provided little guidance on the proper interplay between § 504 and the 1975 amendments to the EHA that established that statute's procedural scheme. Did

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Congress intend ***1533** for the EHA procedures to be the sole means of enforcing the rights of handicapped children to a free, appropriate education, or did it establish overlapping schemes of enforcement: one for parental litigants under the EHA, the other for the Department's supervisory investigations under its § 504 regulations? The answer is far from obvious, and both parties advance good arguments in support of their positions. In the absence of a fully developed record and application of OCR's procedures to actual cases of alleged discrimination we cannot say that the EHA deprives OCR of jurisdiction to investigate the complaints of discrimination at issue in this case. Thus, we affirm the Department's termination of De-Kalb's federal educational funds for failure to cooperate with OCR's investigation.

AFFIRMED.

C.A.11,1991.
Freeman v. Cavazos
939 F.2d 1527, 69 Ed. Law Rep. 25

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98 Cal.App.4th 256, 120 Cal.Rptr.2d 30, 23 NDLR P 158, 02 Cal. Daily Op. Serv. 4007, 2002 Daily Journal D.A.R. 5033
(Cite as: 98 Cal.App.4th 256)

C WILLIAM FRY et al., Plaintiffs and Appellants,
v.
RITA SAENZ, as Director, etc., et al., Defendants and Respondents.
No. C038026.

Court of Appeal, Third District, California.
May 8, 2002.

SUMMARY

Parents filed a writ petition against the Department of Social Services arising out of the denial of benefits to their disabled children under CalWORKs (California Work Opportunity and Responsibility to Kids) (Welf. & Inst. Code, § 11200 et seq.). After the children turned 18 without having completed high school, or appearing likely to do so within a year, the department discontinued benefits based on the completion rule (Welf. & Inst. Code, § 11253, subd. (b)), which precludes benefits for children who have reached the age of 18 unless the children can reasonably be expected to complete high school by age 19. Plaintiffs sought a declaration that the completion rule violated the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.) and the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), which prohibit discrimination in benefit programs due to disability where the disabled person is otherwise qualified for benefits (a qualified individual being one who meets the essential eligibility requirements for the benefits in question). The trial court denied the petition, finding that the completion rule constituted an essential eligibility requirement within the meaning of the ADA and the Rehabilitation Act. (Superior Court of Sacramento County, No. 00CS01350, Lloyd Connelly, Judge.)

The Court of Appeal reversed the judgment denying benefits and remanded to the trial court to take evidence on the fiscal impact of plaintiffs' proposed remedy. The court held that application of the completion rule to plaintiffs' children unlawfully denied them the benefits of the CalWORKs program on account of their disabilities. The court held that the trial court erred in finding that the completion rule constituted an essential eligibility requirement of CalWORKs. The rule was unnecessary to any CalWORKs purpose expressly defined by the Legislature. Moreover, even if, as the trial court concluded, the purpose of CalWORKs is to serve needy families with children as opposed to adults, the point of demarcation between a child and an adult under Welf. & Inst. Code, § 11253, is age 19. There is no reason why an 18 year old who can complete schooling by age 19 should be deemed a child up until then, but one who cannot do so due to a disability should not. The court held that the trial court also erred in finding that it would fundamentally alter the CalWORKs program to abrogate the completion rule for disabled students, but that the matter had to be remanded to allow the parties to present evidence on whether the relief plaintiffs sought would impose an undue financial hardship on the state. The court held that on remand the department would have the burden of persuasion on this issue. (Opinion by Sims, Acting P. J., with Raye, J., concurring. Concurring opinion by Hull, J. (see p. 274).)

HEADNOTES

(1) Mandamus and Prohibition § 73--Mandamus--Review--Questions of Law.
In reviewing the denial of a petition for a writ of mandamus, whether under Code Civ. Proc., § 1085, or Code Civ. Proc., § 1094.5, the court reviews questions of law de novo.

(2) Public Aid and Welfare § 22--Aid to Disabled--Americans with Disabilities Act--Construction.
Title II of the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.) incorporates the enforcement provisions of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), and case law construing the Rehabilitation Act provides guidance in construing the ADA.

(3a, 3b, 3c) Public Aid and Welfare § 30--Aid to Families with Dependent Children--Eligibility--Age--Time for Completing School--Exception for Disabled Children.
In construing a provision of CalWORKs (California Work Opportunity and Responsibility to Kids) (Welf. & Inst. Code, § 11200 et seq.), providing that a child who has reached the age of 18 may continue to receive aid if he or she can reasonably be expected to complete high school or training before age 19 (the com-

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pletion rule) (Welf. & Inst. Code, § 11253, subd. (b)), the trial court erred in finding that the denial of benefits to children who had reached the age of 18 but whose disabilities made it unlikely they would complete high school by age 19 did not violate the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) or the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.). Under those acts, which prohibit discrimination in benefit programs due to disability where the disabled person is otherwise qualified for benefits, a qualified individual is one who meets the essential eligibility requirements for the benefits in question. The completion rule did not constitute an essential eligibility requirement of CalWORKs, since it was unnecessary to any CalWORKs purpose expressly defined by the Legislature. Moreover, even if, as the trial court concluded, the purpose of CalWORKs is to serve needy families with children as opposed to adults, the point of demarcation between a child and an adult under Welf. & Inst. Code, § 11253, is age 19. There is no reason why an 18 year old who can complete schooling by age 19 should be deemed a child up until then, but one who cannot do so due to a disability should not. The trial court also erred in finding that it would fundamentally alter the CalWORKs program to abrogate the completion rule for disabled students.
[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 744A; West's Key Number Digest, Social Security and Public Welfare ⚷194.6.]
(4) Public Aid and Welfare § 22--Aid to Disabled--Americans with Disabilities Act--Eligibility Requirement--Construction.
A program eligibility requirement that could discriminate against the disabled under the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), may be deemed essential only if the program's purposes could not be achieved without the requirement. If a requirement is not essential in that sense, the fact that it is embodied in a statute rather than a regulation makes no difference. In virtually all controversies involving the ADA and state policies that discriminate against disabled persons, courts will be faced with legislative (or executive agency) deliberation over relevant statutes, rules, and regulations. The courts have a duty to see that the mandate of federal law is achieved, and statutes are no more immune to judicial scrutiny for ADA compliance than are rules or regulations.

(5) Public Aid and Welfare § 22--Aid to Disabled--Americans with Disabilities Act--Eligibility Requirement--Construction.
Under the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the public entity offers. The benefit cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the entity's program or benefits may have to be made.

(6) Public Aid and Welfare § 30--Aid to Families with Dependent Children-- Eligibility--Age--Time for Completing School--Exception for Disabled Children-- Financial Hardship to State.
In order to show that a modification of a CalWORKs (California Work Opportunity and Responsibility to Kids) (Welf. & Inst. Code, § 11200 et seq.) requirement that a child who has reached the age of 18 may continue to receive aid if he or she can reasonably be expected to complete his or her educational or training program before his or her 19th birthday (Welf. & Inst. Code, § 11253, subd. (b)), in favor of children whose disabilities would prevent them from meeting that requirement, the Department of Social Services has the burden of persuasion that the proposed modification of CalWORKs would impose an undue financial hardship on the state. A public entity must make reasonable accommodations for the disabled unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the services, program, or activity.

(7) Public Aid and Welfare § 30--Aid to Families with Dependent Children-- Eligibility--Effect of Other Federal Aid.
A child is not disqualified from receiving benefits under CalWORKs (California Work Opportunity and Responsibility to Kids) (Welf. & Inst. Code, § 11200 et seq.) by the fact that he or she is also receiving Supplemental Security Income benefits.

COUNSEL

Western Center on Law & Poverty, Clare Pastore, Paula Gaber, Richard Rothschild; Legal Aid Society of San Diego, Ann E. Menasche; Legal Services of Northern California and Brian Patrick Lawlor for Plaintiffs and Appellants.

Michelle Uzeta and Melinda Bird for Protection & Advocacy, Inc., as Amicus Curiae on behalf of Plain-

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(Cite as: 98 Cal.App.4th 256)

tiffs and Appellants.

Bill Lockyer, Attorney General, Charlton G. Holland, Assistant Attorney General, Frank S. Furtek and Paul Reynaga, Deputy Attorneys General, for Defendants and Respondents.

SIMS, Acting P. J.

CalWORKs, which stands for California Work Opportunity and Responsibility to Kids (Welf. & Inst. Code, § 11200), [FN1] is the renamed and otherwise amended version of California's former Aid to ***260** Families with Dependent Children (AFDC) program. (Stats. 1997, ch. 270, § 50; Legis. Counsel's Dig., Assem. Bill No. 1542 (1997-1998 Reg. Sess.); see *Arenas v. San Diego County Bd. of Supervisors* (2001) 93 Cal.App.4th 210, 213-214 [112 Cal.Rptr.2d 845].) Like the former state AFDC, CalWORKs is funded in part by its federal counterpart (42 U.S.C. § 601 et seq.), now known as Temporary Assistance for Needy Families (TANF). (§§ 10100-10101, 11200.5.)

FN1 All undesignated section references are to the Welfare and Institutions Code.

CalWORKs is administered by the Department of Social Services (the Department). (§ 11209.) CalWORKs provides aid and services to families with related children under 18 whose parent or parents cannot support them due to death, incapacity, incarceration, unemployment, or continued absence from the home. (§ 11250, subds. (a)-(c).) Section 11253 is the only exception to the cutoff of aid at age 18. (§§ 11250, 11253.)

Section 11253 provides:

"Aid may not be granted under the provisions of this chapter to or in behalf of any child who has attained the age of 18 unless all of the following apply: [¶] (a) The child is less than 19 years of age and is attending high school or the equivalent level of vocational or technical training on a full-time basis. [¶] (b) *The child can reasonably be expected to complete the educational or training program before his or her 19th birthday.*" (Italics added.)

Section 11253, subdivision (b) (hereafter section 11253(b)) is commonly known as the "completion rule."

Defendant Department paid benefits under CalWORKs to plaintiffs William Fry, Marie LaBrash, and Audrey Griffin and their disabled children who were full-time high school students. After the children turned 18 without having completed high school or appearing likely to do so within a year, the Department discontinued benefits based on the completion rule; i.e., because it was unlikely that each child would complete high school by age 19.

Plaintiffs filed a petition for writ of ordinary mandamus (Code Civ. Proc., § 1085) and administrative mandamus (Code Civ. Proc., § 1094.5), seeking a declaration that Welfare and Institutions Code section 11253(b) is unlawful as applied to disabled children and an order reinstating benefits.

Plaintiffs alleged the only reason their children cannot be expected to finish high school before their 19th birthday is because the children are ***261** disabled. Plaintiffs averred that, as applied to their disabled children, the completion rule violates the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.; hereafter Rehabilitation Act), and California law requiring state-funded programs to comply with those federal statutes (Gov. Code, § 11135). According to plaintiffs, the completion rule unlawfully discriminates against these disabled 18-year-old children by depriving them of a benefit available to similarly situated 18-year-old children who are not disabled.

Following a hearing, the trial court denied the petition and plaintiffs timely appealed.

We agree with plaintiffs that application of the completion rule to their children unlawfully denies them the benefits of the CalWORKs program on account of their disabilities. We shall therefore reverse the judgment and remand the matter to the trial court for the taking of evidence as to the Department's current ability to pay benefits to plaintiffs and others in the state similarly situated.

Factual and Procedural Background

At all relevant times, plaintiffs' children were under age 19 and enrolled full time in high school.

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(Cite as: 98 Cal.App.4th 256)

The parties have stipulated that the children are disabled within the meaning of the ADA and the Rehabilitation Act and that only their disabilities appeared likely to prevent them from completing high school by the age of 19. Thus, there is no dispute that their benefits were cut off solely due to disability.

Plaintiffs timely appealed the termination of benefits. Plaintiff LaBrash's termination was rescinded and LaBrash withdrew her appeal after her daughter's high school principal informed the Department that the child could be expected to graduate by age 19. [FN2] After administrative hearings on the remaining appeals, defendant Saenz in her capacity as Director of the Department upheld the terminations under the completion rule. (We shall refer to defendants as the Department for convenience.)

> FN2 Defendants have stipulated, however, that if a change in the child's school program due to her disability delayed her graduation, her benefits would again be in jeopardy. Defendants do not challenge LaBrash's standing in this appeal.

Plaintiffs thereafter filed their writ petition in Sacramento County Superior Court. In a declaration filed in support of the petition, plaintiff Griffin ***262** averred that her child had received $652 per month in Supplemental Security Income (SSI) benefits up until November 2000 and $807 per month thereafter, amounts in excess of the $294 per month Griffin had received under CalWORKs as the child's caretaker parent. The other plaintiffs declared that their children received no benefits other than the discontinued CalWORKs benefits.

After a hearing on the merits, the superior court denied the writ and issued judgment on all claims for defendants. The court found: "The provisions of ... section 11253(b) constitute an essential eligibility requirement, within the meaning of the ADA and the Rehabilitation Act. The purpose of the CalWORKs program is to provide a nurturing, supportive home for a needy child. The point of demarcation between a child and an adult defines the basic program eligibility parameter with substantive financial consequences. [¶] ... The relief requested by petitioners would constitute a fundamental alteration of the CalWORKs program ... within the meaning of the ADA and the Rehabilitation Act."

Discussion

I. *The Trial Court Erred in Concluding That the Completion Rule Was an Essential Eligibility Requirement of CalWORKs*

As the essential facts are undisputed, we have only questions of law before us. (1) In reviewing the denial of a petition for writ of mandamus, whether under Code of Civil Procedure section 1085 or section 1094.5, we review questions of law de novo. (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1278-1279 [101 Cal.Rptr.2d 784]; *Silver v. Los Angeles County Metropolitan Transportation Authority* (2000) 79 Cal.App.4th 338, 347-348 [94 Cal.Rptr.2d 287].)

Government Code section 11135 currently provides in part: "(a) No person in the State of California shall, on the basis of ... disability, be unlawfully denied ... the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is ... funded directly by the state, or receives any financial assistance from the state. [¶] (b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and ***263** prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions." (2)**(See fn. 3)** The ADA and the Rehabilitation Act apply to any program or activity which receives TANF funds, such as CalWORKs. (42 U.S.C. § 608(d).) [FN3]

> FN3 Title II of the ADA incorporates the enforcement provisions of the Rehabilitation Act and case law construing the Rehabilitation Act provides guidance in construing the ADA. (*In re Anthony P.* (2000) 84 Cal.App.4th 1112, 1116 [101 Cal.Rptr.2d 423]; *Black v. Department of Mental Health* (2000) 83 Cal.App.4th 739, 749 [100 Cal.Rptr.2d 39].)

The ADA provides in part: "Subject to the provisions

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of this subchapter [(tit. II, 42 U.S.C. § 12131 et seq.)], no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." (42 U.S.C. § 12132; see also 28 C.F.R. § 35.130(a) (2001).) Similarly, the Rehabilitation Act provides in part: "(a) ... [¶] No otherwise qualified individual with a disability in the United States, as defined in section 706(20) [29 U.S.C. § 705(20)] shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance .... [¶] (b) ... [¶] For the purposes of this section, the term 'program or activity' means all of the operations of [¶] ... a department ... of a State ... government; or [¶] ... the entity of such State ... government that distributes such assistance and each such department ... to which the assistance is extended, in the case of assistance to a State ... government ...." (29 U.S.C. § 794; see also 45 C.F.R. § 84.4(a) (2001).)

Under both the ADA and the Rehabilitation Act, a person "qualified" to receive government benefits or services or to participate in a government program or activity is one who, "with or without reasonable modifications to rules, policies, or practices, ... meets the essential eligibility requirements" for such benefits, services, or participation. (42 U.S.C. § 12131(2) [ADA]; see also 28 C.F.R. § 35.104 (2001) [implementing ADA]; 28 C.F.R. § 41.32(b) (2001) [implementing Rehabilitation Act].) (3a) Plaintiffs contend the trial court erred in finding the completion rule an "essential eligibility requirement" of CalWORKs. Plaintiffs are correct.

Under TANF, a "minor child" qualified to receive benefits is "an individual who-[¶] (A) has not attained 18 years of age; or [¶] *(B) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).*" (42 U.S.C. § 619, italics added.) TANF does not require an eligible child to complete high ***264** school by age 19. [FN4] Plaintiffs' children, who were under 19 and enrolled full-time in high school when plaintiffs' CalWORKs benefits were cut off, therefore met the "essential eligibility requirements" of the federal statute for receiving TANF funds.

FN4 Under the former federal-state AFDC regime, states could not impose eligibility requirements beyond those specified in the federal AFDC statutes because to do so would violate the federal supremacy clause. (U.S. Const., art. VI, § 2; see, e.g., *Townsend v. Swank* (1971) 404 U.S. 282, 286 [92 S.Ct. 502, 505, 30 L.Ed.2d 448, 453]; *Bryant v. Swoap* (1975) 48 Cal.App.3d 431, 434 [121 Cal.Rptr. 867].) As we have just explained, section 11253(b) imposes an eligibility requirement beyond that found in its TANF counterpart: the completion rule. However, plaintiffs have not asked us to consider whether the rule of *Townsend v. Swank*, and *Bryant v. Swoap*, remains in effect under TANF, or whether, if so, section 11253(b) would be unconstitutional on its face under that rule. (See *Anderson v. Superior Court* (1998) 68 Cal.App.4th 1240, 1248-1249 [80 Cal.Rptr.2d 891].) We therefore express no view on that issue.

The Department asserts that the completion rule is essential to CalWORKs because, by enacting that rule in a state statute (§ 11253(b)), the Legislature showed that it thought the rule essential. Indeed, the Department says: "The completion requirement was designed by the California Legislature to be an essential component of CalWORKs, *and that decision is controlling*." (Italics added.) The Department is wrong.

(4) A program eligibility requirement which could discriminate against the disabled may be deemed essential only if the program's purposes could not be achieved without the requirement. (See *Alexander v. Choate* (1985) 469 U.S. 287, 300-301 [105 S.Ct. 712, 719-720, 83 L.Ed.2d 661, 671-672]; *Pandazides v. Virginia Bd. of Educ.* (4th Cir. 1991) 946 F.2d 345, 349; *Strathie v. Department of Transp.* (3d Cir. 1983) 716 F.2d 227, 230-231.) If a requirement is not essential in that sense, the fact that it is embodied in a statute rather than a regulation makes no difference. "[I]n virtually all controversies involving the ADA and state policies that discriminate against disabled persons, courts will be faced with *legislative* (or executive agency) deliberation over relevant *statutes*, rules, and regulations." (*Crowder v. Kitagawa* (9th Cir. 1996) 81 F.3d 1480, 1485, italics added.) The courts have a duty to see that "the mandate of federal law is achieved" (*ibid.*), and statutes are no more immune to judicial scrutiny for ADA compliance than

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are rules or regulations. (*Ibid.*)

Disabled plaintiffs have often brought challenges in federal court to government entities' decisions to deny benefits or services in reliance on rules alleged to be essential eligibility requirements for receiving the benefit or service. (42 U.S.C. § 12131(2).) The federal courts have taken two different approaches to such challenges. Some have looked first to the general purposes of the program and how the rule serves those purposes, ***265** while others have looked first to the characteristics of the individual plaintiff seeking exemption from the rule. Under the former approach, "even if waiver of a rule would be reasonable under the circumstances of the particular case, the waiver would not be required if the rule itself is generally an essential or necessary eligibility requirement." (*Washington v. Indiana High School Athletic Ass'n* (7th Cir. 1999) 181 F.3d 840, 850 (*Washington*).) Under the latter approach, the court asks "whether waiver of the rule in the particular case at hand would be so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change" in the government program. (*Ibid.*) In some contexts, the choice of approach will decide the outcome. (Compare *Pottgen v. Missouri St. High Sch. Activities Ass'n* (8th Cir. 1994) 40 F.3d 926, 929 (*Pottgen*) [age-18 cutoff was "essential eligibility requirement" of high school sports program because it served program's general purposes] with *id.* at p. 931 (dis. opn. of Arnold, C. J.) [opining waiver of cutoff for plaintiff would not fundamentally alter program].)

Although the court in *Washington, supra*, 181 F.3d 840 held the individual-based approach to be "the better view" (*id.* at p. 850), the federal courts have more often chosen the program-based approach. (See, e.g., *McPherson v. Michigan High School Athletic Ass'n* (6th Cir. 1997) 119 F.3d 453, 461; *Does 1-5 v. Chandler* (9th Cir. 1996) 83 F.3d 1150, 1154-1155; *Sandison v. Michigan High School Athletic Ass'n* (6th Cir. 1995) 64 F.3d 1026, 1034; *Easley v. Snider* (3d Cir. 1994) 36 F.3d 297, 300-304.) One reason for this choice may be the courts' fear that under the individual-based approach "[a] public entity could never know the outer boundaries of its 'services, programs, or activities.' A requirement could be deemed essential for one person with a disability but immaterial for another similarly, but not identically, situated individual." (*Pottgen, supra*, 40 F.3d at p. 931.) (3b) Recognizing the validity of this concern, we shall follow the majority approach and look to the general purposes of CalWORKs, rather than to the individual plaintiffs' characteristics, to determine whether the completion rule is an essential eligibility requirement of the program.

The Legislature has defined the purposes of CalWORKs as follows: "The Legislature finds and declares that the family unit is of fundamental importance to society in nurturing its members, passing on values, averting potential social problems, and providing the secure structure in which citizens live out their lives. Each family unit has the right and responsibility to provide its own economic security by full participation in the work force to the extent possible. Each family has the right and responsibility to provide sufficient support and protection of its children, to raise them according to its values and to provide every opportunity for educational and social progress." (§ 11205.) With these aims in mind, "[e]very county ... shall ***266** administer this chapter in such a manner as to achieve the greatest possible reduction of dependency and to promote the rehabilitation of recipients." (§ 11207.) [FN5]

> FN5 These purposes closely resemble those declared by Congress for state programs receiving federal funds through TANF: "(1) [P]rovide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; [¶] (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; [¶] (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and [¶] (4) encourage the formation and maintenance of two-parent families." (42 U.S.C. § 601(a).)

Nothing in these legislatively declared purposes of CalWORKs requires the completion rule as a condition of eligibility for benefits. On the contrary, cutting off benefits under this rule tends to undermine these purposes.

Depriving a family of benefits because a disabled child is not expected to complete high school or job training by age 19 obviously does not enhance the family's "right and responsibility to provide sufficient

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support and protection of its children." (§ 11205.) Similarly, the cutoff of benefits for this reason does not promote the family's "right and responsibility to provide its own economic security by full participation in the work force to the extent possible" (*ibid.*): a disabled 18 year old with schooling or job training unfinished is ill-prepared to work, and having to care for the child without CalWORKs aid may impede the parents' participation in the work force. Barring a family from receiving benefits because a disabled 18 year old will not complete high school within a year patently detracts from the family's "right and responsibility to ... provide every opportunity for educational and social progress." (*Ibid.*) Finally, cutting off benefits under these circumstances does nothing to "reduc[e] dependency" or "promote the rehabilitation of recipients" (§ 11207): it leaves disabled children more dependent than before, thus discouraging the "rehabilitation" of all aid recipients.

Though the completion rule is unnecessary to any CalWORKs purpose expressly defined by the Legislature, the Department asserts that the rule is nevertheless essential because CalWORKs is "purposefully targeted to serve needy families with *children*." Similarly, the trial court thought the rule essential "within the meaning of the ADA and the Rehabilitation Act" because "[t]he purpose of the CalWORKs program is to provide a nurturing, supportive home for a needy child. The point of demarcation between a child and an adult defines the basic program eligibility parameter ...." [FN6] The Department's argument and the trial court's ruling are untenable. ***267**

> FN6 The last sentence ends: "with substantive financial consequences." The financial consequences of granting relief to plaintiffs relate more closely to the topic of part II, *post*: would refusing effect to the completion rule for persons similarly situated to plaintiffs and their children fundamentally alter CalWORKs? We therefore defer our discussion of this point to part II.

By enacting section 11253, the Legislature has established the "point of demarcation between a child and an adult" under the statute as age 19: a child who comes within section 11253 is a "child" for purposes of CalWORKs up to that age. Plaintiffs seek benefits for their children only until each child reaches age 19. We do not see why an 18 year old who can complete schooling or job training by age 19 should be deemed a "child" up until then, but one who cannot do so because of disability should not be. That distinction has no more bearing on the general purpose of "serving needy families with children" than on any specific purpose stated in sections 11205 and 11207.

The Department cites legislative history related to Congress's enactment of the completion rule *in the former AFDC*, apparently to show that Congress thought the rule essential to that program. But if Congress thought so, its failure to reenact the rule in TANF shows that Congress has changed its mind. If the Department means to argue that our Legislature was bound by Congress's earlier finding, the Department fails to explain why the Legislature is not bound by Congress's later implied finding that no completion rule is appropriate. [FN7]

> FN7 The Department asserts that the Legislature is free to impose conditions in CalWORKs even after Congress has discarded them in TANF, but cites no authority for this proposition. (See fn. 4, *ante*.)

Finally, the Department relies on a federal district court decision holding that the completion rule as enacted in a Washington statute was an essential eligibility requirement of that state's AFDC program. (*Aughe v. Shalala* (W.D.Wash. 1995) 885 F.Supp. 1428 (*Aughe*).) We find *Aughe* unpersuasive.

The court in *Aughe* first reasoned that the state could not waive the completion rule because the federal AFDC required it, a rationale which no longer applies. (*Aughe, supra*, 885 F.Supp. at p. 1431.) The court then stated: "The AFDC is designed to help children (i.e.[,] those under eighteen years of age) and their families." (*Ibid.*) As we have explained, this rationale does not justify a rule that distinguishes between two classes of 18-year-old "children." Finally, the court asserted (citing no evidence): "By cutting off aid to those over eighteen the fiscal viability of the AFDC can be maintained." (*Ibid.*) The court's assumption that the fiscal soundness of the AFDC in Washington State depended on the completion rule has no bearing on whether that rule is essential to CalWORKs. As we shall explain in a moment, the fiscal consequences to CalWORKs of eliminating the completion rule for disabled students is a matter that should be tried upon evidence upon remand. ***268**

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For all the above reasons, we conclude that, on the record before us, the completion rule is not an essential eligibility requirement of CalWORKs.

II. *The Trial Court Erred in Ruling That It Would Fundamentally Alter the CalWORKs Program to Abrogate the Completion Rule for Disabled Students. However, We Shall Remand to the Trial Court for the Taking of Evidence on the State's Current Ability to Meet the Increased Costs of Funding Benefits to Disabled Students Caused by Abrogation of the Completion Rule*

The trial court concluded, "[t]he relief requested by petitioners would constitute a fundamental alteration of the CalWORKS program ... within the meaning of the ADA and the Rehabilitation Act." Plaintiffs contend the trial court erred in concluding it would fundamentally alter CalWORKs to abrogate the completion rule as to them. For reasons that follow, we agree that the trial court's conclusion is legally erroneous on the record presented.

However, the Department asserts that to grant relief to plaintiffs and those similarly situated would jeopardize the program's fiscal soundness. As we shall explain, we cannot ascertain on this record whether that is so. Moreover, recent events have dramatically altered our state's economic outlook. Therefore, we shall remand for the taking of evidence on this point.

A. *Considerations Other Than Fiscal Considerations*

"A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the services, program, or activity." (28 C.F.R. § 35.130(b)(7) (2001) [implementing ADA].) (5) Under this guideline, "an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit ... cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made." (*Alexander v. Choate, supra*, 469 U.S. at p. 301 [105 S.Ct. at p. 720, 83 L.Ed.2d at p. 672].)

(3c) Plaintiffs' children are "otherwise qualified handicapped individuals" for purposes of the ADA, and the completion rule deprives them of a ***269** benefit available to nonhandicapped 18-year-old children in a program to which the ADA applies. Thus, the Department must show that it cannot accommodate plaintiffs' children and those similarly situated by permitting them to obtain that benefit because to do so would fundamentally alter CalWORKs. The Department failed to meet its burden in the trial court.

Relying on *Aughe, supra*, 885 F.Supp. at page 1432, the Department asserts that plaintiffs' remedy would "essentially rewrite the statute," which (apparently by definition) would fundamentally alter CalWORKs. We find *Aughe* no more persuasive on this point than on those discussed in part I, *ante*.

The court in *Aughe* based this part of its analysis solely on *Pottgen, supra*, 40 F.3d 926, which upheld a school sports program's age cutoff against a challenge by an athlete whose disability had kept him in school past the cutoff age. *Pottgen* held that it would fundamentally alter school sports programs to waive the age limit, which serves essential purposes of scholastic athletics (to protect younger athletes and to discourage coaches from seeking unfair advantage by using older athletes, among others). (*Id.* at p. 929.) The only possible accommodation for the plaintiff-to waive the age limit-was therefore not "reasonable." (*Id.* at p. 930.)

Pottgen's analysis, which *Aughe* simply parrots (*Aughe, supra*, 885 F.Supp. at pp. 1431-1432), is inapplicable to section 11253(b). Unlike the age-limitation rule in athletics, which prevents older youths from competing unfairly with younger youths, elimination of the completion rule in this case would not result in disabled students competing unfairly in academics with younger students. As shown in part I, *ante*, the Department identifies no essential purpose of CalWORKs incompatible with paying benefits to otherwise qualified children whose disabilities may keep them from completing high school by age 19. It does not rewrite the statute to refuse effect to an inessential condition which unlawfully discriminates against the disabled.

The Department next asserts that plaintiffs' remedy

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would fundamentally alter CalWORKs by "expanding" its coverage. (See *Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F.3d 725, 734 (*BAART*).) The Department is mistaken and its reliance on *BAART* is misplaced.

In *BAART,* the court held that a city zoning ordinance which barred methadone clinics within 500 feet of residential areas discriminated on its face against persons who came within the ambit of the ADA and the Rehabilitation Act. (*BAART, supra,* 179 F.3d at pp. 729-730, 733-734.) Explaining that the "reasonable modifications" requirement under 28 Code of Federal Regulations section 35.130(b)(7) (2002) did not apply, the court ***270** stated: "The only possible modification of a facially discriminatory law that would avoid discrimination on the basis of disability would be *the actual removal of the portion of the law that discriminates on the basis of disability.* However, such a modification *would fundamentally alter the ordinance.* As applied to this case, for example, the urgency ordinance could only be rendered facially neutral *by expanding* the class of entities that may not operate within 500 feet of a residential neighborhood to include all clinics at which medical services are provided, or by striking the reference to methadone clinics entirely." (*BAART,* at p. 734, italics added.)

Without discussing *BAART*'s subject or holding, the Department quotes only the portion of *BAART*'s language we have italicized. In context, that language does not support the Department's proposition that a reasonable accommodation which "expand[s] coverage" under a facially neutral program, so as to avoid as-applied discrimination against qualified individuals, fundamentally alters the program. Nor does any other decision the Department cites.

To the extent that *BAART* might suggest that a court may not order a public program that unlawfully excludes the disabled to disregard exclusionary language in a statute or ordinance, we respectfully decline to follow it. It remains true that whenever a public program is altered to embrace the disabled who have been excluded on account of their disabilities, the program is expanded. That is no reason to refuse to apply the anti-discrimination mandates of the ADA or the Rehabilitation Act. Indeed, to accept the Department's argument would eviscerate remedies for disability discrimination under those acts.

The Department further asserts: "[T]he present rule contained in Section 12253(b) [*sic*: 11253(b)] is itself a reasonable accommodation for all children who have reached the usual graduation cutoff age of 18, but need additional time to complete school for whatever reason, including disability." Not only does this conflict with the Department's position that no reasonable accommodation for plaintiffs' children is possible, but it misuses the term "reasonable accommodation." By definition, that term means an accommodation offered to disabled persons. (*Alexander v. Choate, supra,* 469 U.S. at p. 301 [105 S.Ct. at p. 720, 83 L.Ed.2d at p. 672]; 28 C.F.R. § 35.130(b)(7) (2001).) Nondisabled 18 year olds who "need additional time to complete school" do not require reasonable accommodation under the ADA. Thus it makes no sense to describe section 11253(b) as a reasonable accommodation for 18 year olds in general.

We therefore conclude that the trial court erred as a matter of law by concluding, on the record presented to it, that plaintiffs' proposed remedy would fundamentally alter CalWORKs. ***271**

B. *The Fiscal Impact of Plaintiffs' Remedy*

This leaves the question of fiscal impact, however. The Department asserts that to grant relief to plaintiffs would fundamentally alter CalWORKs by requiring large-scale additional expenditures. We cannot resolve this contention on the record before us.

Both the ADA and the Rehabilitation Act, as construed by the United States Supreme Court, recognize that public entities need not make unreasonable expenditures of public funds to provide services covered by the acts. Therefore, if such expenditures would be required to grant relief to plaintiffs and others similarly situated, the courts cannot compel the state to provide the benefits plaintiffs seek.

In *Olmstead v. L.C.* (1999) 527 U.S. 581 [119 S.Ct. 2176, 144 L.Ed.2d 540], the Supreme Court interpreted 28 Code of Federal Regulations section 35.130(b)(7) (2001), implementing the ADA, which provides (as noted): "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, *unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the*

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services, program, or activity." (Italics added.) The court held:

"The State's responsibility, once it provides community-based treatment to qualified persons with disabilities, is not boundless. The reasonable-modifications regulation speaks of 'reasonable modifications' to avoid discrimination, and allows States to resist modifications that entail a 'fundamenta[l] alter[ation]' of the States' services and programs. [Citation.] The Court of Appeals construed this regulation to permit a cost-based defense 'only in the most limited of circumstances,' [citation], and remanded to the District Court to consider, among other things, 'whether the additional expenditures necessary to treat [the plaintiffs] in community-based care would be unreasonable given the demands of the State's mental health budget' [citation].

"The Court of Appeals' construction of the reasonable-modifications regulation is unacceptable[,] for it would leave the State virtually defenseless once it is shown that the plaintiff is qualified for the service or program she seeks. If the expense entailed in placing one or two people in a community-based treatment program is properly measured for reasonableness against the State's entire mental health budget, it is unlikely that a State, relying on the ***272** fundamental-alteration defense, could ever prevail. [Citations.] Sensibly construed, the fundamental-alteration component of the reasonable-modifications regulation would allow the State to show that, in the allocation of available resources, immediate relief for the plaintiffs would be inequitable, given the responsibility the State has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities." (*Olmstead v. L.C., supra,* 527 U.S. at pp. 603-604 [119 S.Ct. at pp. 2188-2189, 144 L.Ed.2d at pp. 559-560].)

The Supreme Court has found a similar concern for unreasonable public expenditures under the Rehabilitation Act. In *School Bd. of Nassau County v. Arline* (1987) 480 U.S. 273 [107 S.Ct. 1123, 94 L.Ed.2d 307], the court held that under this act "[a]ccommodation is not reasonable if it either imposes 'undue financial and administrative burdens' on a grantee, [citation], or requires 'a fundamental alteration in the nature of [the] program.' " (480 U.S. at p. 287, fn. 17 [107 S.Ct. at p. 1131, 94 L.Ed.2d at p. 321]; see 45 C.F.R. § 84.12(c) (2001), which provides: "In determining ... whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include: ... [¶] (3) The nature and cost of the accommodation needed.")

Unlike the arguments discussed in part II.A., *ante*, the Department's argument that the relief plaintiffs seek would require unreasonable public expenditures raises a factual question. We cannot answer that question because the factual record has not been developed and the economic circumstances of the State have changed dramatically since trial.

Citing exhibits presented below, plaintiffs assert: (1) the cost of "modifying" the completion rule as they wish "would likely average at most only .34 percent of California's welfare payments;" (2) although this might come to $10 million a year, that cost could easily be paid out of a $1.5 billion surplus of available TANF block grant funds the State has not yet sought. The Department accepts plaintiffs' cost estimate for the sake of argument but asserts that there is no remaining TANF block grant balance or surplus out of which to pay that cost. The Department requests judicial notice of a purported excerpt from the Governor's budget for fiscal year 2001-2002 as revised in May 2001, prepared and published by the Department. (Evid. Code, §§ 452, subds. (c) & (h), 459.) According to the Department, this document contains information on California's use of TANF block grant funds.

We deny the request for judicial notice. We frankly cannot make much sense of the document. The Department will have the opportunity to present the document to the trial court and argue its significance on remand. ***273**

The record on appeal is inadequate to assess the costs of getting rid of the completion rule for disabled students. Moreover, pursuant to Evidence Code sections 452, subdivisions (g) and (h) and 459, we take judicial notice that the terrible events of September 11, 2001, have dramatically changed the State's fiscal outlook. [FN8] We shall therefore remand the matter to the trial court for the parties to present evidence on this issue.

FN8 Pursuant to Evidence Code section 455, we have given the parties the opportunity to comment on our taking judicial notice.

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(6) In the trial court, the Department shall have the burden of persuasion that plaintiffs' proposed modification of CalWORKs would impose an undue financial hardship on the state. Thus, 28 Code of Federal Regulations section 35.130(b)(7) (2001) says: "A public entity shall make reasonable modifications ... *unless the public entity can demonstrate* that making the modifications would fundamentally alter the nature of the services, program, or activity." (See also *Olmstead v. L.C., supra*, 527 U.S. at pp. 603-604 [119 S.Ct. at pp. 2188-2189, 144 L.Ed.2d at p. 560].) But in meeting its burden, the Department may present evidence of the costs not only as to the plaintiffs herein, but as to all persons similarly situated. (*Ibid.*) Therefore the trial court is directed on remand to consider the cost of accommodating plaintiffs and all other persons in the state similarly situated.

III. *The Department Has Not Shown That CalWORKs Benefits Can Be Denied to Plaintiff Griffin Because Her Child Received SSI Benefits in Excess of the CalWORKs Benefits.*

Without citing authority, the trial court suggested during oral argument that alternative programs such as SSI may provide benefits to disabled special education students who are not qualified children under section 11253(b). It is undisputed that the child of plaintiff Griffin received SSI benefits, both before and after CalWORKs benefits were cut off, in an amount greater than the CalWORKs benefits.

In this court, the Department makes no argument that plaintiff Griffin can be denied CalWORKs benefits because her child receives SSI. Accordingly, we have been cited no CalWORKs statute or regulation that denies CalWORKs benefits where an eligible child also receives SSI. Nor has our independent research disclosed any.

(7) In the absence of a statute or regulation in the CalWORKs program denying benefits upon receipt of SSI, we see no principled basis upon which ***274** plaintiff Griffin can be denied benefits. As we have recounted, the ADA outlaws denial of "the benefits of the ... *programs* ... of a public entity" by reason of the disability of a qualified individual. (42 U.S.C. § 12132, italics added.) Similarly, the Rehabilitation Act provides that, "No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, ... be denied the benefits of ... any *program* ... receiving Federal financial assistance ...." (29 U.S.C. § 794, italics added.)

The two federal acts are therefore aimed at the denial of benefits of a *program*. As we have said, we have found no statute or regulation in the CalWORKs *program* that denies benefits where a child receives SSI. Although this court doubtless has the authority to mandate the Department to disregard the completion rule, in order to ensure compliance with the ADA and the Rehabilitation Act, this court has no authority to rewrite the CalWORKs program willy nilly so as to create an exception for children who receive SSI. That is the proper job of the Legislature; the Department does not contend otherwise. Taking the CalWORKs *program* as established by the Legislature, we see no basis to deny benefits to plaintiff Griffin on the ground her disabled child receives SSI.

Disposition

The judgment denying reinstatement of benefits is reversed. The matter is remanded to the trial court to take evidence on the fiscal impact of plaintiffs' proposed remedy as applied to plaintiffs and others in the state similarly situated. Plaintiffs are awarded their costs on appeal.

Raye, J., concurred.**HULL, J.**
I concur in the result.

The law in this area is a quagmire; there is no firm ground beneath one's feet. I agree only that we should remand this matter to the trial court for further evidence and a more complete record. I do so with some reluctance and I write separately to express my reservations.

Even though this mandamus action is brought on behalf of only three petitioners, its reach, if successful, will presumably extend to any person whose education has been delayed at any time by virtue of their having suffered a disability. On this record, that population is unknown and therefore the cost to the state of a decision in petitioners' favor is unknown. I am willing to return the matter to the trial court to allow the parties to present evidence on this issue, but I suspect that the number of people affected by a ***275** ruling in petitioners' favor is not only unknown but unknowable, either this year, or in future years. I doubt that it is possible to judge accurately, or to even

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make an informed estimate of, the fiscal impact of a ruling that bars application of the completion rule to an unknown number of persons. And, if that number is as large as I think it may be, a ruling in petitioners' favor may well have the practical effect of, essentially, writing the completion rule out of the statute. However, caution suggests we should have a record that more fully explores that issue, and for that reason I agree the matter should be returned to the trial court.

The majority remands the matter to the trial court "to consider the cost of accommodating plaintiffs and all other persons in the state similarly situated." (Maj. opn., *ante*, at p. 273.) To comply with this remand order the trial court will be required to consider, in part, the definition of a "disability."

Code of Federal Regulations, title 28, section 35.104 (hereafter section 35.104) defines "disability" with respect to an individual as "a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment." (§ 35.104 (2002).)

Section 35.104 defines "physical or mental impairment" as "[a]ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine" or "[a]ny mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." (§ 35.104 (2002).)

Section 35.104 also provides that "[t]he phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism." (§ 35.104 (2002).)

If we are guided, as I think we should be, by the United States Supreme Court's holdings in *Olmstead v. L. C.* (1999) 527 U.S. 581 [119 S.Ct. 2176, 144 L.Ed.2d 540] and *School Bd. of Nassau County v. Arline* (1987) 480 U.S. 273 [94 L.Ed.2d 307, 107 S.Ct. 1123], the trial court must decide from the evidence presented the number of persons in the State of California who will ***276** be unable to complete high school before age 19 due to a disability. The trial court will then have to determine the cost of continuing those person's benefits to age 19 and decide whether, given the resources available to CalWORKS, that cost imposes an undue financial burden on the program. If it does, the requested accommodation is not reasonable and is not required by the Americans with Disabilities Act.

I have difficulty understanding how we can determine whether the accommodation sought by petitioners will impose an undue financial burden on the state when one cannot know how many people are entitled to that accommodation, or how many people will be entitled to that accommodation in the future. We may be requiring the state to prove what cannot be proven.

I note also that the financial burden of the requested accommodation may be greater, or less, in a given fiscal year, depending on the number of people who qualify for it and depending also on the state's and the CalWORKS program's resources. What is "undue" may well change from year to year. If the Americans with Disability Act requires this accommodation, except where it imposes an undue financial burden, must the task of determining that burden become an annual exercise? Will the completion rule be applicable to those with disabilities in some years but not in others? Given the majority opinion's analysis of the issue before us, those results seem logically to follow.

For all of these reasons, I am inclined to defer to the Legislature's implied determination that the completion rule is an essential eligibility requirement for the CalWORKS program, that is, the program's purposes cannot be achieved without the rule. But I am willing to wait for a complete record and consider what that record might show. I agree with the remand. ***277**

Cal.App.3.Dist.
Fry v. Saenz
98 Cal.App.4th 256, 120 Cal.Rptr.2d 30, 23 NDLR P 158, 02 Cal. Daily Op. Serv. 4007, 2002 Daily Journal D.A.R. 5033

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98 Cal.App.4th 256, 120 Cal.Rptr.2d 30, 23 NDLR P 158, 02 Cal. Daily Op. Serv. 4007, 2002 Daily Journal D.A.R. 5033
(Cite as: 98 Cal.App.4th 256)

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998 F.2d 1480, 62 Fair Empl.Prac.Cas. (BNA) 525, 62 Empl. Prac. Dec. P 42,456, 62 USLW 2055
(Cite as: 998 F.2d 1480)

▷

United States Court of Appeals,
Ninth Circuit.
Priscilla GARCIA; Maricela Buitrago; United Food and Commercial Workers International Union, AFL-CIO, Plaintiffs-Appellees,
v.
SPUN STEAK COMPANY, a California corporation, Defendant-Appellant.
No. 91-16733.

Argued and Submitted Nov. 3, 1992.
Decided July 16, 1993.

Spanish-speaking employees brought action against employer, alleging that English-only policy violated Title VII. The United States District Court for the Northern District of California, Robert H. Schnacke, Senior District Judge, granted summary judgment for employees, and employer appealed. The Court of Appeals, O'Scannlain, Circuit Judge, held that: (1) disparate impact claim may be based upon challenge to practice or policy that has significant adverse impact on "terms, conditions, or privileges" of employment of protected group under Title VII; (2) employees who spoke both Spanish and English failed to show that employer's requirement that bilingual workers speak only English while on job had significant adverse effects on terms, conditions, or privileges of their employment; and (3) genuine issue of material fact existed as to whether employee who spoke no English was adversely affected by English-only rule.

Reversed and remanded.

Boochever, Circuit Judge, filed dissenting opinion.

West Headnotes

[1] Civil Rights 78 ⚿1522

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1521 Persons Protected and Entitled to Sue
78k1522 k. In general. Most Cited Cases
(Formerly 78k366.1)

Union had standing to seek injunctive relief on claim that employer's requirement that bilingual workers speak only English while working on job violated Title VII; Spanish-speaking employees would have standing to sue in their own right, employees' interest in conditions of workplace was germane to union's purpose, and claim asserted and relief requested did not require participation of individual members. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[2] Civil Rights 78 ⚿1138

78 Civil Rights
78II Employment Practices
78k1138 k. Disparate treatment. Most Cited Cases
(Formerly 78k153)

Civil Rights 78 ⚿1140

78 Civil Rights
78II Employment Practices
78k1140 k. Disparate impact. Most Cited Cases
(Formerly 78k153)

Plaintiff alleging discrimination under Title VII may proceed under two theories of liability: "disparate treatment" or "disparate impact"; while disparate treatment theory requires proof of discriminatory intent, intent is irrelevant to disparate impact theory. Civil Rights Act of 1964, § 703(a)(2), 42 U.S.C.A. § 2000e-2(a)(2).

[3] Civil Rights 78 ⚿1119

78 Civil Rights
78II Employment Practices
78k1119 k. Adverse actions in general. Most Cited Cases
(Formerly 78k141)

Civil Rights 78 ⚿1140

78 Civil Rights
78II Employment Practices
78k1140 k. Disparate impact. Most Cited

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998 F.2d 1480, 62 Fair Empl.Prac.Cas. (BNA) 525, 62 Empl. Prac. Dec. P 42,456, 62 USLW 2055
(Cite as: 998 F.2d 1480)

Cases
(Formerly 78k141)
Burdensome term or condition of employment or denial of privilege does not limit, segregate or classify employees in way that would "deprive any individual of employment opportunities" or "otherwise adversely affect his status as an employee" within meaning of Title VII and, thus, such claims must be brought directly under section of Title VII prohibiting practices or policies with significant adverse impact on "terms, conditions, or privileges" of employment. Civil Rights Act of 1964, § 703(a)(1, 2), 42 U.S.C.A. § 2000e-2(a)(1, 2).

[4] Civil Rights 78 ⚿1140

78 Civil Rights
78II Employment Practices
78k1140 k. Disparate impact. Most Cited Cases
(Formerly 78k153)
Disparate impact claim may be based upon challenge to practice or policy that has significant adverse impact on "terms, conditions, or privileges" of employment of protected group under Title VII; there is no reason to restrict application of disparate impact theory to denial of employment opportunities under separate section of Title VII. Civil Rights Act of 1964, § 703(a)(1, 2), 42 U.S.C.A. § 2000e-2(a)(1, 2).

[5] Civil Rights 78 ⚿1140

78 Civil Rights
78II Employment Practices
78k1140 k. Disparate impact. Most Cited Cases
(Formerly 78k153)
Regardless of whether company's decisions about whom to hire or to promote are infected with discrimination, policies or practices that impose significant harsher burdens on protected group than on employee population in general may operate as barriers to equality in workplace and, if unsupported by business justification, may be considered "discriminatory" for purposes of Title VII. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[6] Civil Rights 78 ⚿1140

78 Civil Rights
78II Employment Practices
78k1140 k. Disparate impact. Most Cited Cases
(Formerly 78k153)
To make out prima facie of discriminatory impact under Title VII, plaintiff must identify specific, seemingly neutral practice or policy that has significantly adverse impact on persons of protected class. Civil Rights Act of 1964, § 703(a)(1, 2), 42 U.S.C.A. § 2000e-2(a)(1, 2).

[7] Civil Rights 78 ⚿1536

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1534 Presumptions, Inferences, and Burden of Proof
78k1536 k. Effect of prima facie case; shifting burden. Most Cited Cases
(Formerly 78k378)

Civil Rights 78 ⚿1545

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1545 k. Prima facie case. Most Cited Cases
(Formerly 78k383)
In disparate treatment context, Title VII plaintiff can make out prima facie case merely by presenting evidence sufficient to give rise to inference of discrimination, whereas, in disparate impact case, plaintiff must do more than merely raise inference of discrimination before burden shifts; plaintiff must actually prove discriminatory impact at issue. Civil Rights Act of 1964, § 703(a)(1, 2), 42 U.S.C.A. § 2000e-2(a)(1, 2).

[8] Civil Rights 78 ⚿1535

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1534 Presumptions, Inferences, and Burden of Proof
78k1535 k. In general. Most Cited Cases
(Formerly 78k377.1)

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Fact that alleged effects of disparate impact on conditions, terms or privileges of employment may be subjective does not relieve Title VII plaintiff of burden of proving disparate impact; plaintiff must prove existence of adverse effects of policy, that impact of policy is on terms, conditions, or privileges or employment of protected class, that adverse effects are significant, and that employee population in general is not affected by policy to same degree. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[9] Civil Rights 78 ⚷1545

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1545 k. Prima facie case. Most Cited Cases
(Formerly 78k383)
Employees who spoke both Spanish and English failed to show that employer's requirement that bilingual workers speak only English while on job had significant adverse effects on terms, conditions, or privileges of their employment, so as to create prima facie case under Title VII; Title VII did not protect employees' ability to express cultural heritage at workplace, employees could engage in privilege of speaking on job, and there was no evidence that atmosphere at workplace was infused with hostility toward Hispanic workers. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[10] Courts 106 ⚷89

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k89 k. In general. Most Cited Cases
Case vacated as moot by Supreme Court had no precedential authority.

[11] Civil Rights 78 ⚷1118

78 Civil Rights
78II Employment Practices
78k1118 k. Practices prohibited or required in general; elements. Most Cited Cases
(Formerly 78k141)
Title VII does not protect ability of workers to express their cultural heritage at workplace. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[12] Civil Rights 78 ⚷1119

78 Civil Rights
78II Employment Practices
78k1119 k. Adverse actions in general. Most Cited Cases
(Formerly 78k153)

Civil Rights 78 ⚷1140

78 Civil Rights
78II Employment Practices
78k1140 k. Disparate impact. Most Cited Cases
(Formerly 78k153)
Title VII is not meant to protect against rules that merely inconvenienced some employees, even if inconvenience falls regularly on protected class but, rather, Title VII protects against only those policies that have significant impact. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[13] Federal Civil Procedure 170A ⚷2497.1

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2497 Employees and Employment Discrimination, Actions Involving
170Ak2497.1 k. In general. Most Cited Cases
Genuine issue of material fact as to whether employee who spoke no English was adversely affected by English-only rule imposed by employer precluded summary judgment in Title VII suit; employee stated that she was not bothered by rule because she preferred not to make small talk on job, and there was evidence that she was not required to comply with English-only policy when she chose to speak. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[14] Federal Civil Procedure 170A ⚷2491.5

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170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2491.5 k. Civil rights cases in general. Most Cited Cases
Whether employee spoke such little English as to be effectively denied privilege of speaking on job by imposition of English-only rule was question of fact for which summary judgment was improper in Title VII suit. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[15] Civil Rights 78 1147

78 Civil Rights
78II Employment Practices
78k1143 Harassment; Work Environment
78k1147 k. Hostile environment; severity, pervasiveness, and frequency. Most Cited Cases
(Formerly 78k145)
In evaluating claim that employer's English-only rule has exacerbated existing tensions or contributed to overall environment of discrimination, or that rule is enforced in such draconian manner that enforcement itself amounts to harassment, court in Title VII suit must look to totality of circumstances in particular factual context in which claim arises. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[16] Civil Rights 78 1545

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1545 k. Prima facie case. Most Cited Cases
(Formerly 78k383)
Equal Employment Opportunity Commission (EEOC) guideline providing that employee meets prima facie case in disparate impact cause of action merely by proving existence of English-only policy was rejected; nothing in plain language of Title VII supported guideline, and guideline contravened Supreme Court policy that plaintiff in disparate impact case must prove alleged discriminatory effect before burden shifts to employer by presuming that English-only policy had disparate impact in absence of proof. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

*1482 James A. Carter,Hendrickson, Higbie & Carter, San Francisco, CA, for defendant-appellant.

Edward M. Chen, American Civil Liberties Union Foundation of Northern California, San Francisco, CA, for plaintiffs-appellees.

Jennifer S. Goldstein, E.E.O.C., Washington, DC, for amicus.

Appeal from the United States District Court for the Northern District of California.

Before: BOOCHEVER, NOONAN and O'SCANNLAIN, Circuit Judges.

*1483 O'SCANNLAIN, Circuit Judge:

We are called upon to decide whether an employer violates Title VII of the Civil Rights Act of 1964 in requiring its bilingual workers to speak only English while working on the job.

I

Spun Steak Company ("Spun Steak") is a California corporation that produces poultry and meat products in South San Francisco for wholesale distribution. Spun Steak employs thirty-three workers, twenty-four of whom are Spanish-speaking. Virtually all of the Spanish-speaking employees are Hispanic. While two employees speak no English, the others have varying degrees of proficiency in English. Spun Steak has never required job applicants to speak or to understand English as a condition of employment.

Approximately two-thirds of Spun Steak's employees are production line workers or otherwise involved in the production process. Appellees Garcia and Buitrago are production line workers; they stand before a conveyor belt, remove poultry or other meat products from the belt and place the product into cases or trays for resale. Their work is done individually. Both Garcia and Buitrago are fully bilingual, speaking both English and Spanish.

Appellee Local 115, United Food and Commercial Workers International Union, AFL-CIO ("Local 115"), is the collective bargaining agent representing

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the employees at Spun Steak.

Prior to September 1990, these Spun Steak employees spoke Spanish freely to their co-workers during work hours. After receiving complaints that some workers were using their bilingual capabilities to harass and to insult other workers in a language they could not understand, Spun Steak began to investigate the possibility of requiring its employees to speak only English in the workplace. Specifically, Spun Steak received complaints that Garcia and Buitrago made derogatory, racist comments in Spanish about two co-workers, one of whom is African-American and the other Chinese-American.

The company's president, Kenneth Bertelson, concluded that an English-only rule would promote racial harmony in the workplace. In addition, he concluded that the English-only rule would enhance worker safety because some employees who did not understand Spanish claimed that the use of Spanish distracted them while they were operating machinery, and would enhance product quality because the U.S.D.A. inspector in the plant spoke only English and thus could not understand if a product-related concern was raised in Spanish. Accordingly, the following rule was adopted:

> [I]t is hereafter the policy of this Company that only English will be spoken in connection with work. During lunch, breaks, and employees' own time, they are obviously free to speak Spanish if they wish. However, we urge all of you not to use your fluency in Spanish in a fashion which may lead other employees to suffer humiliation.

In addition to the English-only policy, Spun Steak adopted a rule forbidding offensive racial, sexual, or personal remarks of any kind.

It is unclear from the record whether Spun Steak strictly enforced the English-only rule. According to the plaintiffs-appellees, some workers continued to speak Spanish without incident. Spun Steak issued written exceptions to the policy allowing its clean-up crew to speak Spanish, allowing its foreman to speak Spanish, and authorizing certain workers to speak Spanish to the foreman at the foreman's discretion. One of the two employees who speak only Spanish is a member of the clean-up crew and thus is unaffected by the policy.

In November 1990, Garcia and Buitrago received warning letters for speaking Spanish during working hours. For approximately two months thereafter, they were not permitted to work next to each other. Local 115 protested the English-only policy and requested that it be rescinded but to no avail.

On May 6, 1991, Garcia, Buitrago, and Local 115 filed charges of discrimination against Spun Steak with the U.S. Equal Employment Opportunity Commission ("EEOC"). The EEOC conducted an investigation and determined that "there is reasonable***1484** cause to believe [Spun Steak] violated Title VII of the Civil Rights Act of 1964, as amended, with respect to its adoption of an English-only rule and with respect to retaliation when [Garcia, Buitrago, and Local 115] complained."

Garcia, Buitrago, and Local 115, on behalf of all Spanish-speaking employees of Spun Steak, (collectively, "the Spanish-speaking employees") filed suit, alleging that the English-only policy violated Title VII. On September 6, 1991, the parties filed cross-motions for summary judgment. The district court denied Spun Steak's motion and granted the Spanish-speaking employees' motion for summary judgment, concluding that the English-only policy disparately impacted Hispanic workers without sufficient business justification, and thus violated Title VII. Spun Steak filed this timely appeal and the EEOC filed a brief amicus curiae and participated in oral argument.

II

[1] As a preliminary matter, we must consider whether Local 115 has standing to sue on behalf of the Spanish-speaking employees at Spun Steak. If Local 115 does not have standing, we will consider the application of the policy only to Garcia and Buitrago, both of whom speak English fluently.

"[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343,

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97 S.Ct. 2434, 2441, 53 L.Ed.2d 383 (1977).

Here, it is clear that the Spanish-speaking employees would have standing to sue in their own right because they could claim injury from the application of the policy to them. Further, it is clear that the employees' interest in the conditions of the workplace is germane to Local 115's purpose as the collective bargaining agent of the employees. Finally, the claim asserted and the relief requested do not require the participation of individual members. Local 115 claims that the policy has a per se discriminatory impact on all Spanish-speaking employees. Further, the union is seeking only injunctive relief on behalf of its members, not damages.

In short, Local 115 has standing.

III

[2] Sections 703(a)(1) and (2) of Title VII provide:

> (a) It shall be an unlawful employment practice for an employer-
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a). It is well-settled that Title VII is concerned not only with intentional discrimination, but also with employment practices and policies that lead to disparities in the treatment of classes of workers. *See, e.g., Griggs v. Duke Power Co.*, 401 U.S. 424, 430-31, 91 S.Ct. 849, 853-54, 28 L.Ed.2d 158 (1971). Thus, a plaintiff alleging discrimination under Title VII may proceed under two theories of liability: disparate treatment or disparate impact. *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 986-87, 108 S.Ct. 2777, 2784-85, 101 L.Ed.2d 827 (1988). While the disparate treatment theory requires proof of discriminatory intent, intent is irrelevant to a disparate impact theory. *Id.* at 988, 108 S.Ct. at 2785. "[I]mpact analysis is designed to implement Congressional concern with 'the consequences of employment practices, not simply the motivation.' " ***1485***Rose v. Wells Fargo & Co.*, 902 F.2d 1417, 1424 (9th Cir.1990) (citations omitted).

A

The Spanish-speaking employees do not contend that Spun Steak intentionally discriminated against them in enacting the English-only policy. Rather, they contend that the policy had a discriminatory impact on them because it imposes a burdensome term or condition of employment exclusively upon Hispanic workers and denies them a privilege of employment that non-Spanish-speaking workers enjoy. Because their claim focuses on disparities in the terms, conditions, and privileges of employment, and not on barriers to hiring or promotion, it is outside the mainstream of disparate impact cases decided thus far. As a threshold matter, therefore, we must determine whether the disparate impact theory can be made applicable at all.

The disparate impact cause of action developed out of the language in section 703(a)(2) prohibiting discrimination based on deprivation of employment opportunities, such as the opportunity to be hired or promoted. *See, e.g., Connecticut v. Teal*, 457 U.S. 440, 448-50, 102 S.Ct. 2525, 2531-32, 73 L.Ed.2d 130 (1981). Our court's disparate impact cases fall squarely within the language of section 703(a)(2). The cases in which we have concluded that the plaintiff has proved discrimination based on a disparate impact theory have all involved plaintiffs who claimed that they were denied employment opportunities as the result of artificial, arbitrary, and unnecessary barriers that excluded members of a protected group from being hired or promoted, *see, e.g., Bouman v. Block*, 940 F.2d 1211, 1224-26 (9th Cir.), *cert. denied*, 502 U.S. 1005, 112 S.Ct. 640, 116 L.Ed.2d 658 (1991), not plaintiffs contending that they were subjected to harsher working conditions than the general employee population.

[3] This case, by contrast, does not fall within the language of section 703(a)(2). While policies that serve as barriers to hiring or promotion clearly deprive

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applicants of employment opportunities, we cannot conclude that a burdensome term or condition of employment or the denial of a privilege would "limit, segregate, or classify" employees in a way that would "deprive any individual of employment opportunities" or "otherwise adversely affect his status as an employee" in violation of section 703(a)(2). *See* Nashville Gas Co. v. Satty, 434 U.S. 136, 144, 98 S.Ct. 347, 352, 54 L.Ed.2d 356 (1977) (deprivation of benefits does not fall under § 703(a)(2)). Such claims, therefore, must be brought directly under section 703(a)(1). We have never expressly considered, however, whether disparate impact theory applies to claims under section 703(a)(1), and the Supreme Court has explicitly reserved the issue. *Id.*

[4][5] Nevertheless, we are called upon to decide the issue in this case notwithstanding the parties' failure to brief it. Our decision is simple: we see no reason to restrict the application of the disparate impact theory to the denial of employment opportunities under section 703(a)(2). The Supreme Court has instructed that the language of section 703(a)(1) is to be interpreted broadly. "[T]he phrase 'terms, conditions, or privileges of employment' evinces a congressional intent to strike at the entire spectrum of disparate treatment," Meritor Sav. Bank v. Vinson, 477 U.S. 57, 64, 106 S.Ct. 2399, 2404, 91 L.Ed.2d 49 (1985) (internal quotations and citations omitted), even when the differences in treatment are not the result of intentional discrimination. *See also* Lynch v. Freeman, 817 F.2d 380, 387 (6th Cir.1987) ("The language of section 703(a)(2) is ... broad enough to include working conditions that have an adverse impact on a protected group of employees."). Regardless whether a company's decisions about whom to hire or to promote are infected with discrimination, policies or practices that impose significantly harsher burdens on a protected group than on the employee population in general may operate as barriers to equality in the workplace and, if unsupported by a business justification, may be considered "discriminatory." *Id.; cf.* Meritor Sav. Bank, 477 U.S. at 57, 106 S.Ct. at 2399 (sexual harassment can be arbitrary barrier to equality in the marketplace). We are satisfied that a disparate impact claim may be based upon a challenge to a practice or policy that has a significant ***1486** adverse impact on the "terms, conditions, or privileges" of the employment of a protected group under section 703(a)(1).

B

[6] To make out a prima facie case of discriminatory impact, a plaintiff must identify a specific, seemingly neutral practice or policy that has a significantly adverse impact on persons of a protected class. Teal, 457 U.S. at 446, 102 S.Ct. at 2530. If the prima facie case is established, the burden shifts to the employer to "demonstrate that the challenged practice is job related for the position in question and consistent with business necessity." 42 U.S.C.A. § 2000e-2(k)(1)(A) (Supp.1992). In this case, the district court granted summary judgment in favor of the Spanish-speaking employees, concluding that, as a matter of law, the employees had made out the prima facie case and the justifications offered by the employer were inadequate.

1

[7][8] We first consider whether the Spanish-speaking employees have made out the prima facie case. "[T]he requirements of a prima facie disparate impact case ... are in some respects more exacting than those of a disparate treatment case." Spaulding v. University of Washington, 740 F.2d 686, 705 (9th Cir.) (citation omitted), *cert. denied*, 469 U.S. 1036, 105 S.Ct. 511, 83 L.Ed.2d 401 (1984). In the disparate treatment context, a plaintiff can make out a prima facie case merely by presenting evidence sufficient to give rise to an inference of discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-06, 93 S.Ct. 1817, 1824-26, 36 L.Ed.2d 668 (1973). In a disparate impact case, by contrast, plaintiffs must do more than merely raise an inference of discrimination before the burden shifts; they "must actually prove the discriminatory impact at issue." Rose, 902 F.2d at 1421. In the typical disparate impact case, in which the plaintiff argues that a selection criterion excludes protected applicants from jobs or promotions, the plaintiff proves discriminatory impact by showing statistical disparities between the number of protected class members in the qualified applicant group and those in the relevant segment of the workforce. Wards Cove Packing Co. v. Atonio, 490 U.S. 642, 650, 109 S.Ct. 2115, 2121, 104 L.Ed.2d 733 (1989). While such statistics are often difficult to compile, whether the protected group has been disadvantaged turns on quantifiable data. When the alleged disparate impact is on the conditions, terms, or privileges of employment, however, determining whether the protected group has been adversely affected may depend on subjective factors not

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easily quantified. The fact that the alleged effects are subjective, however, does not relieve the plaintiff of the burden of proving disparate impact. The plaintiff may not merely assert that the policy has harmed members of the group to which he or she belongs. Instead, the plaintiff must prove the existence of adverse effects of the policy, must prove that the impact of the policy is on terms, conditions, or privileges of employment of the protected class, must prove that the adverse effects are significant, and must prove that the employee population in general is not affected by the policy to the same degree.

It is beyond dispute that, in this case, if the English-only policy causes any adverse effects, those effects will be suffered disproportionately by those of Hispanic origin. The vast majority of those workers at Spun Steak who speak a language other than English-and virtually all those employees for whom English is not a first language-are Hispanic. It is of no consequence that not all Hispanic employees of Spun Steak speak Spanish; nor is it relevant that some non-Hispanic workers may speak Spanish. If the adverse effects are proved, it is enough under Title VII that Hispanics are disproportionately impacted.

[9][10] The crux of the dispute between Spun Steak and the Spanish-speaking employees, however, is not over whether Hispanic workers will disproportionately bear any adverse effects of the policy; rather, the dispute centers on whether the policy causes any adverse effects at all, and if it does, whether the effects are significant. The Spanish-speaking employees argue that the policy adversely affects them in the following ways: (1) it denies them the ability to express***1487** their cultural heritage on the job; (2) it denies them a privilege of employment that is enjoyed by monolingual speakers of English; and (3) it creates an atmosphere of inferiority, isolation, and intimidation. We discuss each of these contentions in turn.[FN1]

> FN1. The Spanish-speaking employees rely on the reasoning in *Gutierrez v. Municipal Court*, 838 F.2d 1031 (9th Cir.1988), *vacated as moot*, 490 U.S. 1016, 109 S.Ct. 1736, 104 L.Ed.2d 174 (1989), which held that English-only policies adversely impact Spanish-speaking employees. The case has no precedential authority, however, because it was vacated as moot by the Supreme Court. We are in no way bound by its reasoning.

a

[11] The employees argue that denying them the ability to speak Spanish on the job denies them the right to cultural expression. It cannot be gainsaid that an individual's primary language can be an important link to his ethnic culture and identity. Title VII, however, does not protect the ability of workers to express their cultural heritage at the workplace. Title VII is concerned only with disparities in the treatment of workers; it does not confer substantive privileges. *See, e.g., Garcia v. Gloor*, 618 F.2d 264, 269 (5th Cir.1980), *cert. denied*, 449 U.S. 1113, 101 S.Ct. 923, 66 L.Ed.2d 842 (1981). It is axiomatic that an employee must often sacrifice individual self-expression during working hours. Just as a private employer is not required to allow other types of self-expression, there is nothing in Title VII which requires an employer to allow employees to express their cultural identity.

b

Next, the Spanish-speaking employees argue that the English-only policy has a disparate impact on them because it deprives them of a privilege given by the employer to native-English speakers: the ability to converse on the job in the language with which they feel most comfortable. It is undisputed that Spun Steak allows its employees to converse on the job. The ability to converse-especially to make small talk-is a privilege of employment, and may in fact be a significant privilege of employment in an assembly-line job. It is inaccurate, however, to describe the privilege as broadly as the Spanish-speaking employees urge us to do.

The employees have attempted to define the privilege as the ability to speak in the language of their choice. A privilege, however, is by definition given at the employer's discretion; an employer has the right to define its contours. Thus, an employer may allow employees to converse on the job, but only during certain times of the day or during the performance of certain tasks. The employer may proscribe certain topics as inappropriate during working hours or may even forbid the use of certain words, such as profanity.

Here, as is its prerogative, the employer has defined the privilege narrowly. When the privilege is defined at its narrowest (as merely the ability to speak on the

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job), we cannot conclude that those employees fluent in both English and Spanish are adversely impacted by the policy. Because they are able to speak English, bilingual employees can engage in conversation on the job. It is axiomatic that "the language a person who is multi-lingual elects to speak at a particular time is ... a matter of choice." *Garcia,* 618 F.2d at 270. The bilingual employee can readily comply with the English-only rule and still enjoy the privilege of speaking on the job. "There is no disparate impact" with respect to a privilege of employment "if the rule is one that the affected employee can readily observe and nonobservance is a matter of individual preference." *Id.*

This analysis is consistent with our decision in *Jurado v. Eleven-Fifty Corporation,* 813 F.2d 1406, 1412 (9th Cir.1987). In *Jurado,* a bilingual disc jockey was fired for disobeying a rule forbidding him from using an occasional Spanish word or phrase on the air. We concluded that Jurado's disparate impact claim failed "because Jurado was fluently bilingual and could easily comply with the order" and thus could not have been adversely affected. *Id.*

[12] The Spanish-speaking employees argue that fully bilingual employees are hampered in the enjoyment of the privilege because***1488** for them, switching from one language to another is not fully volitional. Whether a bilingual speaker can control which language is used in a given circumstance is a factual issue that cannot be resolved at the summary judgment stage. However, we fail to see the relevance of the assertion, even assuming that it can be proved. Title VII is not meant to protect against rules that merely inconvenience some employees, even if the inconvenience falls regularly on a protected class. Rather, Title VII protects against only those policies that have a *significant* impact. The fact that an employee may have to catch himself or herself from occasionally slipping into Spanish does not impose a burden significant enough to amount to the denial of equal opportunity. This is not a case in which the employees have alleged that the company is enforcing the policy in such a way as to impose penalties for minor slips of the tongue. The fact that a bilingual employee may, on occasion, unconsciously substitute a Spanish word in the place of an English one does not override our conclusion that the bilingual employee can easily comply with the rule. In short, we conclude that a bilingual employee is not denied a privilege of employment by the English-only policy.

[13][14] By contrast, non-English speakers cannot enjoy the privilege of conversing on the job if conversation is limited to a language they cannot speak. As applied "[t]o a person who speaks only one tongue or to a person who has difficulty using another language than the one spoken in his home," an English-only rule might well have an adverse impact. *Garcia,* 618 F.2d at 270. Indeed, counsel for Spun Steak conceded at oral argument that the policy would have an adverse impact on an employee unable to speak English. There is only one employee at Spun Steak affected by the policy who is unable to speak any English. Even with regard to her, however, summary judgment was improper because a genuine issue of material fact exists as to whether she has been adversely affected by the policy. She stated in her deposition that she was not bothered by the rule because she preferred not to make small talk on the job, but rather preferred to work in peace. Furthermore, there is some evidence suggesting that she is not required to comply with the policy when she chooses to speak. For example, she is allowed to speak Spanish to her supervisor. Remand is necessary to determine whether she has suffered adverse effects from the policy. It is unclear from the record whether there are any other employees who have such limited proficiency in English that they are effectively denied the privilege of speaking on the job. Whether an employee speaks such little English as to be effectively denied the privilege is a question of fact for which summary judgment is improper.

c

Finally, the Spanish-speaking employees argue that the policy creates an atmosphere of inferiority, isolation, and intimidation. Under this theory, the employees do not assert that the policy directly affects a term, condition, or privilege of employment. Instead, the argument must be that the policy causes the work environment to become infused with ethnic tensions. The tense environment, the argument goes, itself amounts to a condition of employment.

i

The Supreme Court in *Meritor Savings Bank v. Vinson,* 477 U.S. at 66, 106 S.Ct. at 2405, held that an abusive work environment may, in some circumstances, amount to a condition of employment giving

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rise to a violation of Title VII. The Court quoted with approval the decision in *Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir.1971), *cert. denied*, 406 U.S. 957, 92 S.Ct. 2058, 32 L.Ed.2d 343 (1972):

> [T]he phrase 'terms, conditions or privileges of employment' in [Title VII] is an expansive concept which sweeps within its protective ambit the practice of creating a working environment heavily charged with ethnic or racial discrimination.... One can readily envision working environments so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers.

Although *Vinson* is a sexual harassment case in which the individual incidents involved behavior that was arguably intentionally discriminatory, its rationale applies equally to ***1489** cases in which seemingly neutral policies of a company infuse the atmosphere of the workplace with discrimination. The *Vinson* Court emphasized, however, that discriminatory practices must be pervasive before an employee has a Title VII claim under a hostile environment theory.

Here, the employees urge us to adopt a per se rule that English-only policies always infect the working environment to such a degree as to amount to a hostile or abusive work environment. This we cannot do. Whether a working environment is infused with discrimination is a factual question, one for which a per se rule is particularly inappropriate. The dynamics of an individual workplace are enormously complex; we cannot conclude, as a matter of law, that the introduction of an English-only policy, in every workplace, will always have the same effect.

The Spanish-speaking employees in this case have presented no evidence other than conclusory statements that the policy has contributed to an atmosphere of "isolation, inferiority or intimidation." The bilingual employees are able to comply with the rule, and there is no evidence to show that the atmosphere at Spun Steak in general is infused with hostility toward Hispanic workers. Indeed, there is substantial evidence in the record demonstrating that the policy was enacted to prevent the employees from intentionally using their fluency in Spanish to isolate and to intimidate members of other ethnic groups. In light of the specific factual context of this case, we conclude that the bilingual employees have not raised a genuine issue of material fact that the effect is so pronounced as to amount to a hostile environment. *See generally Anderson v. Liberty Lobby*, 477 U.S. 242, 250-51, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986).

ii

[15] We do not foreclose the prospect that in some circumstances English-only rules can exacerbate existing tensions, or, when combined with other discriminatory behavior, contribute to an overall environment of discrimination. Likewise, we can envision a case in which such rules are enforced in such a draconian manner that the enforcement itself amounts to harassment. In evaluating such a claim, however, a court must look to the totality of the circumstances in the particular factual context in which the claim arises.

[16] In holding that the enactment of an English-only while working policy does not inexorably lead to an abusive environment for those whose primary language is not English, we reach a conclusion opposite to the EEOC's long standing position. The EEOC Guidelines provide that an employee meets the prima facie case in a disparate impact cause of action merely by proving the existence of the English-only policy. *See* 29 C.F.R. § 1606.7(a) & (b) (1991). Under the EEOC's scheme, an employer must always provide a business justification for such a rule. *Id.* The EEOC enacted this scheme in part because of its conclusion that English-only rules may "create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment." 29 C.F.R. § 1606.7(a).

We do not reject the English-only rule Guideline lightly. We recognize that "as an administrative interpretation of the Act by the enforcing agency, these Guidelines ... constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Meritor Sav. Bank*, 477 U.S. 57 at 65, 106 S.Ct. 2399 at 2404 (internal quotations and citations omitted). But we are not bound by the Guidelines. *See Espinoza v. Farah Mfg. Co., Inc.*, 414 U.S. 86, 94, 94 S.Ct. 334, 339, 38 L.Ed.2d 287 (1973). We will not defer to "an administrative construction of a statute where there are 'compelling indications that it is wrong.' " *Id.*

We have been impressed by Judge Rubin's pre-Guidelines analysis for the Fifth Circuit in *Garcia,*

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which we follow today. *Garcia*, 618 F.2d 264. Nothing in the plain language of section 703(a)(1) supports EEOC's English-only rule Guideline. "Title VII could not have been enacted into law without substantial support from legislators in both Houses who traditionally resisted federal regulation of private business." *United Steelworkers of America, AFL-CIO v. Weber*, 443 U.S. 193, 99 S.Ct. 2721, 61 L.Ed.2d 480 (1979). "Those legislators demanded as a price for their support that," *id.*,

> ***1490** management prerogatives, and union freedoms are to be left undisturbed to the greatest extent possible. Internal affairs of employers and labor organizations must not be interfered with except to the limited extent that correction is required in discrimination practices.

Statement of William M. McCulloch, *et al.*, H.R.Rep. No. 914, 88 Cong., 2d Sess (1964), *reprinted in* 1964 U.S.C.C.A.N. 2355, 2516 (quoted in part in *Steelworkers*, 443 U.S. at 206, 99 S.Ct. at 2728). It is clear that Congress intended a balance to be struck in preventing discrimination and preserving the independence of the employer. In striking that balance, the Supreme Court has held that a plaintiff in a disparate impact case must prove the alleged discriminatory effect before the burden shifts to the employer. The EEOC Guideline at issue here contravenes that policy by presuming that an English-only policy has a disparate impact in the absence of proof. We are not aware of, nor has counsel shown us, anything in the legislative history to Title VII that indicates that English-only policies are to be presumed discriminatory. Indeed, nowhere in the legislative history is there a discussion of English-only policies at all.

2

Because the bilingual employees have failed to make out a prima facie case, we need not consider the business justifications offered for the policy as applied to them. On remand, if Local 115 is able to make out a prima facie case with regard to employees with limited proficiency in English, the district court could then consider any business justification offered by Spun Steak.

IV

In sum, we conclude that the bilingual employees have not made out a prima facie case and that Spun Steak has not violated Title VII in adopting an English-only rule as to them. Thus, we reverse the grant of summary judgment in favor of Garcia, Buitrago, and Local 115 to the extent it represents the bilingual employees, and remand with instructions to grant summary judgment in favor of Spun Steak on their claims. A genuine issue of material fact exists as to whether there are one or more employees represented by Local 115 with limited proficiency in English who were adversely impacted by the policy. As to such employee or employees, we reverse the grant of summary judgment in favor of Local 115, and remand for further proceedings.

REVERSED and REMANDED.

BOOCHEVER, Circuit Judge, dissenting in part:
I agree with most of the majority's carefully crafted opinion. I dissent, however, from the majority's rejection of the EEOC guidelines. The guidelines provide that an employee establishes a prima facie case in a disparate impact claim by proving the existence of an English-only policy, thereby shifting the burden to the employer to show a business necessity for the rule. *See* 29 C.F.R. § 1606.7(b) (1991) ("An employer may have a rule requiring that employees speak only in English at certain times where the employer can show that the rule is justified by business necessity."). I would defer to the Commission's expertise in construing the Act, by virtue of which it concluded that English-only rules may "create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment." *Id.* § 1606.7(a).

As the majority indicates, proof of such an effect of English-only rules requires analysis of subjective factors. It is hard to envision how the burden of proving such an effect would be met other than by conclusory self-serving statements of the Spanish-speaking employees or possibly by expert testimony of psychologists. The difficulty of meeting such a burden may well have been one of the reasons for the promulgation of the guideline. On the other hand, it should not be difficult for an employer to give specific reasons for the policy, such as the safety reasons advanced in this case.

It is true that EEOC regulations are entitled to somewhat less weight than those promulgated by an

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agency with Congressionally delegated rulemaking authority. *General Elec. Co. v. Gilbert*, 429 U.S. 125, 141, 97 S.Ct. 401, 410, 50 L.Ed.2d 343 (1976). Nevertheless, the EEOC guideline is entitled to "great deference" in the absence of "compelling indications that it is wrong." ***1491***Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 94-95, 94 S.Ct. 334, 339-340, 38 L.Ed.2d 287 (1973). While one may reasonably differ with the EEOC's position as a matter of policy, I can find no such "compelling indications" in this case. The lack of directly supporting language in § 703(a)(1) or the legislative history of Title VII, relied on by the majority, does not in my opinion make the guideline "inconsistent with an obvious congressional intent not to reach the employment practice in question." *Id.* at 94, 94 S.Ct. at 339.

I conclude that if appropriate deference is given to the administrative interpretation of the Act, we should follow the guideline and uphold the district court's decision that a prima facie case was established. I believe, however, that triable issues were presented whether Spun Steak established a business justification for the rule, and I would remand for trial of that issue.

C.A.9 (Cal.),1993.
Garcia v. Spun Steak Co.
998 F.2d 1480, 62 Fair Empl.Prac.Cas. (BNA) 525, 62 Empl. Prac. Dec. P 42,456, 62 USLW 2055

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166 Cal.App.4th 255, 82 Cal.Rptr.3d 629, 08 Cal. Daily Op. Serv. 11,397, 2008 Daily Journal D.A.R. 13,555
(Cite as: 166 Cal.App.4th 255, 82 Cal.Rptr.3d 629)

H

Court of Appeal, Fourth District, California.
Maheshkuimar GOGRI, Plaintiff and Appellant,
v.
JACK IN THE BOX INC., Defendant and Respondent.
No. D050838.

Aug. 25, 2008.

Background: After fast food franchisor's demurrers to some of franchisee's causes of action were sustained without leave to amend, both parties moved for summary judgment on franchisee's remaining causes of action for declaratory relief, breach of contract, breach of implied covenant of good faith and fair dealing, unfair business practices, injunctive relief, and violation of California Franchise Relations Act. Court clerk entered dismissal without prejudice at franchisee's request. Franchisor requested that dismissal be vacated. The Superior Court, San Diego County, No. GIC854188,Yuri K. Hofmann, J., vacated dismissal, granted summary judgment for franchisor, and awarded attorney fees. Franchisee appealed.

Holding: The Court of Appeal, McDonald, Acting P.J., held that franchisee's voluntary dismissal was timely filed.

Reversed and remanded with directions.

West Headnotes

[1] Costs 102 ⚷197

102 Costs
102IX Taxation
102k197 k. Jurisdiction and authority. Most Cited Cases

Pretrial Procedure 307A ⚷517.1

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak517 Effect
307Ak517.1 k. In general. Most Cited Cases
Voluntary dismissal of an entire action deprives the court of both subject matter and personal jurisdiction in that case, except for the limited purpose of awarding costs and statutory attorney fees. West's Ann.Cal.C.C.P. § 581.

[2] Courts 106 ⚷40

106 Courts
106I Nature, Extent, and Exercise of Jurisdiction in General
106k40 k. Acts and proceedings without jurisdiction. Most Cited Cases
An order by a court lacking subject matter jurisdiction is void.

[3] Pretrial Procedure 307A ⚷501

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak501 k. Right in general. Most Cited Cases

Pretrial Procedure 307A ⚷511

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak511 k. Procedure to effect dismissal in general. Most Cited Cases
A voluntary dismissal is available to a plaintiff as a matter of right and is accomplished by filing with the clerk a written request therefor. West's Ann.Cal.C.C.P. § 581.

[4] Pretrial Procedure 307A ⚷517.1

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak517 Effect
307Ak517.1 k. In general. Most Cited Cases

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If a plaintiff's written request for voluntary dismissal is in proper form, the dismissal is effective immediately. West's Ann.Cal.C.C.P. § 581.

[5] Pretrial Procedure 307A 509

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak506 Time for Dismissal; Condition of Cause
307Ak509 k. Trial, dismissal during. Most Cited Cases
"Commencement of trial," as would terminate a plaintiff's absolute right to voluntary dismissal, is not restricted to only jury or court trials on the merits, but also includes pretrial procedures that effectively dispose of the case. West's Ann.Cal.C.C.P. § 581.

[6] Pretrial Procedure 307A 506.1

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak506 Time for Dismissal; Condition of Cause
307Ak506.1 k. In general. Most Cited Cases
Pretrial procedures not determinative of the case do not preclude voluntary dismissal under statute. West's Ann.Cal.C.C.P. § 581.

[7] Pretrial Procedure 307A 506.1

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak506 Time for Dismissal; Condition of Cause
307Ak506.1 k. In general. Most Cited Cases
A voluntary dismissal is untimely under statute granting a plaintiff an absolute right to timely dismissal if either: (1) there has been a public and formal indication by the trial court of the legal merits of the case, or (2) there has been some procedural dereliction by the dismissing plaintiff that made dismissal otherwise inevitable. West's Ann.Cal.C.C.P. § 581.

[8] Appeal and Error 30 842(1)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k842 Review Dependent on Whether Questions Are of Law or of Fact
30k842(1) k. In general. Most Cited Cases
A trial court's application of statute granting a plaintiff an absolute right to timely voluntary dismissal to undisputed facts is a question of law, reviewed independently on appeal. West's Ann.Cal.C.C.P. § 581.

[9] Pretrial Procedure 307A 517.1

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak517 Effect
307Ak517.1 k. In general. Most Cited Cases
A timely voluntary dismissal deprives the trial court of jurisdiction in the case. West's Ann.Cal.C.C.P. § 581.

[10] Pretrial Procedure 307A 508

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak506 Time for Dismissal; Condition of Cause
307Ak508 k. Counterclaim or other request for affirmative relief, effect of. Most Cited Cases

Pretrial Procedure 307A 517.1

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak517 Effect
307Ak517.1 k. In general. Most Cited Cases
Plaintiff's voluntary dismissal was timely filed under statute granting a plaintiff an absolute right to timely voluntary dismissal, and thus trial court lacked discretion to vacate dismissal or grant defendant's motion for summary judgment, even though trial court had

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sustained demurrers without leave to amend as to some of plaintiff's causes of action, and both parties had moved for summary judgment as to remaining causes of action, where trial court had issued no tentative ruling on summary judgment motions, and plaintiff had submitted admissible evidence in support of its motion; there had been no public and formal indication by court regarding merits of case, and plaintiff had not committed any procedural dereliction that rendered judgment against him inevitable or mere formality. West's Ann.Cal.C.C.P. § 581.

See Annot., Right to voluntary dismissal of civil action as affected by opponent's motion for summary judgment, judgment on the pleadings, or directed verdict (1971) 36 A.L.R.3d 1113; Cal. Jur. 3d, Actions, § 395; Cal. Civil Practice (Thomson/West 2007) Procedure, §§ 22:2, 22:3; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2007) ¶ 11:18 et seq. (CACIVP Ch. 11-A); 2 Witkin, Cal. Procedure (4th ed. 1997) Jurisdiction, § 317; 6 Witkin, Cal. Procedure (4th ed. 1997) Proceedings Without Trial, § 275.

[11] Pretrial Procedure 307A 508

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak506 Time for Dismissal; Condition of Cause
307Ak508 k. Counterclaim or other request for affirmative relief, effect of. Most Cited Cases

Absent special circumstances that make an adverse judgment inevitable, a plaintiff's voluntary dismissal of an action is timely when it is filed before the trial court issues a tentative ruling granting the defendant's motion for summary judgment. West's Ann.Cal.C.C.P. § 581.

[12] Pretrial Procedure 307A 506.1

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak506 Time for Dismissal; Condition of Cause
307Ak506.1 k. In general. Most Cited Cases

A determination that disposes of only some, but not all, of the causes of action alleged in a complaint does not terminate the plaintiff's absolute right to voluntary dismissal, since it does not effectively dispose of the entire case. West's Ann.Cal.C.C.P. § 581.

[13] Pleading 302 226

302 Pleading
302V Demurrer or Exception
302k219 Operation and Effect of Decision on Demurrer
302k226 k. Effect on subsequent pleading. Most Cited Cases

Pretrial Procedure 307A 508

307A Pretrial Procedure
307AIII Dismissal
307AIII(A) Voluntary Dismissal
307Ak506 Time for Dismissal; Condition of Cause
307Ak508 k. Counterclaim or other request for affirmative relief, effect of. Most Cited Cases

A trial court's ruling on a defendant's demurrers to some, but not all, causes of action alleged in the plaintiff's complaint does not terminate the plaintiff's absolute right to voluntary dismissal, since it does not effectively dispose of the entire case. West's Ann.Cal.C.C.P. § 581.

[14] Courts 106 92

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k92 k. Dicta. Most Cited Cases

Only statements necessary to the decision are binding precedents.

[15] Courts 106 92

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k92 k. Dicta. Most Cited Cases

The doctrine of precedent, or stare decisis, extends only to the ratio decidendi of a decision, not to sup-

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plementary or explanatory comments which might be included in an opinion.

[16] Courts 106 92

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k92 k. Dicta. Most Cited Cases
The Court of Appeal generally considers California Supreme Court dicta to be persuasive.

[17] Costs 102 194.48

102 Costs
102VIII Attorney Fees
102k194.48 k. On dismissal, nonsuit, default, or settlement. Most Cited Cases
Trial court lacked authority to award contractual attorney fees to defendant upon plaintiff's voluntary dismissal of action, to the extent that such fees were incurred in defending against contract causes of action. West's Ann.Cal.C.C.P. § 581; West's Ann.Cal.Civ.Code § 1717.
****631** Mohajerian Law Corporation, Al Mohajerian, Aaron G. Capps, Los Angeles, and Michael T. Smith, for Plaintiff and Appellant.

Kirby Noonan Lance & Hoge, David J. Noonan, Steven W. Sanchez and Jill E. Randall, San Diego, for Defendant and Respondent.

McDONALD, Acting P.J.

259** Plaintiff Maheshkuimar Gogri appeals a judgment entered after the trial court granted the motion for summary judgment filed by defendant Jack in the Box Inc. (JIB). On appeal, Gogri contends the trial court erred by: (1) vacating his voluntary dismissal filed prior to the court's order granting JIB's motion for summary judgment; (2) granting JIB's motion for summary*632** judgment; and (3) awarding attorney fees to JIB. We conclude that because Gogri timely filed his voluntary dismissal, the trial court did not have jurisdiction to decide JIB's motion for summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 1988 Gogri and Chandra Haria became co-owners of a JIB franchise restaurant in San Jose. Gogri is an officer and director of Haria and Gogri Corporation, which now owns four JIB franchise restaurants in California, including the original San Jose restaurant.

In 1995 Gogri, Haria and Adel Farag, pursuant to their partnership agreement, purchased five JIB franchise restaurants in Arizona, including one known as JIB 1165. In 2000 Gogri and Farag, pursuant to a separate partnership agreement, purchased a sixth JIB franchise restaurant in Arizona.

In February 2005, with the term of the franchise agreement for JIB 1165 about to expire, JIB offered to renew the franchise agreement with Gogri, Haria, and Farag on the condition that they each execute a general release in favor of JIB. However, Gogri chose not to execute the general release. Thereafter, JIB entered into a new franchise agreement for JIB 1165 with only Haria and Farag.

***260** Gogri then filed the instant action against JIB. His first amended complaint alleged causes of action for: (1) declaratory relief; (2) breach of contract; (3) breach of the implied covenant of good faith and fair dealing; (4) intentional interference with contractual relationship; (5) negligent interference with contractual relationship; (6) intentional interference with prospective economic advantage; (7) negligent interference with prospective economic advantage; (8) unfair business practices in violation of Business and Professions Code section 17200 et seq.; (9) injunctive relief; and (10) violation of the California Franchise Relations Act (Bus. & Prof.Code, § 20000 et seq.).[FN1] The trial court ultimately sustained, without leave to amend, JIB's demurrers to the fourth, fifth, sixth and seventh causes of action of Gogri's first amended complaint, leaving in effect the first, second, third, eighth, ninth, and 10th causes of action (to which JIB apparently did not demur) in the first amended complaint.[FN2]

FN1. Although the record on appeal filed by the parties unfortunately does not contain a copy of the original complaint filed by Gogri, the judgment entered in this case reflects that the eighth and ninth causes of action originally alleged fraud and racketeering, but, after JIB's demurrers to those causes of ac-

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tion were sustained without leave to amend, were replaced in Gogri's first amended complaint by the causes of action described above.

FN2. The record on appeal filed by the parties does not contain copies of JIB's demurrers. However, because the judgment entered in this case discusses JIB's demurrers and the trial court's disposition, and the record contains copies of the court's tentative rulings, dated January 20, 2006, and May 26, 2006, sustaining JIB's demurrers to those causes of action, we assume for purposes of this appeal that JIB demurred to certain causes of action alleged in the original and first amended complaints.

On December 15, 2006, JIB filed a motion for summary judgment, arguing there were no triable issues of material fact regarding the six remaining causes of action and that it was entitled to judgment as a matter of law. On December 18, Gogri filed a motion for summary judgment, arguing there were no triable issues of material fact regarding the six remaining causes of action and that he was entitled to judgment as a matter of law.

****633** On February 22, 2007, Gogri filed a request for dismissal of his complaint without prejudice. The court clerk accepted it and entered the dismissal on that date. On February 23, JIB filed an ex parte application requesting Gogri's voluntary dismissal be vacated, apparently arguing it was untimely filed, and that the court grant JIB's motion for summary judgment. On February 26, an order to show cause (OSC) was issued as to why Gogri's voluntary dismissal should not be set aside. On March 2, the trial court vacated Gogri's voluntary dismissal of the complaint and granted JIB's motion for summary judgment. On April 18, the court entered judgment for JIB on Gogri's complaint. The court subsequently granted JIB's request for an award of $270,810.77 in reasonable attorney fees and costs and amended the judgment to reflect that award. Gogri timely filed a notice of appeal.

***261** DISCUSSION

I

Voluntary Dismissals Generally

[1][2][3][4] Code of Civil Procedure section 581 [FN3] allows a plaintiff to voluntarily dismiss, with or without prejudice, all or any part of an action before the "actual commencement of trial." (§ 581, subds. (b)(1), (c).) [FN4] The California Supreme Court stated: "Apart from certain ... statutory exceptions, a plaintiff's right to a voluntary dismissal [before commencement of trial pursuant to section 581] appears to be absolute. [Citation.] Upon the proper exercise of that right, a trial court would thereafter lack jurisdiction to enter further orders in the dismissed action." [FN5] (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 784, 176 Cal.Rptr. 104, 632 P.2d 217 (*Wells*).) Alternatively stated, voluntary dismissal of an entire action deprives the court of both subject matter and personal jurisdiction in that case, except for the limited purpose of awarding costs and statutory attorney fees. (*Shapell Industries, Inc. v. Superior Court* (2005) 132 Cal.App.4th 1101, 1108, 34 Cal.Rptr.3d 149 (*Shapell*); *Harris v. Billings* (1993) 16 Cal.App.4th 1396, 1405, 20 Cal.Rptr.2d 718 (*Harris*).) "An order by a court lacking subject matter jurisdiction is void. [Citation.]" (*Kyle v. Carmon* (1999) 71 Cal.App.4th 901, 909, 84 Cal.Rptr.2d 303 (*Kyle*).)

FN3. All further statutory references are to the Code of Civil Procedure unless otherwise specified.

FN4. Section 581 provides in relevant part: "(b) An action may be dismissed in any of the following instances: [¶] (1) With or without prejudice, upon written request of the plaintiff to the clerk, filed with papers in the case, or by oral or written request to the court *at any time before the actual commencement of trial,* upon payment of the costs, if any. [¶] ... [¶] (c) A plaintiff may dismiss his or her complaint, or any cause of action asserted in it, in its entirety, or as to any defendant or defendants, with or without prejudice *prior to the actual commencement of trial.*" (Italics added.)

FN5. "A section 581 dismissal 'is available to [a] plaintiff as a matter of right and is accomplished by filing with the clerk a written request therefor. If in proper form, the dis-

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> missal is effective immediately.' [Citation.]" (*S.B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 380, 46 Cal.Rptr.3d 380, 138 P.3d 713.)

[5][6] Section 581, subdivision (a)(6), provides: "A trial shall be deemed to actually commence at the beginning of the opening statement or argument of any party or his or her counsel, or if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence." Despite that statutory**634 definition of the commencement of trial, the California Supreme Court has construed the phrase*262 "commencement of trial" in section 581 to include "*determinations* on matters of law *which dispose of the entire case,* such as some demurrers and pretrial motions. [Citations.]" (*Kyle, supra,* 71 Cal.App.4th at p. 909, 84 Cal.Rptr.2d 303, italics added.) Therefore, "commencement of trial" under section 581 is not restricted to only jury or court trials on the merits, but also includes *pretrial* procedures that *effectively dispose of the case.* (*Mary Morgan, Inc. v. Melzark* (1996) 49 Cal.App.4th 765, 769, 57 Cal.Rptr.2d 4; *Wells, supra,* 29 Cal.3d at p. 785, 176 Cal.Rptr. 104, 632 P.2d 217; *Goldtree v. Spreckels* (1902) 135 Cal. 666, 672, 67 P. 1091 (*Goldtree*).) However, "pretrial procedures not determinative of the case do not preclude voluntary dismissal [under section 581]. [Citations.]" (6 Witkin, Cal. Procedure (4th ed. 1997) Proceedings Without Trial, § 263, p. 682.)

[7] One court recently reviewed numerous section 581 cases and concluded a "mere formality" test applied in determining whether a voluntary dismissal is untimely (i.e., requested on or after a "commencement of trial"). (*Franklin Capital Corp. v. Wilson* (2007) 148 Cal.App.4th 187, 200-205, 55 Cal.Rptr.3d 424 (*Franklin*).) A voluntary dismissal is untimely under section 581 if either: (1) there has been "a public and formal indication by the trial court of the legal merits of the case;" or (2) there has been "some procedural dereliction by the dismissing plaintiff that made dismissal otherwise *inevitable.*" (*Franklin,* at p. 200, 55 Cal.Rptr.3d 424.)

[8][9] Because the trial court's application of section 581 to undisputed facts is a question of law, we apply the independent standard in reviewing on appeal the trial court's determination.[FN6] (*Zapanta v. Universal Care, Inc.* (2003) 107 Cal.App.4th 1167, 1171, 132 Cal.Rptr.2d 842 (*Zapanta*); *Groth Bros. Oldsmobile, Inc. v. Gallagher* (2002) 97 Cal.App.4th 60, 65, 118 Cal.Rptr.2d 405; cf. *International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611, 38 Cal.Rptr.2d 150, 888 P.2d 1279 [application of statute of limitations to undisputed facts is a question of law].)

> FN6. *Tire Distributors, Inc. v. Cobrae* (2005) 132 Cal.App.4th 538, 33 Cal.Rptr.3d 761 (*Tire Distributors*), at page 544, 33 Cal.Rptr.3d 761, concluded that a trial court's determination whether section 581 applies generally should be reviewed on appeal for abuse of discretion. However, to the extent this conclusion applies to a trial court's application of section 581 to *undisputed* facts, we believe it is inconsistent with established appellate principles to apply an abuse of discretion standard in reviewing a trial court's determination of a question of law (i.e., application of a statute to undisputed facts). Because a plaintiff generally has an absolute right under section 581 to voluntarily dismiss an action before commencement of trial (*Wells, supra,* 29 Cal.3d at p. 784, 176 Cal.Rptr. 104, 632 P.2d 217), which dismissal, if timely, deprives the trial court of jurisdiction in the case (*ibid.*), the independent standard, and not the abuse of discretion standard, should apply in reviewing on appeal a trial court's determination of the question of law whether section 581 applies to *undisputed* facts. (Because neither party asserts the relevant facts on this question are disputed, we do not address whether the substantial evidence or abuse of discretion standard would apply in reviewing a trial court's application of section 581 to *disputed* facts.)

***263** II

Timeliness of Gogri's Section 581 Voluntary Dismissal

Gogri contends the trial court erred by vacating his section 581 voluntary dismissal filed prior to the court's order granting JIB's motion for summary judgment.

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A

JIB filed two demurrers (dated January 20, 2006, and May 26, 2006) to some, but **635 not all, causes of action alleged in Gogri's original and first amended complaint. Following those demurrers, six operative causes of action remained for resolution in Gogri's first amended complaint.

On December 15, 2006, JIB filed a motion for summary judgment, arguing there were no triable issues of material fact regarding the six remaining causes of action, and it was entitled to judgment as a matter of law.[FN7] On February 2, 2007, Gogri filed his papers in opposition to JIB's motion for summary judgment. On February 9, JIB filed its reply to Gogri's opposition to its motion. On February 13, JIB filed an amended notice of motion, setting the hearing on its motion for summary judgment for February 27 or "as soon thereafter as the matter may be heard." That amended notice noted the trial court would issue a tentative ruling on JIB's motion by 4:00 p.m. "on the date preceding oral argument."

> FN7. As noted above, on December 18, 2006, Gogri also filed his own motion for summary judgment.

On February 22, Gogri filed a request for dismissal of his complaint without prejudice. The court clerk accepted it and entered the dismissal on that date. On February 23, JIB filed an ex parte application requesting Gogri's voluntary dismissal be vacated, apparently arguing it was untimely filed and the court should grant JIB's motion for summary judgment.

On February 26, an order to show cause (OSC) was issued to determine whether Gogri's voluntary dismissal should be set aside. The OSC set a hearing for March 2 or "as soon thereafter as the matter may be heard."

Also on February 26, JIB filed a second amended notice of motion, setting the hearing on its motion for summary judgment for March 2 or "as soon thereafter as the matter may be heard." That second amended notice noted the trial court would issue a tentative ruling on JIB's motion by 4:00 p.m. "on the *264 date preceding oral argument." On March 1, the trial court issued its tentative ruling granting JIB's motion for summary judgment.

On March 2, the trial court conducted a hearing on the OSC and JIB's motion for summary judgment. Addressing the OSC first, the trial court stated its tentative ruling was to set aside Gogri's dismissal. After hearing arguments of counsel, the court explained that when Gogri requested the dismissal of his complaint, "the writing [was] on the wall, that ... it is about to be an unfavorable decision for [Gogri on JIB's motion for summary judgment]." The court also noted it considered the fact that it had sustained JIB's demurrers to some of Gogri's causes of action before he requested the voluntary dismissal of his complaint. The court then set aside Gogri's voluntary dismissal. Thereafter, the court heard arguments on, and then granted, JIB's motion for summary judgment.

B

Gogri asserts the trial court erred by vacating his section 581 voluntary dismissal of his complaint because it was filed *before* the court issued its tentative ruling on JIB's motion for summary judgment. Furthermore, citing *Franklin,* Gogri argues that at the time he filed his section 581 voluntary dismissal, there had not been any "public and formal indication" by the court regarding the merits of his case, and he had not committed any "procedural dereliction" that rendered a judgment against him inevitable or a mere formality. (*Franklin, supra,* 148 Cal.App.4th at p. 200, 55 Cal.Rptr.3d 424.)

**636 [10][11] Based on our independent consideration of the undisputed facts relevant to Gogri's section 581 voluntary dismissal of his complaint, we conclude his voluntary dismissal was timely filed under section 581 and therefore the trial court erred by vacating his dismissal and did not have jurisdiction to grant JIB's motion for summary judgment. Absent special circumstances that make an adverse judgment inevitable, a plaintiff's section 581 voluntary dismissal of an action is timely when, as in this case, it is filed *before* the trial court issues a tentative ruling granting the defendant's motion for summary judgment. In *Zapanta, supra,* 107 Cal.App.4th 1167, 132 Cal.Rptr.2d 842, the plaintiffs filed a section 581 voluntary dismissal one day before their opposition to the defendants' motion for summary judgment was due. (*Id.* at p. 1169, 132 Cal.Rptr.2d 842.) *Zapanta* concluded the voluntary dismissal was timely filed and distinguished its facts from other cases, stating:

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> "[N]one of the cases cited by respondents is dispositive. At the time appellants filed their [section 581] request for dismissal, the opposition to the summary judgment ***265** motion was not past due, no hearing on the motion had been held and *no tentative ruling or other decision tantamount to an adjudication had been made in respondents' favor.* In other words, *the case had not yet reached a stage where a final disposition was a mere formality.*" (*Zapanta, supra,* 107 Cal.App.4th at pp. 1173-1174, 132 Cal.Rptr.2d 842, italics added.)

Zapanta noted: "The purpose behind the right of a plaintiff to voluntarily dismiss a case under ... section 581 'is to allow a plaintiff a certain amount of freedom of action within the limits prescribed by the code.' [Citation.]" (*Id.* at p. 1174, 132 Cal.Rptr.2d 842.)

In *Mossanen v. Monfared* (2000) 77 Cal.App.4th 1402, 92 Cal.Rptr.2d 459, the plaintiffs filed a section 581 voluntary dismissal after the defendants filed a motion for summary judgment but before the trial court ruled on the motion. (*Mossanen,* at pp. 1406-1407, 92 Cal.Rptr.2d 459.) The trial court granted the defendants' request to vacate the dismissal and then granted their motion for summary judgment. (*Id.* at p. 1408, 92 Cal.Rptr.2d 459.) On appeal, *Mossanen* concluded the trial court erred in vacating the plaintiffs' dismissal and granting the defendants' motion for summary judgment. (*Id.* at p. 1410, 92 Cal.Rptr.2d 459.)

Similarly, in *Tire Distributors, supra,* 132 Cal.App.4th 538, 33 Cal.Rptr.3d 761, the court held that a plaintiff's section 581 voluntary dismissal was timely even though it was filed just one day before the scheduled hearing on the defendant's motion for summary judgment. (*Tire Distributors,* at pp. 541-542, 547, 33 Cal.Rptr.3d 761.) Although the plaintiff had not filed separate papers opposing a defendant's motion, the court nevertheless concluded the plaintiff's dismissal was timely because the plaintiff believed in good faith that defendant would be dismissed as part of a comprehensive settlement agreement with the other defendants. (*Id.* at pp. 541, 546-547, 33 Cal.Rptr.3d 761.) Accordingly, *Tire Distributors* distinguished its facts from those in *Cravens v. State Bd. of Equalization* (1997) 52 Cal.App.4th 253, 60 Cal.Rptr.2d 436 (*Cravens*), which we discuss below.[FN8] ****637**(*Tire Distributors, supra,* 132 Cal.App.4th at p. 547, 33 Cal.Rptr.3d 761.)

> FN8. To the extent *Tire Distributors* concludes the timeliness of a section 581 voluntary dismissal "depends on the plaintiff's motivation and intent in dismissing his complaint" (*Tire Distributors, supra,* 132 Cal.App.4th at p. 546, 33 Cal.Rptr.3d 761), we believe that an objective, not a subjective, standard should apply in determining the timeliness of a section 581 voluntary dismissal.

In *Cal-Vada Aircraft, Inc. v. Superior Court* (1986) 179 Cal.App.3d 435, 224 Cal.Rptr. 809 (*Cal-Vada*), the plaintiff (U.S. Fire Insurance Co.) filed an action for declaratory relief against the defendant (Cal-Vada). (*Id.* at p. 439, 224 Cal.Rptr. 809.) The defendant, in turn, filed a cross-complaint against the plaintiff and another cross-defendant (Bussey). (*Ibid.*) The plaintiff filed a motion for summary judgment. (*Ibid.*) However, the trial court granted only summary ***266** adjudication for the plaintiff on some, but not all, of the issues, concluding there remained a triable issue of material fact. (*Ibid.*) Prior to the commencement of trial on that remaining issue, the defendant filed a section 581 voluntary dismissal of its cross-complaint as to only cross-defendant Bussey. (*Cal-Vada,* at pp. 439-440, 224 Cal.Rptr. 809.) The trial court set aside the dismissal and thereafter denied the defendant's motion for reconsideration, concluding its ruling on the plaintiff's motion for summary judgment constituted the commencement of the trial under section 581. (*Cal-Vada,* at p. 440, 224 Cal.Rptr. 809.) The defendant then filed a petition for an alternative writ. (*Ibid.*) *Cal-Vada* phrased its question: "[W]hether a hearing on a motion for summary judgment followed by an order of summary adjudication on some, but not all, of the issues raised in a complaint is a 'trial,' barring a plaintiff from filing a voluntary dismissal under section 581...." (*Ibid.,* fn. omitted.) After reviewing three California Supreme Court cases involving demurrers, *Cal-Vada* concluded: "It is now clear it is the sustaining of a demurrer *that brings the case to final disposition* which constitutes commencement of the trial of law." (*Id.* at p. 443, 224 Cal.Rptr. 809.) *Cal-Vada* noted that "while the [California Supreme Court] has not construed the nature of partial summary adjudications in context with the voluntary dismissal statute [i.e., section 581], it has held plaintiffs are barred from dismissal when a question of law which

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leads to the final determination, i.e., which *will effectively dispose of the case,* has been heard and determined accordingly." (*Id.* at p. 444, 224 Cal.Rptr. 809, italics added.) *Cal-Vada* distinguished its facts from other cases involving summary judgments, stating: "A partial summary adjudication ... is unlike summary judgment precisely because it does not resolve all the issues in the case." (*Id.* at p. 445, 224 Cal.Rptr. 809.) Accordingly, *Cal-Vada* concluded that for purposes of a section 581 voluntary dismissal "trial does not commence with the summary adjudication" of issues. (*Id.* at p. 447, 224 Cal.Rptr. 809.) *Cal-Vada* stated:

> "[A]s the summary adjudication statute contemplates, such proceedings do not constitute the 'trial' which brings the action to the stage where final disposition can be made; they are not a trial of a question of law barring a plaintiff from voluntarily dismissing his action or a party to the action under section 581.... Unlike a summary judgment, the rights of the parties have not been determined here, and the matter must proceed to trial for that to occur. [¶] ... The trial court's resulting summary adjudication is in essence a *denial* of summary judgment, because a significant trial issue remained which, the court concluded, could not 'be resolved by summary judgment.' Thus, the hearing on the motion did not result in the determination of the parties' rights and the matter had not gone to 'trial.' " (*Cal-Vada, supra,* 179 Cal.App.3d at pp. 447-448, 224 Cal.Rptr. 809.)

Cal-Vada therefore concluded the defendant had a statutory right to dismiss its cross-complaint, depriving the trial court ****638** of further jurisdiction to act. (*Id.* at p. 448, 224 Cal.Rptr. 809.) Accordingly, the court granted the writ petition. (*Ibid.*)

***267** In contrast, certain summary judgment cases that have held section 581 voluntary dismissals to be untimely filed involved either prior tentative rulings or other special circumstances making judgment for the defendant inevitable. (*Mary Morgan, Inc. v. Melzark, supra,* 49 Cal.App.4th at pp. 768-772, 57 Cal.Rptr.2d 4 [plaintiff's voluntary dismissal untimely when filed after tentative ruling granting defendant's motion for summary judgment and after the hearing is continued]; *Cravens, supra,* 52 Cal.App.4th at pp. 255-257, 60 Cal.Rptr.2d 436 *Sweat v. Hollister* (1995) 37 Cal.App.4th 603, 614-615, 43 Cal.Rptr.2d 399 [section 581 voluntary dismissal was untimely when filed after trial court issued a final, telephonic order granting the defendant's motion for summary judgment even though oral argument had not yet been heard], disapproved on another ground by *Santisas v. Goodin* (1998) 17 Cal.4th 599, 609, 71 Cal.Rptr.2d 830, 951 P.2d 399.) In *Cravens,* the court concluded that because the plaintiff failed to timely file papers opposing the defendants' motion for summary judgment, "[a]t that point, entry of summary judgment in favor of [the defendants] became a formality which [the plaintiff] could not avoid by the stratagem of filing a last minute request for dismissal without prejudice." (*Cravens, supra,* at p. 257, 60 Cal.Rptr.2d 436.)

In this case, Gogri filed his request for voluntary dismissal of his complaint on February 22, 2007. Although his dismissal was filed after JIB filed its motion for summary judgment and after Gogri filed his papers opposing that motion, his dismissal was filed *before* the trial court issued its *tentative ruling* on JIB's motion on March 1. Therefore, at the time Gogri filed his section 581 voluntary dismissal, there had yet to be any "public and formal indication" by the court regarding the merits of his case, and he had not committed any "procedural dereliction" (e.g., failure to timely oppose JIB's motion for summary judgment) that would have rendered a judgment against him inevitable or a mere formality.[FN9] (*Franklin, supra,* 148 Cal.App.4th at p. 200, 55 Cal.Rptr.3d 424; cf. *Cravens, supra,* 52 Cal.App.4th at pp. 255-257, 60 Cal.Rptr.2d 436.)

> FN9. Although we do not adopt *Franklin's* description of its "mere formality" test as the exclusive test for determining the timeliness of a section 581 voluntary dismissal, we believe it is a sufficiently accurate "rule of thumb" for application of section 581 to the undisputed facts in this case.

Alternatively stated, at the time Gogri filed his section 581 voluntary dismissal, the trial court had not yet made any decision or taken any other action that effectively disposed of the entire case (i.e., any action that was tantamount to, or would inevitably lead to, judgment for JIB). (*Zapanta, supra,* 107 Cal.App.4th at pp. 1173-1174, 132 Cal.Rptr.2d 842; *Cal-Vada, supra,* 179 Cal.App.3d at pp. 443, 447, 224 Cal.Rptr. 809; cf. *Kyle, supra,* 71 Cal.App.4th at pp. 908-917, 84 Cal.Rptr.2d 303 [plaintiff's section 581 ***268** vo-

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luntary dismissal was timely when filed before the trial court ruled on the defendant's anti-SLAPP motion, which potentially would dispose of the entire case].) Accordingly, we conclude the trial court erred by vacating Gogri's section 581 voluntary dismissal of his complaint, and after that voluntary dismissal it did not have jurisdiction to **639 grant JIB's motion for summary judgment. Because Gogri's timely section 581 voluntary dismissal deprived the trial court of further jurisdiction (except for the limited purpose of awarding costs and statutory attorney fees), the court's order granting JIB's motion for summary judgment and its subsequent judgment for JIB are both void. (*Zapanta, supra,* 107 Cal.App.4th at p. 1174, 132 Cal.Rptr.2d 842; *Shapell, supra,* 132 Cal.App.4th at p. 1108, 34 Cal.Rptr.3d 149; *Harris, supra,* 16 Cal.App.4th at p. 1405, 20 Cal.Rptr.2d 718; *Kyle, supra,* 71 Cal.App.4th at p. 909, 84 Cal.Rptr.2d 303.)

JIB contends Gogri's section 581 voluntary dismissal was untimely because summary judgment for JIB was inevitable at the time the dismissal was filed. JIB argues: "Gogri's factually devoid interrogatory responses plus his factually devoid deposition testimony established that, as a matter of law, Gogri had no evidence to support his case." However, because JIB does not provide any citation to the record on appeal showing Gogri did not have any evidence that arguably supported his case, we decline to accept JIB's conclusory assertion that summary judgment for JIB was inevitable at the time Gogri filed his voluntary dismissal. Similarly, JIB argues that because Gogri did not submit any admissible evidence in opposition to its motion for summary judgment, Gogri in effect did not file opposition papers to its motion, thereby making judgment for JIB inevitable. (Cf. *Cravens, supra,* 52 Cal.App.4th at pp. 255-257, 60 Cal.Rptr.2d 436.) However, JIB again does not support its factual premise with any citation to the record. Rather, the record shows Gogri submitted evidence in opposition to JIB's motion for summary judgment and in support of his own motion for summary judgment, which evidence, on its face, is not wholly inadmissible.[FN10] In reply to Gogri's opposition papers, JIB did not object to all of Gogri's evidence. Rather, the record on appeal shows JIB objected, as inadmissible evidence, to only certain portions of Gogri's declaration submitted in support of his opposition to its motion for summary judgment.

FN10. The record on appeal appears to be incomplete. JIB's reply to Gogri's opposition includes its reply to his separate statement of undisputed facts, filed in response to its separate statement of undisputed material facts in support of its motion. Although JIB refers to Gogri's separate statement of undisputed facts, the record on appeal apparently does not include that separate statement or the evidence Gogri cited. Similarly, although the record on appeal includes JIB's response to Gogri's additional statement of undisputed facts submitted in opposition to its motion for summary judgment, the record apparently does not include his additional statement of undisputed facts or the evidence Gogri cited. However, based on our review of JIB's reply and response to Gogri's opposition, we infer that Gogri did submit evidence in opposition to JIB's motion for summary judgment.

*269 Furthermore, in ruling on JIB's motion, the trial court did not sustain JIB's objections to Gogri's declaration or, for that matter, any other evidence submitted by Gogri. We are not persuaded by JIB's appellate assertion that *all* of Gogri's evidence was inadmissible. In any event, JIB does not cite, and we have not found, any case holding that, for purposes of section 581 voluntary dismissals, a plaintiff's failure to file admissible evidence in opposition to a defendant's motion for summary judgment is equivalent to a failure to file any opposing papers. (Cf. *Cravens, supra,* 52 Cal.App.4th at pp. 255-257, 60 Cal.Rptr.2d 436.) On this record, we decline to adopt JIB's proposed expansion of existing section 581 principles.[FN11]

FN11. To the extent JIB argues Gogri's section 581 voluntary dismissal should be deemed untimely because it was a last-minute tactic "designed to wipe the slate clean of all his discovery abuses" and to avoid an inevitable summary judgment against him, we conclude, based on our adopted "objective" standard for determining the timeliness of a section 581 voluntary dismissal, that Gogri's subjective reasons for his dismissal are not determinative, if relevant at all. Furthermore, JIB has not shown that summary judgment for JIB was, in fact, inevitable for purposes of section 581. Considering the extensive summary judgment papers filed by both parties, we cannot con-

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clude that, prior to the trial court's tentative ruling, it was inevitable the court would grant JIB's motion and enter judgment for JIB. Alternatively stated, at the time Gogri filed his section 581 dismissal, it was *not* a mere formality, based on any "procedural dereliction" by Gogri or otherwise, that judgment would be entered for JIB. (*Franklin, supra,* 148 Cal.App.4th at pp. 200, 204, 55 Cal.Rptr.3d 424.)

****640** D

[12][13] JIB alternatively contends that because the trial court granted its demurrers to some, but not all, of Gogri's causes of action before he filed his section 581 voluntary dismissal of his complaint, Gogri's dismissal was untimely filed. Citing *Goldtree, supra,* 135 Cal. 666, 67 P. 1091, JIB argues the trial court's determination of its demurrers to some, but not all, of Gogri's causes of action constituted the commencement of a trial for purposes of section 581. Based on our review of section 581 case law, we conclude a trial is commenced for section 581 purposes when there is a determination of legal and/or factual issues that effectively disposes of the *entire case.* However, a determination on only some, but not all, of the causes of action alleged in a complaint does not effectively dispose of the entire case for purposes of section 581 voluntary dismissals. As noted above, *Cal-Vada* concluded that for purposes of a section 581 voluntary dismissal, "trial does not commence with the summary adjudication" of issues. (*Cal-Vada, supra,* 179 Cal.App.3d at p. 447, 224 Cal.Rptr. 809.) Following summary adjudication of some, but not all, causes of action alleged in a complaint, there remain issues to be decided at trial and therefore summary adjudication does not constitute the commencement of trial for section 581 purposes. (*Ibid.*) We discern no reason why that same reasoning should not apply to a trial court's ruling on a defendant's demurrers to some, but not all, causes of action alleged in the ***270** plaintiff's complaint. Accordingly, the fact that the trial court in this case sustained JIB's demurrers to some, but not all, of Gogri's causes of action did not preclude him from thereafter timely filing a section 581 voluntary dismissal of his complaint. (*Cal-Vada,* at p. 447, 224 Cal.Rptr. 809.)

Goldtree, cited by JIB, appears at first glance to support JIB's assertion. However, a close review of that case shows the "holding" on which JIB relies is dicta and unnecessary to the court's disposition. In *Goldtree,* the plaintiff's complaint alleged three causes of action. (*Goldtree, supra,* 135 Cal. at p. 667, 67 P. 1091.) The defendant generally demurred to each cause of action. (*Ibid.*) The trial court sustained the demurrer as to two of the causes of action, but overruled it as to the third cause of action. (*Ibid.*) Thereafter, the trial court denied the plaintiff's oral request to dismiss the entire action, stating that a trial had already been had on two of the causes of action. (*Ibid.*) Nevertheless, the plaintiff later filed a voluntary dismissal of the action with the court clerk. (*Ibid.*) When that action was brought to the trial court's attention, the court ordered that the entry of dismissal be set aside and canceled. (*Ibid.*) The plaintiff then moved to dismiss, without prejudice, the third cause of action, which motion the court granted. (*Id.* at pp. 667-668, 67 P. 1091.) On dismissal of the third cause of action, the defendant moved for judgment ****641** in his favor on the two remaining causes of action to which his demurrer had been sustained. (*Id.* at p. 668, 67 P. 1091.) The court granted that motion and entered judgment for the defendant. (*Ibid.*) The plaintiff appealed both the order canceling the entry of his dismissal and the judgment on the demurrer. (*Ibid.*)

In determining whether the trial court erred by canceling the plaintiff's section 581 dismissal, *Goldtree* reviewed various nonsection 581 cases that discussed the effect of general demurrers. (*Goldtree, supra,* 135 Cal. at pp. 668-672, 67 P. 1091.) *Goldtree* quoted language from *Alley v. Nott* (1884) 111 U.S. 472, 4 S.Ct. 495, 23 L.Ed. 491, in which the United States Supreme Court observed: " '[A general] demurrer to a complaint ... raises an issue which, when tried, will finally dispose of the case as stated in the complaint on its merits.... The trial of such an issue is the trial of the cause as a cause.... [I]f final judgment is entered on the [general] demurrer, it will be a final determination of the rights of the parties.... Under such circumstances, the trial of an issue raised by a demurrer which involves the merits of the action is, in our opinion, a trial of the action....' " (*Goldtree,* at p. 670, 67 P. 1091, quoting *Alley,* at pp. 475-476, 4 S.Ct. 495.) In *Goldtree,* the California Supreme Court also cited its prior language in *Tregambo v. Comanche M. and M. Co.* (1881) 57 Cal. 501 that a determination of legal issues may be considered a trial and then stated: "We cannot see why it is not true ... [that] a *general demurrer* ... goes ***271** directly to the determination of the rights of the parties and *all rights involved in the*

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166 Cal.App.4th 255, 82 Cal.Rptr.3d 629, 08 Cal. Daily Op. Serv. 11,397, 2008 Daily Journal D.A.R. 13,555
(Cite as: 166 Cal.App.4th 255, 82 Cal.Rptr.3d 629)

complaint." (*Goldtree, supra,* at pp. 670-671, 67 P. 1091, italics added.) After discussing cases from other jurisdictions, *Goldtree* adopted, as "a correct statement of the law as applied to" section 581, the principle that when a general demurrer is sustained with leave to amend, there has not yet been a conclusive determination of the litigation on its merits and therefore the order sustaining the demurrer lacks the quality of finality for a trial under section 581. (*Id.* at p. 672, 67 P. 1091.) Considering the question of a "trial" for purposes of section 581, *Goldtree* stated:

> "In our opinion [section 581] cannot be restricted in its meaning to trials of the merits after answer, for there may be such a trial on *a general demurrer to the complaint* as *will effectually dispose of the case* where the plaintiff has properly alleged all the facts which constitute his cause of action. If the demurrer is sustained, he stands on his pleading and submits to judgment on the demurrer, and, if not satisfied, has his remedy by appeal. *In such a case,* we think, *there would be a trial within the meaning of* [section 581], *and the judgment would cut off the right of dismissal,* unless it was first set aside or leave given to amend." (*Goldtree, supra,* 135 Cal. at pp. 672-673, 67 P. 1091, italics added.)

Without discussing the fact that in its case the trial court sustained the defendant's demurrer as to only two of the three causes of action alleged by the plaintiff, *Goldtree* then summarily concluded: "The clerk had no authority, therefore, to enter the dismissal, and being void the court rightly set it aside." (*Id.* at p. 673, 67 P. 1091.)

Goldtree then addressed the plaintiff's contention that the trial court erred by sustaining the defendant's demurrer as to two of his three causes of action. (*Goldtree, supra,* 135 Cal. at p. 673, 67 P. 1091.) Citing a case decided on the same day, *Goldtree* concluded: "Each of the first two counts of the complaint stated a cause of action, and the demurrer should have been overruled." (*Ibid.*) In its disposition of the appeal, *Goldtree* stated the order canceling the entry of dismissal was affirmed and **642 the judgment for the defendant on the demurrer was reversed. (*Ibid.*)

Based on our review of *Goldtree,* it appears the *Goldtree* court reversed the sequence of its discussion of the two questions from the sequence necessary to dispose of the case. Had the court first addressed the demurrer question (i.e., the trial court's ruling sustaining the defendant's demurrer as to two of the three causes of action), it would not have had to address the section 581 question. Alternatively stated, had *Goldtree* first addressed and decided the trial court erred by sustaining, in part, the defendant's demurrer, *Goldtree* could have reversed that ruling and the resulting judgment based solely on that error, without addressing the trial court's subsequent order vacating the *272 plaintiff's section 581 voluntary dismissal. Because reversal of the trial court's ruling sustaining, in part, the defendant's demurrer to the plaintiff's causes of action would have effectively reversed all subsequent orders, including its order vacating the plaintiff's voluntary dismissal, *Goldtree's* discussion of that subsequent decision by the trial court was unnecessary to its decision.[FN12]

> FN12. Furthermore, we note that had the trial court correctly overruled the defendant's demurrer, the plaintiff presumably never would have had any reason to file a section 581 voluntary dismissal. Therefore, had the trial court not erred by sustaining, in part, the defendant's demurrer, it never would have had occasion to decide whether to vacate the plaintiff's dismissal. Therefore, *Goldtree's* discussion of the section 581 voluntary dismissal issue was dicta as unnecessary to its disposition.

[14][15][16] "Only statements necessary to the decision are binding precedents...." (*Western Landscape Construction v. Bank of America* (1997) 58 Cal.App.4th 57, 61, 67 Cal.Rptr.2d 868.) "The doctrine of precedent, or stare decisis, extends only to the ratio decidendi of a decision, not to supplementary or explanatory comments which might be included in an opinion. To determine the precedential value of a statement in an opinion, the language of that statement must be compared with the facts of the case and the issues raised." (*Ibid.*) Considering the procedural background in *Goldtree,* we conclude *Goldtree's* discussion of the section 581 issue was unnecessary to its disposition of the appeal. Therefore, we are not bound by *Goldtree's* dicta in discussing and deciding the section 581 issue. (*Western Landscape,* at p. 61, 67 Cal.Rptr.2d 868; *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, 20 Cal.Rptr. 321, 369 P.2d 937.) Furthermore, although we generally consider California Supreme Court dicta to be persu-

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asive (*Hubbard v. Superior Court* (1997) 66 Cal.App.4th 1163, 1169, 78 Cal.Rptr.2d 819), *Goldtree's* discussion of case law involving general demurrers that dispose of an entire case did not logically support its implicit conclusion that the trial court's ruling sustaining two of the three causes of action effectively disposed of the entire case and therefore constituted a trial for purposes of a subsequent section 581 voluntary dismissal. Because *Goldtree's* dicta regarding the section 581 issue does not, in our opinion, "reflect[ ] compelling logic," we decline to follow it.[FN13] ****643**(*Hubbard v. Superior Court, supra,* 66 Cal.App.4th at p. 1169, 78 Cal.Rptr.2d 819.)

> FN13. However, in so doing, we do not disagree with *Goldtree's* apparent conclusion that a general demurrer to an *entire complaint,* if sustained without leave to amend, constitutes a final disposition of the *entire case* and therefore a "trial" for section 581 purposes. We part with *Goldtree* when it summarily applies that general principle to facts involving a ruling sustaining a demurrer only in part, leaving a cause of action yet to be tried. In those circumstances, we believe a "trial," or effective disposition of the entire case, has not been conducted for section 581 purposes.

***273** Furthermore, not only was *Goldtree's* determination of the section 581 issue unnecessary to its disposition of the appeal, we also believe the California Supreme Court has, in effect, implicitly overruled that dicta. In *Wells,* the court subsequently stated, in parenthetical dicta, that a section 581 "right of voluntary dismissal, which is not barred until expiration of plaintiff's time to amend after the sustaining of the demurrer, would ... not be impaired *prior* to a decision sustaining the demurrer." (*Wells, supra,* 29 Cal.3d at pp. 789-790, 176 Cal.Rptr. 104, 632 P.2d 217.) It is implicit within *Wells's* discussion that the court was referring to a decision sustaining a general demurrer to an entire complaint or action, and not (as in *Goldtree*) only to some, but not all, causes of action alleged in the complaint. We believe *Wells* set forth, albeit in dicta, the general principle that a section 581 voluntary dismissal is timely when filed before a decision sustaining a general demurrer to an *entire* complaint. In fact, citing *Wells,* the California Supreme Court subsequently stated: "[P]laintiffs had the right to dismiss the complaint without prejudice before any decision on the demurrer to the first amended complaint." (*Christensen v. Dewor Developments* (1983) 33 Cal.3d 778, 785, 191 Cal.Rptr. 8, 661 P.2d 1088.) Therefore, we believe it is implicit within *Wells's* dicta that a section 581 voluntary dismissal is likewise timely when filed after a decision sustaining a general demurrer only in part, leaving one or more causes of action for trial. (Cf. *Cal-Vada, supra,* 179 Cal.App.3d at p. 447, 224 Cal.Rptr. 809 [regarding summary adjudication of some, but not all, causes of action].)

We conclude *Goldtree* does *not* require us to decide that Gogri's section 581 voluntary dismissal was untimely filed. The trial court's order sustaining JIB's demurrers to some, but not all, of Gogri's causes of action did *not* constitute a "commencement of trial" under section 581 that would preclude Gogri from subsequently filing a voluntary dismissal of his entire complaint.

III

Remaining Contentions

Because we have decided this appeal on the ground set forth above, we need not, and do not, address Gogri's substantive contention regarding the trial court's order granting JIB's motion for summary judgment. When Gogri timely filed his section 581 voluntary dismissal of his complaint without prejudice, he deprived the trial court of further jurisdiction in the matter (except, possibly, for the limited purpose of awarding costs and statutory attorney fees, as discussed below). (*Zapanta, supra,* 107 Cal.App.4th at p. 1174, 132 Cal.Rptr.2d 842; *Shapell, supra,* 132 Cal.App.4th at p. 1108, 34 Cal.Rptr.3d 149; ***274***Harris, supra,* 16 Cal.App.4th at p. 1405, 20 Cal.Rptr.2d 718; *Kyle, supra,* 71 Cal.App.4th at p. 909, 84 Cal.Rptr.2d 303.) Because the trial court did not have jurisdiction to decide the parties' summary judgment motions and grant JIB's motion for summary judgment or enter judgment for JIB, its order granting JIB's motion for summary judgment and judgment for JIB are void.

[17] Gogri also contends the trial court erred by awarding attorney fees to JIB because it had no jurisdiction to do so after he filed his section 581 voluntary dismissal of his complaint without prejudice. To the extent the trial court awarded JIB attorney fees incurred in defending against Gogri's *contract* causes of

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action, we agree. The trial court had no authority to award JIB Civil Code section 1717 attorney fees on Gogri's contract causes of action. (**644Civ.Code, § 1717, subd. (b)(2) ["Where an action has been voluntarily dismissed ..., there shall be no prevailing party for purposes of this section."]; *Santisas v. Goodin, supra,* 17 Cal.4th at pp. 614-619, 622, 71 Cal.Rptr.2d 830, 951 P.2d 399 [contractual attorney fees *may* be recoverable by defendant in voluntary pretrial dismissal cases for defense of tort, but not contract, causes of action]; *Rosen v. Robert P. Warmington Co.* (1988) 201 Cal.App.3d 939, 941-944, 247 Cal.Rptr. 635 [following plaintiff's section 581 voluntary dismissal with prejudice of entire action, defendant was not entitled to award of Civil Code section 1717 attorney fees as prevailing party].) *Santisas* stated: "Under [Civil Code] section 1717, the seller defendants are not 'part[ies] prevailing on the contract' because that section specifies that there is no party prevailing on the contract when, as here, the plaintiffs have voluntarily dismissed the action, and therefore defendants may not recover the attorney fees they incurred in the defense of the contract claim. But this conclusion does not affect the seller defendants' right to recover as costs the attorney fees they incurred in defense of the tort claims. Because [Civil Code] section 1717 does not apply to those claims [citations], it does not bar recovery of attorney fees that were incurred in litigation of those claims and that are otherwise recoverable as a matter of contract law." (*Santisas, supra,* at p. 619, 71 Cal.Rptr.2d 830, 951 P.2d 399.) Therefore, under *Santisas,* JIB could recover, at most, those attorney fees incurred in defending against Gogri's noncontract (e.g., tort or statutory) causes of action.

Because the amount of the fees incurred by JIB in defending against Gogri's contract and noncontract causes of action are not plainly shown in the record on appeal and the trial court awarded JIB attorney fees in defending against all of Gogri's causes of action, the court's order awarding attorney fees to JIB must be reversed and remanded for further proceedings (e.g., an amended request by JIB for an award of attorney fees in defending against Gogri's noncontract causes of action and a determination by the trial court of what, if any, attorney fees JIB should be awarded).

*275 DISPOSITION

The judgment is reversed and the matter is remanded with directions that the trial court enter a new order vacating its order setting aside Gogri's voluntary dismissal and to conduct further proceedings consistent with this opinion.

WE CONCUR: McINTYRE and O'ROURKE, JJ.
Cal.App. 4 Dist.,2008.
Gogri v. Jack In The Box Inc.
166 Cal.App.4th 255, 82 Cal.Rptr.3d 629, 08 Cal. Daily Op. Serv. 11,397, 2008 Daily Journal D.A.R. 13,555

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Supreme Court of the United States

Alberto R. GONZALES, Attorney General, et al., Petitioners,

v.

OREGON et al.

No. 04-623.

Argued Oct. 5, 2005.

Decided Jan. 17, 2006.

Background: State of Oregon and others brought action seeking declaratory and injunctive relief preventing federal enforcement or application of United States Attorney General's interpretive rule indicating that physicians who assist suicide of terminally ill patients pursuant to Oregon Death With Dignity Act (ODWDA) would be violating the federal Controlled Substances Act (CSA). The United States District Court for the District of Oregon, Robert E. Jones, J., 192 F.Supp.2d 1077, permanently enjoined enforcement of the rule. The United States Court of Appeals for the Ninth Circuit, 368 F.3d 1118, granted petitions for review and held the rule invalid. Government's petition for certiorari was granted.

Holdings: The Supreme Court, Justice Kennedy, held that:

(1) interpretive rule was not entitled to deference as interpretation of allegedly ambiguous regulation;

(2) rule was not entitled to *Chevron* deference; and

(3) CSA did not authorize Attorney General to prohibit doctors from prescribing regulated drugs for use in physician-assisted suicide, as authorized by ODWDA.

Affirmed.

Justice Scalia filed dissenting opinion in which Chief Justice Roberts and Justice Thomas joined.

Justice Thomas filed dissenting opinion.

West Headnotes

[1] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative construction. Most Cited Cases

Administrative Law and Procedure 15A 416.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak416 Effect
15Ak416.1 k. In general. Most Cited Cases

An administrative rule may receive substantial deference if it interprets the issuing agency's own ambiguous regulation.

[2] Administrative Law and Procedure 15A 416.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak416 Effect
15Ak416.1 k. In general. Most Cited Cases

Statutes 361 219(2)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(2) k. Existence of ambiguity. Most Cited Cases

An interpretation of an ambiguous statute may receive substantial deference, pursuant to *Chevron*, but *Chevron* deference is warranted only when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the

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agency interpretation claiming deference was promulgated in the exercise of that authority; otherwise, the interpretation is entitled to respect only to the extent it has the power to persuade.

[3] Statutes 361 219(6.1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(6) Particular Federal Statutes
361k219(6.1) k. In general. Most Cited Cases

Interpretive rule issued by United States Attorney General, providing that using controlled substances to assist suicide was not a legitimate medical practice and that dispensing or prescribing controlled substances for this purpose was unlawful under the Controlled Substances Act (CSA), was not entitled to deference as interpretation of issuing agency's own allegedly ambiguous regulation requiring that all prescriptions be issued for legitimate medical purpose by individual practitioner acting in usual course of his professional practice; language addressed by rule came from Congress, not Attorney General, underlying regulation did little more than restate terms of statute itself, and underlying regulation was enacted before relevant CSA amendments, so rule could not be justified as indicative of Attorney General's intent at time regulation was enacted. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 101 et seq., 21 U.S.C.A. § 801 et seq.; 21 C.F.R. § 1306.04.

[4] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative construction. Most Cited Cases

An agency does not acquire special authority to interpret its own words when, instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language.

[5] Statutes 361 219(6.1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(6) Particular Federal Statutes
361k219(6.1) k. In general. Most Cited Cases

Interpretive rule issued by United States Attorney General, providing that using controlled substances to assist suicide was not a legitimate medical practice and that dispensing or prescribing controlled substances for this purpose was unlawful under the Controlled Substances Act (CSA), was not entitled to *Chevron* deference; powers expressly delegated to Attorney General by CSA in connection with registration and control, and with the efficient execution of his functions under the statute, were limited and did not extend to defining medical standards for care and treatment of patients. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 102(5), 301, 303(f), 501(b), 21 U.S.C.A. §§ 802(5), 821, 823(f), 871(b).

[6] Administrative Law and Procedure 15A 386

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak385 Power to Make
15Ak386 k. Statutory basis. Most Cited Cases

Administrative Law and Procedure 15A 416.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak416 Effect
15Ak416.1 k. In general. Most Cited Cases

Chevron deference is not accorded to an administrative rule merely because the governing statute is ambiguous and an administrative official is involved; the rule must be promulgated pursuant to authority Con-

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gress has delegated to the official.

[7] Controlled Substances 96H 2

96H Controlled Substances
96HI In General
96Hk1 Nature and Power to Regulate
96Hk2 k. In general. Most Cited Cases

Health 198H 101

198H Health
198HI Regulation in General
198HI(A) In General
198Hk101 k. Power to regulate in general. Most Cited Cases
Controlled Substances Act (CSA) allocates decisionmaking powers among statutory actors so that medical judgments, if they are to be decided at the federal level and for the limited objects of the statute, are placed in the hands of the Secretary of Health and Human Services. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 101 et seq., 21 U.S.C.A. § 801 et seq.

[8] Administrative Law and Procedure 15A 416.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak416 Effect
15Ak416.1 k. In general. Most Cited Cases
When administrative rule is entitled to only *Skidmore* deference, because rule is not within scope of agency's delegated authority, the weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.

[9] Statutes 361 219(6.1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(6) Particular Federal Statutes
361k219(6.1) k. In general. Most Cited Cases
Skidmore deference accorded to Attorney General's interpretive rule, which provided that using controlled substances to assist suicide was not a legitimate medical practice and that dispensing or prescribing controlled substances for this purpose was unlawful under the Controlled Substances Act (CSA), whereby court would follow rule only to extent it was persuasive, would be tempered by Attorney General's lack of expertise in the area and the apparent absence of any consultation with anyone outside the Department of Justice who might aid in a reasoned judgment. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 101 et seq., 21 U.S.C.A. § 801 et seq.

[10] Controlled Substances 96H 2

96H Controlled Substances
96HI In General
96Hk1 Nature and Power to Regulate
96Hk2 k. In general. Most Cited Cases
In enacting Controlled Substances Act (CSA), which repealed most of earlier antidrug laws in favor of a comprehensive regime to combat the international and interstate traffic in illicit drugs, Congress sought to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 101 et seq., 21 U.S.C.A. § 801 et seq.

[11] Attorney General 46 6

46 Attorney General
46k5 Powers and Duties
46k6 k. In general. Most Cited Cases

Health 198H 305

198H Health
198HI Regulation in General
198HI(E) Drugs; Medical Devices and Instruments
198Hk305 k. Prescription requirement; ethical drugs. Most Cited Cases
(Formerly 198Hk211)
Controlled Substances Act (CSA) did not authorize

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United States Attorney General to prohibit doctors from prescribing regulated drugs for use in physician-assisted suicide, as authorized by the Oregon Death With Dignity Act (ODWDA); notwithstanding CSA's requirement that Schedule II drugs be dispensed pursuant to written prescription of a practitioner, CSA, when viewed as a whole, did not grant expansive federal authority to regulate medicine by defining scope of legitimate medical practice, in view of CSA's silence on the practice of medicine generally and its recognition of state regulation of the medical profession. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 101 et seq., 309(a), 708, 21 U.S.C.A. §§ 801 et seq.,829(a), 903; West's Or.Rev. Stat. Ann. § 127.800 et seq.

[12] States 360 ⚿4.4(2)

360 States
360I Political Status and Relations
360I(A) In General
360k4.4 Powers Reserved to States
360k4.4(2) k. Police power. Most Cited Cases
Structure and limitations of federalism allow states great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.

[13] States 360 ⚿18.13

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.13 k. State police power. Most Cited Cases
Even though regulation of health and safety is primarily, and historically, a matter of local concern, there is no question that the federal government can set uniform national standards in these areas.

[14] Statutes 361 ⚿205

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k205 k. In general. Most Cited Cases
Statutes should not be read as a series of unrelated and isolated provisions.

[15] Health 198H ⚿211

198H Health
198HI Regulation in General
198HI(B) Professionals
198Hk201 Discipline, Revocation, and Suspension
198Hk211 k. Prescriptions; controlled substances. Most Cited Cases

Health 198H ⚿305

198H Health
198HI Regulation in General
198HI(E) Drugs; Medical Devices and Instruments
198Hk305 k. Prescription requirement; ethical drugs. Most Cited Cases
Requirement of Controlled Substances Act (CSA) that Schedule II drugs be dispensed pursuant to written prescription of a practitioner ensures that patients use controlled substances under the supervision of a doctor, so as to prevent addiction and recreational abuse; as a corollary, the provision also bars doctors from peddling to patients who crave the drugs for those prohibited uses, but to read prescriptions for assisted suicide as constituting "drug abuse" under the CSA is discordant with the phrase's consistent use throughout the statute, as well as its ordinary meaning. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 309(a), 21 U.S.C.A. § 829(a).

***907 *243 *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

The Controlled Substances Act (CSA or Act), which was enacted in 1970 with the main objectives of combating drug abuse and controlling legitimate and illegitimate traffic in controlled substances, criminalizes, *inter alia,* the unauthorized distribution and dispensation of substances classified in any of its five schedules. The Attorney General may add, remove, or

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reschedule substances only after making particular findings, and on scientific and medical matters, he must accept the findings of the Secretary of Health and Human Services (Secretary). These proceedings must be on the record after an opportunity for comment. The dispute here involves controlled substances listed in Schedule II, which are generally available only by written prescription, 21 U.S.C. § 829(a). A 1971 regulation promulgated by the Attorney General requires that such prescriptions be used "for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR § 1306.04. To prevent diversion of controlled substances, the CSA regulates the activity of physicians, who must register in accordance with rules and regulations promulgated by the Attorney General. He may deny, suspend, or revoke a registration that, as relevant here, would be "inconsistent with the public interest." 21 U.S.C. §§ 824(a)(4), 822(a)(2). In determining consistency with the public interest, he must consider five factors, including the State's recommendation, compliance with state, federal, and local law regarding controlled substances, and "public health and safety." § 823(f). The CSA explicitly contemplates a role for the States in regulating controlled substances. See § 903.

The Oregon Death With Dignity Act (ODWDA) exempts from civil or criminal liability state-licensed physicians who, in compliance with ODWDA's specific safeguards, dispense or prescribe a lethal dose of drugs upon the request of a terminally ill patient. In 2001, the Attorney General issued an Interpretive Rule to address the implementation and enforcement of the CSA with respect to ODWDA, declaring that using controlled substances to assist suicide is not a legitimate medical practice and that dispensing or prescribing them for this purpose is unlawful under the CSA. The State, a physician, a pharmacist, and ***244** some terminally ill state residents challenged the Rule. The District Court permanently enjoined its enforcement. The Ninth Circuit invalidated the Rule, reasoning that, by making a medical procedure authorized under Oregon law a federal offense, it altered the balance between the States and the Federal Government without the requisite clear statement that the CSA authorized the action; and in the alternative, that the Rule could not be squared with the CSA's plain language, ****908** which targets only conventional drug abuse and excludes the Attorney General from medical policy decisions.

Held: The CSA does not allow the Attorney General to prohibit doctors from prescribing regulated drugs for use in physician-assisted suicide under state law permitting the procedure. Pp. 914-926.

(a) An administrative rule interpreting the issuing agency's own ambiguous regulation may receive substantial deference. *Auer v. Robbins,* 519 U.S. 452, 461-463, 117 S.Ct. 905, 137 L.Ed.2d 79. So may an interpretation of an ambiguous statute, *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842-845, 104 S.Ct. 2778, 81 L.Ed.2d 694, but only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority," *United States v. Mead Corp.,* 533 U.S. 218, 226-227, 121 S.Ct. 2164, 150 L.Ed.2d 292. Otherwise, the interpretation is "entitled to respect" only to the extent it has the "power to persuade." *Skidmore v. Swift & Co.,* 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124. Pp. 914-915.

(b) The Interpretive Rule at issue is not entitled to *Auer* deference as an interpretation of 21 CFR § 1306.04. Unlike the underlying regulations in *Auer,* which gave specificity to a statutory scheme the Secretary of Labor was charged with enforcing and reflected the Labor Department's considerable experience and expertise, the underlying regulation here does little more than restate the terms of the statute itself. The CSA allows prescription of drugs that have a "currently accepted medical use," 21 U.S.C. § 812(b); requires a "medical purpose" for dispensing the least controlled substances of those on the schedules, § 829(c); and defines a "valid prescription" as one "issued for a legitimate medical purpose," § 830(b)(3)(A)(ii). Similarly, physicians are considered practitioners if they dispense controlled substances "in the course of professional practice." 21 U.S.C. § 802(21). The regulation just repeats two of these statutory phrases and attempts to summarize the others. An agency does not acquire special authority to interpret its own words when, instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language. Furthermore, any statutory authority for the Interpretive Rule would have to come from 1984 CSA amendments adding the "public ***245** interest" requirement, but 21 CFR § 1306.04 was adopted in

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1971. That the current interpretation runs counter to the intent at the time of the regulation's promulgation is an additional reason why *Auer* deference is unwarranted. Pp. 915-916.

(c) The Interpretive Rule is also not entitled to *Chevron* deference. The statutory phrase "legitimate medical purpose" is ambiguous in the relevant sense. However, *Chevron* deference is not accorded merely because the statute is ambiguous and an administrative official is involved. A rule must be promulgated pursuant to authority Congress has delegated to the official. The specific respects in which the Attorney General is authorized to make rules under the CSA show that he is not authorized to make a rule declaring illegitimate a medical standard for patient care and treatment specifically authorized under state law. Congress delegated to the Attorney General only the authority to promulgate rules relating to "registration" and "control" of the dispensing of controlled substances, 21 U.S.C. § 821 (2000 ed., Supp.V), and "for the efficient execution of his [statutory] functions," **909 21 U.S.C. § 871(b). Control means "to add a ... substance ... to a schedule," § 802(5), following specified procedures. Because the Interpretive Rule does not concern scheduling of substances and was not issued under the required procedures, it cannot fall under the Attorney General's control authority. Even if "control" were understood to signify something other than its statutory definition, it could not support the Interpretive Rule. Nor can the Interpretive Rule be justified under the CSA's registration provisions. It does not undertake the Act's five-factor analysis for determining when registration is "inconsistent with the public interest," § 823(f), and it deals with much more than registration. It purports to declare that using controlled substances for physician-assisted suicide is a crime, an authority going well beyond the Attorney General's statutory power to register or deregister physicians. It would be anomalous for Congress to have painstakingly described the Attorney General's limited authority to deregister a single physician or schedule a single drug, but to have given him, just by implication, authority to declare an entire class of activity outside the course of professional practice and therefore a criminal violation of the CSA. It is not enough that "public interest," "public health and safety," and "Federal law" are used in the part of the Act over which the Attorney General has authority. Cf. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 119 S.Ct. 2139, 144 L.Ed.2d 450. The first two terms do not call on the Attorney General, or any executive official, to make an independent assessment of the meaning of federal law. The Attorney General did not base the Interpretive Rule on an application of the five-factor test generally, or the "public health and safety" factor specifically. Even if he had, it is doubtful that he could cite those factors to deregister a ***246** physician simply because he deemed a controversial practice permitted by state law to have an illegitimate medical purpose. The federal-law factor requires the Attorney General to decide "[c]ompliance" with the law but does not suggest that he may decide what the law is. To say that he can define the substantive standards of medical practice as part of his authority would also put 21 U.S.C. § 871(b) in considerable tension with the narrowly defined control and registration delegation. It would go, moreover, against the plain language of the text to treat a delegation for the "execution" of his functions as a further delegation to define other functions well beyond the Act's specific grants of authority. The authority desired by the Government is inconsistent with the Act's design in other fundamental respects, *e.g.*, the Attorney General must share power with, and in some respect defer to, the Secretary, whose functions are likewise delineated and confined by the Act. Postenactment congressional commentary on the CSA's regulation of medical practice is also at odds with the Attorney General's claimed authority. The Government's claim that the Attorney General's decision is a legal, not medical, one does not suffice, for the Interpretive Rule places extensive reliance on medical judgments and views of the medical community in concluding that assisted suicide is not a legitimate medical purpose. The idea that Congress gave him such broad and unusual authority through an implicit delegation is not sustainable. The importance of the issue of physician-assisted suicide makes the oblique form of the claimed delegation all the more suspect. Pp. 916-922.

(d) The Attorney General's opinion is unpersuasive under *Skidmore*. The CSA and this Court's case law amply support the conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers**910 as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, the Act manifests no intent to regulate the practice of medicine generally, which is understandable given federalism's structure and limitations. The CSA's structure and operation presume and rely upon a functioning medical profession regulated under the States' police

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powers. The Federal Government can set uniform standards for regulating health and safety. In connection with the CSA, however, the only provision in which Congress set general, uniform medical practice standards, § 290bb-2a, strengthens the understanding of the CSA as a statute combating recreational drug abuse, and also indicates that when Congress wants to regulate medical practice in the given scheme, it does so by explicit statutory language. The difficulty in defending the Attorney General's declaration that the CSA impliedly criminalizes physician-assisted suicide is compounded by the Act's consistent delegation of medical judgments to the Secretary and its otherwise careful ***247** allocation of powers for enforcing the CSA's limited objectives. The Government's contention that the terms "medical" or "medicine" refer to a healing or curative art, and thus cannot embrace the intentional hastening of a patient's death, rests on a reading of 21 U.S.C. § 829(a)'s prescription requirement without the illumination of the rest of the statute. Viewed in context, that requirement is better understood as ensuring that patients use controlled substances under a doctor's supervision so as to prevent addiction and recreational abuse. To read prescriptions for assisted suicide as "drug abuse" under the CSA is discordant with the phrase's consistent use throughout the Act, not to mention its ordinary meaning. The Government's interpretation of the prescription requirement also fails under the objection that the Attorney General is an unlikely recipient of such broad authority, given the Secretary's primacy in shaping medical policy under the CSA and the Act's otherwise careful allocation of decisionmaking powers. Pp. 922-926.

368 F.3d 1118, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS, J., joined, *post,* p. 926. THOMAS, J., filed a dissenting opinion, *post,* p. 939.
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Eli D. Stutsman, Counsel of Record, Portland, OR, Brief for the Respondents filed by Peter A. Rasmussen, M.D. and David M. Hochhalter.

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Paul D. Clement, Acting Solicitor General, Counsel of Record, Peter D. Keisler, Assistant Attorney General, Edwin S. Kneedler, Deputy Solicitor General, Gregory G. Katsas, Deputy Assistant Attorney General, Douglas Hallward-Driemeier, Assistant to the Solicitor General, ****911**Mark B. Stern, Jonathan H. Levy, Attorneys, Department of Justice, Washington, D.C., for the Petitioners.

For U.S. Supreme Court briefs, see:2005 WL 1126079 (Pet.Brief)2005 WL 1749169 (Resp.Brief)2005 WL 1749168 (Resp.Brief)2005 WL 1687168 (Resp.Brief)2005 WL 2083964 (Reply.Brief)

Justice KENNEDY delivered the opinion of the Court.

***248** The question before us is whether the Controlled Substances Act allows the United States Attorney General to ***249** prohibit doctors from prescribing regulated drugs for use in physician-assisted suicide, notwithstanding a state law permitting the procedure. As the Court has observed, "Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician-assisted suicide." *Washington v. Glucksberg,* 521 U.S. 702, 735, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). The dispute before us is in part a product of this political and moral debate, but its resolution requires an inquiry familiar to the courts: interpreting a federal statute to determine whether executive action is authorized by, or otherwise consistent with, the enactment.

In 1994, Oregon became the first State to legalize assisted suicide when voters approved a ballot measure enacting the Oregon Death With Dignity Act (ODWDA). Ore.Rev.Stat. § 127.800 *et seq.* (2003). ODWDA, which survived a 1997 ballot measure

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seeking its repeal, exempts from civil or criminal liability state-licensed physicians who, in compliance with the specific safeguards in ODWDA, dispense or prescribe a lethal dose of drugs upon the request of a terminally ill patient.

The drugs Oregon physicians prescribe under ODWDA are regulated under a federal statute, the Controlled Substances Act (CSA or Act). 84 Stat. 1242, as amended, 21 U.S.C. § 801 *et seq.* The CSA allows these particular drugs to be available only by a written prescription from a registered physician. In the ordinary course the same drugs are prescribed in smaller doses for pain alleviation.

A November 9, 2001, Interpretive Rule issued by the Attorney General addresses the implementation and enforcement of the CSA with respect to ODWDA. It determines that using controlled substances to assist suicide is not a legitimate medical practice and that dispensing or prescribing them for this purpose is unlawful under the CSA. The Interpretive Rule's validity under the CSA is the issue before us.

***250** I

A

We turn first to the text and structure of the CSA. Enacted in 1970 with the main objectives of combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances, the CSA creates a comprehensive, closed regulatory regime criminalizing the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act's five schedules. *Gonzales v. Raich*, 545 U.S. 1, 12-13, 125 S.Ct. 2195, 2203-2204, 162 L.Ed.2d 1 (2005); 21 U.S.C. § 841 (2000 ed. and Supp. II); 21 U.S.C. § 844. The Act places substances in one of five schedules based on their potential for abuse or dependence, their accepted medical use, and their accepted safety for use under medical supervision. Schedule I contains the most severe restrictions on access and use, and Schedule V the least. *Raich, supra*, at 14, 125 S.Ct., at 2204; 21 U.S.C. § 812. Congress classified a host of substances when it enacted the CSA, but the statute permits the Attorney****912** General to add, remove, or reschedule substances. He may do so, however, only after making particular findings, and on scientific and medical matters he is required to accept the findings of the Secretary of Health and Human Services (Secretary). These proceedings must be on the record after an opportunity for comment. See 21 U.S.C. § 811 (2000 ed. and Supp.V).

The present dispute involves controlled substances listed in Schedule II, substances generally available only pursuant to a written, nonrefillable prescription by a physician. 21 U.S.C. § 829(a). A 1971 regulation promulgated by the Attorney General requires that every prescription for a controlled substance "be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR § 1306.04(a) (2005).

To prevent diversion of controlled substances with medical uses, the CSA regulates the activity of physicians. To issue ***251** lawful prescriptions of Schedule II drugs, physicians must "obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him." 21 U.S.C. § 822(a)(2). The Attorney General may deny, suspend, or revoke this registration if, as relevant here, the physician's registration would be "inconsistent with the public interest." § 824(a)(4); § 822(a)(2). When deciding whether a practitioner's registration is in the public interest, the Attorney General "shall" consider:

> "(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
>
> "(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
>
> "(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
>
> "(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
>
> "(5) Such other conduct which may threaten the public health and safety." § 823(f).

The CSA explicitly contemplates a role for the States in regulating controlled substances, as evidenced by its pre-emption provision.

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> "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates ... to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision ... and that State law so that the two cannot consistently stand together." § 903.

B

Oregon voters enacted ODWDA in 1994. For Oregon residents to be eligible to request a prescription under ***252** ODWDA, they must receive a diagnosis from their attending physician that they have an incurable and irreversible disease that, within reasonable medical judgment, will cause death within six months. Ore.Rev.Stat. §§ 127.815, 127.800(12) (2003). Attending physicians must also determine whether a patient has made a voluntary request, ensure a patient's choice is informed, and refer patients to counseling if they might be suffering from a psychological disorder or depression causing impaired judgment. §§ 127.815, 127.825. A second "consulting" physician must examine the patient and the medical record and confirm the attending physician's conclusions. § 127.800(8). Oregon physicians may dispense****913** or issue a prescription for the requested drug, but may not administer it. §§ 127.815(1)(L), 127.880.

The reviewing physicians must keep detailed medical records of the process leading to the final prescription, § 127.855, records that Oregon's Department of Human Services reviews, § 127.865. Physicians who dispense medication pursuant to ODWDA must also be registered with both the State's Board of Medical Examiners and the federal Drug Enforcement Administration (DEA). § 127.815(1)(L). In 2004, 37 patients ended their lives by ingesting a lethal dose of medication prescribed under ODWDA. Oregon Dept. of Human Servs., Seventh Annual Report on Oregon's Death with Dignity Act 20 (Mar. 10, 2005).

C

In 1997, Members of Congress concerned about ODWDA invited the DEA to prosecute or revoke the CSA registration of Oregon physicians who assist suicide. They contended that hastening a patient's death is not legitimate medical practice, so prescribing controlled substances for that purpose violates the CSA. Letter from Sen. Orrin Hatch and Rep. Henry Hyde to Thomas A. Constantine (July 25, 1997), reprinted in Hearing on S. 2151 before the Senate Committee on the Judiciary, 105th Cong., 2d Sess., 2-3 (1999) ***253** hereinafter Hearing). The letter received an initial, favorable response from the director of the DEA, see Letter from Thomas A. Constantine to Sen. Orrin Hatch (Nov. 5, 1997), Hearing 4-5, but Attorney General Reno considered the matter and concluded that the DEA could not take the proposed action because the CSA did not authorize it to "displace the states as the primary regulators of the medical profession, or to override a state's determination as to what constitutes legitimate medical practice," Letter from Attorney General Janet Reno to Sen. Orrin Hatch, on Oregon's Death with Dignity Act (June 5, 1998), Hearing 5-6. Legislation was then introduced to grant the explicit authority Attorney General Reno found lacking; but it failed to pass. See H.R. 4006, 105th Cong., 2d Sess. (1998); H.R. 2260, 106th Cong., 1st Sess. (1999).

In 2001, John Ashcroft was appointed Attorney General. Perhaps because Mr. Ashcroft had supported efforts to curtail assisted suicide while serving as a Senator, see, *e.g.,* 143 Cong. Rec. 5589-5590 (1997) (remarks of Sen. Ashcroft), Oregon Attorney General Hardy Myers wrote him to request a meeting with Department of Justice officials should the Department decide to revisit the application of the CSA to assisted suicide. Letter of Feb. 2, 2001, App. to Brief for Patient-Respondents in Opposition 55a. Attorney General Myers received a reply letter from one of Attorney General Ashcroft's advisers writing on his behalf, which stated:

> "I am aware of no pending legislation in Congress that would prompt a review of the Department's interpretation of the CSA as it relates to physician-assisted suicide. Should such a review be commenced in the future, we would be happy to include your views in that review." Letter from Lori Sharpe (Apr. 17, 2001), *id.,* at 58a.

On November 9, 2001, without consulting Oregon or apparently anyone outside his Department, the Attorney General ***254** issued an Interpretive Rule announcing his intent to restrict the use of controlled substances for physician-assisted suicide. Incorpo-

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rating the legal analysis of a memorandum he had solicited from his Office of Legal Counsel, the Attorney General ruled:

> "[A]ssisting suicide is not a 'legitimate medical purpose' within the meaning of 21 CFR 1306.04 (2001), and that prescribing, dispensing, or administering **914 federally controlled substances to assist suicide violates the Controlled Substances Act. Such conduct by a physician registered to dispense controlled substances may 'render his registration ... inconsistent with the public interest' and therefore subject to possible suspension or revocation under 21 U.S.C. 824(a)(4). The Attorney General's conclusion applies regardless of whether state law authorizes or permits such conduct by practitioners or others and regardless of the condition of the person whose suicide is assisted." 66 Fed.Reg. 56608 (2001).

There is little dispute that the Interpretive Rule would substantially disrupt the ODWDA regime. Respondents contend, and petitioners do not dispute, that every prescription filled under ODWDA has specified drugs classified under Schedule II. A physician cannot prescribe the substances without DEA registration, and revocation or suspension of the registration would be a severe restriction on medical practice. Dispensing controlled substances without a valid prescription, furthermore, is a federal crime. See, *e.g.*, 21 U.S.C. § 841(a)(1); *United States v. Moore*, 423 U.S. 122, 96 S.Ct. 335, 46 L.Ed.2d 333 (1975).

In response the State of Oregon, joined by a physician, a pharmacist, and some terminally ill patients, all from Oregon, challenged the Interpretive Rule in federal court. The United States District Court for the District of Oregon entered a permanent injunction against the Interpretive Rule's enforcement.

*255 A divided panel of the Court of Appeals for the Ninth Circuit granted the petitions for review and held the Interpretive Rule invalid. *Oregon v. Ashcroft*, 368 F.3d 1118 (C.A.9 2004). It reasoned that, by making a medical procedure authorized under Oregon law a federal offense, the Interpretive Rule altered the " ' "usual constitutional balance between the States and the Federal Government" ' " without the requisite clear statement that the CSA authorized such action. *Id.*, at 1124-1125 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991), in turn quoting *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242, 105 S.Ct. 3142, 87 L.Ed.2d 171 (1985)). The Court of Appeals held in the alternative that the Interpretive Rule could not be squared with the plain language of the CSA, which targets only conventional drug abuse and excludes the Attorney General from decisions on medical policy. 368 F.3d, at 1125-1129.

We granted the Government's petition for certiorari. 543 U.S. 1145, 125 S.Ct. 1299, 161 L.Ed.2d 104 (2005).

II

[1][2] Executive actors often must interpret the enactments Congress has charged them with enforcing and implementing. The parties before us are in sharp disagreement both as to the degree of deference we must accord the Interpretive Rule's substantive conclusions and whether the Rule is authorized by the statutory text at all. Although balancing the necessary respect for an agency's knowledge, expertise, and constitutional office with the courts' role as interpreter of laws can be a delicate matter, familiar principles guide us. An administrative rule may receive substantial deference if it interprets the issuing agency's own ambiguous regulation. *Auer v. Robbins*, 519 U.S. 452, 461-463, 117 S.Ct. 905, 137 L.Ed.2d 79 (1997). An interpretation of an ambiguous statute may also receive substantial deference. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-845, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Deference in accordance**915 with *Chevron*, however, is warranted only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, *256 and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *United States v. Mead Corp.*, 533 U.S. 218, 226-227, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001). Otherwise, the interpretation is "entitled to respect" only to the extent it has the "power to persuade." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1944).

A

[3] The Government first argues that the Interpretive Rule is an elaboration of one of the Attorney General's own regulations, 21 CFR § 1306.04 (2005), which requires all prescriptions be issued "for a legitimate

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medical purpose by an individual practitioner acting in the usual course of his professional practice." As such, the Government says, the Interpretive Rule is entitled to considerable deference in accordance with *Auer*.

In our view *Auer* and the standard of deference it accords to an agency are inapplicable here. *Auer* involved a disputed interpretation of the Fair Labor Standards Act of 1938 as applied to a class of law enforcement officers. Under regulations promulgated by the Secretary of Labor, an exemption from overtime pay depended, in part, on whether the employees met the "salary basis" test. 519 U.S., at 454-455, 117 S.Ct. 905. In this Court the Secretary of Labor filed an *amicus* brief explaining why, in his view, the regulations gave exempt status to the officers. *Id.*, at 461, 117 S.Ct. 905. We gave weight to that interpretation, holding that because the applicable test was "a creature of the Secretary's own regulations, his interpretation of it is, under our jurisprudence, controlling unless plainly erroneous or inconsistent with the regulation." *Ibid.* (internal quotation marks omitted).

In *Auer,* the underlying regulations gave specificity to a statutory scheme the Secretary was charged with enforcing and reflected the considerable experience and expertise the Department of Labor had acquired over time with respect to the complexities of the Fair Labor Standards ***257** Act. Here, on the other hand, the underlying regulation does little more than restate the terms of the statute itself. The language the Interpretive Rule addresses comes from Congress, not the Attorney General, and the near equivalence of the statute and regulation belies the Government's argument for *Auer* deference.

[4] The Government does not suggest that its interpretation turns on any difference between the statutory and regulatory language. The CSA allows prescription of drugs only if they have a "currently accepted medical use," 21 U.S.C. § 812(b); requires a "medical purpose" for dispensing the least controlled substances of those on the schedules, § 829(c); and, in its reporting provision, defines a "valid prescription" as one "issued for a legitimate medical purpose," § 830(b)(3)(A)(ii). Similarly, physicians are considered to be acting as practitioners under the statute if they dispense controlled substances "in the course of professional practice." § 802(21). The regulation uses the terms "legitimate medical purpose" and "the course of professional practice," *ibid.,* but this just repeats two statutory phrases and attempts to summarize the others. It gives little or no instruction on a central issue in this case: Who decides whether a particular activity is in "the course of professional practice" or done for a "legitimate medical purpose"? Since the regulation gives no indication how to decide this issue, the Attorney General's effort to decide it now ****916** cannot be considered an interpretation of the regulation. Simply put, the existence of a parroting regulation does not change the fact that the question here is not the meaning of the regulation but the meaning of the statute. An agency does not acquire special authority to interpret its own words when, instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language.

Furthermore, as explained below, if there is statutory authority to issue the Interpretive Rule it comes from the 1984 amendments to the CSA that gave the Attorney General authority***258** to register and deregister physicians based on the public interest. The regulation was enacted before those amendments, so the Interpretive Rule cannot be justified as indicative of some intent the Attorney General had in 1971. That the current interpretation runs counter to the "intent at the time of the regulation's promulgation" is an additional reason why *Auer* deference is unwarranted. *Thomas Jefferson Univ. v. Shalala,* 512 U.S. 504, 512, 114 S.Ct. 2381, 129 L.Ed.2d 405 (1994) (internal quotation marks omitted). Deference under *Auer* being inappropriate, we turn to the question whether the Interpretive Rule, on its own terms, is a permissible interpretation of the CSA.

B

[5][6] Just as the Interpretive Rule receives no deference under *Auer,* neither does it receive deference under *Chevron.* If a statute is ambiguous, judicial review of administrative rulemaking often demands *Chevron* deference; and the rule is judged accordingly. All would agree, we should think, that the statutory phrase "legitimate medical purpose" is a generality, susceptible to more precise definition and open to varying constructions, and thus ambiguous in the relevant sense. *Chevron* deference, however, is not accorded merely because the statute is ambiguous and an administrative official is involved. To begin with, the rule must be promulgated pursuant to authority Congress has delegated to the official. *Mead, supra,* at

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226-227, 121 S.Ct. 2164.

The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.

The starting point for this inquiry is, of course, the language of the delegation provision itself. In many cases authority is clear because the statute gives an agency broad power to enforce all provisions of the statute. See, *e.g., National***259** Cable & Telecommunications Assn. v. Brand X Internet Services, 545 U.S. 967, 980, 125 S.Ct. 2688, 2699, 162 L.Ed.2d 820 (2005) (explaining that a Federal Communications Commission regulation received *Chevron* deference because "Congress has delegated to the Commission the authority to ... 'prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions' of the Act" (quoting 47 U.S.C. § 201(b))); *Household Credit Services, Inc. v. Pfennig*, 541 U.S. 232, 238, 124 S.Ct. 1741, 158 L.Ed.2d 450 (2004) (giving *Chevron* deference to a Federal Reserve Board regulation where "Congress has expressly delegated to the Board the authority to prescribe regulations ... as, in the judgment of the Board, 'are necessary or proper to effectuate the purposes of' " the statute (quoting 15 U.S.C. § 1604(a))). The CSA does not grant the Attorney General this broad authority to promulgate rules.

****917** The CSA gives the Attorney General limited powers, to be exercised in specific ways. His rulemaking authority under the CSA is described in two provisions: (1) "The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances and to listed chemicals," 21 U.S.C. § 821 (2000 ed., Supp.V); and (2) "The Attorney General may promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter," 21 U.S.C. § 871(b). As is evident from these sections, Congress did not delegate to the Attorney General authority to carry out or effect all provisions of the CSA. Rather, he can promulgate rules relating only to "registration" and "control," and "for the efficient execution of his functions" under the statute.

Turning first to the Attorney General's authority to make regulations for the "control" of drugs, this delegation cannot sustain the Interpretive Rule's attempt to define standards of medical practice. Control is a term of art in the CSA. ***260** "As used in this subchapter," § 802-the subchapter that includes § 821-

> "The term 'control' means to add a drug or other substance, or immediate precursor, to a schedule under part B of this subchapter, whether by transfer from another schedule or otherwise." § 802(5).

To exercise his scheduling power, the Attorney General must follow a detailed set of procedures, including requesting a scientific and medical evaluation from the Secretary. See 21 U.S.C. §§ 811, 812 (2000 ed. and Supp.V). The statute is also specific as to the manner in which the Attorney General must exercise this authority: "Rules of the Attorney General under this subsection [regarding scheduling] shall be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by [the Administrative Procedure Act, 5 U.S.C. § 553]." 21 U.S.C. § 811(a). The Interpretive Rule now under consideration does not concern the scheduling of substances and was not issued after the required procedures for rules regarding scheduling, so it cannot fall under the Attorney General's "control" authority.

Even if "control" in § 821 were understood to signify something other than its statutory definition, it would not support the Interpretive Rule. The statutory references to "control" outside the scheduling context make clear that the Attorney General can establish controls "against diversion," *e.g.*, § 823(a)(1), but do not give him authority to define diversion based on his view of legitimate medical practice. As explained below, the CSA's express limitations on the Attorney General's authority, and other indications from the statutory scheme, belie any notion that the Attorney General has been granted this implicit authority. Indeed, if "control" were given the expansive meaning required to sustain the Interpretive Rule, it would transform the carefully described ***261** limits on the Attorney General's authority over registration and scheduling into mere suggestions.

We turn, next, to the registration provisions of the

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CSA. Before 1984, the Attorney General was required to register any physician who was authorized by his State. The Attorney General could only deregister a physician who falsified his application, was convicted of a felony relating to controlled substances, or had his state license or registration revoked. See 84 Stat. 1255. The CSA was amended in 1984 to allow the Attorney General to deny registration to an applicant "if he determines****918** that the issuance of such registration would be inconsistent with the public interest." 21 U.S.C. § 823(f). Registration may also be revoked or suspended by the Attorney General on the same grounds. § 824(a)(4). In determining consistency with the public interest, the Attorney General must, as discussed above, consider five factors, including: the State's recommendation; compliance with state, federal, and local laws regarding controlled substances; and public health and safety. § 823(f).

The Interpretive Rule cannot be justified under this part of the statute. It does not undertake the five-factor analysis and concerns much more than registration. Nor does the Interpretive Rule on its face purport to be an application of the registration provision in § 823(f). It is, instead, an interpretation of the substantive federal law requirements (under 21 CFR § 1306.04 (2005)) for a valid prescription. It begins by announcing that assisting suicide is not a "legitimate medical purpose" under § 1306.04, and that dispensing controlled substances to assist a suicide violates the CSA. 66 Fed.Reg. 56608. Violation is a criminal offense, and often a felony, under 21 U.S.C. § 841 (2000 ed. and Supp. II). The Interpretive Rule thus purports to declare that using controlled substances for physician-assisted suicide is a crime, an authority that goes well beyond the Attorney General's statutory power to register or deregister.

***262** The Attorney General's deregistration power, of course, may carry implications for criminal enforcement because if a physician dispenses a controlled substance after he is deregistered, he violates § 841. The Interpretive Rule works in the opposite direction, however: It declares certain conduct criminal, placing in jeopardy the registration of any physician who engages in that conduct. To the extent the Interpretive Rule concerns registration, it simply states the obvious because one of the five factors the Attorney General must consider in deciding the "public interest" is "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances." 21 U.S.C. § 823(f)(4). The problem with the design of the Interpretive Rule is that it cannot, and does not, explain why the Attorney General has the authority to decide what constitutes an underlying violation of the CSA in the first place. The explanation the Government seems to advance is that the Attorney General's authority to decide whether a physician's actions are inconsistent with the "public interest" provides the basis for the Interpretive Rule.

By this logic, however, the Attorney General claims extraordinary authority. If the Attorney General's argument were correct, his power to deregister necessarily would include the greater power to criminalize even the actions of registered physicians, whenever they engage in conduct he deems illegitimate. This power to criminalize-unlike his power over registration, which must be exercised only after considering five express statutory factors-would be unrestrained. It would be anomalous for Congress to have so painstakingly described the Attorney General's limited authority to deregister a single physician or schedule a single drug, but to have given him, just by implication, authority to declare an entire class of activity outside "the course of professional practice," and therefore a criminal violation of the CSA. See *Federal Maritime Comm'n v. Seatrain Lines, Inc.*, 411 U.S. 726, 744, 93 S.Ct. 1773, 36 L.Ed.2d 620 (1973) ("In light of these specific ***263** grants of ... authority, we are unwilling to construe the ambiguous provisions ... to serve this purpose [of creating further authority]-a purpose for which it obviously was not intended").

****919** *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 119 S.Ct. 2139, 144 L.Ed.2d 450 (1999), is instructive. The statute at issue was the Americans with Disabilities Act of 1990 (ADA), which, like the CSA, divides interpretive authority among various executive actors. The Court relied on "the terms and structure of the ADA" to decide that neither the Equal Employment Opportunity Commission (EEOC), nor any other agency, had authority to define "disability" in the ADA. *Id.*, at 479, 119 S.Ct. 2139. Specifically, the delegating provision stated that the EEOC "shall issue regulations ... to carry out this subchapter," 42 U.S.C. § 12116, and the section of the statute defining "disability" was in a different subchapter. The Court did not accept the idea that because "the employment subchapter, *i.e.*, '*this* subchapter,' includes other provisions that use the defined terms, ... [t]he EEOC

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might elaborate, through regulations, on the meaning of 'disability' ... if elaboration is needed in order to 'carry out' the substantive provisions of 'this subchapter.' " 527 U.S., at 514, 119 S.Ct. 2139 (BREYER, J., dissenting). See also *Adams Fruit Co. v. Barrett,* 494 U.S. 638, 649-650, 110 S.Ct. 1384, 108 L.Ed.2d 585 (1990) (holding that a delegation of authority to promulgate motor vehicle safety *"standards"* did not include the authority to decide the pre-emptive scope of the federal statute because "[n]o such delegation regarding [the statute's] enforcement provisions is evident in the statute").

The same principle controls here. It is not enough that the terms "public interest," "public health and safety," and "Federal law" are used in the part of the statute over which the Attorney General has authority. The statutory terms "public interest" and "public health" do not call on the Attorney General, or any other executive official, to make an independent assessment of the meaning of federal law. The Attorney General did not base the Interpretive Rule on an ***264** application of the five-factor test generally, or the "public health and safety" factor specifically. Even if he had, it is doubtful the Attorney General could cite the "public interest" or "public health" to deregister a physician simply because he deemed a controversial practice permitted by state law to have an illegitimate medical purpose.

As for the federal-law factor, though it does require the Attorney General to decide "[c]ompliance" with the law, it does not suggest that he may decide what the law says. Were it otherwise, the Attorney General could authoritatively interpret "State" and "local laws," which are also included in 21 U.S.C. § 823(f), despite the obvious constitutional problems in his doing so. Just as he must evaluate compliance with federal law in deciding about registration, the Attorney General must as surely evaluate compliance with federal law in deciding whether to prosecute; but this does not entitle him to *Chevron* deference. See *Crandon v. United States,* 494 U.S. 152, 177, 110 S.Ct. 997, 108 L.Ed.2d 132 (1990) (SCALIA, J., concurring in judgment) ("The Justice Department, of course, has a very specific responsibility to determine for itself what this statute means, in order to decide when to prosecute; but we have never thought that the interpretation of those charged with prosecuting criminal statutes is entitled to deference").

The limits on the Attorney General's authority to define medical standards for the care and treatment of patients bear also on the proper interpretation of § 871(b). This section allows the Attorney General to best determine how to execute "his functions." It is quite a different matter, however, to say that the Attorney General can define the substantive standards of medical practice as part of his ****920** authority. To find a delegation of this extent in § 871 would put that part of the statute in considerable tension with the narrowly defined delegation concerning control and registration. It would go, moreover, against the plain language of the text to treat a delegation for the "execution" of his functions as a further delegation to define other functions well beyond ***265** the statute's specific grants of authority. When Congress chooses to delegate a power of this extent, it does so not by referring back to the administrator's functions but by giving authority over the provisions of the statute he is to interpret. See, *e.g., National Cable & Telecommunications Assn.,* 545 U.S. 967, 125 S.Ct. 2688; *Household Credit Services,* 541 U.S. 232, 124 S.Ct. 1741.

[7] The authority desired by the Government is inconsistent with the design of the statute in other fundamental respects. The Attorney General does not have the sole delegated authority under the CSA. He must instead share it with, and in some respects defer to, the Secretary, whose functions are likewise delineated and confined by the statute. The CSA allocates decisionmaking powers among statutory actors so that medical judgments, if they are to be decided at the federal level and for the limited objects of the statute, are placed in the hands of the Secretary. In the scheduling context, for example, the Secretary's recommendations on scientific and medical matters bind the Attorney General. The Attorney General cannot control a substance if the Secretary disagrees. 21 U.S.C. § 811(b). See H.R.Rep. No. 91-1444, pt. 1, p. 33 (1970), U.S.Code Cong. & Admin.News 1970, pp. 4566, 4600 (the section "is not intended to authorize the Attorney General to undertake or support medical and scientific research [for the purpose of scheduling], which is within the competence of the Department of Health, Education, and Welfare").

In a similar vein the 1970 Act's regulation of medical practice with respect to drug rehabilitation gives the Attorney General a limited role; for it is the Secretary who, after consultation with the Attorney General and

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national medical groups, "determine[s] the appropriate methods of professional practice in the medical treatment of ... narcotic addiction." 42 U.S.C. § 290bb-2a; see 21 U.S.C. § 823(g) (2000 ed. and Supp. II) (stating that the Attorney General shall register practitioners who dispense drugs for narcotics treatment when the Secretary has determined the applicant is qualified to treat addicts and the Attorney General has concluded***266** the applicant will comply with recordkeeping and security regulations); *Moore*, 423 U.S., at 144, 96 S.Ct. 335 (noting that in enacting the addiction-treatment provisions, Congress sought to change the fact "that 'criminal prosecutions' in the past had turned on the opinions of federal prosecutors"); H.R.Rep. No. 93-884, p. 6 (1974), U.S.Code Cong. & Admin.News 1974, pp. 3029, 3034 ("This section preserves the distinctions found in the [CSA] between the functions of the Attorney General and the Secretary.... All decisions of a medical nature are to be made by the Secretary.... Law enforcement decisions respecting the security of stocks of narcotic drugs and the maintenance of records on such drugs are to be made by the Attorney General").

Postenactment congressional commentary on the CSA's regulation of medical practice is also at odds with the Attorney General's claimed authority to determine appropriate medical standards. In 1978, in preparation for ratification of the Convention on Psychotropic Substances, Feb. 21, 1971, [1979-1980] 32 U.S.T. 543, T.I.A.S. No. 9725, Congress decided it ****921** would implement the United States' compliance through "the framework of the procedures and criteria for classification of substances provided in the" CSA. 21 U.S.C. § 801a(3). It did so to ensure that "nothing in the Convention will interfere with ethical medical practice in this country as determined by [the Secretary] on the basis of a consensus of the views of the American medical and scientific community." *Ibid.*

The structure of the CSA, then, conveys unwillingness to cede medical judgments to an executive official who lacks medical expertise. In interpreting statutes that divide authority, the Court has recognized: "Because historical familiarity and policymaking expertise account in the first instance for the presumption that Congress delegates interpretive lawmaking power to the agency rather than to the reviewing court, we presume here that Congress intended to invest interpretive power in the administrative actor in the best position to develop these attributes." *Martin*267 v. Occupational Safety and Health Review Comm'n*, 499 U.S. 144, 153, 111 S.Ct. 1171, 113 L.Ed.2d 117 (1991) (citations omitted). This presumption works against a conclusion that the Attorney General has authority to make quintessentially medical judgments.

The Government contends the Attorney General's decision here is a legal, not a medical, one. This generality, however, does not suffice. The Attorney General's Interpretive Rule, and the Office of Legal Counsel memo it incorporates, place extensive reliance on medical judgments and the views of the medical community in concluding that assisted suicide is not a "legitimate medical purpose." See 66 Fed.Reg. 56608 (noting the "medical" distinctions between assisting suicide and giving sufficient medication to alleviate pain); Memorandum from Office of Legal Counsel to Attorney General (June 27, 2001), App. to Pet. for Cert. 121a-122a, and n. 17 (discussing the "Federal medical policy" against physician-assisted suicide), *id.*, at 124a-130a (examining views of the medical community). This confirms that the authority claimed by the Attorney General is both beyond his expertise and incongruous with the statutory purposes and design.

The idea that Congress gave the Attorney General such broad and unusual authority through an implicit delegation in the CSA's registration provision is not sustainable. "Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions-it does not, one might say, hide elephants in mouseholes." *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001); see *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000) ("[W]e are confident that Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion").

The importance of the issue of physician-assisted suicide, which has been the subject of an "earnest and profound debate" across the country, *Glucksberg*, 521 U.S., at 735, 117 S.Ct. 2258, makes the oblique form of the claimed delegation all the more suspect.***268** Under the Government's theory, moreover, the medical judgments the Attorney General could make are not limited to physician-assisted suicide. Were this argument accepted, he could decide whether any par-

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ticular drug may be used for any particular purpose, or indeed whether a physician who administers any controversial treatment could be deregistered. This would occur, under the Government's view, despite the statute's express limitation of the Attorney General's authority to registration and control, ****922** with attendant restrictions on each of those functions, and despite the statutory purposes to combat drug abuse and prevent illicit drug trafficking.

We need not decide whether *Chevron* deference would be warranted for an interpretation issued by the Attorney General concerning matters closer to his role under the CSA, namely, preventing doctors from engaging in illicit drug trafficking. In light of the foregoing, however, the CSA does not give the Attorney General authority to issue the Interpretive Rule as a statement with the force of law.

[8][9] If, in the course of exercising his authority, the Attorney General uses his analysis in the Interpretive Rule only for guidance in deciding when to prosecute or deregister, then the question remains whether his substantive interpretation is correct. Since the Interpretive Rule was not promulgated pursuant to the Attorney General's authority, its interpretation of "legitimate medical purpose" does not receive *Chevron* deference. Instead, it receives deference only in accordance with *Skidmore*. "The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." 323 U.S., at 140, 65 S.Ct. 161; see also *Mead,* 533 U.S., at 235, 121 S.Ct. 2164 (noting that an opinion receiving *Skidmore* deference may "claim the merit of its writer's thoroughness, logic, and expertness, its fit with prior interpretations, and any other ***269** sources of weight"). The deference here is tempered by the Attorney General's lack of expertise in this area and the apparent absence of any consultation with anyone outside the Department of Justice who might aid in a reasoned judgment. In any event, under *Skidmore,* we follow an agency's rule only to the extent it is persuasive, see *Christensen v. Harris County,* 529 U.S. 576, 587, 120 S.Ct. 1655, 146 L.Ed.2d 621 (2000); and for the reasons given and for further reasons set out below, we do not find the Attorney General's opinion persuasive.

III

[10] As we have noted before, the CSA "repealed most of the earlier antidrug laws in favor of a comprehensive regime to combat the international and interstate traffic in illicit drugs." *Raich,* 545 U.S., at 12, 125 S.Ct., at 2203. In doing so, Congress sought to "conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances." *Ibid.* It comes as little surprise, then, that we have not considered the extent to which the CSA regulates medical practice beyond prohibiting a doctor from acting as a drug " 'pusher' " instead of a physician. *Moore,* 423 U.S., at 143, 96 S.Ct. 335. In *Moore,* we addressed a situation in which a doctor "sold drugs, not for legitimate purposes, but primarily for the profits to be derived therefrom." *Id.,* at 135, 96 S.Ct. 335 (quoting H.R.Rep. No. 91-1444, pt. 1, at 10, U.S.Code Cong. & Admin.News 1970, pp. 4566, 4576; internal quotation marks omitted). There the defendant, who had engaged in large-scale overprescribing of methadone, "concede[d] in his brief that he did not observe generally accepted medical practices." 423 U.S., at 126, 96 S.Ct. 335. And in *United States v. Oakland Cannabis Buyers' Cooperative,* 532 U.S. 483, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001), Congress' express determination that marijuana had no accepted medical use foreclosed any argument about statutory coverage of drugs available by a doctor's prescription.

[11][12] In deciding whether the CSA can be read as prohibiting physician-assisted suicide, we look to the statute's text and ****923** design. The statute and our case law amply support the ***270** conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, however, the statute manifests no intent to regulate the practice of medicine generally. The silence is understandable given the structure and limitations of federalism, which allow the States " 'great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.' " *Medtronic, Inc. v. Lohr,* 518 U.S. 470, 475, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996) (quoting *Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724, 756, 105 S.Ct. 2380, 85 L.Ed.2d 728 (1985)).

The structure and operation of the CSA presume and rely upon a functioning medical profession regulated

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under the States' police powers. The Attorney General can register a physician to dispense controlled substances "if the applicant is authorized to dispense ... controlled substances under the laws of the State in which he practices." 21 U.S.C. § 823(f). When considering whether to revoke a physician's registration, the Attorney General looks not just to violations of federal drug laws; but he "shall" also consider "[t]he recommendation of the appropriate State licensing board or professional disciplinary authority" and the registrant's compliance with state and local drug laws. *Ibid.* The very definition of a "practitioner" eligible to prescribe includes physicians "licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices" to dispense controlled substances. § 802(21). Further cautioning against the conclusion that the CSA effectively displaces the States' general regulation of medical practice is the Act's pre-emption provision, which indicates that, absent a positive conflict, none of the Act's provisions should be "construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates ... to the exclusion of any State law on the same subject matter***271** which would otherwise be within the authority of the State." § 903.

Oregon's regime is an example of the state regulation of medical practice that the CSA presupposes. Rather than simply decriminalizing assisted suicide, ODWDA limits its exercise to the attending physicians of terminally ill patients, physicians who must be licensed by Oregon's Board of Medical Examiners. Ore.Rev.Stat. §§ 127.815, 127.800(10) (2003). The statute gives attending physicians a central role, requiring them to provide prognoses and prescriptions, give information about palliative alternatives and counseling, and ensure patients are competent and acting voluntarily. § 127.815. Any eligible patient must also get a second opinion from another registered physician, § 127.820, and the statute's safeguards require physicians to keep and submit to inspection detailed records of their actions, §§ 127.855, 127.865.

[13] Even though regulation of health and safety is "primarily, and historically, a matter of local concern," *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 719, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985), there is no question that the Federal Government can set uniform national standards in these areas. See *Raich, supra,* at 9, 125 S.Ct., at 2201. In connection to the CSA, however, we find only one area in which Congress set general, uniform standards of medical practice. Title I of the Comprehensive Drug Abuse Prevention and Control Act of 1970, of which the CSA was Title II, provides:

> ****924** "[The Secretary], after consultation with the Attorney General and with national organizations representative of persons with knowledge and experience in the treatment of narcotic addicts, shall determine the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts, and shall report thereon from time to time to the Congress." § 4, 84 Stat. 1241, codified at 42 U.S.C. § 290bb-2a.

***272** This provision strengthens the understanding of the CSA as a statute combating recreational drug abuse, and also indicates that when Congress wants to regulate medical practice in the given scheme, it does so by explicit language in the statute.

In the face of the CSA's silence on the practice of medicine generally and its recognition of state regulation of the medical profession it is difficult to defend the Attorney General's declaration that the statute impliedly criminalizes physician-assisted suicide. This difficulty is compounded by the CSA's consistent delegation of medical judgments to the Secretary and its otherwise careful allocation of powers for enforcing the limited objects of the CSA. See Part II-B, *supra.* The Government's attempt to meet this challenge rests, for the most part, on the CSA's requirement that every Schedule II drug be dispensed pursuant to a "written prescription of a practitioner." 21 U.S.C. § 829(a). A prescription, the Government argues, necessarily implies that the substance is being made available to a patient for a legitimate medical purpose. The statute, in this view, requires an anterior judgment about the term "medical" or "medicine." The Government contends ordinary usage of these words ineluctably refers to a healing or curative art, which by these terms cannot embrace the intentional hastening of a patient's death. It also points to the teachings of Hippocrates, the positions of prominent medical organizations, the Federal Government, and the judgment of the 49 States that have not legalized physician-assisted suicide as further support for the proposition that the practice is not legitimate medicine. See Brief for Petitioners 22-24; Memorandum

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from Office of Legal Counsel to Attorney General, App. to Pet. for Cert. 124a-130a.

[14] On its own, this understanding of medicine's boundaries is at least reasonable. The primary problem with the Government's argument, however, is its assumption that the CSA ***273** impliedly authorizes an Executive officer to bar a use simply because it may be inconsistent with one reasonable understanding of medical practice. Viewed alone, the prescription requirement may support such an understanding, but statutes "should not be read as a series of unrelated and isolated provisions." *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995). The CSA's substantive provisions and their arrangement undermine this assertion of an expansive federal authority to regulate medicine.

The statutory criteria for deciding what substances are controlled, determinations which are central to the Act, consistently connect the undefined term "drug abuse" with addiction or abnormal effects on the nervous system. When the Attorney General schedules drugs, he must consider a substance's psychic or physiological dependence liability. 21 U.S.C. § 811(c)(7). To classify a substance in Schedules II through V, the Attorney General must find abuse of the drug leads to psychological or physical dependence. § 812(b). Indeed, the differentiation of Schedules II through V turns in large part on a substance's habit-forming potential: The more addictive a substance, the stricter the controls. ****925** *Ibid.* When Congress wanted to extend the CSA's regulation to substances not obviously habit forming or psychotropic, moreover, it relied not on executive ingenuity, but rather on specific legislation. See § 1902(a) of the Anabolic Steroids Control Act of 1990, 104 Stat. 4851 (placing anabolic steroids in Schedule III).

The statutory scheme with which the CSA is intertwined further confirms a more limited understanding of the prescription requirement. When the Secretary considers Food and Drug Administration approval of a substance with "stimulant, depressant, or hallucinogenic effect," he must forward the information to the Attorney General for possible scheduling. Shedding light on Congress' understanding of drug abuse, this requirement appears under the heading "Abuse ***274** potential." 21 U.S.C. § 811(f). Similarly, when Congress prepared to implement the Convention on Psychotropic Substances, it did so through the CSA. § 801a.

[15] The Interpretive Rule rests on a reading of the prescription requirement that is persuasive only to the extent one scrutinizes the provision without the illumination of the rest of the statute. See *Massachusetts v. Morash*, 490 U.S. 107, 114-115, 109 S.Ct. 1668, 104 L.Ed.2d 98 (1989). Viewed in its context, the prescription requirement is better understood as a provision that ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, the provision also bars doctors from peddling to patients who crave the drugs for those prohibited uses. See *Moore*, 423 U.S., at 135, 143, 96 S.Ct. 335. To read prescriptions for assisted suicide as constituting "drug abuse" under the CSA is discordant with the phrase's consistent use throughout the statute, not to mention its ordinary meaning.

The Government's interpretation of the prescription requirement also fails under the objection that the Attorney General is an unlikely recipient of such broad authority, given the Secretary's primacy in shaping medical policy under the CSA, and the statute's otherwise careful allocation of decisionmaking powers. Just as the conventions of expression indicate that Congress is unlikely to alter a statute's obvious scope and division of authority through muffled hints, the background principles of our federal system also belie the notion that Congress would use such an obscure grant of authority to regulate areas traditionally supervised by the States' police power. It is unnecessary even to consider the application of clear statement requirements, see, *e.g.*, *United States v. Bass*, 404 U.S. 336, 349, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971); cf. *BFP v. Resolution Trust Corporation*, 511 U.S. 531, 544-546, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994), or presumptions against pre-emption, see, *e.g.*, *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 387, 122 S.Ct. 2151, 153 L.Ed.2d 375 (2002), to reach this commonsense conclusion. For all these reasons, we conclude the CSA's prescription requirement does not authorize***275** the Attorney General to bar dispensing controlled substances for assisted suicide in the face of a state medical regime permitting such conduct.

IV

The Government, in the end, maintains that the pre-

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scription requirement delegates to a single executive officer the power to effect a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality. The text and structure of the CSA show that Congress did not have this far-reaching intent to alter the federal-state balance and the congressional role in maintaining it.

**926 The judgment of the Court of Appeals is

Affirmed.

Justice SCALIA, with whom Chief Justice ROBERTS and Justice THOMAS join, dissenting.
The Court concludes that the Attorney General lacked authority to declare assisted suicide illicit under the Controlled Substances Act (CSA), because the CSA is concerned only with "*illicit* drug dealing and trafficking," *ante,* at 923 (emphasis added). This question-begging conclusion is obscured by a flurry of arguments that distort the statute and disregard settled principles of our interpretive jurisprudence.

Contrary to the Court's analysis, this case involves not one but *three* independently sufficient grounds for reversing the Ninth Circuit's judgment. First, the Attorney General's interpretation of "legitimate medical purpose" in 21 CFR § 1306.04 (2005) (hereinafter Regulation) is clearly valid, given the substantial deference we must accord it under *Auer v. Robbins,* 519 U.S. 452, 461, 117 S.Ct. 905, 137 L.Ed.2d 79 (1997), and his two remaining conclusions follow naturally from this interpretation. See Part I, *infra.* Second, even if this interpretation of the Regulation is entitled to lesser deference or no deference*276 at all, it is by far the most natural interpretation of the Regulation-whose validity is not challenged here. This interpretation is thus correct even upon *de novo* review. See Part II, *infra.* Third, even if that interpretation of the Regulation were incorrect, the Attorney General's independent interpretation of the *statutory* phrase "public interest" in 21 U.S.C. §§ 824(a) and 823(f), and his implicit interpretation of the statutory phrase "public health and safety" in § 823(f)(5), are entitled to deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), and they are valid under *Chevron.* See Part III, *infra.* For these reasons, I respectfully dissent.

I

The Interpretive Rule issued by the Attorney General (hereinafter Directive) provides in relevant part as follows:

> "For the reasons set forth in the OLC Opinion, I hereby determine that assisting suicide is not a 'legitimate medical purpose' within the meaning of 21 CFR § 1306.04 (2001), and that prescribing, dispensing, or administering federally controlled substances to assist suicide violates the CSA. Such conduct by a physician registered to dispense controlled substances may 'render his registration ... inconsistent with the public interest' and therefore subject to possible suspension or revocation under 21 U.S.C. [§] 824(a)(4)." 66 Fed.Reg. 56608 (2001).

The Directive thus purports to do three distinct things: (1) to interpret the phrase "legitimate medical purpose" in the Regulation to exclude physician-assisted suicide; (2) to determine that prescribing, dispensing, and administering federally controlled substances to assist suicide violates the CSA; and (3) to determine that participating in physician-assisted suicide may render a practitioner's registration "inconsistent with the public interest" within the meaning of 21 U.S.C. §§ 823(f) and 824(a)(4) (which incorporates § 823(f) by reference).*277 The Court's analysis suffers from an unremitting failure to distinguish among these distinct propositions in the Directive.

As an initial matter, the validity of the Regulation's interpretation of "prescription" in § 829 to require a "legitimate medical purpose" is not at issue. Respondents conceded the validity of this interpretation**927 in the lower court, see *Oregon v. Ashcroft,* 368 F.3d 1118, 1133 (C.A.9 2004), and they have not challenged it here. By its assertion that the Regulation merely restates the statutory standard of 21 U.S.C. § 830(b)(3)(A)(ii), see *ante,* at 915, the Court likewise accepts that the "legitimate medical purpose" interpretation for prescriptions is proper. See also *ante,* at 916 (referring to "legitimate medical purpose" as a "statutory phrase"). It is beyond dispute, then, that a "prescription" under § 829 must issue for a "legitimate medical purpose."

A

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Because the Regulation was promulgated by the Attorney General, and because the Directive purported to interpret the language of the Regulation, see 66 Fed.Reg. 56608, this case calls for the straightforward application of our rule that an agency's interpretation of its own regulations is "controlling unless plainly erroneous or inconsistent with the regulation." *Auer, supra,* at 461, 117 S.Ct. 905 (internal quotation marks omitted). The Court reasons that *Auer* is inapplicable because the Regulation "does little more than restate the terms of the statute itself." *Ante,* at 915. "Simply put," the Court asserts, "the existence of a parroting regulation does not change the fact that the question here is not the meaning of the regulation but the meaning of the statute." *Ante,* at 916.

To begin with, it is doubtful that any such exception to the *Auer* rule exists. The Court cites no authority for it, because there is none. To the contrary, our unanimous decision in *Auer* makes clear that broadly drawn regulations are entitled to no less respect than narrow ones. "A rule requiring***278** the Secretary to construe his own regulations narrowly would make little sense, *since he is free to write the regulations as broadly as he wishes, subject only to the limits imposed by the statute.*" 519 U.S., at 463, 117 S.Ct. 905 (emphasis added).

Even if there were an antiparroting canon, however, it would have no application here. The Court's description of 21 CFR § 1306.04 (2005) as a regulation that merely "paraphrase[s] the statutory language," *ante,* at 915, is demonstrably false. In relevant part, the Regulation interprets the word "prescription" as it appears in 21 U.S.C. § 829, which governs the dispensation of controlled substances other than those on Schedule I (which may not be dispensed at all). Entitled "[p]rescriptions," § 829 requires, with certain exceptions not relevant here, "the written prescription of a practitioner" (usually a medical doctor) for the dispensation of Schedule II substances (§ 829(a)), "a written or oral prescription" for substances on Schedules III and IV (§ 829(b)), and no prescription but merely a "medical purpose" for the dispensation of Schedule V substances (§ 829(c)).

As used in this section, "prescription" is susceptible of at least three reasonable interpretations. First, it might mean any oral or written direction of a practitioner for the dispensation of drugs. See *United States v. Moore,* 423 U.S. 122, 137, n. 13, 96 S.Ct. 335, 46 L.Ed.2d 333 (1975) ("On its face § 829 addresses only the form that a prescription must take.... [Section] 829 by its terms does not limit the authority of a practitioner"). Second, in light of the requirement of a "medical purpose" for the dispensation of Schedule V substances, see § 829(c), it might mean a practitioner's oral or written direction for the dispensation of drugs that the practitioner believes to be for a legitimate medical purpose. See Webster's New International Dictionary 1954 (2d ed.1950) (hereinafter Webster's Second) (defining "prescription" as ****928** "[a] written direction for the preparation and use of a *medicine* "); *id.,* at 1527 (defining "medicine" as "[a]ny substance or preparation used in *treating disease* ") (emphasis added). Finally, "prescription" might ***279** refer to a practitioner's direction for the dispensation of drugs that serves an *objectively* legitimate medical purpose, regardless of the practitioner's *subjective* judgment about the legitimacy of the anticipated use. See *ibid.*

The Regulation at issue constricts or clarifies the statute by adopting the last and narrowest of these three possible interpretations of the undefined statutory term: "A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose ...." 21 CFR § 1306.04(a) (2005). We have previously *acknowledged* that the Regulation gives added content to the text of the statute: "The medical purpose requirement explicit in subsection (c) [of § 829] could be implicit in subsections (a) and (b). Regulation § [1]306.04 makes it explicit." *Moore, supra,* at 137, n. 13, 96 S.Ct. 335.[FN1]

> FN1. To be sure, this acknowledgment did not go far enough, because it overlooked the significance of the word "legitimate," which is most naturally understood to create an objective, *federal* standard for appropriate medical uses. See *Mississippi Band of Choctaw Indians v. Holyfield,* 490 U.S. 30, 43, 109 S.Ct. 1597, 104 L.Ed.2d 29 (1989) ("We start ... with the general assumption that in the absence of a plain indication to the contrary, ... Congress when it enacts a statute is not making the application of the federal act dependent on state law" (internal quotation marks omitted)).

The Court points out that the Regulation adopts some of the phrasing employed in unrelated sections of the statute. See *ante,* at 915. This is irrelevant. A regula-

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tion that significantly clarifies the meaning of an otherwise ambiguous statutory provision is not a "parroting" regulation, *regardless* of the sources that the agency draws upon for the clarification. Moreover, most of the statutory phrases that the Court cites as appearing in the Regulation, see *ibid.* (citing 21 U.S.C. §§ 812(b) (" 'currently accepted medical use' "), 829(c) (" 'medical purpose' "), 802(21) (" 'in the course of professional practice' ")), are inapposite because they do *not* "parrot" the *only* phrase in the Regulation that the Directive purported to construe. See 66 Fed.Reg. 56608 ("I hereby ***280** determine that assisting suicide is not a 'legitimate medical purpose' within the meaning of 21 CFR § 1306.04 ..."). None of them includes the key word "legitimate," which gives the most direct support to the Directive's theory that § 829(c) presupposes a uniform federal standard of medical practice.[FN2]

> FN2. The only place outside 21 U.S.C. § 801 in which the statute uses the phrase "legitimate medical purpose" is in defining the phrase "valid prescription" for purposes of the reporting requirements that apply to mail orders of regulated substances. See § 830(b)(3)(A)(ii). The Regulation did not "parrot" this statutory section, because the Regulation was adopted in 1971 and the statutory language was added in 2000. See Brief for Petitioners 17 (citing the Children's Health Act of 2000, § 3652, 114 Stat. 1239, 21 U.S.C. § 830(b)(3)). But even if the statutory language had predated the Regulation, there would be no "parroting" of that phrase. In using the word "prescription" *without* definition in the much more critical § 829, Congress left the task of resolving any ambiguity in that word, used in that context, to the relevant executive officer. That the officer did so by deeming relevant a technically inapplicable statutory definition contained elsewhere in the statute does not make him a parrot. He has given to the statutory text a meaning it did not explicitly-and perhaps even not necessarily-contain.

Since the Regulation does not run afowl (so to speak) of the Court's newly invented prohibition of "parroting"; and since the Directive represents the agency's own interpretation****929** of that concededly valid regulation; the only question remaining is whether that interpretation is "plainly erroneous or inconsistent with the regulation"; otherwise, it is "controlling." *Auer*, 519 U.S., at 461, 117 S.Ct. 905 (internal quotation marks omitted). This is not a difficult question. The Directive is assuredly valid insofar as it interprets "prescription" to require a medical purpose that is "legitimate" as a matter of *federal* law-since that is an interpretation of "prescription" that we ourselves have adopted. *Webb v. United States*, 249 U.S. 96, 39 S.Ct. 217, 63 L.Ed. 497 (1919), was a prosecution under the Harrison Act of a doctor who wrote prescriptions of morphine "for the purpose of providing the user with morphine sufficient to keep him comfortable by maintaining his customary use," ***281***id.*, at 99, 39 S.Ct. 217 (internal quotation marks omitted). The dispositive issue in the case was whether such authorizations were "prescriptions" within the meaning of § 2(b) of the Harrison Act, predecessor to the CSA. *Ibid.* We held that "to call such an order for the use of morphine a physician's prescription would be so plain a perversion of meaning that no discussion of the subject is required." *Id.*, at 99-100, 39 S.Ct. 217. Like the Directive, this interprets "prescription" to require medical purpose that is legitimate as a matter of federal law. And the Directive is also assuredly valid insofar as it interprets "legitimate medical purpose" as a matter of federal law to exclude physician-assisted suicide, because that is not only a permissible but indeed the most natural interpretation of that phrase. See Part II, *infra*.

B

Even if the Regulation merely parroted the statute, and the Directive therefore had to be treated as though it construed the statute directly, see *ante*, at 916, the Directive would still be entitled to deference under *Chevron*. The Court does not take issue with the Solicitor General's contention that no alleged procedural defect, such as the absence of notice-and-comment rulemaking before promulgation of the Directive, renders *Chevron* inapplicable here. See Reply Brief for Petitioners 4 (citing *Barnhart v. Walton*, 535 U.S. 212, 219-222, 122 S.Ct. 1265, 152 L.Ed.2d 330 (2002); 5 U.S.C. § 553(b)(3)(A) (exempting interpretive rules from notice-and-comment rulemaking)). Instead, the Court holds that the Attorney General lacks interpretive authority to issue the Directive at all, on the ground that the explicit delegation provision, 21 U.S.C. § 821 (2000 ed., Supp.V), limits his rulemaking authority to "registration and control," which

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(according to the Court) are not implicated by the Directive's interpretation of the prescription requirement. See *ante,* at 917-918.

Setting aside the implicit delegation inherent in Congress's use of the undefined term "prescription" in § 829, the Court's ***282** reading of "control" in § 821 is manifestly erroneous. The Court urges, *ante,* at 917, that "control" is a term defined in part A of the subchapter (entitled "Introductory Provisions") to mean "to add a drug or other substance ... to a schedule *under part B of this subchapter,*" 21 U.S.C. § 802(5) (emphasis added). But § 821 is not included in "part B of this subchapter," which is entitled "Authority to Control; Standards and Schedules," and consists of the sections related to *scheduling,* 21 U.S.C. §§ 811-814 (2000 ed. and Supp.V), where the statutory definition is uniquely appropriate. Rather, § 821 is found in *part C* of the subchapter, §§ 821-830, entitled "Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances," which includes all and only the provisions relating to the "manufacture, distribution, and dispensing of controlled substances," § 821. The artificial****930** definition of "control" in § 802(5) has no conceivable application to the use of that word in § 821. Under that definition, "control" must take a *substance* as its direct object, see 21 U.S.C. § 802(5) ("to add a drug or other substance ... to a schedule")-and that is how "control" is consistently used throughout *part B*. See, *e.g.,* §§ 811(b) ("proceedings ... to *control* a drug or other substance"), 811(c) ("each drug or other substance proposed to be *controlled* or removed from the schedules"), 811(d)(1) ("If *control* is required ... the Attorney General shall issue an order *controlling* such drug ..."), 812(b) ("Except where *control* is required ... a drug or other substance may not be placed in any schedule ..."). In § 821, by contrast, the term "control" has as its object, not "a drug or other substance," but rather the *processes* of "manufacture, distribution, and dispensing of controlled substances." It could not be clearer that the artificial definition of "control" in § 802(5) is inapplicable. It makes no sense to speak of "adding the manufacturing, distribution, and dispensing of substances to a schedule." We do not force term-of-art definitions into contexts where they plainly do not fit and produce nonsense. What ***283** is obviously intended in § 821 is the ordinary meaning of "control"-namely, "[t]o exercise restraining or directing influence over; to dominate; regulate; hence, to hold from action; to curb," Webster's Second 580. "Control" is regularly used in this ordinary sense elsewhere in *part C* of the subchapter. See, *e.g.,* 21 U.S.C. §§ 823(a)(1), (b)(1), (d)(1), (e)(1), (h)(1) ("maintenance of effective *controls* against diversion"); §§ 823(a)(5), (d)(5) ("establishment of effective *control* against diversion"); § 823(g)(2)(H)(i) ("to exercise supervision or *control* over the practice of medicine"); § 830(b)(1)(C) ("a listed chemical under the *control* of the regulated person"); § 830(c)(2)(D) ("chemical *control* laws") (emphasis added).

When the word is given its ordinary meaning, the Attorney General's interpretation of the prescription requirement of § 829 plainly "relat[es] to the ... *control* of the ... dispensing of controlled substances," 21 U.S.C. § 821 (2000 ed., Supp.V) (emphasis added), since a prescription is the chief requirement for "dispensing" such drugs, see § 829. The same meaning is compelled by the fact that § 821 is the first section not of part B of the subchapter, which deals entirely with "control" in the artificial sense, but of part C, every section of which relates to the "registration and control of the manufacture, distribution, and dispensing of controlled substances," § 821. See §§ 822 (persons required to register), 823 (registration requirements), 824 (denial, revocation, or suspension of registration), 825 (labeling and packaging), 826 (production quotas for controlled substances), 827 (recordkeeping and reporting requirements of registrants), 828 (order forms), 829 (prescription requirements), 830 (regulation of listed chemicals and certain machines). It would be peculiar for the first section of this part to authorize rulemaking for matters covered by the *previous* part. The only sensible interpretation of § 821 is that it gives the Attorney General interpretive authority over the provisions of part C, all of which "relat[e] to the registration and control of the ***284** manufacture, distribution, and dispensing of controlled substances." These provisions include *both* the prescription requirement of § 829, and the criteria for registration and deregistration of §§ 823 and 824 (as relevant below, see Part III, *infra*).[FN3]

> FN3. The Court concludes that "[e]ven if 'control' in § 821 were understood to signify something other than its statutory definition, it would not support the Interpretive Rule." *Ante,* at 917. That conclusion rests upon a misidentification of the text that the Attorney General, pursuant to his "control" authority, is interpreting. No one argues that the word "control" in § 821 gives the Attorney General

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"authority to define diversion based on his view of legitimate medical practice," *ibid.* Rather, that word authorizes the Attorney General to interpret (among other things) the "prescription" requirement of § 829. The question then becomes whether the phrase "*legitimate medical purpose* " (which all agree is included in "prescription") is at least *open* to the interpretation announced in the Directive. See *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). And of course it is-as the Court effectively concedes two pages earlier: "All would agree, we should think, that the statutory phrase 'legitimate medical purpose' is a generality, susceptible to more precise definition and open to varying constructions, and thus ambiguous in the relevant sense." *Ante,* at 916 (citing *Chevron*).

****931** C

In sum, the Directive's construction of "legitimate medical purpose" is a perfectly valid agency interpretation of its own regulation; and if not that, a perfectly valid agency interpretation of the statute. No one contends that the construction is "plainly erroneous or inconsistent with the regulation," *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414, 65 S.Ct. 1215, 89 L.Ed. 1700 (1945), or beyond the scope of ambiguity in the statute, see *Chevron,* 467 U.S., at 843, 104 S.Ct. 2778. In fact, as explained below, the Directive provides *the most natural* interpretation of the Regulation and of the statute. The Directive thus definitively establishes that a doctor's order authorizing the dispensation of a Schedule II substance for the purpose of assisting a suicide is not a "prescription" within the meaning of § 829.

***285** Once this conclusion is established, the other two conclusions in the Directive follow inevitably. Under our reasoning in *Moore,* writing prescriptions that are illegitimate under § 829 is certainly not "in the [usual] course of professional practice" under § 802(21) and thus not "authorized by this subchapter" under § 841(a). See 423 U.S., at 138, 140-141, 96 S.Ct. 335. A doctor who does this may thus be prosecuted under § 841(a), and so it follows that such conduct "violates the Controlled Substances Act," 66 Fed.Reg. 56608. And since such conduct is thus not in "[c]ompliance with applicable ... Federal ... laws relating to controlled substances," 21 U.S.C. § 823(f)(4), and may also be fairly judged to "threaten the public health and safety," § 823(f)(5), it follows that "[s]uch conduct by a physician registered to dispense controlled substances *may* 'render his registration ... inconsistent with the public interest' and therefore subject to *possible* suspension or revocation under 21 U.S.C. [§] 824(a)(4)," 66 Fed.Reg. 56608 (emphasis added).

II

Even if the Directive were entitled to no deference whatever, the most reasonable interpretation of the Regulation and of the statute would produce the same result. Virtually every relevant source of authoritative meaning confirms that the phrase "legitimate medical purpose" [FN4] does not include intentionally assisting suicide. "Medicine" refers to "[t]he science and art dealing with the prevention, cure, or alleviation of disease." Webster's Second 1527. The use of the word "legitimate" connotes an *objective* standard of "medicine," and our presumption that the CSA creates a uniform federal law regulating the dispensation****932** of controlled substances, see ***286***Mississippi Band of Choctaw Indians v. Holyfield,* 490 U.S. 30, 43, 109 S.Ct. 1597, 104 L.Ed.2d 29 (1989), means that this objective standard must be a federal one. As recounted in detail in the memorandum for the Attorney General that is attached as an appendix to the Directive (OLC Memo), virtually every medical authority from Hippocrates to the current American Medical Association (AMA) confirms that assisting suicide has seldom or never been viewed as a form of "prevention, cure, or alleviation of disease," and (even more so) that assisting suicide is not a "legitimate" branch of that "science and art." See OLC Memo, App. to Pet. for Cert. 113a-130a. Indeed, the AMA has determined that " '[p]hysician-assisted suicide is fundamentally incompatible with the physician's role as healer.' " *Washington v. Glucksberg,* 521 U.S. 702, 731, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). "[T]he overwhelming weight of authority in judicial decisions, the past and present policies of nearly all of the States and of the Federal Government, and the clear, firm and unequivocal views of the leading associations within the American medical and nursing professions, establish that assisting in suicide ... is not a legitimate medical purpose." OLC Memo, *supra,* at 129a. See also *Glucksberg, supra,* at 710, n. 8, 117 S.Ct. 2258

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(prohibitions or condemnations of assisted suicide in 50 jurisdictions, including 47 States, the District of Columbia, and 2 Territories).

> FN4. This phrase appears only in the Regulation and not in the relevant section of the statute. But as pointed out earlier, the Court does not contest that this is the most reasonable interpretation of the section-regarding it, indeed, as a mere "parroting" of the statute.

In the face of this "overwhelming weight of authority," the Court's admission that "[o]n its own, this understanding of medicine's boundaries is *at least reasonable,*" *ante,* at 924 (emphasis added), tests the limits of understatement. The only explanation for such a distortion is that the Court confuses the *normative* inquiry of what the boundaries of medicine *should be*-which it is laudably hesitant to undertake-with the *objective* inquiry of what the accepted definition of "medicine" *is*. The same confusion is reflected in the Court's remarkable statement that "[t]he primary problem with the Government's argument ... is its assumption that the CSA impliedly authorizes an executive officer to bar a use simply ***287** because it may be inconsistent with *one reasonable understanding* of medical practice." *Ibid.* (emphasis added). The fact that many in Oregon believe that the boundaries of "legitimate medicine" *should be* extended to include assisted suicide does not change the fact that the overwhelming weight of authority (including the 47 States that condemn physician-assisted suicide) confirms that they have not yet been so extended. Not even those of our Eighth Amendment cases most generous in discerning an "evolution" of national standards would have found, on this record, that the concept of "legitimate medicine" has evolved so far. See *Roper v. Simmons,* 543 U.S. 551, 564-567, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

The Court contends that the phrase "legitimate medical purpose" *cannot* be read to establish a broad, uniform federal standard for the medically proper use of controlled substances. *Ante,* at 922. But it also rejects the most plausible alternative proposition, urged by the State, that any use authorized under state law constitutes a "legitimate medical purpose." (The Court is perhaps leery of embracing this position because the State candidly admitted at oral argument that, on its view, a State could exempt from the CSA's coverage the use of morphine to achieve euphoria.) Instead, the Court reverse-engineers an approach somewhere between a uniform national standard and a state-by-state approach, holding (with no basis in the CSA's text) that "legitimate medical purpose" refers to *all* uses of drugs unrelated****933** to "addiction and recreational abuse." *Ante,* at 925. Thus, though the Court pays lipservice to state autonomy, see *ante,* 922-923, its standard for "legitimate medical purpose" is in fact a hazily defined *federal* standard based on its purposive reading of the CSA, and extracted from obliquely relevant sections of the Act. In particular, relying on its observation that the criteria for scheduling controlled substances are primarily concerned with "addiction or abnormal effects on the nervous system," *ante,* at 924 (citing ***288**21 U.S.C. §§ 811(c)(7), 812(b), 811(f), 801a), the Court concludes that the CSA's prescription requirement must be interpreted in light of this narrow view of the statute's purpose.

Even assuming, however, that the *principal* concern of the CSA is the curtailment of "addiction and recreational abuse," there is no reason to think that this is its *exclusive* concern. We have repeatedly observed that Congress often passes statutes that sweep more broadly than the main problem they were designed to address. "[S]tatutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale v. Sundowner Offshore Services, Inc.,* 523 U.S. 75, 79, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998). See also *H.J. Inc. v. Northwestern Bell Telephone Co.,* 492 U.S. 229, 248, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989).

The scheduling provisions of the CSA on which the Court relies confirm that the CSA's "design," *ante,* at 923, is not as narrow as the Court asserts. In making scheduling determinations, the Attorney General must not only consider a drug's "psychic or physiological dependence liability" as the Court points out, *ante,* at 924 (citing 21 U.S.C. § 811(c)(7)), but must also consider such broad factors as "[t]he state of current scientific knowledge regarding the drug or other substance," § 811(c)(3), and (most notably) "[w]hat, if any, risk there is to the public health," § 811(c)(6). If the latter factor were limited to addiction-related health risks, as the Court supposes, it would be redundant of § 811(c)(7). Moreover, in making regis-

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tration determinations regarding manufacturers and distributors, the Attorney General "shall" consider "such *other* factors as may be relevant to and consistent with the public health and safety," §§ 823(a)(6), (b)(5), (d)(6), (e)(5) (emphasis added)-over and above the risk of "diversion" of controlled substances, §§ 823(a)(1), (a)(5), (b)(1), (d)(1), (d)(5), (e)(1). And, most relevant of all, in registering and deregistering *physicians,* the Attorney General "may deny an applicationfor ***289** such registration if he determines that the issuance of such registration would be inconsistent with the public interest," § 823(f); see also § 824(a)(4), and in making that determination "shall" consider "[s]uch other conduct which may threaten the public health and safety," § 823(f)(5). *All* of these provisions, not just those selectively cited by the Court, shed light upon the CSA's repeated references to the undefined term "abuse." See §§ 811(a)(1)(A), (c)(1), (c)(4), (c)(5); §§ 812(b)(1)(A), (b)(2)(A), (b)(3)(A), (b)(4)(A), (b)(5)(A).

By disregarding all these public-interest, public-health, and public-safety objectives, and limiting the CSA to "addiction and recreational abuse," the Court rules out the prohibition of anabolic-steroid use for bodybuilding purposes. It seeks to avoid this consequence by invoking the Anabolic Steroids Control Act of 1990, 104 Stat. 4851. *Ante,* at 925. But the only effect of that legislation is to make anabolic steroids controlled drugs under Schedule III of the CSA. If the only *basis* for control is (as the Court says) "addiction and recreational ****934** abuse," dispensation of these drugs for bodybuilding could not be proscribed.

Although, as I have described, the Court's opinion no more defers to state law than does the Directive, the Court relies on two provisions for the conclusion that "[t]he structure and operation of the CSA presume and rely upon a functioning medical profession regulated under the States' police powers," *ante,* at 923-namely, the registration provisions of § 823(f) and the non-pre-emption provision of § 903. Reliance on the former is particularly unfortunate, because the Court's own analysis recounts how Congress amended § 823(f) in 1984 in order to *liberate* the Attorney General's power over registration from the control of state regulators. See *ante,* at 917-918; 21 U.S.C. § 823(f); see also Brief for Petitioners 34-35. And the non-pre-emption clause is embarrassingly inapplicable, since it merely disclaims field pre-emption, and affirmatively *prescribes* federal pre-emption ***290** whenever state law creates a conflict.[FN5] In any event, the Directive does not purport to pre-empt state law in any way, not even by conflict pre-emption-unless the Court is under the misimpression that some States *require* assisted suicide. The Directive merely interprets the CSA to prohibit, like countless other federal criminal provisions, conduct that happens not to be forbidden under state law (or at least the law of the State of Oregon).

> FN5. Title 21 U.S.C. § 903 reads, in relevant part, as follows: "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter ... unless there is a positive conflict ...."

With regard to the CSA's registration provisions, 21 U.S.C. §§ 823(f), 824(a), the Court argues that the statute cannot fairly be read to " 'hide elephants in mouseholes' " by delegating to the Attorney General the power to determine the legitimacy of medical practices in " 'vague terms or ancillary provisions.' " *Ante,* at 921 (quoting *Whitman v. American Trucking Assns., Inc.,* 531 U.S. 457, 468, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001)). This case bears not the remotest resemblance to *Whitman,* which held that "Congress ... does not alter *the fundamental details* of a regulatory scheme in vague terms or ancillary provisions." *Ibid.* (emphasis added). The Attorney General's power to issue regulations against questionable uses of controlled substances in no way alters "the fundamental details" of the CSA. I am aware of only four areas in which the Department of Justice has exercised that power to regulate uses of controlled substances *unrelated* to "addiction and recreational abuse" as the Court apparently understands that phrase: assisted suicide, aggressive pain management therapy, anabolic-steroid use, and cosmetic weight-loss therapy. See, *e.g., In re Harline,* 65 Fed.Reg. 5665, 5667 (2000) (weight loss); *In re Tecca,* 62 Fed.Reg. 12842, 12846 (1997) (anabolic steroids); *In re Roth,* 60 Fed.Reg. 62262, 62263, 62267 (1995) (pain management). There is no indication that ***291** enforcement in these areas interferes with the prosecution of "drug abuse" as the Court understands it. Unlike in *Whitman,* the Attorney General's *additional* power to address other forms of drug "abuse" does *absolutely*

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nothing to undermine the central features of this regulatory scheme. Of course it was critical to our analysis in *Whitman* that the language of the provision did not bear the meaning that respondents sought to give it. See 531 U.S., at 465, 121 S.Ct. 903. Here, for the reasons stated above, the provision is most naturally interpreted to incorporate a **935 uniform federal standard for legitimacy of medical practice.[FN6]

> FN6. The other case cited by the Court, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000), is even more obviously inapt. There we relied on the first step of the *Chevron* analysis to determine that Congress had spoken to the precise issue in question, impliedly repealing the grant of jurisdiction on which the Food and Drug Administration relied. 529 U.S., at 160-161, 120 S.Ct. 1291. Here, Congress has not expressly or impliedly authorized the practice of assisted suicide, or indeed "spoken directly" to the subject in any way beyond the text of the CSA.

Finally, respondents argue that the Attorney General must defer to state-law judgments about what constitutes legitimate medicine, on the ground that Congress must speak clearly to impose such a uniform federal standard upon the States. But no line of our clear-statement cases is applicable here. The canon of avoidance does not apply, since the Directive does not push the outer limits of Congress's commerce power, compare *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers*, 531 U.S. 159, 172, 121 S.Ct. 675, 148 L.Ed.2d 576 (2001) (regulation of isolated ponds), with *United States v. Sullivan*, 332 U.S. 689, 698, 68 S.Ct. 331, 92 L.Ed. 297 (1948) (regulation of labeling of drugs shipped in interstate commerce), or impinge on a core aspect of state sovereignty, cf. *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242, 105 S.Ct. 3142, 87 L.Ed.2d 171 (1985) (sovereign immunity); *Gregory v. Ashcroft*, 501 U.S. 452, 460, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991) (qualifications of state government officials). The clear-statement rule based on the presumption against pre-emption does not *292 apply because the Directive does not pre-empt any state law, cf. *id.*, at 456-457, 111 S.Ct. 2395; *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 359, 122 S.Ct. 2151, 153 L.Ed.2d 375 (2002). And finally, no clear statement is required on the ground that the Directive intrudes upon an area traditionally reserved exclusively to the States, cf. *BFP v. Resolution Trust Corporation*, 511 U.S. 531, 544, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994) (state regulation of titles to real property), because the Federal Government has pervasively regulated the dispensation of drugs for over 100 years. See generally Brief for Pro-Life Legal Defense Fund et al. as *Amici Curiae* 3-15. It would be a novel and massive expansion of the clear-statement rule to apply it in a commerce case *not involving pre-emption or constitutional avoidance,* merely because Congress has chosen to prohibit conduct that a State has made a contrary policy judgment to permit. See *Sullivan, supra,* at 693, 68 S.Ct. 331.

III

Even if the Regulation did not exist and "prescription" in § 829 could not be interpreted to require a "legitimate medical purpose," the Directive's conclusion that "prescribing, dispensing, or administering federally controlled substances ... by a physician ... may 'render his registration ... inconsistent with the public interest' and therefore subject to possible suspension or revocation under 21 U.S.C. [§]824(a)(4)," 66 Fed.Reg. 56608, would nevertheless be unassailable in this Court.

Sections 823(f) and 824(a) explicitly grant the Attorney General the authority to register and deregister physicians, and his discretion in exercising that authority is spelled out in very broad terms. He may refuse to register or deregister if he determines that registration is "inconsistent with the public interest," 21 U.S.C. § 823(f), after considering five factors, the fifth of which is "[s]uch other conduct which may threaten the public health and **936 safety," § 823(f)(5). See also *In re Arora*, 60 Fed.Reg. 4447, 4448 (1995) ("It is well established that these factors are to be considered in the disjunctive,*293 i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate"). As the Court points out, these broad standards were enacted in the 1984 amendments for the specific purpose of *freeing* the Attorney General's discretion over registration from the decisions of state authorities. See *ante,* at 917-918.

The fact that assisted-suicide prescriptions are issued in violation of § 829 is of course sufficient to support

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the Directive's conclusion that issuing them may be cause for deregistration: such prescriptions would violate the fourth factor of § 823(f), namely, "[c]ompliance with applicable ... Federal ... laws relating to controlled substances," 21 U.S.C. § 823(f)(4). But the Attorney General did not rely solely on subsection (f)(4) in reaching his conclusion that registration would be "inconsistent with the public interest"; nothing in the text of the Directive indicates that. Subsection (f)(5) ("[s]uch other conduct which may threaten the public health and safety") provides an independent, alternative basis for the Directive's conclusion regarding deregistration-provided that the Attorney General has authority to interpret "public interest" and "public health and safety" in § 823(f) to exclude assisted suicide.

Three considerations make it perfectly clear that the statute confers authority to interpret these phrases upon the Attorney General. First, the Attorney General is solely and explicitly charged with administering the registration and deregistration provisions. See §§ 823(f), 824(a). By making the criteria for such registration and deregistration such obviously ambiguous factors as "public interest" and "public health and safety," Congress implicitly (but clearly) gave the Attorney General authority to interpret those criteria-*whether or not* there is any explicit delegation provision in the statute. "Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own ***294** construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron,* 467 U.S., at 844, 104 S.Ct. 2778. The Court's exclusive focus on the *explicit* delegation provisions is, at best, a fossil of our pre-*Chevron* era; at least since *Chevron,* we have not conditioned our deferral to agency interpretations upon the existence of explicit delegation provisions. *United States v. Mead Corp.,* 533 U.S. 218, 229, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001), left this principle of implicit delegation intact.

Second, even if explicit delegation were required, Congress provided it in § 821, which authorizes the Attorney General to "promulgate rules and regulations ... relating to the *registration and control* of the manufacture, distribution, and dispensing of controlled substances ...." (Emphasis added.) Because "dispensing" refers to the delivery of a controlled substance "pursuant to the lawful order of, a practitioner," 21 U.S.C. § 802(10), the deregistration of such practitioners for writing impermissible orders "relat [es] to the registration ... of the ... dispensing" of controlled substances, 21 U.S.C. § 821 (2000 ed., Supp.V).

Third, § 821 also gives the Attorney General authority to promulgate rules and regulations "relating to the ... control of the ... dispensing of controlled substances." As discussed earlier, it is plain that the *ordinary* meaning of "control" must apply to § 821, so that the plain import of the provision is to grant the ****937** Attorney General rulemaking authority over all the provisions of part C of the CSA, §§ 821-830 (main ed. and Supp.2005). Registering and deregistering the practitioners who issue the prescriptions necessary for lawful dispensation of controlled substances plainly "relat[es] to the ... control of the ... dispensing of controlled substances." § 821 (Supp.2005).

The Attorney General is thus authorized to promulgate regulations interpreting §§ 823(f) and 824(a), both by implicit delegation in § 823(f) and by two grounds of explicit delegation in § 821. The Court nevertheless holds that this triply ***295** unambiguous delegation cannot be given full effect because "the design of the statute," *ante,* at 920, evinces the intent to grant the Secretary of Health and Human Services exclusive authority over scientific and medical determinations. This proposition is not remotely plausible. The Court cites as authority for the Secretary's exclusive authority two specific areas in which his medical determinations are said to be binding on the Attorney General-with regard to the "scientific and medical evaluation" of a drug's effects that precedes its scheduling, § 811(b), and with regard to "the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts," 42 U.S.C. § 290bb-2a; see also 21 U.S.C. § 823(g) (2000 ed. and Supp. II). See *ante,* at 920-921. Far from establishing a general principle of Secretary supremacy with regard to all scientific and medical determinations, the fact that Congress granted the Secretary specifically defined authority in the areas of scheduling and addiction treatment, *without otherwise mentioning him* in the registration provisions, suggests, to the contrary, that Congress envisioned *no* role for the Secretary in that area-where, as we have said, interpretive authority was both implicitly and explicitly conferred upon the Attorney General.

Even if we could rewrite statutes to accord with

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sensible "design," it is far from a certainty that the Secretary, rather than the Attorney General, ought to control the registration of physicians. Though registration decisions sometimes require judgments about the legitimacy of medical practices, the Department of Justice has seemingly had no difficulty making them. See *In re Harline,* 65 Fed.Reg. 5665; *In re Tecca,* 62 Fed.Reg. 12842; *In re Roth,* 60 Fed.Reg. 62262. But unlike decisions about whether a substance should be scheduled or whether a narcotics addiction treatment is legitimate, registration decisions are not exclusively, or even primarily, concerned with "medical [and] scientific" factors. See 21 U.S.C. § 823(f). Rather, the decision to register, or ***296** to bring an action to deregister, an individual *physician* implicates all the policy goals and competing enforcement priorities that attend any exercise of prosecutorial discretion. It is entirely reasonable to think (as Congress evidently did) that it would be easier for the Attorney General occasionally to make judgments about the legitimacy of medical practices than it would be for the Secretary to get into the business of law enforcement. It is, in other words, perfectly consistent with an intelligent "design of the statute" to give the Nation's chief law enforcement official, not its chief health official, broad discretion over the substantive standards that govern registration and deregistration. That is *especially* true where the contested "scientific and medical" judgment at issue has to do with the legitimacy of physician-assisted suicide, which ultimately rests, not on "science" or "medicine," but on a naked value judgment. It no more depends upon a "quintessentially medical judgmen[t]," *ante,* at 921, than does the legitimacy of ****938** polygamy or eugenic infanticide. And it requires no particular *medical* training to undertake the objective inquiry into how the continuing traditions of Western medicine have consistently treated this subject. See OLC Memo, App. to Pet. for Cert. 113a-130a. The Secretary's supposedly superior "medical expertise" to make "medical judgments," *ante,* at 921, is strikingly irrelevant to the case at hand.

The Court also reasons that, even if the CSA grants the Attorney General authority to interpret § 823(f), the Directive does not purport to exercise that authority, because it "does not undertake the five-factor analysis" of § 823(f) and does not "on its face purport to be an *application* of the registration provision in § 823(f)." *Ante,* at 918 (emphasis added). This reasoning is sophistic. It would be improper-indeed, *impossible*-for the Attorney General to "undertake the five-factor analysis" of § 823(f) and to "appl[y] the registration provision" outside the context of an actual enforcement proceeding. But of course the Attorney General***297** may issue regulations to clarify his interpretation of the five factors, and to signal how he will apply them in future enforcement proceedings. That is what the Directive plainly purports to do by citing § 824(a)(4), and that is why the Directive's conclusion on deregistration is couched in conditional terms: "Such conduct by a physician ... *may* 'render his registration ... inconsistent with the public interest' and therefore subject to *possible* suspension or revocation under 21 U.S.C. [§]824(a)(4)." 66 Fed.Reg. 56608 (emphasis added).

It follows from what we have said that the Attorney General's authoritative interpretations of "public interest" and "public health and safety" in § 823(f) are subject to *Chevron* deference. As noted earlier, the Court does not contest that the absence of notice-and-comment procedures for the Directive renders *Chevron* inapplicable. And there is no serious argument that "Congress has directly spoken to the precise question at issue," or that the Directive's interpretations of "public health and safety" and "inconsistent with the public interest" are not "permissible." *Chevron,* 467 U.S., at 842-843, 104 S.Ct. 2778. On the latter point, in fact, the condemnation of assisted suicide by 50 American jurisdictions supports the Attorney General's view. The Attorney General may therefore weigh a physician's participation in assisted suicide as a factor counseling against his registration, or in favor of deregistration, under § 823(f).

In concluding to the contrary, the Court merely presents the conclusory assertion that "it is doubtful the Attorney General could cite the 'public interest' or 'public health' to deregister a physician simply because he deemed a controversial practice permitted by state law to have an illegitimate medical purpose." *Ante,* at 919. But why on earth not?-especially when he has interpreted the relevant statutory factors in advance to give fair warning that such a practice is "inconsistent with the public interest." The Attorney General's discretion to determine the public interest in this ***298** area is admittedly broad-but certainly no broader than other congressionally conferred executive powers that we have upheld in the past. See, *e.g., National Broadcasting Co. v. United States,* 319 U.S. 190, 216-217, 63 S.Ct. 997, 87 L.Ed. 1344 (1943) ("public interest"); *New York Central Securities Corp.*

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v. United States, 287 U.S. 12, 24-25, 53 S.Ct. 45, 77 L.Ed. 138 (1932) (same); see also *Mistretta v. United States,* 488 U.S. 361, 415-416, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989) (SCALIA, J., dissenting).

****939 * * ***

In sum, the Directive's first conclusion-namely, that physician-assisted suicide is not a "legitimate medical purpose"-is supported both by the deference we owe to the agency's interpretation of its own regulations and by the deference we owe to its interpretation of the statute. The other two conclusions-(2) that prescribing controlled drugs to assist suicide violates the CSA, and (3) that such conduct is also "inconsistent with the public interest"-are inevitable consequences of that first conclusion. Moreover, the third conclusion, standing alone, is one that the Attorney General is authorized to make.

The Court's decision today is perhaps driven by a feeling that the subject of assisted suicide is none of the Federal Government's business. It is easy to sympathize with that position. The prohibition or deterrence of assisted suicide is certainly not among the enumerated powers conferred on the United States by the Constitution, and it is within the realm of public morality *(bonos mores)* traditionally addressed by the so-called police power of the States. But then, neither is prohibiting the recreational use of drugs or discouraging drug addiction among the enumerated powers. From an early time in our national history, the Federal Government has used its enumerated powers, such as its power to regulate interstate commerce, for the purpose of protecting public morality-for example, by banning the interstate shipment of lottery tickets, or the interstate transport of women for immoral purposes. See ***299***Hoke v. United States,* 227 U.S. 308, 321-323, 33 S.Ct. 281, 57 L.Ed. 523 (1913); *Lottery Case,* 188 U.S. 321, 356, 23 S.Ct. 321, 47 L.Ed. 492 (1903). Unless we are to repudiate a long and well-established principle of our jurisprudence, using the federal commerce power to prevent assisted suicide is unquestionably permissible. The question before us is not whether Congress *can* do this, or even whether Congress *should* do this; but simply whether Congress *has* done this in the CSA. I think there is no doubt that it has. If the term "*legitimate* medical purpose" has any meaning, it surely excludes the prescription of drugs to produce death.

For the above reasons, I respectfully dissent from the judgment of the Court.

Justice THOMAS, dissenting.

When Angel Raich and Diane Monson challenged the application of the Controlled Substances Act (CSA), 21 U.S.C. § 801 *et seq.,* to their purely intrastate possession of marijuana for medical use as authorized under California law, a majority of this Court (a mere seven months ago) determined that the CSA effectively invalidated California's law because "the CSA is a comprehensive regulatory regime specifically designed to regulate which controlled substances can be utilized for medicinal purposes, *and in what manner.*" *Gonzales v. Raich,* 545 U.S. 1, 27, 125 S.Ct. 2195, 2211, 162 L.Ed.2d 1 (2005) (emphasis added). The majority employed unambiguous language, concluding that the "manner" in which controlled substances can be utilized "for medicinal purposes" is one of the "core activities regulated by the CSA." *Id.,* at 28, 125 S.Ct., at 2212. And, it described the CSA as "creating a comprehensive framework for regulating the production, distribution, and possession of ... 'controlled substances,' " including those substances that " 'have a useful and legitimate medical purpose,' " in order to "foster the beneficial use of those medications" and "to prevent their misuse." *Id.,* at 24, 125 S.Ct., at 2210.

Today the majority beats a hasty retreat from these conclusions. Confronted with a regulation that broadly requires***300** all prescriptions****940** to be issued for a "legitimate medical purpose," 21 CFR § 1306.04(a) (2005), a regulation recognized in *Raich* as part of the Federal Government's "closed ... system" for regulating the "manner" in "which controlled substances can be utilized for medicinal purposes," 545 U.S., at 13, 27, 125 S.Ct., at 2203, 2211, the majority rejects the Attorney General's admittedly "at least reasonable," *ante,* at 924, determination that administering controlled substances to facilitate a patient's death is not a " 'legitimate medical purpose.' " The majority does so based on its conclusion that the CSA is only concerned with the regulation of "medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood." *Ante,* at 923. In other words, in stark contrast to *Raich's* broad conclusions about the scope of the CSA as it pertains to the medicinal use of controlled substances, today this Court concludes that the

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CSA is merely concerned with fighting " 'drug abuse' " and only insofar as that abuse leads to "addiction or abnormal effects on the nervous system." [FN1] *Ante,* at 924.

> FN1. The majority does not expressly address whether the ingestion of a quantity of drugs that is sufficient to cause death has an "abnormal effec[t] on the nervous system," *ante,* at 924, though it implicitly rejects such a conclusion.

The majority's newfound understanding of the CSA as a statute of limited reach is all the more puzzling because it rests upon constitutional principles that the majority of the Court rejected in *Raich.* Notwithstanding the States' " 'traditional police powers to define the criminal law and to protect the health, safety, and welfare of their citizens,' " 545 U.S., at 30, n. 38, 125 S.Ct., at 2213, n. 38, the *Raich* majority concluded that the CSA applied to the intrastate possession of marijuana for medicinal purposes authorized by California law because "Congress could have rationally" concluded that such an application was necessary to the regulation of the "larger interstate marijuana market." *Id.,* at 30, 32, 125 S.Ct., at 2213, 2215. Here, by contrast, the majority's***301** restrictive interpretation of the CSA is based in no small part on "the structure and limitations of federalism, which allow the States ' "great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." ' " *Ante,* at 923 (quoting *Medtronic, Inc. v. Lohr,* 518 U.S. 470, 475, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996), in turn quoting *Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724, 756, 105 S.Ct. 2380, 85 L.Ed.2d 728 (1985)). According to the majority, these "background principles of our federal system ... belie the notion that Congress would use ... an obscure grant of authority to regulate areas traditionally supervised by the States' police power." *Ante,* at 925.

Of course there is nothing "obscure" about the CSA's grant of authority to the Attorney General. *Ante,* p. 926 (SCALIA, J., dissenting). And, the Attorney General's conclusion that the CSA prohibits the States from authorizing physician assisted suicide is admittedly "at least reasonable," *ante,* at 924 (opinion of the Court), and is therefore entitled to deference. *Ante,* at 931 (SCALIA, J., dissenting). While the scope of the CSA and the Attorney General's power thereunder are sweeping, and perhaps troubling, such expansive federal legislation and broad grants of authority to administrative agencies are merely the inevitable and inexorable consequence of this Court's Commerce Clause and separation-of-powers jurisprudence. See, *e.g., Raich, supra;* ****941***Whitman v. American Trucking Assns., Inc.,* 531 U.S. 457, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001).

I agree with limiting the applications of the CSA in a manner consistent with the principles of federalism and our constitutional structure. *Raich, supra,* at 74, 125 S.Ct., at 2229 (THOMAS, J., dissenting); cf. *Whitman, supra,* at 486-487, 121 S.Ct. 903 (THOMAS, J., concurring) (noting constitutional concerns with broad delegations of authority to administrative agencies). But that is now water over the dam. The relevance of such considerations was at its zenith in *Raich,* when we considered whether the CSA could be applied to the intrastate possession of a controlled substance consistent with the limited federal powers-enumerated ***302** by the Constitution. Such considerations have little, if any, relevance where, as here, we are merely presented with a question of statutory interpretation, and not the extent of constitutionally permissible federal power. This is particularly true where, as here, we are interpreting broad, straightforward language within a statutory framework that a majority of this Court has concluded is so comprehensive that it necessarily nullifies the States' " 'traditional ... powers ... to protect the health, safety, and welfare of their citizens.' " [FN2] *Raich, supra,* at 30, n. 38, 125 S.Ct., at 2213, n. 38. The Court's reliance upon the constitutional principles that it rejected in *Raich*-albeit under the guise of statutory interpretation-is perplexing to say the least. Accordingly, I respectfully dissent.

> FN2. Notably, respondents have not seriously pressed a constitutional claim here, conceding at oral argument that their "point is not necessarily that [the CSA] would be unconstitutional." Tr. of Oral Arg. 44. In any event, to the extent respondents do present a constitutional claim, they do so solely within the framework of *Raich.* Framed in this manner, the claim must fail. The respondents in *Raich* were "local growers and users of state-authorized, medical marijuana," who stood "outside the interstate drug market" and possessed " 'medicinal marijuana ... not

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> intended for ... the stream of commerce.' " 545 U.S., at 62, 72, 125 S.Ct., at 2213, 2215 (THOMAS, J., dissenting). Here, by contrast, the respondent-physicians are active participants in the interstate controlled substances market, and the drugs they prescribe for assisting suicide have likely traveled in interstate commerce. If the respondents in *Raich* could not sustain a constitutional claim, then *a fortiori* respondents here cannot sustain one. Respondents' acceptance of *Raich* forecloses their constitutional challenge.

U.S.,2006.
Gonzales v. Oregon
546 U.S. 243, 126 S.Ct. 904, 163 L.Ed.2d 748, 74 USLW 4068, 06 Cal. Daily Op. Serv. 433, 2006 Daily Journal D.A.R. 608, 19 Fla. L. Weekly Fed. S 49

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812 F.2d 1103
(Cite as: 812 F.2d 1103)

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United States Court of Appeals,
Ninth Circuit.
GREATER LOS ANGELES COUNCIL ON DEAFNESS, INC.; Barbara U. Sheridan and Joy Anne Maucere, individually and on behalf of all others similarly situated, Plaintiffs-Appellants,
v.
Frank S. ZOLIN, individually and as Jury Commissioner for the County of Los Angeles; Raymond F. Arce, individually and as Director of Juror Services for the County of Los Angeles; County of Los Angeles; Superior Court of the State of California for the County of Los Angeles, Defendants-Appellees.
No. 84-6448.

Argued and Submitted Dec. 3, 1985.
Submission Vacated Jan. 29, 1986.
Ordered Resubmitted April 25, 1986.
Decided March 11, 1987.

Council on deafness and individuals brought action against county, jury commissioner, director of juror services, and superior court to challenge decision not to provide sign-language interpreters to enable deaf individuals to serve as jurors. The United States District Court for the Central District of California, Edward Rafeedie, J., 607 F.Supp. 175, entered judgment for county, superior court, commissioner, and director. Council and individuals appealed. The Court of Appeals, Canby, Circuit Judge, held that: (1) director and commissioner were not shielded from liability by quasi-judicial or legislative immunity; (2) Eleventh Amendment immunity protected superior court, but did not protect county, commissioner, and director; and (3) past federal funding of relevant program supported action for damages and declaratory relief, but not injunctive relief, under statute, which prohibits discrimination against handicapped persons and programs receiving federal financial support.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] Federal Courts 170B ⚿611

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)1 Issues and Questions in Lower Court
170Bk611 k. Necessity of Presentation in General. Most Cited Cases
Deciding issue on appeal, which had not been addressed by district court, was inappropriate.

[2] Civil Rights 78 ⚿1376(8)

78 Civil Rights
78III Federal Remedies in General
78k1372 Privilege or Immunity; Good Faith and Probable Cause
78k1376 Government Agencies and Officers
78k1376(8) k. Judges, Courts, and Judicial Officers. Most Cited Cases
(Formerly 78k214(8), 78k13.8(5))
Jury commissioner and director of juror services did not perform integral part of judicial process when they determined not to provide sign-language interpreters to assist deaf individuals in jury service and, therefore, were not entitled to absolute, quasi-judicial immunity from monetary damages. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; U.S.C.A. Const.Amend. 14; West's Ann.Cal.Gov.Code § 11135.

[3] Civil Rights 78 ⚿1376(8)

78 Civil Rights
78III Federal Remedies in General
78k1372 Privilege or Immunity; Good Faith and Probable Cause
78k1376 Government Agencies and Officers
78k1376(8) k. Judges, Courts, and Judicial Officers. Most Cited Cases
(Formerly 78k214(8), 78k13.8(5))
Jury commissioner and director of juror services, who decided not to provide sign-language interpreters to enable deaf individuals to serve as jurors, made executive, rather than legislative decision and, therefore, were not entitled to legislative immunity from liability

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for monetary damages, where commissioner and director were not empowered by legislative body to promulgate regulations to implement legislative will, and where commissioner and director did not use any particular procedure in arriving at decision not to provide interpreters. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; West's Ann.Cal.Gov.Code § 11135.

[4] Civil Rights 78 ⚿1376(8)

78 Civil Rights
78III Federal Remedies in General
78k1372 Privilege or Immunity; Good Faith and Probable Cause
78k1376 Government Agencies and Officers
78k1376(8) k. Judges, Courts, and Judicial Officers. Most Cited Cases
(Formerly 78k214(8), 78k13.8(5))
Jury commissioner and director of juror services, who decided not to provide sign-language interpreters to enable deaf individuals to serve as jurors, were entitled only to qualified immunity and were protected from liability for monetary damages only if conduct did not violate clearly established statutory or constitutional rights of which reasonable person would have known. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; West's Ann.Cal.Gov.Code § 11135.

[5] Civil Rights 78 ⚿1376(8)

78 Civil Rights
78III Federal Remedies in General
78k1372 Privilege or Immunity; Good Faith and Probable Cause
78k1376 Government Agencies and Officers
78k1376(8) k. Judges, Courts, and Judicial Officers. Most Cited Cases
(Formerly 78k214(8), 78k13.8(5))
Jury commissioner and director of juror services, who waived good faith defense to liability for monetary damages for decision not to provide sign-language interpreters to enable deaf individuals to serve as jurors, were not protected by qualified immunity. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; West's Ann.Cal.Gov.Code § 11135.

[6] Civil Rights 78 ⚿1350

78 Civil Rights
78III Federal Remedies in General
78k1342 Liability of Municipalities and Other Governmental Bodies
78k1350 k. Other Particular Cases and Contexts. Most Cited Cases
(Formerly 78k206(2.1), 78k206(2), 78k13.7)
Evidence that county paid salaries and benefits of jury commissioner and director of juror services and that commissioner, director, and judge relied upon advice of county council regarding responsibilities toward deaf jurors established county's participation in decision of commissioner and director not to provide sign-language interpreters to enable deaf individuals to serve as jurors and, therefore, established county's liability for damages, if statute, which prohibits discrimination against handicapped persons in programs receiving federal financial support, was violated. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; West's Ann.Cal.Gov.Code § 11135.

[7] Federal Courts 170B ⚿270

170B Federal Courts
170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on
170BIV(A) In General
170Bk268 What Are Suits Against States
170Bk270 k. Cities or Other Political Subdivisions, Actions Involving. Most Cited Cases
County enjoyed no Eleventh Amendment immunity from liability for monetary damages in connection with decision of jury commissioner and director of juror services not to provide sign-language interpreters to enable deaf individuals to serve as jurors. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; U.S.C.A. Const.Amend. 11; West's Ann.Cal.Gov.Code § 11135.

[8] Federal Courts 170B ⚿269

170B Federal Courts
170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on
170BIV(A) In General
170Bk268 What Are Suits Against States
170Bk269 k. State Officers or Agencies, Actions Against. Most Cited Cases
(Formerly 170Bk268.1, 170Bk268)
Suit against superior court was suit against state,

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which was barred by Eleventh Amendment immunity. U.S.C.A. Const.Amend. 11; West's Ann.Cal. Const. Art. 6, §§ 1, 5.

[9] Federal Courts 170B 270

170B Federal Courts
170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on
170BIV(A) In General
170Bk268 What Are Suits Against States
170Bk270 k. Cities or Other Political Subdivisions, Actions Involving. Most Cited Cases
Lawsuit against jury commissioner and director of juror services, which would be satisfied from county treasury, was not barred by Eleventh Amendment immunity. U.S.C.A. Const.Amend. 11.

[10] Civil Rights 78 1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k126, 78k9.16)
Termination of federal funding should not bar claim for damages under statute, which prohibits discrimination against handicapped persons in programs receiving federal financial support. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

[11] Civil Rights 78 1456

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1456 k. Other Particular Cases and Contexts. Most Cited Cases
(Formerly 78k262.1, 78k262, 78k13.2(1))
Prior termination of federal funding without any indication that it would be renewed barred injunction ordering end to discriminatory behavior, in that statute, which prohibits discrimination against handicapped persons in programs receiving federal financial support, did not prohibit discrimination against handicapped as such, but simply barred use of federal funds to support programs or activities that discriminated; declining to follow *Bachman v. American Society of Clinical Pathologists*, 577 F.Supp. 1257 (D.N.J.). Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

[12] Declaratory Judgment 118A 8

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(A) In General
118Ak8 k. Termination or Settlement of Controversy. Most Cited Cases
Declaratory relief should be denied when it will not aid in clarifying and settling legal relations in issue and when it will not terminate proceedings and afford parties relief from uncertainty and controversy faced. Fed.Rules Civ.Proc.Rule 57, 28 U.S.C.A.

[13] Declaratory Judgment 118A 41

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(C) Other Remedies
118Ak41 k. Existence and Effect in General. Most Cited Cases
Existence of other remedies does not preclude appropriate declaratory relief. Fed.Rules Civ.Proc.Rule 57, 28 U.S.C.A.

[14] Declaratory Judgment 118A 395

118A Declaratory Judgment
118AIII Proceedings
118AIII(H) Appeal and Error
118Ak392 Appeal and Error
118Ak395 k. Determination and Disposition of Cause. Most Cited Cases
Recognition that program definition was highly case-specific matter did not resolve question whether declaratory relief was properly denied in case alleging that decision not to provide sign-language interpreters to enable deaf individuals to serve as jurors violated statute, which prohibits discrimination against handicapped persons in program receiving federal financial support; thus remand was necessary for determinations of unresolved issues. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; Fed.Rules Civ.Proc.Rule 57, 28 U.S.C.A.

[15] Civil Rights 78 1719

78 Civil Rights

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78V State and Local Remedies
78k1718 Right of Action; Nature and Grounds
78k1719 k. In General. Most Cited Cases
(Formerly 78k449, 78k68)
Private right of action was permitted by California statute, which prohibits discrimination on basis of ethnic group identification, religion, age, sex, color, or physical or mental disability by any program or activity receiving financial assistance from state. West's Ann.Cal.Gov.Code §§ 11135, 11136, 11139, 19230(a).

[16] Constitutional Law 92 ⚿726

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)4 Particular Constitutional Provisions in General
92k726 k. Discrimination in General. Most Cited Cases
(Formerly 92k42.1(1), 92k42.1)
Council on deafness had sufficient stake in outcome of controversy to have standing to maintain challenge to decision of jury commissioner and director of juror services not to provide sign-language interpreters to enable deaf individuals to serve as jurors. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; U.S.C.A. Const. Art. 3, § 1 et seq.

[17] Civil Rights 78 ⚿1331(4)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1331 Persons Aggrieved, and Standing in General
78k1331(4) k. Criminal Law Enforcement; Prisons. Most Cited Cases
(Formerly 78k201, 78k13.6)
Council on deafness challenging decision of jury commissioner and director of juror services not to provide sign-language interpreters to enable deaf individuals to serve as jurors was entitled to invoke statute, which prohibits discrimination against handicapped persons in programs receiving federal financial support, if claim was for expenses reasonably and foreseeably expended to secure for handicapped juror and interpreter that county, commissioner, and director were legally obligated to provide, and, therefore, had standing; declining to follow *Sanders v. Marquette Public Schools*, 561 F.Supp. 1361 (W.D.Mich.). Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; U.S.C.A. Const. Art. 3, § 1 et seq.

[18] Federal Courts 170B ⚿41

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(B) Right to Decline Jurisdiction; Abstention Doctrine
170Bk41 k. Nature and Grounds in General. Most Cited Cases
Abstention was not appropriate where no pending state proceeding existed.

[19] Federal Courts 170B ⚿617

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)1 Issues and Questions in Lower Court
170Bk617 k. Sufficiency of Presentation of Questions. Most Cited Cases
Council on deafness and deaf individuals alleging violations of due process and equal protection as result of decision of jury commissioner and director of juror services not to provide sign-language interpreters to enable deaf individuals to serve as jurors waived constitutional claims by failing to press them adequately before district court and by relying solely on statutory claims. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; U.S.C.A. Const.Amend. 14.
***1106** Stanley Fleishman, Los Angeles, Cal., for plaintiffs-appellants.

De Witt W. Clinton, Frederick R. Bennett, Deputy, Los Angeles, Cal., for defendants-appellees.

Appeal from the United States District Court for the Central District of California.

Before FLETCHER, PREGERSON and CANBY, Circuit Judges.

CANBY, Circuit Judge:

The Greater Los Angeles Council on Deafness

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(GLAD) and deaf individuals Barbara Sheridan and Joy Ann Maucere appeal an adverse judgment in their suit against Los Angeles County, its superior court, its jury commissioner, Frank Zolin, and its director of juror services, Raymond Arce. Appellants sought monetary, injunctive and declaratory relief after county officials refused to provide, at public expense, sign-language interpreters ("interpreters") to enable deaf individuals to serve as jurors. This refusal, appellants argue, violates their fourteenth amendment rights to equal protection and due process, as well as statutory rights under section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (1982), and Cal.Gov't Code § 11135 (West 1980).[FN1]

FN1. In their complaint, appellants also alleged violation of 31 U.S.C. § 6716(b)(2), which prohibits discrimination on the basis of handicap by state and local government agencies that receive revenue sharing funds. The district court denied relief under the Revenue Sharing Act because of appellants' failure to exhaust the prescribed administrative remedy before suing. Appellants do not challenge this ruling on appeal.

BACKGROUND

The facts are not disputed. On January 1, 1981, a change in California law made hearing-impaired as well as other handicapped persons competent to serve as jurors. Cal.Civ.Proc.Code §§ 198, 205 (West 1982).[FN2] In March 1981, appellants Sheridan and Maucere received summonses to appear for jury service in Los Angeles County Superior Court. Both women sent letters to the court explaining that their ability to serve depended on whether the court would provide them with interpreters at public expense.[FN3] Appellee Arce responded that there was no provision for payment of an interpreter and excused them from jury service.

FN2. Under related provisions, a party may challenge a hearing-impaired venireman for cause, but interpreters must be admitted into the jury room once a deaf person is seated. Cal.Civ.Proc.Code §§ 602(2), 610 (West Supp.1986).

FN3. All parties concede that the individual appellants are fully competent to serve as jurors and that they declined to serve only because of the expense of providing their own interpreter.

In August and September 1981, GLAD paid more than $2000 for an interpreter to assist Nathan Shapiro, a deaf person who served as an alternate juror in a civil trial for 22 days. After unsuccessfully seeking reimbursement from the County for this expense, GLAD, joined by appellants Sheridan and Maucere, brought this action. After a bench trial, the district court entered judgment for defendants. *See Greater Los Angeles Council on Deafness, Inc. v. Zolin,* 607 F.Supp. 175 (C.D.Cal.1984) (hereinafter *GLAD*). The court later confirmed its ruling by denying plaintiffs' motion under Fed.R.Civ.P. 59(e), and plaintiffs brought this timely appeal. We now affirm in part, reverse in part and remand.

DISCUSSION

I. THE CLAIM UNDER SECTION 504

A. *Section 504*

Section 504 by its terms prohibits discrimination against handicapped persons in ***1107** programs receiving federal financial support.[FN4] As the district court stated, section 504 was enacted as a general civil rights provision for the handicapped, designed " 'to prevent discrimination against all handicapped individuals ... in employment, housing, transportation, education, health services, or any other Federally-aided programs.' " *GLAD,* 607 F.Supp. at 180 (quoting S.Rep. No. 1297, 93rd Cong., 1st Sess. *reprinted in* 1974 U.S.Code Cong. & Admin.News 6373, 6388). We have recognized a private right of action under section 504, *Kling v. County of Los Angeles,* 633 F.2d 876, 878 (9th Cir.1980), and plaintiffs suing under section 504 may pursue the full panoply of remedies, including equitable relief and monetary damages, *see Kling v. County of Los Angeles,* 769 F.2d 532, 534 (9th Cir.) (damages), *rev'd on other grounds,* 474 U.S. 936, 106 S.Ct. 300, 88 L.Ed.2d 277 (1985); *Kling,* 633 F.2d at 879 (injunction); *see also Bachman v. American Society of Clinical Pathologists,* 577 F.Supp. 1257, 1262 (D.N.J.1983).

FN4. Section 504, 29 U.S.C. § 794 (1982), provides, in pertinent part:

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> No otherwise qualified handicapped individual in the United States ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....

As the district court further noted, to prove a section 504 violation, the plaintiffs must show (1) that hearing-impaired people are "handicapped persons" under the Rehabilitation Act, (2) that they are "otherwise qualified" to serve as jurors, (3) that the relevant program is federally funded, and (4) that the refusal to provide interpreters prevents deaf people from serving as jurors. *See* Bentivegna v. U.S. Dep't. of Labor, 694 F.2d 619, 621 (9th Cir.1982).

[1] The district court, however, never reached the ultimate question whether section 504 requires the defendants to provide sign-language interpreters for jurors serving in the Superior Courts. Although appellants urge us to decide that issue on this appeal, it would be inappropriate for us to do so when the district court has not addressed this issue.[FN5] The issues that are properly before us are those upon which the district court ruled in denying relief to appellants. We turn to them now.

> FN5. We similarly do not reach subissues of fact that the district court did not rule upon. An example is the question whether the lack of interpreters effectively barred deaf persons from serving as jurors, or whether other measures such a lip-reading or use of hearing aids could serve in place of interpreters.

B. *Denial of Monetary Relief*

The district court denied monetary relief because it found the defendants either shielded by immunity or uninvolved with the jury-selection process.

1. *Quasi-judicial Immunity*

[2] The district court held that the individual defendants were immune from a damage award because they were shielded by absolute "quasi-judicial immunity." *See, e.g.,* Mitchell v. Forsyth, 472 U.S. 511, 105 S.Ct. 2806, 2812, 86 L.Ed.2d 411 (1985); *Imbler v. Pachtman,* 424 U.S. 409, 430, 96 S.Ct. 984, 994-95, 47 L.Ed.2d 128 (1976). The district court relied heavily on our decision in *Pomerantz v. County of Los Angeles,* 674 F.2d 1288, 1291 (9th Cir.1982). In *Pomerantz,* a case superficially similar to this case, blind citizens challenged their exclusion from Los Angeles County juries. We affirmed the district court's determination that the court officials were shielded by quasi-judicial immunity. It so happens that among the court officials who were found immune in *Pomerantz* are the very ones who are individual defendants here. We nonetheless disagree with the district court's ruling that defendants Arce and Zolin are entitled to an absolute immunity in this case.[FN6]

> FN6. The type of immunity to which a public official is entitled is a question of law, reviewed here *de novo. See* United States v. McConney, 728 F.2d 1195, 1201 (9th Cir.), *cert. denied,* 469 U.S. 824, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984).

When deciding whether a public official is immune from liability for acts performed in his official capacity, qualified immunity is the general rule and absolute immunity ***1108** the exceptional case. *See, e.g.,* Harlow v. Fitzgerald, 457 U.S. 800, 807, 102 S.Ct. 2727, 2732, 73 L.Ed.2d 396 (1982); Butz v. Economou, 438 U.S. 478, 506-07, 98 S.Ct. 2894, 2910-11, 57 L.Ed.2d 895 (1978). The burden is on the official claiming the immunity to demonstrate that public policy requires recognition of an absolute immunity in his case. *Harlow,* 457 U.S. at 808, 102 S.Ct. at 2733; *Butz,* 438 U.S. at 506-07, 98 S.Ct. at 2910-11. It is well-settled that the immunity to which a public official is entitled depends not on the official's title or agency, but on the nature of the function that the person was performing when taking the actions that provoked the lawsuit. *E.g., Mitchell,* 105 S.Ct. at 2813; *Imbler,* 424 U.S. at 430, 96 S.Ct. at 994-95; Bothke v. Fluor Engineers & Constructors, Inc., 713 F.2d 1405, 1412 (9th Cir.1983), *vacated on other grounds,* 468 U.S. 1201, 104 S.Ct. 3566, 82 L.Ed.2d 867 (1984).

Quasi-judicial immunity, like judicial immunity, derives historically from the recognition that participation in the court system raises a significant risk of "entanglement in vexatious litigation." *Mitchell,* 105 S.Ct. at 2813. As the Supreme Court has recognized:

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The judicial process is an arena of open conflict, and in virtually every case there is, if not always a winner, at least one loser. It is inevitable that many of those who lose will pin the blame on judges, prosecutors, or witnesses and will bring suit against them in an effort to relitigate the underlying conflict.

Id. Quite obviously, similar blame might also be pinned on other court officials variously responsible for assisting in an adjudication, such as the clerk of the court, or the persons responsible for selecting eligible potential jurors. Accordingly, we held in *Pomerantz* that the Los Angeles County Superior Court's jury administration personnel were entitled to quasi-judicial immunity for actions they performed in determining the eligibility of potential jurors to serve. *See* Pomerantz, 674 F.2d at 1290-91.

The district court here apparently believed that, as in *Pomerantz,* the individual defendants were engaged in the juror-selection process when the complained-of acts occurred. This was error.

In *Pomerantz,* the challenge was to defendants' exclusion of blind persons from juries as unqualified. By contrast, there exists no question here that the deaf plaintiffs are perfectly qualified to serve as jurors. The challenge is to defendants' determination that they need not provide these handicapped persons, defined by state statute to be generally eligible for jury service, with the reasonable accommodations necessary to permit them to participate in this important activity of citizenship.

Although the decisions challenged in this lawsuit were made in the course of defendants' official duties, they were not "an integral part of the judicial process," which has been seen as the lynchpin of both the judicial and quasi-judicial immunities. *Imbler,* 424 U.S. at 430, 96 S.Ct. at 994-95; *see Mitchell,* 105 S.Ct. at 2813; *Richardson v. Koshiba,* 693 F.2d 911, 914 (9th Cir.1982). The individual defendants' actions in issue here are simply not the sort of actions that "have been the primary wellsprings of absolute immunities," *Mitchell,* 105 S.Ct. at 2813, such as the quasi-judicial immunity. We conclude that defendants are not entitled to quasi-judicial immunity.

2. *Legislative Immunity*

[3] Nor was the decision to deny interpreters a legislative one, as the district court alternatively held. *See GLAD,* 607 F.Supp. at 179 n. 8. It is true that Zolin and Arce were establishing a policy on behalf of the Los Angeles County Superior Court. But this was not a case where the officials involved were empowered by a legislative body to promulgate regulations to implement the legislative will. The record does not indicate that any formal rulemaking occurred or that defendants used any particular procedure in arriving at their decision not to provide interpreters. The decisionmaking process here in no way resembled a legislative act in the traditional sense. Instead, faced with statutes declaring deaf persons generally qualified to ***1109** serve as jurors, Zolin and Arce acted to execute those legislative mandates. Theirs was an executive decision. Legislative immunity does not shield it.

We reject defendants' argument that this case is controlled by *Supreme Court of Virginia v. Consumers Union,* 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980). There, the Supreme Court held that state supreme court justices were immune from suits for acts performed in their legislative capacity. *Id.* at 731-34, 100 S.Ct. at 1974-76. The justices had been sued over rules they had promulgated governing discipline of members of the State Bar. The rules in *Consumers Union,* therefore, constituted far more than an internal interpretation of how to implement a statute. The Court held that, in promulgating the rules, members of the state supreme court *were* the state's legislators. *Id.* at 734, 100 S.Ct. at 1975-76. The same cannot be said for Zolin and Arce with respect to the policy at issue.

3. *Qualified Immunity*

[4] Aside from their misplaced reliance on *Pomerantz* and *Consumers Union,* defendants do not point to anything that even arguably requires us to recognize an absolute immunity for them in the factual context presented here. *See Butz,* 438 U.S. at 505-06, 98 S.Ct. at 2910-11. Accordingly, we conclude that the individual defendants here are entitled only to a qualified immunity, which protects them fully "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. at 818, 102 S.Ct. at 2738 (1982).

[5] A qualified immunity does not help defendants in this case, however, because they waived their good faith defense.[FN7] We must, therefore, remand the

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plaintiffs' action for damages because the individual defendants are not, as the district court ruled, immune from liability for their actions here.

> FN7. Before stipulating to the waiver, the record shows that Arce testified that he was aware of section 504's requirement of reasonable accommodation to handicapped persons to persons otherwise qualified to serve as jurors. The same defendants, it appears, had previously agreed to settle a case brought by some potential jurors with physical disabilities who were barred from participation as jurors because of building-access problems. The defendants were therefore aware of section 504's general requirements when they decided not to provide interpreters.

4. *Lack of Involvement in Jury Selection*

The district court also ruled that Los Angeles County was not liable for damages here because it found that the County was uninvolved in the jury-selection process. *GLAD*, 607 F.Supp. at 179. The court again relied on *Pomerantz*, where we affirmed a similar district court finding. *See Pomerantz*, 674 F.2d at 1291.

[6] As we have already made clear, however, it is irrelevant whether the County participated in the selection of jurors. The question here is whether the County participated in the decision to deny plaintiffs the assistance of interpreters. On this point, the district court's findings compel us to conclude that it did. The County paid the salaries and benefits of both individual defendants. More important, the district court found that Arce, Zolin and a Superior Court judge sought and relied upon advice from the County Counsel regarding their responsibilities toward deaf jurors. Several meetings concerning the Court's responsibility to deaf jurors were held; and various County officials participated. The evidence indicates, therefore, sufficient County participation in the challenged practices to render it liable for damages if a violation of section 504 is found to have occurred.

5. *Eleventh Amendment Immunity*

Having determined that neither the individual defendants nor the County are immune from liability, we must still evaluate whether the eleventh amendment bars the lawsuit in any regard. The district court found the eleventh amendment inapplicable because the County, and not the State, was ***1110** primarily responsible for funding, housing and operation of the Superior Court.[FN8] We cannot entirely agree.

> FN8. For example, the district court found that $47 million of the Superior Court's $52 million budget in 1982 came from the County. *GLAD*, 607 F.Supp. at 178.

In *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 105 S.Ct. 3142, 3149, 87 L.Ed.2d 171 (1985), the Supreme Court held that the Rehabilitation Act, and specifically section 504, did not abrogate the eleventh amendment bar to suits in federal court against the states. To the extent that the state is a defending party in this suit, *Atascadero* makes it clear that plaintiffs can seek neither damages nor equitable relief under section 504. The question is whether the state is being sued here.

a) *The County*

[7] The eleventh amendment does not bar actions against cities and counties. *See Mt. Healthy City School Dist. Board of Educ. v. Doyle*, 429 U.S. 274, 280, 97 S.Ct. 568, 572, 50 L.Ed.2d 471 (1977). It therefore does not preclude the suit against the County.[FN9]

> FN9. To the extent appellees argue that Los Angeles County may not be sued under the eleventh amendment due to its status as a state political subdivision, the argument must fail. In *Moor v. County of Alameda*, 411 U.S. 693, 718-20, 93 S.Ct. 1785, 1800-01, 36 L.Ed.2d 596 (1973), the Supreme Court specifically addressed and rejected this contention by another California county.

b) *The Superior Court*

[8] More difficult are the questions whether the Superior Court or its employees may be sued. Although the County does pay most of the Superior Court's bills, state case law and constitutional provisions make clear that the Court is a State agency. *See* Cal. Const. art. 6 §§ 1, 5 (West Supp.1986); *Sacramento & San Joaquin*

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Drainage Dist. v. Superior Court, 196 Cal. 414, 432, 238 P. 687, 694 (1925). The official name of the court is the Superior Court of the State of California; its geographical location within any particular county cannot change the fact that the court derives its power from the State and is ultimately regulated by the State. Judges are appointed by California's governor, and their salaries are established and paid by the State. We conclude that a suit against the Superior Court is a suit against the State, barred by the eleventh amendment. *See Shaw v. California Dep't of Alcoholic Beverage Control*, 788 F.2d 600, 603 (9th Cir.1986).[FN10]

> FN10. Since the eleventh amendment by its terms bars suits against a state "in law or equity," our holding necessarily applies also to plaintiffs' claims against the Superior Court for injunctive and declaratory relief.

c) *The Individual Defendants*

[9] In a technical sense, employees of the Superior Court are state employees despite the fact that they are paid by the County and are included in County employee-benefit plans. *See Greenaway v. Workmen's Comp. App. Bd.*, 269 Cal.App. 2d 49, 53-54, 57-59, 74 Cal.Rptr. 452, 455, 458-59 (1969). There is, then, a potential eleventh amendment problem with suing these individuals.

A functional approach governs the eleventh amendment's application to actions for money damages against state officials. Such actions are considered to be suits against the state, and thus barred, if " 'the state is the real, substantial party in interest.' " *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 101, 104 S.Ct. 900, 908, 79 L.Ed.2d 67 (1984) (quoting *Ford Motor Co. v. Indiana Dep't of Treasury*, 323 U.S. 459, 464, 65 S.Ct. 347, 350, 89 L.Ed. 389 (1945)). We must look behind the pleadings to determine whether a decree in the case would operate in fact against the sovereign. If the judgment would actually run against the state treasury, the action is barred. *Id.* at 101-02, 104 S.Ct. at 908-09; *Shaw*, 788 F.2d at 604.

On the facts of this case, however, the district court found that the County, and not the State, would be responsible for any judgment that might be rendered. Our independent examination of the record shows this finding to be clearly correct. ***1111** Because the state treasury is not in jeopardy, the action against the individual defendants for damages is not barred by the eleventh amendment.

C. *Denial of Equitable Relief*

1. *Denial of the Injunction*

The district court refused appellants' request for a mandatory injunction ordering the County to provide interpreters without cost. The district court found that there was neither current, nor the likelihood of future, federal funding of the county court system. The system was, therefore, not subject to the mandate of section 504. *See GLAD*, 607 F.Supp. at 180-81. We review the factual finding for clear error and the legal conclusion *de novo*. *United States v. McConney*, 728 F.2d 1195, 1201 (9th Cir.) (en banc), *cert. denied*, 469 U.S. 824, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984).

Our review of the record satisfies us that the finding was not clearly erroneous. Further, we agree with the district court that past federal funding provides no basis for an injunction under section 504.

We recognize that at least one district court has held otherwise. In *Bachman v. American Society of Clinical Pathologists*, 577 F.Supp. 1257, 1262 (D.N.J.1983), the court stated that handicapped persons who are discriminated against by federal grantees, "may seek affirmative injunctive and compensatory relief under section 504, even though the federal financial assistance has terminated." The *Bachman* court cites no authority for this proposition, however, and past federal funding is not a factual characteristic of any of the cases it relied upon. Instead, the cases discuss matters fully resolved in this circuit, such as the existence of a private right of action under section 504 and the variety of remedies available to section 504 plaintiffs.

[10] We agree that the termination of federal funding should not bar a claim for damages. As the *Bachman* court recognized, the statute and implementing regulations are written in the present tense, *see* 29 U.S.C. § 794; 45 C.F.R. § 84.1 (1985), reflecting the fact that federal funding is conditioned on the recipient's simultaneous compliance with the anti-discrimination provisions of section 504. *Bachman*, 577 F.Supp. at 1260. "Failure to comply with this condition ... constitutes a statutory violation which is not cured merely

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upon the discontinuance of the federal assistance." *Id.* at 1261. If a person suffers discrimination in violation of section 504, he may collect appropriate damages even if federal funding of the program has ended.

[11] We cannot agree, however, that an injunction ordering an end to discriminatory behavior may properly issue under section 504 where, as here, federal funding has ended and there is no indication that it will be renewed. The mandate of section 504 is simply inapplicable to future conduct unless there is a showing that the program or activity in issue is receiving, or in the future will likely receive, federal funding. The statute does not prohibit discrimination against the handicapped as such; it simply bars the use of federal funds to support programs or activities that so discriminate. [FN11] *See U.S. Dep't of Transportation v. Paralyzed Veterans of America,* ---U.S. ----, 106 S.Ct. 2705, 2711, 91 L.Ed.2d 494 (1986). The district court properly denied the injunction.

> FN11. In this regard, section 504 is similar to other statutes placing conditions on the receipt of federal funding. One example is Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (1982), which bars sex discrimination by any educational program or activity receiving federal funding. As the Supreme Court noted in *Grove City College v. Bell,* 465 U.S. 555, 575, 104 S.Ct. 1211, 1222, 79 L.Ed.2d 516 (1984), Congress may attach reasonable conditions to federal financial assistance. The recipients of federal funding are not thereby obligated to accept the conditions, however, because they "may terminate [their] participation in the ... program and thus avoid" the conditions imposed by the statute. *Id.*
>
> Section 504 is accordingly unlike provisions in the Civil Rights Act of 1964, in which Congress, in an exercise of its regulatory power, prohibited discrimination directly. *E.g.,* 42 U.S.C. § 2000a (1982); *see Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241, 245-49, 85 S.Ct. 348, 351-53, 13 L.Ed.2d 258 (1964).

2. *Denial of Declaratory Relief*

The district court also refused to grant *1112 declaratory relief. [FN12] The court ruled that a declaration would not be useful because certain issues related to section 504 litigation were factually too case-specific to permit a general ruling on them. Accordingly, the court did not believe that a declaration would eliminate uncertainty about legal obligations under section 504 or prevent future litigation.

> FN12. The court's decision concerning declaratory relief came in its denial of plaintiffs' post-trial motion under Rule 59(e). It was not published.

Whether or not to grant a declaratory judgment is a matter committed to the sound discretion of the district court. *Doe v. Gallinot,* 657 F.2d 1017, 1024 (9th Cir.1981). But, with declaratory-judgment rulings, unlike many other discretionary acts, we must exercise our own discretion to determine the propriety of the district court's ruling. *United States v. State of Washington,* 759 F.2d 1353, 1356-57 (9th Cir.1985) (en banc) (per curiam). As a result, we effectively review a district court's decision to grant or deny declaratory relief *de novo. Guerra v. Sutton,* 783 F.2d 1371, 1376 (9th Cir.1986); *Washington,* 759 F.2d at 1362 (Nelson, J., dissenting in part).

[12][13] Declaratory relief should be denied when it will neither aid in clarifying and settling legal relations in issue nor terminate the proceedings and afford the parties relief from the uncertainty and controversy they faced. *E.g., Washington,* 759 F.2d at 1357; *McGraw-Edison Co. v. Performed Line Products Co.,* 362 F.2d 339, 342 (9th Cir.), *cert. denied,* 385 U.S. 919, 87 S.Ct. 229, 17 L.Ed.2d 143 (1966). The decision to grant declaratory relief "should always be made with reference to the public interest," *Washington,* 759 F.2d at 1357, recognizing that declarations can serve an important educational function for the public at large as well as for the parties to the lawsuit, *Bilbrey v. Brown,* 738 F.2d 1462, 1471 (9th Cir.1984). Thus, the existence of other remedies does not preclude appropriate declaratory relief. Fed.R.Civ.P. 57. With these principles in mind, we turn to the propriety of denying declaratory relief in this case.

In order to state a cause of action under section 504, a plaintiff must allege discrimination by or exclusion from a "program or activity" receiving federal financial assistance. 29 U.S.C. § 794.[FN13] Plaintiffs must identify specifically the program or activity at issue

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when legal obligations, like those imposed by section 504, turn on the existence of federal funding. *See* Consolidated Rail Corp. v. Darrone, 465 U.S. 624, 636, 104 S.Ct. 1248, 1255, 79 L.Ed.2d 568 (1984); *see also* U.S. Dep't of Transportation v. Paralyzed Veterans of America, 477 U.S. 597, 106 S.Ct. 2705, 2714, 91 L.Ed.2d 494 (1986) (relevant program or activity determined by reference to particular grant statute, not by reference to "hypothetical collective concepts").

> FN13. The Supreme Court has recently commented on the financial assistance requirement. For purposes of section 504, we may not draw a distinction between direct or indirect federal aid. Moreover, "federal financial assistance" may be either monetary or nonmonetary. *See* U.S. Dep't of Transportation v. Paralyzed Veterans of America, 477 U.S. 597, 106 S.Ct. 2705, 2711-12 & n. 11, 91 L.Ed.2d 494.

The district court here concluded that the issue of which specific program was involved was sufficiently case-specific that a declaration would do little or nothing to eliminate uncertainty or prevent future litigation. The court relied on *United States v. University Hospital*, 729 F.2d 144, 151 (2d Cir.1984), where the Second Circuit stated that "the issue of program-specificity cannot be properly analyzed in the abstract, but instead requires a concrete set of facts." We agree that it is difficult to generalize in determining whether a sufficient nexus exists between a program receiving federal assistance and a plaintiff to support a section 504 action. *Cf. Tudyman v. United Airlines*, 608 F.Supp. 739, 742 (C.D.Cal.1984) (declining to decide program definition on summary judgment).

[14] The recognition that program definition is often a highly case-specific matter does not resolve the question whether declaratory relief was properly denied here, however. This case appears to us quite similar to *Bilbrey v. Brown*, 738 F.2d 1462 (9th Cir.1984). There, the parents of two ***1113** fifth-grade students sued to recover for allegedly unlawful searches of the students by school officials. Plaintiffs sought both damages and a declaration that the searches violated the students' fourth amendment rights. A jury had found that the officials had acted in good faith, and it accordingly denied monetary relief on qualified-immunity grounds. The district court denied the declaration, apparently believing that it would serve no purpose.

We reversed. We held that the district court had examined the usefulness of the declaration only from the defendants' point of view. The court had ignored the fact that plaintiffs had been wronged and deserved to have their position vindicated even if damages were unavailable to compensate them. Further, we held that the district court had disregarded the public-education function that a declaration can serve. Because the searches were clearly unlawful, we ordered the district court to enter an appropriate declaration in plaintiffs' favor. *Id.* at 1470-71.

We conclude that we should remand this case for the district court to re-evaluate, in light of the applicability of *Bilbrey*, its decision denying declaratory relief.[FN14] Such relief might be appropriate as a vindication of plaintiffs' position and as a public statement of the extent of handicapped persons' rights under section 504. It may even forestall future litigation. *See generally McGraw-Edison*, 362 F.2d at 342-43. Whether declaratory relief is ultimately justified must, however, await determination of issues not yet resolved by the district court, including those of program specificity and the specific requirements of section 504 when federal funding is present. After exploration of those issues and any others that it finds to be appropriate, the district court may again exercise its discretion, in light of *Bilbrey* and our decision here, whether to award declaratory relief.

> FN14. Our reliance on *Bilbrey* should make clear that we also reject the district court's conclusion that the request for a declaration was moot due to an absence of current federal funding. In *Bilbrey*, we found that a *bona fide* controversy existed notwithstanding the fact that the students searched had both gone on to high school and that one of the defendant school officials had left his post. The declaration would still "serve to delineate important rights and responsibilities." *Bilbrey*, 738 F.2d at 1471.

II. THE CALIFORNIA STATUTE

A. *Private Right of Action Under Section 11135*

[15] Appellants object to dismissal of their pendent

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claim under Cal.Gov't Code § 11135 (West 1980).[FN15] The district court held that no private right of action existed under the state statute because of the existence of what it determined was a mandatory, exclusive administrative remedy. *See* *GLAD*, 607 F.Supp. at 182-83. We review questions of state law *de novo*. *Matter of McLinn*, 739 F.2d 1395, 1398 (9th Cir.1984) (en banc).

FN15. Section 11135 provides:

> No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

The question of a private right of action under section 11135 has never been addressed by the California courts. Indeed, the statute has been mentioned in California cases only a few times. Nonetheless, we conclude, for reasons that follow, that California courts would likely construe the statute as supporting a private right of action. *See* *Cort v. Ash*, 422 U.S. 66, 78, 95 S.Ct. 2080, 2087-88, 45 L.Ed.2d 26 (1975).

While the section 11135 cases do not address whether a private right of action exists under the statute, the cases all involved private litigants, who, like plaintiffs here, were either handicapped persons or organizations of handicapped people.[FN16] Moreover, the similarity of language between*1114 section 11135 and section 504 clearly supports finding a private right of action under section 11135. *See* *Kling v. County of Los Angeles*, 633 F.2d 876, 878 (9th Cir.1980) (private right of action under section 504).

FN16. We are aware of only three cases actually construing section 11135. *Westside Community for Independent Living v. Obledo*, 33 Cal.3d 348, 657 P.2d 365, 188 Cal.Rptr. 873 (1983), appears unhelpful as it involved an attempt by handicapped rights groups to compel promulgation of regulations to enforce Section 11135. *Martin v. City of Los Angeles*, 162 Cal.App.3d 559, 209 Cal.Rptr. 301 (1984), involved a suit by a handicapped person to compel architectural modifications to a police station. Although relief was denied, judgment was on the merits. Finally, *People v. Levinson*, 155 Cal.App.3d Supp. 13, 203 Cal.Rptr. 426 (Super.1984), involved an unsuccessful challenge to a fine imposed on a deaf traffic offender. He argued under 11135 that an interpreter should have been provided so that he could attend traffic school in lieu of his fine. Once again, the court reached the merits of the controversy.

Also important to our decision is California's stated policy to achieve, insofar as possible, the "total integration of handicapped persons into the mainstream of society." *In re Marriage of Carney*, 24 Cal.3d 725, 740, 598 P.2d 36, 44, 157 Cal.Rptr. 383, 391 (1979) (citing section 11135 as one example of the state legislature's effort in this regard). Cal. Gov't Code § 11139 (West 1980), for example, mandates construing section 11135 and related civil rights provisions so as not to frustrate their purpose. Further, among the numerous handicapped rights statutes scattered throughout the California Codes is an unequivocal statement that it is California's policy "to encourage and enable disabled persons to participate fully in the social and economic life of the state...." Cal.Gov't Code § 19230(a) (West 1980). Refusing handicapped people an opportunity to vindicate their rights through private lawsuits would, in our view, be inconsistent with these statements of policy from California's legislature and courts.

We reach our conclusion despite the existence of an administrative remedy not present in the federal statutory scheme. *See* Cal.Gov't Code § 11136 (West 1980).[FN17] Section 11136, however, is not written in mandatory or exclusive terms. We do not read it as precluding a private judicial remedy. *Cf.* 31 U.S.C. § 6721(a) (1982) (Revenue Sharing Act remedy expressly barring private lawsuits until prescribed administrative remedy exhausted). Nor does the fact that the California legislature expressly provided for private rights of action in certain articles of its Government Code necessarily indicate a legislative intent to preclude private actions to vindicate rights granted by other parts of the Code. Our conclusion is supported by section 11139, mandating liberal construction of the Code's civil rights provisions.

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> FN17. Section 11136 provides, in pertinent part:
>
> > Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing ... to determine whether a violation has occurred.

The added enforcement possibilities created by permitting private lawsuits would, in our view, best effectuate a civil rights provision like section 11135. The reasons for recognizing a private right of action under section 504 seem applicable here. *See Kling*, 633 F.2d at 878. Accordingly, we conclude that a private right of action exists under Cal.Gov't Code § 11135.

B. *The Eleventh Amendment*

Defendants argue that even if there is a private right of action under section 11135, federal courts cannot grant relief because of the eleventh amendment. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 124-25, 104 S.Ct. 900, 920-21, 79 L.Ed.2d 67 (1984) (federal courts lack jurisdiction to enjoin state institutions and state officials on the basis of state law).

Under our ruling above, *supra* Part I(B)(5), defendants are clearly correct that the eleventh amendment bars the suit against the Superior Court. Equally clear is that the suit against the County is not barred. Again, the troublesome question is the suit against the individual defendants. ***1115** We recognize that defendants are technically state employees. Nonetheless, because of the finding that relief against them will in fact constitute relief against the County, we conclude that the action based on section 11135 may proceed without violating the *Pennhurst* rule.

III. GLAD'S STANDING TO SUE

[16] Appellees argue, apparently for the first time, that GLAD lacks standing to bring an action under section 504.[FN18] Its argument, based on *Cort v. Ash*, 422 U.S. 66, 78, 95 S.Ct. 2080, 2087-88, 45 L.Ed.2d 26 (1975); *accord Kling*, 633 F.2d at 878, is that GLAD may not bring a private action under section 504 because it is not a member of the class benefited by the statute.

> FN18. Appellees' claim is more a question of GLAD's entitlement to relief under section 504 more than a question of Article III standing to sue. For jurisdictional purposes, the record establishes that GLAD has a sufficient stake in the outcome of this controversy to maintain this action. *See Warth v. Seldin*, 422 U.S. 490, 498-99, 95 S.Ct. 2197, 2204-05, 45 L.Ed.2d 343 (1975); *see also Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 471-72, 102 S.Ct. 752, 757-59, 70 L.Ed.2d 700 (1982).

Appellees assert that this case is analogous to *Sanders v. Marquette Public Schools*, 561 F.Supp. 1361, 1368-70 (W.D.Mich.1983), where the court held that a father of a handicapped child could not sue under section 504 for his personal pain and suffering and for alternative school expenses incurred when a school district allegedly denied his daughter's right to education. The father, the court held, was not in the class that Congress intended to benefit by enacting section 504.

We cannot accept the *Sanders* ruling to the extent that it precluded the father from recovering expenses he incurred to secure for his daughter an education that the school district was legally obligated to provide. The expenses were incurred for the daughter's benefit, and the father's relationship made the expenditures foreseeable and appropriate, and rendered him a suitable person to assert and enforce rights of his

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daughter. *See* Singleton v. Wulff, 428 U.S. 106, 114-115, 96 S.Ct. 2868, 2874-75, 49 L.Ed.2d 826 (1976) (plurality opinion).

[17] This court has already held that organizations of or for handicapped persons have standing to sue for injunctive relief under section 504. *Williams v. United States*, 704 F.2d 1162, 1163 (9th Cir.1983). GLAD is therefore clearly entitled to invoke section 504 for some purposes. So long as its claim is for expenses reasonably and foreseeably expended to secure for a handicapped juror an interpreter that the defendants were legally obligated to provide, we see no reason why GLAD, organized for the benefit of hearing-impaired persons, cannot maintain a damages action under section 504. Whether GLAD may actually recover its expenses must await further litigation of the merits in district court; our holding is that GLAD has standing to litigate that claim.

IV. CONSTITUTIONAL CLAIMS

[18] In their complaint, appellants alleged that refusal to provide them with an interpreter violated fourteenth amendment due process and equal protection. The district court found that these claims were waived because they were not mentioned during trial and because appellants' post-trial brief stated, "Because plaintiffs recognize that this case is better resolved without reaching a constitutional question, they do not here press their constitutional claim." Appellants refer to several points in the record where they contend they did raise the constitutional claims during trial. They also argue that they did not waive the claims in their post-trial brief, but merely followed *Campbell v. Kruse*, 434 U.S. 808, 98 S.Ct. 38, 54 L.Ed.2d 65 (1977) (vacating judgment based on constitutional claim and remanding for decision under section 504).[FN19]

FN19. Appellees argue that the federal courts should abstain from deciding the issue because the California statutes declaring handicapped people competent to serve as jurors have not been authoritatively construed. We reject the contention. First, abstention is a matter left to the trial court's sound discretion. *Silberkleit v. Kantrowitz*, 713 F.2d 433, 435 (9th Cir.1983). Second, appellees seem to argue that this is an appropriate case for abstention under *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971). The problem with this argument is that there is no pending state proceeding in this case. Most important, there is no indication that appellees ever raised the abstention argument below. As this is the first time the issue has been raised, it is not properly considered on appeal. *Trans Container Services (Basel) A.G. v. Security Forwarders, Inc.*, 752 F.2d 483, 487 (9th Cir.1985).

[19] We agree with the district court's conclusion that plaintiffs waived their constitutional claims. Although the presumption is against waivers of constitutional rights, *e.g.*, ***1116***Brookhart v. Janis*, 384 U.S. 1, 4, 86 S.Ct. 1245, 1246-47, 16 L.Ed.2d 314 (1966), a party may waive constitutional claims by failing to press them adequately before a court. Our review of the record indicates that, although plaintiffs included constitutional claims in the complaint, the case was in fact tried solely on the statutory claims. The constitutional claims were hardly mentioned outside of plaintiffs' counsel's opening remarks. Plaintiffs' statement in their post-trial brief only serves to reinforce what the trial record already makes clear-that plaintiffs relied only on their statutory claims. Our preference for avoiding constitutional questions where possible, *e.g.*, *Jean v. Nelson*, 472 U.S. 846, 105 S.Ct. 2992, 2997-98, 86 L.Ed.2d 664 (1985); *Campbell*, 434 U.S. 808, 98 S.Ct. 38, does not relieve litigants of the responsibility to present evidence and arguments on every claim they wish to pursue. The district court properly concluded that the constitutional claims had been abandoned. *Cf. Robert's Waikiki U-Drive, Inc. v. Budget Rent-a-Car Systems, Inc.*, 732 F.2d 1403, 1408-09 (9th Cir.1984).

CONCLUSION

To summarize, we hold that past federal funding of the relevant program can support an action for damages and declaratory relief under section 504. An injunction, however, may not be based on past funding.

We conclude that the district court erred in ruling that the individual defendants here were shielded from liability by quasi-judicial or legislative immunity. Moreover, the eleventh amendment does not bar the lawsuit *in toto* because the County, and not the State, will be responsible for any monetary judgment that may result. Because the Superior Court is a state ent-

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ity, however, it must be dismissed on eleventh amendment grounds.

We further conclude that the district court improperly held that there was no private right of action under Cal.Gov't Code § 11135. We agree, however, that plaintiffs had abandoned their constitutional claims.

In light of the foregoing, we affirm the district court's dismissal of the claim for injunctive relief under section 504 and of the constitutional claims against all defendants. We also affirm the dismissal of the entire action against the Superior Court. In all other respects, we reverse the judgment and remand for further proceedings consistent with this opinion. Appellants are entitled to costs.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

C.A.9 (Cal.),1987.
Greater Los Angeles Council on Deafness, Inc. v. Zolin
812 F.2d 1103

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929 F.Supp. 1088, 74 Fair Empl.Prac.Cas. (BNA) 1539
(Cite as: 929 F.Supp. 1088)

United States District Court,
M.D. Tennessee,
Nashville Division.

Beatrice Y. GRIMES, et al.
v.
SUPERIOR HOME HEALTH CARE OF MIDDLE TENNESSEE, INC., et al.
No. 3:94-1031.

June 19, 1996.

Former employees of home health care corporation brought race discrimination action against employer, and against consulting corporation which provided advice on personnel matters to home health care corporation, under Title VI, Title VII, § 1981, and § 1981a. On employer's motion to dismiss, and consulting corporation's motion to dismiss and/or for summary judgment, the District Court, Campbell, J., held that: (1) "primary objective limitation," under which Title VI action is not authorized with respect to employment practice unless primary objective of federal financial assistance is to provide employment, applies to private employers, and (2) employees' failure to state discrimination claims under Title VII against consulting corporation did not defeat employees' § 1981 claims against consulting corporation.

Employer's motion granted; consulting corporation's motion denied.

West Headnotes

[1] Federal Civil Procedure 170A 1829

170A Federal Civil Procedure
170AXI Dismissal
170AXI(B) Involuntary Dismissal
170AXI(B)5 Proceedings
170Ak1827 Determination
170Ak1829 k. Construction of Pleadings. Most Cited Cases

Federal Civil Procedure 170A 1835

170A Federal Civil Procedure
170AXI Dismissal
170AXI(B) Involuntary Dismissal
170AXI(B)5 Proceedings
170Ak1827 Determination
170Ak1835 k. Matters Deemed Admitted; Acceptance as True of Allegations in Complaint. Most Cited Cases
On motion to dismiss, court must construe complaint in light most favorable to plaintiffs, accepting all their factual allegations as true, and determine whether they can prove no set of facts that would entitle them to relief.

[2] Civil Rights 78 1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k126)
General prohibition of Title VI against discrimination in program or activity receiving federal financial assistance applies only if defendant receives federal funds. Civil Rights Act of 1964, § 601, as amended, 42 U.S.C.A. § 2000d.

[3] Civil Rights 78 1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k126)
Civil Rights Restoration Act was intended to ensure that various civil rights statutes would apply to entirety of any state or local institution that had program or activity funded by federal government. Civil Rights Restoration Act of 1987, § 1 et seq., 102 Stat. 28.

[4] Civil Rights 78 1055

78 Civil Rights
78I Rights Protected and Discrimination Prohi-

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bited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k126)
Under Civil Rights Restoration Act, term "program or activity," in section of Title VI prohibiting discrimination under any program or activity receiving federal financial assistance, was expanded to include all operations of institution that conducted program or activity. Civil Rights Restoration Act of 1987, § 1 et seq., 102 Stat. 28; Civil Rights Act of 1964, § 601, as amended, 42 U.S.C.A. § 2000d.

[5] Civil Rights 78 ⚿1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k126)
To state claim for damages under Title VI, plaintiff must allege that entity involved is engaging in racial discrimination, and entity involved is receiving federal assistance. Civil Rights Act of 1964, § 601 et seq., as amended, 42 U.S.C.A. § 2000d et seq.

[6] Civil Rights 78 ⚿1395(1)

78 Civil Rights
78III Federal Remedies in General
78k1392 Pleading
78k1395 Particular Causes of Action
78k1395(1) k. In General. Most Cited Cases
(Formerly 78k235(1))
Although plaintiff must prove intent at trial in order to prevail in Title VI action, intent need not be pled in complaint. Civil Rights Act of 1964, § 601 et seq., as amended, 42 U.S.C.A. § 2000d et seq.

[7] Civil Rights 78 ⚿1117

78 Civil Rights
78II Employment Practices
78k1108 Employers and Employees Affected
78k1117 k. Publicly Assisted Employers. Most Cited Cases
(Formerly 78k141)
"Primary objective limitation," under which Title VI action is not authorized with respect to employment practice of employer, employment agency, or labor organization unless primary objective of federal financial assistance is to provide employment, applies to private employers, despite its plain language limiting its application to departments and agencies. Civil Rights Act of 1964, § 604, as amended, 42 U.S.C.A. § 2000d-3.

[8] Civil Rights 78 ⚿1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k107(1))
Title VI served as model for section of Rehabilitation Act governing nondiscrimination under federal grants and programs. Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.; Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

[9] Civil Rights 78 ⚿1113

78 Civil Rights
78II Employment Practices
78k1108 Employers and Employees Affected
78k1113 k. Individuals as "Employers". Most Cited Cases
(Formerly 78k143)
Employees are not liable in their individual capacities for claims under Title VII. Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.

[10] Civil Rights 78 ⚿1006

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1002 Constitutional and Statutory Provisions
78k1006 k. Retrospective Application. Most Cited Cases
(Formerly 78k102.1)
Provisions added to § 1983 by Civil Rights Act of 1991 are applicable only to conduct arising after effective date of that Act. Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

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more fully set forth herein, Superior's Motion to Dismiss Plaintiff's Title VI Claims (Docket No. 46) is GRANTED. The Alpha Defendants' Motion to Dismiss and/or for Summary Judgment (Docket No. 55) is DENIED.

FACTS

Plaintiffs bring this action against Defendants for racial discrimination pursuant to 42 U.S.C. §§ 1981 and 1981a, 42 U.S.C. § 2000d ("Title VI"), and 42 U.S.C. §§ 2000e, *et seq.* ("Title VII"). Plaintiffs are former employees of Defendant Superior. Defendant Alpha Medical, Inc. ("Alpha") was, at all times pertinent herein, under contract with Superior to provide advice on hiring, promotions and other administrative matters to Superior.

TITLE VI CLAIMS

[1] On a motion to dismiss, this Court must construe the complaint in the light most favorable to the Plaintiffs, accepting all their factual allegations as true, and determine whether they can prove no set of facts that would entitle them to relief. *Briggs v. Ohio Elections Commission*, 61 F.3d 487, 493 (6th Cir.1995).

Plaintiffs assert, among other things, that Defendants' actions violate Title VI, 42 U.S.C. § 2000d. Both Superior and the Alpha Defendants move to dismiss Plaintiffs' Title VI claims.

[2] Section 601 of Title VI provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d. Thus, the general prohibition of Section 601 applies only if a defendant receives federal funds.[FN1] *See Mosley v. Clarksville Memorial Hospital*, 574 F.Supp. 224, 236 (M.D.Tenn.1983).

> FN1. It is undisputed that Superior receives federal funds in the form of payments under the Medicare program.

Before 1988, courts extended the prohibitions of Section 601 only to the specific program or activity receiving the federal funds. *See, e.g., Consolidated Rail Corp. v. Darrone*, 465 U.S. 624, 634-36, 104 S.Ct. 1248, 1255, 79 L.Ed.2d 568 (1984); *DeVargas v. Mason & Hanger-Silas Mason Co., Inc.*, 911 F.2d 1377, 1383 (10th Cir.1990), *cert. denied*, 498 U.S. 1074, 111 S.Ct. 799, 112 L.Ed.2d 860 (1991). In other words, prior to 1988, the strictures of Title VI applied only to an institution's or government entity's specific programs that received federal funds. *Hodges v. Public Bldg. Comm'n. of Chicago*, 864 F.Supp. 1493, 1504 (N.D.Ill.1994).

The landscape of Title VI changed in 1988, however, when Congress enacted the Civil Rights Restoration Act of 1987 ("the 1987 Act"), which overturned the program-specific interpretation of *Consolidated Rail. Hodges*, 864 F.Supp. at 1505; *see also DeVargas*, 911 F.2d at 1384. The 1987 Act expanded the concept of "program or activity" by adding to Title VI and other anti-discrimination statutes (such as the Rehabilitation Act of 1973) an explicit definition of that phrase. *Stanley v. Darlington County School Dist.*, 879 F.Supp. 1341, 1365 (D.S.C.1995), *rev'd in part on other grounds*, 84 F.3d 707 (4th Cir.1996).

"The new definition specifies that entire entities receiving federal funds-whether governmental entities, school systems, or universities*1092 -must comply with Title VI, rather than just the particular program or activity that actually receives the funds." *Id.; see also* 42 U.S.C. § 2000d-4a (Supp.1996).

[3][4] The 1987 Act "was intended to ensure that the various civil rights statutes 'would apply to the entirety of any state or local institution that had a program or activity funded by the federal government.' " *Hodges*, 864 F.Supp. at 1505 (quoting *Schroeder v. City of Chicago*, 927 F.2d 957, 962 (7th Cir.1991)). Thus, the term "program or activity" was expanded to include all of the operations of the institution that conducted the program or activity. *Id.*[FN2]

> FN2. *See also Maddox v. University of Tennessee*, 907 F.Supp. 1144, 1149 (E.D.Tenn.1994), *aff'd*, 62 F.3d 843 (6th Cir.1995), where the court held it was clear that the University of Tennessee constituted a "program or activity," as defined in the Rehabilitation Act (which was amended by the Civil Rights Restoration Act at the same time

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> and in the same fashion as Title VI), regardless of whether any federal funds were used by the university's athletic department (the specific program involved).

The cases cited by Superior- *Mosley v. Clarksville Memorial Hospital,* 574 F.Supp. 224 (M.D.Tenn.1983); *Trageser v. Libbie Rehabilitation Center,* 590 F.2d 87 (4th Cir.1978), *cert. denied,* 442 U.S. 947, 99 S.Ct. 2895, 61 L.Ed.2d 318 (1979); *Flora v. Moore,* 461 F.Supp. 1104 (N.D.Miss.1978), *aff'd,* 631 F.2d 730 (5th Cir.1980); and *Doe v. St. Joseph's Hospital of Fort Wayne,* 788 F.2d 411 (7th Cir.1986)-were all decided before the 1987 Act. Thus, they apply the more limited program-specific requirement upon plaintiffs and are not applicable here.[FN3]

> FN3. *Vakharia v. Swedish Covenant Hospital,* 824 F.Supp. 769 (N.D.Ill.1993), cited by Superior, was decided more than one year before *Hodges,* and-for some reason-fails to mention the 1987 Act at all. This Court can find no other case which has cited *Vakharia* for the proposition that Plaintiff must be an intended beneficiary of the federal funds even after the 1987 Act. In light of the 1987 Act and other authority, the Court does not find *Vakharia* to be persuasive.

[5][6] Since the 1987 Act, the Ninth Circuit has held that there is no requirement that a plaintiff plead that he was an intended beneficiary of the federally-funded program in which defendants are alleged to have participated. *Fobbs v. Holy Cross Health System Corp.,* 29 F.3d 1439, 1447 (9th Cir.1994), *cert. denied,* 513 U.S. 1127, 115 S.Ct. 936, 130 L.Ed.2d 881 (1995). "To state a claim for damages under 42 U.S.C. § 2000d, *et seq.,* a plaintiff must allege that (1) the entity involved is engaging in racial discrimination; and (2) the entity involved is receiving federal assistance." *Id.* (citing *Wrenn v. Kansas,* 561 F.Supp. 1216, 1221 (D.C.Kan.1983)). "Although the plaintiff must prove intent at trial, it need not be pled in the complaint." *Fobbs,* 29 F.3d at 1447.

In this case, Plaintiffs have alleged that Defendants engaged in racial discrimination and that Defendants receive federal assistance. Therefore, the Court finds that Plaintiffs have stated a claim under Section 601 of Title VI, and Superior's Motion to Dismiss on this issue must be denied.

Superior argues another limitation, however. Section 604 of Title VI, which specifically addresses claims of employment discrimination, limits the general prohibitions of Section 601:

> Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

42 U.S.C. § 2000d-3.

[7] The plain language of Section 604, which is often referred to as the "primary objective limitation," clearly indicates its applicability is only to federal departments or agencies. Yet, many courts have interpreted Section 604 as limiting the rights of private actions as well. *Mosley,* 574 F.Supp. at 226; *Association Against Discrimination v. City of Bridgeport,* 647 F.2d 256, 276 (2d Cir.1981), *cert. denied,* 455 U.S. 988, 102 S.Ct. 1611, 71 L.Ed.2d 847 (1982); *Trageser,* 590 F.2d at 89; *Doe,* 788 F.2d at 419 n. 12; *Carmi v. Metropolitan St. Louis Sewer District,* 620 F.2d 672, 674-75 (8th Cir.1980), *cert. denied,* 449 U.S. 892, 101 S.Ct. 249, 66 L.Ed.2d 117 (1980); ***1093***Temengil v. Trust Territory of Pacific Islands,* 881 F.2d 647, 653 (9th Cir.1989) (court completely omitted the language "by any department or agency" in quoting the statute), *cert. denied,* 496 U.S. 925, 110 S.Ct. 2617, 110 L.Ed.2d 638 (1990); *Reynolds v. School Dist. No. 1, Denver, Colorado,* 69 F.3d 1523, 1531-32 (10th Cir.1995); *Moxley v. Vernot,* 555 F.Supp. 554, 558 (S.D.Ohio 1982); *Ward v. Massachusetts Bay Transp. Auth.,* 550 F.Supp. 1310, 1311 (D.Mass.1982); and *Bhatt v. Uniontown Hospital,* 1986 WL 30681 at *6 (W.D.Pa.1986).

[8] The United States Supreme Court, without expressly so holding, assumed that Section 604 applied to private rights of action in *Consolidated Rail Corp. v. Darrone,* 465 U.S. 624, 636-37, 104 S.Ct. 1248, 1256, 79 L.Ed.2d 568 (1984); *see also North Haven Board of Education v. Bell,* 456 U.S. 512, 528-30 n. 20, 102 S.Ct. 1912, 1922 n. 20, 72 L.Ed.2d 299 (1982) (Section 604 was added to indicate, or at least clarify, a limitation on the class of beneficiaries of Title VI);

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and *Johnson v. Transportation Agency, Santa Clara County, California,* 480 U.S. 616, 626-27 n. 6, 107 S.Ct. 1442, 1449 n. 6, 94 L.Ed.2d 615 (1987) (Congress added Section 604 because of its concern that the receipt of any form of financial assistance might render an employer subject to the commands of Title VI rather than Title VII).[FN4]

> FN4. Many of the cases which have looked at the meaning of Section 604 deal with whether to extend its applicability to Section 504 of the Rehabilitation Act of 1973. *See, e.g., Consolidated Rail, Trageser, Carmi, Moxley* and *Ward.* Title VI served as the model for Section 504 of the Rehabilitation Act of 1973. *LeStrange v. Consolidated Rail Corp.,* 687 F.2d 767, 768 (3d Cir.1982).

On the other hand, a few courts have held that Section 604 does not limit private rights of action but applies solely to federal departments or agencies, as the statute itself states. *Pittsburgh Federation of Teachers v. Langer,* 546 F.Supp. 434, 436 (W.D.Pa.1982); *LeStrange v. Consolidated Rail Corp.,* 687 F.2d 767, 770 (3d Cir.1982), *aff'd, Consolidated Rail Corp. v. Darrone,* 465 U.S. 624, 104 S.Ct. 1248, 79 L.Ed.2d 568 (1984);[FN5] *Jones v. MARTA,* 681 F.2d 1376, 1379, n. 7 and 1382 (11th Cir.1982), *cert. denied,* 465 U.S. 1099, 104 S.Ct. 1591, 80 L.Ed.2d 123 (1984); and *Hart v. County of Alameda,* 485 F.Supp. 66, 72 (N.D.Cal.1979).

> FN5. As indicated above, in *Consolidated Rail,* the Supreme Court assumed that the Section 604 limitation applies to private rights of action without expressly overruling the lower court's dicta to the contrary.

Despite the apparent majority of authority to the contrary, this Court is reluctant to disregard the plain language of Section 604 itself. As the Third Circuit noted: "The plain words of § 604 limit its application to departments or agencies. Given the statutory scheme of which Title VI is a part, it is not illogical to assume Congress intended precisely what it said and no more." *LeStrange,* 687 F.2d at 770.[FN6]

> FN6. The Third Circuit explained: "The question of whether § 604 also limited the rights of private litigants was unlikely to even occur to the Congress. The only reason for a private litigant to sue for employment discrimination under Title VI is that he failed to meet the administrative requirements to bringing suit under Title VII. Even then, an action brought pursuant to 42 U.S.C. § 1983 may provide a wider range of remedies than a Title VI action." *LeStrange,* 687 F.2d at 771.

Nonetheless, the Court is persuaded that the Supreme Court has implied that the limitations of Section 604 apply to private rights of action. *See, e.g., Consolidated Rail,* 465 U.S. at 636-37, 104 S.Ct. at 1256; *North Haven,* 456 U.S. at 528-30 n. 20, 102 S.Ct. at 1922 n. 20; and *Johnson,* 480 U.S. at 626-27 n. 6, 107 S.Ct. at 1449 n. 6.

As recently as November 1995, a federal court of appeals found: "Although the literal language of § 2000d-3 establishing the requirement that a primary objective of federal funding be to provide employment only applies to federal administrative action to redress civil rights violations under Title VI, we apply the requirement to the implied private rights of action which have been read into the statute." *Reynolds v. School Dist. No. 1, Denver, CO.,* 69 F.3d 1523, 1531 n. 8 (10th Cir.1995) (citing numerous cases).

***1094** Finally, this Court has previously held that Section 604 "has been consistently interpreted by the courts to limit the right to bring a private suit." *Mosley,* 574 F.Supp. at 236. This Court is not persuaded that the prior decision in *Mosley* was wrong.

Therefore, the Court finds that Section 604 limits Plaintiff's rights under Title VI to those employers who receive federal funds "where a primary objective of the Federal financial assistance is to provide employment." There is no allegation in this case that the "primary objective" of the Medicare funds received by Superior is "to provide employment." Thus, Plaintiff's Title VI claims against Superior must be dismissed, and Superior's Motion to Dismiss (Docket No. 46) is GRANTED.

The Alpha Defendants also moved to dismiss Plaintiffs' Title VI claims, if any, against them. Plaintiffs have conceded, however, that they do not assert Title VI claims against the Alpha Defendants (*see* Second Amended Complaint, ¶ 46; Plaintiffs' Memorandum in Opposition to the Alpha Defendants' Motion, p. 22). Therefore, the Title VI portion of the Alpha Defen-

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(Cite as: 929 F.Supp. 1088)

dants' Motion to Dismiss is DENIED as moot.

TITLE VII

[9] Defendants Frazier and Rogers also move to dismiss Plaintiffs' Title VII claims against them individually. They correctly note that employees are not liable in their individual capacities for claims under Title VII. *See, e.g., Babb v. Bridgestone/Firestone, Inc.*, 861 F.Supp. 50, 52 (M.D.Tenn.1993).

Plaintiffs, however, have not alleged Title VII claims against any of the Alpha Defendants. *See* Second Amended Complaint, ¶ 50; Plaintiffs' Memorandum in Opposition to the Alpha Defendants' Motion, pp. 22-23. Therefore, that portion of the Alpha Defendants' Motion to Dismiss/for Summary Judgment which deals with Title VII is DENIED as moot.

SECTION 1981

The only remaining claim against the Alpha Defendants, then, is Plaintiffs' claim for violation of 42 U.S.C. § 1981, which states:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as is enjoyed by white citizens....

42 U.S.C. § 1981(a).

[10] In 1991, Section 1981 was amended by the Civil Rights Act of 1991 to add a definition of "make and enforce contracts" as follows:

> For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

42 U.S.C. § 1981(b).[FN7] The discrimination prohibited by Section 1981 includes both nongovernmental discrimination and discrimination under color of State law. 42 U.S.C. § 1981(c).

> FN7. The provisions added by the Civil Rights Act of 1991 are applicable only to conduct arising after the effective date of that Act. *Caprio v. American Airlines, Inc.*, 848 F.Supp. 1528, 1530 (M.D.Fla.1994); *see also Rivers v. Roadway Express*, 511 U.S. 298, ----, 114 S.Ct. 1510, 1517, 128 L.Ed.2d 274 (1994).

[11] The Alpha Defendants move to dismiss the Section 1981 claims, arguing that since Plaintiffs have failed to state claims under Title VII, the claims under Section 1981 must also fail. The Court notes that Plaintiffs did not even *allege* violations of Title VII against the Alpha Defendants. Second Amended Complaint, § 50. Thus, the Alpha Defendants' argument, standing alone, cannot be sustained. Although taken literally, Plaintiffs did not "state a claim" under Title VII against these Defendants, it is not necessarily true that such a failure defeats Plaintiffs' Section 1981 claims.

If, in fact, Plaintiffs could not sustain a Title VII claim against the Alpha Defendants because the Alpha Defendants were not Plaintiffs' "employer" [FN8] as that term is defined*1095 in Title VII, then-since Section 1981 addresses discriminatory conduct not only of "employers" as defined by Title VII, but also of private individuals and corporations-Plaintiffs' failure to bring a Title VII action against the Alpha Defendants should have no effect upon Plaintiffs' Section 1981 claim. The Alpha Defendants cannot "hide" behind the fact that Title VII claims were not brought in order to avoid liability under Section 1981 where the scope of that statute is broader than Title VII.

> FN8. The Court did not have to decide this issue since Plaintiffs did not assert Title VII claims against the Alpha Defendants.

[12] The remedies available under Title VII and under Section 1981, although related, and although directed to most of the same ends, are separate, distinct, and independent. *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 461, 95 S.Ct. 1716, 1721, 44 L.Ed.2d 295 (1975); *Watson v. Fraternal Order of Eagles*, 915 F.2d 235, 240 (6th Cir.1990); *Balmes v. Board of Ed. of Cleveland City School Dist.*, 436 F.Supp. 129, 133 (N.D.Ohio 1977).

[13][14] For example, proof of discriminatory intent is not required in a Title VII case as it is in a Section 1981 case. *Harvey v. NYRAC, Inc.*, 813 F.Supp. 206, 209 (E.D.N.Y.1993). Similarly, individual defendants

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may not be liable under Title VII, but they can be individually liable under Section 1981. *Id.*

[15] Where a plaintiff has alleged violations of both Title VII and Section 1981, the court will consider the alternative remedy under Section 1981 if violation of that statute can be made out on grounds different from those available under Title VII. *Aldridge v. Tougaloo College*, 847 F.Supp. 480, 487 (S.D.Miss.1994) (citing *Rivera v. City of Wichita Falls*, 665 F.2d 531, 534 n. 4 (5th Cir.1982)). Plaintiffs may not be able to sustain a claim under Title VII because the Alpha Defendants were not "employers" as that term is defined by Title VII; so the grounds available under Title VII may not be available. That fact does not, however, necessarily mean that the grounds under Section 1981 are not available.

Therefore, the Alpha Defendants' Motion to Dismiss the Section 1981 claims simply because there are no viable Title VII claims must be DENIED.

The Alpha Defendants also seek summary judgment with regard to the Section 1981 claims, alleging that because they were not personally involved in any adverse employment actions against the Plaintiffs, the Section 1981 claims cannot be sustained.

As provided in Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202, 211 (1986). Of course, the court is to construe the evidence and all inferences to be drawn from it in the light most favorable to the nonmoving party. *Id.* at 255, 106 S.Ct. at 2513-14, 91 L.Ed.2d at 216.

The party seeking summary judgment bears the initial burden of showing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265, 274 (1986); *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir.1989).

The Supreme Court concluded in *Anderson* that a dispute about a material fact is "genuine" within the meaning of Rule 56 only if "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson*, 477 U.S. at 252, 106 S.Ct. at 2510, 91 L.Ed.2d at 211-12. Since the preponderance of the evidence standard is used in this determination, more than a mere scintilla of evidence in support of the non-moving party's position is required. *Id.* at 252, 106 S.Ct. at 2512, 91 L.Ed.2d at 214.

Once a motion for summary judgment has been made, "the non-moving party bears the responsibility to demonstrate that summary judgment is inappropriate under Rule 56(e)." *Davidson & Jones Dev. Co. v. Elmore Dev. Co.*, 921 F.2d 1343, 1349 (6th Cir.1991). The non-moving party may not merely rest on ***1096** conclusory allegations contained in the complaint, but must respond with affirmative evidence supporting its claims and establishing the existence of a genuine issue of material fact. *Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553, 91 L.Ed.2d at 274; *Cloverdale Equip. Co. v. Simon Aerials, Inc.*, 869 F.2d 934, 937 (6th Cir.1989). While the disputed issue does not have to be resolved conclusively in favor of the non-moving party to defeat summary judgment, "sufficient evidence supporting the claimed factual dispute" must be shown, thereby requiring resolution of the parties' differing versions of the truth by a jury or judge. *Liberty Lobby*, 477 U.S. at 249, 106 S.Ct. at 2510, 91 L.Ed.2d at 212; *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 289, 88 S.Ct. 1575, 1592, 20 L.Ed.2d 569, 592 (1968).

[16][17] The Alpha Defendants have failed to respond to the Plaintiffs' Local Rule 8(b)(7) Statement of Material Facts Showing A Genuine Issue for Trial in accordance with Local Rule 8(b)(7)(d), so the Court must and will assume that the Alpha Defendants do not dispute the 160 facts asserted therein. That the Alpha Defendants believe Plaintiffs' response to their Statement of Facts is incorrect does not excuse their failure to respond to the 160 Statements in Plaintiff's Local Rule Statement of Material Facts in Dispute.[FN9]

> FN9. The Alpha Defendants' assertion that Plaintiffs' response fails to comply with Local Rule 8(b)(7)(c) is incorrect. Plaintiffs responded to each fact set forth by the Alpha Defendants. For those which were disputed, Plaintiffs explained the dispute and gave citations to the record or to Plaintiffs' own 160 Statements of Fact which were each, in turn,

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> supported with citations to the record. Obviously, the Court cannot and will not consider evidence with does not comply with Rule 56(e), such as hearsay evidence. But, in general, Plaintiffs' response complies with the Local Rules.

[18][19][20] Although Plaintiffs' failure to bring Title VII claims against these Defendants cannot be used to defeat their Section 1981 claims, it is true that the analysis of claims brought under Section 1981 mirrors the analysis of Title VII actions. *Lewis v. American Foreign Service Ass'n.*, 846 F.Supp. 77, 82 (D.D.C.1993). The *McDonnell Douglas/ Burdine* [FN10] formula is the evidentiary framework applicable not only to claims brought under Title VII, but also to claims under Section 1981. *Mitchell v. Toledo Hospital*, 964 F.2d 577, 582 (6th Cir.1992). The respective burdens of proof and persuasion of the parties in a Title VII action apply equally to a Section 1981 action. *Harvey*, 813 F.Supp. at 209.

> FN10. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d. 668 (1973) and *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981).

[21] A claim seeking to impose personal liability under Section 1981 must be predicated on the actor's personal involvement and there must therefore be some affirmative link to causally connect the actor with the discriminatory action. *Johnson v. Resources for Human Development, Inc.*, 843 F.Supp. 974, 978 (E.D.Pa.1994).

[22] The Alpha Defendants allege that it is undisputed that they did not personally participate in any adverse employment decisions or actions against the Plaintiffs. Plaintiffs, however, have cited numerous instances in the record which dispute that fact. The Court finds that there exist genuine issues of material fact as to the extent of the Alpha Defendants' participation in the employment decisions at issue and in the alleged discriminatory acts. Therefore, their Motion for Summary Judgment on the Section 1981 claims is DENIED.

CONCLUSIONS

For the reasons stated herein, Defendant Superior's Motion to Dismiss Plaintiff's Title VI Claims (Docket No. 46) is GRANTED, and the Alpha Defendants' Motion to Dismiss and/or for Summary Judgment (Docket No. 55) is DENIED. The remaining portions of this lawsuit-the Title VII and Section 1981 claims against Superior and the Section 1981 claims against the Alpha Defendants-are REFERRED to the Magistrate Judge for continued case management.

It is so ORDERED.

M.D.Tenn.,1996.
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630 F.2d 79, 23 Fair Empl.Prac.Cas. (BNA) 909, 23 Empl. Prac. Dec. P 31,154
(Cite as: 630 F.2d 79)

United States Court of Appeals,
Second Circuit.

The GUARDIANS ASSOCIATION OF the NEW YORK CITY POLICE DEPARTMENT, INC., The Hispanic Society of the New York City Police Department, Inc., Nydia I. Diaz, James Michael Hidalgo, Wilfred Cebellero, Andre Lopez, Reinaldo Salgado, Denise Santos, Deborah Holmes and Pamela Obey, individually and on behalf of all those similarly situated, Plaintiffs-Appellees,

v.

CIVIL SERVICE COMMISSION OF the CITY OF NEW YORK, Department of Personnel of the City of New York, and The New York City Police Department, Defendants-Appellants.

No. 849, Docket 80-7027.

Argued Feb. 6, 1980.
Decided July 31, 1980.

Plaintiffs brought employment discrimination suit challenging test designed to select candidates for hiring as entry level police officers and sought preliminary and permanent injunction against planned use of test results. The District Court, 484 F.Supp. 785, Robert L. Carter, J., found that use of test unjustifiably discriminated against blacks and Hispanics in violation of Title VII and ordered a broad remedy, including a 50 percent minority hiring quota, and defendants appealed. The Court of Appeals, Newman, Circuit Judge, held that: (1) exam had a racially disparate racial impact; (2) content validation was appropriate technique for assessing examination; (3) exam lacked content validity in using results of exam to compile rank ordering of all applicants and selecting passing score sufficient to generate required number of trainees; (4) it was appropriate to bar continued use of exam; (5) it was appropriate to require city to make extensive efforts in its search for new selection procedure, including consideration of "all reasonably available alternative selection procedures" and broad consultation with appropriate professionals; (6) it is a reasonable remedy to require that any subsequent exam or other selection device receive court approval prior to its use; (7) in determining legality of new selection procedure, district court should not require that procedure conform in all respects to uniform guidelines on employee selection procedures promulgated by Equal Employment Opportunity Commission and American Psychological Association standards; (8) new selection procedure need not have least adverse impact on minority applicants in order to comply with Title VII; and (9) only hiring remedy justified was compliance remedy, one designed to make sure that city complied with requirements of Title VII in making appointments to police force.

Affirmed in part, vacated in part, and remanded.

Sifton, District Judge, sitting by designation, concurred and filed opinion.

West Headnotes

[1] Civil Rights 78 ⚿1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k150, 78k9.13)

Examination designed to select candidates for hiring as entry level police officers in New York City Police Department which yielded a passing rate of 45.9% for whites, of 17 percent for blacks and of 20.5 percent for Hispanics had a disparate racial impact by any reasonable measure. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[2] States 360 ⚿4.16(1)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(1) k. In General. Most Cited Cases
(Formerly 360k4.16)

Finding a prima facie Title VII violation by state or local governments without showing of discriminatory intent does not violate Tenth Amendment. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.; U.S.C.A.Const. Amends. 10, 14.

[3] Civil Rights 78 ⚿1504

78 Civil Rights

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78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1504 k. In General. Most Cited Cases
(Formerly 78k331, 78k38)
In employment discrimination action pursuant to Title VII, uniform guidelines on employment selection procedures promulgated by Equal Employment Opportunity Commission should always be considered, but they should not be regarded as conclusive unless reason and statutory interpretations support their conclusions. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[4] Civil Rights 78 1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k150, 78k9.13)
In assessing examination designed to select candidates for hiring as entry level police officers in New York City Police Department, content validation as set forth in uniform guidelines on employee selection procedure promulgated by Equal Employment Opportunity Commission was appropriate, since exam tested for basic abilities to remember details, to fill out forms and to apply general principles to specific facts. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[5] Civil Rights 78 1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k150, 78k9.13)
Attributes of examination with sufficient content validity to be used notwithstanding its disparate racial impact include: test makers must have conducted suitable job analysis; test makers must have used reasonable competence in constructing test itself; content of test must be related to content of job; content of test must be representative of content of job; and test must be used with a scoring system that usefully selects from among applicants those who can better perform the job. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[6] Civil Rights 78 1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k150, 78k9.13)
In developing examination designed to select candidates for hiring as entry level police officers in New York City Police Department, job analysis performed by city which set forth 42 entry level tasks and rated tasks on basis of frequency of occurrence, importance and amount of time normally spent in performing it, adequately assessed important work behavior required for successful performance and their relative importance for purposes of Title VII. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[7] Civil Rights 78 1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k150, 78k9.13)
Examination designed to select candidates for hiring as entry level police officers in New York City Police Department sufficiently satisfied requirement of Title VII that content of test be related to content of job, where job analysis procedure provided adequate assurance that identified tasks were in fact tasks that police officer performed and, while procedure for identifying abilities required those tasks was less than satisfactory, abilities that were actually tested for appeared adequately related to most of the identified tasks. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[8] Civil Rights 78 1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k150, 78k9.13)
Examination designed to select candidates for hiring as entry level police officers in New York City Police Department was adequately related to content of police officers' job, and adequately representative of content of the job; while it did not test for all skills involved in being police officer nor adequately test for human relations skill that job analysis mentioned as important, skills it did measure, memory ability to fill out forms and ability to

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apply rules to factual situations, were all significant aspects of entry level police work. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[9] Civil Rights 78 ⚿1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k150, 78k9.13)
Examination process to select candidates for hiring as entry level police officers in New York City Police Department lacked content validity in using results of exam to compile rank ordering of all applicants and selecting passing score sufficient to generate required number of potential trainees, where examination had disparate impact and, considering defects in job analysis and test construction and fact that testing scores were closely bunched around cut-off score, exam did not measure ability with sufficient differentiating power to justify rank ordering. Civil Rights Act of 1964, §§ 701 et seq., 703(h) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-2(h).

[10] Civil Rights 78 ⚿1142

78 Civil Rights
78II Employment Practices
78k1142 k. Educational Requirements; Ability Tests. Most Cited Cases
(Formerly 78k153, 78k9.13)
When cutoff score for entry level examination unrelated to job performance produces disparate racial results, Title VII is violated. Civil Rights Act of 1964, §§ 701 et seq., 703(h) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-2(h).

[11] Civil Rights 78 ⚿1562

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1562 k. Affirmative Action; Recruitment and Hiring. Most Cited Cases
(Formerly 78k393, 78k46(4), 78k46)
When it has been established that selection procedure has been unlawfully used by employer, appropriate remedy should forbid use of that procedure, or its disparate racial impact, and may properly assure establishment of lawful new procedure; when it also appears that employer has discriminated prior to use of challenged selection procedure, then it may also be appropriate to fashion some form of affirmative relief, on an interim and long-term basis, to remedy past violations. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[12] Civil Rights 78 ⚿1562

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1562 k. Affirmative Action; Recruitment and Hiring. Most Cited Cases
(Formerly 78k393, 78k46(4), 78k46)
Hiring ratio for interim period to compensate for prior discrimination should be used only upon clear evidence and appropriate findings of need to redress demonstrated prior discrimination of long standing that has had significant impact on minority employment. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[13] Civil Rights 78 ⚿1562

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1562 k. Affirmative Action; Recruitment and Hiring. Most Cited Cases
(Formerly 78k393, 78k46(4), 78k46)
If hiring ratio is imposed beyond interim period in which valid selection procedure is developed in order to reach required long-term target, justification for use of hiring ratio must be especially compelling; prior discrimination warranting such remedies must either be intentional, or it must plainly appear that significant discrimination has persisted for a substantial time. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[14] Civil Rights 78 ⚿1562

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1562 k. Affirmative Action; Recruitment and Hiring. Most Cited Cases
(Formerly 78k393, 78k46(4), 78k46)
Having found examination designed to select candidates

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for hiring as entry level police officers violated Title VII it was appropriate to bar its continued use except on interim basis with adjustments that eliminated its disparate racial impact and thereby avoided its unlawful effect. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[15] Civil Rights 78 ⚿1562

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1562 k. Affirmative Action; Recruitment and Hiring. Most Cited Cases
(Formerly 78k393, 78k46(4), 78k46)
Having found examination designed to select candidates for hiring as entry level police officers violated Title VII, it was appropriate to require city to make extensive efforts in its search for new procedure, including consideration of all reasonably available alternative selection procedures and broad consultation with appropriate professionals. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[16] Civil Rights 78 ⚿1562

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1562 k. Affirmative Action; Recruitment and Hiring. Most Cited Cases
(Formerly 78k393, 78k46(4), 78k46)
Once an examination has been adjudicated to be in violation of Title VII, it is a reasonable remedy to require that any subsequent exam or other selection device receive court approval prior to its use. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[17] Civil Rights 78 ⚿1562

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1562 k. Affirmative Action; Recruitment and Hiring. Most Cited Cases
(Formerly 78k393, 78k46(4), 78k46)
Having found examination designed to select candidates for hiring as entry level police officer violated Title VII, in determining legality of new selection procedure, literal compliance with uniform guidelines on employee selection procedures promulgated by Equal Employment Opportunity Commission and standards of American Psychological Association is not required; it is sufficient if new procedure conforms to essential purposes of Title VII. Civil Rights Act of 1964, §§ 701 et seq., 703(h) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-2(h).

[18] Civil Rights 78 ⚿1562

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1562 k. Affirmative Action; Recruitment and Hiring. Most Cited Cases
(Formerly 78k393, 78k46(4), 78k46)
Where examination designed to select candidates for hiring as entry level police officers violated Title VII, new selection procedure need not have had least adverse impact on minority applicants in order to comply with Title VII. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[19] Civil Rights 78 ⚿1562

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1562 k. Affirmative Action; Recruitment and Hiring. Most Cited Cases
(Formerly 78k393, 78k46(4), 78k46)
Absent showing of deliberate intention to discriminate against blacks or Hispanics, or demonstration of pattern of significant prior discrimination in use of test designed to select candidates for hiring as entry level police officers in New York City police force, which test was determined to be discriminatory, affirmative hiring quota of 50 percent, either as interim or long-term relief, and long-hiring goal of 30 percent were unwarranted; rather, only hiring remedy justified was compliance remedy, one designed to make sure that city complied with requirements of Title VII in making appointments to police force. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[20] Civil Rights 78 ⚿1560

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630 F.2d 79, 23 Fair Empl.Prac.Cas. (BNA) 909, 23 Empl. Prac. Dec. P 31,154
(Cite as: 630 F.2d 79)

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1559 Relief
78k1560 k. In General. Most Cited Cases
(Formerly 78k391.1, 78k391, 78k46(2), 78k46)
In absence of intentional discrimination, affirmative relief requires some demonstrated pattern of significant prior discrimination. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

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Ira H. Leibowitz, Barry Lasky, Garden City, N. Y., submitted a brief for The Policewomen's Endowment Assoc., Inc., as amicus curiae.

H. Elliot Wales, New York City, submitted a brief for Seven Civil Service Organizations as amicus curiae.

Before MANSFIELD and NEWMAN, Circuit Judges, and SIFTON,[FN*] District Judge.

FN* Of the United States District Court for the Eastern District of New York, sitting by designation.

NEWMAN, Circuit Judge:

This employment discrimination suit pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. s 2000e-2, once again requires this Court to venture into the complex realm of testing and test validation. The test at issue was designed by New York City officials and administrated on June 30, 1979 to 36,797 applicants for positions on the City's police force. Plaintiffs are the Guardians Association of the New York City Police Department, Inc., an organization of Black police officers, the Hispanic Society of the New York City Police Department, Inc., an organization of Hispanic police officers, and eight individual Black or Hispanic applicants. Defendants ***83** are the New York City Department of Personnel, which performed much of the test preparation, the New York City Civil Service Commission, and the New York City Police Department. The United States District Court for the Southern District of New York (Robert L. Carter, Judge) found that use of the test unjustifiably discriminates against Blacks and Hispanics in violation of Title VII. Guardians Ass'n v. Civil Service Commission, 484 F.Supp. 785 (S.D.N.Y.1980). The Court ordered a broad remedy, including a 50% minority hiring quota. We affirm the District Court's finding that the City's specific use of the test violates Title VII, but vacate the remedy and remand for entry of a revised decree.

I. Factual Background

The test in question, designated Exam No. 8155, was designed to select candidates for hiring as entry-level police officers. Those who pass the exam are selected, in rank order of their test scores, to complete the other aspects of the hiring process-a medical examination, a physical agility test, a psychological test, and a character investigation. These last four components of the hiring process are scored only on a pass/fail basis. Thus, an appellant's score on Exam No. 8155 is a major determinant of his prospects for becoming a police officer. It is also the only feature of the process alleged to have a discriminatory impact. Once an applicant scores high enough to be selected for the final four hiring steps and successfully completes those steps, he or she becomes a sworn police officer and enters the police academy for five months of training. While successful completion of the training program is a requirement of continuing as a police officer, the Department does not use the training program as a selection device, but anticipates that nearly all academy entrants will go on to active duty.

The exam was developed by a fairly elaborate two-stage process; the first stage was an analysis of the police officer's job, and the second was construction of the test itself. The job analysis consisted of five separate steps. First, the Department of Personnel identified 71 tasks that police officers generally perform, based on interviews with 49 police officers and 49 supervisors. Second, a panel of seven officers and supervisors reviewed the list to add any tasks that had been omitted, and to eliminate those items that were duplicative, or too specialized to be performed by

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entry-level officers. The result was a consolidated list of 42 entry-level tasks.

Third, a questionnaire was distributed to 5,600 police officers, requesting them to rate each of the 42 tasks on the basis of its frequency of occurrence, its importance, and the amount of time normally spent in performing it. The 2,600 responses that were received were then analyzed by computer to yield a ranking of the 42 tasks, according to the combined rating of all the responses. In addition, faculty members of John Jay College were asked to observe police officers during an entire tour of duty and record the tasks that they performed; their survey generally confirmed the identification of the 42 tasks.

In the fourth step of the job analysis, the Department of Personnel divided the list of 42 ranked tasks into clusters of related activities. Five such clusters were established: the arrest process, providing assistance to people, police operations, stationhouse activities, and handling unusual and other occurrences. The fifth step was an analysis of all five clusters, each one by a separate panel of police officers, to identify the "knowledge, skills and abilities" required to perform these tasks at the entry level, and to assign percentages reflecting the relative importance of each of the identified knowledges, skills, and abilities for the cluster as a whole. One panel listed five such qualities for its cluster, all of which are properly characterized as "abilities" or "skills" (hereafter referred to as "abilities"): recalling facts, filling out forms, understanding and applying statutory definitions of crimes, understanding written instructions and applying appropriate procedures, and human relations skills, including communication techniques. Each of the other four panels used the first panel's***84** list of abilities, but developed its own percentages to express the relative importance of each ability to the tasks within its cluster.

The second major stage in developing Exam No. 8155, the process of test construction, consisted of four identifiable steps. First, the percentages of the five abilities necessary to perform each of the five task clusters were multiplied by the weightings that had been given to each task in Step 3 of the job analysis on the basis of frequency, importance, and time spent. This yielded a general measurement for the importance of each of the five abilities for performance of the job of police officer. As a result of this computation, the Department of Personnel concluded that on a test with 100 questions, 15 questions should test for the ability to recall facts, 9 questions for filling out forms, 14 questions for understanding and applying sections of the criminal law, 32 questions for understanding written instructions and applying appropriate procedures, and 30 questions for human relations skills. Next, a group of eleven police officers was selected to write multiple-choice questions that tested for the five abilities, as they related to the 42 identified tasks. The officers wrote many of these questions from Police Academy materials and similar sources, however, without having access to descriptions of the five identified abilities, or the 42 ranked tasks. In the third step, Department of Personnel staff members who did have access to the description of abilities and the ranking of tasks reviewed the questions written by the police officers to assure that the questions were not ambiguous, overly complex, overly specialized, or dependent on prior knowledge. As a result of this review, some questions were discarded, others were revised, and still others were added. Finally, the resulting questions were subjected to a further review by a panel of six police experts, and by various members of the Department of Personnel.

The test that resulted consisted of 100 multiple-choice questions, designed so that the candidate could answer correctly without knowledge of any information beyond what was provided on the test itself. The test materials were determined by the Department of Personnel to require an eighth-grade reading level, on the average, although the 14 questions on law required college-level reading ability. The estimated time for completing the exam was 1 1/2 hours, but 3 1/2 hours were allowed.

The first part of the exam, designed to measure the ability to recall facts, consisted of a page-and-a-half description of a burglary, and a series of 15 questions to be answered without referring back to the description. In the second part, testing ability to fill out forms, the candidates were given a simplified arrest form, and a page-long description of both a robbery and an arrested suspect, and then asked 9 questions about the proper entries to be made in filling out the form. Part three, intended to test ability to apply provisions of law, consisted of 14 questions, each briefly presenting the facts of an incident, and then requiring the candidate to identify the precise criminal offense involved on the basis of definitions provided in the test materials.[FN1] The remaining 62 questions, of ***85** which 32 were intended to measure the ability to follow appropriate procedures and 30 were intended to measure human relations skills, consisted of general instructions as to procedures or appropriate responses for certain types of situations, a description of a specific situation, and then one or more questions asking the proper response to the situation presented. Three of the questions dealing with appropriate procedures, for example, involved the proper response to a

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bomb threat. Four of the questions in the human relations section involved the proper way to deal with a person who appears to be mentally ill.

FN1. One example:

> 37. Chris Hart and Larry Burns are walking by a big museum late one night. Hart notices that, although the museum is closed to the public, one of the doors is unlocked. Hart suggests that for a prank they go into the museum to see the exhibits. Hart has a flashlight with him while Burns has an illegal gun hidden under his clothing. Hart does not know that Burns has a gun illegally in his possession. About five minutes after they enter the museum, they hear footsteps and leave the museum the same way they entered. According to the definitions given,
>
> (A) Burns committed the crime of criminal trespass, but Hart did not
>
> (B) Hart committed the crime of criminal trespass, but Burns did not
>
> (C) both Hart and Burns committed the crime of criminal trespass
>
> (D) neither Hart nor Burns committed the crime of criminal trespass.
>
> The definition provided for criminal trespass is as follows:
>
> The crime of criminal trespass is committed when a person knowingly enters or remains in a building in which he has no right to be and while in the building possesses, or knows that another person accompanying him possesses, an explosive or a gun.
>
> It will be noted, simply as an indication of the difficulty of the test construction enterprise, that there is a slight ambiguity in this question. The applicant is told that Hart is unaware that "Burns has a gun illegally in his possession," but not whether Hart was unaware that Burns had a gun at all. This could affect the answer, since, according to the definition given, knowledge of any gun, even of a legal one, would render Hart's action a criminal trespass. While it would be unreasonable to suggest that a test must be free of every possible ambiguity in order to be acceptable, the ease with which such ambiguities can appear emphasizes the value of confirming the test's reliability by some empirical procedure. See Section IV, infra.

The test was scored from zero to one hundred, with one point given for each correct answer, and bonus points given for veterans.[FN2] The candidates were then rank-ordered on the basis of their scores. Scores were generally high, with 13% of the applicants scoring 98 or above, and fully 50% scoring 91 or above. Because of the number of candidates taking the test and the bunching of candidates in the upper range of scores, each point a candidate achieved made a substantial difference in his position on the rank-ordering list. More than 2,000 applicants achieved a score at each numerical grade from 92 to 97.

FN2. As a result of these bonus points, it was possible to achieve a score as high as 110. Some 482 applicants, or 1.3% of those taking the test, scored above 100.

The passing grade was determined in the following manner. The Police Department first estimated that 4,000 police officers would be hired during the four-year period for which the eligibility list resulting from Exam No. 8155 would be valid. The Department further estimated that only one out of three applicants who passed Exam No. 8155 would successfully complete all the remaining steps in the hiring process. Therefore, if this eligibility list was to meet the Department's needs, 12,000 persons had to pass the exam to provide the 4,000 needed police officers. With all this in mind, the Department simply set the passing grade at the score achieved by the 12,000th highest scoring candidate, which turned out to be 94. Because of the bunching phenomenon, a large number of candidates, 2,124, achieved this same score, so that the actual number who received a passing grade was 13,749.

Of the 36,797 applicants who took the test, 6,142 identified themselves as Black, 5,239 identified themselves as Hispanic, 19,798 identified themselves as White, and 4,847, or 13.2% did not identify their race. Thus, identified Blacks constituted 16.7% of the total applicants, and 19.7% of all those who identified their race, while the equivalent percentages for identified Hispanics were 14.2% and 16.8%,

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and for identified Whites, 53.8% and 64.5%.

Of those who passed the exam, i. e., scored 94 or better, 7.6% had identified themselves as Black and 7.8% had identified themselves as Hispanic, for a known minority population in the passing group of 15.4%, against a known minority population in the applicant pool of 30.9%. In contrast, 66.6% of the passing applicants had identified themselves as White, although Whites comprised only 53.8% of the applicant pool.

Viewed in another and more revealing way, the figures show that, among those who had identified themselves by race, the passing rate for Whites was 45.9% compared to 17% for Blacks and 20.5% for Hispanics. The combined minority pass rate was thus about two-fifths of the pass rate for Whites.

***86** The Police Department accepted 415 candidates from the list in November, 1979 and planned to hire another 380 in January, 1980. Of this group of 795 candidates, 89.2% were White, 3.5% were Black, and 6.8% were Hispanic. The selection rates (number chosen compared to number of applicants) for these first two uses of the list were 0.5% for Blacks, 1% for Hispanics, and 3.6% for Whites.

II. The District Court's Prior Proceedings and Decision

The plaintiffs filed their complaint in this suit, together with a motion for a preliminary injunction, in October, 1979, before any candidates had been accepted on the basis of the list. They charged that the intended use of the lists by the Police Department constituted discrimination against Blacks and Hispanics in violation of the Fourteenth Amendment, Title VII, and various other Federal and state laws. The District Court, by consent of the parties, consolidated the hearing on the preliminary injunction and the trial on the merits. This proceeding was held on November 13, 14, and 15, 1979, shortly after the Police Department's first use of the list. On January 11, 1980, three days before the Department intended to use the list to accept a second group of trainees, the District Court held a second hearing. That same day, the Court issued an opinion, which was subsequently re-issued in revised form on January 23.[FN3]

> FN3. By the time of the November hearing, the Police Department had already proceeded to use the list to accept 415 trainees, as described above. In order to forestall any further hiring on the basis of the list, and to assist the City in making alternative arrangements, the District Court informed the parties on December 17, 1979 that the test violated Title VII, and orally enjoined the defendants from its further use. On December 27, 1979, the City filed an order to show cause and a motion for a stay, in which it stated that the Police Department needed to accept an additional 380 trainees from the list on January 14, 1980. When the Court denied its motion, the City filed a petition in this Court for a writ of mandamus. This Court granted the petition, ordering the District Court to issue findings of fact and conclusions of law, pursuant to Fed.R.Civ.P. 52(a), at least 48 hours before any injunction against the City was to take effect. The District Court then held its second hearing, which was devoted to the issue of relief. Since the Court's decision, issued that day, preceded the January 14 action by more than 48 hours, it fulfills the requirements of this Court's mandamus.

The Court's basic conclusion was that Exam No. 8155 violated Title VII. In reaching this conclusion, the Court used the common mode of Title VII analysis, in which the plaintiff is first required to establish a prima facie case on the basis of disparate impact, and then the defendant is required to rebut the plaintiff's case by proving that the disparity results from legitimate, job-related selection procedures. The Court first found that the disparity between the percentage of minority group members who achieved a passing score and the percentage of minority group members in the applicant pool was sufficient to establish a prima facie case. It based this finding of disparate impact on the standards developed by the Supreme Court in Castaneda v. Partida, 430 U.S. 482, 97 S.Ct. 1272, 51 L.Ed.2d 498 (1977), and by the Equal Employment Opportunity Commission (EEOC) in its Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. s 1607 (1979). Castaneda stated that, in cases involving large samples, "if the difference between the expected value (from a random selection) and the observed number is greater than two or three standard deviations," a prima facie case is established. 430 U.S. at 496 n.17, 97 S.Ct. at 1281 n.17.[FN4] ***87** The Uniform Guidelines provide that "(a) selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact." s 1607.4(D) (hereinafter Guideline sections are cited only by the subdivisions of 29 C.F.R. s 1607). The District Court then noted that the discrepancy between the percentage of minority group members in the

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applicant pool and the percentage of minority group members who passed the test was 39 standard deviations. The evidence also showed that the passing rate of the minority group members was 44.3% of the passing rate of Whites, or about two-fifths.

> FN4. The standard deviation for a particular set of data provides a measure of how much the particular results of that data differ from the expected results. In essence, the standard deviation is a measure of the average variance of the sample, that is, the amount by which each item differs from the mean. The number of standard deviations by which the actual results differ from the expected results can be compared to the normal distribution curve, yielding the likelihood that this difference would have been the result of chance. The likelihood that the actual results will fall more than one standard deviation beyond the expected results is about 32%. For more than two standard deviations, it is about 4.6% and for more than three standard deviations, it is about .03%. On this basis, the Supreme Court concluded in Castaneda that when actual results fell more than three standard deviations from the expected result (that is, a race-neutral selection), the deviation could be regarded as caused by some factor other than chance.

Having concluded that the plaintiffs had established a prima facie case, the Court next concluded that the test was not sufficiently valid to constitute a legitimate attempt to choose those applicants who would become better police officers. Relying primarily on the EEOC Guidelines, the Court stated that a determination of validity based on the content of the test would be inappropriate, first because the test purported to measure abilities that the accepted applicants would be trained to acquire, see Guidelines, s 14(C)(1), and second, because the test actually measured constructs, not abilities, see id.[FN5] Moreover, the Court concluded that the job analysis was not sufficiently precise to satisfy the Guideline requirement even for content validation, see Guidelines s 14(C)(2). Since content validation was the only method of validation which the City attempted, the Court concluded that the test was invalid, and thus an inadequate rebuttal to the plaintiffs' prima facie case.

> FN5. A construct is generally defined as "an idea developed or 'constructed' as a work of informed, scientific imagination; that is, it is a theoretical idea developed to explain and to organize some aspects of existing knowledge." American Psychological Association, Inc., Standards for Educational & Psychological Tests 29 (1974) (hereinafter APA Standards). Neither the APA Standards nor the Guidelines appear to include a definition of content, apart from the concept of content validity, although the Guidelines do describe content as involving "knowledges, skills, or abilities." Guidelines s 14(C)(1).

In fashioning relief, the District Court noted that a previous examination administered by the New York City Police Department had been found to be in violation of Title VII. Guardians Association v. Civil Service Commission, 431 F.Supp. 526 (S.D.N.Y.), vacated and remanded on other grounds, 562 F.2d 38 (2d Cir. 1977). Concluding that the defendants had "persisted in devising and utilizing testing procedures that continue to discriminate against blacks and hispanics," the District Court found that the defendants' "studied adherence to discriminatory procedures must at this point be deemed conscious and deliberate." 484 F.Supp. at 798. On this basis, the Court held that "affirmative action is mandated as an interim measure either until such discrimination has been totally eliminated or until defendants proceed to select police officers under procedures that are in full compliance with Title VII." Id. at 799. It enjoined the City from using Exam No. 8155, although permitting it to use the eligibility list from that exam for purposes designated by the Court. In its order, also issued on January 11, the Court ordered the Police Department to achieve at least 30% minority composition of the force, a level comparable to the percentage of minorities in the labor force of the relevant hiring area. To achieve this goal, the Court further ordered that the defendants should "as an interim goal appoint 50% of their entry level police officers from among qualified black and hispanic applicants." Finally, the Court awarded the plaintiffs attorneys' fees and costs, and retained jurisdiction "for such further relief or other orders as may be necessary or appropriate to enforce and insure rights to equal employment opportunity within the New York City Police Department."

The City moved to stay the District Court's order pending consideration of its ***88** appeal from the decision. This Court denied the motion. However, we granted a conditional stay, in view of the City's declared need to hire new police officers [FN6] and set an expedited schedule for the appeal.

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FN6. The terms of this conditional stay were that, if the City wished to hire, pending appeal, it should establish two pools of candidates, one consisting of all the minority applicants who passed the exam, and the second consisting of all others who passed, and select trainees from these pools in the ratio of one minority applicant for every two others. The 415 applicants already hired were to be counted in determining whether the new hires conformed to this 1 to 2 ratio.

III. The Framework of Title VII Analysis

[1] As the District Court concluded, the accepted procedure for Title VII cases is to require the plaintiffs to establish a prima facie case, and then to require the defendants to rebut this showing with proof that the test was legitimately job-related. See Albemarle Paper Co. v. Moody, 422 U.S. 405, 95 S.Ct. 2362, 45 L.Ed.2d 280 (1975); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); Griggs v. Duke Power Co., 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971). The Court correctly concluded that a prima facie case had been established. By any reasonable measure, including the standard deviation rule of Castaneda, supra, or the four-fifths rule of the EEOC Guidelines, Exam No. 8155 had a disparate racial impact.

The City argues that statistics alone, specifically a comparison of the racial composition of the passing group to that of the applicant group, are not sufficient to establish a prima facie case. But statistics showing a significantly disparate racial impact have consistently been held to create a presumption of Title VII discrimination. See International Brotherhood of Teamsters v. United States, 431 U.S. 324, 339, 97 S.Ct. 1843, 1856, 52 L.Ed.2d 396 (1977); United States v. City of Chicago, 549 F.2d 415, 428 (7th Cir.), cert. denied, 434 U.S. 875, 98 S.Ct. 225, 54 L.Ed.2d 155 (1977); Kirkland v. New York State Department of Corrections, 520 F.2d 420, 425 (2d Cir. 1975), cert. denied, 429 U.S. 823, 97 S.Ct. 73, 50 L.Ed.2d 84 (1976); Vulcan Society v. Civil Service Commission, 490 F.2d 387, 392-93 (2d Cir. 1973); Chance v. Board of Examiners, 458 F.2d 1167, 1172-73 (2d Cir. 1972).[FN7]

FN7. The City hypothesizes some situations in which statistics could be misleading (e. g., if some of the candidates taking the test had not been eligible to apply for the position) but presents no evidence to show that this occurred. To accept such unsupported possibilities, and require the plaintiffs to refute every circumstance that could explain the disparate impact shown by the statistics, would create an onerous burden of proof, far in excess of the Title VII standards as interpreted by the Supreme Court. See Dothard v. Rawlinson, 433 U.S. 321, 329-30, 97 S.Ct. 2720, 2726-27, 53 L.Ed.2d 786 (1977); Jones v. New York City Human Resources Administration, 528 F.2d 696, 698 (2d Cir. 1976).

[2] The City also claims that finding a prima facie Title VII violation by state or local governments without a showing of discriminatory intent violates the Tenth Amendment. This view has been definitively rejected by the Seventh Circuit in United States v. City of Chicago, 573 F.2d 416, 422-24 (7th Cir. 1978), and we agree with that analysis. Congress may enforce the Fourteenth Amendment by legislation that prohibits practices the Amendment might not of its own force condemn. See Katzenbach v. Morgan, 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966).

The real issue in this case, therefore, is whether the defendants have rebutted the plaintiffs' prima facie case by proving that its test was job-related: that the test accurately selected applicants who would be better police officers. Adjudication of this issue presents a more complex problem in the present case than it has in many previous Title VII suits. Many of the previous suits involved tests that were so artlessly constructed that they could be judged invalid without extensive inquiry, fine distinctions, or a precise notion of where the line between validity and invalidity was located. See, e. g., Griggs, supra, 401 U.S. at 431, 91 S.Ct. at 853 (intelligence tests used "on the Company's judgment that they generally would improve the overall quality of the *89 work force"); United States v. N. L. Industries, Inc., 479 F.2d 354, 371 (8th Cir. 1973) (test given to one applicant "consisted of four or five mathematical problems which a Company employee jotted down on a sheet of yellow paper"); Brito v. Zia Co., 478 F.2d 1200, 1205-06 (10th Cir. 1973) (test based almost entirely on subjective judgments of supervisors, not administered or scored under controlled and standardized conditions); Vulcan Society, supra, 490 F.2d at 396-98 (no job analysis, test measured abilities that were clearly of secondary importance to job).

Exam No. 8155, in contrast, is a "second generation" selection procedure. Despite the various flaws in construction of the test, it is clear that some attempt was made to develop the test with recognition of at least some of the standards that courts had established in the first wave of

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Title VII cases. Aware that the validity of the test would likely have to be demonstrated, the City performed an extensive job analysis, consciously used Guideline concepts in determining the qualities that were being tested for, and attempted to eliminate extraneous variables, such as the applicant's prior knowledge, his reading level, and his ability to complete the test in a relatively short amount of time.

Nevertheless the plaintiffs have alleged and the District Court has concluded that the construction and use of Exam No. 8155 failed in several respects to meet test validity standards, particularly those specified in the Guidelines. Whether or not these deficiencies are fatal, they are plainly more substantial than the defects deemed not to defeat validity in prior cases. Detroit Police Officers Association v. Young, 446 F.Supp. 979, 990-91, 1007-08 (E.D.Mich.1978); Bridgeport Guardians v. Bridgeport Police Department, 431 F.Supp. 931 (D.Conn.1977); cf. Washington v. Davis, 426 U.S. 229, 248-52, 96 S.Ct. 2040, 2051-53, 48 L.Ed.2d 597 (1976) (Fourteenth Amendment case involving some Title VII concepts). Consequently, assessment of Exam No. 8155 necessarily carries this Court into difficult areas of judging test validity. We must determine, with some care, what the general standards are for judging validity, and how these standards are to be applied in a specific factual situation.

The study of employment testing, although it has necessarily been adopted by the law as a result of Title VII and related statutes, is not primarily a legal subject. It is part of the general field of educational and industrial psychology, and possesses its own methodology, its own body of research, its own experts, and its own terminology. The translation of a technical study such as this into a set of legal principles requires a clear awareness of the limits of both testing and law. It would be entirely inappropriate for the law to ignore what has been learned about employment testing in assessing the validity of these tests. At the same time, the science of testing is not as precise as physics or chemistry, nor its conclusions as provable. While courts should draw upon the findings of experts in the field of testing, they should not hesitate to subject these findings to both the scrutiny of reason and the guidance of Congressional intent.

The need to modify rigid technical conclusions from the field of testing is indicated by the view of certain testing experts, including those who testified for the plaintiffs in this case, that there is no test that can be considered completely valid to select candidates for any but the most rudimentary tasks. If this view guided interpretation of Title VII, then at the current stage of the technology of testing, no test that produces a disparate racial impact could be used for positions such as police officers.

While this position is a conceivable one, it is supported neither by the statutory language nor by judicial precedent. Had Congress felt that testing for virtually all employment was invalid, it would not have made a specific exception to Title VII for the proper use of professionally designed employment tests.[FN8] Clearly, Congress did ***90** not intend that the standard used in interpreting Title VII would reject every test with a disparate racial impact. Nor have the courts permitted this to occur; although they have subjected employment testing to the careful scrutiny required by the statute, they have found a variety of tests to be valid, despite a disparate racial impact. See, e. g., Sims v. Sheet Metal Workers, Local 65, 489 F.2d 1023, 1025-26 (6th Cir. 1973); Detroit Police Officers Association v. Young, supra, 446 F.Supp. at 1007-08; Friend v. Leidinger, 446 F.Supp. 361 (E.D.Va.1977), aff'd, 588 F.2d 61 (4th Cir. 1978); United States v. South Carolina, 445 F.Supp. 1094 (D.S.C.1977), aff'd, 434 U.S. 1026, 98 S.Ct. 756, 54 L.Ed.2d 777 (1978); Bridgeport Guardians v. Bridgeport Police Department, supra, 431 F.Supp. at 936-39; Jackson v. Nassau County Civil Service Commission, 424 F.Supp. 1162 (E.D.N.Y.1976); Buckner v. Goodyear Tire & Rubber Co., 339 F.Supp. 1108, 1113-16 (N.D.Ala.1972), aff'd, 476 F.2d 1287 (5th Cir. 1973).

FN8. Title VII states, in relevant part:

> Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice . . . for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin.
>
> 42 U.S.C. s 2000e-2(h). Cf. International Brotherhood of Teamsters, supra, 431 U.S. at 348-56, 97 S.Ct. at 1861-65 (interpreting Title VII's seniority exception, s 2000e-2(h), to give operative effect to exception's full scope).

The danger of too rigid an application of technical testing principles is that tests for all but the most mundane tasks would lack sufficient validity to permit their use. At least

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that is the risk given the current state of the art of employment testing. This risk can be appreciated by considering the one example even most test critics acknowledge to have substantial, though not complete, validity. This is a typing test given to a group of applicants for jobs as typists.[FN9] Such a test substantially meets all the criteria suggested by plaintiffs' experts for content validation, but the very success of this test casts doubt on the usefulness of the example. To begin with, typing is a task that readily yields to quantitative measurement. The quality of a typist's job performance depends on two factors, both of which can be captured with precision in numbers: how fast he types, and how many errors he commits. Most jobs involve tasks whose performance can be evaluated only in the more subjective light of judgment. Surely this is true of nearly all the tasks required to be performed by police officers. In addition, there is a more basic problem with the typing test example. Typing is one of the few activities that a test-taker can perform in virtually the same manner as he will be required to perform on the job. That is obviously an ideal testing situation, but it is not one that is frequently available, and such "on-the-job" testing could not possibly be done to select police officers. Yet the force of the typing test example easily leads to one of the conclusions of the District Court in this case: that Exam No. 8155 lacked validity because it measured performance in an artificial classroom setting and did not necessarily indicate who would perform well on the job.[FN10]

> FN9. See EEOC, Uniform Employee Selection Guidelines: Interpretation and Clarification (Questions and Answers) Q. 62 (1979) (hereinafter cited as EEOC Questions and Answers); APA Standards, supra at 29; accord, Vulcan Society, supra, 490 F.2d at 395.
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> FN10. In criticizing the questions involving application of the law, the District Court stated: "In a real situation, the officer sees activity and must determine rather quickly whether the activity is illegal, with no definitional aids before him. He must operate on instinct and experience." 484 F.Supp. at 797. That is true, but it is a criticism of all testing. In any situation, there are generally at least two steps that are necessary to produce the correct behavioral response. The first is to know what to do, and the second is to act accordingly. Clearly the limits of any test, no matter how well designed, is to determine whether the applicant knows or can determine what to do. Only a probationary period can determine if the applicant will act correctly in a real life situation.

[3] Closely related to the question of the proper weight to be given to technical conclusions of testing theory is the question of the proper weight to be given to the EEOC Uniform Guidelines, which are largely based on these technical conclusions. See ***91** Guidelines s 5(C). The District Court drew its methodology from the Guidelines, concluding that the City's test was invalid because it failed to satisfy all of the Guidelines. The Supreme Court has relied upon some of the Guidelines in several of the leading cases, see Albemarle, supra, 422 U.S. at 431, 95 S.Ct. at 2378; Espinoza v. Farah Manufacturing Co., 414 U.S. 86, 94, 94 S.Ct. 334, 339, 38 L.Ed.2d 287 (1973); Griggs, supra, 401 U.S. at 433-34, 91 S.Ct. at 854-55, but the Court has not ruled that every deviation from any of the Guidelines automatically results in a violation of Title VII. The Court appears to have applied the Guidelines only to the extent that they are useful, in the particular setting of the case under consideration, for advancing the basic purposes of Title VII. See Espinoza, supra, 414 U.S. at 94, 94 S.Ct. at 339; Guardians Association v. Civil Service Commission, 490 F.2d 400, 403 n.1 (2d Cir. 1973), United States v. Georgia Power Co., 474 F.2d 906, 913 (5th Cir. 1973). To the extent that the Guidelines reflect expert, but non-judicial opinion, they must be applied by courts with the same combination of deference and wariness that characterizes the proper use of expert opinion in general. See Albemarle, supra, 422 U.S. at 449, 95 S.Ct. at 2390 (Blackmun, J., concurring) (Guidelines "have never been subjected to the test of adversary comment. Nor are the theories on which the Guidelines are based beyond dispute.") Thus, the Guidelines should always be considered, but they should not be regarded as conclusive unless reason and statutory interpretation support their conclusions. As this Court has previously stated: "If the EEOC's interpretations go beyond congressional intent, the Guidelines must give way." Guardians Association, supra, 490 F.2d at 403 n.1.

In addition to their force as the expression of expert opinion, the Guidelines also possess legal force. But here too, it is necessary to keep their limits in mind. The primary purpose of the Guidelines is to indicate the standards that various Federal agencies, such as the EEOC, the Civil Service Commission, and the Department of Justice are to use in enforcing Title VII and related statutes. See Guidelines s 2(A). But the fact that an agency or group of agencies has announced the standards they will use does not convert those standards into mandatory legal rules.

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A second legal basis for following the Guidelines is that they represent the "administrative interpretation of the Act by the enforcing agency," and are "entitled to great deference" on that basis. Griggs, supra, 401 U.S. at 433-34, 91 S.Ct. at 854-55; see Albemarle, supra, 422 U.S. at 431, 94 S.Ct. at 2378. However, the Court has also recognized that the Guidelines "are not administrative 'regulations' promulgated pursuant to formal procedures established by Congress." Ibid. They are entitled to deference, not obedience. See Espinoza, supra, 414 U.S. at 94, 94 S.Ct. at 339 (1973) (Guideline rule on discrimination against non-citizen "is no doubt entitled to great deference . . . , but that deference must have limits where, as here, application of the guideline would be inconsistent with an obvious congressional intent"). Moreover, the Court in Griggs was following the Guidelines only to make the straightforward distinction between general intelligence tests and job-related tests; it is not at all clear that Griggs requires observance of all the intricate details of the Guidelines. It might be desirable for all employers to follow the more careful practices required of the Federal Government, but there is no reason to think that Congress intended to impose such practices, in their full rigor, when it enacted Title VII.

With these considerations in mind, we turn to the validity of Exam No. 8155.

IV. The Validity of Exam No. 8155

A. Selecting the Validation Technique

The threshold task in determining the validity of a challenged examination is to select the appropriate method for assessing its job-relatedness. The Guidelines describe three techniques: content validation, construct validation, and criterion-related validation. Guidelines ss 5(B), 14. The Guidelines specify when each technique is appropriate and also specify the requirements***92** for successfully validating an exam by use of each technique. Defendants have attempted to justify Exam No. 8155 by content validation, a technique appropriate for tests that measure "knowledges, skills or abilities" representative of the "content" of the job. Guidelines s 14(C)(1). Plaintiffs contend that construct validation must be used to assess this exam because, in their view, the exam attempts to measure "constructs," that is, inferences about mental processes or traits, such as "intelligence, aptitude, personality, commonsense, judgment, leadership and spatial ability." Ibid.

This content-construct distinction has a significance beyond just selecting the proper technique for validating the exam; it frequently determines who wins the lawsuit. Content validation is generally feasible while construct validation is frequently impossible. Even the Guidelines acknowledge that construct validation requires "an extensive and arduous effort." Guidelines s 14(D)(1). The principal difficulty with construct validation is that it requires a technique that includes a criterion-related study, Guidelines s 14(D)(4)-a demonstration from empirical data that the test successfully predicts job performance.[FN11] Developing such data is difficult, and tests for which it is required have frequently been declared invalid.[FN12] As a result, a conclusion that construct validation is required would often decide a case against a test-maker, once a disparate racial impact has been demonstrated.

FN11. Such data may be obtained by studying correlations of test scores of accepted candidates with their subsequent job performances, or correlations of the test scores of present employees with their current job performances.

FN12. See United States v. City of Chicago, supra, 549 F.2d at 430-32; Douglas v. Hampton, 512 F.2d 976, 985-86 (D.C.Cir.1975); Vulcan Society, supra, 490 F.2d at 395 & n. 10; Bridgeport Guardians, Inc. v. Civil Service Commission, 354 F.Supp. 778 (D.Conn.), aff'd in part, rev'd in part, 482 F.2d 1333 (2d Cir. 1973); cf. Schmidt & Hunter, The Future of Criterion-Related Validity, 33 Personnel Psych. 41, 48 (1980) ("criterion related validity studies will frequently, perhaps typically, be technically infeasible").

A rare example of a criterion-related study that was found acceptable is Washington v. Davis, supra, 426 U.S. at 249-52, 251 n. 17, 96 S.Ct. at 2052-53, 2053 n. 17. This was not a Title VII case however, and the Court's use of Title VII concepts, in dictum, to assess the validity of the test in question under the Fourteenth Amendment does not indicate that the Court was reviewing the test with the stringency that Title VII requires. See Gudians Ass'n v. Civil Service Commission, 633 F.2d 232 at 245 - 246 (2d Cir., 1980). In fact, a less demanding standard was almost certainly being used, as is clear from the comparison between Davis and the Court's Title VII decision the preceding term in Albemarle.

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To determine whether defendants are entitled to use content validation, we examine the Guidelines' criteria for that technique, but we do so bearing in mind our cautionary approach to the Guidelines, previously expressed. The Guidelines specify two basic conditions that must be met before content validation may be used. First, it must appear that what the test attempts to measure is knowledge or an ability, and not a general trait, such as intelligence. Guidelines s 14(C)(1). Second, the test must not measure knowledge or ability that an employee will be expected to learn on the job. Ibid.; see also s 5(F). The District Court rejected content validation, concluding both that Exam No. 8155 measures constructs, not abilities, and that, even if what was tested for could be considered abilities, they could be learned in the five-month training program.

In specifying how the selection of validation techniques is to be made, the Guidelines adopt too rigid an approach, one that is inconsistent with Title VII's endorsement of professionally developed tests. Taken literally, the Guidelines would mean that any test for a job that included a training period is almost inevitably doomed: if the attributes the test attempts to measure are too general, they are likely to be regarded as constructs, in which event validation is usually too difficult to be successful; if the attributes are fairly specific, they are likely to be appropriate for content validation, but this too will prove unsuccessful because the specific attributes will usually be learned in a training program or on the job.

***93** The origin of this dilemma is not any inherent defect in testing, but rather the Guidelines' definition of "content." This definition makes too sharp a distinction between "content" and "construct," while at the same time blurring the distinction between the two components of "content" : knowledge and ability. The knowledge covered by the concept of "content" generally mean factual information. The abilities refer to a person's capacity to carry out a particular function, once the necessary information is supplied. Unless the ability requires virtually no thinking, the "ability" aspect of "content" is not closely related to the "knowledge" aspect of "content"; instead it bears a closer relationship to a "construct." Some researchers regard content tests as nothing more than assessments of particular kinds of constructs, e. g., Tenopyr, Content-Construct Confusion, 30 Personnel Psych. 47 (1977); others regard any ability that is evidenced by observable behavior as sufficiently non-inferential to be considered content, see Ebel, Comments on Some Problems of Employment Testing, 30 Personnel Psych. 55 (1977). See generally Catell, Validity and Reliability: A Proposed More Basic Set of Concepts, 55 J.Ed.Psych. 1 (1964). Whichever view is adopted, it would seem that abilities, at least those that require any thinking, and constructs are simply different segments along a continuum reflecting a person's capacity to perform various categories of tasks. This continuum starts with precise capacities and extends to increasingly abstract ones-from the capacity for filling out forms to the capacity for exercising judgment.

Recognition that abilities and constructs are not entirely distinct leads to a conclusion that a validation technique for purposes of determining Title VII compliance can best be selected by a functional approach that focuses on the nature of the job. The crucial question under Title VII is job relatedness-whether or not the abilities being tested for are those that can be determined by direct, verifiable observation to be required or desirable for the job. See Griggs, supra, 401 U.S. at 431, 91 S.Ct. at 853; Vulcan Society, supra, 490 F.2d at 394-95; Chance, supra, 458 F.2d at 1177. If the job in question involves primarily abilities that are somewhat abstract, content validation should not be rejected simply because these abilities could be categorized as constructs. However, if the test attempts to measure general qualities such as intelligence or commonsense, which are no more relevant to the job in question than to any other job, then insistence on the rigorous standards of construct validation is needed. Since tests of this kind are often biased in favor of a person's familiarity with the dominant culture, permitting them to be used without a showing of predictive validity would perpetuate the effects of prior discrimination. But as long as the abilities that the test attempts to measure are no more abstract than necessary, that is, as long as they are the most observable abilities of significance to the particular job in question, content validation should be available. To lessen the risks of perpetuating cultural disadvantages, the degree to which content validation must be demonstrated should increase as the abilities tested for become more abstract.

This functional approach, which adjusts the distinction between content and construct to the nature of the job being tested for, expands the opportunity for both employers and courts to rely on content validation. It also avoids making a threshold choice between content and construct validation based solely on the nature of the quality tested for unrelated to the job, a choice that might make content validation seem inappropriate. To base the content-construct determination on the nature of the job, it is necessary first to analyze the job to see if it requires abilities appropriate for content validation. Instead of choosing between content and construct validation at the

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outset, as the Guidelines seem to require, employers and courts can start the content validation inquiry and use its results to determine both whether content validation is appropriate and whether it has been achieved. Should the attempted content validation be found inadequate, the reason may be that this method of validation*94 was not appropriate because of the pertinent job abilities revealed by the job analysis. On the other hand, this approach will sometimes indicate that content validation is appropriate, even though the abilities tested for could be considered constructs.[FN13]

> FN13. There will be some tests whose character is sufficiently clear so that the content-construct distinction can be applied at the threshold, without the need to place the test in the context of the job it tests for. A general intelligence test, see Griggs, supra (Wonderlic Personnel Test), will almost always need to be assessed by construct validation, since it necessarily measures for an inferred ability, regardless of the context. The much-vaunted typing test, in contrast, can always be regarded as amenable to content validation. However, there are a large number of tests, including virtually all the "second generation" tests for jobs such as the one considered here, that will fall into the middle range.

Just as lessening the severity of the Guidelines' distinction between content and construct reduces the likelihood that a test is invalid because it measures constructs, so sharpening the distinction between knowledge and ability, now obscured by the Guidelines, reduces the problem that the test is invalid because it duplicates the training period, i. e., tests for what will later be learned. Unlike knowledge, some abilities are appropriate for testing confirmed by content validation despite their overlap with post-selection training. A valid measurement of some abilities can select applicants who will ultimately use their training to perform their tasks more effectively or who will more effectively perform similar tasks for which they have not been specifically trained. On the other hand, content validation remains inappropriate for tests that measure knowledge of factual information if that knowledge will be fully acquired in a training program. Approval of such tests, without predictive validation, risks favoring applicants with prior exposure to the information, a course likely to discriminate against a disadvantaged minority. For example, it would be duplicative of the Police Department's training program, and thus invalid, to test applicants for their knowledge of the Department's arrest form. Testing for their ability to fill out the form, however, can be expected to select applicants who can be successfully trained to perform well at that task and others like it.

[4] Applying the approach just outlined, we conclude, at least as an initial matter, that content validation may properly be selected as the appropriate technique for assessing Exam No. 8155. The exam tests for three basic abilities (although it purports to test for five): the ability to remember details, the ability to fill out forms, and the ability to apply general principles to specific facts. This third ability is assessed in three contexts: the application of general statements of criminal offenses to the facts of specific events, the application of procedures and standards to the facts of specific policing activities, and the application of procedures and standards to the facts of specific situations involving human relations problems. These three basic abilities are not so abstract, on their face, as to preclude content validation, provided subsequent consideration of the job analysis does not demonstrate that important and more concrete abilities necessary for the job were needlessly omitted from those considered for measurement. Though all three abilities involve some inference about mental processes, they are based on observable behaviors and are far less abstract than such traits as intelligence, leadership, or judgment. Moreover, testing for these three abilities sufficiently avoids the objection that the test duplicates the Department's training program. Though all three abilities can be trained to some extent, the test-makers were entitled to select applicants with existing ability so that training would both enhance their abilities and prepare them for other tasks requiring similar talents. The vice of testing for knowledge readily taught in the training program was totally avoided.

B. Assessing the Content Validity of Exam No. 8155

[5] Since content validation appears to be an appropriate method for assessing Exam No. 8155, we proceed to consider *95 whether the use of this method indicates that the exam has sufficient validity to select applicants for the job of police officer. The Guidelines describe various aspects of content validation, but do not neatly list ingredients of an adequate exam. From our study of the Guidelines, we distill five attributes of an exam with sufficient content validity to be used notwithstanding its disparate racial impact. The first two concern the quality of the test's development: (1) the test-makers must have conducted a suitable job analysis, and (2) they must have used reasonable competence in constructing the test itself.[FN14] The next three attributes are more in the nature of standards

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that the test, as produced and used, must be shown to have met. The basic requirement, really the essence of content validation, is (3) that the content of the test must be related to the content of the job. In addition, (4) the content of the test must be representative of the content of the job. Finally, the test must be used with (5) a scoring system that usefully selects from among the applicants those who can better perform the job. We consider each of these five matters in turn.

> FN14. These considerations are particularly crucial to an exam validated on content grounds. See APA Standards at 29: "Content validity is determined by a set of operations, and one evaluates content validity by the thoroughness and care with which these operations have been conducted."

The Job Analysis

[6] According to the Guidelines, a job analysis involves an assessment "of the important work behavior(s) required for successful performance and their relative importance." s 14(C)(2). The job analysis performed by the City, while somewhat flawed as the District Court pointed out, is nonetheless adequate to meet this standard. As far as the first part of the standard is concerned, the work behaviors involved in being a police officer were identified by extensive interviewing, and subjected to serious review (Job Analysis, Steps 1 and 2). The District Court found that these work behaviors "were not delineated with precision." 484 F.Supp. at 795. In fact, the descriptions of the 42 tasks that ultimately appeared on the job analysis list vary considerably in the level of precision. Some are complete and unambiguous, such as "1. Checks the condition of personal and department equipment such as radio, patrol car, weapons, etc."; "35. Attends training sessions." Others are more open-ended, but do manage to fulfill their function by defining the behaviors associated with the task, such as "3. Performs foot patrol"; "40. Controls various types of crowds." Still others are so vague that they communicate very little real information, such as "10. Interacts with juveniles in non-arrest situations"; "39. Performs duties in hostage situations."

While greater precision might have been achieved, a complete description of the observable tasks associated with being a police officer would be a reworded version of the entire training manual. The Police Department's list of tasks, despite some lapses in specificity, contains a sufficient amount of meaningful information to satisfy the relevant requirement.

The second part of the Guideline standard for a job analysis requires determination of the relative importance of the identified work behaviors. The City performed this function by means of an extensively distributed questionnaire, specifying the criteria to be used in ranking the 42 tasks (Job Analysis, Step 3). The process as a whole appears to be reasonably accurate, and neither the plaintiffs nor the District Court raised any serious objection to it.

Having determined the work behaviors and established their relative importance, the City then grouped the 42 tasks into five clusters and asked panels of police officers to identify the knowledges, skills, or abilities necessary to the effective performance of these tasks. (Job Analysis, Steps 4 and 5). This function was implemented in a much less satisfactory manner. Only one of the panels identified the abilities; the other four used the list of five abilities that the first panel had developed. This lessened ***96** the value of having five independent panels make this complicated and subjective determination. Moreover, no effort was made to explain the relationship between any of the five abilities and the 42 job tasks from which they were ostensibly derived.[FN15]

> FN15. In some instances the relationship is obvious. Plainly the ability to fill out forms is needed for task 16, "Processes arrests using appropriate police department forms and notifications." But it is not evident, for example, why any of the five listed abilities are critical to task 32, "Searches for lost children, runaways, etc." or task 19, "Guards and transports prisoners."

The plaintiffs criticize the required abilities identified by the City for being undefined. But the type of definition suggested by the Guidelines-one that describes the abilities in terms of "observable behaviors and outcomes," Guidelines s 15(C)(3)-seems repetitive, since the work behaviors are already defined in this way. The five identified abilities, with the possible exception of "human relations, including communication techniques," are comprehensible enough. Their appropriateness for measurement would have been considerably clearer, however, if each panel had explained which tasks required which abilities. While the Guidelines may be unnecessarily stringent in regarding the identification of this relationship of ability to task as "essential," see ibid., such identification does go far toward eliminating the ambiguities that are otherwise inherent in generalized descriptions of abilities. Only if the relation-

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ship of abilities to tasks is clearly set forth can there be confidence that the pertinent abilities have been selected for measurement.

The Test Construction Process

With a job analysis of questionable sufficiency, the City then proceeded to the test construction stage. As an initial matter, we note that Exam No. 8155 was developed "in-house," by staff members of New York City's Police Department and Department of Personnel; there was little input from any outside source, and no participation by anyone specializing in test preparation. Of course, the law should not be designed to subsidize specialists. But employment testing is a task of sufficient difficulty to suggest that an employer dispenses with expert assistance at his peril. Certainly, the decision to forgo such assistance should require a Court to give the resulting test careful scrutiny. See Kirkland, supra, 520 F.2d at 425-26; Vulcan Society, supra, 490 F.2d at 395-96.

While the determination of how many questions should be included for each identified ability was made by a fairly careful numerical analysis (Test Construction, Step 1), the process of writing the questions themselves was rather haphazard. The questions were initially framed by police officers, who may have had expertise in identifying tasks involved in their job but were amateurs in the art of test construction. In addition, the officers did not have access to the job analysis material during much of the process. Finally, the questions, although they were reviewed, were not tested on a sample population. To be sure, a complete determination of the questions' accuracy in measuring the identified abilities would be equivalent in its complexity to a criterion-related study. But the City did not even perform the minimal sample testing to ensure that the questions were comprehensible and unambiguous.

Not surprisingly, the test construction process did not fully succeed in meeting even its own goal of testing for all the identified abilities. As previously indicated, Exam No. 8155 does appear to test for the three identified abilities of remembering details, filling out forms, and applying general principles to specific facts. However, the fourth identified ability, human relations skill, proved more troublesome. In deciding how to test for this ability, the City faced a dilemma inherent in testing for all but the most mundane jobs. To be fully representative of the job, a test should measure all the significant abilities needed for successful job performance, yet some abilities, especially in jobs of any complexity, are far along the construct end of the content-construct continuum where successful validation is difficult. If a test tries *97 to be representative and measure all significant abilities, including those that are clearly constructs, it risks the use of inadequate assessment devices, because the rigorous standard for construct validation will rarely be met. On the other hand, if the test-makers acknowledge the difficulty of satisfactorily measuring constructs and test only for those abilities that are appropriate for content validation, they encounter the objection that the test is not sufficiently representative of the job.

Recognizing the difficulty of construct validation, yet reluctant to omit assessment of an important characteristic of successful job performance, the City attempted to resolve the dilemma by treating human relations skill as an ability suitable for content validation and devoting 30 questions, nearly one-third of the exam, to an effort to assess this ability. Mindful of an important requirement of content validity, the City carefully avoided rewarding a test-taker's prior knowledge and, instead, supplied in the test itself all the information necessary to select the correct answers to the human relations questions. Included before each group of questions was a set of appropriate standards-essentially "do's" and "don'ts"-for handling a particular type of human relations matter. But supplying this guidance rendered the 30 questions primarily a further assessment of a candidate's ability to apply written standards to specific fact situations, and only slightly a measure of his talent for human relations. Anyone with minimal analytic ability needed to apply the standards to the various fact situations could select the one correct answer, even if his intuitive reaction to a human relations problem might be woefully inadequate.

Assessing human relations skill will always be a difficult enterprise, but the deficiency of the City's attempt does not mean that a content validation approach is necessarily impermissible nor impossible to achieve. As indicated above, at least within the middle range of the content-construct continuum, the distinction between content and construct should be determined functionally, in relation to the job. If the quality measured is not unduly abstract, and if it constitutes a significant aspect of the job, content validation of the test component used to measure that quality should be permitted. But that component must be designed in an extremely careful way. Test-makers will be well advised to obtain highly qualified assistance in constructing this portion of an exam.

One desirable approach would be to confront applicants

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with simulated real life situations and assess the appropriateness of their volunteered response. See Firefighters Institute for Racial Equality v. City of St. Louis, 616 F.2d 350 (8th Cir. 1980). That technique is normally too costly for large numbers of applicants, but might have usefulness as a testing device to be used toward the end of the overall selection procedure, after an initially large group of applicants has been narrowed down by the results of a written exam and a background check. If the test component is limited to traditional pencil and paper methods, it may be preferable to forgo any pretense of being able to make fine differentiation among candidates' human relations skills and instead adopt a pass/fail approach, rejecting those whose demonstrably inappropriate responses to human relations questions mark them as unsuitable for police work. Another possibility is to recognize that questions in this area for which only one answer is correct are likely to be too easy, as were most of the questions on Exam No. 8155, and therefore of little use in making selections from among applicants. Instead questions can be designed for which some answers are appropriate responses and others are inappropriate. As feasible techniques in this area evolve, employers will be expected to use them.

With these strengths and weaknesses of the job analysis and the test construction in mind, we now consider how well the test, as constructed and used, met the basic requirements of content validity.

The Direct Relationship Requirement

[7] The central requirement of Title VII, relationship of test content to job content,***98** was sufficiently satisfied by Exam No. 8155. The job analysis procedure provides adequate assurance that the identified tasks are in fact the tasks that a police officer performs. While the procedure for identifying the abilities required for those tasks was less satisfactory, the three abilities that were actually tested for appear adequately related to most of the identified tasks. The list of tasks confirms one's intuitive assumption that police officers are required to fill out forms (see, e. g., "16. Processes arrests using appropriate police department forms and notifications"), to remember facts (see, e. g., "18. Gives testimony in court (oral and written)"), and to apply general principles to specific fact situations (see, e. g., "26. Executes warrants.").

Moreover, these abilities are among the most concrete ones that can be derived from the list; they are certainly more concrete than human relations skills, which the test purported to measure, but did not. Two of the abilities tested for, filling out forms and remembering facts, are as specifically stated as they could be without resort to trivial distinctions about particular kinds of forms and facts. The ability to apply general standards is somewhat more problematical, since it is a relatively abstract skill that is relevant to many jobs. However, if there is any job for which ability in applying and following rules is an especially important requirement, it is the job of a law enforcement officer.[FN16]

> FN16. The fact that the factual subject matter of the exam questions (as opposed to their purpose in measuring abilities) was related to the subject matter of the job is not a major indicator of the test's validity, since the test measured abilities, not knowledge. But it does suggest that the test has avoided the dangers inherent in using irrelevant factual material. Such material could skew the test for ability in directions unrelated to the job, a phenomenon that even the best designed test might not be able to avoid. The present test avoids that problem by ensuring that any distorting effects resulting from the subject matter of the questions are themselves job-related.

The Representativeness Requirement

The second requirement established by the Guidelines is that the test must be a "representative sample of the content of the job." As presented by the Guidelines, this representativeness requirement has two different meanings. The first is that the content of the test must be representative of the content of the job; the second is that the procedure, or methodology, of the test must be similar to the procedures required by the job itself. The Guidelines express this dual requirement in the following somewhat inscrutable language: "For any selection procedure measuring a knowledge, skill, or ability the user should show that (a) the selection procedure measures and is a representative sample of that knowledge, skill, or ability. . . ." Guidelines s 14(C)(4) (emphasis added).

Both aspects of the representativeness requirement, if interpreted rigorously, would once again foreclose any possibility of constructing a valid test. The United States, as amicus, argues that the requirement that the content of the exam be representative means that all the knowledges, skills, or abilities required for the job be tested for, each in its proper proportion. This is not even theoretically possible, since some of the required capacities cannot be tested for in any valid manner. Even if they could be, the task of

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identifying every capacity and determining its appropriate proportion is a practical impossibility.

It is similarly impossible for the procedures of the test to be truly representative of the actual job procedures. Tests, by their nature, are a controlled, simplified version of the job activities, not the activities themselves. As a practical matter, virtually any realistic test, except one that directly measures a physical skill, like lifting 50-pound sacks, is likely to be a pencil and paper activity, quite different from the job it tests for. An elaborate effort to simulate the actual work setting would be beyond the resources of most employers, and perhaps beyond the capacities of even the most professional test-makers.

More reasonable interpretations of the representativeness requirement are appropriate in light of Title VII's basic purposes. ***99** The reason for a requirement that the content of the exam be representative is to prevent either the use of some minor aspect of the job as the basis for the selection procedure or the needless elimination of some significant part of the job's requirements from the selection process entirely; this adds a quantitative element to the qualitative requirement-that the content of the test be related to the content of the job. Thus, it is reasonable to insist that the test measure important aspects of the job, at least those for which appropriate measurement is feasible, but not that it measure all aspects, regardless of significance, in their exact proportions. The reason for a requirement that the test's procedure be representative is to prevent distorting effects that go beyond the inherent distortions present in any measuring instrument. For example, although all pencil and paper tests are dependent on reading, even if many aspects of the job are not, the reading level of the test should not be pointlessly high. Similarly, the instructions should not be overly complex, and the exam should not place candidates under excessive time pressure unless such time pressure is an identifiable aspect of the job.

[8] Exam No. 8155 meets these representativeness requirements to an adequate degree. While it did not test for all the skills involved in being a police officer nor adequately test for the human relations skill that the job analysis identified as important, the ones it did measure-memory, the ability to fill out forms, and the ability to apply rules to factual situations-are all significant aspects of entry-level police work. To be sure, this conclusion would have been easier to reach if the City had spelled out the relationship between the abilities that were tested for and the job behaviors that had been identified. But the relationship is sufficiently apparent to indicate that the City was not seizing on minor aspects of the police officer's job as the basis for selection of candidates. The inadequate assessment of human relations skill lessens the representativeness of the exam and consequently lessens its degree of content validity, but this deficiency is not fatal, especially in light of the difficulty of assessing such an abstract ability. Though human relations skill was deemed so important as to warrant 30 of the exam's 100 questions, the City could just as plausibly have concluded that equally important for the job of policing are such other abstract qualities as common sense, leadership potential, sound judgment, or ability to resist provocation. When a police exam inadequately tests for any of these abstract abilities, it simply recognizes the limits of the art of testing. Indeed, the more a test concerns itself with relatively concrete abilities identified as necessary for successful job performance, the more likely it is to achieve a sound basis for assessment of applicants.

Similarly, the procedure that the test employed was not needlessly unrepresentative of the job itself. In electing to use a pencil and paper test, the City did not forgo any readily available and realistically feasible alternative procedure that would have been more representative of the job. Moreover, the risks of using a written test were substantially minimized. The reading level necessary to understand the questions was in some cases equal to, but generally well below, the training materials used in the Police Academy. The instructions were clear enough, and employed an ordinary four-answer, multiple-choice format, perhaps the most familiar standardized test technique. In addition, ample time was allowed for taking the exam, thereby avoiding an unnecessarily pressured situation.

Thus the exam is adequately related to the content of the police officer's job, and adequately representative. The combined effect of this assessment might support a conclusion that the exam as a whole has content validity, though it would be a close question whether a test with the disparate racial impact of this one can be validated when its development departs in some significant respects even from reasonably attainable requirements of the Guidelines. However, even if the construction of the exam passes muster, the way in which it was used to distinguish among candidates ***100** seriously departs from the third requirement for content validity and defeats any claim of validity for a testing process that produces disparate racial results.

The Scoring Requirement

Essentially, the City used the results of the exam to com-

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pile a rank-ordering of all the applicants, and then selected a passing score sufficient to generate the required number of potential trainees. Neither the rank-ordering nor the passing score conforms to even the most minimal standards for these two devices.

Rank-Ordering. The Guidelines provide that rank-ordering should be used only if it can be shown that "a higher score . . . is likely to result in better job performance." Guidelines s 14(C)(9). This requirement is reasonable and consistent with Title VII's provision that the "results" of a test may not be "used to discriminate." 42 U.S.C. s 2000e-2(h). If test scores do not vary directly with job performance, ranking the candidates on the basis of their scores will not select better employees. It is possible to read the Guidelines' standard for rank-ordering as if the required relationship between better scores and better job performance had to be demonstrated by a criterion-related study. However, the EEOC's interpretation of the Guidelines disclaims such a high standard. The relationship between higher scores and better job performance may permissibly rest on an inference, but where, as here, the test scores reveal a disparate racial impact, and that disparity is greater at high passing scores than at low passing scores, the appropriateness of inferring that higher scores closely correlate with better job performance must be closely scrutinized.

[9] This close scrutiny is required because rank-ordering makes such a refined use of the test's basic power to distinguish between those who are qualified to perform the job and those who are not. If a test is content valid, it may be reasonable to infer that the test scores make some useful gross distinctions between candidates. Candidates with high scores may well be expected to perform the job better than candidates with low scores. See Science Research Associates, Validation: Procedures and Results (1972) (use of criterion "tails" identifying best and worst candidates more justifiable than continuous rating). And it may even be that within some range of scores, some incremental improvements in scores show some positive correlation with improvements in job performance. But neither of these propositions provides confidence for inferring that one-point increments among those who took Exam No. 8155 are a valid basis for making job-related hiring decisions, especially in the range of scores between 94 and 100. The reason such a precise inference cannot be so readily drawn is that content validity is not an all or nothing matter; it comes in degrees. A test may have enough validity for making gross distinctions between those qualified and unqualified for a job, yet may be totally inadequate to yield passing grades that show positive correlation with job performance.

Overlooking this point, the City earnestly contends that if the appropriate abilities were tested for, it makes eminent sense to select candidates strictly on the basis of ranked scores, even to the extent of concluding that a candidate scoring 98 will perform better as a police officer than a candidate scoring 97. The frequency with which such one-point differentials are used for important decisions in our society, both in academic assessment and civil service employment, should not obscure their equally frequent lack of demonstrated significance. Rank-ordering satisfies a felt need for objectivity, but it does not necessarily select better job performers. In some circumstances the virtues of objectivity may justify the inherent artificiality of the substantively deficient distinctions being made. But when test scores have a disparate racial impact, an employer violates Title VII if he uses them in ways that lack significant relationship to job performance.

Permissible use of rank-ordering requires a demonstration of such substantial test validity that it is reasonable to expect one- or two-point differences in scores to reflect ***101** differences in job performance. Our prior conclusion that the test itself may have had enough validity to be used does not, therefore, lead to approval of using its results for rank-ordered selections. On the contrary, the defects we noted in the job analysis and the test construction are substantial enough to preclude an inference that passing scores will correlate with job performance closely enough to justify rank-ordered selections. While we do not criticize the City's efforts as extensively as did the District Court, we agree that the identification of pertinent abilities, the demonstration of their relationship to the job tasks, and the process of developing the questions, were flawed.

These shortcomings take on added significance when it is recognized that the test just barely satisfied even our lenient construction of the Guidelines requirement of procedural representativeness. As the EEOC has advised, it is "easier" to make the inference of a relationship between higher scores and better job performance "(t)he more closely and completely the selection procedure approximates the important work behaviors." EEOC Questions and Answers, supra, Q. 62. Unlike the District Court, we are not willing to reject any use of a police exam simply because the pencil and paper procedure of the test is not a close approximation of the job. Nor are we willing to preclude rank-ordering because a pencil and paper procedure was used. Given the current state of the art in em-

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ployment testing, we think it would be unrealistic to condemn pencil and paper tests. Alternative procedures have not been shown to be readily available within the limitations of time and resources confronting most employers. Nevertheless, we cannot ignore the Guidelines' criticism of assessing ability to perform complex tasks by a test procedure so different from the work setting. When the selection procedure does not closely approximate the important job tasks, it becomes especially important to insist upon a strong showing that other aspects of content validity have been demonstrated. And that demonstration must be very substantial when a test procedure that does not closely approximate the job is sought to reflect the fine gradations required for rank-ordering. In short, while we might not agree with the District Judge that the defects in the test preclude a finding of sufficient content validity to permit its use, we agree that content validity has not been shown to the extent necessary for rank-ordering.

In addition to inadequate demonstration of validity, the test may not be used for rank-ordered selections because of the total absence of any evidence that the exam possessed another vital feature-reliability, that is, the extent to which the exam would produce consistent results if applicants repeatedly took it or similar tests. Of course, there is no expectation that applicants will take any given test more than once. But if an exam lacks reliability to such an extent that results would be significantly inconsistent if the same applicants were to take it again, that is an important indication that the test is not especially useful in measuring their abilities. Although not explicitly mentioned in the Guidelines, reliability is prominently identified in the APA Standards (to which the Guidelines refer in s 5(C)) to be as basic for evaluating an exam as validity itself. See APA Standards, supra at 48-55. Like content validity, reliability is not an all or nothing matter. It too comes in degrees. What is required is not perfect reliability, but rather a sufficient degree of reliability to justify the use being made of the test results. Without some substantial demonstration of reliability it is wholly unwarranted to make hiring decisions, with a disparate racial impact, for thousands of applicants that turn on one-point distinctions among their passing grades.

Two aspects of reliability deserve consideration in assessing the use of rank-ordering. The first is the quality of the exam questions. The more skillfully they have been formulated, the more likely it is that results on one question will correlate with results on the other questions and that successive test scores would be consistent. This will avoid the tendency of scores to vary because of extraneous factors such as ***102** test administration. Whether this aspect of reliability has been achieved to an extent sufficient to justify rank-ordering need not be left to general consideration of the quality of the test construction process. A basic demonstration of this aspect of reliability can easily be made by the test-maker, before the test is administered to job applicants. The test-maker can pre-test his exam by giving it twice to a sample of persons generally approximating the characteristics of the population where the test is expected to be used for employment selection. To avoid distortion due to recollection, the test given at a later date to such a sample can use similar but not identical questions. Another somewhat useful indicator of reliability is a technique known as a split-half correlation-dividing each component of the test into equal halves and observing how consistent were an individual's scores on each half.[FN17] This technique can also be used in the process of pre-testing the exam, before it is administered to job applicants. The technique also is easily used on actual test results to provide some minimal evidence of reliability. In this case the City offered no evidence to demonstrate the quality of the questions used in Exam No. 8155.

> FN17. See APA Standards, supra at 48-50; Kuder & Richardson, The Theory of Estimation of Test Reliability in Principles of Educational and Psychological Measurement 95 (W. Mehrens & R. Ebel, eds. 1967); Rulon, A Simplified Procedure for Determining the Reliability of a Test by Split Halves, in id. at 104.

The second aspect of reliability concerns what testing experts call the error of measurement. See generally, H. Gulliksen, The Theory of Mental Test (1950). This is a statistical phenomenon indicating the degree to which scores on successive tests will be subject to inevitable random variation, no matter how carefully the test-makers have eliminated or at least lessened the effects of extraneous factors within their control. The error of measurement can be calculated by use of the standard deviation concept. For any test, regardless of how carefully it was prepared, statistical analysis, based on the normal distribution curve, shows that there is 68% probability that successive scores would fall within a range of one standard deviation from an actual score and a 95% probability (generally a satisfactory confidence level) that successive scores would fall within a range of two standard deviations from the actual score. It is also possible to estimate, again for any test, how many raw score points above and below the applicant's actual score are within the range of one or more standard deviations. This calculation, as explained in

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the margin, [FN18] depends upon the applicant's score and the number of items on the test. Thus, though the test-maker can never eliminate the error of measurement, he can minimize its effect for all scores by increasing the number of questions.

FN18. This effect can be demonstrated more precisely in psychometric terms, through the use of the standard error concept. The standard error is the raw score variance corresponding to a single standard deviation of the scores that would be obtained by a test-taker on successive, equivalent tests. It can be approximated by the quantity

$$\sqrt{\frac{t(n-t)}{n}}$$

where t is the test-taker's score and n is the number of items on the test. This formula is derived from the general formula for a standard deviation. See Lord, Do Tests of the Same Length Have the Same Standard Error of Measurement?, in Principles of Educational and Psychological Measurement 192 (W. Mehrens & R. Ebel, eds. 1967). The formula is an approximation because a particular applicant's error of measurement as defined by Lord, supra, is a function of his "true" score, that is, the score he would have obtained had no error been present. However, as the number of items on the test increases, the observed score will approach the true score, so that the approximation is permissible. In substituting observed score for actual score Lord introduces the refinement of reducing the denominator of his function by one to eliminate sampling bias, but this has an insignificant effect when the numbers are rounded off to the extent that they are in this discussion.

The inevitable error of measurement for a test consisting of 100 items, like Exam No. 8155, has significance in assessing the use of rank-ordering. At the passing score of 94, one standard deviation is equivalent *103 to a range between 2.4 points above and below 94. The range narrows as actual scores approach 100. At 97, for example, the range is plus or minus 1.7. Thus, to have 95% confidence that an applicant's grade has statistical reliability, grades within two standard deviations of his grade should theoretically be treated as equivalent to his grade, for in fact there is a 95% likelihood that each applicant at each grade would score within such a range on successive takings of equivalent tests. This means that the range in which a satisfactory confidence level is achieved for an applicant who scores 94 lies between 89 and 99, and even for one who scored 97, the range extends from 94 to 100. Care must be taken not to over-emphasize the significance of the error of measurement. Though grounded on sound principles of statistics, it remains an estimate, and it need not prevent the usual use of test scores that do not have a disparate racial impact. At a minimum, however, it should serve to illustrate the risks of making hiring decisions turn on one-point increments at scores where even a single standard deviation covers a raw score range greater than one point.

The most serious implication of error of measurement for Exam No. 8155 arises from the extraordinary extent to which high test scores were closely bunched. [FN19] Each score from 94 to 97 was achieved by over 2,000 applicants. [FN20] If the test questions had sufficient differentiating power to produce a somewhat even distribution of scores, or at least to avoid excessive bunching among the high scores, the error of measurement would not have affected the ultimate selection of such a significant portion of the applicants. But when 8,928 applicants, two-thirds of all who passed, are bunched between 94 and 97, the error of measurement makes the use of rank-ordering an extremely unreliable basis for hiring decisions.

FN19. The reason this bunching occurred was that the exam was too easy. An exam that was too difficult might have had the same effect, except that the bunching would have occurred at the lower end of the scale. Neither excessive easiness nor excessive difficulty is necessarily fatal, but each magnifies effects that may make scoring arrangements unjustified.

FN20. Set forth below are the total number of applicants who achieved each score from 110 to 70 and the number of White and minority (Black and Hispanic-surnamed) applicants at each of these scores. The White and minority figures do not always equal the total because some applicants were members of other minority groups and some applicants were not identified.

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Score	Total Applicants	White	Minority
110	3	1	1
109	6	4	2
108	3	1	0
107	9	5	1
106	13	5	5
105	36	19	6
104	90	59	16
103	102	64	23
102	95	53	17
101	125	60	38
100	823	565	96
99	1570	1067	177
98	1845	1372	223
97	2238	1562	282
96	2311	1516	390
95	2255	1434	428
94	2124	1307	425
93	2024	1195	504
92	2017	1174	504
91	1772	1009	524
90	1675	913	529
89	1498	774	541
88	1359	678	485
87	1171	569	452
86	1077	500	452
85	989	468	402
84	870	395	371
83	813	358	362
82	722	313	330
81	608	246	298
80	558	214	287
79	497	191	245
78	449	163	222
77	409	157	197
76	363	130	192
75	323	117	156
74	342	121	182
73	265	89	141

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72	247	87	138
71	213	89	102
70	198	65	112

If test scores produce disparate racial results, an employer who wants to use rank-ordering of the scores for hiring decisions faces a substantial task in demonstrating that rank-ordering is sufficiently justified to be used. But the task is by no means impossible. Even without resorting to a criterion-related study, the test-maker still has several ways to increase the justification***104** for rank-ordering sufficiently to use it. First, he can conduct a job analysis and construct the test with a high degree of adherence to Guideline requirements. That would produce a much stronger showing of content validation than the City was able to demonstrate in this case. Even content validity sufficient for rank-ordering does not require literal compliance with every aspect of the Guidelines. But there must be a substantial demonstration of job relatedness and representativeness to show a sound basis for making rank-ordering hiring decisions. Second, the test-maker can achieve an adequate degree of reliability by careful design of the exam so that the questions will yield a satisfactory degree of consistent results. To guard against inconsistency based on extraneous factors, the test-maker can pre-test the exam by successive applications to an appropriate sample or at least analyze the results of split-half correlations. Inconsistencies revealed by these techniques can be lessened by redesign of needlessly unreliable questions or components of the exam. To reduce inconsistency based on random variation, the number of questions can be increased. Of course, the size of an exam must observe realistic limits of cost and time of administration, but in the case of Exam No. 8155, using 200 instead of 100 questions would have significantly increased reliability. Because some error of measurement is inevitable, even an increase in the number of questions will not eliminate all random variation. However, the effect of such random variation can be reduced by using questions that are shown to have significant differentiating power, so that scores are not bunched at the high end of the scale.[FN21]

> FN21. The differentiating power of a question can be easily determined by means of an item analysis. The City could have tested each question on a sample population to determine its power to distinguish between different levels of ability. The most simple item analysis would have quickly revealed that this exam would produce a large number of closely bunched high scores. See Englehart, A Comparison of Several Item Discrimination Indices, reprinted in Principles of Educational and Psychological Measurement 387 (W. Mehrens & R. Ebel eds. 1967); Findley, A Rationale for Evaluation of Item Discrimination Statistics, reprinted in id. at 381.

Alternatively, the employer can acknowledge his inability to justify rank-ordering and resort to random selection from within either the entire group that achieves a properly determined passing score, or some segment of the passing group shown to be appropriate. The City itself, perhaps unwittingly, has acknowledged the reasonableness of this second alternative. Since each of the scores between 94 and 97 was achieved by more than 2,000 candidates, and since each training class can accommodate slightly more than 400 candidates, the test scores provide no basis for selecting from among candidates at each of these scoring levels. At oral argument, the City acknowledged that random selection would be used; for example, if all candidates scoring 98 or above have been selected, and 400 academy trainees are needed from the 2,000 candidates scoring 97, a random drawing from among all 2,000 would be used. [FN22] Thus, even the City recognizes that when the test scores afford no job-related basis for making selections from within a group that passed the test, random selection is appropriate.

> FN22. Actually, in this example, presumably 1,200 names would be drawn to yield the anticipated 400 candidates who would complete the post-examination steps of the hiring process.

We do not conclude that Title VII requires random selection from among those who pass a content valid test. In some instances rank-ordering may be shown to be justified. But where it is not, random selection from within a group validly determined to have passed a content valid exam is simply an available option. See Association Against Discrimination in Employment v. City of Bridgeport, 594 F.2d 306, 313 n.19 (2d Cir. 1979). The City may prefer not to use it. However that may be, the City cannot use rank-ordering not shown to be job-related when test scores produce a disparate racial impact. Nor can the City justify the use of rank-ordering by reliance on what it contends are requirements of state law. See N.Y.Const. art. 5, s 6; N.Y.***105** Civil Service Law s 61(1). Title VII explicitly relieves employers from any duty to observe a state

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hiring provision "which purports to require or permit" any discriminatory employment practice. 42 U.S.C. s 2000e-7 (1976).

If rank-ordering were the only unjustified use of test scores, it would be possible to limit a Title VII remedy to the elimination of this device. In other words, if an exam has adequate content validity and a passing score has been adequately determined, the employer could still limit selections to those within the group that passed, provided only that he abandons rank-ordered choices. But in this case, the impermissible use of the test scores extends beyond rank-ordering to the setting of the cutoff score.

[10] Cutoff Score. The Guidelines state that a cutoff score "should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force." Guidelines s 5(H). This also makes sense. No matter how valid the exam, it is the cutoff score that ultimately determines whether a person passes or fails. A cutoff score unrelated to job performance may well lead to the rejection of applicants who were fully capable of performing the job. When a cutoff score unrelated to job performance produces disparate racial results, Title VII is violated. See Association Against Discrimination, supra, 594 F.2d at 312-13; Bridgeport Guardians, Inc. v. Bridgeport Civil Service Commission, 482 F.2d 1333, 1338 (2d Cir. 1973). Consequently, there should generally be some independent basis for choosing the cutoff. As with rank-ordering, a criterion-related study is not necessarily required; the employer might establish a valid cutoff score by using a professional estimate of the requisite ability levels, or, at the very least, by analyzing the test results to locate a logical "break-point" in the distribution of scores. The City offered no such basis in this case. It merely chose as many candidates as it needed, and then set the cutoff score so that the remaining candidates would fail.

If it had been shown that the exam measures ability with sufficient differentiating power to justify rank-ordering, it would have been valid to set the cutoff score at the point where rank-ordering filled the City's needs. The justification would be that each incremental change in score represents an incremental change in job-related ability, so that, for any given cutoff (even one determined solely by hiring needs), those who passed would likely perform the job better than those who failed. But the City can make no such claim, since it never established a valid basis for rank-ordering.

Indeed, the problems of both validity and reliability, which prevent the justified use of rank-ordering, also cast serious doubt on the justification for the cutoff score of 94. Of all these problems, the unreliability attributable to the error of measurement has special significance for the cutoff score. As previously noted, the error of measurement had an especially extensive impact on the applicants because of the bunching of scores at the high end. The bunching occurred not only at passing scores from 94 to 97, but also at failing scores of 92 and 93, each of which was also achieved by more than 2,000 applicants. Scores within a range of two points above and below the passing grade of 94 were achieved by 10,731 applicants, 29% of the total. Had the scores been evenly distributed, 1,800 applicants, only 5%, would have fallen within this range. Selecting a cutoff score in the middle of the range in which the test scores were closely bunched meant that the inevitable error of measurement led to a much higher number of mistaken passes and failures than would otherwise have occurred.[FN23] Perhaps an even distribution*106 of scores cannot be readily achieved, but the impact of the error of measurement could have been held to acceptable limits if a cutoff score had been selected within some range where scores were not closely bunched. This does not mean that every person who fails a test by a single point necessarily has a claim for legal redress. A cutoff score, properly selected, is not impermissible simply because there will always be some error of measurement associated with it. But when an exam produces disparate racial results, a cutoff score requires adequate justification and cannot be used at a point where its unreliability has such an extensive impact as occurred in this case.

FN23. This comparison can be expressed mathematically by considering the statistical probability that a person who passed with a score of 94 or failed with a score of 93 would have achieved that same score on successive exams. If one were to administer successive exams and average the results, the test-taker would have to achieve an average score no more than one-half point above or below his original score to be regarded as achieving the same score. For a test-taker who scored 93 or 94 on Exam No. 8155, the standard error is approximately 2.4. This means that 2.4 points above or below 93 or 94 represents one standard deviation. Similarly, one-half a point above or below these scores represents . 5/2 .4 or .21 standard deviations. Assuming that the normal distribution curve applies, and ignoring the effect of bonus points, it can be derived from the table of normal curve distributions that .21 standard deviations represent a 17% level of certainty.

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> In other words about 17% of the test takers who scored 93 or 94 would achieve that same score, on the average, if they had taken successive equivalent exams. Of the remainder, we can assume that half would have scored higher and half would have scored lower. Since 94 was passing, these figures mean that 41.5% of those who scored 93 (41.5% being half the remainder, which is 100%-17%, or 83%), would have achieved an average score of 94 on a series of successive equivalent tests, and thereby passed the exam, while 41.5% of those who scored 94 would have failed.
>
> > If the test-takers had been evenly distributed by score, which is ideal, or at least approximated an even distribution in the cutoff region, which is generally feasible, 729 persons would have scored 93 or 94, and 41.5% of these, or 300, would have been incorrectly placed. In fact, some 4,148 achieved these two scores, so that at least 1,721 of the test-takers were incorrectly placed, just counting those who achieved these two sets of scores. As one moves away from the cutoff, the percentage of incorrect placements becomes much less. Of those who scored 99, for example, virtually none would have failed on successive tests, since the standard error for a score of 99 on a test with 100 questions is about 1, and 93, the highest failing grade, is thus more than three standard deviations below 99. Similarly, of those who scored 85, only one half of one percent would have passed on successive tests, since the standard error for a score of 85 is 3.6, which is 2.5 standard deviations below 94. For these scores, the test had a very low error of measurement. But relatively few of the test-takers in Exam No. 8155 scored 85 or 99. In contrast, each score in the 92 to 97 range, where the error of measurement was greatest, was achieved by over 2,000 test-takers. And the selected cutoff score was right in the middle of that range.

Primarily on the basis of Exam No. 8155's improper use of rank-ordering, and of the cutoff score, we affirm the conclusion of the District Court that the exam as used was invalid. Since we agree with the District Court that the exam had a significant disparate racial impact, we hold that the City's use of the exam violated Title VII.

V. Relief

The fashioning of relief in employment discrimination cases is always a sensitive matter, especially in cases like this one where the District Court endeavors to order some form of affirmative action, including the use of a quota. Our task of determining whether the District Court's remedy conforms to prevailing standards for Title VII relief has been made somewhat more difficult than usual because the precise effect of the Court's order is not clear and, in some respects, the order is not adequately supported by necessary findings or sufficient evidence.

The District Court's order is set out in full in the margin.[FN24] It deals with several topics including the use of Exam No. 8155, ***107** the development and approval of a new selection procedure, hiring in the interim until a new selection procedure receives court approval, and long-term hiring. The City objects most strenuously to the provisions concerning interim and long-term hiring,***108** since these provisions involve the use of a quota.

> FN24. Upon consideration of the evidence presented at the liability and relief stages of this case, and consideration of the briefs and oral arguments of the parties and amicus curiae United States of America and Policewomen's Endowment Association of New York City, Inc., and entry of findings of fact and conclusions of law, it is hereby ORDERED:
>
> > 1. Defendants, their officers, officials, agents, employees, successors, and all persons in active concert or participation with them or any of them are hereby permanently enjoined from engaging in any act or practice with respect to the selection of candidates for appointment to and training for the position in the New York City Police Department of entry-level police officer, which act or practice has the purpose or effect of discriminating against such persons because of race or national origin.
> >
> > 2. Defendants are hereby permanently enjoined from using Examination 8155 in any manner, except as specifically provided in paragraph 5 of this order.
> >
> > 3. The defendants shall seek to achieve as a long-term goal black and hispanic (hereinafter "minority") representation in the sworn ranks

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of the Police Department comparable to that of the minority composition of the labor force in the relevant hiring area. As of 1978, the labor force of the relevant hiring area was at least 30% black and hispanic.

4. To achieve the long-term goal set forth in paragraph 3, supra, the defendants shall as an interim goal appoint 50% of their entry level police officers from among qualified black and hispanic applicants. The interim hiring goal for minorities shall remain in effect until the minority representation in the sworn ranks of the Police Department is at least equal to the percentage of minorities in the labor force of the relevant hiring area as described in paragraph 3, supra, or until this court has found, after a hearing, that all proposed selection procedures for police officer positions have been validated in accordance with the Uniform Guidelines on Employee Selection Procedures, 28 C.F.R. s 50.14, 29 C.F.R. s 1607, effective September 25, 1978 ("Uniform Guidelines"), and that no further interim goals are appropriate. Nothing herein shall preclude plaintiffs from advocating the continuance of the interim goals on the basis that the continuing effects of past discrimination have not been eliminated.

5. To satisfy the goals set forth above in paragraphs 3 and 4, defendants may use an eligibility list derived from Examination No. 8155 as the pool from which it selects police officers. At such time as that eligibility list or any future eligibility list for the position of police officer does not contain sufficient minority candidates to meet the interim goals set out in paragraph 4, supra, the City shall take whatever steps are necessary to achieve the interim hiring goals.

6. Defendants shall make reasonable efforts to develop within a reasonable period of time a procedure for the selection of candidates for the entry level position of police officer which shall be lawful and validated in accordance with the Uniform Guidelines or successor guidelines similarly promulgated, and which is consistent with generally accepted psychological standards as defined by the American Psychological Association from time to time, and which has the least adverse impact on minority applicants. Consistent with this requirement defendants (a) shall examine all reasonably available alternative selection procedures on the subject of testing of police officer applicants, and (b) shall consult with industrial psychologists, psychometricians and/or others who have experience in the field of selection testing, and preferably who have performed or have knowledge of analyses of the job of police officers.

7. Defendants may continue to use the current qualifications and selection criteria for police officer positions. However, no such qualification or selection criterion shall be a valid basis for or defense for failure to meet the interim hiring goals set out in paragraph 4, supra, unless the court has ruled that such qualification or selection criterion has been validated in accordance with the Uniform Guidelines and has determined that there is no further basis for continuing the interim goals.

8. Members of the plaintiff class shall be afforded the opportunity, at appropriate later proceedings, to show that they are entitled to an award of back pay and constructive seniority.

9. Plaintiffs are entitled to their court costs and reasonable attorneys' fees to date. The amount of such costs and fees shall be set by the court after a hearing. Costs and attorneys' fees for work done in the future shall be fixed in such manner as the court may determine.

10. Within thirty (30) days after the entry of this order, and every six (6) months thereafter, the defendant city shall submit to the plaintiffs the following reports:

(a) A list of its then current uniformed employees in the Police Department showing for each person: name, address, race or national origin, police station or other place of assignment, date of appointment, rank, and date such rank was achieved.

(b) The total number of uniformed personnel employed by the Police Department, by rank, race and national origin.

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(c) A list of all minority applicants for all vacancies, including date of application, names, addresses, and telephone numbers, whether the applicant was accepted or rejected and reason(s) for rejection.

(d) The name, address, and telephone number of any minority employee involuntarily terminated prior to the completion of the probationary period, and reason(s) for termination.

(e) List of all hires, promotions and voluntary and involuntary terminations showing race and national origin.

11. Defendants shall provide to plaintiffs, upon request, such other records or documents as are necessary to monitor compliance with this order.

12. The court retains jurisdiction of this action for such further relief or other orders as may be necessary or appropriate to enforce and insure rights to equal employment opportunity within the New York City Police Department.

SO ORDERED.

In considering the District Court's order, we find it useful to distinguish between those aspects of the order that are designed to assure compliance with Title VII and those aspects that provide affirmative relief as a remedy for past discrimination. Compliance involves restricting the use of an invalid exam, specifying procedures and standards for a new valid selection procedure, and authorizing interim hiring that does not have a disparate racial impact. [FN25] Affirmative relief involves interim hiring at any ratio greater than what is necessary just to avoid a disparate racial impact and any required long-term hiring targets or ratios. Though standards in this difficult area are only beginning to emerge and have been a source of disagreement within this and other courts, we distill from the case law the following general principles, applicable to remedies for discrimination in entry-level hiring. [FN26]

FN25. An example would be an interim minority hiring ratio of 30%, where the minority percentage of the applicant pool or the relevant work force is also 30%. In this case, the District Court's provision for interim hiring specifies a minority ratio of a remedial nature, i. e., greater than needed simply to avoid a disparate racial impact. We therefore consider this provision as part of affirmative relief.

FN26. The formulation of remedies for discrimination in promotion of employees requires even greater caution than is appropriate for entry-level hiring cases, since such remedies inevitably impact adversely identifiable employees who have committed themselves to a particular career track. See Kirkland, supra, 520 F.2d at 429; Bridgeport Guardians, supra, 482 F.2d at 1341.

[11] 1. As a general matter Title VII relief should at least assure compliance with the law. When it has been established that a selection procedure has been unlawfully used, an appropriate compliance remedy should forbid the use of that procedure, or its disparate racial impact, and may properly assure the establishment of a lawful new procedure. When it also appears that the employer has discriminated prior to the use of the challenged selection procedure, then it may also be appropriate to fashion some form of affirmative relief, on an interim and long-term basis, to remedy past violations, see, e. g., Prate v. Freedman, 583 F.2d 42, 47 (2d Cir. 1978); United States v. City of Chicago, supra, 549 F.2d at 436-37; Morrow v. Crisler, 491 F.2d 1053 (5th Cir.) (en banc), cert. denied, 419 U.S. 895, 95 S.Ct. 173, 42 L.Ed.2d 139 (1974); Bridgeport Guardians, supra, 482 F.2d at 1340; Carter v. Gallagher, 452 F.2d 315, 331 (8th Cir. 1972) (en banc); cf. Franks v. Bowman Transportation Co., 424 U.S. 747, 763-64, 96 S.Ct. 1251, 1263-64, 47 L.Ed.2d 444 (1976) (Title VII authorizes broad remedial relief); Albemarle, supra, 422 U.S. at 418 (same). However, the form of such affirmative relief, especially the use of quotas, requires a most sensitive approach, see Association Against Discrimination, supra, 594 F.2d at 310-11; Kirkland, supra, 520 F.2d at 427-28; Patterson v. Newspaper & Mail Deliverers' Union, 514 F.2d 767, 775-76 (2d Cir. 1975) (Feinberg, J., concurring), cert. denied, 427 U.S. 911, 96 S.Ct. 3198, 49 L.Ed.2d 1203 (1976); Bridgeport Guardians, supra, 482 F.2d at 1340; Vulcan Society, supra, 490 F.2d at 398-99.

2. Initial consideration should be given to relief for the plaintiffs and those similarly situated, that is, Black and Hispanic applicants who took Exam No. 8155. While relief in Title VII cases need not necessarily be limited to the applicant class nor framed in specific relation to that class,

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their interests obviously deserve consideration. See Castro v. Beecher, 459 F.2d 725, 736-37 (1st Cir. 1972); Carter v. Gallagher, supra, 452 F.2d at 328-31.

3. Interim hiring provisions, for the period prior to use of a valid selection procedure, should be considered and formulated separately from long-term hiring provisions.

4. Since interim hiring provisions, where needed to satisfy immediate personnel requirements, are to be used prior to the development and approval of a valid selection procedure, such provisions cannot meet Title VII standards by demonstrated job ***109** relatedness. Therefore, one appropriate way to assure Title VII compliance on an interim basis is to avoid a disparate racial impact. This means selecting from among adequately qualified applicants either on a random basis, see, e. g., Association Against Discrimination, supra, 594 F.2d at 313, n.19, or according to some appropriately noncompensatory ratio, see, e. g., Kirkland, supra, 520 F.2d at 429-30; Vulcan Society, supra, 490 F.2d at 398-99, normally reflecting the minority ratio of the applicant pool or the relevant work force.

[12] 5. Any use of a hiring ratio during the interim period to compensate for prior discrimination, that is, a ratio greater than the minority percentage in the applicant pool or the relevant work force, should be imposed only upon clear evidence and appropriate findings of the need to redress demonstrated prior discrimination of long standing that has had a significant impact on minority employment. See Association Against Discrimination, supra, 594 F.2d at 312; Patterson, supra, 514 F.2d at 776 (Feinberg, J., concurring); Vulcan Society, supra, 490 F.2d at 398-99.

[13] 6. If a hiring ratio is imposed beyond the interim period in which a valid selection procedure is developed in order to reach a required long-term target, the justification for its use must be especially compelling.[FN27] See Bridgeport Guardians, supra, 482 F.2d at 1340. The prior discrimination warranting such a remedy must either be intentional, or it must plainly appear that significant discrimination has persisted for a substantial time. Gross disparity between minority employment and minority percentage in the relevant work force may imply such discrimination, especially when the minority employment is extremely low. Otherwise, the instances, impact, and duration of prior discrimination must be established.

> FN27. This requirement of reaching a target should be contrasted with the far more modest use of a target figure merely to limit the extent of interim relief. The latter occurs when a remedy provides that the interim relief will continue until an acceptable selection procedure is developed or until a particular target figure for minority employment is achieved. In such a case, the target figure does not function as an absolute requirement; it simply serves as a means of assuring that the interim requirements will end at some point, even if development of a valid selection procedure is unduly delayed. The use of a target figure for this limiting purpose does not require the same compelling justification as a target figure prescribed as an absolute requirement, since it imposes no additional obligation on the defendant.

With these principles in mind we turn to consideration of the order's provisions for compliance remedies and for affirmative relief.

Compliance Remedies

[14] Paragraph 2 of the order enjoins the use of Exam No. 8155 as a selection procedure, except in connection with the implementation of the interim and long-term hiring provisions. Deferring for the moment the exception concerning the permissible use of the exam, we readily affirm the District Court's prohibition against the unqualified use of the exam. The exam as used violated Title VII, and it is obviously appropriate to bar its continued use, except on an interim basis with adjustments that eliminate its disparate racial impact and thereby avoid its unlawful effect.

[15] The order prescribes four requirements for the development and approval of a new selection procedure. We affirm the requirement, in paragraph 6 of the order, that the City make extensive efforts in its search for a new procedure, including consideration of "all reasonably available alternative selection procedures" and broad consultation with appropriate professionals.

[16] We also affirm the procedural requirement in paragraph 4 of the order that the new selection device must be approved by the District Court prior to its use. Once an exam has been adjudicated to be in violation of Title VII, it is a reasonable remedy to require that any subsequent exam or other selection device receive court approval prior to use. See, e. g., Bridgeport Guardians, supra, 482 F.2d at 1339. This situation is to be contrasted with a case like ***110**Guardians Ass'n v. Civil Service Commission, 490 F.2d 400 (2d Cir. 1973) (Guardians I or "the '68-'70 exams case"), where the exams had not yet been found to be

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invalid. In that case the City was obliged only to show the new exam to plaintiffs and afford them an opportunity to criticize it.

[17] However, we reject the District Court's principal substantive standard for approval of the new selection procedure to the extent that it requires any new procedure to be validated in accordance with the Guidelines and consistent with the APA Standards. As discussed in part III of this opinion, we have concluded that literal compliance with the Guidelines and with professional testing criteria is not required by Title VII and can, in some instances, lead to results inconsistent with Title VII's explicit endorsement of "any professionally developed ability test." 42 U.S.C. s 2000e-2(h). We therefore conclude that the District Court, in determining the legality of a new selection procedure, should not require that it must conform in all respects to the Guidelines and the APA Standards; it will be sufficient if the new procedure conforms to the essential purposes of Title VII. We have endeavored to outline the extent to which the Guidelines are useful in carrying out those purposes and some of the respects in which excessive rigidity in application of the Guidelines may undermine those purposes. No all-encompassing formula is possible. The Guidelines remain useful as a source of guidance, but they need not be adhered to in every detail as if they were substantive regulations.

[18] We also reject the District Court's substantive requirement, as expressed in paragraph 6 of the order, that the new selection procedure must have "the least adverse impact on minority applicants." This requirement appears to be an attempt to implement the principle expressed in Albemarle that once an employer has established the job-relatedness of a selection procedure that has a disparate racial impact, the plaintiff may still establish a Title VII violation by proving that "other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate interest in 'efficient and trustworthy workmanship.' " Albemarle Paper Co. v. Moody, supra, 422 U.S. at 425, 95 S.Ct. at 2375, quoting McDonnell Douglas Corp. v. Green, supra, 411 U.S. at 801, 93 S.Ct. at 1823. Of course, a decree may incorporate this principle into the standard for approving any new selection procedure, but the phrasing in paragraph 6 imposes a stricter and impermissible burden. To comply with Title VII a new selection procedure need not have the least adverse impact on minority applicants. That requirement would prohibit any exam with any disparate racial impact because random selection would always be a procedure with less adverse impact. What Albemarle contemplates, and what the decree may require, is that a selection procedure proposed by the City may not be used if the plaintiffs can establish the existence of an alternative procedure with an equivalent degree of job relatedness and a lesser disparate racial impact.

Affirmative Relief

Our initial concern with the provisions of the order concerning affirmative relief arises from our uncertainty as to precisely what the District Court has required. The District Court's January 11 order states, and its January 23 revised opinion appears to require, that the City take the affirmative action of hiring 50% of entry-level police officers from among qualified Black and Hispanic applicants. But the opinion and the order seem to contain different provisions about the length of time for which this 50% minority hiring ratio is to apply. The opinion characterizes the affirmative action required as an "interim" measure. 484 F.Supp. at 799. In the context of Title VII testing cases, "interim" has meant the time period between the date of a decree and the subsequent use of a valid selection procedure. See, e. g., EEOC v. Local 638, Sheet Metal Workers' Association, 532 F.2d 821, 829 (2d Cir. 1976); Kirkland, supra, 520 F.2d at 423, 429-30; Vulcan Society, supra, 490 F.2d at 398. It is to be contrasted with a long-term or permanent*111 hiring requirement, which specifies a minority composition of the employer's work force that must be achieved, even if a valid testing procedure has been developed and approved before the targeted minority composition is reached. [FN28]

> FN28. Though the District Court's opinion refers to affirmative action as an "interim" measure, it prescribes that it will last either until "discrimination has been totally eliminated" or until valid selection procedures are being used. (484 F.Supp. at 799). The meaning of the first phrase is not entirely clear; however, even if it means a long-term objective of minority police employment equal to the minority percentage in the work force, the opinion still requires no more than an interim remedy because of the provision in the second phrase that the affirmative action can be terminated once a valid selection procedure has been approved.

In contrast to the District Court's opinion, its order, which is the operative document brought here for review, appears to require numerical quotas that continue beyond interim relief. Paragraph 3 states that the defendants "shall" seek to

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achieve minority (Black and Hispanic) representation in the Police Department "comparable to that of the minority composition of the labor force in the relevant hiring area," a representation stated to be at least 30%. Paragraph 4 also indicates that the required 50% quota hiring [FN29] may well last beyond the interim that ends with approval of a valid test. Paragraph 4 prescribes 50% minority hiring either until minority representation in the Department equals minority representation in the relevant labor force or until the District Court has both approved a valid selection procedure and, in addition, found that 50% quota hiring is no longer "appropriate." That such a finding might not be made until sometime after approval of a valid selection procedure and perhaps not until the long-term hiring goal has been reached is indicated by the specific reservation in Paragraph 4 of the plaintiffs' right to advocate the continued use of hiring quotas because "the continuing effects of past discrimination have not been eliminated."

> FN29. The order unfortunately refers to the 50% quota as an "interim goal." It is not a goal at all. It is a procedure that the District Court has required to be used at least until the true interim goal approval of a valid selection procedure has been reached, and perhaps until the long-term goal minority employment percentage equal to minority work force percentage has been reached.

In addition to creating uncertainty whether affirmative relief has been ordered on an interim or long-term basis, the record contains inadequate findings and, more significantly, inadequate evidence to support the hiring provisions of the order. The District Court determined that affirmative relief was warranted based upon conclusions concerning the prior employment practices of the defendants and their state of mind in preparing and using Exam No. 8155. The prior practices concern the defendants' use of an eligibility list compiled from the results of police exams given between 1968 and 1970. The continued use of the results of those exams after 1972, when Title VII was amended to include municipal employers, had previously been found to violate Title VII because the exams had a disparate racial impact and were not job-related. That conclusion had been reached in litigation concerning the Police Department's layoff policy, Guardians Ass'n v. Civil Service Commission, 431 F.Supp. 526 (S.D.N.Y.) (Guardians II or "the first layoff policy case"), vacated and remanded for reconsideration, 562 F.2d 38 (2d Cir. 1977), and reaffirmed in Guardians Ass'n v. Civil Service Commission, 466 F.Supp. 1273 (S.D.N.Y.1979) (Guardians III or "the second layoff policy case"), aff'd in part, remanded in part, No. 79-7377, -- F.2d -- (2d Cir. July 25, 1980). [FN30]

> FN30. In 1973 the defendants gave still another exam whose validity has not been adjudicated. See 431 F.Supp. at 545 n.36. It is interesting to note, however, that even plaintiffs' well-known testing expert, Dr. Richard Barrett, acknowledged on cross-examination during the first layoff policy case that he could not be certain whether or not this exam is content valid. Id. n.37.

[19] The District Court grounded its decision to impose affirmative relief on the conclusion that the defendants designed Exam No. 8155 "either with a deliberate ***112** intention to discriminate against blacks and hispanics or with reckless disregard of whether the test would have that result." 484 F.Supp. at 798-99. This serious indictment of responsible city and police administrators is unsupported and indeed contradicted by the record. The conclusion is based virtually exclusively on the fact that the Police Department failed to assemble a valid eligibility list from the '68-'70 exams and failed again in 1979.[FN31] It would be contrary to Title VII's provision allowing the use of valid exams to hold that once an employer tries to construct such an exam and fails, any further failure to develop a valid exam constitutes intentional discrimination. Such a second attempt, by itself, is evidence only of a desire to make use of a technique that the law explicitly allows. Persistent use of exams with disparate racial effects would support an inference of intentional discrimination if proper test construction were not even attempted. But the record here indicates that the City's police and personnel officials made extensive efforts to understand and apply the Guidelines and develop a test they hoped would have the requisite validity. [FN32] Their failure entitles the plaintiffs to some relief, but does not justify a remedy based upon an unwarranted inference of deliberate discrimination.

> FN31. The only evidence referred to by the District Court, in addition to the invalidity of the '68-'70 exams, is the testimony of some police officers who warned the test makers that the test would disfavor minorities. (484 F.Supp. at 798). Such a caution would be significant if the test makers had made no effort to satisfy Guideline standards. But when test makers have undertaken the elaborate process of job analysis and test construction revealed by this record, their willingness to disregard a prediction of disparate ra-

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cial impact does not indicate that they lacked a good faith belief that their exam could nonetheless be shown to be adequately job-related.

FN32. It is true that the City's previous unsuccessful attempt to design an exam on its own renders somewhat questionable its apparent enthusiasm for another "in-house" effort. However, the decision to produce Exam No. 8155 "in-house" may well have been motivated by a bureaucratic preference for internal procedures, a need to save money, a naive self-confidence, or simply a desire to try again. None of these motives is a basis for inferring a conscious intention or even a reckless willingness to violate the law.

[20] In the absence of intentional discrimination, affirmative relief requires some demonstrated pattern of significant prior discrimination. There are no adequate findings concerning such a pattern, and the record lacks sufficient evidence on which such findings could be based. The District Court referred to the City's prior Title VII violation in using the eligibility list resulting from the '68-'70 exams and concluded that the minority "imbalance" on the City's police force is "directly caused by past and current discriminatory practices." 484 F.Supp. at 799. Obviously Exam No. 8155 has had no significant effect upon the current minority proportion of the police force, because its results have been used to select only one class for the training academy. As to the use of the eligibility list from the '68-'70 exams, there are no findings and no evidence to indicate the extent to which use of that list has affected the minority proportion of the police force. The first layoff policy case provides some data as to the numbers of Whites and minority members hired as a result of two of the '68-'70 exams, 431 F.Supp. at 552-53, Tables 4 and 6, but even with that data, the record in this case does not disclose the minority percentage in the police department before and after the '68-'70 exams. Nor is there any evidence of the impact of hiring resulting from Exam No. 3014, administered in 1973, the validity of which has not been challenged. The '68-'70 exams undoubtedly made some contribution to the current racial imbalance of the police force, but the record does not contain even estimates of how the hiring prior to the 1973 exam currently affects the composition of the police force. Plaintiffs have failed to prove that prior use of discriminatory exams has created a situation warranting affirmative relief.

In the absence of proof of the specific impact of such prior discrimination, the only ***113** probative evidence in the record is that the current minority proportion of the police force is 12.7% compared to a relevant work force percentage of at least 30%. That is cause for some concern, but does not reveal the flagrant disparity shown in prior cases where long-term hiring quotas were in issue. Cf. Association Against Discrimination, supra, 594 F.2d at 308 (minorities constituted 0.2% of employees, 41% of population; quota vacated for reconsideration and findings); EEOC v. Local 14, International Union of Operating Engineers, 553 F.2d 251, 256 (2d Cir. 1977) (minorities constituted 2.8% of union members, at least 16.2% of relevant labor force; judgment including quota vacated for further findings); Patterson, supra, 514 F.2d at 770, 772 (minorities constituted 2.45% of union and union-affected job-seekers, 30% of relevant labor force; quota sustained); Bridgeport Guardians, supra, 482 F.2d at 1335 (minorities constituted 3.6% of employees, 25% of population; hiring quota sustained). If the disparity between existing minority employment and relevant work force percentage were extreme and long-standing, that circumstance alone might justify some affirmative relief, especially if minority employment were low. But where, as here, the disparity is not extreme and minority employment is not insubstantial, an affirmative hiring remedy must be based on detailed findings, supported by evidence, that there exists a pattern of prior discrimination warranting such relief. Cf. Association Against Discrimination, supra, 594 F.2d at 312-13; Kirkland, supra, 520 F.2d at 427-28.

We therefore conclude that the affirmative hiring provisions of the order must be set aside. This will require elimination of the affirmative hiring quota of 50%, both as interim and long-term relief, and elimination of the long-term hiring goal of 30%, a goal that obviously could be achieved only by affirmative hiring at a ratio above the minority percentage of the relevant work force. The only hiring remedy justified by this record is a compliance remedy, one designed to make sure that the City complies with the requirements of Title VII in making appointments to the police force. Such a remedy should permit the City, in the interim period prior to development of a new, valid selection procedure, to use the results of Exam No. 8155 in a way that avoids any disparate racial impact. This means selecting candidates from the eligibility list subject to the minority proportion of either the applicant pool or the relevant work force, a determination to be made upon remand.

To accomplish such interim hiring the City may assemble a minority pool and a majority pool of qualified candidates from the eligibility list. In assembling these pools, the City

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may use a cut-off score somewhat lower than 94, a score that was originally determined by the City's manpower needs, rather than by an independent estimate of adequate ability. Within the majority and minority pools, the City may choose candidates, maintaining the requisite proportion of minority candidates and taking into account those already hired as a result of this exam. The City is not obliged to hire on an interim basis, but it should have the option of doing so in order to meet its manpower needs.

We remand this case to the District Court for the entry of a revised decree consistent with this opinion. Pending the entry of that decree, we continue in effect the provisions of the stay order we previously entered, under which the City is afforded the option of hiring from those who scored 94 or above on Exam No. 8155 provided such hiring achieves a minority ratio of 33%, taking into account those already hired as a result of this exam.

Affirmed in part, vacated in part, and remanded.

SIFTON, District Judge, concurring:

I concur in the result and in the reasoning of Judge Newman's thorough opinion with the exception of his conclusion that Exam No. 8155 adequately tested a representative sample of the skills, knowledges and abilities required for police work in New York City. While I join in rejecting ***114** the argument of the United States as amicus, that the requirement of representativeness means that all the knowledges, skills and abilities needed for police work must be tested, each in its proper proportions, I disagree with the conclusion that an exam which contains omissions as extensive as the present exam meets the "representativeness requirements to an adequate degree."

As Judge Newman correctly points out, Exam No. 8155 failed to test for human relations skills despite the City's job analysis which found, not surprisingly, that such skills constitute a significant part of police work in New York City-sufficiently important to warrant devoting 30 of the exam's 100 questions to determining whether the applicants possessed them and in what degree. Unfortunately, as Judge Newman so well explains, the portion of the exam which attempted to test for human relations skills in fact simply replicated other portions of the exam which tested the applicants' abilities to remember details, fill out forms, and apply general principles in specifically described factual settings. In my view, an exam which does not test for a skill or ability determined to constitute close to one-third of the talents required for success on the job cannot be called representative in any meaningful sense.

The legal effect of excusing a lack of representativeness of these dimensions, as Judge Newman's opinion appears to do, because the record does not contain evidence that a test for the relevant skills or abilities is "readily available and realistically feasible," appears to me, with all due respect, to shift to plaintiffs the burden of explaining the exam's racially disparate impact. The practical effect of validating a test for New York City police work which does not examine for human relations skills is to leave out of the entry level employment decision an area of qualifications in which minority groups would, one must assume, perform well despite educational and other deprivations. The immediate consequence of the decision is that high performance in the area of human relations skills will not be available to alter the overall assessment of applicants who perform less well in other areas.

Nor will refinements in rank-ordering or in the determination of an appropriate cut-off score overcome the effect of an omission of these dimensions. Selection at random or in rank order without the benefit of any assessment of the applicants' performance in one large area of police work will reflect the same racial disparities as exist in the pool from which random selection is made or in the ranks established by the unrepresentative test. [FN1]

> FN1. Of course, an unrepresentative exam-as is the case with exams at other stages of the qualification process for New York City police work-can be administered on a pass/fail basis as part of a larger qualification process provided the cut-off score represents that level of skills shown to be the level below which an applicant is disqualified for police work. There is, in other words, no objection on grounds of discriminatory impact to a test which eliminates those whose skills and abilities in the areas actually tested for are so low as to disqualify the applicant no matter how well he or she might perform in other untested areas.

C.A.N.Y., 1980.

Guardians Ass'n of New York City Police Dept., Inc. v. Civil Service Commission of City of New York

630 F.2d 79, 23 Fair Empl.Prac.Cas. (BNA) 909, 23 Empl. Prac. Dec. P 31,154

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266 F.3d 1155, Unempl.Ins.Rep. (CCH) P 16685B, 105 A.L.R.5th 747
(Cite as: 266 F.3d 1155)

United States Court of Appeals,
Ninth Circuit.
Patricia HART, Plaintiff-Appellant,
v.
Larry G. MASSANARI, Acting Commissioner of Social Security Administration, FN* Defendant-Appellee.

FN* Larry G. Massanari is substituted for his predecessor, Kenneth Apfel, as Acting Commissioner of the Social Security Administration. Fed. R.App. P. 43(c)(2).

No. 99-56472

Sept. 24, 2001.
Submitted March 5, 2001 FN**

FN** The panel unanimously finds this case suitable for decision without oral argument. Fed. R.App. P. 34(a)(2).

Filed Sept. 24, 2001

Action was brought against Acting Commissioner of Social Security Administration (SSA). The United States District Court for the Central District of California, Arthur Nakazato, United States Magistrate Judge, found for Acting Commissioner, and appeal was taken. After ordering appellant's counsel to show cause why he should not be disciplined for citing unpublished opinion in his opening brief, the Court of Appeals, Kozinski, Circuit Judge, held that: (1) Ninth Circuit rule generally prohibiting citation to unpublished dispositions and orders did not violate constitutional article governing judiciary, but (2) counsel's violation of such rule was not willful so as to warrant sanctions.

Order to show cause discharged.

West Headnotes

[1] Courts 106 96(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(1) k. In General. Most Cited Cases
When ruling on a novel issue of law, federal courts will generally consider how other courts have ruled on the same issue; this consideration will not be limited to courts at the same or higher level, or even to courts within the same system of sovereignty.

[2] Courts 106 96(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(1) k. In General. Most Cited Cases
While the Court of Appeals would consider it bad form to ignore contrary authority from other courts by failing even to acknowledge its existence, courts may, in the absence of binding precedent, forge a different path than suggested by prior authorities that have considered the issue; so long as the earlier authority is acknowledged and considered, courts are deemed to have complied with their common law responsibilities.

[3] Courts 106 96(3)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(3) k. Supreme Court Decisions. Most Cited Cases

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Courts 106 96(4)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(4) k. Conclusiveness of Decisions of Court of Appeals Within Its Circuit. Most Cited Cases

Binding authority, in the form of a ruling by a Court of Appeals on a controlling legal issue, or Supreme Court Justices writing for a majority of the Court, cannot be considered by a district judge and cast aside, for it is not merely evidence of what the law is; rather, caselaw on point is the law.

[4] Courts 106 96(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(1) k. In General. Most Cited Cases

If a federal court must decide an issue governed by a prior opinion that constitutes binding authority, the later court is bound to reach the same result, even if it considers the rule unwise or incorrect; binding authority must be followed unless and until overruled by a body competent to do so.

[5] Courts 106 89

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k89 k. In General. Most Cited Cases

In determining whether it is bound by an earlier decision, a court considers not merely the reason and spirit of cases, but also the letter of particular precedents, and this includes not only the rule announced, but also the facts giving rise to the dispute, other rules considered and rejected, and the views expressed in response to any dissent or concurrence; thus, when crafting binding authority, the precise language employed is often crucial to the contours and scope of the rule announced.

[6] Courts 106 96(3)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(3) k. Supreme Court Decisions. Most Cited Cases

Courts 106 96(4)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(4) k. Conclusiveness of Decisions of Court of Appeals Within Its Circuit. Most Cited Cases

A decision of the Supreme Court will control that corner of the law unless and until the Supreme Court itself overrules or modifies it, and judges of the inferior courts may voice their criticisms, but follow it they must; the same is true as to circuit authority.

[7] Courts 106 90(2)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k90 Decisions of Same Court or Co-Ordinate Court
106k90(2) k. Number of Judges Concurring in Opinion, and Opinion by Divided Court. Most Cited Cases

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Courts 106 96(4)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(4) k. Conclusiveness of Decisions of Court of Appeals Within Its Circuit. Most Cited Cases
Circuit law binds all courts within a particular circuit, including the court of appeals itself; thus, the first panel to consider an issue sets the law not only for all the inferior courts in the circuit, but also future panels of the court of appeals.

[8] Courts 106 90(2)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k90 Decisions of Same Court or Co-Ordinate Court
106k90(2) k. Number of Judges Concurring in Opinion, and Opinion by Divided Court. Most Cited Cases
Once a circuit court panel resolves an issue in a precedential opinion, the matter is deemed resolved, unless overruled by the court itself sitting en banc, or by the Supreme Court, or unless Congress changes the law.

[9] Courts 106 90(2)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k90 Decisions of Same Court or Co-Ordinate Court
106k90(2) k. Number of Judges Concurring in Opinion, and Opinion by Divided Court. Most Cited Cases
A later three-judge circuit court panel considering a case that is controlled by the rule announced in an earlier panel's opinion has no choice but to apply the earlier-adopted rule; it may not any more disregard the earlier panel's opinion than it may disregard a ruling of the Supreme Court.

[10] Courts 106 90(2)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k90 Decisions of Same Court or Co-Ordinate Court
106k90(2) k. Number of Judges Concurring in Opinion, and Opinion by Divided Court. Most Cited Cases
Designating an opinion as binding circuit authority is a weighty decision that cannot be taken lightly, because its effects are not easily reversed.

[11] Courts 106 90(2)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k90 Decisions of Same Court or Co-Ordinate Court
106k90(2) k. Number of Judges Concurring in Opinion, and Opinion by Divided Court. Most Cited Cases
Because en banc procedures are cumbersome, and are seldom used merely to correct errors of individual panels, it is very important that three-judge panel opinions be decided correctly and that they state their holdings in a way that is easily understood and applied in future cases.

[12] Courts 106 96(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(1) k. In General. Most Cited Cases

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Using the techniques developed at common law, a federal court confronted with apparently controlling authority must parse the precedent in light of the facts presented and the rule announced; insofar as there may be factual differences between the current case and the earlier one, the court must determine whether those differences are material to the application of the rule or allow the precedent to be distinguished on a principled basis.

[13] Courts 106 96(5)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(5) k. Decisions in Other Circuits. Most Cited Cases
The decision of a newly-created circuit whether to adopt wholesale the circuit law of another court is a matter of judicial policy, not a constitutional command.

[14] Courts 106 96(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(1) k. In General. Most Cited Cases
The first district judge to decide an issue within a district or within a circuit does not bind all similarly situated district judges.

[15] Courts 106 90(7)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k90 Decisions of Same Court or Co-Ordinate Court
106k90(7) k. Decisions of Co-Ordinate Courts of Same State. Most Cited Cases

Courts 106 91(2)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k91 Decisions of Higher Court or Court of Last Resort
106k91(2) k. Intermediate Appellate Court. Most Cited Cases
Under California law, an opinion by one of the courts of appeal is binding on all trial courts in the state, not merely those in the same district; however, court of appeal panels are not bound by the opinions of other panels, even those within the same district.

[16] Courts 106 107

106 Courts
106II Establishment, Organization, and Procedure
106II(K) Opinions
106k107 k. Operation and Effect in General. Most Cited Cases
The California Supreme Court may "depublish" a court of appeal opinion, that is, strip a published decision of its precedential effect. Cal.Rules of Court 976(c)(2).

[17] Courts 106 96(4)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(4) k. Conclusiveness of Decisions of Court of Appeals Within Its Circuit. Most Cited Cases
A district court bound by circuit authority has no choice but to follow it, even if convinced that such authority was wrongly decided.

[18] Courts 106 96(4)

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106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k96 Decisions of United States Courts as Authority in Other United States Courts
106k96(4) k. Conclusiveness of Decisions of Court of Appeals Within Its Circuit. Most Cited Cases

Courts 106 ⚿107

106 Courts
106II Establishment, Organization, and Procedure
106II(K) Opinions
106k107 k. Operation and Effect in General. Most Cited Cases
Courts of Appeals may decide which of their opinions will be deemed binding on themselves and the courts below them, inasmuch as the principle of strict binding authority is not constitutional, but is a matter of judicial policy. U.S.C.A. Const. Art. 3, § 1 et seq.

[19] Courts 106 ⚿106

106 Courts
106II Establishment, Organization, and Procedure
106II(K) Opinions
106k106 k. Preparation and Filing. Most Cited Cases
In writing a precedential opinion, a federal court must be careful to recite all facts that are relevant to its ruling, while omitting facts that it considers irrelevant; omitting relevant facts will make the ruling unintelligible to those not already familiar with the case, while including inconsequential facts can provide a spurious basis for distinguishing the case in the future.

[20] Courts 106 ⚿103

106 Courts
106II Establishment, Organization, and Procedure
106II(K) Opinions
106k103 k. In General. Most Cited Cases
In a precedential opinion of a federal court, the rule of decision cannot simply be announced, but must be selected after due consideration of the relevant legal and policy considerations.

[21] Courts 106 ⚿106

106 Courts
106II Establishment, Organization, and Procedure
106II(K) Opinions
106k106 k. Preparation and Filing. Most Cited Cases
Where more than one rule could be followed in a precedential federal judicial opinion, the court must explain why it is selecting one and rejecting the others; moreover, the rule must be phrased with precision and with due regard to how it will be applied in future cases.

[22] Courts 106 ⚿106

106 Courts
106II Establishment, Organization, and Procedure
106II(K) Opinions
106k106 k. Preparation and Filing. Most Cited Cases
A federal judge drafting a precedential opinion must not only consider the facts of the immediate case, but must also envision the countless permutations of facts that might arise in the universe of future cases; modern opinions generally call for the most precise drafting and re-drafting to ensure that the rule announced sweeps neither too broadly nor too narrowly, and that it does not collide with other binding precedent that bears on the issue.

[23] Courts 106 ⚿87

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k87 k. Nature of Judicial Determination. Most Cited Cases

Courts 106 ⚿103

106 Courts
106II Establishment, Organization, and Procedure
106II(K) Opinions
106k103 k. In General. Most Cited Cases
Federal judges have a responsibility to keep the body of law cohesive and understandable, and not muddy the water with a needless torrent of published opinions.

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266 F.3d 1155, Unempl.Ins.Rep. (CCH) P 16685B, 105 A.L.R.5th 747
(Cite as: 266 F.3d 1155)

[24] Courts 106 ⚷87

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k87 k. Nature of Judicial Determination. Most Cited Cases
All courts must follow the law.

[25] Constitutional Law 92 ⚷2450

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)1 In General
92k2450 k. Nature and Scope in General. Most Cited Cases
(Formerly 92k67)

Courts 106 ⚷107

106 Courts
106II Establishment, Organization, and Procedure
106II(K) Opinions
106k107 k. Operation and Effect in General. Most Cited Cases
Ninth Circuit rule, stating that unpublished dispositions and orders of Court of Appeals were not binding precedent and generally could not be cited to or by courts of Circuit, did not violate constitutional article governing judiciary, inasmuch as such article did not require that all case dispositions and orders issued by appellate courts be binding authority, and an inherent aspect of function of judges appointed under such article was managing precedent to develop coherent body of circuit law to govern litigation in Court of Appeals and other courts of Ninth Circuit. U.S.C.A. Const. Art. 3, § 1 et seq.; U.S.Ct. of App. 9th Cir.Rule 36-3, 28 U.S.C.A.

[26] Attorney and Client 45 ⚷37.1

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k37.1 k. In General. Most Cited Cases
Counsel's violation of Ninth Circuit rule generally prohibiting citation to Court of Appeals' unpublished dispositions and orders was not willful, and Court of Appeals would not exercise its discretion to impose sanctions, inasmuch as Eighth Circuit's opinion in *Anastasoff v. United States*, holding that similar Eighth Circuit rule violated constitutional article governing judiciary, may have cast doubt on Ninth Circuit rule's constitutional validity. U.S.C.A. Const. Art. 3, § 1 et seq.; U.S.Ct. of App. 8th Cir.Rule 28A(i), 28 U.S.C.A.; U.S.Ct. of App. 9th Cir.Rule 36-3, 28 U.S.C.A.

[27] Attorney and Client 45 ⚷37.1

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k37.1 k. In General. Most Cited Cases
The Ninth Circuit's rules providing for sanctions are not meant to punish attorneys who, in good faith, seek to test a rule's constitutionality.

***1158** Lawrence D. Rohlfing,Esq., Rohlfing Law Firm, Santa Fe Springs, California, for the plaintiff-appellant.

Kaladharan M.G. Nayar, Office of the Regional Attorney, Social Security Administration, San Francisco, California, for the defendant-appellant.

Appeal from the United States District Court for the Central District of California Arthur Nakazato, Magistrate Judge, Presiding. D.C. No. CV-97-02082-TJH(ANx).

Before: KOZINSKI and TALLMAN, Circuit Judges, and ZAPATA, District Judge.[FN***]

FN*** The Honorable Frank Zapata, United States District Judge for the District of Arizona, sitting by designation.

KOZINSKI, Circuit Judge.

Appellant's opening brief cites *Rice v. Chater*, No. 95-35604, 1996 WL 583605 (9th Cir. Oct.9, 1996). *Rice* is an unpublished***1159** disposition, not reported in the Federal Reporter except as a one-line entry in a long table of cases. *See* Decisions Without Published Opinions, 98 F.3d 1345, 1346 tbl. (9th Cir.1996). The full text of the disposition can be obtained from our clerk's office, and is available on Westlaw® and

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LEXIS®. However, it is marked with the following notice: "This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R. 36-3." Our local rules are to the same effect: "Unpublished dispositions and orders of this Court are not binding precedent ... [and generally] may not be cited to or by the courts of this circuit ...." 9th Cir. R. 36-3.

We ordered counsel to show cause as to why he should not be disciplined for violating Ninth Circuit Rule 36-3. Counsel responds by arguing that Rule 36-3 may be unconstitutional. He relies on the Eighth Circuit's opinion in *Anastasoff v. United States,* 223 F.3d 898, *vacated as moot on reh'g en banc,* 235 F.3d 1054 (8th Cir.2000). *Anastasoff,* while vacated, continues to have persuasive force. *See, e.g., Williams v. Dallas Area Rapid Transit,* 256 F.3d 260 (5th Cir.2001) (Smith, J., dissenting from denial of reh'g en banc).[FN1] It may seduce members of our bar into violating our Rule 36-3 under the mistaken impression that it is unconstitutional. We write to lay these speculations to rest.

FN1. *See also* Coleen M. Barger, *Anastasoff, Unpublished Opinions, and "No-Citation" Rules,* 3 J.App. Prac. & Process 169, 169-70 (2001). Barger notes that "[t]he chief judge of the District of Massachusetts seems determined to force the issue in the First Circuit," citing 1st Cir. R. 36(b)(2)(F) ("Unpublished opinions may be cited only in related cases ...."), "as he has begun to routinely insert the following footnote in his opinions whenever he cites unpublished opinions to support his reasoning":

> For the propriety of citing unpublished decisions, see *Anastasoff v. United States,* 223 F.3d 898, 899-905 (8th Cir.) (R. Arnold, J.) (holding that unpublished opinions have precedential effect), *vacated as moot,* No. 99-3917, 2000 WL 1863092 (8th Cir. Dec. 18, 2000); *Giese v. Pierce Chem. Co.,* 43 F.Supp.2d 98, 103 (D.Mass.1999) (relying on unpublished opinions' persuasive authority), and Richard S. Arnold, *Unpublished Opinions: A Comment,* 1 J.App. Prac. & Process 219 (1999).
>
> *See, e.g., Suboh v. City of Revere,* 141 F.Supp.2d 124, 144 n. 18 (D.Mass.2001) (Young, C.J.).

I

A. *Anastasoff* held that Eighth Circuit Rule 28A(i), which provides that unpublished dispositions are not precedential-and hence not binding on future panels of that court [FN2]-violates Article III of the Constitution. *See* 223 F.3d at 899. According to *Anastasoff,* exercise of the "judicial Power" precludes federal courts ***1160** from making rulings that are not binding in future cases. Or, to put it differently, federal judges are not merely required to follow the law, they are also required to *make* law in every case. To do otherwise, *Anastasoff* argues, would invite judicial tyranny by freeing courts from the doctrine of precedent: " 'A more alarming doctrine could not be promulgated by any American court, than that it was at liberty to disregard all former rules and decisions, and to decide for itself, without reference to the settled course of antecedent principles.' " *Id.* at 904 (quoting Joseph Story, *Commentaries on the Constitution of the United States* § 377 (1833)).[FN3]

FN2. Our rule operates somewhat differently from that of the Eighth Circuit, though it is in essential respects the same. While Eighth Circuit Rule 28A(i) says that "[u]npublished decisions are not precedent," we say that unpublished dispositions are "not binding precedent." Our rule, unlike that of the Eighth Circuit, prohibits citation of an unpublished disposition to any of the courts of our circuit. The Eighth Circuit's rule allows citation in some circumstances, but provides that the authority is persuasive rather than binding. *See* 8th Cir. R. 28A(i) ("Parties may ... cite an unpublished opinion of this court if the opinion has persuasive value on a material issue and no published opinion of this or another court would serve as well."). The difference is not material to the rationale of *Anastasoff* because both rules free later panels of the court, as well as lower courts within the circuit, to disregard earlier rulings that are designated as nonprecedential.

> For a comprehensive table of nonpublication and noncitation rules across all circuits

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and states, see Melissa M. Serfass & Jessie L. Cranford, *Federal and State Court Rules Governing Publication and Citation of Opinions*, 3 J.App. Prac. & Process 251, 253-85 tbl. 1 (2001).

FN3. In the passage cited by *Anastasoff*, Justice Story argued only that the judicial decisions of the Supreme Court were "conclusive and binding," and that inferior courts were not free to disregard the "decisions of the highest tribunal." He said nothing to suggest that the principle of binding authority constrained the "judicial Power," as *Anastasoff* does; rather, he recognized that the decisions of the Supreme Court were binding upon the states because they were the "supreme law of the land." Story, *supra*, §§ 376-78.

We believe that *Anastasoff* overstates the case. Rules that empower courts of appeals to issue nonprecedential decisions do not cut those courts free from all legal rules and precedents; if they did, we might find cause for alarm. But such rules have a much more limited effect: They allow panels of the courts of appeals to determine whether future panels, as well as judges of the inferior courts of the circuit, will be bound by particular rulings. This is hardly the same as turning our back on all precedents, or on the concept of precedent altogether. Rather, it is an effort to deal with precedent in the context of a modern legal system, which has evolved considerably since the early days of common law, and even since the time the Constitution was adopted.

The only constitutional provision on which *Anastasoff* relies is that portion of Article III that vests the "judicial Power" of the United States in the federal courts. U.S. Const. art. III, § 1, cl. 1. *Anastasoff* may be the first case in the history of the Republic to hold that the phrase "judicial Power" encompasses a specific command that limits the power of the federal courts. There are, of course, other provisions of Article III that have received judicial enforcement, such as the requirement that the courts rule only in "Cases" or "Controversies," *see, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), and that the pay of federal judges not be diminished during their good behavior. *See, e.g., United States v. Hatter*, 532 U.S. 557, ---- - ----, 121 S.Ct. 1782, 1790-91, 149 L.Ed.2d 820 (2001). The judicial power clause, by contrast, has never before been thought to encompass a constitutional limitation on how courts conduct their business.

There are many practices that are common or even universal in the federal courts. Some are set by statute, such as the courts' basic organization. *See, e.g.*, 28 U.S.C. § 43 (creating a court of appeals for each circuit); 28 U.S.C. § 127 (dividing Virginia into two judicial districts); 28 U.S.C. § 2101 (setting time for direct appeals to the Supreme Court and for applications to the Supreme Court for writs of certiorari). *See generally* David McGowan, *Judicial Writing and the Ethics of the Judicial Office*, 14 Geo. J. Legal Ethics 509, 509-10 (2001). Others are the result of tradition, some dating from the days of the common law, others of more recent origin. Among them are the practices of issuing written opinions that speak for the court rather than for individual judges, adherence to the adversarial (rather than inquisitorial) model of developing cases, limits on the exercise of equitable relief, ***1161** hearing appeals with panels of three or more judges and countless others that are so much a part of the way we do business that few would think to question them. While well established, it is unclear that any of these practices have a constitutional foundation; indeed, Hart (no relation so far as we know), in his famous Dialogue, concluded that Congress could abolish the inferior federal courts altogether. *See* Henry M. Hart, Jr., *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 Harv. L.Rev. 1362, 1363-64 (1953). While the greater power does not always include the lesser, the Dialogue does suggest that much of what the federal courts do could be modified or eliminated without offending the Constitution.

Anastasoff focused on one aspect of the way federal courts do business-the way they issue opinions-and held that they are subject to a constitutional limitation derived from the Framers' conception of what it means to exercise the judicial power. Given that no other aspect of the way courts exercise their power has ever been held subject to this limitation,[FN4] we question whether the "judicial Power" clause contains any limitation at all, separate from the specific limitations of Article III and other parts of the Constitution. The more plausible view is that when the federal courts rule on cases or controversies assigned to them by Congress, comply with due process, accord trial by

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jury where commanded by the Seventh Amendment and generally comply with the specific constitutional commands applicable to judicial proceedings, they have ipso facto exercised the judicial power of the United States. In other words, the term "judicial Power" in Article III is more likely descriptive than prescriptive.[FN5]

> FN4. To be sure, exercise of the judicial power is subject to a number of explicit constraints, such as the requirements of due process, trial by jury, the availability of counsel in criminal cases, the ex post facto clause and the prohibition against bills of attainder-to name just a few.
>
> FN5. Because the matter arises so seldom, there is little authority on this point, but the authority that does exist supports the view that the text of the judicial power clause is merely descriptive. For example, *United States v. Ferreira*, 54 U.S. (13 How.) 40, 14 L.Ed. 40 (1851), considered whether decisions of district courts as to whether certain Spanish citizens were entitled to compensation pursuant to a treaty between Spain and the United States were an exercise of the judicial power. If the district judges found the claimants entitled to compensation, they were to recommend that the Secretary of the Treasury make such payments, and the latter could (but was not required to) pay the claim. In concluding that such recommendations did not constitute an exercise of the judicial power (and hence were not reviewable by the Supreme Court), the opinion noted the ways in which the procedures for establishing these claims differed from "the ordinary forms of a court of justice":
>
> > For there is to be no suit; no parties in the legal acceptance of the term, are to be made-no process to issue; and no one is authorized to appear on behalf of the United States, or to summon witnesses in the case. The proceeding is altogether *ex parte;* and all that the judge is required to do, is to receive the claim when the party presents it, and to adjust it upon such evidence as he may have before him, or be able himself to obtain. But neither the evidence, nor his award, are to be filed in the court in which he presides, nor recorded there; but he is required to transmit, both the decision and the evidence upon which he decided, to the Secretary of the Treasury; and the claim is to be paid if the Secretary thinks it just and equitable, but not otherwise. It is to be a debt from the United States upon the decision of the Secretary, but not upon that of the judge.
>
> *See also Missouri v. Jenkins*, 515 U.S. 70, 130-33, 115 S.Ct. 2038, 132 L.Ed.2d 63 (1995) (Thomas, J., concurring) (listing various functional limitations on the exercise of the judicial power, including federalism, separation of powers and the prohibition against deciding political questions); *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 815-18, 107 S.Ct. 2124, 95 L.Ed.2d 740 (1987) (Scalia, J., concurring) (discussing the functional limitation of separation of powers on the exercise of the judicial power).

***1162** If we nevertheless were to accept *Anastasoff*'s premise that the phrase "judicial Power" contains limitations separate from those contained elsewhere in the Constitution, we should exercise considerable caution in recognizing those limitations, lest we freeze the law into the mold cast in the eighteenth century. The law has changed in many respects since the time of the Framing, some superficial, others quite fundamental. For example, as Professor William Nelson has convincingly demonstrated, colonial juries "usually possessed the power to find both law and fact in the cases in which they sat," and were not bound to follow the instructions given to them by judges. *See* William E. Nelson, *Marbury v. Madison: The Origins and Legacy of Judicial Review* 16-17 (2000). Today, of course, we would consider it unfair-probably unconstitutional-to allow juries to make up the law as they go along.

Another example: At the time of the Framing, and for some time thereafter, the practice that prevailed both in the United States and England was for judges of appellate courts to express separate opinions, rather than speak with a single (or at least majority) voice. The practice changed around the turn of the nineteenth

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century, under the leadership of Chief Justice Marshall. *See* George L. Haskins & Herbert A. Johnson, *Foundations of Power: John Marshall, 1801-15, in* 2 The Oliver Wendell Holmes Devise: History of the Supreme Court of the United States 382-89 (Paul A. Freund ed., 1981).

And yet another example: At the time of the Framing, and for some time thereafter, it was considered entirely appropriate for a judge to participate in the appeal of his own decision; indeed, before the creation of the Circuit Courts of Appeals, appeals from district court decisions were often taken to a panel consisting of a Supreme Court Justice riding circuit, and the district judge from whom the decision was taken. Act of March 2, 1793, ch. 22, § 1, 1 Stat. 333; *see also* Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3504 (2d ed.1984). Today, of course, it is widely recognized that a judge may not hear the appeal from his own decision. There are doubtless many more such examples.[FN6]

> FN6. The three examples we have given, though apparently disparate, actually bear on the question of what weight was given to precedent at the time of the Framing. In a regime where juries have power to decide the law, the concept of "binding" precedent has a very different, and much more diluted, meaning than in the current regime where jury verdicts are routinely reversed if they are not supported by the evidence in light of the applicable law. Similarly, binding precedent means something different altogether when a court speaks with seven or nine voices than with a single voice. Nine judges speaking separately may well agree on the outcome of a case, but they cannot give the kind of specific guidance as to the conduct of future cases that can be found in a single opinion speaking for the court. Finally, during the time when appeals were conducted by two-judge panels consisting of the circuit justice flanked by the district judge whose ruling was being appealed produced remarkably few-if any-written rulings. The precedential value of rulings from such panels was, for obvious reasons, not particularly valuable guidance in future cases. *Anastasoff* 's view that the judicial process underwent such fundamental changes, yet the process of producing precedential opinions remained essentially unchanged, strikes us as inherently doubtful. *Anastasoff* 's historical analysis has been called into question even by academics who generally agree with the result. *See, e.g.,* Polly J. Price, *Precedent and Judicial Power After the Founding,* 42 B.C. L.Rev. 81, 84, 90-93 (2000); Salem M. Katsh & Alex V. Chachkes, *Constitutionality of "No-Citation" Rules,* 3 J.App. Prac. & Process 287, 288 & n. 5 (2001).

***1163** One danger of giving constitutional status to practices that existed at common law, but have changed over time, is that it tends to freeze certain aspects of the law into place, even as other aspects change significantly. *See* note 6 *supra.* This is a particularly dangerous practice when the constitutional rule in question is not explicitly written into the Constitution, but rather is discovered for the first time in a vague, two-centuries-old provision. The risk that this will allow judges to pick and choose those ancient practices they find salutary as a matter of policy, and give them constitutional status, is manifest. *Compare* Richard S. Arnold, *Unpublished Opinions: A Comment,* 1 J.App. Prac. & Process 219 (1999) (suggesting that all opinions be published and given precedential value), *with Anastasoff,* 223 F.3d 898 (holding that the Eighth Circuit's rule barring citation to unpublished opinions violates Article III). Thus, in order to follow the path forged by *Anastasoff,* we would have to be convinced that the practice in question was one the Framers considered so integral and well-understood that they did not have to bother stating it, even though they spelled out many other limitations in considerable detail. Specifically, to adopt *Anastasoff* 's position, we would have to be satisfied that the Framers had a very rigid conception of precedent, namely that all judicial decisions necessarily served as binding authority on later courts.

This is, in fact, a much more rigid view of precedent than we hold today. As we explain below, most decisions of the federal courts are not viewed as binding precedent. No trial court decisions are; almost four-fifths of the merits decisions of courts of appeals are not. *See* p. 1177 *infra.* [FN7] To be sure, *Anastasoff* challenges the latter practice. We find it significant, however, that the practice has been in place for a long time, yet no case prior to *Anastasoff* has challenged its

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constitutional legitimacy. The overwhelming consensus in the legal community has been that having appellate courts issue nonprecedential decisions is not inconsistent with the exercise of the judicial power.

> FN7. Rules limiting the precedential effect of unpublished decisions exist in every federal circuit and all but four states (Connecticut, Delaware, New York and North Dakota). *See* Serfass & Cranford, note 2 *supra,* at 260-61 tbl. 1, 273-74 tbl. 1. *But see* Eaton v. Chahal, 146 Misc.2d 977, 553 N.Y.S.2d 642, 646 (N.Y.Sup.Ct.1990) ("[U]nreported decisions issued by judges of coordinate jurisdiction ... are not binding precedent upon this court....") The near-universal adoption of the practice illustrates not only that the practice is consistent with the prevailing conception of the judicial power, but also that it reflects sound judicial policy.

To accept *Anastasoff*'s argument, we would have to conclude that the generation of the Framers had a much stronger view of precedent than we do. In fact, as we explain below, our concept of precedent today is far stricter than that which prevailed at the time of the Framing. The Constitution does not contain an express prohibition against issuing nonprecedential opinions because the Framers would have seen nothing wrong with the practice.

B. Modern federal courts are the successors of the English courts that developed the common law, but they are in many ways quite different, including how they understand the concept of precedent. Common law judges did not make law as we understand that concept; rather, they "found" the law with the help of earlier cases that had considered similar matters. An opinion was evidence of what the law ***1164** is, but it was not an independent source of law. *See* Theodore F.T. Plucknett, *A Concise History of the Common Law* 343-44 (5th ed.1956).[FN8] The law was seen as something that had an existence independent of what judges said: "a miraculous something made by nobody ... and merely declared from time to time by the judges." 2 John Austin, *Lectures on Jurisprudence or The Philosophy of Positive Law* 655 (4th ed. 1873) (emphasis omitted). Opinions were merely judges' efforts to ascertain the law, much like scientific experiments were efforts to ascertain natural laws. If an eighteenth-century judge believed that a prior case was wrongly decided, he could say that the prior judge had erred in his attempt to discern the law. *See Bole v. Horton,* 124 Eng. Rep. 1113, 1124 (C.P.1673). Neither judges nor lawyers understood precedent to be binding in *Anastasoff*'s strict sense. [FN9]

> FN8. As Hale described it, judicial decisions "do not make a Law properly so-called," but "they have a great Weight and Authority in Expounding, Declaring, and Publishing what the Law of this Kingdom is, [and] are a greater Evidence [of a law] than the Opinion of any private Persons, as such, whatsoever." Sir Matthew Hale, *The History of the Common Law of England* 68 (London, Nutt & Gosling 1739). In Lord Mansfield's view, "[t]he reason and spirit of cases make law; not the letter of particular precedents." *Fisher v. Prince,* 97 Eng. Rep. 876, 876 (K.B.1762).

> FN9. As Holdsworth put it:
>
> > The general rule is clear. Decided cases which lay down a rule of law are authoritative and must be followed. But in very many of the statements of this general rule there are reservations of different kinds.... The fundamental principle, upon which all these reservations ultimately rest, is the principle stated by Coke, Hale and Blackstone, that these cases do not make law, but are only the best evidence of what the law is. They are not, as Hale said, "law properly so called," but only very strong evidence of the law. They are evidence, as Coke said, of the existence of those usages which go to make up the common law; and, conversely, the fact that no case can be produced to prove the existence of an alleged usage is evidence that there is no such usage. This principle is the natural, though undesigned, result of the unofficial character of the reports; and it is clear that its adoption gives the courts power to mould as they please the conditions in which they will accept a decided case or a series of decided cases as authoritative. If the cases are only evidence of what the law is the courts must decide what weight is to be attached to this evidence in different

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> sets of circumstances. *The manner in which they have decided this question has left them many means of escape from the necessity of literal obedience to the general rule that decided cases must always be followed.* They have allowed many exceptions to, and modifications of, this rule if, in their opinion, a literal obedience to it would produce either technical departures from established principles, or substantial inconveniences which would be contrary to public policy.
>
> Sir William Holdsworth, 12 *A History of English Law* 150-51 (1938) (footnotes omitted) (emphasis added).

One impediment to establishing a system of strict binding precedent was the absence at common law of a distinct hierarchy of courts. *See* Plucknett, *supra,* at 350.[FN10] Only towards the end of the nineteenth century, after England had reorganized its courts, was the position of the House of Lords at the head of its judicial hierarchy confirmed. Before that, there ***1165** was no single high court that could definitively say what the law was. Thus, as late as the middle of the nineteenth century, an English judge might ignore decisions of the House of Lords,[FN11] and the Exchequer and Queen's Bench held different views on the same point as late as 1842. [FN12] *See id.* at 350. Common law judges looked to earlier cases only as examples of policy or practice, and a single case was generally not binding authority.[FN13] Eighteenth-century judges did not feel bound to follow most decisions that might lead to inconvenient results, and judges would even blame reporters for cases they disliked. *See* Plucknett, *supra,* at 349.

FN10. As one commentator has noted:

> [T]wo conditions had to be satisfied before the doctrine of *stare decisis* could be established. (1) There had to exist reliable reports of cases. It is obvious that if cases are to be binding, there should be precise records of what they lay down. (2) There had also to be a settled judicial hierarchy. Equally obvious is it that until this was settled it could not be known which decisions were binding. Not until roughly the middle of the last century were these conditions fulfilled, and it is from about then that the modern doctrine [of stare decisis] emerges.
>
> R.W.M. Dias, *Jurisprudence* 30-31 (2d ed.1964).

FN11. One reason that House of Lords decisions commanded little respect was that as late as 1844, judicial deliberations could be conducted by lay peers, who brought far less training and experience to bear on legal issues than did the judges of the Exchequer Chamber. Dias, note 10 *supra,* at 32-33.

FN12. The three common law courts of first instance-the King's (or Queen's) Bench, Common Pleas and Exchequer-had overlapping jurisdiction in many common classes of cases. *See* Plucknett, *supra,* at 210.

FN13. The absence of an appellate hierarchy that could definitively settle legal issues was a continuing problem until the nineteenth century. The need for such definitive resolution nevertheless existed and the common law judges invented a substitute: the Exchequer Chamber. When a particularly vexing legal issue arose that was common to two or more of the courts, all the judges would meet, sometimes including the Lord Chancellor, the barons of the Exchequer, the members of the Council and the serjeants. *See* Plucknett, *supra,* at 151 (the Council consisted of the King's closest advisers); *id.* at 224 (serjeants were, essentially, lawyers known for wearing the coif, "a close-fitting cap of white silk or linen fastened under the chin; hence the term 'order of the coif.' ")

> The Exchequer Chamber debated particular legal issues and came up with a definitive ruling, which was then announced in the court where the case raising the issue originated. *Id.* at 162-63. The Exchequer Chamber was not a separate court; it was referred to by that name because these meetings were held in the court of the Exchequer, which "had ample office accommodation" to allow all the judges to meet in one place. Plucknett, *supra,* at 162

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> n. 7. The Exchequer Chamber might best be viewed as a super-en banc court including all of England's judicial officers.
>
> Unlike other decisions at common law, decisions reached by the Exchequer Chamber were considered binding precedent and, according to Plucknett, this is the first time we find "the principle that a single case may be precedent." *Id.* at 348. The Exchequer Chamber is significant for our analysis because it clearly suggests common law judges knew the distinction between binding and persuasive precedent. The vast majority of precedents at common law were considered more or less persuasive; only the few decisions agreed-to by all English judges sitting together were afforded the status that the *Anastasoff* court would now afford to every decision of a three-judge court of appeals as a matter of constitutional imperative.

The idea that judges declared rather than made the law remained firmly entrenched in English jurisprudence until the early nineteenth century. David M. Walker, *The Oxford Companion to Law* 977 (1980). Blackstone, who wrote his Commentaries only two decades before the Constitutional Convention and was greatly respected and followed by the generation of the Framers, noted that "the 'law,' and the 'opinion of the judge' are not ... one and the same thing; since it sometimes may happen that the judge may mistake the law"; in such cases, the precedent simply "was not law." 1 William Blackstone, *Commentaries* *70-71 (1765).

For centuries, the most important sources of law were not judicial opinions themselves, but treatises that restated the law, such as the commentaries of Coke and Blackstone. Because published opinions were relatively few, lawyers and judges ***1166** relied on commentators' synthesis of decisions rather than the verbatim text of opinions.[FN14]

> FN14. In the first century of American jurisprudence, Blackstone's "Commentaries were not merely an approach to the study of law; for most lawyers they constituted all there was of the law." Daniel J. Boorstin, *The Mysterious Science of the Law* 3 (1941).

Case reporters were entrepreneurs who scribbled down jury charges as they were delivered by judges, then printed and sold them. Or, reporters might cobble together case reports from secondhand sources and notes found in estates, sometimes years after the cases were decided. *See* Robert C. Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 Cal. L.Rev. 15, 18-19 (1987). For example, *Heydon's Case* was decided in 1584, but Lord Coke did not publish his account of it until 1602. *See* Allen Dillard Boyer, *"Understanding, Authority, and Will": Sir Edward Coke and the Elizabethan Origins of Judicial Review*, 39 B.C. L.Rev. 43, 79 (1997). Not surprisingly, case reports often contradicted each other in describing the reasoning, and even the names, of particular cases. *See* Berring, *supra,* at 18.[FN15] The value of case reports turned not on the accuracy of the report but on the acuity of their authors. *See id.* at 18-19.[FN16]

> FN15. For example, "*Clerk v. Day* was reported in four different books, and in not one of them correctly-not even as to name.... Arbitrary spelling of the names of cases is a bibliographical irritation, and sometimes a difficulty. *Fetter v. Beal* ... is a pretty good disguise for *Fitter v. Veal* ...." Percy H. Winfield, *The Chief Sources of English Legal History* 185 n. 3 (1925) (citations omitted).
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> FN16. As Holdsworth wrote:
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> > [I]n the eighteenth century, because the reports were made by private reporters, the reports of decided cases possessed, as we have seen, very different degrees of authority. It was always possible for a judge who was trying a case to decry the authority of a report which laid down a rule with which he disagreed. We have seen that Lord Mansfield, when he was pressed by a case which laid down a rule with which he did not like, was rather too apt to take this line. It is no doubt a line which it became less possible to take as the reports improved in quality, and as reporting became more standardized and more stereotyped. But within limits this censorship of reports is both legitimate and necessary.... Thus in the case of *Chillingworth v. Esche* [1924] 1

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> Ch. at pp. 112-113 Warrington L.J. said, "there are one or two points raised by Mr. Micklem with which I think I ought to deal. He relies on *Moeser v. Wisker* ((1871) L.R. 6 C.P. 120). In my opinion that is a case which never ought to have been reported. It was an *ex parte* application. The judges seized on a single fact, and decided on that fact. The purchaser in that case had no opportunity of stating his view."
>
> Holdsworth, note 9 *supra,* at 154 & 154 n. 3 (footnotes omitted).

Coke's intellectual reputation made him the most valued, and the most famous, of the private reporters. His reports were not verbatim transcriptions of what the judges actually said, but vehicles for Coke's own jurisprudential and political agenda. *See* Boyer, *supra,* at 80 ("In the name of judicial reason, Coke was willing to rewrite the law.... In 1602, his chief way of shaping the law was in the way he reported it."). Like other reporters, Coke often distorted the language and meaning of prior decisions that were inconsistent with what he considered the correct legal principle. *See* Harold J. Berman & Charles J. Reid, Jr., *The Transformation of English Legal Science: From Hale to Blackstone,* 45 Emory L.J. 437, 447 (1996). "There was no clear boundary in his mind between what a case said and what he thought it ought to say, between the reasons which actually prompted the decision, and the elaborate commentary which he could easily weave around any question." ***1167** Plucknett, *supra,* at 281.[FN17] Contrary to *Anastasoff* 's view, it was emphatically not the case that all decisions of common law courts were treated as precedent binding on future courts unless distinguished or rejected. Rather, case reporters routinely suppressed or altered cases they considered wrongly decided. Indeed, sorting out the decisions that deserved reporting from those that did not became one of their primary functions. [FN18]

FN17. Coke was not alone in this practice:

> [B]arristers have sometimes exercised some kind of censorship over the cases which they have reported.... For instance ... Atlay, The Victorian Chancellors ii 138, says, "Campbell was no mere stenographer; he exercised an absolute discretion as to what decisions he reported and what he suppressed, and sternly rejected any which appeared to him inconsistent with former rulings or recognised principles. He jocularly took credit for helping to establish the Chief Justice's reputation as a lawyer, and he used to boast that he had, in one of his drawers, material for an additional volume in the shape of 'bad Ellenborough law'."
>
> Holdsworth, note 9 *supra,* at 158 & 158 n. 1.

FN18. As one commentator has noted:

> It would appear also that from about 1785 judges were beginning to favour particular reporters chosen for each court and to prefer citation from them and no other.... The question what cases should be reported bristles with problems. The decision rests ultimately with the individual reporter.
>
> Dias, note 10 *supra,* at 33.

A survey of the legal landscape as it might have been viewed by the generation of the Framers casts serious doubt on the proposition-so readily accepted by *Anastasoff*-that the Framers viewed precedent in the rigid form that we view it today. Indeed, it is unclear that the Framers would have considered our view of precedent desirable.[FN19] The common law, at its core, was a reflection of custom, and custom had a built-in flexibility that allowed it to change with circumstance. Thus, "when Lord Mansfield incorporated the custom of merchants into the common law, it was a living flexible custom, responding to the growth and change of mercantile habits." Plucknett, *supra,* at 350. Embodying that custom into a binding decision raised the danger of ossifying the custom: "[I]f perchance a court has given a decision on a point of that custom, it loses for ever its flexibility and is fixed by the rule of precedent at the point where the court touched it." *Id.* It is entirely possible that lawyers of the eighteenth century, had they been confronted with the regime of rigid precedent that is in common use today, would have reacted with alarm.[FN20]

FN19. As another commentator has noted:

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> The Framers were familiar with the idea of precedent. But ... [t]he whole idea of just what precedent entailed was unclear. The relative uncertainty over precedent in 1789 also reflects the fact that "many state courts were manned by laymen, and state law and procedure were frequently in unsettled condition. The colonial and state courts did not enjoy high prestige, and their opinions were not even deemed worthy of publication."
>
> Henry Paul Monaghan, *Stare Decisis and Constitutional Adjudication,* 88 Colum. L.Rev. 723, 770 n. 267 (1988) (citations omitted). *See also* Melissa H. Weresh, *The Unpublished, Non-Precedential Decision: An Uncomfortable Legality?,* 3 J.App. Prac. & Process 175, 186 (2001) ("Stare decisis and the American common law system have never required the publication of all decisions.")

FN20. Far from being the strict and uncontroverted doctrine that *Anastasoff* attempts to portray, the concept of precedent at the time of the Framers was the subject of lively debate. Adherence to the common law was not "inevitable and unopposed." Robert H. Jackson, *The Supreme Court in the American System of Government* 29 (1955). "[T]he parameters of judicial power were highly contested in the late colonial and early Republic periods.... [N]o one knew the exact role that judges would have in the new experiment in government that formed the United States." R. Ben Brown, *Judging in the Days of the Early Republic: A Critique of Judge Richard Arnold's Use of History in Anastasoff v. United States,* 3 J.App. Prac. & Process 355, 375, 383 (2001). Therefore, "lawyers, judges and legal commentators contested the question of just what body of law judges should use to decide cases in the early Republic." *Id.* at 358.

> On one side of the debate was Blackstone himself. "Far from providing support for Judge Arnold's claim that the colonial judiciary was bound by common law precedent, Blackstone's thesis was just the opposite": that American courts were not bound by English precedent. *Id.* at 357 (footnotes omitted). St. George Tucker, a prominent nineteenth-century American scholar, disagreed. *Id.* at 358.
>
> Amidst this disagreement, American judges not only routinely picked and chose which English precedents to follow, but also felt free to ignore their *own* decisions. *Id.* at 359, 360-63 (discussing *Fitch v. Brainerd,* 2 Day 163 (Conn.1805) (available at 1805 WL 203), in which the Connecticut Supreme Court declared, without explanation, that its prior decision adopting an English precedent authored by Lord Mansfield, "was not law.") Such cavalier treatment of precedent-the *Fitch* court did not acknowledge the precedent as binding and distinguish or reject it, but simply declared it "was not law"-illustrates that precedent at the time of the Framers was a far more fluid concept than it is today, and certainly more so than the strict form advocated by *Anastasoff.*

***1168** The modern concept of binding precedent-where a single opinion sets the course on a particular point of law and must be followed by courts at the same level and lower within a pyramidal judicial hierarchy-came about only gradually over the nineteenth and early twentieth centuries. Lawyers began to believe that judges made, not found, the law. This coincided with monumental improvements in the collection and reporting of case authorities. As the concept of law changed and a more comprehensive reporting system began to take hold, it became possible for judicial decisions to serve as binding authority. FN21

> FN21. As Plucknett notes, "[t]he nineteenth century produced the changes which were necessary for the establishment of the rigid and symmetrical theory [of case precedent] as it exists today." Plucknett, *supra,* at 350. Among the changes he points to was the establishment of a strict appellate hierarchy and the standardization of case law reporting. *Id.*

Early American reporters resembled their English

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ancestors-disorganized and meager [FN22]-but the character of the reporting*1169 process began to change, after the Constitution was adopted, with the emergence of official reporters in the late eighteenth century and the early nineteenth century. *See* Berring, *supra,* at 20-21. And, later in the nineteenth century, the West Company began to publish standardized case reporters, which were both accurate and comprehensive, making "it possible to publish in written form all of the decisions of courts." *Id.* at 21. Case reports grew thicker, and the weight of precedent began to increase-weight, that is, in terms of volume.

> FN22. The first volumes of the United States Reports reveal the idiosyncratic and sometimes unreliable character of the early reporters. The first volume contains not a single decision of the United States Supreme Court. *See* Craig Joyce, *The Rise of the Supreme Court Reporter: An Institutional Perspective on Marshall Court Ascendancy,* 83 Mich. L.Rev. 1291, 1296 (1985). The reporter, Alexander James Dallas, began his career by publishing decisions of the Pennsylvania and Delaware courts, but not until 1806 were Pennsylvania judges required to reduce their opinions to writing (and then only at the parties' request). Dallas's first volume therefore contains only brief descriptions of the earliest decisions, based on notes preserved by judges and lawyers. *See id.* at 1295-98. And, while his second volume does contain decisions of the United States Supreme Court, Dallas could not always rely on a written opinion as the basis of his report because the Court did not invariably reduce its opinions to writing:
>
> > Not a single formal manuscript opinion is known to have survived from the Court's first decade; and few, if any, may ever have existed for Dallas to draw upon. Nor may it be confidently assumed that in all instances Dallas was present in court to take down what the Justices said, or that he was able afterwards to consult any notes they may have kept of the opinions they announced.... Delay, expense, omission and inaccuracy: these were among the hallmarks of Dallas' work.
>
> *Id.* at 1305 (footnotes omitted).
>
> At that time, the Supreme Court had no official reporter and cases were never printed. *United States v. Yale Todd,* decided by the Supreme Court in 1784, is a typical example. Because "[t]here was no official reporter at that time, [the] case has not been printed." *United States v. Ferreira,* 54 U.S. (13 How.) 40, 52, 14 L.Ed. 40 (1851). So said Chief Justice Taney in a note added following *Ferreira,* describing *Yale Todd.* "[A]s the subject is one of much interest, and concerns the nature and extent of judicial power, the substance of the decision in *Yale Todd's case* is inserted here, in order that it may not be overlooked, if similar questions should hereafter arise." *Id.*

The more cases were reported, the harder became the task of searching for relevant decisions. At common law, circuit-riding judges often decided cases without referring to any reporters at all, *see Fentum v. Pocock,* 5 Taunt. 192, 195, 128 Eng. Rep. 660, 662 (C.P.1813) (Mansfield, C.J.) ("It [was] utterly impossible for any Judge, whatever his learning and abilities may be, to decide at once rightly upon every point which [came] before him at Nisi Prius ...."), and reporters simply left out decisions they considered wrong or those that merely repeated what had come before. Sir Francis Bacon recommended that cases "merely of iteration and repetition" be omitted from the case reports altogether, and Coke warned judges against reporting all of their decisions for fear of weighing down the law. *See* Kirt Shuldberg, *Digital Influence: Technology and Unpublished Opinions in the Federal Courts of Appeals,* 85 Cal. L.Rev. 541, 545 & n. 8 (1997). Indeed, the English opinion-reporting system has never published, and does not today publish, every opinion of English appellate courts, even though the total number of opinions issued each year in both the English Court of Appeal and House of Lords combined is little more than 1000-less than a quarter of the number of dispositions issued annually by the Ninth Circuit in recent years, *see* note 37 *infra.* Robert J. Martineau, *Appellate Justice in England and the United States: A Comparative Analysis* 107, 150 (1990); Robert J. Martineau, *Restrictions on Publication and Citation of Judicial Opinions: A Reassessment,* 28 U. Mich. J.L. Ref. 119, 136 (1995).[FN23]

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FN23. In 1986, only 39% of the 884 opinions of the English Court of Appeal were reported. Martineau, *Appellate Justice, supra,* at 107, 150. "Although technically a judgment need not be reported to be cited as precedent [in England] ... the reality is that unless a judgment is reported it is not likely to be used as precedent." *Id.* at 104. Nevertheless, "[t]here does not appear to be among the judges and the bar any current dissatisfaction with the system except that some believe too many, not too few, judgments are reported." *Id.* at 107.

II

[1] Federal courts today do follow some common law traditions. When ruling on a novel issue of law, they will generally consider how other courts have ruled on the same issue. This consideration will not be limited to courts at the same or higher level, or even to courts within the same system of sovereignty. Federal courts of appeals will cite decisions of district courts, even those in other circuits; the Supreme Court may cite the decisions of the inferior courts, *see, e.g.,* *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 491, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (citing *Associated Gen. Contractors of Cal. v. City & County of San Francisco*, 813 F.2d 922, 929 (9th Cir.1987)), or those of the state courts, *see, e.g.,* *Lujan v. G & G Fire Sprinklers, Inc.*, 532 U.S. 189, 121 S.Ct. 1446, 1452, 149 L.Ed.2d 391 (2001) ***1170** (citing *J & K Painting Co. v. Bradshaw*, 45 Cal.App.4th 1394, 1402, 53 Cal.Rptr.2d 496 (Cal.Ct.App.1996)). It is not unusual to cite the decision of courts in foreign jurisdictions, so long as they speak to a matter relevant to the issue before us. *See, e.g.,* *Mozes v. Mozes*, 239 F.3d 1067, 1071 (9th Cir.2001). The process even extends to non-case authorities, such as treatises and law review articles. *See id.* at 1071 & n. 7.

[2] Citing a precedent is, of course, not the same as following it; "respectfully disagree" within five words of "learned colleagues" is almost a cliche. After carefully considering and digesting the views of other courts and commentators-often giving conflicting guidance on a novel legal issue-courts will then proceed to follow one line of authority or another, or sometimes strike out in a completely different direction. While we would consider it bad form to ignore contrary authority by failing even to acknowledge its existence, it is well understood that-in the absence of binding precedent-courts may forge a different path than suggested by prior authorities that have considered the issue. So long as the earlier authority is acknowledged and considered, courts are deemed to have complied with their common law responsibilities.

[3][4] But precedent also serves a very different function in the federal courts today, one related to the horizontal and vertical organization of those courts. *See* John Harrison, *The Power of Congress Over The Rules of Precedent*, 50 Duke L.J. 503 (2000). A district judge may not respectfully (or disrespectfully) disagree with his learned colleagues on his own court of appeals who have ruled on a controlling legal issue, or with Supreme Court Justices writing for a majority of the Court.[FN24] Binding authority within this regime cannot be considered and cast aside; it is not merely evidence of what the law is. Rather, caselaw on point *is* the law. If a court must decide an issue governed by a prior opinion that constitutes binding authority, the later court is bound to reach the same result, even if it considers the rule unwise or incorrect. Binding authority must be followed unless and until overruled by a body competent to do so.

FN24. The same practice is followed in the state courts as well. *See, e.g.,* *Auto Equity Sales, Inc. v. Superior Court of Santa Clara County*, 57 Cal.2d 450, 20 Cal.Rptr. 321, 369 P.2d 937, 940 (Cal.1962) ("Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court.").

[5] In determining whether it is bound by an earlier decision, a court considers not merely the "reason and spirit of cases" but also "the letter of particular precedents." *Fisher v. Prince*, 97 Eng. Rep. 876, 876 (K.B.1762). This includes not only the rule announced, but also the facts giving rise to the dispute, other rules considered and rejected and the views expressed in response to any dissent or concurrence.[FN25] Thus, when crafting binding ***1171** authority, the precise language employed is often crucial to the contours and scope of the rule announced.[FN26]

FN25. For example, in *Dun & Bradstreet,*

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> *Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 105 S.Ct. 2939, 86 L.Ed.2d 593 (1985), a majority held that the rule announced in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974) (plaintiff must show "actual malice" to obtain punitive damages for false and defamatory statements), applies only to statements involving matters of public concern. Relying on the language and context of *Gertz,* the Court rejected the dissenters' claim that the *Gertz* rule applied to all defamatory statements, and instead concluded that *Gertz* left it an open question whether the rule applied to statements not of public concern. *Compare Dun & Bradstreet,* 472 U.S. at 757 n. 4, 105 S.Ct. 2939 ("The dissent states that '[a]t several points the Court in *Gertz* makes perfectly clear [that] the restrictions of presumed and punitive damages were to apply in all cases.' Given the context of *Gertz,* however, the Court could have made 'perfectly clear' only that these restrictions applied in cases involving *public speech.*" (citations omitted)), *with id.* at 785 n. 11, 105 S.Ct. 2939 ("Distrust of placing in the courts the power to decide what speech was of public concern was precisely the rationale *Gertz* offered for rejecting [an alternative] approach. It would have been incongruous for the Court to go on to circumscribe the protection against presumed and punitive damages by reference to a judicial judgment as to whether the speech at issue involved matters of public concern." (citation omitted)).
>
> FN26. This is consistent with the practice in our court-and all other collegial courts of which we are aware-in which the judges who join an opinion authored by another judge make substantive suggestions, often conditioning their votes on reaching agreement on mutually acceptable language.

[6][7] Obviously, binding authority is very powerful medicine. A decision of the Supreme Court will control that corner of the law unless and until the Supreme Court itself overrules or modifies it. Judges of the inferior courts may voice their criticisms, but follow it they must. *See, e.g., Ortega v. United States,* 861 F.2d 600, 603 & n. 4 (9th Cir.1988) ("This case is squarely controlled by the Supreme Court's recent decision.... [We] agree[ ] with the dissent that [appellant] deserves better treatment from our Government. Unfortunately, legal precedent deprives us of discretion to do equity."). The same is true as to circuit authority, although it usually covers a much smaller geographic area.[FN27] Circuit law, a concept wholly unknown at the time of the Framing, *see* Danny J. Boggs & Brian P. Brooks, *Unpublished Opinions & the Nature of Precedent,* 4 Green Bag 2d 17, 22 (2000), binds all courts within a particular circuit, including the court of appeals itself. Thus, the first panel to consider an issue sets the law not only for all the inferior courts in the circuit, but also future panels of the court of appeals.

> FN27. The exception is the Federal Circuit, which has a geographic area precisely the same as the Supreme Court, but much narrower subject-matter jurisdiction. *See* 28 U.S.C. § 1295(a).

[8][9][10][11] Once a panel resolves an issue in a precedential opinion, the matter is deemed resolved, unless overruled by the court itself sitting en banc, or by the Supreme Court.[FN28] As *Anastasoff* itself states, a later three-judge panel considering a case that is controlled by the rule announced in an earlier panel's opinion has no choice but to apply the earlier-adopted rule; it may not any more disregard the earlier panel's opinion than it may disregard a ruling of the Supreme Court. *Anastasoff,* 223 F.3d at 904; *see also Santamaria v. Horsley,* 110 F.3d 1352, 1355 (9th Cir.1997) ("It is settled law that one three-judge panel of this court cannot ordinarily reconsider or overrule the decision of a prior panel."), *rev'd,* 133 F.3d 1242 (9th Cir.) (en banc), *amended by* 138 F.3d 1280 (9th Cir.), *cert. denied,* 525 U.S. 823-24, 119 S.Ct. 68, 142 L.Ed.2d 53 (1998); *Montesano v. Seafirst Commercial Corp.,* 818 F.2d 423, 425-26 (5th Cir.1987) (A "purpose of institutional orderliness [is served] by our insistence that, in the absence of intervening Supreme Court precedent, one panel cannot overturn another panel, regardless of how ***1172** wrong the earlier panel decision may seem to be."). Designating an opinion as binding circuit authority is a weighty decision that cannot be taken lightly, because its effects are not easily reversed. Whether done by the Supreme Court or the court of appeals through its "unwieldy" and time-consuming en banc procedures, Richard A. Posner, *The Federal Courts: Crisis and Reform* 101 (1985),[FN29] overruling such authority requires a sub-

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stantial amount of courts' time and attention-two commodities already in very short supply.

> FN28. Or, unless Congress changes the law. *See, e.g., Van Tran v. Lindsey,* 212 F.3d 1143, 1149 (9th Cir.) (earlier caselaw established that mixed questions in habeas petitions were reviewed de novo, but under the Anti-Terrorism and Effective Death Penalty Act of 1996, the standard of review is governed by 28 U.S.C. § 2254(d)), *cert. denied,* 531 U.S. 944, 121 S.Ct. 340, 148 L.Ed.2d 274 (2000).

> FN29. An impressive array of judges and academics have noted the rigors of en banc procedures. *See* Richard S. Arnold, *Why Judges Don't Like Petitions for Rehearing,* 3 J.App. Prac. & Process 29, 37 (2001) ("[O]n many days, I confess, I find myself wishing that there were no such thing [as en banc rehearing]."); Pamela Ann Rymer, *How Big Is Too Big?,* 15 J.L. & Pol. 383, 392 (1999) ("expensive and time consuming"); Joseph T. Sneed, *The Judging Cycle: Federal Circuit Court Style,* 57 Ohio St. L.J. 939, 942 (1996) ("time consuming and complex"); James Oakes, *Personal Reflections on Learned Hand and the Second Circuit,* 47 Stan. L.Rev. 387, 393 (1995) ("enormously time-consuming and expensive"); Deanell Reece Tacha, *The "C" Word: On Collegiality,* 56 Ohio St. L.J. 585, 590 (1995) ("time-consuming and expensive"); Irving R. Kaufman, *Do the Costs of the En Banc Proceeding Outweigh Its Advantages?,* 69 Judicature 7, 7 (1985) ("the most time consuming and inefficient device in the appellate judiciary's repertoire"); J. Woodford Howard, Jr., *Courts of Appeals in the Federal Judicial System: A Study of the Second, Fifth, and District of Columbia Circuits* 217 (1981) ("most circuit judges regard en bancs as a 'damned nuisance' ").
>
> Because they are so cumbersome, en banc procedures are seldom used merely to correct the errors of individual panels: "[W]e do not take cases en banc merely because of disagreement with a panel's decision, or rather a piece of a decision.... We take cases en banc to answer questions of general importance likely to recur, or to resolve intracircuit conflicts, or to address issues of transcendent public significance-perhaps even to curb a 'runaway' panel-but not just to review a panel opinion for error, even in cases that particularly agitate judges...." *EEOC v. Ind. Bell Tel. Co.,* 256 F.3d 516, 86 Fair Empl. Prac. Cas. (BNA) 1, 2001 WL 717685, at *11 (7th Cir.2001) (en banc) (Posner, J., concurring). *See also* Fed. R.App. P. 35(a) ("An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."); Arnold, *supra,* at 36 ("Petitions for rehearing are generally denied unless something of unusual importance-such as a life-is at stake, or a real and significant error was made by the original panel, or there is conflict within the circuit on a point of law.") It is therefore very important that three-judge panel opinions be decided correctly and that they state their holdings in a way that is easily understood and applied in future cases.

[12] Controlling authority has much in common with persuasive authority. Using the techniques developed at common law, a court confronted with apparently controlling authority must parse the precedent in light of the facts presented and the rule announced. Insofar as there may be factual differences between the current case and the earlier one, the court must determine whether those differences are material to the application of the rule or allow the precedent to be distinguished on a principled basis. Courts occasionally must reconcile seemingly inconsistent precedents and determine whether the current case is closer to one or the other of the earlier opinions. *See, e.g., Mont. Chamber of Commerce v. Argenbright,* 226 F.3d 1049, 1057 (9th Cir.2000).

But there are also very important differences between controlling and persuasive authority. As noted, one of these is that, if a controlling precedent is determined to be on point, it must be followed. Another important distinction concerns the scope of controlling authority.

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Thus, an opinion of our court is binding within our circuit, not ***1173** elsewhere in the country. The courts of appeals, and even the lower courts of other circuits, may decline to follow the rule we announce-and often do. This ability to develop different interpretations of the law among the circuits is considered a strength of our system. It allows experimentation with different approaches to the same legal problem, so that when the Supreme Court eventually reviews the issue it has the benefit of "percolation" within the lower courts. *See* Samuel Estreicher & John E. Sexton, *A Managerial Theory of the Supreme Court's Responsibilities: An Empirical Study*, 59 N.Y.U. L.Rev. 681, 716 (1984). Indeed, the Supreme Court sometimes chooses not to grant certiorari on an issue, even though it might deserve definitive resolution, so it will have the benefit of a variety of views from the inferior courts before it chooses an approach to a legal problem. *See McCray v. New York*, 461 U.S. 961, 963, 103 S.Ct. 2438, 77 L.Ed.2d 1322 (1983) (Stevens, J., respecting denial of petitions for writs of certiorari) ("[I]t is a sound exercise of discretion for the Court to allow [other courts] to serve as laboratories in which the issue receives further study before it is addressed by this Court.").

[13] The various rules pertaining to the development and application of binding authority do not reflect the developments of the English common law. They reflect, rather, the organization and structure of the federal courts and certain policy judgments about the effective administration of justice. *See Payne v. Tennessee*, 501 U.S. 808, 828, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991) (stare decisis is a "principle of policy," and "not an inexorable command"); *see, e.g., Textile Mills Secs. Corp. v. Comm'r*, 314 U.S. 326, 334-35, 62 S.Ct. 272, 86 L.Ed. 249 (1941) (en banc rehearing "makes for more effective judicial administration"). Circuit boundaries are set by statute and can be changed by statute. When that happens, and a new circuit is created, it starts without any circuit law and must make an affirmative decision whether to create its circuit law from scratch or to adopt the law of another circuit-generally the circuit from which it was carved-as its own. *Compare Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc) (adopting as binding precedent all decisions issued by the former Fifth Circuit before its split into the Fifth and Eleventh Circuits), *and South Corp. v. United States*, 690 F.2d 1368, 1370-71 (Fed.Cir.1982) (en banc) (adopting as binding precedent all decisions of the Federal Circuit's predecessor courts, the Court of Claims and the Court of Customs and Patent Appeals), *with Estate of McMorris v. Comm'r*, 243 F.3d 1254, 1258 (10th Cir.2001) ("[W]e have never held that the decisions of our predecessor circuit [the former Eighth Circuit] are controlling in this court."). The decision whether to adopt wholesale the circuit law of another court is a matter of judicial policy, not a constitutional command.

How binding authority is overruled is another question that was resolved by trial and error with due regard to principles of sound judicial administration. Early in the last century, when the courts of appeals first grew beyond three judges, the question arose whether the courts could sit en banc to rehear cases already decided by a three-judge panel. The lower courts disagreed, but in *Textile Mills Securities Corporation v. Commissioner*, the Supreme Court sustained the authority of the courts of appeals to sit en banc. *Textile Mills Secs. Corp. v. Comm'r*, 314 U.S. 326, 335, 62 S.Ct. 272, 86 L.Ed. 249 (1943) ("Conflicts within a circuit will be avoided. Finality of decision in the circuit courts of appeal will be promoted. Those considerations are especially important in view of the fact that in our federal judicial system ***1174** these courts are the courts of last resort in the run of ordinary cases."). En banc rehearing would give all active judges an opportunity to hear a case "[w]here ... there is a difference in view among the judges upon a question of fundamental importance, and especially in a case where two of the three judges sitting in a case may have a view contrary to that of the other ... judges of the court." *Comm'r v. Textile Mills Secs. Corp.*, 117 F.2d 62, 70 (3d Cir.1940), *aff'd*, 314 U.S. 326, 62 S.Ct. 272, 86 L.Ed. 249 (1943). Congress codified the *Textile Mills* decision just five years later in 28 U.S.C. § 46(c), leaving the courts of appeals "free to devise [their] own administrative machinery to provide the means whereby a majority may order such a hearing." *W. Pac. R.R. v. W. Pac. R.R.*, 345 U.S. 247, 250, 73 S.Ct. 656, 97 L.Ed. 986 (1953).

[14][15][16] That the binding authority principle applies only to appellate decisions, and not to trial court decisions, is yet another policy choice. There is nothing inevitable about this; the rule could just as easily operate so that the first district judge to decide an issue within a district, or even within a circuit, would bind all similarly situated district judges, but it does not. The very existence of the binding authority principle is not inevitable. The federal courts could operate, though much less efficiently, if judges of

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inferior courts had discretion to consider the opinions of higher courts, but "respectfully disagree" with them for good and sufficient reasons. [FN30]

> FN30. Some state court systems apply the binding authority principle differently than do the federal courts. In California, for example, an opinion by one of the courts of appeal is binding on all trial courts in the state, not merely those in the same district. Judicial Council of California, *Report of the Appellate Process Task Force* 59 (2000); Jon B. Eisenberg, Ellis J. Horvitz & Justice Howard B. Wiener, *California Practice Guide: Civil Appeals and Writs* § 14:193 (2000) ("A court of appeal decision must be followed by *all* superior and municipal courts, regardless of which appellate district rendered the opinion.") However, court of appeal panels are not bound by the opinions of other panels, even those within the same district. *In re Marriage of Shaban*, 88 Cal.App.4th 398, 105 Cal.Rptr.2d 863, 870-71 (2001) ("[B]ecause there is no 'horizontal stare decisis' within the Court of Appeal, intermediate appellate court precedent that might otherwise be binding on a trial court ... is not absolutely binding on a different panel of the appellate court." (citations omitted)). *See also Report of the Appellate Process Task Force, supra,* at 60-61; Eisenberg, Horvitz & Wiener, *supra,* § 14:193.1 ("In contrast, a decision by one court of appeal is *not* binding on other courts of appeal.")
>
> California's management of precedent differs from that of the federal courts in another important respect: The California Supreme Court may "depublish" a court of appeal opinion-i.e., strip a published decision of its precedential effect. *See* Cal. R. Ct. 976(c)(2); Steven B. Katz, *California's Curious Practice of "Pocket Review"*, 3 J.App. Prac. & Process 385 (2001). California's depublication practice shows that it is possible to adopt more aggressive methods of managing precedent than those used by the federal courts.

III

While we agree with *Anastasoff* that the principle of precedent was well established in the common law courts by the time Article III of the Constitution was written, we do not agree that it was known and applied in the strict sense in which we apply binding authority today. It may be true, as *Anastasoff* notes, that "judges and lawyers of the day recognized the authority of unpublished decisions even when they were established only by memory or by a lawyer's unpublished memorandum," 223 F.3d at 903, but precedents brought to the attention of the court in that fashion obviously could not serve as the kind of rigid constraint that binding authority provides today. Unlike our practice today, a single ***1175** case was not sufficient to establish a particular rule of law, and case reporters often filtered out cases that they considered wrong, or inconsistent with their view of how the law *should* develop. *See* pp. 1166-67 *supra.* The concept of binding case precedent, though it was known at common law, *see* note 13 *supra,* was used exceedingly sparingly. For the most part, common law courts felt free to depart from precedent where they considered the earlier-adopted rule to be no longer workable or appropriate.

Case precedent at common law thus resembled much more what we call persuasive authority than the binding authority which is the backbone of much of the federal judicial system today. The concept of binding precedent could only develop once two conditions were met: The development of a hierarchical system of appellate courts with clear lines of authority, and a case reporting system that enabled later courts to know precisely what was said in earlier opinions. *See* note 21 *supra.* As we have seen, these developments did not come about-either here or in England-until the nineteenth century, long after Article III of the Constitution was written.

[17] While many consider the principle of binding authority indispensable-perhaps even inevitable-it is important to note that it is not an unalloyed good. While bringing to the law important values such as predictability and consistency, it also (for the very same reason) deprives the law of flexibility and adaptability. *See Planned Parenthood v. Casey*, 505 U.S. 833, 868, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) ("The promise of constancy, once given, binds its maker for as long as the power to stand by the decision survives and the understanding of the issue

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has not changed so fundamentally as to render the commitment obsolete.").[FN31] A district court bound by circuit authority, for example, has no choice but to follow it, even if convinced that such authority was wrongly decided. Appellate courts often tolerate errors in their caselaw because the rigors of the en banc process make it impossible to correct all errors. *See* note 29 *supra.*

> FN31. It also forces judges in certain instances to act in ways they may consider to be contrary to the Constitution. Some have argued that the duty of judges to follow the Constitution stands on a higher footing than the rule requiring adherence to precedent, and judges should not follow precedent when they believe that to do so would violate the Constitution. *See* Gary Lawson, *The Constitutional Case Against Precedent,* 17 Harv. J.L. & Pub. Pol'y 23, 27-28 (1994).

A system of strict binding precedent also suffers from the defect that it gives undue weight to the first case to raise a particular issue. This is especially true in the circuit courts, where the first panel to consider an issue and publish a precedential opinion occupies the field, whether or not the lawyers have done an adequate job of developing and arguing the issue.

[18] The question raised by *Anastasoff* is whether one particular aspect of the binding authority principle-the decision of which rulings of an appellate court are binding-is a matter of judicial policy or constitutional imperative. We believe *Anastasoff* erred in holding that, as a constitutional matter, courts of appeals may not decide which of their opinions will be deemed binding on themselves and the courts below them. For the reasons explained, the principle of strict binding authority is itself not constitutional, but rather a matter of judicial policy. Were it otherwise, it would cast doubt on the federal court practice of limiting the binding effect of appellate decisions to the courts of a particular circuit. Circuit boundaries***1176** -and the very system of circuit courts-are a matter of judicial administration, not constitutional law. If, as *Anastasoff* suggests, the Constitution dictates that every "declaration of law ... must be applied in subsequent cases to similarly situated parties," 223 F.3d at 900, then the Second Circuit would have no authority to disagree with a ruling of the Eighth Circuit that is directly on point, and the first circuit to rule on a legal issue would then bind not only itself and the courts within its own circuit, but all inferior federal courts.

Another consequence of *Anastasoff* 's reasoning would be to cast doubt on the authority of courts of appeals to adopt a body of circuit law on a wholesale basis, as did the Eleventh Circuit in *Bonner,* and the Federal Circuit in *South Corp. See* p. 1173 *supra.* Circuits could, of course, adopt individual cases from other circuits as binding in a case raising a particular legal issue. *See, e.g., Charles v. Lundgren & Assocs., P.C.,* 119 F.3d 739, 742 (9th Cir.) ("Because we have the benefit of the Seventh Circuit's cogent analysis, we will not replow plowed ground. Instead, we adopt the reasoning of the Seventh Circuit ....") *cert. denied,* 522 U.S. 1028, 118 S.Ct. 627, 139 L.Ed.2d 607 (1997). But adopting a whole body of law, encompassing countless rules on matters wholly unrelated to the issues raised in a particular case, is a very different matter. If binding authority were a constitutional imperative, it could only be created through individual case adjudication, not by a decision unconstrained by the facts before the court or its prior caselaw.

Nor is it clear, under the reasoning of *Anastasoff,* how courts could limit the binding effect of their rulings to appellate decisions. Under *Anastasoff* 's reasoning, district court opinions should bind district courts, at least in the same district, or even nationwide. After all, the Constitution vests the same "judicial Power" in all federal courts, so *Anastasoff* 's conclusion that judicial decisions must have precedential effect would apply equally to the thousands of unpublished decisions of the district courts.

No doubt the most serious implication of *Anastasoff* 's constitutional rule is that it would preclude appellate courts from developing a coherent and internally consistent body of caselaw to serve as binding authority for themselves and the courts below them. Writing an opinion is not simply a matter of laying out the facts and announcing a rule of decision. Precedential opinions are meant to govern not merely the cases for which they are written, but future cases as well.

[19][20][21][22] In writing an opinion, the court must be careful to recite all facts that are relevant to its ruling, while omitting facts that it considers irrelevant. Omitting relevant facts will make the ruling unintelligible to those not already familiar with the case;

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including inconsequential facts can provide a spurious basis for distinguishing the case in the future. The rule of decision cannot simply be announced, it must be selected after due consideration of the relevant legal and policy considerations. Where more than one rule could be followed-which is often the case-the court must explain why it is selecting one and rejecting the others. Moreover, the rule must be phrased with precision and with due regard to how it will be applied in future cases. A judge drafting a precedential opinion must not only consider the facts of the immediate case, but must also envision the countless permutations of facts that might arise in the universe of future cases. Modern opinions generally call for the most precise drafting and re-drafting to ensure that the rule announced sweeps neither too broadly nor too narrowly, and that it does not ***1177** collide with other binding precedent that bears on the issue. *See* Fred A. Bernstein, *How to Write it Right,* Cal. Lawyer, at 42 (June 2000). Writing a precedential opinion, thus, involves much more than deciding who wins and who loses in a particular case. It is a solemn judicial act that sets the course of the law for hundreds or thousands of litigants and potential litigants. When properly done, it is an exacting and extremely time-consuming task.[FN32]

> FN32. Opinion writing is a "reflective art," an absolute necessity of which is "fully adequate time to contemplate, think, write and re-write." Howard T. Markey, *On the Present Deterioration of the Federal Appellate Process: Never Another Learned Hand,* 33 S.D. L.Rev. 371, 379, 384 (1988). Judge Markey rightly mourns the age when a judge could, as Judge Hand did, talk at length about each case, "with his feet on the desk and hands behind his head," and "having reached his decision, ... wr[i]te the entire opinion in longhand." *Id.* at 380. Today, "[t]here simply isn't time" to engage in such "reflective personal craftsmanship." *Id.* at 379-80.

It goes without saying that few, if any, appellate courts have the resources to write precedential opinions in every case that comes before them.[FN33] The Supreme Court certainly does not. Rather, it uses its discretionary review authority to limit its merits docket to a handful of opinions per justice, from the approximately 9000 cases that seek review every Term. [FN34] While federal courts of appeals generally lack discretionary review authority, they use their authority to decide cases by unpublished-and nonprecedential-dispositions to achieve the same end: They select a manageable number of cases in which to publish precedential opinions, and leave the rest to be decided by unpublished dispositions or judgment orders. In our circuit, published dispositions make up approximately 16 percent of decided cases; in other circuits, the percentage ranges from 10 to 44, the national average being 20 percent. Administrative Office of the United States Courts, *Judicial Business of the United States Courts* 44 tbl. S-3 (2000).

> FN33. As Judge Posner has noted:
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> > Given the workload of the federal courts of appeals today, the realistic choice is not between limited publication, on the one hand, and, on the other, improving and then publishing all the opinions that are not published today; it is between preparing but not publishing opinions in many cases and preparing no opinions in those cases. It is a choice, in other words, between giving the parties reasons for the decision of their appeal and not giving them reasons even though the appeal is not frivolous.
>
> Richard A. Posner, *The Federal Courts: Challenge and Reform* 168-69 (1996).

> FN34. The United States Supreme Court decided seventy-seven cases in October Term 1999, which represents less than nine opinions per justice. *Statistics for the Supreme Court's October Term 1999,* 69 U.S.L.W. 3076 (BNA 2000). By comparison, in 1999, each active judge in our court heard an average of 450 cases and had writing responsibility for an average of twenty opinions and 130 unpublished dispositions. *See infra* note 37.

That a case is decided without a precedential opinion does not mean it is not fully considered, or that the disposition does not reflect a reasoned analysis of the issues presented.[FN35] What it does mean is that ***1178** the disposition is not written in a way that will be fully intelligible to those unfamiliar with the case, and the rule of law is not announced in a way that makes it suitable for governing future cases. As the Federal Judicial Center recognized, "the judicial time and

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effort essential for the development of an opinion to be published for posterity and widely distributed is necessarily greater than that sufficient to enable the judge to provide a statement so that the parties can understand the reasons for the decision." Federal Judicial Center, *Standards for Publication of Judicial Opinions* 3 (1973). An unpublished disposition is, more or less, a letter from the court to parties familiar with the facts, announcing the result and the essential rationale of the court's decision. Deciding a large portion of our cases in this fashion frees us to spend the requisite time drafting precedential opinions in the remaining cases.

> FN35. Sufficient restrictions on judicial decisionmaking exist to allay fears of irresponsible and unaccountable practices such as "burying" inconvenient decisions through nonpublication. In *Unpublished Decisions in the Federal Courts of Appeals: Making the Decision to Publish,* 3 J.App. Prac. & Process 325 (2001), Professor Stephen L. Wasby concludes, after "extended observation of the ... Ninth Circuit," *id.* at 331, that formal publication guidelines and judges' enforcement of them through their interactions with each other, keep judges honest in deciding whether or not to publish. *See also* Martineau, *Restrictions on Publication and Citation of Judicial Opinions: A Reassessment, supra,* at 132 ("American appellate systems ... have many built-in protections to prevent against [judicial] irresponsibility without mandatory publication of opinions.")

Should courts allow parties to cite to these dispositions, however, much of the time gained would likely vanish. Without comprehensive factual accounts and precisely crafted holdings to guide them, zealous counsel would be tempted to seize upon superficial similarities between their clients' cases and unpublished dispositions. Faced with the prospect of parties citing these dispositions as precedent, conscientious judges would have to pay much closer attention to the way they word their unpublished rulings. Language adequate to inform the parties how their case has been decided might well be inadequate if applied to future cases arising from different facts. And, although three judges might agree on the outcome of the case before them, they might not agree on the precise reasoning or the rule to be applied to future cases. Unpublished concurrences and dissents would become much more common, as individual judges would feel obligated to clarify their differences with the majority, even when those differences had no bearing on the case before them. In short, judges would have to start treating unpublished dispositions-those they write, those written by other judges on their panels, and those written by judges on other panels-as mini-opinions.[FN36] This new responsibility would cut severely into the time judges need to fulfill their paramount duties: producing well-reasoned published opinions and keeping the law of the circuit consistent through the en banc process. The quality of published opinions would sink as judges were forced to devote less and less time to each opinion.[FN37]

> FN36. *See* Boyce F. Martin, Jr., *In Defense of Unpublished Opinions,* 60 Ohio St. L.J. 177, 196 ("[I]t will not save us any time if [unpublished opinions] are being cited back to us. We will have to prepare unpublished opinions as we do published opinions-as if they were creating precedent.").

> FN37. Recent figures tell a striking story. In 1999, our court decided some 4500 cases on the merits, about 700 by opinion and 3800 by unpublished disposition. Each active judge heard an average of 450 cases as part of a three-judge panel and had writing responsibility in a third of those cases. That works out to an average of 150 dispositions-20 opinions and 130 unpublished dispositions-per judge. In addition, each judge had to review, comment on, and eventually join or dissent from 40 opinions and 260 unpublished dispositions circulated by other judges with whom he sat. *See* Alex Kozinski & Stephen Reinhardt, *Please Don't Cite This! Why We Don't Allow Citation to Unpublished Dispositions,* Cal. Law., June 2000, at 44; *see also Report of the Federal Courts Study Committee* 109 (Apr. 2, 1990) (noting the federal appellate courts' "crisis of volume").

***1179** [23] Increasing the number of opinions by a factor of five, as *Anastasoff* suggests, doesn't seem to us a sensible idea, even if we had the resources to do so. Adding endlessly to the body of precedent-especially binding precedent-can lead to confusion and unnecessary conflict. Judges have a

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responsibility to keep the body of law "cohesive and understandable, and not muddy[ ] the water with a needless torrent of published opinions." Martin, note 36 *supra,* at 192. Cases decided by nonprecedential disposition generally involve facts that are materially indistinguishable from those of prior published opinions. Writing a second, third or tenth opinion in the same area of the law, based on materially indistinguishable facts will, at best, clutter up the law books and databases with redundant and thus unhelpful authority. Yet once they are designated as precedent, they will have to be read and analyzed by lawyers researching the issue, materially increasing the costs to the client for absolutely no legitimate reason. Worse still, publishing redundant opinions will multiply significantly the number of inadvertent and unnecessary conflicts, because different opinion writers may use slightly different language to express the same idea. As lawyers well know, even small differences in language can have significantly different implications when read in light of future fact patterns, so differences in phrasing that seem trivial when written can later take on a substantive significance.

The risk that this may happen vastly increases if judges are required to write many more precedential opinions than they do now, leaving much less time to devote to each.[FN38] Because conflicts-even inadvertent ones-can only be resolved by the exceedingly time-consuming and inefficient process of en banc review, *see* Atonio v. Wards Cove Packing Co., 810 F.2d 1477, 1478-79 (9th Cir.1987) (en banc) (conflict in panel opinions must be resolved by en banc court), *cert. denied,* 485 U.S. 989, 108 S.Ct. 1293, 99 L.Ed.2d 503 (1988), an increase in intracircuit conflicts would leave much less time for us to devote to normal panel opinions. Maintaining a coherent, consistent and intelligible body of caselaw is not served by writing more opinions; it is served by taking the time to make the precedential opinions we do write as lucid and consistent as humanly possible.[FN39]

FN38. Concerned that judges spend too little time writing (as opposed to editing) precedential opinions, commentators have suggested that judges should do the preliminary drafting of all published opinions. *See, e.g.,* David McGowan, *Judicial Writing and the Ethics of the Judicial Office,* 14 Geo. J. Legal Ethics 509, 514, 555-56 (2001). Adoption of such proposals would, however, "produce fewer published opinions [and] more unpublished dispositions." *Id.* at 593. By preventing judges from determining which of their opinions will be citable as precedent, *Anastasoff* would have precisely the opposite effect, forcing judges to spread their resources more thinly, resulting in even less judicial involvement in precedential opinions.

FN39. *Anastasoff* suggests that the appointment of more judges would enable courts to write binding opinions in every case. *See* 223 F.3d at 904. We take no position as to whether there should be more federal judges, that being a policy question for Congress to decide. We note, however, that Congress would have to increase the number of judges by something like a factor of five to allocate to each judge a manageable number of opinions each year. But adding more judges, and more binding precedents, creates its own set of problems by significantly increasing the possibility of conflict within the same circuit as each judge will have an increased body of binding caselaw to consider and reconcile.

That problem, in turn, could be ameliorated by increasing the number of circuits, but that would increase the number of inter-circuit conflicts, moving the problem up the chain of command to the Supreme Court, which likewise does not have the capacity to significantly increase the number of opinions it issues each year. *See Wisniewski v. United States,* 353 U.S. 901, 901-02, 77 S.Ct. 633, 1 L.Ed.2d 658 (1957) (per curiam) (noting the problems of intra-circuit consistency raised by the growing number of circuit judgeships). In the end, we do not believe that more law makes for better law.

***1180 IV**

[24] Unlike the *Anastasoff* court, we are unable to find within Article III of the Constitution a requirement that all case dispositions and orders issued by appellate courts be binding authority. On the contrary, we believe that an inherent aspect of our function as Article III judges is managing precedent to develop a coherent body of circuit law to govern litigation in our

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court and the other courts of this circuit. We agree with *Anastasoff* that we-and all courts-must follow the law. But we do not think that this means we must also make binding law every time we issue a merits decision. The common law has long recognized that certain types of cases do not deserve to be authorities, and that one important aspect of the judicial function is separating the cases that should be precedent from those that should not.[FN40] Without clearer guidance than that offered in *Anastasoff,* we see no constitutional basis for abdicating this important aspect of our judicial responsibility.

FN40. This is hardly a novel view:

> [C]ertain types of cases do not deserve to be authorities. One type, already alluded to, is that in which there is no discoverable *ratio decidendi.* Others are cases turning purely on fact, those involving the exercise of discretion, and those which judges themselves do not think worthy of being precedents.
>
> Dias, note 10 *supra,* at 55 (footnotes omitted) (citing *R. v. Stokesley* (Yorkshire) Justices, Ex parte Bartram [1956] 1 All E.R. 563 at 565).

[25][26][27] Contrary to counsel's contention, then, we conclude that Rule 36-3 is constitutional. We also find that counsel violated the rule. Nevertheless, we are aware that *Anastasoff* may have cast doubt on our rule's constitutional validity. Our rules are obviously not meant to punish attorneys who, in good faith, seek to test a rule's constitutionality. We therefore conclude that the violation was not willful and exercise our discretion not to impose sanctions.

The order to show cause is **DISCHARGED.**

C.A.9 (Cal.),2001.
Hart v. Massanari
266 F.3d 1155, Unempl.Ins.Rep. (CCH) P 16685B, 105 A.L.R.5th 747

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672 F.Supp.2d 1045, 253 Ed. Law Rep. 652
(Cite as: 672 F.Supp.2d 1045)

H

United States District Court,
C.D. California.
Marvin HUEZO, Plaintiff,
v.
LOS ANGELES COMMUNITY COLLEGE DISTRICT (Re: Los Angeles Pierce College); Does 1 through 20, Inclusive, Defendants.
Case No. CV 04-9772 MMM (JWJx).

Sept. 9, 2008.

Background: Student who used wheelchair brought action against state college, alleging that college was not accessible to mobility-impaired persons and did not provide "programs, services and activities" in a non-discriminatory manner to persons with mobility disabilities, in violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Following grant of partial summary judgment to student as to liability, student moved for a permanent injunction requiring college to remove barriers and change discriminatory policies.

Holdings: The District Court, Margaret M. Morrow, J., held that:
(1) student showed actual success on merits of his claims;
(2) student would likely suffer irreparable harm due to numerous access barriers he encountered in absence of permanent injunction; and
(3) balance of hardships favored the permanent injunction.

Motion granted.

West Headnotes

[1] Civil Rights 78 1452

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1452 k. Education. Most Cited Cases
Student who used wheelchair seeking permanent injunction requiring college to remove barriers and change discriminatory policies showed actual success on merits of his claims that college was not accessible to mobility-impaired persons and did not provide programs, services, and activities in a non-discriminatory manner to persons with mobility disabilities, in violation of the ADA and the Rehabilitation Act, where District Court had granted partial summary judgment to student on his ADA and Rehabilitation Act claims. Americans with Disabilities Act of 1990, § 202, 42 U.S.C.A. § 12132; Rehabilitation Act of 1973, § 504(a), 29 U.S.C.A. § 794(a).

[2] Action 13 3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory rights of action. Most Cited Cases

Civil Rights 78 1330(6)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1330 Private Right of Action
78k1330(6) k. Other particular cases and contexts. Most Cited Cases
There is no private right of action to enforce either the self-evaluation or transition plan regulations promulgated under Title II of the ADA, as neither regulation contains a clear Congressional intent to create a private right of enforcement. Americans with Disabilities Act of 1990, § 202, 42 U.S.C.A. § 12132; 28 C.F.R. §§ 35.105(a), 35.150(d)(1).

[3] Civil Rights 78 1452

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1452 k. Education. Most Cited Cases
Student who used wheelchair would likely suffer irreparable harm due to numerous access barriers he would continue to encounter as a result of state college's policies and procedures in absence of permanent injunction requiring college to comply with access requirements of the ADA by removing barriers and changing discriminatory policies. Americans with

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672 F.Supp.2d 1045, 253 Ed. Law Rep. 652
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Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.; 28 C.F.R. §§ 35.149 to 35.151.

[4] Civil Rights 78 ⚿1452

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1452 k. Education. Most Cited Cases
Balance of hardships favored permanent injunction requiring state college to comply with access requirements of the ADA and its obligations under the Rehabilitation Act by removing barriers and changing discriminatory policies, although college claimed that its campus would undergo massive renovations in the future, where college did not set forth a schedule for taking the steps necessary to achieve accessibility, and student continued to be discriminated against on basis of his disability due to barriers on campus. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.; 28 C.F.R. §§ 35.149 to 35.151.

***1046** Paul L. Rein, Patricia Barbosa, Julie McLean, Law Offices of Paul L. Rein, Oakland, CA, Jordon Metz, Goodman and Metz, Encino, CA, Julie A. Ostil, Law Office of Julie A. Ostil, San Ramon, CA, Patricia Barbosa, Barbosa Group, Huntington Beach, CA, for Plaintiff.

Camille A. Goulet, Rae Fallon Pidoux, Los Angeles Community College District General Counsel, Eric C. Kim, Office of General Consel, Los Angeles, CA, Conrad Kohrs, Kohrs & Fiske, Richard E. Morton, Haight Brown and Bonesteel, Santa Ana, CA, for Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR PERMANENT INJUNCTION

MARGARET M. MORROW, District Judge.

I. FACTUAL & PROCEDURAL BACKGROUND

On December 1, 2004, plaintiff Marvin Huezo filed this action against the Los Angeles Community College District ("the District") and certain unnamed defendants. Huezo requires the use of a wheelchair or other mobility devices to attend classes and gain access to public facilities at Pierce College, a state community college located in the San Fernando Valley. Huezo alleged that defendants failed to make the educational facilities accessible to mobility-impaired persons and failed to provide "programs, services and activities" in a non-discriminatory manner to persons with mobility disabilities. On August 16, 2005, after the court granted the District's motion to dismiss his initial complaint, Huezo filed a first amended complaint alleging two causes of action under Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

On December 18, 2006, Huezo moved for partial summary judgment. He argued that the undisputed facts showed he was entitled to judgment as a matter of law on his claim that the District discriminated against him by reason of his disability, leaving only his request for compensatory damages to be adjudicated at a subsequent stage of these proceedings.[FN1] ***1047** On February 27, 2007, the court granted Huezo's motion, finding that there were no triable issues of fact, and that as a matter of law, the District had violated the ADA and § 504 of the Rehabilitation Act by excluding Huezo from participation in and denying him the benefits of its services, programs, and activities, or otherwise discriminating against him on the basis of his disability.[FN2] The court also determined that the District had also failed to operate its educational programs, services, and activities at Pierce College in a manner that was "readily accessible to and usable by" students with mobility impairments commencing in the Fall semester of 2003 and continuing to the date of the court's order.[FN3]

FN1. Liability under the ADA and § 504 can be established without a showing of discriminatory intent. See *Crowder v. Kitagawa*, 81 F.3d 1480, 1483-84 (9th Cir.1996); see also, e.g., *Tyler v. City of Manhattan*, 857 F.Supp. 800, 817 (D.Kan.1994) ("The prohibition of Title II applies to action that carries a discriminatory effect, regardless of the City's motive or intent," citing *Concerned Parents to Save Dreher Park Center v. City of West Palm Beach*, 853 F.Supp. 424, 424-26 (S.D.Fla.1994)). To recover compensatory damages, however, intentional discrimination must be proven. See, e.g., *Duvall v. County of Kitsap*, 260 F.3d 1124, 1138 (9th Cir.2001); *Ferguson v. City of*

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Phoenix, 157 F.3d 668, 674 (9th Cir.1998).

FN2. February 27, 2007 Order Granting Plaintiff's Motion for Partial Summary Judgment ("February 27, 2007 Order") at 30.

FN3. *Id.* The court incorporates its factual findings from its order on the motion for summary judgment into this order, and, where relevant, will discuss those findings *infra* in greater detail.

Following entry of the order granting Huezo's motion for partial summary judgment, the court referred the parties to Magistrate Judge Jeffrey Johnson for a settlement conference on April 27, 2007. With Judge Johnson's assistance, the parties reached an agreement on Huezo's claims for damages and attorney's fees; they also undertook to work together to resolve injunctive relief issues. Huezo represents the District advised him that it had planned a massive renovation of the Pierce campus, and that barriers to access would be removed as part of the renovation.[FN4] Huezo's counsel agreed to work with the District to coordinate barrier removal and modify school policies. [FN5]

FN4. Plaintiff's Motion for Permanent Injunctive Relief ("Pl.'s Mot.") at 7.

FN5. *Id.* at 7-8.

On May 9, 2008, Huezo filed a motion for permanent injunctive relief, requesting that the court enjoin the District to comply with Title II of the ADA.[FN6] Huezo contends that, despite more than a year of negotiation, the District has never given him definitive information regarding the scope or timing of the planned renovations. Nor, he asserts, has it responded to his demand for injunctive relief to complete the settlement.[FN7] Huezo maintains that he continues to encounter multiple barriers on a daily basis at the Pierce campus, and therefore has no option but to seek an order requiring the District to remove barriers and change discriminatory policies.[FN8]

FN6. *Id.* at 8.

FN7. *Id.*

FN8. *Id.* Specifically, Huezo seeks an order requiring the District to (1) prepare a compliant self-evaluation and transition plan; and (2) pending completion of a plan, to take certain steps and remove certain barriers on an interim basis to make Pierce's programs readily accessible. The interim changes Huezo seeks to have the court mandate include modification of certain policies and procedures, appointment of an interim ADA coordinator, and modification of registration and services for disabled students. (*Id.* at 12-22). Huezo requests that any permanent injunction include a monitoring program to ensure that the District completes the work necessary to operate Pierce as "readily accessible." (*Id.* at 23).

II. DISCUSSION

A. Standard Governing Motions for Permanent Injunctive Relief

"The requirements for the issuance of a permanent injunction are (1) the likelihood of substantial and immediate irreparable injury; and (2) the inadequacy of remedies at law." *Dream Palace v. County of Maricopa*, 384 F.3d 990, 1010 (9th Cir.2004) (citing ***1048***G.C. & K.B. Investments, Inc. v. Wilson*, 326 F.3d 1096, 1107 (9th Cir.2003)); see also *Sierra Club v. Penfold*, 857 F.2d 1307, 1318 (9th Cir.1988) ("The basis for injunctive relief is irreparable injury and inadequacy of legal remedies. This requires a court to balance the competing claims of injury and the effect on each party of granting or withholding of the requested relief," citing *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987)); *Na Pali Haweo Community Ass'n v. Grande*, CV 04-00413 DAE/BMK, 2008 WL 763695, *5 (D.Haw. Mar. 20, 2008) (" 'The requirements for the issuance of a permanent injunction are the likelihood of substantial and immediate irreparable injury and the inadequacy of remedies at law,' " quoting *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1495 (9th Cir.1996)).

A court may issue a preliminary injunction if plaintiff demonstrates " 'either: (1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in its favor.' " *Lands Council v. Martin*, 479 F.3d 636, 639

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(9th Cir.2007) (quoting *Clear Channel Outdoor Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir.2003)); see also *Miller v. Cal. Pacific Med. Ctr.*, 19 F.3d 449, 456 (9th Cir.1994). "The standard for granting a permanent injunction is essentially the same as a preliminary injunction with the exception that the plaintiff must show ... actual success, instead of probable success on the merits." *Walsh v. City and County of Honolulu*, 460 F.Supp.2d 1207, 1211 (D.Haw.2006) (citing *Amoco Prod. Co.*, 480 U.S. at 546 n. 12, 107 S.Ct. 1396).

B. Whether Plaintiff Has Shown Actual Success on the Merits

1. Legal Standard Governing ADA and Rehabilitation Act Claims

In his first and second causes of action, Huezo alleged claims for violation of Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.[FN9] Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation ***1049** in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Similarly, § 504 of the Rehabilitation Act, as amended,[FN10] provides that "[n]o otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a).

FN9. The rights and responsibilities created by the ADA and the Rehabilitation Act are nearly identical; the two statutes are, for the most part, distinguished by the fact that the Rehabilitation Act applies only to entities that receive public funding. See *Washington v. Indiana High School Athletic Ass'n*, 181 F.3d 840, 845 n. 6 (7th Cir.1999). Indeed, "the standards applicable to one act are applicable to the other." *Id.*; see also *Theriault v. Flynn*, 162 F.3d 46, 48 n. 3 (1st Cir.1998) (noting that "Title II of the ADA was expressly modeled after Section 504 of the Rehabilitation Act, and is to be interpreted consistently with that provision"). The legislative history of the ADA makes apparent the substantial overlap between the rights and responsibilities created by the ADA and the Rehabilitation Act. See H.R.Rep. No. 101-485(II) (House Report on Pub.L. No. 101-336, American with Disabilities Act of 1990), reprinted in 1990 U.S.C.C.A.N. 303, 367 (May 15, 1990) ("Section 202 of the legislation extends the nondiscrimination policy in section 504 of the Rehabilitation Act of 1973 to cover all State and local governmental entities. Specifically, section 202 provides that no qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government. The Committee has chosen not to list all the types of actions that are included within the term 'discrimination', as was done in titles I and III, because this title essentially simply extends the anti-discrimination prohibition embodied in section 504 to all actions of state and local governments"); see also *Collings v. Longview Fibre Co.*, 63 F.3d 828, 832 n. 3 (9th Cir.1995) ("The legislative history of the ADA indicates that Congress intended judicial interpretation of the Rehabilitation Act be incorporated by reference when interpreting the ADA").

FN10. A 1992 amendment substituted the word "disability" for the word "Handicap," which was used in § 504 of the Rehabilitation Act of 1973. See Rehabilitation Act Amendment of 1992, Pub.L. No. 102-569, 106 Stat. 4360; see also *Gates v. Rowland*, 39 F.3d 1439, 1445 n. 1 (9th Cir.1994). Section 794a of the Act provides a private right of action for violations of § 794. See 29 U.S.C. § 794a; see also *Smith v. Barton*, 914 F.2d 1330, 1338 (9th Cir.1990).

To establish a violation of Title II of the ADA, a plaintiff must show that "(1)[ ]he is a qualified individual with a disability; (2)[ ]he was excluded from participation in or otherwise discriminated against with regard to a public entity's services, programs, or

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activities, and (3) such exclusion or discrimination was by reason of [his] disability." *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir.2002) (citing *Weinreich v. Los Angeles County Metropolitan Transportation Authority*, 114 F.3d 976, 978 (9th Cir.1997)). To establish a violation of § 504 of the Rehabilitation Act, a plaintiff must show that "(1)[ ]he is [disabled] within the meaning of the [Rehabilitation Act]; (2)[ ]he is otherwise qualified for the benefit or services sought; (3)[ ]he was denied the benefit or services solely by reason of her handicap; and (4) the program providing the benefit or services receives federal financial assistance." *Smith*, 914 F.2d at 1338.[FN11]

> FN11. In opposing Huezo's motion for partial summary judgment, defendant did not dispute that he is a qualified individual with a disability or that the District receives federal financial assistance, subjecting it to the requirements of the Rehabilitation Act.

To achieve Congress's broadly remedial purpose of "provid[ing] a national mandate for the elimination of discrimination against the disabled," *Wood v. County of Alameda*, 875 F.Supp. 659, 665 (N.D.Cal.1995),[FN12] the United States Attorney General has promulgated regulations requiring each public entity subject to the ADA to conduct a "self-evaluation." The regulations state:

> FN12. See also H.R.Rep. No. 101-485(II), reprinted in 1990 U.S.C.C.A.N. at 332 ("[T]here is a compelling need to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and for the integration of persons with disabilities into the economic and social mainstream of American life. Further, there is a need to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities. Finally, there is a need to ensure that the Federal Government plays a central role in enforcing these standards on behalf of individuals with disabilities").

"(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

***1050** (c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified;

(3) A description of any modifications made." 28 C.F.R. § 35.105(a)-(c).[FN13]

> FN13. A parallel self-evaluation was implicitly required, but not expressly mandated, by the regulations implementing the Rehabilitation Act. Recognizing this fact, the ADA regulations also provide: "If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation." 28 C.F.R. § 35.105(d).

If, following self-evaluation, the public entity determined that it was necessary to make "structural changes to facilities" to "achieve program accessibility," [FN14] the entity was required to develop a "transition plan setting forth the steps necessary to complete such changes." *Id.* § 35.150(d)(1); see also 34 C.F.R. § 104.22(e) (parallel regulatory provision for the Rehabilitation Act). The transition plan was, "at a minimum," required to "(i)[i]dentify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities; (ii)[d]escribe in detail the methods that will

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be used to make the facilities accessible; (iii)[s]pecify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and (iv)[i]ndicate the official responsible for implementation of the plan." 28 C.F.R. § 35.150(d)(3); see also 34 C.F.R. § 104.22(e) (parallel regulatory provision for the Rehabilitation Act). The transition plan was to be developed after soliciting input from interested individuals, and a copy of the plan was to be made publicly available. 28 C.F.R. § 35.150(d)(1); 34 C.F.R. § 104.22(e) (parallel regulatory provision for the Rehabilitation Act).

> FN14. As the ADA regulations make clear, structural changes to facilities are not mandated if a public entity can guarantee disabled individuals ready access to each of its services, programs, and activities through alternative means, e.g., "redesign[ing] ... equipment, reassign [ing] ... services to accessible buildings, assign[ing] ... aides to beneficiaries, [providing] home visits, deliver[ing] ... services at alternate accessible sites, ... construct[ing] ... new facilities, us [ing] ... accessible rolling stock or other conveyances, or any other methods." *Id.*, § 35.150(b)(1); see also 34 C.F.R. § 104.22(b) (parallel regulatory provision of the Rehabilitation Act).

2. The Court's Findings in its Order Granting Partial Summary Judgment

As noted, in its order granting Huezo's motion for partial summary judgment, the court concluded Huezo had shown that the District had violated the ADA and § 504 of the Rehabilitation Act by excluding Huezo from participation in and denying him the benefits of its services, programs, and activities, or otherwise discriminating against him on the basis of his disability. In particular, the court found, based on undisputed, admissible evidence, that defendant failed to comply with ADA and Rehabilitation Act provisions requiring that it evaluate its programs, services and facilities, and prepare a transition plan.[FN15] The court also found that Huezo had identified myriad correctable yet unameliorated physical barriers on the Pierce College campus.[FN16] ***1051** It was undisputed that, although the ADA placed the burden on the District to make its services and facilities accessible to disabled students, Huezo had had to request accommodations from the school in order to surmount barriers on campus.

> FN15. February 27, 2007 Order at 22.

> FN16. *Id.* at 28-29.

C. Scope of the Injunction

[1] Because the court granted Huezo's motion for partial summary judgment on his ADA and Rehabilitation Act claims, Huezo has shown actual success on the merits. See *Disability Law Center of AK, Inc. v. North Star Behavior Health*, CV 07-62 JWS, 2008 WL 853639, *2 & n. 12 (D.Alaska Mar. 27, 2008) ("To succeed on a motion for a permanent injunction, DLCA must have actual success on the merits," citing *Sierra Club*, 857 F.2d at 1318 (noting that the "standard for a preliminary injunction is essentially the same as for a permanent injunction except 'likelihood of success on the merits rather than actual success' must be shown")); see also *Lonberg v. City of Riverside*, CV 97-237 SGL AJWx, 2007 WL 2005177, *7 (C.D.Cal. May 16, 2007) (*"Lonberg II"*) ("The ADA states that the remedies and procedures set forth in section 505 of the Rehabilitation Act are the remedies available to any person alleging discrimination under the ADA. 42 U.S.C. § 12133. Section 505 of the Rehabilitation Act, in turn, states that a person who is being discriminated against is entitled to injunctive relief. 29 U.S.C. § 794a"). Thus, the first prong of the showing necessary to secure permanent injunctive relief is satisfied. The court considers *infra* whether Huezo has shown a likelihood of irreparable injury, such as would entitle him to injunctive relief as a matter of law. Before doing so, however, it addresses the scope of the injunctive relief Huezo seeks.

Huezo requests that the court enjoin the District "from continuing to discriminate against persons with disabilities by requiring [it] to evaluate all of the facilities and programs offered at Pierce College, ... to remove necessary barriers[,] and [to] modify its policies and procedures to ensure that Pierce is 'operating' its programs and services in a manner that is 'readily accessible and usable by' persons with mobility disabilities." [FN17] He asserts that without an enforceable court order requiring the District to comply with its obligations under Title II of the ADA, Huezo and other disabled persons will continue to be excluded

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from and denied the benefits of defendant's programs, services, and activities, including the use of safe and accessible parking, paths of travel on campus to reach classrooms, and accessible classrooms at Pierce College.[FN18] The District counters that injunctive relief is not necessary because "Pierce College has taken great strides to make its programs and services 'readily accessible and usable' by plaintiff and others." [FN19]

FN17. Pl.'s Mot. at 4.

FN18. *Id.*

FN19. Defendant Los Angeles Community College District's Opposition to Plaintiff's Motion for Permanent Injunctive Relief ("Def.'s Opp.") at 3.

1. Self-Evaluation and Transition Plan

[2] Huezo first argues that it is necessary to order the District to conduct a self-evaluation and create a transition plan because it continues to delay in completing these activities, and because self-evaluation and a transition plan are necessary to ensure modification of discriminatory policies and practices, and to provide information about the scope of barrier removal at Pierce College and the schedule for its completion.[FN20] The District responds that it ***1052** contracted with ADA Accrediting Consulting on August 13, 2007, to assist in development of an ADA transition plan,[FN21] and that the plan that has been created identifies the barriers that must be removed, their location, the nature of the recommended corrections, the cost of the corrections, and the CBC/ADAAG Specification addressed.[FN22] In addition, the District states that Environmental Access, Inc. and ADA Accrediting and Consulting completed a Pierce College Self Evaluation on April 25, 2008.[FN23] Huezo asserts that the self-evaluation and transition plan do not comply with ADA regulations.[FN24]

FN20. Pl.'s Mot. at 12.

FN21. Def.'s Opp. at 10; Declaration of Paul Nieman in Opposition to Plaintiff's Motion for Permanent Injunctive Relief ("Nieman Decl."), ¶ 6, Exh. G.

FN22. Def.'s Opp. at 10.

FN23. *Id.;* Nieman Decl., ¶ 7, Exh. F.

FN24. Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Permanent Injunctive Relief ("Pl.'s Reply") at 13-14.

As noted in the court's order granting partial summary judgment, some courts have held that a private plaintiff cannot sue to enforce the self-evaluation and transition plan regulations. See, e.g., *Iverson v. City Of Boston,* 452 F.3d 94, 102 (1st Cir.2006) (holding that the self-evaluation and transition plan regulations impose obligations on public entities that differ from those imposed by the ADA and thus that they cannot be enforced through the private right of action provided in Title II); *Ability Ctr. of Greater Toledo v. City of Sandusky,* 385 F.3d 901, 913-15 (6th Cir.2004) (holding that "[a]lthough the development of a transition plan 'may ultimately facilitate compliance with Title II, ... there is no indication that a public entity's failure to develop a transition plan [seriously] harms disabled individuals," or that a public entity cannot make its services, programs, or activities accessible to qualified disabled persons without first developing a transition plan). At least one circuit, however, has taken the opposite view. See *Chaffin v. Kan. State Fair Bd.,* 348 F.3d 850, 857-58 (10th Cir.2003) (holding that both the self-evaluation and transition plan regulations are enforceable in a private suit under the ADA).

In granting partial summary judgment, the court concluded that it did not need to address whether the self-evaluation and transition plan regulations were privately enforceable, and that it could consider defendant's compliance or lack of compliance with them as merely a factor in assessing Huezo's claims of discrimination. Although it determined that the District had failed to comply with the regulations requiring a self-evaluation and transition plan, the court noted that this did not necessarily prove that its services, programs, or activities were not accessible to qualified disabled persons. Rather, the court stated, the lack of a self-evaluation and transition plan was evidence that tended to show Huezo had suffered discrimination in the provision of defendant's services, programs, or activities. Because Huezo now asks the court to order that the District conduct a self-evaluation and prepare a transition plan, however, the court must determine

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whether there is a private right of action that permits a plaintiff like Huezo to obtain such relief. [FN25]

> FN25. The court notes that Huezo does not address whether there is a private right of action to enforce these regulations, and the parties thus have interdict a broader swath of conduct than provided no briefing on this issue.

There is no controlling Ninth Circuit authority on this issue. In *Armstrong v. Davis*, 275 F.3d 849 (9th Cir.2001), the Ninth Circuit noted the district court's ***1053** findings that the State of California had not complied with the regulations mandating self-evaluation and preparation of a transition plan, and that it was not in substantial compliance with the ADA and Rehabilitation Act as a result. *See id.* at 858 and n. 14. Based on these and other findings, the district court certified a class and entered an injunction. The Ninth Circuit affirmed the award of injunctive relief, although it required some modification of the form of the injunction. *Id.* at 879. Because the court primarily addressed issues of standing, certification and the propriety of class-wide relief, however, it did not discuss whether proof of a failure to comply with the self-evaluation and transition plan regulations sufficed to prove discrimination under the ADA and/or Rehabilitation Act and whether the regulations were enforceable through a private right of action. Two district courts in the Ninth Circuit that have addressed the issue have agreed with the First and Sixth Circuits, and have held that "there is no private right of action to enforce either the self-evaluation or transition-plan requirements set forth in the federal regulations accompanying Title II of the ADA." See *Cherry v. City College of San Francisco*, No. C04-04981 WHA, 2005 WL 2620560, *2 (N.D.Cal. Oct. 14, 2005); *Californians for Disability Rights, Inc. v. California Dept. of Transp.*, 249 F.R.D. 334, 342 (N.D.Cal.2008) ("[T]his Court concurs with its sister court's ruling in *Cherry,* and holds that there is no private right of action to enforce either the self-evaluation or transition plan regulations"); but see *Lonberg v. City of Riverside*, CV 97-237 RT AJWx, 2006 WL 4811345, *1 (C.D.Cal. May 4, 2006) ("*Lonberg I*") ("This Court determines that the analysis and reasoning in *Chaffin* is more persuasive than the analysis and reasoning in *Ability Center.* It, therefore, concludes that Lonberg does have a private right of action under Section 12134 for injunctive relief compelling the City to comply with its obligations under Section 35.150(d)").

As noted by the court in *Californians for Disability Rights,* the Tenth Circuit in *Chaffin* held that there was a private right to enforce the regulations implementing Title II by examining the regulations collectively and concluding that, "as a whole, they 'simply provide the details necessary to implement the statutory right created by § 12132 of the ADA. They do not prohibit otherwise permissible conduct.' " *Californians for Disability Rights,* 249 F.R.D. at 341 (quoting *Chaffin,* 348 F.3d at 858). Other circuit courts have disagreed. In *Ability Center,* for example, "the Sixth Circuit held [that] no private right to enforcement existed under 28 C.F.R. 35.150(d), [because] 'failing to develop a transition plan ... does not in and of itself ... hinder the disabled.' " *Id.* at 341 (quoting *Ability Ctr.*, 385 F.3d at 914). Similarly, the First Circuit in *Iverson* "examined the self-evaluation regulation, § 35.105, and found that 'it is altogether conceivable that a public entity may be in full compliance with Title II without observing the commands of the self-evaluation regulation'...." Consequently, it held, "a private right of action to enforce the self-evaluation regulation does not exist." *Id.* (quoting *Iverson,* 452 F.3d at 101).[FN26]

> FN26. The *Californians for Disability Rights* court also noted that prior to *Iverson,* the district court in *Cherry* offered a similar reason for declining to find a private right of action to enforce the regulations. It reasoned that " 'there is no indication that a public entity's failure to develop a transition plan harms disabled individuals, let alone in a way that Title II aims to prevent or redress,' and therefore no private right of action to enforce the transition plan regulation would lie." *Californians for Disability Rights,* 249 F.R.D. at 341 (quoting *Cherry,* 2005 WL 2620560 at *4).

***1054** All three circuits endeavored "to interpret the Supreme Court's guidance in *Alexander v. Sandoval,* 532 U.S. 275, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001)." *Id.* at 341. "In characterizing the Supreme Court's holding in *Sandoval,* the First Circuit stated:

> '[The Supreme Court recognized in *Sandoval* that] [a]n implementing regulation may under certain circumstances be enforced through the private right

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> of action available under the organic statute that it implements. Under *Sandoval,* however, a private plaintiff may not, merely by referencing the organic statute, enforce regulations that interdict a broader swath of conduct than the statute itself prohibits. After all, the power to create a private right of action, like the power to create positive federal law itself, lies exclusively with Congress.' " *Id.* (quoting *Iverson,* 452 F.3d at 101).

"[R]ejecting the Tenth Circuit's analysis in *Chaffin,* the First Circuit ... reasoned:

> 'In our view, the *Chaffin* court misconstrued *Sandoval* and, thus, the decision is simply incorrect. Although the court appropriately recognized that "regulations may not create a private cause of action where no such right was intended by Congress in the statute authorizing promulgation of such regulations," [*Chaffin,* 348 F.3d at 857], it inexplicably disregarded *Sandoval's* corollary rule that regulations which impose an obligation beyond the statutory mandate are not enforceable through the statutory right of action. In light of this error, we elect to align ourselves with the Sixth Circuit, see *Ability Ctr.,* 385 F.3d at 913-15, and to reject the position of the Tenth Circuit, see *Chaffin,* 348 F.3d at 856-60.' " *Id.* (quoting *Iverson,* 452 F.3d at 101-02 (some internal citations omitted)).[FN27]

FN27. The *Californians for Disability Rights* court noted that this aspect of *Iverson's* analysis "is [also] consonant with the reasoning employed by ... *Cherry.*" *Californians for Disability Rights,* 249 F.R.D. at 342 (citing *Cherry,* 2005 WL 2620560 at *3 ("Unlike the Sixth Circuit, the Tenth Circuit did not engage in a separate analysis for each regulation in dispute ... This order agrees with the Sixth Circuit that there is a distinction between regulatory violations that, by themselves, would deny the disabled meaningful access to public services and those that would not")).

After reviewing the opinions, the *Californians for Disability Rights* court determined, consistent with the analysis of the First and Sixth Circuits, and of the district court in *Cherry,* that " *Sandoval* directs a regulation-by-regulation analysis, as opposed to the 'collective' approach endorsed by the Tenth Circuit, in order to determine if each [regulation] exhibits a Congressional intent to create a private right of enforcement." *Id.* at 342. The court reasoned that because "the transition plan and self-evaluation regulations might both be violated and yet there could still be no violation of Title II, ... Congress's intent to create a private right of enforcement for violations of Title ... II itself cannot be imputed to the accompanying regulations." *Id.* (citing *Cherry,* 2005 WL 2620560 at *4). Ultimately, the court concluded that "[s]ince neither regulation contains a clear Congressional intent to create a private right of enforcement, *Sandoval* mandates that none be found in the facts of this case." *Id.* Concurring with the holding in *Cherry,* it found "that there [was] no private right of action to enforce either the self-evaluation or transition plan regulations." *Id.*

The court agrees with the careful reasoning of those circuit and district courts that have concluded, under *Sandoval,* that there is no private right of action to enforce the self-evaluation and transition plan regulations. As Huezo has presented no argument to the contrary, the court ***1055** denies his request for an injunction requiring the District to prepare a self-evaluation and transition plan in accordance with ADA regulations.

2. Barriers to Access

Huezo notes that in granting partial summary judgment, the court found that he and other disabled students had "been excluded from participation in or otherwise discriminated against with regard to defendant's services, programs, or activities by reason of [their] disability." [FN28] He asserts that, while at Pierce College, he has encountered both physical barriers to access and barriers arising from Pierce's policies and procedures regarding disabled students. Huezo requests that the court order the District to remove these interim barriers until such time as it conducts a self-evaluation that complies with the regulations and implements a transition plan to remove barriers and modify policies and procedures.[FN29]

FN28. Pl.'s Mot. at 17.

FN29. *Id.* at 16.

a. Official Policies and Procedures

i. Interim ADA Coordinator

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Huezo contends that Pierce relies completely on two educational counselors associated with the Disabled Students Programs & Services ("DSPS") to assist disabled students.[FN30] The court earlier found that DSPS did not respond adequately when Huezo complained of barriers and access problems. Furthermore, Huezo proffers evidence that the counselors are not trained in ADA requirements for accessible programs and services.[FN31] As a result, he contends, "there is no knowledgeable, responsible person to [whom a disabled student can] take complaints and [no one who can] coordinate a correct response [among] [Pierce] [f]acility staff, ... teaching faculty, and disabled students. [FN32] Huezo therefore requests that the District be ordered to hire an interim ADA coordinator with the experience necessary to modify Pierce's policies and practices in a way that will permit it to operate its educational programs in a "readily accessible" manner.[FN33]

FN30. *Id.* at 17.

FN31. See Declaration of Patricia Barbosa in Support of Plaintiff's Motion for Permanent Injunctive Relief ("Barbosa Decl."), Exh. 3 (Deposition of Miriam Helena Gottlieb ("Gottlieb Depo.") at 133:1-135:5; Deposition of Leslie Donna Cook ("Cook Depo.") at 21:9-22:25).

FN32. Pl.'s Mot. at 17.

FN33. *Id.* at 17-18. Huezo contends that the coordinator would also be responsible for documenting requests for help or accommodation, and the resolution of such requests. (*Id.*).

The District responds that after settling the monetary damages issues in the case, Pierce appointed Sylvia Silva as its designated ADA coordinator. [FN34] Silva identifies herself as the "Pierce College Compliance Officer and current ADA Coordinator...." [FN35] She asserts that she became the ADA Coordinator, she has worked on creation of a Special Services Student Handbook and preparation and review of the Pierce Self Evaluation and Transition Plan.[FN36] Given Silva's appointment as ADA coordinator and the fact that Huezo does not appear to dispute Silva's qualifications to serve in such a position, the court finds that it is unnecessary to order the District to hire an interim ADA Coordinator.

FN34. Def.'s Opp. at 6-7.

FN35. Declaration of Sylvia Silva in Opposition to Plaintiff's Motion for Permanent Injunctive Relief ("Silva Decl."), ¶ 1.

FN36. *Id.*, ¶¶ 2-4.

***1056 ii. Registration and Services for Disabled Students**

Huezo argues that the District does not operate its programs in a readily accessible manner in part because it does not anticipate and respond to physical barriers or policies that discriminate against disabled students. [FN37] He contends that there are many physical barriers to access that directly affect him at Pierce College, including a lack of accessible parking, the need to ask for a special card to park in the teachers' lots, exterior paths of travel on campus that make it difficult or impossible for him to travel from the public street to his classes and between classes, and the lack of a handrail on a ramp where he fell more than two years ago.[FN38] Huezo continues to take a class in the Applied Tech Building; although there is now an accessible desk, he reports that there are still no curb cuts or accessible paths of travel to get to the class.[FN39]

FN37. Pl.'s Mot. at 18.

FN38. *Id.*

FN39. *Id.*

In addition, Huezo now takes a night architecture class in the Music Building, which is located on the upper campus.[FN40] He asserts there is no accessible path of travel from the upper campus to accessible parking or any other part of campus.[FN41] As a result, Huezo has had to ask for a ride from DSPS, which has a van to take disabled students to inaccessible locations on campus.[FN42] Use of the van service has been problematic for Huezo. On one occasion, he was given a ride to class, but was told by Leslee Cook of DSPS that he would have to call his wife for pick-up because the DSPS office closed at 8:00 p.m.[FN43] Subsequently,***1057** Huezo was told that DSPS had arranged for

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an employee to pick him up after class, but only on the days of class and only right before and after class.[FN44] Because DSPS will transport Huezo only at his scheduled class time, if Huezo wants to go to class early, stay late to meet with the professor or other students, or go to Music Building at other times of day to use a desk for drafting or studying, he has no way to get there.[FN45]

FN40. *Id.*, ¶¶ 4, 6.

FN41. *Id.*, ¶¶ 4, 7. In support of his request for a permanent injunction, Huezo proffers the declaration of Karl Danz, a licensed contractor and specialist in universal/barrier-free design and construction. (Declaration of Karl Danz in Support of Plaintiff's Motion for Permanent Injunctive Relief ("Danz Decl.")). Danz worked with Huezo's retained expert, Peter Margen, to conduct site inspections, take photographs and measurements, and prepare exhibits that depict the barriers at Pierce College. (*Id.*, ¶ 2). Danz states that a long series of stairs connect the lower campus to the upper campus. (*Id.*, ¶ 7). There is no other pedestrian path of travel that provides access to the upper campus, except for very long street routes that surround the school. (*Id.*).

Defendant objects to Danz's declaration under Rule 37(c)(1) on the ground that Huezo failed to disclose Danz as an expert witness. (Defendant Los Angeles Community College District's Objections to Declaration of Karl Danz in Support of Plaintiff's Motion for Permanent Injunctive Relief ("Def.'s Objections") at 1). Defendant also contends that the Danz declaration is based on hearsay and lacks foundation. (*Id.* at 2).

The court need not consider the Danz declaration or address defendant's objection, as Huezo's statements regarding the accessibility of buildings on the upper campus are supported by the declaration of Peter Margen in support of Huezo's motion for partial summary judgment. (See Declaration of Peter Margen in Support of Plaintiff's Motion for Partial Summary Judgment ("Margen Decl.")). Margen, a qualified expert in ADA compliance, conducted a thorough inspection of the Pierce College campus to determine "the accessibility of certain public facilities ... and [ ] the impact of these accessibility conditions on the programmatic access of the programs, services, and activities offered at Pierce College, along with conditions related [to] parking and paths of travel." (*Id.*, ¶ 7). Margen states that the only way a wheelchair user can reach the Music Building is to go all the way around campus on Mason Street and Stadium Way. (*Id.*, ¶ 11). "These streets are very long, very steep and inaccessible." (*Id.*). Margen found that "there [was] no alternate *accessible* means for a mobility disabled student to walk or roll" to the Music Building. (*Id.*).

FN42. Huezo Decl., ¶ 7.

FN43. *Id.*

FN44. *Id.*

FN45. *Id.* The District does not dispute Huezo's representations regarding the availability of shuttle service at Pierce College. Leslee Cook, a counselor in Pierce's Special Services Department, states that Huezo and other similarly situated students "must fill out the appropriate forms with Special Services so that Pierce College is aware of the class schedule of the requesting student and [can] plan transportation accordingly." (Declaration of Leslee Cook ("Cook Decl."), ¶¶ 1, 3).

Beyond his difficulties in accessing the Music Building, Huezo has also found that there is no space or accessible desk for him to use there.[FN46] After the professor advised him to call DSPS to request accommodation, Huezo spoke with a DSPS counselor and asked for an accessible desk.[FN47] Leslee Cook assisted him, but said that he would have to re-register with DSPS to obtain help. Huezo did this.[FN48] By his second class, an accessible desk had been provided, but it had no bench of the type Huezo needs for his prosthetic legs, and it had been placed facing the

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wall.[FN49] To get the desk moved and obtain a bench, Huezo again had to contact DSPS, which then contacted a plant manager. The plant manager called Huezo and asked for a meeting in the classroom so that he could identify where Huezo wanted the desk located.[FN50] All told, it took more than a week to secure an accessible desk and bench located in the area where the remainder of the student desks were located.[FN51]

FN46. Huezo Decl., ¶ 6.

FN47. *Id.*

FN48. *Id.*

FN49. *Id.*

FN50. *Id.*

FN51. *Id.*

As respects his class in the Applied Tech Building, Huezo reports that DSPS expects him to drive to the class and find accessible parking next to the building because there are no curb cuts or accessible paths of travel for pedestrians to reach the building.[FN52] Although he has complained about the lack of accessible curb cuts and paths of travel since Fall of 2003, the District has not taken steps to make the building accessible.[FN53]

FN52. *Id.*, ¶ 7. Again, the Margen declaration supports Huezo's assertions concerning the Applied Tech Building. As with the Music Building, to reach the Applied Tech Building, a wheelchair user must travel all the way around campus on Mason Street or Stadium Way, streets that are long, steep, and inaccessible. (Margen Decl., ¶ 11). The paths of travel surrounding the Applied Tech Building lack curb cuts and/or curb ramps. (*Id.*). Margen states that "[s]tudents with mobility disabilities cannot use the sidewalks and must walk or roll in the narrow street with cars parked and traffic coming by, and they must also use the steep driveway to reach ... classes" in the Applied Tech Building. (*Id.*). Finally, there is only one accessible parking space for the building, so only one disabled student or teacher can park near it at a time. (*Id.*).

FN53. Huezo Decl., ¶ 7.

(a) Huezo's Requests

In light of the continuing barriers to access at Pierce College, Huezo requests that the District be directed to modify its policies and procedures in various ways, including:

***1058** • That it be required to hire an individual with expertise in Title II and ADAAG regulations, particularly the use and placement of accessible equipment in schools,[FN54] to establish a written school-wide policy, and train Pierce facility staff, teachers, and DSPS counselors in the use and placement of accessible desks and equipment. Huezo also asks that the court direct that each teacher will be responsible for requesting accessible desks and equipment as necessary, and ensuring that such equipment is obtained, properly placed, and maintained in his or her classroom.[FN55]

FN54. Pl's Mot. at 19.

FN55. *Id.*

• That it install accessible tables and desks in all classrooms currently in use; [FN56] that the accessible desks be bolted to the floor so they cannot be moved; and that they have priority signage.[FN57] He requests that the court direct that the accessible tables and desks be placed with other student desks, that they have required wheelchair space, and that they offer accessible ingress and egress. Huezo notes additionally that science, computer, and music and art classes may require special accessible equipment that must be ready for use when needed.[FN58]

FN56. *Id.*

FN57. *Id.* at 19-20.

FN58. *Id.* at 20. Huezo notes that in his motion for partial summary judgment, the court found that on occasion, he had been unable to participate in class activities or had been

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dissuaded from taking a class altogether due to the lack of accessible facilities. (See February 27, 2007 Order at 23-24 & n. 52). For instance, a lack of accessible desks discouraged Huezo from taking a cinema class in which he was interested, because he found that he would have to sit by himself in front of the class. In addition, the Life Sciences Building has fixed desks that are not accessible to Huezo, as they contain sinks and lab equipment he cannot reach. (*Id.* at 24 n. 52). The court determined that this and other evidence demonstrated that Huezo had not had the "high degree of convenient accessibility" to Pierce College campus facilities to which the ADA entitles him. (*Id.* at 24).

• That defendant publish comprehensive information regarding the services and accommodations available for disabled students.[FN59] DSPS publishes a booklet that provides general information regarding the educational services offered to disabled students. Huezo asserts, however, that the Student Handbook does not provide information regarding special parking permits for the teachers' parking lots; keys for the library elevator; or the availability of shuttle services to take disabled students to inaccessible locations. [FN60] He contends that this information is not disseminated to disabled students unless they complain about the lack of access.[FN61] Huezo therefore requests that, until such time as the District removes barriers on campus, it be required to publicize the special accommodations available in the materials provided at the orientation for disabled students; on the school's website; and in the college newspaper.[FN62] Further, Huezo requests that the court enjoin the District from charging disabled students for obtaining parking permits for use of the teachers' parking lots, or a key to the library elevator.[FN63]

FN59. Pl.'s Mot. at 20.

FN60. *Id.*

FN61. *Id.*

FN62. *Id.*

FN63. *Id.*

***1059** • That the District provide regularly scheduled accessible shuttles for disabled students.[FN64] Huezo notes that DSPS provides van service only to the inaccessible upper campus, and not to the Applied Tech Building. Moreover, disabled students receive transportation assistance only when they specifically request it. Huezo asks that until such time as the District renovates the inaccessible paths of travel on campus, it provide a regularly scheduled wheelchair accessible shuttle that can take disabled students to all of the areas of campus that his expert has identified as lacking accessible paths of travel.[FN65] These include the upper campus, the agricultural and equestrian facilities, the applied technology buildings, and parking lots. Huezo asks that the court order that the service be widely publicized and that it have a regular schedule and marked stops.[FN66] He contends this method of transporting students is routinely used on college campuses and that it would provide a non-discriminatory service to many disabled students who do not feel comfortable asking a DSPS educational counselor to act as a driver. [FN67]

FN64. *Id.* at 21.

FN65. *Id.*

FN66. *Id.* at 22.

FN67. *Id.* at 21-22.

(b) The District's Response

The District responds that after settling the monetary damages issues in the case, it endeavored to make as much progress as it could in resolving the issues raised in Huezo's complaint.[FN68] Robert Garber, the President of Pierce College, states that as a result of the mediation, the "mobility assistance" portion of the Special Services Student Handbook was revised, [FN69] and a list of off-campus resources for disabled students***1060** was provided.[FN70] Appended to the handbook is a campus map identifying para-transit stops and disabled parking spots; a Los Angeles Community College District Disabled Student Program & Services Counseling Record; a Special Services Recommendation & Referral form; and a Pierce College Special Services Authorization to Release Information to

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Instructors form.[FN71] Garber states that the Special Services Student Handbook has been made available to all students who have requested it.[FN72]

FN68. Def.'s Opp. at 6. The District has submitted a declaration by Michael Gibbens, an expert accessibility/usability specialist, in support of its position that an injunction is not necessary. (See Declaration of Michael Gibbens in Opposition to Plaintiff's Motion for Permanent Injunctive Relief ("Gibbens Decl."), ¶ 2). Huezo objects to the declaration on the ground that the court excluded his testimony under Rule 37(c)(1) in a November 30, 2006 order denying defendant's ex parte application to continue the deadline for rebuttal expert disclosure and the expert discovery cut-off date, and in a December 12, 2006 denial of defendant's request for reconsideration. (Plaintiff's Opposition to Defendant's Submission of Declaration of Michael Gibbens ("Pl.'s Objections") at 1-2). Apparently anticipating this objection, the District argues that by submitting the declaration of Karl Danz, "a non-disclosed expert, plaintiff has no standing to object to the attached declaration of LACCD's expert consultant regarding ADA compliance, Michael Gibbens." (Def's Opp. at 4).

The court agrees with Huezo that the District's attempt to introduce Gibbens' previously excluded expert testimony is improper. Because the court has already excluded Gibbens' testimony based on the District's failure to disclose him as an expert or otherwise comply with the expert discovery deadlines in the case, the court declines to consider his declaration in connection with the present motion for permanent injunction. See FED. R. CIV. PROC. 37(c)(1) ("If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless"); cf. *Pratt v. California State Bd. of Pharmacy*, 268 Fed.Appx. 600, 603 (9th Cir.2008) (Unpub. Disp.) ("[T]he district court did not abuse its discretion in excluding the declaration of Dr. Poggio. Pratt never properly disclosed this expert or provided an expert report, nor did he seek an extension to do so," citing *Quevedo v. Trans-Pac. Shipping, Inc.*, 143 F.3d 1255, 1258 (9th Cir.1998)).

FN69. Def.'s Opp. at 6; Declaration of Robert Garber in Opposition to Plaintiff's Motion for Permanent Injunctive Relief ("Garber Decl."), ¶¶ 1, 4. Garber does not identify the revisions to the "mobility assistance" section that were made. The section states that wheelchairs and scooters are available to assist students in moving around Pierce College. (*Id.*, Exh. A). It also states that "[t]he Special Services program [ ] has an adapted full-size van equipped with a wheelchair lift to transport students using wheelchairs to and from the art, drama, and music buildings. For other mobility-impaired students, we will be using other forms of transportation. All requests for regularly-scheduled transportation services must be made at least a week before services begin. Last minute requests will be accommodated as best as possible." (*Id.*).

A section discussing services for mobility-impaired students addresses other concerns raised by Huezo, in that it states that students may obtain special parking and library elevator access. (*Id.*)

FN70. *Id.*, ¶ 4, Exh. A. The organizations identified include the Braille Institute, California State Department of Rehabilitation, California State University, Northridge, and the Office of Civil Rights. (*Id.*, Exh. A).

FN71. *Id.*

FN72. *Id.*, ¶ 4.

The District also contends that consistent with discussions at the mediation, it has begun to conduct a training program for instructors at the start of each fall semester that includes two sessions on the ADA; additionally, it "train [s] on a case by case basis as matters come up from time to time." [FN73] Pierce College has created several ADA-compliant forms to ensure

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that it is aware of a student's request for accommodations.[FN74] These forms include the Pierce College Accommodations Request Form, Accommodations Update Form, and the Los Angeles Pierce College Special Services Program Authorization of Temporary Services.[FN75] To receive the accommodations offered by Pierce College, each qualifying student must fill out the forms properly prior to the beginning of each semester.[FN76]

FN73. Def.'s Opp. at 7; Garber Decl., ¶ 6.

FN74. Def.'s Opp. at 7; Silva Decl., ¶ 4.

FN75. Silva Decl., ¶ 4, Exh. I.

FN76. *Id.*, ¶ 4.

The District argues that these steps ensure that disabled students are able to benefit from the programs, services, and activities offered at Pierce College. [FN77] It maintains that the present methods it employs are effective in achieving compliance with the program access requirements of 28 C.F.R. § 35.150, which states that "[a] public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section." [FN78] 28 C.F.R. § 35.150(b)(1).

FN77. Def.'s Opp. at 8.

FN78. *Id.*

(c) Court's Analysis

[3] As noted in the court's order granting Huezo's motion for partial summary judgment, the access requirements of the ADA are set forth in 28 C.F.R. §§ 35.149-.151. Section 35.149 sets forth a general prohibition against discrimination; § 35.150 governs the accessibility of existing facilities; and § 35.151 governs the accessibility of new construction and alterations.[FN79] Section 35.150 requires that a ***1061** public entity "operate *each* service, program, or activity so that the service, program, or activity, *when viewed in its entirety,* is readily accessible to and usable by individuals with disabilities." 28 C.F.R. § 35.150(a) (emphasis added). In deciding the motion for partial summary judgment, the court found that Huezo had established that he did not have the "high degree of convenient accessibility" to Pierce College campus facilities to which he is entitled under the ADA, given the difficulties he had encountered in obtaining accessible workstations and parking, and entering inaccessible classrooms. [FN80]

FN79. There are parallel regulations implementing the Rehabilitation Act. See 34 C.F.R. §§ 104.21 (general prohibition against discrimination), 104.22 (accessibility of existing facilities and transition plan), 104.23 (accessibility of new construction).

FN80. See February 27, 2007 Order at 23-25.

The court also noted that Huezo had proffered undisputed evidence that he had had to personally request accommodation to overcome barriers that exist on the Pierce College campus.[FN81] The court found that the District had improperly placed the burden of requesting accommodation and identifying on disabled students. It determined that the District's failure to take affirmative steps to ensure that its programs and facilities were operated so that they were readily accessible to disabled persons was discriminatory within the meaning of the ADA and the Rehabilitation Act.[FN82] See *Putnam v. Oakland Unified Sch. Dist.*, No. C-93-3772CW, 1995 WL 873734, *10 (N.D.Cal. June 9, 1995). As the *Putnam* court stated:

FN81. *Id.* at 26.

FN82. *Id.* at 27-28.

> "Defendants ... mistakenly argue that the regulations do not require entities to take any action to address architectural barriers creating the potential for denial of access, but instead allow entities to deal with problems when they 'actually arise,' either by then removing the barrier or by alternative means. However, the regulations impose upon schools the affirmative duty continuously 'to operate each program ... so that the program ..., when viewed in its entirety, is readily accessible to handicapped persons.'
>
> "Although the regulations do not require removal of all architectural barriers to achieve such ready accessibility, they do require prompt implementation of a plan making all programs readily accessible.

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> The approach of taking no action to render programs accessible until a student or parent identifies an accessibility problem does not make a program 'readily' accessible. Rather, this approach imposes the discriminatory requirement that a disabled student ascertain which barriers deny her access and brave possible disapproval to point them out and request that they be remedied. Furthermore, it imposes the further discrimination of forcing the student to wait for the barriers to be remedied, and in the meantime either be excluded or be subjected to the perils attendant to the barriers. Finally, Defendants' approach also has the discriminatory effect of discouraging students from entering or staying in the inaccessible school system, or from attempting to participate in classes and other programs located in inaccessible facilities." *Id.*
>
> See also *Bacon v. City of Richmond,* 386 F.Supp.2d 700, 708 (E.D.Va.2005) ("The law does not require ... that Plaintiffs[ ] request some specific form of accommodation as a prerequisite to a valid ADA claim.... The ADA requires that any program or activity held at a school be made accessible to the handicap [ped]. The burden is not on the disabled to create accommodation solutions, but on those that provide***1062** services or facilities which hinder their participation").

Huezo has demonstrated that barriers resulting from the District's official policies and procedures persist, despite the changes the District has made following the parties' mediation. According to the Special Services Student Handbook, to obtain mobility assistance, a disabled student must (1) register with DSPS; (2) make an appointment with a Special Services counselor; (3) submit verification of disability; and (4) seek accommodation by requesting the loan of the wheelchair or scooter, or a van ride to an inaccessible part of campus, at least a week before the scheduled class.[FN83] The handbook states that (a) when disabled students need to park closer to a classroom, they must submit a medical doctor's certification that the service is required, and request a gate key from Special Services that will allow them to park in staff and faculty parking areas; [FN84] (b) students must seek special accommodation to obtain accessible desks and classroom furniture; (c) students must ask a teacher to relocate a classroom when they find that the assigned classroom is not accessible; [FN85] and (d) students must identify and seek barrier removal if they encounter inaccessible paths of travel.[FN86]

> FN83. Garber Decl., Exh. A.
>
> FN84. *Id.* The handbook states that "[a]ll parking is available on a first-come-first-serve basis. Parking is not reserved for students with disabilities. Students may wish to schedule their classes at times that are not as crowded as other times." (*Id.*) Notably, Huezo previously asserted that even with a key card to enter faculty parking lots, he still had difficulty accessing classroom buildings at Pierce College due to the lack of accessible paths of travel to class. (See February 27, 2007 Order at 26 n. 62).
>
> FN85. The District will not relocate classes if they are offered at different locations, or if the nature of the programs would be fundamentally altered by relocation. (Garber Decl., Exh. A). Huezo notes that all classes on the upper campus are inaccessible due to inaccessible parking and paths of travel. (Pl.'s Reply at 10).
>
> FN86. Garber Decl., Exh. A. Huezo has asked for curb cuts and accessible ramps for the last three years without success. (Pl.'s Reply at 10).

The District concedes that to receive an accommodation of any kind-including basic services such as accessible furniture and transportation to otherwise inaccessible parts of campus-each disabled student must fill out certain forms prior to the beginning of each semester.[FN87] By continuing to require disabled students to request accommodation in this manner, the District has failed to operate its facilities and services in a non-discriminatory manner.[FN88] Cf. *Bacon,* 386 F.Supp.2d at 708; ***1063** *Putnam,* 1995 WL 873734 at *10.

> FN87. Def.'s Opp. at 7; Silva Decl., Exh. I.
>
> FN88. Citing several opinions of the Office of Civil Rights, the District argues that at the college level, the student must request accommodation. (Def.'s Opp. at 12). The court, however, has determined that the ADA and

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> Rehabilitation Act place an affirmative duty on the public entity to operate its services, programs, or activities in a non-discriminatory manner. (February 27, 2007 Order at 22-29). It has concluded that by requiring disabled students to point out barriers to access and seek accommodations, the District has violated the ADA and § 504 of the Rehabilitation Act by excluding Huezo from participation in and denying him the benefits of its services, programs, and activities, or otherwise discriminating against him on the basis of his disability.
>
> Opinions of the Office of Civil Rights are not binding on the court, and the opinions defendant cites are factually distinguishable, as the majority relate to students with learning disabilities who required additional time for test taking or changes in course work. See *R.K. ex rel. T.K. v. Hayward Unified School Dist.*, C 06-07836 JSW, 2007 WL 2778730, *9 n. 6 (N.D.Cal. Sept. 21, 2007) ("Plaintiff also relies on an administrative ruling from the Office of Civil Rights ('OCR'). This ruling is not binding on this Court. Moreover, the Court finds the administrative ruling is not persuasive because it does not contain any analysis of the elements of a claim under Section 504, it was based on a settlement between the OCR and the CDE, and because it is factually distinguishable"). The court notes, moreover, that the District did not make an argument based on the OCR opinions in opposing Huezo's motion for partial summary judgment. That, of course, was the proceeding in which the accommodations issue was actually decided.

Furthermore, the District makes no real attempt to address the specific modifications in policies and procedures Huezo seeks. Although the District has appointed Sylvia Silva as Pierce College's ADA Coordinator, Silva has done nothing other than consult on the creation of the Special Services Student Handbook and create various "ADA compliant" forms.[FN89] There is no evidence that Silva has expertise in Title II and the ADAAG regulations, particularly the use and placement of accessible equipment in schools. [FN90] Nor does the District address Huezo's request that teachers be responsible for requesting accessible desks and equipment as required. Although defendant states that teachers have been given ADA training, it does not discuss the content of the training or define what responsibilities teachers have vis-à-vis disabled students.

> FN89. Silva Decl., ¶¶ 2-4.
>
> FN90. Pl's Mot. at 19.

In sum, the court concludes that the District's programmatic response to the pervasive lack of curb cuts, accessible paths of travel, and accessible desks and workstations does not meet the § 35.150's requirement that a public entity "operate *each* service, program, or activity so that the service, program, or activity, *when viewed in its entirety,* is readily accessible to and usable by individuals with disabilities." 28 C.F.R. § 35.150(a) (emphasis added). This is particularly true given that the District continues to place the burden on disabled students to identify barriers-e.g., lack of accessible workstations, inaccessible paths of travel-and request accommodation. Furthermore, Huezo has demonstrated that he will continue to take classes at Pierce College [FN91] and continue to suffer irreparable injury due to the numerous access barriers he encounters as a result of the District's policies and procedures.[FN92]

> FN91. Huezo Decl., ¶ 3 ("Although I have now finished my degree program, I remain enrolled at Pierce College in classes like Architecture as well as in other subjects, and plan to continue taking such classes. I also attend, and plan to continue attending, public functions such as the recent art show in the Arts Building").
>
> FN92. Cf. *L.H. v. Schwarzenegger*, CIV 06-2042 LKK/GGH, 2008 WL 268983, *9 (E.D. Cal. Jan. 29, 2008) ("Here, the plaintiffs have shown that there is a fair chance they will succeed in proving that the defendants do not comply with the ADA in parole revocation proceedings. Additionally, the possibility that the affected plaintiffs would consequently suffer discrimination that would impede their ability to participate in proceedings in which their liberty rights are at stake demonstrates the likelihood of irre-

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> parable injury"); *Burriola v. Greater Toledo YMCA*, 133 F.Supp.2d 1034, 1040 (N.D.Ohio 2001) ("Additionally, the irreparable harm requirement is met when the injuries plaintiff would incur are 'the very type of injuries Congress tried to avoid.' *E.E.O.C. v. Chrysler Corp.*, 733 F.2d 1183, 1186 (6th Cir.1984). Because Jordan's injuries would be the result of discrimination based on disability, they are the very type of injuries Congress sought to avoid in enacting the ADA," citing 42 U.S.C. § 12101(b)).

Because he has shown a likelihood that he will suffer irreparable injury and the inadequacy of remedies at law, the court grants Huezo's request for interim modifications to the District's policies and procedures. The court hereby enjoins the District to provide accessible desks, workstations, and other equipment with priority signage in all classrooms in use ***1064** during a given semester; to hire an ADA access expert approved by plaintiff responsible for overseeing the placement of accessible desks, tables, and other workstations in all classrooms in use; [FN93] to cease charging disabled students for parking permits to use the teachers' parking lots and keys to the library elevator; to provide regularly scheduled shuttle service for disabled students; to update the Special Services Student Handbook to reflect these changes; and to publicize the existence and availability of the handbook as a resources for disabled students.[FN94]

> FN93. Huezo has also asked that the court require the District to impose responsibilities on teachers respecting accommodation of disabled students and the provision of accessible desks and equipment. The court declines to determine who within the District or with Pierce College should bear responsibility for ensuring that disabled students have accessible desks and other necessary equipment. The court concludes that enjoining the District to develop policies that will ensure the availability of such accommodations is adequate.

> FN94. Cf., e.g., *Anderson v. Rochester-Genesee Regional Transp. Authority*, 337 F.3d 201, 206 (2d Cir.2003) (affirming in part that grant of injunctive relief that encompassed the following remedial measures: (1) " 'The company must provide next-day ride service to all ADA paratransit eligible individuals who require such service' "; (2) " '[T]he company shall take whatever steps are necessary to obtain more buses, drivers and schedulers to comply with all of the requirements concerning provision of paratransit service' "; (3) " '[T]he company will phase in modifications to its reservation system to permit advance reservations to be made not more than three days prior to the desired trip' "; and (4) "The company shall 'provide the Court with [monthly] reports' on demand rides, subscription rides, and the certification/recertification process' "); *L.H.*, 2008 WL 268983 at *9 ("[T]he court issues a preliminary injunction to require defendants to develop sufficiently specific draft Policies, Procedures, and Plans ('Policies and Procedures') that will ensure continuous compliance with all of the requirements of the Americans with Disabilities Act in parole revocation proceedings. Defendants will promptly disseminate their Policies and Procedures in an effective manner. The Policies and Procedures must ensure that Juvenile Parolees with effective communication needs (including but not limited to mental illness, other cognitive or communication impairments, illiteracy, limited English-language proficiency, and the need for a foreign language interpreter) and/or disabilities are able to participate, to the best of their abilities, in all parole revocation proceedings. The Policies and Procedures shall include detailed procedures for accommodating and effectively communicating with Juvenile Parolees with Disabilities and/or effective communication needs at all Parole Revocation Proceedings"); *Lonberg II*, 2007 WL 2005177 at *8 ("By ordering the City to bring all of the curb ramps and sidewalk segments identified on Exhibit A ... in[to] full compliance with the federal and state standards, the Court is promoting the Congressional objective of eliminating physical obstacles and preventing discrimination against disabled persons. Further, the repeated and significant difficulty Plaintiff encounters when attempting to use the non-compliant streets and sidewalks is a real and immediate threat of substantial and irreparable harm and it is

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> exactly the type of discrimination that the ADA seeks to prevent. *Barden v. City of Sacramento*, 292 F.3d 1073, 1075-1077 (9th Cir.2002). The Court finds that the public interest would be greatly served by the issuance of an injunction requiring the City to comply with the ADA and California's disability access laws. Indeed, when passing the ADA Congress found that '[t]he employment, transportation, and public accommodation sections of ... [the ADA] would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets,' " quoting *Kinney v. Yerusalim*, 9 F.3d 1067, 1071 (3d Cir.1993)).

b. Physical Barriers

[4] In its order granting Huezo's motion for partial summary judgment, the court noted that "[o]ne form of prohibited discrimination is the exclusion from a public entity's services, programs, or activities ***1065** because of the inaccessibility of the entity's facilit[ies]." [FN95] *Barden v. City of Sacramento*, 292 F.3d 1073, 1075 (9th Cir.2002). Huezo has proffered uncontroverted evidence that the Pierce College campus has significant physical barriers that discriminate against persons with mobility disabilities. Indeed, the court previously found that when not driving around campus, Huezo has considerable difficulty maneuvering around the myriad physical barriers he encounters.[FN96] Sidewalks do not have curb cuts, requiring that he utilize steep, narrow roads filled with potholes to travel from building to building.[FN97] Many ramps are steep, have no handrails, or have been obstructed.[FN98] Huezo attempts to utilize his prosthetic legs more frequently to lessen the impact of these physical barriers as he tries to access the services, programs, and activities of Pierce College, but doing so is painful and tiring, and exposes him to sores, back problems, and "other" painful conditions.[FN99]

FN95. See February 27, 2007 Order at 22.

FN96. *Id.* at 26.

FN97. *Id.*

FN98. *Id.*

FN99. *Id.*

Huezo represents that since the court granted partial summary judgment, he has attempted to work with the District to get it to remove physical barriers and create accessible paths of travel throughout campus by installing curb cuts, fixing steep ramps, adding handrails, and renovating accessible parking so that it is configured and located near accessible paths on campus.[FN100] He asserts that the District has not agreed to make the renovations he has requested, in part because it contends that Pierce will undergo massive renovations in the future. Huezo has been unable to obtain information about the timing of the planned renovation, however.[FN101] He therefore requests that the court order the District to make the interim renovations that his expert, Peter Margen, has determined are most important to operate the college as readily accessible for persons with mobility disabilities. [FN102] Huezo has provided a "Demand for Interim Barrier Removal," that identifies more than 150 barriers for removal.[FN103] They include improvements to parking lots, installation of curb ramps, installation of handrails on ramps, changes to the slope angle of excessively steep ramps, installation of automatic doors, installation of accessible shower facilities, and lowering paper towel dispensers in restrooms.[FN104]

FN100. Pl.'s Mot. at 22.

FN101. *Id.*

FN102. *Id.*

FN103. Barbosa Decl., Exh. 4.

FN104. *Id.*

The District responds that various barrier removal projects are currently underway at Pierce College.[FN105] It states that Pierce College's President, Robert Garber, and Director of College Facilities, Paul Nieman, met with Margen and reviewed the campus with him to address barriers Huezo sought to have removed.[FN106] The parties agreed that the District would await a report from Margen, that it would deal with those issues that could be addressed immediately, and that it would also attempt to make changes that could be accomplished over time, bond money permitting.[FN107] The District did not receive ***1066** Margen's

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until six months after the meeting. [FN108]

FN105. Def.'s Opp. at 9.

FN106. *Id.* Garber and Nieman do not state when this meeting took place. (Garber Decl., ¶ 7; Nieman Decl., ¶ 3).

FN107. Def.'s Opp. at 9.

FN108. *Id.;* Nieman Decl., ¶ 3; Garber Decl., ¶ 7.

The District has submitted a document addressing every item on Huezo's interim barrier removal demand.[FN109] The document reflects what corrective work is recommended, what work Pierce College will perform, and the status of that work as of March 27, 2008.[FN110] It represents that the removal of many of the identified barriers is either complete or in progress, or that the barrier is no longer in existence.[FN111]

FN109. Nieman Decl., Exh. D ("Attachment A to Consent Decree-Injunctive Relief").

FN110. *Id.*

FN111. *Id.*, ¶ 4.

On May 20, 2008, Nieman prepared an updated status report regarding ongoing corrective work.[FN112] It reports that the following renovations have been completed: provision of accessible parking spaces at the Field House parking lot; installation of accessible hardware on doors in the South Gym, Life Sciences Building, History Building, Library, and Architecture Building; modifications to restrooms in the South Gym, Math Building, Computer Science Building, Library, and Architecture Building; provision of wheelchair-seating spaces in the Learning Center; and installation of signage for access to the Library.[FN113] Numerous other projects are in progress, or scheduled for the future.[FN114] The District notes that the Transition Plan identifies the barriers to be corrected, their location, the recommended correction, and the cost of the modification.[FN115] Garber states that Pierce College has contracted with Swinerton to classify items in the transition plan in three categories: (1) items that will be completed under a current bond project; (2) items that are not covered by a current bond project; and (3) items that are complete.[FN116] Given its progress in barrier removal, the District argues that a permanent injunction is not necessary.

FN112. *Id.*, Exh. E.

FN113. *Id.*

FN114. *Id.*

FN115. Def.'s Opp. at 9.

FN116. Garber Decl., ¶ 11, Exh. B. This document, which is undated, identifies no work that has been completed. (*Id.*, Exh. B).

The court appreciates that the extensive renovations necessary to make Pierce College readily accessible will take time. The District, however, has provided minimal details regarding the timing of some of the most necessary work. The District's Transition Plan, for example, does not set forth a schedule for taking the steps necessary to achieve accessibility. Nieman's status update provides greater detail, but indicates that some of the renovation projects will not commence for some time. Renovations to the Gym Building, for instance, will not begin until December 2008.[FN117] Parking Lot 1 and the Ag-Sciences Building are not scheduled to be renovated until Fall 2009. [FN118] No start date for work on items included in the "North of Mall Renovations" is provided.[FN119] Furthermore, with respect to particular barriers such as curb cuts and steep ramps, Nieman states only that they are "under review for means/methods & possible DSA review." [FN120]

FN117. Nieman Decl., Exh. E. The court notes that the only evidence offered regarding the scheduling of these renovations is found in one-line notations in Nieman's status update. The District provides no other information confirming the schedule of necessary barrier removal.

FN118. *Id.*

FN119. *Id.*

FN120. *Id.*

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***1067** Given its earlier holding that the numerous physical barriers on the Pierce College campus discriminated against Huezo on the basis of his disability, the court cannot accept the District's view that an injunction is unnecessary at the present time. It is undisputed that Huezo is still unable to travel to his architectural classes because there are no curb cuts along the walkways; is still unable safely to use ramps around the Math Building that are too steep and do not have handrails; and must still move his car or seek a special van ride to reach portions of campus that are inaccessible due to lack of accessible parking lots and paths of travel.[FN121] The District argues that the balance of hardships tips in its favor, "in light of the DSPS and myriad of non-structural program access [methods] available to students with disabilit[ies], and in light of the proven dedication of Pierce College to comply with the ADA through program changes and barrier removal." [FN122] The District, however, does not identify precisely what hardship it will suffer by being required to comply with its obligations under the ADA and the Rehabilitation Act in a timely fashion.

FN121. Supplemental Declaration of Marvin Huezo ("Huezo Supp. Decl."), ¶¶ 2-3.

FN122. Def.'s Opp. at 11.

The court accepts the District's representation that it is endeavoring to remove barriers on campus. The fact that it will not begin certain of the renovations for six months to a year, however, coupled with its failure to provide a specific time frame for completion of important renovation work, such as the creation of curb cuts and modification of ramps, shows that the current pace of barrier removal is inadequate. Huezo, moreover, has demonstrated that he will continue to take classes at Pierce College and therefore continue to suffer irreparable injury due to the numerous physical barriers to access. Accordingly, Huezo has shown he is entitled to a permanent injunction requiring the interim removal of barriers at Pierce College. The District is therefore enjoined to use its best efforts to remove interim barriers by December 31, 2008, making those related to paths of travel to classes and parking areas on campus a priority.[FN123] Cf. *Lonberg II*, 2007 WL 2005177 at *8.

FN123. In his Demand for Interim Barrier Removal, Huezo requests that much of the work be completed by the end of June 2008. (Barbosa Decl., Exh. 4). This accelerated schedule is impracticable given the amount of work to be performed and the fact that Huezo's motion was not heard until June 16, 2008.

3. Monitoring

Huezo argues that any permanent injunction must include a monitoring program to ensure that the District is complying with its obligation to modify its policies and procedures and remove interim physical barriers.[FN124] Given the District's persistent delays in making Pierce College readily accessible, the court agrees that monitoring is necessary. Accordingly, the court directs that the access expert/consultant the District has been ordered to hire monitor and oversee the progress of corrective work and implementation of modified policies. The access expert must submit status reports to the parties every three months following issuance of the injunction until the renovation work is complete. The status reports must identify the work completed, and the work that remains to be completed. Additionally, in the event the District is unable to remove all interim barriers on or before December 31, 2008, the District must notify plaintiff's counsel in writing within thirty days of learning that removal of a particular barrier will not be completed by the end of the year, state the reason for the delay, advise of the steps the District intends to take to ***1068** complete the work, and identify the anticipated completion date.

FN124. Pl.'s Mot. at 23.

III. CONCLUSION

For the reasons stated, the court grants Huezo's motion for permanent injunctive relief.

C.D.Cal.,2008.
Huezo v. Los Angeles Community College Dist.
672 F.Supp.2d 1045, 253 Ed. Law Rep. 652

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239 F.3d 1128, 11 A.D. Cases 765, 20 NDLR P 2, 01 Cal. Daily Op. Serv. 1295, 2001 Daily Journal D.A.R. 1631
(Cite as: 239 F.3d 1128)

▷

United States Court of Appeals,
Ninth Circuit.
Carolyn HUMPHREY, Plaintiff-Appellant,
v.
MEMORIAL HOSPITALS ASSOCIATION, Defendant-Appellee.
No. 98-15404.

Argued and Submitted Feb. 10, 1999.
Submission vacated Dec. 8, 1999.
Resubmitted Feb. 7, 2001.
Filed Feb. 13, 2001.

Medical transcriptionist with obsessive compulsive disorder (OCD) brought action against former employer alleging she was terminated in violation of the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA). The United States District Court for the Eastern District of California, Robert E. Coyle, J., granted summary judgment for employer, and transcriptionist appealed. The Court of Appeals, Reinhardt, Circuit Judge, held that: (1) genuine issues of material fact precluded summary judgment on ADA and FEHA claims, and (2) employer had affirmative duty to explore further arrangements to offer a reasonable accommodation.

Reversed and remanded.

West Headnotes

[1] Federal Courts 170B 776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
In ADA cases, as in all appeals, Court of Appeals reviews a grant of summary judgment de novo. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[2] Civil Rights 78 1225(2)

78 Civil Rights
78II Employment Practices
78k1215 Discrimination by Reason of Handicap, Disability, or Illness
78k1225 Accommodations
78k1225(2) k. What Are Reasonable Accommodations; Factors Considered. Most Cited Cases
(Formerly 78k173.1)
Americans with Disabilities Act (ADA) does not require an employee to show that a leave of absence is certain or even likely to be successful to prove that it is a reasonable accommodation under the ADA. Americans with Disabilities Act of 1990, §101(8), 42 U.S.C.A. § 12111(8).

[3] Federal Civil Procedure 170A 2497.1

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2497 Employees and Employment Discrimination, Actions Involving
170Ak2497.1 k. In General. Most Cited Cases
Genuine issues of material fact as to whether medical transcriptionist with obsessive compulsive disorder (OCD) would have been qualified for her position if employer had allowed her a leave-of-absence or a work-at-home position, precluded summary judgment for employer on transcriptionist's claims under the ADA and the California Fair Employment and Housing Act (FEHA). Americans with Disabilities Act of 1990, §101(8), 42 U.S.C.A. § 12111(8); West's Ann.Cal.Gov.Code § 12921 et seq.; 29 C.F.R. § 1630.2(o); Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

[4] Civil Rights 78 1225(4)

78 Civil Rights
78II Employment Practices
78k1215 Discrimination by Reason of Handicap, Disability, or Illness
78k1225 Accommodations
78k1225(4) k. Requesting and Choosing

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Accommodations; Interactive Process; Cooperation. Most Cited Cases
(Formerly 78k173.1)
Once an employer becomes aware of the need for an accommodation of employee's disability, the employer has a mandatory obligation under the ADA to engage in an interactive process with the employee to identify and implement appropriate reasonable accommodations. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[5] Civil Rights 78 1225(4)

78 Civil Rights
78II Employment Practices
78k1215 Discrimination by Reason of Handicap, Disability, or Illness
78k1225 Accommodations
78k1225(4) k. Requesting and Choosing Accommodations; Interactive Process; Cooperation. Most Cited Cases
(Formerly 78k173.1)
Employers who fail to engage in the interactive process with disabled employee to identify and implement appropriate reasonable accommodations in good faith face liability for the remedies imposed by the ADA if a reasonable accommodation would have been possible. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[6] Civil Rights 78 1225(4)

78 Civil Rights
78II Employment Practices
78k1215 Discrimination by Reason of Handicap, Disability, or Illness
78k1225 Accommodations
78k1225(4) k. Requesting and Choosing Accommodations; Interactive Process; Cooperation. Most Cited Cases
(Formerly 78k173.1)
Former employer had an affirmative duty under the ADA and the California Fair Employment and Housing Act (FEHA) to explore further arrangements to offer a reasonable accommodation for medical transcriptionist with obsessive compulsive disorder (OCD) before terminating her; although employer had already allowed transcriptionist a flexible start time, the accommodation was ineffective and transcriptionist had requested a work-at-home position or a leave-of-absence. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[7] Civil Rights 78 1217

78 Civil Rights
78II Employment Practices
78k1215 Discrimination by Reason of Handicap, Disability, or Illness
78k1217 k. Practices Prohibited or Required in General; Elements. Most Cited Cases
(Formerly 78k173.1)
Unlawful discharge claim under the ADA requires a showing that the employer terminated the employee because of his disability. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[8] Federal Civil Procedure 170A 2497.1

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2497 Employees and Employment Discrimination, Actions Involving
170Ak2497.1 k. In General. Most Cited Cases
Genuine issues of material fact as to whether former employer terminated hospital transcriptionist with obsessive compulsive disorder (OCD) because of her disability, precluded summary judgment for employer on transcriptionist's claims under the ADA and the California Fair Employment and Housing Act (FEHA). Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.; West's Ann.Cal.Gov.Code § 12921 et seq.; Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.
***1129** Jerry Budin,Green & Azevedo, Modesto, California, for the plaintiff-appellant.

John Edward Fischer, James Francis Curran, and Rhonda Canby of Diepenbrock, Wulff, Plant, and Hannegan LLP, Sacramento, California, for the defendant-appellee.

Appeal from the United States District Court for the Eastern District of California;***1130** Robert E. Coyle, District Judge, Presiding. D.C. No. CV-96-06025-REC.

Before: KRAVITCH,[FN1] REINHARDT, and T.G.

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239 F.3d 1128, 11 A.D. Cases 765, 20 NDLR P 2, 01 Cal. Daily Op. Serv. 1295, 2001 Daily Journal D.A.R. 1631
(Cite as: 239 F.3d 1128)

NELSON, Circuit Judges.

> FN1. The Honorable Phyllis A. Kravitch, Senior Judge, United States Court of Appeals for the Eleventh Circuit, sitting by designation.

REINHARDT, Circuit Judge:

Carolyn Humphrey brought suit against her former employer, Memorial Hospitals Association (MHA), under the Americans with Disabilities Act (ADA) and its California counterpart, the Fair Employment and Housing Act (FEHA) for failure to reasonably accommodate her disability and wrongful termination. We reverse the district court's grant of summary judgment in favor of MHA.

I. BACKGROUND

Humphrey worked for MHA as a medical transcriptionist from 1986 until her termination in 1995. At the time of her termination, she was earning approximately $11.00 per hour. Throughout her employment at MHA, Humphrey's transcription performance was excellent and consistently exceeded MHA's standards for speed, accuracy, and productivity.

In 1989, Humphrey began to experience problems getting to work on time, or at all. She engaged in a series of obsessive rituals that hindered her ability to arrive at work on time. She felt compelled to rinse her hair for up to an hour, and if, after brushing her hair, it didn't "feel right," she would return to the shower to wash it again. This process of washing and preparing her hair could take up to three hours. She would also feel compelled to dress very slowly, to repeatedly check and recheck for papers she needed, and to pull out strands of her hair and examine them closely because she felt as though something was crawling on her scalp. She testified that these obsessive thoughts and rituals made it very difficult to get to work on time. Once she realized that she was late, she would panic and become embarrassed, making it even more difficult for her to leave her house and get to work.

Due to Humphrey's difficulties with tardiness and absenteeism, MHA gave her a "Level I" disciplinary warning in June 1994. This warning required her to call her supervisor before the time she was due to be at work if she was going to be late or absent. Humphrey's mental obsessions and peculiar rituals only grew worse after the warning, and her attendance record did not improve; nor did her call-in rate. In December 1994, she received a "Level III" warning, which documented four tardy days and one unreported absence over a two week period.

When MHA gave Humphrey the Level III warning, she was told that she was expected to schedule and keep counseling appointments with the Employee Assistance Program (EAP). This counseling consisted of "tips," helpful hints such as getting up earlier and laying out clothes the night before. Humphrey found this somewhat helpful and attended several sessions, but her efforts to follow the "tips" were not particularly successful. After watching an episode of the Oprah Winfrey show devoted to attention deficit disorder, Humphrey began to suspect that her debilitating symptoms and inability to get to work on time might be related to a medical condition. In May, 1995, she asked MHA's EAP nurse, Elizabeth Pierson, if she could see a psychiatrist for an evaluation. Pierson agreed, and set up an appointment for a diagnostic evaluation and psychological testing with Dr. John Jacisin. MHA paid for the consultation through its EAP program.

Humphrey first saw Dr. Jacisin on May 12, 1995. Dr. Jacisin diagnosed her with obsessive compulsive disorder (OCD).[FN2] He ***1131** sent a letter explaining that diagnosis to Pierson on May 18, 1995, telling her that Humphrey's OCD "is directly contributing to her problems with lateness." In addition, the letter stated:

> FN2. Individuals with obsessive compulsive disorder experience obsessions or compulsions or both. *See* American Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 417 (4th ed.1994). Obsessions are recurring or persistent thoughts, images, or impulses that, rather than being voluntarily produced, seem to invade a person's consciousness despite his attempts to ignore, suppress, or control them. *See id.* at 418. Compulsions are urges or impulses to commit repetitive acts that are apparently meaningless, stereotyped, or ritualistic. *See id.* The disorder was recently made famous by Jack Nicholson's Oscar-winning portrayal of a man with OCD in the 1998 film *As Good*

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> *As it Gets.*
>
> I believe that we can treat this, although, the treatment may take a while. I do believe that she would qualify under the Americans with Disability Act, although, I would like to see her continue to work, but if it is proving to be a major personnel problem, she may have to take some time off until we can get the symptoms better under control.

Humphrey sought treatment from Dr. Jacisin and from a psychologist, Dr. Litynsky. Dr. Litynsky, like Dr. Jacisin, diagnosed Humphrey with OCD and concluded that it was probable that the OCD caused her absenteeism and tardiness. Humphrey had difficulty paying for the necessary services, however, because her insurance did not cover the treatment. In addition, due to the severe symptoms of her ailment, Humphrey had great difficulty showing up for appointments. Both doctors considered her inconsistency in treatment in 1995 and 1996 to be the result of the disorder as well as her financial problems. [FN3]

> FN3. Dr. Litynsky testified, "[h]er obsessive compulsive disorder was certainly the primary factor in her inability to appear for most of her missed sessions with me. If the same set of events were occurring while she was employed, I would believe that it was very likely a major factor in her nonappearance at work."

On June 7, 1995, Humphrey met with Pierson and Humphrey's supervisor, Carol Evans-Bowlsby, to review Dr. Jacisin's letter. What happened at this meeting is disputed. MHA contends that Humphrey rejected the leave of absence alluded to in the doctor's letter. Humphrey says that she was never offered a leave of absence and never rejected one. Instead, she testified that "they asked if I would like to keep working. And I said yes." She did not remember anyone using the term "leave of absence." (As it turns out, this factual dispute is not material to our ruling on appeal.)

Humphrey did want to try to keep working, if possible, and Pierson told her that she could have an "accommodation" that would allow her to do so. Pierson suggested, as an accommodation, that Humphrey have a friend or family member drive her to work every day. Humphrey said that this suggestion would not be feasible. Pierson next offered a flexible start-time arrangement in which Humphrey could begin work any time within a 24 hour period on days on which she was scheduled to work. Pierson asked her to think about whether this would help her and whether any other accommodation would be desirable, and asked her to submit any additional requests for accommodation in writing. A few days later, Humphrey sent Pierson a letter accepting the flexible start time arrangement, and saying that she "would still do my best to be at my work station at the earliest possible hour."

Nevertheless, Humphrey continued to miss work. It is disputed whether Humphrey's supervisor warned her about her conduct during the remainder of that summer. It is undisputed, however, that no one from MHA broached the subject of modifying the accommodation during that period. On September 18, 1995, Humphrey, upset about her continuing problems, sent Pierson an e-mail message asking for a new accommodation because the then-current one seemed to be failing:

> Dear Liz:
>
> It has now been a few months since I sent you a memo regarding how my disability would best be accommodated as far as my job performance. I have since come to the conclusion that I would be able to put in considerable ***1132** more hours [sic] and be much more productive if I were able to work from my home as a lot of other transcriptionists are doing.... I think this would be the ideal way to accommodate my diagnosed disability.

MHA allows certain medical transcriptionists to work out of their homes. Dr. Jacisin was not asked by anyone at MHA for his opinion on the work-at-home request. After Humphrey's termination, Jacisin said that working at home "might accommodate some of her work issues" but might be "anti-therapeutic." He testified, in his deposition in this lawsuit, that he felt working at home was an accommodation which would have been worth trying because it was necessary for Humphrey to earn money and increase her self-confidence.

In any event, Humphrey's request was summarily denied. In an e-mail message, Pierson denied her request for work-at-home accommodation on the ground of Humphrey's disciplinary warnings for tardiness and absenteeism. Pierson did not suggest an

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alternative accommodation or indicate that MHA would be receptive to reassessing its arrangements to accommodate Humphrey in light of the apparent failure of the flexible work schedule arrangement. Instead, she wrote:

> It is departmental policy that if you are involved in any disciplinary action you are ineligible to be a home based transcriptionist as per the AT HOME ARRANGEMENT FOR TRANSCRIPTIONISTS. Since you are currently involved in the discipline process, you are ineligible for being based at home. During our 6/7/95 meeting, you requested to be accommodated for your disability by having a flexible start time, stating that you would have no problems staying for a full shift once you arrived. You were given this flexible start time accommodation which continues to remain in effect. As for your productivity, your manager indicated that you consistently meet your hourly productivity requirements when you are at work.

Pierson's comment regarding Humphrey's productivity at work was typical of Humphrey's performance evaluations, which recognized her high level of competence but were tarnished by the problems caused by her disability. For example, in her annual performance review completed on September 26, 1995-approximately two weeks before she was terminated-Humphrey exceeded expectations in minutes typed per shift and in errors per 130 lines checked. She was one of the only transcriptionists who could accurately transcribe the comments of a particular group of physicians. Her review noted that this was "a very difficult task as the majority of physicians speak with very pronounced accents. You have done this very well as you have learned the accents and have become familiar with the styles." She was regarded as very cordial, considerate, honest, and tactful.

Humphrey's evaluation indicates that were it not for her ailment, she would have been a model employee. The only negative ratings she received were in relation to the problems caused by the interference of her symptoms and the accommodation of flexible start time.[FN4] Her evaluation stated that her recent unscheduled absences were "unacceptable," and advised that correcting her attendance problem was "a major goal for the upcoming year." During a meeting with her supervisor, Julie Vieira, to discuss her evaluation, Humphrey again raised the issue of working at home, but was told that she would have to be free of attendance problems for a year before she could be considered for an at-home transcriptionist position. Neither ***1133** Humphrey nor her supervisor suggested a medical leave of absence at this meeting.

> FN4. For example, she was criticized because she was "not able to learn and transcribe Pathology because of your inconsistent work hours. You are scheduled to start work at 10:00 a.m. but do not come to work before 4:00 p.m. which is after the deadline FOR Pathology." However, at this time Humphrey had been given permission to arrive at work after 4:00 p.m. in accordance with the flexible start-time accommodation.

Humphrey was absent two more times, and on October 10, 1995, Vieira fired her. MHA's stated reason for the termination was Humphrey's history of tardiness and absenteeism. Humphrey testified that after learning of her termination, she went across the hall to Pierson's office and asked if she might take a leave of absence instead of lose her job, but that Pierson refused and told her that she had had her chance at accommodation. Pierson denies that Humphrey requested a leave of absence on the day of her discharge. MHA concedes that it would have granted the request if Humphrey had asked for a leave of absence prior to her termination, as MHA had a policy of permitting medical leaves of absence to employees with disabilities.

On September 6, 1996, Humphrey brought suit against MHA for violation of the ADA and the FEHA.[FN5] The district court granted MHA's motion for summary judgment on the theory that MHA had satisfied its duty to reasonably accommodate Humphrey's disability. The district court found it "dispositive ... that Plaintiff was initially offered a leave of absence and rejected it, and then failed to request a leave of absence subsequently." Humphrey appeals the judgment entered in favor of MHA.

> FN5. Humphrey also brought claims for violation of the Family and Medical Leave Act, 29 U.S.C. §§ 2601-2654, and the California Family Rights Act, Cal. Govt.Code § 12945.2. However, Humphrey does not appeal the adverse judgment on those claims.

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239 F.3d 1128, 11 A.D. Cases 765, 20 NDLR P 2, 01 Cal. Daily Op. Serv. 1295, 2001 Daily Journal D.A.R. 1631
(Cite as: 239 F.3d 1128)

II. DISCUSSION

Humphrey contends that MHA violated the ADA and the FEHA by failing to reasonably accommodate her disability and by terminating her because of that disability. The ADA [FN6] provides that "[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability...." 42 U.S.C. § 12112(a). Title I of the ADA insures full opportunities for people with disabilities in the workplace by requiring reasonable accommodation of employees' disabilities by their employers. Under the ADA, the term "discriminate" is defined as including "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." 42 U.S.C. § 12112(b)(5)(A). To prevail on a claim of unlawful discharge under the ADA, the plaintiff must establish that he is a qualified individual with a disability and that the employer terminated him because of his disability. *Cooper v. Neiman Marcus Group*, 125 F.3d 786, 790 (1997). The ADA defines a "qualified individual with a disability" as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). A "disability" is "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." [FN7] 42 U.S.C. § 12102(2)(a).

> FN6. Because the FEHA provisions relating to disability discrimination are based on the ADA, decisions interpreting federal anti-discrimination laws are relevant in interpreting the FEHA's similar provisions. *See Brundage v. Hahn*, 57 Cal.App.4th 228, 235, 66 Cal.Rptr.2d 830 (Cal.Ct.App.1997). We analyze Humphrey's state and federal disability claims together, relying on federal authority in the absence of contrary or differing state law. *See id.*

> FN7. The statute's definition also includes "having a record of such an impairment," 42 U.S.C. § 12102(2)(B), or "being regarded as having such an impairment," 42 U.S.C. § 12102(2)(C). Humphrey argues only that she has an actual impairment under § 12102(2)(A).

[1] In ADA cases, as in all appeals, we review a grant of summary judgment de novo. ***1134***McAlindin v. County of San Diego*, 192 F.3d 1226, 1232 (9th Cir.), *amended* 201 F.3d 1211, and *cert. denied*, 530 U.S. 1243, 120 S.Ct. 2689, 147 L.Ed.2d 961 (2000).

A. QUALIFIED INDIVIDUAL WITH A DISABILITY

Because the district court granted summary judgment to MHA on the ground that it reasonably accommodated Humphrey, the court did not address whether Humphrey is a qualified individual with a disability. However, MHA asks us to uphold the judgment on the alternate ground that Humphrey is not disabled and that she is not a "qualified individual" for purposes of the ADA. Because we reject MHA's reasonable accommodation argument, we consider its alternate ground here.

Most of the issues relating to Humphrey's status as a qualified individual with a disability are legal. The primary factual dispute arises out of an equivocal report and declaration by defense expert Dr. Weissman. The report raises some question regarding the testimony of Drs. Jacisin and Litynsky that Humphrey suffered from OCD and that her condition caused her attendance problems. Dr. Weissman declares that although Humphrey may have suffered from OCD with psychotic features while employed by MHA, it is also possible that she was suffering from brief psychotic delusional episodes rather than OCD. He continues in his report: "It is a mistake to assume that the only explanation for her tardiness (or of anyone's) was obsessive compulsive disorder. There are lots of other problems that can result in chronic tardiness. And alternate sources of stress were operating in 1994 in Ms. Humphrey's life." If, as Dr. Weissman suggests, Humphrey's difficulties getting to work may not have stemmed from OCD but may have been attributable to other "problems," it is possible that Humphrey might not be a qualified individual with a disability under the ADA. Because Humphrey does not seek summary judgment, we need not determine whether the conclusory and somewhat ambiguous statements of Dr. Weissman are sufficient to create a triable issue of fact as to whether she is a qualified individual with a dis-

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ability (OCD or otherwise). Rather, for purposes of this appeal, we will assume without deciding that MHA has presented sufficient evidence to survive summary judgment on this point.

MHA also argues that Humphrey is not disabled for purposes of the ADA because she is not substantially limited in one or more of her major life activities. The EEOC regulations provide that "caring for oneself" is a major life activity. 29 C.F.R. § 1630.2(i). According to the EEOC, "[a]n impairment substantially limits an individual's ability to care for him/herself if, due to the impairment, an individual is significantly restricted as compared to the average person in the general population in performing basic activities such as getting up in the morning, bathing, dressing, and preparing and obtaining food." EEOC Enforcement Guidance: Psychiatric Disabilities and the ADA, FEP (BNA) 405:7461, at 7467 (March 25, 1997) [hereinafter EEOC Enforcement Guidance on Psychiatric Disabilities].[FN8]

> FN8. By contrast, the legislative definition of a "mental disability" in the FEHA does not require that the disability substantially limit a major life activity, but merely that it "limit" a major life activity. *See* Cal. Govt.Code § 12926(1). Because a triable issue of fact exists as to whether Humphrey is disabled under the ADA, a fortiori an issue of fact also exists as to whether she is disabled under the FEHA.

The facts are undisputed with regard to Humphrey's ability to care for herself.[FN9] The testimony of Humphrey and Dr. Jacisin, her mental health provider, reflects that it took Humphrey significantly more time than the average person to accomplish***1135** the basic tasks of washing and dressing. According to Humphrey, the process of washing and brushing her hair alone could take several hours, and she at times would prepare for work from eight o'clock in the morning until five or six o'clock in the evening. Dr. Jacisin testified that, on one OCD screening test, she was rated as taking three times as long as most people to shower, wash her hands, dress, and handle or cook food. MHA argues that even if Humphrey's ritualistic behaviors caused her to take more time to complete basic activities than the average person, she is not disabled under the ADA because her OCD did not prevent her from accomplishing those activities. As the Supreme Court has noted, however, "[t]he [Americans with Disabilities] Act addresses substantial limitations on major life activities, not utter inabilities." *Bragdon v. Abbott*, 524 U.S. 624, 641, 118 S.Ct. 2196, 141 L.Ed.2d 540 (1998). An impairment "substantially limits" one's ability to carry out a major life activity if, because of the impairment, the individual is "[s]ignificantly restricted as to the condition, manner, or duration under which an individual can perform a major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." 29 C.F.R. § 1630.2(j). An individual who has a physical or mental impairment that causes him to take inordinately more time than others to complete a major life activity is substantially limited as to that activity under the ADA. There is no dispute on the record before us that Humphrey falls within that category. Accordingly, in determining whether Humphrey is disabled for purposes of the ADA, the question is not whether she is substantially limited in her ability to care for herself, but whether she had OCD, and, if so, whether her OCD was the cause of her limitation.

> FN9. We need not address whether Humphrey is substantially limited in working. *See McAlindin*, 192 F.3d at 1233; EEOC Enforcement Guidance on Psychiatric Disabilities, at 7463 ("The first question is whether an individual is substantially limited in a major life activity other than working (e.g. sleeping, concentrating, caring for oneself). Working should be analyzed only if no other major life activity is substantially limited by an impairment.").

MHA next argues that Humphrey was not "qualified" for the medical transcriptionist position within the meaning of the ADA. A qualified individual is "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). It is undisputed that Humphrey had the skills, training, and experience to transcribe medical records. MHA contends that Humphrey's inability to show up for work and to notify her employer when she would be absent renders her not otherwise qualified under the ADA [FN10] because regular and predictable attendance is an essential function of the position.[FN11] However,

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Humphrey is a "qualified individual" under the ADA so long as she is able to perform the essential functions of her job "with or without reasonable accommodation." 42 U.S.C. § 12111(8). Either of two potential reasonable accommodations might have made it possible for Humphrey to perform the essential functions of her job: granting her a leave of absence or allowing her to become a "home-based transcriptionist."

> FN10. MHA also argues that Humphrey's inability to perform her job duties extended beyond her attendance difficulties. However, the only negative comments on her evaluations are related to attendance. For example, she was unable to learn and transcribe pathology because she was unable to arrive at work consistently before the pathology department's four o'clock deadline. Her poor scores for attendance and attendance-related activities and policies resulted in a "below average" overall rating.

> FN11. Humphrey concedes that regular and predictable job performance is an essential function of the MHA medical transcriptionist position. We note that although excessive or unscheduled absences may prevent an employee from performing the essential functions of his job and thereby render him not otherwise qualified for purposes of the ADA, regular and predictable attendance is not per se an essential function of all jobs.

A leave of absence for medical treatment may be a reasonable accommodation under the ADA. *See* 29 C.F.R. 1630 app. § 1630.2(*o*). We have held that where a leave of absence would reasonably accommodate an employee's disability and permit him, upon his return, to perform the ***1136** essential functions of the job, that employee is otherwise qualified under the ADA. *See Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1247 (9th Cir.1999).

[2][3] MHA contends that Humphrey is not otherwise qualified because the results of the leave of absence were speculative. However, the ADA does not require an employee to show that a leave of absence is certain or even likely to be successful to prove that it is a reasonable accommodation. In *Kimbro v. Atlantic Richfield Co.*, 889 F.2d 869 (9th Cir.), *cert. denied*, 498 U.S. 814, 111 S.Ct. 53, 112 L.Ed.2d 28 (1990), we held that a leave of absence was a reasonable accommodation for an employee whose cluster migraine headaches, a condition for which there was no specific treatment program, caused him sporadically to miss work.[FN12] We noted that

> FN12. *Kimbro* involved the Washington state handicap laws, which are similar to the ADA and the FEHA. *See Schmidt v. Safeway, Inc.*, 864 F.Supp. 991, 996 (D.Or.1994); *Prilliman v. United Air Lines, Inc.*, 53 Cal.App.4th 935, 949 n. 3, 62 Cal.Rptr.2d 142 (Cal.Ct.App.1997); *see also Sanders v. Arneson Prod. Inc.*, 91 F.3d 1351, 1354 (9th Cir.), *cert. denied*, 520 U.S. 1116, 117 S.Ct. 1247, 137 L.Ed.2d 329 (1997) (relying on *Kimbro* when construing the ADA).

> [w]hile it is altogether possible that Kimbro's migraine episodes may have recurred upon his return to work following a leave of absence, such a possibility does not foreclose a finding of liability for failure to accommodate Kimbro's migraines.... As long as a reasonable accommodation available to the employer could have plausibly enabled a handicapped employee to adequately perform his job, an employer is liable for failing to attempt that accommodation.

Id. at 879. The statements in Dr. Jacisin's letter that Humphrey's condition was treatable and that "she may have to take some time off until we can get the symptoms better under control" are sufficient to satisfy the minimal requirement that a leave of absence could plausibly have enabled Humphrey adequately to perform her job.[FN13] We discuss in Section C below MHA's contention that it was not required to offer Humphrey a leave of absence or other accommodation unless she specifically requested it.[FN14]

> FN13. Of course, the requirement to grant a leave where there are plausible reasons to believe that it would accommodate the employee's disability can not be repeatedly invoked, thus permitting an unqualified employee to avoid termination by requesting a leave of absence each time he is about to be fired. As we noted in *Kimbro*, the fact that a prior leave was granted and was unsuccessful may be a relevant consideration in deter-

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mining whether additional leave would be a reasonable accommodation. *Kimbro*, 889 F.2d at 879 n. 10.

FN14. We also note that an employer need not make an accommodation, including granting a leave of absence, if it poses an undue hardship. 42 U.S.C. § 12112(b)(5)(A). However, MHA makes no such contention here.

There is another reasonable accommodation that could also serve to render Humphrey a "qualified individual." There is at least a triable issue of fact as to whether Humphrey would have been able to perform the essential duties of her job with the accommodation of a work-at-home position. Working at home is a reasonable accommodation when the essential functions of the position can be performed at home and a work-at-home arrangement would not cause undue hardship for the employer. EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, FEP (BNA) 405:7601, at 7626 (March 1, 1999) [hereinafter EEOC Enforcement Guidance on Reasonable Accommodation].[FN15] Humphrey does not dispute ***1137** that regular and predictable performance of the job is an essential part of the transcriptionist position because many of the medical records must be transcribed within twenty-four hours, and frequent and unscheduled absences would prevent the department from meeting its deadlines. However, physical attendance at the MHA offices is not an essential job duty; in fact, the record makes it clear that MHA permits some of its medical transcriptionists to work at home.

FN15. Courts have taken differing approaches toward working at home as an accommodation. *Compare Vande Zande v. Wisconsin Dept. of Admin.*, 44 F.3d 538, 544-45 (7th Cir.1995) (holding that an employer is not required to allow disabled workers to work at home except in extraordinary circumstances), *with Langon v. Department of Health and Human Servs.*, 959 F.2d 1053, 1060-61 (D.C.Cir.1992) (holding that an employer must consider requested accommodation of working at home), *cited with approval in Buckingham v. United States*, 998 F.2d 735, 740 (9th Cir.1993). We see no reason not to follow the approach taken by the EEOC in its Enforcement Guidance.

MHA denied Humphrey's application for a work-at-home position because of her disciplinary record, which consisted of Level I and Level III warnings for tardiness and absenteeism prior to her diagnosis of OCD. It would be inconsistent with the purposes of the ADA to permit an employer to deny an otherwise reasonable accommodation because of past disciplinary action taken due to the disability sought to be accommodated. Thus, Humphrey's disciplinary record does not constitute an appropriate basis for denying her a work-at-home accommodation.

Although Dr. Jacisin was less optimistic about Humphrey's working at home than he was about a leave of absence, Humphrey has submitted sufficient evidence to raise an issue of fact as to whether she could perform the job with the accommodation of a work-at-home position. She testified that her ailment interfered primarily with her ability to leave her house in the morning. Dr. Jacisin stated that working at home "might accommodate some of her work issues," and later testified that he felt working at home would have been worth trying because "her OCD really didn't interfere necessarily with her ability to do the work, that is to actually do the typing and transcription." A reasonable jury could conclude that if Humphrey was relieved of the stress of having to leave the house, she could perform her transcriptionist duties and thus was "qualified" under the ADA.

Accordingly, we hold that MHA is not entitled to summary judgment on the issue of whether Humphrey is a "qualified individual with a disability" for purposes of the ADA.

B. BREAKDOWN OF THE INTERACTIVE PROCESS

The remaining question with respect to the duty to accommodate is a purely a legal one: was MHA obligated to suggest a leave of absence or to explore other alternatives in response to Humphrey's request for a work-at-home position, or was it Humphrey's burden to make an express request for a leave of absence before she was terminated? We conclude, as a matter of law, that (assuming Humphrey was a qualified individual with a disability) MHA had an affirmative duty under the ADA to explore further me-

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thods of accommodation before terminating Humphrey.

[4][5] Once an employer becomes aware of the need for accommodation, that employer has a mandatory obligation under the ADA to engage in an interactive process with the employee to identify and implement appropriate reasonable accommodations. *Barnett v. U.S. Air,* 228 F.3d 1105, 1114 (9th Cir.2000). "An appropriate reasonable accommodation must be effective, in enabling the employee to perform the duties of the position." *Id.* at 1115. The interactive process requires communication and good-faith exploration of possible accommodations between employers and individual employees, and neither side can delay or obstruct the process. *Id.* at 1114-15; *Beck v. University of Wis. Bd. of Regents,* 75 F.3d 1130, 1135 (7th Cir.1996) ("A party that obstructs or delays the interactive process is not acting in good faith. A party that fails to communicate, by way of initiation or response, may also be acting in bad faith."). Employers, who fail to engage in the interactive process in good faith, face liability for the remedies ***1138** imposed by the statute if a reasonable accommodation would have been possible. *Barnett,* 228 F.3d at 1116.

Moreover, we have held that the duty to accommodate "is a 'continuing' duty that is 'not exhausted by one effort.' " *McAlindin,* 192 F.3d at 1237. The EEOC Enforcement Guidance notes that "an employer must consider each request for reasonable accommodation," and that "[i]f a reasonable accommodation turns out to be ineffective and the employee with a disability remains unable to perform an essential function, the employer must consider whether there would be an alternative reasonable accommodation that would not pose an undue hardship." EEOC Enforcement Guidance on Reasonable Accommodation, at 7625. Thus, the employer's obligation to engage in the interactive process extends beyond the first attempt at accommodation and continues when the employee asks for a different accommodation or where the employer is aware that the initial accommodation is failing and further accommodation is needed. This rule fosters the framework of cooperative problem-solving contemplated by the ADA, by encouraging employers to seek to find accommodations that really work, and by avoiding the creation of a perverse incentive for employees to request the most drastic and burdensome accommodation possible out of fear that a lesser accommodation might be ineffective.

When MHA received Dr. Jacisin's letter diagnosing Humphrey with OCD, MHA properly initiated the interactive process by arranging a meeting to discuss possible accommodations. Dr. Jacisin's statement "I would like to see her continue to work, but if it is proving to be a major personnel problem, she may have to take some time off until we can get the symptoms better under control" alerted MHA to the possibility that any initial arrangement that kept Humphrey on the job might not be effective and that a leave of absence might ultimately be necessary to accommodate her disability. In fact, it is MHA's position, disputed by Humphrey, that MHA explicitly offered her a leave at the June 7 meeting, and that it was Humphrey who decided that flexible scheduling was the better choice. Even if we assume that Humphrey turned down the leave of absence in June in favor of a flexible start-time arrangement, her attempt to perform her job functions by means of a less drastic accommodation does not forfeit her right to a more substantial one upon the failure of the initial effort.

[6] By the time of her annual performance review in September, it was abundantly clear to MHA that the flexible start time accommodation was not succeeding; Humphrey had accumulated six unreported absences in each of the months of August and September, and her evaluation stated that her attendance record was "unacceptable." At this point, MHA had a duty to explore further arrangements to reasonably accommodate Humphrey's disability.

Humphrey also realized that the accommodation was not working, and requested a work at home position. When it received that request, MHA could have either granted it or initiated discussions with Humphrey regarding other alternatives. [FN16] Instead, MHA denied her request without suggesting any alternative solutions, or exploring with her the possibility of other accommodations. Rather than fulfill its obligation to engage in a cooperative dialogue with Humphrey, Pierson's e-mail suggested that the matter was closed: "During our 6/7/95 meeting, you requested ***1139** to be accommodated for your disability by having a flexible start time, stating that you would have no problems staying for a full shift once you arrived. You were given this flexible start time accommodation which continues to remain in effect." We held in *Barnett* that an employer fails to engage in the interactive process as a matter of law where it rejects the

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employee's proposed accommodations by letter and offers no practical alternatives. *See* Barnett, 228 F.3d at 1116-17. Similarly, MHA's rejection of Humphrey's work-at-home request and its failure to explore with Humphrey the possibility of other accommodations, once it was aware that the initial arrangement was not effective, constitutes a violation of its duty regarding the mandatory interactive process.

> FN16. As we have discussed, working at home is a reasonable accommodation when the essential functions of the position can be performed at home and a work-at-home arrangement would not cause an undue hardship for the employer. EEOC Enforcement Guidance on Reasonable Accommodation, at 7626. Although MHA may have violated the ADA by refusing her request for a work at home accommodation, we do not reach this issue because on appeal Humphrey argues only the failure to grant a leave of absence as a violation of the duty to accommodate.

Given MHA's failure to engage in the interactive process, liability is appropriate if a reasonable accommodation without undue hardship to the employer would otherwise have been possible. *See id.* at 1117. As we have already discussed, a leave of absence was a reasonable accommodation for Humphrey's disability.[FN17] Ordinarily, whether an accommodation would pose an undue hardship on the employer is a factual question. Here, however, MHA has conceded that granting a leave of absence would not have posed an undue hardship. MHA had a policy of granting leaves to disabled employees, and admits that it would have given Humphrey a leave had she asked for one at any time before her termination. MHA's ultimate position, therefore, is simply that Humphrey is not entitled to a leave of absence because she failed to ask for one before she was fired. As we have explained, however, MHA was under a continuing duty to offer a reasonable accommodation. Accordingly, we hold as a matter of law (again, assuming that Humphrey is a qualified individual with a disability) that MHA violated the ADA's reasonable accommodation requirement.

> FN17. *See* Section IIA *supra.*

C. REASON FOR TERMINATION

[7][8] Unlike a simple failure to accommodate claim, an unlawful discharge claim requires a showing that the employer terminated the employee because of his disability. *See* Cooper v. Neiman Marcus Group, 125 F.3d 786, 790 (1997). Often the two claims, are, from a practical standpoint, the same. For the consequence of the failure to accommodate is, as here, frequently an unlawful termination. In this case, MHA's stated reason for Humphrey's termination was absenteeism and tardiness. For purposes of the ADA, with a few exceptions,[FN18] conduct resulting from a disability is considered to be part of the disability, rather than a separate basis for ***1140** termination. *See* Hartog v. Wasatch Academy, 129 F.3d 1076, 1086 (10th Cir.1997). The link between the disability and termination is particularly strong where it is the employer's failure to reasonably accommodate a known disability that leads to discharge for performance inadequacies resulting from that disability. *See* Borkowski v. Valley Central Sch. Dist., 63 F.3d 131, 143 (2d Cir.1995). In *Kimbro,* for example, we found that there was a sufficient causal connection between the employee's disability and termination where the employee was discharged for excessive absenteeism caused by migraine-related absences. *See* Kimbro, 889 F.2d at 875. Similarly, Humphrey has presented sufficient evidence to create a triable issue of fact as to whether her attendance problems were caused by OCD. In sum, a jury could reasonably find the requisite causal link between a disability of OCD and Humphrey's absenteeism and conclude that MHA fired Humphrey because of her disability.

> FN18. The text of the ADA authorizes discharges for misconduct or inadequate performance that may be caused by a "disability" in only one category of cases-alcoholism and illegal drug use: "[An employer] may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee." 42 U.S.C. § 12114(c)(4). In line with this provision, we have applied a distinction between disability-caused conduct and disability itself as a cause for termination only in cases involving illegal drug use or alcoholism. *See* Newland v. Dalton, 81 F.3d 904, 906 (9th Cir.1996) (holding that an

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employer may fire an employee who went on a "drunken rampage" and attempted to fire an assault rifle at individuals in a bar); *Collings v. Longview Fibre Co.*, 63 F.3d 828, 832 (9th Cir.), *cert. denied,* 516 U.S. 1048, 116 S.Ct. 711, 133 L.Ed.2d 666 (1996) (employees discharged for drug-related misconduct at the workplace); *see also Hartog,* 129 F.3d at 1085-88 (reviewing cases in all circuits and finding that "the disability vs. disability-caused conduct dichotomy seems to be unique to alcoholism and drugs."). In *Newland,* however, we suggested that an additional exception might apply in the case of "egregious and criminal conduct" regardless of whether the disability is alcohol- or drug-related. *See Newland,* 81 F.3d at 906 ("Attempting to fire a weapon at individuals is the kind of egregious and criminal conduct which employees are responsible for regardless of any disability."). Any such exception would not be applicable to Humphrey's absences or tardiness.

III. CONCLUSION

For the foregoing reasons, the district court's grant of summary judgment to MHA on Humphrey's ADA and FEHA claims is hereby REVERSED and the case is REMANDED for proceedings consistent with this opinion.

C.A.9 (Cal.),2001.
Humphrey v. Memorial Hospitals Ass'n
239 F.3d 1128, 11 A.D. Cases 765, 20 NDLR P 2, 01 Cal. Daily Op. Serv. 1295, 2001 Daily Journal D.A.R. 1631

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MICHAEL HUTNICK et al., Plaintiffs and Appellants,
v.
UNITED STATES FIDELITY AND GUARANTY COMPANY et al., Defendants and Respondents

No. S005221.

Supreme Court of California
Dec 1, 1988.

SUMMARY

Holders of a mechanic's lien brought an action to foreclose on the lien. During the pendency of the action, the subject property was purchased by a third party. The purchaser recorded a mechanic's lien release bond pursuant to Civ. Code, § 3143, and served notice of the recording on the lienholders. The lienholders thereafter amended their foreclosure complaint to name the surety on the release bond as a defendant and to add a cause of action for recovery on the bond. The surety demurred to the amended complaint, on the ground that suit on the lien release bond had not been brought within the six-month period of limitations in Civ. Code, § 3144.5, for an action on the bond. The trial court sustained the demurrer without leave to amend, entering a judgment of dismissal in favor of the surety. (Superior Court of Sacramento County, No. 308313, James Timothy Ford, Judge.) The Court of Appeal, Third Dist., No. C000785, affirmed.

The Supreme Court reversed the judgment of the Court of Appeal. It held that the statute of limitations for an action on a mechanic's lien release bond does not apply to a pending lien foreclosure action, which is only later amended to add an action on a release bond executed after initiation of the foreclosure action. Rather, it held, the limitations period of § 3144.5 is applicable only when the bond is recorded before the commencement of the lien foreclosure action, in which case the action on the bond is in effect a substitute for, rather than a continuation of or sequel to, a foreclosure action against the liened property. Therefore, it held, the surety was precluded from invoking the limitations period of § 3144.5 as a defense to the lien foreclosure action. (Opinion by Kaufman, J., with Lucas, C. J., Mosk, Broussard, Panelli, Arguelles and Eagleson, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Mechanics' Liens § 10--Release Bonds--Time for Bringing Action on Bond--Where Timely Filed Lien Foreclosure Action Already Pending.

The statute of limitations for an action on a mechanic's lien release bond (Civ. Code, § 3144.5), six months from the recording of the bond, does not apply to pending lien foreclosure actions commenced before the recording of the release bond. The limitations period applies only when the bond is recorded before commencement of a foreclosure action, in which case the action on the bond is in effect a substitute for, rather than a continuation of or sequel to, a foreclosure action against the liened property. Thus, in a properly pleaded mechanic's lien foreclosure action timely filed before the recording of a release bond by the purchaser of the subject property, plaintiffs' third amended complaint alleging the subsequent recording of the bond and adding the bond surety as a defendant was not subject to the limitations period in Civ. Code, § 3144.5, and the trial court therefore erred in sustaining without leave to amend the surety's demurrer to the amended complaint, with regard to suit on the release bond, on the ground of expiration of the limitations period.

[See **Cal.Jur.3d,** Mechanics' Liens, §§ 105, 116 et seq.; **Am.Jur.2d,** Mechanics' Liens, § 356.]

(2) Mechanics' Liens § 1--Constitutional Provisions--Liberal Construction.

The mechanic's lien is the only creditors' remedy stemming from constitutional command (Cal. Const., art. XIV, § 3). The courts have uniformly classified the mechanic's lien laws as remedial legislation, to be liberally construed for the protection of laborers and materialmen. State policy strongly supports the preservation of laws which give laborers and materialmen security for their claims.

(3) Mechanics' Liens § 10--Release Bonds--Nature and Purpose.

The purpose of the mechanic's lien release bond procedure is to provide a means by which, before a final determination of the lien claimant's rights and without prejudice to those rights, the property may be

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freed of the lien. This procedure protects the lien claimant by providing an alternate source of recovery on the claim of lien. The release bond procedure therefore does not deprive the lien claimant of its constitutional right to a lien. The recording of the release bond does not extinguish the lien; rather, the bond is substituted for the land as the object to which the lien attaches.

(4) Limitation of Actions § 52--Commencement of Proceedings--Amendments.

Once an action has been timely commenced by the filing of a complaint, the filing of a supplemental or amended complaint which does not introduce a new cause of action is not subject to the statute of limitations.

(5) Limitation of Actions § 54--Mechanic's Lien Foreclosure Action-- Amendment to Add Count Against Surety on Release Bond Executed Subsequent to Commencement of Foreclosure Action.

In a properly pleaded mechanic's lien foreclosure action, an amended or supplemental complaint alleging the recording of a release bond and adding the bond surety as a party defendant does not introduce a new cause of action, but is merely a continuation of the initial foreclosure cause of action. Thus, it is not subject to the six-month statute of limitations contained in Civ. Code, § 3144.5, for an action on a mechanic's lien release bond.

(6) Statutes § 43--Construction--Aids--Committee Reports.

Reports of legislative committees and commissions are part of a statute's legislative history, and may be considered when the meaning of a statute is uncertain. It is reasonable to infer that those who actually voted on the proposed measure read and considered the materials presented in explanation of it, and that the materials therefore provide some indication of how the measure was understood at the time by those who voted to enact it.

(7) Mechanics' Liens § 10--Release Bonds--Statutory Period of Limitations for Bringing Action on Bond--Purpose--Commencement of Correct Form of Action.

The Legislature's intent in enacting Civ. Code, § 3144.5, providing a six-month statute of limitations for an action on a mechanic's lien release bond, was to resolve a preexisting uncertainty regarding the limitations period for an action on a release bond, and to provide for prompt notification of the lienholder so that if the bond is recorded before the lienholder has commenced any suit, the lienholder will be aware of the controlling limitations period and will frame the complaint initially as an action to foreclose on the bond, rather than as an action to foreclose on the liened property. There is no indication that the statute of limitations of § 3144.5 was intended to apply to a lien foreclosure action already pending at the time of the bond's recording.

(8) Statutes § 40--Construction--Avoiding Constitutional Difficulties.

Statutes should be interpreted in a manner which avoids constitutional difficulties.

(9a, 9b) Limitation of Actions § 15--By and Against Whom Statute May Be Pleaded--Successor of Party Timely Sued--Surety on Mechanic's Lien Release Bond.

The surety on a mechanic's lien release bond may not assert the statute of limitations as a defense to a cause of action to foreclose on the bond, where previously an action to foreclose on the property subject to the lien has been timely filed against the principal on the bond. Although such a case does not involve a direct substitution of parties, it is similar in that the release bond has been substituted in place of the liened property after the cause of action accrued, and the new party's liability is premised on the substitution.

(10) Limitation of Actions § 15--By and Against Whom Statute May Be Pleaded--Successor of Party Timely Sued.

The statute of limitations provides no defense to the successor of a party timely sued. Thus, for example, where an individual defendant dies or becomes incompetent, where title to property at issue is transferred, or where a corporate defendant is merged or dissolved, the substitution of a representative or successor in place of the named defendant may not be challenged on the ground that the statute of limitations has expired as to the representative or successor.

(11) Mechanics' Liens § 21--Execution and Filing of Mechanic's Lien Release Bond--Continued Liability of Principal on Bond.

A property owner who is a principal on a mechanic's lien release bond is not entitled to a dismissal from the underlying lien foreclosure action that is

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pending when the bond is executed and recorded, but must remain to defend against the lienholder's claim.

(12) Mechanics' Liens § 10--Release Bonds--Bond Principal Not Named or Served in Action.

If only the surety on a mechanic's lien release bond is joined as a defendant to the underlying action to enforce the mechanic's lien, and the release-bond principal is not joined, the resulting judgment will nevertheless be binding on the principal, provided only that the surety has given notice to the principal and an opportunity at the surety's request to join in the defense. A principal notified of the action by the surety will have the same motivation to defend the action as if formally named as a party, because the judgment will be equally conclusive as a determination of the principal's liability. Consequently, the surety has the means to call upon the principal to defend the lien foreclosure action.

COUNSEL

Kent Walker, Stephen J. Gay, Deborah D. Ditore and Bullen, McKinley, Gay, Keitges & Pach for Plaintiffs and Appellants.

James B. Thompson for Defendants and Respondents.

KAUFMAN, J.

As provided by Civil Code section 3144.5, [FN1] the statute of limitations for an action on a mechanic's lien release bond is six months from the recording of the bond. (1a) We granted review in this case to determine how this statute of limitations affects a mechanic's lien foreclosure action commenced *before* the recording of the release bond. For the reasons to follow, we conclude that section 3144.5's limitation period was not intended to and does not apply to pending lien foreclosure actions. Accordingly, if a lien foreclosure action has been timely filed before the recording of the bond and the surety has thereafter been made a party defendant to the action, the surety may not invoke section 3144.5's limitations period as a defense.

FN1 All further statutory references are to the Civil Code unless otherwise stated.

Factual and Procedural Background

According to the allegations of their third amended complaint, which we assume to be true for purposes of this appeal (*Perdue* v. *Crocker National Bank* (1985) 38 Cal.3d 913, 922 [216 Cal.Rptr. 345, 702 P.2d 503]), plaintiffs Michael Hutnick and Tree Care, Inc., entered into an oral agreement with Thomas R. Henderson (Henderson) and Murieta Village Development Company (Murieta) to perform services consisting of planting, trimming, tree removal and insect control. The work was to be performed on property which Murieta was in the process of buying from Tana Investments (Tana) under a duly recorded installment contract. Plaintiffs fully performed under the agreement but were paid only $8,000 against a total bill of $29,208. In October 1982 plaintiffs recorded a mechanic's lien against the property on which the work had been performed.

In December 1982, plaintiffs timely filed a complaint alleging a common count to recover an agreed sum for work performed, a count seeking damages for breach of an oral contract, and a count seeking to foreclose the mechanic's lien. Plaintiffs subsequently filed first and second amended ***461** complaints adding a cause of action for declaratory relief and making other minor changes. The defendants named in these pleadings included Murieta, Henderson, Tana, and defendants designated by fictitious name as Does I through XXX. The fictitiously named defendants were alleged to be persons claiming an interest in the liened property and persons acting as agents for the other defendants.

While the action was pending, Fred Anderson (Anderson) acquired Tana's interest in the property and instituted foreclosure proceedings which resulted in the property being freed from Murieta's installment contract. On July 26, 1985, Anderson recorded a lien release bond from United States Fidelity and Guaranty Company (United) pursuant to section 3143. [FN2] On July 30, 1985, notice of the release bond's recording was served on plaintiffs as required by section 3144.5. [FN3] In March 1986 plaintiffs served United as Doe V with summons and the second amended complaint.

FN2 Section 3143 reads: "If the owner of property, or the owner of any interest therein, sought to be charged with a claim of lien, or any original contractor or subcontractor disputes the correctness or validity of any claim of lien, he may record in the office of the county recorder in which such claim of lien was recorded, either before or after the

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commencement of an action to enforce such claim of lien, a bond executed by a corporation authorized to issue surety bonds in the State of California, in a penal sum equal to 1 1/2 times the amount of the claim or 1 1/2 times the amount allocated in the claim of lien to the parcel or parcels of real property sought to be released, which bond shall be conditioned for the payment of any sum which the claimant may recover on the claim together with his costs of suit in the action, if he recovers therein. Upon the recording of such bond the real property described in such bond is released from the lien and from any action brought to foreclose such lien. The principal upon such bond may be either the owner of the property or the owner of any interest therein, or any original contractor, subcontractor, or sub-subcontractor affected by such claim of lien."

FN3 Section 3144.5 provides: "Any person who obtains a lien release bond which is recorded pursuant to Section 3143 shall give notice of the recording to the lienholder by mailing a copy of the bond to the lienholder at the address appearing on the lien. Service of the notice shall be by certified or registered mail, return receipt requested. Failure to give the notice provided by this section shall not affect the validity of the lien release bond, but the statute of limitations on any action on the bond shall be tolled until the notice is given. Any action on the lien release bond shall be commenced by the claimant within six months of the recording of the lien release bond."

United demurred and the court sustained its demurrer with leave to amend on the ground the complaint stated no cause of action against United and, in particular, stated no cause of action on the lien release bond. Plaintiffs then filed a "third amended complaint" adding a cause of action for recovery on the bond. Both United and Anderson were named as defendants to this cause of action but Anderson was not served and has not appeared in the action. United demurred to the "third amended complaint" on the ground suit on the lien release bond had not been brought within six months of the bond's recording as required by section 3144.5. This demurrer ***462** was sustained without leave to amend and judgment was entered accordingly in favor of United. [FN4]

FN4 A demurrer by Tana to the cause of action for foreclosure of the mechanic's lien was also sustained without leave to amend but the suit remains pending as an action for breach of contract against Henderson and Murieta.

Plaintiffs appealed and the Court of Appeal affirmed, stating that when a valid mechanic's lien release bond is recorded, a pending mechanic's lien foreclosure action is "terminated" and the owner of the liened property is entitled to a dismissal, leaving no party in privity with the surety to be bound by a judgment in the action. Surmising that one purpose of section 3144.5 was to provide a mechanism for bringing a release bond surety into a lien foreclosure action once the lien was released, the Court of Appeal concluded that when the release bond is recorded during a pending foreclosure action, the lienholder is required, within six months of the bond's recording, to file a supplemental complaint stating an action on the bond. As plaintiffs had failed to file a supplemental complaint stating an action on the bond issued by United within six months of its recording, the Court of Appeal concluded that any recovery on the bond was barred by section 3144.5 and that United's demurrer had been properly sustained. We granted review to determine whether these conclusions are correct. We conclude they are incorrect.

Discussion

Mechanic's lien law derives from our state Constitution, which provides: "Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens." (Cal. Const., art. XIV, § 3.) The mechanic's lien is the only creditors' remedy stemming from constitutional command and our courts "have uniformly classified the mechanics' lien laws as remedial legislation, to be liberally construed for the protection of laborers and materialmen." (*Connolly Development, Inc. v. Superior Court* (1976) 17 Cal.3d 803, 826-827 [132 Cal.Rptr. 477, 553 P.2d 637], fn. omitted.) "[S]tate policy strongly supports the preservation of laws which give

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the laborer and materialman security for their claims." (*Id.* at p. 827.)

(3) The purpose of the release bond procedure is to provide a means by which, before a final determination of the lien claimant's rights and without prejudice to those rights, the property may be freed of the lien, so that it may be sold, developed, or used as security for a loan. [FN5] Section 3143 ***463** provides that a mechanic's lien release bond "shall be conditioned for the payment of any sum which the claimant may recover on the claim together with his costs of suit in the action, if he recovers therein." The "claim" for which the principal and surety assume liability in the bond is the "claim of lien." (See fn. 2, *ante*.) The release bond procedure thus protects the lien claimant by providing an alternate source of recovery on the claim of lien. The release bond procedure "does not deprive the [lien claimant] of its constitutional right to a lien" but "[o]n the contrary, it provides for the speedy and efficient *enforcement* of such lien ...." (*Frank Curran Lbr. Co. v. Eleven Co.* (1969) 271 Cal.App.2d 175, 184 [76 Cal.Rptr. 753], italics added.) The recording of the release bond does not extinguish the lien; rather, the bond is substituted for the land as the object to which the lien attaches. (See Marsh, Cal. Mechanics' Lien Law (3d rev. ed. 1988) § 8.28 ["The recordation of the bond in effect transfers the claim of lien from the owner's land to the bond."].)

> FN5 Under section 3171, a release bond may also be used to release construction funds withheld pursuant to a stop notice.

(1b) Because recovery on the bond is a part of the process for enforcing the mechanic's lien, authorities from other jurisdictions have concluded that a cause of action to foreclose a mechanic's lien is substantially the same whether relief is sought against the liened property or against a bond which has been substituted for the property. Thus it has been said that the bond "does not change the relation or rights of the parties otherwise than in substituting its obligations for the [property] subject to the lien, and it was not within the legislative purpose in permitting the substitution to deteriorate the lienor's rights." (*Harley v. Plant* (1914) 210 N.Y. 405, 410 [104 N.E. 946, 947]; see also, *United States v. Certified Industries, Inc.* (2d Cir. 1966) 361 F.2d 857, 861; *Ohio Plate Glass Company v. Paskin* (1965) 4 Ohio Misc. 136 [33 Ohio Ops.2d 179; 209 N.E.2d 640, 642] [amendment of complaint alleging recording of bond and seeking relief against surety "does not change the cause of action in any way"].)

Recognizing that only a single cause of action is involved, courts of other jurisdictions have held that if a mechanic's lien foreclosure action has been timely commenced and the complaint is then amended to bring in a surety and to obtain relief on a lien release bond, the amendment is not itself subject to any limitations period. (*Ohio Plate Glass Company v. Paskin, supra*, 209 N.E.2d 640, 642; *American Fire & Cas. Co. v. Davis Water & Waste* (Fla.App. 1978) 358 So.2d 225, 227; see also, *Canam Systems v. Lake Buchanan Dev. Corp.* (Fla.App. 1979) 375 So.2d 582, 583.)

The analysis of these sister state decisions is sound. In seeking to enforce their mechanic's lien first against the liened property and subsequently against the release bond plaintiffs have pursued a single cause of action. (Cf. *Commercial Centre R. Co. v. Superior Ct.* (1936) 7 Cal.2d 121, 126-128 [***464**59 P.2d 978, 107 A.L.R. 714].) (4) Once an action has been timely commenced by the filing of a complaint, the filing of a supplemental or amended complaint which does not introduce a new cause of action is not subject to the statute of limitations. (*Taylor v. Marine Cooks & Stewards Assn.* (1953) 117 Cal.App.2d 556, 561 [256 P.2d 595].) (5) In a properly pleaded mechanic's lien foreclosure action, an amended or supplemental complaint [FN6] alleging the recording of a release bond and seeking recovery against the bond does not introduce a new cause of action and therefore is not subject to a statute of limitations.

> FN6 Facts occurring after filing of a complaint, such as the recording of the bond in the present case, should be pleaded by supplemental rather than amended complaint (Code Civ. Proc., § 464) but courts regard substance and not labels in determining the sufficiency of a pleading. (See *Jaffe v. Carroll* (1973) 35 Cal.App.3d 53, 58 [110 Cal.Rptr. 435] ["Since the pleading are a means to an end and not an end in themselves, we must determine the status of the pleadings from the facts pleaded rather than from the title or prayer for relief."].)

The limitations provision of section 3144.5 reads:

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"Any action on the lien release bond shall be commenced by the claimant within six months of the recording of the lien release bond." Invoking the familiar rule of statutory construction that when statutory language is clear and unambiguous "there is no need for construction, and courts should not indulge in it" (*Solberg v. Superior Court* (1977) 19 Cal.3d 182, 198 [137 Cal.Rptr. 460, 561 P.2d 1148]), United argues that this language can only mean that when a release bond is recorded during pendency of a lien foreclosure action, the claimant must, within the time prescribed by section 3144.5, file a supplemental complaint alleging the recording of the bond and naming the principal or surety, or both, as parties defendant. On the contrary, a more plausible argument supports a different interpretation. Under express statutory provisions, the release bond may be recorded "either *before* or *after* the *commencement* of an action to enforce [the] claim of lien" (§ 3143, italics added) and, as United concedes by its argument, recovery on the bond may be obtained in the action to enforce the claim of lien. In this context, section 3144.5's language - "Any action on the lien release bond shall be *commenced* ... within six months ..." (italics added) - may more reasonably be read as applying only to an action "*commenced*" by the claimant *after* the bond's recording and not to an action, such as the one in this case, which was already pending at the time of the bond's recordation. At a more fundamental level, United's argument fails because it rests on the assumption that the recording of the release bond gives rise to a cause of action on the bond which is separate and distinct from the cause of action to foreclose the claim of lien. As we have observed, this assumption is incorrect.

Section 3144.5 was enacted in 1983 (Stats. 1983, ch. 351, § 1, p. 1554). Before that time, it was uncertain whether the applicable limitations period ***465** for an action on a mechanic's lien release bond was the 90-day period for an action to foreclose a mechanic's lien (§ 3144) or the four-year period for an action on an obligation in writing (Code Civ. Proc., § 337). (See Comment, *The Release Bond Statutes; Achieving Balance in the Mechanics' Lien Laws* (1980) 28 UCLA L.Rev. 95, 112-118.) A legislative committee report on the bill by which section 3144.5 was enacted states that it was intended to resolve this uncertainty and to require that the lienholder be notified of the recording of the release bond to eliminate the "cumbersome situation" in which a lienholder who is ignorant of the bond's recording sues to foreclose the lien and is then required to amend the complaint to include a cause of action on the bond. (6)**(See fn. 7.)** (Assem. Com. on Judiciary Rep. on Sen. Bill No. 432 (June 27, 1983).) [FN7]

FN7 The Court of Appeal declined to consider this report, stating that "the views of a committee staff member are not appropriate legislative history." However, it is well established that reports of legislative committees and commissions are part of a statute's legislative history and may be considered when the meaning of a statute is uncertain. (See *Southern Cal. Gas Co. v. Public Utilities Com.* (1979) 24 Cal.3d 653, 659 [156 Cal.Rptr. 733, 596 P.2d 1149]; *People v. Knowles* (1950) 35 Cal.2d 175, 182 [217 P.2d 1]; *Southern Pac. Co.* v. *Ind. Acc. Com.* (1942) 19 Cal.2d 271, 278-279 [120 P.2d 880]; *Planned Protective Services, Inc. v. Gorton* (1988) 200 Cal.App.3d 1, 15 [245 Cal.Rptr. 790]; *People* v. *Martinez* (1987) 194 Cal.App.3d 15, 22 [239 Cal.Rptr. 272]; *Maben* v. *Superior Court* (1967) 255 Cal.App.2d 708, 713 [63 Cal.Rptr. 439].) The United States Supreme Court has long followed a similar practice in using committee reports as an aid in construing federal legislation. (See *Commissioner v. Bilder* (1962) 369 U.S. 499, 502-505 [8 L.Ed.2d 65, 68-69, 82 S.Ct. 881]; *Wright v. Vinton Branch* (1937) 300 U.S. 440, 463, fn. 8 [81 L.Ed. 736, 744, 57 S.Ct. 556, 112 A.L.R. 1455].) The rationale for considering committee reports when interpreting statutes is similar to the rationale for considering voter materials when construing an initiative measure. In both cases it is reasonable to infer that those who actually voted on the proposed measure read and considered the materials presented in explanation of it, and that the materials therefore provide some indication of how the measure was understood at the time by those who voted to enact it.

(7) Thus the Legislature's intent in enacting section 3144.5 appears to have been to resolve an existing uncertainty regarding the limitations period for an action on a release bond and to provide for prompt notification of the lienholder so that if the bond is recorded before the lienholder has commenced suit,

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the lienholder will be aware of the controlling limitations period and will frame the complaint initially as an action to foreclose on the bond rather than as an action to foreclose on the liened property. There is no indication that the new statute of limitations was intended to apply to a lien foreclosure action pending at the time of the bond's recording.

In sections 3144 and 3144.5 the Legislature has provided two limitations periods for the enforcement of a single right - the right embodied in the mechanic's lien. It may not lightly be inferred that the Legislature intended to require a plaintiff seeking recovery on a single cause of action to comply with two limitations periods - one at the filing of the action and another to ***466** respond to subsequent self-protective steps taken by defendants or their successors-in-interest. Neither the language nor the available legislative history requires a construction of section 3144.5 under which the limitations period therein prescribed would be *in addition to* the period prescribed in section 3144. Moreover, any such construction would "deteriorate the lienor's rights" (*Harley* v. *Plant, supra*, 210 N.Y. 405, 410 [104 N.E. 946, 947]) and thus raise serious constitutional questions under the provision quoted above, authorizing the Legislature to provide for the "speedy and efficient enforcement of [mechanic's] liens." (8) It is a familiar rule of construction that statutes should be interpreted in a manner which avoids constitutional difficulties. (*Welfare Rights Organization* v. *Crisan* (1983) 33 Cal.3d 766, 772 [190 Cal.Rptr. 919, 661 P.2d 1073, 31 A.L.R.4th 1214].)

(1c) For these reasons, we conclude that the two limitations periods are alternative rather than cumulative. [FN8] The facts existing when the complaint is filed determine which section is applicable. Section 3144.5 controls if a release bond has been recorded; otherwise, section 3144 controls. Accordingly, section 3144.5's limitation period may not be invoked as a defense if the plaintiff has timely commenced a lien foreclosure action, that action is pending when the release bond is recorded, and the plaintiff seeks recovery against the bond in the pending action.

> FN8 As noted, a lien release bond is "conditioned for the payment of any sum which the claimant may *recover on the claim* ..." (§ 3143, italics added), and the surety thus has no obligation on the bond to pay or do anything until there has been a recovery on the claim of lien. Yet because section 3144.5's six-month limitation period runs from the recording of the bond, and because prosecuting a mechanic's lien foreclosure action to judgment is likely to require at least a year, the six-month limitations period may expire before the surety has incurred any obligation on the bond. This anomaly in the statutory scheme underlies the dispute in the present case and reinforces our conclusion that the limitations period was intended to apply only when the bond is recorded before commencement of the lien foreclosure action, thereby making an action on the bond a substitute for, rather than a continuation of or sequel to, an action to foreclose against the liened property.

(9a) While the foregoing analysis explains why the new factual allegations regarding the recording of the bond are not subject to section 3144.5's limitations period, arguably it fails to explain completely how the action is timely as against the surety and the principal on the bond, who may have been brought into the action long after its commencement. While the timeliness of the action as against the new parties could be analyzed in terms of the "relation back" doctrine (see *Smeltzley* v. *Nicholson Mfg. Co.* (1977) 18 Cal.3d 932 [136 Cal.Rptr. 269, 559 P.2d 624, 85 A.L.R.3d 121]), this mode of analysis would be awkward given that the events which made these parties subject to suit occurred subsequent to both the accrual of the mechanic's lien foreclosure cause of action and the filing of the complaint. ***467**

(10), (9b) The action as against United is timely because, in general, the statute of limitations provides no defense to the successor of a party timely sued. (See Code Civ. Proc., §§ 385, 1908.) Thus where an individual defendant dies or becomes incompetent, title to property at issue is transferred, or a corporate defendant is merged or dissolved, the substitution of a representative or successor in place of the named defendant may not be challenged on the ground that the statute of limitations has expired as to the representative or successor. (*Hibernia etc. Soc. v. Wackenreuder* (1893) 99 Cal. 503, 510 [34 P. 219]; see also, *Dougherty* v. *California Kettleman, etc.* (1937) 9 Cal.2d 58, 84-85 [69 P.2d 155].) Although the present case does not involve a direct substitution of parties, it

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is similar in that the release bond has been substituted in place of the liened property after the cause of action accrued and the new parties' liability is premised on this substitution. The principle under which the statute of limitations is satisfied in the former situations is also broad enough to cover the present case.

(1d) These conclusions make the procedure in respect to release bonds parallel to that statutorily prescribed for litigation bonds generally. As provided in the Bond and Undertaking Law (Code Civ. Proc., § 995.010 et seq.), a surety on a bond given in an action or proceeding submits itself to the jurisdiction of the court in all matters affecting its liability on the bond and this liability may be enforced either by civil action or by a motion "without the necessity of an independent action" (*id.* at §§ 996.420-996.440). Similarly, when a mechanic's lien foreclosure action is commenced and a release bond is thereafter recorded, the lien claimant may obtain recovery against the bond's surety in the pending action without having to plead a new cause of action or comply with an additional limitations period.

These conclusions also make the mechanic's lien procedures consistent with the only reasonable construction of the corresponding provisions governing oil and gas liens, which secure payment for labor and materials used to drill or operate oil and gas wells (see Code Civ. Proc., §§ 1203.52-1203.53). Property subject to an oil and gas lien, like property subject to a mechanic's lien, may be released from the lien by the recording of a bond. (Code Civ. Proc., § 1203.60, subd. (a).) Significantly, the provision stating the limitations period for an action to enforce an oil and gas lien - i.e., Code of Civil Procedure section 1203.61 - also governs the time for bringing suit on the bond. (Code Civ. Proc., § 1203.60, subd. (b).) In other words, an action on the bond, like an action on the lien, generally must be commenced within 180 days of the recording of the *lien*. But this means that if the *bond* is recorded during pendency of a lien foreclosure action and more than 180 days after the recording of the lien, the time to sue on the bond will have expired before the bond was even recorded. Obviously, the Legislature ***468** could not have intended the limitations period for an action on an oil and gas lien release bond to apply when the bond is recorded after suit has been commenced to enforce the lien. (See *Westinghouse Electric Corp. v. Superior Court* (1976) 17 Cal.3d 259, 268 [131 Cal.Rptr. 231, 551 P.2d 847] [statutes should be construed to avoid absurd consequences].)

(11) There is one other problem here that concerned the Court of Appeal and apparently caused it to conclude that section 3144.5's limitation period applies even if a lien foreclosure action is pending when the bond is recorded. Stated generally, this problem is how a surety on a lien release bond can be held liable in a lien foreclosure action if the principal on the bond is not a party to the action. More particularly, the Court of Appeal questioned how the surety may be held liable if a property owner who is the principal on the bond is, as it concluded, entitled to a dismissal from the action once the bond is recorded. The latter formulation of the problem is based on an erroneous premise - a property owner who is a principal on the bond is not entitled to a dismissal from the lien foreclosure action.

The Court of Appeal was mistaken in relying on *Frank Curran Lbr. Co. v. Eleven Co., supra*, 271 Cal.App.2d 175, as authority for the proposition that the recording of the lien release bond entitles an owner of the liened property, who is also the principal on the release bond, to a judgment of dismissal. In that case, the principal on the release bond was not a property owner but rather the general contractor, who was also a party to the lien foreclosure action. Because the landowners were not principals on the bond, and because the property was released by the bond, the court held it was proper to dismiss the action as to the landowners "since no personal judgment could be rendered against the landowners ... so that the action could proceed against the other defendants against whom a personal judgment might be rendered." (271 Cal.App.2d at p. 185.) These "other defendants" included the general contractor.

In *Borello v. Eichler Homes, Inc.* (1963) 221 Cal.App.2d 487 [34 Cal.Rptr. 648], the landowner *was* the principal on the lien release bond and remained in the lien foreclosure action after the bond was recorded. One of the issues considered on appeal was whether the trial court had acted correctly in rendering a personal judgment against the landowner. Justice Sullivan, writing for the Court of Appeal, noted that the landowner was not in contractual privity with the lienholder and was not liable by agency principles, but concluded that the personal judgment against the landowner was nonetheless proper "be-

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cause of the release of [the landowner's] property from the lien following the furnishing of a bond ... on [the landowner's] behalf." (At p. 497, fn. 9.) In other words, the landowner was personally ***469** liable as the principal on the lien release bond up to the amount stated in the bond.

Thus, as indicated by *Borello, supra*, 221 Cal.App.2d 487, if a landowner defending the lien foreclosure action is the principal on the bond, and if the bond is recorded during the pendency of the action, the landowner is not entitled to be dismissed from the action but will remain to defend against the lienholder's claim. (See Hunt, Claims on Private Works in Cal. Mechanics' Liens and Other Remedies (Cont.Ed.Bar 1988) § 2.61, p. 111 ["The defendants on the bond cause of action are the principal and the sureties."].) This is so because when the release bond is recorded, the bond obligations of *both* principal and surety are substituted for the property as the object to which the mechanic's lien attaches.

(12) Still to be addressed is the more general question raised by the Court of Appeal regarding the surety's liability when the lien claimant has not served the release bond principal as a defendant in the foreclosure action. The present case directly raises this problem because although plaintiffs have named Anderson, the new owner of the property and the principal on the bond, as a defendant in this action, Anderson has not been served and has not appeared.

We may assume arguendo that a judgment on a lien release bond would not be directly enforceable against a principal who had not been served and had not appeared in the action. (See *Fazzi v. Peters* (1968) 68 Cal.2d 590, 594 [68 Cal.Rptr. 170, 440 P.2d 242] ["a judgment may not be entered either for or against one not a party to an action or proceeding"]; but see *Hilton v. Reed* (1941) 46 Cal.App.2d 449, 455 [116 P.2d 98] [subsequent purchaser with notice of mechanic's lien foreclosure action bound by judgment of foreclosure although not formally joined as party].) This does not mean, however, that the surety will be compelled to defend the action alone and unassisted by the principal. If only the surety is joined, the resulting judgment will be binding on the principal, provided only that the surety has given notice to the principal "and an opportunity at the surety's request to join in the defense." (Code Civ. Proc., § 1912.) A principal notified of the action by the surety will have the same motivation to defend the action as if formally named as a party, because the judgment will be equally conclusive as a determination of the principal's liability. Consequently, the surety has the means to call upon the principal to defend the lien foreclosure action.

The Court of Appeal expressed concern that if section 3144.5's limitations period did not apply when the release bond was recorded during the pendency of a lien foreclosure action, the plaintiff "could wait years after receiving notice of recording of the bond before bringing the surety into the ***470** action" and the surety would not have sufficient time "to defend the action in the absence of its principal." As noted, the surety would be able to call upon the principal to defend the action. Moreover, the filing of an amended or supplemental complaint adding new parties requires leave of the court (Code Civ. Proc., §§ 464, 473) and leave could be denied, in the court's discretion, if the plaintiff had unreasonably delayed. (See *Bulmash v. Davis* (1979) 24 Cal.3d 691, 701 [157 Cal.Rptr. 66, 597 P.2d 469]; *Marvin v. Marvin* (1976) 18 Cal.3d 660, 667, fn. 2 [134 Cal.Rptr. 815, 557 P.2d 106]; *Flood v. Simpson* (1975) 45 Cal.App.3d 644, 647 [119 Cal.Rptr. 675].) Finally, a mechanic's lien foreclosure action not brought to trial within two years after its commencement is subject to dismissal, in the court's discretion, for want of prosecution. (§ 3147.) The use of section 3144.5's limitation period to provide a remedy is unnecessary for the proper protection of sureties and would unfairly burden the enforcement of the constitutionally protected rights of mechanic's lien claimants.

Our conclusion that section 3144.5's limitation period has no application in the present case makes it unnecessary to consider plaintiffs' contentions that the amendments of the complaint relate back to the filing of the original complaint, that section 3144.5 cannot be applied retroactively to plaintiffs' action, and that United should be estopped from asserting section 3144.5 as a defense.

The judgment of the Court of Appeal is reversed.

Lucas, C. J., Mosk, J., Broussard, J., Panelli, J., Arguelles, J., and Eagleson, J., concurred. ***471**

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Hutnick v. U.S. Fidelity & Guaranty Co.

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47 Cal.3d 456, 763 P.2d 1326, 253 Cal.Rptr. 236

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HIn re JOHNNY B. DAPPER on Habeas Corpus.
Crim. No. 12720.

Supreme Court of California
May 28, 1969.

HEADNOTES

(1) Criminal Law § 1038.7(7)--Writ of Coram Nobis--Review.
The granting or denying of a petition for writ of error *coram nobis* is an appealable order, governed by the same procedural rules that apply to appeals from a judgment of conviction.
See **Cal.Jur.2d,** Coram Nobis, § 26; **Am.Jur.2d,** Coram Nobis and Allied Statutory Remedies, § 29.
(2) Habeas Corpus § 8.1--Grounds--Relief Not Warranted.
A habeas corpus petitioner, convicted of five counts of a municipal code violation, could not attack a stipulation by the prosecutor and court-appointed defense counsel that three previously dismissed counts be reinstated, included in an appealable order granting his petition for writ of error *coram nobis,* which also set aside his guilty plea and sentence on the other two counts after which he was found guilty by a jury on all five counts, where the reinstatement of the dismissed charges might have been an integral part of the order granting the writ, where petitioner did not appeal from the order, move to set it aside, or to vacate the writ, but attacked only the portion of the order which, based on the stipulation, directed reinstatement of the dismissed charges, and where petitioner never urged that the order be set aside in its entirety but took advantage of it by withdrawing his guilty pleas and proceeding to trial on the merits of all of the charges.

(3) Criminal Law § 107(11)--Rights of Accused--Aid of Counsel--Competence of Counsel.
In a five-count prosecution for violation of a municipal code in which defendant pleaded guilty to and was sentenced on two counts and the other counts were thereupon dismissed "in furtherance of justice," the decision of court-appointed defense counsel to enter into a stipulation that the dismissed counts be reinstated, made part of an order granting defendant's petition for writ of *coram nobis* under which he withdrew his guilty pleas and proceeded to trial on the merits of all the charges, even if beyond his attorney's authority, did not show that he was incompetent, where the record did not show that counsel was unaware of the facts or the law applicable to the *coram nobis* proceeding, and, so far as appeared from the record, the determination to enter into the stipulation might have been the wisest course to follow to secure the vacation of defendant's convictions.

(4) Criminal Law § 12--Prohibition by Law--Repeal of StatutesMunicipal Corporations § 228--Ordinances--Effect of Repeal.
The outright repeal of a criminal statute without a saving clause bars prosecution for violations of the statute committed before the repeal; and the rule applies equally to local ordinances.
See **Cal.Jur.2d,** Criminal Law, § 102; **Am.Jur.,** Statutes (1st ed § 568).
(5) Municipal Corporations § 229--Ordinances--Effect of Repeal.
Prosecutions under repealed city ordinances, part of a municipal code, for violations committed before the repeal, were not saved by a savings clause of the municipal code which referred to ordinances repealed by the code and not to ordinances comprising the code which were subsequently repealed.
See **Cal.Jur.2d,** Municipal Corporations, § 409; **Am.Jur.,** Municipal Corporations (1st ed § 201).
(6) Criminal Law § 12--Prohibition by Law--Repeal of Statutes.
The rule which bars prosecution under a repealed law for offenses occurring before repeal does not apply where there is an outright appeal and a substantial reenactment; and in such case it is presumed that the legislative body did not intend that there should be a remission of crimes not reduced to final judgment.

(7) Statutes § 95(3)--Repeal--Simultaneous Re-enactment.
When a statute, although new in form, reenacts an older statute without substantial change, even though it repeals the older statute, the new statute is but a continuation of the old, and there is no break in the continuous operation of the old statute, and no abatement of any of the legal consequences of acts done under the old statute; the rule especially applies to the consolidation, revision, or codification of statutes.

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(8) Municipal Corporations § 229--Ordinances--Effect of Repeal.
A prosecution for violation of a municipal code section could be validly maintained against defendant for violations committed before its repeal, where the section had been substantially reenacted and could be considered to be continuous in operation from the date the section was originally adopted.

(9) Municipal Corporations § 229--Ordinances--Effect of Repeal.
No prosecution for violation of municipal code sections could be validly maintained against defendant for violations committed before their repeal, where the sections had not been substantially reenacted, and no savings clause was applicable.

(10) Municipal Corporations § 229--Ordinances--Effect of Repeal.
Prosecution of a defendant for violation of a municipal code section, repealed before the prosecution had been reduced to final judgment, was barred by the "outright repeal of a criminal statute," where defendant was charged, inter alia, with the accumulation of "broken wood" specifically punishable under the repealed section, but where the list of items, accumulation of which was prohibited in the new section, omitted the significant item-"broken wood," and where there was no applicable savings clause.

(11) Municipal Corporations § 229--Ordinances--Effect of Repeal.
A repealed municipal code section was not substantially reenacted by a new section so as to permit prosecution of a defendant for violations committed before its repeal, where the purpose of the new section, requiring that accumulations of weeds be not permitted to remain in any court, yard, vacant lot or open space and that weeds be cut down only when property was endangered, was to prevent fires, whereas the repealed section contained no mention of cut-down weeds, but did prohibit certain types of growing weeds, no longer an offense under the new section unless they endanger property, and where there was no applicable savings clause.

SUMMARY

PROCEEDING in habeas corpus to have vacated convictions for violations of a repealed municipal code. Writ granted.

COUNSEL

Johnny B. Dapper, in pro. per., for Petitioner.

Edward T. Butler, City Attorney, Kenneth H. Lounsbery and J. David Franklin, Deputy City Attorneys, for Respondent.

PETERS, J.

Johnny B. Dapper petitions for a writ of habeas corpus.

In August 1966, he was charged with five counts of violating the San Diego Municipal Code: Count 1 [§ 55.30.10], permitting combustible material and debris to accumulate; count 2 [§ 55.36], allowing rubbish to remain without a permit; count 3 [§ 55.30.7(c)], storing lumber without a permit; count 4 [§ 44.0350], accumulating debris so as to afford a shelter for rats; and count 5 [§ 55.35], allowing dangerous weeds.

Dapper pleaded guilty to and was sentenced on counts 1 and 5. The other counts were dismissed "in furtherance of justice." Upon Dapper's petition, the court granted a petition for a writ of error *coram nobis,* including in its order a stipulation by the district attorney and Dapper's court-appointed counsel that the dismissed counts be reinstated.

A jury trial was held, and Dapper was found guilty on all *187 five counts. On count 1, he was sentenced to pay a fine of $500 and serve 180 days in jail; execution of judgment was stayed, and he was placed on probation for three years. On count 5, he was sentenced to 180 days in jail; except for three days, execution of sentence was stayed, and he was placed on probation for three years. The sentences were to run consecutively. As a condition of probation, he was required "to clean up his property."

Dapper contends that he could not be validly prosecuted under counts 2, 3, and 4, because section 1387 of the Penal Code bars the refiling of misdemeanor complaints which have been dismissed. [FN1] He argues that the stipulation to the reinstatement of the dismissed counts is invalid, because it was made over his objection, and shows incompetence of counsel. However, even assuming that Dapper objected to the

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stipulation at the time it was made and that because of his objection it was improper for counsel to enter into the stipulation, Dapper may not in this proceeding attack the stipulation, and the stipulation does not show incompetence of counsel.

> FN1 Section 1387 of the Penal Code states: "An order for the dismissal of the action, made as provided in this chapter, is a bar to any other prosecution for the same offense if it is a misdemeanor, but not if it is a felony."

(1) The granting or denying of a petition for writ of error *coram nobis* is an appealable order, governed by the same procedural rules that apply to appeals from a judgment of conviction. (*People v. Griggs*, 67 Cal.2d 314, 316 [61 Cal.Rptr. 641, 431 P.2d 225]; *In re Horowitz*, 33 Cal.2d 534, 537 [203 P.2d 513].) (2) The reinstatement of the dismissed charges may have been an integral part of the order granting the writ, and had Dapper attacked the order on the basis of the part reinstating the charges, the entire order may have been held inseverable. (Cf. *Hamasaki v. Flotho*, 39 Cal.2d 602, 608-610 [248 P.2d 910]; *People v. Dominguez*, 256 Cal.App.2d 623, 629 [64 Cal.Rptr. 290]; *People v. Williams*, 247 Cal.App.2d 394, 409-410 [55 Cal.Rptr. 550]; *People* ex rel. *Dept. of Public Works v. Mascotti*, 206 Cal.App.2d 772, 778-779 [23 Cal.Rptr. 846, 24 Cal.Rptr. 679]; *People v. Mason*, 184 Cal.App.2d 182, 187 [7 Cal.Rptr. 525].) He did not appeal the order granting the writ or move to set aside the order and vacate the writ. He has attacked only the portion of the order which, based on the stipulation, directed reinstatement of the dismissed charges. He has never urged that the order should be set aside in its entirety. Instead, he has taken advantage of ***188** the order by withdrawing his guilty pleas and proceeding to trial on the merits of all of the charges. We are satisfied that in the circumstances of this case he may not be permitted at this time to attack the order granting the writ after he has taken advantage of those portions which are favorable to him.

(3) The decision of the attorney to enter into the stipulation, even if beyond his authority, does not show that he was incompetent. The record does not show that counsel was unaware of the facts or the law applicable to the *coram nobis* proceeding, and, so far as appears from the record, the determination to enter into the stipulation may have been the wisest course to follow to secure the vacation of defendant's convictions. (Cf. *In re Hawley*, 67 Cal.2d 824, 828-829 [63 Cal.Rptr. 831, 433 P.2d 919].)

Dapper further contends that the municipal court had no jurisdiction to prosecute him under San Diego Municipal Code sections 55.30.10, 55.36, 55.30.7(c), and 55.35 because, although the provisions were in effect when the violations were allegedly committed, "on or about" June 30, 1966, the sections were repealed June 20, 1967, before the prosecution of Dapper had been reduced to final judgment in October 1967. This contention does not apply to count 4, accumulating debris so as to afford a shelter for rats, because that section has not been repealed.

(4) The law is well-established that "the outright repeal of a criminal statute without a saving clause bars prosecution for violations of the statute committed before the repeal." (*Sekt v. Justice's Court*, 26 Cal.2d 297, 304 [159 P.2d 17, 167 A.L.R. 833].) The rule applies equally to local ordinances. (*Spears v. County of Modoc*, 101 Cal. 303, 304, 307 [35 P. 869].)

(5) Respondent contends that the San Diego Municipal Code contains such a saving clause. The clause on which respondent relies reads: "Neither the adoption of this Code nor the repeal *hereby* of any Ordinance of this City shall in any manner effect [*sic*] the prosecution for violation of Ordinances, *which violations were committed prior to the effective date hereof, ...*" (San Diego Mun. Code, § 11.04; italics added.) It is patently clear that the savings clause refers to ordinances repealed *by* the code, and not to ordinances comprising the code which are subsequently repealed. It is equally clear that the "violations" referred to, prosecution for which is preserved, are violations occurring before the adoption of the code and not violations like those involved here which ***189** occurred after adoption. In brief, prosecution under the repealed ordinances in this case is not saved by section 11.04 of the San Diego Municipal Code. [FN2]

> FN2 In contrast, the savings clause in section 9608 of the Government Code, would preserve the prosecution of offenses in circumstances such as those in the instant case: "The termination or suspension (by whatsoever means effected) of any law creating a criminal offense does not constitute a bar to the indictment or information and punishment of an act already committed in violation

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> of the law so terminated or suspended, unless the intention to bar such indictment or information and punishment is expressly declared by an applicable provision of law."

Respondent next contends that, even absent a valid savings clause, Dapper can be prosecuted under the repealed municipal code sections because San Diego Municipal Code Ordinance 9651 (new series), which repealed the challenged sections, simultaneously enacted the Uniform Fire Code, which, respondent asserts, contains substantially the same provisions as those in the repealed sections.

(6) It is established that the rule which bars prosecution under a repealed law for offenses occurring before repeal does not apply "where there is an outright repeal and a substantial reenactment," because it will be presumed that the legislative body "did not intend that there should be a remission of crimes not reduced to final judgment." (*Sekt v. Justice's Court, supra,* 26 Cal.2d 297, 306.) (7) "When a statute, although new in form, re-enacts an older statute without substantial change, even though it repeals the older statute, the new statute is but a continuation of the old. There is no break in the continuous operation of the old statute, and no abatement of any of the legal consequences of acts done under the old statute. Especially does this rule apply to the consolidation, revision, or codification of statutes, because, obviously, in such event the intent of the Legislature is to secure clarification, a new arrangement of clauses, and to delete superseded provisions, and not to affect the continuous operation of the law." (*Sobey v. Molony,* 40 Cal.App.2d 381, 385 [104 P.2d 868]; see also, *Pacific Mail S.S. Co. v. Joliffe* (1864) 69 U.S. (2 Wall.) 450, 458 [17 L.Ed. 805]; *Cort v. Steen,* 36 Cal.2d 437, 440 [224 P.2d 723]; *Perkins Mfg. Co. v. Clinton Constr. Co.,* 211 Cal. 228, 236 [295 P. 1, 75 A.L.R. 439]; *Carter v. Stevens,* 208 Cal. 649, 651 [284 P. 217]; *San Joaquin etc. Irr. Co. v. Stevinson,* 164 Cal. 221, 234 [128 P. 924]; *Wayne v. Bureau of Private Investigators & Adjusters,* 201 Cal.App.2d 427, 438-439 [20 Cal.Rptr. 194]; *Orange County Water Dist. v. Farnsworth,* 138 Cal.App.2d 518, 524-525 [292 P.2d 927]; ***190***People v. Atkinson,* 115 Cal.App.2d 425, 426-427 [252 P.2d 67]; *Jones v. City of South San Francisco,* 96 Cal.App.2d 427, 432-433 [216 P.2d 25].)

Preliminarily, we note that the entire San Diego Municipal Code-both the repealed sections and the portions of the Uniform Fire Code which replaced the repealed sections-are subject to section 11.12 of that code, captioned "Violations-A Misdemeanor," which states: "It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code." The punishment provided by the section for either violating a provision or failing to comply with any mandatory requirement is a fine of not more than $500 or imprisonment in jail for not more than six months, or both.

Section 11.12 makes clear that an act is subject to punishment whether the language be, for example, "It is unlawful to. ..." or, "No person shall. ..." Since section 11.12 was neither amended nor repealed, it is clear that the punishment is the same for violation of either the repealed or the new sections.

(8, 9) A comparison of the repealed sections and the new sections based on, or incorporated by reference to, the Uniform Fire Code, convinces us that, as respondent contends, section 55.36 (count 2) has been substantially reenacted and may be considered to be continuous in operation from the date the section was originally adopted; but contrary to respondent's contention, section 55.30.10 (count 1), section 55.30.7(c) (count 3) and section 55.35 (count 5) have not been substantially reenacted, and therefore no prosecution may be validly maintained against Dapper for violation of those sections.

1. Section 55.30.7(c) stated: "It shall be unlawful ... To keep ... lumber ... without ... a permit from the Fire Marshal." Respondent cites us to no comparable provision contained in the provisions of the Uniform Fire Code, as adopted by San Diego Ordinance 9651 (new series).

(10) 2. With respect to former section 55.30.10 respondent urges that its provisions have been substantially reenacted by sections 27.05a and 1.44 of the Uniform Fire Code (UFC), incorporated by reference into the San Diego Municipal Code. Although the list of items, "accumulation" of which is prohibited in both the repealed and the new sections, contains many of the same items, one significant item-"broken ***191** wood"-has been omitted from the prohibited list of items in the new section. [FN3]

FN3 Repealed section 55.30.10 stated: "Any

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> accumulation of combustible or inflammable material, boxes, broken wood, trash, waste paper, rags, or other debris of any kind ... is ... prohibited, ..."
>
> Section 27.05a of the Uniform Fire Code (incorporated by reference in § 55.1 of Ord. 9651 (new series) of the San Diego Mun. Code) prohibits: "Accumulations of waste paper, hay, grass, straw, weeds, litter or combustible or flammable waste [which includes, under UFC, § 1.44: 'magazines, books, trimmings from lawns, trees, flower gardens, pasteboard boxes, rags, paper, straw, sawdust, packing material, shavings, boxes ... rubbish and refuse ....']."

The information against Dapper charging him in count 1 with the violation of section 55.30.10, specified, inter alia, the accumulation of "broken wood."

Thus, both the section as written and as charged involves an offense, accumulating "broken wood," that is no longer punishable. We must hold that the rule of *Sekt v. Justice's Court, supra,* 26 Cal.2d 297, 304, applies, and the prosecution of Dapper is barred by the "outright repeal of a criminal statute."

(11) 3. Respondent contends that section 55.35 has been substantially reenacted by section 27.05a, discussed above. Section 55.35 made it unlawful to allow any "vacant land, yard or premises" to "be overrun or overgrown with noxious or dangerous weeds." Section 27.05a states that "Accumulations of .... weeds ... shall not be permitted to remain ... in any court, yard, vacant lot or open space," and that "All weeds ... when same endangers property ... shall be cut down and removed. ..."

Although section 27.05a requires that "weeds" be cut down only when property is endangered, repealed section 55.35 required that "noxious" weeds be cut down, whether or not the weeds are dangerous. The phrase "noxious weeds" has a meaning distinct and different from "weeds ... [which] endanger property." In California, " 'Noxious weed' means any species of plant which is, or is liable to be, detrimental or destructive and difficult to control or eradicate." (Agr. Code, § 52256.) "Primary noxious weeds" consist of 13 specified species (Agr. Code, § 52257), while "secondary noxious weeds" refers to all other species of noxious weeds (Agr. Code, § 52258).

The purpose of the provisions of section 27.05a (contained in the UFC) is to prevent fires. Thus, any "accumulations" ***192** of weeds-that is, cut-down or loose weeds-and other loose items are prohibited, while growing weeds are prohibited only when they endanger property. In contrast, section 55.35 contained no mention of cut-down weeds, but did prohibit certain types of growing weeds.

In sum, neither the prohibitions nor the purpose of section 55.35 are reenacted by section 27.05a. Dapper was charged with allowing his property to be overrun with "noxious or dangerous weeds." It is no longer an offense to allow property to be overrun with "noxious" weeds. The conviction for violating section 55.35 (count 5) must also be reversed.

Finally, respondent contends that repealed section 55.36 was substantially reenacted by section 27.36 of the Uniform Fire Code, included as section 55.27.36 of the San Diego Municipal Code. We agree. The sections are virtually identical. [FN4]

> FN4 Section 55.36 stated: "It shall be unlawful for any person to dump or throw rubbish of any kind upon any lot or tract of land ... except by the written permission of the City Council; and it shall be unlawful ... to place or allow to be placed, or allow to remain on any premises ... such rubbish without the written permission of the City Council."
>
> Section 27.36 of the Uniform Fire Code states: "No person shall dump or throw rubbish of any kind upon any lot or tract of land ... except by the written permission of the City Council; and no occupant or owner of any premises shall place or allow to be placed, or allow to remain on said premises such rubbish without the written permission of the City Council."

In summary, Dapper was convicted of five counts of violating the San Diego Municipal Code. The convictions on count 1 (violation of § 55.30.10), count 3 (§ 55.30.7(c)) and count 5 (§ 55.35) are invalid, because the sections have been repealed and have not been substantially reenacted by any provisions of ordinance

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9651 (new series) of the San Diego Municipal Code. The conviction on count 2 (violation of § 55.36) is valid, because the repealed section was substantially reenacted by provisions of ordinance 9651 of the San Diego Municipal Code. The conviction on count 4 (violation of § 44.0350) is valid; that section has not been repealed.

Dapper's further contentions that he was denied a fair trial, was inadequately represented by counsel, was convicted based on false testimony, and was subject to cruel and unusual punishment, are without merit.

Because of our disposition of this matter, we need not reach Dapper's final contention that the sentences imposed on ***193** counts 1 and 5 are cumulative punishment for the same offense, in violation of section 654 of the Penal Code. [FN5]

> FN5 Dapper has not been sentenced on either of the valid convictions (counts 2 and 4). It would be premature for this court to decide whether separate sentences for these counts would violate section 654. We must assume that any sentence imposed by the trial court will be consistent with the requirements of section 654.

The writ is granted. The Appellate Department of the Superior Court of San Diego County is directed to recall the remittitur in case number Crim. 12056 to vacate the convictions and judgments on count 1 and count 5, to vacate the conviction on count 3, and to remand the case to the municipal court to enter judgment on count 2 and count 4 in accordance with the views expressed herein.

Traynor, C. J., Tobriner, J., Mosk, J., Burke, J., and Sullivan, J., concurred.
McCOMB, J.

I concur in that part of the opinion that upholds the convictions on counts 2 and 4. I dissent from that part of the opinion that directs the court to vacate the convictions and judgments on counts 1 and 5 and to vacate the conviction on count 3.

Petitioner's application for a rehearing was denied June 25, 1969. ***194**

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(Cite as: 548 F.2d 1277)

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United States Court of Appeals,
Seventh Circuit.
George A. LLOYD and Janet B. Wolfe, etc., Plaintiffs-Appellants,
v.
The REGIONAL TRANSPORTATION AUTHORITY and the Chicago Transit Authority, Defendants-Appellees.
No. 76-1524.

Argued Dec. 1, 1976.
Decided Jan. 18, 1977.

Class action was brought on behalf of the class of all mobility-disabled persons in the northeastern region of Illinois, alleging that the plaintiff class was unable to use public transportation system operated by the two municipal defendants because of physical disabilities. Defendants were alleged to have violated the Urban Mass Transportation Act of 1964, the Rehabilitation Act of 1973, the Architectural Barriers Act of 1968 and the equal protection clause of the Fourteenth Amendment. The United States District Court for the Northern District of Illinois, Eastern Division, Joel M. Flaum, J., granted defendants' motion to dismiss on the ground that none of the three statutes conferred a private right of action and that the equal protection clause did not apply. Plaintiffs appealed, and the Court of Appeals, Cummings, Circuit Judge, held that the section of the Rehabilitation Act of 1973 which forbids discrimination against otherwise qualified handicapped individuals in programs or activities receiving federal financial assistance established affirmative rights; that a private cause of action could be implied to vindicate those rights; and that because no administrative remedy was open to plaintiffs, neither the exhaustion of remedies doctrine nor the primary jurisdiction doctrine applied.

Vacated and remanded.

West Headnotes

[1] Civil Rights 78 ⚿1343

78 Civil Rights
78III Federal Remedies in General
78k1342 Liability of Municipalities and Other Governmental Bodies
78k1343 k. In General. Most Cited Cases
(Formerly 78k206(1), 78k13.7)
Municipal corporations are outside the scope of the Civil Rights Act of 1871. 42 U.S.C.A. § 1983.

[2] Federal Civil Procedure 170A ⚿1829

170A Federal Civil Procedure
170AXI Dismissal
170AXI(B) Involuntary Dismissal
170AXI(B)5 Proceedings
170Ak1827 Determination
170Ak1829 k. Construction of Pleadings. Most Cited Cases
On motion to dismiss, complaint must be read liberally.

[3] United States 393 ⚿82(1)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(1) k. In General. Most Cited Cases
(Formerly 393k82)
Section of Rehabilitation Act of 1973 which prohibits discrimination against otherwise qualified handicapped individuals in programs or activities receiving federal financial assistance, when considered together with regulations which implement the section, establishes affirmative rights. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

[4] Action 13 ⚿3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory Rights of Action. Most Cited Cases
Four factors relevant to determining whether a private remedy is implicit in statute which does not expressly provide such remedy are: whether plaintiff is one of the class for whose special benefit the statute was enacted; whether there is any indication of legislative intent, explicit or implicit, either to create or to deny

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such a remedy; whether such remedy is consistent with the underlying purposes of the legislative scheme; and whether it would be inappropriate to infer a cause of action based solely on federal law because such cause of action would be within an area traditionally relegated to state law.

[5] United States 393 ⚿82(1)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(1) k. In General. Most Cited Cases
(Formerly 393k82)
A principal purpose of the 1974 Rehabilitation Act amendments was to include within scope of section which prohibits discrimination against otherwise qualified handicapped individuals in programs or activities receiving federal financial assistance individuals who may have been unintentionally excluded from the protection of the section by the original definition of handicapped individuals which overemphasized employability. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

[6] Action 13 ⚿1

13 Action
13I Grounds and Conditions Precedent
13k1 k. Nature and Elements of Cause of Action and Suspension of Remedies. Most Cited Cases
When administrative remedial machinery does not exist to vindicate an affirmative right, there can be no objection to an independent cause of action in the federal courts.

[7] Civil Rights 78 ⚿1308

78 Civil Rights
78III Federal Remedies in General
78k1306 Availability, Adequacy, Exclusivity, and Exhaustion of Other Remedies
78k1308 k. Administrative Remedies in General. Most Cited Cases
(Formerly 78k194, 78k12.4, 393k82(1), 393k82)
Until effective enforcement regulations are promulgated, section of the Rehabilitation Act of 1973 which establishes an implied private cause of action to vindicate affirmative right of otherwise qualified handicapped individuals to nondiscrimination in programs or activities receiving federal financial assistance should not be subjugated to the doctrine of exhaustion of remedies; however, assuming a meaningful administrative enforcement mechanism, the private cause of action implied under the section should be limited to a posteriori judicial review. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

[8] United States 393 ⚿82(1)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(1) k. In General. Most Cited Cases
(Formerly 393k82)
In view of fact that "mobility-disabled" persons, who alleged that they were unable to use municipal defendants' public transportation system because of physical disabilities, were among the class for whose special benefit the legislature enacted that section of the Rehabilitation Act of 1973 which prohibits discrimination against otherwise qualified handicapped individuals in programs receiving federal financial assistance and because there were indications that legislature intended to create independent federal cause of action to vindicate affirmative rights established by the section and it was consistent with underlying purpose of Act and would not intrude upon area traditionally relegated to state law to imply private remedy, section implicitly provided a private remedy. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

[9] Civil Rights 78 ⚿1313

78 Civil Rights
78III Federal Remedies in General
78k1306 Availability, Adequacy, Exclusivity, and Exhaustion of Other Remedies
78k1313 k. Other Particular Cases and Contexts. Most Cited Cases
(Formerly 78k194, 78k12.4, 393k82(3), 393k82)
Because no administrative remedy was open to "mobility-disabled" persons who brought class action to challenge municipal public transportation facilities as violative of, inter alia, the Rehabilitation Act of 1973, neither the exhaustion nor primary jurisdiction doctrine was applicable. Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.
***1278** Neil K. Quinn, Walter J. Kendall, Chicago, Ill., for plaintiffs-appellants.

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Norman J. Barry, Joseph P. Della Maria, Jr., and Ronald F. Bartkowicz, Chicago, Ill., for Chicago Transit Authority.

Don H. Reuben, James C. Munson, Chicago, Ill., for Regional Transportation Authority.

Before CUMMINGS and TONE, Circuit Judges, and GRANT, Senior District Judge. [FN*]

FN* Senior District Judge Robert A. Grant of the Northern District of Indiana is sitting by designation.

CUMMINGS, Circuit Judge.

[1] This class action was filed under the Civil Rights Act of 1871 (42 U.S.C. s 1983),[FN1] the Rehabilitation Act of 1973 (29 U.S.C. ss 701 et seq.), the Architectural Barriers Act of 1968 (42 U.S.C. ss 4151 and 4152). and unspecified regulations promulgated under the statutes.[FN2] Plaintiffs also relied on various sections of the Constitution but now rest their constitutional argument only on the Equal Protection Clause of the Fourteenth Amendment.

FN1. Plaintiffs no longer rely on 42 U.S.C. s 1983 (see reply br. 7), apparently because municipal corporations like defendants are outside its ambit. City of Kenosha v. Bruno, 412 U.S. 507, 513, 93 S.Ct. 2222, 37 L.Ed.2d 109.

FN2. In their appellate brief (at 11-13) plaintiffs also rely on a 1975 amendment to Section 165 of the Federal-Aid Highway Act of 1973, providing that the Secretary of Transportation "shall not approve any program or project * * * (not) requiring access to public mass transportation facilities, equipment and services for elderly or handicapped persons" which is funded under certain specified sections of Title 23 of the United States Code (23 U.S.C.A. s 142 note; 88 Stat. 2283). The 1975 amendment defined the handicapped to "includ(e) those who are nonambulatory wheelchair-bound and those with semiambulatory capabilities." Id. However, since this provision was not cited in the complaint and barely mentioned in the district court's opinion, we will not consider it.

***1279** [2] The named plaintiffs are George A. Lloyd, a quadriplegic who has been confined to a wheelchair since 1953, and Janet B. Wolfe, who is "mobility-disabled" because of a chronic pulmonary dysfunction. They sued on behalf of a class of all mobility-disabled persons in the northeastern region of Illinois. The two defendants are the Regional Transportation Authority (RTA),[FN3] which provides public transportation and assists in the public mass transportation system in that region, and the Chicago Transit Authority (CTA), [FN4] which operates a mass transportation system in the Chicago metropolitan area. The complaint alleges that the suing class is unable to use defendants' public transportation system because of physical disabilities. Plaintiffs aver on information and belief that defendants are in the process of planning for the purchase of new transportation equipment utilizing federal funds [FN5] and that, unless defendants are compelled to take affirmative action, the transportation system will continue to be inaccessible to the mobility-disabled.

FN3. The RTA is a municipal corporation established pursuant to Ill.Rev.Stat.1975, ch. 111 2/3, ss 701.01 et seq.

FN4. The CTA is a municipal corporation established pursuant to Ill.Rev.Stat.1975, ch. 111 2/3, ss 301 et seq.

FN5. Reading the complaint liberally as we must on a motion to dismiss, we deem it possible that plans for the purchase of new equipment on June 5, 1975, the date of the complaint, were not all consummated at the level of final approval of federal funding before the effective date of the Urban Mass Transportation Administrator's regulations on May 31, 1976. See also note 30 infra.

The complaint sets out four causes of action. First, plaintiffs assert that defendants have violated Section 16 of the Urban Mass Transportation Act of 1964 (49 U.S.C. s 1612) because they have not met the transportation needs of handicapped persons. Secondly, plaintiffs charge that defendants have violated Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. s 794) because, by reason of their handicaps, plaintiffs

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have been denied the meaningful usage of defendants' federally financed mass transportation facilities. Thirdly, plaintiffs claim that defendants have not complied with Sections 1 and 2 of the Architectural Barriers Act of 1968 (42 U.S.C. ss 4151 and 4152) because they have not designed vehicular facilities permitting ready access to physically handicapped persons. Finally, defendants' denial of public transportation system access to plaintiffs and their class is said to violate the Fourteenth Amendment's Equal Protection Clause.

The plaintiffs sought a preliminary injunction to prevent the defendants from designing or placing into operation any new federally funded facilities unless the facilities were accessible to all mobility-disabled persons. Plaintiffs also prayed for a mandatory injunction compelling the defendants to make the existing transportation system accessible to the mobility-disabled.

The district court filed a memorandum opinion granting the defendants' motions to dismiss on the ground that the three statutes in question do not confer a private right of action. The opinion stated that the only substantial constitutional claim of plaintiffs was founded on the Equal Protection Clause but that it was inapplicable because

"(d)efendants have not created any inequalities of treatment. They are not alleged to be providing handicapped persons with any lesser facilities than other persons." [FN6]

> FN6. The district judge found it unnecessary to decide whether the Secretary of Transportation or his delegates were indispensable parties. Similarly, he did not pass on whether the Secretary of Health, Education and Welfare and the Urban Mass Transportation Administrator had to be named as defendants, as urged by the Urban Mass Transportation Administrator (who filed an amicus curiae brief with us) and by the CTA.

***1280** We vacate and remand.

SECTION 504 CONFERS AFFIRMATIVE RIGHTS

[3] Plaintiffs and two amici curiae [FN7] rely on Section 504 of the Rehabilitation Act of 1973 as giving plaintiffs the right to file a private action to enforce compliance with the statutes relied upon in the complaint and the recent regulations of the Urban Mass Transportation Administration.[FN8] Section 504 provides:

> FN7. They are the National Center for Law and the Handicapped, Inc. of South Bend, Indiana, and a group of eight organizations representing disabled persons, whose counsel was the Public Interest Law Center of Philadelphia.
>
> FN8. Those regulations were issued on April 27, 1976, and made effective May 31, 1976. They appear in 49 C.F.R. ss 609.1-609.25 and 613.204 and in 41 F.R. 18239-18241 and 18234 (April 30, 1976). Two appendices were also added. 49 C.F.R. ss 609.15(a), (b) and (c) were revised effective October 12, 1976. 41 F.R. 45842 (October 18, 1976).

"No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (29 U.S.C. s 794).
This provision closely tracks [FN9] Section 601 of the Civil Rights Act of 1964,[FN10] which was construed in Lau v. Nichols, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1. There a unanimous Supreme Court held that Section 601 provided a private cause of action. See also Bossier Parish School Board v. Lemon, 370 F.2d 847, 852 (5th Cir. 1969), certiorari denied, 388 U.S. 911, 87 S.Ct. 2116, 18 L.Ed.2d 1350. While adverting to regulations and guidelines issued by the Department of Health, Education and Welfare (HEW) pursuant to Section 602 of the Act [FN11] and the respondent school district's contractual agreement to comply with Title VI of the Civil Rights Act of 1964 and the regulations thereunder,[FN12] Justice Douglas (speaking for himself and Justices Brennan, Marshall, Powell and Rehnquist) stated, in reversing the court of appeals, that "(w)e do not reach the Equal Protection Clause argument which has been advanced but rely solely on s 601." 414 U.S. at 566, 94 S.Ct. at 788. The concurring opinion of Justice Stewart (with whom the Chief Justice and Justice Blackmun joined)

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relied on Section 601 and the HEW regulations and guidelines and mentioned that plaintiffs there could concededly sue as third-party beneficiaries of said contract. Finally, Justice Blackmun (with whom the Chief Justice joined) stated that because the plaintiff class involved 2800 school children, he concurred in the holding that the San Francisco School District could not continue to teach students in English without teaching English to Chinese-speaking children or giving their classes in the Chinese language. [FN13] ***1281** Because of the near identity of language in Section 504 of the Rehabilitation Act of 1973 and Section 601 of the Civil Rights Act of 1964, Lau is dispositive. Therefore, we hold that Section 504 of the Rehabilitation Act, at least when considered with the regulations which now implement it, establishes affirmative rights and permits this action to proceed.[FN14]

FN9. Indeed, Section 504 had its genesis in an abortive attempt by Congressman Vanik to include the handicapped within the strictures of the Civil Rights Act of 1964 itself. In floor debate on the Rehabilitation Act of 1973, he expressed pleasure that his language was included in what was to become Section 504. 119 Cong. Rec. 7114 (1973).

FN10. Section 601 of the Civil Rights Act of 1964 provides:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (42 U.S.C. s 2000d).

FN11. Section 602 provides:

"Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken * * * " (42 U.S.C. s 2000d-1).

FN12. 45 C.F.R. pt. 80.

FN13. A perceived importance in the number of discriminatees seeking relief has caused one court to consider the numerosity of the plaintiff class as a limitation of Lau. Serna v. Portakes Municipal Schools, 499 F.2d 1147, 1154 (10th Cir. 1974).

FN14. Accord: Gurmankin v. Costanzo, 411 F.Supp. 982 (E.D.Pa.1976); Hairston v. Drosick, 423 F.Supp. 180 (S.D.W.Va.1976); Rhode Island Society for Autistic Children v. Board of Regents, Civil Action No. 5081 (D.R.I. August 1, 1975); Cherry v. Mathews, 419 F.Supp. 922 (D.D.C.1976); Sites v. McKenzie, 423 F.Supp. 1190, (N.D.W.Va.1976). See also Bartels v. Biernat, 405 F.Supp. 1012 (E.D.Wis.1975). To the extent that Young v. Coleman, Civil Action No. H-76-201 (D.Conn. Dec. 17, 1976), may be contra, we disagree therewith. The district judge did not realize that the Urban Mass Transportation Administrator's regulations had been issued in part under Section 504 (mem. op. 9), which was his reason for distinguishing Lau v. Nichols, supra. He left open the question whether Section 504 authorizes a private right of action in circumstances like these (mem. op. 9, 10). Also, the defendants there satisfied him that they were making good faith efforts to comply with the Urban Mass Transportation Act (mem. op. 8), and the State of Connecticut Department of Transportation represented that it would comply with the April and October requirements of the Urban Mass Transportation Administrator (n. 5).

Judge Flaum held that Lau was not controlling because this case was devoid of analogs to the HEW guidelines there involved. In the district court's view, the "obligation to provide special programs did not flow from the cited statutory language (Section 601 of the Civil Rights Act of 1964), but rather from Health, Education and Welfare guidelines which were enacted

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pursuant to the additional statutory section, s 2000d-1 (Section 602 of the Civil Rights Act of 1964)." Even though the opinion of the Court in Lau can be read as authority for allowing this action to proceed under Section 504 of the Rehabilitation Act alone, developments subsequent to the district court's opinion have provided a virtual one-to-one correspondence between the conceptual props supporting the concurring opinions in Lau and the elements of the instant case.

Here the conceptual analog of Section 602 of the Civil Rights Act of 1964 came into being on April 28, 1976, in the form of Executive Order 11914, 41 F.R. 17871 (April 29, 1976). The Executive Order authorizes HEW and other federal agencies dispensing financial assistance to adopt rules, regulations and orders to ensure that recipients of federal aid are in compliance with Section 504. If compliance cannot be secured voluntarily, it may be compelled by suspension or termination of federal assistance after a hearing or by "other appropriate means authorized by law." HEW is given the responsibility of establishing standards for who are "handicapped individuals" and for determining what are "discriminatory practices" as well as coordinating the implementation of Section 504 by all federal agencies. While the Rehabilitation Act itself contains no express directive to issue regulations,[FN15] ***1282** the 1974 Amendments to the Act generated a legislative history which indicates that Congress contemplated speedy implementation of Section 504 through regulations. See S.Rep. No. 93-1139, 93d Cong., 2d Sess. 24-25 (1974); H.R.Rep. No. 32-1457, 93d Cong., 2d Sess. 27-28 (1974); S.Rep. No. 32-1297, 93d Cong., 2d Sess. 39-40 (1974). "In review of the foregoing, (it can be concluded) that the (HEW) Secretary is required to promulgate regulations effectuating s 504." Cherry v. Mathews, 419 F.Supp. 922 (D.D.C., 1976). [FN16]

> FN15. However, the legislative history of the 1974 Rehabilitation Act Amendments explicitly contemplates an Executive Order such as 11914 which would consolidate in HEW the government-wide responsibility of issuing regulations to implement Section 504:
>
> "It is intended that sections 503 and 504 be administered in such a manner that a consistent, uniform, and effective Federal approach to discrimination against handicapped persons would result. Thus, Federal agencies and departments should cooperate in developing standards and policies so that there is a uniform, consistent Federal approach to these sections. The Secretary of the Department of Health, Education and Welfare, because of that Department's experience in dealing with handicapped persons and with the elimination of discrimination in other areas, should assume responsibility for coordinating the section 504 enforcement effort and for establishing a coordinating mechanism with the Secretary of the Department of Labor to ensure a consistent approach to the implementation of sections 503 and 504. The conferees fully expect that H.E.W.'s section 504 regulations should be completed by the close of this year. Delay beyond this point would be most unfortunate since the Act (P.L. 93-112) was enacted over one year ago September 26, 1973.
>
> "The conferees noted, and the Committee reiterates, that Executive Order No. 11758, section 2, delegates to the Secretary of Labor the responsibility for carrying out the responsibilities embodied in section 503 of the Rehabilitation Act of 1973, and a similar delegation of responsibility to the Secretary of HEW is urged to carry out on a Government-wide basis those responsibilities embodied in section 504." 4 U.S.Code Cong. & Admin.News, p. 6391 (1974).
>
> FN16. The district court in Cherry chose not to set a date when the final 504 regulations must issue but did retain jurisdiction to ensure that "no further unreasonable delays affect the promulgation of regulations under s 504." No appeal was taken from the July 19 memorandum opinion.

Forty days after the district court's opinion was issued, the Urban Mass Transportation Administrator promulgated final regulations, in part under the authority of Section 504. These regulations and various accompanying guidelines are squarely couched in affirmative language. Thus new regulation 49 CFR s 613.204 provides:

"Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.

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"The Urban Mass Transportation Administrator will grant project approvals pursuant to 23 CFR 450.320(a)(3) only if:

"(a) The urban transportation planning process exhibits satisfactory special efforts in planning public mass transportation facilities and services that can be utilized by elderly and handicapped persons ; and

"(b) The annual element of the transportation improvement program developed pursuant to 23 CFR 450.118 and submitted after September 30, 1976, contains projects or project elements designed to benefit elderly and handicapped persons, specifically including wheelchair users and those with semi-ambulatory capabilities ; and

(c) After September 30, 1977, reasonable progress has been demonstrated in implementing previously programmed projects." (Emphasis supplied.)

Advisory information issued simultaneously, to be added to the appendix to 23 CFR Part 450, Subpart A, sets forth general guidance on the meaning of "special efforts" in planning:
"The urban transportation planning process must include special efforts to plan public mass transportation facilities and service that can effectively be utilized by elderly and handicapped persons. As used in this guidance, the term 'special efforts' refers both to service for elderly and handicapped persons in general and specifically to service for wheelchair users and semiambulatory persons. With regard to transportation for wheelchair users and others who cannot negotiate steps, 'special efforts' in planning means genuine, good-faith progress in planning service for wheelchair users and semiambulatory handicapped persons that is reasonable by comparison with the service provided to the general public and that meets a significant fraction of the actual transportation needs of such persons within a reasonable time period." (Emphasis supplied.)

Further advisory information published as an appendix to 49 CFR Part 613, Subpart B, gives several examples of a level of effort that will be deemed to satisfy the special efforts requirement.[FN17] While the guidelines ***1283** do not purport to be regulatory standards or minimums,[FN18] they do suggest a commitment to an affirmative remedial program of substantial scope. The most recently issued Urban Mass Transportation Administrator's regulation (49 CFR s 609.15(b), 41 F.R. 45842 (October 18, 1976)) provides in pertinent part that:

FN17. The examples given are the following:

"1. A program for wheelchair users and semiambulatory handicapped persons that will involve the expenditure of an average annual dollar amount equivalent to a minimum of five percent of the section 5 (49 U.S.C. s 1604) apportionment to the urbanized area. These 'five percent funds' may be derived from sources other than section 5. The term 'average' permits lower expenditure years to be balanced by higher expenditure years but does not permit an initial delay in implementing projects. The term 'section 5 apportionment' refers to UMTA's formula apportionment for areas with a population of 200,000 or more and to the Governor's apportionment for areas with a population of 200,000 or more and to the Governor's apportionment for areas with a population under 200,000. Projects that qualify as local 'special efforts' for wheelchair users and other semiambulatory persons under the initial paragraphs of this advisory information would be counted in computing the five percent.

"2. Purchase of only wheelchair-accessible new fixed route equipment until one-half of the fleet is accessible, or in the alternative, provision of a substitute service that would provide comparable coverage and service levels.

"3. A system, of any design, that would assure that every wheelchair user or semiambulatory person in the urbanized area would have public transportation available is requested for 10 round-trips per week at fares comparable to those which are charged on standard transit buses for trips of similar length, within the service area of the public transportation authority. The system could, for example, provide trip coupons to individuals who would then purchase the needed service." 41 F.R. 18234 (April 30, 1976).

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FN18. 41 F.R. 18234 (April 30, 1976). However, the same appended material does describe some qualitative boundaries to the special efforts concept:

"Projects funded by UMTA under section 16(b)(2) (49 U.S.C. s 1612(b)(2)) may be identified as deriving from local special efforts to meet the needs of wheelchair users and semiambulatory persons only to the extent that the following four conditions are met: (1) the service and vehicles serve wheelchair users and semiambulatory persons; (2) the service meets a priority need identified in this planning process; (3) the service is not restricted to a particularized organizational or institutional clientele; and (4) any fares charged are comparable to those which are charged on standard transit buses for trips of similar length." Id.

"procurement solicitations shall provide for a bus design which permits the addition of a wheelchair accessibility option and shall require an assurance from each bidder that it offers a wheelchair accessibility option for its buses. The term 'wheelchair accessibility option' means a level change mechanism (e. g., lift or ramp), sufficient clearances to permit a wheelchair user to reach a securement location, and at least one wheelchair securement device."
Indeed, in oral argument the CTA conceded that the regulations created an affirmative duty on federal grant recipients.

Four months after the district judge's opinion, HEW issued proposed regulations implementing Section 504.[FN19] Paralleling 45 CFR s 80.3(b)(1) (ii) and (iv), the provisions explicitly mentioned by eight Justices in Lau, proposed regulations 49 CFR ss 84.4(b)(1)(ii) and (iv) specify that recipients of federal financial assistance may not

FN19. HEW's proposed regulations appear at 41 F.R. 29560-29567 (July 16, 1976) and are intended to become 45 CFR ss 84.1-84.54. Notice of Proposed Rulemaking was published at 41 F.R. 20296 (May 17, 1976). Even this early in the rulemaking process, the HEW Secretary conceded that Section 504 created individual rights:

"Thus, while we recognize that the statute creates individual rights, the statute is ambiguous as to the specific scope of these rights." Id.

"(ii) Provide a qualified handicapped person with aid, benefit, or service which is not as effective as that provided to others ;

"(iv) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving an aid, benefit or service." (Emphasis supplied.)

Moreover s 84.4(b)(2) establishes that
"A recipient may not provide different or separate aid, benefits or services to handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services which are as effective as those provided to others." (Emphasis supplied.) [FN20]

FN20. Sections 84.4(b)(i) and (b)(2) were redrafted from the language appearing in the Nature of Intent of Proposed Rulemaking of May 17, 1976, because the commentators objected to the draft regulations' emphasis on different treatment. Thus "as effective as" was substituted for "comparable" in the May 17 draft. The accompanying advisory information outlined the intent of this change:

"(The new terminology) is intended to encompass the concept of equivalent as opposed to identical, services and to acknowledge the fact that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary. For example, a welfare office that uses the telephone for communicating with its clients must provide alternative modes of communicating with its deaf clients. This standard parallels the one established under title VI of Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See ' Lau v. Nichols ', 414 U.S. 563,

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94 S.Ct. 786, 39 L.Ed.2d 1 (1974). The rewording of this provision is intended to emphasize that, although separate services may be required in some instances, the provision of unnecessarily separate or different services is discriminatory." 41 F.R. 29551 (July 16, 1976).

***1284** Finally, pending the adoption of a new procedural regulation consolidating all of the enforcement procedures implementing the civil rights statutes for which HEW has enforcement responsibilities,[FN21] the "procedural provisions of the title VI regulation, which may be found at 45 CFR Part 80, will be incorporated by reference into the section 504 regulations for use during the interim." 41 F.R. 29548 (July 16, 1976). The regulations thus reduce to concrete terms the abstract words of section 504.

FN21. On April 22, 1976, HEW released an Intent to Issue Notice of Proposed Rulemaking styled "Consolidated Procedural Rules for Administration and Enforcement of Certain Civil Rights Laws and Authorities." 41 F.R. 18394 (May 3, 1976).

Taken together with the numerosity of the class,[FN22] every element of the two [FN23] concurring opinions in Lau is also satisfied under the statutory and administrative framework of the instant case. The existence of affirmative rights under Section 504 necessarily follows, for, to paraphrase Justice Douglas in Lau :

FN22. The complaint alleges that there may be hundreds of thousands of mobility-disabled persons in the northeastern region of Illinois.

FN23. Justice White concurred without comment in the Lau result without joining either in the opinion of the Court or in the concurring opinions authored by Justices Stewart and Blackmun.

"Under these (federal) standards there is no equality of treatment merely by providing (the handicapped) with the same facilities (as ambulatory persons) * * *; for (handicapped persons) who (can) not (gain access to such facilities) are effectively foreclosed from any meaningful (public transportation)." 414 U.S. at 566, 94 S.Ct. at 788.[FN24]

FN24. HEW's May 17, 1976, statement of policy on interpreting Section 504 acknowledges as much:

"Handicapped persons may require different treatment in order to be afforded equal access to federally assisted programs and activities, and identical treatment may, in fact, constitute discrimination." 41 F.R. 20296 (May 17, 1976).

Cf. Griggs v. Duke Power Co., 401 U.S. 424, 431, 91 S.Ct. 849, 28 L.Ed.2d 158.

PRIVATE RIGHT OF ACTION

[4][5] Having demonstrated that Lau v. Nichols is conclusive on the question of the existence of affirmative rights under Section 504 and the regulations, we now turn to a consideration whether a private cause of action may be implied to vindicate these rights. As the parties have acknowledged, Cort v. Ash, 422 U.S. 66, 78, 95 S.Ct. 2080, 2087, 45 L.Ed.2d 26, sets out the four factors relevant to determining whether a private remedy is implicit in a statute not expressly providing one. They are:

"First, is the plaintiff 'one of the class for whose especial benefit the statute was enacted,' (emphasis supplied) that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would ***1285** be inappropriate to infer a cause of action based solely on federal law?" (Citations omitted.)

Applying the Cort factors here leads to the conclusion that a private cause of action must be implied from Section 504.

(1) Plaintiffs of course are among the class specifically benefited by the enactment of the statute. As demonstrated above, Section 504 establishes affirmative

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private rights. In particular, these rights apply to transportation barriers impeding handicapped individuals.[FN25] 29 U.S.C. s 701(11).

> FN25. Indeed, one of the principal purposes of the 1974 Rehabilitation Act Amendments was to include within Section 504 individuals who may have been unintentionally excluded from its protection by the original definition of handicapped individuals which over-emphasized employability. In the Senate Report, it was made plain that inter alia :
>
> "Section 504 was enacted to prevent discrimination against all handicapped individuals, regardless of their need for, or ability to benefit from vocational rehabilitation services, in relation to Federal assistance in * * * transportation * * * programs." 4 U.S.Code Cong. & Admin.News, p. 6388 (1974).

[6][7] (2) While the 1973 legislative history of Section 504 is bereft of much explanation,[FN26] the legislative history of the Rehabilitation Act Amendments of 1974 [FN27] casts light on the original Congressional intent. These amendments, inter alia, redefined the term "handicapped individual" as used in Section 504 and, as clarifying amendments, have cogent significance in construing Section 504. See Red Lion Broadcasting Co., Inc. v. Federal Trade Commission, 395 U.S. 367, 380-381, 89 S.Ct. 1794, 23 L.Ed.2d 371. It is noteworthy that the Senate Report was submitted on November 26, 1974, and the Lau opinion construing Section 601 of the Civil Rights Act of 1964 was handed down on January 21 of that year and certainly known by the Senate Committee. [FN28] Indeed, the report of the Senate Labor and Public Welfare Committee notes that the

> FN26. The 1973 legislative history leaves ambiguous whether or not Section 504 is a mandatory provision. See 2 U.S.Code Cong. & Admin.News, pp. 2123, 2143 (1973).
>
> FN27. Pub.L. 93-516, 88 Stat. 1617.
>
> FN28. Lau is also referred to in the introduction to HEW's proposed regulations (41 F.R. 29551, July 16, 1976). See note 20 supra. The third-party beneficiary theory advanced by Justice Stewart in Lau (414 U.S. at 571 n. 2, 94 S.Ct. 786) and by the Fifth Circuit in Bossier Parish School Board, supra, 370 F.2d at 852, is likewise mentioned there (41 F.R. 29552, July 16, 1976).

"new definition applies to section 503, as well as to section 504, in order to avoid limiting the affirmative action obligation of a Federal contractor to only that class of persons who are eligible for vocational rehabilitation services. * * * Where applicable, section 504 is intended to include a requirement of affirmative action as well as a prohibition against discrimination." 4 U.S.Code Cong. & Admin.News, p. 6390 (1974).
The Committee continues by stating that Section 504's similarity to Section 601 of the Civil Rights Act of 1964 was not accidental:

"Section 504 was patterned after, and is almost identical to, the antidiscrimination language of section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1 (relating to race, color, or national origin), and section 901 of the Education Amendments of 1972, 42 U.S.C. 1683 (relating to sex). The section therefore constitutes the establishment of a broad government policy that programs receiving Federal financial assistance shall be operated without discrimination on the basis of handicap. It does not specifically require the issuance of regulations or expressly provide for enforcement procedures, but it is clearly mandatory in form, and such regulations and enforcement are intended." (4 U.S.Code Cong. & Admin.News, p. 6390 (1974)).

Further, the scope of the enforcement mechanism to result from such conscious parallelism did not escape comment:
"The language of section 504, in followig (sic) the above-cited Acts, further envisions the implementation of a compliance program which is similar to those Acts, including promulgation of regulations providing for investigation and review of ***1286** recipients of Federal financial assistance, attempts to bring non-complying recipients into voluntary compliance through informal efforts such as negotiation, and the imposition of sanctions against recipients who continue to discriminate against otherwise qualified handicapped persons on the basis of handicap. Such sanctions would include, where appropriate, the termination of Federal financial assistance to the recipient or other means otherwise authorized by law. Implementation of section 504 would also include

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pre-grant analysis of recipients to ensure that Federal funds are not initially provided to those who discriminate against handicapped individuals. Such analysis would include pre-grant review procedures and a requirement for assurances of compliance with section 504. This approach to implementation of section 504, which closely follows the models of the above-cited anti-discrimination provisions, would ensure administrative due process (right to hearing, right to review), provide for administrative consistency within the Federal government as well as relative ease of implementation, and permit a judicial remedy through a private action." Id. at pp. 6390-6391. (Emphasis supplied.)

While the above language contemplates judicial review of an administrative proceeding as contradistinct from an independent cause of action in federal court, still it is plain that the rights of the handicapped were meant to be enforced at some point through the vehicle of a private cause of action. When administrative remedial machinery does not exist to vindicate an affirmative right, there can be no objection to an independent cause of action in the federal courts.[FN29] See Steele v. Louisville & N. R. Co., 323 U.S. 192, 206-207, 65 S.Ct. 226, 89 L.Ed. 173. In any event, under the second prong of the Cort test, there is surely an indication of legislative intent to create such a remedy and none to deny it.

> FN29. We expressly leave open as premature the question whether, after consolidated procedural enforcement regulations are issued to implement Section 504, the judicial remedy available must be limited to post-administrative remedy judicial review. In any event, the private cause of action we imply today must continue at least in the form of judicial review of administrative action. And until effective enforcement regulations are promulgated, Section 504 in its present incarnation as an independent cause of action should not be subjugated to the doctrine of exhaustion. Cf. Hardy v. Leonard, 377 F.Supp. 831 (N.D.Cal.1974); Southern Christian Leadership Conference, Inc. v. Connolly, 331 F.Supp. 940 (E.D.Mich.1971). See also Albert, Standing to Challenge Administrative Action: An Inadequate Surrogate for Claims for Relief, 83 Yale L.J. 425, 451-456 (1974). But assuming a meaningful administrative enforcement mechanism, the private cause of action under Section 504 should be limited to a posteriori judicial review.

[8] (3) It is certainly consistent with the underlying purposes of the legislative scheme to imply such a remedy. Indeed, one of the explicitly detailed purposes of the Rehabilitation Act of 1973 was to "enforce statutory and regulatory standards and requirements regarding barrier-free construction of public facilities and study and develop solutions to existing architectural and transportation barriers impeding handicapped individuals." 29 U.S.C. s 701(11). Moreover, since a private cause of action in this case serves to enforce the uniform substantive standards laid down by the UMTA and HEW regulations, the unseemly vista of a spotty application of ad hoc remedies in lawsuits in various regions of the country is not presented here. And no objection to local implementation of these substantive standards can prevail since the nationwide Urban Mass Transportation Administrator's regulations which set out standards for meeting the needs of the handicapped in transportation only serve as a guide for the local implementation of transportation opportunities for the mobility-disabled. 41 F.R. 18234 (April 30, 1976).

(4) Affording a private remedy under Section 504 of the Rehabilitation Act of 1973 would not be the kind of suit traditionally relegated to state law in an area basically the concern of the States. In fact, both the RTA and CTA conceded below that it was the intent of Congress to deal ***1287** with the transportation needs of the handicapped on a national basis.

Because all four Cort tests are satisfied, we are reinforced in our holding that Section 504 implicitly provides a private remedy. Therefore, we need not and do not consider whether the Equal Protection Clause (together with 28 U.S.C. s 1343) and the other statutes cited in the complaint also confer jurisdiction on the district court.

Defendants rely principally on Cannon v. University of Chicago Nos. 76-1238 and 1239, decided August 27, (7th Cir. 1976), in arguing that Section 504 does not provide for a private right of action. There a panel of this Court held that Title IX of the Education Amendments of 1972 (20 U.S.C. s 1681) does not permit a private cause of action. However, the Court

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noted that in contradistinction to Lau, Cannon involved only an individual plaintiff who had not exhausted her administrative remedies (slip op. 11 - 16). Here we have a huge class, and plaintiffs and amicus Urban Mass Transportation Administrator have not persuaded us that any administrative remedy is yet available to plaintiffs and their class, nor has Congress provided other means of enforcement. Furthermore, it should be noted that the Cannon opinion is not final, for the panel granted the petition for rehearing in part on November 30, 1976, and now again has the case sub judice. There HEW's most recent brief quotes legislative history of Section 504 to show that a private right of action should be inferred (Br. 15-16).

[9] Defendants and the amicus Urban Mass Transportation Administrator also rely on Bradford School Bus Transit, Inc. v. Chicago Transit Authority, 537 F.2d 943, 948 (7th Cir. 1976), in claiming that here plaintiffs must exhaust their administrative remedies before seeking judicial relief. There we applied the primary jurisdiction doctrine because the regulations specifically provided "for judicial review of administrative actions regarding school bus operations after certain procedures have been exhausted." No comparable regulations presently exist with respect to the problem at hand. There being no administrative remedy open to these plaintiffs, neither the exhaustion nor primary jurisdiction doctrine applies. Rosado v. Wyman, 397 U.S. 397, 405-406, 90 S.Ct. 1207, 25 L.Ed.2d 442.

Upon remand, defendants may of course be able to show that they are in compliance with the statutes on which plaintiffs rely and the regulations thereunder.[FN30] The affidavit filed in the district court by defendant CTA's general operations manager tends in that direction although it may already be partly obsolete in view of the Transbus developments (41 F.R. 15735, 32286-32287, 45842 (April 14, 1976; August 2, 1976; October 18, 1976)). See also notes 17-18 and accompanying text supra. Our opinion expresses no view on the ultimate merits of plaintiffs' case because the undeveloped record does not show whether RTA and CTA are following the statutes and regulations. [FN31]

FN30. Since the Urban Mass Transportation Administrator's regulations became effective on May 31, 1976, plaintiffs now challenge only projects whose funding was approved after that date. On remand, leave should be granted to plaintiffs to make post-May 31 allegations. Cf. note 5 supra.

FN31. In Lau, the opinion of the Court adverted to a contract between HEW and the San Francisco Unified School District compelling it to comply with Title VI of the Civil Rights Act of 1964 and HEW's regulations thereunder and to take any necessary measures to effectuate the contract (414 U.S. at 568-569, 94 S.Ct. 786). Through discovery on remand, plaintiffs will be able to ascertain whether any agreements between defendants and federal agencies contain equivalent terms.

In concluding, we cannot fault the district court for its dismissal order. Without the benefit of any regulations, it is difficult to perceive what relief could have been afforded at that stage. However, the Urban Mass Transportation Administrator's regulations were issued before this appeal was briefed and argued and of course apply to our deliberations. Thorpe v. Housing Authority, 393 U.S. 268, 281-282, 89 S.Ct. 518, 21 L.Ed.2d 474; United States v. Fitzgerald, 545 F.2d 578, 581 (7th Cir. 1976). Since the plaintiffs may now be able to ***1288** show that they are entitled to remedial action, the case must be returned to the district court for appropriate further proceedings. If effective by then, consideration will also have to be given to HEW's proposed regulations (note 19 supra).

Vacated and remanded.[FN32]

FN32. On remand, leave should be granted to amend the complaint to add the HEW Secretary, the Secretary of Transportation and the Urban Mass Transportation Administrator as defendants and Section 165 of the Federal-Aid Highway Act of 1973, as amended (88 Stat. 2283) as one of the statutes relied upon, as prayed in plaintiffs' briefs (Br. 12 and Reply Br. 6) Such amendments will not unfairly surprise the litigants, for the CTA below and the district court discussed the federal official point, as did the amicus Urban Mass Transportation Administrator, and the Federal-Aid Highway Act was first discussed in RTA's briefs below and again in the district court's opinion.

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(Cite as: 548 F.2d 1277)

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Supreme Court of the United States
McDONNELL DOUGLAS CORPORATION, Petitioner,
v.
Percy GREEN.
No. 72-490.

Argued March 28, 1973.
Decided May 14, 1973.

Suit claiming violation of provisions of Civil Rights Act of 1964. The District Court, 299 F.Supp. 1100 and 318 F.Supp. 846, entered judgment, and appeal was taken. The Court of Appeals, 463 F.2d 337, ordered the case remanded, and certiorari was granted. The Supreme Court, Mr. Justice Powell, held that the Act did not restrict a complainant's right to sue to those charges as to which the Equal Employment Opportunity Commission has made findings of reasonable cause, and further held that where employer sought mechanics, complainant's trade and continued to do so after complainant's rejection and employer did not dispute complainant's qualifications, complainant proved prima facie case under Title VII and furthermore, employer, which assigned complainant's participation in unlawful conduct against it as cause for his rejection, discharged its burden of proof to articulate legitimate, nondiscriminatory reason for complainant's rejection, but on remand complainant had to be afforded a fair opportunity to show that employer's stated reason for complainant's rejection was in fact pretextual.

Cause remanded.

West Headnotes

[1] Civil Rights 78 ⚿1511

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1511 k. Civil Actions in General. Most Cited Cases
(Formerly 78k361, 78k38)
Absence of an Equal Employment Opportunity Commission finding of reasonable cause cannot bar suit under an appropriate section of Title VII of the Civil Rights Act of 1964. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[2] Civil Rights 78 ⚿1511

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1511 k. Civil Actions in General. Most Cited Cases
(Formerly 78k361, 78k38)
Where complaint satisfied jurisdictional prerequisites to federal action under Title VII of the Civil Rights Act of 1964 by filing timely charges of employment discrimination with Equal Employment Opportunity Commission and by receiving and acting upon the Commission's statutory notice of right to sue, district judge erred in dismissing his claim of racial discrimination under provision dealing with whether for any reason a racially discriminatory employment decision has been made; the Act did not restrict a complainant's right to sue to those charges as to which the Commission has made findings of reasonable cause. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[3] Federal Civil Procedure 170A ⚿1793.1

170A Federal Civil Procedure
170AXI Dismissal
170AXI(B) Involuntary Dismissal
170AXI(B)4 Particular Actions, Insufficiency of Pleadings in
170Ak1793 Employees and Employment Discrimination, Actions Involving
170Ak1793.1 k. In General. Most Cited Cases
(Formerly 170Ak1793, 106k406.6(3), 170Ak1781)

Federal Courts 170B ⚿893

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)6 Harmless Error

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170Bk893 k. Particular Errors as Harmless or Prejudicial. Most Cited Cases
Where it was not clear that district court's findings as to complainant's contentions under provision of Civil Rights Act of 1964 relating solely to discrimination against an applicant or employee on account of his participation in legitimate civil rights activities or protests involved identical issues raised by his claim under other provision of the Act dealing with whether for any reason a racially discriminatory employment decision has been made, dismissal of complainant's claim under the latter provision was not harmless error and he should have been accorded right to prepare his case and plan strategy of trial with knowledge that cause of action under that provision was properly before the district court. Civil Rights Act of 1964, §§ 703(a)(1), 704(a), 42 U.S.C.A. §§ 2000e-2(a)(1), 2000e-3(a).

[4] Civil Rights 78 ⚿1107

78 Civil Rights
78II Employment Practices
78k1107 k. Discrimination by Reason of Race, Color, Ethnicity, or National Origin, in General. Most Cited Cases
(Formerly 78k142, 78k9.10)
In implementation of employment and personnel decisions, Title VII of the Civil Rights Act of 1964 tolerates no racial discrimination, subtle or otherwise. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[5] Civil Rights 78 ⚿1121

78 Civil Rights
78II Employment Practices
78k1121 k. Hiring. Most Cited Cases
(Formerly 78k1545, 78k383, 78k44(1))

Civil Rights 78 ⚿1535

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1534 Presumptions, Inferences, and Burden of Proof
78k1535 k. In General. Most Cited Cases
(Formerly 78k1545)
Complainant in a trial under Title VII of the Civil Rights Act of 1964 must carry initial burden under the statute of establishing a prima facie case of racial discrimination and that may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[6] Civil Rights 78 ⚿1121

78 Civil Rights
78II Employment Practices
78k1121 k. Hiring. Most Cited Cases
(Formerly 78k382.1)

Civil Rights 78 ⚿1536

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1534 Presumptions, Inferences, and Burden of Proof
78k1536 k. Effect of Prima Facie Case; Shifting Burden. Most Cited Cases
(Formerly 78k382.1)

Civil Rights 78 ⚿1544

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1544 k. In General. Most Cited Cases
(Formerly 78k382.1, 78k382, 78k44(1))

Civil Rights 78 ⚿1545

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1545 k. Prima Facie Case. Most Cited Cases
(Formerly 78k383, 78k43)
Where employer sought mechanics, complainant's trade, and continued to do so after complainant's re-

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jection and employer did not dispute complainant's qualifications, complainant proved prima facie case under Title VII of Civil Rights Act of 1964, and furthermore, employer, which assigned complainant's participation in unlawful conduct against it as cause for his rejection, discharged its burden of proof to articulate legitimate, nondiscriminatory reason for complainant's rejection, but on remand complainant had to be afforded a fair opportunity to show that employer's stated reason for complainant's rejection was in fact mere pretext. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[7] Civil Rights 78 1122

78 Civil Rights
78II Employment Practices
78k1122 k. Discharge or Layoff. Most Cited Cases
(Formerly 78k141, 78k9.10)

Civil Rights 78 1247

78 Civil Rights
78II Employment Practices
78k1241 Retaliation for Exercise of Rights
78k1247 k. Discharge or Layoff. Most Cited Cases
(Formerly 78k1246, 78k141, 78k9.10)
Nothing in Title VII of the Civil Rights Act of 1964 compels an employer to absolve and rehire one who has engaged in deliberate, unlawful activity against it. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[8] Civil Rights 78 1122

78 Civil Rights
78II Employment Practices
78k1122 k. Discharge or Layoff. Most Cited Cases
(Formerly 78k141, 78k9.10)

Civil Rights 78 1247

78 Civil Rights
78II Employment Practices
78k1241 Retaliation for Exercise of Rights
78k1247 k. Discharge or Layoff. Most Cited Cases
(Formerly 78k1246, 78k141, 78k9.10)
Employer may justifiably refuse to rehire one who was engaged in unlawful, disruptive acts against it but only if that criterion is applied alike to members of all races. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[9] Civil Rights 78 1121

78 Civil Rights
78II Employment Practices
78k1121 k. Hiring. Most Cited Cases
(Formerly 78k141, 78k9.10)

Civil Rights 78 1246

78 Civil Rights
78II Employment Practices
78k1241 Retaliation for Exercise of Rights
78k1246 k. Particular Cases. Most Cited Cases
(Formerly 78k141, 78k9.10)
Rejection of prospective employee for unlawful conduct against employer, in the absence of proof of pretextual or discriminatory application of such a reason, is not the kind of artificial, arbitrary and unnecessary barrier to employment which it was the intent of Congress to remove under the Civil Rights Act of 1964. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

**1819 *792 Syllabus[FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Respondent, a black civil rights activist, engaged in disruptive and illegal activity against petitioner as part of his protest that his discharge as an employee of petitioner's and the firm's general hiring practices were racially motivated. When petitioner, who subsequently advertised for qualified personnel, rejected respondent's re-employment application on the ground of the illegal conduct, respondent filed a complaint with the Equal Employment Opportunity Commission (EEOC) charging violation of Title VII of the Civil

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Rights Act of 1964. The EEOC found that there was reasonable cause to believe that petitioner's rejection of respondent violated s 704(a) of the Act, which forbids discrimination against applicants or employees for attempting to protest or correct allegedly discriminatory employment conditions, but made no finding on respondent's allegation that petitioner had also violated s 703(a) (1), which prohibits discrimination in any employment decision. Following unsuccessful EEOC conciliation efforts, respondent brought suit in the District Court, which ruled that respondent's illegal activity was not protected by s 704(a) and dismissed the s 703(a)(1) claim because the EEOC had made no finding with respect thereto. The Court of Appeals affirmed the s 704(a) ruling, but reversed with respect to s 703(a)(1), holding that an EEOC determination of reasonable cause was not a jurisdictional prerequisite to claiming a violation of that provision in federal court. Held:

1. A complainant's right to bring suit under the Civil Rights Act of 1964 is not confined to charges as to which the EEOC has made a reasonable-cause finding, and the District Court's error in holding to the contrary was not harmless since the issues raised with respect to s 703(a)(1) were not identical to those with respect to s 704(a) and the dismissal of the former charge may have prejudiced respondent's efforts at trial. Pp. 1822-1823.

2. In a private, non-class-action complaint under Title VII charging racial employment discrimination, the complainant has the burden of establishing a prima facie case, which he can satisfy by showing that (i) he belongs to a racial**1820 minority; (ii) he *793 applied and was qualified for a job the employer was trying to fill; (iii) though qualified, he was rejected; and (iv) thereafter the employer continued to seek applicants with complainant's qualifications. P. 1824.

3. Here, the Court of Appeals, though correctly holding that respondent proved a prima facie case, erred in holding that petitioner had not discharged its burden of proof in rebuttal by showing that its stated reason for the rehiring refusal was based on respondent's illegal activity. But on remand respondent must be afforded a fair opportunity of proving that petitioner's stated reason was just a pretext for a racially discriminatory decision, such as by showing that whites engaging in similar illegal activity were retained or hired by petitioner. Other evidence that may be relevant, depending on the circumstances, could include facts that petitioner had discriminated against respondent when he was an employee or followed a discriminatory policy toward Minority employees. Pp. 1824-1826.

8 Cir., 463 F.2d 337, vacated and remanded.
Veryl L. Riddle, St. Louis, Mo., for petitioner.

Louis Gilden, St. Louis, Mo., for respondent.

Mr. Justice POWELL delivered the opinion for a unanimous Court.

The case before us raises significant questions as to the proper order and nature of proof in actions under Title *794 VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U.S.C. s 2000e et seq.

Petitioner, McDonnell Douglas Corp., is an aerospace and aircraft manufacturer headquartered in St. Louis, Missouri, where it employs over 30,000 people. Respondent, a black citizen of St. Louis, worked for petitioner as a mechanic and laboratory technician from 1956 until August 28, 1964[FN1] when he was laid off in the course of a general reduction in petitioner's work force.

> FN1. His employment during these years was continuous except for 21 months of service in the military.

Respondent, a long-time activist in the civil rights movement, protested vigorously that his discharge and the general hiring practices of petitioner were racially motivated.[FN2] As part of this protest, respondent and other members of the Congress on Racial Equality illegally stalled their cars on the main roads leading to petitioner's plant for the purpose of blocking access to it at the time of the morning shift change. The District Judge described the plan for, and respondent's participation in, the 'stall-in' as follows:

> FN2. The Court of Appeals noted that respondent then 'filed formal complaints of discrimination with the President's Commission on Civil Rights, the Justice Department, the Department of the Navy, the Defense Department, and the Missouri Commission on Human Rights.' 463 F.2d 337 (8 Cir., 1972).

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'(F)ive teams, each consisting of four cars would 'tie up' five main access roads into McDonnell at the time of the morning rush hour. The drivers of the cars were instructed to line up next to each other completely blocking the intersections or roads. The drivers were also instructed to stop their cars, turn off the engines, pull the emergency brake, raise all windows, lock the doors, and remain in their cars until the police arrived. The plan was to have the cars remain in position for one hour.

***795** 'Acting under the 'stall in' plan, plaintiff (respondent in the present action) drove his car onto Brown Road, a McDonnell access road, at approximately 7:00 a.m., at the start of the morning rush hour. Plaintiff was aware of the traffic problems that would result. He stopped his car with the intent to block traffic. The police ****1821** arrived shortly and requested plaintiff to move his car. He refused to move his car voluntarily. Plaintiff's car was towed away by the police, and he was arrested for obstructing traffic. Plaintiff pleaded guilty to the charge of obstructing traffic and was fined.' 318 F.Supp. 846.

On July 2, 1965, a 'lock-in' took place wherein a chain and padlock were placed on the front door of a building to prevent the occupants, certain of petitioner's employees, from leaving. Though respondent apparently knew beforehand of the 'lock-in,' the full extent of his involvement remains uncertain.[FN3]

> FN3. The 'lock-in' occurred during a picketing demonstration by ACTION, a civil rights organization, at the entrance to a downtown office building which housed a part of petitioner's offices and in which certain of petitioner's employees were working at the time. A chain and padlock were placed on the front door of the building to prevent ingress and egress. Although respondent acknowledges that he was chairman of ACTION at the time, that the demonstration was planned and staged by his group, that he participated in and indeed was in charge of the picket line in front of the building, that he was told in advance by a member of ACTION 'that he was planning to chain the front door,' and that he 'approved of' chaining the door, there is no evidence that respondent personally took part in the actual 'lock-in,' and he was not arrested. App. 132-133.
>
> The Court of Appeals majority, however, found that the record did 'not support the trial court's conclusion that Green 'actively cooperated' in chaining the doors of the downtown St. Louis building during the 'lock-in' demonstration.' 463 F.2d, at 341. See also concurring opinion of Judge Lay. Id., at 344. Judge Johnsen, in dissent, agreed with the District Court that the 'chaining and padlocking (were) carried out as planned, (and that) Green had in fact given it . . . approval and authorization.' Id., at 348.
>
> In view of respondent's admitted participation in the unlawful 'stall-in,' we find it unnecessary to resolve the contradictory contentions surrounding this 'lock-in.'

***796** Some three weeks following the 'lock-in,' on July 25, 1965, petitioner publicly advertised for qualified mechanics, respondent's trade, and respondent promptly applied for re-employment. Petitioner turned down respondent, basing its rejection on respondent's participation in the 'stall-in' and 'lock-in.' Shortly thereafter, respondent filed a formal complaint with the Equal Employment Opportunity Commission, claiming that petitioner had refused to rehire him because of his race and persistent involvement in the civil rights movement, in violation of ss 703(a)(1) and 704(a) of the Civil Rights Act of 1964, 42 U.S.C. ss 2000e-2(a)(1) and 2000e-3(a).[FN4] The former section generally prohibits racial discrimination in any employment decision while the latter forbids discrimination against applicants or employees for attempting to protest or correct allegedly discriminatory conditions of employment.

> FN4. Section 703(a)(1) of the Civil Rights Act of 1964, 42 U.S.C. s 2000e-2(a) (1), in pertinent part provides:
>
> 'It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . ..'

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> Section 704(a) of the Civil Rights Act of 1964, 42 U.S.C. s 2000e-3(a), in pertinent part provides:
>
> 'It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment . . . because he has opposed any practice made an unlawful employment practice by this subchapter . . ..'

***797** The Commission made no finding on respondent's allegation of racial bias under s 703(a)(1), but it did find reasonable cause to believe petitioner had violated s 704(a) by refusing to rehire respondent because of his civil rights activity. After the Commission unsuccess-fully attempted to conciliate the dispute, it advised respondent in March 1968, of his right to institute a civil action in federal court within 30 days.

On April 15, 1968, respondent brought the present action, claiming initially a violation of s 704(a) and, in an amended ****1822** complaint, a violation of s 703(a)(1) as well.[FN5] The District Court, 299 F.Supp. 1100, dismissed the latter claim of racial discrimination in petitioner's hiring procedures on the ground that the Commission had failed to make a determination of reasonable cause to believe that a violation of that section had been committed. The District Court also found that petitioner's refusal to rehire respondent was based solely on his participation in the illegal demonstrations and not on his legitimate civil rights activities. The court concluded that nothing in Title VII or s 704 protected 'such activity as employed by the plaintiff in the 'stall in' and 'lock in' demonstrations.' 318 F.Supp., at 850.

> FN5. Respondent also contested the legality of his 1964 discharge by petitioner, but both courts held this claim barred by the statute of limitations. Respondent does not challenge those rulings here.

On appeal, the Eighth Circuit affirmed that unlawful protests were not protected activities under s 704(a),[FN6] but reversed the dismissal of respondent's s 703(a)(1) claim relating to racially discriminatory hiring practices, holding that a prior Commission determination of reasonable cause was not a jurisdictional prerequisite to raising a claim under that section in federal court. The court ***798** ordered the case remanded for trial of respondent's claim under s 703(a)(1).

> FN6. Respondent has not sought review of this issue.

In remanding, the Court of Appeals attempted to set forth standards to govern the consideration of respondent's claim. The majority noted that respondent had established a prima facie case of racial discrimination; that petitioner's refusal to rehire respondent rested on 'subjective' criteria which carried little weight in rebutting charges of discrimination; that, though respondent's participation in the unlawful demonstrations might indicate a lack of a responsible attitude toward performing work for that employer, respondent should be given the opportunity to demonstrate that petitioner's reasons for refusing to rehire him were mere pretext.[FN7] In order to clarify the standards governing the disposition of an action challenging employment discrimination, we granted certiorari, 409 U.S. 1036, 93 S.Ct. 522, 34 L.Ed.2d 485 (1972).

> FN7. All references are to Part V of the revised opinion of the Court of Appeals, 463 F.2d, at 352, which superseded Part V of the court's initial opinion with respect to the order and nature of proof. 463 F.2d 337.

I

[1][2] We agree with the Court of Appeals that absence of a Commission finding of reasonable cause cannot bar suit under an appropriate section of Title VII and that the District Judge erred in dismissing respondent's claim of racial discrimination under s 703(a)(1). Respondent satisfied the jurisdictional prerequisites to a federal action (i) by filing timely charges of employment discrimination with the Commission and (ii) by receiving and acting upon the Commission's statutory notice of the right to sue, 42 U.S.C. ss 2000e-5(a) and 2000e-5(e). The Act does not restrict a complainant's right to sue to those charges as to which the Commission has made findings of reasonable cause, and we will not engraft on the statute a requirement which may inhibit the review of ***799** claims of employment discrimination in the federal courts. The Commission itself does not con-

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sider the absence of a 'reasonable cause' determination as providing employer immunity from similar charges in a federal court, 29 CFR s 1601.30, and the courts of appeal have held that, in view of the large volume of complaints before the Commission and the nonadversary character of many of its proceedings, 'court actions under Title VII are de novo proceedings**1823 and . . . a Commission 'no reasonable cause' finding does not bar a lawsuit in the case.' Robinson v. Lorillard Corp., 444 F.2d 791, 800 (CA4 1971); Beverly v. Lone Star Lead Construction Corp., 437 F.2d 1136 (CA,5 1971); Flowers v. Local 6, Laborers International Union of North America, 431 F.2d 205 (CA7 1970); Fekete v. United States Steel Corp., 424 F.2d 331 (CA 3 1970).

[3] Petitioner argues, as it did below, that respondent sustained no prejudice from the trial court's erroneous ruling because in fact the issue of racial discrimination in the refusal to re-employ 'was tried thoroughly' in a trial lasting four days with 'at least 80%' of the questions relating to the issue of 'race.'[FN8] Petitioner, therefore, requests that the judgment below be vacated and the cause remanded with instructions that the judgment of the District Court be affirmed.[FN9] We cannot agree that the dismissal of respondent's s 703(a)(1) claim was harmless error. It is not clear that the District Court's findings as to respondent's s 704(a) contentions involved the identical issues raised by his claim under s 703(a)(1). The former section relates solely to discrimination against an applicant or employee on account of his participation in legitimate civil rights activities or protests, while the latter section deals with the broader and centrally*800 important question under the Act of whether for any reason, a racially discriminatory employment decision has been made. Moreover, respondent should have been accorded the right to prepare his case and plan the strategy of trial with the knowledge that the s 703(a)(1) cause of action was properly before the District Court. [FN10] Accordingly, we remand the case for trial of respondent's claim of racial discrimination consistent with the views set forth below.

FN8. Tr. of Oral Arg. 11.

FN9. Brief for Petitioner 40.

FN10. The trial court did not discuss respondent's s 703(a)(1) claim in its opinion and denied requests for discovery of statistical materials which may have been relevant to that claim.

II

The critical issue before us concerns the order and allocation of proof in a private, non-class action challenging employment discrimination. The language of Title VII makes plain the purpose of Congress to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens. Griggs v. Duke Power Co., 401 U.S. 424, 429, 91 S.Ct. 849, 852, 28 L.Ed.2d 158 (1971); Castro v. Beecher, 459 F.2d 725 (CA1 1972); Chance v. Board of Examiners, 458 F.2d 1167 (CA2 1972); Quarles v. Philip Morris, Inc., 279 F.Supp. 505 (ED Va.1968). As noted in Griggs, supra:

'Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. *801 What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.' Id., 401 U.S., at 430-431, 91 S.Ct., at 853.

[4] There are societal as well as personal interests on both sides of this equation. The broad, overriding interest, shared by employer, employee, and consumer, is efficient and trustworthy workmanship assured through fair and racially neutral employment and personnel decisions. In the implementation of **1824 such decisions, it is abundantly clear that Title VII tolerates no racial discrimination, subtle or otherwise.

In this case respondent, the complainant below, charges that he was denied employment 'because of his involvement in civil rights activities' and 'because of his race and color.'[FN11] Petitioner denied discrimination of any kind, asserting that its failure to re-employ respondent was based upon and justified by his participation in the unlawful conduct against it. Thus, the issue at the trial on remand is framed by

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those opposing factual contentions. The two opinions of the Court of Appeals and the several opinions of the three judges of that court attempted, with a notable lack of harmony, to state the applicable rules as to burden of proof and how this shifts upon the making of a prima facie case.[FN12] We now address this problem.

FN11. The respondent initially charged petitioner in his complaint filed April 15, 1968, with discrimination because of his 'involvement in civil rights activities.' App. 7, 8. In his amended complaint, filed March 20, 1969, plaintiff broadened his charge to include denial of employment because of race in violation of s 703(a)(1). App. 27.

FN12. See original opinion of the majority of the panel which heard the case, 463 F.2d, at 338; the concurring opinion of Judge Lay, id., at 344; the first opinion of Judge Johnsen, dissenting in part, id., at 346; the revised opinion of the majority, id., at 352; and the supplemental dissent of Judge Johnsen, id., at 353. A petition for rehearing en banc was denied by an evenly divided Court of Appeals.

***802** [5][6] The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.[FN13] In the instant case, we agree with the Court of Appeals that respondent proved a prima facie case. 463 F.2d 337, 353. Petitioner sought mechanics, respondent's trade, and continued to do so after respondent's rejection. Petitioner, moreover, does not dispute respondent's qualifications[FN14] and acknowledges that his past work performance in petitioner's employ was 'satisfactory.'[FN15]

FN13. The facts necessarily will vary in Title VII cases, and the specification above of the prima facie proof required from respondent is not necessarily applicable in every respect to differing factual situations.

FN14. We note that the issue of what may properly be used to test qualifications for employment is not present in this case. Where employers have instituted employment tests and qualifications with an exclusionary effect on minority applicants, such requirements must be 'shown to bear a demonstrable relationship to successful performance of the jobs' for which they were used, Griggs v. Duke Power Co., 401 U.S. 424, 431, 91 S.Ct. 849, 853, 28 L.Ed.2d 158 (1971). Castro v. Beecher, 459 F.2d 725 (CA1 1972); Chance v. Board of Examiners, 458 F.2d 1167 (CA2 1972).

FN15. Tr. of Oral Arg. 3; 463 F.2d, at 353.

The burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection. We need not attempt in the instant case to detail every matter which fairly could be ***803** recognized as a reasonable basis for a refusal to hire. Here petitioner has assigned respondent's participation in unlawful conduct against it as the cause for his rejection. We think that this suffices to discharge petitioner's burden of proof at this stage and to meet respondent's prima facie case of discrimination.

[7] The Court of Appeals intimated, however, that petitioner's stated reason for refusing to rehire respondent was a 'subjective' rather than objective criterion which 'carr[ies] little weight in rebutting charges of discrimination,' 463 F.2d, at 343. This was among the statements which caused the dissenting judge ****1825** to read the opinion as taking 'the position that such unlawful acts as Green committed against McDonnell would not legally entitle McDonnell to refuse to hire him, even though no racial motivation was involved . . . .' Id., at 355. Regardless of whether this was the intended import of the opinion, we think the court below seriously underestimated the rebuttal weight to which petitioner's reasons were entitled. Respondent admittedly had taken part in a carefully planned 'stall-in,' designed to tie up access to and egress from petitioner's plant at a peak traffic hour.[FN16] Nothing in Title VII compels an employer to absolve and rehire one who has engaged in such deliberate, unlawful activity against it. [FN17] In upholding, under the National Labor Relations Act,

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the discharge of employees who had seized and forcibly retained *804 an employer's factory buildings in an illegal sit-down strike, the Court noted pertinently:

> FN16. The trial judge noted that no personal injury or property damage resulted from the 'stall-in' due 'solely to the fact that law enforcement officials had obtained notice in advance of plaintiff's (here respondent's) demonstration and were at the scene to remove plaintiff's car from the highway.' 318 F.Supp. 846, 851.
>
> FN17. The unlawful activity in this case was directed specifically against petitioner. We need not consider or decide here whether, or under what circumstances, unlawful activity not directed against the particular employer may be a legitimate justification for refusing to hire.

'We are unable to conclude that Congress intended to compel employers to retain persons in their employ regardless of their unlawful conduct,-to invest those who go on strike with an immunity from discharge for acts of trespass or violence against the employer's property . . . Apart from the question of the constitutional validity of an enactment of that sort, it is enough to say that such a legislative intention should be found in some definite and unmistakable expression.' NLRB v. Fansteel Corp., 306 U.S. 240, 255, 59 S.Ct. 490, 496, 83 L.Ed. 627 (1939).

[8] Petitioner's reason for rejection thus suffices to meet the prima facie case, but the inquiry must not end here. While Title VII does not, without more, compel rehiring of respondent, neither does it permit petitioner to use respondent's conduct as a pretext for the sort of discrimination prohibited by s 703(a)(1). On remand, respondent must, as the Court of Appeals recognized, be afforded a fair opportunity to show that petitioner's stated reason for respondent's rejection was in fact pretext. Especially relevant to such a showing would be evidence that white employees involved in acts against petitioner of comparable seriousness to the 'stall-in' were nevertheless retained or rehired. Petitioner may justifiably refuse to rehire one who was engaged in unlawful, disruptive acts against it, but only if this criterion is applied alike to members of all races.

Other evidence that may be relevant to any showing of pretext includes facts as to the petitioner's treatment of respondent during his prior term of employment; petitioner's reaction, if any, to respondent's legitimate civil rights activities; and petitioner's general policy and *805 practice with respect to minority employment.[FN18] On the latter point, statistics as to petitioner's employment policy and practice may be helpful to a determination of whether petitioner's refusal to rehire respondent in this case conformed to a general pattern of discrimination against blacks. **1826Jones v. Lee Way Motor Freight, Inc., 431 F.2d 245 (CA10 1970); Blumrosen, Strangers in Paradise: Griggs v. Duke Power Co., and the Concept of Employment Discrimination, 71 Mich.L.Rev. 59, 91-94 (1972).[FN19] In short, on the retrial respondent must be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for his rejection were in fact a coverup for a racially discriminatory decision.

> FN18. We are aware that some of the above factors were, indeed, considered by the District Judge in finding under s 704(a), that 'defendant's (here petitioner's) reasons for refusing to rehire the plaintiff were motivated solely and simply by the plaintiff's participation in the 'stall in' and 'lock in' demonstrations.' 318 F.Supp., at 850. We do not intimate that this finding must be overturned after consideration on remand of respondent's s 703(a)(1) claim. We do, however, insist that respondent under s 703(a)(1) must be given a full and fair opportunity to demonstrate by competent evidence that whatever the stated reasons for his rejection, the decision was in reality racially premised.
>
> FN19. The District Court may, for example, determine, after reasonable discovery that 'the (racial) composition of defendant's labor force is itself reflective of restrictive or exclusionary practices.' See Blumrosen, supra, at 92. We caution that such general determinations, while helpful, may not be in and of themselves controlling as to an individualized hiring decision, particularly in the presence of an otherwise justifiable reason for refusing to rehire. See generally United States v. Bethlehem Steel Corp., 312 F.Supp. 977, 992 (WDNY 1970), order modified, 446

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F.2d 652 (CA2 1971). Blumrosen, supra, n. 19, at 93.

[9] The court below appeared to rely upon Griggs v. Duke Power Co., *supra,* in which the Court stated: 'If an employment practice which operates to exclude Negroes cannot***806** be shown to be related to job performance, the practice is prohibited.' 401 U.S., at 431, 91 S.Ct., at 853, 28 L.Ed.2d 158.[FN20] But Griggs differs from the instant case in important respects. It dealt with standardized testing devices which, however neutral on their face, operated to exclude many blacks who were capable of performing effectively in the desired positions. Griggs was rightly concerned that childhood deficiencies in the education and background of minority citizens, resulting from forces beyond their control, not be allowed to work a cumulative and invidious burden on such citizens for the remainder of their lives. Id., at 430, 91 S.Ct., at 853. Respondent, however, appears in different clothing. He had engaged in a seriously disruptive act against the very one from whom he now seeks employment. And petitioner does not seek his exclusion on the basis of a testing device which overstates what is necessary for competent performance, or through some sweeping disqualification of all those with any past record of unlawful behavior, however remote, insubstantial, or unrelated to applicant's personal qualifications as an employee. Petitioner assertedly rejected respondent for unlawful conduct against it and, in the absence of proof of pretext or discriminatory application of such a reason, this cannot be thought the kind of 'artificial, arbitrary, and unnecessary barriers to employment' which the Court found to be the intention of Congress to remove. Id., at 431, 91 S.Ct., at 853.[FN21]

FN20. See 463 F.2d, at 352.

FN21. It is, of course, a predictive evaluation, resistant to empirical proof, whether 'an applicant's past participation in unlawful conduct directed at his prospective employer might indicate the applicant's lack of a responsible attitude toward performing work for that employer.' 463 F.2d, at 353. But in this case, given the seriousness and harmful potential of respondent's participation in the 'stall-in' and the accompanying inconvenience to other employees, it cannot be said that petitioner's refusal to employ lacked a rational and neutral business justification. As the Court has noted elsewhere:

'Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust.' Garner v. Board of Public Works of Los Angeles, 341 U.S. 716, 720, 71 S.Ct. 909, 912, 95 L.Ed. 1317 (1951).

***807** III

In sum, respondent should have been allowed to pursue his claim under s 703(a) (1). If the evidence on retrial is substantially in accord with that before us in this case, we think that respondent carried his burden of establishing a prima facie case of racial discrimination and that petitioner successfully rebutted that case. But this does not end the matter. On retrial, respondent must be afforded a fair opportunity to demonstrate ****1827** that petitioner's assigned reason for refusing to re-employ was a pretext or discriminatory in its application. If the District Judge so finds, he must order a prompt and appropriate remedy. In the absence of such a finding, petitioner's refusal to rehire must stand.

The cause is hereby remanded to the District Court for reconsideration in accordance with this opinion.

So ordered.

Remanded.

U.S.Mo. 1973.
McDonnell Douglas Corp. v. Green
411 U.S. 792, 93 S.Ct. 1817, 5 Fair Empl.Prac.Cas. (BNA) 965, 5 Empl. Prac. Dec. P 8607, 36 L.Ed.2d 668

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256 F.3d 864, 86 Fair Empl.Prac.Cas. (BNA) 336, 81 Empl. Prac. Dec. P 40,716
(Cite as: 256 F.3d 864)

▷

United States Court of Appeals,
Ninth Circuit.
Michelle NICHOLS, an individual; Antonio Sanchez, an individual; Anna Christine Lizarraga, an individual, Plaintiffs-Appellants,
v.
AZTECA RESTAURANT ENTERPRISES, INC., a corporation, Defendant-Appellee.
No. 99-35579.

Argued and Submitted Feb. 16, 2001
Filed July 16, 2001

Male former employee sued former employer for sexual harassment and retaliation, alleging he was harassed by male co-workers and supervisor because he did not meet their views of a male stereotype. Following bench trial, the United States District Court for the Western District of Washington, Jack D. Shanstrom, J., entered judgment for former employer. Former employee appealed. The Court of Appeals, Gould, Circuit Judge, held that: (1) employee's environment was objectively hostile; (2) employee perceived environment as hostile; (3) fact that employee never sought mental health treatment did not preclude finding that he subjectively believed environment was hostile; (4) abuse by male coemployees was "because of sex," abrogating *DeSantis v. Pacific Telephone & Telegraph Co., Inc.*; (5) employer was liable for harassment by coemployees; and (6) employer was liable for harassment by supervisor.

Affirmed in part, reversed in part, and remanded.

Wardlaw, Circuit Judge, concurred in part, dissented in part, and filed opinion.

West Headnotes

[1] Federal Courts 170B 776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
District court's conclusions that employee failed to establish his Title VII sexual harassment and retaliation claims presented mixed questions of law and fact which would be reviewed de novo. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[2] Federal Courts 170B 844

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)5 Questions of Fact, Verdicts and Findings
170Bk844 k. Credibility of Witnesses in General. Most Cited Cases

Federal Courts 170B 850.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)5 Questions of Fact, Verdicts and Findings
170Bk850 Clearly Erroneous Findings of Court or Jury in General
170Bk850.1 k. In General. Most Cited Cases
The Court of Appeals reviews a district court's factual findings for clear error, and will not reverse if such findings are plausible in light of the record viewed in its entirety; where factual findings rest on credibility determinations, the Court of Appeals gives them even greater deference.

[3] Civil Rights 78 1185

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1185 k. Hostile Environment; Severity, Pervasiveness, and Frequency. Most Cited Cases
(Formerly 78k167)
Sexual harassment in the form of a hostile work environment constitutes sex discrimination in violation of Title VII. Civil Rights Act of 1964, § 703(a)(1), 42

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U.S.C.A. § 2000e-2(a)(1).

[4] Civil Rights 78 ⚿1185

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1185 k. Hostile Environment; Severity, Pervasiveness, and Frequency. Most Cited Cases
(Formerly 78k167)
To prevail on a hostile environment sexual harassment claim, an employee is required to establish a pattern of ongoing and persistent harassment severe enough to alter the conditions of employment, and to satisfy this requirement, the employee needs to prove that the workplace was both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[5] Civil Rights 78 ⚿1185

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1185 k. Hostile Environment; Severity, Pervasiveness, and Frequency. Most Cited Cases
(Formerly 78k167)
An employee seeking to establish a hostile environment sexual harassment claim must prove that any harassment took place because of sex. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[6] Civil Rights 78 ⚿1147

78 Civil Rights
78II Employment Practices
78k1143 Harassment; Work Environment
78k1147 k. Hostile Environment; Severity, Pervasiveness, and Frequency. Most Cited Cases
(Formerly 78k145)
To determine if a work environment is sufficiently hostile or abusive to violate Title VII, the Court of Appeals looks at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[7] Civil Rights 78 ⚿1147

78 Civil Rights
78II Employment Practices
78k1143 Harassment; Work Environment
78k1147 k. Hostile Environment; Severity, Pervasiveness, and Frequency. Most Cited Cases
(Formerly 78k145)
The level of severity or seriousness of conduct required to support a hostile environment claim varies inversely with the pervasiveness or frequency of the conduct. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[8] Civil Rights 78 ⚿1186

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1186 k. Harassment of Men. Most Cited Cases
(Formerly 78k167)
Objective hostility would be analyzed from perspective of reasonable man in Title VII sexual harassment case brought by male employee. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[9] Civil Rights 78 ⚿1187

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1187 k. Same-Sex Harassment. Most Cited Cases
(Formerly 78k167)
Male restaurant employee's environment was objectively hostile, as required for establishing hostile environment sexual harassment claim, where employee testified that male coemployees habitually called him sexually derogatory names, referred to him with female gender, and taunted him for behaving like female. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

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[10] Civil Rights 78 1147

78 Civil Rights
78II Employment Practices
78k1143 Harassment; Work Environment
78k1147 k. Hostile Environment; Severity, Pervasiveness, and Frequency. Most Cited Cases
(Formerly 78k145)
Assuming that a reasonable person would find a workplace hostile, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[11] Civil Rights 78 1188

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1188 k. Welcomeness; Consent. Most Cited Cases
(Formerly 78k167)
In determining whether a work environment was subjectively hostile, for purposes of a hostile environment sexual harassment claim, a court must determine whether the employee, by his or her conduct, indicated that the alleged harassment was unwelcome. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[12] Civil Rights 78 1549

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1549 k. Sex Discrimination. Most Cited Cases
(Formerly 78k387)
District court's finding that male restaurant employee made no complaint of sexual harassment to anyone from corporate office, for purposes of hostile environment sexual harassment claim, was clearly erroneous; it was undisputed that employee told human resources director in considerable detail about fact and nature of verbal abuse. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[13] Civil Rights 78 1187

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1187 k. Same-Sex Harassment. Most Cited Cases
(Formerly 78k167)
Male restaurant employee perceived his workplace as hostile, as required for hostile environment sexual harassment claim, where he complained about frequent, degrading verbal abuse by male coemployees. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[14] Civil Rights 78 1186

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1186 k. Harassment of Men. Most Cited Cases
(Formerly 78k167)
Fact that male restaurant employee never sought mental health treatment did not preclude finding that he subjectively believed his environment was hostile, as required for hostile environment sexual harassment claim. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[15] Civil Rights 78 1119

78 Civil Rights
78II Employment Practices
78k1119 k. Adverse Actions in General. Most Cited Cases
(Formerly 78k141)
The scope of Title VII is not limited to conduct that affects a victim's psychological well-being. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[16] Civil Rights 78 1187

78 Civil Rights
78II Employment Practices

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78k1181 Sexual Harassment; Work Environment

78k1187 k. Same-Sex Harassment. Most Cited Cases

(Formerly 78k167)

Fact that male restaurant employee engaged in horseplay with some of his male harassers did not preclude finding that he subjectively believed his environment was hostile, as required to establish hostile environment sexual harassment claim. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[17] Civil Rights 78 1183

78 Civil Rights

78II Employment Practices

78k1181 Sexual Harassment; Work Environment

78k1183 k. Practices Prohibited or Required in General; Elements. Most Cited Cases

(Formerly 78k167)

Sexual harassment is actionable under Title VII to the extent it occurs because of the employee's sex. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).4

[18] Civil Rights 78 1187

78 Civil Rights

78II Employment Practices

78k1181 Sexual Harassment; Work Environment

78k1187 k. Same-Sex Harassment. Most Cited Cases

(Formerly 78k167)

Verbal abuse by male restaurant employee's male coemployees, including referring to him as "she" and "her," derisively commenting that he walked and carried his tray "like a woman," and making derisive comments because he did not have sexual intercourse with female friend of his, was "because of sex," as required for employee to establish hostile environment sexual harassment, inasmuch as such abuse reflected belief that employee did not act as a man should act; abrogating *DeSantis v. Pacific Telephone & Telegraph Co., Inc.*, 608 F.2d 327. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[19] Civil Rights 78 1179

78 Civil Rights

78II Employment Practices

78k1164 Sex Discrimination in General

78k1179 k. Discrimination Against Men; Reverse Discrimination. Most Cited Cases

(Formerly 78k158.1)

The principle of *Price Waterhouse v. Hopkins,* that discrimination on the basis of sex stereotypes is barred by Title VII, applies to a man who is discriminated against for acting too feminine. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[20] Civil Rights 78 1104

78 Civil Rights

78II Employment Practices

78k1102 Constitutional and Statutory Provisions

78k1104 k. Purpose and Construction in General. Most Cited Cases

(Formerly 78k141)

Decisions interpreting Title VII are persuasive authority for the construction of the Washington Law Against Discrimination (WLAD). Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; West's RCWA 49.60.010 et seq.

[21] Civil Rights 78 1189

78 Civil Rights

78II Employment Practices

78k1181 Sexual Harassment; Work Environment

78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases

(Formerly 78k167)

Civil Rights 78 1528

78 Civil Rights

78IV Remedies Under Federal Employment Discrimination Statutes

78k1526 Persons Liable

78k1528 k. Vicarious Liability; Respondeat Superior. Most Cited Cases

(Formerly 78k371)

The relevant standards and burdens pertaining to employer liability for sexual harassment vary with the circumstances; when harassment by co-workers is at issue, the employer's conduct is reviewed for negli-

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gence, but when harassment by a supervisor is at issue, the employer is vicariously liable, subject to a potential affirmative defense. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[22] Civil Rights 78 1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
Once an employer knows or should know of sexual harassment by co-workers, a remedial obligation kicks in, and the employer is liable for the hostile work environment created by a co-worker unless the employer takes adequate remedial measures in order to avoid liability. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[23] Civil Rights 78 1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
For purposes of determining whether an employer is liable for sexual harassment by co-workers, an employer's remedies for the harassment should be reasonably calculated to end the harassment. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[24] Civil Rights 78 1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
The reasonableness of an employer's remedy for sexual harassment by co-workers, for purposes of determining whether the employer is liable for the harassment, depends on the employer's ability to: (1) stop harassment by the person who engaged in harassment, and (2) persuade potential harassers to refrain from unlawful conduct. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[25] Civil Rights 78 1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
When an employer undertakes no remedy for sexual harassment by co-workers, or where the remedy does not end the current harassment and deter future harassment, liability attaches for both the past harassment and any future harassment. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[26] Civil Rights 78 1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
Employer failed to meet its remedial obligations upon learning of sexual harassment of male restaurant employee by male coemployees, and employer thus was liable for harassment under Title VII, where human resources director told employee to inform general manager if offensive conduct recurred and conducted handful of spot checks, but employer made no effort to investigate complaint, did not discuss allegations with perpetrators, did not demand that unwelcome conduct cease, and did not threaten more serious discipline if it continued. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[27] Civil Rights 78 1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment

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78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
Restaurant employee's complaints to his assistant and general managers were sufficient to place employer on notice of sexual harassment, such that employer was required to take remedial measures to avoid liability under Title VII, even though complaints did not follow formal reporting requirements of employer's anti-harassment policy, where employer's corporate structure was not so large as to make it impractical for managers to communicate with corporate office about such important matters as harassment, and employer required assistant managers and general managers to report sexual harassment complaints to corporate office. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[28] Civil Rights 78 ⚿1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
An employer's organizational structure is relevant to determining the extent of its knowledge of sexual harassment by coemployees, for purposes of determining whether the employer is liable for the harassment under Title VII. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[29] Civil Rights 78 ⚿1528

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1526 Persons Liable
78k1528 k. Vicarious Liability; Respondeat Superior. Most Cited Cases
(Formerly 78k371)
In general, an employer is vicariously liable under Title VII for a hostile environment created by a supervisor. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[30] Civil Rights 78 ⚿1528

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1526 Persons Liable
78k1528 k. Vicarious Liability; Respondeat Superior. Most Cited Cases
(Formerly 78k371)

Civil Rights 78 ⚿1549

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1543 Weight and Sufficiency of Evidence
78k1549 k. Sex Discrimination. Most Cited Cases
(Formerly 78k387)
When no tangible employment action has been taken, an employer may raise an affirmative defense to liability or damages for sexual harassment by a supervisor, subject to proof by a preponderance of the evidence. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[31] Civil Rights 78 ⚿1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
An employer's affirmative defense to liability for sexual harassment by a supervisor has two prongs: (1) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (2) that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[32] Civil Rights 78 ⚿1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preven-

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tive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
Whether an employer has a stated antiharassment policy is relevant to whether the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, as required for the employer to avoid liability for sexual harassment by a supervisor. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[33] Civil Rights 78 ⚿1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
An employee's failure to use a complaint procedure provided by an employer will normally satisfy the employer's burden of showing that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise, as required for the employer to avoid liability for sexual harassment by a supervisor. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[34] Civil Rights 78 ⚿1190

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1190 k. Other Particular Cases. Most Cited Cases
(Formerly 78k167)
Employee's termination was not "tangible employment action" that would prevent employer from asserting affirmative defense to liability for sexual harassment by supervisor, inasmuch as termination was unrelated to any harassment or complaint thereof. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[35] Civil Rights 78 ⚿1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
Employer acted to prevent sexual harassment generally, as required for it to avoid liability for sexual harassment by supervisor, where employer provided mandatory sexual harassment training for all employees, and had written antiharassment policy that defined sexual harassment, set forth reporting procedure, stated that employees who violated policy would be disciplined, and assured employees that no reprisals would be made against them solely for making complaint of sexual harassment. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[36] Civil Rights 78 ⚿1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
Employer did not exercise reasonable care to promptly correct sexually harassing behavior directed at restaurant employee, and thus was liable under Title VII for harassment by supervisor, where human resources director told employee to inform general manager if offensive conduct recurred and conducted handful of spot checks, but employer made no effort to investigate complaint, did not discuss allegations with perpetrators, did not demand that unwelcome conduct cease, and did not threaten more serious discipline if it continued. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

[37] Civil Rights 78 ⚿1189

78 Civil Rights
78II Employment Practices
78k1181 Sexual Harassment; Work Environment
78k1189 k. Knowledge or Notice; Preventive or Remedial Measures. Most Cited Cases
(Formerly 78k167)
Employer did not exercise reasonable care to promptly correct sexually harassing behavior directed at restaurant employee, and thus was liable under Wash-

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ington Law Against Discrimination (WLAD) for sexual harassment by supervisor under negligence standard or under standard applicable to Title VII actions, where human resources director told employee to inform general manager if offensive conduct recurred and conducted handful of spot checks, but employer made no effort to investigate complaint, did not discuss allegations with perpetrators, did not demand that unwelcome conduct cease, and did not threaten more serious discipline if it continued. West's RCWA 49.60.010 et seq.; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[38] Civil Rights 78 1252

78 Civil Rights
78II Employment Practices
78k1241 Retaliation for Exercise of Rights
78k1252 k. Causal Connection; Temporal Proximity. Most Cited Cases
(Formerly 255k30(6.10) Master and Servant)
District court did not clearly err in determining that there was no causal link between male employee's sexual harassment complaint and his discharge, and that he thus failed to establish retaliation claim under Title VII. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

***869** Kathleen Phair Barnard,Schwerin Campbell Barnard, LLP, Seattle, Washington, for the plaintiffs-appellants.

Rex Darrell Berry, Davis, Grimm & Payne, Seattle, Washington, for the defendant-appellee.

Appeal from the United States District Court for the Western District of Washington; Jack D. Shanstrom, District Judge, Presiding. D.C. No. CV-96-10870-JDS.

Before: REINHARDT, WARDLAW, and GOULD, Circuit Judges.

Opinion by Judge GOULD; Concurrence and Partial Dissent by Judge WARDLAW

GOULD, Circuit Judge:

Antonio Sanchez[FN1] brought this action against his former employer, Azteca Restaurant Enterprises, Inc., alleging, among other claims, sexual harassment and retaliation in violation of Title VII of the Civil Rights Act of 1964 ("Title VII") and its state law counterpart, the Washington Law Against Discrimination ("WLAD"). Sanchez claimed that he was verbally harassed by some male co-workers and a supervisor because he was effeminate and did not meet their views of a male stereotype. Sanchez further asserted that he was terminated in retaliation for opposing the harassment. Following a bench trial, the district court entered judgment in favor of Azteca on all claims.

> FN1. We address the claims of Sanchez's co-plaintiffs, Michelle Nichols and Anna Christine Lizarraga, in an unpublished memorandum disposition filed concurrently with this opinion. *See Nichols v. Azteca Restaurant Enters., Inc.*, No. 99-35579, 2001 WL 804002 (9th Cir.2001).

On appeal, Sanchez challenges the district court's factual findings and legal conclusions regarding the existence of a hostile work environment; Azteca's liability for the alleged harassment; and the alleged retaliatory discharge. [FN2] He also appeals two evidentiary rulings.

> FN2. Sanchez does not appeal the portion of the district court's judgment denying his claims for wage discrimination, negligent supervision, and negligent retention.

We agree with Sanchez that the behavior of his co-workers and supervisor violated Title VII and WLAD. We further agree that Azteca failed to take adequate steps to remedy the harassment. We therefore reverse the judgment of the district court with respect to Sanchez's hostile work environment claim, and remand for further proceedings consistent with our opinion. We affirm the judgment of the district ***870** court with respect to Sanchez's retaliation claim.

I

Azteca operates a chain of restaurants in Washington and Oregon. It employed Sanchez from October 1991 to July 1995. Sanchez at first worked as a host in Azteca's Burien restaurant, and later worked as a food server at the Southcenter restaurant.

Throughout his tenure at Azteca, Sanchez was sub-

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jected to a relentless campaign of insults, name-calling, and vulgarities. Male co-workers and a supervisor repeatedly referred to Sanchez in Spanish and English as "she" and "her." Male co-workers mocked Sanchez for walking and carrying his serving tray "like a woman," and taunted him in Spanish and English as, among other things, a "faggot" and a "fucking female whore." The remarks were not stray or isolated. Rather, the abuse occurred at least once a week and often several times a day.

This conduct violated company policy. Since 1989, Azteca has expressly prohibited sexual harassment and retaliation and has directed its employees to bring complaints regarding such conduct directly to the attention of the corporate office. Azteca's most recent antiharassment policy, established in 1993, states:

> [A]n employee who believes that he or she has been harassed by a co-worker, supervisor or anyone acting on behalf of the company should immediately report the facts of the incident to [name omitted], Azteca EEO Officer, at the corporate office [telephone number omitted], or to _____, the "Local Contact" who is the Area Manager responsible for this restaurant.[FN3]
>
> FN3. Each Azteca restaurant is managed by a general manager and one or more assistant managers, all of whom work under the direction of an area manager. Area managers, in turn, are responsible for several restaurants, and report directly to Azteca's corporate office.

Upon receipt of a complaint, Azteca's policy is to conduct a thorough investigation, the results of which are reviewed by the company's EEO Board, which is then responsible for implementing an appropriate remedy.

In addition to this policy, Azteca has a bilingual (English and Spanish) training program about sexual harassment. This training, which all employees attend when hired, and annually thereafter, defines sexual harassment and instructs employees how to report complaints.

Sanchez attended Azteca's sexual harassment training and was familiar with the company's antiharassment policy and reporting procedures. Yet he never complained to the corporate EEO officer or the area manager about the harassment he experienced, as required by the corporate policy. This is not to say, however, that Sanchez ignored the harassment. Indeed, the general manager of the Southcenter restaurant (the "Southcenter general manager") testified that Sanchez complained about being called names, and an assistant manager testified that Sanchez made similar complaints to him. Moreover, in May 1995, Sanchez reported and described the specifics of the harassment to Azteca's human resources director, Arnie Serna. Sanchez made his complaint during a meeting that had been convened to address a fight between Sanchez and a co-worker. Sanchez, Serna, and the Southcenter general manager were present. During the meeting, Sanchez told Serna that he had complained to the Southcenter general manager many times, and expressed***871** concern that the harassment would continue to be ignored.

In response, Serna proposed the following solution: (1) Sanchez was to report any further harassment to the Southcenter general manager, who promised to address the issue; and (2) Serna was to follow up with "spot checks" over a two-week period to ensure that the harassment would stop. During the four or five spot checks that followed, Serna spoke with Sanchez only once and was told that conditions were improving. Serna replied that if the situation took a turn for the worse, Sanchez should tell the Southcenter general manager or call Serna directly. Sanchez made no further complaints.

On July 29, 1995, a couple of months after his meeting with Serna, Sanchez became involved in a heated argument with an assistant manager, and walked off the job. He was fired for leaving work in the middle of his shift. A month later, Sanchez filed a charge of discrimination with the EEOC. Thereafter, he initiated this lawsuit.

Following a bench trial, the district court concluded that Sanchez had not been subjected to a hostile environment. Stating that it gave "greater credibility to the defense witnesses and their testimony," the court concluded that Sanchez's workplace had been neither objectively nor subjectively hostile, and that the alleged harassment did not take place "because of sex." The court further concluded that there had been no retaliation because Sanchez had not engaged in any protected activity and, in any event, had failed to es-

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tablish a causal link between protected activity and his termination. Sanchez timely appealed.

II

[1][2] The district court's conclusions that Sanchez failed to establish his sexual harassment and retaliation claims present mixed questions of law and fact which we review de novo. *Intlekofer v. Turnage*, 973 F.2d 773, 777 (9th Cir.1992); *Jordan v. Clark*, 847 F.2d 1368, 1375 (9th Cir.1988). We review the district court's factual findings for clear error, *Ellison v. Brady*, 924 F.2d 872, 876 (9th Cir.1991), and will not reverse if such findings are "plausible in light of the record viewed in its entirety." *United States v. Alexander*, 106 F.3d 874, 877 (9th Cir.1997). Where, as here, the factual findings rest on credibility determinations, we give them "even greater deference." *Anderson v. City of Bessemer*, 470 U.S. 564, 575, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985).

III

[3] Under Title VII, it is unlawful for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of ... sex." 42 U.S.C. § 2000e-2(a)(1). It is by now clear that sexual harassment in the form of a hostile work environment constitutes sex discrimination. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986); *see also Schonauer v. DCR Enter., Inc.*, 79 Wash.App. 808, 905 P.2d 392, 399 (1995).

[4][5] To prevail on his hostile environment claim, Sanchez was required to establish a "pattern of ongoing and persistent harassment severe enough to alter the conditions of employment." *Draper v. Coeur Rochester, Inc.*, 147 F.3d 1104, 1108 (9th Cir.1998) (citing *Meritor*, 477 U.S. at 66-67, 106 S.Ct. 2399); *see also Schonauer*, 905 P.2d at 400. To satisfy this requirement, Sanchez needed to prove that his workplace was "both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, ***872** and one that the victim in fact did perceive to be so." *Faragher v. City of Boca Raton*, 524 U.S. 775, 787, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998).[FN4] In addition, Sanchez was required to prove that any harassment took place "because of sex." *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998); *Schonauer*, 905 P.2d at 400.

FN4. Before *Faragher*, we used the following test to evaluate whether a work environment was hostile:

> (1) [whether the victim] was subjected to ... verbal or physical conduct of a [harassing] nature, (2) [whether] this conduct was unwelcome, and (3) [whether] the conduct was sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.
>
> *Ellison*, 924 F.2d at 875-76 (citing *Jordan*, 847 F.2d at 1373). We have continued to cite this test in our decisions concerning hostile environment sexual harassment as it is consistent with the requirements for a hostile work environment set forth in *Faragher*. *See, e.g., Pavon v. Swift Trans. Co., Inc.*, 192 F.3d 902, 908 (9th Cir.1999).

The district court ruled against Sanchez on each of these elements, concluding that: (1) Sanchez's workplace was not objectively hostile; (2) Sanchez did not perceive his workplace to be hostile; and (3) the alleged conduct did not occur because of sex. We disagree with each of these conclusions and, where applicable, the clearly erroneous findings upon which they are based.

A. *Objectively Hostile Environment*

[6][7] To determine if an environment is sufficiently hostile or abusive to violate Title VII, we look at "all the circumstances," including the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993). The required level of severity or seriousness "varies inversely with the pervasiveness or frequency of the conduct." *Ellison*, 924 F.2d at 878. "[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." *Faragher*, 524 U.S. at

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788, 118 S.Ct. 2275 (internal quotation marks and citations omitted).

[8] The "objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering 'all the circumstances.' " *Oncale,* 523 U.S. at 81-82, 118 S.Ct. 998 (the "real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed"). Consistent with our holding in *Ellison,* we analyze objective hostility in this case from the perspective of a "reasonable man." 924 F.2d at 879 n. 11.

[9] At trial, Sanchez testified that he endured an unrelenting barrage of verbal abuse while employed at Azteca. Specifically, Sanchez testified that other Azteca employees habitually called him sexually derogatory names, referred to him with the female gender, and taunted him for behaving like a woman. Although the district court failed to indicate whether it believed this testimony, no witness-including the supervisor accused of participating in the harassment-testified to the contrary.[FN5] Moreover, the district court's ***873** factual finding that "Sanchez was teased on occasion" suggests that the court believed the conduct took place, but did not view it to be serious or actionable.

> FN5. Although we accept and defer to the district court's decision to give "greater credibility to the defense witnesses and their testimony," that determination has no bearing in the absence of conflicting evidence.

Having reviewed the record, we hold that a reasonable man would have found the sustained campaign of taunts, directed at Sanchez and designed to humiliate and anger him, sufficiently severe and pervasive to alter the terms and conditions of his employment. Indeed, even Azteca does not contend otherwise on appeal.

B. *Subjectively Hostile Environment*

[10][11] Assuming that a reasonable person would find a workplace hostile, if the victim "does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." *Harris,* 510 U.S. at 21-22, 114 S.Ct. 367. We must determine whether Sanchez, by his conduct, indicated that the alleged harassment was "unwelcome." *Meritor,* 477 U.S. at 68, 106 S.Ct. 2399; *see also Fuller v. City of Oakland,* 47 F.3d 1522, 1527 (9th Cir.1995); *Schonauer,* 905 P.2d at 399.

The district court concluded that the frequent verbal abuse was not unwelcome. Although the court made no factual finding directly on point, its determination may have been influenced by its findings that: (1) Sanchez made no complaint of sexual harassment to Serna, or anyone else from the corporate office; (2) Sanchez never sought mental health treatment; and (3) Sanchez engaged in horseplay with his male co-workers. We see the evidence another way.

[12][13] The first of these findings by the district court, which forms the crux of Azteca's appeal, is clearly erroneous. It is undisputed that in May 1995 Sanchez told Serna, in considerable detail, about the fact and nature of the verbal abuse.[FN6] Sanchez also complained to the Southcenter general manager and an assistant manager, though in less detail. It was clearly erroneous to find, as did the district court, that Sanchez had not complained about his harassment. That Sanchez complained about the frequent, degrading verbal abuse supports our conclusion that the conduct was unwelcome, as does Sanchez's unrebutted testimony to that effect. We hold that Sanchez perceived his workplace to be hostile.

> FN6. Sanchez specified the insults and slurs to which he was subjected. His failure to label the conduct of which he complained "sexual harassment" is irrelevant to the issue of whether he made a sexual harassment complaint.

[14][15][16] Nor do the other potentially relevant findings noted above-that Sanchez never sought mental health treatment, and that he engaged in horseplay with some of his harassers-warrant a different result. As to the first, the scope of Title VII is not limited to conduct that affects a victim's psychological well-being. *Harris,* 510 U.S. at 22, 114 S.Ct. 367; *Ellison,* 924 F.2d at 878 ("Title VII's protection of employees ... comes into play long before the point where victims of sexual harassment require psychiatric assistance"). As to the second, the fact that not all of Sanchez's interactions with his harassers were hos-

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tile does not mean that none of them was. As any sensible person would, Sanchez drew a distinction between conduct he perceived to be objectionable, and conduct that was not. He viewed horseplay as "male bonding" and excluded it from his hostile environment claim; he viewed relentless verbal affronts as sexual harassment, and sought legal recourse for that conduct. And, in complaining to Serna about the verbal abuse, he demonstrated***874** a subjective belief that he was being harassed.

C. *Because of Sex*

[17][18] Sexual harassment is actionable under Title VII to the extent it occurs "because of" the plaintiff's sex. *Oncale,* 523 U.S. at 79, 118 S.Ct. 998; *see also Schonauer,* 905 P.2d at 400. Sanchez asserts that the verbal abuse at issue was based upon the perception that he is effeminate and, therefore, occurred because of sex. In short, Sanchez contends that he was harassed because he failed to conform to a male stereotype.

Sanchez's theory derives from *Price Waterhouse v. Hopkins,* 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989), in which the Supreme Court held that a woman who was denied partnership in an accounting firm because she did not match a sex stereotype had an actionable claim under Title VII. Hopkins, the plaintiff in *Price Waterhouse,* was described by various partners as "macho," in need of "a course in charm school," "a lady using foul language," and someone who had been "a tough-talking somewhat masculine hard-nosed manager." *Id.* at 235, 109 S.Ct. 1775. Hopkins was advised that she could improve her partnership chances if she would "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." *Id.* (internal quotation marks omitted). Writing for the plurality, Justice Brennan held that "[i]n the specific context of sex stereotyping, an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender." *Id.* at 250, 109 S.Ct. 1775; *see also id.* at 272-73, 109 S.Ct. 1775 (O'Connor, J., concurring in the judgment) (characterizing "failure to conform to [sex] stereotypes" as criterion of discrimination).

[19] Sanchez contends that the holding in *Price Waterhouse* applies with equal force to a man who is discriminated against for acting too feminine. We agree. *See Oncale,* 523 U.S. at 78, 118 S.Ct. 998 ("Title VII's prohibition of discrimination 'because of ... sex' protects men as well as women."); *see also Schwenk v. Hartford,* 204 F.3d 1187, 1202 (9th Cir.2000) (comparing the scope of the Gender Motivated Violence Act with the scope of Title VII, which forbids "[d]iscrimination because one fails to act in the way expected of a man or woman"); *Higgins v. New Balance Athletic Shoe, Inc.,* 194 F.3d 252, 261 n. 4 (1st Cir.1999) ("[J]ust as a woman can ground an action on a claim that men discriminated against her because she did not meet stereotyped expectations of femininity, a man can ground a claim on evidence that other men discriminated against him because he did not meet stereotyped expectations of masculinity.") (citing *Price Waterhouse,* 490 U.S. at 250-51, 109 S.Ct. 1775).

At its essence, the systematic abuse directed at Sanchez reflected a belief that Sanchez did not act as a man should act. Sanchez was attacked for walking and carrying his tray "like a woman"-i.e., for having feminine mannerisms. Sanchez was derided for not having sexual intercourse with a waitress who was his friend. Sanchez's male co-workers and one of his supervisors repeatedly reminded Sanchez that he did not conform to their gender-based stereotypes, referring to him as "she" and "her." And, the most vulgar name-calling directed at Sanchez was cast in female terms. We conclude that this verbal abuse was closely linked to gender.

Price Waterhouse sets a rule that bars discrimination on the basis of sex stereotypes. That rule squarely applies to preclude***875** the harassment here.[FN7] The only potential difficulty arises out of a now faint shadow cast by our decision in *DeSantis v. Pacific Telephone & Telegraph Co., Inc.,* 608 F.2d 327 (9th Cir.1979). *DeSantis* holds that discrimination based on a stereotype that a man "should have a virile rather than an effeminate appearance" does not fall within Title VII's purview. *Id.* at 331-32. This holding, however, predates and conflicts with the Supreme Court's decision in *Price Waterhouse.* And, in this direct conflict, *DeSantis* must lose. To the extent it conflicts with *Price Waterhouse,* as we hold it does, *DeSantis* is no longer good law. Under *Price Waterhouse,* Sanchez must prevail.

FN7. We do not imply that all gender-based

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> distinctions are actionable under Title VII. For example, our decision does not imply that there is any violation of Title VII occasioned by reasonable regulations that require male and female employees to conform to different dress and grooming standards.

[20] Following *Price Waterhouse,* we hold that the verbal abuse at issue occurred because of sex.[FN8] Because we hold that Sanchez has established each element of his hostile environment claim, we further hold that the conduct of Sanchez's co-workers and supervisor constituted actionable harassment under both Title VII and WLAD,[FN9] and reverse the district court's contrary conclusion.

> FN8. The district court's finding that "Sanchez testified that the harassment was unrelated to his sex or gender," is clearly erroneous. Sanchez did not so testify.

> FN9. There is no Washington state law authority regarding same-sex sexual harassment or harassment based on sex stereotyping. Absent such authority, we may reasonably hold that Sanchez established a hostile environment claim under WLAD as "decisions interpreting [Title VII] are persuasive authority for the construction of [WLAD]." *Xieng v. Peoples Nat'l Bank,* 120 Wash.2d 512, 844 P.2d 389, 392 (1993).

IV

[21] Having determined that the conduct of Sanchez's co-workers and supervisor created a hostile environment, we must decide whether Azteca is liable for the harassment. The relevant standards and burdens pertaining to employer liability vary with the circumstances. When harassment by co-workers is at issue, the employer's conduct is reviewed for negligence. *See Ellison,* 924 F.2d at 881. When harassment by a supervisor is at issue, an employer is vicariously liable, subject to a potential affirmative defense. *See Faragher,* 524 U.S. at 780, 118 S.Ct. 2275.

A. *Harassment by Co-Workers*

[22] "Once an employer knows or should know of [co-worker] harassment, a remedial obligation kicks in." *Fuller,* 47 F.3d at 1528. An employer is liable for the hostile work environment created by a co-worker unless "the employer ... take[s] adequate remedial measures in order to avoid liability." *Yamaguchi v. United States Dep't of the Air Force,* 109 F.3d 1475, 1482 (9th Cir.1997); *Glasgow v. Georgia-Pacific Corp.,* 103 Wash.2d 401, 693 P.2d 708, 712 (1985).

[23][24][25] In this circuit, as in others, "remedies [for sexual harassment] should be 'reasonably calculated to end the harassment.' " *Ellison,* 924 F.2d at 882 (quoting *Katz v. Dole,* 709 F.2d 251, 256 (4th Cir.1983)); *see also Glasgow,* 693 P.2d at 712. The reasonableness of the remedy depends on its ability to: (1) "stop harassment by the person who engaged in harassment;" and (2) "persuade potential harassers to refrain from unlawful conduct." *Ellison,* 924 F.2d at 882. When the employer undertakes no remedy, or ***876** where the remedy does not end the current harassment and deter future harassment, liability attaches for both the past harassment and any future harassment. *Fuller,* 47 F.3d at 1528-29.

[26][27][28] Here, the district court concluded that, "upon notice of alleged sexual harassment, Azteca took appropriate remedial measures that were reasonably calculated to, and in fact did put an end to any harassment." In so ruling, the court relied on its single factual finding that "Azteca took action to remedy the situation" once Sanchez complained. The record belies the district court's conclusion. Azteca did nothing after Sanchez complained to his assistant and general managers.[FN10] Although Azteca took some action in response to Sanchez's May 1995 complaint, its remedy fell short. [FN11]

> FN10. Although these complaints did not follow the formal reporting requirements of Azteca's anti-harassment policy, they were sufficient to place the company on notice of the harassment. *See Fuller,* 47 F.3d at 1528. We recognize that an employer's organizational structure is relevant to determining the extent of its knowledge, but we conclude that Azteca's corporate structure is not so large as to make it impractical for managers to communicate with the corporate office about such important matters as harassment. Moreover, Azteca required both its assistant managers and general managers to report complaints and incidents of sexual harass-

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ment to the corporate office.

FN11. Indeed, in its brief to this court, Azteca made no argument regarding its efforts to promptly correct the harassment of which Sanchez complained.

Following Sanchez's complaint, Azteca's human resources director told Sanchez to inform the Southcenter general manager if the offensive conduct recurred, and conducted a handful of spot checks in the two weeks after Sanchez complained. This solution did not remedy the harassment that had already occurred, and was not adequate to deter future harassment. The company made no effort to investigate Sanchez's complaint; it did not discuss his allegations with the perpetrators; it did not demand that the unwelcome conduct cease; and it did not threaten more serious discipline in the event the harassment continued. *See Intlekofer,* 973 F.2d at 780 (oral warning may be sufficient where employer expresses strong disapproval, demands that the harassment stop and threatens harsher discipline in the event the conduct does not cease). Moreover, by conditioning its response on Sanchez's reports of further harassment, Azteca placed virtually all of its remedial burden on the victimized employee. Although Azteca's request for a report regarding further harassment may have been well-meaning, and gave some support to Sanchez, this response was not sufficient. *Cf. id.* at 780 n. 9 ("harassment is to be remedied through actions targeted at the *harasser,* not at the victim") (emphasis in original).

Title VII condemns "the existence of past harassment every bit as much as the risk of future harassment." *Fuller,* 47 F.3d at 1529. The record establishes that, with respect to Sanchez and the harassment he suffered, Azteca failed to remedy the harassment and discipline those responsible for it. Because Azteca failed to meet its remedial obligations, we hold that the company is liable for the harassment by Sanchez's co-workers.[FN12]

FN12. Azteca contends that it should be absolved of liability because Sanchez failed to report any harassment after his May 1995 complaint. This argument is not a defense to liability in the face of an inadequate remedial response. It goes solely to the question of the extent of damages, which is a matter to be decided by the district court following remand.

***877** B. *Harassment by Supervisors*

[29][30][31][32][33] In general, an employer is vicariously liable for a hostile environment created by a supervisor. *Faragher,* 524 U.S. at 780, 118 S.Ct. 2275. However, when no "tangible employment action" has been taken, an employer may raise "an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence." *Burlington Indus., Inc. v. Ellerth,* 524 U.S. 742, 765, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998). The affirmative defense has two prongs: (1) "that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior"; and (2) "that the plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise." *Id.* Whether the employer has a stated antiharassment policy is relevant to the first element of the defense. *Id.* And an employee's failure to use a complaint procedure provided by the employer "will normally suffice to satisfy the employer's burden under the second element of the defense." *Id.*

[34] Sanchez claims that Azteca may not assert the affirmative defense because he suffered a tangible adverse employment action-namely, termination. *See Ellerth,* 524 U.S. at 761, 118 S.Ct. 2257 (tangible employment action is "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits"). We disagree. As discussed in Section V, below, Sanchez's termination was unrelated to any harassment or complaint thereof. Moreover, before being fired, Sanchez was not demoted or reassigned, and did not receive a cut in pay or benefits. Because Sanchez was not subjected to any tangible adverse employment action, we consider the merits of Azteca's affirmative defense.

[35] As noted earlier, the first prong of the affirmative defense requires Azteca to show that it "exercised reasonable care to prevent and correct promptly any sexually harassing behavior." *Ellerth,* 524 U.S. at 765, 118 S.Ct. 2257. Azteca showed that it acted to prevent sexual harassment generally, but not that it acted to correct promptly the harassment here. During all re-

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levant time periods, Azteca had a written antiharassment policy that: (1) defined sexual harassment; (2) set forth a reporting procedure; (3) stated that employees who violate the policy will be disciplined; and (4) assured employees that no reprisals would be made against them "solely for making a complaint of sexual harassment." *See Montero v. Agco Corp.*, 192 F.3d 856, 862 (9th Cir.1999) (finding a similar policy sufficient to support, in part, an affirmative defense). In addition, Azteca provided mandatory sexual harassment training for all of its employees. Sanchez acknowledges that he was aware of the company's antiharassment policy and attended the required sexual harassment training. Thus, we agree with the district court that Azteca's policy and company-wide training program were sufficient to show that it exercised reasonable care to prevent sexual harassment in its restaurants.

[36][37] However, for the reasons discussed above in the context of co-worker harassment, we hold that Azteca did not exercise reasonable care to promptly correct the sexually harassing behavior directed at Sanchez, and therefore cannot assert the affirmative defense. Accordingly, we hold that Azteca is liable for the hostile environment created by its supervisor.***878** [FN13] Because we conclude that Sanchez prevails on his hostile environment claim,[FN14] we need not consider his evidentiary objections, both of which relate to the exclusion of evidence in support of the hostile environment claim.

> FN13. The result under WLAD is the same, despite the fact that the standards for employer liability for supervisory employees under Washington state law may be in flux. In *Glasgow,* the Washington Supreme Court applied a negligence standard, holding that an employer is liable for a hostile work environment created by a supervisor if the employer "authorized, knew, or should have known of the harassment" and "failed to take reasonable prompt and adequate corrective action." 693 P.2d at 712. Recently, however, the Washington Court of Appeals applied the *Faragher* analysis to a hostile environment claim brought under WLAD. *Sangster v. Albertson's, Inc.*, 99 Wash.App. 156, 991 P.2d 674 (2000). The Washington Supreme Court has not yet considered this issue. Under either standard, Azteca would be liable for the supervisory harassment at issue here.
>
> FN14. We intimate no conclusion whether Sanchez suffered damages as a result of his hostile work environment and, if so, the appropriate amount.

V

[38] Finally, Sanchez contends that Azteca fired him in retaliation for opposing the harassment. The district court, however, found that Sanchez failed to establish a link between his harassment complaint and his discharge. Upon review of the record, we cannot conclude that this finding is clearly erroneous. *See Brooks v. City of San Mateo,* 229 F.3d 917, 928 (9th Cir.2000) (prima facie case of retaliation requires a showing of involvement in a protected activity, an adverse employment action, and a causal link between the two); *see also Allison v. Housing Auth.*, 118 Wash.2d 79, 821 P.2d 34, 43 (1991) (retaliation claim under WLAD requires proof that the employee engaged in a statutorily protected activity, that an adverse employment action was taken, and that the statutorily protected activity was a substantial factor in the adverse employment action). We therefore affirm the judgment of the district court with respect to Sanchez's retaliation claim.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

WARDLAW, Circuit Judge, concurring in part and dissenting in part:

I concur in parts I, II, III, IVA, and V of the majority opinion but respectfully dissent from part IVB. Unlike the majority, I believe that the district court correctly concluded that Azteca successfully established an affirmative defense to Sanchez's claims of a hostile work environment based on vicarious liability for the acts of its managers under *Faragher v. City of Boca Raton,* 524 U.S. 775, 807, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998). Azteca created and implemented the type of anti-harassment policy that Title VII was designed to encourage. *See Shaw v. AutoZone, Inc.*, 180 F.3d 806, 811 (7th Cir.), *cert. denied,* 528 U.S. 1076, 120 S.Ct. 790, 145 L.Ed.2d 666 (2000) ("Title VII is designed to encourage the creation of anti-harassment policies and effective grievance mechanisms.") (quoting *Burlington Indus. v. Ellerth,* 524 U.S. 742, 764, 118 S.Ct. 2257, 141 L.Ed.2d 633

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(1998)). First, Azteca took no tangible employment action against Sanchez. Second, Azteca had a written sexual harassment policy, which Sanchez admitted receiving, and required that employees attend sexual harassment training sessions, which Sanchez admitted attending. The policy instructs employees to take their complaints ***879** directly to corporate headquarters to ensure prompt, objective responses as well as to remove managers, who might be a part of the problem, from the complaint reporting process. Sanchez complained only once to Serna, the Human Resources Director, and it is unclear from the record whether, during that discussion, Sanchez specifically complained that, in addition to co-workers, his managers were involved in the harassment. Because the meeting culminated in a plan, agreed upon by Serna, Sanchez and the Southcenter General Manager Jose Sanchez, to address the complaint of harassment within the managerial structure of the restaurant, it would have been inherently contradictory for Sanchez to have complained of harassment by his managers during that meeting. Furthermore, although Sanchez was instructed to notify Serna if the solution did not work, he never did. Complaining to the restaurant managers of further name-calling was not only contrary to Serna's instructions and company policy, it was inherently unreasonable given Sanchez's claim that the managers themselves were participating in the harassment. Thus, Sanchez "unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer to avoid harm otherwise," *Faragher*, 524 U.S. at 807, 118 S.Ct. 2275, and Azteca cannot be held liable for Sanchez's failure to follow its publicized anti-harassment policy.

C.A.9 (Wash.),2001.
Nichols v. Azteca Restaurant Enterprises, Inc.
256 F.3d 864, 86 Fair Empl.Prac.Cas. (BNA) 336, 81 Empl. Prac. Dec. P 40,716

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Supreme Court of the United States
NORTH HAVEN BOARD OF EDUCATION, et al., Petitioners,
v.
Terrel H. BELL, Secretary, Department of Education, et al.
No. 80-986.

Argued Dec. 9, 1981.
Decided May 17, 1982.

Appeals were taken from orders of summary judgment in the United States District Court for the District of Connecticut, Ellen B. Burns, J., which declared regulations governing sex discrimination in employment issued by the Department of Health, Education and Welfare invalid and enjoined the Department from withholding or threatening to withhold any federal funds under tax regulations. The Court of Appeals, 629 F.2d 773, reversed and remanded. On writ of certiorari, the Supreme Court, Blackmun, Justice, held that: (1) employment discrimination comes within Title IX's prohibition, and (2) subpart E regulations promulgated in connection with Title IX are valid.

Affirmed and remanded.

Justice Powell, filed a dissenting opinion in which Chief Justice Burger and Justice Rehnquist, joined.

West Headnotes

[1] Statutes 361 219(3)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(3) k. Long Continuance of Construction, and Approval or Acquiescence. Most Cited Cases
In construing a statute, the Supreme Court normally accords great deference to interpretation, particularly when it is long-standing, of agency charged with statute's administration.

[2] Civil Rights 78 1170

78 Civil Rights
78II Employment Practices
78k1164 Sex Discrimination in General
78k1170 k. Education, Employment In. Most Cited Cases
(Formerly 78k165, 78k9.10)
Employment discrimination comes within Title IX's prohibition. Education Amendments of 1972, § 901 et seq. as amended 20 U.S.C.A. § 1681 et seq.

[3] Statutes 361 218

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k218 k. Contemporaneous Construction in General. Most Cited Cases
Where an agency's statutory construction has been fully brought to attention of public and Congress, and latter has not sought to alter interpretation although it has amended statute in other respects, then presumably legislative intent has been correctly discerned.

[4] Civil Rights 78 1005

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1002 Constitutional and Statutory Provisions
78k1005 k. Power to Enact and Validity. Most Cited Cases
(Formerly 78k103, 78k2.1)
Subpart E regulations promulgated in connection with Title IX are valid in light of fact that agency's authority under Title IX both to promulgate regulations and to terminate funds is subject to program-specific limitation and regulations are not inconsistent with that restriction. Education Amendments of 1972, §§ 901 et seq., 902, 903 as amended 20 U.S.C.A. §§ 1681 et seq., 1682, 1683.

****1913 *512** *Syllabus* [FN*]

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FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Section 901(a) of Title IX of the Education Amendments of 1972 provides that "no person," on the basis of sex, shall "be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Section 902 authorizes each agency awarding federal financial assistance to any education program to promulgate regulations ensuring that aid recipients adhere to § 901(a), and as a sanction for noncompliance provides for termination of federal funds limited to the particular program, or part thereof, in which such noncompliance has been found. Pursuant to § 902, the Department of Health, Education, and Welfare (HEW), interpreting "person" in § 901(a) to encompass employees as well as students, issued regulations (Subpart E) prohibiting federally funded education programs from discriminating on the basis of sex with respect to employment. Petitioners, federally funded public school boards, when threatened with enforcement proceedings for alleged violations of § 901(a) with respect to board employees, brought separate suits challenging HEW's authority to issue the Subpart E regulations on the alleged ground that § 901(a) was not intended to apply to employment practices, and seeking declaratory and injunctive relief. The District Court in each case granted the school board's motion for summary judgment. In a consolidated appeal, the Court of Appeals reversed, holding that § 901(a) was intended to prohibit employment discrimination and that the Subpart E regulations were consistent with § 902.

Held:

1. Employment discrimination comes within Title IX's prohibition. Pp. 1917-1925.

****1914** (a) While § 901(a) does not expressly include employees within its scope or expressly exclude them, its broad directive that "no person" may be discriminated against on the basis of gender, on its face, includes employees as well as students. Pp. 1917-1918.

(b) Title IX's legislative history corroborates the conclusion that employment discrimination was intended to come within its prohibition. Pp. 1919-1923.

***513** (c) Title IX's postenactment history provides additional evidence of Congress' desire to ban employment discrimination in federally financed education programs. Pp. 1923-1925.

2. The Subpart E regulations are valid. Pp. 1926-1928.

(a) An agency's authority under Title IX both to promulgate regulations and to terminate funds is subject to the program-specific limitation of §§ 901(a) and 902. The Subpart E regulations are not inconsistent with this restriction. Pp. 1926-1928.

(b) But whether termination of petitioners' federal funds is permissible under Title IX is a question that must be answered by the District Court in the first instance. Pp. 1927-1928.

629 F.2d 773 (2nd Cir.), affirmed and remanded.
Susan K. Krell, Hartford, Conn., for petitioner North Haven Bd. of Ed.

Paul E. Knag, Stamford, Conn., for petitioner Trumbull Bd. of Ed.

Sol. Gen. Rex E. Lee, Washington, D. C., for the Federal respondents.

Beverly J. Hodgson, Bridgeport, Conn., for respondent Linda Potz.

***514** Justice BLACKMUN delivered the opinion of the Court.

At issue here is the validity of regulations promulgated by the Department of Education pursuant to Title IX of the Education Amendments of 1972, Pub.L.92-318, 86 Stat. 373, as amended, 20 U.S.C. § 1681 *et seq.* These regulations prohibit federally funded education programs from discriminating on the basis of gender with respect to employment.

I

Title IX proscribes gender discrimination in education

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programs or activities receiving federal financial assistance. Patterned after Title VI of the Civil Rights Act of 1964, Pub.L.88-352, 78 Stat. 252, 42 U.S.C. § 2000d *et seq.* (1976 ed. and Supp.IV), Title IX, as amended, contains two core provisions. The first is a "program-specific" prohibition of gender discrimination:

> "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance ...." § 901(a), 20 U.S.C. § 1681(a).

Nine statutory exceptions to § 901(a)'s coverage follow. See §§ 901(a)(1)-(9).[FN1]

> FN1. Section 901(a)(1) provides that, with respect to admissions, § 901(a) applies only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education. Specific exceptions are made for the admissions policies of schools that begin admitting students of both sexes for the first time, § 901(a)(2); religious schools, § 901(a)(3); military schools, § 901(a)(4); the admissions policies of public institutions of undergraduate higher education that traditionally and continually have admitted students of only one gender, § 901(a)(5); social fraternities and sororities, and voluntary youth service organizations, § 901(a)(6); Boys/Girls State/Nation conferences, § 901(a)(7); father-son and mother-daughter activities at educational institutions, § 901(a)(8); and scholarships awarded in "beauty" pageants by institutions of higher education, § 901(a)(9).

The second core provision relates to enforcement. Section 902, 20 U.S.C. § 1682, authorizes each agency awarding federal financial assistance to any education program to promulgate regulations ensuring that aid recipients adhere to § 901(a)'s mandate. The ultimate sanction for noncompliance is termination of ***515** federal funds or denial of future grants.[FN2] Like § 901, § 902 is program-specific:

> FN2. Funding may not be terminated, however, until after the agency determines that noncompliance cannot be achieved by voluntary means; the recipient is given a hearing before an administrative law judge, who makes a recommendation subject to administrative and judicial review; and a report is filed with the appropriate House and Senate committees and no action is taken on that report for 30 days. See §§ 902, 903; 34 CFR §§ 106.71, 100.6-100.11, pt. 101 (1980).

****1915** "[S]uch termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding [of noncompliance] has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found ...." [FN3]

> FN3. Section 902 provides in full:
>
> "Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 901 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such non-

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> compliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report." 86 Stat. 374 (emphasis in original).

In 1975, the Department of Health, Education, and Welfare (HEW) invoked its § 902 authority to issue regulations ***516** governing the operation of federally funded education programs.[FN4] These regulations extend, for example, to policies involving admissions, textbooks, and athletics. See 34 CFR pt. 106 (1980).[FN5] Interpreting the term "person" in § 901(a) to encompass employees as well as students, HEW included among the regulations a series entitled "Subpart E," which deals with employment practices, ranging from job classifications to pregnancy leave. See 34 CFR §§ 106.51-106.61 (1980). Subpart E's general introductory section provides:

> FN4. HEW's functions under Title IX were transferred in 1979 to the Department of Education by § 301(a)(3) of the Department of Education Organization Act, Pub.L. 96-88, 93 Stat. 678, 20 U.S.C. § 3441(a)(3) (1976 ed., Supp. IV). Because many of the relevant actions in this case were taken by HEW prior to reorganization, both agencies are referred to herein as HEW.
>
> FN5. The regulations initially appeared at 34 CFR pt. 86 (1972), but were recodified in connection with the establishment of the Department of Education. 45 Fed.Reg. 30802 (1980). See n. 4, *supra.*

> "No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, ***517** consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance." § 106.51(a)(1).[FN6]
>
> FN6. The Department of Agriculture also has issued regulations implementing Title IX. These include employment practices provisions that track the regulations at issue here. See 7 CFR §§ 15a.51-15a.61 (1980). In addition, the Small Business Administration has promulgated regulations prohibiting employment discrimination, which are based in part on Title IX. See 13 CFR § 113.3 (1981). See generally Comment, 129 U.Pa.L.Rev. 417, 418, nn. 7 and 8 (1980).

****1916** II

Petitioners are two Connecticut public school boards that brought separate suits challenging HEW's authority to issue the Subpart E regulations. Petitioners contend that Title IX was not meant to reach the employment practices of educational institutions.

A. *The North Haven case.* The North Haven Board of Education (North Haven) receives federal funds for its education programs and activities and is therefore subject to Title IX's prohibition of gender discrimination. Since the 1975-1976 school year, North Haven has devoted between 46.8% and 66.9% of its federal assistance to the salaries of its employees; this practice is expected to continue.[FN7]

> FN7. See *North Haven Bd. of Ed. v. Hufstedler*, 629 F.2d 773, 774-775 (CA2 1980).

In January 1978, Elaine Dove, a tenured teacher in the North Haven public school system, filed a complaint with HEW, alleging that North Haven had violated Title IX by refusing to rehire her after a one-year maternity leave. In response to this complaint, HEW began to investigate the school board's employment practices and sought from petitioner information

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concerning its policies on hiring, leaves of absence, seniority, and tenure. Asserting that HEW lacked authority to regulate employment practices under Title IX, North Haven refused to comply with the request.

***518** When HEW then notified petitioner that it was considering administrative enforcement proceedings, North Haven brought this action in the United States District Court for the District of Connecticut. The complaint sought a declaratory judgment that the Subpart E regulations exceeded the authority conferred on HEW by Title IX, and an injunction prohibiting HEW from attempting to terminate the school district's federal funds on the basis of those regulations. The parties filed cross-motions for summary judgment, and on April 24, 1979, the District Court granted North Haven's motion. App. to Pet. for Cert. 51A. Agreeing with petitioner that Title IX was not intended to apply to employment practices, the court invalidated the employment regulations and permanently enjoined HEW from interfering with North Haven's federal funds because of noncompliance with those regulations.

B. *The Trumbull case.* The Trumbull Board of Education (Trumbull) likewise receives financial support from the Federal Government and must therefore adhere to the requirements of Title IX and appropriate implementing regulations. In October 1977, HEW began investigating a complaint filed by respondent Linda Potz, a former guidance counselor in the Trumbull school district. Potz alleged that Trumbull had discriminated against her on the basis of gender with respect to job assignments, working conditions, and the failure to renew her contract. In September 1978, HEW notified Trumbull that it had violated Title IX and warned that corrective action, including respondent's reinstatement, must be taken.

Trumbull then filed suit in the United States District Court for the District of Connecticut, contending that HEW's Title IX employment regulations were invalid and seeking declaratory and injunctive relief. On the basis of its decision in *North Haven*, the District Court granted Trumbull's motion for summary judgment on May 24, 1979. App. to Pet. for ***519** Cert. 76A. [FN8] The court subsequently amended the judgment, on Trumbull's request, to include injunctive and declaratory relief similar to that ordered in North Haven's case. *Id.*, at 77A, 91A-92A.

FN8. Because the court awarded summary judgment in petitioner's favor before respondent Potz had an opportunity to reply to Trumbull's motion, Potz filed a motion to set aside the judgment and a cross-motion for summary judgment. On September 13, 1979, the court denied both motions, rejecting Potz' contention that the judgment was inconsistent with this Court's opinion in *Cannon v. University of Chicago*, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979). App. to Pet. for Cert. 77A.

****1917** C. *The appeal.* The two cases were consolidated on appeal, and the Court of Appeals for the Second Circuit reversed. *North Haven Bd. of Ed. v. Hufstedler*, 629 F.2d 773 (1980). Finding the language of § 901 inconclusive, the court examined the legislative history and concluded that the provision was intended to prohibit employment discrimination. The court also found the Subpart E regulations consistent with § 902, which the court read as directing only that "any *termination* of funds be limited to the particular program or programs in which noncompliance with § 901 is found ...." 629 F.2d, at 785 (emphasis added). Section 902, the Second Circuit held, does not circumscribe HEW's authority to issue *regulations* prohibiting gender discrimination in employment and does not require the Department "to specify prior to termination which particular programs receiving financial assistance are covered by its regulations." *Ibid.* Because HEW had not exercised its § 902 authority to terminate federal assistance to either North Haven or Trumbull, the court declined to decide whether HEW could do so in these cases. The court remanded the cases to the District Court to determine whether petitioners had violated the HEW regulations and, if so, what remedies were appropriate.

Because other federal courts have invalidated the employmentregulations ***520** as unauthorized by Title IX,[FN9] we granted certiorari to resolve the conflict. 450 U.S. 909, 101 S.Ct. 1345, 67 L.Ed.2d 332 (1981).

FN9. Four Courts of Appeals and several District Courts have so held. See *Seattle University v. HEW*, 621 F.2d 992 (CA9), cert. granted *sub nom. United States Dept. of Ed. v. Seattle Univ.*, 449 U.S. 1009, 101 S.Ct. 563, 66 L.Ed.2d 467 (1980); *Romeo Community Schools v. HEW*, 600 F.2d 581 (CA6),

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cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 388 (1979); *Junior College Dist. of St. Louis v. Califano*, 597 F.2d 119 (CA8), cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 388 (1979); *Islesboro School Comm. v. Califano*, 593 F.2d 424 (CA1), cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 387 (1979); *Grove City College v. Harris*, 500 F.Supp. 253 (WD Pa.1980), appeal pending, Nos. 80-2383, 80-2384 (CA3); *Kneeland v. Bloom Township High School Dist.*, 484 F.Supp. 1280 (ND Ill.1980); *McCarthy v. Burkholder*, 448 F.Supp. 41 (Kan.1978).

But see *Piascik v. Cleveland Museum of Art*, 426 F.Supp. 779, 781, n. 1 (ND Ohio 1976). Cf. *Dougherty Cty. School System v. Harris*, 622 F.2d 735 (CA5 1980), cert. pending *sub nom. Bell v. Dougherty Cty. School System*, No. 80-1023. The Fifth Circuit invalidated the Subpart E regulations on the ground that they do not apply only to specific programs that receive federal financial assistance, but ruled that Title IX permits the Secretary to regulate at least some employment practices.

III

A

Our starting point in determining the scope of Title IX is, of course, the statutory language. See *Greyhound Corp. v. Mt. Hood Stages, Inc.*, 437 U.S. 322, 330, 98 S.Ct. 2370, 2375, 57 L.Ed.2d 239 (1978). Section 901(a)'s broad directive that "no person" may be discriminated against on the basis of gender appears, on its face, to include employees as well as students. Under that provision, employees, like other "persons," may not be "excluded from participation in," "denied the benefits of," or "subjected to discrimination under" education programs receiving federal financial support.

Employees who directly participate in federal programs or who directly benefit from federal grants, loans, or contracts clearly fall within the first two protective categories described in § 901(a). See *Islesboro School Comm. v. Califano*, 593 F.2d 424, 426 (CA1), cert. denied, *521444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 387 (1979). In addition, a female employee who works in a federally funded education program is "subjected to discrimination under" that program if she is paid a lower salary for like work, given less opportunity for promotion, or forced to work under more adverse conditions than are her male colleagues. See *Dougherty Cty. School System v. Harris*, 622 F.2d 735, 737-738 (CA5 1980), cert. pending *sub nom. Bell v. Dougherty Cty. School System*, No. 80-1023.

****1918** There is no doubt that "if we are to give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language." *United States v. Price*, 383 U.S. 787, 801, 86 S.Ct. 1152, 1160, 16 L.Ed.2d 267 (1966); see also *Griffin v. Breckenridge*, 403 U.S. 88, 97, 91 S.Ct. 1790, 1795, 29 L.Ed.2d 338 (1971); *Daniel v. Paul*, 395 U.S. 298, 307-308, 89 S.Ct. 1697, 1702, 23 L.Ed.2d 318 (1969); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 437, 88 S.Ct. 2186, 2202, 20 L.Ed.2d 1189 (1968); *Piedmont & Northern R. Co. v. ICC*, 286 U.S. 299, 311-312, 52 S.Ct. 541, 545, 76 L.Ed. 1115 (1932). Because § 901(a) neither expressly nor impliedly excludes employees from its reach, we should interpret the provision as covering and protecting these "persons" unless other considerations counsel to the contrary. After all, Congress easily could have substituted "student" or "beneficiary" for the word "person" if it had wished to restrict the scope of § 901(a).[FN10]

FN10. According to the dissent, the ease with which any confusion "could have been avoided by the legislative draftsman ..." suggests that "person" should be given its ordinary meaning. *Post*, at 1933.

Petitioners, however, point to the nine exceptions to § 901(a)'s coverage set forth in §§ 901(a)(1)-(9). See n. 1, *supra*. The exceptions, the school boards argue, are directed only at students, and thus indicate that § 901(a) similarly applies only to students. But the exceptions are not concerned solely with students and student activities: two of them exempt an entire class of institutions-religious and military schools-and are not limited to student-related activities at such schools. See §§ 901(a)(3), (4). Moreover, petitioners' argument rests on an inference that is by no means compelled; in fact, the absence of a specific exclusion for employmentamong ***522** the list of exceptions tends to support the Court of Appeals' conclusion that

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Title IX's broad protection of "person[s]" does extend to employees of educational institutions. See *Andrus v. Glover Construction Co.*, 446 U.S. 608, 616-617, 100 S.Ct. 1905, 1910, 64 L.Ed.2d 548 (1980).[FN11]

FN11. Nor does § 901(b) qualify the broad language of § 901(a). Section 901(b) repeats the language identifying certain of the categories of persons listed in § 901(a); it provides no clearer indication of the intended scope of § 901(a) than does that section itself.

[1] Although the statutory language thus seems to favor inclusion of employees, nevertheless, because Title IX does not expressly include or exclude employees from its scope, we turn to the Act's legislative history for evidence as to whether Congress meant somehow to limit the expansive language of § 901.[FN12]

FN12. In construing a statute, this Court normally accords great deference to the interpretation, particularly when it is longstanding, of the agency charged with the statute's administration. See, *e.g.*, *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 274-275, 94 S.Ct. 1757, 1761-1762, 40 L.Ed.2d 134 (1974); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 381, 89 S.Ct. 1794, 1801, 23 L.Ed.2d 371 (1969). But the administrative interpretation of Title IX has changed, and a split has occurred between the federal agencies responsible for promulgating Title IX regulations. On July 27, 1981, respondent Bell, Secretary of Education, wrote to the Attorney General expressing his dissatisfaction with the existing Subpart E regulations and his belief that they were ultra vires. The Secretary sought to amend the regulations to make them parallel with the Department of Education regulations implementing Title VI of the Civil Rights Act of 1964. See 34 CFR pt. 100 (1980). Specifically, Secretary Bell proposed to have the regulations cover employment practices "only when the complaint shows a clear nexus between the alleged employment discrimination and discrimination against the students, or when the complaint shows that the complainant is a beneficiary of a program in which a primary objective of the Federal financial assistance is to provide employment." Letter from Terrel H. Bell to William French Smith, reprinted in Daily Labor Report, No. 150, p. A-5 (Aug. 5, 1981). Cf. 34 CFR § 100.3(c) (1980). In response, the Attorney General, to whom the President has delegated the authority given him by § 902 to approve regulations promulgated pursuant to Title IX, refused to approve the Department's suggestion and continues to defend the existing regulations. See Brief for Federal Respondents 37, n. 26; Tr. of Oral Arg. 18-19.

The Department of Education has withdrawn its request to the Attorney General pending this Court's decision in this case. See *id.*, at 17-18. Because the Subpart E regulations therefore are still in effect, respondent Bell's changed view does not moot the litigation. See *American Textile Mfrs. Institute, Inc. v. Donovan*, 452 U.S. 490, 505, n. 25, 101 S.Ct. 2478, 2488, n. 25, 69 L.Ed.2d 185 (1981). It, however, does undercut the argument that the regulations are entitled to deference as the interpretation of the agency charged with Title IX's enforcement. See *Southeastern Community College v. Davis*, 442 U.S. 397, 412, n. 11, 99 S.Ct. 2361, 2370, n. 11, 60 L.Ed.2d 980 (1979).

***523 **1919** B

In the early 1970's, several attempts were made to enact legislation banning discrimination against women in the field of education. Although unsuccessful, these efforts included prohibitions against discriminatory employment practices.[FN13]

FN13. Title IX grew out of hearings on gender discrimination in education, held in 1970 by a special House Subcommittee on Education chaired by Representative Green. See Discrimination Against Women: Hearings on Section 805 of H.R. 16098 before the Special Subcommittee on Education of the House Committee on Education and Labor, 91st Cong., 2d Sess. (1970) (1970 Hearings). Much of the testimony focused on discrimination against women in employment. See generally, *e.g.*, Kuhn, Title IX: Employment

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and Athletics Are Outside HEW's Jurisdiction, 65 Geo.L.J. 49, 59-60 (1976); Comment, 1976 B.Y.U.L.Rev. 133, 140-141. The proposal on which the hearings were held, however, never emerged from committee. That provision, § 805 of H.R. 16098, would have extended the prohibitions of Title VI of the Civil Rights Act of 1964 to discrimination based on gender by adding the word "sex" to § 601; would have made Title VII of the Civil Rights Act of 1964 applicable to public school employees and education employees generally; would have amended the Civil Rights Act of 1957 to include gender discrimination within the jurisdiction of the Civil Rights Commission; and would have extended the application of the Equal Pay Act to executive, administrative, and professional employees.

Then, in 1971, Senator Bayh introduced an amendment to S. 659, 92d Cong., 1st Sess. (1971), the Education Amendments of 1971, which would have prohibited recipients of federal education funds from discriminating against women. The amendment, which Senator Bayh characterized as identical to the prohibition against discrimination on the basis of race contained in Title VI of the Civil Rights Act of 1964, plainly was meant to proscribe discrimination in employment. See 117 Cong.Rec. 30155, 30403 (1971); see also *id.*, at 30411 (Sen. McGovern announces his intent to support Sen. Bayh's "similar amendment" rather than introducing his own, which explicitly forbade gender discrimination in employment). The amendment never came to a vote on the floor of the Senate, however, because it was ruled nongermane. See *id.*, at 30415.

***524** In 1972, the provisions ultimately enacted as Title IX were introduced in the Senate by Senator Bayh during debate on the Education Amendments of 1972. In addition to prohibiting gender discrimination in federally funded education programs and threatening termination of federal assistance for noncompliance, the amendment included provisions extending the coverage of Title VII and the Equal Pay Act to educational institutions. Summarizing his proposal, Senator Bayh divided it into two parts-first, the forerunner of § 901(a), and then the extensions of Title VII and the Equal Pay Act:

"Amendment No. 874 is broad, but basically it closes loopholes in existing legislation relating to general education programs and employment resulting from those programs.... *[T]he heart of this amendment* is a provision banning sex discrimination in educational programs receiving Federal funds. The amendment would cover such crucial aspects as admissions procedures, scholarships, and *faculty employment*, with limited exceptions. Enforcement powers include fund termination provisions-and appropriate safeguards-parallel to those found in title VI of the 1964 Civil Rights Act. *Other important provisions* in the amendment would extend the equal employment opportunities provisions of title VII of the 1964 Civil Rights Act to educational institutions, and extend the Equal Pay for Equal Work Act to include executive, administrative and professional women." 118 Cong.Rec. 5803 (1972) (emphasis added).

The Senator's description of § 901(a), the "heart" of his amendment, indicates that it, as well as the Title VII and Equal Pay Act provisions, was aimed at discrimination in employment.[FN14]

FN14. Senator Bayh's 1971 proposal, see n. 13, *supra*, did not include provisions amending Title VII and the Equal Pay Act. His statements that the 1971 amendment nevertheless would prohibit employment discrimination thus rebut petitioners' contention that the Senator's discussion of employment discrimination during debate on the 1972 version of his amendment referred solely to the provisions regarding Title VII and the Equal Pay Act.

***525 **1920** Similarly, in a prepared statement summarizing the amendment, Senator Bayh discussed the general prohibition against gender discrimination:

"Central to my amendment are sections 1001-1005, which would prohibit discrimination on the basis of sex in federally funded education programs....

"This portion of the amendment covers dis-

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crimination in all areas where abuse has been mentioned-*employment practices for faculty and administrators*, scholarship aid, admissions, access to programs within the institution such as vocational education classes, and so forth." 118 Cong.Rec. 5807 (1972) (emphasis added).

Petitioners observe that the discussion of this portion of the amendment appears under the heading "A. Prohibition of Sex Discrimination in Federally Funded Education Programs," while the provisions involving Title VII and the Equal Pay Act are summarized under the heading "B. Prohibition of Education-Related Employment Discrimination." But we are not willing to ascribe any particular significance to these headings. The Title VII and Equal Pay Act portions of the Bayh amendment are more narrowly focused on employment discrimination than is the general ban on gender discrimination, and the headings reflect that difference. Especially in light of the explicit reference to employment practices in the description of the amendment's general provision, however, the headings do not negate Senator Bayh's intent that employees as well as students be protected by the first portion of his amendment.[FN15]

FN15. The headings and corresponding divisions of Senator Bayh's summary of his amendment do suggest, however, that the Senator's reference to "sections 1001-1005" in describing the prohibition of discrimination in federally funded education programs is of little significance. Although, as the dissent points out, *post*, at 1932, § 1005 of the amendment comprised the Title VII provisions, the detailed discussion of the Title VII amendments in part B of the summary, the absence of any further mention of those provisions in part A's description of Title IX, and the fact that the Title VII provisions were not limited to "federally funded education programs" indicate that the Senator's reference to § 1005 in part A was inadvertent.

***526** The final piece of evidence from the Senate debate on the Bayh amendment appears during a colloquy between Senator Bayh and Senator Pell, chairman of the Senate Subcommittee on Education and floor manager of the education bill. In response to Senator Pell's inquiry about the scope of the sections that in large part became §§ 901(a) and (b), Senator Bayh stated:

"As the Senator knows, we are dealing with three basically different types of discrimination here. We are dealing with discrimination in admission to an institution, discrimination of available services or studies within an institution once students are admitted, and *discrimination in employment within an institution, as a member of a faculty or whatever.*

"*In the area of employment, we permit no exceptions.*" *Id.*, at 5812 (emphasis added).[FN16]

FN16. Moreover, in reply to Senator Pell's questions regarding Title IX's application to the faculty of religious and military schools, Senator Bayh made clear that such institutions were explicitly excepted from the reach of § 901(a). See 118 Cong.Rec. 5813 (1972). His response makes no sense if Senator Bayh thought that the provision was not aimed at protecting any employees; in that event, he could have answered Senator Pell's questions simply by stating that employment discrimination was dealt with in the Title VII and Equal Pay Act portions of the amendment, rather than in § 901.

Although the statements of one legislator made during debate may not be controlling, see, *e.g.*, *Chrysler Corp. v. Brown*, 441 U.S. 281, 311, 99 S.Ct. 1705, 1722, 60 L.Ed.2d 208 (1979), Senator Bayh's remarks, as those of the sponsor of the language****1921** ultimately enacted, ***527** are an authoritative guide to the statute's construction. See, *e.g.*, *FEA v. Algonquin SNG, Inc.*, 426 U.S. 548, 564, 96 S.Ct. 2295, 2304, 49 L.Ed.2d 49 (1976) (such statements "deserv[e] to be accorded substantial weight ..."); *NLRB v. Fruit Packers*, 377 U.S. 58, 66, 84 S.Ct. 1063, 1068, 12 L.Ed.2d 129 (1964); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394-395, 71 S.Ct. 745, 750-751, 95 L.Ed. 1035 (1951). And, because §§ 901 and 902 originated as a floor amendment, no committee report discusses the provisions; Senator Bayh's statements-which were made on the same day the amendment was passed, and some of which were prepared rather than spontaneous remarks-are the only authoritative indications of congressional intent regarding the scope of §§ 901 and 902.

The legislative history in the House is even more

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sparse. H.R. 7248, 92d Cong., 1st Sess. (1971), the Higher Education Act of 1971, contained, as part of its Title X, a general prohibition against gender discrimination in federally funded education programs that was identical to the corresponding section of the Bayh amendment and to § 901(a) as ultimately enacted. But § 1004 of Title X, like § 604 of Title VI, see 42 U.S.C. § 2000d-3, provided that nothing in Title X authorized action "by any department or agency with respect to any employment practice ... except where a primary objective of the Federal financial assistance is to provide employment." The debate on Title X included no discussion of this limitation. See 117 Cong.Rec. 39248-39263 (1971).[FN17]

FN17. Portions of that debate suggest, however, that, despite § 1004, Members of the House thought that the ban on discrimination protected employees. In discussing a proposed amendment to § 1001 of the bill, the section similar to § 901(a) of Title IX, Representative Smith quoted § 1001, described it as containing the "effective provisions" of Title X, and observed that the amendment "would exempt out of this title all undergraduate schools and would leave the prohibition against sex discrimination to apply to graduate education and faculty employment and salaries." 117 Cong.Rec. 39255 (1971); see also *id.*, at 39260 (remarks of Rep. Erlenborn); *id.*, at 39262 (remarks of Rep. Quie). Despite the explicit exclusion of employment discrimination in § 1004, then, there was at least some feeling on the floor of the House that employment discrimination was nonetheless prohibited by the provision that would become § 901(a).

When the House and Senate versions of Title IX were submitted***528** to the Conference Committee, § 1004 was deleted. The Conference Reports simply explained:

"[T]he House amendment, but not the Senate amendment, provided that nothing in the title authorizes action by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment. The House recedes." S.Conf.Rep.No.92-798, p. 221 (1972); H.R.Conf.Rep.No.92-1085, p. 221 (1972).

Expressly a conscious choice, therefore, the omission of § 1004 suggests that Congress intended that § 901 prohibit gender discrimination in employment.

Petitioners and the dissent contend, however, that § 1004 was deleted in order to avoid an inconsistency: Title IX included provisions relating to the Equal Pay Act,[FN18] which obviously concerned employment, and § 1004 conflicted with those portions of the Act. See Sex Discrimination Regulations: Hearings before the Subcommittee on Postsecondary Education of the House Committee on Education and Labor, 94th Cong., 1st Sess., 409 (1975) (1975 Hearings) (remarks of Rep. O'Hara) (arguing that Title IX was a "cut and paste job," using "a Xerox" of Title VI, and that § 1004 "got in through a drafting error"). As the ****1922** Court of Appeals observed, however, the Conference Committee could easily have altered the wording of § 1004 to make clear that its limitation applied only to § 901 [FN19] or could have noted in the ConferenceReports ***529** that the omission was necessitated by the apparent inconsistency. Instead, by stating that "[t]he House recedes," the Reports suggest that the Senate version of Title IX, which was intended to ban discriminatory employment practices, prevailed for substantive reasons. See *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 199-200, 95 S.Ct. 392, 400-401, 42 L.Ed.2d 378 (1974) (deletion of a provision by a Conference Committee "militates against a judgment that Congress intended a result that it expressly declined to enact"); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S., at 391-392, 71 S.Ct., at 749. Identical language-"The House recedes" or "The Senate recedes"-appears in the Conference Reports with respect to all other changes made in Title IX during the conference. See S.Conf.Rep.No.92-798, pp. 221-222 (1972). See also 118 Cong.Rec. 18437 (1972) (letters printed in the record during the Senate debate on the Conference Report, which imply that employment discrimination is prohibited by § 901).

FN18. The proposed amendments to Title VII had been deleted because identical provisions had already been enacted as part of the Equal Employment Opportunity Act of 1972, Pub.L. 92-261, 86 Stat. 103, 42 U.S.C. § 2000e(a).

FN19. The Court of Appeals suggested the

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> following language: " 'Nothing in § 901 shall apply to any employees of any educational institution subject to this title except where a primary objective of the Federal financial assistance is to provide employment.' " 629 F.2d, at 783.

Petitioners insist additionally that a specific exclusion for employment, such as that contained in § 1004, was unnecessary to limit the scope of § 901. Pointing out that Title IX was patterned after Title VI of the Civil Rights Act of 1964, the school boards contend that the addition of § 604 to Title VI was not viewed by Congress as diminishing the scope of the Act; rather, petitioners argue, it was agreed that Title VI would not prohibit employment discrimination even before § 604 made the exclusion explicit.

This focus on the history of Title VI-urged by petitioners and adopted by the dissent-is misplaced. It is Congress' intention in 1972, not in 1964, that is of significance in interpreting Title IX. See *Cannon v. University of Chicago*, 441 U.S. 677, 710-711, 99 S.Ct. 1946, 1964-1965, 60 L.Ed.2d 560 (1979). The meaning and applicability of Title VI are useful guides in construing Title IX, therefore, only to the extent that the language and history of Title IX do not suggest a contrary interpretation. Moreover, ***530** whether § 604 clarified or altered the scope of Title VI,[FN20] it is apparent that § 601 alone was not considered adequate to exclude employees from the statute's coverage. If Congress had intended that Title IX have the same reach as Title VI, therefore, we assume that it would have enacted counterparts to both § 601 and § 604. For although two statutes may be similar in language and objective, we must not fail to give effect to the differences between them. See *Lorillard v. Pons*, 434 U.S. 575, 584-585, 98 S.Ct. 866, 872, 55 L.Ed.2d 40 (1978).

> FN20. Petitioners oversimplify the role of § 604. Some Members of Congress did not find the language of § 601 clearly limited to a certain class of beneficiaries. See 110 Cong.Rec. 2484 (1964) (remarks of Rep. Poff); Civil Rights: Hearings on H.R. 7152 before the House Committee on Rules, 88th Cong., 2d Sess., 228 (1964) (colloquy between Rep. Avery and Rep. McCulloch); *id.*, at 143 (remarks of Rep. Celler); *id.*, at 197-198 (Colloquy between Rep. Avery and Rep. Celler); *id.*, at 379-380 (remarks of Rep. Poff). Section 604 was thereafter added in the Senate, as part of the Dirksen-Mansfield substitute bill; although the provision has been viewed as merely clarifying the scope of Title VI, see 110 Cong.Rec. 12714, 12720 (1964) (remarks of Sen. Humphrey); Kuhn, 65 Geo.L.J., at 53, it has also been considered a substantive change, see 110 Cong.Rec. 14219-14220 (1964) (remarks of Sen. Holland); Comment, 129 U.Pa.L.Rev., at 447 ("The employment exemption in title VI was amended onto the statute as part of a substitute written during informal bargaining between the Senate's Democratic and Republican leadership with the intention of providing a compromise that would garner enough votes to end the ongoing filibuster").

[2] In our view, the legislative history thus corroborates our reading of the statutory language and verifies the Court of ****1923** Appeals' conclusion that employment discrimination comes within the prohibition of Title IX.[FN21]

> FN21. Thus, we do not, as the dissent charges, "rel[y] on legislative history to add omitted words ...." *Post*, at 1933. Rather, we use the legislative history as a guide to interpreting the "critical words" that Congress did include in Title IX. *Ibid.* It is the dissent that uses the legislative history-of a different statute-to rewrite Title IX so as to restrict its reach.

C

The postenactment history of Title IX provides additional evidence of the intended scope of the Title and confirms Congress'***531** desire to ban employment discrimination in federally financed education programs. Following the passage of Title IX, Senator Bayh published in the Congressional Record a summary of the final version of the bill. That description expressly distinguishes Title VI of the Civil Rights Act of 1964 with respect to employment practices:

> "Title VI ... specifically excludes *employment* from coverage (except where the primary objective of the federal aid is to provide employment). *There is no similar exemption for employment* in the sex dis-

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crimination provisions relating to federally assisted education programs." 118 Cong.Rec. 24684, n. 1 (1972) (first emphasis in original; second emphasis added).

See also 120 Cong.Rec. 39992 (1974) (remarks of Sen. Bayh).

Then, in June 1974, HEW published proposed Title IX regulations pursuant to § 902. See 39 Fed.Reg. 22228 (1974). Included among these regulations was Subpart E, containing provisions prohibiting discriminatory employment practices in federally funded education programs. During the comment period, nearly 10,000 formal responses to the regulations were submitted, reputedly the most HEW had ever received on one of its proposals. See Salomone, Title IX and Employment Discrimination: A Wrong in Search of a Remedy, 9 J.Law & Ed. 433, 436 (1980). But not one suggested that § 901 was not meant to prohibit discriminatory employment practices. See 1975 Hearings 479 (statement of Peter E. Holmes, Director of the Office for Civil Rights).

On June 4, 1975, HEW published its final Title IX regulations, see 40 Fed.Reg. 24128 (1975), and, as required by § 431(d)(1) of the General Education Provisions Act, Pub.L.93-380, 88 Stat. 567, as amended, 20 U.S.C. § 1232(d)(1), submitted the regulations to Congress for review. This "laying before" provision was designed to afford Congress an opportunity to examine a regulation and, if it found the regulation "inconsistent with the Act from which it derives its authority***532** ...," to disapprove it in a concurrent resolution. If no such disapproval resolution was adopted within 45 days, the regulation would become effective.

Resolutions of disapproval were introduced in both Houses of Congress. The two Senate resolutions, which did not mention the employment regulations, were not acted upon.[FN22] In the House, the Subcommittee on Postsecondary Education of the House Committee on Education and Labor held six days of hearings to determine whether the HEW regulations were "consistent with the law and with the intent of the Congress in enacting the law." 1975 Hearings 1 (remarks of Rep. O'Hara). One witness expressed opposition to the employment regulations, interpreting the legislative history much as petitioners have. *Id.*, at 406-408 (statement of Janet L. Kuhn); see also Kuhn, 65 Geo.L.J., at 49. Senator Bayh testified, however, that the regulations, "as the Congress mandated, call for equality in admissions ... and in the case of teachers and other educational personnel,****1924** employment, pay and promotions." 1975 Hearings 169.[FN23] And HEW Secretary Weinberger stated that he did not see "any way you can find that employees do not participate in education programs and activities receiving Federal assistance, and, therefore, they are within the protected class ...." *Id.*, at 478. See also *id.*, at 140 (statement of Jean Simmons, ***533** President, Federation of Organizations for Professional Women); 154-155 (statement of Rep. Carr); 164 (statement of Rep. Mink); 329 (statement of Dr. Bernice Sandler, Director, Project of the Status and Education of Women, Association of American Colleges).

FN22. Senator Laxalt introduced a resolution disapproving the regulations governing athletic programs. S.Con.Res. 52, 94th Cong., 1st Sess. (1975); see 121 Cong.Rec. 22940 (1975). Senator Helms' resolution was a blanket disapproval of the HEW regulations, S.Con.Res. 46, 94th Cong., 1st Sess. (1975); see 121 Cong.Rec. 17300 (1975), but he did voice disapproval specifically of the employment regulations when he introduced the resolution. *Id.*, at 17301. Senator Helms later explained that the Committee on Labor and Public Welfare had met in executive session on his resolution but had decided not to report it to the full Senate. *Id.*, at 23846.

FN23. Senator Bayh also stressed the similarity between Title IX and Title VI, see 1975 Hearings 169-171, thereby confirming that his references to Title VI during the debate on his amendment did not indicate an intent that employment discrimination be excluded from its coverage.

Following the hearings, members of the Subcommittee on Postsecondary Education introduced concurrent resolutions disapproving certain portions of the HEW regulations, but not referring specifically to the employment regulations. H.R.Con.Res. 329, 94th Cong., 1st Sess. (1975); H.R.Con.Res. 330, 94th Cong., 1st Sess. (1975); see 121 Cong.Rec. 21687 (1975). Representatives Quie and Erlenborn introduced an amendment to H.R.Con.Res. 330 that explicitly sought to disapprove the employment regulations as

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inconsistent with Title IX. See Unpublished Amendment to H.R.Con.Res. 330, quoted in 629 F.2d, at 783.[FN24] Neither resolution was passed, and HEW's regulations went into effect on July 21, 1975.

FN24. H.R.Con.Res. 330 was referred to the House Committee on Education and Labor, which in turn submitted it to its Subcommittee on Equal Opportunities. That Subcommittee held a one-day hearing on the resolution, see Hearing on House Concurrent Resolution 330 (Title IX Regulation) before the Subcommittee on Equal Opportunities of the House Committee on Education and Labor, 94th Cong., 1st Sess. (1975) (H.R.Con.Res. 330 Hearing), and then voted to recommend against passage of the resolution. Interestingly, Representative O'Hara testified at this hearing, but, despite his remarks during the hearings conducted by his own Subcommittee, see 1975 Hearings 408-409, he did not challenge the employment regulations. See H.R.Con.Res. 330 Hearing 2-21, 33-34, 38.

In addition to the two concurrent resolutions mentioned in the text, Representative Martin introduced two resolutions in the House-one broad resolution disapproving all the Title IX regulations, H.R.Con.Res. 310, 94th Cong., 1st Sess. (1975); see 121 Cong.Rec. 19209 (1975), and one focusing on the sections governing athletic programs, H.R.Con.Res. 311, 94th Cong., 1st Sess. (1975); see 121 Cong.Rec. 19209 (1975). Neither referred to the employment regulations. No action was taken on the Martin resolutions.

Admittedly, Congress' failure to disapprove the HEW regulations does not necessarily demonstrate that it considered***534** those regulations valid and consistent with the legislative intent. See § 431(d)(1) of the General Education Provisions Act (as amended approximately four months after the Title IX regulations went into effect), 20 U.S.C. § 1232(d)(1). But the postenactment history of Title IX does indicate that Congress was made aware of the Department's interpretation of the Act and of the controversy surrounding the regulations governing employment, and it lends weight to the argument that coverage of employment discrimination was intended. See *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14-16, 61 S.Ct. 422, 426-427, 85 L.Ed. 479 (1941); Comment, 1976 B.Y.U.L.Rev., at 153-157. And the relatively insubstantial interest given the resolutions of disapproval that were introduced seems particularly significant since Congress has proceeded to amend § 901 when it has disagreed with HEW's interpretation of the statute.[FN25] ****1925** While amending these other portions of § 901, however, Congress has not seen fit to disturb the Subpart E regulations.

FN25. In 1974, Congress, by adding § 901(a)(6), excepted social fraternities and sororities and voluntary youth service organizations from the reach of § 901(a). Pub.L. 93-568, § 3(a), 88 Stat. 1862. See 120 Cong.Rec. 41390-41391 (1974) (remarks of Reps. Green, Steiger, Perkins, Quie, and Ashbrook). The amendment was enacted prior to the period of regulations review, but after HEW had published for comment the Title IX regulations, including those pertaining to employment practices. Then, in 1976, Congress added three new exceptions, §§ 901(a)(7)-(9). See 122 Cong.Rec. 27979-27987 (1976) (remarks of Sens. Fannin, Dole, Thurmond, Bayh, Humphrey, and Eagleton).

In fact, Congress has refused to pass bills that would have amended § 901 to limit its coverage of employment discrimination. On the day the 45-day review period for the HEW regulations expired, Senator Helms introduced a bill that would have added a provision to Title IX stating that "[n]othing in [§ 901] shall apply to employees of any educational institution subject to this title." S.2146, § 2(1), 94th Cong., 1st Sess. (1975); see 121 Cong.Rec. 23845-23847 (1975). No action was taken on the bill. Similarly, Senator McClure ***535** sponsored an amendment to S.2657, 94th Cong., 2d Sess. (1976), the Education Amendments of 1976, which would have restricted the meaning of the term "educational program or activity" in § 901(a) to the "curriculum or graduation requirements of the institutions ..." receiving federal funds. 122 Cong.Rec. 28136 (1976). Senator Bayh successfully opposed the amendment, in part on the ground that it "would exempt those areas of traditional discrimination against women that are the reason for the congressional enactment of title IX[,]" including "employment and employment benefits ...." *Id.*, at

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28144. The McClure amendment was rejected. *Id.*, at 28147.

[3] Although postenactment developments cannot be accorded "the weight of contemporary legislative history, we would be remiss if we ignored these authoritative expressions concerning the scope and purpose of Title IX...." *Cannon v. University of Chicago*, 441 U.S., at 687, n. 7, 99 S.Ct., at 1952, n. 7. Where "an agency's statutory construction has been 'fully brought to the attention of the public and the Congress,' and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned." *United States v. Rutherford*, 442 U.S. 544, 554, n. 10, 99 S.Ct. 2470, 2476, n. 10, 61 L.Ed.2d 68 (1979), quoting *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 489, 60 S.Ct. 982, 989, 84 L.Ed. 1311 (1940). See also *Cannon v. University of Chicago*, 441 U.S., at 702-703, 99 S.Ct., at 1960; *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 275, 94 S.Ct. 1757, 1762, 40 L.Ed.2d 134 (1974); *United States v. Bergh*, 352 U.S. 40, 46-47, 77 S.Ct. 106, 109-110, 1 L.Ed.2d 102 (1956). These subsequent events therefore lend credence to the Court of Appeals' interpretation of Title IX.[FN26]

FN26. Petitioners' final two arguments rely on policy judgments: the school boards insist that the victims of employment discrimination have remedies other than those available under Title IX and that terminating all federal funds to an education program because of discrimination suffered by one employee will injure numerous innocent students. These policy considerations were for Congress to weigh, and we are not free to ignore the language and history of Title IX even were we to disagree with the legislative choice.

Moreover, even if alternative remedies are available and their existence is relevant, but cf. *Cannon v. University of Chicago*, 441 U.S., at 711, 99 S.Ct., at 1965; Comment, 129 U.Pa.L.Rev., at 442-446, this Court repeatedly has recognized that Congress has provided a variety of remedies, at times overlapping, to eradicate employment discrimination. See, *e.g.*, *Electrical Workers v. Robbins & Myers, Inc.*, 429 U.S. 229, 236-239, 97 S.Ct. 441, 446-448, 50 L.Ed.2d 427 (1976); *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 459, 95 S.Ct. 1716, 1719, 44 L.Ed.2d 295 (1975); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47-49, 94 S.Ct. 1011, 1019-1020, 39 L.Ed.2d 147 (1974). And petitioners do not dispute that all funds may be terminated for an education program that discriminates against only one *student.*

Similarly, the views of the dissent as to the competence of the drafters of Title IX, the need for the legislation, the type of procedural, remedial, and enforcement provisions that should have been included, and the language that should have been used, see *post*, at 1933-1935, may be interesting, and may be the sorts of considerations that Congress should take into account in enacting legislation; but they are not relevant to the inquiry we must undertake in ascertaining legislative intent. Rather, in order to avoid the oft-criticized practice of second-guessing Congress, we must rely on the legislative history, however "truncated," *post*, at 1933, and not on our perceptions of the soundness of the legislative judgment.

IV

Although we agree with the Second Circuit's conclusion that Title IX proscribes ****1926** employment discrimination in federally***536** funded education programs, we find that the Court of Appeals paid insufficient attention to the "program-specific" nature of the statute. The court acknowledged that, under § 902, termination of funds "shall be limited in its effect to the particular program, or part thereof, in which ... noncompliance has been ... found," but implied that the Department's authority to issue regulations is considerably broader. See 629 F.2d, at 785-786.[FN27] We disagree.

FN27. To the extent that the Court of Appeals was suggesting only that regulations may be broadly worded and need not be directed at specific programs-as long as they are applied only to programs that receive federal funds-we do not dispute the court's

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> conclusion. See § 902 (referring to "rules, regulations, or orders of general applicability").

It is not only Title IX's funding termination provision that ***537** is program-specific. The portion of § 902 authorizing the issuance of implementing regulations also provides:

> "Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity ... is authorized and directed to effectuate the provisions of section 901 *with respect to such program or activity* by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken." (Emphasis added.)

Certainly, it makes little sense to interpret the statute, as respondents urge, to authorize an agency to promulgate rules that it cannot enforce. And § 901(a) itself has a similar program-specific focus: it forbids gender discrimination "under any education program or activity receiving Federal financial assistance ...."

[4] Title IX's legislative history corroborates its general program-specificity. Congress failed to adopt proposals that would have prohibited *all* discriminatory practices of an institution that receives federal funds. See 117 Cong.Rec. 30155-30157, 30408 (1971) (Sen. Bayh's 1971 amendment); H.R. 5191, 92d Cong., 1st Sess., § 1001(b) (1971) (administration proposal); 1970 Hearings 690-691 (Dept. of Justice's proposed alternative to § 805 of H.R. 16098); cf. Title IX, § 904 (proscribing discrimination against the blind by a recipient of federal assistance with no program-specific limitation). In contrast, Senator Bayh indicated that his 1972 amendment, which in large part was ultimately adopted, was program-specific. See 118 Cong.Rec. 5807 (1972) (observing that the amendment "prohibit[s] discrimination on the basis of sex in federally funded education programs," and that "[t]he effect of termination of funds is limited to the particular entity and program in which such noncompliance has been found ..."); cf. 117 Cong.Rec. 39256 (1971) (colloquies between***538** Reps. Green and Waggoner and between Reps. Green and Steiger). Finally, we note that language in §§ 601 and 602 of Title VI, virtually identical to that in §§ 901 and 902 and on which Title IX was modeled, has been interpreted as being program-specific. See *Board of Public Instruction v. Finch*, 414 F.2d 1068 (CA5 1969). We conclude, then, that an agency's authority under Title IX both to promulgate regulations and to terminate funds is subject to the program-specific limitation of §§ 901 and 902. Cf. *Cannon v. University of Chicago*, 441 U.S., at 690-693, 99 S.Ct., at 1954-1955.

Examining the employment regulations with this restriction in mind, we nevertheless reject petitioners' contention that the regulations are facially invalid. Although their import is by no means unambiguous, we do not view them as inconsistent with Title IX's program-specific character. The employment regulations do speak in general terms of an educational institution's employment practices, but they are limited by the provision that states their general purpose:***1927** "to effectuate title IX ...[,] which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education *program or activity* receiving Federal financial assistance ...." 34 CFR § 106.1 (1980) (emphasis added).[FN28]

> FN28. Similarly, for example, the specific Title IX regulations governing student admissions policies-which are indisputably covered by the statute-are phrased generally, providing that "[n]o person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient ...." 34 CFR § 106.21(a) (1980). The reach of those regulations is likewise limited by § 106.1 to conform to Title IX's program-specific nature. See also 45 CFR § 80.3(b)(1) (1980) (Title VI regulation providing that "[a] recipient under any program to which this part applies may not ... [discriminate] on ground of race, color, or national origin ...").

HEW's comments accompanying publication of its final Title IX regulations confirm our view that Subpart E is consistent with the Act's program-specificity.[FN29] The Department***539** recognized that § 902 limited its authority to terminate funds to particular programs that were found to have violated Title IX, and it continued:

> FN29. In construing regulations, the Court normally defers to the agency's interpreta-

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tion. See, *e.g.*, *INS v. Stanisic*, 395 U.S. 62, 72, 89 S.Ct. 1519, 1525, 23 L.Ed.2d 101 (1969); *Udall v. Tallman*, 380 U.S. 1, 16-17, 85 S.Ct. 792, 801, 13 L.Ed.2d 616 (1965). Here, however, that interpretation has fluctuated from case to case, and even as this case has progressed. See Brief for Federal Respondents 46; compare 1975 Hearings 485 (testimony of HEW Secretary Weinberger), and *Dougherty Cty. School System v. Harris*, 622 F.2d, at 737, with Brief for Federal Respondents 44-46. Accordingly, there is no consistent administrative interpretation of the Title IX regulations for us to evaluate. Cf. n. 12, *supra.*

"Therefore, an education program or activity or part thereof operated by a recipient of Federal financial assistance administered by the Department will be subject to the requirements of this regulation ifit [FN30] receives or benefits from such assistance. This interpretation is consistent with the only case specifically ruling on the language contained in title VI, which holds that Federal funds may be terminated under title VI upon a finding that they 'are infected by a discriminatory environment ...' *Board of Public Instruction of Taylor County, Florida v. Finch*, 414 F.2d 1068, 1078-79 (5th Cir. 1969)." 40 Fed.Reg. 24128 (1975).

FN30. Whether "it" refers to "recipient" or "education program or activity" is somewhat unclear, but we find the latter reading more plausible, especially given the approving citation to the Fifth Circuit's opinion in *Board of Public Instruction of Taylor County, Florida v. Finch*, 414 F.2d 1068 (1969). Moreover, "a recipient of Federal financial assistance" by definition "receives or benefits from such assistance," whereas "an education program or activity ... operated by a recipient" may not; the subordinate clause therefore adds nothing unless "it" means "program or activity." See also 34 CFR § 106.51(a) (1980) (prohibiting gender discrimination "under any education program or activity operated by a recipient *which* receives or benefits from Federal financial assistance" (emphasis added)).

By expressly adopting the Fifth Circuit opinion construing Title VI as program-specific, HEW apparently indicated its intent that the Title IX regulations be interpreted in like fashion. So read, the regulations conform with the limitations Congress enacted in §§ 901 and 902.

Whether termination of petitioners' federal funds is permissibleunder ***540** Title IX is a question that must be answered by the District Court in the first instance. Similarly, we do not undertake to define "program" in this opinion. Neither of the cases before us advanced beyond a motion for summary judgment, and the record therefore does not reflect whether petitioners' employment practices actually discriminated on the basis of gender or whether any such discrimination comes within the prohibition of Title IX. Neither school board opposed HEW's investigation into its employment practices on the grounds that the complaining employees' salaries were not funded by federal money, that the employees did not work in an education program that received federal assistance, or that the discrimination they allegedly suffered did not affect a federally funded program.[FN31] ****1928** Instead, petitioners disputed the Department's authority to regulate any employment practices whatsoever, and the District Court adopted that view, which we find to be error. Accordingly, we affirm the judgment of the Court of Appeals but remand the case for further proceedings consistent with this opinion.

FN31. Petitioner North Haven, for example, has conceded that it uses a substantial percentage of its federal funds to pay the salaries of its employees, including teachers. See App. 6, 18-20, 21-22, 24.

It is so ordered.

Justice POWELL, with whom THE CHIEF JUSTICE and Justice REHNQUIST join, dissenting.
Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U.S.C. § 1681 *et seq.*, prohibits discrimination on the basis of sex in education programs and activities receiving federal funds. In 1975, the Department of Health, Education, and Welfare (HEW) [FN1] promulgated regulations prohibiting***541** discrimination on the basis of gender in *employment* by fund recipients. 34 CFR § 106.51(a)(1). Today, the Court upholds the validity of these regulations, relying on the statutory language, its legislative history, and several postenactment events.

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Because I believe the Court's interpretation is neither consistent with the statutory language nor supported by its legislative history, I dissent.[FN2]

FN1. As noted by the Court, *ante*, at 1915, n. 4, HEW's duties under Title IX were transferred to the Department of Education in 1979 by § 301(a)(3) of the Department of Education Organization Act, Pub.L. 96-88, 93 Stat. 678, 20 U.S.C. § 3441(a)(3) (1976 ed., Supp. IV). I follow the Court in referring to both agencies as HEW since many of the relevant acts in this case took place before the reorganization. See *ante*, at 1915, n. 4.

FN2. The Court acknowledges that the postenactment events it discusses only "lend credence" to its interpretation of the statute. *Ante*, at 1925.

I

Although the Court begins with the language of the statute, it quotes the relevant language in its entirety only in the opening paragraphs of the opinion. In the section considering the statute's meaning, the Court quotes two words of the statute and paraphrases the rest, thereby suggesting an interpretation actually at odds with the language used in the statute. Thus, according to the Court, "[s]ection 901(a)'s broad directive that 'no person' may be discriminated against on the basis of gender appears, on its face, to include employees as well as students." *Ante*, at 1917. This is not what the statutory language provides.

In relevant part, the statute states:

> "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...." Education Amendments of 1972, § 901(a), 20 U.S.C. § 1681(a).

A natural reading of these words would limit the statute's scope to discrimination against those who are enrolled in, or who are denied the benefits of, programs or activities receiving federal funding. It tortures the language chosen by Congress to conclude that not only teachers and administrators, but also secretaries and janitors, who are discriminated against on the basis of sex in employment, are thereby (i) denied*participation****542** in a program or activity;[FN3] (ii) denied the *benefits* of a program or activity; or (iii) subject to discrimination *under* an education program or activity. Moreover, Congress made no reference whatever to employers or employees in Title IX, in sharp contrast to quite explicit language in other statutes regulating employment practices.[FN4]

FN3. I agree with the Court that employees who directly participate in a federal program, *i.e.*, teachers who receive federal grants, are, of course, protected by Title IX. See *ante*, at 1917. Respondents Elaine Dove and Linda Potz were not, however, participants in any grant program or in any other federally funded program or activity. Elaine Dove was a teacher and Linda Potz a guidance counselor. Both alleged only discrimination in employment.

FN4. See, *e.g.*, 42 U.S.C. § 2000e-2(a) (Title VII: "[i]t shall be an unlawful employment practice for an employer-"); 29 U.S.C. § 206(d)(1) (Equal Pay Act: "[n]o employer having employees...").

****1929** It is noteworthy that not one of the other five Courts of Appeals to consider the question before us reached the conclusion that HEW's interpretation is supported by the statutory language. The issue was presented initially to the Court of Appeals for the First Circuit in *Islesboro School Committee v. Califano*, 593 F.2d 424, 426, cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 387 (1979), and that decision has been followed by most other Courts of Appeals to consider the question. There, the court concluded that "[t]he language of section 901, 20 U.S.C. § 1681(a), on its face, is aimed at the beneficiaries of the federal monies, *i.e.*, either students attending institutions receiving federal funds or teachers engaged in special research being funded by the United States government." The court went on to point out that this reading of "the plain language of the statute is buttressed by an examination of the specific exemptions mentioned in the statute," all of which relate to students, not employees.[FN5] *Ibid.*

FN5. The Court today not only finds this

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point unconvincing, but concludes that the "absence of a specific exclusion for employment among the list of exceptions tends to support the Court of Appeals' conclusion" that Title IX does protect employees. *Ante*, at 1918. I am unable to follow this reasoning. The absence of employment-related exceptions may not be conclusive proof that employment is not within the scope of the statute. But I fail to see how that absence affirmatively indicates that the statute was intended to apply to employees. Indeed, if Congress did intend to cover employees, it is anomalous that it did not provide exceptions similar to those in Title VII. For example, Title VII does not proscribe bona fide seniority plans, 42 U.S.C. § 2000e-2(h).

***543** In the next appellate decision, *Romeo Community Schools v. HEW*, 600 F.2d 581, cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 388 (1979), the Court of Appeals for the Sixth Circuit also rejected the interpretation of the statute now relied on by this Court, noting: "[A]s actually written, the statute is not nearly so broad. The words 'no person' are modified by later language which clearly limits their meaning." 600 F.2d, at 584. The court concluded that the statute "reaches only those types of disparate treatment" that involve discrimination against program beneficiaries.[FN6] *Ibid.*

FN6. The question also has been presented to the Courts of Appeals for the Fifth, Eighth, and Ninth Circuits. In *Junior College Dist. of St. Louis v. Califano*, 597 F.2d 119, 121, cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 388 (1979), the Court of Appeals for the Eighth Circuit considered HEW's arguments but "adopted" the Court of Appeals for the First Circuit's decision in *Islesboro*. And in *Seattle University v. HEW*, 621 F.2d 992, 993, cert. granted *sub nom. United States Dept. of Ed. v. Seattle Univ.*, 449 U.S. 1009, 101 S.Ct. 563, 66 L.Ed.2d 467 (1980), the Court of Appeals for the Ninth Circuit followed the three earlier Circuit decisions, noting that each of those courts had held that the plain language of Title IX did not support HEW's position. Even in the decision below, in which the Court of Appeals for the Second Circuit upheld the regulations, the court did not base its decision on the statutory language, and stated that the "language is more ambiguous than HEW suggests." 629 F.2d 773, 777.

The other appellate decision was entered by the Court of Appeals for the Fifth Circuit in *Dougherty Cty. School System v. Harris*, 622 F.2d 735 (1980), cert. pending *sub nom. Bell v. Dougherty Cty. School System*, No. 80-1023. There, the Court of Appeals for the Fifth Circuit held the regulations invalid because they did not limit fund termination to the offending program or activity. In reaching this decision, the court noted that program-specific regulations might be sustainable in some instances, *e.g.*, if they prohibited discrimination in pay against female teachers paid with federal funds relative to the amounts paid male teachers with federal funds. The court noted that an argument can be made that in such a case, the woman teacher is "denied the benefits of" or "subject to discrimination under" the federal program. 622 F.2d, at 737-738. But there is no indication it would agree with this Court that the statutory language supports program-specific regulations prohibiting all kinds of discriminatory employment practices with respect to all types of employees, *i.e.*, hourly employees, secretaries, and administrators as well as teachers.

***544** II

A

The Court acknowledges, as it must, that § 901 of Title IX "does not expressly include****1930** ... employees." But it finds a strong negative inference in the fact that § 901 does not "exclude employees from its scope." *Ante*, at 1918. The Court then turns to the legislative history for evidence as to whether or not § 901 was meant to prohibit employment discrimination. *Ibid.* I agree with the several Courts of Appeals that have concluded unequivocally that the statutory language cannot fairly be read to proscribe employee discrimination. Only rarely may legislative history be relied upon to read into a statute operative language that Congress itself did not include. To justify such a

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reading of a statute, the legislative history must show clearly and unambiguously that Congress did intend what it failed to state.[FN7] The Court's elaborate exposition of the history of Title IX falls far short of this standard.

> FN7. See, *e.g.*, *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 412, n. 29, 91 S.Ct. 814, 821, n. 29, 28 L.Ed.2d 136 (1971) ("Because of this ambiguity [in the legislative history] it is clear that we must look primarily to the statutes themselves to find the legislative intent").

Title IX originated in a floor amendment sponsored by Senator Bayh to Senate bill S. 659, 92d Cong., 2d Sess. (1972). The amendment was intended to close loopholes in earlier civil rights legislation; three problem areas had been identified in hearings by a special House Committee in 1970. See Discrimination Against Women: Hearings on Section 805 of H.R. 16098 before the Special Subcommittee on Education of the House Committee on Education and Labor, 91st ***545** Cong., 2d Sess. (1970). Title VII of the Civil Rights Act of 1964, though generally barring employment discrimination on the basis of sex, race, religion, or national origin, did not apply to discrimination "with respect to the employment of individuals to perform work connected with the educational activities of [educational] institutions." Pub.L. 88-352, Title VII, § 702, 78 Stat. 255. And the Equal Pay Act of 1963 banned discrimination in wages on the basis of sex, 29 U.S.C. § 206(d)(1), but it did not apply to administrative, executive, or professional workers, including teachers. See 29 U.S.C. § 213(a)(1) (1970 ed.) (no longer in force). Finally, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, barred discrimination on the basis of "race, color, or national origin," but not sex, in any federally funded programs and activities.

The Bayh floor amendment, No. 874, introduced in 1972, 118 Cong.Rec. 5803 (1972) (print of amendment), closed these loopholes. Section 1005 amended Title VII to cover employment discrimination in educational institutions. *Ibid.* Sections 1009-1010 amended the Equal Pay Act so that discrimination in pay on the basis of sex was barred, even for teachers and other professionals. *Ibid.* And §§ 1001-1003 created a new Title IX banning discrimination on the basis of sex in federally funded *educational* programs and activities, thus effectively extending Title VI's prohibition to sex discrimination in such programs.

Since the amendments to Title VII and the Equal Pay Act explicitly covered discrimination in employment in educational institutions, there was no need to include §§ 1001-1003 of the Bayh amendment to proscribe such discrimination. Instead, Title IX presumably was enacted, as its language clearly indicates, to bar discrimination against beneficiaries of federally funded educational programs and activities. This interpretation of Title IX is confirmed by the fact that it was modeled after Title VI, a statute limited in its scope to ***546** discrimination against beneficiaries of federally funded programs, not general employment practices of fund recipients.[FN8] 42 U.S.C. § 2000d-3.[FN9] And, as this Court noted in ****1931** *Cannon v. University of Chicago*, 441 U.S. 677, 694-701, 99 S.Ct. 1946, 1956-1960, 60 L.Ed.2d 560 (1979), when Congress passed Title IX, it expected the new provision to be interpreted consistently with Title VI, which had been its model.

> FN8. The operative language in the two provisions is virtually identical. Compare 42 U.S.C. § 2000d (Title VI) with 20 U.S.C. § 1681(a) (Title IX).

> FN9. Title 42 U.S.C. § 2000d-3 states:
>
> "Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency or labor organization except where a primary objective of the Federal financial assistance is to provide employment."

B

The Court discounts the importance of Title VI to the proper interpretation of Title IX for three reasons. First, it notes that "[i]t is Congress' intention in 1972, not in 1964, that is of significance in interpreting Title IX." *Ante*, at 1922 (citing *Cannon v. University of Chicago, supra*, at 710-711, 99 S.Ct., at 1964-1965). This point begs the question, however, since there is no evidence that in 1972, when it passed Title IX, Congress thought Title VI applied to employment discrimination. The second reason advanced by the

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Court for disregarding Title VI is that it, unlike Title IX, includes a section, *i.e.*, § 604, 42 U.S.C. § 2000d-3, expressly stating that Title VI applies only to discrimination against fund beneficiaries, not to employment discrimination *per se*. But in an earlier version of the legislation that was to become Title IX, the amendment was drafted as a modification of Title VI, simply adding the word "sex." In the end, it is true, Title IX was enacted as a statute separate from Title VI, but the reason for this approach was strategic, not substantive. Supporters feared that if Title VI were opened for amendment, ***547** Title VI itself might be "gutted" on the floor of the Congress. Sex Discrimination Regulations: Review of Regulations to Implement Title IX, Hearings Before the Subcommittee on Postsecondary Education and Labor of the House Committee on Education and Labor, 94th Cong., 1st Sess., 409 (1975) (1975 Hearings).

Finally, to break the link between Titles VI and IX, the Court stresses that the House version of the Senate's Bayh amendment originally contained a provision, § 1004, equivalent to § 604 of Title VI, explicitly stating that no section of the 1972 legislation applied to discrimination in employment, but this provision was eliminated by the Conference. *Ante*, at 1921. A strong argument, however, can be made that there was a nonsubstantive reason for eliminating § 1004 from the House bill. In 1975 hearings before the House Subcommittee on Postsecondary Education and Labor, Representative O'Hara, Chairman of that Subcommittee, while explaining the background of Title IX to a witness, noted that this change was made at Conference simply to eliminate, as quietly as possible, a recently discovered drafting error. 1975 Hearings 409. Even without reference to Representative O'Hara's remarks, made in 1975, it is clear that, at the time of the Conference on the House bill and the Senate's Bayh amendment, § 1004 of the House bill was a drafting mistake; it stated that no section of the House bill applied to employment, though sections of the House bill, as well as the Senate version, contained express changes to the employment discrimination provisions of Title VII and the Equal Pay Act. Since the analogous provision of Title VI, § 604, had been regarded as a mere clarification,[FN10] the Court is on weak ground in arguing that the Conference Report's use of the ritualistic words "the House recedes" reveals a substantive***548** change rather than the quiet correction of an obvious drafting error at a very late stage in the legislative process.

FN10. See, *e.g.*, 110 Cong.Rec. 10076 (1964) (statement of Attorney General Kennedy); Civil Rights: Hearings on H.R. 7152 before the House Committee on Rules, 88th Cong., 2d Sess., 198 (1964) (statement of Cong. Celler, House Floor Manager of Title VI).

C

In concluding that the legislative history indicates Title IX was intended to extend to employment discrimination, the Court is forced to rely primarily on the statements ****1932** of a single Senator.[FN11] The first statement, *ante*, at 1919 (quoting 118 Cong.Rec. 5803 (1972)), is ambiguous. Senator Bayh did state that faculty employment would be covered by his amendment after mentioning the sections enacting Title IX but *prior* to any mention of those amending Title VII and the Equal Pay Act. Immediately thereafter, however, he stated that Title IX's enforcement powers paralleled those in Title VI. Yet Title VI has never provided for fund termination to redress discrimination in employment.

FN11. The most dependable sources of legislative intent are the reports of the responsible committees. Because Title IX is the result of a floor amendment, there is no explanation of its meaning in reports from the relevant House and Senate Committees.

Next, the Court quotes Bayh's statements that (i) he regarded "sections 1001-1005" as "[c]entral to [his] amendment" and (ii) "[t]his portion of the amendment covers discrimination in all areas," including employment. *Ante*, at 1920 (quoting 118 Cong.Rec. 5807 (1972)). But § 1005 of the Bayh Amendment is the section amending Title VII and thus §§ 1001-1005 cover employment discrimination regardless of whether Title IX does.[FN12] Moreover, the Court uses an ellipsis***549** rather than include the following words from the second Bayh statement:

FN12. See description of various sections of the Bayh amendment, *supra*, at 1930. See also 118 Cong.Rec. 5803 (1972) (print of amendment).

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> The Court argues against the relevance of the portion of Senator Bayh's statement that is inconsistent with its position, characterizing that portion as "inadvertent." See *ante*, at 1920, n. 15. This hardly gives one confidence that the Senator's statements, selectively relied upon by the Court, are not also inadvertent. Moreover, the Court's decision concededly is based solely on discussion on the floor of the Senate. We note-as evidence of how little that discussion actually supports the Court-that the views of Courts of Appeals judges with respect to its import have ranged from viewing it as indicating *no intention* to include employment discrimination in Title IX to recognizing that, like most floor debates, the oral statements of Senators must be viewed with skepticism even when not ambiguous. See *Seattle University v. HEW*, 621 F.2d, at 995; *Romeo Community Schools v. HEW*, 600 F.2d 581, 585 (CA6), cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 388 (1979); *Islesboro School Committee v. Califano*, 593 F.2d 424, 428 (CA1), cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 387 (1979).

"Discrimination against the beneficiaries of federally assisted programs and activities is already prohibited by title VI of the 1964 Civil Rights Act, but unfortunately the prohibition does not apply to discrimination on the basis of sex. In order to close this loophole, my amendment sets forth prohibition and enforcement provisions which generally parallel the provisions of title VI." 118 Cong.Rec. 5807 (1972) (in ellipsis, *ante*, at 1920).

Thus, for a second time, Bayh indicated to the Senate that he regarded Title IX of his amendment as parallel to Title VI rather than as a substantial departure from Title VI.

In the third Bayh statement, *ante*, at 1920 (quoting 118 Cong.Rec. 5812 (1972)), the Senator was responding to a question from Senator Pell regarding Title IX, and the Court assumes that each sentence in that response refers to Title IX. But, as the Court of Appeals for the First Circuit noted in *Islesboro* :

"A fair reading both of the colloquy ..., as well as the discussion immediately preceding and following the above-quoted passage, indicates that Senator Bayh divided his analysis into three sections, two of which were ***550** specifically aimed at students (admissions and services), the third at employees (employment). While Senator Bayh's response was more extended than it needed to be for a direct answer to Senator Pell's question, we think HEW's reading is strained. We think this particularly in light of the fact that the discussion was an oral one and thus not as precise as a response in written form ...." 593 F.2d, at 427.

****1933** Rather than supporting the Court's view, the legislative history accords with the natural reading of the statute. Title IX prohibits discrimination only against beneficiaries of federally funded programs and activities, not all employment discrimination by recipients of federal funds. Title IX is modeled after Title VI, which is explicitly so limited-and to the extent statements of Senator Bayh can be read to the contrary, they are ambiguous.[FN13]

> FN13. The Court devotes considerable time to describing postenactment actions or inaction on the part of subsequent Congresses. See *ante*, at 1923-1925. The fact that, in 1975, Congress considered, but failed to enact, resolutions disapproving HEW's regulations is essentially irrelevant in determining the intent of the enacting Congress in 1972. Similarly, the fact that a subsequent Congress considered, but failed to enact, bills limiting Title IX's coverage with respect to employment discrimination does not indicate that the 1972 Congress meant to include employment discrimination within Title IX.

As indicated above, when critical words, in this case "employment discrimination," are absent from a statute and its meaning is otherwise clear, reliance on legislative history to add omitted words is rarely appropriate. Only when legislative history gives clear and unequivocal guidance as to congressional intent should a court presume to add what Congress failed to include. And, however else one might describe the legislative history relied upon by the Court today, it is neither clear nor unequivocal.

***551** III

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As the sole issue before us is the meaning of § 901(a) of Title IX, I repeat the relevant language:

> "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...."

The Court acknowledges that, in view of the lack of support for its position in this language, it must look to the legislative history for evidence as to whether or not § 901 was meant to prohibit employment discrimination. *Ante*, at 1918. Although the Court examines at length the truncated legislative history, it ignores other factors highly relevant to congressional intent: (i) whether the ambiguity easily could have been avoided by the legislative draftsman; (ii) whether Congress had prior experience and a certain amount of expertise in legislating with respect to this particular subject; and (iii) whether existing legislation clearly and adequately proscribed, and provided remedies for, the conduct in question. When these factors are considered, there is no justification for reading sex employment discrimination language into § 901.

If there had been such an intent, no competent legislative draftsman would have written § 901 as above set forth. The draftsman would have been guided, of course, by the employment-discrimination language in Title VII and the Equal Pay Act, language specifically addressing this problem. Moreover, although these other statutes had been enacted by an earlier Congress, at the time Title IX was being drafted and considered Title VII and the Equal Pay Act also were amended to proscribe explicitly employment discrimination in educational institutions on the basis of sex. Congress hardly would have enacted a *third* statute addressing this ***552** problem, but, in contrast to the other two, use language ambiguous at best.

In addition, a comparison of the provisions of Title VII and Title IX suggests that Congress would not have enacted the inconsistent provisions of the latter with respect to remedies and procedures. Title VII is a comprehensive antidiscrimination statute with carefully prescribed procedures for conciliation by the EEOC, federal-court remedies available within certain time limits, and certain specified forms of ****1934** relief, designed to make whole the victims of illegal discrimination and available unless discriminatory conduct falls within one of several exceptions. See 42 U.S.C. § 2000e *et seq.* (1976 ed. and Supp.IV). This thoughtfully structured approach is in sharp contrast to Title IX, which contains only one extreme remedy, fund termination, apparently now available at the request of any female employee who can prove discrimination in employment in a federally funded program or activity. This cutoff of funds, at the expense of innocent beneficiaries of the funded program, will *not* remedy the injustice to the employee. Indeed, Title IX does not authorize a single action, such as employment, reemployment, or promotion, to rectify *employment* discrimination. And Title IX, unlike Title VII, has no time limits for action, no conciliation provisions, and no guidance as to procedure.[FN14] ***553** Compare 20 U.S.C. § 1681 *et seq.* (Title IX) with 42 U.S.C. § 2000e *et seq.* (1976 ed. and Supp.IV) (Title VII). The Solicitor General conceded at oral argument that appropriate relief for the two employees who initiated this suit was available under Title VII.[FN15] See Tr. of Oral Arg. 27.

> FN14. It is interesting to note that, whereas Congress itself provided for administrative procedures to redress employment discrimination in Title VII, see 42 U.S.C. § 2000e *et seq.* (1976 ed. and Supp.IV), it enacted no comparable provisions in Title IX, see 20 U.S.C. § 1681 *et seq.* Such administrative procedures as are available under Title IX are part of the regulations promulgated by HEW, 45 CFR §§ 80.7-80.10 (1980).
>
> The administrative procedures enacted by Congress in the United States Code and promulgated by HEW in the Code of Federal Regulations are quite different, though addressing a single problem. The HEW regulations provide for Administrative Procedure Act hearings, followed by judicial review. See 45 CFR §§ 80.9-80.11 (1980). In contrast, EEOC acts first as conciliator, attempting to settle employment disputes, and then, if it so desires, as counsel for the victims of discrimination in subsequent *de novo* judicial proceedings. See 42 U.S.C. § 2000e *et seq.* (1976 ed. and Supp.IV).

> FN15. An employee could presumably bring actions against the school district under Title

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> VII and the Equal Pay Act, seeking redress of his or her wrong in the form of backpay and injunctive relief, and, in addition, request that funds be terminated under Title IX.

Finally, Congress delegated the administration of Title IX to the Department of HEW. In contrast, Title VII and the Equal Pay Act are administered by the Department of Labor and EEOC. It is most unlikely that Congress would intend not only duplicate substantive legislation but also enforcement of these provisions by different departments of government with different enforcement powers, areas of expertise, and enforcement methods. [FN16] The District Court in *Romeo Community Schools v. HEW*, 438 F.Supp. 1021 (E.D.Mich.1977), aff'd., 600 F.2d 581 (CA6), cert. denied, 444 U.S. 972, 100 S.Ct. 467, 62 L.Ed.2d 388 (1979), correctly observed:

> FN16. The Court's decision will result in needless duplication of governmental bureaucracy. Although HEW would prefer to have no involvement in employment discrimination, see Brief for Federal Respondents 37, n. 26, it will be required to maintain a staff of employees to enforce the antidiscrimination in employment portion of Title IX. And these employees will duplicate the large staffs of the EEOC and the Department of Labor already devoted to employment discrimination.
>
> From the viewpoint of educational institutions, there will now be two sets of federal regulations and regulators overseeing their employment practices. These different governmental departments may, or may not, have the same substantive standards and filing requirements at any given time. At the present time, the HEW and EEOC procedures in the event of noncompliance are quite different. See discussion in text *supra*, at 1933-1934.

"These governmental agencies, particularly the EEOC, were established specifically for the purpose of regulating discrimination in employment practices. These agencies have the expertise and their enabling legislation***554** has provided them with the investigative and enforcement machinery necessary to compel compliance with regulations against sex discrimination in employment. HEW does not have similar enforcement authority." 438 F.Supp., at 1034.

Even the Solicitor General, in the brief on behalf of the federal respondents in this ****1935** case, acknowledges what the *Romeo* court thought was self-evident:

> "The Department of Education has only limited expertise in employment matters. Its view is that employment cases are better resolved under Title VII of the Civil Rights Act of 1964, which provides more appropriate remedies for such cases." Brief for Federal Respondents 37, n. 26.

In sum, the Court's decision today, finding an unarticulated intent on the part of Congress, is predicated on five perceptions of congressional action that I am unable to share: (i) that Congress neglectfully or forgetfully failed to include language in § 901 with respect to discrimination that would have made clear its intent; (ii) that Congress enacted a *third* statute proscribing sex discrimination in employment in educational institutions in the absence of any showing of a need for such duplicative legislation; (iii) that Congress failed to include in the third statute appropriate procedural and remedial provisions relevant to employment discrimination; (iv) that it vested the authority to enforce the third statute in HEW, a department that even the Solicitor General concedes lacks the experience and the qualifications to oversee and enforce employment legislation; and, (v) finally that in Title IX, it gave a new "remedy" for sex discrimination in employment, but did not make that remedy available to those discriminated against on the basis of race.

In response to this dissent, see *ante*, at 1925, n. 26, the Court states that the factors considered in this Part III, summarized above, "are *not* relevant" to "ascertaining legislative ***555** intent." If this were a "plain language" case, this statement probably would be unobjectionable. But the Court recognizes that its position cannot be sustained solely by the plain language of the statute, and it therefore relies heavily on ambiguous and muddled oral statements made on the floor of the Senate. In these circumstances, it defies reason to say that a court should not consider what reasonable legislators surely would have considered. Where ambiguity exists it is not "irrelevant," to the process of ascertaining the intention of Congress, to consider

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specifically other statutes on the same subject. Nor must a court shun common sense in resolving ambiguities.[FN17]

> FN17. See, *e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 77, 96 S.Ct. 612, 662, 46 L.Ed.2d 659 (1976) (when statute is ambiguous, Court must "draw upon 'those common-sense assumptions that must be made in determining direction without a compass' ") (citation omitted); *Fairport R. Co. v. Meredith*, 292 U.S. 589, 595, 54 S.Ct. 826, 828, 78 L.Ed. 1446 (1934) (the interpretation that a reasonable Congress would have intended is adopted by the Court); 2A C. Sands, Sutherland on Statutory Construction § 456.12, p. 38 (4th ed. 1973) (legislative bodies presumed to act reasonably). See also *Kokoszka v. Belford*, 417 U.S. 642, 650, 94 S.Ct. 2431, 2436, 41 L.Ed.2d 374 (1974) ("When 'interpreting a statute, the court will look not merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law ...' ").

U.S.Conn.,1982.
North Haven Bd. of Ed. v. Bell
456 U.S. 512, 102 S.Ct. 1912, 28 Fair Empl.Prac.Cas. (BNA) 1393, 28 Empl. Prac. Dec. P 32,675, 72 L.Ed.2d 299, 18 Ed. Law Rep. 13

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Supreme Court of the United States.
NORTON
v.
SHELBY CO., STATE OF TENNESSEE.
Filed May 10, 1886.

In Error to the Circuit Court of the United States for the Western District of Tennessee.

West Headnotes

Counties 104 154(1)

104 Counties
104VIII Fiscal Management, Public Debt, and Securities
104k154 Aid to Corporations and Investments in Stock
104k154(1) k. In General. Most Cited Cases
After the adoption of Const.Tenn.1870, declaring that no county should become a stockholder in any corporation except upon election first held, and the assent of three-fourths of the votes cast thereat, no action by the county court can ratify an invalid subscription to the stock of a railroad company made before its adoption, without such election first held.

Counties 104 154(1)

104 Counties
104VIII Fiscal Management, Public Debt, and Securities
104k154 Aid to Corporations and Investments in Stock
104k154(1) k. In General. Most Cited Cases

Counties 104 183(3)

104 Counties
104VIII Fiscal Management, Public Debt, and Securities
104k183 Issuance, Requisites, and Validity of Bonds
104k183(3) k. Ratification and Estoppel to Deny Validity. Most Cited Cases
Under Acts Tenn.1867-68, c. 6, § 1, which authorizes a subscription on behalf of a county to the stock of a railroad by the county court, but requires that a majority of the justices in commission when the subscription is made shall be present, and that a majority of those present shall concur therein, a subscription which was invalid when made is not ratified by the levy of a tax to pay the bonds issued in payment of the subscription, where a majority of the justices in commission were not present when the tax was levied.

Officers and Public Employees 283 40

283 Officers and Public Employees
283I Appointment, Qualification, and Tenure
283I(D) De Facto Officers or Employees
283k40 k. Existence of Office or Position and De Facto Offices or Employments. Most Cited Cases
Since Acts Tenn.1867-68, c. 46, §§ 21, 25, establishing a board of commissioners for the government of a named county, were declared void by the supreme court of the state under its constitution, which vested the administration of the county in justices of the peace, the commissioners appointed under that act were not de facto officers, for there was no office for them to fill; and hence an attempted subscription by them to the stock of a railroad company was void.
***432** ****1121** *D. H. Poston, W. K. Poston,* and ***428** *Jos. H. Choate,* for plaintiff in error.

***433** *Julius A. Taylor, R. D. Jordan,* and *W. B. Glisson,* for defendant in error.

***434** FIELD, J.

This is an action upon 29 bonds, of $1,000 each, alleged to be the bonds of Shelby county, Tennessee, issued on the first of March, 1869, and payable on the first of January, 1873, with interest from January 1, 1869, at 6 per cent. per annum, payable annually on the surrender of matured interest coupons attached; and three coupons of $60 each. The following is a copy of one of the bonds, and of a coupon:

'$1,000 UNITED STATES OF AMERICA, $1,000

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'Issued under and by virtue of section 6 of an act of the legislature of the state of Tennessee passed February 25, 1867, amended on the twelfth day of February, 1869, and by authority conferred upon the county commissioners of Shelby county by section 25 of an act passed March 9, 1867.

State of Tennessee.

[Vignette.]

'A special tax is levied by authority of law upon all the taxable property in the county of Shelby to meet the principal and interest of these bonds, collectible in equal annual installments running through six years, as the bonds themselves mature.

'SHELBY COUNTY RAILROAD BOND NO. 176.

1,000 Dollars.

'Be it known that the county of Shelby, state of Tennessee, is indebted to the Mississippi River Railroad Company, or bearer, in the sum of one thousand dollars, payable in the city of Memphis on the first day of January, 1873, with interest at the rate of six per cent. per annum from January 1, 1869, payable annually in said city upon surrender of the matured interest coupons hereto attached.

'This is one of three hundred $1,000 bonds, all of the same denomination and rate of interest, issued by Shelby county in payment of a subscription of three hundred thousand dollars to the Mississippi River Railroad Company, made by the county commissioners under the authority of the acts above recited, transferable by delivery, and redeemable in six years, at the rate of fifty thousand dollars a year, commencing January 1, 1870.

***435** 'Dated at the city of Memphis, county of Shelby, state of Tennessee, the first day of March, 1869.

[Seal County Court of Shelby County, Tennessee.]

'BARBOUR LEWIS,

'President of the Board of County Commissioners of Shelby County.

'JOHN LOAGUE,

'Clerk of County Court of Shelby County,'

****1122** '$60 STATE OF TENNESSEE, $60

'*Shelby County.*

'Coupon No. ___ of Bond No. 264.

'The trustee of Shelby county will pay to the bearer sixty dollars, in the city of Memphis, on the first day of January, 1875, being interest due on bond No. 264, for $1,000, of bonds issued to Mississippi River Railroad Company.

[Seal County Court of Shelby County, Tennessee.]

[Signed]

'JOHN LOAGUE,

'Clerk of Shelby County Court.'

The plaintiff contends (1) that the commissioners, by whose direction the bonds were issued, and whose president signed them, were lawful officers of Shelby county, and authorized, under the acts mentioned in the heading of the bonds, to represent and bind the county by the subscription to the railroad company, and that the bonds issued were therefore its legal obligations; (2) that if the commissioners were not officers *de jure* of the county, they were officers *de facto*, and, as such, their action in making the subscription and issuing the bonds is equally binding upon the county; and (3) that the action of the commissioners, whatever their want of authority, has been ratified by the county.

The defendant contends (1) that the commissioners were not lawful officers of the county, and that there was no such office in Tennessee as that of county commissioner; (2) that there could not be any such *de facto* officers, as ***436** there was no such office known to the laws, and therefore that the subscription was made, and the bonds were issued, without authority, and are void; and (3) that the action of the commissioners was never ratified, and was incapable of rati-

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fication, by the county.

Upon the first question presented, that which relates to the lawful existence and authority of the county commissioners, we are relieved from the necessity of passing. That has been authoritatively determined by the supreme court of Tennessee, and is not open for consideration by us.

From an early period in the history of the state-indeed, from a period anterior to the adoption of her constitution of 1796-to the passage of the act of March 9, 1867, the administration of the government in local matters in each county was lodged in a county court, or 'quarterly court,' as it was sometimes called, composed of justices of the peace, elected in its different districts. The constitution of 1796 recognizes that court as an existing tribunal, and the constitution of 1834 prescribes the duties of the justices of the peace composing it. This county court alone had the power to make a county subscription to the Mississippi River Railroad Company, to issue bonds for the amount, and to levy taxes for its payment, unless the act of March 9, 1867, invested the board of commissioners with that authority. St. 1867, *c.* 48, § 6. That act created the board, and provided that it should consist of five persons, residents of the county for not less than two years, each to serve for the period of five years, and until his successor should be elected and qualified. The twenty-fifth section vested in it all the powers and duties then possessed by the quarterly court of the county, and in addition thereto the authority 'to subscribe stock in railroads, which the county court of Shelby county has been authorized by general and special law to subscribe, and under the same conditions and restrictions, and to represent such stock in all elections for directors, and provide for payment of subscriptions as made.'

The validity of this act superseding the county court was at once assailed as in violation of the constitution of the state. Within a month after its passage, WILLIAM WALKER and other ***437** justices of the peace of the county, in their official character, and as citizens and tax-payers, filed a bill in chancery in the name of the state, at their relation, against the commissioners appointed, alleging that they had usurped, and were unlawfully exercising, the ****1123** powers and functions of the justices, and had taken into custody the records of the county under the act, which the relators insisted was in violation of the constitution, mentioning several sections with which it conflicted; and praying that the act be adjudged void, that the attempt of the commissioners to exercise the powers of the justices be declared a usurpation, and that the commissioners be perpetually enjoined from exercising them. The case having been decided adversely to the relators, an appeal was taken to the supreme court of the state, and pending the appeal the subscription to the stock of the Mississippi River Railroad Company was made by the commissioners, and the bonds were issued. Before the appeal was heard the supreme court of the state had under consideration a similar statute, passed on the twelfth of March, 1868, for Madison county, and extended to White county, which, in like manner, undertook to supersede the quarterly courts of those counties, and substitute in their place boards of commissioners with the same powers as those conferred upon the commissioners of Shelby county. The case in which such consideration was had was *Pope* v. *Phifer*, reported in 3 Heiskell's Reports [684] of the Supreme Court of the state. Under this act, three commissioners were appointed by the governor, being the number prescribed to constitute the board of White county. The bill was filed to restrain them from organizing as a board, to have the act declared unconstitutional, and to perpetually enjoin them from acting under it. The court states in its opinion that the question as to the validity of the act was argued with great ability by counsel on both sides, and the opinion itself shows that the question was carefully considered. The chancellor, as in the case of *State at the Relation of Walker and others* against *The Commissioners*, dismissed the bill. The supreme court reversed the decree, and perpetually enjoined the defendants from acting as a board of commissioners. It held that the act creating the board, and conferring on the commissioners appointed by ***438** the governor the powers of justices of the peace of the county court, was unconstitutional and void; that the county court was one of the institutions of the state, recognized in the constitution; that the powers conferred by it upon the justices of the peace in their collective capacity were intended to be exercised by that court; and that the power to tax for purposes of the county could not, by any special or local law, be taken from the justices of the peace as a county court and conferred upon local tribunals of particular counties composed of commissioners appointed by the governor.

This decision was made in February, 1871. In June following the case mentioned above of *State at the Relation of Walker and others against The Commis-*

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sioners of Shelby County was decided in conformity with it, the supreme court holding that at the time the bill was filed the justices were entitled to the relief prayed, and that the decree dismissing the bill was erroneous, and it so adjudged and decreed. But it said that as the act under which the bill alleged that the defendants had usurped office had since then been repealed, and that they had not afterwards assumed to exercise the powers and perform the duties named in the act, it was only necessary, in addition to what was decreed above, to dispose of the costs; and that disposition was made by taxing them against the defendants, and awarding execution therefor.

In the same month the supreme court decided the case of *Butterworth* against *Shelby County*, which also involved a consideration of the validity of the act creating the board of commissioners of that county.[FN1] The action was upon county warrants issued by the board, and signed by Barbour Lewis as its president, as the bonds in this suit are signed. The court held that the act creating the board was unconstitutional, that the board was an illegal body, and that, as a necessary consequence, the warrants of the county were ****1124** invalid. Judgment was accordingly rendered for the defendant. Chief Justice NICHOLSON, in delivering the opinion of the court, referred to ***439** the two decisions mentioned, and said that they had 'determined that the legislature exceeded its constitutional powers in assuming to abolish the county court, and substitute in its place a board of county commissioners with the powers before belonging to the county court. The act of March 9, 1867, was therefore a nullity, and the board of commissioners appointed and organized thereunder was an unauthorized and illegal body. The act was inoperative as to the existing organization, powers, and duties of the county court. Neither the board of commissioners nor Barbour Lewis, its president, had any more powers under said act than if no act had been passed.'

Counsel for the plaintiff have endeavored to show that the adjudication in these cases has been questioned by later decisions, and therefore should have no controlling force in this litigation. A careful examination of those decisions fails to support this position. The opinion that the act was invalid because it was special legislation, applicable only to certain counties, would seem, indeed, to be thus modified. But the adjudication that the constitution did not permit the appointment of commissioners to take the place of the justices of the peace for the county, and perform the duties of the county court, stands unimpaired, and as such is binding upon us. Two of the cases, as we have seen, were brought against the commissioners, in one case, of Shelby county, and in the other, of White county, to test the validity of the acts under which they were appointed, or about to be appointed, and their right to assume and exercise the functions and powers of the justices of the peace, and hold the county court in their place. From the nature of the questions presented we cannot review or ignore this determination. Upon the construction of the constitution and laws of a state, this court, as a general rule, follows the decisions of her highest court, unless they conflict with or impair the efficacy of some principle of the federal constitution, or of a federal statute, or a rule of commercial or general law. In these cases no principle of the federal constitution, or of any federal law, is invaded, and no rule of general or commercial law is disregarded. The determination made relates to the existence ***440** of an inferior tribunal of the state, and that depending upon the constitutional power of the legislature of the state to create it and supersede a pre-existing institution. Upon a subject of this nature the federal courts will recognize as authoritative the decision of the state court. As said by Mr. Justice BRADLEY, speaking for the court in *Claiborne Co.* v. *Brooks:* 'It is undoubtedly a question of local policy with each state, what shall be the extent and character of the powers which its various political and municipal organizations shall possess; and the settled decisions of its highest courts on the subject will be regarded as authoritative by the courts of the United States; for it is a question that relates to the internal constitution of the body politic of the state.' 111 U. S. 400, 410; S. C. 4 Sup. Ct. Rep. 489. It would lead to great confusion and disorder if a state tribunal, adjudged by the state supreme court to be an unauthorized and illegal body, should be held by the federal courts, disregarding the decision of the state court, to be an authorized and legal body, and thus make the claims and rights of suitors depend, in many instances, not upon settled law, but upon the contingency of litigation respecting them being before a state or a federal court. Conflicts of this kind should be avoided, if possible, by leaving the courts of one sovereignty within their legitimate sphere to be independent of those of another, each respecting the adjudications of the other on subjects properly within its jurisdiction.

On many subjects the decisions of the courts of a state are merely advisory, to be followed or disregarded,

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according as they contain true or erroneous expositions of the law, as those of a foreign tribunal are treated. But on many subjects they must necessarily be conclusive,-such as relate to the existence of her subordinate tribunals, the eligibility and election or appointment **1125 of their officers, and the passage of her laws. No federal court should refuse to accept such decisions as expressing on these subjects the law of the state. If, for instance, the supreme court of a state should hold that an act appearing on her statute book was never passed, and never became a law, the federal courts could not disregard the decision, and declare that it was a law, and enforce it as such. South Ottawa v. Perkins, 94 U. S. 260; Post v. Supervisors, 105 U. S. 667.

*441 The decision of the supreme court of Tennessee as to the constitutional existence of the board of commissioners of Shelby county is one of this class. That court has repeatedly adjudged, after careful and full consideration, that no such board ever had a lawful existence; that it was an unauthorized and illegal body; that its members were usurpers of the functions and powers of the justices of the peace of the county; and that their action in holding the county court was utterly void. This court should neither gainsay nor deny the authoritative character of that determination. It follows that in the disposition of the case before us we must hold that there was no lawful authority in the board to make the subscription to the Mississippi River Railroad Company, and to issue the bonds of which those in suit are a part.

But it is contended that if the act creating the board was void, and the commissioners were not officers *de jure*, they were nevertheless officers *de facto*, and that the acts of the board as a *de facto* court are binding upon the county. This contention is met by the fact that there can be no officer, either *de jure* or *de facto*, if there be no office to fill. As the act attempting to create the office of commissioner never became a law, the office never came into existence. Some persons pretended that they held the office, but the law never recognized their pretensions, nor did the supreme court of the state. Whenever such pretensions were considered in that court, they were declared to be without any legal foundation, and the commissioners were held to be usurpers. The doctrine which gives validity to acts of officers *de facto*, whatever defects there may be in the legality of their appointment of election, is founded upon considerations of policy and necessity, for the protection of the public and individuals whose interests may be affected thereby. Offices are created for the benefit of the public, and private parties are not permitted to inquire into the title of persons clothed with the evidence of such offices, and in apparent possession of their powers and functions. For the good order and peace of society their authority is to be respected and obeyed until, in some regular mode prescribed by law, their title is investigated and determined. *442 It is manifest that endless confusion would result if in every proceeding before such officers their title could be called in question. But the idea of an officer implies the existence of an office which he holds. It would be a misapplication of terms to call one an 'officer' who holds no office, and a public office can exist only by force of law. This seems to us so obvious that we should hardly feel called upon to consider any adverse opinion on the subject but for the earnest contention of plaintiff's counsel that such existence is not essential, and that it is sufficient if the office be provided for by any legislative enactment, however invalid. Their position is that a legislative act, though unconstitutional, may in terms create an office, and nothing further than its apparent existence is necessary to give validity to the acts of its assumed incumbent. That position, although not stated in this broad form, amounts to nothing else. It is difficult to meet it by any argument beyond this statement: An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.

In Hildreth v. McIntire, 1 J. J. Marsh. 206, we have a decision from the court of appeals of Kentucky which well illustrates this doctrine. The legislature of that state attempted to abolish the court of appeals established by her constitution, and create in its stead a new court. Members of the new **1126 court were appointed, and undertook to exercise judicial functions. They dismissed an appeal because the record was not filed with the person acting as their clerk. A certificate of the dismissal signed by him was received by the lower court, and entered of record, and execution to carry into effect the original decree was ordered to issue. To reverse this order an appeal was taken to the constitutional court of appeals. The question was whether the court below erred in obeying the mandate of the members of the new court, and its solution depended upon another, whether they were judges of the court of appeals, and the person acting as their

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clerk was its clerk. The court said: 'Although they assumed the functions of judges and clerk, and attempted to act as such ***443** their acts in that character are totally null and void, unless they had been regularly appointed under and according to the constitution. A *de facto* court of appeals cannot exist under a written constitution which ordains one supreme court, and defines the qualification and duties of its judges, and prescribes the mode of appointing them. There cannot be more than one court of appeals in Kentucky as long as the constitution shall exist, and that must necessarily be a court *de jure*. When the government is entirely revolutionized, and all its departments usurped by force or the voice of a majority, then prudence recommends and necessity enforces obedience to the authority of those who may act as the public functionaries, and in such a case the acts of a *de facto* executive, a *de facto* judiciary, and a *de facto* legislature must be recognized as valid. But this is required by political necessity. There is no government in action except the government *de facto*, because all the attributes of sovereignty have, by usurpation, been transferred from those who had been legally invested with them to others who, sustained by a power above the forms of law, claim to act, and do act, in their stead. But when the constitution or form of government remains unaltered and supreme, there can be no *de facto* department or *de facto* office. The acts of the incumbents of such departments or office cannot be enforced conformably to the constitution, and can be regarded as valid only when the government is overturned. When there is a constitutional executive and legislature, there cannot be any other than a constitutional judiciary. Without a total revolution, there can be no such political solecism in Kentucky as a *de facto* court of appeals. There can be no such court while the constitution has life and power. There has been none such. There might be under our constitution, as there have been, *de facto* officers; but there never was, and never can be, under the present constitution, a *de facto* office.' And the court held that the gentlemen who acted as judges of the legislative tribunal were not incumbents of *de jure* or *de facto* offices, nor were they *de facto* officers of *de jure* offices, and the order below was reversed.

In some respects the case at bar resembles this one from Kentucky.***444** Under the constitution of Tennessee there was but one county court. That was composed of the justices of the county elected in their respective districts. The commissioners appointed under the act of March 9, 1867, by the governor were not such justices, and could not hold such court, any more than the legislative tribunal of Kentucky could hold the court of appeals of that state. In *Shelby Co.* v. *Butterworth*, from the opinion in which we have already quoted, Chief Justice NICHOLSON, speaking of the claim that Barbour Lewis, the president of the board of county commissioners, was a *de facto* officer, after referring to the decisions of the supreme court of the state holding that the board of commissioners was an illegal and unconstitutional body, said: 'This left the organization of the county court in its former integrity, with its officers entitled to their offices, and creating no vacancy to be filled by the illegal action under the act of 1867. It follows that Barbour Lewis could not be a *de facto* officer, as there was no legal board of which he could be president, and as there was no vacancy in the legal organization. The warrants issued by him show the character in which he was acting, and repel the presumption that he was a *de facto* officer. He could be, under the circumstances, ****1127** as we can judicially know from the law and the pleadings in the case, nothing but a usurper. There must be a legal office in existence, which is being improperly held, to give to the acts of such incumbent the validity of an officer *de facto*.'

Numerous cases are cited in which expressions are used which, read apart from the facts of the cases, seemingly give support to the position of counsel. But, when read in connection with the facts, they will be seen to apply only to the invalidity, irregularity, or unconstitutionality of the mode by which the party was appointed or elected to a legally existing office. None of them sanctions the doctrine that there can be a *de facto* office under a constitutional government, and that the acts of the incumbents are entitled to consideration as valid acts of a *de facto* officer. Where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as the validity of his acts are concerned. It is ***445** enough that he is clothed with the insignia of the office, and exercises its powers and functions. As said by Mr. Justice MANNING, of the supreme court of Michigan, in Carleton v. People, 10 Mich. 259: 'Where there is no office there can be no officer *de facto*, for the reason that there can be none *de jure*. The county office existed by virtue of the constitution the moment the new county was organized. No act of legislation was necessary for that purpose. And all that is required when there is an office to make an officer *de facto*, is that the individual claiming the office is in possession of it, performing its duties, and claiming to be such

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officer under color of an election or appointment, as the case may be. It is not necessary that his election or appointment be valid, for that would make him an officer *de jure*. The official acts of such persons are recognized as valid on grounds of public policy, and for the protection of those having official business to transact.'

The case of State v. Carroll, 38 Conn. 449, decided by the supreme court of Connecticut, upon which special reliance is placed by counsel, and which is mentioned with strong commendation as a land-mark of the law, in no way militates against the doctrine we have declared, but is in harmony with it. That case was this: The constitution of Connecticut provided that all judges should be elected by its general assembly. An act of the legislature authorized the clerk of a city court, in case of the sickness or absence of its judge, to appoint a justice of the peace to hold the court during his temporary sickness or absence. A justice of the peace having thus been called in, and having acted, a question arose whether the judgments rendered by him were valid. The court held that whether the law was constitutional or not, he was an officer *de facto*, and, as such, his acts were valid. The opinion of Chief Justice BUTLER is an elaborate and admirable statement of the law, with a review of the English and American cases, on the validity of the acts of *de facto* officers, however illegal the mode of their appointment. It criticises the language of some cases, that the officer must act under color of authority conferred by a person having power, or *prima facie* power, to appoint or elect in the particular case; and it thus defines an officer *de facto:* ***446** 'An officer *de facto* is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid, so far as they involve the interests of the public and third persons, where the duties of the office are exercised-*First*, without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be; *second*, under color of a known and valid appointment or election, but where the officer had failed to conform to some precedent, requirement, or condition, as to take an oath, give a bond, or the like; *third*, under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity ****1128** in its exercise, such ineligibility, want of power, or defact being unknown to the public; *fourth*, under color of an election or an appointment by or pursuant to a public unconstitutional law, before the same is adjudged to be such.'

Of the great number of cases cited by the chief justice, none recognizes such a thing as a *de facto* office, or speaks of a person as a *de facto* officer, except when he is the incumbent of a *de jure* office. The fourth head refers, not to the unconstitutionality of the act creating the office, but to the unconstitutionality of the act by which the officer is appointed to an office legally existing. That such was the meaning of the chief justice is apparent from the cases cited by him in support of the last position, to some of which reference will be made. One of them (Taylor v. Skrine, 3 Brev. 516) arose in South Carolina in 1815. By an act of that state of 1799 the governor was authorized to appoint and commission some fit and proper person to sit as judge in case any of the judges on the circuit should happen to be sick, or become unable to hold the court in his circuit. A presiding judge of the court was thus appointed by the governor. Subsequently the act was declared to ***447** be unconstitutional, and the question arose whether the acts of the judge were necessarily void. It was held that he was a judge *de facto*, and acting under color of legal authority, and that as such his acts were valid. Here the judge was appointed to fill an existing office, the duties of which the legal incumbent was temporarily incapable of discharging. Another case is Cocke v. Halsey, 16 Pet. 71. It there appeared that, by the constitution of Mississippi, the judges and clerks of probate were elected by the people. The legislature provided by law that, in case of the disability of the clerk, the court might appoint one. An elected clerk having left the state for an indefinite period, the judge appointed another to serve during his absence. The law authorizing the appointment was declared unconstitutional, but the acts of the clerk were deemed valid as those of an officer *de facto*. Here the office was an existing one, created by law.

To Carleton v. People, 10 Mich. 250, we have already referred. By the constitution of Michigan the laws of the legislature took effect 90 days after their passage. The legislature, on the fourth of February, passed an act creating a new county, and authorized the election of county officers in April following. The officers were elected within the 90 days, that is, before the act took effect, and they subsequently acted as such officers. The validity of their acts was questioned on the ground that there was at the time no law that autho-

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rized the election, but the offices were existing by the constitution, and as they subsequently entered upon the duties of those offices, it was held that they were officers *de facto*.

In *Clark* v. *Com.*, from the supreme court of Pennsylvania, (29 Pa. St. 129,) the question related only to the title of the officer. The constitution of that state provided for a division of the state into judicial districts, and for the election of the presiding judge of the county court for each district by the people thereof. The legislature passed a law transferring a county from one judicial district to another during the term for which the judge of the district had been elected, and while presiding judge of the district to which the county was thus transferred he held court, at which a prisoner was convicted***448** of murder. It was contended that the act of the legislature was equivalent to an appointment of a judge for that county, and therefore unconstitutional. The supreme court held that, admitting the law to be unconstitutional, the judge was an officer *de facto*, and that the prisoner could not be heard to deny it. Here, also, the office was one created by law, and the only question was as to the constitutionality of the law authorizing the judge to exercise it.

It is evident, from a consideration of these cases, that the learned chief justice, in *State* v. *Carroll*, had reference, in his fourth subdivision, as we have said, to the unconstitutionality of acts appointing the officer, and not of ****1129** acts creating the office. Other cases cited by counsel will show a similar view.

In *Brown* v. *O'Connell*, 36 Conn. 432, the constitution of the state provided that the judges of the courts should be appointed by the general assembly. An act of the legislature established a police court in the city of Hartford, and provided for the appointment of judges of the court by the common council. It was held that the judge could be appointed only by the general assembly, and to that extent the act was unconstitutional. There was no question as to the validity of the act, so far as it established a police court, and the appointee of the common council was held to be a judge *de facto*.

The case of *Blackburn* v. *State*, 3 Head, 689, only goes to show that the illegality of an appointment to a judicial office does not affect the validity of the acts of the judge. The constitution of Tennessee requires a judge to be 30 years of age. A judge under that age having been appointed, it was held that he could be removed by a proper proceeding, but until that was done his acts were binding.

In *Fowler* v. *Bebee*, 9 Mass. 231, the legislature passed an act erecting the county of Hampden, and provided that the law should take effect from the first of August next ensuing. Before that date the governor, with the advice and consent of the then council, commissioned a person as sheriff of the county. There was no such office at the time his commission was issued, but when the law went into effect he acted under his commission. It was only the case of a premature appointment,***449** and it was held that he was an officer *de facto*, and that the legality of his commission could not be collaterally questioned.

None of the cases cited militates against the doctrine that, for the existence of a *de facto* officer, there must be an office *de jure*, although there may be loose expressions in some of the opinions, not called for by the facts, seemingly against this view. Where no office legally exists, the pretended officer is merely a usurper, to whose acts no validity can be attached; and such, in our judgment, was the position of the commissioners of Shelby county, who undertook to act as the county court, which could be constitutionally held only by justices of the peace. Their right to discharge the duties of justices of the peace was never recognized by the justices, but from the outset was resisted by legal proceedings, which terminated in an adjudication that they were usurpers, clothed with no authority or official function.

It remains to consider whether the action of the commissioners in subscribing for stock of the Mississippi River Railroad Company, and issuing the bonds, of which those in suit are a part, being originally in valid, was afterwards ratified by the county. The county court, consisting of the justices of the peace, elected in their respective districts, alone had power to make a subscription and issue bonds. The sixth section of the act of February 25, 1867, to which the bonds on their face refer, provides 'that the county court of any county through which the line of the Mississippi River Railroad is proposed to run, a majority of the justices in commission at the time concurring, may make a corporate or county subscription to the capital stock of said railroad company, of an amount not exceeding two-thirds the estimated cost of grading the road-bed through the county, and preparing the same for the

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iron rails; the said cost to be verified by the sworn statement of the president or chief engineer of said company. And after such subscription shall have been entered upon the books of the railroad company, either by the chairman of the county court, or by any other member of the court appointed therefor, the court shall proceed, without further reference or delay, to levy an ***450** assessment on all the taxable property within the county sufficient to pay said subscription; and the same shall be payable in three equal annual installments, commencing with the fiscal year in which said subscription shall be made. And it shall be lawful for county courts ****1130** making subscriptions as herein provided to issue short bonds to the railroad company, in anticipation of the collection of the annual levies, if thereby construction of the work may be facilitated.' St. 1867, *c.* 48, § 6. On the fifth of the following November the legislature passed an act declaring 'that the subscription authorized in said sixth section to be made to the capital stock of the Mississippi River Railroad Company, by the counties along the line of said railroad, may be made at any monthly term of the county courts of said counties, or at any special term of said courts: provided, that a majority of all the justices in commission in the counties respectively shall be present when any such subscription is made; and provided, further, that a majority of those present shall concur therein.' St. 1867, *c.* 6, § 1.

Neither of these acts, as counsel observe, recognizes or in any way refers to the county commissioners, though the last act was passed eight months after the act creating the board of commissioners for Shelby county. Both provide that the subscription may be made by the county court, but upon the condition that a majority of all the justices in commission shall be present, and a majority of those present shall concur therein.

The county court met on the fifteenth of November, 1869, for the first time after the passage of the act of March 9, 1867, and assumed its legitimate functions as the governing agency of the county. On the eleventh of April, 1870, it again met, and established the rate of taxation for the Mississippi River Railroad bonds at 20 cents on each $100 worth of taxable property. At its meeting on the sixteenth of that month it ordered that the tax for those bonds should be 10 cents on each $100 worth of property. At the meeting on the 11th there were 22 justices of the peace present, of whom 18 voted for the tax levy, and on the 16th only ***451** 12 justices were present. There were in the county at that time 45 justices in commission. There were no other exeetings of the county court until after May 5, 1870, on which day the new constitution of Tennessee went into effect, which declares that 'the credit of no county, city, or town shall be given or loaned to or in aid of any person, company, association, or corporation, except upon an election to be first held by the qualified voters of such county, city, or town, and the assent of three-fourths of the votes cast at said election; nor shall any county, city, or town become a stockholder with others in any company, association, or corporation, except upon a like election and the assent of a like majority.'

By this provision of the constitution the county court, as thus seen, was shorn of any power to order a subscription to stock of any railroad company without the previous assent of three-fourths of the voters of the county cast at an election held by its qualified voters, and, of course, it could not afterwards, without such assent, give validity to a subscription previously made by the commissioners. It could not ratify the acts of an unauthorized body. To ratify is to give validity to the act of another, and implies that the person or body ratifying has at the time power to do the act ratified. As we said in *Marsh* v. *Fulton Co.*, where it was contended, as in this case, that certain bonds of that county, issued without authority, were ratified by various acts of its supervisors, 'a ratification is, in its effect upon the act of an agent, equivalent to the possession by him of a previous authority. It operates upon the act ratified in the same manner as though the authority of the agent to do the act existed originally. It follows that a ratification can only be made when the party ratifying possesses the power to perform the act ratified. The supervisors possessed no authority to make the subscription or issue the bonds in the first instance without the previous sanction of the qualified vocers of the county. The supervisors in that particular were the mere agents of the county. They could not, therefore, ratify a subscription without a vote of the county, because they could not make a subscription in the first instance without such authorization. It would be absurd to say that ***452** they could without such vote, by simple expressions of approval, or in ****1131** some other indirect way, give validity to acts, when they were directly, in terms, prohibited by statute from doing those acts until after such vote was had. That would be equivalent to saying that an agent, not having the power to do a particular act for his principal, could give validity to such act by its indirect recogni-

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tion.' 10 Wall. 676, 684. See, also, *County of Davies* v. *Dickinson*, 117 U. S. --; S. C. 6 Sup. Ct. Rep. 897; *McCracken* v. *City of San Francisco*, 16 Cal. 591, 623.

No election was held by the voters of Shelby county with reference to the subscription for stock of the Mississippi River Railroad Company after the new constitution went into effect. No subsequent proceedings, resolutions, or expressions of approval of the county court with reference to the subscription made by the county commissioners, or to the bonds issued by them, could supersede the necessity of such an election. Without this sanction the county court could, in no manner, ratify the unauthorized act, nor could it accomplish that result by acts which would estop it from asserting that no such election was had. The requirement of the law could not, in this indirect way, be evaded.

The case of *Aspinwall* v. *Commissioners of Davis Co.*, 22 How. 365, is directly in point on this subject. There the charter of the Ohio & Mississippi Railroad Company, created by the legislature of Indiana in 1848, as amended in 1849, authorized the commissioners of a county through which the road passed to subscribe for stock and issue bonds, provided a majority of the qualified voters of the county voted on the first of March, 1849, that this should be done. The election was held on that day, and a majority of the voters voted that a subscription should be made. In September, 1852, the board of commissioners, pursuant to the acts and election, subscribed for 600 shares of the stock of the railroad company, amounting to $30,000, and in payment of it issued 30 bonds of $1,000 each, signed and sealed by the president of the board, and attested by the auditor of the county, and delivered the same to the company. These bonds drew interest at the rate of 6 per cent. per annum, for which coupons were attached. ***453** The plaintiffs became the holders of 60 of these coupons, and upon them the suit was brought against the commissioners of the county. After the subscription was voted, but before it was made or the bonds issued, the new constitution of Indiana went into effect, which contained the following provision: 'No county shall subscribe for stock in any incorporated company unless the same be paid for at the time of such subscription, nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company.' Article 10, § 6. This provision was set up against the validity of the bonds and coupons; and the question arose whether, under the charter of the company and its amendment, the right to the county subscription became so vested in the company as to exclude the operation of the new constitution. The court held that the provisions of the charter authorizing the commissioners to subscribe conferred a power upon a public corporation which could be modified, changed, enlarged, or restrained by the legislature; that by voting for the subscription no contract was created which prevented the application of the new constitution; that the mere vote to subscribe did not of itself form a contract with the company within the protection of the federal constitution; that until the subscription was actually made no contract was executed; and that the bonds, being issued in violation of the new constitution of the state, were void. That constitution withdrew from the county commissioners all authority to make a subscription for the stock of an incorporated company, except in the manner and under the circumstances prescribed by that instrument, even though a vote for such subscription had been previously had, and a majority of the voters had voted for it. The doctrine of this case was reaffirmed in *Wadsworth* v. *Supervisors*, 102 U. S. 534.

It follows that no ratification of the subscription to the Mississippi River ****1132** Railroad Company, or of the bonds issued for its payment, could be made by the county court, subsequently to the new constitution of Tennessee, without the previous assent of three-fourths of the voters of the county, which has never been given.

***454** The question recurs whether any ratification can be inferred from the action of the county court on the eleventh and sixteenth of April, 1870, which was had before that constitution took effect. At the meeting of the court on those days a rate of tax was established to be levied for the payment of the bonds, but it appears from its records that on both days less than a majority of the justices of the county were present, and the county court, under those circumstances, could not even directly have authorized the subscription. The levy of a tax for the payment of the bonds, when a less number of justices were present than would have been necessary to order a subscription, could not operate as a ratification of a void subscription.

It is unnecessary to pursue this subject further. We are satisfied that none of the positions taken by the plain-

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tiff can be sustained. The original invalidity of the acts of the commissioners has never been subsequently cured. It may be, as alleged, that the stock of the railroad company for which they subscribed is still held by the county. If so, the county may, by proper proceedings, be required to surrender it to the company, or to pay its value; for, independently of all restrictions upon municipal corporations, there is a rule of justice that must control them as it controls individuals. If they obtain the property of others without right, they must return it to the true owners, or pay for its value. But questions of that nature do not arise in this case. Here it is simply a question as to the validity of the bonds in suit, and as that cannot be sustained, the judgment below must be affirmed; and it is so ordered.

FN1 This case does not appear to be reported. A copy of the opinion was furnished the court by counsel.

U.S. 1886
Norton v. Shelby County
118 U.S. 425, 6 S.Ct. 1121, 30 L.Ed. 178

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143 F.3d 473, 126 Ed. Law Rep. 589, 98 Cal. Daily Op. Serv. 3368, 98 Cal. Daily Op. Serv. 3086, 98 Daily Journal D.A.R. 4233, 98 Daily Journal D.A.R. 4657
(Cite as: 143 F.3d 473)

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United States Court of Appeals,
Ninth Circuit.
OONA, R.-S.-, a minor, by KATE S., her guardian, Kate S. and Ken R., Plaintiff-Appellee,
v.
Patricia McCAFFREY; Gerald Hill; Ronald Lundy, Defendants-Appellants.
No. 95-16046.

Argued and Submitted Oct. 8, 1996.
Decided Aug. 13, 1997.
Amended Aug. 25, 1997.
Opinion withdrawn April 24, 1998.
Order and Opinion April 24, 1998.
As Amended on Denial of Rehearing and Suggestion for Rehearing En Banc May 5, 1998.

Student brought civil rights action against school officials for violations of equal protection clause, due process clause, and Title IX, alleging that officials were responsible for permitting sexual harassment by student teacher and by boys in student's class. The United States District Court for the Northern District of California, Thelton E. Henderson, J., 890 F.Supp. 1452, denied officials' motion for qualified immunity, and officials appealed. The Court of Appeals, Schroeder, Circuit Judge, held that: (1) rights asserted by student under equal protection clause were clearly established at time of alleged injury; (2) rights asserted by student under Title IX were clearly established at time of alleged injury; and (3) Title VII standards apply to hostile environment claims under Title IX.

Affirmed, petition for rehearing denied, and suggestion for rehearing en banc rejected.

Cynthia Holcomb Hall, Circuit Judge, concurred in part, dissented in part, and filed opinion.

Opinion, 122 F.3d 1207, withdrawn.

West Headnotes

[1] Federal Courts 170B 776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
Whether federal rights asserted by plaintiff in civil rights action were clearly established at time of alleged violation is question of law to be reviewed de novo. 42 U.S.C.A. § 1983.

[2] Civil Rights 78 1376(5)

78 Civil Rights
78III Federal Remedies in General
78k1372 Privilege or Immunity; Good Faith and Probable Cause
78k1376 Government Agencies and Officers
78k1376(5) k. Schools. Most Cited Cases
(Formerly 78k214(5))
Defendant school officials were not entitled to qualified immunity from student's claim that officials intentionally discriminated against student because of her gender in violation of equal protection clause, by permitting sexual harassment of student, as right to be free from intentional gender discrimination by state actor was clearly established at time of alleged injury. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983.

[3] Civil Rights 78 1376(5)

78 Civil Rights
78III Federal Remedies in General
78k1372 Privilege or Immunity; Good Faith and Probable Cause
78k1376 Government Agencies and Officers
78k1376(5) k. Schools. Most Cited Cases
(Formerly 78k214(5))
Defendant school officials were not entitled to qualified immunity from student's claim that officials intentionally discriminated against student because of her gender in violation of Title IX, by permitting sexual harassment of student by student teacher and other students, as officials' duty to take reasonable

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143 F.3d 473, 126 Ed. Law Rep. 589, 98 Cal. Daily Op. Serv. 3368, 98 Cal. Daily Op. Serv. 3086, 98 Daily Journal D.A.R. 4233, 98 Daily Journal D.A.R. 4657
(Cite as: 143 F.3d 473)

steps to prevent such harassment was clearly established at time of alleged injury. Education Amendments of 1972, § 901(a), as amended, 20 U.S.C.A. § 1681(a); 42 U.S.C.A. § 1983.

[4] Civil Rights 78 ⚿1067(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(3) k. Sexual Harassment; Sexually Hostile Environment. Most Cited Cases
(Formerly 78k127.1)
Title VII standards apply to hostile environment claims under Title IX, which prohibits discrimination in education programs and activities that receive federal financial assistance, including claims based on peer harassment. Education Amendments of 1972, § 901 et seq., as amended, 20 U.S.C.A. § 1681 et seq.; Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.

[5] Civil Rights 78 ⚿1355

78 Civil Rights
78III Federal Remedies in General
78k1353 Liability of Public Officials
78k1355 k. Vicarious Liability and Respondeat Superior in General; Supervisory Liability in General. Most Cited Cases
(Formerly 78k207(2))
Supervisor may be found liable under § 1983 if supervisor is aware of specific risk of harm to plaintiff. 42 U.S.C.A. § 1983.

***474** Michael D. Senneff,Senneff, Kelly, Kimelman & Beach, P.C., Santa Rosa, California, for defendants-appellants.

Desiree O. Cox, McCann & LoDolce, Santa Rosa, California, for plaintiff-appellee.

Scott N. Kivel, Boonville, CA, and Robert J. Henry, Santa Rosa, California, for amicus curiae Redwood Empire Schools.

Appeal from the United States District Court for the Northern District of California; Thelton E. Henderson, District Judge Presiding. D.C. No. CV-94-00623-TEH.

Before: WOOD, Jr.,[FN*]SCHROEDER and HALL, Circuit Judges.

FN* The Honorable Harlington Wood, Jr., Senior United States Circuit Judge for the Seventh Circuit, sitting by designation.

Opinion by Judge SCHROEDER; Partial Concurrence and Partial Dissent by Judge CYNTHIA HOLCOMB HALL.

SCHROEDER, Circuit Judge:

This is an interlocutory appeal testing the district court's denial of qualified immunity to school district officials in a 42 U.S.C. § 1983 action. The suit was filed by a female student claiming school officials were responsible for permitting sexual harassment by a student teacher and by boys in her class. We must decide whether the district court correctly determined that the duty imposed on school officials by Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (as amended), to prevent sexual harassment of students was clearly established when the harassment in this case allegedly occurred during the 1992-93 school year. *See Oona R.-S. v. Santa Rosa City Schools,* 890 F.Supp. 1452, 1472-73 (N.D.Cal.1995).

BACKGROUND

The plaintiff-appellee, Oona R.-S., was in the sixth grade at J.C. Fremont Elementary School in the Santa Rosa School District in California in 1992-93. She filed this action in February of 1994 against the school district, as well as individual school officials, including her teacher, Patricia McCaffrey; the school principal, Gerald Hill; and the Director of Elementary Education, Ronald Lundy. The individual officials are the defendants-appellants here.

The complaint alleged facts that the district court determined were sufficient to make out a claim of intentional discrimination on the basis of gender on the part of the principal, teacher, and director. The complaint contained allegations of failure to remedy sexual harassment from two different sources. The first was the failure to take steps to remedy inappropriate conduct by a student teacher. The second was

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the failure to take steps to address adequately the hostile environment created by the male students in Oona's class. The nature of the allegations are described fully in the district court opinion, *see* 890 F.Supp. at 1456-57, and we merely sketch them here.

***475** The student teacher, Ibach, allegedly fondled, kissed, straddled and otherwise inappropriately touched Oona and other students during October of 1992. He also allegedly called Oona "Oona Noodles." The complaint alleged that some of this inappropriate conduct actually took place in the presence of the teacher and principal, and that Oona's parents had demanded on October 16 that the principal remove Ibach from the classroom, which he refused to do. The complaint further alleged that upon noticing that Ibach was still on the school grounds on October 29, the parents confronted director Lundy, three days later. At that time, Lundy alleges, he told them that Ibach had been removed, and that his continued presence on October 29 had been unauthorized. However, beyond that, Lundy was uncooperative in dealing with the concerns of Oona's parents.

The harassment by male students allegedly occurred throughout the fall and winter of the school year. Boys allegedly referred to girls' body parts as "melons" and "beavers," called the girls slang terms for whores, and persisted in other types of offensive behavior. According to one particularly disturbing allegation, a boy struck Oona in the face and told her to "Get used to it." After the parents complained to Lundy and Hill, teacher McCaffrey allegedly retaliated against Oona by lowering her grade; when Oona's mother filed a tort claim against the district, the teacher allegedly retaliated further by, inter alia, withholding awards Oona had won. Oona's parents removed her from the school at the end of the school year and began home schooling.

The school district did not dispute that the complaint stated a claim against the district for violation of Title IX. The individual defendants moved to dismiss the claims brought against them under § 1983, and the district court denied the motions of these defendants. *Oona,* 890 F.Supp. at 1473. This appeal followed.

In ruling on the motions to dismiss, the district court decided a number of issues. The only one before us in this appeal, however, is whether it correctly determined that the individual defendants were not entitled to immunity, because in 1992-93 reasonable school officials would have known that the conduct alleged by plaintiff would violate plaintiff's federal rights. *Oona,* 890 F.Supp. at 1472.

JURISDICTION

[1] Our decision in *Doe v. Petaluma Sch. Dist.,* 54 F.3d 1447 (9th Cir.1995), controls the scope of our jurisdiction. In *Petaluma,* we considered a § 1983 sexual harassment case that was in the same procedural posture as this one. A school counselor appealed from an order denying him qualified immunity on the ground that his alleged conduct in failing to take steps to stop sexual harassment violated clearly established rights under Title IX. In addition to seeking review of that determination, the counselor in *Petaluma* asked us to consider further whether he, as an individual, could be sued under § 1983 for violations of Title IX, or whether a suit against the school district itself was the exclusive remedy available for such violations.

We expressly declined to consider the latter question in *Petaluma,* holding that our review was limited to considering whether the law allegedly violated, i.e. Title IX's protection against hostile environment sexual harassment in schools receiving federal aid, was clearly established at the time of the conduct in question. We said that in reviewing a denial of qualified immunity, this court has jurisdiction " 'only to decide if defendant's conduct violated ... clearly established [law.]' " *Petaluma,* 54 F.3d at 1449 (quoting *Pelletier v. Federal Home Loan Bank,* 968 F.2d 865, 871 (9th Cir.1992)). We accordingly conclude that our review in this case is limited to the issue of whether the federal rights here asserted were clearly established in the 1992-93 school year, which is a question of law to be reviewed de novo. *See Petaluma,* 54 F.3d at 1449. *See also Mitchell v. Forsyth,* 472 U.S. 511, 530, 105 S.Ct. 2806, 2817-18, 86 L.Ed.2d 411 (1985) (denial of qualified immunity is an appealable decision to the extent that it turns on an issue of law). It is to that issue that we now turn.

***476** DISCUSSION

Equal Protection

[2] The Equal Protection Clause creates the right to be free from any purposeful sex discrimination by state actors. This court has rejected a defendant's claim of

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143 F.3d 473, 126 Ed. Law Rep. 589, 98 Cal. Daily Op. Serv. 3368, 98 Cal. Daily Op. Serv. 3086, 98 Daily Journal D.A.R. 4233, 98 Daily Journal D.A.R. 4657
(Cite as: 143 F.3d 473)

qualified immunity in a § 1983 claim claiming sex discrimination as a violation of the Equal Protection Clause. *Lindsey v. Shalmy,* 29 F.3d 1382 (9th Cir.1994). The discriminatory conduct at issue in *Lindsey* took place in 1988, and the court concluded that "[w]ell prior to 1988 the protection afforded under the Equal Protection Clause was held to proscribe any purposeful discrimination by state actors, be it in the workplace *or elsewhere,* directed at an individual solely because of the individual's membership in a protected class." *Id.* at 1386 (citing *Washington v. Davis,* 426 U.S. 229, 239, 96 S.Ct. 2040, 2047, 48 L.Ed.2d 597 (1976)) (emphasis added).

Thus, the right to be free from intentional gender discrimination by a state actor was clearly established as early as 1988. Here, Oona alleges that defendants intentionally discriminated against Oona because of her gender in the school year of 1992-93. Defendants are not entitled to immunity from Oona's Equal Protection claim.

Title IX

[3] The pertinent provision of Title IX provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance....

20 U.S.C. § 1681(a).

In *Petaluma* we considered a claim that a school counselor had violated Title IX in failing to take steps to stop peer sexual harassment of a student in 1990. *Petaluma,* 54 F.3d at 1451. Although we recognized that an employer's duty under Title VII to remedy peer sexual harassment in the workplace was clear, the majority held that there was no clearly established law imposing a similar duty for school officials under Title IX because courts had, as of 1990, not yet treated the Titles as analogous for purposes of sexual harassment claims. *Id.* at 1452.

The Supreme Court made such an analogy in 1992, however, when it likened the duties of a school district to remedy sexual harassment under **Title IX**, to the **Title VII** duties of an employer. In *Franklin v. Gwinnett County Pub. Schs.,* 503 U.S. 60, 112 S.Ct. 1028, 117 L.Ed.2d 208 (1992), the Court said:

Unquestionably, Title IX placed on the Gwinnett County Public Schools the duty not to discriminate on the basis of sex, and "when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex." *Meritor Sav. Bank, FSB v. Vinson,* 477 U.S. 57, 64, 106 S.Ct. 2399, 2404, 91 L.Ed.2d 49 (1986). We believe the same rule should apply when a teacher sexually harasses and abuses a student.

Franklin, 503 U.S. at 75, 112 S.Ct. at 1037-38. *Meritor* is, of course, the lead Supreme Court case recognizing that an employer may be liable for sexual harassment that creates a hostile work environment. By citing it with approval in the Title IX context, to define the critical concept of discrimination on the basis of sex, the Supreme Court in *Franklin* was analogizing the duties of school officials to remedy known sexual harassment under Title IX, to those of employers under Title VII.

Several circuits, following *Franklin,* have applied Title VII principles to hostile environment claims under Title IX. The Eighth Circuit, in *Kinman v. Omaha Pub. Sch. Dist.,* 94 F.3d 463, 469 (8th Cir.1996), noted that same sex harassment was actionable under Title VII and wrote "[w]e see no reason to apply a different standard under Title IX." *Id.* at 468. Likewise, the Sixth Circuit held that "a 'hostile environment' sexual harassment claim is cognizable under **Title IX**," and that **Title VII** principles guide resolution of such a claim. *Doe v. Claiborne County,* 103 F.3d 495, 514-15 (6th Cir.1996) (citations omitted).

Moreover, two circuits have held, as we do, that plaintiffs may state hostile environment claims for student-to-student harassment, as well as teacher-to-student harassment. The Seventh Circuit in ***477***Doe v. University of Illinois,* 138 F.3d 653, 661-62 (7th Cir.1998), held that school officials are not immune for their "failure to take prompt, appropriate action in response to student-on-student sexual harassment...." The Fourth Circuit in *Brzonkala v. Virginia Polytechnic Inst.,* 132 F.3d 949, 957 (4th Cir.1997), *reh'g en banc granted* (Feb. 5, 1998), though not dealing with immunity, considered the school's duties to remedy known peer harassment

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under Title IX to be the same as that of an employer's under Title VII.

[4] In *Petaluma,* when we held that the school officials' duties were not clearly established in 1990, we noted the Supreme Court's 1992 *Franklin* decision and recognized that the result might well be different in a claim of immunity for conduct that occurred after *Franklin* was decided. Because *Franklin* was decided in February 1992, and the conduct here complained of began in October 1992, this is such a case. The holding adumbrated by the majority in *Franklin* is required today: Title VII standards apply to hostile environment claims under Title IX. We expressly recognized that hostile environments include peer harassment in Ellison v. Brady, 924 F.2d 872, 878 (9th Cir.1991). Accordingly, we hold that the defendants are not entitled to immunity for their failure to take steps to remedy the hostile environment created by the male students in Oona's class.

We are aware that the law is different in other circuits. The Eleventh Circuit in Davis v. Monroe County Bd. of Educ., 74 F.3d 1186 (11th Cir.1996), *reh'g en banc granted; opinion vacated,* 91 F.3d 1418 (1996), originally held that similar allegations, that the school board knowingly permitted another student's sexual harassment to create a hostile environment, stated a violation of Title IX duties. After en banc review, it held the allegations did not state such a violation. Davis v. Monroe County Bd. of Educ., 120 F.3d 1390 (11th Cir.1997) (en banc). The Fifth Circuit has held that Title IX does not impose liability on a school district for peer hostile environment sexual harassment, absent allegations that the school district itself discriminated based on sex, e.g., by correcting only harassment of boys and not of girls. *See* Rowinsky v. Bryan Indep. Sch. Dist., 80 F.3d 1006, 1016 (5th Cir.1996), *cert. denied,* 519 U.S. 861, 117 S.Ct. 165, 136 L.Ed.2d 108 (1996).

We have difficulty squaring the reasoning of those cases with the Supreme Court's in *Franklin* and our own in *Petaluma. Rowinsky* and *Davis* imply that school officials, differ from employers, and should not be vicariously liable for the actions of peers under agency principles. But neither the employers under Title VII, nor the school officials under Title IX, are vicariously liable for the actions of others. Rather, they are liable for their own discriminatory actions in failing to remedy a known hostile environment. Thus, Oona seeks only to hold the school liable for its own failure to address adequately a known hostile environment. Accordingly, the district court correctly held that the individual defendants were not entitled to qualified immunity from Oona's peer harassment claim under Title IX.

We stress that the issue before us is narrow. We do not consider what steps school officials may reasonably be required to take to address harassment by fellow students, or when they are required to take them. Hence, we do not consider the extent to which such action may differ from the action reasonably expected of employers to remedy harassment by fellow employees. We hold only that in this circuit the duty to take reasonable steps to remedy a known hostile environment created by a peer is clearly established. Parents have long had a right to expect school officials to do what they reasonably can to protect the children who are temporarily in their custody and to provide an appropriate learning atmosphere. The dissent's position that there is a duty under Title IX to remedy one type of sex discrimination but not another is contrary to controlling authority and to parents' expectations.

[5] Defendants' conduct also violated Oona's clearly established rights under Title IX by failing to supervise Ibach. A supervisor may be found liable under § 1983 if the supervisor is "aware of a specific risk of harm to the plaintiff." Ketchum v. Alameda County, 811 F.2d 1243, 1247 (9th Cir.1987). This court has also held that, as early as ***478** 1988, "complete inaction in the face of claimed harassment cannot be objectively reasonable conduct entitling a supervisor to qualified immunity." Bator v. Hawaii, 39 F.3d 1021, 1029 (9th Cir.1994) (denying qualified immunity in a § 1983 action where the violation took place in 1988).

Oona has alleged that defendants here, who were all in supervisory positions to Ibach, knew or had reason to know that Ibach sexually harassed, fondled, and inappropriately touched Oona. Ibach's alleged conduct of sexually harassing a student constitutes sex discrimination, in violation of Oona's federal rights under Title IX. *See* Franklin, 503 U.S. at 75, 112 S.Ct. at 1037-38. Thus, after *Franklin,* a school official in a supervisory position cannot claim immunity for the failure to respond to complaints of harassment and discrimination. Other circuits have reached this conclusion as well. *See* Claiborne, 103 F.3d at 515 (holding that elements to state a supervisory hostile

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environment claim under **Title VII** equally apply under **Title IX**); *Rosa H. v. San Elizario Indep. Sch. Dist.*, 106 F.3d 648, 660 (5th Cir.1997) (finding Title IX liability for supervisory school officials with actual knowledge of sexual abuse or harassment). The allegations that defendants knew of Ibach's behavior and failed to prevent it are sufficient to show violations of clearly established Title IX rights during the 1992-93 year.

For the foregoing reasons, we AFFIRM the District Court's order denying qualified immunity to the defendants.

CYNTHIA HOLCOMB HALL, Circuit Judge, concurring in part and dissenting in part:

I respectfully dissent from the majority's holding that the defendants are not entitled to qualified immunity on the plaintiffs' Title IX claim based on their failure to stop peer sexual harassment among students.

The only issue on appeal is whether the individual defendants are entitled to qualified immunity. The defendants are entitled to a dismissal based on qualified immunity "[u]nless the plaintiff's allegations state a claim of violation of clearly established law." *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815-16, 86 L.Ed.2d 411 (1985). "The standard for determining qualified immunity is objective. 'If the law at [the time of the official's actions] was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to 'know' that the law forbade conduct not previously identified as unlawful.' " *Doe v. Petaluma City Sch. Dist.*, 54 F.3d 1447, 1450 (9th Cir.1995) (citation omitted).

The majority holds that Oona's rights under the Fourteenth Amendment and Title IX were clearly established on the date of the alleged conduct and affirmed the district court's denial of qualified immunity. I disagree. The law does not clearly impose a duty under Title IX on school officials to stop peer sexual harassment. Therefore, the defendants are entitled to qualified immunity on this claim to the extent it relates to the Title IX peer harassment allegations.

There are no cases holding that students have a right under Title IX to be free from peer sexual harassment. Instead, the majority's determination that Title IX clearly protects students from peer harassment depends upon an analogy between **Title VII** and **Title IX**: Because peer harassment in the workplace is actionable under Title VII, *Ellison v. Brady*, 924 F.2d 872 (9th Cir.1991), therefore, peer harassment in schools is clearly actionable under Title IX.

It is correct that courts have applied **Title VII** principles in **Title IX** cases. Most significantly, in *Franklin v. Gwinnett County Pub. Schs.*, the Supreme Court relied on a **Title VII** case to find that **Title IX** protects students from teacher-student sexual harassment:

Unquestionably, Title IX placed on the Gwinnett County Public Schools the duty not to discriminate on the basis of sex, and "when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex." We believe the same rule should apply when a teacher sexually harasses and abuses a student.

503 U.S. 60, 75, 112 S.Ct. 1028, 1037, 117 L.Ed.2d 208 (1992) (quoting ***479***Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64, 106 S.Ct. 2399, 2404, 91 L.Ed.2d 49 (1986)); *see also Doe v. Claiborne County*, 103 F.3d 495 (6th Cir.1996) (adopting **Title VII** principles to recognize **Title IX** hostile-environment claim for teacher-student harassment); *Kinman v. Omaha Pub. Sch. Dist.*, 94 F.3d 463 (8th Cir.1996) (borrowing from **Title VII** to find a **Title IX** right against same-sex teacher-student harassment).

The majority, relying on *Petaluma*, concludes that the Supreme Court in *Franklin* clearly established that **Title VII** rights are analogous to **Title IX** rights. Therefore, because peer harassment has been recognized under Title VII, the majority holds that peer harassment is clearly recognized under Title IX. I do not believe that *Petaluma* mandates this interpretation, nor do I believe that *Franklin* sweeps so broadly.

The facts and issues in *Petaluma*, a student peer harassment case, were almost identical to those in this case. The *Petaluma* court determined that a school counselor was entitled to qualified immunity because he did not have a clearly established duty to prevent peer sexual harassment under Title IX. The conduct in *Petaluma* arose before the Supreme Court's decision in *Franklin;* therefore, the court was unable to apply the ruling in *Franklin* to its decision. However, the court recognized,

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If [the counselor] engaged in the same conduct today, he might not be entitled to qualified immunity. We would then be required to consider the Supreme Court's recent *Franklin* decision. It might be that today a Title VII analogy likening [the counselor] to an employer and Doe to an employee might provide an argument to consider in a similar Title IX case. However, those arguments are not properly before us.

Petaluma, 54 F.3d at 1452. *Petaluma* properly declined to determine the reach of *Franklin.* Instead, it merely reminded the court that the effect of *Franklin* must be considered in future Title IX peer harassment cases. This is such a case.

Franklin does not require this court to apply **Title VII** principles to all **Title IX** cases. It merely states that teacher-student harassment is sufficiently analogous to employer-employee harassment that "the same rule should apply." 503 U.S. at 75, 112 S.Ct. at 1037. However, the similarity between peer harassment among employees and peer harassment among students is not as clear: While schools do hire and fire their teachers, they do not hire and fire their students. Although an argument can certainly be made for applying **Title VII** principles to this **Title IX** case, the analogy is neither clear nor required by *Franklin;* therefore, qualified immunity should not have been denied with respect to the peer harassment. *See Davis v. Monroe County Bd. of Educ.,* 120 F.3d 1390, 1399-1400 n. 13 (11th Cir.1997) (en banc) (explicitly rejecting this analogy because "the Supreme Court has never discussed student-student sexual harassment or generally applied **Title VII** jurisprudence to [all] **Title IX** cases").

Based on the foregoing reasons, I respectfully dissent. At the time of the defendants' actions, the law did not clearly establish the defendants' duty under Title IX to stop peer sexual harassment among students.

C.A.9 (Cal.),1998.
Oona R.-S.- by Kate S. v. McCaffrey
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CLOUIS G. PEPPER et al., Respondents,
v.
THE BOARD OF DIRECTORS OF THE BOLINAS PUBLIC UTILITY DISTRICT et al., Appellants.
Civ. No. 17885.

District Court of Appeal, First District, Division 2, California.
July 7, 1958.

HEADNOTES

(1)Public Utilities § 2--Utility Districts--Elections.
Pub. Util. Code, § 15966, providing a method by which persons can be placed on the ballot as candidates for public utility district boards of directors, cannot refer to nominations of directors at the first election of directors after the formation of a public utility district, because until after such first election of directors there is no "board of directors" with whom nominating petitions may be filed, as expressly directed by the statute, but does apply to the nomination of directors at all subsequent elections, at which times there is a "board of directors" with whom petitions may be filed.
See **Cal.Jur.2d,** Public Utilities and Services, § 151.
(2) Statutes § 134--Construction--Departure From Literal Meaning.
Although, where necessary to give a statute any reasonable meaning or where it manifestly appears that the Legislature has erroneously used one word for another, the courts may substitute the intended word for the one erroneously used, the need for such substitution should be patent and pressing and such action should not be taken where the language of the statute given its ordinary and obvious meaning will accomplish the full purpose of the legislation.

(3) Statutes § 126--Construction--Language of Statute--Legislative Intent.
The intention of the Legislature will be determined so far as possible from the language of its statutes, read as a whole, and if the words of an enactment, given their ordinary and popular signification, are reasonably free from ambiguity and uncertainty, the courts will look no further.

(4) Statutes § 112(2)--Construction--Function of Courts.
It is the function of the courts to construe and apply the law as it is enacted and not to add thereto or detract therefrom.

(5) Statutes § 126--Construction--Language of Statute.
A legislative enactment should be construed in accordance with the ordinary meaning of the language used and it should be assumed that the Legislature knew what it was saying and meant what it said.

(6) Statutes § 175--Construction--Aids--Chapter and Section Headings.
Under Pub. Util. Code, § 6, providing that division, part, chapter, article and section headings do not in any manner affect the scope, meaning or intent of the provisions of such code, the headings of Pub. Util. Code, §§ 15966, 16152, may not be considered in construing them and they must be given the construction that their language demands without regard to the headings under which they may appear.

SUMMARY

APPEAL from a judgment of the Superior Court of Marin County. N. Charles Brusatori, Judge. Affirmed.

Proceeding in mandamus to compel the board of directors of a public utility district to place petitioners' names on the ballot as candidates for director of the district. Judgment granting writ, affirmed.

COUNSEL

Hadsell, Murman & Bishop for Appellants.

Lawrence Draper, Jr., Sam J. Whiting, Jr., Crimmins, Kent, Draper & Bradley, Thomas J. Barfield and Walter E. Hettman for Respondents.

DOOLING, J.

The petitioners in the court below sought a writ of mandate to compel the respondents below to place

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petitioners' names on the ballot as candidates for director of Bolinas Public Utilities District. This appeal is from a judgment granting a peremptory writ of mandate as prayed.

The nominating petitions of these candidates were in the form and filed with the directors of the district within the time provided in section 15966 Public Utilities Code, but they were not in the form (Elec. Code, § 2601) nor filed within the *3 time (Elec. Code, § 2600) provided by the general election laws.

The Public Utility District Act was codified and added to the Public Utilities Code in 1953. (Stats. 1953, ch. 72, p. 751.) Later at the same session section 15966 was amended to its present form. (Stats. 1953, ch. 1196, p. 2711, § 2.) Section 15966 as so amended reads:

"(a) Not less than 30 days prior to the election, any five or more electors in the district may file with the board of directors a petition requesting that the names of certain persons specified in the petition be placed upon the ballot as candidates for the office of director at large.

"(b) Not less than 30 days prior to the election, any five or more electors of a territorial unit may file with the board of directors a petition requesting that the name of a designated person specified in the petition be placed upon the ballot as candidate for the office of director from the territorial unit."

(1) In its present form, according to the plain meaning of its language, section 15966 cannot refer to nominations of directors at the first election of directors after the formation of a public utility district, because until after such first election of directors there is no "board of directors" with whom such nominating petitions may be filed, as expressly directed by that section. Giving the words of the section their plain meaning the section equally does apply to the nomination of directors at all subsequent elections, at which times there is a "board of directors" with whom the nominating petitions may be filed as therein provided. This is the construction put upon the section by the trial court.

It is appellants' contention that despite the clear language of section 15966 as it now reads, that the nominating petitions therein provided for shall be filed with "the board of directors," and despite the fact that there is no "board of directors" with whom such petitions can be filed before the first election of directors, section 15966 nevertheless applies only to the first election of directors and does not, as the trial court held in this case, apply to subsequent elections. To make the section conform to the meaning which they ascribe to it appellants ask us to read "board of directors" to mean "board of supervisors." We can find no justification for thus reading the section to mean something which its own language makes it perfectly plain that it does not mean.

Appellants argue, however, that the construction for which *4 they contend must be given to section 15966 in order to have any provision in the statute for the nomination of directors at the first election. We find no such difficulty in the statute. Section 16152 Public Utilities Code provides:

"The provisions of law relating to ... the manner of nominating county officers, as far as applicable, govern all district elections, except when otherwise provided in this division." This is a catch-all provision and makes the law regarding the nomination of county officers apply to *all* elections for which no other provision is made in division 7, Public Utilities Code. If section 15966 as it now reads is construed according to the plain meaning of its words to apply to all subsequent elections of directors after the first election section 16152 fills in the gap and makes the law relating to nominations of county officers applicable to the first election of directors for which no other provision is now made in the statute.

(2) While it is true, as stated by appellants, that where necessary to give a statute any reasonable meaning or where it manifestly appears that the Legislature has erroneously used one word for another, the courts may substitute the intended word for the one erroneously used (23 Cal.Jur., Statutes, § 116, pp. 738-739), the need for such substitution should be patent and pressing and such action should not be taken by the courts where the language of the statute given its ordinary and obvious meaning will accomplish the full purpose of the legislation. The Legislature itself has admonished us that: "In the construction of a statute ... the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted ..." (Code Civ. Proc., § 1858.) (3)

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Following this rule the "intention of the legislature will be determined so far as possible from the language of its statutes, read as a whole, and if the words of an enactment, given their ordinary and popular signification, are reasonably free from ambiguity and uncertainty, the courts will look no further to ascertain its meaning." (23 Cal.Jur., Statutes, § 109, pp. 730-731.) (4, 5) "It is the function of the courts to construe and apply the law as it is enacted and not to add thereto nor detract therefrom" (*Pacific Coast etc. Bank v. Roberts,* 16 Cal.2d 800, 805 [108 P.2d 439]; *In re Miller,* 31 Cal.2d 191, 199 [187 P.2d 722]; *Kirkwood v. Bank of America,* 43 Cal.2d 333, 341 [273 P.2d 532]) and "the better and more modern rule of ***5** construction is to construe a legislative enactment in accordance with the ordinary meaning of the language used and to assume that the Legislature knew what it was saying and meant what it said." (*Pacific Gas & E. Co. v. Shasta Dam etc. Dist.,* 135 Cal.App.2d 463, 468 [287 P.2d 841].)

Appellants argue from the history of the act that because section 15966 before its amendment applied to the first election of directors it must still be construed, despite its radical change in language, to apply to the first election. We are not called upon to construe the section as it read before its amendment, but as it reads now, and since the very purpose of an amendment is to change the meaning or application of the statutory provision amended we fail to see the force of this argument. As it now reads section 15966 applies, and can apply, only to elections at which there is a "board of directors" with whom the nominating petitions therein provided for can be filed.

(6) Appellants attempt to invoke the rule that the various headings of the statute may be looked to in construing sections 15966 and 16152, but they disregard Public Utilities Code, section 6, which reads: "Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code." In the face of such a provision the headings may not be considered in construing the code and the several sections must be given the construction which their language demands without regard to the headings under which they may appear. (*In re Halcomb,* 21 Cal.2d 126, 130 [130 P.2d 384]; *Klassen v. City of San Carlos,* 149 Cal.App.2d 225, 228 [308 P.2d 413]; *People v. Trout,* 137 Cal.App.2d 794 [291 P.2d 83]; *Cavalli v. Luckett,* 40 Cal.App.2d 250, 255-256 [104 P.2d 708].)

Our reading of section 15966 according to the plain meaning of its words finds support, if any be needed, in the history of its amendment to its present form.

After the Public Utilities District Act was codified by the Legislature in 1953 and at the same session a bill was introduced to add article 6.5 to this act. Article 6.5 as originally introduced added sections 16171 to 16174 to the Public Utilities Code. This amendment introduced an entirely new idea, providing in substance that if only one person should be nominated for each office of director the election might be dispensed with and the nominees be appointed by the board of supervisors to the positions of director without the holding of an election. ***6**

After its introduction this bill was amended in the assembly to add thereto section 2 which amended section 15966 to its present form. This statute as so amended was adopted as chapter 1196. (Stats. 1953, p. 2710.)

Prior to this amendment the general election laws governed the nomination of directors at all district elections. (Pub. Util. Code, § 15966, as it read before its last amendment, Stats. 1953, p. 759; §§ 15971, 16152.) The Elections Code, section 2605, subdivision (c), requires a minimum of 20 sponsors to sign such petitions or where there are less than 150 registered voters in the district at least 10 sponsors. (Elec. Code, § 2605, subd. (f).) The nominations must be in the form provided by Elections Code, section 2601, and must be filed not less than 60 days prior to the election. (Elec. Code, § 2600.)

Section 15966 as last amended substitutes a simple petition for the form required by Elections Code, section 2601, extends the time within which such petitions may be filed to 30 days before the election; and reduces the number of electors who must sign such petition to five.

The purpose of this last amendment of section 15966 appears obvious on the face of the statute. The Legislature was providing for the appointment of directors where only one person was nominated for each office and was thus taking away from the voters the right of franchise in those cases. If the voters were to be deprived of the right to vote for the persons of their choice where only one person was nominated for each

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office, what more natural safeguard of their right of franchise could be devised than to provide a simpler system of nomination, make nominations easier by reducing the number of sponsors required, and enlarge the time within which such nominating petitions might be filed? This is precisely what the Legislature did by adding section 2 to Statutes 1953, chapter 1196 which amended Public Utilities Code, section 15966, to its present form.

The weakness of the argument that "board of directors" in this section really means "board of supervisors" is apparent from another point of view. Before its last amendment section 15966 made the general election laws applicable to nominating petitions. Under the general election laws nominating petitions are not filed with the board of supervisors but with the *county clerk.* (Elec. Code, § 2632.) We are asked by appellants to believe that the Legislature amended section 15966 to change the place of filing from the county clerk to the *board of supervisors* and to accomplish this purpose *7 described the board of supervisors in the amendment as "the board of directors." Even the severest critic of the legislative process would hesitate to ascribe such ineptness with words to the Legislature.

Judgment affirmed.

Kaufman, P. J., and Draper, J., concurred.
Appellants' petition for a hearing by the Supreme Court was denied September 3, 1958.

Cal.App.1.Dist.
Pepper v. Board of Directors of Bolinas Public Utility Dist.
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C LOUIS G. PEPPER et al., Respondents,
v.
THE BOARD OF DIRECTORS OF THE BOLINAS PUBLIC UTILITY DISTRICT et al., Appellants.
Civ. No. 17885.

District Court of Appeal, First District, Division 2, California.
July 7, 1958.

HEADNOTES

(1)Public Utilities § 2--Utility Districts--Elections.
Pub. Util. Code, § 15966, providing a method by which persons can be placed on the ballot as candidates for public utility district boards of directors, cannot refer to nominations of directors at the first election of directors after the formation of a public utility district, because until after such first election of directors there is no "board of directors" with whom nominating petitions may be filed, as expressly directed by the statute, but does apply to the nomination of directors at all subsequent elections, at which times there is a "board of directors" with whom petitions may be filed.
See **Cal.Jur.2d,** Public Utilities and Services, § 151.
(2) Statutes § 134--Construction--Departure From Literal Meaning.
Although, where necessary to give a statute any reasonable meaning or where it manifestly appears that the Legislature has erroneously used one word for another, the courts may substitute the intended word for the one erroneously used, the need for such substitution should be patent and pressing and such action should not be taken where the language of the statute given its ordinary and obvious meaning will accomplish the full purpose of the legislation.

(3) Statutes § 126--Construction--Language of Statute--Legislative Intent.
The intention of the Legislature will be determined so far as possible from the language of its statutes, read as a whole, and if the words of an enactment, given their ordinary and popular signification, are reasonably free from ambiguity and uncertainty, the courts will look no further.

(4) Statutes § 112(2)--Construction--Function of Courts.
It is the function of the courts to construe and apply the law as it is enacted and not to add thereto or detract therefrom.

(5) Statutes § 126--Construction--Language of Statute.
A legislative enactment should be construed in accordance with the ordinary meaning of the language used and it should be assumed that the Legislature knew what it was saying and meant what it said.

(6) Statutes § 175--Construction--Aids--Chapter and Section Headings.
Under Pub. Util. Code, § 6, providing that division, part, chapter, article and section headings do not in any manner affect the scope, meaning or intent of the provisions of such code, the headings of Pub. Util. Code, §§ 15966, 16152, may not be considered in construing them and they must be given the construction that their language demands without regard to the headings under which they may appear.

SUMMARY

APPEAL from a judgment of the Superior Court of Marin County. N. Charles Brusatori, Judge. Affirmed.

Proceeding in mandamus to compel the board of directors of a public utility district to place petitioners' names on the ballot as candidates for director of the district. Judgment granting writ, affirmed.

COUNSEL

Hadsell, Murman & Bishop for Appellants.

Lawrence Draper, Jr., Sam J. Whiting, Jr., Crimmins, Kent, Draper & Bradley, Thomas J. Barfield and Walter E. Hettman for Respondents.

DOOLING, J.

The petitioners in the court below sought a writ of mandate to compel the respondents below to place

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petitioners' names on the ballot as candidates for director of Bolinas Public Utilities District. This appeal is from a judgment granting a peremptory writ of mandate as prayed.

The nominating petitions of these candidates were in the form and filed with the directors of the district within the time provided in section 15966 Public Utilities Code, but they were not in the form (Elec. Code, § 2601) nor filed within the ***3** time (Elec. Code, § 2600) provided by the general election laws.

The Public Utility District Act was codified and added to the Public Utilities Code in 1953. (Stats. 1953, ch. 72, p. 751.) Later at the same session section 15966 was amended to its present form. (Stats. 1953, ch. 1196, p. 2711, § 2.) Section 15966 as so amended reads:

"(a) Not less than 30 days prior to the election, any five or more electors in the district may file with the board of directors a petition requesting that the names of certain persons specified in the petition be placed upon the ballot as candidates for the office of director at large.

"(b) Not less than 30 days prior to the election, any five or more electors of a territorial unit may file with the board of directors a petition requesting that the name of a designated person specified in the petition be placed upon the ballot as candidate for the office of director from the territorial unit."

(1) In its present form, according to the plain meaning of its language, section 15966 cannot refer to nominations of directors at the first election of directors after the formation of a public utility district, because until after such first election of directors there is no "board of directors" with whom such nominating petitions may be filed, as expressly directed by that section. Giving the words of the section their plain meaning the section equally does apply to the nomination of directors at all subsequent elections, at which times there is a "board of directors" with whom the nominating petitions may be filed as therein provided. This is the construction put upon the section by the trial court.

It is appellants' contention that despite the clear language of section 15966 as it now reads, that the nominating petitions therein provided for shall be filed with "the board of directors," and despite the fact that there is no "board of directors" with whom such petitions can be filed before the first election of directors, section 15966 nevertheless applies only to the first election of directors and does not, as the trial court held in this case, apply to subsequent elections. To make the section conform to the meaning which they ascribe to it appellants ask us to read "board of directors" to mean "board of supervisors." We can find no justification for thus reading the section to mean something which its own language makes it perfectly plain that it does not mean.

Appellants argue, however, that the construction for which ***4** they contend must be given to section 15966 in order to have any provision in the statute for the nomination of directors at the first election. We find no such difficulty in the statute. Section 16152 Public Utilities Code provides:

"The provisions of law relating to ... the manner of nominating county officers, as far as applicable, govern all district elections, except when otherwise provided in this division." This is a catch-all provision and makes the law regarding the nomination of county officers apply to *all* elections for which no other provision is made in division 7, Public Utilities Code. If section 15966 as it now reads is construed according to the plain meaning of its words to apply to all subsequent elections of directors after the first election section 16152 fills in the gap and makes the law relating to nominations of county officers applicable to the first election of directors for which no other provision is now made in the statute.

(2) While it is true, as stated by appellants, that where necessary to give a statute any reasonable meaning or where it manifestly appears that the Legislature has erroneously used one word for another, the courts may substitute the intended word for the one erroneously used (23 Cal.Jur., Statutes, § 116, pp. 738-739), the need for such substitution should be patent and pressing and such action should not be taken by the courts where the language of the statute given its ordinary and obvious meaning will accomplish the full purpose of the legislation. The Legislature itself has admonished us that: "In the construction of a statute ... the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted ..." (Code Civ. Proc., § 1858.) (3)

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Following this rule the "intention of the legislature will be determined so far as possible from the language of its statutes, read as a whole, and if the words of an enactment, given their ordinary and popular signification, are reasonably free from ambiguity and uncertainty, the courts will look no further to ascertain its meaning." (23 Cal.Jur., Statutes, § 109, pp. 730-731.) (4, 5) "It is the function of the courts to construe and apply the law as it is enacted and not to add thereto nor detract therefrom" (*Pacific Coast etc. Bank v. Roberts,* 16 Cal.2d 800, 805 [108 P.2d 439]; *In re Miller,* 31 Cal.2d 191, 199 [187 P.2d 722]; *Kirkwood v. Bank of America,* 43 Cal.2d 333, 341 [273 P.2d 532]) and "the better and more modern rule of ***5** construction is to construe a legislative enactment in accordance with the ordinary meaning of the language used and to assume that the Legislature knew what it was saying and meant what it said." (*Pacific Gas & E. Co. v. Shasta Dam etc. Dist.,* 135 Cal.App.2d 463, 468 [287 P.2d 841].)

Appellants argue from the history of the act that because section 15966 before its amendment applied to the first election of directors it must still be construed, despite its radical change in language, to apply to the first election. We are not called upon to construe the section as it read before its amendment, but as it reads now, and since the very purpose of an amendment is to change the meaning or application of the statutory provision amended we fail to see the force of this argument. As it now reads section 15966 applies, and can apply, only to elections at which there is a "board of directors" with whom the nominating petitions therein provided for can be filed.

(6) Appellants attempt to invoke the rule that the various headings of the statute may be looked to in construing sections 15966 and 16152, but they disregard Public Utilities Code, section 6, which reads: "Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code." In the face of such a provision the headings may not be considered in construing the code and the several sections must be given the construction which their language demands without regard to the headings under which they may appear. (*In re Halcomb,* 21 Cal.2d 126, 130 [130 P.2d 384]; *Klassen v. City of San Carlos,* 149 Cal.App.2d 225, 228 [308 P.2d 413]; *People v. Trout,* 137 Cal.App.2d 794 [291 P.2d 83]; *Cavalli v. Luckett,* 40 Cal.App.2d 250, 255- 256 [104 P.2d 708].)

Our reading of section 15966 according to the plain meaning of its words finds support, if any be needed, in the history of its amendment to its present form.

After the Public Utilities District Act was codified by the Legislature in 1953 and at the same session a bill was introduced to add article 6.5 to this act. Article 6.5 as originally introduced added sections 16171 to 16174 to the Public Utilities Code. This amendment introduced an entirely new idea, providing in substance that if only one person should be nominated for each office of director the election might be dispensed with and the nominees be appointed by the board of supervisors to the positions of director without the holding of an election. ***6**

After its introduction this bill was amended in the assembly to add thereto section 2 which amended section 15966 to its present form. This statute as so amended was adopted as chapter 1196. (Stats. 1953, p. 2710.)

Prior to this amendment the general election laws governed the nomination of directors at all district elections. (Pub. Util. Code, § 15966, as it read before its last amendment, Stats. 1953, p. 759; §§ 15971, 16152.) The Elections Code, section 2605, subdivision (c), requires a minimum of 20 sponsors to sign such petitions or where there are less than 150 registered voters in the district at least 10 sponsors. (Elec. Code, § 2605, subd. (f).) The nominations must be in the form provided by Elections Code, section 2601, and must be filed not less than 60 days prior to the election. (Elec. Code, § 2600.)

Section 15966 as last amended substitutes a simple petition for the form required by Elections Code, section 2601, extends the time within which such petitions may be filed to 30 days before the election; and reduces the number of electors who must sign such petition to five.

The purpose of this last amendment of section 15966 appears obvious on the face of the statute. The Legislature was providing for the appointment of directors where only one person was nominated for each office and was thus taking away from the voters the right of franchise in those cases. If the voters were to be deprived of the right to vote for the persons of their choice where only one person was nominated for each

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office, what more natural safeguard of their right of franchise could be devised than to provide a simpler system of nomination, make nominations easier by reducing the number of sponsors required, and enlarge the time within which such nominating petitions might be filed? This is precisely what the Legislature did by adding section 2 to Statutes 1953, chapter 1196 which amended Public Utilities Code, section 15966, to its present form.

The weakness of the argument that "board of directors" in this section really means "board of supervisors" is apparent from another point of view. Before its last amendment section 15966 made the general election laws applicable to nominating petitions. Under the general election laws nominating petitions are not filed with the board of supervisors but with the *county clerk.* (Elec. Code, § 2632.) We are asked by appellants to believe that the Legislature amended section 15966 to change the place of filing from the county clerk to the *board of supervisors* and to accomplish this purpose *7 described the board of supervisors in the amendment as "the board of directors." Even the severest critic of the legislative process would hesitate to ascribe such ineptness with words to the Legislature.

Judgment affirmed.

Kaufman, P. J., and Draper, J., concurred.
Appellants' petition for a hearing by the Supreme Court was denied September 3, 1958.

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162 Cal.App.2d 1, 327 P.2d 928

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Supreme Court of the United States
REGENTS OF the UNIVERSITY OF CALIFORNIA,
Petitioner,
v.
Allan BAKKE.
No. 76-811.

Argued Oct. 12, 1977.
Decided June 28, 1978.

White male whose application to state medical school was rejected brought action challenging legality of the school's special admissions program under which 16 of the 100 positions in the class were reserved for "disadvantaged" minority students. School cross-claimed for declaratory judgment that its program was legal. The trial court declared the program illegal but refused to order the school to admit the applicant. The California Supreme Court, 18 Cal.3d 34, 132 Cal.Rptr. 680, 553 P.2d 1152, affirmed the finding that the program was illegal and ordered the student admitted and the school sought certiorari. The Supreme Court, Mr. Justice Powell, held that: (1) the special admissions program was illegal, but (2) race may be one of a number of factors considered by school in passing on applications, and (3) since the school could not show that the white applicant would not have been admitted even in the absence of the special admissions program, the applicant was entitled to be admitted.

Affirmed in part and reversed in part.

Mr. Justice Brennan, Mr. Justice White, Mr. Justice Marshall and Mr. Justice Blackmun filed an opinion concurring in the judgment in part and dissenting.

Mr. Justice White filed a separate opinion.

Mr. Justice Marshall filed a separate opinion.

Mr. Justice Blackmun filed a separate opinion.

Mr. Justice Stevens concurred in the judgment in part and dissented in part and filed an opinion in which Mr. Chief Justice Burger, Mr. Justice Stewart and Mr. Justice Rehnquist joined.

West Headnotes

[1] Federal Courts 170B 511.1

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk511 Scope and Extent of Review
170Bk511.1 k. In General. Most Cited Cases
(Formerly 170Bk511)
Where, in action brought by white applicant to medical school for declaratory and injunctive relief against the school's denial of admission, the school had cross-claimed for declaratory judgment that its special admissions program for minority applicants was constitutional and where the lower court had determined, as a reason for its judgment in favor of the applicant, that the school's use of race in its consideration of any candidate's application was unlawful, it was proper for the Supreme Court to deal not only with the issue of the denial of admission to the white applicant but also to deal with the propriety of the use of race as a factor in reviewing applications generally.

[2] Federal Courts 170B 511.1

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk511 Scope and Extent of Review
170Bk511.1 k. In General. Most Cited Cases
(Formerly 170Bk511)
Although the petitioner for certiorari did not object to respondent's standing, where several amici had suggested that the respondent had lacked standing to bring the suit, Supreme Court was required to consider the issue of standing because it related to that court's jurisdiction under the Constitution. U.S.C.A.Const. art. 3, § 1 et seq.

[3] Stipulations 363 3

363 Stipulations
363k3 k. Matters Which May Be Subject of Stipulation. Most Cited Cases
Medical school's concession that white applicant who challenged his rejection on the ground that it was based on improper racial considerations had standing to challenge

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his rejection and to challenge the school's special admissions programs for minority students was not an improper attempt to stipulate to a conclusion of law or to disguise actual facts of record.

[4] Federal Civil Procedure 170A 103.3

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing
170Ak103.3 k. Causation; Redressability. Most Cited Cases
(Formerly 92k42(2))
The constitutional element of standing is plaintiff's demonstration of any injury to himself that is likely to be redressed by favorable decision of his claim. U.S.C.A.Const. art. 3, § 1 et seq.

[5] Civil Rights 78 1331(2)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1331 Persons Aggrieved, and Standing in General
78k1331(2) k. Education. Most Cited Cases
(Formerly 78k201, 78k13.6)
Even though unsuccessful white applicant to medical school could not show that he would have been admitted to the school except for the school's special admissions program which reserved 16 of the 100 places for minority students, he had standing to maintain an action challenging the legality of the special admissions program since the program had precluded the applicant from competing for all 100 places because of his race. U.S.C.A.Const. art. 3, § 1 et seq.

[6] Civil Rights 78 1331(2)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1331 Persons Aggrieved, and Standing in General
78k1331(2) k. Education. Most Cited Cases
(Formerly 78k201, 78k13.6)
Fact that white applicant to medical school was not a "disadvantaged" applicant did not preclude him from having standing to challenge the school's special admissions program which reserved 16 of the 100 places for "disadvantaged" minority students where the special admissions program was a minority enrollment program with a secondary "disadvantage" element and where white "disadvantaged" students were never considered under the special program. U.S.C.A.Const. art. 3, § 1 et seq.

[7] Civil Rights 78 1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k102.1, 78k102, 78k2)
Purpose of Title VI of the Civil Rights Act is the halting of federal funding of entities which violate a prohibition of racial discrimination similar to that of the Constitution. Civil Rights Act of 1964, § 601 et seq. as amended 42 U.S.C.A. § 2000d et seq.

[8] Civil Rights 78 1055

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1055 k. Publicly Assisted Programs. Most Cited Cases
(Formerly 78k126, 78k111, 78k3)
Title VI of the Civil Rights Act proscribes only those racial classifications which would violate the equal protection clause of the Fourteenth Amendment or the Fifth Amendment. Civil Rights Act of 1964, § 601 et seq. as amended 42 U.S.C.A. § 2000d et seq.; U.S.C.A.Const. Amends. 5, 14.

[9] Constitutional Law 92 3250

92 Constitutional Law
92XXVI Equal Protection
92XXVI(B) Particular Classes
92XXVI(B)8 Race, National Origin, or Ethnicity
92k3250 k. In General. Most Cited Cases
(Formerly 92k215)
The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color; if both are not accorded the same protection, then it is not equal. (Per Mr. Justice Powell with the Chief Justice and three Justices concurring in the judgment in part.)

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[10] Civil Rights 78 ⚿1009

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1007 Bases of Discrimination and Classes Protected
78k1009 k. Race, Color, Ethnicity, or National Origin. Most Cited Cases
(Formerly 78k104.2, 78k104.1, 78k104, 78k3)

Civil Rights 78 ⚿1033(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1030 Acts or Conduct Causing Deprivation
78k1033 Discrimination in General
78k1033(3) k. Affirmative Action and Reverse Discrimination. Most Cited Cases
(Formerly 78k104.2, 78k104.1, 78k104, 78k3)
Racial and ethnic distinctions of any sort are inherently suspect and call for the most exacting judicial examination; such suspect classifications are subject to strict scrutiny and can be justified only if they further a compelling government purpose and, even then, only if no less restrictive alternative is available.

[11] Civil Rights 78 ⚿1009

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1007 Bases of Discrimination and Classes Protected
78k1009 k. Race, Color, Ethnicity, or National Origin. Most Cited Cases
(Formerly 78k104.2, 78k104.1, 78k104, 78k3)

Civil Rights 78 ⚿1033(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1030 Acts or Conduct Causing Deprivation
78k1033 Discrimination in General
78k1033(3) k. Affirmative Action and Reverse Discrimination. Most Cited Cases
(Formerly 78k104.2, 78k104.1, 78k104, 78k3)
Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake and is forbidden by the Constitution. (Per Mr. Justice Powell with the Chief Justice and three Justices concurring in the judgment in part.)

[12] Civil Rights 78 ⚿1033(3)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1030 Acts or Conduct Causing Deprivation
78k1033 Discrimination in General
78k1033(3) k. Affirmative Action and Reverse Discrimination. Most Cited Cases
(Formerly 78k111, 78k3)
A classification which aids persons who are perceived as members of relatively victimized groups at the expense of other innocent individuals is permissible only when there are judicial, legislative, or administrative findings of constitutional or statutory violations; after such findings have been made, the governmental interest in preferring members of the injured groups at the expense of others is substantial, since the legal rights of the victims must be vindicated.

[13] Civil Rights 78 ⚿1061

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1061 k. Admission. Most Cited Cases
(Formerly 78k127.1, 78k127, 78k3)
The purpose of helping certain groups whom the faculty of state medical school perceived as being victims of societal discrimination did not justify a classification, for admissions purposes, which imposed disadvantages upon white applicants who bore no responsibility for whatever harm the beneficiaries of the special admissions program were thought to have suffered. (Per Mr. Justice Powell with the Chief Justice and three Justices concurring in the judgment in part.)

[14] Colleges and Universities 81 ⚿9.15

81 Colleges and Universities
81k9 Students
81k9.15 k. Admission or Matriculation. Most Cited Cases

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(Formerly 81k9)
The attainment of a diverse student body is a constitutionally permissible goal for an institution of higher education; however, ethnic diversity is only one element in a range of factors which a university may properly consider in attaining the goal of a heterogeneous student body; although a university must have wide discretion in making the sensitive judgments as to who should be admitted, constitutional limitations protecting individual rights may not be disregarded. (Per Mr. Justice Powell with four Justices concurring in the judgment in part and with the Chief Justice and three Justices concurring in the judgment in part.)

[15] Colleges and Universities 81 ⚷9.15

81 Colleges and Universities
81k9 Students
81k9.15 k. Admission or Matriculation. Most Cited Cases
(Formerly 81k9)
A plan for achieving educational and student body diversity, such as used by Harvard College, in which race is a factor in some admission decisions and in which target quotas are not set for the number of students of any particular background and in which each applicant is treated as an individual in the admissions process is constitutional, at least so long as the use of race to achieve an integrated student body is necessitated by the lingering effects of past discrimination. U.S.C.A.Const. Amends. 1, 5, 14.

[16] Colleges and Universities 81 ⚷9.15

81 Colleges and Universities
81k9 Students
81k9.15 k. Admission or Matriculation. Most Cited Cases
(Formerly 81k9)
The denial to white applicant to medical school of his right to individual consideration without regard to race was the principal evil of medical school's special admissions program which reserved 16 of the 100 places in each class for "disadvantaged" members of minority groups; the fatal flaw in a preferential program was its disregard of individual rights. (Per Mr. Justice Powell with the Chief Justice and three Justices concurring in the judgment in part.) U.S.C.A.Const. Amend. 14.

[17] Colleges and Universities 81 ⚷9.15

81 Colleges and Universities
81k9 Students
81k9.15 k. Admission or Matriculation. Most Cited Cases
(Formerly 81k9)
The state has a substantial interest which may legitimately be served by a properly devised admissions program for its medical school which involves the competitive consideration of race and ethnic origin; medical school need not forego all considerations of race of applicants in determining which applicants will be admitted to the school.

[18] Civil Rights 78 ⚷1448

78 Civil Rights
78III Federal Remedies in General
78k1448 k. Judgment and Relief in General. Most Cited Cases
(Formerly 78k261, 78k13.16)
Since medical school could not show that, were it not for the existence of its unlawful special admissions program which reserved 16 of the 100 places in the class for "disadvantaged" minority students, white applicant still would not have been admitted, white applicant who successfully challenged the legality of the special admissions program was entitled to relief admitting him to the school. (Per Mr. Justice Powell with the Chief Justice and three Justices concurring in the judgment in part.)

[19] Federal Courts 170B ⚷513

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk513 k. Determination and Disposition of Cause. Most Cited Cases
Where medical school had rejected white male's application in part because it had reserved 16 of the 100 places in the class for "disadvantaged" minority group members, and where the special admissions program was found to be illegal, school was not entitled to attempt to reconstruct what might have happened with respect to the white male's application had the school been operating a legitimate admissions program so that there was no need for the Supreme Court to remand the case for that purpose rather than affirming an order directing that the white male be admitted. (Per Mr. Justice Powell with the Chief Justice and three Justices concurring in the judgment in part.)

***2735 *265** *Syllabus* [FN*]

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FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

The Medical School of the University of California at Davis (hereinafter Davis) had two admissions programs for the entering **2736 class of 100 students-the regular admissions program and the special admissions program. Under the regular procedure, candidates whose overall undergraduate grade point averages fell below 2.5 on a scale of 4.0 were summarily rejected. About one out of six applicants was then given an interview, following which he was rated on a scale of 1 to 100 by each of the committee members (five in 1973 and six in 1974), his rating being based on the interviewers' summaries, his overall grade point average, his science courses grade point average, his Medical College Admissions Test (MCAT) scores, letters of recommendation, extracurricular activities, and other biographical data, all of which resulted in a total "benchmark score." The full admissions committee then made offers of admission on the basis of their review of the applicant's file and his score, considering and acting upon applications as they were received. The committee chairman was responsible for placing names on the waiting list and had discretion to include persons with "special skills." A separate committee, a majority of whom were members of minority groups, operated the special admissions program. The 1973 and 1974 application forms, respectively, asked candidates whether they wished to be considered as "economically and/or educationally disadvantaged" applicants and members of a "minority group" (blacks, Chicanos, Asians, American Indians). If an applicant of a minority group was found to be "disadvantaged," he would be rated in a manner similar to the one employed by the general admissions committee. Special candidates, however, did not have to meet the 2.5 grade point cutoff and were not ranked against candidates in the general admissions process. About one-fifth of the special applicants were invited for interviews in 1973 and 1974, following which they were given benchmark scores, and the top choices were then given to the general admissions committee, which could reject special candidates for failure to meet course requirements or other specific deficiencies. The special committee continued to recommend candidates until 16 special admission selections had been made. During a four-year period 63 minority *266 students were admitted to Davis under the special program and 44 under the general program. No disadvantaged whites were admitted under the special program, though many applied. Respondent, a white male, applied to Davis in 1973 and 1974, in both years being considered only under the general admissions program. Though he had a 468 out of 500 score in 1973, he was rejected since no general applicants with scores less than 470 were being accepted after respondent's application, which was filed late in the year, had been processed and completed. At that time four special admission slots were still unfilled. In 1974 respondent applied early, and though he had a total score of 549 out of 600, he was again rejected. In neither year was his name placed on the discretionary waiting list. In both years special applicants were admitted with significantly lower scores than respondent's. After his second rejection, respondent filed this action in state court for mandatory, injunctive, and declaratory relief to compel his admission to Davis, alleging that the special admissions program operated to exclude him on the basis of his race in violation of the Equal Protection Clause of the Fourteenth Amendment, a provision of the California Constitution, and § 601 of Title VI of the Civil Rights Act of 1964, which provides, *inter alia,* that no person shall on the ground of race or color be excluded from participating in any program receiving federal financial assistance. Petitioner cross-claimed for a declaration that its special admissions program was lawful. The trial court found that the special program operated as a racial quota, because minority applicants in that program were rated only against one another, and 16 places in the class of 100 were reserved for them. Declaring that petitioner could not take race into account in making admissions decisions, the program was held to violate the Federal and State Constitutions and Title VI. Respondent's admission was not ordered, however, for lack of proof that he would have **2737 been admitted but for the special program. The California Supreme Court, applying a strict-scrutiny standard, concluded that the special admissions program was not the least intrusive means of achieving the goals of the admittedly compelling state interests of integrating the medical profession and increasing the number of doctors willing to serve minority patients. Without passing on the state constitutional or federal statutory grounds the court held that petitioner's special admissions program violated the Equal Protection Clause. Since petitioner could not satisfy its burden of demonstrating that respondent, absent the special program, would not have been admitted, the court ordered his admission to Davis.

Held: The judgment below is affirmed insofar as it orders respondent's admission to Davis and invalidates petitioner's special admissions program,*267 but is reversed in-

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sofar as it prohibits petitioner from taking race into account as a factor in its future admissions decisions.

18 Cal.3d 34, 132 Cal.Rptr. 680, 553 P.2d 1152, affirmed in part and reversed in part.

Mr. Justice POWELL concluded:

1. Title VI proscribes only those racial classifications that would violate the Equal Protection Clause if employed by a State or its agencies. Pp. 2744-2747.

2. Racial and ethnic classifications of any sort are inherently suspect and call for the most exacting judicial scrutiny. While the goal of achieving a diverse student body is sufficiently compelling to justify consideration of race in admissions decisions under some circumstances, petitioner's special admissions program, which forecloses consideration to persons like respondent, is unnecessary to the achievement of this compelling goal and therefore invalid under the Equal Protection Clause. Pp. 2747-2764.

3. Since petitioner could not satisfy its burden of proving that respondent would not have been admitted even if there had been no special admissions program, he must be admitted. P. 2764.

Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN concluded:

1. Title VI proscribes only those racial classifications that would violate the Equal Protection Clause if employed by a State or its agencies. Pp. 2768-2781.

2. Racial classifications call for strict judicial scrutiny. Nonetheless, the purpose of overcoming substantial, chronic minority underrepresentation in the medical profession is sufficiently important to justify petitioner's remedial use of race. Thus, the judgment below must be reversed in that it prohibits race from being used as a factor in university admissions. Pp. 2782-2794.

Mr. Justice STEVENS, joined by THE CHIEF JUSTICE, Mr. Justice STEWART, and Mr. Justice REHNQUIST, being of the view that whether race can ever be a factor in an admissions policy is not an issue here; that Title VI applies; and that respondent was excluded from Davis in violation of Title VI, concurs in the Court's judgment insofar as it affirms the judgment of the court below ordering respondent admitted to Davis. Pp. 2809-2815.

***268** Archibald Cox, Cambridge, Mass., for petitioner.

Sol. Gen. Wade H. McCree, Jr., Washington, D. C., for United States, as amicus curiae, by special leave of Court.

Reynold H. Colvin, San Francisco, Cal., for respondent.

***269** Mr. Justice POWELL announced the judgment of the Court.

[1] This case presents a challenge to the special admissions program of the petitioner, the Medical School of the University of California at Davis, which is designed to assure the admission***270** of a specified number of students from certain minority groups. The Superior Court of California sustained respondent's challenge, holding that petitioner's program violated the California Constitution, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and the Equal Protection Clause of the Fourteenth****2738** Amendment. The court enjoined petitioner from considering respondent's race or the race of any other applicant in making admissions decisions. It refused, however, to order respondent's admission to the Medical School, holding that he had not carried his burden of proving that he would have been admitted but for the constitutional and statutory violations. The Supreme Court of California affirmed those portions of the trial court's judgment declaring the special admissions program unlawful and enjoining petitioner from considering the race of any applicant.[FN**] ***271** It modified that portion of the judgment denying respondent's requested injunction and directed the trial court to order his admission.

FN** Mr. Justice STEVENS views the judgment of the California court as limited to prohibiting the consideration of race only in passing upon Bakke's application. *Post*, at 2809-2810. It must be remembered, however, that petitioner here cross-complained in the trial court for a declaratory judgment that its special program was constitutional and it lost. The trial court's judgment that the special program was unlawful was affirmed by the California Supreme Court in an opinion which left no doubt that the reason for its holding was petitioner's use of race in consideration of *any candidate's* application. Moreover, in explaining the scope of its holding, the court quite clearly stated that petitioner was prohibited from taking race into account in any way in making admissions decisions:

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> "In addition, the University may properly as it in fact does, consider other factors in evaluating an applicant, such as the personal interview, recommendations, character, and matters relating to the needs of the profession and society, such as an applicant's professional goals. In short, the standards for admission employed by the University are not constitutionally infirm except to the extent that they are utilized in a racially discriminatory manner. Disadvantaged applicants of all races must be eligible for sympathetic consideration, and no applicant may be rejected because of his race, in favor of another who is less qualified, as measured by standards applied without regard to race. We reiterate, in view of the dissent's misinterpretation, that we do not compel the University to utilize only 'the highest objective academic credentials' as the criterion for admission." 18 Cal.3d 34, 54-55, 132 Cal.Rptr. 680, 693-694, 553 P.2d 1152, 1166 (1976) (footnote omitted).
>
> This explicit statement makes it unreasonable to assume that the reach of the California court's judgment can be limited in the manner suggested by Mr. Justice STEVENS.

For the reasons stated in the following opinion, I believe that so much of the judgment of the California court as holds petitioner's special admissions program unlawful and directs that respondent be admitted to the Medical School must be affirmed. For the reasons expressed in a separate opinion, my Brothers THE CHIEF JUSTICE, Mr. Justice STEWART, Mr. Justice REHNQUIST and Mr. Justice STEVENS concur in this judgment.

***272** I also conclude for the reasons stated in the following opinion that the portion of the court's judgment enjoining petitioner from according any consideration to race in its admissions process must be reversed. For reasons expressed in separate opinions, my Brothers Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN concur in this judgment.

Affirmed in part and reversed in part.

I [FN*]

> FN* Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN join Parts I and V-C of this opinion. Mr. Justice WHITE also joins Part III-A of this opinion.

The Medical School of the University of California at Davis opened in 1968 with an entering class of 50 students. In 1971, the size of the entering class was increased to 100 students, a level at which it remains. No admissions program for disadvantaged or minority students existed when the school opened, and the first class contained three Asians but no blacks, no Mexican-Americans, and no American Indians. Over the next two years, the faculty devised a special admissions program to increase the representation of "disadvantaged" students in each Medical School class.[FN1] The special ****2739** program consisted of ***273** a separate admissions system operating in coordination with the regular admissions process.

> FN1. Material distributed to applicants for the class entering in 1973 described the special admissions program as follows:
>
> "A special subcommittee of the Admissions Committee, made up of faculty and medical students from minority groups, evaluates applications from economically and/or educationally disadvantaged backgrounds. The applicant may designate on the application form that he or she requests such an evaluation. Ethnic minorities are not categorically considered under the Task Force Program unless they are from disadvantaged backgrounds. Our goals are: 1) A short range goal in the identification and recruitment of potential candidates for admission to medical school in the near future, and 2) Our long-range goal is to stimulate career interest in health professions among junior high and high school students.
>
> "After receiving all pertinent information selected applicants will receive a letter inviting them to our School of Medicine in Davis for an interview. The interviews are conducted by at least one faculty member and one student member of the Task Force Committee. Recommendations are then made to the Admissions Committee of the medical school. Some of the Task Force Faculty are also members of the Admissions Committee.
>
> "Long-range goals will be approached by meeting with counselors and students of schools with large minority populations, as well as with local

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youth and adult community groups.

"Applications for financial aid are available only *after* the applicant has been accepted and can only be awarded after registration. Financial aid is available to students in the form of scholarships and loans. In addition to the Regents' Scholarships and President's Scholarship programs, the medical school participates in the Health Professions Scholarship Program, which makes funds available to students who otherwise might not be able to pursue a medical education. Other scholarships and awards are available to students who meet special eligibility qualifications. Medical students are also eligible to participate in the Federally Insured Student Loan Program and the American Medical Association Education and Research Foundation Loan Program.

"Applications for Admissions are available from:

"Admissions Office

School of Medicine

University of California

Davis, California 95616"

Record 195. The letter distributed the following year was virtually identical, except that the third paragraph was omitted.

Under the regular admissions procedure, a candidate could submit his application to the Medical School beginning in July of the year preceding the academic year for which admission was sought. Record 149. Because of the large number of applications,[FN2] the admissions committee screened each one to select candidates for further consideration. Candidates whose overall undergraduate grade point averages fell below 2.5 on a scale of 4.0 were summarily rejected. *Id.*, at 63. About ***274** one out of six applicants was invited for a personal interview. *Ibid.* Following the interviews, each candidate was rated on a scale of 1 to 100 by his interviewers and four other members of the admissions committee. The rating embraced the interviewers' summaries, the candidate's overall grade point average, grade point average in science courses, scores on the Medical College Admissions Test (MCAT), letters of recommendation, extracurricular activities, and other biographical data. *Id.*, at 62. The ratings were added together to arrive at each candidate's "benchmark" score. Since five committee members rated each candidate in 1973, a perfect score was 500; in 1974, six members rated each candidate, so that a perfect score was 600. The full committee then reviewed the file and scores of each applicant and made offers of admission on a "rolling" basis.[FN3] The chairman was responsible for placing names on the waiting list. They were not placed in strict numerical order; instead, the chairman had discretion to include persons with "special skills." *Id.*, at 63-64.

FN2. For the 1973 entering class of 100 seats, the Davis Medical School received 2,464 applications. *Id.*, at 117. For the 1974 entering class, 3,737 applications were submitted. *Id.*, at 289.

FN3. That is, applications were considered and acted upon as they were received, so that the process of filling the class took place over a period of months, with later applications being considered against those still on file from earlier in the year. *Id.*, at 64.

The special admissions program operated with a separate committee, a majority of whom were members of minority groups. *Id.*, at 163. On the 1973 application form, ****2740** candidates were asked to indicate whether they wished to be considered as "economically and/or educationally disadvantaged" applicants; on the 1974 form the question was whether they wished to be considered as members of a "minority group," which the Medical School apparently viewed as "Blacks," "Chicanos," "Asians," and "American Indians." *Id.*, at 65-66, 146, 197, 203-205, 216-218. If these questions were answered affirmatively, the application was forwarded to the special admissions committee. No formal definition of "disadvantaged***275** " was ever produced, *id.*, at 163-164, but the chairman of the special committee screened each application to see whether it reflected economic or educational deprivation.[FN4] Having passed this initial hurdle, the applications then were rated by the special committee in a fashion similar to that used by the general admissions committee, except that special candidates did not have to meet the 2.5 grade point average cutoff applied to regular applicants. About one-fifth of the total number of special applicants were invited for interviews in 1973 and 1974.[FN5] Following each interview, the special committee assigned each special applicant a benchmark score. The special committee then presented its top choices to the general admissions committee. The latter did not rate or compare the special candidates against the

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general applicants, *id.*, at 388, but could reject recommended special candidates for failure to meet course requirements or other specific deficiencies. *Id.*, at 171-172. The special committee continued to recommend special applicants until a number prescribed by faculty vote were admitted. While the overall class size was still 50, the prescribed number was 8; in 1973 and 1974, when the class size had doubled to 100, the prescribed number of special admissions also doubled, to 16. *Id.*, at 164, 166.

FN4. The chairman normally checked to see if, among other things, the applicant had been granted a waiver of the school's application fee, which required a means test; whether the applicant had worked during college or interrupted his education to support himself or his family; and whether the applicant was a member of a minority group. *Id.*, at 65-66.

FN5. For the class entering in 1973, the total number of special applicants was 297, of whom 73 were white. In 1974, 628 persons applied to the special committee, of whom 172 were white. *Id.*, at 133-134.

From the year of the increase in class size-1971-through 1974, the special program resulted in the admission of 21 black students, 30 Mexican-Americans, and 12 Asians, for a total of 63 minority students. Over the same period, the regular admissions program produced 1 black, 6 Mexican-Americans, ***276** and 37 Asians, for a total of 44 minority students.[FN6] Although disadvantaged whites applied to the special program in large numbers, see n. 5, *supra*, none received an offer of admission through that process. Indeed, in 1974, at least, the special committee explicitly considered only "disadvantaged" special applicants who were members of one of the designated minority groups. Record 171.

FN6. The following table provides a year-by-year comparison of minority admissions at the Davis Medical School:

	Special Admissions Program				General Admissions				Total
	Blacks	Chicanos	Asians	Total	Blacks	Chicanos	Asians	Total	
1970....	5	3	0	8	0	0	4	4	12
1971....	4	9	2	15	1	0	8	9	24
1972....	5	6	5	16	0	0	11	11	27
1973....	6	8	2	16	0	2	13	15	31
1974....	6	7	3	16	0	4	5	9	25

Id., at 216-218. Sixteen persons were admitted under the special program in 1974, *ibid.*, but one Asian withdrew before the start of classes, and the vacancy was filled by a candidate from the general admissions waiting list. Brief for Petitioner 4 n. 5.

****2741** Allan Bakke is a white male who applied to the Davis Medical School in both 1973 and 1974. In both years Bakke's application was considered under the general admissions program, and he received an interview. His 1973 interview was with Dr. Theodore C. West, who considered Bakke "a very desirable applicant to [the] medical school." *Id.*, at 225. Despite a strong benchmark score of 468 out of 500, Bakke was rejected. His application had come late in the year, and no applicants in the general admissions process with scores below 470 were accepted after Bakke's application was completed. *Id.*, at 69. There were four special admissions slots unfilled at that time however, for which Bakke was not considered. *Id.*, at 70. After his 1973 rejection, Bakke wrote to Dr. George H. Lowrey, Associate Dean and Chairman of the Admissions Committee, protesting that the special admissions program operated as a racial and ethnic quota. *id.*, AT 259.

***277** Bakke's 1974 application was completed early in the year. *Id.*, at 70. His student interviewer gave him an overall rating of 94, finding him "friendly, well tempered, conscientious and delightful to speak with." *Id.*, at 229. His faculty interviewer was, by coincidence, the same Dr. Lowrey to whom he had written in protest of the special admissions program. Dr. Lowrey found Bakke "rather limited in his approach" to the problems of the medical profession and found disturbing Bakke's "very definite opinions which were based more on his personal viewpoints than upon a study of the total problem." *Id.*, at 226.

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Dr. Lowrey gave Bakke the lowest of his six ratings, an 86; his total was 549 out of 600. *Id.*, at 230. Again, Bakke's application was rejected. In neither year did the chairman of the admissions committee, Dr. Lowrey, exercise his discretion to place Bakke on the waiting list. *Id.*, at 64. In both years, applicants were admitted under the special program with grade point averages, MCAT scores, and benchmark scores significantly lower than Bakke's.[FN7]

FN7. The following table compares Bakke's science grade point average, overall grade point average, and MCAT scores with the average scores of regular admittees and of special admittees in both 1973 and 1974. Record 210, 223, 231, 234:

Class Entering in 1973

			MCAT (Percentiles)			Gen.
	SGPA	OGPA	Verbal	Quantitative	Science	Infor.
Bakke.....	3.44	3.46	96	94	97	72
Average of regular admittees.....	3.51	3.49	81	76	83	69
Average of special admittees.....	2.62	2.88	46	24	35	33

Class Entering in 1974

			MCAT (Percentiles)			Gen.
	SGPA	OGPA	Verbal	Quantitative	Science	Infor.
Bakke.....	3.44	3.46	96	94	97	72
Average of regular admittees.....	3.36	3.29	69	67	82	72
Average of special						

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admittees.....	2.42	2.62	34	30	37	18

Applicants admitted under the special program also had benchmark scores significantly lower than many students, including Bakke, rejected under the general admissions program, even though the special rating system apparently gave credit for overcoming "disadvantage." *Id.*, at 181, 388.

After the second rejection, Bakke filed the instant suit in the Superior Court of California.[FN8] He sought mandatory, injunctive,**2742 and declaratory relief compelling his admission to the Medical School. He alleged that the Medical School's special admissions program operated to exclude him from the *278 school on the basis of his race, in violation of his rights under the Equal Protection Clause of the Fourteenth Amendment,[FN9] Art. I, § 21, of the California Constitution,[FN10] and § 601 of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d.[FN11] The University cross-complained for a declaration that its special admissions program was lawful. The trial *279 court found that the special program operated as a racial quota, because minority applicants in the special program were rated only against one another. Record 388 and 16 places in the class of 100 were reserved for them. *Id.*, at 295-296. Declaring that the University could not take race into account in making admissions decisions, the trial court held the challenged program violative of the Federal Constitution, the State Constitution, and Title VI. The court refused to order Bakke's admission, however, holding that he had failed to carry his burden of proving that he would have been admitted but for the existence of the special program.

FN8. Prior to the actual filing of the suit, Bakke discussed his intentions with Peter C. Storandt, Assistant to the Dean of Admissions at the Davis Medical School. *Id.*, at 259-269. Storandt expressed sympathy for Bakke's position and offered advice on litigation strategy. Several *amici* imply that these discussions render Bakke's suit "collusive." There is no indication, however, that Storandt's views were those of the Medical School or that anyone else at the school even was aware of Storandt's correspondence and conversations with Bakke. Storandt is no longer with the University.

FN9. "[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."

FN10. "No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens."

This section was recently repealed and its provisions added to Art. I, § 7, of the State Constitution.

FN11. Section 601 of Title VI, 78 Stat. 252, provides as follows:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Bakke appealed from the portion of the trial court judgment denying him admission, and the University appealed from the decision that its special admissions program was unlawful and the order enjoining it from considering race in the processing of applications. The Supreme Court of California transferred the case directly from the trial court, "because of the importance of the issues involved." 18 Cal.3d 34, 39, 132 Cal.Rptr. 680, 684, 553 P.2d 1152, 1156 (1976). The California court accepted the findings of the trial court with respect to the University's program.[FN12] Because the special admissions program involved a racial classification, the Supreme Court held itself bound to apply strict scrutiny. *Id.*, at 49, 132 Cal.Rptr., at 690, 553 P.2d, at 1162-1163. It then turned to the goals the University presented as justifying the special program. Although the court agreed that the goals of integrating the medical profession and increasing the number of physicians willing to serve members of minority groups were compelling state interests, *id.*, at 53, 132 Cal.Rptr., at 693, 553 P.2d, at 1165, it concluded that the special admissions program was not the least intrusive means of achieving those goals. Without passing on the state constitutional or the federal

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statutory grounds cited in the trial court's judgment, the California court held *280 that the Equal Protection Clause of the Fourteenth Amendment required that "no applicant may be rejected because of his race, in favor of another who is less qualified, as measured by standards applied without regard to race." *Id.*, at 55, 132 Cal.Rptr., at 694, 553 P.2d, at 1166.

FN12. Indeed, the University did not challenge the finding that applicants who were not members of a minority group were excluded from consideration in the special admissions process. 18 Cal.3d, at 44, 132 Cal.Rptr., at 687, 553 P.2d, at 1159.

**2743 [2][3][4][5][6] Turning to Bakke's appeal, the court ruled that since Bakke had established that the University had discriminated against him on the basis of his race, the burden of proof shifted to the University to demonstrate that he would not have been admitted even in the absence of the special admissions program.[FN13] *Id.*, at 63-64, 132 Cal.Rptr., at 699-700, 553 P.2d, at 1172. The court analogized Bakke's situation to that of a plaintiff under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-17 (1970 ed., Supp. V), see, *e. g., Franks v. Bowman Transportation Co.*, 424 U.S. 747, 772, 96 S.Ct. 1251, 1267, 47 L.Ed.2d 444 (1976). 18 Cal.3d, at 63-64, 132 Cal.Rptr., at 700, 553 P.2d, at 1172. On this basis, the court initially ordered a remand for the purpose of determining whether, under the newly allocated burden of proof, Bakke would have been admitted to either the 1973 or the 1974 entering class in the absence of the special admissions program. App. A to Application for Stay 48. In its petition for rehearing below, however, the University conceded its inability to carry that burden. App. B to Application for Stay A19-A20.[FN14] The *281 California court thereupon amended its opinion to direct that the trial court enter judgment ordering Bakke's admission to the Medical School. 18 Cal.3d, at 64, 132 Cal.Rptr., at 700, 553 P.2d, at 1172. That order was stayed pending review in this Court. 429 U.S. 953, 97 S.Ct. 573, 50 L.Ed.2d 321 (1976). We granted certiorari to consider the important constitutional issue. 429 U.S. 1090, 97 S.Ct. 1098, 51 L.Ed.2d 535 (1977).

FN13. Petitioner has not challenged this aspect of the decision. The issue of the proper placement of the burden of proof, then, is not before us.

FN14. Several *amici* suggest that Bakke lacks standing, arguing that he never showed that his injury-exclusion from the Medical School-will be redressed by a favorable decision, and that the petitioner "fabricated" jurisdiction by conceding its inability to meet its burden of proof. Petitioner does not object to Bakke's standing, but inasmuch as this charge concerns our jurisdiction under Art. III, it must be considered and rejected. First, there appears to be no reason to question the petitioner's concession. It was not an attempt to stipulate to a conclusion of law or to disguise actual facts of record. Cf. *Swift & Co. v. Hocking Valley R. Co.*, 243 U.S. 281, 37 S.Ct. 287, 61 L.Ed. 722 (1917).

Second, even if Bakke had been unable to prove that he would have been admitted in the absence of the special program, it would not follow that he lacked standing. The constitutional element of standing is plaintiff's demonstration of any injury to himself that is likely to be redressed by favorable decision of his claim. *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 2204, 45 L.Ed.2d 243 (1975). The trial court found such an injury, apart from failure to be admitted, in the University's decision not to permit Bakke to compete for all 100 places in the class, simply because of his race. Record 323. Hence the constitutional requirements of Art. III were met. The question of Bakke's admission *vel non* is merely one of relief.

Nor is it fatal to Bakke's standing that he was not a "disadvantaged" applicant. Despite the program's purported emphasis on disadvantage, it was a minority enrollment program with a secondary disadvantage element. White disadvantaged students were never considered under the special program, and the University acknowledges that its goal in devising the program was to increase minority enrollment.

II

In this Court the parties neither briefed nor argued the applicability of Title VI of the Civil Rights Act of 1964. Rather, as had the California court, they focused exclusively upon the validity of the special admissions program under the Equal Protection Clause. Because it was possible, however, that a decision on Title VI might obviate resort to constitutional interpretation, see *Ashwander v. TVA*, 297 U.S. 288, 346-348, 56 S.Ct. 466, 80 L.Ed. 688 (1936) (concurring opinion), we requested supplementary

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briefing on the statutory issue. 434 U.S. 900, 98 S.Ct. 293, 54 L.Ed.2d 186 (1977).

A

At the outset we face the question whether a right of action for private parties exists under Title VI. Respondent argues that there is a private right of action, invoking**2744 the test set forth in *Cort v. Ash,* 422 U.S. 66, 78, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975). He contends *282 that the statute creates a federal right in his favor, that legislative history reveals an intent to permit private actions,[FN15] that such actions would further the remedial purposes of the statute, and that enforcement of federal rights under the Civil Rights Act generally is not relegated to the States. In addition, he cites several lower court decisions which have recognized or assumed the existence of a private right of action.[FN16] Petitioner denies the existence of a private right of action, arguing that the sole function of § 601, see n. 11, *supra,* was to establish a predicate for administrative action under § 602, 78 Stat. 252, 42 U.S.C. § 2000d-1.[FN17] In its view, administrative curtailment of federal funds under that section was the only sanction to be imposed upon recipients that *283 violated § 601. Petitioner also points out that Title VI contains no explicit grant of a private right of action, in contrast to Titles II, III, IV, and VII, of the same statute, 42 U.S.C. §§ 2000a-3(a), 2000b-2, 2000c-8, and 2000e-5(f) (1970 ed. and Supp. V).[FN18]

FN15. See, *e. g.,* 110 Cong.Rec. 5255 (1964) (remarks of Sen. Case).

FN16. *E. g., Bossier Parish School Board v. Lemon,* 370 F.2d 847, 851-852 (CA5), cert. denied, 388 U.S. 911, 87 S.Ct. 2116, 18 L.Ed.2d 1350 (1967); *Natonabah v. Board of Education,* 355 F.Supp. 716, 724 (NM 1973); cf. *Lloyd v. Regional Transportation Authority,* 548 F.2d 1277, 1284-1287 (C.A.7 1977) (Title V of Rehabilitation Act of 1973, 29 U.S.C. § 790 *et seq.* (1976 ed.)); *Piascik v. Cleveland Museum of Art,* 426 F.Supp. 779, 780 n. 1 (N.D.Ohio 1976) (Title IX of Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (1976 ed.)).

FN17. Section 602, as set forth in 42 U.S.C. § 2000d-1, reads as follows:

"Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report."

FN18. Several comments in the debates cast doubt on the existence of any intent to create a private right of action. For example, Representative Gill stated that no private right of action was contemplated:

"Nowhere in this section do you find a comparable right of legal action for a person who feels he has been denied his rights to participate in the benefits of Federal funds. Nowhere. Only those

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> who have been cut off can go to court and present their claim." 110 Cong.Rec. 2467 (1964).
>
> Accord, *id.,* at 7065 (remarks of Sen. Keating); 6562 (remarks of Sen. Kuchel).

We find it unnecessary to resolve this question in the instant case. The question of respondent's right to bring an action under Title VI was neither argued nor decided in either of the courts below, and this Court has been hesitant to review questions not addressed below. *McGoldrick v. Compagnie Generale Transatlantique,* 309 U.S. 430, 434-435, 60 S.Ct. 670, 672-673, 84 L.Ed. 849 (1940). See also ****2745***Massachusetts v. Westcott,* 431 U.S. 322, 97 S.Ct. 1755, 52 L.Ed.2d 349 (1977); *Cardinale v. Louisiana,* 394 U.S. 437, 439, 89 S.Ct. 1161, 1163, 22 L.Ed.2d 398 (1969). Cf. *Singleton v. Wulff,* 428 U.S. 106, 121, 96 S.Ct. 2868, 2877, 49 L.Ed.2d 826 (1976). We therefore do not address this difficult issue. Similarly, we need not pass ***284** upon petitioner's claim that private plaintiffs under Title VI must exhaust administrative remedies. We assume, only for the purposes of this case, that respondent has a right of action under Title VI. See *Lau v. Nichols,* 414 U.S. 563, 571 n. 2, 94 S.Ct. 786, 790, 39 L.Ed.2d 1 (1974) (STEWART, J., concurring in result).

B

[7] The language of § 601, 78 Stat. 252, like that of the Equal Protection Clause, is majestic in its sweep:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The concept of "discrimination," like the phrase "equal protection of the laws," is susceptible of varying interpretations, for as Mr. Justice Holmes declared, "[a] word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." *Towne v. Eisner,* 245 U.S. 418, 425, 38 S.Ct. 158, 159, 62 L.Ed. 372 (1918). We must, therefore, seek whatever aid is available in determining the precise meaning of the statute before us. *Train v. Colorado Public Interest Research Group,* 426 U.S. 1, 10, 96 S.Ct. 1938, 1942, 48 L.Ed.2d 434 (1976), quoting *United States v. American Trucking Assns.,* 310 U.S. 534, 543-544, 60 S.Ct. 1059, 1063-1064, 84 L.Ed. 1345 (1940). Examination of the voluminous legislative history of Title VI reveals a congressional intent to halt federal funding of entities that violate a prohibition of racial discrimination similar to that of the Constitution. Although isolated statements of various legislators taken out of context, can be marshaled in support of the proposition that § 601 enacted a purely color-blind scheme,[FN19] without regard to the reach of the Equal Protection***285** Clause, these comments must be read against the background of both the problem that Congress was addressing and the broader view of the statute that emerges from a full examination of the legislative debates.

> FN19. For example, Senator Humphrey stated as follows:
>
> "Racial discrimination or segregation in the administration of disaster relief is particularly shocking; and offensive to our sense of justice and fair play. Human suffering draws no color lines, and the administration of help to the sufferers should not." *Id.,* at 6547.
>
> See also *id.,* at 12675 (remarks of Sen. Allott); 6561 (remarks of Sen. Kuchel); 2494, 6047 (remarks of Sen. Pastore). But see *id.,* at 15893 (remarks of Rep. MacGregor); 13821 (remarks of Sen. Saltonstall); 10920 (remarks of Sen. Javits); 5266, 5807 (remarks of Sen. Keating).

The problem confronting Congress was discrimination against Negro citizens at the hands of recipients of federal moneys. Indeed, the color blindness pronouncements cited in the margin at n. 19, generally occur in the midst of extended remarks dealing with the evils of segregation in federally funded programs. Over and over again, proponents of the bill detailed the plight of Negroes seeking equal treatment in such programs.[FN20] There simply was no reason for Congress to consider the validity of hypothetical preferences that might be accorded minority citizens; the legislators were dealing with the real and pressing problem of how to guarantee those citizens equal treatment.

> FN20. See, *e. g., id.,* at 7064-7065 (remarks of Sen. Ribicoff); 7054-7055 (remarks of Sen. Pastore); 6543-6544 (remarks of Sen. Humphrey); 2595 (remarks of Rep. Donohue); 2467-2468 (remarks of Rep. Celler); 1643, 2481-2482 (remarks of Rep. Ryan); H.Rep.No.914, 88th Cong., 1st Sess., pt. 2, pp. 24-25 (1963), U.S.Code Cong. & Admin.News 1964, p. 2355.

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In addressing that problem, supporters of Title VI repeatedly declared that the bill enacted constitutional principles. For example,**2746 Representative Celler, the Chairman of the House Judiciary Committee and floor manager of the legislation in the House, emphasized this in introducing the bill:

"The bill would offer assurance that hospitals financed by Federal money would not deny adequate care to Negroes. It would prevent abuse of food distribution programs whereby Negroes have been known to be denied food *286 surplus supplies when white persons were given such food. It would assure Negroes the benefits now accorded only white students in programs of high[er] education financed by Federal funds. It would, in short, *assure the existing right to equal treatment* in the enjoyment of Federal funds. It would not destroy any rights of private property or freedom of association." 110 Cong.Rec. 1519 (1964) (emphasis added).

Other sponsors shared Representative Celler's view that Title VI embodied constitutional principles.[FN21]

FN21. See, *e. g.,* 110 Cong.Rec. 2467 (1964) (remarks of Rep. Lindsay). See also *id.,* at 2766 (remarks of Rep. Matsunaga); 2731-2732 (remarks of Rep. Dawson); 2595 (remarks of Rep. Donohue); 1527-1528 (remarks of Rep. Celler).

In the Senate, Senator Humphrey declared that the purpose of Title VI was "to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation." *Id.,* at 6544. Senator Ribicoff agreed that Title VI embraced the constitutional standard: "Basically, there is a constitutional restriction against discrimination in the use of federal funds; and title VI simply spells out the procedure to be used in enforcing that restriction." *Id.,* at 13333. Other Senators expressed similar views. [FN22]

FN22. See, *e. g., id.*, at 12675, 12677 (remarks of Sen. Allott); 7064 (remarks of Sen. Pell); 7057, 7062-7064 (remarks of Sen. Pastore); 5243 (remarks of Sen. Clark).

Further evidence of the incorporation of a constitutional standard into Title VI appears in the repeated refusals of the legislation's supporters precisely to define the term "discrimination." Opponents sharply criticized this failure,[FN23] but proponents of the bill merely replied that the meaning of *287 "discrimination" would be made clear by reference to the Constitution or other existing law. For example, Senator Humphrey noted the relevance of the Constitution:

FN23. See, *e. g., id.*, at 6052 (remarks of Sen. Johnston); 5863 (remarks of Sen. Eastland); 5612 (remarks of Sen. Ervin); 5251 (remarks of Sen. Talmadge); 1632 (remarks of Rep. Dowdy); 1619 (remarks of Rep. Abernethy).

"As I have said, the bill has a simple purpose. That purpose is to give fellow citizens-Negroes-the same rights and opportunities that white people take for granted. This is no more than what was preached by the prophets, and by Christ Himself. It is no more than what our Constitution guarantees." *Id.,* at 6553.[FN24]

FN24. See also *id.*, at 7057, 13333 (remarks of Sen. Ribicoff); 7057 (remarks of Sen. Pastore); 5606-5607 (remarks of Sen. Javits); 5253, 5863-5864, 13442 (remarks of Sen. Humphrey).

[8] In view of the clear legislative intent, Title VI must be held to proscribe only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment.

III

A

Petitioner does not deny that decisions based on race or ethnic origin by faculties and administrations of state universities are reviewable under the Fourteenth Amendment. See, *e. g., Missouri ex rel. Gaines v. Canada,* 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208 (1938); *Sipuel v. Board of Regents,* 332 U.S. 631, 68 S.Ct. 299, 92 L.Ed. 247 (1948); *Sweatt v. Painter,* 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114 (1950); *McLaurin v. Oklahoma State Regents,* 339 U.S. 637, 70 S.Ct. 851, 94 L.Ed. 1149 (1950). For his part, respondent does not argue that all racial or ethnic classifications are *per se* invalid. See, *e. g., Hirabayashi v. United States,* 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed. 1774 (1943); *Korematsu v. United States,* 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944); **2747*Lee v. Washington,* 390 U.S. 333, 334, 88 S.Ct. 994, 995, 19 L.Ed.2d 1212 (1968) (Black, Harlan, and Stewart, JJ., concurring); *United Jewish Organizations v. Carey,* 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 (1977). The parties

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do disagree as to the level of judicial scrutiny to be applied to the special admissions program. Petitioner argues that the court below erred in applying strict scrutiny, as this inexact term has been ***288** applied in our cases. That level of review, petitioner asserts, should be reserved for classifications that disadvantage "discrete and insular minorities." See *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n. 4, 58 S.Ct. 778, 783, 82 L.Ed. 1234 (1938). Respondent, on the other hand, contends that the California court correctly rejected the notion that the degree of judicial scrutiny accorded a particular racial or ethnic classification hinges upon membership in a discrete and insular minority and duly recognized that the "rights established [by the Fourteenth Amendment] are personal rights." *Shelley v. Kraemer*, 334 U.S. 1, 22, 68 S.Ct. 836, 846, 92 L.Ed. 1161 (1948).

En route to this crucial battle over the scope of judicial review,[FN25] the parties fight a sharp preliminary action over the proper characterization of the special admissions program. Petitioner prefers to view it as establishing a "goal" of minority representation in the Medical School. Respondent, echoing the courts below, labels it a racial quota.[FN26]

FN25. That issue has generated a considerable amount of scholarly controversy. See, *e. g.*, Ely, The Constitutionality of Reverse Racial Discrimination, 41 U.Chi.L.Rev. 723 (1974); Greenawalt, Judicial Scrutiny of "Benign" Racial Preference in Law School Admissions, 75 Colum.L.Rev. 559 (1975); Kaplan, Equal Justice in an Unequal World: Equality for the Negro, 61 Nw.U.L.Rev. 363 (1966); Karst & Horowitz, Affirmative Action and Equal Protection, 60 Va.L.Rev. 955 (1974); O'Neil, Racial Preference and Higher Education: The Larger Context, 60 Va.L.Rev. 925 (1974); Posner, The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities, 1974 Sup.Ct.Rev. 1; Redish, Preferential Law School Admissions and the Equal Protection Clause: An Analysis of the Competing Arguments, 22 UCLA L.Rev. 343 (1974); Sandalow, Racial Preferences in Higher Education: Political Responsibility and the Judicial Role, 42 U.Chi.L.Rev. 653 (1975); Sedler, Racial Preference, Reality and the Constitution: Bakke v. Regents of the University of California, 17 Santa Clara L.Rev. 329 (1977); Seeburger, A Heuristic Argument Against Preferential Admissions, 39 U.Pitt.L.Rev. 285 (1977).

FN26. Petitioner defines "quota" as a requirement which must be met but can never be exceeded, regardless of the quality of the minority applicants. Petitioner declares that there is no "floor" under the total number of minority students admitted; completely unqualified students will not be admitted simply to meet a "quota." Neither is there a "ceiling," since an unlimited number could be admitted through the general admissions process. On this basis the special admissions program does not meet petitioner's definition of a quota.

The court below found-and petitioner does not deny-that white applicants could not compete for the 16 places reserved solely for the special admissions program. 18 Cal.3d, at 44, 132 Cal.Rptr., at 687, 553 P.2d, at 1159. Both courts below characterized this as a "quota" system.

***289** This semantic distinction is beside the point: The special admissions program is undeniably a classification based on race and ethnic background. To the extent that there existed a pool of at least minimally qualified minority applicants to fill the 16 special admissions seats, white applicants could compete only for 84 seats in the entering class, rather than the 100 open to minority applicants. Whether this limitation is described as a quota or a goal, it is a line drawn on the basis of race and ethnic status. [FN27]

FN27. Moreover, the University's special admissions program involves a purposeful, acknowledged use of racial criteria. This is not a situation in which the classification on its face is racially neutral, but has a disproportionate racial impact. In that situation, plaintiff must establish an intent to discriminate. *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 264-265, 97 S.Ct. 555, 562-563, 50 L.Ed.2d 450 (1977); *Washington v. Davis*, 426 U.S. 229, 242, 96 S.Ct. 2040, 2048, 48 L.Ed.2d 597 (1976); see *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886).

[9] The guarantees of the Fourteenth Amendment extend to all persons. Its language***2748** is explicit: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." It is settled beyond question that the "rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual.

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The rights established are personal rights." *Shelley v. Kraemer, supra,* at 22, 68 S.Ct., at 846. Accord, *Missouri ex rel. Gaines v. Canada, supra,* 305 U.S., at 351, 57 S.Ct., at 237; *McCabe v. Atchison, T. & S.F.R. Co.,* 235 U.S. 151, 161-162, 35 S.Ct. 69, 71, 59 L.Ed. 169 (1914). The guarantee of equal protection cannot mean one thing when applied to one individual and something else when ***290** applied to a person of another color. If both are not accorded the same protection, then it is not equal.

[10] Nevertheless, petitioner argues that the court below erred in applying strict scrutiny to the special admissions program because white males, such as respondent, are not a "discrete and insular minority" requiring extraordinary protection from the majoritarian political process. *Carolene Products Co., supra,* 304 U.S., at 152-153 n. 4, 58 S.Ct., at 783-784. This rationale, however, has never been invoked in our decisions as a prerequisite to subjecting racial or ethnic distinctions to strict scrutiny. Nor has this Court held that discreteness and insularity constitute necessary preconditions to a holding that a particular classification is invidious.[FN28] See, *e. g., Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942); *Carrington v. Rash,* 380 U.S. 89, 94-97, 85 S.Ct. 775, 779-780, 13 L.Ed.2d 675 (1965). These characteristics may be relevant in deciding whether or not to add new types of classifications to the list of "suspect" categories or whether a particular classification survives close examination. See, *e. g., Massachusetts Board of Retirement v. Murgia,* 427 U.S. 307, 313, 96 S.Ct. 2562, 2566, 49 L.Ed.2d 520 (1976) (age); *San Antonio Independent School Dist. v. Rodriquez,* 411 U.S. 1, 28, 93 S.Ct. 1278, 1293, 36 L.Ed.2d 16 (1973) (wealth); *Graham v. Richardson,* 403 U.S. 365, 372, 91 S.Ct. 1848, 1852, 29 L.Ed.2d 534 (1971) (aliens). Racial and ethnic classifications, however, are subject to stringent examination without regard to these additional characteristics. We declared as much in the first cases explicitly to recognize racial distinctions as suspect:

> FN28. After *Carolene Products,* the first specific reference in our decisions to the elements of "discreteness and insularity" appears in *Minersville School District v. Gobitis,* 310 U.S. 586, 606, 60 S.Ct. 1010, 1018, 84 L.Ed. 1375 (1940) (Stone, J., dissenting). The next does not appear until 1970. *Oregon v. Mitchell,* 400 U.S. 112, 295 n. 14, 91 S.Ct. 260, 349, 27 L.Ed.2d 91 (STEWART, J., concurring in part and dissenting in part). These elements have been relied upon in recognizing a suspect class in only one group of cases, those involving aliens. *E. g., Graham v. Richardson,* 403 U.S. 365, 372, 91 S.Ct. 1848, 1852, 29 L.Ed.2d 534 (1971).

"Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people ***291** whose institutions are founded upon the doctrine of equality." *Hirabayashi,* 320 U.S., at 100, 63 S.Ct., at 1385.

"[A]ll legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny." *Korematsu,* 323 U.S., at 216, 65 S.Ct., at 194.

The Court has never questioned the validity of those pronouncements. Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination.

B

This perception of racial and ethnic distinctions is rooted in our Nation's constitutional and demographic history. The Court's initial view of the Fourteenth Amendment was that its "one pervading purpose" was "the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the ****2749** oppressions of those who had formerly exercised dominion over him." *Slaughter-House Cases,* 16 Wall. 36, 71, 21 L.Ed. 394 (1873). The Equal Protection Clause, however, was "[v]irtually strangled in infancy by post-civil-war judicial reactionism." [FN29] It was relegated to decades of relative desuetude while the Due Process Clause of the Fourteenth Amendment, after a short germinal period, flourished as a cornerstone in the Court's defense of property and liberty of contract. See, *e. g., Mugler v. Kansas,* 123 U.S. 623, 661, 8 S.Ct. 273, 297, 31 L.Ed. 205 (1887); *Allgeyer v. Louisiana,* 165 U.S. 578, 17 S.Ct. 427, 41 L.Ed. 832 (1897); *Lochner v. New York,* 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905). In that cause, the Fourteenth Amendment's "one pervading purpose" was displaced. See, *e. g., Plessy v. Ferguson,* 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896). It was only as the era of substantive due process came to a close, see, *e. g.,* ***292***Nebbia v. New York,* 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 (1934); *West Coast Hotel Co. v. Parrish,* 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937), that the Equal Protection Clause began to attain a genuine measure of vitality, see, *e. g., United States v. Carolene Products,* 304 U.S. 144, 58 S.Ct. 778, 82 L.Ed. 1234 (1938); *Skinner v.*

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Oklahoma ex rel. Williamson, supra.

FN29. Tussman & tenBroek, The Equal Protection of the Laws, 37 Calif.L.Rev. 341, 381 (1949).

By that time it was no longer possible to peg the guarantees of the Fourteenth Amendment to the struggle for equality of one racial minority. During the dormancy of the Equal Protection Clause, the United States had become a Nation of minorities.[FN30] Each had to struggle [FN31]-and to some extent struggles still [FN32]-to overcome the prejudices not of a monolithic majority, but of a "majority" composed of various minority groups of whom it was said-perhaps unfairly in many cases-that a shared characteristic was a willingness to disadvantage other groups.[FN33] As the Nation filled with the stock of many lands, the reach of the Clause was gradually extended to all ethnic groups seeking protection from official discrimination. See *Strauder v. West Virginia,* 100 U.S. 303, 308, 25 L.Ed. 664 (1880) (Celtic Irishmen) (dictum); *Yick Wo v. Hopkins,* 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886) (Chinese); *Truax v. Raich,* 239 U.S. 33, 41, 36 S.Ct. 7, 10, 60 L.Ed. 131 (1915) (Austrian resident aliens); *Korematsu, supra* (Japanese); *Hernandez v. Texas,* 347 U.S. 475, 74 S.Ct. 667, 98 L.Ed. 866 (1954) (Mexican-Americans). The guarantees of equal protection, said the Court in ***293** *Yick Wo,* "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws." 118 U.S., at 369, 6 S.Ct., at 1070.

FN30. M. Jones, American Immigration 177-246 (1960).

FN31. J. Higham, Strangers in the Land (1955); G. Abbott, The Immigrant and the Community (1917); P. Roberts, The New Immigration 66-73, 86-91, 248-261 (1912). See also E. Fenton, Immigrants and Unions: A Case Study 561-562 (1975).

FN32. "Members of various religious and ethnic groups, primarily but not exclusively of Eastern, Middle, and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavic groups, continue to be excluded from executive, middle-management, and other job levels because of discrimination based upon their religion and/or national origin." 41 CFR § 60-50.1(b) (1977).

FN33. *E. g.,* Roberts, *supra* n. 31, at 75; Abbott, *supra* n. 31, at 270-271. See generally n. 31, *supra.*

Although many of the Framers of the Fourteenth Amendment conceived of its primary function as bridging the vast distance between members of the Negro race and the white "majority," *Slaughter-House Cases, supra,* the Amendment itself was framed in universal terms, without reference to color, ethnic origin, or condition of prior servitude. As this Court recently remarked in interpreting the 1866 Civil Rights Act to extend to claims of racial discrimination against white persons, "the 39th Congress was intent upon establishing ****2750** in the federal law a broader principle than would have been necessary simply to meet the particular and immediate plight of the newly freed Negro slaves." *McDonald v. Santa Fe Trail Transportation Co.,* 427 U.S. 273, 296, 96 S.Ct. 2574, 2586, 49 L.Ed.2d 493 (1976). And that legislation was specifically broadened in 1870 to ensure that "all persons," not merely "citizens," would enjoy equal rights under the law. See *Runyon v. McCrary,* 427 U.S. 160, 192-202, 96 S.Ct. 2586, 2605-2609, 49 L.Ed.2d 415 (1976) (WHITE, J., dissenting). Indeed, it is not unlikely that among the Framers were many who would have applauded a reading of the Equal Protection Clause that states a principle of universal application and is responsive to the racial, ethnic, and cultural diversity of the Nation. See, *e. g.,* Cong.Globe, 39th Cong., 1st Sess., 1056 (1866) (remarks of Rep. Niblack); *id.,* at 2891-2892 (remarks of Sen. Conness); *id.,* 40th Cong., 2d Sess., 883 (1868) (remarks of Sen. Howe) (Fourteenth Amendment "protect[s] classes from class legislation"). See also Bickel, The Original Understanding and the Segregation Decision, 69 Harv.L.Rev. 1, 60-63 (1955).

Over the past 30 years, this Court has embarked upon the crucial mission of interpreting the Equal Protection Clause with the view of assuring to all persons "the protection of ***294** equal laws," *Yick Wo, supra,* 118 U.S., at 369, 6 S.Ct., at 1070, in a Nation confronting a legacy of slavery and racial discrimination. See, *e. g., Shelley v. Kraemer,* 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948); *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); *Hills v. Gautreaux,* 425 U.S. 284, 96 S.Ct. 1538, 47 L.Ed.2d 792 (1976). Because the landmark decisions in this area arose in response to the continued exclusion of Negroes from the mainstream of American society, they could be characterized as involving discrimination by the "majority" white race against the Negro minority. But they need not be read as depending upon that characterization for their results. It suffices to say that

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"[o]ver the years, this Court has consistently repudiated '[d]istinctions between citizens solely because of their ancestry' as being 'odious to a free people whose institutions are founded upon the doctrine of equality.' " *Loving v. Virginia,* 388 U.S. 1, 11, 87 S.Ct. 1817, 1823, 18 L.Ed.2d 1010 (1967), quoting *Hirabayashi,* 320 U.S., at 100, 63 S.Ct., at 1385.

Petitioner urges us to adopt for the first time a more restrictive view of the Equal Protection Clause and hold that discrimination against members of the white "majority" cannot be suspect if its purpose can be characterized as "benign." [FN34] ***295** The clock of our liberties, however, cannot be turned back to 1868. *Brown v. Board of Education, supra,* 347 U.S., at 492, 74 S.Ct., at 690; accord, *Loving v. Virginia, supra,* 388 U.S., at 9, 87 S.Ct., at 1822. It is far too late to argue that the guarantee of equal protection***2751** to *all* persons permits the recognition of special wards entitled to a degree of protection greater than that accorded others. [FN35] "The Fourteenth Amendment is not directed solely against discrimination due to a 'two-class theory'-that is, based upon differences between 'white' and Negro." *Hernandez,* 347 U.S., at 478, 74 S.Ct., at 670.

FN34. In the view of Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN, the pliable notion of "stigma" is the crucial element in analyzing racial classifications. See, *e. g., post,* at 2785. The Equal Protection Clause is not framed in terms of "stigma." Certainly the word has no clearly defined constitutional meaning. It reflects a subjective judgment that is standardless. *All* state-imposed classifications that rearrange burdens and benefits on the basis of race are likely to be viewed with deep resentment by the individuals burdened. The denial to innocent persons of equal rights and opportunities may outrage those so deprived and therefore may be perceived as invidious. These individuals are likely to find little comfort in the notion that the deprivation they are asked to endure is merely the price of membership in the dominant majority and that its imposition is inspired by the supposedly benign purpose of aiding others. One should not lightly dismiss the inherent unfairness of, and the perception of mistreatment that accompanies, a system of allocating benefits and privileges on the basis of skin color and ethnic origin. Moreover, Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN offer no principle for deciding whether preferential classifications reflect a benign remedial purpose or a malevolent stigmatic classification, since they are willing in this case to accept mere *post hoc* declarations by an isolated state entity-a medical school faculty-unadorned by particularized findings of past discrimination, to establish such a remedial purpose.

FN35. Professor Bickel noted the self-contradiction of that view:

"The lesson of the great decisions of the Supreme Court and the lesson of contemporary history have been the same for at least a generation: discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society. Now this is to be unlearned and we are told that this is not a matter of fundamental principle but only a matter of whose ox is gored. Those for whom racial equality was demanded are to be more equal than others. Having found support in the Constitution for equality, they now claim support for inequality under the same Constitution." A. Bickel, The Morality of Consent 133 (1975).

Once the artificial line of a "two-class theory" of the Fourteenth Amendment is put aside, the difficulties entailed in varying the level of judicial review according to a perceived "preferred" status of a particular racial or ethnic minority are intractable. The concepts of "majority" and "minority" necessarily reflect temporary arrangements and political judgments. As observed above, the white "majority" itself is composed of various minority groups, most of which can lay claim to a history of prior discrimination at the hands of the State and private individuals. Not all of these groups can receive preferential treatment and corresponding judicial tolerance***296** of distinctions drawn in terms of race and nationality, for then the only "majority" left would be a new minority of white Anglo-Saxon Protestants. There is no principled basis for deciding which groups would merit "heightened judicial solicitude" and which would not.[FN36] Courts would be asked to evaluate the extent of the prejudice and consequent ***297** harm suffered by various minority groups. Those whose societal injury is thought to exceed some arbitrary level of tolerability then would be entitled to preferential classifications at the expense of individuals belonging to other groups. Those classifications would be free from exacting judicial

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scrutiny. As these preferences began to have their desired effect, and the consequences of past discrimination were undone, new judicial rankings would be necessary. The kind of variable sociological and political**2752 analysis necessary to produce such rankings simply does not lie within the judicial competence-even if they otherwise were politically feasible and socially desirable.[FN37]

FN36. As I am in agreement with the view that race may be taken into account as a factor in an admissions program, I agree with my Brothers BRENNAN, WHITE, MARSHALL, and BLACKMUN that the portion of the judgment that would proscribe all consideration of race must be reversed. See Part V, *infra.* But I disagree with much that is said in their opinion.

They would require as a justification for a program such as petitioner's, only two findings: (i) that there has been some form of discrimination against the preferred minority groups by "society at large," *post,* at 2789 (it being conceded that petitioner had no history of discrimination), and (ii) that "there is reason to believe" that the disparate impact sought to be rectified by the program is the "product" of such discrimination:

"If it was reasonable to conclude-as we hold that it was-that the failure of minorities to qualify for admission at Davis under regular procedures was due principally to the effects of past discrimination, then there is a reasonable likelihood that, but for pervasive racial discrimination, respondent would have failed to qualify for admission even in the absence of Davis' special admissions program." *Post,* at 2787.

The breadth of this hypothesis is unprecedented in our constitutional system. The first step is easily taken. No one denies the regrettable fact that there has been societal discrimination in this country against various racial and ethnic groups. The second step, however, involves a speculative leap: but for this discrimination by society at large, Bakke "would have failed to qualify for admission" because Negro applicants-nothing is said about Asians, cf., *e. g., post,* at 2791 n. 57-would have made better scores. Not one word in the record supports this conclusion, and the authors of the opinion offer no standard for courts to use in applying such a presumption of causation to other racial or ethnic classifications. This failure is a grave one, since if it may be concluded *on this record* that each of the minority groups preferred by the petitioner's special program is entitled to the benefit of the presumption, it would seem difficult to determine that any of the dozens of minority groups that have suffered "societal discrimination" cannot also claim it, in any area of social intercourse. See Part IV-B, *infra.*

FN37. Mr. Justice Douglas has noted the problems associated with such inquiries:

"The reservation of a proportion of the law school class for members of selected minority groups is fraught with . . . dangers, for one must immediately determine which groups are to receive such favored treatment and which are to be excluded, the proportions of the class that are to be allocated to each, and even the criteria by which to determine whether an individual is a member of a favored group. [Cf. *Plessy v. Ferguson,* 163 U.S. 537, 549, 552, 16 S.Ct. 1138, 1142, 1143, 41 L.Ed. 256 (1896).] There is no assurance that a common agreement can be reached, and first the schools, and then the courts, will be buffeted with the competing claims. The University of Washington included Filipinos, but excluded Chinese and Japanese; another school may limit its program to blacks, or to blacks and Chicanos. Once the Court sanctioned racial preferences such as these, it could not then wash its hands of the matter, leaving it entirely in the discretion of the school, for then we would have effectively overruled *Sweatt v. Painter,* 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 620, and allowed imposition of a 'zero' allocation. But what standard is the Court to apply when a rejected applicant of Japanese ancestry brings suit to require the University of Washington to extend the same privileges to his group? The Committee might conclude that the population of Washington is now 2% Japanese, and that Japanese also constitute 2% of the Bar, but that had they not been handicapped by a history of discrimination, Japanese would now constitute 5% of the Bar, or 20%. Or, alternatively, the Court could attempt to assess how grievously each group has suffered from discrimination, and allocate proportions accordingly; if that were the standard the current University of Washington policy would almost

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surely fall, for there is no Western State which can claim that it has always treated Japanese and Chinese in a fair and evenhanded manner. See, *e. g., Yick Wo v. Hopkins,* 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220; *Terrace v. Thompson,* 263 U.S. 197, 44 S.Ct. 15, 68 L.Ed. 255; *Oyama v. California,* 332 U.S. 633, 68 S.Ct. 269, 92 L.Ed. 249. This Court has not sustained a racial classification since the wartime cases of *Korematsu v. United States,* 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194, and *Hirabayashi v. United States,* 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed. 1774, involving curfews and relocations imposed upon Japanese-Americans.

"Nor obviously will the problem be solved if next year the Law School included only Japanese and Chinese, for then Norwegians and Swedes, Poles and Italians, Puerto Ricans and Hungarians, and all other groups which form this diverse Nation would have just complaints." *DeFunis v. Odegaard,* 416 U.S. 312, 337-340, 94 S.Ct. 1704, 1716, 1717, 40 L.Ed.2d 164 (1974) (dissenting opinion) (footnotes omitted).

***298** Moreover, there are serious problems of justice connected with the idea of preference itself. First, it may not always be clear that a so-called preference is in fact benign. Courts may be asked to validate burdens imposed upon individual members of a particular group in order to advance the group's general interest. See *United Jewish Organizations v. Carey,* 430 U.S., at 172-173, 97 S.Ct., at 1013. (BRENNAN, J., concurring in part). Nothing in the Constitution supports the notion that individuals may be asked to suffer otherwise impermissible burdens in order to enhance the societal standing of their ethnic groups. Second, preferential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth. See *DeFunis v. Odegaard,* 416 U.S. 312, 343, 94 S.Ct. 1704, 1719, 40 L.Ed.2d 164 (1974) (Douglas, J., dissenting). Third, there is a measure of inequity in forcing innocent persons in respondent's position to bear the burdens of redressing grievances not of their making.

By hitching the meaning of the Equal Protection Clause to these transitory considerations, we would be holding, as a constitutional principle, that judicial scrutiny of classifications touching on racial and ethnic background may vary with the ebb and flow of political forces. Disparate constitutional tolerance of such classifications well may serve to exacerbate ***299** racial and ethnic antagonisms rather than alleviate them. *United Jewish Organizations, supra,* 430 U.S., at 173-174, 97 S.Ct., at 1013-1014 (BRENNAN, J., concurring in part). Also, the mutability of a constitutional principle, based upon shifting political and social judgments, undermines the chances for consistent application of the Constitution from ****2753** one generation to the next, a critical feature of its coherent interpretation. *Pollock v. Farmers' Loan & Trust Co.,* 157 U.S. 429, 650-651, 15 S.Ct. 673, 716, 39 L.Ed. 759 (1895) (White, J., dissenting). In expounding the Constitution, the Court's role is to discern "principles sufficiently absolute to give them roots throughout the community and continuity over significant periods of time, and to lift them above the level of the pragmatic political judgments of a particular time and place." A. Cox, The Role of the Supreme Court in American Government 114 (1976).

If it is the individual who is entitled to judicial protection against classifications based upon his racial or ethnic background because such distinctions impinge upon personal rights, rather than the individual only because of his membership in a particular group, then constitutional standards may be applied consistently. Political judgments regarding the necessity for the particular classification may be weighed in the constitutional balance, *Korematsu v. United States,* 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944), but the standard of justification will remain constant. This is as it should be, since those political judgments are the product of rough compromise struck by contending groups within the democratic process.[FN38] When they touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest. The Constitution guarantees that right to every person regardless of his background. *Shelley v. Kraemer,* 334 U.S., at 22, 68 S.Ct., at 846; *Missouri ex rel. Gaines v. Canada,* 305 U.S., at 351, 59 S.Ct., at 237.

FN38. R. Dahl, A Preface to Democratic Theory (1956); Posner, *supra* n. 25, at 27.

***300** C

Petitioner contends that on several occasions this Court has approved preferential classifications without applying the most exacting scrutiny. Most of the cases upon which petitioner relies are drawn from three areas: school desegregation, employment discrimination, and sex discrimi-

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nation. Each of the cases cited presented a situation materially different from the facts of this case.

The school desegregation cases are inapposite. Each involved remedies for clearly determined constitutional violations. *E. g., Swann v. Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); *McDaniel v. Barresi,* 402 U.S. 39, 91 S.Ct. 1287, 28 L.Ed.2d 582 (1971); *Green v. County School Board,* 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968). Racial classifications thus were designed as remedies for the vindication of constitutional entitlement.[FN39] Moreover, the scope of the remedies was not permitted to exceed the extent of the ***301** violations. ****2754***E. g., Dayton Board of Education v. Brinkman,* 433 U.S. 406, 97 S.Ct. 2766, 53 L.Ed.2d 851 (1977); *Milliken v. Bradley,* 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974); see *Pasadena City Board of Education v. Spangler,* 427 U.S. 424, 96 S.Ct. 2697, 49 L.Ed.2d 599 (1976). See also *Austin Independent School Dist. v. United States,* 429 U.S. 990, 991-995, 97 S.Ct. 517-519, 50 L.Ed.2d 603 (1976) (POWELL, J., concurring). Here, there was no judicial determination of constitutional violation as a predicate for the formulation of a remedial classification.

FN39. Petitioner cites three lower court decisions allegedly deviating from this general rule in school desegregation cases: *Offermann v. Nitkowski,* 378 F.2d 22 (C.A.2 1967); *Wanner v. County School Board,* 357 F.2d 452 (C.A.4 1966); *Springfield School Committee v. Barksdale,* 348 F.2d 261 (C.A.1 1965). Of these, *Wanner* involved a school system held to have been *de jure* segregated and enjoined from maintaining segregation; racial districting was deemed necessary. 357 F.2d, at 454. Cf. *United Jewish Organizations v. Carey,* 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 (1977). In *Barksdale* and *Offermann,* courts did approve voluntary districting designed to eliminate discriminatory attendance patterns. In neither, however, was there any showing that the school board planned extensive pupil transportation that might threaten liberty or privacy interests. See *Keyes v. School District No. 1,* 413 U.S. 189, 240-250, 93 S.Ct. 2686, 2713, 2718, 37 L.Ed.2d 548 (1973) (POWELL, J., concurring in part and dissenting in part). Nor were white students deprived of an equal opportunity for education.

Respondent's position is wholly dissimilar to that of a pupil bused from his neighborhood school to a comparable school in another neighborhood in compliance with a desegregation decree. Petitioner did not arrange for respondent to attend a different medical school in order to desegregate Davis Medical School; instead, it denied him admission and may have deprived him altogether of a medical education.

The employment discrimination cases also do not advance petitioner's cause. For example, in *Franks v. Bowman Transportation Co.,* 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed.2d 444 (1976), we approved a retroactive award of seniority to a class of Negro truckdrivers who had been the victims of discrimination-not just by society at large, but by the respondent in that case. While this relief imposed some burdens on other employees, it was held necessary " 'to make [the victims] whole for injuries suffered on account of unlawful employment discrimination.' " *Id.,* at 763, 96 S.Ct., at 1264, quoting *Albemarle Paper Co. v. Moody,* 422 U.S. 405, 418, 95 S.Ct. 2362, 2372, 45 L.Ed.2d 280 (1975). The Courts of Appeals have fashioned various types of racial preferences as remedies for constitutional or statutory violations resulting in identified, race-based injuries to individuals held entitled to the preference. *E. g., Bridgeport Guardians, Inc. v. Bridgeport Civil Service Commission,* 482 F.2d 1333 (CA2 1973); *Carter v. Gallagher,* 452 F.2d 315 (CA8 1972), modified on rehearing en banc, *id.,* at 327. Such preferences also have been upheld where a legislative or administrative body charged with the responsibility made determinations of past discrimination by the industries affected, and fashioned remedies deemed appropriate to rectify the discrimination. *E. g., Contractors Association of Eastern Pennsylvania v. Secretary of Labor,* 442 F.2d 159 (C.A.3), cert. denied, 404 U.S. 854, 92 S.Ct. 98, 30 L.Ed.2d 95 (1971); [FN40] ***302***Associated General Contractors of Massachusetts, Inc. v. Altshuler,* 490 F.2d 9 (C.A.1 1973), cert. denied, 416 U.S. 957, 94 S.Ct. 1971, 40 L.Ed.2d 307 (1974); cf. *Katzenbach v. Morgan,* 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966). But we have never approved preferential classifications in the absence of proved constitutional or statutory violations.[FN41]

FN40. Every decision upholding the requirement of preferential hiring under the authority of Exec. Order No. 11246, 3 CFR 339 (1964-1965 Comp.), has emphasized the existence of previous discrimination as a predicate for the imposition of a preferential remedy. *Contractors Association of Eastern Pennsylvania; Southern Illinois Builders*

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Assn. v. Ogilvie, 471 F.2d 680 (C.A.7 1972); *Joyce v. McCrane,* 320 F.Supp. 1284 (NJ 1970); *Weiner v. Cuyahoga Community College District,* 19 Ohio St.2d 35, 249 N.E.2d 907, cert. denied, 396 U.S. 1004, 90 S.Ct. 554, 24 L.Ed.2d 495 (1970). See also *Rosetti Contracting Co. v. Brennan,* 508 F.2d 1039, 1041 (C.A.7 1975); *Associated General Contractors of Massachusetts, Inc. v. Altshuler,* 490 F.2d 9 (C.A.1 1973), cert. denied, 416 U.S. 957, 94 S.Ct. 1971, 40 L.Ed.2d 307 (1974); *Northeast Constr. Co. v. Romney,* 157 U.S.App.D.C. 381, 383, 390, 485 F.2d 752, 754, 761 (1973).

FN41. This case does not call into question congressionally authorized administrative actions, such as consent decrees under Title VII or approval of reapportionment plans under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (1970 ed., Supp. V). In such cases, there has been detailed legislative consideration of the various indicia of previous constitutional or statutory violations, *e. g., South Carolina v. Katzenbach,* 383 U.S. 301, 308-310, 86 S.Ct. 803, 808-809, 15 L.Ed.2d 769 (1966) (§ 5), and particular administrative bodies have been charged with monitoring various activities in order to detect such violations and formulate appropriate remedies. See *Hampton v. Mow Sun Wong,* 426 U.S. 88, 103, 96 S.Ct. 1895, 1905, 48 L.Ed.2d 495 (1976).

Furthermore, we are not here presented with an occasion to review legislation by Congress pursuant to its powers under § 2 of the Thirteenth Amendment and § 5 of the Fourteenth Amendment to remedy the effects of prior discrimination. *Katzenbach v. Morgan,* 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966); *Jones v. Alfred H. Mayer Co.,* 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189 (1968). We have previously recognized the special competence of Congress to make findings with respect to the effects of identified past discrimination and its discretionary authority to take appropriate remedial measures.

Nor is petitioner's view as to the applicable standard supported by the fact that **2755 gender-based classifications are not subjected to this level of scrutiny. *E.G., Califano v. Webster,* 430 U.S. 313, 316-317, 97 S.Ct. 1192, 1194-1195, 51 L.Ed.2d 360 (1977); *Craig v. Boren,* 429 U.S. 190, 211, 97 S.Ct. 451, 464, 50 L.Ed.2d 397 (1976) (POWELL, J., concurring). Gender-based distinctions are less likely to create the analytical and practicalproblems *303 present in preferential programs premised on racial or ethnic criteria. With respect to gender there are only two possible classifications. The incidence of the burdens imposed by preferential classifications is clear. There are no rival groups which can claim that they, too, are entitled to preferential treatment. Classwide questions as to the group suffering previous injury and groups which fairly can be burdened are relatively manageable for reviewing courts. See, *e. g., Califano v. Goldfarb,* 430 U.S. 199, 212-217, 97 S.Ct. 1021, 1029-1032, 51 L.Ed.2d 270 (1977); *Weinberger v. Wiesenfeld,* 420 U.S. 636, 645, 95 S.Ct. 1225, 1231, 43 L.Ed.2d 514 (1975). The resolution of these same questions in the context of racial and ethnic preferences presents far more complex and intractable problems than gender-based classifications. More importantly, the perception of racial classifications as inherently odious stems from a lengthy and tragic history that gender-based classifications do not share. In sum, the Court has never viewed such classification as inherently suspect or as comparable to racial or ethnic classifications for the purpose of equal protection analysis.

Petitioner also cites *Lau v. Nichols,* 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974), in support of the proposition that discrimination favoring racial or ethnic minorities has received judicial approval without the exacting inquiry ordinarily accorded "suspect" classifications. In *Lau,* we held that the failure of the San Francisco school system to provide remedial English instruction for some 1,800 students of oriental ancestry who spoke no English amounted to a violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the regulations promulgated thereunder. Those regulations required remedial instruction where inability to understand English excluded children of foreign ancestry from participation in educational programs. 414 U.S., at 568, 94 S.Ct., at 789. Because we found that the students in *Lau* were denied "a meaningful opportunity to participate in the educational program," *ibid.,* we remanded for the fashioning of a remedial order.

*304 *Lau* provides little support for petitioner's argument. The decision rested solely on the statute, which had been construed by the responsible administrative agency to reach educational practices "which have the effect of subjecting individuals to discrimination," *ibid.* We stated: "Under these state-imposed standards there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed

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from any meaningful education." *Id.*, at 566, 94 S.Ct., at 788. Moreover, the "preference" approved did not result in the denial of the relevant benefit-"meaningful opportunity to participate in the educational program"-to anyone else. No other student was deprived by that preference of the ability to participate in San Francisco's school system, and the applicable regulations required similar assistance for all students who suffered similar linguistic deficiencies. *Id.*, at 570-571, 94 S.Ct., at 790 (STEWART, J., concurring in result).

In a similar vein,[FN42] petitioner contends that our recent decision in **2756*United Jewish Organizations v. Carey*, 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 (1977), indicates a willingness to approve racial classifications designed to benefit certain minorities, without denominating the classifications as "suspect." The State of New York had redrawn its reapportionment plan to meet objections of the Department of Justice under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (1970 ed., Supp. V). Specifically, voting districts were redrawn to enhance the electoral power *305 of certain "nonwhite" voters found to have been the victims of unlawful "dilution" under the original reapportionment plan. *United Jewish Organizations,* like *Lau,* properly is viewed as a case in which the remedy for an administrative finding of discrimination encompassed measures to improve the previously disadvantaged group's ability to participate, without excluding individuals belonging to any other group from enjoyment of the relevant opportunity-meaningful participation in the electoral process.

> FN42. Petitioner also cites our decision in *Morton v. Mancari*, 417 U.S. 535, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974), for the proposition that the State may prefer members of traditionally disadvantaged groups. In *Mancari,* we approved a hiring preference for qualified Indians in the Bureau of Indian Affairs of the Department of the Interior (BIA). We observed in that case, however, that the legal status of the BIA is *sui generis.* *Id.*, at 554, 94 S.Ct., at 2484. Indeed, we found that the preference was not racial at all, but "an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent . . . groups . . . whose lives and activities are governed by the BIA in a unique fashion." *Ibid.*

In this case, unlike *Lau* and *United Jewish Organizations,* there has been no determination by the legislature or a responsible administrative agency that the University engaged in a discriminatory practice requiring remedial efforts. Moreover, the operation of petitioner's special admissions program is quite different from the remedial measures approved in those cases. It prefers the designated minority groups at the expense of other individuals who are totally foreclosed from competition for the 16 special admissions seats in every Medical School class. Because of that foreclosure, some individuals are excluded from enjoyment of a state-provided benefit-admission to the Medical School-they otherwise would receive. When a classification denies an individual opportunities or benefits enjoyed by others solely because of his race or ethnic background, it must be regarded as suspect. *E. g., McLaurin v. Oklahoma State Regents,* 339 U.S., at 641-642, 70 S.Ct., at 853-854.

IV

We have held that in "order to justify the use of a suspect classification, a State must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is 'necessary . . . to the accomplishment' of its purpose or the safeguarding of its interest." *In re Griffiths*, 413 U.S. 717, 721-722, 93 S.Ct. 2851, 2855, 37 L.Ed.2d 910 (1973) (footnotes omitted); *Loving v. Virginia*, 388 U.S., at 11, 87 S.Ct., at 1823; *McLaughlin v. Florida*, 379 U.S. 184, 196, 85 S.Ct. 283, 290, 13 L.Ed.2d 222 (1964). The special admissions *306 program purports to serve the purposes of: (i) "reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession," Brief for Petitioner 32; (ii) countering the effects of societal discrimination; [FN43] (iii) increasing**2757 the number of physicians who will practice in communities currently underserved; and (iv) obtaining the educational benefits that flow from an ethnically diverse student body. It is necessary to decide which, if any, of these purposes is substantial enough to support the use of a suspect classification.

> FN43. A number of distinct subgoals have been advanced as falling under the rubric of "compensation for past discrimination." For example, it is said that preferences for Negro applicants may compensate for harm done them personally, or serve to place them at economic levels they might have attained but for discrimination against their forebears. Greenawalt, *supra* n. 25, at 581-586. Another view of the "compensation"

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goal is that it serves as a form of reparation by the "majority" to a victimized group as a whole. B. Bittker, The Case for Black Reparations (1973). That justification for racial or ethnic preference has been subjected to much criticism. *E. g.,* Greenawalt, *supra* n. 25, at 581; Posner, *supra*, n. 25 at 16-17, and n. 33. Finally, it has been argued that ethnic preferences "compensate" the group by providing examples of success whom other members of the group will emulate, thereby advancing the group's interest and society's interest in encouraging new generations to overcome the barriers and frustrations of the past. Redish, *supra* n. 25, at 391. For purposes of analysis these subgoals need not be considered separately.

Racial classifications in admissions conceivably could serve a fifth purpose, one which petitioner does not articulate: fair appraisal of each individual's academic promise in the light of some cultural bias in grading or testing procedures. To the extent that race and ethnic background were considered only to the extent of curing established inaccuracies in predicting academic performance, it might be argued that there is no "preference" at all. Nothing in this record, however, suggests either that any of the quantitative factors considered by the Medical School were culturally biased or that petitioner's special admissions program was formulated to correct for any such biases. Furthermore, if race or ethnic background were used solely to arrive at an unbiased prediction of academic success, the reservation of fixed numbers of seats would be inexplicable.

***307** A

[11] If petitioner's purpose is to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose must be rejected not as insubstantial but as facially invalid. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids. *E. g., Loving v. Virginia, supra,* 388 U.S., at 11, 87 S.Ct., at 1823; *McLaughlin v. Florida, supra,* 379 U.S., at 196, 85 S.Ct., at 290; *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

B

The State certainly has a legitimate and substantial interest in ameliorating, or eliminating where feasible, the disabling effects of identified discrimination. The line of school desegregation cases, commencing with *Brown,* attests to the importance of this state goal and the commitment of the judiciary to affirm all lawful means toward its attainment. In the school cases, the States were required by court order to redress the wrongs worked by specific instances of racial discrimination. That goal was far more focused than the remedying of the effects of "societal discrimination," an amorphous concept of injury that may be ageless in its reach into the past.

[12] We have never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations. See, *e. g., Teamsters v. United States,* 431 U.S. 324, 367-376, 97 S.Ct. 1843, 1870-1875, 52 L.Ed.2d 396 (1977); *United Jewish Organizations,* 430 U.S., at 155-156, 97 S.Ct., at 1004-1005; *South Carolina v. Katzenbach,* 383 U.S. 301, 308, 86 S.Ct. 803, 808, 15 L.Ed.2d 769 (1966). After such findings have been made, the governmental interest in preferring members of the injured groups at the expense of others is substantial, since the legal rights of the victims must be vindicated. In such a case, the ***308** extent of the injury and the consequent remedy will have been judicially, legislatively, or administratively defined. Also, the remedial action usually remains subject to continuing oversight to assure that it will work the least harm possible to other innocent persons competing for the benefit. Without such findings of constitutional or statutory violations,[FN44] it cannot be ***309** said that ****2758** the government has any greater interest in helping one individual than in refraining from harming another. Thus, the government has no compelling justification for inflicting such harm.

FN44. Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN misconceive the scope of this Court's holdings under Title VII when they suggest that "disparate impact" alone is sufficient to establish a violation of that statute and, by analogy, other civil rights measures. See *post,* at 2786-2787, and n. 42. That this was not the meaning of Title VII was made quite clear in the seminal decision in this area, *Griggs v. Duke Power Co.,* 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971):

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"*Discriminatory preference* for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of *artificial, arbitrary, and unnecessary barriers* to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification." *Id.*, at 431, 91 S.Ct., at 853 (emphasis added).

Thus, disparate impact is a basis for relief under Title VII only if the practice in question is not founded on "business necessity," *ibid.*, or lacks "a manifest relationship to the employment in question," *id.*, at 432, 91 S.Ct., at 854. See also *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-803, 805-806, 93 S.Ct. 1817, 1824, 1825, 1826, 36 L.Ed.2d 668 (1973). Nothing *in this record* -as opposed to some of the general literature cited by Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN-even remotely suggests that the disparate impact of the general admissions program at Davis Medical School, resulting primarily from the sort of disparate test scores and grades set forth in n. 7, *supra*, is without educational justification.

Moreover, the presumption in *Griggs* -that disparate impact without any showing of business justification established the existence of discrimination in violation of the statute-was based on legislative determinations, wholly absent here, that past discrimination had handicapped various minority groups to such an extent that disparate impact could be traced to identifiable instances of past discrimination:

"[Congress sought] to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices." *Griggs, supra*, 401 U.S., at 429-430, 91 S.Ct., at 853.

See, *e. g.*, H.R.Rep. No. 914, 88th Cong., 1st Sess., pt. 2, p. 26 (1963) ("Testimony supporting the fact of discrimination in employment is overwhelming"). See generally Vaas, Title VII: The Legislative History, 7 B.C.Ind. & Com.L.Rev. 431 (1966). The Court emphasized that "the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group." 401 U.S., at 430-431, 91 S.Ct., at 853. Indeed, § 703(j) of the Act makes it clear that preferential treatment for an individual or minority group to correct an existing "imbalance" may not be required under Title VII. 42 U.S.C. § 2000e-2(j). Thus, Title VII principles support the proposition that findings of identified discrimination must precede the fashioning of remedial measures embodying racial classifications.

Petitioner does not purport to have made, and is in no position to make, such findings. Its broad mission is education, not the formulation of any legislative policy or the adjudication of particular claims of illegality. For reasons similar to those stated in Part III of this opinion, isolated segments of our vast governmental structures are not competent to make those decisions, at least in the absence of legislative mandates and legislatively determined criteria.[FN45] Cf. *Hampton v. Mow Sun Wong*, 426 U.S. 88, 96 S.Ct. 1895, 48 L.Ed.2d 495 (1976); n. 41, *supra*. Before relying upon these sorts of findings in establishing a racial classification, a governmental body must have the authority and capability to establish, in the record, that the classification is responsive to identified discrimination. See, *e. g., Califano v. Webster*, 430 U.S., at 316-321, 97 S.Ct., at 1194-1197; ***310***Califano v. Goldfarb*, 430 U.S., at 212-217, 97 S.Ct., at 1029-1032. Lacking this capability, petitioner has not carried its burden of justification on this issue.

FN45. For example, the University is unable to explain its selection of only the four favored groups-Negroes, Mexican-Americans, American-Indians, and Asians-for preferential treatment. The inclusion of the last group is especially curious in light of the substantial numbers of Asians admitted through the regular admissions process. See also n. 37, *supra*.

[13] Hence, the purpose of helping certain groups whom the faculty of the Davis Medical School perceived as victims of "societal discrimination" does not justify a classification that imposes disadvantages upon persons like

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respondent, who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered. To hold otherwise would be to convert a remedy heretofore reserved for violations of legal rights into a privilege that all institutions throughout the Nation could grant at their pleasure to whatever groups are perceived as victims of societal discrimination. That is a step we have never approved. Cf. *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 96 S.Ct. 2697, 49 L.Ed.2d 599 (1976).

C

Petitioner identifies, as another purpose of its program, improving the delivery of **2759 health-care services to communities currently underserved. It may be assumed that in some situations a State's interest in facilitating the health care of its citizens is sufficiently compelling to support the use of a suspect classification. But there is virtually no evidence in the record indicating that petitioner's special admissions program is either needed or geared to promote that goal.[FN46] The court below addressed this failure of proof:

> FN46. The only evidence in the record with respect to such underservice is a newspaper article. Record 473.

"The University concedes it cannot assure that minority doctors who entered under the program, all of whom expressed an 'interest' in practicing in a disadvantaged community, will actually do so. It may be correct to assume that some of them will carry out this intention, and that it is more likely they will practice in minority *311 communities than the average white doctor. (See Sandalow, *Racial Preferences in Higher Education: Political Responsibility and the Judicial Role* (1975) 42 U.Chi.L.Rev. 653, 688). Nevertheless, there are more precise and reliable ways to identify applicants who are genuinely interested in the medical problems of minorities than by race. An applicant of whatever race who has demonstrated his concern for disadvantaged minorities in the past and who declares that practice in such a community is his primary professional goal would be more likely to contribute to alleviation of the medical shortage than one who is chosen entirely on the basis of race and disadvantage. In short, there is no empirical data to demonstrate that any one race is more selflessly socially oriented or by contrast that another is more selfishly acquisitive." 18 Cal.3d, at 56, 132 Cal.Rptr., at 695, 553 P.2d, at 1167.

Petitioner simply has not carried its burden of demonstrating that it must prefer members of particular ethnic groups over all other individuals in order to promote better health-care delivery to deprived citizens. Indeed, petitioner has not shown that its preferential classification is likely to have any significant effect on the problem.[FN47]

> FN47. It is not clear that petitioner's two-track system, even if adopted throughout the country, would substantially increase representation of blacks in the medical profession. That is the finding of a recent study by Sleeth & Mishell, Black Under-Representation in United States Medical Schools, 297 New England J. of Med. 1146 (1977). Those authors maintain that the cause of black underrepresentation lies in the small size of the national pool of qualified black applicants. In their view, this problem is traceable to the poor premedical experiences of black undergraduates, and can be remedied effectively only by developing remedial programs for black students before they enter college.

D

[14] The fourth goal asserted by petitioner is the attainment of a diverse student body. This clearly is a constitutionally permissible*312 goal for an institution of higher education. Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body. Mr. Justice Frankfurter summarized the "four essential freedoms" that constitute academic freedom:

" 'It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail "the four essential freedoms" of a university-to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.' " *Sweezy v. New Hampshire*, 354 U.S. 234, 263, 77 S.Ct. 1203, 1218, 1 L.Ed.2d 1311 (1957) (concurring in result).

Our national commitment to the safeguarding of these freedoms within university communities was emphasized in *Keyishian v. Board of Regents*, 385 U.S. 589, 603, 87 S.Ct. 675, 683, 17 L.Ed.2d 629 (1967):

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**2760 "Our Nation is deeply committed to safeguarding academic freedom which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment . . . . The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.' *United States v. Associated Press*, D.C., 52 F.Supp. 362, 372."

The atmosphere of "speculation, experiment and creation"-so essential to the quality of higher education-is widely believed to be promoted by a diverse student body.[FN48] As the Court **313** noted in *Keyishian*, it is not too much to say that the "nation's future depends upon leaders trained through wide exposure" to the ideas and mores of students as diverse as this Nation of many peoples.

FN48. The president of Princeton University has described some of the benefits derived from a diverse student body:

"[A] great deal of learning occurs informally. It occurs through interactions among students of both sexes; of different races, religions, and backgrounds; who come from cities and rural areas, from various states and countries; who have a wide variety of interests, talents, and perspectives; and who are able, directly or indirectly, to learn from their differences and to stimulate one another to reexamine even their most deeply held assumptions about themselves and their world. As a wise graduate of ours observed in commenting on this aspect of the educational process, 'People do not learn very much when they are surrounded only by the likes of themselves.'

"In the nature of things, it is hard to know how, and when, and even if, this informal 'learning through diversity' actually occurs. It does not occur for everyone. For many, however, the unplanned, casual encounters with roommates, fellow sufferers in an organic chemistry class, student workers in the library, teammates on a basketball squad, or other participants in class affairs or student government can be subtle and yet powerful sources of improved understanding and personal growth." Bowen, Admissions and the Relevance of Race, Princeton Alumni Weekly 7, 9 (Sept. 26, 1977).

Thus, in arguing that its universities must be accorded the right to select those students who will contribute the most to the "robust exchange of ideas," petitioner invokes a countervailing constitutional interest, that of the First Amendment. In this light, petitioner must be viewed as seeking to achieve a goal that is of paramount importance in the fulfillment of its mission.

It may be argued that there is greater force to these views at the undergraduate level than in a medical school where the training is centered primarily on professional competency. But even at the graduate level, our tradition and experience lend support to the view that the contribution of diversity is substantial. In *Sweatt v. Painter*, 339 U.S., at 634, 70 S.Ct., at 850, the **314** Court made a similar point with specific reference to legal education:

"The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned."

Physicians serve a heterogeneous population. An otherwise qualified medical student with a particular background-whether it be ethnic, geographic, culturally advantaged or disadvantaged-may bring to a professional school of medicine experiences, outlooks, and ideas that enrich the training of its student body and better equip its graduates to render with understanding their vital service to humanity.[FN49]

FN49. Graduate admissions decisions, like those at the undergraduate level, are concerned with "assessing the potential contributions to the society of each individual candidate following his or her graduation-contributions defined in the broadest way to include the doctor and the poet, the most active participant in business or government affairs and the keenest critic of all things organized, the solitary scholar and the concerned parent." *Id.*, at 10.

Ethnic diversity, however, is only one element in a range of factors a university **2761 properly may consider in attaining the goal of a heterogeneous student body. Although a university must have wide discretion in making

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the sensitive judgments as to who should be admitted, constitutional limitations protecting individual rights may not be disregarded. Respondent urges-and the courts below have held-that petitioner's dual admissions program is a racial classification that impermissibly infringes his rights under the Fourteenth Amendment. As the interest of diversity is compelling in the context of a university's admissions program, the question remains whether the ***315** program's racial classification is necessary to promote this interest. *In Re Griffiths*, 413 u.s., at 721-722, 93 s.ct., at 2854-2855.

V

A

It may be assumed that the reservation of a specified number of seats in each class for individuals from the preferred ethnic groups would contribute to the attainment of considerable ethnic diversity in the student body. But petitioner's argument that this is the only effective means of serving the interest of diversity is seriously flawed. In a most fundamental sense the argument misconceives the nature of the state interest that would justify consideration of race or ethnic background. It is not an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups, with the remaining percentage an undifferentiated aggregation of students. The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. Petitioner's special admissions program, focused *solely* on ethnic diversity, would hinder rather than further attainment of genuine diversity.[FN50]

> FN50. See Manning, The Pursuit of Fairness in Admissions to Higher Education, in Carnegie Council on Policy Studies in Higher Education, Selective Admissions in Higher Education 19, 57-59 (1977).

Nor would the state interest in genuine diversity be served by expanding petitioner's two-track system into a multi-track program with a prescribed number of seats set aside for each identifiable category of applicants. Indeed, it is inconceivable that a university would thus pursue the logic of petitioner's two-track program to the illogical end of insulating each category of applicants with certain desired qualifications from competition with all other applicants.

***316** [15] The experience of other university admissions programs, which take race into account in achieving the educational diversity valued by the First Amendment, demonstrates that the assignment of a fixed number of places to a minority group is not a necessary means toward that end. An illuminating example is found in the Harvard College program:

"In recent years Harvard College has expanded the concept of diversity to include students from disadvantaged economic, racial and ethnic groups. Harvard College now recruits not only Californians or Louisianans but also blacks and Chicanos and other minority students. . . .

"In practice, this new definition of diversity has meant that race has been a factor in some admission decisions. When the Committee on Admissions reviews the large middle group of applicants who are 'admissible' and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases. A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer. [See Appendix hereto.] . . .

"In Harvard College admissions the Committee has not set target-quotas for ****2762** the number of blacks, or of musicians, football players, physicists or Californians to be admitted in a given year. . . . But that awareness [of the necessity of including more than a token number of black students] does not mean that the Committee sets a minimum number of blacks or of people from west of the Mississippi who are to be admitted. It means only that in choosing among thousands of applicants who are not only 'admissible' academically but have other strong qualities, the Committee, with a number of criteria in mind, pays some attention to distribution among many ***317** types and categories of students." App. to Brief for Columbia University, Harvard University, Stanford University, and the University of Pennsylvania, as *Amici Curiae* 2-3.

In such an admissions program,[FN51] race or ethnic background may be deemed a "plus" in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats. The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive when compared, for example, with that of an applicant identified as an Italian-American if the latter

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is thought to exhibit qualities more likely to promote beneficial educational pluralism. Such qualities could include exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, a history of overcoming disadvantage, ability to communicate with the poor, or other qualifications deemed important. In short, an admissions program operated in this way is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight. Indeed, the weight attributed to a ***318** particular quality may vary from year to year depending upon the "mix" both of the student body and the applicants for the incoming class.

> FN51. The admissions program at Princeton has been described in similar terms:
>
> "While race is not in and of itself a consideration in determining basic qualifications, and while there are obviously significant differences in background and experience among applicants of every race, in some situations race can be helpful information in enabling the admission officer to understand more fully what a particular candidate has accomplished-and against what odds. Similarly, such factors as family circumstances and previous educational opportunities may be relevant, either in conjunction with race or ethnic background (with which they may be associated) or on their own." Bowen, *supra* n. 48, at 8-9.
>
> For an illuminating discussion of such flexible admissions systems, see Manning, *supra* n. 50, at 57-59.

[16] This kind of program treats each applicant as an individual in the admissions process. The applicant who loses out on the last available seat to another candidate receiving a "plus" on the basis of ethnic background will not have been foreclosed from all consideration for that seat simply because he was not the right color or had the wrong surname. It would mean only that his combined qualifications, which may have included similar nonobjective factors, did not outweigh those of the other applicant. His qualifications would have been weighed fairly and competitively, and he would have no basis to complain of unequal treatment under the Fourteenth Amendment.[FN52]

> FN52. The denial to respondent of this right to individualized consideration without regard to his race is the principal evil of petitioner's special admissions program. Nowhere in the opinion of Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN is this denial even addressed.

It has been suggested that an admissions program which considers race only as one factor is simply a subtle and more sophisticated-but no less effective-means of according racial preference than the Davis program. A facial intent to discriminate, however, is evident in petitioner's preference program and not denied in this case. No such facial infirmity exists in an admissions****2763** program where race or ethnic background is simply one element-to be weighed fairly against other elements-in the selection process. "A boundary line," as Mr. Justice Frankfurter remarked in another connection, "is none the worse for being narrow." *McLeod v. Dilworth*, 322 U.S. 327, 329, 64 S.Ct. 1023, 1025, 88 L.Ed. 1304 (1944). And a court would not assume that a university, professing to employ a facially nondiscriminatory admissions policy, would operate it as a cover for the functional equivalent of a quota system. In short, good faith ***319** would be presumed in the absence of a showing to the contrary in the manner permitted by our cases. See *e. g., Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977); *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976); *Swain v. Alabama*, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965).[FN53]

> FN53. Universities, like the prosecutor in *Swain*, may make individualized decisions, in which ethnic background plays a part, under a presumption of legality and legitimate educational purpose. So long as the university proceeds on an individualized, case-by-case basis, there is no warrant for judicial interference in the academic process. If an applicant can establish that the institution does not adhere to a policy of individual comparisons, or can show that a systematic exclusion of certain groups results, the presumption of legality might be overcome, creating the necessity of proving legitimate educational purpose.
>
> There also are strong policy reasons that correspond to the constitutional distinction between petitioner's preference program and one that assures a measure of competition among all applicants. Petitioner's program will be viewed as in-

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herently unfair by the public generally as well as by applicants for admission to state universities. Fairness in individual competition for opportunities, especially those provided by the State, is a widely cherished American ethic. Indeed, in a broader sense, an underlying assumption of the rule of law is the worthiness of a system of justice based on fairness to the individual. As Mr. Justice Frankfurter declared in another connection, "[j]ustice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13, 99 L.Ed. 11 (1954).

B

In summary, it is evident that the Davis special admissions program involves the use of an explicit racial classification never before countenanced by this Court. It tells applicants who are not Negro, Asian, or Chicano that they are totally excluded from a specific percentage of the seats in an entering class. No matter how strong their qualifications, quantitative and extracurricular, including their own potential for contribution to educational diversity, they are never afforded the chance to compete with applicants from the preferred groups for the special admissions seats. At the same time, the preferred ***320** applicants have the opportunity to compete for every seat in the class.

The fatal flaw in petitioner's preferential program is its disregard of individual rights as guaranteed by the Fourteenth Amendment. *Shelley v. Kraemer*, 334 U.S., at 22, 68 S.Ct., at 846. Such rights are not absolute. But when a State's distribution of benefits or imposition of burdens hinges on ancestry or the color of a person's skin, that individual is entitled to a demonstration that the challenged classification is necessary to promote a substantial state interest. Petitioner has failed to carry this burden. For this reason, that portion of the California court's judgment holding petitioner's special admissions program invalid under the Fourteenth Amendment must be affirmed.

C

[17] In enjoining petitioner from ever considering the race of any applicant, however, the courts below failed to recognize that the State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin. For this reason, so much of the California court's judgment as enjoins petitioner from any consideration of the race of any applicant must be reversed.

VI

[18][19] With respect to respondent's entitlement to an injunction directing his admission****2764** to the Medical School, petitioner has conceded that it could not carry its burden of proving that, but for the existence of its unlawful special admissions program, respondent still would not have been admitted. Hence, respondent is entitled to the injunction, and that portion of the judgment must be affirmed.[FN54]

FN54. There is no occasion for remanding the case to permit petitioner to reconstruct what might have happened if it had been operating the type of program described as legitimate in Part V, *supra*. Cf. *Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274, 284-287, 97 S.Ct. 568, 575-576, 50 L.Ed.2d 471 (1977). In *Mt. Healthy*, there was considerable doubt whether protected First Amendment activity had been the "but for" cause of Doyle's protested discharge. Here, in contrast, there is no question as to the sole reason for respondent's rejection-purposeful racial discrimination in the form of the special admissions program. Having injured respondent solely on the basis of an unlawful classification, petitioner cannot now hypothesize that it might have employed lawful means of achieving the same result. See *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S., at 265-266, 97 S.Ct., at 563-564. No one can say how-or even if-petitioner would have operated its admissions process if it had known that legitimate alternatives were available. Nor is there a record revealing that legitimate alternative grounds for the decision existed, as there was in *Mt. Healthy*. In sum, a remand would result in fictitious recasting of past conduct.

***321** APPENDIX TO OPINION OF POWELL, J.

Harvard College Admissions Program [FN55]

FN55. This statement appears in the Appendix to the Brief for Columbia University, Harvard University, Stanford University, and the University of Pennsylvania, as *Amici Curiae*.

For the past 30 years Harvard College has received each

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year applications for admission that greatly exceed the number of places in the freshman class. The number of applicants who are deemed to be not "qualified" is comparatively small. The vast majority of applicants demonstrate through test scores, high school records and teachers' recommendations that they have the academic ability to do adequate work at Harvard, and perhaps to do it with distinction. Faced with the dilemma of choosing among a large number of "qualified" candidates, the Committee on Admissions could use the single criterion of scholarly excellence and attempt to determine who among the candidates were likely to perform best academically. But for the past 30 years the Committee on Admissions has never adopted this approach. The belief has been that if scholarly excellence were the sole or even predominant criterion, Harvard College would lose a great deal of its vitality and intellectual excellence and that the quality of the educational*322 experience offered to all students would suffer. Final Report of W. J. Bender, Chairman of the Admission and Scholarship Committee and Dean of Admissions and Financial Aid, pp. 20 *et seq.* (Cambridge, 1960). Consequently, after selecting those students whose intellectual potential will seem extraordinary to the faculty-perhaps 150 or so out of an entering class of over 1,100-the Committee seeks-

variety in making its choices. This has seemed important . . . in part because it adds a critical ingredient to the effectiveness of the educational experience [in Harvard College]. . . . *The effectiveness of our students' educational experience has seemed to the Committee to be affected as importantly by a wide variety of interests, talents, backgrounds and career goals as it is by a fine faculty and our libraries, laboratories and housing arrangements.* (Dean of Admissions Fred L. Glimp, Final Report to the Faculty of Arts and Sciences, 65 Official Register of Harvard University No. 25, 93, 104-105 (1968) (emphasis supplied).

The belief that diversity adds an essential ingredient to the educational process has long been a tenet of Harvard College admissions. Fifteen or twenty years ago, however, diversity meant students from California, New York, and Massachusetts; city dwellers and farm boys; violinists, painters and football players; biologists, historians and classicists; potential stockbrokers, academics and politicians. The result**2765 was that very few ethnic or racial minorities attended Harvard College. In recent years Harvard College has expanded the concept of diversity to include students from disadvantaged economic, racial and ethnic groups. Harvard College now recruits not only Californians or Louisianans but also blacks and Chicanos and other minority students. Contemporary conditions in the United States mean that if Harvard College is to continue to offer a first-rate education to its students, *323 minority representation in the undergraduate body cannot be ignored by the Committee on Admissions.

In practice, this new definition of diversity has meant that race has been a factor in some admission decisions. When the Committee on Admissions reviews the large middle group of applicants who are "admissible" and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases. A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer. The quality of the educational experience of all the students in Harvard College depends in part on these differences in the background and outlook that students bring with them.

In Harvard College admissions the Committee has not set target-quotas for the number of blacks, or of musicians, football players, physicists or Californians to be admitted in a given year. At the same time the Committee is aware that if Harvard College is to provide a truly heterogen[e]ous environment that reflects the rich diversity of the United States, it cannot be provided without some attention to numbers. It would not make sense, for example, to have 10 or 20 students out of 1,100 whose homes are west of the Mississippi. Comparably, 10 or 20 black students could not begin to bring to their classmates and to each other the variety of points of view, backgrounds and experiences of blacks in the United States. Their small numbers might also create a sense of isolation among the black students themselves and thus make it more difficult for them to develop and achieve their potential. Consequently, when making its decisions, the Committee on Admissions is aware that there is some relationship between numbers and achieving the benefits to be derived from a diverse student body, and between numbers and providing a reasonable environment for those students admitted. But *324 that awareness does not mean that the Committee sets a minimum number of blacks or of people from west of the Mississippi who are to be admitted. It means only that in choosing among thousands of applicants who are not only "admissible" academically but have other strong qualities, the Committee, with a number of criteria in mind, pays some attention to distribution among many types and categories of students.

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The further refinements sometimes required help to illustrate the kind of significance attached to race. The Admissions Committee, with only a few places left to fill, might find itself forced to choose between A, the child of a successful black physician in an academic community with promise of superior academic performance, and B, a black who grew up in an inner-city ghetto of semi-literate parents whose academic achievement was lower but who had demonstrated energy and leadership as well as an apparently abiding interest in black power. If a good number of black students much like A but few like B had already been admitted, the Committee might prefer B; and vice versa. If C, a white student with extraordinary artistic talent, were also seeking one of the remaining places, his unique quality might give him an edge over both A and B. Thus, the critical criteria are often individual qualities or experience not dependent upon race but sometimes associated with it.

Opinion of Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN, concurring in the judgment in part and dissenting in part.

[12] The Court today, in reversing in part the judgment of the Supreme Court of ****2766** California, affirms the constitutional power of Federal and State Governments to act affirmatively to achieve equal opportunity for all. The difficulty of the issue presented-whether government may use race-conscious programs to redress the continuing effects of past discrimination- ***325** and the mature consideration which each of our Brethren has brought to it have resulted in many opinions, no single one speaking for the Court. But this should not and must not mask the central meaning of today's opinions: Government may take race into account when it acts not to demean or insult any racial group, but to remedy disadvantages cast on minorities by past racial prejudice, at least when appropriate findings have been made by judicial, legislative, or administrative bodies with competence to act in this area.

THE CHIEF JUSTICE and our Brothers STEWART, REHNQUIST, and STEVENS, have concluded that Title VI of the Civil Rights Act of 1964, 78 Stat. 252, as amended, 42 U.S.C. § 2000d *et seq.*, prohibits programs such as that at the Davis Medical School. On this statutory theory alone, they would hold that respondent Allan Bakke's rights have been violated and that he must, therefore, be admitted to the Medical School. Our Brother POWELL, reaching the Constitution, concludes that, although race may be taken into account in university admissions, the particular special admissions program used by petitioner, which resulted in the exclusion of respondent Bakke, was not shown to be necessary to achieve petitioner's stated goals. Accordingly, these Members of the Court form a majority of five affirming the judgment of the Supreme Court of California insofar as it holds that respondent Bakke "is entitled to an order that he be admitted to the University." 18 Cal.3d 34, 64, 132 Cal.Rptr. 680, 700, 553 P.2d 1152, 1172 (1976).

[8][1][15] We agree with Mr. Justice POWELL that, as applied to the case before us, Title VI goes no further in prohibiting the use of race than the Equal Protection Clause of the Fourteenth Amendment itself. We also agree that the effect of the California Supreme Court's affirmance of the judgment of the Superior Court of California would be to prohibit the University from establishing in the future affirmative-action programs that take race into account. See *ante*, at 2738 n. **. Since we conclude that the affirmative admissions program at the Davis ***326** Medical School is constitutional, we would reverse the judgment below in all respects. Mr. Justice POWELL agrees that some uses of race in university admissions are permissible and, therefore, he joins with us to make five votes reversing the judgment below insofar as it prohibits the University from establishing race-conscious programs in the future.[FN1]

> FN1. We also agree with Mr. Justice POWELL that a plan like the "Harvard" plan, see *ante*, at 2762-2763, is constitutional under our approach, at least so long as the use of race to achieve an integrated student body is necessitated by the lingering effects of past discrimination.

I

Our Nation was founded on the principle that "all Men are created equal." Yet candor requires acknowledgment that the Framers of our Constitution, to forge the 13 Colonies into one Nation, openly compromised this principle of equality with its antithesis: slavery. The consequences of this compromise are well known and have aptly been called our "American Dilemma." Still, it is well to recount how recent the time has been, if it has yet come, when the promise of our principles has flowered into the actuality of equal opportunity for all regardless of race or color.

The Fourteenth Amendment, the embodiment in the Constitution of our abiding belief in human equality, has been the law of our land for only slightly more than half its 200 years. And for half of that half, the Equal Protection Clause of the Amendment was largely moribund so that, as late as ****2767** 1927, Mr. Justice Holmes could sum up the

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importance of that Clause by remarking that it was the "last resort of constitutional arguments." *Buck v. Bell*, 274 U.S. 200, 208, 47 S.Ct. 584, 585, 71 L.Ed. 1000 (1927). Worse than desuetude, the Clause was early turned against those whom it was intended to set free, condemning them to a "separate but equal" [FN2] status before the law, a status ***327** always separate but seldom equal. Not until 1954-only 24 years ago-was this odious doctrine interred by our decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (*Brown I*), and its progeny,[FN3] which proclaimed that separate schools and public facilities of all sorts were inherently unequal and forbidden under our Constitution. Even then inequality was not eliminated with "all deliberate speed." *Brown v. Board of Education*, 349 U.S. 294, 301, 75 S.Ct. 753, 756, 99 L.Ed. 1083 (1955). In 1968 [FN4] and again in 1971,[FN5] for example, we were forced to remind school boards of their obligation to eliminate racial discrimination root and branch. And a glance at our docket [FN6] and at dockets of lower courts will show that even today officially sanctioned discrimination is not a thing of the past.

FN2. See *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

FN3. *New Orleans City Park Improvement Assn. v. Detiege*, 358 U.S. 54, 79 S.Ct. 99, 3 L.Ed.2d 46 (1958); *Muir v. Louisville Park Theatrical Assn.*, 347 U.S. 971, 74 S.Ct. 783, 98 L.Ed. 1112 (1954); *Mayor of Baltimore v. Dawson*, 350 U.S. 877, 76 S.Ct. 133, 100 L.Ed. 774 (1955); *Holmes v. Atlanta*, 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 776 (1955); *Gayle v. Browder*, 352 U.S. 903, 77 S.Ct. 145, 1 L.Ed.2d 114 (1956).

FN4. See *Green v. County School Board*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

FN5. See *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); *Davis v. School Comm'rs of Mobile County*, 402 U.S. 33, 91 S.Ct. 1289, 28 L.Ed.2d 577 (1971); *North Carolina Board of Education v. Swann*, 402 U.S. 43, 91 S.Ct. 1284, 28 L.Ed.2d 586 (1971).

FN6. See, *e. g.*, cases collected in *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 663 n. 5, 98 S.Ct. 2018, 2022, 56 L.Ed.2d 611 (1978).

Against this background, claims that law must be "color-blind" or that the datum of race is no longer relevant to public policy must be seen as aspiration rather than as description of reality. This is not to denigrate aspiration; for reality rebukes us that race has too often been used by those who would stigmatize and oppress minorities. Yet we cannot-and, as we shall demonstrate, need not under our Constitution or Title VI, which merely extends the constraints of the Fourteenth Amendment to private parties who receive federal funds-let color blindness become myopia which masks the reality that many "created equal" have been treated within our lifetimes as inferior both by the law and by their fellow citizens.

***328** II

The threshold question we must decide is whether Title VI of the Civil Rights Act of 1964 bars recipients of federal funds from giving preferential consideration to disadvantaged members of racial minorities as part of a program designed to enable such individuals to surmount the obstacles imposed by racial discrimination.[FN7] We join Parts I and V-C of our Brother POWELL's opinion and three of us agree with his conclusion in Part II that this case does not require us to resolve the question whether there is a private right of action under Title VI.[FN8]

FN7. Section 601 of Title VI provides:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

FN8. Mr. Justice WHITE believes we should address the private-right-of-action issue. Accordingly, he has filed a separate opinion stating his view that there is no private right of action under Title VI. See *post*, p. 2794.

In our view, Title VI prohibits only those uses of racial criteria that would violate the Fourteenth Amendment if employed by a ****2768** State or its agencies; it does not bar the preferential treatment of racial minorities as a means of remedying past societal discrimination to the extent that such action is consistent with the Fourteenth Amendment. The legislative history of Title VI, administrative regulations interpreting the statute, subsequent congressional and executive action, and the prior decisions of this Court

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compel this conclusion. None of these sources lends support to the proposition that Congress intended to bar all race-conscious efforts to extend the benefits of federally financed programs to minorities who have been historically excluded from the full benefits of American life.

A

[7] The history of Title VI-from President Kennedy's request that Congress grant executive departments and agencies authority*329 to cut off federal funds to programs that discriminate against Negroes through final enactment of legislation incorporating his proposals-reveals one fixed purpose: to give the Executive Branch of Government clear authority to terminate federal funding of private programs that use race as a means of disadvantaging minorities in a manner that would be prohibited by the Constitution if engaged in by government.

This purpose was first expressed in President Kennedy's June 19, 1963, message to Congress proposing the legislation that subsequently became the Civil Rights Act of 1964.[FN9] *330 Representative Celler, the Chairman of the House Judiciary Committee, and the floor manager of the legislation in the House, introduced Title VI in words unequivocally expressing the intent to provide the Federal Government with the means of assuring that its funds were not used to subsidize racial discrimination inconsistent with the standards imposed by the Fourteenth and Fifth Amendments upon state and federal action.

> FN9. "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination. Direct discrimination by Federal, State or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation. Congress and the Executive have their responsibilities to uphold the Constitution also . . ..
>
> "Many statutes providing Federal financial assistance, however, define with such precision both the Administrator's role and the conditions upon which specified amounts shall be given to designated recipients that the amount of administrative discretion remaining-which might be used to withhold funds if discrimination were not ended-is at best questionable. No administrator has the unlimited authority to invoke the Constitution in opposition to the mandate of the Congress. Nor would it always be helpful to require unconditionally-as is often proposed-the withdrawal of all Federal funds from programs urgently needed by Negroes as well as whites; for this may only penalize those who least deserve it without ending discrimination.
>
> "Instead of permitting this issue to become a political device often exploited by those opposed to social or economic progress, it would be better at this time to pass a single comprehensive provision making it clear that the Federal Government is not required, under any statute, to furnish any kind of financial assistance-by way of grant, loan, contract, guaranty, insurance, or otherwise-to any program or activity in which racial discrimination occurs. This would not permit the Federal Government to cut off all Federal aid of all kinds as a means of punishing an area for the discrimination occurring therein-but it would clarify the authority of any administrator with respect to Federal funds or financial assistance and discriminatory practices." 109 Cong.Rec. 11161 (1963).

"The bill would offer assurance that hospitals financed by Federal money would not deny adequate care to Negroes. It would prevent abuse of food distribution programs whereby Negroes have been known to be denied food surplus supplies when white persons were given such food. It would assure Negroes the benefits now accorded only white students in programs of high[er] education financed by Federal funds. It would, in short, assure the existing right to equal treatment in the enjoyment of Federal funds. It would not destroy any rights of private property or freedom of association." 110 Cong.Rec. 1519 (1964).
**2769 It was clear to Representative Celler that Title VI, apart from the fact that it reached all federally funded activities even in the absence of sufficient state or federal control to invoke the Fourteenth or Fifth Amendments, was not placing new substantive limitations upon the use of racial criteria, but rather was designed to extend to such activities "the existing right to equal treatment" enjoyed by Negroes under those Amendments, and he later specifically defined the purpose of Title VI in this way:

"In general, it seems rather anomalous that the Federal Government should aid and abet discrimination on the basis of race, color, or national origin by granting money

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***331** and other kinds of financial aid. It seems rather shocking, moreover, that while we have on the one hand the 14th amendment, which is supposed to do away with discrimination since it provides for equal protection of the laws, on the other hand, we have the Federal Government aiding and abetting those who persist in practicing racial discrimination.

"It is for these reasons that we bring forth title VI. The enactment of title VI will serve to override specific provisions of law which contemplate Federal assistance to racially segregated institutions." *Id.*, at 2467.

Representative Celler also filed a memorandum setting forth the legal basis for the enactment of Title VI which reiterated the theme of his oral remarks: "In exercising its authority to fix the terms on which Federal funds will be disbursed . . ., Congress clearly has power to legislate so as to insure that the Federal Government does not become involved in a violation of the Constitution." *Id.*, at 1528.

Other sponsors of the legislation agreed with Representative Celler that the function of Title VI was to end the Federal Government's complicity in conduct, particularly the segregation or exclusion of Negroes, inconsistent with the standards to be found in the antidiscrimination provisions of the Constitution. Representative Lindsay, also a member of the Judiciary Committee, candidly acknowledged, in the course of explaining why Title VI was necessary, that it did not create any new standard of equal treatment beyond that contained in the Constitution:

"Both the Federal Government and the States are under constitutional mandates not to discriminate. Many have raised the question as to whether legislation is required at all. Does not the Executive already have the power in the distribution of Federal funds to apply those conditions which will enable the Federal Government itself to live up to the mandate of the Constitution and to require ***332** States and local government entities to live up to the Constitution, most especially the 5th and 14th amendments?" *Id.*, at 2467.

He then explained that legislation was needed to authorize the termination of funding by the Executive Branch because existing legislation seemed to contemplate the expenditure of funds to support racially segregated institutions. *Ibid.* The views of Representatives Celler and Lindsay concerning the purpose and function of Title VI were shared by other sponsors and proponents of the legislation in the House.[FN10] Nowhere is there any suggestion that Title VI was intended to terminate federal funding for any reason other than consideration of race or national origin by the recipient institution in a manner inconsistent with the standards incorporated in the Constitution.

FN10. See, *e. g.*, 110 Cong.Rec. 2732 (1964) (Rep. Dawson); *id.*, at 2481-2482 (Rep. Ryan); *id.*, at 2766 (Rep. Matsunaga); *id.*, at 2595 (Rep. Donahue).

The Senate's consideration of Title VI reveals an identical understanding concerning the purpose and scope of the legislation. Senator Humphrey, the Senate floor manager, opened the Senate debate with a section-by-section analysis of the Civil Rights Act in which he succinctly stated the purpose of Title VI:

"The purpose of title VI is to make sure that funds of the United States are ****2770** not used to support racial discrimination. In many instances the practices of segregation or discrimination, which title VI seeks to end, are unconstitutional. This is clearly so wherever Federal funds go to a State agency which engages in racial discrimination. It may also be so where Federal funds go to support private, segregated institutions, under the decision in *Simkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959 (C.A.4, 1963), [cert. denied, 376 U.S. 938, 84 S.Ct. 793, 11 L.Ed.2d 659 (1964)]. In all cases, such discrimination is contrary to national policy, and to the moral sense of the Nation. Thus, title VI is simply ***333** designed to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation." *Id.*, at 6544.

Senator Humphrey, in words echoing statements in the House, explained that legislation was needed to accomplish this objective because it was necessary to eliminate uncertainty concerning the power of federal agencies to terminate financial assistance to programs engaging in racial discrimination in the face of various federal statutes which appeared to authorize grants to racially segregated institutions. *Ibid.* Although Senator Humphrey realized that Title VI reached conduct which, because of insufficient governmental action, might be beyond the reach of the Constitution, it was clear to him that the substantive standard imposed by the statute was that of the Fifth and Fourteenth Amendments.

Senate supporters of Title VI repeatedly expressed agreement with Senator Humphrey's description of the legislation as providing the explicit authority and obligation to apply the standards of the Constitution to all reci-

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pients of federal funds. Senator Ribicoff described the limited function of Title VI:

"Basically, there is a constitutional restriction against discrimination in the use of Federal funds; and title VI simply spells out the procedure to be used in enforcing that restriction." *Id.*, at 13333.

Other strong proponents of the legislation in the Senate repeatedly expressed their intent to assure that federal funds would only be spent in accordance with constitutional standards. See remarks of Senator Pastore, *id.*, at 7057, 7062; Senator Clark, *id.*, at 5243; Senator Allott, *id.*, at 12675, 12677.[FN11]

> FN11. There is also language in 42 U.S.C. § 2000d-5, enacted in 1966, which supports the conclusion that Title VI's standard is that of the Constitution. Section 2000d-5 provides that "for the purpose of determining whether a local educational agency is in compliance with [Title VI], compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with [Title VI], insofar as the matters covered in the order or judgment are concerned." This provision was clearly intended to avoid subjecting local educational agencies simultaneously to the jurisdiction of the federal courts and the federal administrative agencies in connection with the imposition of remedial measures designed to end school segregation. Its inclusion reflects the congressional judgment that the requirements imposed by Title VI are identical to those imposed by the Constitution as interpreted by the federal courts.

***334** Respondent's contention that Congress intended Title VI to bar affirmative-action programs designed to enable minorities disadvantaged by the effects of discrimination to participate in federally financed programs is also refuted by an examination of the type of conduct which Congress thought it was prohibiting by means of Title VI. The debates reveal that the legislation was motivated primarily by a desire to eradicate a very specific evil: federal financial support of programs which disadvantaged Negroes by excluding them from participation or providing them with separate facilities. Again and again supporters of Title VI emphasized that the purpose of the statute was to end segregation in federally funded activities and to end other discriminatory uses of race disadvantaging Negroes. Senator Humphrey set the theme in his speech presenting Title VI to the Senate:

"Large sums of money are contributed by the United States each year for the construction, operation, and maintenance of segregated schools.

****2771** "Similarly, under the Hill-Burton Act, Federal grants are made to hospitals which admit whites only or Negroes only. . . .

"In higher education also, a substantial part of the Federal grants to colleges, medical schools and so forth, in the South is still going to segregated institutions.

***335** "Nor is this all. In several States, agricultural extension services, supported by Federal funds, maintain racially segregated offices for Negroes and whites. . . .

". . . Vocational training courses, supported with Federal funds, are given in segregated schools and institutions and often limit Negroes to training in less skilled occupations. In particular localities it is reported that Negroes have been cut off from relief rolls, or denied surplus agricultural commodities, or otherwise deprived of the benefit of federally assisted programs, in retaliation for their participation in voter registration drives, sit-in demonstrations and the like." *Id.*, at 6543-6544.

See also the remarks of Senator Pastore (*id.*, at 7054-7055); Senator Ribicoff (*id.*, at 7064-7065); Senator Clark (*id.*, at 5243, 9086); Senator Javits (*id.*, at 6050, 7102).[FN12]

> FN12. As has already been seen, the proponents of Title VI in the House were motivated by the identical concern. See remarks of Representative Celler (110 Cong. Rec. at 2467 (1964)); Representative Ryan (*id.*, at 1643, 2481-2482); H.R.Rep. No. 914, 88th Cong., 1st Sess., pt. 2, Additional Views of Seven Representatives 24-25 (1963).

The conclusion to be drawn from the foregoing is clear. Congress recognized that Negroes, in some cases with congressional acquiescence, were being discriminated against in the administration of programs and denied the full benefits of activities receiving federal financial support. It was aware that there were many federally funded

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programs and institutions which discriminated against minorities in a manner inconsistent with the standards of the Fifth and Fourteenth Amendments but whose activities might not involve sufficient state or federal action so as to be in violation of these Amendments. Moreover, Congress believed that it was questionable whether the Executive Branch possessed legal authority to terminate the funding of activities on the ground that they discriminated racially against Negroes in a manner violative of the standards contained in the Fourteenth and Fifth ***336** Amendments. Congress' solution was to end the Government's complicity in constitutionally forbidden racial discrimination by providing the Executive Branch with the authority and the obligation to terminate its financial support of any activity which employed racial criteria in a manner condemned by the Constitution.

Of course, it might be argued that the Congress which enacted Title VI understood the Constitution to require strict racial neutrality or color blindness, and then enshrined that concept as a rule of statutory law. Later interpretation and clarification of the Constitution to permit remedial use of race would then not dislodge Title VI's prohibition of race-conscious action. But there are three compelling reasons to reject such a hypothesis.

First, no decision of this Court has ever adopted the proposition that the Constitution must be colorblind. See *infra*, at 2781-2782.

Second, even if it could be argued in 1964 that the Constitution might conceivably require color blindness, Congress surely would not have chosen to codify such a view unless the Constitution clearly required it. The legislative history of Title VI, as well as the statute itself, reveals a desire to induce voluntary compliance with the requirement of nondiscriminatory treatment.[FN13] See § 602 of the Act, 42 U.S.C. § 2000d-1 (no funds shall be terminated unless and until it has been "determined that compliance cannot be secured by voluntary means"); H.R.Rep. No. 914, 88th Cong., 1st Sess., pt. 1, p. ****2772** 25 (1963), U.S.Code Cong. & Admin.News 1964, p. 2355; 110 Cong.Rec. 13700 (1964) (Sen. Pastore); *id.*, at 6546 (Sen. Humphrey). It is inconceivable that Congress intended to encourage voluntary efforts to eliminate the evil of racial discrimination while at the same time forbidding the voluntary use of race-conscious remedies to cure acknowledged or obvious statutory violations. Yet a reading of Title VI as prohibiting all action predicated upon race which adversely ***337** affects any individual would require recipients guilty of discrimination to await the imposition of such remedies by the Executive Branch. Indeed, such an interpretation of Title VI would prevent recipients of federal funds from taking race into account even when necessary to bring their programs into compliance with federal constitutional requirements. This would be a remarkable reading of a statute designed to eliminate constitutional violations, especially in light of judicial decisions holding that under certain circumstances the remedial use of racial criteria is not only permissible but is constitutionally required to eradicate constitutional violations. For example, in *Board of Education v. Swann*, 402 U.S. 43, 91 S.Ct. 1284, 28 L.Ed.2d 586 (1971), the Court held that a statute forbidding the assignment of students on the basis of race was unconstitutional because it would hinder the implementation of remedies necessary to accomplish the desegregation of a school system: "Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy." *Id.*, at 46, 91 S.Ct., at 1286. Surely Congress did not intend to prohibit the use of racial criteria when constitutionally required or to terminate the funding of any entity which implemented such a remedy. It clearly desired to encourage all remedies, including the use of race, necessary to eliminate racial discrimination in violation of the Constitution rather than requiring the recipient to await a judicial adjudication of unconstitutionality and the judicial imposition of a racially oriented remedy.

> FN13. See separate opinion of Mr. Justice WHITE, *post*, at 2795-2796, n. 2.

Third, the legislative history shows that Congress specifically eschewed any static definition of discrimination in favor of broad language that could be shaped by experience, administrative necessity, and evolving judicial doctrine. Although it is clear from the debates that the supporters of Title VI intended to ban uses of race prohibited by the Constitution and, more specifically, the maintenance of segregated***338** facilities, they never precisely defined the term "discrimination," or what constituted an exclusion from participation or a denial of benefits on the ground of race. This failure was not lost upon its opponents. Senator Ervin complained:

"The word 'discrimination,' as used in this reference, has no contextual explanation whatever, other than the provision that the discrimination 'is to be against' individuals participating in or benefiting from federally assisted programs and activities on the ground specified. With this context, the discrimination condemned by this reference

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occurs only when an individual is treated unequally or unfairly because of his race, color, religion, or national origin. What constitutes unequal or unfair treatment? Section 601 and section 602 of title VI do not say. They leave the determination of that question to the executive department or agencies administering each program, without any guideline whatever to point out what is the congressional intent." 110 Cong.Rec. 5612 (1964).

See also remarks of Representative Abernethy (*id.*, at 1619); Representative Dowdy (*id.*, at 1632); Senator Talmadge (*id.*, at 5251); Senator Sparkman (*id.*, at 6052). Despite these criticisms, the legislation's supporters refused to include in the statute or even provide in debate a more explicit definition of what Title VI prohibited.

The explanation for this failure is clear. Specific definitions were undesirable, in the views of the legislation's principal backers, because Title VI's standard was that of the Constitution and one that could and should be administratively and judicially applied. **2773 See remarks of Senator Humphrey (*id.*, at 5253, 6553); Senator Ribicoff (*id.*, at 7057, 13333); Senator Pastore (*id.*, at 7057); Senator Javits (*id.*, at 5606-5607, 6050).[FN14] Indeed, there was a strong emphasis throughout *339 Congress' consideration of Title VI on providing the Executive Branch with considerable flexibility in interpreting and applying the prohibition against racial discrimination. Attorney General Robert Kennedy testified that regulations had not been written into the legislation itself because the rules and regulations defining discrimination might differ from one program to another so that the term would assume different meanings in different contexts.[FN15] This determination to preserve flexibility in the administration of Title VI was shared by the legislation's supporters. When Senator Johnston offered an amendment that would have expressly authorized federal grantees to take race into account in placing children in adoptive and foster homes, Senator Pastore opposed the amendment, which was ultimately defeated by a 56-29 vote, on the ground that federal administrators could be trusted to act reasonably and that there was no danger that they would prohibit the use of racial criteria under such circumstances. *Id.*, at 13695.

FN14. These remarks also reflect the expectations of Title VI's proponents that the application of the Constitution to the conduct at the core of their concern-the segregation of Negroes in federally funded programs and their exclusion from the full benefits of such programs-was clear. See *supra*, at 2770-2772; *infra*, at 2774-2775, n. 17.

FN15. Testimony of Attorney General Kennedy in Hearings before the Senate Committee on the Judiciary on S. 1731 and S. 1750, 88th Cong., 1st Sess., 398-399 (1963).

Congress' resolve not to incorporate a static definition of discrimination into Title VI is not surprising. In 1963 and 1964, when Title VI was drafted and debated, the courts had only recently applied the Equal Protection Clause to strike down public racial discrimination in America, and the scope of that Clause's nondiscrimination principle was in a state of flux and rapid evolution. Many questions, such as whether the Fourteenth Amendment barred only *de jure* discrimination or in at least some circumstances reached *de facto* discrimination, had not yet received an authoritative judicial resolution. The congressional debate reflects an awareness of the evolutionary*340 change that constitutional law in the area of racial discrimination was undergoing in 1964.[FN16]

FN16. See, *e. g.*, 110 Cong.Rec. 6544, 13820 (1964) (Sen. Humphrey); *id.*, at 6050 (Sen. Javits); *id.*, at 12677 (Sen. Allott).

In sum, Congress' equating of Title VI's prohibition with the commands of the Fifth and Fourteenth Amendments, its refusal precisely to define that racial discrimination which it intended to prohibit, and its expectation that the statute would be administered in a flexible manner, compel the conclusion that Congress intended the meaning of the statute's prohibition to evolve with the interpretation of the commands of the Constitution. Thus, any claim that the use of racial criteria is barred by the plain language of the statute must fail in light of the remedial purpose of Title VI and its legislative history. The cryptic nature of the language employed in Title VI merely reflects Congress' concern with the then-prevalent use of racial standards as a means of excluding or disadvantaging Negroes and its determination to prohibit absolutely such discrimination. We have recently held that " '[w]hen aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use, however clear the words may appear on "superficial examination." ' " *Train v. Colorado Public Interest Research Group*, 426 U.S. 1, 10, 96 S.Ct. 1938, 1942, 48 L.Ed.2d 434 (1976), quoting *United States v. American Trucking Assns.*, 310 U.S. 534, 543-544, 60 S.Ct. 1059, 1063-1064, 84 L.Ed. 1345 (1940). This is especially so when, as is the case here, the literal application of what is believed to be the **2774 plain language of the statute,

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assuming that it is so plain, would lead to results in direct conflict with Congress' unequivocally expressed legislative purpose.[FN17]

FN17. Our Brother STEVENS finds support for a colorblind theory of Title VI in its legislative history, but his interpretation gives undue weight to a few isolated passages from among the thousands of pages of the legislative history of Title VI. See *id.*, at 6547 (Sen. Humphrey); *id.*, at 6047, 7055 (Sen. Pastore); *id.*, at 12675 (Sen. Allott); *id.*, at 6561 (Sen. Kuchel). These fragmentary comments fall far short of supporting a congressional intent to prohibit a racially conscious admissions program designed to assist those who are likely to have suffered injuries from the effects of past discrimination. In the first place, these statements must be read in the context in which they were made. The concern of the speakers was far removed from the incidental injuries which may be inflicted upon nonminorities by the use of racial preferences. It was rather with the evil of the segregation of Negroes in federally financed programs and, in some cases, their arbitrary exclusion on account of race from the benefits of such programs. Indeed, in this context there can be no doubt that the Fourteenth Amendment does command color blindness and forbids the use of racial criteria. No consideration was given by these legislators, however, to the permissibility of racial preference designed to redress the effects of injuries suffered as a result of one's color. Significantly one of the legislators, Senator Pastore, and perhaps also Senator Kuchel, who described Title VI as proscribing decisionmaking based upon skin color, also made it clear that Title VI does not outlaw the use of racial criteria in all circumstances. See *supra*, at 2773-2774; 110 Cong.Rec. 6562 (1964). See also *id.*, at 2494 (Rep. Celler). Moreover, there are many statements in the legislative history explicitly indicating that Congress intended neither to require nor to prohibit the remedial use of racial preferences where not otherwise required or prohibited by the Constitution. Representative MacGregor addressed directly the problem of preferential treatment:

"Your mail and mine, your contacts and mine with our constituents, indicates a great degree of misunderstanding about this bill. People complain about racial 'balancing' in the public schools, about open occupancy in housing, about preferential treatment or quotas in employment. There is a mistaken belief that Congress is legislating in these areas in this bill. When we drafted this bill we excluded these issues largely because the problems raised by these controversial questions are more properly handled at a governmental level close to the American people and by communities and individuals themselves. The Senate has spelled out our intentions more specifically." *Id.*, at 15893.

Other legislators explained that the achievement of racial balance in elementary and secondary schools where there had been no segregation by law was not compelled by Title VI but was rather left to the judgment of state and local communities. See, *e. g., id.*, at 10920 (Sen. Javits); *id.*, at 5807, 5266 (Sen. Keating); *id.*, at 13821 (Sens. Humphrey and Saltonstall). See also, *id.*, at 6562 (Sen. Kuchel); *id.*, at 13695 (Sen. Pastore).

Much the same can be said of the scattered remarks to be found in the legislative history of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (1970 ed. and Supp. V), which prohibits employment discrimination on the basis of race in terms somewhat similar to those contained in Title VI, see 42 U.S.C. § 2000e-2(a)(1) (unlawful "to fail or refuse to hire" any applicant "because of such individual's race, color, religion, sex, or national origin . . . ."), to the effect that any deliberate attempt by an employer to maintain a racial balance is not required by the statute and might in fact violate it. See, *e. g.*, 110 Cong.Rec. 7214 (1964) (Sens. Clark and Case); *id.*, at 6549 (Sen. Humphrey); *id.*, at 2560 (Rep. Goodell). Once again, there is no indication that Congress intended to bar the voluntary use of racial preferences to assist minorities to surmount the obstacles imposed by the remnants of past discrimination. Even assuming that Title VII prohibits employers from deliberately maintaining a particular racial composition in their work force as an end in itself, this does not imply, in the absence of any consideration of the question, that Congress intended to bar the use of racial preferences as a tool for achieving the objective of remedying past discrimination or other compelling ends. The former may well be contrary to the

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requirements of the Fourteenth Amendment (where state action is involved), while the latter presents very different constitutional considerations. Indeed, as discussed *infra*, at 2780-2781, this Court has construed Title VII as requiring the use of racial preferences for the purpose of hiring and advancing those who have been adversely affected by past discriminatory employment practices, even at the expense of other employees innocent of discrimination. *Franks v. Bowman Transportation Co.*, 424 U.S. 747, 767-768, 96 S.Ct. 1251, 1265-1266, 47 L.Ed.2d 444 (1976). Although Title VII clearly does not require employers to take action to remedy the disadvantages imposed upon racial minorities by hands other than their own, such an objective is perfectly consistent with the remedial goals of the statute. See *id.*, at 762-770, 96 S.Ct., at 1263-1267; *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418, 95 S.Ct. 2362, 2372, 45 L.Ed.2d 280 (1975). There is no more indication in the legislative history of Title VII than in that of Title VI that Congress desired to prohibit such affirmative action to the extent that it is permitted by the Constitution, yet judicial decisions as well as subsequent executive and congressional action clearly establish that Title VII does not forbid race-conscious remedial action. See *infra*, at 2780-2782, and n. 28.

***341 **2775** B

Section 602 of Title VI, 42 U.S.C. § 2000d-1, instructs federal agencies to promulgate regulations interpreting Title ***342** VI. These regulations, which, under the terms of the statute, require Presidential approval, are entitled to considerable deference in construing Title VI. See, *e. g.*, ***343***Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974); *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 369, 93 S.Ct. 1652, 1660, 36 L.Ed.2d 318 (1973); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 381, 89 S.Ct. 1794, 1801, 23 L.Ed.2d 371 (1969). Consequently, it is most significant that the Department of Health, Education, and Welfare (HEW), which provides much of the federal assistance to institutions of higher education, has adopted regulations *requiring* affirmative measures designed to enable racial minorities which have been previously discriminated against by a federally funded institution or program to overcome the effects of such actions and *authorizing* the voluntary undertaking of affirmative-action programs by federally funded institutions that have not been guilty of prior discrimination in order to overcome the effects of conditions which have adversely affected the degree of participation by persons of a particular race.

Title 45 CFR § 80.3(b)(6)(i) (1977) provides:

"In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination."

Title 45 CFR § 80.5(i) (1977) elaborates upon this requirement:

"In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 80.6(d), to provide information as to the availability of the program or activity and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary under the requirement stated in (i) of § 80.3(b)(6) for such applicant or recipient to take additional steps to make the benefits ***344** fully available to racial and nationality groups previously subject to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served."

These regulations clearly establish that where there is a need to overcome the effects of past racially discriminatory or exclusionary practices engaged in by a federally funded institution, race-conscious action is not only permitted but required to accomplish the remedial objectives of Title VI. [FN18] Of course, there is no evidence that the Medical School has been guilty of past discrimination and consequently these regulations would not compel it to employ a program of preferential admissions in behalf of racial minorities. It would be difficult to explain from the language of Title VI, however, much less from its legislative history, why the statute *compels* race-conscious remedies where a recipient institution has engaged in past discrimination but *prohibits* such remedial action where racial minorities, as a result of the effects of past discrimination imposed by entities other than the recipient, are excluded from the benefits of federally funded programs. HEW was fully aware of the incongruous nature of such an interpretation of Title VI.

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FN18. HEW has stated that the purpose of these regulations is "to specify that affirmative steps to make services more equitably available are not prohibited and that such steps are required when necessary to overcome the consequences of prior discrimination." 36 Fed.Reg. 23494 (1971). Other federal agencies which provide financial assistance pursuant to Title VI have adopted similar regulations. See Supplemental Brief for United States as *Amicus Curiae* 16 n. 14.

**2776 Title 45 CFR § 80.3(b)(6)(ii) (1977) provides:

"Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted *345 in limiting participation by persons of a particular race, color, or national origin."

An explanatory regulation explicitly states that the affirmative action which § 80.3(b)(6)(ii) contemplates includes the use of racial preferences:
"Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service." 45 CFR § 80.5(j) (1977).

This interpretation of Title VI is fully consistent with the statute's emphasis upon voluntary remedial action and reflects the views of an agency [FN19] responsible for achieving its objectives.[FN20]

FN19. Moreover, the President has delegated to the Attorney General reponsibility for coordinating the enforcement of Title VI by federal departments and agencies and has directed him to 'assist the departments and agencies in accomplishing effective implementation.' Exec. Order No. 11764, 3 CFR 849 (1971-1975 Comp.). Accordingly, the views of the Solicitor General, as well as those of HEW, that the use of racial preferences for remedial purposes is consistent with Title VI are entitled to considerable respect.

FN20. HEW administers at least two explicitly race-conscious programs. Details concerning them may be found in the Office of Management and Budget, 1977 Catalogue of Federal Domestic Assistance 205-206, 401-402. The first program, No. 13.375, 'Minority Biomedical Support.' has as its objectives:

"To increase the number of ethnic minority faculty, students, and investigators engaged in biomedical research. To broaden the opportunities for participation in biomedical research of ethnic minority faculty, students, and investigators by providing support for biomedical research programs at eligible institutions."

Eligibility for grants under this program is limited to (1) four-year colleges, universities, and health professional schools with over 50% minority enrollments; (2) four-year institutions with significant but not necessarily over 50% minority enrollment provided they have a history of encouragement and assistance to minorities; (3) two-year colleges with 50% minority enrollment; and (4) American Indian Tribal Councils. Grants made pursuant to this program are estimated to total $9,711,000 for 1977.

The second program, No. 13.880, entitled "Minority Access To Research Careers," has as its objective to "assist minority institutions to train greater numbers of scientists and teachers in health related fields." Grants under this program are made directly to individuals and to institutions for the purpose of enabling them to make grants to individuals.

*346 The Court has recognized that the construction of a statute by those charged with its execution is particularly deserving of respect where Congress has directed its attention to the administrative construction and left it unaltered. Cf. *Red Lion Broadcasting Co. v. FCC*, 395 U.S., at 381, 89 S.Ct., at 1801; *Zemel v. Rusk*, 381 U.S. 1, 11-12, 85 S.Ct. 1271, 1278-1279, 14 L.Ed.2d 179 (1965). Congress recently took just this kind of action when it considered an amendment to the Departments of Labor and Health, Education, and Welfare appropriation bill for 1978, which would have restricted significantly the remedial use of race

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in programs funded by the appropriation. The amendment, as originally submitted by Representative Ashbrook, provided that "[n]one of the funds appropriated in this Act may be used to initiate, carry out or enforce any program of affirmative action or any other system of quotas or goals in regard to admission policies or employment practices which encourage or require any discrimination on the basis of race, creed, religion, sex or age." 123 ***347** Rec. 19715 (1977). In support of the measure, Representative Ashbrook argued that the 1964 Civil Rights Act never authorized the imposition of affirmative action and that this was a creation of the bureaucracy. *Id.*, at 19722. He explicitly stated, however, that ****2777** he favored permitting universities to adopt affirmative action programs giving consideration to racial identity but opposed the imposition of such programs by the Government. *Id.*, at 19715. His amendment was itself amended to reflect this position by only barring the *imposition* of race-conscious remedies by HEW:

"None of the funds appropriated in this Act may be obligated or expended in connection with the issuance, implementation, or enforcement of any rule, regulation, standard, guideline, recommendation, or order issued by the Secretary of Health, Education, and Welfare which for purposes of compliance with any ratio, quota, or other numerical requirement related to race, creed, color, national origin, or sex requires any individual or entity to take any action with respect to (1) the hiring or promotion policies or practices of such individual or entity, or (2) the admissions policies or practices of such individual or entity." *Id.*, at 19722.

This amendment was adopted by the House. *Ibid.* The Senate bill, however, contained no such restriction upon HEW's authority to impose race-conscious remedies and the Conference Committee, upon the urging of the Secretary of HEW, deleted the House provision from the bill.[FN21] More significant for present purposes, however, is the fact that even the proponents of imposing limitations upon HEW's implementation of Title VI did not challenge the right of federally funded educational institutions voluntarily to extend preferences to racial minorities.

FN21. H.R.Conf.Rep. No. 95-538, p. 22 (1977); 123 Cong.Rec. 26188 (1977). See H.J.Res. 662, 95th Cong., 1st Sess. (1977); Pub.L. 95-205, 91 Stat. 1460.

***348** Finally, congressional action subsequent to the passage of Title VI eliminates any possible doubt about Congress' views concerning the permissibility of racial preferences for the purpose of assisting disadvantaged racial minorities. It confirms that Congress did not intend to prohibit and does not now believe that Title VI prohibits the consideration of race as part of a remedy for societal discrimination even where there is no showing that the institution extending the preference has been guilty of past discrimination nor any judicial finding that the particular beneficiaries of the racial preference have been adversely affected by societal discrimination.

Just last year Congress enacted legislation [FN22] explicitly requiring that no grants shall be made "for any local public works project unless the applicant gives satisfactory assurance to the Secretary [of Commerce] that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises." The statute defines the term "minority business enterprise" as "a business, at least 50 per centum of which is owned by minority group members or, in case of a publicly owned business, at least 51 per centum of the stock of which is owned by minority group members." The term "minority group members" is defined in explicitly racial terms: "citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts." Although the statute contains an exemption from this requirement "to the extent that the Secretary determines otherwise," this escape clause was provided only to deal with the possibility that certain areas of the country might not contain sufficient qualified "minority business enterprises" to permit compliance with the quota provisions of the legislation. [FN23]

FN22. 91 Stat. 117, 42 U.S.C. § 6705 (f)(2) (1976 ed.).

FN23. 123 Cong.Rec. 7156 (1977); *id.*, at 5327-5330 (1977).

The legislative history of this race-conscious legislation reveals that it represents a deliberate attempt to deal with ***349** the excessive rate of unemployment among minority citizens and to encourage the development of viable minority controlled enterprises.[FN24] ****2778** It was believed that such a "set-aside" was required in order to enable minorities, still "new on the scene" and "relatively small," to compete with larger and more established companies which would always be successful in underbidding minority enterprises. 123 Cong.Rec. 5327 (1977) (Rep. Mitchell). What is most significant about the congressional consideration of the measure is that although the use of a racial quota or "set-aside" by a recipient of federal funds

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would constitute a direct violation of Title VI if that statute were read to prohibit race-conscious action, no mention was made during the debates in either the House or the Senate of even the possibility that the quota provisions for minority contractors might in any way conflict with or modify Title VI. It is inconceivable that such a purported conflict would have escaped congressional attention through an inadvertent failure to recognize the relevance of Title VI. Indeed, the Act of which this affirmative-action provision is a part also contains a provision barring discrimination on the basis of sex which states that this prohibition "will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination under Title VI of the Civil Rights Act of 1964." 42 U.S.C. § 6709 (1976 ed.). Thus Congress was fully aware of the applicability of Title VI to the funding of public works projects. Under these circumstances, the enactment of the 10% "set-aside" for minority enterprises reflects a congressional judgment that the remedial use of race is permissible under Title VI. We have repeatedly recognized that subsequent legislation reflecting an interpretation of an earlier Act is entitled to great weight in determining the meaning of the earlier statute. *Red Lion Broadcasting Co. v. FCC*, 395 U.S., at 380-381, 89 S.Ct., at 1801-1802; ***350***Erlenbaugh v. United States*, 409 U.S. 239, 243-244, 93 S.Ct. 477, 480-481, 34 L.Ed.2d 446 (1972). See also *United States v. Stewart*, 311 U.S. 60, 64-65, 61 S.Ct. 102, 105-106 85 L.Ed. 40 (1940).[FN25]

FN24. See *id.*, at 7156 (1977) (Sen. Brooke).

FN25. In addition to the enactment of the 10% quota provision discussed *supra*, Congress has also passed other Acts mandating race-conscious measures to overcome disadvantages experienced by racial minorities. Although these statutes have less direct bearing upon the meaning of Title VI, they do demonstrate that Congress believes race-conscious remedial measures to be both permissible and desirable under at least some circumstances. This in turn undercuts the likelihood that Congress intended to limit voluntary efforts to implement similar measures. For example, § 7(a) of the National Science Foundation Authorization Act, 1977, provides:

"The Director of the National Science Foundation shall initiate an intensive search for qualified women, members of minority groups, and handicapped individuals to fill executive level positions in the National Science Foundation. In carrying out the requirement of this subsection, the Director shall work closely with organizations which have been active in seeking greater recognition and utilization of the scientific and technical capabilities of minorities, women, and handicapped individuals. The Director shall improve the representation of minorities, women, and handicapped individuals on advisory committees, review panels, and all other mechanisms by which the scientific community provides assistance to the Foundation." 90 Stat. 2056, note following 42 U.S.C. § 1873 (1976 ed.).

Perhaps more importantly, the Act also authorizes the funding of Minority Centers for Graduate Education. Section 7(c)(2) of the Act, 90 Stat. 2056, requires that these Centers:

"(A) have substantial minority student enrollment;

"(B) are geographically located near minority population centers;

"(C) demonstrate a commitment to encouraging and assisting minority students, researchers, and faculty;

"(F) will serve as a regional resource in science and engineering for the minority community which the Center is designed to serve; and

"(G) will develop joint educational programs with nearby undergraduate institutions of higher education which have a substantial minority student enrollment."

Once again, there is no indication in the legislative history of this Act or elsewhere that Congress saw any inconsistency between the race-conscious nature of such legislation and the meaning of Title VI. And, once again, it is unlikely in the extreme that a Congress which believed that it had commanded recipients of federal funds to be absolutely color-blind would itself expend federal funds in such a race-conscious manner. See also the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. § 801 *et seq.* (1976 ed.), 49 U.S.C. § 1657a *et seq.* (1976

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ed.); the Emergency School Aid Act, 20 U.S.C. § 1601 *et seq.* (1976 ed.).

**2779 C

Prior decisions of this Court also strongly suggest that Title VI does not prohibit the remedial use of race where such action is constitutionally permissible. In *Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974), the Court held that the failure of the San *351 Francisco school system to provide English-language instruction to students of Chinese ancestry who do not speak English, or to provide them with instruction in Chinese, constituted a violation of Title VI. The Court relied upon an HEW regulation which stipulates that a recipient of federal funds "may not . . . utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination" or have "the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin." 45 CFR § 80.3(b)(2) (1977). It interpreted this regulation as requiring San Francisco to extend the same educational benefits to Chinese-speaking students as to English-speaking students, even though there was no finding or allegation that the city's failure to do so was a result of a purposeful design to discriminate on the basis of race.

Lau is significant in two related respects. First, it indicates that in at least some circumstances agencies responsible for the administration of Title VI may require recipients who have not been guilty of any constitutional violations to depart from a policy of color blindness and to be cognizant of the impact of their actions upon racial minorities. Secondly, *Lau* clearly requires that institutions receiving federal funds be accorded considerable latitude in voluntarily undertaking race-conscious action designed to remedy the exclusion of significant numbers*352 of minorities from the benefits of federally funded programs. Although this Court has not yet considered the question, presumably, by analogy to our decisions construing Title VII, a medical school would not be in violation of Title VI under *Lau* because of the serious underrepresentation of racial minorities in its student body as long as it could demonstrate that its entrance requirements correlated sufficiently with the performance of minority students in medical school and the medical profession.[FN26] It would be inconsistent with *Lau* and the emphasis of Title VI and the HEW regulations on voluntary action, however, to require that an institution wait to be adjudicated to be in violation of the law before being permitted to voluntarily undertake corrective action based upon a good-faith and reasonable belief that the failure of certain racial minorities to satisfy entrance requirements is not a measure of their ultimate performance as doctors but a result of the lingering effects of past societal discrimination.

FN26. Cf. *Griggs v. Duke Power Co.*, 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971).

We recognize that *Lau*, especially when read in light of our subsequent decision in *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976), which rejected the general proposition that governmental action is unconstitutional solely because it has a racially disproportionate impact, may be read as being predicated upon the view that, at least under some circumstances, Title VI proscribes conduct which might not be prohibited by the Constitution. Since we are now of the opinion, for the reasons set forth above, that Title VI's standard, applicable alike to public and private recipients of federal funds, is no broader than the Constitution's, we have serious doubts concerning the correctness of what appears to be the premise of that decision. However, even accepting *Lau*'s implication that impact alone is in some contexts sufficient to establish a prima facie violation of Title VI, contrary to our review that Title VI's definition of racial discrimination is absolutely coextensive with the Constitution's, this would not assist the respondent *353 in the least. First, for the reasons discussed *supra*, at 2772-2779, regardless of whether Title VI's prohibitions extend beyond the **2780 Constitution's, the evidence fails to establish, and, indeed, compels the rejection of, the proposition that Congress intended to prohibit recipients of federal funds from voluntarily employing race-conscious measures to eliminate the effects of past societal discrimination against racial minorities such as Negroes. Secondly, *Lau* itself, for the reasons set forth in the immediately preceding paragraph, strongly supports the view that voluntary race-conscious remedial action is permissible under Title VI. If discriminatory racial impact alone is enough to demonstrate at least a prima facie Title VI violation, it is difficult to believe that the Title would forbid the Medical School from attempting to correct the racially exclusionary effects of its initial admissions policy during the first two years of the School's operation.

The Court has also declined to adopt a "color-blind" interpretation of other statutes containing nondiscrimination provisions similar to that contained in Title VI. We have held under Title VII that where employment requirements have a disproportionate impact upon racial minorities they constitute a statutory violation, even in the absence of

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discriminatory intent, unless the employer is able to demonstrate that the requirements are sufficiently related to the needs of the job.[FN27] More significantly, the Court has required that preferences be given by employers to members of racial minorities as a remedy for past violations of Title VII, even where there has been no finding that the employer has acted with a discriminatory intent.[FN28] Finally, we have construed the Voting ***354** Rights Act of 1965, ****2781** 42 U.S.C. § 1973 *et seq.* (1970 ed. and Supp. V), which contains a provision barring any voting procedure or qualification that denies or abridges "the right of ***355** any citizen of the United States to vote on account of race or color," as permitting States to voluntarily take race into account in a way that fairly represents the voting strengths of different racial groups in order to comply with the commands of the statute, even where the result is a gain for one racial group at the expense of others.[FN29]

FN27. *Ibid.*; *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 95 S.Ct. 2362, 45 L.Ed.2d 280 (1975).

FN28. *Franks v. Bowman Transportation Co.*, 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed.2d 444 (1976); *Teamsters v. United States*, 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977). Executive, judicial, and congressional action subsequent to the passage of Title VII conclusively established that the Title did not bar the remedial use of race. Prior to the 1972 amendments to Title VII (Equal Employment Opportunity Act of 1972, 86 Stat. 103) a number of Courts of Appeals approved race-conscious action to remedy the effects of employment discrimination. See, *e. g., Heat & Frost Insulators & Asbestos Workers v. Vogler*, 407 F.2d 1047 (C.A.5 1969); *United States v. Electrical Workers*, 428 F.2d 144, 149-150 (C.A.6), cert. denied, 400 U.S. 943, 91 S.Ct. 245, 27 L.Ed.2d 248 (1970); *United States v. Sheet Metal Workers*, 416 F.2d 123 (C.A.8 1969). In 1965, the President issued Exec. Order No. 11246, 3 CFR 339 (1964-1965 Comp.), which as amended by Exec. Order No. 11375, 3 CFR 684 (1966-1970 Comp.), required federal contractors to take affirmative action to remedy the disproportionately low employment of racial minorities in the construction industry. The Attorney General issued an opinion concluding that the race consciousness required by Exec. Order No. 11246 did not conflict with Title VII:

"It is not correct to say that Title VII prohibits employers from making race or national origin a factor for consideration at any stage in the process of obtaining employees. The legal definition of discrimination is an evolving one, but it is now well recognized in judicial opinions that the obligation of nondiscrimination, whether imposed by statute or by the Constitution, does not require and, in some circumstances, may not permit obliviousness or indifference to the racial consequences of alternative courses of action which involve the application of outwardly neutral criteria." 42 Op. Atty. Gen. 405, 411 (1969).

The federal courts agreed. See, *e. g., Contractors Assn. of Eastern Pa. v. Secretary of Labor*, 442 F.2d 159 (C.A.3), cert. denied, 404 U.S. 854, 92 S.Ct. 98, 30 L.Ed.2d 95 (1971) (which also held, 442 F.2d, at 173, that race-conscious affirmative action was permissible under Title VI); *Southern Illinois Builders Assn. v. Ogilvie*, 471 F.2d 680 (C.A.7 1972). Moreover, Congress, in enacting the 1972 amendments to Title VII, explicitly considered and rejected proposals to alter Exec. Order No. 11246 and the prevailing judicial interpretations of Title VII as permitting, and in some circumstances requiring, race-conscious action. See Comment, The Philadelphia Plan: A Study in the Dynamics of Executive Power, 39 U.Chi.L.Rev. 723, 747-757 (1972). The section-by-section analysis of the 1972 amendments to Title VII undertaken by the Conference Committee Report on H.R. 1746 reveals a resolve to accept the then (as now) prevailing judicial interpretations of the scope of Title VII:

"In any area where the new law does not address itself, or in any areas where a specific contrary intent is not indicated, it was assumed that the present case law as developed by the courts would continue to govern the applicability and construction of Title VII." Legislative History of the Equal Employment Opportunity Act of 1972, p. 1844 (Comm.Print. 1972).

FN29. *United Jewish Organizations v. Carey*, 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 (1977). See also *id.*, at 167-168, 97 S.Ct., at 1010-1011 (opinion of WHITE, J.).

These prior decisions are indicative of the Court's unwil-

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lingness to construe remedial statutes designed to eliminate discrimination against racial minorities in a manner which would impede efforts to attain this objective. There is no justification for departing from this course in the case of Title VI and frustrating the clear judgment of Congress that race-conscious remedial action is permissible.

We turn, therefore, to our analysis of the Equal Protection Clause of the Fourteenth Amendment.

III

A

The assertion of human equality is closely associated with the proposition that differences in color or creed, birth or status, are neither significant nor relevant to the way in which persons should be treated. Nonetheless, the position that such factors must be "constitutionally an irrelevance," *Edwards v. California*, 314 U.S. 160, 185, 62 S.Ct. 164, 172, 86 L.Ed. 119 (1941) (Jackson, J., concurring), summed up by the shorthand phrase "[o]ur Constitution is color-blind," *Plessy v. Ferguson*, 163 U.S. 537, 559, 16 S.Ct. 1138, 1146, 41 L.Ed. 256 (1896) (Harlan, J., dissenting), has never been adopted by this Court as the proper meaning of the Equal Protection Clause. In ***356** deed, we have expressly rejected this proposition on a number of occasions.

Our cases have always implied that an "overriding statutory purpose," *McLaughlin v. Florida*, 379 U.S. 184, 192, 85 S.Ct. 283, 288, 13 L.Ed.2d 222 (1964), could be found that would justify racial classifications. See, *e. g., ibid.; Loving v. Virginia*, 388 U.S. 1, 11, 87 S.Ct. 1817, 1823, 18 L.Ed.2d 1010 (1967); *Korematsu v. United States*, 323 U.S. 214, 216, 65 S.Ct. 193, 194, 89 L.Ed. 194 (1944); *Hirabayashi v. United States*, 320 U.S. 81, 100-101, 63 S.Ct. 1375, 1385-1386, 87 L.Ed. 1774 (1943). More recently, in *McDaniel v. Barresi*, 402 U.S. 39, 91 S.Ct. 1287, 28 L.Ed.2d 582 (1971), this Court unanimously reversed the Georgia Supreme Court which had held that a desegregation plan voluntarily adopted by a local school board, which assigned students on the basis of race, was *per se* invalid because it was not color-blind. And in *North Carolina Board of Education v. Swann* we held, again unanimously, that a statute mandating color-blind school-assignment plans could not stand "against the background of segregation," since such a limit on remedies would "render illusory the promise of *Brown [I]*." 402 U.S., at 45-46, 91 S.Ct., at 1286.

We conclude, therefore, that racial classifications are not *per se* invalid under the Fourteenth Amendment. Accordingly, we turn to the problem of articulating what our role should be in reviewing state action that expressly classifies by race.

B

Respondent argues that racial classifications are always suspect and, consequently, that this Court should weigh the importance of the objectives served by Davis' special admissions program to see if they are compelling. In addition, he asserts that this Court must inquire whether, in its judgment, there are alternatives to racial classifications which would suit Davis' purposes. Petitioner, on the other hand, states that our proper role is simply to accept petitioner's determination that the racial ****2782** classifications used by its program are reasonably related to what it tells us are its benign ***357** purposes. We reject petitioner's view, but, because our prior cases are in many respects inapposite to that before us now, we find it necessary to define with precision the meaning of that inexact term, "strict scrutiny."

[10] Unquestionably we have held that a government practice or statute which restricts "fundamental rights" or which contains "suspect classifications" is to be subjected to "strict scrutiny" and can be justified only if it furthers a compelling government purpose and, even then, only if no less restrictive alternative is available.[FN30] See, *e. g., San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 16-17, 93 S.Ct. 1278, 1287-1288, 36 L.Ed.2d 16 (1973); *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972). But no fundamental right is involved here. See *San Antonio, supra*, 411 U.S., at 29-36, 93 S.Ct., at 1294-1298. Nor do whites as a class have any of the "traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Id.*, at 28, 93 S.Ct., at 1294; see *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n. 4, 58 S.Ct. 778, 783, 82 L.Ed. 1234 (1938).[FN31]

FN30. We do not pause to debate whether our cases establish a "two-tier" analysis, a "sliding scale" analysis, or something else altogether. It is enough for present purposes that strict scrutiny is applied at least in some cases.

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FN31. Of course, the fact that whites constitute a political majority in our Nation does not necessarily mean that active judicial scrutiny of racial classifications that disadvantage whites is inappropriate. Cf. *Castaneda v. Partida,* 430 U.S. 482, 499-500, 97 S.Ct. 1272, 1282-1283, 51 L.Ed.2d 498 (1977); *id.,* at 501, 97 S.Ct., at 1283 (MARSHALL, J., concurring).

Moreover, if the University's representations are credited, this is not a case where racial classifications are "irrelevant and therefore prohibited." *Hirabayashi, supra,* 320 U.S., at 100, 63 S.Ct., at 1385. Nor has anyone suggested that the University's purposes contravene the cardinal principle that racial classifications that stigmatize-because they are drawn on the presumption that one race is inferior to another or because they put the weight of government*358 behind racial hatred and separatism-are invalid without more. See *Yick Wo v. Hopkins,* 118 U.S. 356, 374, 6 S.Ct. 1064, 1073, 30 L.Ed. 220 (1886); [FN32] accord, *Strauder v. West Virginia,* 100 U.S. 303, 308, 25 L.Ed. 664 (1880); *Korematsu v. United States, supra,* 323 U.S., at 223, 65 S.Ct., at 197; *Oyama v. California,* 332 U.S. 633, 663, 68 S.Ct. 269, 283, 92 L.Ed. 249 (1948) (Murphy, J., concurring); *Brown I,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); *McLaughlin v. Florida, supra,* 379 U.S., at 191-192, 85 S.Ct., at 287-289; *Loving v. Virginia, supra,* 388 U.S., at 11-12, 87 S.Ct., at 1823-1824; *Reitman v. Mulkey,* 387 U.S. 369, 375-376, 87 S.Ct. 1627, 1631-1632, 18 L.Ed.2d 830 (1967); *United Jewish Organizations v. Carey,* 430 U.S. 144, 165, 97 S.Ct. 996, 1009, 51 L.Ed.2d 229 (1977) (*UJO*) (opinion of WHITE, J., joined by REHNQUIST and STEVENS, JJ.); *id.,* at 169, 97 S.Ct., at 1011 (opinion concurring in part). [FN33]

FN32. "[T]he conclusion cannot be resisted, that no reason for [the refusal to issue permits to Chinese] exists except hostility to the race and nationality to which the petitioners belong . . .. The discrimination is, therefore, illegal . . .."

FN33. Indeed, even in *Plessy v. Ferguson* the Court recognized that a classification by race that presumed one race to be inferior to another would have to be condemned. See 163 U.S., at 544-551, 16 S.Ct., at 1140-1143.

On the other hand, the fact that this case does not fit neatly into our prior analytic framework for race cases does not mean that it should be analyzed by applying the very loose rational-basis standard of review that is the very least that is always applied in equal protection cases. [FN34] " '[T]he mere **2783 recitation of a benign, compensatory purpose is not an automatic shield *359 hich protects against any inquiry into the actual purposes underlying a statutory scheme.' " *Califano v. Webster,* 430 U.S. 313, 317, 97 S.Ct. 1192, 1194, 51 L.Ed.2d 360 (1977), quoting *Weinberger v. Wiesenfeld,* 420 U.S. 636, 648, 95 S.Ct. 1225, 1233, 43 L.Ed.2d 514 (1975). Instead, a number of considerations-developed in gender-discrimination cases but which carry even more force when applied to racial classifications-lead us to conclude that racial classifications designed to further remedial purposes " 'must serve important governmental objectives and must be substantially related to achievement of those objectives.' " *Califano v. Webster, supra,* 430 U.S., at 317, 97 S.Ct., at 1194, quoting *Craig v. Boren,* 429 U.S. 190, 197, 97 S.Ct. 451, 457, 50 L.Ed.2d 397 (1976). [FN35]

FN34. Paradoxically, petitioner's argument is supported by the cases generally thought to establish the "strict scrutiny" standard in race cases, *Hirabayashi v. United States,* 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed. 1774 (1943), and *Korematsu v. United States,* 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944). In *Hirabayashi,* for example, the Court, responding to a claim that a racial classification was rational, sustained a racial classification solely on the basis of a conclusion in the double negative that it could not say that facts which might have been available "could afford no ground for differentiating citizens of Japanese ancestry from other groups in the United States." *Hirabayashi,* 320 U.S., at 101, 63 S.Ct., at 1386. A similar mode of analysis was followed in *Korematsu,* see 323 U.S., at 224, 65 S.Ct., at 197, even though the Court stated there that racial classifications were "immediately suspect" and should be subject to "the most rigid scrutiny." *Id.,* at 216, 65 S.Ct., at 194.

FN35. We disagree with our Brother POWELL's suggestion, *ante,* at 2755, that the presence of "rival groups which can claim that they, too, are entitled to preferential treatment" distinguishes the gender cases or is relevant to the question of scope of judicial review of race classifications. We are not asked to determine whether groups other than those favored by the Davis program should similarly be favored. All we are asked to do is to pronounce the constitutionality of what Davis has done.

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> But, were we asked to decide whether any given rival group-German-Americans for example-must constitutionally be accorded preferential treatment, we do have a "principled basis," *ante,* at 2751, for deciding this question, one that is well established in our cases: The Davis program expressly sets out four classes which receive preferred status. *Ante,* at 2740. The program clearly distinguishes whites, but one cannot reason from this a conclusion that German-Americans, as a national group, are singled out for invidious treatment. And even if the Davis program had a differential impact on German-Americans, they would have no constitutional claim unless they could prove that Davis intended invidiously to discriminate against German-Americans. See *Arlington Heights v. Metropolitan Housing Dev. Corp.,* 429 U.S. 252, 264-265, 97 S.Ct. 555, 562-563, 50 L.Ed.2d 450 (1977); *Washington v. Davis,* 426 U.S. 229, 238-241, 96 S.Ct. 2040, 2046, 2048, 48 L.Ed.2d 597 (1976). If this could not be shown, then "the principle that calls for the closest scrutiny of distinctions in laws *denying* fundamental rights . . . is inapplicable," *Katzenbach v. Morgan,* 384 U.S. 641, 657, 86 S.Ct. 1717, 1727, 16 L.Ed.2d 828 (1966), and the only question is whether it was rational for Davis to conclude that the groups it preferred had a greater claim to compensation than the groups it excluded. See *ibid.; San Antonio Independent School District v. Rodriquez,* 411 U.S. 1, 38-39, 93 S.Ct. 1278, 1299-1300, 36 L.Ed.2d 16 (1973) (applying *Katzenbach* test to state action intended to remove discrimination in educational opportunity). Thus, claims of rival groups, although they may create thorny political problems, create relatively simple problems for the courts.

360** First, race, like, "gender-based classifications too often [has] been inexcusably utilized to stereotype and stigmatize politically powerless segments of society." *Kahn v. Shevin,* 416 U.S. 351, 357, 94 S.Ct. 1734, 1738, 40 L.Ed.2d 189 (1974) (dissenting opinion). While a carefully tailored statute designed to remedy past discrimination could avoid these vices, see *Califano v. Webster, supra; Schlesinger v. Ballard,* 419 U.S. 498, 95 S.Ct. 572, 42 L.Ed.2d 610 (1975); *Kahn v. Shevin, supra,* we nonetheless have recognized that the line between honest and thoughtful appraisal of the effects of past discrimination and paternalistic stereotyping is not so clear and that a statute based on the latter is patently capable of stigmatizing all women with a badge of inferiority. Cf. *Schlesinger v. Ballard, supra,* 419 U.S., at 508, 95 S.Ct., at 577; *UJO, supra,* 430 U.S., at 174, and n. 3, 97 S.Ct., at 1014 (opinion concurring in part); ****2784Califano v. Goldfarb,* 430 U.S. 199, 223, 97 S.Ct. 1021, 1035, 51 L.Ed.2d 270 (1977) (STEVENS, J., concurring in judgment). See also *Stanton v. Stanton,* 421 U.S. 7, 14-15, 95 S.Ct. 1373, 1377-1378, 43 L.Ed.2d 688 (1975). State programs designed ostensibly to ameliorate the effects of past racial discrimination obviously create the same hazard of stigma, since they may promote racial separatism and reinforce the views of those who believe that members of racial minorities are inherently incapable of succeeding on their own. See *UJO, supra,* 430 U.S., at 172, 97 S.Ct., at 1013 (opinion concurring in part); *ante,* at 2753 (opinion of POWELL, J.).

Second, race, like gender and illegitimacy, see *Weber v. Aetna Casualty & Surety Co.,* 406 U.S. 164, 92 S.Ct. 1400, 31 L.Ed.2d 768 (1972), is an immutable characteristic which its possessors are powerless to escape or set aside. While a classification is not *per se* invalid because it divides classes on the basis of an immutable characteristic, see *supra,* at 2781-2782, it is nevertheless true that such divisions are contrary to our deep belief that "legal burdens should bear some relationship to individual responsibility or ***361** wrongdoing," *Weber, supra,* 406 U.S., at 175, 92 S.Ct., at 1407; *Frontiero v. Richardson,* 411 U.S. 677, 686, 93 S.Ct. 1764, 1770, 36 L.Ed.2d 583 (1973) (opinion of BRENNAN, WHITE, and MARSHALL, JJ.), and that advancement sanctioned, sponsored, or approved by the State should ideally be based on individual merit or achievement, or at the least on factors within the control of an individual. See *UJO,* 430 U.S., at 173, 97 S.Ct., at 1013 (opinion concurring in part); *Kotch v. Board of River Port Pilot Comm'rs,* 330 U.S. 552, 566, 67 S.Ct. 910, 917, 91 L.Ed. 1093 (1947) (Rutledge, J., dissenting).

Because this principle is so deeply rooted it might be supposed that it would be considered in the legislative process and weighed against the benefits of programs preferring individuals because of their race. But this is not necessarily so: The "natural consequence of our governing process [may well be] that the most 'discrete and insular' of whites . . . will be called upon to bear the immediate, direct costs of benign discrimination." *UJO, supra,* 430 U.S., at 174, 97 S.Ct., at 1014 (opinion concurring in part). Moreover, it is clear from our cases that there are limits beyond which majorities may not go when they classify on

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the basis of immutable characteristics. See, *e. g., Weber, supra.* Thus, even if the concern for individualism is weighed by the political process, that weighing cannot waive the personal rights of individuals under the Fourteenth Amendment. See *Lucas v. Colorado General Assembly,* 377 U.S. 713, 736, 84 S.Ct. 1459, 1473, 12 L.Ed.2d 632 (1964).

In sum, because of the significant risk that racial classifications established for ostensibly benign purposes can be misused, causing effects not unlike those created by invidious classifications, it is inappropriate to inquire only whether there is any conceivable basis that might sustain such a classification. Instead, to justify such a classification an important and articulated purpose for its use must be shown. In addition, any statute must be stricken that stigmatizes any group or that singles out those least well represented in the political process to bear the brunt of a benign program. Thus, our review under the Fourteenth Amendment should be ***362** strict-not " 'strict' in theory and fatal in fact," [FN36] because it is stigma that causes fatality-but strict and searching nonetheless.

FN36. Gunther, The Supreme Court, 1971 Term-Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv.L.Rev. 1, 8 (1972).

IV

Davis' articulated purpose of remedying the effects of past societal discrimination is, under our cases, sufficiently important to justify the use of race-conscious admissions programs where there is a sound basis for concluding that minority underrepresentation is substantial and chronic, and that the handicap of past discrimination is impeding access of minorities to the Medical School.

****2785** A

At least since *Green v. County School Board,* 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), it has been clear that a public body which has itself been adjudged to have engaged in racial discrimination cannot bring itself into compliance with the Equal Protection Clause simply by ending its unlawful acts and adopting a neutral stance. Three years later, *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), and its companion cases, *Davis v. School Comm'rs of Mobile County,* 402 U.S. 33, 91 S.Ct. 1289, 28 L.Ed.2d 577 (1971); *McDaniel v. Barresi,* 402 U.S. 39, 91 S.Ct. 1287, 28 L.Ed.2d 582 (1971), and *North Carolina Board of Education v. Swann,* 402 U.S. 43, 91 S.Ct. 1284, 28 L.Ed.2d 586 (1971), reiterated that racially neutral remedies for past discrimination were inadequate where consequences of past discriminatory acts influence or control present decisions. See, *e. g., Charlotte-Mecklenburg, supra,* 402 U.S., at 28, 91 S.Ct., at 1282. And the Court further held both that courts could enter desegregation orders which assigned students and faculty by reference to race, *Charlotte-Mecklenburg, supra; Davis, supra; United States v. Montgomery County Board of Ed.,* 395 U.S. 225, 89 S.Ct. 1670, 23 L.Ed.2d 263 (1969), and that local school boards could *voluntarily* adopt desegregation ***363** plans which made express reference to race if this was necessary to remedy the effects of past discrimination. *McDaniel v. Barresi, supra.* Moreover, we stated that school boards, even in the absence of a judicial finding of past discrimination, could voluntarily adopt plans which assigned students with the end of creating racial pluralism by establishing fixed ratios of black and white students in each school. *Charlotte-Mecklenburg, supra,* 402 U.S., at 16, 91 S.Ct., at 1276. In each instance, the creation of unitary school systems, in which the effects of past discrimination had been "eliminated root and branch," *Green, supra,* 391 U.S., at 438, 88 S.Ct., at 1694, was recognized as a compelling social goal justifying the overt use of race.

Finally, the conclusion that state educational institutions may constitutionally adopt admissions programs designed to avoid exclusion of historically disadvantaged minorities, even when such programs explicitly take race into account, finds direct support in our cases construing congressional legislation designed to overcome the present effects of past discrimination. Congress can and has outlawed actions which have a disproportionately adverse and unjustified impact upon members of racial minorities and has required or authorized race-conscious action to put individuals disadvantaged by such impact in the position they otherwise might have enjoyed. See *Franks v. Bowman Transportation Co.,* 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed.2d 444 (1976); *Teamsters v. United States,* 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977). Such relief does not require as a predicate proof that recipients of preferential advancement have been individually discriminated against; it is enough that each recipient is within a general class of persons likely to have been the victims of discrimination. See *id.,* at 357-362, 97 S.Ct., at 1865-1868. Nor is it an objection to such relief that preference for minorities will upset the settled expectations of nonminorities. See *Franks, supra.* In addition, we have held that Congress, to remove barriers to equal opportunity, can and has required employers to use test criteria that fairly reflect the quali-

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fications of minority applicants ***364** vis-à-vis nonminority applicants, even if this means interpreting the qualifications of an applicant in light of his race. See *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 435, 95 S.Ct. 2362, 2380, 45 L.Ed.2d 280 (1975).[FN37]

FN37. In *Albemarle,* we approved "differential validation" of employment tests. See 422 U.S., at 435, 95 S.Ct., at 2380. That procedure requires that an employer must ensure that a test score of, for example, 50 for a minority job applicant means the same thing as a score of 50 for a nonminority applicant. By implication, were it determined that a test score of 50 for a minority corresponded in "potential for employment" to a 60 for whites, the test could not be used consistently with Title VII unless the employer hired minorities with scores of 50 even though he might not hire nonminority applicants with scores above 50 but below 60. Thus, it is clear that employers, to ensure equal opportunity, may have to adopt race-conscious hiring practices.

These cases cannot be distinguished simply by the presence of judicial findings of ****2786** discrimination, for race-conscious remedies have been approved where such findings have not been made. *McDaniel v. Barresi, supra; UJO*; see*Califano V. Webster*, 430 U.S. 313, 97 S.Ct. 1192, 51 L.Ed.2d 360 (1977); *Schlesinger v. Ballard*, 419 U.S. 498, 95 S.Ct. 572, 42 L.Ed.2d 610 (1975); *Kahn v. Shevin*, 416 U.S. 351, 94 S.Ct. 1734, 40 L.Ed.2d 189 (1974). See also*Katzenbach v. Morgan*, 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966). Indeed, the requirement of a judicial determination of a constitutional or statutory violation as a predicate for race-conscious remedial actions would be self-defeating. Such a requirement would severely undermine efforts to achieve voluntary compliance with the requirements of law. And our society and jurisprudence have always stressed the value of voluntary efforts to further the objectives of the law. Judicial intervention is a last resort to achieve cessation of illegal conduct or the remedying of its effects rather than a prerequisite to action.[FN38]

FN38. Indeed, Titles VI and VII of the Civil Rights Act of 1964 put great emphasis on voluntarism in remedial action. See *supra,* at 2772-2773. And, significantly, the Equal Employment Opportunity Commission has recently proposed guidelines authorizing employers to adopt racial preferences as a remedial measure where they have a reasonable basis for believing that they might otherwise be held in violation of Title VII. See 42 Fed.Reg. 64826 (1977).

365** Nor can our cases be distinguished on the ground that the entity using explicit racial classifications itself had violated § 1 of the Fourteenth Amendment or an antidiscrimination regulation, for again race-conscious remedies have been approved where this is not the case. See *UJO*, 430 U.S., at 157, 97 S.Ct., at 1005 (opinion of WHITE, J., joined by BRENNAN, BLACKMUN, and STEVENS, JJ.); [FN39] *id.*, at 167, 97 S.Ct., at 1010 (opinion of WHITE, J., joined by REHNQUIST and STEVENS, JJ.); [FN40] cf. *Califano v. Webster, supra*, 430 U.S., at 317, 97 S.Ct., at 1194; *Kahn v. Shevin, supra.* Moreover, the presence or absence of past discrimination by universities or employers is largely irrelevant to resolving respondent's constitutional claims. The claims of those burdened by the race-conscious actions of a university or employer who has never been adjudged in violation of an antidiscrimination law are not any more or less entitled to deference than the claims of the burdened nonminority workers in *Franks v. Bowman Transportation Co., supra*, in which the employer had violated Title VII, for in each case the employees are innocent of past discrimination. And, although it might be argued that, where an employer has violated an antidiscrimination law, the expectations of nonminority workers are themselves products of discrimination and hence "tainted," see *Franks, supra,* at 776, 96 S.Ct., at 1270, and therefore more easily upset, the same argument can be made with respect to respondent. If it was reasonable to conclude-as we hold that it was-that the failure of minorities to qualify for admission at Davis under regular procedures was due principally to the effects of past discrimination, then there is a reasonable likelihood that, but for pervasive racial discrimination,366** respondent would have failed to qualify for admission even in the absence of Davis' special admissions program.[FN41]

FN39. "[T]he [Voting Rights] Act's prohibition . . . is not dependent upon proving past unconstitutional apportionments . . . ."

FN40. "[T]he State is [not] powerless to minimize the consequences of racial discrimination by voters when it is regularly practiced at the polls."

FN41. Our cases cannot be distinguished by suggesting, as our Brother POWELL does, that in none of them was anyone deprived of "the relevant benefit." *Ante,* at 2756. Our school cases

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have deprived whites of the neighborhood school of their choice; our Title VII cases have deprived nondiscriminating employees of their settled seniority expectations; and *UJO* deprived the Hassidim of bloc voting strength. Each of these injuries was constitutionally cognizable as is respondent's here.

Thus, our cases under Title VII of the Civil Rights Act have held that, in order to ****2787** achieve minority participation in previously segregated areas of public life, Congress may require or authorize preferential treatment for those likely disadvantaged by societal racial discrimination. Such legislation has been sustained even without a requirement of findings of intentional racial discrimination by those required or authorized to accord preferential treatment, or a case-by-case determination that those to be benefited suffered from racial discrimination. These decisions compel the conclusion that States also may adopt race-conscious programs designed to overcome substantial, chronic minority underrepresentation where there is reason to believe that the evil addressed is a product of past racial discrimination.[FN42]

FN42. We do not understand Mr. Justice POWELL to disagree that providing a remedy for past racial prejudice can constitute a compelling purpose sufficient to meet strict scrutiny. See *ante,* at 2756. Yet, because petitioner is a corporation administering a university, he would not allow it to exercise such power in the absence of "judicial, legislative, or administrative findings of constitutional or statutory violations." *Ante,* at 2758. While we agree that reversal in this case would follow *a fortiori* had Davis been guilty of invidious racial discrimination or if a federal statute mandated that universities refrain from applying any admissions policy that had a disparate and unjustified racial impact, see, *e. g., McDaniel v. Barresi,* 402 U.S. 39, 91 S.Ct. 1287, 28 L.Ed.2d 582 (1971); *Franks v. Bowman Transportation Co.,* 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed.2d 444 (1976), we do not think it of constitutional significance that Davis has not been so adjudged.

Generally, the manner in which a State chooses to delegate governmental functions is for it to decide. Cf. *Sweezy v. New Hampshire,* 354 U.S. 234, 256, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957) (Frankfurter, J., concurring in result). California, by constitutional provision, has chosen to place authority over the operation of the University of California in the Board of Regents. See Cal.Const., Art. 9, § 9(a). Control over the University is to be found not in the legislature, but rather in the Regents who had been vested with full legislative (including policymaking), administrative, and adjudicative powers by the citizens of California. See *ibid.; Ishimatsu v. Regents,* 266 Cal.App.2d 854, 863-864, 72 Cal.Rptr. 756, 762-763 (1968); *Goldberg v. Regents,* 248 Cal.App.2d 867, 874, 57 Cal.Rptr. 463, 468 (1967); 30 Op.Cal.Atty.Gen. 162, 166 (1957) ("The Regents, not the legislature, have the general rule-making or policy-making power in regard to the University"). This is certainly a permissible choice, see *Sweezy, supra,* and we, unlike our Brother POWELL, find nothing in the Equal Protection Clause that requires us to depart from established principle by limiting the scope of power the Regents may exercise more narrowly than the powers that may constitutionally be wielded by the Assembly.

Because the Regents can exercise plenary legislative and administrative power, it elevates form over substance to insist that Davis could not use race-conscious remedial programs until it had been adjudged in violation of the Constitution or an antidiscrimination statute. For, if the Equal Protection Clause required such a violation as a predicate, the Regents could simply have promulgated a regulation prohibiting disparate treatment not justified by the need to admit only qualified students, and could have declared Davis to have been in violation of such a regulation on the basis of the exclusionary effect of the admissions policy applied during the first two years of its operation. See *infra,* at 2789-2790.

***367** Title VII was enacted pursuant to Congress' power under the Commerce Clause and § 5 of the Fourteenth Amendment. To the extent that Congress acted under the Commerce Clause power, it was restricted in the use of race in governmental decisionmaking by the equal protection component of the Due Process Clause of the Fifth Amendment precisely to the same extent as are the States by § 1 of the Fourteenth Amendment.[FN43] Therefore, to the extent that Title VII rests on the Commerce Clause power, our decisions such as *Franks* and ***368** *Teamsters v. United States,* 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977), implicitly recognize that the affirmative use of race

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is consistent with the equal protection component of the Fifth Amendment ****2788** and therefore with the Fourteenth Amendment. To the extent that Congress acted pursuant to § 5 of the Fourteenth Amendment, those cases impliedly recognize that Congress was empowered under that provision to accord preferential treatment to victims of past discrimination in order to overcome the effects of segregation, and we see no reason to conclude that the States cannot voluntarily accomplish under § 1 of the Fourteenth Amendment what Congress under § 5 of the Fourteenth Amendment validly may authorize or compel either the States or private persons to do. A contrary position would conflict with the traditional understanding recognizing the competence of the States to initiate measures consistent with federal policy in the absence of congressional pre-emption of the subject matter. Nothing whatever in the legislative history of either the Fourteenth Amendment or the Civil Rights Acts even remotely suggests that the States are foreclosed from furthering the fundamental purpose of equal opportunity to which the Amendment and those Acts are addressed. Indeed, voluntary initiatives by the States to achieve the national goal of equal opportunity have been recognized to be essential to its attainment. "To use the Fourteenth Amendment as a sword against such State power would stultify that Amendment." *Railway Mail Assn. v. Corsi,* 326 U.S. 88, 98, 65 S.Ct. 1483, 1489, 89 L.Ed. 2072 (1945) (Frankfurter, J., concurring).[FN44] We therefore***369** conclude that Davis' goal of admitting minority students disadvantaged by the effects of past discrimination is sufficiently important to justify use of race-conscious admissions criteria.

FN43. "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." *Buckley v. Valeo,* 424 U.S. 1, 93, 96 S.Ct. 612, 670, 46 L.Ed.2d 659 (1976) (*per curiam*), citing *Weinberger v. Wiesenfeld,* 420 U.S. 636, 638 n. 2, 95 S.Ct. 1225, 1228, 43 L.Ed.2d 514 (1975).

FN44. *Railway Mail Assn.* held that a state statute forbidding racial discrimination by certain labor organizations did not abridge the Association's due process rights secured by the Fourteenth Amendment because that result "would be a distortion of the policy manifested in that amendment, which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color." 326 U.S., at 94, 65 S.Ct., at 1487. That case thus established the principle that a State voluntarily could go beyond what the Fourteenth Amendment required in eliminating private racial discrimination.

B

Properly construed, therefore, our prior cases unequivocally show that a state government may adopt race-conscious programs if the purpose of such programs is to remove the disparate racial impact its actions might otherwise have and if there is reason to believe that the disparate impact is itself the product of past discrimination, whether its own or that of society at large. There is no question that Davis' program is valid under this test.

Certainly, on the basis of the undisputed factual submissions before this Court, Davis had a sound basis for believing that the problem of underrepresentation of minorities was substantial and chronic and that the problem was attributable to handicaps imposed on minority applicants by past and present racial discrimination. Until at least 1973, the practice of medicine in this country was, in fact, if not in law, largely the prerogative of whites.[FN45] In 1950, for example, while Negroes ***370** constituted 10% of the ****2789** total population, Negro physicians constituted only 2.2% of the total number of physicians.[FN46] The overwhelming majority of these, moreover, were educated in two predominantly Negro medical schools, Howard and Meharry.[FN47] By 1970, the gap between the proportion of Negroes in medicine and their proportion in the population had widened: The number of Negroes employed in medicine remained frozen at 2.2% [FN48] while the Negro population had increased to 11.1%.[FN49] The number of Negro admittees to predominantly white medical schools, moreover, had declined in absolute numbers during the years 1955 to 1964. Odegaard 19.

FN45. According to 89 schools responding to a questionnaire sent to 112 medical schools (all of the then-accredited medical schools in the United States except Howard and Meharry), substantial efforts to admit minority students did not begin until 1968. That year was the earliest year of involvement for 34% of the schools; an additional 66% became involved during the years 1969 to 1973. See C. Odegaard, Minorities in Medicine: From Receptive Passivity to Positive Action, 1966-1976, p. 19 (1977) (hereinafter Odegaard). These efforts were reflected in a significant increase in the percentage of minority M.D. graduates. The number of American Negro graduates increased from 2.2% in 1970 to 3.3% in 1973 and

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5.0% in 1975. Significant percentage increases in the number of Mexican American, American-Indian, and mainland Puerto Rican graduates were also recorded during those years. *Id.,* at 40.

The statistical information cited in this and the following notes was compiled by Government officials or medical educators, and has been brought to our attention in many of the briefs. Neither the parties nor the *amici* challenge the validity of the statistics alluded to in our discussion.

FN46. D. Reitzes, Negroes and Medicine, pp. xxvii, 3 (1958).

FN47. Between 1955 and 1964, for example, the percentage of Negro physicians graduated in the United States who were trained at these schools ranged from 69.0% to 75.8%. See Odegaard 19.

FN48. U.S. Dept. of Health, Education, and Welfare, Minorities and Women in the Health Fields 7 (Pub. No. (HRA) 75-22, May 1974).

FN49. U.S. Dept. of Commerce, Bureau of the Census, 1970 Census, vol. 1, pt. 1, Table 60 (1973).

Moreover, Davis had very good reason to believe that the national pattern of underrepresentation of minorities in medicine would be perpetuated if it retained a single admissions standard. For example, the entering classes in 1968 and 1969, the years in which such a standard was used, included only 1 Chicano and 2 Negroes out of the 50 admittees for each year. Nor is there any relief from this pattern of underrepresentation in the statistics for the regular admissions program in later years.[FN50]

FN50. See *ante,* at 2741 n. 6 (opinion of POWELL, J.).

Davis clearly could conclude that the serious and persistent underrepresentation of minorities in medicine depicted by these statistics is the result of handicaps under which minority applicants labor as a consequence of a background of deliberate, purposeful discrimination against minorities in education ***371** and in society generally, as well as in the medical profession. From the inception of our national life, Negroes have been subjected to unique legal disabilities impairing access to equal educational opportunity. Under slavery, penal sanctions were imposed upon anyone attempting to educate Negroes.[FN51] After enactment of the Fourteenth Amendment the States continued to deny Negroes equal educational opportunity, enforcing a strict policy of segregation that itself stamped Negroes as inferior, *Brown I,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), that relegated minorities to inferior educational institutions,[FN52] and that denied them intercourse in the mainstream of professional life necessary to advancement. See *Sweatt v. Painter,* 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114 (1950). Segregation was not limited to public facilities, moreover, but was enforced by criminal penalties against private action as well. Thus, as late as 1908, this Court enforced a state criminal conviction against a private college for teaching Negroes together with whites. *Berea College v. Kentucky,* 211 U.S. 45, 29 S.Ct. 33, 53 L.Ed. 81. See also *Plessy v. Ferguson,* 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

FN51. See, *e. g.,* R. Wade, Slavery in the Cities: The South 1820-1860, pp. 90-91 (1964).

FN52. For an example of unequal facilities in California schools, see *Soria v. Oxnard School Dist. Board,* 386 F.Supp. 539, 542 (CD Cal.1974). See also R. Kluger, Simple Justice (1976).

Green v. County School Board, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), gave explicit recognition to the fact that the habit of discrimination and the cultural tradition of race prejudice cultivated by centuries of legal slavery and segregation were not immediately dissipated when *Brown I, supra,* announced the constitutional principle that equal educational opportunity and participation in all aspects of American life could not be denied on the basis of race. Rather, massive official and private resistance prevented, and to a lesser extent still prevents, attainment of equal opportunity in education at all levels and in ****2790** the professions. The generation of minority students applying to Davis Medical School since it opened in 1968-most of whom ***372** were born before or about the time *Brown I* was decided-clearly have been victims of this discrimination. Judicial decrees recognizing discrimination in public education in California testify to the fact of widespread discrimination suffered by California-born minority applicants; [FN53] many minority group members living in California, moreover, were born and reared in school districts in Southern States segregated by law. [FN54] Since separation of school-children by race "generates a

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feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone," *Brown I, supra*, 347 U.S., at 494, 74 S.Ct., at 691, the conclusion is inescapable that applicants to medical school must be few indeed who endured the effects of *de jure* segregation, the resistance to *Brown I,* or the equally debilitating pervasive private discrimination fostered by our long history of official discrimination, cf. *Reitman v. Mulkey*, 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1967), and yet come to the starting line with an education equal to whites.[FN55]

FN53. See, *e. g., Crawford v. Board of Education*, 17 Cal.3d 280, 130 Cal.Rptr. 724, 551 P.2d 28 (1976); *Soria v. Oxnard School Dist. Board, supra*; *Spangler v. Pasadena City Board of Education*, 311 F.Supp. 501 (C.D.Cal.1970); C. Wollenberg, All Deliberate Speed: Segregation and Exclusion in California Schools, 1855-1975, pp. 136-177 (1976).

FN54. For example, over 40% of American-born Negro males aged 20 to 24 residing in California in 1970 were born in the South, and the statistic for females was over 48%. These statistics were computed from data contained in Census, *supra* n. 49, pt. 6, California, Tables 139, 140.

FN55. See, *e. g.,* O'Neil, Preferential Admissions: Equalizing the Access of Minority Groups to Higher Education, 80 Yale L.J. 699, 729-731 (1971).

Moreover, we need not rest solely on our own conclusion that Davis had sound reason to believe that the effects of past discrimination were handicapping minority applicants to the Medical School, because the Department of Health, Education, and Welfare, the expert agency charged by Congress with promulgating regulations enforcing Title VI of the Civil Rights Act of 1964, see *supra,* at 2775-2776, has also reached the conclusion that race may be taken into account in situations ***373** where a failure to do so would limit participation by minorities in federally funded programs, and regulations promulgated by the Department expressly contemplate that appropriate race-conscious programs may be adopted by universities to remedy unequal access to university programs caused by their own or by past societal discrimination. See *supra,* at 2776, discussing 45 CFR §§ 80.3(b)(6)(ii) and 80.5(j) (1971). It cannot be questioned that, in the absence of the special admissions program, access of minority students to the Medical School would be severely limited and, accordingly, race-conscious admissions would be deemed an appropriate response under these federal regulations. Moreover, the Department's regulatory policy is not one that has gone unnoticed by Congress. See *supra,* at 2777-2778. Indeed, although an amendment to an appropriations bill was introduced just last year that would have prevented the Secretary of Health, Education, and Welfare from mandating race-conscious programs in university admissions, proponents of this measure, significantly, did not question the validity of voluntary implementation of race-conscious admissions criteria. See *ibid.* In these circumstances, the conclusion implicit in the regulations-that the lingering effects of past discrimination continue to make race-conscious remedial programs appropriate means for ensuring equal educational opportunity in universities-deserves considerable judicial deference. See, *e. g., Katzenbach v. Morgan*, 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966); *UJO*, 430 U.S., at 175-178, 97 S.Ct., at 1014-1016 (opinion concurring in part).[FN56]

FN56. Congress and the Executive have also adopted a series of race-conscious programs, each predicated on an understanding that equal opportunity cannot be achieved by neutrality because of the effects of past and present discrimination. See *supra,* at 2778-2779.

****2791** C

The second prong of our test-whether the Davis program stigmatizes any discrete group or individual and whether race ***374** is reasonably used in light of the program's objectives-is clearly satisfied by the Davis program.

It is not even claimed that Davis' program in any way operates to stigmatize or single out any discrete and insular, or even any identifiable, nonminority group. Nor will harm comparable to that imposed upon racial minorities by exclusion or separation on grounds of race be the likely result of the program. It does not, for example, establish an exclusive preserve for minority students apart from and exclusive of whites. Rather, its purpose is to overcome the effects of segregation by bringing the races together. True, whites are excluded from participation in the special admissions program, but this fact only operates to reduce the number of whites to be admitted in the regular admissions program in order to permit admission of a reasonable percentage-less than their proportion of the California population [FN57]-of otherwise underrepresented qualified minority applicants. [FN58]

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FN57. Negroes and Chicanos alone constitute approximately 22% of California's population. This percentage was computed from data contained in Census, *supra*, n. 49, pt. 6, California, sec. 1, 6-4, and Table 139.

FN58. The constitutionality of the special admissions program is buttressed by its restriction to only 16% of the positions in the Medical School, a percentage less than that of the minority population in California, see *ibid.*, and to those minority applicants deemed qualified for admission and deemed likely to contribute to the Medical School and the medical profession. Record 67. This is consistent with the goal of putting minority applicants in the position they would have been in if not for the evil of racial discrimination. Accordingly, this case does not raise the question whether even a remedial use of race would be unconstitutional if it admitted unqualified minority applicants in preference to qualified applicants or admitted, as a result of preferential consideration, racial minorities in numbers significantly in excess of their proportional representation in the relevant population. Such programs might well be inadequately justified by the legitimate remedial objectives. Our allusion to the proportional percentage of minorities in the population of the State administering the program is not intended to establish either that figure or that population universe as a constitutional benchmark. In this case, even respondent, as we understand him, does not argue that, if the special admissions program is otherwise constitutional, the allotment of 16 places in each entering class for special admittees is unconstitutionally high.

***375** Nor was Bakke in any sense stamped as inferior by the Medical School's rejection of him. Indeed, it is conceded by all that he satisfied those criteria regarded by the school as generally relevant to academic performance better than most of the minority members who were admitted. Moreover, there is absolutely no basis for concluding that Bakke's rejection as a result of Davis' use of racial preference will affect him throughout his life in the same way as the segregation of the Negro schoolchildren in *Brown I* would have affected them. Unlike discrimination against racial minorities, the use of racial preferences for remedial purposes does not inflict a pervasive injury upon individual whites in the sense that wherever they go or whatever they do there is a significant likelihood that they will be treated as second-class citizens because of their color. This distinction does not mean that the exclusion of a white resulting from the preferential use of race is not sufficiently serious to require justification; but it does mean that the injury inflicted by such a policy is not distinguishable from disadvantages caused by a wide range of government actions, none of which has ever been thought impermissible for that reason alone.

In addition, there is simply no evidence that the Davis program discriminates intentionally or unintentionally against any minority group which it purports to benefit. The program does not establish a quota in the invidious sense of a ceiling on the number of minority applicants to be admitted. ****2792** Nor can the program reasonably be regarded as stigmatizing the program's beneficiaries or their race as inferior. The Davis program does not simply advance less qualified applicants; rather, it compensates applicants, who it is uncontested are fully qualified to study medicine, for educational disadvantages which it was reasonable to conclude were a product of ***376** state-fostered discrimination. Once admitted, these students must satisfy the same degree requirements as regularly admitted students; they are taught by the same faculty in the same classes; and their performance is evaluated by the same standards by which regularly admitted students are judged. Under these circumstances, their performance and degrees must be regarded equally with the regularly admitted students with whom they compete for standing. Since minority graduates cannot justifiably be regarded as less well qualified than nonminority graduates by virtue of the special admissions program, there is no reasonable basis to conclude that minority graduates at schools using such programs would be stigmatized as inferior by the existence of such programs.

D

We disagree with the lower courts' conclusion that the Davis program's use of race was unreasonable in light of its objectives. First, as petitioner argues, there are no practical means by which it could achieve its ends in the foreseeable future without the use of race-conscious measures. With respect to any factor (such as poverty or family educational background) that may be used as a substitute for race as an indicator of past discrimination, whites greatly outnumber racial minorities simply because whites make up a far larger percentage of the total population and therefore far outnumber minorities in absolute terms at every socioeconomic level.[FN59] For example, of a class of recent med-

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ical school applicants from families with less than $10,000 income, at least 71% were white.[FN60] Of all 1970 families headed by a *377 person *not* a high school graduate which included related children under 18, 80% were white and 20% were racial minorities.[FN61] Moreover, while race is positively correlated with differences in GPA and MCAT scores, economic disadvantage is not. Thus, it appears that economically disadvantaged whites do not score less well than economically advantaged whites, while economically advantaged blacks score less well than do disadvantaged whites.[FN62] These statistics graphically illustrate that the University's purpose to integrate its classes by compensating for past discrimination could not be achieved by a general preference for the economically disadvantaged or the children of parents of limited education unless such groups were to make up the entire class.

FN59. See Census, *supra*, n. 49, Sources and Structure of Family Income, pp. 1-12.

FN60. This percentage was computed from data presented in B. Waldman, Economic and Racial Disadvantage as Reflected in Traditional Medical School Selection Factors: A Study of 1976 Applicants to U. S. Medical Schools 34 (Table A-15), 42 (Table A-23) (Association of American Medical Colleges 1977.)

FN61. This figure was computed from data contained in Census, *supra* n. 49, pt. 1, United States Summary, Table 209.

FN62. See Waldman, *supra* n. 60, at 10-14 (Figures 1-5).

Second, the Davis admissions program does not simply equate minority status with disadvantage. Rather, Davis considers on an individual basis each applicant's personal history to determine whether he or she has likely been disadvantaged by racial discrimination. The record makes clear that only minority applicants likely to have been isolated from the mainstream of American life are considered in the special program; other minority applicants are eligible only through the regular admissions program. True, the procedure by which disadvantage is detected is informal, but we have never insisted that educators conduct their affairs through adjudicatory proceedings, and such **2793 insistence here is misplaced. A case-by-case inquiry into the extent to which each individual applicant has been affected, either directly or indirectly, by racial discrimination, would seem to be, as a practical matter, virtually impossible, despite the fact that there are excellent reasons for concluding that such effects generally exist. When individual measurement is impossible or extremely impractical, there is nothing to prevent a State *378 from using categorical means to achieve its ends, at least where the category is closely related to the goal. Cf. *Gaston County v. United States*, 395 U.S. 285, 295-296, 89 S.Ct. 1720, 1725-1726, 23 L.Ed.2d 309 (1969); *Katzenbach v. Morgan*, 384 U.S. 641, 86 S.Ct. 1731, 16 L.Ed.2d 828(1986). And it is clear from our cases that specific proof that a person has been victimized by discrimination is not a necessary predicate to offering him relief where the probability of victimization is great. See *Teamsters v. United States*, 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977).

E

Finally, Davis' special admissions program cannot be said to violate the Constitution simply because it has set aside a predetermined number of places for qualified minority applicants rather than using minority status as a positive factor to be considered in evaluating the applications of disadvantaged minority applicants. For purposes of constitutional adjudication, there is no difference between the two approaches. In any admissions program which accords special consideration to disadvantaged racial minorities, a determination of the degree of preference to be given is unavoidable, and any given preference that results in the exclusion of a white candidate is no more or less constitutionally acceptable than a program such as that at Davis. Furthermore, the extent of the preference inevitably depends on how many minority applicants the particular school is seeking to admit in any particular year so long as the number of qualified minority applicants exceeds that number. There is no sensible, and certainly no constitutional, distinction between, for example, adding a set number of points to the admissions rating of disadvantaged minority applicants as an expression of the preference with the expectation that this will result in the admission of an approximately determined number of qualified minority applicants and setting a fixed number of places for such applicants as was done here.[FN63]

FN63. The excluded white applicant, despite Mr. Justice POWELL's contention to the contrary, *ante*, at 2763 n. 52, receives no more or less "individualized consideration" under our approach than under his.

*379 The "Harvard" program, see *ante*, at 2762-2763, as

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those employing it readily concede, openly and successfully employs a racial criterion for the purpose of ensuring that some of the scarce places in institutions of higher education are allocated to disadvantaged minority students. That the Harvard approach does not also make public the extent of the preference and the precise workings of the system while the Davis program employs a specific, openly stated number, does not condemn the latter plan for purposes of Fourteenth Amendment adjudication. It may be that the Harvard plan is more acceptable to the public than is the Davis "quota." If it is, any State, including California, is free to adopt it in preference to a less acceptable alternative, just as it is generally free, as far as the Constitution is concerned, to abjure granting any racial preferences in its admissions program. But there is no basis for preferring a particular preference program simply because in achieving the same goals that the Davis Medical School is pursuing, it proceeds in a manner that is not immediately apparent to the public.

V

Accordingly, we would reverse the judgment of the Supreme Court of California holding the Medical School's special admissions program unconstitutional and directing respondent's admission, as well as that ****2794** portion of the judgment enjoining the Medical School from according any consideration to race in the admissions process.

Mr. Justice WHITE.

I write separately concerning the question of whether Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, provides for a private cause of action. Four Justices are apparently of the view that such a private cause of action ***380** exists, and four Justices assume it for purposes of this case. I am unwilling merely to assume an affirmative answer. If in fact no private cause of action exists, this Court and the lower courts as well are without jurisdiction to consider respondent's Title VI claim. As I see it, if we are not obliged to do so, it is at least advisable to address this threshold jurisdictional issue. See *United States v. Griffin*, 303 U.S. 226, 229, 58 S.Ct. 601, 602, 82 L.Ed. 764 (1938).[FN1] Furthermore, just as it is inappropriate to address constitutional issues without determining whether statutory grounds urged before us are dispositive, it is at least questionable practice to adjudicate a novel and difficult statutory issue without first considering whether we have jurisdiction to decide it. Consequently, I address the question of whether respondent may bring suit under Title VI.

FN1. It is also clear from *Griffin* that "lack of jurisdiction . . . touching the subject matter of the litigation cannot be waived by the parties . . . ." 303 U.S., at 229, 58 S.Ct., at 602. See also *Mount Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274, 278, 97 S.Ct. 568, 571, 50 L.Ed.2d 471 (1977); *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152, 29 S.Ct. 42, 43, 53 L.Ed. 126 (1908); *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U.S. 379, 382, 4 S.Ct. 510, 511, 28 L.Ed. 462 (1884).

In *Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974), we did adjudicate a Title VI claim brought by a class of individuals. But the existence of a private cause of action was not at issue. In addition, the understanding of Mr. Justice STEWART's concurring opinion, which observed that standing was not being contested, was that the standing alleged by petitioners was as third-party beneficiaries of the funding contract between the Department of Health, Education, and Welfare and the San Francisco United School District, a theory not alleged by the present respondent. *Id.*, at 571 n. 2, 94 S.Ct., at 790. Furthermore, the plaintiffs in *Lau* alleged jurisdiction under 42 U.S.C. § 1983 rather than directly under the provisions of Title VI, as does the plaintiff in this case. Although the Court undoubtedly had an obligation to consider the jurisdictional question, this is surely not the first instance in which the Court has bypassed a jurisdictional problem not presented by the parties. Certainly the Court's silence on the jurisdictional question, when considered in the context of the indifference of the litigants to it and the fact that jurisdiction was alleged under § 1983, does not foreclose a reasoned conclusion that Title VI affords no private cause of action.

A private cause of action under Title VI, in terms both of ***381** the Civil Rights Act as a whole and that Title, would not be "consistent with the underlying purposes of the legislative scheme" and would be contrary to the legislative intent. *Cort v. Ash*, 422 U.S. 66, 78, 95 S.Ct. 2080, 2088, 45 L.Ed.2d 26 (1975). Title II, 42 U.S.C. § 2000a *et seq.*, dealing with public accommodations, and Title VII, 42 U.S.C. § 2000e *et seq.* (1970 ed. and Supp. V), dealing with employment, proscribe private discriminatory conduct that as of 1964 neither the Constitution nor other federal statutes had been construed to forbid. Both Titles carefully provided for private actions as well as for official participation in enforcement. Title III, 42 U.S.C. § 2000b

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et seq., and Title IV, 42 U.S.C. § 2000c *et seq.* (1970 ed. and Supp. V), dealing with public facilities and public education, respectively, authorize suits by the Attorney General to eliminate racial discrimination in these areas. Because suits to end discrimination in public facilities and public education were already available under 42 U.S.C. § 1983, it was, of course, unnecessary to provide for private actions under Titles III and IV. But each Title carefully provided that its provisions for public actions would not adversely affect pre-existing private remedies. §§ 2000b-2 and 2000c-8.

The role of Title VI was to terminate federal financial support for public and private institutions or programs that discriminated on the basis of race. Section 601, ****279542** U.S.C. § 2000d, imposed the proscription that no person, on the grounds of race, color, or national origin, was to be excluded from or discriminated against under any program or activity receiving federal financial assistance. But there is no express provision for private actions to enforce Title VI, and it would be quite incredible if Congress, after so carefully attending to the matter of private actions in other Titles of the Act, intended silently to create a private cause of action to enforce Title VI.

It is also evident from the face of § 602, 42 U.S.C. § 2000d-1, that Congress intended the departments and agencies***382** to define and to refine, by rule or regulation, the general proscription of § 601, subject only to judicial review of agency action in accordance with established procedures. Section 602 provides for enforcement: Every federal department or agency furnishing financial support is to implement the proscription by appropriate rule or regulation, each of which requires approval by the President. Termination of funding as a sanction for noncompliance is authorized, but *only* after a hearing and after the failure of voluntary means to secure compliance. Moreover, termination may not take place until the department or agency involved files with the appropriate committees of the House and Senate a full written report of the circumstances and the grounds for such action and 30 days have elapsed thereafter. Judicial review was provided, at least for actions terminating financial assistance.

Termination of funding was regarded by Congress as a serious enforcement step, and the legislative history is replete with assurances that it would not occur until every possibility for conciliation had been exhausted.[FN2] To allow a private ***383** individual to sue to cut off funds under Title VI would compromise these assurances and short circuit the procedural preconditions provided in Title VI. If the Federal Government may not cut off funds except pursuant to an agency rule, approved by the President, and presented to the appropriate committee of Congress for a layover period, and after voluntary means to achieve compliance have failed, it is inconceivable that Congress intended to permit individuals to circumvent these administrative prerequisites themselves.

> FN2. "Yet, before that principle [that 'Federal funds are not to be used to support racial discrimination'] is implemented to the detriment of any person, agency, or State, regulations giving notice of what conduct is required must be drawn up by the agency administering the program. . . . Before such regulations become effective, they must be submitted to and approved by the President.
>
> "Once having become effective, there is still a long road to travel before any sanction whatsoever is imposed. Formal action to compel compliance can only take place after the following has occurred: first, there must be an unsuccessful attempt to obtain voluntary compliance; second, there must be an administrative hearing; third, a written report of the circumstances and the grounds for such action must be filed with the appropriate committees of the House and Senate; and fourth, 30 days must have elapsed between such filing and the action denying benefits under a Federal program. Finally, even that action is by no means final because it is subject to judicial review and can be further postponed by judicial action granting temporary relief pending review in order to avoid irreparable injury. It would be difficult indeed to concoct any additional safeguards to incorporate in such a procedure." 110 Cong.Rec. 6749 (1964) (Sen. Moss).
>
> "[T]he authority to cut off funds is hedged about with a number of procedural restrictions. . . . [There follow details of the preliminary steps.]
>
> "In short, title VI is a reasonable, moderate, cautious, carefully worked out solution to a situation that clearly calls for legislative action." *Id.*, at 6544 (Sen. Humphrey). "Actually, *no action whatsoever* can be taken against anyone until the Federal agency involved has advised the appropriate person of his failure to comply with nondiscrimination requirements and until voluntary

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efforts to secure compliance have failed." *Id.*, at 1519 (Rep. Celler) (emphasis added). See also remarks of Sen. Ribicoff (*id.*, at 7066-7067); Sen. Proxmire (*id.*, at 8345); Sen. Kuchel (*id.*, at 6562). These safeguards were incorporated into 42 U.S.C. § 2000d-1.

Furthermore, although Congress intended Title VI to end federal financial support for racially discriminatory policies of not only public but also private institutions and programs, it is extremely unlikely that Congress,****2796** without a word indicating that it intended to do so, contemplated creating an independent, private statutory cause of action against all private as well as public agencies that might be in violation of the section. There is no doubt that Congress regarded private litigation as an important tool to attack discriminatory practices. It does not at all follow, however, that Congress anticipated new private actions under Title VI itself. Wherever a discriminatory program was a public undertaking, such as a public school, private remedies were already available under other statutes, and a private remedy under Title VI was ***384** unnecessary. Congress was well aware of this fact. Significantly, there was frequent reference to *Simkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959 (C.A.4 1963), cert. denied, 376 U.S. 938, 84 S.Ct. 793, 11 L.Ed.2d 659 (1964), throughout the congressional deliberations. See, *e. g.*, 110 Cong.Rec. 6544 (1964) (Sen. Humphrey). *Simkins* held that under appropriate circumstances, the operation of a private hospital with "massive use of public funds and extensive state-federal sharing in the common plan" constituted "state action" for the purposes of the Fourteenth Amendment. 323 F.2d, at 967. It was unnecessary, of course, to create a Title VI private action against private discriminators where they were already within the reach of existing private remedies. But when they were not-and *Simkins* carefully disclaimed holding that "every subvention by the federal or state government automatically involves the beneficiary in 'state action,' " *ibid.* [FN3]-it is difficult ***385** to believe that Congress *silently* created a *private* remedy to terminate conduct that previously had been entirely beyond the reach of federal law.

FN3. This Court has never held that the mere receipt of federal or state funds is sufficient to make the recipient a federal or state actor. In *Norwood v. Harrison*, 413 U.S. 455, 93 S.Ct. 2804, 37 L.Ed.2d 723 (1973), private schools that received state aid were held subject to the Fourteenth Amendment's ban on discrimination, but the Court's test required "tangible financial aid" with a "significant tendency to facilitate, reinforce, and support private discrimination." *Id.*, at 466, 93 S.Ct., at 2811. The mandate of *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722, 81 S.Ct. 856, 860, 6 L.Ed.2d 45 (1961), to sift facts and weigh circumstances of governmental support in each case to determine whether private or state action was involved, has not been abandoned for an automatic rule based on receipt of funds.

Contemporaneous with the congressional debates on the Civil Rights Act was this Court's decision in *Griffin v. School Board*, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 265 (1964). Tuition grants and tax concessions were provided for parents of students in private schools, which discriminated racially. The Court found sufficient state action, but carefully limited its holding to the circumstances presented: "[C]losing the Prince Edward schools and meanwhile contributing to the support of the private segregated white schools that took their place denied petitioners the equal protection of the laws." *Id.*, at 232, 84 S.Ct., at 1234.

Hence, neither at the time of the enactment of Title VI, nor at the present time to the extent this Court has spoken, has mere receipt of state funds created state action. Moreover, *Simkins* has not met with universal approval among the United States Courts of Appeals. See cases cited in *Greco v. Orange Memorial Hospital Corp.*, 423 U.S. 1000, 1004, 96 S.Ct. 433, 435, 46 L.Ed.2d 376 (1975) (WHITE, J., dissenting from denial of certiorari).

For those who believe, contrary to my views, that Title VI was intended to create a stricter standard of color blindness than the Constitution itself requires, the result of no private cause of action follows even more readily. In that case Congress must be seen to have banned degrees of discrimination, as well as types of discriminators, not previously reached by law. A Congress careful enough to provide that existing private causes of action would be preserved (in Titles III and IV) would not leave for inference a vast new extension of private enforcement power. And a Congress so exceptionally concerned with the satisfaction of procedural preliminaries before confronting fund recipients with the choice of a cutoff or of stopping discriminating would not permit private parties to pose

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precisely that same dilemma in a greatly widened category of cases with no procedural requirements whatsoever.

Significantly, in at least three instances legislators who played a major role in the **2797 passage of Title VI explicitly stated that a private right of action under Title VI does not exist.[FN4] *386 As an "indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one," *Cort v. Ash*, 422 U.S., at 78, 95 S.Ct., at 2088, clearer statements cannot be imagined, and under *Cort*, "an explicit purpose to *deny* such cause of action [is] controlling." *Id.*, at 82, 95 S.Ct., at 2090. Senator Keating, for example, proposed a private "right to sue" for the "person suffering from discrimination"; but the Department of Justice refused to include it, and the Senator acquiesced.[FN5] These are not neutral, ambiguous statements. They indicate the absence of a legislative intent to create a private remedy. Nor do any of these statements make nice distinctions between a private cause of action to enjoin discrimination and one to cut off funds, as Mr. Justice STEVENS and the three Justices who join his opinion apparently would. See *post*, at 2814-2815, n. 26. Indeed, it would be odd if they did, since the practical effect of either type of private cause of action would be identical. If private suits to enjoin conduct allegedly violative of § 601 were permitted, recipients of federal funds would be presented with the choice of either ending what the court, rather than the agency, determined to be a discriminatory practice within the meaning of Title VI or refusing federal funds and thereby escaping from the statute's jurisdictional predicate.[FN6] This is precisely the same choice as would confront recipients if suit were brought to cut off funds. Both types of actions would equally jeopardize the administrative processes so carefully structured into the law.

FN4. "Nowhere in this section do you find a comparable right of legal action for a person who feels he has been denied his rights to participate in the benefits of Federal funds. Nowhere. Only those who have been cut off can go to court and present their claim." 110 Cong.Rec. 2467 (1964) (Rep. Gill).

"[A] good case could be made that a remedy is provided for the State or local official who is practicing discrimination, but none is provided for the victim of the discrimination." *Id.*, at 6562 (Sen. Kuchel).

"Parenthetically, while we favored the inclusion of the right to sue on the part of the agency, the State, or the facility which was deprived of Federal funds, we also favored the inclusion of a provision granting the right to sue to the person suffering from discrimination. This was not included in the bill. However, both the Senator from Connecticut and I are grateful that our other suggestions were adopted by the Justice Department." *Id.*, at 7065 (Sen. Keating).

FN5. *Ibid.*

FN6. As Senator Ribicoff stated: "Sometimes those eligible for Federal assistance may elect to reject such aid, unwilling to agree to a nondiscrimination requirement. If they choose that course, the responsibility is theirs." *Id.*, at 7067.

*387 This Court has always required "that the inference of such a private cause of action not otherwise authorized by the statute must be consistent with the evident legislative intent and, of course, with the effectuation of the purposes intended to be served by the Act." *National Railroad Passenger Corp. v. National Association of Railroad Passengers*, 414 U.S. 453, 458, 94 S.Ct. 690, 693, 38 L.Ed.2d 646 (1974). See also *Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 418-420, 95 S.Ct. 1733, 1737-1738, 44 L.Ed.2d 263 (1975). A private cause of action under Title VI is unable to satisfy either prong of this test.

Because each of my colleagues either has a different view or assumes a private cause of action, however, the merits of the Title VI issue must be addressed. My views in that regard, as well as my views with respect to the equal protection issue, are included in the joint opinion that my Brothers BRENNAN, MARSHALL, and BLACKMUN and I have filed.[FN7]

FN7. I also join Parts I, III-A, and V-C of Mr. Justice POWELL's opinion.

Mr. Justice MARSHALL.

I agree with the judgment of the Court only insofar as it permits a university to consider the race of an applicant in making admissions decisions. I do not agree that petitioner's admissions program violates the **2798 Constitution. For it must be remembered that, during most of the past 200 years, the Constitution as interpreted by this Court did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now, when a State acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution stands as a bar-

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rier.

I

A

Three hundred and fifty years ago, the Negro was dragged to this country in chains to be sold into slavery. Uprooted from his homeland and thrust into bondage for forced labor, *388 the slave was deprived of all legal rights. It was unlawful to teach him to read; he could be sold away from his family and friends at the whim of his master; and killing or maiming him was not a crime. The system of slavery brutalized and dehumanized both master and slave.[FN1]

> FN1. The history recounted here is perhaps too well known to require documentation. But I must acknowledge the authorities on which I rely in retelling it. J. Franklin, From Slavery to Freedom (4th ed. 1974) (hereinafter Franklin); R. Kluger, Simple Justice (1975) (hereinafter Kluger); C. Woodward, The Strange Career of Jim Crow (3d ed. 1974) (hereinafter Woodward).

The denial of human rights was etched into the American Colonies' first attempts at establishing self-government. When the colonists determined to seek their independence from England, they drafted a unique document cataloguing their grievances against the King and proclaiming as "self-evident" that "all men are created equal" and are endowed "with certain unalienable Rights," including those to "Life, Liberty and the pursuit of Happiness." The self-evident truths and the unalienable rights were intended, however, to apply only to white men. An earlier draft of the Declaration of Independence, submitted by Thomas Jefferson to the Continental Congress, had included among the charges against the King that

"[h]e has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither." Franklin 88.

The Southern delegation insisted that the charge be deleted; the colonists themselves were implicated in the slave trade, and inclusion of this claim might have made it more difficult to justify the continuation of slavery once the ties to England were severed. Thus, even as the colonists embarked on a *389 course to secure their own freedom and equality, they ensured perpetuation of the system that deprived a whole race of those rights.

The implicit protection of slavery embodied in the Declaration of Independence was made explicit in the Constitution, which treated a slave as being equivalent to three-fifths of a person for purposes of apportioning representatives and taxes among the States. Art. I, § 2. The Constitution also contained a clause ensuring that the "Migration or Importation" of slaves into the existing States would be legal until at least 1808, Art. I, § 9, and a fugitive slave clause requiring that when a slave escaped to another State, he must be returned on the claim of the master, Art. IV, § 2. In their declaration of the principles that were to provide the cornerstone of the new Nation, therefore, the Framers made it plain that "we the people," for whose protection the Constitution was designed, did not include those whose skins were the wrong color. As Professor John Hope Franklin has observed Americans "proudly accepted the challenge and responsibility of their new political freedom by establishing the machinery and safeguards that insured the continued enslavement of blacks." Franklin 100.

The individual States likewise established the machinery to protect the system of slavery through the promulgation of the Slave **2799 Codes, which were designed primarily to defend the property interest of the owner in his slave. The position of the Negro slave as mere property was confirmed by this Court in *Dred Scott v. Sandford*, 19 How. 393, 15 L.Ed. 691 (1857), Holding that the Missouri Compromise-which prohibited slavery in the portion of the Louisiana Purchase Territory north of Missouri-was unconstitutional because it deprived slave owners of their property without due process. The Court declared that under the Constitution a slave was property, and "[t]he right to traffic in it, like an ordinary article of merchandise and property, was guarantied to the citizens of the United *390 States . . . ." *Id.*, at 451. The Court further concluded that Negroes were not intended to be included as citizens under the Constitution but were "regarded as beings of an inferior order . . . altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect . . . ." *Id.*, at 407.

B

The status of the Negro as property was officially erased by his emancipation at the end of the Civil War. But the

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long-awaited emancipation, while freeing the Negro from slavery, did not bring him citizenship or equality in any meaningful way. Slavery was replaced by a system of "laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty, and property to such an extent that their freedom was of little value." *Slaughter-House Cases*, 16 Wall. 36, 70, 21 L.Ed. 394 (1873). Despite the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments, the Negro was systematically denied the rights those Amendments were supposed to secure. The combined actions and inactions of the State and Federal Governments maintained Negroes in a position of legal inferiority for another century after the Civil War.

The Southern States took the first steps to re-enslave the Negroes. Immediately following the end of the Civil War, many of the provisional legislatures passed Black Codes, similar to the Slave Codes, which, among other things, limited the rights of Negroes to own or rent property and permitted imprisonment for breach of employment contracts. Over the next several decades, the South managed to disenfranchise the Negroes in spite of the Fifteenth Amendment by various techniques, including poll taxes, deliberately complicated balloting processes, property and literacy qualifications, and finally the white primary.

Congress responded to the legal disabilities being imposed ***391** in the Southern States by passing the Reconstruction Acts and the Civil Rights Acts. Congress also responded to the needs of the Negroes at the end of the Civil War by establishing the Bureau of Refugees, Freedmen, and Abandoned Lands, better known as the Freedmen's Bureau, to supply food, hospitals, land, and education to the newly freed slaves. Thus, for a time it seemed as if the Negro might be protected from the continued denial of his civil rights and might be relieved of the disabilities that prevented him from taking his place as a free and equal citizen.

That time, however, was short-lived. Reconstruction came to a close, and, with the assistance of this Court, the Negro was rapidly stripped of his new civil rights. In the words of C. Vann Woodward: "By narrow and ingenious interpretation [the Supreme Court's] decisions over a period of years had whittled away a great part of the authority presumably given the government for protection of civil rights." Woodward 139.

The Court began by interpreting the Civil War Amendments in a manner that sharply curtailed their substantive protections. See, *e. g., Slaughter-House Cases, supra; United States v. Reese*, 92 U.S. 214, 23 L.Ed. 563 (1876); *United States v. Cruikshank*, 92 U.S. 542, 23 L.Ed. 588 (1876). Then in the notorious *Civil Rights Cases*, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835 (1883), ****2800** the Court strangled Congress' efforts to use its power to promote racial equality. In those cases the Court invalidated sections of the Civil Rights Act of 1875 that made it a crime to deny equal access to "inns, public conveyances, theatres and other places of public amusement." *Id.*, at 10, 3 S.Ct., at 20. According to the Court, the Fourteenth Amendment gave Congress the power to proscribe only discriminatory action by the State. The Court ruled that the Negroes who were excluded from public places suffered only an invasion of their social rights at the hands of private individuals, and Congress had no power to remedy that. *Id.*, at 24-25, 3 S.Ct., at 31. "When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that ***392** state," the Court concluded, "there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws . . . ." *Id.*, at 25, 3 S.Ct., at 31. As Mr. Justice Harlan noted in dissent, however, the Civil War Amendments and Civil Rights Acts did not make the Negroes the "special favorite" of the laws but instead "sought to accomplish in reference to that race . . .-what had already been done in every State of the Union for the white race-to secure and protect rights belonging to them as freemen and citizens; nothing more." *Id.*, at 61, 3 S.Ct., at 57.

The Court's ultimate blow to the Civil War Amendments and to the equality of Negroes came in *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896). In upholding a Louisiana law that required railway companies to provide "equal but separate" accommodations for whites and Negroes, the Court held that the Fourteenth Amendment was not intended "to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either." *Id.*, at 544, 16 S.Ct., at 1140. Ignoring totally the realities of the positions of the two races, the Court remarked:

"We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." *Id.*, at 551, 16 S.Ct., at 1143.

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Mr. Justice Harlan's dissenting opinion recognized the bankruptcy of the Court's reasoning. He noted that the "real meaning" of the legislation was "that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens." *Id.*, at 560, 16 S.Ct., at 1147. He expressed his fear that if like laws were enacted in other ***393** States, "the effect would be in the highest degree mischievous." *Id.*, at 563, 16 S.Ct., at 1148. Although slavery would have disappeared, the States would retain the power "to interfere with the full enjoyment of the blessings of freedom; to regulate civil rights, common to all citizens, upon the basis of race; and to place in a condition of legal inferiority a large body of American citizens . . . ." *Ibid.*

The fears of Mr. Justice Harlan were soon to be realized. In the wake of *Plessy,* many States expanded their Jim Crow laws, which had up until that time been limited primarily to passenger trains and schools. The segregation of the races was extended to residential areas, parks, hospitals, theaters, waiting rooms, and bathrooms. There were even statutes and ordinances which authorized separate phone booths for Negroes and whites, which required that textbooks used by children of one race be kept separate from those used by the other, and which required that Negro and white prostitutes be kept in separate districts. In 1898, after *Plessy,* the Charlestown News and Courier printed a parody of Jim Crow laws:

" 'If there must be Jim Crow cars on the railroads, there should be Jim Crow cars on the street railways. Also on all passenger boats. . . . If there are to be ****2801** Jim Crow cars, moreover, there should be Jim Crow waiting saloons at all stations, and Jim Crow eating houses. . . . There should be Jim Crow sections of the jury box, and a separate Jim Crow dock and witness stand in every court-and a Jim Crow Bible for colored witnesses to kiss.' " Woodward 68.

The irony is that before many years had passed, with the exception of the Jim Crow witness stand, "all the improbable applications of the principle suggested by the editor in derision had been put into practice-down to and including the Jim Crow Bible." *Id.*, at 69.

Nor were the laws restricting the rights of Negroes limited ***394** solely to the Southern States. In many of the Northern States, the Negro was denied the right to vote, prevented from serving on juries, and excluded from theaters, restaurants, hotels, and inns. Under President Wilson, the Federal Government began to require segregation in Government buildings; desks of Negro employees were curtained off; separate bathrooms and separate tables in the cafeterias were provided; and even the galleries of the Congress were segregated. When his segregationist policies were attacked, President Wilson responded that segregation was " 'not humiliating but a benefit' " and that he was " 'rendering [the Negroes] more safe in their possession of office and less likely to be discriminated against.' " Kluger 91.

The enforced segregation of the races continued into the middle of the 20th century. In both World Wars, Negroes were for the most part confined to separate military units; it was not until 1948 that an end to segregation in the military was ordered by President Truman. And the history of the exclusion of Negro children from white public schools is too well known and recent to require repeating here. That Negroes were deliberately excluded from public graduate and professional schools-and thereby denied the opportunity to become doctors, lawyers, engineers, and the like-is also well established. It is of course true that some of the Jim Crow laws (which the decisions of this Court had helped to foster) were struck down by this Court in a series of decisions leading up to *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). See, *e. g., Morgan v. Virginia,* 328 U.S. 373, 66 S.Ct. 1050, 90 L.Ed. 1317 (1946); *Sweatt v. Painter,* 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114 (1950); *McLaurin v. Oklahoma State Regents,* 339 U.S. 637, 70 S.Ct. 851, 94 L.Ed. 1149 (1950). Those decisions, however, did not automatically end segregation, nor did they move Negroes from a position of legal inferiority to one of equality. The legacy of years of slavery and of years of second-class citizenship in the wake of emancipation could not be so easily eliminated.

***395** II

The position of the Negro today in America is the tragic but inevitable consequence of centuries of unequal treatment. Measured by any benchmark of comfort or achievement, meaningful equality remains a distant dream for the Negro.

A Negro child today has a life expectancy which is shorter by more than five years than that of a white child.[FN2] The Negro child's mother is over three times more likely to die of complications in childbirth,[FN3] and the infant mortality rate for Negroes is nearly twice that for whites.[FN4] The median income of the Negro family is only 60% that of the median of a white family,[FN5] and the percentage of Negroes who live in families with incomes below the poverty

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line is nearly four times greater than that of whites.[FN6]

FN2. U. S. Dept. of Commerce, Bureau of the Census, Statistical Abstract of the United States 65 (1977) (Table 94).

FN3. *Id.,* at 70 (Table 102).

FN4. *Ibid.*

FN5. U. S. Dept. of Commerce, Bureau of the Census, Current Population Reports, Series P-60, No. 107, p. 7 (1977) (Table 1).

FN6. *Id.,* at 20 (Table 14).

**2802 When the Negro child reaches working age, he finds that America offers him significantly less than it offers his white counterpart. For Negro adults, the unemployment rate is twice that of whites,[FN7] and the unemployment rate for Negro teenagers is nearly three times that of white teenagers.[FN8] A Negro male who completes four years of college can expect a median annual income of merely $110 more than a white male who has only a high school diploma.[FN9] Although Negroes *396 represent 11.5% of the population,[FN10] they are only 1.2% of the lawyers, and judges, 2% of the physicians, 2.3% of the dentists, 1.1% of the engineers and 2.6% of the college and university professors.[FN11]

FN7. U. S. Dept. of Labor, Bureau of Labor Statistics, Employment and Earnings, January 1978, p. 170 (Table 44).

FN8. *Ibid.*

FN9. U. S. Dept. of Commerce, Bureau of the Census, Current Population Reports, Series P-60, No. 105, p. 198 (1977) (Table 47).

FN10. U. S. Dept. of Commerce, Bureau of the Census, Statistical Abstract, *supra,* at 25 (Table 24).

FN11. *Id.,* at 407-408 (Table 662) (based on 1970 census).

The relationship between those figures and the history of unequal treatment afforded to the Negro cannot be denied. At every point from birth to death the impact of the past is reflected in the still disfavored position of the Negro.

In light of the sorry history of discrimination and its devastating impact on the lives of Negroes, bringing the Negro into the mainstream of American life should be a state interest of the highest order. To fail to do so is to ensure that America will forever remain a divided society.

III

I do not believe that the Fourteenth Amendment requires us to accept that fate. Neither its history nor our past cases lend any support to the conclusion that a university may not remedy the cumulative effects of society's discrimination by giving consideration to race in an effort to increase the number and percentage of Negro doctors.

A

This Court long ago remarked that

"in any fair and just construction of any section or phrase of these [Civil War] amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy . . .." *Slaughter-House Cases,* 16 Wall., at 72.

It is plain that the Fourteenth Amendment was not intended to prohibit measures designed to remedy the effects of the *397 Nation's past treatment of Negroes. The Congress that passed the Fourteenth Amendment is the same Congress that passed the 1866 Freedmen's Bureau Act, an Act that provided many of its benefits only to Negroes. Act of July 16, 1866, ch. 200, 14 Stat. 173; see *supra,* at 2800. Although the Freedmen's Bureau legislation provided aid for refugees, thereby including white persons within some of the relief measures, 14 Stat. 174; see also Act of Mar. 3, 1865, ch. 90, 13 Stat. 507, the bill was regarded, to the dismay of many Congressmen, as "solely and entirely for the freedmen, and to the exclusion of all other persons . . .." Cong.Globe, 39th Cong., 1st Sess., 544 (1866) (remarks of Rep. Taylor). See also *id.,* at 634-635 (remarks of Rep. Ritter); *id.,* at App. 78, 80-81 (remarks of Rep. Chanler). Indeed, the bill was bitterly opposed on the ground that it "undertakes to make the negro in some respects . . . superior . . . and gives them favors that the poor white boy in the North cannot get." *Id.,* at 401 (remarks of Sen. McDougall). See also *id.,* at 319 (remarks of Sen. Hendricks); *id.,* at 362 (remarks of Sen. Saulsbury); *id.,* at 397 (remarks of

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Sen. Willey); *id.,* at 544 (remarks of Rep. Taylor). The bill's supporters defended it-not by rebutting the claim of special treatment-but by pointing to the need for such treatment:

****2803** "The very discrimination it makes between 'destitute and suffering' negroes, and destitute and suffering white paupers, proceeds upon the distinction that, in the omitted case, civil rights and immunities are already sufficiently protected by the possession of political power, the absence of which in the case provided for necessitates governmental protection." *Id.,* at App. 75 (remarks of Rep. Phelps).

Despite the objection to the special treatment the bill would provide for Negroes, it was passed by Congress. *Id.,* at 421, 688. President Johnson vetoed this bill and also a subsequent bill that contained some modifications; one of his principal***398** objections to both bills was that they gave special benefits to Negroes. 8 Messages and Papers of the Presidents 3596, 3599, 3620, 3623 (1897). Rejecting the concerns of the President and the bill's opponents, Congress overrode the President's second veto. Cong.Globe, 39th Cong., 1st Sess., 3842, 3850 (1866).

Since the Congress that considered and rejected the objections to the 1866 Freedmen's Bureau Act concerning special relief to Negroes also proposed the Fourteenth Amendment, it is inconceivable that the Fourteenth Amendment was intended to prohibit all race-conscious relief measures. It "would be a distortion of the policy manifested in that amendment, which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color." Railway Mail Assn. v. Corsi, 326 U.S. 88, 94, 65 S.Ct. 1483, 1487, 89 L.Ed. 2072 (1945), to hold that it barred state action to remedy the effects of that discrimination. Such a result would pervert the intent of the Framers by substituting abstract equality for the genuine equality the Amendment was intended to achieve.

B

As has been demonstrated in our joint opinion, this Court's past cases establish the constitutionality of race-conscious remedial measures. Beginning with the school desegregation cases, we recognized that even absent a judicial or legislative finding of constitutional violation, a school board constitutionally could consider the race of students in making school-assignment decisions. See Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16, 91 S.Ct. 1267, 1276, 28 L.Ed.2d 554 (1971); McDaniel v. Barresi, 402 U.S. 39, 41, 91 S.Ct. 1287, 1288, 28 L.Ed.2d 582 (1971). We noted, moreover, that a

"flat prohibition against assignment of students for the purpose of creating a racial balance must inevitably conflict with the duty of school authorities to disestablish dual school systems. As we have held in *Swann*, the Constitution does not compel any particular degree of racial***399** balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely to be useful as starting points in shaping a remedy. An absolute prohibition against use of such a device-even as a starting point-contravenes the implicit command of Green v. County School Board, 391 U.S. 430 [88 S.Ct. 1689, 20 L.Ed.2d 716] (1968), that all reasonable methods be available to formulate an effective remedy." Board of Education v. Swann, 402 U.S. 43, 46, 91 S.Ct. 1284, 1286, 28 L.Ed.2d 586 (1971).

As we have observed, "[a]ny other approach would freeze the status quo that is the very target of all desegregation processes." McDaniel v. Barresi, supra, 402 U.S. at 41, 91 S.Ct. at 1289.

Only last Term, in United Jewish Organizations v. Carey, 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed. 229 (1977), we upheld a New York reapportionment plan that was deliberately drawn on the basis of race to enhance the electoral power of Negroes and Puerto Ricans; the plan had the effect of diluting the electoral strength of the Hasidic Jewish community. We were willing in *UJO* to sanction the remedial use of a racial classification even though it disadvantaged otherwise "innocent" individuals. In another case last Term, ****2804**Califano v. Webster, 430 U.S. 313, 97 S.Ct. 1192, 51 L.Ed.2d 360 (1977), the Court upheld a provision in the Social Security laws that discriminated against men because its purpose was " 'the permissible one of redressing our society's longstanding disparate treatment of women.' " *Id.,* at 317, 97 S.Ct. at 1195, quoting Califano v. Goldfarb, 430 U.S. 199, 209 n. 8, 97 S.Ct. 1021, 1028, 51 L.Ed.2d 270 (1977) (plurality opinion). We thus recognized the permissibility of remedying past societal discrimination through the use of otherwise disfavored classifications.

Nothing in those cases suggests that a university cannot similarly act to remedy past discrimination.[FN12] It is true that ***400** in both *UJO* and *Webster* the use of the disfavored classification was predicated on legislative or administrative action, but in neither case had those bodies made findings that there had been constitutional violations

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or that the specific individuals to be benefited had actually been the victims of discrimination. Rather, the classification in each of those cases was based on a determination that the group was in need of the remedy because of some type of past discrimination. There is thus ample support for the conclusion that a university can employ race-conscious measures to remedy past societal discrimination, without the need for a finding that those benefited were actually victims of that discrimination.

> FN12. Indeed, the action of the University finds support in the regulations promulgated under Title VI by the Department of Health, Education, and Welfare and approved by the President, which authorize a federally funded institution to take affirmative steps to overcome past discrimination against groups even where the institution was not guilty of prior discrimination. 45 CFR § 80.3(b)(6)(ii) (1977).

IV

While I applaud the judgment of the Court that a university may consider race in its admissions process, it is more than a little ironic that, after several hundred years of class-based discrimination against Negroes, the Court is unwilling to hold that a class-based remedy for that discrimination is permissible. In declining to so hold, today's judgment ignores the fact that for several hundred years Negroes have been discriminated against, not as individuals, but rather solely because of the color of their skins. It is unnecessary in 20th-century America to have individual Negroes demonstrate that they have been victims of racial discrimination; the racism of our society has been so pervasive that none, regardless of wealth or position, has managed to escape its impact. The experience of Negroes in America has been different in kind, not just in degree, from that of other ethnic groups. It is not merely the history of slavery alone but also that a whole people were marked as inferior by the law. And that mark has endured. The dream of America as the great melting pot has ***401** not been realized for the Negro; because of his skin color he never even made it into the pot.

These differences in the experience of the Negro make it difficult for me to accept that Negroes cannot be afforded greater protection under the Fourteenth Amendment where it is necessary to remedy the effects of past discrimination. In the *Civil Rights Cases, supra,* the Court wrote that the Negro emerging from slavery must cease "to be the special favorite of the laws." 109 U.S., at 25, 3 S.Ct., at 31, see *supra*, at 2800. We cannot in light of the history of the last century yield to that view. Had the Court in that decision and others been willing to "do for human liberty and the fundamental rights of American citizenship, what it did . . . for the protection of slavery and the rights of the masters of fugitive slaves," 109 U.S., at 53, 3 S.Ct., at 51 (Harlan, J., dissenting), we would not need now to permit the recognition of any "special wards."

Most importantly, had the Court been willing in 1896, in *Plessy v. Ferguson*, to hold that the Equal Protection Clause forbids differences in treatment based on race, we would not be faced with this dilemma in 1978. We must remember, however, that ****2805** the principle that the "Constitution is color-blind" appeared only in the opinion of the lone dissenter. 163 U.S., at 559, 16 S.Ct., at 1146. The majority of the Court rejected the principle of color-blindness, and for the next 58 years, from *Plessy* to *Brown v. Board of Education*, ours was a Nation where, *by law*, an individual could be given "special" treatment based on the color of his skin.

It is because of a legacy of unequal treatment that we now must permit the institutions of this society to give consideration to race in making decisions about who will hold the positions of influence, affluence, and prestige in America. For far too long, the doors to those positions have been shut to Negroes. If we are ever to become a fully integrated society, one in which the color of a person's skin will not determine the opportunities available to him or her, we must be willing ***402** to take steps to open those doors. I do not believe that anyone can truly look into America's past and still find that a remedy for the effects of that past is impermissible.

It has been said that this case involves only the individual, Bakke, and this University. I doubt, however, that there is a computer capable of determining the number of persons and institutions that may be affected by the decision in this case. For example, we are told by the Attorney General of the United States that at least 27 federal agencies have adopted regulations requiring recipients of federal funds to take " '*affirmative action* to overcome the effects of conditions which resulted in limiting participation . . . by persons of a particular race, color, or national origin.' " Supplemental Brief for United States as *Amicus Curiae* 16 (emphasis added). I cannot even guess the number of state and local governments that have set up affirmative-action programs, which may be affected by today's decision.

I fear that we have come full circle. After the Civil War

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our Government started several "affirmative action" programs. This Court in the *Civil Rights Cases* and *Plessy v. Ferguson* destroyed the movement toward complete equality. For almost a century no action was taken, and this nonaction was with the tacit approval of the courts. Then we had *Brown v. Board of Education* and the Civil Rights Acts of Congress, followed by numerous affirmative-action programs. *Now*, we have this Court again stepping in, this time to stop affirmative-action programs of the type used by the University of California.

Mr. Justice BLACKMUN.

I participate fully, of course, in the opinion, *ante*, p. 2766, that bears the names of my Brothers BRENNAN, WHITE, MARSHALL, and myself. I add only some general observations that hold particular significance for me, and then a few comments on equal protection.

***403** I

At least until the early 1970's, apparently only a very small number, less than 2%, of the physicians, attorneys, and medical and law students in the United States were members of what we now refer to as minority groups. In addition, approximately three-fourths of our Negro physicians were trained at only two medical schools. If ways are not found to remedy that situation, the country can never achieve its professed goal of a society that is not race conscious.

I yield to no one in my earnest hope that the time will come when an "affirmative action" program is unnecessary and is, in truth, only a relic of the past. I would hope that we could reach this stage within a decade at the most. But the story of *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), decided almost a quarter of a century ago, suggests that that hope is a slim one. At some time, however, beyond any period of what some would claim is only transitional inequality, the United States must and will reach a stage of maturity where action along this line is no longer necessary. Then persons will be regarded as persons, and discrimination****2806** of the type we address today will be an ugly feature of history that is instructive but that is behind us.

The number of qualified, indeed highly qualified, applicants for admission to existing medical schools in the United States far exceeds the number of places available. Wholly apart from racial and ethnic considerations, therefore, the selection process inevitably results in the denial of admission to many *qualified* persons, indeed, to far more than the number of those who are granted admission. Obviously, it is a denial to the deserving. This inescapable fact is brought into sharp focus here because Allan Bakke is not himself charged with discrimination and yet is the one who is disadvantaged, and because the Medical School of the University of California at Davis itself is not charged with historical discrimination.

One theoretical solution to the need for more minority ***404** members in higher education would be to enlarge our graduate schools. Then all who desired and were qualified could enter, and talk of discrimination would vanish. Unfortunately, this is neither feasible nor realistic. The vast resources that apparently would be required simply are not available. And the need for more professional graduates, in the strict numerical sense, perhaps has not been demonstrated at all.

There is no particular or real significance in the 84-16 division at Davis. The same theoretical, philosophical, social, legal, and constitutional considerations would necessarily apply to the case if Davis' special admissions program had focused on any lesser number, that is, on 12 or 8 or 4 places or, indeed, on only 1.

It is somewhat ironic to have us so deeply disturbed over a program where race is an element of consciousness, and yet to be aware of the fact, as we are, that institutions of higher learning, albeit more on the undergraduate than the graduate level, have given conceded preferences up to a point to those possessed of athletic skills, to the children of alumni, to the affluent who may bestow their largess on the institutions, and to those having connections with celebrities, the famous, and the powerful.

Programs of admission to institutions of higher learning are basically a responsibility for academicians and for administrators and the specialists they employ. The judiciary, in contrast, is ill-equipped and poorly trained for this. The administration and management of educational institutions are beyond the competence of judges and are within the special competence of educators, provided always that the educators perform within legal and constitutional bounds. For me, therefore, interference by the judiciary must be the rare exception and not the rule.

II

I, of course, accept the propositions that (a) Fourteenth Amendment rights are personal; (b) racial and ethnic distinctions***405** where they are stereotypes are inherently suspect and call for exacting judicial scrutiny; (c) academic

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freedom is a special concern of the First Amendment; and (d) the Fourteenth Amendment has expanded beyond its original 1868 concept and now is recognized to have reached a point where, as Mr. Justice POWELL states, *ante*, at 2750, quoting from the Court's opinion in *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 296, 96 S.Ct. 2574, 2586, 49 L.Ed.2d 493 (1976), it embraces a "broader principle."

This enlargement does not mean for me, however, that the Fourteenth Amendment has broken away from its moorings and its original intended purposes. Those original aims persist. And that, in a distinct sense, is what "affirmative action," in the face of proper facts, is all about. If this conflicts with idealistic equality, that tension is original Fourteenth Amendment tension, constitutionally conceived and constitutionally imposed, and it is part of the Amendment's very nature until complete equality is achieved in the area. In this sense, constitutional equal protection is a shield.

I emphasize in particular that the decided cases are not easily to be brushed aside. ****2807** Many, of course, are not precisely on point, but neither are they off point. Racial factors have been given consideration in the school desegregation cases, in the employment cases, in *Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974), and in *United Jewish Organizations v. Carey*, 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 (1977). To be sure, some of these may be "distinguished" on the ground that victimization was directly present. But who is to say that victimization is not present for some members of today's minority groups, although it is of a lesser and perhaps different degree. The petitioners in *United Jewish Organizations* certainly complained bitterly of their reapportionment treatment, and I rather doubt that they regard the "remedy" there imposed as one that was "to improve" the group's ability to participate, as Mr. Justice POWELL describes it, *ante,* at 2756. And surely in *Lau v. Nichols* we looked to ethnicity.

***406** I am not convinced, as Mr. Justice POWELL seems to be, that the difference between the Davis program and the one employed by Harvard is very profound or constitutionally significant. The line between the two is a thin and indistinct one. In each, subjective application is at work. Because of my conviction that admission programs are primarily for the educators, I am willing to accept the representation that the Harvard program is one where good faith in its administration is practiced as well as professed. I agree that such a program, where race or ethnic background is only one of many factors, is a program better formulated than Davis' two-track system. The cynical, of course, may say that under a program such as Harvard's one may accomplish covertly what Davis concedes it does openly. I need not go that far, for despite its two-track aspect, the Davis program, for me, is within constitutional bounds, though perhaps barely so. It is surely free of stigma, and, as in *United Jewish Organizations,* I am not willing to infer a constitutional violation.

It is worth noting, perhaps, that governmental preference has not been a stranger to our legal life. We see it in veterans' preferences. We see it in the aid-to-the-handicapped programs. We see it in the progressive income tax. We see it in the Indian programs. We may excuse some of these on the ground that they have specific constitutional protection or, as with Indians, that those benefited are wards of the Government. Nevertheless, these preferences exist and may not be ignored. And in the admissions field, as I have indicated, educational institutions have always used geography, athletic ability, anticipated financial largess, alumni pressure, and other factors of that kind.

I add these only as additional components on the edges of the central question as to which I join my Brothers BRENNAN, WHITE, and MARSHALL in our more general approach. It is gratifying to know that the Court at least finds it constitutional for an academic institution to take race and ethnic background into consideration as one factor, among many, in ***407** the administration of its admissions program. I presume that that factor always has been there, though perhaps not conceded or even admitted. It is a fact of life, however, and a part of the real world of which we are all a part. The sooner we get down the road toward accepting and being a part of the real world, and not shutting it out and away from us, the sooner will these difficulties vanish from the scene.

I suspect that it would be impossible to arrange an affirmative-action program in a racially neutral way and have it successful. To ask that this be so is to demand the impossible. In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot-we dare not-let the Equal Protection Clause perpetuate racial supremacy.

So the ultimate question, as it was at the beginning of this litigation, is: Among the qualified, how does one choose?

****2808** A long time ago, as time is measured for this

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Nation, a Chief Justice, both wise and farsighted, said:

"In considering this question, then, we must never forget, that it is *a constitution* we are expounding." *McCulloch v. Maryland,* 4 Wheat. 316, 407, 4 L.Ed. 579 (1819) (emphasis in original).

In the same opinion, the Great Chief Justice further observed:
"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Id.,* at 421.

More recently, one destined to become a Justice of this Court observed:
"The great generalities of the constitution have a content and a significance that vary from age to age." B. Cardozo, The Nature of the Judicial Process 17 (1921).

***408** And an educator who became a President of the United States said:
"But the Constitution of the United States is not a mere lawyers' document: it is a vehicle of life, and its spirit is always the spirit of the age." W. Wilson, Constitutional Government in the United States 69 (1911).

These precepts of breadth and flexibility and ever-present modernity are basic to our constitutional law. Today, again, we are expounding a *Constitution.* The same principles that governed *McCulloch's* case in 1819 govern *Bakke's* case in 1978. There can be no other answer.
Mr. Justice STEVENS, with whom THE CHIEF JUSTICE, Mr. Justice STEWART, and Mr. Justice REHNQUIST join, concurring in the judgment in part and dissenting in part.
It is always important at the outset to focus precisely on the controversy before the Court.[FN1] It is particularly important to do so in this case because correct identification of the issues will determine whether it is necessary or appropriate to express any opinion about the legal status of any admissions program other than petitioner's.

FN1. Four Members of the Court have undertaken to announce the legal and constitutional effect of this Court's judgment. See opinion of Justices BRENNAN, WHITE, MARSHALL, and BLACKMUN, *ante,* at 2766. It is hardly necessary to state that only a majority can speak for the Court or determine what is the "central meaning" of any judgment of the Court.

I

This is not a class action. The controversy is between two specific litigants. Allan Bakke challenged petitioner's special admissions program, claiming that it denied him a place in medical school because of his race in violation of the Federal and California Constitutions and of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* The California Supreme Court upheld his challenge and ordered him admitted. If the ***409** state court was correct in its view that the University's special program was illegal, and that Bakke was therefore unlawfully excluded from the Medical School because of his race, we should affirm its judgment, regardless of our views about the legality of admissions programs that are not now before the Court.

The judgment as originally entered by the trial court contained four separate paragraphs, two of which are of critical importance.[FN2] Paragraph 3 declared that the University's****2809** special admissions program violated the Fourteenth Amendment, the State Constitution, and Title VI. The trial court did not order the University to admit Bakke because it concluded that Bakke had not shown that he would have been admitted if there had been no special program. Instead, in paragraph 2 of its judgment it ordered the University to consider Bakke's application for admission without regard to his race or the race of any other applicant. The order did not include any broad ***410** prohibition against any use of race in the admissions process; its terms were clearly limited to the University's consideration of *Bakke's* application.[FN3] Because the University has since been ordered to admit Bakke paragraph 2 of the trial court's order no longer has any significance.

FN2. The judgment first entered by the trial court read, in its entirety, as follows:

"IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

"1. Defendant, the Regents of the University of California, have judgment against plaintiff, Allan Bakke, denying the mandatory injunction requested by plaintiff ordering his admission to the University of California at Davis Medical School;

"2. That plaintiff is entitled to have his application for admission to the medical school consi-

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dered without regard to his race or the race of any other applicant, and defendants are hereby restrained and enjoined from considering plaintiff's race or the race of any other applicant in passing upon his application for admission;

"3. Cross-defendant Allan Bakke have judgment against cross-complainant, the Regents of the University of California, declaring that the special admissions program at the University of California at Davis Medical School violates the Fourteenth Amendment to the United States Constitution, Article 1, Section 21 of the California Constitution, and the Federal Civil Rights Act [42 U.S.C. § 2000d];

"4. That plaintiff have and recover his court costs incurred herein in the sum of $217.35." App. to Pet. for Cert. 120a.

FN3. In paragraph 2 the trial court ordered that "plaintiff [Bakke] is entitled to have *his* application for admission to the medical school considered without regard to *his* race or the race of any other applicant, and defendants are hereby restrained and enjoined from considering *plaintiff's* race or the race of any other applicant in passing upon *his* application for admission." See n. 2, *supra* (emphasis added). The only way in which this order can be broadly read as prohibiting any use of race in the admissions process, apart from Bakke's application, is if the final "his" refers to "any other applicant." But the consistent use of the pronoun throughout the paragraph to refer to Bakke makes such a reading entirely unpersuasive, as does the failure of the trial court to suggest that it was issuing relief to applicants who were not parties to the suit.

The California Supreme Court, in a holding that is not challenged, ruled that the trial court incorrectly placed the burden on Bakke of showing that he would have been admitted in the absence of discrimination. The University then conceded "that it [could] not meet the burden of proving that the special admissions program did not result in Mr. Bakke's failure to be admitted." [FN4] Accordingly, the California Supreme Court directed the trial court to enter judgment ordering Bakke's admission.[FN5] Since that order superseded paragraph***411** 2 of the trial court's judgment, there is no outstanding injunction forbidding any consideration of racial criteria in processing applications.

FN4. Appendix B to Application for Stay A19-A20.

FN5. 18 Cal.3d 34, 64, 132 Cal.Rptr. 680, 700, 553 P.2d 1152, 1172 (1976). The judgment of the Supreme Court of the State of California affirms only paragraph 3 of the trial court's judgment. The Supreme Court's judgment reads as follows:

"IT IS ORDERED, ADJUDGED, AND DECREED by the Court that the judgment of the Superior Court[,] County of Yolo[,] in the above-entitled cause, is hereby affirmed insofar as it determines that the special admission program is invalid; the judgment is reversed insofar as it denies Bakke an injunction ordering that he be admitted to the University, and the trial court is directed to enter judgment ordering Bakke to be admitted.

"Bakke shall recover his costs on these appeals."

It is therefore perfectly clear that the question whether race can ever be used as a factor in an admissions decision is not an issue in this case, and that discussion of that issue is inappropriate.[FN6]

FN6. "This Court . . . reviews judgments, not statements in opinions." *Black v. Cutter Laboratories,* 351 U.S. 292, 297, 76 S.Ct. 824, 827, 100 L.Ed. 1188.

II

Both petitioner and respondent have asked us to determine the legality of the University's special admissions program by reference to the Constitution. Our settled practice, however, is to avoid the decision of a constitutional issue if a case can be fairly decided on a statutory ground. "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication,***2810** it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Spector Motor Co. v. McLaughlin,* 323 U.S. 101, 105, 65 S.Ct. 152, 154, 89 L.Ed. 101. [FN7] The more important the issue, the more force ***412** there is to this doctrine.[FN8] In this case, we are presented with a constitutional question of undoubted and unusual importance. Since, however, a dispositive statutory claim was raised at the very inception of this case, and

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squarely decided in the portion of the trial court judgment affirmed by the California Supreme Court, it is our plain duty to confront it. Only if petitioner should prevail on the statutory issue would it be necessary to decide whether the University's admissions program violated the Equal Protection Clause of the Fourteenth Amendment.

FN7. "From *Hayburn's Case,* 2 Dall. 409, to *Alma Motor Co. v. Timken-Detroit Axle Co.*[, 329 U.S. 129, 67 S.Ct. 231, 91 L.Ed. 128,] and the *Hatch Act* case [*United Public Workers v. Mitchell,* 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754] decided this term, this Court has followed a policy of strict necessity in disposing of constitutional issues. The earliest exemplifications, too well known for repeating the history here, arose in the Court's refusal to render advisory opinions and in applications of the related jurisdictional policy drawn from the case and controversy limitation. U.S.Const., Art. III. . . .

"The policy, however, has not been limited to jurisdictional determinations. For, in addition, 'the Court [has] developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision.' Thus, as those rules were listed in support of the statement quoted, constitutional issues affecting legislation will not be determined in friendly, nonadversary proceedings; in advance of the necessity of deciding them; in broader terms than are required by the precise facts to which the ruling is to be applied; if the record presents some other ground upon which the case may be disposed of; at the instance of one who fails to show that he is injured by the statute's operation, or who has availed himself of its benefits; or if a construction of the statute is fairly possible by which the question may be avoided." *Rescue Army v. Municipal Court,* 331 U.S. 549, 568-569, 67 S.Ct. 1409, 1419, 91 L.Ed. 1666 (footnotes omitted). See also *Ashwander v. TVA,* 297 U.S. 288, 346-348, 56 S.Ct. 466, 482-483, 80 L.Ed. 688 (Brandeis, J., concurring).

FN8. The doctrine reflects both our respect for the Constitution as an enduring set of principles and the deference we owe to the Legislative and Executive Branches of Government in developing solutions to complex social problems. See A. Bickel, The Least Dangerous Branch 131 (1962).

III

Section 601 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d, provides:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The University, through its special admissions policy, excluded Bakke from participation in its program of medical education because of his race. The University also acknowledges that it was, and still is, receiving federal financial assistance.[FN9] The plain language of the statute therefore requires affirmance of the judgment below. A different result ***413** cannot be justified unless that language misstates the actual intent of the Congress that enacted the statute or the statute is not enforceable in a private action. Neither conclusion is warranted.

FN9. Record 29.

Title VI is an integral part of the far-reaching Civil Rights Act of 1964. No doubt, when this legislation was being debated, Congress was not directly concerned with the legality of "reverse discrimination" or "affirmative action" programs. Its attention was focused on the problem at hand, the "glaring . . . discrimination against Negroes which exists throughout our Nation," [FN10] and, with respect to Title ****2811** VI, the federal funding of segregated facilities.[FN11] The genesis of the legislation, however, did not limit the breadth of the solution adopted. Just as Congress responded to the problem of employment discrimination by enacting a provision that protects all races, see *McDonald v. Santa Fe Trail Transp. Co.,* 427 U.S. 273, 279, 96 S.Ct. 2574, 2578, 49 L.Ed. 493,[FN12] so, too, its answer to the problem of federal funding of segregated facilities stands as a broad prohibition against the exclusion of *any* individual from a federally funded program "on the ground of race." In the words of the House Report, Title VI stands for "the general principle that *no person* . . . be excluded from participation . . . on the ground of race, color, or national origin under any program or activity receiving Federal financial assistance." H.R.Rep.No.914, 88th ***414** Cong., 1st Sess., pt. 1, p. 25 (1963), U.S.Code Cong. & Admin.News 1964, p. 2401 (emphasis added). This same

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broad view of Title VI and § 601 was echoed throughout the congressional debate and was stressed by every one of the major spokesmen for the Act.[FN13]

FN10. H.R.Rep.No.914, 88th Cong., 1st Sess., pt. 1, p. 18 (1963), U.S.Code Cong. & Admin.News 1964, p. 2393.

FN11. It is apparent from the legislative history that the immediate object of Title VI was to prevent federal funding of segregated facilities. See, *e. g.,* 110 Cong.Rec. 1521 (1964) (remarks of Rep. Celler); *id.,* at 6544 (remarks of Sen. Humphrey).

FN12. In *McDonald v. Santa Fe Trail Transp. Co.,* the Court held that "Title VII prohibits racial discrimination against . . . white petitioners . . . upon the same standards as would be applicable were they Negroes . . . ." 427 U.S., at 280, 96 S.Ct., at 2579. Quoting from our earlier decision in *Griggs v. Duke Power Co.,* 401 U.S. 424, 431, 91 S.Ct. 849, 853, 28 L.Ed.2d 158, the Court reaffirmed the principle that the statute "prohibit[s] '[d]iscriminatory preference for *any* [racial] group, *minority* or *majority*.' " 427 U.S., at 279, 96 S.Ct., at 2578 (emphasis in original).

FN13. See, *e. g.,* 110 Cong.Rec. 1520 (1964) (remarks of Rep. Celler); *id.,* at 5864 (remarks of Sen. Humphrey); *id.,* at 6561 (remarks of Sen. Kuchel); *id.,* at 7055 (remarks of Sen. Pastore). (Representative Celler and Senators Humphrey and Kuchel were the House and Senate floor managers for the entire Civil Rights Act, and Senator Pastore was the majority Senate floor manager for Title VI.)

Petitioner contends, however, that exclusion of applicants on the basis of race does not violate Title VI if the exclusion carries with it no racial stigma. No such qualification or limitation of § 601's categorical prohibition of "exclusion" is justified by the statute or its history. The language of the entire section is perfectly clear; the words that follow "excluded from" do not modify or qualify the explicit outlawing of any exclusion on the stated grounds.

The legislative history reinforces this reading. The only suggestion that § 601 would allow exclusion of nonminority applicants came from opponents of the legislation and then only by way of a discussion of the meaning of the word "discrimination." [FN14] The opponents feared that the term "discrimination***415** " would be read as mandating racial quotas and "racially balanced" colleges and universities, and they pressed for a specific definition of the term in order to avoid this possibility.[FN15] In response, the proponents of the legislation gave repeated assurances that the Act ****2812** would be "colorblind" in its application.[FN16] Senator Humphrey, the Senate floor manager for the Act, expressed this position as follows:

FN14. Representative Abernathy's comments were typical:

"Title VI has been aptly described as the most harsh and unprecedented proposal contained in the bill . . . .

"It is aimed toward eliminating discrimination in federally assisted programs. It contains no guideposts and no yardsticks as to what might constitute discrimination in carrying out federally aided programs and projects. . . .

"Presumably the college would have to have a 'racially balanced' staff from the dean's office to the cafeteria . . . .

"The effect of this title, if enacted into law, will interject race as a factor in every decision involving the selection of an individual . . . . The concept of 'racial imbalance' would hover like a black cloud over every transaction . . . ." *Id.,* at 1619. See also, *e. g., id.,* at 5611-5613 (remarks of Sen. Ervin); *id.,* at 9083 (remarks of Sen. Gore).

FN15. *E. g., id.,* at 5863, 5874 (remarks of Sen. Eastland).

FN16. See, *e. g., id.,* at 8346 (remarks of Sen. Proxmire) ("Taxes are collected from whites and Negroes, and they should be expended without discrimination"); *id.,* at 7055 (remarks of Sen. Pastore) ("[Title VI] will guarantee that the money collected by colorblind tax collectors will be distributed by Federal and State administrators who are equally colorblind"); and *id.,* at 6543 (remarks of Sen. Humphrey) (" 'Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or re-

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sults in racial discrimination' ") (quoting from President Kennedy's Message to Congress, June 19, 1963).

"[T]he word 'discrimination' has been used in many a court case. What it really means in the bill is a distinction in treatment . . . given to different individuals because of their different race, religion or national origin. . . .

"The answer to this question [what was meant by 'discrimination'] is that if race is not a factor, we do not have to worry about discrimination because of race. . . . The Internal Revenue Code does not provide that colored people do not have to pay taxes, or that they can pay their taxes 6 months later than everyone else." 110 Cong.Rec. 5864 (1964).

"[I]f we started to treat Americans as Americans, not as fat ones, thin ones, short ones, tall ones, brown ones, green ones, yellow ones, or white ones, but as Americans. If we did that we would not need to worry about discrimination." *Id.*, at 5866.

***416** In giving answers such as these, it seems clear that the proponents of Title VI assumed that the Constitution itself required a colorblind standard on the part of government,[FN17] but that does not mean that the legislation only codifies an existing constitutional prohibition. The statutory prohibition against discrimination in federally funded projects contained in § 601 is more than a simple paraphrasing of what the Fifth or Fourteenth Amendment would require. The Act's proponents plainly considered Title VI consistent with their view of the Constitution and they sought to provide an effective weapon to implement that view.[FN18] As a distillation of what the supporters of the Act believed the Constitution demanded of State and Federal Governments, § 601 has independent force, with language and emphasis in addition to that found in the Constitution.[FN19]

FN17. See, *e. g.*, 110 Cong.Rec. 5253 (1964) (remarks of Sen. Humphrey); and *id.*, at 7102 (remarks of Sen. Javits). The parallel between the prohibitions of Title VI and those of the Constitution was clearest with respect to the immediate goal of the Act-an end to federal funding of "separate but equal" facilities.

FN18. "As in *Monroe [v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492], we have no occasion here to 'reach the constitutional question whether Congress has the power to make municipalities liable for acts of its officers that violate the civil rights of individuals.' 365 U.S. [167], at 191 [81 S.Ct. 473, 5 L.Ed.2d 492]. For in interpreting the statute it is not our task to consider whether Congress was mistaken in 1871 in its view of the limits of its power over municipalities; rather, we must construe the statute in light of the impressions under which Congress did in fact act, see *Ries v. Lynskey*, 452 F.2d, 172, at 175." *Moor v. County of Alameda*, 411 U.S. 693, 709, 93 S.Ct. 1785, 1795, 36 L.Ed.2d 596.

FN19. Both Title VI and Title VII express Congress' belief that, in the long struggle to eliminate social prejudice and the effects of prejudice, the principle of *individual* equality, without regard to race or religion, was one on which there could be a "meeting of the minds" among all races and a common national purpose. See *Los Angeles Dept. of Water and Power v. Manhart*, 435 U.S. 702, 709, 98 S.Ct. 1370, 1376, 55 L.Ed.2d 657 ("[T]he basic policy of the statute [Title VII] requires that we focus on fairness to individuals rather than fairness to classes"). This same principle of *individual* fairness is embodied in Title VI.

"The basic fairness of title VI is so clear that I find it difficult to understand why it should create any opposition. . . .

"Private prejudices, to be sure, cannot be eliminated overnight. However, there is one area where no room at all exists for private prejudices. That is the area of governmental conduct. As the first Mr. Justice Harlan said in his prophetic dissenting opinion in *Plessy v. Ferguson*, 163 U.S. 537, 559, 16 S.Ct. 1138, 1146, 41 L.Ed. 256.

" 'Our Constitution is colorblind.'

"So-I say to Senators-must be our Government. . . .

"Title VI closes the gap between our purposes as a democracy and our prejudices as individuals. The cuts of prejudice need healing. The costs of prejudice need understanding. We cannot have hostility between two great parts of our people without tragic loss in our human values . . . .

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> "Title VI offers a place for the meeting of our minds as to Federal money." 110 Cong.Rec. 7063-7064 (1964) (remarks of Sen. Pastore).
>
> Of course, one of the reasons marshaled in support of the conclusion that Title VI was "noncontroversial" was that its prohibition was already reflected in the law. See *ibid.* (remarks of Sen. Pell and Sen. Pastore).

***417 **2813** As with other provisions of the Civil Rights Act, Congress' expression of its policy to end racial discrimination may independently proscribe conduct that the Constitution does not.[FN20] However, we need not decide the congruence-or lack of congruence-of the controlling statute and the Constitution ***418** since the meaning of the Title VI ban on exclusion is crystal clear: Race cannot be the basis of excluding anyone from participation in a federally funded program.

> FN20. For example, private employers now under duties imposed by Title VII were wholly free from the restraints imposed by the Fifth and Fourteenth Amendments which are directed only to governmental action.
>
> In *Lau v. Nichols,* 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1, the Government's brief stressed that "the applicability of Title VI . . . does not depend upon the outcome of the equal protection analysis. . . . [T]he statute independently proscribes the conduct challenged by petitioners and provides a discrete basis for injunctive relief." Brief for United States as *Amicus Curiae,* O.T. 1973, No. 72-6520, p. 15. The Court, in turn, rested its decision on Title VI. Mr. Justice POWELL takes pains to distinguish *Lau* from the case at hand because the *Lau* decision "rested solely on the statute." *Ante,* at 2756. See also *Washington v. Davis,* 426 U.S. 229, 238-239, 96 S.Ct. 2040, 2046-2047, 48 L.Ed.2d 597; *Allen v. State Board of Elections,* 393 U.S. 544, 588, 89 S.Ct. 817, 843, 22 L.Ed.2d 1 (Harlan, J., concurring and dissenting).

In short, nothing in the legislative history justifies the conclusion that the broad language of § 601 should not be given its natural meaning. We are dealing with a distinct statutory prohibition, enacted at a particular time with particular concerns in mind; neither its language nor any prior interpretation suggests that its place in the Civil Rights Act, won after long debate, is simply that of a constitutional appendage.[FN21] In unmistakable terms the Act prohibits the exclusion of individuals from federally funded programs because of their race.[FN22] As succinctly phrased during the Senate debate, under Title VI it is not "permissible to say 'yes' to one person; but to say 'no' to another person, only because of the color of his skin." [FN23]

> FN21. As explained by Senator Humphrey, § 601 expresses a principle imbedded in the constitutional *and* moral understanding of the times.
>
> "The purpose of title VI is to make sure that funds of the United States are not used to support racial discrimination. *In many instances* the practices of segregation or discrimination, which title VI seeks to end, are unconstitutional. . . . *In all cases,* such discrimination is contrary to national policy, and to the moral sense of the Nation. Thus, title VI is simply designed to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation." 110 Cong.Rec. 6544 (1964) (emphasis added).
>
> FN22. Petitioner's attempt to rely on regulations issued by HEW for a contrary reading of the statute is unpersuasive. Where no discriminatory policy was in effect, HEW's example of permissible "affirmative action" refers to "special recruitment policies." 45 CFR § 80.5(j) (1977). This regulation, which was adopted in 1973, sheds no light on the legality of the admissions program that excluded Bakke in this case.
>
> FN23. 110 Cong.Rec. 6047 (1964) (remarks of Sen Pastore).

Belatedly, however, petitioner argues that Title VI cannot be enforced by a private litigant. The claim is unpersuasive in the context of this case. Bakke requested injunctive and declaratory relief under Title VI; petitioner itself then joined ***419** issue on the question of the legality of its program under Title VI by asking for a declaratory judgment that it was in compliance with the statute.[FN24] Its view during state-court litigation was that a private cause of action does exist under Title VI. Because petitioner****2814** questions the availability of a private cause of action for the first time in this Court, the question is not properly before us. See *McGoldrick v. Compagnie Generale Transatlantique,* 309 U.S. 430, 434, 60 S.Ct. 670, 672, 84

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L.Ed. 849. Even if it were, petitioner's original assumption is in accord with the federal courts' consistent interpretation of the Act. To date, the courts, including this Court, have unanimously concluded or assumed that a private action may be maintained under Title VI. [FN25] The United States has taken the same position; in its *amicus curiae* brief directed to this specific issue, it concluded that such a remedy is clearly available,[FN26] ***420** and Congress has repeatedly enacted legislation predicated on the assumption that Title VI may be enforced in a private action.[FN27] The conclusion that an individual may maintain a private cause of action is amply supported in the legislative history of Title VI itself.[FN28] In ****2815** short, a fair consideration of ***421** petitioner's tardy attack on the propriety of Bakke's suit under Title VI requires that it be rejected.

FN24. Record 30-31.

FN25. See, *e. g., Lau v. Nichols, supra*; *Bossier Parish School Board v. Lemon,* 370 F.2d 847 (C.A.5 1967), cert. denied, 388 U.S. 911, 87 S.Ct. 2116, 18 L.Ed.2d 1350; *Uzzell v. Friday,* 547 F.2d 801 (C.A.4 1977), opinion on rehearing en banc, 558 F.2d 727, cert. pending, No. 77-635; *Serna v. Portales,* 499 F.2d 1147 (C.A.10 1974); cf. *Chambers v. Omaha Public School District,* 536 F.2d 222, 225 n. 2 (C.A.8 1976) (indicating doubt over whether a *money judgment* can be obtained under Title VI). Indeed, the Government's brief in *Lau v. Nichols, supra,* succinctly expressed this common assumption: "It is settled that petitioners . . . have standing to enforce Section 601 . . . ." Brief for United States as *Amicus Curiae* in *Lau v. Nichols*, O.T.1973, No. 72-6520, p. 13 n. 5.

FN26. Supplemental Brief for United States as *Amicus Curiae* 24-34. The Government's supplemental brief also suggests that there may be a difference between a private cause of action brought to end a particular discriminatory practice and such an action brought to cut off federal funds. *Id.,* at 28-30. Section 601 is specifically addressed to personal rights, while § 602-the fund cutoff provision-establishes "an elaborate mechanism for *governmental* enforcement by federal agencies." Supplemental Brief, *supra,* at 28 (emphasis added). Arguably, private enforcement of this "elaborate mechanism" would not fit within the congressional scheme, see separate opinion of Mr. Justice WHITE, *ante*, at 2794. But Bakke did not seek to cut off the University's federal funding; he sought admission to medical school. The difference between these two courses of action is clear and significant. As the Government itself states:

"[T]he grant of an injunction or a declaratory judgment in a private action would not be inconsistent with the administrative program established by Section 602 . . . . A declaratory judgment or injunction against future discrimination would not raise the possibility that funds would be terminated, and it would not involve bringing the forces of the Executive Branch to bear on state programs; it therefore would not implicate the concern that led to the limitations contained in Section 602." Supplemental Brief, *supra,* at 30 n. 25.

The notion that a private action seeking injunctive or declaratory judgment relief is inconsistent with a federal statute that authorizes termination of funds has clearly been rejected by this Court in prior cases. See *Rosado v. Wyman,* 397 U.S. 397, 420, 90 S.Ct. 1207, 1221, 25 L.Ed.2d 442.

FN27. See 29 U.S.C. § 794 (1976 ed.) (the Rehabilitation Act of 1973) (in particular, the legislative history discussed in *Lloyd v. Regional Transportation Authority,* 548 F.2d 1277, 1285-1286 (C.A.7 1977)); 20 U.S.C. § 1617 (1976 ed.) (attorney fees under the Emergency School Aid Act); and 31 U.S.C. § 1244 (1976 ed.) (private action under the Financial Assistance Act). Of course, none of these subsequent legislative enactments is necessarily reliable evidence of Congress' intent in 1964 in enacting Title VI, and the legislation was not intended to change the existing status of Title VI.

FN28. Framing the analysis in terms of the four-part *Cort v. Ash* test, see 422 U.S. 66, 78, 95 S.Ct. 2080, 2087, 45 L.Ed.2d 26, it is clear that all four parts of the test are satisfied. (1) Bakke's status as a potential beneficiary of a federally funded program definitely brings him within the " 'class for whose *especial* benefit the statute was enacted,' " *Ibid.* (emphasis in original). (2) A cause of action based on race discrimination has not been "traditionally relegated to state law." *Ibid.* (3) While a few excerpts from the volu-

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minous legislative history suggest that Congress did not intend to create a private cause of action, see opinion of Mr. Justice *POWELL, ante,* at 2745 n. 18, an examination of the entire legislative history makes it clear that Congress had no intention to foreclose a private right of action. (4) There is ample evidence that Congress considered private causes of action to be consistent with, if not essential to, the legislative scheme. See, *e. g.,* remarks of Senator Ribicoff:

"We come then to the crux of the dispute-how this right [to participate in federally funded programs without discrimination] should be protected. And even this issue becomes clear upon the most elementary analysis. If Federal funds are to be dispensed on a nondiscriminatory basis, the only possible remedies must fall into one of two categories: First, action to end discrimination; or second, action to end the payment of funds. Obviously action to end discrimination is preferable since that reaches the objective of extending the funds on a nondiscriminatory basis. But if the discrimination persists and cannot be effectively terminated, how else can the principle of nondiscrimination be vindicated except by nonpayment of funds?" 110 Cong.Rec. 7065 (1964). See also *id.,* at 5090, 6543, 6544 (remarks of Sen. Humphrey); *id.,* at 7103, 12719 (remarks of Sen. Javits); id., at 7062, 7063 (remarks of Sen. Pastore).

The congressional debates thus show a clear understanding that the principle embodied in § 601 involves *personal* federal rights that administrative procedures would not, for the most part, be able to protect. The analogy to the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.* (1970 ed. and Supp. V), is clear. Both that Act and Title VI are broadly phrased in terms of personal rights ("no person shall be denied . . ."); both Acts were drafted with broad remedial purposes in mind; and the effectiveness of both Acts would be "severely hampered" without the existence of a private remedy to supplement administrative procedures. See *Allen v. State Bd. of Elections,* 393 U.S. 544, 556, 89 S.Ct. 817, 826, 22 L.Ed.2d 1. In *Allen,* of course, this Court found a private right of action under the Voting Rights Act.

The University's special admissions program violated Title VI of the Civil Rights Act of 1964 by excluding Bakke from the Medical School because of his race. It is therefore our duty to affirm the judgment ordering Bakke admitted to the University.

Accordingly, I concur in the Court's judgment insofar as it affirms the judgment of the Supreme Court of California. To the extent that it purports to do anything else, I respectfully dissent.

U.S.Cal.,1978.
Regents of University of California v. Bakke
438 U.S. 265, 98 S.Ct. 2733, 17 Fair Empl.Prac.Cas. (BNA) 1000, 17 Empl. Prac. Dec. P 8402, 57 L.Ed.2d 750

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264 Cal.App.2d 576, 70 Cal.Rptr. 654, 5 UCC Rep.Serv. 907
(Cite as: 264 Cal.App.2d 576)

NORRIS F. RIEBE, Plaintiff, Cross-defendant and Appellant
v.
BUDGET FINANCIAL CORPORATION, Defendant, Cross-complainant and Respondent.
MOODY-McCLOUD, INC. et al., Plaintiffs, Cross-defendants and Appellants,
v.
BUDGET FINANCIAL CORPORATION, Defendant, Cross-complainant and Respondent.
(Consolidated Appeals.)
Civ. No. 31391., Civ. No. 31392.

Court of Appeal, Second District, Division 3, California.
Aug. 1, 1968.

HEADNOTES

(1) Pawn and Personal Property Brokers § 6--Real Estate as Security for Loan.
Personal property brokers are restricted generally from taking liens on real estate as security for a loan by Fin. Code, § 22466.
See **Cal.Jur.2d,** Pawn and Personal Property Brokers, § 14.
(2) Pawn and Personal Property Brokers § 6--Applicability of Statutes.
The terms 'bona fide' and 'purpose of evading this division' used in Fin. Code, § 22053, providing that certain sections of the Personal Property Brokers Law, including § 22466, forbidding loans secured by liens upon real estate, are inapplicable to loans over $5,000, refer to the determination of the amount of the loan and not the character of the security given therefor. (Fin. Code, § 22054).

(3a, 3b) Pawn and Personal Property Brokers § 6--Applicability of Statutes--Pleadings.
In an action attacking a loan transaction by a personal property broker as usurious, the pleadings established as a matter of law that the restrictive provisions of the Personal Property Brokers Law made inapplicable to loans of $5,000 or more by Fin. Code, § 22053, were inapplicable to the loan attacked, where the pleadings established without dispute that the borrowers applied for and received from defendant, a personal property broker, a loan and additions thereto greatly in excess of $5,000, and did not suggest that the amount of the loan involved was determined by other than economic considerations.

(4) Pawn and Personal Property Brokers § 6--Applicability of Personal Property Brokers Law.
Under Fin. Code, § 22054, subd. (c), providing that the fact that the transaction is in the form of a sale of instruments shall not be deemed to affect the bona fides of the loan or the amount thereof, or to indicate that the provisions of Fin. Code, § 22053, are used for the purpose of evading the Personal Property Brokers Law, and that 'instruments' have the same meaning as in the Commercial Code, in actions attacking as usurious loans made by defendant personal property broker to a homebuilder, secured by assignment of notes secured in turn by deeds of trust, the Commercial Code applied to defendant's security interest in the notes (Com. Code, § 9102, subd (3)), and no inference of lack of bona fides could be made from the fact that the notes assigned to defendant as security were in turn secured by real property, nor could significance be attached to the fact that Fin. Code, § 22054, subd. (c), refers to a 'sale' of instruments rather than an assignment of instruments.

(5) Pawn and Personal Property Brokers § 7--Interest.
In actions attacking as usurious defendant personal property broker's loan to a home builder secured by personal property of nominal value and by notes secured by deeds of trust representing a portion of the purchase price of homes sold by the borrower, defendant could rely on its status as a personal property broker to exempt it from the usury law where, although part of the security consisted of the assignment to defendant of deeds of trust on houses sold by the borrower to customers, another part of the security consisted of the assignment of the purchase money notes of the purchasers of the houses which were personal property representing income of the borrowers and properly taken by defendant as security for a loan made in the course of its business as a personal property broker.

(6a, 6b) Pawn and Personal Property Brokers § 6--Loans to Which Statutes Applicable.
Cal Const., art. XX, § 22, exempts from the operation of the usury law duly licensed personal property bro-

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kers; the term 'personal property brokers' used in the Constitution refers to the class of lenders defined in the Personal Property Brokers Act of 1933 (identical with the definition found in Fin. Code, § 22009); and the language of the statutory definition in no way indicates an intention to confine its application to personal as opposed to business loans thus denoting and intending to include in the category of personal property brokers those lenders who accept as security a lien on the business income of the borrowers.

(7) Statutes § 126--Construction and Interpretation--Language of Statute-- Determination of Legislative Intent From Language Used.
There can be no intent in a statute not expressed in its words, and there can be no intent on the part of the framers of a statute which does not find expression in their words.
See **Cal.Jur.2d,** Statutes, § 136 et seq; **Am.Jur.** Statutes (1st ed § 27 et seq).
(8) Statutes § 176.5--Construction and Interpretation--Aids to Construction--Reports of Commissions.
In confirming an interpretation of the Personal Property Brokers Act of 1933, the court may properly look to the report of the interim committee appointed by the Assembly in 1933 'to investigate the problems attending the regulation of the business of commercial loans and to recommend legislation ...'
See **Cal.Jur.2d,** Statutes, § 168; **Am.Jur.,** Statutes (1st ed § 334).
(9) Words and Phrases--'Income.'
The 'income' of a person engaged in business is that which comes in or is received without reference to the outgoing expenditures.

(10) Pawn and Personal Property Brokers § 6--Collateral Includable in Loans.
Fin. Code, § 22009, designating the persons includable in the term 'personal property broker', seeks to define certain categories of collateral not usually acceptable to commercial banks, and an assignment of income as security satisfies the statutory purpose whether the income assigned is 'gross' or 'net.'

(11) Pawn and Personal Property Brokers § 6--Collateral.
Collateral notes represented 'income' to the borrowers in the broad sense in which that term is used in the Personal Property Brokers Law where the notes which were assigned as collateral to the lender represented a portion of the purchase price of houses sold by the borrower in the course of business of building and selling houses.

(12) Pawn and Personal Property Brokers § 6--Nature of Collateral.
The character of collateral notes as valid security under Fin. Code, § 22009, designating persons includable in the term 'personal property broker' is not changed by the fact that the notes are themselves secured by liens on real property.

(13) Pawn and Personal Property Brokers § 7--Interest.
The allowance of higher interest rates to personal property brokers is justified by the great costs of investigation and administration involved in operating a small loan business, and the fact that personal property is less valuable as security than real property; thus, many of the reasons for treating personal property brokers as a distinct class of lender existed with respect to the business of lending to a home builder on the security of collateral notes secured by deeds of trust representing a portion of the purchase price of homes sold by the borrower.

(14) Pawn and Personal Property Brokers § 6--Lenders Included.
The use of the term 'in whole or in part' in the definition of personal property broker indicates an intention to include therein not only lenders whose security consists entirely of liens on the kind of personal property enumerated, but also those whose loans are only partly so secured; thus the presence of deeds of trust as part of the security taken by a lender to secure loans to a home builder also secured by personal property of nominal value, did not disqualify the transaction as a personal property broker's loan.

(15) Pawn and Personal Property Brokers § 6--Actions--Judgment on Pleadings.
In actions attacking as usurious defendant personal property broker's loans to a home builder secured by personal property of nominal value and by notes secured by deeds of trust representing a portion of the purchase price of homes sold by the borrower, defendant's motions for judgment on the pleadings had the purpose and effect of general demurrers to be tested by the same rules on review, and it was proper to grant defendant's motions for judgment on the pleadings where the complaints stated no basis for relief other than the alleged invalidity of the loans as

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personal property broker's transactions and failed to state a cause of action, the loans not being invalid as alleged.

SUMMARY

APPEALS from judgments of the Superior Court of Los Angeles County. Brodie Ahlport, Judge. Affirmed.

Actions attacking loan transactions as usurious. Judgments for defendant affirmed.

COUNSEL

Joseph R. Laird for Plaintiffs, Cross-defendants and Appellants.

David M. Turner for Defendant, Cross-complainant and Respondent.

MOSS, J.

Plaintiffs appeal from judgments on the pleadings rendered in favor of defendant and cross-complainant Budget Financial Corporation ('Budget'). In this opinion we consider whether a loan made by a personal property broker to a home builder is void as usurious because the security upon which the lender relied consists of notes secured by deeds of trust which represent a portion of the purchase price of homes sold by the borrower. The complaints allege: On August 1, 1963, Budget, a licensed personal property broker, made a loan to plaintiffs Moody-McCloud, et al., ('the borrowers') of $59,567.76 bearing interest at the rate of 12 percent per year and secured by a chattel mortgage covering furniture and furnishings having a value of less than $1,500, an assignment of promissory notes secured by second deeds of trust on real property, and an assignment of the payments due on the assigned notes. The notes represented a portion of the sales price of houses sold by the borrowers in the course of ***580** their business of building and selling houses. [FN1] The amount of the loan was equal to 50 percent of the unpaid balance of the collateral notes assigned to secure the loan. The loan agreement pursuant to which the loan was made provided that the borrowers were eligible to borrow additional sums at the same rate of interest upon the assignment to Budget of additional collateral notes having an unpaid principal amount due equal to twice the amount of the additional loan. The agreement provided that should any additional loan be made the borrowers would execute a new note in an amount equal to the unpaid balance of the then existing obligation to defendant. The borrowers agreed to maintain the loan balance at an amount equal to not more than 50 percent of the unpaid balance of the collateral notes assigned as security. The agreement provided that the borrowers should continue to collect the installments due on the collateral notes, deposit the payments received in a trust account in Budget's name, and render a monthly accounting to Budget of the amounts so collected. The borrowers agreed to cause their records pertaining to the collateral notes to reflect the assignment of the notes and second deeds of trust to Budget. Budget recorded the instruments of assignment in the office of the county recorder. On February 17, 1964, the borrowers executed and delivered a new note to Budget in the sum of $94,725.40, which represented the principal amount then due on the loan, and as additional collateral gave to Budget a chattel mortgage on household furniture and furnishings worth $4,000. Plaintiff Riebe is the assignee of the collateral notes and deeds of trust. Plaintiffs allege that in making the loan and additions thereto Budget relied solely on the security of the deeds of trust underlying the notes assigned as collateral security.

> FN1 This fact is set forth in the judgment which states that the facts recited therein were declared in open court by all counsel to be not in dispute. The recitation of facts in the judgment appears to be in the form of a stipulation offered and accepted and an order based thereon amending the pleadings. No transcript of the oral proceedings on the motion is in the record. If appellants had believed themselves to be aggrieved by the recitals in the judgment they had the opportunity to correct any alleged error in the trial court by proper motion. They did not do so and therefore we treat the recitations in the judgment as amendments to the pleadings.

Plaintiffs Moody-McCloud, et al., the borrowers, prayed for rescission, return of the interest paid and treble damages on the ground that the transaction was usurious. Plaintiff Riebe sought a declaration on the same ground that he is entitled to have the collateral notes and deeds of trust assigned to him ***581** and an

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injunction forbidding Budget from selling the collateral notes for an amount less than the principal amount thereof.

In its cross-complaint Budget alleged that the borrowers were in default on their note, and that the principal amount then due was $54,033.30. [FN2] Budget prayed for judgment in this amount and possession of the property described in the two chattel mortgages.

FN2 The amount due was admitted by appellants in open court and recited in the judgment. See footnote 1.

Appellants contend that the contract of loan is void on the ground that the loan violated the usury provisions contained in article XX, section 22 of the California Constitution [FN3] and the Personal Property Brokers Law, (Financial Code, division 9, §§ 22000-22653 (unless otherwise specified, all stautory references will be to the Financial Code)) [FN4] by reason of the fact that the loan was secured by personal property having ***582** only nominal value and that the only security for the loan in reality consisted of liens on real property. Appellants argue more particularly that section 22053 of the Financial Code, which exempts from certain restrictions of the Personal Property Brokers Law, bona fide loans in excess of $5,000, was used by Budget for the purpose of evading the restriction against lending on the security of real property.

FN3 Article XX, section 22 of the California Constitution, adopted November 6, 1934, provides in part as follows: 'The rate of interest upon the loan or forbearance of any money ... shall be 7 per cent per annum but it shall be competent for the parties to any loan or forbearance of any money ... to contract in writing for a rate of interest not exceeding 10 per cent per annum. ...

'However, none of the above restrictions shall apply to any building and loan association ... or to any corporation incorporated in the manner prescribed in and operating under that certain act entitled 'An act defining industrial loan companies ...' approved May 18, 1917, as amended, or any corporation incorporated in the manner prescribed in and operating under that certain act entitled 'An act defining credit unions ...' approved March 31, 1927, as amended or any duly licensed pawnbroker or personal property broker, or any bank ... or any nonprofit cooperative association organized under Chapter 4 of Division 6 of the Agricultural Code ... or any corporation ... engaged exclusively in the business of marketing agricultural ... products on a cooperative nonprofit basis in loaning ... money to the members thereof or in connection with any such business or any corporation securing money or credit from any federal intermediate credit bank, organized and existing pursuant to the provisions of an act of Congress entitled, 'Agricultural Credits Act of 1923,' as amended ..., nor shall any such charge of any said exempted classes of persons be considered in any action or for any purpose as increasing or affecting or as connected with the rate of interest hereinbefore fixed. The Legislature may from time to time prescribe the maximum rate per annum of, or provide for the supervision, or the filing of a schedule of, or in any manner fix, regulate or limit, the fees, bonus, commissions, discounts or other compensation which all or any of the said exempted classes of persons may charge or receive from a borrower in connection with any loan ... of any money. ...'

FN4 Section 22651. 'If any amount other than or in excess of the charges permitted by this division is charged, contracted for, or received, except as the result of an accidental and bona fide error in computation, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction.'

Section 22652. 'Except as provided in Section 22651, if any provision of this division is violated in the making or collection of a loan, the contract of loan is void, and no person has any right to collect or receive any principal, interest, or charges in connection with the transaction.'

(1) Personal property brokers are restricted generally from taking liens upon real estate as security for a loan by section 22466. [FN5] Section 22053 provides that

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certain sections of the Personal Property Brokers Law, including section 22466, 'do not apply to any bona fide loan of a principal amount of five thousand dollars ($5,000) or more or to a duly licensed personal property broker in connection with any such loan, if the provisions of this section are not used for the purpose of evading this division. ...'

> FN5 Section 22466. 'No licensee shall take a lien upon real estate as security for any loan made under this division, except such lien as is created by law upon the recording of an abstract of judgment.'

(2) Section 22054, enacted in 1967, [FN6] makes clear that the terms 'bona fide' and 'purpose of evading this division' ***583** used in section 22053 refer to the determination of the amount of the loan and not the character of the security given therefor. Section 22054 is consistent with a prior judicial interpretation of a provision similar to section 22053 contained in the Industrial Loan Law. (See *Peoples Finance & Thrift Co. of Beverly Hills v. Mike-Ron Corp., Inc.*, 236 Cal.App.2d 897 [46 Cal.Rptr. 497], interpreting § 18649.) (3a) The pleadings establish without dispute that the borrowers applied for and received from Budget a loan and additions thereto greatly in excess of $5,000. Appellants do not suggest and have not in their complaints or otherwise at any time in these proceedings suggested that the amount of the loan here involved was determined by other than economic considerations.

> FN6 Section 22054. 'In determining under Section 22053 whether a loan is a bona fide loan of a principal amount of five thousand dollars ($5,000) or more and whether the provisions of that section are used for the purpose of evading this division, the following principles apply:
>
> (a) If a borrower applies for a loan in a principal amount of less than five thousand dollars ($5,000), and a loan to that borrower of a principal amount of five thousand dollars ($5,000) or more is made by a licensed personal property broker, and
>
> (1) No adequate economic reason for the increase in the size of the loan exists, and
>
> (2) By prearrangement or understanding between the borrower and the licensee a substantial payment is to be made upon the loan with the effect of reducing the principal amount of the loan to less than five thousand dollars ($5,000) within a short time after the making of the loan other than by reason of a requirement that the loan be paid in substantially equal periodical installments, then
>
> the loan shall not be deemed to be a bona fide loan of the principal amount of five thousand dollars ($5,000) or more and the provisions of Section 22053 shall be deemed to be used for the purpose of evading this division unless the loan complies with the provisions of this division relating to loans of less than five thousand dollars ($5,000).
>
> (b) An individual advance of money of less than five thousand dollars ($5,000) pursuant to a revolving loan agreement or similar agreement between a borrower and a licensed personal property broker, or a loan agreement providing for the making of advances to the borrower from time to time up to an aggregate maximum amount, shall be deemed to be loan of a principal amount of five thousand dollars ($5,000) or more if the total unpaid principal amount of all loans owing by the borrower to the licensed personal property broker at the time of any such advance is five thousand dollars ($5,000) or more.
>
> (c) If a loan made by a licensed personal property broker is in a principal amount of five thousand dollars ($5,000) or more, the fact that the transaction is in the form of a sale of accounts, chattel paper, contract rights, goods or instruments or a lease of goods shall not be deemed to affect the bona fides of the loan or the amount thereof or to indicate that the provisions of Section 22053 are used for the purpose of evading this division. As used herein, 'accounts,' 'chattel power,' 'contract rights,' 'goods' and 'instruments' shall have the same meaning as in the Commercial Code.
>
> *This section shall be deemed declaratory of*

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existing law and not amendatory thereof.' (Italics added.)

Furthermore, section 22054, subdivision (c) provides that 'the fact that the transaction is in the form of a sale of ... instruments ... shall not be deemed to affect the bona fides of the loan or the amount thereof or to indicate that the provisions of Section 22053 are used for the purpose of evading this division. As used herein ... 'instruments' shall have the same meaning as in the Commercial Code.' (4) Division 9 of the Commercial Code does not apply to liens on real estate (Com. Code, § 9104, subd. (j)), but it does apply to a security interest in a secured obligation which in turn is secured by a lien on real estate. (Com. Code, § 9102, subd. (3). [FN7] The Commercial Code applies, therefore, to the security interest of Budget in the collateral notes. That being ***584** so, no inference of lack of bona fides can be made from the fact that the notes assigned to Budget as security were in turn secured by liens on real property. No significance can be attached to the fact that section 22054, subdivision (c) refers to a 'sale' of instruments whereas this case involves an assignment of instruments. The form of the transaction here is more like that of the customary bona fide loan than it would have been had the transaction taken the form of a sale of the collateral notes to Budget with corollary guarantees, buy-back, or similar agreements by the borrowers. (3b) Therefore, the pleadings establish as a matter of law that the restrictive provisions of the Personal Property Brokers Law made inapplicable to loans of $5,000 or more by section 22053 are inapplicable to the loan here considered.

FN7 Thus, the offiicial comment gives the following illustration of section 9102, subdivision (3) in comment 4:

'The owner of Blackacre borrows $10,000 from his neighbor, and secures his note by a mortgage on Blackacre. This Article is not applicable to the creation of the real estate mortgage. However, when the mortgagee in turn pledges this note and mortgage to secure his own obligation to X, this Article is applicable to the security interest thus created in the note and the mortgage. Whether the transfer of the collateral for the note, i.e., the mortgagee's interest in Blackacre, requires further action (such as recording an assignment of the mortgagee's interest) is left to real estate law. ...'

(5) Appellants argue further that because the security relied upon by Budget consisted of liens on real property and because the tangible personal property given as security for the loan had only a nominal value in relation to the amount of the loan, Budget cannot rely on its status as a personal property broker to exempt it from the usury law with respect to this transaction. This argument misconceives the nature of the security taken by Budget. Although part of the security consisted of the assignment to Budget of deeds of trust on houses sold by the borrowers to their customers, another part of the security consisted of the assignment of the purchase money notes of the purchasers of the houses. These notes are personal property (Civ. Code, §§ 14, subd. 3, 658, 663; Code Civ. Proc., § 17, subd. 3) and, as we shall explain, since they represented income of the borrowers, were properly taken by Budget as security for a loan made in the course of its business as a personal property broker.

(6a) Article XX, section 22 of the California Constitution exempts from the operation of the usury law various classes of lenders including 'duly licensed ... personal property brokers.' The term 'personal property brokers' used in the Constitution refers to the class of lenders which was defined in the Personal Property Brokers Act of 1933 at the time the constitutional provision was adopted. (*Budget Finance Plan v. Gamson,* 34 Cal.2d 95, 97 [207 P.2d 825].) The definition in that act is substantially the same as that found in the original Personal Property Brokers Act of 1909 [FN8] and identical with ***585** the definition found in section 22009 which declares, ' 'Personal property broker,' includes all who are engaged in the business of lending money and taking in the name of the lender, or in any other name, in whole or in part, as security for such loan, (1) any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or (2) any lien on, assignment of, or power of attorney relative to wages, salary, earnings, income, or commission.' (Parenthetical numbers added.) (7) '[T]here can be no intent in a statute not expressed in its words, and there can be no intent upon the part of the framers of such a statute which does not find expression in their words.' (*Ex parte Goodrich,* 160 Cal. 410, 416-417 [117 P. 451,

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Ann.Cas. 1913A 56].) (6b) The language of the statutory definition of personal property broker in no way indicates an intention to confine its application to personal as opposed to business loans. Therefore, it was apparently the intention of the framers and adopters of the amendment to include in the category of personal property brokers those lenders who accept as security a lien on the business income of the borrower. (8) In confirming this interpretation we may properly look to the report of the interim committee appointed by the Assembly in 1933 'to investigate the problems attending the regulation of the business of commercial loans and to recommend legislation. ...' (*Carter v. Seaboard Finance Co.*, 33 Cal.2d 564, 582 [203 P.2d 758].) In its report [FN9] the committee made clear that the Legislature has always contemplated that personal property brokers would make business as well as personal loans. [FN10] ***586**

FN8 Section 1. 'That every person or corporation engaged in the business of loaning or advancing money or other thing and taking in whole or in part as security for such loan or advance any chattel mortgage, bill of sale or other obligation or contract involving the forfeiture of rights in or to personal property, the use or possession of which is retained by other than the mortgagee or lender, or engaged in the business of loaning or advancing money or other thing, and taking either in whole or in part as security therefore [*sic*] any lien on, assignment of or power of attorney relative to wages, salary, earnings, income or commissions, shall be held, and, for the uses and purposes of this act, is hereby declared and defined to be a personal property broker.' (Stats. 1909, p. 969.)

FN9 Report of the Interim Committee of the Assembly of the State of California for the Investigation of Small Loans. 1935 Cal. Assembly Journal 1297, hereinafter cited as the Report.

FN10 Thus, in the Report the committee states, 'Since 1909 it has been the legislative policy of this State to divide the lending transactions for the purpose of regulation into the three general classifications of (1) loans secured by real estate, (2) loans secured by personal property, and (3) unsecured loans. ... This report is concerned with the second class of loans, i.e., those secured by personal property. For the purpose of regulation, accuracy is increased by the classification of such loans as either consumptive or productive. A merchant borrows money with which to enlarge his stock; an industrialist borrows to build a factory; a farmer to buy seed. These are 'productive' loans; they were made to enable production and profit. ... The principal subdivision of secured loans is that which distinguishes between loans secured by real estate and loans secured by personal property. In the sense that personal property is used as security, it is distinguished from real property by being movable, destructible, difficult to record as to property rights therein, susceptible of abuse as to rights of third persons, and not subject to a period of redemption after foreclosure. These differences make personal property less valuable as security both to borrower and to lender; special regulations are required to overcome these difficulties. Borrowers on personal property are subject to temptations in respect to its treatment after a lien is created, and lenders are tempted to abuses after default. ... Obviously those personal property brokers who engage in the business of making loans in large amounts deal with borrowers whose loans, as a rule, are 'productive,' and who are economically better able to protect themselves against exploitation and unfair practice.' (pp. 1298, 1305.)

The first legislation to implement the amendment as to personal property brokers was the Brokers Act of 1939 which established graduated rates in excess of 10 percent per year for small loans but imposed no limits on interest charges for loans over $300. [FN11] (Stats. 1939, ch. 1045, p. 2892.) This implementing legislation gives a further indication that the Legislature contemplated that personal property brokers would make large business loans as well as small personal loans.

FN11 Between 1934 and 1939 there was no limit on the rate of interest chargeable by a personal property broker. (*Wolf v. Pacific Southwest Discount Corp.*, 10 Cal.2d 183 [74 P.2d 263]; *Matulich v. Marlo Inv. Co.*, 7

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Cal.2d 374 [60 P.2d 842].)

(9) The 'income' of a person engaged in business is that which comes in or is received without reference to the outgoing expenditures. (*People* ex rel. *J. E. Farnum, et al., Bank Comrs. v. San Francisco Sav. Union,* 72 Cal. 199, 203 [13 P. 498].) (10) Although 'profit' and 'income' are sometimes used as synonymous phrases, there is no reason to attach the more restricted meaning to the definition of 'income' as used in section 22009. The statute seeks to define certain categories of collateral not usually acceptable to commercial banks. [FN12] An assignment of income as security satisfies this purpose whether the income assigned is 'gross' or 'net.' (To the same effect see 40 Ops. Cal.Atty.Gen. 152, 154. (11) The notes which were assigned as collateral to Budget represented a portion of the purchase price of houses sold by the borrowers in the course of their business of building and selling ***587** houses. The collateral notes, therefore, represented 'income' to the borrowers in the broad sense in which that term is used in the Personal Property Brokers Law. [FN13]

FN12 See Report, p. 1300, 'Suppose, however, that the borrower has no security. Is he to be barred from borrowing money? Because he has no bankable collateral, is he to be deprived of a right to borrow, thereby being forced to suffer the burden or some emergency or loss?'

FN13 Budget also contends that the security here given can also be regarded as personal property 'the use and possession of which ... is retained by other than the mortgagee or lender. ...' (§ 22009) This theory is discussed in *Accounts Receivable Financing and the California Personal Property Brokers Act,* 14 Stanford Standard L.Rev. 520. In view of our holding that the assignment of the collateral notes constituted a lien on income within the meaning of section 22009, we do not discuss or pass upon this contention.

(12) The character of the collateral notes as valid security under section 22009 is not changed by the fact that the notes were themselves secured by liens on real property. (13) The allowance of higher rates to personal property brokers is justified by the great costs of investigation and administration involved in operating a small loan business and the fact that personal property is less valuable as security than real property. (See *Carter v. Seaboard Finance Co., supra,* 33 Cal.2d 564, 587; *Eaker v. Bryant,* 24 Cal.App. 87 [140 P. 310]; *Matter of Application of Stephan,* 170 Cal. 48 [148 P. 196, Ann.Cas. 1916E 617]; Report, pp. 1303, 1305.) In accepting purchase money notes as collateral, Budget ran the risk that the borrowers might give false or inaccurate information as to the balance due on the notes at the time of the assignment to Budget, or divert collections on the notes to the borrower's own use, or fail to account properly for collections made. If the borrowers should default in their obligations to Budget, Budget could not recoup its loss by seeking recourse against the real property securing the assigned notes so long as no default occurred thereon. The investigation required to forestall these possibilities might well be more extensive and expensive than that required if Budget had been given a lien directly on real property as security for the loan. Therefore, many of the reasons for treating personal property brokers as a distinct class of lender exist with respect to the business of lending upon the security of collateral notes such as those taken by Budget.

(14) The use of the term 'in whole or in part' in the definition of personal property broker indicates an intention to include therein not only lenders whose security consists entirely of liens on the kinds of personal property enumerated therein, but also those whose loans are only partly so secured. (See *Budget Finance Plan v. Gamson, supra,* 34 Cal.2d 95, 99.) In *Budget Finance Plan v. Gamson,* the Supreme Court ***588** upheld a judgment in favor of a personal property broker who had made a loan of $20,000 and taken as security therefor a chattel mortgage on two automobiles and household furnishings have a combined value of $5,000 and a deed of trust on a parcel of real property. The borrowers argued that if personal property brokers are permitted to take real estate liens on loans over $5,000, as permitted by a 1945 amendment (now embodied in section 22053), 'the very basis upon which the classification and regulation of personal property brokers has in the past been sustained as reasonable would be removed and constitutional provisions prohibiting discriminatory legislation would be violated.' (34 Cal.2d at p. 100.) In discussing that contention the Supreme Court stated, 'However, the 1945 amendment is not to be construed as permitting those holding personal property brokers' licenses to lend solely on the security of real property liens, for so construed it might cause the classification

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of personal property broker to lose its distinctiveness. When read in conjunction with the definition to which we have referred, [the definition now embodied in section 22009] the 1945 amendment is found to be an authorization to licensees to take real estate security in part when making loans of $5,000 or more so long as the good faith requirements of the statute are satisfied.' (*Budget Finance Plan v. Gamson, supra,* 34 Cal.2d 95, 101.) The case before us does not present the question with which the foregoing statement is concerned. There is nothing in the transaction here considered which can be construed as possibly causing the classification of Budget as a personal property broker to lose its distinctiveness. Although Budget was given liens on real property as security for its loan, it can resort to those liens only as and if the trust deed note debtors as well as the borrowers here are in default on their obligations. If the trust deed debtors are not in default, the only way that Budget can realize on the security for its loan in the event that the borrowers here are in default is to sell the collateral notes and the underlying deeds of trust, or to collect the payments on the notes as they become due. In neither of these cases will it be able to obtain payment by sale of the underlying real estate. Budget has taken the kind of risk that justifies its classification as a personal property broker. Therefore, the presence of the deeds of trust as part of the security taken by Budget does not disqualify the transaction as a personal property broker's loan.

(15) Budget's motions for judgment on the pleadings had the purpose and effect of a general demurrer and on review ***589** are to be tested by the same rules. (*Colberg, Inc. v. State of California* ex rel. *Dept. of Public Works,* 67 Cal.2d 408, 411 [62 Cal.Rptr. 401, 432 P.2d 3].) Since the complaints state no basis for relief other than the alleged invalidity of the loan as a personal property broker transaction, they fail to state a cause of action. By reason of the stipulation of the cross-defendants as to the balance due on the loan and the value of the property covered by the chattel mortgages given as security for the loan, the answers to the cross-complaint fail to state a defense thereto. Therefore, it was proper to grant Budget's motions for judgment on the pleadings.

The judgments are affirmed.

Cobey, Acting P. J., and Frampton, J. pro tem., [FN*] concurred.

FN* Retired judge of the superior court sitting under assignment by the Chairman of the Judicial Council.

Cal.App.2.Dist.
Riebe v. Budget Financial Corp.
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136 Cal.App.4th 621, 39 Cal.Rptr.3d 62, 36 Envtl. L. Rep. 20,034, 06 Cal. Daily Op. Serv. 1171, 2006 Daily Journal D.A.R. 1621
(Cite as: 136 Cal.App.4th 621, 39 Cal.Rptr.3d 62)

H

Court of Appeal, Second District, Division 5, California.
Ferial SHAMSIAN, Plaintiff and Appellant,
v.
DEPARTMENT OF CONSERVATION, et al., Defendants and Respondents.
No. B184680.

Feb. 7, 2006.
Review Denied June 14, 2006.[FN*]

FN* Baxter, Chin and Corrigan, JJ., did not participate therein. Kennard, Werdegar and Johnson, JJ., dissented.

Background: Plaintiff filed purported class action and mandate petition against Department of Conservation, state officials, and two beer companies, alleging that defendants failed to discharge their joint statutory obligation under the Beverage Container Recycling and Litter Reduction Act to provide convenient, economical, and efficient beverage container redemption opportunities for California consumers. Plaintiff also alleged violations of the unfair competition law (UCL), and sought declaratory relief. The Superior Court, Los Angeles County, No. BS091563,Carl J. West, J., entered judgment of dismissal. Plaintiff appealed.

Holdings: The Court of Appeal, Turner, P.J., held that:
(1) there was no mandatory statutory duty on which plaintiff could base private claim or action for declaratory relief against defendants;
(2) there was no ministerial act on which plaintiff could base mandate petition; and
(3) equitable abstention principles barred UCL claim.

Affirmed.

West Headnotes

[1] Municipal Corporations 268 723

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k723 k. Nature and Grounds of Liability. Most Cited Cases
Statute allowing an exception to governmental immunity and creating a private right of action where there is a mandatory duty to protect against the risk of a particular kind of injury requires that the enactment at issue be obligatory, rather than merely discretionary or permissive, in its directions to the public entity; it must require, rather than merely authorize or permit, that a particular action be taken or not taken. West's Ann.Cal.Gov.Code § 815.6.

[2] Action 13 3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory Rights of Action. Most Cited Cases

Environmental Law 149E 385

149E Environmental Law
149EVIII Waste Disposal and Management
149Ek385 k. Private Right of Action; Citizen Suits. Most Cited Cases
There was no mandatory statutory duty under Beverage Container Recycling and Litter Reduction Act on which plaintiff could base private claim against Department of Conservation, state officials, and two beer companies, based on their alleged failure to discharge their joint obligation under Act; provision of Act imposing joint responsibility on manufacturers, distributors, dealers, recyclers, processors, and the Department to provide convenient, efficient, and economical redemption opportunities was mere statement of legislative intent and imposed no mandatory obligation to act, and provisions pertaining to establishment of recycling centers were also discretionary. West's Ann.Cal.Gov.Code § 815.6; West's Ann.Cal.Pub.Res.Code §§ 14501(g), 14571(a), 14571.8(b).
See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 875; Cal. Jur. 3d, Pollution and Conservation Laws, § 489.

[3] Mandamus 250 73(1)

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136 Cal.App.4th 621, 39 Cal.Rptr.3d 62, 36 Envtl. L. Rep. 20,034, 06 Cal. Daily Op. Serv. 1171, 2006 Daily Journal D.A.R. 1621
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250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k73 Specific Acts
250k73(1) k. In General. Most Cited Cases

Mandamus 250 ⚿140

250 Mandamus
250II Subjects and Purposes of Relief
250II(C) Acts and Proceedings of Private Corporations and Individuals
250k140 k. Individual Duties and Obligations. Most Cited Cases
There was no ministerial act on which plaintiff could base mandate petition against Department of Conservation, state officials, and two beer companies, seeking to compel defendants to discharge their alleged joint statutory obligation under Beverage Container Recycling and Litter Reduction Act; provision of Act imposing joint responsibility on manufacturers, distributors, dealers, recyclers, processors, and the Department to provide convenient, efficient, and economical redemption opportunities was mere statement of legislative intent and imposed no affirmative duty that would be enforceable through writ of mandate, and provisions pertaining to establishment of recycling centers were also discretionary. West's Ann.Cal.C.C.P. § 1085(a); West's Ann.Cal.Pub.Res.Code §§ 14501(g), 14571(a), 14571.8(b).

[4] Mandamus 250 ⚿72

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k72 k. Matters of Discretion. Most Cited Cases
A writ of mandate will not lie to control discretion conferred upon a public officer or agency. West's Ann.Cal.C.C.P. § 1085(a).

[5] Mandamus 250 ⚿10

250 Mandamus
250I Nature and Grounds in General
250k10 k. Nature and Existence of Rights to Be Protected or Enforced. Most Cited Cases

Mandamus 250 ⚿12

250 Mandamus
250I Nature and Grounds in General
250k12 k. Nature of Acts to Be Commanded. Most Cited Cases
Two basic requirements are essential to the issuance of a writ of mandate: (1) a clear, present and usually ministerial duty upon the part of the respondent, and (2) a clear, present and beneficial right in the petitioner to the performance of that duty. West's Ann.Cal.C.C.P. § 1085(a).

[6] Antitrust and Trade Regulation 29T ⚿283

29T Antitrust and Trade Regulation
29TIII Statutory Unfair Trade Practices and Consumer Protection
29TIII(E) Enforcement and Remedies
29TIII(E)1 In General
29Tk281 Exclusive and Concurrent Remedies or Laws
29Tk283 k. Judicial Remedies Prior to or Pending Administrative Proceedings. Most Cited Cases
(Formerly 382k864 Trade Regulation)
Equitable abstention principles barred plaintiff's claim under unfair competition law (UCL) against Department of Conservation, state officials, and two beer companies, based on their alleged failure to discharge their joint statutory obligation under Beverage Container Recycling and Litter Reduction Act to provide convenient, efficient, and economical redemption opportunities to California consumers, as equitable judicial action under UCL would interfere with Department's administration of Act and regulation of beverage container recycling, and potentially throw complex economic arrangement out of balance. West's Ann.Cal.Bus. & Prof.Code § 17200; West's Ann.Cal.Pub.Res.Code §§ 14501(g), 14571(a), 14571.8(b).

[7] Antitrust and Trade Regulation 29T ⚿370

29T Antitrust and Trade Regulation
29TIII Statutory Unfair Trade Practices and

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136 Cal.App.4th 621, 39 Cal.Rptr.3d 62, 36 Envtl. L. Rep. 20,034, 06 Cal. Daily Op. Serv. 1171, 2006 Daily Journal D.A.R. 1621
(Cite as: 136 Cal.App.4th 621, 39 Cal.Rptr.3d 62)

Consumer Protection
29TIII(E) Enforcement and Remedies
29TIII(E)7 Relief
29Tk370 k. In General. Most Cited Cases
(Formerly 382k864 Trade Regulation)

Constitutional Law 92 ⚿2502(3)

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2499 Particular Issues and Applications
92k2502 Business and Industry
92k2502(3) k. Antitrust and Trade Regulation. Most Cited Cases
(Formerly 92k70.1(3), 382k864 Trade Regulation)
Because the remedies available under the unfair competition law (UCL), namely injunctions and restitution, are equitable in nature, courts have the discretion to abstain from employing them; where a UCL action would drag a court of equity into an area of complex economic or similar policy, equitable abstention is appropriate, as it is primarily a legislative and not a judicial function in such cases to determine the best economic policy. West's Ann.Cal.Bus. & Prof.Code § 17200.

[8] Declaratory Judgment 118A ⚿81

118A Declaratory Judgment
118AII Subjects of Declaratory Relief
118AII(A) Rights in General
118Ak81 k. Subjects of Relief in General. Most Cited Cases

Declaratory Judgment 118A ⚿204

118A Declaratory Judgment
118AII Subjects of Declaratory Relief
118AII(K) Public Officers and Agencies
118Ak204 k. State Officers and Boards. Most Cited Cases
There was no mandatory statutory duty under Beverage Container Recycling and Litter Reduction Act on which plaintiff could base action for declaratory relief against Department of Conservation, state officials, and two beer companies; provision of Act imposing joint responsibility on manufacturers, distributors, dealers, recyclers, processors, and the Department to provide convenient, efficient, and economical redemption opportunities was mere statement of legislative intent and imposed no mandatory obligation to act. West's Ann.Cal.Pub.Res.Code § 14501(g).

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TURNER, P.J.

***626** I. INTRODUCTION

Plaintiff, Ferial Shamsian, appeals from a judgment dismissing her first amended complaint and denying her mandate petition as to defendants: the Department of Conservation (department); two individuals-Darryl W. Young, department director, and Jim Ferguson, assistant director of the California Beverage Container Recycling Program; and two corporations-Anheuser-Busch, Inc. and Miller Brewing Company (the corporate defendants). Plaintiff alleged the defendants had failed to ****65** provide convenient, economical, and efficient beverage container redemption opportunities for California consumers as required by section 14501, subdivision (g) of the California Beverage Container Recycling and Litter Reduction Act, Public Resources Code [FN1] section 14500 et seq. (the act).

FN1. All further statutory references are to the Public Resources Code except where otherwise noted.

Plaintiff raises two contentions she claims are dispositive of this appeal. To begin with, plaintiff asserts defendants have a mandatory duty pursuant to section

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14501, subdivision (g) such that a private right of action challenging their alleged inaction may be pursued by her. The trial court ruled there was no mandatory duty created by section 14501, subdivision (g). Also, plaintiff argues she can pursue her Business and Professions Code section 17200 unfair competition claims. The trial court ruled equitable abstention principles barred plaintiff's unfair competition claims. We agree with the trial court on both counts and affirm the judgment.

II. BACKGROUND

A. The Act

The Legislature adopted the act in 1986. (Stats.1986, ch. 1290, § 2, pp. 4539-4568.) The act creates a comprehensive administrative scheme designed to encourage and facilitate the large-scale recycling of used beverage ***627** containers. The act establishes a department administered program designed to achieve stated recycling goals through a complex arrangement of financial incentives. The act attempts to balance the competing interests of the varied participants in the beverage container and recycling industries. It requires for its success cooperation among manufacturers, distributors, recycling centers, supermarkets, and consumers. Additionally, it attempts to make recycling convenient for the consuming public. (§ 14500 et seq.; see *Californians Against Waste v. Department of Conservation* (2002) 104 Cal.App.4th 317, 325-326, 127 Cal.Rptr.2d 905.)

The act is administered and enforced by the department. (§ 14530; see also, e.g., §§ 14538, 14539.) The department is authorized to adopt regulations. (§ 14536; Cal.Code Regs., tit. 14, § 2000 et seq.) A violation of the act is an infraction punishable by a fine (§ 14591, subd. (a)) or, in the case of fraud, by a fine as well as possible imprisonment, potentially in the state penitentiary. (§ 14591, subd. (b).) The department is authorized, among other things, to: assess civil penalties for violations of the act (§ 14591.1) including unfair recycling competition (§ 14588 et seq.); take disciplinary action (§ 14591.2); seek restitution of money illegally paid (§ 14591.4); issue cease and desist orders (§ 14591.6, subd. (a)); and request that the Attorney General seek injunctive relief. (§ 14591.6, subd. (e).) Penalties, restitution and other remedies imposed by the department can be enforced by means of a judgment having the same force and effect as a judgment in a civil action. (§ 14591.5.)

The Legislature found and declared in section 14501 as follows: "(a) *Experience in this state and others demonstrates that financial incentives and convenient return systems ensure the efficient and large-scale recycling of beverage containers. Accordingly, it is the intent of the Legislature to encourage increased, and more convenient, beverage container redemption opportunities for all consumers. These redemption opportunities shall consist of dealer and other shopping*****66** *center locations, independent and industry operated recycling centers, curbside programs, nonprofit dropoff programs, and other recycling systems that assure all consumers, in every region of the state, the opportunity to return beverage containers conveniently, efficiently, and economically.* [¶] (b) California grocery, beer, soft drink, container manufacturing, labor, agricultural, consumer, environmental, government, citizen, recreational, taxpayer, and recycling groups have joined together in calling for an innovative program to generate large-scale redemption and recycling of beverage containers. [¶] (c) *This division establishes a beverage container recycling goal of 80 percent,* and when the redemption rate for any one type of beverage container falls below 65 percent, this division provides for an increased refund value. [¶] (d) It is the intent of the Legislature to ensure that every container type proves its own recyclability. [¶] (e) It is the intent of the Legislature to make redemption and recycling convenient to consumers, and the Legislature hereby urges cities and counties, when ***628** exercising their zoning authority, to act favorably on the siting of multimaterial recycling centers, reverse vending machines, mobile recycling units, or other types of recycling opportunities, as necessary for consumer convenience, and the overall success of litter abatement and beverage container recycling in the state. [¶] (f) The purpose of this division is to create and maintain a marketplace where it is profitable to establish sufficient recycling centers and locations to provide consumers with convenient recycling opportunities through the establishment of minimum refund values and processing fees and, through the proper application of these elements, to enhance the profitability of recycling centers, recycling locations, and other beverage container recycling programs. [¶] (g) *The responsibility to provide convenient, efficient, and economical redemption opportunities rests jointly with manufacturers, distributors, dealers, recyclers, processors, and the Department of Conservation.* [¶] (h) It is the intent of the Legislature, in enacting this

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division, that all empty beverage containers redeemed shall be recycled, and that the responsibilities and regulations of the department shall be determined and implemented in a manner which favors the recycling of redeemed containers, as opposed to their disposal. [¶] (i) Nothing in this division shall be interpreted as affecting the current business practices of scrap dealers or recycling centers, except that, to the extent they function as a recycling center or processor, they shall do so in accordance with this division [¶] (j) The program established by this division will contribute significantly to the reduction of the beverage container component of litter in this state." (Italics added.)

Section 14571, subdivision (a) provides: "Except as otherwise provided in this chapter, there shall be at least one certified recycling center or location within every convenience zone which accepts and pays the refund value, if any, at one location for all types of empty beverage containers...." "Convenience zone" is defined in section 14509.4, subdivision (a) as, "The area within a one-half mile radius of a supermarket." However, the department has discretion under specified circumstances to increase the size of a convenience zone in a rural region to within a three-mile radius of a supermarket. (§ 14509.4, subd. (b)(1) & (2).) The department also has discretion to grant an exemption from the section 14571 requirement of one certified recycling center or location within every convenience zone. (§ 14571.8.) Section 14571.8, subdivision **67 (b) states in part: "The director may grant an exemption from the requirements of Section 14571 for an individual convenience zone only after the department solicits public testimony on whether or not to provide an exemption from Section 14571. The solicitation process shall be designed by the department to ensure that operators of *629 recycling centers, dealers, and members of the public in the jurisdiction affected by the proposed exemption are aware of the proposed exemption." [FN2]

> FN2. Section 14571.8, subdivision (b) states in full: "The director may grant an exemption from the requirements of Section 14571 for an individual convenience zone only after the department solicits public testimony on whether or not to provide an exemption from Section 14571. The solicitation process shall be designed by the department to ensure that operators of recycling centers, dealers, and members of the public in the jurisdiction affected by the proposed exemption are aware of the proposed exemption. After evaluation of the testimony and any field review conducted, the department shall base a decision to exempt a convenience zone on one, or any combination, of the following factors: [¶] (1) The exemption will not significantly decrease the ability of consumers to conveniently return beverage containers for the refund value to a certified recycling center redeeming all material types. [¶] (2) Except as provided in paragraph (5), the nearest certified recycling center is within a reasonable distance of the convenience zone being considered from exemption. [¶] (3) The convenience zone is in the area of a curbside recycling program that meets the criteria specified in Section 14509.5. [¶] (4) The requirements of Section 14571 cannot be met in a particular convenience zone due to local zoning or the dealer's leasehold restrictions for leases in effect on January 1, 1987, and the local zoning or leasehold restrictions are not within the authority of the department and the dealer. However, any lease executed after January 1, 1987, shall meet the requirements specified in subdivision (a). [¶] (5) The convenience zone has redeemed less than 60,000 containers per month for the prior 12 months and, notwithstanding paragraph (2), a certified recycling center is located within one mile of the convenience zone that is the subject of the exemption."

B. The First Amended Complaint and the Mandate Petition

Plaintiff's first amended complaint and mandate petition were brought "individually and on behalf of all others similarly situated." Plaintiff's central allegation was that defendants were jointly responsible for providing convenient, economical, and efficient beverage container redemption opportunities for California consumers pursuant to section 14501, subdivision (g) of the act, but had failed to do so. Only the first, sixth, ninth, tenth, and eleventh causes of action of the first amended complaint concerned the present defendants. In her first cause of action, plaintiff sought a writ of mandate to compel compliance with defendants' "mandatory statutory joint duty and responsibility to provide convenient, efficient, and economical re-

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136 Cal.App.4th 621, 39 Cal.Rptr.3d 62, 36 Envtl. L. Rep. 20,034, 06 Cal. Daily Op. Serv. 1171, 2006 Daily Journal D.A.R. 1621
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demption opportunities ..." as required by section 14501, subdivision (g) of the act. Plaintiff sought an order "that all convenience zones include within its [*sic*] boundaries at least one recycling center" as required by section 14571. In her sixth cause of action, plaintiff sought restitution and disgorgement of profits as against defendants, other than the department, for engaging in unfair and unlawful business practices in violation of Business and Professions Code section 17200. Plaintiff alleged defendants had "jointly failed to implement the [a]ct by not providing convenient, efficient, and economical redemption opportunities to California consumers ... in sufficient numbers to reach a recycling rate of 80 [percent], in violation of [section] 14501[, subdivision] (c) [establishing the 80 percent recycling goal] and [section] 14501 [, subdivision] (g) of the [a]ct [setting forth the need for redemption opportunities]." The ***630** ninth ****68** cause of action alleged the department had "wrongfully and unlawfully failed to carry out its statutory duty to provide convenient, efficient, and economical redemption opportunities ... as required by the [a]ct, including but not limited to" section 14501[, subdivision] (g). Plaintiff sought imposition of a constructive trust on unspent cash redemption value funds (nonrefunded beverage container deposits) in the department's possession. The tenth cause of action, for an accounting, was brought against the department for violating section 14501, subdivision (g) of the act. The eleventh cause of action sought declaratory relief "as to the interpretation, application and effect of the [a]ct, including but not limited to [section] 14501[, subdivision] (g), and the rights, duties and responsibilities of the parties with respect thereto."

Plaintiff's separately filed Code of Civil Procedure section 1085 mandate petition paralleled her first amended complaint. The first cause of action sought a writ of mandate to compel compliance with the "mandatory statutory duties" imposed by the act "including but not limited to" section 14501, subdivision (g). Plaintiff requested an order "commanding [defendants] to comply with the [act], specifically [section] 14501[, subdivision] (g), by providing convenient, efficient, and economical redemption opportunities for consumers ..., including but not limited to ..." requiring at least one recycling center in every convenience zone. The remaining causes of action as against the present defendants were: the sixth, for restitution and disgorgement of profits against the corporate defendants for engaging in unfair and unlawful business practices in violation of Business and Professions Code section 17200, "in that they have jointly failed to implement the [a]ct by providing convenient, efficient, and economical redemption opportunities to California beverage container consumers ... in adequate numbers to reach a recycling rate of 80 [percent], in violation of [section] 14501 [, subdivision] (g) of the [a]ct"; the ninth for imposition of a constructive trust against unredeemed cash redemption value funds in the department's possession as a result of its failure to provide convenient, efficient, and economical redemption opportunities as required by the act including section 14501, subdivision (g); the tenth against the department for an accounting of unredeemed cash redemption value funds wrongfully retained because plaintiff and other consumers had insufficient redemption opportunities; and the eleventh for "a judicial declaration as to the interpretation, application and effect of the [a]ct, including but not limited to [section] 14501 [, subdivision] (g)...." Plaintiff's eleventh cause of action alleged section 14501, subdivision (g) was not being "adequately" implemented.

C. The Trial Court's Ruling

The parties agreed the trial court would determine certain threshold issues of law regarding the viability of plaintiff's claims for relief "in lieu of ***631** generalized demurrers" to the first amended complaint. The trial court concluded: there was no private right of action or mandatory " 'duty' of compliance" under the act that would support plaintiff's claims against defendants; plaintiff had no standing to seek a writ of mandate under Code of Civil Procedure section 1085; the act vested discretion in the department to develop a recycling program consistent with legislative goals and there was no ministerial act that plaintiff could compel; there was no duty under the act and therefore no basis for an unlawful business practices claim under Business and Professions Code section 17200 et seq.; and equitable abstention was appropriate in light of the comprehensive administrative****69** scheme created to address beverage container recycling.

III. DISCUSSION

A. Standards of Review

The trial court's ruling was in the nature of a demurrer dismissal. Therefore, consistent with the standard of review on appeal from an order sustaining a demurrer

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without leave to amend, we give the complaint a reasonable interpretation, and treat the demurrer as admitting all material facts properly pleaded. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126, 119 Cal.Rptr.2d 709, 45 P.3d 1171; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967, 9 Cal.Rptr.2d 92, 831 P.2d 317; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 703 P.2d 58.) In addition, whether section 14501, subdivision (g) imposes a mandatory duty or supports a private right of action is a question of statutory interpretation and of law for the court. (*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 499, 93 Cal.Rptr.2d 327, 993 P.2d 983; *Creason v. Department of Health Services* (1998)18 Cal.4th 623, 631, 76 Cal.Rptr.2d 489, 957 P.2d 1323.) We exercise our independent judgment in resolving that issue. (*City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942, 949, 22 Cal.Rptr.3d 518, 102 P.3d 904 [Code Civ. Proc. § 1085 mandate petition]; *McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1583-1584, 18 Cal.Rptr.2d 680 [same].) We apply the following standard of statutory review described by our Supreme Court: "When interpreting a statute our primary task is to determine the Legislature's intent. [Citation.] In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent." (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826, 25 Cal.Rptr.2d 148, 863 P.2d 218; *People v. Jones* (1993) 5 Cal.4th 1142, 1146, 22 Cal.Rptr.2d 753, 857 P.2d 1163.) Further, our Supreme Court has noted: " 'If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature....' " (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798, 268 Cal.Rptr. 753, 789 P.2d 934; accord, *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977, 90 Cal.Rptr.2d 260, 987 P.2d 727.)

***632** B. Mandatory Duty or Private Right of Action

The first important question before us is whether the act imposes a mandatory duty on the defendants "to provide convenient, efficient, and economical redemption opportunities" (§ 14501, subd. (g)), the breach of which obligation creates a private right of action by plaintiff. With respect to a public entity such as the department, Government Code section 815.6 allows an exception to governmental immunity and creates a private right of action where there is a mandatory duty to protect against the risk of a particular kind of injury. (Gov.Code, § 815.6; *Haggis v. City of Los Angeles, supra,* 22 Cal.4th at pp. 498-500, 93 Cal.Rptr.2d 327, 993 P.2d 983; *Creason v. Department of Health Services, supra,* 18 Cal.4th at pp. 630-631, 76 Cal.Rptr.2d 489, 957 P.2d 1323; *Nunn v. State of California* (1984) 35 Cal.3d 616, 624, 200 Cal.Rptr. 440, 677 P.2d 846.) The effect of Government Code section 815, subdivision (a) on the right to sue a public entity was described in *Creason v. Department of Health Services, supra,* 18 Cal.4th at pages 630-631, 76 Cal.Rptr.2d 489, 957 P.2d 1323: "The California Tort Claims Act provides that a public entity is not liable for injury arising from an act or omission except as provided by statute. (Gov.Code, § 815, subd. (a); see ****70** *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 809, 205 Cal.Rptr. 842, 685 P.2d 1193.) Under Government Code section 815.6, as we have construed it, 'a public entity is liable for an injury proximately caused by its failure to discharge a mandatory duty designed to protect against the risk of a particular kind of injury....' (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 904, 136 Cal.Rptr. 251, 559 P.2d 606; see *Washington v. County of Contra Costa* (1995) 38 Cal.App.4th 890, 896, 45 Cal.Rptr.2d 646; *State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 854, 197 Cal.Rptr. 914.) Whether a particular statute is intended to impose a mandatory duty, rather than a mere obligation to perform a discretionary function, is a question of statutory interpretation for the courts. (*Nunn v. State of California, supra,* 35 Cal.3d at p. 624, 200 Cal.Rptr. 440, 677 P.2d 846.)" If a statute does not require that a "particular action" be taken, Government Code section 815.6 does not create the right to sue a public entity. (*Haggis v. City of Los Angeles, supra,* 22 Cal.4th at pages 498-499, 93 Cal.Rptr.2d 327, 993 P.2d 983; *Creason v. Department of Health Services, supra,* 18 Cal.4th at p. 631, 76 Cal.Rptr.2d 489, 957 P.2d 1323.) In *Creason,* the Supreme Court emphasized the statutory scheme at issue, the Hereditary Disorders Act, required the Department of Health Services select accurate standards for testing for and reporting possible congenital hypothyroidism. (*Creason v. Department of Health Services, supra,* 18 Cal.4th at p. 626, 76 Cal.Rptr.2d 489, 957 P.2d 1323.) The Supreme Court described the scope of discretion under the Hereditary Disorders Act as follows: "[T]he statutory scheme at issue here makes reasonably clear that the state is given substantial *discretion* in formulating and reporting appropriate testing standards for hypothyroidism, al-

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though the Legislature has specified certain general principles to guide the exercise of that discretion. Moreover, although the Hereditary Disorders Act included some mandatory language in describing the state's obligations, the *633 act's provisions disclose no legislative intent to confer a private right of action for the state's breach of its statutory duties." (*Id.* at p. 631, 76 Cal.Rptr.2d 489, 957 P.2d 1323.)

[1] The Supreme Court has described the nature of the duty that must be present in order for there to be statutory liability by a public entity: "[S]ection 815.6 requires that the enactment at issue be *obligatory,* rather than merely discretionary or permissive, in its directions to the public entity; it must *require,* rather than merely authorize or permit, that a particular action be taken or not taken. (*Morris v. County of Marin [, supra,]* 18 Cal.3d [at pp.] 907, 910, 136 Cal.Rptr. 251, 559 P.2d 606.) It is not enough, moreover, that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion. (*Creason v. Department of Health Services[, supra,]* 18 Cal.4th [at pp.] 631-633, 76 Cal.Rptr.2d 489, 957 P.2d 1323....)" (*Haggis v. City of Los Angeles, supra,* 22 Cal.4th at p. 498, 93 Cal.Rptr.2d 327, 993 P.2d 983; see *County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 639, 125 Cal.Rptr.2d 637.) (Plaintiff does not contend she has a cause of action against the corporate defendants in the absence of a duty such as would support a claim against the department.)

[2] Plaintiff concedes the Legislature did not grant an explicit right to sue to enforce the act. But our Supreme Court has held the absence of an "*express* right to sue" is not dispositive. (**71*Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 539, 28 Cal.Rptr.2d 617, 869 P.2d 1142.) Plaintiff argues the clear language of section 14501, subdivision (g) imposes a joint mandatory duty on all of the defendants to provide convenient, efficient, and economical redemption opportunities throughout the state. We agree with the trial court that a plain reading of section 14501, subdivision (g) reveals it is a statement of legislative intent. Section 14501 is unofficially entitled "Legislative Findings and Declarations." It begins with the phrase, "The Legislature finds and declares as follows...." (§ 14501.) As noted previously, section 14501, subdivision (g), which is part of the legislative findings of the act, simply states, "The responsibility to provide convenient, efficient, and economical redemption opportunities rests jointly with manufacturers, distributors, dealers, recyclers, processors, and the Department of Conservation." With these words, the Legislature conveyed its intent that the responsibility to provide redemption opportunities would rest not just with the department but with all of the principal participants in the beverage container recycling scheme. (§ 14501, subd. (g).) However, as the Courts of Appeal have repeatedly held, a statement of legislative intent may not give rise to a mandatory duty. (*County of Los Angeles v. Superior Court, supra,* 102 Cal.App.4th at p. 639, 125 Cal.Rptr.2d 637; *MacDonald v. State of California* (1991) 230 Cal.App.3d 319, 330, 281 Cal.Rptr. 317; *Tirpak v. Los Angeles Unified School Dist.* (1986) 187 Cal.App.3d 639, 642-643, 232 Cal.Rptr. 61; *Ibarra v. California Coastal Commission* (1986) 182 Cal.App.3d 687, 694, 227 Cal.Rptr. 371.) The statement of legislative intent in section 14501, *634 subdivision (g) does not impose a mandatory duty the breach of which gives rise to a private right of action.

At oral argument, plaintiff's counsel asserted defendants' mandatory duty also arose from section 14501, subdivision (a), which provides: "Experience in this state and others demonstrates that financial incentives and convenient return systems ensure the efficient and large-scale recycling of beverage containers. Accordingly, it is the intent of the Legislature to encourage increased, and more convenient, beverage container redemption opportunities for all consumers. These redemption opportunities shall consist of dealer and other shopping center locations, independent and industry operated recycling centers, curbside programs, nonprofit dropoff programs, and other recycling systems that assure all consumers, in every region of the state, the opportunity to return beverage containers conveniently, efficiently, and economically." The foregoing analysis applies with equal force to section 14501, subdivision (a). For the reasons discussed above with respect to subdivision (g), section 14501, subdivision (a) is also a statement of legislative intent. The statement of legislative intent in section 14501, subdivision (a) does not impose a mandatory duty.

Plaintiff asserts a private right of action was intended by the Legislature's enactment of section 14530.6, which provides: "Upon the request of the department, the Attorney General shall represent the department and the state in litigation concerning affairs of the

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department." Plaintiff contends the Legislature clearly expected the department would be sued to enforce the act. We disagree. Section 14530.6 states only that the Attorney General is required to represent the department in litigation concerning its affairs. This is consistent, for example, with section 14591.6, subdivision (e), which authorizes the department to ask the Attorney General to seek injunctive relief on the department's behalf to restrain activity in violation**72 of a department-issued cease and desist order. Nothing in the language of section 14530.6 suggests the Legislature intended to allow individuals such as plaintiff to sue the department to enforce the act.

Plaintiff relies on our Supreme Court's analysis in *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 440, 261 Cal.Rptr. 574, 777 P.2d 610, in holding that former Elections Code sections 302 and 304 [FN3] authorized a private cause of action be brought to compel counties to design and implement voter *635 outreach programs. The issue before the Supreme Court was whether under **73Elections Code section 304 only the Attorney General had the standing to bring suit to enforce the county registrar's obligation to implement voter outreach programs. The Supreme Court held that a private cause of action could be pursued by an entity other than the Attorney General and reasoned as follows: "First, the plain language of section 304 contains no limitation on the right of private citizens to sue to enforce the section. To infer such a limitation would contradict our long-standing approval of citizen actions to require governmental officials to follow the law, expressed in our expansive interpretation of taxpayer standing (see *Harman* [*v. City and County of San Francisco* (1972)] 7 Cal.3d 150, 160, 101 Cal.Rptr. 880, 496 P.2d 1248; *636*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-268, 96 Cal.Rptr. 42, 486 P.2d 1242; *Wirin v. Parker* (1957) 48 Cal.2d 890, 894, 313 P.2d 844), and our recognition of a 'public interest' exception to the requirement that a petitioner for writ of mandate have a personal beneficial interest in the proceedings (*Green v. Obledo* [(1981)] 29 Cal.3d 126, 144, 172 Cal.Rptr. 206, 624 P.2d 256; *Bd. of Soc. Welfare v. County of L.A.* (1945) 27 Cal.2d 98, 100-101, 162 P.2d 627). In the absence of either an express limitation on citizen standing or any indication of legislative intent to confer exclusive powers on the Attorney General, we decline to impose such a limitation on citizen actions to enforce section 304 and its accompanying regulations. (Cf. *People v. City of South Lake Tahoe* (E.D.Cal.1978) 466 F.Supp. 527 [conferral of enforcement power on Attorney General not determinative of exclusivity question under California law].) [¶] Second, plaintiffs' action is not based solely on section 304. To the contrary, they rely principally on section 302, which authorizes county clerks to deputize citizens as deputy registrars. It cannot reasonably be maintained that, by enacting and providing for the enforcement of section 304-which mandates the adoption of outreach programs-the Legislature intended to preclude citizens from bringing actions to enforce the provisions of section 302, a preexisting statute that governs counties' deputization of voting registrars. Were we to accept County's contention, courts would be required to consider claims alleging violations of section 302 in isolation from closely related claims alleging violations of section 304 and its accompanying regulations. Considerations of judicial efficiency militate strongly against such a result." (*Common Cause v. Board of Supervisors, supra,* 49 Cal.3d at pp. 440-441, 261 Cal.Rptr. 574, 777 P.2d 610, fn. omitted.)

FN3. In 1989, Elections Code section 302 provided: "(a) It is the intent of the Legislature that the election board of each county, in order to promote and encourage voter registrations, shall establish a sufficient number of registration places throughout the county, and outside the county courthouse, for the convenience of persons desiring to register, to the end that registration may be maintained at a high level. [ ] (b) It is also the intent of the Legislature that county clerks, in order to promote and encourage voter registrations, shall enlist the support and cooperation of interested citizens and organizations, and shall deputize as registrars qualified citizens in such a way as to reach most effectively every resident of the county. The persons so deputized shall be permitted to register voters anywhere within the county, including at the places of residence of the persons to be registered, and the county clerk shall not deny deputy registrars the right to register voters anywhere in the county. [ ] (c) It is also the intent of the Legislature that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to registration by citizens who lack sufficient skill in English to register without assistance. [ ] (d) Where the

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136 Cal.App.4th 621, 39 Cal.Rptr.3d 62, 36 Envtl. L. Rep. 20,034, 06 Cal. Daily Op. Serv. 1171, 2006 Daily Journal D.A.R. 1621
(Cite as: 136 Cal.App.4th 621, 39 Cal.Rptr.3d 62)

> county clerk finds that citizens described in subdivision (c) approximate 3 percent or more of the voting age residents of a precinct, or in the event that interested citizens or organizations provide information which the county clerk believes indicates a need for registration assistance for qualified citizens described in subdivision (c), the county clerk shall make reasonable efforts to recruit deputy registrars who are fluent in a language used by citizens described in subdivision (c) and in English. Such recruitment shall be conducted through the cooperation of interested citizens and organizations and through voluntarily donated public service notices in the media, including newspapers, radio, and television, particularly those media which serve the non-English-speaking citizens described in subdivision (c). Deputy registrars so appointed shall facilitate registration in the particular precincts concerned and shall have the right to register voters anywhere in the county. [ ] (e) In furtherance of the purposes of this section, the governing board of any county, city, city and county, district, or other public agency, may authorize and assign any of its officers or employees to become deputy registrars of voters and to register qualified citizens on any premises and facilities owned or controlled by such public agencies during the regular working hours of such officers or employees; provided, that with the exception of firemen, and compensation to which said officer or employee may be entitled in payment for the services of such officer or employee as a deputy registrar may be paid by the authority which appointed such officer or employee as a deputy registrar to the public agency which regularly employs such officer or employee. [ ] (f) It is the intent of the Legislature that no limitation be imposed on the number of persons appointed to act as deputy registrars of voters." (Stats. 1976, ch. 1275, § 12, pp. 5637-5638 repealed and reenacted at Stats. 1994, ch. 920, § 2, pp. 4710-4711 as Elec. Code, § 2103.) Elections Code section 304 provided in 1989: "It is the intent of the Legislature that voter registration be maintained at the highest possible level. The Secretary of State shall adopt regulations requiring each county to design and implement programs intended to identify qualified electors who are not registered voters, and to register such persons to vote. The Secretary of State shall adopt regulations prescribing minimum requirements for such programs. If the Secretary of State finds that a county has not designed and implemented a program meeting such prescribed minimum requirements, the Secretary of State shall design a program for such county and report the violation to the Attorney General." (Stats. 1976, ch. 1275, § 12, p. 5638 repealed and reenacted by Stats. 1994, ch. 920, § 2, pp. 4711-4712, as Elec. Code § 2105.)

Common Cause is not authority for the proposition advanced by plaintiff that section 14501, subdivision (g) imposes a mandatory duty on defendants' part to provide the statutorily sufficient redemption program. The language in *Common Cause* relied upon by plaintiff here relates to whether Elections Code section 304 permitted the Attorney General to sue to require counties to engage in statutorily mandated voter outreach programs. (*Common Cause v. Board of Supervisors, supra,* 49 Cal.3d at pp. 440-441, 261 Cal.Rptr. 574, 777 P.2d 610.) No similar provision of law is present here. Because the issue presented before us is entirely different, *Common Cause* is not controlling authority on the mandatory duty issue. (*Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1278, 135 Cal.Rptr.2d 654, 70 P.3d 1067 [" 'an opinion is not authority for a proposition not therein considered' "]; *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1081, 130 Cal.Rptr.2d 892, 63 P.3d 979 [" ' "cases are not authority for propositions not considered" ' "].)

Plaintiff also relies on **74*Californians Against Waste v. Department of Conservation, supra,* 104 Cal.App.4th at pages 320- 326, 127 Cal.Rptr.2d 905. In *Californians Against Waste,* a nonprofit corporation sought a writ of mandate to compel the department to properly calculate statutory processing fees paid as a recycling incentive. (*Id.* at p. 320, 127 Cal.Rptr.2d 905.) In *Californians Against Waste,* former Associate ***637** Justice Conseuelo Maria Callahan identified the issue before the Court of Appeal thusly: "Following 1999 amendments to section 14575 (Stats.1999, ch. 815, § 32; Stats.1999, ch. 817, §§ 6 & 7), the Department [of Conservation] changed the way it calculated the processing fee. Californians Against Waste [ ], a nonprofit corporation that pro-

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motes market-based waste-reduction and recycling policies, challenged the Department's reading of section 14575. [Californians Against Waste] maintained the Department was setting processing fees too low, contrary to the language and intent of the Act as amended. The trial court granted [the] petition for writ of mandate, finding that the Department's processing fee calculation employed a "recycling factor" not specifically included in the statute. [¶] On appeal, the Department contends the plain language of the statute supports the Department's formula for calculating the processing fee paid by beverage manufacturers. It argues the approach urged by [Californians Against Waste] and adopted by the trial court is "patently absurd" because it "would ... lead to the creation of surplus funds in accounts unavailable for any of the salutary purposes of the Act." [¶] The interpretation of section 14575 presents a question of law, which we review de novo. (*County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588, 594, 22 Cal.Rptr.2d 409.) Having considered the plain language of section 14575, and its relationship to the Act as a whole, we agree with the trial court that the Department's reading of section 14575 is erroneous." (*Californians Against Waste v. Department of Conservation, supra,* 104 Cal.App.4th at pp. 319-320, 127 Cal.Rptr.2d 905.) The foregoing was the sole issue before the Court of Appeal in *Californians Against Waste.* There was no issue before the trial court or former Associate Justice Callahan and her colleagues as to whether the statement of legislative purpose in section 14501, subdivision (g) or the provisions of section 14530.6, which allow the Attorney General to represent the department under specified circumstances, gives rise to a private cause of action. Therefore, *Californians Against Waste* is not authority for the proposition that writ review is available to plaintiff or that a private right of action exists under the act. (*Palmer v. GTE California, Inc., supra,* 30 Cal.4th at p. 1278, 135 Cal.Rptr.2d 654, 70 P.3d 1067; *Little v. Auto Stiegler, Inc., supra,* 29 Cal.4th at p. 1081, 130 Cal.Rptr.2d 892, 63 P.3d 979.)

Plaintiff further argues defendants failed to fulfill their section 14501, subdivision (g) duty to provide convenient, efficient, and economical redemption opportunities in that they did not establish certified recycling locations as required by section 14571, subdivision (a). As noted above, section 14571, subdivision (a) provides, "Except as otherwise provided in this chapter, there shall be at least one certified recycling center or location within every convenience zone which accepts and pays the refund value ... for all types of empty beverage containers...." "Convenience zone" is defined in section 14509.4 as, "The area within a one-half mile radius of a supermarket." However, the department has discretion under specified circumstances to ***638** increase the size of a convenience zone to within a three-mile radius of a supermarket. (§ 14509.4, subd. (b)(1) & (2).) Moreover, the department has discretion to grant *exemptions* from the requirements***75** of section 14571 as set forth in section 14571.8, subdivision (b), which states in part: "The director may grant an exemption from the requirements of Section 14571 for an individual convenience zone only after the department solicits public testimony on whether or not to provide an exemption from Section 14571. The solicitation process shall be designed by the department to ensure that operators of recycling centers, dealers, and members of the public in the jurisdiction affected by the proposed exemption are aware of the proposed exemption." [FN4]

> FN4. See footnote 2, ante, for the full text of section 14571.8, subdivision (b).

Plaintiff's reliance on section 14571 is unavailing for two reasons. First, with respect to the corporate defendants, plaintiff does not argue section 14571 by itself imposes any direct duty on them to establish certified recycling centers. Instead, plaintiff relies on the purported joint mandatory obligation "to provide convenient, efficient, and economical redemption opportunities" in section 14501, subdivision (g), as the source of a duty on the part of the corporate defendants to establish at least one certified recycling center within every convenience zone. As discussed above, however, section 14501, subdivision (g) does not create any joint mandatory duty to provide recycling opportunities. Therefore, plaintiff cannot rely on section 14571, subdivision (g) to impose on the corporate defendants a duty to establish certified recycling centers. Second, with respect to the department, our Supreme Court has held that a statute creates a mandatory duty sufficient to impose liability on a public entity only when it *requires,* rather than allows, the governmental agency to take a particular action. (*Haggis v. City of Los Angeles, supra,* 22 Cal.4th at pp. 498-499, 93 Cal.Rptr.2d 327, 993 P.2d 983; *Creason v. Department of Health Services, supra,* 18 Cal.4th at pp. 631-633, 76 Cal.Rptr.2d 489, 957 P.2d 1323; *Morris v. County of Marin, supra,* 18 Cal.3d at

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pp. 907, 910, 136 Cal.Rptr. 251, 559 P.2d 606.) The Supreme Court has explained, "It is not enough ... that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion. (*Creason v. Department of Health Services* [, *supra,*] 18 Cal.4th [at pp.] 631-633, 76 Cal.Rptr.2d 489, 957 P.2d 1323.)" (*Haggis v. City of Los Angeles, supra,* 22 Cal.4th at pages 498-499, 93 Cal.Rptr.2d 327, 993 P.2d 983.) Section 14571, subdivision (a) does not *require* that the department establish at least one certified recycling center or location within a one-half mile radius of every supermarket. Section 14571, subdivision (a) states, "*Except as otherwise provided in this chapter, there shall be....* " (Italics added.) The chapter, specifically section 14509.4, subdivision (b)(1) and (2), provides otherwise. Section 14509.4, subdivision (b) provides that the department has discretion to increase a convenience zone otherwise not being served by a certified recycling center or location to within a three-mile radius of a supermarket. (§ 14509.4, subd. (b)(1) & (2).) That is, the department has ***639** discretion to require at least one certified recycling center be established within a three-mile radius of a supermarket in a rural region rather than within a one-half mile zone. Moreover, under section 14571.8, subdivision (b), the department has discretion to grant an exemption from the requirements of section 14571; that is, to not require a certified recycling center within a convenience zone at all. No cause of action will lie against the department with respect to the placement of certified recycling centers or locations within convenience zones because the act does not *require* the department to take a particular****76** action. The department's obligation to perform the function set forth in section 14571 involves the exercise of discretion.

In her reply brief, plaintiff asserts section 14501, subdivision (g), imposing a joint responsibility to provide redemption opportunities, section 14501, subdivision (a), describing redemption opportunities as including "industry operated recycling centers," and various references in the act to "reverse vending machines" (e.g., §§ 14571, subd. (e), (f), (g), & (h), 14520.5, 14572.5), should be construed together to require beverage manufacturers-here, the corporate defendants-to provide reverse vending machines in recycling centers. We need not discuss this argument at length. It is sufficient to note that it relies on section 14501, subdivision (g), a statement of legislative intent, as establishing the joint mandatory obligation. As we have noted, section 14501, subdivision (g) provides no mandatory duty of the type which can give rise to a right of action.

C. Writ Relief

[3][4][5] The trial court found a writ petition would not lie in the absence of a clear, present duty on defendants' part. Because the pertinent facts are undisputed and the issue is one of statutory interpretation, our review of the trial court's decision is de novo. (*Marshall v. Pasadena Unified School Dist.* (2004) 119 Cal.App.4th 1241, 1253, 15 Cal.Rptr.3d 344; *Catalina Investments, Inc. v. Jones* (2002) 98 Cal.App.4th 1, 6, 119 Cal.Rptr.2d 256; *Beverly v. Anderson* (1999) 76 Cal.App.4th 480, 483-484, 90 Cal.Rptr.2d 545.) Plaintiff's writ petition was properly denied. Pursuant to Code of Civil Procedure section 1085, subdivision (a), "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person." Under Code of Civil Procedure section 1086: "The writ must issue in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested." The Supreme Court has held: "The writ will ***640** issue against a county, city or other public body or against a public officer. (*Housing Authority v. City of L.A.* (1952) 38 Cal.2d 853, 869-871, 243 P.2d 515, cert. den. (1952) 344 U.S. 836, 73 S.Ct. 46, 97 L.Ed. 651; *Hawthorn v. City of Beverly Hills* (1952) 111 Cal.App.2d 723, 731, 245 P.2d 352.) However, the writ will not lie to control discretion conferred upon a public officer or agency. (*Lindell Co. v. Board of Permit Appeals* (1943) 23 Cal.2d 303, 315, 144 P.2d 4; *Faulkner v. Cal. Toll Bridge Authority* (1953) 40 Cal.2d 317, 326, 253 P.2d 659.) Two basic requirements are essential to the issuance of the writ: (1) A clear, present and usually ministerial duty upon the part of the respondent (*Faulkner v. Cal. Toll Bridge Authority, supra.; Sherman v. Quinn* (1948) 31 Cal.2d 661, 664, 192 P.2d 17; *Browning v. Dow* (1923) 60 Cal.App. 680, 682, 213 P. 707); and (2) a clear, present and beneficial right in the petitioner to the performance of that duty (*Parker v. Bowron*

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(1953) 40 Cal.2d 344, 351, 254 P.2d 6). (See generally 3 Witkin, Cal. Procedure (1954), Extraordinary Writs, § 40 et seq., pp. 2520 et seq.)" (*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 491, 96 Cal.Rptr. 553, 487 P.2d 1193, fn. omitted; accord, *Santa Clara County Counsel Attys. Assn. v. Woodside, supra,* 7 Cal.4th at pp. 539-540, 28 Cal.Rptr.2d 617, 869 P.2d 1142; **77*Taylor v. Board of Trustees* (1984) 36 Cal.3d 500, 507, 204 Cal.Rptr. 711, 683 P.2d 710; *Cooper v. Estero Mun. Imp. Dist.* (1969) 70 Cal.2d 645, 650, 75 Cal.Rptr. 777, 451 P.2d 417.)

In *Younger,* for example, the Supreme Court found a clear duty was imposed by law upon the county defendants because a statute unequivocally required a particular action: "[Government Code] section 66801, article VII, subdivision (a) provides that '[e]ach county in California *shall pay* the sum allotted to it by the agency from any funds available therefor....' [Italics added by *Younger.*]" (*People ex rel. Younger v. County of El Dorado, supra,* 5 Cal.3d at p. 491, 96 Cal.Rptr. 553, 487 P.2d 1193.) Similarly, in *Woodside,* the Supreme Court held a Government Code section requiring the county to meet and confer with an employee association in good faith created a clear and present duty to do so. (*Santa Clara County Counsel Attys. Assn. v. Woodside, supra,* 7 Cal.4th at p. 540, 28 Cal.Rptr.2d 617, 869 P.2d 1142.) On the other hand, absent a clear duty imposed by law such as that in *Younger* or *Woodside,* mandamus is not a proper vehicle for resolution of the asserted grievance. (*Cooper v. Estero Mun. Imp. Dist., supra,* 70 Cal.2d at p. 650, 75 Cal.Rptr. 777, 451 P.2d 417.) In *Cooper,* the plaintiff failed to allege the defendants had any duty to act in a particular manner. (*Id.* at p. 650, 75 Cal.Rptr. 777, 451 P.2d 417.)

Plaintiff asserts section 14501, subdivision (g) imposes a mandatory duty on defendants to jointly provide convenient, efficient, and economical redemption opportunities. Further, plaintiff contends section 14571 entails a mandatory requirement that a convenience zone contain at least one certified recycling center or location. As discussed above, no duty arises under section 14501, subdivision (g). We agree with the trial court that section 14501, subdivision (g) is a general statement of legislative intent that does not ***641** impose any affirmative duty that would be enforceable through a writ of mandate. (See *Municipal Court v. Superior Court* (1993) 5 Cal.4th 1126, 1132, 22 Cal.Rptr.2d 504, 857 P.2d 325; *Common Cause of California v. Board of Supervisors, supra,* 49 Cal.3d at p. 444, 261 Cal.Rptr. 574, 777 P.2d 610.) Also as discussed above, the department has discretion to exempt convenience zones from the certified recycling center or location requirement in section 14571. (§ 14571.8.) A writ of mandate will not lie to control the department's discretion as to establishing certified recycling centers or locations within convenience zones. (*People ex rel. Younger v. County of El Dorado, supra,* 5 Cal.3d at p. 491, 96 Cal.Rptr. 553, 487 P.2d 1193; *Lindell Co. v. Board of Permit Appeals, supra,* 23 Cal.2d at p. 315, 144 P.2d 4; *Faulkner v. Cal. Toll Bridge Authority, supra,* 40 Cal.2d at p. 326, 253 P.2d 659.) Absent a clear, present duty on defendants' part, the trial court properly denied plaintiff's mandate petition.

D. The Unfair Competition Claim

[6] Plaintiff argues that even in the absence of a mandatory duty or a private right of action under section 14501, subdivision (g), she has a right to bring an unfair competition claim under Business and Professional Code section 17200. Plaintiff alleges the corporate defendants engaged in fraudulent, unlawful, and unfair business practices and conduct in failing to provide sufficient convenient, efficient, and economical redemption opportunities in violation of section 14501, subdivision (g), resulting in an unacceptably low recycling rate. Plaintiff's reply brief states, "Plaintiff concedes that [section] 14501(g) is the mainspring of [her] [unfair competition **78** law] claim...." According to plaintiff, this unacceptably low recycling rate violated the Legislature's intent in adopting the act. Plaintiff further alleges defendants deceived consumers into believing such opportunities would be available. The trial court ruled: courts will abstain from unlawful competition claims in the face of a comprehensive administrative process which can address the issue at hand; it therefore should abstain from involving itself in an area addressed by "a comprehensive legislative scheme designed to improve recycling in California"; and it should not "become involved in determining how to meet complex recycling goals the Legislature has entrusted to the [department]." The trial court properly exercised its discretion to abstain from employing the remedies available under the unfair competition law.

[7] It is well-established that a court of equity will abstain from employing the remedies available under

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136 Cal.App.4th 621, 39 Cal.Rptr.3d 62, 36 Envtl. L. Rep. 20,034, 06 Cal. Daily Op. Serv. 1171, 2006 Daily Journal D.A.R. 1621
(Cite as: 136 Cal.App.4th 621, 39 Cal.Rptr.3d 62)

the unfair competition law in appropriate cases. As the Court of Appeal held in a case involving the health care finance industry: "[B]ecause the remedies available under the [unfair competition law], namely injunctions and restitution, are equitable in nature, courts have the discretion to abstain from employing them. Where [an unfair competition law] action would drag a court of equity into an area of complex economic [or similar] policy, equitable abstention is appropriate. In such ***642** cases, it is primarily a legislative and not a judicial function to determine the best economic policy." (*Desert Healthcare District v. PacifiCare, FHP, Inc.* (2001) 94 Cal.App.4th 781, 795-796, 114 Cal.Rptr.2d 623; accord, *People ex rel. Dept. of Transportation v. Naegele Outdoor Advertising Co.* (1985) 38 Cal.3d 509, 523, 213 Cal.Rptr. 247, 698 P.2d 150 [billboards]; *Crusader Ins. Co. v. Scottsdale Ins. Co.* (1997) 54 Cal.App.4th 121, 137-138, 62 Cal.Rptr.2d 620 [insurance industry]; *Wolfe v. State Farm Fire Casualty Ins. Co.* (1996) 46 Cal.App.4th 554, 564-565, 53 Cal.Rptr.2d 878 [earthquake insurance]; *California Grocers Assn. v. Bank of America* (1994) 22 Cal.App.4th 205, 218-219, 27 Cal.Rptr.2d 396 [bank service fees]; *Samura v. Kaiser Foundation Health Plan, Inc.* (1993) 17 Cal.App.4th 1284, 1301-1302, 22 Cal.Rptr.2d 20 [health maintenance organization third party liability policies]; *Larez v. Oberti* (1972) 23 Cal.App.3d 217, 221-222, 100 Cal.Rptr. 57 [domestic farmworker protection from illegal alien competition]; *Cobos v. Mello-Dy Ranch* (1971) 20 Cal.App.3d 947, 951, 98 Cal.Rptr. 131 [same]; *Diaz v. Kay-Dix Ranch* (1970) 9 Cal.App.3d 588, 599, 88 Cal.Rptr. 443 [same]; see *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 596-597 fn. 2, 71 Cal.Rptr.2d 731, 950 P.2d 1086 [dis. opn. of Brown, J.] [sale of cigarettes to minors].)

In this case, the complex statutory arrangement of requirements and incentives involving participants in the beverage container recycling scheme is to be administered and enforced by the department consistent with the Legislature's goals. For the court at this point to issue restitution and disgorgement orders against the corporate defendants would interfere with the department's administration of the act and regulation of beverage container recycling and potentially risk throwing the entire complex economic arrangement out of balance. The public's need for opportunities to recover its cash redemption value funds and to conveniently recycle its beverage containers is not so great as to warrant judicial interference in the administrative scheme designed to address those needs at this point.

E. Declaratory Relief

[8] Plaintiff argues she has a right to seek declaratory relief as to the construction****79** of the act and mandamus to compel its enforcement. We disagree. As discussed above, section 14501, subdivision (g) does not impose any mandatory duty on defendants to act. Therefore, plaintiff cannot state a cause of action for declaratory relief as to defendants' rights, duties, and responsibilities under section 14501, subdivision (g).

***643** IV. DISPOSITION

The judgment is affirmed. Defendants, the Department of Conservation, Darryl W. Young, Jim Ferguson, Anheuser-Bush, Inc. and Miller Brewing Company, are to recover their costs on appeal from plaintiff, Ferial Shamsian.

ARMSTRONG and KRIEGLER, JJ., concur.
Cal.App. 2 Dist.,2006.
Shamsian v. Department of Conservation
136 Cal.App.4th 621, 39 Cal.Rptr.3d 62, 36 Envtl. L. Rep. 20,034, 06 Cal. Daily Op. Serv. 1171, 2006 Daily Journal D.A.R. 1621

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709 F.Supp. 345, 57 USLW 2491, 53 Ed. Law Rep. 1144
(Cite as: 709 F.Supp. 345)

United States District Court,
S.D. New York.

Khadijah SHARIF, by her mother and next friend, Amida SALAHUDDIN, et al., individually and on behalf of all others similarly situated, Plaintiffs,
v.
NEW YORK STATE EDUCATION DEPARTMENT; and Thomas Sobol, Commissioner of Education, in his official capacity, Defendants.
No. 88 Civ. 8435 (JMW).

Feb. 3, 1989.
As Amended Feb. 7, 1989.

Female applicants for New York State merit scholarships brought action alleging discrimination against women in violation of Title IX and equal protection clause in awarding scholarships based solely on SAT scores. On motion for preliminary injunction, the District Court, Walker, J., held that: (1) plaintiffs had standing even if success would only improve their chances for scholarships and not assure awards; (2) venue was proper in the Southern District of New York even though defendants were located in Northern District; (3) plaintiffs did not have to prove intentional discrimination but could prevail on the basis of disparate impact; and (4) plaintiffs demonstrated probability of success on the merits of their claims that the challenged practice violated Title IX as well as the equal protection clause of the Fourteenth Amendment.

Injunction issued.

West Headnotes

[1] Civil Rights 78 1331(2)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1331 Persons Aggrieved, and Standing in General
78k1331(2) k. Education. Most Cited Cases
(Formerly 78k201, 78k13.6)
Women challenging sole reliance on SAT scores to determine eligibility for state merit scholarships showed injury in fact sufficient for standing by showing that their chances for winning scholarships were reduced by the challenged practice, even if were not shown that some of them would in fact receive scholarships but for the challenged policy. U.S.C.A. Const.Art. 3, § 1 et seq.; Amend. 14; Education Amendments of 1972, § 901, as amended, 20 U.S.C.A. § 1681.

[2] Civil Rights 78 1331(2)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1331 Persons Aggrieved, and Standing in General
78k1331(2) k. Education. Most Cited Cases
(Formerly 78k201, 78k13.6)
Fact that it was conceded that three of the women challenging New York's sole reliance on SAT scores to determine eligibility for state's Regents and Empire merit scholarships probably would qualify for Regents Scholarships if eligibility were determined by using equally weighted grade point average and SAT scores, but not if SAT scores were the sole criterion, was sufficient to establish standing to challenge the awarding practices as to both types of scholarships, where both were awarded from the same list and the claims raised necessarily implicated the entire system, even though plaintiffs personally might not be eligible for Empire Scholarships. U.S.C.A. Const.Art. 3, § 1 et seq.; Amend. 14; Education Amendments of 1972, § 901, as amended, 20 U.S.C.A. § 1681; N.Y.Laws 1974, c. 942, §§ 604, 605, 605, subd. 1.

[3] Federal Civil Procedure 170A 103.3

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing
170Ak103.3 k. Causation; Redressability. Most Cited Cases
Causation in fact as a requisite of standing in federal court necessitates that injury be both "fairly traceable" to defendant and "redressable," but does not require a showing of complete certainty and does not depend on whether plaintiffs actually will prevail. U.S.C.A. Const.Art. 3, § 1 et seq.

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[4] Civil Rights 78 1333(2)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1333 Injury and Causation
78k1333(2) k. Education. Most Cited Cases
(Formerly 78k203, 78k13.6)
In action challenging New York's system of awarding merit scholarships as having discriminatory impact on women, the causation in fact requisite for standing was established where injunctive relief compelling use of alternative procedure would redress the grievance and claim rested on allegedly discriminatory nature of the system as a whole, even though some of the named plaintiffs still might not receive scholarships and despite claim, going to the merits, that there might be variables other than sex accounting for the low number of women receiving scholarships. U.S.C.A. Const.Art. 3, § 1 et seq.; Amend. 14; Education Amendments of 1972, § 901, as amended, 20 U.S.C.A. § 1681.

[5] Federal Courts 170B 269

170B Federal Courts
170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on
170BIV(A) In General
170Bk268 What Are Suits Against States
170Bk269 k. State Officers or Agencies, Actions Against. Most Cited Cases
Eleventh Amendment did not preclude subject matter jurisdiction over equal protection claim against New York State Education Department, in suit brought under Title IX, challenging disparate impact on women of state's system of awarding merit scholarships. U.S.C.A. Const.Amend. 11; 28 U.S.C.A. §§ 1331, 1343(a)(3, 4), 1391(b); Rehabilitation Act Amendments of 1986, § 1003, 42 U.S.C.A. § 2000d-7.

[6] Federal Courts 170B 74

170B Federal Courts
170BII Venue
170BII(A) In General
170Bk74 k. Particular Actions. Most Cited Cases
Venue of action under Title IX against the New York State Education Department and Commissioner of Education, challenging disparate impact on women of state's method of awarding merit scholarships, was proper in the Southern District of New York, where effects relying on SAT scores were more profoundly felt in the Southern District, and students took tests in that District, even though defendants were located in the Northern District of New York. Education Amendments of 1972, § 901, as amended, 20 U.S.C.A. § 1681; 28 U.S.C.A. § 1391(b).

[7] Federal Civil Procedure 170A 175

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)2 Proceedings
170Ak175 k. Time for Proceeding and Determination. Most Cited Cases
Court need not certify a class prior to granting a preliminary injunction that would have class-wide effect.

[8] Civil Rights 78 1457(3)

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1457 Preliminary Injunction
78k1457(3) k. Education. Most Cited Cases
(Formerly 78k268, 78k13.2(4))
Women challenging New York's sole reliance upon SAT scores in awarding merit scholarships demonstrated irreparable harm necessary for preliminary injunction, despite contention that it was unlikely that any of the named plaintiffs would receive the more valuable Empire Scholarships, where some members of the putative class of scholarship applicants would qualify for such awards, the chances of all the plaintiffs were reduced by the challenged actions, and it was conceded that at least three named plaintiffs were harmed by the challenged actions in being denied Regents Scholarships.

[9] Civil Rights 78 1067(5)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(5) k. Other Particular Cases and Contexts. Most Cited Cases
(Formerly 78k128, 78k9.5)
Regulations under Title IX prohibit testing practices with

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discriminatory effect on one sex, and thus women challenging New York's sole reliance on SAT scores in awarding merit scholarships could prevail upon showing disparate impact on women and need not prove intentional discrimination. Education Amendments of 1972, §§ 901(a), 908, as amended, 20 U.S.C.A. §§ 1681(a), 1687.

[10] Civil Rights 78 ⚿1067(5)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(5) k. Other Particular Cases and Contexts. Most Cited Cases
(Formerly 78k128, 78k9.5)

Civil Rights 78 ⚿1402

78 Civil Rights
78III Federal Remedies in General
78k1400 Presumptions, Inferences, and Burdens of Proof
78k1402 k. Education. Most Cited Cases
(Formerly 78k240(1), 78k13.13(1))

Women challenging New York's award of merit scholarships based solely on SAT scores, on theory of disparate impact on women, had to show that facially neutral practice had disproportionate effect, and burden would then shift to defendant state officials to prove substantial legitimate justification for their practice, and plaintiffs could ultimately prevail by offering either an equally effective alternative practice with less of discriminatory impact or proof that the legitimate practices were a pretext for discrimination. Education Amendments of 1972, §§ 901(a), 908, as amended, 20 U.S.C.A. §§ 1681(a), 1687.

[11] Civil Rights 78 ⚿1457(3)

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1457 Preliminary Injunction
78k1457(3) k. Education. Most Cited Cases
(Formerly 78k268, 78k13.2(4))

For purposes of preliminary injunction against New York's award of merit scholarships based on solely on SAT scores, plaintiff women demonstrated likelihood of success on their merits of claim under Title IX that the award system had a disparate impact on women and that there was no reasonable relationship between the challenged practice and its conceded purpose, by statistical evidence showing nearly zero probability that differential scores could be explained by "neutral" variables, and by evidence that SAT scores do not measure high school performance, which was the supposed basis for the scholarship awards. Education Amendments of 1972, §§ 901(a), 908, as amended, 20 U.S.C.A. §§ 1681(a), 1687.

[12] Civil Rights 78 ⚿1457(3)

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1457 Preliminary Injunction
78k1457(3) k. Education. Most Cited Cases
(Formerly 78k268, 78k13.2(4))

For purposes of probability of success requisite for preliminary injunction against New York's award of merit scholarships based solely on SAT scores, under Title IX it was not shown that use of high school grades together with SAT scores, pending development of a statewide achievement test, would be either unfair or infeasible. Education Amendments of 1972, §§ 901(a), 908, as amended, 20 U.S.C.A. §§ 1681(a), 1687.

[13] Civil Rights 78 ⚿1067(5)

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1059 Education
78k1067 Sex Discrimination
78k1067(5) k. Other Particular Cases and Contexts. Most Cited Cases
(Formerly 78k128, 78k9.5)

The New York State Education Department could not justify its discriminatory practice of awarding merit scholarships based solely on SAT scores, with resultant disparate impact on women, on ground that alternative would be more difficult to administer. Education Amendments of 1972, § 901 et seq., as amended, 20 U.S.C.A. § 1681 et seq.

[14] Civil Rights 78 ⚿1457(3)

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1457 Preliminary Injunction

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78k1457(3) k. Education. Most Cited Cases
(Formerly 78k268, 78k13.2(4))
For purposes of preliminary injunction against New York's practice of awarding merit scholarships based solely on SAT scores, was resultant disparate impact on women, balance of hardships tipped decidedly in favor of female scholarship applicants, upon balancing conflict between the state's administrative concerns and the risk of substantial discriminatory harm to plaintiffs. Education Amendments of 1972, § 901 et seq., as amended, 20 U.S.C.A. § 1681 et seq.

[15] Civil Rights 78 1457(3)

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1457 Preliminary Injunction
78k1457(3) k. Education. Most Cited Cases
(Formerly 78k268, 78k13.2(4))
For purposes of preliminary injunction against New York's practice of awarding merit scholarships based solely on SAT scores, women claiming that such practice had disparate impact on women established likelihood of success on equal protection claim on theory that the method used was not rationally related to the state's goal of rewarding students who had demonstrated academic achievement. U.S.C.A. Const.Amend. 14.

***347** Isabelle Katz Pinzler, Kary Moss, Deborah Ellis, Joan Bertin, Women's Rights Project, American Civil Liberties Union Foundation, (Helen Hershkoff, John A. Powell, of counsel, American Civil Liberties ***348** Union), Vivenne W. Nearing, Robert Lewin, Madelaine R. Berg, Elizabeth A. Sherwin, Lisa Rosenthal, Mary S. Feinstein, Regan A. Shulman, Stroock & Stroock & Lavan, Robert M. Levy, New York Civil Liberties Union, New York City, for plaintiffs.

Marion R. Buchbinder, Anne B. Ehrenkranz, Asst. Attys. Gen., New York City, for defendant.

Richard Hamburger, Block, Amelkin & Hamburger, Smithtown, N.Y., for amicus Hewlett School Dist.

John F. Cannon, Edward W. Keane, Henry Christensen III, Sullivan & Cromwell, New York City, Howard P. Willens, Christopher R. Lipsett, Edward J. Janger, Michael S. Raab, Wilmer, Cutler & Pickering, Washington, D.C., for amici College Bd. and Educational Testing Service.

OPINION AND ORDER

WALKER, District Judge:

This case raises the important question of whether New York State denies female students an equal opportunity to receive prestigious state merit scholarships by its sole reliance upon the Scholastic Aptitude Test ("SAT") to determine eligibility. To the Court's knowledge, this is the first case where female students are seeking to use the federal civil rights statute prohibiting sex discrimination in federally-funded educational programs to challenge a state's reliance on standardized tests. This case also presents a legal issue of first impression: whether discrimination under Title IX can be established by proof of disparate impact without proof of intent to discriminate.

After careful consideration, this Court finds that defendants are discriminating against female plaintiffs and their putative class in violation of Title IX and the equal protection clause of the U.S. Constitution. For the reasons set forth below, this Court enjoins the State Education Department and its Commissioner from awarding the merit scholarships at issue solely on the basis of the SAT.

I. *The Present Action*

In November, 1988, plaintiffs-ten high school students, individually and behalf of all others similarly situated, and two organizational plaintiffs [FN1] -brought an action for declaratory and injunctive relief against the State Education Department ("SED") and Commissioner of Education Thomas Sobol, in his official capacity, alleging that New York's exclusive reliance on the SAT to award Empire and Regents scholarships discriminates against female students in violation of the equal protection clause of the Fourteenth Amendments to the U.S. Constitution, Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.*, as amended by the Civil Rights Restoration Act of 1987, Pub.L. 100-259, and the regulations pursuant to Title IX, 34 CFR Part 106. Plaintiff's proposed class is composed of "all female high school seniors in New York State who are or will be applicants for Regents College Scholarships and Empire State Scholarships of Excellence." Am. Complaint at ¶ 4.[FN2]

FN1. The students bring the suit by their parents and next friends. The organizational plaintiffs are the Girls Clubs of America and National Organization for Women.

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FN2. References are made as follows: Amended Complaint ("Am. Complaint); Affidavit ("Aff."); Testimony of Witness at January 23, 1989 hearing before this Court ("Witness T."); Exhibits ("Ex."); Plaintiffs' Memorandum ("P.Mem."); Plaintiff's Reply Memorandum (P. Reply Mem."); Plaintiff's Appendix ("P.App."); Defendants' Memorandum ("D.Mem.").

In essence, plaintiffs contend that the SED's reliance upon the SAT disproportionately impacts female students without advancing the legislature's purpose of recognizing and awarding superior high school achievement. Plaintiffs argue: "(1) the SAT was not designed to measure academic performance and achievement, and cannot appropriately be put to that use, (2) but even if it did, the SAT discriminates against female applicants for scholarships, because it underpredicts academic performance for females as compared to males." P.Mem. at 5.

On December 21, 1988, plaintiffs filed an order to show cause as to why this Court should not issue a preliminary injunction ***349** enjoining SED's practice of exclusive reliance on SAT scores in awarding Regents and Empire scholarships. On that date, in a conference before this Court, defendants represented that, to cover the possibility of an adverse decision that would require the use of grade point averages (variously "GPAs") to determine scholarship eligibility, the SED would commence collection of GPAs immediately.

On January 12, 1989, defendants submitted a cross-motion for an order dismissing the complaint on the grounds that the Court lacks subject matter jurisdiction, that venue is improper, and that the complaint fails to state a claim on which relief can be granted.

On January 23, 1989, at a hearing, the Court accepted amici briefs of the Educational Testing Service ("ETS") and the College Entrance Board, and the Hewlett School District, and heard the testimony of educational testing experts, college deans of admission, and SED administrators with knowledge of the SED's programs of scholarship and testing practices. The Court has carefully examined the submissions of the parties, assessed the credibility of the witnesses and reviewed word by word the hearing transcript.

II. *Background*

A. Evolution of New York State Scholarship Awards

New York State, in one of the most extensive merit scholarship programs in the country, each year makes 26,000 academic achievement awards to New York's high school graduates. In order to understand the program's current purpose, a brief recitation of the program's evolution is appropriate.

1. *Reliance Upon College Entrance Diplomas and Special Regents Examinations*

New York State's scholarship program began in 1913, when the legislature first awarded 750 Regents Scholarships in the amount of $100 a year for a period of four years. Act approved Apr. 16, 1913, ch. 292, 1913 N.Y. Laws, § 527. At that time, the $100 stipend was sufficient to cover the tuition charged at most colleges in the State.[FN3] Thus, the award was in the nature of a full scholarship which would promote excellence in education by enabling "the most deserving and meritorious students ... [to] obtain a college or university training, many of whom would be deprived of such education were it not for the wisdom of the State in providing these scholarships." [FN4]

FN3. *Tenth Annual Report of the Education Department* (March 16, 1914), D.Mem., Ex. 3.

FN4. *Id.* at 30.

The 1913 law authorized the State Board of Regents to make all rules governing the award of the scholarships. Ch. 292, 1913 N.Y. Laws § 72. From 1913 until 1944, the State determined scholarship winners based upon the results of general high school Regents examinations, which also were the basis for granting the college entrance diploma. Lott, T. 64.[FN5]

FN5. The college entrance diploma was granted to pupils who pursued courses in approved New York secondary schools and passed the Regents examinations prescribed for such diploma. D.Mem. at 7, n. 1.

By 1944, the SED recognized that it could no longer rely solely upon general high school Regents examinations and college entrance diplomas in awarding Regents Scholarships. First, it was hard to rank students based upon the college entrance diploma because it was "difficult under the statute to know just what subjects to take into account in computing the averages of pupils." [FN6] Second, the na-

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ture of the high school general Regents exams had changed. Instead of measuring levels of achievement in the variety of courses taught in high school, the general Regents exams became a test of the bare minimum ***350** that a student needed to know to graduate from high school, and thus was a poor method for sorting students at the top of the spectrum. Lott T. at 73. Faced with these difficulties, in 1944 the SED developed a separate, more challenging Regents scholarship examination. Meno Aff. ¶ 2. The examination, in use for the next twenty years, was divided into two equal parts-aptitude and achievement-and was six hours long. Lott T. at 68.

FN6. *Tenth Annual Report of the Education Department* at 468 (1914), D.Mem. Ex. 3. Moreover, at that time the college entrance diploma was issued in two very different forms-the college entrance diploma in arts and the college entrance diploma in science." *Id.*

In 1974, New York State's scholarship program changed dramatically following a revaluation by a Select Committee on Higher Education. At the time the Regents scholarship program provided an annual award of $1,000 to a limited number of highly qualified students. The Committee found that the legislature's goal of substantially funding students' college educations as an incentive for select students to attend college was no longer being met. [FN7] The Committee found that the Regents scholarship examinations "can be criticized for actually rewarding the family background and upbringing that enables students to study and perform well, rather than an objective kind of merit." [FN8]

FN7. *Report of the Select Committee on Higher Education,* State of New York Legislative Document, No. 16, p. 9 (1974), D.Mem. Ex. 4.

FN8. *Id.* at 29.

Prompted by these concerns, the legislature restructured its awards, creating two types of awards: first, "general awards" which provide substantial monetary assistance, and second, "academic performance awards" which recognize achievement. Act of 1974, ch. 942, N.Y. Laws §§ 604, 605. Classifying Regents Scholarships as "academic performance awards," the legislature reduced the awards to a stipend of $250, and increased the number of awards to 25,000 to be allocated by county of residence. The legislature created additional awards for the least competitive high schools to enable them to receive at least one for every graduate from that school in the preceding year. Ch. 942, 1974 N.Y. Laws § 605(1).

In the "general awards" category, the legislature created a Tuition Assistance Program ("TAP") to fund college students based upon financial need. The legislature made TAP awards available to all students enrolled in approved programs and are given to those who demonstrate the ability to complete such program's courses, and who satisfy financial need requirements established by the Commissioner of Education. Ch. 942, 1974 N.Y. Laws § 604; N.Y. Educ. Law. § 667(1) and (4) (McKinney 1988 & Supp.1989).

2. *Reliance Upon the SAT*

In 1977, as a cost-cutting measure, the legislature eliminated its funding for the Regents scholarship examinations. P.App. I, Ex. 3. Instead, the legislature directed that the scholarships be awarded on the basis of "nationally established competitive examinations." Act approved Apr. 12, 1977, ch. 63, 1977 N.Y. Laws § 1. The SED considered examinations, including: (1) the SAT; (2) the American College Testing Program ("ACT"); (3) the Preliminary Scholastic Aptitude Test ("PSAT"); and (4) a combination of Achievement Tests, individual tests given in particularized areas of study, including biology, chemistry and foreign languages. Lott T. at 66. While the Achievement Tests measured performance in a wide variety of courses in a high school curriculum, the SED chose not to use them because few students take the exams and the SED did not want to require them to do so for Regents scholarship purposes.[FN9] The SED similarly rejected the ACT, a test much like the SAT, because few students take the ACT in New York.[FN10] The PSAT, a shorter version of the SAT given in the junior year of high school, was not considered a viable option because students***351** took it too early in their high school careers.

FN9. For example, the most popular Achievement Test is taken by only 25,000 students. Lott T. at 68-69. The SED "felt it would be an imposition on students to require them to pay the additional fee to have to take these College Board achievement tests for scholarship purposes." *Id.*

FN10. The SED, however, allowed a student to use the ACT as an alternative to the SAT, if the sole test that student had taken was the ACT.

By process of elimination, then, the SED chose the SAT,

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the test taken by the greatest number of students.[FN11] Unlike the Regents scholarship examinations, the entire SAT is labeled an "aptitude" test, and the SAT only purports to test two subjects-Math and English. D.Mem. at 8. Despite the SED's claim that the Regents Scholarship exam and the SAT are very similar, D.Mem. at 9, the State's own witness, Lynn Richbart,[FN12] testified that about 30% of the SAT questions would not have appeared on the Regents Scholarship exam. Richbart T. at 184. Richbart testified that SAT questions, unlike Regents Scholarship questions, often require that students remember concepts learned in earlier grade levels, or test students on material which is outside the high school curriculum. Richbart T. at 178-182. [FN13] Moreover, the SAT requires students to be able to answer questions designed specifically for the SAT, such as comparison and logic questions, that are not present on the Regents Scholarship exams. Richbart T. at 182. In addition, the SAT was never designed to test high school achievement. While high school performance may affect a student's performance on the SAT, the SAT does not cover the high school curriculum-indeed there is no standard high school curriculum in New York State-nor has it ever been validated to test achievement in high school. *See* validation discussion *infra.*

> FN11. The SED has attempted to justify its choice by arguing that some studies found a general correlation between scores obtained on the SAT and scores obtained on the now abandoned Regents scholarship scholarship exams. Lott. T. at 67, 70-71. These studies are discredited, however, because they did not draw any distinctions between men and women, but rather grouped them together in examining the correlation between the tests. Lott. T. at 72. For problems inherent in such a practice, *see infra.* Moreover, like the SAT, the Regents scholarship examinations were not validated as a measure of high school achievement.
>
> FN12. Associate of Bureau of Mathematics Education, SED.
>
> FN13. *See also* Shapiro T. at 44 (Regents questions are more content specific).

In 1986, the legislature created the more selective Empire State Scholarships of Excellence carrying an annual stipend of $2000 to be awarded to the 1,000 highest ranking Regents Scholarship winners. Act approved and effective Apr. 18, 1986, ch. 56, 1986 N.Y. Laws. The Governor's approval memorandum to the legislative bill creating the Empire Scholarship stated the purpose of these new awards as follows:

> The *Empire State Scholarship of Excellence Program will recognize academic achievement* and provide a significant inducement for New York's brightest students to continue their studies in the State. These new scholarships will complement the efforts we are undertaking to acknowledge and enhance the *educational performance* of our brightest youth. (emphasis added).

1986 Legislative Annual, P.App. I, Ex. 3. Like the Regents scholarship, the Empire Scholarship is distributed by county of residence, and is renewable for five years. There is no minimum quota per high school for Empire State Scholarships.

3. *Reliance Upon SATs and GPAs: The 1987 Experiment*

In response to allegations that the SED's practice of relying solely upon the SAT in awarding Regents and Empire State Scholarships discriminated against females who consistently scored below males, the Board of Regents asked the Governor and legislature for $100,000 to develop a new scholarship achievement examination. The legislature declined to fund a special examination but, instead, amended the Education Law to require that the awards be based upon in part upon the student's grade point average ("GPA") as a measure of high school achievement. Senator Kenneth Lavalle, introducing the legislation, explained that the "statute intended to correct a gross inequity that pervaded the New York educational system caused by awarding of Regents College Scholarships and Empire State Scholarships of Excellence based solely on the results of a nationally administered ***352** standardized examination." [FN14] Lavalle Aff. ¶ 2, P. Reply Mem., Ex. 7. The SED specified in its announcement of the new legislation to high school principals that the law was changed "[i]n order to provide for a better balance of male and female winners." P.App. I, Ex. 10.

> FN14. The State claims that "the primary intent of the legislation is to include a 'measure of high school performance' in the scholarship eligibility criteria because it was believed that high school performance is a better predictor of college performance than are SAT scores." D.Mem. at 10. In support of its claim, the State cites one isolated exchange from the Hearing on the Implementation of Changes in Criteria for Awarding Regents Scholarships and Empire State Scholarships of

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> Excellence, New York State Senate and Assembly Standing Committees on Higher Education, May 25, 1988, pp. 19-21, P.App. I, attachment 4 (hereafter "May Hearing").

The new legislation, for the first time, expressly stated that awards are to be based on a measure of "high school performance." Act approved and effective Aug. 7, 1987, ch. 837, 1987 N.Y. Laws §§ 1, 2. In doing so, the legislature altered the criteria for scholarship eligibility-on a one-year, experimental basis-to require the SED Commissioner to base awards on a formula which at least includes a measure of high school performance, and which may include nationally established competitive examinations. The amendment also required the Commissioner to "complete a statistical review of the gender, racial and ethnic composition of students awarded such scholarships within sixty days of the announcement of such scholarship award." *Id.* The legislation included a sunset provision that provided that the amendment would automatically lapse after one year if it were not affirmatively extended.

In May 1987, the SED examined possible measures of high school performance that could be used to select scholarship winners equitably. May Hearing at 9. The SED surveyed high school principals for information concerning grade point averages and class rank. *Id.* at 4. The possibility of using class rank as a measure of high school performance was dropped for three reasons: (1) it is not used by all schools; (2) it adversely affects students in highly selective schools; (3) it cannot be used to compare students from schools of difference size. *Id.* at 19; Lott T. at 72.

The SED also found drawbacks to the use of grade point averages. Because of the volume of scholarship applications it receives yearly, approximately 100,000, the SED would be unable to individually evaluate the GPA information submitted for each candidate as is done by college admission committees. Byrne aff. ¶ 3; Sharrow T. at 133. Also, the SED concluded that it was difficult to convert grade point average information to a common scale because: (1) there is a lack of comparability in the substance of the courses for which grades are given; (2) school grading practices differ from district to district and different grading scales are utilized; (3) schools differ in their practice and philosophy regarding weighing grades in order to take into account course difficulty; and (4) reported grades may reflect grade inflation. Meno Aff. ¶¶ 2-5; Sharrow T. at 129; Meno T. at 140. On the other hand, the SED's survey indicated that there is a great deal of uniformity as to grading scales: 85 percent of the public schools and 73 percent of the private schools used a numerical score of 1-100. Results of High School Survey, P.App. I, Ex. 8.

Despite comparability difficulties, the SED chose to use GPAs as the best available measure of high school achievement. In awarding the Regents and Empire Scholarships for the 1988 graduates, the SED gave equal weight to students' SAT scores and GPAs, as the measure of high school performance. The SED, however, did not issue specific instructions to schools as to how grades should be reported.[FN15] As a ***353** result, some schools reported weighted grades, taking into account course difficulty, while others reported students' grades as they appeared on their transcripts. Hamburger T. at 3-4. Such inconsistent reporting practices touched off a controversy among school administrators who accused each other of cheating in weighting and reporting grades. Meno T. at 139.

> FN15. The GPA calculation was to be based upon three years of English, three years of social studies, two years of math, one year of science, and any three-year sequence in the student's major. Lott T. at 103. However, the SED issued no guidelines as to how to compute average GPAs. Kenneth Ormiston, SED Bureau Chief, told one school: "when calculating grade point average, you may use either weighted or unweighted grades." Letter of Nov. 23, 1987, P.App. I, Ex. 11. After receiving "hundreds of phone calls" about computation of grade point averages, one SED official, Jim Brown, wrote to Ormiston, urging that the policy be clarified. Brown Memo at 1, App. I, Ex. 12. However, SED officials did not issue clarifying instructions. *See* Hearings at 82-85.

In 1988, under the procedure using a combination of grades and SATs weighted equally women received substantially more Regents and Empire Scholarships than in all prior years in which the SAT had been the sole criterion. P.App. I, Ex. 2. In both 1987 and 1988, young women comprised approximately 54 percent of the applicant pool for the scholarship, yet the results in 1988 when grades and SATs were used were markedly different. The results are summarized as follows:

	Winners of Em-	Winners of Re-

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pire State Scholarships of Excellence		gents College Scholarships	
Males	Females	Males	Females
1986	3 5 4		
8	2 8 1 9		
1987	2 5 4		
7	2 8 7 3		

When GPAs were used in 1988, the mean GPAs were: 85 for females and 84.4 for males. P.App. I, Ex. 2.

In May 1988, the legislature held hearings to evaluate the new practice of using both GPAs and SATs. Although use of GPA information reduced the disparity between the number of males and females receiving Scholarships, Commissioner Sobol recommended that the practice be discontinued, as soon as a new scholarship exam was developed, because: (1) use of GPA information put an increased burden on school staff; (2) use of GPA did not provide an equitable way to compare students from different schools; and (3) use of GPA would encourage students to avoid more challenging courses in order to obtain better grades for Scholarship purposes. May Hearing at 17-18. Sobol requested funds for a new scholarship exam but also recommended that, until a separate Regents Scholarship examination could be established, GPAs continue to be used in conjunction with SAT scores. *Id.*[FN16]

> FN16. The Attorney for the SED addressed the Commissioner's apparent about face at trial by explaining, "[a]t the time the statement was made, the statute had not yet expired. And he was assuming that if the statute was extended it would be made on a grade point average." T. at 199.

Despite Commissioner Sobel's recommendation, the legislature allowed to lapse the eligibility calculation "based on a formula which includes high school performance and which may include nationally competitive examinations." The standard thereby reverted to awards "on the basis of nationally established competitive examinations". In the 1988 legislative session, the SED received funds for a new scholarship examination, but has not yet received approval for a developed test. Meno Aff. ¶ 9. In September, 1989, the SED determined that it would award Regents and Empire Scholarships to 1989 high school graduates on the basis of SAT scores alone. It is the SED's sole reliance on SAT scores for 1989 graduates that plaintiffs complain denies them equal protection under the fourteenth amendment to the U.S. Constitution and violates Title IX of the Education Amendments of 1972.

B. Use of the SAT for Merit Scholarship Awards

1. *ETS Recommendations and States' Practice*

The Educational Testing Service ("ETS") developed the SAT in order to predict academic performance in college. Willingham Aff. at ¶¶ 5-6. The ability of the SAT to serve this purpose has been statistically "validated." Willingham Aff. at ¶¶ 16-19.[FN17] It is undisputed, however, that the SAT predicts the success of students differently for males and females. Willingham Aff. at 32. In other words, while the ***354** SAT will predict college success as well for males within the universe of males as for females within the universe of females, when predictions are within the combined universe of males and females, the SAT *underpredicts* academic performance of females in their freshman year of college, and *overpredicts* such academic performance for males. [FN18] The SAT has never been validated as a measure of past high school performance.

> FN17. "Validity refers to the degree to which evidence supports the inference and use of test scores." Title Aff. ¶ 11.
>
> FN18. Emery T. at 47. *See also* Title Aff. at ¶¶ 6, 10-19, 29; Campbell Aff. at ¶¶ 6, 12-17, 20; Behnke Aff. at ¶¶ 2-7. When the regression equation is based on what is called a common regression line (with males and females together), a male and female with the same SAT scores will obtain different grade point averages, with the female's actual grade point average being somewhat higher than her predicted average. The male's actual grade point average will be somewhat lower than that predicted. Campbell Aff. at ¶

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11-14.

Both the ETS and the College Board, which administers the SAT, specifically advise against exclusive reliance upon the SAT, even for the purpose for which the SAT has been validated-predicting future college performance.[FN19] Instead, ETS researchers recommend that college admissions counselors use a combination of high school grades and test scores because this combination provides the highest median correlation with freshman grades. Title Aff. at ¶¶ 25-29. Additionally, the National Association of College Admission Counselors' ("NACAC") Code of Ethics requires member institutions to refrain from using minimum test scores as the sole criterion for admission, to use test scores in conjunction with other data such as school record and recommendations, and to refrain from using tests in any manner that may discriminate against students.[FN20] Thus, many colleges refrain from using test scores exclusively to decide admissions questions. *See* Stewart T. at 58-59; Sharrow T. at 122; Behnke Aff. at ¶¶ 2, 7, 8; Mason Aff. at ¶¶ 5, 6, 7.

FN19. *See* 1988 Profile of SAT and Achievement Test Takers-National Report p. iii (ETS, 1988), P.App. I, Ex. 7. The ETS argues only that "it would be incorrect to suggest ... that the College Board and ETS guidelines are the product of any conclusion that the SAT is biased in any way ..." ETS and College Board Amici Brief at 9.

FN20. Statement by NACAC on the role of Standardized Testing in the College Admission Process, P.App. II, Part 3, Ex. X; Richard Stewart, vice-president of committee for admissions practices, NACAC, T. at 58; NACAC Statement of Principles of Good Practice (December 1988); Burtnett Aff. at ¶ 3.

Notwithstanding ETS and NACAC guidelines recommending against using the SAT as the sole basis on which to award scholarships or offer admissions, the SED adopted such a policy in 1974. New York State is one of only two states in the nation to rely solely on SAT scores for the award of state-sponsored merit scholarships instead of factoring in other measurements, such as grade point average or high school rank. May Hearing at 54; Lee Aff. at ¶ 3. Most states rely, at least in part, upon GPAs. For instance, California's extensive merit scholarship program, which gives nearly 17,000 awards annually, relies upon self-reported GPAs. Moss Aff. at ¶¶ 1, 3, 5-6.

2. *SAT as Measure of High School Performance*

Both the Empire and Regents Scholarships are intended to reward past academic achievement of high school students, and to encourage those students who have demonstrated such achievement to pursue their educations in New York State. Lott T. at 91; Memo Aff. at ¶ 9. It is undisputed, however, that the SAT was developed and validated to serve a different purpose-*predicting* performance *in college.*

Professional standards governing educational testing require statistical analysis ("validation") to be undertaken to ensure that a test is properly used for its intended purpose. Shapiro T. at 51. For example, the American Psychology Association's Standards on Psychological Testing require that "evidence of validity should be presented for the major types of inferences for which the use of a test is recommended." P.App. I, Ex. 6, at 13. Similarly, the College Board requires that tests be validated periodically "to ensure that they ***355** predict the expected outcome at a level acceptable for the institution's particular purpose." 1987-1988 ATP Guide for High Schools and Colleges. The SED has never validated the SAT for the purpose of measuring high school performance. Lott. T. at 89.[FN21]

FN21. Indeed, without a prescribed curriculum (as in New York State), it would be very difficult to prove the content validity of the SAT. Shapiro T. at 42.

Notwithstanding the absence of validation studies, it is the SED's current position that the SAT provides a good measure of high school performance because it "measures skills and knowledge primarily developed in school." Byrne Aff. ¶ 17. The SED does not dispute that the SAT does not measure performance in all high school courses, but claims merely that the SAT partially tracks high school English and Math courses and thus tests achievement. Lott T. at 89.[FN22] The SED concedes that the SAT does not measure achievement in other subject matters such as science, social studies, and foreign languages. Moreover, the SED concedes that overall GPAs are a better measure of high school performance than SATs. Lott. T. at 90; *See also* Anastasi, P.App. II, Part 2, Ex. C.

FN22. The SED's claim that the SAT is an achievement test contradicts the position taken by Commissioner Sobol himself, on June 23, 1988 in the *Appeal of Yick Moon Lee.* P. Reply Mem., Ex. 4. In that case, Sobol stated that SAT scores "are a

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measure of aptitude rather than achievement." (In *Yick Moon Lee,* a student appealed to the Commissioner to enjoin the practice in his school of using a combination of SAT scores and GPA to calculate class rank. Commissioner Sobol ordered that the practice be discontinued because SAT scores do not measure "actual student achievement.")

3. *Statistical Impact on Men and Women Statewide*

Males have outscored females on the verbal portion of the SAT since 1972, with an average score differential of at least 10 points since 1981. Males have also consistently outscored females on the mathematics portion, with an average differential of at least 40 points since 1967.[FN23] In 1988, for example, girls scored 56 points lower than boys on the test. The probability that these score differentials happened by chance is approximately about one in a billion and the probability that the result could consistently be so different is essentially zero. *See* Gray Aff. at ¶ 6.

FN23. *1988 Profile of SAT takers,* The College Board, P.App. I, Ex. 7, p. iii. These undisputed results are summarized in Appendix B, *infra.*

Statisticians have attempted to explain the score differentials between males and females by removing the effect of "neutral" variables[FN24], such as ethnicity, socioeducational status (parental education), high school classes, and proposed college major. However, under the most conservative studies presented in evidence, even after removing the effect of these factors, at least a 30 point combined differential remains unexplained.[FN25]

FN24. It is debatable whether all of these factors are indeed "neutral" and do not to some degree reflect systemic sex discrimination.

FN25. Shapiro T. at 50; Willingham Aff., Ex. 6. *See also* Clark and Grady at 18, P.App. II, Part 2, Ex. D; and Gamache and Novick, P.App. II, Part 3, Ex. M.

As a result of the State's practice of basing scholarship awards solely upon SAT scores, males have consistently received substantially more scholarships than females. In 1987 for example, males were 47 percent of the scholarship competitors, but received 72 percent of the Empire State Scholarships and 57 percent of the Regents Scholarships.[FN26] For Empire State Scholarships, these results represent 15.8 standard deviations from the mean; for Regents Scholarships, the difference represents 31.7 standard deviations. In other words, the probability that the Empire Scholarship results would occur by chance is less than one in a billion, and the probability of the ***356** Regents Scholarship results would occur by chance is even less. Shapiro T. at 29.[FN27]

FN26. According to the SED's own estimates of the 1988-89 competition, 56 percent of the winners of the Regents Scholarship will be male if only SAT results are used to determine scholarship winners despite the fact that 53 percent of all the competitors are female. Statistical review of the Awarding of the 1988 New York State Scholarships (April 1988), p. App. I, Ex. 2.

FN27. As statistical significance is generally recognized to be .05 standard deviations from the mean, there is no doubt that these figures are statistically significant. The reason why the regents results are more significant than the Empire results is that sample size greatly affects calculations of standard deviations, and 25,000 Regents awards are given annually as compared to only 1,000 Empires awards.

III. *Discussion*

A. Procedural Issues

At the outset, defendants argue that this Court should dismiss plaintiffs' complaint on three procedural grounds: first, this Court is without authority to issue the relief requested in this case because plaintiffs do not have standing to bring their claims; second, the Court lacks subject matter jurisdiction; and third, venue is improper. The Court will consider each of these arguments in turn.

1. *Standing*

In order to establish standing for the purposes of the constitutional "case or controversy" requirement, the general rule is that a plaintiff "must show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant," *Gladstone Realtors v. Village of Bellwood,* 441 U.S. 91, 99, 99 S.Ct. 1601, 1607, 60 L.Ed.2d 66 (1979), and that the injury is "likely to be redressed by a favorable decision." *Simon v.*

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Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 38, 96 S.Ct. 1917, 1924, 48 L.Ed.2d 450 (1976). Otherwise, the exercise of federal jurisdiction "would be gratuitous and thus inconsistent with the Article III limitation." *Id.* at 38, 96 S.Ct. at 1924.

More precisely, plaintiffs must demonstrate: (1) that the "interest sought to be protected is within the zone of interests protected or regulated by the statute or constitutional guarantee in question," *Association of Data Processing Service Organizations Inc. v. Camp*, 397 U.S. 150, 153, 90 S.Ct. 827, 830, 25 L.Ed.2d 184 (1970), (2) "injury in fact," and (3) "causation in fact."

Plaintiffs have fulfilled the first standing requirement. The interest sought to be protected-freedom from discrimination in the award of state scholarships-is within the zone of interests to be protected by the fourteenth amendment and Title IX. Education Amendments of 1972, 20 U.S.C. § 1681.

[1] The second requirement, injury in fact, is satisfied by a showing of a likelihood of harm, if not actual harm. In *University of California Regents v. Bakke*, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978) the Supreme Court found that a student had standing to challenge a school's allegedly discriminatory admissions policy, not because he could establish that he would have been admitted were it not for the challenged policy, but rather because his *chances* for admission were reduced by the policy. *Id.* at 280-81 n. 14, 98 S.Ct. at 2743 n. 14 (Powell, J., concurring). *See also, McCleskey v. Kemp*, 481 U.S. 279, 295 n. 8, 107 S.Ct. 1756, 1766 n. 8, 95 L.Ed.2d 262 (1987); *Heckler v. Mathews*, 465 U.S. 728, 738, 104 S.Ct. 1387, 1394, 79 L.Ed.2d 646 (1984); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. at 115, 99 S.Ct. at 1615.

Plaintiffs here allege that their *chances* for winning a state merit scholarship are reduced by the SED's practice of basing such awards solely on SAT scores and that, therefore, they are less likely to receive benefits such as substantial public recognition, an enhanced ability to attract additional scholarships, and an increased opportunity to attend the college or university of their choice.[FN28] These allegations alone are sufficient to establish "injury in fact."[FN29]

FN28. *See* Plaintiff's Affidavits, App. II: Bonzon at ¶ 4; Hart at ¶ 3; Lewis at ¶ 5; Sharif at ¶¶ 3, 4; Sultan at ¶ 2; Greenblatt at ¶¶ 4, 5; Taylor at ¶ 8.

FN29. Defendants argue that plaintiffs do not have standing because some female students' chances of winning scholarships will be reduced if a combination of grades and SATs are used to determine the awards. D.Mem. at 23. This is irrelevant. The fact is that as a group women's chances are improved. Plaintiffs would rarely succeed in educational testing cases if courts accepted defendants argument, because changes in *any* test has differing effects on a broad class of plaintiffs.

***357** [2] Moreover, while plaintiffs need only establish a likelihood of injury, they have shown as to at least three plaintiffs a near certainty of injury if the SED is not enjoined. Defendants concede that plaintiffs Hart, Capodice, and Bozon probably will qualify for Regents Scholarships if eligibility is determined by using equally weighted GPA and SAT scores but will *not* qualify if SAT scores are the sole criterion. T. at 19, 207; Byrne Aff. at ¶ 10. These three plaintiffs alone are sufficient to establish standing to challenge the awarding practices for both Regents and Empire Scholarships since both are awarded from the same list of 25,000 names.[FN30] Because the claims raised by plaintiffs necessarily implicate the entire system, and any relief would require modification of that system, plaintiffs have standing to challenge both the Regents and Empire Scholarships even though they personally may not be eligible for the latter.

FN30. The state awards 25,000 Regents scholarships of $250 and 1000 Empire Scholarships of $2000 to the top Regents scholarship winners.

[3][4] The final requirement, causation in fact, necessitates that the injury be both "fairly traceable" to the defendant and "redressable." *Allen v. Wright*, 468 U.S. 737, 753 n. 19, 104 S.Ct. 3315, 3325 n. 19, 82 L.Ed.2d 556 (1984). As with injury in fact, causation in fact does not require a showing of complete certainty. In the Second Circuit:

All that is required is a showing that such relief be reasonably designed to improve the *opportunities* of a plaintiff not otherwise disabled to avoid the specific injury alleged. To ask the plaintiffs to show more than that they would 'benefit in a tangible way from the court's intervention,' would be to close our eyes to the uncertainties which shroud human affairs.

Huntington Branch N.A.A.C.P. v. Town of Huntington, 689 F.2d 391, 394 (2d Cir.1982) (emphasis added) (plain-

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tiffs seeking funding to construct housing project had standing to challenge zoning ordinance, even though no federal housing money was presently available).

In the present case, plaintiffs allege that the SED's reliance upon the SAT is the direct cause of their injury. Injunctive relief compelling the SED to use an alternative procedure with a less discriminating effect would redress their grievance. Defendants argue that because variables other than sex might account for the disparate number of women receiving low SAT scores-and, consequently, *not* receiving scholarships-there is no causation. D.Mem. at 23. This, however, is a dispute on the merits of plaintiffs' claim. Standing does not depend on whether plaintiffs actually will prevail. *See e.g.,* McCleskey, 481 U.S. 279, 107 S.Ct. 1756.

The fact that some of the named plaintiffs may not receive scholarships if the injunction is granted presents no barrier to this suit. The claim rests on the alleged discriminatory nature of the system as a whole. In analogous circumstances, the Supreme Court held that a black would-be resident had standing to challenge discriminatory zoning practices, because he intended to apply for housing, although he might not actually obtain it. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264, 97 S.Ct. 555, 562, 50 L.Ed.2d 450 (1977). Here, as in *Arlington,* if the requested relief is granted, the plaintiffs would no longer suffer the injury complained of. *See also* Pennell v. City of San Jose, 485 U.S. 1, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988) (landlords had standing to challenge rent control ordinance when there was a likelihood of enforcement of the ordinance and concomitant probability that rent would be reduced below what some landlords could afford); *Duke Power Co. v. Carolina Environmental Study Group,* 438 U.S. 59, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978) (standing to challenge act limiting liability in the event of a nuclear accident where "substantial likelihood" that construction of plants could not be completed without liability limit).

***358** Since we find plaintiffs have sufficiently alleged injury in fact and causation in fact and that plaintiffs are within the requisite zone of interests, we conclude that plaintiff have standing.

2. *Jurisdiction*

[5] Defendants argue that this Court lacks subject matter jurisdiction over plaintiffs' equal protection claim against the SED. This argument is wholly meritless.

While it is true that the Eleventh Amendment bars suits against states, *Pennhurst State School & Hospital v. Halderman,* 465 U.S. 89, 100, 104 S.Ct. 900, 907, 79 L.Ed.2d 67 (1984), the "important exception to this general rule [is that] a suit challenging the constitutionality of a state official's action is not one against the state." *Id.* at 102, 104 S.Ct. at 909. Moreover, Congress has specifically provided that a state shall not be immune from suit under Title IX. 42 U.S.C. § 2000d-7. Thus, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4).

3. *Venue*

[6] Defendants also challenge the venue of this action. They argue that it is more properly brought in the Northern District of New York where the defendants are located. The Court finds this argument unpersuasive.

Venue in this case is governed by 28 U.S.C. § 1391(b), which provides:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law.

Where the claim arose in more than one district, "a plaintiff may chose between those two (or conceivably even more) districts that with approximately equal plausibility-in terms of the availability of witnesses, the accessibility of other relevant evidence, and the convenience of the defendant (but not of the plaintiff)-may be assigned as the locus of the claim." *Leroy v. Great Western,* 443 U.S. 173, 185, 99 S.Ct. 2710, 2717, 61 L.Ed.2d 464 (1979).

Applying the *Leroy* holding, in a similar case to this, Judge Sofaer, formerly of this district, held that state security employees could bring suit against state officials in the Southern District. *Cheeseman v. Carey,* 485 F.Supp. 203 (S.D.N.Y.1980). While the state decisions in question had been made in Albany, the court held that the Southern District had a "substantial relationship" to the claim and, thus, the claim "arose" in the Southern District as well the Northern District. *Id.* at 212. In *Cheeseman,* half of the plaintiff class is located in the Southern District and thus, the court concluded, the challenged practice had been "profoundly felt" in the district.

In this case, the effects of the SED's policy have similarly

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been profoundly felt in the Southern District. Female students attending New York City schools are harmed more than elsewhere by the SED's exclusive reliance on SAT scores because they are even less likely to qualify for their scholarships than their female counterparts throughout the state. Moreover, these students take the SAT in the Southern District. Thus, while plaintiffs' claims also arise in the Northern District, they arise in the Southern District as well.

The Southern District is at least an "equally plausible forum." New York City is more accessible for the many expert witnesses who live outside New York. Amici ETS and College Board have offices in the City. It is not overly burdensome for state officials to travel to New York. Defendants have not demonstrated that evidence would somehow be less accessible if this case is maintained in the Southern District.

Finally, the Court concludes that because speed of disposition is important in this case, the interests of justice weigh against a transfer. This Court is familiar with the detailed facts of the case, and substantial proceedings have already occurred before this Court. *See e.g.,* Cheeseman, *supra,* 485 F.Supp. at 215. This is not a case where plaintiffs may have chosen their place of venue to harass defendants or to avoid precedents in the Northern District. It appears that plaintiffs merely have chosen***359** a forum that is convenient for the named plaintiffs, teenagers who live in the New York City area.

It is well-established that a plaintiff's choice of forum "is entitled to great weight and will not be disturbed except upon a clear-cut showing that convenience and justice for all parties demands that the litigation proceed elsewhere." *Eastern Refractories v. Forty Eight Insulations,* 668 F.Supp. 183, 187 (S.D.N.Y.1987), *citing* *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947). Such a showing has not been made. Accordingly, accordingly defendants' venue motion is denied.

B. The Preliminary Injunction

The standard for reviewing a request for a preliminary injunction is well established.

In this circuit, a preliminary injunction can be granted if plaintiff shows *irreparable injury,* combined with either a *probability of success on the merits,* or a fair ground for litigation and a balance of the hardships in his favor. *The Video Trip Corporation v. Lightning Video, Inc.,* 866 F.2d 50, 52 (2d Cir.1989) (emphasis added), *citing* *Wainwright Securities, Inc. v. Wall Street Transcript Corp.,* 558 F.2d 91, 94 (2d Cir.1977), *cert. denied,* 434 U.S. 1014, 98 S.Ct. 730, 54 L.Ed.2d 759 (1987).

[7] A court need not certify a class prior to granting a preliminary injunction. Defendants improperly rely upon *Hurley v. Ward,* 584 F.2d 609 (2d Cir.1978), to support their contention that any injunction must be limited to the individual named plaintiffs. *Hurley* is inapposite because it was brought by an individual plaintiff who did not even seek class certification and members of the purported class were not similarly situated.

Contrary to defendants' argument, courts have consistently granted relief that would have a class-wide effect without first certifying a class. Indeed, in this Circuit, courts have held that where a judgment would run to the benefit not only of the named plaintiffs but also of all others similarly situated, as it would here, class designation is "largely a formality." *Galvan v. Levine,* 490 F.2d 1255, 1261 (2d Cir.1973), *cert. denied,* 417 U.S. 936, 94 S.Ct. 2652, 41 L.Ed.2d 240 (1974). *See also* *Hurley, supra,* 584 F.2d at 611-612.[FN31]

> FN31. Moreover, the Supreme Court has held in connection with statute of limitations questions that class-wide relief is appropriate unless and until the class is dismissed. *Crown, Cork and Seal Co. v. Parker,* 462 U.S. 345, 103 S.Ct. 2392, 76 L.Ed.2d 628 (1983); *American Pipe and Construction Co. v. Utah,* 414 U.S. 538, 551, 94 S.Ct. 756, 765, 38 L.Ed.2d 713 (1974).

Thus, this Court need not certify a class in this case before determining whether plaintiffs have demonstrated the requirements for a preliminary injunction: irreparable harm and a likelihood of success on the merits.[FN32]

> FN32. While plaintiffs filed a motion for class certification of January 30, 1989, the Court will not consider this motion until defendants' have filed their response.

1. *Irreparable Harm*

[8] Plaintiffs have demonstrated that if the SED is not enjoined from its current practices, they will suffer irre-

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parable harm. Defendants do not dispute that Regents and Empire State scholarships are prestigious awards, and that students benefit from receiving such awards. Rather, they merely argue that Regents scholarships are worth less than Empire scholarships, and because it is unlikely that any of the named plaintiffs would receive Empire awards, plaintiffs have not shown irreparable harm. D.Mem. at 20. This is defendants' standing argument that was dismissed above. To reiterate: first, while named plaintiffs may not receive Empire awards, some members of the putative class would qualify for such awards; second, *all* plaintiffs' chances are reduced by the SED's actions; and third, defendants concede that at least three named plaintiffs will be harmed by the SED's acts. Byrne Aff. ¶ 10.

"When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury*360 is necessary." *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir.1984). Plaintiffs here go further than merely alleging deprivation of a constitutional right-they document the harm that would result if the SED continued its practice of reliance upon the SAT.[FN33] Thus, plaintiffs clearly have demonstrated "irreparable harm."

FN33. *See* P. Mem. at 20-23; Bonzon Aff. at ¶ 4; Hart Aff. at ¶ 4; Lewis Aff. at ¶ 5; Mackenzie Aff. at ¶ 3; Sharif Aff. at ¶¶ 3, 4; Sultan Aff. at ¶ 2. Defendants have not disputed these affidavits.

2. *Likelihood of Success on Merits*

a. Title IX

[9] Plaintiffs invoke the protections provided by Title IX, which prohibits sex discrimination in federally-funded educational programs.[FN34] Plaintiffs do not claim that defendants have intentionally discriminated against them based on their sex. Rather, they claim that defendants' practice of sole reliance upon SAT scores to award prestigious state scholarships disparately impacts female students. To this Court's knowledge, this is the first disparate impact case challenging educational testing practices under Title IX.[FN35]

FN34. Title IX provides, in pertinent part:

> (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving any federal assistance.
>
> 20 U.S.C. § 1681(a). Recently, Congress broadened the scope of Title IX so that it applies institution-wide. Civil Rights Restoration Act, 20 U.S.C. § 1687 (became law on March 22, 1988). This Act directly reversed the Supreme Court's decision in *Grove City College v. Bell*, 465 U.S. 555, 104 S.Ct. 1211, 79 L.Ed.2d 516 (1984), which had limited the coverage of Title IX to specific programs or activities which actually receive federal funds.

FN35. The most common Title IX cases challenge regulations that prohibit female students from participating in high school sports. In general, courts have had little difficulty in concluding that such regulations deny female students equal protection of the laws. *See, e.g., Brenden v. Independent School District*, 477 F.2d 1292 (8th Cir.1973); *Morris v. Michigan State Board of Education*, 472 F.2d 1207 (6th Cir.1973); *Hoover v. Meiklejohn*, 430 F.Supp. 164 (D.Col.1977).

Neither the Supreme Court nor any court in the Second Circuit has determined whether intent must be shown in Title IX cases.[FN36] This Court, however, is not without substantial guidance. Recognizing that "Title IX was patterned after Title VI of the Civil Rights Act of 1964," *Grove City College v. Bell*, 465 U.S. 555, 566, 104 S.Ct. 1211, 1218, 79 L.Ed.2d 516 (1984) courts examining Title IX questions have looked to the substantial body of law[FN37] developed under Title VI, 42 U.S.C. § 2000d, which prohibits race discrimination in federally-funded programs, and Title VII, 42 U.S.C. § 2000e, which prohibits discrimination in employment. *See, e.g., Mabry v. State Board of Community Colleges and Occupational Education*, 813 F.2d 311, 317 (10th Cir.), *cert. denied*, 484 U.S. 849, 108 S.Ct. 148, 98 L.Ed.2d 104 (1987); *Haffer v. Temple University*, 678 F.Supp. 517, 539 (E.D.Pa.1987).

FN36. Judge Sweet of this district applied a disparate impact analysis under Title IX in *Fulani v. League of Women Voters Educ. Fund*, 684 F.Supp. 1185 (S.D.N.Y.1988). However, he carefully *assumed* that a disparate impact is appropriate under Title IX without actually *deciding* that such was the case. *Id.* at 1193.

FN37. Many of these cases have challenged teacher competency tests as being racially dis-

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> criminatory. *See generally* Rebell, *Disparate Impact of Teacher Competency Testing on Minorities: Don't Blame the Test-Takers-or the Tests,* 4 YALE L. & POL.REV. 375 (1986).

In *Guardians Association v. Civil Service Commission,* 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983), the Supreme Court held that a violation of Title VI itself requires proof of discriminatory intent. However, a majority also agreed that proof of discriminatory effect suffices to establish liability when a suit is brought to enforce the regulations promulgated under Title VI, rather than statute itself. *See also Alexander v. Choate,* 469 U.S. 287, 293-294, 105 S.Ct. 712, 716, 83 L.Ed.2d 661 (1985); *Latinos Unidos de Chelsea v. Secretary of Housing,* 799 F.2d 774, 785 n. 20 (1st Cir.1986).

Plaintiffs' amended complaint explicitly alleges both violations of Title IX and its implementing regulations. This Court ***361** finds no persuasive reason not to apply Title VI's substantive standards to the present Title IX suit. Under analogous circumstances, one district court reasoned:

> The Title IX regulations, like the Title VI regulations at issue in *Guardians,* do not explicitly impose an intent requirement. As there is no reason that a Title IX plaintiff should have a higher burden of proof than a Title VI plaintiff, *see, e.g., Cannon v. University of Chicago,* 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979) (interpretation of Title IX dependent upon interpretation of Title VI); *Chowdhury v. Reading Hospital & Medical Center,* 677 F.2d 317 (3d Cir.1982), *cert. denied,* 463 U.S. 1229 [103 S.Ct. 3569, 77 L.Ed.2d 1411] (1983) ..., I hold that plaintiffs need not prove discriminatory intent to succeed on their claim.
>
> *Haffer,* 678 F.Supp. at 539-540.

The Title IX implementing regulations, like the regulations promulgated under Title VI, to which Title IX is frequently compared, are consistent with this interpretation of the comprehensive reach of the statute. Several Title IX regulations specifically prohibit facially neutral policies. For example, the provision governing admissions procedures, 34 CFR § 106.21(b)(2), prohibits a recipient from

> administer[ing] or operat[ing] any test or other criteria for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionate adverse effect are shown to be unavailable.

See also 34 C.F.R. §§ 106.22, 106.23(b), 106.34(d), 106.37(b), 106.52, and 106.53.(b).[FN38]

> FN38. The Tenth Circuit made a similar observation in *Mabry,* 813 F.2d at 316-17 n. 6.

Based upon a reading of the Title IX regulations, as well as the decisions that apply them, the Court finds that Title IX regulations, like the Title VI regulations at issue in *Guardians,* prohibit testing practices with a discriminatory *effect* on one sex. Consequently, plaintiffs need not prove intentional discrimination.

[10] In Title VII testing cases, the Supreme Court developed a three-pronged formulation to analyze disparate impact claims. Under this scheme, plaintiffs first must show that a facially neutral practice has a disproportionate effect. After such a showing, the burden shifts to defendants to prove a substantial legitimate justification-a "business necessity"-for its practice. The plaintiff then may ultimately prevail by offering either an equally effective alternative practice which has a less of a discriminatory impact, or proof that the legitimate practices are a pretext for discrimination. *Connecticut v. Teal,* 457 U.S. 440, 102 S.Ct. 2525, 73 L.Ed.2d 130 (1982); *Albemarle Paper Co. v. Moody,* 422 U.S. 405, 95 S.Ct. 2362, 45 L.Ed.2d 280 (1975); *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); *Griggs v. Duke Power Co.,* 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971); *Sheehan v. Purolator,* 839 F.2d 99, 104 (2d Cir.1988).[FN39]

> FN39. Defendants' mistakenly rely upon Justice O'Connor's plurality opinion in *Watson v. Fort Worth Bank & Trust,* 487 U.S. 977, 108 S.Ct. 2777, 2790, 101 L.Ed.2d 827 (1988), to argue that the Supreme Court now requires a greater quantum of proof in disparate impact cases. The portion of Justice O'Connor's opinion containing the alleged change in law was only joined by three other members of the Court. Thus, it is not law. The Court's holding in *Watson,* that subjective employment practices can be challenged under disparate impact analysis, does not affect the outcome of this case.

In educational testing cases, instead of requiring defen-

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dants to demonstrate a "business necessity," courts have required defendants to show an "educational necessity." For example, the Eleventh Circuit, in *Georgia State Conf. of Branches of NAACP v. State of Georgia*, 775 F.2d 1403 (11th Cir.1985), held that defendants had a burden of proving that their practices in question bore "a manifest demonstrable relationship to classroom education." *Id.* at 1418. *See also* ***362***Board of Education v. Harris*, 444 U.S. 130, 151, 100 S.Ct. 363, 375, 62 L.Ed.2d 275 (1979) ("educational necessity" analogous to "business necessity").

[11] Applying the Title VII formulations to this Title IX case as modified to take into account "educational necessity," this Court finds that plaintiffs have demonstrated a likelihood of success on the merits. Plaintiffs have met their burden of establishing a *prima facie* case through persuasive statistical evidence and credible expert testimony that the composition of scholarship winners tilted decidedly toward males and could not have occurred by a random distribution. *See* Gray Aff. at ¶ 6; Shapiro T. at 29-30. Defendants have failed to attack plaintiffs' evidence of statewide disparate impact but have instead focused in an *ad hoc* fashion on individual schools and counties. In a case alleging statewide discrimination, such a focus does not rebut plaintiffs' statewide *prima facie* case.

Plaintiffs, moreover, have established that the probability, absent discriminatory causes, that women would consistently score 60 points less on the SAT than men is nearly zero. Gray Aff. at ¶¶ 5-7. Defendants concede that at least half of this differential cannot be explained away by "neutral" variables. Based upon the totality of evidence, then, this Court finds that plaintiffs have demonstrated that the State's practice of sole reliance upon the SAT disparately impacts young women.

Thus, to prevail, defendants must show a manifest relationship between use of the SAT and recognition and award of academic achievement in high school. The Court finds that defendants have failed to show even a reasonable relationship between their practice and their conceded purpose. The SAT was not designed to measure achievement in high school and was never validated for that purpose. Instead, in arguing that the SAT somehow measures high school performance, defendants rely upon anecdotal evidence that the SAT partially tracks what is generally learned in high school Math and English courses. This argument is meritless.

Plaintiffs have offered substantial evidence that the SATs do not mirror high school Math and English classes. The makers of the SAT describe the test as an "aptitude test;" it does not purport to measure what is learned in classrooms but to predict success in college. The testing format of the SAT measures students' ability to take tests at least as much as it measures substantive material. Defendants' claims that the SAT is an achievement test are contradicted by defendant Sobol's own recent pronouncement that SAT scores "are a measure of aptitude rather than achievement." *Appeal of Yick Moon Lee* (June 23, 1988), P. Reply Mem.Ex. 4.

Moreover, even if SATs provided a partial measurement of what is learned in high school Math and English, these two courses constitute only 20 percent of a high school student's studies. The SAT fails to provide *any* measure of what a student learns in foreign language, science, and social studies courses. Moreover, there can be no serious claim that a test given on one single morning can take into account a student's diligence, creativity and social development and work habits in that student's environment-all part of high school achievement. After a careful review of the evidence, this Court concludes that SAT scores capture a student's academic achievement no more than a student's yearbook photograph captures the full range of her experiences in high school.

[12] Plaintiffs have offered an alternative to sole reliance upon the SAT: a combination of GPAs and SATs. The SED's use of this alternative in 1988 sharply reduced the disparate impact against females caused by the use of the SAT alone. A significantly greater number of female students received scholarships in 1988 than in each prior year in which the SED relied solely upon the SAT. P.App. I, Ex. 2. Defendants concede that females had a greater opportunity to receive scholarships under the combination system. Defendants also concede that grades are the best measure of high school achievement within the walls of a single school. Instead, they argue that since there is a disparity among ***363*** schools and their grading systems it is both unfair and impossible to use grades as part of the scholarship eligibility determination. Defendants plan instead to develop a statewide achievement test. While this Court does not dispute the apparent advantages of a statewide achievement test-if indeed a valid test can be developed-it does not agree that pending the implication of such a test, use of grades would be either unfair or infeasible.

While a combination system-using both GPAs and SATs-is not a perfect alternative, it is the best alternative

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presently available. The SED is concerned that students in academically superior high schools not be disadvantaged by the use of GPAs. This concern is addressed by the combination system because in effect grades would be weighted by SATs. The SAT component which cannot properly itself measure achievement serves to balance the grade component that does. In this way, the SED's concern that use of grades alone will deprive good students in superior high schools of scholarships is ameliorated. Also, as a testing expert explained at the hearing, few students will be displaced if a combination system is used:

What happens when you add GPA in with the SAT is you eliminate people who had sufficiently high SATs but low grade point averages. And they get replaced by people with slightly lower SATs who have higher-very high grade point averages. So the movement of individuals is not really all that severe, it's ... really just taking scholarships away from the high SAT performers who did not actually achieve in high school ...

Shapiro T. at 36. More importantly, the combination system would be "fair" in the larger sense of the word, because it would better advance the state's goal of awarding high school performance and would better provide *all* students-not just male students or students from selective schools-with an equal opportunity to compete for prestigious state scholarships.

Like its fairness argument, the SED's feasibility argument lacks merit. The SED contends that if it uses GPAs in awarding scholarships, the GPAs will not be in hand until February 24, 1988, the awards process will extend 16 weeks thereafter and, thus, it will be difficult to inform winners prior to college acceptance dates. The Court rejects this argument. First, based upon evidence detailing the time that is necessary to process scholarship applications, the Court finds that the awards process can be completed in substantially less than 16 weeks.[FN40] Second, as of the hearing before the Court on December 21, 1988, the defendants have been on notice that GPAs may be needed and on that date represented to the Court that they had commenced collection of GPAs. The defendants-not the plaintiffs or the Court-selected February 24 as the date grade calculations must be submitted to the SED, and then waited until January 13 to notify schools of that fact. The Court can only assume the SED did so consistent with using GPAs in a timely fashion and, in any event, the SED cannot use its own delay to justify continued reliance upon a discriminatory practice.

FN40. While the Court will not play the role of administrator and detail the time saving techniques that the SED could use, the Court does note that the SED could save considerable time if it notifies students of their awards by listing names in a New York newspaper, a procedure used successfully by the New York Board of Bar Examiners.

[13] The SED cannot justify its discriminatory practice because any alternative would be more difficult to administer. All states giving merit scholarships awards, with the exception of New York and Massachusetts, use GPAs, without concern for either administrative difficulties, grade inflation or the comparability of grades. Lee Aff., P. Reply Mem. Ex. 5; App. I, Ex. 14. Any administrative difficulties that the SED experienced in 1988, when it used a combination system, were attributable to the SED's own failure to implement and clarify specific guidelines for the collections of grades, and to provide any enforcement mechanisms to guard against cheating. While the Court, like the amici Hewlett School District, does not condone cheating or inaccuracies in grade reporting, it is not the Court's role to police the SED's ***364** scholarship program. The Court notes, however, that to verify accuracy, the SED could follow the practice of many states and require school administrators to submit a signed certificate of accuracy.

[14] Faced with a conflict between the SED's administrative concerns on the one hand, and the risk of substantial discriminatory harm to plaintiffs on the other, the Court has little difficulty in concluding that the balance of hardships tips decidedly in plaintiffs' favor. *See Mitchell v. Cuomo*, 748 F.2d 804, 808 (2d Cir.1984). The Court finds that plaintiffs have offered a feasible alternative to sole reliance upon SATs. Accordingly, the Court finds that plaintiffs have demonstrated a likelihood of success on the merits of their Title IX claim and, thus, a preliminary injunction is warranted.

b. Equal Protection

[15] Alternatively, a preliminary injunction is warranted because plaintiffs also have established a likelihood that they will succeed on their equal protection claim. The classification of scholarship applicants solely on the basis of SAT scores violates the equal protection clause of the Fourteenth Amendment because this method is not rationally related to the state's goal of rewarding students who have demonstrated academic achievement.

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Under the lowest standard of equal protection review-the "rational relationship standard"-"[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446, 105 S.Ct. 3249, 3257, 87 L.Ed.2d 313 (1985). Although considerable deference is given to the decisions of legislators and state administrators under the rational basis test, the test "is not a toothless one." *Baccus v. Karger*, 692 F.Supp. 290, 298 (S.D.N.Y.1988) (invalidating New York bar rule that required applicants for bar admission to have commenced the study of law after their 18th birthday), *citing Schweiker v. Wilson*, 450 U.S. 221, 234, 101 S.Ct. 1074, 1082, 67 L.Ed.2d 186 (1980). In a long line of cases, the Supreme Court has applied rational basis scrutiny to strike down legislation where the permissible bounds of rationality were exceeded. *See e.g., Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 105 S.Ct. 2862, 86 L.Ed.2d 487 (1985); *Williams v. Vermont*, 472 U.S. 14, 105 S.Ct. 2465, 86 L.Ed.2d 11 (1985); *Metropolitan Life Insurance v. Ward*, 470 U.S. 869, 105 S.Ct. 1676, 84 L.Ed.2d 751 (1985); *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973).

For the reasons stated above, the SED's use of the SAT as a proxy for high school achievement is too unrelated to the legislative purpose of awarding academic achievement in high school to survive even the most minimal scrutiny. The evidence is clear that females score significantly below males on the SAT while they perform equally or slightly better than males in high school. Therefore, the SED's use of the SAT as the sole criterion for awarding Regents and Empire Scholarships discriminates against females and, since such a practice is not rationally related to the legislative purpose, it unconstitutionally denies young women equal protection of the laws and must be enjoined on that ground as well.

IV. *Conclusion*

Defendants' practice of relying solely upon SAT scores in awarding Regents and Empire Scholarships deprives young women of the opportunity to compete equally for these prestigious scholarships in violation of both Title IX and the Constitution's equal protection clause. Defendants are hereby ordered to discontinue such discriminatory practices and, instead, to award Regents and Empire Scholarships in a manner that more accurately measures students' high school achievement. For the present year, the best available alternative is a combination of grades and SATs. The SAT component is justified, not as a measure of achievement, but to weight the GPA component. The Court, however, does not limit the SED's discretion to develop***365** other alternatives in the future, including a statewide achievement test.

SO ORDERED.

Appendix: Mean SAT Scores for College-Bound Seniors*

	Verbal		Math	
	Males	Females	Males	Females
1988	435	422	498	455
1987	435	425	500	453
1986	437	426	501	451
1985	437	425	499	452
1984	433	420	495	449
198	430	420	493	445

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1982	431	421	493	443
1981	430	418	492	443
1980	428	420	491	443
1979	431	423	493	443
1978	433	425	494	444
1977	431	427	497	445
1976	433	430	497	446
1975	437	431	495	449
1974	447	442	501	459
1973	446	443	502	460
1972	454	452	505	461
1971	454	457	507	466
1970	459	461	509	465

* 1988 Profile of the SAT (ETS), P. App. 1, Ex. 7.

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Supreme Court of the United States
UNITED STATES et al., Petitioners,
v.
Nicholas J. LARIONOFF, Jr., et al.
No. 76-413.

Argued April 27, 1977.
Decided June 13, 1977.

A class action under the Tucker Act was brought by seven enlisted members of the United States Navy who alleged that their agreements to extend their enlistments, made at various times from 1968 to 1970, entitled each of them to payment of a reenlistment bonus. The United States District Court for the District of Columbia, 365 F.Supp. 140, awarded the relief prayed, and cross appeals were filed. The Court of Appeals, 175 U.S.App.D.C. 32, 533 F.2d 1167, affirmed, and certiorari was granted. The Supreme Court, Mr. Justice Brennan, held that respondents and other similarly situated, who agreed to extend their enlistments at a time when a statute provided for a Variable Re-enlistment Bonus (VRB), in addition to the Regular Re-enlistment Bonus (RRB), for members of the armed forces whose ratings were classified as a "critical military skill" were entitled to VRB's determined according to the award level in effect at the time they agreed to extend their enlistments, even though the Navy eliminated their ratings from the "critical military skill" list before they began serving their extended enlistments, and the statutes authorizing the RRB and VRB were repealed and a new Selective Re-enlistment Bonus substituted before one respondent began to serve his extended enlistment.

Affirmed.

Mr. Justice White filed a dissenting opinion in which Mr. Chief Justice Burger, Mr. Justice Blackmun, and Mr. Justice Rehnquist joined.

West Headnotes

[1] Armed Services 34 ⚿18.5

34 Armed Services
34I In General
34k17 Enlistment
34k18.5 k. Reenlistment. Most Cited Cases
(Formerly 34k23.3(1), 34k18)
Respondent enlisted members of the United States Navy and others similarly situated, who agreed to extend their enlistments at a time when a statute provided for a Variable Re-enlistment Bonus (VRB), in addition to the Regular Re-enlistment Bonus (RRB), for members of the armed forces whose ratings were classified as a "critical military skill" were entitled to VRB's determined according to the award level in effect at the time they agreed to extend their enlistments, even though the Navy eliminated their ratings from the "critical military skill" list before they began serving their extended enlistments, and the statutes authorizing the RRB and VRB were repealed and a new Selective Re-enlistment Bonus substituted before one respondent began to serve his extended enlistment. 37 U.S.C.A. §§ 308, 906.

[2] Armed Services 34 ⚿5(6)

34 Armed Services
34I In General
34k5 Persons in the Armed Services, and Militia Called Into Service of the United States
34k5(6) k. Pay and Allowances. Most Cited Cases
(Formerly 34k23)
A soldier's entitlement to pay is dependent upon statutory right.

[3] Administrative Law and Procedure 15A ⚿413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
In construing administrative regulations, the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation.

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[4] Administrative Law and Procedure 15A ⚷386

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak385 Power to Make
15Ak386 k. Statutory Basis. Most Cited Cases
In order to be valid, regulations must be consistent with the statute under which they are promulgated.

[5] Armed Services 34 ⚷18

34 Armed Services
34I In General
34k17 Enlistment
34k18 k. In General. Most Cited Cases
(Formerly 34k23.3(1))
Implementing regulations requiring that the amount of the Variable Re-enlistment Bonus awarded an enlisted armed forces member who extended his enlistment be determined by reference to the award level in effect at the time he began to serve his extension enlistment, rather than at the time he agreed to the extension, are invalid as contrary to Congress' purpose, as manifested by the legislative history, in enacting the VRB program as an inducement to selected members of the armed forces to extend their period of service.

[6] Armed Services 34 ⚷18.5

34 Armed Services
34I In General
34k17 Enlistment
34k18.5 k. Reenlistment. Most Cited Cases
(Formerly 34k18)
Whether a member of the armed services reenlists or agrees to extend his enlistment, the Variable Re-enlistment Bonus could only be effective as a selective incentive to extension of service if, at the time he made his decision, the member could count on receiving it if he elected to remain in the service. 37 U.S.C.A. §§ 308, 906.

[7] Armed Services 34 ⚷5(6)

34 Armed Services
34I In General
34k5 Persons in the Armed Services, and Militia Called Into Service of the United States
34k5(6) k. Pay and Allowances. Most Cited Cases
(Formerly 34k23)
Congress may prospectively reduce the pay of members of the armed forces, even if that reduction deprives members of benefits they had expected to be able to earn; however, it is quite a different matter for Congress to deprive a service member of pay due for services already performed, but still owing.

[8] Armed Services 34 ⚷18.5

34 Armed Services
34I In General
34k17 Enlistment
34k18.5 k. Reenlistment. Most Cited Cases
(Formerly 34k23.3(1), 34k18)
Nothing in either the language or legislative history of the statute repealing the Regular Re-enlistment Bonus and the Variable Re-enlistment Bonus system and establishing a new bonus system showed any intention on the part of Congress to affect the rights of those service members who had extended their enlistments and became entitled to receive Variable Re-enlistment Bonuses. 37 U.S.C.A. § 308.

****2151** Syllabus [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

***864** Respondent enlisted members of the United States Navy and others similarly situated, who agreed to extend their enlistments at a time when a statute provided for a Variable Re-enlistment Bonus (VRB), in addition to the Regular Re-enlistment Bonus (RRB), for members of the Armed Forces whose ratings were classified as a "critical military skill" held entitled to VRB's determined according to the award level in effect at the time they agreed to extend their enlistments, notwithstanding that the Navy eliminated their ratings from the "critical military skill" list before they began serving their extended enlistments, and that the statutes authorizing the RRB and VRB

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were repealed and a new Selective Re-enlistment Bonus (SRB) substituted before one of the respondents began to serve his extended enlistment. Pp. 2154-2161.

(a) Implementing regulations requiring that the amount of the VRB to be awarded to an enlisted member who extended his enlistment be determined by reference to **2152 the award level in effect at the time he began to serve his extended enlistment, rather than at the time he agreed to the extension, are invalid as being contrary to Congress' purpose, as manifested by the legislative history, in enacting the VRB program as an inducement to selected service members to extend their period of service. Whether a service member re-enlists or agrees to extend his enlistment, the VRB could only be effective as a selective incentive to extension of service if at the time he made his decision the service member could count on receiving it if he elected to remain in the service. Pp. 2154-2159.

(b) There is nothing in either the language or legislative history of the statute repealing the RRB and VRB system and establishing a new bonus system to show any intention on the part of Congress to affect the rights of those service members who had extended their enlistments and became entitled to receive VRB's. Pp. 2159-2161.

175 U.S.App.D.C. 32, 533 F.2d 1167, affirmed.

*865 Keith A. Jones, Washington, D.C., for the petitioners.

Stephen Daniel Keeffe, Washington, D.C., for the respondents.

Mr. Justice BRENNAN delivered the opinion of the Court.

Seven enlisted members of the United States Navy brought this class action in the District Court for the District of Columbia under the Tucker Act, 28 U.S.C. s 1346(a)(2), alleging that their agreements to extend their enlistments, made at various times from 1968 to 1970, entitled each of them to payment of a re-enlistment bonus. The District Court ordered that the bonuses be paid, 365 F.Supp. 140 (1973), and the Court of Appeals for the District of Columbia Circuit affirmed. 175 U.S.App.D.C. 32, 533 F.2d 1167 (1976). We granted certiorari, 429 U.S. 997, 97 S.Ct. 522, 50 L.Ed.2d 607 (1976). We affirm.

I

From early in our history, Congress has provided by statute for payment of a re-enlistment bonus to members of the Armed Services who re-enlisted upon expiration of their term of service, or who agreed to extend their period of service before its expiration.[FN1] Prior to the enactment of Pub.L. No. 89-132, 79 Stat. 547 (1965), this bonus was determined for an enlistee's first re-enlistment or extension of enlistment by multiplying his monthly pay at the time of expiration of the initial period *866 of service by the number of years specified in the re-enlistment agreement. See former 37 U.S.C. ss 308(a), (b).

> FN1. The Court of Appeals opinion traces the history of this policy from 1795 to the present. 175 U.S.App.D.C., at 37-38, and n. 16, 533 F.2d, at 1172-1173, and n. 16.

The perceived defect of this system was that "it failed to vary the monetary incentive for reenlistment according to the needs of the armed services for personnel with particular skills." 175 U.S.App.D.C., at 38, 533 F.2d, at 1173. Consequently, Congress enacted former 37 U.S.C. s 308(g), which authorized the services to provide, in addition to the Regular Re-enlistment Bonus (RRB) just described, a Variable Re-enlistment Bonus (VRB) to members of the Armed Services whose particular skills were in short supply. The VRB was to be a multiple, no greater than four, of the RRB.[FN2]

> FN2. Former 37 U.S.C. s 308(g), 79 Stat. 547, provided as follows:
>
> "(g) Under regulations to be prescribed by the Secretary of Defense, or the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, a member who is designated as having a critical military skill and who is entitled to a bonus computed under subsection (a) of this section upon his first reenlistment may be paid an additional amount not more than four times the amount of that bonus. The additional amount shall be paid in equal yearly installments in each year of the reenlistment period. However, in meritorious cases the additional amount may be paid in fewer in-

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stallments if the Secretary concerned determines it to be in the best interest of the members. An amount paid under this subsection does not count against the limitation prescribed by subsection (c) of this section on the total amount that may be paid under this section."

Under the Department of Defense regulations implementing the VRB program, multiples of one to four times the RRB were assigned depending on the relative urgency of the services' need for particular skills, as measured by personnel shortages and the cost of training replacement personnel. Department of Defense Directive 1304.14, PP IV.D.1.a, b (Sept. 3, 1970); Department of Defense Instruction 1304.15, PP IV.D, V.A.1, 2 (Sept. 3, 1970).

Under 37 U.S.C. s 906, "(a) member of the (Armed Forces) who extends his enlistment . . . is entitled to the same pay and allowances as though he had reenlisted."

**2153 This program was in effect when respondent Nicholas J. Larionoff enlisted in the Navy for four years on June 23, *867 1969.[FN3] Shortly after his enlistment, Larionoff chose to participate in a Navy training program, completion of which would qualify him for the service rating "Communications Technician Maintenance" (CTM). At that time, as Larionoff was aware,[FN4] the CTM rating was classified by Navy regulations as a "critical military skill," whose holders were eligible upon re-enlistment or extension of enlistment for payment of a a VRB in the amount of four times the RRB, the highest allowable rate. Before entering the training program, which entailed a six-year service obligation, Larionoff entered a written agreement to extend his enlistment "in consideration of the pay, allowances, and benefits which will accrue to me during the continuance of my service." Larionoff successfully completed the program and was advanced to the CTM rating, expecting to receive a VRB upon entering the period of his extended enlistment on June 23, 1973.[FN5]

FN3. Except as noted below with specific reference to respondent Johnnie S. Johnson, the facts relating to Larionoff are typical of those concerning the other named respondents.

FN4. Larionoff was informed of the existence of the VRB program, and its applicability to the CTM program, by a Navy "classifier" who interviewed him to determine what field within the service he should enter. Several of the other named respondents were also told of the existence of the VRB program, and in some instances the amount of the VRB they could expect to receive was calculated for them by Navy personnel, without any indication that the amount might be reduced. 175 U.S.App.D.C., at 35, 36, and nn. 6, 11, 533 F.2d, at 1170, 1171, and nn. 6, 11. These facts, contained in affidavits filed by respondents, are undisputed; while an affidavit introduced by the Government states that "it is not the policy of the Department of the Navy to promise specific eligibility for Variable Reenlistment Bonus, nor is any official authorized to make such a promise in counselling with a prospective enlistee," there is no dispute that in particular cases individual service members might, inadvertently or otherwise, be left with the impression that a VRB had been promised.

FN5. Under former 37 U.S.C. s 308(g), the VRB was paid "in equal yearly installments in each year of the reenlistment period."

*868 On March 24, 1972, however, the Navy announced that effective July 1, 1972, the CTM rating would no longer be considered a "critical military skill" eligible for a VRB. When Larionoff, through his congressional representatives, inquired into his continued eligibility for a VRB, he was informed that since the CTM rating was no longer listed, he would not receive the expected bonus. Accordingly, in March 1973, respondents filed this lawsuit, and in September of that year the District Court certified a class and granted summary judgment for respondents, ordering payment of the disputed VRB's.

[1] (1) While the Government's appeal of this order was pending in the Court of Appeals, Congress repealed the statutes authorizing both the RRB and the VRB, and substituted a new Selective Re-enlistment Bonus (SRB), effective June 1, 1974. Armed Forces Enlisted Personnel Bonus Revision Act of 1974, 88

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Stat. 119, 37 U.S.C. s 308 (1970 ed., Supp. V). The Government concedes that this action had no effect on six of the named respondents; like Larionoff, they were scheduled to begin serving their extended enlistments prior to the effective date of the Act, and therefore should have received their VRB's, if at all, while the program was still in effect.[FN6] Respondent**2154 Johnnie S. Johnson, however, first enlisted in the Navy in August 1970, and did not begin serving his extended enlistment until August 1974. The Court of Appeals was thus confronted with two questions: (1) whether Larionoff and those in his position were entitled to receive VRB's despite the Navy's elimination of their rating from the eligible list in the period after their agreement to extend their enlistments but before they began serving those extensions; and (2) whether Johnson and others in his situation were entitled to receive VRB's despite the repeal of the VRB program in the same *869 period. The Court of Appeals held that both were entitled to receive VRB's.

FN6. But see n. 23, infra.

II

A

[2] (2) Both the Government and respondents recognize that "(a) soldier's entitlement to pay is dependent upon statutory right," Bell v. United States, 366 U.S. 393, 401, 81 S.Ct. 1230, 1235, 6 L.Ed.2d 365 (1961), and that accordingly the rights of the affected service members must be determined by reference to the statutes and regulations governing the VRB, rather than to ordinary contract principles.[FN7] In this case, the relevant statute, former 37 U.S.C. s 308(g), provided:

FN7. Indeed, this is implicitly recognized in the contracts executed by the named respondents, which state that they agree to extend their enlistments "in consideration of the pay, allowances, and benefits which will accrue to me during the continuance of my service," rather than stating any fixed compensation.

"Under regulations to be prescribed by the Secretary of Defense, . . . a member who is designated as having a critical military skill and who is entitled to (an RRB) upon his first reenlistment may be paid an additional amount not more than four times the amount of (the RRB)."

The regulations governing individual eligibility were set forth in Department of Defense Instruction 1304.15, P V.B.1 (Sept. 3, 1970).[FN8]

FN8. This regulation provided:

"B. Individual Eligibility for Receipt of Awards

"1. Variable Reenlistment Bonus. An enlisted member is eligible to receive a Variable Reenlistment Bonus if he meets all the following conditions:

"a. Is qualified and serving on active duty in a military specialty designated under provisions of paragraph V.A.2. above for award of the Variable Reenlistment Bonus. Members paid a Variable Reenlistment Bonus shall continue to serve in the military specialty which qualified them for the bonus unless the Secretary of a Military Department determines that a waiver of this restriction is necessary in the interest of the Military Service concerned.

"b. Has completed at least 21 months of continuous active service other than active duty for training immediately prior to discharge, release from active duty, or extension of enlistment.

"c. Is serving in pay grade E-3 or higher.

"d. Reenlists in a regular component of the Military Service concerned within three (3) months (or within a lesser period if so prescribed by the Secretary of the Military Department concerned) after the date of his discharge or release from compulsory or voluntary active duty (other than for training), or extends his enlistment, so that the reenlistment or enlistment as extended provides a total period of continuous active service of not less than sixty-nine (69) months.

"(1) The reenlistment or extension of enlistment must be a first reenlistment or ex-

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tension for which a reenlistment bonus is payable.

"(2) No reenlistment or extension accomplished for any purpose other than continued active service in the designated military specialty shall qualify a member for receipt of the Variable Reenlistment Bonus.

"(3) Continued active service in a designated military specialty shall include normal skill progression as defined in the respective Military Service classification manuals.

"e. Has not more than eight years of total active service at the time of reenlistment or extension of enlistment.

"f. Attains eligibility prior to the effective date of termination of awards in any military specialty designated for termination of the award. Member must attain eligibility prior to the effective date of a reduction of award level to be eligible for the higher award level. Eligibility attained through any modification of an existing service obligation, including any early discharge granted pursuant to 10 U.S.C. 1171, must have been attained prior to the date the authority approving the modification was notified of the prospective termination or reduction of award in the military specialty.

"g. Meets such additional eligibility criteria as may be prescribed by the Secretary of the Military Department concerned."

Instruction 1304.15 has been canceled by Department of Defense Instruction 1304.22 (June 1975).

***870 **2155** The Government contends that these eligibility criteria are to be applied as of the time the enlisted member completes service of his original enlistment and enters into the extended ***871** enlistment. This is a reasonable construction, since the statute requires that the VRB not be paid until that time. See n. 5, supra. At that time, it is argued, respondents did not satisfy two related criteria prescribed by P V.B.1, although it is conceded they met the others. First, they were not then "serving . . . in a military specialty designated" as a critical military skill, P V.B.1.a, since the CTM rating was by that time no longer so designate; second, they had not "(a)ttain(ed) eligibility prior to the effective date of termination of awards" for the CTM rating. P V.B.1.f.

The Government also relies upon the regulations governing the amount of the award to be received. Under Department of Defense Directive 1304.14, P IV.F (Sept. 3, 1970):

"When a military skill is designated for reduction or termination of award an effective date for reduction or termination of awards shall be established and announced to the field at least 90 days in advance. All awards on or after that effective date in military skills designated for reduction of award level will be at the level effective that date and no new awards will be made on or after the effective date in military skills designated for termination of awards." [FN9] (Emphasis added.)

FN9. Directive 1304.14 has been canceled by Department of Defense Directive 1304.21 (June 1975).

Similarly, Department of Defense Instruction 1304.15, supra, P VI.A, stated:

"Members serving in a military specialty designated for reduction or termination of award under the provisions of subsection IV.F. of (Directive 1304.14, supra) will receive the award level effective on the date of their reenlistment or extension of enlistment, except at provided in paragraph V.B.l.f. above." [FN10]

FN10. The reference is apparently to the last sentence of P V.B.l.f, supra, n. 8, which provided: "Eligibility attained through any modification of an existing service obligation . . . must have been attained prior to the date the authority approving the modification was notified of the prospective termination or reduction of award . . . ." The Court of Appeals interpreted this provision as intended to prevent service members from qualifying for a soon-to-be-reduced benefit level by agreeing to extend their enlistments in the interval between the announcement of the reduction in award level and the effective date of the

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change, and hence an implicit recognition that in the absence of such a provision service members in that position would be entitled to the higher benefit level. 175 U.S.App.D.C., at 41-42, 533 F.2d, at 1176-1177. The Government argues, however, that the purpose of P V.B.l.f was to reach the much smaller group of service members who would be in a position both to agree to extend their enlistment and to begin serving the extension within the relevant period. Tr. of Oral Arg. 15-16.

***872** The Government argues that these regulations, read together, establish that respondents were entitled to receive only the VRB in effect for their service rating at the time the period of their original enlistment ended, and the extended enlistment began.

[3] (3) These regulations, as the Court of Appeals pointed out and the Government freely concedes, contain a number of ambiguities. See 175 U.S.App.D.C., at 40-42, 533 F.2d, at 1175-1177. We need not tarry, however, over the various ambiguous terms and complex interrelations of the regulations. In construing administrative regulations, "the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation." Bowles v. Seminole Rock Co., 325 U.S. 410, 414, 65 S.Ct. 1215, 1217, 89 L.Ed. 1700 (1945). See also INS v. Stanisic, 395 U.S. 62, 89 S.Ct. 1519, 23 L.Ed.2d 101 (1969). The Government represents, and respondents do not seriously dispute, that throughout the period in which the VRB program was in effect, the Navy interpreted the Department of Defense regulations ****2156** as entitling an enlisted member who extends his enlistment to the VRB level, if any, in effect at the time he began to serve the extended enlistment.[FN11] Since this interpretation***873** is not plainly inconsistent with the wording of the regulations, we accept the Government's reading of those regulations as correct.

FN11. This has apparently been the practice regardless of whether that level was higher or lower than that in effect when the service member agreed to extend his enlistment. Id., at 45.

B

[4][5] (4, 5) This, however, does not end our inquiry. For regulations, in order to be valid must be consistent with the statute under which they are promulgated.[FN12] We are persuaded that insofar as they required that the amount of the VRB to be awarded to a service member who extended his enlistment was to be determined by reference to the award level in effect at the time he began to serve the extension, rather than at the time he agreed to it, the relevant regulations were contrary to the manifest purposes of Congress in enacting the VRB program, and hence invalid.[FN13]

FN12. "The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is . . . (only) the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity." Manhattan General Equip. Co. v. Commissioner, 297 U.S. 129, 134, 56 S.Ct. 397, 400, 80 L.Ed. 528 (1936). See, e.g., Ernst & Ernst v. Hochfelder, 425 U.S. 185, 213-214, 96 S.Ct. 1375, 1391, 47 L.Ed.2d 668 (1976); Dixon v. United States, 381 U.S. 68, 74, 85 S.Ct. 1301, 1305, 14 L.Ed.2d 223 (1965).

FN13. This argument was clearly raised in the briefs in the Court of Appeals, Brief for Plaintiffs-Appellees (Cross-Appellants) 13, Larionoff v. United States, Nos. 74-1211 and 74-1212, and in this Court, Brief for Respondents 15-18. We therefore do not regard the somewhat inconclusive colloquy at oral argument, see Tr. of Oral Arg. 29-33, as abandoning it.

The legislative history of the VRB statute makes those congressional purposes crystal clear. As noted above, the re-enlistment bonus scheme in effect before 1965, which relied entirely on the RRB, was criticized for providing the same re-enlistment incentive to all members of the Armed Services, regardless of the need for their skills. The Defense Department desired greater flexibility in calibrating re-enlistment incentives to its manpower needs. The additional expenditures***874** for the VRB were expected to save money in the long run, since payment of the higher re-enlistment bonus would enable the Armed Forces

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to retain highly skilled individuals whose training had required a considerable investment.[FN14] Members of Congress in the floor debates clearly recognized the wisdom of offering such incentives.[FN15]

FN14. H.R.Rep.No.549, 89th Cong., 1st Sess., 47 (1965); S.Rep.No.544, 89th Cong., 1st Sess., 14 (1965); U.S.Code Cong. & Admin.News 1965, p. 2745.

FN15. See, e. g., remarks of Rep. Morton, 111 Cong.Rec. 17206 (1965); remarks of Rep. Bennett, ibid.; remarks of Rep. Dole, id., at 17209; remarks of Sen. Russell, id., at 20034.

The VRB was thus intended to induce selected service members to extend their period of service beyond their original enlistment. Of course, the general pay raise for the military included in the same Act was also intended to have a similar effect, by making a military career generally more attractive.[FN16] But the VRB was expected to be a very specific sort of incentive, not only because it was aimed at a selected group of particularly desirable service members, but also because it offered an incentive "at just the time that it will be most effective, when an individual decides whether or not to reenlist." Remarks of Rep. Nedzi, 111 Cong.Rec. 17201 (1965). The then Secretary of Defense, Robert S. McNamara, made the same point to the House Armed Services Committee, in contrasting the VRB to "proficiency pay," which provides increased pay to service members with critical skills:

FN16. See, e. g., H.R.Rep.No.549, supra, at 5-6; S.Rep.No.544, supra, at 1-4.

**2157 "We believe a more efficient way to provide additional reenlistment incentives to selected first termers in especially high demand is by using a variable reenlistment bonus. Monetary rewards are thereby concentrated at the first reenlistment decision point, obtaining the greatest return per dollar spent on the retention of personnel. " Hearings on Military Pay Bills before the House Committee*875 on Armed Services, 89th Cong., 1st Sess., 2545 (June 7, 1965) (House Hearings). (Emphasis added.)

The then Assistant Secretary of Defense, Norman S. Paul, also distinguished the VRB from ordinary pay, stating that with the VRB the military hoped "to cure a separate specific problem by specific means, rather than overall pay." Hearings on Military Pay Increase before the Senate Committee on Armed Services, 89th Cong., 1st Sess., 41 (July 29, 1965). (Senate Hearings). The timing of the VRB was crucial to this intention:

"At the end of his first term of reenlistment (sic) he is trying to make up his mind whether to stay in the military. And we think that the added bonus may push him over the line into staying with us, which is what we want to see happening." Id., at 40.[FN17]

FN17. The argument that the VRB would be particularly effective as an inducement to re-enlist because it would be provided at the "decision point" is a constant theme through the hearings, the committee reports, and the floor debates. See House Hearings 2545-2584 (statements of Secy. McNamara), 2671 (colloquy of Rep. Stratton and Gen. Greene); Senate Hearings 19 (statement of Secy. McNamara), 26, 40, 44 (statements of Asst. Secy. Paul); H.R.Rep.No.549, supra, at 47; S.Rep.No.544, supra, at 14; 111 Cong.Rec. 17201 (1965) (remarks of Rep. Nedzi).

[6] (6) It is true that in discussing the VRB, Congress focused on the service member who reaches the end of his enlistment, and is faced with the decision "whether or not to reenlist." (Emphasis added.) Remarks of Rep. Nedzi, supra. But, as Congress has recognized in providing that "(a) member of the (Armed Forces) who extends his enlistment . . . is entitled to the same pay and allowances as though he had reenlisted," 37 U.S.C. s 906, precisely the same reasoning applies to the decision to extend enlistment as to the decision to re-enlist. In either case, the VRB could only be effective as a selective incentive to extension of service if at the time he made his *876 decision the service member could count on receiving it if he elected to remain in the service.

This is very apparent when the VRB program is examined from the perspective of an individual who is at the point of deciding whether or not to extend an enlistment due to expire at some future date. At the time he makes this decision, he is aware that his rating or expected rating is classified as a critical military skill eligible for a VRB at a particular level. Under the plan as envisioned by Congress, and as applied by the Navy

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in the case of re-enlistments, the incentive operates "at just the time it will be most effective," because the service member knows that if he remains in the service, he will receive a VRB at the prescribed level. But under the contested regulations, the service member has no such reassurance. Whether or not his rating is eligible for a VRB now, it may not be at the future date on which his first enlistment expires.[FN18] His "incentive" to extend his enlistment is the purely hypothetical possibility that he might receive a VRB if there is a personnel shortage in his skill on that date. On the other hand, if he nevertheless extends his enlistment, and if the VRB level for his rating is increased in the interval before his **2158 original term expires, he will receive a higher award than that which sufficed to induce his decision to remain in the service from the standpoint of Congress' purposes, a totally gratuitous award. [FN19]

FN18. Indeed, as the Court of Appeals pointed out, 175 U.S.App.D.C., at 43-44, n. 32, 533 F.2d, at 1178-1179, n. 32, because the regulations governing the VRB program required the various services to undertake an annual review of the military specialties in which personnel shortages existed for the purpose of adjusting VRB award levels, Department of Defense Directive 1304.14, P IV.F.1, the service member, by his very decision to extend his enlistment, would contribute to the likelihood that by the time his initial enlistment expired, his skill would no longer be in short supply and the VRB he had expected would therefore have been reduced or eliminated.

FN19. The effects of the challenged regulations would, of course, be less than clear to the service member deciding whether or not to extend his enlistment, and, given the complexity and ambiguity of the regulations, and the resulting possibility that they could be misconstrued by Navy recruiters as well as by the enlistees themselves, it would not be surprising if many service members, like some of the respondents here, see n. 4, supra, came to believe that by extending their enlistments they had acquired a vested right to a VRB. To the extent that such beliefs had been fostered, upholding the regulations would perpetrate a considerable injustice.

*877 The clear intention of Congress to enact a program that "concentrates monetary incestives at the first re-enlistment decision point where the greatest returns per retention dollar can be expected," Senate Hearings 26 (statement of Asst. Secy. Paul), could only be effectuated if the enlisted member at the decision point had some certainty about the incentive being offered. Instead, the challenged regulations provided for a virtual lottery. [FN20] We therefore hold that insofar as the Defense Department regulations required that the amount of the VRB to be paid to a service member who was otherwise eligible to receive one be determined by the award level as of the time he began to serve his extended enlistment, they are in clear conflict with the congressional intention in enacting the VRB program, and hence invalid. Because Congress intended to provide at the re-enlistment decision point a promise of a reasonably certain and specific bonus for extending service in the Armed Forces, Larionoff and the members of his class are entitled, as the Court of Appeals held, to payment of VRB's determined according to the award levels in effect at the time they agreed to extend their enlistments.

FN20. Of course, the enlisted service member agreeing to extend his enlistment could not have been entirely certain of the amount of his future VRB. First, the VRB was calculated according to a formula based on the amount of the RRB, which in turn depended on the re-enlistee's basic pay upon entering the re-enlistment period. At the time he agreed to extend his enlistment, the service member could not have been sure what that amount would be; Congress could alter military pay scales, or the member might be promoted or demoted, and hence his pay might change, in the interval. Second, the VRB, by both statute and regulation, was not actually paid until the service member began serving his extended enlistment, and even then was ordinarily paid in yearly installments. If for some reason the enlistee did not complete service of his extension, remaining installments were not paid, and overpayments were recouped. Department of Defense Directive 1304.14, P IV.G. Finally, receipt of any VRB at all depended on the service member's completing the require-

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ments for eligibility before expiration of the original enlistment. See Department of Defense Instruction 1304.15, P V.B.1, n. 8. Thus, the VRB as applied to service members extending their enlistments, as opposed to those re-enlisting, was always somewhat contingent. But there is a significant difference between this sort of contingency, which was inherent in the nature of the program and in any event involved marginal effects on the amount of the award or the occurrence of rather speculative events, and the sort of uncertainty the contested regulations inject into the program, which rendered the primary determinant of the VRB entirely unpredictable at the time the decision to extend enlistment was made.

***878** III

This brings us to the further question of respondent Johnson's entitlement to a VRB. At the time he agreed to extend his enlistment, the VRB program was in effect and his CTM rating was classified as a critical military skill. Before he began serving the extended enlistment period, however, Congress repealed the RRB and VRB system, and substituted the new SRB. 88 Stat. 119, 37 U.S.C. s 308 (1970 ed., Supp. V). The Government contends that since the VRB had been abolished before Johnson became eligible to receive one, he is not entitled to receive a bonus. The Court of Appeals rejected this argument.[FN21]

FN21. The decision of the Court of Appeals on this point is in conflict with the decisions in Collins v. Rumsfeld, 542 F.2d 1109 (CA9 1976), cert. pending sub nom. Saylors v. United States, No. 76-677; and Carini v. United States, 528 F.2d 738 (CA4 1975), cert. pending, No. 75-1695.

****2159** What we have said above as to Larionoff goes far toward answering this question. The intention of Congress in enacting the VRB was specifically to promise to those who ***879** extended their enlistments that a VRB award would be paid to them at the expiration of their original enlistment in return for their commitment to lengthen their period of service.[FN22] When Johnson made that commitment, by entering an agreement to extend his enlistment, he, like Larionoff, became entitled to receive at some future date a VRB at the award level then in effect (provided that he met the other eligibility criteria). Thus, unless Congress intended, in repealing the VRB program in 1974, to divest Johnson of the rights he had already earned, and constitutionally could do so, the prospective repeal of the program could not affect his right to receive a VRB, even though the date on which the bonus was to be paid had not yet arrived.

FN22. As noted, n. 20, supra, the precise amount of the award remained somewhat uncertain, and the award was contingent on the enlisted member's meeting certain eligibility conditions.

[7] (7) Of course, if Congress had such an intent, serious constitutional questions would be presented. No one disputes that Congress may prospectively reduce the pay of members of the Armed Forces, even if that reduction deprived members of benefits they had expected to be able to earn. Cf. Bell v. United States, 366 U.S. 393, 81 S.Ct. 1230, 6 L.Ed.2d 365 (1961); United States v. Dickerson, 310 U.S. 554, 60 S.Ct. 1034, 84 L.Ed. 1356 (1940). It is quite a different matter, however, for Congress to deprive a service member of pay due for services already performed, but still owing. In that case, the congressional action would appear in a different constitutional light. Cf. Lynch v. United States, 292 U.S. 571, 54 S.Ct. 840, 78 L.Ed. 1434 (1934); Perry v. United States, 294 U.S. 330, 55 S.Ct. 432, 79 L.Ed. 912 (1935). In view of these problems, we would not lightly conclude, in the absence of a clear expression of congressional intent, that in amending 37 U.S.C. s 308 and establishing a new bonus system, Congress intended to affect the rights of those service members who had extended their enlistments and become entitled to receive VRB's.

[8] (8) Nothing in the language of the 1974 Act or its legislative history expresses such an intention. The Act makes no reference***880** whatever to service members who have become entitled to payment of a VRB by extending their enlistments. There is no prohibition of further payments of VRB's to those already entitled to them; [FN23] the Act simply replaces the old s 308 with a new one that authorizes SRB's rather than RRB's and VRB's. Nor does the legislative history express any intention to effect such a prohibition. No paramount power of the Congress or important national interest justifying interference with contractual

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entitlements is invoked.

> FN23. The Government's concession that the 1974 Act does not affect respondents other than Johnson implicitly admits that the Act permits such payments. Three other named respondents entered their two-year extension periods after June 1, 1973. Since the VRB was paid in yearly installments, n. 5, supra, these three would presumably still have installments due on their VRB after the Act became effective on June 1, 1974.

The Courts of Appeals that have upheld the Government's position have relied on two indications of a congressional intent to affect the rights of Johnson and his class. First, the 1974 Act expressly preserves the right of all service members on active duty as of the effective date of the Act to receive upon re-enlistment the RRB's they would have been entitled to before passage of the Act. Pub.L.No.93-277, s 3, 88 ***881** Stat. 121.[FN24] The failure to include a similar saving***2160** clause as to VRB's, it is argued, indicates that Congress intended to abolish them entirely. But the saving clause for RRB's does not merely preserve them for those who had already extended their enlistments, but assures RRB's upon re-enlistment to any service member then on active duty. The failure to enact a similar provision as to VRB's indicates only that Congress did not intend that VRB's be paid to those service members who re-enlisted after the effective date of the Act, and has no bearing on those who had already extended their enlistments and become entitled to VRB's.

> FN24. This section provides:
>
> "Notwithstanding section 308 of title 37, United States Code, as amended by this Act, a member of a uniformed service on active duty on the effective date of this Act, who would have been eligible, at the end of his current or subsequent enlistment, for the reenlistment bonus prescribed in section 308(a) or (d) of that title, as it existed on the day before the effective date of this Act, shall continue to be eligible for the reenlistment bonus under that section as it existed on the day before the effective date of this Act. If a member is also eligible for the reenlistment bonus prescribed in that section as amended by this Act, he may elect to receive either one of those reenlistment bonuses. However, a member's eligibility under section 308(a) or (d) of that title, as it existed on the day before the effective date of this Act, terminates when he has received a total of $2,000 in reenlistment bonus payments, received under either section 308(a) or (d) of that title as it existed on the day before the effective date of this Act, or under section 308 of that title, as amended by this Act, or from a combination of both."

Second, reference is made to a portion of the Conference Report on the Act, indicating a congressional "understanding" that service members, like Johnson, who had already entered two-year extensions of enlistment could become eligible for an SRB by canceling the extension and replacing it with a four-year extension. H.R.Conf.Rep.No.93-985, pp. 4-5 (1974).[FN25] This, it is argued, indicates that Congress had ***882** considered the possible unfairness that eliminating the VRB could work on members such as Johnson, and felt that it had made sufficient provision for them by making them eligible, upon a further extension of their commitment, for an SRB. But the Report does not refer to the possible unfairness of eliminating the VRB payable to those service members with whom it deals; rather, it refers to the Navy's concern that language in the legislative history might cast doubt on a commitment the Navy had made "to a man with a four-year enlistment and a two-year extension that he can cancel the two-year extension and reenlist for four years and receive a reenlistment bonus for the four-year reenlistment." Id., at 4. The Report removes any doubts about the validity of that commitment. The only relevance of the Report to the problem before us is that it demonstrates that Congress was responsive to the "concern that the language of the bill might be interpreted to require it to abrogate an understanding" between the Armed Forces and enlistees, ibid., making it less rather than more likely that Congress intended the 1974 Act to abrogate Johnson's entitlement to a VRB by implication.

> FN25. The relevant portion of the Conference Report referred to in the text states:
>
> "Clarification of interpretation of bill language

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> "The House committee in reporting the bill indicated its intention that bonuses not be authorized for personnel for existing obligated service. There was brought to the attention of the conferees a problem that would exist, particularly in the Navy nuclear-power field, under the House interpretation of the language of the bill. In cases where commitment has been made to a man with a four-year enlistment and a two-year extension he can cancel the two-year extension and reenlist for four years and receive a reenlistment bonus for the four-year reenlistment. The Navy expressed great concern that the language of the bill might be interpreted to require it to abrogate an understanding it had with enlistees and would operate in such a way as to cause serious retention problems in its most critical career field. The conferees, therefore, want it understood that while it normally does not expect bonuses to be paid for services for which there was an existing obligation, it is consistent with the conferees' understanding that full entitlement to SRB will be authorized for personnel who have already agreed to an extension period prior to the enactment of the legislation if they subsequently cancel this extension prior to its becoming operative and reenlist for a period of at least two years beyond the period of the canceled extension. Nothing in the bill should operate to deny the Chief of Naval Operations the authority to extend SRB entitlement to nuclear-power operators, if they subsequently can cancel any outstanding extension period prior to its becoming operative and reenlist for a period of at least two years beyond the period of the canceled extension."

Affirmed.

****2161** Mr. Justice WHITE, with whom the Chief Justice, Mr. Justice BLACKMUN, and Mr. Justice REHNQUIST join, dissenting.

Like the Court, I accept the Government's interpretation of the relevant Navy Department regulations, but I do not agree ***883** with the majority's view that because Congress intended by the VRB legislation irrevocably to promise a re-enlistment bonus to those who agreed in advance to re-enlist the regulations are invalid. As I see it, the legislation was not part of the re-enlistment agreement, which was executed in consideration of the pay, allowances, and benefits that would accrue during a continuance of the re-enlistee's service. Those who executed re-enlistment agreements had no vested right in any particular level of pay, in any particular allowance or benefit, or in any particular total package of pay, allowances, or benefits. In this respect, I am in essential agreement with Judge Haynsworth's opinion for the Court of Appeals for the Fourth Circuit in Carini v. United States, 528 F.2d 738 (1975), which concluded that cancellation of the VRB prior to the beginning of a re-enlistment period was not forbidden by law. I respectfully dissent.

U.S.D.C., 1977.
U. S. v. Larionoff
431 U.S. 864, 97 S.Ct. 2150, 53 L.Ed.2d 48

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183 F.3d 1161, 9 A.D. Cases 954, 16 NDLR P 28, 99 Cal. Daily Op. Serv. 5976, 1999 Daily Journal D.A.R. 7637
(Cite as: 183 F.3d 1161)

H

United States Court of Appeals,
Ninth Circuit.
Scot L. ZIMMERMAN, Plaintiff-Appellant,
v.
State of OREGON DEPARTMENT OF JUSTICE, Defendant-Appellee.
No. 97-36101.

July 28, 1999.

Before: KOZINSKI, KLEINFELD, and GRABER, Circuit Judges.

Order; Dissent by Judge REINHARDT.

ORDER

The panel has voted to deny the petition for rehearing en banc.

The full court was advised of the petition for rehearing en banc. A judge of the court requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R.App. P. 35.

The petition for rehearing en banc is DENIED.

REINHARDT, Circuit Judge, with whom Circuit Judges PREGERSON and MICHAEL DALY HAWKINS join, dissenting from the denial of reconsideration en banc.

I dissent from the court's refusal to reconsider, en banc, the panel's decision in this important case of national significance. The panel's opinion holding that Title II of the Americans with Disabilities Act (ADA) does not prohibit employment discrimination by public entities is directly contrary to the plain language of the statute, to the clearly expressed intent of Congress, and to the Department of Justice's authoritative implementing regulations. Moreover, the panel's opinion conflicts either directly or indirectly with the position taken by every circuit to confront the question, including ours, *see* *Norman-Bloodsaw v. Lawrence Berkeley Laboratory*, 135 F.3d 1260, 1272 (9th Cir.1998) (applying, without discussion, Title II to employment discrimination claim); *Bledsoe v. Palm Beach County Soil and Water Conservation Dist.*, 133 F.3d 816 (11th Cir.1998) (holding that Title II applies to employment discrimination); *Castellano v. City of New York*, 142 F.3d 58 (2d Cir.1998) (applying Title II to employee benefits discrimination claim); *Holmes v. Texas A & M*, 145 F.3d 681, 684 (5th Cir.1998) (applying Title II to employment discrimination claim); *Doe v. University of Maryland Medical Sys. Corp.*, 50 F.3d 1261 (4th Cir.1995) (applying Title II to employment discrimination*1162 claim using same standards as under Rehabilitation Act), as well as with 18 of the 21 published district court opinions addressing the issue.[FN1] The Ninth Circuit now stands alone in adopting an interpretation of the ADA that deprives disabled persons of a right expressly granted them by Congress-the right to bring an action for employment discrimination under Title II of the ADA.

FN1. *Saylor v. Ridge*, 989 F.Supp. 680 (E.D.Pa.1998); *Magee v. Nassau County Medical Center*, 27 F.Supp.2d 154 (E.D.N.Y.1998); *Fobar v. City Dearborn Heights*, 994 F.Supp. 878 (E.D.Mich.1998); *Alberti v. City and County of San Francisco*, 32 F.Supp.2d 1164 (N.D.Cal.1998); *Downs v. Massachusetts Bay Transp. Auth.*, 13 F.Supp.2d 130 (D.Mass.1998); *Winfrey v. City of Chicago*, 957 F.Supp. 1014 (N.D.Ill.1997); *Dominguez v. City of Council Bluffs*, 974 F.Supp. 732 (S.D.Iowa 1997); *Hernandez v. City of Hartford*, 959 F.Supp. 125 (D.Conn.1997); *Roe v. County Comm'n of Monongalia*, 926 F.Supp. 74 (N.D.W.Va.1996); *Graboski v. Guiliani*, 937 F.Supp. 258 (S.D.N.Y.1996); *Wagner v. Texas A & M Univ.*, 939 F.Supp. 1297 (S.D.Tex.1996); *Davoll v. Webb*, 943 F.Supp. 1289 (D.Colo.1996); *Dertz v. City of Chicago*, 912 F.Supp. 319 (N.D.Ill.1995); *Doe v. County of Milwaukee*, 871 F.Supp. 1072 (E.D.Wis.1993); *Eisfelder v. Michigan Dep't of Natural Resources*, 847 F.Supp. 78 (W.D.Mich.1993); *Finley v. Giacobbe*, 827 F.Supp. 215 (S.D.N.Y.1993); *Petersen v. University of Wisconsin Bd. of Regents*, 818 F.Supp. 1276 (W.D.Wis.1993); *Ethridge v.*

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State of Alabama, 847 F.Supp. 903 (M.D.Ala.1993). Two of the three district court opinions agreeing with Zimmerman have already been overruled: *Bledsoe v. Palm Beach Soil and Water Conservation Dist.*, 942 F.Supp. 1439 (S.D.Fla.1996), *rev'd*, 133 F.3d 816 (11th Cir.1998), and *Decker v. University of Houston*, 970 F.Supp. 575 (S.D.Tex.1997). *Decker* is no longer good law, given the Fifth Circuit's contrary opinion in *Holmes*. Thus, *Patterson v. Illinois Dep't of Corrections*, 35 F.Supp.2d 1103 (C.D.Ill.1999) provides the slim reed of support on which *Zimmerman* rests. In addition to these published cases, 4 out of 6 unpublished district court decisions disagree with *Zimmerman*.

Overview

The panel holds that the "plain meaning" of Title II of the ADA excludes discrimination in employment from the otherwise broad anti-discrimination prohibition of that Title. Such is not only *not* the plain meaning of Title II, but the panel's interpretation is directly contrary to the express language of the Title, to the unequivocal legislative history of the Title and to the uniform administrative interpretations of the Title rendered by the agency charged by Congress with that function. Title II contains two independent clauses, each of which serves to prohibit discrimination in employment. The Title contains *no* language of exclusion and the panel points to none. Rather it relies on a concept of its own creation-"inputs" and "outputs"-a concept found nowhere in the statute, or in any of the pertinent materials, as well as on a structural argument not accepted by any other circuit court. The panel's mode of statutory analysis at most results in a question of statutory ambiguity. However, if Title II were ambiguous, we would still be required by the applicable rules of statutory construction to hold that it covers every form of discrimination, including employment discrimination. Thus, the panel is compelled to base its decision exclusively on its plain meaning argument, an argument that cannot survive serious scrutiny.

A. *Plain Meaning of the ADA*

The plain meaning of Title II is that it prohibits employment discrimination as well as all other forms of discrimination by public entities against the disabled. The ADA was enacted by Congress in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Title II provides that no disabled individual:

> shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.

42 U.S.C. § 12132. The panel concludes that this language obviously and *unambiguously* excludes discrimination in employment from its purview. Yet, there is nothing***1163** in the plain meaning of the words that even suggests, let alone mandates, this result. The words themselves are self-evidently broad and inclusive. There are two clauses; each of which, properly construed, includes a proscription on workplace discrimination.

1. *First Clause*

The first clause bars discrimination in any of the "programs, services, or activities" of a local governmental entity. The plain and ordinary meaning of "activity" clearly does not exclude hiring or employing workers. Indeed, putting people to work is often the chief "activity" of municipalities. Although Title II does not define these terms, the Rehabilitation Act-with which Congress specified that Title II is to be interpreted consistently-does. *See* 42 U.S.C. § 12133 (providing that "remedies, procedures, and rights" under Title II are the same as those provided in § 794a of the Rehabilitation Act); 42 U.S.C. § 12134 (providing that Title II should be interpreted consistently with regulations under the Rehabilitation Act). Section 508 of the Rehabilitation Act defines "program or activity" as "all of the operations" of the governmental entity. 29 U.S.C. 794(b); *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 44 (2d Cir.1997) (holding that "activity" under Title II has same meaning as "activity" under the Rehabilitation Act and includes all operations of the entity).

Furthermore, the Supreme Court has specifically interpreted the "programs and activities" language in the Rehabilitation Act to include employment, and thus to bar employment discrimination. *Consolidated Rail v. Darrone*, 465 U.S. 624, 631-34, 104 S.Ct. 1248, 79 L.Ed.2d 568 (1984). The language at issue here (Title

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II) is unquestionably *broader* than that in *Consolidated Rail,* particularly as Title II, unlike the Rehabilitation Act, contains an independent discrimination clause banning all discrimination, in addition to the clause which the Supreme Court construed: the "programs and activities" provision that is common to both statutes. Thus, there can be no justification for concluding, as the panel does, that Title II is somehow *narrower.* Indeed, applying Title II to discrimination in employment, the Fourth Circuit concluded that the same standard applies to employment discrimination actions brought under Title II and the Rehabilitation Act, because, as Judge Wilkins wrote for the court, in an opinion joined by Judges Wilkinson and Luttig, "the language of the Rehabilitation Act and Title II is substantially the same." *Doe v. University of Maryland Medical Sys. Corp.,* 50 F.3d 1261, 1264 (4th Cir.1995). Moreover, the ADA contains a further provision stating that "nothing in this chapter [the ADA] shall be construed to apply a lesser standard than the standards applied under Title V of the Rehabilitation Act of 1973" or the regulations issued by Federal agencies pursuant to such title. 42 U.S.C. § 12201(a). Where, as here, the language is not only similar, but indeed broader, it must be accorded at a minimum the same meaning-i.e., prohibiting employment discrimination.

The panel attempts to distinguish the Supreme Court decision in *Consolidated Rail* by pointing out that the Rehabilitation Act, unlike the ADA, was limited to those governmental entities receiving federal funds. Thus, according to the panel, the Supreme Court interpreted the Rehabilitation Act to bar employment discrimination because it was possible that federal funds "may well flow into compensation for employees." The panel overlooks the fact, however, that in *Consolidated Rail,* the Supreme Court expressly rejected the argument that Congress was concerned about whether the federal funds were to be used to promote employment, and instead said that the Act was intended to "prohibit[ ] employment discrimination regardless of the purpose of federal financial assistance." 465 U.S. at 632, 104 S.Ct. 1248.

Despite the overwhelming legal authority that the phrase "services, programs, and activities" under Title II is to be interpreted*1164 consistently with the phrase "programs and activities" under the Rehabilitation Act, and thus to include employment discrimination, the panel arrives at precisely the opposite conclusion. In so doing, the panel rests its determination almost entirely on an erroneous and non-existent dichotomy between "inputs" and "outputs," asserting that employment is in the former category, while "programs, services, or activities" fall within the latter.

The distinction between "inputs" and "outputs" finds no support whatever in the statutory language (or in the legislative or administrative history). Indeed, the approach was first concocted by a district court in Florida in a decision that has since been reversed in an Eleventh Circuit opinion holding that Title II *does* apply to employment discrimination. *See Bledsoe v. Palm Beach Soil and Water Conservation Dist.,* 942 F.Supp. 1439, 1443 (S.D.Fla.1996), *rev'd,* 133 F.3d 816 (11th Cir.1998).[FN2] The input-output format adopted by the panel will plunge district courts, and this court as well, into the impossible task of categorizing municipal and state functions and activities into two newly created categories-inputs and outputs-categories heretofore unknown to Congress or the affected administrative agencies, to local or state governments, or to the federal or state courts, with no standards or definitions to guide the entities or parties involved. In any event, it is certainly hard to find "inputs" and "outputs" in the plain meaning of Title II.

> FN2. The input-output distinction was also adopted by a district court in Texas, *see Decker,* 970 F.Supp. at 578, but that decision was subsequently implicitly overruled by the Fifth Circuit when it applied Title II to discrimination in employment. *See Holmes v. Texas A & M University,* 145 F.3d 681, 684 (5th Cir.1998).

In reaching its decision that the plain meaning of Title II excludes discrimination in employment from its coverage, the panel also ignores the A.D.A.'s clear command that Title II be interpreted consistently with the regulations issued under the Rehabilitation Act. 42 U.S.C. § 12134. The particular regulations specified in the text of the statute include specific prohibitions against employment discrimination. The panel refused, however, to consider that statutory command as evidence that Title II prohibits employment discrimination because, it said, "employment is but one" of the topics covered by the regulations. Slip Op. at 2348. The panel does not, however, offer any reason why that fact should justify ignoring the specific statutory

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requirement that those particular regulations affecting employment discrimination be made applicable. Similarly, the panel refuses to give effect to the statute's directive in § 12133 that the "remedies, procedures, and *rights* " under Title II shall be identical with those under § 504 of the Rehabilitation Act. The referenced section of the Rehabilitation Act, in turn, provides that the "remedies, procedures, and *rights* [of Title VI of the Civil Rights Act] shall be available to any *employee or applicant for employment* ...." 29 U.S.C. 794a (emphasis added). The panel concludes that this plain language does not demonstrate a congressional intent to grant victims of employment discrimination a cause of action, i.e. *rights,* under Title II because that section of the Rehabilitation Act deals only with "procedural" rights. This reasoning completely ignores the fact that the rights addressed are those of "any employee or applicant for employment." In this circumstance, it is irrelevant whether the rights are viewed as "procedural" or "substantive," although it is difficult, in any event, to comprehend why the panel concludes that they are plainly only procedural.

2. *Second Clause*

The plain meaning of the second clause of § 12132 even more clearly encompasses employment discrimination-if that is possible. The second clause is separated from the first by a comma followed by "*or* be subjected to discrimination by any such entity." The second and independent clause, like the first, does not contain any language which limits it to an "outward" ***1165** focus; nor does its language *in any way* limit the flat and unqualified statutory prohibition against discrimination by any public entity. Certainly, nothing in the statutory language purports to exclude discrimination in employment. To the contrary, the second clause plainly and unequivocally prohibits covered entities from engaging in any discrimination. The panel, however, concludes that the second clause also applies only to discrimination in the provision of "services, programs, and activities" and cites *Crowder v. Kitagawa,* 81 F.3d 1480 (9th Cir.1996), for support. *Crowder* in no way supports the panel's opinion; indeed, it is pertinent only to the extent that it emphasizes the "or" that separates the two independent clauses, and the substantive differences in congressional intent with respect to these clauses. The only issue in *Crowder* was whether discrimination with respect to "services, programs, and activities" need be direct and intentional, and the court said, "no," a holding of no relevance here.

The proper construction of the second clause was afforded it by both the Eleventh and the Second Circuits. In *Bledsoe,* the Eleventh Circuit wrote:

As the Second Circuit found in *Innovative Health Systems, Inc. v. City of White Plains,* 117 F.3d 37, 44-45 (2d Cir.1997), "the language of Title II's anti-discrimination provision does not limit the ADA's coverage to conduct that occurs in the 'programs, services, or activities' of [a public entity]. Rather, it is a catch-all phrase that prohibits all discrimination by a public entity, regardless of the context,...." Accordingly, employment coverage is clear from the language and structure of Title II.

Bledsoe, 133 F.3d at 821. To conclude that the panel clearly erred in holding that the plain meaning of Title II is that it is inapplicable to discrimination in employment, we need only look to what the Second and Eleventh Circuits have unequivocally stated regarding the Title's second and independent clause. "It is a catch-all phrase that prohibits all discrimination by a public entity, regardless of the context...." *Id.*

The panel supports its niggardly construction of the second clause by suggesting that Title II's definition of "qualified individual with a disability" somehow excludes coverage for employment discrimination. Its argument essentially is that the definition of that term in 42 U.S.C. § 12131(2) necessarily limits Title II's coverage to "services, programs or activities." Slip Op. at 2338-39. There are two obvious problems with this argument. First, it would read the second clause of § 12132-"or be subjected to discrimination"-entirely out of the statute and render it redundant. Second, as noted above, both Congress and the Supreme Court have already made it absolutely clear that programs and activities as used in the Rehabilitation Act-with which the ADA is to be interpreted consistently, *see Bay Area Addiction Research and Treatment, Inc. v. City of Antioch,* 179 F.3d 725, 730 (9th Cir.1999), *does* cover employment. At most, the definition of a disabled person in the definition section of Title II raises a question, or creates an ambiguity, regarding the meaning of Title II's language. It does not in any way "plainly" exclude employment discrimination from the purview of a statute that, on its face, clearly covers it.

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As the Eleventh Circuit concluded in *Bledsoe:* "Accordingly, employment coverage is clear from the language and structure of Title II." *Id.* In sum, the plain language of Title II prohibiting "discrimination," coupled with the plain language of other parts of Title II that incorporate by reference parts of the Rehabilitation Act, demonstrates that Congress unambiguously intended to include, and did include, employment discrimination within the scope of Title II. Such coverage is provided for in the plain language of both the first and the second clauses of § 12132, as indeed are all forms of discrimination by public entities. Thus, the panel's conclusion that the plain meaning of the statute ***1166** compels the opposite result-that Title II *excludes* employment discrimination from its coverage-is to misread the statutory language completely.

3. *Structure*

The panel states that Title I of the ADA prohibits discrimination in employment, and then treats Titles I and II as necessarily mutually exclusive, although other circuits have consistently construed them as overlapping. *See e.g., Bledsoe,* 133 F.3d at 820. In insisting on a necessary mutual exclusivity, the panel ignores the plain statutory language of Title II and relies on an entirely unsupportable theory that applying Title II to employment discrimination would render Title I superfluous. In this respect as well, the panel clearly errs. There are differences in the scope of coverage of employment discrimination under Title I and Title II (Title I covers employers with 15 or more employees, while Title II covers all public employers, regardless of size), the two Titles evolved from different civil rights laws (Title I is modeled on Title VII of the 1964 Civil Rights Act, while Title II is modeled on the Rehabilitation Act and Title VI of the 1964 Civil Rights Act), and there is a difference in the forms of relief (compensatory and punitive damages are available under Title I, but may not be under Title II), and the procedures to be followed (administrative exhaustion is required under Title I but not under Title II). Thus, the provisions of the two Titles are not coextensive; although both apply to employment, neither is redundant.

Congress's decision to provide two approaches to remedying discrimination in employment in one complex disability statute has caused some to question the wisdom of its policy and its rationale. It is, of course, not our function to do so. *See United States v. Burdeau,* 180 F.3d 1091, 1092-93 (9th Cir.1999) (Kozinski, J., dissenting from the order rejecting the suggestion for rehearing en banc). In any event, if the fact that two Titles appear to address the same general area of discrimination raises some doubt about the meaning of one or both Titles, the statute is, at most, ambiguous, and it is the unequivocal legislative history to which we must turn.

Before doing so, I would add that the panel acted properly in examining the statute's structure and the statute as a whole, as well as the statutory objectives and policies, *if* it believed that its effort to determine Title II's plain meaning would benefit from such an examination. See *Northwest Forest Resource Council v. Glickman,* 82 F.3d 825, 830 (9th Cir.1996). The problem here, in part, is that its examination led it to the wrong result. The statutory structure does not support the panel's conclusion; nor does the statute as a whole. A careful examination merely tells us that the statute contains overlapping Titles. More significantly, the statute's objectives and policies not only do not support the holding the panel reaches, but compel the opposite result. Nowhere in its opinion does the panel suggest, nor could it, that any policy or objective of the ADA argues for limiting any of its provisions, including Title II, so as to exclude employment discrimination. To the contrary, the policies and objectives of the act were to eradicate all discrimination against the disabled by public entities in every area, including employment discrimination. It is a generous rather than a stingy reading of Title II that furthers the ADA's policies and objectives.

4. *Summary*

If anything is clear about this case, it is that the plain meaning of the statute is not what the panel says it is. No matter how apparent it may be that particular statutory language provides "X", a court can determine, if it chooses, that the statute does not provide "X"; and indeed, that "X" has nothing whatever to do with it. It can do so by holding that the statutory language plainly says what it plainly does not. A court can announce that the word "dog" plainly means "cat" if a panel so chooses, and a majority of eligible active judges then elects not to take the case en banc.

***1167** That is what happened here: Congress, by plain language (or "wording" as the panel insists on putting

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it) provided disabled persons with a Title II remedy for discrimination in public employment. The panel then held that the plain meaning of the statute is that it did not, and a majority of our active judges has now seen fit to allow the panel's erroneous pronouncement to stand.

What the panel and our court have done is of course not unique. Courts have in the past chosen on various occasions to read statutes as having precisely the opposite meaning from that dictated by the statutes' plain language. Even the Constitution has been the victim of this odd interpretive technique. The most prominent example is the perverse interpretation given to the Eleventh Amendment in *Hans v. Louisiana,* 134 U.S. 1, 14, 10 S.Ct. 504, 33 L.Ed. 842 (1890). There, the Court read the plain language of the Amendment, which stated that the federal courts lack jurisdiction to consider suits brought against a state by "*citizens of another state*" as having almost precisely the opposite meaning: that federal courts lack jurisdiction over suits brought against a state by *citizens of the same state.* The Court rejected the plaintiff's appeal to the plain language of the amendment as "an attempt to strain the constitution and the law to a construction never imagined or dreamed of." Justice Bradley, writing for the majority, declined even to give any policy justifications for the decision to ignore what he called "the letter" of the law, saying "it is enough for us to declare" a contrary rule. *Id.* at 18-19, 10 S.Ct. at 508. This ostensibly "plain" meaning was reaffirmed by a divided Supreme Court in 1987. *See Welch v. Texas Dept. of Highways and Public Transportation,* 483 U.S. 468, 492, 107 S.Ct. 2941, 97 L.Ed.2d 389 (1987) (declining to overrule Hans on the basis of stare decisis). Today, this contrarian "construction" of the Eleventh Amendment's plain language lies at the heart of federalism's recent resurgence. *See Alden v. Maine,* 527U.S. 706, ----, 119 S.Ct. 2240, 2252, 144 L.Ed.2d 636 (1999) (following *Hans* in declining to "adher[e] to the mere letter" of the Eleventh Amendment).

Hans and other cases involving judicial failures to respect the plain meaning of words contained in the Constitution or in statutes do not, of course, excuse what our court does today. To the contrary, this latest example should cause great concern to those who volubly proclaim their fear that federal judges do not demonstrate sufficient respect for the decisions of other branches of government or for the Constitution's framers. Whether a congressionally granted right is invalidated under the guise of statutory construction or by reliance on a Constitutional doctrine conjured up by the judiciary, the result is the same; the will of the people has been improperly frustrated.

B. *Legislative History*

The panel is compelled to rely on "plain language" that is nowhere to be found in the statute because the legislative history of Title II overwhelmingly confirms that Congress did indeed intend to ban employment discrimination in Title II. If the statute were ambiguous-and that is the best that the panel could legitimately hope to prove by its wording and structure arguments-the legislative history would be dispositive. The House Judiciary Committee Report states that "in the area of employment, title II incorporates" the regulations under the Rehabilitation Act. H.R.Rep. No. 101-485(III) (1990). The House Report also states that Title II is intended to prohibit forms of discrimination "identical" to those contained in Title I-which deals exclusively with employment discrimination-and that it is to "work in the same manner as section 504" of the Rehabilitation Act, which also prohibits employment discrimination. *Id.* at 84. Likewise, the Senate Labor Committee Report states that employment discrimination is prohibited by Title II: "The existence of non-disability related factors ***1168** in the rejection decisions does not immunize employers" making adverse hiring determinations. S.Rep. No. 116, 101st Cong., 1st Sess., at 45 (1989). As the Eleventh Circuit observed in *Bledsoe,* "[e]xtensive legislative commentary regarding the applicability of Title II to employment discrimination ... is so pervasive as to belie any contention that Title II does not apply to employment actions." 133 F.3d at 821.

The panel's opinion never even acknowledges the existence of these authoritative Committee Reports and the clear evidence of congressional intent. The panel insists instead that the language and structure of the law unambiguously makes clear that Title II excludes "employment" discrimination from its scope. The reason the panel does not go beyond this point is evident. Unless the panel can base its decision on its argument that the plain language of the statute excludes employment discrimination from the coverage afforded by Title II, the argument is over. If the ADA is "ambiguous," then in light of the legislative history,

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Title II *must* be held to cover employment discrimination.

C. *Chevron Deference*

The panel is compelled to rely exclusively on its argument that Title II plainly and unambiguously excludes discrimination in employment for another reason as well. If the statute does not by its plain language compel exclusion of employment discrimination, and it is instead found to be ambiguous, *Chevron* deference also requires that we hold that Title II does indeed prohibit employment discrimination. Congress delegated enforcement of Title II to the Department of Justice, and directed it to promulgate regulations consistent with the regulations implementing the Rehabilitation Act. 42 U.S.C. § 12134. Moreover, as the House Judiciary Committee Report states, the Department of Justice was directed to specify the interpretation of the forms of prohibited discrimination where ambiguity existed and interpretation was required.

Unlike the other Titles in this Act, title II does not list all of the forms of discrimination that the title is intended to prohibit. Thus, the purpose of this section is to direct the Attorney General to issue regulations setting forth the forms of discrimination prohibited. The Committee intends that the regulations under Title II incorporate interpretations of the term discrimination set forth in Titles I and III of the ADA to the extent that they do not conflict with section 504 regulations.

H.R.Rep. No. 485(III), 101st Cong., 2d Sess., at 52 (1989). This language was used in both the Judiciary and Education Committee Reports.

The Department of Justice, acting pursuant to this clear congressional command, issued regulations that straightforwardly apply Title II to employment discrimination. 28 C.F.R. pt. 35, App. A ("Title II of the ADA applies to all activities of public entities, including their employment practices."); 28 C.F.R. § 35.140(a) ("No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity."). If it is not plain from the language, structure, and legislative history that Congress intended to apply Title II to public employment, then, at the very least, it is uncertain whether or not it intended to do so. In such cases, the Department of Justice was authorized to fill in the gaps. The Department's interpretation is neither arbitrary nor manifestly contrary to the statute. Instead, these regulations faithfully adhere to Congress's intent, are well within the agency's discretion, and are thus controlling.

D. *Conclusion*

The plain language of the statute conclusively demonstrates that, as every other circuit to have considered the issue has concluded, Title II applies to employment discrimination. Both major clauses of the provision independently proscribe such discrimination. At the very least, the statute is ambiguous, and in that event, ***1169** both the unequivocal legislative history and the uniform Department of Justice's regulatory interpretations, to which we must give deference, compel the conclusion that Title II applies to employment discrimination. Unquestionably, that is what Congress intended, and that is what the other circuit courts have readily understood. Here, the panel made a serious error of law in a case of great significance, where uniformity is necessary. Its holding that the plain language of Title II *excludes* employment discrimination is simply contrary to the applicable rules and precepts of statutory construction, as well as to all prior caselaw in the circuit courts. For these reasons, I dissent.

C.A.9,1999.
Zimmerman v. Oregon Dept. of Justice
183 F.3d 1161, 9 A.D. Cases 954, 16 NDLR P 28, 99 Cal. Daily Op. Serv. 5976, 1999 Daily Journal D.A.R. 7637

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C
United States Code Annotated Currentness
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement (Refs & Annos)

➡ AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

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<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Constitution of the State of California 1879 (Refs & Annos)
Article I. Declaration of Rights (Refs & Annos)

→ § 31. Discrimination based on race, sex, color, ethnicity, or national origin; gender-based qualifications in public employment, education, or contracting

Sec. 31. (a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(b) This section shall apply only to action taken after the section's effective date.

(c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(d) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.

(f) For the purposes of this section, "state" shall include, but not necessarily be limited to, the state itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

(g) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing California antidiscrimination law.

(h) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

CREDIT(S)

(Added by Initiative Measure (Prop. 209, approved Nov. 5, 1996).)

Current with all 2009 Reg.Sess. laws; all 2009-2010 1st through 5th, 7th, and 8th Ex.Sess. laws; urgency legislation through Ch. 70 of the 2010 Reg.Sess.; and propositions on the 6/8/2010 ballot.

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C

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 20. Education
Chapter 38. Discrimination Based on Sex or Blindness (Refs & Annos)
➡ **§ 1681. Sex**

(a) Prohibition against discrimination; exceptions

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition

in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admissions

in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets

this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which

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is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices--

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences

this section shall not apply to--

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for--

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) Institution of higher education scholarship awards in "beauty" pageants

this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any

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community, State, section, or other area: *Provided,* That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) "Educational institution" defined

For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

CREDIT(S)

(Pub. L. 92-318, Title IX, § 901, June 23, 1972, 86 Stat. 373; Pub. L. 93-568, § 3(a), Dec. 31, 1974, 88 Stat. 1862; Pub. L. 94-482, Title IV, § 412(a), Oct. 12, 1976, 90 Stat. 2234; Pub. L. 96-88, Title III, § 301(a)(1), Title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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C

Effective: [See Text Amendments]

United States Code Annotated Currentness
Title 20. Education
Chapter 38. Discrimination Based on Sex or Blindness (Refs & Annos)
§ 1682. Federal administrative enforcement; report to Congressional committees

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

CREDIT(S)

(Pub. L. 92-318, Title IX, § 902, June 23, 1972, 86 Stat. 374.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Effective: January 8, 2002

United States Code Annotated Currentness
Title 20. Education
Chapter 38. Discrimination Based on Sex or Blindness (Refs & Annos)
➡ § 1687. Interpretation of "➡ program or activity"

For the purposes of this chapter, the term "program or activity" and "program" mean [FN1] all of the operations of--

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of this title), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization.

CREDIT(S)

(Pub.L. 92-318, Title IX, § 908, as added Pub.L. 100-259, § 3(a), Mar. 22, 1988, 102 Stat. 28, and amended Pub.L. 103-382, Title III, § 391(g), Oct. 20, 1994, 108 Stat. 4023; Pub.L. 107-110, Title X, § 1076(j), Jan. 8, 2002, 115 Stat. 2091.)

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[FN1] So in original. Probably should be "means".

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Effective: August 7, 1998

United States Code Annotated Currentness
Title 29. Labor
Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)
General Provisions (Refs & Annos)
§ 701. Findings; purpose; policy

(a) Findings

Congress finds that--

(1) millions of Americans have one or more physical or mental disabilities and the number of Americans with such disabilities is increasing;

(2) individuals with disabilities constitute one of the most disadvantaged groups in society;

(3) disability is a natural part of the human experience and in no way diminishes the right of individuals to--

(A) live independently;

(B) enjoy self-determination;

(C) make choices;

(D) contribute to society;

(E) pursue meaningful careers; and

(F) enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society;

(4) increased employment of individuals with disabilities can be achieved through implementation of statewide workforce investment systems under title I of the Workforce Investment Act of 1998 [29 U.S.C.A. § 2801 et seq.] that provide meaningful and effective participation for individuals with disabilities in workforce investment activities and activities carried out under the vocational rehabilitation program established under subchapter I of this chapter, and through the provision of independent living services, support services, and meaningful opportunities for employment in integrated work settings through the provision of reasonable accommodations;

(5) individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services; and

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(6) the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to--

(A) make informed choices and decisions; and

(B) achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals.

(b) Purpose

The purposes of this chapter [29 U.S.C.A. § 701 et seq.] are--

(1) to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through--

(A) statewide workforce investment systems implemented in accordance with title I of the Workforce Investment Act of 1998 [29 U.S.C.A. § 2801 et seq.] that include, as integral components, comprehensive and coordinated state-of-the-art programs of vocational rehabilitation;

(B) independent living centers and services;

(C) research;

(D) training;

(E) demonstration projects; and

(F) the guarantee of equal opportunity; and

(2) to ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, and in assisting States and providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful and gainful employment and independent living.

(c) Policy

It is the policy of the United States that all programs, projects, and activities receiving assistance under this chapter [29 U.S.C.A. § 701 et seq.] shall be carried out in a manner consistent with the principles of--

(1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;

(2) respect for the privacy, rights, and equal access (including the use of accessible formats), of the individuals;

(3) inclusion, integration, and full participation of the individuals;

(4) support for the involvement of an individual's representative if an individual with a disability requests, desires, or needs such support; and

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(5) support for individual and systemic advocacy and community involvement.

CREDIT(S)

(Pub.L. 93-112, § 2, as added Pub.L. 105-220, Title IV, § 403, Aug. 7, 1998, 112 Stat. 1095; Pub.L. 105-277, Div. A, § 101(f) [Title VIII, § 402(b)(2)], Oct. 21, 1998, 112 Stat. 2681-413.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Effective: January 8, 2002

United States Code Annotated Currentness
Title 29. Labor
Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)
Subchapter V. Rights and Advocacy (Refs & Annos)

§ 794. Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of--

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of Title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is

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extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 to 12204 and 12210), as such sections relate to employment.

CREDIT(S)

(Pub.L. 93-112, Title V, § 504, Sept. 26, 1973, 87 Stat. 394; Pub.L. 95-602, Title I, §§ 119, 122(d)(2), Nov. 6, 1978, 92 Stat. 2982, 2987; Pub.L. 99-506, Title I, § 103(d)(2)(B), Title X, § 1002(e)(4), Oct. 21, 1986, 100 Stat. 1810, 1844; Pub.L. 100-259, § 4, Mar. 22, 1988, 102 Stat. 29; Pub.L. 100-630, Title II, § 206(d), Nov. 7, 1988, 102 Stat. 3312; Pub.L. 102-569, Title I, § 102(p)(32), Title V, § 506, Oct. 29, 1992, 106 Stat. 4360, 4428; Pub.L. 103-382, Title III, § 394(i)(2), Oct. 20, 1994, 108 Stat. 4029; Pub.L. 105-220, Title IV, § 408(a)(3), Aug. 7, 1998, 112 Stat. 1203; Pub.L. 107-110, Title X, § 1076(u)(2), Jan. 8, 2002, 115 Stat. 2093.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 76. Age Discrimination in Federally Assisted Programs (Refs & Annos)
➡ **§ 6101. Statement of purpose**

It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

CREDIT(S)

(Pub.L. 94-135, Title III, § 302, Nov. 28, 1975, 89 Stat. 728; Pub.L. 95-478, Title IV, § 401(a), Oct. 18, 1978, 92 Stat. 1555; Pub.L. 99-272, Title XIV, § 14001(b)(4), Apr. 7, 1986, 100 Stat. 329.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 76. Age Discrimination in Federally Assisted Programs (Refs & Annos)
§ 6102. Prohibition of discrimination

Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6103(b) and section 6103(c) of this title, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

CREDIT(S)

(Pub.L. 94-135, Title III, § 303, Nov. 28, 1975, 89 Stat. 728.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Effective: October 21, 1998

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 76. Age Discrimination in Federally Assisted Programs (Refs & Annos)
§ 6103. Regulations

(a) Publication in Federal Register of proposed general regulations, final general regulations, and anti-discrimination regulations; effective date

(1) Not later than one year after the transmission of the report required by section 6106(b) of this title, or two and one-half years after November 28, 1975, whichever occurs first, the Secretary of Health and Human Services shall publish in the Federal Register proposed general regulations to carry out the provisions of section 6102 of this title.

(2)(A) The Secretary shall not publish such proposed general regulations until the expiration of a period comprised of--

(i) the forty-five day period specified in section 6106(e) of this title; and

(ii) an additional forty-five day period, immediately following the period described in clause (i), during which any committee of the Congress having jurisdiction over the subject matter involved may conduct hearings with respect to the report which the Commission is required to transmit under section 6106(d) of this title, and with respect to the comments and recommendations submitted by Federal departments and agencies under section 6106(e) of this title.

(B) The forty-five day period specified in subparagraph (A)(ii) shall include only days during which both Houses of the Congress are in session.

(3) Not later than ninety days after the Secretary publishes proposed regulations under paragraph (1), the Secretary shall publish in the Federal Register final general regulations to carry out the provisions of section 6102 of this title, after taking into consideration any comments received by the Secretary with respect to the regulations proposed under paragraph (1).

(4) Not later than ninety days after the Secretary publishes final general regulations under paragraph (a)(3), the head of each Federal department or agency which extends Federal financial assistance to any program or activity by way of grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to the Secretary and publish in the Federal Register proposed regulations to carry out the provisions of section 6102 of this title and to provide appropriate investigative, conciliation, and enforcement procedures. Such regulations shall be consistent with the final general regulations issued by the Secretary, and shall not become effective until approved by the Secretary.

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section shall be effective before July 1, 1979.

(b) Nonviolative actions; program or activity exemption

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(1) It shall not be a violation of any provision of this chapter, or of any regulation issued under this chapter, for any person to take any action otherwise prohibited by the provisions of section 6102 of this title if, in the program or activity involved--

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this chapter shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.

(c) Employment practices and labor-management joint apprenticeship training program exemptions; Age Discrimination in Employment Act unaffected

(1) Nothing in this chapter shall be construed to authorize action under this chapter by any Federal department or agency with respect to any employment practice of any employer, employment agency, or labor organization, or with respect to any labor-management joint apprenticeship training program.

(2) Nothing in this chapter shall be construed to amend or modify the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634), as amended, or to affect the rights or responsibilities of any person or party pursuant to such Act.

CREDIT(S)

(Pub.L. 94-135, Title III, § 304, Nov. 28, 1975, 89 Stat. 729; Pub.L. 95-478, Title IV, § 401(b), Oct. 18, 1978, 92 Stat. 1555; Pub.L. 96-88, Title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub.L. 97-300, Title I, § 183, Oct. 13, 1982, 96 Stat. 1357; Pub.L. 105-277, Div. A, § 101(f) [Title VIII, § 405(d)(37)], Oct. 21, 1998, 112 Stat. 2681-427.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Effective: January 1, 2009

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)
Subchapter I. Employment (Refs & Annos)
→ § 12111. Definitions

As used in this subchapter:

(1) Commission

The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

(2) Covered entity

The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat

The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee

The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer

(A) In general

The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term "employer" does not include--

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(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of Title 26.

(6) Illegal use of drugs

(A) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C.A. § 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C.A. § 812].

(7) Person, etc.

The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual

The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term "reasonable accommodation" may include--

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

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The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include--

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

CREDIT(S)

(Pub.L. 101-336, Title I, § 101, July 26, 1990, 104 Stat. 330; Pub.L. 102-166, Title I, § 109(a), Nov. 21, 1991, 105 Stat. 1077; Pub.L. 110-325, § 5(c)(1), Sept. 25, 2008, 122 Stat. 3557.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Effective: January 1, 2009

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)
Subchapter I. Employment (Refs & Annos)
§ 12112. Discrimination

(a) General rule

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a) of this section, the term "discriminate against a qualified individual on the basis of disability" includes--

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration--

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the

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physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on--

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control,

of the employer and the corporation.

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(d) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if--

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that--

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to

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whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

CREDIT(S)

(Pub.L. 101-336, Title I, § 102, July 26, 1990, 104 Stat. 331; Pub.L. 102-166, Title I, § 109(b)(2), Nov. 21, 1991, 105 Stat. 1077; Pub.L. 110-325, § 5(a), Sept. 25, 2008, 122 Stat. 3557.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)
Subchapter I. Employment (Refs & Annos)
§ 12115. Posting notices

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e-10 of this title.

CREDIT(S)

(Pub.L. 101-336, Title I, § 105, July 26, 1990, 104 Stat. 336.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Title 42. The Public Health and Welfare
Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)
Subchapter I. Employment (Refs & Annos)
→ § 12117. Enforcement

(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C.A. § 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed.Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

CREDIT(S)

(Pub.L. 101-336, Title I, § 107, July 26, 1990, 104 Stat. 336.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)
Subchapter II. Public Services (Refs & Annos)
Part A. Prohibition Against Discrimination and Other Generally Applicable Provisions
§ 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

CREDIT(S)

(Pub.L. 101-336, Title II, § 202, July 26, 1990, 104 Stat. 337.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Title 42. The Public Health and Welfare
Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)
Subchapter II. Public Services (Refs & Annos)
Part A. Prohibition Against Discrimination and Other Generally Applicable Provisions
→ **§ 12131. Definitions**

As used in this subchapter:

(1) Public entity

The term "public entity" means--

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of Title 49).

(2) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

CREDIT(S)

(Pub.L. 101-336, Title II, § 201, July 26, 1990, 104 Stat. 337.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter IV. Public Education (Refs & Annos)
→ § 2000c-6. Civil actions by the Attorney General

(a) Complaint; certification; notice to school board or college authority; institution of civil action; relief requested; jurisdiction; transportation of pupils to achieve racial balance; judicial power to insure compliance with constitutional standards; impleading additional parties as defendants

Whenever the Attorney General receives a complaint in writing--

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings

The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) "Parent" and "complaint" defined

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The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, Title 18.

CREDIT(S)

(Pub.L. 88-352, Title IV, § 407, July 2, 1964, 78 Stat. 248; Pub.L. 92-318, Title IX, § 906(a), June 23, 1972, 86 Stat. 375.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter V. Federally Assisted Programs (Refs & Annos)

➡ § 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

CREDIT(S)

(Pub.L. 88-352, Title VI, § 601, July 2, 1964, 78 Stat. 252.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Title 42. The Public Health and Welfare
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Subchapter V. Federally Assisted Programs (Refs & Annos)

→ § 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

CREDIT(S)

(Pub.L. 88-352, Title VI, § 602, July 2, 1964, 78 Stat. 252.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter V. Federally Assisted Programs (Refs & Annos)

→ § 2000d-3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

CREDIT(S)

(Pub.L. 88-352, Title VI, § 604, July 2, 1964, 78 Stat. 253.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter VI. Equal Employment Opportunities (Refs & Annos)
→ § 2000e. Definitions

For the purposes of this subchapter--

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization--

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C.A. § 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C.A. § 151 et seq.];

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(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C.A. § 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C.A. § 1331 et seq.].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

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(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title.

CREDIT(S)

(Pub.L. 88-352, Title VII, § 701, July 2, 1964, 78 Stat. 253; Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 662; Pub.L. 92-261, § 2, Mar. 24, 1972, 86 Stat. 103; Pub.L. 95-555, § 1, Oct. 31, 1978, 92 Stat. 2076; Pub.L. 95-598, Title III, § 330, Nov. 6, 1978, 92 Stat. 2679; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 102-166, Title I, §§ 104, 109(a), Nov. 21, 1991, 105 Stat. 1074, 1077.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter VI. Equal Employment Opportunities (Refs & Annos)
→ § 2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization--

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

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It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C.A. § 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if--

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of

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production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29.

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if--

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

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(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C.A. § 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws--

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had--

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to--

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of

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parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of Title 28.

CREDIT(S)

(Pub.L. 88-352, Title VII, § 703, July 2, 1964, 78 Stat. 255; Pub.L. 92-261, § 8(a), (b), Mar. 24, 1972, 86 Stat. 109; Pub.L. 102-166, Title I, §§ 105(a), 106, 107(a), 108, Nov. 21, 1991, 105 Stat. 1074-1076.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter VI. Equal Employment Opportunities (Refs & Annos)
→ **§ 2000e-4. Equal Employment Opportunity Commission**

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of Title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of Title 5.

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) Exercise of powers during vacancy; quorum

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A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) Seal; judicial notice

The Commission shall have an official seal which shall be judicially noticed.

(e) Reports to Congress and the President

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) Principal and other offices

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) Powers of Commission

The Commission shall have power--

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e-5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities

(1) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

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(2) In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to--

(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination,

concerning rights and obligations under this subchapter or such law, as the case may be.

(i) Personnel subject to political activity restrictions

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of Title 5, notwithstanding any exemption contained in such section.

(j) Technical Assistance Training Institute

(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

(2) An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

(k) EEOC Education, Technical Assistance, and Training Revolving Fund

(1) There is hereby established in the Treasury of the United States a revolving fund to be known as the "EEOC Education, Technical Assistance, and Training Revolving Fund" (hereinafter in this subsection referred to as the "Fund") and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

(2)(A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such fees for any education, technical assistance, or training--

(i) shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,

(ii) shall not exceed the cost of providing such education, assistance, and training, and

(iii) with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

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(C) The Commission shall include in each report made under subsection (e) of this section information with respect to the operation of the Fund, including information, presented in the aggregate, relating to--

(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,

(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and

(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund $1,000,000 from the Salaries and Expenses appropriation of the Commission.

CREDIT(S)

(Pub.L. 88-352, Title VII, § 705, July 2, 1964, 78 Stat. 258; Pub.L. 92-261, § 8(d)-(f), Mar. 24, 1972, 86 Stat. 109, 110; Pub.L. 93-608, § 3(1), Jan. 2, 1975, 88 Stat. 1972; Pub.L. 95-251, § 2(a)(11), Mar. 27, 1978, 92 Stat. 183; Pub.L. 102-166, Title I, §§ 110(a), 111, Nov. 21, 1991, 105 Stat. 1078; Pub.L. 102-411, § 2, Oct. 14, 1992, 106 Stat. 2102; Pub.L. 104-66, Title II, § 2031, Dec. 21, 1995, 109 Stat. 728.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Effective:[See Notes]

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter VI. Equal Employment Opportunities (Refs & Annos)
§ 2000e-5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

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In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) [FN1] of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this subchapter, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

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(B) In addition to any relief authorized by section 1981a of this title, liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial

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district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2)(A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court--

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of Title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of Title 29 shall not apply with respect to civil actions brought under this section.

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(i) Proceedings by Commission to compel compliance with judicial orders

In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28.

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

CREDIT(S)

(Pub.L. 88-352, Title VII, § 706, July 2, 1964, 78 Stat. 259; Pub.L. 92-261, § 4, Mar. 24, 1972, 86 Stat. 104; Pub.L. 102-166, Title I, §§ 107(b), 112, 113(b), Nov. 21, 1991, 105 Stat. 1075, 1078, 1079; Pub.L. 111-2, § 3, Jan. 29, 2009, 123 Stat. 5.)

[FN1] So in original. Probably should be subsection "(b)".

2009 Acts. Pub.L. 111-2, § 6, Jan. 29, 2009, 123 Stat. 7, provided that: "This Act, and the amendments made by this Act [amending this section, 29 U.S.C.A. §§ 626, 633a, and 794a, and 42 U.S.C.A. § 2000e-16, and enacting provisions set out as notes under this section and 42 U.S.C.A. § 2000a], take effect as if enacted on May 28, 2007 and apply to all claims of discrimination in compensation under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), title I and section 503 of the Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12111 et seq. and 42 U.S.C.A. § 12203], and sections 501 and 504 of the Rehabilitation Act of 1973 [29 U.S.C.A. §§ 791, 794], that are pending on or after that date."

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter VI. Equal Employment Opportunities (Refs & Annos)
§ 2000e-8. Investigations

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a charge filed under section 2000e-5 of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed

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description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

CREDIT(S)

(Pub.L. 88-352, Title VII, § 709, July 2, 1964, 78 Stat. 262; Pub.L. 92-261, § 6, Mar. 24, 1972, 86 Stat. 107.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter VI. Equal Employment Opportunities (Refs & Annos)

➡ § 2000e-12. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of Title 5.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

CREDIT(S)

(Pub.L. 88-352, Title VII, § 713, July 2, 1964, 78 Stat. 265.)

Current through P.L. 111-196 (excluding P.L. 111-148, 111-152, 111-159, 111-173, 111-192, and 111-195) approved 7-2-10

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Effective: January 1, 2006

West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 3. Postsecondary Education (Refs & Annos)
Division 7. Community Colleges (Refs & Annos)
Part 47. Students (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)
Article 1. Admission of Students (Refs & Annos)

§ 76001. Admission of special part-time or full-time students; denial of requests for such admission; enrollment priority

(a) The governing board of a community college district may admit to any community college under its jurisdiction as a special part-time or full-time student in any session or term any student who is eligible to attend community college pursuant to Section 48800 or 48800.5.

(b) If the governing board denies a request for a special part-time or full-time enrollment at a community college for a pupil who is identified as highly gifted, the board shall record its findings and the reasons for denial of the request in writing within 60 days. The written recommendation and denial shall be issued at the next regularly scheduled board meeting that falls at least 30 days after the request has been submitted.

(c) The attendance of a pupil at a community college as a special part-time or full-time student pursuant to this section is authorized attendance, for which the community college shall be credited or reimbursed pursuant to Sections 48802 and 76002. Credit for courses completed shall be at the level determined to be appropriate by the school district and community college district governing boards.

(d) For purposes of this section, a special part-time student may enroll in up to, and including, 11 units per semester, or the equivalent thereof, at the community college.

(e) The governing board of a community college district shall assign a low enrollment priority to special part-time or full-time students described in subdivision (a) in order to ensure that these students do not displace regularly admitted students.

CREDIT(S)

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1977, c. 242, § 39, eff. July 7, 1977; Stats.1978, c. 495, p. 1629, § 6; Stats.1981, c. 470, p. 1751, § 112; Stats.1982, c. 251, p. 801, § 8, eff. June 11, 1982; Stats.1983, c. 513, § 2; Stats.1990, c. 1372 (S.B.1854), § 416; Stats.2000, c. 1073 (A.B.2207), § 5; Stats.2003, c. 786 (S.B.338), § 4; Stats.2005, c. 399 (A.B.967), § 2.)

Current with all 2009 Reg.Sess. laws; all 2009-2010 1st through 5th, 7th, and 8th Ex.Sess. laws; urgency legislation through Ch. 70 of the 2010 Reg.Sess.; and propositions on the 6/8/2010 ballot.

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West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 3. Postsecondary Education (Refs & Annos)
Division 7. Community Colleges (Refs & Annos)
Part 48. Community Colleges, Education Programs (Refs & Annos)
Chapter 2. Courses of Study (Refs & Annos)
Article 2. Athletic Programs (Refs & Annos)
→ § 78223. Rules and regulations; eligibility and participation in intercollegiate athletics

The governing board of a community college district may enforce rules and regulations relating to eligibility for and participation in intercollegiate athletics. The rules and regulations may include, but are not limited to, those adopted by a voluntary association, one of whose purposes is to govern intercollegiate athletics among schools and colleges.

CREDIT(S)

(Added by Stats.1981, c. 470, p. 1758, § 160.)

Current with all 2009 Reg.Sess. laws; all 2009-2010 1st through 5th, 7th, and 8th Ex.Sess. laws; urgency legislation through Ch. 70 of the 2010 Reg.Sess.; and propositions on the 6/8/2010 ballot.

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public employers do not discriminate in employment but that effort must also be made to build a community in which opportunity is equalized. It is the intent of the Legislature to require educational agencies to adopt and implement plans for increasing the numbers of women and minority persons at all levels of responsibility.

87101. For the purposes of this article:

(a) "Affirmative action employment program" means planned activities designed to seek, hire, and promote persons who are underrepresented in the work force compared to their number in the population, including handicapped persons, women, and persons of minority racial and ethnic backgrounds. It is a conscious, deliberate step taken by a hiring authority to assure equal employment opportunity for all staff, both certificated and classified. Such programs require the employer to make additional efforts to recruit, employ, and promote members of groups formerly excluded at the various levels of responsibility who are qualified or may become qualified through appropriate training or experience within a reasonable length of time. Such programs should be designed to remedy the exclusion, whatever its cause. Affirmative action requires imaginative, energetic, and sustained action by each employer to devise recruiting, training, and career advancement opportunities which will result in an equitable representation of women and minorities in relation to all employees of such employer.

(b) "Goals and timetables" means projected new levels of employment of women and minority racial and ethnic groups to be attained on an annual schedule, given the expected turnover in the work force and the availability of persons who are qualified or may become qualified through appropriate training or experience within a reasonable length of time. Goals are not quotas or rigid proportions. They should relate both to the qualitative and quantitative needs of the employer.

(c) "Public education agency" means the Office of the Chancellor and the governing board of each community college district in California.

87102. The governing board of each community college district shall submit, not later than January 1, 1980, to the office of the Chancellor of the California Community Colleges an affirmation of compliance with the provisions of this article. The affirmative action employment program shall have goals and timetables for its implementation. The plans shall be a public record within the meaning of the California Public Records Act.

87103. The office of the Chancellor of the California Community Colleges shall render assistance in developing and implementing affirmative action employment programs to community college districts under his jurisdiction.

87104. The office of the Chancellor of the California Community Colleges, out of funds appropriated for such purposes, (1) shall provide assistance to local community colleges in adopting and maintaining high-quality affirmative action programs; (2) report to

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature hereby finds and declares that numerous provisions of the Education Code, including those provisions listed in subdivision (b), authorizing community colleges to conduct various activities are unnecessary in light of Section 14 of Article IX of the California Constitution. Section 14 of Article IX of the California Constitution authorizes community college districts to initiate and carry out any activity which is not in conflict with, or inconsistent with, or preempted by any law, and which is not in conflict with the purposes for which community college districts are established.

(b) The Legislature finds and declares that the purpose of this act is to repeal or make inapplicable to the community colleges numerous Education Code provisions which are no longer necessary in light of the authority of Section 14 of Article IX of the Constitution. In repealing or making inapplicable these provisions, the Legislature finds and declares that under the general authority of Section 14 of Article IX, community college districts shall continue to have the authority provided in the provisions that are repealed. The Legislature specifically declares this finding with regard to, but not limited to, the following Education Code sections which are repealed or amended by this act:

Sections 8080, 8081, 8084, 8085, 8091, 8322, 8329, 8760, 8761, 8762, 8763, 8764, 10504, 12400, 12401, 12402, 12404, 12405, 18110, 18111, 18120, 18131, 18134, 32371, 32372, 72241.5, 72244, 72320, 72321, 72412, 72419, 72419.5, 72420, 72421, 72422, 76400, 76470, 78001, 78010, 78011, 78050, 78051, 78208, 78230, 78240, 78270, 78280, 78281, 78286, 78302, 78303, 78409, 78440, 79022, 79028, 79032, 79121, 81009, 81839, 81931, 81953, 81954, 81957, 82305, 82305.5, 82500, 82501, 82535, 82541, 84035, 84050, 85201, 85260.5, 85266, 85267, 85410, 85420, and 85430, the second sentence of Section 32033, the second and third sentences of Section 76403, the first sentence of Section 78442, and the second and third sentences of Section 84041.

SEC. 3. Section 40 of the Education Code is amended to read:

40. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses be conducted, without regard to the sex of the student enrolled in such classes and courses.

(b) No school district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student, except a class subject to Section 51550.

(c) No school district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or

aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for the seventh grade so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

SEC. 4. Section 41 of the Education Code is amended to read:

41. (a) The Legislature finds and declares that female students are not accorded opportunities for participation in school-sponsored athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female students.

(b) Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(c) Nothing in this section shall be construed to require a school district to require competition between male and female students in school-sponsored athletic programs.

SEC. 5. Section 52 of the Education Code is amended to read:

52. The secondary schools of the state are designated as high schools, technical schools, and adult schools.

SEC. 6. Section 91 of the Education Code is repealed.

SEC. 7. Section 92 of the Education Code is amended to read:

92. "County" or "counties" as used in Sections 2300, 12300 to 12307, inclusive, 41000 to 41964, inclusive, 42100 to 42128, inclusive, 46000 to 46392, inclusive, 84000 to 84850.5, inclusive, and 85000 to 85430, inclusive, whichever are in effect, includes a city and county.

SEC. 9. Section 262.3 of the Education Code is amended to read:

262.3. (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, the president of a campus of the California State University,

after the effective date of this act.

CHAPTER 906

An act to amend Section 48980 of, and to add Section 212.6 to, the Education Code, relating to sexual harassment.

[Approved by Governor September 24, 1992. Filed with Secretary of State September 25, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 212.6 is added to the Education Code, to read:

212.6. (a) It is the policy of the State of California, pursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets

forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

SEC. 2. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of its minor pupils regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, 51240, and 51550, Article 3 (commencing with Section 56030) of Chapter 1 of Part 30, and Chapter 2.3 (commencing with Section 32255) of Part 19.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options including, but not limited to, United States Savings Bonds.

(d) School districts that elect to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) shall inform parents or guardians of the program as specified in Section 32390.

(e) Until June 30, 1995, the notification also shall advise the parent or guardian of the availability of the employment-based school attendance options pursuant to subdivision (f) of Section 48204.

(f) The notification also shall include a copy of the district's written policy on sexual harassment established pursuant to Section 212.6, as it relates to pupils.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

sex.

(c) On the basis of sex, exclusion from participation in or denial of equivalent opportunity in athletic programs. For purposes of this subdivision, "equivalent" means equal or equal in effect.

(d) On the basis of sex, discrimination among persons, including, but not limited to, students and nonstudents, or academic and nonacademic personnel, in employment and the conditions thereof, except as it relates to a bona fide occupational qualification.

(e) On the basis of sex, the application of any rule concerning the actual or potential parental, family, or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions.

231. Nothing herein shall be construed to prohibit any educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes, so long as comparable facilities are provided.

232. The State Board of Education, the Board of Governors of the California Community Colleges, and the Trustees of the California State University shall issue rules, regulations, or orders to implement the provisions of this chapter.

The Regents of the University of California may issue rules, regulations, or orders to implement the provisions of this chapter.

Article 4. Instructional Materials

240. Governing boards of school districts shall adopt instructional materials in accordance with the provisions of Section 60040.

Article 5. Compliance

250. Prior to receipt of any state financial assistance or state student financial aid, an educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the educational institution will be conducted in compliance with the provisions of this chapter and all other applicable provisions of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the educational institution, may be provided for all the programs and activities conducted by an educational institution.

251. A school district or a community college district shall submit timely, complete, and accurate compliance reports to the State Department of Education or to the chancellor's office, as those entities may require.

All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

this article, to the State Department of Education, the Chancellor of the California Community Colleges, the Chancellor of the California State University, or the President of the University of California, as applicable.

SEC. 6. Section 265 is added to the Education Code, to read:

265. Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other orders may also be available to the complainants. The educational institution shall make this information available by publication in appropriate informational materials.

SEC. 7. It is the intent of the Legislature that Section 264 of the Education Code, relative to the applicability of Chapter 2 (commencing with Section 200) of Part 1 of the Education Code to the University of California, apply to the sections of the Education Code amended and added by this act.

CHAPTER 1515

An act to amend Sections 8956, 8957, and 8959 of the Education Code, relating to education.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

The people of the State of California do enact as follows:

SECTION 1. Section 8956 of the Education Code is amended to read:

8956. (a) The site for the California State Summer School for the Arts shall be chosen for one year or on a multiyear basis to be determined by the board of trustees by the cost effectiveness of the proposals submitted to the board through a competitive request for proposal procedure. The criteria for selection shall include, but not be limited to, all of the following:

(1) Space requirements of the summer school, including residential space and appropriate facilities for all artistic disciplines offered by the summer school.

(2) Technical, administrative, and support services available to the summer school, submitted with an appropriate budget designating donated services and the costs to the summer school of having other services provided.

(3) Materials, supplies, and equipment available for the exclusive use of the summer school. Materials or equipment which may be used by the host institution during its regular sessions either shall be purchased by the host institution, which may charge the summer school a rental fee for the use of the materials or equipment, or

fund and special reserve fund of the high school district or unified district at the end of the last year in which the district maintained a junior college shall be divided between such district and the junior college district in the following manner:

(a) The balance remaining in the general fund shall be divided in the same ratio that the expenditures from that fund for junior college purposes for the last year in which the junior college was maintained bear to the other expenditures of the district during that year. The amount so allocable to the junior college district shall be transferred to, and deposited in, the general fund of that district.

(b) The balance remaining in the special reserve fund deposited there by the district governing board to be used for junior college purposes, shall be transferred to the junior college district and deposited in the special reserve fund of that district.

CHAPTER 49

An act to add Division 16.5 (commencing at Section 22500) to the Education Code, relating to higher education, and making an appropriation.

In effect July 7, 1960

[Approved by Governor April 27, 1960. Filed with Secretary of State April 27, 1960.]

The people of the State of California do enact as follows:

SECTION 1. Division 16.5 is added to the Education Code, to read:

DIVISION 16.5. HIGHER EDUCATION

CHAPTER 1. GENERAL PROVISIONS

"Public higher education"

22500. Public higher education consists of (1) all public junior colleges heretofore and hereafter established pursuant to law, (2) all state colleges heretofore and hereafter established pursuant to law, and (3) each campus, branch and function of the University of California heretofore and hereafter established by the Regents of the University of California.

Legislative policy

22501. It is hereby declared to be the policy of the Legislature not to authorize or to acquire sites for new institutions of public higher education unless such sites are recommended by the Co-ordinating Council for Higher Education and not to authorize existing or new institutions of public education, other than those described in subdivisions (2) and (3) of Section 22500, to offer instruction beyond the 14th grade level.

Nothing in this section shall be construed to require any further recommendations as a prerequisite to legislative action with respect to state colleges intended to be in operation by

1965 or University of California campuses intended to be under construction by 1962, as set forth in the recommendations contained in the Master Plan for Higher Education printed at page 42, paragraphs 4 and 6, Senate Journal (Regular Session) for February 1, 1960.

22502. Each segment of public higher education shall strive for excellence in its sphere, as assigned in this division.

Nautical school unaffected

22503. This division shall not affect the existence or status of the state nautical school.

Provisions supersede conflicting laws

22504. The provisions of this division shall supersede the provisions of any other law which conflict with the provisions of this division.

CHAPTER 2. UNIVERSITY OF CALIFORNIA

University of California Primary research agency

22550. The Legislature hereby finds and declares that the University of California is the primary state-supported academic agency for research.

Curriculum

22551. The university may provide instruction in the liberal arts and sciences and in the professions, including the teaching profession. The university has exclusive jurisdiction in public higher education over instruction in the profession of law, and over graduate instruction in the professions of medicine, dentistry, veterinary medicine and architecture.

Doctoral degrees

22552. The university has the sole authority in public higher education to award the doctoral degree in all fields of learning, except that it may agree with the state colleges to award joint doctoral degrees in selected fields.

Library and research facilities

22553. The university may make reasonable provision for the use of its library and research facilities by qualified members of the faculties of other institutions of public higher education in this State.

CHAPTER 3. THE STATE COLLEGE SYSTEM

State College System Administration

22600. The State College System shall be administered by a board designated as the Trustees of the State College System of California, which is hereby created.

Board Members, terms, etc

22601. The board shall be composed of the following four ex officio members: the Governor, the Lieutenant Governor, the Superintendent of Public Instruction, and the person named by the trustees to serve as the chief executive officer of the system; and 16 appointive members appointed by the Governor, except that the members, as of the effective date of this section, of the State Board of Education shall serve ex officio as and among the first appointive trustees. The terms of the appointive members shall be four years, except that the first appointive trustees, including the members of the State Board of Education, shall classify the terms of their offices by lot so that four of the first appointive terms shall expire on the first day of March of each calendar year, commencing in 1961 and ending in 1964.

community colleges heretofore and hereafter established pursuant to law, (2) the California State University and Colleges, and each campus, branch, and function thereof, heretofore and hereafter established pursuant to law, and (3) each campus, branch, and function of the University of California heretofore and hereafter established by the Regents of the University of California.

SEC. 13.5. Section 25501 of the Education Code is repealed.

SEC. 14. Section 25502.3 of the Education Code is amended to read:

25502.3. Notwithstanding any provisions to the contrary, at the request of a community college district, the chancellor may approve a program of studies on a quarter system or a trisemester basis in accordance with rules and regulations prescribed by the Board of Governors of the California Community Colleges.

SEC. 15. Section 25502.5 of the Education Code is amended to read:

25502.5. Each community college shall provide for the education of students in the 13th and 14th grades and for the education of such adults and minors as may properly be admitted but who are not classifiable by grade.

Persons 21 years of age or over enrolled in less than 10 class hours as defined in Section 5756 in classes of any kind whatsoever maintained in connection with a community college, except classes maintained in English and citizenship for foreigners, classes in elementary subjects, and classes which are required in order that the participant may qualify for a high school diploma, where no charge of any kind shall be made, may be required by the governing board of the district maintaining the class to pay a tuition for such classes. The total of the tuition required and the apportionments from the State School Fund on account of the attendance in the classes shall not exceed the estimated cost of all such classes maintained.

SEC. 16. Section 25503 of the Education Code is amended to read:

25503. The governing board of a community college district maintaining a two-year community college shall admit to the community college any high school graduate.

Such governing board may admit to the community college any apprentice, as defined in Section 3077 of the Labor Code, who, in the judgment of the governing board or of the president of the community college if he is so authorized by rule of the governing board, is capable of profiting from the instruction offered.

Such governing board may by rule determine whether there shall be admitted to the community college any other person who is over 18 years of age and who, in the judgment of the board or of the president of the community college if he is so authorized by the rule, is capable of profiting from the instruction offered. If the governing board determines to admit such other persons, any such person shall be admitted as a provisional student and thereafter shall be required to comply with the rules and regulations prescribed by the Board of Governors of the California Community Colleges or the chancellor's

veterinary medicine. It has the sole authority in public higher education to award the doctoral degree in all fields of learning, except that it may agree with the California State University and Colleges to award joint doctoral degrees in selected fields. It shall be the primary state-supported academic agency for research.

SEC. 5. Section 22551 of the Education Code is repealed.

SEC. 6. Section 22552 of the Education Code is repealed.

SEC. 7. Section 22606 of the Education Code is amended to read:

22606. The California State University and Colleges shall have as its primary function the provision of undergraduate instruction and graduate instruction through the master's degree. Presently established two-year programs in agriculture are authorized, but other two-year programs shall be permitted only when mutually agreed upon by the Trustees of the California State University and Colleges and the Board of Governors of the California Community Colleges. The doctoral degree may be awarded jointly with the University of California, as provided in Section 22550, or jointly with a private institution of postsecondary education accredited by the Western Association of Schools and Colleges and provided the proposed doctoral program is approved by the California Postsecondary Education Commission. Faculty research is authorized to the extent that it is consistent with the primary function of the California State University and Colleges.

SEC. 8. Section 22651 of the Education Code is amended to read:

22651. Public community colleges shall offer instruction through but not beyond the second year of college. These institutions may grant the associate in arts and the associate in science degree. Their program may include but shall not be limited to: standard collegiate courses for transfer to other institutions; vocational and technical fields leading to employment; general or liberal arts courses; and community services.

SEC. 9. Chapter 4.5 (commencing with Section 23521) is added to Division 16.5 of the Education Code, to read:

CHAPTER 4.5. INTERSEGMENTAL COOPERATION

23521. Within such differentiation of segmental function in public postsecondary education the institutions shall undertake intersegmental cooperation when it can:

(a) Enhance the achievement of the institutional missions shared by the segments.

(b) Enable public and private postsecondary education to more effectively meet the educational needs of a geographic region.

(c) Provide more effective planning of postsecondary education on a statewide basis.

SEC. 41 Section 71060 of the Education Code is amended to read:

71060. By enacting this article the Legislature declares its intent to more specifically delineate the powers, duties, and functions of the Board of Governors of the California Community Colleges and the powers, duties, and functions of the local district governing boards operating community colleges

SEC. 42. Section 71094 of the Education Code is repealed.

SEC. 43. Section 71095 of the Education Code is repealed.

SEC. 44 Section 72002 of the Education Code is amended to read:

72002. Whenever a petition is presented to the governing board of a community college district, signed by at least 15 qualified electors of any community college district, asking that the name of the district be changed, the governing board shall designate a day upon which it will act upon the petition, which shall not be less than 10 days nor more than 40 days after the receipt of the petition.

The clerk of the governing board shall give notice to all parties interested by sending a notice of the time for the hearing of the petition. Notices shall be mailed at least 10 days before the day set for hearing. At the hearing the board shall by resolution either grant or deny the petition, and, if granted, the clerk shall notify the county superintendent of the change of the name of the district.

SEC. 45. Article 2 (commencing with Section 72010) of Chapter 1 of Part 45 of the Education Code is repealed.

SEC. 46. Article 2 (commencing with Section 72010) is added to Chapter 1 of Part 45 of the Education Code, to read

Article 2. Nondiscrimination

72010. The provisions of this article are supplemental to any provision in the Constitution or laws of the United States or Constitution or laws of the State of California, relating to discrimination.

72011 Every community college district shall provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex.

72012. Every community college shall comply with the provisions of Sections 40, 41, and 66016, relating to sex discrimination.

SEC. 47 Section 72020 of the Education Code is amended to read:

72020. In any community college district coterminous with a unified district, the governing board of the unified district shall, except as provided in this section or in Section 74126, constitute the community college board and after organizing as a community college board shall have the management and control of the community college in the district. If the district is divided into two or more unified districts, or if any territory is included within the boundaries of such community college district by annexation thereto or by change of boundaries thereof, which territory is not included within the unified district, such community college district shall be governed by a board of five members who shall be elected in the

from determination of the total membership constituting the governing board.

SEC. 287.5. Section 72001 of the Education Code is repealed.

SEC. 288. Section 72002 of the Education Code is repealed.

SEC. 288.5. Section 72013 is added to the Education Code, to read:

72013. With respect to access to community college district services, classes, and programs, and with respect to all references within this division, "handicap" and "disability" shall have the same meaning.

SEC. 289. Section 72014 is added to the Education Code, to read:

72014. No funds under the control of a community college district shall ever be used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin. This section does not apply to any public funds which have been paid to an individual officer or employee of the district as salary, or to any funds which are used directly or indirectly for the benefit of student organizations.

SEC. 289.5. Section 72015 is added to the Education Code, to read:

72015. (a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.

(b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.

(c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

(f) The Legislature finds and declares that female students are not accorded opportunities for participation in community college athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in

community college athletics be provided equally to male and female students and on an equitable basis to all students.

(g) Insofar as practicable, in apportioning public funds, community college district governing boards shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of the governing board of a community college district, or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and opportunities for participation shall include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(h) It is the further intent of the Legislature that females be given the same opportunity to participate in athletics and compete with other females in individual and team sports as is available to males who compete with other males in individual and team sports. Nothing in this section shall be construed to require a community college to require competition between male and female students in school-sponsored athletic programs.

SEC. 290. Section 72020 of the Education Code is repealed.

SEC. 291. Section 72021 of the Education Code is repealed.

SEC. 292. Section 72023.5 of the Education Code is amended to read:

72023.5. (a) The governing board of each community college district shall order the inclusion within the membership of the governing board, in addition to the number of members otherwise prescribed, one or more nonvoting students who are residents of the district. These students shall have the right to attend each and all meetings of the governing board, except that student members shall not have the right, or be afforded the opportunity, to attend executive sessions of the governing board.

The students selected to serve on the governing board, in addition to being residents of the district, shall be enrolled in a community college of the district and shall be chosen, and shall be recalled, by the students enrolled in the community colleges of the district in accordance with procedures prescribed by the governing board. A student member shall be required throughout the term of his or her appointment to be enrolled in a community college of the district for at least five semester units, or its equivalent, and shall meet and maintain the minimum standards of scholarship for community college students prescribed by the community college district. The term of the student members shall be one year commencing on June 1 of each year.

The nonvoting student members appointed pursuant to this section shall be entitled to the mileage allowance prescribed by

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 35.105 Self-evaluation.

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

(Approved by the Office of Management and Budget under control number 1190-0006)

[56 FR 35716, July 26, 1991, as amended by Order No. 1694-93, 58 FR 17521, Apr. 5, 1993]

§ 35.106 Notice.

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 35.107 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

§§ 35.108-35.129 [Reserved]

Subpart B—General Requirements

§ 35.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections—

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(c) Nothing in this part prohibits a public entity from providing benefits,

services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

(g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

§ 35.131 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* (1) A public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.* (1) This part does not prohibit a public entity from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§ 35.132 Smoking.

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in transportation covered by this part.

§ 35.133 Maintenance of accessible features.

(a) A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.

(b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

[56 FR 35716, July 26, 1991, as amended by Order No. 1694-93, 58 FR 17521, Apr. 5, 1993]

§ 35.134 Retaliation or coercion.

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

APPENDIX

1607.17 Policy statement on affirmative action (see section 13B).
1607.18 Citations.

AUTHORITY: Secs. 709 and 713, Civil Rights Act of 1964 (78 Stat. 265) as amended by the Equal Employment Opportunity Act of 1972 (Pub. L. 92-261); 42 U.S.C. 2000e-8, 2000e-12.

SOURCE: 43 FR 38295, 38312, Aug. 25, 1978, unless otherwise noted.

GENERAL PRINCIPLES

§ 1607.1 Statement of purpose.

A. *Need for uniformity—Issuing agencies.* The Federal government's need for a uniform set of principles on the question of the use of tests and other selection procedures has long been recognized. The Equal Employment Opportunity Commission, the Civil Service Commission, the Department of Labor, and the Department of Justice jointly have adopted these uniform guidelines to meet that need, and to apply the same principles to the Federal Government as are applied to other employers.

B. *Purpose of guidelines.* These guidelines incorporate a single set of principles which are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles.

C. *Relation to prior guidelines.* These guidelines are based upon and supersede previously issued guidelines on employee selection procedures. These guidelines have been built upon court decisions, the previously issued guidelines of the agencies, and the practical experience of the agencies, as well as the standards of the psychological profession. These guidelines are intended to be consistent with existing law.

§ 1607.2 Scope.

A. *Application of guidelines.* These guidelines will be applied by the Equal Employment Opportunity Commission in the enforcement of title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter "title VII"); by the Department of Labor, and the contract compliance agencies until the transfer of authority contemplated by the President's Reorganization Plan No. 1 of 1978, in the administration and enforcement of Executive Order 11246, as amended by Executive Order 11375 (hereinafter "Executive Order 11246"); by the Civil Service Commission and other Federal agencies subject to section 717 of title VII; by the Civil Service Commission in exercising its responsibilities toward State and local governments under section 208(b)(1) of the Intergovernmental-Personnel Act; by the Department of Justice in exercising its responsibilities under Federal law; by the Office of Revenue Sharing of the Department of the Treasury under the State and Local Fiscal Assistance Act of 1972, as amended; and by any other Federal agency which adopts them.

B. *Employment decisions.* These guidelines apply to tests and other selection procedures which are used as a basis for any employment decision. Employment decisions include but are not limited to hiring, promotion, demotion, membership (for example, in a labor organization), referral, retention, and licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Other selection decisions, such as selection for training or transfer, may also be considered employment decisions if they lead to any of the decisions listed above.

C. *Selection procedures.* These guidelines apply only to selection procedures which are used as a basis for making employment decisions. For example, the use of recruiting procedures designed to attract members of a particular race, sex, or ethnic group, which were previously denied employment opportunities or which are currently underutilized, may be necessary to bring an employer into compliance with Federal law, and is frequently an

essential element of any effective affirmative action program; but recruitment practices are not considered by these guidelines to be selection procedures. Similarly, these guidelines do not pertain to the question of the lawfulness of a seniority system within the meaning of section 703(h), Executive Order 11246 or other provisions of Federal law or regulation, except to the extent that such systems utilize selection procedures to determine qualifications or abilities to perform the job. Nothing in these guidelines is intended or should be interpreted as discouraging the use of a selection procedure for the purpose of determining qualifications or for the purpose of selection on the basis of relative qualifications, if the selection procedure had been validated in accord with these guidelines for each such purpose for which it is to be used.

D. *Limitations.* These guidelines apply only to persons subject to title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines do not apply to responsibilities under the Age Discrimination in Employment Act of 1967, as amended, not to discriminate on the basis of age, or under sections 501, 503, and 504 of the Rehabilitation Act of 1973, not to discriminate on the basis of handicap.

E. *Indian preference not affected.* These guidelines do not restrict any obligation imposed or right granted by Federal law to users to extend a preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation.

§ 1607.3 Discrimination defined: Relationship between use of selection procedures and discrimination.

A. *Procedure having adverse impact constitutes discrimination unless justified.* The use of any selection procedure which has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines, or the provisions of section 6 below are satisfied.

B. *Consideration of suitable alternative selection procedures.* Where two or more selection procedures are available which serve the user's legitimate interest in efficient and trustworthy workmanship, and which are substantially equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should include, as a part of the validity study, an investigation of suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible, to determine the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and validity has been demonstrated in accord with these guidelines, the use of the test or other selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown an alternative selection procedure with evidence of less adverse impact and substantial evidence of validity for the same job in similar circumstances, the user should investigate it to determine the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if the use of such a combination has been shown to be in compliance with the guidelines.

§ 1607.4 Information on impact.

A. *Records concerning impact.* Each user should maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group as set forth in paragraph B of this section, in order to determine compliance with these guidelines. Where there are large numbers of applicants and procedures are

administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of the applicant population and adequate in size.

B. *Applicable race, sex, and ethnic groups for recordkeeping.* The records called for by this section are to be maintained by sex, and the following races and ethnic groups: Blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic, and totals. The race, sex, and ethnic classifications called for by this section are consistent with the Equal Employment Opportunity Standard Form 100, Employer Information Report EEO–1 series of reports. The user should adopt safeguards to insure that the records required by this paragraph are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used improperly. See sections 4E and 17(4), below.

C. *Evaluation of selection rates. The "bottom line."* If the information called for by sections 4A and B above shows that the total selection process for a job has an adverse impact, the individual components of the selection process should be evaluated for adverse impact. If this information shows that the total selection process does not have an adverse impact, the Federal enforcement agencies, in the exercise of their administrative and prosecutorial discretion, in usual circumstances, will not expect a user to evaluate the individual components for adverse impact, or to validate such individual components, and will not take enforcement action based upon adverse impact of any component of that process, including the separate parts of a multipart selection procedure or any separate procedure that is used as an alternative method of selection. However, in the following circumstances the Federal enforcement agencies will expect a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual components:

(1) Where the selection procedure is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices, (2) where the weight of court decisions or administrative interpretations hold that a specific procedure (such as height or weight requirements or no-arrest records) is not job related in the same or similar circumstances. In unusual circumstances, other than those listed in (1) and (2) of this paragraph, the Federal enforcement agencies may request a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual component.

D. *Adverse impact and the "four-fifths rule."* A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact. Smaller differences in selection rate may nevertheless constitute adverse impact, where they are significant in both statistical and practical terms or where a user's actions have discouraged applicants disproportionately on grounds of race, sex, or ethnic group. Greater differences in selection rate may not constitute adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be atypical of the normal pool of applicants from that group. Where the user's evidence concerning the impact of a selection procedure indicates adverse impact but is based upon numbers which are too small to be reliable, evidence concerning the impact of the procedure over a longer period of time and/or evidence concerning the impact which the selection procedure had when used in the same manner in similar circumstances elsewhere may be

considered in determining adverse impact. Where the user has not maintained data on adverse impact as required by the documentation section of applicable guidelines, the Federal enforcement agencies may draw an inference of adverse impact of the selection process from the failure of the user to maintain such data, if the user has an underutilization of a group in the job category, as compared to the group's representation in the relevant labor market or, in the case of jobs filled from within, the applicable work force.

E. *Consideration of user's equal employment opportunity posture.* In carrying out their obligations, the Federal enforcement agencies will consider the general posture of the user with respect to equal employment opportunity for the job or group of jobs in question. Where a user has adopted an affirmative action program, the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the user has adopted and the progress which the user has made in carrying out that program and in meeting the goals and timetables. While such affirmative action programs may in design and execution be race, color, sex, or ethnic conscious, selection procedures under such programs should be based upon the ability or relative ability to do the work.

(Approved by the Office of Management and Budget under control number 3046–0017)

(Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[43 FR 38295, 38312, Aug. 25, 1978, as amended at 46 FR 63268, Dec. 31, 1981]

§ 1607.5 General standards for validity studies.

A. *Acceptable types of validity studies.* For the purposes of satisfying these guidelines, users may rely upon criterion-related validity studies, content validity studies or construct validity studies, in accordance with the standards set forth in the technical standards of these guidelines, section 14 below. New strategies for showing the validity of selection procedures will be evaluated as they become accepted by the psychological profession.

B. *Criterion-related, content, and construct validity.* Evidence of the validity of a test or other selection procedure by a criterion-related validity study should consist of empirical data demonstrating that the selection procedure is predictive of or significantly correlated with important elements of job performance. See section 14B below. Evidence of the validity of a test or other selection procedure by a content validity study should consist of data showing that the content of the selection procedure is representative of important aspects of performance on the job for which the candidates are to be evaluated. See 14C below. Evidence of the validity of a test or other selection procedure through a construct validity study should consist of data showing that the procedure measures the degree to which candidates have identifiable characteristics which have been determined to be important in successful performance in the job for which the candidates are to be evaluated. See section 14D below.

C. *Guidelines are consistent with professional standards.* The provisions of these guidelines relating to validation of selection procedures are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other selection procedures, such as those described in the Standards for Educational and Psychological Tests prepared by a joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, DC, 1974) (hereinafter "A.P.A. Standards") and standard textbooks and journals in the field of personnel selection.

D. *Need for documentation of validity.* For any selection procedure which is part of a selection process which has an adverse impact and which selection procedure has an adverse impact, each user should maintain and have available such documentation as is described in section 15 below.

E. *Accuracy and standardization.* Validity studies should be carried out under conditions which assure insofar as possible the adequacy and accuracy

of the research and the report. Selection procedures should be administered and scored under standardized conditions.

F. *Caution against selection on basis of knowledges, skills, or ability learned in brief orientation period.* In general, users should avoid making employment decisions on the basis of measures of knowledges, skills, or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

G. *Method of use of selection procedures.* The evidence of both the validity and utility of a selection procedure should support the method the user chooses for operational use of the procedure, if that method of use has a greater adverse impact than another method of use. Evidence which may be sufficient to support the use of a selection procedure on a pass/fail (screening) basis may be insufficient to support the use of the same procedure on a ranking basis under these guidelines. Thus, if a user decides to use a selection procedure on a ranking basis, and that method of use has a greater adverse impact than use on an appropriate pass/fail basis (see section 5H below), the user should have sufficient evidence of validity and utility to support the use on a ranking basis. See sections 3B, 14B (5) and (6), and 14C (8) and (9).

H. *Cutoff scores.* Where cutoff scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where applicants are ranked on the basis of properly validated selection procedures and those applicants scoring below a higher cutoff score than appropriate in light of such expectations have little or no chance of being selected for employment, the higher cutoff score may be appropriate, but the degree of adverse impact should be considered.

I. *Use of selection procedures for higher level jobs.* If job progression structures are so established that employees will probably, within a reasonable period of time and in a majority of cases, progress to a higher level, it may be considered that the applicants are being evaluated for a job or jobs at the higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it should be considered that applicants are being evaluated for a job at or near the entry level. A "reasonable period of time" will vary for different jobs and employment situations but will seldom be more than 5 years. Use of selection procedures to evaluate applicants for a higher level job would not be appropriate:

(1) If the majority of those remaining employed do not progress to the higher level job;

(2) If there is a reason to doubt that the higher level job will continue to require essentially similar skills during the progression period; or

(3) If the selection procedures measure knowledges, skills, or abilities required for advancement which would be expected to develop principally from the training or experience on the job.

J. *Interim use of selection procedures.* Users may continue the use of a selection procedure which is not at the moment fully supported by the required evidence of validity, provided: (1) The user has available substantial evidence of validity, and (2) the user has in progress, when technically feasible, a study which is designed to produce the additional evidence required by these guidelines within a reasonable time. If such a study is not technically feasible, see section 6B. If the study does not demonstrate validity, this provision of these guidelines for interim use shall not constitute a defense in any action, nor shall it relieve the user of any obligations arising under Federal law.

K. *Review of validity studies for currency.* Whenever validity has been shown in accord with these guidelines for the use of a particular selection procedure for a job or group of jobs, additional studies need not be performed until such time as the validity study is subject to review as provided in section 3B above. There are no absolutes in the area of determining the currency of a validity study. All circumstances concerning the study, including the validation strategy used, and changes in the relevant labor market and the job

should be considered in the determination of when a validity study is outdated.

§ 1607.6 Use of selection procedures which have not been validated.

A. *Use of alternate selection procedures to eliminate adverse impact.* A user may choose to utilize alternative selection procedures in order to eliminate adverse impact or as part of an affirmative action program. See section 13 below. Such alternative procedures should eliminate the adverse impact in the total selection process, should be lawful and should be as job related as possible.

B. *Where validity studies cannot or need not be performed.* There are circumstances in which a user cannot or need not utilize the validation techniques contemplated by these guidelines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact, as set forth below.

(1) *Where informal or unscored procedures are used.* When an informal or unscored selection procedure which has an adverse impact is utilized, the user should eliminate the adverse impact, or modify the procedure to one which is a formal, scored or quantified measure or combination of measures and then validate the procedure in accord with these guidelines, or otherwise justify continued use of the procedure in accord with Federal law.

(2) *Where formal and scored procedures are used.* When a formal and scored selection procedure is used which has an adverse impact, the validation techniques contemplated by these guidelines usually should be followed if technically feasible. Where the user cannot or need not follow the validation techniques anticipated by these guidelines, the user should either modify the procedure to eliminate adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

§ 1607.7 Use of other validity studies.

A. *Validity studies not conducted by the user.* Users may, under certain circumstances, support the use of selection procedures by validity studies conducted by other users or conducted by test publishers or distributors and described in test manuals. While publishers of selection procedures have a professional obligation to provide evidence of validity which meets generally accepted professional standards (see section 5C above), users are cautioned that they are responsible for compliance with these guidelines. Accordingly, users seeking to obtain selection procedures from publishers and distributors should be careful to determine that, in the event the user becomes subject to the validity requirements of these guidelines, the necessary information to support validity has been determined and will be made available to the user.

B. *Use of criterion-related validity evidence from other sources.* Criterion-related validity studies conducted by one test user, or described in test manuals and the professional literature, will be considered acceptable for use by another user when the following requirements are met:

(1) *Validity evidence.* Evidence from the available studies meeting the standards of section 14B below clearly demonstrates that the selection procedure is valid;

(2) *Job similarity.* The incumbents in the user's job and the incumbents in the job or group of jobs on which the validity study was conducted perform substantially the same major work behaviors, as shown by appropriate job analyses both on the job or group of jobs on which the validity study was performed and on the job for which the selection procedure is to be used; and

(3) *Fairness evidence.* The studies include a study of test fairness for each race, sex, and ethnic group which constitutes a significant factor in the borrowing user's relevant labor market for the job or jobs in question. If the studies under consideration satisfy paragraphs (1) and (2) of this paragraph B.,¼ above but do not contain an investigation of test fairness, and it is not technically feasible for the borrowing user to conduct an internal study of test fairness, the borrowing user may utilize the study until studies conducted elsewhere meeting the requirements of these guidelines show test unfairness, or until such time as it becomes technically feasible to conduct

PART 100—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

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APPENDIX A TO PART 100—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

APPENDIX B TO PART 100—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

AUTHORITY: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1, unless otherwise noted.

SOURCE: 45 FR 30918, May 9, 1980, unless otherwise noted.

§ 100.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Education.

(Authority: Sec. 601, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d)

§ 100.2 Application of this regulation.

This regulation applies to any program to which Federal financial assistance is authorized to be extended to a recipient under a law administered by the Department, including the Federal financial assistance listed in appendix A of this regulation. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended before the effective date of this regulation, (c) the use of any assistance by any individual who is the ultimate beneficiary, or (d) any employment practice, or any employer, employment agency, or labor organization, except to the extent described in §100.3. The fact that a type of Federal assistance is not listed in appendix A shall not mean, if title VI of the Act is otherwise applicable, that a program is not covered. Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

(Authority: Secs. 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253; 42 U.S.C. 2000d–1, 2000d–3)

[45 FR 30918, May 9, 1980, as amended at 65 FR 68053, Nov. 13, 2000]

§ 100.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) In determining the site or location of a facilities, an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to reduce the employment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, (iii) to provide work experience which contributes to the education or training of

such individuals, or (iv) to provide remunerative activity to such individuals who because of handicaps cannot be readily absorbed in the competitive labor market. The following, under existing laws, have one of the above objectives as a primary objective:

(A) Projects under the Public Works Acceleration Act, Pub. L. 87–658, 42 U.S.C. 2641–2643.

(B) Work-study under the Vocational Education Act of 1963, as amended, 20 U.S.C. 1371–1374.

(C) Programs assisted under laws listed in appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments.

(D) Assistance to rehabilitation facilities under the Vocational Rehabilitation Act, 29 U.S.C. 32–34, 41a and 41b.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the foregoing provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Indian health and Cuban refugee services.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from benefits limited by Federal law to individuals of a particular race, color, or national origin different from his.

(e) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

(Authority: Sec. 601, 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253, 42 U.S.C. 2000d, 2000d–1, 2000d–3)

[45 FR 30918, May 9, 1980, as amended at 65 FR 68053, Nov. 13, 2000]

§ 100.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to which this part applies, except an application to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other

misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) *Program or activity* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(l) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicappped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

§ 104.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activitiy which receives Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in

or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Aid, benefits, or services limited by Federal law.* The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

§ 104.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program or activity will be operated in compliance with

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request:

(i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

§ 104.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to § 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

§ 104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not

with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives Federal financial assistance.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.9 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to §106.8, or to the Assistant Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in:

(i) Local newspapers;

(ii) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(iii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

Subpart B—Coverage

§ 106.11 Application.

Except as provided in this subpart, this part 106 applies to every recipient and to the education program or activity operated by such recipient which receives Federal financial assistance.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 86298, Dec. 30, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; sec. 3(a) of P.L. 93–568, 88 Stat. 1862 amending Sec. 901)

admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one

year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 106.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.43 Standards for measuring skill or progress in physical education classes.

If use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have that effect.

(Authority: 20 U.S.C. 1681, 1682)

[71 FR 62543, Oct. 25, 2006]

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 106.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 106.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.43 Standards for measuring skill or progress in physical education classes.

If use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have that effect.

(Authority: 20 U.S.C. 1681, 1682)

[71 FR 62543, Oct. 25, 2006]

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 106.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including those that are social or recreational; and

(10) Any other term, condition, or privilege of employment.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 106.61.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.56 Fringe benefits.

(a) *Fringe benefits defined.* For purposes of this part, *fringe benefits* means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 106.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

(Authority: 42 U.S.C. 6103)

[58 FR 40197, July 27, 1993, as amended at 65 FR 68056, Nov. 13, 2000]

Subpart B—Standards for Determining Age Discrimination

§ 110.10 Rules against age discrimination.

The rules stated in this section are subject to the exceptions contained in §§ 110.12 and 110.13 of these regulations.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions that have the effect, on the basis of age, of—

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) *Other forms of discrimination.* The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

(Authority: 42 U.S.C. 6101–6103)

§ 110.11 Definitions of "normal operation" and "statutory objective."

For purposes of these regulations, the terms *normal operation* and *statutory objective* have the following meanings:

(a) *Normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

(Authority: 42 U.S.C. 6103)

§ 110.12 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action otherwise prohibited by § 110.10 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if—

(a) Age is used as a measure or approximation of one or more other characteristics;

(b) The other characteristic or characteristics must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic or characteristics can be reasonably measured or approximated by the use of age; and

(d) The other characteristic or characteristics are impractical to measure directly on an individual basis.

(Authority: 42 U.S.C. 6103)

§ 110.13 Exceptions to the rules against age discrimination: Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 110.10 that is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

(Authority: 42 U.S.C. 6103)

§ 110.14 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 110.12 and 110.13 is on the recipient of Federal financial assistance.

(Authority: 42 U.S.C. 6104)

§ 110.15 Affirmative action by recipients.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(Authority: 42 U.S.C. 6103)

§ 110.16 Special benefits for children and the elderly.

If a recipient operating a program or activity provides special benefits to the elderly or to children, the use of age distinctions is presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of § 110.12.

(Authority: 42 U.S.C. 6103)

[58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]

§ 110.17 Age distinctions contained in ED's regulations.

Any age distinction contained in regulations issued by ED is presumed to be necessary to the achievement of a statutory objective of the program or activity to which the regulations apply, notwithstanding the provisions of § 110.12.

(Authority: 42 U.S.C. 6103)

[58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]

Subpart C—Duties of ED Recipients

§ 110.20 General responsibilities.

Each ED recipient has primary responsibility for ensuring that its program or activity is in compliance with the Act and these regulations and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford ED access to its records to the extent required for ED to determine whether the recipient is in compliance with the Act and these regulations.

(Authority: 42 U.S.C. 6103)

[58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]

§ 110.21 Notice to subrecipients.

If the recipient initially receiving funds makes the funds available to a subrecipient, the recipient shall notify the subrecipient of its obligations under the Act and these regulations.

(Authority: 42 U.S.C. 6103)

§ 110.22 Information requirements.

Each recipient shall—

(a) Provide ED with information that ED determines is necessary to ascertain whether the recipient is in compliance with the Act and these regulations; and

(b) Permit reasonable access by ED to the books, records, accounts, reports, and other recipient facilities and sources of information to the extent ED determines is necessary to ascertain whether a recipient is in compliance with the Act and these regulations.

(Authority: 42 U.S.C. 6103)

§ 110.23 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which these regulations apply shall sign a written assurance, on a form specified by ED, that the program or activity will be operated in compliance with these regulations. An applicant may incorporate this assurance by reference in subsequent applications to ED.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

Federal financial assistance means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

Program or activity means all of the operations of—

(a)(1) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(2) The entity of such State or local government that distributes Federal financial assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(b)(1) A college, university, or other postsecondary institution, or a public system of higher education; or

(2) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(c)(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(d) Any other entity which is established by two or more of the entities described in paragraph (a), (b), or (c) of this definition; any part of which is extended Federal financial assistance.

Recipient means any State or its political subdivision, any instrumentality of a State or its political sub-division, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

Secretary means the Secretary of the Department of Health and Human Services.

United States means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

(42 U.S.C. 6107)

[44 FR 33776, June 12, 1979, as amended at 70 FR 24321, May 9, 2005]

Subpart B—What is Age Discrimination?

STANDARDS FOR DETERMINING DISCRIMINATORY PRACTICES

§ 90.11 Purpose of this subpart.

The purpose of this subpart is to set forth the prohibitions against age discrimination and the exceptions to those prohibitions.

§ 90.12 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in §§ 90.14, and 90.15 of these regulations.

(a) *General rule:* No person in the United states shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules:* A recipient may not, in any program or activity receiving Federal financial assistance, directly

or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance, or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 90.13 Definitions of normal operation and statutory objective.

For purposes of §§ 90.14, and 90.15, the terms *normal operation* and *statutory objective* shall have the following meaning:

(a) *Normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 90.14 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by § 90.12, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 90.15 Exceptions to the rules against age discrimination. Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 90.12 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 90.16 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 90.14 and 90.15 is on the recipient of Federal financial assistance.

Subpart C—What are the Responsibilities of the Federal Agencies?

§ 90.31 Issuance of regulations.

(a) The head of each agency which extends Federal financial assistance to any program or activity shall publish proposed and final age discrimination regulations in the FEDERAL REGISTER to:

(1) Carry out the provisions of section 303 of the Age Discrimination Act of 1975; and

(2) Provide for appropriate investigative, conciliation, and enforcement procedures.

(b) Each agency shall publish its proposed agency age discrimination regulations no later than 90 days after the publication date of the final general, government-wide age discrimination regulations.

(c) Each agency shall submit its final agency regulations to HHS for review no later than 120 days after publication of proposed agency age discrimination regulations.

(d) Final agency age discrimination regulations shall be consistent with

(g) White Persons. "White persons" means all persons having origins in any of the original peoples of Europe, North Africa, the Middle East, and not of Hispanic origin.

(h) Goals and Timetables. "Goals and timetables" means projected new levels of employment of women and historically underrepresented ethnic minority groups as specified in federal regulations to be worked toward on a specific schedule, given the expected turnover in the work force and the availability of persons who are qualified through appropriate training or experience within a reasonable length of time. Goals are not "quotas" or rigid proportions. Quantitative measurements should only be used as management tools to assess the overall effectiveness of the programs. They should relate both to the qualitative and quantitative needs of the district.

Filipinos shall be included in the Asian/Pacific Islander group for goal setting purposes.

(i) Handicapped Persons. "Handicapped person" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment or (3) is regarded as having such an impairment. A handicapped individual is "substantially limited" if he or she is likely to experience difficulty in securing, retaining or advancing in employment because of a handicap.

(j) Protected Groups. "Protected groups" means ethnic minorities, women, handicapped persons and Vietnam-era veterans.

(k) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the employer to remove artificial or real barriers, which prevent or limit the employment and upward mobility of disabled persons.

(*l*) Sexual Harassment. "Sexual harassment" means unwelcome sexual conduct which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87101, Education Code; Section 11092, Government Code; 29 C.F.R. 1602.48 (1981); 29 U.S.C. 793; 41 C.F.R. 60-741-2 (1980).

53002. District Affirmative Action Policy.

The governing board of each California Community College district shall adopt by resolution an Affirmative Action Employment policy which will outline the district's commitment to implement "affirmatively" equal employment opportunity programs for all employees and applicants for employment regardless of race, color, religion, sex, national origin, age, handicap, status as a Vietnam-era veteran, or marital status. This policy shall cover all aspects of personnel policy and practice for all personnel.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

53003. District Affirmative Action Plan.

(a) Each community college district shall develop and adopt a district-wide written affirmative action and equal employment opportunity plan to implement its Affirmative Action Policy. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) Each community college district shall revise its affirmative action goals and timetables every three years and submit them to the Chancellor's Office for approval. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its affirmative action plan.

(c) The plans submitted to the Chancellor shall be public records.

(d) Each community college district shall make a continuous good faith effort to comply with the requirements of its affirmative action plan.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

53004. District Evaluation and Report to Chancellor.

Each district shall annually survey its employment patterns in an effort to evaluate its progress in reaching the goals set forth in its affirmative action plan. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey.

The Chancellor's Office shall seek field input from community college districts in developing reporting formats.

NOTE: Authority cited: Sections 71020, 71025, 71060 and 87105, Education Code. Reference: Section 87100, Education Code.

53005. Minimum Standards.

The compliance with the requirements of Sections 53002, 53003, 53004, and 53021 shall be a minimum standard which a community college district must satisfy to receive state aid.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 71025 and 87100, Education Code.

SUBCHAPTER 2. RESPONSIBILITIES OF THE CHANCELLOR

53010. Assistance.

The Chancellor shall provide guidelines for the development of policies, programs and procedures for affirmative action and equal employment opportunity programs. The Chancellor shall cooperate with and render assistance to community colleges in carrying out the provisions of this subchapter. The Chancellor shall review and approve programs submitted by districts pursuant to Section 53003.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87103, Education Code.

53011. Report.

The Chancellor shall report annually to the Board of Governors and Legislature on the progress and/or effectiveness of all California Community College districts in meeting the provisions of this chapter.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87104, Education Code.

53012. Periodic Evaluation.

The Chancellor shall periodically evaluate community college districts to determine their compliance with the requirements of their affirmative action plans and this chapter. If the Chancellor finds that a district has failed to substantially comply with the requirements of its plan, the Chancellor shall offer assistance and take whatever action he or she deems necessary to effect compliance.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Section 87102, Education Code.

SUBCHAPTER 3. RESPONSIBILITIES OF COMMUNITY COLLEGE DISTRICTS

53020. Implement Affirmative Action Plan.

The means specified in this subchapter are the essential requirements for implementing a district affirmative action plan.

NOTE: Authority cited: Sections 71020 and 87105, Education Code; Section 11138, Government Code. Reference: Section 87102, Education Code.

53021. Recruitment.

Community college districts shall undertake a program of verifiable affirmative action recruitment for protected group members in all job categories which reflect underrepresentation, including categorically funded positions and in all executive/administrative/managerial positions. Upward mobility programs may be used in conjunction with a recruitment effort when it promotes the goals of the district's affirmative action plan. "In house" or "promotional only" recruitment shall not be used except when "business necessity" dictates.

NOTE: Authority cited: Sections 71020 and 87105, Education Code; Section 11138, Government Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980); Section 87100, Education Code.

53022. Job Announcements.

Job announcements shall state clearly job specifications setting forth those skills necessary to job performance and the required training and experience related to those skills. The requirements are to be based on a careful analysis of the job. Only bona fide occupational qualifications may be included in job announcements.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980); Section 87100, Education Code.

53024. Screening.

All selection testing for employees shall follow procedures as outlined in Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures." Selection procedures established in the district's affirmative action plan shall be used to identify a reasonable number of qualified candidates for interviews for all recruited positions.

Selection committees shall include members of protected groups whenever possible.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980); 29 C.F.R. 1607 (1978).

53025. Agents.

Any individual or group of individuals acting on behalf of the local governing board for the recruitment and screening of personnel, including superintendentships, are agents of the district and subject to all state and federal laws and regulations.

NOTE: Authority cited: Sections 71020 and 87105, Education Code; Section 11138, Government Code. Reference: Section 87100, Education Code.

53026. Selection Procedure.

(a) Selection devices such as interviews shall be solely based on job-related requirements.

(b) The Affirmative Action Officer shall ensure that the entire selection process shall be solely based on job-related criteria, a fair impartial examination of the candidates based on job-related criteria, with job-related questions prepared in advance.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980).

53027. Final Selection.

(a) The results of the selection procedures shall be reviewed by the affirmative action officer to ensure that selection of a qualified candidate is supported by factual data and that the elimination of other candidates is based upon bona fide occupational qualifications.

(b) Throughout the entire selection process, the Affirmative Action Officer is responsible for monitoring for adverse impact. If discriminatory intent or effect is identified, the Affirmative Action Officer shall implement solutions and/or confer with the chief administrative officer or designee of the district or college to determine necessary remedies.

(c) Length of service in the district shall not be used as the sole determinant for decisions affecting hiring and promotions.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980).

53028. Affirmative Action Commitment.

All employment practices, including selection, assignment, promotion, transfer, demotion, or termination decisions, shall be based on job-related factors which include qualifications and capabilities. Seniority shall be considered only where required by law. The goals of the affirmative action program shall also be designed to meet the special needs and aspirations of minority groups, students and the community in counseling, bilingual/multicultural education, and school-staff mobility.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53029. Handicapped.

Districts shall make reasonable accommodation for the handicapped applicant or employee.

NOTE: Authority cited: Sections 71020 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code; Section 11135, Government Code; 29 U.S.C. 705 and 706.

53030. Sexual Harassment Policy.

A work place free of sexual harassment and intimidation shall be maintained.

NOTE: Authority cited: Sections 71020, 71068 and 87105, Education Code; Section 11138, Government Code. Reference: 42 U.S.C. 2000e, et seq.; 29 C.F.R. 1604.11 (1981).

SUBCHAPTER 4. ESSENTIAL ELEMENTS OF AN AFFIRMATIVE ACTION PLAN

53040. Governing Board's Affirmative Action Employment Policy Statement.

Each affirmative action plan shall have a written policy statement adopted by the district governing board which sets forth the district's obligation and commitment to equal employment opportunity through affirmative action. The statement must include a plan to ensure nondiscrimination in employment, promotion, transfer, and assignment on the basis of race, color, religion, national origin, sex, age, handicap, status as Vietnam-era veteran and/or marital status. This plan must be applied to all levels of employment procedure and to all position classifications.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Section 87101, Education Code; Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980); 20 U.S.C. 793; 41 C.F.R. 60-741.1–.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1–.9, et seq. (1980).

53041. Affirmative Action Responsibilities and Duties.

The affirmative action plan shall state that the community college district governing board and the chief district administrator have the overall responsibility for ensuring affirmative action and equal employment opportunity including, but not limited to, recruitment, assignment, promotion, retention, compensation, and training; and for improving representation of minority racial and ethnic groups, women, handicapped persons and Vietnam-era veterans.

NOTE: Authority cited: Sections 71020, 71025, 71068, and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53042. Affirmative Action Officer.

In the affirmative action plan the community college district shall designate an affirmative action officer to administer the affirmative action program. This officer shall report to the chief district administrator or designee who reports to the chief district administrator.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53043. Internal Dissemination.

The affirmative action plan shall require that all district employees shall be apprised of the equal employment opportunity/affirmative action policy, affirmative action plan, and the importance of the employee's participation and responsibility in ensuring the plan's implementation.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53044. External Dissemination.

The affirmative action plan shall require that a written notice be provided at least annually to various community organizations concerning the district's affirmative action policy and to solicit their assistance in recruiting ethnic minority, female, handicapped, and Vietnam-era veteran candidates.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53045. Complaint Procedure.

The district affirmative action plan shall state that an employee or applicant for employment may file a complaint with the district affirmative action officer alleging that the district has failed to satisfy the requirements of this chapter. The affirmative action plan shall state the district's procedure for responding to complaints.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Sections 87100 and 87101, Education Code.

53046. Work Force Analysis.

Each affirmative action plan shall contain a work force analysis in which the district shall determine statistically the racial, ethnic, and sex composition of existing staff by the following seven job categories:

Executive/Administrative/Managerial, Faculty and Other Instructional Staff, Professional Nonfaculty, Secretarial/Clerical, Technical and Paraprofessional, Skilled Crafts, Service and Maintenance.

Districts shall supply the information required by the Chancellor's Office Information System, Staff Data File.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: 29 C.F.R. 1602.48 (1981).

53049. Utilization Analysis.

The affirmative action plan shall include a utilization analysis that includes a determination of whether minorities and women are being underrepresented or underutilized in any job category. The district shall consider the numbers and percentages of staff in each position category within each of the job categories by ethnic and sex classification compared with the general availability of minorities and women in the relevant work force having requisite skills to fill vacancies as they occur.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980).

53050. Corrective Action.

The affirmative action plan shall require that when imbalances exist in the various job categories of the district work force, district practices and policies must be examined to determine the factors contributing to the imbalance. Employment practices within the personnel system which constitute barriers to equal opportunity shall be identified and corrective action designed to eliminate the barriers.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980).

53051. Goals and Timetables.

The affirmative action plan shall require that affirmative action programs be designed to eliminate discriminatory employment practices. Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies in representation from ethnic minority groups and women at all employment levels within the district.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Executive Order 11246, 3 C.F.R. 1964–1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1–3.2, et seq. (1980).

53052. Affirmative Action Advisory Committee.

The district affirmative action plan shall require that an affirmative action advisory committee be established to assist the district to achieve understanding and support of affirmative action/equal employment opportunity policies and programs, and shall assist in developing the affirmative action program in conformity with state and federal statutes, regulations, and guidelines, monitoring its progress and acting as an advisory body to the affirmative action officer. The membership of the Affirmative Action Advisory Committee shall include ethnic minorities, women, the handicapped and Vietnam-era veterans whenever possible.

NOTE: Authority cited: Sections 71020, 71025, 71068 and 87105, Education Code. Reference: Section 87100, Education Code.

Cal. Admin. Code tit. 5, § 53206

C
Barclays Official California Code of Regulations Currentness
Title 5. Education
Division 6. California Community Colleges
Chapter 4. Employees
Subchapter 2. Certificated Positions
Article 2. Academic Senates
§ 53206. Academic Senate for California Community Colleges.

(a) An Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils so that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-9-78; effective thirtieth day thereafter (Register 78, No. 19).

2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

4. Amendment of subsection (a) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

5. Editorial correction of History3 (Register 95, No. 19).

6. Change without regulatory effect amendingNote filed 3-15-2006 pursuant to section 100, title 1, California Code of Regulations. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2006, No. 17).

5 CCR § 53206, 5 CA ADC § 53206

This database is current through 7/2/10 Register 2010, No. 27

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ACADEMIC SENATE
for CALIFORNIA COMMUNITY COLLEGES

ıe Academic Senate

Formed in 1970, the Academic Senate for California Community Colleges is a 501(c)6 nonprofit organization. Created for the promotion and advancement of public community college education in California, its general purposes are:

1. To strengthen local academic senates and councils of community colleges;
2. To serve as the voice of the faculty of the community colleges in matters of statewide concern;
3. To develop policies and promote the implementation of policies on matters of statewide issues;
4. To make recommendations on statewide matters affecting the community colleges.

The Academic Senate gets its authority to strengthen local senates on California community colleges statewide from the California Code of Regulations Title 5 Section 53206, which says:

(a) An Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils so that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

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555 CAPITOL MALL, SUITE 525 SACRAMENTO, CA 95814
(916) 445-4753

AGREEMENT

WHEREAS, a dispute has arisen between the Chancellor of the California Community Colleges ("Chancellor") and the San Mateo County Community College District ("District") regarding the District's compliance with section 53021 of Title 5 of the California Code of Regulations in the appointment of an in-house candidate to the position of District Chancellor; and

WHEREAS, it is the position of the District that it acted in good faith, upon legal advice and under the belief that the appointment of the in-house candidate without compliance with the recruitment regulations was justified based upon the California Court of Appeal decision in *Connerly v. State Personnel Board* (2001) 92 Cal.App.4th 16; and

WHEREAS, it is the position of the Chancellor that, at the time of the appointment, the recruitment regulations continued to be legally valid and enforceable; and

WHEREAS, the Chancellor and the District reaffirm their commitment to equal employment opportunity;

NOW THEREFORE, in order to resolve this matter, the Chancellor and the District agree to the following plan and timetable:

1) During the term of this Agreement, the District shall submit to the Chancellor fourteen (14) calendar days in advance for approval, selection processes for all administrative and executive positions (as indicated on the administrative and executive salary schedules). Processes that will be need prior approval are the following:

   Job Announcement
   List of Recruitment Sources
   Applicant Pool
   Paper Screening Criteria
   Interview Questions
   Candidates for Final Interview

   The Chancellor shall, within fourteen (14) calendar days, submit any written comments to the District regarding the selection processes. If, within fourteen (14) calendar days of receipt, no action has been taken, it will be deemed approved.

2) In the event that the District determines that it needs to make an interim administrative appointment, it shall submit to the Chancellor written justification of such appointment being made. If, within fourteen (14) calendar days of receipt, no action has been taken, it will be deemed that the District's determination has been ratified by the Chancellor. The time to respond by the Chancellor may be extended by mutual agreement of both parties.

3) The District shall comply with those legally enforceable provisions of Subchapter 1 of Chapter 4 (commencing with Section 53000) of Division 6 of Title 5 (the "Equal Employment Opportunity Regulations").

4) During the term of this agreement and at such time as deemed mutually agreeable, the Chancellor may conduct a full on-site review of the District's compliance with the provisions of the Equal Employment Opportunity Regulations. Agreement as to the time of review shall not be unreasonably withheld by either party. Thirty (30) days prior to the review, the Chancellor shall inform the District of the nature of the review and the name(s) of any person(s) who will conduct the review.

5) District and Chancellor shall cooperate fully with each other in the review described in paragraph 4 above. District shall provide written materials requested by the Chancellor and may provide relevant written materials to the Chancellor in advance of the review. The Chancellor shall require the person(s) conducting the review to thoroughly familiarize themselves with these materials prior to conducting the review.

6) The Chancellor shall, in his/her thirty (30) day notice of review, inform the District of any persons the Chancellor needs to be interviewed. The District shall use its best efforts to make such persons available for interview. Additional persons may be interviewed upon reasonable notice to the District.

7) The District shall annually submit for review and approval a report of its compliance with this Agreement to the Chancellor. The first report shall be sent on December 31, 2003. If, by January 31, 2004, the Chancellor has not denied approval of the report in writing, it shall be deemed to be approved.

8) This Agreement shall expire December 31, 2005, except that if the Chancellor makes a finding of violation of the Equal Employment Opportunity Regulations during the term of this Agreement, it may, at the option of the Chancellor, be extended to December 31, 2006. If during this extended period of the Agreement, any such violation is found by the Chancellor, the Agreement may, at the option of the Chancellor, be extended to December 31, 2007.

9) The Chancellor shall take no action against the District affecting its receipt of State funds for reasons arising from the District's appointment, nor shall the Chancellor take any other action not set out in this Agreement for reasons arising from that appointment, so long as the District complies with this Agreement.

10) The District agrees that this Agreement is a public record, and also agrees to provide copies of this agreement to members of the Board of Trustees, the Chancellor of the District, the Presidents of the Colleges, the Assistant Chancellor for Human Resources, and members of the of District's Equal Employment Opportunity Advisory Committee.

11) The Chancellor may conduct a full in service with the San Mateo County Community College District Board of Trustees on the provisions of the Equal Employment Opportunity Regulations. This in service shall be conducted at a time prior to March 30, 2003, which is mutually agreeable to the Board and the Chancellor.

Thomas J. Nussbaum
Chancellor
California Community Colleges
Dec. 19, 2002

Richard Holober
President, Board of Trustees
San Mateo County
Community College District
December 20, 2002

rogators or postpone action. —*v.* **stalled, stalling, stalls.** —*tr.* **1.** To put or lodge (an animal) in a stall. **2.** To maintain (an animal) in a stall for fattening. **3.** To check the motion or progress of; bring to a standstill. **4.** To employ delaying tactics against. Often used with *off*: *stall off creditors.* See Usage note below. **5.** Accidentally to cause (an engine) to stop running. **6.** To cause (an airplane) to go into a stall. —*intr.* **1.** To live or be lodged in a stall. **2.** To stick fast in mud or snow. **3.** To come to a standstill. **4.** To employ delaying tactics. See Usage note below. **5.** To stop running from mechanical failure. Said of an engine. **6.** *Aviation.* To lose forward speed causing a stall. [Middle English *stall(l)*, Old English *steall*, standing place, stable. See **stel-**[1] in Appendix.*]

Usage: *Stall*, in sense 4 of both the transitive and intransitive verb, is common in informal contexts but not necessarily limited to them. The following, as examples in writing, are acceptable to a majority of the Usage Panel: *Realizing that help was on the way, he tried to stall* (accepted by 75 per cent). *She sought to stall off her creditors* (accepted by 62 per cent).

stall-feed (stôl′fēd′) *tr.v.* **-fed** (-fĕd′), **-feeding, -feeds.** To lodge and feed (an animal) in a stall for the purpose of fattening.

stal·lion (stăl′yən) *n.* An adult male horse that has not been castrated. [Middle English *stalo(u)n*, from Old French *estalon*, from Frankish *stallo* (unattested), from *stal* (unattested), standing-place, stable. See **stel-**[1] in Appendix.*]

stal·wart (stôl′wərt) *adj.* **1.** Having physical strength; sturdy; robust. **2.** Resolute; uncompromising. —See Synonyms at **strong.** —*n.* **1.** One who is physically and morally strong. **2.** One who actively supports an organization or cause. [Middle English (Scottish dialect) variant of *stalworth*, *stalwurth*, Old English *stælwierthe*, serviceable, probably contraction of *statholwierthe*, "worthy in the foundation," firm : *stathol*, foundation (see **stā-** in Appendix*) + *wierthe*, *weorth*, worth (see **wer-**[3] in Appendix*).] —**stal′wart·ly** *adv.* —**stal′wart·ness** *n.*

Stam·bul (stăm-bōōl′). Also **Stam·boul. 1.** The old section of Istanbul, south of the Golden Horn. **2.** See **Istanbul.**

sta·men (stā′mən) *n., pl.* **-mens** or *rare* **stamina** (stăm′ə-nə). The pollen-producing reproductive organ of a flower, usually consisting of a filament and an anther. [Latin *stāmen*, thread of the warp, stamen. See **stā-** in Appendix.*]

Stam·ford (stăm′fərd). A city of Connecticut, in the southwest on Long Island Sound. Population, 108,000.

stam·i·na (stăm′ə-nə) *n.* **1.** The physical or moral strength required to resist or withstand disease, fatigue, or hardship; endurance. **2.** *Rare.* Plural of **stamen.** [Latin, plural *stāmen*, thread of the warp, thread of human life. See **stamen.**]

stam·i·nal (stăm′ə-nəl) *adj.* **1.** Pertaining to, showing, or producing stamina. **2.** Pertaining to a stamen or stamens.

stam·i·nate (stăm′ə-nĭt, -nāt′) *adj. Botany.* **1.** Having a stamen or stamens. **2.** Bearing stamens but lacking pistils: *staminate flowers.*

stam·i·node (stăm′ə-nōd′) *n.* Also **stam·i·no·di·um** (stăm′ə-nō′dē-əm) *pl.* **-dia** (-dē-ə). *Botany.* A sterile functionless stamen. [New Latin *staminodium*, from Latin *stāmen*, STAMEN.]

stam·mel (stăm′əl) *n. Obsolete.* **1.** A coarse, red woolen cloth formerly used for undergarments. **2.** The red color of this cloth. —*adj. Obsolete.* Dull-red. [Probably variant of *stamin*, Middle English *stamyn*, from Latin *stāminea*, feminine of *stāmineus*, made of threads, from *stāmen*, thread of the warp. See **stā-** in Appendix.*]

stam·mer (stăm′ər) *v.* **-mered, -mering, -mers.** —*intr.* To intrude involuntary pauses and sometimes syllabic repetitions into one's speaking; falter; stumble. —*tr.* To utter or say with a stammer. —*n.* An instance or habit of stammering. [Middle English *stameren*, Old English *stamerian*. See **stam-** in Appendix.*] —**stam′mer·er** *n.* —**stam′mer·ing·ly** *adv.*

Synonyms: *stammer, stutter.* These verbs apply to hesitant, stumbling, or repetitive speech. *Stammer* generally refers to involuntary pauses or breaks in speech. *Stutter* usually refers to spasmodic repetition or exaggeration of sounds or syllables, especially initial consonants.

stamp (stămp) *v.* **stamped, stamping, stamps.** —*tr.* **1.** To bring down (the foot) forcibly. **2.** To bring the foot down upon (an object or surface) forcibly. **3.** To bring into a specified condition by or as if by thrusting downward forcibly with the foot. **4.** To form or cut out by application of a mold, form, or die. **5.** To imprint or impress with a mark, design, or seal. **6.** To impress forcibly or permanently. **7.** To affix an adhesive stamp to. **8.** To identify, characterize, or reveal. —*intr.* **1.** To thrust the foot forcibly downward. **2.** To walk with forcible, heavy steps. —See Usage note at **stomp.** —*n.* **1.** The act of stamping. **2. a.** An implement or device used to impress, cut out, or shape something to which it is applied. **b.** The impression or shape thus formed. **3.** A mark, design, or seal, the impression of which indicates ownership, approval, completion, or the like. **4. a.** A small piece of gummed paper sold by a government for attachment to an article that is to be mailed; postage stamp. **b.** Any similar piece of gummed paper issued for a specific purpose: *trading stamp.* **5.** Any identifying or characterizing mark or impression. **6.** Characteristic nature or quality; class; kind. [Middle English *stampen*, Old English *stampian* (unattested), to pound, stamp. See **stebh-** in Appendix.*]

Stamp Act. An act passed (1765) by the British Parliament requiring that revenue stamps be affixed to all official documents and printed matter in the American colonies.

stam·pede (stăm′pēd′) *n.* **1.** A sudden headlong rush of startled animals, especially cattle or horses. **2.** A sudden headlong rush of a crowd of people. **3.** Any precipitous mass movement. —*v.* **stampeded, -peding, -pedes.** —*intr.* To participate in a stampede. —*tr.* To cause to stampede. [Mexican Spanish *estampida*, from Spanish, uproar, crash, "a stamping or pounding," from *estampar*, to pound, stamp, from Germanic. See **stebh-** in Appendix.*] —**stam′ped′er** *n.*

stamping ground. One's customary environment or favorite gathering place.

stamp mill. 1. A machine that crushes ore. **2.** A building in which ore is crushed.

stance (stăns) *n.* **1.** The attitude or position of a standing person or animal; especially, the position assumed by an athlete or sportsman in action. **2.** One's emotional or intellectual attitude or position. [Old French *estance*, position, place, from Italian *stanza*, from Vulgar Latin *stantia* (unattested), a standing, from Latin *stāre*. See **stā-** in Appendix.*]

stanch (stănch, stänch) *tr.v.* **stanched, stanching, stanches.** Also **staunch. 1.** To stop or check the flow of (a bodily fluid, especially blood). **2.** To check the flow of blood from (a wound). —*adj.* Variant of **staunch.** See Usage note at **staunch.** [Middle English *staunchen*, to stop from flowing, from Old French *estanch(i)er*, from Vulgar Latin *stanticāre* (unattested), from Latin *stāns*, present participle of *stāre*, to stand. See **stā-** in Appendix.*] —**stanch′er** *n.*

stan·chion (stăn′chən, -shən) *n.* **1.** An upright pole, post, or support. **2.** One of the vertical posts used to secure cattle in a stall. —*tr.v.* **stanchioned, -chioning, -chions. 1.** To build stanchions for; equip with stanchions. **2.** To confine (cattle) in stanchions. [Middle English *stanchon*, from Norman French, from Old French *estanchon*, from *estanc(h)e*, a stay, prop, from *ester*, to stand, prop, from Latin *stāre*. See **stā-** in Appendix.*]

stand (stănd) *v.* **stood** (stōōd), **standing, stands.** —*intr.* **1. a.** To take or maintain an upright position on the feet. **b.** To be placed in or maintain an erect position upon a base, support, or bottom. **c.** To grow in a vertical direction. **2.** To assume a standing position in a manner specified: *stand straight.* **3.** *Hunting.* To point or range. **4.** To measure or equal a specified height when in a standing position: *stand five feet tall.* **5. a.** To remain stable, valid, intact, or unchanged. **b.** To be or remain sure of or committed to. Used with *on*: *to stand on an argument.* **6.** To have a specified position, expectation, or opportunity: *stand to gain.* **7.** To be situated or placed. **8.** To be in a specified class or degree; to rank. **9.** To remain in a stationary position. **10. a.** To remain without flowing or being disturbed. **b.** To stagnate. **11.** To assume or maintain an attitude, conviction, or course. **12.** *Chiefly British.* To be a candidate for public office. **13.** To take or hold a particular course or direction; to steer: *a ship standing to windward.* —*tr.* **1.** To cause to stand; place upright. **2.** To encounter; meet; engage in: *stand battle.* **3. a.** To resist; withstand: *stand siege.* **b.** To tolerate; endure; bear. **4.** To be subjected to; undergo: *stand trial.* **5.** *Informal.* To pick up the check for; treat: *stand someone to a drink.* —See Synonyms at **bear.** —**stand a chance.** To have any hopes or likelihood of gaining or accomplishing. —**stand down.** *Law.* To leave the witness stand, as after giving testimony. —**stand for.** To represent; symbolize. —**stand in for.** To take someone's place; substitute for. —**stand on. 1.** To depend upon; rest on. **2.** To insist upon or demand, as observance of formalities or one's due rights. **3.** To maintain the same tack or course in navigation. —**stand one's ground.** To hold out against attack. —**stand on one's own (two) feet** (or **legs**). To be independent and responsible for one's own affairs. —**stand over. 1.** To keep close surveillance on; watch closely. **2.** To hold over or be held over; postpone. —**stand pat. 1.** In poker, to keep one's original hand without drawing new cards. **2.** To remain unchanged. **3.** To oppose all change. —**stand to reason.** To be consistent with reason. —**stand up for.** To side with; defend. —**stand up to.** To face up to. —**stand up with.** To act as best man or bridesmaid for. —*n.* **1.** The act of standing. **2.** A halt. **3.** A ceasing of work or activity; standstill. **4.** A stop on a performance tour: *one-night stands in summer stock.* **5.** The place where a person stands. **6.** A booth, stall, or counter for the display of goods for sale. **7.** A parking space reserved for taxis. **8.** A desperate or decisive halt for defense or resistance, as in a battle. **9.** A position or opinion one is prepared to defend: *take a stand.* **10.** *Usually plural.* The bleachers at a playing field or stadium. **11.** A **witness stand** *(see).* **12.** A small rack, prop, or table for holding various articles: *music stand.* **13.** A group or growth of tall plants or trees: *a stand of pine.* [Stand, stood (past tense); Middle English *standen, sto(o)d*, Old English *standan, stōd* (past singular). See **stā-** in Appendix.*] —**stand′er** *n.*

stan·dard (stăn′dərd) *n. Abbr.* **std. 1.** A flag, banner, or ensign, specifically: **a.** The ensign of a chief of state, nation, or city. **b.** A long, tapering flag bearing heraldic devices distinctive of a person or corporation. **c.** The colors of a mounted or motorized military unit. **2. a.** An acknowledged measure of comparison for quantitative or qualitative value; criterion; norm. **b.** An object that under specified conditions defines, represents, or records the magnitude of a **unit** *(see).* See **measurement. 3.** The set proportion by weight of gold or silver to alloy metal prescribed for use in coinage. **4.** The commodity or commodities used to back a monetary system. See **gold standard, silver standard, bimetallism. 5. a.** A degree or level of requirement, excellence, or attainment. **b.** A requirement of moral conduct. Often used in the plural to indicate moral character: *maintain standards in the face of temptation.* **6.** *British.* A grade level in elementary schools. **7.** A pedestal, stand, or base. **8.** *Botany.* **a.** The large upper petal of the flower of a pea or related plant. Also called "banner." **b.** One of the narrow,

stamen
Stamens of a lily

stamp
Revenue stamp used under the Stamp Act

upright petals of an iris. **9.** *Horticulture.* A shrub or small tree that through grafting or training has a single stem of limited height with a crown of leaves and flowers at its apex. —See Synonyms at **ideal.** —*adj.* **1. a.** Serving as a standard of measurement or value. **b.** Commonly used and accepted as an authority: *a standard atlas.* **c.** Of average but acceptable quality. **d.** Of normal or prescribed size or quantity. **e.** Designating the U.S. Government grade of meat higher than *commercial* and lower than *good.* **2.** *Linguistics.* Conforming to established educated usage in speech or writing. —See Synonyms at **normal.** [Middle English, from Old French *estandard,* flag marking a place for rallying, probably from Frankish *standhard* (unattested), "standing firmly" : *standan* (unattested), to stand (see **stā-** in Appendix*) + *hard* (unattested), hard, firm (see **kar-**[1] in Appendix*).]

stan·dard-bear·er (stăn′dərd-bâr′ər) *n.* **1.** One who bears the colors of a military unit. **2.** One who is in the vanguard of a political or religious movement.

stan·dard-bred (stăn′dərd-brĕd′) *n.* One of an American breed of horses developed for harness racing.

standard candle. *Optics.* A **candela** *(see).*

standard deviation. *Symbol* σ, **s** *Statistics.* **1.** The square root of the **variance** *(see).* **2.** A statistic used as a measure of dispersion in a distribution, the square root of the arithmetic average of the squares of the deviations from the mean. In this sense, also called "root mean square deviation."

standard gauge. **1.** A railroad track having a width of 56½ inches. **2.** A railroad or railroad car built to the above specification. —**stan′dard-gauge′** *adj.*

stan·dard·ize (stăn′dər-dīz′) *tr.v.* **-ized, -izing, -izes.** To make, cause, or adapt to fit a standard. —**stan′dard·i·za′tion** *n.*

standard time. The time in any of 24 time zones, usually the mean solar time at the central meridian of each zone. In the continental United States, there are four standard time zones: Eastern (E.S.T., E.T.), using the 75th meridian; Central (C.S.T., C.T.), using the 90th meridian; Mountain (M.S.T., M.T.), using the 105th meridian; and Pacific (P.S.T., P.T.), using the 120th meridian.

stand by. **1.** To be available and ready for action if needed. **2.** To aid; support. **3.** To keep or maintain (one's word, policy, or promise). **4.** To wait for the resumption of transmission.

stand-by (stănd′bī′) *n., pl.* **-bys.** **1.** One that can always be depended upon. **2.** A favorite or frequent choice. **3.** One kept in readiness to serve as a substitute.

stand-ee (stăn-dē′) *n.* One using standing room.

stand in. To act as a stand-in.

stand-in (stănd′ĭn′) *n.* **1.** One who substitutes for an actor during lights and camera adjustments. **2.** A substitute.

stand-ing (stăn′dĭng) *n.* **1.** The act or position of one that stands. **2.** Standing room. **3. a.** Status with respect to credit, rank, or reputation. **b.** High reputation; esteem. **4.** Length of time; duration. —*adj.* **1.** Remaining upright; erect. **2.** Made or performed from an upright position: *standing jumps.* **3.** Permanent and unchanging. **4.** Not movable; stationary. **5.** Not flowing or circulating; stagnant.

standing army. A permanent army of paid soldiers.

standing room. Space in which to stand, as in a public place where all seats are filled.

standing wave. A wave in which the amplitude of the resultant of a transmitted and a reflected wave is stationary in time and in which some of the energy of the transmitted wave is absorbed by the reflecting boundary.

stand off. **1.** To maintain a distance from; avoid: *"standing the canoe off the rocks and speeding it into the channel"* (James Michener). **2.** To fail in or deny compliance or agreement. **3.** To put off; evade. **4.** To take or maintain a course away from the shore.

stand-off (stănd′ôf′, -ŏf′) *n.* **1.** A tie, as in a contest; a draw. **2.** An effect that neutralizes or counterbalances.

stand-off-ish (stănd-ôf′ĭsh, -ŏf′ĭsh) *adj.* Unsociable; aloof.

stand oil. A drying oil, such as linseed, tung, or soya, heated with minimum oxidation until thickened and used in oil enamel paints.

stand out. **1.** To protrude; stick out. **2.** To be conspicuous. **3.** To refuse compliance; maintain opposition: *stand out against a verdict.* **4.** To take or maintain a course away from shore.

stand-out (stănd′out′) *n.* One that is outstanding or excellent.

stand-pipe (stănd′pīp′) *n.* A large vertical pipe into which water is pumped in order to produce a desired pressure.

stand-point (stănd′point′) *n.* A position from which things are considered or judged; point of view. [Translation of German *Standpunkt.*]

St. An·drews (sānt′ ăn′drōōz). A town in eastern Fife, Scotland, the site of the Royal and Ancient Golf Club and of St. Andrews University. Population, 10,000.

St. An·drew's cross (sānt′ ăn′drōōz). **1.** A cross shaped like the letter X. **2.** A shrubby New World plant, *Ascyrum hypericoides,* having four-petaled yellow flowers.

stand·still (stănd′stĭl′) *n.* A halt: *came to a standstill.*

stand up. **1.** To assume a standing position; rise. **2.** To prove valid, satisfactory, or durable. **3.** *Informal.* To fail to keep an appointment with (someone).

stand-up, stand-up (stănd′ŭp′) *adj.* **1.** Erect; upright. **2.** Taken standing: *a stand-up supper.* **3.** Designating a fist fight confined largely to heavy blows with little maneuvering. **4.** Designating a theatrical performance, especially of a comedian performed without costume, stage properties, or assisting performers.

Stan·ford-Bi·net scale (stăn′fərd-bĭ-nā′). A revision of the **Binet-Simon scale** *(see)* used in one form or another since 1916. Also called "Stanford-Binet test," "Stanford Revision of the Binet scale." [Prepared at *Stanford* University, California.]

stang. *Obsolete.* Past tense of **sting.**

stan·hope (stăn′hōp′) *n.* A light open carriage with one seat and two or four wheels. [First built for the Reverend Fitzroy *Stanhope* (1787–1864), English clergyman.]

Stan·is·lav·sky (stăn′ə-slăv′skē, -slä′f′skē; *Russian* stə-nĭ-slä′f′skĭ), **Konstantin.** Original name, Konstantin Sergeyevich Alekseyev. 1863–1938. Russian actor and director.

stank. Past tense of **stink.**

Stan·ley (stăn′lē). The administrative center of the British Antarctic Territory, situated in the Falkland Islands.

Stan·ley (stăn′lē), Sir **Henry Morton.** Original name, John Rowlands. 1841–1904. Welsh-born journalist and explorer; founded Congo Free State (1879) for Belgium.

Stan·ley, Mount (stăn′lē). The highest elevation (16,795 feet) in the Ruwenzori, central Africa.

Stan·ley (stăn′lē), **Wendell Meredith.** 1904–1971. American biochemist; worked on enzymes.

Stan·ley Falls (stăn′lē). A series of cataracts on the Lualaba River, in south-central Africa, below which the river becomes the Congo.

Stan·ley Pool (stăn′lē). A broadening of the Congo River forming a 320-square-mile lake between the Republic of Congo and Zaire.

Stan·ley·ville. The former name for **Kisangani.**

stan·na·ry (stăn′ə-rē) *n., pl.* **-ries.** Also **Stan·na·ry.** One of the tin-producing districts of England. Usually used in the plural. [Medieval Latin *stannāria,* neuter plural of Late Latin *stannum,* tin. See **stannic.**]

stan·nic (stăn′ĭk) *adj.* Of, pertaining to, or containing tin, especially with valence 4. [Probably from French *stannique,* from Late Latin *stannum,* tin, from Latin *stannum*†, an alloy of silver and lead.]

stannic chloride. A colorless caustic liquid, $Na_2SnCl_6 \cdot H_2O$, made from tin treated with chlorine and used in the manufacture of textiles, sensitized papers, and perfumes.

stan·nite (stăn′īt′) *n.* A gray to black mineral, chiefly Cu_2FeSnS, having a metallic luster. Also called "tin pyrites." [German *Stannit* : Late Latin *stannum,* tin (see **stannic**) + -ITE.]

stan·nous (stăn′əs) *adj.* Of or pertaining to tin, especially with valence 2. [From Late Latin *stannum,* tin. See **stannic.**]

Stan·o·voi Range (stăn′ə-voi′). A mountain range of the Soviet Union, extending about 450 miles in southeastern Siberia. Highest elevation, 8,143 feet.

St. An·tho·ny's fire. *Pathology.* **Erysipelas** *(see).*

Stan·ton (stăn′tən), **Edwin McMasters.** 1814–1869. American public official and jurist; Secretary of War (1862–68).

Stan·ton (stăn′tən), **Elizabeth Cady.** 1815–1902. American feminist and social reformer.

stan·za (stăn′zə) *n. Abbr.* **st.** One of the divisions of a poem, composed of two or more lines usually characterized by a common pattern of meter, rhyme, and number of lines. [Italian, "a stopping or standing," from Vulgar Latin *stantia* (unattested), from Latin *stāns,* present participle of *stāre,* to stand. See **stā-** in Appendix.*] —**stan·za′ic** (-zā′ĭk) *adj.*

sta·pes (stā′pēz′) *n., pl.* **stapes** or **stapedes** (stə-pē′dēz′). A small bone of the inner ear, shaped somewhat like a stirrup. Also called "stirrup bone." [New Latin, from Medieval Latin *stapēs,* perhaps variant of *staffa, stapha, stapeda,* stirrup : Latin *stāre,* to stand (see **stā-** in Appendix*) + *pēs* (stem *ped-*), foot (see **ped-**[1] in Appendix*).] —**sta·pe′di·al** (stə-pē′dē-əl) *adj.*

staphylo-. Indicates: **1.** *Anatomy.* The uvula; for example, **staphylorrhaphy. 2.** *Microbiology.* Resembling a bunch of grapes; clustered; for example, **staphylococcus.** [New Latin, from Greek *staphulē,* bunch of grapes, grapevine, uvula. See **stebh-** in Appendix.*]

staph·y·lo·coc·cus (stăf′ə-lō-kŏk′əs) *n., pl.* **-cocci** (-kŏk′sī′). Any of various Gram-positive, spherical parasitic bacteria of the genus *Staphylococcus,* occurring in grapelike clusters and causing boils, septicemia, and other infections. Also called "staph." [New Latin : STAPHYLO- + -COCCUS.] —**staph′y·lo·coc′cal** (-kŏk′əl), **staph′y·lo·coc′cic** (-kŏk′sĭk) *adj.*

staph·y·lo·plas·ty (stăf′ə-lō-plăs′tē) *n.* Corrective surgery of the uvula and the soft palate. [STAPHYLO- + -PLASTY.] —**staph′y·lo·plas′tic** *adj.*

staph·y·lor·rha·phy (stăf′ə-lôr′ə-fē, -lŏr′ə-fē) *n.* Also **staph·y·lor·a·phy.** The correction of a cleft palate or divided uvula by plastic surgery. [STAPHYLO- + Greek *-rrhaphia,* sewing, suture, from *rhaptein,* to sew (see **wer-**[3] in Appendix*).]

sta·ple[1] (stā′pəl) *n.* **1.** A major commodity grown or produced in a region. **2.** A major item of trade in steady demand, as salt, flour, or coffee. **3.** A major part, element, or feature. **4.** Raw material. **5.** The fiber of cotton, wool, or flax, graded as to length and fineness. —*adj.* **1.** Being in constant supply and demand. **2.** Important as an article of trade, production, or consumption in a specified region. **3.** Principal; leading: *staple exports.* —*tr.v.* **stapled, -pling, -ples.** To grade (fibers) according to length and fineness. [Middle English *staple, estapel,* market town, trade center, from Old French *estaple,* from Middle Dutch *stapel,* pillar, foundation, pile, emporium. See **stebh-** in Appendix.*]

sta·ple[2] (stā′pəl) *n.* **1.** A U-shaped metal loop with pointed ends, driven into a surface to hold a bolt, hook, or hasp, or to hold wiring in place. **2.** A thin piece of wire having the shape of a square bracket, used as a fastening for papers, cloth, and similar materials. —*tr.v.* **stapled, -pling, -ples.** To fasten by means of a staple or staples. [Middle English *stapel, stapul,* Old English *stapol,* post, pillar. See **stebh-** in Appendix.*]

stanhope

polygamous societies, a secondary wife, usually of inferior legal and social status. [Middle English, from Old French, from Latin *concubīna*, "one to sleep with" : *com-*, together + *cubāre*, to lie down (see **keu-**[2] in Appendix*).]

con·cu·pis·cence (kŏn-kyōō′pə-səns) *n.* **1.** Sexual desire; lust; sensuality. **2.** Any abnormally strong desire. [Latin *concupīscēns*, present participle of *concupīscere*, inceptive of *concupere*, to have a strong desire for : *com-* (intensive) + *cupere*, to desire (see **kwēp-** in Appendix*).] —**con·cu′pis·cent** *adj.*

con·cur (kən-kûr′) *intr.v.* **-curred, -curring, -curs. 1.** To have the same opinion; agree. **2.** To act together; cooperate. **3.** To occur at the same time; coincide. **4.** *Rare.* To come together; converge. —See Synonyms at **assent**. [Middle English *concurren*, from Latin *concurrere*, to run together : *com-*, together + *currere*, to run (see **kers-**[2] in Appendix*).]

Usage: *Concur in* is generally used to express approval or joint action: *concur in a plan. Concur to* (with infinitive) also is used for joint action: *concurred to avert trouble. Concur with* expresses agreement: *concur with him* (or *with his view*).

con·cur·rence (kən-kûr′əns) *n.* Also **con·cur·ren·cy** (-ən-sē) *pl.* **-cies. 1.** Agreement in opinion; accordance. **2.** Cooperation or combination, as of agents, causes, circumstances, or events. **3.** Simultaneous occurrence; coincidence. **4.** *Rare.* Competition. **5.** *Law.* A power or claim jointly held.

con·cur·rent (kən-kûr′ənt) *adj.* **1.** Happening at the same time or place. **2.** Operating in conjunction. **3.** Meeting at or tending to meet at the same point. **4.** In accordance; agreeing; harmonious. —See Synonyms at **contemporary**. —*n.* **1.** One that concurs. **2.** *Rare.* A competitor or rival. [Middle English, from Old French, from Latin *concurrēns*, present participle of *concurrere*, to run together, CONCUR.] —**con·cur′rent·ly** *adv.*

concurrent resolution. A resolution adopted by both houses of a bicameral legislature, that does not have the force of law and does not require the signature of the chief executive. Compare **joint resolution.**

con·cuss (kən-kŭs′) *tr.v.* **-cussed, -cussing, -cusses. 1.** To injure (the brain) by concussion. **2.** *Rare.* To shake or agitate; disturb severely. [Late Latin *concutere* (past participle *concussus*), to shake violently : Latin *com-* (intensive) + *-cutere*, from *quatere*, to shake, dash (see **kwēt-** in Appendix*).]

con·cus·sion (kən-kŭsh′ən) *n.* **1.** A violent jarring; a shock. **2.** An injury of a soft structure, especially of the brain, resulting from a violent blow. —**con·cus′sive** (-kŭs′ĭv) *adj.*

cond. **1.** condition. **2.** conductor.

Con·dé (kôN-dā′), **Prince de.** Title of Louis II de Bourbon, Duc d'Enghien. Called "the Great Condé." 1621–1686. French general.

con·demn (kən-dĕm′) *tr.v.* **-demned, -demning, -demns. 1.** To express disapproval of; censure; criticize. **2.** To pronounce judgment against; to sentence; to doom. **3.** To demonstrate the guilt of; to convict. **4.** To judge or declare to be unfit for use or consumption, usually by official order: *condemn an old building.* **5.** *Law.* To declare legally appropriated for public use under the right of eminent domain. —See Synonyms at **criticize**. [Middle English *condem(p)nen*, from Old French *condem(p)ner*, from Latin *condemnāre* : *com-* (intensive) + *damnāre*, to damage, condemn, from *damnum*, damage, fine (see **dap-** in Appendix*).] —**con·dem′na·ble** (-dĕm′nə-bəl) *adj.* —**con·demn′er** *n.*

con·dem·na·tion (kŏn′dĕm-nā′shən) *n.* **1.** The act of condemning. **2.** The state of being condemned. **3.** Severe reproof; strong censure. **4.** A reason or occasion for condemning. —**con·dem′na·to′ry** (-nə-tôr′ē, -tōr′ē) *adj.*

con·den·sa·ble (kən-dĕn′sə-bəl) *adj.* Also **con·den·si·ble.** Capable of being condensed. —**con·den′sa·bil′i·ty** *n.*

con·den·sate (kən-dĕn′sāt′) *adj. Rare.* Condensed. —*n.* A product of condensation. [Latin *condēnsātus*, past participle of *condēnsāre*, CONDENSE.]

con·den·sa·tion (kŏn′dən-sā′shən) *n.* **1.** The act of condensing. **2.** The state of being condensed. **3.** A product of condensing. **4.** *Physics.* **a.** The physical process by which a liquid is removed from a vapor or vapor mixture. **b.** The liquid so removed; a condensate. **5.** *Chemistry.* A chemical reaction in which water or another simple substance is released by the combination of two or more molecules. **6.** *Psychoanalysis.* The process by which a single idea or word is invested with the emotional content of a group of ideas.

con·dense (kən-dĕns′) *v.* **-densed, -densing, -denses.** —*tr.* **1.** To reduce the volume of; compress. **2.** To abridge (a literary work, for example). **3. a.** To form a condensate from (a vapor, for example). **b.** To subject (a vapor, for example) to condensation. —*intr.* **1.** To become more compact. **2.** To undergo condensation. —See Synonyms at **contract**. [Middle English *condensen*, from Old French *condenser*, from Latin *condēnsāre* : *com-* (intensive) + *dēnsāre*, to make dense, from *dēnsus*, dense (see **dens-**[2] in Appendix*).]

condensed milk. Cow's milk with sugar added, and reduced by evaporation to a thick consistency. Compare **evaporated milk.**

con·dens·er (kən-dĕn′sər) *n.* **1.** One that condenses. **2.** *Physics.* An apparatus used to condense vapor. **3.** *Electricity.* A **capacitor** *(see).* **4.** A mirror, lens, or combination of lenses used to gather light and direct it upon an object or projection lens.

con·de·scend (kŏn′dĭ-sĕnd′) *intr.v.* **-scended, -scending, -scends. 1.** To come down voluntarily to the level of inferiors with whom one is dealing; deign. **2.** To deal with people in a patronizing manner. **3.** *Obsolete.* To yield or assent. [Middle English *condescenden*, from Old French *condescendre*, from Medieval Latin *condēscendere*, to stoop to : Latin *com-* (intensive) + *dēscendere*, to descend : *dē-*, down + *scandere*, to climb (see **skand-** in Appendix*).] —**con′de·scend′er** *n.*

con·de·scen·dence (kŏn′dĭ-sĕn′dəns) *n.* **1.** *Scottish Law.* A list of facts presented by the plaintiff. **2.** Condescension.

con·de·scend·ing (kŏn′dĭ-sĕn′dĭng) *adj.* **1.** Stooping to the level of one's inferiors. **2.** Acting with an air of superiority. —**con′de·scend′ing·ly** *adv.*

con·de·scen·sion (kŏn′dĭ-sĕn′shən) *n.* **1. a.** The act of condescending. **b.** An instance of this. **2.** Patronizing behavior or manner.

con·dign (kən-dīn′) *adj.* **1.** Deserved; adequate; merited. Said of punishment or censure. **2.** *Obsolete.* Worthy; deserving. [Middle English *condigne*, from Old French, from Latin *condignus*, wholly worthy : *com-* (intensive) + *dignus*, worthy (see **dek-**[1] in Appendix*).] —**con·dign′ly** *adv.*

con·di·ment (kŏn′də-mənt) *n.* A seasoning for food, such as mustard or various spices. [Middle English, from Old French, from Latin *condīmentum*, from *condīre*, to season, to preserve by pickling, perhaps variant of *condere*, to bring together, store up. See **dhē-**[1] in Appendix.*] —**con′di·men′tal** *adj.*

con·di·tion (kən-dĭsh′ən) *n. Abbr.* **cond. 1.** The particular mode or state of being of a person or thing. **2. a.** State of health. **b.** State of readiness or physical fitness: *getting in condition for the tournament.* **3.** *Informal.* A disease or ailment: *a heart condition.* See Usage note below. **4.** Rank or social position: *a person of high condition.* **5.** Something indispensable to the appearance or occurrence of something else; a prerequisite. **6.** Something that restricts or modifies something else; a qualification. **7.** *Usually plural.* The existing circumstances: *poor driving conditions.* **8.** *Grammar.* The dependent clause of a conditional sentence. **9.** *Logic.* A proposition upon which another proposition depends; the antecedent of a conditional proposition. **10.** *Law.* **a.** A provision making the effect of a legal instrument contingent upon the occurrence of some uncertain future event. **b.** The event itself. **11.** An unsatisfactory grade given a student and serving notice that he can make up deficiencies by doing further work. **12.** *Obsolete.* Way; disposition. —See Synonyms at **state**. —*tr.v.* **conditioned, -tioning, -tions. 1.** To make conditional. **2.** To render fit. **3.** To accustom (a person) to; adapt. **4.** To give the grade of condition to (a student). **5.** *Psychology.* To cause to respond in a specific manner to a specific stimulus. [Middle English *condicioun*, from Old French *condicion*, from Latin *conditiō*, *condiciō*, agreement, stipulation, probably (irregularly) from *condīcere*, to talk together, agree : *com-*, together + *dīcere*, to talk (see **deik-** in Appendix*).]

Usage: *Condition* (noun), in the sense of disease or ailment *(a liver condition, a nervous condition),* is not a scientific term, and is sometimes objected to as a euphemism. But it is acceptable to 74 per cent of the Usage Panel in all but scientific writing.

con·di·tion·al (kən-dĭsh′ən-əl) *adj.* **1.** Imposing, depending on, or containing a condition or conditions. **2.** Not certain; tentative. **3.** *Grammar.* Stating or implying a condition. —*n. Grammar.* A mood, tense, clause, or word expressing a condition. —**con·di′tion·al′i·ty** *n.* —**con·di′tion·al·ly** *adv.*

con·di·tioned (kən-dĭsh′ənd) *adj.* **1.** Subject to or dependent upon conditions or stipulations. **2. a.** Physically fit; in good physical condition. **b.** Prepared for a specific action or process. **3.** *Psychology.* Exhibiting or trained to exhibit a conditioned response.

conditioned response. *Psychology.* A new or modified response elicited by a stimulus after conditioning. Also called "conditioned reflex."

conditioned stimulus. *Psychology.* A stimulus rendered capable of eliciting a response like that of a specific **unconditioned stimulus** *(see)* by conditioning.

con·di·tion·er (kən-dĭsh′ən-ər) *n.* **1.** One that conditions: *an air conditioner.* **2.** A worker who conditions a product during manufacture. **3.** An additive or application that improves the quality or usability of a substance: *a soil conditioner.* **4.** A trainer of athletes.

con·di·tion·ing (kən-dĭsh′ən-ĭng) *n. Psychology.* The process of, or the complex of organismic processes resulting from, presenting an initially inadequate stimulus with an unconditioned stimulus until the former is capable of eliciting a response like that elicited by the latter.

con·dole (kən-dōl′) *v.* **-doled, -doling, -doles.** —*intr.* To mourn or express sympathy with one in pain, grief, or misfortune. Used with *with.* —*tr. Rare.* To address words of sympathy to. [Late Latin *condolēre*, to feel another's pain : Latin *com-*, together + *dolēre*, to feel pain, grieve (see **del-**[3] in Appendix*).] —**con·do′la·to′ry** (-dō′lə-tôr′ē, -tōr′ē) *adj.* —**con·dol′er** *n.*

con·do·lence (kən-dō′ləns) *n.* Also **con·dole·ment** (-dōl′mənt) (for sense 1). **1.** An expression of sympathy with a person in pain, grief, or misfortune. **2.** *Plural.* A formal declaration of such sympathy. —See Synonyms at **pity**. —**con·do′lent** *adj.*

con do·lo·re (kōn dō-lō′rā). *Music.* With sadness; sorrowfully. Used as a direction. [Italian, "with sorrow."]

con·dom (kŏn′dəm) *n.* Also **cun·dum** (kŭn′dəm). A sheath, usually made of thin rubber, designed to cover the penis during sexual intercourse for antivenereal or contraceptive purposes. [Said to have been invented by Dr. *Condom* or *Conton*, 18th-century English physician.]

con·do·min·i·um (kŏn′də-mĭn′ē-əm) *n.* **1. a.** Joint sovereignty; especially, joint rule of a territory by two or more states. **b.** The territory so governed. **2. a.** An apartment building in which the apartments are owned individually. **b.** An apartment in such a building. [New Latin : CON- + DOMINIUM.]

Con·don (kŏn′dən), **Edward Uhler.** Born 1902. American physicist; aided in development of atomic bomb.

con·do·na·tion (kŏn′dō-nā′shən) *n.* **1.** The condoning or over-

Item		Amount
to contract for a study of the Education Employee Relations Act (EERA) as required in Chapter 973, Statutes of 1988 (AB 1725).		
6870-001-165—For support of Board of Governors of the California Community Colleges, Program 20.20.010—Special Services and Operations—Faculty and Administrative Credentials, payable from the Community College Credentials Fund		764,000
Provisions:		
1. Subject to the conditions of Chapter 2.5 (commencing with Section 87350) of Part 51 of the Education Code, and based on increases in credential applications, Item 6870-001-165 may be increased subject to the approval of the Department of Finance and notification of the Joint Legislative Budget Committee in accordance with the provisions of Section 28.00 of this act.		
6870-101-001—For local assistance, Board of Governors of the California Community Colleges		1,548,715,000
Schedule:		
(a) 10-Apportionments	1,393,933,000	
(b) 20.10.010-Extended Opportunity Programs and Services and Special Services	46,493,000	
(c) 20.10.020-Disabled Students	30,955,000	
(d) 20.10.050-Transfer Centers	1,991,000	
(e) 20.10.060-Foster Parent Training	900,000	
(f) 20.10.070-Matriculation	35,870,000	
(g) 20.20 020-Partial Financing of the Academic Senate for the Community Colleges	110,000	
(h) 20.20.040-Faculty and Staff Diversity	1,000,000	
(i) 20.30.010-Faculty and Staff Development	4,900,000	
(j) 20.30.020-Instructional Improvement, for Transfer to the Community College Fund for Instructional Improvement	736,000	
(k) 20.30.030-Vocational Education Special Projects	5,318,000	
(*l*) 20.30.035-Vocational education allocations	31,883,000	
(m) 20.30.037-Transfer Education and Articulation	1,485,000	
(n) 20.40.020-Deferred maintenance	15,000,000	
(o) 20.40.040-Hazardous Substances	8,000,000	

Item Amount

(p) 20.50.010-Management Information Systems 6,400,000
(q) Reimbursements ..... -36,259,000

Provisions:

1. The funds appropriated in Schedule (a) are for transfer by the State Controller during the 1989–90 fiscal year to Section B of the State School Fund, in lieu of the amount which otherwise would be appropriated for transfer from the General Fund in the State Treasury to Section B of the State School Fund for the 1989–90 fiscal year pursuant to Section 14020 of the Education Code, as needed, in addition to the sums accruing to Section B of the State School Fund from other sources for the purposes specified in this item for apportionment pursuant to Chapter 5 of Part 50 of the Education Code.
2. (a) Of the amount appropriated in Schedule (a), up to $6,775,000 shall be available as necessary upon certification by the Chancellor of the California Community Colleges for the purpose of funding community college related and supplemental instruction pursuant to Section 3074 of the Labor Code as provided in Section 8152 of the Education Code. No community college district shall use funds available under this provision to offer any new or expansion of apprenticeship training program(s) unless that program(s) has been approved by the chancellor.

   (b) The chancellor shall report to the Department of Finance and the Legislature no later than October 1, 1989, on the amount of funds expended for and the hours of related and supplemental instruction offered in the apprenticeship program during the 1988–89 fiscal year, with information to be provided by community college district, program sponsor, and trade. Expenditure information shall distinguish between direct and indirect costs, including administrative costs, funded for community college districts. In addition, the report shall identify the hours of related and supplemental instruction proposed for the 1989–90 fiscal year by community college district, program sponsor,

Item		Amount
	baseline data for the Teacher and Reading Development Partnership funded in Schedule (7) of Item 6870-101-0001.	
	3. Of the funds appropriated in Schedule (4.5) of this item, $750,000 shall be available for the California Community Colleges to contract with an institution of higher education within California to operate a Community College Leadership Institute to coordinate education and training opportunities for community college faculty, classified staff, trustees, and administrators for leadership roles in California Community Colleges.	
6870-001-0574—For support of Board of Governors of the California Community Colleges, Program 20.40.010-Facilities Planning, payable from the Higher Education Capital Outlay Bond Fund of 1998		961,000
6870-001-0909—For support for the Board of Governors of the California Community Colleges, Program 20.30.020-Instructional Improvement and Innovation, payable from the Special Grant Cash Account of the Fund for Instructional Improvement Program		10,000
6870-001-0925—For support of Board of Governors of the California Community Colleges, Program 20.30.050-Economic Development, payable from the California Business Resources and Assistance Innovation Network Fund		14,000
6870-101-0001—For local assistance, Board of Governors of the California Community Colleges (Proposition 98)		2,733,941,000
Schedule:		
(1) 10.10.010-Apportionments	1,703,182,000	
(2) 10.10.020-Basic Skills, CalWORKs, Apprenticeship	47,211,000	
(3) 10.10.030-Growth for Apportionment	106,841,000	
(4) 10.10.040-Partnership for Excellence	307,600,000	
(5) 20.10.005-Student Financial Aid Administration	18,149,000	
(6) 20.10.010-Extended Opportunity Programs and Services and Special Services	93,439,000	
(8) 20.10.020-Disabled Students	79,581,000	
(10) 20.10.045-Special Services for CalWORKs Recipients	65,000,000	

Item	Amount
(11) 20.10.060-Foster Care Education Program	1,866,000
(12) 20.10.070-Matriculation	76,289,000
(12.5) 20.20.015-Faculty and Staff Development	5,233,000
(13) 20.20.020-Academic Senate for the Community Colleges	497,000
(14) 20.20.040-Faculty and Staff Diversity	1,859,000
(15) 20.20.050-Part-Time Faculty Health Insurance	1,000,000
(19) 20.30.011-Telecommunications and Technology Infrastructure	44,300,000
(20) 20.30.012-California Virtual University	2,900,000
(21) 20.30.020-Instructional Improvement, for transfer to the Community Colleges Fund for Instructional Improvements	1,630,000
(21.5) 20.30.045-Fund for Student Success	16,218,000
(22) 20.30.050-Economic Development	50,172,000
(23) 20.30.070-Transfer Education and Articulation	3,974,000
(24) 20.40.025-Scheduled Maintenance/Special Repairs	49,000,000
(25) 20.40.035-Instructional Equipment and Library Materials Replacement	49,000,000
(26) 20.40.040-Hazardous Substances	8,000,000
(27) 20.20.085-Cañada College Joint-Use Baccalaureate	1,000,000

Provisions:

1. The funds appropriated in Schedules (1), (2), (3), (4), (5), (6), (8), (10), (11), (12), (14), (15), (12.5), (19), (22), and (25) are for transfer by the Controller during the 2001–02 fiscal year to Section B of the State School Fund.
2. Of the funds appropriated in Schedule (1), Apportionments, up to $100,000 is for a maintenance allowance, pursuant to regulations adopted by the board of governors. Up to $500,000 is to reimburse colleges for the costs of federal aid repayments related to assessed fees for fee waiver recipients. This reimbursement only applies to

Item		Amount
	travel or per diem expenses shall be in accordance with the State Administrative Manual and the rules and regulations of the Department of Personnel Administration.	
6870-001-0574—For support of Board of Governors of the California Community Colleges, Program 20.40.010-Facilities Planning, payable from the Higher Education Capital Outlay Bond Fund of 1998		985,000
6870-001-0909—For support for the Board of Governors of the California Community Colleges, Program 20.30.020-Instructional Improvement and Innovation, payable from the Special Grant Cash Account of the Fund for Instructional Improvement Program		10,000
6870-001-0925—For support of Board of Governors of the California Community Colleges, Program 20.30.050-Economic Development, payable from the California Business Resources and Assistance Innovation Network Fund		10,000
6870-101-0001—For local assistance, Board of Governors of the California Community Colleges (Proposition 98)		2,670,792,000
Schedule:		
(1) 10.10.010-Apportionments	1,704,396,000	
(2) 10.10.020-Basic Skills and Apprenticeship	40,552,000	
(3) 10.10.030-Growth for Apportionment	114,308,000	
(4) 10.10.040-Partnership for Excellence	300,000,000	
(5) 20.10.005-Student Financial Aid Administration	8,100,000	
(6) 20.10.010-Extended Opportunity Programs and Services and Special Services	96,065,000	
(7) 20.10.013-Teacher and Reading Development Partnerships	5,000,000	
(8) 20.10.020-Disabled Students	83,608,000	
(10) 20.10.045-Special Services for CalWORKs Recipients	35,000,000	
(11) 20.10.060-Foster Care Education Program	1,866,000	
(12) 20.10.070-Matriculation	64,307,000	
(12.5) 20.20.015-Faculty and Staff Development	1,000,000	
(13) 20.20.020-Academic Senate for the Community Colleges	497,000	

Item	Amount
(14) 20.20.040-Faculty and Staff Diversity	1,859,000
(15) 20.20.050-Part-Time Faculty Health Insurance	1,000,000
(16) 20.20.051-Part-time Faculty Compensation	57,000,000
(17) 20.20.055-Part-time Faculty Office Hours	7,172,000
(18) 20.30.011-Telecommunications and Technology Infrastructure	24,500,000
(19) 20.30.012-California Virtual University	2,900,000
(20) 20.30.020-Instructional Improvement, for transfer to the Community Colleges Fund for Instructional Improvements	1,630,000
(21) 20.30.045-Fund for Student Success	6,233,000
(22) 20.30.050-Economic Development	40,322,000
(23) 20.30.070-Transfer Education and Articulation	1,974,000
(24) 20.40.025-Scheduled Maintenance/Special Repairs	31,752,000
(25) 20.40.035-Instructional Equipment and Library Materials Replacement	31,751,000
(26) 20.40.040-Hazardous Substances	8,000,000

Provisions:

1. The funds appropriated in Schedules (1), (2), (3), (4), (5), (6), (8), (10), (11), (12), (12.5), (14), (15), (16), (17), (18), (22), and (25) are for transfer by the Controller during the 2002–03 fiscal year to Section B of the State School Fund.
2. Of the funds appropriated in Schedule (1), Apportionments, up to $100,000 is for a maintenance allowance, pursuant to regulations adopted by the board of governors. Up to $500,000 is to reimburse colleges for the costs of federal aid repayments related to assessed fees for fee waiver recipients. This reimbursement only applies to students who completely withdraw from college before the census date.
3. Notwithstanding any other provision of law, $27,823,000 of the funds appropriated in Schedule (2), is for allocation to community college dis-

Item		Amount
6870-001-0909—For support for the Board of Governors of the California Community Colleges, Program 20.30.020-Instructional Improvement and Innovation, payable from the Special Grant Cash Account of the Fund for Instructional Improvement Program		10,000
6870-001-0925—For support of Board of Governors of the California Community Colleges, Program 20.30.050-Economic Development, payable from the California Business Resources and Assistance Innovation Network Fund		10,000
6870-101-0001—For local assistance, Board of Governors of the California Community Colleges (Proposition 98)		2,189,054,000
Schedule:		
(1) 10.10.010-Apportionments	1,439,149,000	
(2) 10.10.020-Basic Skills and Apprenticeship	40,552,000	
(3) 10.10.030-Growth for Apportionment	57,900,000	
(4) 10.10.040-Partnership for Excellence	175,000,000	
(5) 20.10.005-Student Financial Aid Administration	46,447,000	
(6) 20.10.010-Extended Opportunity Programs and Services and Special Services	94,892,000	
(7) 20.10.013-Teacher and Reading Development Partnerships	3,700,000	
(8) 20.10.020-Disabled Students	82,583,000	
(10) 20.10.045-Special Services for CalWORKs Recipients	34,580,000	
(11) 20.10.060-Foster Care Education Program	1,754,000	
(12) 20.10.070-Matriculation	54,307,000	
(13) 20.20.020-Academic Senate for the Community Colleges	467,000	
(14) 20.20.041-Equal Employment Opportunity pursuant to Ch. 1169, Statutes of 2002	1,747,000	
(15) 20.20.050-Part-time Faculty Health Insurance	1,000,000	
(16) 20.20.051-Part-time Faculty Compensation	50,828,000	
(17) 20.20.055-Part-time Faculty Office Hours	7,172,000	
(18) 20.30.011-Telecommunications and Technology Infrastructure	22,050,000	

Item Amount

(19) 20.30.012-California Virtual University 1,347,000
(20) 20.30.020-Instructional Improvement, for transfer to the Community Colleges Fund for Instructional Improvements 312,000
(21) 20.30.045-Fund for Student Success 6,158,000
(22) 20.30.050-Economic Development 35,790,000
(23) 20.30.070-Transfer Education and Articulation 1,974,000
(24.5) Scheduled Maintenance, Special Repairs, Instructional Equipment and Library Materials Block Grant 24,941,000
(26) 20.40.040-Hazardous Substances.. 4,404,000

Provisions:

1. The funds appropriated in Schedules (1), (2), (3), (4), (5), (6), (8), (10), (11), (12), (14), (15), (16), (17), (18), (22), and (25) are for transfer by the Controller during the 2003–04 fiscal year to Section B of the State School Fund.

1.5. The amounts appropriated in Schedules (1) and (4) reflect the intent of the Legislature to defer $150,000,000 for Apportionments and $50,000,000 for Partnership for Excellence to the 2004–05 fiscal year, pursuant to separate legislation.

2. Of the funds appropriated in Schedule (1), Apportionments:
   (a) Up to $100,000 is for a maintenance allowance, pursuant to regulations adopted by the board of governors.
   (b) Up to $500,000 is to reimburse colleges for the costs of federal aid repayments related to assessed fees for fee waiver recipients. This reimbursement only applies to students who completely withdraw from college before the census date.
   (c) The amount appropriated in this item reflects a reduction of $25 million and approximately 6,500 full-time-equivalent students (FTES) based on a policy that revises allowable parameters for the claiming of state funding for concurrent enrollment. The chancellor shall allocate this reduction on a basis proportion-

STATE OF CALIFORNIA

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September 15, 2004

To: District Discrimination Complaint Officers

From: Steve Bruckman
Interim General Counsel

Subject: Nondiscrimination Complaint Processing
Legal Advisory 04-04

Synopsis: In our review of discrimination complaints and nondiscrimination policies over the past several months, we have become aware of a number of issues that have arisen at multiple districts throughout the system. We thought it would be helpful to provide reminders and updates for all districts on those topics.

DFEH filings in employment-related title 5 cases

Some employees who file title 5 nondiscrimination complaints with their employing districts also file complaints with the Department of Fair Employment and Housing (DFEH). When this situation arises, the district should forward a copy of a claimant's DFEH complaint to the Chancellor's Office for a determination as to whether the issues presented require an independent investigation by the district under the title 5 regulations. (Cal. Code Regs., tit. 5, § 59328(f)(2).)[1]

The regulations also require districts to advise employee complainants that they may be able to file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the DFEH. Because the DFEH and EEOC have a work-sharing arrangement for overlapping complaints, we accept complaints that are filed with the EEOC pursuant to that arrangement under the same conditions as those filed with DFEH. That is, if a district forwards to us a copy of an employee's EEOC complaint that could have been filed with the DFEH, we will advise the district as to whether an independent title 5 investigation is needed.

Whether the employee complaint was filed with DFEH or EEOC, the district may discontinue the investigation required under title 5, unless this Office notifies it that further investigation is required. Generally, we will not require any further investigation if a DFEH or EEOC complaint is filed with regard to the same protected classes, issues and circumstances covered in the title 5 complaint.

[1] All further section references are to title 5 of the California Code of Regulations unless otherwise indicated.

In some instances a claimant who has filed a complaint with a district and with either the DFEH or EEOC is issued a right-to-sue letter before the DFEH or EEOC complaint is forwarded to the district for response. In such a case, a district may be unable to confirm that the complaints arise from the same set of facts or allege the same bases for discrimination. In this event it is within a district's discretion whether it wishes to obtain a copy of the DFEH or EEOC complaint; however, if the external complaint is obtained, it should then be forwarded to the Chancellor's Office for a determination of whether an investigation is required pursuant to title 5. If the district does not obtain and forward the complaint to this Office, it must continue the title 5 investigation even though the right-to-sue letter has been issued.

We must caution that nothing in our regulations prevents a district from conducting its own investigation of any complaint, regardless of whether an investigation is ultimately required pursuant to title 5. For example, a district may wish to investigate a pending matter to ensure nondiscrimination, or it may be obligated to investigate a matter pursuant to local district policies or other state or federal law.

Although the regulations do not require it, we believe that complainants are well-served by a clear statement that their failure to file with DFEH or EEOC may prevent their ability to bring a lawsuit. Additionally, districts may wish to underscore the fact that the title 5 investigatory process does not provide for monetary damages.

Intermediate Steps in the Appeal Process

It has come to our attention that many districts have adopted nondiscrimination complaint procedures that provide for intermediate administrative steps before allowing an appeal to the district governing board under section 59338. For example, some districts require students who are not satisfied with the results of the administrative determination to appeal to a college vice president and then to the college president before obtaining governing board review. Some multi-campus districts also require an appeal to the district chancellor before the appeal to the local board. Such procedures can help to resolve complaints at the lowest possible level, but if there are too many steps in the appeal process complainants may be discouraged from seeking resolution of legitimate complaints. Districts that choose to use this approach should carefully assess the processes they have developed to ensure that they are not unduly burdensome and complex. In addition, there are two important requirements that must be met if such intermediate steps are to be used.

First, because all of these intermediate processes concern the administrative determination, all such intermediate appeal processes must be completed within the ninety (90) days allowed for the district to reach its administrative determination pursuant to title 5, section 59336. This means that the time for the initial investigation, the time for the intermediate appeals to be filed, and the time needed for each administrator to render a decision on the appeal must all be fitted into the available ninety day period.

Second, district policies and communications with complainants should be clear about the effect of these intermediate appeal procedures. We have occasionally seen correspondence to complainants that says something like, "You may appeal this decision to the college President within 10 days from the date of this letter. If you do not appeal this decision will be final and

you will lose your right to appeal." This is not an accurate statement of the title 5 requirements. Whether or not a complainant elects to appeal an initial administrative determination to another administrative level, once the administrative process is complete (either because the complainant does not take advantage of one or more of the intermediate appeals or the intermediate administrative appeals have been exhausted), the district must still notify the complainant that the administrative determination is now final and that he or she may appeal to the governing board. In other words, offering multi-layered administrative processes cannot deprive the complainant of the right to appeal to the governing board, and district policies and communications with complainants should be careful to make this clear.

Employment-related discrimination complaints and appeals

Earlier this year we revised our procedures for handling employment-related unlawful discrimination complaints to provide that districts are no longer required to submit the materials described in sections 59336 and 59340 to the Chancellor's Office in employment-related cases.[2]

To provide guidance to districts, we developed a Model Discrimination Policy and Procedures which was updated this year to include these policy changes, and which is available at the following URL in PDF and Word formats:
http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm

Please remember that, with regard to employment-related discrimination complaints:

- All complaints, whether or not employment-related, should be forwarded to this Office in a timely manner, pursuant to section 59330.

- It is no longer necessary to send the materials and notices required by sections 59336 and 59340 to the Chancellor's Office. However, all other requirements of section 59336 (aside from forwarding materials to this Office) must be followed, and the district should retain such records for a period of 3 years from the date on which a district's case file is closed.

- Although it is not necessary to send the materials and notices required by section 59336 to this Office, it is still necessary to seek an extension of time in cases where the district cannot meet the 90-day deadline set forth in that section. (The process for requesting an extension of time from this Office is discussed below.)

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[2] On January 14, 2004, we informed all districts that:

> "Please note that for the time being, with regard to employment related cases, due to budget reductions and severe staffing constraints the Chancellor's Office is no longer requiring districts to routinely send the information required by title 5, section 59336 to this Office, such as the administrative determination and investigative report. Should we determine that we need such a report in a particular case, we will specifically request it. We also request that districts not direct complainants to file appeals with the Chancellor's Office in employment related cases. Instead, you should continue to direct employment related matters to the Department of Fair Employment and Housing when resolution cannot be reached locally."

- The complainant should not be given appeal rights to the Chancellor's Office; instead, districts should continue to direct employment-related matters to the Department of Fair Employment and Housing when resolution cannot be reached locally.

Extensions of time

Title 5, section 59336 provides that within ninety (90) days from the date on which the complaint is received, the district must notify the complainant of its administrative determination, provide the complainant with a copy or summary of the investigative report, and notify the complainant of his or her appeal rights. In cases not involving employment discrimination, these materials, as well as the full investigation report, must be sent to this Office. Also, in cases not involving employment discrimination, the final district determination (after any appeal to the governing board) and a copy of the notice to the complainant of his or her appeal rights must be forwarded to the Chancellor within 150 days from the date on which the complaint was received. (Cal. Code Regs., tit. 5, § 59340.) The procedure for requesting an extension of these deadlines is contained in section 59342. To summarize:

- The request should be made to this office, in writing, at least 10 days before the deadline;
- A copy of the request must also be sent to the complainant; and
- The complainant must be informed that he or she may file written objections with this Office within five (5) days of receipt of the copy of the district's request for extension.
- If the request is for the extension of the 90-day deadline for completion of an investigation and administrative determination in an employment discrimination case, the district may presume that the extension has been granted if this Office does not notify the district, within 15 days from the date of the request, that the request has been denied.

Summaries of investigation reports

In general, most districts are doing thorough investigations and providing proper notice to the complainants. As you know, section 59336 requires that either the full investigation report or a summary of the investigation report be provided to the claimant along with the district's administrative determination. In a few instances where only summaries were provided, the summaries have not been meaningful and do not adequately inform complainants of the investigation and the district's conclusions. At a minimum, a summary of an investigative report should include all of the following:

- A description of the circumstances giving rise to the complaint.
- A summary and analysis of the relevant evidence (documents, data, or witness testimony) on which the determination rests.
- Specific findings as to whether there is probable cause to believe that discrimination did or did not occur with respect to each allegation in the complaint.

Without an adequate summary, complainants may be unable to file a meaningful appeal of the district's administrative determination with the local board, and, in student-related complaints, with this Office.

Complaint forms, policies and procedures

Complaint forms

Section 59328(c) requires that unlawful discrimination complaints be filed in "a form prescribed by the Chancellor." Such a form is available at the following URL, in PDF and Word: http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm.

Common problems in complaint filings:

- Outdated forms that do not include all the protected classes.
- Forms that do not inform complainants that they may file with the district or with this Office.
- Forms that contain classes that are not protected under title 5. A district may provide in its local policies that groups not covered by state or federal law are also protected from discrimination, but if it does so, the complaint form must make it clear that persons alleging discrimination on these grounds do not have the right to appeal district determinations to this Office.[3]
- Separate forms for sexual harassment complaints. We recognize that districts may wish to emphasize particular elements related to sexual harassment by issuing special explanations. With regard to title 5 complaints, we do not approve using separate forms that address only sexual harassment. A potential claimant must be made aware of all of the protected classes, rather than just one protected class, and should be able to include all allegations on one complaint form.[4]
- Forms that do not have a place to indicate whether the complainant is an employee, student, or "other."

Policies and Procedures

Section 59322 requires districts to establish and adopt written policies consistent with title 5, and to send adopted or amended policies to this Office within ninety (90) days of the adoption or amendment. Common problems are that some districts:

- Have not sent us their current policies and procedures, although letters went out to all districts in 2001 and 2002 requesting such materials.
- Have not sent subsequently amended policies and/or procedures to this Office.
- Have outdated policies and procedures. (Some contain provisions that are not lawful under title 5, such as requiring participation in informal complaint procedures.)

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[3] While we understand the desirability of comprehensive forms that include types of unlawful discrimination complaints which are not under this Office's jurisdiction in addition to title 5 complaints, the following should be made clear on such forms: 1) the protected classes that are covered by title 5; and 2) where complaints with regard to particular protected classes should be filed (i.e. title 5 complaints can be filed either with the District or with the State Chancellor's Office). Your district's policies and procedures should also be clear in this regard, and notify complainants that they can file title 5 complaints on the State Chancellor's form if they so choose.

[4] A district may, however, have separate sexual harassment policy, and in less usual cases, separate sexual harassment complaint procedures, but only if they are properly referenced in the district's core unlawful discrimination complaint policy and procedures. The problem with separate procedures is that they must be kept in up-to-date compliance with title 5.

- Have separate policies and/or procedures for sexual harassment that are not properly referenced in the district's main unlawful discrimination policy and procedures.

Action/Date Requested: Advisory only. For technical assistance and questions you may wish to contact Francesca Reitano, Senior Legal Analyst at (916) 445-1997 (freitano@cccco.edu). Please continue to direct complainants or potential complainants to Suzanne Johnson, Legal Secretary at (916) 327-5493 (sjohnson@cccco.edu).

Contact: Francesca Reitano (916) 445-1997

SB:RB:FR:sj

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May 18, 2006

To: District Officers Responsible for Handling Unlawful Discrimination Complaints

From: Steve Bruckman
Executive Vice Chancellor and General Counsel

Subject: Changes to Nondiscrimination Regulations
Legal Advisory A 06-01

Synopsis: At its meeting of January 18, 2006, the Board of Governors of the California Community Colleges adopted an extensive set of changes to its title 5 regulations. Among these changes were a number of revisions to the regulations related to handling complaints of unlawful discrimination.[1]

Summary of Major Changes To Nondiscrimination Regulations
A number of the nondiscrimination regulations (commencing with title 5, section 59300) were revised to reflect changes in controlling statutes. Changes which merit particular attention are:

Recent revisions to state nondiscrimination laws confirm that a person's actual or perceived status is protected, as is an association with those having actual or perceived characteristics. Section 59300 of the title 5 regulations was amended to include references to these additional forms of discrimination.

Section 59311 was amended to add definitions of "gender" and "sexual orientation." "Gender" is defined to include a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. "Sexual orientation" is defined to mean heterosexuality, homosexuality, or bisexuality.

Section 59339 was amended to eliminate appeals to the System Office in cases involving employment discrimination. The Department of Fair Employment and Housing is the state agency charged with rendering binding decisions in employment discrimination cases. The former language of section 59339 was misleading to employment discrimination complainants who believed the System Office could afford them a remedy.

Section 59342 was amended to clarify that when a district requests an extension of time to complete its investigation, it must notify the complainant in writing that he or she has the right to object to an extension.

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[1] The complete set of changes is available online at Agenda Item 11 in PDF or Word formats: http://www.cccco.edu/executive/bog/agendas/agenda_0106.htm

Section 59360 was amended to increase the flexibility available to the System Office in shaping remedies where a district is found to have violated the nondiscrimination regulations. The regulation has long authorized the Chancellor to withhold all or part of a district's state aid. It has now been amended to expressly permit the Chancellor to impose conditions for receipt of future state funding, including eligibility for grants and contracts.

District Policies and Procedures
The revised regulations took effect April 14, 2006. Districts should review their policies and procedures to ensure consistency with the revised regulations.

By memo dated January 16, 2004, and further clarified in Legal Advisory 04-04,[2] we requested that districts refrain from directing those bringing employment discrimination complaints to file appeals with this office. Districts which have followed this advice will already be operating in accordance with the revisions to section 59339. However, we ask that you now amend your district policies and procedures as soon as possible to include this change, as well as any other changes that may be necessitated by the clarified language of the amended regulations. Please note that, as discussed in Legal Advisory 04-04, districts must continue to send copies of employment discrimination complaints to the System Office when they are first filed. Having a copy of the complaint is helpful to our staff when complainants call for information and it alerts us that an investigation is underway. However, it is not necessary to send us the materials required by sections 59336 or 59340 when investigation of the employment discrimination complaint has been completed.

We also encourage districts to review Legal Advisory 04-04 and the revisions to section 59339 to ensure that the actual handling of employment discrimination complaints is in accord with current requirements. To further assist you in this effort, we have revised the Model Policy on Handling Complaints of Unlawful discrimination and the new version is available on the System Office website.[3]

Filing Policies and Procedures with the System Office
We take this opportunity to remind districts that title 5, section 59322 requires that the most current version of the district's unlawful discrimination complaint policies and procedures be filed with this office. We have not received the policy and procedures from several districts, and even if you have previously sent policies to us, you will now need to forward your revised policies and procedures when they have been updated to reflect the changes in the regulations.

Separate Sexual Harassment Policies and Procedures
In the course of handling discrimination complaints we have become aware that several districts have separate sexual harassment policies and procedures that were not submitted to our office with their other nondiscrimination policies. In addition, some of these separate policies have either not been updated and are out of compliance with title 5, or are not cross-referenced in the

[2] http://www.cccco.edu/divisions/legal/notices/notices.htm – available in PDF and Microsoft Word formats.
[3] http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm– available in PDF and Microsoft Word formats.

district's main policy. For a discussion of some of the issues concerning separate sexual harassment policies and procedures, please see Legal Advisory 04-04.[4]

Revised Complaint Forms and Model Policy
The Chancellor's Complaint form has been revised to include changes to section 59300 re actual or perceived status. The new form is available on the following web page in PDF and Microsoft Word, and also in a large print version:

http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm

Please update your own district's complaint forms accordingly.

As noted above, the Model Policy has been revised to include changes to title 5, sections 59300 et seq. (Past revisions were in 2002 and 2004.) Available at the link above in PDF and Microsoft Word.

Reminder: Responsible District Officer
Title 5, section 59324 requires that districts

> "shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district."

Most districts have identified the responsible district officer to us, including contact information (title, telephone, fax number and e-mail address). If your district has not, or if you are not sure we have current information, please send it to freitano@cccco.edu and sjohnson@cccco.edu.

In addition to identifying a single responsible district officer to the System Office, it is important that districts also identify that same single person to the public, rather than several persons. A common division of labor is to have one person handle employee complaints and another person handle student complaints. This is allowed under the regulation. However, one person must be identified for the filing of **all** types of complaints and the coordination of investigations, regardless of who actually handles their investigation.

Revised Regulations
For your reference, we have attached a document containing the updated text of the nondiscrimination regulations.

Notification to System Office of Failure to Appeal
We request that districts notify us when a complainant fails to appeal to the local district board within the 15-day timeline, or when a district closes its case file due to the fact that the complainant has not appealed to the local district board. Although this notification is not required by title 5, it would greatly help us in our recordkeeping and will eliminate the need to

[4] Please see footnote 2.

request this information from districts at a later and more inconvenient time, such as after your files have already been closed or archived.

This notification can be made by letter, or more informally by e-mail to Francesca Reitano or Suzanne Johnson at the e-mail addresses below, whichever you prefer.

Action/Date Requested: Advisory only. For technical assistance and questions you may wish to contact Francesca Reitano, Senior Legal Analyst at (916) 445-1997 (mailto:freitano@cccco.edu). Please continue to direct complainants or potential complainants to Suzanne Johnson, Legal Secretary at (916) 327-5493 (mailto:sjohnson@cccco.edu).

Contact: Francesca Reitano (916) 445-1997

SB/RB/FR/fr

Attachment

C. SERVICES PROVIDED BY THE OFFICE OF RESEARCH, INFORMATION AND PLANNING PROGRAM RESEARCH AND SURVEYS DIVISION

The Program Research and Surveys Division of the Office of Research, Information and Planning (ORIP) fulfills the following functions: it administers the Equal Employment Opportunity Survey (EEO-1 through EEO-6) program; it disseminates data collected in these workforce surveys (described below) to Commission officials at headquarters and in the field, to Congress, to FEPA agencies, and to the public; it provides analytic support for investigations, which involves assisting investigators in obtaining computerized personnel files, constructing large analytic databases, and developing statistical evidence; it conducts research and studies; and it serves as a statistical research source for other areas of the Commission.

ORIP's analytic support for investigations runs the gamut of technical support necessary to conduct a class investigation.

1. Provision of Workforce Data

Nearly every employer in the United States with 100 or more employees is required to file an Equal Employment Survey with the Commission. Private employers file an EEO-1, referral unions file an EEO-3, state and local governments file an EEO-4, elementary and secondary level school districts file an EEO-5, and institutions of higher education currently file an IPEDS report with the Department of Education, which serves as EEOC's EEO-6 report. Therefore a report describing the workforce of any large employer is available upon request.

Aggregate statistics or availability data can be obtained from ORIP through a summary of any of the reports mentioned above or through the 2000 Census data. All of this data (the EEO-1 through EEO-6 and the Census data) are available for various labor market parameters, including job categories and geographic area. ORIP will prepare special computer-generated reports upon request. Additionally, a great deal of this data is aggregated by various labor market characteristics and published annually for private employers and biennially for state and local governments in EEOC's *Job Patterns* books. ORIP also provides technical assistance in assessing EEO-1 data using the EEO-1 Desktop application.

2. Assessment of Targets

ORIP will assist field offices in comparing an employer's profile to aggregated data. This helps predict the possible impact of potential Commissioner Charges, directed age investigations, and charges being considered for expansion to a class investigation. Assistance includes determining appropriate labor markets and applying appropriate statistical tests.

3. Development of Requests for Information

ORIP is available to assist in framing initial requests for workforce information stored on computer systems, and interpreting those responses. ORIP relies on existing Commission guidance in adopting a multi-step approach that first requests a description of the respondent's computer system and then requests specific computerized data. ORIP will recommend language for the initial request, will provide detailed assistance in interpreting the system description, and will assist in drafting the request for the actual information.

4. Construction of Analytic Databases

Class investigations most often involve large employers. A large workforce necessitates the use of complex computerized personnel files. ORIP will convert the data from its raw form or widely used software to databases that can be readily organized, summarized, and analyzed.

5. Data Analysis

ORIP will develop descriptive and inferential statistics that can serve to bolster the evidence developed in an investigation. The statistics range from simple displays of data, calculation of means, and construction of frequency distributions to the conduct of statistical significance tests including regression analyses.

ORIP attempts to provide services in a manner most compatible with the needs and resources of the field office. Any number of approaches can be developed. For example, ORIP can provide independent analysis of specified issues. At the other extreme, ORIP can provide very detailed on-the-job training to enable investigators to independently develop statistical evidence in the future. Inquiries and requests can be directed to Ron Edwards, Director, Program Research and Surveys Division, at (202) 663-4949.

6. Web Resources

Title	Description and Web Address
EEO-1 Survey	Information on filing EEO-1 report for current year on EEOC's Web site. http://www.eeoc.gov/eeo1survey/index.html
Standard Form 100 Instruction Booklet	Instructions for filling out EEO-1 Report on EEOC's Web site. http://www.eeoc.gov/eeo1survey/2007instruct.html
Job Patterns for Minorities and Women in Private Industry	Several years of data for private employers from EEO-1 reports in aggregated format for major geographic areas and by industry group on EEOC's Web site. http://www.eeoc.gov/stats/jobpat/jobpat.html

Job Patterns for Minorities and Women in State and Local Governments	Several years of data for private employers from EEO-4 reports from 2005 are summarized in aggregated format for States and by job category on EEOC's Web site. http://www.eeoc.gov/stats/jobpat_eeo4/index.html
Special Reports	A number of special reports that utilize and supplement EEO-1 and other data to examine various equal employment opportunity issues. Studies include "Diversity in Law Firms" and "High End Department Stores, Their Access to and Use of Diverse Labor Markets." http://www.eeoc.gov/stats/reports/index.html

This page was last modified on January 27, 2009.

Return to Home Page

This form is applicable to degree-granting institutions that have 15 or more full-time employees. Screen formats for data entry of these data items will differ from what is shown below.

Fall Staff Survey, 2001

S1-Long

Part A -Full-Time Faculty (Instructional/Research/Public Services) By Racial/ethnic Category, Gender, Contract Length and Salary Class Intervals

Employees on the payroll of the Institution as of November 1, 2001

Line No.	Faculty by contract length and salary class intervals	Nonresident Alien		Black non-Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		Hispanic		White non-Hispanic		Race/ethnicity unknown		**Grand Total**	
		Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
1	**Less than 9/10 month salary contract**																
	9/10 month salary contract																
2	Below $30,000																
3	30,000-39,999																
4	40,000-49,999																
5	50,000-64,999																
6	65,000-79,999																
7	80,000-99,999																
8	100,000 and above																
9	**Total 9/10 month salary contracts (sum of lines 2-8)**																
	11/12 month salary contract																
10	Below $30,000																
11	30,000-39,999																
12	40,000-49,999																
13	50,000-64,999																
14	65,000-79,999																
15	80,000-99,999																
16	100,000 and above																
17	**Total 11/12 month salary contracts (sum of lines 10-16)**																
18	**Part A total (sum of lines 1,9,17)**																

All row and column totals will be generated by the system.

This form is applicable to degree-granting institutions that have 15 or more full-time employees. Screen formats for data entry of these data items will differ from what is shown below.

Fall Staff Survey, 2001

S1-Long

Part B - All Other Full-Time Employees By Racial/ethnic Category, Gender, Primary Occupational Activity and Salary Class Intervals

Employees on the payroll of the Institution as of November 1, 2001

Line No.	Employees by primary occupational activity and salary class intervals	Nonresident Alien		Black non-Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		Hispanic		White non-Hispanic		Race/ethnicity unknown		**Grand Total**	
		Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
	Executive/Administrative, and managerial																
19	Below $30,000																
20	30,000-39,999																
21	40,000-49,999																
22	50,000-64,999																
23	65,000-79,999																
24	80,000-99,999																
25	100,000 and above																
26	**Total Executive/ Administrative and managerial (sum of lines 19-25)**																
	Other administrative																
27	Below $30,000																
28	30,000-39,999																
29	40,000-49,999																
30	50,000-64,999																
31	65,000-79,999																
32	80,000-99,999																
33	100,000 and above																
34	**Total other administrative (sum of lines 27-33)**																

All row and column totals will be generated by the system.

This form is applicable to degree-granting institutions that have 15 or more full-time employees. Screen formats for data entry of these data items will differ from what is shown below.

Fall Staff Survey, 2001

S1-Long

Part B - All Other Full-Time Employees By Racial/ethnic Category, Gender, Primary Occupational Activity and Salary Class Intervals

Employees on the payroll of the Institution as of November 1, 2001

Line No.	Employees by primary occupational activity and salary class intervals	Nonresident Alien		Black non-Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		Hispanic		White non-Hispanic		Race/ethnicity unknown		**Grand Total**	
		Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
	Other professionals (Support/Service)																
35	Below $30,000																
36	30,000-39,999																
37	40,000-49,999																
38	50,000-64,999																
39	65,000-79,999																
40	80,000-99,999																
41	100,000 and above																
42	**Total other professionals (support service) (sum of lines 35-41)**																
	Technical and paraprofessionals																
43	Below $20,000																
44	20,000-29,999																
45	30,000-39,999																
46	40,000-49,999																
47	50,000 and above																
48	**Total technical and paraprofessionals (sum of lines 43-47)**																

All row and column totals will be generated by the system.

This form is applicable to degree-granting institutions that have 15 or more full-time employees. Screen formats for data entry of these data items will differ from what is shown below.

Fall Staff Survey, 2001

S1-Long

Part B - All Other Full-Time Employees By Racial/ethnic Category, Gender, Primary Occupational Activity and Salary Class Intervals

Employees on the payroll of the Institution as of November 1, 2001

Line No.	Employees by primary occupational activity and salary class intervals	Nonresident Alien		Black non-Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		Hispanic		White non-Hispanic		Race/ethnicity unknown		**Grand Total**	
		Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
	Clerical and secretarial																
49	Below $20,000																
50	20,000-29,999																
51	30,000-39,999																
52	40,000-49,999																
53	50,000 and above																
54	**Total clerical and secretarial (sum of lines 49-53)**																
	Skilled crafts																
55	Below $20,000																
56	20,000-29,999																
57	30,000-39,999																
58	40,000-49,999																
59	50,000 and above																
60	**Total skilled crafts (sum of lines 55-59)**																
	Service/Maintenance																
61	Below $20,000																
62	20,000-29,999																
63	30,000-39,999																
64	40,000-49,999																
65	50,000 and above																
66	**Total service/ maintenance (sum of lines 61-65)**																
67	**Total all full-time employees (sum of lines 18, 26, 34, 42, 48, 54, 60 and 66)**																

All row and column totals will be generated by the system.

This form is applicable to degree-granting institutions that have 15 or more full-time employees. Screen formats for data entry of these data items will differ from what is shown below.

Fall Staff Survey, 2001

S1-Long

Part D - Part-Time Employees by Racial/ethnic Category, Gender and Primary Occupational Activity

Employees on the payroll of the Institution as of November 1, 2001

Line No.	Employees by primary occupational activity and salary class intervals	Nonresident Alien		Black non-Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		Hispanic		White non-Hispanic		Race/ethnicity unknown		**Grand Total**	
		Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
	Part-Time Employees																
68	Faculty (Instruction/research/ public service)																
69	Instruction/research assistants																
70	Executive/administrative and managerial																
71	Other administrative																
72	Other professionals																
73	Technical and paraprofessionals																
74	Clerical and secretarial																
75	Skilled crafts																
76	Service/Maintenance																
77	**Total part-time employees (sum of lines 68-76)**																

All row and column totals will be generated by the system.

This form is applicable to degree-granting institutions that have 15 or more full-time employees. Screen formats for data entry of these data items will differ from what is shown below.

Fall Staff Survey, 2001

S1-Long

Part F - Tenure of Full-Time Faculty (Instruction/Research/Public Service)
By Racial/ethnic Category, Gender and Academic Rank
Employees on the payroll of the Institution as of November 1, 2001

Line No.	Faculty by tenure and academic rank	Nonresident Alien		Black non-Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		Hispanic		White non-Hispanic		Race/ethnicity unknown		**Grand Total**	
		Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
	Faculty with tenure																
78	Professors																
79	Associate professors																
80	Assistant professors																
81	Instructors																
82	Lecturers																
83	Other faulty*																
84	**Total faculty with tenure (sum of lines 78-83)**																
	Non-tenured faculty (Those on tenure track)																
85	Professors																
86	Associate professors																
87	Assistant professors																
88	Instructors																
89	Lecturers																
90	Other faulty*																
91	**Total non-tenured faculty (Those on tenure track (Sum of lines 85-90)**																

All row and column totals will be generated by the system.

This form is applicable to degree-granting institutions that have 15 or more full-time employees. Screen formats for data entry of these data items will differ from what is shown below.

Fall Staff Survey, 2001

S1-Long

Part F - Tenure of Full-Time Faculty (Instruction/Research/Public Service)

By Racial/ethnic Category, Gender and Academic Rank

Employees on the payroll of the Institution as of November 1, 2001

Line No.	Faculty by tenure and academic rank	Nonresident Alien		Black non-Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		Hispanic		White non-Hispanic		Race/ethnicity unknown		**Grand Total**	
		Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
	Non-tenured faculty (Those not on tenure track)																
92	Professors																
93	Associate professors																
94	Assistant professors																
95	Instructors																
96	Lecturers																
97	Other faulty*																
98	**Total non-tenured faculty (Those not on tenure track (Sum of lines 92-97)**																
99	**Total Faculty (Sum of lines 84, 91 and 98)**																

*Institutions without standard academic ranks should report full-time faculty here.

All row and column totals will be generated by the system.

This form is applicable to degree-granting institutions that have 15 or more full-time employees. Screen formats for data entry of these data items will differ from what is shown below.

Fall Staff Survey, 2001 — S1-Long

Part G - New Hires by Racial /ethnic Category

Gender and Primary Occupational Activity

Line No.	Employees by primary occupational activity	Nonresident Alien		Black non-Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		Hispanic		White non-Hispanic		Race/ethnicity unknown		**Grand Total**	
		Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
	New Hires (Full-time between July 1 and October 31, 2001)																
	Faculty																
100	a. Tenured																
101	b. Non-tenured on track																
102	c. Non-tenured not on track																
103	Executive/Administrative and managerial																
104	Other administrative																
105	Other professionals (support service)																
106	Technical and paraprofessionals																
107	Clerical and secretarial																
108	Skilled crafts																
109	Service/maintenance																
110	**Total (Sum of lines 100-109)**																

All row and column totals will be generated by the system.

GENERAL INSTRUCTIONS -- Fall Staff

PERIOD OF REPORT

Report all persons on the payroll of the institution as of November 1, 2001. This is intended to provide a snapshot of your human resources/payroll data at one point in the fall.

SPECIAL NOTE: All staff reported in the Employees by Assigned Position (EAP) component are to be included in the Fall Staff component in the same occupational activity/assigned position category. Please refer to the detailed instructions for EAP in the Help Menu.

PARTS A, B, AND D -- FULL-TIME FACULTY, ALL OTHER FULL-TIME EMPLOYEES, AND PART-TIME EMPLOYEES BY RACIAL/ETHNIC CATEGORY, GENDER AND PRIMARY OCCUPATIONAL ACTIVITY

CATEGORIZATION OF EMPLOYEES BY EMPLOYMENT STATUS

When reporting employees as full or part time, the following apply –

Report men and women by their full-time/part-time status as of November 1 of this year. This status is to be determined by the institution. The ***Glossary*** should assist in clarifying full-time/part-time status. **Do not include** persons whose services are contracted by or donated to the institution. The caveats box on the screening questions page may be used to describe the extent to which the institution uses contracted or donated services.

Each employee must be accounted for in **one and only one** of the occupational activity categories in either Part A (full-time faculty), Part B (all other full-time employees), or Part D (part-time employees). If an employee is engaged in two or more separate activities, the employee should be reported according to his or her **primary** activity. The institution shall determine what constitutes the primary activity.

Employees at off-campus centers associated with the campus covered by this report should also be included.

Hospitals, medical centers and other entities that offer postsecondary education programs as part of their mission should report **only** those staff who work full time or part time in the postsecondary education division or component of the institution. If an employee works full time for the institution, but only part time in the postsecondary education division or component, for purposes of this survey, that employee should be reported as part time in his or her primary occupational activity in the postsecondary education division or component.

CATEGORIZATION OF EMPLOYEES BY OCCUPATIONAL ACTIVITY

The following instructions will assist in the assignment of employees to primary occupational activity categories:

Faculty (instruction/research/public service)

Report the number of full-time faculty by contract length, gender and race/ethnicity in Part A.

Report the number of part-time faculty by gender and race/ethnicity in Part D.

Report as faculty, all persons whose specific assignments customarily are made for the purpose of conducting instruction, research or public service as a principal activity (or activities), and who hold academic-rank titles of professor, associate professor, assistant professor, instructor, lecturer or the equivalent of any of these academic ranks. Also include deans, directors or the equivalent, as well as

associate deans, assistant deans and executive officers of academic departments (chairpersons, heads or the equivalent) if their principal activity is instruction combined with research and/or public service. Do not include graduate assistants here, but report them in Part D as part time.

Librarians and counselors are normally reported in the other professional category; however, some institutions treat them like faculty. If they are reported as full-time faculty, the institution must also report them by tenure and academic rank (in Part F).

Report adjunct faculty employed on a part-time basis or on a full-time basis (if they were employed the full year) in the primary occupation for which they were hired.

The term, less than 9-month salary contract, applies to individuals who are employed full-time for less than 9 months. The term, 9/10-month salary contract, applies to individuals who are employed full time for two semesters, three quarters, two trimesters, two 4-month sessions, or the equivalent. The term, 11/12-month salary contract, applies to individuals who are employed full time for 11 or 12 months.

NOTE: The total number of full-time faculty reported here should agree with the counts provided in the EAP component (all categories of faculty: primarily instruction, primarily research, primarily public service and the combined category).

Graduate assistants

Report the number of part-time graduate assistants by gender and race/ethnicity in Part D.

Report all students employed on a part-time basis for the primary purpose of assisting in classroom or laboratory instruction or in the conduct of research. Graduate students having titles such as teaching assistant, teaching associate, teaching fellow or research assistant typically hold these positions. Exclude students in the College Work-Study Program. Employees hired on a full-time basis (not students) are to be reported as "other professionals."

OTHER EMPLOYEES

When classifying other employees, determine occupational category based on job title, work performed, skills, education, training and credentials. Report employees in the same occupational categories for the Fall Staff report as you did for the EAP.

Executive/administrative and managerial

Report the number of full-time executive/administrative and managerial employees by salary class intervals, gender and race/ethnicity in Part B.

Report the number of part-time executive/administrative and managerial employees by gender and race/ethnicity in Part D.

Report all persons whose primary assignments require management of the institution, or a customarily recognized department or subdivision thereof. Assignments require the performance of work directly related to management policies or general business operations of the institution, department or subdivision. Assignments in this category customarily and regularly require the incumbent to exercise discretion and independent judgment and to direct the work of others. See the *Glossary* for a full description of who to include in this category.

NOTE - Supervisors of professional employees are included here, while supervisors of nonprofessional employees (technical, clerical, craft and service/maintenance) are to be reported within the specific categories of the personnel they supervise.

Supervisors of professional and technical workers usually have a background similar to the workers they supervise, and are therefore classified with the workers they supervise. Likewise, team leaders, lead workers and supervisors of production, sales and service workers who spend at least 20% of their time performing work similar to the workers they supervise are classified with the workers they supervise.

First-line managers and supervisors of production, service and sales workers who spend more than 80% of their time performing supervisory activities are classified separately in the appropriate supervisor category, since their work activities are distinct from those of the workers they supervise. First-line managers are generally found in smaller establishments where they perform both supervisory and management functions, such as accounting, marketing and personnel work.

Other administrative

Report the number of full-time other administrative employees by salary class intervals, gender and race/ethnicity in Part B.

Report the number of part-time other administrative employees by gender and race/ethnicity in Part D.

Report all persons whose assignments require management of the institution, or a customarily recognized department or subdivision thereof, but who are subordinate to employees classified as executive and managerial. Assignments require the performance of work directly related to management policies or general business operations of the institution, department or subdivision. Assignments in this category customarily and regularly require the incumbent to exercise discretion and independent judgment. See the *Glossary* for a full description of who to include in this category.

Other professionals (support/service)

Report the number of full-time other professional (support/service) employees by salary class intervals, gender and race/ethnicity in Part B.

Report the number of part-time other professional (support/service) employees by gender and race/ethnicity in Part D.

Report all persons employed for the primary purpose of performing academic support, student service and institutional support activities, whose assignments would require either a baccalaureate degree or higher or experience of such kind and amount as to provide a comparable background. See the *Glossary* for a full description of who to include in this category.

Technical and paraprofessionals

Report the number of full-time technical and paraprofessional employees by salary class interval, gender and race/ethnicity in Part B.

Report the number of part-time technical and paraprofessional employees by gender and race/ethnicity in Part D.

Report all persons whose assignments require specialized knowledge or skills that may be acquired through experience, apprenticeship, on-the-job-training or academic work in occupationally specific programs that result in a 2-year degree or other certificate or diploma. Include persons who perform some of the duties of a professional in a supportive role, which usually requires less formal training and/or experience than normally required for professional status. See the *Glossary* for a full description of who to include in this category.

Clerical and secretarial

Report the number of full-time clerical and secretarial employees by salary class interval, gender and race/ethnicity in Part B.

Report the number of part-time clerical and secretarial employees by gender and race/ethnicity in Part D.

Report all persons whose assignments typically are associated with clerical activities or are specifically of a secretarial nature. Include personnel who are responsible for internal and external communications, recording and retrieval of data (other than computer programmers) and/or information and other paper work required in an office. See the *Glossary* for a full description of who to include in this category.

Skilled crafts

Report the number of full-time skilled crafts employees by salary class interval, gender and race/ethnicity in Part B.

Report the number of part-time skilled crafts employees by gender and race/ethnicity in Part D.

Report all persons whose assignments typically require special manual skills and a thorough and comprehensive knowledge of the processes involved in the work, acquired through on-the-job training and experience or through apprenticeship or other formal training programs. See the *Glossary* for a full description of who to include in this category.

Service/maintenance

Report the number of full-time service/maintenance employees by salary class interval, gender and race/ethnicity in Part B.

Report the number of part-time service/maintenance employees by gender and race/ethnicity in Part D.

Report all persons whose assignments require limited degrees of previously acquired skills and knowledge and in which workers perform duties that result in or contribute to the comfort, convenience and hygiene of personnel and the student body or that contribute to the upkeep of the institutional property. See the *Glossary* for a full description of who to include in this category.

CLASSIFICATION OF EMPLOYEES BY RACIAL/ETHNIC CATEGORY AND GENDER

Method of collection - The manner of collecting racial/ethnic information is left to the discretion of the institution, provided that the system that is established results in reasonably accurate data which may be replicated by others when the same documented system is utilized. An employer may acquire the racial/ethnic information necessary for this section either by visual survey of the work force or from post-employment records.

Assignment to categories - For the purpose of this report, an individual may be included in the group to which he or she appears to belong, identifies with or belongs in the eyes of the community. A person may be counted in only one group. Racial/ethnic designations are requested only for United States citizens, resident aliens and other eligible non-citizens (see definitions below).

Racial/ethnic descriptions - Racial/ethnic designations used in this survey do not denote scientific definitions of anthropological origins. The categories are:

- **Black, non-Hispanic** - A person having origins in any of the black racial groups of Africa (except those of Hispanic origin).

- **American Indian/Alaska Native** - A person having origins in any of the original peoples of North America or who maintains cultural identification through tribal affiliation or community recognition.

- **Asian/Pacific Islander** - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or Pacific Islands. This includes people from China, Japan, Korea, the Philippine Islands, American Samoa, India and Vietnam.

- **Hispanic** - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

- **White, non-Hispanic** - A person having origins in any of the original peoples of Europe, North Africa or the Middle East (except those of Hispanic origin).

Other descriptive categories

- **Nonresident alien** - A person who is not a citizen or national of the United States and who is in this country on a visa or temporary basis and does not have the right to remain indefinitely.

  NOTE - Nonresident aliens are to be reported separately, in the rows provided, rather than included in any of the five racial/ethnic categories above. Resident aliens and other eligible (for financial aid purposes) non-citizens who are not citizens or nationals of the United States but who have been admitted as legal immigrants for the purpose of obtaining permanent resident alien status (and who hold either an alien registration card (Form 1-551 or 1-151), a Temporary Resident Card (Form 1-688), or an Arrival-Departure Record (Form 1-94) with a notation that conveys legal immigrant status such as Section 207 Refugee, Section 208 Asylee, Conditional Entrant Parolee or Cuban-Haitian) are to be reported in the appropriate racial/ethnic categories along with United States citizens.

- **Race/ethnicity unknown** -This category is used ONLY if the employee did not select a racial/ethnic designation, AND the postsecondary institution finds it impossible to place the employee in one of the aforementioned racial/ethnic categories.

PART F - TENURE OF FULL-TIME FACULTY BY RACIAL/ETHNIC CATEGORY, GENDER AND ACADEMIC RANK

Report the full-time faculty from Part A by tenure status in Part F. Count an employee only once by tenure status. Totals reported in Part F should match the total full-time faculty reported in Part A.

Tenured

Report the number of faculty who are tenured, by gender and racial/ethnic category, within each of the academic ranks shown.

In reporting the number of faculty by academic rank and tenure, use the institution's criteria or requirements for either, notwithstanding the fact that the policy used by the institution may be different from that which meets or refers to a national set of principles.

Non-tenured on tenure track

Report the number of faculty who are not tenured but are in positions that lead to consideration for tenure, by gender and racial/ethnic category, within each of the academic ranks shown.

Non-tenured not on tenure track

Report the number of faculty who are in non-tenure earning positions, by gender and racial/ethnic category, within each of the academic ranks shown.

PART G - NEW HIRES BY RACIAL/ETHNIC CATEGORY, GENDER, AND PRIMARY OCCUPATIONAL ACTIVITY

Report the number of full-time permanent employees, in the respective activities, who were included on the payroll for the first time between July 1 and October 31 of the survey year, and who also are included in Parts A and B (full time). These are persons who were hired for full-time permanent employment for the first time or after a break in service.

Do not include as new hires persons who have returned from sabbatical leave or full-time faculty with less than 9-month contracts. Report newly hired full-time faculty separately by tenured, non-tenured on tenure track, and non-tenured not on tenure track.

CONFIDENTIALITY OF DATA

If required, the confidentiality of individuals' salaries will be preserved in accordance with Title V, Section 501 (a) of the Education Amendments of 1974 (Public Law 93-380, 93rd Congress, August 21, 1974) which amends Part A of the General Education Provisions Act by adding at the end thereof a new Section 406 specifically referring to NCES. Section (d)(2) of the Act is cited below.

"The Center shall develop and enforce standards designed to protect the confidentiality of persons in the collection, reporting, and publication of data under this section. This subparagraph shall not be construed to protect the confidentiality of information about institutions, organizations, and agencies receiving grants from or having contracts with the federal government."

The Freedom of Information Act requires that data retained by the federal government must be made available to the public so long as the rights to privacy of individuals are not violated. When requested, data collected in this survey will be made available to the public. The database will contain all of the data items on the report (except those which might identify individuals), as well as the names of institutions submitting the reports.

2009-10 Survey Materials

Human Resources

Print Back to Question Screen Back to Result Screen

Human Resources for degree-granting institutions and related administrative offices that have 15 or more full-time staff (combo race/ethnicity)

Human Resources Screening Questions

Does your institution have any part-time staff?

If you answer Yes to this question, you will be provided the screens to report part-time staff.

○ Yes ○ No

Did your institution hire any full-time permanent staff who were included on the payroll of the institution between July 1 and October 31, 2009 either for the *first time* or *after a break in service* AND who were still on the payroll of the institution as of November 1, 2009? (Exclude persons who have returned from sabbatical leave OR full-time staff who are working less-than-9-month contracts/teaching periods and whose primary responsibility is instruction, research, and/or public service.)

*If you answer Yes to this question and your institution has 15 or more full-time staff, you will be provided the screens to report **full-time permanent new hires** in the **Fall Staff section (long version)**.*

○ Yes ○ No

Do ALL of the instructional staff at your institution fall into any of the following categories?

*If you answer Yes to any of the questions below, the **Salaries** section is **NOT** applicable to your institution and you will **NOT** be required to report data for the **Salaries** section.*

○ No ○ Yes Are ALL of the instructional staff military personnel?

○ No ○ Yes Do ALL of the instructional staff contribute their services (e.g., members of a religious order)?

○ No ○ Yes Do ALL of the instructional staff teach pre-clinical or clinical medicine?

You may use the space below to provide context for the data you've reported above.

Screening questions - Method of reporting race and ethnicity for this component

Race/ethnicity question

Which method of reporting race and ethnicity will you use for this component?

○ NEW race/ethnicity categories (9 categories):

Notes:
- Report Hispanic/Latino individuals of any race as Hispanic/Latino
- Report race for non-Hispanic/Latino individuals only

Nonresident alien
Hispanic/Latino
American Indian or Alaska Native
Asian
Black or African American
Native Hawaiian or Other Pacific Islander
White
Two or more races
Race and ethnicity unknown

○ OLD race/ethnicity categories (7 categories):

Nonresident alien
Black, non-Hispanic
American Indian/Alaska Native
Asian/Pacific Islander
Hispanic
White, non-Hispanic
Race and ethnicity unknown

○ MIXTURE of new and old race/ethnicity categories (all 14 categories will show on each screen):

NEW categories:

Notes for NEW categories:
- Report Hispanic/Latino individuals of any race as Hispanic/Latino
- Report race for non-Hispanic/Latino individuals only

Hispanic/Latino
American Indian or Alaska Native
Asian
Black or African American
Native Hawaiian or Other Pacific Islander

White
Two or more races

OLD categories:

Black, non-Hispanic
American Indian/Alaska Native
Asian/Pacific Islander
Hispanic
White, non-Hispanic

Categories used in BOTH New and Old:

Nonresident alien
Race and ethnicity unknown

Part A - Employees by Assigned Position - Full-time staff, non-medical school

Number of full-time staff (non medical) by faculty status and primary function/occupational activity

As of November 1, 2009

Primary function/ occupational activity (mutually exclusive categories)	Faculty status: Tenured	On tenure track	Not on tenure track/ no tenure system	Without faculty status	Total
Primarily instruction					
Instruction/research/public service					
Primarily instruction + Instruction/research/public service					
Primarily research					
Primarily public service					
Primarily instruction + Instruction/research/public service + Primarily research + Primarily public service					
Executive/administrative/managerial					
Other professionals (support/service)					
Technical and paraprofessionals					
Clerical and secretarial					
Skilled crafts					
Service/Maintenance					
Total full time (non medical)					
Total from prior year					

Part A - Employees by Assigned Position - Full-time staff, medical school

****** Applicable to institutions with M.D. or D.O. programs ******

Number of full-time staff (medical school) by faculty status and primary function/occupational activity

As of November 1, 2009

Primary function/ occupational activity (mutually exclusive categories)	Faculty status: Tenured	On tenure track	Not on tenure track/ no tenure system	Without faculty status	Total
Primarily instruction					
Instruction/research/public service					
Primarily instruction + Instruction/research/public service					
Primarily research					
Primarily public service					
Primarily instruction + Instruction/research/public service + Primarily research + Primarily public service					
Executive/administrative/managerial					
Other professionals (support/service)					
Technical and paraprofessionals					
Clerical and secretarial					
Skilled crafts					
Service/Maintenance					
Total full time (medical school)					
Total from prior year					

If employees in other health-related disciplines are grouped with your medical school employees, please list the other health-related disciplines here.

Part B - Employees by Assigned Position - Part-time staff, non-medical school

Number of part-time staff (non medical) by faculty status and primary function/occupational activity

As of November 1, 2009

Primary function/ occupational activity (mutually exclusive categories)	Faculty status: Tenured	On tenure track	Not on tenure track/ no tenure system	Without faculty status	Total	Graduate assistants
Primarily instruction						
Instruction/research/public service						
Primarily instruction + Instruction/research/public service						
Primarily research						
Primarily public service						
Primarily instruction + Instruction/research/public service + Primarily research + Primarily public service						
Executive/administrative/managerial						
Other professionals (support/service)						
Technical and paraprofessionals						
Clerical and secretarial						
Skilled crafts						
Service/Maintenance						
Total part time (non medical)						
Total from prior year						

Part B - Employees by Assigned Position - Part-time staff, medical school

****** Applicable to institutions with M.D. or D.O. programs ******

Number of part-time staff (medical school) by faculty status and primary function/occupational activity

As of November 1, 2009

Primary function/ occupational activity (mutually exclusive categories)	Faculty status: Tenured	On tenure track	Not on tenure track/ no tenure system	Without faculty status	Total	Graduate assistants
Primarily instruction						
Instruction/research/public service/clinical						
Primarily instruction + Instruction/research/public service/clinical						
Primarily research						
Primarily public service						
Primarily instruction + Instruction/research/public service/clinical + Primarily research + Primarily public service						
Executive/administrative/managerial						
Other professionals (support/service)						
Technical and paraprofessionals						
Clerical and secretarial						
Skilled crafts						
Service/Maintenance						
Total part time (medical school)						
Total from prior year						

If employees in other health-related disciplines are grouped with your medical school employees, please list the other health-related disciplines here.

Part C - Employees by Assigned Position - Total number of staff

Total number of staff by employment status and primary function/occupational activity

As of November 1, 2009

Primary function/occupational activity	Full-time	Full-time py	Part-time	Part-time py	Graduate assistants	Graduate assistants py	Total including Graduate assistants
Primarily instruction							
Instruction/research/public service							

Primarily instruction + Instruction/research/public service

Primarily research

Primarily public service

Primarily instruction + Instruction/research/public service + Primarily research + Primarily public service

Executive/administrative/managerial

Other professionals (support/service)

Technical and paraprofessionals

Clerical and secretarial

Skilled crafts

Service/Maintenance

Grand total

Part D - Salaries - Full-time instructional staff by contract length/teaching period - Headcount

Number of full-time instructional staff by contract length/teaching period, gender, and academic rank

As of November 1, 2009

Gender and academic rank	Less-than-9-month	9/10-month	11/12-month	Total
Men				
Professors				
Associate professors				
Assistant professors				
Instructors				
Lecturers				
No academic rank				
Total men				
Women				
Professors				
Associate professors				
Assistant professors				
Instructors				
Lecturers				
No academic rank				
Total women				
Total (men + women)				
Total from EAP, full-time non-medical section (Primarily instruction + Instruction/research/public service lines)				
Total from prior year (Salaries section)				

Part D - Salaries - Full-time instructional staff on 9/10-month contracts/teaching periods - Faculty status

****** Applicable to 4-year degree-granting institutions and above only ******

Number of full-time instructional staff on 9/10-month contracts/teaching periods by faculty status, gender, and academic rank

As of November 1, 2009

Gender and academic rank	Faculty status: Tenured	On tenure track	Not on tenure track/ no tenure system	Without faculty status	Total from Part D (Headcount screen)
Men					
Professors					
Associate Professors					
Assistant Professors					
Instructors					
Lecturers					
No academic rank					
Total men					
Total men prior year					
Women					
Professors					
Associate Professors					
Assistant Professors					
Instructors					
Lecturers					

No academic rank				
Total women				
Total women prior year				
Total (men + women)				

Part D - Salaries - Full-time instructional staff on 11/12-month contracts/teaching periods - Faculty status

****** Applicable to 4-year degree-granting institutions and above only ******

Number of full-time instructional staff on 11/12-month contracts/teaching periods by faculty status, gender, and academic rank

As of November 1, 2009

	Faculty status				
Gender and academic rank	Tenured	On tenure track	Not on tenure track/ no tenure system	Without faculty status	Total from Part D (Headcount screen)
Men					
Professors					
Associate Professors					
Assistant Professors					
Instructors					
Lecturers					
No academic rank					
Total men					
Total men prior year					
Women					
Professors					
Associate Professors					
Assistant Professors					
Instructors					
Lecturers					
No academic rank					
Total women					
Total women prior year					
Total (men + women)					

Part E - Salaries - Full-time instructional staff on 9/10-month contracts/teaching periods - Salary outlays

Salaries of full-time instructional staff on 9/10-month contracts/teaching periods by gender and academic rank

As of November 1, 2009

Gender and academic rank	Number	Salary outlays	Average salary	Prior year Average salary
Men				
Professors				
Associate professors				
Assistant professors				
Instructors				
Lecturers				
No academic rank				
Total men				
Women				
Professors				
Associate professors				
Assistant professors				
Instructors				
Lecturers				
No academic rank				
Total women				
Total (men + women)				

Part E - Salaries - Full-time instructional staff on 11/12-month contracts/teaching periods - Salary outlays

Salaries of full-time instructional staff on 11/12-month contracts/teaching periods by gender and academic rank

As of November 1, 2009

Gender and academic rank	Number	Salary outlays	Average salary	Prior year Average salary
Men				
Professors				
Associate professors				
Assistant professors				
Instructors				
Lecturers				
No academic rank				
Total men				
Women				
Professors				
Associate professors				
Assistant professors				
Instructors				
Lecturers				
No academic rank				
Total women				
Total (men + women)				

Part F - Salaries - Full-time instructional staff on 9/10-month contracts/teaching periods - Fringe benefits

Fringe benefits of full-time instructional staff on 9/10-month contracts/teaching periods

As of November 1, 2009

Fringe benefits	Number covered	Expenditures	Average expenditures	Prior year Average expenditures
Retirement plans (other than Social Security) - Vested within 5-years				
Retirement plans (other than Social Security) - Vested after 5-years				
Medical/dental plans				
Group life insurance				
Other insurance benefits (cafeteria plan, etc.)				
Guaranteed disability income protection				
Tuition plan (dependents only)				
Unrestricted				
Restricted				
Housing plan				
Unrestricted				
Restricted				
Social Security taxes				
Unemployment compensation taxes				
Worker's compensation taxes				
Other benefits in kind with cash options				
Total expenditures				

Part F - Salaries - Full-time instructional staff on 11/12-month contracts/teaching periods - Fringe benefits

Fringe benefits of full-time instructional staff on 11/12-month contracts/teaching periods

As of November 1, 2009

Fringe benefits	Number covered	Expenditures	Average expenditures	Prior year Average expenditures
Retirement plans (other than Social Security) - Vested within 5-years				
Retirement plans (other than Social Security) - Vested after 5-years				
Medical/dental plans				
Group life insurance				
Other insurance benefits (cafeteria plan, etc.)				
Guaranteed disability income protection				
Tuition plan (dependents only)				
Unrestricted				
Restricted				
Housing plan				
Unrestricted				
Restricted				
Social Security taxes				
Unemployment compensation taxes				

Worker's compensation taxes		
Other benefits in kind with cash options		
Total expenditures		

Part G - Fall Staff - Full-time instruction/research/public service staff - Tenured

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time staff with faculty status who are Tenured and whose primary responsibility is instruction, research, and/or public service by academic rank, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Professors	Associate professors	Assistant professors	Instructors	Lecturers	No academic rank	Total
Men							
NEW categories:							
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only							
Hispanic/Latino							
American Indian or Alaska Native							
Asian							
Black or African American							
Native Hawaiian or Other Pacific Islander							
White							
Two or more races							
OLD categories:							
Black, non-Hispanic							
American Indian/Alaska Native							
Asian/Pacific Islander							
Hispanic							
White, non-Hispanic							
Categories used in BOTH New and Old:							
Nonresident alien							
Race and ethnicity unknown							
Total men							
Women							
NEW categories:							
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only							
Hispanic/Latino							
American Indian or Alaska Native							
Asian							
Black or African American							
Native Hawaiian or Other Pacific Islander							
White							
Two or more races							
OLD categories:							
Black, non-Hispanic							
American Indian/Alaska Native							
Asian/Pacific Islander							
Hispanic							
White, non-Hispanic							
Categories used in BOTH New and Old:							
Nonresident alien							
Race and ethnicity unknown							
Total women							
Total (men+women)							
Total from EAP							

Part G - Fall Staff - Full-time instruction/research/public service staff - On tenure track

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time staff with faculty status who are On tenure track and whose primary responsibility is instruction, research, and/or public service by academic rank, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Professors	Associate professors	Assistant professors	Instructors	Lecturers	No academic rank	Total
Men							
NEW categories:							
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only							
Hispanic/Latino							
American Indian or Alaska Native							
Asian							
Black or African American							
Native Hawaiian or Other Pacific Islander							
White							
Two or more races							
OLD categories:							
Black, non-Hispanic							
American Indian/Alaska Native							
Asian/Pacific Islander							
Hispanic							
White, non-Hispanic							
Categories used in BOTH New and Old:							
Nonresident alien							
Race/ethnicity unknown							
Total men							
Women							
NEW categories:							
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only							
Hispanic/Latino							
American Indian or Alaska Native							
Asian							
Black or African American							
Native Hawaiian or Other Pacific Islander							
White							
Two or more races							
OLD categories:							
Black, non-Hispanic							
American Indian/Alaska Native							
Asian/Pacific Islander							
Hispanic							
White, non-Hispanic							
Categories used in BOTH New and Old:							
Nonresident alien							
Race/ethnicity unknown							
Total women							
Total (men+women)							
Total from EAP							

Part G - Fall Staff - Full-time instruction/research/public service staff - Not on tenure track/no tenure system

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time staff with faculty status who are Not on tenure track and whose primary responsibility is instruction, research, and/or public service OR number of full-time staff whose primary responsibility is instruction, research, and/or public service and who work at an institution with No tenure system by academic rank, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Professors	Associate professors	Assistant professors	Instructors	Lecturers	No academic rank	Total
Men							

NEW categories:

Notes for NEW categories:
- Report Hispanic/Latino individuals of any race as Hispanic/Latino
- Report race for non-Hispanic/Latino individuals only

Hispanic/Latino						
American Indian or Alaska Native						
Asian						
Black or African American						
Native Hawaiian or Other Pacific Islander						
White						
Two or more races						
OLD categories:						
Black, non-Hispanic						
American Indian/Alaska Native						
Asian/Pacific Islander						
Hispanic						
White, non-Hispanic						
Categories used in BOTH New and Old:						
Nonresident alien						
Race and ethnicity unknown						
Total men						

Women

NEW categories:

Notes for NEW categories:
- Report Hispanic/Latino individuals of any race as Hispanic/Latino
- Report race for non-Hispanic/Latino individuals only

Hispanic/Latino						
American Indian or Alaska Native						
Asian						
Black or African American						
Native Hawaiian or Other Pacific Islander						
White						
Two or more races						
OLD categories:						
Black, non-Hispanic						
American Indian/Alaska Native						
Asian/Pacific Islander						
Hispanic						
White, non-Hispanic						
Categories used in BOTH New and Old:						
Nonresident alien						
Race and ethnicity unknown						
Total women						
Total (men+women)						
Total from EAP						

Part G - Fall Staff - Full-time instruction/research/public service staff - Without faculty status

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time staff Without faculty status whose primary responsibility is instruction, research, and/or public service by gender and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Total
Men	
NEW categories:	
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only	
Hispanic/Latino	
American Indian or Alaska Native	
Asian	
Black or African American	
Native Hawaiian or Other Pacific Islander	

White

Two or more races

OLD categories:

Black, non-Hispanic

American Indian/Alaska Native

Asian/Pacific Islander

Hispanic

White, non-Hispanic

Categories used in BOTH New and Old:

Nonresident alien

Race and ethnicity unknown

Total men

Women

NEW categories:

Notes for NEW categories:
- Report Hispanic/Latino individuals of any race as Hispanic/Latino
- Report race for non-Hispanic/Latino individuals only

Hispanic/Latino

American Indian or Alaska Native

Asian

Black or African American

Native Hawaiian or Other Pacific Islander

White

Two or more races

OLD categories:

Black, non-Hispanic

American Indian/Alaska Native

Asian/Pacific Islander

Hispanic

White, non-Hispanic

Categories used in BOTH New and Old:

Nonresident alien

Race and ethnicity unknown

Total women

Total (men+women)

Total from EAP

Part G - Fall Staff - Full-time instruction/research/public service staff - Totals

Total number of full-time staff whose primary responsibility is instruction, research, and/or public service by gender and race/ethnicity

As of November 1, 2009

	Total men	Total women	Total (men+women)
NEW categories:			
Hispanic/Latino			
American Indian or Alaska Native			
Asian			
Black or African American			
Native Hawaiian or Other Pacific Islander			
White			
Two or more races			
OLD categories:			
Black, non-Hispanic			
American Indian/Alaska Native			
Asian/Pacific Islander			
Hispanic			
White, non-Hispanic			
Categories used in BOTH New and Old:			
Nonresident alien			
Race and ethnicity unknown			
Total (must equal Part H (next part))			

Part H - Fall Staff - Full-time instruction/research/public service staff by contract length/teaching period - Headcount

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time staff whose primary responsibility is instruction, research, and/or public service by contract length/teaching period, gender, and race/ethnicity

(Include all staff from these functions, including those with and without faculty status.)

As of November 1, 2009

Gender and race/ethnicity	Less-than-9-month	9/10-month	11/12-month	Total	Total from Part G
Men					
NEW categories:					
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only					
Hispanic/Latino					
American Indian or Alaska Native					
Asian					
Black or African American					
Native Hawaiian or Other Pacific Islander					
White					
Two or more races					
OLD categories:					
Black, non-Hispanic					
American Indian/Alaska Native					
Asian/Pacific Islander					
Hispanic					
White, non-Hispanic					
Categories used in BOTH New and Old:					
Nonresident alien					
Race/ethnicity unknown					
Total men					
Women					
NEW categories:					
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only					
Hispanic/Latino					
American Indian or Alaska Native					
Asian					
Black or African American					
Native Hawaiian or Other Pacific Islander					
White					
Two or more races					
OLD categories:					
Black, non-Hispanic					
American Indian/Alaska Native					
Asian/Pacific Islander					
Hispanic					
White, non-Hispanic					
Categories used in BOTH New and Old:					
Nonresident alien					
Race/ethnicity unknown					
Total women					
Total (men+women)					
Total from EAP					
Total (men+women) from Fall 2007					

Part H - Fall Staff - Full-time instruction/research/public service staff on 9/10-month contracts/teaching periods - Salary class intervals

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time staff on 9/10-month contracts/teaching periods whose primary responsibility is instruction, research, and/or public service by salary class intervals, gender, and race/ethnicity

(Include all staff from these functions, including those with and without faculty status.)

As of November 1, 2009

Gender and race/ethnicity	Below $30,000	30,000-39,999	40,000-49,999	50,000-64,999	65,000-79,999	80,000-99,999	100,000 and above	Total from Part H (Headcount screen)
Men								
NEW categories:								

Notes for NEW categories:
- Report Hispanic/Latino individuals of any race as Hispanic/Latino
- Report race for non-Hispanic/Latino individuals only

Hispanic/Latino							
American Indian or Alaska Native							
Asian							
Black or African American							
Native Hawaiian or Other Pacific Islander							
White							
Two or more races							
OLD categories:							
Black, non-Hispanic							
American Indian/Alaska Native							
Asian/Pacific Islander							
Hispanic							
White, non-Hispanic							
Categories used in BOTH New and Old:							
Nonresident alien							
Race/ethnicity unknown							
Total men							
Women							
NEW categories:							

Notes for NEW categories:
- Report Hispanic/Latino individuals of any race as Hispanic/Latino
- Report race for non-Hispanic/Latino individuals only

Hispanic/Latino							
American Indian or Alaska Native							
Asian							
Black or African American							
Native Hawaiian or Other Pacific Islander							
White							
Two or more races							
OLD categories:							
Black, non-Hispanic							
American Indian/Alaska Native							
Asian/Pacific Islander							
Hispanic							
White, non-Hispanic							
Categories used in BOTH New and Old:							
Nonresident alien							
Race/ethnicity unknown							
Total women							
Total (men+women)							

Part H - Fall Staff - Full-time instruction/research/public service staff on 11/12-month contracts/teaching periods - Salary class intervals

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time staff on 11/12-month contracts/teaching periods whose primary responsibility is instruction, research, and/or public service by salary class intervals, gender, and race/ethnicity

(Include all staff from these functions, including those with and without faculty status.)

As of November 1, 2009

Gender and race/ethnicity	Below $30,000	30,000-39,999	40,000-49,999	50,000-64,999	65,000-79,999	80,000-99,999	100,000 and above	Total from Part H (Headcount screen)
Men								
NEW categories:								
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only								
Hispanic/Latino								
American Indian or Alaska Native								
Asian								
Black or African American								
Native Hawaiian or Other Pacific Islander								
White								
Two or more races								
OLD categories:								
Black, non-Hispanic								
American Indian/Alaska Native								
Asian/Pacific Islander								
Hispanic								
White, non-Hispanic								
Categories used in BOTH New and Old:								
Nonresident alien								
Race and ethnicity unknown								
Total men								
Women								
NEW categories:								
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only								
Hispanic/Latino								
American Indian or Alaska Native								
Asian								
Black or African American								
Native Hawaiian or Other Pacific Islander								
White								
Two or more races								
OLD categories:								
Black, non-Hispanic								
American Indian/Alaska Native								
Asian/Pacific Islander								
Hispanic								
White, non-Hispanic								
Categories used in BOTH New and Old:								
Nonresident alien								
Race and ethnicity unknown								
Total women								
Total (men+women)								

Part I - Fall Staff - Full-time executive/administrative/managerial staff - Salary class intervals

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time executive/administrative/managerial staff by salary class intervals, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Below $30,000	30,000-39,999	40,000-49,999	50,000-64,999	65,000-79,999	80,000-99,999	100,000 and above	Total
Men								
NEW categories:								
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only								
Hispanic/Latino								
American Indian or Alaska Native								
Asian								
Black or African American								
Native Hawaiian or Other Pacific Islander								
White								
Two or more races								
OLD categories:								
Black, non-Hispanic								
American Indian/Alaska Native								
Asian/Pacific Islander								
Hispanic								
White, non-Hispanic								
Categories used in BOTH New and Old:								
Nonresident alien								
Race and ethnicity unknown								
Total men								
Women								
NEW categories:								
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only								
Hispanic/Latino								
American Indian or Alaska Native								
Asian								
Black or African American								
Native Hawaiian or Other Pacific Islander								
White								
Two or more races								
OLD categories:								
Black, non-Hispanic								
American Indian/Alaska Native								
Asian/Pacific Islander								
Hispanic								
White, non-Hispanic								
Categories used in BOTH New and Old:								

Nonresident alien							
Race and ethnicity unknown							
Total women							
Total (men+women)							
Total from EAP							

Part I - Fall Staff - Full-time other professional (support/service) staff - Salary class intervals

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time <u>other professional (support/service)</u> staff by salary class intervals, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Below $30,000	30,000-39,999	40,000-49,999	50,000-64,999	65,000-79,999	80,000-99,999	100,000 and above	Total
Men								
NEW categories:								
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only								
Hispanic/Latino								
American Indian or Alaska Native								
Asian								
Black or African American								
Native Hawaiian or Other Pacific Islander								
White								
Two or more races								
OLD categories:								
Black, non-Hispanic								
American Indian/Alaska Native								
Asian/Pacific Islander								
Hispanic								
White, non-Hispanic								
Categories used in BOTH New and Old:								
Nonresident alien								
Race and ethnicity unknown								
Total men								
Women								
NEW categories:								
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only								
Hispanic/Latino								
American Indian or Alaska Native								
Asian								
Black or African American								
Native Hawaiian or Other Pacific Islander								
White								
Two or more races								
OLD categories:								

Black, non-Hispanic							
American Indian/Alaska Native							
Asian/Pacific Islander							
Hispanic							
White, non-Hispanic							
Categories used in BOTH New and Old:							
Nonresident alien							
Race and ethnicity unknown							
Total women							
Total (men+women)							
Total from EAP							

Part I - Fall Staff - Full-time technical and paraprofessional staff - Salary class intervals

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time technical and paraprofessional staff by salary class intervals, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Below $20,000	20,000-29,999	30,000-39,999	40,000-49,999	50,000 and above	Total
Men						
NEW categories:						
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only						
Hispanic/Latino						
American Indian or Alaska Native						
Asian						
Black or African American						
Native Hawaiian or Other Pacific Islander						
White						
Two or more races						
OLD categories:						
Black, non-Hispanic						
American Indian/Alaska Native						
Asian/Pacific Islander						
Hispanic						
White, non-Hispanic						
Categories used in BOTH New and Old:						
Nonresident alien						
Race and ethnicity unknown						
Total men						
Women						
NEW categories:						
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only						
Hispanic/Latino						
American Indian or Alaska Native						
Asian						
Black or African American						
Native Hawaiian or Other Pacific Islander						
White						
Two or more races						
OLD categories:						
Black, non-Hispanic						
American Indian/Alaska Native						
Asian/Pacific Islander						
Hispanic						
White, non-Hispanic						
Categories used in BOTH New and Old:						

Nonresident alien					
Race and ethnicity unknown					
Total women					
Total (men+women)					
Total from EAP					

Part I - Fall Staff - Full-time clerical and secretarial staff- Salary class intervals

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time clerical and secretarial staff by salary class intervals, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Below $20,000	20,000-29,999	30,000-39,999	40,000-49,999	50,000 and above	Total
Men						
NEW categories:						
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only						
Hispanic/Latino						
American Indian or Alaska Native						
Asian						
Black or African American						
Native Hawaiian or Other Pacific Islander						
White						
Two or more races						
OLD categories:						
Black, non-Hispanic						
American Indian/Alaska Native						
Asian/Pacific Islander						
Hispanic						
White, non-Hispanic						
Categories used in BOTH New and Old:						
Nonresident alien						
Race and ethnicity unknown						
Total men						
Women						
NEW categories:						
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only						
Hispanic/Latino						
American Indian or Alaska Native						
Asian						
Black or African American						
Native Hawaiian or Other Pacific Islander						
White						
Two or more races						
OLD categories:						
Black, non-Hispanic						
American Indian/Alaska Native						
Asian/Pacific Islander						
Hispanic						
White, non-Hispanic						
Categories used in BOTH New and Old:						
Nonresident alien						
Race and ethnicity unknown						
Total women						
Total (men+women)						
Total from EAP						

Part I - Fall Staff - Full-time skilled crafts staff - Salary class intervals

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time skilled crafts staff by salary class intervals, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Below $20,000	20,000-29,999	30,000-39,999	40,000-49,999	50,000 and above	Total
Men						
NEW categories:						
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only						
Hispanic/Latino						
American Indian or Alaska Native						
Asian						
Black or African American						
Native Hawaiian or Other Pacific Islander						
White						
Two or more races						
OLD categories:						
Black, non-Hispanic						
American Indian/Alaska Native						
Asian/Pacific Islander						
Hispanic						
White, non-Hispanic						
Categories used in BOTH New and Old:						
Nonresident alien						
Race/ethnicity unknown						
Total men						
Women						
NEW categories:						
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only						
Hispanic/Latino						
American Indian or Alaska Native						
Asian						
Black or African American						
Native Hawaiian or Other Pacific Islander						
White						
Two or more races						
OLD categories:						
Black, non-Hispanic						
American Indian/Alaska Native						
Asian/Pacific Islander						
Hispanic						
White, non-Hispanic						
Categories used in BOTH New and Old:						
Nonresident alien						
Race/ethnicity unknown						
Total women						
Total (men+women)						
Total from EAP						

Part I - Fall Staff - Full-time service/maintenance staff - Salary class intervals

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time service/maintenance staff by salary class intervals, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Below $20,000	20,000-29,999	30,000-39,999	40,000-49,999	50,000 and above	Total
Men						
NEW categories:						
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only						
Hispanic/Latino						
American Indian or Alaska Native						

Asian					
Black or African American					
Native Hawaiian or Other Pacific Islander					
White					
Two or more races					
OLD categories:					
Black, non-Hispanic					
American Indian/Alaska Native					
Asian/Pacific Islander					
Hispanic					
White, non-Hispanic					
Categories used in BOTH New and Old:					
Nonresident alien					
Race/ethnicity unknown					
Total men					
Women					
NEW categories:					
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only					
Hispanic/Latino					
American Indian or Alaska Native					
Asian					
Black or African American					
Native Hawaiian or Other Pacific Islander					
White					
Two or more races					
OLD categories:					
Black, non-Hispanic					
American Indian/Alaska Native					
Asian/Pacific Islander					
Hispanic					
White, non-Hispanic					
Categories used in BOTH New and Old:					
Nonresident alien					
Race/ethnicity unknown					
Total women					
Total (men+women)					
Total from EAP					

Part I - Fall Staff - Full-time staff (excluding instruction/research/public service staff) - Totals

Total number of full-time staff by primary function/occupational activity, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Executive/ administrative/ managerial	Other professionals (support/service)	Technical and paraprofessionals	Clerical and secretarial	Skilled crafts	Service/ Maintenance	Total
Men							
NEW categories:							
Hispanic/Latino							
American Indian or Alaska Native							
Asian							
Black or African American							
Native Hawaiian or Other Pacific Islander							
White							
Two or more races							
OLD categories:							
Black, non-Hispanic							
American Indian/Alaska Native							
Asian/Pacific Islander							
Hispanic							
White, non-Hispanic							
Categories used in BOTH New and Old:							
Nonresident alien							

Race and ethnicity unknown

Total men

Women

NEW categories:

Hispanic/Latino

American Indian or Alaska Native

Asian

Black or African American

Native Hawaiian or Other Pacific Islander

White

Two or more races

OLD categories:

Black, non-Hispanic

American Indian/Alaska Native

Asian/Pacific Islander

Hispanic

White, non-Hispanic

Categories used in BOTH New and Old:

Nonresident alien

Race and ethnicity unknown

Total women

Total (men+women)

Total from EAP

Part J - Fall Staff - Part-time professional staff

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of part-time staff by primary function/occupational activity, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Staff whose primary responsibility is instruction, research, and/or public service	Executive/ administrative/ managerial	Other professionals (support/service)
Men			
NEW categories:			
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only			
Hispanic/Latino			
American Indian or Alaska Native			
Asian			
Black or African American			
Native Hawaiian or Other Pacific Islander			
White			
Two or more races			
OLD categories:			
Black, non-Hispanic			
American Indian/Alaska Native			
Asian/Pacific Islander			
Hispanic			
White, non-Hispanic			
Categories used in BOTH New and Old:			
Nonresident alien			
Race and ethnicity unknown			
Total men			
Women			
NEW categories:			
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only			

Hispanic/Latino			
American Indian or Alaska Native			
Asian			
Black or African American			
Native Hawaiian or Other Pacific Islander			
White			
Two or more races			
OLD categories:			
Black, non-Hispanic			
American Indian/Alaska Native			
Asian/Pacific Islander			
Hispanic			
White, non-Hispanic			
Categories used in BOTH New and Old:			
Nonresident alien			
Race and ethnicity unknown			
Total women			
Total (men+women)			
Total from EAP			

Part J - Fall Staff - Part-time non-professional staff

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of part-time staff by primary function/occupational activity, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Technical and paraprofessionals	Clerical and secretarial	Skilled crafts	Service/ Maintenance
Men				
NEW categories:				
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only				
Hispanic/Latino				
American Indian or Alaska Native				
Asian				
Black or African American				
Native Hawaiian or Other Pacific Islander				
White				
Two or more races				
OLD categories:				
Black, non-Hispanic				
American Indian/Alaska Native				
Asian/Pacific Islander				
Hispanic				
White, non-Hispanic				
Categories used in BOTH New and Old:				
Nonresident alien				
Race and ethnicity unknown				
Total men				
Women				
NEW categories:				
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only				
Hispanic/Latino				
American Indian or Alaska Native				
Asian				
Black or African American				
Native Hawaiian or Other Pacific Islander				
White				
Two or more races				
OLD categories:				
Black, non-Hispanic				
American Indian/Alaska Native				
Asian/Pacific Islander				
Hispanic				

White, non-Hispanic

Categories used in BOTH New and Old:

Nonresident alien

Race and ethnicity unknown

Total women

Total (men+women)

Total from EAP

Part J - Fall Staff - Graduate assistants and part-time grand total

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of part-time staff by primary function/occupational activity, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Subtotal	Graduate assistants	Part-time total
Men			
NEW categories:			
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only			
Hispanic/Latino			
American Indian or Alaska Native			
Asian			
Black or African American			
Native Hawaiian or Other Pacific Islander			
White			
Two or more races			
OLD categories:			
Black, non-Hispanic			
American Indian/Alaska Native			
Asian/Pacific Islander			
Hispanic			
White, non-Hispanic			
Categories used in BOTH New and Old:			
Nonresident alien			
Race and ethnicity unknown			
Total men			
Women			
NEW categories:			
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only			
Hispanic/Latino			
American Indian or Alaska Native			
Asian			
Black or African American			
Native Hawaiian or Other Pacific Islander			
White			
Two or more races			
OLD categories:			
Black, non-Hispanic			
American Indian/Alaska Native			
Asian/Pacific Islander			
Hispanic			
White, non-Hispanic			
Categories used in BOTH New and Old:			
Nonresident alien			
Race and ethnicity unknown			
Total women			
Total (men+women)			
Total from EAP			

Part K - Fall Staff - Total number of staff

Total number of staff by employment status, gender, and race/ethnicity

As of November 1, 2009

Gender and race/ethnicity	Full-time men	Full-time women	Part-time men	Part-time women	Total men	Total women
NEW categories:						
Hispanic/Latino						
American Indian or Alaska Native						
Asian						
Black or African American						
Native Hawaiian or Other Pacific Islander						
White						
Two or more races						
OLD categories:						
Black, non-Hispanic						
American Indian/Alaska Native						
Asian/Pacific Islander						
Hispanic						
White, non-Hispanic						
Categories used in BOTH New and Old:						
Nonresident alien						
Race and ethnicity unknown						
Grand total						

Part L - Fall Staff - New hires - Full-time instruction/research/public service staff - Faculty status

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time permanent new hires whose primary responsibility is instruction, research, and/or public service by faculty status, gender, and race/ethnicity

(Hired full time between July 1 and October 31, 2009 and still on payroll of the institution as of November 1, 2009)

Gender and race/ethnicity	Faculty status: Tenured	On tenure track	Not on tenure track/ no tenure system	Without faculty status	Total
Men					
NEW categories:					
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only					
Hispanic/Latino					
American Indian or Alaska Native					
Asian					
Black or African American					
Native Hawaiian or Other Pacific Islander					
White					
Two or more races					
OLD categories:					
Black, non-Hispanic					
American Indian/Alaska Native					
Asian/Pacific Islander					
Hispanic					
White, non-Hispanic					
Categories used in BOTH New and Old:					
Nonresident alien					
Race and ethnicity unknown					
Total men					
Women					
NEW categories:					
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only					
Hispanic/Latino					
American Indian or Alaska Native					
Asian					
Black or African American					
Native Hawaiian or Other Pacific Islander					
White					
Two or more races					
OLD categories:					
Black, non-Hispanic					

American Indian/Alaska Native				
Asian/Pacific Islander				
Hispanic				
White, non-Hispanic				
Categories used in BOTH New and Old:				
Nonresident alien				
Race and ethnicity unknown				
Total women				
Total (men+women)				

Part L - Fall Staff - New hires - Full-time staff by position

REMINDER: This screen contains both NEW and OLD race/ethnicity categories.
Report each individual only ONCE, in either a new category OR an old category.
Do NOT double count individuals!

Report ALL Nonresident aliens and Race and ethnicity unknown in the 'Categories used in BOTH New and Old' section.

Number of full-time permanent new hires by primary function/occupational activity, gender, and race/ethnicity

(Hired full time between July 1 and October 31, 2009 and still on payroll of the institution as of November 1, 2009)

Gender and race/ethnicity	Executive/ administrative/ managerial	Other professionals (support/service)	Technical and paraprofessionals	Clerical and secretarial	Skilled crafts	Service/ Maintenance	Total
Men							
NEW categories:							
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only							
Hispanic/Latino							
American Indian or Alaska Native							
Asian							
Black or African American							
Native Hawaiian or Other Pacific Islander							
White							
Two or more races							
OLD categories:							
Black, non-Hispanic							
American Indian/Alaska Native							
Asian/Pacific Islander							
Hispanic							
White, non-Hispanic							
Categories used in BOTH New and Old:							
Nonresident alien							
Race and ethnicity unknown							
Total men							
Women							
NEW categories:							
Notes for NEW categories: • Report Hispanic/Latino individuals of any race as Hispanic/Latino • Report race for non-Hispanic/Latino individuals only							
Hispanic/Latino							
American Indian or Alaska Native							
Asian							
Black or African American							
Native Hawaiian or Other Pacific Islander							
White							
Two or more races							
OLD categories:							
Black, non-Hispanic							
American Indian/Alaska Native							
Asian/Pacific Islander							
Hispanic							
White, non-Hispanic							
Categories used in BOTH New and Old:							
Nonresident alien							
Race and ethnicity unknown							

Total women

Total (men+women)

Part L - Fall Staff - New hires - Totals

Total number of full-time permanent new hires by gender and race/ethnicity

(Hired full time between July 1 and October 31, 2009 and still on payroll of the institution as of November 1, 2009)

	Total men	Total women	Total (men+women)
NEW categories:			
Hispanic/Latino			
American Indian or Alaska Native			
Asian			
Black or African American			
Native Hawaiian or Other Pacific Islander			
White			
Two or more races			
OLD categories:			
Black, non-Hispanic			
American Indian/Alaska Native			
Asian/Pacific Islander			
Hispanic			
White, non-Hispanic			
Categories used in BOTH New and Old:			
Nonresident alien			
Race and ethnicity unknown			
Grand total			

Human Resources Survey Evaluation

Were any staff members difficult to categorize? If so, please explain in the box below.

Abbreviated listing

Record: 1029

Proposition # **209**

Title **Prohibition Against Discrimination or Preferential Treatment by State and Other Public Entities.**

Year/Election **1996** general

Proposition type constitutional

Popular vote Yes: 5,268,462 (54.6%); No: 4,388,733 (45.4%)

Pass/Fail Pass

Summary

Official Title and Summary Prepared by the Attorney General

PROHIBITION AGAINST DISCRIMINATION OR PREFERENTIAL TREATMENT BY STATE AND OTHER PUBLIC ENTITIES.

INITIATIVE CONSTITUTIONAL AMENDMENT.

. Prohibits the state, local governments, districts, public universities, colleges, and schools, and other government instrumentalities from discriminating against or giving preferential treatment to any individual or group in public employment, public education, or public contracting on the basis of race, sex, color, ethnicity, or national origin.

. Does not prohibit reasonably necessary, bona fide qualifications based on sex and actions necessary for receipt of federal funds.

. Mandates enforcement to extent permitted by federal law.

. Requires uniform remedies for violations. Provides for severability of provisions if invalid.

Summary of Legislative Analyst's

Estimate of Net State and Local Government Fiscal Impact:

. The measure could affect state and local programs that currently cost well in excess of $125 million annually.

. Actual savings to the state and local governments would depend on various factors (such as future court decisions and implementation actions by government entities).

Proponents Pete Wilson; *Governor, State of California*
Ward Connerly; *Chairman, California Civil Rights Initiative*
Pamela A. Lewis; *Co-Chair, California Civil Rights Initiative*

Opponents Fran Packard; *President, League of Women Voters of California*

Rosa Parks; *Civil Rights Leader*
Maxine Blackwell; *Vice President, Congress of California Seniors, Affiliate of the National Council of Senior Citizens*

Analysis

Analysis by the Legislative Analyst

BACKGROUND

The federal, state, and local governments run many programs intended to increase opportunities for various groups -- including women and racial and ethnic minority groups. These programs are commonly called "affirmative action" programs. For example, state law identifies specific goals for the participation of women-owned and minority-owned companies on work involved with state contracts. State departments are expected, but not required, to meet these goals, which include that at least 15 percent of the value of contract work should be done by minority-owned companies and at least 5 percent should be done by women-owned companies. The law requires departments, however, to reject bids from companies that have not made sufficient "good faith efforts" to meet these goals.

Other examples of affirmative action programs include:

. Public college and university programs such as scholarship, tutoring, and outreach that are targeted toward minority or women students.

. Goals and timetables to encourage the hiring of members of "underrepresented" groups for state government jobs.

. State and local programs required by the federal government as a condition of receiving federal funds (such as requirements for minority-owned business participation in state highway construction projects funded in part with federal money).

PROPOSAL

This measure would eliminate state and local government affirmative action programs in the areas of public employment, public education, and public contracting to the extent these programs involve "preferential treatment" based on race, sex, color, ethnicity, or national origin. The specific programs affected by the measure, however, would depend on such factors as (1) court rulings on what types of activities are considered "preferential treatment" and (2) whether federal law requires the continuation of certain programs.

The measure provides exceptions to the ban on preferential treatment when necessary for any of the following reasons:

. To keep the state or local governments eligible to receive money from the federal government.

.To comply with a court order in force as of the effective date of this measure (the day after the election).

. To comply with federal law or the United States Constitution.

. To meet privacy and other considerations based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting.

FISCAL EFFECT

If this measure is approved by the voters, it could affect a variety of state and local programs. These are discussed in more detail below.

Public Employment and Contracting

The measure would eliminate affirmative action programs used to increase hiring and promotion opportunities for state or local government jobs, where sex, race, or ethnicity are preferential factors in hiring, promotion, training, or recruitment decisions. In addition, the measure would eliminate programs that give preference to women-owned or minority-owned companies on public contracts. Contracts affected by the measure would include contracts for construction projects, purchases of computer equipment, and the hiring of consultants. These prohibitions would not apply to those government agencies that receive money under federal programs that require such affirmative action.

The elimination of these programs would result in savings to the state and local governments. These savings would occur for two reasons. First, government agencies no longer would incur costs to administer the programs. Second, the prices paid on some government contracts would decrease. This would happen because bidders on contracts no longer would need to show "good faith efforts" to use minority-owned or women-owned subcontractors. Thus, state and local governments would save money to the extent they otherwise would have rejected a low bidder -- because the bidder did not make a "good faith effort" -- and awarded the contract to a higher bidder.

Based on available information, we estimate that the measure would result in savings in employment and contracting programs that could total tens of millions of dollars each year.

Public Schools and Community Colleges

The measure also could affect funding for public schools (kindergarten through grade 12) and community college programs. For instance, the measure could eliminate, or cause fundamental changes to, voluntary desegregation programs run by school districts. (It would not, however, affect court-ordered desegregation programs.) Examples of desegregation spending that could be affected by the measure include the special funding given to (1) "magnet" schools (in those cases where race or ethnicity are preferential factors in the admission of students to the schools) and (2) designated "racially isolated minority schools" that are located in areas with high proportions of

racial or ethnic minorities. We estimate that up to $60 million of state and local funds spent each year on voluntary desegregation programs may be affected by the measure.

In addition, the measure would affect a variety of public school and community college programs such as counseling, tutoring, outreach, student financial aid, and financial aid to selected school districts in those cases where the programs provide preferences to individuals or schools based on race, sex, ethnicity, or national origin. Funds spent on these programs total at least $15 million each year.

Thus, the measure could affect up to $75 million in state spending in public schools and community colleges.

The State Constitution requires the state to spend a certain amount each year on public schools and community colleges. As a result, under most situations, the Constitution would require that funds that cannot be spent on programs because of this measure instead would have to be spent for other public school and community college programs.

University of California and

California State University

The measure would affect admissions and other programs at the state's public universities. For example, the California State University (CSU) uses race and ethnicity as factors in some of its admissions decisions. If this initiative is passed by the voters, it could no longer do so. In 1995, the Regents of the University of California (UC) changed the UC's admissions policies, effective for the 1997-98 academic year, to eliminate all consideration of race or ethnicity. Passage of this initiative by the voters might require the UC to implement its new admissions policies somewhat sooner.

Both university systems also run a variety of assistance programs for students, faculty, and staff that are targeted to individuals based on sex, race, or ethnicity. These include programs such as outreach, counseling, tutoring, and financial aid. The two systems spend over $50 million each year on programs that probably would be affected by passage of this measure.

Summary

As described above, this measure could affect state and local programs that currently cost well in excess of $125 million annually. The actual amount of this spending that might be saved as a result of this measure could be considerably less, for various reasons:

. The amount of spending affected by this measure could be less depending on (1) court rulings on what types of activities are considered "preferential treatment" and (2) whether federal law requires continuation of certain programs.

. In most cases, any funds that could not be spent for existing programs in public schools and community colleges would have to be spent on other programs in the schools and colleges.

. In addition, the amount affected as a result of this measure would be less if any existing affirmative action programs were declared unconstitutional under the United States Constitution. For example, five state affirmative action programs are currently the subject of a lawsuit. If any of these programs are found to be unlawful, then the state could no longer spend money on them -- regardless of whether this measure is in effect.

. Finally, some programs we have identified as being affected might be changed to use factors other an those prohibited by the measure. For example, a high school outreach program operated by the UC or the CSU that currently uses a factor such as ethnicity to target spending could be changed to target instead high schools with low percentages of UC or CSU applications.

ies NATIONAL CENTER FOR EDUCATION STATISTICS

Fall Staff in Postsecondary Institutions, 1993

Introduction

In the fall of 1993, about 2.7 million persons, or about 2.1 percent of the U.S. labor force, were employed by postsecondary institutions in the United States. Just over half were women, but the distribution by occupation varied substantially by sex. Sixty-eight percent of the total postsecondary employees were full time and 32 percent were part time. Just over one-third were faculty members, and almost two-thirds (65 percent) were classified as professional employees. This report presents detailed tabulations for 1993 and historical comparisons with previous years for staff employed by postsecondary institutions in the United States. The data are from the "Fall Staff" survey, a part of the Integrated Postsecondary Education Data System (IPEDS) of the U.S. Department of Education?s National Center for Education Statistics (NCES).

Institutions and Information Covered by the Report

Data are presented for both the total postsecondary institutions and for the subset that are classified as institutions of higher education (IHE). In 1993, there were some 8,861 postsecondary institutions at the 4-year, 2-year, and less than 2-year levels in the 50 states and the District of Columbia. Of these, about 3,670 were accredited at the college level by an agency recognized by the Secretary of the U.S. Department of Education (ED) and are known as "institutions of higher education." While over half of the total postsecondary institutions are non-IHEs, over 95 percent of total postsecondary staff are employed in IHEs. The data on IHEs are available for a longer period of time, and this information can produce insights into the trends and distribution of higher education staff. In this report, all tables and graphs are labeled to indicate whether the information is for all postsecondary institutions or for IHEs alone. In most cases, historical data prior to 1987 are available only for IHEs.

All Postsecondary Staff

The following information on staff in all postsecondary institutions is covered in this report.

- Employment status (full- or part-time staff);
- Primary occupation (executive, administrative and managerial, faculty (instruction/research/public service), other professionals (support/service), technical and paraprofessionals, clerical/secretarial, skilled crafts, and service/maintenance); and
- Sex of employees.

Institutions of Higher Education

For the 3,670 institutions of higher education, additional information is reported. This includes

- Median full-time staff salary by primary occupation by sex and race/ethnicity;
- Tenure and rank status of full-time faculty by sex and race/ ethnicity; and
- Full-time new hires by primary occupation by sex and race/ethnicity.

Past and Related Surveys

The Fall Staff survey is one of the eight components of the Integrated Postsecondary Education Data System. The survey covers all postsecondary institutions including universities and colleges, as well as institutions offering technical and vocational education beyond the high school level. IPEDS was begun in 1986. Prior to that time, similar data were collected through the Higher Education General Information Survey (HEGIS), which began in 1966. HEGIS, however, covered only those institutions accredited at the college level by an agency recognized by the Secretary of the U.S. Department of Education. Between 1987 and 1991, the fall staff data were collected in cooperation with the U.S. Equal Employment Opportunity Commission (EEOC).

The EEOC collected data on staff through its Higher Education Staff Information (EEO-6) report from all postsecondary institutions within their mandate, that is, institutions that have 15 or more full-time employees. NCES through the IPEDS system collected data from all other postsecondary institutions, including all 2- and 4-year higher education institutions with fewer than 15 full-time employees, and a sample of less than

2-year schools. NCES and EEOC collected staff data biennially in odd numbered years. The IPEDS files from 1987 to 1991 combine data from the EEO-6 and the IPEDS staff survey to create the IPEDS "Fall Staff" data file.

In 1993 for the first time, all schools formerly surveyed by EEOC were surveyed by NCES. Additionally, all less than 2-year schools eligible for participation in the Title IV federal financial aid program were included in the data collection.

Additional data on full-time faculty are available through the IPEDS "Faculty Salaries, Tenure, and Fringe Benefits" survey. This survey has been conducted for most years since 1966, initially through HEGIS and then through IPEDS. NCES also sponsors the National Survey of Postsecondary Faculty (NSOPF), a nationally representative sample survey that provides detailed information on postsecondary faculty and departments. Previous NSOPF surveys were conducted in 1988 and 1993. Historical data on faculty in institutions of higher education prior to 1975 are also available, and they have been summarized in the Digest of Education Statistics.

1993 Methodology

The IPEDS Fall Staff questionnaires were mailed out between October and November 1993, and institutions were asked to report their employment statistics for the pay period closest to October 1, 1993. Postsecondary education institutions completed either the "Consolidated" survey (IPEDS-CN) or the "Fall Staff" survey (IPEDS-S). The IPED-S survey form collected data on the race and sex of staff from all higher education institutions and all other schools offering a baccalaureate or higher degree. The IPEDS-CN survey was completed by all other postsecondary institutions that were not sent the "Fall Staff" survey. For institutions in the 50 states and District of Columbia, the response rate was 87 percent for the total postsecondary institutions and 92 percent for IHEs. Data were imputed for missing schools and for schools that had missing individual items. (See technical notes in Appendix C for a description of study methodology.)

Classifications Used in This Report

Data included in this report are presented first according to whether they are for all postsecondary institutions or limited to institutions of higher education. This distinction is discussed above and summarized numerically in Appendix table C-2. Data are presented by the following categories:

- Level of institution (4-year, 2-year, and less than 2-year)
- Control (public; private, nonprofit; and private, for-profit)
- Employment status (full or part time)
- Race/ethnicity and sex
- Primary occupation

  - Professional staff (executive/administrative/managerial, faculty (instruction/research) instructional and research assistants, and professional (support/service))

  - Nonprofessional staff (technical and paraprofessional, clerical and secretarial, skilled crafts, service/maintenance, and other employees)

- Faculty tenure status (tenured, nontenured on tenure track, and nontenured not on track)
- Faculty rank (professor, associate professor, assistant professor, instructor, lecturer, and no academic rank)
- New hires (those staff appearing on the payroll for the first time between July 1 and September 30 of the survey year and who were included in the counts of fall totals)

Structure of the Report

The report presents the summary of findings in three major sections: (1) overview of postsecondary and institutions of higher education staff, (2) faculty growth, distribution, tenure, and rank, and (3) newly hired staff in institutions of higher education. Section 1 includes data for all postsecondary institutions and for the subset institutions of higher education. Sections 2 and 3 focus on institutions of higher education. Where possible, comparisons are made to earlier NCES and EEO-6 data. We have usually taken the period of 1975-77 as comparison years, depending on the availability of data.

Detailed statistical tables are presented at the end of the report. Appendix A includes tables for all postsecondary institutions, and Appendix B provides tabulations for IHEs. Appendix C provides technical

notes on study methodology, Appendix D provides a glossary of major terms and classification categories used in the survey and this report, and Appendix E presents additional related tables. Appendix F is a copy of the survey questionnaire.

For ease of reading, those staff labeled in the tables and figures as white, non-Hispanic, and black, non-Hispanic are referred to simply as whites and blacks, respectively, in the text portion of the report.

Note on Historical Comparisons

In utilizing the historical data some caution must be exercised. First there have been some changes in actual numbers in the universe of postsecondary and higher education institutions. Second, the EEO-6 data were not imputed and may not have been as inclusive among the small institutions as was the 1993 survey. This is reflected in the number of institutions reporting, which was 3,031 in 1977 and 3,670 in 1993. There were, however, no systematic exclusions from the EEO-6 of institutions such as historically black colleges and universities (HBCUs) that might have biased the data on race/ethnicity.

It should also be noted that data from 1975-77 were drawn from two different primary sources, The Higher Education General Information System (HEGIS) "Staff Survey" 1976 and the EEO-6 surveys, which were conducted in odd years (1975 and 1977).

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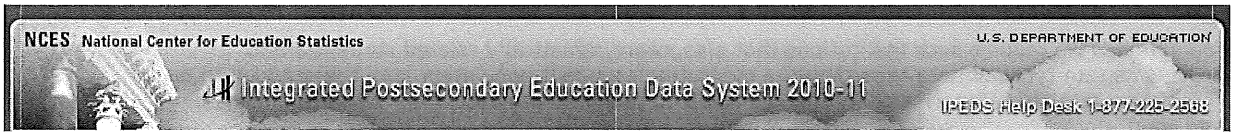

Statutory Requirements for Reporting IPEDS Data

General Mandate

NCES is authorized by law under the Section 153 of the Education Sciences Reform Act of 2002 (P.L. 107-279). Accordingly, NCES "shall collect, report, analyze, and disseminate statistical data related to education in the United States and in other nations, including -

- collecting, acquiring, compiling (where appropriate, on a state by state basis), and disseminating full and complete statistics on the condition and progress of education, at the pre-school, elementary, secondary, and postsecondary levels in the United States, ...;
- conducting and publishing reports and analyses of the meaning and significance of such statistics;
- collecting, analyzing, cross-tabulating, and reporting, to the extent feasible, so as to provide information by gender, race, ...; and
- assisting public and private educational agencies, organizations, and institutions in improving and automating statistical and data collection activities..."

Mandatory Reporting for Institutions with Program Participation Agreements

The completion of all IPEDS surveys, in a timely and accurate manner, is mandatory for all institutions that participate in or are applicants for participation in any Federal financial assistance program authorized by Title IV of the Higher Education Act (HEA) of 1965, as amended. The completion of the surveys is mandated by 20 USC 1094, Section 487(a)(17) and 34 CFR 668.14(b)(19).

Title IV, HEA program regulations 34 CFR 668.84, 668.85, and 668.86 provide that the Department may initiate a fine action or other administrative action, such as a limitation, suspension or termination of eligibility to participate in the Title IV, HEA programs, against institutions that do not comply with the requirement to complete and submit the surveys. The regulations permit a fine of up to $27,500 for each violation of any provision of Title IV, or any regulation or agreement implementing that Title. In determining the amount of a fine, the Secretary considers both the gravity of the offense and the size of the institution (34 CFR 668.92(a)).

Vocational Education Data

IPEDS responds to certain of the requirements pursuant to Section 421(a)(1) of the Carl D. Perkins Vocational Education Act. The data related to vocational programs and program completions are collected from postsecondary institutions known to provide occupationally specific vocational education.[1]

Data on Race/Ethnicity and Gender of Students

The collection and reporting of race/ethnicity and gender data on students and completers are mandatory for all institutions which receive, are applicants for, or expect to be applicants for Federal financial assistance as defined in the Department of Education (ED) regulations implementing Title VI of the Civil Rights Act of 1964 (34 CFR 100), or defined in any ED regulation implementing Title IX of the Education Amendments of 1972 (34 CFR 106). The collection of race/ethnicity and gender data in vocational programs is mandated by Section 421(a)(1) of the Carl D. Perkins Vocational Education Act.

Fall Staff Data

The collection and reporting of race/ethnicity and gender data on the Fall Staff (S) section of the Human Resources (HR) component are mandatory for all institutions which receive, are applicants for, or expect to be applicants for Federal financial assistance as defined in the Department of Education (ED) regulations implementing Title VI of the Civil Rights Act of 1964 (34 CFR 100). The collection of data are also mandated by P.L. 88-352, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (29 CFR 1602, subparts O, P, and Q). Institutions with 15 or more full-time employees are required to respond to the IPEDS Fall Staff component under this mandate.

Student Right-to-Know

Sections 668.41, 668.45, and 668.48 of the Student Assistance General Provision (34 CFR 668) were amended to implement the Student Right-to-Know Act, as amended by the Higher Education Amendments of 1991 and further by the Higher Education Technical Amendments of 1993 and 1999. The final regulations require an institution that participates in any student financial assistance program under Title IV of the Higher Education Act of 1965, as amended, to disclose information about graduation or completion rates to current and prospective students. The final

regulations also require such institutions that also award athletically related student aid to provide certain types of data regarding the institution's student population, and the graduation or completion rates of categories of student-athletes, to potential athletes, their parents, coaches, and counselors.

Consumer Information

Section 101 of the Higher Education amendments of 1965 (P.L. 105-244) requires that NCES collect the following information about undergraduate students from institutions of higher education: tuition and fees, cost of attendance, the average amount of financial assistance received by type of aid, and the number of students receiving each type.

Section 132 of the Higher Education Opportunity Act of 2008 (P.L. 110-315) requires that NCES make the following consumer information about postsecondary institutions available on the College Navigator college search web site: the institution's mission statement; a link to the institution's website that provides, in an easily accessible manner, information on student activities, services for individuals with disabilities, career and placement services, and policies on transfer of credit; admissions rates and test scores; enrollment by race and ethnicity, gender, enrollment status, and residency; number of transfer students; students registered with the disability office; retention rates; graduation rates within normal time of program completion and 150% and 200% of normal time; number of certificates and degrees awarded, and programs with the highest number of awards; student-to-faculty ratio and number of faculty and graduate assistants; cost of attendance and availability of alternative tuition plans; average grant aid and loans, and number of students receiving such aid, by type; total grant aid to undergraduates; number of students receiving Pell Grants; three years of tuition and fees and average net price data; three years of average net price disaggregated by income; a multi-year tuition calculator; College Affordability Lists and reports; Title IV cohort default rate; and campus safety information. Some of these items will be phased in over a 5-year period from passage of the bill. State spending charts and a link to Bureau of Labor Statistics information on starting salaries are also required.

[1] Institutions providing vocational/occupational programs are identified through responses to the Institutional Characteristics (IC) survey and the Completions (C) survey.

TITLE 5. EDUCATION

NOMENCLATURE CROSS–REFERENCE

(NOTE: Effective April 1, 1990, the Office of Administrative Law authorized the renaming of the hierarchical headings used within the Titles of the *California Code of Regulations*. Until the agencies implement these changes in their regulations, use the following Cross–Reference Table for the new organizational headings used in this Title.)

OLD HIERARCHY	REVISED HIERARCHY
Part	Division
Division	Chapter
Chapter	Subchapter
Subchapter	Article
Article	Subarticle
Section	Section

REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES

TITLE IX

January 2001

U.S. Department of Education
Office for Civil Rights

PREAMBLE

Summary

The Assistant Secretary for Civil Rights, U.S. Department of Education (Department), issues a new document (revised guidance) that replaces the 1997 document entitled "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," issued by the Office for Civil Rights (OCR) on March 13, 1997 (1997 guidance). We revised the guidance in limited respects in light of subsequent Supreme Court cases relating to sexual harassment in schools.

The revised guidance reaffirms the compliance standards that OCR applies in investigations and administrative enforcement of Title IX of the Education Amendments of 1972 (Title IX) regarding sexual harassment. The revised guidance re-grounds these standards in the Title IX regulations, distinguishing them from the standards applicable to private litigation for money damages and clarifying their regulatory basis as distinct from Title VII of the Civil Rights Act of 1964 (Title VII) agency law. In most other respects the revised guidance is identical to the 1997 guidance. Thus, we intend the revised guidance to serve the same purpose as the 1997 guidance. It continues to provide the principles that a school[1] should use to recognize and effectively respond to sexual harassment of students in its program as a condition of receiving Federal financial assistance.

Purpose and Scope of the Revised Guidance

In March 1997, we published in the Federal Register "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." 62 FR 12034. We issued the guidance pursuant to our authority under Title IX, and our Title IX implementing regulations, to eliminate discrimination based on sex in education programs and activities receiving Federal financial assistance. It was grounded in longstanding legal authority establishing that sexual harassment of students can be a form of sex discrimination covered by Title IX. The guidance was the product of extensive consultation with interested parties, including students, teachers, school administrators, and researchers. We also made the document available for public comment.

Since the issuance of the 1997 guidance, the Supreme Court (Court) has issued several important decisions in sexual harassment cases, including two decisions specifically addressing sexual harassment of students under Title IX: Gebser v. Lago Vista Independent School District (Gebser), 524 U.S. 274 (1998), and Davis v. Monroe County Board of Education (Davis), 526 U.S. 629 (1999). The Court held in Gebser that a school can be liable for monetary damages if a teacher sexually harasses a student, an

[1] As in the 1997 guidance, the revised guidance uses the term "school" to refer to all schools, colleges, universities, and other educational institutions that receive Federal funds from the Department.

official who has authority to address the harassment has actual knowledge of the harassment, and that official is deliberately indifferent in responding to the harassment. In Davis, the Court announced that a school also may be liable for monetary damages if one student sexually harasses another student in the school's program and the conditions of Gebser are met.

The Court was explicit in Gebser and Davis that the liability standards established in those cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. The Court acknowledged, by contrast, the power of Federal agencies, such as the Department, to "promulgate and enforce requirements that effectuate [Title IX's] nondiscrimination mandate," even in circumstances that would not give rise to a claim for money damages. See, Gebser, 524 U.S. at 292.

In an August 1998 letter to school superintendents and a January 1999 letter to college and university presidents, the Secretary of Education informed school officials that the Gebser decision did not change a school's obligations to take reasonable steps under Title IX and the regulations to prevent and eliminate sexual harassment as a condition of its receipt of Federal funding. The Department also determined that, although in most important respects the substance of the 1997 guidance was reaffirmed in Gebser and Davis, certain areas of the 1997 guidance could be strengthened by further clarification and explanation of the Title IX regulatory basis for the guidance.

On November 2, 2000, we published in the Federal Register a notice requesting comments on the proposed revised guidance (62 FR 66092). A detailed explanation of the Gebser and Davis decisions, and an explanation of the proposed changes in the guidance, can be found in the preamble to the proposed revised guidance. In those decisions and a third opinion, Oncale v. Sundowner Offshore Services, Inc. (Oncale), 523 U.S. 75 (1998) (a sexual harassment case decided under Title VII), the Supreme Court confirmed several fundamental principles we articulated in the 1997 guidance. In these areas, no changes in the guidance were necessary. A notice regarding the availability of this final document appeared in the Federal Register on January 19, 2001.

Enduring Principles from the 1997 Guidance

It continues to be the case that a significant number of students, both male and female, have experienced sexual harassment, which can interfere with a student's academic performance and emotional and physical well-being. Preventing and remedying sexual harassment in schools is essential to ensuring a safe environment in which students can learn. As with the 1997 guidance, the revised guidance applies to students at every level of education. School personnel who understand their obligations under Title IX, e.g., understand that sexual harassment can be sex discrimination in violation of Title IX, are in the best position to prevent harassment and to lessen the harm to students if, despite their best efforts, harassment occurs.

One of the fundamental aims of both the 1997 guidance and the revised guidance has been to emphasize that, in addressing allegations of sexual harassment, the good judgment and common sense of teachers and school administrators are important elements of a response that meets the requirements of Title IX.

A critical issue under Title IX is whether the school recognized that sexual harassment has occurred and took prompt and effective action calculated to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. If harassment has occurred, doing nothing is always the wrong response. However, depending on the circumstances, there may be more than one right way to respond. The important thing is for school employees or officials to pay attention to the school environment and not to hesitate to respond to sexual harassment in the same reasonable, commonsense manner as they would to other types of serious misconduct.

It is also important that schools not overreact to behavior that does not rise to the level of sexual harassment. As the Department stated in the 1997 guidance, a kiss on the cheek by a first grader does not constitute sexual harassment. School personnel should consider the age and maturity of students in responding to allegations of sexual harassment.

Finally, we reiterate the importance of having well- publicized and effective grievance procedures in place to handle comp laints of sex discrimination, including sexual harassment complaints. Nondiscrimination policies and procedures are required by the Title IX regulations. In fact, the Supreme Court in Gebser specifically affirmed the Department's authority to enforce this requirement administratively in order to carry out Title IX's nondiscrimination mandate. 524 U.S. at 292. Strong policies and effective grievance procedures are essential to let students and employees know that sexual harassment will not be tolerated and to ensure that they know how to report it.

Analysis of Comments Received Concerning the Proposed Revised Guidance and the Resulting Changes

In response to the Assistant Secretary's invitation to comment, OCR received approximately 11 comments representing approximately 15 organizations and individuals. Commenters provided specific suggestions regarding how the revised guidance could be clarified. Many of these suggested changes have been incorporated. Significant and recurring issues are grouped by subject and discussed in the following sections:

Distinction Between Administrative Enforcement and Private Litigation for Monetary Damages

In Gebser and Davis, the Supreme Court addressed for the first time the appropriate standards for determining when a school district is liable under Title IX for money damages in a private lawsuit brought by or on behalf of a student who has been sexually harassed. As explained in the preamble to the proposed revised guidance, the Court was explicit in Gebser and Davis that the liability standards established in these cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. at 283, and Davis, 526 U.S. at 639. The Gebser Court recognized and contrasted lawsuits for money damages with the incremental nature of administrative enforcement of Title IX. In Gebser, the Court was concerned with the possibility of a money damages award against a school for harassment about which it had not known. In contrast, the process of administrative enforcement requires enforcement agencies such as OCR to make schools

aware of potential Title IX violations and to seek voluntary corrective action before pursuing fund termination or other enforcement mechanisms.

Commenters uniformly agreed with OCR that the Court limited the liability standards established in Gebser and Davis to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. Commenters also agreed that the administrative enforcement standards reflected in the 1997 guidance remain valid in OCR enforcement actions.[2] Finally, commenters agreed that the proposed revisions provided important clarification to schools regarding the standards that OCR will use and that schools should use to determine compliance with Title IX as a condition of the receipt of Federal financial assistance in light of Gebser and Davis.

Harassment by Teachers and Other School Personnel

Most commenters agreed with OCR's interpretation of its regulations regarding a school's responsibility for harassment of students by teachers and other school employees. These commenters agreed that Title IX's prohibitions against discrimination are not limited to official policies and practices governing school programs and activities. A school also engages in sex-based discrimination if its employees, in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students (such as teaching, counseling, supervising, and advising students) deny or limit a student's ability to participate in or benefit from the schools program on the basis of sex. Under the Title IX regulations, the school is responsible for discrimination in these cases, whether or not it knew or should have known about it, because the discrimination occurred as part of the school's undertaking to provide nondiscriminatory aid, benefits, and services to students. The revised guidance distinguishes these cases from employee harassment that, although taking place in a school's program, occurs outside of the context of the employee's provision of aid, benefits, and services to students. In these latter cases, the school's responsibilities are not triggered until the school knew or should have known about the harassment.

One commenter expressed concern that it was inappropriate ever to find a school out of compliance for harassment about which it knew nothing. We reiterate that, although a school may in some cases be responsible for harassment caused by an employee that occurred before other responsible employees of the school knew or should have known about it, OCR always provides the school with actual notice and the opportunity to take appropriate corrective action before issuing a finding of violation. This is consistent with the Court's underlying concern in Gebser and Davis.

Most commenters acknowledged that OCR has provided useful factors to determine whether harassing conduct took place "in the context of providing aid, benefits, or services." However, some commenters stated that additional clarity and examples regarding the issue were needed. Commenters also suggested clarifying

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[2] It is the position of the United States that the standards set out in OCR's guidance for finding a violation and seeking voluntary corrective action also would apply to private actions for injunctive and other equitable relief. See brief of the United States as Amicus Curiae in Davis v. Monroe County.

references to quid pro quo and hostile environment harassment as these two concepts, though useful, do not determine the issue of whether the school itself is considered responsible for the harassment. We agree with these concerns and have made significant revisions to the sections "Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program" and "Harassment by Teachers and Other Employees" to clarify the guidance in these respects.

Gender-based Harassment, Including Harassment Predicated on Sex-stereotyping

Several commenters requested that we expand the discussion and include examples of gender-based harassment predicated on sex stereotyping. Some commenters also argued that gender-based harassment should be considered sexual harassment, and that we have "artificially" restricted the guidance only to harassment in the form of conduct of a sexual nature, thus, implying that gender-based harassment is of less concern and should be evaluated differently.

We have not further expanded this section because, while we are also concerned with the important issue of gender-based harassment, we believe that harassment of a sexual nature raises unique and sufficiently important issues that distinguish it from other types of gender-based harassment and warrants its own guidance.

Nevertheless, we have clarified this section of the guidance in several ways. The guidance clarifies that gender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity and femininity. Although this type of harassment is not covered by the guidance, if it is sufficiently serious, gender-based harassment is a school's responsibility, and the same standards generally will apply. We have also added an endnote regarding Supreme Court precedent for the proposition that sex stereotyping can constitute sex discrimination.

Several commenters also suggested that we state that sexual and non-sexual (but gender-based) harassment should not be evaluated separately in determining whether a hostile environment exists. We note that both the proposed revised guidance and the final revised guidance indicate in several places that incidents of sexual harassment and non-sexual, gender-based harassment can be combined to determine whether a hostile environment has been created. We also note that sufficiently serious harassment of a sexual nature remains covered by Title IX, as explained in the guidance, even though the hostile environment may also include taunts based on sexual orientation.

Definition of Harassment

One commenter urged OCR to provide distinct definitions of sexual harassment to be used in administrative enforcement as distinguished from criteria used to maintain private actions for monetary damages. We disagree. First, as discussed in the preamble to the proposed revised guidance, the definition of hostile environment sexual harassment used by the Court in Davis is consistent with the definition found in the proposed guidance. Although the terms used by the Court in Davis are in some ways different from

the words used to define hostile environment harassment in the 1997 guidance (see, e.g., 62 FR 12041, "conduct of a sexual nature is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment"), the definitions are consistent. Both the Court's and the Department's definitions are contextual descriptions intended to capture the same concept -- that under Title IX, the conduct must be sufficiently serious that it adversely affects a student's ability to participate in or benefit from the school's program. In determining whether harassment is actionable, both Davis and the Department tell schools to look at the "constellation of surrounding circumstances, expectations, and relationships" (526 U.S. at 651 (citing Oncale)), and the Davis Court cited approvingly to the underlying core factors described in the 1997 guidance for evaluating the context of the harassment. Second, schools benefit from consistency and simplicity in understanding what is sexual harassment for which the school must take responsive action. A multiplicity of definitions would not serve this purpose.

Several commenters suggested that we develop a unique Title IX definition of harassment that does not rely on Title VII and that takes into account the special relationship of schools to students. Other commenters, by contrast, commended OCR for recognizing that Gebser and Davis did not alter the definition of hostile environment sexual harassment found in OCR's 1997 guidance, which derives from Title VII caselaw, and asked us to strengthen the point. While Gebser and Davis made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the Davis Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX. We also believe that the factors described in both the 1997 guidance and the revised guidance to determine whether sexual harassment has occurred provide the necessary flexibility for taking into consideration the age and maturity of the students involved and the nature of the school environment.

Effective Response

One commenter suggested that the change in the guidance from "appropriate response" to "effective response" implies a change in OCR policy that requires omniscience of schools. We disagree. Effectiveness has always been the measure of an adequate response under Title IX. This does not mean a school must overreact out of fear of being judged inadequate. Effectiveness is measured based on a reasonableness standard. Schools do not have to know beforehand that their response will be effective. However, if their initial steps are ineffective in stopping the harassment, reasonableness may require a series of escalating steps.

The Relationship Between FERPA and Title IX

In the development of both the 1997 guidance and the current revisions to the guidance, commenters raised concerns about the interrelation of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and Title IX. The concerns relate to two issues: (1) the harassed student's right to information about the outcome of a sexual harassment complaint against another student, including information about sanctions imposed on a student found guilty of harassment; and (2) the due process rights of

individuals, including teachers, accused of sexual harassment by a student, to obtain information about the identity of the complainant and the nature of the allegations.

FERPA generally forbids disclosure of information from a student's "education record" without the consent of the student (or the student's parent). Thus, FERPA may be relevant when the person found to have engaged in harassment is another student, because written information about the complaint, investigation, and outcome is part of the harassing student's education record. Title IX is also relevant because it is an important part of taking effective responsive action for the school to inform the harassed student of the results of its investigation and whether it counseled, disciplined, or otherwise sanctioned the harasser. This information can assure the harassed student that the school has taken the student's complaint seriously and has taken steps to eliminate the hostile environment and prevent the harassment from recurring.

The Department currently interprets FERPA as not conflicting with the Title IX requirement that the school notify the harassed student of the outcome of its investigation, i.e., whether or not harassment was found to have occurred, because this information directly relates to the victim. It has been the Department's position that there is a potential conflict between FERPA and Title IX regarding disclosure of sanctions, and that FERPA generally prevents a school from disclosing to a student who complained of harassment information about the sanction or discipline imposed upon a student who was found to have engaged in that harassment.[3]

There is, however, an additional statutory provision that may apply to this situation. In 1994, as part of the Improving America's Schools Act, Congress amended the General Education Provisions Act (GEPA) -- of which FERPA is a part -- to state that nothing in GEPA "shall be construed to affect the applicability of ... title IX of the Education Amendments of 1972...."[4] The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between requirements of FERPA and requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. The Department is in the process of developing a consistent approach and specific factors for implementing this provision. OCR and the Department's Family Policy Compliance Office (FPCO) intend to issue joint guidance, discussing specific areas of potential conflict between FERPA and Title IX.

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[3] Exceptions include the case of a sanction that directly relates to the person who was harassed (e.g., an order that the harasser stay away from the harassed student), or sanctions related to offenses for which there is a statutory exception, such as crimes of violence or certain sex offenses in postsecondary institutions.

[4] 20 U.S.C. 1221(d). A similar amendment was originally passed in 1974 but applied only to Title VI of the Civil Rights Act of 1964 (prohibiting race discrimination by recipients). The 1994 amendments also extended 20 U.S.C. 1221(d) to Section 504 of the Rehabilitation Act of 1973 (prohibiting disability-based discrimination by recipients) and to the Age Discrimination Act.

FERPA is also relevant when a student accuses a teacher or other employee of sexual harassment, because written information about the allegations is contained in the student's education record. The potential conflict arises because, while FERPA protects the privacy of the student accuser, the accused individual may need the name of the accuser and information regarding the nature of the allegations in order to defend against the charges. The 1997 guidance made clear that neither FERPA nor Title IX override any federally protected due process rights of a school employee accused of sexual harassment.

Several commenters urged the Department to expand and strengthen this discussion. They argue that in many instances a school's failure to provide information about the name of the student accuser and the nature of the allegations seriously undermines the fairness of the investigative and adjudicative process. They also urge the Department to include a discussion of the need for confidentiality as to the identity of the individual accused of harassment because of the significant harm that can be caused by false accusations. We have made several changes to the guidance, including an additional discussion regarding the confidentiality of a person accused of harassment and a new heading entitled "Due Process Rights of the Accused," to address these concerns.

REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS[1] BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES

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I. Introduction

Title IX of the Education Amendments of 1972 (Title IX) and the Department of Education's (Department) implementing regulations prohibit discrimination on the basis of sex in federally assisted education programs and activities.[2] The Supreme Court, Congress, and Federal executive departments and agencies, including the Department, have recognized that sexual harassment of students can constitute discrimination prohibited by Title IX.[3] This guidance focuses on a school's[4] fundamental compliance responsibilities under Title IX and the Title IX regulations to address sexual harassment of students as a condition of continued receipt of Federal funding. It describes the regulatory basis for a school's compliance responsibilities under Title IX, outlines the circumstances under which sexual harassment may constitute discrimination prohibited by the statute and regulations, and provides information about actions that schools should take to prevent sexual harassment or to address it effectively if it does occur.[5]

II. Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.[6] Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program. Sexual harassment of students is, therefore, a form of sex discrimination prohibited by Title IX under the circumstances described in this guidance.

It is important to recognize that Title IX's prohibition against sexual harassment does not extend to legitimate nonsexual touching or other nonsexual conduct. For example, a high school athletic coach hugging a student who made a goal or a kindergarten teacher's consoling hug for a child with a skinned knee will not be considered sexual harassment.[7] Similarly, one student's demonstration of a sports maneuver or technique requiring contact with another student will not be considered sexual harassment. However, in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher's repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment.

III. Applicability of Title IX

Title IX applies to all public and private educational institutions that receive Federal funds, i.e., recipients, including, but not limited to, elementary and secondary schools, school districts, proprietary schools, colleges, and universities. The guidance uses the terms "recipients" and "schools" interchangeably to refer to all of those institutions. The "education program or activity" of a school includes all of the school's operations.[8] This means that Title IX protects students in connection with all of the academic, educational, extra-curricular, athletic, and other programs of the school,

whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere.

A student may be sexually harassed by a school employee,[9] another student, or a non-employee third party (e.g., a visiting speaker or visiting athletes). Title IX protects any "person" from sex discrimination. Accordingly, both male and female students are protected from sexual harassment[10] engaged in by a school's employees, other students, or third parties. Moreover, Title IX prohibits sexual harassment regardless of the sex of the harasser, i.e., even if the harasser and the person being harassed are members of the same sex.[11] An example would be a campaign of sexually explicit graffiti directed at a particular girl by other girls.[12]

Although Title IX does not prohibit discrimination on the basis of sexual orientation,[13] sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX under the circumstances described in this guidance.[14] For example, if a male student or a group of male students target a gay student for physical sexual advances, serious enough to deny or limit the victim's ability to participate in or benefit from the school's program, the school would need to respond promptly and effectively, as described in this guidance, just as it would if the victim were heterosexual. On the other hand, if students heckle another student with comments based on the student's sexual orientation (e.g., "gay students are not welcome at this table in the cafeteria"), but their actions do not involve conduct of a sexual nature, their actions would not be sexual harassment covered by Title IX.[15]

Though beyond the scope of this guidance, gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping,[16] but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond, if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program.[17] For example, the repeated sabotaging of female graduate students' laboratory experiments by male students in the class could be the basis of a violation of Title IX. A school must respond to such harassment in accordance with the standards and procedures described in this guidance.[18] In assessing all related circumstances to determine whether a hostile environment exists, incidents of gender-based harassment combined with incidents of sexual harassment could create a hostile environment, even if neither the gender-based harassment alone nor the sexual harassment alone would be sufficient to do so.[19]

IV. Title IX Regulatory Compliance Responsibilities

As a condition of receiving funds from the Department, a school is required to comply with Title IX and the Department's Title IX regulations, which spell out prohibitions against sex discrimination. The law is clear that sexual harassment may constitute sex discrimination under Title IX.[20]

Recipients specifically agree, as a condition for receiving Federal financial assistance from the Department, to comply with Title IX and the Department's Title IX regulations. The regulatory provision requiring this agreement, known as an assurance of

compliance, specifies that recipients must agree that education programs or activities operated by the recipient will be operated in compliance with the Title IX regulations, including taking any action necessary to remedy its discrimination or the effects of its discrimination in its programs.[21]

The regulations set out the basic Title IX responsibilities a recipient undertakes when it accepts Federal financial assistance, including the following specific obligations.[22] A recipient agrees that, in providing any aid, benefit, or service to students, it will not, on the basis of sex—

- Treat one student differently from another in determining whether the student satisfies any requirement or condition for the provision of any aid, benefit, or service;[23]
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;[24]
- Deny any student any such aid, benefit, or service;[25]
- Subject students to separate or different rules of behavior, sanctions, or other treatment;[26]
- Aid or perpetuate discrimination against a student by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students;[27] and
- Otherwise limit any student in the enjoyment of any right, privilege, advantage, or opportunity.[28]

For the purposes of brevity and clarity, this guidance generally summarizes this comprehensive list by referring to a school's obligation to ensure that a student is not denied or limited in the ability to participate in or benefit from the school's program on the basis of sex.

The regulations also specify that, if a recipient discriminates on the basis of sex, the school must take remedial action to overcome the effects of the discrimination.[29]

In addition, the regulations establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination[30] and adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints of sex discrimination.[31] The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance.[32]

To comply with these regulatory requirements, schools need to recognize and respond to sexual harassment of students by teachers and other employees, by other students, and by third parties. This guidance explains how the requirements of the Title IX regulations apply to situations involving sexual harassment of a student and outlines measures that schools should take to ensure compliance.

V. Determining a School's Responsibilities

In assessing sexually harassing conduct, it is important for schools to recognize that two distinct issues are considered. The first issue is whether, considering the types of harassment discussed in the following section, the conduct denies or limits a student's ability to participate in or benefit from the program based on sex. If it does, the second issue is the nature of the school's responsibility to address that conduct. As discussed in a following section, this issue depends in part on the identity of the harasser and the context in which the harassment occurred.

A. Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program

This guidance moves away from specific labels for types of sexual harassment.[33] In each case, the issue is whether the harassment rises to a level that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. However, an understanding of the different types of sexual harassment can help schools determine whether or not harassment has occurred that triggers a school's responsibilities under, or violates, Title IX or its regulations.

The type of harassment traditionally referred to as quid pro quo harassment occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct.[34] Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the student has been treated differently, or the student's ability to participate in or benefit from the school's program has been denied or limited, on the basis of sex in violation of the Title IX regulations.[35]

By contrast, sexual harassment can occur that does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct. Harassment of this type is generally referred to as hostile environment harassment.[36] This type of harassing conduct requires a further assessment of whether or not the conduct is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program based on sex.[37]

Teachers and other employees can engage in either type of harassment. Students and third parties are not generally given responsibility over other students and, thus, generally can only engage in hostile environment harassment.

1. Factors Used to Evaluate Hostile Environment Sexual Harassment

As outlined in the following paragraphs, OCR considers a variety of related factors to determine if a hostile environment has been created, i.e., if sexually harassing conduct by an employee, another student, or a third party is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. OCR considers the conduct from both a subjective[38] and objective[39] perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all relevant circumstances, i.e., "the constellation of surrounding circumstances, expectations, and relationships."[40] Schools should also use these factors to evaluate conduct in order to draw commonsense distinctions between conduct that constitutes

sexual harassment and conduct that does not rise to that level. Relevant factors include the following:

- The degree to which the conduct affected one or more students' education. OCR assesses the effect of the harassment on the student to determine whether it has denied or limited the student's ability to participate in or benefit from the school's program. For example, a student's grades may go down or the student may be forced to withdraw from school because of the harassing behavior.[41] A student may also suffer physical injuries or mental or emotional distress.[42] In another situation, a student may have been able to keep up his or her grades and continue to attend school even though it was very difficult for him or her to do so because of the teacher's repeated sexual advances. Similarly, a student may be able to remain on a sports team, despite experiencing great difficulty performing at practices and games from the humiliation and anger caused by repeated sexual advances and intimidation by several team members that create a hostile environment. Harassing conduct in these examples would alter a reasonable student's educational environment and adversely affect the student's ability to participate in or benefit from the school's program on the basis of sex.

  A hostile environment can occur even if the harassment is not targeted specifically at the individual complainant.[43] For example, if a student, group of students, or a teacher regularly directs sexual comments toward a particular student, a hostile environment may be created not only for the targeted student, but also for others who witness the conduct.

- The type, frequency, and duration of the conduct. In most cases, a hostile environment will exist if there is a pattern or practice of harassment, or if the harassment is sustained and nontrivial.[44] For instance, if a young woman is taunted by one or more young men about her breasts or genital area or both, OCR may find that a hostile environment has been created, particularly if the conduct has gone on for some time, or takes place throughout the school, or if the taunts are made by a number of students. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. For instance, if the conduct is more severe, e.g., attempts to grab a female student's breasts or attempts to grab any student's genital area or buttocks, it need not be as persistent to create a hostile environment. Indeed, a single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.[45] On the other hand, conduct that is not severe will not create a hostile environment, e.g., a comment by one student to another student that she has a nice figure. Indeed, depending on the circumstances, this may not even be conduct of a sexual nature.[46] Similarly, because students date one another, a request for a date or a gift of flowers, even if unwelcome, would not create a hostile environment. However, there may be circumstances in which repeated, unwelcome requests for dates or similar conduct could create a hostile environment. For example, a person, who has been refused previously, may request dates in an intimidating or threatening manner.

- The identity of and relationship between the alleged harasser and the subject or subjects of the harassment. A factor to be considered, especially in cases involving allegations of sexual harassment of a student by a school employee, is the identity of

and relationship between the alleged harasser and the subject or subjects of the harassment. For example, due to the power a professor or teacher has over a student, sexually based conduct by that person toward a student is more likely to create a hostile environment than similar conduct by another student.[47]

- The number of individuals involved. Sexual harassment may be committed by an individual or a group. In some cases, verbal comments or other conduct from one person might not be sufficient to create a hostile environment, but could be if done by a group. Similarly, while harassment can be directed toward an individual or a group,[48] the effect of the conduct toward a group may vary, depending on the type of conduct and the context. For certain types of conduct, there may be "safety in numbers." For example, following an individual student and making sexual taunts to him or her may be very intimidating to that student, but, in certain circumstances, less so to a group of students. On the other hand, persistent unwelcome sexual conduct still may create a hostile environment if directed toward a group.
- The age and sex of the alleged harasser and the subject or subjects of the harassment. For example, in the case of younger students, sexually harassing conduct is more likely to be intimidating if coming from an older student.[49]
- The size of the school, location of the incidents, and context in which they occurred. Depending on the circumstances of a particular case, fewer incidents may have a greater effect at a small college than at a large university campus. Harassing conduct occurring on a school bus may be more intimidating than similar conduct on a school playground because the restricted area makes it impossible for students to avoid their harassers.[50] Harassing conduct in a personal or secluded area, such as a dormitory room or residence hall, can have a greater effect (e.g., be seen as more threatening) than would similar conduct in a more public area. On the other hand, harassing conduct in a public place may be more humiliating. Each incident must be judged individually.
- Other incidents at the school. A series of incidents at the school, not involving the same students, could — taken together — create a hostile environment, even if each by itself would not be sufficient.[51]
- Incidents of gender-based, but nonsexual harassment. Acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex, but not involving sexual activity or language, can be combined with incidents of sexual harassment to determine if the incidents of sexual harassment are sufficiently serious to create a sexually hostile environment.[52]

It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists. Consequently, in using the factors discussed previously to evaluate incidents of alleged harassment, it is always important to use common sense and reasonable judgement in determining whether a sexually hostile environment has been created.

2. Welcomeness

The section entitled "Sexual Harassment" explains that in order for conduct of a sexual nature to be sexual harassment, it must be unwelcome. Conduct is unwelcome if

the student did not request or invite it and "regarded the conduct as undesirable or offensive."[53] Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.[54] For example, a student may decide not to resist sexual advances of another student or may not file a complaint out of fear. In addition, a student may not object to a pattern of demeaning comments directed at him or her by a group of students out of a concern that objections might cause the harassers to make more comments. The fact that a student may have accepted the conduct does not mean that he or she welcomed it.[55] Also, the fact that a student willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwelcome on a subsequent occasion. On the other hand, if a student actively participates in sexual banter and discussions and gives no indication that he or she objects, then the evidence generally will not support a conclusion that the conduct was unwelcome.[56]

If younger children are involved, it may be necessary to determine the degree to which they are able to recognize that certain sexual conduct is conduct to which they can or should reasonably object and the degree to which they can articulate an objection. Accordingly, OCR will consider the age of the student, the nature of the conduct involved, and other relevant factors in determining whether a student had the capacity to welcome sexual conduct.

Schools should be particularly concerned about the issue of welcomeness if the harasser is in a position of authority. For instance, because students may be encouraged to believe that a teacher has absolute authority over the operation of his or her classroom, a student may not object to a teacher's sexually harassing comments during class; however, this does not necessarily mean that the conduct was welcome. Instead, the student may believe that any objections would be ineffective in stopping the harassment or may fear that by making objections he or she will be singled out for harassing comments or other retaliation.

In addition, OCR must consider particular issues of welcomeness if the alleged harassment relates to alleged "consensual" sexual relationships between a school's adult employees and its students. If elementary students are involved, welcomeness will not be an issue: OCR will never view sexual conduct between an adult school employee and an elementary school student as consensual. In cases involving secondary students, there will be a strong presumption that sexual conduct between an adult school employee and a student is not consensual. In cases involving older secondary students, subject to the presumption,[57] OCR will consider a number of factors in determining whether a school employee's sexual advances or other sexual conduct could be considered welcome.[58] In addition, OCR will consider these factors in all cases involving postsecondary students in making those determinations.[59] The factors include the following:

- The nature of the conduct and the relationship of the school employee to the student, including the degree of influence (which could, at least in part, be affected by the student's age), authority, or control the employee has over the student.
- Whether the student was legally or practically unable to consent to the sexual conduct in question. For example, a student's age could affect his or her ability to do so. Similarly, certain types of disabilities could affect a student's ability to do so.

If there is a dispute about whether harassment occurred or whether it was welcome — in a case in which it is appropriate to consider whether the conduct would be welcome — determinations should be made based on the totality of the circumstances. The following types of information may be helpful in resolving the dispute:

- Statements by any witnesses to the alleged incident.
- Evidence about the relative credibility of the allegedly harassed student and the alleged harasser. For example, the level of detail and consistency of each person's account should be compared in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist. However, the absence of witnesses may indicate only the unwillingness of others to step forward, perhaps due to fear of the harasser or a desire not to get involved.
- Evidence that the alleged harasser has been found to have harassed others may support the credibility of the student claiming the harassment; conversely, the student's claim will be weakened if he or she has been found to have made false allegations against other individuals.
- Evidence of the allegedly harassed student's reaction or behavior after the alleged harassment. For example, were there witnesses who saw the student immediately after the alleged incident who say that the student appeared to be upset? However, it is important to note that some students may respond to harassment in ways that do not manifest themselves right away, but may surface several days or weeks after the harassment. For example, a student may initially show no signs of having been harassed, but several weeks after the harassment, there may be significant changes in the student's behavior, including difficulty concentrating on academic work, symptoms of depression, and a desire to avoid certain individuals and places at school.
- Evidence about whether the student claiming harassment filed a complaint or took other action to protest the conduct soon after the alleged incident occurred. However, failure to immediately complain may merely reflect a fear of retaliation or a fear that the complainant may not be believed rather than that the alleged harassment did not occur.
- Other contemporaneous evidence. For example, did the student claiming harassment write about the conduct and his or her reaction to it soon after it occurred (e.g., in a diary or letter)? Did the student tell others (friends, parents) about the conduct (and his or her reaction to it) soon after it occurred?

B. Nature of the School's Responsibility to Address Sexual Harassment

A school has a responsibility to respond promptly and effectively to sexual harassment. In the case of harassment by teachers or other employees, the nature of this responsibility depends in part on whether the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

1. Harassment by Teachers and Other Employees

Sexual harassment of a student by a teacher or other school employee can be discrimination in violation of Title IX.[60] Schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed. The extent of a recipient's responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

A recipient is responsible under the Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. Recipients generally provide aid, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual harassment – generally this means harassment that is carried out during an employee's performance of his or her responsibilities in relation to students, including teaching, counseling, supervising, advising, and transporting students – and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of sex,[61] the recipient is responsible for the discriminatory conduct.[62] The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has "notice" of the harassment. (As explained in the section on "Notice of Employee, Peer, or Third Party Harassment," for purposes of this guidance, a school has notice of harassment if a responsible school employee actually knew or, in the exercise of reasonable care, should have known about the harassment.) Of course, under OCR's administrative enforcement, recipients always receive actual notice and the opportunity to take appropriate corrective action before any finding of violation or possible loss of federal funds.

Whether or not sexual harassment of a student occurred within the context of an employee's responsibilities for providing aid, benefits, or services is determined on a case-by-case basis, taking into account a variety of factors. If an employee conditions the provision of an aid, benefit, or service that the employee is responsible for providing on a student's submission to sexual conduct, i.e., conduct traditionally referred to as quid pro quo harassment, the harassment is clearly taking place in the context of the employee's responsibilities to provide aid, benefits, or services. In other situations, i.e., when an employee has created a hostile environment, OCR will consider the following factors in determining whether or not the harassment has taken place in this context, including:

- The type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally;
- the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place;
- where and when the harassment occurred;
- the age and educational level of the student involved; and

- as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

These factors are applicable to all recipient educational institutions, including elementary and secondary schools, colleges, and universities. Elementary and secondary schools, however, are typically run in a way that gives teachers, school officials, and other school employees a substantial degree of supervision, control, and disciplinary authority over the conduct of students.[63] Therefore, in cases involving allegations of harassment of elementary and secondary school-age students by a teacher or school administrator during any school activity,[64] consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee's provision of aid, benefits, or services.

For example, a teacher sexually harasses an eighth- grade student in a school hallway. Even if the student is not in any of the teacher's classes and even if the teacher is not designated as a hall monitor, given the age and educational level of the student and the status and degree of influence of teachers in elementary and secondary schools, it would be reasonable for the student to believe that the teacher had at least informal disciplinary authority over students in the hallways. Thus, OCR would consider this an example of conduct that is occurring in the context of the employee's responsibilities to provide aid, benefits, or services.

Other examples of sexual harassment of a student occurring in the context of an employee's responsibilities for providing aid, benefits, or services include, but are not limited to -- a faculty member at a university's medical school conditions an intern's evaluation on submission to his sexual advances and then gives her a poor evaluation for rejecting the advances; a high school drama instructor does not give a student a part in a play because she has not responded to sexual overtures from the instructor; a faculty member withdraws approval of research funds for her assistant because he has rebuffed her advances; a journalism professor who supervises a college newspaper continually and inappropriately touches a student editor in a sexual manner, causing the student to resign from the newspaper staff; and a teacher repeatedly asks a ninth grade student to stay after class and attempts to engage her in discussions about sex and her personal experiences while they are alone in the classroom, causing the student to stop coming to class. In each of these cases, the school is responsible for the discriminatory conduct, including taking prompt and effective action to end the harassment, prevent it from recurring, and remedy the effects of the harassment on the victim.

Sometimes harassment of a student by an employee in the school's program does not take place in the context of the employee's provision of aid, benefits, or services, but nevertheless is sufficiently serious to create a hostile educational environment. An example of this conduct might occur if a faculty member in the history department at a university, over the course of several weeks, repeatedly touches and makes sexually suggestive remarks to a graduate engineering student while waiting at a stop for the university shuttle bus, riding on the bus, and upon exiting the bus. As a result, the student stops using the campus shuttle and walks the very long distances between her classes. In this case, the school is not directly responsible for the harassing conduct because it did not occur in the context of the employee's responsibilities for the provision

of aid, benefits, or services to students. However, the conduct is sufficiently serious to deny or limit the student in her ability to participate in or benefit from the recipient's program. Thus, the school has a duty, upon notice of the harassment,[65] to take prompt and effective action to stop the harassment and prevent its recurrence.

If the school takes these steps, it has avoided violating Title IX. If the school fails to take the necessary steps, however, its failure to act has allowed the student to continue to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program. The school, therefore, has engaged in its own discrimination. It then becomes responsible, not just for stopping the conduct and preventing it from happening again, but for remedying the effects of the harassment on the student that could reasonably have been prevented if the school had responded promptly and effectively. (For related issues, see the sections on "OCR Case Resolution" and "Recipient's Response.")

2. Harassment by Other Students or Third Parties

If a student sexually harasses another student and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program, and if the school knows or reasonably should know[66] about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence.[67] As long as the school, upon notice of the harassment, responds by taking prompt and effective action to end the harassment and prevent its recurrence, the school has carried out its responsibility under the Title IX regulations. On the other hand, if, upon notice, the school fails to take prompt, effective action, the school's own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program on the basis of sex.[68] In this case, the school is responsible for taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had it responded promptly and effectively.

Similarly, sexually harassing conduct by third parties, who are not themselves employees or students at the school (e.g., a visiting speaker or members of a visiting athletic team), may also be of a sufficiently serious nature to deny or limit a student's ability to participate in or benefit from the education program. As previously outlined in connection with peer harassment, if the school knows or should know[69] of the harassment, the school is responsible for taking prompt and effective action to eliminate the hostile environment and prevent its recurrence.

The type of appropriate steps that the school should take will differ depending on the level of control that the school has over the third party harasser.[70] For example, if athletes from a visiting team harass the home school's students, the home school may not be able to discipline the athletes. However, it could encourage the other school to take appropriate action to prevent further incidents; if necessary, the home school may choose not to invite the other school back. (This issue is discussed more fully in the section on "Recipient's Response.")

If, upon notice, the school fails to take prompt and effective corrective action, its own failure has permitted the student to be subjected to a hostile environment that limits

the student's ability to participate in or benefit from the education program.[71] In this case, the school is responsible for taking corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had the school responded promptly and effectively.

C. Notice of Employee, Peer, or Third Party Harassment

As described in the section on "Harassment by Teachers and Other Employees," schools may be responsible for certain types of employee harassment that occurred before the school otherwise had notice of the harassment. On the other hand, as described in that section and the section on "Harassment by Other Students or Third Parties," in situations involving certain other types of employee harassment, or harassment by peers or third parties, a school will be in violation of the Title IX regulations if the school "has notice" of a sexually hostile environment and fails to take immediate and effective corrective action.[72]

A school has notice if a responsible employee "knew, or in the exercise of reasonable care should have known," about the harassment.[73] A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.[74] Accordingly, schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

A school can receive notice of harassment in many different ways. A student may have filed a grievance with the Title IX coordinator[75] or complained to a teacher or other responsible employee about fellow students harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, bus driver, teacher, affirmative action officer, or staff in the office of student affairs. A teacher or other responsible employee of the school may have witnessed the harassment. The school may receive notice about harassment in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The school also may have learned about the harassment from flyers about the incident distributed at the school or posted around the school. For the purposes of compliance with the Title IX regulations, a school has a duty to respond to harassment about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a "reasonably diligent inquiry."[76]

For example, in some situations if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents.[77] In other cases, the pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment — if the harassment is widespread, openly practiced, or well-known to students and staff

(such as sexual harassment occurring in the hallways, graffiti in public areas, or harassment occurring during recess under a teacher's supervision.)[78]

If a school otherwise knows or reasonably should know of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX even if the student has failed to use the school's existing grievance procedures or otherwise inform the school of the harassment.

D. The Role of Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination.[79] (These issues are discussed in the section on "Prompt and Equitable Grievance Procedures.") These procedures provide a school with a mechanism for discovering sexual harassment as early as possible and for effectively correcting problems, as required by the Title IX regulations. By having a strong policy against sex discrimination and accessible, effective, and fairly applied grievance procedures, a school is telling its students that it does not tolerate sexual harassment and that students can report it without fear of adverse consequences.

Without a disseminated policy and procedure, a student does not know either of the school's policy against and obligation to address this form of discrimination, or how to report harassment so that it can be remedied. If the alleged harassment is sufficiently serious to create a hostile environment and it is the school's failure to comply with the procedural requirements of the Title IX regulations that hampers early notification and intervention and permits sexual harassment to deny or limit a student's ability to participate in or benefit from the school's program on the basis of sex,[80] the school will be responsible under the Title IX regulations, once informed of the harassment, to take corrective action, including stopping the harassment, preventing its recurrence, and remedying the effects of the harassment on the victim that could reasonably have been prevented if the school's failure to comply with the procedural requirements had not hampered early notification.

VI. OCR Case Resolution

If OCR is asked to investigate or otherwise resolve incidents of sexual harassment of students, including incidents caused by employees, other students, or third parties, OCR will consider whether — (1) the school has a disseminated policy prohibiting sex discrimination under Title IX[81] and effective grievance procedures;[82] (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment;[83] and (3) the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.[84] (Issues related to appropriate investigative and corrective actions are discussed in detail in the section on "Recipient's Response.")

If the school has taken, or agrees to take, each of these steps, OCR will consider the case against the school resolved and will take no further action, other than monitoring compliance with an agreement, if any, between the school and OCR. This is true in cases

in which the school was in violation of the Title IX regulations (e.g., a teacher sexually harassed a student in the context of providing aid, benefits, or services to students), as well as those in which there has been no violation of the regulations (e.g., in a peer sexual harassment situation in which the school took immediate, reasonable steps to end the harassment and prevent its recurrence). This is because, even if OCR identifies a violation, Title IX requires OCR to attempt to secure voluntary compliance.[85] Thus, because a school will have the opportunity to take reasonable corrective action before OCR issues a formal finding of violation, a school does not risk losing its Federal funding solely because discrimination occurred.

VII. Recipient's Response

Once a school has notice of possible sexual harassment of students — whether carried out by employees, other students, or third parties — it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps

reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.[86] As described in the next section, in appropriate circumstances the school will also be responsible for taking steps to remedy the effects of the harassment on the individual student or students who were harassed. What constitutes a reasonable response to information about possible sexual harassment will differ depending upon the circumstances.

A. Response to Student or Parent Reports of Harassment; Response to Direct Observation of Harassment by a Responsible Employee

If a student or the parent of an elementary or secondary student provides information or complains about sexual harassment of the student, the school should initially discuss what actions the student or parent is seeking in response to the harassment. The school should explain the avenues for informal and formal action, including a description of the grievance procedure that is available for sexual harassment complaints and an explanation of how the procedure works. If a responsible school employee has directly observed sexual harassment of a student, the school should contact the student who was harassed (or the parent, depending upon the age of the student),[87] explain that the school is responsible for taking steps to correct the harassment, and provide the same information described in the previous sentence.

Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student's behalf (including in cases involving direct observation by a responsible employee), the school must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial. (Requests by the student who

was harassed for confidentiality or for no action to be taken, responding to notice of harassment from other sources, and the components of a prompt and equitable grievance procedure are discussed in subsequent sections of this guidance.)

It may be appropriate for a school to take interim measures during the investigation of a complaint. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes or in different housing arrangements on a campus, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate. In cases involving potential criminal conduct, school personnel should determine whether appropriate law enforcement authorities should be notified. In all cases, schools should make every effort to prevent disclosure of the names of all parties involved -- the complainant, the witnesses, and the accused -- except to the extent necessary to carry out an investigation.

If a school determines that sexual harassment has occurred, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation.[88] Appropriate steps should be taken to end the harassment. For example, school personnel may need to counsel, warn, or take disciplinary action against the harasser, based on the severity of the harassment or any record of prior incidents or both.[89] A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.[90] In some cases, it may be appropriate to further separate the harassed student and the harasser, e.g., by changing housing arrangements[91] or directing the harasser to have no further contact with the harassed student. Responsive measures of this type should be designed to minimize, as much as possible, the burden on the student who was harassed. If the alleged harasser is not a student or employee of the recipient, OCR will consider the level of control the school has over the harasser in determining what response would be appropriate.[92]

Steps should also be taken to eliminate any hostile environment that has been created. For example, if a female student has been subjected to harassment by a group of other students in a class, the school may need to deliver special training or other interventions for that class to repair the educational environment. If the school offers the student the option of withdrawing from a class in which a hostile environment occurred, the school should assist the student in making program or schedule changes and ensure that none of the changes adversely affect the student's academic record. Other measures may include, if appropriate, directing a harasser to apologize to the harassed student. If a hostile environment has affected an entire school or campus, an effective response may need to include dissemination of information, the issuance of new policy statements, or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and will be responsive to any student who reports that conduct.

In some situations, a school may be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student.[93] For example, if an instructor gives a student a low grade because the student failed to respond to his sexual advances, the school may be required to make arrangements for an independent reassessment of the student's work, if feasible, and change the grade accordingly; make arrangements for the student to take the course again

with a different instructor; provide tutoring; make tuition adjustments; offer reimbursement for professional counseling; or take other measures that are appropriate to the circumstances. As another example, if a school delays responding or responds inappropriately to information about harassment, such as a case in which the school ignores complaints by a student that he or she is being sexually harassed by a classmate, the school will be required to remedy the effects of the harassment that could have been prevented had the school responded promptly and effectively.

Finally, a school should take steps to prevent any further harassment[94] and to prevent any retaliation against the student who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses.[95] At a minimum, this includes making sure that the harassed students and their parents know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any retaliation. To prevent recurrences, counseling for the harasser may be appropriate to ensure that he or she understands what constitutes harassment and the effects it can have. In addition, depending on how widespread the harassment was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.[96]

B. Confidentiality

The scope of a reasonable response also may depend upon whether a student, or parent of a minor student, reporting harassment asks that the student's name not be disclosed to the harasser or that nothing be done about the alleged harassment. In all cases, a school should discuss confidentiality standards and concerns with the complainant initially. The school should inform the student that a confidentiality request may limit the school's ability to respond. The school also should tell the student that Title IX prohibits retaliation and that, if he or she is afraid of reprisals from the alleged harasser, the school will take steps to prevent retaliation and will take strong responsive actions if retaliation occurs. If the student continues to ask that his or her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.

OCR enforces Title IX consistent with the federally protected due process rights of public school students and employees. Thus, for example, if a student, who was the only student harassed, insists that his or her name not be revealed, and the alleged harasser could not respond to the charges of sexual harassment without that information, in evaluating the school's response, OCR would not expect disciplinary action against an alleged harasser.

At the same time, a school should evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors that a school may consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the

accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.[97]

Similarly, a school should be aware of the confidentiality concerns of an accused employee or student. Publicized accusations of sexual harassment, if ultimately found to be false, may nevertheless irreparably damage the reputation of the accused. The accused individual's need for confidentiality must, of course, also be evaluated based on the factors discussed in the preceding paragraph in the context of the school's responsibility to ensure a safe environment for students.

Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual complaint of harassment, other means may be available to address the harassment. There are steps a recipient can take to limit the effects of the alleged harassment and prevent its recurrence without initiating formal action against the alleged harasser or revealing the identity of the complainant. Examples include conducting sexual harassment training for the school site or academic department where the problem occurred, taking a student survey concerning any problems with harassment, or implementing other systemic measures at the site or department where the alleged harassment has occurred.

In addition, by investigating the complaint to the extent possible — including by reporting it to the Title IX coordinator or other responsible school employee designated pursuant to Title IX — the school may learn about or be able to confirm a pattern of harassment based on claims by different students that they were harassed by the same individual. In some situations there may be prior reports by former students who now might be willing to come forward and be identified, thus providing a basis for further corrective action. In instances affecting a number of students (for example, a report from a student that an instructor has repeatedly made sexually explicit remarks about his or her personal life in front of an entire class), an individual can be put on notice of allegations of harassing behavior and counseled appropriately without revealing, even indirectly, the identity of the student who notified the school. Those steps can be very effective in preventing further harassment.

C. Response to Other Types of Notice

The previous two sections deal with situations in which a student or parent of a student who was harassed reports or complains of harassment or in which a responsible school employee directly observes sexual harassment of a student. If a school learns of harassment through other means, for example, if information about harassment is received from a third party (such as from a witness to an incident or an anonymous letter or telephone call), different factors will affect the school's response. These factors include the source and nature of the information; the seriousness of the alleged incident; the specificity of the information; the objectivity and credibility of the source of the report; whether any individuals can be identified who were subjected to the alleged harassment; and whether those individuals want to pursue the matter. If, based on these factors, it is reasonable for the school to investigate and it can confirm the allegations, the considerations described in the previous sections concerning interim measures and appropriate responsive action will apply.

For example, if a parent visiting a school observes a student repeatedly harassing a group of female students and reports this to school officials, school personnel can speak with the female students to confirm whether that conduct has occurred and whether they view it as unwelcome. If the school determines that the conduct created a hostile environment, it can take reasonable, age-appropriate steps to address the situation. If on the other hand, the students in this example were to ask that their names not be disclosed or indicate that they do not want to pursue the matter, the considerations described in the previous section related to requests for confidentiality will shape the school's response.

In a contrasting example, a student newspaper at a large university may print an anonymous letter claiming that a professor is sexually harassing students in class on a daily basis, but the letter provides no clue as to the identity of the professor or the department in which the conduct is allegedly taking place. Due to the anonymous source and lack of specificity of the information, a school would not reasonably be able to investigate and confirm these allegations. However, in response to the anonymous letter, the school could submit a letter or article to the newspaper reiterating its policy against sexual harassment, encouraging persons who believe that they have been sexually harassed to come forward, and explaining how its grievance procedures work.

VIII. Prevention

A policy specifically prohibiting sexual harassment and separate grievance procedures for violations of that policy can help ensure that all students and employees understand the nature of sexual harassment and that the school will not tolerate it. Indeed, they might even bring conduct of a sexual nature to the school's attention so that the school can address it before it becomes sufficiently serious as to create a hostile environment. Further, training for administrators, teachers, and staff and age-appropriate classroom information for students can help to ensure that they understand what types of conduct can cause sexual harassment and that they know how to respond.

IX. Prompt and Equitable Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex.[98] Accordingly, regardless of whether harassment occurred, a school violates this requirement of the Title IX regulations if it does not have those procedures and policy in place.[99]

A school's sex discrimination grievance procedures must apply to complaints of sex discrimination in the school's education programs and activities filed by students against school employees, other students, or third parties.[100] Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment. Thus, if, because of the lack of a policy or procedure specifically addressing sexual harassment, students are unaware of what kind of conduct constitutes sexual harassment or that such conduct is

prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination complaints will not be considered effective.[101]

OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for —

- Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- Application of the procedure to comp laints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to the parties of the outcome of the complaint;[102] and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.[103]

Many schools also provide an opportunity to appeal the findings or remedy, or both. In addition, because retaliation is prohibited by Title IX, schools may want to include a provision in their procedures prohibiting retaliation against any individual who files a complaint or participates in a harassment inquiry.

Procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience. In addition, whether complaint resolutions are timely will vary depending on the complexity of the investigation and the severity and extent of the harassment. During the investigation it is a good practice for schools to inform students who have alleged harassment about the status of the investigation on a periodic basis.

A grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language appropriate to the age of the school's students, easily understood, and widely disseminated. Distributing the procedures to administrators, or including them in the school's administrative or policy manual, may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community. Many schools ensure adequate notice to students by having copies of the procedures available at various locations throughout the school or campus; publishing the procedures as a separate document; including a summary of the procedures in major publications issued by the school, such as handbooks and catalogs for students, parents of elementary and secondary students, faculty, and staff; and identifying individuals who can explain how the procedures work.

A school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities.[104] The school must notify all of its students and employees of the name, office address, and telephone number of the employee or employees designated.[105] Because it is possible that an employee designated to handle Title IX complaints may himself or herself engage in harassment, a school may want to designate more than one employee to be responsible for handling complaints in order to ensure that students have an effective means of reporting harassment.[106] While a school may choose to have a number of employees responsible for Title IX matters, it is also advisable to give one official responsibility for overall coordination and oversight of all sexual harassment complaints to ensure consistent practices and standards in handling complaints. Coordination of recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator) will also ensure that the school can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them.[107] Finally, the school must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.[108]

Grievance procedures may include informal mechanisms for resolving sexual harassment complaints to be used if the parties agree to do so.[109] OCR has frequently advised schools, however, that it is not appropriate for a student who is complaining of harassment to be required to work out the problem directly with the individual alleged to be harassing him or her, and certainly not without appropriate involvement by the school (e.g., participation by a counselor, trained mediator, or, if appropriate, a teacher or administrator). In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis. Title IX also permits the use of a student disciplinary procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, as long as the procedure meets the requirement of affording a complainant a "prompt and equitable" resolution of the complaint.

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.[110] Similarly, schools are cautioned about using the results of insurance company investigations of sexual harassment allegations. The purpose of an insurance investigation is to assess liability under the insurance policy, and the applicable standards may well be different from those under Title IX. In addition, a school is not relieved of its responsibility to respond to a sexual harassment complaint filed under its grievance procedure by the fact that a complaint has been filed with OCR.[111]

X. Due Process Rights of the Accused

A public school's employees have certain due process rights under the United States Constitution. The Constitution also guarantees due process to students in public and State-supported schools who are accused of certain types of infractions. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding. Furthermore, the Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of persons accused of sexual harassment. Procedures that ensure the Title IX rights of the complainant, while at the same time according due process to both parties involved, will lead to sound and supportable decisions. Of course, schools should ensure that steps to accord due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant. In both public and private schools, additional or separate rights may be created for employees or students by State law, institutional regulations and policies, such as faculty or student handbooks, and collective bargaining agreements. Schools should be aware of these rights and their legal responsibilities to individuals accused of harassment.

XI. First Amendment

In cases of alleged harassment, the protections of the First Amendment must be considered if issues of speech or expression are involved.[112] Free speech rights apply in the classroom (e.g., classroom lectures and discussions)[113] and in all other education programs and activities of public schools (e.g., public meetings and speakers on campus; campus debates, school plays and other cultural events[114]; and student newspapers, journals, and other publications[115]). In addition, First Amendment rights apply to the speech of students and teachers.[116]

Title IX is intended to protect students from sex discrimination, not to regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a sexually hostile environment under Title IX.[117] In order to establish a violation of Title IX, the harassment must be sufficiently serious to deny or limit a student's ability to participate in or benefit from the education program.[118]

Moreover, in regulating the conduct of its students and its faculty to prevent or redress discrimination prohibited by Title IX (e.g., in responding to harassment that is sufficiently serious as to create a hostile environment), a school must formulate, interpret, and apply its rules so as to protect academic freedom and free speech rights. For instance, while the First Amendment may prohibit a school from restricting the right of students to express opinions about one sex that may be considered derogatory, the school can take steps to denounce those opinions and ensure that competing views are heard. The age of the students involved and the location or forum may affect how the school can respond consistently with the First Amendment.[119] As an example of the application of free speech rights to allegations of sexual harassment, consider the following:

Example 1: In a college level creative writing class, a professor's required reading list includes excerpts from literary classics that contain descriptions of explicit

sexual conduct, including scenes that depict women in submissive and demeaning roles. The professor also assigns students to write their own materials, which are read in class. Some of the student essays contain sexually derogatory themes about women. Several female students complain to the Dean of Students that the materials and related classroom discussion have created a sexually hostile environment for women in the class. What must the school do in response?

Answer: Academic discourse in this example is protected by the First Amendment even if it is offensive to individuals. Thus, Title IX would not require the school to discipline the professor or to censor the reading list or related class discussion.

Example 2: A group of male students repeatedly targets a female student for harassment during the bus ride home from school, including making explicit sexual comments about her body, passing around drawings that depict her engaging in sexual conduct, and, on several occasions, attempting to follow her home off the bus. The female student and her parents complain to the principal that the male students' conduct has created a hostile environment for girls on the bus and that they fear for their daughter's safety. What must a school do in response?

Answer: Threatening and intimidating actions targeted at a particular student or group of students, even though they contain elements of speech, are not protected by the First Amendment. The school must take prompt and effective actions, including disciplinary action if necessary, to stop the harassment and prevent future harassment.

Endnotes

[1] This guidance does not address sexual harassment of employees, although that conduct may be prohibited by Title IX. 20 U.S.C. 1681 et seq.; 34 CFR part 106, subpart E. If employees file Title IX sexual harassment complaints with OCR, the complaints will be processed pursuant to the Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance. 28 CFR 42.604. Employees are also protected from discrimination on the basis of sex, including sexual harassment, by Title VII of the Civil Rights Act of 1964. For information about Title VII and sexual harassment, see the Equal Employment Opportunity Commission's (EEOC's) Guidelines on Sexual Harassment, 29 CFR 1604.11, for information about filing a Title VII charge with the EEOC, see 29 CFR 1601.7–1607.13, or see the EEOC's website at www.eeoc.gov.

[2] 20 U.S.C. 1681; 34 CFR part 106.

[3] See, e.g., Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 649-50 (1999); Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274, 281 (1998); Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60, 75 (1992); S. REP. NO. 100-64, 100th Cong., 1st Sess. 14 (1987); Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (1997 guidance), 62 FR 12034 (1997).

[4] As described in the section on "Applicability," this guidance applies to all levels of education.

[5] For practical information about steps that schools can take to prevent and remedy all types of harassment, including sexual harassment, see "Protecting Students from Harassment and Hate Crime, A Guide for Schools," which we issued jointly with the National Association of Attorneys General. This Guide is available at our web site at: www.ed.gov/pubs/Harassment.

[6] See, e.g., Davis, 526 U.S. at 653 (alleged conduct of a sexual nature that would support a sexual harassment claim included verbal harassment and "numerous acts of objectively offensive touching;" Franklin, 503 U.S. at 63 (conduct of a sexual nature found to support a sexual harassment claim under Title IX included kissing, sexual intercourse); Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 60-61 (1986) (demands for sexual favors, sexual advances, fondling, indecent exposure, sexual intercourse, rape, sufficient to raise hostile environment claim under Title VII); Ellison v. Brady, 924 F.2d 872, 873-74, 880 (9th Cir. 1991) (allegations sufficient to state sexual harassment claim under Title VII included repeated requests for dates, letters making explicit references to sex and describing the harasser's feelings for plaintiff); Lipsett v. University of Puerto Rico, 864 F.2d 881, 904-5 (1st Cir. 1988) (sexually derogatory comments, posting of sexually explicit drawing of plaintiff, sexual advances may support sexual harassment claim); Kadiki v. Virginia Commonwealth University, 892 F.Supp. 746, 751 (E.D. Va. 1995)

(professor's spanking of university student may constitute sexual conduct under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65 (N.D. Cal. 1996) (sexually derogatory taunts and innuendo can be the basis of a harassment claim); Denver School Dist. #2, OCR Case No. 08-92-1007 (same to allegations of vulgar language and obscenities, pictures of nude women on office walls and desks, unwelcome touching, sexually offensive jokes, bribery to perform sexual acts, indecent exposure); Nashoba Regional High School, OCR Case No. 01-92-1377 (same as to year-long campaign of derogatory, sexually explicit graffiti and remarks directed at one student.

[7] See also Shoreline School Dist., OCR Case No. 10-92-1002 (a teacher's patting a student on the arm, shoulder, and back, and restraining the student when he was out of control, not conduct of a sexual nature); Dartmouth Public Schools, OCR Case No. 01-90-1058 (same as to contact between high school coach and students); San Francisco State University, OCR Case No. 09-94-2038 (same as to faculty advisor placing her arm around a graduate student's shoulder in posing for a picture); Analy Union High School Dist., OCR Case No. 09-92-1249 (same as to drama instructor who put his arms around both male and female students who confided in him).

[8] 20 U.S.C. 1687 (codification of the amendment to Title IX regarding scope of jurisdiction, enacted by the Civil Rights Restoration Act of 1987). See 65 FR 68049 (November 13, 2000) (Department's amendment of the Title IX regulations to incorporate the statutory definition of "program or activity").

[9] If a school contracts with persons or organizations to provide benefits, services, or opportunities to students as part of the school's program, and those persons or employees of those organizations sexually harass students, OCR will cons ider the harassing individual in the same manner that it considers the school's employees, as described in this guidance. (See section on "Harassment by Teachers and Other Employees.") See Brown v. Hot, Sexy, and Safer Products, Inc., 68 F.3d 525, 529 (1st Cir. 1995) (Title IX sexual harassment claim brought for school's role in permitting contract consultant hired by it to create allegedly hostile environment).

In addition, if a student engages in sexual harassment as an employee of the school, OCR will consider the harassment under the standards described for employees. (See section on "Harassment by Teachers and Other Employees.") For example, OCR would consider it harassment by an employee if a student teaching assistant who is responsible for assigning grades in a course, i.e., for providing aid, benefits, or services to students under the recipient's program, required a student in his or her class to submit to sexual advances in order to obtain a certain grade in the class.

[10] Cf. John Does 1 v. Covington County Sch. Bd., 884 F.Supp. 462, 464-65 (M.D. Ala. 1995) (male students alleging that a teacher sexually harassed and abused them stated cause of action under Title IX).

[11] Title IX and the regulations implementing it prohibit discrimination "on the basis of sex;" they do not restrict protection from sexual harassment to those circumstances in

which the harasser only harasses members of the opposite sex. See 34 CFR 106.31. In Oncale v. Sundowner Offshore Services, Inc. the Supreme Court held unanimously that sex discrimination consisting of same-sex sexual harassment can violate Title VII's prohibition against discrimination because of sex. 523 U.S. 75, 82 (1998). The Supreme Court's holding in Oncale is consistent with OCR policy, originally stated in its 1997 guidance, that Title IX prohibits sexual harassment regardless of whether the harasser and the person being harassed are members of the same sex. 62 FR 12039. See also Kinman v. Omaha Public School Dist., 94 F.3d 463, 468 (8th Cir. 1996), rev'd on other grounds, 171 F.3d 607 (1999) (female student's allegation of sexual harassment by female teacher sufficient to raise a claim under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65, 1575 (N.D. Cal. 1996) (female junior high student alleging sexual harassment by other students, including both boys and girls, sufficient to raise a claim under Title IX); John Does 1, 884 F.Supp. at 465 (same as to male students' allegations of sexual harassment and abuse by a male teacher.) It can also occur in certain situations if the harassment is directed at students of both sexes. Chiapuzo v. BLT Operating Corp., 826 F.Supp. 1334, 1337 (D.Wyo. 1993) (court found that if males and females were subject to harassment, but harassment was based on sex, it could violate Title VII); but see Holman v. Indiana, 211 F.3d 399, 405 (7th Cir. 2000) (if male and female both subjected to requests for sex, court found it could not violate Title VII).

In many circumstances, harassing conduct will be on the basis of sex because the student would not have been subjected to it at all had he or she been a member of the opposite sex; e.g., if a female student is repeatedly propositioned by a male student or employee (or, for that matter, if a male student is repeatedly propositioned by a male student or employee.) In other circumstances, harassing conduct will be on the basis of sex if the student would not have been affected by it in the same way or to the same extent had he or she been a member of the opposite sex; e.g, pornography and sexually explicit jokes in a mostly male shop class are likely to affect the few girls in the class more than it will most of the boys.

In yet other circumstances, the conduct will be on the basis of sex in that the student's sex was a factor in or affected the nature of the harasser's conduct or both. Thus, in Chiapuzo, a supervisor made demeaning remarks to both partners of a married couple working for him, e.g., as to sexual acts he wanted to engage in with the wife and how he would be a better lover than the husband. In both cases, according to the court, the remarks were based on sex in that they were made with an intent to demean each member of the couple because of his or her respective sex. 826 F.Supp. at 1337. See also Steiner v. Showboat Operating Co., 25 F.3d 1459, 1463-64 (9th Cir. 1994), cert. denied, 115 S.Ct. 733 (1995); but see Holman, 211 F.3d at 405 (finding that if male and female both subjected to requests for sex, Title VII could not be violated).

[12] Nashoba Regional High School, OCR Case No. 01-92-1397. In Conejo Valley School Dist., OCR Case No. 09-93-1305, female students allegedly taunted another female student about engaging in sexual activity; OCR found that the alleged comments were sexually explicit and, if true, would be sufficiently severe, persistent, and pervasive to create a hostile environment.

[13] See Williamson v. A.G. Edwards & Sons, Inc., 876 F2d 69, 70 (8th Cir. 1989, cert. denied 493 U.S. 1089 (1990); DeSantis v. Pacific Tel. & Tel. Co., Inc., 608 F.2d 327, 329-30 (9th Cir. 1979)(same); Blum v. Gulf Oil Corp., 597 F.2d 936, 938 (5th Cir. 1979)(same).

[14] It should be noted that some State and local laws may prohibit discrimination on the basis of sexual orientation. Also, under certain circumstances, courts may permit redress for harassment on the basis of sexual orientation under other Federal legal authority. See Nabozny v. Podlesny, 92 F.3d 446, 460 (7th Cir. 1996) (holding that a gay student could maintain claims alleging discrimination based on both gender and sexual orientation under the Equal Protection Clause of the United States Constitution in a case in which a school district failed to protect the student to the same extent that other students were protected from harassment and harm by other students due to the student's gender and sexual orientation).

[15] However, sufficiently serious sexual harassment is covered by Title IX even if the hostile environment also includes taunts based on sexual orientation.

[16] See also, Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989) (plurality opinion) (where an accounting firm denied partnership to a female candidate, the Supreme Court found Title VII prohibits an employer from evaluating employees by assuming or insisting that they match the stereotype associated with their sex).

[17] See generally Gebser; Davis; See also Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 65-66 (1986); Harris v. Forklift Systems Inc., 510 U.S. 14, 22 (1993); see also Hicks v. Gates Rubber Co., 833 F.2d 1406, 1415 (10th Cir. 1987) (concluding that harassment based on sex may be discrimination whether or not it is sexual in nature); McKinney v. Dole, 765 F.2d 1129, 1138 (D.C. Cir. 1985) (physical, but nonsexual, assault could be sex-based harassment if shown to be unequal treatment that would not have taken place but for the employee's sex); Cline v. General Electric Capital Auto Lease, Inc., 757 F.Supp. 923, 932-33 (N.D. Ill. 1991).

[18] See, e.g., sections on "Harassment by Teachers and Other Employees," "Harassment by Other Students or Third Parties," "Notice of Employee, Peer, or Third Party Harassment," "Factors Used to Evaluate a Hostile Environment," "Recipient's Response," and "Prompt and Equitable Grievance Procedures."

[19] See Lipsett, 864 F.2d at 903-905 (general antagonism toward women, including stated goal of eliminating women from surgical program, statements that women shouldn't be in the program, and assignment of menial tasks, combined with overt sexual harassment); Harris, 510 U.S. at 23; Andrews v. City of Philadelphia, 895 F.2d 1469, 1485-86 (3rd Cir. 1990) (court directed trial court to consider sexual conduct as well as theft of female employees' files and work, destruction of property, and anonymous phone calls in determining if there had been sex discrimination); see also Hall v. Gus Construction Co., 842 F.2d 1010, 1014 (8th Cir. 1988) (affirming that harassment due to the employee's sex

may be actionable even if the harassment is not sexual in nature); Hicks, 833 F.2d at 1415; Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (the boys made lewd comments about male anatomy and tormented the girls by pretending to stab them with rubber knives; while the stabbing was not sexual conduct, it was directed at them because of their sex, i.e., because they were girls).

[20] Davis, 526 U.S. at 650 ("Having previously determined that 'sexual harassment' is 'discrimination' in the school context under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute."); Franklin, 503 U.S. at 75 ("Unquestionably, Title IX placed on the [school] the duty not to discriminate on the basis of sex, and 'when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor "discriminate[s]" on the basis of sex.' ... We believe the same rule should apply when a teacher sexually harasses and abuses a student." (citation omitted)).

OCR's longstanding interpretation of its regulations is that sexual harassment may constitute a violation. 34 CFR 106.31; See Sexual Harassment Guidance, 62 FR 12034 (1997). When Congress enacted the Civil Rights Restoration Act of 1987 to amend Title IX to restore institution-wide coverage over federally assisted education programs and activities, the legislative history indicated not only that Congress was aware that OCR interpreted its Title IX regulations to prohibit sexual harassment, but also that one of the reasons for passing the Restoration Act was to enable OCR to investigate and resolve cases involving allegations of sexual harassment. S. REP. NO. 64, 100th Cong., 1st Sess. at 12 (1987). The examples of discrimination that Congress intended to be remedied by its statutory change included sexual harassment of students by professors, id. at 14, and these examples demonstrate congressional recognition that discrimination in violation of Title IX can be carried out by school employees who are providing aid, benefits, or services to students. Congress also intended that if discrimination occurred, recipients needed to implement effective remedies. S. REP. NO. 64 at 5.

[21] 34 CFR 106.4.

[22] These are the basic regulatory requirements. 34 CFR 106.31(a)(b). Depending upon the facts, sexual harassment may also be prohibited by more specific regulatory prohibitions. For example, if a college financial aid director told a student that she would not get the student financial assistance for which she qualified unless she slept with him, that also would be covered by the regulatory provision prohibiting discrimination on the basis of sex in financial assistance, 34 CFR 106.37(a).

[23] 34 CFR 106.31(b)(1).

[24] 34 CFR 106.31(b)(2).

[25] 34 CFR 106.31(b)(3).

[26] 34 CFR 106.31(b)(4).

[27] 34 CFR 106.31(b)(6).

[28] 34 CFR 106.31(b)(7).

[29] 34 CFR 106.3(a).

[30] 34 CFR 106.9.

[31] 34 CFR 106.8(b).

[32] 34 CFR 106.8(a).

[33] The 1997 guidance referred to quid pro quo harassment and hostile environment harassment. 62 FR 12038–40.

[34] See Alexander v. Yale University, 459 F.Supp. 1, 4 (D.Conn. 1977), aff'd, 631 F.2d 178 (2nd Cir. 1980)(stating that a claim "that academic advancement was conditioned upon submission to sexual demands constitutes [a claim of] sex discrimination in education..."); Crandell v. New York College, Osteopathic Medicine, 87 F.Supp.2d 304, 318 (S.D.N.Y. 2000) (finding that allegations that a supervisory physician demanded that a student physician spend time with him and have lunch with him or receive a poor evaluation, in light of the totality of his alleged sexual comments and other inappropriate behavior, constituted a claim of quid pro quo harassment); Kadiki, 892 F.Supp. at 752 (reexamination in a course conditioned on college student's agreeing to be spanked should she not attain a certain grade may constitute quid pro quo harassment).

[35] 34 CFR 106.31(b).

[36] Davis, 526 U.S. at 651 (confirming, by citing approvingly both to Title VII cases (Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57,67 (1986) (finding that hostile environment claims are cognizable under Title VII), and Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 82 (1998)) and OCR's 1997 guidance, 62 FR at 12041-42, that determinations under Title IX as to what conduct constitutes hostile environment sexual harassment may continue to rely on Title VII caselaw).

[37] 34 CFR 106.31(b). See Davis, 526 U.S. at 650 (concluding that allegations of student-on-student sexual harassment that is "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits" supports a claim for money damages in an implied right of action).

[38] In Harris, the Supreme Court explained the requirement for considering the "subjective perspective" when determining the existence of a hostile environment. The Court stated– – "... if the victim does not subjectively perceive the environment to be abusive, the

conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." 510 U.S. at 21-22.

[39] See Davis, 526 U.S. at 650 (conduct must be "objectively offensive" to trigger liability for money damages); Elgamil v. Syracuse University, 2000 U.S. Dist. LEXIS 12598 at 17 (N.D.N.Y. 2000) (citing Harris); Booher v. Board of Regents, 1998 U.S. Dist. LEXIS 11404 at 25 (E.D. Ky. 1998) (same). See Oncale, 523 U.S. at 81, in which the Court "emphasized ... that the objective severity of harassment should be judged from the perspective of a reasonable person in the [victim's] position, considering 'all the circumstances,'" and citing Harris, 510 U.S. at 20, in which the Court indicated that a "reasonable person" standard should be used to determine whether sexual conduct constituted harassment. This standard has been applied under Title VII to take into account the sex of the subject of the harassment, see, e.g., Ellison, 924 F.2d at 878-79 (applying a "reasonable woman" standard to sexual harassment), and has been adapted to sexual harassment in education under Title IX, Patricia H. v. Berkeley Unified School Dist., 830 F.Supp. 1288, 1296 (N.D. Cal. 1993) (adopting a "reasonable victim" standard and referring to OCR's use of it).

[40] See Davis, 526 U.S. at 651, citing both Oncale, 523 U.S. at 82, and OCR's 1997 guidance (62 FR 12041-12042).

[41] See, e.g., Davis, 526 U.S. at 634 (as a result of the harassment, student's grades dropped and she wrote a suicide note); Doe v. Petaluma, 830 F. Supp. at 1566 (student so upset about harassment by other students that she was forced to transfer several times, including finally to a private school); Modesto City Schools, OCR Case No. 09-93-1391 (evidence showed that one girl's grades dropped while the harassment was occurring); Weaverville Elementary School, OCR Case No. 09-91-1116 (students left school due to the harassment). Compare with College of Alameda, OCR Case No. 09-90-2104 (student not in instructor's class and no evidence of any effect on student's educational benefits or service, so no hostile environment).

[42] Doe v. Petaluma, 830 F.Supp. at 1566.

[43] See Waltman v. Int'l Paper Co., 875 F.2d 468, 477 (5th Cir. 1989) (holding that although not specifically directed at the plaintiff, sexually explicit graffiti on the walls was "relevant to her claim"); Monteiro v. Tempe Union High School, 158 F.3d 1022, 1033-34 (9th Cir. 1998) (Title VI racial harassment case, citing Waltman; see also Hall, 842 F. 2d at 1015 (evidence of sexual harassment directed at others is relevant to show hostile environment under Title VII).

[44] See, e.g., Elgmil 2000 U.S. Dist. LEXIS at 19 ("in order to be actionable, the incidents of harassment must occur in concert or with a regularity that can reasonably be termed pervasive"); Andrews, 895 F.2d at 1484 ("Harassment is pervasive when 'incidents of harassment occur either in concert or with regularity'"); Moylan v. Maries County, 792 F.2d 746, 749 (8th Cir. 1986).

[45] 34 CFR 106.31(b). See Vance v. Spencer County Public School District, 231 F.3d 253 (6th Cir. 2000); Doe v. School Admin. Dist. No. 19, 66 F.Supp.2d 57, 62 (D. Me. 1999). See also statement of the U.S. Equal Employment Opportunity Commission (EEOC): "The Commission will presume that the unwelcome, intentional touching of [an employee's] intimate body areas is sufficiently offensive to alter the conditions of her working environment and constitute a violation of Title VII. More so than in the case of verbal advances or remarks, a single unwelcome physical advance can seriously poison the victim's working environment." EEOC Policy Guidance on Current Issues of Sexual Harassment, 17. Barrett v. Omaha National Bank, 584 F. Supp. 22, 30 (D. Neb. 1983), aff'd, 726 F. 2d 424 (8th Cir. 1984) (finding that hostile environment was created under Title VII by isolated events, i.e., occurring while traveling to and during a two-day conference, including the co-worker's talking to plaintiff about sexual activities and touching her in an offensive manner while they were inside a vehicle from which she could not escape).

[46] See also Ursuline College, OCR Case No. 05-91-2068 (a single incident of comments on a male student's muscles arguably not sexual; however, assuming they were, not severe enough to create a hostile environment).

[47] Davis, 526 U.S. at 653 ("The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX's guarantee of equal access to educational benefits and to have a systemic effect on a program or activity. Peer harassment, in particular, is less likely to satisfy these requirements than is teacher student harassment."); Patricia H., 830 F. Supp. at 1297 (stating that the "grave disparity in age and power" between teacher and student contributed to the creation of a hostile environment); Summerfield Schools, OCR Case No. 15-92-1929 ("impact of the ... remarks was heightened by the fact that the coach is an adult in a position of authority"); cf. Doe v. Taylor I.S.D., 15 F.3d 443, 460 (5th Cir. 1994) (Sec. 1983 case; taking into consideration the influence that the teacher had over the student by virtue of his position of authority to find that a sexual relationship between a high school teacher and a student was unlawful).

[48] See, e.g., McKinney, 765 F.2d at 1138-49; Robinson v. Jacksonville Shipyards, 760 F. Supp. 1486, 1522 (M.D. Fla. 1991).

[49] Cf. Patricia H., 830 F. Supp. at 1297.

[50] See, e.g., Barrett, 584 F. Supp. at 30 (finding harassment occurring in a car from which the victim could not escape particularly severe).

[51] See Hall, 842 F. 2d at 1015 (stating that "evidence of sexual harassment directed at employees other than the plaintiff is relevant to show a hostile environment") (citing Hicks, 833 F. 2d, 1415-16). Cf. Midwest City-Del City Public Schools, OCR Case No. 06-92-1012 (finding of racially hostile environment based in part on several racial incidents at school shortly before incidents in complaint, a number of which involved the same student involved in the complaint).

[52] In addition, incidents of racial or national origin harassment directed at a particular individual may also be aggregated with incidents of sexual or gender harassment directed at that individual in determining the existence of a hostile environment. Hicks, 833 F.2d at 1416; Jefferies v. Harris County Community Action Ass'n, 615 F.2d 1025, 1032 (5th Cir. 1980).

[53] Does v. Covington Sch. Bd. of Educ., 930 F.Supp. 554, 569 (M.D. Ala. 1996); Henson v. City of Dundee, 682 F.2d 897, 903 (11th Cir. 1982).

[54] See Meritor Savings Bank, 477 U.S. at 68. "[T]he fact that sex-related conduct was 'voluntary,' in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII.... The correct inquiry is whether [the subject of the harassment] by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary."

[55] Lipsett, 864 F.2d at 898 (while, in some instances, a person may have the responsibility for telling the harasser "directly" that the conduct is unwelcome, in other cases a "consistent failure to respond to suggestive comments or gestures may be sufficient...."); Danna v. New York Tel. Co., 752 F.Supp. 594, 612 (despite a female employee's own foul language and participation in graffiti writing, her complaints to management indicated that the harassment was not welcome); see also Carr v. Allison Gas Turbine Div. GMC., 32 F.3d 1007, 1011 (7th Cir. 1994) (finding that cursing and dirty jokes by a female employee did not show that she welcomed the sexual harassment, given her frequent complaints about it: "Even if ... [the employee's] testimony that she talked and acted as she did [only] in an effort to be one of the boys is ... discounted, her words and conduct cannot be compared to those of the men and used to justify their conduct.... The asymmetry of positions must be considered. She was one woman; they were many men. Her use of [vulgar] terms ... could not be deeply threatening....").

[56] See Reed v. Shepard, 939 F.2d 484, 486-87, 491-92 (7th Cir. 1991) (no harassment found under Title VII in a case in which a female employee not only tolerated, but also instigated the suggestive joking activities about which she was now complaining); Weinsheimer v. Rockwell Int'l Corp., 754 F.Supp. 1559, 1563-64 (M.D. Fla. 1990) (same, in case in which general shop banter was full of vulgarity and sexual innuendo by men and women alike, and plaintiff contributed her share to this atmosphere.) However, even if a student participates in the sexual banter, OCR may in certain circumstances find that the conduct was nevertheless unwelcome if, for example, a teacher took an active role in the sexual banter and a student reasonably perceived that the teacher expected him or her to participate.

[57] The school bears the burden of rebutting the presumption.

[58] Of course, nothing in Title IX would prohibit a school from implementing policies prohibiting sexual conduct or sexual relationships between students and adult employees.

[59] See note 58.

[60] Gebser, 524 U.S. at 281 ("Franklin ... establishes that a school district can be held liable in damages [in an implied action under Title IX] in cases involving a teacher's sexual harassment of a student...."; 34 CFR 106.31; See 1997 Sexual Harassment Guidance, 62 FR 12034.

[61] See Davis, 526 U.S. at 653 (stating that harassment of a student by a teacher is more likely than harassment by a fellow student to constitute the type of effective denial of equal access to educational benefits that can breach the requirements of Title IX).

[62] 34 CFR 106.31(b). Cf. Gebser, 524 U.S. at 283-84 (Court recognized in an implied right of action for money damages for teacher sexual harassment of a student that the question of whether a violation of Title IX occurred is a separate question from the scope of appropriate remedies for a violation).

[63] Davis, 526 U.S. at 646.

[64] See section on "Applicability of Title IX" for scope of coverage.

[65] See section on "Notice of Employee, Peer, or Third Party Harassment."

[66] See section on "Notice of Employee, Peer, or Third Party Harassment."

[67] 34 CFR 106.31(b).

[68] 34 CFR 106.31(b).

[69] See section on "Notice of Employee, Peer, or Third Party Harassment."

[70] Cf. Davis, 526 U.S. at 646.

[71] 34 CFR 106.31(b).

[72] 34 CFR 106.31(b).

[73] Consistent with its obligation under Title IX to protect students, cf. Gebser, 524 U.S. at 287, OCR interprets its regulations to ensure that recipients take reasonable action to address, rather than neglect, reasonably obvious discrimination. Cf. Gebser, 524 U.S. at 287-88; Davis, 526 U.S. at 650 (actual notice standard for obtaining money damages in private lawsuit).

[74] Whether an employee is a responsible employee or whether it would be reasonable for a student to believe the employee is, even if the employee is not, will vary depending on

factors such as the age and education level of the student, the type of position held by the employee, and school practices and procedures, both formal and informal.
The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. Gebser, 524 U.S. at 290, and Davis, 526 U.S. at 642. The concept of a "responsible employee" under our guidance is broader. That is, even if a responsible employee does not have the authority to address the discrimination and take corrective action, he or she does have the obligation to report it to appropriate school officials.

[75] The Title IX regulations require that recipients designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulations, including complaint investigations. 34 CFR 106.8(a).

[76] 34 CFR 106.31. See Yates v. Avco Corp., 819 F.2d 630, 636 (6th Cir. 1987); Katz v. Dole, 709 F.2d 251, 256 (4th Cir. 1983).

[77] For example, a substantiated report indicating that a high school coach has engaged in inappropriate physical conduct of a sexual nature in several instances with different students may suggest a pattern of conduct that should trigger an inquiry as to whether other students have been sexually harassed by that coach. See also Doe v. School Administrative Dist. No. 19, 66 F.Supp.2d 57, 63-64 and n.6 (D.Me. 1999) (in a private lawsuit for money damages under Title IX in which a high school principal had notice that a teacher may be engaging in a sexual relationship with one underage student and did not investigate, and then the same teacher allegedly engaged in sexual intercourse with another student, who did not report the incident, the court indicated that the school's knowledge of the first relationship may be sufficient to serve as actual notice of the second incident).

[78] Cf. Katz, 709 F.2d at 256 (finding that the employer "should have been aware of the problem both because of its pervasive character and because of [the employee's] specific complaints ..."); Smolsky v. Consolidated Rail Corp., 780 F.Supp. 283, 293 (E.D. Pa. 1991), reconsideration denied, 785 F.Supp. 71 (E.D. Pa. 1992) "where the harassment is apparent to all others in the work place, supervisors and coworkers, this may be sufficient to put the employer on notice of the sexual harassment" under Title VII); Jensen v. Eveleth Taconite Co., 824 F.Supp. 847, 887 (D.Minn. 1993); "[s]exual harassment ... was so pervasive that an inference of knowledge arises .... The acts of sexual harassment detailed herein were too common and continuous to have escaped Eveleth Mines had its management been reasonably alert."); Cummings v. Walsh Construction Co., 561 F.Supp. 872, 878 (S.D. Ga. 1983) ("... allegations not only of the [employee] registering her complaints with her foreman ... but also that sexual harassment was so widespread that defendant had constructive notice of it" under Title VII); but see Murray v. New York Univ. College of Dentistry, 57 F.3d 243, 250-51 (2nd Cir. 1995) (concluding that other students' knowledge of the conduct was not enough to charge the school with notice, particularly because these students may not have been aware that the conduct was offensive or abusive).

[79] 34 CFR 106.9 and 106.8(b).

[80] 34 CFR 106.8(b) and 106.31(b).

[81] 34 CFR 106.9.

[82] 34 CFR 106.8(b).

[83] 34 CFR 106.31.

[84] 34 CFR 106.31 and 106.3. Gebser, 524 U.S. at 288 ("In the event of a violation, [under OCR's administrative enforcement scheme] a funding recipient may be required to take 'such remedial action as [is] deem[ed] necessary to overcome the effects of [the] discrimination.' §106.3.").

[85] 20 U.S.C. 1682. In the event that OCR determines that voluntary compliance cannot be secured, OCR may take steps that may result in termination of Federal funding through administrative enforcement, or, alternatively, OCR may refer the case to the Department of Justice for judicial enforcement.

[86] Schools have an obligation to ensure that the educational environment is free of discrimination and cannot fulfill this obligation without determining if sexual harassment complaints have merit.

[87] In some situations, for example, if a playground supervisor observes a young student repeatedly engaging in conduct toward other students that is clearly unacceptable under the school's policies, it may be appropriate for the school to intervene without contacting the other students. It still may be necessary for the school to talk with the students (and parents of elementary and secondary students) afterwards, e.g., to determine the extent of the harassment and how it affected them.

[88] Gebser, 524 U.S. at 288; Bundy v. Jackson, 641 F.2d 934, 947 (D.C. Cir. 1981) (employers should take corrective and preventive measures under Title VII); accord, Jones v. Flagship Int'l, 793 F.2d 714, 719-720 (5th Cir. 1986) (employer should take prompt remedial action under Title VII).

[89] See Doe ex rel. Doe v. Dallas Indep. Sch. Dist., 220 F.3d 380 (5th Cir. 2000) (citing Waltman); Waltman, 875 F.2d at 479 (appropriateness of employer's remedial action under Title VII will depend on the "severity and persistence of the harassment and the effectiveness of any initial remedial steps"); Dornhecker v. Malibu Grand Prix Corp., 828 F.2d 307, 309-10 (5th Cir. 1987); holding that a company's quick decision to remove the harasser from the victim was adequate remedial action).

[90] See Intlekofer v. Turnage, 973 F.2d 773, 779-780 (9th Cir. 1992)(holding that the employer's response was insufficient and that more severe disciplinary action was

necessary in situations in which counseling, separating the parties, and warnings of possible discipline were ineffective in ending the harassing behavior).

[91] Offering assistance in changing living arrangements is one of the actions required of colleges and universities by the Campus Security Act in cases of rape and sexual assault. See 20 U.S.C. 1092(f).

[92] See section on "Harassment by Other Students or Third Parties."

[93] University of California at Santa Cruz, OCR Case No. 09-93-2141 (extensive individual and group counseling); Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (counseling).

[94] Even if the harassment stops without the school's involvement, the school may still need to take steps to prevent or deter any future harassment — to inform the school community that harassment will not be tolerated. Wills v. Brown University, 184 F.3d 20, 28 (1st Cir. 1999) (difficult problems are posed in balancing a student's request for anonymity or limited disclosure against the need to prevent future harassment); Fuller v. City of Oakland, 47 F.3d 1522, 1528-29 (9th Cir. 1995) (Title VII case).

[95] 34 CFR 106.8(b) and 106.71, incorporating by reference 34 CFR 100.7(e). The Title IX regulations prohibit intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX.

[96] Tacoma School Dist. No. 10, OCR Case No. 10-94-1079 (due to the large number of students harassed by an employee, the extended period of time over which the harassment occurred, and the failure of several of the students to report the harassment, the school committed as part of corrective action plan to providing training for students); Los Medanos College, OCR Case No. 09-84-2092 (as part of corrective action plan, school committed to providing sexual harassment seminar for campus employees); Sacramento City Unified School Dist., OCR Case No. 09-83-1063 (same as to workshops for management and administrative personnel and in-service training for non-management personnel).

[97] In addition, if information about the incident is contained in an "education record" of the student alleging the harassment, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, the school should consider whether FERPA would prohibit the school from disclosing information without the student's consent. Id. In evaluating whether FERPA would limit disclosure, the Department does not interpret FERPA to override any federally protected due process rights of a school employee accused of harassment.

[98] 34 CFR 106.8(b). This requirement has been part of the Title IX regulations since their inception in 1975. Thus, schools have been required to have these procedures in place since that time. At the elementary and secondary level, this responsibility generally lies

with the school district. At the postsecondary level, there may be a procedure for a particular campus or college or for an entire university system.

[99] Fenton Community High School Dist. #100, OCR Case 05-92-1104.

[100] While a school is required to have a grievance procedure under which complaints of sex discrimination (including sexual harassment) can be filed, the same procedure may also be used to address other forms of discrimination.

[101] See generally Meritor, 477 U.S. at 72-73 (holding that "mere existence of a grievance procedure" for discrimination does not shield an employer from a sexual harassment claim).

[102] The Family Educational Rights and Privacy Act (FERPA) does not prohibit a student from learning the outcome of her complaint, i.e., whether the complaint was found to be credible and whether harassment was found to have occurred. It is the Department's current position under FERPA that a school cannot release information to a complainant regarding disciplinary action imposed on a student found guilty of harassment if that information is contained in a student's education record unless — (1) the information directly relates to the complainant (e.g., an order requiring the student harasser not to have contact with the complainant); or (2) the harassment involves a crime of violence or a sex offense in a postsecondary institution. See note 97. If the alleged harasser is a teacher, administrator, or other non-student employee, FERPA would not limit the school's ability to inform the complainant of any disciplinary action taken.

[103] The section in the guidance on "Recipient's Response" provides examples of reasonable and appropriate corrective action.

[104] 34 CFR 106.8(a).

[105] Id.

[106] See Meritor, 477 U.S. at 72-73.

[107] University of California, Santa Cruz, OCR Case No. 09-93-2131. This is true for formal as well as informal complaints. See University of Maine at Machias, OCR Case No. 01-94-6001 (school's new procedures not found in violation of Title IX in part because they require written records for informal as well as formal resolutions). These records need not be kept in a student's or employee's individual file, but instead may be kept in a central confidential location.

[108] For example, in Cape Cod Community College, OCR Case No. 01-93-2047, the College was found to have violated Title IX in part because the person identified by the school as the Title IX coordinator was unfamiliar with Title IX, had no training, and did not even realize he was the coordinator.

[109] Indeed, in University of Maine at Machias, OCR Case No. 01-94-6001, OCR found the school's procedures to be inadequate because only formal complaints were investigated. While a school isn't required to have an established procedure for resolving informal complaints, they nevertheless must be addressed in some way. However, if there are indications that the same individual may be harassing others, then it may not be appropriate to resolve an informal complaint without taking steps to address the entire situation.

[110] Academy School Dist. No 20, OCR Case No. 08-93-1023 (school's response determined to be insufficient in a case in which it stopped its investigation after complaint filed with police); Mills Public School Dist., OCR Case No. 01-93-1123, (not sufficient for school to wait until end of police investigation).

[111] Cf. EEOC v. Board of Governors of State Colleges and Universities, 957 F.2d 424 (7th Cir. 1992), cert. denied, 506 U.S. 906 (1992).

[112] The First Amendment applies to entities and individuals that are State actors. The receipt of Federal funds by private schools does not directly subject those schools to the U.S. Constitution. See Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982). However, all actions taken by OCR must comport with First Amendment principles, even in cases involving private schools that are not directly subject to the First Amendment.

[113] See, e.g., George Mason University, OCR Case No. 03-94-2086 (law professor's use of a racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment); Portland School Dist. 1J, OCR Case No. 10-94-1117 (reading teacher's choice to substitute a less offensive term for a racial slur when reading an historical novel aloud in class constituted an academic decision on presentation of curriculum, not racial harassment).

[114] See Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 993 F.2d 386 (4th Cir. 1993) (fraternity skit in which white male student dressed as an offensive caricature of a black female constituted student expression).

[115] See Florida Agricultural and Mechanical University, OCR Case No. 04-92-2054 (no discrimination in case in which campus newspaper, which welcomed individual opinions of all sorts, printed article expressing one student's viewpoint on white students on campus.)

[116] Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969) (neither students nor teachers shed their constitutional rights to freedom of expression at the schoolhouse gates); Cf. Cohen v. San Bernardino Valley College, 92 F.3d 968, 972 (9th Cir. 1996) (holding that a college professor could not be punished for his longstanding teaching methods, which included discussion of controversial subjects such as obscenity and consensual sex with children, under an unconstitutionally vague sexual harassment policy); George Mason University, OCR Case No. 03-94-2086 (law professor's use of a

racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment.)

[117] See, e.g., University of Illinois, OCR Case No. 05-94-2104 (fact that university's use of Native American symbols was offensive to some Native American students and employees was not dispositive, in and of itself, in assessing a racially hostile environment claim under Title VI.)

[118] See Meritor, 477 U.S. at 67 (the "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee" would not affect the conditions of employment to a sufficient degree to violate Title VII), quoting Henson, 682 F.2d at 904; cf. R.A.V. v. City of St. Paul, 505 U.S. 377, 389 (1992) (citing with approval EEOC's sexual harassment guidelines); Monteiro, 158 F.3d at 1032-34 (9th Cir. 1998) (citing with approval OCR's racial harassment investigative guidance).

[119] Compare Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986) (Court upheld discipline of high school student for making lewd speech to student assembly, noting that "[t]he undoubted freedom to advocate unpopular and controversial issues in schools must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior."), with Iota Xi, 993 F.2d 386 (holding that, notwithstanding a university's mission to create a culturally diverse learning environment and its substantial interest in maintaining a campus free of discrimination, it could not punish students who engaged in an offensive skit with racist and sexist overtones).

Senate Committee on
Governmental Organization
Hearing Date: 8/9/77

STAFF ANALYSIS OF ASSEMBLY BILL NO. 803 (Brown)
(As Amended 6/21/77)

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SUBJECT

State Funds: Discrimination

DESCRIPTION

1. AB 803 would prohibit any state-funded program or activity from unlawfully denying benefits or unlawfully discriminating on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability.

2. Requires any state agency which administers a program or activity receiving state financial assistance to hold a hearing to ascertain whether discrimination has occurred when the agency has reasonable cause to believe that a contractor, grantee, or local agency has violated these provisions.

3. Requires state agencies to curtail funding to any contractor, grantee, or local agency that has engaged in unlawful denial of benefits or unlawful discrimination as defined by the agency's rules and regulations.

4. Any state agency administering a program or activity funded directly by the state, or a program that receives any financial assistance from the state, and which enters into contracts for services to the public in an amount exceeding $100,000 per year shall adopt rules and regulations to carry out the purposes of this measure.

- MORE -

5. Specified that this measure shall not be interpreted to adversely affect lawful programs which benefit the disabled, the aged, minorities or women.

BACKGROUND

Under current law and executive orders, all state agencies and entities receiving state funds are prohibited from engaging in employment discrimination in providing services. However, if an individual feels he or she has been discriminated against, they must go to court as individuals alleging discrimination under the United States Civil Rights Act.

On the basis of applicable law and court decisions, each state agency under this measure would adopt such rules and regulations as it deemed necessary to define unlawful discrimination within the context of the programs and activities operated by the agency. From that point on, the agency would become primarily responsible for non-discriminority policies and this would lessen the need for individuals to seek a judicial remedy of their own.

The major intent of this measure is to shift the burden of proving unlawful discrimination in a state-funded program from the person being discriminated against to the state agency administering the program.

Supporters of this measure feel that no organization should be able to discriminate, and if they do, they should definitely be prohibited from receiving any state funds. Opponents feel that each agency's individual interpretation of existing statutes in determining their new rules and regulations will ultimately lead to confusion and conflict. Also, that forced minority quotas and dealing with minority contractors is not the best answer to the problem.

KNOWN POSITIONS:

The following SUPPORT AB 803:

Asian American Drug Treatment Program, L.A.
California School Employees Association
California NOW
Friends Commission on Legislation
League of Women Voters
NAACP
Southern California Rehabilitation Association
United Farmworkers

The following OPPOSE AB 803:

Construction Industry Legislative Council

WRITTEN COMMUNICATIONS RECEIVED: None

FISCAL COMMITTEE: Senate Finance Committee

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SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
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SB 105

THIRD READING

Bill No: SB 105
Author: Burton (D), et al
Amended: 7/18/02
Vote: 21

SENATE GOVERNMENTAL ORG. COMMITTEE : 8-0, 1/15/02
AYES: Vincent, Chesbro, Dunn, Karnette, Knight, Machado, Perata, Soto

SENATE APPROPRIATIONS COMMITTEE : 13-0, 1/28/02
AYES: Alpert, Battin, Bowen, Burton, Escutia, Johannessen, Johnson, Karnette, McPherson, Murray, Perata, Poochigian, Speier

SENATE FLOOR : 36-0, 1/30/02
AYES: Ackerman, Alarcon, Alpert, Battin, Bowen, Brulte, Burton, Chesbro, Costa, Dunn, Escutia, Figueroa, Johannessen, Johnson, Karnette, Knight, Kuehl, Machado, Margett, McPherson, Monteith, Murray, O'Connell, Ortiz, Peace, Perata, Polanco, Poochigian, Romero, Scott, Sher, Soto, Speier, Torlakson, Vasconcellos, Vincent

ASSEMBLY FLOOR : 75-0, 8/24/02 - See last page for vote

SUBJECT : Services: blind: visually impaired: deaf: hard of hearing

SOURCE : Blind Alliance for Rehabilitation Change

DIGEST : This bill establishes within the State

CONTINUED

Department of Rehabilitation, a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing, as specified.

Assembly Amendments added legislative findings and declarations, made clarifying changes and double-join this

bill to AB 3035 (Assembly Judiciary Committee).

ANALYSIS : Existing law provides for the State Department of Rehabilitation (DOR), which administers programs and services for disabled persons, including the blind and visually impaired, and the deaf and hard of hearing.

This bill:

1. Provides that the intent of the Legislature is for DOR to implement policy and procedural changes to improve its ability to enhance employment outcomes and independent living services.

2. Establishes, within DOR, a Division of Services for the Blind and Visually Impaired and the Deaf and hard of Hearing with the purpose of enlarging economic opportunities and enhancing the self-sufficiency of persons who are blind, visually impaired, deaf, and hard of hearing, and assisting them to gain competitive employment.

3. Requires the Governor to appoint a deputy director to direct the division, report to the directorate of DOR, and serve as a member of DOR's executive management.

4. Requires, subject to the control of the director, all employees providing services administered by the division to persons who are blind and visually impaired to be under the exclusive direction and supervision of the deputy director.

5. Specifies the programs currently administered by DOR for which the division will have responsibility beginning July 1, 2003, and specifies other responsibilities of the division.

6. Requires additional rehabilitation services for clients

who are blind, visually impaired, deaf, and hard of hearing, to the extent funding is available.

7. Requires state entities and state-funded entities, in developing, procuring, maintaining, or using electronic or information technology, to comply with the accessibility requirements of the federal Rehabilitation Act of 1973, as amended, and federal regulations implementing that Act.

8. Requires any entity that contracts with a state or local agency to agree to respond to and resolve complaints that are brought to its attention regarding the accessibility of its service or products.

9. Requires any program administered by the State Department of Education, relative to the transition from school to work for blind, visually impaired, deaf, and hard of hearing students, to be conducted in partnership with the division.

10. Requires the Director of DOR to appoint a Deaf Advisory Committee, composed of a majority of members who are deaf or hard of hearing, and other members with experience relating to services for the deaf and hard of hearing, and specifies the duties of the Advisory Committee.

11. Requires the Director of DOR to appoint a Blind Advisory Committee, composed of a majority of members who are blind, or visually impaired, and other members with experience relating to services for the blind, and specifies the duties of the Advisory Committee.

12. Requires DOR to report annually, in the fourth quarter of the calendar year, to the Blind Advisory Committee on the amount of state and federal funds allocated to direct services under the new division.

13. Requires the Director of DOR, by July 2, 2005, and every year thereafter, to report to the Legislature and the Governor on the programs administered by the division, including statistics on employment placements.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, estimated cost of $167,000 ($36,000 General Fund) to provide additional staff.

SUPPORT : (Verified 1/20/02) (Unable to reverify at time of writing)

Blind Alliance for Rehabilitation Changes (source)
Action Committee on Organization of and for the Visually Impaired
California Optometric Association
Californians for Disability Rights, Inc.

ARGUMENTS IN SUPPORT : According to the sponsor of the bill, the Blind Alliance for Rehabilitation Change (BARC), approximately 70 percent of California's working-age blind and visually impaired citizens are unemployed, and the current services provided by DOR are inadequate to meet their needs. The sponsor argues that the key factor in the success of state agencies serving blind and visually impaired clients is that al personnel, from the director to direct service counselors who work with blind clients, must be well versed in the services required to obtain a satisfactory employment outcome. That, the sponsor says, is not the case in California where there are layers of district administrators and supervisors who know little about the needs of blind clients. This bill rectifies that by establishing line authority directly from the deputy director of the specialized division to the counselor and by assuring that all staff in the division have specialized expertise.

According to DOR staff, in its current form, the bill is

consistent with steps the department is already taking to establish a division that focuses on consumers with sensory disabilities. DOR staff believes the bill will fit in with its current efforts to streamline services and that it will result in minor, absorbable costs, if any.

ASSEMBLY FLOOR :

AYES: Aanestad, Alquist, Aroner, Ashburn, Bates, Bogh, Briggs, Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Havice, Hertzberg, Horton, Keeley, Kehoe, Kelley, Koretz, La Suer, Leach, Leonard, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Mountjoy, Nakano, Nation, Negrete McLeod, Oropeza, Robert Pacheco, Rod Pacheco, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Simitian, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wiggins, Wright, Wyland, Wyman, Zettel, Wesson

TSM:cm 8/26/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****